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Index

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INDEX

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Index

THIS INDEX is based on a consolidation of contents entries appearing in the January--December issues of the **Federal Register** together with broad subject references. The entries are arranged first under the name of the agency which issued the document. Under each agency, the entries are then listed alphabetically within the categories of Rules, Proposed Rules, and Notices. Executive Orders, Proclamations, and other documents from the President are listed under Presidential Documents. The number at the end of each entry gives the pages in the **Federal Register** where the document begins. Use the table of Federal Register Pages and Dates at the back of this index to locate the issue date for each page number. This index is published monthly and is cumulated for 12 months.

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TABLE OF CONTENTS

Entries / **2**
Guide to Freedom of Information Indexes / **154**
Federal Register Pages and Dates / **167**

FEDERAL REGISTER INDEX, January--December, 1996

Actuaries, Joint Board for Enrollment
See Joint Board for Enrollment of Actuaries

Administration on Aging
See Aging Administration

Administrative Committee of the Federal Register
See Federal Register, Administrative Committee

Administrative Conference of the United States
RULES
Termination and CFR chapter vacated, 3539

Advisory Council on Historic Preservation
See Historic Preservation, Advisory Council

African Development Foundation
RULES
Conflict of interests, 6506
NOTICES
Meetings; Sunshine Act, 6894, 18543, 28836, 40182, 51672, 58368

Agency for Health Care Policy and Research
NOTICES
Advisory committees; annual reports; availability, 18743
Agency information collection activities:
Proposed collection; comment request, 42425, 50826, 65065
Submission for OMB review; comment request, 36068, 48491, 53747, 55153
Evidence-based practice centers; topics nominations, 67554
Health plans, consumer assessments; draft questionnaires availability for review, 42619
Meetings:
Health Care Policy and Research Special Emphasis Panel, 10585, 15487, 15958, 24500, 31530, 33745, 37482, 39977, 41416, 56963, 58883, 59232, 64749
Health Care Policy, Research, and Evaluation National Advisory Council, 1439, 24312, 54444
Meetings; advisory committees:
February, 5561
March, 5561
June, 24799
July, 36885, 37482
August, 40646
October, 50827
Nurse staffing; impact on quality of care in hospitals; comment request, 58194
Patient outcomes research teams (PORT IIs) priority topics; nominations of outcomes and effectiveness, 26519

Agency for International Development
See International Development Cooperation Agency
RULES
Acquisition regulations:
Miscellaneous amendments, 39089
Correction, 42939, 51234, 52497, 53996
Commodities and services financed by AID; source, origin and nationality rules, 53615
Correction, 54849, 55361
Foreign dairy products donation program to assist needy persons overseas; CFR part removed, 65946
Freedom of Information Act; implementation, 43002
PROPOSED RULES
Commodities and services financed by AID; source, origin and nationality rules, 4240
Semi-annual agenda, 23600, 63110
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5408, 13213, 15968, 19957, 24509, 42442, 44077
Submission for OMB review; comment request, 11430, 28890, 46484, 49154
Close-out plan guidance, draft; availability, 53757
Food Aid Consultative Group; membership requests, 60726
Grants and cooperative agreements; availability, etc.:
American schools and hospitals abroad assistance applications acceptance; cancellation, 34862
Housing guaranty program:
Chile, 47956
India, 69109
Indonesia, 48968
Morocco, 30094, 42052
Tunisia, 59108
Zimbabwe, 19637
Israel loan guarantees; investment opportunities notice, 37495, 67574
Meetings:
International Food and Agricultural Development Board, 17720, 41798, 68209
Voluntary Foreign Aid Advisory Committee, 7277, 26545, 38785, 60726
Senior Executive Service:
Performance Review Board; membership, 1602
Title II development project proposals:
Final draft guidelines (FY 1997); availability, 14336

Agency for Toxic Substances and Disease Registry
NOTICES
Committees; establishment, renewal, termination, etc.:
Public Health Service Activities and Research at DOE Sites Citizens Advisory Committee—
Membership nominations solicitation, 50322
Grants and cooperative agreements; availability, etc.:
Hazardous waste sites; human health studies; applied research and development, 20821
Public health conference support program, 19296
Site-specific health activities—
Environmental health education for health professionals, 15807
State health agency administered; capacity building program, 18603
Hazardous substances releases and facilities:
Public health assessments and effects—
Quarterly listing, 5787, 18743, 38754, 50827, 59888
Meetings:
Inter-Tribal Council, 1765, 32442
Inter-tribal Council Advisory Committee, 17303
Public Health Service Activities and Research at DOE Sites Citizens Advisory Committee, 1766, 17303, 173044
Scientific Counselors Board, 10767, 54445
Native American tribal governments; establishment of government-to-government relationship; policy statement, 42255
Organization, functions, and authority delegations:
Public Health Practice Coordination Group; transfer, 9710
Senior Executive Service:
Performance Review Board; membership, 58071
Superfund program:
Hazardous substances priority list (toxicological profiles), 14430, 18744, 38451, 41416, 60105
Minimum risk levels, 25873
Minimum risk levels; republication, 33511
Substance-specific applied research program; status update, 14420

Aging Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5561
Submission for OMB review; comment request, 30619
Grants and cooperative agreements; availability, etc.:
Supportive and nutritional services to older Native Hawaiians, 33920
Medical food and food for special dietary uses in Older Americans Act nutrition programs; guidance, 30619
White House Conference on Aging:
Governors' comments; compilation, 1581

Agricultural Marketing Service
RULES
Agricultural commodities; U.S. grade standards and other selected regulations; removal from ... Federal regulatory reform, 9589
Agricultural commodities testing services:
Laboratory support functions and responsibilities; Federal regulatory reform, 51349
Correction, 55840
Almonds grown in California, 32917, 39841, 42990, 49954, 53607, 64601
Apples and pears, export:
U.S. grown; shipped to Pacific ports of Russia; grade requirements relaxation, 50421

Apricots grown in—
Washington, 30495, 40954, 42988, 50229
Avocados grown in—
Florida, 17551, 19512, 40290
South Florida, 31004, 46701, 49050
Washington, 50229
Cauliflower (frozen); grade standards, 43939
Cherries (sweet) grown in Washington, 40954, 50229
Cherries (tart) grown in—
Michigan et al., 49939
Cotton:
Classification under cotton futures legislation; CFR correction, 48399
Cotton classing, testing and standards:
Classification services to growers; 1996 user fees, 19511
Cotton research and promotion order:
Imported cotton and cotton content of imported products; supplemental assessment calculation, 31817
Cranberries grown in Massachusetts et al., 30497, 41729, 51353
Dairy products; grading, inspection, and standards:
Dairy plants information reporting and recordkeeping requirements, 67447
Fee increases, 68997
Instant nonfat dry milk, 35589
Monterey (monterey jack) cheese, 15875
Nonfat dry milk; spray process, 17547
Dates (domestic) produced or packed in California, 49955, 59178
Filberts/hazelnuts grown in Oregon and Washington, 2665, 11289, 17556, 29924
Florida grapefruit, oranges, tangelos, and tangerines:
Grade standards, 20702
Fluid milk promotion order, 27003
Fresh cut flowers and fresh cut greens promotion and information, 30498
Assessments payment postponement, 14951
Fruits; import regulations:
Avocados, grapefruit, kiwifruit, etc.; exemptions, 13051
Limes, 43141
Prunes, brine dried; exemption, 2393
Fruits, vegetables, and other products, fresh:
Inspection, certification, and standards fee schedule, 54082
Fruits, vegetables, and other products, processed:
Inspection, certification, and standards fee schedule, 25549
Okra (frozen), 48065
Peas, field and black-eye (frozen), 48066
Quality through verification program, etc.; public meeting, 67179
Grapes and plums, exported:
Black Corinth grape variety; exemption, 54081
Grapes grown in California, 11127, 14013, 27245
Grapes, table (European or Vinifera type); grade standards, 11125
Green and wax beans, frozen; grade standards, 37663
Hazelnuts grown in Oregon and Washington, 42991
Honey research, promotion, and consumer information order, 29461
Correction, 33175, 38355
Kiwifruit grown in California, 13393, 40506, 49653, 51575, 64959
Limes; imported, 64255
Limes grown in—
Florida, 17551, 31004, 43141, 46701, 49050, 64255
Livestock; grading, certification, and standards:
Slaughter cattle and carcass beef, 2891, 19155
Marketing orders; stipulation procedures, 20717
Meats, prepared meats, and meat products; grading, certification, and standards:
Definitions, certificate form changes, and official stamp imprints update, 11504
Melons grown in Texas, 248, 7408, 7688, 20718
Milk marketing orders:
Black Hills, SD, 47038, 67927
Carolina et al., 1147, 41488
Central Arizona, 17561
Eastern Colorado, 55205
Iowa, 55731
Middle Atlantic, 20719
Middle Atlantic et al., 69016
New York-New Jersey, 11293, 20719
Southeast, 20124
Southwest Plains, 35596
Nectarines grown in—
California, 13386, 19160, 26073, 31006, 31387, 37812, 49651
Olives grown in California, 6306, 17555, 40507, 55202
Olives, imported, 40507, 55202
Onions (sweet) grown in Washington and Oregon, 20121, 39050, 44150
Onions (Vidalia) grown in Georgia, 49952, 67179
Onions grown in—
Idaho, 27250, 35592, 39839, 43415, 52682
Oregon, 27250, 35592, 39839, 43415, 52682
Texas, 7407, 24877
Onions, imported, 25556, 35592
Oranges and grapefruit grown in Texas, 37810, 43139, 49650, 59820, 64253
Oranges, grapefruit, tangerines, and tangelos grown in Florida, 3544, 38354, 50691, 64251, 69011
Grade standards, 40289
Papayas grown in Hawaii, 99, 28000, 40146
Peaches grown in—
California, 13386, 19160, 26073, 31006, 31387, 37812, 49651
Peanuts, domestically produced, 102, 29926, 35594, 42993, 55547, 59822
Pears (Bartlett) grown in Oregon et al., 42529
Pears (winter) grown in Oregon et al., 17553, 42529
Pears (winter and Bartlett) grown in Oregon et al., 52681
Perishable Agricultural Commodities Act:
Oil-blanched fresh and frozen fruits and vegetables, including frozen french fried potato products; coverage extension, 13385
Plant Variety Protection Act conformance; certification fee increase, 247
Pork promotion, research, and consumer information, 28002, 35597
Potatoes (Irish) grown in—
California, 27247, 43144
Colorado, 29635, 36813, 43946, 50231
Idaho, 3546, 39270, 51354
Maine, 53606
North Carolina, 27248
Oregon, 27247, 39270, 43144, 51354
Southeastern States, 43146
Virginia, 27248
Washington, 20119, 31006, 35109
Prunes (dried) produced in California, 39842, 51356
Prunes (fresh) grown in Washington and Oregon, 40954, 40956, 50229
Raisins produced from grapes grown in California, 100, 6307, 7067, 36814, 52684, 64454
Referendum:
Tobacco auction market consolidation—
Boone, et al., NC and TN, 29923
Horse Cave et al., KY, 29924
Sanford et al., NC, 27997, 37316, 37351
Sheep promotion, research, and information program, 19514, 21053, 33644
National Sheep Promotion, Research, and Information Board; membership nomination eligibility, 21049
Referendum approval, 13061
Soybean promotion, research, and consumer information:
Federal regulatory reform, 50693
Spearmint oil produced in Far West, 11291, 15695, 20122, 29459, 32922, 40959
Specialty crops; import regulations:
Peanuts, 31306
Tomatoes grown in—
Florida, 5924, 55729, 60510
Vegetables and specialty crops; import regulations:
Potatoes, onions, tomatos, etc.; exemptions, 13051
Walnuts grown in—
California, 60512

PROPOSED RULES

Almonds grown in California, 48428
Avocados grown in South Florida, 27027
Cherries (tart) grown in—
Michigan et al., 21, 26956
Cotton classing, testing and standards:
Classification services to growers; 1996 user fees, 7756
Cotton research and promotion order:
Imported cotton and cotton content of imported products; supplemental assessment calculation, 11764
Referendum continuance request; sign-up period, 64640
Cranberries grown in—
Massachusetts et al., 17586, 43186
Dairy products; grading, inspection, and standards:
Fee increases, 58345
Dates (domestic) produced or packed in California, 64638
Fluid milk promotion order, 20759, 47093
Fruits; import regulations:
Limes, 0550, 20754
Prunes, 20756
Fruits, vegetables, and other products, fresh:
Almonds, shelled and in shell, 17580
Correction, 19117
Inspection, certification, and standards; fee schedules, 24247
Fruits, vegetables, and other products, processed:
Inspection, certification, and standards fee schedule, 9654
Honey research, promotion, and consumer information order, 13463
Mail referendum, 34385
Correction, 38407
Kiwifruit grown in California, 3604, 13463
Kiwifruit research, promotion, and consumer information order, 51378, 51391
Limes; imported, 33047
Limes grown in—
Florida, 20754, 27027, 33047
Milk marketing orders:
Carolina et al., 11756, 19861, 37628, 43474, 55229, 59843
Central Arizona, 10288
Eastern Colorado, 47092
Iowa, 46571, 65366
New England et al., 49081
New York-New Jersey et al., 14514
Pacific Northwest et al., 43474, 60639
Southwest Plains, 17588
Nectarines grown in—
California, 8225
Olives grown in California, 57782
Olives, imported, 57782

Onions (sweet) grown in Washington and Oregon, 36827
Onions grown in—
Idaho et al., 20188
Texas, 6328
Onions, imported, 4941
Oranges and grapefruit grown in Texas, 49078
Oranges, grapefruit, tangerines, and tangelos grown in Florida, 44187
Papayas grown in Hawaii, 33388
Peaches grown in—
California, 8225
Peanuts, domestically and foreign produced, 51811
Peanuts, domestically produced, 44192
Correction, 47786
Pears (winter) grown in Oregon et al., 33047
Perishable Agricultural Commodities Act; implementation:
Retailers and grocery wholesalers; phase-out of license fee payments, etc., 47674
Pistachios grown in California et al., 39911
Popcorn promotion, research, and consumer information order, 51046, 51055
Pork promotion, research, and consumer information, 11776
Potatoes (Irish) grown in—
Washington, 17587
Prunes (fresh) grown in Washington and Oregon, 20756
Sheep promotion, research, and information program:
Referendum conduct, 35982
Spearmint oil produced in Far West, 1855, 6329
Specialty crops; import regulations:
Medjhool dates; removal, 15734
Peanuts, 3606
Tobacco inspection:
Growers; mail referendum, 10902, 10903
Vegetables; import regulations:
Banana/fingerling potatoes, etc.; removal and exemption, 67499

NOTICES

Agency information collection activities:
Proposed collection; comment request, 159, 5371, 7464, 7465, 19023, 19024, 20209, 43225, 44036, 46760, 47733, 48457, 49296, 49725, 50802, 52771, 52772, 56509, 64661, 67996
Beef promotion and research:
Cattlemen's Beef Promotion and Research Board; certification and nomination, 15023
Committees; establishment, renewal, termination, etc.:
Burley Tobacco Advisory Committee, 13480
Flue-Cured Tobacco Advisory Committee, 13480
NAFTA Private Commercial Disputes Regarding Agricultural Goods Advisory Committee, 33084
National Organic Standards Board, 33897, 49725
Cotton research and promotion order:
Referendum continuance request; sign-up period; determination, 52772
Referendum on continuation of 1990 amendments; comment request, 11377
Eggs and egg products:
Pasteurized shell eggs (in-shell eggs), 30851
Grants and cooperative agreements; availability, etc.:
Federal-State marketing improvement program, 5371, 64319
Meetings:
Agricultural Concentration Advisory Committee, 9423, 15919
Burley Tobacco Advisory Committee, 24270
Flue-Cured Tobacco Advisory Committee, 29524
National Organic Standards Board, 43520
Plant Variety Protection Advisory Board, 10309
Tobacco Inspection Services National Advisory Committee, 14551
Universal Cotton Standards Advisory Committee
Recommendations, 7466
Milk; manufacturing, production and processing; recommended State requirements, 48120
Northeast Interstate Dairy Compact:
Compelling public interest; comment request, 19904
Implementation, 44290
Poultry grade standards, voluntary:
Cooked, boneless-skinless products without added ingredients, 5975, 7050
Legs and drumsticks, boneless/skinless, 13480
Tentative, for raw, ready-to-cook, boneless, skinless poultry products, 30031
Tobacco auction market consolidation:
Tabor City and Whiteville, NC, 55783

Agricultural Research Service

RULES

Beltsville Agricultural Research Center property, Beltsville, MD; conduct on premises, 51210
National Arboretum Property; conduct:
Federal regulatory reform, 65302

NOTICES

Agency information collection activities:
Proposed collection; comment request, 57847
Inventions, Government-owned; availability for licensing, 37439, 45932
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Agricultural Innovations, 45932
American Medical Products, 7234
Biotechnology Research and Development Corp., 10560
Colorado State University Research Foundation, 37439
Consep, Inc., 26873
Fanning Corp., 16461, 64048
Genespan Corp., 65519
Nu Way Flame & Equipment Co., 6232
Peterson Seed Co., Inc., 14046
Seedbiotics, 34415
Sonic Industries, Inc., 54408
University of Georgia Research Foundation, 345, 40183
Zellweger Uster, 50271
Strategic plan (FYs 1998-2002); draft availability, 37980

Agriculture Department

See Agricultural Marketing Service
See Agricultural Research Service
See Agriculture Department
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Cooperative State Research, Education, and Extension Service
See Economic Research Service
See Economics Management Staff
See Farm Service Agency
See Federal Crop Insurance Corporation
See Food and Consumer Service
See Food Safety and Inspection Service
See Foreign Agricultural Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See National Agricultural Statistics Service
See Natural Resources Conservation Service
See Rural Business and Cooperative Development Service
See Rural Business-Cooperative Service
See Rural Housing and Community Development Service
See Rural Housing Service
See Rural Telephone Bank
See Rural Utilities Service

RULES

Acquisition regulations:
Federal regulatory reform, 53645
Administrative regulations:
Claims based on negligence, wrongful act, or omission; Federal regulatory reform, 57577
Agricultural Trade Development and Assistance Act:
Agricultural commodities; commercial sales financing, 17823
Award of fellowships to applicants from other American republics; Federal regulatory reform; CFR part removed, 42773
Debarment and suspension (nonprocurement), 250
Economics Management Staff organization and functions; CFR part removed, 42371
Federal Agriculture Improvement and Reform Act of 1996:
Farm program provisions implementation, 37544
Federal regulatory reform:
Classified information; classification, declassification, and safeguarding; CFR part removed, 30495
Freedom of Information Act; implementation:
CFR part removed, 4209
Highly erodible land and wetland conservation, 47019
Correction, 53491
Immigration Reform and Control Act:
Immigration and Nationality Act; replenishment agricultural worker program expiration; CFR part removed, 2659
Special agricultural worker program expiration; CFR part removed, 2659
Import quotas and fees:
Dairy products, 6305, 53002
Federal regulatory reform—
Section 22 import fees, sugar import fees and cotton reentry into U.S; CFR subparts removed, 28723
Licensing Department inventions; CFR part removed, 42371
Meat import limitations; CFR part removed, 37199
Organization, functions, and authority delegations:
Deputy Administrator for Veterinary Services, 68541
Economic Analysis Staff regulations; CFR parts removed, 68997
Energy Office; CFR part removed, 9901
Finance and Management Office, internal structure; CFR part removed, 53608
General Counsel; tort claims payment authority, 49237
Under Secretary for Farm and Foreign Agricultural Services et al., 25775
Practice and procedure:
Perishable Agricultural Commodities Act; formal adjudicatory proceedings, 11501
Upland cotton and rice; world market price determinations; CFR part removed, 40145

PROPOSED RULES

Acquisition regulations:
Federal regulatory review, 7456, 37032
Administrative regulations:
Claims based on negligence, wrongful act, or omission; Federal regulatory review, 16231

INDEX
VOL
61
996

Agriculture

Export sales reporting:
  Sunflower oil, 38107
  Sunflowerseed, 38107
Freedom of Information Act; implementation:
  Federal regulatory review, 38657
Import quotas and fees:
  Dairy products, 1233
Meat and meat products; export reporting, 58343, 68167
Nondiscrimination in USDA conducted programs and activities, 17851
Privacy Act; implementation:
  Federal regulatory review, 38657
Semi-annual agenda, 22708, 62222

NOTICES

Agency information collection activities:
  Proposed collection; comment request, 55950, 58368
  Submission for OMB review; comment request, 407, 1025, 3668, 4760, 6232, 6966, 7772, 9140, 10559, 13813, 16895, 18371, 19249, 21155, 24478, 25842, 28836, 30031, 31502, 35707, 37438, 39116, 40182, 41124, 43328, 44290, 47110, 48119, 49109, 50271, 51672, 53188, 54407, 55130, 55952, 57626, 58368, 59216, 60676, 65009, 66994
Committees; establishment, renewal, termination, etc.:
  Agricultural Concentration Advisory Committee, 6232, 7772
  California Spotted Owl Advisory Committee—Membership nominations request, 59400
  National Agricultural Research, Extension, Education, and Economics Advisory Board, 49999
Emergency declarations;
  Arizona et al.—
    Karnal bunt disease, 12058, 14046
  California—
    Karnal bunt disease, 16895
Import quotas and fees:
  Raw cane sugar, and sugars, syrups, and molasses, 51672
  Sugar, raw cane, 4253, 15458, 37243
  Sugar, refined, 42416
  Upland cotton, 156, 157, 5973-5975, 16457-16460, 27330-27332, 33481-33483
  Special import quota, 47475-47478, 54758, 54759, 60085-60087
Industrial products or processes; agricultural material use; proposal request, 44035
Meetings:
  Agricultural Concentration Advisory Committee, 6232, 7772
  National Agricultural Research, Extension, Education and Economics Advisory Board, 45932
Penalties waiver for small business and report frequency reduction; Federal regulatory review, 2479
Privacy Act:
  Computer matching programs, 158
  Systems of records, 55952, 63815
Program payments; income tax exclusion; primary purpose determinations:
  New York State agricultural nonpoint source abatement and control matching grant program, 50800
  Skaneateles Lake Watershed agricultural program, 50801
Senior Executive Service:
  Performance Review Boards; membership, 57845

Air Force Department

RULES

Administration:
  Industrial labor relations activities; CFR part removed, 46379
Aircraft:
  Aircraft arresting systems; CFR part removed, 45322
  Aircraft leased for airshows; Air Force responsibilities; CFR part removed, 45322
  DOD commercial air carrier quality and safety review program, 17840
Air Force Systems command contractor performance assessment; CFR part removed, 4351
Claims and litigation:
  Foreign tax relief program; CFR part removed, 4352
  Statutory reimbursement for land; CFR part removed, 4351
Military training and schools:
  Contractor employees training; CFR part removed, 45323
Organization and mission:
  Personnel review boards; correction of military records, 16046
Public relations:
  Public affairs policies and procedures; CFR part removed, 43466
  Support of nongovernmental test and evaluation; CFR part removed, 4351
Special investigation:
  Oaths, administration authority; CFR part removed, 45323

PROPOSED RULES

Acquisition regulations:
  Air Force Logistics Command; vendor rating system; withdrawn, 4393
Public relations:
  Air Force Systems command contractor performance assessment; withdrawn, 4390

NOTICES

Active military service and discharge determinations:
  Civilian flight crew and aviation ground support employees of Northeast Airlines who served as result of contract with Air Transport Command (December 7, 1941-August 14, 1945), 8579
Agency information collection activities:
  Proposed collection; comment request, 14088, 16087, 37883, 42873, 56948
Base realignment and closure:
  Gentile AFS, OH; disposal and reuse, 27054
  George AFB, CA; disposal and reuse, 25850
  K.I. Sawyer AFB, MI; disposal and reuse, 18384
  O'Hare Air Reserve, IL; property conveyance to City of Chicago, 58170
  Surplus Federal property—
    Griffiss AFS, NY, 40203
    Kelly AFB, TX, 34423
    McClellan AFB, CA, 33493
  Wurtsmith AFB, MI; disposal and reuse, 43347
Commercial activities performance (OMB A-76); cost comparison studies, 10564, 37451, 53723
Environmental statements; availability, etc.:
  Dobbins Air Reserve Base, GA; proposed wing conversion and airspace modification, 5753
  Hardwood Range expansion and related airspace actions, Wood County, WI, et al., 40408
  Luke AFB, AZ; golf course construction and operation, 15926
  Ontario Air National Guard Station, CA; disposal and reuse, 19053
Environmental statements; notice of intent:
  Barry M. Goldwater Range (BMGR), AZ; renewal, 4965
  Holloman AFB, NM; German Air Force aircraft operations expansion, 20809
  Kelly AFB, TX; disposal and reuse, 43531
  McChord AFB, WA; beddown of C-17 aircraft, etc., 20809
  McClellan AFB, CA; disposal, 54174
  Mountain Home AFB, ID; tactical training range, 2803
  Nellis AFR, NV, 27054
  Reese AFB, TX; disposal and reuse, 15788
  Robins AFB, GA; permanent weapons storage area siting, etc., 49440
  Scott AFB, IL; realignment of Illinois Air National Guard Unit, 5989
  Sky Harbor International Airport, AZ; master plan update improvements, 49441
Meetings:
  Air Force Academy Board of Visitors, 21445
  Air University Board of Visitors, 7777
  Community College Board of Visitors, 11194, 29360, 51083
  Scientific Advisory Board, 10993, 10994, 14562, 15788, 15789, 31090, 32428, 40616, 40617, 42873, 46785, 49117
Patent licenses; non-exclusive, exclusive, or partially exclusive:
  CeramOptec, Inc., 13483
  EPI-MBE Production Group, 55790
  Giner Inc., 36554
  Polychip, Inc., 43348
  Unison Industries Ltd., 4419
Privacy Act:
  Systems of records, 4966, 51923, 54174
Senior Executive Service:
  Performance Review Boards: membership, 43348

Alaska Power Administration

NOTICES

Power rate adjustments:
  Eklutna Project, 24783, 42010, 52781
Wholesale power rates:
  Eklutna Project, 33723

Alcohol, Tobacco and Firearms Bureau

RULES

Alcohol; viticultural area designations:
  Malibu-Newton Canyon, CA, 29949
  Paso Robles, CA, 29952
  Redwood Valley, Mendocino County, CA, 67463
Alcoholic beverages:
  Basic permit requirements, spirits and wine nonindustrial use, and distilled spirits bulk sales and bottling; CFR parts consolidation—
    Federal regulatory reform, 26096
  Wine; labeling and advertising—
    Grape variety names; American wines, 522
  Wine; production, cellar treatment, and finishing—
    Wine treating processes and wine treating material, 21076
  Wine and other liquors; miscellaneous amendments
    Federal regulatory reform, 31029
Alcohol, tobacco, and other excise taxes:
  Federal regulatory reform—
    Tobacco products and cigarette papers and tubes manufacture, 54084
  Taxpaid distilled spirits used to manufacture nonbeverage products, 31399

Commerce in firearms and ammunition:
  Ammunition feeding devices with capacity of more than 10 rounds; importation, 39320
Federal claims collection:
  Civil monetary penalties; inflation adjustment, 54935
Firearms:
  Arms, ammunition, and implements of war—
    Defense articles and services from Russian Federation; certain restrictions removed, 18678
  Commerce in explosives—
    Plastic explosives possession; reporting requirements, 38084
  Firearms and ammunition; manufacturers excise taxes—
    Exemption certificates; simplification, 37005
Organization, functions, and authority delegations:
  District Directors, 29956
Practice and procedure:
  Federal regulatory reform—
    Procedural rules statement; CFR part removed and regulations consolidation, 29954
Technical amendments, 20721, 37002

PROPOSED RULES

Alcohol; viticultural area designations:
  Paso Robles, San Luis Obispo County, CA; extension, 706
  Redwood Valley, CA, 46403
Alcoholic beverages:
  Beer; domestically produced—
    Formulas and statements of process; registration, 2459
  Denatured alcohol and rum—
    Distribution and use; Federal regulatory review, 30019
    Formulas, 39929
  Distilled spirits; domestically produced—
    Formulas and statements of process; registration, 2459
  Distilled spirits; labeling and advertising—
    Grape brandy, unaged, 30015, 49715
  Distilled spirits, wine, and beer importation; consolidation and CFR parts removed, 40568, 56928
  Distilled spirits, wine, and malt beverages; labeling and advertising—
    Margarita; use of term, 57597
  Tax-free alcohol, distribution and use; Federal regulatory review, 30019
  Volatile fruit-flavor concentrate production; Federal regulatory review, 30017
  Wine; domestically produced—
    Formulas and statements of process; registration, 2459
  Wine; labeling proceedings—
    Certificates of label approval, exemption from label approval, and distinctive liquor bottle approvals, 1545
Alcohol, tobacco, and other excise taxes:
  Alcoholic beverages, denatured alcohol, tobacco products, and cigarette papers and tubes; exportation, 41500, 55238
    Correction, 42462
  Liquors and alcoholic products from Puerto Rico and Virgin Islands; Federal regulatory review, 30021
Commerce in firearms and ammunition:
  Ammunition feeding devices with capacity of more than 10 rounds; importation; cross reference, 39372
Firearms:
  Commerce in explosives—
    Explosives storage and manufacturing sites notification requirements, etc., 53688
  Firearms and ammunition; manufacturers excise taxes, 37022
    Parts and accessories inclusion in tax calculation, 45377
Firearms and ammunition commerce:
  National instant criminal background check system facilitation—
    Categories of persons prohibited from receiving firearms; definitions, 47095
Practice and procedure:
  Federal regulatory review—
    Procedure rules statement improvement, 30013

NOTICES

Agency information collection activities:
  Proposed collection; comment request, 5600-5603, 9009-9011, 14202-14204, 16532, 19331, 19332, 27384, 33959, 33960, 40478-40480, 46506, 48203, 48204, 49525-49527, 51137, 51138, 51490, 51491, 56736, 56737, 60142-60144
Commerce in explosives:
  Explosive materials list, 21225
Organization, functions, and authority delegations:
  Chief, Product Compliance Branch, et al., 31223
Senior Executive Service:
  Performance Review Board; membership, 46507

Animal and Plant Health Inspection Service

RULES

Exportation and importation of animals and animal products:
  African swine fever; disease status change—Spain, 43305
  Bird quarantine facilities, privately owned; screening, 31391
  Cattle for slaughter; tuberculosis and brucellosis pre-export test requirements elimination, 6917
  Embryos from ruminants and swine from countries where rinderpest or foot-and-mouth disease exists, 15180
  Hog cholera and swine vesicular disease; disease status change—Netherlands, 40292
  Horse quarantine facilities—
    Walls, floors and ceilings; construction, 36816
  Horses; vesicular stomatitis, 43417
  Horses from Bermuda and British Virgin Islands; quarantine requirements, 14239
  Horses from contagious equine metritis-affected countries, 1697, 10269
    Mares and stallions, etc.; new testing and treatment protocols, 52236
  Horses from Mexico; quarantine requirements, 39852
  Pork and pork products from Mexico transiting United States, 32646
  Ratites and hatching eggs of ratites from Canada, 68123
  Rinderpest and foot-and-mouth disease; disease status change—
    Czech Republic, 51769
    Italy, 51769
  Sheep and goats, and germ plasm from sheep and goats, 17231
Hawaiian and territorial quarantine notices:
  Avocados from Hawaii, 5923
Import and export user fees, 20421
  Correction, 25513
Interstate transportation of animals and animal products (quarantine):
  Brucellosis in cattle and bison—
    Brucella vaccine approval, 14237, 19976, 41730
    State and area classifications, 58625
  Brucellosis in cattle—
    State and area classifications, 56116
  Brucellosis in swine—
    State and area classifications, 15881
  Exotic Newcastle disease in birds and poultry and chlamydiosis in poultry, 56877
  Horses affected with or exposed to contagious equine metritis (CEM), 47669, 56116
  Tuberculosis in cattle and bison—
    State and area classifications, 16617, 67928
Livestock and poultry disease control:
  Animals destroyed because of tuberculosis—
    Federal indemnity payments for cattle, bison, and cervids, 25135
  Scrapie indemnification program, sheep and goats; regulations removed, 47669
Overtime services relating to imports and exports:
  Commuted traveltime allowances, 53603, 58626
  International commercial aircraft and vessels; quarantine and inspection services; user fees, 2660
Phytosanitary export certification regulations; revision, 15365
Plant-related quarantine, domestic:
  Citrus canker, 1519
  Corn cyst nematode, 47662
  Fire ant, imported, 17550, 53601, 65459
  Japanese beetle, 32636, 56403
  Karnal bunt disease—
    Arizona et al., 13649, 35107, 36812
    California, 18233, 20877
    Compensation, 35102
    Public forum, 36811
    Seed planting, regulated articles movement and risk levels; criteria, 52190
  Mediterranean fruit fly, 8205, 31003, 47663
    Correction, 32900
  Mexican fruit fly, 2391, 26423, 38353, 57987
  Pine shoot beetle, 3176
  Pink bollworm, 1521
Plant-related quarantine, foreign:
  Citrus fruits from Australia, 8205
  Fruits and vegetables, imported; cold treatment upon arrival, 47663
  Fruit trees from France, 51208
  Irradiation as phytosanitary treatment for plant pests; policy statement, 24433
Poultry improvement:
  National Poultry Improvement Plan and auxiliary provisions—
    Administrative and testing procedures for participants and participating flocks, 11515
Viruses, serums, toxins, etc.:
  Analogous products—
    Marek's disease vaccines, 33840
    Rabies vaccines; killed and live viruses, 31822
  Equine vaccines—
    Encephalomyelitis vaccine, Eastern, Western, and killed Venezuelan virus; standard potency test, 67929
  Licenses, inspections, records, and reports, 52871
  Veterinary biological products—
    Antibody products, 51771
  Veterinary biological products licenses and permits
    Federal regulatory reform, 43316
  Veterinary biologicals; master label system, 29462
    Correction, 33175

PROPOSED RULES

Animal welfare:
  Dogs and cats—
    Commercial pet trade; public meeting, 5524, 11778
  Horse protection regulations—
    Horse Protection Act; enforcement changes; public meetings, 34747

UMI

Humane treatment of dogs and cats—
Tethering and temperature requirements, 34386
Wire flooring; coating requirements, 34389
Marine Mammal Negotiated Rulemaking Advisory Committee—
Meetings, 9371, 30545
Exportation and importation of animals and animal products:
African swine fever; disease status change—
Spain, 26850
Bird quarantine facilities, privately owned; screening, 9957
Exotic Newcastle Disease; disease status change—
Costa Rica, 69051
Fetal bovine serum; withdrawn, 30189
Foreign "regions" criteria based on risk class levels, etc., 16978, 36520
Hearings, 20190, 26849
Hog cholera and swine vesicular disease; disease status change—
Netherlands, 14999
Horse quarantine facilities—
Fees collection; withdrawal, 7079
Permanent private facilities; establishment, 20189
Horses; country of origin and country of transit permit applications and health certificate requirements information clarification, 21389
Horses; vesicular stomatitis, 14268
Horses from contagious equine metritis-affected countries
Mares and stallions, etc.; new testing and treatment protocols, 28073
Pet birds; importation, 43188
Pork and pork products from Mexico transiting United States, 6955, 69052
Ports designation—
Atlanta, GA, 52387
Prohibited and restricted importations—
Garbage disposal by cruise ships in Alaskan Port landfills, 15201
Ratites and hatching eggs of ratites from Canada, 27797
Rinderpest and fmot-and-mouth disease, etc.; disease status change—
Czech Republic, 35987
Italy, 35987
Ruminants and swine from countries where foot-and-mouth disease or rinderpest exists imported for exhibition in U.S. zoological parks; quarantine, 56165
Federal Seed Act:
Imported seed and screening U.S./Canada seed analysis program, etc., 51791
Hawaiian and territorial quarantine notices:
Papaya, carambola, and litchi, 38108
Inspection and certification of animal byproducts:
Inedible animal byproducts references replaced by animal products references, 49278
Interstate transportation of animals and animal products (quarantine):
Brucellosis in cattle, bison, and swine—
Rapid automated presumptive test; disease status determination, 48430
Livestock market approval for cattle, bison, horses and swine; hog cholera obsolete regulations removed, 56155
Tuberculosis in cervids—
Identification requirements, 14982
Plant pest regulations:
Garbage disposal by cruise ships in Alaskan Port landfills, 15201
Plant pests; importation and interstate movement; Federal regulatory review, 50767
Plant-related quarantine, foreign:
Camellia, gardenia, rhododendron, rose, and lilac—
Import permit and notice of arrival requirements elimination, 40362
Cotton and cotton products; pest introduction prevention, 68673
Fruits and vegetables; importation, 18690, 34379, 42565
Plant-related quarantine, domestic:
Corn cyst nematode, 37018
Imported plants and plant parts—
Interstate movement prohibition subsequent to importation, 51376
Karnal bunt disease—
Public forum, 40361, 41990
Seed planting, regulated articles movement and risk levels; criteria, 40354, 42824
Viruses, serums, toxins, etc.:
Biological products and guidelines; definitions, 43483
NOTICES
Agency information collection activities:
Proposed collection; comment request, 1895, 9141, 16626, 19025, 24755, 30590, 42829, 43520, 48457, 56215
Committees; establishment, renewal, termination, etc.:
Foreign Animal and Poultry Diseases Advisory Committee, 9142, 32425
National Animal Damage Control Advisory Committee, 9423, 32425
Environmental statements; availability, etc.:
Boll weevil control program, TX, 6344
Genetically engineered organisms; field test permits—
Chicory plants, etc., 2995
Corn plants, etc., 45933
Metaseiulus occidentalis (predatory mites), etc., 15458
Onion plants, etc., 54408
Potato plants, etc., 33897
Nonregulated status determinations—
AgrEvo USA Co.; genetically engineered soybeans, 18718, 42581
Agritope, Inc.; genetically engineered cherry tomato line, 1743, 15919
Asgrow Seed Co.; genetically engineered squash line, 3899, 33484
Calgene, Inc.; genetically engineered tomato line, 52906
Cornell University et al.; genetically engineered papaya lines, 19904, 48663
Dekalb Genetics Corp.; genetically engineered corn line, 1744, 60257
Dupont Agricultural Products; genetically engineered cotton line, 6621
Monsanto Co.; genetically engineered corn lines, 10720, 66650
Monsanto Co.; genetically engineered potato lines, 1557, 24755
Northrup King Co.; genetically engineered corn line, 2789
Plant Genetic Systems (America), Inc.; genetically engineered corn line, 9142
Veterinary services program, 14046, 18719
Veterinary unlicensed biological products for field testing; shipment, 26873, 45396
Federal information processing standards (FIPS):
Digital signature technology, 56215
Genetically engineered organisms for release into environment; permit applications, 52906
Harry S. Truman Animal Import Center; importation procedures; application period and lottery, 43521, 45396
Meetings:
Foreign Animal and Poultry Diseases Advisory Committee, 18371
National Animal Damage Control Advisory Committee, 20508
National Poultry Improvement Plan General Conference Committee and Biennial Conference, 24757
Uruguay Round Agreements Act (URAA):
Sanitary and phytosanitary standard-setting activities of international standard-setting organizations, 49432
Veterinary biological products; public meeting, 64499
Post-marketing surveillance; public meeting, 54409

Antitrust Division

NOTICES

Agency information collection activities:
Proposed collection; comment request, 13215
Competitive impact statements and proposed consent judgments:
A&L Mayer Associates, Inc., et al., 29763
Alex Brown & Sons, Inc., 40433, 59895
American National Can Co. et al., 34862
American Radio Systems Corp. et al., 57701
American Skiing Co. et al., 33765, 55995
Anchorshade, Inc., 34867, 43077
Association of Family Practice Residency Directors, 28891
Baroid Corp. et al., 32858
Browning-Ferris Industries, Inc., 8643
Brush Fibers, Inc., 48164
Computer Associates International, Inc., et al., 6025
First Hawaiian, Inc., et al., 4287
Georgia-Pacific Corp., 17721, 33538
Greyhound Lines, Inc., 5027
HealthCare Partners, Inc., et al., 3731
Health Choice of Northwest Missouri, Inc., et al., 29800
International Business Machines Corp., 39666
Ixtlera de Santa Catarina, S.A. de C.V., et al., 52459
Jacor Communications, Inc., et al., 42652, 50872, 67345
Kimberly-Clark Corp. et al., 14811
National Automobile Dealers Association, 25891
Oldcastle Northeast, Inc., et al., 49343, 65236
Pacific Scientific Co., 4793
Southern Pine Association et al., 22074
Sprint Corp. et al., 3970
Texas Television, Inc., et al., 6032
Thomson Corp. et. al., 53386
U.S. West, Inc., et al., 58703
Universal Shippers Association, Inc., 46484
USA Waste Services, Inc., et al., 48971
Vision Service Plan, 9487
Waste Management, Inc., 8653
Westinghouse Electric Corp. et al., 63861, 65237
Woman's Hospital Foundation & Woman's Physician Health Organization, 21489
Women's Hospital Foundation et al., 43380
National cooperative research notifications:
Advanced Lead-Acid Battery Consortium, 44347
Advanced Process Control Framework Initiative Program, 24513
Advanced Telecommunications Information Distribution Research Consortium, 21498
Aids Drug Development Inter Company Collaboration, 38215
Air Products & Chemicals, Inc., 13517, 38216
Allegheny-Singer Research Institute, 6038
American Display Consortium, 54221

American Society of Mechanical Engineers, 54221
Amoco/Chevron Drilling Training Alliance, 10011
ATM forum, 10011, 24514, 27935, 46488, 65238
Auto Body Consortium, 3463, 6038, 16267, 18409, 56970
Bay Area Multimedia Technology Alliance, 6038, 29427
Bell Communications Research, Inc., 10011, 56708
Bell Helicopter Textron, Inc., et al., 8663
Bethlehem Steel Corp., et al., 7019, 15520
Biotechnology Research & Development Corp., 44347, 67347
Blue Band II Consortium, 48982
Boston Edison Co., 14816
Cable Television Laboratories, Inc., 19089, 28596, 38216, 43077, 67067
CAD Framework Initiative, Inc., 4288, 15969, 56970
Center for Emissions Control, Inc., 29768
Center for Waste Reduction Technologies, 24331
Center for Waste Reduction Technologies et al., 5409
Chemical Industry Environmental Technology Projects, L.L.C., 4288
Cigarette Ignition Propensity Joint Venture, 7019
Commerce Department Advanced Technology Program/NIST Project No. 94-02-0048 participants, 32464
Consortium for Integrated Intelligent Manufacturing, Planning and Execution, 24514
Consortium for Non-Contact Gauging, 14817
Consortium for Vehicle Electronics, 7019
Corporation for National Research Initiatives, 18409, 56708
Corporation for Open Systems International, 6388, 7804, 13517
Cryrogenic Refrigerants & Systems of Air Products & Chemicals, Inc., 8664
Cullen Engineering Research Foundation Cooperative Research Venture, 17912
David Sarnoff Research Center, 32464
Dominion Semiconductor, L.L.C., 31550
Dow Chemical Co., 19638
Dry Machining of Aluminum Joint Venture, 64370
E&P Technology Cooperative, 33774
Electrical & Electronics Technical Team, 64532
Embedded Mass Formed Passives Consortium, 30098
Enterprise Computer Telephony Forum, 22074, 29769, 56708
Environmental Research Institute of Michigan, 45457
Extrude Hone Corp., 15969
Exxon Production Research Co., 15521
Fastcast Consortium, 25891
FED Corporation Joint Venture, 24331
Field Emission Display Consortium, 6388
Financial Services Technology Consortium, Inc., 3463, 6389, 15970, 24331, 25242, 41183, 56970
Frame Relay Forum, 1406, 4288, 6389, 24514, 38216, 56970
Fuel Cell Commercialization Group, 15970
Fuel Cell Technical Team, 65238
Gas Utilization Research Forum, 56971
Global Industries, Inc., 7804
Hart Communication Foundation, 5569
HDP User Group International, Inc., 24331, 48169
Healthcare Information Infrastructure Proposal, 15970
Healthcare Information Technology Enabling Community Care (HITECC), 15521
High Throughput Hole Making Joint Venture, 64370
Hybrid Propulsion System Research Collaboration Agreement, 29769
IAP Research, Inc., 15970
Industrial Macromolecular Crystallography Association, 18410
InfoTEST International, 67067
Intelligent Large Area Processing Consortium, 38217
Intelligent Network Forum, 65238
Intelligent Processing of Materials-Physical Vapor Deposition Consortium, 4800
Inter Company Collaboration for Aids Drug Development, 7019, 29769, 48982
Interconnection Technology Research Institute, 65420
International 300 MM Initiative, Inc., 48982
International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA-134a (IPACT-I), 18410, 18755, 24331
International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA-227 (IPACT-II), 18409
ITT Industries, Inc., 56708
Joint Development Venture called "versit", 27936
Joint Industry Program, 7020, 17913
Light Helicopter Turbine Engine Company Consortium, 38217
Lonza Inc., 28596
Low Cost Flip Chip Consortium, 29769
Manufacturing Technical Team, 64533
Mechanical Energy Storage Technical Team, 64533
Message Oriented Middleware Association, 27936
Michigan Materials and Processing Institute, 10012, 16808, 17728, 46826
Microelectronics & Computer Technology Corp., 24332, 42268, 50876
Mid Atlantic Regional Consortium for Advanced Vehicles, 7805, 19089
Minnesota Mining & Manufacturing Co., 1406, 6389, 48169, 56971
MIPS ABI Group, Inc., 6389
Mobile Information Infrastructure for Digital Video and Multimedia Applications Joint Venture, 6039, 45458, 48983
Model HDTV Station Project, Inc., 45458
Multimedia Services Affiliate Forum, Inc., 29428
National Center for Manufacturing Sciences, Inc., 15521, 28596, 45458, 64370, 67067
National Electronics Manufacturing Initiative, 33774, 56971
National Industrial Information Infrastructure Protocols Solutions for Manufacturing-Adaptable Replicable Technology, 30098
National Information Infrastructure Testbed, 19638, 27936
National Medical Practice Knowledge Bank, 24332
National Storage Industry Consortium, 19638
Network Management Forum, 5409, 25243, 42268, 56709
Ohio Aerospace Institute, 50877, 51720, 51720
Ohio Aerospace Institute Computer Assisted Minimally Invasive Surgery Project, 49484
Ohio Aerospace Institute Propulsion Instrumentation Working Group, 49350
OPC Foundation, 42269
Open DeviceNet Vendor Association, Inc., 31551
Open DeviceNet Vendor Association, Inc., Joint Venture, 6039
Open Software Foundation, Inc., 15971
OSINET Corp., 3463
Partnership for New Generation of Vehicles—
Petroleum Environmental Research Forum projects, 3464, 6040, 7805, 8664, 13517, 13518, 18756, 27936, 32464, 35250, 38217, 39986, 56709, 64371, 66310
Petrotechnical Open Software Corp., 14817, 24807, 42055, 60726
PixTech, S.A., 10012
PlantSTEP, Inc., 7020
PMT. L.L.C., 3464
PNGV Electrochemical Energy Storage Technical Team, 65239
Polyisocyanurate Insulation Manufacturers Association, 5570
Portland Cement Association, 10012, 15971, 24332, 39667, 48169
Rapid Object Application Development Consortium, 7805
Rotorcraft Industry Technology Association, Inc., 14817
Salutation Consortium, 25243, 48983, 65239
Sawtek, Inc., 59243
Seagate Technology, Inc., et al., 67348
Seamless High Off-Chip Connectivity Consortium, 7806
Seed Research Services, L.L.C., 54221
Semiconductor Research Corp., 4289, 17728, 32858, 64371
Seriplex Technology Organization, Inc., Joint Venture, 6390
Sony Electronics Inc., 18756
Southwest Research Institute, 7020, 15971, 15972, 18409, 19089, 19639, 28597, 54222, 64371, 65421
Specialty Metals Processing Consortium, Inc., 15972
Spinal Implant Manufacturers Group, 24332
Spray Drift Task Force, 6038, 15522
Springback Predictability Venture, 14818
Switched Multi-Megabit Data Service Interest Group, 28597
Systems Analysis Technical Team, 64533
TRAAMS Venture Team, 29770
Trico Steel Co., L.L.C., 7806
TRW, Inc., 5570
United Technologies Research Center, 43077
Universal Instruments Corp., 7020, 16267
UnixWare Technology Group, Inc., 24333
Wilfred Baker Engineering, Inc., 7020, 19639, 51721
X Consortium, Inc., 24333, 30099, 35250

Appalachian Regional Commission

RULES

Conflict of interests:
Correction, 13051

Appalachian States Low-Level Radioactive Waste Commission

NOTICES

Meetings, 25845

Architectural and Transportation Barriers Compliance Board

RULES

Americans with Disabilities Act; implementation:
Accessibility guidelines—
Detectable warnings at curb ramps, hazardous vehicular areas, and reflecting pools, 39323

PROPOSED RULES
Americans with Disabilities Act; implementation:
Accessibility guidelines—
Children's facilities and environments, 37964
Detectable warnings at curb ramps, hazardous vehicular areas, and reflecting pools, 16232
Play Facilities Accessibility Guidelines Negotiated Rulemaking Committee, 17271
Establishment, 5723
Meetings, 5723, 36688, 51397, 64832
Semi-annual agenda, 23602, 63114
NOTICES
Committees; establishment, renewal, termination, etc.:
Telecommunications Access Advisory Committee, 13813, 26155
Meetings:
Access Board, 7772, 18720, 32426, 44291, 55785
Americans with Disabilities Act Accessibility Guidelines Review Advisory Committee, 5738, 31089, 40603
Telecommunications Access Advisory Committee, 39435, 46434, 54612, 60678

Arctic Research Commission

NOTICES
Meetings, 9147, 29072, 58034
Meetings; Sunshine Act, 40193

Armed Forces Retirement Home

NOTICES
Privacy Act:
Computer matching programs, 37881

Arms Control and Disarmament Agency

RULES
Freedom of Information Act; implementation, 40332
National Security Information, 64286
Organization, functions, and authority delegations:
Organization statement; update, revision, and restatement, 58327
Privacy Act; implementation, 51593
Service of process, production of official information, and agency employees testimony or response; prior approval, 36820
PROPOSED RULES
Freedom of Information Act; implementation, 27031
National Security Information, 53158
Privacy Act; implementation, 30009
Service of process, production of official information, and agency employees testimony or response; prior approval, 26474
NOTICES
Grants and cooperative agreements; availability, etc.:
Hubert H. Humprehy fellowship competition, 50468
William C. Foster fellows visiting scholars program, 50468
Senior Executive Service:
Performance Review Board; membership, 64500

Army Department

See Engineers Corps
RULES
Absentee deserter apprehension program and military personnel surrender to civilian law enforcement agencies, 39072
Military traffic management:
Air freight forwarders; qualification standards, 49060
Privacy Act; implementation, 43657
Real property:
Real estate handbook—
Homeowners assistance program; CFR subpart removed, 58133
Supplies and equipment:
Loan of army materiel; property returns, 45889
PROPOSED RULES
Freight carriers qualifying program:
Military Traffic Management Command—
Air freight forwarders qualification standards, 15010
Military ranges; closed, transferred, and transferring:
Safety, human health, and environmental issues, 6588
Military traffic management:
Motor common carriers of perishable subsistence and bulk fuel; cargo insurance requirements, 33409
National Environmental Policy Act; implementation, 37865
Withdrawn, 47839
NOTICES
Agency information collection activities:
Proposed collection; comment request, 10565, 16763, 29360, 29361, 50285, 50286, 54419
Environmental statements; availability, etc.:
Camp Roberts Army National Guard Training Site, CA; combined-forces training activities, etc., 20245
Defense Personnel Support Center, Philadelphia, PA; disposal and reuse, 34424, 36608, 54420
Evans Subport Fort Monmouth, NJ; disposal and reuse, 20516
Fort Monmouth, NJ; communications-electronics materiel management and functions; relocation from St. Louis, MO, 43532
Fort Ord, CA; disposal and reuse, 48920
Recommendations, 48920
Fort Ritchie, MD; 1111th Signal Battalion et al.; relocation to Fort Detrick, MD, 33715
Hamilton Army Airfield, CA; disposal and reuse, 10330
Johnston Island in Pacific and Tooele, UT; non-stockpile chemical warfare materiel containing chemical agent; destruction, 58281
Letterkenny Army Depot, PA; towed and self-propelled combat mission realignment, etc., 30228, 32777
M1 Breacher life cycle from combat vehicle to single armored vehicle chassis, 54777
Massachusetts Military Reservation, MA; rifle and machine gun ranges construction, 63832
Pine Bluff Arsenal, AR; chemical agent demilitarization facility; construction and operation, 53725
Red-cockaded woodpecker; management guidelines, 33102
Surplus Federal property—
Fort Ord, CA, 712
Jefferson Proving Ground, IN, 712
Tooele Army Depot, UT; disposal and reuse, 9680, 25850
U.S. Army Aviation Troop Command, MO; disestablishment, etc., 10566
U.S. Army Chemical School and Military Police School, AL; relocation to Fort Leonard Wood, MO, 53362
U.S. Army Concepts Analysis Agency, MD; relocation to Fort Belvoir, VA, 67322
U.S. Army Defense Ammunition School and Center; relocation to McAlester Army Ammunition Plant, OK, from Savanna Army Depot Activity, IL., 68249
U.S. Army Materials Technology Laboratory, MA; disposal and reuse, 40617
Umatilla Depot Activity, OR; chemical agent demilitarization facility; construction and operation, 30862
Western Army National Guard Aviation Training Site, AZ; expansion, 24764
Environmental statements; notice of intent:
Field Artillery Center and Fort Sill, OK; real property master plan, 30228
Fort Bliss, TX and NM; installation master plan, 58541
Johnston Island in Pacific and Tooele, UT; non-stockpile chemical warfare materiel containing chemical agent; destruction, 54421
Public meetings, 56221
Red-cockaded woodpecker; management guidelines, 10330
Surplus Federal property—
Vint Hill Farms Station, VA, 712
Yuma Proving Ground, AZ, 30862
Meetings:
Armament Retooling and Manufacturing Support Public/Private Task Force, 4967, 54627
Armed Forces Epidemiological Board, 554, 1900, 25210, 54176, 58170
Armed Forces Institute of Pathology Scientific Advisory Board, 18725, 43348
Army Education Advisory Committee, 24481, 60095
Army Science Board, 54424, 56673
Collegiate Education Advisory Committee, 11616
Historical Advisory Committee, 49117
Personal Property Partnership Council, 9152
Science Board, 347, 1750, 1751, 1901, 4258, 5387, 6632, 6633, 8922, 8923, 9983, 13158, 13483, 14298, 14562, 15789, 15927, 18725, 20810, 25210, 25211, 30230, 41385, 42418, 59423, 63832, 63833
U.S. Army Command and General Staff College (CGSC) Advisory Committee, 7095
U.S. Military Academy, Board of Visitors, 3680, 15225, 54628
Yakima Training Center Cultural and Natural Resources Committee, 3387, 11812, 33493, 42418
Military traffic management:
Defense freight traffic by motor or railroad carriers, 66026
Defense freight traffic by rail carrier; security rules and accessorial services, 47894
DOD personal property program—
Reengineering, 14747
Dromedary service; bulk commodity shipments, 32777
Freight all kinds (FAK) shipments; motor freight carrier liability, 10566, 28857, 58678
Freight traffic by air carrier, air forwarder, air taxi; rules, security and accessorial services, 8263
Military cargo via barge carriers; rules security and accessorial services, 14563
Military Traffic Management Command's personal property reengineering pilot acquisition program; Commerce Business Daily publication, 67779

Personal property nontemporary storage program; warehouseman's legal liability increase, 11194
Tender filing instructions; foreign military sales materiel movement, 14760, 58679
Transloading shipments of arms, ammunition, and explosives, 26167
Organization, functions, and authority delegations:
Civilian Marksmanship Program; transfer, 55621
Deputy Inspection General; Freedom of Information requests on Guatamala; release, 39634
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Acoustic monitoring technology, 54628
Azabicyclooctanes, preparations and derivatives, 7095
Ceramic ferroelectric composite material—BSTO-ZRO2, etc., 36038
Electro-chemical capacitor technology, 21445, 33494
Gram-negative bacterial infections vaccine, 19910
Inactivated dengue virus vaccine, 14563
In-situ sensor method and device, 36038, 66026
Japanese encephalitis cDNA clones and vaccines, 11812
Lethality of high temperature food processing; establishment method, etc., 36038
Method of raising antibodies against E. coli of family CS4-CFA/I, 11812
Microsphere drug application device, 10567
Motion sensor, 36350
Object recognition technology, 8263
Organo-fluoro compounds and processes, 7095
Protective monoclonal antibody against botulinum neurotoxin serotype F, 18124
Quantitative thrombin time; test, 10567
Recombinant dengue virus vaccine, 14563
Recombinant DNA molecules for producing terminal transferase-like polypeptides, 7778
SciClone Pharmaceuticals, 60095
Selective nitration, 7095
Sudden Infant Death Syndrome monitor and stimulator, acoustic monitoring system and motion and sound monitor and stimulator, 54628
Superconducting Core Technologies, 60095
Tank weapon technology, 58281, 58616
Transportable life support system, 57659
Tunable heavy and light hole coupled bands in variable-strain quantum well semiconductor heterostructure for novel opto-electronic devices, etc., 8264
Pharmacoeconomic Center; use of FDA-approved drugs for unlabeled applications, 46632
Privacy Act:
Systems of records, 3680, 3912, 41572
Senior Executive Service:
Performance Review Boards; membership, 46632

Arts and Humanities, National Foundation

See National Foundation on the Arts and the Humanities

Assassination Records Review Board

NOTICES
Formal determinations on records release, 48, 2996, 6346, 15760, 20211, 28158, 31917, 39624, 43730, 54411, 56937, 64662, 66015
Meetings; Sunshine Act, 1668, 6894, 9424, 14737, 19607, 26874, 27047, 28163, 33899, 37882, 47480, 48881, 52908, 57383, 64857, 65195, 65520, 67769

Barry M. Goldwater Scholarship and Excellence in Education Foundation

NOTICES
Meetings; Sunshine Act, 7303

Blackstone River Valley National Heritage Corridor Commission

NOTICES
Meetings; Sunshine Act, 8972, 27865, 43523, 56968

Blind or Severely Disabled, Committee for Purchase From People Who Are

See Committee for Purchase From People Who Are Blind or Severely Disabled

Bonneville Power Administration

NOTICES
Bonneville purchasing instructions and financial assistance instructions; availability, 47903
Environmental statements; notice of intent:
Albeni Falls, ID; wildlife management plan, 58873
Lower Valley Power and Light Transmission System reinforcement project, WY et al., 19267
Oliver Delivery Project, BC and WA, 14298
Vancouver Lowlands Columbia River Wildlife Mitigation Project, WA, 11198
Excess Federal power; marketing policy, 14089, 50810
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Billy Shaw Dam and Reservoir, ID and NV, 24297
Columbia River Basin, OR—
Hydroelectric projects, 13160
Watershed rehabilitation projects; salmon habitat improvement, 28860
Watershed restoration program early action projects, 24297
Kalispel Tribe, WA; bass hatchery and nurseries, 14093, 44043
Methow Valley Irrigation District Fisheries Enhancement Project, 55982
Swan Valley, ID; BPA/Lower Valley Transmission Project, 57400
Yakima, WA; Wapato Irrigation Fish Screening Project, 18581
Pacific Northwest Electric Power Planning and Conservation Act:
Northwest Regional Transmission Association, 5540
Power sales contract provisions; insufficiency and allocations exhibit publication, 11389
Records of decision:
Alturas transmission line project; Sierra Pacific Power Co. interconnection, 7095
Business plan, 3390
Canadian entitlement delivery, 11388, 64861
Hood River Fisheries Project, OR, 56221
Metered requirements purchasers 1981 power sales contracts, 11198
Power sales contract amendatory agreement, 7096
Templates (new power sales contracts) and amendatory agreement (No. 7), 25657
Yakima fisheries project, 11390

Broadcasting Board of Governors

NOTICES
Meetings; Sunshine Act, 682, 1668, 8908, 21443, 27865, 35176, 51675, 58511

Census Bureau

RULES
Foreign trade statistics:
Customs entry records; collection of Canadian Province of Origins codes; list, 60531
Correction, 65319
Softwood lumber from Canada; province of manufacture information collection for Customs entry records, 15697
PROPOSED RULES
Foreign trade statistics:
Customs entry records; collection of Canadian Province of Origin codes; list, 36318
NOTICES
Agency information collection activities:
Proposed collection; comment request, 1558, 1559, 2791, 2998, 3901, 5738, 6971, 7773, 8909, 10984, 13152, 14737, 14738, 15216, 17274, 17872, 18374, 18545, 22018, 22019, 25187, 25188, 25478, 25479, 26875, 27335, 28565, 28566, 29730, 30032, 34419, 36349, 38435, 43040, 46437, 46761, 48882, 51401, 51402, 51675, 52773, 52774, 54763, 54764, 56940, 59859, 59860, 66253, 68225, 68707
Census 2000; census designated place delineation; criteria, 29524
Committees; establishment, renewal, termination, etc.:
African American Population Advisory Committee, 21156
Agriculture Statistics Census Advisory Committee, 22020
American Indian and Alaska Native Populations Advisory Committee, 21156
Asian and Pacific Islander Populations Advisory Committee, 21156
Hispanic Population Advisory Committee, 21156
Decennial population and housing count determinations for annexations and incorporations; fee-paid basis service, 50271
Meetings:
African American Population Advisory Committee, 29355
Joint meeting, 29355, 59217
Agriculture Statistics Advisory Committee, 26157
American Indian and Alaska Native Populations Advisory Committee, 29355
Asian and Pacific Islander Populations Advisory Committee, 29355
Hispanic Population Advisory Committee, 29355
Professional Associations Census Advisory Committee, 14553, 53349
Surveys, determinations, etc.:
American community, 60090
Communications services; annual, 1188, 58304
Company organization, 1188, 58166
Environmental products and services, 30592, 43041
Manufacturing area; annual, 1896
Plant capacity, 58167
Retail trade; annual, 60090
Service industries; annual, 1188, 58034
Transportation; annual, 58035

Wholesale trade; annual, 55130

Centers for Disease Control and Prevention

PROPOSED RULES

Respiratory protective devices certification requirements; public meeting and comment request, 24740
Correction, 25513

NOTICES

Advisory committees; annual reports; availability, 18745
Agency information collection activities:
Proposed collection; comment request, 1766, 4439, 4441, 4442, 8626, 9997, 11212, 11640, 11642, 12074, 18609, 19072, 21185, 21186, 26907, 34841, 40421, 40846, 41633, 42256, 44066, 45429, 45975, 49145, 50027, 57436, 59232, 65226, 66670
Submission for OMB review; comment request, 1768, 20825, 24799, 26907, 31529, 31944, 33924, 37482, 40646, 41164, 42025, 50028, 54209, 57438, 60288, 65227
Back support belts; laboratory evaluation; NIOSH meeting, 54445
Clinical Laboratory Improvement Amendments:
Laboratory test systems, assays, and examinations specific list; categorization by complexity, etc., 35736, 39695
Quality control issues; public meeting, 43061
Committees; establishment, renewal, termination, etc.:
Federal regulatory reform; CFR part removed, National Center for Environmental Health, Advisory Committee to Director, 43366
National Vaccine Advisory Committee; membership nominations, 7110
Diseases transmitted through food supply; annual update, 42426
Electronic databases, review and evaluation:
NIOSH Technical Information Center (NIOSHTIC) and Registry of Toxic Effects of Chemical Substances (RTECS), 57876
Federal Information Resources Management Regulation:
WONDER Information systems; availability, 5785
Grants and cooperative agreements; availability, etc.:
Acquired Immunodeficiency Syndrome (AIDS)—
Infection; epidemiological research studies of women, mother-to-child transmission, etc., 30899
Birth defects surveillance demonstration projects, State-based; development, implementation, and evaluation, 29383
Community Partners for Healthy Farming, 28867
Deer mouse ecology in peridomestic settings, 33523
DOE nuclear weapons facilities; environmental health research; community education and training, 36380, 58415
Emerging infections—
Antimicrobial resistance in community-acquired baterial pathogens spread control; applied research, 33520
Genetic analysis of antimicrobial resistance determinants, 31121
Surveillance and applied epidemiological and laboratory research; local, State and national (FY 1996), 33524
Gonorrhea, populations at high risk; health-seeking behaviors and health care interventions; development and feasibility testing, 29386
Correction, 36382
Hemophilia A and B; surveillance of complications (FY 1996), 17896
Hemophilia complications prevention through hemophilia treatment centers, 30903
Pre-application workshop, 33119
Human Immunodeficiency Virus (HIV) Related Tuberculosis (TB) Preventive Therapy Regimen (PTR) Demonstration Cooperative Agreements, 19073
Human immunodeficiency virus (HIV)—
Behavioral intervention research studies; follow-up or secondary analysis, 29393
Effective behavioral interventions; replication, 29389
HIV-seropositive men; prevention of sexual transmission; formative behavioral intervention research, 30906
Infection; epidemiological research studies of women, mother-to-child transmission, etc., 30899
Innovative interventions; outcome evaluations, 31128
Minority and other community-based organizations prevention projects, 42619, 51702
Public health conference support cooperative agreement prevention program (FY 1997), 57439
Students, postsecondary and in high-risk situations; national system of integrated prevention activities, 31124
Youth at risk; HIV infection prevention, 31530
Immunization levels improvement in preschool age group, 20826
Injury control research program project grants, 1382, 46810
Injury control training and demonstration center, 30909
Interpersonal violence among youth, 31133
Longitudinal evaluations, 31137
Intimate partner violence prevention; community demonstration projects, 27879
Lead poisoning of children; State and community-based prevention program and surveillance of elevated blood lead levels in children, 4668
Maternal and child health epidemiology programs, 36382
Measles infections pathogenesis and development of improved measles vaccines; primate model, 33528
Microbiology; resident postdoctoral research associates program, 31131
National breast and cervical cancer early detection program, 19299
Occupational safety and health—
Agricultural disease and injury research, education, and prevention centers; establishment, 27079
Construction industry; intervention projects, 27354
Education programs, 20252
Musculoskeletal disorders in office and video display terminal work prevention; work organizations interventions, 28875
Nuclear facilities and energy-related industries radiation and energy-related health research grants, 21470
Research and demonstration projects, 24800
Silicosis prevention in surface miners, 28872
Traumatic occupational fatality surveillance investigation and intervention activities; FACE model implementation at State and local levels, 26520
Pediatric nutrition State surveillance system; development, 33745
Physical activity intervention programs; evaluation, 34843
Pregnancy and pediatric nutrition State surveillance systems; demonstration sites, 35217
Public health conference support program, 19296
Public health services; translation into practice, 66047
Sexually transmitted disease specialists; faculty positions expansion program in U.S. schools of medicine, 20257
State and community nutrition intervention programs; evaluation, 34843
Teen pregnancy prevention; health promotion disease prevention research center, 29396
Tickborne diseases; emerging infections applied research, 33748
Tuberculin skin testing demonstration projects, 27356
Tuberculosis patients; counseling and testing for HIV infection and test results reporting, 27356
Tuberculosis prevention and control programs in developing countries; effectiveness improvement, 30912
Violence-related injury prevention research, 1385
Hot mix asphalt pavers; engineering control guidelines; comment request, 51708, 57442
Immunoassay device for monitoring human urinary metabolites of herbicide alachlor; development of direct reading, 1938
Meetings:
Advisory Committee to Director, 1191, 46465
Asphalt exposure during paving operations; NIOSH meetings, 28590, 36069
Asphalt exposure during roofing operations; NIOSH meetings, 30242, 36069
Childhood Lead Poisoning Prevention Advisory Committee, 16101
Childhood lead poisoning prevention program grantee workshop, 5001
Citizens Advisory Committee, 42909
Clinical Laboratory Improvement Advisory Committee, 5785, 22064, 67030
Cystic fibrosis, newborn screening; public health genetics policy development paradigm; workshop, 65066
Diabetes Translation and Community Control Programs Technical Advisory Committee, 9460, 38452
Disease, Disability, and Injury Prevention and Control special emphasis panels, 1769, 29104, 33531, 35763, 36384, 37751, 37904, 39661, 41166
Energy-Related Epidemiologic Research Advisory Committee, 14786, 55001
Female flight attendants reproductive outcomes; NIOSH meeting, 16102, 49147
Fernhald Dosimetry Reconstruction Project, 42908
Fernald Feed Materials Production Center workers; cohort mortality study; NIOSH meeting, 25226
Guide to Community Preventive Services Task Force, 41635
Hanford Thyroid Morbidity Study Advisory Committee, 19943, 52948
Hospital Infection Control Practices Advisory Committee, 17304, 58417
ICD-9-CM Coordination and Maintenance Committee, 20526, 58565
Immunization information systems barriers; identification, 47131

Immunization Practices Advisory Committee, 4277, 24804, 50491
Injury Prevention and Control Advisory Committee, 7110, 10585, 39462, 50491, 50492
Injury Research Grant Review Committee, 2515, 22064
Isometric strength, whole body, during simulated scaffold end frame lifting, laboratory evaluation; NIOSH meeting, 59444
Metalworking fluids, occupational exposure; recommended standard criteria; NIOSH meeting, 19075, 19976
Mine shift atmospheric conditions; respirable dust sample; public hearing, 10012, 18158
National Center for Environmental Health, 4278, 33925
National Center for HIV, STD and TB Prevention; public hearing, 37070
National Center for Infectious Diseases Scientific Counselors Board, 18146, 57442
National Institute for Occupational Safety and Health, 5562, 28590, 51457, 53747, 66052, 66281
National Vaccine Advisory Committee, 1192, 9460, 17304, 41635, 44313
Noise exposure; recommended standard criteria; NIOSH meeting, 29566
Nursing home worker back pain and injury; evaluation of prevention strategies for reduction; NIOSH meeting, 19628, 25226
Occupational noise exposure; recommended standard criteria; NIOSH meeting, 25227, 39462
Occupational safety and health research national agenda; NIOSH meetings, 1253, 3425, 7264
Partner notification program policies in disease control by U.S. public health programs consultation; public meeting, 50323
Prevention of HIV Infection Advisory Committee, 15487, 54445
Public Health Service Activities and Research at DOE Sites Citizens Advisory Committee, 1254, 4673, 9710, 14103, 25495, 28590, 33119, 36385, 43770, 53227, 55643, 59233
Savannah River Site environmental dose reconstruction project—
Public workshops, 2515
State childhood blood lead surveillance coordinators, 50492
Tuberculosis Elimination Advisory Council, 13503, 49147
Vital and Health Statistics National Committee, 4278, 5562, 9461, 13504, 17305, 20527, 25226
Workers' Family Protection Task Force; NIOSH meeting, 45430
National Center for Health Statistics; external cause codes expansion; applicability for morbidity purposes—
Child and adult battery, etc., 19073
Organ donors HIV screening practices; clarification guidelines availability, 56548
Organization, functions, and authority delegations:
National Center for HIV, STD, and TB Prevention (NCHSTP), 35219
Passenger cruise ships; sanitation inspections; fee schedule, 58884
Senior Executive Service:
Performance Review Board; membership, 58071
Vaccine information materials:
Diphtheria, tetanus, and pertussis (DTP/DTaP)—
Interim, 48596
Proposed revision, 48597
Vaccine information materials; polio vaccine materials revision, 42770
Vessel sanitation programs; shipbuilding construction guidelines for vessels destined to call on U.S. ports, 18147, 48704

Central Intelligence Agency

NOTICES

Privacy Act:
Systems of records, 1320, 16751

Children and Families Administration

RULES

Child support enforcement program:
Federal regulatory reform, 67235
Developmental disabilities program:
Protection and advocacy system redesignation, 51142
Correction, 51751
Family violence prevention and services programs, 6791
Foster care maintenance payments, adoption assistance, and child welfare services:
Titles IV-B and IV-E programs; consolidation, 58632
Head Start Program:
Early Head Start program; performance standards for grantees and agencies providing services; implementation, 57186
Native American programs:
Ineligible applications; appeals procedure, 42817
Public assistance programs:
National Voter Registration Act of 1993; regulatory conflicting restrictions removed, 58140
State systems advanced planning document process; reporting requirements reduction, 39894

PROPOSED RULES

Child support enforcement program:
Aid to Families with Dependent Children, cooperation requirements improvement, 37236
Required reporting to consumer reporting agencies; Federal regulatory review, 2774
Head Start Fellows Program, 24467
Head Start Program:
Early Head Start program; performance standards for grantees and agencies providing services implementation, 17754

NOTICES

Agency information collection activities:
Proposed collection; comment request, 1580, 2513, 2514, 5402, 6377, 9176, 9461, 9997, 10583, 10584, 11010, 14328, 14575, 15076, 18746, 21473, 24940, 25680, 27082, 32827, 33750, 33751, 33925, 34846, 35763, 36732, 36733, 37751, 37904, 37905, 38205, 39661, 43250, 48958, 49779, 54800, 55644, 56684, 57684, 57685, 60105, 60707, 65227, 65579, 66669, 68267
Submission for OMB review; comment request, 5401, 14329, 16505, 17705, 24313, 26910, 28212, 28866, 29566, 30242, 31140, 32827, 32828, 33751, 33925, 37071, 37752, 38756, 39136, 39662, 40647, 42628, 45430, 47523, 47755, 56685, 64097, 64909, 65066
Child welfare training; public agency staff, foster and adoptive parents, etc.; comment request, 43250
Grants and cooperative agreements; availability, etc.:
Abandoned infants assistance program (FY 1996), 30871
Adoption opportunities program, 36424
Child abuse and neglect research, demonstration, and training and technical assistance projects, 30748
Child welfare services (title IV-B) State program—
Allotment percentages, 60289
Developmental disabilities—
Projects of national significance, 41896
State councils and protection and advocacy programs; Federal allotments, 13504, 45976
Family violence prevention and services program—
Discretionary funds, 11011
Domestic violence and violence among intimates; youth education model programs, 30621
Domestic violence national resource center and three special issue resource centers, 11033
Head Start—
University partnerships and research scholars; discretionary funds, 27885
Indian lands; mitigation of environmental impacts due to Defense Department activities; financial assistance—, 46994
Extension of closing date, 56239
Native American social and economic development projects, 44122
Residential energy assistance challenge option (REACH) program, 35518
Runaway and homeless youth program, 5777, 16534, 17706, 67030
Social services (title XX) block grants (FY 1998), 25681, 63850
Revised allocations to States, 48492, 60289
Temporary child care for children with disabilities and crisis nurseries program (FY 1996), 30871, 32900
Grants and cooperative agreements; availablity, etc.:
Child care and development block grants; self-certification process for Tribal allotments calculation, 55305
Medicaid:
Welfare reform and combined welfare reform/Medicaid demonstration projects—
December (1995), 5780
January, 5780
February, 9177
March, 15487
April, 21187
May, 29399
June, 35763
July, 42628
August, 49464
Meetings:
President's Committee on Mental Retardation, 17706, 43770
Organization, functions, and authority delegations:
Child Support Enforcement Office, 32443
Family and Youth Service Bureau; organizational structure, 50028
Family Assistance Office, 35770
Regional Offices, 50029
Regional Offices; five-region "hub" structure, 18147
Regional Offices; reorganization, 3937, 68045
Privacy Act:
Computer matching programs, 29404, 38754
Systems of records, 38754
Senior Executive Service:
Performance Review Board; membership, 64098

Civil Rights Commission

PROPOSED RULES

Semi-annual agenda, 23606, 63118

NOTICES
Meetings; State advisory committees:
Alabama, 28837, 30851, 33092, 919256
Alaska, 26498, 30805
Arizona, 8908, 55616, 56668
Arkansas, 4626
California, 15766, 45398, 60089
Colorado, 53899
Connecticut, 15027
Delaware, 30851
District of Columbia, 6622
Florida, 13852, 26874, 58511
Georgia, 5531, 27334
Hawaii, 30851, 35176, 54762, 66252
Idaho, 28837, 66253
Illinois, 6622
Indiana, 13852, 47113
Iowa, 21156, 47869
Kansas, 3668, 11379
Kentucky, 13852
Louisiana, 4626, 10313, 33093
Maine, 11807
Maryland, 3669
Massachusetts, 11379
Michigan, 6622, 26874
Mississippi, 21156, 33899, 68224
Missouri, 18373, 59216
Montana, 1322, 58511
Nebraska, 15766
Nevada, 26498
New Hampshire, 33093
New Jersey, 7773, 30852
New Mexico, 54417, 66253
New York, 16628, 56669, 60089, 60090
North Carolina, 7235, 33489
North Dakota, 18373
Ohio, 14737, 51081
Oklahoma, 45399
Oregon, 66253
Pennsylvania, 13853
Rhode Island, 32770, 54762
South Carolina, 7235, 30216, 33093
South Dakota, 4626, 54417
Tennessee, 28838, 33093
Texas, 43332, 54762
Utah, 7773
Vermont, 13853
Virginia, 68224
Washington, 26498, 53899
West Virginia, 15027
Wisconsin, 4626, 58034
Wyoming, 8908, 24763
Meetings; Sunshine Act, 9976, 11606, 15459, 19614, 26874, 35177, 45935, 48126, 54418, 57627, 63821
Racial and ethnic tensions in American communities:
Poverty, inequality, and discrimination—
Los Angeles, CA, 41125, 56669
Mississippi Delta, 41125
Senior Executive Service:
Performance Review Board; membership, 40193

Coast Guard

RULES
Anchorage regulations:
Georgia et al., 18944
Mississippi, 16711
South Carolina, 40993
Correction, 63715
Boating safety:
Inflatable personal flotation devices for recreational boaters; approval procedures, 13924
Correction, 5162, 15868
Reporting and recordkeeping requirements, 44176
Dangerous cargoes:
Bulk liquid, liquefied gas, or compressed gas hazardous materials; carriage; CFR correction, 42822
Cargoes compatibility; CFR correction, 5518, 58143
Drawbridge operations:
California, 17247, 17248, 59025
Florida, 1524, 13098, 29654, 67947
Louisiana, 4886, 39872, 49064, 64995
Maryland, 37211
Massachusetts, 18946
Michigan, 24235, 40515, 50712
New Jersey, 29959
New York, 10466
North Carolina, 31434
Virginia, 1714, 14970
Washington, 7306, 43158
Washington, DC, 57585
Federal regulatory reform:
Electrical engineering requirements for merchant vessels, 28260, 51789
Correction, 33045, 34927, 36608, 36786, 39695, 49691
Inspected and uninspected commercial vessels industry standards, 25984
Correction, 32900, 35138
International Regulations for Preventing Collisions at Sea (72 COLREGS); text removed, 8, 10466
Lifesaving equipment, 25272, 43685
Correction, 40281
Lifesaving equipment:
Inflatable personal flotation devices for recreational boaters; standards, 13931
Correction, 15868
Load lines:
Great Lakes certificate interval extension, 35963, 49418
Marine events:
AC Delco Offshore Invitational, 64991
Continental Airlines Boat Parade, 65332
Delaware River, PA; New Year's Eve fireworks, 67946
Events requiring permits, written notices, or neither; identification, 33027
Correction, 36292
Effective date delay, 60027
First Coast Guard District fireworks displays, 67946
Holiday Boat Parade of the Palm Beaches, 64994
Holidays in the City Boat Parade and Fireworks Display, 60028
Key West Super Boat Race, 64993
Merchant marine officers and seamen:
Commercial vessel personnel; chemical drug and alcohol testing programs; drug testing in foreign waters, 66612
Maritime personnel licensing—
Examination methods modernization, 47060
Radar-observer endorsement for uninspected towing vessel operators, 19859
Seamen certification—
Examination methods modernization, 47060
Shipment and discharge of merchant mariners; Federal regulatory reform, 56632
Tankermen and persons in charge of dangerous liquids and liquefied gases transfers; qualifications, 13098
Military personnel:
Coast Guard Military Records Correction Board; final decisions reconsideration, 24233
Navigation aids on artificial islands and fixed structures, etc.:
Uniform State Waterways and Western Rivers Marking Systems conformance with U.S. Navigation System, 27780
Correction, 29449
Offshore supply vessels:
Alternate maximum size limit; interpretation, 66613
Certification and inspection; conventional OSVs and lifeboats, 7425
Correction, 1035
Organization, functions, and authority delegations:
First and Fifth District Marine Inspection boundary change and Captain of Port zone boundaries descriptions, 21957
Great Lakes pilotage regulations; responsibility transferred to Saint Lawrence Seaway Development Corporation, 5720
Headquarters reorganization-related technical amendments, 33660
Correction, 36629
Second and Eighth District boundary change and Captain of Port zone boundaries descriptions, 29958
Penalty provisions, list; appendix removed, 18250
Pollution:
Existing tank vessels without double hulls; structural and operational measures to reduce oil spills, 39770
Correction, 41684
Partial suspension, 60189
Reporting and recordkeeping requirements, 64618
Facilities transferring oil or hazardous materials in bulk, 41452
Correction, 42462
Facility response plans and required pollution response equipment, 7890
Financial responsibility for vessels, 9264
Vessels carrying oil; response plans, 1052
Ports and waterways safety:
Arrivals, departures, and certain dangerous cargoes; advance notice, 50232
Atlantic Intracoastal Waterway, NC; safety zone, 8220, 16716
Back River and Foster Creek, SC; safety zone, 50436, 67948
Bellingham Bay, WA; safety zone, 47823
Boon Island, ME; safety zone, 60030
Boston Harbor, MA; regulated navigation area, 26105, 40515
Capistrano Beach to San Mateo Point, CA; safety zone, 19841
Charleston Harbor and Cooper River, SC; safety zone, 68155
Chesapeake Bay, MD, et al.; regulated navigation area during ice navigation season, 3316
Columbia River, WA; safety zone, 18948
Cuyahoga River, OH; safety zone, 37684
Delaware Bay and Delaware River, PA; safety zone, 2418, 35132
Delaware Bay, NJ; safety zone, 26840
East River, NY; safety zone, 35130, 45892
Elizabeth and York Rivers, VA; safety zone, 16714
Elizabeth River, VA; safety zone, 17249, 29655
Elliott Bay, WA; safety zone, 40994
Fort Pierce, FL; regulated navigation area, 544, 8219
Great South Bay, Fire Island, NY; safety zone, 21963
Greenwood Lake, NJ; safety zone, 24701
Gulf Intercoastal Waterway, Houma, LA; safety zone, 59026
Hempstead Harbor, NY, 47054
Hudson River, NY; safety zone, 28055, 33672, 45891
Lake Erie, MI and OH; safety zone, 29020
Long Beach Harbor, CA; safety zone, 24892
Lower Mississippi River; safety zone, 7413, 13100
Miami Beach, FL; security zone, 29022
Ohio River, OH—
Regulated navigation area, 2415
Safety zone, 2417
Ohio River, WV; safety zone, 29021
Port of New Jersey and New York; safety zone, 24697, 24699
Safety zones and security zones, etc.; list of temporary local rules, 7071, 19192, 39325, 45678
San Diego Bay, CA; safety zone, 37211
Sandy Hook Bay, NJ; safety zone, 33671
San Francisco Bay, CA; safety zone, 29656
San Pedro Bay, CA; safety zone, 60028
Savannah Light Tower, GA; safety zone, 68156
Savannah River, GA; safety/security zone, 18949
Smith Creek, NC; safety zone, 16717
Southern Florida coastal waters; security zone, 9348
Towing vessels; navigation safety equipment requirements, 35064
Upper New York Bay, NY and NJ; safety zone, 24698
Vessel traffic management—
New York Harbor, NY; Vessel Traffic Service New York (VTSNY) area; boundary expansion, 45323
Recreational vessels; fees:
Federal regulatory reform, 6542
Regattas and marine parades:
American Power Boat Association Green Bridge Regatta, 8216
Annual National Maritime Week Tugboat Races, 16709
Augusta Port Authority Invitational Rowing Regatta, 8217
Augusta Southern National Drag Boat Races, 28503
Beaufort Water Festival, 28501
Big River Rendezvous, 53321
Blessing of the Fleet and Fireworks Display, Louisiana Shrimp and Petroleum Festival, 44160
Boating Safety Parade, 21962
Christmas Parade of Boats, SC, 59022
First Coast Guard District fireworks displays, 32328, 33371
First District local regulations event notification; Federal Register publication requirement eliminated, 26104
Fort Myers Beach Offshore Grand Prix, 28502
Great Lakes Annual Marine Events, 5680
Hampton Bay Days Festival, 44160
Harborwalk Boat Race, 29019
Harvard-Yale Regatta, 21959
Inland Seafood Festival Jet Boat Races, 41506
Kennewick, Washington, Columbia Unlimited Hydroplane Races, 20132
Kentucky Drag Boat Association Races, 33670
Key West Super Boat Race, 21960
Lake Worth Sunfest, 6, 17246
Lansing Fish Days Celebration, 41505
Miami Super Boat Race, 27782
Mississippi Blackhawks Water Ski Show, 44161
Newport-Bermuda Regatta, 32331
Newport to Ensenada race, CA, 4885
Norfolk Harborfest, 25149
Ocean City Offshore Grand Prix, 53321
Opening Day Marine Parade, San Francisco Bay, 14249
Palm Beach, FL Offshore Grand Prix, 40513
Parker 500 Enduro, 8218
Provincetown Harbor Swim for Life, 45890
Quonset Open House, 26102
River Race Augusta, GA, 17841
Safety at Sea Seminar, 16711
San Diego Crew Classic, 10896
Searsport Lobster Boat Races, 59024
Seventeenth Annual Safety at Sea Seminar, 14025
Suncoast Kilo Run et al., 32333
Swim the Narragansett Bay, 26103
U.S. Navy Fleet Week Parade of Ships, 52695
U.S. Offshore World Championship Power Boat Races, 47822
Wilmington Family YMCA-Physicians Health Plan Triathlon, 50436
World's Fastest Lobster Boat Race, 21961
Technical amendments, 50721
Correction, 36786, 52497
Uninspected vessels:
Commercial fishing industry regulations, 57268
Correction, 68161
Vessel documentation and measurement:
Vessel rebuild standards, 17814
Vessel identification system, 6943
Vessel inspection alternatives:
Classification procedures, 68510
Vessel inspection and certification:
Classification procedures, 68510
Vessels; small passenger vessel inspection and certification, 864
Correction, 20556, 24464
Vocational rehabilitation and education:
Veterans education—
Reservists education and Montgomery GI Bill-Selected Reserve; educational assistance awards commencing dates, 11310, 29297, 29481
Waterfront facilities:
Passenger vessel and terminal security, 37648
Policy clarification, 51597
PROPOSED RULES
Anchorage regulations:
New York, 11356, 68197
South Carolina, 17861
Boating safety:
Boats and associated equipment—
Propeller guards on houseboats and other displacement-type recreational vessels, mandatory requirements; propeller-strike incidents reduction, 13123
Drawbridge operations:
California, 35702
Florida, 6803
Louisiana, 15437, 18532, 19223, 59396, 68198
Mississippi, 59047
Missouri, 57599
New Jersey, 31881, 67970
New York, 22002
North Carolina, 1725
Oregon, 16736, 59394
Tennessee—
Public meetings, 68689
Washington, 6588, 6589
Washington, DC, 709
Federal regulatory review:
Electrical engineering requirements for merchant vessels, 4132, 7090
Correction, 7050, 8539
International Conventions on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (STCW):
Licensing, documentation, and manning, 13284
Public meetings, 15438
Marine events:
Augusta Invitational Rowing Regatta, 64645
Merchant marine officers and seamen:
Marine licensing, registry certification, and merchant marine documentation; user fees, 56199
Maritime training course approval process; meeting, 16749
Shipment and discharge of merchant mariners; Federal regulatory review, 13796
Towing vessels; manning and licensing requirements for officers, 31332, 66642
Correction, 36543, 36608, 41208
Public meetings, 43720, 47786
Navigation aids on artificial islands and fixed structures, etc.:
International Association of Lighthouse Authorities; conformance, 708, 13472
Withdrawn, 26857
Uniform State Waterways and Western Rivers Marking Systems, elimination; and conformance with U.S. Aids to Navigation System; Federal regulatory review, 13470
Pollution:
Existing tank vessels without double hulls; structural and operational measures to reduce oil spills; correction, 6334, 5590
Tank vessel or marine transportation related facility response plans; hazardous substances response equipment, 20084
Public meetings, 34775
Ports and waterways safety:
Arrivals, departures, and certain dangerous cargoes; advance notice, 1183
Cape Fear River and Beaufort Inlet, NC port access route; study, 35703
Charleston Harbor and Cooper River, SC; safety zone, 47839
Chelsea River, MA; safety zone, 2461
Columbia River, WA; safety zone, 4945
Delaware Bay and Delaware River et al., NJ; regulated navigation area, 57599
Elizabeth and York Rivers, VA; safety zone, 10493
Hillsborough Channel Cut D, Hillsborough Bay, FL; regulated navigation area; withdrawn, 53346
Lake Erie; safety zone, 16886
Lake Erie, South Passage of the Western Basin; regulated navigation area, 67971
Los Angeles-Long Beach, CA; safety zone, 37714
Lower Hudson River, NY; safety zone, 40587
Mullet Key Channel, Tampa, FL regulated navigation area; withdrawn, 53345
San Diego Bay, CA; security zone, 25838
Savannah River et al., GA; security and safety zones, 136, 6178
Shipping safety fairways—
California coast port access routes, 55248
Tampa Bay, Hillsborough Bay and approaches, FL: safety zone, 14518
Regattas and marine parades:
Augusta Southern National Drag Boat Races, 16885
Beaufort Water Festival, 17269
Charleston Christmas Parade of Boats, SC, 50463
Connecticut River Raft Race, 21998
Detroit Grand Prix, 8229
Festival on the Fourth Celebration; Charleston, SC, 19003
First Coast Guard District fireworks displays, 25835
First District local regulations event notification; Federal Register publication requirement eliminated, 11796
Fort Myers Beach Offshore Grand Prix, 11354
Harborwalk Boat Race, 13119
Holiday Boat Parade of the Palm Beaches, 53342
Idle Hour South Channel Challenge, 17270

Key West Super Boat Race, 53344
Miami Super Boat Race, 13122
National Maritime Week Tugboat Races, annual, 1182
Newport-Bermuda Regatta, 21999
Permits, notices, etc.; Federal regulatory review, 16732
Provincetown Harbor Swim for Life, 11352
River Race Augusta, 13120
Searsport Lobster Boat Races, 22001
Suncoast Kilo Run et al., 19220
Swim Buzzards Bay Day, 20196
Swim the Bay, 11353
Winter Harbor Lobster Boat Race, ME, 7089
World's Fastest Lobster Boat Race, 8227
Vessel documentation and measurement:
Recreational vehicles—
Combined builder's certification and manufacturer's certificate of origin, hull identification number submission, etc., 58359
Vessels; inspected and uninspected:
Harmonization with international safety standards; Federal regulatory review, 58804
Vessels; small passenger inspection and certification
Public meetings, 6961

NOTICES
Agency information collection activities:
Proposed collection; comment request, 24851, 25262, 34920, 37113, 38507, 41679, 48733, 54831, 55834
Submission for OMB review; comment request, 24346, 37309, 37789
Committees; establishment, renewal, termination, etc.:
Chemical Transportation Advisory Committee; membership, 3758
Coastal Zone Area Committees, 3519
Commercial Fishing Industry Vessel Advisory Committee, 15555
Cook Inlet Regional Citizens' Advisory Council, 16518, 32883
Lower Mississippi River Waterway Safety Advisory Committee, 26245
Merchant Marine Personnel Advisory Committee; membership aplications, 66343
National Boating Safety Advisory Council; membership, 38508
National Offshore Safety Advisory Committee, 15555
Navigation Safety Advisory Council, 67586
Prince William Sound Regional Citizens' Advisory Council, 19110, 43804
Towing Safety Advisory Committee, 39689
Designated areas:
Eighth Coast Guard District Regional Examination Center; issuance of first class pilot licenses and endorsements, 68090
Emergency response plans:
National Response Team's integrated contingency plan guidance; availability, 28642
Environmental statements; availability, etc.:, 64561
Atlantic protected living marine resource initiative, 64785
Coast Guard activities along U.S. Atlantic coast, 14590, 56258
Living marine resource initiative, 40062
Differential global positioning systems—Geiger Key, FL, 29786, 64561
Great Lakes icebreaking, 56994
Incineration of solid waste aboard U.S. Coast Guard cutters, 60137
Grants and cooperative agreements; availability, etc.:
National boating safety activities; national nonprofit public service organizations, 51312
Load lines:
Unmanned barges on Lake Michigan; limited service domestic voyage load lines, 43804
Meetings:
Chemical Transportation Advisory Committee, 3759, 15556, 37310, 42082
Civil GPS Service Interface Committee, 8701
Commercial Fishing Industry Vessel Advisory Committee, 8701, 42936
Commercial ships; compressed and liquefied natural gas use as fuel, 60138, 68091
Houston/Galveston Navigation Safety Advisory Committee, 11233, 11234, 44383, 47544, 68091
Industry Day, Eighth Coast Guard District, 8324
Industry Day, Second Coast Guard District, 5829
Lower Mississippi River Waterway Safety Advisory Committee, 571, 48520, 59482, 67587
Marine oil spill response hazardous waste operations and emergency response training workshop, 67587
Merchant Marine Personnel Advisory Committee, 18188, 46010
Merchant Vessel Personnel Advisory Committee, 4509
National Boating Safety Advisory Council, 13225, 53479
National Offshore Safety Advisory Committee, 8701, 50890
Navigation Safety Advisory Council, 13225, 58094
Towing Safety Advisory Committee, 3759, 37311, 55353
Tug of opportunity system, international and private-sector; documentation and marine safety criteria, 48202, 52488, 56258
National Environmental Policy Act:
Categorical exclusions; agency procedures Regatta and marine parade events; permits, etc., 13563
National preparedness for response exercise program; exercise schedule, workshop, and guidelines and training elements availability, 2568
Oil spill removal organization classification process:
Guidelines, 3071
Omega radionavigation system termination, 53479
Organization, functions, and authority delegations:
Agency headquarters docket facility's opening hours and copying fee schedule, 33164
Privacy Act:
Systems of records, 55353, 56324, 67588
Reports; availability, etc.:
Prevention through people quality action team report; human error focus, 6283
Tank vessel design, construction, and operation under 1990 Oil Pollution Act, 18457
Vessels in distress; emergency response:
Olympic Coast Marine Sanctuary and Strait of Juan de Fuca; international private sector tug-of-opportunity system plan, 15154
Waterfront facilities; marine oil or hazardous material transfer pipeline testing, 21521
Water pollution control:
Clean Water Act; class II administrative penalty assessments—
Energy Technical Services, Inc., et al., 49374
Greenhill Petroleum Corp. et al., 1661
Shell Offshore Inc. et al., 1662
Waxler Towing Co., Inc., 19329

Commerce Department

See Census Bureau
See Economic Analysis Bureau
See Economic Development Administration
See Economics and Statistics Administration
See Export Administration Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See Minority Business Development Agency
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See National Technical Information Service
See National Telecommunications and Information Administration
See Patent and Trademark Office
See Technology Administration
See Travel and Tourism Administration

RULES
Cost principles for state, local and tribal governments (OMB A-87), 26095
Federal claims collection:
Civil monetary penalties; inflation adjustments, 55092
Patents:
Inventions made by Government employees; uniform patent policy—
Federal regulatory reform, 40997

PROPOSED RULES
Acquisition regulations:
Acquisition processes; streamlining, 60068
Freedom of Information Act; implementation, 6585
Privacy Act; implementation, 6585
Semi-annual agenda, 22806, 62338

NOTICES
Acquisition regulations:
Empowerment contracting; guidelines, 48463, 55616, 64321, 66077
Advisory committees; reports on closed meetings; availability, 39945
Agency information collection activities:
Proposed collection; comment request, 14552
Submission for OMB review; comment request, 4762, 8909, 9424, 9976, 10561, 11808, 14737, 14739, 15215, 15459, 20213, 20513, 22017, 24479, 25187, 26156, 26875, 27334, 28838, 30591, 30592, 34790, 36025, 38434, 39945, 40193, 40812, 41993, 41994, 43228, 44038, 45399, 46435, 46436, 46761, 47480, 47869, 48664, 49111, 51259, 53349, 54762-54764, 55953, 55954, 56939, 58511, 58859, 59858, 60259, 65013, 65195, 65521, 66651, 68225, 68706
Committees; establishment, renewal, termination, etc.:
Federal Information Processing Standard for Federal Key Management Infrastructure Development Technical Advisory Committee, 35710
Reduction in Force procedures:
U.S. Travel and Tourism Administration; foreign services officers, 7235
Senior Executive Service:
Performance Review Board; membership, 54152, 58371
Unfunded Mandates Reform Act; intergovernmental consultation; policy statement, 5531
Voting age population; 1995 census count, 15460, 18650

Commercial Space Transportation Office

NOTICES
Environmental statements; notice of intent:
Commercial expendable launch vehicle operations, 763

Commission of Fine Arts

NOTICES
Grants and cooperative agreements; availability, etc.:
National Capital Arts and Cultural Affairs Program, 2233
Meetings, 1749, 7005, 9734, 18629, 29137, 53720, 55134, 64505, 68240

Commission on Immigration Reform

NOTICES
Meetings, 18122, 47738

Commission on Protecting and Reducing Government Secrecy

NOTICES
Meetings, 19909

Committee for Purchase From People Who Are Blind or Severely Disabled

NOTICES
Agency information collection activities:
Proposed collection; comment request, 1565
Submission for OMB review; comment request, 15223
Procurement list; additions and deletions, 407, 1361, 1362, 2493, 2494, 3910, 4961, 4962, 6233, 6234, 6976, 6977, 8044, 9438, 10732, 10733, 11810, 11811, 14087, 14297, 15224, 16240, 17280, 17281, 18570, 19052, 19908, 21444, 21445, 22026, 24920, 24921, 26166, 26167, 27338, 27339, 29080, 29081, 30223, 31927, 31928, 33708, 33710, 35176, 35709, 35710, 36705, 37718, 37719, 39118, 40394, 40395, 41569, 41570, 42583, 42584, 43037, 43523-43524, 45934, 45935, 47111, 47112, 48462, 49434, 49435, 50804, 50805, 51881, 51882, 53348, 54416, 54417, 55267, 55268, 56511, 57848, 57849, 58509, 58510, 59400, 59401, 63818-63820, 64664, 64665, 65520, 65521, 67305, 68705, 68706

Committee for the Implementation of Textile Agreements

NOTICES
Cotton, wool, and man-made textiles:
Bahrain, 47738, 68241
Bangladesh, 37308, 44380, 49735, 56944, 58385, 68241
Brazil, 59420
Bulgaria, 29356, 69080
Burma (Myanmar), 58037
China, 24919, 30597, 34919, 42931, 47892, 55618
Colombia, 1358, 58038
Costa Rica, 3002, 11810, 31992, 34492, 69081
Czech Republic, 55973
Dominican Republic, 1359, 24292, 31992, 33792, 38717, 48133, 50278, 52776, 59086, 65375
Egypt, 42933, 67533, 68242
El Salvador, 18383, 34492, 42673, 43396, 59864
Fiji, 3003, 15925, 54985, 58535
Former Yugoslav Republic of Macedonia, 48889
Guatemala, 28183, 30046, 34493, 44381, 58038, 58169
Honduras, 38236, 38237, 58386, 59865
Hong Kong, 58536, 65196
Hungary, 57398, 58386
India, 16760, 18722, 39688, 48133, 60093, 64342, 67772, 68243
Indonesia, 11614, 29357, 40060, 49736, 56944, 59866, 64505
Jamaica, 1360, 30047, 46503, 67773
Kenya, 58039
Korea, 24291, 42933, 56945, 59087, 69082
Kuwait, 58387
Laos, 1749, 58040
Macau, 40701, 58387, 64507, 68244
Macedonia, 26165
Malaysia, 29538, 34494, 50279, 58041, 58537
Maldives, 42934
Mauritius, 54986, 56522, 58538
Mexico, 8043, 54986
Myanmar, 18383
Nepal, 30598, 31993, 37787, 47738, 58169, 65197
Oman, 1361, 42674, 58388, 58389
Pakistan, 6353, 16761, 24291, 34494, 36951, 44381, 56946, 57851, 58389, 68245
Philippines, 11615, 30047, 40472, 52776, 56947, 58538, 64507
Poland, 10564, 54987, 55974
Qatar, 15925, 58390
Romania, 4627, 46784
Russia, 50279
Singapore, 36951, 53210, 56523, 58042
Slovak Republic, 24293, 54988, 55975
Sri Lanka, 10992, 29357, 34495, 68246, 69084
Taiwan, 3004, 30048, 43568, 53360, 58043, 58539, 60684
Thailand, 28183, 34495, 41131, 55619, 58044, 58247
Turkey, 36037, 42934, 54988, 67533
Ukraine, 48889, 57399
United Arab Emirates, 9982, 16761, 24290, 33792, 37952, 64508, 68248
Uruguay, 58046
Country of origin on-site verification for textiles and textile products, 33793
Export visa requirements; certification, waivers, etc.:
China, 59088
El Salvador, 67321
Honduras, 40702
Pakistan, 25847, 48529
Poland, 1564
Singapore, 65548
Special access and special regime programs; participation denial:
Caribbean Basin countries, 49439
Gator of Florida, 7493
Textile and apparel categories:
Correlation with U.S. Harmonized Tariff Schedule, 5537, 24293, 36952, 57400, 66263, 68249
Visa and quota requirements; exemptions—Fashion samples, 4418
Textile consultation; review of trade:
El Salvador, 16762
Hong Kong, 53210
India, 53210
Ukraine, 17279

Commodity Credit Corporation

RULES
Agricultural conservation programs:
Conservation reserve program (1986-1990 and 1991-2002), 43943
Export programs:
Agricultural commodities; humanitarian grant food supplies donation and overseas distribution, 60513
Supplier credit guarantee program, 33825
Federal Agriculture Improvement and Reform Act of 1996:
Farm program provisions implementation, 37544
Correction, 49049
Noninsured crop disaster assistance program provisions; transferred from Federal Crop Insurance Corporation, 69004
Federal regulatory reform:
Noncommercial Risk Assurance Program, etc.; elimination, 8207
Loan and purchase programs:
Emergency livestock assistance regulations; redesignation, 32643
Foreign markets for agricultural commodities; development agreements, 3548, 32644, 53303
Reimbursement requirement, 24205
Grains and similarly handled commodities—
Wheat and feed grains; maturing 1994 and subsequent crop year price support loans; extension, 11514
Market access program; eligibility criteria, 58779
Price support levels—
Burley tobacco, 50423
Sugar; cane and beet (1995 crop), 15881
Tobacco, 33303, 37672
Tobacco; fire-cured, dark air-cured, etc., 63697
Wetlands reserve program:
Responsibility transferred from NRCS to Commodity Credit Corporation, 42137

PROPOSED RULES
Agricultural conservation programs:
Conservation reserve program regulations, long-term policy; consolidation and CFR parts removed, 49697
Environmental quality incentives program, 53574
Loan and purchase programs:
Foreign markets for agricultural commodities; development agreements—
Reimbursement requirement, 704
Price support levels—
Peanuts, 59840
Tobacco (nested), 5317
Upland cotton; user marketing certificate program
Rate-setting method change, 10289
Wildlife habitat incentives program, 65485

NOTICES
Agency information collection activities:
Proposed collection; comment request, 3900, 24914, 40811, 42829-42831, 65009, 65519, 66012
Feed grain donations:
Three Affiliated Tribes of Fort Berthold Indian Reservation, ND, 24914
Grants and cooperative agreements; availability, etc.:
Disaster reserve assistance program, 55783
Farmland protection program, 43226
Market access program (FY 1997), 51880, 66209
Market access program; funding evaluation and allocation methodology, 33898
Market promotion program, 1316
Meetings; Sunshine Act, 2334
Organization, functions, and authority delegations:
Bylaws, 14285

Commodity Futures Trading Commission

RULES

Commodity Exchange Act:
- Futures commission merchants and introducing brokers; early warning reporting requirements, minimum financial requirements, etc., 19177

Commodity pool operators and commodity trading advisors:
- Electronic media use—
  - Effective date delay, 65940
  - Interpretation and comment request, 42146, 54731, 56271

Contract market designation applications, leverage commodity registration, etc.; fee schedule, 19830

Contract markets:
- Trading cards and trading records; correction of erroneous information; procedures, 42999, 50431

Domestic exchange-traded commodity option transactions:
- Futures commission merchants; disciplinary actions notification requirement, 2719

Ethics training for registrants, 20127
- Correction, 26253

Federal claims collection:
- Civil monetary penalties; inflation adjustment, 55564

Foreign futures and options transactions:
- Authorization requirement prior to sale of foreign exchange-traded options in United States, 10891
- New Zealand Futures and Options Exchange—
  - Exempted transactions, 64985
- Singapore International Monetary Exchange Limited—
  - Nikkei 300 stock index futures contract, 1709
- Tokyo Grain Exchange, 2717

Futures Trading Practices Act:
- Broker association memberships disclosure, 41496

Organization, functions, and authority delegations:
- Director, Enforcement Division, et al., 1708
- Proceedings Office, Director et al., 21954

Registration:
- Statutory disqualification "for other good cause" standard; interpretative statement, 58627

Reporting requirements:
- Futures commission merchants, contract market members, and foreign brokers, 6310

Telemarketing and Consumer Fraud and Abuse Prevention Act:
- Telemarketing rules; determination, 32323

PROPOSED RULES

Commission records and information; open Commission meetings, 66949

Commodity Exchange Act:
- Futures commission merchants and introducing brokers; financial reporting and debt-equity ratio requirements, 7080
- Leverage transactions—
  - Financial report filing attestations; personal identification number (PIN)/manual signature equivalency, 55235

Commodity pool operators and commodity trading advisors:
- Disclosure documents filing, etc.; clarification, 44009

Contract markets:
- Contract market designation applications review and approval and exchange rules relating to contract terms and conditions, 59386, 68175
- Contract market rule review procedures, 66241

Trading cards and trading records; correction of erroneous information; procedures, 28806

Freedom of Information Act; implementation, 66949

Futures Trading Practices Act:
- Voting by interested members of self-regulatory organization governing boards and committees; broker association membership disclosure, 19869

Reporting requirements:
- Options and futures large trader reports; daily filing requirements, 37409

Semi-annual agenda, 23926, 63410

NOTICES

Agency information collection activities:
- Proposed collection; comment request, 20515, 31928, 42009
- Submission for OMB review; comment request, 3674, 20808, 31928, 32428, 39634, 51689

Committees; establishment, renewal, termination, etc.:
- CFTC-State Cooperation Advisory Committee, 10733

Contract market proposals:
- Chicago Board of Trade—
  - CBOT Argentina Brady Bond Index, 4628
  - CBOT Brazil Brady Bond Index, 4418
  - Corn and soybean futures, 67998
  - Diammonium phosphate and anhydrous ammonia futures, 1750
  - Eurodollar, 51082
  - London International Financial Futures and Options Exchange training and clearing link, 16899
  - U.K. futures and contract options, 18571
  - Yield curve spread futures, 3674
- Chicago Mercantile Exchange, et al.—
  - S & P 500 futures, 68722
- Chicago Mercantile Exchange—
  - Beef futures, 58863
  - Brazilian "C" Brady Bonds, etc., 5386
  - CETES (91-day) Mexican treasury bill, 59421
  - CME Argentine Brady Bond Index, etc., 2803
  - CME three-month Eurodollar, etc., 50280
  - Deutsch mark-French franc, -Italian lira, -Spanish peso and -Swedish krona; currency cross-rates, 346
  - Dow Jones Taiwan Stock Index, 50280
  - Frozen pork bellies futures, 65550
  - GLOBEX foreign exchange facility; establishment, 9678
  - GLOBEX terminals access for commodity trading advisors; pilot program, etc., 21162
  - Mexican Interbank Equilibrium interest rate futures and options, 58864
  - Mexican Stock Exchange Prices and Quotes Index; futures and options, 8578
  - Nasdaq 100 Index, 2233
  - Ninety percent lean boneless beef, etc., 49736
  - Oriented Strand Board futures and futures options, 30861
  - Taiwan Stock Index, 25636
  - Venezuelan DCB Brady Bonds, 37446
- Coffee, Sugar & Cocoa Exchange—
  - Basic formula price milk, 59421
  - Butter futures, 37883
  - Membership lessees; affiliation with member firms, 34802
  - White sugar, 9147, 10323
- MidAmerica Commodity Exchange—
  - Live hog futures, 41775
  - Mexican peso futures, 20244
- Minneapolis Grain Exchange—
  - Audit trail requirements; exemption, 58677
  - Barley, 10992
- New York Cotton Exchange—
  - Deutsche Mark/Spanish Peseta cross rate, 59221
  - U.S. Dollar; futures and options, 68723
- New York Futures Exchange—
  - British pound, Deutsche mark, Japanese yen and Swiss franc, 11615
- New York Mercantile Exchange—
  - Alberta natural gas futures and options contracts, 25847
  - Hong Kong Stock Index, 58864
  - New York Harbor No. 2 heating oil futures, 22026
  - Silver futures, 29358

Meetings:
- Agricultural Advisory Committee, 17881, 50003
- CFTC-State Cooperation Advisory Committee, 21163, 25210
- Risk management practices and internal controls; interactive symposium, 30861

Meetings; Sunshine Act, 230, 1819, 4520, 5605, 6295, 9149, 13157, 15926, 19612, 25636, 25637, 27867, 30224, 35728, 37446, 40616, 44305, 47893, 48666, 49302, 51689, 52777, 54627, 56947, 57851, 60685, 64071, 65376, 66997, 68723, 68724

Philadelphia Stock Exchange, Inc.:
- Foreign currency options on Hong Kong Exchange, Ltd.; exemptive relief, 52921, 59019

Privacy Act:
- Systems of records, 19613, 43738

Senior Executive Service:
- Performance Review Board; membership, 40200

U.S. futures exchanges:
- Broker associations; rule enforcement review, 68996

Community Development Financial Institutions Fund

RULES

Bank enterprise award program:
- Clarification, 59827
- Comment period extended, 1699

Community development financial institutions program:
- Comment period extended, 1699
- Correction, 7690

NOTICES

Committees; establishment, renewal, termination, etc.:
- Community Development Advisory Board, 1203

Grants and cooperative agreements; availability, etc.:
- Bank enterprise award program, 11081
  - Application date extended, 1204
- Community development financial institutions program, 11081, 59928
  - Application date extended, 1204

Meetings:
- Community Development Advisory Board, 1203, 67593

Community Services Office

NOTICES

Grants and cooperative agreements; availability, etc.:
- Community food and nutrition program, 25342
- Community Services Office discretionary program, 16318
- Developmental disabilities—
  - Projects of national significance, 16253
- Low-income individuals job opportunities program; (demonstration projects), 27950

- National youth sports program (FY 1996), 8942
- Residential energy assistance challenge option (REACH) program, 38452
- Training, technical assistance, and capacity building program, 16850

State median income estimates for four-person families (FY 1997), 11212

Comptroller of the Currency

RULES

Clearing agencies; disciplinary sanctions:
- Collective investment funds; Federal regulatory reform, 68543

Community development corporations, projects, and other public welfare investments, 49654

Community Reinvestment Act regulations, 21362

Corporate activities; rules, policies, and procedures, 60342

Credit life insurance sales:
- Income disposition; Federal regulatory reform, 51777

Federal branches and agencies of foreign banks:
- International operations of national and foreign banks, 19524

Federal Deposit Insurance Act:
- Safety and soundness standards, 43948

Federal regulatory review:
- Minimum security devices and procedures, suspicious activities reporting and bank secrecy compliance program, 4332
- Real estate lending and appraisals, 11294

Fees assessment; national and District of Columbia banks:
- Non-lead banks; lower assessments, 64000

Interpretive rulings; revision, etc., 4849

Investment securities:
- Federal regulatory reform, 63972

Leasing:
- National banks; personal property lease financing transactions, 66554

Management official interlocks, 40293

National bank insiders; extensions of credit and transactions with affiliates, 54533

National Flood Insurance Reform Act of 1994; implementation:
- Loans in special flood hazard areas, 45684

Practice and procedure:
- Fiduciary activities of national banks; Federal regulatory reform, 68543
- Uniform and local rules, 20330

Risk-based capital:
- Capital adequacy guidelines
  - Correction, 1273
- Market risk, 47358

Securities transactions; recordkeeping and confirmation requirements streamlining, 63958

PROPOSED RULES

Capital ratios, minimum; issuance of directives:
- Risk-based capital; collateralized transactions, 42565

Government securities sales practices:
- Banks' conduct of business as government securities brokers or dealers; standards, 18470

National banks lending limits:
- Personal property securing loans; value preservation, 37227

Risk-based capital:
- Market risk; internal models backtesting, 9114

Securities transactions; recordkeeping and confirmation requirements:
- Qualification requirements, 68824

NOTICES

Agency information collection activities:
- Proposed collection; comment request, 20551, 42085, 48205, 48687, 53994, 56263, 56737, 68814, 68841
- Submission for OMB review; comment request, 3764, 4514, 48205, 60748, 66344

Delayed availability of funds; interagency policy statement; withdrawn, 43573

Lobbying Disclosure Act of 1995:
- Covered executive branch officials; list, 14851

National banks:
- Independent regulatory appeals process guidelines, 7042
- Preemption determinations—
  - Low-cost or consumer checking accounts by State depositories, 4515

Organization, functions, and authority delegations:
- Comptroller; order of succession, 24531

Practice and procedure:
- Interest rate risk management; policy statement, 33166

Congressional Budget Office

NOTICES

Balanced Budget and Emergency Deficit Control Reaffirmation Act (Gramm-Rudman-Hollings):
- Sequestration final report for FY 1996 transmittal to Congress and OMB, 1145
- Sequestration final report for FY 1997 transmittal to Congress and OMB, 53901
- Sequestration preview report for FY 1997 transmittal to Congress and OMB, 10734
- Sequestration update report for FY 1997 transmittal to Congress and OMB, 42593

Consumer Product Safety Commission

RULES

Conflict of interests, 65457

Flammable Fabrics Act:
- Children's sleepwear (Sizes 0-6X) flammability standards; revoked, 1115
- Children's sleepwear (sizes 0-6X and 7-14) flammability standards, 47634
- Stay enforcement extended, 47412
- Children's sleepwear (Sizes 7-14) flammability standards; revoked, 1116

Hazardous substances:
- Charcoal intended for cooking or heating, retail containers; labeling requirements, 19818
  - Correction, 33175
- Ethylene glycol-base radiator antifreeze hazard labeling example; alternative first aid instruction, 54549
- Fireworks devices; allowable fuse burn time, 67197
- Multiple tube mine and shell fireworks devices; stability performance test requirement, 13084, 26096
  - Correction, 18245

Noncomplying, misbranded, or banned products; export:
- Policy statement and procedures; consolidation, 29645

Organization, functions, and authority delegations:
- Directorate for Engineering Sciences et al., 1707

Poison prevention packaging:
- Substances requiring special packaging; CFR correction, 40317

Small business ombudsman and small business program policies, 52877

PROPOSED RULES

Baby cribs, full-size and non-full-size:
- Slats and side panels; structural integrity, 65996

Consumer Product Safety Act:
- Multi-purpose lighters; child-resistant standard, 20503

Hazardous substances:
- Fireworks devices; fuse burn time, 41043

Poison prevention packaging:
- Child-resistant packaging requirements—
  - Packages containing 50 mg or more of Ketoprofen, 59043

Semi-annual agenda, 23932, 63416

NOTICES

Agency information collection activities:
- Proposed collection; comment request, 1363, 3373, 5537, 5987, 10734, 14557, 55278
- Submission for OMB review; comment request, 48474, 52777, 55279, 55975-55977

Agenda and priorities (FY 1998); public hearing, 25648

Batting helmets with face guards; petition requesting safety standard development and staff report, 40822

Carbon monoxide detectors; public hearings, 2233

Meetings:
- Small business conference, 19262

Meetings; Sunshine Act, 2868, 5063, 5838, 6411, 8579, 10993, 12060, 13853, 17689, 18384, 24763, 26505, 31090, 33715, 35195, 37446, 40822, 45946, 51689, 54160, 54777, 55620, 56524, 60093, 64693, 68725

Privacy Act:
- Systems of records, 66997

Senior Executive Service:
- Performance Review Board; membership, 66019

Settlement agreements:
- Brinkmann Corp., 53720
- Burlington Coat Factory Warehouse Corp., 26505
- Four Seasons General Merchandise, Inc., 56669
- Hartman Products, 55280
- National Media Corp., 30049
- Premier Promotions & Marketing, Inc., 30224
- Sandy Starkman Co., 25848
- Singer Sewing Co., 10735
- SKR Resources, Inc., 11382
- Taito America Corp., 11384, 25637

Cooperative State Research, Education, and Extension Service

RULES

Grants:
- National research initiative competitive grants program, 45319
- Rangeland research programs; administrative provisions, 27752
- Small business innovation research grants program; administrative provisions, 25366

NOTICES

Agency information collection activities:
- Proposed collection; comment request, 38432

Grants and cooperative agreements; availability, etc.:
- Agriculture telecommunications program (FY 1996), 32282, 34927
- Community food projects program, 38524
- National research initiative competitive grants program, 51078
- Rangeland research program (FY 1996), 96
- Small business innovation research program, 32628

Meetings:
- Committee of Nine, 15459
  - Cancellation, 20210
- Forestry Research Advisory Council, 15024

Copyright Office, Library of Congress

RULES

Claims registration:
- Copyright claims registrability of pictorial, graphic, and sculptural works for which

design patent has been issued; correction, 5445
Copyright arbitration royalty panel rules and regulations; technical amendments, 63715
Copyright arbitration royalty panel rules of procedure:
Digital phonorecord delivery rate adjustment proceeding, 37213
Digital audio recording technology (DART); statements of account; verification, 30808, 49680
Noncommercial educational broadcasting; copyrighted musical compositions; royalty rates:
Cost of living adjustment, 60613
PROPOSED RULES
Cable compulsory license:
Open video systems of telephone companies; eligibility threshold, 20197, 27322
Correction, 22084
Copyright office and procedures:
"Best Edition" of published motion pictures—"Most widely distributed" gauge selection factor; removal, 58497, 64042
Procedures and services:
Copyright claims; group registration of photographs, 2463, 28829
Correction, 33052
Sound recordings, publicly performed, of nonexempt subscription transmissions; notice and recordkeeping, 22004
NOTICES
Cable compulsory license:
Cable copyright royalty rates; termination of adjustment proceedings, 65603
Cable compulsory license royalty rates adjustment; negotiation period, 11896
Cable royalty funds for 1990, 1991, and 1992; distribution proceedings, 6040, 55653
Cable royalty funds for 1993 and 1994; ascertainment of controversy, 49799, 50906
Catalog of Copyright Entries; microfiche copies publication discontinued, 52465
Copyright arbitration royalty panels; arbitrator names list, 5410
Digital audio recording technology royalties for 1992, 1993, and 1994; distribution proceedings, 39670, 49799
Digital performance right in sound recordings; precontroversy discovery schedule, 40464
Digital phonorecord delivery rate adjustment proceeding; precontroversy discovery period, 65343
Noncommercial educational broadcasting compulsory license; voluntary negotiation period, 54458
Satellite carrier compulsory license royalty rate adjustment negotiation period; precontroversy discovery schedule, 29573
Uruguay Round Agreements Act (URAA):
Copyright restoration of certain Berne Convention and World Trade Organization works; list, 19372, 46134, 68454

Corporation for National and Community Service

PROPOSED RULES
Semi-annual agenda, 23608, 63120
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16628, 28184, 29359, 30226, 33906, 33907, 47481, 58540, 65198, 66263
Submission for OMB review; comment request, 24481, 40823, 46628, 47481, 55281
Foster grandparent and senior companion programs; income eligibility levels, 14558
Grants and cooperative agreements; availability, etc.:
AmeriCorps* programs—
Education awards, 46628
National Civilian Community Corps: collaboration availability, 3675
State commissions training and technical assistance, 5987
State, National, and Tribes and Territories programs; policy and guidelines; grant cycle (FY 1997), 40823
Learn and Serve America—
K-12 school-based and community-based programs, 20808
Martin Luther King, Jr. Federal Holiday; service opportunities, 57852
National service scholarship program, 46631
Hearings, 1897, 24919
Meetings, 47893
Civilian Community Corps Advisory Board, 59222
Meetings; Sunshine Act, 1819, 28184, 51277

Council on Environmental Quality

NOTICES
Endangered Species Act exemption; annual report availability, 8569
Memorandum of understanding:
Federal natural resource trustees; CERCLA administrative order authority, 59886

Customs Service

RULES
Articles conditionally free, subject to reduced rate, etc.:
Reusable shipping devices arriving from Canada or Mexico; treatment, 7987
Steel products entry requirements interim amendments; removal, 24887
U.S.-Canada Free-Trade Agreement; effects of North American Free Trade Agreement (NAFTA) implementation, 19834
Centralized examination stations:
Felony indictment; operations suspension or permanent revocation, 39070
Customs bonds:
Warehouse withdrawals; aircraft turbine fuel; pipeline transportation, 6772
Customs brokers permits; user fees, 54551
Designated public international organizations; list changes, 3569
Freedom of Information Act; implementation, 19835
Merchandise, special classes:
Foreign Assets Control Office regulations; enforcement, 24888
Nonroad engines; emissions standards, 43960
Toshiba Machine Co. and Kongsberg Trading Co.; sanctions; obsolete provisions removed, 28500
North American Free Trade Agreement (NAFTA):
Country of origin marking statement exception—
Use of terms "Made in" and "Assembled in", 37678
Country of origin of a good, rules for determining, 28932
Correction, 33845, 41737
Duty deferral programs; collection and waiver or reduction of duty, 2908
Correction, 6110
Implementation; correction, 1829
Organization and functions; field organization, ports of entry, etc.:
Columbus, OH; port limits extension, 49058
Corpus Christi et al., TX.; ports of entry designations; technical correction, 51363
International airport status for customs services and ports of entry for aliens arriving by aircraft—
Eagle Pass Municipal Airport, TX; status revocation, 25777
Maverick County Airport, TX; designation, 25777
International Criminal Police Organization (INTERPOL); port of entry designation, 9638
Puget Sound, WA; port limits extension, 43428
Privacy Act; implementation, 60559
Recordkeeping, inspection, search, and seizure:
Search warrants, officer authority; restrictions removed, 258
Reporting and recordkeeping requirements:
Customs entry processing; streamlining Correction, 31394
Uruguay Round Agreements Act (URAA):
Beef imports; tariff-rate quota implementation; export certificates, 3569
Textiles and textile products; country of origin determination, 37817
Marking exceptions, 32924
Vessels in foreign and domestic trades:
Preliminary vessel entry and permits to lade and unlade, 2412
Vessels, vehicles, and individuals; reporting requirements
Correction, 3568
PROPOSED RULES
Air commerce:
User fee airports; list additions, 64041
Articles conditionally free, subject to reduced rate, etc.:
Containers designated as instruments of international traffic in point-to-point local traffic, 51849
Carnets, etc.:
Bilateral agreement, American Institute in Taiwan (AIT)/U.S. Taipei Economic and Cultural Representative (TECRO), 56645
Centralized examination stations:
Felony indictment; operations suspension or permanent revocation, 1877
Country of origin marking:
Frozen produce packages, 38119
Customs bonds:
Duty-free stores; use of inventory control and recordkeeping requirements; relief, 28808
Customs relations with Canada and Mexico:
Port Passenger Accelerated Service System (PORTPASS); land-border inspection programs, 48100
Information availability:
Export manifest data; shippers' name and address information confidential treatment on Automated Export System (AES), 48098
Merchandise; examination, sampling, and testing:
Detention procedures for merchandise undergoing extended examination, 28522
Organization and functions; field organization, ports of entry, etc.:
Columbus, OH; port limits extension, 8001, 19810
Sanford, FL; port of entry designation, 30552
Recordkeeping, inspection, search, and seizure:
Prior disclosure of previous entry of merchandise into U.S. by fraud, gross negligence or negligence; formal investigation commencement, 50459
NOTICES
Agency information collection activities:
Proposed collection; comment request, 76, 3081-3085, 7576-7580, 18640-18646, 29795-29797, 42312, 49810-49815, 58437-58440
Automated Broker Interface system:
Electronic protest filing—
Automation test, 3086, 69133
Test ports expansion, 69133
Automation program test, 21534
Reconciliation prototype, 21534
Remote location filing, 7300, 60749
Bilateral carnet agreement, U.S. Taipei Economic and Cultural Representative (TECRO) and American Institute in Taiwan (AIT)
Applications solicitation, 56740
Ceramic floor and wall tile crystallinity; tariff classification, 64192
Commercial gauger:
Approval—
Allied Control Services, L.L.C., 64946
Oiltest, Inc., 64946
OMNI Measurement, 64947
Commercial laboratory accreditations:
Approval—
Allied Control Services, L.L.C., 64946
Oiltest, Inc., 64946
Country of origin marking:
Textile components cut to shape in U.S. from foreign fabric, 36784
Textiles and textile products, 29797
Wearing apparel, 3763
Customhouse broker license cancellation, suspension, etc.:
Coscette, Thomas G., 54702
Gabehart, Kim K., 53779
Goldstein, Steven, 53779
Customs broker:
Licensure examination, 68335
Customs Modernization Act (MOD); customs business, definition; public meeting, 67871
General aviation telephonic entry (GATE), flights entering U.S. from Canada; program test announcement, 46902
Generalized System of Preferences:
Duty-free claims; renewable preferential trade program; delayed processing, 49528
Hong Kong; quota categories monitored for transshipment concerns, 45473
Hydraulic mine roof shield supports; tariff classification, 64791
Imported glassware; tariff classification guidelines, 223
Information dissemination:
CD-ROM and Internet formats; microfiche elimination and CD-ROM availability postponed, 6892, 13228, 40075
Intellectual property rights information; trademark and copyright recordations; paperless notification, 573
IRS interest rate used in calculating interest on overdue accounts and refunds, 16286, 30667
Merchandise, special classes:
China; importation of convict, forced, or indentured labor made goods—
Tianjin Malleable Iron Factory, 17956
Outbound manifest and shippers export declaration compliance workshops, 38803
Petitions by domestic interested parties:
Ceramic sanitary ware made in Mexico, tariff classification, 9521
Petroleum refineries in foreign trade subzones; attribution schedule:
Valero Refining Co., 28639
Quota status reports; change in issuance, 29166
Records or merchandise entry information required; interim list, 36956
Comment request, 67872
Senior Executive Service:
Performance Review Boards; membership, 55138
Sleepwear separates; inconsistent modification tariff classification, 77
Tariff rate quotas:
Tuna fish, 21537
Textile headbands, ponytail holders, and "scrunchies"; tariff classification, 10841
Trade name recordation applications:
A.J.&W. Inc., 67594
A.J.&W. INCORPORATED, 48206
Mega Toys, 2573, 17752
OMI INDUSTRIES INC., 14851, 42313
Uruguay Round Agreements Act (URAA):
Foreign entities violating textile transshipment rules; list, 14204, 51492
Textile goods processed in Israel; exception from rules of origin governing textiles and textile products, 40076
Vessel manifest information, electron submission; automation program test, 47782
Vessels in foreign and domestic trades:
Ukraine; special tonnage taxes and light money collection upon entry into U.S., 50534
Suspension, 59278

Defense Contract Audit Agency

NOTICES
Senior Executive Service:
Performance Review Board; membership, 36714

Defense Department

See Air Force Department
See Army Department
See Defense Contract Audit Agency
See Defense Information Systems Agency
See Defense Intelligence Agency
See Defense Investigative Service
See Defense Logistics Agency
See Defense Mapping Agency
See Defense Special Weapons Agency
See Engineers Corps
See National Communications System
See Navy Department
See Uniformed Services University of the Health Sciences
RULES
Acquisition regulations:
Allowable individual compensation, 36305
Ball and roller bearings, 58489
Non-domestic, 10899
Commercial vehicles and equipment leasing, 16879
Comprehensive small business subcontracting plans; test program for negotiation, 39900
Correction, 49008
Contract action reporting, 51030
Contract cost principles and procedures—
Compensation for personal services reimbursement, 7077
Contract modification or termination; notification, 67952
Contract termination or reduction; notification, 64636
Correction, 66077
Direct submission of interim vouchers to disbursing office, 25409
External restructuring costs reimbursement, business combination-associated—
Reimbursement, 16881, 49531
Reimbursement from FY 1997 funds; prohibition, 64635
Foreign acquisition—
Designated countries list; Singapore, 16880
Military sales costing basis, 18987, 49531
Foreign machine tools and powered and non-powered valves, 58488
General Agreement on Tariffs and Trade (GATT); implementation, 130
Higher education institutions with anti-ROTC policy, 25408
Indirect costs; private sector reimbursement, 21973
Individual compensation ceiling, 65478
Justification and approval thresholds, 10285
Miller Act bond requirements; alternatives, 3600
Miscellaneous amendments, 7739, 50446
Correction, 9532, 18195, 43119, 50535
Naval vessel components, 13106
Correction, 16287
Petroleum products from Caribbean Basin countries, 37841
Pilot Mentor-Protege Program, 54346
Restructuring costs/bonuses reimbursement, 58490
Small disadvantaged business concerns, 18686, 49511
Correction, 49531
Base closure communities revitalization and community assistance:
Community redevelopment and homeless assistance, 55567, 56896
Civilian health and medical program of uniformed services (CHAMPUS):
Blood lead levels in infants, ambulance services, prescribed contraceptives, etc., 59337
Closures and realignment:
Base closure communities, 54097
Community assistance, 54097
Collection from third party payers of reasonable costs of healthcare services:
TRICARE resource sharing agreements, 6541
Contracting:
Contractors receiving contract awards ($10 million or more), 16704
Domestic Dependent Elementary and Secondary Schools:
Elected school boards; establishment and operation policies and procedures, 271, 60562
Federal Acquisition Regulation (FAR):
Accounting guide availability, 2640
Agency procurement protests, 39219
Allowable cost and payment clause; cost-type contracts, 67418
Alternative dispute resolution and Federal Courts Administration Act, 31658
Armed Services Pricing Manual; replacement, 31620
Automatic data processing equipment, definition; and leasing costs cost principle deleted, 69287
Caribbean Basin countries, 31649
Child care services, 31660
Circular 90-37; introduction and summary, 2626
Circular 90-39; introduction and summary, 31612
Circular 90-40; introduction, 39186
Circular 90-44; introduction and summary, 69286
Claims assignment, 18920
Commercial items contracts and subcontract; cost accounting standards exemption, 67418
Community right-to-know; toxic chemical release reporting, 41473
Computer network and micro-purchase procedures, 39189
Contingent fee representation, 39188
Contract award; sealed bidding; construction, 31663
Contract cost principles and procedures—
Agency supplements, 31655
Foreign differential pay, 69294

INDEX VOL 61 1996 UMI

Contract modifications, 69297
Contractor gratuities to government personnel, 59199
Contractor overhead—
Certification, 67422
Contractor qualifications; "manufacturer" or "regular dealer" requirement, 67409
Contractor responsibility determinations; use of commercial sources of supplier information, 39201
Contractors' purchasing systems reviews and subcontractor consent, 2641
Contract qualifications; unfair trade practices; made in America labels, 2631
Convict labor use, 31643
Cost accounting standards; interest rate clause revisions, 18921
Cost Accounting Standards Board regulations applicable to educational institutions, 18916
Cost-effective value engineering procedures and processes, 39220
Data Universal Numbering System; use as primary contractor identification, 67412
Debarment and suspension certificate; tax evasion, 2632
Defense Production Act amendments, 31659
Deviations, individual and class; submission requirement elimination, 67411
Disaster Relief Act activities, 39200
Double-sided copying on recycled paper, 31616
Drug-free workplace; certification requirements, 69291
Existing contracts modification, 18915
Federal procurement data system; information collection, 67426
Field pricing support request, 2634
Final indirect cost rates, 69295
Flowdown to subcontractors contract clauses; reduction, 67425
Fluctuating exchange rates, 31650
Foreign purchases; restrictions, 41475
Immigration and Nationality Act employment provisions; contractor compliance, 41472
Indian-owned economic enterprises; subcontracting costs recovery, 39210
Information Technology Management Reform Act of 1996; implementation, 41467
Inherently governmental functions, 2627
Inspection clauses; fixed price, 31665
Insurance; liability to third persons, 2639
Irrevocable letters of credit and alternatives to Miller Act bonds, 31651
Javits-Wagner-O'Day program, 2630
Justification and approval thresholds, 31618
Late bid offers consideration, 69292
Legal proceedings costs, 41476
Legislative lobbying costs, 31656
Local government lobbying costs, 67424
Long-lived assets gains and losses; impairment, 67411
Major system; dollar thresholds, 69288
Master subcontracting plans, 31642
Mentor-protege program, 2637, 67419
Minority small business and capital ownership development program, 67420
Miscellaneous amendments, 67408
Introduction, 41466
Streamlining, 18914
Multiyear contracting, 39203
National Industrial Security Program Operating Manual, 31617
Nonallowability of excise taxes on nondeductible contributions to deferred compensation plans, 2641
Nonprofit institutions clause prescription, 2633
North American Free Trade Agreement Implementation Act; implementation, 31646
Overhead should-cost reviews, 2635
Ozone depleting substances; items containing, using or manufactured with, 31645
Patent use without authorization; General Agreement on Tariffs and Trade (GATT), 39211
Payment by electronic funds transfer, 45770
Performance and payment bonds, 39212
Personal services compensation costs, 39217
Postponement of bid openings or closing dates, 31619
Preaward debriefings, 69288
Predetermined indirect cost rates, 31621
Prompt payment overseas, 31658
Quality assurance actions; electronic screening, 31661
Quality assurance nonconformances, 31662
Quick-closeout procedures, 31660
Records retention, 31655
Small Business Administration; authority to issue certificate of competency determinations, 2636
Small business competitiveness demonstration program; extension, 31643, 67422
Small business innovation research program rights in data, 31664
Small business set-asides; simplified acquisition threshold, 39207
Small business size standards, 31622
Small entity compliance guide, 39224, 41477, 45775, 67430, 69298
Solicitation provisions; contract clauses, 31663
Subcontracting plans, 2638
Subcontract proposal audits, 2634
Task and delivery order contracts, 39201
Technical amendments, 67430
Termination for convenience, 31665
Termination inventory schedules, 39221
Travel costs, 31657
U.S. and European Economic Community; memorandum of understanding; government procurement and sanctions imposed on European Community, 31618
Uruguay Round Agreement Act (URAA), General Agreement on Tariffs and Trade (GATT); implementation, 2454, 31646
Federal claims collection:
Civil monetary penalties; inflation adjustment, 67944
Freedom of Information Act:
Defense Contract Audit Agency, 4885
Contractor alpha listing; discontinuance, 5510
Gifts from foreign governments: CFR part removed, 26102
Grants:
Military recruiting on campus, 9344
Medical records; release of information
CFR part removed, 37386
Military recruiting at institutions of higher education, 9346
Organization, functions, and authority delegations:
Assistants to Secretaries of Defense for Public Affairs and Atomic Energy organizational charters; CFR parts removed, 18083
Personnel:
Conduct on Pentagon Reservation, 541
Privacy Act; implementation, 2916, 3813, 25561, 63712
Vocational rehabilitation and education:
Veterans education—
Educational assistance test program; rates payable increase, 28753
Post-Vietnam era veterans' educational assistance program; flight training, etc., 1525, 7217, 29028, 36629
Reservists education and Montgomery GI Bill-Selected Reserve; educational assistance awards commencing dates, 11310, 29297, 29481

PROPOSED RULES

Acquisition regulations:
Carbon fiber, 43214
Certification requirements for contractors and offerors not specifically imposed by statute; removal, 14944
Contract financing, 1889
Government property; rental charges determination class deviation, 24473
Government Property Rewrite Team—
Public meetings, 27851, 49294
Procurement integrity, 47100
Small Business Administration; certificates of competency processing, 37878
U.S. European Command (EUCOM) supplement, 31490, 47101
Civilian health and medical program of uniformed services (CHAMPUS):
Individual case management, 339
Well-baby visits, immunizations of children under age six, etc., 56929
Defense environmental restoration activities; technical assistance for public participation (TAPP):
Restoration Advisory Boards and Technical Review Committees local community members, 68184
Federal Acquisition Regulation (FAR):
ADP/telecommunications Federal Supply Schedules
Advantage! program, etc., 52844
Bid and proposal costs definition; withdrawn, 50114
Business meals; withdrawn, 52998
Certified cost or pricing data requirement; exception, 41214
Commercial items; special simplified procedures application, 47384
Commercial items contracts and subcontracts; cost accounting standards exemption, 32312
Competitive range determinations, 40116, 52999, 58622
Contingent fees; withdrawn, 52998
Contract administration and audit cognizance, 65306
Contracting by negotiation—
Competitive range determinations; withdrawn, 14944
Phase I rewrite, 48380, 52998, 57622
Contractor acquisition of ADPE; withdrawn, 14944
Contractor overhead—
Certification, 14216
Rates; final settlement process, 39518
Contractors and offerors—
Certification requirements removed, 48354, 49402, 52232
Contractor selection process; past performance information use requirements; withdrawn, 14944
Contracts, fixed-priced; performance incentives, 31798
Costs related to legal/other proceedings, 31790
Defense Authorization Act; implementation, 6760
Design-build two-phase construction procedures, 41212
Drug-free workplace; certification requirements, 31814
Electronic commerce; use in contracting, 48532
Employee stock ownership plans—
Comment period extension, 234
Evaluation factors; withdrawn, 14944
Federal Acquisition Streamlining Act of 1994; implementation—
Commercially available off-the-shelf item acquisition, 22010
Final indirect cost rates, 26766
Foreign purchases; restrictions, 6910
Foreign selling costs, 31800
Historically black colleges and universities/ minority institutions; collection of award data, 31792
Independent research and development/bid and proposal in cooperative arrangements, 31796
Independent research and development bid and proposal costs ceiling; requirement removed (FY 1996 and beyond), 58452
Late bid offers consideration, 18480
Management oversight of service contracting, 14946
Nonstatutory certifications elimination, 26496
Public meeting, 24263
Novation and change-of-name agreements, 43294
Performance-based payments, 47798
Preaward debriefings, 32580
Procurement integrity, 47390
Semi-annual agenda, 23900, 63386
Service contracting, 40284
Grant and agreement regulations:
Uniform administrative requirements and definitions; higher education institutions, hospitals, and other nonprofit organizations (OMB-110), 43867
Privacy Act; implementation, 8003
Defense Special Weapons Agency, 47467
Restoration Advisory Boards (RABs):
Characteristics, composition, funding, and establishment, 40764, 58803
Semi-annual agenda, 22878, 62408

NOTICES

Acquisition regulations:
Agency information collection activities:
Proposed collection; comment request, 2494, 2495, 9150, 9439, 9440, 10323, 10324, 14560, 15786, 18723, 19052, 27053, 30050, 37049, 37722, 37723, 38439, 39121, 39122, 41571, 42009, 48134, 55134, 56947, 57853, 58864, 60094, 67774
Submission for OMB review; comment request, 4769, 14298, 18723, 30227, 33907, 34423, 34802, 34803, 36038, 45412, 47482, 47483, 49737, 50281, 53722, 54990, 59422, 63831, 64858, 65029, 66998, 67109
Arms sales notification; transmittal letter, etc., 40826, 40830, 40834, 48890, 48895, 48899, 48903, 48907, 48911, 48915, 49113, 49302, 49307, 49312, 49738, 49742, 50281, 50472, 50476, 51915, 51919, 64694, 64699, 64704, 66020, 67774
Base closure and realignment:
Homeless assistance; local redevelopment authorities; points of contact and addresses, 52, 8045, 14561
Civilian health and medical program of uniformed services (CHAMPUS):
Breast cancer treatment clinical trials for high dose chemotherapy with stem cell rescue, 1899
Cancer treatment clinical trials, 53901
DRG-based payment system (FY 1997)—
Medical and dental reimbursement rates, 57654
Revised weights, threshold, and per diem rates, 54160
Operation Joint Endeavor in or around former Yugoslavia; active duty service period, 4963
Specialized treatment services program; designations—
Advanced neuroimaging; New Mexico Regional Federal Medical Center, 43739
Cardiac surgery facilities; Walter Reed Army Medical Center et al., 45412
Cardiac surgery facility; Dwight D. Eisenhower Army Medical Center, 41384
Liver transplantation; Wilford Hall Medical Center, etc., 29359
TRICARE managed care program overseas, 50808
Committees; establishment, renewal, termination, etc.:
Defense Intelligence Agency Scientific Advisory Board, 49746
Marshall Center Board of Visitors, 13853
Navy Planning and Steering Advisory Committee, 54627
Nuclear Weapons Surety Joint Advisory Committee, 49746
President's Security Policy Advisory Board, 39123
Telecommunications Service Priority System Oversight Committee, 58390
Comprehensive small business subcontracting plans; test program for negotiation, 39950
Courts-Martial Manual, 15044, 18123
Defense export loan guarantee program; implementation, 57853
Environmental statements; availability, etc.:
Naval Air Station Alameda et al., CA; disposal and reuse, 6817
Environmental statements; notice of intent:
East Coast shallow water training range; construction and operation, 22028
Eglin AFB, FL; theater missile defense systems; developmental and operational flight testing, 60094
Naval Training Center, San Diego, CA; disposal and reuse, 22027
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Proposed collection; comment request, 3375, 3676-3678, 14745, 14746, 50003, 60685
Submission for OMB review; comment request, 15522, 1897, 18988, 2496, 3374, 3679, 3680, 3911, 3912, 4419, 5753, 9983, 15053-15056, 15470, 15471, 16241, 16242, 26892, 31090, 32775-32777, 40288, 44041, 47893, 51083
Federal Acquisition Streamlining Act of 1994:
Defense contracts; private financing; need determination, 29539
Federal claims collection:
Garnishments processing fee, 53722
Grants and cooperative agreements; availability, etc.:
Local educational agencies assistance program, 43346
National security education program; institutional grants, 643, 5445, 66999
Meetings:
Armed Forces Code Committee, U.S. Court of Appeals, 45413
Ballistic Missile Defense Advisory Committee, 347, 16468, 43740, 55135
Defense Acquisition University Board of Visitors, 5988, 53902
Defense Advisory Committee on Military Personnel Testing, 56948
Defense Environmental Response task force, 15787, 39123, 63832
Defense Information School Board of Visitors, 19909
Defense Intelligence Agency Joint Military Intelligence College Board of Visitors, 19909
Defense Intelligence Agency Scientific Advisory Board, 643, 33097, 66999
Defense Partnership Council, 5538, 9150, 16243, 31510, 34423, 55621, 68013
Defense Policy Board Advisory Committee, 1900, 29360, 50480
Dependents' Education Advisory Council, 13482, 48134
Education Benefits Board of Actuaries, 27053
Education of Handicapped Dependents National Advisory Panel, 9150
Electron Devices Advisory Group, 1565, 1566, 3676, 3747, 11386, 15787, 25482, 37724, 37725, 48919, 49746, 58390, 58391
Government-Industry Advisory Committee, 13854, 19909
Historical Records Declassification Advisory Panel, 57, 15787, 39443, 55621
Military Health Care Advisory Committee, 57, 16763, 48135
Military Justice Joint Service Committee, 15057
Military Personnel Testing Advisory Committee, 554, 21164
National Defense University Board of Visitors, 24763
National Security Education Board, 21164, 49746, 51437
National Security Education Board advisors, 14562
Nuclear Weapons Surety Joint Advisory Committee, 9151, 42417, 67779
President's Security Policy Advisory Board, 52778, 67322
Retirement Board of Actuaries, 27054
Science Board, 2497, 39953
Science Board task forces, 1566, 2497, 6354, 7094, 9151, 13157, 15788, 16243, 16244, 18723, 22028, 25482, 27054, 28857, 30227, 31511, 33908, 37725, 39953, 40200, 42010, 48919, 48920
Scientific Advisory Board, 643, 37447
Semiconductor Technology Council, 11386, 53723
Strategic Command Strategic Advisory Group, 11387, 50480
Strategic Environmental Research and Development Program Scientific Advisory Board, 30228, 49746
Wage Committee, 643, 1566, 5538, 11387, 16763, 25483, 31511, 39123, 42010, 49316, 53902, 65376
Women in Services Advisory Committee, 9151, 42010, 51432, 53723
Organization, functions, and authority delegations:
Defense Hearings and Appeals Office, 50284
Privacy Act:
Systems of records, 3006, 5989, 37447, 40201, 67534
Reports; availability, etc.:
Environmental research and development program (FY 1996) annual report, 4963
Senior Executive Service:
Defense Contract Audit Agency; Performance Review Boards; membership, 36714
Defense Mapping Agency Performance Review Board; membership, 46784

Performance Review Board; membership, 39123, 40203, 40838, 41571
Strategic investment plan (1996-2000); availability, 4963
Travel per diem rates, civilian personnel; changes, 10325, 22029, 33097, 37725, 41208, 49747
U.S. Court of Appeals for the Armed Forces; practice and procedure rule changes, 18724, 66023
Uniform administrative requirements and definitions; higher education institutions, hospitals, and other nonprofit organizations (OMB-110), 43867

Defense Information Systems Agency

NOTICES
Senior Executive Service:
Performance Review Board; membership, 31090, 47114, 49316

Defense Intelligence Agency

NOTICES
Meetings:
Scientific Advisory Board, 51925
Senior Executive Service:
Performance Review Committee; membership, 37452

Defense Investigative Service

RULES
Privacy Act; implementation, 3814

Defense Logistics Agency

NOTICES
Agency information collection activities:
Proposed collection; comment request, 16088, 29361
Contractor alert list; management policy, 65029
Cooperative agreements procurement technical support; revised procedures, 8579
Environmental statements; availability, etc.:
Designated missions and personnel realignment to DLA activities, 19053
Privacy Act:
Computer matching programs, 9680, 32778, 38439-38441, 49118, 64708
Systems of records, 4964, 6354, 32779, 34424, 43532, 51925, 64709, 67322
Senior Executive Service:
Performance Review Boards; membership, 27055

Defense Mapping Agency

NOTICES
Agency information collection activities:
Proposed collection; comment request, 24764, 24765

Defense Nuclear Facilities Safety Board

RULES
Freedom of Information Act; implementation:
Fee schedule, 28725

NOTICES
Conflict of interests resolution:
MPR Associates, Inc., 39953
Defense nuclear facilities; DOE decommissioning activities; policy statement, 41597
Meetings; Sunshine Act, 1205, 7853, 55136, 63833
Privacy Act:
Systems of records, 2826
Recommendations:
In-tank precipitation system; DOE Savannah River Site, 43534

Defense Special Weapons Agency

NOTICES
Privacy Act:
Systems of records, 43740, 53725

Delaware River Basin Commission

NOTICES
Comprehensive plan and water code; and water quality regulations:
Nonpoint sources of pollution; special protection waters; public meeting, 37453
Comprehensive plan and water code; water quality regulations:
Toxic pollutants from point source discharges to Delaware River estuary; control policies and procedures, 58047
Hearings, 1364, 6978, 11387, 16765, 24482, 31511, 39955, 47899, 54177, 64509

Drug Enforcement Administration

RULES
Chemical exports from U.S. to Colombia; policy statement, 13759
Diversion control program; registration application fee schedule; adjustment, 68624
Domestic Chemical Diversion Control Act of 1993; implementation:
List I chemicals; manufacturers, distributors, importers, and exporters; registration—
Distribution requirement waiver, 32925
Manufacturer reporting requirements, 17566, 17958
Federal Food, Drug, and Cosmetic Act:
Pseudoephedrine products; exemption removed, 30981
Correction, 41836, 48830
Withdrawn, 52287
Precursor and essential chemical import/export declaration; distribution requirements, 51003
Schedules of controlled substances:
Exempt chemical preparations, 13689
Remifentanil; placement into Schedule II, 56893

PROPOSED RULES
Federal regulatory review
Controlled substances and listed chemicals diversion regulations; CFR chapter III consolidation, 8503
Correction, 11594
Freight forwarding facilities for DEA distributor registrants; establishment, 66637
List I chemicals; manufacturers, distributors, importers and exporters; registration:
Controlled substances to ocean vessels, provision guidelines, 49086
Schedules of controlled substances:
Remifentanil; placement into Schedule II, 48655

NOTICES
Environmental statements; availability, etc.:
Cannabis eradication on Federal, non-Federal, and Indian lands in continental United States, 42056
Schedules of controlled substances; production quotas:
Schedule I—
1996 aggregate, 11063, 19090, 39153
1996 proposed aggregate, 25895
1997 aggregate, 66311
1997 proposed aggregate, 54222
Schedule II—
1996 aggregate, 11063, 14336, 19090, 24813, 39153
1996 proposed aggregate, 25895
1997 aggregate, 66311
1997 proposed aggregate, 54222
Applications, hearings, determinations, etc.:
Aemol Chemical Corp., 42269
Agbebiyi, Jonathan, M.D., 65075
Allen, Dovensky & Co., Inc., 41427
Ansys, Inc., 5570, 25895, 40451, 58423
Applied Science Labs, 36913, 37078, 58423, 60726
Arenol Chemical Corp., 33139, 33140, 66311
Azen, Stanley Alan, M.D., 57893
B.I. Chemical, Inc., 41427, 67851
Bilang, Bernardo G., M.D., 10788
Binding Site, Inc., 10789
Bridgeway Trading Corp., 39986, 53761
Broomes, Edward L.C., M.D., 3946
Bynum, Therial L., M.D., 3948
Calbiochem-Novabiochem Corp., 46488
Cambridge Isotope Lab, 2265, 58423, 60729
Celgene Corp., 4289, 45986, 67851
Chang, Ying-Ming, M.D., 26207
Ciba-Geigy Corp., 8303, 45986, 67851
Coleman, Rita M., M.D., 35816
Dinorah Drug Store, Inc., 15972
Dubin, Stanley, D.D.S., 60727
Dupont Merck Pharmaceutical Co., 53761
Dupont Pharmaceuticals, 35265
East Towne Save Rite Pharmacy, 19321
Eli Lilly Industries, Inc., 8303, 49351, 66311
Farmacia Ortiz, 726
G&O Pharmacy et al., 8973
Ganes Chemicals, Inc., 15119, 24957
Garcia, Nestor A., M.D., 30099
Golden, Robert M., M.D., 24808, 28930
Green, Demetris A., M.D., 60728
Guilford Pharmaceuticals, Inc., 39986
Gunderson, Jeffrey Patrick, M.D., 26208
Headley, David M., M.D., 39469
Herrera, Anibal P., M.D., 65075
High Standard Products, 13518, 40248, 67852
Hoffmann-LaRoche, Inc., 11432, 60305
Homayouni, Homayoun, M.D., 1406
Humphreys, Earl A., M.D., 2840
Isotec, Inc., 5570, 7157, 24514
Jerome, William P., M.D., 11867
Johnson Matthey, Inc., 8303, 15974, 28597, 32859, 46664, 67852
Jowhal, Tej Pal Singh, M.D., 17321
Karpo, Stanley, D.P.M., 13876
Kelly, Irene C., 60729, 68097
Knight Seed Co., Inc., 1603, 10789
Knoll Pharmaceuticals, 17322, 39987
Lonza Riverside, 6390, 15119, 25895, 27098, 45986
Mallinckrodt Chemical, Inc., 15120, 34447, 37079
Marais, Philip G., D.D.S., 6657
Maxicare Pharmacy, 27368, 30670
Mays, Dewey O., Jr., M.D., 39668
MD Pharmaceutical, Inc., 8303, 37081
Med-Pharmex, Inc., 36082, 55315
Murphy, Terrence E., M.D., 2841, 7050
Nahin, David R., M.D., 39668
Norac Co., Inc., 21499, 58424
Noramco of Delaware, Inc., 46827, 58424, 67853
North Pacific Trading Co., 8304, 60305
Nycomed, Inc., 10789, 58424
Organix Inc., 1603, 20541
Orpharm, Inc., 5571, 20275
Parameswaran, Ekambaram, M.D., 11871, 18157
Penick Corp., 8304, 20275, 28598, 39987, 45986
Phillips, R. Bruce, D.D.S., 10789
Phillips, Ronald, D.O., 15304, 17958
Radian Corp., 15121, 28598, 40659
Radian International LLC, 46488, 58424, 67853

Rand, Jerry Neil, M.D., 28895
Research Biochemicals, L.P., 20275, 24515, 40659
Research Triangle Institute, 27099, 35265, 45987, 46489, 58425
Richards, John Porter, D.O., 13878
Risner, Darrell, D.M.D., P.S.C., 728
Roberts Laboratories, Inc., 20276, 39987
Roche Diagnostic Systems, Inc., 27099, 39987, 45987
Roger Pharmacy, 65079
Ross, Gilbert, M.D., 8664
Roxane Laboratories, Inc.,
Rozeboom, Earl G. M.D., 60730, 65266, 68097
Rutgard, Jeffrey, M.D., 36395
RX Returns, Inc., 37081
Sanofi Winthrop, Inc., 27099, 55315
Sarver, Margaret E., M.D., 57896
Septer, Michael J., D.O., 53762, 56271
Septer, Michael J., D.O.; correction, 59930
Service Pharmacy, Inc., 10791
Shah, Mukesh H., M.D., 36396
Shore, James W., M.D., 6262
Siddiqui, Shahid Musud, M.D., 14818, 17958
Sigma Chemical Co., 1604, 10796, 15122
Stepan Co., 15523, 29133, 35266
Stoll, Walter William, Jr., M.D., 17322
Stoops, Donald E., D.O., 41653
The Drugstore, 5031
U.S. Drug Testing, Inc., 41427
Upjohn Co., 1604, 20276
Vangsgard, Gerald E., M.D., 41428
West, Mitchell F., D.O., 43384
White, Stan, 14819
Wildlife Laboratories, Inc., 27100, 39987

Economic Analysis Bureau

PROPOSED RULES
International services surveys:
Foreign direct investments in U.S.—
BE-20; selected services transactions with unaffiliated foreign persons; benchmark survey, 54109

NOTICES
Agency information collection activities:
Proposed collection; comment request, 32770, 56941

Economic Development Administration

RULES
Federal regulatory reform:
Simplification and streamlining regulations, 7979, 15371, 45738

NOTICES
Agency information collection activities:
Proposed collection; comment request, 46762
Environmental statements; notice of intent:
Lackawanna County, PA; business park, 60091
Grants and cooperative agreements; availability, etc.:
Economic development assistance programs, 29526
Defense adjustment infrastructure cluster development; public pre-proposal conference, 31782
Disaster recovery activities; flooding in Mid-Atlantic states, etc., 32624
Disaster recovery activities; wind damage and flooding in North Carolina, South Carolina, Virginia, West Virginia, and Puerto Rico, 67440
National technical assistance and research and evaluation, 39242
Unemployment and underemployment in economically distressed areas (FY 1997), 67434
Senior Executive Service:
Performance Review Board; membership, 54765
Trade adjustment assistance eligibility determination petitions:
A&M Thermometer Corp. et al., 39436
Artistic Plastics, Inc., et al., 18546
Boston Precision Parts Co., Inc., et al., 14048
Brahmin Leather Works, Inc., et al., 34791
Chaffin Manufacturing, Inc., et al., 2483
Hudson Standard Corp., et al., 57627, 64049
Lance Garment Corp. et al., 45935
Premier Sportswear, Inc., et al., 51402
Rand Machine Products, Inc., et al., 27865
Twang, Inc., et al., 8027

Economic Research Service

RULES
Organization, functions, and authority delegations:
Internal reorganization, 1827

NOTICES
Agency information collection activities:
Proposed collection; comment request, 20508, 67527

Economics and Statistics Administration

NOTICES
Meetings:
2000 Census Advisory Committee, 19608, 47735, 59860
Senior Executive Service:
Performance Review Board; membership, 47481

Economics Management Staff

RULES
Freedom of Information Act; implementation:
CFR part removed, 3787

Education Department

RULES
Bilingual education:
Graduate fellowship program, 31350
Direct grant programs, 8454
Drug and alcohol abuse prevention:
Correction, 68821
Drug-free schools and campuses, 66225
Elementary and secondary education:
Indian fellowship and professional development programs; payback provisions, 46338
Family educational rights and privacy:
Federal regulatory reform, 59292
Federal regulatory reform:
CFR parts removed, 18680
Grants and agreements administration:
Audits of higher education and other non-profit institutions (OMB A-133); applicability, 50712
Cost principles for educational institutions (OMB A-21), 50712
Uniform administrative requirements and definitions; higher education institutions, hospitals, and other nonprofit organizations (OMB A-110), 14483
Postsecondary education:
College facilities loan program, etc.; CFR parts removed, 51783
Federal family education loan program—
Due diligence requirements, 60478
Guaranty agencies; conflicts of interest, 60426
Reporting and recordkeeping requirements, 16718
Higher Education Act of 1965—
Student financial assistance programs; Federal regulatory review, 3776
Law school clinical experience program, etc.; CFR parts removed; Federal regulatory reform, 32656
Modern foreign language training and area studies higher education programs, 50192, 50200
Student assistance general provisions—
Compliance audits and financial responsibility standards, 60565
Federal Perkins loan, Federal work-study, Federal supplemental educational opportunity grant, etc., 60390, 60578
Federal Perkins loan program, etc.; regulatory relief due to natural disasters, 58926
Men's and women's intercollegiate athletic programs; Equity in Athletics Disclosure Act implementation; reporting and recordkeeping requirements, 29960
Records maintenance and retention; three year time period, 60490
Technical amendments, 49042
Tests for determining student eligibility; approval and administration; reporting and recordkeeping requirements, 31035
Student support services program, 38534
William D. Ford Federal direct student loan program, 29898, 31358
Reporting and recordkeeping requirements, 24486
Special education and rehabilitative services:
State vocational rehabilitation services program, 24390
Technology-related assistance for individuals with disabilities State grants program, 8158

PROPOSED RULES
Direct grant programs; EDGAR criteria, etc., 37184
Educational research and improvement:
Exemplary and promising programs designation; conduct standards and activities evaluation, 27990
Elementary and secondary education:
Elementary and Secondary Education Act; implementation, 13324
Impact aid program, 52564
Indian fellowship and professional development programs; payback provisions, 39246
Family educational rights and privacy:
Federal regulatory review, 10664
Federal regulatory review:
Direct grant programs, State-administered programs, elementary and secondary education programs, etc., 43640
Correction, 47550
Disability and Rehabilitation Research Projects and Centers Program; CFR parts consolidation, 53560
Vocational and adult education programs, 54024
Postsecondary education:
Federal family education loan program, 47398
Federal reserve funds and assets safety assurance, 49382
Foreign language and area studies fellowships program national resource centers, 14006
Higher Education Act of 1965—
Student financial assistance programs; improved oversight, 4198
Modern foreign language training and area studies, etc., 13996
Strengthening institutions programs, etc.; Federal refulatory review and CFR parts removal, 52399

Student assistance general provisions—
Compliance audits and financial responsibility standards, 49552, 66854
Federal Perkins loan, Federal work-study, Federal supplemental educational opportunity grant, etc., programs; Federal regulatory review, 49390, 49874
Records maintenance and retention; three year time period, 48564
Student support services program, 4758
Semi-annual agenda, 22912, 62442
Special education and rehabilitative services:
Projects with industry program, 1672
State vocational rehabilitation services program—
Public meetings, 4390

NOTICES

Administrative Law Judges Office hearings:
Claim compromises—
Alaska Education Department, 15058
Connecticut State Board of Education, 12061
Agency information collection activities:
Proposed collection; comment request, 1190, 2805, 3388, 4968-4970, 5990, 5991, 6818, 6979, 8266, 8592, 10995, 12061, 13484, 15230, 15927, 16765, 18124, 18579, 19265, 20516, 21164, 24296, 24921, 24922, 25211, 25483, 25851, 26168, 26893, 26894, 27056, 27868, 28188, 29362, 29742, 30051, 31091, 31092, 32428, 33103, 34803, 35195, 36040, 36861, 38719, 39635, 40838, 41131, 42235, 43231, 44042, 46446, 46447, 46786, 47504, 47900, 48921, 49119, 49753, 52440, 52441, 53210, 53362, 54779, 55790, 55791, 55978, 57659, 57660, 58865, 60686, 64343, 65030, 66999
Submission for OMB review; comment request, 1906, 1907, 4968, 5540, 5991, 6819, 6979, 6980, 7779, 11815, 16628, 18725, 20517, 24295, 25852, 27868, 28189, 29363, 29742, 33104, 36715, 36861, 38719, 39443, 39444, 40205, 40617, 41132, 41776, 46447, 47900, 49754, 52440, 54178, 54629, 55361, 55979, 56948, 58171, 60687, 64343
Educational research and improvement:
Research priorities plan report; availability, 20753
Elementary and secondary education:
Elementary and Secondary Education Act and Goals 2000: Educate America Act; waivers approved; list, 11816, 42134
Elementary and Secondary Education Act—
Preschool programs (Title I); Head Start performance standards applicability, 17794, 57230
Migratory education program; criteria, 3772
Waiver requests submission; deadlines establishment, 49441
Grantback arrangements; award of funds:
Colorado, 39796
Connecticut, 6086
Maine, 14598, 46162, 54424
South Dakota, 6750
Vermont, 51086
Grants and cooperative agreements; availability, etc.:
Bilingual education and minority languages affairs—
Comprehensive school program, 17138
Children with disabilities, 53032
Research in education, etc., 55188
Desegregation of public education—
Desegregation assistance center program, 13485
State educational agency desegregation program; cancellation, 21447
Direct grant and fellowship programs—
Deadline extended due to furlough, 5389
Educational progress program; national assessment, 10331
Educational research and development centers program
Early childhood reading, 65932
Elementary and secondary education—
Emergency immigrant children and youth education program, 7245
Even Start family literacy program women's prison project, 29904
Even Start migrant education program, 16180
Even Start statewide family literacy initiative, 13358, 18125
Foreign language assistance program; local educational agencies, 26372
Foreign language assistance program; State educational agencies, 26396
Indian formula grants to local educational agencies, 38522
Local educational agencies; comprehensive local improvement plans, 26730, 28982
Magnet schools assistance-innovative programs, 33716
Migrant education coordination program, 43122, 67920, 67922
Migratory education program; criteria, 15670
Model professional development national awards program, 30450
Public charter schools program, 33717
Endowment challenge program, 5908
Cancellation, 31929
Federal Pell grant program, 47652, 60156
Fund for improvement of education, 14392
Character education pilot projects partnerships, 3690
Elementary school mathematics and science equipment program, 32314
Graduate assistance in areas of national need program, 58442
Hispanic-serving institutions program, 5908
Impact aid (FYs 1996 and 1997)—
Application deadline extended due to furlough and blizzard of 1996, 4324
Impact Aid; section 8002 grants (FY's 1995 and 1996) and section 8003 (FY 1997), 65924
Independent living centers program, 58047
Indian education programs—
Even Start family literacy program, 17168
School-to-work opportunities initiatives, 24819
Tribally controlled postsecondary vocational institutions program, 9864
Indian education reform formula grants to local educational agencies, 67178
Indian vocational education program, 31364
Individuals with disabilities—
American Indians with disabilities; vocational rehabilitation service projects, 67000
Braille training program, 9984
Children and youth attainment to higher levels of academic achievement, 45718
Independent living centers program, 5387
Independent living centers program for elderly blind individuals, 54630
Migratory agricultural workers and seasonal farmworkers, 54630
Minority entities and underrepresented populations; outreach services, 26996
Personnel training program, 6754, 15058, 21230, 21231, 26996
Research in education, 4168, 6754, 8810, 8811, 8832, 9682
Research in education; cancellation, 18579
Vocational rehabilitation services; special projects and demonstrations, 65200
Jacob K. Javits gifted and talented students education program, 6980, 18214
Library education and human resouce development program, 18580
Library services to Indian tribes and Hawaiian natives program, 24406, 68250
National Assessment of Educational Progress program, 65930
National Institute on Disability and Rehabilitation Research—
Health care research; rehabilitation research and training centers, 17818, 36270
Rehabilitation engineering research center; older persons with disabilities, 12066
Rehabilitation research and training centers program; blind or visually impaired and deaf or hard of hearing individuals, 12063, 36276, 563744
Research and demonstration program, 8834, 27340, 33104
Research and demonstration program; funding priorities, 28436, 56374
Research and demonstration projects; application availability, 28443
Research and demonstration projects; emerging universe of disability areas of national need, 12062
Parental assistance program; children from birth through 5 years, 68524
Postsecondary education—
Consortia of American, Canadian and Mexican institutions; problem areas or improvement approaches special focus competition, 59867
Direct grant and fellowship programs (FY 1997), 43128
Drug use and violence prevention program; institution-wide program (FY 1996), 36351
Federal Pell grant program, 16824
Federal Perkins loan, Federal work-study, and Federal supplemental educational opportunity grant programs, 4184
Federal work-study programs, 16902, 29743
Foreign language and area studies, etc., 50005
North American mobility in higher education; special focus competition, 1567
Opportunities improvement programs for deaf and hard of hearing individuals, 34322
Student support services program, 42368, 42369
William D. Ford Federal direct loan program, 30438
Rehabilitation long-term training program, 15472, 54630
Safe and drug-free schools and communities Federal activities—
Drug and violence prevention; application availability, 34692
Drug and violence prevention; funding priorities (FY 1996), 34690
Hate crimes prevention; application availability, 34671
Hate crimes prevention; funding priority (FY 1996), 34670
School-to-work and urban/rural opportunities program, 35582
School-to-work opportunities State implementation program (FY 1996), 36715

Special education and rehabilitative services—
Children and youth with serious emotional disturbance, 6754
Education of individuals with disabilities personnel training program, 13376, 13380
Individuals with disabilities; closing date, 4178, 9682
Regional centers for deaf individuals (FY 1996), 1822, 11086, 34318
Research training and career development program, etc., 34326, 38189
Special studies program, 20416, 20418
Vocational rehabilitation service projects for American Indians with disabilities; withdrawn, 14563
State student incentive program, 20248
Strengthening institutions programs, 5908, 60264
Technology in education challenge grants (FY 1996), 16174, 16175
Meetings:
Education Statistics Advisory Council, 6362, 45414
Federal Interagency Coordinating Council, 5388, 19914, 36352, 52441, 55621
Foreign language and area studies fellowship programs; technical assistance workshop, 9050
Foreign Medical Education and Accreditation National Committee, 46637
Historically Black Colleges and Universities Capital Financing Advisory Committee, 4971
Indian Education National Advisory Council, 9440, 60687
Institutional Quality and Integrity National Advisory Committee, 16469, 51926
National Assessment Governing Board, 1908, 3011, 4629, 5389, 7246, 18580, 24765, 37453, 42874, 54178, 54990, 58172, 60688
National Educational Research Policy and Priorities Board, 8266, 15231, 16766, 24771, 25484, 30230, 47901, 58048, 58049
National Library of Education Advisory Task Force, 4972, 18385, 34426, 51927
National Resource Center program; technical assistance workshop, 9050
President's Advisory Commission on Educational Excellence for Hispanic Americans, 29362, 31225, 31512, 42235, 43232, 48135, 68725
President's Board of Advisors on Historically Black Colleges and Universities, 30052, 45447
School-to-Work Opportunities Advisory Council, 10331, 59222
Student Financial Assistance Advisory Committee, 7246, 26169, 44306
National Library of Education development; comments request, 16470
Postsecondary education:
Accrediting agencies and State approval agencies for vocational and nurse education institutions; national recognition, 66026
Initial or continued national recognition applicants; list, 36041, 45946
Easy access for students and institutions (EASI) project—
Special government employees acting as agents for employer-institutions, etc.; certification, 38520
Federal family education loan program—
Need analysis methodology for 1997-1998 award year; tables update, 27762
Federal Pell grant program—
Need analysis methodology for 1997-1998 award year; tables update, 27762
Federal Perkins loan, Federal work-study, and Federal supplemental educational opportunity grant programs—
Fiscal operations report and application; filing closing date, 37455, 65926
Need analysis methodology for 1997-1998 award year; tables update, 27762
Federal Perkins loan program expanded lending option; institutional agreement for participation, 36862
Federal Title IV student assistance—
National Student Loan Data System; financial aid transcript information, 49040
Federal work-study programs—
Compensation requirement for students employed in community service jobs; waiver requests, 47902
Higher Education Act reauthorization; meeting, 58938, 64569
National direct and Federal Perkins student loan programs; directory of designated low-income schools; availability
Teacher cancellation benefits, 36863
Student assistance general provisions—
Approved "ability-to-benefit" tests and passing scores; list, 55542
William D. Ford Federal direct loan program—
Electronic loan records and promissory notes submission; processing deadlines, 52778, 53490
Interest rates, 35728
Need analysis methodology for 1997-1998 award year; tables update, 27762
Privacy Act:
Computer matching programs, 17690
Projects With Industry program; waiver, 9682
Reports; availability, etc.:
Section 504 Self-Evaluation; accessibility of programs, activities, and facilities for persons with disabilities, 15472, 53902
Senior Executive Service:
Performance Review Board; membership, 39635
Sexual harassment guidance:
Peer sexual harassment; document availability, 42728
Student harassment by school employees; document availability, 52172
Special education and rehabilitative services:
Blind vending facilities under Randolph-Sheppard Act—
Arbitration fees and expenses schedule, 16700
Arbitration panel decisions, 4629, 5992, 45947, 56949
Rehabilitation Act of 1973 reauthorization; public meetings, 35195
State educational agencies; submission of expenditure and revenue data, etc., 7779

Employment and Training Administration

RULES

Alien crewmembers used for longshore activities in U.S. ports; attestations by employers, 46985
Organization, functions, and authority delegations:
Administrative Review Board; establishment and review procedures, 19982

PROPOSED RULES

Aliens:
Labor certification process for permanent employment, and researchers employed by colleges and universities, 17610
Correction, 18650

NOTICES

Adjustment assistance:
3M Co. et al., 31554
A. P. Green Industries, Inc., et al., 58219
ABT CO et al., 18420
Advanced Textile Composites Inc., 53937
AEG Transportation Systems, 5805
Aeroil Products Co., Inc., et al., 12102
Alcoa Fujikura Ltd. et al., 12103
Allergan, Inc., 57905
Allied Signal Corp. et al., 14821
Ambrose Uniform, 50333
Ambrose Uniform Div. et al., 38221
American Banknote Co., 11225
American Contract Sewing Corp. et al., 19640
American Olean Tile Co., Inc., 13219, 28898
American Tourister et al., 64534
Ameristeel, 60307
Amoco Exploration and Production et al., 64534
Amy Industries, 67855
Anchor Glass Container, 19640
Anchor Glass Container et al., 12100
Andover Togs, Inc., 12103, 24816
Andover Togs, Inc. et al., 36086
Apparel Services Co., Inc., 50878
ASARCO, Inc., et al., 40853
AT&T Corp., 40455
AT&T Network Cable et al., 2539
Atkinson Oil Co., 5033
AVX Corp., 47179
B&A Manufacturing, Inc., 19640
Baker Hughes Inteq, 5034
Basin Resources et al., 57453
Bates of Maine, Inc., 26220
Bausch & Lomb, 31950
Bausch & Lomb et al., 12103
Bayer Clothing Group, Inc., et al., 20835, 36759
Bethlehem Steel Corp., 7540
BHP Petroleum (Americas), Inc., 40854
Bidermann Industries Corp. et al., 49485
Bike Athletic Co., 7816
BJ Services Co., U.S.A., et al., 5034
Blount, Inc., 48505
Blue Mountain Forest Products, 52062
Boise Cascade Corp., 9499, 34876, 42059, 57454
Boise Cascade Corp. et al., 4489, 9499
Borg Warner Automotive et al., 66696
Brandie Rose, Inc., et al., 52062
Brasher Garment Cutting, 40854
Breed Technologies, Inc., 26220, 40854
Bruckner Manufacturing et al., 50333
BSW International et al., 36086
Bull HN Information Systems, Inc., 68057
Burlington Industries, Inc., et al., 50331
Buster Brown Apparel, Inc., 36759, 43780, 44078
California Microwave/Telecon Transmission Systems, 12104
Cambridge Industries, Inc., 28898
Carborundum Co., 40854, 47179
Caribou Ltd. et al., 38218
Carolina Lace Corp., 15833
Carter-Wallace, Inc., 31164
Casablanca Fan Co., 31164
CENEX, Inc., et al., 18758
Champion Products, Inc., 7816
Chel-Mar Manufacturing et al., 18759
Chevron Overseas Petroleum, Inc., 31165
Christian Fashions, 13220
Clear Pine Moulding et al., 34874
Cole Haan, 26220, 48505
Cone Mills Corp., 44078
Connor Forest Industries, Inc., 68058
Conoco Inc., 57906
Consolidated Natural Gas Transmission et al., 5805
Contact Technologies, Inc., 60307
Controlled Power Corp., 31165, 36087

Control Techniques Drives, Inc., 66697
Cooper Firearms Inc., et al., 64535
Cranston Print Works Co., 31165
Cray Research, Inc., 28899
Crown Pacific L.P., 51304, 65598
D & H Co., 5806
Dale Electronics, Inc., 57454
Dalen Resources Oil & Gas Co., 14822, 50879
Dallco Industries, Inc., 36759, 40855
Dana Manufacturing, Inc. et al., 43780
Dataproducts Corp., 28899
Dawson Home Fashions, Inc., 40855
Decotech Innovations, 65599
Diamond Offshore Drilling, Inc., 5034, 9500
Digital Equipment Corp. et al., 43781
Distribution & Auto Service, Inc., 7021, 47179
Ditto Apparel of California, Inc., 48505
Diversified Apparel Resources, Inc., 65599
Doranco, Inc., et al., 7816
Douglas County, Inc., 9721
Dura-Bond et al., 44079
Dutchess Lingerie, 65600
E&J Apparel, 7817
E.I. DuPont DeNemours & Co., 68058
Eagle Garment Finishing, Inc., 31166
Eastland Woolen Mill, Inc., et al., 13220
Easton Composites, Inc., et al., 38219
El Paso Natural Gas Co., 48506
EMI Co. et al., 24959
Energy Fuels Nuclear, Inc., 7021
Ertl Co., 24816
EWI, Inc., et al., 60307
Exxon Co., U.S.A., 24961, 67855
Fasco Consumer Products, 38219
Fashion Bed Group et al., 57455, 57906
Fort Smith Furniture et al., 40851
Fruit of the Loom, 4491, 31555
Galey & Lord, 18419
General Mills, Inc., et al., 7021
Geomartec, 26220
Glencraft Lingerie Inc., 43781
Globe Metallurgical, Inc., 65599
Goodyear Tire & Rubber Co., 59461
Gordon Garment et al., 55316
Gothels Park Cutting, Inc., et al., 5806
Grace Energy Corp. et al., 5035
Grassroots USA, Inc., 50334
Greenfield Research, Inc., et al., 6659
Grumman Olson et al., 28899
Guardian Life Insurance Co., 55317
Haggar Clothing Co., 19641, 20835
Harbours Casuals, Inc., 60308
Hart Schaffner and Marx Hartmarx Corp., 36088
Hasbro Manufacturing Services, 50879
Hickory Hills Industries, Inc., 47180
Hill Co., Inc., 14823, 18413
Holiday Hosiery, Inc., et al., 57904
Hotsey Equipment Co., 69112
Hubbell Lighting, Inc., et al., 31552
Hudson Valley Tree, Inc., 19641
Hydro-Fit, Inc., et al., 55317
I.C.I. Explosives USA, Inc., et al., 51305
IBM Corp., 36760
IBM Corp. et al., 24816
Indian Refining, 19641
Inland Steel Co., 2539
Intercontinental Branded Apparel, 48506
International Paper Co., 42059
International Paper Co. et al., 36085
J&J Lingerie Co. et al., 44079
J&W Garment Factory, 47180
J.E. Morgan Knitting Mills, Inc., 47180, 64536
Jackson Mills, Inc., 11225
Jeld-Wen of Bend/Bend Millwork, 4490, 26220
Jencraft Manufacturing Co., Inc., 5035
Joe Benbasset, Inc., 31166
Johnson Controls Battery Group, Inc., 6658
Jos J. Pietrafesa Co., 2540
JPS Elastomerics Corp., 15833
Kendall Healthcare Products Co., 38220
Kenton Custom Molding et al., 2536
Kentucky Apparel et al., 15833
Kentucky Apparel LLP, 38220, 47181
Kerr-McGee Corp., 4490
Key Tronic Corp. et al., 57456
Kingstree Knits, 59461, 66697, 67855
Kinney Shoe Corp., 38220
Klear-Knit, Inc., 47181
Klear-Knit of Statesville, Inc., et al., 47181, 52063
Koomey Inc., 43781
Kuppenheimer Manufacturing Co., Inc., 66698
Lambda Electronics, Inc., et al., 60308
Layton Sportswear et al., 7817
Lee Apparel Co., 55317, 57456
Lee Thomas, Inc., 55318
Leroy Industries, Inc., et al., 4486
Leslie Corp. et al., 34876
Litco International et al., 57907
Lucent Technologies, Inc. et al., 60309
Lucia, Inc., 38221
M&M/Mars, Inc., 12104
Magnetek Main St. Plant, 7023
Mahan Western Industries, Inc., 44080
Major League, Inc., 13220
Manson Wear, Inc., et al., 49485
Marblehead Lime Co. et al., 64537
Marshall Electric Corp. et al., 5807
Mason Shoe Manufacturing Co. et al., 2538
Maxus Energy Corp., 7540
Maxus Energy Corp. et al., 38222
McAllen Separation Co., 13220
Milady Brassiere & Corset Co., 11225, 28901
Miller Brewing Co., 24816, 36088
Miller Brewing Co. et al., 36088
Mission Plastics of DeQueen, 65599
Mobile Exploration & Producing U.S., Inc., 7818
Mobil Exploration & Producing U.S., Inc., et al., 59461
Mobil Natural Gas, Inc., 60310
Moisture Systems, 66698
Monarch Tile, Inc., 5035
Montana Power Co., 7537
Monticello Manufacturing, Inc./Oxford Slacks, 14823
Moormans, Inc., et al., 11223
Morgan Lumber Co., 53937
National Fiber Technology, 7540
National Food Products, Ltd., et al., 69109
National Garment Co., 55318
Nazareth/Century Mills, 49486
Nesor Alloy Corp., 20836
New Thermal Corp., 55822
NordicTrack, 59461
Norminjil Sportswear Corp., 31166
Northbridge Marketing Corp., 64538
Oakloom Clothes, Inc., 53937, 59462
Olga Co., 68059
Orbit Industries, Inc., et al., 53937, 64538
OshKosh B'Gosh, 34860, 34877, 36760, 40855
Oshkosh B'Gosh, Columbia Cutting, 36088
Owens-Illinois et al., 7538
Owens-Illinois, Inc., et al., 40453
Oxford Industries, Inc., 5035
OXY USA, Inc., 40856
P & K Dress Corp., 9500
Pabst Brewing Co., 24817, 36089
Palm Beach Co., 19641, 19642
Paramount Headwear et al., 69111
Paramount Headwear, Inc., 43781
Parker & Parsley Petroleum USA, Inc., 7023
PCI Group, Inc., et al., 55822
Pendleton Woolen Mills, Inc., 12105
Penn Mould Industries et al., 50879
Penn Mould Industries, Inc., 65599
Penn Virginia Oil & Gas Corp., 64538
Pershield, Inc., et al., 14820
Phillips Laser Magnetic Storage, 31555
Phillips Petroleum Co., 28901
Phillips Petroleum Co. et al., 38222, 42060
Pioneer Balloon et al., 34877
Pioneer Manufacturing, Inc., 38222
Pittsburgh Corning Corp. et al., 28902
Plains Blouse Co., 2540
Pope & Talbot, Inc., 18420
Pope & Talbot, Inc., et al., 15832
Porter House Ltd., 50880
Porter House Ltd. et al., 7818
Prentiss Manufacturing Co., 52063
Progressive Knitting Mills of Pennsylvania, Inc., 48506
Pyke Manufacturing Co., 26221
Quantum Corp., 20836
Quantum Corp. et al., 43782, 57456
R.D. Simpson, Inc., et al., 20836
Ralph Lauren Womenswear, Inc., 40455, 48507
Raster Graphics, Inc., et al., 55821
Rau Fastener Co., LLC, 58220
Rayloc et al., 18757
Red Kap Industries et al., 26221
Rhubarb Fashions, 26222
Rissler & McMurry Co. et al., 48503
Rivera Manufacturing, 7023
Rivera Manufacturing et al., 47181
Roseburg Forest Product, 31166
Roxanne of New Jersey et al., 12105, 14823
Rubin Gloves, Inc., 48507
Sara Lee Knit Products, 2538
Savannah Manufacturing Corp. et al., 47182
SCI Systems, Inc., et al., 55318
Scotts Hill Leisurewear, Inc., 36760
SCT Yarns, Inc., 11226
Sea Isle Sportswear, 31166
Sero Co., Inc., 12105
Shepard's/McGraw-Hill Companies, 40455
Shorty's Electric Motor Service, 9500
Simonds Industries, Inc., 2539
Smith Corona Corp., 59462
Snap-On, Inc., 53938
Snyder Oil Corp., 36761, 59462
Spartan Mills Corp., 28902
Springtown Knitwear, Inc., 14823, 14824
Stevenson Manufacturing, 36089
Strick Corp., 59463
Strick Corp. et al., 64539
Superior Garments Inc., 26222
Supreme Slipper Manufacturing Co., Inc., 4489
Synergy Services, Inc., 40455
Takata Seat Belts, Inc., 15835
TAMAC, 55823
Texaco Trading & Transportation, Inc., 69111
Thomas Industry et al., 69112
Thompson River Lumber Co. et al., 4488
Tifton Apparel Manufacturing Co., 52064
Todd Uniforms, 57457
Toombs County Mfg. et al., 28902
Toymax, Inc., 31167
Transco Energy Corp. et al., 12106
TRW, Inc., 13220
Tyler Pipe Co. et al., 53935
Tyler Pipe Industries et al., 42060
U.S. Can Co. et al., 26218
Union Supply Co., 5035
United Technologies Auto et al., 40856
United Technologies Automotive, 57457
United Technologies Automotive, Inc., 31167

United Technologies Automotive, Wiring Systems Division, 58220
Vanco Industries, Inc., 65600
Vanguard Products Corp., 43782
Vanguard Products Corp. et al., 36089
Vanity Fair Mills, Inc., 7540
Vanity Fair Mills, Inc., et al., 11226
Velco Electronics, Inc., 68059
Vic Manufacturing Co., 4489
VIP/Vanguard Industrial Products, Inc., 28903
Vishau-Sprague, Inc., et al., 24817
Wallace & Tiernan, Inc., 40857
Warnaco, Inc., 68059
Warner's of Warnaco, 44080
Weldotron Corp., 48507
Westmoreland Plastics, 59463
Wex Tex Industries, Inc., et al., 66698
Whirlpool Corp. et al., 24962
Wilkes Mill & Feed Co., Inc., 12106
Willits Footwear Worldwide, 24818
Winona Knitting Mills, Inc., 24818, 26222, 42061, 42063
Wirekraft Industries, Inc., 7819
Zena Enterprises, 20836
Zenith Data Systems et al., 49486
Zenith Distributing Corp., 15835

Agency information collection activities:
Proposed collection; comment request, 1411, 4290, 4291, 8665, 10599, 20542, 20836, 24818, 25898, 30922, 31167, 31951, 31952, 36090, 36568, 39155, 39156, 40661, 41183, 41657, 42061, 42442, 43386, 46666, 47182, 47959, 53938, 55016, 58894, 59463, 67856, 68297

Alien temporary employment labor certification process:
Agriculture and logging; adverse effect wage rates and meal charges, 4800

Committees; establishment, renewal, termination, etc.:
Federal Apprenticeship Committee, 4491

Emergency unemployment compensation program:
Extended benefit periods; changes, 14580, 44080

Environmental statements; availability, etc.:
Chicago Job Corps Center, IL, 37291
Loring AFB Job Corps Center, ME, 2267

Federal-State unemployment compensation program:
Extended benefit periods; changes, 32465
Federal employees excepted from furlough unemployment compensation, 11871
Federal Unemployment Tax Act certifications (1996); employer credits, 58221
Unemployment insurance benefit accuracy measurement annual report; availability, 39159
Unemployment insurance program letters—
Confidential employment information disclosure to private entities, 28236
Federal unemployment insurance law interpretation, 25691, 27101, 33799, 39156, 57714

Grant and cooperative agreement awards:
Job Training Partnership Act—
Indian and Native American employment and training programs, 53939

Grants and cooperative agreements; availability, etc.:
Indian education programs—
School-to-work opportunities initiatives, 24819
Job Training Partnership Act—
Indian and Native American employment and training programs (PYs 1997 and 1998), 48170
National Reserve Account; application procedures, 50388
One-stop setting services delivery; workforce development system-building demonstration projects, 16115
Title III high wage job opportunities for dislocated workers demonstration program, 9722
O*NET (Occupational Information Network) database and prototype, 16808
School-to-work and urban/rural opportunities program, 35582
School-to-work opportunities for out-of-school youth; application availability, 39473
School-to-work opportunities State implementation program (FY 1996), 36715

Job Training Partnership Act:
Allotments and final planning estimates (PY 1996), 42444
Dislocated workers employment and training assistance; Title III funds reallotment, 3465
Empowerment zones and enterprise communities—
Out-of-school youth (16-24 year-olds); pilot testing, 17729
Intertitle transfers of funds; training and employment guidance letter, 43782
Migrant and seasonal farmworker programs; final allocations, 25243
Summer youth employment and training program (CY 1996), 42444
Targeted jobs tax credit program—
Lower living standard income level; economically disadvantaged, definition, 14824

Labor surplus areas classifications:
Annual list, 33540, 53951

Meetings:
Apprenticeship Federal Committee, 24334
Job Training Partnership Act Native American Employment and Training Council, 16512
Native American Employment and Training Council, 51305

NAFTA transitional adjustment assistance:
A.H. Schreiber Co., Inc., et al., 26223
A. P. Green Industries, Inc., et al., 58219
Airshield Corp. et al., 38223
Alcoa Fujikura Ltd. et al., 12106
Algatel Wire & Cable, Inc., et al., 31555
Anchor Glass Container, 19642
Anchor Glass Container et al., 12100
AT&T Corp., 40456
AVX Corp., 40857
Blue Chip Products, Inc., 36091
Boise Cascade, Timber & Wood Products Division, 5036, 7819
Burlington Industries, Inc., 31168
Burlington Industries, Inc., et al., 50331
C.J. Enterprises et al., 50882, 55823
Cambridge Industries, Inc., 31168
Carpenter Manufacturing, Inc., 14827
Clear Pine Moulding et al., 34874
Cole Haan, 49487
Cole Haan et al., 28903
Colstrip Project Division et al., 36761
Crown Pacific L.P., 31168, 65598
Dale Electronics, Inc., et al., 57457
Dataproducts Corp., 28904
Decotech Innovations, 65599
DeTrebor Allan Inc. et al., 42058
DM IV, Inc. et al., 38224
Eagle Garment Finishing, Inc., 31168
Eagle Pitcher Industries, 12107
Elwell Parker Electric Co. et al., 43791
EMI Co. et al., 24959
Equitable Resources Energy Co., 4494, 5036
Equitable Resources Energy Co. et al., 4491, 18414
Fashion Development Center, Inc., et al., 24833
Fort Smith Furniture et al., 40851
General Electric Co., 58222
Goodyear Tire & Rubber Co., 47190, 68059
Goodyear Tire & Rubber Co. et al., 59464
Greenfield Research, Inc., et al., 6659
Haggar Clothing Co., 19642, 24834, 31556
Holiday Hosiery, Inc., et al., 57904
Hubbell Lighting, Inc., et al., 31552
I.C.I. Explosives USA, Inc., et al., 51303
Inland Steel Co., 2541
Intercontinental Branded Apparel, 55826, 59464
International Paper Co., 42059
International Paper Co. et al., 36085
Iowa Assemblies, Inc., 6661
Joe Manufacturing et al., 65600
Karl J. Marx Co., Inc., 7820
Kenton Custom Molding et al., 2536
Keystone Brewers, Inc., et al., 24814
Kinney Shoe Corp., 40456
LaSevilla Fashions, Inc., 12107
Lee Apparel Co., 55826, 57908
Lee Thomas, Inc., 55318
Leroy Industries, Inc., et al., 4486
Lockheed Martin, 40857
M.J. Electric, Inc., 5036
Matsushita Electric Corp. of America, Matsushita Logistics Co., 9500
Mead Office Products, 24835
Mid-Columbia Lumber & Box Co., Inc., 24835
Miller Brewing Co., 24835
Montana Power Co., 7537
Moormans, Inc., et al., 11223
Mullen Lumber, Inc., 40858
Newell Home Hardware Co., 53981
Ogden Atlantic Design, 38225, 50334
Olga Co., 55826
Owens-Illinois et al., 7538
Owens-Illinois, Inc., 55319
Owens-Illinois, Inc., et al., 40453
Pacific Power, 24962
Pam-Cor, 14827
Paxport Mills, Inc., 7023
Penn Mould Industries, Inc., 65599
Pershield, Inc., et al., 14820
Pope & Talbot, Inc., 31168
Pope & Talbot, Inc., et al., 15832
Progressive Knitting Mills of Pennsylvania, Inc., 50334
R.D. Simpson, Inc., et al., 20837
Raster Graphics, Inc., et al., 55821
Rayloc et al., 18757
Rio Algom Mining Corp., 11226
Rissler & McMurry Co. et al., 48503
Runny Mede Mills Co. et al., 48508
S.E.A. Enterprises, Inc., 7820
Sara Lee Knit Products, 2541, 34878
Schuller Manufacturing, Inc., et al., 67857
SCI Systems, Inc., et al., 55319
Scotts Hill Leisurewear, Inc., 36761
Seams Right et al., 58222
Sony Electronics, 40858
Stone Ridge Farm, 34878, 36761
Takata Seat Belts, Inc., 15835
Thomas & Betts Corp., 31557

Thompson River Lumber Co. et al., 4488
Thompson Steel Pipe Co., 7541, 48509
Tyler Pipe Co. et al., 53935
U.S. Can Co. et al., 26218
United Technologies Automotive, Interior Systems Division, 19643
Walker Manufacturing Co., 2541, 4494
Westbrook Wood Products, 48509
Western Energy Co., 36091
Weyerhaeuser Co., 34878
Winona Knitting Mills, Inc., 24835, 26224
Zena Enterprises, 28904
Unemployment compensation:
Ex-servicemembers; reumeration schedules, 9734

Employment Standards Administration

See Wage and Hour Division

RULES

Organization, functions, and authority delegations:
Administrative Review Board; establishment and review procedures, 19982

NOTICES

Agency information collection activities:
Proposed collection; comment request, 2534, 4292, 7820, 11226, 18624, 21500, 24835, 25693, 28599, 31953, 33540, 43078, 58895, 68060
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 2535, 3950, 5032, 6264, 7024, 8077, 10796, 11874, 14163, 15307, 16268, 17324, 18624, 19959, 20838, 24515, 26224, 27370, 29135, 30260, 31962, 33775, 35266, 36762, 37292, 39160, 40456, 41657, 42662, 43562, 45987, 47190, 48510, 49487, 50880, 52064, 53458, 54457, 55320, 56570, 57908, 58593, 59464, 60730, 64761, 65602, 67348, 68298

Energy Department

See Alaska Power Administration
See Bonneville Power Administration
See Energy Efficiency and Renewable Energy Office
See Energy Information Administration
See Energy Research Office
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
See Southeastern Power Administration
See Southwestern Power Administration
See Western Area Power Administration

RULES

Acquisition regulations:
Federal Acquisition Streamlining Act of 1994—Conforming amendments, 21975, 30823
Management and operating contracts—Competition and extension contract reform initiative; implementation, 32584
Miscellaneous amendments; Federal regulatory reform, 41702
Conflict of interests, 35085
Debarment and suspension (nonprocurement), 39854
Drug-free workplace requirements Correction, 41684
Debarment and suspension (procurement); CFR part removed, 39854
Correction, 41684
Energy conservation:
Annual reports from States and nonregulated utilities on ratemaking progress, etc.; Federal regulatory reform, 35114
Financial assistance rules:
Federal regulatory reform, 7164
Hearings and Appeals Office procedural regulations; Federal regulatory reform, 35112
National Environmental Policy Act; implementing procedures
Federal regulatory reform, 36222
National Environmental Policy Act implementing procedures:
Power marketing activities, 64603
Nuclear safety management:
Interpretation availability, 4209
Occupational radiation protection:
Interpretation availability, 4209
Oil:
Administrative procedures and sanctions, 35114
Federal regulatory reform, 35112:
Patent waiver regulation, 36611

PROPOSED RULES

Acquisition regulations:
Classification, security clearance procedures and new counterintelligence provisions, 59072
Contractor and offeror non-statutorily imposed certification requirements; elimination, 45391
Federal regulatory review, 19891
Management and operating contracts—Competition and extension contract reform initiative; implementation, 53185, 53699
Performance-based management contracting, fines, penalties, etc., 32588, 38701, 39940
Organizational conflicts of interest, 40775
Contract appeals:
Organization, functions and authorities overview, 55932
Contractor employee protection program, 55230
Debarment and suspension (nonprocurement), 3877
Debarment and suspension (procurement); CFR part removed, 3877
Federal property management regulations:
DOE property management regulations; reissuance, 48006
National Environmental Policy Act implementing procedures:
Federal regulatory review, 6414, 17257, 35990
Nuclear waste repositories sites guidelines:
Yucca Mountain Site, NV, 66158
Occupational radiation protection:
Primary standards amendments, 67600
Radiation protection of public and environment, 6799
Semi-annual agenda, 22932, 62460

NOTICES

Active uranium and thorium processing sites; reimbursement for costs of remedial action, 2237
Agency information collection activities:
Submission for OMB review; comment request, 39444
Atomic energy agreements; subsequent arrangements, 3023, 36554, 45948, 47903, 51088, 51088, 52779, 54425, 65201
Beryllium; occupational exposure:
Health standard development; data gathering public forums, 68725
Classification policy review; draft availability, 4770
Commercial nuclear reactor spent fuel and high level radioactive waste acceptance, storage, etc.; comment request, 26508, 68250
Committees; establishment, renewal, termination, etc.:
American Statistical Association Committee on Energy Statistics, 53727
Appliance Energy Efficiency Standards Advisory Committee, 58542
Environmental Management Advisory Board, 2238
Environmental Management Site-Specific Advisory Board, 25646
Secretary of Energy Advisory Board, 13159
Conflict of interests:
Former employees; post-employment prohibitions, 66656
Contractor litigation costs, terms of law firm engagement, and allowability of costs; policy statement and acquisition letter availability, 14763
Contractor work force restructuring; interim planning guidance; comment request; site-specific plans development, 8593
Defense Nuclear Facilities Safety Board recommendations:
Safety management, 1752
Electric industry restructuring; public meetings, 57857, 64860
Electricity export and import authorizations, permits, etc.:
Arizona Public Service Co., 60265
Calpine Power Services Co., 38190
Destec Power Services, Inc., 11819
Edison Source, 43232
Electric Clearinghouse, Inc., 51690
Enron Power Marketing, Inc., 31092, 57664
Federal Energy Sales, Inc., et al., 57661
Hill County Electric Cooperative, Inc., 40618
MidCon Power Services Corp., 28571
Northeast Utilities Service Co., 8046
PECO Energy Co., 51691
Public Service Co. of New Mexico, 51088
Southwestern Public Services Co. et al., 57663
USGen Power Services, L.P., 11401
Western Systems Power Pool, 3012, 43048
Environmental statements; availability, etc.:
Alternative fueled vehicle acquisition requirements; implementation, 10567
Argonne National Laboratory-West, ID—Electrometallurgical treatment research and demonstration project, 3922, 16471, 25647
Foreign research reactor spent nuclear fuel; nuclear weapons nonproliferation policy, 6983, 25092, 38720
Hanford Site, WA—Comprehensive land-use plan, 47739, 56950
K-Basins; spent nuclear fuel management, 3922, 10736
Plutonium finishing plant stabilization, 19914, 25655, 36352
Tank waste remediation system, 16471, 45949
Nevada Test Site and off-site locations, NV, 3928, 13485, 54425, 65551
Pantex Plant, TX—Continued operation and associated storage of nuclear weapon components, 15232, 18726, 65563
Programmatic spent nuclear fuel management and Idaho National Engineering Laboratory environmental restoration and waste management programs, 9441
Reactor plants from decommissioned and defueled nuclear-powered cruisers and Ohio and Los Angeles Class submarines; disposal, 41596
Rocky Flats Environmental Technology Site, CO—Interim plutonium storage, 40618
Plutonium residues and scrub alloy management, 58866

SIC Prototype Reactor Plant, CT; disposal, 33908
Sandia National Laboratories et al., NM; medical isotopes production project; molybdenum-99 and related isotopes, 48921
Savannah River Site, SC—Nuclear materials; interim management, 6633, 48474
SIC prototype reactor plant, Windsor, CT, 60693
Stockpile stewardship and management program, 408, 9683, 58871
Surplus highly enriched uranium; disposition, 33719, 36608, 40619
Surplus natural and low-enriched uranium; sale, 41776, 54780
Uranium mill tailings remedial action ground water project, 67325
Waste Isolation Pilot Plant, Carlsbad, NM; transuranic (TRU) radioactive waste disposal, 60690
Weapons-usable fissile materials; long-term storage and disposition, 9443, 15233, 22038, 67001
West Valley Demonstration Project et al., NY, 11620
Environmental statements; notice of intent:
Coal-fired proof-of-concept low emission boiler system (LEBS) project, 67003
Lawrence Livermore National Laboratory, CA; decontamination and waste treatment facility; withdrawn, 56525
Naval Petroleum Reserve Numbered 1 (Elk Hills), CA, 11617
Paducah, KY, et al.—Depleted uranium hexafluoride; alternative strategies for long-term management and use, 2239
Prototype reactor plants (S3G and D1G), Kesselring Site, NY; disposal, 43233
Rocky Flats Environmental Technology Site, CO—Interim plutonium storage, 37247
Savannah River Site, SC—Aluminum-clad spent nuclear fuel; management, 69085
River water system shutdown, 29744
Tritium extraction facility; construction and operation, 46790
Tritium production accelerator; construction and operation, 46787
Withdrawn, 16473
Surplus natural and low-enriched uranium sale, 36042
Weapons-usable fissile materials; long-term storage and disposition, 33909
Federal assistance rules; class deviation:
Vehicles of the future and environmental technologies; DOE/National Science Foundation joint grants administration, 46637
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Los Alamos National Laboratory, NM, 30862
Paducah Gaseous Diffusion Plant, KY—Site investigation activities, 32785
Uranium hexafluoride cylinder storage yards refurbishment and construction, 19917
Pantex Plant waste water treatment facility, TX, 67326
Sandia National Laboratories, AK; Barrow area instrumented climate research site, 67326
Ventron Site, MA, 11621, 25656
West Tributary Surface Water Monitoring Improvements Project, TN, 11622
Foreign research reactor spent nuclear fuel acceptance; fee policy establishment, 26507
Grant and cooperative agreement awards:
Electric Power Research Institute, 5542
Lake County, CA; Southeast Geysers effluent pipeline and injection project, 15789
Reservoir Engineering Research Institute, 4650
South Carolina Energy Research and Development Center, 35197
University of Georgia Research Foundation, 3925
Washington State Department of Ecology, 17882
Grants and cooperative agreements; availability, etc.:
Advanced coal research program at U.S. colleges and universities, 51089
Alternative fuel vehicles, light and heavy duty, demonstration project, 8726
Climate change fuel cell program, 11623
Commercialization ventures program, 28189
Co-processing of coal with plastics, rubber, or other solid wastes to produce alternative liquid fuels, 32785
Diesel engine components, high efficiency; advanced materials for low emissions; research and development, 51927
Diesel engine technologies for light trucks; cooperative development, 47741
Diesel high efficiency, very low emission engine technologies for light trucks; cooperative development, 40629
Drilling systems, advanced; systems development, 47505
Electric vehicle field test program, 10740
Environmental Restoration and Waste Management (EM) program; applied research and development, 19917, 47114
Epidemiology and occupational and environmental health studies financial assistance program, 53903
Fossil resource conservation and utilization by historically black colleges and universities, 4259
Fossil resource conversion and utilization—Historically Black Colleges and Universities and Other Minority Institutions, 67779
Gas utilization/gas-to-liquids program, 54426
Greenhouse of the future program, 68727
High-energy-density and laser-matter interaction studies, 15233, 60096
Hot gas desulfurization; partnering opportunities for developers of transport reactor systems, etc., 11624
Hydrogen technology integration, 28190
Medical surveillance; former DOE workers, 8047
National industrial competitiveness through energy, environment and economics (NICE) program, 24923, 41388
Pioneer plants design, construction, and operation; direct and/or indirect conversion-based technologies, 55979
Sorbent development/commercialization; partnering opportunities, 31093
Waste Heat Driven Thermal Swing Oxygen Production System, 4973
Waste storage facilities; remediation technologies at INEL; implementation, 3389, 15233
Information dissemination:
Gas Technology Marketplace; availability on GTI Online, 11196
Inventions, Government-owned; availability for licensing, 2502, 48666, 55791
Meetings:
DOE/NSF Nuclear Science Advisory Committee, 39124
DOE Freedom of Information Act policies and procedures; public conference, 14766
Environmental Management Advisory Board, 3925, 17282, 51929
Environmental Management Site Specific Advisory Board—Fernald Site, 3012, 7497, 25485, 46449, 55980, 67781
Hanford Site, 3013, 17883, 32431, 46448, 55980, 59425
Idaho National Engineering Laboratory, 7498, 17882, 46793, 58174
Kirtland Area Office (Sandia), 1025, 41387, 49119, 53727, 58172, 67781
Los Alamos National Laboratory, 2242, 7497, 14088, 19266, 26895, 29363, 33722, 40206, 46792, 51090, 54781, 59425, 63834
Monticello Site, 3013, 19267, 40206, 51091, 58178
Nevada Test Site, 39955, 60097, 66027
Oak Ridge Reservation, 7780, 11197, 22039, 30863, 38442, 41777, 46449, 51092, 53728, 58174
Oak Ridge, TN, 58, 3925, 6363, 10740
Pantex Plant, TX, 713, 4769, 10741, 15928, 25485, 28859, 36043, 41777, 48929, 52780, 58173
Rocky Flats, 39124, 46448, 51091, 56951, 60266, 67780
Savannah River Site, 713, 4770, 9445, 17883, 33722, 46793, 52780, 58173
Federal Advisory Committee to Develop On-Site Innovative Technology, 26169
Fusion Energy Advisory Committee, 724
Fusion Energy Sciences Advisory Committee, 30864
International Energy Agency Industry Advisory Board, 58, 15790, 29539, 58391
Metal Casting Industrial Advisory Board, 13159
National Coal Council, 17884, 55981
National Electric and Magnetic Fields Advisory Committee, 15928, 56951
National Petroleum Council, 27341
Secretary of Energy Advisory Board, 11197, 35198, 46794, 54782, 58543, 58872, 68728
TRU Waste Mobile Systems Capability Plan, 53363
Memorandums of understanding:
Energy Department, Environment, Safety and Health Office; facilities and operations at Savannah River Site, SC, 15059
Mixed radioactive/hazardous waste:
Deficiencies identification; expression of interest, 2242
Natural gas exportation and importation:
Anadarko Trading Co. et al., 39444
Brooklyn Union Gas Co., et al., 36719
Coastal Gas Marketing Co., 59
Coastal Gas Marketing Co. et al., 42603
Eastern Energy Marketing, Inc., et al., 20518
EMC Gas Transmission Co. et al., 52925
Enron Capital & Trade Resources Corp., 59
Indeck-Yerkes L.P., 2254
Interenergy Sheffield Processing Co. et al., 55621
New York State Electrical & Gas Corp. et al., 33104
Numac Energy (U.S.) Inc. et al., 67538
Poco Petroleum, Inc., 2254
Rochester Gas & Electric Corp., 67539
St. Clair Pipelines Ltd., 2254
Tenneco Gas Marketing Co., 20518
Organization, functions, and authority delegations:
Federal Energy Regulatory Commission; border facilities to transmit electricity to foreign

country; construction, operation, etc., 56525
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Eclipse Energy Systems Inc., 14089
Electron beam generator; intense steady state, 17824
Fonet, Inc., 37251
Great Lakes Chemical Corp., 50005
Physical Optics Devices, 37730
United Catalysts Inc., 49316
Personnel assurance program; human reliability policies, 53018
Petroleum Marketing Practices Act Amendments of 1994; revised summary, 32786
Powerplant and industrial fuel use; new electric powerplant coal capability:
Self-certification filings—
Blue Mountain Power, L.P., 725
Clark Public Utilities, 11820
Grays Ferry Cogeneration Partnership, 11400
Mid-Georgia Cogen, L.P., 24923
Southwestern Public Service Co., 49120
University of Minnesota, 49120
Presidential permit applications:
Bangor Hydro-Electric Co., 2244
Hill County Electric Cooperative, Inc., 40618
Privacy Act:
Systems of records, 3014, 22039
Privatization of isotope activities, 2247
Radiological condition certification:
Alba Craft Site, OH, 60097
Aliquippa Forge Site, PA, 55981
Associate Aircraft Site, OH, 48667
C.H. Schnoor Site, PA, 48135
Herring-Hall-Marvin safe site, OH, 64072
Records of decision:
Stockpile stewardship and management program, 68014
Reports; availability, etc.:
Nuclear Safety External Regulation Advisory Committee; final report; availability, 2244
Weapons-usable fissile materials and surplus weapons-usable plutonium disposition; long-term storage; technical summaries, 40206
Senior Executive Service:
Performance Review Board; membership, 53363
Spent nuclear fuel or high level radioactive waste; acceptance, storage, and transportation responsibilities; performance plan; comment request, 30864
Presolicitation conference, 30864
Safe transportation and emergency response training—
Technical assistance and funding, 24772, 41778
Unfunded Mandates Reform Act; intergovernmental consultation; policy statement, 2504
Weapons-usable fissile material storage and plutonium disposition alternatives; nonproliferation and arms control assessment, 51092, 55982, 51278, 66269

Energy Efficiency and Renewable Energy Office

RULES

Consumer products; energy conservation program:
Energy efficiency standards for appliances; consideration procedures, 36974
Energy conservation:
Alternative fueled vehicle acquisition requirements; implementation, 10622
Federal energy management and planning programs—
Life cycle cost analyses; methodology and procedures, 32647
State Energy Conservation Program (SECP) and Institutional Conservation Program (ICP); consolidation—
Federal regulatory reform, 35890

PROPOSED RULES

Consumer products; energy conservation program:
Appliance standards—
Public workshop, 6798, 9958, 28517
Revised product data sheets, 44001
Clothes washers—
Design options and engineering, analysis; public workshop, 56918
Test procedures, etc., 17589
Clothes washers, dryers, and dishwashers—
Test procedures, 57794
Clothes washers—
Test procedures, etc., 17589
Fluorescent and incandescent lamps test procedures issues, 7431
Refrigerators, refrigerator-freezers, and freezers, 41748
Energy conservation:
Home energy rating system; voluntary guidelines, 15736
New Federal commercial and multi-family high rise residential buildings; energy code, 40087
Private and local government fleets; alternative fueled vehicle acquisition requirements, 41032
Energy efficiency program for certain commercial and industrial equipment:
Electric motors; test procedures, labeling, and certification requirements, 60440
Correction, 64948

NOTICES

Appliance and equipment energy efficiency standards; voluntary evaluation program criteria:
Luminaires; provisional determination, 10742
Building energy standards program:
Energy-related provisions of residential building codes; guidance and procedures, 64727
Consumer products; energy conservation program:
Representative average unit costs of energy sources—
Electricity, natural gas, heating oil, propane and kerosene, 1366, 58679
Consumer product test procedures; waiver petitions:
Bard Manufacturing Co., 32790, 50812
CFM International Inc., 17287
Consolidated Industries, 4262
General Electric Appliances, 18125, 47115, 58175
Goodman Manufacturing Co., 3025, 17289
HEAT-N-GLO Fireplace Products, Inc., 53366, 64519
Inter-City Products Corp., 11199, 27057
Miele Appliance Inc., 11201
Nordyne, 11395, 54783
Rheem Manufacturing Co., 50813
Superior Fireplace Co., 5755, 17885
Thermo Products Inc., 3023, 17887
Vermont Castings, Inc., 17290, 47741, 57857
Electric and magnetic field effects research and public information dissemination program; solicitation of non-Federal financial contributions, 3390
Energy conservation:
Commercial office equipment; voluntary national testing and information program, 17292
Energy-efficient products commercialization promotion; Federal government purchasing power use, 17888
Energy savings performance contract model solicitations; changes, 2502
Grants and cooperative agreements; availability, etc.:
Electric and magnetic field effects research and public information dissemination program
Non-Federal financial contributions solicitation, 67539
State energy program special projects, 27058
Meetings:
Appliance Energy Efficiency Standards Advisory Committee, 66270
Demonstration and Commercial Application of Renewable Energy and Energy Efficiency Technologies Advisory Committee, 37884
State Energy Advisory Board, 7781, 25657, 53728

Energy Information Administration

NOTICES

Agency information collection activities:
Proposed collection; comment request, 11390, 14766, 16903, 25212, 31929, 33105, 40207, 53903, 68728
Submission for OMB review; comment request, 4260, 4974, 24924, 29083, 44043, 46637, 52926, 54179, 56952, 58176
Forms; availability, etc.:
Residential energy consumption survey, 60
Meetings:
American Statistical Association Committee on Energy Statistics, 15929, 56673
Spent nuclear fuel and/or high level waste disposal standard contract; reporting and recordkeeping requirements, 56526

Energy Research Office

NOTICES

Grants and cooperative agreements; availability, etc.:
Energy biosciences program, 68729
Environmental management science program, 4975
Experimental program to stimulate competitive research, 57
Financial assistance programs—
Basic energy sciences, biological and environmental research, etc., 58392
Environmental management science program, 64731
High performance computing and communications grand challenge applications, 15235
Natural and accelerated bioremediation research-science team leadership program, 10746, 59868
Photochemistry sciences research opportunities, 15234
Global change integrated assessment research program, 3026
Human Genome Program—
Ethical, legal, and social implications, 4631
Sequencing and its analysis, 4630
Plasma physics junior faculty development program, 49754
Special research program—
Atmospheric radiation measurement program; radiation and clouds study, 6986
Terrestrial ecology and global change joint program, 68026
Vehicular transportation improvement and energy consumption and pollution reduction from manufacturing processes, 4972
Meetings:
Basic Energy Sciences Advisory Committee, 162, 26170, 51093

DOE/NSF Nuclear Science Advisory Committee, 16904
Fusion Energy Advisory Committee, 1367
Fusion Energy Sciences Advisory Committee, 46794, 67782
Health and Environmental Research Advisory Committee, 11400, 41778
High Energy Physics Advisory Panel, 4263, 15929, 46450, 65033

Engineers Corps

RULES

Danger zones and restricted areas:
Albemarle and Pamlico Sounds; Harvey Point, Perquimans County, NC, 7214
Correction, 26107
Alligator Bayou, tributary of St. Andrew Bay, FL, 43969
Chesapeake Bay off Fort Monroe, VA, and Canaveral Harbor adjacent to Navy Pier at Fort Canaveral, FL, 34732
Cooper River and tributaries, Charleston, SC; Naval Weapons Station small arms firing range, 64996
Pamlico Sound and adjacent waters, NC; Marine Corps operations, 43969
Sinclair Inlet, Puget Sound Naval Shipyard, WA, 2117
Suisun Bay at Naval Weapons Station, CA, 43969
Navigation regulations:
St. Marys Falls Canal Soo Locks, MI, 55572
Water resource development projects, public use; shoreline management, 18499

PROPOSED RULES

Danger zones and restricted areas:
Chesapeake Bay off Fort Monroe, VA, and Canaveral Harbor adjacent to Navy Pier at Fort Canaveral, FL, 7231
Cooper River and tributaries, Charleston, SC; Naval Weapons Station small arms firing range, 48112
Persons subject to restrictions; clarification, 67265
Navigation regulations:
St. Marys Falls Canal Soo Locks, MI, 33

NOTICES

Base realignment and closure:
Surplus Federal property—
Camp Bonneville, WA, 32784
Charles E. Kelly Support Facility, Irwin Support Annex, Manor, PA, 24921
Charles E. Kelly Support Facility, PA, 54629
Defense Distribution Depot Memphis, TN, 13483
Defense Distribution Depot, UT, 25211
Detroit Arsenal Tank Plant, MI, 15057
Fitzsimons Army Medical Center, CO, 19910
Fort Chaffee Military Reservation, Sebastian County, AR, 21445
Fort Dix, NJ, 58170
Fort Greely, AK, 26892
Fort Holabird, Baltimore, MD, 17690
Fort McClellan, AL, 43348
Fort Pickett, Blackstone, VA, 16764
Fort Ritchie Military Reservation, Cascade, MD, 21445
Fort Totten, NY, 19910
Hingham/Cohasset USARC, MA, 16764
Irwin Support Annex, PA, 24481
Letterkenny Army Depot, Chambersburg, PA, 28567
Military Ocean Terminal Bayonne, NJ, 18572
Oakland Army Base, CA, 51084
Red River Army Depot, TX, 28568
Rio Vista Army Reserve Facility, CA, 20516
Savanna Army Depot, IL, 32784
Seivers Sandberg U.S. Army Reserve Center, Pedricktown, NJ, 15225, 18124
Seneca Army Depot, NY, 18572
Sgt. Joyce Kilmer U.S. Army Reserve Center, Edison, NJ, 15226
Stratford Army Engine Plant, CT, 15225
U.S. Army Reserve Facility Bellmore, NY, 15226
Closure of public lands:
Washington, 18572
Coast Guard categorical exclusions; nationwide general permit program; proposed authorization, 18573, 64858
Committees; establishment, renewal, termination, etc.:
Inland Waterways Users Board, 36350
Environmental statements; availability, etc.:
Alexander and Pulaski Counties, IL, 65199
Ashtabula River and Harbor, OH; dredging and confined disposal facilities project, 1901
Bluestone Dam, WV; safety assurance program, 9681, 36714
Chesapeake and Delaware Canal-Baltimore Harbor connecting channels (deepening), DE and MD; feasibility study; public meeting, 29081
Defense Personnel Support Center, Philadelphia, PA; disposal and reuse, 34424
Irvine, CA; U.S. Food and Drug Administration laboratory construction, CA, 30229, 46635
Jennings Randolph Lake, MD and WV; master plan update, 38718
Lake Seminole Hydrilla Action Plan, FL et al., 15226
Luzerne County, PA; Wyoming Valley levee raising project, 7493
New York/New Jersey port; dredged material management plan, 60096
Norco, CA; Norco Bluffs banks stabilization measures, 30229
Poplar Island, Talbot County, MD, 15229
Environmental statements; notice of intent:
Arkabutla Lake et al., MS, 14760
Arthur Kill/Howland Hook navigation channel, NY and NJ; deepening; limited reevaluation study, 51084
Atlantic County, NJ; storm damage reduction and beach erosion control project, 11813, 21446
Baltimore County, MD; metropolitan water resources study for Gwynn Falls sub-basin, 36038
Bethany Beach and South Bethany, DE; storm damage reduction and beach erosion control project, 39634
Central and Southern Florida Project; comprehensive review study, 2804
Churchmans Marsh Reservoir/New Castle county water supply project, DE, 11813
Dade County, FL; Miami River maintenance dredging, 20810
Dallas County et al., TX; Upper Trinity River feasibility study, 58171
Dallas County, TX.; Dallas Floodway extension, 56524
Gulf Intracoastal Waterway, TX, 5754
Herbert Hoover Dike, FL; major rehabilitation evaluation report, 51085
Jackson Hole, WY; Snake River channel between Grand Teton National Park and South Park Elk Feed Grounds; environmental restoration, 46635
King County, WA; Howard Hanson Dam water storage project, 36039
Middlesex County et al., NJ; Green Brook flood control project, 28568
North Dade (C-7, C-8, and C-9), FL; canals and water control structures construction, 37931
Palm Beach County, FL; Bolles Canal flood control project, 11814
Pierce County, WA; municipal solid-waste landfill; cancellation, 58542
Pine Flat Dam fish and wildlife habitat restoration investigation, CA, 15227
Port Hueneme, CA; feasibility study, 11814
Putnam and Marion Counties, FL; Rodman Dam/Ocklawaha River restoration project, 4419
Randleman Lake, NC, 47897
Sacramento County and City, CA; flood protection, 554
Salt River, Tempe and Phoenix, AZ; Rio Salado environmental restoration project, 29082
Sauquoit Creek, NY; flood control project, 555
St. Joseph Harbor, MI; long-term dredged material management, 45413
St. Paul, AK; harbor improvements, 2805
Willamette River Basin, OR; review feasibility study, 50286
Worcester County, MD; Ocean City and vicinity water resources feasibility study, 7778, 11815
Mechanical silvicultural site preparation activities for pine plantation establishment in the Southeast; best management practices; guidance, 7242
Meetings:
Coastal Engineering Research Board, 21164, 37730, 65200
Inland Waterways Users Board, 15229, 32785, 47898
Nationwide permits (NWPs); issuance, reissuance, and modification:, 65874, 67324
Public hearings, 30778, 30780, 34424, 42234
Native American human remains and associated funerary objects:
Illinois State Museum, IL, and Glenn Black Laboratory of Archaeology, IN; lithics, 10994
Regulatory guidance letters, 18575
Dissemination, 30990

Water resource development projects:
Deauthorization lists, 66654
Wetland functions assessment; hydrogeomorphic approach; national action plan, 42593

Engraving and Printing Bureau

RULES

United States currency and other securities; distinctive paper, 10895

NOTICES

Agency information collection activities:
Proposed collection; comment request, 28258

Environmental Protection Agency

RULES

Acquisition regulations:
Administrative changes; Federal regulatory reform, 57336
Confidential business information; collection, use, access, treatment, and disclosure; solicitation provisions and contract clauses, 14264
Cost-sharing contracts, 14504
Energy-efficient computer equipment coverage; EPA Energy Star requirements, 14506
Information exchange, past performance, advisory and assistance services, etc.; outdated doverage removed, 55118
Information Resources Management policies; electronic access, 33693
Major systems acquisition (OMB A-109); regulations removed, 47064
Monthly progress reports; contract cost suspended or disallowed, 29314
Source selection process, 47065
Superfund response action contractors; insurance for liability to third parties; clauses removed, 29493
Air pollutants, hazardous; national emission standards:
Aerospace manufacturing and rework facilities, 66226
Correction, 4902
Authority delegation; CFR correction, 29485
Chromium emissions from hard and decorative chromium electroplating and anodizing tanks, etc., 27785
Constructed or reconstructed major sources, 68384
Equivalent emission limitations by permit; implementation, 21370
Gasoline terminals and pipeline breakout stations, 7718
Hazardous air pollutants list; additions and deletions—
Caprolactam; delisting, 30816
Off-site waste and recovery operations, 34140
Perchloroethylene emissions from dry cleaning facilities, 49263
California, 25397
Guidance availability, 29485
Petroleum refinery sources, new and existing, 33799
Correction, 7051, 29876
Polumer and resin production facilities (Group I), 46906
Polymer and resin production facilities (Group IV), 46906, 48208
Correction, 54342
Printing and publishing industry operations, 27132
Radionuclide emissions from licensed facilities, 68972
Secondary lead smelters, new and existing; compliance date extension, etc., 65334
State programs approval and Federal authorities delegation, 36295
Surface coating operations from new or existing shipbuilding and ship repair facilities, 66226
Compliance date revision and implementation plan submittal deadline extension, 30814
Synthetic organic chemical manufacturing industry and other processes subject to equipment leaks negotiated regulation, 7716, 31435, 64572
Tennessee; radionuclides emissions other than radon from Energy Department facilities, etc., 18280
Air pollution; standards of performance for new stationary sources:
Authority delegations—
Alabama et al., 42808
Industrial-commercial-institutional steam generating units—
Louisiana, 14029
Metals emissions determination, 18260
Nebraska City Power Station, NE; alternate opacity standard rescission, 49974
Portland cement plants; CFR correction, 14637
Small industrial-commercial-institutional steam generating units, 20734
Air pollution control; new motor vehicles and engines:
Clean-fuel vehicles and engines emission standards; conversion requirements, and California pilot text program—
Small-volume manufacturers certification program conversion sales volume limit provision removed, 129
Deterioration factors for alternative fuel vehicles, determination requirements; inherently low-emission vehicles; labeling requirements amendments, 122
Gasoline spark-ignition and diesel compression-ignition marine engines; emission standards, 52088
Heavy-duty vehicles and engines; 1996 and 1998 model year emission standards; nonconformance penalties, 6949
Light-duty trucks; 1996 model year particulate standards, etc.; nonconformance penalties, 6944
Light-duty vehicles and trucks—
Durability testing procedures and allowable maintenance; indefinite extension, 58618
Motor vehicle emissions Federal test procedure revisions, 54852
New nonroad compression-ignition engines at or above 37 kilowatts—
On-highway compression-ignition engines in nonroad vehicles; use and replacement provisions, 58102
New nonroad spark-ignition engines at or below 19 kilowatts, 20738
Nonconforming vehicles importation, 5840
Nonhandheld new non-road spark ignition engines, phase 1 small class I and II; carbon monoxide standard, 58296
Obsolete regulations removed, 51365
On-board diagnostic systems—
Compliance with Federal requirements by optional compliance with revised California OBD II requirements, 45898
Air programs:
Accidental release protection—
Regulated substances and thresholds list; modifications, 31730
Requirements; risk management program, 31668
Ambient air quality standards, national—
Nitrogen dioxide, 52852
Sulfur oxides (sulfur dioxide), 25566
Clean Air Act—
Special exemptions; American Samoa, et al., 58284, 66077
Fuel and fuel additives—
Deposit control (detergent) gasoline additives; certification standards, 35310
Diesel fuel sulfur requirement exemption; Alaska, 42812
Gasoline containing lead or lead additives for highway use; prohibition, 3832, 8221, 28763
Guam; anti-dumping and detergent additization requirements for conventional gasoline; exemption petition, 53854
Motor vehicle emissions; health-effects testing registration requirements, 36506
Reformulated gasoline; oxygen content limits, 12030
Reformulated gasoline standards; nitrogen oxides, 35960
Reid Vapor Pressure lower limit adjustment; reformulated gasoline sold in California, 20736
Reid Vapor Pressure volatility standard (1996 and 1997); relaxation approval, 16391
Fuels and fuel additives—
Health effects testing requirements, detergent certification provision, etc., 58744
Reformulated gasoline program; alternative analytical test methods use, 58304
Gasoline retailer and wholesale purchaser-consumer fuel dispensing rate:
Implementation date delayed, and hardware/software controlling same, location, 33034
Motor vehicle inspection/maintenance (I/M) program requirements; on-board diagnostic computer test procedures and requirements, 40940
Correction, 44119
Municipal solid waste landfills; new sources control and emission guidelines for existing sources, 9905
Outer Continental Shelf air regulations—
Sources within 25-mile limit; offset remand, 25149
Outer Continental Shelf regulations—
California, 28757
State operating permit programs
Interim approval extensions, 56368
Stratospheric ozone protection—
Fire extinguishers containing hydrochlorofluorocarbons (HCFCs); ban reconsideration, 64424
Ozone-depleting substances; global-warming potentials, list, 1284
Ozone-depleting substances; substitutes list, 54030
Ozone-depleting substances significant new alternatives policy program; substitutes prohibitions or restrictions, 25585, 47012
Refrigerant recycling, 7724, 10676
Refrigerant recycling; purity requirements effectiveness extension, 68506
Significant new alternatives policy program, 4736, 51018
Used class I controlled substances import; excise tax liability certification 3-month administrative stay, 3316, 29485
Air programs; State authority delegations:
Georgia, 59832
Kentucky, 15721
Mississippi, 21080

Air quality implementation plans:
Preparation, adoption, and submittal—
Air quality models guideline, 41838
Federal regulatory reform, 16050, 30162, 32339
Vehicle inspection and maintenance program requirements; flexibility amendments (Ozone Transport Regions), 39032, 49680
Volatile organic compound (VOC) definition; HFC 43-10mee and HCFC 225ca and cb exclusion, 52848
Volatile organic compounds (VOC); perchloroethylene exclusion, 4588
Air quality implementation plans; approval and promulgation; various States:
Alabama, 5285, 11137
Alaska, 5704, 24712, 33676
Arizona, 3578, 5287, 14974, 15717, 51599, 56450, 56451, 58281
California, 1716, 1718, 3579, 4215, 4887, 4890, 4891, 5288, 5515, 5701, 7706, 7992, 15719, 18500, 18959, 18963, 19555, 20136, 20145, 20453, 29659, 32341, 36501, 37390, 38571, 43976, 44161, 52297, 54941, 56470, 56472, 56474, 56627, 56629, 57775, 58133, 64291
Colorado, 11149, 49682, 51784, 67466
Connecticut, 24239, 38574
Delaware, 1838, 2449, 7415, 13101, 24239
Federal regulatory review, 16050
Florida, 3572, 6543, 18259, 49064, 65955
Georgia, 3817, 3819, 3820, 33372
Idaho, 20730, 27019, 66602
Illinois, 2423, 3575, 5291, 5511, 11139, 11550, 14484, 15715, 20147, 20455, 38577, 38582, 41338, 41342, 54556, 67469
Illinois; withdrawn, 12030
Illinois et al., 2428
Indiana, 3581, 4895, 4897, 11142, 11552, 14487, 15704, 29961, 29965, 55889, 58482, 60615
Iowa, 18958
Kansas, 51366
Kansas and Missouri, 18251
Kentucky, 8873, 14489, 33674, 50718
Louisiana, 2438, 7218, 31035, 37833, 38590, 48409, 50238, 54737, 55894
Ohio, 31225
Louisiana et al., 53639
Maine, 5690, 53636
Maryland, 3582, 7418, 50715, 64028
Massachusetts, 2918, 5696, 11556, 41335, 43973, 53628
Michigan, 3815, 5694, 5707, 6545, 7221, 7995, 12030, 16229, 31831, 39330, 40516, 45893, 66607, 66609
Minnesota, 6547
Mississippi, 5295
Missouri, 4352, 7711, 7714, 9642, 13776, 39334
Montana, 11153, 51014, 54946
Nebraska, 4899, 5297, 5699
Nevada, 4901
Nevada 57331
New Jersey, 5299, 33678, 38591, 53624, 54948, 66606
New Mexico, 29978, 32339, 48407
New York, 38594, 49262, 51214
Withdrawal, 64029
New York et al., 56897
North Carolina, 3584, 5689, 25789, 49413, 49414
North Dakota, 52865
North Dakota et al., 60613
Ohio, 1720, 3319, 3591, 9644, 11560, 17576, 18255, 20139, 20458, 24457, 24702, 29662, 52882
Oklahoma, 7709, 15713
Oregon, 24709, 37393, 50713
Ozone nonattainment areas State implementation plans; findings of failure to submit, 36292
Pennsylvania, 2926, 5303, 14493, 15709, 19193, 24706, 28061, 29483, 29664, 39594, 51598, 54736, 67229, 67232
Pennsylvania; CFR correction, 5515
Rhode Island, 3824, 4353, 11731, 14975, 55897
South Carolina, 6114
Tennessee, 3318, 11136, 14491, 14634, 29666, 37387, 38391, 39326, 39332, 43972, 47055, 53633, 54943, 55903
Tennessee; withdrawn, 47057
Texas, 20732, 49685, 55894
U.S. Virgin Islands, 54948
Utah, 9350, 20142
Virginia, 11162, 29963, 38388, 48629, 48632
Virginia et al., 2931
Washington, 5704, 25791, 38086, 38597, 41331, 43675, 47055, 49688, 50235, 50438, 50713, 53066, 53323, 54560
West Virginia, 4216, 54734, 58481, 60191
Wisconsin, 5306, 5514, 9639, 11735, 14972, 15706, 18257, 18681, 37216, 39329, 43668, 43970, 45327
Correction, 5307
Wyoming, 47058
Air quality planning purposes; designation of areas:
Arizona, 21372, 39343
Connecticut, 24239, 58487
Idaho, 29667
Illinois, 41342
Indiana, 58482, 60615
Louisiana, 50238
Louisiana et al., 53639
Massachusetts, 2918
Michigan, 5707, 31831, 40516
Nebraska, 64294
New Jersey, 33678
New Jersey et al., 2939
New Mexico, 29970
Ohio, 3319, 3591, 11560, 20458, 31225
Pennsylvania, 2926
South Dakota, 4357, 24242
Tennessee, 55903
Texas, 14496
Virginia et al., 2931
Washington, 50438, 54560
Wisconsin, 43668
Wyoming, 47058, 47100
Clean Air Act:
Acid rain program—
Continuous emissions monitoring, 59142
Nitrogen oxides emission reduction program, 67112, 68821
Permits regulation; periodic relative accuracy test audits (RATA), 25580
Acid rain provisions—
Sulfur dioxide emissions allowance; direct sale elimination and independent power producers written guarantee program, 28761
Federally-issued operating permits program, 34202
Administration in jurisdictions lacking EPA-approved or adequately-administered programs, 39877
Reformulated gasoline program; opt-out requests—
New York et al., 35673
State air quality plans; designated facilities and pollutants—
Texas, 55573
State operating permits programs—
Alaska, 64463
Arizona, 55910
California, 4217, 18083, 45330
California; withdrawn, 56631
Idaho, 64622
Indiana, 8875
Interim approval criteria, 31443
Kansas, 2938
Kentucky, 11738
Maryland, 34733
Massachusetts, 3827, 24460, 31442
Missouri, 16063
Nebraska, 7073
New Hampshire, 51370
New Jersey, 24715
New Mexico, 60032
New York, 57589, 63928
Oklahoma, 4220
Pennsylvania, 39597
Puerto Rico, 7073
Rhode Island, 20150
South Dakota, 2720
Tennessee, 5705, 13101, 18966, 36502, 39335
Texas, 32693
Vermont, 51368
Virgin Islands, 39882
Conflict of interests, 40500
Debarment and suspension (nonprocurement) and drug-free workplace requirements:
Clean Air and Water Acts; facilities ineligibility in performance of Federal contracts, grants, and loans, 28755
Drinking water:
National primary and secondary drinking water regulations—
Public water systems; monitoring and data reporting requirements, 24354
Reporting and recordkeeping requirements, 53854
Drug-free workplace requirements:
Clean Air and Water Acts; facilities ineligibility in performance of Federal contracts, grants, and loans, 28755
Equal employment opportunity requirements; contractor compliance; CFR part removed, 33673
Federal debt collection:
Civil monetary penalties; inflation adjustment, 58736
Hazardous waste:
Burning in boilers and industrial furnaces; CFR correction, 56631
Federal Facility Compliance Act; administrative enforcement actions; technical revision, 11090
Identification and listing—
Exclusions, 18088, 37397, 40519, 46380, 48635, 50238, 57334
Recovered oil exclusion; correction, 13103
Recycled used oil, 33691
Land disposal restrictions—
Decharacterized wastewaters, carbamate wastes, and spent potliners (Phase III); partial withdrawal and amendment, 15660
Correction, 19117
Decharacterized wastewaters, carbamate wastes, and spent potliners (Phase III), 15566, 33680, 36419, 43924
CITGO Petroleum Facility, LA; site-specific treatability variance, 55718
Non-municipal solid waste disposal facilities; conditionally exempt small quantity generator wastes disposal standards, 34252

INDEX VOL 61 1996 UMI

Small municipal solid waste landfills in dry or remote areas—
Ground-water monitoring exemption re-establishment, 50410
State underground storage tank program approvals—
Arkansas, 1213
Connecticut, 41507
Delaware, 50720
Georgia, 4224
Louisiana, 1211
Maine, 6554
Massachusetts, 56135
Montana, 3599
New Mexico, 1216
Oklahoma, 1220
Rhode Island, 6319
Texas, 1223
Treatment, storage, and disposal facilities—
Tanks, surface impoundments, and containers; organic air emission standards, 4903, 28508, 59932
Hazardous waste program authorizations:
Alabama, 5718, 18281
Delaware, 41345
Georgia, 9108
Illinois, 10684, 40520
Indiana, 43009, 43018
Kansas, 39353
Kentucky, 18504, 25799
Louisiana, 13777
Michigan, 4742
Montana, 55223
Nebraska, 32699
Nevada, 32345
New Mexico, 2450, 49265, 67474
North Carolina, 18284
Ohio, 54950
Oklahoma, 52884
South Carolina, 18502
South Dakota, 38392
Tennessee, 25794, 25796
Washington, 7736
Organization, functions, and authority delegations:
Pollution Prevention and Toxics Office; mailing addresses update for submissions, information requests, etc., 33044
Pesticide programs:
Federal Insecticide, Fungicide, and Rodenticide Act container and containment standards—
Exemptions, 8876
Production reports; submission time extension, 8221, 25151
Correction, 14497
Registration and classification procedures; notification to Agriculture Secretary, 30163
Registration modifications; notification and non-notification procedures, 33039
Worker protection standards for agricultural workers—
Decontamination sites for workers; requirements, 33207
Warning signs; language and size requirement, 33202
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
1,2-Ethanediamine, 9355
1-[[2-(2,4-Dichlorophenyl)-4propyl-1,3-dioxolan-2-yl[methyl]-1H-1,2,4-triaz ole, 3326, 29672, 31042
2,4-D (2,4-dichlorophenoxyacetic acid), 13428
3,5-dichloro-n-(1,1-dimethyl-2-propynyl)benzamide, 10282
Acephate, etc., 36299, 39528
Acrylate polymers/copolymers, 6550
Allyl isothiocyanate, 24893
Aluminum tris (O-ethylphosphonate), 31039
Avermectin B1 and delta-8,9-isomer, 4593, 15900, 20745
Avermectin B1, etc., 9350
Bacillus thuringiensis CryIA(b) delta-endotoxin, 40340
Benomyl, etc., 50684
Benzoic acid, 13427
Bifenthrin, 29676
Cadre, 11311
Captan, etc., 11994
Chlorothalonil, 10280
Chlorpyrifos, 3328
Clomazone, 20743
CP4 Enolpyruvylshikimate-3-D, 40338
Cyfluthrin, 10678, 39883
Cypermethrin, 39889
Cyromazine, 19842
Diflubenzuron, 30170
Dihydroazadirachtin, 37395
Dimethenamid, 10681
Diquat, 30165
Fenoxaprop-ethyl, 21378, 30165
Fenpropathrin, 39887
Correction, 51372
Flutolanil, 33041
Folpet, 37218
Glyphosate, 7729, 15192
Hexaconazole, 15895
Hexythiazox, 6552
Imidacloprid, 5711, 5714, 7734, 19855, 29674, 50622
Iprodione, 19845
Jojoba oil, 2120
Lactofen, 19849, 20742
Maleic hydrazide, etc., 26118
Meat meal and red pepper, 13424
Metalaxyl, 4592
Metolachlor, 60617
Myrothecium verrucaria, 11313, 58331
Nicosulfuron, 7732
Norflurazon, 39347
Octadecanoic acid, 12-hydroxy-, homopolymer, octadecanoate, 5712
Oxidized pine lignin, sodium salt, 31037
Oxo-alkyl acetates, 26117
Pelargonic acid, 5716
Pentaerythritol stearates, 34741
Phosphinothricin acetyltransferase, 40337
Potassium citrate, 34739
Propargite, etc., 25153
Propiconazole, 58135
Propylene oxide, 25152
Prosulfuron, 26841, 26843
Pyridaben, 48843
Quizalofop ethyl, 31041
Quizalofop-p ethyl ester, 30171
Correction, 33799
Sethoxydim, 7727
Sodium bicarbonate, etc., 67472
Sodium salt of acifluorfen, 30163
Styrene-2-ethylhexyl acrylate-glycidyl methacrylate-2-acrylamido-2-methylpropanesulfonic acid graft copolymer, 4591
Sulfonium, etc., 9352, 9357
Sulfonium, trimethyl-salt with N-(phosphonomethyl)glycine (1:1), 15896
Tebufenozide, 60628
Tebuthiuron, 19847
Tefluthrin, 19852
Tolerance processing fees increase, 19850
Triadimefon, 63721
Tribenuron methyl, 14637
Trifluralin, 2446
Triflusulfuron methyl, 30167
Triphenyltin hydroxide, 36298
Xanthan gum-modified, 19854
Radiation protection programs:
Spent nuclear fuel, high-level and transuranic radioactive wastes management and disposal; waste isolation pilot plant compliance, 5224
Reporting and recordkeeping requirements, 33851, 67950
Solid wastes:
Beverage containers and resource recovery facilities; management guidelines—
Federal regulatory reform; CFR parts removed, 69032
Land disposal of solid waste, guidelines; CFR part removed, 18501
Municipal solid waste landfill criteria; financial assurance mechanisms for local government owners, 60328
Transfrontier movements of solid/hazardous wastes destined for recovery operations, control; OECD Council decision implementation, 16290
Superfund program:
Emergency Planning and Community Right-to-Know Act—
Extremely hazardous substances list and reportable threshold planning quantities, 20473
National oil and hazardous substances contingency plan—
National priorities list update, 2451, 3331, 4747, 6115, 6556, 7996, 10687, 15902, 18287, 18507, 18683, 18968, 20473, 24720, 24894, 27788, 28511, 29678, 30510, 35137, 35962, 39080, 39081, 40523, 41959, 45336, 47060, 47825, 49690, 50443, 51019, 51373, 52886, 52887, 53328, 54098, 54343, 55751, 56477, 57594, 58332, 59184, 60197, 65186, 65957, 67233, 67234, 67656, 68157
Toxic chemical release reporting; community right-to-know—
Di-(2-ethylhexyl) adipate, 39891
Diethyl phthalate, 39356
Hydrochloric acid, 38600
Toxic release inventory reports, 2722
Toxic and hazardous substances:
Health and safety data reporting rule—
List additions, 7421, 14596, 55872
List additions; partial stay, 65186
Toxic substances:
Anthraquinone reporting and recordkeeping requirements; revocation, 7076
Asbestos-containing materials in schools—
State waiver requests, 52703
Health and safety data reporting rule—
Siloxanes; CFR correction, 32702
Lead—
Lead-based paint activities; requirements, 45778
Lead-based paint poisoning prevention in residential structures; information disclosure requirements, 9064
Polychlorinated biphenyls (PCBs)—
Disposal, 11096
Significant new uses—
Aliphatic polyisocyanates etc., 63726
Benzidine-based chemical substances, 52287
Cyclohexanecarbonitrile, 1,3,3-trimethyl-5-oxo, 33373
Ethane, 1,1,1 trifluoro-, 33374
Testing requirements—
Alkyl glycidyl ethers, 11740, 29486
Chloroethane; modification; withdrawn, 7221
Mesityl oxide; withdrawn, 33375

Test rules and enforceable testing consent agreements/orders; modifications, 37685
Treatment works construction; loan guarantees; CFR part removed, 64290
Tuition fees for direct training; CFR part removed, 41330
Uniform administrative requirements and definitions; higher education institutions, hospitals, and other nonprofit organizations (OMB A-110), 6066
Water pollution; effluent guidelines for point source categories:
Fertilizer manufacturing; CFR correction, 10468
Leather tanning and finishing, 35680
Nonferrous metals manufacturing; CFR correction, 24242
Oil and gas extraction, 66086
Pesticide chemicals formulation, packaging and repackaging facilities; pretreatment and new source performance standards, 57518
Water pollution control:
Clean Water Act—
State permitting programs; State law challenge requirement; approval or denial of Section 402 permits, 20972
National pollutant discharge elimination system—
Marine waters; secondary treatment requirements, 45832
Municipal separate storm sewer systems; reapplication (permit reissuance) requirements, 41698
Ocean dumping; bioassay testing requirements, 51196
Ocean dumping; site designations—
Atlantic Ocean offshore Miami, FL, 2941
San Francisco Deep Ocean Disposal Site, 68964
Underground injection control program—
Montana, 58932
Water quality standards—
Arizona surface waters, 20686
Idaho human health criteria; withdrawn, 60616
Pennsylvania, 64816
Water programs:
Oil discharge program; Federal regulatory reform, 7419, 9646
Correction, 14031
Water quality standards:
Priority toxic pollutants; numeric criteria—
Dioxin and pentachlorophenol, 65183

PROPOSED RULES

Acquisition regulations:
Confidential business information; collection, use, access, treatment, and disclosure; certification requirements removed, 55126
Policy support contractors performance of response action work; ineligibility, 57623
Source selection process, 25440
Air and water programs:
Pulp, paper, and paperboard industries; effluent limitations guidelines, pretreatment standards, and new source performance standards, 36835
Air pollutants, hazardous; national emission standards:
Aerospace manufacturing and rework facilities, 55842
Equivalent emission limitations by permit; implementation, 21414
Flexible polyurethane foam manufacturing facilities, 68406
Industrial Combustion Coordinated Rulemaking Advisory Committee
Establishment, 31883
Meetings, 48452, 59211
New nonroad phase I small spark-ignition engines, nonhandle-held, class I and II; carbon monoxide standard, 34778
Organic chemical processes standards; 20+ listed source categories, 57602
Perchloroethylene emissions from dry cleaning facilities, 19887
Phosphoric acid manufacturing and phosphate fertilizers production, 68430
Polymer and resin production facilities (Group IV), 59849
Primary aluminum reduction plants, 50586
Radon emissions from phosphogypsum stacks, 20775, 36326
Hearing, 33053
State programs approval and Federal authorities delegation, 36326
Surface coating operations from new or existing shipbuilding and ship repair facilities—
Compliance date revision and implementation plan submittal deadline extension, 30846
Synthetic organic chemical manufacturing industry and other processes subject to equipment leaks negotiated regulation, 7761, 43698
Air pollution; standards of performance for new stationary sources:
Medical waste incinerators, 31736
Nebraska City Power Station, NE; alternate opacity standard rescission, 49987
Nonmetallic mineral processing plants, 33415
Starch production plants and volatile organic compounds used in cold cleaning machine operations, 54377
Volatile organic compound (VOC) emissions—
Architectural coatings, 32729, 40161, 46410, 52735
Automobile refinish coatings, 19005
Air pollution control; new motor vehicles and engines:
Clean-fuel and conventional vehicle conversions and small-volume limit provisions for small volume manufacturers certification, 140
Gasoline spark-ignition and diesel compression-ignition marine engines; emission standards, 4600, 9132, 12053
Heavy-duty engines, highway-operated; emissions control, 33421, 37715
New nonroad compression-ignition engines at or above 37 kilowatts—
On-highway compression-ignition engines in nonroad vehicles; use and replacement provisions, 58028
New non-road spark ignition and compression-ignition engines; reduced certification reporting requirements, 20779
Small Non-Road Engines Emissions Control Negotiated Rulemaking Advisory Committee—
Meetings, 2216
Urban buses (1993 and earlier model years); retrofit/rebuild requirements; equipment certification—
Post-rebuild 1997 emission levels; update, 58022
Air programs:
Accidental release prevention; regulated substances and thresholds list; modifications, 16598
Proposed stay of effectiveness, 16606
Ambient air quality standards, national—
Ozone and particulate matter, 29719, 37427, 65638, 65716, 67763
Ozone and particulate matter; State implementation plans; requirements policy, 65752
Ozone and particulate matter, and regional haze program development, 65764
Particulate matter; reference and equivalent surveillance methods, 65780
Clean Air Act—
Consumer products; national volatile organic compound emission standards, 14531
Special exemptions; American Samoa et al., 58158
Fuel and fuel additives—
Diesel fuel sulfur requirement exemption; Alaska, 42827
Gasoline containing lead or lead additives for highway use; prohibition, 3894
Guam; anti-dumping and detergent additization requirements for conventional gasoline; exemption petition, 53886
Motor vehicle registration and manufacturer testing and applicability to blenders of deposit control gasoline additives, 36535
Reformulated gasoline program; alternative analytical test methods use, 34775
Reid Vapor Pressure lower limit adjustment; reformulated gasoline sold in California, 20779
Reid Vapor Pressure volatility standard (1996 and 1997); relaxation approval, 16423
Gasoline retailers and wholesale purchaser-consumer fuel dispensing rate requirements
Implementation date delayed, 33053
National emission standards for hazardous air pollutants—
Owners or operators who construct, reconstruct, or modify major sources; control technology requirements, 13125
Radionuclide emissions from licensed facilities, 2765
Outer Continental Shelf air regulations—
Enforcement beyond 25-mile limit; delegation remand, 25173
Outer Continental Shelf regulations—
California, 2761, 36012, 66003
Pulp, paper, and paperboard industries; effluent limitations guidelines, pretreatment standards, and new source performance standards, 9383
Stratospheric ozone protection—
Fire extinguishers containing hydrochlorofluorocarbons (HCFCs); ban reconsideration, 37430
Motor vehicle air conditioners servicing and refrigerant recovery and disposal, 9014
Motor vehicle air conditioning alternative refrigerants; refrigerant mixing elimination, 64045
Ozone-depleting substances significant new alternatives policy program; substitutes list, 25604
Refrigerant recycling, 7762, 7858, 56493
Used class I controlled substances import; excise tax liability certification stay and reconsideration, 3361
Air programs; fuels and fuel additives:
Reformulated and conventional gasoline—
World Trade Organization; imported gasoline requirements determination baseline, 33703
Air programs; State authority delegations:
Washington, 6184

Air quality implementation plans:
Preparation, adoption, and submittal—
Federal regulatory review, 16068
Prevention of significant deterioration and nonattainment new source review; Federal regulatory review, 38250, 43030, 55252, 58497, 67274
Vehicle inspection and maintenance program requirements; motorist compliance enforcement mechanisms for pre-existing programs, 49680
Volatile organic compounds definition (VOC); HFC 43-10mee and HCFC 225ca and cb exclusion, 19231
Transportation conformity pilot program; participation, 35994
Transportation conformity rule; flexibility and streamlining, 36112
Air quality implementation plans; approval and promulgation; various States:
Alabama, 5358, 11168
Alaska, 33703, 53163
American Samoa et al., 38664, 42939
Arizona, 15019, 15745, 15752, 49087, 54972
California, 1727, 4946-4948, 5358, 5527, 5725, 7760, 8008, 10920, 15752, 17675, 19004, 19601, 20199, 20201, 20504, 29725, 32385, 37428, 38682, 52401, 54975, 56491, 56492, 56649, 56650, 57834, 64308
Colorado, 11169, 36004, 43501, 44264, 49716, 51631, 51659, 51877, 64647, 67515
Delaware, 1880, 2464, 7453
District of Columbia, 53166
Federal regulatory review, 16068
Florida, 3632, 6591, 18311, 49090, 66003
Georgia, 3891, 33414, 65496
Idaho, 27038, 66642
Illinois, 2464, 3631, 5526, 11168, 11596, 14520, 15751, 20201, 20504, 21405, 38683, 41372, 67516
Indiana, 3631, 4948, 11168, 11596, 14520, 15744, 30023, 55942, 58498
Iowa, 39375, 48873
Kansas, 51397
Kansas and Missouri, 18310
Kentucky, 8901, 14521, 16738, 33702
Louisiana, 30024, 31073, 37875, 48453, 54747, 55943
Louisiana et al., 53694
Maine, 5724, 53693
Maryland, 3632, 7453, 8009, 50787, 56183, 64307
Massachusetts, 2981, 5725, 11597, 41371, 44024
Michigan, 3891, 5724, 6592, 8009, 14522, 19233, 40592, 45926
Mississippi, 5359
Missouri, 4248, 4391, 7760, 9661, 10962, 10969, 39378, 40591, 43202, 64042, 68199
Montana, 11169, 51074, 54976
Nebraska, 4949, 5360, 5725, 64304
Nevada, 4949
New Jersey, 53692, 54976, 56172
New Mexico, 6179, 32385, 48453
New York, 49285, 51257, 60242
New York et al., 5363, 56930
North Carolina, 3633, 5723, 25840, 49426
North Dakota, 52864
North Dakota et al., 60671
Ohio, 1727, 2760, 3362, 3635, 9661, 17669, 20200, 24467, 24737, 52902
Oklahoma, 7760, 15751
Oregon, 24738, 28531, 37429
Pennsylvania, 2982, 4598, 5360, 14522, 15744, 24737, 29508, 36320, 37030, 39614, 39617, 51638, 53174, 55253, 67275
Puerto Rico, 31885
Rhode Island, 3892, 4392, 11798, 15019, 55943
South Carolina, 6178
Tennessee, 3362, 11167, 14521, 14694, 29725, 32386, 36534, 37428, 38423, 39377, 39378, 44024, 47099, 53693
Texas, 2751, 49716, 51651, 55943, 58671, 65504
U.S. Virgin Islands, 54976
Utah, 20200, 53180
Virginia, 1880, 11170, 30023, 48656, 48657, 57343
Virginia et al., 2982
Washington, 25841, 29515, 35998, 38129, 38683, 39378, 41371, 49717, 50465
West Virginia, 4246, 54747, 60253
Wisconsin, 5362, 5527, 9661, 11798, 15019, 15744, 18311, 18711, 21412, 28541, 29508, 37232, 39377, 45379
Wyoming, 47100
Air quality planning purposes; designation of areas:
Arizona, 21415
Colorado, 36004, 43501
Idaho, 29726
Illinois, 41372
Indiana, 58498
Kentucky, 16738
Louisiana et al., 53694
Michigan, 14522, 19233
Nebraska, 64308
Nevada, 41759
New Jersey et al., 2983
New Mexico, 6179
New York et al., 5363
Ohio, 2760, 3362, 3635
Pennsylvania, 2982
South Dakota, 4392
Virginia et al., 2982
Washington, 29515, 33879, 39378, 41764, 50465, 55259
Wisconsin, 29508
Wyoming, 47100
Clean Air Act:
Acid rain program—
Contiuous emission monitoring; excess emissions, etc., rules streamlining, 68340
Nitrogen oxides emission reduction program, 1442, 3893
Acid rain provisions—
Sulfur dioxide emissions allowance; auction design and timing change, etc., 28996
Sulfur dioxide emissions allowance; direct sale elimination and independent power producers written guarantee program, 28830
Enhanced monitoring program; compliance assurance monitoring, 41991
Correction, 46418
Enhanced monitoring programs compliance assurance monitoring, 53886
State air quality plans; designated facilities and pollutants—
Texas, 55612
State operating permits programs—
Alaska, 49091
Arizona, 55949
California, 45379
Connecticut, 64651
Idaho, 30570
Maine, 49289
Maryland, 2465
Massachusetts, 3893
Michigan, 32391
New Hampshire, 42222
New Jersey, 2990
New Mexico, 60061
New York, 39617
Pennsylvania, 9125
Rhode Island, 20202
Tennessee, 9661
Vermont, 26145
Virgin Islands, 2216
Drinking water:
Marine sanitation device standards—
Application requirements specific to drinking water intake no discharge zones, 54014
National primary and secondary drinking water regulations—
Enhanced surface water treatment requirements for waterborne pathogens and viruses, 26857
National primary drinking water regulations—
Lead and copper, 16348
Hazardous waste:
Decharacterized hazardous wastes potential human health or environmental risks—
Land Disposal Program Flexibility Act; surface impoundment study, 38684
Hazardous waste management system—
Contaminated media managed during government-overseen remedial actions; requirements, 18780, 33881, 41111
Hazardous waste program authorizations—
Indian Tribes; grant funds for development and implementation, eligibility, 30472, 46748
Identification and listing—
Constituent-specific exit levels for low-risk solid wastes, 6805
Exclusions, 14696, 25175, 32746, 32753, 42318, 51397
Military munitions rule; explosives emergencies; redefinition of on-site, 2990
Petroleum refining process wastes; land disposal restrictions, 4758, 5528
Recovered oil exclusion; correction, 13129
Land disposal restrictions—
Mineral processing wastes, etc., 2338, 12054
Wood preserving wastes and toxicity characteristic metal wastes, 21418
Management facilities; solid waste management units (SWMUs), corrective action, 19432
Particulate matter and continuous emissions monitoring systems for combustors; demonstration, 7232
Correction, 9532
Solid waste and hazardous waste recycling definition; public meeting, 55252
Solid waste disposal facility criteria (landfills)—
State/tribal permit program adequacy determination, 2584
State underground storage tank program approvals—
Alabama, 51875
Delaware, 40592
Treatment, storage, and disposal facilities—
Tanks, surface impoundments, and containers; organic air emission standards, 17863

Pesticide programs:
Atrazine, simazine, cyanazine, alachlor, and metolachlor; sale and use restrictions; State management plans; notification to Agriculture Secretary, 1883
Pesticides and ground water strategy; State management plan regulation, 33260, 57356
Registration and classification procedures; notification to Agriculture Secretary, 3363
Risk/benefit information; reporting requirements, 11839, 41764, 49427, 55259
Worker protection standards—
Decontamination supplies; notification to Agriculture Secretary, 14040
Restricted entry intervals for limited contact tasks; methyl parathion "double notification" not required, 19889
Warning signs; standard language and size requirements; notification to Agriculture Secretary, 14041
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
1,1,1,2-Tetrafluoroethane, 15913
1,1-Difluoroethane, 28118
2,4-D(2,4-dichlorophenoxyacetic acid), 6804
2,4-Dichlorophenoxyacedic acid, 4623
2-Bromo-2-nitro-1,3-propanediol, 15915
2-Propene-1-sulfonic acid, sodium salt, polymer with ethenol and ethenyl acetate, 24738
3-Dichloroacetyl-5-(2-furanyl)-2,2-dimethyloxazolidine, 31077
A-alkyl(C12-C15)-w-hydroxy poly(oxyethylene) sulfate, etc., 28120
Acephate, etc., 6592, 44269
Aluminum tris (O-ethylphosphonate), 18534
Avermectin B1 and its delta-8,9-isomer, 11357, 20780, 38428
Capsaicin and ammonium salts of fatty acids, 19233
Chlorothalonil, 1884, 31073
Chloroxuron, etc., 14694
Clomazone, 10297
Copper 8-quinolinolate, 33058
Cyfluthrin, 37233
Dicofol, etc., 8174, 26858
Diflubenzuron, 16745
Diquat, 13474
Fenarimol, 30200
Fluorine compounds, 20781
Glyphosate, 33469, 36689
Hexaconazole, 3363
Hexakis (2-methyl-2-phenylpropyl)distannoxane, 11359
Lactofen, 5726, 9399
Linuron, 33054
Maleic anhydride-diisobutylene copolymer, sodium salt, 36329
Methyl esters of tall-oil fatty acids, 26859
Metolachlor, 26149
N-acyl sarcosines and sodium n-acyl sarcosinates, 38423
Oxidized pine lignin, sodium salt, 13476
Oxo-alkyl acetates, 5728
Pentaerythritol stearates, 16747
Pesticide chemicals residues tolerances; revocation, 26861
Polybutene, 38426
Polyvinylpyrrolidone butylated polymer, 36331
Potassium citrate, 15911
Prosulfuron, 8903, 16742
Quizalofop ethyl, 18536, 31079
Quizalofop-p ethyl ester, 30204
Sethoxydim, 7764
Sodium and potassium bicarbonates, 57356
Sodium salt of acifluorfen, 16740
Sodium salt of fomesafen, 31075
Tau-fluvalinate, 24911
Triadimefon, 31081
Triphenyltin hydroxide, 8901
Vinyl alcohol-vinyl acetate copolymer, benzaldehyde-o-sodium sulfonate condensate, 37433
Vinyl pyrrolidone-acrylic acid copolymer, 30202
Withdrawal of proposed revocations, 50686
Xanthan Gum-modified, 4621
Radiation protection programs:
Spent nuclear fuel, high-level and transuranic radioactive wastes management and disposal; waste isolation pilot plant compliance
Criteria compliance certification, 58499
Reporting and recordkeeping burden reduction, 47840
Semi-annual agenda, 23610, 63122
Solid wastes:
Beverage containers and resource recovery facilities; management guidelines—
Federal regulatory review, 69059
Hazardous waste combustors, etc.; maximum achievable control technologies performance standards, 17358, 27038
Data availability, 43501
Municipal solid waste landfill facilities and hazardous waste treatment, storage, and disposal facilities; corporate owners and operators—
Financial assurance mechanisms, 50787
Products containing recovered materials; comprehensive guidelines for procurement, 57748
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 2772, 3365, 6806, 6807, 8012, 9401, 9403, 10298, 11597, 13131, 13794, 14280, 16068, 16234, 19889, 20202, 20785, 21422, 22004, 22006, 24261, 30207, 30575, 32765, 36858, 37435, 37875, 37877, 39104, 39383, 40371, 42402, 42404, 43203, 43205, 44025, 44269, 44275, 46418, 46749, 46753, 48657, 50788, 55260, 55261, 56194, 56197, 56931, 67678, 68695
Sites deletion; Minot Landfill site, ND, 67975
Toxic chemical release reporting; community right-to-know—
Chemical use, 51322, 51330, 55612
Copper metal; petition denied, 54381
Metal mining, coal mining, etc.; industry group list additions, 33588, 43207, 44278
Toxic substances:
Acrylamide and N-methylolacrylamide grouts; ban, 7454
Significant new uses—
Cyclohexyldiamino ethyl esters (substituted), 17272
Testing requirements—
Biphenyl, etc., 33178, 47853, 67516
Pharmacokinetics studies, 54383
Water pollution; effluent guidelines for point source categories:
Centralized waste treatment, 48806
Centralized water treatment, 56650
Leather tanning and finishing, 35705
Ore mining and dressing, 5364, 15917
Water pollution control:
Clean Water Act—
Pollutant analysis; analytical methods flexibility and approval, 36328
Pollutant analysis; test procedures guidelines, 2465
Great Lakes System; water quality guidance—
Polychlorinated biphenyls (PCBs) criteria for human health and wildlife, 54748
Selenium criterion maximum concentration, 58444, 66007
National pollutant discharge elimination system (NPDES)—
Marine waters; secondary treatment requirements, 7404
Permitting procedures; clarification and streamlining, 65268
Publicly owned treatment works pretreatment programs; permit application requirements, 8229, 39804
Ocean dumping; bioassay testing requirements, 7765, 13794
Ocean dumping; site designations—
San Francisco, CA, 54112
Water quality standards—
Arizona surface waters; 2766
Idaho human health criteria for arsenic; proposed withdrawal, 60672
Pennsylvania, 45379
Water programs:
Pollutants analysis test procedures; guidelines—
Oil and grease and total petroleum hydrocarbons, 1730, 26149

NOTICES

Agency information collection activities:
Proposed collection; comment request, 1922, 3029, 3395, 3396, 4992, 5397, 5546, 5549, 5761, 6373, 8271-8273, 9160, 10748, 10749, 11635, 11832-11834, 13172, 14303, 14771, 15065, 15066, 15068, 15246, 15801, 18137, 20520, 20814, 21460, 24486, 24488, 26901, 26903, 29092, 29093, 29551, 30061, 30609, 33113, 33114, 33732, 36875, 39448, 39450, 39641, 41147, 41404, 41605, 41784, 42243, 45959, 45964, 48152, 48682, 51107, 52449, 55147, 55293, 56229, 56539, 57411, 57672, 58065, 58750, 59884, 63840, 67328, 69089, 69090, 69092
Submission for OMB review; comment request, 2505, 2820, 3397, 4264, 4433, 4434, 5549, 6639, 6829-6833, 6995, 7101, 7259, 7260, 7506, 7507, 8061, 8618, 8619, 9161, 9162, 10341, 10342, 10750-10753, 14569, 16483, 16484, 18136, 19275, 24790, 24930, 24931, 25220-25222, 25665, 27073, 27074, 28575-28577, 29376, 29377, 29556, 29557, 30231, 30867, 31101, 31937, 32433, 33734, 34809, 34810, 34812, 36876-36878, 38726, 39644, 39957, 40636, 41148, 41406, 41407, 41785, 41786, 42884, 42885, 43542, 44049, 46800-46803, 51109, 51110, 51446, 52449, 52789, 52940, 53919, 54997, 57412, 59226, 64738, 65041, 65388, 65389, 66274, 67016, 67017, 68258, 68742
Air pollutants, hazardous; national emission standards:
Industrial Combustion Coordinated Rulemaking Advisory Committee—
Establishment, 40413
Promulgation schedule, 28197, 37542
Surface coating operations from new or existing shipbuilding and ship repair facilities, 44050
Air pollution; standards of performance for new stationary sources:
Coal preparation plants; coal dump truck unloading operations; information request, 29558
Air pollution control:
Clean Air Act grants—
Arizona, 6241
California, 6240, 11403, 21462

Air pollution control; new motor vehicles and engines:
California pollution control standards; Federal preemption waiver, 53371
California State nonroad engine and equipment pollution control standards; State standards authorization, 69093
International regulatory harmonization, 38200
Public meetings, 30657
Light-duty vehicle voluntary emission standards; report availability, 36559
Urban buses (1993 and earlier model years); retrofit/rebuild requirements; equipment certification—
Detroit Diesel Corp., 8275, 16739, 37734, 37738
Engine Control Systems Ltd., 41408
Englehard Corp., 20249
Johnson Matthey Inc., 16773
Post-rebuild particulate matter emission levels, 42764
Twin Rivers Technologies, 54790
Air programs:
Ambient air monitoring reference and equivalent methods—
Columbia Scientific Industries Model 5600 Oxides of Nitrogen Analyzer, 11405
Horiba Instruments, Inc; Model APNA-360 ambient nitrogen oxide monitor, etc., 11404
Clean Air Act—
Accidental release prevention requirements; model risk management programs; guidances availability, 31733
Outer Continental Shelf permits—
BP Exploration (Alaska) Inc.; exploratory oil well drilling in Beaufort Sea, AK, 49770
Stratospheric ozone protection—
Industrial process refrigeration leak repair requirements; training module and self auditing checklist; availability, 3399
Technician certification programs; revocation, 37741
Air programs; State authority delegations:
Alabama, 3030
Air quality; prevention of significant deterioration (PSD):
Permit determinations, etc.—
Campo Band of Mission Indians lands; solid waste landfill, 56679
Air quality implementation plans:
Preparation, adoption, and submittal—
Grand Canyon Visibility Transportation Commission; recommendations; hearings, 15068
Benzene waste operations; reporting and recordkeeping requirements, 52450
Border Environment Cooperation Commission:
Certification criteria document availability, 43543
Project guidelines and certification criteria; availability, 30063
Civil penalty enforcement cases; calculation of economic benefit of noncompliance, 53026, 65391
Clean Air Act:
Acid rain provisions—
Nitrogen oxides, etc.; permit and permit modifications, 50483, 50484
Opt-in permits, 26175, 40413
Permits, 2820
Small diesel refineries fuel desulfurization allowance allocations, 21462
State and local programs; list, 43544
State exemptions, 57414
Sulfur dioxide; draft permit modification, 67018
Sulfur dioxide control program; transferable allowances auctions and sales, 2821, 15934
Written exemptions, 11835, 57413
Citizens suits; proposed settlements—
American Petroleum Institute, 58547
American Petroleum Institute et al., 13858
Chemical Manufacturers Association et al., 43544
Citizens for Balanced Transportation, 52941, 58548, 64354
Delaware Valley Citizens' Council for Clean Air, 26903, 42021
Ober, Edward M. et al., 64082
Sierra Club, 46460, 52941, 60702
Sierra Club Legal Defense Fund, 13858, 26176, 48950
Sierra Club Legal Defense Fund et al., 69095
Montreal Protocol; production and import phaseout of ozone depleting substances; essential use exemptions applications, 51110
Risk management plan programs—
Offsite consequence assessment, ammonia refrigeration facilities, and data elements; guidance availability, 3031, 8058
Clean Water Act:
Effluent guidelines plan (biennial), 35042, 52582
St. Croix River, MN and WI; adequate facilities for safe and sanitary removal and treatment of sewage from all vessels; reasonable availability, 30868
Clean Water Act and Safe Drinking Water Act administration; performance evaluation studies; public meeting, 37464
Climate change actions under Berlin Mandate; issues analysis; workshop, 17893
Proceedings; comment request, 39453
Committees; establishment, renewal, termination, etc.:
Board of Scientific Counselors, 21463
Clean Air Act Advisory Committee, 55800
Environmental Education National Advisory Council—
Nominations request, 65391
Environmental Financial Advisory Board, 12071
Environmental Policy and Technology National Advisory Council; nominations request, 29094, 41606
FIFRA Scientific Advisory Panel, 5762, 65208
Food Safety Advisory Committee, 46641
Gulf of Mexico Program Policy Review Board, 48950
Industrial Non-Hazardous Waste Stakeholders' Focus Group, 8058
Local Government Advisory Committee, 2821
National Drinking Water Advisory Council, 66036
Membership nominations, 56540
National Environmental Education and Training Foundation, Inc.; Board of Directors appointment, 17891
Pesticide Program Dialogue Committee, 29749
Science Advisory Board, 15479
Confidential business information and data transfer, 162, 2506, 2822, 5398, 15069, 15480, 17699, 29558, 31102, 37050, 38727, 38728, 39958, 46641, 49769, 54436, 56230, 60279, 65209, 67799
Consumer labeling initiative; project initiation, 12012
Drinking water:
Low levels of arsenic, health effects; investigator-initiated grants request for proposals, 64739
Microbial contaminants and disinfectants/ disinfection byproducts; public meetings, 29560
Public water supply supervision program—
Arkansas et al., 2822
California, 2507
Hawaii, 17892
Illinois, 50485
Nebraska, 6242
Nevada, 29748
Vermont, 60280
Sole source aquifer determinations—
California, 47752
State revolving loan fund; implementation guidance availability, 55635
Underground injection control program—
Texas, 37051
Emergency response plans:
National Response Team's integrated contingency plan guidance; availability, 28642, 31103
Endocrine disruption by chemicals:
Screening and testing strategy development; public meeting, 20814, 54195
Environmental data collection and maintenance; facility identification initiative;, 52588
Federal regulatory review, 52588
Environmental Management Principles Code for Federal Agencies; issuance, 54062
Environmental reports; filing via electronic data interchange; policy, 46684
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 6996, 8059, 9450, 10755, 11836, 14097, 15251, 16249, 17296, 18586, 19932, 22057, 24933, 26177, 27346, 29094, 30233, 31938, 33735, 36725, 37741, 39133, 40415, 41608, 42607, 45967, 47125, 49455, 50821, 51937, 54437, 55294, 56541, 57869, 58548, 59436, 60702, 64741, 65571, 67331
Comment nonavailability due to government furlough and blizzard of 1996, 1380
Weekly receipts, 2507-2510, 3932, 4993, 6242, 6997, 8060, 9450, 10754, 11836, 14097, 15252, 16248, 17297, 18587, 19931, 22057, 24933, 26177, 27347, 29094, 30232, 31938, 33735, 35210, 36726, 37742, 39133, 40414, 41607, 42508, 43544, 45968, 47124, 48489, 49455, 50821, 51938, 53372, 54437, 55294, 56540, 57870, 58548, 59435, 60703, 64742, 65572, 67330, 68258
Alaska-Juneau Mine Project, AK, 11837
Bayou Lafourche siphon fresh water diversion restoration project, LA, 15253
Coastal nonpoint pollution control programs; States and territories—
Delaware, 43736
Michigan, 57673
Pennsylvania et al., 67532
Rhode Island, 43736
Wisconsin, 57673

Coastal nonpoint pollution control programs; States and territories—
Massachusetts, Maryland, U.S. Virgin Islands, and Northern Mariana Islands, 51914
Sabine Mining Co., TX; permit for waste water discharges, 3934
South Bay International Wastewater Treatment Plant, CA, 3934
Federal regulatory review:
Reinvention pilot programs (Project XL); community pilot program, 3032
Watershed-based trading; framework availability, 29563
Watersheds; effluent trading; policy statement, 4994
Grant and cooperative agreement awards:
Community/university partnership program—
University of Washington et al., 49456
Grants and cooperative agreements; availability, etc.:
Brownfields assessment pilot programs, 56953
Community/university partnership program (FY 1997), 65210
Computational science and environmental education program (EarthVision), 41238
Environmental education program (FY 1997), 65106
Great Lakes Priorities and Funding Guidance, 58881
Investigator-initiated grants program, 2254, 9451, 56231
Lead-based paint professionals; authorized State accreditation and certification programs, 21463
Multimedia environmental justice through pollution prevention program, 30063
Office of Environmental Justice program (FY 1997), 65214
Project XL (excellence and leadership) innovative technologies proposals, 47929
Rural communities hardship program; wastewater treatment services improvement; implementation guidelines, 46642
Sustainable development challenge program, 33913
Grants, State and local assistance:
Drinking water state revolving fund program; comment request, 56231
Grantee performance evaluation reports—
Alabama et al., 24934
Missouri et al., 15802
Performance partnership grants, State and tribal environmental programs; interim guidance, 9696, 42887
Wetlands protection, State/tribal development grants, 64354
Hazardous waste:
Economic and regulatory impact supporting data; national hazardous waste constituent survey; reporting and recordkeeping requirements, 16484
Land disposal restrictions; exemptions—
Abbott Laboratories, 3032, 52450
American Ecology Environmental Services Corp., 11838, 48683
ASARCO, Inc., 52942
Cabot Corp., 4996
Chemical Waste Management, Inc., 36880
Disposal Systems, Inc., 36879
Disposal Systems of Corpus Christi, Inc., 36880
DOE Waste Isolation Pilot Plant; no-migration petition, 42899
EMPAK, Inc., 36881
Rollins Environmental Services of Louisiana, Inc., 36879
Mixed radioactive/hazardous wastes storage prohibition; enforcement policy, 18588
Regional delisting contacts; list, 32798
Waste Isolation Pilot Plant (WIPP); transuranic radioactive waste management and storage; guidance availability, 46804
Hazardous waste management final authorization; reporting and recordkeeping requirements, 16786
Innovative technologies projects (Project XL)—
Weyerhauser Flint River Kraft pulp mill, GA; comment request, 53373
Integrated risk information system; pilot program; information request, 14570
Meetings:
Acute Exposure Guideline Levels for Hazardous Substances National Advisory Committee, 29095, 38446, 44307, 56541
Antimicrobial pesticides regulation, national workshop, 68259
Clean Air Act Advisory Committee, 5549, 7508, 15069, 24306, 33736, 36726, 47930, 48153, 50822, 53374, 54798, 56680, 59229
Common sense initiative—
Automobile manufacturing sector, 3696, 6834, 10342, 17297, 18728, 40415, 47751, 58406
Computers and electronics sector, 6834, 17297, 29559, 32795, 46461
Iron and steel sector, 6834, 17297, 29559, 32795, 46461, 58406
Metal finishing sector, 10756, 29559, 32795, 46461, 58406
Petroleum refining sector, 8278, 29559, 32795, 58406
Printing sector, 8278, 17297, 33737, 49457, 58406
Drinking water contaminant identification method; stakeholders, 55148
Drinking water health advisory program, 15253
Drinking water issues—
Microbial contaminants and disinfectants, etc., 47931, 58408, 64876
Water source protection, 66037
Effluent Guidelines Task Force, 18729, 42609, 67544
Emergency Planning and Community Right-to-Know reporting requirements; industry group list additions; public hearings, 33619, 40637
Endocrine Disruptors Screening and Testing Advisory Committee, 60280
Environmental data collection and maintenance; facility identification initiative
Public meetings, 59229
Environmental Financial Advisory Board, 36881
Environmental Laboratory Advisory Board, 31939, 43055
Environmental Policy and Technology National Advisory Council, 13859, 29095, 30064, 36367, 43055, 43760, 54438, 58188, 59437, 64082
Federal Facilities Environmental Restoration Dialogue Committee, 1755
FIFRA Scientific Advisory Panel, 19276, 47126
Food Safety Advisory Committee, 46641, 50020, 54438, 57414, 64355
Good Neighbor Environmental Board, 7102, 33737, 68260
Grand Canyon Visibility Transport Commission, 24791
Gulf of Mexico Program Citizens Advisory Committee, 58683
Gulf of Mexico Program Joint Issue Committee and Technical Advisory Committee Co-Chairs, 18592
Gulf of Mexico Program Joint Management and Policy Review Board Committees, 20522, 69095
Gulf of Mexico Program Management Committee, 16485, 53374
Industrial Non-Hazardous Waste Stakeholders Focus Group, 41608
Lead-based paint hazards; dialogue process on identification, 5766
Lead model validation workshop, 52790
Local Government Advisory Committee, 16485, 39959
Mobile Sources Technical Advisory Committee, 13859
Monte Carlo methodology for human health risk assessment; technical workshop, 18138
National Advisory Council for Environmental Policy and Technology, 42901
National Drinking Water Advisory Council, 18139, 55149, 64083
National Environmental Education Advisory Council, 4997, 37051
National Environmental Justice Advisory Council, 15480, 50293, 56679
National radon proficiency program privatization; workshop, 19277
Ozone Transport Commission, 3936, 16485, 40805
Paint stripper chemicals; dibasic esters; toxicity testing and human exposure potential evaluation, 67332
Pesticide Program Dialogue Committee, 29749, 57414
Polychlorinated biphenyls (PCBs)—
Cancer dose-response assessment and application to environmental mixtures; peer-review workshop, 19278
Risk Assessment and Risk Management Commission, 3399, 15481, 19279, 28577
Sanitary Sewer Overflows Advisory Subcommittee, 43545
Sanitary Sewer Overflows Dialogue, 6374
Science Advisory Board, 4435, 4773, 6004, 9162, 9989, 15254, 15481, 19279, 19932, 19933, 24791, 29560, 29561, 32796, 33917, 43240, 43545, 48950, 49458, 54196, 56542, 58683, 59437, 63847, 65043, 65572, 68743
Scientific Counselors Board Executive Committee, 41411, 52791, 67800
Small Town Environmental Planning Task Force, 27347
State and Tribal Toxics Action Forum Coordinating Committee and Projects, 5550, 28578, 60098
State FIFRA Issues Research and Evaluation Group, 17298, 27872, 36368, 50823, 60099
Toxic Substances Control Act; health and safety studies reporting; public meeting, 43546
U.S. Government Representative to North American Commission on Environmental Cooperation—
Governmental Advisory Committee, 5399, 42609
National Advisory Committee, 5399, 42610
Urban Wet Weather Flows Advisory Committee, 33737
Urban Wet Weather Flows Advisory Committee et al., 1380, 7790, 15256, 18139, 46462, 59885
Whole effluent toxicity (WET); implementation issues; stakeholders' meeting, 41149
Worker protection standard; agricultural workers and pesticide handlers, 29750, 40638
Municipal solid waste disposal facilities; no-migration petitions; guidance document, 58189

Municipal solid waste landfill permit programs; adequacy determinations:
Alaska, 60000
Indiana, 52791
Kansas, 32434
Nebraska, 32436
South Dakota, 48683
Utah, 30065
West Virginia, 9451
Wisconsin, 59096
National Food Processors Association et al.; petition to modify policy:
Pesticide coordination policy; response to petitions, 2378
Organization, functions, and authority delegations:
Headquarters Library and INFOTERRA; revised hours for public access, 44308
Underground Storage Tanks Office Docket; relocation, 41464
Pesticide applicator certification; Federal and State plans:
Nebraska, 11405, 36368
Oregon, 67800
Pesticide, food, and feed additive petitions:
AgrEvo USA Co., 39964
American Cyanamid Co., 68036
Asgrow Seed Co., 27348
Aspergillus Flavus Isolate AF3, 7512
BASF Corp., 26178
Ciba-Geigy Corp., 56954
Ciba-Geigy Corp. et al., 33738, 36373, 39965
Clofencet, 65392
Clopyralid, 65221
Dicamba, 24492
DowElanco, 67801
E.I. du Pont de Nemours & Co. et al., 18594
Ecoscience Corp., 1923
Entek Corp., 36375
Fenoxyprop-ethyl, 14772
Fenvalerate; conversion to esfenvalerate, 16784
Glufosinate-ammonium, 58684
Griffin Corp. et al., 34811
Iprodione, 28578
ISK Biotech Corp., 14773
Makhteshim Chemical Works et al., 3399
Mann Lake Ltd., 40841
Merck Co., Inc., 65043
Monsanto Co., 67804
Monsanto Co. et al., 41153
Rhone-Poulenc Ag Co., 39966, 67807
Spinosad, 59437
Sulfentrazone, etc., 57420
Thiazopyr, 59440
Trichoderma harzianum Rifai strain KRL-AG2, 14098
Valent U.S.A. Corp., 65395
Zeneca AG Products, 3401
Pesticide programs:
Agricultural worker protection standards program; public meetings, 6243, 15256, 37890, 42901
Cholinesterase enzyme assays; measurement in laboratory rats and dogs tissue; standard operating procedure; availability, 18593
Dried commodities as raw agricultural commodities status; interpretive ruling, 2366
Federal Food, Drug, and Cosmetic Act—
Plant-pesticides policy, 37891
Federal Insecticide, Fungicide, and Rodenticide Act—
American Cyanamid Co.; genetically engineered microbial pesticide; small-scale field testing, 11838
DuPont Agricultural Products of Delaware; genetically engineered microbial pesticide; small-scale testing, 24934
Plant-pesticides policy, 37891
Pesticide data submitters list—
Availability, 57415
Update, 15939
Pesticide products; sale, distribution, and use of existing stocks—
Public involvement in significant risk reduction decisions, 16632
Propargite product labeling; deletion of ten uses, 19936
Propoxur, 7508
Toxicologically significant levels of pesticide active ingredients; policy statement availability, 1928, 65573
Worker protection standards—
Chlorothalonil; exception, 29096
Chlorothalonil; withdrawn, 68034
Rose harvesting by hand cutting; exception, 56100
Pesticide registration, cancellation, etc.:
2-Mercaptobenzothiazole, etc., 11406
4-Chlorophenoxyacetic, etc., 11408
Aatrex 4l Brand Atrazine/season-long Weed Cont. in Corn, etc., 9454
Agridyne Technologies, Inc., et al., 46642
American Cyanamid Co., 33116
Babolna Bioenvironmental Centre Ltd. et al., 52942
Bayer Corp. et al., 19279
Bedoukian Research, Inc., et al., 31104
Bonide Insect Fog, etc., 38731
Buckman Laboratories, Inc., 55295
Cartilage Technologies, Inc., 68035
Ciba-Geigy Corp., 7261
Ciba-Geigy Corp. et al., 5768, 20815
Cyanazine, 8186, 39024
Cygon SC-9 Systemic Insecticide, etc., 43241
D.Z.N. Diazinon Ag 500, etc., 57416
DeKalb Genetics Corp., 11409, 39959
Diethyl toluamide, etc., 25666
Dividend Fungicide, etc., 51447
Dragon Ferbam Wettable Fungicide, etc., 38728
Drexel LV6 Weed Killer, etc., 57419
DuPont Diuron Technical Herbicide, etc., 31105
D-Z-N diazinon AG500, etc., 68260
Ecogen Inc. et al., 39960
Ecoval Technologies Inc., 36369
Ethylene bisdithiocarbamates (EBDCs), 42244
Ethylene Oxide 100%, etc., 36369
Fenitrothion, etc., 2510
Flying Insect Killer, etc., 64083
Fungimex, etc., 16779
Garden Rotenone Dust, etc., 9456
IJQ Products, Inc., et al., 39961
Iprodione, 41152
Johnson & Johnson, Inc., 55296
Lakeshore Enterprises, 4662, 21466
Leco Plastics, Inc., 11410
Limonene, etc., 3401
Mann Lake Ltd., 40840
Martin's Cube Powder, etc., 7509
Merck Research Co., 36372
Metalaxyl, 19281, 37743
Metam-sodium, 24935
Methoxychlor 25% Insecticide, etc., 50294
Methoxychlor, etc., 8928
Miller's MCP Amine 4, etc., 3400
Monsanto Co. et al., 16781, 52943
Naham, etc., 15939
Ortho Methoxychlor 70, etc., 24489
Ortho Rose & Floral Dust Formula IV, etc., 1924
Pennant 5G Granular Herbicide, etc., 11411, 16782
Provado 1.6 Flowable, etc., 8930
Registration maintenance fees; non-payment, 39962
Reregistration eligibility decisions; development schedule, 24490
Rhone Merieux, Inc., et al., 19282
Rhone-Poulenc Ag Co., 29751
Rigo Home Pest Control RTU, etc., 65218
Rigo's Best Dipel Dust, etc., 43244
Rodenticide baits and other vertebrate pesticides, 68035
Rohm & Haas, 5769
S.C. Johnson & Son, 46643
S.C. Johnson & Son, Inc., 5770
Stine Microbial Products, 52944
Sumitomo Chemical Co. Ltd. et al., 30234
Toagosei Co., 65220
Valent U.S.A. Corp., 38447
Woodstream Corp., 24936
Zeneca Inc., 55297
Pesticides; emergency exemptions, etc.:
Bifenthrin, 4659, 8932, 41154
Carbofuran, 7513, 13492, 20816, 24493, 36376, 39967
Carbofuran, etc., 52945
Carboxin, 55983
Chlorfenapyr, 55984
Chlorfenpyr, 7514, 7515
Cymoxanil, etc., 4661
Dimethomorph, 13493
Dimethomorph, etc., 58189
EarthGro, Inc., 28580
Emamectin benzoate, 10757
Fenoxycarb, 18140
Imidacloprid, etc., 21467, 39968
Mancozeb, 8933
Metalaxyl, etc., 31108
Metolachlor, 8934, 51450
Norflurazon, 4663
Norflurazon, etc., 18142
Pirate, 11413, 15940, 38447, 51451
Pirate, etc., 6640
Pirimicarb, 18141
Propazine, 4664, 10758, 16785
Puma IEC, 24494
Pyridaben, 39970
Pyriproxyfen, etc., 10756, 36726
Tebufenozide, etc., 55985
Pesticides; experimental use permits, etc.:
Abbott Laboratories et al., 15941, 58190
AgrEvo USA Co. et al., 24495
Aspergillus flavus (AF36), 5771
Ciba Plant Protection et al., 4660, 36377
Trichodex, 5767
Pesticides; safe use, storage and disposal:
Audio technologies; introduction, 64356
Pesticides; temporary tolerances:
Abbott Laboratories, 30236, 38733
American Cyanamid Co., 66658
Aspergillus flavus, 30235
Ciba Plant Protection, 24496
Cyclanilide, 29751
Cyfluthrin, 26904
Elf Atochem North America, Inc., et al., 30237
Fipronil, 7516
FMC Corp. et al., 3696
Glufosinate-ammonium, 20817
Gowan et al., 39971
Iprodione, 16786
Iprodione, etc., 10760
Monsanto Agricultural Co., 39972
Northrup King Corp., 5772, 39972
Rhone-Poulenc Ag Co., 67544
Rhone-Poulenc Ag Co. et al., 29752
Tralomethrin, 39973
Tralomethrin and its metabolites, 39974
Trichodex, 7516, 30236
Pollutants in the environment, analysis; conference and training workshop, 17892

Prenatal developmental toxicity study and reproduction and fertility effects testing guidelines; availability and comment request, 8282
Reformulated and conventional gasoline; annual reports submission; deadline extension, 7790
Reporting and recordkeeping requirements, 6998, 14571, 27348, 34812, 40416, 42020
Reporting and recordkeeping requirements; hazardous waste reports, etc., 49770
Reports; availability, etc.:
Acute toxicity studies—
Conduct; comment request, 34812
Self certification, 26178
Carcinogen risk assessment guidelines, 17960
Benchmark dose peer consultation workshop, 44308
Reevaluation process, 32799
Cleaner technologies substitutes assessment; lithographic blanket washes, 41155
Environmental justice compliance analysis; guidance, 36727
Federal facilities cleanup principles and recommendations; availability, 16632
Generic guidance risk management program; guidance, 3031
Hazardous wastes characteristics scoping study, 50295, 58549
Individual facility site profiles availability, 55800
National Lead Laboratory Accreditation Program, 58408
Offsite consequence assessment; guidance, 3031
Oxyfuels information needs, 42611
Ozone and related photochemical oxidants; air quality criteria, 44057
Paper products recovered materials advisory notice, 26986
Particulate matter; air quality criteria, 20522
Permits Improvement Team environmental permitting concept paper and task force recommendations, 21856, 37744, 41252, 47931
Polychlorinated biphenyls (PCB's)—
Cancer dose-response assessment and application to environmental mixtures, 7517, 56680
Recovered materials advisory notice procurement guidance; draft, 57760, 60154
Risk Assessment and Risk Management Commission—
Draft report, 8283
Risk-management decision-making framework; availability, 68745
Solvents and petroleum refining; data availability, 47751
State Revolving Fund; funding framework policy and guidance, 55297
Streams and small rivers surveys; biological criteria, 42610
Urban soil lead abatement demonstration project; integrated report, etc., 25669
Waste Technologies Industries (WTI) incinerator risk assessment issues, 30868
Wood furniture finishing and cleaning operations; control techniques guidelines document, 25223, 50823
Reproductive toxicity risk assessment; guidelines availability, 56274
Right-to-know laws and pollution prevention requirements, Federal compliance; Federal facility workshops, 17700
Risk assessment, ecological; guidelines; availability and comment request, 47552
Senior Executive Service:
Performance Review Board; membership, 54644
Small business compliance incentives; interim policy, 27984
Solid wastes:
RCRA public participation bibliography; public input request, 15942
Recovered materials advisory notices—
Floor tile, structural fiberboard, and laminated paperboard recommendations; clarification, 58067
State-assured programs; reporting and recordkeeping requirements, 54998
Strategic plan; Research and Development Office, 29099, 31109
Superfund; response and remedial actions, proposed settlements, etc.:
Albion-Sheridan Landfill Site, MI, 20818
Arthur Dearing and Midwest United Industries, Inc., 37745
Automatic Industrial Plating, Inc., Site, IL, 43056
Bern Metals Site, NY, 6374
Black Hawk Iron and Metals Site, IA, 39645
Bohaty Drum Site, OH, 5550, 15802
Bollinger Steel Removal Site, PA, 6375
Bonifield Brothers Site, MO, 43246
C&D Recycling Site, PA, 15257
Carroll & Dubies Site, NY, 5550
Chemical Commodities, Inc. Site, KS, 18729, 18730
Chemical Handling Corp. Site, CO, 37052
Chem-Solv, Inc. Site, DE, 67333
City Bumper Site, Cincinnati, OH, 1929
Colorado School of Mines Research Institute Site, CO, 48951, 65400
Conservation Chemical Co. of Illinois Site, IN, 29754, 65401
Denver Radium Site, CO, 55302
Doepke Holliday Site, KS, 60099
East Multnomah County Groundwater Contamination Site, OR, 6244
Elizabethtown Landfill Site, PA, 49771
Fields Brook Site, OH, 18595
Foote Mineral Superfund Site, PA, 13191
GE/Moreau Site, NY, 2823
Gray PCB Site, KY, 52946
Groveland Wells Nos. 1 and 2 Superfund Site, MA, 7102
Hansen Container Site, CO, 37745, 65573
Hexagon Laboratories Superfund Site, NY, 57674
Hi View Terrace Site, NY, 7103
Indiana Woodtreating Corp. Site, IN, 31110
Industri-Plex Site, MA, 2824, 58550
J&A Enterprises Site, AL, 2823
Kin-Buc Landfill Site, NJ, 2823
L.H. Inc. Site, OH, 38733
Liberty Borough, PA, 54197
Lorentz Barrel and Drum Site, CA, 40416
Manistique River/Harbor Site, MI, 60281, 64948
Marathon Battery Co. Site, NY, 67019
Marco of Iota Site, LA, 46463, 50296
MIG DeWane Landfill Site, IL, 50296
Muratti Environmental Site, PR, 67019
National Pin Service Site, NC, 20819
National Tank Truck Carriers, Inc., 4265
Ninth Avenue Dump Site, IN, 1929
Novak Sanitary Landfill Site, PA, 10760
Odessa Drum Site, TX, 45968
Old City Landfill Site, IN, 7103
Osage Metals Site, KS, 37471
Palmerton Zinc Superfund Site, PA, 9457
Peerless Industrial Paint Coatings Site, MO, 21178
Photech Site, NY, 56234
Pipe and Piling Superfund Site, NE, 60703
Prestolite Battery Site, IN, 52451
Quanta Resources Syracuse Site, NY, 67018
Ramapo Landfill Site, NY, 2825
Raymark Industries, Inc., Site, CT, 43056
Regional Enterprises Site, VA, 60283
Republic Steel Quarry National Priorities List Site, OH, 50823
Response action selection; administrative records availability, 39646
San Gabriel Valley Sites, CA, 26515
Sidney Landfill Site, NY, 2826, 65401
SMS Instruments, Inc., NY, 9164
Summitville Mine Site, CO, 41156
Sussex County Landfill site, DE, 67811
Taylor Road Landfill Site, FL, 55987
Thermo-Chem, Inc., 4435
Tonolli Corp., 4997
Tonolli Corp. Site, PA, 43057
Tri-Cities Barrel Site, NY, 3698
Tulalip Landfill Site, WA, 36058
Union Steel Products, Inc. Site, MI, 37893
Waukegan Paint & Lacquer Co., Inc. Site, IL, 30067
Witco Corp. Site, NJ, 6375
XXKEM Site, OH, 14572
Superfund program:
CERCLA reimbursement petitions; submittal and review procedures; guidance document availability, 55298
Prospective purchaser agreements—
Allied Brands Chemical Co. Site, GA, 65573
Calhoun Park Area Site, SC, 29562
Croydon Site; PA, 42902
D.C. Franche Site, IL, 15802
Kansas City Structural Steel Site, KS, 2824, 4814
National Mine Tailings Site, MO, 36378
Rutledge Property Superfund Site, SC, 66275
Southern Crop Site, FL, 41156, 46462
Upper Animas Mining District Site, CO, 36057
Soil screening levels, risk-based; development guidance; availability, 27349
Toxic and hazardous substances control:
Chemical testing waiver request—
Rhone-Poulenc, 65402
Chemical testing—
Conditional exemptions, 51453
Data receipt, 3403, 3936, 11414, 13192, 17700, 21179, 25224, 29562, 36378, 42611, 47752, 49135, 58688, 67333, 67334
Master testing list, 1996; availability, 65936
Interagency Testing Committee—
Dermal absorption rate testing; enforceable consent agreements; proposal request; test protocol text, 14773
Report, 4188, 39832
Premanufacture exemption approvals, 6835, 11415, 30610, 45968, 50297, 51751, 66661, 68039
Premanufacture notices receipts, 5646, 16832, 30120, 39816, 59744
Review period extension due to furlough, 657
Toxic substances:
Asbestos-containing materials in schools—
State waiver requests, 8619
Urea-formaldehyde pressed wood building materials; exposure testing pilot study; report availability, 41411
U.S.-Canada Great Lakes Basin; elimination of persistent toxic substance discharge:, 42902
Draft availability, 42902
Strategy availability, 52946
Unified library of OPPTS guidelines:
Ecological effects test; availability, 16486

Fate, transport, and transformation; availability, 16486
Health effect test guidelines; availability, 31522
Occupational and residential exposure, biochemicals, and microbial pesticides; test guidelines; availability, 8279
Product properties and residue chemistry, 44308
United States-Mexico Border XXI program; draft framework document availability, 28581
Waste Isolation Pilot Plant, NM:
Department of Energy petition for no-migration determination; termination of review, 60704
Radioactive waste disposal standards; compliance application guidance document availability, 19283
Water alliances for voluntary efficiency (WAVE) program; reporting and recordkeeping requirements, 58408
Water pollution; discharge of pollutants (NPDES):
Alaska; log transfer facilities; general permit, 51112, 57425
Alaska; placer mining—
General permits, 3403, 15261, 64796
Gulf of Mexico OCS operations—
Eastern portion; oil and gas extraction category; general permit, 64876
Western portion; oil and gas extraction category; general permit, 41609
Maine et al.; construction dewatering facilities; general permit, 19284
North Slope of Brooks Range, AK; oil and gas extraction; general permit, 40417
Seafood processors in Alaska in U.S. waters; final general permit
Alaska, 4265
Sludge management program modification application; Utah, 16787, 53919
Storm water discharges from industrial activity; multi-sector general permit, 5248, 6412, 50020
Water quality-based effluent limitations in storm water permits, 43761, 57425
Water pollution control:
Clean Water Act—
Class II administrative penalty assessments, 15943, 20819, 24793, 32437, 48952, 52452, 54197, 57423, 57424, 64743
State water quality-limited waters requiring total maximum daily loads (TDMLs) preparation lists; availability, 36059
Total maximum daily loads: list of waters; availability, 1930
Marine sanitation device standard; petitions—
Massachusetts, 64743
National pollutant discharge elimination system; State programs—
Louisiana, 15258, 37746, 47932, 58550
Oklahoma, 45420, 65047
Texas et al., 37894

Environmental Quality Council

See Council on Environmental Quality

Equal Employment Opportunity Commission

RULES
Conflict of interests, 7065
Employment discrimination:
Age Discrimination in Employment Act—
Apprenticeship programs coverage, 15374
Employment discrimination complaint procedures in programs or activities receiving Federal financial assistance; complaint procedures, 42556
Federal Sector Equal Employment Opportunity:
Regulatory time limits extension; initial appeals filing, class action appeals, attorney fees motions, prohibited discrimination initial appeals, etc., 17576
Organization, functions, and authority delegations:
State and local fair employment agencies designation—
Orange County, NC; Human Relations Commission, 21370
Palm Beach County, FL; Equal Opportunity Office, 21370
Recordkeeping and reporting requirements:
Elementary-secondary staff information report (EEO-5); discontinuation, 33659
PROPOSED RULES
Semi-annual agenda, 23738, 63238
Unsupervised Waivers of Rights and Claims under Age Discrimination in Employment Act Regulatory Guidance Negotiated Rulemaking Advisory Committee:
Correction, 2335
Meetings, 1282, 3624, 13794, 20768, 34405
Cancellation, 3624
NOTICES
Agency information collection activities:
Proposed collection; comment request, 10761, 31110, 48686, 63847, 67549, 68040
Submission for OMB review; comment request, 25670, 42612
Meetings; Sunshine Act, 1437, 3088, 4301, 5063, 6063, 8283, 18394, 18730, 29378, 52946, 67550

Executive Office of the President

See Central Intelligence Agency
See Council on Environmental Quality
See Federal Procurement Policy Office
See Management and Budget Office
See National Drug Control Policy Office
See National Education Goals Panel
See Presidential Documents
See Science and Technology Policy Office
See Trade Representative, Office of United States

Export Administration Bureau

RULES
Alaskan North Slope crude oil exports; establishment of license exception TAPS, 27255
Export administration regulations:
Computers, digital; export and reexport, 67448
Key escrow (encryption) information security equipment and software; licensing, 65462
Restructuring, reorganization, and simplification, 12714, 55740
Correction, 64272
License exceptions; reorganization, 64272
Export licensing:
Commerce control list—
Biological warfare experts group; biological weapons production equipment, etc., 41326
Commercial communications satellites; enhanced national and foreign policy controls, 54540
Encryption items transferred from U.S. Munitions List to the Commerce Control List, 68572
Nuclear nonproliferation special country list, 3555, 6064
Computer export control reform, 2099
Correction, 5677
Iran; economic sanctions (E.O. 12959 implementation); imposition, 8471
Restrictive trade practices or boycotts—
Jordan; boycott-related actions and agreements considered no longer presumed boycott-related, 14243
PROPOSED RULES
Export licensing:
Foreign policy-based controls; review of effects, 51395
NOTICES
Agency information collection activities:
Proposed collection; comment request, 4408, 8910, 10561, 37043, 55786
Submission for OMB review; comment request, 34420, 53189
Alaskan North slope crude oil ban lifting; public hearings, 2484
Antiboycott regulations; implications of termination of Arab economic boycott between Jordan and Israel, 3669
Export of controlled items; temporary extension of license validity period, 1559
Export privileges, actions affecting:
Doornbos, 68226
Gato, James J., 16896
Hoffman, Ronald J., 4762
ISP International Spare Parts GmbH, 31504, 40708
Johansen, Leif Kare, 5980
Korelski, Helmut, 68227
Lasarray Corp., 1745
Lasarray S.A., 1746
McCarthy, Walton W., 55130
MEGA Computer Corp. et al., 19257
Nothacker, Wolfgang, 31505, 40708
Rodco International, Inc., 54418
Scientific International, Inc., 5979
Serfilco, Ltd., et al., 30216, 38436
Foreign availability assessments:
Stored program controlled equipment for testing integrated circuits "denied license" assessment, 1189
Meetings:
Information Systems Technical Advisory Committee, 2485, 9424, 25620, 47736, 65375
Materials Processing Equipment Technical Advisory Committee, 14048
Materials Technical Advisory Committee, 19258, 42831, 65521
President's Export Council, 643, 20790, 42231, 50409
Regulations and Procedures Technical Advisory Committee, 2999, 19258, 31921, 43733, 58167
Sensors and Instrumentation Technical Advisory Committee, 25189, 43332, 58512
Sensors Technical Advisory Committee, 5533
Transportation and Related Equipment Technical Advisory Committee, 2791, 15460, 42832, 58035
National Defense Stockpile; market impact of proposed disposals of excess commodities, 51403
Unprocessed timber from non-Federal public lands in 17 Western States; export ban, 56942

Export-Import Bank

NOTICES
Agency information collection activities:
Proposed collection; comment request, 6375
Submission for OMB review; comment request, 19060
Environmental review procedures and guidelines; effective date extension, 3423, 17701
Meetings:
Advisory Committee, 15262, 26179, 46464, 59886

Family Support Administration

See Community Services Office
See Refugee Resettlement Office

Farm Credit Administration

RULES
Farm credit system:
Accounting and reporting requirements; high risk assets, 18235
Funding and fiscal affairs, loan policies and operations, and funding operations—
Book-entry procedures for securities, 67188
Federal Agricultural Mortgage Corporation (Farmer Mac); unsecured debt and guaranteed securities book-entry procedures, 31392
Global debt securities, 12015
Shareholders; director elections; effective date, 1274
Loan policies and operations—
Loan information disclosure, 11303, 20125
Federal claims collection:
Civil money penalties; inflation adjustment, 54728
Federal regulatory reform, 67181
National Flood Insurance Reform Act of 1994; implementation:
Loans in special flood hazard areas, 45684
PROPOSED RULES
Farm credit system:
Capital adequacy and customer eligibility for FCS institutions, collateral ratio for banks, etc., 42092
Disclosure to shareholders and investors in FCS system; quarterly reports dissemination, 53331
Funding and fiscal affairs, loan policies and operations, and funding operations—
Foreign denominated debt securities, 47829
Loan policies and operations—
Loan underwriting; Federal regulatory review, 16403
Short- and intermediate-term credit; FCS (System) and non-System lenders, 24907, 37230
Semi-annual agenda, 23940, 63424
NOTICES
Association structure; mergers of unlike associations policy statement, 19938
Disaster relief efforts by farm credit institutions; policy statement, 37471
Meetings; Sunshine Act, 574, 3966, 6688, 8061, 8935, 9458, 11083, 11209, 15803, 17701, 20523, 26179, 32438, 36378, 39134, 43761, 47753, 49771, 54645, 58191, 65223
Privacy Act:
Systems of records, 68262

Farm Credit System Insurance Corporation

RULES
Conflict of interests, 4349
Federal claims collection:
Civil monetary penalties; inflation adjustment, 55079
PROPOSED RULES
Semi-annual agenda, 23948, 63432
NOTICES
Insurance premiums adjustments; policy statement, 16788, 39453
Stand-alone assistance; policy statement, 17299

Farm Service Agency

RULES
Agricultural conservation programs:
Conservation reserve program (1986-1990), 10671, 43943
Conservation reserve program (1991-2002), 43943
Dairy indemnity payment program, 64601
Extension, 18485
Farm marketing quotas, acreage allotments, and production adjustments:
Burley tobacco, 50423
Peanuts, 36997, 60509
Tobacco, 37672, 63697
Federal Agriculture Improvement and Reform Act of 1996:
Conservation provisions; implementation
Public forums, 52671
Farm program provisions implementation, 37544
Correction, 49049
Federal regulatory reform:
Federal assistance and grant coordination programs and projects evaluation (OMB A-95), 6309
Freedom of Information Act; implementation, 32645
North American Free Trade Agreement (NAFTA):
End-use certificate program, 32641
Organization, functions, and authority delegations:
Rural Housing Service and Rural Business-Cooperative Service; agency name changes, 2899
Program regulations:
Business and industrial loan program, 67624
Audit requirements, 18493
Construction and other developments seismic safety requirements compliance requirements; planning and performance, 65153
Housing loans and/or grants; lobbyist disclosure provisions; Federal regulatory reform, 39850
Intermediary relending program loan limits; loan limit increase, 6761
Liquidated guaranteed loans; future recovery of losses, 43147
Loan assessment, market placement, and seasoned direct loan borrowers graduation to loan guarantee program, 35916
Nonprofit National Corporations Loan and Grant Program; Federal regulatory reform, 55877
Program-related instructions, construction and repair, and housing; duplicate regulations removed, 56114
Real estate title clearance and loan closing procedures, 11709
Rural technology and cooperative development grants, 3779
Program regulations, etc.:
Federal regulatory reform—
Obsolete CFR subparts removed, 21361
Single family housing; direct section 502 and 504 programs; reengineering and reinvention, 59762
Correction, 63928, 65266
Wetlands reserve program; CFR part removed, 26423
PROPOSED RULES
Agricultural conservation programs:
Conservation reserve program regulations, long-term policy; consolidation and CFR parts removed, 49697
Cotton warehouses:
Electronic cotton receipts issuance, 60637
Farm marketing quotas, acreage allotments, and production adjustments:
Peanuts, 59840
Tobacco, 5316
Federal Agriculture Improvement and Reform Act of 1996:
Conservation provisions; implementation—
Public forums, 52664
Federal claims collection; administrative offset, 45907
Program regulations:
Business and industrial loan program, 3853
Housing—
Rental housing loans; Section 515, 4814
Personal property—
Post bankruptcy loan servicing notices, 37405
Rural housing—
Rental housing loans; Section 515 preapplication processing, 1153
Water and waste loans and grants; regulations consolidation, 48075
NOTICES
Agency information collection activities:
Proposed collection; comment request, 3900, 5372, 11183, 15920, 33485, 47479, 51400, 51401, 60677, 65010, 66012, 67767
Marketing quotas and penalty rates:
Tobacco, 32425
Meetings:
National Conservation Review Group, 2790
Program regulations:
County and area committees; farm credit programs loan eligibility determinations, 16461
Warehouses; licensed, and cancellations and/or terminations; lists availability, 6967

Federal Aviation Administration

RULES
Air carrier certification and operations:
Aircraft flight simulator use in pilot training, testing, and checking and at training centers, 34508
Check airmen and flight instructors in simulators—
Advanced simulation plan, 30726, 39859
Separate training and qualification requirements, 30734, 34927
Commuter operator requirements, 30432
Correction, 35628
Crew resource management (CRM) training requirements, etc.—
Correction, 2869
Domestic, flag, supplemental, commuter, and on-demand operations; operating requirements; editorial and terminology changes, 2608
Correction, 9612
Extended overwater operations with single long-range communication system (LRCS) and single long-range navigation system (LNRS), 7186
Correction, 10430
First aid kits; burn compound removal, 6938
Protective breathing equipment, 43918
Correction, 57585, 58924
Aircraft:
Maintenance and preventative maintenance, 19481
Aircraft products and parts; certification procedures:
Helicopter design; noise level compliance; type certificates, 20696
Correction, 57002
Replacement and modification parts; discrete electrical or electronic component parts, etc.; inclusion, 47671

Airmen certification:
  Medical certificates; general medical condition standards, 7695
  Medical standards and certification—
    Insulin-treated diabetic airman applicants, third-class certificates issuances; policy statement, 59282
    Procedures revision and medical certificate duration, 11238
Airports:
  National Capital airports; CFR part removed, 19784
Airspace:
  Designations and reporting points; incorporation by reference, 48403
Air traffic operating and flight rules:
  Afghanistan; prohibition against certain flights within territory and airspace (SFAR No. 67); expiration date extension, 24430
  Flights between Republic of Yugoslavia (Serbia and Montenegro) and U.S.; prohibition, 629
  High-density traffic airports; air carrier and commuter operator slots, allocation and transfer method; severe weather conditions impact policy statement, 7213
  Iran; prohibition against certain flights within territory and airspace (SFAR No. 76), 49870, 51782
  Iraq; prohibition against certain flights within territory and airspace (SFAR No. 77), 54020
  Security records, fraudulent or intentionally false; prohibition, 64242
  Summer 1996 Olympic Games; airspace and flight operations requirements, 5492
    Correction, 7855, 16287
Air traffic operating and flight rules, etc.:
  Grand Canyon National Park, CO; special flight rules in vicinity (SFAR No. 50-2)—
    Noise limitations, 69302
  Hawaii; Stage 2 airplane operations, 66182
Airworthiness directives:
  Aerospace Technologies of Australia Pty Ltd., 57993, 59323, 59325, 64985
  Aerospatiale, 20646, 60018
  Airbus Industrie, 1274, 2409, 2410, 2697, 6503, 6925, 6927, 6929, 6931, 9096, 9604, 14240, 16873, 18661, 18665, 24690, 26091, 28497, 29267, 35122, 39306, 39315, 42777, 43650, 46540, 46541, 46703, 47808, 50988, 57317, 66881, 66884, 66887
  Air Tractor, Inc., 6934, 58985, 60015
  Allied Signal Commercial Avionics Systems, 58989
  AlliedSignal, Inc., 2699, 6766, 7690, 7692, 10881, 13079, 20127, 21070, 29932, 31007, 42782, 47806, 52876
  Allison, 47802
  Allison Engine Co., 59828
  American Champion Aircraft Corp., 5501, 44157, 48822
  Aviat Aircraft Inc., 19540, 24684, 28730, 35936
  Beech, 1276, 5275, 6768, 14960, 20638, 26426, 26780, 28031, 29269, 29276, 42994, 42996, 43652, 46542, 55733, 57295
  Bell, 613, 11538, 15184, 24218, 45876, 47041, 47046, 47047, 57323
  Bellanca, 46538
  Boeing, 1703, 3550, 3793, 6500, 6501, 6935, 7694, 9092, 9601, 9607, 10270, 11529, 11533, 11541, 14608, 14961, 17824, 18238, 21068, 24206, 25558, 35126, 35127, 35938, 35940, 37202, 39307, 41733, 41953, 41957, 43155, 45878, 48820, 49409, 50995, 53035, 55080, 57291, 57313, 57994, 58316, 58318, 59317, 59319, 66201, 66898, 68135, 68566, 69026
  Boeing et al., 2095
  Bombardier, 49056, 52688, 57319
  Brackett Aircraft Co., Inc., 18667
  British Aerospace, 11534, 20671, 37199, 55082, 57298, 57299, 58326
  Burkhart Grob Luft-und Raumfahrt, 49250
  Canadair, 9090, 28734, 58978
  Cessna, 20641, 26425, 29468, 30501, 30505, 64456
  CFM International, 53038, 68570
  Construcciones Aeronauticas, S.A., 16382, 20674
  Curtiss-Wright, 2701
  de Havilland, 3792, 5277, 19807, 20616, 20679, 26089, 26425, 34368, 47410, 48612, 50990, 58983, 59315, 68565, 68569
  Diamond Aircraft Industries, 18670
  Don Luscombe Aviation History Foundation, 66900
  Dornier, 20639, 20676, 26426, 29274, 29465, 33650, 58315, 59321
  Dornier, Z0, 6
  Empresa Brasileiro de Aeronautico, S.A. (EMBRAER), 20636, 20677, 26427
  Enstrom Helicopter Corp., 11130, 11536
  Eurocopter Deutschland GmbH, 16703
  Fairchild, 5279, 5675, 12018, 20643, 26424, 36817, 48066, 50999, 54538
  FLS Aerospace (Lovaux) Ltd., 68139
  Flugtechnik GmbH, 19815
  Fokker, 6932, 8211, 13083, 14013, 14014, 20681, 28029, 29277, 29278, 29467, 31824, 31825, 33305, 34718, 35942, 39311, 40511, 47813, 49051, 49055, 49248, 50992, 58987, 59322, 66890, 68131
  Franklin, 2703
  Gates Learjet, 48822
  General Dynamics, 2705
  General Electric Co., 10673, 28736, 41951
  Glaser-Dirks Flugzeugbau GmbH, 6937
  Glasflugel, 6770
  Hamilton Standard, 617, 16618, 18052, 40313, 49058
  Hartzell Propeller Inc., 39309, 47809
  HB Aircraft Industries, 57322
  HOAC Austria, 59326
  I.A.M. Rinaldo Piaggo.S.p.A., 19808
  Industrie Aeronautiche E Meccaniche, 48613
  Israel Aircraft Industries, Inc., 63702
    Correction, 64948
  Israel Aircraft Industries, Ltd., 26776
  JanAero Devices, 51357
  Jetstream, 622, 5280, 9606, 14242, 19811, 20644, 20668, 20669, 24216, 24883, 24884, 26424, 28498, 30505, 33646, 33647, 41955, 43307, 48614, 50994, 51212, 53040, 57296, 57300, 58980, 58981, 68134
  Learjet, 26090, 44156
  LITEF GmbH, 55561
  Lockheed, 16379, 29279, 29642, 42549, 53044, 66889
  Maule Aerospace Technologies, Inc., 623, 20125
  McCauley, 16226
  McDonnell Douglas, 691, 1278, 2403, 2407, 2902, 5281, 6922, 8209, 9098, 11539, 12015, 15882, 16377, 16384, 21066, 24214, 24220, 24675, 24686, 24688, 25557, 26778, 27251, 28028, 28736, 29007, 29009, 31009, 35944, 35946, 39312, 39314, 39860, 42776, 42779, 46704, 47804, 48617, 53042, 57301, 57304, 58323, 66880, 66886, 68132
  MDB Flugtechnik, 30801
  Michelin Aircraft Tire Corp., 2706
  Mitsubishi, 64270
  Mooney Aircraft Corp., 17562
  New Piper Aircraft, Inc., 19811, 19813, 24691, 24878, 24881, 28732, 39584, 53611, 53613, 55087, 60016
  Piaggio, 47409
  Pilatus, 57315
  Pilatus Britten-Norman Ltd., 47049
  Pratt & Whitney, 9599, 20125, 36620, 37814, 42781, 48818, 50984, 58975, 63706, 63707, 66892
  PTC Seating Products Division; B/E Aerospace, 32317
  Raytheon, 42997, 55734, 66878, 67195
  Robinson Helicopter Co., 19809, 26427, 26429, 53046
  Rolls-Royce, plc, 36622
  Royal Inventum Co., 11527
  S.N. CentrAir, 1280
  Saab, 511, 5284, 17825, 18242, 20672, 27253, 42773, 45880, 48619, 66885
  Sensenich Propeller Manufacturing Co., Inc., 21071
  Short Brothers plc, 20682, 54331, 55084, 55085, 57311
  Sikorsky, 37675
  SOCATA, 49252
  Societe Nationale Industrielle Aerospatiale et al., 13655, 18236
  Sundstrand Aerospace, 68141
  Superior Air Parts, Inc., 29641
  Teledyne Continental Motors, 2708, 29934
  Teledyne Continental Motors et al., 29931
  Textron Lycoming, 625, 29003, 29271, 47051, 63704
  Transport category airplanes—
    Smoking prohibition in lavatories, 32318
  Twin Commander Aircraft Corp., 28738
  Weatherly Aviation Co., Inc., 49053
Airworthiness standards:
  Aircraft engines—
    Continued rotation, rotor locking, and vibration, 28430
    New one-engine-inoperative ratings; definitions, and type certification standards, 31324
  European Joint Aviation requirements; normal and transport category rotorcraft—
    Performance, systems, propulsion, and airframes; harmonization, 21904, 29931, 33963, 36965, 43952
  European Joint Aviation requirements standards; normal, utility, acrobatic, and commuter category airplanes—
    Airframe standards, 5138
    Flight standards, 5171
    Powerplant and equipment standards, 252, 5130
    Powerplant instruments; fuel pressure indication, 13642
    Systems and equipment standards, 5151, 7410, 10269
  Manned free balloons—
    Burner testing, 18220, 20877
  Rotorcraft; normal and transport category—
    Occupant protection, 10436
    Takeoff, climb, and landing performance requirements, determination factors, 21894, 29931, 33963, 36965

Special conditions—
  Aerospatiale model SA-365N, SA-365N1 and AS-365N2 Dauphin helicopters, 48609
  Agusta models A109D and A109E helicopters, 29928
  Avions Marcel Dassault-Breguet Aviation Mystere-Falcon model Fan Jet Falcon (basic), etc., 41949
  Cessna Aircraft model 425 airplanes, 18939
  Cessna Aircraft model 500, 550, and S550 airplanes, 34716
  Cessna Aircraft model 550 airplane (serial number 550-0801, etc.), 42144
  Cessna Aircraft model 750 airplanes, 24208
  Dassault Aviation model Falcon 900EX airplane, 25778
  Dassault Aviation, Mystere Falcon 50 airplane, 24213, 26775
  de Havilland; DHC-8-400 airplane, 56408
  Embraer Aircraft Corp.; model EMB-145 airplane, 39305
  Eurocopter Deutschland model EC135 helicopter, 6921
  Eurocopter Deutschland model MBB-BK helicopters, 43648
  Fairchild Aircraft Inc., models SA227-CC and SA227-DC (C-26B) airplanes, 1
  Gulfstream model G1159A airplane, 65460
  Hamilton standard model 568F propeller, 114, 254
  Israel Aircraft Industries; model Galaxy, high-intensity radiated fields, 14607
  McDonnell Douglas model DC9-10, -20, -30, -40, -50 high-intensity radiated fields, 11728, 15372
  Sikorsky model S76C helicopter, 43647
  Turbomeca model Arriel 2S1 turboshaft engine, 163757
Transport category airplanes—
  Cabin interior materials; improved flammability standards, 5938
  Carbon dioxide; allowable concentration in cabins, 63952
  Discrete gust load design requirements, 5218, 9533
  Passenger emergency exits, type and number, seating standards, etc., 57946
  Subsonic transport airplanes; high altitude operation, 28684
Child restraint systems:
  Booster seats and vest- and harness-type systems, approval withdrawn; and lap held systems; existing prohibition emphasis, 28416
Class B airspace, 5934, 47815, 66902
Class C airspace, 255, 26431
Class D airspace, 1705, 4870, 5935, 8859, 10884, 17826, 19152, 21953, 26094, 26434, 29472, 34720, 48824, 49254, 51360, 52281, 52689, 53841, 58782, 59328, 66908, 67698
Class E airspace, 3, 120, 121, 232, 513, 514, 693-696, 1149, 1705, 1706, 2711-2714, 5503, 5504, 5935, 5937, 6771, 7051, 7209-7213, 7697, 7855, 8859, 9612, 10271, 10884-10886, 12019, 18058-18062, 19541, 19542, 19816, 19817, 21364, 21365, 21953, 24222, 24223, 26094, 26781, 27004, 28033-28045, 28740-28743, 29472, 29645, 29936, 30507, 30670, 30803, 31013-31019, 32374, 32651, 33843-33845, 34720, 35307, 36283-36285, 36820, 36965, 37001, 37204, 37205, 37352, 39317, 39318, 39695, 40315, 40136, 40717-40719, 40961, 41685, 41735, 42146, 42784, 42785, 47051, 47052, 47411, 47672, 48069, 48825, 49254, 49255, 49411, 49112, 50426, 51361, 51362, 52282, 52283, 53050, 53843, 53845, 53847, 53851, 53996, 54933, 55088-55090, 55563, 55881, 55882, 56623, 56624, 57324, 57771, 57772, 58131, 58783, 58784, 59180, 59181, 59329, 60186-60189, 60524-60526, 64569, 65318, 65939, 66579, 66908, 66910, 67699, 67700
  Correction, 37113
Colored Federal airways, 29937, 37677
Federal airways and jet routes, 29937
Federal claims collection:
  Civil monetary penalties; inflation adjustment, 67444
Federal Regulatory Review; 3-year cycle, 53610
IFR altitudes, 697, 18064, 18065, 27769, 37206, 40148, 49256, 56120, 67700
Jet routes, 4587, 29938, 34720, 36286, 59329, 66912
Omnibus Transportation Employee Testing Act of 1991:
  Substance abuse professional; definition amendment, 37222
Organization, functions, and authority delegations:
  Air Traffic Operations, Program Director, 26434
  Commercial Space Transportation; CFR chapter III name change, 37814
  Southern Region; Regional Administrator; Summer 1996 Olympic Games; airspace and flight operations requirements provisions, 36286
Practice and procedure:
  Direct final rulemaking procedure, 11278
  Federally assisted airport enforcement proceedings, 53998
  Technical amendment, 18052
Procedural rules:
  Civil penalties; enforcement procedures for certain security violations; Federal regulatory reform, 44152
Restricted areas, 4, 18062, 20127, 26095, 30508, 31021, 35623, 42550, 53051, 53052, 53852, 64458
Special use airspace forms; definitions, 2080
Standard instrument approach procedures, 699-701, 2715, 2903, 2904, 2906, 3795-3797, 6106, 6108, 7698-7700, 10887-10889, 14017, 14018, 14020, 18066, 18068, 18069, 18941, 18942, 25138, 25139, 25141, 25780, 25781, 25783, 29015, 29016, 31827, 31828, 31830, 35623, 35624, 35626, 37352, 37354, 37356, 37677, 40150, 40151, 42551, 42552, 42554, 46706, 46707, 46711, 48826, 48827, 50427, 50428, 53053, 53054, 53056, 55735, 55736, 55738, 57003, 57998, 57999, 60527, 60528, 60530, 64459, 64460, 64462, 67703, 67704, 67706
VOR Federal airways, 9902, 31020, 34722, 40147, 41736, 43310, 53050, 54933, 116

PROPOSED RULES

Air carrier certification and operations:
  Age 60 rule—
    Correction, 18099, 24533
  Air taxi and commercial operators—
    Single-engine aircraft under visual into instrument meteorological conditions, 64230
  Check airmen and flight instructors in simulators; separate training and qualification requirements, 6898
  Digital flight data recorder upgrade requirements, 37144, 65142
  Flight attendant reduction at intermediate stops; withdrawn, 29000
  Flight time limitations and rest requirements for flight crew members—
    Extension of comment period, 11492
  Omnibus Transportation Employee Testing Act of 1991—
    Pre-employment alcohol testing; permitted but not required, 21149
  Radar beacon system and Mode S transponder requirements in national airspace system, 26036
    Correction, 30551
  Supplemental air carriers and commercial large aircraft operators—
    Cabin safety changes, 38552
Airports:
  Passenger facility charges, 16678, 25420
Air traffic operating and flight rules:
  Rocky Mountain National Park, CO; special flight rules in vicinity, 24582, 38119, 65191
    Comment period reopened, 59209
Air traffic operating and flight rules, etc.:
  Grand Canyon National Park, CO; special flight rules in vicinity (SFAR No. 50-2), 69334
  Aviation noise issues; potential, 38119
  Flight free zones and reporting requirements for commercial sightseeing companies, 40120, 41040, 43196, 45921, 54716
Airworthiness directives:
  Aerospace Technologies of Australia Pty Ltd., 10478, 11784, 35693, 64489, 65002, 65004, 67965
  Aerospatiale, 1015, 2147, 15738, 42825
  Airbus Industrie, 1017, 1289, 1528, 3343, 5326, 7444, 8892, 8896, 8897, 13789, 16414, 16418, 17257, 18699, 18700, 18704, 18995, 20762, 27322, 29996, 33874, 36664, 39603, 39604, 43687, 45910, 47829, 47835, 54955, 54960, 549635, 56923, 60650
  Airtell International, Inc., 54364
  Air Tractor, Inc., 54370
  Allied Signal Commercial Avionics Systems, 24511
  AlliedSignal Inc., 11790, 13111, 13113, 29499, 36310, 41751, 51618, 57342, 58148
  Avions Pierre Robin, 58145
  Beech, 2180, 4756, 4943, 9959, 16416, 21979, 25418, 27028, 29994, 41537, 46574, 51060, 54359, 54965, 55233
  Bell, 15903, 46742, 55231, 58353, 58355, 58356, 59033, 59034, 67503
  Bellanca, Inc., 1532
  Bell Helicopter Textron, Inc., 65367
  Boeing, 634, 1291, 1294, 1722, 2730, 3340, 10294, 11593, 14034, 14269, 14271, 16412, 18705, 18997, 24250, 29038, 31061, 33049, 33050, 40758, 42195, 44230, 44232, 44234, 44237, 44239, 44241, 44243, 44245, 44247, 45373, 48435, 51250, 51621, 51624, 58667, 58669, 60653
  Boeing et al., 48431
  Bombardier, 35691
  British Aerospace, 131, 2139, 41037, 41539, 41755, 43692, 44006, 54362, 54366
  Burkhardt Grob Luft-und Raumfahrt, 45912, 65001, 67506
  Cessna, 1534, 2178
  CFM International, 13110, 16420, 28112
  Construcciones Aeronauticas, S.A., 54958
  Construcciones Aeronauticas, S.A. (CASA), 2166, 58014
  Day-Ray Products, Inc., 52394
  de Havilland, 636, 2154, 2175, 13785, 17855, 25417, 25598, 34767, 37019, 45914, 47459, 47834, 48437, 51062, 51619
  Don Luscombe Aviation History Foundation model 8 series airplane, 26853
  Dornier, 133, 2157, 2172, 15000, 43689, 43691, 64491, 64492, 65492, 65494
  Empresa Brasileira de Aeronautica, S.A. (EMBRAER), 2163, 2183, 17853

Fairchild Aircraft, 2189, 18524, 56642
Fokker, 2160, 5329, 5330, 5524, 13791, 14273, 14275, 14515, 15002, 15906, 15908, 38407, 39366, 40760, 44004, 47462, 48439, 51066, 51255, 56170, 56925, 57832
General Electric Co., 12050, 48866
Glasflugel, 53683, 65006
Gulfstream, 20764, 32369
H.B. Flugtechnik GmbH, 21980
Hartzell Propeller Inc., 18520
Hiller Aircraft Corp., 48441
HOAC Austria, 43317
I.A.M. Rinaldo Piaggio S.p.A., 18696
Industrie Aeronautiche E Meccaniche, 41753, 64645
Israel Aircraft Industries, Ltd., 46576
JanAero Devices, 10703
Jetstream, 1295, 1298, 1300, 2142, 2144, 2186, 6583, 9371, 11786, 18707, 36308, 41039, 41757, 54582, 54967, 55585, 56169, 57830, 58016, 59038, 64643, 66238
Jetstream Aircraft Ltd., 12051
Learjet, 9119, 21982, 27030, 55584
Lockheed, 6579, 40762
Louis L'Hotellier, S.A., 59203
McDonnell Douglas, 134, 637, 1301, 3341, 5334, 6581, 9960, 10907, 11347, 11789, 13787, 15904, 16413, 17259, 17261, 18303, 31059, 36307, 44002, 45375, 48433, 48864, 51058, 51068, 51845, 54961, 54969, 56919, 58012, 59036
Mitsubishi, 55939
New Piper Aircraft, Inc., 1303, 3338, 13468, 18299, 18697, 19865, 19867, 29992
Piaggio, 10292
Pilatus Aircraft Ltd., 29501
Pilatus Britten-Norman Ltd., 21146, 43319
Piper, 53155
Pratt & Whitney, 20192, 20194, 28114, 28520, 51847
Raytheon, 35695, 51060, 54368, 54372, 63762, 67505
Robinson Helicopter Co., 3882, 45916, 45918
Rolls-Royce plc, 29697, 58147
Saab, 640, 2169, 11591, 46572, 47831, 55587, 65369
Schempp-Hirth, 56921
Schweizer Aircraft Corp., 55937, 56640
Schweizer Aircraft Corp. et al., 30548
Short Brothers plc, 2151, 36667, 36669, 39364, 40159
Sikorsky, 53337, 53339
Special conditions—
Embraer (Brazil) Aircraft Corp. model EMB-145 airplane, 58665
Textron Lycoming, 15430
Airworthiness standards:
Aircraft turbine engines; rain and hail ingestion standards harmonization, 41688
European Joint Aviation requirements; transport category airplanes—
Hydraulic systems standards revision to harmonize with European standards, 35056, 39515, 41924
Special conditions—
Boeing model 767-27C airborne warning and control system modification (AWACS) airplanes, 59202
Cessna Aircraft Co. model 750 (Citation X) airplane; operation with fly-by-wire rudder, 11779
de Havilland DHC-8-400 airplane, 37844
Embraer (Brazil) Aircraft Corp. model EMB-145 airplane, 14684
Jetstream Aircraft Ltd. model 4100 series airplanes, 53680
LET Aeronautical Works model L610G airplane, 42577
Lockheed Martin Aerospace Corp. model L382J airplane, 48862
Sikorsky model S76C helicopter, 20760
Transport category airplanes—
Braked roll conditions, 40710
Cabin safety changes, 38552
Reference stall speed; redefinition, 1260, 7157
Smoking prohibitions in lavatories, 1306
Class B airspace, 21910
Class C airspace, 43320, 44119, 64826
Class D airspace, 2731, 3346, 4379, 5960, 7227, 7228, 8899, 10908, 31063, 32371, 37230, 39367, 43320, 44008, 44119, 47465, 54108, 54585, 59040, 63764, 64826, 67739
Class E airspace, 548-551, 1724, 1860-1864, 1866-1874, 2731, 3347-3357, 4379, 4381, 5960, 5962, 7079, 7227, 7228, 7229, 7757, 9655-9658, 10296, 10908, 10910, 11792, 13115, 15432, 15740, 15742, 16287, 16621, 17606, 17607, 18999-19001, 19590-19593, 21984, 24533, 25157, 25600, 26473, 26855, 26856, 28803, 29449, 29699, 29700, 30842, 30843, 31064-31069, 32371, 32372, 33390, 34391, 34393-34398, 34769, 35991, 36311-36316, 36520, 37231, 37407, 37408, 39368-39370, 39919, 39920, 40365, 42396, 42397, 45919, 46743, 46744, 47465, 47466, 48097, 48868-48870, 49425, 51319, 52397, 52398, 52734, 53157, 53876-53882, 54586, 54587, 55121, 56479, 56480, 56644, 58150, 59041, 59042, 59206-59208, 59383-59385, 60237-60240, 60655-60660, 63765-63767, 65992-65995, 66620, 67967, 68172
Correction, 37113
Colored Federal Airways, 4380
Commercial space launch activities, licensed; financial responsibility requirements, 38992, 51395
Correction, 43814
Jet routes, 16622, 43694
Omnibus Transportation Employee Testing Act of 1991:
Substance abuse professional; definition amendment, 9969
Restricted areas, 3884, 17608, 36317, 45920, 56927, 64494, 64495
Rulemaking petitions; summary and disposition, 4942, 28803, 39918, 41750, 51844, 51845, 55230, 65190
VOR Federal airways, 30550
NOTICES
Acquisition Management System:
Availability, 33572
Standard clauses; availability, 31210
Acquisition regulations:
Jammed flight control systems; public meeting, 55682
RTCA, Inc., 55684
Advisory circulars; availability, etc.:
Aircraft—
Agriculture airplanes; restricted category, 4809
Air transportation partnership for safety programs, 37953
Civil aircraft parts distributors; voluntary industry accreditation program, 63916
Hydraulic system certification tests and analysis, 35062, 41925
Inspection and repair; acceptable methods, techniques, and practices, 26946, 49374
Product inspection and acceptance; statistical quality control use, 36106
Subsonic flight, high altitude; pressurization, ventilation, and oxygen systems assessments, 64562
Tundra tires, 33581
Airplane simulator qualification, 55681
Airworthiness assessments—
Turbine engine power-loss and instability in extreme conditions of rain and hail, 46893
Airworthiness designee function codes and consolidated directory for SFAR No. 36 and DMIR/DAR/ODAR/DAS/DOA, 42306
Normal and transport category rotorcraft—
Certification; updates, 48000
Normal category rotorcraft—
Certification; updates, 68326
Supplier surveillance procedures, 19110
Third-party registration/surveillance, 37790
Transport and normal category rotorcraft—
Emergency flotation systems draft appendix, 67373
Transport category airplanes—
Flight test certification guide, 14847
Transport category rotorcraft—
Certification and emergency flotation systems, 68326
Agency information collection activities:
Proposed collection; comment request, 678, 7133, 9220, 11933, 15556, 34921, 37311, 43507, 54832, 67866
Submission for OMB review; comment request, 19110, 24347, 25729, 29445, 33794, 34497, 35296, 36412, 36775, 36953, 56731, 67589
Airport financial reports; preparation and filing formats; comment request, 11077, 39499
Airport fire service:
Civil facilities firefighting and rescue requirements study; comment request, 29447
Airport noise and access restrictions analysis; funding policy, 48727
Airport noise compatibility program:
Blue Grass Airport, KY, 45470
Boise Air Terminal, ID, 50530
Charlotte/Douglas International Airport, NC, 11933
Chattanooga Metropolitan (Lovell Field) Airport, TN, 59129
Chico Municipal Airport, CA, 14591, 54247
Compliance waivers; petition processing procedures, 43113
Glendale Municipal Airport, AZ, 3072
James M. Cox-Dayton International Airport, OH, 27125
Kahului Airport, HI, 52490
Kansas City International Airport, MO, 52080
Kenosha Regional Airport, WI, 6407
Laughlin/Bullhead International Airport, AZ, 37958
McGhee Tyson Airport, TN, 39500
Meadows Field, CA, 67373
Noise exposure map—
Albany County Airport, NY, 20310
Chattanooga Metropolitan (Lovell Field) Airport, TN, 15557
DeKalb-Peachtree Airport, GA, 57510
Kahului Airport, HI, 11078
Kansas City International Airport, MO, 7133
Lambert-St. Louis International Airport, MO, 40063
Portland International Airport, OR, 56603
San Francisco International Airport, CA, 26946
Sarasota-Bradenton International Airport, FL, 25264
Savannah International Airport, GA, 14591
Snohomish County Airport, WA, 16518
Tallahassee Regional Airport, TN, 38239
Palm Springs Regional Airport, CA, 52988
Pease International Tradeport, NH, 11080
Reno/Tahoe International Airport, NV, 11937
Riverside Municipal Airport, CA, 37791
San Antonio International Airport, TX, 65257
Scottsdale Airport, AZ, 31210
Snohomish County Airport et al., WA, 57723
Snohomish County Airport, WA, 56082
Southwest Florida International Airport, FL, 65258
Springfield-Beckley Municipal Airport, OH, 52492
Westover Metropolitan Airport/Air Reserve Base, MA, 6057
Airport rates and charges; policy statement, 31994
Airport revenue use; policy and procedures; comment request, 7134, 66735
Air traffic operating and flight rules, etc.:
Grand Canyon National Park, CO; special flight rules in vicinity (SFAR No. 50-2)—
Air tour routes, 69356
Antidrug and alcohol misuse prevention programs for personnel engaged in specified aviation activities:
Random alcohol and drug testing minimum annual percentage rates, 67866
Antidrug program for personnel engaged in specified aviation activities, 1427
Aviation safety data:
Availability and accessibility issues; paper availability, 58276
Beta operations, in-flight on transport category turboprop airplanes; public meeting, 16521
Situational Awareness for Safety Systems Requirements Team, 16525
Civil penalty actions; Administrator's decisions and orders; index availability, 1972, 16955, 17937, 37526, 54833
Committees; establishment, renewal, termination, etc.:
Aviation Rulemaking Advisory Committee, 6680, 26246, 28633, 34922, 49519
Civil Tiltrotor Development Advisory Committee; termination, 2863
Cuban territorial airspace; emergency cease and desist order; enforcement policy, 8702
Design standards for acceptance under primary category rule; availability:
Powered parachutes, 11234
Emergency enforcement policy:
Oxygen generator transportation aboard passenger-carrying aircraft; prohibition, 26422
Environmental statements; availability, etc.:
ASR-11 radar program, 47778
Indianapolis International Airport, IN, 57723
John F. Kennedy International Airport, NY and NJ airport access program, reevaluation/technical report on changes; availability, 40877
John F. Kennedy International and La Guardia Airports, NY; terminal Doppler weather radar, 2864, 11081
Kodiak Launch Complex, AK, 32884
Lambert-St. Louis International Airport, MO, 60737, 66070
Narrow Cape on Kodiak Island, AK; Alaska Aerospace Development Corp. proposal to construct and operate a launch site, 54248
Newark International Airport, NJ, 41818
Seattle-Tacoma International Airport, WA, 5055, 11935, 15558, 20875, 27944
Syracuse-Hancock International Airport, NY, 18458
Wide Area Augmentation System (WAAS); ground earth stations, 37538
Environmental statements; notice of intent:
Blue Grass Airport, KY; parallel runway, 32883, 34923
Bridgeport-Sikorsky Memorial Airport, CT, 6058
Ft. Lauderdale-Hollywood International Airport, FL, 14190
General Mitchell International Airport, WI, 45471
John F. Kennedy International and La Guardia Airports, NY; terminal Doppler weather radar, 20874
New Bedford Municipal Airport, MA, 30105
Palm Beach International Airport, FL, 10056
Seattle-Tacoma International Airport, WA; parallel runway development, etc., 68327
Toledo Express Airport, OH, 33572
Exemption petitions; summary and disposition, 1428, 1971, 1984, 3759, 5056, 6883-6885, 9220, 10421, 11673, 14191, 15559, 16519-16521, 16967, 17748, 17949, 19111, 24526, 25730, 28255, 28923, 29446, 32022, 32023, 35296, 35297, 37105, 37312, 39500, 39502, 40064, 41819, 42306, 42307, 43808, 44383, 46011, 47779, 49004, 52081-52083, 52836, 54251, 55181, 55354, 56732, 58277, 64786, 65425, 66070, 67867, 67868
Explosives detection systems; certification criteria, 46011, 57511
Global analysis and information network prototype development, 21522, 30107, 38240
Grants and cooperative agreements; availability, etc.:
Airport capital improvement program, 19655
Aviation research, 5596, 46015
Center of Excellence (COE) in airworthiness assurance, 66071
Center of Excellence (COE) in aviation operations research, 5830
National priority system; comment request, 25731, 26947
Life Cycle Acquisition Management System, 15155
Meetings:
Aircraft Inflight Icing International Conference, 14593
Aircraft Noise Federal Interagency Committee, 43808
Air Traffic Procedures Advisory Committee, 11935, 32472, 49520, 64786
Aviation Environmental Protection Committee, 6886, 41441
Aviation Research Center of Excellence in Airworthiness Assurance; establishment, 46894
Aviation Rulemaking Advisory Committee, 571, 572, 1201, 1815, 3073, 3520, 7144, 13565, 14594, 15560, 15860, 20311, 22079, 25732, 29583, 33572, 33573, 33956, 34923, 36953, 38242, 39503, 48001, 48728, 51314, 51485, 52989, 53778, 55066, 55181, 55682, 56259, 56732, 60315, 67374
Aviation Rulemaking Advisory Committee Executive Committee, 63917
Aviation Security Advisory Committee, 572, 13226, 34923, 65100
Commercial space industry; panel on critical topics, 9221
Commercial Space Transportation Advisory Committee, 32886, 53480
Commercial Space Transportion Office; Low Earth Orbit (LEO) market demands; launch requirements and future space transportation needs, 4705
Informal airspace meetings—
California, 37959, 41818
Texas, 14848
Washington, 15331
Research, Engineering and Development Advisory Committee, 3760, 4509, 22080, 38242, 60737
RTCA, Inc., 763, 1430, 3073, 3074, 4706, 6058, 7144, 9003, 11936, 14192, 16968, 18461, 18770, 24527, 25732, 25733, 29163, 29164, 32023, 32473, 33956, 36412, 36954, 37539, 39503, 40065, 41680, 43397, 43809, 44117, 44384, 46504, 46894, 47231, 49520, 51485, 55182, 56083, 56733, 63917, 67374, 67375
Military airport program; designation criteria changes, 10423
National Airspace System (NAS) Architecture version 1.5; public comment request, 5831, 54486
Organization, functions, and authority delegations:
Bloomington, IN, 223
Dispute Resolution for Acquisition Office; establishment, 24348
Muncie, IN, 223
Reno, NV; Flight Standards District Office, 49521
South Lake Tahoe, CA, 223
West Memphis, AR; airport traffic control tower; decommissioned, 65628
Parachute, powered; design standards for acceptance under primary category, 24348
Passenger facility charges; applications, etc.:
Akron-Canton Regional Airport, OH, 38508
Albany County Airport, NY, 39504
Albuquerque International Sunport, NM, 1815
Alexander Hamilton Airport, U.S. Virgin Islands, 31211, 40878
Altoona-Blair County Airport, PA, 39504
Arcata/Eureka Airport et al., CA, 32886
Baton Rouge Metropolitan Airport, LA, 66073
Bellingham International Airport, WA, 48729, 58734
Bemidji-Beltrami County Airport, MN, 32473
Blue Grass Airport, KY, 27944
Boise Air Terminal, ID, 33573
Boston Logan International Airport, MA, 58734, 59275
Bradley International Airport, CT, 4510, 58735
Burbank-Glendale-Pasadena Airport, CA, 55354
Burlington International Airport, VT, 58735
Capital Airport, IL, 3521
Capital City Airport, MI, 65258
Central Wisconsin Airport, WI, 60316
Charlottesville-Albermarle Airport, VA, 11936, 30933
Charter County of Wayne, MI, et al., 47779
Chautauqua County/Jamestown Airport, NY, 28923
Cherry Capital Airport, MI, 39505
Chicago Midway Airport, IL, 41198

Chicago O'Hare International Airport, IL, 4509, 16277
Chico Municipal Airport, CA, 6283
Clinton County Airport, NY, 52989
Colorado Springs Airport, CO, 50530, 64945
Columbus Municipal Airport Authority, OH, et al., 678
Craven Regional Airport, NC, 43809
Cyril E. King Airport, VI, 3962
Dallas/Fort Worth International Airport, TX, 40065
Dane County Regional Airport, WI, 54486, 56259
Daytona Beach International Airport, FL, 33957
Dayton International Airport et al., OH, 41198
Delta County Airport, MI, 38509
Detroit Metropolitan Wayne County Airport et al., MI, 21526
Duluth International Airport et al., MN, 33957
Eagle County Regional Airport, CO, 64562
Easterwood Airport, TX, 1816
El Paso International Airport, TX, 38510
Eugene Airport/Mahlon Sweet Field, OR, 18770, 29787
Ford Airport, MI, 21526
Fort Smith Regional Airport, AR, 60316
Fresno Airport, CA, 37791
Gillette-Campbell County Airport, WY, 47232
Grand Forks International Airport, ND, 39505, 65259
Greater Rockford Airport, IL, 60317
Gregg County Airport, TX, 16278
Harrisburg International Airport, PA, 46504
Hartsfield Atlanta International Airport, GA, 60138
Hector International Airport, ND, 43810
Helena Regional Airport, MT, 18771
Houghton County Memorial Airport, MI, 1202, 6407
Humboldt County, CA, et al., 53480
Huntsville International Airport, AL, 40066
Indianapolis International Airport, IN, 51485
James M. Cox-Dayton International Airport, OH, 41199
Jefferson County Airport, TX, 30657
John F. Kennedy International Airport, NY and NJ; airport access program; reevaluation/technical report on changes; availability, 50530
Johnstown-Cambria County Airport, PA, 46505
Kalamazoo/Battle Creek International Airport, MI, 58736
Kent County Aeronautics Department, MI, et al., 10056
Key Field Airport, MS, 42308
Killeen Municipal Airport, TX, 43810
La Crosse Municipal Airport, WI, 16279
Laramie Regional Airport, WY, 5057
Laredo International Airport, TX, 56995
Long Island MacArthur Airport, NY, 47232, 48729
Los Angeles International Airport, CA, 9003, 13565
Louisville International Airport, KY, 56604
Luis Munoz Marin International Airport, PR, 40678
Manchester Airport Authority, NH, et al., 16525
Manchester Airport, NH, 33574
Marquette County Airport, MI, 21527
MBS International Airport, MI, 43811
McGhee Tyson Airport, TN, 42308, 64562, 64563
Melbourne International Airport, FL, 54846
Memphis International Airport, TN, 5832, 5833
Metropolitan Nashville Airport Authority, TN, et al., 22080
Metropolitan Oakland International Airport, CA, 25933
Miami International Airport, FL, 25733, 25933
Minot International Airport, ND, 49005
Modesto City-County Harry Sham Field Airport, CA, 6284, 24348
Morgantown Municipal Airport, WV, 5597, 68327
Myrtle Beach International Airport, SC, 16279, 56260
Nashville International Airport, TN, 2863, 65628
Natrona County International Airport, WY, 27945
Newark International Airport, NJ, 40879
New Orleans International Airport, LA, 32023
Norfolk International Airport, VA, 40880
North Bend Municipal Airport. OR, 57512
Palm Beach International Airport et al., FL, 25934
Pellston Regional Airport, MI, 6886, 10058
Pensacola, FL, et al., 3074
Port Columbus International Airport, OH, 26247
Portland International Airport, OR, 42309
Port of Oakland, CA, et al., 6681
Pueblo Memorial Airport, CO, 1430
Redding Municipal Airport, CA, 56995
Reno/Tahoe International Airport, NV, 39506
Sacramento Metropolitan Airport, CA, 4511, 7145
Salt Lake City International Airport et al., UT, 32024
San Angelo Mathis Field, TX, 25935
San Luis Valley Regional Airport-Bergman Field, CO, 46016
Savannah Airport Commission, GA, et al., 36413
Savannah International Airport, GA, 7145
Syracuse Hancock International Airport, NY, 55684
Telluride Regional Airport, CO, 28634
Texas A&M University, TX, et al., 30105
Tri-Cities Regional Airport, TN/VA, TN, 42309
Tri-State Airport, Huntington, WV, 42675, 46505
Tulsa International Airport, OK, 38510
Volusia County, FL, et al., 59272
Walker Field Airport Authority, CO, et al., 42310
Walker Field Airport, CO, 18771
Wendover Airport, UT, 6682, 56084
Wichita Mid-Continent Airport, KA, 31211
William R. Fairchild International Airport, WA, 16280
Williamsport-Lycoming County Airport, PA, 68328
Yakima Air Terminal, WA, 3077, 40473
Rulemaking petitions; summary and disposition, 65259
Technical standard orders:
  Aircraft flight recorder and cockpit voice recorder systems, 50531
  Very high frequency communications transmitting equipment, 56084
Weather observation service standards; policy statement, 32887, 33800, 35307

Federal Bureau of Investigation

PROPOSED RULES

Criminal Assistance for Law Enforcement Act of 1994; cost recovery procedures, 21396
  Significant upgrade and major modifications, 58799

NOTICES

Agency information collection activities:
  Proposed collection; comment request, 15974, 16645, 19639, 58592, 58710
  Submission for OMB review; comment request, 36396, 57901
Meetings:
  Criminal Justice Information Services Advisory Policy Board, 18410, 57712
  DNA Advisory Board, 1410, 28897

Federal Communications Commission

RULES

Antennas; structure clearance process streamlining, construction, marking, and lighting rules, 4359
Common carrier services:
  28 GHz band designation—
    Local multipoint distribution service providers licensing, fixed satellite service systems and mobile satellite service systems feeder links, 44177
  Calling number identification service (Caller ID); interstate calls—
    Waiver, 20746
  Cellular Phase I and II unserved service areas; competitive bidding, 58333
  Collect calls; operator service providers and call aggregators; branding requirements, 14979
  Commercial mobile radio service providers; roaming service provision, 43977
  Common and private carrier paging, geographic licensing procedures; competitive bidding—
    Interim freeze; modification, 21380
  Common carrier applications, 59201
  Cross ownership of broadcast networks and cable television stations, etc., 15387
  Domestic public fixed services—
    Frequency interference; CFR correction, 25594
  Enhanced and basic 911 systems; wireless services compatibility, 40348
  Federal-State Joint Board on Universal Service—
    Universal Service Fund; extension of duration of indexed interim cap, 34376
  Foreign carriers or affiliates; participation in U.S. market in international facilities-based services; correction, 4937
  Geographic rate averaging and integration for interexchange telecommunications services providers, 42558
  Hearing aid compatible wireline telephones in workplaces, confined settings, etc., 42181
  International accounting rates reform, 59198
    Pleading cycle extended, 11163
  International global telecommunications market entry; Section 214 authorization process and tariff requirements; streamlining, 15724
  International traffic data; reporting requirements, 4918
  Interstate, interexchange telecommunications service providers; tariff filing requirements for non-dominant interexchange carriers for domestic services, 59340
  Interstate pay-per-call services—
    Telephone subscribers' protection, 39084, 55582
  Local telephone company facilities; expanded interconnection, 43159
  Non-aggregator business customers; international call blocking, etc., 26466
  Paging, geographic licensing procedures; competitive bidding
    Site expansion, 34375
  Pay telephone reclassification and compensation provisions, 52307, 65341
  Prison calling services; inmate-only payphones designation as customer premises equipment (CPE); declaratory ruling, 8879, 36653
Public mobile services—
  Ameritech Communications, Inc.; cellular service provision; limited waiver, 50736
  Editorial corrections, 54098
Qualified private paging systems at 929-930 MHz; channel exclusivity, 8478
Satellite communications—
  Big LEO earth terminals determinations and feeder link proposals, 9944
  Domestic satellite service; licensing policies and procedures, 9944
  Earth-to-space (''uplink'') transmissions; fixed-satellite service 13.75-14.0 GHz band allocation, 52301
  Local zoning of earth stations; preemption, 10896
  U.S.-licensed geostationary-fixed satellites; transborder and separate international satellite systems policies distinction eliminated, 9946, 55582
Tariffs—
  800 data base access tariffs and service management system tariff; services provision, 65336
  Billing name and address disclosure; tariffing requirements, 8879
Telecommunications Act of 1996; implementation—
  Filing requirements and carrier classifications reform, 50244
  Local competition provisions; interconnection between local exchange carriers and commercial mobile radio service providers, 66931
  Pay telephones; local exchange carrier-owned; subsidies discontinued, 54344
  Stay of rules; petitions denied, 54099
  Telecommunications or customer premises equipment standards; default dispute resolution, 24897
  Video dialtone systems; regulatory scheme election for future use, 40531
  Telephone companies consolidation, acquisition, or control, related applications; CFR part removed, 36654
  Telephone number portability; policy and technical issues, 38605
  Terminal equipment, connection to telephone network—
    End-to-end digital connectivity for consumers, 42386, 47434, 54953
  Toll free 888 service access code opening, 7738, 36515
  Video dialtone service—
    Subsidiary accounting requirements concerning costs and revenues for local exchange carriers offering services, 30531
Commuications equipment:
  Radio frequency devices—
    Spectrum below 5 Ghz transferred from Federal Government; use, 55924
Communications equipment:
  Radio frequency devices—
    Personal computers and peripherals; equipment authorization procedures streamlining, 31044
    Television receivers; UHF noise figure performance measurements; reporting requirements elimination, 30532
    Vehicle-mounted radar system transmitters; frequency bands above 40 GHz made available for use, 14500, 42558
Conflict of interests, 56109
Freedom of Information Act; implementation:
  Fee schedule, 14499
Maritime and maritime mobile-satellite radio services; accounting authorities administration, 20155
Organization, functions, and authority delegations:
  Chief, Common Carrier Bureau; subpoenas issuance, 16229
  Compliance and Information Bureau; restructure, 8475
  General Counsel, 26464
    Hearing matters, 29311
  Staff; Instructional Television Fixed Service facilites mutually exclusive applications processing authority, 10688
  Workplace Diversity Office—
    Establishment, 2727
Personal communications services:
  Broadband PCS C block auction—
    Audited financial statements and general applications requirements; waiver, 25808
    Bid withdrawal payment provisions; waiver, 25807, 25810
  Licenses in 2 GHz (broadband PCS)—
    Pioneers' preference recipients payment obligations and procedures for initial authorizations, 14672
    Race-based F block rules, gender-based rules, etc., 33859, 51233
Practice and procedure:
  Applications and filings fee schedule, 41966
    Correction, 44176
  Equal Access to Justice Act; implementation Attorneys' fees and other expenses; recovery, 39090
  Filing periods; computation of time, 11748
  FM and TV allotment orders; automatic stay provision deleted, 43468
  Omnipoint Communications New York MTA frequency Block A; declaratory ruling petition denied, 45903
  Pioneer's preference rule; regulatory review, 4916
  Public utility holding companies; entry into telecommunications industry without prior SEC approval, 52887
    Correction, 57334
  Radio frequency radiation exposure guidelines, 41006
    Correction, 63758
  Regulatory fees (FY 1996); assessment and collection, 36629, 40155
  Telecommunications Act of 1996; conformance—
    Pole attachment provisions, 43023
Radio broadcasting:
  AM broadcast stations—
    Technical assignment criteria; interference reduction, 46563
  Broadcast license renewal procedures, 18289
  Emergency Alert System (EAS); clarification, 54952
  Mass media; AM expanded band allotment plan, 16878
  National radio multiple ownership restrictions; ''radio contour overlap'' rule relaxation, 10689
  National television station multiple ownership; dual network operations, 10691
Radio services, special:
  Amateur services—
    219-220 MHz band; use allocation, 15382
    Telecommunications Act of 1996; conforming provisions, 9953
    Vanity call sign system and license renewal applications; timeliness, 21385
  Aviation services—
    Domestic ship and aircraft radio stations; operation without individual licenses, 18226, 58010
  Commercial mobile radio services—
    Flexible service offerings; fixed wireless services on co-primary basis, 45336
  Commercial mobile service providers—
    Interconnection and resale obligations, 38399
  Emergency medical radio service, 6575
  Fixed point-to-point microwave service in 39 GHz band; mutually exclusive applications, etc., 2452
  Interactive video and data service, 49066, 60198
  Interactive video and data service licensees—
    Fully mobile operation for response transmitter units, 32710
    One-year construction ''build-out'' requirement; elimination, 1286
  Low power radio and automated maritime telecommunications system operations in 216-217 MHz band—
    Auditory assistance devices, law enforcement tracking systems, etc.; inclusion, 46563
  Maritime services—
    Domestic ship and aircraft radio stations; operation without individual licenses, 18226, 58010
    Global maritime distress and safety system; radiotelegraph carriage requirement eliminated, 19558
    Great Lakes Agreement ships; private sector inspectors, 25804
    Vessel traffic services (VTS) system frequencies, 26465
  Microwave facilities operating in 1850 to 1990 MHz (2 GHz band); relocation costs sharing, 29679
  Personal radio services—
    Family radio service; very short distance two-way voice radio service; establishment, 28768
  Prince William Sound; designation as radio protection area for mandatory vessel traffic services (VTS), 26120
  Private land mobile services—
    2.1 and 2.5 GHz frequencies use, 18092
    800 MHz frequency band SMR systems; future development facilitation and competitive bidding, 6138, 32709
    Automatic vehicle monitoring systems, 18981, 38403
    Cordless telephones; additional operation frequencies, 3600
    Modification of policies governing use of bands below 800 MHz; correction, 4234
    Type acceptance process; transition to narrowband technology, 40747
    Wireless services; phase I licensees in 220 MHz service; minor modifications, 3841
  Signal boosters (one-way or two-way) use by licensees without separate Commision authorization, 31051
  Terrestrial microwave fixed services, 26670
Radio stations; table of assignments:
  Alabama, 67727
  Alabama et al., 9360, 40156, 43025, 68162
  Alaska et al., 43686
  Arizona, 16879, 60043, 64999
  Arizona et al., 48639
  Arkansas, 44184, 47435, 51789, 58340
  Arkansas et al., 21384
  California, 9360, 20490, 20747, 24242, 40746, 43472, 53644, 55752, 58340
  California et al., 7999, 42190, 57335
  Colorado, 2453, 29491, 47435, 50246, 50247, 57336

Colorado; correction, 7739
Colorado et al., 42394
Delaware, 60632
Florida, 4232, 9360, 18685, 19558, 37840, 42189, 67728
Georgia, 35139, 50247
Hawaii, 55118, 57335
Illinois, 10284, 11584, 41019
Indiana, 21973
Iowa, 11320, 44183
Kansas, 2453, 24243, 33377, 44184
Kansas; correction, 7739
Kentucky, 18511, 31449, 43685, 55926
Maine, 14503
Michigan, 24243, 50247, 55117
Mississippi, 4232, 7999, 47436
Mississippi et al., 14032, 18685
Missouri, 18511, 29311, 51029
Missouri et al., 47436, 67728
Montana, 5721
New Mexico, 32706, 47436, 67727
New York, 14981, 21385, 66228
North Carolina, 8881, 20490, 34744, 42394, 66618
Ohio, 66229
Oklahoma, 66228
Oregon, 21384
Pennsylvania, 8880, 9648, 53643
Puerto Rico et al., 48638
South Carolina, 5722, 29492, 34377, 34743, 48638
Tennessee, 57336
Tennessee et al., 58785
Texas, 2454, 4233, 24244, 37840, 55117, 55752, 65478
Texas et al., 18685, 24465
Virginia, 20490, 25594, 34744
Washington, 18686, 34743, 47434
Washington et al., 53643
West Virginia, 55117
West Virginia et al., 29492
Wisconsin, 14676, 63759, 65478, 66228
Wyoming, 4233, 9359, 10284, 37840
Reporting and recordkeeping requirements, 51022
Telecommunications Act of 1996; implementation:
  Common carrier services—
    Dialing parity and nondiscriminatory access to competitors provision by local exchange carriers; requirement, 47284
    Interconnection and unbundled elements; flat-rated default proxy range for port lines, etc., 52706
    Local competition provisions, 45476
  Out-of-region, domestic, interstate, interexchange services by Bell Operating Companies, 35964
    Effective date acceleration, 39359
  Radio stations; corporate licensees; citizenship requirements, 55579
  Satellite communications—
    Over-the-air reception of video programming devices; impairment restrictions preemption, 46557
  Silent station authorizations—
    Accelerated expiration of radio and television broadcast station license, 28766
  Video-dialtone service; open video systems provisions, 10475
Television broadcasting:
  Ancillary digital data transmission within active video portion of NTSC signals, 36302
  Cable Television Consumer Protection and Competition Act of 1992—
    Cable systems and consumer electronics equipment; compatibility, 18508
    Leased commercial access, 16396
    Rate regulation, 9361, 11749, 15388, 45356
  Cable television service—
    Open video systems, 28698, 32706
  Cable television systems—
    Cable home wiring disposition, 6131
    Equipment costs on franchise, system, regional, or company level; aggregation, 32707
    Local markets designated for purposes of must-carry rules, 29312
    Major television markets; list, 18291
    Open video systems; implementation, 43160
  Children's educational and informational programming, 43981
  Telecommunications Act of 1996—
    Cable reform provisions, 18968
    Sexually explicit adult programming; scrambling or blocking, 9648
Television stations; table of assignments:
  Alabama, 11585
  New Mexico, 8000
  New York et al., 53644
  Oklahoma, 54104
  South Dakota, 4232
  Tennessee, 52899
  Virginia, 19558
  Wisconsin, 34744, 52900

PROPOSED RULES

Common carrier services:
  31.0-31.3 GHz frequency band designation to local multipoint distribution services for hub-to-subscriber and subscriber-to-hub transmissions, 39425
  Aeronautical services provision via International Maritime Satellite Organization (INMARSAT) system, 30579, 46419
  Calling number identification service (Caller ID); interstate calls—
    Privacy requirements, 2228
  Cellular priority access service for national security/emergency preparedness; rulemaking petition, 18538
  Commercial mobile radio service providers; roaming service provision; cross reference, 44026
  Commercial mobile radio services—
    Cellular providers provision of telephone toll services; equal access requirements; inquiry termination, 15753
    Competitive service safeguards, structural and nonstructural, for local exchange carrier provision, 46420
  Enhanced 911 emergency calling systems, 40374
  Enhanced 911 services compatibility with wireless services, 6963
  Federal-State Joint Board on Universal Service—
    Establishment, 10499, 15208, 27323, 55779
    Meetings, 15208, 27323, 30028, 30847
    Other billing and collecting expenses separation between State and interstate jurisdictions; decision, 55779
  Hearing aid compatible wireline telephones in workplaces, confined settings, etc., 1887
  International accounting rates regulation, 11172, 11173
  International settlement rates benchmark, 68702
  Interstate information services—
    Toll-free numbers caller charges, etc., 39107
  Interstate, interexchange telecommunications service providers; tariff filing requirements for non-dominant interexchange carriers for domestic services, 14717
  Interstate rate of return prescription procedures and methodologies; rate base, 9968
  Local exchange carriers and qualifying carriers Infrastructure sharing, 63774
  Local exchange carrier video programming services provision; costs allocation, 25184
  Microwave relocation for C, D, E, and F blocks; voluntary negotiation period shortening, etc., 24470
  Newspaper/broadcast cross-ownership restriction; waiver, 53694, 65192
  0+ InterLATA calls; billed party preference, 30581, 54979
  Operator service providers and call aggregators; consumer information time limit change, 15020
  Out-of-region interstate, interexchange services (including interLATA and intraLATA) provision by Bell operating companies, 6607
  Paging, common and private carrier; geographic licensing procedures; competitive bidding, 6199
  Pay telephones, local exchange carrier-owned; subsidies discontinued, 31481, 33074
  Race- and gender-based provisions elimination for auctioning of D, E, and F block broadband personal communications services licenses, 13133
  Reporting requirements applicable to interexchange carriers, Bell Operating Companies, other local telephone companies and record carriers, 10522
  Satellite communications—
    Antennas, satellite earth station and others used in video programming reception, installation; local zoning, 46420
    Earth-to-space "uplink" transmissions; fixed-satellite service in 13.75-14.0 GHz band allocation, 8905
    Licensing procedures; space to earth transmissions in upper and lower L-band, 40772
    Non-U.S. licensed satellite systems, etc.; application and licensing procedures, 32399
    Non-voice non-geostationary mobile satellite service, 69062
    Video services, direct-to-home; nonfederal governmental restrictions preemption, 10710
  Tariffs—
    Dominant carriers; price cap rules for AT&T; policy and rules, 69064
  Telecommunications Act of 1996; implementation—
    Accounting safeguards, 40161, 41208
    Filing requirements and carrier classifications reform, 50266
    Local competition provisions, 34405
    Market entry barriers for small businesses; identification and elimination, 33066
    Tariff filings by local exchange carriers, streamlining; statutory effect, 49987
    Telecommunications or customer premises equipment standards; dispute resolution, 9966
    Telemessaging, electronic publishing, and alarm monitoring services, 39385
    Wireless services; telecommunications equipment, customer premise equipment, and telecommunications services; access by people with disabilities, 50465
  Telephone number portability—
    Cost recovery, 38687
    Policy and technical issues, 11174
  Terminal equipment; connection to public switched telephone network—
    U.S. and Canadian network protection standard; harmonization, 15441

  Wireless services by local exchange carriers and commercial mobile radio service providers; equal access and interconnection obligations, 3644, 6961
Communications equipment:
  Radio frequency devices—
    Unlicensed equipment, NII/SUPERNet devices, operation in 5 GHz frequency range, 24749
    Vehicle radar systems and radio astronomy operations; protection from interference; use of frequency bands above 40 GHz restricted, 14041
Freedom of Information Act; implementation, 16424
Frequency allocations and radio treaty matters:
  Mobile-satellite services; allocation at 70 MHz range satellites operation use, 18354
  Spread spectrum transmission systems in 915, 2450 and 5800 MHz bands operation, frequency hopping reduction, 15206
Personal communications services:
  Licenses in 2 GHz band (broadband PCS)—
    Geographic partitioning along county lines, spectrum disaggregation; market entry barriers elimination, 38693
Practice and procedure:
  AM and FM radio licensees fees assessment (FY 1996); class of license and market designation based, 59397
  Exempt telecommunications companies status determination; implementation, 24743
  Formal complaints filed against common carriers; processing, 67978
  Non-emergency police telephone calls; N11 code (311); reserved on national basis by Justice Department request pleading cycle establishment, 48874
  North American numbering plan; carrier identification codes expansion—
    Transition period extension, 20505
  Omnibus Consolidated Appropriations Act of 1997—
    Wireless communications service; 2305-2320 and 2345-2360 MHz bands, 59048
  Regulatory fees (FY 1996); assessment and collection, 16432
  Telecommunications Act of 1996; conformance—
    Universal service policy; comments request, 63778
  Television broadcast signals and multichannel multipoint distribution services; over-the-air reception of video programming services; nonfederal governmental restrictions preemption, 16890
Radio and television broadcasting:
  Broadcast blanketing interference, 26491
  Equal employment opportunity (EEO) requirements; streamlining, 9964, 25183, 37241, 46755, 54600
  Multiple ownership attribution rules, 67275
  Personal attack and political editorial rules, 58201
  Telecommunications Act of 1996; implementation—
    Broadcast facilities; license term extension to eight years, 17864
Radio broadcasting:
  Broadcast transmission facilities; minor changes without construction permit, 15439
  Coordination Zone designation, Arecibo Radio Astronomy Observatory, PR, 10709
  Grandfathered short-spaced FM stations, 33474
Radio frequency devices:
  Biomedical telemetry devices, 3367
  Spread spectrum transmission systems in 915, 2450 and 5800 MHz bands operation, frequency hopping reduction, 15206
Radio services, special:
  Amateur services—
    Visiting foreign operators; authorization to operate stations in U.S., 52767
  Aviation services—
    Aeronautical advisory stations (unicoms); automatic operation, 8905
    Differential global positioning systems (GPS) correction data and hand-held transmitter use in 112-118 MHz bands, 60673
    Domestic ship and aircraft radio stations; operation without individual licenses, 18227
  Commercial mobile radio services—
    Fixed wireless local loop, etc., 6189, 7455
    Flexible service offerings, 43721
  Directional fixed service microwave antennas; flexible standards, 11798
  Experimental radio service rules, 68698
  Fixed point-to-point microwave service in 37 GHz band; channeling plan, etc., 2465, 6809, 19236
  Interactive video and data service, 49103
  Maritime services—
    Domestic ship and aircraft radio stations; operation without individual licenses; cross reference, 18227
    Passenger ships, large cargo and small; radio installations inspection, 21151, 28122
  Private land mobile services—
    200-222 MHz band; finder's preference program elimination, 51877
    220 MHz, 40-mile rule; elimination, 59852
    800 MHz frequency band SMR systems; future development facilitation and competitive bidding, 6212
  Public safety radio requirements—
    Role of wireless communications through 2010 calendar year, 25185
    Standards development and requirements imposition, 54980
Radio stations; table of assignments:
  Alabama, 47470, 47471
  Alaska, 14042
  Arizona, 2469, 41114
  Arkansas, 4392, 4393, 18712, 31084, 34406, 46430
  California, 6335, 30584, 30585, 31083, 43032, 54405
  Colorado, 10977, 14043, 15022, 40774, 47471, 65008
  Delaware, 6337
  Florida, 37717, 51074, 54404
  Georgia, 54405, 67765
  Guam, 55780
  Hawaii, 14043, 31083, 34407, 40775
  Idaho, 66249
  Illinois, 6335, 18540, 60068
  Illinois et al., 10300, 51075
  Indiana, 65508
  Iowa, 20789, 57360
  Iowa et al.,
  Kansas, 2469, 14733, 18712, 43032, 47471, 55125, 57359
  Kentucky, 9411, 24263, 37716, 42228, 42229, 54142, 58360
  Louisiana, 10976, 37716, 42412, 44288, 65508
  Michigan, 34784, 35705, 42229, 58360, 64660
  Minnesota, 24262, 48660, 55124
  Mississippi, 20207, 31085, 37717, 42413, 63809
  Mississippi et al., 15443, 42412
  Missouri, 18540, 34406, 34407, 63811
  Nebraska et al., 20206
  Nevada, 21425, 37716, 48659
  Nevada et al., 44287
  New Mexico, 14042, 18541, 37715, 55125
  New York, 10977, 31084, 58361, 65509
  New York et al., 6336
  Ohio, 18711, 44288, 57360
  Oklahoma, 20206, 40775, 48660, 54142, 63810, 66249, 66250
  Oklahoma et al., 50267
  Oregon, 4950, 6336, 55780
  Pennsylvania, 18540, 43033, 64309
  Puerto Rico et al., 9410
  South Carolina, 9411, 31490, 42228, 51075, 66248
  South Dakota, 31489, 60067
  Tennessee, 42230, 53698, 55781
  Texas, 6335, 25841, 34785, 42230, 58361, 63809
  Utah, 63810
  Virginia, 10300, 20505, 43515
  Virgin Islands, 10978
  Washington, 9410, 63810
  Wisconsin, 8230, 18539, 30585, 47472
  Wyoming, 15442, 60067, 65509, 65509, 66248, 67765
Semi-annual agenda, 23952, 63436
Telecommunications Act of 1996; implementation:
  Common carrier services—
    Local competition provisions, 18311, 22008, 32766
    Local competition provisions; video programming services local exchange provision, costs allocation, 26152
    Over-the-air reception of video programming devices; impairment restrictions preemption, 46557
  Customer proprietary network information, etc; telecommunications carriers' use, 26483, 43031
  In-region, interstate, domestic interLATA services by Bell Operating Companies, 39397
Television broadcasting:
  Advanced television (ATV) systems; digital television service, 43209, 63811
    Comment period extended, 1315
  Cable Television Consumer Protection and Competition Act of 1992—
    Leased commercial access; cross reference, 16447
    Rate regulation, 9411
  Cable television service—
    Definitions for purposes of cable television must-carry rules, 1888
    Equipment costs on franchise system, regional or company level; aggregation, 13803
    Open video systems; implementation, 10496
  Cable television systems—
    Cable home wiring, 6210
    Cable regulated tiers of service; pricing flexibility, 45387
    Local markets designated for purposes of must-carry rules, 29333
    Major television markets; list, 29336, 34408
    Video programming delivery; market competition status; annual assessment, 34409
  Closed captioning and video description of video programming; availability, cost, and uses, 2781, 9963
  Digital broadcast television licensees; digital television standard use requirement, 26864
  Digital television; technical standards, 64045
  Local television ownership and radio-television cross-ownership rules; designated market area, etc., 66978

National broadcast television ownership rules, 66987
Telecommunications Act of 1996—
Cable reform provisions, 19013
Sexually explicit adult programming; scrambling or blocking, 9671
Telephone and cable telecommunications inside wiring, customer premises equipment; harmonization, 3657
Television stations; table of assignments:
Nebraska, 19601
New York, 8014
Oklahoma, 10978
Tennessee, 8230
Texas, 7091
Wisconsin, 10301, 10978, 14043, 31490

NOTICES

1997 World Radiocommunications Conference Industry Committee (WR97 Advisory Committee):
Comment submission procedures, 33507
Preliminary proposals, 52452
Agency information collection activities:
Proposed collection; comment request, 2830, 4665, 5551, 6006, 6836, 6998, 8284, 9989, 10762, 10763, 11002, 11416, 11636, 14099, 14305, 14572, 15070, 15943, 16488, 18595-18597, 19619, 19939, 21179, 21180, 25867, 27075, 27351, 30067, 31939, 33738, 33740, 36881, 36882, 37896, 37898, 39656, 39974, 40842, 42021, 43058, 45426, 45970, 46644, 49135, 49325, 49459, 50023, 51939, 51940, 53733, 54439, 56234, 57429, 58409, 58410, 59886, 60283, 60705, 64084, 65224, 65574, 67551, 68263
Submission for OMB review; comment request, 1571, 1572, 2511, 3699, 4436, 6007, 6999, 7103, 9458, 9708, 11003, 12072, 16912, 18597, 21181, 24793, 25866, 25868, 30238, 31111, 33741, 35731, 36379, 36882, 37896, 37897, 39657, 39976, 40218, 40843, 41412, 43059, 45969, 46806, 47754, 51282, 51940, 53734, 55636, 57429, 57871, 58554, 58555, 60283, 64085, 65402, 66276, 68263, 68264
Asbestos abatement worker protection, etc.; reporting and recordkeeping requirements, 8061
Cable television and other video programming services competition status; report to Congress, 1932
Committees; establishment, renewal, termination, etc.:
National Advisory Committee; renewal and name change from Emergency Broadcast System Advisory Committee, 34434
National Business and Industry Advisory Council; termination, 34434
Network Reliability and Interoperability Council, 26516
North American Numbering Council, 53221
North American Numbering Council Advisory Committee, 47940
Membership, 47940
Common carrier or operational fixed point-to-point microwave radio services:
37.0-38.6 GHz and 38.6-40 GHz bands; applications freeze, 8062
Common carrier services:
ARMIS reports, semi-annual; filing requirements, 18143
Cellular Phase I and II unserved service area licenses—
Auction, 65403
In-region interLATA services provision; Bell operating companies applications processing, 68040
International global section 214 authorizations exclusion list, 50023, 58689
Local exchange carriers interstate access services; cost of debt, etc., 6641
Market entry and foreign-affiliated entities; reporting and recordkeeping requirements, 3032
Stand-alone cable systems construction in exchange telephone service areas; reporting and recordkeeping requirements, 2831
Tariffs; reporting and recordkeeping requirements, 4998
Telecommunications relay services fund; contribution factor and payment formula, 4999
Telecommunications services between United States and Cuba, 17702, 33917
Construction grants delegation to States; reporting and recordkeeping requirements, 54999
Consumer education concerning wireless; reporting and recordkeeping requirements, 54197
Documents due during government furlough or blizzard of 1996; filing procedures, 1381
Equipment authorization measurement standards; reporting and recordkeeping requirements, 55801
Frequencies; interservice sharing; reporting and recordkeeping requirements, 58069
Interactive video and data service licenses:
Auction notice and filing requirements, 67812
Interstate, interexchange marketplace policy and rules; reporting and recordkeeping requirements, 65053
IntraLATA carriers; listing payphone automatic number ID's; reporting and recordkeeping requirements, 67551
Local competition; reporting and recordkeeping requirements, 59098
Meetings:
1997 World Radiocommunication Conference Industry Committee (WRC-97 Advisory Committee), 3701, 7104, 25490, 35211, 58411
Federal-State Joint Board on Universal Service, 28581, 46806, 54200, 58411, 67020
Network Reliability and Interoperability Council, 31940, 53374
North American Numbering Council, 58412, 67021
North American Numbering Council Advisory Committee, 47940
Public Safety Wireless Advisory Committee, 3701, 11637, 19620, 28582, 34814, 39658, 44311
Meetings; Sunshine Act, 2868, 4520, 7156, 8285, 11210, 15803, 18144, 20523, 29378, 30239, 32801, 38448, 39659, 40218, 40639, 47941, 55637, 56956, 59887, 65404
Payment accepted from non-Federal sources; semiannual report, 25490, 32802
Pioneer's preference requests; filing deadline, 22864
Practice and procedure:
A and B block broadband PCS licenses; applications, 19620
MTA commercial broadband PCS; licensing deferral, 19623
Public safety radio communications plans:
Louisiana, 4437
Radio and television broadcasting:
Auxiliary broadcast service application form; reporting and recordkeeping requirements, 7263
Radio broadcasting:
Radio astronomy, research and receiving installations interference notifications; reporting and recordkeeping requirements, 5552
Radio services, special:
Private land mobile services—
800 MHz general category channels freeze waiver; Florida Bureau of Communications Engineering, 56543
Reporting and recordkeeping requirements, 9164, 9459, 11210, 12072, 16913, 30068, 31112, 38200, 49772
Reports; availability, etc.:
Nonregulated uncollectible revenue, etc.; Citizens Utilities Co. manual, 18731
Reports and recordkeeping requirements, 37899
Rulemaking proceedings; petitions filed, granted, denied, etc., 3423, 5773, 10764, 16252, 19295, 20251, 20556, 24307, 27076, 29378, 31524, 33742, 36379, 38448, 42021, 46807, 48154, 48952, 49772, 50487, 51941, 53922, 56957, 57872, 58555, 58556, 60285, 64744, 65575, 66662
Satellite application and licensing procedures; reporting and recordkeeping requirements, 49136
Ship radio station requirements, etc.; reporting and recordkeeping requirements, 17894
Spectrum policy and management; en banc hearing, 2831
Telephone number portability; reporting and recordkeeping requirements, 65574
Television broadcasting:
Closed captioning and video description of video programming; Congressional report; availability, 42249
Instructional television fixed service; facilities co-location with wireless cable operations; applications filing, 55638
Low power television/television translator major change only filing window, 11840, 16914
Wireless Telecommunications Bureau bidder defaults payment rules; strict enforcement, 16914

Applications, hearings, determinations, etc.:

AJI Broadcasting, Inc., 17701
Bechtel, Gene A., et al., 29100
Bluestone Broadcasters, Inc., 50486
Cen-Tea Productions, Inc., 13192
Chester Broadcasting Co., Inc., 43360
College of Southern Idaho, 17702
Communications Enterprises, Inc., 27872
Concord Area Broadcasting, 48490
Contemporary Media, Inc., et al., 11209
Davel Broadcasting Group, Inc., 17702
Desert Broadcasting Corp., 58688
Diamond State Broadcasting, Inc., 16250
Evergreen Media Corp., 48490
Family Broadcasting, Inc., 30067
Fisher Broadcasting, Inc., 16250
Great American Broadcasting of Hutchinson, Inc., 19619
Group Communications, Inc., 53922
Hometown Media, Inc., 27873
Jones, Clarence E., 24496
Jotocon Communications, Inc., 24497
KGCX, Inc., et al., 18394
Kokomo School Corp., 16250
KXSA Radio, Inc., 16251
Lamoille Broadcasting & Communications, 50486
Liberty Cable Co., Inc., 11839
Missouri Valley Productions, Inc., 48491
Morgan Media, Inc., 55637
Moss, Charles B., Jr., 50487
Multimedia Cablevision, Inc. et al., 51941
Oakhill-Jackson Economic Development Corp., 13192

Prather-Breck Broadcasting Inc., 16251
Quality Broadcasting, Inc., 59443
Rainbow Broadcasting Co., 3423
Rainy River Community College, 13193
Red River Broadcasting, Inc., 16251
Simes, L.T. et al., 53922
Southwestern Broadcasting Corp., 20819
Twenty-One Sound Communications, Inc., 55637
Under His Direction, Inc., 16251
University of Kansas, 24497
WKZF-FM, Inc., 24497
WPVG, Inc., 27873

Federal Contract Compliance Programs Office

RULES

Disabled veterans and Vietnam era veterans; affirmative action obligations of contractors and subcontractors:
Invitation to self-identify, 19366
Reporting and recordkeeping requirements, 43466
Statutory changes, 6116
Individuals with disabilities; affirmative action and nondiscrimination obligations of contractors and subcontractors:
Employment and advancement in employment, 19336
Reporting and recordkeeping requirements, 43466
Organization, functions, and authority delegations:
Administrative Review Board; establishment and review procedures, 19982

PROPOSED RULES

Disabled veterans and Vietnam era veterans; affirmative action obligations of contractors and subcontractors, 50080
Correction, 55613
Government contractors, affirmative action requirements; EO 11246 implementation, 25516
Individuals with disabilitites; affirmative action and nondiscrimination obligations of contractors and subcontractors:
Separate facility waivers; standards, 5902
Correction, 9532

NOTICES

Contracts; eligible bidders:
Pacific Coast Feather Co.; debarment, 56248
Rampart Electric, Inc.; debarment, 8666

Federal Crop Insurance Corporation

RULES

Administrative regulations:
1995 and subsequent crop years, 42970
Board of Contract Appeals; reinsurance agreement; approval standards, 39268, 40952
Federal Agriculture Improvement and Reform Act of 1996—
State catastrophic risk protection plan; reinsurance agreement, 34367, 65153
Highly erodible land (sodbuster) or converted wetland (swampbuster); insurance coverage for production of agricultural commodities; restrictions removed, 38057, 39048
Common crop insurance regulations:
Pear crop provisions, 57578
Crop insurance regulations:
Arizona-California citrus, 44145
Catastrophic risk protection plan of insurance, 42979
Dry beans, 68542
Florida citrus fruit, 68998
Malting barley option crop insurance provisions, 8851
Correction, 27244
Noninsured crop disaster assistance program, 1995 and subsequent crop years, 7193
Sugar beets, 58769
Texas citrus fruit crop, 41297
Correction, 57583
Noninsured crop disaster assistance program 1995 and subsequent crop years; provisions transferred to Commodity Credit Corporation, 66004

PROPOSED RULES

Administrative regulations:
Federal Crop Insurance Act—
Eligibility determinations procedures for program participation, 56151
Nonstandard underwriting classification system, 57595
Crop insurance regulations:
Almonds, 41531
Arizona-California citrus, 31464
Cotton, 46401
Cranberries, 48420
Dry beans, 60049
Extra long staple cotton, 43999
Florida citrus endorsement, 10699
Forage plants, 48416
Fresh market (dollar plan) tomatoes, 48423, 68682
Fresh market tomatoes, 48423
Grapes, 49982
Group risk plan of insurance; 1998 and succeeding crop years, 52717
Hybrid sorghum seed endorsement, 68674
Peaches, 58786
Pear crop provisions, 18293
Raisins, 55928
Sugar beets, 27315
Texas citrus fruit, 28512
Texas citrus tree, 45369
Walnuts, 41527

Federal Deposit Insurance Corporation

RULES

Agricultural loan loss amortization, 33842
Assessments:
Bank Insurance Fund—
Rate schedule adjustment, 26078, 64609
Oakar institutions; interpretive rules, 64960
Savings Association Insurance Fund—
Base assessment schedule and adjusted assessment schedule; establishment, 57687
Rate schedule retention, 26083
Special assessment; net worth percentage increase, 53834
Community Reinvestment Act regulations, 21362
Conflict of interests, 35915
Contractors suspension and exclusion and contracts termination, 9590, 35115, 68559
Federal claims collection:
Civil monetary penalties; inflation adjustment, 57987
Federal Deposit Insurance Act:
Safety and soundness standards, 43948
Financial disclosure requirements, supplemental; CFR part removed, 50947
Foreign banks:
Domestic retail deposit activities by state licensed branches, 5671
General policy:
Employment fitness and integrity; minimum standards, 28725
Management official interlocks, 40293
National Flood Insurance Reform Act of 1994; implementation:
Loans in special flood hazard areas, 45684
Practice and procedure:
Annual independent audits, reporting requirements and determining compliance with designated laws, 6487
Bank clearing agency actions; applications for stay or review, 48402
Board of Directors meetings; public observation rules, 38356
Golden parachute and indemnification payments limits, 5926
Uniform and local rules, 20344
Privacy Act; implementation:
Federal regulatory reform, 43418
Risk-based capital:
Market risk, 47358
Suspicious activity reports, 6095

PROPOSED RULES

Assessments:
Oakar institutions; interpretive rules, 34751
Savings Association Insurance Fund—
Base assessment schedule, adjusted assessment and special interim rate schedules, 53867
Capital maintenance:
Risk-based capital; collateralized transactions, 43500
Deposit insurance coverage:
Streamlining and simplification, 25596
Economically depressed regions determination; withdrawn, 40756
Fair housing:
Nondiscriminatory advertising requirements, etc.—
Equal Housing Lender and Opportunity posters; placement and display, etc., 49420
General policy:
Employment fitness and integrity; minimum standards, 5956
Government securities sales practices:
Banks' conduct of business as government securities brokers or dealers; standards, 18470
Insured State banks; activities and investments, 43496
Risk-based capital:
Market risk; internal models backtesting, 9114
Securities:
Transactions; qualification requirements, 68824
Transactions effected by State nonmember banks; recordkeeping and confirmation, 26135, 67729
Securities of nonmember insured banks:
Incorporation of SEC provisions by cross reference, 33696
Semi-annual agenda, 23974, 63460

NOTICES

Agency information collection activities:
Proposed collection; comment request, 14778-14782, 31524, 42085, 48687, 53994, 56263, 56737, 68814, 68841
Submission for OMB review; comment request, 4773, 10343, 27874-27876, 55302, 60748
Bank investments under state laws; policy statement rescission, 25869
Bank securities, public distribution; offering circulars use; policy statement, 46807
Capital forbearance; policy statement rescission, 35869
Coastal Barrier Improvement Act; property availability:
Black Mountain, CA, 57872

Bryant Road Property, MA, 13859
Hanover Run/Myrtle Point, MD, 18598
Hopping Brook Park, MA, 27876
Malden Street Property, MA, 13860
Committees; establishment, renewal, termination, etc.:
Affordable Housing Advisory Board, 10343
Delayed availability of funds; interagency policy statement; withdrawn, 43573
FICO interest funds payment from FSLIC funds; General Counsel's opinion, 45970
Foreclosure consent and redemption rights; policy statement, 53494
Interest rate futures, forward, and standby contracts; policy statement rescission, 49460
Leased space procedures; policy statement, 5552
Lessors of real property to FDIC; fitness and integrity standards; policy statement, 5554, 19939
Liquidation update list, 53496
Meetings:
Affordable Housing Advisory Board, 10343, 29563, 47941, 64085
Meetings; Sunshine Act, 1668, 2580, 3965, 4301, 4520, 5063, 6295, 7048, 8063, 9459, 10764, 11417, 14782, 16634, 16915, 18598, 20251, 21467, 21468, 25224, 26179, 28582, 29100, 30071, 30611, 31940, 33742, 36728, 36883, 38201, 40418, 41628, 42903, 43762, 47127, 47754, 47755, 51113, 51942, 53375, 54799, 55640, 56544, 59443, 64086, 64906, 64906, 66662, 67335
Operating insured depository institutions; assistance; policy statement, 34814
Practice and procedure:
Interest rate risk management; policy statement, 33166
Reports of condition filing time limits; policy statement rescission, 32813
Retail repurchase agreements (repos); policy statement rescission, 65225
State and local property taxes, payment; policy statement, 65053
State nonmember banks; independent external auditing programs; policy statement, 32438
Stored value cards and other electronic payment systems:
Funds underlying as deposit liabilities; comment request, 40494
Funds underlying as deposits; General Counsel's opinion, 40490

Federal Election Commission

RULES
Congressional candidates (House of Representatives):
Campaign finance reports filing, 3549
Contribution and expenditure limitations and prohibitions:
Candidate debates and news stories produced by cable television organizations, 18049, 31824
Correction, 24533
Coordinated party expenditures; conformance, 40961
Corporate and labor organizations—
Expenditures; correction, 4302
Express advocacy and coordination with candidates; correction, 4302, 10269
Document filing; amendments, 6095
Presidential primary and general election candidates; public financing:
Correction, 4849, 69020
Effective date, 4849
Reports by political committees:
Electronic filing system; campaign finance activity reports; transmittal to Congress, 42371, 58460
PROPOSED RULES
Contribution and expenditure limitations and prohibitions:
Candidate debates and news stories produced by cable television organizations, 3621
Reports by policital committees:
Best efforts; $200+ contributors identification, 52901, 68688
Electronic filing system; campaign finance activity reports, 13465
Rulemaking petitions:
Democratic Senatorial Campaign Committee et al., 41036
NOTICES
Meetings:
Election Administration Advisory Panel, 41787
Meetings; Sunshine Act, 369, 1258, 2334, 3766, 4813, 5605, 7853, 10579, 11003, 11637, 13494, 16098, 16915, 19625, 21182, 24794, 27877, 28865, 29564, 31525, 36560, 37472, 38734, 40218, 40844, 42423, 42903, 46809, 48154, 49326, 50487, 54200, 55150, 56235, 57674, 58412, 60705, 64521, 67832
Presidential primary and general election committees; computerized magnetic media requirements changes, 6245
Special elections; filing dates:
California, 1933
Kansas, 33508
Maryland, 4666
Missouri, 45426
Oregon, 6837
Texas, 50298

Federal Emergency Management Agency

RULES
Disaster assistance:
Temporary housing assistance; exemption from garnishment, 7224
Environmental considerations; categorical exclusions, 4227
Correction, 10688
Flood elevation determinations:
Alabama et al., 17251, 25405, 38092, 38094, 44165
Arizona et al., 10468, 14665, 25400, 33852, 33854, 33856, 40527, 54567, 60037
Arkansas et al., 10472, 54573
California et al., 6561, 14658, 43677, 43679, 43682, 54565, 60034, 60041
Connecticut et al., 6560, 6565, 11315, 44167, 44169, 66925, 66926
Delaware et al., 6572
Florida et al., 6569, 11317, 25402, 29488, 66923
Georgia et al., 6564, 16874, 25403, 38091
Indiana et al., 16875
Kentucky et al., 11318
Louisiana et al., 6567
New Mexico et al., 6568
North Carolina, 6559
Oklahoma, 10474
Pennsylvania et al., 29490
Wisconsin, 29489
Flood insurance; communities eligible for sale:
Delaware et al., 15723
Georgia et al., 7997
Illinois et al., 54563
Kentucky et al., 32704
Maine et al., 28067
Massachusetts et al., 51228, 57572
Michigan et al., 14497, 18287, 40525, 44163
Nebraska et al., 51226
New Jersey et al., 5947, 36514
New York et al., 42179, 46732
North Dakota et al., 59339
Pennsylvania et al., 19857
Texas et al., 8474, 25802
Flood insurance program:
Individual and family grant program; group flood insurance policy, 19197
Insurance coverage and rates, 8222
Special hazard areas identification and mapping and procedures and fees for processing map changes, 46330
Write-your-own program—
Allocated loss adjustment expense fee schedule, 24462, 36513
Audit program revision, 51217
Private sector property insurers assistance, 37687
PROPOSED RULES
Disaster assistance:
Damaged facilities repair, restoration and replacement; eligible costs limitation to preexisting design of facility, 55262
Mobile homes and travel trailers as temporary housing; inventory divestiture, 43208
Public assistance grants; appeals procedures, 55122
Snow removal, 55123
Flood elevation determinations:
Alabama et al., 6598, 11362
Arizona et al., 6593, 25435, 40595, 54593, 60062
Arkansas et al., 33882
California et al., 10494, 14715, 43718
Connecticut et al., 25429
Florida et al., 44279, 66974
Illinois et al., 6601, 16887, 38129
New York, 18538
Pennsylvania et al., 29518
Flood insurance program:
Insurance coverage and rates—
Standard flood insurance policy; rebuilding or altering flood-damaged structures coverage, 49717
Write-your-own program—
Audit program revision, 3635
Private sector property insurers assistance, 14709
Semi-annual agenda, 23744, 63244
NOTICES
Agency information collection activities:
Proposed collection; comment request, 11842-11845, 13193, 15803, 16098, 29378, 29379, 54201, 56544
Submission for OMB review; comment request, 29379, 29380, 31112, 31115, 44057-44059, 54201, 56545
Committees; establishment, renewal, termination, etc.:
National Fire Academy Board of Visitors, 10580
Disaster and emergency areas:
Alabama, 8622, 11003, 16915, 18599
Alaska, 35731, 37065, 37065
Arkansas, 19940, 20524
California, 57873, 58191, 65575
Connecticut, 6007
Delaware, 3703, 6008, 9165
District of Columbia, 1756, 3703
Florida, 57873
Georgia, 3704
Hawaii, 65575, 67553
Idaho, 7000, 8063, 8622
Illinois, 20524, 20525, 25870, 26516, 28865, 32814, 42022, 43247
Indiana, 16915, 16916, 18394, 20525, 38734, 40418

Iowa, 35731, 37065, 46809
Kentucky, 3704, 6008, 30869, 32815
Maine, 15804, 18599, 28865, 58191, 58556, 65576
Maryland, 3705, 5399, 5557, 6009, 8063, 51453, 54206, 55302
Massachusetts, 6009, 57873, 58192, 58556
Michigan, 42022, 42250, 43247, 43762
Minnesota, 1756, 30869, 32815, 38735, 43247
Montana, 8622, 14573, 25870, 26517, 32815
Nebraska, 37066
New Hampshire, 1756, 3706, 58557, 59443, 65576
New Jersey, 3706, 5557, 9165, 13194, 65576
New York, 1757, 3706, 4774, 5399, 5557, 6010, 10344, 13194, 18395, 20525, 65576, 67553
North Carolina, 3707, 5558, 8623, 11003, 13495, 40418, 40419, 42250, 43247, 43762, 48695, 49139, 49140, 49773, 51454, 52793, 54206, 56546, 59443
North Dakota, 30869, 32815, 35732
Ohio, 5400, 5558, 6010, 8063, 35732, 37066, 40419, 42250
Oklahoma, 10344, 11004, 38735
Oregon, 7001, 8063, 8623, 9165, 11004, 13194, 13495, 15804, 20525, 32815
Pennsylvania, 3708, 4774, 5559, 6010, 7002, 8064, 8624, 14573, 33918, 37265, 40419, 42612, 43248, 43762, 51454, 52793
Puerto Rico, 49773, 49774, 51455, 52793, 54206, 57431, 58557, 65577
Rhode Island, 6011, 65577, 67553
South Carolina, 54206, 55303
South Dakota, 1757
Texas, 8624, 10344, 13194, 13860, 14573, 15805, 18395, 32816
Vermont, 7002, 13195, 37066
Virginia, 3710, 5400, 6011, 6012, 7002, 8064, 10345, 15805, 48695, 49140, 49774, 49775, 51455, 51456, 52794, 54207, 55303, 57431, 58557
Virgin Islands, 38735, 40419
Washington, 1757, 3710, 6013, 7002, 8064, 8624, 10345, 11004, 13495
West Virginia, 3710, 4775, 5559, 6013, 7003, 9165, 11004, 28865, 30870, 32816, 32816, 46810, 49776
Wisconsin, 42612
Environmental statements; notice of intent:
Albany (city) and Dougherty County, GA; flood recovery activities, 11417
Flood insurance program:
Agents' commissions; rebating to consumers, 9166
Flood map changes, 28296, 51942
Map changes requests processing and flood insurance study backup data fee schedule (FY 1997), 46334
Grants and cooperative agreements; availability, etc.:
Individual and family programs, and public assistance program; amounts adjustments, 54207
National Urban Search and Rescue Response System, 64744
Hotel and Motel Fire Safety Act:
National master list, 32036, 66662
State contacts, 32032, 39544, 45726, 52858, 58120
Meetings:
Emergency Management Institute Board of Visitors, 17300, 49776
Federal Radiological Preparedness Coordinating Committee, 24937
National Fire Academy Board of Visitors, 21468, 49776
Technical Mapping Advisory Council, 18395, 33919, 44059
Offsite radiological emergency preparedness program; services fees:
Fee assessment and collection hourly rate (FY 1997), 66276
Oklahoma City bombing crisis counseling assistance and training; extension, 38201, 60996
Privacy Act:
Systems of records, 49777
Radiological emergencies response:
Criteria for Protective Action Recommendations for Severe Accidents, 43794
Operational plan, 20944, 28583
Strategic review; notice of intent, 35732, 39455
Radiological emergency; State plans:
New York, 24938
Rhode Island, 38735
Tennessee, 28585
Reports; availability, etc.:
Nuclear power plant early site permit applications; emergency planning criteria, 24307
Senior Executive Service:
Performance Review Board; membership, 54207

Federal Energy Regulatory Commission

RULES
Conflict of interests, 43411
Electric utilities (Federal Power Act):
Open access non-discriminatory transmission services provided by public utilities—
Wholesale competition promotion; stranded costs recovery by public and transmitting utilities, 21540, 30509, 31394
Open access same-time information system (formerly real-time information networks) and standards of conduct for public utilities, 21737
Conference cancellation, etc., 30804
Public utility mergers; policy statement, 68595
Rate schedules filing—
Government land use; annual (FY 1997) fee schedule charges, 58469
Filing fees:
Annual update, 40722
Natural gas companies (Natural Gas Act):
Interstate natural gas pipelines; filing requirements conformance, 13419
Pipeline Regulation Office; project cost and annual limits (1982-1996), 8213
Rate schedule and tariff filing and reporting requirements; changes, 9613, 38565
Uniform system of accounts, forms, statements, and reporting requirements; revisions, 8860, 8870
Natural Gas Policy Act:
Interstate natural gas pipelines—
Business practices, standardizing, 39053, 40962, 55208
Uniform system of accounts, forms, statements, and reporting requirements; revisions, 19832
Oil pipelines:
Cost-of-service filing requirements—
Trans-Alaska Pipeline System carriers, etc.; applicability, 38567
Practice and procedure:
Electronic filing of FERC Form No. 1; changes in instructions, 49662
Public Utility Holding Company Act:
Exempt wholesale generator status; filing requirements and ministerial procedures, 57325
PROPOSED RULES
Capacity reservation open access transmission tariffs, 21847, 38663
Electric utilities (Federal Power Act):
Independent system operators (ISOs) and power tools; technical conference, 705
Merger policy; inquiry, 4596
Open access non-discriminatory transmission services provided by public utilities—
Wholesale competition promotion; stranded costs recovery, 2733, 17263
Rate schedules filing—
Capacity reservation open access transmission tariffs, 41759
Filing of rate schedules:
Federal Power Act; independent system operators (ISOs) and power tools; technical conference, 705
Natural Gas Policy Act:
Interstate natural gas pipelines—
Business practices standards, 19211, 58790
Capacity release mechanism; secondary market transactions, 41046
Oil pipelines:
Cost-of-service filing requirements
Trans-Alaska Pipeline System carriers, etc., applicability, 19878
Practice and procedure:
Hydroelectric projects; relicensing procedures; rulemaking petition, 705, 64031
Semi-annual agenda, 23982, 63472
NOTICES
Agency information collection activities:
Proposed collection; comment request, 7498, 7499, 10568, 16904, 17691, 28859, 36359, 38191, 38192, 40208, 41779, 47505, 49121, 55137
Submission for OMB review; comment request, 4771, 25852, 26895, 36044, 43349, 52926, 55791, 55792, 58049, 68730, 68731
Cultural resources compliance training course, 4979
Data availability on bulletin board system for review by working groups, 8925
Electric rate and corporate regulation filings:
AEP Resources Gippsland Power L.L.C., et al., 4426
Alaska Power Administration et al., 53911
Antigua Energy Operators Ltd. et al., 50481
Arizona Public Service Co. et al., 4423, 13162, 37458
Ashton Energy Corp. et al., 16768
Baltimore Gas & Electric Co. et al., 19921
Brooklyn Navy Yard Cogeneration Partners, L.P. et al., 56225
Calpine Parlin Cogen, Inc., et al., 714
Calpine Power Services Co. et al., 16090
Carolina Power & Light Co. et al., 47120, 52936, 54433
Catex Vitol Electric, L.L.C., et al., 1367
CEA Meiya Power Ltd. et al., 55626
Central Illinois Light Co. et al., 25658
Central Vermont Public Service Corp. et al., 22044, 66272
Chicago Energy Exchange of Chicago et al., 16907
Cincinnati Gas & Electric Co. et al., 41388
Cinergy Services Inc. et al., 409
Citizens Lehman Power Sales et al., 43049
Citizens Power & Light Corp. et al., 43537
CMS Ensenada S.A. et al., 67542
CMS Generation Yallourn Ltd. Duration Co. et al., 5994
CMS Morocco Operating Co. SCA et al., 58183, 68736
Coastal Suzhou Power Ltd. et al., 33497

Colorado Public Service Co. et al., 51931
Commonwealth Edison Co., et al., 59875, 65567
Commonwealth Electric Co. et al., 3692
Consolidated Edison Co. of New York, Inc., et al., 9694
CSW Power Marketing, Inc., et al., 15061
Dayton Power & Light Co. et al., 1908, 4979
DC Tie, Inc., et al., 8926
Delmarva Power & Light Co. et al., 11207
Department of the Navy et al., 27869
Dominican Power Partners, LDC, et al., 6237
Duke/Louis Dreyfus L.L.C. et al., 5999, 49443
Duke Power Co. et al., 29367
Duquesne Light Co. et al., 4981, 9154, 15799, 25217, 42604
Edison Bataan Cogeneration Corp. et al., 64075
Empresa de Generaci n Electrica nor Peru S.A. et al., 37252
Encogen Northwest, L.P., et al., 67008
Energy Source Power et al., 17692
Energy Spring, Inc., et al., 66031
Enpak Power (Private) Co. et al., 19054
Enron Corp. and Portland General Corp. et al., 56227
Enron Power Marketing, Inc., et al., 51097
Ensource, 37461
Entergy Arkansas, Inc., et al., 67786
Entergy Power Marketing Corp. et al., 33725
Entergy Services, Inc., 43754
Entergy Services, Inc., et al., 42013
Escuintla Operations, Inc., et al., 15238
Excell Energy Services, Inc., et al., 13487
Fibrowatt Thetford Ltd. et al., 52787
Florida Power & Light Co., et al., 27063, 54184, 58403
Florida Power Corp. et al., 50290
Gelber Group, Inc., et al., 30600
Graham County Electric Cooperative Inc. et al., 42015
Great Bay Power Corp. et al., 18388
Growth Unlimited Investments, Inc., et al., 34427
Gulf Power Co. et al., 54632
Hainan Meinan Power Co. et al., 64
Hermiston Generating Co., L.P., et al., 9156, 21454, 28862
Idaho Power Co., et al., 58877
IES Utilities Inc. et al., 15474, 49758, 55284
Illinois Power Co. et al., 31096, 46458
Illinova Power Marketing, Inc., et al., 18134
Indeck Pepperell Power Associates, Inc., et al., 16475, 20519
Indian Queens Power Ltd. et al., 16909
InterCoast Power Marketing Co. et al., 29085
Island Power Corp. et al., 59881
J.D. Enterprises et al., 40211, 51099
Jersey Central Power & Light Co. et al., 64872
Kansas Gas & Electric Co. et al., 30054
Kentucky Utilities Co. et al., 6821, 53913
Kincaid Generation, L.L.C., et al., 54636
Lee 8 Storage Partnership, 37256
Liberty Power Ltd. et al., 49125
Louisville Gas & Electric Co., et al., 30057, 32794, 43237, 65570
LSP-Cottage L.P. et al., 43756
LSP-Whitewater, L.P., et al., 48931
Market Responsive Energy, Inc., et al., 42238
Massachusetts Electric Co. et al., 48480
Massachusetts Institute of Technology et al., 2806
Medina Power Co. et al., 28191
Metropolitan Edison Co. et al., 13490
Metropolitan Water District of Southern California et al., 19270
Michigan Power Co. et al., 39127
MidAmerican Energy Co. et al., 16245, 17694, 51932, 64347
Mid-American Power LLC et al., 28192
Mid-Continent Area Power Pool et al., 31514
Midwest Energy, Inc., et al., 63
Midwest Power Systems, Inc., et al., 56676
Milford Power L.P. et al., 24484
Minnesota Power & Light Co., 65202
Minnesota Power & Light Co. et al., 52938
Montana Power Co., 37257
Montaup Electric Co. et al., 14302
Morgan Stanley Capital Group Inc. et al., 36364
Municipal Electric Authority of Georgia et al., 25858
National Gas & Electric L.P. et al., 21174
NCP Houston Power Inc. et al., 14770
Nevada Power Co. et al., 21175
New England Power Co. et al., 2500, 16771, 36046
New England Power Pool et al., 47512
New York State Electric & Gas Corp. et al., 35202
NFR Power, Inc., et al., 8269
Niagara Mohawk Power Corp. et al., 35204, 54994
North American Energy Conservation et al., 7098, 8608
North American Energy Services Co. et al., 57667
Northern Indiana Public Service Co. et al., 716, 16093, 64350
Northern States Power Co. et al., 39637, 40214
NRGenerating Holdings (No. 3) B.V. et al., 36048
NRGenerating Holdings (No. 4) B.V. et al., 5544
NRGenerating Holdings (No. 9) B.V. et al., 67788
O'Brien Parlin Cogeneration, Inc., et al., 22045
Ohio Edison Co. et al., 60276
Oklahoma Gas & Electric Co. et al., 11000
P.H. Don Pedro, S.A., et al., 68253
Pacific Gas & Electric Co. et al., 9448, 57860
PacifiCorp Power Marketing, Inc., et al., 11626
PanEnergy Lake Charles Generation, Inc., et al., 26171, 55629
PECO Energy Co. et al., 31517, 39639, 41392, 41395, 51439, 57402
Pennsylvania Electric Co. et al., 1909
Pennsylvania Power & Light Co. et al., 6367, 68739
Pennsylvania Power Co. et al., 49760
PMDC Netherlands B.V. et al., 58680, 67013
Portland General Electric Co. et al., 10570, 29369, 50817
Potomac Electric Power Co. et al., 37885
PowerNet Corp. et al., 46796
Power Providers, Inc., et al., 42419
Progress Power Marketing, Inc., et al., 47914
PSI Argentina, Inc., et al., 26512
PSI Energy, Inc., et al., 38445, 65379
Public Service Co. of Colorado et al., 1369, 27066, 56677
Public Service Co. of Indiana, Inc., et al., 6990
Public Service Co. of New Mexico et al., 3390, 37886
SCANA Energy Marketing Inc. et al., 29548
Sonat Power Marketing, Inc., et al., 39129
South Carolina Public Service Authority et al., 2808
Southeastern Power Administration et al., 53369
Southern California Edison Co. et al., 10572, 11628, 30602
Southern Co. Services, Inc., et al., 4983
Southern Company Services, Inc., et al., 49125, 65040
Southern Electric Wholesale Generators, Inc., et al., 18583
Southwestern Public Service Co. et al., 64873
State Line Energy, L.L.C., et al., 48933
Termo Santander de Colombia, E.S.P., et al., 59090
Termovalle S.C.A. et al., 59092, 63928
Texas Utilities Electric Co. et al., 47916
Texican Energy Ventures, Inc., et al., 33499
TPC Corp., 65202
Trakya Elektrik Uretim ve Ticaret A.S. et al., 24925, 42880
TransCanada Power Corp. et al., 24303
Two Elk Generation Partners, L.P., et al., 58059
UGI Power Supply, Inc., et al., 58185
Union Electric Co., et al., 64512
Upper Peninsula Power Co. et al., 63837
Utilicorp United Inc. et al., 10335, 25859
Ventway Pty Ltd. et al., 3926
Virginia Electric & Power Co. et al., 1372, 51935
Warbasse-Cogeneration Technologies Partnership L.P., 46460
Washington Water Power Co. et al., 13164, 34430
Washington Water Power et al., 11392
Western Area Power Administration et al., 6369
Western Resources, Inc., et al., 47514
Western Systems Power Pool et al., 7501, 9532, 19056, 36721, 43352, 55144
Wisconsin Electric Power Co. et al., 40632, 59429
Wisconsin Power & Light Co. et al., 39130, 45951
Wisconsin Public Service Corp. et al., 3392, 45417
Xuwen Jieda Electricity Generating Co. Ltd. et al., 7785
Yankee Atomic Electric Co. et al., 31931
Yichange CMI Power Development Co., Ltd. et al., 8048
Electric utilities (Federal Power Act):
  Open access non-discriminatory transmission services provided by public utilities—
    New docket prefix "OA" for filings, 36367
    Wholesale competition promotion; stranded cost recovery by public and transmitting utilities, 51696
  Open access same-time information system (formerly real-time information networks) and standards of conduct for public utilities—
    New docket prefix "OA" for filings, 36367
    Phase 1 oasis operations, 50482
    Standards and protocols document, 50116
Environmental compliance training courses, 21456
Environmental statements; availability, etc.:
  Abbeville, SC, 10339
  Aberdeen et al., WA, 10574
  Alabama Power Co., 11001, 51696
  Alaska Energy Authority, 24788
  Alaska Power & Telephone Co., 10748, 26898
  Algonquin Gas Transmission Co., 10574, 36051
  Algonquin LNG, Inc., 33729, 36051, 51280
  Allegheny Hydro No. 8 & 9 L.P. et al., 19616
  ANR Pipeline Co., 40635
  Appalachian Power Co., 46460
  Armstrong Energy Resources, 36723, 51697
  Blue Diamond Power Partners, 4432
  Butler County, IA, Conservation Board, 38194, 59433, 59884
  California Department of Water Resources et al., 14566
  Canneiton Hydroelectric Project L.P., 21177
  Central Maine Power et al., 2502
  Central Nebraska Public Power and Irrigation District et al., 59884
  Central Vermont Public Service Corp., 46799, 51936

Chugach Electric Association, Inc., 8050
CNG Transmission Corp. et al., 65
Cogeneration, Inc., 45954
Columbia Gas Transmission Corp., 9988, 42422
Consolidated Hydro Maine, Inc., 13166, 32431, 52443, 57669, 57670, 68741
Continental Hydro Corp., 51697
Continental Hydro Corp. & Gas Co., 8610
Crystal Springs Hydroelectric L.P., 48674
Duke Power Co., 6239
Eastern Shore Natural Gas Co., 28195
EcoElectrica, L.P., 232, 19923
Egan Hub Partners, L.P., 43539, 46460
Eugene Water & Electrical Board, 717
Flambeau River, WI, 7503
Gardiner Water District, 11001
Georgia Power Co., 1914, 12071, 25863
Grand River Dam Authority, 38446, 42423, 47745, 49764
Granite State Gas Transmission, Inc., 3929
Great Lakes Gas Transmission L.P., 25219, 30059
Hamilton, KY and OH, 14093
Humboldt State University, 4771
Hydro Matrix Partnership, Ltd., 35207
Indiana Michigan Power Co., 68741
International Paper Co. et al., 2812
Lake Dorothy Hydro, Inc., 49318
Lower Androscoggin River Basin, ME, 11394
Madison Paper Industries, 38446, 47122
Maritimes & Northeast Pipeline, L.L.C., 11630
Midwest Hydraulic Co., 25488, 67792
Midwest Hydraulic Co., Inc., 56678
Minnesota Power & Light Co., 49319, 52497
Mitchell County, IA, 1570, 56953
N.E.W. Hydro, Inc., 27345, 53221
National Fuel Gas Supply Corp., 36724
Natural Gas Pipeline Co. of America, 52444
New England Power Co. et al., 13493
New York Power Authority, 24306
New York State Dam L.P., 31520
Niagara Mohawk Power Corp., 7248, 11630, 28573, 36053, 56228, 60277
Niagara Mohawk Power Corp. et al., 11823, 37733, 51697
Northern Border Pipeline Co. et al., 6992, 35208
Northern Natural Gas Co., 1374, 19925, 49764, 64875
Norwich Public Utilities Department, 24302
Pacific Gas & Electric Co., 6994, 8611, 27345, 36367, 40409, 43540, 57670, 58188, 60278, 68033
PacifiCorp, 21177
PacifiCorp Electric Operations, 411, 1917, 6373
Paiute Pipeline Co., 15239, 30866
Peru, IL; Starved Rock lock and dam project, 50696
Pine Needle LNG Co., LLC, 2248
Pine Needle LNG Co., LLC, et al., 38194
Portland General Electric Co. et al., 58683
Portwood, Ordell O., et al., 16094
Power Authority of State of New York, 20813
Public Service Co. of Colorado, 51697
Public Utility District No. 2 of Grant County, WA, 15064
PUD No.1 of Pend Oreille County, 7100
Rochester Gas & Electric Corp., 7249
Ruger, William B., Jr., 34807
Sahko Hydroelectric Project, 4430
Seattle City Light, 34432
Seattle City Light; Newhalem Creek project, 50696
Seneca Falls Power Corp., 8271
Sequoia Land & Power, Inc., 6240
South Carolina Electric & Gas Co. et al., 556
Southern California Edison Co., 15476
Southern Natural Gas Co., 36872, 51280, 52497, 54997
Star Mill, Inc., 64876
Summersville, WV, 54997
Summerville Hydroelectric Project, 21178
Tennessee Gas Pipeline Co. et al., 25863, 56228
Texas Eastern Transmission Corp., 4986
Thunder Bay Power Co., 10576
Transcontinental Gas Pipe Line Corp., 55288
Transwestern Pipeline Co. et al., 9158
Union Electric Co., 556, 28573
Upper Peninsula Power Co., 8925, 16478, 27346
Virginia Electric Power Co., 32431
Whitewater Engineering Corp., 7306
Wisconsin Electric Power Co., 45955
Wisconsin Public Service Corp., 33502
Environmental statements; notice of intent:
  CNG Transmission Corp. et al., 65383
  Columbia Gas Transmission Corp., 1568, 19922
  Columbia Gas Transmission Corp. et al., 58543
  Denver, CO; city and county, 53368
  Destin Pipeline Co. Inc., 57671
  Eastern Shore Natural Gas Co., 1569
  East Tennessee Natural Gas Co., 54639
  Egan Hub Partners, L.P., 22047
  Granite State Gas Transmission, Inc., 37257, 48937
  Haida Corp., 16094
  Heber Light & Power Co., 57864
  Iroquois Gas Transmission System, L.P., 55287
  Ketchikan Public Utilities, 43540
  KN Interstate Gas Transmission Co., 36052
  Maritimes & Northeast Pipeline, L.L.C., 27067
  Michigan Gas Storage Co., 16478
  NE Hub Partners, L.P., 19924
  Portland Natural Gas Transmission System, 27070, 64514
  Southern California Edison Co., 46799
  Southern Natural Gas Co., 8050
  Tacoma Public Utilities, 1375
  Texas Eastern Transmission Corp., 9159
  Thermalito Power Corp., 55146
  Total Peaking Services, L.L.C., 38195
  Transcontinental Gas Pipe Line Corp. et al., 51697
  Washington Water Power, 32795
  Whitewater Engineering Corp., 6824
  Williams Natural Gas Co., 54640
Hydroelectric applications, 1375, 1914, 2813, 4261, 4986, 6002, 6824, 8052, 10576, 11394, 11630, 11824, 12071, 14094, 15240, 15241, 15933, 16095, 16911, 17696, 18385, 18391, 18727, 19058, 19926, 19927, 21460, 24788, 24789, 25489, 25660, 27072, 29086, 30604, 31520, 33502, 36053, 37257, 37461, 37890, 38196, 38197, 40217, 40409, 41605, 42011, 42012, 42423, 42604, 43050, 43239, 43353, 44307, 47516, 48674, 48938, 49320, 49446, 49447, 51699, 51936, 53905, 54186, 54187, 54436, 55288, 55633, 55799, 57403, 60278, 60696, 64353, 65385, 67328, 67792, 68741
Lobbying Disclosure Act of 1995:
  Covered executive branch officials; list, 11001
Meetings:
  Central Nebraska Public Power and Irrigation District et al., 66274
  DOE/NARUC National Electricity Forum, 54641
  Maritimes & Northeast Pipeline, L.L.C., 43239, 43757
  Michigan statewide programmatic agreement, 31934
  Natural gas companies; working groups (forms and filings), 4432, 50011
  Panhandle Eastern Pipe Line Co., 22048
  Riverside Pipeline Co., L.P., 56678
  Tacoma, WA, 43239
Meetings; Sunshine Act, 1256, 5442, 7303, 9695, 11830, 14302, 15243, 16248, 17697, 22048, 26898, 27872, 29375, 32432, 36873, 39446, 40636, 47749, 50012, 51102, 53730, 54641, 55633, 58061, 58879, 59433, 64077, 66033, 67544
Minnesota Power & Light Co.; National Register of Historic Places; restricted service list for programmatic agreement for managing properties, 55289
Natural Gas Act and Outer Continental Shelf Lands Act:
  Gas pipeline facilities and services; agency's jurisdiction, 31521
Natural gas certificate filings:
  Algonquin Gas Transmission Co. et al., 8616
  ANR Pipeline Co. et al., 6827
  CNG Transmission Corp. et al., 42017, 65203
  Colorado Interstate Gas Co. et al., 10339, 22050, 42605
  Columbia Gas Transmission Corp. et al., 30606, 37462, 42241, 58063
  Distrigras of Massachusetts Corp. et al., 14095
  Eastern Shore Natural Gas Co. et al., 17698
  East Tennessee Natural Gas Co. et al., 45419, 45955
  GPM Gas Corp. et al., 28195
  Koch Gateway Pipeline Co. et al., 13166, 14566, 14596
  Michigan Gas Storage Co. et al., 33730
  MidCon Texas Pipeline Corp. et al., 41396
  Mississippi River Transmission Corp. et al., 15064
  National Fuel Gas Supply Corp. et al., 41399, 50819
  Natural Gas Pipeline Co. of America et al., 47122
  Nautilus Pipeline Co., L.L.C., et al., 51440
  NorAm Gas Transmission Co., 57406
  NorAm Gas Transmission Co. et al., 1377, 7788, 29089
  Northern Border Pipeline Co. et al., 48940
  Northern Natural Gas Co. et al., 42883, 43541
  Northwest Pipeline Corp. et al., 16096, 19058, 25865
  Ozark Gas Transmission System et al., 14567
  Petal Gas Storage Co. et al., 33110
  Puget Sound Energy et al., 57408
  Questar Pipeline Co. et al., 13856
  Riverside Pipeline Co., L.P., et al., 4990
  Southern Natural Gas Co., 28573
  Southern Natural Gas Co. et al., 7504, 8056, 11633, 40411
  Tennessee Gas Pipeline Co. et al., 31100
  Texas Eastern Transmission Corp. et al., 1915
  Texas Gas Transmission Corp. et al., 6003
  TransColorado Gas Transmission Co. et al., 19928
  Transcontinental Gas Pipe Line Corp., 64517
  Transcontinental Gas Pipe Line Corp. et al., 24928, 47518, 49447, 64077
  Trunkline Gas Co., 56678
  Trunkline LNG Co. et al., 54187
  Western Gas Interstate Co. et al., 6994
  Williams Natural Gas Co., 17891
  Williams Natural Gas Co. et al., 718, 30060
  Williston Basin Interstate Pipeline Co. et al., 13168, 15476
Natural gas companies (Natural Gas Act):
  Electronic and paper filing specifications, 57410
  Rate schedule and tariff changes; electronic filing and reporting requirements, 41783
  Uniform system of accounts, forms, statements, and reporting requirements; revisions; rate

schedule and tariff changes; filing requirements, 15477, 16630, 26900
Natural gas exportation and importation:
Columbia Gas Transmission Corp. et al., 37263
Texas Gas Transmission Corp. et al., 43757
Natural gas pipelines; alternatives to traditional cost-of-service ratemaking; negotiated terms and conditions, 4633, 7789, 13857, 16479
Natural gas pipelines, interstate:
Business practices standards, 49127, 50293
New and existing facilities construction; pricing policy, 19930
Secondary market transactions; pilot program to relax price cap, 41401
Oil pipelines:
Producer price index for finished goods; annual change, 25661
Outer Continental Shelf Lands Act (Section 5); gathering and transportation of natural gas across OCS; policy statement, 8611
Preliminary permits surrender:
Hydrogroup Inc., 15065
Northrop Engineering Corp., 6240
Trenton Falls Hydroelectric Co., 6240
Records and Information Management System (RIMS III) documents; procedural change in payment, 33113
Senior Executive Service:
Performance Review Board; membership, 53732
Stranded costs declaratory order petitions; new docket prefix, 55147
Applications, hearings, determinations, etc.:
AEP Power Marketing, Inc., 52927
AEP Resources Gippsland Power, L.L.C., 13161
AEP Resources International, Ltd., 54991
AEP Resources Project Management Co., Ltd., 54991
Alabama-Tennessee Natural Gas Co., 16088, 29364, 35198, 38442, 43349, 43536, 47240, 48668, 51692, 53905, 63835
Alabama-Tennessee Natural Gas Co. et al., 65033
Algonquin Gas Transmission Co., 3691, 5392, 7247, 8267, 9153, 10569, 12068, 15060, 15791, 16630, 21165, 24783, 32429, 33911, 34804, 41133, 47904, 52927, 55138, 58395
Algonquin Gas Transmission Corp. et al., 3691, 5637
Algonquin LNG, Inc., 26509, 29364, 59222, 64861
Alleghany Power Service Corp. et al., 7096
Allegheny Generating Co., 7781
Alliance Power Marketing, Inc., 33723
Alqonquin Gas Transmission Co., 37251
Alternate Power Source, Inc., 21165
American Electric Power Service Corp., 17283
American Energy Solutions, Inc., 68731
American Hunter Energy Inc., 64344
American Municipal Power Ohio, Inc., 55281
Amoco Production Co. et al., 2249
ANP Energy Direct Co., 16905, 21166
ANP Operations Co., 21447
ANR Pipeline Co., 644, 719, 1916, 4423, 6988, 9685, 9686, 9985, 15791, 17283, 19918, 21166, 21447, 24784, 25853, 29364, 29540, 29541, 38721, 39956, 41133, 41780, 42874, 46450, 47743, 48136, 52928, 53211, 54427, 54991, 54992, 55138, 56674, 58050, 58395, 59223, 59426, 59872, 60267, 64073, 64862, 66028, 68030
ANR Storage Co., 47507, 47508
Aquila Gas Systems Corp., 67005
ARCO Products Co. et al., 3393
Arizona Public Service Co., 49122
Arkansas Western Pipeline Co., 21166, 47743, 50006, 52842, 55138, 67539
Armstrong Energy Co., 58176
Atlantic City Electric Co. et al., 41600
Atmos Energy Services, Inc., 44306
Avoca Natural Gas Storage, 16905
AYP Energy, Inc., 32792, 55622
Black Marlin Pipeline Co., 47508, 48529, 52782
Blandin Paper Co., 12068, 16975, 27059
Blue Lake Gas Storage Co., 47508
Bonneville Fuels Management Corp., 6363
Boston Edison Co., 20811, 57859
Boston Gas Co., 47904
Boundary Gas, Inc., 4420, 13161
Bridgeline Gas Distribution LLC, 48930
Brooklyn Union Gas Co., 48137
Brooklyn Union Gas Co. et al., 51692
Btu Power, Inc., 19616
Burlington Resources Trading Inc., 64344
Burney Forest Products, 21167, 27341, 41600
Cambridge Electric Light Co., 26170
Canal Electric Co., 60267
Canyon Creek Compression Co., 46450, 55793, 58176, 65034
Caprock Pipeline Co., 48668
Carnegie Interstate Pipeline Co., 1026, 7247, 11625, 14564, 15792, 18727, 36719, 39636, 46451, 47904, 53729, 54179, 59223, 64863
Centerprise Inc., 25853, 35199
Centana Interstate Pipeline Co., 34426
Central Hudson Gas & Electric Corp., 48137
Central Maine Power Co., 6637, 11391
Central Nebraska Public Power & Irrigation District et al., 3394, 5392, 5445, 14093
Central Power & Light Co. et al., 16767
Central Vermont Public Service Corp., 64073
Centra Pipelines Minnesota Inc., 55138
Chandeleur Pipe Line Co., 1753, 3017, 3930, 47508, 48669, 68732
Chevron U.S.A., Inc., 3930
Cleveland Electric Illuminating Co., 35199, 47905, 57860
Cleveland Electric Illuminating Co. et al., 30052, 53211, 57859
CL Power Sales Six, L.L.C., et al., 52928
CMS Electric Marketing Co., 49755
CNG Energy Services Corp., 58395
CNG Transmission Corp., 645, 3018, 4421, 5993, 6412, 6989, 7500, 9686, 10996, 11625, 15792, 15929, 17889, 18387, 20518, 26510, 29083, 33723, 36554, 37730, 39515, 41600, 46451, 48137, 49442, 50006, 51437, 52928, 52929, 53367, 55622, 60267, 63835, 64863, 67005, 68732
CNG Transmission Corp. et al., 64863
Colenergy Trading Co., 11820
Colonial Pipeline Co., 50480, 55793
Colorado Interstate Gas Co., 720, 3018, 3691, 4646, 6364, 7781, 9985, 10996, 13485, 15792, 16244, 18387, 19117, 24784, 25486, 25854, 29541, 30865, 33911, 35729, 36864, 39956, 40839, 42418, 47117, 47743, 47744, 47905, 49531, 51094, 52782, 52783, 52929, 53729, 54180, 58177, 59223, 64864, 65034, 65034, 65564
Colorado Interstate Gas Co. et al., 25854
Columbia Gas Transmission Co., 43750
Columbia Gas Transmission Corp., 347, 645, 720, 1026, 1753, 2497, 3018, 3691, 4422, 5758, 6364, 6637, 7248, 8923, 8924, 9446, 9686, 9985, 11820, 12068, 15236, 16630, 17692, 18131, 18582, 21447, 24298, 25657, 27059, 29541, 30598, 31930, 33107, 34805, 36719, 37731, 38193, 38722, 40209, 41133, 41134, 41781, 41781, 43234, 43536, 47117, 47744, 48138, 51094, 51693, 52783, 54427, 55983, 57665, 60267, 60694, 64737, 64864
Columbia Gas Transmission Corp. et al., 161, 16474, 47905, 64864
Columbia Gulf Transmission Co., 646, 9687, 15793, 19268, 26511, 29542, 29745, 34427, 36864, 43751, 48138, 51693, 53212, 56952, 58050, 58396, 60268, 65377, 66270, 67540
Columbia Gulf Transmission Co. et al., 16906
Columbia Natural Resources, Inc., 24299
ConAgra Energy Services, Inc., 11821
Confederated Tribes of Warm Springs Reservation of Oregon et al., 11204
Connecticut Light & Power Co., 28860
Consolidated Edison Co. of New York, Inc., 8924
Consumers Power Co., 56529
Cook Inlet Energy Supply, 38722
Copano Field Services/Copano Bay, L.P., 58177
Cove Point LNG L.P., 14768, 47906, 55139
CPS Capital, Ltd., 36360
Crossroads Pipeline Co., 14300, 66657
Cumberland Power, Inc., 52929
Dakota Gasification Co. et al., 49317, 52497
Dauphin Island Gathering System, 64345
Decatur Utilities, AL, et al., 53909
Direct Access Management, LP, 19617
Distrigas of Massachusetts Corp., 31094, 54992, 60268
Dow Intrastate Gas Co., 30865, 54992
DPL Energy, Inc., et al., 53212
Duke/Louis Dreyfus Energy Services (New England) L.L.C., 27341
Eagle Gas Marketing Co., 27059
Eastern Shore Natural Gas Co., 646, 1026, 1754, 4646, 6365, 10748, 11821, 15237, 15793, 21448, 24300, 26896, 30052, 36864, 38443, 39636, 41134, 42235, 45415, 47117, 48138, 50007, 51094, 55140, 58051, 58876, 65034, 65035, 66029
Eastex Power Marketing, Inc., 13486
East Tennessee Gas Transmission Co., 46451
East Tennessee Natural Gas Co., 2250, 9153, 15930, 25486, 29364, 30052, 39125, 42874, 42875, 43235, 44044, 48138, 48669, 52929, 53212, 55139, 58050, 58178, 60268
EcoElectrica, L.P., 31512
Edison Source, 43349
Edwards Manufacturing Co., Inc., et al., 5393
Egan Hub Partners, L.P., 8604, 46795, 67006
El Paso Natural Gas Co., 647, 2250, 6235, 9688, 11204, 18582, 21449, 24301, 24483, 25854, 29542, 35199, 35729, 36045, 42875, 46451, 46795, 47906, 49442, 53213, 54785, 58051, 58396, 59872, 60269, 64864, 65035, 68030, 68252
EMC Gas Transmission Co, 49755
EnerConnect, Inc., 31094
Energy Management Corp., 55793
Energy Marketing Services, Inc., 7782
EnergyOnline Inc., 2815
Energy Resource Management Corp., 1027
Energy Transfer Group, L.L.C., 5760
Energy West Power Co., LLC, 1378
Enerserve, L.C., 1379
EnerZ Corp., 56529
Engineered Energy Systems Corp., 43350
Enova Energy, Inc., 50815
Enron Mountain Gathering, Inc., 67782
Enron Power Marketing, Inc., 58051
Enron Power Marketing, Inc., et al., 49442
Enserco Energy, Inc., 54992, 65564
Entergy Power, Inc., 26896, 26897
Entergy Services, Inc., 12069, 37049, 54180
Entergy Services, Inc., et al., 7782
e prime, inc., 15473
Equitable Storage Co., 19919
Equitrans, Inc., 647, 55140, 56529
Equitrans, L.P., 3694, 6638, 7157, 8267, 9688, 10332, 12069, 15794, 16975, 21449, 24302, 29542, 36865, 37456, 46638, 50287, 52784, 53996, 55141, 55282, 55623, 55793, 56221, 56222, 56530
Equitrans, L.P., et al., 27341
Express Pipeline Partnership, 12069
Exxon Co., U.S.A., 33912
Fall Line Hydro Co., Inc., 21449
Family Fiber Connection, 33724
Federal Energy Sales, Inc., 10996
Florida Gas Transmission Co., 648, 2498, 4421, 6235, 7782, 8604, 8605, 9154, 10997, 15060, 16631, 21167, 21449, 21450, 22041, 36555, 36720, 36865, 39445, 39956, 40839, 41781, 43048, 43235, 46452, 46452, 47509, 47744, 47745, 48139, 48669, 50007, 50008, 51278, 53213, 55141, 55623, 55794, 56530, 58052, 59223, 67540, 67783
Florida Power & Light Co., 41600
Florida Power Corp., 13486
Foster, Brian R., 13486
Frontier Gas Storage Co., 5542, 5993, 11205, 48670, 49756, 51438, 54428, 54785, 55282, 56222, 57401, 64346
Garden Banks Gas Pipeline, LLC, 41601
Gasdel Pipeline System, Inc., 47906
Gas Research Institute, 14768, 29746, 31095, 58052, 65035
Gateway Energy Marketing, 11205
GDK Corp., 36360
Gelber Group, Inc., 40629
Georgia Power Co., 68031
Global Petroleum Corp., 1027
Global Petroleum Corp. et al., 7097
GPM Gas Corp. et al., 60269
Granite State Gas Transmission, Inc., 20812, 21168, 24925, 36045, 39956, 42236, 49122, 52930
Great Lakes Gas Transmission L.P., 720, 21168, 25486, 27342, 40209, 41135, 47745, 48670, 52784, 54428, 58053, 66029
Greenwich Energy Partners, L.P., 408
Growth Unlimited Investments, Inc.,
Gulf States Pipeline Corp., 27342
Gulf States Transmission Corp., 68031
Heath Petra Resources, Inc., 1028
High Country Resources et al., 16089
High Island Offshore System, 19269, 29365, 51094, 58053
Hilo Coast Processing Co., 9446
Holliday Historic Restoration Associates, 8268
Honeoye Storage Corp., 4648, 13486, 16631, 17355, 51279, 54785
Hopkinton LNG Corp., 68732
Hydroelectric applications, 58396
Hydro-Power Inc., 36361
ICC Energy Corp., 36361
IES Utilities Inc., 14300
Indeck Pepperell Power Associates, Inc., 13161
International Paper Co. et al., 45415
International Utility Consultants, Inc., 6365
Iroquois Gas Transmission System, L.P., 3019, 15794, 19617, 36865, 39125, 48139, 48930, 49443, 52784, 58398, 65036
J.D. Enterprises, 55795
Jersey Central Power & Light Co., 5393
Jersey Central Power & Light Co. et al., 55795
Jupiter Energy Corp., 47509, 48670, 67540
Kansas City Power & Light Co., 26170, 27343
Kennebec Water District et al., 43350
Kentucky Utilities Co., 2816, 13854, 55282
Kentucky West Virginia Gas Co., 36555
Kentucky West Virginia Gas Co., L.L.C., 46452, 54428
Kentucky West Virginia Gas L.L.C., 58399
Kern River Gas Transmission Co., 12070, 22041, 36720, 47907, 48139, 48931, 64865
Keyspan Energy Services, Inc., 55624
Kibler Energy Ltd., 19617
KinEr-G Power Marketing Inc., 21169
KN Interstate Gas Transmission Co., 721, 4260, 27060, 29746, 29747, 36046, 36866, 42236, 43235, 46453, 47509, 48671, 53729, 54786, 59873, 60270, 67783
KN Wattenberg Transmission, L.L.C., 29747, 48671
Koch Gateway Pipeline Co., 721, 5393, 5543, 6236, 6820, 8924, 10332, 11391, 15930, 17283, 21450, 24784, 26511, 27343, 29747, 30865, 33912, 35200, 37456, 39125, 40210, 40630, 41602, 41782, 42875, 43536, 46453, 47118, 47746, 48479, 49122, 51094, 51095, 52785, 52930, 52931, 53213, 54428, 54490, 54786, 55141, 56222, 56531, 56674, 57401, 58053, 58399, 59873, 60270, 64865, 64866, 65377, 68032, 68733
KO Transmission Co., 13854, 14769, 29543, 34805
Lawrenceburg Gas Co., 2816
Lawrence, David M., 7097
LG&E Power Marketing Inc., 348
LG&E-Westmoreland Southampton, 41135
Lisco, Inc., 31095
Lomex Oil & Gas Co. et al., 54429
Long Island Lighting Co., 42875
Louisiana-Nevada Transit Co., 37456, 64510, 67783
Louisiana State Gas Corp., 30053
LS Power Marketing, LLC., 37731
Lykes-Duke/Louis Dreyfus, Ltd., 59427
Manner Technologies, L.L.C., 68733
Manta Ray Offshore Gathering Co., L.L.C., 50480
Maritime & Northeast Pipeline, L.L.C., 54429
Maritime & Northeast Pipeline, L.L.C., et al., 27060
MarkWest Hydrocarbon Partners, Ltd., 65564
Maverick County Water Control and Improvement District No., 35200
Michigan Gas Storage Co., 9688, 26511, 36361
MidAmerican Energy Co., 11821, 15060, 20812, 30230, 66657
Mid-American Power LLC, 38722
Mid Continent Market Center, Inc., 18132
Mid Continent Market Center, Inc., et al., 25854
Mid Louisiana Gas Co., 3930, 8268, 9986, 18132, 19976, 29365, 36555, 49123, 50287, 51095, 54180, 55624, 56531, 68734
Midwestern Gas Transmission Co., 15930, 21169, 29543, 41138, 42876, 42876, 48140, 48671, 53214
Midwestern Natural Gas Co., 58179, 60271
Midwest Gas Storage Inc., 48140
Midwest Hydraulic Co., 31513, 67784
MIGC, Inc., 47509, 48671
Minnesota Power & Light Co., 2251
Mississippi River Transmission Corp., 348, 15795, 15931, 25487, 41138, 42012, 43751, 46453, 47907, 48480, 48672, 51095, 52931, 53214, 53910, 54180, 54181, 55142, 55624, 55625, 56223, 58053, 58399, 58876, 64866, 65036, 65377, 67541
Mississippi River Transmission Corp. et al., 36866, 38443, 42876
Mississippi Valley Gas Co. et al., 38444
Missouri Gas Energy et al., 26897
Mobile Bay Pipeline Co., 21450, 24785, 47746
Mojave Pipeline Co., 648, 5394, 29543, 40839, 46453, 47907, 50008, 53214, 68032
Mojave Pipeline Operating Co., 46795, 65036
Monterey Consulting Associates, Inc., 43351
Mountaineer Gas Co., 47908
MP Energy, Inc., 3019
Murphy Exploration & Production Co. et al., 10998
National Fuel Gas Distribution Corp., 47908
National Fuel Gas Supply Corp., 62, 2816, 4646, 6365, 8268, 8605, 9689, 9986, 14564, 15564, 15931, 16089, 17890, 20519, 21169, 27343, 29544, 31095, 33107, 36556, 39125, 40631, 41139, 41602, 41603, 41782, 42418, 42877, 47746, 48140, 48672, 49317, 50287, 52785, 52931, 53215, 54181, 54632, 54786, 55142, 56223, 58054, 58399, 58400, 59089, 60271, 64510, 64867, 65036, 65037, 67326, 67784
Natural Gas Pipeline Co., 57665
Natural Gas Pipeline Co. of America, 348, 1379, 4647, 9986, 11205, 13162, 13487, 14565, 17283, 21451, 24786, 29544, 30599, 31930, 33107, 37457, 38193, 39126, 46454, 46638, 51694, 55282, 55795, 58054, 58179, 60272, 67541
Natural Gas Pipeline Co. of America et al., 24785
NE HUB Partners, L.P., 35201, 36362, 39636, 54433
New Energy Ventures, Inc., 37731, 49756
New England Power Co. et al., 21169
New Jersey Natural Energy Co., 55283
New York State Electric & Gas Corp., 35201, 42877
NFR Power, Inc., 16906
NGTS Energy Services, 59427
NorAm Gas Transmission Co., 161, 1379, 1754, 2498, 2817, 3019, 6820, 7248, 9987, 10998, 15795, 15931, 21170, 21171, 25855, 28861, 29365, 31931, 37252, 41782, 43351, 43351, 43752, 48141, 48141, 50288, 53215, 54267, 55795, 55796, 58055, 58179, 58400, 64867, 67007, 67327, 67541, 68032, 68734
NorAm Gas Transmission Co. et al., 57401
Nora Transmission Co., 721, 41602, 46454
NORSTAR Energy L.P., 19618
Norteno Pipeline Co., 58055
North American Power Brokers, Inc., 19618
Northeast Utilities Service Co., 5394, 54181
Northern Border Pipeline Co., 16244, 21451, 24786, 25855, 25856, 29544, 29748, 38444, 48931, 53215, 60694, 67784
Northern Illinois Gas Co., 40210
Northern Indiana Public Service Co. et al., 29366
Northern Natural Gas Co., 349, 649, 1380, 2251, 3019, 4422, 4647, 5394, 9689, 11625, 15795, 16630, 17284, 17692, 18133, 19919, 25856, 27061, 27344, 28861, 29084, 29545, 30599, 30865, 33108, 34805, 36866, 37457, 39126, 39445, 41139, 42877, 43752, 43752, 45951, 46638, 47118, 47747, 52442, 52785, 53216, 54433, 54787, 54993, 55142, 55625, 56674, 57002, 57402, 60272, 60694, 63836, 64867, 64868, 66029, 66030, 67785
Northern Natural Gas Corp., 48141

Northern States Power Co., 50815
Northern States Power Co. et al., 54181, 54182
Northrop Grumman Corp. et al., 59427
Northwest Alaskan Pipeline Co., 26897, 60272
Northwest Pipeline Corp., 408, 649, 2498, 5543, 5993, 6365, 8268, 9690, 10570, 12070, 15932, 17284, 18388, 18727, 19269, 24483, 29084, 32430, 33108, 33912, 36362, 38723, 39126, 40631, 40839, 46795, 47510, 47908, 48931, 49757, 50288, 50289, 54182, 54183, 54787, 55840, 58055, 59873, 59874, 60695, 64511, 64868, 65037, 67542
Northwest Pipeline Corp. et al., 65378
Northwest Power Marketing Co., L.L.C., 33724
Norwest Pipeline Corp., 25215
NUI Energy Brokers, Inc., 49123
Ocean Energy Services, Inc., 5760
Oceanside Energy, Inc., 64346
Oklahoma Municipal Power Authority, 11626
OkTex Pipeline Co., 4648, 6990, 45416
Old Dominion Electric Cooperative, 6638, 27344
Olympic Natural Gas Co., 31096
ONEOK Power Marketing Co., 59428
Open Access Same-time Information System (OASIS), 48672
Orange & Rockland Utilities Inc., 49124
Ouachita River Gas Storage Co., L.L.C., 66030, 67109
Overthrust Pipeline Co., 721, 6820, 10998, 29748, 46454
Oxbow Power Marketing, Inc., 38723
Ozark Gas Transmission System, 15796, 46454, 48141
P&T Power Co., 58400
PacificCorp Power Marketing, Inc., 11392
Pacific Gas & Electric Co., 1916, 19919, 25856, 25857, 47119, 59428
Pacific Gas & Electric Co. et al., 25216, 25217, 37732, 38723, 39636, 42878, 47510, 48142
Pacific Gas Transmission Co., 2817, 3020, 7097, 8605, 9987, 18386, 29545, 41140, 43236, 46796, 47119, 51279, 52931, 53216, 53217, 56675, 59874, 64511, 65037, 68032
Pacific Gas Transmission Corp., 49443
Pacific Interstate Offshore Co., 47747
Pacific Interstate Transmission Co., 11822
Pacific Northwest Generating Cooperative, 55143
PacifiCorp, 556, 2251, 11822, 16767, 36867
Pacific Power Marketing, Inc., 7783
Pacific Power Solutions, LLC, 31096
Paiute Pipeline Co., 10998, 11205, 14769, 18133, 36867, 37457, 48142, 53217, 55143, 64868
PanEnergy Field Services, Inc., 60273
PanEnergy Power Services, Inc., 11392
PanEnergy Trading & Market Services, L.L.C., 55283
Panhandle Eastern Line Co., 67785
Panhandle Eastern Pipe Line, 3695
Panhandle Eastern Pipe Line Co., 1918, 3020, 3931, 5394, 6366, 6820, 9446, 9691, 15796, 19919, 19920, 21452, 27344, 28571, 29545, 32430, 33724, 36868, 38193, 44044, 46455, 46796, 47909, 48142, 51694, 52785, 52932, 54787, 60273, 65038, 65565, 67007, 68252
Paragon Gas Marketing, 1028
Peabody POWERTRADE, Inc., 49757
PECO Energy Co., 37732, 50816
PECO Energy Co. et al., 30053
Plant Owners, 34805
Plum Street Energy Marketing, Inc., 52932
PNM Gas Services, 65038
Portland General Electric Co. et al., 67007
Portland Natural Gas Transmission System, 58401, 65565
Potomac Electric Power Co., 11822
Power Authority of State of New York, 41141
Power Fuels, Inc., 36868
Powerline Controls, Inc., 39446
PowerMark, L.L.C., 5760
Power Providers, Inc., 49757, 50906
Power Source L.L.C., 43049
Preferred Energy Services, Inc., 43352, 48529
Progress Power Marketing, Inc., 42418
Public Service Co. of Colorado, 15060
Public Utility District No. 1 of Chelan County, WA, 66271
Public Utility District No. 1 of Douglas County, WA, 46455
Puget Sound Power & Light Co., 14093
QST Energy Trading, Inc., 11822
Quantum Energy Resources, Inc., 10999
Questar Energy Trading Co., 5758
Questar Pipeline Co., 649, 722, 3931, 4422, 9987, 10332, 17285, 26511, 32793, 37458, 38444, 41140, 43536, 46455, 47747, 47909, 51694, 51929, 54993, 55143, 56223, 64869
Raton Gas Transmission Co., 52786
Richfield Gas Storage System, 48143
Rio Grande Pipeline Co., 54433
Riverside Pipeline Co. et al., 31513
Rochester Gas & Electric Corp., 14300, 21452, 66271
Rocky Mountain Natural Gas Co., 57666
Roosevelt Water Conservation District, 25658
Russell Energy Sales Co., 58402
S.D. Warren Co., 47119
Sabine Pipe Line Co., 2252, 41141, 46455, 48672
Sandia Energy Resources Co., 53218
SCANA Energy Marketing, Inc., 27344
SDS Petroleum Products, Inc., 31513
Seagull Power Services, Inc., 7783
Sea Robin Pipeline Co., 722, 1918, 4420, 14769, 48143, 67785
SEMASS Partnership, 20813, 21452
SEMCOR, Inc., 27061
Shell Gas Pipeline Co., 349, 4261, 9447, 13487, 16767, 22042, 29366, 45416
Sonat Power Marketing L.P., 43352
Southern California Edison Co., 21171, 22042, 22043, 26897
Southern Company Services, Inc., 13162
Southern Indiana Gas and Electric Co., 37732
Southern Natural Gas Co., 62, 349, 350, 722, 3931, 4648, 4771, 4772, 4978, 5543, 6990, 8269, 9691, 12070, 13855, 15796, 16245, 21171, 21453, 28861, 28862, 29546, 32793, 35201, 35202, 36557, 40210, 41602, 46456, 47910, 50816, 52933, 53368, 55625, 58056, 64869, 65566, 66272
South Georgia Natural Gas Co., 722, 1754, 1918, 3394, 25857, 35201, 39127, 46456, 47748, 47910, 59224, 60695, 64869, 64870, 65565
State Line Energy L.L.C., 56224
Steuben Gas Storage Co., 47511, 58056, 65038, 66657
Stingray Pipeline Co., 723, 14301, 26512, 46456, 53729, 55796, 58180, 65038
Strategic Energy Ltd., 64347
Strategic Energy Management, Inc., 51930
Sumas Cogeneration Co., L.P., 2499
Sumas International Pipeline Inc., 54183
SuperSystems, Inc., 16907
Symmetry Device Research, Inc., 47511
Syracuse Power Co. et al., 24925
Tallahassee, FL, et al., 10333
Tarpon Transmission Co., 47511, 50008
Teco Pipeline Co., 64074
Tenneco Baja California Corp., 2252
Tennessee Gas Pipeline Co., 1918, 2253, 3395, 3967, 4648, 5394, 6236, 6366, 8606, 9154, 9447, 9692, 9987, 11392, 12070, 13487, 15797, 16090, 17286, 19269, 19920, 21453, 24303, 25487, 26512, 29546, 30053, 31514, 32793, 35730, 36557, 36720, 36869, 38445, 39127, 42419, 42879, 43049, 43752, 46457, 48143, 48673, 50009, 50289, 51096, 52786, 52933, 53218, 53369, 54183, 54787, 57406, 57666, 58180, 58876, 59428, 60274, 64074, 64871, 68734
Texaco Natural Gas Inc., 5758
Texas Eastern Gas Transmission Corp. et al., 65201
Texas Eastern Transmission Corp., 723, 3020, 5544, 6639, 9692, 11626, 13487, 16475, 21171, 21172, 25487, 26898, 28572, 29084, 32430, 33109, 34427, 34807, 36557, 36721, 37733, 40631, 41782, 42236, 43236, 46639, 47120, 47911, 49758, 50009, 50480, 52934, 53219, 53220, 55283, 58056, 58057, 64074, 67327, 68734
Texas Gas Transmission Corp., 63, 650, 3021, 3932, 4649, 8606, 9447, 10999, 25858, 27061, 29547, 30866, 40632, 42237, 42251, 47912, 48144, 49124, 51097, 52443, 57402, 58057, 66657
Texas Ohio Pipeline, Inc., 46457, 55796
Texas Utilities Electric Co., 10999
Thicksten Grimm Burgum, Inc., 37733, 51930
Thunder Bay Power Co., 17287
Tosco Power Inc., 59429
Total Peaking Services, L.L.C., 36363
Total Petroleum, Inc., 19920
Trailblazer Pipeline Co., 24786, 46458, 55797, 58181, 65039
TransAlta Enterprises Corp., 19618, 33725
TransColorado Gas Transmission Co., 28572, 58402, 58877
Transcontinental Gas Pipe Line Corp., 61, 350, 724, 1754, 2252, 2499, 3021, 3695, 7783, 7784, 8607, 9693, 10333, 11083, 11206, 13855, 14301, 15060, 15797, 15798, 15932, 16767, 17890, 18134, 19619, 28572, 28862, 30866, 32430, 33109, 36558, 38445, 39957, 41141, 41603, 42879, 43753, 44044, 45416, 46458, 47748, 47912, 49124, 49443, 50009, 50010, 51097, 51695, 52787, 52934, 53219, 53910, 54788, 56531, 56532, 58058, 59224, 59874, 60275, 60695, 64511, 65378, 65566, 68735
Transcontinental Gas Pipe Line Corp. et al., 48450
Transok, Inc., 25858
Transwestern Pipeline Co., 7500, 21173, 25217, 39127, 48144, 50010, 52935, 53220, 54490, 55143, 55797, 55798, 56675, 57002, 58058, 65039, 67786
Trasncontinental Gas Pipe Line Corp., 30599
Trunkline Gas Co., 351, 650, 1028, 1919, 2499, 3932, 4649, 4772, 9447, 9693, 10335, 14301, 17286, 19270, 21453, 24787, 27062, 29085, 36558, 36869, 40632, 41783, 42419, 48145, 52787, 52936, 56224, 58058, 58543, 60276, 60695, 64871, 65378, 67007
Trunkline LNG Co., 4772, 15237, 55625, 57667
Tucson Electric Power Co., 64074

Tuscarora Gas Transmission Co., 33110, 33496
UGI Power Supply, Inc., 56224
Ultramar Inc., 46639
Ultramar Inc. et al., 21453, 49317, 56225
United Cities Gas Co., 14769
United Illuminating Co., 55284, 64075
Universal Power Services, L.L.C., 15473
Universal Resources Corp., 27062
Upper Peninsula Power Co., 53910
US Energy, Inc., 66030, 68736
Utah State University, 63836
Utility Management & Consulting, Inc., 5759
Utility Management Corp., 16907
U-T Offshore System, 58059
Valero Transmission Co. et al., 24483
Ventway PTY Ltd., 15061
Vermont Electric Power Co., Inc., 56675
Vermont Marble Power Division of OMYA, Inc., 45951
Viking Gas Transmission Co., 16631, 27063, 34807, 37458, 47512, 50010, 50011, 54994, 59225, 65039, 68253
Virginia Electric & Power Co., 4978
Virginia Gas Pipeline Co., 41604
Wabash Valley Power Association, Inc., et al., 5269
Wascana Energy Marketing (U.S.) Inc., 55798
Washington Gas Energy Services, Inc., 56532
Washington Gas Light Co., 47912
Washington Water Power Co., 17286, 30599
Western Area Power Administration, 7097, 57402
Western Gas Interstate Co., 55626, 65202
Western Resources, Inc., et al., 7784
Western Transmission Corp., 4422, 67008
WestGas InterState, Inc., 48673
West Texas Gas, Inc., 7784, 9694, 21173, 29547, 39636, 41604, 47912, 58877, 65039
Wheeled Electric Power Co., 19054
Williams Gas Processing-Gulf Coast Co., L.P., 8507
Williams Natural Gas Co., 16968, 47913, 48145, 49758, 50816, 50817, 51279, 52936, 53369, 53911, 54490, 54788, 54994, 55144, 55361, 55983, 56225, 56532, 58182, 59225, 63836, 63837, 65040, 65566, 66031, 68032
Williams Pipe Line Co., 41141, 48673, 67786
Williston Basin Interstate Pipeline Co., 651, 1755, 2253, 3022, 4264, 4302, 4978, 5759, 5994, 15799, 16475, 27063, 29547, 29748, 32794, 36721, 36870, 36871, 37252, 39637, 40840, 42237, 43537, 47749, 49124, 50289, 52936, 53220, 55284, 55798, 55799, 58402, 58403, 58877, 65379
Windpower Partners 1993, L.P., 43237
Windpower Partners 1994, L.P., 43237
Wisconsin Electric Power Co., 13855, 18386, 54184
Wisconsin Power & Light Co. et al., 7785
Wisconsin Public Service Corp., 59875, 64075
Wisconsin Public Service Corp. et al., 18583
Working Assets Green Power, Inc., 58059, 64347
WWP Resource Services, Inc., 50817
Wyoming Interstate Co., Ltd., 724, 5994, 9694, 47913, 48145, 49125, 51695, 54789, 58059, 58182, 60695, 67542
Young Gas Storage Co. Ltd., 21454, 30600, 63837
Young Storage Co., Ltd., 21454

Federal Financial Institutions Examination Council

NOTICES

Agency information collection activities:
Proposed collection; comment request, 65058
Community reinvestment; interagency questions and answers, 54647
Negotiable order of withdrawal (NOW) accounts advertising; interagency policy statement withdrawn, 40419
Real estate appraisers, State licensed or certified; temporary practice and reciprocity agreements and arrangements, 54645
Trust assets annual report; addition of Schedule E fiduciary income statement, 46645
Uniform Financial Institutions Rating System (CAMEL rating system):
Composite rating component factors revision, 67021
Composite rating component factors revision; comment request, 37472

Federal Highway Administration

RULES

Civil rights:
Equal employment opportunity on Federal and Federal-aid construction contracts; reporting requirements, 14615
Engineering and traffic operations:
Certification acceptance streamlining and simplification; alternate procedures use by State highway agencies for non-interstate projects, 57330
Construction and maintenance—
Federal-aid highway construction contracts; warranty clauses expanded use, 17243
Design standards for highways—
Geometric design policy; numerical values to metric conversion, 17566
Emergency relief program, 67207
Federal-aid program approval and highway project authorization, 35629
Public lands highways funds program; elimination; CFR part removed, 43964
Traffic control devices design; national standards—
Metric conversion guide, etc.; incorporation by reference, 29624
Utilities—
Consultant contracts preaward review requirement elimination and lump sum agreements threshold increase, 12022
Federal regulatory reform:
Highway safety program standards; applicability to Federally administered areas; CFR part removed, 28750
Invoking sanctions against States under the 1996 Highway Safety Act; rules of procedure, 28745
Motor carriers:
Single State insurance registration; receipt rule, 64295
Motor carrier safety standards:
Driver qualifications—
Vision and diabetes temporary waiver grantees; limited exemptions; correction, 13338, 17253
Hazardous materials transportation—
Technical amendment, 20496
Uniform forms and procedures for registration; recommendations; report availability, 54744
Hours of service and commercial driver's license requirements statutory exemptions; conformance, 14677
Omnibus Transportation Employee Testing Act of 1991—
Commercial motor vehicle driver's license program; correction; 9546, 14677
Controlled substances and alcohol use and testing; correction, 9546, 14677
State planning and research programs administration—
Intermodal transportation, 42822
Technical amendments, 1842
Motor carrier transportation:
Regulations transfer and redesignation from Surface Transportation Board to FHA, 54706
National Highway System Designation Act; implementation:
Compliance and transfer of funds procedures—
Motorcycle helmet use legislation references and requirements; removed, 28747
Operation of motor vehicles by intoxicated minors; Federal-aid highway funds withholding; zero-tolerance laws sanction program implementation, 55213
Onmibus Transportation Employee Testing Act of 1991:
Substance abuse professional; definition amendment, 37222
Right-of-way and environment:
Federal regulatory reform—
Right-of-way programs, 18246
Highway traffic and construction noise abatement procedures, 45319
Speed limit enforcement certification:
National maximum speed limit compliance program; repeal effective date delay in five States, 11305
Transportation infrastructure management:
Management system certification and sanction requirements; removal, 67166

PROPOSED RULES

Engineering and traffic operations:
Contruction and maintenance—
Federal-aid project agreement streamlining; contract procedures, 2973
Truck size and weight—
National Network for Commercial Vehicles; route addition in North Carolina, 54588
Uniform Traffic Control Devices Manual—
Center and edge line markings; standards, 40454
Pedestrian, bicycle, and school warning signs; color fluorescent green, 29234, 54111
External programs:
Equal employment opportunity provisions on Federal and Federal-Aid highway construction contracts; retention, 17264
Federal regulatory review:
Invoking sanctions against States under the 1966 Highway Safety Act; rules of procedure, 11794
Motor carrier replacement information/registration system, 43816
Motor carriers:
Agricultural cooperative associations conducting compensated transportation operations for nonmembers
Notice filing requirements exemption, 54712
Compensated intercorporate hauling; Federal regulatory review, 54711
Motor carrier safety and hazardous materials administration:
Proceedings, investigations, and disqualifications and penalties; practice rules, 18866, 40781, 54601
Motor carrier safety regulations:
Parts and accessories necessary for safe operation—
Manufactured homes transportation; overloading of tires by up to 18 percent, 18014
Motor carrier safety standards:
Commercial Driver's License and Driver Physical Qualification Requirements

Negotiated Rulemaking Advisory Committee—
Intent to establish, 18713
Meetings, 38133, 43725, 52401, 56936, 66250
Driver qualifications—
Vision and diabetes temporary waiver grantees; limited exemptions, 606
Vision deficiencies; waivers, 28547
Hazardous materials transportation—
Uniform forms and procedures for registration; recommendations; report availability, 36016
New drivers; safety performance history, 10548
Omnibus Transportation Employee Testing Act of 1991—
Pre-employment alcohol testing; permitted but not required, 21149
Parts and accessories necessary for safe operation—
Lighting devices, reflectors, and electrical equipment, 40781
Shifting or falling cargo, protection; North American standard development, 54142
Television receivers and data display units in commercial motor vheicles; restrictions rescinded, 14733
Training for entry-level drivers of commercial motor vehicles and cost-benefit analysis; availability, 18355
Meeting, 51076
Motor vehicle safety standards:
Parts and accessories necessary for safe operation—
Antilock brake systems on air-braked truck tractors, single-unit trucks, buses, trailers, and converter dollies, 36691
Motor vehicle safety standards; exemption petitions, etc.:
Driver qualifications—
Hours of service for commercial motor vehicle drivers, 57252
National Highway System Designation Act; implementation:
Operation of motor vehicles by intoxicated minors; Federal-aid highway funds withholding; zero tolerance laws sanction program implementation, 9120
Omnibus Transportation Employee Testing Act of 1991:
Substance abuse professional; definition amendment, 9969
Right-of-way and environment:
Federal regulatory review—
Mitigation of impacts to privately owned wetlands, 30553

NOTICES
Agency information collection activities:
Proposed collection; comment request, 62, 1755, 2253, 3022, 3695, 4421, 4649, 6366, 6821, 7157, 7248, 7501, 7785, 11000, 11823, 13855, 15933, 18388, 19921, 24787, 25488, 25658, 27345, 27869, 30054, 33496, 33913, 35202, 35730, 36870, 37884, 38194, 38726, 40211, 41783, 42013, 43753, 44385, 46016, 46017, 52837, 59483, 59484, 67092
Clean Air Act:
Highway funding sanctions; exemption criteria; policy statement, 14363
Committees; establishment, renewal, termination, etc.:
National Motor Carrier Advisory Committee, 20550
Environmental statements; availability:
Pointe Coupee Parish et al., LA; withdrawn, 43398
Environmental statements; notice of intent:
Anchorage, AK; cancellation, 16969
Atlantic and Cape May Counties, NJ causeway improvement, etc., 55182
Benton County, AR, et al., 36775
Bernalillo County, NM, 49521
Caddo Parish, LA; North South Expressway, 17749
Cleveland County, NC, 24852
Crow Wing County, MN, 3521
Erie County, NY, 7040
Essex County, NY, 7575
Fremont and Teton Counties, WY, 54252
Hardy County, WV; Moorefield bypass project, 51135
Howell, Livingston County, MI, 34924
Imperial County, CA, 38795, 56605
Jefferson County, WV, 5058
Johnson County, KS, et al.; cancelled, 52085
King County, WA, 35299
Southeast Issaquah Bypass project, 59130
Sunset Interchange modifications, etc., 9222
Kings County, NY; bridge/highway project, 60139
Lane County, OR—
East-west thoroughfare construction, 21527
West Eugene Parkway, 58601
Maricopa County, AZ; Red Mountain Freeway, 49187
Mingo County, WV, 14594
Montgomery County, TN, 58094
New London County, CT, 27945
Ontonagon County, MI, 3760
Orange County, FL; Apopka Bypass; rescission, 60140
Otero County, NM, 7040
Peoria County et al., IL, 43569
Phelps County, MO, 15332
Pierce County, WA, 18638
Pitkin County, CO, 13917
Portland, OR to Vancouver, BC corridor; high speed rail improvement program, 1431
Ramsey County, MN, 10616
Rockland County, NY; ferry service, 45472
Salt Lake County et al., UT, 53260
Salt Lake County, UT, 51314
Santa Fe County, NM, 49521
Sarpy County et al., NE, 35300
Solano County, CA, 53991
St. Johns County, FL; Bridge of Lions, 38511
St. Paul, MN, 34924
Stearns County, MN, 40474
Tioga County et al., NY; Susquehanna River crossing, 53483
Vigo County, IN; Terre Haute bypass, 58922
Wake County, NC, 29164
Washington, DC, 18639
Westchester County, NY, 30279, 9222
Grants and cooperative agreements; availability, etc.:
Dwight David Eisenhower transportation fellowship program, 1202
Motor carrier regulatory relief and safety demonstration project, 44385, 55835
National Recreational Trails Funding Program; State certification requirements, 17344
State highway safety pilot program (FY 1997); procedures waivers, 46895
State infrastructure bank pilot program participation, 57513
Highway performance monitoring system; strategic reassessment, 67590
ICC Termination Act of 1995; implementation:
Interstate and foreign commerce service—
Common carrier transportation of household goods; arbitration requirements, 52990
Intelligent Transportation Systems:
Early deployment planning program; implementation procedures, 9860
Model deployment initiative; participation request, 7146
Intermodal Surface Transportation Efficiency Act; congestion mitigation and air quality improvement program; guidance update, 50990
Interstate Commerce Commission legal documents; effectiveness continuation, 14372
Life-cycle cost analysis of infrastructure investments; policy statement, 49187
Meetings:
Civil rights programs; efficiency, quality, and effectiveness; roundtable discussions, 19973, 25010, 33165
Highway transportation of hazardous materials in cargo tank motor vehicles; roundtable meeting, 33165
Intelligent Transportation Society of America, 11674, 39507, 46678, 46679, 65101, 66741
Motor carrier safety standards:
Commercial driver's license; temporary waiver; Trekking International Overland Expedition from Rome, Italy to New York City, 14193, 21219
Commercial vehicle information systems and networks (CVISN)—
Government-, motor carrier-, and other stakeholder-owned and operated, 16157
Motor vehicle safety standards:
Commercial vehicle information systems and networks (CVISN)—
Model deployment program, 35300
National highway system route marker study; comment request, 43402
Omnibus Transportation Employee Testing Act of 1991:
Controlled substances and alcohol use and testing—
Mexican motor carriers implementation; conference, 29787
Speed limit enforcement certification:
National maximum speed limit repeal; study of associated State costs and benefits, 31212, 60738
State infrastructure bank pilot program participation, 6683
Surveying and mapping services; private sector utilization; comment request, 35305
Transportation enhancement activities; nationwide programmatic agreement; comment request, 48802
Uniform Relocation Assistance and Real Property Acquisition Policies Act:
Fixed payment for moving expenses and dislocation allowance payment schedule; residential moves, 65425
Pilot program; Florida, 1984, 33165
Winter home heating oil delivery State flexibility program; hours of drivers service, 51486

Federal Housing Enterprise Oversight Office

RULES
Minimum capital for enterprises (Fannie Mae and Freddie Mac), 35607

PROPOSED RULES
Risk-based capital
Stress tests; house price index (HPI) use and benchmark loss experience establishment, 29592, 42824
Semi-annual agenda, 23790, 63288

Federal Housing Finance Board

RULES
Banks, organization:
Federal home loan bank system:
Directors' compensation and expenses, 43151
Federal home loan bank system:
Advances; terms and conditions, 52686
Bank or trust company deposits; definition modification, 40311
Budgets approval, 55877
Federal home loan bank securities, book entry regulations, 64021
Membership approval; statutory eligibility requirements, 42531
Financing Corporation Operations:
Federal regulatory reform, 59311
Operations:
Regulatory provisions waivers; consideration procedure, 64613
Organization, functions, and authority delegations:
Managing Director Office et al., 68129

PROPOSED RULES
Affordable housing program:
Applications approval authority, scoring processes modification, etc., 57799
Banks, organization:
Federal home loan bank system—
Directors' compensation and expenses, 17603
Federal home loan bank system:
Advances; terms and conditions, 40364
Advances to nonmembers, 52727
Budgets approval, 41535
Community support requirements, 60229
Employees selection and compensation and Finance Office Director selection; Federal regulatory review, 42570
Semi-annual agenda, 23988, 63478

NOTICES
Agency information collection activities:
Proposed collection; comment request, 27076
Submission for OMB review; comment request, 48595
Federal home loan bank system:
Community support review—
Members selected for review; list, 16489, 53735
Selection of members, 1037, 37265
Items processing and settlement and other services; prices, 34818
Meetings; Sunshine Act, 230, 682, 1256, 2868, 7853, 15262, 18599, 26904, 33117, 36560, 37478, 39455, 40639, 47755, 49326, 52032, 53223, 54440, 54799, 55150, 55801, 56546, 58558, 60285, 64521, 65059

Federal Labor Relations Authority

RULES
Federal Service Impasses Panel procedures:
Clarification and simplification, 41293
Organization, functions, and authority delegations:
General Counsel, 16043
Regional and sub-regional offices; closures and telephone and fax numbers changes, 1697
Regional offices; geographical jurisdictional changes, 51207

PROPOSED RULES
Federal Service Impasses Panel procedures:
Clarification and simplification, 28798
Miscellaneous and general requirements:
Documents filing and/or service by facsimile transmissions, 28797

NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 4437
Amicus curiae briefs in representation proceedings pending before FLRA; opportunity to present, 35211
Federal service labor-management relations statute:
Collective bargaining; comment solicitation for policy statement, 25871
Federal employees; transfer from one collective bargaining unit to another; criteria, 11638
Meetings; Sunshine Act, 36060
Senior Executive Service:
Performance Review Board; membership, 57431

Federal Law Enforcement Training Center

NOTICES
Meetings:
National Center for State, Local, and International Law Enforcement Training Advisory Committee, 57944

Federal Maritime Commission

RULES
Federal claims collection:
Administrative offset, 50444
Civil monetary penalties; inflation adjustment, 52704
Maritime carriers in domestic offshore commerce:
Vessel-operating common carriers by water, etc.; CFR parts removed, 66616
Maritime carriers in foreign commerce:
Ocean common carriers agreements; information form and post-effective reporting requirements, 11564, 17849, 40530
Regulatory burden relief, 64822
Ocean freight forwarders, marine terminal operations, and passenger vessels:
Automated Tariff Filing and Information System (ATFI); essential terms search table; CFR correction, 35685
Service contract filing requirements, 5308
Correction, 14979
Organization, functions, and authority delegations:
Economics and Agreement Analysis Bureau, Director, 9944
Correction, 14032
Enforcement Bureau; establishment, 51230

PROPOSED RULES
Maritime carriers in domestic offshore commerce:
Annual statements by States' attorneys general; access; withdrawn, 55263
Maritime carriers in foreign commerce:
Conditions unfavorable to shipping, actions to adjust or meet—
United States/Japan trade; port restrictions and requirements, 58160, 68200
Ocean freight forwarders, marine terminal operations, and passenger vessels:
Transportation nonperformance—
Coverage ceiling removal and replacement with sliding-scale coverage, 33059, 43209, 50265
Financial responsibility; withdrawn, 39940
Semi-annual agenda, 23996, 63484

NOTICES
Agreements; additional information requests:
Crowley American Transport, Inc., et al., 25491
Agreements filed, etc., 1381, 1934, 3424, 3967, 4437, 5400, 6838, 7518, 8624, 10345, 11210, 12073, 13495, 14783, 15805, 16287, 16916, 17300, 18395, 18396, 19060, 20251, 24308, 24498, 26517, 29380, 29381, 33919, 35214, 36560, 37067, 37747, 38736, 38737, 40219, 40639, 42023, 42613, 43248, 43763, 46464, 47942, 48155, 48696, 49779, 50299, 51113, 51114, 51701, 52032, 52497, 53223, 53375, 54667, 55640, 56235, 56957, 58690, 58881, 59230, 59444, 60285, 60706, 63848, 64356, 64745, 64906, 65059, 65578, 66037, 66276, 67554, 68746
Casualty and nonperformance certificates:
Alaska Sightseeing/Cruise West, 42613
Cape Canaveral Cruise Line, Inc., et al., 39456
Carnival Corp., 10580
Carnival Corp. et al., 52794
Celebrity Cruises Inc. et al., 24498, 60100
Costa Cruise Lines N.V. et al., 36560
Disney Cruise Line, Inc., 26180
Disney Cruise Vacations, Inc., et al., 43248
Dolphin Cruise Line, Inc., 6642
Dolphin Cruise Line, Inc., et al., 10580
Holland America Line et al., 17301, 36561
Norwegian Cruise Line, 4999
Norwegian Cruise Line et al., 15262, 24498
Palm Beach Cruises, S.A., 17301
Princess Cruises, Inc., et al., 15944, 39456, 42424, 60100
Radisson Seven Seas Cruises, Inc., 30612
Regal Cruises et al., 52794
Royal Venture Cruise Line, Inc., 46650
Seabourn Cruise Line Ltd. et al., 3711, 38449, 38737, 39134
Sun Line Cruises, Inc., et al., 1573
Ulysses Cruises, Inc., et al., 19940
Complaints filed:
Compania Sud Americana de Vapores S.A., 45645
Compania Sud Americana de Vapores S.A. et al., 29755
Holt Cargo Systems, Inc., et al., 29755
Red Hot Transport, 55303
River Parishes Co., Inc., 9990
Rose International, Inc., et al., 8936
Southern Pacific Transportation Co. et al., 17894
Venezuelan American Maritime Association et al., 58412
World Class Freight Inc. et al., 3711
Freight forwarder licenses:
A&A Freight Forwarding Co., Ltd., et al., 52794
AAA International Shipping et al., 25491
Aces, Ltd., 15806
Aero Marine Expediters, Inc., et al., 41629
AGS International Forwarders, Inc., et al., 45650
Air & Ocean International, Inc., et al., 36561
Air Cargo Expediters Inc. et al., 35214
AIT Ocean Systems, Inc. et al., 66277
All-Ways Forwarding International Inc. et al., 26905
American Cargo Forwarding, Inc., et al., 9166
American International Brokerage, Inc., et al., 31941
Armando's Freight Forwarders et al., 43360
Arubex International Services Corp. et al., 51114
B.L.G. Air-Ocean Transport Corp. et al., 6838
Best Freight Forwarding Co. et al., 47755
BM International Transport, Inc., et al., 15944
CARGOCARE et al., 1935
CJC International Services, Inc., et al., 20820
Computrex International Services, Inc., et al., 56680
Continental Express International Corp. et al., 31525
D&S Movers, Inc. et al., 59098
D & T Freight Forwarders et al., 4666
D.L. International Forwarders Inc. et al., 50025
Desert Net, Inc., et al., 8625
Echo International Freight Forwarding et al., 53746

Elco Freight International, Inc. et al., 64086
Esposito, Joseph, et al., 66037
Evans, Wood & Caulfield, Inc., et al., 30612
Excel International et al., 33742
Expeditors International (Puerto Rico), Inc., et al., 3711, 19626
Export Center et al., 20252
Foreign Cargo International, Inc., et al., 35733, 39659
G.S.I. Cargo Systems, Inc., et al., 49461, 53923
Global Link Transport, Inc., et al., 59887
Great Western Steamship Co. et al., 11211
H&S International, Inc., et al., 11004
Hung Ng, Herman Wai et al., 37067
I.L.S., Inc., et al., 15070
Ian International, Inc., et al.,
Infiniti Shipping Inc., et al., 41788
Interglobo Morra North America et al., 17301
International Cargo Service, 2512
International Logistics Corp. et al., 13195
International Logistics, Inc., et al., 8625
International Trading Partners, Inc., et al., 30239
Intrepid Overseas Shipping Corp. et al., 26180
K&M International Co. et al., 64745
K.M. International et al., 58192
Low Cost Shipping, Inc., 3033
M7 Consolidation, Inc., et al., 55801
MAS & E Co., et al., 68043
Miami Cargo Freight Forwarders et al., 56235
Network Freight Forwarding Services Inc. et al., 68765
New England Logistics Group Inc. et al., 40219
Noral Cargo International, Inc., et al., 57432
OAC Shipping Co., Inc., et al., 39659
O'Keefe & Associates, Inc., et al., 6642
OK Forwarding Co. et al., 7264
Orca International Freight Forwarders Inc. et al., 10580
Pantrac Transport Corp. et al., 48697, 60286
Prestige Trade Services, Inc., et al., 38736
Rex Air & Ocean Freight, Inc., et al., 15806
Richmond Forwarding et al., 41413
RMG International Inc. et al., 17895
S&M Moving Systems et al., 55150
SafeTech Int'l, Inc., 5774
Salinas International Freight Co. et al., 54440
Satt International Forwarding Inc. et al., 50824, 67029
Seiwa America, Inc., et al., 5401
Sekin Transport International et al., 16099
Senrac Transportation Services et al., 51701
Sina International Forwarders, Inc., 40844
Southern Winds International, 28866
Target International Shipping, Inc., et al., 68265
Transworld Export Services, Inc., et al., 16790
Trans World Shipments, Inc., et al., 7518
U.S. International Forwarding Agency, Inc., et al., 37276
United Shipping Agent, Inc., et al., 46810
Universal Export Services Inc. et al., 43547
UTC Overseas, Inc. et al., 65404
Westrans Air Express et al., 38736
Whitte, Deborah S., et al., 13861
Winston International, Inc., et al., 24794
Worldwide Shipping and Agencies (USA), Inc. et al., 59099
ICC Termination Act of 1995; implementation:
Noncontiguous domestic trade tariffs, 5835, 52494
Investigations, hearings, petitions, etc.:
Comm-Sino Ltd., 55802
F&D Loadline Corp., 5559
Haewoo Shipping Co., Ltd., 25872
Longrow Shipping Ltd., 17895
Royal Venture Cruise Line, Inc., 58413
Royal Venture Cruise Line, Inc., et al., 51283
Sear International Line, 24795
U.S.-foreign trades; possible rate malpractices, 42424
Meetings; Sunshine Act, 1437, 55000, 56546, 56680
Ocean freight forwarders, marine terminal operations, and passenger vessels:
Automated Tariff Filing and Information System (ATFI)—
Firms certified for batch filing capability; list, 11639
Senior Executive Service:
Performance Review Board; membership, 29100

Federal Mediation and Conciliation Service

NOTICES

Agency information collection activities:
Proposed collection; comment request, 16634, 16636
Submission for OMB review; comment request, 34837
Grants and cooperative agreements; availability, etc.:
Labor-management committees support (FY 1997), 66277
Labor-management cooperation program, 4775, 57674

Federal Mine Safety and Health Review Commission

RULES

Conflict of interests, 39869

PROPOSED RULES

Equal Access to Justice Act; implementation:
Attorneys' fees and other expenses; award, 66961

NOTICES

Meetings; Sunshine Act, 1256, 1819, 2580, 4520, 10385, 15145, 15146, 15835, 15836, 19061, 29429, 31169, 36060, 37294, 38474, 54239, 59117, 63872, 66699, 67068

Federal Prison Industries

RULES

Work and compensation; inmates on sick call or medical idle:
Work status, 59168

NOTICES

Agency information collection activities:
Proposed collection; comment request, 26545, 29572, 31149
Submission for OMB review; comment request, 47526
New product and specific product definitions development; comment request, 41248

Federal Procurement Policy Office

RULES

Acquisition regulations:
Cost Accounting Standards Board—
Cost accounting standards coverage; applicability criteria, 39360
Disclosure statement form, 7616
Gains or losses subsequent to mergers or business combinations by government contractors; treatment, 5520
Pension costs; composition, measurement, adjustment, and allocation, 58011

PROPOSED RULES

Acquisition regulations:
Cost Accounting Standards Board—
Cost accounting practice changes and noncompliances, 49196

NOTICES

Acquisition regulations:
Cost Accounting Standards Board—
Post-retirement benefit plans other than pension plans sponsored by Government contractors; costs treatment, 49534
Cost Accounting Standards Board:
Selling and marketing costs allocation to Government contracts, 49351
Procurement regulatory activity report; availability, 564
Professional and technical services; conversion to performance-based service contracting methods; draft availability, 46835

Federal Railroad Administration

RULES

Accident reporting, 30940
Federal hours of service laws, agency interpretation; Supreme Court decision; nationwide applicability, 20494
Federal regulatory reform:
Loans under Rail Passenger Service Act of 1970 and regulations under Railroad Revitalization and Regulatory Reform Act of 1976; CFR parts removed, 4937
Omnibus Transportation Employee Testing Act of 1991:
Substance abuse professional; definition amendment, 37222
Railroad accident/incident reporting:
Accident reporting, 59368
Guide; public meeting, 37842
Monetary threshold, 60632
Money threshold increase, etc., 67477
Railroad locomotive safety standards:
Locomotive conspicuity; auxiliary external lights; minimum standards, 8881
Railroad operating rules:
Grade crossing signal system safety, 31802
Signal and train control; miscellaneous amendments, 33871
Railroad safety enforcement procedures:
Hazardous materials regulations, violations; penalty guideline amounts, 38644
Railroad workplace safety:
Roadway worker protection, 65959
State safety participation regulations:
Federal regulatory reform, 26124

PROPOSED RULES

Omnibus Transportation Employee Testing Act of 1991:
Pre-employment alcohol testing; permitted but not required, 21149
Substance abuse professional; definition amendment, 9969
Rail passenger equipment safety standards; passenger and crew survivability, 30672
Railroad accident reporting, 1892
Railroad power brakes and drawbars:
Train and locomotive power braking systems; advanced technology use; two-way end-of-train telemetry devices, 6610
Railroad workplace safety:
Roadway worker protection, 10528
Advisory committee negotiating session, 31085
Public hearing, 31085

NOTICES

Agency information collection activities:
Proposed collection; comment request, 63917, 67868
Submission for OMB review; comment request, 38243

Alcohol/drug regulations:
Post accident toxicology testing kits, blood testing, 64189
Committees; establishment, renewal, termination, etc.:
Railroad Safety Advisory Committee, 9740
Emergency orders:
Atchison, Topeka, and Santa Fe Railway Co., 8038
Commuter and intercity passenger railroads; safety of passengers occupying lead car of train, 6876, 8703
Locomotives, remote-control, and one-person crews; informal safety inquiry, 58736
Tonawanda Island Railroad, 6284
Environmental statements; notice of intent:
Portland, OR to Vancouver, BC; high speed rail improvement program, 1431
Exemption petitions, etc.:
3R International, 36107
American Railway Car Institute, 4810
Association of American Railroads, 19974
Beech Mountain Railroad Co., 43570
Boone & Scenic Valley Railroad, 41441
Burlington Northern Railroad et al., 6286
Burlington Northern Santa Fe, 41441
CSX Transportation et al., 5437
De Queen & Eastern Railroad Co. et al., 36108
Florida East Coast Railway, 51489
Long Island Railroad et al., 17749
Michigan State Trust for Railway Preservation, Inc. (MSTP), 76
National Railroad Passenger Corp. (AMTRAK), 5060, 30280, 41199, 64408
RoadRailers operation, 56733
Northeast Illinois Railroad Corp., 27126
Palm Leaf Corp., 58602
Renfe Talgo of America, Inc., 2569
Siemens Transportation Systems, Inc., 56260
Southern California Regional Rail Authority, 2327
Southern Pacific Transportation Co. et al., 4511
Texas North Western Railway Co. et al., 16667
Thrall Car Manufacturing Co., 35858
Transcisco Rail Services Co., 55183
Trinity Industries, Inc., 66343
Westinghouse Air Brake Co., 49375
Yolo Shortline Railroad et al., 17750
Federal regulatory review:
Railroad Safety Advisory Committee; task acceptance, 29164
Grants and cooperative agreements; availability, etc.:
Next generation high-speed rail corridor—
Planning assistance, 65102
Studies, 10059
State infrastructure bank pilot program participation, 57513
Meetings:
Maglev Study Advisory Committee, 68328
Railroad Safety Advisory Committee, 11936, 36415, 54698
Railroad accident/incident reporting; custom software availability, 59485
Safety bulletins:
Direct Train Control operations, 64191
State infrastructure bank pilot program participation, 6683
Tank car safety ensurance:
Research, regulatory development and industry standards; public meetings, 4512
Traffic control systems; discontinuance and removal:
Burlington Northern Railroad Co. et al., 35859
Central Oregon & Pacific Railroad, 13918
CSX Transportation, Inc., et al., 16161, 66741
Soo Line Railroad Co. et al., 30280
Southern Pacific Lines et al., 52492
Twin Cities & Western Railroad Co. et al., 6408
Union Pacific Railroad Co. et al., 55183

Federal Register, Administrative Committee

See Federal Register Office

RULES

Federal Register publications:
Price changes and availability, acceptance of digital signatures, 68117

Federal Register Office

See Office of the Federal Register

NOTICES

American Institute in Taiwan and Taipei Economic and Cultural Representative Office in United States; agreements list availability, 33948
Public Laws; cumulative list:
104th Congress—
First session, 3768
Second session, 66080

Federal Reserve System

RULES

Availability of funds and collection of checks (Regulation CC):
Technical amendments, 25389
Bank holding companies and change in bank control (Regulation Y):
Bank Secrecy Act; suspicious activities reporting, 4338
Investment adviser activities, 45873
Permissible nonbanking activities, bank holding companies engaging de novo, 56404
Bank Secrecy Act; implementation:
Funds transfers and transmittals (wire transfers); recordkeeping by financial institutions, 14382, 14383
Community Reinvestment Act regulations, 21362
Conflict of interests, 53827
Consumer leasing (Regulation M):
Motor vehicle leasing, etc.; disclosures, 52246
Defense production loan guarantees (Regulation V); CFR part removed, 52875
Depository institutions; reserve requirements (Regulation D):
Time deposits, nonpersonal time deposits, Eurocurrency liabilities, etc., 69020
Transaction accounts; low reserve tranche adjustment, 60171
Electronic fund transfers (Regulation E):
Home banking services disclosure; new accounts error resolution, and stored-value cards, etc., 19662
Official staff commentary, 19678
Equal credit opportunity (Regulation B):
Official staff commentary, 50948
Equal opportunity rules; complaint processing procedures; investigative file accessibility, 251
Correction, 13079
Extensions of credit by Federal Reserve banks (Regulation A):
Discount rate change, 5926
Federal Deposit Insurance Act:
Safety and soundness standards, 43948
Financial institutions; netting eligibility (Regulation EE):
Financial market intermediary representation form, 1273
Freedom of Information Act; implementation:
Fee schedule, 60013
International banking operations (Regulation K):
Bank Secrecy Act; suspicious activities reporting, 4338
Evaluation criteria for foreign bank operations in United States, 6918
Foreign banks home state selection, 24439
Foreign banks, shell branches managed or controlled by such banks' U.S. offices, 39052
U.S. representative offices establishment; certain foreign banks through prior notice procedures, 2899
Loans to executive officers, directors, and principal shareholders of member banks (Regulation O):
Loans to holding companies and affiliates, 57769
Correction, 58782
Management official interlocks, 40293
Membership of State banking institutions (Regulation H):
Bank Secrecy Act; suspicious activities reporting, 4338
National Flood Insurance Reform Act of 1994; implementation:
Loans in special flood hazard areas, 45684
Organization, functions, and authority delegations:
General Counsel, 13395
Practice and procedure:
Hearings; rules of practice, 56407, 65317
Uniform and local rules, 20338
Reimbursement for providing financial records (Regulation S):
Recordkeeping requirements for certain financial records, 14382, 29638, 58974
Correction, 32317
Risk-based capital:
Market risk, 47358
Securities:
Credit by brokers and dealers (Regulation T), 70388
Miscellaneous interpretations, 57287
Relations with dealers in securities under section 32, Banking Act of 1933 (Regulation R); rescission, 57287
Securities credit transactions:
OTC margin stocks and foreign stocks list, 2667, 18495, 39556, 55555
Securities credit transactions (Regulations G, T, and U), 60166
Transactions with affiliates; conformity of capital stock and surplus definition to unimpaired capital stock and surplus definition, etc., 19805
Truth in lending (Regulation Z):
Adjustment of dollar amount for mortgages bearing fees above certain amount, 3177
Closed-end loans secured by real property or dwellings; creditor-liability rules, 49237
Mortgage rate and fees; limitations and disclosure requirements—
Adjustment of dollar amount, 65317
Official staff commentary, 14952

PROPOSED RULES

Availability of funds and collection of checks (Regulation CC):
Miscellaneous amendments, 27802
Bank holding companies and change in bank control (Regulation Y):
Bank holding companies competitiveness improvement, 47242
Risk-based capital; collateralized transactions, 42565
Depository institutions; reserve requirements (Regulation D):
Savings deposit, transaction account, savings deposit; definition clarifications, 69054

Time deposits, nonpersonal time deposits, Eurocurrency liabilities, etc., 30545
Electronic fund transfers (Regulation E):
Home banking services disclosure; new accounts error resolution, and stored-value cards, etc., 19696, 37229
Equal credit opportunity (Regulation B):
Data collection relating to applicant's race, color, sex, religion, or national origin; prohibition elimination
Withdrawn, 68688
Freedom of Information Act:
Availability of information rules, 7436
Home Mortgage Disclosure (Regulation C):
Depository institutions exemption threshold increase, disclosure requirements modification, etc., 68168
International banking operations (Regulation K):
Banks' conduct of business as government securities brokers or dealers; standards, 18470
Foreign banks, shell branches managed or controlled by such banks' U.S. offices, 6956
Loan guarantees for defense production (Regulation V); repeal, 26471
Loans to executive officers, directors, and principal shareholders of member banks (Regulation O):
Loans to holding companies and affiliates, 19863, 57797
Membership of State banking institutions (Regulation H):
Banks' conduct of business as government securities brokers or dealers; standards, 18470
Risk-based capital; collateralized transactions, 42565
Securities transactions; qualification requirements, 68824
Reimbursement for providing financial records (Regulation S):
Recordkeeping requirements for certain financial records, 43195
Risk-based capital:
Market risk; internal models backtesting, 9114
Securities:
Relations with dealers in securities under section 32, 1933 Banking Act (Regulation R); CFR part removed, 34749
Securities credit transactions (Regulations G, T, and U), 20399, 33874, 60168
Comment period extended, 67503
Semi-annual agenda, 24002, 63488
Truth in lending (Regulation Z):
Creditor-liability rules for closed-end loans secured by real property or dwellings, 26126
Disclosures to consumers; improvement, 69055
Home-equity lines of credit consumer protection; adequacy determination, 2968
Official staff commentary, 60223
Truth in Savings (Regulation DD):
Official staff commentary; revisions Withdrawn, 26470

NOTICES

Agency information collection activities:
Proposed collection; comment request, 163, 2512, 3713, 14306, 15070, 15944, 37748, 38202, 42085, 48687, 53994, 56263, 56737, 56957, 56960, 68746, 68748, 68749, 68814, 68841
Submission for OMB review; comment request, 4667, 6245, 16637, 60748
Bank holding companies consolidated financial statements; reporting and recordkeeping requirements, 11005
Bank holding companies engaged in underwriting and dealing in securities, 48953
Director and employee interlocks, cross-marketing activities, and purchase and sale of financial assets; review of restrictions on subsidiaries, 40640, 57679
Revenue limit on bank-ineligible activities of subsidiaries, 40642, 40643, 68750
Banks and bank holding companies:
Change in bank control, 10346, 10581, 10764, 11008, 11639, 11845, 12222, 13195, 13496, 14308, 14573, 14784, 15263, 15483, 15945, 16100, 16501, 16639, 17301, 17702, 17703, 18145, 19061, 19626, 19940, 20526, 24309, 24938, 25491, 25671, 26180, 26518, 26905, 27077, 27352, 28208, 28585, 29381, 29564, 29755, 30071, 30240, 30612, 30870, 31115, 31525, 31941, 32441, 33117, 33743, 35215, 36061, 38203, 39134, 40844, 41415, 42023, 42613, 42903, 43248, 43547, 44060, 44311, 46465, 47127, 47942, 48155, 48954, 49140, 50300, 50824, 51114, 51283, 52453, 52794, 52946, 52947, 53746, 53923, 54208, 54440, 55000, 55303, 55640, 55803, 55987, 56546, 57432, 57874, 58192, 58414, 58558, 58690, 58881, 59099, 59231, 59888, 60100, 60101, 60706, 63848, 64086, 64357, 64746, 64907, 65059, 65226, 65404, 65578, 66037, 66280, 66666, 67335, 67833, 68043, 68265, 68756, 69096
Nonbanking activities, 37480, 39660, 48155, 48956, 54441
Permissible nonbanking activities, 8626, 9460, 9709, 9991, 10346, 10581, 11009, 11640, 11846, 12074, 13497, 14574, 14785, 15071, 15262, 15482, 15945, 16101, 16502, 16638, 16791, 16792, 17302, 17704, 17896, 18145, 18397, 19627, 19628, 19941, 20820, 21183, 21469, 22059, 24309, 24498, 24796, 24939, 25225, 25492, 26181, 26518, 26905, 27077, 27352, 27877, 28209, 28587, 29101, 29565, 29756, 30072, 30240, 30871, 31116, 31942, 32442, 32817, 33118, 33744, 33920, 34435, 35216, 35734, 36061, 36062, 36884, 37068, 37480, 38204, 38450, 38738, 39135, 39461, 39659, 40220, 40421, 41161, 41162, 41413, 41415, 41788, 42023, 42251, 42614, 42615, 43060, 43249, 43361, 43548, 43763, 44060, 44313, 45074, 46651, 47128, 47943, 47944, 48156, 48957, 49462, 50025, 50300, 50488, 50825, 51115, 51284, 51702, 52032, 52795, 52948, 53377, 53746, 54442, 55001, 55151, 55641, 55804, 56236, 56547, 56681, 56961, 57433, 58070, 58193, 58559, 58882, 59100, 60102, 60706, 64087, 64357, 64746, 65060, 66666, 67335, 68043, 68266, 69097
Check fraud survey; reporting and recordkeeping requirements, 10765
Committees; establishment, renewal, termination, etc.:
Consumer Advisory Council, 35734
Delayed availability of funds; interagency policy statement; withdrawn, 43573
Fair credit reporting:
Social security numbers and other sensitive identifying information; public availability and use; comment request, 68044
Federal Open Market Committee:
Domestic policy directives, 412, 5775, 16503, 28209, 36885, 47129, 52453, 60102
Federal Reserve bank services:
Fedwire funds transfer service—
Operating hours, 57433
Third-party access policy, 3035
Fees for priced services and electronic connections; private sector adjustment factor, etc., 64087
Free cash access, etc., 19062
Measuring daylight overdrafts; electronic Federal tax payments, posting times; modified procedures; policy statement, 58691, 65405
Foreign subsidiaries of U.S. banking organizations; reporting and recordkeeping requirements, 9991
International banking operations (Regulation K):
Foreign branches establishment; reporting and recordkeeping requirements, 3712
Meetings:
Consumer Advisory Council, 10582, 28587, 30613, 51456
Meetings; Sunshine Act, 230, 231, 438, 1034, 1146, 1205, 1256, 1437, 2001, 2580, 3530, 3766, 3965, 4521, 5442, 5605, 6295, 6688, 7048, 7305, 7854, 8065, 8285, 9992, 10766, 10767, 11211, 13196, 14100, 14785, 15947, 16252, 16639, 17302, 17303, 18146, 18600, 19064, 20821, 21469, 21470, 24310, 24939, 25225, 25672, 26182, 26906, 27353, 28210, 29102, 29565, 30241, 31116, 31943, 32817, 34435, 35735, 35736, 36063, 36729, 37068, 37750, 38450, 39136, 39661, 40421, 40845, 41629, 42024, 43061, 43548, 44313, 46810, 47130, 47944, 48491, 49141, 49462, 50026, 50826, 51285, 52033, 53223, 53377, 53924, 54442, 54800, 55304, 55804, 56548, 56962, 57875, 58070, 58193, 58559, 59100, 59444, 60102, 60707, 64097, 64747, 65060, 65405, 65579, 66280, 66281, 69097
Practice and procedure:
Interest rate risk management; policy statement, 33166

Privacy Act:
Systems of records, 16252
Reporting and recordkeeping requirements, 30241, 39456, 51116
Reports; availability, etc.:
Capital and accounting standards; differences among Federal banking and thrift agencies; report to congressional committees, 15947
Survey of terms of bank lending; reporting and recordkeeping requirements, 55151
Truth in savings (Regulation DD); reporting and recordkeeping requirements, 3035
Applications, hearings, determinations, etc.:
ABC Bancorp et al., 5774
Associated Banc-Corp. et al., 725
BancTenn Corp. et al., 3039
Bass, Ken, et al., 21468
Bauman, Douglas R., et al., 1029
Beulah Bancorporation, Inc., et al., 4276
BNCCORP, Inc., 5774
Butte Bank Shares, Inc., 1029
Campbell, Craig L., et al., 6642
Capital Corp of the West, 5774, 7264
Carroll County Bancshares, Inc., et al., 21469
Chittenden Corp. et al., 658
Community Financial Group, Inc., et al., 6838
Community First Financial Group, Inc., 3425
Compass Bancshares, Inc., et al., 7791
Connecticut Bankshares, MHC, et al., 5401
CoreStates Financial Corp., 4667
Corporacion Bancaria de Espana, 1029
Cousatte, Arthur W., 3936
Croak, Robert H., et al., 5775
Dansker, Jerome, et al., 5560
DFC Acquisition Corp. Two et al., 1935
Downs Bancshares, Inc., et al., 658
Dresdner Bank AG, 7004
Evans Bancshares, Inc., et al., 351
F&M National Corp. et al., 3425
Farmers Bancshares, Inc., et al., 2512
Farmers State Corp. et al., 3713, 6013
FCNB Corp., 6014
Fidelity Co. et al., 166
Financial Services Corp of the Midwest, 6643
First Bankshares of Las Animan, Inc., 3039
First Citizens Bancorp et al., 7518
First Commonwealth Financial Corp., 4438
First Financial Bancorp et al., 556, 6839
First Union Corp. et al., 557, 1758, 7792
Fleet Financial Group, Inc., et al., 6643
Forrest Bancshares, Inc., 6246
Fort Wayne National Corp. et al., 5560
Fulton Bancshares Corp. et al., 4999
George Mason Bankshares, Inc., et al., 7519
Gillfillan, Donald W., et al., 5000
Hanson, Marty W., et al., 7792
Holcomb Bancorp, Inc. Employee Stock Ownership Plan et al., 1935
HSBC Holdings plc, 1936
J.G.D.B. y Cia. S. en C. et al., 166
James River Bankshares, Inc., 1030
Johnson, Arthur C., et al., 166
Lukas, Gus J., 9166
Magnolia Bancorp, Inc., 6014
Mellon Bank Corp. et al., 351
Mercantile Bancorporation, Inc., 1937
Middlefork Financial Group et al., 167
MTB Bank, 21469
National Bancshares Corp. of Texas, 4668
National Bank of Greece et al., 352
National City Corp., 167
National Commerce Bancorporation et al., 1758
NationsBank Corp., 9166
Nebraska Bankshares, Inc., 1759
Norwest Corp., 6376, 7004
Ohio Valley Banc Corp. et al., 168, 726
Paetow, Gregory J., et al., 7264
Patapsco Bancorp, Inc., et al., 2513
Peoples Heritage Financial Group, Inc., et al., 1759
Pikeville National Corp. et al., 658
Prairieland Employee Stock Ownership Plan, 4276
Qvale, Miles Jeffrey, et al., 4276
Regions Financial Corp. et al., 659, 2832
Royal Bank of Canada, 168
Royal Bank of Scotland Group plc et al., 1760
SouthTrust Corp. et al., 6643
Standridge, Jerry G. et al., 4438
Tampa Banking Co. et al., 4439
Traxshares, Inc., et al., 1030
United Bancshares, Inc., 4277
Valley Community Bancorp, Inc., et al., 5000
Valley Ridge Financial Corp. et al., 6376
Wachovia Corp. et al., 7792
Wesbanco, Inc., 4438
Westwood Financial Corp., 4277
Wilmers, Robert G., et al., 1760
Woodforest Bancshares, Inc., 7520
Young In Chung et al., 659

Federal Retirement Thrift Investment Board

RULES

Administrative errors, 68464
Fiduciary responsibility allocation; CFR part removed, 36610
Thrift savings plan:
Basic pay definition, loan eligibility expansion, and loan program amendments, 58754
Continuation of eligibility—
Federal employees moving between civil service positions and nonappropriated fund instrumentalities of DOD and Coast Guard, 41485
Separated Federal employees employed by District of Columbia Financial Responsibility and Management Authority, 2872, 55201
Earnings allocation, 58973
Retirement benefits orders; alimony or child support, 18912

PROPOSED RULES

Administrative errors correction, 56904
Thrift savings plan:
Earnings allocation, 45906

NOTICES

Meetings:
Employee Thrift Advisory Council, 53377
Meetings; Sunshine Act, 682, 4813, 10347, 15263, 21184, 29382, 35216, 41630, 47130, 53224, 58194, 64521

Federal Trade Commission

RULES

Adjudicatory proceedings; rules of practice:
Clarification and streamlining, 50640
Antitrust Improvements Act:
Mergers and acquisitions; premerger notification and report form, 13666
Appliances, consumer; energy consumption and water use information in labeling and advertising:
Comparability ranges—
Dishwashers, instantaneous water heaters, central air conditioners, and heat pumps sold as single package units, 48620
"EnergyGuide Label"; Canadian and Mexican labels placement in adjoining locale, 33651
Appliances, consumer; energy costs and consumption information in labeling and advertising:
Comparability ranges—
Clothes washers, 29939
Refrigerators, refrigerator-freezers, and freezers, 55563
Residential energy sources; average unit energy costs, 5679
Comprehensive Smokeless Tobacco Health Education Act:
Rotation of health warnings for promotional materials for smokeless tobacco products, 45813
Consent agreements accepted for public comment in Federal Register; full text publication discontinuation, 50430
Federal claims collection:
Civil monetary penalties; inflation adjustment, 54548
Correction, 55840
Fur Products Labeling Act regulations:
Metrication amendments; international system of units; equivalents addition, 67708
Industry guides:
Environmental marketing claims, 53311
Correction, 67109
Hosiery industry, 3799
Leather and imitation leather products, select, 51577
Metallic watch band and jewelry industries; consolidation, 27178
Metallic watch band industry; CFR part removed, 27222
Mirror industry, 59181
Lubricating oil, previously used; deceptive advertising and labeling; CFR part removed, 55095
Textile Fiber Products Identification Act:
Costs, benefits, and overall regulatory and economic impact, 11543
Lyocell; generic name application, 16385
Trade regulation rules:
Food retailing and gasoline industries; games of chances, 68143
Home insulation; labeling and advertising, 13659
Incandescent lamp (light bulb) industry; CFR part removed; Federal regulatory reform, 33501
Waist belts, leather content; misbranding and deception; CFR part removed, 25560

PROPOSED RULES

Appliances, consumer; energy consumption and water use information in labeling and advertising:
"Energy Guide Label"; Canadian and Mexican labels placement in adjoining locale, 6801
Fur Products Labeling Act regulations:
Regulatory review, 67748
Industry guides:
Feather and down products, 55589
Jewelry, precious metals, and pewter industries; platinum product claims, 27224, 43500
Mirror industry, 10708
Private vocational schools, 19869
Lubricating oil, previously used; deceptive advertising and labeling, 14686, 39101
Magnuson-Moss Warranty Act interpretations, etc., 14688
Private vocational school guides, 14685
Rulemaking; comment request, 68173
Rules and guides; review and comment request, 1538
Semi-annual agenda, 24018, 63508
Textile Fiber Products Identification Act:
Federal regulatory review, 5340
Polyetherester, elastoester, or esterlest; generic fiber name application, 35992

Trade regulation rules:
Food retailing and gasoline industries; games of chance, 29039
Franchising and business opportunity ventures; disclosure requirements and prohibitions—
International franchise sales; public workshop conference, 5969
Incandescent lamps (light bulbs), 4382
Waist belts, leather content; misbranding and deception, 8499
Wool Products Labeling Act regulations:
Costs, benefits, and regulatory and economic impact, 67739

NOTICES

Agency information collection activities:
Proposed collection; comment request, 43764, 56237
Submission for OMB review; comment request,
Interlocking directorates:
Clayton Act Section 8 jurisdictional thresholds, 13196
Made in USA claims in product advertising and labeling; comment request, 18600
Meetings:
Global Information Infrastructure; consumer privacy; public workshop, 24499
Meetings; Sunshine Act, 48957
Premerger notification waiting periods; early terminations, 659, 1937, 5776, 6839, 9992, 11418, 16916, 19941, 27878, 28588, 32818, 36729, 38204, 42024, 43362, 47944, 50488, 53224, 56238, 58692, 60286, 66666, 67833
Prohibited trade practices:
AAF International, 55641
Alpine Industries, Inc., et al., 10347
American Stores Co. et al., 31117
Amoco Oil Co., 7793, 30613
APM Enterprises-Minn Inc., 9993
Arizona Institute of Reproductive Medicine, Ltd., 16793
Atlas Supply Co., 25493
Azrak-Hamway International, Inc., 6841
Azrak-Hamway International, Inc., et al., 30613
BBDO Worldwide, Inc., 31117
Benckiser Consumer Products, Inc., 10347
Blenheim Expositions, Inc., 25493
Body Gold, 58559
Body Wise International, Inc., 16793
Boeing Co., 66038
Budget Marketing, Inc., 53378
Budget Rent A Car Systems, Inc., 15071
California Dental Association, 40845
California Medical Association, 31117
California SunCare, Inc., 64521
Cancer Treatment Centers of America, Inc., et al., 13197
Castle Harlan Partners, II, L.P., 52796
Coiumbia/HCA HealthCare Corp., 30614, 33509
Computer Business Services, Inc., 44061
Comtrad Industries, Inc., 66040
Conopco, Inc. et al., 58561
Council of Fashion Designers of America et al., 16793
Dannon Co., Inc., 30614
Devro International plc et al., 25493
Diet Workshop, Inc., et al., 13497
DMC Publishing Group, 14309
Eli Lilly & Co., Inc., 31117
Enterprising Solutions, 14311
Equifax Credit Information Services, Inc., 15484
Eskimo Pie Corp., 15484
Excel Communications, 14313
Federal News Service Group, Inc., et al., 16794
Filtration Manufacturing, Inc., et al., 55642
First Data Corp., 15484
Food Service Equipment Industry Inc. et al., 31118
Ford Motor Co., 16920, 69097
Fresenius AG et al., 40220
G.E.C.H., Inc., 9994
General Motors Corp., et al., 64524
Genetus Alexandria, Inc., et al., 31118
Georgetown Publishing House Ltd. Partnership et al., 8936
Giant Food, Inc., 33509
Good News Products, Inc., 30614
Great Expectations Creative Management, Inc., et al., 9994
Great Expectations of Baltimore, Inc., et al., 9994
Great Expectations of Columbus, Inc., 9994
Great Southern Video, Inc., et al., 9995
Grey Advertising, Inc., 42904, 42906
Hale Products, Inc., 40225
Harley-Davidson Motor Co., 31118
Hoechst, AG, 16794
Home Shopping Network, Inc., et al., 38738
Hughes Danbury Optical Systems, Inc., et al., 6847, 30615
Hyde Athletic Industries, Inc., 49141, 69098
IHI Clinics, Inc., et al., 15485
Illinois Tool Works Inc., 4778, 33509
J.C. Penney Co., Inc., et al., 66041
J. Walter Thompson, USA, Inc., 16795
JAMS Financial, Inc., 9995
Jerry's Ford Sales, Inc., et al., 15485
Johnson & Collins Research, Inc., et al., 13199
Johnson & Johnson, 66, 30615
Johnson & Johnson Consumer Products, Inc., 25493
Jordan, McGrath, Case & Taylor, 36063
KGE, Inc., 9995
KKR Associates, L.P., 33509
Koninklijke Ahold NV et al., 38741
L'Air Liquide S.A. et al., 30615
Latronica, Frank A., Jr., et al., 31119
LItton Industries, Inc., 7105, 30615
Live-Lee Productions, Inc., et al., 16795
Local Health System, Inc., et al., 31119
Lockheed Martin Corp., 18732
Loewen Group, Inc., et al., 25672, 25677
Mama Tish's Italian Specialties, Inc., 168, 30616
Mannesmann, A.G., 33510
May Department Stores Co., 19064
Momentum, 14316
Montana Associated Physicians, Inc. et al., 56682
Mrs. Fields Cookies, Inc., 8939
Mustad International Group NV et al., 16795
National Dairy Products Corp., 40845
National Dietary Research, Inc., et al., 16795
Natural Innovations, Inc. et al., 66042
NBDC Credit Resource Publishing, 14318
New Balance Athletic Shoe, Inc., 32820, 49143
NGC Corp., 48697, 69098
NordicTrack, Inc., 7795, 69098
Nutrition 21, Selene Systems, Inc. et al., 58562
NW Ayer, Inc., 13202
Occidental Petroleum Corp. et al., 40845
Original Marketing, Inc., et al., 15485
P. Lorillard Co., 30616
Papermakers Felt Association et al., 31120
Phaseout of America, Inc., et al., 64526
Phillips Petroleum Co. et al., 16504
Physicians Group, Inc., et al., 10349
Port Washington Real Estate Board, Inc., 16504
Praxair, Inc., 1573, 25494
Precision Moulding Co., Inc., 32824, 69099
Premier Products, Inc. et al., 66043
Progressive Mortgage Corp. et al., 65061
Quantum Electronics Corp. et al., 16796
R.R. Donnelley & Sons Co. et al., 16796
Raytheon Co., 31526, 69099
RBR Productions, Inc., et al., 42616, 69099
Reuters America Inc., 16796
RustEvader Corp. et al., 36065, 69099
RxCare of Tennessee, Inc., 2833
Safe Brands Corp. et al., 25494
Saint-Gobain/Norton Industrial Ceramics Corp., 9167
San Antonio Singles of Texas, Inc., et al., 9996
Santa Clara County Motor Car Dealers Association, 31120
Scotts Co., 10349
Service Corporation International, 1512, 33510
Silicon Graphics, Inc., 16797
Simplex Systems, 14320
SoftSearch Holdings, Inc. et al., 66044
Starr Communications, 14322
Starwood Advertising, Inc., et al., 6851, 30616
Sterling Connections, Inc., et al., 9996
Stop & Shop Companies, Inc., et al., 25494
Summit Communications Group, Inc., et al., 16797
Supermarket Development Corp. et al., 31120
Syncronys Softcorp et al., 38747
Telebrands Corp. et al., 52797, 69100
Third Option Laboratories, Inc., et al., 16797
Time Warner Inc. et al., 50301
TRIAAC Enterprises, Inc., 9996
Universal Merchants, Inc., 58563
Upjohn Co. et al., 31120
V.L.P. Enterprises, Inc., 9997
Valspar Corp. et al., 33510
Waterous Co., Inc., 40229
Wesley-Jessen Corp., 52799
West Point-Pepperell, Inc., 25495
WLAR Co. et al., 30617
Wolverine Capital, 14324
Young & Rubicam, Inc., 16922, 69100
Zygon International, Inc., 16798, 69100
Reporting and recordkeeping requirements, 7520
Senior Executive Service:
Performance Review Board; membership, 40846
Trade regulation rules; franchising and business opportunity ventures; disclosure requirements and prohibitions:
Freightliner Corp., 16503, 68266
Vehicles repurchased due to warranty defects, resale disclosures; public forum and comment request, 19067, 34435, 57434

Federal Transit Administration

RULES

Buy America requirements:
Statutory amendments; implementation, 6300
Capital leases, 25088
Charter service:
Obsolete sections removed, 19562
Elderly and handicapped persons transportation:
Obsolete sections removed, 19562
Federal regulatory reform:
Temporary local match waiver for Sections 9 and 18; CFR part removed, 9650
Omnibus Transportation Employee Testing Act of 1991:
Substance abuse professional; definition amendment, 37222
Prohibited drug use and alcohol misuse prevention in transit operations:
Random drug testing program, 67962
Rail fixed guideway systems; State safety oversight, 67492
Transportation infrastructure management:
Management system certification and sanction requirements; removal, 67166

PROPOSED RULES

Capital leases, 3532
Omnibus Transportation Employee Testing Act of 1991:
Preemployment alcohol testing; permitted but not required, 21149
Substance abuse professional; definition amendment, 9969

NOTICES

Agency information collection activities:
Proposed collection; comment request, 36954, 52837, 55684
Charter services demonstration program; public meeting, 43115
Environmental statements; availability, etc.:
Canal Street Spine Streetcar Project, New Orleans, LA, 15560
Cross County Corridor, Bucks County, PA, et al., 50532
Greenbush Line Corridor, MA, 6683
Salt Lake City, UT; transportation improvements, 15562
Environmental statements; notice of intent:
Central Florida Light Rail Transit System, 52837
Dade County, FL; 27th Avenue project, 59485
Largo Town Center metrorail extension, Prince George's County, MD, 7848
Logan 2000 People Mover, East Boston, MA, 1662
Salt Lake County, UT; transportation project, 9517
Third Street Light Rail Project, San Francisco, CA, 55355
Grants and cooperative agreements; availability, etc.:
New Starts criteria, 67093
State infrastructure bank pilot program participation, 57513
Transit assistance programs; apportionments and allocations (FY 1997), 52500, 53492
Grants and cooperative agreements; certifications and assurances; annual list, 52540
Intelligent Transportation Systems model deployment initiative; participation request, 7146
Intermodal Surface Transportation Efficiency Act; congestion mitigation and air quality improvement program; guidance update, 50890
State infrastructure bank pilot program participation, 6683
Transfer of federally assisted land or facility:
105 Barrington Street, Rochester, NY, 15155
124 Industrial Park Drive, New Smyrna Beach, FL, 54887
602-608 York Road, Towson, MD, 25011

Financial Management Service

See Fiscal Service

Fine Arts Commission

See Commission of Fine Arts

Fiscal Service

RULES

Bonds and notes, U.S. Treasury:
Payments by banks and other financial institutions of United States savings bonds and notes (Freedom Shares), 37196
Savings bonds, Series EE and HH; payment pursuant to judicial or administrative forfeiture, 53822
Series EE U.S. savings bonds—
Bonds description; CFR correction, 5510
Book-entry Treasury bonds, notes, and bills:
Conforming amendments; CFR part removed, 43636
Payments made by ACH method; prenotification messages requirements, 6113
Securities in book-entry form held through financial intermediaries "TRADES" regulations, 43626
Federal agency disbursements management, 39254
Financial management services:
Delivery of checks and warrants to addresses outside U.S., its territories, and possessions—
Vietnam; reference removed, 41739
Surety companies; Federal process agents appointment reporting; elimination, 26839
Treasury tax depositaries; CFR part removed, 43656
Marketable book-entry Treasury bills, notes, and bonds; sale and issue, 37007
Automated automated clearing house payment method; U.S. Securities accounts, 54908
Organization, functions, and authority delegations:
Government Losses in Shipment Act, claims; address change, 20437
Payment to financial institutions for credit to employee and beneficiary accounts; CFR part removed, 68155
Treasury certificates of indebtedness, notes, and bonds; State and local government series securities, 55690

PROPOSED RULES

Acceptance of bonds secured by Government obligations in lieu of bonds with sureties, 58493
Bonds and notes, U.S. Treasury:
Payments by banks and other financial institutions of United States savings bonds and notes (Freedom Shares), 14444
Book-entry Treasury bonds, notes, and bills:
Sale and issue, 402
Securities held through financial intermediaries, 8450
Financial management services:
Depositaries and financial agents of Federal Government—
Designation, authorization to accept deposits, securing of public money, etc., 31879
Foreign exchange; purchase limitation, 2750
Marketable book-entry Treasury bills, notes, and bonds; sale and issue; uniform offering circular; amendments, 25164, 31072
Meeting, 38127
Treasury inflation-protection securities accomodation, 50924
Correction, 51851
Payments under judgments and private relief acts:
Claims against U.S.; procedures, 552
Treasury certificates of indebtedness, notes, and bonds; State and local government series securities, 19002, 39228
Correction, 40764
Treasury tax and loan depositaries and payment of Federal taxes:
Electronic Federal Tax Payment System operation; financial institutions and Federal Reserve Banks, 51186, 59211

NOTICES

Agency information collection activities:
Proposed collection; comment request, 32898, 33960, 35305, 41683, 46023, 48003, 49192, 49376, 59928, 59929, 67873
Book-entry Treasury securities held at Federal Reserve banks, transfer; 1997 fee schedule, 58278
Federal debt collection and discount evaluation; Treasury current value of funds rate, 56086
Interest rates:
Renegotiation Board and prompt payment rates, 763, 37794
Senior Executive Service:
Performance Review Board; membership, 30937
Surety companies acceptable on Federal bonds:
Aetna Life & Casualty Co. et al., 33960
American Alliance Insurance Co., 30284
American International Insurance Co. of Puerto Rico, 66075
Amwest Surety Insurance Co., 18192
Capital Reinsurance Co., 21537, 28930
Carolina Casualty Insurance Co., 13229
Century Indemnity Co., 27129
Connecticut Surety Co., 24350
Delta Casualty Co., 18192
Everest Reinsurance Co., 25936
Evergreen National Indemnity Co., 24351
Far West Insurance Co., 18193
Frankona America Reinsurance Co., 33961
North Star Reinsurance Corp., 33961
Oriska Insurance Co., 51493
Personal Service Insurance Co., 18193
Signet Star Reinsurance Co., 33961
Skandia America Reinsurance Corp., 57728
U.S. Capital Insurance Co., 32899
Surety companies acceptable on Federal bonds; annual list, 34280
Treasury certificates of indebtedness, notes, and bonds; State and local government series securities
Demand deposit one-day certificate; interest rate formula, 55708

Fish and Wildlife Service

RULES

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Customary and traditional use determinations; correction, 5685
Effective date extended, 25785
Fish and wildlife taking determinations, 39698
Correction, 48625
Alaska National Wildlife Refuges:
Alaska Peninsula/Becharof National Wildlife Refuge Complex; public use regulations, 29495
Endangered and threatened species:
'Akoko, etc. (twenty-five plants from Oahu, HI), 53089
Amaranthus brownii, etc. (three plants from Nihoa, HI), 43178
Australian saltwater crocodile, etc., 32356
Black-footed ferret—
Aubrey Valley, AZ; experimental population, 11320
California condors; reintroduction, 54044
California red-legged frog, 25813
Candidate categories review—
Category 2 candidates list; discontinued, 64481
Central California coast coho salmon, 59028
Cuneate biden, 4372
Cyanea dunbarii, etc. (three plants from Molokai, HI), 53130
Delissea undulata, 53124
Listing priority guidance, interim, 9651
Listing priorities, final, 24722
Listing priority guidance (FY 1997), 48962, 64475
Kuawawaenohu, etc. (nineteen plants from Kauai, HI), 53070

MacFarlane's four-o'clock, 10693
Maguire daisy, 31054
Marbled murrelet—
Critical habitat designation, 26256
'ohawai (thirteen plants from HI), 53137
Plant taxa, 53108
Southern maritime chaparral plant taxa from coastal Southern California et al., 52370
Spring Creek bladderpod, 67493
Stebbins' morning-glory etc. (five plants from Central Sierran foothills, CA), 54346
Umpqua River cutthroat trout, 48412
Wahane (Hawaiian plant), 41020
Endangered Species Convention:
Appendixes and amendments—
Bigleaf mahogany, 6793
River otters taken in Tennessee; export, 2454
Hunting and fishing:
Open areas list additions, 31459, 31461, 45336
Refuge-specific regulations, 46390
Importation, exportation, and transportation of wildlife:
Designated port status—
Atlanta, GA, 3849
Miscellaneous amendments, 31850
Correction, 40481, 49979
Migratory bird hunting:
Bismuth-tin shot as nontoxic for waterfowl and coot hunting during 1996-97 hunting season; conditional approval, 42492
Duck hunting season alternatives (1996-97); special youth waterfowl hunting day establishment, 49232
Early-season regulations (1996-1997); frameworks, 45836
Federal Indian reservations, off-reservation trust lands and ceded lands, 46352, 50940
Late-season regulations (1996-97); final frameworks, 50662
Migratory bird harvest information program; participating States, 46350
Seasons, limits, and shooting hours; establishment, etc. (FY 1996-97), 46357, 50738
Youth waterfowl hunting day—
Seasons, limits, and shooting hours; establishment, etc., 49638
Migratory bird hunting and conservation stamp (Federal Duck Stamp) contest, 25155
Patuxent Wildlife Research Center; CFR part removed, 53329
Wild Bird Conservation Act of 1992:
Implementation, 2084

PROPOSED RULES

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):, 41060
Alaska Federal Subsistence Regional Advisory Councils; meetings, 463, 67274
Federal Subsistence Program and Federal Subsistence Board's Authority; expansion, 15014
Fish and wildlife taking determinations, 41060
Alaska National Wildlife Refuges:
Special use permits administration, 56502
Endangered and threatened species:
Alameda whipsnake, etc., 56501
Alexander Archipelago wolf; status review, 64496, 69065
Amargosa toad, 8018
Barton Springs salamander, 32413, 38702
Withdrawn, 46608
Cactus ferruginous pygmy-owl, 53186
California condors; captive-reared, 35, 4394, 7770
Candidate categories review—
California candidate plant and animal species, etc. (category 1); reclassification, 7457
Coastal dunes milkvetch, etc. (five plants and lizard from Monterey County, CA), 33082, 36346
Copperbelly water snake, 37034
Eggert's sunflower, 45931
Fat three-ridge, etc. (seven freshwater mussels), 36020
Findings on petitions, etc.—
Anadromous Atlantic salmon in seven Maine rivers, 44032
Maryland darter, 5971
Namibian cheetah, 11181
Northern goshawk in Western United States, 28834
Fisher; populations in the Western United States, 8016
Guajon, 51878
Lane Mountain milk-vetch, etc., 46430
Least chub; public hearing, 29047
Lloyd's hedgehog cactus; removal, 30209
Mexican gray wolf; reintroduction in Arizona and New Mexico, 19237, 25618
Northern copperbelly water snake, 48876
Northern spotted owl, 3369, 6964, 15452, 21426, 30588
Ohlone tiger beetle, 8014
Petitions on findings, etc.—
Santa Ana speckled dace, etc., 36021
Santa Ana sucker, 60073
Plant and animal taxa, 7596, 48875
Queen Charlotte goshawk; status review, 64496, 69065
Short-leaved dudleya, etc.; withdrawn, 52402
Sonoma alopecurus, etc. (nine plants from grasslands or mesic areas of central coast of California), 47856
Suisun thistle, etc. (two San Francisco Bay California tidal marsh plants), 47105
Treatment of intercrosses and intercross progeny (hybridization); comment request, 4710
Virgin spinedace, 4401
Whooping crane, 4394
Endangered Species Convention:
Appendices and amendments, 67293
River otters taken in Missouri; export, 14543, 52403
Endangered Species of Wild Fauna and Flora International Trade Convention, 8019
Federal regulatory review:
Wild plants and animals (wildlife); lists consolidation, 11180
Hunting and fishing:
Open areas list additions, 31888, 31891, 31893, 31895, 31897, 31899, 31901, 31904, 31906, 31908
Refuge-specific regulations, 32415
Importation, exportation, and transportation of wildlife:
Box turtles; export, 3894
Injurious wildlife—
Brush-tailed possums, 1893
Regulatory review, 24267
Migratory bird hunting:
Annual hunting regulations; and migratory bird hunting by Indian Tribes, 11986
Public hearings, 30114
Annual hunting regulations; and special youth waterfowl hunting day establishment, 30490
Bismuth-tin shot as nontoxic for waterfowl and coot hunting; approval, 42495
Correction, 44119, 47786
Duck hunting (1996-97) season alternatives; special youth waterfowl hunting day establishment, 42500
Early-season regulations (1996-1997); proposed frameworks, 37994
Federal Indian reservations, off-reservation trust lands and ceded lands (1996-1997), 42730
Late-season regulations (1996-1997); proposed frameworks, 42506
Migratory bird harvest information program; participating States, 18936
Nontoxic shot approval procedures for shot and shot coatings; test protocol, 2470, 18924
Waterfowl baiting by artificial alteration or manipulation of natural vegetation in moist soil areas; prohibition, 11805
Migratory bird hunting and conservation stamp (Federal Duck Stamp) contest, 10557
Migratory bird permits:
Canada geese, injurious; control permits; environmental assessment, 46431, 58084
National wildlife refuge system:
Range and feral animal management—
Range animals; surplus disposition, 41115

NOTICES

Agency information collection activities:
Proposed collection; comment request, 25884, 25885, 25889, 26922, 31543, 39151, 55815
Submission for OMB review; comment request, 45454, 55648, 58587, 60721
Alaska; commercial big game guide-outfitting services on national wildlife refuges; proposals solicitation, 1399
Animal trap use within the national wildlife refuge system, 66307
Endangered and threatened species:
Argali sheep from Mongolia, Kyrgyzstan, and Tajikistan; import permits, 29423
Black-footed ferret survey guidelines for oil and gas activities in Wyoming; availability, 3050, 8071
Bonneville and Colorado River cutthroat trout; conservation agreements; availability, 48500
Conservation agreements—
Coral Pink Sand Dunes tiger beetle, 59889
Conserving species listed or proposed for listing while providing and enhancing recreational fisheries opportunities; policy, 27978
Emergency exemptions—
Specific Florida panther, 52053
Endangered Species Act activities; interagency cooperative policy statements—
Distinct vertebrate population segments, 4722
Species list; controlled propagation; draft, 4716
Listing priority guidance extension (FY 1997), 48962
Petitions received under Endangered Species Act; management guidance availability, 36075

Recovery plans—
Alabama cave shrimp, 46818
Anthony's riversnail, 48159
Aurodendron pauciflorum, etc., 49337
Bluemask (=jewel) darter, 49478
Calyptranthes thomasiana, 49337
Carolina heelsplitter, 32454
Delhi Sands Flower-loving fly, 5025
Desert dace and Soldier Meadows cinquefoil, 7271, 9195
Fringed campion, 68283
Grizzly bear, 54674
Maui plant cluster, 24324
Mitchell's Satyr Butterfly, 13513
Multi-island plant cluster, 51122
Palezone shiner, 33762
Puerto Rican broad-winged and sharp-shinned hawks, 49336
Rock gnome lichen, 46660
Southern sea otter, 33134
Water howellia, 50044
Wetland and aquatic species of Owens Basin, CA, 43777
White sturgeon; Kootenai population in Idaho and Montana, 34441
Wood stork, 12084, 2914
Endangered and threatened species permit applications, 1399, 2263, 3051, 3943, 4280, 4790, 5024, 6021, 6252, 6253, 6860, 7800, 8070, 8968, 9483, 9715, 10376, 10779, 10780, 11648, 12083, 13865, 14806, 15819, 15958, 16112, 16932, 18407, 18616, 18753, 19080, 19081, 19313, 20833, 24322, 24505, 25686, 27096, 28230, 28889, 30254, 31144, 33133, 33134, 34857, 36891, 37488, 37921, 38469, 39663, 40243, 41648, 43264, 44324, 46818, 47171, 48718, 49150, 49151, 49476, 49477, 50325, 50503, 51714, 52806, 52954, 54212, 55012, 55013, 56565, 56705, 56965, 57694, 58082, 58209, 58419, 59106, 60722, 64359, 65229, 66308, 67340, 68049
Monthly reports, 17317
Endangered Species Convention:
Appendices and amendments, 44324
Trade prohibition in animal species from fourteen countries, 1780
Trade prohibition in animal species from Thailand and Greek tortoises from Turkey; rescinded, etc., 36388
Trade prohibition in animal species from twelve countries, 1782
Endangered Species of Wild Fauna and Flora International Trade Convention
Review of effectiveness; public meeting, 30255
Environmental statements; availability, etc.:
Artificial salmon and steelhead production strategies in Columbia Basin, 68284
Churchill County, NV; Lahontan Valley Wetlands water rights acquisition, 58083
Commencement Bay, WA; natural resource damage assessment restoration plan development, 41383
Fish Creek No. 2 diesel fuel spill, IN et al.; restoration plan, 57448
Headwaters Forest and Elk Head Forest, etc.; transfer, 68285
Incidental take permits—
Austin, TX; golden-cheeked warbler, etc., 14807
Baldwin County, AL; Alabama beach mouse, 1400, 7118, 8300
Butler County et al., AL; Red Hill's salamander, 58209
Calhoun County et al., TX; Peregrine Fund Aplomado Falcon reintroduction program, 37488
Chaves County, NM; black-footed ferret, 18617
Chelan County, WA; northern spotted owl, 6381
Coconino and Apache-Sitgreaves National Forests, AZ; Mexican spotted owl, 36076
Colorado County et al., TX; Attwater's greater prairie chicken, 36077
Conecuh and Monroe Counties, AL; Red Hills salamander, 8301
Contra Costa County, CA; California red-legged frog, 39978
Department of Natural Resources, WA; public hearings, 15959
Forest County, MS; gopher tortoise, 26201
Fort Morgan Peninsula, AL; Alabama beach mouse, 49151, 49338, 51299, 55311, 60111
Hidalgo County, NM, et al.; lesser long-nosed bats, etc., 36076
Iron County, UT; Utah prairie dog, 18407, 30636, 39979, 49787
John F. Kennedy International Airport, NJ and NY; migratory birds, including several gull species, 35804
King County et al., WA, 1193, 16257, 37922
Marion County, FL; red-cockaded woodpecker, 60112
Massachusetts; Atlantic Coast piping plover, 5568, 33534
McCurtain County, OK; American burying beetle, etc., 36075
New Mexico; Pecos gambusia, etc., 37760
Orangeburg County, SC; red-cockaded woodpecker, 6254
Orange County, CA; coastal California gnatcatcher, etc., 27363, 50503
Osceola County, FL; bald eagle, 36391
Otero County, NM, et al.; Sacramento Mountain thistle, etc., 36076
Palm Beach County, FL; Florida scrub jay, 10781
Pender County, NC; red-cockaded woodpecker, 36390
Pima County, AZ; Mexican spotted owl, 36078
Riverside County, CA; Stephens' kangaroo rat, etc., 59889
Riverside County, CA, et al.; Stephens' kangaroo rat, etc., 47525
Riverside County, TX; California gnatcatcher, 42439
San Diego County, CA; Subarea habitat, 18618
San Diego County, CA; western snowy plover, etc., 45983, 54675
San Joaquin County, CA; san joaquin kit fox, etc., 53750
San Marcos National Fish Hatchery and Technology Center, TX; fountain darter, etc., 36077
San Mateo County, CA; mission blue butterfly, etc., 9717
Texas; Pecos gambusia, etc., 36077
Travis County et al., TX; golden-cheeked warbler, etc., 15506
Travis County, TX; golden-cheeked warbler, 14332, 14807, 15507, 22071, 37760, 37761, 41796, 41797, 48965, 51715, 55013
Travis County, TX; golden-cheeked warbler, etc., 11859, 38212
Volusia County, FL; loggerhead sea turtle, etc., 9716
Washington County, UT; desert tortoise, 1048, 26529
Washington Natural Resources Department; northern spotted owl, etc., 15297
Western Riverside County, CA; Stephens' kangaroo rat, etc., 33135
Williamson County, TX; golden-cheeked warbler, 15507
Lahontan Valley Wetlands, NV; water rights acquisition, 52053
Marshall County et al., KY; Clarks River National Wildlife Refuge; establishment, 58699
Mexican gray wolf; reintroduction in Southwestern United States, 67573
Northern Tallgrass Prairie Habitat Preservation Area, MN and IA, 3456
Polar bear conservation; United States/Russia bilateral agreement, 37761
Virgin River, UT; nonnative red shiner eradication, 42051
Waccamaw National Wildlife Refuge, SC, 29127
Environmental statements; notice of intent:
Little Pend Oreille National Wildlife Refuge, WA, 65591
Willapa Bay, WA; spartina alterniflora grass invasion control, 67843
Federal wildland fire management policy and program review, 5737
Grants and cooperative agreements; availability, etc.:
North American Wetlands Conservation Council; document availability, 9196
Sport fish and wildlife restoration projects, 15820
Habitat conservation planning and incidental take permitting process; handbook availability, 63854
Marine mammals:
Authorization letters; incidental take—
Oil and gas industry activities; polar bears and Pacific walruses, 3943, 28890
Marine mammals permit applications, 6860, 7801, 8921, 24507, 34858, 48888, 51082, 52955, 64070, 64504, 64505, 68050
Meetings:
Aquatic Nuisance Species Task Force, 15508, 35808, 42649, 57448, 60722
Atlantic Coastal Fisheries Cooperative Management Act and Atlantic Striped Bass Conservation Act; coordination of activities, 2839
Endangered Species of Wild Fauna and Flora International Trade Convention, 44332
Garrison Diversion Unit Federal Advisory Council, 18156, 51715
Klamath Fishery Management Council, 46660

Klamath River Basin Fisheries Task Force, 13866, 21475, 51715
Migratory Bird Regulations Committee, 67844
North American Wetlands Conservation Council, 7272, 30093, 57889
Silvio Conte National Fish and Wildlife Refuge Advisory Committee, 3729, 16113, 48501
Sport Fishing and Boating Partnership Council, 9196, 37077, 50861
Migratory bird hunting:
Federal Cartridge Co.; tungsten-iron shot approval as nontoxic for waterfowl hunting; application, 50862
Migratory bird hunting and conservation stamp (Duck Stamp) contest, 6255, 11428
Natural resource damage assessment plans; availability, etc.:
Coeur d'Alene River Basin, ID, 32455
Lower Fox River/Green Bay, WI, 43558, 50045
Nonindigenous aquatic nuisance prevention and control:
Aquatic nuisance species task force; document availability, 9718
Pipeline right-of-way applications:
Louisiana, 26529
Minnesota, 68771
Wild Bird Conservation Act of 1992:
Approval applications—
Schriver, Mark, 40244
Van Oosten, Jan Roger, 16805

Food and Consumer Service

RULES
Child nutrition programs:
Child and adult care food program—
Free and reduced price meal eligibility requirements, 25550
National school lunch program—
Cheese alternate products specifications removal, 37670
Summer food service program—
Free and reduced price meal eligibility requirements, 25550
Food distribution programs:
Donation of foods for use in U.S., territories, and possessions, and areas under jurisdiction—
State processing program; waiver authority, 5271
Food stamp program:
Alaska, Northern Mariana Islands, Puerto Rico, and demonstration projects; Federal regulatory reform, 60009
Automated data processing equipment and services; reporting requirements reduction, 33641
Federal, State, or local welfare assistance payments; noncompliance penalties, 19155
Mickey Leland Childhood Hunger Relief Act—
Amendments; implementation, 54270, 55188, 58281
Child support deduction establishment, 54282
Monthly reporting for households residing on reservations; restrictions, 54298
Restaurant meals purchase; retailers and wholesalers periodic participation reauthorization, etc., 53595
Retail and wholesale food concerns; applicant-provided information sharing with other Federal and State agencies, 68119
Rules simplification, 54303
Student eligibility and treatment of education assistance, 54292
Freedom of Information Act; implementation, 19047

PROPOSED RULES
Child nutrition programs:
Child and adult care food program—
Meat alternates, 35152, 40481, 42396
National school lunch program—
Meat alternates, 35152, 40481, 42396
School breakfast program—
Meat alternates, 35152, 40481, 42396
Summer food service program—
Meat alternates, 35152, 40481, 42396
Women, infants, and children; special supplemental food program—
Cereal sugar limit, 10903
Federal regulatory review:
Food stamp program:
Alaska, Commonwealth of Northern Mariana Islands, Puerto Rico, and demonstration projects, 1849
Food stamp program:
Earned income changes; anticipating income and reporting changes, 66233
Quality control system; State agencies workload reduction, etc., 47680

NOTICES
Agency information collection activities:
Proposed collection; comment request, 48, 160, 2481, 5372, 8908, 12058, 14287, 15758, 15921, 19249-19252, 20210, 24270, 28132, 31088, 33486, 33487, 35707, 43036, 43228, 48458, 53347, 56659, 59858, 63817, 66013
Child nutrition programs:
Child and adult care food program—
Donated foods national average minimum value (July 1, 1996-June 30, 1997), 36348
Income eligibility guidelines, 10720, 15162
National average payment rates; day care home food service payment rates, etc., 36545
Summer food service program; reimbursement rates, 1316
Commodity school program—
Income eligibility guidelines, 10720, 15162
National school lunch program—
Donated foods national average minimum value (July 1, 1996-June 30, 1997), 36348
Income eligibility guidelines, 10720, 15162
National average payments/maximum reimbursement rates, 36547
School breakfast program—
Income eligibility guidelines, 10720, 15162
National average payments/maximum reimbursement rates, 36547
Special milk program—
Income eligibility guidelines, 10720, 15162
National average payments/maximum reimbursement rates, 36547
Women, infants, and children; special supplemental food program—
Poverty income guidelines, 10981
Commodity Supplemental Food Program:
Poverty income guidelines for elderly, 24478
Food distribution programs:
Donated chicken substitution with commercial chicken; demonstration project, 5373
Nutrition program for elderly; assistance level, 10983
Meetings:
Maternal, Infant and Fetal Nutrition National Advisory Council, 37439

Food and Drug Administration

RULES
Administrative practice and procedure:
Advisory committees—
Name and function changes, 36624
Pharmaceutical Science Advisory Committee; name and function change, 28048
Reproductive Health Drugs Advisory Committee; name and function change, 28047
Animal drugs, feeds, and related products:
Bambermycins, 43654
Chlortetracycline, 35949, 36291
Correction, 53615
Chlortetracycline, sulfathiazole, and penicillin, 2414
Doramectin, 53320
Enrofloxacin oral solution, 56892
Extralabel uses of animal drugs, 57732
Federal regulatory review; CFR parts removed, 37680
Feed and drinking water of animals—
Formaldehyde, 15703
Halofuginone hydrobromide and bacitracin methylene disalicylate; turkey feed use, 21075
Ivermectin tablets and chewable cubes, 39867
Correction, 43963
Ivermectin with pyrantel pamoate, 15185
Liquid Sul-Q-Nox (sodium sulfaquinoxaline solution), 24441
Menadione nicotinamide bisulfite, 5
Monensin, 24443

New drug applications—
Atipamezole, 48829
Carprofen caplets, 66581
Ceftiofur, 35129
Ceftiofur hydrochloride sterile suspension, 29478
Ceftiofur sterile powder, 66582
Clindamycin hydrochloride liquid, 59002
Diethylcarbamazine tablets, etc., 34727
Fenbendazole-containing suspension, paste and medicated feed products, 29477
Florfenicol solution, 42383
Fomepizole, 68146
Gentamicin otic solution, 48624
Gonadorelin diacetate tetrahydrate injection, 37682
Halofuginone hydrobromide and bambermycins, 24694
Ivermectin and lincomycin, 32651
Ivermectin bolus, 67452
Ivermectin with pyrantel pamoate, 59003
Lasalocid; correction, 4349
Milbemycin oxime, 43654
Monensin, 51003
Monensin feed blocks, 53614
Neomycin sulfate oral solution, 31397
Neomycin sulfate soluble powder, 31027, 31398
Nicarbazin and bacitracin methylene disalicylate; correction, 14021
Oxytetracycline, 67453
Oxytetracycline-containing Type A medicated articles, 51588
Oxytetracycline hydrochloride soluble powder, 2914
Oxytetracycline injection, 31027, 36290
Praziquantel, etc., 29650
Propofol injection, 66582
Pyrantel pamoate suspension, 29477, 63711
Semduramicin with bacitracin methylene disalicylate and roxarsone, 29481, 43450, 66583
Spectinomycin sterile solution, 31028
Sulfadimethoxine/ormetoprim tablets, 46719
Sulfaquinoxaline solution, 63711
Tilmicosin, 68147
Trenbolone acetate and estrodiol; implantation or injectable dosage, 29479, 41498
Tripelennamine hydrochloride injection, 29480
Tylosin, 58631, 67713
Xylazine injection, 46548
Nicarbazin and bacitracin methylene disalicylate, 1831
Nicarbazin, roxarsone, and lincomycin, etc., 14483
Oral dosage form new animal drugs—
Oxytetracycline hydrochloride soluble powder, 52690
Phenylbutazone injection, 54332
Polysulfated glycosaminoglycan, 54333
Sponsor name and address changes—
A.L. Pharma, Inc., 514
ADM Animal Health & Nutrition Division, 17566
ALPHARMA, Inc., 15703
Alstoe, Ltd., Animal Health, 18671, 58630
American Home Products Division, American Cyanamid, 258
Anthony Products Co., 17829
Biocraft Laboratories, Inc., et al., 63712
DuPont Merck Pharmaceutical Co., 4735
Fort Dodge Animal Health, 63710
Fort Dodge Laboratories, 5505, 29479
Hoechst Roussel Vet., 63710
Hoffmann-La Roche, Inc., 18081
Intervet, Inc., 66581
Mallinckrodt Veterinary, Inc., 8872
Mallinckrodt Veterinary Operations, Inc., 17565
Orion-Farmos, 21075
Roussel-UCLAF-SA, 46547
SmithKline Beecham Animal Health et al., 4874
TRINADA, Inc., 259
Veterinary Specialties, Inc., 66580
Wildlife Laboratories, Inc., 260
Tolazoline hydrochloride injection, 25784
Trenbolone acetate and estradiol benzoate, 14482
Virginiamycin, 30133
Biological products:
Distributor name prominence on labels, 57328
Federal regulatory reform, 40153
Well-characterized biotechnology products—
Product and establishment license applications requirement; elimination, 24227
Biologics:
Current good manufacturing practices—
Blood and blood components; consignee notification of increased HIV infection transmission risk, 47413, 66919
Chlorofluorocarbon propellants in self-pressurized containers; addition to list of essential uses, 15699, 25390
Color additives:
1,4-Bis[2-hydroxyethyl)amino]-9,10-anthracenedione bis (2-propenoic)ester copolymers, 51584
Certification services; fees increase, 3571
Fruit and vegetable juice color additives, 7990
Cosmetics:
Federal regulatory reform, 27771
Dietary supplements—
Manganese hypophosphite, 14244
Drug labeling controls; manufacturing, processing, packing, or holding; current good manufacturing practices:
Compliance date extension, 37679
Federal regulatory reform:
Obsolete regulations revoked, 29476
Food additives:
Adhesive coatings and components—
1,2-benzisothiazolin, 60533
1,4-cyclohexanedicarboxylic acid, 37208
3-Aminomethyl-3,5,5-trimethylcyclohexylamine, 29474
3-iodo-2-propynyl-N-butylcarbamate, 6939
Dimethyl 1,4-cyclohexanedicarboxylate, 42378
Glyceryl polyoxypropylene triol, etc., 2111
Meta-tetramethylxylene diisocyanate, etc., 9903
Adjuvants, production aids, and sanitizers—
1,4-bis[2,4,6-trimethylphenyl)amino]-9,10-anthracenedione, 64989
2-[[2,4,8,10-tetrakis(1,1-dimethylethyl)dibenzo[d,f][1,3,2], etc., 1830, 65943
3,9-bis[2-[3-(3-tert-butyl-4-hydroxy-5-methylphenyl)propionyloxy]-1,1-dimethylethyl]-2,4,8,10-tetraoxaspiro[5.5]undecane, 66918
Bis(2,4-di-tert-butyl-6-methylphenyl) ethyl phosphite, 46545
C.I. pigment yellow, 38, 2113
Chlorine dioxide and related oxychloro species aqueous solution, 31395
Dimethyldibenzylidene sorbitol, 33846
Disodium decanedioate, 1829
Formaldehyde, polymer with 1-naphthylenol, 25395, 42381
Hydrogen peroxide, etc. (aqueous solution), 28951
Methylated 4,4'-bis(2-benzoxazolyl)stilbenes, 48673
Monomethyltin/dimethyltin isooctylmercaptoacetates, 56892
Phosphorous acid, cyclic neopentanetetrayl bis(2,6-di-tert-butyl-4-methylphenyl)ester, 46544
Phosphorylated tall oil fatty acids, 43156
Sodium 2,2'-methylenebis (4,6-di-tert-butylphenyl) phosphate, 51587, 65942
Triisopropanolamine, 68622
Tri[2(or 4)-C9-10-branched alkylphenyl]phosphorothioate, 1712
Aspartame, 33654
Chlorine dioxide, 14244, 25392
Curdlan, 65941
Dimethyl dicarbonate, 26786
Folic acid (Folacin), 8797
Mannitol, 7990
N-butoxypoly(oxyethylene)poly(oxypropylene) glycol, 631
Paper and paperboard components—
Acrylic acid, sodium salt copolymer with polyethyleneglycol allyl ether, 58628
Ammonium zirconium lactate-citrate, 37209
Diethanolamine, 25392
Periodic acid and polyethylenimine; use in manufacture of beer, 4871
Peroxyacetic acid, acetic acid, and hydrogen peroxide, 46376
Peroxyacetic acid, acetic acid, hydrogen peroxide and 1-hydroxyethylidene-1,1-diphosphonic acid (HEDP), 46374
Poly(2-vinylpyridine-co-styrene), 11546
Polymaleic acid and its sodium salt, 385
Polymers—
Di(4-methylbenzoyl) peroxide, 46543
Ethyl acrylate, methyl methacrylate, and methacrylamide in combination with melamine-formaldehyde resin, 46716
Ethylene/pentene-1 copolymers, 59330
Methyl methacrylate/butyl acrylate-grafted polypropylene copolymer, 51364
Nylon 46 resins, 34370
Petroleum hydrocarbon resins (cyclopentadiene-type), hydrogenated, 28966
Poly(oxy-1,2-ethanediyloxycarbonyl-2,6-naphthalenediylcarbonyl), 14964
Poly(trimethyl hexamethylene terephthalamide), 53852
Polyaryletherketone resins, 42379
Polymethylsilsesquioxane, 37210
Polysulfone resins, 29474
Sodium chlorite acidified solutions; use in poultry processing, 17828
Sucrose esterified with medium and long chain fatty acids (olestra), 3118, 11545

Food for human consumption:
Bakery products—
Enriched grain product identity standards; folic acid addition, 8781, 40513, 46714
Bottled water—
Quality standards, 13258
Cereal flours and related products—
Enriched grain product identity standards; folic acid addition, 8781, 46714
Federal regulatory reform, 27771, 43963
Food labeling—
Folate/folic acid and neural tube defects; health claims and label statements, 8752, 43119, 48529, 49964
Folate and neural tube defects; health claims; CFR correction, 55567
Nutrient content claims; "extra" as synonym for "added", 11730, 21074
Nutrient content claims for fat, fatty acids, and cholesterol content of food, 58991
Nutrition labeling; low-volume food products of small businesses; exemption, 40963
Raw fruits, vegetables, and fish; voluntary nutrition labeling guidelines, 42742
Reference daily intakes; correction, 10280
Restaurant menus; nutrient content and health claims exemption removed, 40320, 67451
Sugar alcohols and dental caries; health claims, 43433
Uniform compliance date, 67710, 68145
Irradiation in production, processing, and handling of food, 42381
Macaroni and noodle products—
Enriched grain product identity standards; folic acid addition, 8781, 46714
Milk and cream—
Lowfat milk and skim milk; stabilizers and emulsifiers; CFR correction, 48405
Lowfat milk, sour half and half, etc., identity standards revoked, 58991
Peanut butter; identity standard, 9323
Substances prohibited from use—
Tin-coated lead foil capsules for wine bottles, 4816, 29650
GRAS or prior-sanctioned ingredients:
Cocoa butter substitute derived from high-oleic safflower or sunflower oil, 36287
Enzyme-modified lecithin, 45886
Ferrous lactate, 40317, 64027
High fructose corn syrup, 43447
Hydrophobic silica, 43451
Lactase enzyme preparation from Candida pseudotropicalis, 7702
Propylene glycol; exclusion from use in or on cat food, 19542
Hazard Analysis Critical Control Point (HACCP) principles:
Fish and fishery products, safe processing and importing; procedures
Meetings, 9100
Human drugs:
Antacid drug products (OTC); final monograph, 4822
Antibiotic drugs—
Clarithromycin granules for oral suspension, 34726
Anticaries drug products (OTC); final monograph, 52285
Fluoride dentifrice drug products testing procedures; effective date stay, 65944
Antiflatulent/antigas products (OTC); monograph amendment, 8836
Cold, cough, allergy, bronchodilator, and antiasthmatic products (OTC)—
Diphenhydramine citrate or diphenhydramine hydrochloride-containing combination products, 15700
Ephedrine-containing, etc. bronchodilator products; aerosol containers, pressurized metered dose; monograph amendment, 25142
Products containing l-desoxyephedrine; partial stay, 9570
Orally ingested (OTC) drug products containing alcohol as inactive ingredient; maximum concentration limit—
Ipecac syrup; exemption, 58629
Pediatric use subsection of professional labeling requirements; revision, 68623
Topical antimicrobal drug products for over-the-counter human use—
OTC first aid antibiotic drug products; final monograph, 58471
Human research subjects, protection; informed consent, 57278
Labeling of drug products (OTC):
Sodium content (OTC); labeling provisions, 17798, 38046
Medical devices:
Cigarettes and smokeless tobacco products; restriction of sale and distribution to protect children and adolescents, 44396
Correction, 47550
Class II generic devices reclassification into class I, etc.; premarket notification exemptions, 1117
Class III preamendments devices; premarket approval requirement or product development protocol; effective date, 50704
Current good manufacturing practices; incorporation into quality system regulation, 52602
General hospital and personal use devices—
Acupuncture needles; reclassification, 64616
Humanitarian use devices, 33232
Reporting and recordkeeping requirements; effective date stayed, 55741
Labeling; Federal regulatory reform, 37682
Medical device user facilities and manufacturers; adverse events reporting requirements; certification and registration, 39868
Certification and U.S. designated agent provisions; partial stay and and distributor certification requirement revoked, 38346
Reporting and recordkeeping requirements, 16043
Premarket approval applications; temporary suspension of approval, 15186
Protective restraints; premarket notification procedures and current good manufacturing practices requirements; exemptions revocation, 8432
Recall authority; procedures, 59004
Unscented menstrual pads; Class II generic device reclassification into class I, etc.; premarket notification exemptions, 67713
Organization, functions, and authority delegations:
Agency organizational structure and headquarters and field offices addresses, 8472, 24223
Associate Commissioner for Policy Coordination, 2414
Center for Drug Evaluation and Research et al.; debarment notices, 8214
Correction, 11544, 14375
Center for Food Safety and Applied Nutrition—
Address changes, 14478
Official Analytical Chemists International Association; new name and address; correction, 14481, 27004
Organizational change, 14478
Director, Office of Food Labeling; correction, 9639
Prescription drugs (animal and human) and OTC drug and device products and cosmetics:
Chlorofluorocarbons and other ozone-depleting substances, products containing or manufactured with; warning statements, 20096
Protection of human subjects:
Emergency research activities in cases of life-threatening medical conditions; informed consent requirements, exceptions, 51498
Radiological health:
Radiation emitting electronic products and adverse experiences; reporting and recordkeeping requirements; correction, 13421
Viruses, serums, toxins, etc.:
Veterinary biological products licenses and permits—
Federal regulatory reform, 43316
Gentamicin injection, 24440

PROPOSED RULES

Administrative practice and procedure:
Federal regulatory review, 28116
Animal drugs, feeds, and related products:
Animal food standards; Federal regulatory review, 59845
Carcinogenicity testing of compounds used in food-producing animals, 31468
Drug labeling—
Drugs used in milk-producing animals, 15003
Extralabel uses of animal drugs, 25106
New drug applications—
Investigational use, 59209
Ruminant feed; animal proteins prohibited, 24253
Biological product licenses:
Well-characterized biotechnology products—
Approved application changes reporting, 2739, 2748, 13793
Product and establishment license applications requirement; elimination, 2733
Biological products:
Placental/umbilical cord blood stem cell products intended for transplantation, etc.; draft document, 7087, 26473
Postmarketing expedited adverse experience reporting requirements; increased frequency reports revocation, 55602
Chlorofluorocarbon propellants in self-pressurized containers:
Sterile aerosol talc—
Addition to list of essential uses, 8002
Clinical investigator; financial disclosure, 8502
Color additives:
Color additive lakes; safe use in food, drugs, and cosmetics; permanent listing, 8372, 28525
Federal regulatory review:
Food additives, 29711
Food and cosmetic labeling, 29708, 44013
Food standards, 29701, 48102
Obsolete regulations removed, 2192
Food for human consumption:
Dietary supplements—
Dietary ingredients, new; premarket notification, 50774
Foodborne illness reduction—
Potentially hazardous foods; transportation and storage requirements, 59372

Food labeling—
Dietary supplements; nutritional support statement; notification procedure, 50771
Dietary supplements, nutrition and ingredient labeling; identity statement, 10480, 11349
Folate and neural tube defects; health claims and label statements; revoked, 8750
Free glutamate content of foods; label information requirements, 48102, 55122, 58151
Health claims; oat products and coronary heart disease, 296
Nutrient content claims; definitions, etc., 11349
Nutrient content claims; general principles, 8900, 11793
Nutrient content claims; "healthy" definition; fruits, vegetables, etc., inclusion, 5349, 11793, 25421
Nutrient content claims and health claims; special requirements, 3885, 13117
Nutrient content claims based on reduced availability of fat to body; fat substitute ingredient use in food, 67243
Nutrient content claims, health claims, and dietary supplements nutritional support statements; requirements, 11349, 16423
Saccharin and its salts; retail establishment notice; regulation revocation, 50770
Uniform compliance date, 16422, 21392
Food standards of identity, quality and container fill and common or unusual name for nonstandardized foods, 19220
Infant formula; current good manufacturing practice, quality control procedures, etc., 36154, 49714
GRAS or prior-sanctioned ingredients:
Meat and poultry products; substances approved; comment period reopening, 14690
Human drugs:
Colloidal silver ingredients or silver salts-containing products (OTC); not generally recognized as safe and effective, 53685
Current good manufacturing practice—
Finished pharmaceuticals; manufacturing, quality control, and documentation requirements, 20104, 39372
Drug monograph system (OTC); additional conditions eligibility criteria, 51625
Internal analgesic, antipyretic, and antirheumatic products (OTC); tentative final monograph, 30002
Investigational new drugs applications—
Clinical investigator disqualification, 6177
Labeling of drug products (OTC)—
Interchangeable words in monograph requirement, 8450
Orally ingested (OTC) drug products containing calcium, magnesium, and potassium, 42826
Phenylpropanolamine-containing drug products; warning label, 5912
New drugs; list consolidation; Federal regulatory review, 29502
Orally ingested (OTC) drug products containing alcohol as inactive ingredient; maximum concentration limit—
Ipecac syrup; exemption, 21392
Postmarketing expedited adverse experience reporting requirements; increased frequency reports revocation, 55602
Prescription drug product labeling; medication guide requirements, 2971
Sunscreen drug products (OTC)—
Photochemistry and photobiology; public meeting, 42398
Tentative final monograph amendment, 48645, 53340
Topical antimicrobial (OTC) drug products for over-the-counter human use—
First aid antibiotic drug products; final monograph, 5918
Vaginal contraceptive products (OTC), 66953
Labeling of drug products (OTC):
Orally ingested drug products containing calcium, magnesium, and potassium (OTC), 17807, 38047
Medical devices:
Analyte specific regents; classification/reclassification as restricted devices, 10484
Cigarettes and smokeless tobacco products; restriction of sale and distribution to protect children and adolescents
Comment period reopened, 11349
Hematology and pathology devices—
Immunohistochemistry reagents and kits; classification and reclassification, 30197
Infant radiant warmer; reclassification from class III to class II; premarket approval, 44013
Investigational device exemptions available to desperately ill patients; treatment use, 66954
Labeling—
Latex condoms; expiration date requirement, 26140
Mammography facilities—
Accreditation requirements, 14884
Equipment, quality standards and assurance, 14908
Personnel qualification standards, 14898
Quality standards and certification requirements, 14870
Mammography quality standards—
Alternative performance and outcome-based standards, 14856
Manufacturer and distributor certification and appointment of U.S. designated agents; adverse events reporting requirements, 38348
Natural rubber latex-containing devices; user labeling, 32618
Ophthalmic devices—
Neodymium:yttrium:aluminum:garnet (Nd:YAG) laser; reclassification from Class III to Class II, 9373
Rigid gas permeable and soft (hydrophilic) contact lens solutions, etc.; reclassification from Class III to Class II, 14277
Radiology devices; proposed classification—
Medical image management, 63769
Medical foods regulation, 60661
National Environmental Policy Act; implementation; Federal regulatory review, 14922, 19476, 54746
Tea Importation Act; implementation:
Public recommendation solicitation, 4597

NOTICES

Agency information collection activities:
Proposed collection; comment request, 8960, 17306, 17900, 18611, 21192, 27083, 34846, 34847, 41792, 45431, 45432, 46651, 51285, 56685, 59444, 64750-64752, 65067, 65068, 66671, 66673, 67032, 67033, 67835
Submission for OMB review; comment request, 11642, 47756, 50030, 55804, 55805, 55807, 56240, 59445, 64753, 65069, 67556, 67836, 68268
Animal drugs, feeds, and related products:
Anti-microbial bovine mastitis products; target animal safety and drug effectiveness studies; guidance availability, 18747
Bayer Corp. et al.; approval withdrawn, 34848
Benton County Ag Center, Inc.; medicated animal feeds applications; proposal to withdraw; hearing, 24500
Bioequivalence guidance availability, 26182
Compounding of drugs for use in animals; compliance policy guide; availability, 34849
Dietary Supplement Health and Education Act of 1994; inapplicability to animal products, 17706
Export applications—
ANIPRYL tablets, 2515
Denagard (tiamulin) injection, 1388
NUFLOR (florfenicol) injectable solution, 9998
RALGRO (zeronal) implant for cattle in Canada, 4673
Generic animal drug products containing fermentation-derived drug substances; guidance availability, 6644
Ivermectin, 4442
New drug applications—
Agri-Tech, Inc., 59100
Ceftiofur sodium for sheep, 49327
Countrymark Cooperative, Inc.; approval withdrawn, 58694
Formalin solution; availability, 54445
Rhone Merieux, Inc.; approval withdrawn, 41635
Sperti Drug Products, Inc., et al.; approval withdrawn, 99990
Type C medicated feed containing sulfadimethoxine and ormetoprim in chukar partridge feed, 37753
Patent extension; regulatory review period determinations--
DOMITOR, 60708, 60709
IMMITICIDE, 11054
Nuflor, 60106
OPTIMMUNE, 15264
Biological product licenses:
Bio-Components, Inc., 3040
Pasca Plasma Center, Inc., 49147
Permian Basin Regional Center, 48705
Personal Blood Storage of Memphis, Inc., 18149
Worldwide Biologicals, Inc., 25495
Biological products:
Computer Assisted Product License Application Guidance Manual; availability, 11644
Export applications—
Abbott MATRIX HCV 2.0, 8289
ACEL-IMUNE diphtheria-tetanus toxoid (acellular) pertussis vaccine, 10585
Acellular Pertussis Toxoid Adsorbed, 8289
ORTHO HIV-1/HIV-2 Ab-Capture ELISA Test System, 17307
Human, including therapeutic biotechnology-derived products; guidance availability, 18612
Labeling—
Pediatric use labeling supplements, content and format; industry guidance, 26191
Living autologous cells manipulated ex vivo products intended for structural repair or reconstruction; guidance availability, 26523
New drug, biologic, or antibiotic drug for human use, interim form for application to market (FDA Form 3439); availability, 24313
Biologics:
Plasmid DNA vaccines for preventive infectious disease indications, points to consider; guidance availability, 68269

Blood and plasma establishments:
Donor screening with licensed test for Type 1 (HIV-1) antigen; recommendations memorandum; availability, 3042
Blood donor incentive programs for volunteer (non-remunerated) donors; public workshop, 43770
Chemistry, manufacturing and controls information for therapeutic recombinant DNA-derived product; industry guidance availability, 56243
Color additive petitions:
Ethicon, Inc., 14786
ProMedica International,
Color additives (other than hair dyes); reporting and recordkeeping requirements, 59888
Committees; establishment, renewal, termination, etc.:
Medical Devices Advisory Committee et al.; membership nominations, 43366, 43369
Medical Imaging Drugs Advisory Committee et al., 30243
National Center for Toxicological Research Science Advisory Board; membership nominations, 11645
National Mammography Quality Assurance Advisory Committee et al., 6644
Pulmonary-Allergy Drugs Advisory Committee et al., 58417
Science Board, 25882
Transmissible Spongiform Encephalopathies Advisory Committee, 36733
Compliance policy guides:
Certification for exports; revised, 57444
Manual; availability, 67557
Quality assurance program audits and inspections access; availability, 1939
Revocation and availability, 42909, 67837
Creutzfeldt-Jakob Disease; possible transmission by plasma and plasma derivatives; public workshop, 1389
Debarment orders:
Bushlow, John W., 11846
Copanos, John D., 9711, 16975
Shainfeld, Fredrick Jay, 7521
Environmental statements; availability, etc.:
New drug applications or supplements—
Paclitaxel, 58694, 65635
Versed (midazolam) injection, 49470
Export certificates:
FDA Export Reform and Enhancement Act of 1996—
Drugs, animal drugs, and devices; certification fees, 57445
Federal regulatory review:
Grassroots regulatory partnership meetings—
Import and private laboratory communities, 29416
Pacific Region; importing community, 1031
Pacific Region; medicated feed industry, 25496
Southeast Region; turkey/broiler industry, 18150
Southwest Region; medicated feed industry, 14786
Food additive petitions:
Albright & Wilson, Ltd., 25228
Asahi Chemical Industry Co., Ltd.; withdrawn, 17308
Asahi Denka Kogyo K.K., 12075, 27085
Withdrawn, 35228
Atlantis Corp.
Withdrawn, 32443
BASF Corp., 56242
Bio-Cide International, Inc., 21193
Withdrawn, 59446
Ciba-Geigy Corp., 5001, 7005, 18749, 35229, 37483
Withdrawn, 8066, 53379
Coconut Products Corp., 18151
Cytec Industries, Inc., 8290, 43771
Withdrawn, 29757
Dainippon Ink & Chemicals, Inc., 17901
Dover Chemical Corp., 53748
Dow Chemical Co., 54801
Eastman Chemical Co., 7111
Elf Atochem North America, Inc., 65405
Enviro Tech Chemical Services, Inc., 11214
General Electric Co., 31141, 53379
GE Silicones, 46814
Henkel Corp., 35770
Withdrawn, 36886
Heveafil Sendirian Berhad; withdrawn, 42026
Hoechst Celanese Corp., 44066
ICI Americas Inc., 43772
Johnson Matthey Chemicals, 21473
Life Technologies, Inc., 34852, 37905
Lonza, Inc., 35771, 41793, 42635, 56686
Withdrawn, 56686
MacMillan Bloedel, Ltd., 51118, 52454
Microbio Resources, Inc.; withdrawn, 35229
Milliken & Co., 7111, 14103
Milwhite, Inc., 59101
Nalco/Exxon Energy Chemicals, L.P., 58417
Pendleton, Betty J., 64754
Registration and Consulting Co. AG, 6854
Reichhold Chemicals, Inc., 4783
Rio Linda Chemical Co., Inc., 14330
Sequa Chemicals, Inc., 9462
Shinagawa Fuel Co., Ltd., 5001
Stockhausen, Inc.; withdrawn, 7006
Sumitomo Chemical America, Inc., 34853
Tomy Industries (America), Inc., 44067
Toyobo Co. Ltd., 37484
Transcommerz AG; withdrawn, 21194
Victorian Chemical Co., Pty. Ltd., 6854
Witco Corp., 25228
Withdrawn, 24501
Zeneca Inc., 44067
Food for human consumption:
Antimicrobial drug residues in food, microbiological testing; guideline availability, 3043
Food Chemicals Codex; 4th Edition—
New monographs and revisions, 64098
Food labeling—
Nutrition labeling values for 20 most frequently consumed raw fruits, vegetables and fish; availability, 26910
Identity standards deviation; market testing permits—
White chocolate, 352
Infant nutritional needs and formula nutrient concentrations requirements; study, scientific data and information request, and meeting, 8628, 13505
Shell eggs, dairy products, game meat and game meat products—
European Community; U.S. firms/processors lists establishment; information request, 15077
Grant and cooperative agreement awards:
Interstate Shellfish Sanitation Conference, 557
Grants and cooperative agreements; availability, etc.:
New Zealand; systems to ensure safe, wholesome, and truthfully labeled fish and fishery products, 7112
Orphan drug products; safety and effectiveness in rare diseases and conditions; clinical studies, 28877
Shellfish and seafood safety assistance project, 48706
Streamlined noncompeting award process (SNAP); implementation, 42427
GRAS or prior-sanctioned ingredients:
Beta-cyclodextrin, 49472
Enzyme Technical Association, 40648
Flax Council of Canada, 13505
FMC Corp., 41793
Michael Foods, Inc., 13506
Solvay Enzymes, Inc., 5787
Guidance documents:
Initiation, development, and issuance; meaningful public participation, 9181
Public meeting, 15080
Harmonisation International Conference; guidelines availability:
Biotechnological/biological pharmaceutical products; stability testing, 36466
Biotechnological products derived from cell lines of human or animal origin; viral safety evaluation, 21882
Biotechnological products quality—
Analysis of expression construct in cells used for production of r-DNA derived protein products, 7006
Clinical safety data—
Periodic safety update reports for marketed drugs, 15352
Individual case safety reports; data elements for transmission, 51287
New drug substances and products—
Impurities, 372, 11268
Photostability testing, 9310
Pharmaceuticals—
Analytical procedures validation; methodology, 9316
Carcinogenicity testing, 43298
Genotoxicity tests; specific aspects, 18198
Rodent carcinogenicity long-term studies need; final guideline, 8154
Stability testing for new dosage forms, 9060
Toxicity studies—
Reproductive toxicity detection for medicinal products; male fertility, 15360
Harmonization International Conference; guidelines availability:
Clinical study reports; structure and content, 37320
Human drugs:
Antibiotic drug applications—
Hoffmann-La Roche, Inc., et al.; approval withdrawn, 13506
Lilly Research Laboratories et al.; approval withdrawn, 51457
Drug products discontinued from sale for reasons other than safety or effectiveness—
Acetaminophen and codeine tablets USP, 325 mg/45mg, 36385
Glyburide tablets (4.5 milligrams), 25497
Hydrocortisone acetate topical ointment (2.5%), 25497
Ibuprofen 200-milligram capsule, 58565
Medroxyprogesterone acetate (100 milligrams per milliliter), 25498
Selegiline hydrochloride 5-milligram tablet, 42428
Testosterone propionate 2% ointment, 59233, 64754
Export applications—
Benadryl Injection Steri-Vials (diphenhydramine hydrochloride injection, USP) 50 milligram per millitiliter (mg/mL), 1-mL vials, 18151
Differin (Adapalene) 0.1% topical gel, 17902, 19976
Migramist (dihydroergotamine mesylate, USP) 4 mg/mL nasal spray, 17901
Labeling—
Pediatric use labeling supplements, content and format; industry guidance, 26191

New and antibiotic drugs applications—
Hance Brothers & White Co. et al., 50323
New drug applications, etc.—
Lilly Research Laboratories et al.; approval withdrawn, 51457, 58071
New drug applications—
Cyclospasmol; withdrawn, 64099
Hoffmann-La Roche, Inc., et al.; approval withdrawn, 13506, 40649
Investigational new drugs; content and format of applications for Phase I studies: guidance availability, 1939
Kasdenol Corp. et al.; approval withdrawn, 18151
Mycolog ointment and cream, etc.; partial withdrawal, 42635
Parke-Davis & Co.; determination, 7114
Reed & Carnrick Pharmaceuticals et al.; approval withdrawn, 5562
Selacryn tablets; approval withdrawn, 25228
Sperti Drug Products, Inc., et al.; approval withdrawn, 49327
Orphan-drug and biologicals—
Designations; cumulative listing, 17708
Patent extension; regulatory review period determinations—
ADENOSCAN, 73
AMARYL, 26913
ARIMIDEX, 44069
Buphenyl powder, 60107
CASODEX, 17308
CEDAX, 41635
CEDAX capsules, 44070, 46465
CEDAX oral suspension, 44068
COREG, 26911
CORVERT, 41637
DYNABAC, 41636
EPIVIR, 24316
FLOLAN, 15265
FOSAMAX, 26912
MAXIPIME, 41638
MYOVIEW, 60711
Neutrexin, 53748
PRECOSE, 27085
PREVACID, 72
TAXOTERE, 60710
TRUSOPT, 24317
VEXOL, 45433
VISTIDE, 66675
ZYRTEC, 26913
Pharmaceuticals; single dose acute toxicity testing; revised guidance availability, 43934
Prescription drug user fee revenues and rates, FY 1997; establishment, 67557
Industry guidance:
Advertising and promotion; journal articles and reference texts; availability, 52800
Infant formulas for preterm infants; nutrient requirements review, etc., 58566
Investigational new drugs:
1996 Gene Therapy Conference—
Phase I products development and evaluation and viral vectors use for gene therapy; development workshop, 18749
Procedure to monitor clinical hold process; meeting and request for submissions, 14797, 25882
Medical devices:
Cigarettes and smokeless tobacco products; restriction of sale and distribution to protect children and adolescents
Federal preemption; State and local government exemption applications, 57685
Contact lens care products; premarket notification (510(k)) guidance document; availability, 14330
Design controls inspection strategies; public meeting, 45978
Ear, nose, and throat devices—
Endolymphatic shunt tube with valve; reclassification petition denied, 64909
Industry initiatives; pilot program, 14786
Mammography facility performance (CY 1995); document availability, 51294
Medical device denominator data; estimation methods; public workshop, 42636
Medical gas manufacturers and transfillers who repack medical gas; current good manufacturing practices; public workshops, 16924
Medical software devices; public workshop, 36886
Suction lipoplasty sytem for aesthetic body contouring; reclassification, 58195
Third party review of selected premarket notifications; pilot program, 14789
Medical devices; nonexperimental/investigational:
Medicare-covered; interagency agreement and list, 7011
Medical devices; premarket approval:
Abbott PGR-ICA monoclonal, 36733
Acrysof models MA60BM and MA30BA ultraviolet-absorbing soft acrylic posterior chamber intraocular lenses, 36887
Adeza Biomedical Corp.; fetal fibronectin enzyme immunoassay kit, 35771
Advanced Technology Laboratories; Ultramark 9 high definition imaging (HDI) ultrasound system, 60712
Allergen Optical; Refresh CL lubricating and rewetting drops, 65580
American Medical Systems, Inc.; UroLume Endourethral Prosthesis, 52949
Arrow International; model 3000 constant flow inplantable pump with bolus safety valve, 37071
Autopap 300 QC system, 49780
BARD BTA Test, 36386
Bartels Prognostics; chemoresponse assay, 66282
Biomira Diagnostics, Inc.; Truquante BR RIA vitro diagnostic device, 38206
CapSureFix pacing lead (model 4068), 52801
Cardiac Pacemakers, Inc.; VIGOR DR Pacemaker System/VIGOR SR Pacemaker System, 60713
CareLink Corp., 54446
Ciba Corning Diagnostics Corp.; ACS AFP (two-site chemiluminescence immuoassay), 34853
CLARION multi-strategy cochlear implant, 68270
Coat-A-Count PSA IRMA, 48156
Dade International, Inc.; aca plus PSA Test Kit, aca plus PSA Calibrator, and aca plus PSA Control, 58695
Direct Access Diagnostics; Confide HIV testing service using dried blood spots, 57446
EDAP Technomed Group (U.S.A.), Inc.; Prostatron transurethral microwave thermal therapy system, 52949
EMDOGAIN bone filling and augmentation device, 59234
Epitope, Inc.; OraSure HIV-1 oral specimen collection device, 26187
Epitope, Inc.; OraSure HIV-1 western blot kit, 57447
Filshie clip system (Mark VI), 64912
Healthdyne, Inc.; System 37 home uterine activity monitoring system, 37484
HeartMate IP LVAS, 51712
Integra LifeSciences Corp.; INTEGRA artificial skin, 37485
Liposorber LA-15 system, 33926
Matritech NMP22 test kit, 64912
MicroTrak II IgM Anti-HAV EIA, 37276
Neuromedical Systems, Inc.; PAPNET testing system, 65228
Nucleus 22-channel cochlear implant, 55644
Perfluoron (Highly purified Perfluoro-n-Octane liquid), 37486
Protective restraints and wheelchair accessories; draft 510(K) guidance document; availability, 8440
Res-Q ACD (arrhythmia control device) epicardial patch and non-thoracotomy lead systems, 36387
Roche Molecular Systems, Inc.; HIV-1 monitor test, 66283
Schneider (USA) Inc.; Wallstent transjugular intrahepatic portosystemic shunt (TIPS) endoprothesis, 37277
SELUTE steroid eluting endocardial lead (models 4185 and 4285), 55153
SOLO-care brand MULTI-PURPOSE SOLUTION, 39977
Spine-Tech, Inc.; BAK Interbody Fusion System, 58696
SVS Apex Excimer Laser System, 42429
Technicon Immuno 1 CEA assay, 34854
Technicon Immuno 1 PSA Assay, 36888
Tripter-X1 series extracorporeal shock wave lithotripters, 65070
UroMed Corp.; Reliance urinary control insert and sizing device, 63850
VISX Excimer Laser System (Models B and C) for phototherapeutic keratectomy, 67559
Medical devices; premarket submissions:
Software-containing medical devices; guidance availability, 67837
Meetings:
Advisory committees, panels, etc., 74, 1192, 2255, 3427, 4674, 4783, 4785, 7008, 7115, 7116, 7265, 10769, 11848, 15079, 18152, 19076, 20527, 20831, 25682, 26187, 26188, 29104, 32443, 32446, 32829, 33927, 35229, 36889, 38453, 40235, 41794, 43370, 43372, 43772, 46652, 49472, 50031, 50828, 52034, 54447, 55154, 55306, 55308, 55645, 55990, 56686, 56688, 59447, 59448, 67560
Advisory Committee Information Hotline; availability, 15079
Tentative schedule, 17708
Autologous cells manipulated ex vivo-comprised products intended for structural repair or reconstruction; regulatory approach, 9185
Bioresearch industry; regulatory requirements; public workshop, 46653
Calcium and related nutrient needs of U.S. population, 28881
Center for Biologics Evaluation and Research; refusal to file practices use, standing oversight committee review, 8290, 34854, 52454
Cancellation, 2836
Center for Biologics Evaluation and Research Standing Oversight Committee review, 67020
Clinical safety data in marketing applications review; guidance availability and public workshop, 60713
Compressed medical gas industry; public workshop, 26191
FDA-regulated medical products (biologics, human and animal drugs and medical devices); promotion on Internet, 48707
Food ingredient safety evaluation; scientific data and information request, 8291

Fresh juices; current science, technology, and safety factors review, 60290
Health professional organizations representatives, 2255, 46654
Human subject protection issues; clinical investigators, coordinators, and Institutional Review Board personnel; national conference, 46814
Investigational biological products—
Clinical holds monitoring; review committee, 1032, 8067, 65580
Trials placed on clinical hold; submissions, 46654
Medical Gas Industry, 58884
Peripheral blood stem cells; collection, processing, and product characterization; procedures discussion and public workshop, 4786
Pharmaceutical laboratory practices and agency/industry dialogue, 55808
Plasma-derived products; withdrawals and recalls, notification to public, 6549
Small business exchange; minority and female business operators and owners/FDA officials, 15265
Memorandums of cooperation:
Chile; Economy, Development, and Reconstruction Ministry; safe and wholesome fish and fishery products trade facilitation, 67035
Mexico and Canada; communications in scientific and regulatory fields of health, 11645
Memorandums of understanding:
Agreements between FDA and State or local government agencies; list availability, 1583
Agricultural Marketing Service; National Laboratory Accreditation Program responsibilities, 55646
Belarus; drugs and biological products information exchange, etc., 67562
Customs Service; international trade compliance measurement program, 67034
Russian Federation; imported and domestic food, 29104
Russian Federation; U.S. drugs and biological products, 67036
Mutual recognition agreements:
U.S.-European Union—
Human biologicals and human and animal drugs; good manufacturing practices and quality controls; inspectional information exchange, 54448
Pharmaceutical good manufacturing practices and medical devices; public docket establishment, 21194
National shellfish sanitation program manual of operations, Parts I and II; revision availability, 11849
New and antibiotic drugs applications:
Hance Brothers & White Co. et al.; market approval withdrawn; hearing, 10768
Nicotine-containing cigarettes and smokeless tobacco products; analysis regarding FDA's jurisdiction, 11419
Organization, functions, and authority delegations:
Office of Communication, Training, and Manufacturers Assistance, Center for Biologics Evaluation and Research; establishment, 170
Pesticide residue monitoring data base (FY 1995); availability, 50324
Plasma Derivatives Virological Safety International Conference, 52950
Premarket applications:
Human somatic cell and gene therapy, points to consider; document availability and meeting subject, 5786
Prescription drugs (animal and human), biologics and restricted medical devices; labeling and advertising:
Direct-to-consumer promotion, etc., 24314
Reports; availability, etc.:
Conjugated estrogens composition; preliminary analysis of scientific data, 57687
Dental drug products (OTC) panel plaque subcommittee agenda; alcohol-containing mouthwashes, 19077
"Do It By Design", human factors in medical device design; guidance availability, 12075
Fluproquinolone Working Group, 353
Human drug applications and supplements, environmental assessment; guidance, 1031
Investigational new drug applications; clinical hold response data, 64136
Liquid chemical germicides; premarket notification (510(k)) content and format submissions; guidance, 64755
Medical Device Reporting for Manufacturers, 27361
Medical devices; user facility and distributor reporting guidance; availability, 27360
Medical devices design control; guidance availability, 12075
Rheumatoid arthritis treatment; clinical program design for developing drugs, medical devices or biological products; guidance and public workshop, 8961
Juvenile rheumatoid arthritis; draft guidance, 32447
Sea lice in salmon treatment and control; joint U.S.-Canadian public workshop, 42257, 28213

Food Safety and Inspection Service

RULES
Meat and poultry inspection:
Bacon, shingle packed; net weight statements; labeling requirement removed, 42143
Bob veal calf residue testing program; fast antimicrobial screen test, 4849
Certain cured and uncured whole meat products; sodium citrate buffered with citric acid use, 18047
Effective date confirmed, 37675
Cooked roast beef products; sorbitol use, 7207
Withdrawn, 16617
Corn syrup, corn syrup solids, and glucose syrup as flavoring agents in meat products, 58780
Foreign inspection systems equivalence criteria; hearing, 50425
Pathogen reduction; hazard analysis and critical control point (HACCP) systems, 38806
E. coli verification testing; technical conference, 43150
"Farm to table" food safety strategies; Federal/State conference, 55207
International implementation; meeting, 50425
Public meetings; schedule, 43150
Regional implementation; public conferences, 43149, 53305
Small and very small plants; demonstration projects, 55206
Poultry carcasses, raw and chilled; trisodium phosphate use as antimicrobial agent, 39273
Sausages made with natural casings; labeling, 39853
Voluntary inspection fee increases and laboratory services fee reduction, 65459
Poultry inspection:
Nutrition labeling—
Raw poultry products; use of term "fresh", 66198, 68821
PROPOSED RULES
Federal regulatory review, 9655
Regulatory proposed rules; withdrawal, 58664
Meat and poultry inspection:
Bone particles size and foreign material in mechanically-separated meat and poultry products; Public Health Hazard Analysis Board report availability, 35157
Cooked beef products, uncured meat patties, and poultry products production; performance standards, 19564, 35990
Establishment drawings and specifications, equipment, and partial quality control programs; prior approval requirements elimination, 19578, 35990
Food products or product categories—
Meat or poultry contents, etc., 47453
Laboratory services; fees reduction, 34747
Meat produced by advanced meat/bone separation machinery and meat recovery systems, 57791
Pathogen reduction; hazard analysis and critical control point (HACCP) systems
Foodborne illness reduction; transportation and storage requirements of potentially hazardous foods, 59372
Poultry products manufacturing; use of two kinds of poultry without label change, 68167
Processed meat and poultry products; nutrient content claim and general definition and standard of identity, 7227
Comment period extended, 26470
Substances suitable for use in meat and poultry products preparation; approval procedures, 8892
Time, Temperature, and Transportation; technical conference, 57790
Voluntary inspection, etc.; fee increases, 34747
Nutrition labeling and reference daily intakes for vitamin K, selenium, manganese, chromium, molybdenum and chloride, 65490
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37718
Beef carcasses:
Zero tolerance performance standard achievement for fecal, ingesta, and milk contamination; trim-only policy change, 15024
Codex Alimentarius Commission:
International sanitary and phytosanitary standard-setting activities, 28132
Pesticides and treated food commodities as candidates for maximum residue limits; procedure, 4954
Committees; establishment, renewal, termination, etc.:
Microbiological Criteria for Foods National Advisory Committee, 18719, 28562
Meat and poultry inspection:
Interstate shipment of State-inspected products; recommendations; comment request, 20509
Meetings:
Codex Alimentarius Commission; U.S. participation, 25620, 58369
Microbiological Criteria for Foods National Advisory Committee, 2229, 43728
Reports; availability, etc.:
Raw meat and poultry products labeling/mandatory safe handling information study, 2790
Technical Service Center for field operations personnel and regulated meat, poultry, and egg product industries; alternative sites for consideration, 24479

Foreign Agricultural Service

RULES
Freedom of Information Act; implementation:
CFR parts removed and chapters vacated, 2898
PROPOSED RULES
Sugar import licensing:
Refined sugar re-export, sugar-containing products re-export, and polyhydric alcohol programs—
Raw sugar/refined sugar import-export equivalency, 40749
NOTICES
Agency information collection activities:
Proposed collection; comment request, 11600, 46432
Food and Agriculture Organization Committee on World Food Security draft policy statement, etc.; public meeting, 161
Grants and cooperative agreements; availability, etc.:
U.S. and Egypt; food crops collaborative research program, 43522
Import quotas and fees:
Dairy import licenses, 38705
Meetings:
Emerging Democracies Advisory Committee, 15759
Food and Agriculture Organization Committee on World Food Security—
Public debriefing, 51258
North American Free Trade Agreement (NAFTA):
Mexican frozen concentrated orange juice; temporary duty imposition, 44037, 51258
Orange juice, frozen concentrated; special provision, 46617
United States agricultural expertise; sharing with emerging markets, 29049
Uruguay Round Agreements Act (URAA); agricultural safeguard trigger levels, 4952
World Food Summit:
U.S.-Canada Forum, 28158
U.S. Public Forum, 20790
U.S.-Rome Forum, 44038, 64856

Foreign Assets Control Office

RULES
Federal claims collection:
Civil money penalties; inflation adjustment, 54936
Federal Republic of Yugoslavia (Serbia and Montenegro) sanctions regulations:
Bosnian Serb forces and areas of Republic of Bosnia and Herzegovina under their control—
New transactions authorization, 24696
Partial suspension, 1282
Foreign assets control regulations:
Antiterrorism and Effective Death Penalty Act; implementation—
Cuban and Iranian assets control regulations, Iranian transactions regulations, and Libyan and Iraqi sanctions regulations, 43459
Stipend- and scholarship-related transactions; Syrian and Sudanese nationals, 67943
Terrorism list governments sanctions regulations, 43462
Cuba; indirect financing, civil penalties, 37385
North Korea; humanitarian donations, 9343
Terrorism sanctions regulations, Middle East peace process disruption; implementation, 3805
Iranian assets control regulations:
National emergency and sanctions against Iran; oil-realted transactions, 58480
Shams Pahlavi; assets unblocked, 8216
Correction, 15382
Iraqi sanctions regulations:
Executory contracts for purchase of Iraqi-origin petroleum and petroleum products, etc., 36627, 65312
Sanctions; blocked persons, specially designated nationals, terrorists, and narcotics traffickers, and blocked vessels; lists consolidation, 32936
Correction, 43459
M/V RAMA vessel; removed, 54334
Yugoslavia; designated nationals removal, 64289
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26555, 58615, 58922, 67375
Colombia; specially designated narcotics traffickers; list, 9523

Foreign Claims Settlement Commission

NOTICES
Agency information collection activities:
Proposed collection; comment request, 5804, 9720, 16646, 24330
Claims against:
Iraq; registration program establishment, 25897
Filing deadline extension, 36757
Holocaust survivor claims adjudication for compensation; filing deadline, 30638
Meetings; Sunshine Act, 1206, 2001, 9721, 27937, 35266, 44347, 44348, 55818, 55819, 64760
Privacy Act:
Systems of records, 17913, 46827, 46828

Foreign-Trade Zones Board

RULES
Inactive foreign-trade zones; lapse of authority, 53305
NOTICES
Inactive foreign-trade zones; lapse of authority, 14290, 15766, 35711
Applications, hearings, determinations, etc.:
Alabama, 5375, 20214
MagneTek, Inc.; electronic fluorescent lighting ballasts and components manufacturing facility, 25621
Mercedes-Benz U.S. International, Inc.; motor vehicle manufacturing plant, 8237
Onan Engine Co., Inc.; small internal combustion engines manufacturing facility, 41768
Sony Magnetic Products Inc. of America; unrecorded magnetic media and battery systems manufacturing plant, 18547
Zeneca Inc.; agricultural chemical products manufacturing plant, 11606, 58512
ZF Industries, Inc.; automotive front and rear axle assembly manufacturing plant, 18375
Alaska, 29529
Arizona, 6972, 9675, 63821
Abbott Manufacturing, Inc.; infant formula and adult nutritional products manufacturing plant, 3669, 66016
PETsMART, Inc.; pet products warehouse/distribution facility, 9674, 66016
SGS-Thomson Microelectronics, Inc.; semiconductor manufacturing plant, 1322
Sitix of Phoenix, Inc.; semiconductor wafer manufacturing plant, 1747, 25189
Arkansas
Cedar Chemical Corp.; agricultural and specialty chemical manufacturing facility, 3000, 58512
Mid States Pipe Fabricating, Inc.; steel pipe fabrication facilities, 15216
California, 42832, 46763
C. Ceronix, Inc.; gaming/recreational machine video display monitor manufacturing plant, 11607
California Steel Industries, Inc.; steel mill products manufacturing facility, 28839
Minnesota Mining & Manufacturing Co. (3M); pharmaceutical products manufacturing facility, 26157
Delaware
Star Enterprise; oil refinery complex, 33490
Florida, 30593, 42832, 42833, 58036
Capo, Inc.; sunglasses/reading glasses manufacturing facility, 54765
Federal-Mogul World Trade, Inc.; vehicle component warehouse/distribution facility, 3000
Lockheed Martin Plant; aerospace systems manufacturing plant, 54766
Georgia, 21156
CITGO Asphalt Refinery Co.; oil refinery, 10725
United Technologies Corp. et al.; aircraft turbine engine components manufacturing facilities, 54152
Hawaii
NIC Americas Inc.; medical devices manufacturing and distribution facilities, 4254, 33490
Illinois
Nissan Industrial Engine Manufacturing USA, Inc.; spark ignition industrial engine manufacturing plant, 55268
Shell Oil Co.; oil refinery complex, 55268
Shell Oil Co.; oil refinery complex; fuels and petrochemical feedstocks production, 18379
Indiana, 43527
Fujitsu Ten Corp. of America; automotive audio products and electronic components manufacturing plant, 45399
Thomson Consumer Electronics, Inc.; warehouse/distribution facilities, 15461
Kansas, 40396
Texaco, Inc.; oil refinery complex, 17874
Kentucky, 52909
Ascent Power Technology Corp., Inc.; electric power supplies and electronic fluorescent lighting ballasts manufacturing facilities, 47870
Ashland Inc.; oil refinery complex, 33093
Louisiana, 15217
BP Exploration & Oil Inc.; oil refinery complex, 27047
Conoco, Inc.; crude oil refinery complex, 3669, 7050, 15217
Exxon Corp.; oil refinery/petrochemical complex, 6623, 9532, 54152
Murphy Oil USA, Inc.; oil refinery complex, 36550, 39695
Shell Oil Co.; oil refinery/petrochemical complex, 2486, 38710
TransAmerican Natural Gas Corp.; crude oil refinery complex, 15217, 28839
Maryland, 48665
Massachusetts, 1322, 19259

Michigan, 6623, 7237, 25190, 27047, 46763
  Abbott Manufacturing, Inc., et al.; infant formula and adult nutritional products manufacturing plant, 12059
  Diesel Technology Co., Inc.; diesel engine fuel injection components manufacturing/warehousing facilities, 58036
  ESCO Co., L.P.; colorformer chemicals manufacturing facility, 38137, 59401, 65266
  Marathon Oil Co.; oil refinery complex, 28839
  Petri, Inc.; automotive steering wheels, etc. manufacturing facilities, 66651
Minnesota
  Plastic Products Co., Inc.; plastic in-line skates manufacturing facilities, 9675, 51676
Missouri, 9676, 29529, 54153
Nevada, 14289
  Porsche Cars North America, Inc.; facility, 63822
New Hampshire, 57383
New Jersey
  Chevron Products Co.; crude oil refinery, 55954
  CITGO Asphalt Refinery Co.; oil refinery, 10725
  Coastal Eagle Point Oil Co.; oil refinery complex, 35710
New Mexico
  Lukens Medical Corp.; surgical sutures processing facility, 41373
New York, 20791, 28840, 48665
  BASF Corp.; chemical pigment/dye manufacturing facility, 1322
North Carolina, 27048
  Custom Manufacturing Services, Lucent Technologies Inc.; telecommunications and computer equipment manufacturing facility, 24270
  R.G. Barry Corp.; footwear and thermal comfort products distribution facility, 5981
Ohio, 12060, 15766, 37442, 39695, 41208, 54766
  Abbott Manufacturing, Inc. et al.; infant formula and adult nutritional products manufacturing plant, 17875
  Ashland Inc.; oil refinery complex, 29530
  Ben Venue Laboratories, Inc.; pharmaceutical manufacturing facility, 3670
  BP Exploration & Oil Inc.; oil refinery facilities, 27048
  Motch Corp.; vertical and horizontal turning and grinding machinery manufacturing facility, 41768
  Pier 1 Imports, Inc.; distribution facility, 2486
  Pioneer Industrial Components, Inc.; automotive audio products manufacturing facilities, 10726
Pennsylvania, 2487
  Baker Refractories; refractory bricks, etc. manufacturing plant, 55955
  J. Schoeneman, Inc.; apparel manufacturing plant; withdrawn, 68228
  Precision Components Corp., Inc.; nuclear fuel containment vessels manufacturing plant, 51405
  Sun Co., Inc.; integrated oil refinery complex, 1747
  Sun Co. Inc.; oil refinery complex, 38710
Puerto Rico
  Mani Can Corp.; easy-open steel can processing facilities, 24271, 43527
  PepsiCo of Puerto Rico, Inc.; soft drink flavoring concentrates manufacturing plant, 47870
  Puerto Rico Sun Oil Co.; oil refinery complex, 39628
South Carolina, 33491, 43229, 45400, 57383
  Hubner Manufacturing Corp; industrial bellows and molded parts manufacturing, 33094
  Quoizel, Inc.; lighting fixtures manufacturing facilities, 25190
South Dakota, 6973
Tennessee, 54766
  Nissan Motor Manufacturing Corp. U.S.A.; engine/powertrain manufacturing facility, 8027
Texas, 3670, 8237, 10562, 17875, 21157, 29530, 29531, 66652
  Automotive Air-Conditioner Components; manufacturing facility, 55955
  B&F Systems, Inc.; assembly of knives and distribution and processing facility, 58860
  Basis Petroleum, Inc.; oil refinery complex, 17875
  Clark Refining & Marketing, Inc.; oil refinery complex, 7469, 54153
  Dell Computer Corp.; computer manufacturing facilities, 33899
  Energy Department Strategic Petroleum Reserve; crude oil storage facilities, 33094
  Exxon Corp.; oil refinery/petrochemical complex, 1323, 38711
  Mobil Oil Corp.; crude oil refinery complex, 2487, 33491
  Nokia Mobile Phones Americas, Inc.; cellular phones and telecommunications products manufacturing facility, 65013, 66016
  Pier 1 Imports, Inc.; distribution facility, 2486
  R.G. Barry Corp.; footwear and thermal comfort products distribution facility, 5981
Virginia, 18380, 21157
  Abbott Manufacturing, Inc.; infant formula and adult nutritional products manufacturing plant, 12060
Washington, 20791, 30593, 45400, 52909
  Texaco, Inc.; oil refinery complex, 39119
  Toray Composites (America), Inc.; carbon fiber composite materials manufacturing plant; withdrawn, 68228
Wisconsin, 21157
  Polaris Industries Inc.; internal-combustion engine manufacturing plant, 66652
  Robin Manufacturing U.S.A., Inc.; small internal-combustion engines manufacturing plant, 63822
  Western Publishing Co., Inc.; children's touch-sound books manufacturing, 29531

Forest Service

RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
  Customary and traditional use determinations; correction, 5685
  Effective date extended, 25785
  Fish and wildlife taking, 39698
  Correction, 48625
Federal regulatory reform:
  National Wildfire Disasters Commission; regulation removed, 41507
National Forest System lands:
  Cooperation with user organizations; Federal regulatory reform, 47673
National Forest System timber; sale and disposal:
  Appraisal of timber for land exchange, right-of-way, or other authorized use; consolidation and clarification, 48625
  Contract modification in environmental damage prevention; forest plans conformance, 64815
  Fair market value determination; appraisal procedures, 5684
  Federal timber contract payment modification program; obsolete CFR subpart removed, 35960
  Timber sale and substitution, 14618
National recreation areas:
  Smith River National Recreation Area, CA; mineral operations, 14621, 20726
Occupancy and use of developed sites and areas of concentrated public use:
  Admission fee charges; expanded locations, 1715
Range management:
  Wild free-roaming horses and burros management; correction, 35959
PROPOSED RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
  Alaska Federal Subsistence Regional Advisory Councils; meetings, 463, 67274
  Federal Subsistence Program and Federal Subsistence Board's Authority; expansion, 15014
  Fish and wildlife taking, 41060
National Forest System timber; disposal and sale:
  Market-related contract term additions; indices, 54589
  Correction, 58281, 64569
  Timber sale contracts; cancellation, 68690
NOTICES
Agency information collection activities:
  Proposed collection; comment request, 4953, 13151, 16627, 18121, 24915, 31911, 51673, 58369, 58673
Appealable decisions; legal notice:
  Intermountain region, 11600, 66014
  Northern region, 27333, 58509
  Pacific Northwest region, 1317, 21438, 57383
  Pacific Southwest region, 5529, 67767
  Rocky Mountain region, 24757, 58857
  Southern region, 1317, 21440, 56659
Boundary establishment, descriptions, etc.:
  Ouachita National Forest, AR, 47867
  Wesley Chapel Gulf Purchase Unit, IN, 56510
  White Mountain Purchase Unit, NH, 47867
Cibola National Forest, NM; land and resource management plan; comment request, 8235
Committees; establishment, renewal, termination, etc.:
  Water Rights Task Force, 47858
Environmental statements; availability, etc.:
  Boise National Forest, ID; Prince John project, 54409
  California spotted owl; Pacific Southwest Region forests, 40394
  George Washington National Forest, VA, 8565
  Gypsy moth management, 5976
  Okanogan National Forest, WA, 16896
  Ouachita National Forests, AK, et al., 53897
  Southwestern Region; forest plans, AZ and NM, 1896
  Summit County et al., UT; petroleum pipeline, 25477
  Tonto National Forest, AZ; State Highway 87 withdrawal; meeting, 49109
  Umpqua National Forest, OR, 49109
  Wallowa-Whitman National Forest, OR Cancelled, 67997
  Winema National Forest, OR; Pelican Butte Ski Area, 54410

Environmental statements; notice of intent:
  Alta Ski Lifts, UT, 15759
  Angeles National Forest, CA; Elsmere Canyon area solid waste management facility, 64499
  Arapaho National Forest, CO, 41562
  Beaverhead National Forest et al., MT, 9674
  Bitterroot National Forest, MT; Lost Trail Powder Mountain ski area, 38705, 38707
  Boise National Forest, ID, 41563, 49433
  Prince John project, 43728
  Rescinded, 5976
  Cavanah Analysis Area Multi-Resource Management Projects, CA, 9143
  Chattahoochee/Oconee National Forests et al., AL, 40183
  Chequamegon and Nicolet National Forests, WI, 13084
  Clearwater National Forest, ID, 39116, 41565, 54608
  Coconino National Forest, AZ, 49297
  Colville National Forest, WA, 11183, 58029
  Croatan National Forest, NC, 54148
  Custer National Forest, MT, 49999
  Custer National Forest, SD, 11602
  Daniel Boone National Forest, KY, 31911
  Off-highway vehicle management, 67300
  Eldorado National Forest, CA, 8566
  Flathead National Forest, MT, 64319
  Tansy ragwort control project, 67527
  George Washington and Jefferson National Forests et al., VA and WV; public meetings, 28562
  Grand Mesa National Forest et al., CO, 47866
  Grand Mesa, Uncompahgre and Gunnison National Forests, CO, 10560
  Helena and Deerlodge National Forests, MT, 48124
  Helena National Forest et al., MT, 49726
  Helena National Forest, MT, 10722
  Humboldt-Tolyabe National Forests, NV, 19606
  Idaho Panhandle National Forest, ID, 6344
  Interior Columbia Basin ecosystem management project, OR and WA, 47859
  Kootenai National Forest, MT, 56510, 58673, 66251
  Lolo National Forest, MT; petroleum products pipeline, 67302
  Los Padres National Forest, CA; withdrawn, 2481
  Malheur National Forest, OR; Summit Fire recovery, 54610
  Manti-La Sal National Forest, UT, 11183
  Medicine Bow/Routt National Forest, CO and WY, 11605, 25842
  Cold Springs project, 65374
  Mendocino National Forest, CA; integrated pest management program, 27044
  Modoc National Forest, CA; fire kille4d or damaged lumber, salvage, 54607
  Mt. Baker-Snoqualmie National Forest, WA, 34789, 55784
  Olympic Cross Cascade Pipeline Project, 7467
  Mt. Hood National Forest, OR, 2481
  Ochoco National Forest, OR; rescission, 28158
  Okanogan National Forest, WA; Long Draw salvage timber sale, 37243
  Payette National Forest, ID, 27864, 31502
  Rogue River National Forest, OR; rescission, 24759
  Salmon and Challis National Forests, ID; Cobalt Helosalvage sale, 48879
  Siskiyou National Forest, OR, 58858
  Tahoe National Forest, CA, 1320
  Lakes Basin/Sierra Buttes Area winter recreation plan; cancellation, 65520
  Tongass National Forest, AK, 4407, 33488, 37680
  Canal Hoya timber sale, 67530
  Tonto National Forest, AZ, 18372
  Umpqua National Forest, OR, 19905
  Big Bend timber sale; cancelled, 36704
  Lake Creek timber sale; cancelled, 36704
  Walton Ridge timber sale; cancelled, 36705
  Wallowa-Whitman National Forest, OR, 5531, 68704
  Wasatch-Cache National Forest, UT—
  Brighton Ski resort, 36024
  Solitude ski resort, 38709
  Wenatchee National Forest, WA
  Rescinded, 57847
  Taneum/Peaches road access project, 38432
  White Mountain National Forest, NH; snowmaking ponds construction, 18543
  White River National Forest, CO; timber harvest and road construction, 67303
  Federal wildland fire management policy and program review, 5737
  Forest and rangeland renewable resources program; 1995 recommendations; availability, 19253
  Forest Legacy Program; revised guidelines:
  Availability, 53188
  Comment request, 25478
  Grants and cooperative agreements; availability, etc.:
  Timber Bridge research joint venture agreements; wood in transportation structures, 5977
  Land and jurisdiction transfers, etc.:
  Applegate Lake Project, OR and CA, 49298
  Sam Rayburn Dam and Reservoir Project, TX, 17872, 20877, 31915, 36786
  Land and resource management planning:
  Forest Service manual and handbook; revision, 58370
  Land and resource management plans:
  Kootenai National Forest, MT, 60088
  Meetings:
  Alaska Federal Subsistence Regional Advisory Councils, 25843
  Blue Mountains Natural Resources Institute Board of Directors, 9144, 39624, 41568
  California Coast Province Advisory Committee, 1745, 7234, 16626, 33706, 42582, 58509
  Deschutes Provincial Interagency Executive Committee Advisory Committee, 1320, 11184, 33489
  Eastern Washington Cascades Provincial Interagency Advisory Committee, 2995, 47867, 56216
  Intergovernmental Advisory Committee, 6967, 11605, 14047, 24759, 29050, 38433, 38710, 46761, 60258
  Klamath Provincial Advisory Committee, 1320, 8235, 19607, 30031, 48459, 56662, 67304
  National Forest System Timber Sale Program, 52907
  National Urban and Community Forestry Advisory Council, 9424, 45933
  Northwest Sacramento Province Advisory Committee, 15760
  Olympic Provincial Interagency Executive Committee Advisory Committee, 1320, 14551, 36861, 50002, 67997
  Oregon Coast Provincial Advisory Committee, 14047, 34789, 53347
  Southwest Oregon Provincial Interagency Executive Committee Advisory Committee, 6967, 16087, 26498, 36705, 46432, 53898, 59079, 67769
  Southwest Washington Provincial Advisory Committee, 2996, 12059, 19607, 33092, 44291, 57627
  Water Rights Task Force, 47858, 52405, 54611, 59079
  Western Washington Cascades Province Interagency Advisory Committee, 4954, 9145, 20790, 28836
  Wildcat River Advisory Commission, 3668
  Willamette Provincial Interagency Executive Committee Advisory Committee, 2791, 13480, 26154, 38137, 52405, 64048
  Yakima Provincial Interagency Executive Committee Advisory Committee, 7234, 14288, 14289, 28837
National Forest System lands:
  Noxious weed management, 10309
  Timber sales contracts—
  Extension and periodic payments deferral, 14551
  Stumpage rate adjustment procedure change, 41124, 54612
  Substantial public interest findings, 40602
  Tonto National Forest, AZ; Carlota Copper Project conformity determination, 6967
Organic Administration Act:
  National Forest System lands—
  Forest lieu selection lands; title, 30032, 64856
Organization, functions, and authority delegations:
  Pacific Southwest Regional Forester; California spotted owl, 8025
  Regional Lands Directors, 16627
Ozark National Forest, AR; wild and scenic rivers; comprehensive management plans, 64321
Resources program and assessments program draft; national strategic plan; comment period reopening, 16896
Small business timber sale set-aside program:
  Recomputation of shares, 7468
Withdrawal and reservation of lands:
  Arizona, 30215
  Montana, 27366, 50803
  Wyoming, 27366, 50803

General Accounting Office

RULES
Bid protest process; timeliness requirement, 39039
Practice and procedure:
  Personnel Appeals Board—
  Reductions in force, 9089, 36809
PROPOSED RULES
Americans with Disabilities Act; implementation:
  Personnel relations and services, 44187
  Correction, 47240
  Prohibited personnel practices, 44187
  Correction, 47240
Bid protest process; timeliness requirement, 6579, 19205
NOTICES
Meetings:
  Federal Accounting Standards Advisory Board, 1030, 1761, 5000, 10350, 15954, 25873, 29102, 31121, 37068, 49326, 54667, 57875
Omnibus Budget Reconciliation Act of 1990; compliance report transmittal to President and Congress, 6246

General Services Administration

RULES
Acquisition regulations:
  Board of Contract Appeals; procedure rules—
  Standard and expedited proceedings, 52347
  Travel and relocation expenses cases; procedure rules, 39098
  Travel and relocation expenses reimbursement, 67241
  Transportation rate cases; procedure rules, 39096

Commercial items and open season solicitations, 6164
Correction, 14032
Competition requirements; FAC 90-39 implementation and miscellaneous changes, 39088
Correction, 42190, 42462
Deviations from FAR and GSAR, 51373
Federal Acquisition Streamlining Act of 1994; implementation—
Commerical items and open season solicitations, 6164
Contracting financing, 1150
Protests, disputes, and appeals, 1150
Publicizing contract actions, 1150
Solicitation provisions and contract clauses, 1150
Leasehold interests in real property—
Design-build two-phase selection procedures, 24720
Conflict of interests, 56399
Federal Acquisition Regulation (FAR):
Accounting guide availability, 2640
Agency procurement protests, 39219
Allowable cost and payment clause; cost-type contracts, 67418
Alternative dispute resolution and claim certification procedures, 31658
Armed Services Pricing Manual; replacement, 31620
Automatic data processing equipment, definition; and leasing costs cost principle deleted, 69287
Caribbean Basin countries, 31649
Child care services, 31660
Circular 90-37; introduction and summary, 2626
Circular 90-39; introduction and summary, 31612
Circular 90-40; introduction, 39186
Circular 90-44; introduction and summary, 69286
Claims assignment, 18920
Commercial items contracts and subcontract; cost accounting standards exemption, 67418
Community right-to-know; toxic chemical release reporting, 41473
Computer network and micro-purchase procedures, 39189
Contingent fee representation, 39188
Contract award; sealed bidding; construction, 31663
Contract cost principles and procedures—
Agency supplements, 31655
Foreign differential pay, 69294
Contract modifications, 69297
Contractor gratuities to government personnel, 39199
Contractor overhead—
Certification, 67422
Contractor qualifications; ''manufacturer'' or ''regular dealer'' requirement, 67409
Contractor responsibility determinations; use of commercial sources of supplier information, 39201
Contractors' purchasing systems reviews and subcontractor consent, 2641
Contract qualifications; unfair trade practices; Made in America labels, 2631
Convict labor use, 31643
Cost accounting standards; interest rate clause revisions, 18921
Cost Accounting Standards Board regulations applicable to educational institutions, 18916
Cost-effective value engineering procedures and processes, 39220
Data Universal Numbering System; use as primary contractor identification, 67412
Debarment and suspension certificate; tax evasion, 2632
Defense Production Act amendments, 31659
Deviations, individual and class; submission requirement elimination, 67411
Disaster Relief Act activities, 39200
Double-sided copying on recycled paper, 31616
Drug-free workplace; certification requirements, 69291
Existing contracts modification, 18915
Federal procurement data system; information collection, 67426
Field pricing support request, 2634
Final indirect cost rates, 69295
Flowdown to subcontractors contract clauses; reduction, 67425
Fluctuating exchange rates, 31650
Foreign purchases; restrictions, 41475
Immigration and Nationality Act employment provisions; contractor compliance, 41472
Indian-owned economic enterprises; subcontracting costs recovery, 39210
Information Technology Management Reform Act of 1996; implementation, 41467
Inherently governmental functions, 2627
Inspection clauses; fixed price, 31665
Insurance; liability to third persons, 2639
Irrevocable letters of credit and alternatives to Miller Act bonds, 31651
Javits-Wagner-O'Day program, 2630
Justification and approval thresholds, 31618
Late bid offers consideration, 69292
Legal proceedings costs, 41476
Legislative lobbying costs, 31656
Local government lobbying costs, 67424
Long-lived assets gains and losses; impairment, 67423
Major system; dollar thresholds, 69288
Master subcontracting plans, 31642
Mentor-protege program, 2637, 67419
Minority small business and capital ownership development program, 67420
Miscellaneous amendments, 67408
Introduction, 41466
Streamlining, 18914
Multiyear contracting, 39203
National Industrial Security Program Operating Manual, 31617
Nonallowability of excise taxes on nondeductible contributions to deferred compensation plans, 2641
Nonprofit institutions clause prescription, 2633
North American Free Trade Agreement Implementation Act; implementation, 31646
Overhead should-cost reviews, 2635
Ozone depleting substances; items containing, using or manufactured with, 31645
Patent use without authorization; General Agreement on Tariffs and Trade (GATT), 39211
Payment by electronic funds transfer, 45770
Performance and payment bonds, 39212
Personal services compensation costs, 39217
Postponement of bid openings or closing dates, 31619
Preaward debriefings, 69288
Predetermined indirect cost rates, 31621
Prompt payment overseas, 31658
Quality assurance actions; electronic screening, 31661
Quality assurance nonconformances, 31662
Quick-closeout procedures, 31660
Records retention, 31655
Small Business Administration; authority to issue certificate of competency determinations, 2636
Small business competitiveness demonstration program; extension, 31643, 67422
Small business innovation research program rights in data, 31664
Small business set-asides; simplified acquisition threshold, 39207
Small business size standards, 31622
Small entity compliance guide, 39224, 41477, 45775, 67430, 69298
Solicitation provisions; contract clauses, 31663
Subcontracting plans, 2638
Subcontract proposal audits, 2634
Task and delivery order contracts, 39201
Technical amendments, 67430
Termination for convenience, 31665
Termination inventory schedules, 39221
Travel costs, 31657
U.S. and European Economic Community; memorandum of understanding; government procurement and sanctions imposed on European Community, 31618
Uruguay Round Agreement Act (URAA), General Agreement on Tariffs and Trade (GATT); implementation, 2454, 31646
Federal claims collection:
Civil monetary penalties; inflation adjustment, 67234
Federal Information Resources Management Regulation:
CFR Chapter removed, 39359
Currency and relevancy ensurance, 10
Excess and exchange/sale equipment; interagency screening and transfer, 39081
Correction, 40708
Federal information processing multiple award schedule contracts; provisions removed, 35685
Information processing technology equipment and services acquisition requirements—
Procurement authorization delegation threshold increase, 2723
Federal property management:
Information and records management and use—
Records management program; FIRMR provisions reestablishment, 41000
Public buildings and space—
Space utilization and assignment, 9110
Tobacco-products in vending machines and free samples distribution prohibition in Government-owned and leased space, 2121
Supply and procurement—
Electronic typewriters and office machines; use and replacement standards deleted, 14978
Telecommunications resources management and use—
Government telephone systems, etc.; FIRMR provisions reestablishment, 41003
Utilization and disposal—
Excess and exchange/sale information technology (IT) equipment disposal; FIRMR provisions reestablishment, 41352
Federal regulatory review:
Commercial items
Correction, 10846
Federal travel:
Approved accommodations data collection and reporting requirement; elimination, 64997
Long-distance telephone call certification requirement; removed, 67951
Per diem allowance for partial day of travel; and househunting trips, use of locality-based per diem rate, 68158

Per diem localities; maximum lodging and meal allowances, 10252, 40524, 59185
Correction, 16620, 65635
Privately owned vehicles-mileage reimbursement, 25802
Real estate sale and purchase expenses; maximum reimbursement limitations increase, 55578
Reimbursement claims review streamlining and receipt requirements elimination, regardless of amount, for certain travel expense items, 55577
Relocation income tax (RIT) allowance tax tables, 3838
Foreign gifts and decorations; utilization, donation, and disposal:
Minimal value reporting requirements, 60034

PROPOSED RULES

Acquisition regulations:
Board of Contract Appeals; procedure rules—
Automatic data processing equipment and services procurements; Board's jurisdiction eliminated, 32410
Commercial items and open season solicitations, 46607
Federal Acquisition Regulation (FAR):
ADP/telecommunications Federal Supply Schedules
Advantage! program, etc., 52844
Bid and proposal costs definition; withdrawn, 50114
Business meals; withdrawn, 52998
Certified cost or pricing data requirement; exception, 41214
Commercial items; special simplified procedures application, 47384
Commercial items contracts and subcontracts; cost accounting standards exemption, 32312
Competitive range determinations, 40116, 52999, 58622
Contingent fees; withdrawn, 52998
Contract administration and audit cognizance, 65306
Contracting by negotiation—
Competitive range determinations; withdrawn, 14944
Phase I rewrite, 48380, 52998, 57622
Contractor acquisition of ADPE; withdrawn, 14944
Contractor overhead—
Certification, 14216
Rates; final settlement process, 39517
Contractors and offerors—
Certification requirements removed, 48354, 49402, 52232
Contractor selection process; past performance information use requirements; withdrawn, 14944
Contracts, fixed-priced; performance incentives, 31798
Costs related to legal/other proceedings, 31790
Defense Authorization Act; implementation, 6760
Design-build two-phase construction procedures, 41212
Drug-free workplace; certification requirements, 31814
Employee stock ownership plans—
Comment period extension, 234
Evaluation factors; withdrawn, 14944
Federal Acquisition Streamlining Act of 1994; implementation—
Commercially available off-the-shelf item acquisition, 22010
Final indirect cost rates, 26766
Foreign purchases; restrictions, 6910
Foreign selling costs, 31800
Historically black colleges and universities/ minority institutions; collection of award data, 31792
Independent research and development/bid and proposal in cooperative arrangements, 31796
Costs ceiling; requirement removed (FY 1996 and beyond), 58452
Late bid offers consideration, 18480
Management oversight of service contracting, 14946
Nonstatutory certifications elimination, 26496
Public meeting, 24263
Novation and change-of name agreements, 43294
Performance-based payments, 47798
Preaward debriefings, 32580
Procurement integrity, 47390
Semi-annual agenda, 23900, 63386
Service contracting, 40284
Simplified acquisition procedures, 48532
Federal property management:
Public buildings and space—
Buildings and grounds management, reimbursable space alterations; small purchase authority, 30028
Semi-annual agenda, 23750, 63252

NOTICES

Acquisition regulations:
Abstract of offers (SF 1409); form stocking change, 39661, 58564
Abstract of offers-continuation (SF 1410); form stocking change, 40646
Continuation sheet for SF 24, 25, and 25A (SF 25B); form stocking change, 56684
Individual surety affidavit (SF 28); form stocking change, 40234
Performance bond to update the burden statement (SF 25), 44065
Performance evaluation; contracts (SF 1420); form stocking change, 56239
Proposal cover sheet (SF 1448); form stocking creation, 56239
Public buildings and space; ''Can't Beat GSA Leasing'' leasing program, 53924
Real property asset management principles; issuance to heads of Federal landholding agencies, 53925
Subcontracting report for individual contracts (SF 294) and summary subcontract report (SF 295)—
Reproduction authorization, 24310
Agency information collection activities:
Proposed collection; comment request, 37049, 50094
Submission for OMB review; comment request, 4769, 63831
Bill of lading accountability record; optional form (OF 1121); stocking change, 25680
Committees; establishment, renewal, termination, etc.:
National World War II Memorial Design Competition Federal Advisory Committee, 40234
Delegation of lease acquisition authority; bulletin, 56668
Environmental statements; availability, etc.:
Atlanta, GA; Centers for Disease Control and Prevention; Clifton Road Campus Annex development, 42424, 64907
Blaine, WA; port of entry, 726
Expansion, 29102
Phoenix, AZ; Federal Building - U.S. Courthouse, 42252
San Diego, CA; Veterans Affairs Department leasing action, 42425
San Francisco, CA; Federal Building, 16639
Savannah, GA; U.S. Courthouse Annex, 3714, 16924, 41630
Tucson, AZ; Federal Building - U.S. Courthouse, 1191
Washington, DC; building to house National Museum of Health and Medicine, 28589
Whatcom County, WA; Pacific Highway Port of Entry expansion, 49327
Environmental statements; notice of intent:
Las Vegas, NV; Federal Building - U.S. Courthouse, 557
Miami, FL; Immigration and Naturalization Service lease construction and consolidation, 50026
Portland, OR; Consolidated Law Federal Office Building, 21184
Union Township, OH; Voice of America Bethany Relay Station; disposal, etc., 36379
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Proposed collection; comment request, 3375, 3676-3678, 14745, 14746, 50003, 60685
Submission for OMB review; comment request, 1897, 1898, 2496, 3374, 3679, 3680, 3911, 4419, 5753, 9983, 15053-15056, 15470, 15471, 16241, 16242, 26892, 31090, 32775-32777, 40288, 44041, 47893, 51083
Federal Information Resources Management Regulation (FIRMR); abolishment, 38450
Federal property management:
Excess educationally useful equipment transfer by Federal agencies; elementary and secondary schools preference, 50490
Excess real property report (SF 118), etc., form stocking change and revision, 56684
Public buildings and space—
Federal facilities; location on historic properties in central cities, 35736
Federal telecommunications standards:
Telecommunications—
High frequency radio automatic link establishment, 45429
High frequency radio modems, 45428
Project 25 land mobile radio standards, 28210
Terms glossary, 45427
Federal travel:
Hotel occupancy tax, Texas State, imposition on Federal Government and Federal employees on official travel; rescission, 55988
Special actual subsistence expense reimbursement ceiling—
Atlanta, GA; Summer 1996 Olympic Games, 28211, 36731, 64747
Augusta (Richmond County), GA; temporary, during Masters Golf Tournament, 26906
Burlington, VT; peak fall foliage season, 64748
Frontier Days, Cheyenne and Laramie, WY and Fort Collins, CO, 37481
Greensboro and Wilmington, NC; Hurricane Fran disaster, 64748
Oshkosh, WI; Experimental Aircraft Association Convention and Show, 34436, 40481
Fixed price service contracts; criteria, 5777
Grants and cooperative agreements; availability, etc.:
Persons of Japanese ancestry—
Internment of U.S. citizens and permanent resident aliens, remembrance; research and educational program, 29382

Interagency Committee for Medical Records:
Medical record-anatomical figure (SF 531); form stocking change and revision, 2255
Surgical procedures and other episodes of care; videotape documentation guidelines, 64908
Telemedicine videotape documentation; guidelines, 64908
Meetings:
National World War II Memorial Design Competition Federal Advisory Committee, 49234
Memorandums of agreement:
Washington, DC; Pennsylvania Avenue development and redevelopment, 41789
Mobile services commercial antennas; placement on Federal property, 14100
Organization, functions, and authority delegations:
Social Security Administration, Commissioner, 55152
Privacy Act:
Systems of records, 38750, 49462, 60103
Property transfers:
Cheney Dam and Reservoir, KS, 66047
Senior Executive Service:
Performance Review Boards; membership, 3425, 60104
Small business competitiveness demonstration program:
Solicitation procedures change, 10350, 28212, 54443

Geological Survey

NOTICES
Agency information collection activities:
Proposed collection; comment request, 7801, 10782, 11860, 49339, 58210, 58588
Submission for OMB review; comment request, 4676, 29757, 40847, 68771
Federal Geographic Data Committee:
Soil geographic data standard; public review opportunity, 66308
Spatial data transfer standard, point profile; public review opportunity, 66309
Vegetation classification and information standards; public review opportunity, 34858
Wetlands classification system public review; responses to comments, 39465
Grant and cooperative agreement awards:
3M Corp., 3729
Advanced Resource International, 10590
Institute of Gas Technology; radon use in natural gas to detect water-front movement in gas reservoirs; research, 7272
Grants and cooperative agreements; availability, etc.:
Federal Geographic Data Committee national geospatial data infrastructure framework demonstration projects program, 24325, 59240, 60113
National earthquake hazards reduction program, 6382
Species at Risk program, 57889
Meetings:
Earth Observing System Land Processes Distributed Active Archive Center Science Advisory Panel, 55014
Federal Geographic Data Committee—
Facilities working group, 3052, 7801, 13514, 18408, 38784, 53237, 58211, 68287
Standards working group, 33135, 50504
National Cooperative Geologic Mapping Program Advisory Committee, 15959

Government Ethics Office

RULES
Certificates of divestiture, public financial disclosure and conflicts of interest for executive branch officials, 32633
Correction, 35589, 40145
Conflict of interests, 50689, 66830
Federal Government executive branch employees, 42965
Correction, 48733
Grace period extension, 40950

PROPOSED RULES
Semi-annual agenda, 23794, 63292

NOTICES
Agency information collection activities:
Proposed collection; comment request, 357, 8941
Submission for OMB review; comment request, 24796, 41162
Post-government employment "senior employee" restrictions; waiver revocation, 14326, 28908
Senior Executive Service:
Performance Review Board; membership, 30927

Government Printing Office

NOTICES
Meetings:
Depository Library Council, 11640, 51117
Online access to Federal Register and other Federal databases; demonstration, 3937, 15486, 31943, 36380, 36380, 43249

Grain Inspection, Packers and Stockyards Administration

RULES
Agricultural commodities and products:
Rice inspection services, 34714
Agricultural commodities standards:
Federal regulatory reform—
Beans, whole dry peas, split peas, and lentils; grade standards removed from CFR, 7687
Inspection services fees; commodities other than rice, 66533
Clear title; farms products purchasers protection:
Effective financing statements; statewide central filing systems, 54727
Fees:
Official inspection, weighing, and appeal inspection services, 43301
Grain standards:
Barley, 18486, 24669
Packers and Stockyards Act:
Federal regulatory reform, 36277, 36279

PROPOSED RULES
Fees:
Federal rice inspection services, 1013
Inspection services; commodities other than rice, 35687

NOTICES
Agency designation actions:
Georgia et al., 33706
Illinois et al., 19253, 33706, 40191, 46432, 63818
Indiana et al., 3372
Iowa et al., 8025, 14289, 40192, 46433
Kentucky et al., 27045
Maine, 8026
Missouri, 40192
Nebraska et al., 19254, 51259, 54760
South Dakota et al., 27045, 54761
Texas, 10313, 21155, 42582
Central filing systems; State certifications:
Oklahoma, 8026
Committees; establishment, renewal, termination, etc.:
Federal Grain Inspection Service Advisory Committee, 41767
Livestock care and handling guidelines; comment request, 24916, 37881
Meetings:
Advisory Committee, 7234, 55267
Stockyards; posting and deposting:
Asheville Horse Sale, NC, et al., 15921
Cattlemen's Livestock Auction, Inc., AR, et al., 21443
Centre Livestock Market, AL, Inc., et al., 58675
Crockett Livestock Sales Co., Inc., TN, 2482
Empire Livestock Marketing, Inc., NY, et al., 39435
Graben Livestock Auction Sales, AL, et al., 28837, 33898
Gray Bell Auction Co., GA, et al., 58675
Harrison Stockyard Auction, Inc., AR, et al., 9674
Natural Bridge Stockyard, AL, et al., 49727
Producers Livestock Association, OH, 21443
Roden's Auction Service, AR, et al., 8026, 48125
Walking Acres Auction, NC, 9976
Timely service and open season pilot programs, 51674

Harry S. Truman Scholarship Foundation

NOTICES
Agency information collection activities:
Proposed collection; comment request, 38753
Submission for OMB review; comment request, 33929
Meetings; Sunshine Act, 25225
Scholarship programs:
Nominations; closing dates, 64908
Supplemental nominations; closing date, 9465

Health and Human Services Department

See Agency for Health Care Policy and Research
See Agency for Toxic Substances and Disease Registry
See Aging Administration
See Centers for Disease Control and Prevention
See Children and Families Administration
See Community Services Office
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See Indian Health Service
See Inspector General Office, Health and Human Services Department
See National Institutes of Health
See Public Health Service
See Refugee Resettlement Office
See Substance Abuse and Mental Health Services Administration

RULES
Block grants:
Substance abuse prevention and treatment; sale and distribution of tobacco products to individuals under 18 years; legislation and enforcement by States, 1492
Correction, 2335
Conflict of interests, 39756
Grants administration:
Uniform administrative requirements and definitions; higher education institutions, hospitals, and other nonprofit organizations (OMB A-110), 11743
Correction, 15564
Inventions and patents:
Inventions resulting from research grants, contracts and fellowship awards; rescission, 54743

Protection of human subjects:
Emergency research; informed consent requirements; waiver, 51531

PROPOSED RULES
Semi-annual agenda, 22956, 62486

NOTICES
Agency information collection activities:
Proposed collection; comment request, 8065, 10767, 14575, 15074, 27078, 37901, 43548, 66047
Submission for OMB review; comment request, 3040, 6014, 6015, 26182, 29102, 44065, 47946, 51285, 54444, 58882, 65061
Committees; establishment, renewal, termination, etc.:
Blood Safety and Availability Advisory Committee, 55074
Chronic Fatigue Syndrome Coordinating Committee, 51754
Dietary Supplement Labels Commission, 3714
Vital and Health Statistics National Committee, 4444
Federal claims; interest rates on overdue debts, 3040, 18146, 39977, 55305
Grant and cooperative agreement awards:
National Minority AIDS Council, 66669
Grants and cooperative agreements; availability, etc.:
Family planning services projects, 48715, 57002
National center for primary care (FY 1996), 48790, 49531
President's Council on Physical Fitness and Sports; national awards and recognitions programs, 58564
Group health plans:
Certain State and local government employees—
COBRA continuation coverage, 56239
Meetings:
Dietary Supplement Labels Commission, 3714, 7005, 14102, 15076, 24798, 33510, 45975, 51117, 63849
HIV/AIDS Presidential Advisory Council, 55152
National Bioethics Advisory Commission, 57875, 68757
Presidential Advisory Council on HIV/AIDS, 15954
President's Council on Physical Fitness and Sports, 660
Vital and Health Statistics National Committee, 44065, 56962, 69101
Welfare Indicators Advisory Board, 37750, 48958
Objectivity in research and investigator financial disclosure policy; responses to questions, 34839
Organization, functions, and authority delegations:
Agency for Health Care Policy and Research, 15955
Assistant Secretary for Management and Budget, 47520, 55988
Budget Office, 37068
Division of Personnel; name change, 13503
Grants and Acquisition Management Office, 43363, 49008
Health Resources and Services Administration, 24939, 27087, 65062
Health Resources Development Bureau, 19942
Information Resources Management Office, 37902
Inspector General Office, 22059
Intergovernmental Affairs Office et al., 24311
National Institutes of Health, 29566
Program Support Center, 1761, 6015, 52033, 53226
Program Systems Office et al., 24499
Public Health and Science Office, Assistant Secretary for Health, 54209
Public Health Service, Office of the Secretary, 21470
Substance Abuse and Mental Health Services Administration; mental health services delivery in DC, 30617, 39146, 58883
Poverty income guidelines; annual revision, 8286
Prescription drug information for patients; action plan collaberation request, 43769
Reports: availability, etc.:
Integrity and misconduct in research, 8942
Scientific misconduct findings; administrative actions:
Abbs, James H., Ph.D., 15806
Abdulahi, Yahya, Ph.D., 39461
Altman, Robert J., M.D., 32826
Daubert, Gail L., R.N., 10584
Farooqui, Jamal Z., 16803
Fossel, Eric T., Ph.D., 29103
Friedman, Andrew, M.D., 19295
Gans, Joan, R.N., 17705
Harrington, Melissa A., Ph.D., 56962
Kumar, Vipin, Ph.D., 33744
Lee, Cathy Q., 11010
Li, Yi, 63849
Paruchuri, Durga K., Ph.D., 1765
Thomas, P.P., 55152
Vardi, Danya J., 16804
Washabaugh, Michael W., Ph.D., 24798
Whitters, Eric, Ph.D., 58883
Yuan, Gang, 57436
Senior Executive Service:
Performance Review Board; membership, 52800, 54444
State assistance expenditures; Federal financial participation, 8288

Health Care Financing Administration

See Inspector General Office, Health and Human Services Department

RULES
Medicaid:
Blood and blood products, potentially HIV infectious; hospital standard, 47423
Family planning services and supplies for individuals of child-bearing age, 59198
Health maintenance organizations, competitive medical plans, and health care prepayment plans—
Prepaid health care organizations; physician incentive plans requirements, 13430, 46384, 69034
Medicaid eligibility quality control program requirements, etc.; Federal regulatory reform, 38395
Organ procurement organizations; conditions of coverage, etc., 19722
Providers and suppliers appeals; technical amendments, 32347
Correction, 35307, 42385, 51021
Medical assistance programs:
National Voter Registration Act of 1993; regulatory conflicting restrictions removed, 58140
Medicare:
Blood and blood products, potentially HIV infectious; hospital standard, 47423
Disabled individuals under age 65—
Special enrollment periods and waiting period, 40343
End stage renal disease—
Routine extended care services provided in swing-bed hospital; new payment methodology, 51611, 58631
Essential access community hospitals; designation criteria for rural hospitals, 21969
Federally qualified health center services; coverage and payment requirements, 14640
Health maintenance organization (HMO) employer-offered plans; employer's contribution, 27282
Health maintenance organizations, competitive medical plans, and health care prepayment plans—
Outstanding loans and loan guarantees administration; CFR correction, 38395
Prepaid health care organizations; physician incentive plan requirements, 46384
Hospital inpatient prospective payment systems and FY 1997 rates, 2725, 46166
Correction, 2725, 66919
Effective date change, 51217
Medicare Part B services; advance payments to suppliers; requirements and procedures, 49271
Medicare payments suspension and allowable interest expenses determination, 63740
Organ procurement organizations; conditions of coverage, etc., 19722
Physician fee schedule (CY 1996); payment policies and relative value unit adjustments
Correction, 42385
Physician fee schedule (CY 1997); payment policies and relative value unit adjustments, 49490
Prepaid health care organizations; physician incentive plans requirements, 13430, 69034
Providers and suppliers appeals; technical amendments, 32347
Correction, 35307, 42385, 51021
Waiver of recovery of overpayments; Federal old-age, survivors and disability insurance program, 49269
Correction, 69034
Zero coupon bonds interest expense and income; reporting by providers, 37011

PROPOSED RULES
Medicaid:
Health Insurance Portability and Accountability Act—
Portability, access, and renewability provisions; comment request, 68697
Personal care services coverage, 9405
Medicare:
End-stage renal disease—
Routine extended care services provided in swing-bed hospital; new payment methodology, 17677
Health Insurance Portability and Accountability Act—
Portability, access, and renewability provisions; comment request, 68697
Hospice wage index update methodology, 46579
Hospital inpatient prospective payment systems and FY 1997 rates, 27444
Correction, 29449, 33928
Physician fee schedule (CY 1997); payment policies; revisions, 34614

NOTICES
Agency information collection activities:
Proposed collection; comment request, 1940, 2255, 4786, 5402-5404, 6015, 6645, 7522, 9186, 10000, 11214, 11646, 11647, 14799, 15486, 16804, 16925, 17710, 19077, 19628, 24310, 25229, 25883, 29406, 30072, 31141, 34437, 37278, 37486, 40422, 40847, 43373, 43774, 47131, 48157, 50492, 53228, 54209, 55155, 56689, 56963, 58199, 64913, 66284

Submission for OMB review; comment request, 3715, 4278, 4787, 6016, 6645, 7012, 10586, 11214, 13205, 13508, 14798, 14799, 20833, 21474, 24501, 24804, 25873, 26914, 27086, 28882, 29407, 29408, 31142, 33532, 33752, 34855, 35231, 37278, 37487, 38454, 41417, 42257, 43062, 43373, 43374, 46655, 46814, 46815, 47131, 48157, 49781, 50493, 51295, 52951, 55155, 56964, 57688, 58200, 58567, 59451, 60290, 67566, 68048, 68270, 68758
Clinical laboratories improvement:
Laboratories exemption; Oregon, 30072
Committees; establishment, renewal, termination, etc.:
Participating Physicians Advisory Council; nominations request, 66676
Grants and cooperative agreements; availability, etc.:
End-stage renal disease managed care demonstration, 2516
Medicaid:
Demonstration project proposals, new and pending—
November (1995), 1769
December (1995), 7266
January, 7798
February, 24318
March, 24318
April, 29409
May, 33531
June, 42637
July, 47946
August, 50493
October, 64914
September, 58885
Disproportionate share hospitals; FY 1996 aggregate payments limitations, 21195, 29418, 49781
Organ procurement organizations (OPOs) in designated areas; hospitals requesting waivers; list, 1389, 24941, 57876
Program issuances and coverage decisions; quarterly listing, 15491, 33119, 40236, 66676
State plan amendments, reconsideration; hearings—
Pennsylvania, 8629
Medicare:
Ambulatory surgical centers; covered surgical procedures—
Payment rates update, 51295
Ambulatory surgical center standards deeming authority—
Accreditation Association for Ambulatory Health Care, 38207, 67041
Joint Commission on Accreditation of Healthcare Organizations, 38207, 67041
Durable medical equipment, prosthetics, orthotics, and supplies regional carriers' performance; evaluation criteria and standards, 2516
Home health agency costs per visit; schedule of limits, 34344
Inpatient hospital deductible and hospital and extended care services coinsurance amounts (CY 1997), 56690
Lung volume reduction surgery; effectiveness study; collaborative effort with NIH, 33129
Monthly actuarial rates and supplementary medical insurance (Part B) premium rates (CY 1997), 55002
Monthly hospital insurance premium (Part A premium); CY 1997, for uninsured aged, etc., 56691
Organ procurement organizations (OPOs) in designated areas; hospitals requesting waivers; list, 1389, 24941, 57876
Physician fee schedule (CY 1997) and physician volume performance standard rates of increase (FY 1997), 59717
Physician fee schedule; work relative value units—
Five-year review, 19992
Program issuances and coverage decisions; quarterly listing, 15491, 33119, 40236
Skilled nursing facilities—
Inpatient routine service costs; payment rates (FY 1997), 46466
Meetings:
Practicing Physicians Advisory Council, 15266, 33532, 47950, 58885
Organization, functions, and authority delegations:
Denver Regional Office; reorganization, 10771
Medicaid Bureau; subordinate structure, 68758
Program Operations Bureau; reorganization, 4443
Privacy Act:
Systems of records, 6645, 20528

Health Resources and Services Administration

RULES
Grants:
Health professions personnel teaching facilities construction; obsolete regulations removed, 65477
NOTICES
Advisory committees; annual reports; availability, 1589, 41166, 67838
Agency information collection activities:
Proposed collection; comment request, 1772, 3045, 5788, 7522, 15809, 19078, 20260, 21198, 31143, 43062, 43775, 46815, 52951, 58071, 63851, 64137, 66284, 66687
Submission for OMB review; comment request, 10000, 16640, 17309, 18153, 21199, 28213, 28883, 36387, 43776, 46655, 51458, 56964, 57689, 60714, 64756, 67838
Committees; establishment, renewal, termination, etc.:
Advisory Committee to Administrator, 44314
Membership nominations, 54802
Childhood Vaccines Advisory Commission; nominations request, 22065
Graduate Medical Education Council; membership nominations, 34855
Grant and cooperative agreement awards:
George Mason University Center for Health Policy, 43374
Human immunodeficiency virus (HIV)—
HIV care grant program, 56694
HIV emergency relief grant program, 56693
University of Pennsylvania School of Dental Medicine et al., 45434
Grants and cooperative agreements; availability, etc.:
Basic/Core Area Health Education Centers program (FY 1996), 1589
Community and migrant health centers, 16505, 37906
Community scholarship programs, 30075
Disadvantaged health professions faculty loan repayment program, 3716
Disadvantaged students scholarships program; health professions, 11420
Emergency medical services for children (FY 1997), 8292, 69102
Family medicine training programs, 2519
Health careers opportunity program (FY 1997), 54210, 66688
Technical assistance workshops, 54802
Health care for homeless and homeless children programs; expiring project periods notification, 30622
Health education and training center program (FY 1996), 1595
Health professions and nursing programs—
Low income levels, 11423
Health professions education partnerships (FY 1996), 18750, 43375
Homeless individuals and children—
Health care services, 37917
Primary care and substance abuse services, 37917
Human immunodeficiency virus (HIV)—
Adolescent-focused HIV service delivery and care demonstration models, 46656
Early intervention services; pre-application technical assistance workshops, 8068
HIV evaluation technical assistance center; design and development, 7527, 9186, 11055
HIV integrated service delivery, 7525, 9186, 11055
Native American communities innovative HIV service delivery models, 58072
Outpatient early intervention services, 11424, 16925
Youth demonstration projects, 11055
Youth with HIV infection; pediatric and adolescent populations, 11055
Interdisciplinary health care training for rural areas—
Dentistry, chiropractic, geriatric, etc. (FY 1997), 56550
Maternal and child health services—
Federal set-aside program, etc., 10586, 12076, 18613, 27087, 31536, 31537, 36069, 36734
Migrant health centers—
Technical and non-financial assistance, 57689, 60291
Minority faculty fellowship program (FY 1997), 54210, 66688
Technical assistance workshops, 54802
Minority health professions education centers of excellence, etc., 1595
Model state-supported area health education center program (FY 1996), 1595
National Health Service Corps loan repayment and State loan repayment programs (FY 1996), 13861, 16925
Non-acute health care facilities; renovation or construction projects
Rural, women's, and oral health care, 30077, 32831, 39662
Nurse anesthetists program, 54802
Nurse practitioner and midwifery program, 54802
Nursing education loan repayment program for service in health facilities, 29408
Nursing education opportunities for individuals from disadvantaged backgrounds, 54802
Nursing informatics for faculty in medically underserved communities: continuing education, 37072, 51459
Primary care research center; medically underserved and vulnerable populations, 37074
Primary care training programs (FY 1997), 52034, 52842
Professional trade association representing health maintenance organizations; minority management training expansion, 46656
Public health education and services; innovative projects, 29410, 42910
Rural health outreach and rural network development programs (FY 1997), 65581

Rural health resource centers program, 8630
Ryan White Title IV human immunodeficiency virus (HIV) program—
Children, youth, women, and families; coordinated services and access to research, 8962
Telemedicine project, OR, 38455
Medical professional shortage areas:
Dental health care—
Designations and withdrawals list, 69136
Mental health care—
Designations and withdrawals list, 69136
Primary medical care—
Designations and withdrawals list, 69136
Meetings:
Health Professions and Nurse Education Special Emphasis Panel, 58886
Nurse Education and Practice National Advisory Council, 58074
Rural Health National Advisory Committee, 67047
Meetings; advisory committees:
February, 3430
March, 7530
April, 14800
May, 14800
June, 20531, 24319
July, 30243
September, 41639, 42429
October, 52040
November, 54668
December, 57691
January (1997), 65229
February (1997), 69106
National practitioner data bank:
Public use data file; availability, 27904
User fee, 4788
National vaccine injury compensation program:
Petitions received, 39136, 52040, 58886
Nursing's Third Minority Congress Division; emerging majority care; team proposals request, 46659
Organization, functions, and authority delegations:
Field Coordination Office et al., 1595
Organ transplantation, liver, kidney, and kidney/pancreas; liver allocation and patient listing criteria; public forum, 46658
Primary and preventive health care delivery "Models That Work" campaign; cosponsorship opportunities, 14801
Privacy Act:
Systems of records, 6854
Telemedicine; licensure barriers identification and easing issues; comment request, 41640
Veterans Health Care Act:
Limitation on prices of drugs purchased by covered entities—
Contract pharmacy services, 43549
Manufacturer audit guidelines and informal dispute resolution process, 65406
Patient and entity eligibility, 55156

Hearings and Appeals Office, Energy Department

NOTICES
Acquisition regulations:
Miscellaneous amendments, 19468
Cases filed, 11401, 11402, 22052-22056, 29370, 31934-31936, 34807, 34808, 38198, 42018, 42019, 43356-43359, 44045-44048, 48943, 50014, 54641-54643, 54789, 57864, 57865, 58879, 58880, 60697, 65205, 67795, 67796, 68033
Decisions and orders, 7249, 7250, 7252-7257, 46640, 47920, 47922-47925, 47927, 48145, 48147, 48148, 48149, 48150, 48483, 48485, 48487, 48488, 48674, 48676, 48677, 48679, 48944-48946, 48948, 49128-49132, 49320, 49322, 49323, 49449-49453, 49765, 49767, 49768, 50015, 50017, 51280, 51281, 51442-51444, 53915, 54189-54191, 54193, 55289, 55291, 57866, 57867, 58880, 60697, 60698, 65206, 65207, 67797, 67798
Petroleum violation escrow funds; excess determinations, 58545
Special refund procedures; implementation, 652, 1919, 5395, 11827, 13170, 25662, 26514, 29371, 50018, 56533, 57868, 60700

Hearings and Appeals Office, Interior Department

RULES
Hearings and appeals procedures:
Administrative Law Judges; authority to hold hearings, 47434
Solicitor Office addresses update, 40347
Organization, functions, and authority delegations:
Obsolete language removed, etc., 49976

Historic Preservation, Advisory Council

PROPOSED RULES
Historic and cultural properties protection:
Federal regulatory review, 48580
Semi-annual agenda, 23598, 63108
NOTICES
Historic properties protection during emegency response under National Contingency Plan; nationwide programmatic agreement, 60257
Meetings, 11377, 47858

Housing and Urban Development Department

See Federal Housing Enterprise Oversight Office
RULES
Annual income definition; exclusions, 16172, 54492
Board of Contract Appeals:
Federal Acquisition Streamlining Act—
Monetary amount increase, 13280
Community development block grant program:
Community revitalization strategy requirements, etc.; technical amendments, 54914
Federal regulatory review, 11474
Correction, 18672
Community development block grants:
Community development work study program, 36456
Indian tribes and Alaska Native villages, 7410, 40084
Small cities and insular areas; streamlining and clarification, 32268
Community facilities:
Base closure community redevelopment and homeless assistance; effective date extended, 45321, 45322
Church Arson Prevention Act of 1996; implementation—
Loan guarantee recovery fund, 47404, 68272
Emergency shelter grants program; Federal regulatory reform, 51546
Housing opportunities for persons with AIDS program; Federal regulatory review, 7962
Shelter Plus Care program; Federal regulatory reform, 51168
Supportive housing demonstration program; services for homeless; correction, 17245
Supportive housing program; Federal regulatory reform, 51174
Youthbuild program; administrative costs, 25124, 52186
Community planning and development programs consolidated submissions,
Community revitalization strategy requirements, etc.; technical amendments, 54914
Conflict of interests, 15350, 36246
Correction, 19187
Environmental criteria and standards:
Federal regulatory reform, 13332
Environmental quality protection and enhancement; Federal regulatory reform, 50914
Environmental review procedures for entities assuming HUD environmental responsibilities, 19120
Equal employment opportunity; policies and procedures; conformance with EEOC regulations and Federal regulatory review, 14226
Fair housing:
Complaint processing; subpoena provision removed, 41480
Fair Housing Act implementation; Federal regulatory reform, 14378
Correction, 18248
Federal Home Mortgage Corporation (Freddie Mac):
Securities in book-entry system; issuance, recordation, and transfer, 63944
Federal National Mortgage Association (Fannie Mae):
Securities in book-entry system; issuance, recordation, and transfer, 63944
Federal regulatory reform:
Affordable housing programs; streamlining, 7060
Civil rights; nondiscrimination and equal opportunity matters; hearing procedures consolidation, 52216
Cross cutting requirements, 5198
Elderly or handicapped housing; pet ownership requirements consolidation, 9536
Elimination of unnecessary codifications, 7942
Fair housing; State and local enforcement agencies certification and funding, 7674, 41282
Funding decisions, advance prohibition disclosure; and HUD assistance provision; consolidation, 14448
Hearing procedures; streamlining, 50208
Interstate land sales, real estate settlement, and manufactured housing construction and safety standards—
Consumer regulatory programs investigations; streamlining, 10440
Low income housing—
HOME investment partnerships program, 9036
Mortgagee Review Board; hearing procedures streamlined, 684
Public and Indian housing—
Family self-sufficiency programs; public housing and housing assistance (Section 8) regulations consolidation, 8814
Grants:
Nehemiah housing opportunity grants program; streamlining, 42952
Housing assistance:
Drug elimination programs; Federal regulatory reform; consolidation, 13986
Housing assistance applications and allocation of funds:
Federal regulatory reform, 10848
HUD and HUD-assisted programs; displacement, relocation assistance, and real property acquisition; regulations consolidation, 51756

HUD-owned properties:
Disposition of HUD-acquired single family property; Federal regulatory reform, 55710
Sale of HUD-held multifamily mortgages, 32264
Sale of HUD-held single family mortgages, 4580, 43966
Human subjects protection; Federal regulatory reform, 36462
Interstate land sales registration program; Federal regulatory review, 13596
Lead-based paint poisoning prevention in residential structures; information disclosure requirements, 9064
Lobbying of personnel; requirements; CFR part removed, 4875
Low income housing:
Assisted housing admission preferences; Federal regulatory reform, 9040
HOME investment partnerships program, 1824, 48736
HOPE for homeownership of single family homes program (HOPE 3), 48796
Housing assistance payments (Section 8)—
Consolidation and Federal regulatory review, 13566
Contract rent annual adjustment factors (FY 1997), 66132
Fair market rent schedules for rental certificate, loan management, property disposition, moderate rehabilitation, and rental voucher programs, 6690, 7157, 49576
Single room occupancy program for homeless individuals, 5850, 48052
Tax-exempt obligation refunds, 14456, 16045
Section 8 housing; tenancy termination for criminal activity, 47380
Supportive housing programs—
Elderly and persons with disabilities; Federal regulatory review, 11948
Manufactured home procedural and enforcement regulations:
Federal regulatory review, 10858
Correction, 18249
Mortgage and loan insurance programs:
Condominium units in non-FHA approved projects, 26982
Congregate housing services program—
Streamlining and Federal regulatory reform, 42942
FHA multifamily processing, 14410
Correction, 18944
Home equity conversion mortgage insurance demonstration; mortgage balance definition, etc., 49030
Correction, 55188, 67930
Lending institutions and mortgagees, approval; Federal regulatory review, 8458
Mortgagee requirements; streamlining, 2650, 36452
Multifamily and single family nonjudicial foreclosure procedures; CFR parts consolidation, 48546
Multifamily housing projects tenant participation—
Regulations consolidation; Federal regulatory reform, 57960
Multifamily projects—
Conversion from coinsurance to full insurance, 49036, 51319
HUD-owned and subject to HUD-held multifamily mortgages; management and disposition, 11684, 19188
Risk-sharing program for insured affordable multifamily project loans; Federal regulatory reform, 7946
Single family and multifamily housing, and health care facility mortgage programs—
Certain single-family components removal; Federal regulatory reform, 60158
Federal regulatory reform, 14396, 54267
Single family mortgage insurance—
Annual premium adjustment, 37798
Correction, 42786
Loss mitigation procedures, 35014
Technical amendments, clarifications, and corrections, 36260
Title 1 property improvement and manufactured home loan insurance programs, 19788
Noncitizens; financial restrictions on assistance:
Consolidation and streamlining; Federal regulatory reform, 13614
Documentation establishing immigration status; verification, 60535
Correction, 64617
Organization, functions, and authority delegations:
Board of Contract Appeals; mailing address, telephone and facsimile numbers, 13280
Practice and procedure:
Social security and employer identification numbers disclosure and verification and obtaining income information; streamlining, 11112
Public and Indian housing:
Certificate and voucher programs (Section 8)—
Conforming rule, 27162, 42130
Comprehensive improvement assistance program and comprehensive grant program; streamlining, 8712
Drug elimination programs; Federal regulatory reform; consolidation, 13986
Eviction; lease and grievance procedures, 13272
HOME investment partnerships program
Indian HOME program streamlining, 32292
Indian loan guarantee program; housing financing on restricted lands, 9052
Optional earned income special treatment (FYs 1997 and 1998), 46344
Performance funding system—
Federal regulatory review, 17538
Incentives; operating subsidy payment, 51178
Public and assisted housing; occupancy restrictions—
Federal regulatory reform, 5662
Public housing; streamlining maintenance and operation rules, 7966
Public housing development program—
Federal regulatory review, 38014
Public housing management assessment program, 68894
Heating degree day factor; adjustment removed, 35633
Public housing units; public/private partnerships for mixed-finance development, 19708, 35958
Vacancy units included in eligibility computations under Performance Funding System, 7586
Real Estate Settlement Procedures Act:
Computer loan origination systems; payments, 29255
Controlled business arrangements; "sham" determination, 29258
Employer-employee exemption, withdrawn; computer loan origination services, and controlled business disclosure format, 29238, 58472
Correction, 41944
Effective date delay, 51782
Time schedule for establishing effective date, 56624
Enforcement standards statement; title insurance practices in Florida, 49398
Office space rental, lock-outs and retaliation, 29264
Unnecessary or illustrative regulations; streamlining; Federal regulatory reform, 13232
Correction, 18674, 46510
Uniform relocation assistance and real property acquisition policies; technical conforming amendments:
Correction, 5850

PROPOSED RULES

Community development block grants:
Dispute resolution and enforcement actions, loan guarantee application requirements, etc., 50654
Hispanic-serving institutions work study program, 51556
Environmental quality protection and enhancement:
Federal regulatory review, 15340
Federal regulatory review:
Hearing procedures; streamlining, 18026
Home investment partnerships program; streamlining and market interest rate formula establishment for rehabilitation loans, 65298
HUD and HUD-assisted programs; displacement, relocation assistance, and real property acquisition; streamlining, 53341
Lead-based paint hazards in federally owned residential property and housing receiving Federal assistance; notification, evaluation, and reduction, 29170
Low income housing:
HOPE for homeownership of single family homes program (HOPE 3), 53276
Housing assistance payments (Section 8)—
Fair market rent schedules for rental certificate, loan management and property disposition, moderate rehabilitation and rental voucher programs (FY 1997), 20982
Manufactured home construction and safety standards:
Transportation of manufactured homes; overloading of tires by up to 18 percent, 18014
Mortgage and loan insurance programs:
Home equity conversion mortgage insurance demonstration; mortgage balance definition, etc., 21918
Hospitals, mortgage insurance—
Construction, rehabilitation or improvement financing; risk-sharing, 64414
Single family mortgage insurance; annual premium adjustment, 2644
Public and Indian Housing:
Certificate and voucher programs (Section 8)—
Management assessment program, 63930
Fathers' role in public housing families, strengthening; regulatory development, 39812
Correction, 42939
Public housing management assessment program, 20358
Real Estate Settlement Procedures Act:
Disclosure to consumers; improvement, 69055
Escrow accounting procedures, 46511
Mortgage Brokers Fees Disclosure Negotiated Rulemaking Advisory Committee—
Meetings, 6334, 14617, 21394
Rulemaking policies and procedures; CFR part removal, 42722
Semi-annual agenda, 23044, 62572

NOTICES

Agency information collection activities:
Proposed collection; comment request, 1942, 3046, 3724, 5010, 5011, 6379, 6858, 7530, 8965-8967, 11855, 11856, 15081, 15106, 15107, 16928, 17314-17316, 19307, 19945, 19946, 21200, 21201, 22068, 26524, 27087, 27091, 27092, 27926, 27927, 28884, 30633, 31946, 32854, 34439, 35777, 38463-38466, 38757, 38758, 41946, 42027, 43252-43254, 43257, 43258, 43261, 43263, 45435, 45436, 45439-45442, 47953, 49329, 50034, 50035, 50043, 50044, 50830, 52953, 54210, 54669, 54670, 58201, 58204-58206, 60294, 64141, 64142, 65413, 66290, 67052, 67056, 67336, 67572
Submission for OMB review; comment request, 5012, 6379, 7531, 8967, 8968, 11858, 14331, 16929-16931, 17906, 21202, 24946, 26524-26526, 27928, 28227, 28591, 28885, 28886, 30634, 30635, 31947, 35307, 36071-36074, 36561, 41940, 43258-43260, 43262, 43263, 43557, 44071-44073, 45978, 49330-49335, 52803-52805, 54671-54674, 58200, 58207, 58208, 60295-60298, 64142, 65071-65073, 65414-65416, 65587, 66291, 66292, 67056, 67057
Community facilities:
Church Arson Prevention Act of 1996; implementation, loan guarantee recovery fund—
OMB approval number; announcement, 68272
Fair housing:
Substantially equivalent agencies certification; list, 53380
Federal Home Loan Mortgage Corporation (Freddie Mac):
Secretary's regulatory authorities; reporting and recordkeeping requirements, 3046
Utility allowances, 19466
Federal National Mortgage Association (Fannie Mae):
Loan-level mortgage proprietary data; final order, 54322
Secretary's regulatory authorities; reporting and recordkeeping requirements, 3046
Utility allowances, 19466
Foreclosure commissioners notice of application; reporting and recordkeeping requirements, 55647
Grant and cooperative agreement awards:
Community development block grant program—
Indian tribes and Alaska Native villages, 7532, 16104
Indian tribes and Alaska native villages (FY 1993), 17716
Community development work study program (FY 1996), 58889
Community outreach partnership centers demonstration programs, 58890
Community planning and development programs (FY 1994), 29568
Congregate housing services program, 26919, 26920
Fair housing initiatives program, 5013, 29108
Flexible subsidy program—
Capital improvement loan program, 33754-33756
Homeless rental assistance, 3438
HOPE homeownership program—
Multifamily units program (HOPE 2), 26921
Single family homes program (HOPE 3), 27069
Housing assistance payments (Section 8)—
Family self-sufficiency program coordinators, 58763
Homeless individuals; single room occupancy program, supportive housing and shelter plus programs, 3430
Loan management set-aside program, 33758
Rental certificate and rental voucher programs, 3445, 4455
Service coordinators in assisted housing projects, 27093
Housing counseling agency approval program (FY 1997), 5790, 55811
Housing opportunities for persons with AIDS program, 55009
Revised allocations, 1775
John Heinz neighborhood development program, 64359
Lead-based paint risk assessments, 10361
Low income housing—
Drug elimination program, 32450, 44315
Milton S. Eisenhower Foundation, 53232
Public and Indian Housing:
Comprehensive improvement assistance program, 66292
Public and Indian housing—
Community Renaissance Fellows Program, 33939
Comprehensive improvement assistance program, 10362, 14108
Drug elimination program, 4447
Drug elimination technical assistance program, 13509
Emergency shelter set-aside for Indian tribes and Alaska Native villages, 6859, 17715
HOME program; Indian applicants, 48960
HOPE for elderly independence program; elderly service coordinators, 1778
Public housing authorities and public housing police departments; technical assistance, 49474
Public housing development, 11217
Rental certificate and rental voucher programs (FYs 1993 and 1994), 29109
Tenant opportunities program, 5015, 26193
Traditional Indian housing development program, 7799, 55010
Youth leadership development project, 31540
Youth sports program, 18402
Public housing demolition, site revitalization, and replacement housing (HOPE VI); FY 1996, 56560
Self-help homeownership opportunity program, 55012
Supportive housing programs—
Elderly, 35777
Homeless assistance, 3440
Persons with disabilities, 35777
Youth sports program, 5020, 10352
Grants and cooperative agreements; availability, etc.:
Communities of opportunity—
Early childhood development program, 13950, 15815
Community development block grant program—
Hispanic-serving institutions work study program (SY 1996-1997), 51566
Indian tribes and Alaska Native villages, 6380, 21338, 60298
Small cities development grants and guaranteed loans; New York canal system, 64196, 66692
Small cities program, 7533, 9714
Community development work study program (FY 1996), 11942
Community outreach partnership centers demonstration programs, 24868, 32448
Continuum of care systems—
Homeless individuals; supportive housing, shelter plus care, and single room occupancy dwellings rehabilitation, 10866, 25684, 27932, 33533, 67058
Economic development initiative, 37132
Program guidelines, 47523
Reporting and recordkeeping requirements, 50640
Emergency shelter grants programs—
Set-aside allocation for Indian tribes and Alaska native villages, 8824, 10589
Facilities to assist homeless—
Excess and surplus Federal property, 1391, 2521, 3939, 5068, 6248, 7013, 8110, 9466, 10777, 11859, 14114, 15267, 16256, 17316, 18616, 19947, 21475, 24947, 26197, 27363, 29112, 30245, 31948, 33761, 35234, 36752, 37754, 39151, 41640, 42641, 43576, 45981, 47133, 48497, 49475, 50840, 52049, 53382, 54452, 55311, 56561, 57878, 58576, 59455, 60715, 64756, 65588, 67337, 68273
Fair housing initiatives program, 26362
Bonus points eligibility standards; expansion, 32449
Historically black colleges and universities program, 560, 9258
Housing assistance payments (Section 8)—
Family self-sufficiency program coordinators in assisted housing projects (FY 1996), 39262, 52805
Omnibus Consolidated Rescissions and Appropriations Act of 1996; implementation, 41641
Rental certificate and rental voucher programs, 37756, 39515
Rental certificates and vouchers for persons with disabilities, 56090
Housing counseling agency approval program (FY 1996), 35906
Housing opportunities for persons with AIDS program, 7664, 14805
John Heinz neighborhood development program, 41936
Reporting and recordkeeping requirements, 44078
Lead-based paint hazard control; State and local governments—
Eligible housing including units on Superfund sites, 24408
Lead-based paint hazards, residential; evaluation and control, 60500
Low income housing—
Drug elimination program, 15164, 68276
Market-to-market/portfolio reengineering demonstration program, 34664

Public and Indian housing—
Community Renaissance Fellows Program, 559, 1391
Comprehensive improvement assistance program (FY 1996), 17218
Drug elimination program, 15674, 36472
Drug elimination technical assistance program, 32902
East Texas; fair housing services center, 50376, 55167
Economic development and supportive services program, 42356, 50501, 54813
Family unification program (FY 1996), 19762
HOME program; Indian applicants, 13574
Judicial eviction procedures; list, 13276
Moving to work demonstration program (Section 8), 66856
Omnibus Consolidated Rescissions and Appropriations Act of 1996; implementation, 41641
Public housing demolition, site revitalization, and replacement housing, 38024
Tenant opportunities program, 35022, 41646, 50244
Traditional Indian housing development program (FY 1996); correction, 14218, 17316
Youth sports program, 29884
Self-help homeownership opportunity program, 36254
Supportive housing programs—
Elderly, 35866, 41647, 44323
Elderly; application due date extension due to Hurricane Fran, 49475
Persons with disabilities, 35878, 41647
Persons with disabilities; application due date extension due to Hurricane Fran, 49475
Youthbuild programs, 8442, 17906
Indian housing program; interdepartmental agreement with Indian Affairs Bureau and Indian Health Service, 47788
Lobbying information and registrations; reports, 5854, 24588
Low income housing:
Qualified census tracts and difficult development areas; statutorily mandated designation for tax credit, 55536
Mortgage and loan insurance programs:
Debenture interest rates, 6651, 37076
Debenture recall, 51299
HUD-held multifamily mortgage loans; sale notice, 18652, 38467, 58585
HUD-held single family mortgage loans sale; bid packages availability, 66524
HUD-owned properties—
HUD-held single family mortgage loans; bid packages availability, 42435
Risk-sharing program for insured affordable multifamily project loans; additional units availability, 25752
Mortgagee Review Board; administrative actions, 19631, 42436, 60715
Organization, functions, and authority delegations:
Acting General Counsel; order of succession, 63811
Assistant Secretary for Community Planning and Development et al., 3536, 25685, 42050
Assistant Secretary for Fair Housing and Equal Opportunity; order of succession, 65591
Assistant Secretary for Housing-Federal Housing Commissioner, 3941
Community Planning and Development, Assistant Secretary; loan guarantee recovery fund, 54211
Community Planning and Development, General Deputy Assistant Secretary, et al.; loan guarantee recovery fund, 54211
Deputy Assistant Secretary for Enforcement and Investigations et al., 26199
Deputy Secretary, 353
Director, Empowerment Zone/Enterprise Community Task Force; redelegation of authority, 3536
Directors, Housing Divisions; authority revocation and redelegation, 33130
Lead Hazard Control Office; designation, 48158
Native American Programs Field Office Administrators, 31143
Office of Housing, Deputy Assistant Secretary for Operations, 15818
Privacy Act—
General Counsel Office et al.; law enforcement activities, 53382
Secretary's Field Office Representatives et al.; waiver authority, 35800-35803
Southeast/Caribbean State and Area Coordinators; directives waiver authority, 59236, 59237
Ounce of Prevention program:
Youth crime and violence prevention programs coordination and integration; reporting and recordkeeping requirements, 3047
Privacy Act:
Systems of records, 18401, 65416
Public and Indian housing:
Campus of learners designated public housing sites (FY 1996), 53232, 58418
Judicial eviction procedures; due process procedures list, 47953
Reasonable revitalization potential assessment of public housing required by law, 50632
Timeframe amendment, 68048
Rental assistance programs; social security and supplemental security income verification procedures, 37804
Voter registration, 9190
Regulatory waiver requests; quarterly listing, 7394, 29886, 41928, 58110
Senior Executive Service:
Performance Review Board; membership, 51714
Supportive housing programs:
Elderly; impact of rescissions, 3047
Persons with disabilities; impact of rescissions, 3047

Immigration and Naturalization Service

RULES
Immigration:
Aliens, employment control—
Employer sanctions; warning notices; blank employment eligibility verification forms (Forms I-9), electronic generation, 52235, 55840
Aliens in U.S.; deportability determination proceedings—
Aliens convicted of aggravated felonies who are not lawful permanent residents, 69019
Aliens—
Alien registration receipt card (Form I-151); removal from list of forms recognized as evidence of registration for lawful permanent resident aliens; removal, 37673
Employment authorization document (Form I-766) introduction, 46534
Lawfully present in United States; term definition, 47039
Law students and graduates; representation and appearances, 53609
Benefits applicants fingerprint taking; designated fingerprinting services, 28003
Implementation date extension, 57583
Defaulted payments; fees assessment, 35597
Favorable treatment; written consent requirement, 48405
Fees for motions to reopen or reconsider and underlying applications for relief, 46373
Correction, 47550
Immigrant petitions—
Children of widows or widowers, 7206
Employment-based petitions; priority dates, 33304
Lawful permanent residence status—
Battered or abused spouses and children; self-petitioning, 13061
Nonimmigrants: documentary requirements—
Lawful domicile, establishment; section 212(c) relief eligibility, 59824
Nonimmigrants bearing Iraqi and Kuwaiti travel documents; registration and fingerprinting requirements removed, etc., 47668
Nonimmigrant visa or passport requirements waiver due to unforeseen circumstances, 11717
Paroled Cuban or Haitian nationals; resettlement assistance eligibility, 36610
Port Passenger Accelerated Service System (PORTPASS) Program; border inspection fee projects, 53830
Status adjustment for persons admitted for permanent residence; interview waiver, 59825
Visa waiver pilot program—
Argentina, 35598
Australia, 41684
Immigration and nationality forms; listing update, 47799
Nationality:
Naturalization revocation; administrative processes, 55550
Nationals and citizens of U.S. at birth:
Equal treatment of women in conferring citizenship on children born abroad, 35111
Correction, 43948
Nonimmigrant classes:
Ports of entry accepting applications for direct transit without visa; list additions—
Oakland, CA and Sanford, FL, 35934
Organization, functions, and authority delegations:
Institutional hearing program director; show cause orders and warrants of arrest issuance authority, 8858
International airport status for customs services and ports of entry for aliens arriving by aircraft—
Eagle Pass Municipal Airport, TX; status revocation, 25777
Maverick County Airport, TX; designation, 25777
Temporary protected status program designations:
Salvador; obsolete language removed, 47667
Visa waiver pilot program:
Australia, 39271

PROPOSED RULES
Aliens employment control:
Employment eligibility varification form (Form I-9); electronic production and/or storage demonstration project, 4378
Carrier responsibilities at foreign parts of embarkation; administrative fines reduction, refund or waiver:
Carrier screening requirements for eligibility, 29323
Immigration:
Aliens—
Mexican and Canadian nonresident alien border crossing cards, 4374
Children born outside United States; citizenship certificate applications, 47690

Educational requirements for naturalization—
Exceptions due to physical or developmental disability or mental impairment, 44227, 51250
Nonimmigrant status conditions; information disclosure, 30188
Permanent residence; status adjustment of persons admitted; conditional residents and fiancees, 43028
Port Passenger Accelerated Service System (PORTPASS) Program—
Dedicated commuter lane (DCL) system costs fee, 53303
Spouses and unmarried children of refugees/asylees; procedures for filing derivative petitions, 35984

NOTICES
Agency information collection activities:
Proposed collection; comment request, 11651, 13216, 16647, 17728, 19958, 26547, 26932, 26933, 29770, 34871, 36082, 36397, 40849, 41653, 41654, 42270, 43561, 47527, 49351, 53766, 54456, 58425, 59109
Submission for OMB review; comment request, 28234, 29770, 36083, 41655, 42269, 46666, 49482-49485, 55819, 56972, 64760, 64921, 65081, 65082, 68056, 68057, 68296
Asylum and asylum-related applications; special filing instructions for ABC class members:
Salvadorans under deferred enforced departure; work authorization extension, 3053
Commercial transportation lines contracts; policy, 5410
Committees; establishment, renewal, termination, etc.:
Citizens' Advisory Panel, 11432
P-1 Nonimmigrant Advisory Committee, 9498
Environmental statements; availability, etc.:
Buffalo, NY; Federal Detention Center, 6658
Environmental statements; notice of intent:
San Joaquin County, CA; Federal Service Processing Center, 52060
Immigration:
Direct mail program; expansion, 2266, 56060
Meetings:
Citizens Advisory Panel, 3734, 7021
Immigration and Naturalization Service User Fee Advisory Committee, 15306, 59110
Nicaraguan nationals subject to final deportation orders; discontinuation of review process
Work authorization criteria extension, 28598
Nonimmigrants bearing Iranian and Libyan travel documents; registration and fingerprinting requirements, 46829
Temporary protected status program designations:
Bosnia-Hercegovina, 39471
Liberia, 8076
Rwanda, 29428, 34927
Extension, 58425
Somalia, 39472
Organization, functions, and authority delegations:
Executive Office for Immigration Review; Immigration Appeals Board, 59305

Indian Affairs Bureau

RULES
Contracts and grants:
Indian Self-Determination and Education Assistance Act amendments; implementation, 32482
Delaware Indians of Western Oklahoma, Delaware Indians, and Indians of San Pasqual Band; membership rolls; CFR parts removed, 27780
Detention and rehabilitation programs within Indian country, 34371
Correction, 65473
Energy and minerals:
Tribal and alloted lands leasing for mineral development, 35634
Fish and wildlife:
Indian fishing; Hoopa Valley Indian Reservation; CFR part removed, 59331
Indian Self-Determination and Education Assistance Act program:
Contracts, grants, school construction contracts, etc., elimination; CFR parts removed; Federal regulatory reform, 49059
Land and water:
Indian tribes' off-reservation land acquisitions; trust status
Final administrative decisions; waiting period establishment, 18082
Law and order on Indian reservations:
Courts of Indian Offenses; listing update, 10673
Tribal government:
Indian child protection and family violence prevention
Character and suitability standards for employment, etc., 32272

PROPOSED RULES
American Indian Trust Fund Reform Act:
Restricted tribal funds withdrawal and management, 24731
Contracts and grants:
Indian Self-Determination and Education Assistance Act amendments; implementation, 2038
Education:
Special education, CFR part removal; Federal regulatory review, 34399
Energy and minerals:
Osage Reservation lands, OK, leasing; mining, except oil and gas, 41365
Quapaw Indian lands; lead and zinc mining operation and leases, 44019
Ute Indian Tribe's undivided tribal assets; joint management, 27831
Federal regulatory review:
Regulations rewriting in "plain English", list; obsolete regulations removal, 17857
Financial activities:
Alaska resupply operation; U.S.M.S. North Star decommissioning; Federal regulatory review, 31470
Fish and wildlife:
Indian fishing; Hoopa Valley Indian Reservation; CFR part removed, 19600
Housing improvement program:
Resource allocation methodology; simplification, 36829
Human services:
Social welfare arrangements with States or other agencies; clarification, 33876
Indian Gaming Regulatory Act:
Class III (casino) gaming on Indian lands; authorization procedures when States raise Eleventh amendment defense, 21394
Correction, 25604
Indian Self-Determination and Education Assistance Act program:
Contracts, grants, school construction contracts, etc. elimination; Federal regulatory review, 27833
Indian Self-Determination Negotiated Rulemaking Committee:
Meetings, 18100
Land and water:
General agriculture and range regulations, 27824
Irrigation projects and systems, 35167
Land acquisitions—
Navajo partitioned land grazing regulations, 29327
Land records and title documents, 27822
Leasing and permitting and grazing permit regulations incorporation, 30560
Osage Roll; certificate of competency; Federal regulatory review, 30559
Patents in fee, competency certificates, restrictions removal, and Indian lands sale issuance—
Federal regulatory review, 34400
Rights-of-way over Indian lands, 37417
Law and order on Indian reservations:
Courts of Indian Offenses and law and order code, 35158
Indian country law enforcement, 35163
Practice and procedure:
Administrative action appeals; Federal regulatory review, 31875
Indian employment preference, 36671
Procedure and practice:
BIA rules applicability, 27821
Tribal electric power utilities, 29040
Tribal government:
Indian tribal justice support distribution of appropriations; funding formula, 39606
Tribal revenue allocation plans, 29044
Correction, 37022

NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 33940
Environmental statements; availability, etc.:
Pueblo of San Ildefonso trust land, NM; El Rancho electric substation construction, 9483, 19955, 59456
Swinomish Marina, LaConner, WA, 55311
Environmental statements; notice of intent:
Flathead Indian Reservation, MT; forest management plan; meetings, 3048
Federal wildland fire management policy and program review, 5737
Grants and cooperative agreements; availability, etc.:
Contract support funds (FY 1996); distribution and use method; guidance availability, 16106
Off-reservation Indian child and family service programs, 35809
Indian child custody proceedings; jurisdiction reassumption petitions:
Red Cliff Band of Lake Superior Chippewa Indians, WI, 1778
Washoe Tribe of Nevada and California et al., 1779
Indian entities recognized and eligible to receive services from BIA; list, 58211
Indian housing program; interdepartmental agreement with HUD and Indian Health Service, 47788
Indian tribes, acknowledgement of existence determinations, etc.:
Apalachee Indians of Louisiana, 19313
Apalachee Indian Tribe, 19313
Apalachicola Band of Creek Indians, 19314
Biloxi, Chitmacha Confederation of Muskogees, Inc., 19314
Chickahominy Indian Tribe, 32456
Duwamish Tribal Organization, 33762
Golden Hill Paugussett Tribe, 50501
Meherrin Indian Tribe, 19314
Mendota Mdewakanton Dakota Community, 32456
Monacan Indian Tribe, Inc., 19314
Montauk Indian Nation, 19315
Oakbrook Chumash People, 10782
Ramapough Mountain Indians, Inc., 4476
Samish Tribal Organization, 15825, 26922

Tinoqui-Chalola Council of Kitanemuk and Yowlumne Tejon Indians, 19315
Irrigation projects; operation and maintenance charges:
Wapato Irrigation Project, WA, 8969
Land acquisitions into trust:
Mashantucket Pequot Indian Tribe, CT, 33764
Wyandotte Tribe of Oklahoma, 29757
Liquor and tobacco sale or distribution ordinance:
Cahuilla Band of Indians, CA, 50045
Confederated Tribes of the Grand Ronde Community of Oregon, 33941
Cow Creek Band of Umpqua Tribe of Indians, 49152
Modoc Tribe of Oklahoma, 47763
Sac and Fox Nation, OK, 35244
Santa Ana Pueblo Indian Reservation, NM, 41172
Seneca-Cayuga Tribe of Oklahoma, 47766
Wyandotte Tribe of Oklahoma, 15298
Meetings:
Individual Indian Money (IIM) accounting and customer service—
Tribal consultation on financial trust services improvement, 24505
National tribal consultation meetings; tribal trust fund accounts holders and allottees, 68772
Tribal consultation on Indian education topics, 18619
National Environmental Policy Act; implementation, 67845
Operation and maintenance assessment rate adjustments:
Walker River Irrigation Project, NV, 40244
Reservation establishment, additions, etc.:
Forest County Potawatomie Community of Wisconsin Potawatomie Indians, 32456
Kalispel Tribe, Spokane County, WA, 55992
Pinoleville Indian Community of California, 59107
Redwood Valley Rancheria of Pomo Indians of California, 58700
Saginaw Chippewa Indian Tribe, 32457
Road maintenance funds to tribal bases distribution methodology, 67058
Tribal government:
Delaware Tribe of Eastern Oklahoma government-to-government relations through Cherokee Nation—
Retraction of 1979 decision of Deputy Commissioner of Indian Affairs to deal with Delaware Tribe of Eastern Oklahoma only for claims purposes, 33534, 50862
Tribal priority allocations; permanent funds transfer from contract support, housing improvement program, and social services welfare assistance, 46660
Tribal-State Compacts approval; Class III (casino) gambling:
Blackfeet Indian Tribe of Blackfeet Reservation, MT, 55312
Confederated Tribes and Bands of Yakama Indian Nation, WA, 40429
Confederated Tribes of Grande Ronde Community, OR, 43067
Confederated Tribes of Siletz Indians Tribe, OR, 4477, 46662
Confederated Tribes of Umatilla Indian Reservation, OR, 47525
Confederated Tribes of Warm Springs Reservation, OR, 4478, 46662
Coquille Indian Tribe, OR, 4477, 46662
Cow Creek Band of Umpqua Tribe of Indians, OR, 4477, 46662
Eastern Band of Cherokee Indians, NC, 36078
Klamath Tribes, OR, 30635
Miami Tribe of Oklahoma, OK, 4478
Mississippi Band of Choctaw Indians, MS, 36892
Puyallup Tribe of Indians, WA, 38213
Quinault Indian Nation, WA, 53751
Reno-Sparks Indian Colony, NV, 4478
Ute Mountain Ute Tribe, CO, 11217
Walker River Paiute Tribe, NV, 40429

Indian Arts and Crafts Board

RULES
Indian art and craftsmanship; product protection, 54551
Correction, 57002

Indian Health Service

RULES
Contracts and grants:
Indian Self-Determination and Education Assistance Act amendments; implementation, 32482
PROPOSED RULES
Contracts and grants:
Indian Self-Determination and Education Assistance Act amendments; implementation, 2038
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17903
Submission for OMB review; comment request, 48710, 50324
Grant and cooperative agreement awards:
Indian health scholarship program; recipients list, 28214
Grants and cooperative agreements; availability, etc.:
American Indians/Alaska natives—
Tribal management program, 4446
Health professions educational loan repayment program, 5789, 64138
Health professions preparatory, pregraduate, and Indian health scholarship (professions) program (FY 1996), 5789
Health professions recruitment program for Indians, 8297
Indian housing program; interdepartmental agreement with HUD and Indian Affairs Bureau, 47788
Medical care:
Contract health services; reimbursement rates; evaluation and establishment; Portland Pilot Project; termination date extended, 51298
Organization, functions, and authority delegations:
Contract Health Service Delivery Area (CHSDA)—
Chehalis Reservation, WA; geographic boundaries redesignation, 10351
Jamestown S'Klallam Tribe, WA; geographic boundaries redesignation, 55309
Headquarters reorganization, 67048

Information Security Oversight Office

RULES
Classified national security information:
Interagency Security Classification Appeals Panel bylaws, 10854
NOTICES
Meetings:
National Industrial Security Program Policy Advisory Committee, 20287, 46490

Inspector General Office, Health and Human Services Department

RULES
Medicaid programs:
Fraud and abuse—
State utilization and quality control peer review organizations; program sanctions imposition and adjudication; correction, 1841
Health maintenance organizations, competitive medical plans, and health care prepayment plans—
Prepaid health care organizations; physician incentive plans requirements, 13430
Medicare programs:
Fraud and abuse—
Civil money penalties, assessments, and exclusions; inflation adjustments, 52299
Health care plan protection; safe harbors, 2122
State utilization and quality control peer review organizations; program sanctions imposition and adjudication; correction, 1841
Health maintenance organizations, competitive medical plans, and health care prepayment plans—
Prepaid health care organizations; physician incentive plans requirements, 13430
PROPOSED RULES
Medicare; program integrity:
Safe harbors, new, solicitation; and existing safe harbors modification, 69060
State health care programs; program integrity:
Safe harbors, new, solicitation; and existing safe harbors modification, 69060
NOTICES
Program exclusions; list, 6017, 11055, 17711, 24502, 30243, 38455, 42258, 48710, 53231, 59102, 66285
Special fraud alerts; publication:
Medicare; HMO beneficiary obligations and rights, 58568
Nursing facilities; services not rendered, falsified claims, etc.; fraud and abuse, 30623

Inter-American Foundation

NOTICES
Meetings; Sunshine Act, 3766, 7583, 54674

Intergovernmental Relations Advisory Commission

NOTICES
Meetings, 36388
Reports; availability, etc.:
Role of Federal mandates in intergovernmental relations, 1194, 8636
ACIR preliminary report; public hearing, 7271, 11059

Interior Department

See Fish and Wildlife Service
See Geological Survey
See Hearings and Appeals Office, Interior Department
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See Mines Bureau
See National Biological Service
See National Indian Gaming Commission
See National Park Service
See Reclamation Bureau
See Special Trustee for American Indians Office
See Surface Mining Reclamation and Enforcement Office
RULES
Acquisition regulations:
Foreign construction materials, etc.; Federal regulatory reform, 15389
Forms; CFR part removed, 31053
Internal procedures, 5519
Solicitation provisions and contract clauses; streamlining, 31053
Assistance programs; administrative and audit requirements and cost principles, 68666
Buy American requirements, 39083
Audits of institutions of higher education and other non-profit institutions (OMB A-133), 40525
Natural resource damage assessments, 20560
Range management:
Grazing administration; correction, 4227
Tribal government:
Self-governance program; awarding negotiation/advance planning grants; procedure establishment, 17830
Watches and watch movements; allocation of duty exemptions:
Virgin Islands, Guam, American Samoa, and Northern Mariana Islands, 55883
PROPOSED RULES
Natural resource damage assessments:
Type B procedures, 37031
Semi-annual agenda, 23078, 62602
Transportation and utility systems in and across, and access into, conservation system units in Alaska:
Economically feasible and prudent alternative route; definition, 48873
Tribal government:
Self-governance program (FY or CY 1997)—
Application submission deadline, 3623
Watches and watch movements:
Allocation of duty exemptions—
Virgin Islands, Guam, American Samoa, and Northern Mariana Islands, 37845, 60154
NOTICES
Agency information collection activities:
Proposed collection; comment request, 10376
Alternative dispute resolution use, 40424
Central Utah Water Conservancy District:
Bonneville Unit, Central Utah Project; irrigation water contract negotiation, 3730, 9482, 24321
Central Utah Project, UT; contract negotiation, 47954
Environmental statements; availability, etc.:
Wasatch County Water Efficiency Project/Daniel replacement project, 60300
Salt Lake County artificial ground water recharge/conjunctive management system implementation; agreement negotiation, 28887
Uintah Unit, Central Utah project; irrigation water contract negotiation, 14158
Upalco Unit, Central Utah project; irrigation water contract negotiation, 14158
Wasatch County Water Efficiency Project/Daniel Replacement Project; implementation; negotiation, 24321, 41796
Committees; establishment, renewal, termination, etc.:
California Desert District Advisory Council, 63049
Exxon Valdez Oil Spill Trustee Council Public Advisory Group, 48961
Green River Basin Advisory Committee, 6252
Minerals Management Advisory Board, 53383
Water Information Advisory Committee, 51461
Environmental statements; availability, etc.:
Central Utah Water Conservancy District—
Wasatch County water efficiency project and Daniel replacement project; efficiency improvements, 30090
Environmental statements; notice of intent:
Palau Compact road project; Palau, 9191
Exxon Valdez Oil Spill Trustee Council;
restoration of resources and services injured by oil spill; projects (FY 1997) proposals request, 7013
Fish and Wildlife Service; National Environmental Policy Act; implementation, 19308
Grants and cooperative agreements; availability, etc.:
Tribal self-governance program—
Negotiation and advance planning, 17908
Meetings:
Alaska Land Managers' Forum, 2258, 52052
Exxon Valdez Oil Spill Public Advisory Group, 7013, 20272, 37921
Western Water Policy Review Advisory Commission, 2838, 18616, 44323, 57889
National Environmental Policy Act; implementation
Single-purpose facilities title transfer to non-Federal entities; categorical exclusion, 34439
National Wild and Scenic Rivers System:
Wallowa River, OR, 42050
Self-governance annual funding agreements (FY 1997) negotiated by non-BIA bureaus; eligible programs, 25235
Senior Executive Service:
Performance Review Board; membership, 33132
Watches and watch movements; allocation of duty-exemptions:
Virgin Islands, 10318
Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994; implementation; statement of findings, 33536

Internal Revenue Service

RULES
Employment taxes and collection of income taxes at source:
Federal tax deposits by electronic funds transfer, 11548
Indian gaming profits to tribal members; withholding on distributions; correction, 9639
Nonpayroll withheld tax liabilities; reporting, 27007
Termination of employer's operations; time for furnishing wage statements to employees and Social Security Administration; correction, 7214
Estate taxes:
Actuarial tables exceptions
Correction, 7991
Generation-skipping transfer tax—
Correction, 12135, 29653, 43656
Qualified domestic trusts; requirements to ensure estate tax collection, 60551
Excise taxes:
Deposit procedures, 58004
Diesel fuel registration requirements—
Alaska, 66215
Gasoline and diesel fuel registration requirements, 10450
Correction, 28053
Federal financial assistance received by financially troubled bank or thrift institution, or in connection with acquisition of same; correction, 12135
Federal regulatory reform; CFR parts removed, 515
Gift taxes:
Generation-skipping transfer tax—
Correction, 12135, 29653, 43656
Income taxes:
Accuracy-related penalty imposition, 4876
Correction, 14248
Bad debts modifications and dealer assignments of notional principal contracts, 32653
Brokers; statements required for substitute payments, 46719
Cash received as bail; reporting by court clerks, 6
Charitable contributions, quid pro quo, etc.; deductibility, substantiation, and disclosure, 65946
Common trust funds diversification at time of combination or division, 19546
Correction, 39072
Consolidated groups—
Intercompany transactions and related rules, 10447, 13762
Consolidated return regulations—
Consolidated groups; losses and deductions of members use limitations, 33321, 47821
Consolidated groups; net operating loss carryforwards and built-in losses and credits following ownership change; limitations, 33335
Short taxable years and controlled groups, 33313
Controlled foreign corporations, foreign base company, and foreign personal holding company income; definitions; correction, 14248
Controlling corporation's basis adjustment in its controlled corporation's stock following triangular reorganization; correction, 11547
Corporations or partnerships; stock or partnership interests offered through underwriters, 19188
Debt instruments modifications, 32926
Correction, 47822
Debt instruments with original issue discount; anti-abuse rule, 30133
Effectively connected income; branch profits tax and branch-level interest tax, 9336
Correction, 12135, 14247
Employee remuneration in excess of one million dollars; disallowance of deductions; correction, 4349
Employer social security taxes paid on employee tips; credit removal, 67212
Enterprise zone facility bonds issued by State and local governments, 27258
Federal tax deposits by electronic funds transfer, 11548
Foreign corporations—
Determination of interest expense deduction, 9326, 15891
Transfers of domestic stock or securities by U.S. persons; correction, 11550, 68633
Hedging transactions—
Consolidated group participation, 517, 11547
Indebtedness discharges; information reporting, 262
Individual returns; automatic filing extension, 260
Information returns; magnetic media filing requirements, 53058
Intercompany transfer pricing and cost sharing regulations, 7157
Correction, 21955, 33656

Inventory and natural resources produced in one jurisdiction and sold in another jurisdiction; source of income from sales, 60540
Correction, 65323
Investment companies; transfers of assets, 19544
Correction, 39072
Marketable securities; partnerships distribution, 67936
Meals and entertainment, club dues, and spousal travel; expenses paid by employer, 27005
Mortgage credit certificates reissuance, 66212
Nonbank trustee net worth requirements, 11307
Omnibus Budget Reconciliation Act; elections, 65321
Passive activity losses and credits; limitations; correction, 14247
Passive foreign investment companies shareholders; treatment of shareholders, 58149
Pension, profit-sharing, and stock bonus plans; alternative benefits limitations; correction, 14247
Profit split method; combined taxable income computation, 21366
Correction, 39071
Property (contributed or other) distribution; recognition of gain or loss by contributing partner
Correction, 7213
Returns, statements, or other documents; signing methods, 65319
S corporation; definition; correction, 2869
S corporations and their shareholders—
Definitions under Subchapter S, 67454
Treatment of gain from disposition of interest in certain natural resource recapture property, 53062
Section 355 distributions by U.S. corporations to foreign persons; treatment, 42165
Securities dealers; mark-to-market accounting; equity interests in related parties and dealer-customer relationship, 67715
Tax exempt use property; lease term, 18675
Tax withholding on dispositions of U.S. real property interests by foreign persons; correction, 7157
Time to file automatic extension—
Individual, partnership, trust, and U.S. real estate mortgage investment conduit income tax returns, 69027
Income taxes, etc.:
Backup withholding, statement mailing requirements, and due diligence; correction, 11307, 12135
Bank deposit interest paid to individual who is nonresident alien of U.S. and resident of Canada; information reporting and backup withholding, 17572
Correction, 40993
Procedure and administration:
Domestic unincorporated business organizations classification as partnerships or associations, 66584
Environmental settlement funds; classification, 19189
Extensions of time to make elections, 33365
Internal revenue tax and stamp payments by check or money order; financial institution unpaid tax liability; correction, 13762
Limited liability companies classified as partnerships; tax matters partner selection, 67458
Partnership items; tax treatment
Correction, 37683
Performance of acts where last day falls on Saturday, Sunday, or legal holiday; time, 42178
Retail food stores and wholesale food concerns; employer identification number sharing
Correction, 1035
Return information disclosure; property or services for tax administration purposes; Justice Department, 66217
Return information disclosure; U.S. Customs Service, 66218
Seized property, sale; setting of minimum price, 66216
Taxpayer identifying numbers (TIN), 26788
Correction, 33657
Termination of employer's operations; time for furnishing wage statements to employees and Social Security Administration; correction, 7214

PROPOSED RULES

Employment taxes and collection of income taxes at source:
Federal Insurance Contributions Act (FICA); taxation of amounts under employee benefit plans, 2194
Hearing, 20767
Federal tax deposits by electronic funds transfer, 11595
Hearing cancellation, 36320
Federal Unemployment Tax Act (FUTA); taxation of amounts under employee benefit plans, 2214
Hearing, 20767
Temporary employment; information reporting and backup withholding; hearing, 20767
Correction, 28823
Estate taxes:
Generation-skipping transfer tax; cross reference, 29714
Interests and powers disclaimer, 43197
Excise taxes:
Gasoline; sale or removal and tax bond requirements; withdrawn, 10492
Gasoline and diesel fuel dye injection systems, 10490
Gasoline and diesel fuel registration requirements—
Alaska, 66246
Gift taxes:
Generation-skipping transfer tax; cross reference, 29714
Interests and powers disclaimer, 43197
Residence trust reformation, personal or qualified personal; sale of residence, 16623
Income taxes:
Accuracy-related penalties; reasonable basis definition, 58020
Amortizable bond premium—
Public hearing, 33396, 53688
Bad debts modifications and dealer assignments of notional principal contracts; cross reference, 32728
Correction, 53688
Building demolition; definition of structure, 31473, 43695
Hearing cancelled, 51256
Computer programs transfer transactions; classification, 58152
Consolidated return regulations—
Consolidated groups; losses and deductions of members use limitations; cross reference, 33393, 47838, 52902
Consolidated groups; net operating loss carryforwards and built-in losses and credits following ownership change; limitations; cross reference, 33395
Short taxable years and controlled groups; cross reference, 33391
Controlled foreign corporations, foreign base company, and foreign personal holding company income; definitions—
Hearing cancelled, 338
Corporations or partnerships; stock or partnership interests offered through underwriters
Hearing cancellation, 1545
Depreciation allocations; recapture among partners in a partnership, 65371
Eligible rollover acceptance distributions; retirement plans qualification, 49279
Employee's accrued benefits calculation; qualified benefit pension plan contributions; correction, 10489
Employer social security taxes paid on employee tips; credit; withdrawn, 67260
Empowerment zone employment credit; qualified zone employees, 66000
Extraordinary dividends; distributions to corporate shareholders, 30845, 49715
Federal tax deposits by electronic funds transfer, 11595
Hearing cancellation, 36320
Financial Asset Securitization Investment Trusts, 56647
Foreign corporations—
Determination of interest expense deduction and branch profits tax, 9377, 27833, 28118
Transfers of domestic stock or securities by U.S. persons; cross reference, 15743
Foreign investment—
Passive foreign investment company preferred shares; special income exclusion; hearing, 67752
Health Insurance Portability and Accountability Act—
Portability, access, and renewability provisions; comment request, 68697
Individual returns; automatic filing extension; cross reference
Hearing cancellation, 20503
Public hearing, 338
Information returns; magnetic media filing requirements; cross reference, 53161
Inventory and natural resources produced in one jurisdiction and sold in another jurisdiction; source of income from sales
Correction, 44023
Loans to plan participants or beneficiaries
Hearing, 20766
Low income housing credit; available unit rule, 27036, 48656
Marketable securities; partnerships distribution, 28
Correction, 11083
Hearing cancellation, 14517
Mortgage credit certificate reissuance—
Hearing cancellation, 21988
Public hearing, 15204
Nonexempt employees' trusts; grantor trust rules application, 50778
Nuclear decommissioning reserve funds; revised schedules of ruling amounts, 67510
Obligation-shifting transactions, multiple-party; realized income from leases, etc. and deductions claimed from another party; reporting and recordkeeping requirements, 68175
Partnership termination, 21985
Qualified small business stock; 50 percent exclusion for gain, 28821
Correction, 39104
Reorganizations; receipt of rights to acquire corporation securities, 67508
Retirement bonds; withdrawn, 552
Section 355 distributions by U.S. corporations to foreign persons, treatment; cross reference, 42217
Hearing cancellation, 58798

Section 467 rental agreements, 27834
Securities dealers; mark-to-market accounting; equity interests in related parties and dealer-customer relationship, 31474
Shareholder interest continuity requirement for corporate reorganizations, 67512
Stock disposition loss allocation, 35696
Correction, 44024
Tax-exempt bonds; arbitrage restrictions, 33405
Tax-exempt section 501(c)(5) labor, agricultural and horticultural organizations; requirements; public hearing, 15204
Tax-qualified retirement plans; eligible rollover distributions; cross reference; hearing, 9659
Temporary employment; information reporting and backup withholding; hearing, 20767
Correction, 28823
Income taxes, etc.:
Tax withholding on certain U.S. source income paid to foreign persons and related collection, refunds, and credits, etc., 17614
Correction, 42401
Organization, functions and authority delegations:
Taxpayer assistance orders—
Modification or rescission, 17265
Practice and administration:
Tax-qualified retirement plans; eligible rollover distributions; cross reference; correction, 9660
Procedure and administration:
Domestic unincorporated business organizations classification as partnerships or associations; hearing, 21989
Extensions of time to make elections; cross reference, 33408
Return information disclosure; property or services for tax administration purposes; Justice Department; correction, 9660
Sale of seized property; setting of minimum price, 30012

NOTICES

Agency information collection activities:
Proposed collection; comment request, 368, 1997, 1998, 1999, 3763, 4811, 5061, 6060-6062, 6293, 6294, 7154, 9528-9530, 10617, 10618, 10844, 13919, 14206, 14207, 14373, 15162, 18193, 18464, 18647, 18648, 18775, 19113, 19332, 20552-20554, 21227, 24529, 24530, 25741, 25937, 27384, 29167, 29448, 30284, 30668, 32475-32478, 33172, 33173, 33797, 36417, 37541, 38516, 39181, 39182, 39690, 40078, 40079, 40706, 40707, 41205-41207, 42087, 42314, 42315, 42937, 43812, 44392, 44393, 46679, 47234, 47235, 48206, 48731, 48732, 49815, 49816, 51139, 51746, 53779, 53780, 54702, 54847, 54848, 55184, 56086, 58097, 58098, 58278, 58279, 59136, 60144-60146, 60752, 60753, 63926, 64792, 67594-67596, 67873, 67874, 68336
Art Advisory Panel; closed meetings; report availability, 10845
Bulletin index-digest system, elimination; comment request, 34926
Capital construction fund, nonqualified withdrawals; interest rates, 60321
Committees; establishment, renewal, termination, etc.:
Actuarial Examinations Advisory Committee, 54848
Art Advisory Panel, 7852
Information Reporting Program Advisory Committee, 24351
Inflation adjustment factor and reference prices:
Fuel credit, nonconventional sources, 13919, 16031
Renewable electricity production credit, 14208
Meetings:
Actuarial Examinations Advisory Committee, 46681
Art Advisory Panel, 9744, 43813
Commissioner's Advisory Group, 26556
Information Reporting Program Advisory Committee, 18464, 56266
On-line filing program:
Federal/State returns transmission and software development participation, 40280
Organization, functions, and authority delegations:
Assistant Commissioner (Employee Plans and Exempt Organizations), 11469
Case Managers et al., 14852
Chiefs, Appeals Offices, et al., 30937
Examination case managers, 14852
Regional and District Counsels et al., 47235
Taxpayer assistance orders—
Taxpayer Ombudsman; issuance, 763
Taxpayer Ombudsman, etc.; modification or rescission, 764
Privacy Act:
Computer matching programs, 1817, 2869, 28928
Systems of records, 47547
Senior Executive Service:
Performance Review Board; membership, 46681, 53993
Taxable substances, imported:
Butyl benzyl phthalate, 13919
Diglycidyl ether of bisphenol-A (epoxy), 64793
Tax counseling program for elderly; application packages; availability, 39183

International Boundary and Water Commission, United States and Mexico

PROPOSED RULES

Freedom of Information Act; implementation:
Fee schedule, 31470

NOTICES

Meetings, 15145, 31963, 52068, 68801
U.S./Mexico border environmental infrastructure projects; revised project certification criteria; availability, 65245

International Development Cooperation Agency

See Agency for International Development
See Overseas Private Investment Corporation

NOTICES

Agency information collection activities:
Submission for OMB review; comment request, 36545
Implementation of USAID programs in non-presence countries by non-governmental organizations et al.; comment request, 54407

International Trade Administration

RULES

Watches and watch movements:
Allocation of duty exemptions—
Virgin Islands, Guam, American Samoa, and Northern Mariana Islands, 55883

PROPOSED RULES

Antidumping and countervailing duty proceedings:
Administrative protection orders; procedure changes, 4826
Uruguay Round Agreements Act (URAA); conformance:
Antidumping and countervailing duties; Federal regulatory review, 7308, 18122, 28821
Watches and watch movements:
Allocation of duty exemptions—
Virgin Islands, Guam, American Samoa, and Northern Mariana Islands, 37845, 60154

NOTICES

Agency information collection activities:
Proposed collection; comment request, 25845, 38437
Submission for OMB review; comment request, 43733
Antidumping:
Anhydrous sodium metasilicate from—
France, 9425, 30852, 30853, 44038
Antifriction bearings (other than tapered roller bearings) and parts from—
France et al., 3672, 31506, 35713, 39629, 56472
Germany, 4763
Romania, 60679
Singapore, 68228
Thailand, 33711
Aramid fiber formed of poly para-phenylene terephthalamide from—
Netherlands, 15766, 26876, 51406
Ball bearings (other than tapered roller bearings) and parts—
Germany, 1323, 15769
Beryllium metal and high beryllium alloys from—
Kazakhstan, 15770, 44293
Bicycles from—
China, 19026, 33901
Brake drums and rotors from—
China, 14740, 29073, 53190, 55269, 60682
Brass sheet and strip from—
Canada, 1560, 7238, 46618, 51261, 53996, 64666
Germany, 18720, 20214, 48126, 49727
Netherlands, 1324
Calcium aluminate flux from—
France, 15028, 40396
Calcium hypochlorite from—
Japan, 45936
Chrome-plated lug nuts from—
China, 36025, 58514, 58519
Taiwan, 35724, 58372
Circular welded carbon steel pipes and tubes from—
Thailand, 1328, 18375, 29533, 56512
Circular welded non-alloy steel pipe from—
Korea, 6812, 18380
Mexico, 40603
Romania, 24274
South Africa, 24271
Circular welded non-alloy steel pipes and tubes from—
Brazil et al., 11608
Mexico, 68708
Clad steel plate from—
Japan, 7469, 21158, 34421
Cold-rolled and corrosion-resistant carbon steel flat products from—
Korea, 51882
Cold-rolled carbon steel flat products from—
Germany, 3902
Netherlands, 36551, 47871, 48465, 51888
Collated roofing nails from—
China et al., 67306
Color picture tubes from—
Canada, 24290
Japan, 55271
Color television receivers, except for video monitors, from—
Taiwan, 6624, 13814, 31507, 57628
Color television receivers from—
Korea, 1339, 4408, 26158, 32426, 59402

Compact ductile iron waterworks fittings and glands from—
China, 6812, 18568, 55956
Corrosion-resistant carbon steel flat products—
Australia, 14049, 26876, 40399, 44039
Canada, 13815, 51891
Korea, 18547
Cut-to-length carbon steel plate from—
Brazil, 51904
Canada, 7471, 51891
China et al., 64051
Finland, 2792, 51901
Germany, 13834, 26159, 51907
Sweden, 15772, 51898
Dynamic random access memory semiconductors from—
Korea, 51410
Dynamic random access memory semiconductors of one megabit and above from—
Korea, 4765, 5375, 20216, 36029
Electric golf carts from—
Poland, 29534
Electroluminescent high information content flat panel displays and display glass therefor from—
Japan, 39946, 58860
Elemental sulphur from—
Canada, 8239, 40604, 45937
Engineered process gas turbo-compressor systems, assembled or unassembled, and complete or incomplete, from —
Japan, 28164, 50272, 65013
Extruded rubber thread from—
Malaysia, 25190, 43333, 54767, 65019
Ferrosilicon from—
Brazil, 20793, 38138, 59407, 64322
Foam extruded PVC and polystyrene framing stock from—
United Kingdom, 7240, 22021, 51411
Forged stainless steel flanges from—
India, 11613, 14073, 20223, 39119, 51261, 51263, 55786, 59861
Forged steel crankshafts from—
Germany, 55957
United Kingdom, 25621, 30854, 54613, 64055
Fresh and chilled Atlantic salmon from—
Norway, 26878, 51910, 65522
Fresh cut flowers from—
Colombia, 17685, 42833, 43229
Ecuador, 37044
Mexico, 6812, 28166, 40604, 63822
Fresh garlic from—
China, 43041, 68229
Fresh kiwifruit from—
New Zealand, 15922, 42585, 46438, 51912, 58231
Fresh tomatoes from—
Mexico, 18377, 40607, 53702, 56608, 56618
Freshwater crawfish tail meat from China, 54154
Grain-oriented electrical steel from—
Italy, 36551
Granular polytetrafluoroethylene resin from—
Italy, 25195, 30219, 51266
Japan, 1343, 2489
Gray portland cement and clinker from—
Japan, 40607, 58861, 67308
Mexico, 10562, 24283, 51676, 64058
Heavy forged hand tools, finished or unfinished, with or without handles, from—
China, 15028, 15218, 24285, 51269, 57384
Helical spring lock washers from—
China, 40608, 41994, 42000, 66255
High power microwave amplifiers and components from—
Japan, 20223, 48471, 56512
High-tenacity rayon filament yarn from—
Germany, 11613, 34792, 51421, 58036
Hot-rolled carbon steel flat products, etc., from—
France, 31921, 51274
Hot-rolled lead and bismuth carbon steel products from—
United Kingdom, 20225, 56514, 65022
Industrial nitrocellulose from—
United Kingdom, 6624, 29342
Industrial phosphoric acid from—
Belgium, 20227, 26160, 51424
Israel, 4766, 20230
Internal-combustion, industrial forklift trucks from—
Japan, 10562, 40400, 40813
Kiwifruit, fresh, from New Zealand, 41771
Large electric motors from—
Japan, 58862
Large newspaper printing presses and components (assembled or unassembled) from—
Germany, 8035, 38166, 46623, 48733
Japan, 8029, 38139, 46621
Large power transformers from—
France, 15461, 40403
Italy, 15033, 37443, 40815
Magnesium, pure, from—
Canada, 29343, 39947, 41771, 49732
China, 68712, 69067
Manganese metal from—
China, 4415
Mechanical transfer presses from—
Japan, 15034, 52910, 57387
Melamine institutional dinnerware products from—
China, 43337
Indonesia, 43333
Indonesia et al., 8039, 30219
Taiwan, 43341
Microdisks, 3.5" and coated media from—
Japan, 66653
Natural bristle paintbrushes and brush heads from—
China, 15037, 52917, 57389
Oil country tubular goods from—
Canada, 9676, 37720, 49733
Oil country tubular goods other than drill pipe from—
Korea, 59415
Open-end spun rayon singles yarn from—
Austria, 48472
Pads for woodwind instrument keys from—
Italy, 56664
Pasta from—
Italy, 1344, 7472, 30326, 38547, 42231, 53198
Turkey, 1351, 6348, 30309, 38545
Pencils, cased, from—
China, 27049
Persulfates from—
China, 40817, 68232
Polychloroprene rubber from—
Japan, 15221, 29344, 47871, 67318
Polyethylene terephthalate film from—
Korea, 36032
Polyethylene terephthalate film, sheet, and strip from—
Korea, 5375, 8911, 35177, 58374
Polyvinyl alcohol from—
China, 14057
Japan, 14063
Japan et al., 24286
Taiwan, 14064, 68237
Porcelain-on-steel cooking ware from—
China, 46440
Mexico, 4957, 8911, 15463, 40819, 53350, 54616
Pressure sensitive plastic tape from—
Italy, 20231
Professional electric cutting tools from—
Japan, 14293, 46624
Red raspberries from—
Canada, 47872
Roller chain, other than bicycle, from—
Japan, 28168, 28171, 64322, 68237
Sebacic acid from—
China, 22025, 46440
Shop towels from—
Bangladesh, 5377, 20231, 55957, 65025
Silicomanganese from—
Brazil, 42003
Silicon metal from—
Argentina, 1748, 38711
Brazil, 18375, 39630, 46763, 46776, 46779
Small diameter seamless carbon and alloy steel standard, line and pressure pipe from—
Italy, 66260
Sodium azide from—
Japan, 4959, 26878, 42585
Solid urea from—
Former German Democratic Republic, 27049
German Democratic Republic, 10563, 49436
Sparklers from—
China, 15464, 39630
Stainless steel bar from—
India, 31508, 43042, 49112, 54774, 68238
Spain, 50469
Stainless steel butt-weld pipe and tube fittings from—
Japan, 6349
Stainless steel butt-weld pipe fittings from—
Taiwan, 40406
Stainless steel cooking ware from—
Korea, 8253, 47873, 67320
Stainless steel wire rods from—
France, 8915, 47874, 53199, 58523
India, 40819
Standard welded carbon steel pipe and tube from—
Turkey, 8918
Steel concrete reinforcing bar from—
Turkey, 53203
Steel concrete reinforcing bars (rebar) from—
Turkey, 15039, 40194
Steel jacks from—
Canada, 6627
Steel wire rope from—
Korea, 20233, 55965, 64058
Sugar and syrups from—
Canada, 48885, 51275
Sugar from—
France, 20236, 40609
Sulfanilic acid from—
China, 25196, 29073, 53702, 53711
Tapered roller bearings and parts, finished and unfinished, from—
China, 7473, 10314, 14075, 40610
Japan, 20238, 25200, 55970
Romania, 15465, 39631, 51427, 59416, 63826
Tapered roller bearings and parts from—
China, 29345, 65527
Tapered roller bearings, four inches or less in outside diameter, and components, from—
Japan, 20238, 25200, 57391, 57629
Tapered roller bearings from—
Italy, 52920
Titanium sponge from—
Russia, 6350, 9676
Russian Federation, 20795, 39437, 58525
Ukraine, 6350
Truck trailer axle-and-brake assemblies from—
Hungary, 13481
Uranium from—
Kazakhstan et al., 15468, 40615, 52407
Russian Federation, 56665
Russian Federation et al., 11185, 41126
Vector supercomputers from—
Japan, 43527, 66653
Viscose rayon staple fiber from—
Finland, 6814
Welded carbon steel standard pipes and tubes from—
India, 31509, 33492, 68713
Thailand, 21159, 56515
Turkey, 35188, 69067
Welded stainless steel butt-weld pipe fittings from—
Taiwan, 14742, 38189
Welded stainless steel pipe from—
Taiwan, 48126
Antidumping and countervailing duties:
Administrative review requests, 2488, 3670, 4956, 6347, 8238, 11184, 14739, 18378, 20791, 26158, 28840, 32771, 35712, 41373, 41768, 42416, 46617, 48882, 51259, 54154, 56663, 58513, 64050, 66017
Intent to revoke in part, 32771
New steel rail, except light rail, from—
Canada, 11607, 29531
Antidumping duties:
Administrative reviews; time limit extension, 14291
New shipper administrative review, 1562
Antidumping duty orders and findings:
Determinations not to revoke, 6973, 14291, 17684, 28163, 37043, 38138, 53701, 55955, 60259
Intent to revoke, 3903, 8028, 14292, 19608, 29072, 33899, 39629, 46437, 51261, 56664, 60260
Best Global Practices Award:
Applications availability, 48126
Criteria and application procedures, 38714
Cheese quota; foreign government subsidies:
Annual list, 2491, 68238
Quarterly update, 13846, 33904, 51276
Committees; establishment, renewal, termination, etc.:
Environmental Technologies Trade Advisory Committee, 30033
Exporters' Textile Advisory Committee, 50806
Members solicitation, 63828
U.S. Automotive Parts Advisory Committee, 41407
U.S.-Korea Committee on Business Cooperation, 15041, 20238
U.S.-South Africa Business Development Committee, 15223, 26499
U.S.-Turkey Business Development Council, 60261
Countervailing duties:
Agricultural tillage tools from—
Brazil, 39949, 51681
Antifriction bearings (other than tapered roller bearings) and parts from—
Singapore, 20796
Antifriction bearings and parts from—
Singapore, 33904
Apparel from—
Thailand, 10314
Ball bearings and parts from—
Thailand, 20799, 34794
Bricks from—
Mexico, 26162
Carbon steel butt-weld pipe fittings from—
Thailand, 4959
Carbon steel products from—
Belgium, 51682
Sweden, 5378, 39632, 64062
Carbon steel wire rod from—
Argentina, 46783, 64669
Ceramic tile from—
Mexico, 6630
Chrysanthemums, standard, from—
Netherlands, 47886, 47888
Circular welded carbon steel pipe and tube from—
Thailand, 25205, 49436
Cotton shop towels from—
Pakistan, 26163, 50273
Peru, 40408, 41128, 47885
Cut-to-length carbon steel plate from—
Brazil, 64066
Brazil et al., 25207
Mexico, 2492
Sweden, 5381, 26878, 51683, 64066
United Kingdom, 36706
Cut-to-length steel plate from—
Mexico, 68239
Extruded rubber thread from—
Malaysia, 20803, 29534, 55272
Ferrochrome from—
South Africa, 19259, 39439, 65546
Hot-rolled lead and bismuth carbon steel products from—
United Kingdom, 20238, 58377, 60684
Industrial phosphoric acid from—
Israel, 8255, 28841, 28845, 53351
Iron-metal castings from—
India, 25623, 26879, 64669, 64676, 64687
Laminated hardwood flooring from—
Canada, 15041, 29077
Laminated hardwood-trailer flooring from—
Canada, 59079
Leather, etc., from—
Argentina, 14553
Leather wearing apparel from—
Mexico, 2492, 14076, 26163
Live swine from—
Canada, 19261, 26879, 45402, 52408, 52426, 58383
Magnesium, alloy, from—
Canada, 11186, 24287, 52435
Magnesium, pure, from—
Canada, 11186, 24287, 52435
Oil country tubular goods and cold-rolled carbon steel flat products from—
Argentina, 68713
Oil country tubular goods from—
Argentina, 26164
Pasta from—
Italy, 3672, 30288, 38544
Turkey, 3672, 30366, 38546
Porcelain-on-steel cooking ware from—
Mexico, 1356, 10726
Refrigeration compressors from—
Singapore, 10315, 29348, 44296, 45402, 68239
Roses, miniature carnations, and other cut flowers from—
Colombia, 7474, 9426, 9429, 44297, 45941, 52437
Standard chrysanthemums from—
Netherlands, 20406, 20411
Textile mill products from—
Thailand, 2797, 2800
Viscose rayon staple fiber from—
Sweden, 65195
Welded carbon steel pipe and tube products from—
Turkey, 41380, 57398
Countervailing duty orders:
Determinations not to revoke, 7474, 26890, 31922, 66260
Intent to revoke, 7475, 13847, 19045, 31923, 45945, 51277, 67321
Customized Market Analysis; program name change from Customized Sales Survey, and price list, 1562
Export trade certificates of review, 3673, 4254, 4255, 7092, 11189, 13152, 14077, 16752, 18121, 25207, 26499, 26890, 27049, 30032, 32427, 32772, 32773, 36349, 36706, 36708, 39632, 42003, 43733, 44297, 45946, 48886, 50469, 50471, 51687, 55616, 57850, 59085, 59217, 59418, 60091, 60092
Grants and cooperative agreements; availability, etc.:
Market development cooperator program, 30033, 39441
International buyer program; domestic trade shows support, 31384
Joint projects with U.S. Commercial centers in Sao Paulo, Brazil, Jakarta, Indonesia, and Shanghai, People's Republic of China, 63828
Meetings:
Automotive Parts Advisory Committee, 24760, 43042, 56943
Environmental Technologies Trade Advisory Committee, 4255, 26891
President's Export Council, 11379, 32773, 41473
U.S. Automotive Parts Advisory Committee, 7802
North American Free Trade Agreement (NAFTA); binational panel reviews:
Bacteriological culture media from—
United States, 34421
Cold-rolled steel sheet from—
Canada, 5982, 30221
Color picture tubes from—
Canada, 30221, 37882
Dispute settlement panel rosters; nominations request for U.S. candidates, 58532
Flat coated sheet products from—
United States, 55617
Gray portland cement and cement clinker from—
Mexico, 54621
Gray portland cement clinker from—
Mexico, 59419
Hot-rolled steel sheet from—
Canada, 5982
Oil country tubular goods from—
Mexico, 44041
Porcelain-on-steel cooking ware from—
Mexico, 30222, 39633, 48473, 65027, 66995
Rolled steel plate from—
Canada, 5983
Solid and crystal polystyrene from—
Germany and U.S., 54622
Scope rulings; list, 5533, 18381, 40194, 64334
Senior Executive Service:
Performance Review Board; membership, 42004
Trade fair privatization; U.S. exhibitor presence at Tokyo Motor Show, Japan, 10432
Uruguay Round Agreements Act (URAA):
Foreign currency conversions to U.S. dollars, methodology; policy change, 9434
Watches and watch movements; allocation of duty-exemptions:
Virgin Islands, 10318
Applications, hearings, determinations, etc.:
Agricultural Research Service et al., 30220
Agriculture Department et al., 47884
American Museum of Natural History et al., 33902
Argonne National Laboratory-West, 42589
Argonne National Laboratory-West et al., 53350
Arizona State University, 49112
AURA, Inc., 47884
Belmont University et al., 41773

International

FEDERAL REGISTER INDEX, January--December, 1996

Carnegie Institution of Washington et al., 46782
Centers for Disease Control & Prevention, etc., 66017
College of New Jersey et al., 59417
Continuous Electron Beam Accelerator Facility, VA, 6628
Cornell University, 55971
Duke University Medical Center, 35193
Florida International University, 6628
Florida International University et al., 7240, 45401
Johns Hopkins University, 65027
Johns Hopkins University et al., 40406
Lehigh University et al., 45401
Mayo Foundation, 55971
Mississippi State University et al., 25621, 40407
National Institute of Standards and Technology, 4767
National Institutes of Health et al., 55971
North Carolina State University, 6629
Northwestern University Medical School, 59417
Pennsylvania State University et al., 33903, 47884
Princeton University et al., 40407, 50272
Research Triangle Institute et al., 28174, 28175
Rutgers University et al., 7240
Santa Rosa Outpatient Rehabilitation Hospital et al., 55972
Scripps Research Institute et al., 11613
Shriners Hospital, 25623
University of—
Albany et al., 31509
Arizona et al., 53351
Arizona Foundation et al., 54156
California, 50273, 53351
California, Davis, 15469
California et al., 1563, 8041, 29346, 41773, 47885, 49113, 57397
California, Los Alamos, 33903
Connecticut Health Center et al., 57397
Hawaii et al., 8042
Illinois at Urbana-Champaign et al., 42590
Indiana, 15469
Maryland, 1564
Massachusetts, 45401
Minnesota et al., 55973
North Carolina at Chapel Hill, 59417
Southern California et al., 28176, 51275
South Florida et al., 6629, 29347
Texas at Austin et al., 46782
Texas, et al., 55972
Tulane Hospital and Clinic et al., 4767, 15469
Vermont, 50273
Vermont et al., 60683
Wisconsin-Eau Claire et al., 28175
Wisconsin et al., 42590
Wyoming et al., 4768
Woods Hole Oceanographic Institution, 53351
Woods Hole Oceanographic Institution et al., 39948
Yale University, 39948

International Trade Commission

RULES

Practice and procedure:
Unfair practices in import trade; investigations, etc., 43429
Uruguay Round Agreements Act (URAA):
Antidumping and countervailing duties investigations and reviews; conformance, 37818

PROPOSED RULES

Adjudicative procedures:
Investigations; retention and use of confidential business information from investigations on unfair practices in import and trade, 7230

NOTICES

Agency information collection activities:
Proposed collection; comment request, 6022
Submission for OMB review; comment request, 11221, 21209, 48969
Import investigations:
Administrative protective orders breaches; sanctions imposed for actual violations, 21203
Agricultural tractors under 50 power take-off horsepower, 6862, 31148, 33136, 44344, 51302, 52956
Andean Trade Preference Act; impact on U.S. economy and on Andean drug crop eradication; annual report, 33137
Asia/Pacific trading partners; commitments schedules submitted, examination, 65235
Asian-style kamaboko fish cakes, 33943, 49341
Asia Pacific Economic Cooperation (APEC) forum; trade liberalization, 5026
Bell peppers from—
Florida, 13875, 42652
Beryllium metal and high-beryllium alloys from—
Kazakhstan, 13213, 24509, 49341
Bicycles from—
China, 4680, 33137
Brake drums and rotors from—
China, 10787, 21207, 57449
Broom corn brooms from—
Mexico, 11061, 24952, 42264
Caribbean Basin Economic Recovery Act; impact on U.S. industries and consumers; annual report, 33137
Cattle, live and beef, fresh, chilled and frozen—
Transshipment through Mexico and Canada to U.S.; prevention, 57451
Circular welded non-alloy steel pipe from—
Romania, 1402, 4680, 19958, 35414
South Africa, 1402, 4680, 19958, 35414
Clad steel plate from—
Japan, 10380, 34862
Cold-rolled carbon steel flat products from—
Germany, 2263, 17319
Netherlands, 2263, 17319
Collated roofing nails from—
China et al., 64364
Country of origin marking; laws, regulations, and practices review, 5802
Crawfish; competitive conditions in U.S. market, 46821, 54684
Crawfish tail meat from—
China, 50868, 58216
Cut-to-length carbon steel plate from—
China et al., 58216, 68293
Diagnostic kits for detection and quantification of viruses, 39468
Digital satellite system (DSS) receivers and components, 66695
Dynamic effects on trade liberalization; empirical analysis, 65234
Dynamic random access memory controllers, multi-layer integrated circuits, chipsets and products containing same, 31148
Dynamic random access memory semiconductors of one megabit and above from—
Korea, 42265
Electrical connectors and products containing same, 11221, 21208
Electronic products, including semiconductor products, manufactured by certain processes, 6863
Engineered process gas turbo-compressor systems from—
Japan, 24952, 36080, 68053
Ethyl alcohol for fuel use from Caribbean Based Initiative (CBI) beneficiary countries—
Base quantity determination, 1403, 68054
Fiber optic modems, self-powered, 60304
Investigative attorney designation, 28890
Flash memory circuits and products containing same, 7122, 31149
Foam extruded PVC and polystyrene framing stock from—
United Kingdom, 27097, 46822, 52957
Fresh tomatoes from—
Florida, 42652
Mexico, 15968, 28891, 58217
General Agreement on Trade in Services (GATS)—
Examination of South American trading partners' schedules of commitments, 24510
Generalized System of Preferences—
Advice concerning possible modifications, 68969
Watch and watch band, strap, bracelet manufacturing and assembly in U.S. or U.S. insular possessions, 54677
Global positioning system acquisition code receivers and products containing same, 13876, 41180, 58218
Hardware logic emulation systems and components, 9486, 13517, 15969, 31149, 41652
Harmonized Tariff Schedule—
Pharmaceutical products and chemical intermediates; addition, 68294
Laminated hardwood flooring, etc., from—
Canada et al., 46823
Laminated hardwood flooring from—
Canada, 11430, 21209
Large newspaper printing presses and components, assembled or unassembled, from—
Germany, 10381, 37283
Germany et al., 46824
Japan, 10381, 37283
Manganese metal from—
China, 1403
Melamine institutional dinnerware from—
China, 15109
China et al., 5801, 47957
Indonesia, 15109
Taiwan, 15109
Memory devices with increased capacitance and products containing same, 19319
Monolithic microwave integrated circuit downconverters and products containing same, including low noise block downconverters, 10595, 45456
Multifiber agreement; U.S. textiles and apparel imports; annual report, 38472
Neodymium-iron-boron magnets, magnet alloys, and articles containing same, 6863, 14808, 26206, 36081, 56246
Non-rubber footwear quarterly statistical report, 18157
Open-end spun rayon singles yarn from—
Austria, 44344, 53760
Pasta from—
Italy, 4681, 38473
Turkey, 4681, 38473
Patent-based exclusion orders; extension in conformity with Uruguay Round Agreements Act (URAA), 5803
Persulfates from—
China, 37283, 46824
Plastic encapsulated integrated circuits, 49154
Polyvinyl alcohol from—
China et al., 5804, 24511
Production sharing; use of U.S. components and materials in foreign assembly (1992-1995), 24511
Random access memories, processes for manufacture of same, and products containing same, 11222
Salinomycin biomass and preparations containing same, 3462, 6024
Self-powered fiber optic modems, 19320, 56246
Sodium azide from—
Japan, 1784, 10596, 50330, 68055
Starter kill vehicle security systems from—
Taiwan, 16807, 43266
Steel concrete reinforcing bars from—
Turkey, 11063, 19958, 57451
Suits and suit-type jackets from—
Mexico, 64148
Tariff tariff and nontariff barriers to trade, liberalization; economic implications Symposium, 64365
Tomatoes and peppers, fresh or chilled, 24953
Toothbrushes and packaging thereof, 60304
Trade shifts om selected commodity areas; annual reports, 45456
Transport vehicle tires, 41180
U.S.-Africa trade flows and effects of Uruguay Round Agreements and U.S. trade and development policy, 35814
Variable speed wind turbines and components, 38473, 47958
Vector supercomputers from—
Japan, 41181, 50331
Meetings; Sunshine Act, 1206, 5063, 7049, 10788, 15831, 16934, 20541, 26545, 29424, 30921, 33537, 34862, 37078, 42266, 43076, 46664, 48971, 51129, 53386, 55015, 64531, 68055
Senior Executive Service:
Performance Review Board; membership, 37284
Uruguay Round Agreements Act (URAA), General Agreement on Tariffs and Trade (GATT):
Customs rules of origin international harmonization, 4485, 9197, 13214, 25688, 43560, 68295

Interstate Commerce Commission

NOTICES

Railroad operation, acquisition, construction, etc.:
Georgia & Florida Railroad Co., Inc., 412
Live Oak, Perry & Georgia Railroad Co., Inc., 413
Norfolk Southern Railway Co. et al., 413
Ortman, Raymond L., 414
Portland & Western Railroad, Inc., 414
Railroad services abandonment:
Boston & Maine Corp., 414
Canadian Pacific Ltd., 1194
Illinois Central Railroad Co., 354
Norfolk & Western Railway Co., 415
Southern Pacific Transportation Co., 416

James Madison Memorial Fellowship Foundation

RULES

Fellowship program requirements, 46734

PROPOSED RULES

Fellowship program requirements, 25612

Joint Board for Enrollment of Actuaries

NOTICES

Committees; establishment, renewal, termination, etc.:
Actuarial Examinations Advisory Committee, 24953
Meetings:
Actuarial Examinations Advisory Committee, 15919, 24954, 64792

Judicial Conference of the United States

NOTICES

Judicial Advisory Committee on Long Range Planning:
Federal Courts long range plan; Conference approval, 9198
Meetings:
Judicial Conference Advisory Committee on—
Appellate Procedure Rules, 1785, 9487, 26207, 35815, 40248, 56570
Bankruptcy Procedure Rules, 1785, 6657, 44345
Civil Procedure Rules, 6657, 44346
Criminal Procedure Rules, 6657, 44346, 59241
Evidence Procedure Rules, 6656, 54454
Practice and Procedure Rules, 26207, 44345, 44346, 59241

Justice Department

See Antitrust Division
See Drug Enforcement Administration
See Federal Bureau of Investigation
See Federal Prison Industries
See Foreign Claims Settlement Commission
See Immigration and Naturalization Service
See Justice Assistance Bureau
See Justice Programs Office
See Justice Statistics Bureau
See Juvenile Justice and Delinquency Prevention Office
See National Institute of Corrections
See National Institute of Justice
See Parole Commission
See Prisons Bureau
See Victims of Crime Office

RULES

Americans with Disabilities Act; implementation:
Accessibility guidelines—
Detectable warnings at curb ramps, hazardous vehicular areas, and reflecting pools, 39323
Antitrust Civil Process Act; submitted materials use and examination, 2116
Bankruptcy Reform Acts; internal procedural guidelines establishment, 24889
Civil Liberties Act redress provisions:
Persons of Japanese ancestry—
Individuals who relocated to Japan as minors during World War II; guidelines, 51008
Civil proceedings before U.S. magistrate judges; policy revision, 8472
Conflict of interests, 59811
Employment discrimination in programs or activities receiving Federal financial assistance; complaint procedures, 42556
Equal employment opportunity, 34729
Correction, 43119
Executive Office for Immigration Review:
Motions and appeals in immigration proceedings, 18900
Correction, 19976, 21065, 21228, 32924
Federal regulatory reform:
Civil Aeronautics Board decisions, recommendations to President; CFR part removed, 17575
Formula grants:
Juvenile Justice and Delinquency Prevention Office programs; clarification and guidance, 65132
Grants:
Police Corps eligibility and selection criteria; State plans submission, 49971, 69031
Organization, functions, and authority delegations:
Drug Enforcement Administration Diversion Investigators, 46720
Executive Office for Immigration Review; Immigration Appeals Board, 59305
Postmaster General, 66220
Policy statements:
Antitrust Procedures and Penalties Act—
Procedures for receipt and consideration of written comments; CFR section removed, 13763
Privacy Act; implementation, 6316, 6317, 6318, 65179
Technical amendments, 33657
Victims of Child Abuse Act; designation of agencies to receive and investigate reports, 7704

PROPOSED RULES

Americans with Disabilities Act:
Nondiscrimination on basis of disability—
Childrens' facilities in public accommodations and commercial facilities, 37964
Americans with Disabilities Act; implementation:
Accessibility guidelines—
Detectable warnings at curb ramps, hazardous vehicular areas, and reflecting pools, 16232
Bankruptcy Reform Act:
Standing trustees; qualifications and standards, 37426
Civil Liberties Act redress provisions:
Persons of Japanese ancestry, 17667, 29715
Individuals who relocated to Japan as minors during World War II; guidelines, 29716
Classified national security information and access to classified information; Federal regulatory review, 36678
Formula grants:
Juvenile Justice and Delinquency Prevention Office programs; clarification and guidance, 34770
Nondiscrimination on the basis of disability in State and local government services:
Curb ramps at existing pedestrian walkways; installation, 4389
Organization, functions, and authority delegations:
Executive Office for Immigration Review; free legal services list responsibility, 40552
Correction, 41684
Privacy Act; implementation, 37425, 54112
Semi-annual agenda, 23174, 62694

NOTICES

Agency information collection activities:
Proposed collection; comment request, 2531, 2532, 3054, 3945, 4791, 7280, 8075, 14809, 15110, 15304, 15516, 15517, 37285, 59458, 59894
Submission for OMB review; comment request, 1785, 29762, 40849, 42053, 42054
Alternative dispute resolution; case identification criteria; policy statements, 36895
Americans with Disabilities Act; barrier free design regulations certifications:
Texas, 26545, 51719
Public hearings, 26546
Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996; Title III provisions; summary, 24955
Federal procurement; affirmative action reforms proposal, 26042
Grants and cooperative agreements; availability, etc.:
Americans with Disabilities Act; technical assistance program, 25744

COPS innovative community policing; problem solving partnerships, 30095
COPS Making Officer Redeployment Effective program (FY 1996), 43076
COPS regional community policing institutes, 59241
COPS universal hiring program, 31549
Immigration related employment discrimination; public education program, 12097
Indian sovereignty and government-to-government relations with Indian Tribes; policy availability, 29424
Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act; implementation guidelines, 15110
Meetings:
Violence Against Women Advisory Council, 1602, 34447
Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:
Community programs necessary for life or safety under welfare reform; specification, 45985
Police Corps pilot program (FY 1996) implementation; State plans submission, 31550
Police Corps pilot program (FY 1997) implementation; State plans submission, 64531
Pollution control; consent judgments:
A&N Cleaners & Launderers, Inc., et al., 33944
ABB Vetco Gray, Inc., et al., 50869
AGSCO, Inc. et al., 54455
Alaska Railroad Corp. et al., 55170
ALCOA et al., 21488
Allen County Board of County Commissioners, OH, 10010
Allied-Signal, Inc., 11866
AlliedSignal, Inc., et al., 10596, 27367, 54215
American Cyanamid et al., 20274
American Locker Group, Inc., et al., 59459
American Recovery Co. et al., 15117, 50869
AM International, Inc., et al., 24512, 25890
Amro Realty Corp. et al., 67065
Amtel, Inc., et al., 6024
ARCO Pipe Line Co. et al., 39985
Armco Inc., 65420
ASARCO Inc., 36081
Atlantic Refining & Marketing Co., Inc., et al., 51129
Atlantic Richfield Co. et al., 42055
Avtex Fibers Front Royal, Inc., 1403
BASF Corp. et al., 64532
Billings, MT, 36393
Bliss, Russell Martin, et al., 41182
Blue Grass Chemical Specialties, L.P., et al., 32462
Brace, Robert, et al., 42055
Braselman Corp. et al., 33138
Bridgeview Joint Venture, 1404
Broward County, FL, 58590
Browning-Ferris Industries of Vermont, Inc., et al., 49481
Burlington Northern Railroad Co., 53760
Burmar Metal Finishing Corp. et al., 10010
Burrows, Elmer, et al., 10596
Cambridge Plating Co., Inc., 18411
Caribe Tuna, Inc., 11866
Cassidy et al., 29426
Cecil County, MD, Board of Commissioners, 54455
Chem-Tech Systems, Inc., 37285
Chevron Chemical Co. et al., 11431
Chevron U.S.A. Inc. et al., 30096
Christopherson, Richard R., 6025
Ciba-Geigy Corp., 33138
CITGO Asphalt Refining Co., 59459, 64948
Citizens Utility Co. of Illinois, 15117
City of Erie et al., 56706
City of San Diego et al., 68055
Cleveland Asbestos Abatement et al., 54816
Cline, Frederick T., et al., 48502, 48721
Coaters, Inc., et al., 51719
Collins & Aikman Products Co. et al., 48162
Consolidated Rail Corp. et al., 48162
Consolidation Coal Co. et al., 25241
Cornell-Dubilier Electronics, Inc., et al., 48163
CPF, Inc., 32462
Crown Paper Co. et al., 10597
Cumberland Farms, Inc., et al., 40248
Davis, William, et al., 65420
District of Columbia, 16265
Diversified Metals Corp., 54456
Electro-Voice, Inc., 2264
Elf Atochem North America, Inc., et al., 8642
Eljer Industries, Inc., et al., 16265
Elliott Drywall & Asbestos, Inc., 10598
Eveready Battery Co., Inc., 53761
Excel Corp., 46825
Exide Corp. et al., 38215
Fairchild Industries, Inc., et al., 39665
Farber, Benjamin, et al., 64366
Farmer Oil et al., 59242
Farmland Industries, Inc., 45457
Farmland Industries, Inc., et al., 14810
Federal Pacific Electric Co., Inc., et al., 54216
Fidelcor Business Credit Corp. et al., 11432, 26932
Fisher, David B., et al., 24512, 29426
Flour City Architectural Metals, Inc., et al., 18412
Fort Howard Corp., 15517
Freeman et al., 32857
Frimberger, Martin H., et al., 21488
FSW, Inc., 58590
General Electric Co., 16113, 51720
Georgia Pacific Corp., 42266
Genbaz, Dennis, et al., 42267
Glidden Co. et al., 29763
GNB Industrial Battery, Inc., 36393
Govani, Hargovind L., et al., 24330
Greenberg, Noreen, et al., 36394
H.K. Porter Co., Inc., et al., 64366
H.S. Finishing Products Corp., 14810
Harris Corp., 64367
Heleva, Stephen D., et al., 59243
Hercules et al., 8643, 54216, 67065
Hickel, 1404
Hindman, KY, et al., 16266
Hudson Foods, Inc., 54217
International Paper Co. et al., 15518, 49342, 58590
Interstate Distribution Center Associates, Ltd., et al., 5805
Invincible Metal Furniture Co., Inc., et al., 36394
Iroquois Pipeline Operating Co., 32463
Island Realty, Inc., 18413
IT Corp. et al., 14810
J&M Land Co. et al., 40658
Jefferson County et al., AL, 56706
John Morrell and Co., 7018
Johnson Controls, Inc., et al., 64367
Kaiser, Jordan et al., 54217
Ketchikan Pulp Co., 56706
Keystone Sanitation Co., Inc., et al., 18411, 25890
Kline, Richard A., et al., 30257
Koppers Industries, Inc., et al., 28596
Land Sea Air Leasing Corp., 54217
Lang, Sadeane, 50869
Lang, Sadeane, et al., 43077
LAR Labs, Inc., 56707
Leggett & Platt, Inc., 18412
Lone Star Industries, Inc., 11867
Louisiana-Pacific Corp., 16266
M&V Electroplating Corp., 55171
Macclenny, FL, et al., 22072
MAPCO Alaska Petroleum, Inc., 48163
Marathon Oil Co., 3730
Maryland Sand, Gravel & Stone Co. et al., 22072
Melroe Co., 36395
Merck & Co., Inc., 48502
Metallics, Inc., 46664, 57701
Mobil Mining & Minerals Co., 10598
Mobil Oil Corp., 30096
Monsanto Chemical Corp. of California et al., 30097
Motorola, Inc., et al., 25689
Municipal Authority of Union Township et al., 10598
Musselman, Scott A., 44346
Nalco Chemical Co. et al., 14579
New Boston Coke Corp., 24513
Niagara Transformer Corp., 1405
Northeast Food, Inc., 14811
Oaas, Torger L., et al., 18412
Occidental Chemical Corp. et al., 1405, 64368
Ohio Power Co., 16266
Parson's Co., 46825
Pegasus Gold Corp. et al., 41182
Peirce, 59460
Penta Wood Products, Inc., 7018
Pesses et al., 46826
Philips Electronics North America Corp. et al., 16267
Phillips, Perry et al., 54218
Pneumo Abex Corp. et al., 2265
Princeton Enterprises, Inc., et al., 67066
Publicker Industries Inc. et al., 1946
Puerto Rico Aqueduct and Sewer Authority, 56707
Quaker State Corp., 64369
Raymark Industries, Inc., et al., 48503
Regis, Raymond G., et al., 24513
Reliance Battery Manufacturing Co., 8643
Rhode Island Solid Waste Management Corp., 39985
Riehl, Ralph, et al., 1602, 4792, 25241, 42267, 57701, 64369
Ritschard Brothers, Inc., et al., 24807
Rohm & Haas Co. et al., 46826
Ron Brown Demolition Service & Rain Construction Co., 38215
Rosen, Richard B., 29427
Ruetgers-Nease Corp., 67066
Rueth Builders, Inc., 29763
Sanitary District of Hammond et al., 25689, 51130
San Juan Cement Co., Inc., 39666
Selleck, Inc., et al., 16114
Selma Pressure Treating Co. et al., 4792
Seminole Fertilizer Corp., 21489
Sheller Globe Corp. et al., 64532
Shell Oil Co., 4792
Shell Oil Co., Inc., et al., 54218
Sherwood Medical Co., 48164
Sierra Club et al., 30258
Simpson Timber Co. et al., 58591
Somersworth, NH, et al., 3731
Southern Ohio Coal Co., 6032
Spiller, Robert V., 21489
Stringfellow, J.B., Jr., et al., 25242
Sweat et al., 7018
Tacoma, WA, 10010
Telluride Co., 55171, 64921, 66060, 67574
TH Agriculture & Nutrition Co., Inc., et al., 2265

Thomas, Kenneth L., et al., 55172
Tonolli Corp., 22073
Tremont Landfill Co. et al., 33139
Tri-State Mint, Inc., et al., 1405
Ultramar, Inc., 30097
Union Oil Co. of California, 30098
USA Waste Services, Inc., 15518
Valentine, Dale, et al., 40658
Valley Concrete & Materials, Inc., 19089
Vigeant, Joyce, 55172
Waste Disposal Inc. et al., 14580
Waste Industries, Inc., et al., 3464
Watertown, SD, et al., 64369
Weirton Steel Corp., 58591
Western Crude Reserves, Inc., et al., 67066
Wheeling-Pittsburgh Steel Corp., 58591
Wormuth Brothers Foundry, Inc., 16114
Yellow Cab Cooperative Asssociation, 42267
Young Refining Co., 22073
Privacy Act:
Systems of records, 6385, 15118, 15518, 37495, 50870, 54219
Senior Executive Service:
Performance Review Boards; membership, 33944
Voting Rights Act certification:
Galveston County, TX, 65074
Jefferson County, TX, 65074

Justice Programs Office

RULES
Grants:
Violence against women; arrest policies in domestic violence cases, 40727
Grants for correctional facilities:
Indian Tribes program; violent offender incarceration and truth-in-sentencing, 49969
Correction, 54333
Motor Vehicle Theft Prevention Act; implementation:
Voluntary motor vehicle theft prevention program, 40723
State criminal illegal alien States assistance program regulations; CFR part removed, 38085
Young American Medals Program; implementation, 49259
PROPOSED RULES
Grants:
Violence against women; arrest policies in domestic violence cases, 24256
NOTICES
Agency information collection activities:
Proposed collection; comment request, 13216, 25506, 26547, 27100, 27101, 31551, 35815, 40850, 42270, 45458, 45459, 53456, 55820, 58893, 66061
Submission for OMB review; comment request, 28234, 28235, 46489, 48983, 56247, 67575, 67854
Grants and cooperative agreements; availability, etc.:
Corrections technical assistance and conference series, 49798
Criminal justice information policy program, 13217
National criminal history improvement program, 26212
Program plans (FY 1996), 21238, 25507
State corrections information systems inventory, 52809
State criminal alien assistance program, 38218

Juvenile Justice and Delinquency Prevention Office

NOTICES
Agency information collection activities:
Proposed collection; comment request, 16647, 18756, 26548, 28235, 40660, 41649, 41655, 56247
Submission for OMB review; comment request, 36083, 40851, 42057, 47527, 45528, 53766
Grants and cooperative agreements; availability, etc.:
Comprehensive program (FY 1995), 6456
Discretionary competitive program announcements and application kit (FY 1996), 37768
Missing and exploited children's program (FY 1996), 37286, 65436
Meetings:
Coalition for Juvenile Justice, 42057
Coordinating Council, 11266, 29573, 56570, 57712
revision,

Labor Department

See Employment and Training Administration
See Employment Standards Administration
See Federal Contract Compliance Programs Office
See Labor-Management Standards Office
See Labor Statistics Bureau
See Mine Safety and Health Administration
See Occupational Safety and Health Administration
See Pension and Welfare Benefits Administration
See Veterans Employment and Training, Office of Assistant Secretary
See Wage and Hour Division
See Workers' Compensation Programs Office
RULES
Conflict of interests, 57281
Federal Acquisition Streamlining Act of 1994; contract labor laws, 40714
Federal contracting agencies obligations; permanent replacement of lawfully striking employees; CFR part removed, 51596
Federal transit law guidelines; interests of employees affected; protection:
Effective date deferral due to furlough, 386
Effecve date confirmation, 2117
McNamara-O'Hara Service Contract Act:
Federal service contracts; labor standards; minimum health and welfare benefits requirements, 68647
Organization, functions, and authority delegations:
Administrative Review Board; establishment and review procedures, 19982
Correction, 32910
Work incentive programs for AFDC recipients under Social Security Act Title IV; CFR part removed; Federal regulatory reform, 33658
PROPOSED RULES
McNamara-O'Hara Service Contract Act:
Federal service contracts, labor standards; minimum health and welfare benefits requirements, 19770, 55239
Semi-annual agenda, 23232, 62748
Wage rates predetermination procedures; and construction and nonconstruction contracts; labor standards provisions:
Davis-Bacon semi-skilled helper regulations suspension continuation, 40366
NOTICES
Agency information collection activities:
Proposed collection; comment request, 13880, 16511, 30258, 57712, 60306
Submission for OMB review; comment request, 1947, 2267, 3055, 5571, 7536, 8978, 10382, 13881, 14819, 17323, 18158, 19959, 20541, 21499, 24333, 25690, 29134, 30259, 31150, 33539, 34447, 34873, 35817, 36084, 36758, 39154, 39669, 40452, 41429, 41656, 42661, 43078, 43385, 44078, 47178, 47772, 48794, 50877, 50878, 52060, 52061, 53457, 54456, 55015, 55315, 57453, 57902, 58218, 58592, 59243, 59460, 60118, 60306, 64761, 65239, 65597, 67854
Committees; establishment, renewal, termination, etc.:
Employee Welfare and Pension Benefit Plans Advisory Council, 39155, 50511
Grants and cooperative agreements; availability, etc.:
Job Accomodation Network service; employment opportunities for people with disabilities (FYs 1997-2002), 57713, 58894
National Skill Standards Board, 9498
Nontraditional Employment for Women Act—Demonstration program, 7806
Women in Apprenticeship and Nontraditional Occupations Act—Demonstration program, 31152
Meetings:
Child labor, abusive or exploitative; use in production of goods imported into U.S., 25898
Excellence in State and Local Government through Labor-Management Cooperation Task Force, 3056
North American Agreement on Labor Cooperation National Advisory Committee, 15306, 67348
President's Committee on International Labor Organization, 2533
School-to-Work Opportunities Advisory Council, 10331, 59222
Trade Negotiations and Trade Policy Labor Advisory Committee, 3056, 7816, 13518, 17729, 33140, 43779, 51463, 55821, 65240
Veterans Employment and Training Advisory Committee, 43078, 58894
North American Agreement on Labor Cooperation:
Communications Workers of America et al., 55598
Human Rights Watch Americas et al., 40453
Public hearing, 56064
Sudden plant closings effects and impact on principle of freedom of association and right of workers to organize—Public forum, 2533
Organization, functions, and authority delegations:
Administrative Review Board; establishment, 19978
Assistant Secretary for Employment Standards et al., 4289
Deputy Assistant Secretary, 24334, 31164
Senior Executive Service:
Performance Review Board; membership, 9721, 25690, 54457

Labor-Management Standards Office

RULES
Labor organizations administrative practices and financial transactions; computer-generated reporting forms uniformity, 67942
NOTICES
Agency information collection activities:
Proposed collection; comment request, 33945

Labor Statistics Bureau

NOTICES

Agency information collection activities:
  Proposed collection; comment request, 1410, 2542, 15308, 15310, 16122, 16648, 18626, 18627, 37091, 37768, 37769, 40458, 42663, 43079, 49488, 60119, 65240, 67350, 68299
Meetings:
  Business Research Advisory Council, 15122, 48511
  Labor Research Advisory Council, 17732, 56249
Monthly labor force statistics for certain subnational areas; unemployment rates, etc.; estimation method revision, 9574

Land Management Bureau

RULES

Alaska occupancy and use:
  Homestead settlements; obsolete regulations removed, 47724
  Correction, 49008
Federal regulatory reform:
  Federal timber contract payment modification; CFR subpart removed, 53860
  Recreation management procedures; CFR part removed, 29679
  Recreation programs; CFR part removed, 29678
Land resource management:
  Leases, permits and easements—
    Use, occupancy, development; permit decisions effective dates, 32351
Minerals management:
  Mining laws; use and occupancy, 37116
  Oil and gas leasing—
    Heavy oil; development promotion and royalty reduction, 4748
Organization, functions, and authority delegations:
  California State Office; address correction, 37686
Public land orders:
  Alaska, 4359
  California, 2137
  Colorado, 2138
  Idaho, 2138, 7223
  Oregon, 5719
  Washington, 4752
Public land orders table removed from CFR, 2137
Range management:
  Grazing administration—
    Fallback standards and guidelines; implementation postponement, 59834
  Leases; grazing administration consolidation, 29030
Recreation management restrictions, etc.:
  Shasta County, CA; motorized vehicles prohibition, 7077
Visual Resource—Management (Reserved); CFR group removed, 15722

PROPOSED RULES

Appeal and hearing procedures; revisions, 54120, 58160
Definitions consolidation and central glossary establishment, 58843
Disposition; grants:
  Carey Act grants; CFR part removal, 47725
Disposition; sales:
  Special areas: State irrigation districts; removal from CFR, 48454
Federal regulatory review:
  Recreation management; comment request, 15753
  Recreation programs; comment request, 15753
Forest management:
  Nonsale disposals—
    Timber on public lands and upon oil and gas leases; obsolete regulations removed, 48455
  Sustained-yield forest units; master units and cooperative sustained-yield units regulations removal, 58501
Geothermal resources leasing and operations; CFR parts consolidation, etc., 52736
Health. safety, and enforcement:
  Federal regulatory review, 28546
Indian allotments:
  Federal regulatory review, 53887
Land resource management:
  Disposition; sales—
    Townsites; land disposal for school purposes; CFR part removed, 51666
  Gifts—
    Donating land to Interior Department; deletion, 47853
  Land exchanges; streamlining and CFR parts removal, 64658
  Management, use, and protection of public lands—
    Criminal law enforcement provisions; consolidation, 57605, 66008
  Mineral lands nonmineral entries; CFR subpart removed, 56496
  National Forest exchanges, 47855
  Withdrawals—
    Alaska; National Petroleum Reserve; obsolete regulations removal, 54977
Marginal gas producers; production incentives through royalty reductions; comment request, 8537
Minerals management:
  Leasing of solid minerals other than coal and oil shale; Federal regulatory review, 54384
  Mineral materials sales; bonding and certificates of deposit requirements, 40373
  Mining claims validity and mill site claims eligibility; patenting information disclosure; rulemaking petition, 42407
  Multiple use; mining; and mining claims under general mining laws; CFR subparts removal, 51667
  Oil and gas leasing—
    Stripper oil properties; royalty rate reduction, 45926, 56651
  Special mining laws; areas subject to—
    Bowdie Bowl, CA; mineral activities, 57837
Patent preparation and issuance; CFR subpart removed, 42579
Preservation and conservation:
  Designated wilderness areas, 66968
  Federal regulatory review, 28546
Public administrative procedures:
  Public land records and policies; CFR subpart removed, 67517
Range management:
  Grazing administration—
    Alaska reindeer, 56497
    Fallback standards and guidelines; implementation postponement, 45385
  Wild free-roaming horses and burros; adoption fees, 36333
Recreation management:
  Management areas; CFR part removal, 47726
State grants:
  Alaska; CFR part removal, 58500
Wild and scenic rivers, 47726, 56651

NOTICES

Agency information collection activities:
  Proposed collection; comment request, 5797, 7272, 8636, 8638, 8639, 9719, 10377, 10383, 10782, 11059, 11649, 11860, 11861, 13208-13210, 13515, 13866-13869, 14575, 15509-15511, 16805, 37281, 46480, 50326, 67059
  Submission for OMB review; comment request, 11217, 24804, 26923, 28592, 29127, 38781, 59891
Alaska Native claims selection:
  Ahtna, Inc., 24805
  Akhiok-Kaguyak, Inc., 60115
  Alaska Peninsula Corp., 21476
  Alekna gik Native Ltd., 51461
  Arviq Inc., 25500
  Bering Straits Native Corp., 12084, 39466, 49478
  Brevig Mission Native Corp., 7536
  Calista Corp., 6861, 51461, 59238, 68287, 68772, 68773, 69108
  Chugach Alaska Corp., 50048, 50049, 51461
  Cook Inlet Area, Inc., 31144
  Doyon, Ltd., 5406, 21476, 33535, 41420
  Ellis, Ethel Lorene, 1392
  English Bay Corp., 1779
  Huna Totem Corp., 4478
  Justin, Calvin John, 15826
  Koniag, Inc., 65417, 67573
  Koniag, Inc. et al., 65417
  MTNT, Ltd., 19315
  NANA Regional Corp., Inc., 4478
  Natives of Afognak, Inc., 60723
  Natives of Kodiak, Inc.,
  Sealaska Corp., 11218
  Sitnasuak Native Corp., 19316
  Stevens Village, 67573
  Tanalian, Inc., 15826
  Tozitna, Ltd., 67573
Classification of public lands:
  California, 6255
  New Mexico, 37489
  Utah, 18406
Closure of public lands:
  Arizona, 3941, 29127, 43068, 68773
  California, 36752, 37490, 41177, 48719, 64530, 65074
  Colorado, 40847
  Idaho, 2527, 11862, 52457, 55840, 67060
  Nevada, 1942, 14333, 15827, 25236, 36563, 42649, 44074, 56566
  New Mexico, 11863, 25885, 37763, 56245
  Oregon, 4788, 5406, 5798, 11060, 14158, 16258, 16806, 18405, 18408, 18754, 24947, 37490, 42052, 43778, 53234, 56566, 56966
  Utah, 8071, 17908, 24805, 36078, 57449
  Washington, 18572, 36392, 36753
  Wyoming, 14159
Coal leases, exploration licenses, etc.:
  Alabama, 11218, 28592
  Colorado, 1392, 18406, 21476
  Montana, 27933, 39152, 49787, 58084, 64530, 65418, 65418
  North Dakota, 52054, 52055
  Oklahoma, 68287
  Utah, 19082, 33132, 64756, 67061
  Wyoming, 31543, 43265, 56966, 59457, 64919
Committees; establishment, renewal, termination, etc.:
  California Desert District Advisory Council; nominations request, 40244

Resource advisory councils—
  Arizona, 30635
  Bakersfield, CA, 15107, 26527
  Butte, MT, 16508
  Dakotas, 16508
  Eastern Washington, 16509, 19082
  Front Range, CO, 16259, 16932
  John-Day Snake, 16509
  Lewistown, 16508
  Lower Snake River, 15108
  Miles City, 16508
  Mojave-Southern Great Basin, 15960
  New Mexico, 15511
  Northeastern Great Basin, 15960
  Northwest Colorado, 16259
  Sierra Front-Northwestern Great Basin, 15960
  Southeastern Oregon, 16509, 51300
  Southwest Colorado, 16259
  Susanville, CA, 15107, 26527
  Ukiah, CA, 15107, 26527
  Upper Columbia-Salmon Clearwater, 15108
  Upper Snake River, 15108
  Wyoming, 16806
Environmental statements; availability, etc.:
  Alta Gold Co., Washoe County, NV, 30091
  Anadromous fish-producing watersheds management, ID, OR, and WA; interim strategies continuation, 68774
  Atlas Perlite, Inc., OR; Tucker Hill mining plan of operations, 4280
  Big Cedar Ridge Fossil Plant Area, WY, 1393
  California Desert Conservation Area, CA, 10783, 40655
    U.S. Army National Training Center, CA, et al.; land acquisition, 68289
  Carlin Trend, NV; Bootstrap open-pit mine reopening, etc., 9483
  Cedar City District, UT, 11864
  Copper Flat Mine Project, NM, 6861
  Cortez Pipeline Gold Deposit plan of operation, NV, 3049
  Cyprus Bagdad Copper Corp., Bagdad, AZ; tailings and waste rock disposal areas, 3942, 7050, 8970
  Denton-Rawhide Mine, NV; operations expansion, 56566
  Dos Pobres/San Juan copper ore bodies, AZ, 40429
  Eagle Mountain landfill and recycling center project, CA, 36754, 39663
  Expanded Moxa Arch Area, WY; natural gas development project, 31145
  Express Pipeline Inc., WY; crude oil transport between Wild Horse, Alberta, and Casper, WY, 7118, 21203
  Grass Creek Planning Area, Bighorn Basin Resource Area, WY, 38781
  Green River Resource Area, WY, 15301
  Helena National Forest et al., MT, 49726
  Imperial Project gold mining operation, Imperial County, CA, 56567
  Lake Abert area, OR, 45981
  Little Rock Mine Project, NM, 43266
  Lower Deschutes River management plan, OR, 10590
  Mesa County, CO; replacement raw water pipeline, 41420
  Mesquite Regional Landfill, CA, 10784
  Morenci Land Exchange, AZ, 7802, 53234
  Mule Canyon Gold Mine, NV, 19955
  Newmont Gold Co. bootstrap project, NV, 29128
  Palm Springs-South Coast Resource Area, CA, 57890
  Phillips County, MT; Zortman and Landusky mines reclamation plan modifications and mine life extensions, 14159
  Phoenix and Safford Districts, AZ, 6383
  Powder River Coal Region, MT, 1394
  Price Coalbed Methane Project, UT, 52055, 64531
  Rangeland health standards and grazing management guidelines, AZ, 40655, 41420, 65592
  Round Mountain Mine mill and tailings facility, NV, 5567
  San Juan County, UT; SUMMO USA Corp. Lisbon Valley open pit copper mine, 21477
  Talapoosa Mine project, NV, 2839, 53751
  Victory Bible Camp, AK, 6019
  Ward Valley, CA; land transfer to California for low-level radioactive waste disposal facility development, 34859
  White River Resource Area, CO, 34442
  Winnemucca District, NM—
    Santa Fe Pacific Gold Corp. Lone Tree Mine expansion project, 49479
    Twin Creeks Mine consolidation and expansion project, 34859, 67848
  Wyoming Powder River Basin, 58419
  Yalobusha Co., MS; land disposal suitability, 67061
Environmental statements; notice of intent:
  Alta Gold Co., Washoe County, NV, 37491
  Beaty Butte Allotment, OR, 67340
  California Desert Conservation Area, CA; open pit, heap leach gold mine, 13870, 30256
  Cave Gulch-Bullfrog-Waltman Natural Gas Development Project, WY, 11219
  COE Mosquito Creek Lake Project, OH; oil and gas resources leasing, 17909
  Continental Mine, NM; expansion project; meetings, 5022
  Cortez Gold Mines South Pipeline Project, NV, 60115
  Denton-Rawhide Mine, NV; operations expansion, 1943
  Farmington District, NM; cultural areas of critical environmental concern; designation, 7273
  Florida Canyon Mine expansion project, Pershing County, NV, 65593
  Gillette South Assessment Area, WY; coalbed methane development projects, 26527
  Interior Columbia Basin ecosystem management project, OR and WA, 47859
  Jonah Prospect Natural Gas Field, WY, 39466
  Judith-Valley-Phillips Resource Area, MT, 41650
  Kinross-Goldbanks Mine, NV; plan of operations, 56567
  Klamath and Modoc National Forests, CA; Fourmile Hill geothermal development project, 28887
  Louisiana Army Ammunition Plant, LA, 53932
  Michigan lighthouse planning analysis, 5798
  Midnite Uranium Mine reclamation, WA, 2528
  Rangeland health standards and grazing management guidelines, CA and NV, 3457, 4479, 5406, 12085
  South Baggs Area Natural Gas Project, WY, 1780
  Trenton Canyon Mine Project, NV, 48159
  Ward Valley, CA; land transfer to California for low-level radioactive waste disposal facility development, 24951
    Public scoping workshop; date and location change, 27935, 29449
Federal wildland fire management policy and program review, 5737
Management framework plans, etc.:
  Nevada, 43778
  Oregon, 13870
  Utah, 3457, 8640, 9191, 16259, 24805, 55992
Meetings:
  California Desert District Advisory Council, 16640, 50327
  Gila Box Riparian National Conservation Area Advisory Committee, 10591
  New Mexico, 10591
  Green River Basin Advisory Committee, 14160, 20833, 28230, 34859, 45454, 56568, 68051
  Helicopters and motorized vehicles use for gathering wild horses and burros, 1394
  Lewistown District Advisory Council, 19083
  Mojave-Southern Great Basin, 15827
  Northern and Eastern Colorado Desert coordinated management plan; public workshops, 661, 5799
  Powder River Regional Coal Team, 412, 10006
  Resource advisory councils—
    Alaska, 6019, 39980, 52955, 65418
    Arizona, 1394, 10590, 36392, 65230
    Bakersfield, CA, 7013, 14160, 37491, 55312
    Butte, MT, 9484, 15960, 21203, 35811, 47172, 57695
    California Desert, 3726, 6019, 57695
    Dakotas, 2258, 17718, 40848
    Eastern Washington, 13211, 15302, 20273, 24326, 24327, 33535, 36078, 36079
    Front Range, CO, 4789, 10591, 28888, 35811, 54452, 65594
    Idaho, 3726, 9192
    John Day-Snake, 13871, 30092, 53752
    Lewistown, 2529, 43558
    Lower Snake River, 354, 1395, 5022, 7014, 8072, 16260, 25500, 29424, 33764, 39152, 54813, 67341
    Lower Snake River District, 67341
    Miles City, 5022, 32458, 43376, 56967
    Mojave-Southern Great Basin, 1598, 3049, 8302, 19633, 26528, 42441, 53383, 55393
    Montana, 3726
    New Mexico, 1395, 36563, 42440, 52458, 55167, 65230
    Northeastern Great Basin, 4280, 10005, 25237, 42650, 49479, 66057
    Northwest Colorado, 1395, 4789, 18406, 40430, 47171, 54452, 65594
    Sierra Front/Northwestern Great Basin, 726, 4789, 14161, 16260, 24505, 69108
    Southeastern Oregon, 1396, 8072, 16260, 16932, 24947, 34859, 48501
    Southwest Colorado, 3458, 13871, 25886, 36752, 50863, 59891, 65594
    Susanville, CA, 21478, 51123
    Ukiah, CA, 6652, 24327, 41421, 64143
    Upper Columbia-Salmon Clearwater, 22071, 39152
    Upper Snake River, 2259, 18405, 20273, 39152, 41421, 54813, 59458
    Utah, 3050, 7014, 15827, 33536, 52806
    Wyoming, 1396, 15302, 26202, 39663
Motor vehicle use restrictions:
  California, 20834
  Colorado, 50049
  Linn County, OR, 26203
  Montana, 43559, 47172
  New Mexico, 59891
  Oregon, 5023, 6256, 7119, 11427, 49788, 64921, 68289
  Wyoming, 37491
National Historic Preservation Act; compliance:
  National programmatic agreement, 66057
National Wild and Scenic River System:
  Rio Grande National Wild and Scenic River, N.M.; boundaries, classification and development plans—
  Correction, 65594

Noxious weed-free forage; certified use requirement, 3727, 38469
Oil and gas leases:
Arizona, 5568
Arkansas, 17910
Colorado, 2259, 9193, 16260, 33535
Montana, 65418
New Mexico, 3727, 5023, 8072, 32458
North Dakota, 6653, 37492, 55993
Utah, 6653, 39663, 46481
Wyoming, 9193, 10785, 12085, 13515, 29758, 55815
Oil shale classification order of public lands:
Rock Springs, WY, 53752
Opening of public lands:
Arizona, 11650
California, 26924, 33764, 46481, 48160
Idaho, 43377
Montana, 18619, 43377, 50864
Nevada, 46819
Oregon, 24948
Utah, 33133
Washington, 35812
Wyoming, 4676
Organization, functions, and authority delegations:
Arizona State Office; relocation, address change, and office closure, 51123
California State Office; relocation, address change, and office closure, 21478, 31544
Postponement, 27933
Carlsbad Resource Area Office, NM; mailing address change, 16510
Idaho State Office; relocation, address change, and public room closure, 50050
Lake Havasu Field Office, AZ; mailing address and telephone number change, 46663
Lea County Inspection Station, NM; mailing address change, 36754
Roswell District Office and Roswell Resource Area Office, NM; mailing address change, 41649
Salmon Field Office, ID; mailing address change, 7014
Yuma District Office, AZ; mailing address and telephone number change, 15108, 16933
Pipeline right-of-way applications:
New Mexico, 34443
Protraction diagrams:
Idaho, 44075, 53235, 53383, 54453
Public land orders:
Alaska, 10592, 65074, 67341
Arizona, 16109, 26528, 46820, 49531, 53235
California, 24327, 24806, 29128, 29758, 36564, 58700, 59239, 60723
Colorado, 10592, 24806, 37492, 48719, 69108
Florida, 29129, 29758
Idaho, 12085, 14596, 34860, 48720, 53235
Montana, 38782, 38783, 47769, 60723
New Mexico, 29759, 38783
North Dakota, 36079, 37113
Oregon, 24948, 47954, 58216
Washington, 17910, 29759, 36564, 38783, 47769, 53932, 58701, 60116, 64757, 67061
Wyoming, 14577, 53752
Rangeland health and grazing management; State standards and guidelines:
Arizona, 3728, 7014
Montana, 53383, 56245
New Mexico, 25886, 32900
North Dakota, 53383, 56245
South Dakota, 53383, 56245
Utah, 68290
Realty actions; sales, leases, etc.:
Alaska, 2529, 12086, 15828, 21478, 24327, 36892, 57696, 67342
Arizona, 2259, 6257, 10593, 14161, 15512, 16109, 19316, 19634, 25687, 27933, 28889, 30916, 31145, 31545, 31948, 33536, 39980, 40656, 42261, 52458, 54813, 56703, 58588, 65419, 67342, 68290
California, 2260, 4814, 6019, 6257, 9192, 16109, 29129, 39664, 42650, 45454, 48720, 52056, 54814
Colorado, 7802, 9193, 10846, 11864, 14161, 15828, 24948, 37492, 50327, 53384
Florida, 17317
Idaho, 6257, 42912, 43377, 43778, 52056, 53383, 60301, 60724
Missouri, 51301
Montana, 11651, 16110, 34443, 64360
Nevada, 1944, 2260, 3942, 4479, 4790, 6258, 6259, 6653, 10006, 11427, 15512, 15960, 16510, 16933, 17718, 18620, 18650, 18754, 19634, 19955, 28593, 29760, 30092, 34860, 37282, 37764, 39980, 39981, 40430, 40431, 43559, 49479, 50050, 52057, 55168, 55313, 55993, 57891, 65230, 66693, 67062
New Mexico, 7015, 8072, 14808, 20273, 36755, 41649, 42261, 48966, 49339, 49788, 53236, 54453, 63857, 64360, 66693, 67062, 67343
Oregon, 10593, 29571, 30917, 33764, 42913, 57696, 64143
South Dakota, 26924
Utah, 5024, 6020, 8073, 8302, 8970, 25887, 33537, 37077, 39981, 60301
Wisconsin, 5800, 42441, 53236, 53237
Wyoming, 9194, 11428, 13516, 14333, 15303, 16510, 25887, 38213, 51462
Records of decision:
Winnemucca District, NM—
Santa Fe Pacific Gold Corp. Lone Tree Mine Expanison Project, 55312
Recreation management plans, etc.:
Butte County, CA; special area fee adjustment, 15303
Fort Meade Recreation Area, SD, 9194
Fortymile Management Area, AK, 39467
Interlakes Special Recreation Management Area, 63858
Recreation management restrictions, etc.:
Albuquerque District, NM; supplementary rules establishment, 21479
Antelope Springs Cave, UT; closed to public use, 65419
Barstow Resource Area, CA; recreational shooting restrictions; supplemental rule, 34861, 43068
Brunswick Canyon, NV; off-road vehicle use and firearms discharge prohibition, 64757
Buffalo Creek Area, WY; emergency closure of certain roads and trails, 58420
Caliente Resource Area, CA, visitor restrictions, 1943
Colorado public lands; underage possession of alcoholic beverages, handguns, and drug paraphernalia; supplementary rules establishment, 24949
Coos Bay District, OR; Loon Lake recreation areas camping limits, 15513
Dalton Highway Recreation Area, AK; supplemental rules establishment, 24949
Eagle Campground et al., AK; camping fees, 45982
Fourmile Canyon, AZ; campground user fee and supplementary rules, 7803, 12135
King Range National Conservation Area, CA; group use permits, 15961
Las Vegas District, NV; temporary occupancy and camping closure, 28593
Moab Area, UT et al.; vehicle use and motorized boating, etc., 60724
Muggins Mountains Wilderness, AZ; closure to surface disturbance and mineral extraction activities, etc., 31949
New River, OR; area of critical environmental concern; supplementary management rules, 16108
Outlaw Cave road and campground, Johnson County, WY; seasonal road closure to motorized vehicles, 54815
Palm Springs-South Coast Resource Area, CA; daily recreation usage fees adjustment, 1395
Potholes Recreation Site, CO; visitor use and travel restrictions, 27934
San Juan County, WA; supplementary rules establishment
Rifle discharging prohibition, 51716
Sawmill Canyon, ID; motorized vehicles prohibition, 31949
Storey County, NV; American Flat Millsite; closure to public occupation and off-road vehicle use, 67343
Teton County, MT; Ear Mountain Outstanding Natural Area; seasonal closure of trails, 33765
Tulsa District, TX, 1397
Uintah and Grand Counties, UT; temporary closure to camping, 31950
Utah public lands; alcohol consumption by underage drinkers; supplementary rules establishment, 32459
Yuma District, AZ, et al.; long-term visitor area program, 49789
Reports; availability, etc.:
Reinventing Government II (REGO II)—
Oil and gas inspection and enforcement and environmental compliance responsibilities; transfer to States and Indian tribes, 16641
Resource management plans, etc.:
Alturas Resource Area, CA, 41797
Big Dry Resource Area, MT, 25888, 29129
Bishop Resource Area, CA, 13872, 15162, 36755, 57697
Bodie Bowl area, CA, 66059
Book Cliffs Conservation Initiative area, UT, 32459
Caballo Resource Area, NM, 26203
Caliente and Ridgecrest Resource Areas, CA, 18156
Cedar-Beaver-Garfield-Antimony Resource Area et al., UT, 10594
Challis Resource Area, ID, 40431, 56568
Churchill County, NV, 25500, 43069
Diamond Mountain Resource Area et al., UT, 48161
Dixie Resource Area, UT, 1396
Escalante Resource Area et al., UT, 26924
Glenwood Springs Resource Area, CO, 37922
Headwaters Resource Area, MT, 53751
Hollister Resource Area, CA, 21483, 21484
Jarbidge Resource Area, ID, 45982
Judith Resource Area, MT, 68291
Klamath Falls Resource Area, OR, 13872, 67343
Lahontan Resource Area, NV, 14334
Le Flore County, OK, 6653
Medicine Lodge Resource Area, ID, 41422, 67062
Owyhee Resource Area, ID, 42052, 57891, 67574
Palm Springs-South Coast Resource Area, CA, 34444
Phillips Resource Area, MT, 68291
Pocatello Resource Area, ID, 18405
Pony Express Resource Area, UT, 32460
Powder River Resource Area, MT, 6256
Royal Gorge Resource Area, CO, 28594
Safford District, AZ, 38213
San Juan Resource Area, UT, 57892
San Luis Resource Area, CO, 7015
San Rafael Resource Area, UT, 53933, 59238
Sweet Grass Hills, MT, 25237
Taos Resource Area, NM and CO, 6383
Tulsa District, TX, 15108
Washoe County, NV, 50864
Yuma District, AZ, 10378, 39467, 41178, 55313
Sodium leases, exploration licenses, etc.:
Wyoming, 44342
Survey plat filings:
Arizona, 1397, 16261, 36079, 52806
Arkansas, 10594
California, 5024, 25888, 31545, 42441, 50327, 54454, 65419
Colorado, 1398, 11865, 13874, 15961, 19956, 31546, 35812, 50050, 55816, 59892
Florida, 54212
Idaho, 2261, 8073, 8971, 10785, 11865, 15109, 16262, 16933, 17317, 25888, 25889, 29760, 32855, 33537, 36564, 36565, 37492, 37765, 41178, 42442, 46482, 48720, 49480, 50865, 50865, 65231, 67063, 67848
Illinois, 66694
Missouri, 36080, 55649
Montana, 9195
Nevada, 1945, 6260, 35248, 53753, 65595
New Mexico, 37493, 55816
Oregon/Washington, 48161
Oregon and Washington, 1599, 10594, 24807, 36755
Utah, 20274, 37922
Wyoming, 3729, 11865, 21485, 31546, 47172, 56703, 67063
Withdrawal and reservation of lands:
Alaska, 59107
Arizona, 34861
California, 6020, 48161, 59892, 68291
Colorado, 52057, 58589, 67063
Idaho, 2529, 15513, 16510, 19083, 25016, 25501, 27365, 32855, 49340, 50865
Montana, 27366, 33175, 49480, 50803, 53933
Nevada, 2261, 13874, 18620, 30092, 36756, 39982, 55817, 57892, 63858
New Mexico, 25889, 58702, 63860, 66077
Oregon, 11061
Utah, 31546, 68774
Washington, 28594
Wyoming, 27367, 50803, 56568

Legal Services Corporation

RULES
Aliens; legal assistance restrictions, 45750
Attorneys' fees, 45762
Class actions:
Recipients involvement prohibition, 41963, 63754
Eviction proceedings; restriction of representation:
Persons engaged in illegal drug activity, 14250, 41965, 63756
Fund recipients:
Application of Federal law, 45760
Grants and contracts:
Competitive bidding, 14252
Legal assistance eligibility:
Income levels, 12041
Lobbying and certain other activities; restrictions, 45741
Non LSC funds use:
Client identity and statement of facts, 45740
Statutory restrictions; implementation, 41960, 63749
Priorities in use of resources, 45747
Prisoner representation, 45754
Redistricting:
Funds formerly unrestricted, 41964, 63755
Solicitation restriction, 45755
Subgrants, fees, and dues:
Prohibition of use of funds to pay membership dues to private or nonprofit organization, 45753
Timekeeping requirement; attorneys' and paralegals' time, 14261
Welfare reform, 45757
PROPOSED RULES
Fee-generating cases, 45765
Correction, 48529
NOTICES
Audit guide for LSC recipients and auditors; availability, 26225, 54816, 56065
Grant and cooperative agreement awards:
Legal Assitance of Ashtabula County, OH, 58085
Legal Services Corp. of Alabama, Inc., et al., 55827
Grants and contracts; competitive grant funds, 26225
Applicants list, 43081, 48985
Meetings; Sunshine Act, 6295, 6296, 9734, 21504, 21505, 33776, 36768, 36769, 49490, 52811, 57909, 60732, 64767, 65083, 68304
Priorities list for recipients, 26934, 57942

Libraries and Information Science, National Commission

See National Commission on Libraries and Information Science

Library of Congress

See Copyright Office, Library of Congress
RULES
Procedures and services:
Materials received from Federal agencies, volume and type; reduction, 49261
PROPOSED RULES
Procedures and services:
Materials received from Federal agencies, volume and type; reduction, 25839
NOTICES
Grants and cooperative agreements; availability, etc.:
National Digital Library program, 51130
Television and video preservation in U.S., study; public hearing, 171

Management and Budget Office

See Federal Procurement Policy Office
PROPOSED RULES
National security information; classification, downgrading, declassification, and safeguarding, 48855
OMB personnel as witnesses in litigation; release of official information and testimony, 66232
Semi-annual agenda, 23802, 63300
Unified agenda of Federal regulatory and deregulatory actions, statement on, 22701
NOTICES
Accounting for property, plant, and equipment; document availability, 29579
Agency information collection activities:
Proposed collection; comment request, 14338, 27109
Submission for OMB review; comment request, 1413, 14338, 59917
Audits of institutions of higher education and other non-profit institutions; revisions (Circular A-133), 19134
Audits of states, local governments, and non-profit organizations (OMB Circular A-133); inclusion of Circular A-28, 57232
Balanced Budget and Emergency Deficit Control Reaffirmation Act (Gramm-Rudman-Hollings):
Sequestration update report; transmittal to President and Congress, 2549, 43272, 58715
Budget rescissions and deferrals, 7160, 8691, 10812, 13350, 17915, 26226, 34909, 66172
Cumulative reports, 2882, 11903, 16940, 26230, 31966, 38476, 42956, 50404
Circulars, etc.:
A-21, 20880
A-25, 56360
A-28, 57232
A-33, 57232
A-76, 14338
A-94, 6397
A-106, 1654
A-130, 6428
A-133, 19134
A-119, 68312
Commercial activities performance (A-76), 14338, 26939
Cost-effectiveness analysis of Federal programs; discount rates (Circular A-94), 6397
Cost principles for educational institutions (Circular A-21), 20880
Designated Federal entities and Federal entities; list, 50514
Environmental pollution prevention, control, and abatement at existing Federal facilities; reporting requirements (Circular A-106), 1654
Federal Acquisition Streamlining Act; implementation:
Non-statutory certifications contained in procurement rules, 49801
Federal financial accounting standards:
Accounting for liabilities of the Federal Government; availability, 4295
Revenue and other financing sources accounting and budgetary and financial accounting reconciliation concepts; document availability, 39164
Federal information resources management (Circular A-130):
Federal automated information resources security, 6428
Lobbying restrictions; government guidance, 1412
North American Industry Classification System; standard industrial classification replacement:
Adoption and implementation, 57006
Crop and animal production, forestry and logging, etc., 4524
Food manufacturing, grain and oilseed milling, etc., 26558
Industry structure, hierarchy and coding system development; comment request, 35384
Statistical information confidentiality, 2876
User fees (Circular A-25), 56360
Voluntary consensus standards and conformity assessment activities; Federal participation (Circular A-119), 68312

Marine Mammal Commission

NOTICES
Meetings; Sunshine Act, 46829

Maritime Administration

RULES
Cargo preference—U.S. flag vessels:
Available U.S.-flag commercial vessels, 24895

Federal claims collection:
Civil monetary penalties; inflation adjustment, 56900
Federal regulatory reform:
War risk insurance, 1130
Subsidized vessels and operators:
Bulk cargo vessels; operating-differential subsidy, surveys, and maintenance and repair subsidy, 32705
Maritime security program (10-year); establishment, 53861, 58663
Vessel financing assistance:
Obligation guarantees; program administration, 21302

PROPOSED RULES

Cargo preference—U.S. flag vessels:
Available U.S.-flag commercial vessels, 9670, 67764
Exclusive carriage of export cargo
Available U.S.-flag commercial vessels, 55614

NOTICES

Agency information collection activities:
Proposed collection; comment request, 9223, 11934, 11937, 22082, 25265, 25733, 25935, 28634, 41680, 41819, 41820, 43116, 44118, 55067, 63924
Submission for OMB review; comment request, 30108
Capital construction fund, nonqualified withdrawals; interest rates, 60321
Grants and cooperative agreements; availability, etc.:
Maritime security program; U.S. vessels in foreign commerce of United States, 53483
Marine hull insurance:
Foreign underwriters applications—
Ace Ltd., 63925
Meetings:
Diversion of cargo from U.S. east coast ports, causes; public outreach meeting, 68329
Joint Planning Advisory Group, 16528, 38243
Mortgagees and trustees; applicants approval, disapproval, etc.:
CoreStates Bank N.A., 55067
Deposit Guaranty National Bank, 11234
Fifth Third Bank, 34925
First Union Bank of Connecticut, 27126
First Union National Bank, 50069
First Union National Bank of Virginia, 50069
Fleet National Bank, 29446, 40067
Nationsbanc Leasing Corp., 1203
Seattle-First National Bank, 34925
Wells Fargo Bank, National Association, 55067
Obligation guarantees (Title XI) citizenship requirements of program participants; conforming agency procedures to statutory change, 56996
U.S. East Coast ports, causes of cargo diversion; comment request, 58095
War risk program, 25936
Insurance renewal, 9517
Applications, hearings, determinations, etc.:
Alaska Cargo Transport, Inc., 59131
American President Lines, Ltd., 10617, 25936
BSTC Holding Inc., 18461
Chestnut Shipping Co. et al., 3078
Crowley American Transport, Inc., 57724
Farrel Lines Inc., 36415
Lykes Bros. Steamship Co., Inc., 40067
Matson Navigation Co., Inc., 55685
Mormac Marine Transport, Inc., 4706
OMI Courier Transport, Inc., et al., 5834
OMI Patriot Transport, Inc., et al., 10423
OSG Car Carriers, Inc., 58603
Sargeant Marine, Inc., 68091
Sea-Land Services, Inc.,
Sea-Trader Co., 59133
Weston Shipping Inc., 16020

Merit Systems Protection Board

RULES

Practice and procedure:
Personnel actions civil monetary penalty assessments; inflation adjustment, 49049
Regional offices realignment—
Geographical jurisdiction, 4585
Practices and procedures:
Personnel actions, appealable; statutory and regulatory citations; update, 1

NOTICES

Meetings; Sunshine Act, 3088, 52467, 53239
Opportunity to file amicus brief in Forrest v. Agriculture Department, 33142
Privacy Act:
Systems of records, 33946, 34448
Toll free information line, 22075

Mexico and United States, International Boundary and Water Commission

See International Boundary and Water Commission, United States and Mexico

Minerals Management Service

RULES

Outer Continental Shelf; oil, gas, and sulphur operations:
Incorporations by reference; amendments, 60019
Leases; continuance beyond primary term, 55885
Leases; drilling requirements, 55887
Liquid hydrocarbons; burning, 25147
Tracts offered for sale; high bids, acceptance or rejection; time period extension, 34730
Outer Continental Shelf oil and gas leasing:
Deepwater royalty relief for new leases; royalty suspension terms, 12022
Royalty management:
Coal washing and transportation allowances; valuation regulations, 5448
Oil and gas transportation and processing allowances; valuation regulations, 5448
Outer Continental Shelf lease bidding systems, 3600
Royalty relief for deep water producing leases and existing leases, 27263, 40734, 48834

PROPOSED RULES

Administrative appeals process, 55607, 67515
Federal claims collection:
Civil money penalties; inflation adjustment, 56966
Outer Continental Shelf; oil, gas, and sulphur operations:
Federal regulatory review; request for comments, 25160
Leases; continuance beyond primary term, 18309
Leases; drilling requirements, 28528
Safety and pollution prevention equipment; quality assurance, 66639
Surety bond coverage for leases, 8901
Tracts offered for sale; high bids, acceptance or rejection; time period extension, 24466
Unitization; model unit agreements, 27525, 41541
Royalty management:
Central Gulf of Mexico—
Leasing policies; meeting, 6958, 7089
Federal Gas Valuation Negotiated Rulemaking Advisory Committee—
Meetings, 21997
Federal leases; natural gas valuation regulations; amendments, 25421, 37865
Federal Oil and Gas Royalty Simplification and Fairness Act of 1996; implementation strategies development—
Public meeting, 55941
Federal regulatory review; request for comments, 25160
Gas produced from Federal and Indian leases; gas royalties and deductions for gas transportation calculations, 39931, 48872
Indian Gas Valuation Negotiated Rulemaking Committee—
Meetings, 4390, 17266
Natural gas from Indian leases; valuation, 49894, 59849
Public meetings, 52735
Outer Continental Shelf Deep Water Royalty Relief Act; implementation—
Public meeting, 7089
Royalties; rentals, bonuses, and other monies due the Federal Government; collection, 17266, 28829
Rulemaking petitions:
Outer Continental Shelf; claimed aboriginal title and aboriginal hunting and fishing rights of federally recognized tribes in Alaska, 8538

NOTICES

Agency information collection activities:
Proposed collection; comment request, 15961, 15962, 19316, 29130, 31547, 36565, 47173, 55817, 59893, 60116
Submission for OMB review; comment request, 7274, 35248, 35249, 43378, 47174, 50051, 56967, 56968
Emergency response plans:
National Response Team's integrated contingency plan guidance; availability, 28642
Environmental statements; availability, etc.:
Alaska OCS—
Lease sales, 1945, 3052, 24507
Central and Western Gulf of Mexico OCS—
Lease sales, 19317, 67064
Gulf of Mexico OCS—
Lease sales, 24507
Oil and gas operations, 3458, 19317, 39983, 57698
Outer Continental Shelf oil and gas leasing 5-year program, 44343
Outer Continental Shelf oil and gas leasing program (1997-2002), 5256, 7016, 46482
Environmental statements; notice of intent:
Alaska OCS—
Lease sales, 57892
Gulf of Mexico OCS—
Louisiana Barrier shoreline restoration effort, 19084
Federal offshore mineral leases; de minimis amount for recoupments, 7016
Meetings:
Minerals Management Advisory Board, 13874, 19085, 22071, 48966, 56245, 58892
Outer Continental Shelf; oil, gas, and sulphur operations:
Blowout preventer testing and maintenance requirements; public workshop, 66309
Drilling operations, 4480
Lessee and contractor employees training programs, using third parties to certify, 31548
Safety and Environmental Management Program strategies, 37493

Outer Continental Shelf operations:
Alaska OCS—
Aboriginal title and rights claims; information request, 8640
Lease sales, 15964, 42682, 48502, 51123
Leasing systems, 42651
Oil and gas operations protraction diagrams; availability, 36566
Central Gulf of Mexico—
Lease sales, 12087, 15338, 37765, 40245, 55993
Leasing systems, 12086
Gulf of Mexico OCS—
Oil and gas operations protraction diagrams; availability, 30093
Lessees and operators notices (NTL) issued by each OCS region and National Office, 26925
Oil and gas leases; bid adequacy procedures modification, 14162
Oil and gas lease sales; restricted joint bidders list, 15968, 54213
Oil and gas leasing program (1997-2002), 5264
Sand and gravel resources lease sale, 25501, 54213
Western Gulf of Mexico—
Lease sales, 42714
Leasing systems, 42651
Outer Continental Shelf operations: International Platform and Pipeline Decommissioning Workshop et al.; recommendations, 41422
Royalty management program:
Electronic Data Interchange (EDI); presentation, 7017, 38784
Reduction of royalty or net profit share, 4481

Mine Safety and Health Administration

RULES

Coal mine safety and health:
Underground coal mines—
Personal noise dosimeters use, 45322
Ventilation; safety standards, 9764, 20877, 26441, 29287
Ventilation; safety standards; CFR correction, 55567
Underground coal mining—
Diesel-powered equipment; usage approval, exhaust gas monitoring, and safety requirements, 55412
Metal mine safety and health:
Explosives, 36790
First aid safety standards, 50432
Workplace examinations; program policy, 42787
Mining products; testing, evaluation, and approval user fees, 1686
Nonmetal mine safety and health:
Explosives, 36790
First aid safety standards, 50432

PROPOSED RULES

Coal mine safety and health:
Occupational noise exposure, 66348
Education and training:
Training and retraining of miners; policy review, 2215, 11350
Metal mine safety and health:
Occupational noise exposure, 66348
Mining products; testing, evaluation, and approval:
Flame safety lamps and single-shot blasting units; CFR parts removed, 45925
Nationally recognized testing laboratories, testing and evaluation by; equivalent testing and evaluation requirements
Hearing, 15743
Nonmetal mine safety and health:
Occupational noise exposure, 66348
Respirable coal mine dust; occupational exposure; NIOSH criteria document:
Response, 18308

NOTICES

Agency information collection activities:
Proposed collection; comment request, 4682, 14580, 14582, 32859, 37091, 37770, 37771, 40858, 47772, 68061, 68062, 69113
Committees; establishment, renewal, termination, etc.:
Pneumoconiosis Elimination Among Coal Mine Workers Advisory Committee; membership, 2543
Meetings:
Pneumoconiosis Elimination Among Coal Mine Workers Advisory Committee, 2543, 13519, 24334, 28600, 35269
Mine shaft atmospheric conditions; respirable dust sample, 10012, 16123
Public hearing, 18150
Mining products; testing, evaluation, and approval user adjustments fee, 68300
Petitions for safety standard modifications; summary of affirmative decisions, 25913, 40859
Pneumoconiosis Elimination Among Coal Mine Workers Advisory Committee:
Report, 60120
Respirable coal mine dust; occupational exposure; NIOSH criteria document; response time extension, 731
Safety standard petitions:
Energy West Mining Co. et al., 13881
Kade Coal Co., Inc., et al., 33140
Mackie J. Coal Co., Inc., et al., 8304
Mountain Coal Co. et al., 64372
Old Ben Coal Co. et al., 47192
Pace Mining & Processing, Inc., et al., 17732
Pilgrim Mining Co., Inc., et al., 38785
Serendipity Mining, Inc. et al., 42915
Sidney Coal Co., Inc., et al., 57458
West End Coal Co. et al., 20543

Mine Safety and Health Federal Review Commission

See Federal Mine Safety and Health Review Commission

Mines Bureau

NOTICES

Committees; establishment, renewal, termination, etc.:
Advisory Board; charter termination, 8641

Minority Business Development Agency

NOTICES

Business development center program applications:
California, 7093, 29731
California et al., 29733
Florida, 28847, 66261
Florida et al., 35726, 64693
Hampton Roads, 43043
Illinois, 30856, 30858
Illinois et al., 29735
Kentucky, 48128
Maryland, 67531
Massachusetts, 37245
Massachusetts et al., 29078
Mississippi, 19046
New Mexico, 28850
New York and New Jersey, 28851
Oklahoma, 7093
South Carolina, 33715, 35726, 40408, 48129
South Carolina et al., 29737
Texas, 36711
Texas et al., 29738, 42232
Business development program:
Cost-share requirements; increase, 27336
Community-based enhanced services initiative alternative; implementation, 8919
Grants and cooperative agreements; availability, etc.:
Capital development center; nationwide, 37047
Cancellation, 60092
Native American business development center program applications:
Arizona, 43044
California, 43044

Mississippi River Commission

NOTICES

Meetings; Sunshine Act, 9206, 41185

Morris K. Udall Scholarship & Excellence in National Environmental Policy Foundation

NOTICES

Meetings; Sunshine Act, 9531, 49491, 50883

National Aeronautics and Space Administration

RULES

Acquisition regulations:
Alcohol and drug testing programs, 7224
Civil Space Employee Testing Act of 1991; implementation—
Federal regulatory reform, 5312
FAR supplement (NFS); rewrite, 40533, 52325
Federal regulatory reform, 47068, 55753, 55765, 56271
Government property reporting by contractors, 47032
Japanese products and services, 6577, 42394
Shared savings clause, 64823
Cooperative agreements with commercial firms, 13396
Federal Acquisition Regulation (FAR):
Accounting guide availability, 2640
Agency procurement protests, 39219
Allowable cost and payment clause; cost-type contracts, 67418
Alternative dispute resolution and Federal Courts Administration Act, 31658
Armed Services Pricing Manual; replacement, 31620
Automatic data processing equipment, definition; and leasing costs cost principle deleted, 69287
Caribbean Basin countries, 31649
Child care services, 31660
Circular 90-37; introduction and summary, 2626
Circular 90-39; introduction and summary, 31612
Circular 90-40; introduction, 39186
Circular 90-44; introduction and summary, 69286
Claims assignment, 18920
Commercial items contracts and subcontract; cost accounting standards exemption, 67418
Community right-to-know; toxic chemical release reporting, 41473
Computer network and micro-purchase procedures, 39189
Contingent fee representation, 39188

Contract award; sealed bidding; construction, 31663
Contract cost principles and procedures—
Agency supplements, 31655
Foreign differential pay, 69294
Contract modifications, 69297
Contractor gratuities to government personnel, 39199
Contractor overhead—
Certification, 67422
Contractor qualifications; "manufacturer" or "regular dealer" requirement, 67409
Contractor responsibility determinations; use of commercial sources of supplier information, 39201
Contractors' purchasing systems reviews and subcontractor consent, 2641
Contract qualifications; unfair trade practices; made in America labels, 2631
Convict labor use, 31643
Cost accounting standards; interest rate clause revisions, 18921
Cost Accounting Standards Board regulations applicable to educational institutions, 18916
Cost-effective value engineering procedures and processes, 39220
Data Universal Numbering System; use as primary contractor identification, 67412
Debarment and suspension certificate; tax evasion, 2632
Defense Production Act amendments, 31659
Deviations, individual and class; submission requirement elimination, 67411
Disaster Relief Act activities, 39200
Double-sided copying on recycled paper, 31616
Drug-free workplace; certification requirements, 69291
Existing contracts modification, 18915
Federal procurement data system; information collection, 67426
Field pricing support request, 2634
Final indirect cost rates, 69295
Flowdown to subcontractors contract clauses; reduction, 67425
Fluctuating exchange rates, 31650
Foreign purchases; restrictions, 41475
Immigration and Nationality Act employment provisions; contractor compliance, 41472
Indian-owned economic enterprises; subcontracting costs recovery, 39210
Information Technology Management Reform Act of 1996; implementation, 41467
Inherently governmental functions, 2627
Inspection clauses; fixed price, 31665
Insurance; liability to third persons, 2639
Irrevocable letters of credit and alternatives to Miller Act bonds, 31651
Javits-Wagner-O'Day program, 2630
Justification and approval thresholds, 31618
Late bid offers consideration, 69292
Legal proceedings costs, 41476
Legislative lobbying costs, 31656
Local government lobbying costs, 67424
Long-lived assets gains and losses; impairment, 67423
Major system; dollar thresholds, 69288
Master subcontracting plans, 31642
Mentor-protege program, 2637, 67419
Minority small business and capital ownership development program, 67420
Miscellaneous amendments, 67408
Introduction, 41466
Streamlining, 18914
Multiyear contracting, 39203
National Industrial Security Program Operating Manual, 31617
Nonallowability of excise taxes on nondeductible contributions to deferred compensation plans, 2641
Nonprofit institutions clause prescription, 2633
North American Free Trade Agreement Implementation Act; implementation, 31646
Overhead should-cost reviews, 2635
Ozone depleting substances; items containing, using or manufactured with, 31645
Patent use without authorization; General Agreement on Tariffs and Trade (GATT), 39211
Payment by electronic funds transfer, 45770
Performance and payment bonds, 39212
Personal services compensation costs, 39217
Postponement of bid openings or closing dates, 31619
Preaward debriefing, 69288
Predetermined indirect cost rates, 31621
Prompt payment overseas, 31658
Quality assurance actions; electronic screening, 31661
Quality assurance nonconformances, 31662
Quick-closeout procedures, 31660
Records retention, 31655
Small Business Administration; authority to issue certificate of competency determinations, 2636
Small business competitiveness demonstration program; extension, 31643, 67422
Small business innovation research program rights in data, 31664
Small business set-asides; simplified acquisition threshold, 39207
Small business size standards, 31622
Small entity compliance guide, 39224, 41477, 45775, 67430, 69298
Solicitation provisions; contract clauses, 31663
Subcontracting plans, 2638
Subcontract proposal audits, 2634
Task and delivery order contracts, 39201
Technical amendments, 67430
Termination for convenience, 31665
Termination inventory schedules, 39221
Travel costs, 31657
U.S. and European Economic Community; memorandum of understanding; government procurement and sanctions imposed on European Community, 31618
Uruguay Round Agreement Act (URAA), General Agreement on Tariffs and Trade (GATT); implementation, 2454, 31646
Grants and cooperative agreements; uniform administrative requirements:
Uniform administrative requirements and definitions; higher education institutions, hospitals, and other nonprofit organizations (OMB-110), 38058
Tracking and data relay satellite system (TDRSS):
Estimated service rates (CY 1997), 46713

PROPOSED RULES

Acquisition regulations:
Contractor financial management reporting, 55264
FAR supplement (NFS); rewrite—
Contractors and offerors certification requirements; non-statutory, 66643
Federal Acquisition Regulation (FAR):
ADP/telecommunications Federal Supply Schedules Advantage! program, etc., 52844
Bid and proposal costs definition; withdrawn, 50114
Business meals; withdrawn, 52998
Certified cost or pricing data requirement; exception, 41214
Commercial items; special simplified procedures application, 47384
Commercial items contracts and subcontracts; cost accounting standards exemption, 32312
Competitive range determinations, 40116, 52999, 58622
Contingent fees; withdrawn, 52998
Contract administration and audit cognizance, 65306
Contracting by negotiation—
Competitive range determinations; withdrawn, 14944
Phase I rewrite, 48380, 52998, 57622
Contractor acquisition of ADPE; withdrawn, 14944
Contractor overhead—
Certification, 14216
Rates; final settlement process, 39518
Contractors and offerors—
Certification requirements removed, 48354, 49402, 52232
Contractor selection process; past performance information use requirements; withdrawn, 14944
Contracts, fixed-priced; performance incentives, 31798
Costs related to legal/other proceedings, 31790
Defense Authorization Act; implementation, 6760
Design-build two-phase construction procedures, 41212
Drug-free workplace; certification requirements, 31814
Employee stock ownership plans; comment period extension, 234
Evaluation factors; withdrawn, 14944
Federal Acquisition Streamlining Act of 1994; implementation—
Commercially available off-the-shelf item acquisition, 22010
Final indirect cost rates, 26766
Foreign purchases; restrictions, 6910
Foreign selling costs, 31800
Historically black colleges and universities/ minority institutions; collection of award data, 31792
Independent research and development/bid and proposal in cooperative arrangements, 31796
Independent research and development bid and proposal costs ceiling; requirement removed (FY 1996 and beyond), 58452
Late bid offers consideration, 18480
Management oversight of service contracting, 14946
Nonstatutory certifications elimination; public meeting, 24263, 26496
Novation and change-of-name agreements, 43294
Performance-based payments, 47798
Preaward debriefings, 32580
Procurement integrity, 47390
Semi-annual agenda, 23900, 63386
Service contracting, 40284
Simplified acquisition procedures, 48532
Semi-annual agenda, 23764, 63266

NOTICES

Advisory committees; report on closed meetings; availability, 3057.
Agency information collection activities:
Proposed collection; comment request, 37049, 54239, 55172, 55326, 60094
Submission for OMB review; comment request, 4769, 63831
Committees; establishment, renewal, termination, etc.:
Advisory Council et al., 7281

NASA/Industry Process Action Team for Procurement Issues
Membership solicitation, 53459
Environmental statements; availability, etc.:
Advanced Space Transportation Program; engine technology support, 58426
International space station program, 29429
Near Earth asteroid rendezvous mission, 1950
Environmental statements; notice of intent:
X-33 vehicle design and flight demonstration program, 52467
Federal Acquisition Regulation (FAR):
Agency information collection activities:
Proposed collection; comment request, 60685
Agency information collection activities—
Proposed collection; comment request, 3375, 3676-3678, 14745, 14746, 50003
Submission for OMB review; comment request, 1897, 1898, 2496, 3374-3387, 3679, 3680, 3911, 4419, 5753, 9983, 15053-15056, 15470, 15471, 16241, 16242, 26892, 31090, 32775-32777, 40288, 44041, 47893, 51083
Inventions, Government-owned; availability for licensing, 29430, 30638, 36091, 36092, 36572, 37092, 38227, 39670, 53239, 55173, 58428, 67575, 69113
Meetings:
Advisory Council, 15312, 16513, 36398, 52469
Advisory Council task forces, 6390, 29430, 41663
Aeronautics Advisory Committee, 3493, 4494, 6390, 19643, 22075, 40662, 46490, 46829, 48721, 48988, 59916, 67576
Aerospace Safety Advisory Panel, 3057
Earth Systems Science and Applications Advisory Committee, 11652
International Space Station Advisory Committee, 31169, 42919, 46830, 56709
Life and Microgravity Sciences and Applications Advisory Committee, 10385, 14337, 18761, 26935, 28601, 42920, 47773, 51131, 64173
Minority Business Resource Advisory Committee, 10034, 29431, 48174
Procurement policies and practices; open forum, 33142
Space Science Advisory Committee, 3494, 15836, 16809, 20839, 25507, 37093, 40663, 41663, 42920, 46667, 67576
Technology and Commercialization Advisory Committee, 9501, 12107
Patent licenses; non-exclusive, exclusive, or partially exclusive:
3M Co., 3057, 8687
Active Control eXperts, Inc., 46830
Air Products & Chemicals, Inc., 8687
Aqua-Terra-Aqua Technologies Corp., 8687
ARCO Chemical Co., 21210
Atlas Technology Corp., 8688
Bishop Industries, Inc., 42920
CASI, Inc., 15312
Compix Inc., 64767
Computer Sciences Corp., 17734
Consulting Associates, Inc., 38227
Containerless Processing, Inc., 33776
Containerless Research, Inc., 38475
Drexelbrook Engineering Co., 42920
Ensinger, Inc., 54239
Hargraves Technology Corp., 30639
HITCO Technologies, Inc., et al., 36092, 38228
Honeywell, Inc., 46490
Imidyne Corp., 5586, 43563
Imitech, Inc., 3494
Institute for Research, Inc., 51131
Invention Factory, 8688
J&J Engineering, Inc., 38228
Kinetic Concepts, Inc., 37771
Laser Technology Inc., 3058
Lee Associates, Inc., 8688
LoTEC, Inc., 10385
Marotta Scientific Controls, Inc., 29137
Microcosm, Inc., 8688
Moen Inc., 8688
Morgan Matroc, Inc., 42921
NextGen Systems, Inc., 28248
QSound Labs, Inc., 15313
Ranbar Electrical Materials, Inc., 54239
Rochester Gas & Electric Corp., 46830
SafetySCAN, LLC, 37937
Science & Technology Corp., 11897
Scientific Instruments, Inc., 51131
SpaceTec, Inc., 54240
SR Technology, Inc., 13884
Staged Vibration Corp., 37772
Synkinetics, Inc., 37772
Tech 2000, L.L.C., 68305
Tennessee Valley Performance Products, Inc., 54240
ThermTech Services, Inc., 53981
Trex Medical Corp., 38228
UbiquiTex Technologies Corp., 11227, 48174, 55173
UE Systems Inc., 3058
Vanguard Space Corp., 37937
Vannevar New Media, Inc., 5586
Veatronics Corp., 11897
VISTA Automation Systems, Inc., 3058
Wessex, L.L.C., 15313
Wheelock, Inc., 38228
Senior Executive Service:
Performance Review Board; membership, 53239

National Agricultural Statistics Service

NOTICES

Agency information collection activities:
Proposed collection; comment request, 9145, 9146, 16750, 24759, 33707, 33708, 58166

National Archives and Records Administration

See Federal Register Office
See Information Security Oversight Office

RULES

Conflict of interests, 40505
Grants and agreements administration:
Uniform administrative requirements and definitions; higher education institutions, hospitals, and other nonprofit organizations (OMB A-110), 5660
National Historical Publications and Records Commission; grant program procedures, 5656
Nixon Presidential historical materials; preservation, protection, and access procedures, 17842
Public availability and use:
Suitland research room—
Closure, 14971
Location of records and hours of use, 390
Washington National Records Center remaining archival records; appointment system establishment, 14971
Records management:
Audiovisual records management, 32335
Federal records disposition—
Federal records centers; maintenance reimbursement requirements for records kept beyond disposal date, 19552, 24702

PROPOSED RULES

Records management:
Electronic records transfer; timing and acceptable transfer media forms, 39373
Semi-annual agenda, 23774, 63276

NOTICES

Agency information collection activities:
Proposed collection; comment request, 40466, 43388, 68305
Submission for OMB review; comment request, 53981, 69113
Agency records schedules; availability, 2543, 4801, 8078, 9501, 13221, 15525, 16123, 18628, 19643, 25245, 28601, 30262, 34449, 36769, 39162, 41798, 44091, 49491, 49492, 52469, 55017, 56710, 58896, 64539, 65604, 69114
Archival still photographs, aerial film, maps, and drawings; ordering reproductions:
Vendors; public meetings, 560, 65421
Committees; establishment, renewal, termination, etc.:
Presidential Libraries Advisory Committee, 40250
Meetings:
Presidential Libraries Advisory Committee, 20287
Records of Congress Advisory Committee, 42271, 63873
Nixon Presidential historical materials; opening of additional Nixon White House tapes, 53460, 58253
Nixon Presidential historical materials from White House special files; opening of materials, 48722
Organization, functions, and authority delegations:
Move to Archives II, College Park, MD—
Reference service on certain textual records; temporary closure, 15146
Privacy Act:
Records transfer, 36573
Senior Executive Service:
Performance Review Board; membership, 2544

National Bankruptcy Review Commission

NOTICES

Meetings, 4683, 14583, 19961, 28248, 34880, 46668, 51721, 59244, 64374

National Biological Service

NOTICES

Federal wildland fire management policy and program review, 5737

National Capital Planning Commission

NOTICES

Agency information collection activities:
Submission for OMB review; comment request, 66061
Environmental statements; notice of intent:
Washington, D.C. convention center; construction and operation, 44092
Historic Preservation Review Board; proposed Convention Center effects on historic properties; public meeting, 67577
Memorandums of agreement:
Washington, DC; Pennsylvania Avenue development and redevelopment, 41789
Senior Executive Service:
Performance Review Board; membership, 55669

National Commission on Libraries and Information Science

NOTICES

Meetings; Sunshine Act, 39669, 58085, 60732

National Communications System

NOTICES

Federal telecommunications standards:
  Telecommunications—
    Project 25 land mobile radio standards; availability, 18446
Meetings:
  National Security Telecommunications Advisory Committee, 416, 4683, 11652, 21506
  Telecommunications Service Priority System Oversight Committee, 7281, 36093
Telecommunications operations directives:
  Communications resource information sharing initiative, 43388

National Council on Disability

NOTICES

Meetings; Sunshine Act, 2001, 15147, 29431, 51306

National Credit Union Administration

RULES

Credit unions:
  Community development revolving loan program, 50694
  Loan interest rates, 4213
  Management official interlocks, 50698
  Organization and operations—
    Chartering and membership field policy; senior citizens and retirees; interpretive ruling and policy statement, 11721
    Membership fields restructuring, permission; interpretive ruling and policy statement, 59305
    Secondary capital from foundations and other philanthropic-minded institutional investors, 3788, 50696
    Supervisory committee audits and verifications, 41312
  Share insurance payment and unposted dividends, earned or accrued, payment appeals, 60185
  Suspicious activity report, conformance; nomenclature changes, 11526
Federal debt collection:
  Civil monetary penalties; inflation adjustment, 57290
National Flood Insurance Reform Act of 1994; implementation:
  Loans in special flood hazard areas, 45684
Organization and operations:
  Small nonautomated credit unions; Truth in Savings compliance exemption; loan approval to officials; threshold increase, 68127
Organization, functions, and authority delegations:
  Chief Financial Officer et al., 45875
Practice and procedure:
  Board procedure rules; agenda items determination, 55207
  Uniform and local rules, 28021
Truth in Savings Act; implementation:
  Reporting and recordkeeping requirements, 114

PROPOSED RULES

Credit unions:
  Community development revolving loan program, 4238
  Corporate credit unions—
    Capital strengthening risk management and control, 38117
    Requirements for insurance, 28085, 41750
  Insurance requirements—
    Financial and statistical reports; federally-insured credit unions direct assessment for cost of repeated inaccurate or late filings, 4236
  Investment and deposit activities, 8499, 29697, 41750
  Management official interlocks, 12043
  Share insurance payment and unposted dividends, earned or accrued, payment appeals, 36663
Semi-annual agenda, 24032, 63518

NOTICES

Agency information collection activities:
  Proposed collection; comment request, 731, 16270, 30922, 55018, 67577
  Submission for OMB review; comment request, 11897
Alternative dispute resolution; pilot project, 11433
Credit Unions:
  Community development revolving loan program; applications, 68802
Meetings; Sunshine Act, 1668, 1669, 6296, 9734, 15525, 19090, 24837, 31557, 34450, 37772, 48512, 53460, 58594, 64173, 64922, 66337, 67068, 67577
Privacy Act:
  Systems of records, 8689

National Drug Control Policy Office

NOTICES

Committees; establishment, renewal, termination, etc.:
  Drug Control Research, Data, and Evaluation Committee, 8622
Senior Executive Service:
  Performance Review Board; membership, 40864

National Education Goals Panel

NOTICES

Meetings:, 2544, 28904, 57479

National Foundation on the Arts and the Humanities

PROPOSED RULES

Semi-annual agenda:
  Federal Council on the Arts and the Humanities, 23780
  Museum Services Institute, 23782
  National Endowment for the Arts, 23784, 63282
  National Endowment for the Humanities, 23786, 63284

NOTICES

Agency information collection activities:
  Proposed collection; comment request, 25919, 44292, 58594, 68802
  Submission for OMB review; comment request, 40394
Grants and cooperative agreements; availability, etc.:
  Arts and artisits involvement in substance abuse prevention; publication, 33548
  Arts residencies, one-year, in Federal correctional institutions, 30923
  Institute of Museum Service; general operating support, etc., 50511, 56572
  Learning in museums research, 20545
  National Health Care and Insurance Center for the Arts; artists' health insurance project, 12107
  Playwrights' theater residency program, 21506
  Your Town: Designing its Future, 34789
Meetings:
  Arts and Artifacts Indemnity Panel Advisory Committee, 19090, 59245
  Arts in Education Advisory Panel, 43331
  Arts National Council, 4293, 17326, 43331, 56572, 60311
  Combined Arts Advisory Panel, 43331, 50883, 59245, 68063
  Fellowships Advisory Panel, 52811
  Humanities National Council, 10385, 36550, 56250
  Humanities Panel, 2545, 10386, 12108, 19091, 27104, 34790, 39944, 46435, 52812, 56250, 64374, 68063
  International Advisory Panel, 21506
  Leadership Initiatives Advisory Panel, 43332
  Media Arts Advisory Panel, 2545
  Music Advisory Panel, 13884, 41373
  Partnership Advisory Panel, 59245
  President's Committee on Arts and Humanities, 2545, 17326, 50513
Meetings; Sunshine Act, 2580, 15313, 44292
Organization, functions, and authority delegations:
  National Endowment for the Arts; restructure, 51306
Senior Executive Service:
  Performance Review Board; membership, 53460

National Highway Traffic Safety Administration

RULES

Alcohol traffic safety program, incentive grant criteria; CFR part removed, 18247
Alternative fuel vehicles; manufacturing incentives, 14507
  Petition for reconsideration denied, 46740
Consumer information:
  Course monitoring tires; fees, 47825
  Uniform tire quality grading standards, 47437
  Vehicle stopping distance information requirement; rescission, 2946
Drunk driving prevention programs; incentive grant criteria, 9101, 55218
Federal regulatory reform:
  Highway safety program standards; applicability to Federally administered areas; CFR part removed, 28750
  Invoking sanctions against States under the 1996 Highway Safety Act; rules of procedure, 28745
Fuel economy standards:
  Light trucks; 1998 model year, 14680, 25595
  Passenger automobiles; low volume manufacturer exemptions, 4369, 67491
Insurer reporting requirements:
  Insurers required to file motor vehicle theft loss experiences reports; list, 41985
Motor vehicle content labeling; passenger cars and light vehicles; domestic and foreign content information, 17253, 46385
Motor vehicle safety standards:
  Air brake systems—
    Air compressors on buses; cut-in pressure, 6173, 60635
    Long-stroke brake chambers; trucks, buses and trailers, 36516
    Medium and heavy vehicles stability and control during braking; malfunction indicator lamps, 49691
    Standard clarification and simplification, 27288
  Antilock brake systems—
    Medium and heavy vehicles; stability and control during braking, etc., 1152, 5949
  Brake hoses—
    Addresses and dates update; manufacturer designation filing procedures; Federal regulatory review, 9953
  Whip resistance test, 41510

Child restraint systems—
  Booster seat safety; test dummies use in compliance tests, 30824
  Booster seat safety; voluntary compliance date, 4938
  Booster seats, child harnesses, etc.; use in aircraft; manufacturers labeling requirements, 28423
  Colorfastness requirements removed; Federal regulatory reform, 20170
  Rear-facing infant; interaction between child restraints and air bags; cutoff devices; correction, 13108
Door locks and door retention components, 39904
Federal regulatory reform—
  Vehicle identification number (VIN) physical requirements; consolidation, 29031
Fuel system integrity—
  Compressed natural gas fuel containers, 19202, 47086
  Light vehicles, schoolbuses and fuel spillage/barrier crash tests; deletion, 19201
Glazing materials—
  Rigid plastic, 41739
Hydraulic brake systems—
  Optional burnish procedure; deletion, 19561
Lamps, reflective devices, and associated equipment—
  Headlamp concealment devices; Federal regulatory reform, 49976
  Headlamps; visible color other than white; petition denied, 4370
  High intensity discharge light source use in replaceable bulb headlamp systems, 20497
  Motorcycle headlamps; new photometric requirements, 45359
  Retroreflective sheeting or reflex reflectors for rear of truck tractors, 41355
Manufacturers' obligations to provide notification and remedy without charge to owners of vehicles or items not complying with safety standards, 274
Nonconforming vehicles—
  Importation eligibility; determinations; list, 51242
Occupant crash protection—
  Head restraints, 27023
  Hybrid III test dummy; modifications, 67953
  Lockable lap belts or lap belt portions of seat belt assemblies; CFR correction, 25845
  Smart air bags, vehicles without; warning labels, manual cutoff switches, etc. reduction of dangerous impacts on children, 60206, 64297, 65187
Pneumatic tires, new and retreaded, and tire selection and rims; for vehicles other than passenger cars; Federal regulatory reform, 29493
Rear impact guards for heavy trailers and semitrailers; equipment and vehicle standards; rear impact protection, 2004
Reflecting surfaces standard rescissions; Federal regulatory reform, 11587
Seat belt assemblies—
  Anchorages; owner's manual information requirements deletion, 19560
  Colorfastness requirements removed; Federal regulatory reform, 20170
Wheel nuts, wheel discs, and hub caps; winged projections; Federal regulatory reform, 20172
Motor vehicle safety standards and consumer information:
  Truck-camper loading; Federal regulatory reform, 36655
Motor vehicle theft prevention standard:
  High theft lines for 1997 model year; listing, 15390
  Passenger motor vehicle theft data (CY 1993), 1228
National Highway System Designation Act; implementation:
  Operation of motor vehicles by intoxicated minors; Federal-aid highway funds withholding; zero tolerance laws sanction program implementation, 55213
National Highway System Designation Act of 1995; implementation:
  Compliance and transfer of funds procedures—
    Motorcycle helmet use legislation references and requirements; removed, 28747
National Traffic and Motor Vehicle Safety Act:
  New importers registration and importation of nonconforming vehicles—
    Fee schedule, 51043
Organization, functions, and authority delegations:
  Chief Counsel, 26468
Speed limit enforcement certification:
  National maximum speed limit compliance program; repeal effective date delay in five States, 11305, 9101

PROPOSED RULES

Automotive fuel economy reports:
  Federal regulatory review—
    Semi-annual reports; form and contents, 22010
Federal regulatory review:
  Invoking sanctions against States under the 1966 Highway Safety Act; rules of procedure, 11794
Fuel economy standards:
  Light trucks—
    1998 model year, 145, 2228
  Passenger automobiles; low volume manufacturer exemptions, 39429, 46756, 67518
Insurer reporting requirements:
  Insurers required to file reports; list, 15443
Lamps, Reflective Devices, and Associated Equipment Negotiated Rulemaking Committee:
  Meetings, 5370, 26872
Motor vehicle safety standards:
  Accelerator control systems; Federal regulatory review, 19020
  Air brake systems—
    Automatic drain valves and air dryers, 56652
  Bumper standard—
    Golf carts and other small light-weight vehicles, 30848
  Child restraint systems—
    Universal anchorage systems; public workshop, 47728, 49427
  Controls and displays, accessibility and visibility; Federal regulatory review, 27039
  Convex cross mirrors; petition denied, 30586
  Door locks and door retention components—
    Side doors equipped with wheelchair ramps; exclusion, 27325
  Federal regulatory review—
    Small volume manufacturers; public meetings, 4249
  Front stop lamps; petition denied, 10556
  Head restraints; regulation design and effectiveness report, 66992
  Heavy vehicle safety performance; public meeting, 44031
  Hill-holder for manual transmission cars, trucks, and sport utility vehicles; petition denied, 38135
  Hydraulic brake systems—
    Light vehicle brake systems, 19602
  Lamps, reflective devices, and associated equipment—
    Auxiliary signal lamps and safety lighting inventions; comment request, 65510
  Clearance, side marker, and identification lamps, and backup lamps; petition denied, 28123
  Front amber turn signal bulbs; aftermarket sales requirement; petition denied, 14044
  Headlamp concealment devices; Federal regulatory review, 16073
  Headlamps; visual/optical aiming, 36334, 43033
  Heavy truck conspicuity; evaluation plan, 33891
  Motorcycle headlamps; new photometric requirements, 6616
  Reflectors or reflective tape on driver side door or jamb; new cars, light trucks and sport utility vehicles; petition denied, 38135
  Reflex reflector standard update; petition denied, 14044
  Safety performance; public meeting, 10979
  Upper beam headlamps intensity increase from 75,000 to 140,000 cd; petition denied, 54981
  Mirror systems safety; public meeting, 4624
  Motor vehicles, motor vehicle engines and the environment; international regulatory harmonization, 58362
  Occupant crash protection—
    Head protection zone requirements; petition denied, 50268
    Safety belt fit improvement; Type 2 safety belts for adjustable seats in automobiles with gross weight of 10,000 pounds or less, 39432
    Seat belt assembly anchorages, Type II; certification, 24265
    Smart air bags, vehicles without; warning labels, manual cutoff switches, etc. reduction of dangerous impacts on children, 40784
    Test dummies containment; standard requirement that dummy remain in vehicle during crash test, 45927
  Occupant protection in interior impact—
    Head impact protection, 9136
  Passenger car brake systems—
    Antilock brake systems for light vehicles; rulemaking deferred, 36698
  Power-operated window, partition, and roof panel systems, 28124, 58504
    Correction, 30209
  Rollover prevention; consumer information—
    Stability label for light vehicles, 28560
  Rollover stability; reconsideration petition denied, 28550
  School bus manufacturers and school transportation providers; regional public meetings, 31086
  School bus transportation; public meeting, 51669
  Side impact protection—
    Light trucks, buses, and multipurpose passenger vehicles; petition denied, 24263
    Side impact test dummy specifications; lumbar spine inserts-spacers and ribcage damper pistons, 49992
  Steering locks; theft protection; petition denied, 60070
  Tires—
    New non-pneumatic for passenger cars, withdrawn; Federal regulatory review, 15917
    Visual indication of tread depth wear; petition denied, 2991

Warning devices; Federal regulatory review, 29337
Windshields—
Defrosting and defogging systems; Federal regulatory review, 15449
Wiping and washing systems; Federal regulatory review, 15446
Motor vehicle safety standards and consumer information:
Truck-camper loading, 5730
National Driver Register Problem Driver Pointer System:
Transition procedures, 16729
National Highway System Designation Act; implementation:
Operation of motor vehicles by intoxicated minors; Federal-aid highway funds withholding; zero tolerance laws sanction program implementation, 9121
National Traffic and Motor Vehicle Safety Act:
New importers registration and importation of nonconforming vehicles—
Fee schedule, 32411

NOTICES

Agency information collection activities:
Proposed collection; comment request, 10423, 15860, 36776, 36778, 44391, 49808, 52769, 55067, 60740, 65629, 67592, 68810-68812
Child safety seats, purchase and distribution; agreement between General Motors and DOT; qualification certification criteria, 14194
Committees; establishment, renewal, termination, etc.:
NAFTA Automotive Standards Council; working groups, 28636
Crash avoidance implementation plan; draft availability, 16281
Fatal accident reporting system users; public meeting, 7850
Fuel economy program, automotive; annual report to Congress, 20311
Grants and cooperative agreements; availability, etc.:
Crash Outcome Data Evaluation Systems (CODES) for unfunded states, 60741
National occupant protection program; seat belt use increase in rural areas, 33574
Occupant protection systems and vehicle crash worthiness research program, 15861
Patterns for Life Program; child passenger safety, pedestrian safety, and bicycle helmet safety, 26948
Safe communities concept for traffic safety initiatives; demonstration and evaluation, 15156
State highway safety pilot program (FY 1997); procedures waivers, 46895
Highway safety programs breath alcohol testing devices:
Model specifications and conforming products list, 3078
Evidential devices, 3078
Insurance cost information booklet; availability, 16020
Meetings:
International Harmonization of Safety Standards; meetings schedule, 9741, 50370
Motor Vehicle Safety Research Advisory Committee, 8706
Safety performance standards, research and safety assurance programs, 60154
Motor vehicle defect proceedings; petitions, etc.:
Chevedden, John, 6290
Ciano, Frank J., 57514
General Motors Corp., 64563
Mierzejewski, Randall H., 58095
Pittle, R. David, 10059
Vermont, Philip G., 2327
Walsh-Dempsey, Mary, 65427
Motor vehicle occupant safety survey; comment request, 21528
Motor vehicle safety standards:
International regulatory harmonization, 30657, 38200
Nonconforming vehicles—
Importation eligibility; determinations, 367, 1664, 1816, 3521, 6291, 6684, 6685, 6887, 6889-6891, 8097, 9004, 11675, 11676, 12129, 12131, 15332, 15334, 15335, 15864, 15865, 17950, 17951, 18188, 18190, 20326, 21529-21531, 25265-25267, 25269, 29788-29791, 29793, 31216, 32891-32893, 33577, 33578, 36416, 37107-37109, 38511, 38512, 38795, 38796, 39507-39509, 40068-40073, 40703, 46897, 46899, 47545, 50371, 51739, 51740, 52990, 52992, 52993, 54252, 56997, 56998, 66742
Occupant crash protection—
Fatality reduction by air bags; evaluation report; review, 53260
Motor vehicle safety standards; exemption petitions, etc.:
Cantab Motors, Ltd., 9517
Capacity of Texas, Inc., 58604
Chrysler Corp., 2570, 5061
Cosco, Inc., 55836
Ford Motor Co., 13566, 55686
General Motors Corp., 1663, 2865, 52493, 56734, 60746, 66744
Michelin North America, Inc., 3962, 32895, 32896, 49522, 59487
Nissan Motor Corp., U.S.A., 66744
Panoz Auto Development Co., 2866
Philips Lighting Co., U.S.A., 66745
Whitfield, R.A., 50372
Motor vehicle theft prevention standard:
Passenger motor vehicle theft data (CY 1994), 10424, 50069
Motor vehicle theft prevention standard; exemption petitions, etc.:
BMW of North America, Inc., 6292
General Motors Corp., 12132, 25734
Isuzu Motors America, Inc., 24852
Porsche Cars of North America, Inc., 34498
National accident sampling system users; public meeting, 14849
National Award for Advancement of Motor Vehicle Research and Development; eligibility requirements and request for nominations, 56262
Privacy Act:
Systems of records, 66747
Reports; availability, etc.:
Light truck capabilities, utility requirements and uses; implications for fuel economy, 36779
Updated vehicle survivability and vehicle miles traveled schedules, 7299
Research and development projects, 42083, 43398, 47544
Public meeting, 5438, 8706, 24528, 29446
Safety performance standards, research and safety assurance programs, 4512, 18463, 41681, 50604
Scientific research and development projects presentations; public meeting, 58738
Agenda, 64945
Speed limit enforcement certification:
National maximum speed limit repeal; study of associated State costs and benefits, 31212, 60738

National Indian Gaming Commission

PROPOSED RULES

Semi-annual agenda, 24040, 63524

NOTICES

Agency information collection activities:
Proposed collection; comment request, 11227
Submission for OMB review; comment request, 11228
Annual fees payable by Class II gaming operations; fee rates, 11064
Indian Gaming Regulatory Act:
Class III tribal gaming ordinances; approval, 31963

National Institute for Literacy

NOTICES

Agency information collection activities:
Proposed collection; comment request, 17325, 18162, 18445, 18446, 20545, 32465
Submission for OMB review; comment request, 33542
Grants and cooperative agreements; availability, etc.:
Adult learning system reform and improvement—
Adult literacy basic skills instruction grassroots planning process, 41799
Equipped for the future adult literacy standards, 55019
Governor's State literacy resource centers—
National Electronic Information and Communication Network for Literacy; regional hub establishment on Internet, 41805
Literacy leader fellowship program, 29575, 37498
Meetings:
Advisory Board, 1605, 20287, 55025

National Institute of Corrections

NOTICES

Grants and cooperative agreements; availability, etc.:
Criminal justice system project; training and technical assistance program, 68785
Paroling authorities structured release and violation guidelines project, 68785
Probation and parole violations responding at local level project, 68786
Program plan (FY 1997), 42914
Meetings:
Advisory Board, 5410, 30102, 52811
Prison Construction Standardization and Techniques Task Force, 11652, 41798

National Institute of Justice

NOTICES

Executive Seminar Series on sentencing and corrections research forum; proposals, 29133
Grants and cooperative agreements; availability, etc.:
Arrest policies evaluation program, 42056
Boot camp research and evaluation, 8978
"Breaking the Cycle" demonstration project; evaluation, 52957
Community-oriented policing technology research and development partnership projects, 28235
Forensic DNA Laboratory Improvement Program, 52957
High intensity drug trafficking areas program evaluation, 18411
Jackson County, MO; community-backed anti-drug tax (COMBAT) initiative, 16268

Law enforcement and corrections technology, 30921, 40660
Law enforcement family support—
Law enforcement officers and their families; stress reduction demonstration and training programs, 32464
Policing research and evaluation, 30921
Residential substance abuse treatment for State prisoners program evaluations, 42056, 43779
Sentencing reforms and their effects on corrections; evaluation and research, 30921
Violence against women; research and evaluation, 36398

National Institute of Standards and Technology

RULES

Fastener Quality Act; implementation:
Fastener quality procedures, 50538

NOTICES

Agency information collection activities:
Proposed collection; comment request, 19047, 24288, 53355, 67770
Committees; establishment, renewal, termination, etc.:
Manufacturing Extension Partnership National Advisory Board, 51913
Fastener laboratory accreditation program and accreditation body evaluation programs; applications request, 50582
Fastener Quality Act; consensus standards organizations, list, 50582
Grants and cooperative agreements; availability, etc.:
Advanced technology program (ATP), 27050, 64336
Fire research program, 14742
Manufacturing extension partnership program, 20242
Materials Science and Engineering Grant Program; research in ceramics, metallurgy, etc., 16752
Motor vehicle manufacturing technology and healthcare information infrastructure; advanced technology program (FY 1997), 68716
NIST Physics Laboratory 1996 Summer undergraduate research fellowships, 5983
Physics Laboratory 1997 Summer Undergraduate Research Fellowships, 68717
Precision measurement program, 55787
Information processing standards, Federal:
Computer Graphics Metafile (CGM), 16754
Electronic data interchange (EDI), 25627
Federal Building Telecommunications Wiring Standard, 15783
Group 3 facsimile apparatus for document transmission, etc., 10986
Initial graphics exchange specification, 17876
Perforated tape code information interchange, etc.; withdrawn, 26891
Standards and guidelines; proposed withdrawal of 2, 46444
Termination of five validation services, 54776
Video/Teletext Presentation Level Protocol Syntax (North American PLPS); withdrawal, 9976
Inventions, Government-owned; availability for licensing, 7475, 27866, 43230, 43345
Low-level light standards development, luminometry; public meeting, 5986
Meetings:
Advanced Technology Visiting Committee, 7093, 22025, 28853, 43735, 59863
Clamp-on time-of-travel ultrasonic flow meter test program; cooperative research consortium, 4258
Computer System Security and Privacy Advisory Board, 8568, 25480, 43345, 63830
Cooperative research and development for CD-metrology below 0.25 microns support consortium; commercially available reference standards, 56521
Environmentally safe and fire-retardant materials; cooperative research consortium, 4257
Fastener Quality Act Advisory Committee, 18569
International Laboratory Accreditation Conference, 39120
International organization of legal metrology, U.S. technical participation in 10th Quadrennial Conference, 44298
Malcolm Baldrige National Quality Awards—
Board of Overseers, 9977, 49438
Panel of Judges, 9977, 26165, 37246, 49437
Manufacturing engineering tool kits project; cooperative research and development consortium, 25480
Weights and Measures National Conference, 36711, 68720
National Council for Laboratory Accreditation establishment; public meetings, 58533
National Fire Codes:
Fire safety standards, 30858, 64067
Technical committee reports, 30859, 64068
National voluntary conformity assessment system evaluation program:, 53718
European Union (EU) commerce; conformity assessment body status consideration, 20513, 54157
PFS/TECO Corp.; third party product certification bodies evaluation and accreditation program, 42004
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Pasadena Scientific Industries, 51434
Reports; availability, etc.:
Laboratory Accreditation Working Group; open forum proceedings, 47891
Voluntary product standards:
American Lumber Standard Committee—
American softwood lumber, 34798, 55617
American Petroleum Institute—
Equipment, operations and processes, 4255
Petroleum test laboratory accreditation program, 16759
Pipelines risk management, etc., 41381
Glass Packaging Institute—
Glass bottles for carbonated soft drinks; withdrawn, 14555, 44299

National Institutes of Health

NOTICES

Agency information collection activities:
Proposed collection; comment request, 2836, 7266, 7267, 10001, 11851, 13205, 19943, 25884, 29106, 29567, 30089, 33937, 43063, 43251, 43556, 49472, 53228, 55158, 56696, 66052, 66053, 67839
Submission for OMB review; comment request, 10001, 10002, 11215, 16925, 20532, 39141, 42026, 43063, 49148, 50493, 53930, 55160, 58697, 66287, 67839
Committees; establishment, renewal, termination, etc.:
Special Programs Emphasis Panel; establishment, 55809
Grants and cooperative agreements; availability, etc.:
Antibiotic treatments from natural products repository and database of open compounds, 40653
Atherosclerosis and LCAT deficiency treatment; modalities to raise plasma concentrations of LCAT; development, 47132
B-cell lymphoma tumor specific antigen studies, 56697
Document imaging and information retreival software and systems, 68271
Fusion proteins including antibody and non-antibody portions; scientific and commercial development, 46478
Green fluorescent protein (GFP) technology applications development, 33753
Hydroxylated aromatic protein crosslinking compounds, scientific and commercial development; treatment of hyperproliferative epithelial lesions, 26915
KAI1 metastasis suppressor gene protocols development, 63852
Lymphocyte ADP-ribosytransferase, etc.; therapeutic intervention in diseases of the immune system; research and development, 5564
Novel heparin-binding peptides; scientific and commercial development, 30914
Opioidmimetic peptide antagonists, highly potent and ultraselective, for biochemical, pharmacological, clinical and therapeutic studies; commercial development, 11852
Soluble tat peptide analogs for inhibition of HIV transcription and viral replication; scientific and commercial development, 59452
Inventions, Government-owned; availability for licensing, 5404, 5565, 6247, 7267, 9462, 16926, 17309, 17311, 22066, 37279, 39141, 39142, 39462, 41417, 41418, 42639, 48712, 53931, 55161, 56697, 58074, 59453, 59454, 63853, 66288, 67840
Meetings:
Advisory Committee to Director, 26916, 59234, 64911
AIDS Research Office Advisory Council, 6648, 53229
Alternative Medicine Program Advisory Council, 7117, 26916, 47756
Cervical cancer consensus development conference, 9463
Clinical Research Advisory Panel, 17314, 55162
Dietary supplements for physically active people; workshop, 26916
Fogarty International Center Advisory Board, 2836, 19079, 50034
Genetic Testing Task Force, 10772, 47757, 60100
Human Genome Research Advisory Council, 1773, 18397, 44314
Human Genome Research Evaluation Committee, 47757
Mental Health Special Emphasis Panel, 27362
National Bioethics Advisory Commission, 47757
National Cancer Institute, 1941, 2837, 3938, 5002, 6648, 7268, 8068, 9463, 11057, 11215, 13206, 14104, 17712, 18400, 24319, 25229, 27905, 29567, 33129, 33754, 34856, 35772, 36734, 36889, 38457, 39145, 44314, 47758, 49473, 50494, 50495, 52802, 53229, 55809, 55810, 56559, 56698, 56699, 57691, 58075, 58571, 58572, 60108, 65070, 66289, 66290, 68272
Cancer Communications Office; cancer related problems partnership with private sector organizations, 50499

National Center for Human Genome Research, 8633, 20533, 28222, 29106, 55162, 56699
National Center for Research Resources, 1596, 1773, 5003, 6649, 13206, 14801, 18399, 20533, 27905, 42429, 47759, 48493, 53931, 55162, 64527, 64528, 64918, 67566
National Eye Institute, 6856, 16255, 17712, 20532, 25230, 27905, 33937, 43064, 48158, 54449, 55810, 58075, 59104
National Eye Institute et al., 1941
National Heart, Lung, and Blood Institute, 1596, 1774, 3719, 4278, 5003, 5405, 5790, 7269, 8068, 9464, 10003, 11853, 14104, 14801, 16102, 17713, 17904, 18397, 18399, 19079, 20533, 20534, 25230, 26917, 28222, 30089, 32831, 33937, 33938, 41166, 42430, 42638, 47759, 47760, 47951, 48493, 48494, 50495, 53231, 55162, 55810, 56699, 56700, 57692, 58573, 64528, 67566, 67567
National Institute of Allergy and Infectious Diseases, 1597, 2256, 3719, 5006, 5566, 7269, 8068, 10773, 11216, 11853, 13206, 14803, 17714, 18154, 18401, 19080, 20534, 20535, 20537, 26918, 27906, 33938, 35772, 41167, 41169, 41795, 43252, 47760, 48495, 53931, 56701, 57692, 57693, 58077, 64358
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 2257, 5005, 25232, 42431, 53231, 58075, 58076, 58418, 58697
National Institute of Child Health and Human Development, 3719, 6649, 11854, 14802, 20535, 25231, 43066, 53749, 54449, 56559, 56700, 59105, 59235, 60109, 65071, 67567
National Institute of Dental Research, 1774, 6248, 7798, 10773, 13864, 15505, 17904, 25232, 28223, 28224, 33754, 36890, 45434, 50496, 51120, 55163, 58076, 59105, 67841
National Institute of Diabetes and Digestive and Kidney Diseases, 3720, 5405, 14105, 14106, 26918, 27905, 41167, 50495, 51119, 60109, 66290, 67841, 68272
National Institute of Environmental Health Sciences, 1598, 3046, 5004, 5005, 5790, 6857, 8633, 8965, 10774, 11058, 13864, 14105, 17714, 18398, 25230-25232, 28222, 30089, 35773, 36735, 40423, 41169, 43064, 49149, 50497, 54450, 57693, 58574, 64529, 67567, 67568
National Institute of General Medical Sciences, 4279, 5005, 6650, 10773, 11058, 11853, 14802, 16102, 18154, 25231, 26918, 31540, 32832, 36735, 39145, 41169, 52046, 53231, 54811, 56700, 56701, 57693, 64359, 66053
National Institute of Mental Health, 1941, 2837, 2838, 3720, 5003, 7269, 8633, 9189, 9464, 9713, 10003, 11057, 11854, 13207, 14105, 14802, 15505, 16102, 16103, 17713, 18154, 18399, 20536, 22066, 25499, 27907, 29107, 29567, 30090, 30625, 32448, 32832, 34856, 36734-36736, 38457, 39145, 41167-41169, 42430, 42639, 43065, 47760, 48496, 49149, 50495, 50496, 51460, 52952, 54449, 54450, 55163, 57692, 57693, 58418, 58574, 59105, 60292, 64528, 64918, 65071
National Institute of Neurological Disorders and Stroke, 1774, 14106, 18398, 41170, 51118, 51120, 52047, 53749, 54449, 55811, 58077, 64918, 64919, 67841
National Institute of Nursing Research, 3721, 8633, 28223, 43252, 49150
National Institute on Aging, 1598, 5004, 15504, 17713, 19080, 19944, 25232, 27906, 34857, 41168, 42432, 43065, 43557, 47761, 49149, 49150, 50496, 50497, 52046, 55810, 60291, 65413
National Institute on Alcohol Abuse and Alcoholism, 2256, 5004, 19079, 26917, 42431, 42431, 52046, 52047, 52952, 55163, 58574, 66692
National Institute on Deafness and Other Communication Disorders, 2837, 3721, 5005, 5790, 6248, 7269, 10774, 11058, 14105, 14802, 15505, 17713, 19944, 25229, 28223, 29107, 32832, 36735, 46479, 47951, 47952, 48494-48496, 48714, 51119, 54450, 58573, 59235, 60291, 64528
National Institute on Drug Abuse, 2257, 3722, 7270, 10774, 17714, 27906, 31540, 37075, 45434, 47951, 51118, 51119, 52046, 54811, 56700, 57692, 60292, 67841
National Library of Medicine, 2257, 6650, 10775, 14107, 20537, 34857, 43066, 47132, 47761, 50498, 60293, 67568
Peer Review Oversight Group, 33129, 55811
Recombinant DNA Advisory Committee, 56701
Research Grants Advisory Committee, 17905, 54450
Research Grants Division initial review groups, 5006, 7270, 20538, 67569
Research Grants Division special emphasis panels, 1775, 2258, 3718, 5006, 5567, 6650, 6651, 6857, 7798, 8069, 9464, 9713, 10004, 10775, 11854, 13207, 13208, 13865, 14107, 14803, 15506, 16508, 17715, 18155, 21474, 24320, 25233, 26192, 26919, 27907, 28224, 29107, 29568, 30090, 32833, 33938, 33939, 35773, 35773, 36736, 36737, 36890, 38457, 39146, 39464, 40423, 41170, 41171, 41795, 42260, 42432, 43067, 43252, 46480, 47761, 47762, 48496, 49473, 50034, 52047-52049, 52953, 53749, 54451, 54812, 55164, 55811, 56559, 56560, 58077, 58078, 58574, 58575, 59106, 59235, 60109, 60293, 64529, 64530, 64919, 65071, 67568
Research Grants Division study sections, 50498
Scientific Counselors Boards, 60294
Scientific Counselors Boards chairpersons, 10777
Temporomandibular disorders management technology assessment conference, 9465
Warren Grant Magnuson Clinical Center Board of Governors, 52049
Women's Health Research Advisory Committee, 11855
Women's Health Research Office, 41795, 54812
National Heart, Lung, and Blood Institute; capability statements:
Umbilical cord blood stem and progenitor cells for transplantation; multicenter clinical study, 67842
Organization, functions, and authority delegations:
National Institutes of Health, 3722
Resource Management Office, 1775
Patent licenses; non-exclusive, exclusive, or partially exclusive:
AbbeyMoor Medical, Inc., 67842
Angiotech Pharmaceuticals Inc., 57694
Boehringer-Mannheim Corp., 58575
Cancer treatment; gossypol acetic acid; IVAX Corp., 67842
Cary Medical Corp., 30915
Cephalon, Inc., 37280
Cooperative Research Centre for Biopharmaceutical Research Pty., Ltd., 16103
Creative BioMolecules, Inc., 5405
Cytosine deaminase negative selection system for gene transfer techniques and therapies, 16104
Homologous recombination and cloning of DNA and control of gene expression, 42027
Mallinckrodt Chemical, Inc., 51120, 51121
Sandoz Pharma Ltd., 48714
Sentron Medical, Inc., 48497
S'LIL Pharmaceuticals, 51121
Recombinant DNA molecules research:
Actions under guidelines, 1482, 10004, 35774
Proposed, 59726
Senior Executive Service:
Performance Review Board; membership, 51122

National Labor Relations Board

RULES
Administrative law judges; unfair labor practice proceedings; role in expeditious resolution facilitation:, 6940
Experiment extension, 1281
Freedom of Information Act; implementation, 13764
Privacy Act; implementation, 65182
Procedural rules:
Debt collection; administrative offset and Federal income tax refund offset, 38368
Misconduct by attorneys or party representatives before agency, 65323
Summary judgment cases notice-to-show cause procedure, advisory opinions, etc.; Federal regulatory reform, 65180
PROPOSED RULES
Administrative law judges; unfair labor practice proceedings; role in expeditious resolution facilitation:
Comment period extended, 1314
Court decisions; fees and dues, exaction limitations; withdrawn, 11167
Procedural rules:
Misconduct by attorneys or party representatives before agency, 25158, 30570
Requested single location bargaining units in representation cases; appropriateness, 1546, 4246, 10709
Semi-annual agenda, 24044, 63528
Summary judgment cases notice-to-show-cause procedure, advisory opinions, etc.; Federal regulatory review, 35172, 40369
NOTICES
Committees; establishment, renewal, termination, etc.:
Agency Procedure Advisory Committee; renewal, 60311
Meetings:
Agency Procedure Advisory Committee, 19324, 67578
Meetings; Sunshine Act, 1437, 4301, 13222, 20839, 31557, 42271, 47960, 51722, 58253
Organization, functions, and authority delegations:
El Paso Resident Office; restructuring, 65245
Privacy Act:
Systems of records, 13884
Senior Executive Service:
Performance Review Board; membership, 37093

National Oceanic and Atmospheric Administration

RULES
Aboriginal whaling provisions; elimination of regulations, CFR part removed, 9369
Antarctic marine living resources catches; harvesting and reporting; conservation and management measures, 8483

Aquatic products associations; issuance of cease and desist orders by the Government; CFR part removed, 8224
Civil procedures:
Civil enforcement proceedings; opportunity for in-person hearing, 54729
Continental shelf:
Fishermen's contingency fund—
Federal regulatory reform, 6322
Endangered and threatened species:
Coho salmon; central California coast, 56138
Exceptions to prohibitions; CFR correction, 10477
Sea turtle conservation; shrimp trawling requirements—
Additional turtle excluder device requirements within statistical zones, 33377
Turtle excluder devices, 66933
Sea turtle conservation; summer flounder trawling requirements—
Turtle excluder device exemption, 1846, 6064
Sea turtles; review of endangered status, 17
Umpqua River cutthroat trout, 41514
Federal regulatory reform:
Fish and fishery products inspection standards and regulations; revisions and CFR parts removed, 9368
Marine mammals; protected species general permits, 7429
Ocean thermal energy conversion licensing program; CFR part removed, 21073
Financial aid program procedures; conditional fisheries regulations; CFR part removed, 14682
Fisheries assistance programs:
Fisheries obligation guarantee program (FOG) and Interjurisdictional Fisheries Act program consolidation, etc.; reporting and recordkeeping requirements, 19171
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—, 41363
Alaska scallop, 46399, 57340, 57341
Alka mackerel, 41363
Bering Sea and Aleutian Islands groundfish, 48073, 48074, 60044, 63759, 67962
Bering Sea sablefish, 49076
Correction, 40481, 41684, 45367
Federal regulatory reform, 41363, 49980
Greenland turbot, 53153
Gulf of Alaska groundfish, 41363, 64299, 64487, 67962, 69050
Northern rockfish, 50458, 53154
North Pacific Fisheries Research Plan; interim groundfish observer program, 56425, 64569, 66077
Ocean perch, Pacific, 48415
Pacific cod, 57781, 58491, 59029, 68672
Pacific cod reallocation, 49418
Pacific halibut and red king crab, 65989
Pacific Ocean perch, 51374, 51789, 56477
Pacific Ocean perch, etc., 53153
Pollock, 46570, 50256, 52716, 54580, 54953, 55119
Pollock in 610 statistical area, 49696
Red king crab, 65985
Rockfish fishery, 53679
Rockfish species; reporting and recordkeeping requirements, 52385
Scallop, 47090, 54953, 64298
Tanner crab, 57780
Yellowfin sole, 52385, 54580, 56150
Alaska scallop, 38099, 57002
American lobster, 13454, 16882
Atlantic Coast weakfish, 34746
Atlantic mackerel, squid, and butterfish, 8496, 14465
Atlantic sea scallop, 8490, 15733, 38404
Atlantic shark, 21978, 39099, 43185
Atlantic striped bass and weakfish, 29321
Atlantic surf clam and ocean quahog, 293
Atlantic swordfish, 27304, 34746
Atlantic swordfish fishery; drift gillnet closure, 35971, 37842, 64486
Bering Sea and Aleutian Islands groundfish, 20, 4311, 5608, 6323, 6953, 7754, 7755, 8497, 8498, 8888, 9113, 9370, 10287, 10697, 11165, 11345, 12041, 13109, 16883, 17256, 17849, 19976, 24730, 24905, 25595, 27253, 27312, 27796, 28071, 28072, 29696, 30544, 31463, 33046, 33382, 33386, 36306, 37403, 38358, 39601, 40158, 40353, 40748, 41363, 43312
Caribbean, Gulf, and South Atlantic fisheries, 34930, 43952, 44184
Gulf of Mexico reef fish, 48413, 48641
King mackerel, 48848
Queen conch, 65481
Red hind spawning, 64485
Red snapper, 52715
Reef fish, 65983
Regulations consolidation, 47821
South Atlantic Region shrimp, 47446
Domestic fisheries—
Block Island Sound, RI; closed to fishing, 3602, 7050, 11164, 16401, 20175, 27795
Block Island Sound, RI; reopened to fishing, 33694
Federal regulatory reform, 31228, 37843
Fishery management plan development limitations; interpretation, 30543
Foreign and domestic fishing—
Scientific research activity, exempted fishing, and exempted educational activities, 26435
Gulf of Alaska groundfish, 20, 2457, 3332, 3333, 3602, 4304, 4594, 5608, 8888, 9955, 9956, 10286, 10901, 11165, 11589, 11590, 13462, 17256, 19976, 21104, 24729, 27253, 27308, 27312, 28069, 28070, 33387, 37225, 37226, 37403, 37404, 37700, 38358, 38656, 39100, 40158, 40353, 41024, 41523, 41523
Gulf of Alaska northern rockfish, 34377
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 6175, 7078, 11345, 27281
Gulf of Mexico reef fish, 17, 7751, 14683, 25833
Gulf of Mexico shrimp, 24728
Limited access management of Federal fisheries in and off of Alaska, 1844
Bering Sea and Aleutian Islands groundfish, 41744
Northeastern United States fisheries, 34966, 39909
Atlantic surf clam and ocean quahog, 60044
Correction, 60154
Gillnet fisheries, 47827
Monkfish, 54105
Northeast multispecies, 8492, 27710, 35142, 49276, 55774, 68164
Summer flounder, 52715, 54578, 54579, 56902, 64999, 67497, 68164
Summer flounder and scup, 53866, 56125
Summer flounder, scup, and black sea bass, 58461
Northern anchovy fishery, 48853
North Pacific fisheries research plan; fees refund, etc., 13782
Ocean salmon off coasts of Washington, Oregon, and California, 8497, 20175, 26125, 31873, 35144, 40157, 41988, 43472
Pacific Coast groundfish, 279, 14512, 16402, 18988, 21102, 28786, 35143
Summer flounder, 291, 292, 10285, 11344, 13452, 15199, 32711, 33382, 38403, 52384
Summer flounder and scup, 43420
West Coast States and Western Pacific; exclusive economic zone; CFR parts consolidation, 36661
Correction, 36662
West Coast States and Western Pacific fisheries—
Chinook salmon, 50255
Coho salmon, 48852
Exclusive economic zone, CFR parts consolidation; correction, 34570, 36662, 48543
Pacific Coast groundfish, 56902
Pacific whiting, 48643
Rockfish, 47089
Sablefish, 44185
West Coast salmon, 48072
Western Pacific bottomfish, 8890
Western Pacific crustacean, 6577, 35145, 40156
High Seas Fishing Compliance Act; implementation, 11751
International fisheries regulations:
International fisheries in U.S. Exclusive Economic Zone and on high seas; regulations consolidation, 35548
Magnuson Act provisions; CFR parts consolidation and update, 32538
Correction, 37225
Marine mammals:
Commercial fishing operations—
Commercial fisheries authorization; list of fisheries categorized according to frequency of incidental takes, 3851
"Dolphin safe" tuna labeling, 27793
Incidental taking—
Federal regulatory reform, 51213
Small takes by harassment; Arctic waters, 15884
North Pacific fur seals—
Subsistance taking; Pribilof Islands, AK; Federal regulatory review, 11750
National Weather Service; modernization criteria, 39862, 53307
Ocean and coastal resource management:
Coastal zone management program regulations; Federal regulatory reform, 33802
Correction, 36965
Cordell Bank National Marine Sanctuary, CA; coordinates correction, 51577
Monterey Bay National Marine Sanctuary, CA—
Motorized personal water craft operation zones and access routes, 14963
Shark attraction by chum or other means; restriction or prohibition, 66913
Oil Pollution Act:
Natural resource damage assessments, 440
Injury assessment and assessment, compensation formula generation, etc., guidance documents availability, 58131
Pacific Halibut Commission, International:
Pacific halibut fisheries, 27025, 29695, 29975, 39362, 41987
Catch sharing plan, 11337
Pacific Salmon Commission:
International fisheries regulations—
Fraser River sockeye and pink salmon; inseason orders, 55225
Reporting and recordkeeping requirements, 11132, 21926
Tuna, Atlantic bluefin fisheries, 11336, 30182, 30183, 38656, 39361, 40352, 43027, 43184,

48413, 48640, 50765, 55119, 55926, 57340, 58341, 60221, 66618,
Tuna fisheries:
Atlantic bluefin tuna, 53677, 55119, 55926
Whaling provisions, aboriginal; Federal regulatory reform, 29628

PROPOSED RULES

American lobster fishery, 49430
Endangered and threatened species:
Coho salmon; Oregon and northern California, 56211
Sea turtle conservation; shrimp trawling requirements—
Soft turtle excluder devices approval removed, etc., 18102, 30588
Steelhead, 41541
Treatment of intercrosses and intercross progeny (hybridization); comment request, 4710
West Coast steelhead, 55781
Public hearings, 51398
Federal regulatory review:
Atlantic highly migratory species regulations consolidation; public hearings, 63812
Ocean thermal energy conversion licensing program; CFR part removed, 2969
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish, 48113, 50797, 54145, 60076
Gulf of Alaska groundfish, 50797, 54145, 64110
Halibut, etc., 49294
Pacific halibut, 63812
Recordkeeping and reporting requirements; revisions, 67524
Red king crab, 47108
Scallop, 64047
Scallop fishery, 67990
Tanner crab, 63814
Alaska scallop, 19902, 21431
American lobster, 13478, 20207
Atlantic blue fish, 13810, 20789
Withdrawn, 60254
Atlantic golden crab fishery, 16076
Atlantic highly migratory species; CFR parts consolidation, 57361
Atlantic mackerel, squid and butterfish
Correction, 2787
Public meeting, 25185
Atlantic scup, 44289
Atlantic sea scallop, 20207
Atlantic sharks, 67295, 68202
Atlantic striped bass and weakfish, 13811
Atlantic striped bass fishery—
Possession or harvest; Federal moratorium removal, 64497
Atlantic surf clam and ocean quahog, 19604, 31499
Atlantic swordfish, 15212, 16236, 17866
Atlantic swordfish fisheries; rulemaking petition denied, 48661
Atlantic tuna fisheries; rulemaking petition denied, 48661
Bering Sea and Aleutian Islands groundfish, 6337, 16085, 16456, 24750, 29726, 37041, 43035, 43325, 44033
Black sea bass, 6810
Caribbean Fishery Management Council—
Hearing, 6965
Red hind spawning; public hearing, 30589
Caribbean, Gulf, and South Atlantic fisheries, 55128
Gulf of Mexico shrimp, 50269
King and Spanish mackerel, 66008
Puerto Rico and U.S. Virgin Islands queen conch resources, 45395
Queen conch, 50794
Red hind spawning aggregations, 55127
Red snapper, etc., 42828, 43215, 59076
Reef fish fishery of Gulf of Mexico, 55128, 59852, 67766
Shrimp, 59856
South Atlantic Fishery Management Council; hearings, 67294
Foreign and domestic fishing—
Scientific research activity, exempted fishing, and exempted educational activities, 10712
Gulf of Alaska groundfish, 6337, 8023, 9972, 11375, 16456, 18116, 24750, 35174
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 10302, 34785
Gulf of Mexico and South Atlantic spiny lobster
Federal regulatory reform, 12055
Withdrawn, 60254
Gulf of Mexico reef fish, 3369, 4950, 24267, 29339, 32422, 42413
Withdrawn, 39940
Gulf of Mexico stone crab—
Federal regulatory review, 12056
Withdrawn, 60254
Limited access management of Federal fisheries in and off of Alaska, 29729, 32767
Bering Sea and Aleutian Islands groundfish, 11376, 14547, 24475
Gulf of Alaska groundfish, 11376, 14547, 24475
Magnuson Act provisions, 57843
New England Fishery Management Council; public meeting, 710, 27862, 64309
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish, 58508, 59857, 64852, 65192, 67521
Atlantic sea scallop, 45395, 49428, 49430, 52903
Atlantic surf clam and ocean quahog, 60074
Black sea bass fishery, 38430
Days-at-sea unused allocation restoration, 58365
New England Management Council; joint designation request, 64046
Northeast multispecies, 49430, 50796
Summer flounder, scup, and black sea bass, 43518, 47106
Northeast multispecies, 64309
Scup, 64854
Squid, minimum mesh provisions; public meeting, 54406
Summer flounder, 66646
Northeast multispecies, 6230, 8540, 14284, 16892, 20207, 26847, 30029
Correction, 27948
Northern anchovy, 13148
Withdrawn, 60254
Implementation, 40380
North Pacific fisheries research plan—
Fees refund, etc., 36702
Implementation, 40380
North Pacific Fishery Management Council; meeting, 16456
Pacific Coast groundfish, 1739, 8021, 10303
Salmon fisheries off coast of Alaska, 13149
Shrimp fishery off Southern Atlantic states, 17866
Snapper grouper fishery, 16076
South Atlantic Region golden crab, 8564
South Atlantic shrimp, 11181
South Atlantic snapper-grouper, 2477, 14735
Summer flounder, 1893, 17682, 20506, 27851, 43725
Summer flounder and scup, 40810
Summer flounder, scup, and black sea bass, 43217
West Coast States and Western Pacific fisheries—
Sablefish, 51670
Western Pacific bottomfish fishery, 60255
Western Pacific crustacean, 7771, 15452
Fishery management councils; hearings:
Mid-Atlantic—
Atlantic mackerel et al., 37436
New England, 37241
Northeast multispecies, 47472, 47473
Sea scallop, 21431
International Code of Conduct for Responsible Fisheries implementation plan; availability, 38703
Redrafting, 57625
International fisheries regulations:
International fisheries in U.S. Exclusive Economic Zone and on high seas; regulations consolidation, 25443
Magnuson Act provisions; CFR parts consolidation, 19390
Marine mammals:
Atlantic offshore cetacean take reduction plan; public meeting, 52769
Commercial fishing authorizations—
Fisheries categorized according to frequency of incidental takes; list, 37035
Endangered fish or wildlife—
Anadromous Atlantic salmon in seven Maine rivers, 44032
North Atlantic right whale protection, 41116, 52404
Shortnose sturgeon in Androscoggin and Kennebec Rivers, ME, 53893
Incidental taking—
Naval activities; USS Seawolf submarine shock testing, 30212, 40377, 43517
Pacific offshore fisheries take reduction plan; meeting, 27042
National Weather Service; modernization criteria, 19594, 28804
New England Fishery Management Council; public meeting, 16237, 56213
Ocean and coastal resource management:
Coastal zone management program regulations; Federal regulatory review, 9746
Marine sanctuaries:
Gulf of the Farallones National Marine Sanctuary, CA; motorized personal watercraft ban, 33876
Monterey Bay National Marine Sanctuary, CA—
Shark attraction by chum or other means; restriction or prohibition, 5335, 5969
Organization, functions, and authority delegations:
Seafood inspections (in-plant) and related services; privatization, 9420
Pacific Halibut Commission, International:
Pacific halibut fisheries—
Catch sharing plan, 2782, 2992
Tuna, Atlantic bluefin fisheries, 18366, 43034, 43518, 48876
Tuna Management in the Mid-Atlantic Negotiated Rulemaking Committee:
Intent to establish, 3666, 30214
Whaling provisions, aboriginal; Federal regulatory review, 15754

NOTICES

Agency information collection activities:
Proposed collection; comment request, 7476, 7477, 8042, 28853, 31923, 39441, 43046,

53208, 54776, 60262, 60263, 65028, 66996, 67770
Argos space-based data collection and location system:
Non-environmental use; administrative policy change and public hearing, 52775
Capital construction fund, nonqualified withdrawals; interest rates, 60321
Coastal zone management programs and estuarine sanctuaries:
Consistency appeals—
Taylor, Jessie W., 53719
Mullica River-Great Bay National Estuarine Research Reserve, NJ; management plan, 18569
State programs—
Evaluation findings availability, 16239, 44299
Intent to evaluate performance, 2229, 14079, 16239, 17688, 40196, 54983, 68720
Texas coastal management plan; public hearings, 37048
Wells National Estuarine Research Reserve, ME; management plan, 9977, 30222
Committees; establishment, renewal, termination, etc.:
Atlantic Large Whale Take Reduction Team; meeting, 40819
International Commission for Conservation of Atlantic Tunas, U.S. Section Advisory Committee, et al., 41128
Warren Grant Magnuson Clinical Center Board of Governors, 16255
Endangered and threatened species:
Conserving species listed or proposed for listing while providing and enhancing recreational fisheries opportunities; policy, 27978
Endangered Species Act activities; interagency cooperative policy statements—
Distinct vertebrate population segment; interpretation, 4722
Listed species; controlled propagation; draft, 4716
Petitions received under Endangered Species Act; management guidance availability, 36075
Sea turtles; proposed recovery plans availability, 9978
Environmental statements; availability, etc.:
Coastal nonpoint pollution control programs; States and territories—
Delaware, 43736
Maryland, 51914
Massachusetts, 51914
Michigan, 57673
Northern Mariana Islands, 51914
Pennsylvania et al., 67532
Rhode Island, 43736
U.S. Virgin Islands, 51914
Wisconsin, 57673
Commencement Bay, WA; natural resource damage assessment restoration plan development, 41383
Environmental statements; notice of intent:
Atlantic Coast weakfish, 33905
Juneau, AK; consolidation of facilities, 6974
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Electric reporting system; meeting, 55132
Atlantic herring; spawning closure provisions removed, 50806
Atlantic striped bass fisheries; 1994 survey, 32774
Atlantic surf clam and ocean quahog, 50807
Atlantic tuna fisheries; yellowfin tuna statistics, 10319
Fisheries of Exclusive Economic Zone off Alaska—
Salmon donation program; authorized distributor selection, 42591
Limited access management of Federal fisheries in and off of Alaska—
Pacific halibut and sablefish, 11189
Weakfish interstate coastal management plan; fishing moratorium, 6351
Cancellation, 14744
Grants and cooperative agreements; availability, etc.:
Chesapeake Bay stock assessments, 20803
Climate and Global Change Program, 30593
Environmental Research Laboratories; joint and cooperative institute program, 8920
Fishing industry research and development projects—
Saltonstall-Kennedy program, 11190, 12135
Fishing vessel and gear damage compensation fund program; cessation, 34798
Gulf of Mexico fisheries disaster program, 29350, 55132
Gulf of Mexico fisheries emergency aid, 14293
National estuarine research reserve system; graduate research fellowships (FY 1997), 53355
National sea grant Federal fellows program, 35193
Northeast multispecies; fishing capacity reduction program, 28177, 44300
Pribilof Islands, AK; environmental restoration program, 25632
Small business innovation research program, 47736
Habitat conservation planning and incidental take permitting process; handbook availability, 63854
International Commission for Conservation of Atlantic Tunas, U.S. Section Advisory Committee; public meeting:
Schedule, 48888
Marine mammals:
California sea lions preying on wild winter-run steelhead; intentional lethal taking, 13153
Gulf of Maine Aquaculture-Pinniped Interaction Task Force report; availability, 6352
Incidental taking; authorization letters, etc.—
Amerada Hess Corp. et al., 48131
BP Exploration (Alaska), 26501, 38715, 49300
BP Exploration (Alaska) et al., 67997
Chevron U.S.A. et al., 29354
Conoco Inc., 51434
Ensearch Exploration Inc. et al.; oil and gas structure removal activities, 65028
Massachusetts Institute of Technology, Department of Engineering, 13847, 15785
Parker & Parsley Petroleum USA, Inc., et al., 58168
Schmidt, Henrik, et al., 30037
Tatham Offshore, Inc., et al., 11808
Taylor Energy, 43530
U.S. Coast Guard; vessel and aircraft operations, 54157, 59220
Unocal Corp., 54983
Vandenberg AFB, CA; Lockheed launch vehicles, 19609, 38437
Vandenberg AFB, CA; McDonnell Douglas Aerospace Delta II vehicles, 6975, 45404, 59218
Vandenberg AFB, CA; Taurus space launch vehicles, 50276
Vandenberg AFB, CA; Titan II and IV launch vehicles, 10727, 64337
Walter Oil & Gas Corp., 51435
Italy; identification as large-scale high seas driftnet nation, 18721
Marine sanctuaries:
Monitor National Marine Sanctuary, VA; non-research diving; special use permit, 2230
Meetings:
Atlantic Large Whale Take Reduction Team, 48131
Atlantic Offshore Fisheries Take Reduction Team; public meeting, 25846
Caribbean Fishery Management Council, 6815, 7775, 24288, 36712, 64070
Florida Keys National Marine Sanctuary Advisory Council, 33715
Gulf of Maine Take Reduction Team, 5384
Gulf of Mexico Fishery Management Council, 5536, 6815, 7775, 10563, 14745, 15044, 15469, 16240, 18383, 18570, 24289, 24918, 27052, 29538, 31924, 33490, 33492, 36035, 39950, 41129, 42006, 42871, 43530, 49438, 51435, 52437, 52438, 54984, 55131, 55133, 55789, 56667, 58384, 58534, 58535, 58675, 66018, 67771
Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council, 16467, 20244, 27866, 30223, 34799
International Commission for the Conservation of Atlantic Tunas U.S. Section Advisory Committee; public meetings, 53719
Marine Fisheries Advisory Committee, 29354, 55133
Mid-Atlantic Fishery Management Council, 2493, 5536, 7093, 8568, 11380, 19048, 29741, 35726, 36036, 36712, 38717, 42872, 46445, 54419, 58168, 58676, 63830, 65029
Modernization Transition Committee, 15786, 29355, 46784, 60263
Monterey Bay National Marine Sanctuary Advisory Council, 2230, 5986, 17879, 31925, 43046, 49438
New England Fishery Management Council, 2230, 6816
New England Recovery Plan Implementation Team, 43346
North Pacific Fishery Management Council, 2231, 2802, 7094, 10563, 10564, 11380, 13155, 26504, 27052, 27337, 42006, 45407, 53209, 55278, 56217, 56943, 60092, 68721
Northwest Atlantic Fisheries Organization annual meeting in St. Petersburg, Russia issues review; public meeting, 34422
Olympic Coast National Marine Sanctuary Advisory Council, 5986, 10992, 25208, 37445
Pacific Fishery Management Council, 3001, 3372, 3373, 7241, 7775, 13155, 14079, 19610, 24289, 24918, 25481, 35727, 37247, 38189, 41130, 48131, 48132, 52439, 52440, 58168, 59220, 68721
Pacific Offshore Fisheries Take Reduction Team, 5385
Pinniped-Fishery Interaction Task Force, 43737
Sea Grant Review Panel, 31509, 66018
Shark Operations Team, 37721
South Atlantic Fishery Management Council, 2232, 3001, 9979, 14555, 19610, 20808, 28181, 33492, 41774, 43230, 57653, 63831
Space systems, private remote-sensing, licensing; public hearing, 24480
Stellwagen Bank National Marine Sanctuary Advisory Council, 48474
Western Pacific Fishery Management Council, 9436, 13156, 13851, 30223, 31925, 34799, 45408, 49734, 49735, 52921, 53209, 54419, 54985
National Weather Service; modernization and restructuring:
Analog GOES-TAP/GOES-FAX service to digital-date transmission modes; transition, 27337

Weather Service and Forecast Offices; consolidations, 3904, 5739, 5744, 9147, 14079, 17275, 36553, 51914, 68240
Weather Service Offices; automation certifications, 51081
Ocean and coastal resource management:
National Estuarine Research Reserve System—Southcentral Alaska Coast; site selection process; meetings, 59221
Waimanu Valley, HI; withdrawn, 32774, 32775
Organization, functions, and authority delegations:
National Weather Service; routine agricultural and fruit frost forecasts; discontinuation, 17259
Pacific Halibut Commission, International:
Pacific halibut fisheries, 36036
Permits:
Endangered and threatened species, 346, 1748, 4626, 6975, 7241, 7776, 8568, 9437, 9979, 11808, 14296, 14297, 16897, 16898, 20244, 20514, 20515, 21161, 24760, 25208, 25635, 28182, 28854-28856, 30040, 31510, 33095, 33096, 34800, 35727, 36712, 37722, 39442, 40821, 41130, 42592, 43047, 43230, 46445, 47113, 48132, 51436, 53899, 53900, 55789, 56667, 56668, 59419, 68721
Experimental fishing, 17279
Foreign fishing, 5752, 35194, 42006, 51436, 57850, 64342
Marine mammals, 52, 2493, 3001, 3002, 3674, 3909, 5753, 6353, 6631, 6976, 7478, 8043, 8921, 9438, 11194, 11809, 14556, 16899, 19907, 20244, 20808, 21162, 24289, 24919, 25209, 25210, 25481, 25635, 26165, 26505, 27052, 27337, 29355, 29741, 32774, 32775, 33096, 33906, 34422, 34801, 36036, 36713, 37882, 39120, 39442, 39634, 42007, 42592, 42593, 43047, 43737, 43738, 46627, 48888, 49301, 49439, 50002, 51082, 51688, 53209, 53900, 53901, 55134, 55790, 56668, 58676, 58677, 59863, 64070, 64504, 64857, 66019, 67998, 68050
Marine mammals and endangered and threatened species, 2232, 6233, 14556, 33097
Pribilof Islands, AK; claims statements and recommendations; filing notice; report to Congress:
Public meetings, 19048
Senior Executive Service:
Performance Review Board; membership, 50471
Tampa Bay oil spill (August 1993); natural resource damage assessment and restoration plan; document availability, 1357
West Coast salmon fisheries; northwest emergency assistance plan, 17879, 40197, 45408, 56217

National Park Service

RULES
Criminal Fine Improvement Act; penalty provisions, 2917
"Environman" and human figure and design symbol use; CFR part removed, 46554
National Park System:
Alaska visitor service authorizations, 54334
Conveyance of freehold and leasehold interests, 28506
Denali National Park and Preserve, AK; Mount McKinley and Mount Foraker; mountain climbing registration requirements, 6943
Glacier Bay National Park, AK; vessel management plan, 27008
Indiana Dunes National Lakeshore; zoning standards; CFR part removed, 40996
Protection of wildlife and other values and purposes on all navigable waters within park boundaries, regardless of ownership of submerged lands, 35133
Organization, functions, and authority delegations:
Field Director, 28504
Special regulations:
Appalachian National Scenic Trail, PA; hang gliding, 28505
Cape Lookout National Seashore, NC; aircraft operation; Portsmouth Village Airstrip closing, 28751
Lassen Volcanic National Park, CA; boating, fishing, and limit of catch; regulations removed, 46379
Oregon Caves National Monument, OR; age restriction elimination, 14617

PROPOSED RULES
Boating and water use activities:
Prohibited operations, 32383
Historic preservation program procedures; State, Tribal, and local government, 51536
National Park System:
Conveyance of freehold and leasehold interests, 5356
Shenandoah National Park; special fishing regulations; removal, 5354
Special regulations:
Appalachian National Scenic Trail, PA; hang gliding, 3358
Badlands National Park, SD; commercial vehicle traffic, 41058
Big Cypress National Preserve, FL; recreational frogging, 59393
Big Thicket National Preserve, TX; moored houseboats, 28530
Voyageurs National Park, MN—
Aircraft operation; designation of areas, 20775
Historic resort hotel and villas operation, 3053

NOTICES
Agency information collection activities:
Proposed collection; comment request, 1400, 4287, 4482, 5407, 6384, 14334, 18156, 30918, 30919, 40656, 45455, 46483, 51127
Submission for OMB review; comment request, 14578, 16262, 19956, 26930, 30093, 49791, 53753, 55313, 60302, 67849, 68292, 68776
Boundary establishment, descriptions, etc.:
Big Thicket National Preserve, TX; Menard Creek Corridor Unit, 25505
Carlsbad Irrigation District National Historic Landmark, NM, 30257
James A. Garfield National Historic Site, OH, 36892
Washington, 38214
Committees; establishment, renewal, termination, etc.:
Cape Cod National Seashore Advisory Commission, 44343
National Maritime Heritage Grants Advisory Committee; membership nominations solicitation, 13516
Native American Graves Protection and Repatriation Review Committee—Nomination solicitation, 10786
Concession contract negotiations:
Acadia National Park, MA; restaurant, gift shops, stable, and carriage rides, 26204
Buffalo National River, AR—
Canoe rental, shuttle, and related services, 30636
Johnboat rental, shuttle, and guide services, 30637
Canyonlands National Park, UT; interpretive whitewater river tours and transportation services, 47770
Death Valley National Park, CA, 55169
Dinosaur National Monument, CO; commercially guided, interpretive whitewater river tours, 30637
Isle Royale National Park, MI—
Air transportation services, 1401
Jefferson National Expansion Memorial National Historic Site, MO; soft drink vending sales, 47955
John D. Rockefeller, Jr. Memorial Parkway et al., WY; guided snowmobile tours and services, 55169
Katmai National Park, AK; Katmailand, Inc.; lodging, food service, etc., 42262
Lake Mead National Recreation Area; Willow Beach site marina operation, 9484, 37923
Mount Rainier National Park, WA; mountain guide service, 1401
North Cascades National Park, WA; Lake Chelan Recreation, Inc., 47771
Olympic National Park, WA, 41650
Ozark National Scenic Riverways, MO; canoe, inner tube, and johnboat rentals, etc., 30637, 41650
Rock Creek Park, MD; trail ride and horse boarding service, 37077
Sequoia National Park, CA; pack and saddle animal services and facilities, 24950
Voyageurs National Park, MN; historic resort hotel and villas operation, 3053, 16263
Concession contracts and permits, current:
Extensions, 65231
Concession management activities:
Native American handicraft sales; exemption from franchise fee calculation; policy revision, 18621
Concession prospectus; availability:
American Memorial Park, Northern Mariana Islands; tennis complex, 65232
Environmental statements; availability, etc.:
Big Thicket National Preserve, TX; exploratory oil well drilling, 38214, 52955
Cabrillo National Monument, CA, 16263, 39664
Canyonlands National Park, UT; river management plan, 29760
Cape Cod National Seashore, MA, 40657, 44075, 52458, 59107
Carlsbad Caverns National Park, NM, 44075
Channel Islands National Park, CA, 25505, 37765
Crater Lake National Park, OR, 37765
Denali National Park and Preserve, AK, 31146
Everglades National Park, FL; Miccosukee Tribe of Indians of Florida; additional housing, 5025, 33765
Glacier Bay National Park and Preserve, AK; vessel management plan, 11428
Hagerman Fossil Beds National Monument, ID, 4483, 37766
Independence National Historical Park, PA, 45483
Juan Bautista de Anza National Historic Trail, AZ and CA, 40247, 53385
Katmai National Park and Preserve, AK; Brooks River area, 51127
Keweenaw National Historical Park, MI, 64759
Klondike Gold Rush National Historical Park, AK, 28231, 39664, 64145
Lava Beds National Monument, CA, 41179, 49791
Manhattan sites, New York and Westchester Counties, NY, 15514, 28890
Manzanar National Historic Site, CA, 6384, 55169

Missouri/Niobrara/Verdigre Creek National Recreational Rivers, SD and NE, 36895
National Park of American Samoa, 68776
Nez Perce National Historical Park et al., ID, 53754
Niobrara National Scenic River, NE, 16642, 46821
Olympic National Park, WA, 17911
Elwha River ecosystem restoration, 59108
Lake Crescent watershed, 54676, 58702, 65233, 68051
Organ Pipe Cactus National Monument, AZ, 16263
Padre Island National Seashine, TX; South Sprint fieldwide gas unit, 65595
Pecos National Historical Park, NM, 44076
Petroglyph National Monument, NM, 64146
Pictured Rocks National Lakeshore, MI, 2529, 47174
Richmond National Battlefield Park, VA, 43266, 64758
Saint Croix Island International Historic Site, ME, 48967
Saint-Gaudens National Historic Site, NH, 30256
San Francisco Maritime National Historical Park, CA; general management plan, 39664
South Side Denali, AK, 12095, 22072
Tumacacori National Historical Park, AZ, 1946, 67344
Yosemite National Park, CA, 64361
Environmental statements; notice of intent:
Crater Lake National Park, OR, 50866
Fire Island National Seashore, NY, 5407
Hagerman Fossil Beds National Monument, ID, 50866
Lower St. Croix National Scenic Riverway, MN and WI, 24328
Manassas National Battlefield Park, VA, 9196
Olympic National Park, WA, 29131
Oregon Caves National Monument, OR, 1783
Redwood National and State Parks, CA, 26205
Rock Creek Park, Washington, DC, 37494
Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area, CA, 28595
Whitman Mission National Historic Site, WA, 49481
Yellowstone National Park, WY; commercial services management plan, 26930
Zion National Park, UT; visitor management resource protection plan, 65233
Federal wildland fire management policy and program review, 5737
Grants and cooperative agreements; availability, etc.:
Gettysburg National Military Park; visitor center and museum facilities development, 67849
Tribal preservation program; historic preservation funds (FY 1997) for Indian tribes, Alaska natives, and native Hawaiians, 57700
Jurisdictional transfers:
Maryland park areas, 41423
Prince William County, VA, park areas, 54213
Management and land protection plans; availability, etc.:
Big Cypress National Preserve, FL, 1599
Devils Tower National Monument, WY; climbing limitations based on Indian religious and cultural values, 41424, 68292
Saint-Gaudens National Historic Site, NH, 50328
Meetings:
Acadia National Park Advisory Commission, 16645, 36080, 55170
Blackstone River Valley National Heritage Corridor Commission, 66694
Cape Cod National Seashore Advisory Commission, 1600, 6654, 20540, 47176, 57449, 67065
Cape Krusenstern National Monument and Kobuk Valley National Park Subsistence Resource Commissions—Joint meeting, 56705, 60117
Dayton Aviation Heritage Commission, 1784, 8073, 25238, 31549, 36566, 42262, 47955, 67344
Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 6655, 16645, 30094, 41651, 54213, 60117
Delaware Water Gap National Recreation Area Citizens Advisory Commission, 18622
Delta Region Preservation Commission, 16264, 54676
Denali National Park Subsistence Resource Commission, 18157, 37923
Gates of Arctic National Park Subsistence Resource Commission, 10785, 20834, 55818
Gettysburg National Military Park Advisory Commission, 4287, 16264, 35813, 54676
Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission, 6260, 10007, 15515, 37494, 54214, 65595
Indian Memorial Advisory Committee, 7017, 43069
Jean Lafitte National Historical Park and Preserve, LA; draft Barataria boundary study, 14162
Jimmy Carter National Historic Site Advisory Commission, 43379
Keweenaw National Historical Park Advisory Commission, 2530, 36567, 42262, 47955
Lake Clark National Park Subsistence Resource Commission, 1600
Maine Acadian Culture Preservation Commission, 11219, 29761, 38784, 41651, 64147
Manzanar National Historic Site Advisory Commission, 17318, 36567, 55818
Mary McLeod Bethune Council House National Historic Site Advisory Commission, 49792, 56705
Mississippi River Coordinating Commission, 8074, 25238, 42263, 55314
Mississippi River Corridor Study Commission, 2530, 25238
Missouri National Recreational River Advisory Group, 42263, 47956, 56569, 68051
Mojave National Preserve Advisory Commission, 25238, 43380
National Capital Area; 1996 Christmas Pageant of Peace, 53755
National Capital Memorial Commission, 43070, 55993
National Park System Advisory Board, 16642, 17318, 56569, 58589
National Preservation Technology and Training Board, 11220, 52807
Native American Graves Protection and Repatriation Review Committee, 14335, 43070, 65596
Niobrara National Scenic River Advisory Commission, 19085, 50328, 67344
Petroglyph National Monument Advisory Commission, 24509, 53933
Salt River Bay National Historical Park and Ecological Preserve, St. Croix, Advisory Commission, 58420
San Francisco Maritime National Historical Park Advisory Commission, 53933
Santa Fe National Historic Trail Advisory Council, 52955
Sleeping Bear Dunes National Lakeshore Advisory Commission, 2530, 19086, 50329, 67345
Trail of Tears National Historic Trail Advisory Council, 9484
Upper Delaware Citizens Advisory Council, 18622
Wrangell-St. Elias National Park Subsistence Resource Commission, 5025, 60117
Memorandums of agreement:
Washington, DC; Pennsylvania Avenue development and redevelopment, 41789
Mining claims, unpatented:
Small miner waivers from maintenance fees, 1600
Mining plans of operation; availability, etc.:
Death Valley National Park, CA and NV, 18622
Mojave National Preserve, CA, 9720
National Register of Historic Places:
Pending nominations, 3460, 4483, 5800, 6655, 7274, 8641, 10008, 11220, 13211, 14578, 15829, 16641, 17355, 17912, 19086, 19634, 20540, 24328, 25505, 26930, 28595, 29132, 29761, 30920, 32856, 34444, 35392, 37282, 38214, 39665, 40848, 42263, 43070, 44077, 46821, 47771, 48967, 50051, 51301, 52807, 53934, 54815, 55994, 56968, 58421, 58892, 60302, 64148, 65233, 66310, 67850, 68293
Native American human remains and associated funerary objects:
Acadia National Park, ME; Fernald Point site inventory, 17719
Alaska State Office, BLM, Anchorage, AK—
Hooper Bay Native Village, AK; inventory, 51716
Inventory from Shaktoolik, AK, 52058
Unalakleet Native Village, AK; inventory, 51716
Alaska State Office, BLM, Savoonga, AK; inventory from Kukulik sites, etc., 45455
Anchorage Museum of History and Art, AK; inventory, 3944
Anthropology Department, California State University-Fullerton, CA; inventory completion from Island of Maui, Hawaii, 53238
Apache-Sitgreaves National Forest, AZ; inventory, 16643
Arizona State Office, Land Management Bureau, AZ; inventory, 14335
Bandelier National Monument, Los Alamos, NM; inventory, 66694
Bent's Old Fort National Historic Site, CO; inventory, 48720
Bernice Pauahi Bishop Museum, Honolulu, HI—
Island of Hawaii; inventory, 64362
Island of Kaua'i; inventory, 64363
Island of Lana'i; inventory, 64363
Island of Maui; inventory, 64361
Big Cypress National Preserve, FL; inventory, 7120
Buffalo Bill Historical Center, WY—
Medicine Pipe Thunder Bundle; repatriation, 47177
Sun Dance medicine rattles and paint sack, 16644
Burke Museum, University of WA; inventory, 21485
California Academy of Sciences, CA; inventory from Lanai Island, HI, 51717
Casa Grande National Monument, Coolidge, AZ; inventory from Hohokam sites, 10009

Channel Islands National Park, CA; inventory, 53238
Cheney Cowles Museum, WA—
Spokane Tribe inventory, 7276
Thunder bundle, 7122
Chickasaw National Recreation Area, OK; inventory, 50505
Colorado Springs Pioneers Museum, CO; human remains, 38470
Connecticut State Museum of Natural History, University of Connecticut, CT; cultural items from Norris L. Bull Collection, 18623
Culturally unidentifible Native American remains disposition; draft availability and comment request, 43071
Denver Museum of Natural History, CO; wooden killerwhale clan hat, 60303
Eiteljorg Museum of American Indians and Western Art, IN; Tlingit clan hat, 29132, 30670
El Morro National Monument, Ramah, NM; sacred objects bundle, 58893
Everglades National Park, FL; Miccosukee inventory, 8971
Fort Union Trading Post National Historic Site, ND; inventory, 52058
Fowler Museum of Cultural History, University of California-Los Angeles, CA; inventory from Hawaii, 52059
Fruitlands Museum, MA—
Bad Hand's scalp and hair, 51302
Inventory from Nebraska, 10009
Gila Cliff Dwellings National Monument, NM; inventory, 50505
Grand Portage National Monument, MN; inventory from Lodge Oak, FL burial ground, 17720
Hawai'i Maritime Center, Honolulu, HI; inventory from islands of O'ahu and Hawai'i, 64363
Hood Museum of Art, NH—
Inventory from Lake Winnepesauke, NH, 24950
Inventory from Tetlin Village, AK, 19635
Hubbell Trading Post National Historic Site, AZ; inventory, 7121, 26205
Inventory time requirements extensions granted; list, 36756
Kaibab National Forest, AZ; inventory, 16644
Land Management Bureau, Wyoming State Office, WY; inventory, 19087
Little Bighorn Battlefield National Monument, MT, 65597
Los Angeles County Museum of Natural History, CA; human teeth from Hawaii, 27097, 30670, 51717
Michigan State University Museum, MI; inventory from Bay County, MI, 47526
Milwaukee Public Museum, WI; Parrot Clan mask, 39153
Minnesota Historical Society, MN; inventory, 21486
Modoc National Forest, CA; volcanic stone pipe, 32856
Museum of New Mexico; Nambe Pueblo—
Acoma inventory, 8972
Inventory from 4 New Mexico sites, 3944
Museum of Peoples and Cultures, Brigham Young University, UT; inventory from Havasupai Reservation, AZ, 3459, 41179, 43814
Nevada State Office, BLM, Reno, NV; inventory from White Pine County et al., NV, 51718
Nevada Test Site, Nevada Operations Office, Energy Department, NV; cultural items, 32857, 38471
Oklahoma Museum of Natural History, University of Oklahoma, OK; inventory, 35650
Olmsted County Historical Society, MN; birchbark scroll with mnemonic symbols, 26206
Olympic National Park, WA; inventory, 43073
Peabody Museum of Archaeology and Ethnology, MA; inventory from Straits of Juan de Fuca, WA, 24950
Peabody Museum of Archaeology, MA; Blackfeet Nation beaver bundle, 21486
Portland, OR; Wallula Stone repatriation, 51462
Putnam Museum of History and Natural Science, IA; inventory, 7120
Reading Public Museum, PA; Hawaiian inventory, 51462
Rome Historical Society, NY; inventory from Onondaga County Penitentiary Site, 18623
Santa Cruz City Museum of Natural History, CA; scalplock, 16264
Santa Fe National Forest, NM; inventory, 18754
Science Museum of Minnesota, MN; medicine or false face masks, 12096
Seattle Art Museum, WA; Tlingit steel dagger, repatriation, 58422
Springfield Science Museum, MA—
Cultural items, 58422
Inventory, 16643
Tonto National Forest, AZ; inventory, 50506
Tulsa, Ok; U.S. Army Corps of Engineers—
Caddo Tribe of OK and Wichita and Affiliated Tribes inventory, 7276
Wichita Tribe et al. inventory, 7275
University Museum, University of Arkansas, AR; inventory from Maui, HI, 52059
University of Alaska Museum, AK; inventory from Sekloghyaget site, Gambell, AK, 46663, 49531
University of Arizona State museum, AZ; San Carlos Apache Gaan material, 21487
University of Iowa, IA, 3462
University of Kansas Museum of Anthropology, human remains from Hawaii, 53935
University of Pennsylvania Museum of Archaeology and Anthropology, PA; inventory from Hawaii, 53755
Washington State Historical Society, WA; inventory from Puget Sound, 19636, 55649
Oil and gas plans of operation; availability, etc.:
Big Thicket National Preserve, TX, 24807
Cuyahoga Valley National Recreation Area, OH, 28232
Lake Meredith National Recreation Area, TX, 6656
Padre Island National Seashore, TX, 3944
Planning process guidelines; update, 29133
Realty actions; sales, leases, etc.:
Alabama, 20834
Arkansas, 29572
New Jersey, 20834
Ohio, 36567
Washington, 33136

National Science Foundation

RULES
Conflict of interests, 59815, 59835
Federal claims collection:
Civil monetary penalties; inflation adjustment, 59027
National security information, classification; nondiscrimination, privacy, records availability, etc.; miscellaneous amendments, 51021
PROPOSED RULES
Semi-annual agenda, 23788, 63286
NOTICES
Agency information collection activities:
Proposed collection; comment request, 11065, 28904, 29431, 38228, 42271, 47960, 51722, 51723, 59468, 64922, 67350
Submission for OMB review; comment request, 2546, 11065, 12108, 14831, 16809, 41430, 49493, 54685, 56710, 67578, 68306, 68802
Antarctic Conservation Act of 1978; permit applications, etc., 6041, 16513, 27104, 45989, 53239, 56572, 57910, 59246, 67579
Committees; establishment, renewal, termination, etc.:
Biomolecular Processes Advisory Panel, 46830
Graduate Education Special Emphasis Panel et al., 33548
National Science Board; membership nominations, 56711
Science and Technology Centers Program Advisory Committee, 13885
United States Antarctic Program Blue Ribbon Panel, 35817
Environmental statements; availability, etc.:
McMurdo Station, Antarctica; wastewater treatment plant, 27104
Grants and cooperative agreements; availability, etc.:
Federal demonstration project; phase III solicitation, 4802
Information technology; application to undergraduate education; workshop, 9207
Meetings:
Advanced Scientific Computing Special Emphasis Panel, 5036, 6041, 11653, 16934, 18447, 59246, 59247
Alan T. Waterman Award Committee, 8078
Antarctic tour operators, 29137
Anthropological and Geographic Sciences Advisory Panel, 16124, 53767, 60732
Astronomical Sciences Special Emphasis Panel, 2546, 6041, 16124, 51724, 56712, 57479, 58595, 59247
Biochemistry and Molecular Structure and Function Advisory Panel, 13885, 16934, 52958
Bioengineering and Environmental Systems Special Emphasis Panel, 5036, 6041, 7025, 8079, 15147, 25920, 27937, 29138, 67579, 68064
Biological Infrastructure Advisory Panel, 48988, 50883, 54823
Biological Sciences Advisory Committee, 15147, 35269, 42664, 54685
Biological Sciences Special Emphasis Panel, 6042, 8979, 10808, 11653, 13885, 15148, 16125, 16935, 21506, 39162, 50883, 56712
Biomolecular Structure and Function Advisory Panel, 53767, 56712
Cell Biology Advisory Panel, 15148, 16125, 52470, 55669
Chemical and Transport Systems Special Emphasis Panel, 4293, 5037, 6864, 16125, 35269, 67579, 67580, 68064, 68065
Chemistry Special Emphasis Panel, 13885, 30102, 54823, 56712
Civil and Mechanical Systems Special Emphasis Panel, 5037, 5411, 6865, 8979, 19324, 29138, 35269, 60732, 67580, 68065
Cognitive, Psychological and Language Sciences Advisory Panel, 15525, 51724
Computer and Computation Research Special Emphasis Panel, 10809, 56713, 58595, 59247
Computer and Information Science and Engineering Advisory Committee, 8079, 15148, 16125, 24963, 31557, 55670
Cross Disciplinary Activities Special Emphasis Panel, 10035, 13886, 25920, 26549, 39163, 52958, 56713, 60732
Design, Manufacturing and Industrial Innovation Special Emphasis Panel, 6865, 11653, 13886, 15148, 16125, 16935, 19325, 24963, 29138, 36582, 39163, 40251, 42664, 43389, 43390, 45460, 46831, 47961, 57479, 58595, 67580
Developmental Mechanisms Advisory Panel, 13886, 51724
Earth Sciences Proposal Review Panel, 6865, 13886, 15148, 16126, 45461, 51725
Earth Sciences Special Emphasis Panel, 40252
Ecological Studies Advisory Panel, 47960
Ecological Studies Advisory Panel et al., 8980
Economics, Decision, and Management Sciences Advisory Panel, 15526, 53767
Education and Human Resources Advisory Committee, 11653, 29139, 36582, 53768, 58596
Education and Human Resources Committee of Visitors, 53768
Electrical and Communications Systems Special Emphasis Panel, 2546, 5037, 9207, 21506, 68065
Elementary, Secondary and Informal Education Special Emphasis Panel, 6042, 8079, 8980, 16936, 25920, 33549, 43390, 50883, 51725
Engineering Advisory Committee, 3737, 13887, 16126, 39164, 50335, 53768
Engineering Education and Centers Special Emphasis Panel, 24963, 31557, 53768, 55670
Equal Opportunities in Science and Engineering Committee, 7025, 29139, 48988
Federal Networking Council Advisory Committee, 11653, 51725
Genetics Advisory Panel, 53769
Genetics and Nucleic Acids Advisory Panel, 15149, 16936
Geosciences Advisory Committee, 8079, 31558, 39164, 41185, 55670
Geosciences Special Emphasis Panel, 8079, 11654, 15149, 18447, 27937, 31558, 36582, 39164, 43390, 56713, 58596, 60733, 67581
Graduate Education Special Emphasis Panel, 16649
Graduate Education Special Emphasis Panel et al., 1951
Human Resource Development Special Emphasis Panel, 6042, 6866, 8980, 10809, 16126, 19325, 24963, 35270, 56713, 58597
Information, Robotics and Intelligent Systems Special Emphasis Panel, 6866, 15149, 16126, 25920, 51726, 57480, 58597, 59247
Infrastructure, Methods, and Science Studies Advisory Panel, 53769
Interagency Arctic Research Policy Committee, 53240
International Programs Special Emphasis Panel, 67581
Materials Research Special Emphasis Panel, 2546, 5037, 6866, 8080, 8981, 13887, 19325, 19644, 25921, 26549, 40252, 44092, 45462, 46831, 50884, 58597, 60733, 67581
Mathematical and Physical Sciences Advisory Committee, 6866, 11654, 15149, 55670
Mathematical Sciences Special Emphasis Panel, 2847, 5038, 8981, 10809, 15150, 45462, 55671, 58597, 59248, 60733, 68066
Microelectronic Information Processing Systems Special Emphasis Panel, 6042, 58598, 67581
Networking and Communications Research and Infrastructure Special Emphasis Panel, 6042, 24964, 27937, 31558, 46832, 48988, 50884, 60733
Neuroscience Advisory Panel, 13887, 15150, 16936, 50884, 51726
Physics Special Emphasis Panel, 8080, 11654, 16937, 29139, 45462, 51726, 54686
Physiology and Behavior Advisory Panel, 11654, 15150, 51726, 51727
Polar Programs Special Emphasis Panel, 5038, 25245, 41186, 43390, 43391, 57480, 67581
Presidential Faculty Fellows Advisory Panel, 13887
President's Committee on National Medal of Science, 52958
Proposal Review Advisory Team, 60733
Research, Evaluation and Communication Special Emphasis Panel, 13887, 18447, 35270, 45462, 55671
Science and Technology Centers Program Advisory Committee, 33549, 41186
Science and Technology Infrastructure Special Emphasis Panel, 25921, 36582, 60734
Science Resources Studies Special Emphasis Panel, 21507
Small Business Industrial Innovation Advisory Committee, 24964
Social and Political Sciences Advisory Panel, 15526, 56713
Social, Behavioral and Economic Research Special Emphasis Panel, 33549
Social, Behavioral, and Economic Sciences Advisory Committee, 16126, 25921, 27937, 31558, 55671
Social, Behavioral and Economic Sciences Special Emphasis Panel, 43391, 58598, 59248
Systemic Reform Special Emphasis Panel, 6043, 8981
Theoretical Physics Panel, 45462
Undergraduate education revitalization; conference on shaping the future, 33549
Undergraduate Education Special Emphasis Panel, 35270, 52958, 68066
Undergraduate science education resources; national clearinghouse feasibility and utility, 16127
United States Antarctic Program Blue Ribbon Panel, 48989, 64376, 67068
Meetings; Sunshine Act, 5838, 11434, 19325, 36093, 41186, 52958, 58428
Objectivity in research and investigator financial disclosure policy; responses to questions, 34839
Privacy Act:
Systems of records, 40468, 40663
Senior Executive Service:
Performance Review Board; membership, 51727

National Skill Standards Board

NOTICES
Hearings; public dialogue, 12109, 29432
Meetings, 1410, 10599, 21499, 35271, 56064
National Skill Standards System; establishment, 67068

National Technical Information Service

NOTICES
Meetings:
Advisory Board, 22025, 42007, 56522
NTIS Advisory Board, 3673

National Telecommunications and Information Administration

RULES
Public telecommunications facilities program:
Federal regulatory reform, 57966
Correction, 64948
PROPOSED RULES
Public telecommunications facilities program:
Federal regulatory review, 27230
NOTICES
Agency information collection activities:
Proposed collection; comment request, 31926, 67771
Grants and cooperative agreements; availability, etc.:
Public telecommunications facilities planning and construction program, 6912, 25528
Public telecommunications facilities program (FY 1997), 57982
Telecommunications and information infrastructure assistance program, 7950
Applicants; list, 25376
International activities and short- and long-term agenda; private sector input opportunity and public meeting, 39443
Meetings:
National Telecommunications and Information Administration, 3373
Spectrum Planning and Policy Advisory Committee, 43531
Senior Executive Service:
Performance Review Board; membership, 54159

National Transportation Safety Board

RULES
Organization, functions, and authority delegations:
Surface Transportation Safety Office; hazardous materials accident investigations; correction, 14512
NOTICES
Aircraft accidents; hearings, etc.:
Administrator v. Willette et al.; air carrier voluntary disclosure reporting procedures; applicability, 53769, 58896
Classification system, severity of consequences-based—
Statistical reporting changes, 64540
Miami, FL; ValuJet Airlines, Inc., flight 592, DC-9-32; accident, 55671
Integrated bridge systems; public forum, 6265
Meetings; Sunshine Act, 3088, 7305, 10035, 13222, 17914, 27938, 30923, 34450, 35271, 38229, 42070, 44093, 47961, 50054, 52812, 54823, 56972, 59118, 64376, 64541
Railroad accidents; hearings, etc.:
Fox River Grove, IL; METRA Express commuter train and Crystal Lake school bus collision, 1145
Silver Spring, MD; MARC commuter passenger train derailment and collision with AMTRAK train 29, Capitol Limited, 30102

Natural Resources Conservation Service

RULES
Federal Agriculture Improvement and Reform Act of 1996:
Conservation provisions; implementation; public forums, 52671
Support activities:
Acquisition of real property under federally assisted programs; CFR part removed, 66867

Technical assistance:
Soil loss and wind erosion equations, universal; soil erosion due to water and wind prediction, 27998
Wellton-Mohawk irrigation improvement program; CFR part removed, 41949
Wetlands reserve program:
Responsibility transferred from NRCS to Commodity Credit Corporation, 42137

PROPOSED RULES
Federal Agriculture Improvement and Reform Act of 1996:
Conservation provisions; implementation Public forums, 52664
Wildlife habitat incentives program, 65485

NOTICES
California State technical guides; changes, 37440
Committees; establishment, renewal, termination, etc.:
Agricultural Air Quality Task Force, 43330
Foundation Board of Trustees, 30215, 38137
Conservation Practices National Handbook:
Forage harvest management, mine shaft and adit closing and vegetative barriers, 54152
Environmental statements; availability, etc.:
Attoyac Bayou Watershed, TX, 40812
Bedrock Creek Supplemental Watershed, ID, 15027
Brady Canal, LA; hydrologic restoration project, 8236
BS-3a Caenarvon Diversion Outfall Management Project, LA, 2483
Chestnut Creek Watershed, VA, et al., 32770
Ecleto Creek Watershed, TX, 58030
Fall River Water Users System, SD, 4253, 4254
Highway 384 Hydrologic Restoration Project, LA, 43037
Limestone-Graveyard Creeks watershed, CO, 45397
Marshland Watershed Project, WA, 11807
Monastery Run Project Area, PA, 4760
Orchard Mesa Project, CO, 17274
Potomac Headwaters Watershed, WV, 43729, 52405
Raccoon Island Breakwaters Demonstration Project, LA, 51675
Red-White Clay Creeks Watershed, PA and DE, 35701
Vermilion Parish, LA; Freshwater Bayou Wetlands Phase II, 34415
White Tank Mountains Watershed, AZ, 27046
Environmental statements; notice of intent:
Bexar-Medina-Atascosa Watershed, TX, 16087
Calcasieu Parish, LA; Perry Ridge shoreline protection, 64049
Departee Creek Watershed, AR, 56216
Federal Agriculture Improvement and Reform Act of 1996:
Conservation provisions; public forums, 16462
Hydric soils of United States; list additions and deletions, 29050
Meetings:
Agricultural Air Quality Task Force, 52406
Cancellation, 53898
Watershed projects; deauthorization of funds:
Boulder River Watershed, MT, 16751
Browns Creek Watershed, MS, 29730
Coon Creek Watershed, MN, 6970
McKinney-Buzzard Creek Watershed, OK, 47480
Pasture Creek Watershed, MT, 6971
Sebastian Martin-Black Mesa Watershed, NM, 31917
Starkweather Watershed, ND, 7235, 47480
Upper Tioga River Watershed project, PA, 48125, 67304
West Carroll Watershed, LA, 48880
West Carroll Watersheds Project, LA, 33092

Navajo and Hopi Indian Relocation Office

RULES
Archaeological resources protection:
Lands developed for resettlement purposes, 35666

Navy Department

RULES
Navigation, COLREGS compliance exemptions:
Cormorant, 60027
CSP Class and SLWT Class, 52879
USS Butte, et al., 67726
USS Cheyenne, 9105
USS Falcon, 48070
USS Hopper, 46378
USS Kingfisher, 36291
USS Kiska, 14968
USS Kitty Hawk, 9107
USS Milius, 14966
USS Mitscher, 36497
USS Mount Hood, 14969
USS Parche, 14967
USS Paul Hamilton, 9904
USS Robin, 9107
USS Ross, 58009
USS Seawolf, 9104, 35958
USS The Sullivans, 14969

NOTICES
Agency information collection activities:
Proposed collection; comment request, 2234, 9983, 11195, 14760, 14761, 26168, 51690, 66263
Base realignment and closure:
Naval Air Station Glenview, IL; disposal and reuse, 28185
Surplus Federal property—
Naval Air Station, Key West, FL, 19614
Naval Air Station, South Weymouth, MA, 20245
Naval Air Warfare Center, Indianapolis, IN, 2235
Naval Air Warfare Center, Warminster, PA, 11616
Naval Housing Area, Quincy, MA, 20247
Naval Research Laboratory, Orlando, FL, 3008
Naval Reserve Center, Huntsville, AL, 2235
Naval Reserve Center, Sheboygan, WI, 3009
Naval Shipyard, Philadelphia, PA, 34425
Naval Station Treasure Island, San Francisco, CA, 19615
Naval Surface Warfare Center, Annapolis, MD, 5539
Naval Surface Warfare Center, Louisville, KY, 2236
Naval Undersea Warfare Center Detachment, New London, CT, 20246
Point Molate Fuel Department, Richmond, CA, 3009
Environmental statements; availability, etc.:
Bellows AFS, HI; land use and development plan, 28568
Charleston Naval Base, SC; disposal, 22034
Container system for naval spent nuclear fuel management, 24293, 28857, 59423
Corpus Christi/Ingleside Naval Complex, TX; Navy Mine Warfare Center of Excellence establishment, 7494
International Convention for Prevention of Pollution from Ships (MARPOL) Annex V—
Garbage discharges in special areas; amount and nature, 66264
Plastic processor equipped ships; list, 66264
Long Beach Naval Shipyard, CA; disposal and reuse, 46636, 51085
Marine Corps Air Station, AZ; ordnance storage, 66265
Marine Corps Air Station El Toro, Santa Ana, CA; disposal and reuse, 55978
Marine Corps Base, Camp Lejeune, NC; upgrade of wastewater treatment system, 3387
Naval Air Station Miramar; realignment into Marine Corps Air Station, CA, 46785, 64711
Naval Training Center Orlando, FL; disposal and reuse, 64721
Naval Base Philadelphia, PA; disposal and reuse, 3010
Naval Hospital Long Beach, CA; surplus Federal property, 1902
Naval Medical Center Oakland, CA; disposal and reuse, 55135
Naval Sea System Command, Arlington, VA; relocation to Washington Navy Yard, DC, 68014
Naval Station Long Beach, CA; disposal and reuse, 16764
Naval Station Mayport, FL; potential aircraft carrier homeporting; support facilities development, 15057
Naval Station Puget Sound, WA; reuse, 57856, 67324
Naval Surface Warfare Center (NSWC) Acoustic Research Detachment, Bayview, ID; capital improvements, 41596
Reactor plants from decommissioned and defueled nuclear-powered cruisers and Ohio and Los Angeles Class submarines; disposal, 20810, 41596
USS Seawolf submarine shock testing; public hearings, 40204
Yuma Training Range Complex, AZ, 1751
Environmental statements; notice of intent:
Fleet and Industrial Supply Center, Oakland, CA; disposal and reuse, 27056
Fort Kamehameha, Pearl Harbor, HI; replacement outfall for wastewater treatment plant; construction, 47898
International Convention for Prevention of Pollution from Ships (MARPOL) Annex V; compliance and shipboard solid waste disposal; hearing, 19264
Marine Corps Camp Pendleton, CA—
Flood protection facilities construction and Basilone Road Bridge replacement, 644
Naval Air Station Agana, GU; disposal and reuse, 1566
Naval Air Station Miramar, CA; E-2 aircraft squadron realignment, 19262
Naval Air Station Oceana, VA; F/A-18 aircraft realignment, 43533
Naval Air Warfare Center, Aircraft Division, IN; disposal and reuse, 16468
Naval Base Norfolk, VA; plasma arc hazardous waste treatment facility, 11195
Naval Ordnance Station Louisville, KY; disposal and reuse, 27867
Naval Sea Systems Command Headquarters; realignment within DC area, 19263
Naval Station Roosevelt Roads, PR; solid waste disposal; rescission, 42873
Naval Station Treasure Island, CA; disposal and reuse, 50004
Naval Surface Warfare Center, ID; general development, 3010
Naval Weapon Industrial Reserve Plant, NY; disaposal and reuse, 13158
Naval Weapons Industrial Reserve Plant, TX; disposal and reuse, 9152

NIMITZ class nuclear-powered aircraft carriers home port facilities development, 64071
Surveillance towed array sonar system (SURTASS) low frequency active (LFA) sonar; operational employment, 37452
Inventions, government-owned; availability for licensing, 3690, 6359, 6977, 33494, 41385, 49753, 66265, 66999
Meetings:
Chief of Naval Operations Executive Panel, 6817, 9984, 13854, 24481, 25851, 50810
Historical Advisory Committee, 41387
Naval Academy, Board of Visitors, 6817, 21446, 57857
Naval Postgraduate School, Board of Advisors to Superintendent, 6978, 9984
Naval Research Advisory Committee, 1905, 14762, 31511
Naval War College, Board of Advisors to President, 21446
Planning and Steering Advisory Committee, 29083, 58171
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Banix Corp., 66999
CIDRA Corp., 49753
Combustion chamber drain system, 24482
Davis Liquid Crystals, Inc., et al., 46446
Dynamic Safety Resources, Inc., 6362
Lake Shore Cryotronics, Inc., 2237
Liquid crystal composition and alignment layer, 24482
Lumitox Gulf L.C., 13854
Northrup Grumman Corp.; 16468
Ocean Test Equipment, Inc., 11196
Precision Quincy Corp. et al., 55281
Research International, Inc., 19616
Shields Environmental Corp., 2237
Shipley Co., L.L.C., 2237, 29361, 52925
SmithKline Beecham Biologicals S.A., 66999
Stidd Systems, Inc., 3690, 29362
Zesto Therm, Inc., 19616
Privacy Act:
Systems of records, 19910, 25637, 47483, 54176
Reports; availability, etc.:
Garbage discharges from ships; MARPOL Annex V special areas, 14762
Senior Executive Service:
Performance Review Boards; membership, 40204

Neighborhood Reinvestment Corporation

NOTICES
Meetings; Sunshine Act, 6688, 20545, 37772, 52470

Northeast Dairy Compact Commission

NOTICES
Price regulation rulemaking proceeding; hearing, 65604

Nuclear Regulatory Commission

RULES
Byproduct material; domestic licensing:
Certain byproduct, source, and special nuclear materials licenses; one-time extension, 1109
Decommissioning regulations; cross-references update, 29636
Employee protection policies; consistency and clarification, 6762
Environmental protection; domestic licensing and related regulatory functions:
Nuclear power plant operating licenses; environmental review for renewal, 28467, 37351, 39555, 66537
Correction, 68543
Federal claims collection:
Civil monetary penalties; inflation adjustment, 53554, 56623
Fee schedules revision; 100% fee recovery (FY 1996), 16203
High-level radioactive wastes disposal in geologic repositories; design basis events, 64257
Nuclear equipment and material; export and import:
U.S. export controls conformance to Nuclear Suppliers Group export control guidelines; and State Department nuclear nonproliferation policies, 35600
Practice rules:
Domestic licensing proceedings—
Enforcement actions policy and procedure; removal; correction, 13655
Outdated references deleted, and minor change, 43406
Production and utilization facilities; domestic licensing:
Fuel cycle and other radioactive material licenses, etc., 9901
Nuclear power plants—
Codes and standards; subsections IWE and IWL; incorporation by reference, 41303
Light water reactor pressure vessels; fracture toughness requirements; correction, 232
Nuclear power reactors; decommissioning procedures, 39278
Nuclear power reactors—
Emergency planning and preparedness exercise requirements, 30129
Radiation protection standards:
Radionuclides; constraint level for air emission, 65120
Radioactive material packaging and transportation:
International Atomic Energy Agency compatibility, 28723
Reactor site criteria:
Seismic and earthquake engineering criteria for nuclear power plants, 65157
Regulatory agenda; report availability, 46537
Spent nuclear fuel storage capacity availability; criteria and adequacy determination procedures; CFR part removed, 35935
Termination or transfer of licensed activities; recordkeeping requirements, 24669

PROPOSED RULES
Agreement State licensees; recognition of areas under exclusive Federal jurisdiction wihin agreement State, 30839
Byproduct material; domestic licensing:
Regulatory, health, and radiation safety basis of licensing practices; clarification, 58346
Classified information; access and protection, 40555
Deliberate misconduct rule; extension to six categories of unlicensed persons, 51835
Employee protection policies; consistency and clarification; cross reference, 6796
Federal regulatory review:
Radioactive devices regulation; public workshop, 295
Fee schedules revision; 100% fee recovery (FY 1996), 2948
Correction, 5064
Fitness-for-duty programs:
Conformance with HHS testing guidelines, etc., 21105
Public meeting, 24731
Onsite testing; public meeting, 27, 1528
Nuclear power reactors, standard design certifications; and combined licenses; early site permits:
Boiling water reactors—
System 80+ standard designs; certification approval, 18099, 27027
U.S. advanced reactor; certification approval, 18099
Onsite low-level waste disposal in agreement States; approval authority; withdrawn, 26852
Plants and materials; physical protection:
Nuclear power plants; personnel access authorization requirements; public meeting, 16067
Practice rules:
Domestic licensing procedures—
Licensing support system (LSS); LSSNet computer-based communications program availability, 59031
Outdated references deleted, and minor change, 43406
Rulemaking petitions; submission procedures, 4078
Production and utilization facilities; domestic licensing:
Electric utility industry; restructuring and economic deregulation; public health and safety effect policy statement, 49711
Comment period extended, 65190
Nuclear power plants—
Decommissioning; financial assurance requirements, 15427
Nuclear power reactors—
Risk-significant systems and equipment; reporting reliability and availability information, 5318
Radiation protection standards:
Conformance, clarifications, and policy change, 52385
Licensed radioactive material; unintended or unauthorized use; reporting requirements, 3334, 7431
Radiation equipment performance requirements; public workshop, 37019
Regulatory agenda:
Quarterly report, 6796
Rulemaking petitions:
Amersham Corp., 30837, 48645
Heartland Operation to Protect Environment, 633, 67501
IsoStent, Inc., 33388
IsoStent, Inc.; withdrawn, 68688
Measurex Corp.; denied, 1857
National Registry of Radiation Protection Technologists, 4754
Nuclear Energy Institute, 43193, 60057
Portland General Electric Co., Shillinglaw, Fawn, 24249
University of Cincinnati, 31874
Semi-annual agenda, 24048, 63532, 3619

NOTICES
Abnormal occurrence reports:
Policy statement, 67072
Quarterly reports to Congress, 661, 7123
Agency information collection activities:
Proposed collection; comment request, 1605, 4684-4687, 5412, 6867, 10386, 13519, 33951, 34879, 35271, 37093, 51307, 52470, 53982, 56714, 65083, 65245, 67351, 67582, 68307, 68308
Submission for OMB review; comment request, 3735, 5808, 561, 3494, 3495, 4685, 4804, 5412, 6391, 6661, 7822, 9735, 10809, 11229, 12111, 14831, 15313, 17734, 18629, 20288, 20289, 20290, 20546,

24335, 25508, 27105, 33951, 35272, 36093, 41811, 52068, 52812, 54823, 55025, 57480, 68308
Agreement State program principles and policy statement and adequacy and compatibility policy statement
Working group report availability, 49357
Allegers and confidential sources identity protection; policy statement, 25924
Antitrust and financial qualifications and decommissioning funding assurance; draft standard review plans, 68309
Committees; establishment, renewal, termination, etc.:
Atomic Safety and Licensing Board, 733
Licensing Support System Advisory Review Panel, 67859
Materials Licensing and Inspection Training Working Group, 43091
Medical Uses of Isotopes Advisory Committee, 15838
Nuclear Safety Research Review Committee, 6043
Nuclear Waste Advisory Committee, 6043, 28908, 69116
Reactor Safeguards Advisory Committee, 59250, 65607
Stolen industrial radiography equipment working group, 40252
Declassification of national security information mandatory review; update, 56974
Enforcement actions policy and procedure:
Comment request, 13890, 54461
Policy statement revised, 53557, 65088, 68070
Radiation protection programs, 65128
Environmental statements; availability, etc.:
American Nuclear Corp.; Gas Hills site, WY, 55671
Arizona Public Service Co., 5042, 10036, 11231
Atlantic Richfield Co., 47965
Atlas Corp., 3058, 10391
Baltimore Gas & Electric Co., 53241
BP Chemicals, Inc., 20548
Brigham Young University, 55672
Cabot Performance Materials facility, PA, 51470
Calvert Cliffs Nuclear Power Plant, 52959
Carolina Power & Light Co., 6044, 55673
Catholic University of America, 10037
Cimarron Corp., 16127
Cleveland Electric Illuminating Co. et al., 32860
Commonwealth Edison Co., 669, 6265, 14837, 17329, 25921, 37294
Commonwealth Edison Co. et al., 39481
Connecticut Yankee Atomic Power Co., 1606
Consolidated Edison Co. of New York, Inc., 3496
Consumers Power Co., 422, 10811
Crow Butte Resources, Inc., 7541
Dow Chemical Co., 37772
Duke Power Co., 5808, 37941
Entergy Operations, Inc., 37774, 39482, 52961
Florida Power & Light Co., 5413, 49176
Georgia Power Co. et al., 8308, 36914
Houston Lighting & Power Co., 58710
Indiana Michigan Power Co., 39672
Indiana University, 57911
James A. Fitzpatrick Nuclear Power Plant, 64004
Jefferson Proving Ground (U.S. Army), IN, 20546
Maine Yankee Atomic Power Co., 7824
Northern States Power Co., 26225
Omaha Public Power District, 31561
Pacific Gas & Electric Co., 30924, 33146
Pathfinder Mines Corp., 14839
Portland General Electric Co. et al., 64378
Public Service Electric & Gas Co. et al., 49501
Rio Algom Mining Corp., 6267
Rochester Gas & Electric Corp., 1785, 13891
Saxton Nuclear Experimental Corp., 19962
Sequoyah Fuels Corp., 42071
Shieldalloy Metallurgical Corp., 38789, 42666, 57721
South Carolina Electric & Gas Co.; et al., 16272
Southern California Edison Co., 50513
Southern Nuclear Operating Co., Inc., 33781
Soyland Power Cooperative, 58897
Texas Utilities Electric Co., 5042, 58897
Toledo Edison Co. et al., 42273
U.S. Energy Corp., 42665
Union Electric Co., 12112, 59469
United States Enrichment Corp.; gaseous diffusion plants operation; certification decision, 49360
Vermont Yankee Nuclear Power Corp., 6662, 8984
Virginia Electric & Power Co. et al., 6268
Washington Public Power Supply System, 14337, 50056
Wisconsin Electric Power Co., 13520, 66062
Wisconsin Public Service Corp. et al., 42447
Wolf Creek Nuclear Operating Corp., 9207
Environmental statements; notice of intent:
Sequoyah Fuels Corp., 11066
Export and import license applications for nuclear facilities or materials, 15984
Cambridge Isotop Labs, 29435
Siemens Power Corp., 20291
Exports of nuclear reactor components, substances, and items to EURATOM; general and specific licenses, 355
Generic letters:
Boraflex degradation in spent fuel pool storage racks, 34882
Control rod drive mechanisms and other vessel head penetrations; primary water stress corrosion cracking, 40253, 43393
Equipment operability and containment integrity during design-basis accident conditions, 52069
Licensee qualification for performing safety analyses; alternative method Cancelled, 56069
Pressure temperature limit curves and low temperature overpressure protection system limits; relocation, 5043
Pressurized-water reactors; valve mispositioning, 3059
Safety-related logic circuits testing, 3497
Workshop, 9736
Safety-related motor-operated valves—
Design-basis capability; periodic verification, 6392
Periodic verification of design-basis capability, 50514
Security measures; nuclear power plant protection against internal threat; reconsideration, 6392
Steam generator internals at foreign pressurized-water reactor facilities; degradation, 69116
Steam generator tube inspection techniques, 69117
Ultrasonic testing examinations in inservice inspection programs; effectiveness, 69117
License renewal demonstration program; site visit plan, 10812
Lobbying activities; registration with Congress and filing of semiannual reports, 3737
Meetings:
Agreement States; technical and program management issues in regulation of Atomic Energy Act radioactive materials; public meeting, 40469
Electric cables research; technical issues related to Environmental Qualification process resolution; public meeting, 37775
Licensing Support System Advisory Review Panel, 15984
Materials licensing process; public workshop, 8985
Medical Uses of Isotopes Advisory Committee, 2547, 6045, 14840, 54686
Nuclear power plants; operating licenses renewal requirements; public workshop, 50335
Nuclear Safety Research Review Committee, 733, 17914, 19094, 25247, 30924, 30925, 55327, 58429
Nuclear Waste Advisory Committee, 1607, 6867, 15984, 27108, 36399, 46832, 48990, 52814, 55832, 56976, 65246
Agenda, 52814
Organization of Agreement States; technical workshop, 5414, 8310
Pressure vessel fluence determination; calculational and dosimetry methods, 48176
Reactor Safeguards Advisory Committee, 173, 1608, 1952, 2547, 4688, 4689, 5414, 6868, 7025, 8985, 10037, 11232, 11435, 11898, 12113, 15839, 19094, 20291, 25923, 25924, 27109, 28249, 33783, 33783, 34882, 38475, 39483, 40864, 43565, 44351, 44352, 48990, 50337, 50338, 51132, 52961, 54244, 54686, 55327, 58256, 58898, 58899, 59119, 60311, 67859, 68312
Meeting procedures, 51310
Regulatory information conference, 2268
SCDAP/RELAP5 code modeling of natural circulation in PWR under severe accident conditions; review, 42072
Spent fuel storage and transportation program; public workshop, 8310
State Liaison Officers, 47973
Strategic assessment and rebaselining; stakeholders views and comments solicitation, 52475
Water reactor safety information, 48512
Meetings; Sunshine Act, 231, 1438, 2002, 3088, 4521, 5605, 6296, 6894, 7305, 8311, 8691, 10038, 11232, 13222, 14585, 15839, 16654, 17915, 19095, 20549, 24340, 25509, 26938, 28251, 29578, 30263, 30926, 32860, 34454, 36094, 37095, 38231, 39673, 41188, 42274, 43092, 44093, 46668, 47774, 48991, 50338, 51132, 51311, 52476, 52815, 53461, 53983, 54824, 56069, 56976, 58257, 58899, 60124, 64175, 65247, 66337, 67860
Memorandums of understanding:
NRC emergency response data system utilization—
Louisiana, 64379
Wisconsin, 51727
Occupational Safety and Health Administration; Energy Policy Act; gaseous diffusion plants, 40249
Pennsylvania Environmental Protection Department; site decommissioning management plan sites and other decommissioning sites, 46832
Metric system conversion; policy statement, 31169
Mixed radioactive and hazardous waste:
Cesium-137 contaminated emission control dust and other incident-related material disposition; staff technical position, 1608
Nuclear industry employees; freedom to raise safety concerns without fear of retaliation; policy statement, 24336

Nuclear waste and spent fuel shipments:
Governors' designees receiving advance notification; list, 33952
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 174, 1626, 3497, 5809, 6397, 7542, 7825, 9736, 10392, 13521, 15985, 18162, 20842, 25696, 28604, 31171, 34884, 37295, 40013, 42274, 44353, 47973, 50338, 52962, 55028, 57481, 58900, 64381, 66702, 67860
Organization, functions, and authority delegations:
Atomic Safety and Licensing Board, 37307, 54244
Local public document room relocation and establishment—
Georgia Institute of Technology research reactor; temporary designation, 18761
Hanford tank waste remediation system, WA, 60734
Long Island Power Authority; Shoreham Nuclear Power Station; closure, 3059
Millstone Nuclear Power Station, CT; temporary designation, 18183
Northern States Power Co.; Prairie Island offsite independent spent fuel storage installation, 51311
San Onofre Nuclear Station, CA; temporary closing, 25923
Three Mile Island Nuclear Station et al., PA; temporary service reduction, 55174
Wood River Junction Site, RI; closing, 670
Petitions; Director's decisions:
Arizona Public Service Co., 30925, 34454
Bauman, Sherwood, 59251
Blanch, Paul M., 58257
Cleveland Public Power, 55049
Consolidated Edison Co. of New York, 30643
Consolidated Edison Co. of New York et al., 36916
Consumers Power Co. et al., 2269
Doyle, Shannon T., 42922
Duke Power Co. et al., 16810, 57917
Fleming, Jane A., 9208
Florida Power & Light Co., 36916, 59469
Florida Power Corp., 31562, 53461
GPU Nuclear Corp., 67352
Maine Yankee Atomic Power Co., 25509, 51729, 60124
Morris, C., 18183, 58711
Northeast Utilities, 671, 57914, 57923
Northern States Power Co., 19644, 55175, 64541
PECO Energy Co., 30456
Perry Nuclear Power Plant et al., 9506
Prairie Island Nuclear Generating Plant, 9209
Romer, Klaus R., 36916
Southern California Edison Co., et al., 60734
Tennessee Valley Authority, 15151, 43268
Thermo-Lag fire barrier material use by reactor licensees, 16005
Toledo Edison Co., 3060
Watts Bar Nuclear Plant, 37095
Wisconsin Electric Power Co., 66063
Yankee Atomic Electric Co., 5043, 7825, 11898
Yankee Atomic Electric Co. et al., 31964
Pressurized water reactors; control rod insertion problems, 10601
Privacy Act:
Systems of records, 16810, 20865, 29578
Pumps and valves; inservice testing inspection procedure; public workshop, 63873
Regulatory guides; issuance, availability, and withdrawal, 733, 1647, 2269, 3508, 8311, 10812, 16016, 16017, 17915, 19645, 25510, 36771, 42448, 43792, 46834, 47987, 49363, 52977, 55675, 58910, 60126, 67354
Reports; availability, etc.:
Boiling water reactors; decommissioning analyses and costs estimate, 46668
Boiling-water reactors emergency core cooling suction strainers; potential plugging by debris, 22076
Branch technical position; screening methodology for assessing prior radioactive waste land burials, 56716
Criteria for Protective Action Recommendations for Severe Accidents, 43794
Dry cask storage systems; standard review plan, 11436
Electrical connections; aging and loss-of-coolant accident testing, 65247
Expert elicitation use in high-level waste program; final branch technical position, 7568, 67354
Gas-cooled reactor, modular high-temperature; preapplication safety evaluation, 6869
Termination, 41189
Geological repository for spent nuclear fuel and high-level radioactive waste; license application review plan; draft, 2847
Heavy load movement over spent fuel, fuel in reactor core, or safety-related equipment, 17330
Human-system interface design review guideline, 48513, 52978
Individual Plant Examination Program; reactor safety and plant performance perspectives, 58429
Industry standards comparison review plan, 5415
Licensed devices control and accountability evaluation agreement state working group, 59120
Light water reactor nuclear power plants; standard review plan update and related documents, 43092
Materials licensing process redesign; methodology and findings, 19096
Medical use program; radiation in medicine; external regulatory review, 1648
Nuclear power plant early site permit applications; emergency planning criteria, 24307
Portable gauge licenses; program-specific guidance, 51729, 55053
Pilot test; volunteer request, 64768
Power reactors; operating licensing examination standards, 6869
Reactor safety and plant performance; individual plant examination program; comment request and workshop, 65248
Reassessment of NRC's dollar per person/rem conversion factor policy, 561
Responsiveness to public, 4294
Sealed source and device evaluations and registrations, applications; standard review plan, 59120
Spent fuel dry storage facilities; standard review plan, 57926
Spent fuel storage and transportation casks; chemical, galvanic, or other potential reactions, 36918
Tritium producing burnable poison rod lead test assemblies, 67584
Uranium mills, Title II alternate concentration limits; final staff technical position, 7127
Sealed source and device evaluations; regulatory authority reassumption:
Iowa, North Dakota, and Utah, 20293
Senior Executive Service:
Performance Review Boards; membership, 20293
Site decommissioning management plan; sites:
Removals from list—
Aberdeen Proving Ground Site, MD, 36586
Cleveland Works Facility of Aluminum Co. of America, Inc., 16813
Frome Investment Co. (Brooks & Perkins Corp.), 39673
RTI Inc. Site, NJ, 36585
Small business innovation research program; phased withdrawal in FY 1996, 30263
Standard review plan for review of safety analysis reports for nuclear power plants, 64176
Strategic assessment and rebaselining initiative, 58430
Applications, hearings, determinations, etc.:
Agarwal, Shashi K., M.D., 49357
Applied Health Physics, Inc., 15526, 52813
Arizona Public Service Co., 47962, 47963, 50535
Arizona Public Service Co. et al., 10035
Arkansas Nuclear One, Unit, 64173
Atlas Corp., 4495
B&W Fuel Co., 21210
Babcock & Wilcox Co., 53240
Baltimore Gas & Electric Co., 1952, 27371, 29771, 36914, 56714, 60121
Bemis Construction, Inc., 27373
Bolton, Eugene, 8080
Brigham Young University, 56716
Cabot Corp., 28905
Canspec Materials Testing, Inc., 5038
Carolina Power & Light Co., 7125, 25509, 27106, 30102, 42447, 55830
Catholic University of America, 11435
Chemetron Corp., Inc., 28906
Chem-Nuclear Systems, Inc., 28249, 37937
Cleveland Electric Illuminating & Ohio Edison Co. et al., 20840
Cleveland Electric Illuminating Co., 34450
Cleveland Electric Illuminating Co. et al., 3951, 7823,-8981, 8982, 10600, 21213, 22075, 40012, 42272
Commonwealth Edison Co., 192, 416, 1412, 1648, 3509, 7281, 15983, 16270, 17735, 18449, 40670, 43391, 47214, 47966, 47968, 54240, 57911, 65084
Commonwealth Edison Co. et al., 40468
Connecticut Yankee Atomic Power Co., 11229
Connecticut Yankee Atomic Power Co. et al., 58398
Consolidated Edison Co. of New York, Inc., 4083
Consumers Power Co., 1787, 16127, 44348, 49493, 50054
Crow Butte Resources, Inc., 34451
Detroit Edison Co., 419
Dial Corp., 58085
Diamond H Testing Co., 10387
DowElanco Greenfield Field Research Station, 16937
Duke Power Co., 65605, 66699, 68310
Duke Power Co. et al., 16649, 17735
Duriron Co., Inc., 17326
Eastern Testing & Inspection, Inc., 15836, 16654
Entergy Operations, Inc., 47971, 57911, 64376
Entergy Operations, Inc., et al., 36770
Euratom, 7126
Fansteel, Inc., 32466
Fernandez, Jose L., 56065
Five Star Products, Inc., et al., 562
Florida Power & Light Co., 29140
Florida Power Corp., 13888
General Public Utility Nuclear Corp., 31964, 59118
Georgia Institute of Technology, 14164, 19961, 23016

Georgia Power Co. et al., 734, 41186, 52471
GPU Nuclear Corp., 30103, 39164
GPU Nuclear Corp. et al., 67078
GRD Steel Corp., 49496
Guzman, Juan, 18630
Guzman, Juan, et al., 26549
HNU Systems, Inc., 45994
Houston Lighting & Power Co., 64175
Houston Lighting & Power Co. et al., 4805, 9502, 14832, 16651, 17735, 26936, 43086, 57719
Idaho State University, 563
IES Utilities, Inc., 3953, 69115
Indiana Michigan Power Co., 56572
Industrial Marine Testing Laboratories, Inc., 41430
Innovative Weaponry, Inc., 25694
Jenson, Mark A., 37938
Kerr-McGee Corp., 38788
Maas, John, 68310
Madigan Army Medical Center, Takoma, WA, 27106
Maine Yankee Atomic Power Co., 735
Massachusetts radiation control program; staff assessment, 68066
McDaniel, Emerick S., 27108, 27938, 33952
McDonald, Donald J., Jr., 14834
MidAmerican Energy Co., 30263
Middle Monongahela Industrial Development Association, Inc., 42921
Minnick, Gary A., 193
Molycorp, Inc., 22075
New York Power Authority, 25245
Niagara Mohawk Power Corp., 59248, 65085
North Atlantic Energy Service Co. et al., 33142
North Atlantic Energy Service Corp., 60121
Northeast Nuclear Energy Co., 43087, 54242, 58253
Northeast Nuclear Energy Co. et al., 30639, 31559
Northeast Utilities, 4294
Northeast Utilities Service Co., 29771, 36583, 49498
Northern States Power Co., 5413, 9504, 24837, 38789, 48989, 49800, 53983, 57721, 65246
Omaha Public Power District, 355, 45995
Osorio, Jesus N., 37940
Pacific Gas & Electric Co., 3737, 15314, 48512, 55174, 69115
Pathfinder Mines Corp., 15315, 24964
PECO Energy Co., 45997, 67582
Pennsylvania Power & Light Co., 39672, 47529, 56972
Petrotomics Co., 33776, 40864, 56574
Philadelphia Electric Co., 356, 3511, 3512, 20840, 50335
Portland General Electric Co., 17736
Portland General Electric Co. et al., 18448
Power Authority of State of New York, 14835, 20602
Power Resources, Inc., 43267
Public Service Co. of Colorado, 13520, 48174, 58087
Public Service Electric & Gas Co., 17737, 30641, 32468, 38229, 48175, 59249
Public Service Electric & Gas Co. et al., 420, 5040, 50885, 69115
Rochester Gas & Electric Corp., 24965, 29142
Sadovsky, Roy, D.V.M., 49499
Saxton Nuclear Experimental Corp., 4496, 11231, 24964
Shelton, James L., 1650, 2848
Southern California Edison Co., 34452, 56251
Southern California Edison Co. et al., 67079
Southern Nuclear Operating Co. et al., 41187
Southern Nuclear Operating Co., Inc., 19092, 34830
Tennessee Valley Authority, 5587, 15315, 35272, 37094, 37095, 41431, 51470, 55026
Testco, Inc., 14583, 40671, 43268
Texas Utilities Electric Co., 1651, 3739, 58256, 64930
Toledo Edison Co. et al., 356
U.S. Air Force; McClellan AFB Nuclear Radiation Center, 66061
Umetco Minerals Corp., 563, 1652, 9505
Union Electric Co., 29434, 52959
Virginia Electric & Power Co., 564, 31561, 44093, 49360, 60121
Washington Public Power Supply System, 8307, 10601, 19326, 29577, 33144, 33777, 33779, 44350
Western Nuclear, Inc., 1653, 11066
Whittaker Corp., 56068
Wisconsin Electric Power Co., 51308
Wisconsin Public Service Co. et al., 53769
Wisconsin Public Service Corp. et al., 52472, 60122
Wolf Creek Nuclear Operating Corp., 10389
Yankee Atomic Electric Co., 1953, 41663

Nuclear Waste Technical Review Board

NOTICES
Meetings, 11437, 29144, 43095, 64400
Privacy Act:
Systems of records, 59472

Occupational Safety and Health Administration

RULES
Construction safety and health standards:
Federal regulatory reform, 9228, 31427
General industry safety and health standards applicable to construction work; incorporation, 41738
Scaffolds, 46026
Correction and partial stay, 59831
Organization, functions, and authority delegations:
Administrative Review Board; establishment and review procedures, 19982
Safety and health standards:
Federal regulatory reform, 9228, 31427
Grain handling facilities, 9578
Personal protective equipment for general industry, 19547
Correction, 21228
Safety and health standards, etc.:
1,3-Butadiene (BD); occupational exposure, 56746
Asbestos; occupational exposure
Correction, 43454
Reporting and recordkeeping requirements, 5507
Shipyard employment safety and health standards:
Federal regulatory reform, 9228, 31427
Personal protective equipment, 26322
Correction, 29957
State plans; development, enforcement, etc.:
Kentucky et al., 55098
Minnesota, 36824
North Carolina, 28053, 66593
PROPOSED RULES
Construction safety and health standards:
Federal regulatory reform, 37849
Powered industrial truck operator training; public hearing, 3094
Steel Erection Negotiated Rulemaking Advisory Committee
Re-establishment, 66002
Fire Protection in Shipyard Employment Negotiated Rulemaking Advisory Committee
Intent to establish, 28824
Meetings, 28824, 45923, 69058
Occupational injury and illness; recording and reporting requirements, 4030, 15435, 27850
Preliminary economic analysis; executive summary, 7758
Safety and health standards:
Exit routes (means of egress), 47712
Federal regulatory reform, 37849
Safety and health standards, etc.:
1,3-Butadiene; occupational exposure, 9381, 13205
Powered industrial truck operator training—
Public hearing and comment period extended, 3092
Respiratory protection, 1725
State plans; development, enforcement, etc.:
California, 48443, 58358
North Carolina, 48446
NOTICES
Agency information collection activities:
Proposed collection; comment request, 1604, 2267, 10384, 30261, 38225, 38226, 42063, 45988, 48983, 51305
Air contaminants; permissible exposure limits (PEL), 1947
Committees; establishment, renewal, termination, etc.:
Maritime Advisory Committee, 3056
Maritime Advisory Committee for Occupational Safety and Health, 15523
Metalworking fluids, occupational exposure; standards advisory committee, 45459
Emergency response plans:
National Response Team's integrated contingency plan guidance; availability, 21642
Meetings:
Construction Safety and Health Advisory Committee, 10600, 40863, 56065, 65083
Maritime Advisory Committee for Occupational Safety and Health, 15524
Occupational Safety and Health Maritime Advisory Committee, 40662
Occupational Safety and Health National Advisory Committee, 9199, 13221, 18628, 25507, 28600, 33541, 43080, 58223
Memorandums of understanding:
Energy Department, Environment, Safety and Health Office; facilities and operations at Savannah River Site, SC, 15059
Nuclear Regulatory Commission; Energy Policy Act; gaseous diffusion plants, 40249
Nationally recognized testing laboratories, etc.:
Canadian Standards Association, 36763, 59110
ETL Testing Laboratories, Inc., 41659
Inchcape Testing Services NA, Inc., 59111
MET Laboratories, Inc., 41661, 59114
Wyle Laboratories, 36764, 59115
State plans; development, enforcement, etc.:
California, 50335
State plans; standards approval, etc.:
Vermont, 47195
Washington, 8667

Occupational Safety and Health Review Commission

RULES
Freedom of Information Act; implementation, 14024
Practice and procedure:
E-Z Trial pilot program implementation and simplified proceedings for adjudicative process; rules revision—
Pilot program extension, 50711

NOTICES
Meetings; Sunshine Act, 31192, 47988

Office of Federal Housing Enterprise Oversight

See Federal Housing Enterprise Oversight Office

Office of Management and Budget

See Management and Budget Office

Office of the Special Counsel

NOTICES
Senior Executive Service:
Performance Review Board; membership, 68325

Office of United States Trade Representative

See Trade Representative, Office of United States

Overseas Private Investment Corporation

NOTICES
Agency information collection activities:
Proposed collection; comment request, 36094, 54214
Submission for OMB review; comment request, 19319, 24329, 30257, 37767, 41652, 43075, 51129, 54215, 68053
Hearings, 58702
Meetings; Sunshine Act, 8986, 27097, 47177, 64364
Privacy Act:
Systems of records, 25239

Pacific Northwest Electric Power and Conservation Planning Council

NOTICES
Power plan amendments:
Northwest power in transition plan, 13892

Panama Canal Commission

RULES
Acquisition regulations:
Debarment, suspension and ineligibility, 3846
Canal tolls rates and vessel measurement rules—
Approval authority transfer from President to Canal Commission, 16718
Health, sanitation, and communicable disease surveillance; and radio communication:
Disinfecting vessels requirement; technical amendments, 36497
Shipping and navigation:
Canal tolls rates and vessel measurement rules—
Toll rate increase and on-deck container capacity measurement, 60610
PROPOSED RULES
Semi-annual agenda, 23834, 63328
Shipping and navigation:
Canal tolls rates and vessel management rules—
Toll rates increase and on-deck container capacity measurement, 46407, 53886

Parole Commission

RULES
Federal prisoners; paroling and releasing, etc.:
Original jurisdiction cases procedures, 13763
Parole date advancements; substance abuse treatment program completion, 4350
Transfer treaty cases; special transferee hearings, 38569, 54096
Correction, 54096
Voting quorums establishment, 55742
NOTICES
Meetings; Sunshine Act, 11064, 14346, 37290, 37291, 40451, 49155, 50053, 51721, 53935, 64534, 65421

Patent and Trademark Office

RULES
Organization, functions, and authority delegations:
Communications with agency; mailroom site creation, mailing addresses, etc., 56439
Patent cases:
Correspondence practice changes; signature and filing requirements, 64027
Fee revisions, 39585
Correction, 43400
Patent cases and secrecy of inventions and licenses to export and file applications in foreign countries:
Patent applications; 18-month publication schedule, 42790
Patents:
Acquisition and protection of foreign rights in inventions, licensing of foreign patents acquired by Government; CFR parts removed
Federal regulatory reform, 40997
Services of Process:
Testimony by employees and the production of documents in legal proceedings; CFR parts removed, 42807
Trademark cases:
Opposition filing time extensions notice, consented requests; proof of service requirement eliminated, 36825
Trademarks:
Fastener Quality Act—
Insignias of manufacturers and private label distributors; recordation fees establishment, 55223
PROPOSED RULES
Patent cases:
Fee revisions, 19224
Correction, 20877
Nucleotide and/or amino acid sequences; submission in computer readable form, 51855
Patent practitioners; registration examination, continuing education requirement, and annual fee, 51072
Patents:
Practice rules; assignment recording, and rights of assignee and national and international patents and inventions; Federal regulatory review, 49820
Trademarks:
Fastener Quality Act—
Insignias of manufacturers and private label distributors; recordation fees establishment, 48872
NOTICES
Agency information collection activities:
Proposed collection; comment request, 1749, 6632, 8260-8262, 10430, 13156, 16759, 19261, 42007, 50807
Submission for OMB review; comment request, 28857, 37722, 40199
Applications, prima facie incomplete filing date; procedure change, 30041
Committees; establishment, renewal, termination, etc.:
Trademark Affairs Public Advisory Committee, 34801
Diplomatic Conference on Certain Copyright and Neighboring Rights Questions:
Chairman's text; public briefing, 54159
Meetings:
Nucleic acid sequences search systems, 8922
Patent cases:
Human drug products—
REMERON active ingredient; term extension, 8263
Nucleic acid sequences related issues patent protection; hearings and comment request, 9980
Payor numbers; extension of use to matters involving pending patent applications, 54622
Therapeutic and diagnostic methods; patent protection; hearings and comment request, 10320
Patents:
Computer-generated icons; design patent applications; examination guidelines, 11380
Computer-related inventions applications; examination guidelines, 7478
Technical documentation; accessibility to patent examiners and public; hearing and comment request, 19611
Senior Executive Service:
Performance Review Board; membership, 54626
Two-year exclusivity period claims:
G.D. Searle & Co.; oxaprozin, 25635

Peace Corps

PROPOSED RULES
Semi-annual agenda, 23838, 63332
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 12114, 27939, 27940, 40865, 47215, 47216, 53984, 59251

Pennsylvania Avenue Development Corporation

RULES
Organization, functions, and authority delegations:
Transfer of responsibilities to General Services Administration et al.; effectiveness of regulations after agency termination, 11308
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 5587
Meetings; Sunshine Act, 7305

Pension and Welfare Benefits Administration

RULES
Employee Retirement Income Security Act:
Interpretive bulletins and regulations removed; Federal regulatory reform, 33847
Participant investment education—
Investment-related information provision; interpretive bulletin, 29586
Plan assets; participant contributions, 41220
PROPOSED RULES
Employee Retirement Income Security Act:
Health insurance portability; comment request, 68697
Insurance company general accounts; clarification, 59845
Interpretive bulletins and regulations removal; Federal regulatory review, 14690
Plan assets; participant contributions, 1879
Health Insurance Portability and Accountability Act—
Portability, access, and renewability provisions; comment request, 68697

NOTICES
Agency information collection activities:
Proposed collection; comment request, 63870-63872
Employee benefit plans:
Form 5500 series filing requirement changes, 3735, 5808
Employee benefit plans; class exemptions:
Authorized transactions between plans and parties in interest, 39988
Bank collective investment fund (CIF) conversion transactions, 58224, 59244
Plan asset transactions determined by in-house asset managers, 15975
Receipt of investment services by individuals for whose benefit IRAs or KEOGHs have been established or maintained, 39996
Restoration of delinquent contributions to plans, 9199, 40459
Employee benefit plans; prohibited transaction exemptions:
Aultman Retirement Savings Plan et al., 5572, 20276
Beall Corp., et al., 55321, 68787
Bill Ussery Motors Inc. et al., 31954
Biscayne Bay Pilots, Inc., et al., 18159
Blue Cross and Blue Shield of Maine et al., 3467, 14827
Blue Cross and Blue Shield of Virginia et al., 25899, 64763
Budge Clinic, 10014
Chase Manhattan Bank et al., 47195, 59465
Dimensional Fund Advisors Inc. et al., 49155, 58231
Equitable Life Assurance Society of United States et al., 47205
Everett Clinic et al., 28237
First Hawaiian Bank et al., 3478
GE Capital Investment Advisors, Inc., et al., 59912
General Electric et al., 21501
General Motors et al., 11875
Hassan Zekavat, M.D., P.A., et al., 3483
Jacor Communications Inc. et al., 18421, 31958
Keebler Co., et al., 68791
Lehman Brothers, Inc., et al., 55325
Masters, Mates and Pilots, et al., 51463
Mewbourne Oil Co., Inc., 37924
Morgan Stanley & Co. Inc. et al., 28243, 58237
NBD Bancorp et al., 8670
PaineWebber Inc., 40000
Pikeville National Bank & Trust Co., 57461
Real Estate Equity Trust No. 1 et al., 66314
RREEF USA Fund et al., 25909
RREEF USA Fund-I et al., 11878
San Diego National Bank et al., 20278, 36766
Smith Barney Shearson Prototype Defined Contribution Plan et al., 54224, 66333
Society National Bank et al., 44081
Sprague Electric Co. et al., 28244
Teachers Insurance Annuity Association of America et al., 54229
Wells Fargo Bank et al., 15123, 37933
Wells Fargo Bank, N.A., et al., 64150
Westinghouse Savannah River Co., 40005
Westinghouse Savannah River Co./Bechtel Savannah River, Inc., et al., 49171
WLI Industries, Inc., et al., 3488
World Omni Financial Corp., 10025
Zekavat, Hassan, M.D., P.A., 51470
Zerhusen and Ghazi, M.D., Inc., 44085
Meetings:
Employee Welfare and Pension Benefit Plans Advisory Council, 9203, 18161, 18162, 25912, 25918, 25919, 34880, 43386, 43387, 50053, 50053, 50054, 54237, 54238, 55017
Pension payback program; restoration of delinquent participant contributions voluntary compliance program; adoption, 9203, 40462

Pension Benefit Guaranty Corporation

RULES
Multiemployer plans:
Late premium payments and employer liability underpayments and overpayments; interest rates, 1126
Valuation of plan benefits and plan assets following mass withdrawal—
Interest rates, 1127, 5945, 10674, 16388, 24444, 30160
Withdrawal liability; notice and collection; interest rates, 16391
Regulations; reorganization, renumbering, and reinvention; Federal regulatory reform, 34002
Correction, 36626, 37316, 37795, 67942
Single-employer plans:
Allocation of assets—
Benefits valuation for plan termination; expected retirement age, 65476
Benefits valuation for termination; interest rates, 36968, 48406
Interest assumptions for valuing benefits, 58479
Interest rates and assumptions, 65474
Interest rates for valuing benefits, 42384, 53623
Disclosure to participants, 24694
Terminated plans; benefits payable, 65473
Late premium payments and employer liability underpayments and overpayments; interest rates, 1126, 16387
Reportable events and annual reporting requirements, 63988
Valuation of plan benefits—
Interest rates and factors, 1127, 5945, 10674, 16388, 21228, 24444, 25513, 30160
Withdrawal liability; notice and collection; interest rates, 1129
PROPOSED RULES
Premium payments:
Premium filings-rated information; submission of records, 66247
Semi-annual agenda, 23842, 63336
Single-employer plans:
Reportable events and annual reporting requirements, 38409
Reportable Events Negotiated Rulemaking Advisory Committee—
Meetings, 13117
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15839, 59917
Submission for OMB review; comment request, 14164, 36771, 47774, 59252
Multiemployer plans:
Bond/escrow requirement; exemption requests—
Dunham-Bush, Inc., 67355
St. Louis Cardinals, L.P., 38480, 53463
Tuscan Dairy Farms, Inc., 38481, 53465
Interest rates and assumptions, 36970, 53772
Variable-rate premiums and benefits following mass withdrawal; interest rates and assumptions, 42448, 48513, 58598, 65607
Premium-related information; penalties for failure to provide, reassessment, 36837, 66338
Premiums payment and late payment or underpayment reduction penalty charges; policy statement, 63874
Privacy Act:
Systems of records, 18184, 53466
Single-employer plans:
Interest rates and assumptions, 36970, 53772
Waivers for major disaster area residents due to blizzard of 1996, 1414

Personnel Management Office

RULES
Absence and leave:
Family and Medical Leave Act; implementation, 64441
Acquisition regulations:
Health benefits, Federal employees—
Suits brought by covered individuals because of health benefit denial, 15196
Administrative law judge positions examination administration; funding, 39267
Correction, 56271
Allowances and differentials:
Cost-of-living allowances and post differential; nonforeign areas; partnership pilot project, 59173
Separate maintenance allowance for Johnston Island duty, 27243
Child support and/or alimony; garnishment orders; processing:
Legal process; designated agents lists, 67378
Correction, 68821
Conflict of interests, 36993
Employment:
Career and career-conditional—
Former overseas employees; noncompetitive employment, 9321
Federal employees' political activities, permitted and prohibited (1993 Hatch Act Reform Amendments), 35088
Federal employee training, 21947, 66189
Correction, 68119, 68821
Federal employment information; agencies funding requirements, 11499
Private sector temporaries; government use, 19509
Surplus and displaced Federal employees; career transition assistance programs development; correction, 691
Federal civilian and uniformed service personnel; solicitation for contributions to private voluntary organizations; correction, 4585
Health benefits, Federal employees:
Coverage continuance; leave without pay or insufficient pay status; Agencies notification requirement, 37807
Disputed claims procedures and court actions, 15177
Family and Medical Leave Act; implementation, 64441
Inpatient hospital charges, physician charges, and FEHB benefit payments; Medicare limitations, 50689
Legal actions; CFR correction, 25775
Organization, functions, and authority delegations:
Voting rights program; applications or complaints; Alameda County, CA examination point designation, 11747
Organizations representing Federal employees and other organizations; Agency relationships, 32913
Pay under General Schedule:
Locality-based comparability payments—
Interim geographic adjustments; termination, 3539, 34713, 50535, 51319, 52497, 53491
Metropolitan areas; removed, 40949, 42939, 43574
Prevailing rate systems, 3175, 5921, 5922, 10879, 20701, 27243, 27995, 27996, 36609, 47661, 48817, 49649, 67447
Retirement:
Coverage elections by current and former nonappropriated fund employees, 41714
Federal Employees Retirement System—
Alternative forms of annuity; critical medical condition standards; establishment, 21953
Retirement, health benefits, and life insurance, Federal employees:
Distirct of Columbia Financial Control Authority; employee coverage as Federal employees, 58457
Senior Executive Service:
Executive, management, and supervisory development, 46531
Voting rights program:
Jefferson and Galveston Counties, TX, 64998
PROPOSED RULES
Acquisition regulations:
Health benefits, Federal employees—
Federal Acquisition Streamlining Act of 1994; implementing amendments, 32401
Allowances and differentials:
Cost-of-living allowances in Alaska, Hawaii, Puerto Rico, Guam, and U.S. Virgin Islands; partnership pilot project, 41746
Employment:
Federal employment information; agencies funding requirements, 546
Merit promotion program—
Internal merit selection procedures design, intensive training programs use, and appointment-appropriate employee assignment, 6324
Suitability, national security positions, and personnel investigations—
National security and non-sensitive positions; distinctions, 394
Temporary and term employment; appointment system streamlining, 47450
Mobility assignments between Federal agencies and non-Federal entities; appointment system streamling, 65189
Excepted service:
Schedule A authority for temporary organizations positions, 63762
Health benefits, Federal employees:
Opportunities to enroll and change enrollment, 35973
Pay under General Schedule:
Locality-based comparability payments—
Metropolitan areas; removals, 55227
Prevailing rate systems, 4940
Retirement:
Civil Service Retirement System—
Merit Systems Protection Board direct appeals; claims adjudication, 66948
Semi-annual agenda, 23810, 63306
NOTICES
Agency information collection activities:
Proposed collection; comment request, 423, 4689, 4690, 6662, 6663, 7284, 8082, 9507, 13223, 16655, 19963, 20867, 21507, 22076, 22077, 26549, 28910, 30645, 33550, 35817, 36771, 40865, 41664, 41812, 56574, 56575, 58599
Submission for OMB review; comment request, 6663, 14346, 15316, 22077, 26550, 27374, 27375, 30930, 35272, 37096, 42072, 46491, 48514, 53468, 56575, 56724, 60127, 66063, 66064
Agriculture Department; alternative personnel management system; demonstration project, 9507, 49178
Allowances and differentials:
Cost-of-living allowances in Alaska; winter 1995 surveys report; availability, 4070
Excepted service:
Schedules A, B, and C; positions placed or revoked—
Consolidated list, 46835
Update, 565, 6663, 10601, 15529, 19963, 28251, 33150, 39483, 46491, 50886, 56575, 65249
Federal position classification structure; occupational series reduction, 16654
Health benefits, Federal employees:
Medically underserved areas (CY 1997), 47530
Locality pay; President's Pay Agent; salary tables, 30645
Meetings:
Federal Prevailing Rate Advisory Committee, 2848, 11067, 21507, 24837, 33550, 43565, 46669, 67584
Federal Salary Council, 8082, 34911, 49801
National Partnership Council, 1654, 4295, 5045, 9510, 15151, 19328, 35818, 46871, 52978, 56724, 64177
Organization, functions, and authority delegations:
Claims settlement procedures transferred from General Accounting Office, 51730
Personnel management demonstration projects:
Air Force; Armstrong, Phillips, Rome and Wright science and technology reinvention laboratories, 24622, 60400
Veterans Affairs Department; pay for applied skills system—
New York and Detroit Benefits Regional Offices, 58942
Privacy Act:
Computer matching programs, 35818, 50351, 50352, 60127
Systems of records, 9510, 36919
Senior Executive Service:
Career positions reserved during 1995 list, 25018
Performance Review Board; membership, 37942

Physician Payment Review Commission

NOTICES
Meetings, 17737, 46669

Postal Rate Commission

RULES
Practice and procedure:
Domestic mail classification schedule—
Preferred rate mailers rates changes, etc.; correction, 37316
Revisions, 32656, 55100
Market testing; postal services, 24447
PROPOSED RULES
Practice and procedure:
Omnibus rate proceeding—
Cost attribution methods and rate design principles, 67760
NOTICES
Complaints filed:
Coalition Against Unfair USPS Competition, 40671, 67356
Domestic mail classification schedule:
Preferred rate mailers rates changes, etc., 16129
Revisions, 67860
Special services fees and classifications, 31968, 42449
Meetings; Sunshine Act, 1256, 30104, 37097, 65092, 65093
Post office closings; petitions for appeal:
Atlantic, ME, 55175
Bruington, VA, 6397
Cuyama, CA, 59120
DiGiorgio, CA, 67584
Eagle Harbor, NY, 35819
Forest Grove, MT, 18632, 24341
Green Mountain, IA, 55175
Huntley, NE, 28910
Kemp, OK, 15151
Lewiston, NE, 28627
Moriah, NY, 40675
Morrison, IA, 2269
Oakley, IL, 64401
Oquossoc, ME, 7832
Plevna, MO, 66721
Salem, NE, 26939
Shiloh, VA, 42922
Templeville, MD, 57722
Trevett, ME, 30930
Walters, MN, 14586
West Rushville, OH, 35819
Visits to facilities, 16944, 19646

Postal Service

RULES
Board of Governors bylaws:
Conflict of interests and Sunshine Act provisions, 36498
Domestic Mail Manual:
Deposit, collection and delivery—
Packages weighing 16 ounces or more; deposit in collection receptacles, restrictions, 52702
Experimental first-class and priority mail small parcel automation rate category; zip code realignments in test areas, 17206, 53322
Mail classification reform; implementation standards, 10068, 17190, 42478, 48071, 64618
Mail preparation standards, etc., 48572, 60190
Implementation standards, 67218
Federal claims collection:
Civil monetary penalties; inflation adjustment, 55750, 56450
Inspection Service/Inspector General authority:
Commercial espionage as criminal activity added to mail cover regulations, 42557
Mail reasonably suspected of being dangerous to persons or property; treatment, 28059
International Mail Manual:
Global Priority Mail—
Expansion, 14025
Implementation, 13775
International package consignment service—
Additional destination countries, 13765, 39592, 55572
Implementation, 36500
PROPOSED RULES
Domestic Mail Manual:
Address correction information requests by mailers, 53280
Mail classification reform; implementation standards, 32606
Mail with insufficient postage deposited for delivery; treatment, 15205
Inspection Service/Inspector General authority:
Commercial espionage as criminal activity added to mail cover regulations, 21404
Organization and administration:
Mail reasonably suspected of being dangerous to persons or property; treatment, 7452
Postal electronic commerce services; electronic postmark services prototype system test, 42219
NOTICES
Domestic mail classification and rates, 10220, 42464

Domestic Mail Manual:
Postage meters manufacture and use—
Postal security devices and indicia (postmarks); specifications, 34460, 36940, 44094, 53468, 55676
Transition book; revision, 55053
Domestic rates, fees, and mail classifications:
Experimental first-class and priority mail small parcel automation rate category, 17210
Meetings; Sunshine Act, 2581, 3088, 5605, 6297, 6894, 10406, 11906, 16655, 16944, 18185, 24341, 25928, 31979, 33783, 36586, 38232, 38482, 42072, 43566, 50353, 54245, 56576, 56577, 58431, 58715, 59473, 65092, 68071
Privacy Act:
Computer matching programs, 9736
Systems of records, 10038, 24837, 29774, 31562, 39674, 52069

Presidential Advisory Committee on Gulf War Veterans' Illnesses

NOTICES

Meetings, 195, 2549, 7284, 9737, 15316, 25720, 28911, 34461, 37942, 41812, 47216, 52816

Presidential Documents

PROCLAMATIONS

Bulgaria; extension of nondiscriminatory treatment (most-favored-nation treatment) to products of (Proc. 6922), 51205
Burma:
Suspension of entry of certain persons into U.S. as immigrants and nonimmigrants who formulate or implement policies that are impeding the transition to democracy or who benefit from such policies (Proc. 6925), 52233
Cuba; national emergency and emergency authority relating to regulations of anchorage and movement of vessels (Proc. 6867), 8843
Feed grain from the disaster reserve; state of emergency declaration and release of (Proc. 6907), 35083
Generalized System of Preferences; amendments (Proc. 6942), 54719
Grand Staircase-Escalante National Monument, establishment (Proc. 6920), 50223
Imports and exports:
Broom corn brooms, imports (Proc. 6961), 64431
Harmonized Tariff Schedule of U.S.; amendments (Proc. 6948), 56385
Israel:
Implementing the U.S.-Israel agreement on trade in agricultural products (Proc. 6962), 64581
Romania; extension of nondiscriminatory treatment (most-favored-nation treatment) to products of (Proc. 6951), 58129
Sudan; suspension of entry of certain persons as immigrants and nonimmigrants who are members or officials of the government or armed forces (Proc. 6958), 60007
Tariff-rate quotas for certain cheeses (Proc. 6914), 45851
West Bank and the Gaza Strip and qualifying industrial zones; duty-free treatment to products (Proc. 6955), 58761
Special observances:
Adoption Month, National (Proc. 6947), 56383
African American History Month, National (Proc. 6863), 3777
America Goes Back to School (Proc. 6915), 48063
American Heart Month (Proc. 6864), 4347
American Indian Heritage Month, National (Proc. 6949), 56397
American Red Cross Month (Proc. 6866), 7685
Asian/Pacific American Heritage Month (Proc. 6892), 21045
Boorda, Admiral Jeremy M., death of (Proc. 6898), 25767
Breast Cancer Awareness Month, National (Proc. 6926), 52675
Burke, Admiral Arleigh A.; death of (Proc. 6860), 381
Cancer Control Month (Proc. 6875), 14603
Captive Nations Week (Proc. 6909), 38049
Centers for Disease Control and Prevention Day (Proc. 6905), 32911
Character Counts Week, National (Proc. 6937), 54069
Child Abuse Prevention Month, National (Proc. 6881), 16037
Child Health Day, (Proc. 6933), 53301
Children's Day, National (Proc. 6939), 54073
Citizenship Day and Constitution Week (Proc. 6917), 49405
Columbus Day (Proc. 6940), 54075
Consumers Week, National (Proc. 6945), 55077
Crime Victims' Rights Week, National (Proc. 6888), 18045
D.A.R.E. Day, National (Proc. 6882), 16611
Day of Concern About Young People and Gun Violence, National (Proc. 6935), 53593
Day of Prayer, National (Proc. 6877), 15175
Day of Remembrance of the Oklahoma City Bombing, National (Proc. 6880), 16035
Death of Those Aboard U.S. Air Force Aircraft in Croatia (Proc. 6878), 15363
Defense Transportation Day, National, and National Transportation Week (Proc. 6896), 25129
Disability Employment Awareness Month, National (Proc. 6929), 53291
Domestic Violence Awareness Month, National (Proc. 6927), 52677
Drunk and Drugged Driving Prevention Month, National (Proc. 6960), 64245
Education and Sharing Day, U.S.A. (Proc. 6876), 14605
Family Caregivers Week, National (Proc. 6953), 58313
Family Week, National (Proc. 6956), 59301
Farm-City Week, National (Proc. 6952), 58311
Farm Safety and Health Week, National (Proc. 6916), 48815
Father's Day (Proc. 6904), 30797
Fire Prevention Week (Proc. 6930), 53293
Flag Day and National Flag Week (Proc. 6903), 29633
Forest Products Week, National (Proc. 6944), 54927
Former Prisoner of War Recognition Day, National (Proc. 6879), 15871
General Pulaski Memorial Day (Proc. 6936), 53825
German-American Day (Proc. 6931), 53295
Gold Star Mother's Day (Proc. 6923), 51347
Great American Smokeout Day, National (Proc. 6957), 59803
Greek Independence Day (Proc. 6873), 13383
Hispanic Heritage Month, National (Proc. 6919), 49647
Historically Black Colleges and Universities Week, National (Proc. 6921), 50419
Honoring the Filipino Veterans of World War II (Proc. 6943), 54925
Human Rights Day, Bill of Rights Day, and Human Rights Week (Proc. 6964), 65455
Irish-American Heritage Month (Proc. 6868), 9847
Jewish Heritage Week (Proc. 6887), 18043
Korean War Veterans Armistice Day, National (Proc. 6910), 39551
Labor History Month (Proc. 6891), 20419
Law Day, U.S.A. (Proc. 6890), 19803
Leif Erikson Day (Proc. 6934), 53591
Loyalty Day (Proc. 6889), 19503
Maritime Day, National (Proc. 6900), 26067
Martin Luther King, Jr., Federal Holiday (Proc. 6861), 1207
Minority Enterprise Development Week (Proc. 6913), 44143
Mother's Day (Proc. 6893), 21047
Muskie, Edmund Sixtus; death of (Proc. 6874), 14233
National Park Week (Proc. 6870), 9899
Older Americans Month (Proc. 6894), 24661
Organ and Tissue Donor Awareness Week, National (Proc. 6886), 18041
Pan American Day and Pan American Week, 1996 (Proc. 6884), 16615
Parents' Day, (Proc. 6911), 39553
Pay Inequity Awareness Day, National (Proc. 6883), 16613
Peace Officers Memorial Day and Police Week (Proc. 6895), 24663
Pearl Harbor Remembrance Day, National (Proc. 6963), 64957
Poison Prevention Week, National (Proc. 6871), 10445
POW/MIA Recognition Day, National (Proc. 6918), 49407
Prayer for Peace, Memorial Day (Proc. 6901), 26769
Religious Freedom Day (Proc. 6862), 1271
Roosevelt History Month (Proc. 6928), 53289
Safe Boating Week, National (Proc. 6897), 25765
Saudi Arabia, victims of the bombing (Proc. 6906), 33823
Save Your Vision Week (Proc. 6869), 8849
School Lunch Week, National (Proc. 6938), 54071
Small Business Week (Proc. 6902), 28465
Smithsonian Institution, 150th Anniversary (Proc. 6865), 5269
Student Voter Education Day, National (Proc. 6924), 51767
Thanksgiving Day (Proc. 6954), 58455
United Nations Day (Proc. 6946), 55545
Unity: A National Month of (Proc. 6908), 35587
Veterans Day (Proc. 6950), 56873
Volunteer Week, National (Proc. 6885), 17545
White Cane Safety Day (Proc. 6941), 54077
Wildlife Refuge Week, National (Proc. 6932), 53297
Women's Equality Day, 1996 (Proc. 6912), 43645
Women's History Month (Proc. 6872), 11707
World AIDS Day (Proc. 6959), 63691
World Trade Week (Proc. 6899), 25769
Wright Brothers Day (Proc. 6965), 66865

EXECUTIVE ORDERS

Alternative fueled vehicles, Federal leadership (EO 13021), 66529
Armed Forces Reserve Medal; eligibility requirements (EO 13013), 41483
Armed Forces Service Medal; establishment (EO 12985), 1209
Civil Justice Reform (EO 12988), 4729
Committees; establishment, renewal, termination, etc.:
Bioethics Advisory Commission, National; amendment (EO 13018), 49045
Consumer Protection and Quality in the Health Care Industry, Advisory Commission on (EO 13017), 47659

Counter-Narcotics, President's Council on; establishment (EO 12992), 11287
HIV/AIDS, Presidential Advisory Council on; amendment to EO 12963 (EO 13009), 30799
Mental Retardation, President's Committee on; continuation (EO 12994), 13047
National Railway Labor Conference; labor disputes—
Emergency board establishment (EOs 13001, 13003, 13004, 13027), 21943, 25131, 25771, 58971
President's Commission on Critical Infrastructure Protection; amendment (EO 13025), 58623
Protection, establishment (EO 13010), 37347
President's Drug Policy Council; expansion and name change (EO 13023), 57767
President's Export Council; amendment (EO 12991), 9587
Southeastern Pennsylvania Transportation Authority; labor disputes, emergency board establishment (EO 13012), 38051
Tribal Colleges and Universities, Presidential Board of Advisors on (EO 13021), 54929
United States—Pacific Trade and Investment Policy, Commission on; amendment (EOs 12987 and 13032), 4205, 68985
White House Commission on Aviation Safety and Security (EO 13015), 43937
Enterprise for the Americas Initiative (EO 13028), 64589
Europe, Organization for Security and Cooperation; Implementation of Annex 1 (EO 13029), 64591
Export controls; administration (EO 13020), 54079
Encryption (EO 13026), 58767
Export controls administration; encryption (EO 13026), 58767
Export controls and foreign assistance; administration (EO 13030), 66187
Federal facilities; locating on historic properties in central cities (EO 13006), 26071
Federal procurement; empowerment contracting (EO 13005), 26069
Government agencies and employees:
Commerce Secretary, designation of officers to act as; amendment (EO 12998), 15873
Competitive appointments of students who have completed approved career-related work study programs (EO 13024), 58125
Contracts; Immigration and Naturalization Act provisions compliance (EO 12989), 6091
Defense Secretary, order of succession of officers to act as (EO 13000), 18483
Education technology; transfer of excess and surplus computer equipment and employee assistance to classrooms (EO 12999), 17227
Federal Acquisition, Recycling, and Waste Prevention; amendment (EO 12995), 13645
Federal information technology (EO 13011), 37657
Inspectors General; administrative allegations against (EO 12993), 13043
Pay and allowance rates (EOs 12984 and 13033), 237, 68987
Uniform services (EO 12990), 8467
Wildlife Refuge System, National; management and general public use (EO 12996), 13647
Indian sacred sites (EO 13007), 26771
International Union for Conservation of Nature and Natural Resources; immunity from suit (EO 12986), 16934
Korean Peninsula Energy Development Organization; designation as a public international organization (EO 12997), 14949
Midway Islands; administration (EO 13022), 56875
Narcotics control policies (EO 13008), 28721
Superfund implementation:
National Contingency Plan National Response Team; authority delegations (EO 13016), 45871
Supporting Families:
Collecting Delinquent Child Support Obligations (EO 13019), 51763
Taiwan; maintaining unofficial relations with the people of (EO 13014), 42963
Vietnam and adjacent waters; termination of combat zone designation (EO 13002), 24665

ADMINISTRATIVE ORDERS

Air Force, operating location near Groom Lake, NV, classified information (Presidential Determination No. 96-54 of September 28, 1996), 52679
Alaskan North Slope crude oil exports (Memorandum of April 28, 1996), 19507
Albania; reconfirmation of findings with respect to trade agreement (Presidential Determination No. 96-44 of August 27, 1996), 45859
Albania, Armenia, Azerbaijan, Belarus, Georgia, Kazakstan, Kyrgyzstan, Moldova, Mongolia, and Tajikistan; Trade Act of 1974:
Continuation of waiver authority (Presidential Determination No. 96-30 of June 3, 1996), 29457
Angola, National Union for the Total Independence of (UNITA); continuation of emergency with U.S. (Notice of September 16, 1996), 49047
Anti-Economic Discrimination Act of 1994; suspending prohibitions on certain sales and leases (Presidential Determination No. 96-23 of April 30, 1996), 26029
Argentina-U.S. nuclear energy cooperation agreement (Presidential Determination No. 96-12 of February 28, 1996), 9887
Armenia; reconfirmation of findings with respect to trade agreement (Presidential Determination No. 96-47 of August 27, 1996), 45865
Belarus; renewal of trade agreement (Presidential Determination No. 96-15 of March 7, 1996), 19935
Bosnia and Herzegovina:
Compliance on withdrawal of foreign forces and terminating intelligence cooperation with Iran (Presidential Determination No. 96-34 of June 26, 1966), 36493
Eligibility to be furnished defense articles and services (Presidential Determination No. 96-10 of February 23, 1996), 8463
Receipt of defense articles and services from Department of Defense (Presidential Determination No. 96-39 of July 6, 1996), 38053
Revitalization; aggregate bilateral contributions (Presidential Determination No. 96-40 of July 8, 1996), 38055
Broom corn brooms:
Action under section 203 of the Trade Act of 1974 (Memorandum of November 28, 1996), 64439
Determinations under section 203 of the Trade Act of 1974 and section 304 of the North American Free Trade Act (Memorandum of August 30, 1996), 46697
Cambodia; military drawdown for POW/MIA purposes (Presidential Determination No. 96-50 of September 4, 1996), 48601
China:
Export-Import Bank loan for equipment and services for Yangcheng power plant (Presidential Determination No. 97-3 of November 11, 1996), 59805, 59807
Export-Import Bank loan for equipment and services for Xiaolangdi hydroelectric power plant in Henan (Presidential Determination No. 96-38 of June 29, 1996), 36991
Export-Import Bank loan for Nantong II power plant in Jiangsu Province (Presidential Determination No. 96-35 of June 26, 1996), 36495
Export-Import Bank loan for plant equipment and services at Qinshan II nuclear power plant (Presidential Determination No. 96-37 of June 29, 1996), 36989
Reconfirmation of findings with respect to Trade Agreement (Presidential Determination No. 96-33 of June 21, 1996), 32631
Trade Act of 1974 restrictions; continuation of waiver authority (Presidential Determination No. 96-29 of May 31, 1996), 29455
Colombia; significant narcotics traffickers; continuation of emergency (Notice of October 16, 1996), 54531
Colombia, Venezuela, Peru, and countries of Eastern Caribbean; antinarcotics assistance (Presidential Determination No. 96-57 of September 30, 1996), 56865
Debt amount owed to U.S. by poorest countries, reduction; authority delegation to Secretary of Treasury (Memorandum of July 8, 1996), 38563
Economic Community of West African States' Peacekeeping Force; drawdown of Defense articles and services (Presidential Determination Nos. 96-55 and 96-56 of September 30, 1996), 56861, 56863
Endangered Species Act of 1973:
Suspension of proviso limiting implementation of certain sections, contained in Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Memorandum of April 26, 1996), 24667
Eritrea, Ethiopa, and Uganda; authorization to be furnished emergency military assistance (Presidential Determination No. 96-53 of September 26, 1996), 56859
Export control regulations; continuation of national emergency (Notice of August 14, 1996), 42527
Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996:
Delegation of authority (Memorandum of November 20, 1996), 64247
Determination pursuant to section 523 (Presidential Determination No. 96-19 of March 19, 1996), 14235, 64247
Georgia; findings with respect to trade agreement (Presidential Determination No. 96-49 of August 27, 1996), 45869
Germany; delegation of authority to identify Germany under title VII and modify or restrict title VII trade action taken against, 35079
Government agencies and employees:
Classified national security information (Order of February 27, 1996), 7977
Haiti:
Delegation of authority under Foreign Operations, Export Financing and Related Programs Appropriations Act, 1996 (Memorandum of February 5, 1996), 5669
Drawdown of commodities and services from the Departments of State, the Treasury, Defense, and Justice (Presidential

Determination No. 96-52 of September 12, 1996), 50417
Iran and Libya Sanctions Act of 1996; delegation of responsibilities (memorandum of November 21, 1996), 64249
Iran emergency; continuation (Notices of March 8, 1996 and October 29, 1996), 9897, 56107
Iraqi emergency; continuation (Notice of July 22, 1996), 38561
Iraq, northern:
Drawdown of commodities from the Department of Defense to support peace monitoring force (Presidential Determination No. 96-29 of May 31, 1996), 67685
Israel:
Agreement governing Arrow Deployability Program (Presidential Determination No. 96-27 of May 28, 1996), 29001
Drawdown of commodities and services from the Departments of Defense (including defense articles, defense services, and training), Treasury, Transportation, and Justice (Presidential Determination No. 96-17 of March 7, 1996), 11123
Israel; loan guarantee authority (Presidential Determination No. 96-58 of September 30, 1996), 56867
Jordan; designation as major non-NATO ally (Presidential Determination No. 97–4 of November 12, 1996), 59809
Jordan; eligibility to be furnished defense articles and services (Presidential Determination No. 96-11 of February 23, 1996), 8465
Kazakhstan; renewal of trade agreement (Presidential Determination No. 96-16 of March 7, 1996), 49937
Korean Peninsula Energy Development Organization; U.S. contribution (Presidential Determination 96-21 of April 4, 1996), 26021, 27767
Kyrgyzstan; reconfirmation of findings with respect to trade agreement (Presidential Determination No. 96-45 of August 27, 1996), 45861
Libya; continuation of state of emergency with U.S. (Notice of January 3, 1996), 383
Macedonia, Former Yugoslav Republic of; elegibility to receive defense articles and services (Presidential Determination No. 96-18 of March 8, 1996), 11497
Mexico:
Drawdown of articles, services, military education and training from Defense Department (Presidential Determination No. 97-9 of December 2, 1996), 65149
Drug control cooperation (Memorandum of April 8, 1996), 16039
Middle East Peace process; continuation of emergency regarding terrorists who threaten to disrupt (Notice of January 18, 1996), 1695
Migration and Refugee Assistance Act of 1962; availability of funds (Presidential Determination No. 97-8 of November 27, 1996), 65147
Mojave National Preserve:
Suspension of Subsection 119(a) Department of the Interior and Related Agencies Appropriations Act, 1996 (Memorandum of April 26, 1996), 24875
Moldova; reconfirmation of findings with respect to trade agreement (Presidential Determination No. 96-48 of August 27, 1996), 45867
Mongolia; emigration policies; determination under Trade Act of 1974 (Presidential Determination No. 96-51 of September 4, 1996), 48603
Narcotics; major producing and transit countries, certification (Presidential Determination No. 96-13 of March 1, 1996), 9891
National Defense Authorization Act for Fiscal Year 1996; delegation of authorities to Secretary of State (Memorandum of April 1, 1996), 26017
National Parks:
Public-private partnerships (Memorandum of April 22, 1996), 18231
Transportation impact; planning (Memorandum of April 22, 1996), 18229
Palestine Liberation Organization:
Suspending restriction on relations with U.S. (Presidential Determination No. 96-41 of August 12, 1996), 43137
(Presidential Determination No. 96-20 of April 1, 1996), 26019
(Presidential Determination No. 96-32 of June 14, 1996), 32629
(Presidential Determination No. 96-8 of January 4, 1996), 2889
Delegation of responsibilities to Secretary of State (Memorandum of February 29, 1996), 9889
Refugee admissions numbers and authorizations of in-country refugee status (Presidential Determination No. 96-59 of September 30, 1996), 56869
Russia and Commonwealth of Independent States; certification of troop withdrawal from Latvia and Estonia (Presidential Determination No. 96-31 of June 6, 1996), 30127
Soviet Nuclear Threat Reduction Act of 1991; delegation of authority to Secretary of State (Memorandum of May 10, 1996), 26033
Soviet Union, New Independent States of the Former; foreign assistance (Presidential Determination No. 96-24 of May 9, 1996), 26031, 59171
Assistance program (Presidential Determination No. 96-14 of March 1, 1996), 9893
Tajikistan; findings with respect to Trade Agreement (Presidential Determination No. 97-7 of November 26, 1996), 63695
Tongass National Forest:
Suspension of subsection 325(a) and (b) of the Department of the Interior and Related Agencies Appropriations Act, 1996 (Memorandum of April 26, 1996), 19505
Trading With the Enemy Act; extension of the exercise of certain authorities (Presidential Determination No. 96-43 of August 27, 1996), 46529
Turkey; waiver of statutory restrictions to permit assistance (Presidential Determination No. 96-25 of May 16, 1996), 27001
Turkmenistan; findings with respect to Trade Agreement (Presidential Determination 97-5 of November 20, 1996), 59303
Ukraine; reconfirmation of findings with respect to trade agreement (Presidential Determination No. 96-46 of August 27, 1996), 45863
Uzbekistan; findings with respect to Trade Agreement (Presidential Determination No. 97-6 of November 26, 1996), 63693
Vietnam:
Cooperation in accounting for POW/MIA (Presidential Determination No. 97-10 of December 3, 1996), 29453, 65151
Military drawdown for POW/MIA location efforts (Presidential Determination No. 96-42 of August 24, 1996), 46699
Weapons of mass destruction; continuation of emergency (Notice of November 12, 1996), 58309
Wheat reserve release (Presidential Determination No. 96-9 of January 22, 1996), 4207
Yugoslavia, Federal Republic of (Serbia and Montenegro) and Bosnian Serbs; continuation of emergency (Notice of May 24, 1996), 2887, 26773
Yugoslavia, former; refugee and migration assistance (Presidential Determination No. 96-22 of April 18, 1996), 26027

President's Council on Integrity and Efficiency

NOTICES
Senior Executive Service:
Performance Review Board; membership, 53242, 56976

President's Council on Sustainable Development

NOTICES
Meetings, 24839, 50354, 59473

Prisons Bureau

RULES
Contact with persons in community:
Incoming publications; nudity or sexually explicit material or information; distribution to inmates, 57568
Inmate control, custody, care, etc.:
Acts of violence and terrorism prevention, 25120
Administrative remedy program, 86
Central inmate monitoring system, 40142
Classification and program review, inmate discipline, etc.; Federal regulatory reform, 47794
Drug abuse treatment programs and early release consideration, 25121
Education tests; minimum standards for administration, interpretation, and use; regulation rescinded, 47795
Hostage situation management, 38042
Inmate organizations—
Fund-raising activities; prohibition, 11274
Intensive confinement center program, 18658
Inmate restraints application and use of force, 39800
Medical services—
Plastic surgery, 13322
Records access and information release, 64950
Release from custody—
Standarized release preparation program; exceptions, 38042
Telephone regulations and inmate financial responsibility—
Effective date delayed, 90
Unescorted transfers and voluntary surrenders, 64953
Work and compensation—
Drug abuse treatment programs and pretrial inmates, 378
Institutional management:
Food service; special food or meals, 16374
PROPOSED RULES
Inmate control, custody, care, etc.:
Authorized personal property lists standardization and transportation procedures, 14440
Correspondence of pretrial inmates; restricted special mail procedures, 5846, 64954
Inmate legal activities and inmate personal property, 56096
Records access and information release, 32258

Telephone and commisary privileges limitations; inmate financial responsibility, 92
NOTICES
Environmental statements; notice of intent:
Martin County, KY, 43267
Inmate control, custody, care, etc.:
Incarceration cost; annual fee determination, 39802

Prospective Payment Assessment Commission

NOTICES
Meetings, 15840, 28252, 36940, 51731, 64401

Public Debt Bureau

NOTICES
Agency information collection activities:
Proposed collection; comment request, 53262
Privacy Act:
Computer matching programs, 32478

Public Health Service

See Agency for Health Care Policy and Research
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See Indian Health Service
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
RULES
Fellowships, internships, training:
National Institute of Environmental Health Sciences hazardous substances basic research and training grants, 55113
National Institutes of Health training grants, 55110
Grants:
Investigators; conflict of interests; CFR correction, 56631
National Institutes of Health center grants, 55106
Nurse practitioner and nurse midwifery programs, 51787
Public health and allied health personnel training, 6118
Correction, 9532, 51020
Research projects grants, 55102
Teaching facilities construction, educational improvements, scholarships and student loans—
Correction, 9532
Interstate shipment of etiologic agents:
Facilities transferring or receiving select infectious agents; additional requirements, 55190
Organization, functions, and authority delegations:
Senior Biomedical Research Service; establishment, 6556
PROPOSED RULES
Interstate shipment of etiologic agents:
Facilities transferring or receiving select infectious agents; additional requirements, 29327
Organ Procurement and Transplantation Network; operation framework and Federal oversight provisions:
Human liver allocation policies, 58158
Vaccine Injury Compensation Program:
Vaccine injury table revision, 4249
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 29103
Committees; establishment, renewal, termination, etc.:
National Vaccine Advisory Committee, 64919
Grant and cooperative agreement awards:
ASPIRA Association, Inc., 60110
Grants and cooperative agreements; availability, etc.:
Family planning services personnel training program, 14212
Indian Health Service facilities; inpatient and outpatient medical care; reimbursement rates (CY 1996), 30088, 33130
Meetings:
National Bioethics Advisory Commission, 63853, 63854
National Toxicology Program; Scientific Counselors Board, 11216, 17314, 29413, 55165, 58698, 58698
National toxicology program:
Annual plan (FY 1995); availability, 28883
Biennial Report on Carcinogens; criteria and process used in listing substances, 50499
Toxicology and carcinogenesis studies—
1-Amino-2,4-dibromoanthraquinone, 66055
2,2-Bis(Bromomethyl)-1,3-Propanediol, 66056
7,12-dimethylbenz(a)anthracene, etc. (skin paint studies of mice), 50500
Acetonitrile, 50500
Allyl bromide, etc., 22066
Benzethonium chloride, 19306
Codeine, 66055
Diethylphthalate, etc., 19305
Isobutyl nitrite, 66055
Methylphenidate hydrochloride, 19306
Nickel oxide, 66054
Nickel subsulfide, 66054
Nickel sulfate hexahydrate, 66056
O-Benzyl-p-chlorophenol, 19306
T-Butyl alcohol, 19305
Organization, functions, and authority delegations:
Centers for Disease Control and Prevention, 48959, 49785
National Institutes of Health, 14804, 19944, 25234, 36737, 42433, 47952, 54451, 58078, 58079, 65071
Secretary's Council on Health Promotion and Disease Prevention Objectives for 2010; establishment, 54668
Xenotransplantation, infectious disease issues; guideline availability, 49920

Railroad Retirement Board

RULES
Prohibition of Cigarette Sales to Minors in Federal Buildings and Lands Act; implementation, 8213, 54732
Public information availability; fee schedule, 25390
Railroad Retirement Act:
Railroad employers' reports and responsibilities—
Payroll records disposal or utilization, 31395
Railroad Unemployment Insurance Act:
Employers' contributions and contribution reports—
Unemployment contributions based on experience rating system, 20070
Representative payee program administration, 42377
PROPOSED RULES
Federal claims collection:
Civil monetary penalties; inflation adjustment, 54745
Public information availability; fee schedule, 1252
Railroad Retirement Act:
Railroad employers' reports and responsibilities—
Payroll records disposal or utilization, 5970
Railroad Unemployment Insurance Act:
Representative payee program administration, 16067
Semi-annual agenda, 23850, 63342
NOTICES
Agency information collection activities:
Proposed collection; comment request, 1415, 1416, 2270, 4690, 7026, 7833, 9209, 9210, 10826, 15152, 16273, 16274, 25928, 37498, 37499, 40866, 43095, 43096, 45463, 51731, 55677, 57927, 64177, 64401, 67079, 68071
Submission for OMB review; comment request, 423, 3739, 4690, 4691, 5046, 15151, 15152, 15530, 16655, 19965, 24839, 25929, 29144, 29145, 30104, 33550, 35820, 40469, 50516, 51311, 54466, 54825, 56977, 58599, 60128, 67363
Meetings:
Actuarial Advisory Committee, 11068, 56253
Meetings; Sunshine Act, 1206, 5838, 7049, 10406, 11437, 20867, 31192, 36399, 37540, 42290, 47988, 58431, 65250
Privacy Act:
Computer matching programs, 36772, 42666, 57927
Systems of records, 45463, 60129
Railroad Unemployment Insurance Act:
Employer contribution rates, 64547
Monthly compensation base and other determinations (CY 1997), 58911
Supplemental annuity program; determination of quarterly rate of excise tax, 9737, 28911, 46871, 65422

Reclamation Bureau

RULES
Acreage limitation:
Reclamation reform administration and settlement contract requirements, 66754
Water conservation rules and regulations:
Reclamation reform administration and settlement contract requirements, 66754
PROPOSED RULES
Acreage limitation:
Large trusts with landholdings; compliance, 66827
Newlands Reclamation Project, NV; operating criteria and procedures adjustments, 64832
NOTICES
Agency information collection activities:
Proposed collection; comment request, 9485, 31950, 68052
Submission for OMB review; comment request, 35249, 35250, 57700
Central Valley Project Improvement Act:
Water conservation plans; evaluation criteria; decision, 6385, 26931, 50329
Colorado River Reservoirs; coordinated long-range operating criteria; review, 43073
Committees; establishment, renewal, termination, etc.:
Yakima River Basin Water Conservation Advisory Group; meetings, 16934, 50330
Schedule, 50330
Contract negotiations:
Tabulation of water service and repayment; quarterly status, 4281, 19087, 41424, 55651
Environmental statements; availability, etc.:
Acreage limitation and water conservation rules and regulations; 17 Western states, 4677
American River Bridge Crossing Project, CA, 53385

American River, CA; water resources investigation; workshops and hearings, 8972
Animas-La Plata Project, CO and NM, 19636, 34445
Arrowwood National Wildlife Refuge mitigation project, ND, et al.,
Boise Project, ID; Cascade Reservoir travel management plan, 171
Central Valley, CA; American River Water Resources investigation, 4677
Interim South Delta Program, CA, 42913, 52955, 66059
Lower Colorado River, CO; biological assessment of operations, maintenance, and sensitive species, 16511
Maricopa County, AZ; Ak-Chin Indian community, 53756
Pima-Maricopa Irrigation Project; AZ, 56704
San Jose, CA; South Bay water recycling project, 25687
Southern Nevada Water Authority treatment and transmission facility, 51128
Stanislaus and Calaveras Rivers, CA; water use program, 41426
Tongue River Basin Project, MT, 13212
Yakima River Basin, WA; water enhancement project, 19957, 16111
Environmental statements; notice of intent:
CALFED Bay-Delta Program, CA, 10379
Elephant Butte and Caballo Reservoirs, NM, 37923
Rio Grande floodway, etc., 65234
Loup Basin Reclamation District, NE; long-term water service contract renewal, 25239
Narrows Project, UT, 4790
Pick-Sloan Missouri Basin Program, NE and KS; long-term water service contract renewal, 7803, 10378, 37767
San Diego County Water Authority, CA, et al., 6261
Leasing of public lands:
California, 59240
Nevada, 44077
Meetings:
Bay-Delta Advisory Council, 2262, 8642, 15515, 21487, 34445, 44344, 52808, 55014, 56969, 60303
Colorado River Basin Salinity Control Advisory Council, 54677
Colorado River Reservoirs; coordinated long-range operating criteria; review, 56246
Public meetings, 56246
Trinity River Basin Fish and Wildlife Task Force, 40657
Yakima River Basin Water Enhancement Project Conservation Advisory Group, 75, 37924, 54214
Patent licenses; non-exclusive, exclusive, or partially exclusive:
River Solutions, Inc., 60118
Programmatic agreements:
Animas-La Plata Project, CO and NM, 41178
Water resources planning; discount rate change, 60725

Refugee Resettlement Office

NOTICES
Grants and cooperative agreements; availability, etc.:
Community and family strengthening discretionary social service program (FY 1996), 27908
Ethnic community organizations program; cancelled, 6018
Preferred communities program, 6018,
Refugee resettlement program—
Preferred communities, unanticipated arrivals, orientation, technical assistance, and mental health services, 32833
Refugees in local areas of high need, 20260, 36739
Refugee social services funds; State allocations, 20268, 38458
Unanticipated arrivals program; bidders' conference call, 6018

Regulatory Information Service Center

PROPOSED RULES
Unified agenda of Federal regulatory and deregulatory actions, 22702, 62005

Research and Special Programs Administration

RULES
Alcohol Misuse Prevention Program:
Control of drug use and alcohol misuse in natural gas, liquefied natural gas, and hazardous liquid pipeline operations, 60206
Drug and alcohol testing:
Alcohol misuse prevention program; guidelines and interpretations, 5722, 10477
Reporting drug and alcohol testing results by computer disk option, 65364
Federal regulatory review and customer service:
Hazardous materials table; reformat, 18926
Hazardous materials:
Cylinders, DOT specification and exemption, for compressed gases transportation; maintenance and requalification, 26750, 51238
Cylinder specification requirements restructuring; Federal regulatory reform, 25940
Editorial corrections and clarifications, 51334
Exemption, approval, registration, and reporting procedures; miscellaneous provisions, 21084, 51235, 51241
Correction, 27948
Hazardous materials transportation—
Bulk packagings containing oil; oil spill prevention and response plans, 30533
Open head fiber drum packaging; extension of authority for shipping, 7958
Oxygen generators as cargo in passenger aircraft; temporary prohibition, 26418
Rail requirements, 28666, 50252
Rail requirements; RESIDUE placard discontinuance, 38642
Regulations harmonization with dangerous goods; international commerce by vessel and aircraft, 65958
Ticketing for certain transportation violations; pilot program, 7178
Oxygen generators as cargo in passenger aircraft; prohibition, 68952
Performance-oriented packaging standard and final transitional provisions, 50616
Correction, 51495
Radioactive materials transportation; International Atomic Energy Agency regulations compatibility, 20747
Rulemaking procedures—
Direct final rule process for use with noncontroversial rules, 30175
Tank cars; crashworthiness protection requirements, 33250
Hazardous materials safety program:
Federal regulatory reform, 27166
Air Line Pilot Association et al.; reconsideration petitions denied, 51236
Hazardous materials transportation:
Air carrier's company materials (COMAT); aircraft transportation, 65479
Hazardous liquid transportation—
Liquified petroleum gas in cargo tanks; safety guidance, 65480
Transportation in commerce by aircraft, motor vehicle, rail car and vessel—
Proper identification, packaging, authorization, handling, loading, and transportation; advisory guidance, 30444
Omnibus Transportation Employee Testing Act of 1991:
Substance abuse professional; definition amendment, 37222
Pipeline safety:
Federal regulatory reform, 18512, 27789
Correction, 38403, 45905
Gas pipeline safety standards; Federal regulatory reform, 28770
Correction, 30824, 35139, 41019
Hazardous liquid and carbon dioxide—
Pipelines; hydrostatic pressure testing, 43026
Hazardous liquid transportation—
Petroleum product definition interpretation and low-stress pipelines, 24244
Natural gas transportation, etc.—
Service lines; excess flow valve performance standards, 31449
Rulemaking procedures, replication; Federal regulatory reform, 50908
Correction, 36825
Voluntary specifications and standards, etc.; periodic updates; Federal regulatory reform, 26121
PROPOSED RULES
Hazardous materials:
Cylinder specification requirements restructuring; Federal regulatory review, 8328
Hazardous materials transportation—
Loading, unloading, and storage; regulatory applicability; public meetings, 39522, 49723, 53483
Open head fiber drum packaging; extension of authority for shipping, 688
Oxidizers as cargo in passenger aircraft; temporary prohibition, 68955
Regulations harmonization with dangerous goods international standards, 55364
Intrastate shippers and carriers; regulations compliance, 11484, 24904, 26253
Docket relocation and availability for review during Dockets Unit temporary closure, 38702
Performance-oriented packaging standards; final transitional provisions, 33216
Hazardous materials safety program:
Federal regulatory review, 6478
Omnibus Transportation Employee Testing Act of 1991:
Substance abuse professional; definition amendment, 9969
Pipeline safety:
Excess flow valves for gas distribution systems performance standards; customer notification, 33476
Hazardous liquid and carbon dioxide—
Hydrostatic pressure pipeline testing, 9415
Hazardous liquid transportation—
Areas unusually sensitive to environmental damage; workshop, 342, 13144, 27323
Natural gas transportation, etc.—
Hydrogen sulfide transportation; withdrawn, 9132
Onshore oil pipeline response plans; public hearing,

Personnel performing operating or maintenance activities on hazardous liquid, carbon dioxide, and gas pipelines; training; withdrawn, 34413
Pipeline Personnel Qualification Negotiated Rulemaking Committee—
Intent to establish, 34410
Voluntary specifications and standards, etc.; periodic updates; Federal regulatory review, 8231
Rulemaking petitions:
Barbecue Industry Association—
Propane cylinders filling, 43515, 60674
NOTICES
Agency information collection activities:
Proposed collection; comment request, 3761, 7153, 8706, 13918, 16528, 24854, 41820, 51315
Submission for OMB review; comment request, 7153, 17951, 27126, 33794, 39510
Alcohol Misuse Prevention Program:
Control of drug use and alcohol misuse in natural gas, liquefied natural gas, and hazardous liquid pipeline operations, 5834, 10617
Pipeline personnel drug testing program data and random positive drug testing rate, 5834
Emergency response plans:
National Response Team's integrated contingency plan guidance; availability, 28647
Hazardous materials:
Applications; exemptions, renewals, etc., 1985, 1986, 5597, 5599, 7041, 11677, 11678, 14200, 16819, 16820, 25736, 25738, 30934, 41201, 41202, 54253, 59276, 59277, 68329, 68331
Exemption applications delayed; list, 21221, 41821, 54487
Radioactive material industry; radiation protection programs guidance, 17349
Hazardous materials transportation:
Preemption determinations, 1432, 11463, 11677, 38513
Registration requirement and fee assessment program, 9518
International standards on safe transport of radioactive material; 1996 edition availability, 49523
Meetings:
Hazardous materials safety program; regulatory review and improved customer service, 24529, 38797
International standards on transport of dangerous goods, 27128, 32025, 56605, 59135, 59930
Mechanical damage and cracking in pipelines; detection, 53484, 68813
Pipeline Safety Advisory Committees, 17750, 55356
Pipeline safety program; regulatory review and improved customer service, 30936
Pipeline safety user fee assessment methodology; public meeting, 55069
Risk management and pipeline industry; public conference, 13226
Toward a Metric America; national metrication process open public dialogue, 55069
Organization, functions, and authority delegations:
Dockets Unit; temporary closure, 38798
Pipeline Risk Management Demonstration Program:
Framework; public meetings, 58605
Performance measures guidance, 68092
Pipeline safety:
Risk assessment prioritization (RAP) program first generation completion; public meeting, 1435
User fees, 9005, 58739
Pipeline safety; waiver petitions:
CNG Transmission Co., 35860
CNG Transmission Corp., 50900
Privacy Act:
Systems of records, 55184
Reports availability, etc.:
Surface transportation research and development plan, 67870

Rural Business and Cooperative Development Service

PROPOSED RULES
Program regulations:
Rural housing—
Rental housing loans; Section 515 preapplication processing, 1153

Rural Business-Cooperative Service

RULES
Federal regulatory reform:
Federal assistance and grant coordination programs and projects evaluation (OMB A-95), 6309
Freedom of Information Act; implementation, 32645
Organization, functions, and authority delegations:
Rural Housing Service and Rural Business-Cooperative Service; agency name changes, 2899
Program regulations:
Business and industrial loan program, 67624
Audit requirements, 18493
Construction and other developments seismic safety requirements compliance requirements; planning and performance, 65153
Housing loans and/or grants; lobbyist disclosure provisions; Federal regulatory reform, 39850
Intermediary relending program loan limit increase, 6761
Liquidated guaranteed loans; future recovery of losses, 43147
Loan assessment, market placement, and seasoned direct loan borrowers graduation to loan guarantee program, 35916
Nonprofit National Corporations Loan and Grant Program; Federal regulatory reform, 55877
Program-related instructions, construction and repair, and housing; duplicate regulations removed, 56114
Real estate title clearance and loan closing procedures, 11709
Rural technology and cooperative development grants, 3779
Program regulations, etc.:
Obsolete CFR regulations removed, 21361
Single-family housing; direct section 502 and 504 programs; reengineering and reinvention, 59762
Correction, 63928, 65266
PROPOSED RULES
Federal claims collection; administrative offset, 45907
Program regulations:
Business and industrial loan program, 3853
Housing—
Rental housing loans; Section 515, 4814
Personal property—
Post bankruptcy loan servicing notices, 37405
Water and waste loans and grants; regulations consolidation, 48075
NOTICES
Agency information collection activities:
Proposed collection; comment request, 24269, 41569, 41767, 47868, 51400, 64856, 65010
Committees; establishment, renewal, termination, etc.:
National Sheep Industry Improvement Center Board, 29340
Grants and cooperative agreements; availability, etc.:
Rural business enterprise program, 29340, 33489
Rural technology and cooperative development program (FY 1996), 11378
Loan guarantee authority; maximum portion available for 1996-1997 FY, 67530

Rural Housing and Community Development Service

RULES
Organization, functions, and authority delegations:
Agency name change from Consolidated Farm Service Agency—
Departmental reorganization regulations alignment, 1109
Program regulations:
Obsolete CFR regulations removed, 21361
PROPOSED RULES
Program regulations:
Housing—
Rental housing loans; Section 515, 4814
Rural housing—
Rental housing loans; Section 515 preapplication processing, 1153

Rural Housing Service

RULES
Federal regulatory reform:
Federal assistance and grant coordination programs and projects evaluation (OMB A-95), 6309
Freedom of Information Act; implementation, 32645
Housing:
Congregate housing services program Streamlining and Federal regulatory reform, 42943
Organization, functions, and authority delegations:
Rural Housing Service and Rural Business-Cooperative Service; agency name changes, 2899
Program regulations:
Business and industrial loan program, 67624
Business and industrial loan program; audit requirements, 18493
Construction and other developments seismic safety requirements compliance requirements; planning and performance, 65153
Housing loans and/or grants; lobbyist disclosure provisions; Federal regulatory reform, 39850
Intermediary relending program loan limit increase, 6761
Liquidated guaranteed loans; future recovery of losses, 43147
Loan assessment, market placement, and seasoned direct loan borrowers graduation to loan guarantee program, 35916
Nonprofit National Corporations Loan and Grant Program; Federal regulatory reform, 55877
Program-related instructions, construction and repair, and housing; duplicate regulations removed, 56114

Real estate title clearance and loan closing procedures, 11709
Rural technology and cooperative development grants, 3779
Single family housing; direct section 502 and 504 programs; reengineering and reinvention, 39762
Correction, 63928, 65266

PROPOSED RULES

Federal claims collection; administrative offset, 45907
Program regulations:
Business and industrial loan program, 3853
Personal property—
Post bankruptcy loan servicing notices, 37405
Single family housing portfolio management; section 502 and 504 programs; Federal regulatory review, 15395
Water and waste loans and grants; regulations consolidation, 48075

NOTICES

Agency information collection activities:
Proposed collection; comment request, 15215, 18371, 18544, 22017, 26154, 26155, 27046, 34415, 35708, 36549, 37440, 39117, 47479, 48880, 48881, 51400, 55785, 60677, 65010
Grants and cooperative agreements; availability, etc.:
Housing in underserved areas—
Nonprofit and underserved/targeted reserve increase; co-venture eligibility, 19254
Rural housing funds (FY 1997), 68209
Rural Rental Housing Guaranteed Loan demonstration program, 34416
Rural housing:
Section 515 loan funds recipients list (FY 1995), 1896

Rural Telephone Bank

NOTICES

Loan policies:
Interest rates, 8236, 58030
Meetings; Sunshine Act, 2001, 19607, 41993, 64321

Rural Utilities Service

RULES

Consultants funded by borrowers; use, 48605
Electric loans:
Borrower audit policy and certified public accountant peer review requirements, 104
Electric borrowers; merger and consolidation policies, 66867
Federal regulatory reform:
Federal assistance and grant coordination programs and projects evaluation (OMB A-95), 6309
Freedom of Information Act; implementation, 12645
Organization, functions, and authority delegations:
Rural Housing Service and Rural Business-Cooperative Service; agency name changes, 2199
Program regulations:
Business and industrial loan program, 67624
Business and industrial loan program; audit requirements, 18493
Construction and other developments seismic safety requirements compliance requirements; planning and performance, 65153
Housing loans and/or grants; lobbyist disclosure provisions; Federal regulatory reform, 39850
Intermediary relending program loan limit increase, 6761
Liquidated guaranteed loans; future recovery of losses, 43147
Loan assessment, market placement, and seasoned direct loan borrowers graduation to loan guarantee program, 35916
Nonprofit National Corporations Loan and Grant Program; Federal regulatory reform, 39850
Program-related instructions, construction and repair, and housing; duplicate regulations removed, 56114
Real estate title clearance and loan closing procedures, 11709
Rural technology and cooperative development grants, 3779
Program regulations, etc.:
Obsolete CFR regulations removed, 21361
Rural development:
Distance learning and telemedicine grant program, 33622
Correction, 37813, 37961, 42462
Single family housing; direct section 502 and 504 programs; reengineering and reinvention, 59762
Correction, 63928, 65266
Telecommunications standards and specifications:
Materials, equipment, and construction—
Aerial service wires specifications, 26073
Telephone loans:
Telecommunications borrowers; accounting requirements, 39844, 55877

PROPOSED RULES

Consultants funded by borrowers; use, 21
Electric loans:
Electric borrowers; merger and consolidation policies, 41025
Electric standards and specifications for materials and construction—
Bulletins; numbering and reformatting, 57788
Federal claims collection; administrative offset, 45907
Program regulations:
Business and industrial loan program, 3853
Housing—
Rental housing loans; Section 515, 4814
Personal property—
Post bankruptcy loan servicing notices, 37405
Rural housing—
Rental housing loans; Section 515 preapplication processing, 1153
Rural development:
Distance learning and telemedicine grant program, 16684
Telecommunications standards and specifications:
Materials, equipment, and construction—
Postloan engineering services contract, 4754
Telecommunications plant acceptance tests and measurements, 44195
Water and waste loans and grants; regulations consolidation, 48075

NOTICES

Agency information collection activities:
Proposed collection; comment request, 5737, 8236, 10723, 19906, 36024, 51400, 65010
Cost-of-money loans, telecommunications (FY 1997); interest rates, 50468
Electric distribution borrowers exempt from certain operational controls; list, 29070
Electric loans:
Quarterly municipal interest rates, 10724, 31089, 49299, 66252
Environmental statements; availability, etc.:
Alabama Electric Cooperative, 43522
Associated Electric Cooperative, Inc., 66994
Barry Electric Cooperative, 2483
Illiamna-Newhalen-Nondalton Electric Cooperative, Inc.; Tazimina River project, 56662
Kodiak Electric Association, Inc., 13151
LaGrange County, IN, Sewer District, 4760, 27333
Marshalls Energy Co., Inc., 67304
South Mississippi Electric Power Association, 345
Tri-State Generation and Transmission Association, Inc., 38433
Environmental statements; notice of intent:
Alabama Electric Cooperative, 25844
Albany, KY; Cagle water expansion project, 60671
Dairyland Power Cooperative et al., 25844
Intertie Participants Group, 52908
Grants and cooperative agreements; availability, etc.:
Distance learning and telemedicine program, 33639, 34927, 37881
Applicants list, 48459
Water and wastewater loan program:
Refinancing policies, eligible borrowers list, and loan portfolio participation, 46434

Saint Lawrence Seaway Development Corporation

RULES

Federal claims collection:
Civil monetary penalties; inflation adjustment, 54733
Organization, functions, and authority delegations:
Great Lakes pilotage regulations—
CFR title transfer and consolidation, 32655
Responsibility transferred from Coast Guard, 5720
Seaway regulations and rules:
Clarification and simplification, 19548

PROPOSED RULES

Seaway regulations and rules:
Great Lakes Pilotage rates adjustments, 50258, 58496

NOTICES

Meetings:
Advisory Board, 10061, 28638, 39511, 58096
Privacy Act:
Systems of records, 57943

Science and Technology Policy Office

NOTICES

Meetings:
President's Committee of Advisors on Science and Technology, 12114, 46805, 68745

Secret Service

RULES

Counterfeit Deterrence Act:
Color illustrations of U.S. currency, 27280

NOTICES

Agency information collection activities:
Proposed collection; comment request, 43399
Senior Executive Service:
Performance Review Boards; membership, 31608

Securities and Exchange Commission

RULES

Accounting bulletins, staff:
Nonmonetary assets transfers by promoters or shareholders, 40721

Treasury stock acquisitions following business combination as pooling-of-interests, 12020
Annual report form (Form ADV-S); suspension of use, 68503
Electronic Data Gathering, Analysis, and Retrieval System (EDGAR):
Filer Manual—
Update and incorporation by reference, 52283
Electronic media; use in delivery purposes, 24644, 24652
Federal claims collection:
Civil monetary penalties; inflation adjustment, 57773
Correction, 59930
Investment companies:
Custody of assets with futures commission merchants and commodity clearing organizations, 66207
Money market funds; risk-limiting conditions imposed, etc.; compliance date suspended, 42786
Open-end management investment companies—
Deferred sales loads imposition; exemption, 49011
Registered; fund shares distribution payments, 49010
Organization, functions, and authority delegations:
Commission Secretary, 5939
Enforcement Division Director, 20721
General Counsel, 56891
Practice and procedure:
Administrative proceedings; evidentiary hearings before administrative law judges, etc.; correction, 13689, 15338
Securities:
Brazil et al., "proposed countries"; exemption for purposes of trading futures contracts, 10271
California state securities law; exemption from registration requirements for limited offerings up to $5 million, 21356
Cash tender and exchange (odd-lot offers) by issuers, 68587
Customer limit orders; improvement of handling and execution compliance date, 48290, 53709
Disclosure Simplification Task Force recommendations, 30397
Employee benefit plan exemptive rules; phase-in period extension, 30396
Equity securities, unregistered sales; disclosure requirements streamlining and quarterly reporting requirements, 54506
Executive and director compensation disclosure; streamlining and consolidation, 54509
Filing processing program changes for Forms SB-1, SB-2, and Regulations A and S-T; appropriate filing location and form revisions, 67200
Form BD amendments, 37357
Compliance date suspension, 47412
Ownership reports and trading by officers, directors, and principal securities holders (insider trading), 30376
Quotations publication; market liquidity, transparency and efficiency initiatives, 48290
Small issuers total assets threshold increase; relief from reporting requirements, 21354
Transactions exempt from transaction fees, 68590
Securities and investment companies:
Money market funds; risk-limiting conditions imposed, etc., 13956
Securities, etc.:
Independent Offices Appropriations Act Fees; elimination, 49957
Correction, 52996

PROPOSED RULES

Electronic Data Gathering, Analysis, and Retrieval System (EDGAR):
Submission of filings and other documents; amendments, 65440
Investment advisers:
Advisers between Commission and states; reallocation of responsibilities, 68480
Investment companies:
Acquisition of securities during existence of underwriting syndicate, 13630
Money market funds; advertising, etc., 66621
Multiple class and series investment companies, 49022
Registered open-end management investment companies—
Shares distribution, 1313
Unit investment trusts; calculation of yields, 1312
National Securities Markets Improvement Act of 1996:
Private investment companies exception for "qualified" purchasers, 68100
Securities:
Accounting policies for derivative financial and derivative commodity instruments; financial statement footnote disclosures requirements, 578, 16674
Beneficial ownership in publicly-held companies reporting requirements, 36521
Broker-dealer registration and reporting—
Form BDW, uniform request for withdrawal from broker-dealer registration; amendments, 37701
Broker-dealers books and records requirement, 55593
Cash tender and exchange (odd-lot) by issuers, 11306
Customer orders; improvement of handling and execution—
Comment period extended, 1545
Disclosure Simplification Task Force recommendations, 9848, 30405
Lost securityholders; transfer agent requirements, etc., 44249, 59046
Money market funds; advertising, etc., 66621
Offshore activities, press access—
Conferences, meetings with company representatives and press related materials, 54518
Quote rule; continuous two-sided quotations from over-the-counter market makers and exchange specialists, 48333
Safe harbor provisions; derivative financial, other financial, and derivative commodity instruments information disclosure, 16672
Securities Exchange Act of 1934; section 10A reporting requirements, 45730
Securities Investor Protection Corporation rules—
Contracts closeout and completion for purchase or sale of securities made by debtors in liquidation, 56485
Securities offerings trading practices rules, 17108
Short-form registration expansion to include companies with non-voting common equity, 47706
Securities, etc.:
Independent Offices Appropriations Act fees; elimination, 25601
Correction, 43400
Semi-annual agenda, 24066, 63548
Semiannual regulatory agenda
Correction, 65191

NOTICES

Agency information collection activities:
Proposed collection; comment request, 739, 1790, 3060, 10407, 13540, 13893, 14586, 15530, 16146, 16813, 19646, 24341, 28627, 28628, 31192, 33784, 36587, 37943, 38483, 40258, 40867, 43096, 50354, 52476, 54825, 56977, 56978, 58087, 58716, 64548, 65251, 68317
Submission for OMB review; comment request, 7284, 11437, 13541, 13893, 14586, 15840, 25248, 25721, 27109, 28252, 28911, 30264, 31193, 32861, 36587, 37776, 37777, 40675, 41665, 43795, 44094, 47533, 47534, 48177, 48514, 48515, 49363, 49502, 51133, 52978, 53468, 56979, 56980, 60129, 65607, 68072, 68073
Committees; establishment, renewal, termination, etc.:
Capital Formation and Regulatory Processes Advisory Committee, 8092
Consumer Affairs Advisory Committee, 8989
Consolidated Tape Association and Quotation Plans; amendments, 2321, 24842
Consolidated Tape Association plan; amendments, 31570
Electronic Data Gathering, Analysis, and Retrieval System (EDGAR):
Alternative system architectures, 740, 4691
Corporation Finance Division; phase-in list changes and corrections, 2270
Phase-in completion, 13544
Investment advisers; registration cancellations; list, 15533
Joint industry plan:
National Association of Securities Dealers, Inc., et al., 358, 10408, 12122, 50058, 52980
Meetings:
Capital Formation and Regulatory Processes Advisory Committee, 4500, 26940, 28629
Consumer Affairs Advisory Committee, 35281
Intangible assets symposium, 8313, 11070
Securities laws uniformity annual conference; request for comments on proposed agenda, 15847
Meetings; Sunshine Act, 1669, 3766, 4521, 7854, 10605, 11233, 13544, 14165, 15317, 15537, 16274, 18455, 25511, 25932, 26550, 26940, 30104, 33786, 36772, 36944, 37513, 38233, 38793, 39492, 40867, 43102, 43797, 44097, 46009, 46884, 48518, 49184, 50357, 50524, 50889, 52479, 53773, 53984, 54472, 55833, 56981, 58091, 58600, 59476, 60314, 64933, 66064
Options price reporting authority, 741, 5827, 14844, 49801, 49802
Reporting and recordkeeping requirements, 16149
Reports; availability, etc.:
Capital Formation and Regulatory Processes Advisory Committee; Securities Act concepts and their effects on capital formation, 40044, 49184
Securities:
Senior citizens and qualified retirement plans; protection against fraud; request for comments, 13906
Suspension of trading—
Alliance Industries, Inc., 60734
Comparator Systems Corp., 24843, 43400
Enstar Group, Inc., 14844
Global Timber Corp., 43281
Home Link Corp., 30104
Interactive Multimedia Publishers, Inc., 64773
JDMC Global Corp., 49184
Novatek International, Inc., 54246
OmniGene Diagnostics, Inc., 59476
Systems of Excellence, Inc., 52982
Securities Investor Protection Corporation; membership:
WestLB Securities Americas Inc., 40052

Self-regulatory organizations:
Clearing agency registration applications—
Cedel Bank; exemption, 31201
Government Securities Clearing Corp., 64183
International Securities Clearing Corp., 64184
MBS Clearing Corp., 35281
Participants Trust Co., 10409, 14357
ProTrade, 7285
Options disclosure documents—
Canadian Derivatives Clearing Corp., 43281
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 196, 575, 1796, 1799, 1953, 1954, 2556, 2849, 4695, 5590, 6050, 6665, 6872, 7031, 8313, 8315, 8319, 10606, 11448, 11451, 13545, 13547, 14165, 14358, 15317, 15537, 16150, 17931, 18765, 19102, 19650, 20871, 21215, 22084, 24520, 24976, 28915, 29774, 29776, 30268, 31570, 33153, 33558, 33786, 36094, 36773, 37782, 38485, 38487, 38488, 39167, 39169, 39170, 41669, 41814, 42075, 42667, 44097, 50524, 50525, 51476, 52480, 52982, 53246, 54827, 55176, 56981, 57503, 58270, 59122, 59261, 59476, 60135, 63884, 65623, 68805, 69124
American Stock Exchange, Inc., et al., 1791, 14168, 14172, 38234, 51474, 56983, 58924
Boston Stock Exchange Clearing Corp., 42669
Boston Stock Exchange Clearing Corp. et al., 53773
Boston Stock Exchange, Inc., 672, 1801, 3512, 14359, 15318, 18634, 31573, 36944, 40268, 42297, 42670, 43797
Boston Stock Exchange, Inc., et al., 39172
Chicago Board Options Exchange, Inc., 199, 566, 1802, 2324, 3741, 4502, 4691, 6275, 6400, 7285, 7839, 8698, 8699, 10043, 11452, 11453, 11911, 13548, 13550, 13907, 14845, 15338, 15539, 15542, 15543, 15853, 16514, 16660, 17741, 17743, 19106, 24843, 24979, 24982, 24983, 25251, 28629, 28916, 29154, 32470, 32868, 33155, 33561, 33562, 33787, 33788, 34911, 35282, 35821, 36592, 37513, 38792, 39175, 39685, 39947, 40686, 40689, 40868, 41194, 41196, 41434, 41671, 42455, 43281, 46497, 46884, 47992, 48179, 48180, 48182, 48722, 49508, 49515, 50059, 50358, 50362, 51478, 53472, 53774, 54691, 54693, 55058, 55833, 56586, 56587, 56724, 56726, 63886, 64405, 65098, 65422, 67365, 69126
Chicago Board Options Exchange, Inc., et al., 6666, 14177
Chicago Stock Exchange, Inc., 1803, 1958, 2850, 2851, 3739, 3967, 6403, 7032, 7840, 9213, 9215, 15544, 16274, 17932, 19107, 24988, 26940, 28918, 29156, 32870, 32872, 34462, 38490, 38491, 40270, 40690, 42079, 43393, 43566, 44370, 48184, 48724, 49803, 59124, 59263, 59918, 66065, 69127
Chicago Stock Exchange, Inc., et al., 1195
Cincinnati Stock Exchange, 54472
Cincinnati Stock Exchange, Inc., 359, 575, 5050, 7569, 8989, 11655, 15322, 45467, 48185, 67086
Delta Clearing Corp., 20298, 25722, 26942, 36095, 40471, 48186, 56072, 57504
Delta Government Options Corp., 3743, 8991, 15330
Depository Trust Co., 429, 1199, 1417, 2852, 4692, 4807, 5050, 5433, 6404, 6669-6671, 7287, 7288, 8992, 25253, 29158, 30931, 31989, 36593, 37783, 37948, 40692, 43283, 46498, 46885, 48187, 52985, 54473, 56588, 57505, 57933, 58600, 64774-64776
Government Securities Clearing Corp., 742, 4500, 10045, 10614, 26550, 33564, 34912, 39492, 40275, 42925, 43103, 48189, 48190, 48191, 49367, 54475, 55059, 55341, 56591, 64778, 64779, 67371
International Securities Clearing Corp., 430, 4508, 8995, 13908, 17338, 36096, 41436
MBS Clearing Corp., 24989, 30268, 37307, 41437, 42298, 48193, 52483, 56592, 64780, 65424
MBS Clearing Corp. et al., 36945, 46887
Midwest Clearing Corp., 2552, 11913, 17339
Midwest Clearing Corp. et al., 7033, 11456, 43105, 55678
Midwest Securities Trust Co., 2554, 38493
Municipal Securities Rulemaking Board, 203, 1955, 6276, 7034, 10828, 17745, 24990, 31207, 34463, 36594, 44098, 47224, 49368, 51495, 52819, 56072, 58431, 64781, 64782, 68078, 68322
National Association of Securities Dealers, Inc., 204, 206, 433, 1419, 1655, 1805, 2854, 3743, 3955, 4504, 6052, 6674, 7127, 8996, 8997, 9739, 10048, 11070, 11655, 11913, 13553, 13909, 13911, 14182, 14185, 15338, 15855, 16662, 16944, 17339, 18452, 20299, 20301, 21216, 21517, 24845, 26239, 29777, 30269, 30272, 31574, 31604, 33156, 34915, 35284, 35822, 36098, 36595, 36947, 37515, 37518, 37521, 37950, 39686, 40054, 40693, 40869, 41438, 41816, 43107, 44100, 48725, 52072, 53984, 54830, 55342, 56594, 56986, 57934, 58271, 59265, 59267, 64185, 64549, 64550, 65625, 66339, 67372, 68081, 68806
National Securities Clearing Corp., 1807, 3746, 3967, 7290, 8997, 10050, 10051, 10831, 13912, 17341, 21217, 24343, 24993, 30265, 30274, 33159, 33565, 42457, 42927, 43800, 47534, 49806, 52073, 54695, 55060, 55178, 56595, 57506, 59478, 63887, 64783
National Securities Clearing Corp. et al., 1418, 35289
New York Stock Exchange, Inc., 361, 432, 436, 744, 1420, 1808, 1959, 2856, 5592, 6279, 8998, 10053, 10410, 10832, 13557, 14183, 14360, 15546-15548, 16277, 19651, 20302, 24846, 25257, 26943, 27123, 29438, 31208, 36596, 37523, 37784, 38494, 38497, 39176, 40056, 40699, 40870, 40871, 41673, 43109, 43284, 43400, 43574, 44116, 46008, 49185, 49371, 51133, 52996, 53246, 53473, 54476, 54477, 56987, 58728, 58919, 60735, 65099, 67087, 68082, 69129, 69130
Options Clearing Corp., 5593, 5594, 6053, 7293, 11457, 12124, 13558, 22084, 24995, 29160, 32471, 32873, 36599, 38498, 38500, 46499, 46500, 46888, 46889, 47535, 48193, 48195, 49373, 53475, 53477, 55062, 56596, 56729, 64406, 64407, 64934, 68807
Options Clearing Corp. et al., 30650, 51731
Pacific Clearing Corp., 7570, 7571
Pacific Stock Exchange, Inc., 5052, 6405, 8092, 8321, 9515, 10054, 11072, 11929, 12126, 16152, 16515, 18636, 19328, 20304, 24521, 24523, 29582, 32875, 33566, 33568, 34917, 34918, 36099, 36100, 37785, 38503, 41675, 42458, 43285, 43801, 44376, 45468, 46891, 47536, 48195, 50366, 50527, 50889, 51734, 52483, 52820, 53247, 53253, 53492, 54479, 54481, 55345, 56079, 56597, 56990, 57507, 57508, 57936, 57937, 58272, 58434, 67088
Participants Trust Co., 208, 744, 1809, 4507, 20304, 26552, 36601, 36949, 41677, 41816, 49807, 54483, 56598, 68087
Philadelphia Depository Trust Co., 745, 3060, 3956, 7841, 9000, 10416, 11073, 12127, 15338, 25258, 26243, 27377, 27378, 35292, 43110, 43287, 43288, 47227, 55679, 56079, 56730, 56990, 57938, 58924, 59269
Philadelphia Depository Trust Co. et al., 3958, 35291
Philadelphia Stock Exchange, Inc., 209, 211, 568, 575, 1200, 1961, 1964, 2557, 2559, 2561, 2562, 2858, 3747, 4694, 4697, 4699, 6054, 6280, 7295, 7297, 9001, 10417, 11074, 11668, 13559, 13913, 13915, 14187, 14188, 15549, 15856, 16156, 18454, 22084, 24525, 29782, 30932, 32877, 32878, 32880, 32881, 33160, 33162, 33790, 35294, 36102, 36410, 38505, 40058, 40276, 40873, 42080, 42298, 42671, 43289, 44379, 47537, 47775, 47993, 48198, 48200, 49515, 50060, 50367, 51319, 51479, 53254, 55062, 56599, 56991, 57940, 59125, 59919, 63888, 63889, 65254, 66721
Stock Clearing Corp. of Philadelphia, 676, 3513, 7846, 27379, 47229, 68324
Stock Clearing Corp. of Philadelphia et al., 2551, 42929
Senior Executive Service:
Performance Review Boards; membership, 54697
Applications, hearings, determinations, etc.:
Abatix Environmental Corp., 32862
ABN AMRO Bank N.V. et al., 14347, 31979
Acacia National Life Insurance Co. et al., 39675
Access Capital Strategies Community Investment Fund, Inc., et al., 13541
Accessor Funds, Inc., et al., 42452
Advisors' Inner Circle Fund, 43097
Aetna Life Insurance & Annuity Co. et al., 27110
Aetna Series Fund, Inc. et al., 37945
Affinity Fund Group, Inc., 3515
AIM Equity Funds, Inc., et al., 6269
Air-Cure Technologies, Inc., 13894
Allianee Convertible Fund, 54466
Allianee Counterpoint Fund, 54467
Allianee Global Fund, 54468
Allianee Growth Fund, Inc., 44368
Allianee Multi-Market Income Trust, Inc., 54468
Allianz Life Insurance Co. of North America et al., 49178
Allied Capital Lending Corp. et al., 43272
Allstate Life Insurance Co. of New York et al., 40676
Alpine Group, Inc., 57497
Alternative Investment Fund et al., 58261
American AAdvantage Funds et al., 28912, 59252
American Centurion Life Assurance Co. et al., 39677
American Corporate Trust, 35273
American Skandia Life Assurance Corp. et al., 5046, 42290
AMREP Corp., 63874
Annuity Management Series, 66338
ARCH Fund, Inc., et al., 47988
Arizona Limited Maturity Municipals Portfolio, 46492
Asia Tigers Fund, Inc., et al., 16658
AUSA Life Insurance Co., Inc., et al., 41665
AZX, Inc., 29145, 43574
Baird Blue Chip Fund, Inc., 42453
Baird Capital Development Fund, 56577
Baker, Fentress & Co., et al., 17737
Banco Santander, S.A., 6272
Bando McGlocklin Capital Corp. et al., 58716
Bando McGlocklin Small Business Lending Corp., 65422
Bankers Trust Australia Ltd., 27375
Banque Paribas (Deutschland) OHG et al., 3063
BEA Investment Funds, Inc., 35273
Benchmark Funds & Northern Trust Co., 10038
Benham Manager Funds et al., 52816
Benman California Tax-Free Trust, et al., 42923
Berger Institutional Products Trust et al., 14349
Bessemer Securities LLC et al., 65608
Bitwise Designs, Inc., 29148
BlackRock Financial Management, Inc., 59256
Blue Chip Value Fund, Inc., 24967
Boston Mutual Life, 63875
Brinson Funds et al., 6398, 19965
Brinson Relationship Funds et al., 1420, 48515
BT Insurance Funds Trust et al., 39484
BT Investment Portfolios et al., 45464
Calvert Social Investment Fund, et al., 60312
CAM Designs, Inc., 66064
Canadian Dollar Performance Portfolio L.P., 20293
Capital Market Fund, Inc., 28253
Cardinal Corporate Income Trust Series, 01, 20294
Centennial Technologies, Inc., 68073
CenterPoint Properties Corp., 32862
Central and South West Corp., et al., 37777, 58718
Champion Healthcare Corp., 42671
Chase Corp., 36940
Chase Manhattan Bank, N.A., 1810
Chase Manhattan Bank, N.A., et al., 25248, 29148, 32862
Chicago Milwaukee Corp., 43276
Chubb Series Trust, et al., 64178
CIGNA Funds Group et al., 64768
CII Financial, Inc., 18632
Cityfed Financial Corp., 3750
Classic Trust, 55678
Colonial Data Technologies Corp., 6400
Columbia Gas System, Inc., 8311
Common Trust Fund R of the Commercial Bank Combined Capital Trust, 49365
Commonwealth Bank of Australia, 32864
Commonwealth Energy System, 25250
Companía de Minas Buenaventura S.A., 14840
Companion Life Insurance Co. et al., 16813
Compass Capital Group, 64771
Connecticut General Life Insurance Co. et al., 24840, 46871
Connecticut Mutual Investment Accounts, Inc., et al., 13894
Connecticut Mutual Life Insurance Co. et al., 11906
Continental Assurance Co. et al., 40035
Corporacion Financiera Nacional Y Suramericana S.A., 20867
CountryBasket Index Fund, Inc., et al., 5415
CR Blue Chip Timing Fund, Inc., 54827
Credit Suisse, 1812
Daily Money Fund et al., 40679, 50516
Dean Witter Managed Assets Trust, 6870
Delaware Group Foreign Investors Government Fund, L.P., 16663
Delaware Group Foreign Investors High-Yield Fund, L.P., 16664
Del Global Technologies Corp., 30264
Destiny Plans IIA, 58912
Deutsche Bank AG, 56069
Deutsche Mark Performance Portfolio L.P., 20295
DFA Investment Dimensions Group, Inc., et al., 4[illegible]5
Dial Corp., 54245, 54256
Disc Graphics, Inc., 30264
Diversified Investors Strategic Variable Funds et al., 50355
Dreyfus/Laurel Investment Series, 28914
Dreyfus Asset Allocation Fund, Inc., et al., 16017
Dreyfus International Recovery Fund, Inc., 65613
Dreyfus Massachusetts Municipal Money Market Fund et al., 13896
Driehaus International Large Cap Fund, L.P., et al., 41813
E. Acquisition Corp., 58266
EAI Select Managers Equity Fund et al., 16664
Eaton Vance Cash Management Fund, 8082
Eaton Vance Equity-Income Trust, 8083, 11083
Eaton Vance Investment Fund, Inc., 8083
Eaton Vance Investors Trust, 8084
Eaton Vance Liquid Asset Trust, 8085
Eaton Vance Securities Trust, 8086
Eaton Vance Tax Free Reserves, 8086
Eaton Vance Total Return Trust, 8087
Elfun Trust, et al., 59257
Emerging Americas Fund, Inc., 33955
Emerging Markets Growth Fund, Inc., et al., 17927, 24968
ENSCO International Inc., 569
Enterprise Group of Funds, Inc., et al., 58913
EQ Financial Consultants, Inc. et al., 37779
Equitable Life Insurance Co. of Iowa et al., 17330, 49365
EVEREN Unit Investment Trusts, Series 44, et al., 15841
Evergreen Trust et al., 16656
Evergreen Variable Trust et al., 5419
EV Marathon Gold & Natural Resources Fund, 8088
Federated Investors et al., 58088
First American Investment Funds, Inc., et al., 4295, 46874
First American Strategy Funds, Inc., et al., 46493
First Colonial Ventures, Ltd., 1965
FIRST FUNDS et al., 31981
First Trust Special Situations Trust, 39490
First Trust Special Situations Trust et al., 55328
First Variable Life Insurance Co. et al., 57928
Flex-Partners et al., 10602
FMR Corp. et al., 37097
Focus Investment Trust (Series 1), 44369
Foreign Fund, Inc., et al., 5425
Fortis Benefits Insurance Co. et al., 31193
Fountain Powerboat Industries, Inc., 49181
Franklin Templeton Fund Manager et al., 26235
Freedom Mutual Fund et al., 57930
Fremont Mutual Funds, Inc., et al., 59474
Frontier Communications Services, Inc., 9210
Funds IV Trust et al., 1424
Gabelli Equity Trust Inc., 49503
Gainsco, Inc., 58599
Gannet Welsh & Kotler Funds et al., 56578
GE Funds et al., 46876
GE Investment Management Inc. et al., 43278
George K. Baum Employee Equity Fund, L.P., 31984
Glickenhaus & Co. et al., 17929
Global Income Plus Fund, Inc., 15843
GMO Trust et al., 29152
GNA Variable Investment Account et al., 13898
Golden American Life Insurance Co., 37500
Great American Reserve Insurance Co. et al., 39679
Great Pond Investors, L.P., et al., 41189
Great-West Life & Annuity Insurance Co. et al., 362, 37502
Greenman Bros. Inc., 4701
Gulf Canada Resources Ltd., 9211
Hanover Funds, Inc., 65613
Hanover Investment Funds, Inc., 65251
Harcourt-Symes, Ltd., 50520
Harris & Harris Group, Inc., 6870
Harris Trust & Savings Bank et al., 68317
Hercules Funds Inc., 52979
Heritage Media Corp., 41434, 43574
HLM Global Equity L.P. et al., 56580
Home Network Unit Investment Trust, 55176
Horizon Mental Health Management, Inc., 24542
IDEX Fund et al., 3065
IDS Life Insurance Co. et al., 5587
IDS Life Insurance Co. of New York et al., 39682
ILI Endeavor Variable Annuity Account, 57497
INCSTAR Corp., 29154
Incyte Pharmaceuticals, Inc., 6664
Indigo Group, Ltd., et al., 20869
Industrial Credit and Investment Corporation of India, 68073
ING Bank N.V. et al., 58915
Institutional Series Trust, 36587
International Tourist Entertainment Corp., 569
ITT Hartford Life & Annuity Insurance Co. et al., 30647, 40258
J.P. Morgan Index Funding Co., LLC, 5429
Jefferson Funds Trust, 46879
John Hancock Capital Growth Fund, 8986
John Hancock Cash Management Fund, 3752
John Hancock Declaration Trust et al., 48991
John Hancock Mutual Life Insurance Co. et al., 19970
John Hancock Tax-Exempt Income Fund, 55330
Keyport Life Insurance Co. et al., 40040
Kirby Corp., 63875
Lanstar Semiconductor, Inc., 21218
Laser Industries Ltd., 36940
Lazard Funds, Inc., et al., 40682, 43574
LB Series Fund, Inc., et al., 40260
Lexington Growth & Income Fund, Inc., et al., 4297
Lexington Short-Intermediate Government Securities, Inc., et al., 8987
LifeUSA Funds, Inc., et al., 48996
Lincoln National International Fund, Inc., et al., 47990
Lincoln National Life Insurance Co. et al., 46880, 47217
Lincoln National Variable Annuity Fund B, 36588
Lipper Funds, Inc., et al., 4496, 64771
Lord Abbett Global Fund, Inc., et al., 27112
MacNeal-Schwendler Corp., 34462
Managed Currency Portfolio L.P., 20295
Manufacturers Life Insurance Co. of America et al., 11438, 20296
Marcum Natural Gas Services, Inc., 428
MAS Funds, 15844
McDonald & Co. Securities, Inc., et al., 8987, 10846
Medallion Financial Corp., 63880
Medallion Financial Corp. et al., 19097
Medicore, Inc., 31197
MedQuist Inc., 39491

Merrill Lynch Balanced Fund for Investment & Retirement, Inc., 49505
Merrill Lynch Variable Series Funds, Inc. et al., 58725
Metropolitan Life Insurance Co. et al., 49182
Mexico Equity & Income Fund, Inc., 19100
MFS Special Value Trust, 38232
M Fund, Inc., et al., 750
Midland National Life Insurance Co. et al., 55093
Minnesota Mutual Life Insurance Co. et al., 11440, 37504
Minorco S.A., 24517
Mitchell Hutchins/Kidder, Peabody Equity Income Fund, Inc., 65615
Mitchell Hutchins/Kidder, Peabody Government Income Fund, Inc., 65615
Mobile Mini, Inc., 9738
Morgan Grenfell Investment Trust, 19646
Morgan Stanley & Co. Inc., 50521
Morgan Stanley Universal Funds, Inc., et al., 46000
MuniVest California Fund Inc., 3516
MuniVest Florida Fund II, 3517
MuniVest New Jersey Fund II Inc., 3516
Mutual Fund Group et al., 365
NASL Financial Services, Inc. et al., 65616
NASL Series Trust et al., 63881
National Bond Fund, 5430
National Equity Trust, 26237
National Federal Securities Trust, 5431
National Financial Services Corp. et al., 31564
National Integrity Life Insurance Co. et al., 12115
National Securities Tax Exempt Bonds, Inc., 5432
National Total Return Fund, 5432
Nations Fund Portfolios, Inc., et al., 9511
Nations Fund Trust et al., 33784, 42072
NDE Environmental Corp., 428
New South Africa Fund Inc., 37780
New York Localities Legal Obligations Cash ACCESS Trust, 25929
Nomura Dividend Income Fund, 10041
North Carolina Limited Maturity Municipals Portfolio, 46496
Northeast Utilities et al., 53468
Northwestern Mutual Life Insurance Co., 10042
Norwest Advantage Funds et al., 15846
Norwest Bank Minnesota, N.A., et al., 36941
Norwest Funds et al., 29580
Nuveen California Municipal Income Fund, Inc., 32866
Nuveen New York Municipal Income Fund, Inc., 32867
OCC Distributors et al., 64931
Oppenheimer Global Environment Fund, 35820
Osmanli Bankasi A.S. et al., 57498
Pacifica Funds Trust et al., 9211
Pacific Horizons Funds, Inc. et al., 37946
PaineWebber/Kidder, Peabody California Tax Exempt Money Fund, 68321
PaineWebber/Kidder, Peabody Government Money Fund, Inc., 68320
PaineWebber America Fund et al., 52477
PaineWebber Atlas Fund, 39684
Penn Engineering & Manufacturing Corp., 36944
Photonic Fund, Inc., 54469
Pierre Funding Corp., 21214
Pilot Funds et al., 40683, 50887
PIMCO Advisors Funds et al., 68803
Pittway Corp., 57499
PLM Equipment Growth Fund, 11443
PLM Equipment Growth Fund II, 11443
PLM Equipment Growth Fund III, 11443
PNC Bank, N.A., et al., 3753
Pound Sterling Performance Portfolio L.P., 19648
Principal Aggressive Growth Fund et al., 14354
Principal Mutual Life Insurance Co. et al., 13225
Princor Balanced Fund, Inc., et al., 12117
Protective Life Insurance Co. et al., 1965
Providence Energy Corp., 68075
ProvidentMutual Growth Fund, Inc., 67079
ProvidentMutual Investment Shares, Inc., 67080
ProvidentMutual Moneyfund, Inc., 67081
ProvidentMutual Tax-Free Bond Fund, 67082
ProvidentMutual Total Return Trust, 67083
ProvidentMutual U.S. Government For Income, Inc., 67083
ProvidentMutual Value Shares, Inc., 67084
ProvidentMutual World Fund, Inc., 67085
Pruco Life Individual Variable Annuity Account, 45467
Prudential Adjustable Rate Securities Fund, Inc., 12119
Prudential Institutional Fund et al., 42293
Prudential Strategist Fund, Inc., 18633
Prudential U.S. Government Fund, 40043
Public utility holding company filings, 423, 1422, 1660, 1968, 2549, 3755, 4701, 6046, 7027, 8089, 9213, 10407, 10604, 11910, 13901, 16147, 17333, 18451, 19967, 21508, 25930, 27940, 29150, 30266, 31568, 33551, 35274, 36589, 39165, 40470, 41667, 42454, 43795, 45999, 47219, 48177, 49506, 52071, 54687, 55331, 56581, 57932, 59259, 59261, 63876, 64402, 65619, 67363, 67862
Putnam Research Analysts Fund, 51473
Qualified Unit Investment Liquid Trust Series Equity Opportunity Trust et al., 7834
Qualivest Funds et al., 16147, 33151
Quantitative Group of Funds et al., 46004
Quest for Value Global Funds, Inc., 40263
Reich & Tang Distributors L.P. et al., 49507
Reliv' International, Inc., 55057
Renaissance Assets Trust, 754
Renaissance Capital Growth & Income Fund III, Inc., 65621
Rockwell International Corp., 5433, 17741
Royce Capital Trust et al., 35275
SAFECO Life Insurance Co. et al., 24974
Santa Fe Pacific Gold Corporation, 25510
Schwab Advantage Trust, 19649
Schwab Annuity Portfolios, 46669
Schwab Capital Trust et al., 4498
Scudder Global Fund, Inc., et al., 40263
Security First Life Insurance Co. et al., 53469
SEI Institutional Managed Trust et al., 15530
Select Capital Growth Fund, Inc., 2860
Select Managed Fund, Inc., 2861
Seligman Henderson Emerging Companies Interval Fund, Inc., 44369
Semiconductor Packaging Materials Co., Inc., 19185
Shawmut Funds, 59121
Sherman, Dean Fund, Inc., 35280
Sherry Lane Growth Fund, Inc. et al., 37102
Sierra Asset Management Trust et al., 29435
Simula, Inc., 9738
Sirrom Capital Corp., 31197, 65252
Sirrom Capital Corp. et al., 38483
Southeast Interactive Technology Fund I, LLC, et al., 42295
Southwestern Life Insurance Co. et al., 11068
Special Opportunities Trust, Health Care Securities, Series I, 43280
Stagecoach Funds, Inc., et al., 27114
Star Multi Care Services, Inc., 25250, 25251
Stepan Co., 16663
Strong Advantage Fund, Inc., et al., 57500
Struthers Industries, Inc., 32867
SunAmerica Series Trust et al., 58266
SuperTrust Trust for Capital Market Fund, Inc., 28254
T. Acquisition Corp., 58269
T. Rowe Price International Funds, Inc. et al., 36400
Target Portfolio Trust et al., 43098
Target Unit Investment Trust, 12120
Tasty Baking Co., 55057
TCW/DW Global Convertible Trust, 6871
TCW/DW North American Intermediate Income Trust, 6273
TCW Convertible Limited Partnership, et al., 58917
TCW Mid-Cap Growth Stocks L.P. et al., 12121
Technitrol, Inc., 64183
Technology Funding Partners III, L.P., et al., 50065
Templeton Global Utilities, Inc., 31200
THC Partners, 27116
The One Group et al., 44094
The One Group Investment Trust, 755
Titan Corp., 17741
Tomorrow Funds Retirement Trust et al., 8693
Total Growth Trust, 3517
Transamerica Investors, Inc., et al., 43100
Transamerica Occidental Life Insurance Co. et al., 48998
Transworld Telecommunications, Inc., 13225
Travelers Insurance Co. et al., 18761, 47221
Travelers Life & Annuity Co. et al., 18763
Trend Capital Management, Inc., 33555
Twentieth Century Blended Portfolios, Inc., et al., 10826
U.S. Trust Corp. et al., 13903
UAM Funds, Inc., et al., 6047, 16816
UniMark Group, Inc., 25251
United of Omaha Separate Account B, 3960
United Vision Group, Inc., 58270
Urohealth Systems, Inc., 67365
UST Master Variable Series, Inc., 48179
Valley Forge Life Insurance Co. et al., 18185
Van Eck Funds et al., 40266
Van Eck Trust, 33557
Vanguard Money Market Reserves, Inc., et al., 11444, 54470
Van Kampen American Capital Bond Fund, Inc., et al., 3518
Van Kampen American Capital Comstock Fund et al., 21515, 27118
Van Kampen American Capital Equity Opportunity Trust et al., 39166, 46006, 55333, 68076
Van Kampen American Capital Global Managed Assets Fund et al., 3067
Van Kampen American Capital, Inc., et al., 7836
Van Kampen Merritt California Municipal Opportunity Trust, 760
Van Kampen Merritt California Quality Municipal Trust II, 1969
Van Kampen Merritt Growth Fund, 1970
Van Kampen Merritt Michigan Quality Municipal Trust, 760
Van Kampen Merritt New York Municipal Opportunity Trust, 761
Van Kampen Merritt New York Quality Municipal Trust II, 1970
Van Kampen Merritt Pennsylvania Municipal Opportunity Trust, 761
Van Kampen Merritt Senior Income Opportunity Trust, 1971
Van Kampen Merritt Texas Municipal Opportunity Trust, 762

Van Kampen Merritt Trust for Insured Municipals II, 762
Variable Investment Trust et al., 55336
Vermont Teddy Bear Co., Inc., 46008
Victory Portfolios et al., 65095
Virginia Limited Maturity Municipals Portfolio, 46496
Voice Control Systems, Inc., 9738
Voyageur Arizona Municipal Income Fund II, Inc., 57502
Voyageur Colorado Municipal Income Fund II, Inc., 57503
Voyageur Florida Insured Municipal Income Fund II, 53472
Voyageur Missouri Municipal Income Fund, Inc., 67585
Voyageur Texas Municipal Income Fund, 67586
Walnut Properties L.P. et al., 3069
Wanger Advisors Trust et al., 60130
Warburg, Pincus Managed Bond Trust, 24342
Washington National Insurance Co. et al., 27120
Weldotron Corp., 54827
Wood Island Growth Fund, Inc., 6274
Woodward Funds et al., 17336
Worldwide Short-Term Trust, 570
Wyly, Samuel Evans, et al., 36590
Yen Performance Portfolio L.P., 19649
Zurich Life Insurance Co. of America et al., 9513

Selective Service System

PROPOSED RULES
Semi-annual agenda, 23856, 63348

NOTICES
Agency information collection activities:
Proposed collection; comment request, 6281
Submission for OMB review; comment request, 13917, 18455, 31991
Senior Executive Service:
Performance Review Board; membership, 48202

Sentencing Commission, United States

See United States Sentencing Commission

Small Business Administration

RULES
Administrative claims under Federal Tort Claims Act and representation and idemnification of SBA employees:
Federal regulatory reform, 2401
Conflict of interests, 2398
Disaster loan programs:
Streamlining and clarification, 3304
Federal regulatory reform:
Business loan programs, 3226
Correction, 7985, 11471
Government contracting review, 3310
Correction, 7986, 39304
Procedure rules governing cases before Office of Hearings and Appeals, 2682
Program Fraud Civil Remedies Act regulations, 2691
Small business investment companies, 3177
Correction, 7985, 41496
Small business size standards, 3280
Correction, 6412, 7306, 7986, 43119
Standards for conducting business with SBA, 2679
Surety bond guarantee program, 3266
Correction, 7985
Freedom of Information Act:
Federal regulatory reform, 2671
Privacy Act:
Federal regulatory reform, 2671
Reporting and recordkeeping requirements, etc.:
Federal regulatory reform, 2394
Small business size standards:
Nonmanufacturer rule; waivers—
Metal bars and rods, 42376
Purified terephthalic acid, ground and unground, 54538

PROPOSED RULES
Business loan policy:
Unguaranteed portions of loan, sale, 60649
Semi-annual agenda, 23858, 63350
Small business size standards:
Nonmanufacturer rule; waivers—
Airborne integrated data components, 65492
Purified terephthalic acid, ground and unground, 20191
Routers and switches, 59382
Tabulating paper (computer forms, manifold or continuous), 20191
Tri-deck airborne recorder, 8mm (ruggedized), 59382

NOTICES
Agency information collection activities:
Proposed collection; comment request, 11461, 11462, 16516, 17747, 20309, 25259-25261, 25723, 36412, 49186, 53987, 55180, 59920
Submission for OMB review; comment request, 10420, 10421, 14847, 27942
Disaster home loan servicing and collection functions; cost efficient method, 6281
Disaster loan areas:
Alabama, 15153
Alaska, 32882
Arizona et al., 51134
Arkansas, 24345
California, 6675
Florida, 3960, 36950, 38793, 50067, 56730, 64187, 67863
Florida et al., 58274, 59270
Georgia, 2326
Guam, 64187
Hawaii, 64935
Idaho, 9216, 10055, 11931
Illinois, 24346, 25261, 26244, 26944, 28923, 33570, 40875, 43802, 52485
Indiana, 19653, 34919, 38506, 40875, 40876
Kentucky, 21219, 29783, 38506, 40876
Kentucky et al., 43290
Maine et al., 58436
Maryland, 11932, 52485
Maryland et al., 6675
Massachusetts et al., 6676, 58275, 58436, 60136
Michigan, 46892
Minnesota et al., 40059
Mississippi et al., 9217
New Hampshire, 58275, 59270, 60136
New Jersey, 6676, 36950, 67863
New Mexico et al., 26244
New York, 6676, 47541, 67779, 67864
North Carolina, 19653, 40059, 40876, 42673, 43802, 50067, 53775, 53988, 55834, 57509, 66723
Ohio, 6677
Ohio et al., 28632
Oregon, 1426, 9217, 11932, 67864
Pennsylvania, 11932, 15153, 19653, 36104, 36951, 40876, 52485, 53776
Pennsylvania et al., 6677, 8094, 52485
Puerto Rico, 50068, 52486, 53988, 59271
Rhode Island, 3960
Tennessee, 4509, 15153, 48726
Tennessee et al., 42673, 47541
Texas, 31605, 54484
Virginia, 6876, 16666, 50068, 52486, 53988, 56731, 57509, 58435, 58921
Virgin Islands, 1426, 38506
Washington, 2326, 9217, 11932, 15153, 16666
West Virginia, 11932, 29783, 33570, 36104, 42673, 43802, 50068
West Virginia et al., 6678, 40877
Grant and cooperative agreement awards:
Small business development centers, 37951
Interest rates; quarterly determinations, 2566, 17936, 39496, 53256
Intergovernmental review of agency programs and activities, 52074
License surrenders:
Bartlesville Investment Corp., 33570
Bethela Capital Corp., 25932
Calista Business Investment Corp., 49002
Central Texas Small Business Investment Corp., 13563
D.C. Bancorp Venture Capital Co., 2566
Enterprise Venture Capital Corp. of Pennsylvania, 11075
ESLO Capital Corp., 56731
FBS SBIC, L.P., 6406
First City Capital Corp., 31605
Fluid Capital Corp., 33570
Fluid Financial Corp., 33570
Inverness Capital Corp., 33571
Investment Capital Inc., 33571
Los Angeles Capital Corp., 38507
North Riverside Capital Corp., 8095
Northwest Venture Partners et al., 6406
Oklahoma Capital Corp., 55834
Qeneska Capital Corp., 50069
Richmond Square Capital Corp., 3519
San Joaquin Capital Corp., 37104
SBI Capital Corp., 64187
Threshold Ventures, Inc., 49002
Venture Capital Corp. of New Mexico, 33571
Wachung Capital Corp., 33571
Meetings:
Houston District Advisory Council, 24345
National Advisory Council, 47999
National Small Business Development Center Advisory Board, 4704, 28255, 43291
Portland District Advisory Council, 21219
Meetings; district and regional advisory councils:
Connecticut, 2326, 26944, 31209
Georgia, 36104
Hawaii, 11932, 41678
Maine, 8701, 47999
Massachusetts, 11933, 43290
Minnesota, 2326, 18637, 52826
New York, 11933
Rhode Island, 52826
Utah, 13917
West Virginia, 37952, 41678
Organization, functions, and authority delegations:
Deputy Administrator et al., 4808
Procurement opportunities through electronic commerce and electronic data interchange:
Value-added services, 24849
Senior Executive Service:
Performance Review Board; membership, 58921
Surety bond guarantee program; fees, 7848
Applications, hearings, determinations, etc.:
ABN Capital (USA) Inc., 5434
Blue Rock Capital, L.P., 24344
Canaan S.B.I.C., L.P., 57508
Commerce Capital, L.P., 5828, 57509
CoreStates Enterprise Capital, Inc., 24344
Eastern Virginia Small Business Investment Corp., 27124
Enterprise Fund, L.P., 2564, 46674
First Capital Group of Texas II, L.P., 4704, 24345
FNF Ventures, Inc., 46674
Gateway Partners, L.P., 37104

Javelin Capital Fund, L.P., 36950
Kline Hawkes California SBIC, 3519
Mellon Ventures, L.P., 2565, 15330
MMG Ventures, L.P., 64186
Penny Lane Partners, L.P., 59479
Prospect Street NYC Discovery Fund, L.P., 48726
Regent Capital Partners, L.P., 4299, 41678
Retail & Restaurant Growth Capital, L.P., 57509
Societe Generale Capital Corp., 5829, 24345
Stratford Equity Partners, L.P., 64186
Sundance Venture Partners II, L.P., 2565
Toronto Dominion Capital (U.S.A.), Inc., 4299, 46674
Walden Capital Partners, L.P., 43802
Wasserstein Perella SBIC, L.P., 64187
Wells Fargo Small Business Investment Co., Inc., 2564, 15331

Social Security Administration

RULES

Acquisition regulations:
Chapter establishment, 50737
Authority citation revisions, 5939
Black lung benefits:
Overpayment appeal and waiver rights, 56126
Civil monetary penalties; assessments and recommended exclusions, 18078
Hearings and appeals procedures, 65467
Social security benefits:
Disability and blindness determinations—
Growth impairment listings; expiration date extension, 64615
Musculoskeletal system listings; expiration date extension, 28046
Earnings and benefit estimates statements, 18075
Federal old age, survivors and disability insurance—
Elementary or secondary school students, full-time; inclusion of students enrolled in home schooling or independent study programs, 38361
Living in the same household and lump-sum death payment rules; revision, 41329
Social Security Independence and Program Improvements Act, et al.; coverage provisions, 38363
Signature requirements for State agency medical and psychological consultants in disability determinations, 11133
Supplemental security income:
Aged, blind, and disabled—
Dedicated accounts and installment payments for past-due benefits, 67203
Income exclusions, 49962
Lawful admission for permanent residence in the U.S.; documentation requirements, 56133
Natural disasters; lost, damaged or destroyed excluded resources repair or replacement funds; time period, 5943
Temporarily institutionalized persons; continuation of full benefits, standard, 10274
Victims' compensation payments and relocation assistance exclusions, 1711
Vocational rehabilitation services payments, 31022
Signature requirements for State agency medical and psychological consultants in disability determinations, 11133

PROPOSED RULES

Civil monetary penalties, assessments and recommended exclusions
Hearings and appeals procedures, 39921
Semi-annual agenda, 23874, 63358
Social security benefits:
Cycling payments; additional days throughout month on which benefits will be paid, 2654, 4389
Supplemental security income:
Aged, blind, and disabled—
Supplementary payments on behalf of States; administrative fees and interest, 18529
U.S. residency, definition; birth, baptismal records as acceptable evidence, etc., 17609

NOTICES

Agency information collection activities:
Proposed collection; comment request, 7128, 8095, 10838, 14189, 15331, 17342, 19653, 20872, 24996, 27380, 30275, 35295, 40472, 41817, 45470, 46502, 53478, 59126, 65628, 67865
Submission for OMB review; comment request, 2566, 3961, 6282, 8095, 18637, 37787, 39178, 42930, 49517, 51481, 56601, 64784
Foreign insurance or pension systems:
Croatia, 10615
Magnetic media filing requirements change; W-2 wage reports, 13563
Meetings:
Representative Payment Advisory Committee, 1661, 5052, 11075, 15858, 26944, 38235
Social Security Advisory Council, 15858
Organization, functions, and authority delegations:
Chief Actuary Office et al., 35844
Inspector General; subpoenas issuance, 28255
Inspector General Office; internal organizational realignments, 36602
Office of Information Management, etc., 15553
Office of Program Benefits Policy, 56253
Office of the Regional Commissioner, 56254
Publications and Logistics Management Office, 5053
Privacy Act:
Computer matching programs, 7298, 18766, 25723, 38793, 58091
Systems of records, 25724, 30653, 33791, 46675
Senior Executive Service:
Performance Review Board; membership, 2567
Social security acquiescence rulings:
DeSonier vs. Sullivan; State intestate succession law application in determining entitlement to child's benefits, 27942
Rescissions—
Rosenberg v. Richardson et al., 5434
Validity of last marriage, 11462
Social security benefits:
Cost-of-living increase, SSI monthly benefit amounts increase, average of total wages, contribution and benefit base, etc., 55346, 60154
Social security claims:
Disability evaluation; redesigned method development; research plan, 47542
Social security rulings:
Administrative findings of fact by State agency medical and psychological consultants, etc., 34465
Allegations of pain and other symptoms; consideration in determining whether medically determinable impairment is severe, 34468
Disability claims symptoms evaluation; individual's statements credibility assessment, 34483
Electronic service delivery, 68808
Federal circuit court and district court decisions application, 34470
Medical source opinions on issues reserved to Commissioner, 34471
Rescissions—
Living in the same household; definition, 41439
Residual functional capacity assessment in initial claims, 34474
Residual functional capacity for less than full range of sedentary work, implications; determining capacity to do other work, 34478
Symptoms, medically determinable physical and mental impairments, and exertional and nonexertional limitations, 34488
Treating source medical opinions; controlling weight, 34490
Social security supplementary agreement between U.S. and Germany; payment provision for ethnic German Jews; entry into force, 33570
Supplemental security income:
Disability claim process; testing modifications to prehearing procedures and decisions by adjudication officers; locations of tests, 3757
Disability determination procedures; testing modifications; test sites for single decisionmaker model, 19969

Southeastern Power Administration

NOTICES

Power rates:
Kerr-Philpott Projects, 4433, 51103
Stonewall Jackson Project, 43760

Southwestern Power Administration

NOTICES

Integrated System power rates and opportunities, 34432, 51102
Extension, 34432, 51102
Rate design development, 53732
Power rates:
Robert D. Willis project, 35209, 51104

Special Counsel Office

See Office of the Special Counsel

Special Trustee for American Indians Office

RULES

American Indian Trust Fund Management Reform Act:
Restricted tribal funds withdrawal and management, 67931

State Department

RULES

Claims and stolen property:
Fishermen's Protective Act Guaranty Fund procedures; Federal regulatory reform, 49966
Federal regulatory reform:
Foreign official status notification, 32327
Removal of alien enemies brought to U.S.; World War II reparations; and disposal of surplus property in foreign areas; CFR parts removed, 6506
Shipping and seamen; CFR parts removed, 29940
Foreign missions protection guidelines; CFR part removed, 10447
International agreements:
Coordination and reporting; determination not to publish certain agreements, 7070

International Traffic in Arms regulations, 19841, 36625
Afghanistan; defense articles and services importation and exportation, etc.; prohibition, 33313
Amendments and nomenclature changes, 48830
Commercial aircraft engines and communications satellites hot-section technologies—
Transfer to Commerce Department's CCL, 56894
Cryptographic products for personal use; exemption, 6111
Encryption items removal from U.S. Munitions List, transfer to Commerce Control List, 68633
Georgia et al., 41499
Ukraine; defense articles and services importation and exportation, 41737
Legal and related services:
International child abduction—
Office of Children's Issues designated as U.S. Central Authority for Hague Abduction Convention, 7069
Longshore work by U.S. nationals; foreign prohibitions, 29941
Nationality and passports:
Passports and U.S. nationality claims in foreign countries; persons authorized to issue and adjudicate, 43310
Passports for minors; custodial dispute and non-dispute situations, 6505
Nationality procedures:
Nationality retention or loss; obsolete sections deleted, 29651
Organization, functions, and authority delegations:
Assistant Authentication Officers; authentication certificates issuance, 39584
Notarizing servicing overseas
Correction, 14375
Passports:
Information release; obsolete language removed, 29940
Press building passes, 3800
Privacy Act; implementation, 68148
Tort claims and certain property damage claims, administrative settlement; CFR part removed, 2915
Visas; immigrant documentation:
Diversity immigrant visa program; requirements to prevent fraudulent practices, 1523
Correction, 6111
Federal regulatory reform—
Aliens arrested and deported, international child abduction, temporary workers and trainees, etc., 1832
Labor certification, unqualified physicians, misrepresentation, failure of applicant to comply with INA, etc., 1834
Illegal Immigration Reform and Immigrant Responsibility Act of 1996; implementation—
Visa ineligibility grounds, 59182
Issuance to aliens failing to comply with Immigration and Nationality Act, 9325
Correction, 11305
Visas; nonimmigrant documentation:
Federal regulatory reform—
Aliens arrested and deported, international child abduction, temporary workers and trainees, etc., 1832
Labor certification, unqualified physicians, misrepresentation, failure of applicant to comply with INA, etc., 1834
Illegal Immigration Reform and Immigrant Responsibility Act of 1996; implementation—
Visa ineligibility grounds, 59182
Jurisdictional consular office for nonimmigrant processing; designation by geographical area, 56438
Summer 1996 Olympic Games, Atlanta, GA; visa applications; removal, 1521, 53058
Visa waiver pilot program—
Argentina, 35628
Australia, 39318
Witnesses and informants, 1837

PROPOSED RULES

Freedom of Information Act; implementation:
National security information; classification, safeguarding, and declassification, 39927
Longshore work by U.S. nationals; foreign prohibitions
Comment period extended, 2973
Privacy Act:
Implementation, 53158
Privacy Act; implementation:
National security information; classification, safeguarding, and declassification, 39927
Semi-annual agenda, 23290, 62790

NOTICES

Accountability Review Board:
Attack on headquarters of Office of Program Manager, Saudi Arabian National Guard in Riyadh in which five Americans were killed, 8322
Agency information collection activities:
Proposed collection; comment request, 2567, 7129, 11076, 24996, 24997, 26945, 46892
Submission for OMB review; comment request, 43394, 51483
Antarctic fishing; conservation measures adoption by Commission for Conservation of Antartic Marine Living Resources, 66723
Basel Convention on Transboundary Movement of Hazardous Wastes and Disposal:
Basel-covered wastes trading with non-party absent agreement, 8323
Climate change action plan:
U.S. initiative on joint implementation; evaluation and assessment, 59480
Committees; establishment, renewal, termination, etc.:
Defense Trade Advisory Group, 12128
International Telecommunication Advisory Committee, 7039
Private International Law Advisory Committee, 67090
Religious Freedom Abroad Advisory Committee, 67090
Cryptographic products, temporary export; reporting and recordkeeping requirements, 6282
Cuban Liberty and Democratic Solidarity (LIBERTAD) Act; implementation guidelines, 50655
Diversity immigrant visa program; registration, 2862
Environmental statements; availability, etc.:
Eagle Paso, TX; new international bridge, 20873
El Paso County, TX; Rio Grande Pipeline Co. pipeline, 49002
Express Pipeline Partnership pipeline from Montana to Alberta, Canada, 49003
Portal Pipe Line Company; pipeline to Canadian border, 24997
Foreign Assistance Act; determinations, 10056
Gifts to Federal employees from foreign governments; listing, 24536
Grant and cooperative agreement awards:
American Council of Teachers of Russian et al., 43567
Grants and cooperative agreements; availability, etc.:
Eastern Europe and independent states of former Soviet Union; research and training, 52075
International airports; ineffective security measures:
Hellenikon International Airport, Athens, Greece, 15554
International Atomic Energy Agency-U.S. Safeguards Agreement; interagency procedures for implementation, 7130
International conferences:
U.S. delegations; private-sector representatives, 63892
International Joint Commission on Canada-U.S. Air Quality Agreement:
Air Quality Committee 1996 progress report; transboundary air pollution reduction; inquiry, 58728
International Traffic in Arms regulations; statutory debarment, 29784
Iran and Libya Sanctions Act of 1996; clarification, 66067
Meetings:
Defense Trade Advisory Group, 59481
Eastern Europe and the Independent States of the Former Soviet Union Advisory Committee, 4705
Fine Arts Committee, 9218, 47231
Historical Diplomatic Documentation Advisory Committee, 9002, 24998, 48518, 60736
International Communications and Information Policy Advisory Committee, 11671, 43111, 58729
International Economic Policy Advisory Committee, 49808, 58729, 65256, 68069
International Law Advisory Committee, 24850, 66340
International Telecommunications Advisory Committee, 4705, 4809, 9218, 9740, 10616, 16018, 18767, 19654, 36104, 45470, 51739, 55181, 58921, 67091, 67865
Overseas Schools Advisory Council, 1254, 22077, 67091
Overseas Security Advisory Council, 7571, 27382, 56256, 66340
Private International Law Advisory Committee, 7571, 7572, 22078, 43395, 47999
Shipping Coordinating Committee, 1426, 1427, 3519, 5596, 6407, 6678, 7039, 16516, 18456, 19329, 21521, 24346, 24850, 36774, 43112, 45470, 47231, 52486, 52487, 55181, 55680, 56602, 57509, 66341, 66735, 69131
U.S. foreign policy economic sanctions programs; briefing, 29444, 58729
Missile technology proliferation; sanctions:
Iranian entities, 29785
Korean entities, 29785
Organization, functions, and authority delegations:
Assistant Secretary for Administration et al., 46893
Assistant Secretary for Economic and Business Affairs, 58436
Security Assistance, Science and Technology Under Secretary, et al.; Foreign Assistance Act of 1961, etc., 25727
Passport travel restrictions, U.S.:
Iraq, 10839
Lebanon, 8096, 43395
Libya, 56993
Pipeline facilities on U.S. borders; permit applications:
Express Pipeline Partnership, 37787
Rio Grande Pipeline Co., 26945
Presidential permits:
Eagle Pass, TX; new international bridge, 20874

Privacy Act:
Systems of records, 53259
Property claims:
Nicaragua, 5054
Senior Executive Service:
Performance Review Board; membership, 46893, 48202
Shrimp trawl fishing; turtle protection guidelines; certifications, 17342, 24998, 43395, 59482
U.N. Indigenous Rights draft declaration elaboration:
American tribal leaders/U.S. government officials consultations, 36774
U.S. Framework Convention on Climate Change:
Second U.S. Climate Action Report; preparation, 66341
Visas; immigrant documentation:
Diversity immigrant (DV-98) visa program; registration, 58730

State Justice Institute

NOTICES
Grants, cooperative agreements, and contracts; guidelines, 45640, 53782
Meetings; Sunshine Act, 5606, 29583, 36605, 58436

Statistical Reporting Service

See National Agricultural Statistics Service

Substance Abuse and Mental Health Services Administration

NOTICES
Agency information collection activities:
Proposed collection; comment request, 2838, 4279, 10005, 18753, 34438, 51713, 54668
Submission for OMB review; comment request, 16805, 17905, 24320, 29415, 31945, 31946, 36891, 42640, 54669
Caring for Every Child's Mental Health: Communities Together Campaign; cosponsorship opportunity, 8633
Federal agency urine drug testing; certified laboratories meeting minimum standards, list, 3723, 8635, 15074, 19629, 28225, 35232, 40242, 46816, 52455, 56702, 64140
Grant and cooperative agreement awards:
Minority fellowship program—
American Nurse Association et al., 37280
National Association of State Alcohol and Drug Abuse Directors, 48718
National Association of State Mental Health Program Directors, 25499
Grants and cooperative agreements; availability, etc.:
Center for Substance Abuse Prevention and Center for Substance Abuse Treatment—
Receipt date cancellation, 58699
Community mental health services block grants—
Formula and methods for allocations determination, 30625
Knowledge development and application cooperative agreements, 15810, 16927
Knowledge dissemination conference program—
Receipt date cancellation, 6018, 37075
Mental health systems change evaluation technical assistance center (FY 1997), 31541, 58080
Substance abuse prevention and treatment block grants—
Formula and methods for allocations determination, 30625
Substance abuse treatment conference program, 6018
Receipt date cancellation, 37075
Meetings:
Drug Testing Advisory Board, 7118, 22068, 53166
Mental Health Services Center National Advisory Council, 9189, 15266, 39465
Substance Abuse and Mental Health Services Administration special emphasis panel, 4675, 9190, 43067, 54812, 57878, 60111, 67843
Substance Abuse Prevention Center National Advisory Council, 22068, 26919, 43376
Substance Abuse Treatment Center National Advisory Council, 3724, 37753, 44315
Meetings; advisory committees:
January, 1598
May, 18155, 21475
June, 26192, 28226, 29108
July, 30916, 39465
August, 37487, 42912
September, 41171, 47762
October, 51714
January (1997), 69107
Meetings; special emphasis panels:
August, 44071
Senior Executive Service:
Performance Review Board; membership, 55991

Surface Mining Reclamation and Enforcement Office

RULES
Indian lands program:
Abandoned mine land reclamation plan—
Hopi Tribe, 17833
Navajo Nation, Hopi and Crow Tribes, 6507
Permanent program and abandoned mine land reclamation plan submissions:
Alabama, 37382
Alaska, 48835
Colorado, 6509, 26792, 32328, 59332
Illinois, 26801, 33799, 37383
Indiana, 15378, 15891, 26443, 55743
Kentucky, 66220
Maryland, 12027
Missouri, 26445, 26454, 31610, 38374
New Mexico, 26825, 38376
North Dakota, 52691
Ohio, 7411, 8074, 46548, 55748
Oklahoma, 26461, 38381, 67213
Oregon
Coal exploration requirements; CFR correction, 40155.
Texas, 15380, 30805, 67216
Utah, 46550
Virginia, 26836, 42788, 46552
West Virginia, 6511, 38382
Wyoming, 6537, 40735, 43966
Program development, administration, and enforcement grants:
Administrative procedures; CFR correction, 40155

PROPOSED RULES
Abandoned mine land reclamation:
Reclamation fund list; fee collection and coal production reporting—
Coal excess moisture allowance, 64220
Federal lands program:
State-Federal cooperative agreements approval; Federal regulatory review, 15005
Federal regulatory review:
Permanent program and abandoned mine land reclamation plan submissions, 20768, 26477
Indian lands program:
Abandoned mine land reclamation plan—
Hopi Tribe, 53884
Navajo Nation, AZ and NM, 51070
Permanent program and abandoned mine land reclamation plan submissions:
Arkansas, 19881
Colorado, 8534, 47722, 58800
Illinois, 14039, 39612, 51631
Indiana, 1546, 1549, 1551, 15435
Iowa, 67967
Kentucky, 46577, 55247
Maryland, 44258
Missouri, 2459, 14517
Montana, 15910
New Mexico, 3625, 13117
North Dakota, 18100, 25425
Ohio, 16731, 29504, 32382, 43696, 54373, 54375
Oklahoma, 8536, 15435, 25426, 40369, 40474, 49284
Pennsylvania, 7446, 10918
Texas, 3628, 38420, 44260, 56648
Utah, 11350
Virginia, 10919, 19885, 29506, 31071, 38422, 48110
West Virginia, 17859, 37023
Wyoming, 20773

NOTICES
Abandoned mine reclamation program; guidelines, 68777
Agency information collection activities:
Proposed collection; comment request, 10786, 11429, 14579, 15830, 16113, 19957, 31147, 32460, 55314, 68052
Submission for OMB review; comment request, 3730, 5408, 6022, 8642, 11061, 28232, 32461, 34446, 38472, 49792
Environmental statements; availability, etc.:
Fence Lake Mine, NM and AZ, 17319
Fern Lake Watershed, TN, 2531, 41651, 49793
Environmental statements; notice of intent:
Bull Mountains Mines, MT; cancelled, 8074
Valid existing rights determinations:
Buckingham Coal Co., Inc.; Wayne National Forest, OH, 37078

Surface Transportation Board

RULES
Contracts and exemptions:
Rail general exemption authority—
Ferrous recyclables, 47446
Hydraulic cement, 66230
Railroad contracts; nonagricultural transportation contracts exemption removed, 29036
Discontinuance of bus transportation in one State; CFR part removed, 17579
Environmental laws implementation procedures:
Abandonment and discontinuance of rail lines and rail transportation; environmental laws, 67876
Exemptions:
Boxcar traffic, 26846
Motor carrier transportation:
Regulations transfer and redesignation from STB to Federal Highway Administration, 54706
Pipeline carriage rates and service terms:
Disclosure and notice of rates and other service terms, 35139
Practice and procedure:
Class III rail carriers; class exemption for acquisition or operation of rail lines, 32355
Correction, 36965
Licensing and related services to public; user fees, 42190, 48639, 66229
Rail licensing procedures—
Rail Passenger Service Act; avoidable losses determination; CFR part removed, 16066

Rail carriage rates and service terms:
Disclosure, publication, and notice of change of rates and other service terms, 35141
Rail carriers:
Connecting track and rail construction; class exemptions, 29973
Exempt issuance of securities and assumption of obligations; CFR part removed, 7428
Reasonably expected costs and joint rates subject to surcharge or cancellation; CFR parts removed, 7427
Rail licensing procedures:
Abandonment and discontinuance of rail lines and rail transportation; envirionmental laws, 67876
Train or ferry discontinuance or change of operation; CFR part removed, 7427
Rate procedures:
Rail rate reasonableness, exemption and revocation proceedings; expedited procedures, 52710, 58490
Correction, 53996
Effective date delayed, 57339
Recyclables; CFR parts removed, 7426
Tariffs and schedules:
Anchorage, AK; Alaska intermodal motor/water traffic service; rate increases notification, 30181
Filing requirements for government shipments at reduced rates; CFR part removed, 24722
Owner-operator food transportation; CFR parts removed, 21387
Payment of discounts by motor carriers of property to nonpayer of freight charges; rescission, 19859
Publication, posting and filing; CFR part removed, 7428
Railroad agricultural products contracts, 68668
Transfer of regulations from Interstate Commerce Commission, 1842
Uniform system of records of property changes for railroad companies; CFR part removed, etc., 9112
Water carriers:
Harbors, and water carrier operations exemption; CFR parts removed, 54104

PROPOSED RULES
Accounts, records, and reports:
Abandonment applications; revenue and cost data for years prior to base year period; elimination—
Discontinuance of proceeding, 11375
Exemptions:
Boxcar traffic, 13146
ICC Termination Act of 1995:
Rail common carriage changes of rates and other service terms; disclosure and publication, 9413
Interlocking rail officers and directors; authorization, 22014
Practice and procedure:
Class III rail carriers; class exemption for acquisition or operation of rail lines, 11802
Licensing and related services; user fees, 15208
Correction, 20877
Pipeline common carriage rates and service terms; disclosure and advance notice of increase, 10526
Rail exemption revocation proceedings; withdrawn, 11804
Rail rate reasonableness, exemption and revocation proceedings; expedited procedures, 39110
Rail carriers:
Carrier rates and service terms:
Disclosure, publication, and notice of change of rates and other service terms, 21153
Rail licensing procedures:
Abandonment and discontinuance of rail lines and rail transportation, 11174
Railroad contracts:
Specified rail services provision under specified rates and conditions, 13147, 17682
Rate procedures:
Correction, 14735
Rail rate reasonableness and exemption/revocation proceedings; expedited procedures, 11799, 19236
Semi-annual agenda, 24094, 63580
Tariffs and schedules:
Household goods carriers tariff requirements, 56656
Motor tariff regulations; review; proceeding terminated, 19902
Noncontiguous domestic trade—
Freight forwarders tariff filing requirements; rate reasonableness exemption, 59075
Property transportation by or with water carrier, 67291
Pipeline common carriage; change of rates and other service terms; disclosure and notice, 24474
Railroad agricultural products contracts, 54144
Tariff indexes; revisions, 9419
Uniform system of record of property changes for railroad companies; withdrawn, 9138

NOTICES
Civil monetary penalties; inflation adjustment unnecessary, 55070
Committees; establishment, renewal, termination, etc.:
Railroad-Shipper Transportation Advisory Council; membership, 2866
Declaratory order petitions:
National Association of Freight Transportation Consultants, Inc., 60140
Demurrage collection consideration; antitrust immunity withdrawal, 14200
Environmental statements; availability, etc.:
Central Railroad Co. of Indiana et al., 13567
Norfolk & Western Railway, Inc., et al., 16821
Ogeechee Railway Co. et al., 2570
Environmental statements; notice of intent:
Kansas City Southern Railway Co., 1814
ICC Termination Act of 1995; implementation:
Noncontiguous domestic trade tariffs, 5835, 52494
Meetings; Sunshine Act, 17954, 26554, 32897, 49191
Motor carriers:
Control exemptions—
Antelope Valley Bus, Inc., 51489
Coach USA, Inc., 51742
Greyhound Lines, Inc., 53991
Fuel cost-related surcharge implementation; petitions to allow short-term notices—
American Trucking Associations, Inc., et al., 18462, 27946
Revenue pooling arrangement—
Capitol Bus Co. et al., 3522
Service pooling agreements—
Adirondack Transit Lines, Inc., 42677
Negotiated Rates Act of 1993; motor contract requirements; policy statement vacated, 19974
Rail carriers:
Central Power & Light Co. v. Southern Pacific Transportation Co.—
Captive shippers; legal and policy issues, 66018
Procedural schedule and oral argument notice, 50078
Cost of capital; railroad industry's annual rate proceeding, 28638, 65428
Cost recovery procedures—
Adjustment factor, 9224, 13227, 32898, 50372, 68092
Railroad revenue adequacy determinations; class I railroads, 37793
Service pooling agreements—
Degussa Corp. et al., 42676
State intrastate rail rate authority—
Alabama et al., 14849
Waybill data; release for use, 13567, 48203, 49375, 49810, 51136, 53992, 59278
Railroad operation, acquisition, construction, etc.:
A&G Railroad, L.L.C., et al., 33579
Adrian & Blissfield Rail Road Co., Inc., et al., 58437
Alamo Gulf Coast Railroad Co., 2572
Angelina & Neches River Railroad Co., 26554
Arkansas-Oklahoma Railroad Co., 9006
Atchison, Topeka & Santa Fe Railway Co., 56754
Atlantic & Western Railway, L.P., 47546
Berlin Mills Railway, Inc., 42084
BHP Copper, Inc., 29794
BHP Nevada Railroad Co., 29794
Bootheel Regional Rail Corp. et al., 25739
Buffalo & Pittsburgh Railroad, Inc., 24854
Burlington Junction Railway, 19330
Burlington Northern Railroad Co., 3963, 20550
Burlington Northern Railroad Co. et al., 43812, 48521, 48730
Burlington Northern Santa Fe Corp. et al., 37313, 49524
CAGY Industries, Inc., 38514
Camp Lejeune Railroad Co., 3523
Canadian American Railroad Co., 53779
Canadian Pacific Ltd. et al., 52994
Capital Metropolitan Transportation Authority et al., 16282
Cascade & Columbia River Railroad Co., 48521
Cen-Tex Rail Link, Ltd.,
Central New England Railroad, Inc., 8709
Central Railroad Co. of Indiana, 17952
Chester Valley Railway, Inc., 15160
Chicago Rail Link, L.L.C., et al., 47233
Chicago SouthShore & South Bend Railroad Co., 52838
Cimarron Valley Railroad, L.C., 8324
Clark County, WA, 67593
Claussen, H. Peter, et al., 14200, 26248
Colorado Mountain Express, Inc., et al., 60747
Columbia & Northern Railway Co., 16027
Columbia Basin Railroad Co., Inc., 65630
Columbus & Ohio River Rail Road Co., 53486
Connecticut Central Railroad Co., Inc., 54258
Connecticut Southern Railroad, Inc., 50902
Consolidated Rail Corp., 30108, 32474
Consolidated Rail Corp. et al., 6059
Coopersville & Marne Railway Co., 25511
Corman, Richard J., 2571, 32025
CSX Corp. et al., 40475, 58611, 58613
CSX Transportation, Inc., 4513, 21223, 26249, 28924, 47233, 49005
CWRR, Inc., 42936
Dakota, Minnesota & Eastern Railroad Corp., 9519, 11939
Dakota, Missouri Valley & Western Railroad, Inc., 13567
Dakota Rail, Inc., 55357
Dallas, Garland & Northeastern Railroad, 58096
Delaware Valley Railway Co., Inc., 58739
Dubois County Railroad Corp., 49524
Dubois County Railroad Corp. et al., 49524
Durbano, David L., 8325, 13567
Durden, K. Earl, 33580
East Texas Central Railroad, Inc., 50903
Economic Development Rail Corp. et al., 13227

Economic Development Rail II Corp., 16528
Elk River Railroad, Inc., 42679
Ellis & Eastern Co., 9742
Evansville Terminal Co., Inc., 37314
Falls Road Railroad Co., Inc., 56735
Fay Penn Industrial Development Corp. et al., 52085
Fillmore Western Railway Co., 65428
Flats Industrial Railroad Co., 53486
Fort Worth & Western Railroad Co., 42084
Fort Worth & Western Railroad Co., Inc., 28924, 46901
Fox Valley & Western Ltd., 51316, 52495
Genesee & Wyoming, Inc., 8104, 13568, 32025, 58739
Grand Trunk Western Railroad Inc., 1254, 65102
Great Western Lines, LLC, 27382
Great Western Railway of Colorado, LLC, 27383
Hastings Industrial Link Railroad, 65103
Head, Douglas M., et al., 29165
Hoosier Southern Railroad, 48203
Housatonic Railroad Co., Inc., et al., 68333
Huron and Eastern Railway Co., Inc., 9520
Illinois & Midland Railroad, Inc., 8105
Illinois Central Corp. et al., 8105
Illinois Central Railroad Co. et al, 68814
Indiana & Ohio Rail Passenger Corp., 19112, 32026
Indiana Harbor Belt Railroad Co., 64409
Iron Road Railways Inc. et al., 49006
Jaxport Railway, 3762
K&E Railway Co., 30109
Kansas City Southern Railway Co., 15562, 56085, 56999
Kansas Eastern Railroad, Inc., 63925
Kansas Southwestern Railway Co., L.L.C., 46019
Lackland Western Railroad Co., 49375
Laidlaw Transit, Inc., et al., 48001
Lexington & Ohio Railroad Co., Inc., 26250
Livonia, Avon & Lakeville Railroad Corp., 9742, 25739
Longhorn Railway Co., 17952
Louisiana & Delta Railroad, Inc., 51743
Luxapalila Valley Railroad, Inc., 28638
Minnesota Commercial Railway Co., 9006
Missouri Pacific Railroad Co., 29447, 47781
Missouri Pacific Railroad Co. et al., 54847
Modesto & Empire Traction Co. et al., 48002
Morris Leasing Co., Ltd., et al., 58278
Naugatuck Railroad Co., Inc., 2329
Nebraska Central Railroad Co., 21532
Nebraska, Kansas & Colorado Railnet, Inc., 67870
Nebraska Northeastern Railway Co., 39511
Neptune Partners, Ltd., 27383
New Orleans Public Belt Railroad, 56085
Nittany & Bald Eagle Railroad Co., 63925
Nolan, John C., 15161
Norfolk & Western Railway Co., 28925, 29165, 42460
Norfolk & Western Railway Co. et al., 1996
Norfolk Southern Corp. et al., 60317
Norfolk Southern Railway Co., 40880
Norfolk Southern Railway Co. et al., 25740, 37109, 51316
North Charleston Terminal Co., 28639
North Coast Railroad Authority, 11469, 37792, 50902
Northeast Texas Rural Rail Transportation District, 2570
Northern Central Railway, Inc., et al., 36417
Northern Vermont Railroad Co. Inc., 38798
Northwestern Pacific Railroad Authority, 25011
Northwestern Stage Lines, Inc., et al., 53486
Notre Capital Ventures II, LLC, et al., 13568
Ormet Railroad Corp., 25012, 53992
Owensville Terminal Co., Inc., 20550, 25012
Palouse River & Coulee City Railroad, Inc., 50903
Peterson, Russell A., 3762
Pickens Railway Co., 19330, 40280
Pioneer Railcorp, 13228, 16028
Pioneer Railcorp., et al., 64191
Pittsburg & Shawmut Railroad, Inc., 20551, 24854
Pittsburgh Industrial Railroad, Inc., 68333
Providence & Worcester Railroad Co., 53261
R.J. Corman Railroad Co./Allentown Lines, Inc., 37540
R.J. Corman Railroad Co./Pennsylvania Lines Inc., 2571, 32026
R.J. Corman Railroad Co./Western Ohio Line, 33580, 40704
RailAmerica, Inc., 37314, 48522, 55357
Rail Link, Inc., 9520, 14372
RailTex, Inc., 32027, 50904, 52495, 68334
Reading Blue Mountain & Northern Railroad Co., 46019
Robey, Richard D., 46018, 46020
Rochelle Railroad Co., 16029
Sacramento-Placerville Transportation Corridor Joint Powers Authority, 49191
Saginaw Valley Railway Co., Inc., 39511
San Joaquin Valley Railroad Co., 21223
SEDA-COG Joint Rail Authority et al., 63925
SEDAoint Rail Authority et al., 46020
Shawnee Terminal Railway Co., Inc., 53487
Sheffield Station Junction Railway, 31222
Soo Line Railroad Co., 5439, 39180, 39180
Southern Pacific Transportation Co., 52839, 58096
South Kansas & Oklahoma Railroad, Inc., 63926
St. Louis Southwestern Railway Co., 38799
Talleyrand Terminal Railroad Co., Inc., 9521
TNW Corp., 39512
Tongue River Railroad Co., 17350
Track Tech, Inc., 67106
Tulsa-Sapulpa Union Railway Co., L.L.C., 2329
Union Pacific Corp. et al., 16529
Union Pacific Railroad Co., 27383, 38799, 47781, 52840, 52995, 58097, 67593
Union Pacific Railroad Co., et al., 68092
Utah Railway Co., 48522
Varlen Corp., 37960
Verde, David Monte, et al., 56735
Wabash & Western Railway Co., 67871
Warren & Trumbull Railroad Co., 50078
Warren & Trumbull Railroad Co., 27128, 42084
Webb, Richard B., et al., 50903
Willamette Valley Railway Co., 43399
Wisconsin & Southern Railroad Co., 17751, 56086
Wisconsin Central Ltd., 52495, 60320
Wisconsin Central Ltd. et al., 3963, 39180
Railroad services abandonment:
Ashley, Drew & Northern Railway Co., 18191
Bangor & Aroostook Railroad Co., 31606, 31607
Bay Line Railroad, L.L.C., 24349
Bessemer & Lake Erie Railroad Co., 67106
Burlington Northern Railroad Co., 7850, 16029, 16030, 17350, 17953, 24349, 34925
Central Kansas Railway, Limited Liability Co., 9743, 10428
Central of Georgia Railway Co., 16031
Central Railroad Co. of Indiana, 9743
Central Railroad Co. of Indianapolis, 24350
Consolidated Rail Corp., 6410, 9521, 17751, 18772, 29165, 31607, 31608, 33795, 38243, 38799, 38800, 49006, 49007, 64567, 67107, 67375, 68334
Council Bluffs Railway, 26554
CSX Transportation, Inc., 1427, 11679, 12133, 16529, 16667, 25013, 25740, 29166, 32027, 32474, 33958, 37315, 37793, 65429
Dakota, Minnesota & Eastern Railroad Corp., 51316, 66073
Delaware-Lackawanna Railroad Co., Inc., 4706
Denver & Rio Grande Western Railroad Co. et al., 41828
Fox Valley & Western Ltd., 16666
Georgia & Florida Railroad Co., Inc., 13569
Georgia Great Southern Division, South Carolina Central Railroad Co., Inc., 42679
Georgia Southern et al., 1995
Illinois Central Railroad Co., 1996
J.P. Rail Inc. et al., 14850
Jacksonville Port Authority, 17953
K&E Railway Co., 69132
Lamoille Valley Railroad Co., 49191
Michigan Shore Railroad, Inc., 52839
Missouri Pacific Railroad Co., 2330, 31222, 33958, 41824, 41825, 46506, 69132
Missouri Pacific Railroad Co. et al., 2572, 41823
MNVA Railroad, Inc., 4513
New Hampshire & Vermont Railroad Co., 40477, 40705
Norfolk & Western Railway Co., 15336, 57726, 59921
Norfolk Southern Railway Co., 30667, 47781
Ogeechee Railway Co. et al., 1994
Paducah & Louisville Railway, Inc., 15337
PL&W, Inc., 40705
San Joaquin Valley Railroad Co., 4707
Sequatchie Valley Railroad Co. et al., 42936
Soo Line Railroad Co., 13570, 20326, 48523
South Carolina Central Railroad, 38800
Southeastern International Corp., 32474
Southeast Kansas Railroad Co., 53487
Southern Pacific Transportation Co., 41826, 41827
Texas Northeastern Division, Mid-Michigan Railroad, Inc., et al., 66748
Tulare Valley Railroad Co., 43117
Union Pacific Railroad Co., 3081, 3523, 11680, 14200, 39512, 41829-41832, 47547, 65264
Western Kentucky Railway, L.L.C., 33581
Wheeling & Lake Erie Railway Co., 64568
Wyoming & Colorado Railroad Co., Inc., 48730, 28925

Technology Administration

NOTICES

Agency information collection activities:
Proposed collection; comment request, 42008
Meetings:
Federal Key Management Infrastructure Federal Information Processing Standard Development Technical Advisory Committee, 58862
Metric Policy Interagency Council and Commerce Department; metric town meeting, 16759
National Medal of Technology Nomination Evaluation Committee, 17689, 57398
Modular construction products acquisition; metric-usage requirements; Federal agency implementation policy statement, 24761
Senior Executive Service:
Performance Review Board; membership, 49301

Tennessee Valley Authority

RULES

Conflict of interests, 20117

Federal claims collection:
Civil monetary penalties; inflation adjustment, 55097
Privacy Act; implementation, 2111
Property management:
Prohibition of Cigarette Sales to Minors in Federal Buildings and Lands Act; implementation, 6110
Correction, 54849

PROPOSED RULES

Privacy Act; implementation, 58018
Semi-annual agenda, 23896, 63380

NOTICES

Agency information collection activities:
Proposed collection; comment request, 9740, 33571
Environmental statements; availability, etc.:
Chickamauga Dam, TN; navigation lock project, 25727
Energy Vision 2020 integrated resource plan, 7572
Environmental statements; notice of intent:
Bellefonte Nuclear Power Plant, AL; conversion to fossil-fueled power plant, 18767
Lignite Power Generation Facility, MS, 53988
LSP Energy L.P.; option purchase agreement for supply of electric energy, 42299
Meetings; Sunshine Act, 6411, 17747, 22078, 25729, 30656, 36105, 42930, 48726, 53776, 58731
Privacy Act:
Systems of records, 58092

Textile Agreements Implementation Committee

See Committee for the Implementation of Textile Agreements

Thrift Depositor Protection Oversight Board

RULES

Resolution Funding Corporation:
Book-entry securities, 66874

PROPOSED RULES

Semi-annual agenda, 24104

Thrift Supervision Office

RULES

Community Reinvestment Act regulations, 21362
Corporate governance and policy statements:
Federal regulatory review, 64007
Economic Growth and Regulatory Paperwork Reduction Act; implementation:
Lending and investment authority expansion, qualified thrift lender (QTL) test amendment, etc., 60179
Federal claims collection:
Civil monetary penalties; inflation adjustment, 56118
Federal Deposit Insurance Act:
Safety and soundness standards, 43948
Federal regulatory reform:
Lending and investment, 50951
Management official interlocks, 40293
National Flood Insurance Reform Act of 1994; implementation:
Loans in special flood hazard areas, 45684
Operations:
Conflicts of interest, corporate opportunity, and hazard insurance, 60173
Practice and procedure:
Uniform and local rules, 20350
Privacy Act; implementation, 386
Savings associations:
Lending limits; loans to one borrower; correction, 575
Subsidiaries and equity investments; Federal regulatory reform, 66561
Technical amendments, 65177
Savings associations and service associations:
Suspicious activity uniform reporting form, etc., 6100

PROPOSED RULES

Conflicts of interest, corporate opportunity, and hazard insurance, 30190
Corporate governance and policy statements:
Federal regulatory review, 32713
Federal regulatory review:
Lending and investment, 1162
Mutual savings and loan holding companies:
Mutual holding company structure; establishment, 58144
Risk-based capital:
Collateralized transactions, 42565
Savings associations:
Subsidiaries and equity investments; Federal regulatory review, 29976
Uniform Financial Institutions Rating System; conforming amendments, 38114

NOTICES

Agency information collection activities:
Proposed collection; comment request, 3524, 16669, 19114, 29584, 35861, 39691-39693, 42085, 53262, 53994, 56999, 64409, 64410
Submission for OMB review; comment request, 2573, 19114, 19114, 39683, 39694, 46507, 47236, 48527, 56897, 57000, 60748, 64410, 64411, 64793, 68337
Decisions and findings; review, appeal, and reconsideration guidelines, 36960
Delayed availability of funds; interagency policy statement; withdrawn, 43573
Thrift financial report:
Condition reports, public disclosure, 68817
Applications, hearings, determinations, etc.:
Advance Financial Savings Bank, f.s.b., 58279
Algiers Homestead Association, 25741
American Savings, F.S.B., 6686
Amsterdam Federal Savings & Loan Association, 39513
Buffalo Federal Savings & Loan Association, 4518
Catskill Savings Bank, 5835
Chester Savings Bank, FSB, 41207
Citizens Federal Savings & Loan Association of Delphos, 53263
Citizens Loan & Savings Co., 2574
Citizens Savings Bank, F.S.B., 13229
City National Savings Bank, F.S.B., 16668
Commonwealth, M.H.C., 5836
Community Bank of Excelsior Springs, A Savings Bank, 39513
Community Federal, M.H.C., 2573
Dime Savings Bank of Williamsburgh, 25741
Empire Federal Savings & Loan Association of Livingston, 58280
Fairfield Savings Bank, F.S.B., 56606
Fidelity Federal, M.H.C., 2574
First Federal Bank of Arkansas, FA, 13229
First Federal Savings & Loan Association of Allen Parish, 42679
First Federal Savings & Loan Association of Bloomington, 17957
First Federal Savings & Loan Association of Cullman, 56606
First Federal Savings & Loan Association of Herrin, 14208
First Federal Savings & Loan Association of Ironton, 17957
First Federal Savings Bank of America, 59279, 67376
First Federal Savings Bank of Dover, 4518
First Lancaster F.S.B., 17957
Foundation Savings Bank, 37110
Fulton Savings Bank, FSB, 46507
Great American Federal Savings & Loan Association, 5836
Home City Federal Savings Bank of Springfield, 64796
Home Federal Savings & Loan Association of Elgin, 41207
Home Federal Savings & Loan Association of Fayetteville, 2573
Investors Federal Bank & Savings Association, 59279
Jacksonville Federal M.H.C., 6686
Kenwood Federal M.H.C., 24531
Lawrenceville Federal Savings & Loan Association, 4518
Lexington Building & Loan Association, F.A., 14208
Madison First Federal Savings & Loan Association, 39514
Market Building & Savings Co., 53263
Midwest Savings Bank, 42680
North Central Bancshares, M.H.C., 5836
Ocean F.S.B., 25741
Park Federal Savings Bank, 37110
Patapsco Federal Savings & Loan Association, 2573
Peoples Federal Savings & Loan Association of Massillon, 19333
Pomona First Federal Savings & Loan Association, 5836
Preferred Savings Bank, 55071
Prestige Bank, a Federal Savings Bank, 19333
Provident Savings Bank, F.S.B., 16668
South Bergen Savings Bank, 4518
Union Federal Bank, a Federal Savings Bank, 42680
Washington F.S.B., 2574
Wayne Savings Bank, F.S.B., 19333
Yonkers Savings & Loan Association, FA, 6687

Toxic Substances and Disease Registry Agency

See Agency for Toxic Substances and Disease Registry

Trade and Development Agency

NOTICES

Senior Executive Service:
Performance Review Board; membership, 55834

Trade Representative, Office of United States

RULES

Sugar and specialty sugar imports; tariff-rate quota implementation, 26783

PROPOSED RULES

Uruguay Round Agreement Act (URAA):
Tariff-rate quota amount determinations—Leaf tobacco, 6333, 28522

NOTICES

Accession:
Austria et al., 56082
Argentine:
Apparel, textiles, footwear; specific duties and non-tariff barriers affecting; policies and practices, 53776

Asia Pacific Economic Cooperation (APEC):
Intellectual property rights contact point list; establishment and applications request, 42300
Australia:
Subsidies affecting leather; policies and practices, 55063
Caribbean Basin Economic Recovery Act; beneficiary countries status; report to Congress, 30927, 51134
Colombia:
Banana exports to European Union; policies and practices, 1788
Costa Rica:
Banana exports to European Union; policies and practices, 1789
Determination under section 305 of the Trade Agreements Act of, 979, 35082
European Community:
Banana regime, 18450
Foreign government discrimination against U.S. products and services in procurement practices; information request, 5044
Foreign trade barriers; national trade estimate report, 56081
Generalized System of Preference:
Out-of-cycle country of eligibility review, 66342
Generalized System of Preferences:
Annual Review (1995)—
Petitions, public hearings, and list of articles, 52078
Public hearings site, 55351
Cambodia; beneficiary developing country designated criteria, 54484
Least developed beneficiary developing countries' articles imported; list—
Public hearings, 64935
Pakistan; internationally recognized worker rights, 30646
Intellectual property rights protection, countries denying; policies and practices:
China, 25000, 33147
Pakistan, 19971
Portugal, 19970, 55351
Priority foreign countries; identification, 1413, 19969
Japan:
Economic deregulation measures; market access for U.S. products and services; comment request, 52826
Photographic film and paper access barriers; determination, 30929
Korea:
Telecommunications trade; priority foreign country identification, 40279
Meat from animals treated with certain hormones from European Community; termination of increased duties, 37309, 39515
Meetings:
Agricultural Policy Advisory Committee for Trade, 8081, 36605
Industry Functional Advisory Committee, 57510
Industry Policy and Sector/Functional Advisory Committee, 25720
Industry Sector Advisory Committees—
Aerospace equipment, 69131
Building products and related materials, 58094
Nonferrous ores and metals, 57510
Retailing and wholesaling, 64944
Small and minority business, 55064
Standards, 59128
Investment and Services Policy Advisory Committee, 29444, 44382
Trade and Environment Policy Advisory Committee, 15554, 27938, 50516, 52988
Trade Policy and Negotiations Advisory Committee, 1790, 44382
United States—Pacific Trade and Investment Policy Commission, 16277, 20310, 28258, 31993, 37525, 39179, 44117, 54831, 55680, 60137, 65634
Priority practices identification; comment request, 29444
Tariff-rate quota amount determinations:
Beef from New Zealand, 53242
Organic refined sugar as specialty sugar; globalization, 42935
Raw and refined sugar, 39179, 51135, 51751
Raw cane sugar, 8691, 15859, 34496
Telecommunications products trade agreements compliance review; request for comments
Japan et al, 66068
Trade expansion priorities; report to Congress, 52827
Trade relations agreements:
Cambodia, 56256
Turkey:
U.S. films; box office revenues; discriminatory tax imposition; Section 302 investigation, 30646, 32883
Unfair trade practices, petitions, etc.:
Brazil; auto sector trade and investment policies and practices, 54485
Canada; discriminatory practices affecting imported periodicals, 11067
Canada; U.S.-owned programming services; authorization, 5603
Germany; heavy electrical equipment discriminatory procurement practices, 35082, 53242
Indonesia; motor vehicle sector promotion incentives; investigation and comment request, 54246
Japan; sodium azide from Japan; third-country investigation request, 33148
United States-Canada Free Trade Agreement:
Canadian softwood lumber exports, 28626
Vietnam, Socialist Republic of; bilateral trade agreement negotiations; comment request, 59920
World Trade Organization:
Albania; accession, 24999
Armenia; accession, 24999
Basic telecommunications services negotiations; comment request, 36606
Canadian measures affecting periodicals, 38238
Croatia; accession, 24999
India; pharmaceuticals and agricultural chemicals patent protection, 35857
Meat from animals treated with certain hormones, European ban on import; dispute settlement proceeding; comment request, 33149
Pakistan; pharmaceuticals and agricultural chemicals patent protection; settlement proceeding, 38791
Saudi Arabia; accession, 24999
Singapore; accession, 11233
Ukraine; accession, 24999
Underwear, cotton and man-made fiber, from Costa Rica; dispute settlement proceedings, 12129
Uruguay Round Agreements Act (URAA)—
Japan; imported consumer photographic film and paper; dispute settlement proceeding, 52835
Woven wool shirts and blouses from India; dispute settlement proceedings, 24516

Transportation Department

See Coast Guard
See Commercial Space Transportation Office
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Federal Transit Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Saint Lawrence Seaway Development Corporation
See Surface Transportation Board
See Transportation Statistics Bureau

RULES
Acquisition regulations:
Commercial training services, 391
Incorporation by reference; guidance adherence, 273
Streamlining and restructuring, 50248
Correction, 53677, 54490
Air travel; nondiscrimination on basis of disability:
Lifts and boarding facilitation devices, etc., 56409
Americans with Disabilities Act; implementation:
Accessibility guidelines—
Detectable warnings at curb ramps, hazardous vehicular areas, and reflecting pools, 39323
Transportation for individuals with disabilities, 25409, 26467
Aviation economic regulations:
Technical amendments, 34724
Conflict of interests, 39901
Economic and procedural regulations:
Aircraft accident liability insurance; terminations, suspensions, and reductions of service; Federal regulatory reform, 19164
Federal regulatory reform:
Audits of state and local governments (A-128); CFR part removed, 21386
Civil Aeronautics Board, public meetings; release of internal staff memoranda, 17565
Equal Access to Justice Act; implementation; CFR part removed, 29284
General policy statements; redundant provisions removed, 29645
Interlocking relationships between air carrier and person controlling another air carrier; policy statement removed, 29646
Medals of Honor; clarification, 17578
National security information; CFR part removed, 17564
Official seal uses; duplicative regulations removed, 17577
Great Lakes pilotage rate methodology, 21081
Omnibus Transportation Employee Testing Act of 1991:
Drug and alcohol testing requirements for foreign-based drivers operating in U.S.; participation by Canadian and Mexican laboratories, 37015
Substance abuse professional; definition amendment, 37222
Workplace drug and alcohol testing programs
Specimen collection procedures, 37693
Organization, functions, and authority delegations:
Commandant, U.S. Coast Guard, 3331, 34745, 55582, 67476, 67952
Federal Highway Administration Administrator et al., 68162
Maritime Administrator, 64029
Staff assignments and review of action under assignments; Federal regulatory reform, 19166
Urban Mass Transportation Administration; statutory name change, 32354

Procedural regulations:
Electronic docket system transition; paper-based to optical "imaging", 9282
Rulemaking proceedings; policy statement, 29018
Tariffs:
International airline passenger fares; electronic filing, 18070

PROPOSED RULES
Air travel; nondiscrimination on basis of handicap:
Seating accommodations and collapsible electric wheelchair stowage, 56481
Americans with Disabilities Act; implementation:
Accessibility guidelines—
Detectable warnings at curb ramps, hazardous vehicular areas, and reflecting pools, 16232, 16234
Aviation economic regulations:
Large certificated air carriers; passenger origin-destination survey reports, 32375
Commercial Motor Vehicles Drivers License and Drivers Physical Qualifications Programs Negotiated Rulemaking Committee:
Intent to establish, 18713
Computer reservation systems; carrier-owned:
Contract terms imposition on participating carriers limiting carriers' choice of participation, 42197
Fair display of airline services, 42208
Correction, 43500
Economic regulations:
Airline oversales signs; Federal regulatory review, 27818
Passenger manifest information; flight segments to or from United States, 47692
Federal regulatory review:
Classified information, 33886
Freedom of Information Act; implementation, 33075
Implementation of Equal Access to Justice Act in Agency proceedings:
Federal regulatory review, 28831
Large air carriers; international data submissions; changes, 5963
Omnibus Transportation Employee Testing Act of 1991:
Drug and alcohol testing requirements for foreign-based drivers operating in U.S.; participation by Canadian and Mexican laboratories, 13809
Substance abuse professional; definition amendment, 9969
Passenger manifest information collection regulation for international flights; meeting, 10706
Privacy Act; implementation
Federal regulatory review, 29522
Semi-annual agenda, 23298, 62798
Tariffs, etc.:
Ticketless air travel; passenger notices, 1309

NOTICES
Agency information collection activities:
Proposed collection; comment request, 5830, 6056, 8096, 25261, 25932, 37104, 41439, 42674, 50528, 58275, 59271, 67091
Submission for OMB review; comment request, 6678, 11671, 11680, 14363, 19654, 21521, 27125, 29785, 40060, 41440, 44383, 47777, 47778, 48000, 48518-48520, 49187, 49518, 50369, 50529, 51483, 52079, 52487, 53990, 55064-55066, 55681, 56257, 58436, 58601, 58614, 58732, 59128, 59271, 60736, 64187, 65256, 65424, 67092, 68325, 69131
Air carrier operations; resumption:
ValuJet Airlines, Inc., 46503
Airport rates and charges; policy statement, 31994
Aviation proceedings:
Agreements filed; weekly receipts, 213, 570, 1815, 3071, 3961, 5054, 6679, 7299, 8096, 9516, 10840, 11673, 16019, 16517, 17936, 18769, 19972, 22079, 25010, 26245, 28632, 29163, 32472, 33955, 36952, 37788, 38794, 40702, 41678, 42675, 43803, 48000, 49004, 49519, 51312, 52080, 53777, 54697, 55352, 56602, 57941, 58733, 60737, 64189, 64944, 66342, 67373
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 214, 571, 1814, 3071, 3961, 5055, 5596, 6679, 7299, 8097, 9516, 10840, 16019, 16517, 17937, 18769, 19972, 22079, 25010, 26245, 28632, 29163, 34497, 36953, 37105, 37788, 40702, 41679, 42675, 43803, 46010, 47778, 49004, 51312, 53777, 54697, 55352, 56082, 56603, 57942, 58733, 60314, 64188, 64944, 66343, 67373
Hearings, etc.—
Air 4000, Inc., 41198
Alaska international airports; expanded cargo transfer flexibility, 49519
AlphaJet International, Inc., 6680
Anchorage and Fairbanks international airports, AK; expanded cargo transfer flexibility, 57722
Baltia Air Lines, Inc., 2568
Canadian and Mexican specialty air service operators, 3071
Falcon Air Express, Inc., 7132
Florida West International Airways, Inc., 30105
Gemini Air Cargo, L.L.C., 50529
Golden West Airlines, Inc., 53778
Gulf & Caribbean Air, 64561
Jet Aspen, Inc., 2327
Maverick Airways Corp., 48727
Merlin Express, Inc., 33956
Mountain Air Express, Inc., 60737
Panagro Airways, Inc., 30276
Pan American Airways, Inc., 43803
Premeir Airlines, 10840
Pro Air, Inc., 43112
Sky Trek International Airlines, Inc., 28255
Sun Pacific International, Inc., 7040
Sunworld International Airlines, Inc., 9003
United Parcel Service Co., 37953
Vision Air, Inc., 50370
Aviation proceedings;
Agreements filed; weekly receipts, 64189
Committees; establishment, renewal, termination, etc.:
Commercial Space Transportation Advisory Board, 31209
Freight transportation accross all modes; policy, 14587
Intermodal Surface Transportation Efficiency Act; reauthorization policy statement and principles, 30276
International cargo rate flexibility level:
Standard foreign fare level—
Index adjustment factors, 5596, 15154, 33163, 43397, 52988, 66735
Meetings:
Great Lakes/St. Lawrence Seaway system administration and services management; U.S./Canadian Governmental Working Group, 43568
NAFTA Land Transportation Standards Subcommittee and Transportation Consultative Group; annual plenary session, 19654
Partnership Council, 3962, 51484, 60315
Transportation Statistics Advisory Council, 9218, 59271
White House Commission on Aviation Safety and Security, 44117, 46504, 59272, 60315
Motor carriage limitations of liability study; public meetings, 6056
National emergency:
Cuba; anchorage and movement of vessels, foreign or domestic, in U.S. territorial sea; emergency regulations, 9219
Noncontiguous domestic maritime trades, competition; comment request, 6057
Privacy Act:
Systems of records, 33164, 42301
Secretarial determinations:
Hellenikon International Airport, Athens, Greece; notification of ineffective security measures, 13917, 25729
Ninoy Aquino International Airport, Manila, Philippines; notification of effective security measures, 9219
Senior Executive Service:
Performance Review Boards; membership, 36105
Transportation Marketplace Conference and Seminars; proposal request, 214
Transportation Secretary's Community Partnership Awards; nominations request, 6882
Truck size and weight study; analytical framework and outreach plan, 18458

Transportation Statistics Bureau

PROPOSED RULES
Motor Carrier Financial and Operating Data Collection Program Negotiated Rulemaking Committee:
Intent to establish, 64849

Travel and Tourism Administration

RULES
Agency termination; CFR chapter removed, 30509

Treasury Department

See Alcohol, Tobacco and Firearms Bureau
See Community Development Financial Institutions Fund
See Comptroller of the Currency
See Customs Service
See Engraving and Printing Bureau
See Federal Law Enforcement Training Center
See Fiscal Service
See Foreign Assets Control
See Foreign Assets Control Office
See Internal Revenue Service
See Public Debt Bureau
See Secret Service
See Thrift Supervision Office

RULES
Bank Secrecy Act:
Suspicious transactions; reporting requirement, 4326
Correction, 14248, 18250
Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation—
Casinos and other gaming establishments operated on Indian lands, 7054
Exemptions from currency transaction reporting, 18204
Funds transfers and transmittals (wire transfers); recordkeeping by financial institutions; correction, 14382, 18250
Government Securities Act of 1986:
Correction, 52498

Large position reporting and recordkeeping requirements, 48338
Correction, 53996
Tobacco products; sale and distribution restriction, 25396

PROPOSED RULES

Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation—
Gaming establishments; card clubs, 67260
Government Securities Act of 1986; large position rules financial responsibility and reporting and recordkeeping requirements amendments, 4944
Marketable book-entry Treasury bills, notes, and bonds; sale and issue; uniform offering circular; amendments, 25164, 31072
Meeting, 38127
Privacy Act; implementation:
Internal Revenue Service, 50461
Semi-annual agenda, 23468, 62968

NOTICES

Agency information collection activities:
Proposed collection; comment request, 4516, 4517, 5061, 7851, 11234, 18192, 30281, 36779, 41832-41834, 50904, 54699, 55838, 59922, 66073-66075
Submission for OMB review; comment request, 1997, 5061, 5440, 7153, 7575, 9006, 9007, 11235, 14201, 16162-16164, 16284, 16285, 16530, 16531, 17954, 17955, 18772, 18774, 21224, 25013, 25014, 26251, 26252, 28256, 28257, 28925, 28926, 30282-30284, 32028, 33796, 33796, 36780, 36781, 36783, 37794, 37960, 38244, 38514, 38515, 38801, 38802, 40477, 40478, 41681, 41682, 43117, 43118, 43570-43572, 46021, 46022, 48523-48527, 51743-51745, 53488, 53489, 54700, 54701, 55358, 55360, 57727, 57728, 58613, 59923, 64787-64789, 64946, 65631-65634, 68335
Bank Secrecy Act application to Tribal casinos, compliance; conference, 7057
Bonds, Treasury:
Redemption calls: 8 percent bonds, 16668
Boycotts, international:
Countries requiring cooperation; list, 4514, 15563, 39181, 52840, 65634
Committees; establishment, renewal, termination, etc.:
Customs Service Commercial Operations Advisory Committee, 28927
U.S. Community Adjustment and Investment Program Advisory Committee, 3964
Currency and foreign transactions; financial reporting and recordkeeping requirements:
Entities exempt from currency transaction reporting; list, 18212
Government information locator service (GILS); establishment, 52495
Meetings:
Community Adjustment and Investment Program Advisory Committee, 18463, 31608
Customs Service Commercial Operations Advisory Committee, 76, 18775, 49192, 60142
Debt Management Advisory Committee, 572, 14850, 36784, 51745
National Center for State, Local, and International Law Enforcement Training Advisory Committee,
Organization, functions, and authority delegations:
American Indian Arts Institute; Assistant Secretary for Management & CFO, Inspector General Office et al., 21533
Assistant Secretary (Financial Institutions), 14595
Assistant Secretary (Financial Markets), 10841
Assistant Secretary (Management) and CFO, 50905
Bureau heads et al.; affixing Seal of the Department of Treasury, 14373
Deputy Assistant Secretary (Administration), 54258
Deputy Assistant Secretary (Law Enforcement), 5441
Director, Equal Opportunity Program Office, 6293
Director, Tax Advisory Program for Central and Eastern Europe and Former Soviet Union, et al., 31223
Engraving and Printing Bureau, Director, 48727
General Counsel; alternative dispute resolution, 48002
Personnel Security Program; Assistant Secretary for Management & CFO, 21534
Treasury Seal, 68093
Under Secretary (Domestic Finance), 42085
Under Secretary (International Affairs), 59923
Privacy Act:
Computer matching programs, 7041
Systems of records, 9008, 11939
Senior Executive Service:
Legal Division Performance Review Board; membership, 25270
Performance Review Board; membership, 39513

Truman, Harry S., Scholarship Foundation

See Harry S. Truman Scholarship Foundation

Uniformed Services University of the Health Sciences

NOTICES

Meetings; Sunshine Act, 14762, 35728, 54629, 67324

United States Enrichment Corporation

NOTICES

Meetings; Sunshine Act, 574, 5443, 9744, 21538, 28929, 40707, 42088, 48527, 52086, 58099

United States Information Agency

RULES

Exchange visitor program:
Au pair programs; oversight and administration, 8215
Program extension procedures for designated sponsors; extension requests, etc., 15372, 29285
Clarification, 37002
Partial stay, 20437
Short-term scholars; participation period extended, 39585
Summer travel/work programs, 13760
Privacy Act; implementation, 51004

PROPOSED RULES

Exchange visitor program:
Two-year return home requirement; waiver requests by interested U.S. Government agencies, 46745
Semi-annual agenda, 23898, 63382

NOTICES

Agency information collection activities:
Proposed collection; comment request, 7580, 7581, 15866, 53263, 64193
Submission for OMB review; comment request, 1999, 2000, 19115, 29167, 65103
Art objects; importation for exhibition:
Adolph Menzel (1815-1905): Between Romanticism and Impressionism, 40079
Africa: The Art of a Continent, 20555
Agayuliyararput (Our Way of Making Prayer): The Living Tradition of Yup'ik Masks, 8107
Alexander the Great, 46023
Charles Rennie Mackintosh, 49376
Corot, 45473
Degas: Beyond Impressionism, 39183
Enamels of Limoges, 2867
Eugene Cuvelier, Photographer in the Circle of Corot, 45473
Faberge and Finland: Exquisite Objects, 57729
From Court Jews to the Rothschilds; Art, Patronage and Power (1600-1800), 36964
Georges de La Tour and His World, 45473
Giambattista Tiepolo, 67596
In the Light of Italy: Corot and Early Plein-Air Painting, 19116
Jan Steen: Painter and Storyteller, 10618
Jasper Johns: A Retrospective, 46023
Jewels of the Romanovs: Treasures of the Russian Imperial Court, 56606
Legacy of Peter the Great: St. Petersburg: A Cultural Celebration, 60753
Life of a Patron: Zhou Lianggong and the Painters of Seventeenth Century China, 52086
Marc Chagall (1907-1917), 8108
Masterpieces from the Palazzo Doria Pamphilj, Rome, 25511
Michelangelo and His Influence: Drawings from Windsor Castle, 48527
Olmec Art of Ancient Mexico, 20875
Picasso and Potraiture: Representation and Transformation, 8108
Queen Nefertiti and the Royal Women: Images of Beauty from Ancient Egypt, 48003
Rings: Five Passions in World Art, 24855
Sacred Realm: The Emergence of the Synagogue in the Ancient World, 3964, 9108
Sepphoris in Galilee: Crosscurrents of Culture, 56742
Grants and cooperative agreements; availability, etc.:
Bosnia; media and parliamentary in-country and U.S. training programs, 19655, 24855
College and university affiliations program, 51746
Edmund S. Muskie fellowship program, 18465, 56266
Freedom Support Act graduate fellowship program, 56266
Hubert H. Humphrey fellowship program, 30109
International educational and cultural activities—
Albania; media management training programs, 68094
Discretionary program, 33582
Freedom Support Act undergraduate program, 54259
International visitors; multi-regional groups project development, 53264
Newly independent states (NIS) secondary school initiatives—
Inbound academic year placement, 16164
Secondary school linkage program (Armenia et al.), 60322
Washington, DC civics education program, 49376

Newly independent states—
Humanities and social sciences curriculum consultants exchange program, 16969
Regional humanities and social sciences scholar exchange program, 19658
North African, Middle Eastern and South Asian foreign language training, area studies and research; U.S. graduate students and postdoctoral scholars, 16971
Russian civic education; curriculum development and teacher training, 2574
Russia, Ukraine, and Uzbekistan; training programs, 53270, 54261, 55188
Summer institute for study of U.S.—
History of the U.S.; Religion in America, 54263
International politics; Russian university educators, 2576
Political science; Russian social scientists, 2330
Political system, economy and society, 54261
U.S. based training program for overseas educational advisers, 65429
Ukraine and Moldova; hands-on training in American business and legal and public sector environments, 13920
Lisbon Expo '98; U.S. Pavilion design, fabrication, and operation, 18775
Meetings:
Cuba Broadcasting Advisory Board, 18649, 52940
Cultural Property Advisory Committee, 6687, 51140
Public Diplomacy, U.S. Advisory Commission, 2579, 3525, 6294, 16670, 30938, 49529, 66345

United States Institute of Peace

NOTICES

Grants and cooperative agreements; availability, etc.:
Peaceful resolution of international conflict; senior fellowships, 31224, 42461
Solicited grants—
Post-settlement peacebuilding, etc., 46508
Meetings; Sunshine Act, 1438, 10845, 19975, 47236, 58740

United States Sentencing Commission

NOTICES

Practice and procedure internal rules promulgation; comment request, 39493, 51738, 52825
Sentencing guidelines and policy statements for Federal courts, 79, 7037, 10835, 20306, 34465, 56741

United States—Pacific Trade and Investment Policy Commission

NOTICES

Meetings, 16277, 20310, 28258, 31993, 37525, 39179, 44117, 54831, 55680, 60137, 65634

Utah Reclamation Mitigation and Conservation Commission

RULES

National Environmental Policy Act; implementation, 16719
Operating procedures:
Organizational structure and functions, 13450

PROPOSED RULES

National Environmental Policy Act; implementation, 2219

NOTICES

Environmental statements; availability, etc.:
Provo River restoration project, 30111
Utah Lake Wetland Preserve, 27385
Establishment, 4811
Five-year plan; Central Utah project, etc., construction impacts; guidance, 11681
Annual update; recommendations request, 50905

Veterans Affairs Department

RULES

Acquisition regulations:
Assistant Secretary for Management et al., 1526
Duplicative provisions elimination, etc., 20491
Loan guaranty—
Management brokers blanket advance authority increase and property holders' emergency repair threshold increase, 20493
Nomenclature changes, etc., 11585
Service contracting of nonpersonal healthcare services, etc.; deviations, 52709
Adjudication; pensions, compensation, dependency, etc.:
Active duty periods for eligibility determination; correction, 11731
Brownsville Incident; lump-sum payment provision removed, 11309
Disability or death resulting from hospitalization, treatment, examination, or vocational rehabilitation; compensation, 25787
Diseases associated with exposure to herbicide agents—
Prostate cancer and acute and subacute peripheral neuropathy; presumtive service connection, 57586
Examinations; use when medical evidence not adequate for rating purposes, 13424
Legal services, General Counsel; miscellaneous amendments, 68665
Marriage dissolution, birth of child, death of family member; evidence requirements, 56626
National Service Life Insurance (NSLI); obsolete provisions removed, 29289
Obsolete provisions removal, etc., 67949
Servicemen's group life insurance and veteran's group life insurance—
Regulatory clarification, 20134
Technical amendments, etc., 20726
Vicious habits; references removed, 20438
Willful misconduct; removal of Latin phrases and other unnecesary or redundant material, 56626
Board of Veterans Appeals:
Appeals regulations and rules of practice—
Notification procedures, 43008
Single member and panel decisions, reconsiderations, etc., 20447
Unnecessary provisions elimination, 29027, 68666
Conflict of interests, 11308
Disabilities rating schedule:
Endocrine system, 20440
Fibromyalgia, 20438
Infectious diseases, immune disorders and nutritional deficiencies (systemic conditions), 39873
Mental disorders, 52695
Respiratory system, 46720
Federal claims collection:
Civil monetary penalties; inflation adjustment, 56449
Freedom of Information Act:
Information law; technical amendments, 29023
Inventions developed by employees, 29657
Investigation provisions removal, 29023
Life Insurance, United States Government (USGLI) rules of practice:
Obsolete provisions removal, 29024
Loan guaranty:
Discount points financed in connection with interest rate reduction refinancing loans; limitation, 7414
Veterans Home Loan Program—
Miscellaneous amendments, 28057
Medical benefits:
Adult day health care, community residential care, and veterans with alcohol and drug dependence disorders contract programs—
National Fire Protection Association life safety code; incorporations by reference; update, 63719
Alcohol and drug dependence disorders; contract program; eligibility criteria,
Health professional scholarship program; repayment formula correction, 24236
Miscellaneous amendments, 21964
Medical regulations:
Autopsies; death from crime at VA facility, 25231
National cemeteries:
Burial eligibility, etc., 27281
Organization, functions, and authority delegations:
General Counsel et al.; discrimination complaint final decision, 26107
Miscellaneous amendments, 20438
Property facilities directors; police officers appointment, etc., 56448
Recruitment advertising; competitive and excepted service positions, 20133
Regional Counsel Offices; jurisdictions and addresses, 7215
Regional Counsels; tort claims and debt collection, 27783
Under Secretary of Health et al.; subpoena authority and means of service description, 68663
Part-time career employment program, 38570
Practice and procedure:
Rulemaking notice-and-comment provisions, 11309
Correction, 14596
Reestablishment, 33850
Privacy Act:
Information law; technical amendments, 29023
Soldiers' and Sailors' Civil Relief; obsolete provisions deletion, 29025
VA publications; gender-neutral language conformance, 27282
Veterans mortgage life insurance, 29027
Vocational rehabilitation and education:
Educational assistance; technical amendments, 20727

Veterans education—
Educational assistance test program; rates payable increase, 28753
Eligibility requirements, rates of payment, training time measurement, course approval, etc., 6780
Federal regulatory reform, 26107, 29449
Graduate students in undergraduate courses; enrollment measurement, 28755
Montgomery GI Bill-Active Duty; rates payable increase, 15190, 24237
Post-Vietnam era veterans' educational assistance program; flight training, etc., 1525, 7217, 29028, 36629
Reservists education and Montgomery GI Bill-Selected Reserve; educational assistance awards commencing dates, 11310, 29297, 29481
Veterans' and survivors' and dependents education assistance programs; clarification, etc., 29294
Veterans' Benefits Improvement Act and post-Vietnam era veterans' educational assistance program; implementation, 1525

PROPOSED RULES
Adjudication; pensions, compensation, dependency, etc.:
Diseases associated with exposure to herbicide agents—
Prostate cancer and acute and subacute peripheral neuropathy; presumptive service connection, 41368
Ionizing radiation exposure claims (prostate cancer and any other cancer), 50264
Marriage dissolution, birth of child, death of family member; evidence requirements, 24910
Human subjects protection:
Research-related injuries treatment; compensation, 47469
Medical benefits:
Alcohol and drug dependence disorders contract care; eligibility criteria, 25428
Civilian Health and Medical Program of VA (CHAMPVA)—
Medical care for survivors and dependents of veterans, 56486
Homeless providers grant and per diem program, 37024
Informed consent for patient care, 41108
Practice and procedure:
Disinterments in national cemeteries—
Immediate family member definition; revision, 31479
Rulemaking notice-and-comment provisions; elimination, 33878
Semi-annual agenda, 23572, 63074
Vocational rehabilitation and education:
Veterans education—
Graduate students in undergraduate courses; enrollment measurement, 5357
Work-study services performance; debt reduction, 40589

NOTICES
Advisory committees; annual reports; availability, 9224
Agency information collection activities:
Proposed collection; comment request, 3087, 6893, 7581, 9224, 10061-10063, 10619, 13570, 13571, 16167, 16168, 17351, 17352, 18776-18778, 27385-27388, 34500-34502, 37110, 38245, 42088, 47236, 47238, 55185-55187, 56267-56270, 60324, 65431, 65432, 68817-68819, 69133, 69134
Submission for OMB review; comment request, 7154, 11681, 13571, 13572, 27946, 34503-34505, 35862, 35863, 37111, 37112, 39694, 42088, 47238, 59136-59138, 60146-60148, 60325, 60754, 60755, 65432-65434, 68820
Committees; establishment, renewal, termination, etc.:
Education Advisory Committee, 49817
Future of VA Long-Term Care Advisory Committee, 58740
Geriatrics and Gerontology Advisory Committee, 48527
Innovations in Nursing Advisory Committee, 49378
Prosthetics and Special-Disabilities Programs Advisory Committee, 46903
Residency Realignment Review Committee, 11469
Structural Safety of Facilities Advisory Committee, 25512
Veterans' Advisory Committee on Rehabilitation, 53272
Cost-of-living adjustments:
Compensation and dependency and idemnity compensation (DIC) programs, 5836
Disciplinary Appeals Board Panel; roster of employees; availability, 12134
Diseases not associated with exposure to herbicide agents, 41442
Grants and cooperative agreements; availability, etc.:
Homeless providers grant and per diem program, 10619
Legal interpretations; General Counsel-precedent opinions:
Veterans' benefits under VA administered laws; summary, 10063, 38245, 66748
Loan guaranty:
Percentage to determine net value, 7046
Medical care reimbursement rates (FY 1996), 4812
Meetings:
Cemeteries and Memorials Advisory Committee, 20875, 49379
Education Advisory Committee, 27129, 48528
Former Prisoners of War Advisory Committee, 18778, 58740
Geriatrics and Gerontology Advisory Committee, 26952
Human Radiation Interagency Working Group, 7302
Medical Research Service Cooperative Studies Evaluation Committee, 14209, 49379
Medical Research Service Merit Review Committee, 10620, 24855, 47548
Minority Veterans Advisory Committee, 5837, 8325, 30669, 38246, 56742
Persian Gulf Expert Scientific Committee, 20555, 46904
Prosthetics and Special-Disabilities Programs Advisory Committee, 7302, 47239, 67107
Rehabilitation Advisory Committee, 33174, 56742
Rehabilitation Research and Development Services Scientific Merit Review Board, 1665, 8325, 65264
Research Realignment Advisory Committee, 7302, 17353
Residency Realignment Review Committee, 7582, 13572
Scientific Review Board for Health Services Research and Development Service, 25512, 67108
Special Medical Advisory Group, 17353, 42937
Structural Safety Advisory Committee, 60755
Veterans' Claims Adjudication Commission, 4519, 17353, 36109
Vietnam and Other War Veterans Readjustment Advisory Committee, 14374, 36109
Voluntary Service National Advisory Committee, 5441, 48528
Wage Committee, 1666, 8326, 30938, 50373, 65104
Women Veterans Advisory Committee, 59487
Poverty threshold (1995); weighted average, 67376
Privacy Act:
Computer matching programs, 40079, 57000
Systems of records, 3525, 14853, 60148
Real property; enhanced-use leases:
Big Spring, TX Veterans Affairs Medical Center, 1666
Indianapolis, IN; Richard L. Roudebush Veterans Affairs Medical Center, 9531
Reno, NV Veterans Affairs Medical Center; child development center, 30111
Senior Executive Service:
Performance Review Boards; membership, 51317, 53490

Veterans Employment and Training, Office of Assistant Secretary

NOTICES
Agency information collection activities:
Proposed collection; comment request, 68303
Grants and cooperative agreements; availability, etc.:
Homeless veterans employment and training program, 10807, 17734
Job Training Partnership Act—
Employment and training programs, 16574
Meetings:
Veterans' Employment and Training Advisory Committee, 21504

Vice President of the United States

PROPOSED RULES
Regulatory Plan statement, 62003

Victims of Crime Office

NOTICES
Grants and cooperative agreements; availability, etc.:
Child and adult victims of sexual assault and abuse services; training and technical assistance project (FY 1996), 7277
Victim service agencies; training and technical assistance, 68296

Wage and Hour Division

RULES
Alien crewmembers used for longshore activities in U.S. ports; attestations by employers, 46988
Federal Acquisition Streamlining Act of 1994; contract labor laws, 40714
Migrant and seasonal agricultural worker protection:
Workers' compensation information disclosure and transportation liability insurance requirements, 24858
Organization, functions, and authority delegations:
Administrative Review Board; establishment and review procedures, 19982
Wage rates predetermination procedures; and construction and nonconstruction contracts; labor standards provisions:
Davis-Bacon semi-skilled helper regulations suspension continuation, 68641
Worker protection provisions related to employers using aliens or nonimmigrant workers; Federal regulatory reform, 51013

PROPOSED RULES
Migrant and seasonal agricultural worker protection:
Employ, independent contractor and joint employment, definitions; Federal regulatory review, 14035
Workers' compensation information disclosure and transportation liability insurance requirements, 10911
Wage rates predetermination procedures; and construction and nonconstruction contracts; labor standards provisions:
Davis-Bacon semi-skilled helper regulations suspension continuation, 40366

Western Area Power Administration

NOTICES
Environmental statements; availability, etc.:
Navajo Transmission Project, 52445
Salt Lake City Area, UT; integrated projects electric power marketing program, 56534
Sierra Nevada Region 2004 power marketing program, 26174
Grand Canyon Act replacement resources methods report; availability, 34433
National Defense Authorization Act:
Central Valley Project, CA; 17.0 megawatts for FY 1994; availability, 2503
Post-2000 resource pool allocation procedures; Pick-Sloan Missouri Basin program, Eastern Division; proposed power allocation procedures, etc., 2817, 9449, 28574, 41142, 45957, 52788, 64080
Power rate adjustments:
Boulder Canyon Project, AZ and NV, 25664, 51106
Pacific Northwest-Pacific Southwest Intertie Project, 655, 4650
Purchase concept; power purchase from non-hydropower renewable resource producers on project-by-project basis, 16480, 19274, 24789, 43051, 45959
Transition rate adjustments:
Colorado River Storage Project, 52448

Workers' Compensation Programs Office

NOTICES
Privacy Act:
Computer matching program, 37090

GUIDE TO FREEDOM OF INFORMATION INDEXES

Editorial Note: The Freedom of Information Act (5 U.S.C. 552) requires Government agencies to maintain and make available for inspection and copying current indexes that provide identifying information on certain matters issued, adopted, or promulgated after July 4, 1967. Public Law 93–502 (88 Stat. 1561) requires the publication (with exceptions) and distribution of these indexes quarterly. This guide has been compiled by the Office of the Federal Register from information submitted by agencies in order to notify the public of the availability of these indexes for sale or inspection.

For Further Information Contact:

Linda L. Jones, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 (202) 523–5227 or (202) 523-5229.

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Department of Defense, Office of the Secretary	DoD Directives System Quarterly Index. Lists DoD Directives and DoD Instructions numerically and by subject matter; and includes final opinions, statements of policy, and administrative staff manuals that affect the public	Subscription service is $13.00 annually. Mail certified bank check or postal money order to the Director, Naval Publications and Printing Service, Eastern Division, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111	For inspection and copying: Director for Freedom of Information and Security Review, OASD(PA), Washington, DC 20301 Telephone 202–697–1171 For additional information: OSD Federal Register Liaison Officer, Washington Headquarters Services, Washington, DC 20301 Telephone 202–697–4111
Department of Defense, Department of the Air Force	Numerical index of standard publications (AFIND2). Aug. 1, 1996. Lists regulations, manuals, and pamphlets together under each subject series; list visual aids and recurring periodicals separately	National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.	Chief, Base Information Management at nearest Air Force installation
	Numerical index of departmental forms (AFIND9). July 1, 1996. Lists forms numerically within each category, including accountable forms, forms requiring storage safeguards, and obsolete forms		Chief, Base Information Management at nearest Air Force installation
Department of Defense, Department of the Army, Information Systems Command, Army Publications Command and Printing Command	DA pamphlet 25–30 (Consolidated Index of Army Publications and Blank Forms) January 1, 1996. Printed in microfiche and CD-ROM version.	National Technical Information Service, Order Preprocessing Section, 5285 Port Royal Road, Springfield, VA 22161	Director, Army Publications and Printing Command, Hoffman Bldg., Alexandria, VA 22331-0302
Department of Education (ED), Office of the Assistant Secretary for Legislation and Public Affairs	ED Index contains those records required by Public Law 99–23 (Freedom of Information Act). The index is a guide to ED policies, instruction memoranda, organization function statements, guidelines, decisions and procedures not published in the Federal Register. Contains records originated since May 4, 1980; updated quarterly	Freedom of Information Officer, Department of Education, Office of Legislation and Public Affairs, 400 Maryland Ave., SW., Washington, DC 20202	Office of Legislation and Public Affairs, Document Review Center, 400 Maryland Ave., SW., Washington, DC 20202 Telephone 245–8907 or 472–3850
Department of Energy, Bonneville Power Administration	BPA Manual Index dated 1-25-89 (12 pages). Policy, procedural, and directives material indexed by subject and BPA Manual chapter number	The public may review the index, obtain a copy of the index, without charge, or secure further information concerning the contents of the records listed by contacting Bonneville Power Administration's Office of Media Relations, 905 NE. 11th Avenue, Portland, OR 97232, or the Washington, DC, Office, Forrestal Building, Room 8G-033, 1000 Independence Ave., SW., Washington, DC 20585	Bonneville Power Administration offices listed in previous column or BPA Areas and Districts at the following: 1500 NE. Irving, Portland, OR 97208; 201 Queen Anne Ave., N., Seattle, WA 98109; U.S. Cthse, West 920 Riverside Ave., Spokane, WA 99201; West 101 Poplar St., Walla Walla, WA 99362; U.S. Federal Bldg., 211 E. 7th Ave., Eugene, OR 97401; 800 Kensington, Missoula, MT 59801; U.S. Federal Bldg., 301 Yakima St., Wenatchee, WA 98807; 1650 Hollipark Dr., Idaho Falls, ID 83401; and 550 West Fort Street, Boise, ID 83724

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Department of Health and Human Services, Public Health Service, Centers for Disease Control (HHS/PHS/CDC)	CDC Freedom of Information Act (FOIA) Index contains those records required by the Freedom of Information Act (P.L. 90-23). This index provides identifying information, by program and subject, for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and not published in the Federal Register. Index is updated quarterly	Public Inquiries, Communications and Management Analysis Office, Centers for Disease Control, Atlanta, GA 30333.	Public Inquiries, Communications and Management Analysis Office, Centers for Disease Control, Atlanta, GA 30333
Department of Health and Human Services, Public Health Service, Food and Drug Administration (HHS/PHS/FDA)	Analyst Operations Manual: Training information, instructions and procedures for new laboratory personnel	National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Accession #PB85-211639: $46.50 for paper copy, $6.50 for microfiche	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857 (FDA/FOIS/HFI-35)
	Bio-research Monitoring Manual for Supervisory Investigators, NCTR Nonclinical: One-week course conducted by the National Center for Toxicological Research	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $41.00. Payable to the Food and Drug Administration	
	Center for Drugs and Biologics Staff Manual: Primarily concerned with the preparation and review of documents within the Center for Drugs and Biologics	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $96.00. Payable to the Food and Drug Administration	
	Center for Food Safety and Applied Nutrition Daily Operating Guide: Primarily concerned with the preparation and review of documents within the Center for Food Safety and Applied Nutrition	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $33.00. Payable to the Food and Drug Administration	
	Center for Veterinary Medicine Policy and Procedures Manual: Primarily concerned with the preparation and review of documents within the Center for Veterinary Medicine	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $42.70. Payable to the Food and Drug Administration	
	Compliance Policy Guides: Statements of FDA compliance policy, including those statements which contain regulatory action guidance information	National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Manual accession #PB88–915499, $109.95; subscription accession #PB88–915400, $135.00	
	Compliance Program Guidance Manual: Programs, plans and instructions directed to FDA field operations for Program Management System (PMS) project implementation	National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Entire manual accession #PB89-920499, $157.95; subscription accession #PB89-920-400, $425.00	
	Drug Autoanalysis Manual: A manual of automated methods which provides content uniformity test specifications in USP XVII and NF XII. Provides assurance of homogeneity within a single lot for a safe and effective drug supply. Specifications are for all table monographs where the active ingredient is present in low quantities (usually 50 mg. or less)	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $56.00. Payable to the Food and Drug Administration	
	EDRO Data Codes Manual: Computer code information for program management system projects used for reporting project information into the Program Oriented Data System (PODS)	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $100.00. Payable to the Food and Drug Administration	

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	Field Management Directives: FDA field policy in the areas of operations management, planning and budget, program management	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $35.00. Payable to the Food and Drug Administration	
	Inspection Operations Manual: Standard operating inspectional and investigational procedures and instructions used by FDA investigational personnel	National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Manual accession #PB88-913399, $55.95; subscription accession #PB88-913300, $65.00	
	Inspector Training Manual: Basic training manual for food and drug inspectors and inspection techniques	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $24.00. Payable to the Food and Drug Administration	
	Inspector's Manual for State Food and Drug Officials: Two-part manual—Part (1): operations section contains inspectional and investigational procedures. Part (2): program section outlines the specific recommended inspectional procedures applicable to a particular problem area, commodity or regulated industry. Similar in content to the Inspection Operations Manual, except for FDA administrative procedures which are not relevant to State Food and Drug Officials	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $71.00. Payable to the Food and Drug Administration	
	Inspector's Technical Guide: Technical information for FDA inspectors, not previously available on a broad scale	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $18.00. Payable to the Food and Drug Administration	
	Pesticide Analytical Manual: Procedures and methods used in FDA laboratories for surveillance of the extent and significance of contamination of man and his environment by pesticides and their metabolites	National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Volume I—Accession #PB88-911799, $62.95. Volume II—Accession #PB88-911999, $193.95. Entire Manual—Accession #PB86-911799, $230.00	
	Quantity of Contents Compendium: Contains information used to measure acceptance levels of shrinkage in food containers. Divided into two parts—(1) procedures for measuring fill-of-container, statistical evaluation acceptable common or usual declaration of quantity of contents; (2) information on sampling where special techniques are required	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $18.60. Payable to the Food and Drug Administration	
	Regulatory Procedures Manual: Guidance on regulatory policy and support processing procedures	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $142.80. Payable to the Food and Drug Administration	
	Staff Manual Guides—Organization and Delegations: Directives issued by FDA to establish policy, organization, procedures or responsibilities in the administrative area	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $259.00. Payable to the Food and Drug Administration	
	Supervisory Investigators Guide: Guidelines to assist supervisory inspectors in managing investigational groups	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $9.00. Payable to the Food and Drug Administration	

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	Index to Administrative Staff Manuals: Current listing of all staff manuals with indexes and/or table of contents	Food and Drug Administration, Freedom of Information Staff, HFI-35, 5600 Fishers Lane, Rockville, MD 20857. Cost: $29.00 Payable to the Food and Drug Administration	
Department of Health and Human Services, Public Health Service, Health Services Administration (HHS/PHS/HSA)	HSA Freedom of Information Act (FOIA) Index: March 1975 to June 30, 1982. The HSA, FOIA index is a compilation of supplements to the departmental manual system, program level operations manuals, circulars, memoranda, notices and guides used by the components of HSA. All information included in this index is current as of June 30, 1982. The respective bureau level indexes are listed as follows: OA—OFFICE OF THE ADMINISTRATOR: OCPA—Public Affairs Management System Manual; OPEL—HSA forward plan, fiscal year 1979–83; OM/OCG—HSA procurement operating instructions; OM/OMP—HSA transmittal notices for supplements to HHS manuals; HSA Circulars; OM/OFS—policy decisions, procedures, and opinion. BMS—BUREAU OF MEDICAL SERVICES: Division of Hospitals and Clinics Operations Manual; BMS supplements to HHS manuals; Manual of Operations for PHS Health Unit, DFEH, BMS; BMS circulars; Contract Physician's Guide. IHS—INDIAN HEALTH SERVICES: IHS circulars; IHS supplements to HHS manuals; IHS Operations Manual; General Counsel opinions; policy and procedural manual and circulars. BCHS—BUREAU OF COMMUNITY HEALTH SERVICES: BCHS administrative guide system; BCHS Operations Manual; Emergency Medical Service Systems Program Guidelines; BCHS Regional Memorandum Series. BHPDS—BUREAU OF HEALTH PERSONNEL DEVELOPMENT AND SERVICE: BHPDS supplements to the HHS manuals; BHPDS operations manuals which include memoranda, guidelines, handbooks and procedures	Office of Communications and Public Affairs, HHS/PHS/HSA, Room 14A–39, 5600 Fishers Lane, Rockville, MD 20857. Checks payable to HHS/Public Health Service. Mail to HSA Collection Officer, HHS/PHS/HSA, Room 16–36, 5600 Fishers Lane, Rockville, MD 20857. Fees charged for research and reproduction of information are based upon the current departmental fee schedule for information under the FOI regulations (45 CFR part 5 subpart E)	Office of Communications and Public Affairs, HHS/PHS/HSA, Room 14A–39, 5600 Fishers Lane, Rockville, MD 20857
Department of the Interior, Office of the Secretary	Departmental Manual Table of Contents, Checklist, and Subject Index dated May 31, 1989. Index of directives containing descriptions of central and field organizations of the Department, delegations of authority, internal policies, guidelines, procedures, and other administrative matters.	Office of Planning and Performance Management, U.S. Department of the Interior, Washington, DC 20240 One copy only, no charge	Office of Planning and Performance Management, U.S. Department of the Interior, Washington, DC 20240
	Checklist and Subject Index of Departmental Manual Additions to the FPM dated June 3, 1988. Index of Departmental personnel management directives which supplement the Federal Personnel Manual.	Office of Personnel, U.S. Department of the Interior, Washington, DC 20240 One copy only, no charge	Office of Personnel, U.S. Department of the Interior, Washington, DC 20240

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	Listing of Secretary's Orders which are considered in effect with respect to current operations of the Department dated January 28, 1986	Office of Planning and Performance Management, U.S. Department of the Interior, Washington, DC 20240 One copy only, no charge.	Office of Planning and Performance Management, U.S. Department of the Interior, Washington, DC 20240
Department of the Interior, Office of Acquisition and Property Management	Departmental Manual Additions to the Federal Acquisition Regulation (FAR)	Office of Acquisition and Property Management, Department of the Interior, 1849 C Street, NW., Room 5512, Washington, DC 20240	Office of Acquisition and Property Management, Department of the Interior, 1849 C Street, NW., Room 5512, Washington, DC 20240 Telephone: (202) 208-3348
	400 DM - Departmental Manual Addition to the Interior Property Management Regulations (IPMR)	Office of Acquisition and Property Management, Department of the Interior, 1849 C Street, NW, Room 5512, Washington, DC 20240	Office of Acquisition and Property Management, Department of the Interior, 1849 C Street, NW, Room 5512, Washington, DC 20240 Telephone: (202) 208-6649
Department of the Interior, Office of Aircraft Services	OAS Operational Procedures Memorandum No. 95-1, dated January 1, 1995. Subject: Index of Departmental Manual (Aviation Management) and Operational Procedures Memoranda Information.	Office of Aircraft Services 2350 West Robinson Road P.O. Box 15428 Boise, ID 83715-5428.	Office of Aircraft Services FOIA Officer 2350 West Robinson Road P.O. Box 15428 Boise, ID 83715–5428
Department of the Interior, Bureau of Indian Affairs	Bureau of Indian Affairs Index dated August 31, 1992 1993 BIAM Releases 1993 BIAM Bulletins 1994 BIAM Releases 1994 BIAM Bulletins 1995 BIAM Releases 1995 BIAM Bulletins	Bureau of Indian Affairs Division of Management Support Code 850, MS 351 1951 Constitution Ave., N.W. Washington, DC 20245 First copy no charge	No charge. Bureau of Indian Affairs Division of Management Support Code 850, MS 351 1951 Constitution Ave., N.W. Washington, DC 20245 Telephone: (202) 208-2977
Department of the Interior, Bureau of Land Management	Directives Digest Bulletin's dated – 1/31/90, 2/28/90, 3/31/90, 4/30/90, 5/31/90, 6/30/90, 7/31/90, 8/31/90, 9/31/90, 10/31/90, 11/30/90, 12/31/90	Department of the Interior, Bureau of Land Management, 1849 C Street, N.W., MIB 2454, Washington, DC 20240	Department of the Interior, Bureau of Land Management, 1849 C Street, N. W., MIB 2454, Washington, DC 20240 Telephone: (202) 208–6152
	Land Management Instructions and Manual Indexes	Department of the Interior, Bureau of Land Management, 1849 C Street, N. W., MIB 2454, Washington, DC 20240 Duplicate copies at 13 cents per page.	Section for Directives and Records Operations (W0873) Room 2454, MIB Telephone: (202) 208–6152
Department of the Interior, Bureau of Mines	Bureau of Mines Manual - Subject Index	In accordance with fee schedule in 43 CFR 2, Appendix A	Elizabeth Knorr, Chief, Branch of Management Analysis, 810 7th Street, NW., MS-2193, Washington, DC 20241 Telephone 202–501–9248
	Numeric and subject listing of internal policies and procedures by series, part, chapter, paragraph, and subordinate paragraph	Bureau of Mines	
Department of the Interior, Bureau of Reclamation	Reclamation Manual Index dated 3-21-96.	Bureau of Reclamation, Property and Office Services, D-7924, P.O. Box 25007, Denver Federal Center, Denver CO 80225 No charge.	Bureau of Reclamation, Property and Office Services, D-7924, P.O. Box 25007, Denver Federal Center, Denver, CO 80225 Telephone: (303) 236-0305, Ext. 463
Department of the Interior, U.S. Geological Survey	Table of Contents, Checklist, and Subject Index relating to the U.S. Geological Survey Manual	Directives Officer, U.S. Geological Survey, 208 National Center, Reston, VA 22092 No charge	Directives Officer, U.S. Geological Survey; 208 National Center, Reston, VA 22092 Telephone 703-648-7313
Department of the Interior, Fish and Wildlife Service	Fish & Wildlife Service Manual USER GUIDE Release 209 dated 8/3/95.	Policy and Directives Management Staff U.S. Fish & Wildlife Service 224 ARLSQ, 4401 N. Fairfax Dr. Arlington, VA 22203	Policy and Directives Management Staff U.S. Fish & Wildlife Service 224 ARLSQ, 4401 N. Fairfax Dr. Arlington, VA 22203

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	012 FW 1, Appendix 1 Current List of Director's Orders	Policy and Directives Management U.S. Fish & Wildlife Service 4401 N. Fairfax Dr. Arlington, VA 22203 No Charge	Policy and Directives Management U.S. Fish & Wildlife Service 4401 N. Fairfax Dr. Arlington, VA 22203 Telephone: (703)358-1938
	National Policy Issuance 95-01 Issuances in Effect	Policy and Directives Management U.S. Fish & Wildlife Service 4401 N. Fairfax Dr. Arlington, VA 22203 No Charge	Policy and Directives Management U.S. Fish & Wildlife Service 4401 N. Fairfax Dr. Arlington, VA 22203 Telephone: (703)358-1938
Department of the Interior, Minerals Management Service	Table of Contents and Checklist to Basic Minerals Management Service Manual. Listed numerically by part, series, chapter, release number, date, and pages.	In accordance with fee schedule in 43 CFR 2, Appendix A	Chief, Records and Mail Management Section, 381 Elden Street, MS 2050, Herndon, VA 22070 Telephone 703-787-1239
	Index of Director's appeal decisions	In accordance with fee schedule in 43 CFR 2, Appendix A	Chief, Appeals Division, Office of Policy and Management Improvement, 381 Elden Street, MS 9110, Herndon, VA 22070, Telephone 703-787-1275
Department of the Interior, National Park Service	Checklist of the NPS Guidelines and Directives Dated January 1, 1993	U. S. Dept. of the Interior, National Park Service, P.O. Box 37127, Washington, DC 20013-7127 Attn: Management Services Division No charge	U. S. Dept. of the Interior, National Park Service, P.O. Box 37127, Washington, DC 20013-7127 Attn: Management Services Division Telephone 202-523-5043
Department of the Interior, Office of Hearings and Appeals	Index-Digest. Index of synopses for all decisions decided by Office of Hearings and Appeals Boards of Appeal and published Solicitor's decisions under specific topical headings. Useful in researching legal holdings of Department of the Interior. Published quarterly, annually and on 5-year basis.	Editorial Branch, Office of Hearings & Appeals, 4015 Wilson Blvd. Arlington, VA 22203. Telephone 703–235–3791 Price: $495.00 annually for quarterly issues and bound cumulative issue at end of calendar year. Checks made payable to "Department of the Interior." Price for photocopies as prescribed in Department fee schedule for Freedom of Information Act information (43 CFR Part 2, Appendix A). Checks made payable to "Department of the Interior." Price on Quinquennial issue is set by Government Printing Office and available from that agency.	Editorial Branch, Office of Hearings and Appeals, 4015 Wilson Blvd. Arlington, VA 22203. Telephone 703–235–3791
	Indian Citator. Index of authorities cited in decisions of the Interior Board of Indian Appeals (IBIA). Initial publication covers volumes 1-15 of IBIA decisions. Updated annually.	Administrative Division Subscription Service, Office of Hearings & Appeals, 4015 Wilson Blvd., Arlington, VA 22203. Telephone 703-235-3799 Price: $40.00 for Citator. Checks made payable to: Department of the Interior.	Administrative Division Subscription Service, Office of Hearings & Appeals, 4015 Wilson Blvd., Arlington, VA 22203. Telephone (703) 235-3799
	Administrative Manual. Index related to administrative policies, procedures and standards as contained in the Administrative Manual	Administrative Division, Office of Hearings & Appeals, 4015 Wilson Blvd., Arlington, VA 22203. Price for photocopies as prescribed in Department fee schedule for Freedom of Information Act information (43 CFR Part 2, Appendix A). Checks made payable to Department of the Interior.	Administrative Division, Office of Hearings and Appeals, 4015 Wilson Blvd., Arlington, VA 22203. Telephone: (703) 235-3793
Department of the Interior, Office of Inspector General	Inspector General Manual Index, December 17, 1992. Numeric and subject listing of internal policies and procedures by volume, chapter, section, and subsection	In accordance with fee schedule in 43 CFR Part 2, Appendix A - Fees Office of Inspector General	Betty Foyes, Information Officer, Department of the Interior, Office of Inspector General, 18th and C Streets, NW., Washington, DC 20240 Telephone: 202–208–4356

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Department of the Interior, Office of Surface Mining	Functional Index (OSMRE Directives Listed by Functions) dated December 21, 1993	Office of Surface Mining, Division of Management Services, 1951 Constitution Ave., NW., Washington, DC 20240 No charge	Office of Surface Mining, Division of Management Services, 1951 Constitution Ave., NW., Washington, DC 20240 Telephone: (202) 343-5447
Department of Labor	Department of Labor Freedom of Information Act Index Overview and Guide to DOL agencies and subagencies with information on how to obtain more detailed indexes to records maintained by each subagency; includes cross-reference to agencies by statute or executive order; 28 pages	Mail $4.20 check payable to DEPARTMENT OF LABOR to: FOIA Index Request, Counsel for Administrative Law, Division of Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210.	Administrator, FOIA/PA, Counsel for Administrative Law, Division of Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210 Phone (202) 523-9277
Legal Services Corporation	LSC Index lists decisions, opinions, statements of policy, manuals, and other records of general interest to members of the public in understanding the activities of the Corporation. The index contains records from 1975 to date.	Freedom of Information Administrator, Legal Services Corporation, 750 First Street, NE, Washington, DC 20002-4250. No charge.	Freedom of Information Administrator, Legal Services Corporation, 750 First Street, NE, Washington, DC 20002-4250.
Department of Transportation, Federal Highway Administration (FHWA)	CrossReference Index of current directives, The index is alphabetical by subject and within each subject, applicable directives are identified. The index also includes a three-part cross-reference for the FHPM, 23 U.S.C. and 23 CFR. The index is updated semi-annually (March and September)	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590
	Cease and Desist and Driver Disqualification Final Orders by the Federal Highway Administrator: 1969-1984; listing of cease and desist and driver disqualification final orders of the Federal Highway Administrator; items listed are identified by case docket number, name of carrier and date notice of investigation was mailed	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590
	Opinions and Final Orders of the FHWA in Regard to the Regulation of Toll Bridges: 1968-1984 listing of opinions and final orders regarding regulation of toll bridges issued by the Federal Highway Administrator, which identifies the case and the date issued	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590. No charge	FOIA Program Officer, FHWA, 400 Seventh Street, SW., Washington, DC 20590

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
Department of the Treasury, Departmental Offices	Index of Selected Records, July 1967 to December 31, 1994. Index either contains the following information or indicates where the public may obtain information, decisions, statements of the general course and method by which functions are channeled and determined; a description of the central and field offices; rules of procedure, descriptions of forms; substantive rules and statements of general policy and interpretations adopted by the agency; and each amendment, revision, or repeal of the foregoing; final adjudications of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and administrative staff manuals and instructions to staff that affect a member of the public for the Departmental Offices, Internal Revenue Service, United States Customs Service, United States Secret Service, Bureau of Alcohol, Tobacco and Firearms, Bureau of Engraving and Printing, Financial Management Service, United States Mint, Bureau of the Public Debt, Office of the Comptroller of the Currency, Federal Law Enforcement Training Center, Office of Thrift Supervision.	Library, Room 5010-MT, Department of the Treasury, Washington, DC 20220, Reproduced upon request; fees charged per page copied in accordance with fee schedule at 31 CFR 1.7. Make checks payable to Treasury of the United States	Treasury Department Library, Room 5010, Main Treasury Bldg., 15th and Pennsylvania Ave., NW., Washington, DC 20220 Telephone 202-622-0990
Architectural and Transportation Barriers Compliance Board	ATBCB Freedom of Information Index; June 1978 through November 1982: Final decisions made in adjudication of cases concerning alleged noncompliance to the Architectural Barriers Act of 1968; and a record of the final votes of each member of the Board in every Board proceeding. ATBCB annual reports; pamphlets describing the ATBCB, how to file complaints, and resource guides to literature in the area of creating an accessible environment	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202. Reproduced upon request. Twenty cents per page, per copy. Make checks payable to the Department of Education Public Information Office, ATBCB, Rm. 1010, 330 C St., SW. Washington, DC 20202. No charge	Freedom of Information Officer, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC Phone: 202-245-1591 Public Information Office, ATBCB, Rm. 1010, 330 C St., SW., Washington, DC 20202 Telephone: 202-245-1591
Committee for Purchase From the Blind and Other Severely Handicapped	Index of Additions and Deletions to the Procurement List: (a) Procurement List 1990 incorporates all additions and deletions through November 3, 1989; (b) Current index November 1989-December 1991.	Order from: Executive Director, Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square Building No. 5, 1755 Jefferson Davis Highway, Suite 1107, Arlington, VA 22202-3509. Price: Ten cents per page, per copy. Make checks payable to: Treasurer of the United States	Committee for Purchase From the Blind and Other Severely Handicapped, Attention: Freedom of Information Officer
Commodity Futures Trading Commission	Index of final Commission opinions, including concurring and dissenting opinions, and orders in the adjudication of cases. April 21, 1975 to date. (This index consists of separate chronological listings of final Commission opinions and orders in enforcement cases and reparations proceedings before the Commission)	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 Price: 10 cents per page	Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 Telephone 202 254-6314

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
	Index of statements of policy and interpretations adopted by the Commission and not published in the Federal Register. April 21, 1975 to date Index of Commission administrative manuals and instructions to staff that affect a member of the public. April 21, 1975 to date. (Commission instructions no longer in use are not included in this index)		
General Services Administration (GSA)	GSA Freedom of Information index; July 4, 1967 through June 30, 1984. Category A information which is final opinions, including concurring and dissenting opinions and orders, made in the adjudication of cases. Category B information which is those statements of policy and interpretations which have been adopted by GSA and are not published in the FEDERAL REGISTER. Category C information which is administrative staff manuals and instructions to staff that affect members of the public	GSA, Freedom of Information Officer (ATRAR), Washington, DC 20405. Price: $4.75. Make checks payable to: General Services Administration	GSA Central Office Library and the business service centers located in each regional office listed below: Central Office Library, 18th & F Sts., NW., Rm. 1033, Washington, DC 20405 Business Service Centers: National Capital Region: 7th & D Sts., SW., Washington, DC 20407 Region 1: John W. McCormack Post Office and Courthouse, Boston, Mass. 02109 Region 2: 26 Federal Plaza, New York, NY 10278 Region 3: 9th & Market Sts., Philadelphia, PA, 19107 Region 4: Richard B. Russell Bldg., 75 Spring St., Atlanta, GA 30303 Region 5: 230 So. Dearborn St., Chicago, IL, 60604 Region 6: 1500 East Bannister Rd., Kansas City, MO 64131 Region 7: 819 Taylor St., Ft. Worth, TX 76102 Region 8: Building 41; Denver Federal Center, Denver, CO 80225 Region 9: 525 Market St., San Francisco, CA 94105 Region 10: GSA Center, Auburn, WA 98002
International Boundary and Water Commission, United States and Mexico, U.S. Section	Brochure: Amistad Dam and Reservoir	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, TX 78840. No charge	Project Engineer, U.S. Section, IBWC, Route 2, Box 37, Highway 90 West, Del Rio, TX 78840
	Brochure: Falcon Dam and Power Plant	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545. No charge	Reservoirs Manager, U.S. Section, IBWC, P.O. Box 1, Falcon Village, TX 78545
	Water Bulletins: Containing data for 1 year covering flow of Rio Grande and related data from Elephant Butte, NM, to Gulf of Mexico, re storage in major reservoirs, diversions, suspended silt, chemical analyses, sanitary aspects of water quality, meteorologic data, and irrigated areas–for years 1931 through 1980	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $4.50 per bulletin (data for 1 year). Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Water Bulletins: Containing data for 1 year covering flow of Colorado River and other Western Boundary streams, and related data (including Tijuana, Santa Cruz, and San Pedro Rivers, and Whitewater Draw) for years 1960 through 1980	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $5.50 per bulletin (data for 1 year). Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902

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	Color print map – Lower Rio Grande Valley United States and Mexico	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Prices: 14≥x36≥ $4.00 per map; 10≥x28≥ $3.00 per map. Payable to: International Boundary and Water Commission, U.S. Section	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Annual Report: Operation of Rio Grande Dams and Reservoirs. This report provides data concerning the operation of the international dams and reservoirs constructed by the Governments of the United States and Mexico on the reach of the Rio Grande which forms the boundary between the two countries	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. No charge	Division Engineer, Hydrographic Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Color print map: El Paso Rio Grande Projects, Canalization and Rectification Projects	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $10.00 per map. Payable to International Boundary and Water Commission, U.S. Section	Division Engineer, Projects Division, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
	Brochure: Joint Projects of the United States and Mexico through the International Boundary and Water Commission	Section Secreatry, U.S. Sec., IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902. Price: $6.00 per brochure. Payable to International Boundary and Water Commission, U.S. Section	Section Secretary, U.S. Section, IBWC, 4171 North Mesa, Suite C-310, El Paso, TX 79902
National Archives and Records Administration (NARA)	NARA FOIA Index lists the following materials which have been adopted by NARA since April 1, 1985, and which are not published in the Federal Register: NARA final opinions and orders, statements of policy and interpretations, and administrative staff manuals and instructions to staff that affect a member of the public	Policy and Program Analysis Division (NAA), National Archives, College Park, MD 20740-6001 One copy only (free).	Policy and Program Analysis Division (NAA), Room 3200, National Archives at College Park, 8601 Adelphi Rd., College Park, MD 20740-6001. 301-713-6730
National Science Foundation (NSF)	Reviewer panelist, alphabetical listing contains name, State, and institution of individuals who have reviewed proposals for the National Science Foundation for the previously completed fiscal year		NSF Library, Room 245, 1800 G St., NW., Washington, DC 20550

Agency and subagency name	Index title: period covered, brief description of contents	Order from; price; make checks payable to—	For inspection, copying, or additional information contact
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	Index of NSF regulations promulgated in the Code of Federal Regulations under Title 48, Public Contracts and Property Management; and Title 45, Public Welfare. A listing, by subject title, of current Foundation regulations with a brief description of the content of each		Office of the General Counsel, Room 501, 1800 G St., NW., Washington, DC 20550
	Publications of the National Science Foundation. An index by topical classification, as of April 1986, of current NSF publications issued and available to the public. Listing include annual reports, specific program announcements, and brochures, science resources studies pamphlets, special studies publications, and NSF periodicals. In addition to Titles, provides NSF publication numbers and copy prices. (NSF Publication 86-18)	NSF Forms and Publications Section, Room 232, 1800 G St., NW., Washington, DC 20550. One copy only (free)	For inspection or copying: NSF Library, Room 245, 1800 G St., NW., Washington, DC 20550. For additional information: Public Affairs Group, room 527, 1800 G St., NW., Washington, DC 20550
	NSF Guide to Programs, A composite listing of summary information about NSF support programs, as of October 1985. Provides general guidance and information describing the principal characteristics and basic purposes of each activity; eligibility requirements; closing dates (where applicable); and the address where more detailed information or applications may be obtained. (NSF Publication 85-40)	NSF Forms and Publications Section, Room 232, 1800 G St., NW., Washington, DC 20550. One copy gratis; or Superindendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Stock No. 038-000-00458-1. Unit price $5.00	

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Office of Personnel Management	Handbook of Publications, Periodicals, and FPM Issuances, OPM-AG-PSD-01. As of August 1993. A listing of publications, periodicals, and FPM issuances arranged in alphabetical order by title within each OPM issuing organization. This handbook contains some information formerly published in the Index to Information (no longer published).	Publishing Management Branch, Office of Personnel Management, Room B464, 1900 E St. NW, Washington, DC 20415-0001.	OPM Library or any OPM Office, including regional and area offices
Pennsylvania Avenue Development Corporation	PADC Freedom of Information Act (FOIA) Index; this index contains numeric and subject listings of PADC policy statements; public improvement policies; development guidelines; final opinions and cases interpreting PADC enabling legislation; and internal policies, guidelines and administrative procedures. Contains records originated since October 27, 1972, to date. The index is updated semi-annually (March and September).	PADC, Freedom of Information Officer, Suite 1220 North, 1331 Pennsylvania Avenue, NW, Washington, DC 20004-1703. Fees charged for research and reproduction of information are based upon the current Corporation fee schedule for information under FOI regulations (36 CFR Part 902, Subpart I).	PADC, Freedom of Information Officer, Suite 1220 North, 1331 Pennsylvania Avenue, NW, Washington, DC 20004-1703.
Pension Benefit Guaranty Corporation, Office of the General Counsel	Index to Pension Benefit Guaranty Corp. Opinion Manual; Sept. 2, 1974 to present; interpretive letters addressing the provisions of Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005; Charge $0.15 per page; payable to Pension Benefit Guaranty Corp.; or contact Disclosure Officer for information regarding a subscription to the Opinion Manual	Disclosure Officer, Communications and Public Affairs Department, 202–326–4040 (202–326–4179 for TTY and TDD), Suite 240, 1200 K St., NW., Washington, DC 20005
Pension Benefit Guaranty Corporation, Insurance Operations Department	Index to Pension Benefit Guaranty Corp. Operating Policy Manual; Oct. 1, 1984, to present; contains basic policy statements used by the PBGC staff in administering Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005. Charge $.15 per page. Payable to Pension Benefit Guaranty Corp. or contact Disclosure Officer for price of entire Operating Policy Manual	
Pension Benefit Guaranty Corporation, Insurance Operations Department	Index to Pension Benefit Guaranty Corp. OPO Operations Manual; Part 1 from Sept. 2, 1974, to Oct. 1, 1984, and additional Parts as adopted; contains basic policies and procedures used by Insurance Operations Department staff in administering Title IV of the Employee Retirement Income Security Act (ERISA) plan termination insurance program	Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corp., Suite 240, 1200 K St., NW., Washington, DC 20005. Charge $.15 per page, payable to Pension Benefit Guaranty Corp. or contact Disclosure Officer for price of entire Operations Manual	

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	Board of Veterans' Appeals Decisions CD-ROM are available in CD-ROM format. Decisions from 1992 through 1995 may be searched by subject or by any word that appears in them. Included in this format are BVA Indexes for 1993 and 1994 decisions; and a subject index, identified as "VOCABULARY" that pertains to the following years: 1993, 1994 and 1995.	The Board of Veterans' Appeals Decisions CD-ROM may be purchased for $19.00 from: Superintendent of Documents, P.O. Box 371954, Pittsburg, PA 15250-7954. Make check payable to: Superintendent of Documents.	The CD-ROM is available for copying and inspection at Department of Veterans' Affairs regional offices or at the Board of Veterans' Appeals Research Center, 811 Vermont Avenue, N.W., Washington, DC 20420.
Department of Veterans Affairs	Department of Veterans Affairs Publication I–03–1. All information is current as of April 1991. Classification subject and numeric listing of manuals, VA Regulations, circulars, interim issues, handbooks, bulletins, pamphlets, and guides, conveying agency policies, regulations and procedures of a continuing nature	The public may obtain a copy of the index without charge from the VA Service and Distribution Center, Forms and Publications Services (901P), P.O. Box 7010, Hines, IL 60141.	VA Central Office, IRM Policies and Standards Service (045A3), Room 583, 810 Vermont Ave., NW., Washington, DC 20420. Phone: (202) 273-8129 -OR- Administrative Officer at nearest VA facility. Check your local Telephone Directory under United States Government, Department of Veterans Affairs, or ask your Directory Assistance Operator for the number in your area.

FEDERAL REGISTER PAGES AND DATES—JANUARY–DECEMBER, 1996

Pages	Date	(Issue No.)
1-98	Jan. 2	(1)
99-246	3	(2)
247-380	4	(3)
381-510	5	(4)
511-612	8	(5)
613-690	9	(6)
691-1012	10	(7)
1013-1036	11	(8)
1037-1108	12	(9)
1109-1146	16	(10)
1147-1206	17	(11)
1207-1272	18	(12)
1273-1518	19	(13)
1519-1696	22	(14)
1697-1826	23	(15)
1827-2094	24	(16)
2095-2390	25	(17)
2391-2658	26	(18)
2659-2890	29	(19)
2891-3174	30	(20)
3175-3538	31	(21)
3539-3776	Feb. 1	(22)
3777-4206	2	(23)
4207-4348	5	(24)
4349-4584	6	(25)
4585-4734	7	(26)
4735-4848	8	(27)
4849-5270	9	(28)
5271-5500	12	(29)
5501-5668	13	(30)
5669-5920	14	(31)
5921-6094	15	(32)
6095-6304	16	(33)
6305-6486	20	(34)
6487-6760	21	(35)
6761-6916	22	(36)
6917-7064	23	(37)
7065-7192	26	(38)
7193-7406	27	(39)
7407-7686	28	(40)
7687-7978	29	(41)
7979-8204	Mar. 1	(42)
8205-8466	4	(43)
8467-8850	5	(44)
8851-9088	6	(45)
9089-9320	7	(46)
9321-9588	8	(47)
9589-9898	11	(48)
9899-10268	12	(49)
10269-10446	13	(50)
10447-10670	14	(51)
10671-10878	15	(52)
10879-11124	18	(53)
11125-11288	19	(54)
11289-11496	20	(55)
11497-11708	21	(56)
11709-12014	22	(57)
12015-13042	25	(58)
13043-13382	26	(59)
13383-13644	27	(60)
13645-14012	28	(61)
14013-14232	29	(62)
14233-14464	Apr. 1	(63)
14465-14606	2	(64)
14607-14948	3	(65)
14949-15176	4	(66)
15177-15362	5	(67)
15363-15964	8	(68)
15965-15874	9	(69)
15875-16042	10	(70)
16043-16202	11	(71)
16203-16374	12	(72)
16375-16614	15	(73)
16615-16702	16	(74)
16703-16872	17	(75)
16873-17226	18	(76)
17227-17546	19	(77)
17547-17822	22	(78)
17823-18046	23	(79)
18047-18228	24	(80)
18229-18482	25	(81)
18483-18660	26	(82)
18661-18938	29	(83)
18939-19154	30	(84)
19155-19502	May 1	(85)
19503-19804	2	(86)
19805-20116	3	(87)
20117-20418	6	(88)
20419-20700	7	(89)
20701-21046	8	(90)
21047-21360	9	(91)
21361-21946	10	(92)
21947-24204	13	(93)
24205-24432	14	(94)
24433-24664	15	(95)
24665-24874	16	(96)
24875-25134	17	(97)
25135-25388	20	(98)
25389-25548	21	(99)
25549-25774	22	(100)
25775-26068	23	(101)
26069-26422	24	(102)
26423-26768	28	(103)
26769-27000	29	(104)
27001-27242	30	(105)
27243-27766	31	(106)
27767-27994	June 3	(107)
27995-28466	4	(108)
28467-28722	5	(109)
28723-29000	6	(110)
29001-29266	7	(111)
29267-29458	10	(112)
29459-29632	11	(113)
29633-29922	12	(114)
29923-30126	13	(115)
30127-30494	14	(116)
30495-30796	17	(117)
30797-31002	18	(118)
31003-31386	19	(119)
31387-31816	20	(120)
31817-32316	21	(121)
32317-32628	24	(122)
32629-32910	25	(123)
32911-33302	26	(124)
33303-33640	27	(125)
33641-33824	28	(126)
33825-34366	July 1	(127)
34367-34712	2	(128)
34713-35082	3	(129)
35083-35588	5	(130)
35589-35914	8	(131)
35915-36276	9	(132)
36277-36492	10	(133)
36493-36608	11	(134)
36609-36808	12	(135)
36809-36988	15	(136)
36989-37198	16	(137)
37199-37350	17	(138)
37351-37656	18	(139)
37657-37806	19	(140)
37807-38048	22	(141)
38049-38352	23	(142)
38353-38562	24	(143)
38563-39038	25	(144)
39039-39266	26	(145)
39267-39554	29	(146)
39555-39838	30	(147)
39839-40144	31	(148)
40145-40288	Aug. 1	(149)
40289-40504	2	(150)
40505-40716	5	(151)
40717-40948	6	(152)
40949-41292	7	(153)
41293-41482	8	(154)
41483-41728	9	(155)
41729-41948	12	(156)
41949-42136	13	(157)
42137-42370	14	(158)
42371-42528	15	(159)
42529-42772	16	(160)
42773-42964	19	(161)
42965-43136	20	(162)
43137-43300	21	(163)
43301-43410	22	(164)
43411-43646	23	(165)
43647-43936	26	(166)
43937-44144	27	(167)
44145-45318	28	(168)
45319-45870	29	(169)
45871-46372	30	(170)
46373-46528	Sept. 3	(171)
46529-46698	4	(172)
46699-47018	5	(173)
47019-47408	6	(174)
47409-47660	9	(175)
47661-47798	10	(176)
47799-48062	11	(177)
48063-48398	12	(178)
48399-48600	13	(179)
48601-48814	16	(180)
48815-49044	17	(181)
49045-49236	18	(182)
49237-49406	19	(183)
49407-49648	20	(184)
49649-49938	23	(185)
49939-50228	24	(186)
50229-50418	25	(187)
50419-50688	26	(188)
50689-50946	27	(189)
50947-51204	30	(190)
51205-51348	Oct. 1	(191)
51349-51574	2	(192)
51575-51766	3	(193)
51767-52232	4	(194)
52233-52678	7	(195)
52679-52870	8	(196)
52871-53034	9	(197)
53035-53302	10	(198)
53303-53590	11	(199)
53591-53824	15	(200)
53825-54076	16	(201)
54077-54330	17	(202)
54331-54532	18	(203)
54533-54726	21	(204)
54727-54926	22	(205)
54927-55078	23	(206)
55079-55200	24	(207)
55201-55544	25	(208)
55545-55728	28	(209)
55729-55876	29	(210)
55877-56106	30	(211)
56107-56396	31	(212)
56397-56622	Nov. 1	(213)
56623-56876	4	(214)
56877-57280	5	(215)
57281-57576	6	(216)
57577-57766	7	(217)
57767-57986	8	(218)
57987-58130	12	(219)
58131-58310	13	(220)
58311-58456	14	(221)
58457-58622	15	(222)
58623-58766	18	(223)
58767-58970	19	(224)
58971-59172	20	(225)

Pages	Date	(Issue No.)
59173-59302	21	(226)
59303-59802	22	(227)
59803-60006	25	(228)
60007-60170	26	(229)
60171-60508	27	(230)
60509-63690	29	(231)
63691-64006	Dec. 2	(232)
64007-64244	3	(233)
64245-64440	4	(234)
64441-64600	5	(235)
64601-64814	6	(236)
64815-64958	9	(237)
64959-65146	10	(238)
65147-65316	11	(239)
65317-65456	12	(240)
65457-65938	13	(241)
65939-66186	16	(242)
66187-66532	17	(243)
66533-66866	18	(244)
66867-67178	19	(245)
67179-67446	20	(246)
67447-67686	23	(247)
67687-67926	24	(248)
67927-68116	26	(249)
68117-68540	27	(250)
68541-68986	30	(251)
68987-69366	31	(252)

INDEX

VOL

61

996

UMI

INDEX

VOL

61

996

UMI

Printed on recycled paper

OL
61
ISS
1
2
7
JL
1
996
MI

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICORFORM EDITION.

7–1–96
Vol. 61 No. 127

Monday
July 1, 1996

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168

OL
61
SS
1
2
7
UL
1
996
MI

7–1–96
Vol. 61 No. 127
Pages 33825–34366

federal register

Monday
July 1, 1996

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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Contents

Federal Register
Vol. 61, No. 127
Monday, July 1, 1996

Administration on Aging
See Aging Administration

Aging Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Supportive and nutritional services to older Native Hawaiians, 33920–33924

Agricultural Marketing Service
NOTICES
Committees; establishment, renewal, termination, etc.:
National Organic Standards Board, 33897

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Grain Inspection, Packers and Stockyards Administration

Alcohol, Tobacco and Firearms Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 33959–33960

Animal and Plant Health Inspection Service
RULES
Viruses, serums, toxins, etc.:
Marek's disease vaccines, 33840–33842
NOTICES
Environmental statements; availability, etc.:
Genetically engineered organisms; field test permits—
Potato plants, etc., 33897–33898

Assassination Records Review Board
NOTICES
Meetings; Sunshine Act, 33899

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 33924–33925
Meetings:
Frontiers in lipid and lipoprotein research; basic science, analytical, clinical, and public health applications, 33925

Children and Families Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 33925
Submission for OMB review; comment request, 33925–33926

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Mississippi, 33899

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Credit Corporation
RULES
Export programs:
Supplier credit guarantee program, 33825–33839
NOTICES
Grants and cooperative agreements; availability, etc.:
Market access program, 33898

Corporation for National and Community Service
NOTICES
Agency information collection activities:
Proposed collection; comment request; correction, 33906–33907
Grants and cooperative agreements; availability, etc.:
National Senior Service Corps, 33907

Customs Service
RULES
North American Free Trade Agreement (NAFTA):
Country of origin of a good, rules for determining
Correction, 33845–33846

Defense Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 33907–33908
Meetings:
Science Board task forces, 33908

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Individuals with disabilities—
Postsecondary education programs for deaf and hard of hearing individuals, 34318–34323
Special education and rehabilitative services—
Rehabilitative research fellowships program, etc., 34324–34342

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
S1C Prototype Reactor Plant, CT; disposal, 33908–33909
Weapons-usable fissile materials; long-term storage and disposition
Nonproliferation and arms control assessment, 33909–33911

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Off-site waste and recovery operations, 34140–34200
Clean Air Act:
Federal operating permits program, 34202–34249

Hazardous waste:
Land disposal restrictions—
Non-municipal non-hazardous waste disposal units; conditionally exempt small quantity generator wastes disposal standards, 34252–34278
Reporting and recordkeeping requirements, 33851–33852
PROPOSED RULES
Air quality planning purposes; designation of areas:
Washington, 33879–33881
Hazardous waste:
Hazardous waste management system—
Contaminated media managed during government-overseen remedial actions; requirements, 33881–33882
NOTICES
Grants and cooperative agreements; availability, etc.:
Sustainable development challenge program, 33913–33917
Meetings:
Science Advisory Board, 33917

Federal Aviation Administration
RULES
Airworthiness standards:
European Joint Aviation requirements; normal and transport category rotorcraft—
Performance systems, propulsion, and airframes; harmonization; correction, 33963
Rotorcraft, transport category—
Takeoff, climb, and landing performance requirements; determination factors; correction, 33963
Class E airspace, 33843–33845
PROPOSED RULES
Airworthiness directives:
Airbus, 33874–33876
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee, 33956
RTCA, Inc., 33956–33957
Passenger facility charges; applications, etc.:
Daytona Beach International Airport, FL, 33957
Duluth International Airport et al., MN, 33957–33958

Federal Communications Commission
RULES
Personal communications services:
Broadband PCS—
Race-based F block rules, gender-based rules, etc., 33859–33870
NOTICES
Common carrier services:
Telecommunications services between United States and Cuba, 33917–33918

Federal Deposit Insurance Corporation
RULES
Agricultural loan loss amortization; CFR part removed, 33842–33843

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Arizona et al., 33852–33859
PROPOSED RULES
Flood elevation determinations:
Arkansas et al., 33882–33886
NOTICES
Disaster and emergency areas:
Pennsylvania, 33918–33919
Meetings:
Technical Mapping Advisory Council, 33919

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 33911
Colorado Interstate Gas Co., 33911–33912
Exxon Co., U.S.A., 33912
Koch Gateway Pipeline Co., 33912
Northwest Pipeline Corp., 33912–33913
Williams Natural Gas Co., 33913

Federal Maritime Commission
NOTICES
Agreements filed, etc., 33919

Federal Railroad Administration
RULES
Railroad operating rules:
Signal and train control; miscellaneous amendments, 33871–33873

Federal Register, Administrative Committee
See Federal Register Office

Federal Register Office
NOTICES
American Institute in Taiwan and Taipei Economic and Cultural Representative Office in United States; agreements list availability, 33948–33951

Federal Reserve System
PROPOSED RULES
Securities credit transactions (Regulations G, T, and U), 33874
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 33919–33920
Formations, acquisitions, and mergers; correction, 33920
Permissible nonbanking activities, 33920

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 33960
Surety companies acceptable on Federal bonds:
Aetna Life & Casualty Co. et al., 33960–33961
Frankona America Reinsurance Co., 33961
North Star Reinsurance Corp., 33961
Signet Star Reinsurance Co., 33961–33962
Surety companies acceptable on Federal bonds; annual list, 34280–34316

Food and Drug Administration
RULES
Food additives:
Adjuvants, production aids, and sanitizers—
Dimethyldibenzylidene sorbitol, 33846–33847
NOTICES
Medical devices; premarket approval:
Liposorber LA-15 System, 33926–33927
Meetings:
Advisory committees, panels, etc., 33927–33928

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Texas
Dell Computer Corp.; computer manufacturing facilities, 33899

Grain Inspection, Packers and Stockyards Administration
NOTICES
Stockyards; posting and deposting:
Graben Livestock Auction Sales, AL, et al.; correction, 33898

Health and Human Services Department
See Aging Administration
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health

Health Care Financing Administration
NOTICES
Medicare:
Home health agency costs per visit; schedule of limits, 34344–34365
Hospital inpatient prospective payment systems and 1997 FY rates
Correction, 33928–33936

Housing and Urban Development Department
NOTICES
Grant and cooperative agreement awards:
Public and Indian housing—
Community Renaissance fellows program, 33939–33940

Indian Affairs Bureau
PROPOSED RULES
Human services:
Social welfare arrangements with States or other agencies, 33876–33878
NOTICES
Agency information collection activities:
Proposed collection; comment request, 33940–33941
Liquor and tobacco sale or distribution ordinance:
Confederated Tribes of the Grand Ronde Community of Oregon, 33941–33943

Interior Department
See Indian Affairs Bureau

International Trade Administration
NOTICES
Antidumping:
Bicycles from—
China, 33901–33902
Antidumping duty orders and findings:
Intent to revoke, 33899–33901
Cheese quota; foreign government subsidies:
Quarterly update, 33904
Countervailing duties:
Antifriction bearings and parts from—
Singapore, 33904–33905
Applications, hearings, determinations, etc.:
American Museum of Natural History et al., 33902–33903
Pennsylvania State University et al., 33903
University of—
California, Los Alamos, 33903

International Trade Commission
NOTICES
Import investigations:
Asian-style kamaboko fish cakes, 33943–33944

Justice Department
NOTICES
Pollution control; consent judgments:
A&N Cleaners & Launderers, Inc., et al., 33944
Senior Executive Service:
Performance Review Boards; membership, 33944–33945

Labor Department
See Labor-Management Standards Office
See Pension and Welfare Benefits Administration

Labor-Management Standards Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 33945–33946

Merit Systems Protection Board
NOTICES
Privacy Act:
Systems of records, 33946–33948

National Archives and Records Administration
See Federal Register Office

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Lamps, reflective devices, and associated equipment—
Heavy truck conspicuity; evaluation plan, 33891–33895

National Institutes of Health
NOTICES
Agency information collection activities:
Proposed collection; comment request, 33937
Meetings:
National Eye Institute, 33937
National Heart, Lung, and Blood Institute, 33937–33938
National Institute of Allergy and Infectious Diseases, 33938
Research Grants Division special emphasis panels, 33938–33939

National Oceanic and Atmospheric Administration
PROPOSED RULES
Marine sanctuaries:
Gulf of the Farallones National Marine Sanctuary, CA; motorized personal watercraft ban; rulemaking petition, 33876
NOTICES
Environmental statements; availability, etc.:
Atlantic Coast weakfish, 33905–33906
Permits:
Marine mammals, 33906

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 33951
Submission for OMB review; comment request, 33951–33952
Nuclear waste and spent fuel shipments:
Governors' designees receiving advance notification; list, 33952–33955

Applications, hearings, determinations, etc.:
McDaniel, Emerick S., 33952

Pension and Welfare Benefits Administration
RULES
Employee Retirement Income Security Act:
Interpretive bulletins and regulations removed, 33847–33850

Pension Benefit Guaranty Corporation
RULES
Regulations; reorganization, renumbering, and reinvention; Federal regulatory reform, 34002–34137

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Securities and Exchange Commission
NOTICES
Applications, hearings, determinations, etc.:
Emerging Americas Fund, Inc., 33955

Surface Transportation Board
NOTICES
Railroad services abandonment:
CSX Transportation, Inc., 33958
Missouri Pacific Railroad Co., 33958–33959

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
PROPOSED RULES
Federal regulatory review:
Classified information, 33886–33891
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 33955–33956
Hearings, etc.—
Merlin Express, Inc., 33956

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Customs Service
See Fiscal Service

Veterans Affairs Department
RULES
Practice and procedure:
Rulemaking notice-and-comment provisions Reestablishment, 33850–33851
PROPOSED RULES
Practice and procedure:
Rulemaking notice-and-comment provisions, 33878–33879

Separate Parts in This Issue

Part II
Pension Benefit Guaranty Corporation, 34002–34137

Part III
Environmental Protection Agency, 34140–34200

Part IV
Environmental Protection Agency, 34202–34249

Part V
Environmental Protection Agency, 34252–34278

Part VI
Department of the Treasury, Fiscal Service, 34280–34316

Part VII
Department of Education, 34318–34323

Part VIII
Department of Education, 34326–34342

Part IX
Department of Health and Human Services, Health Care Financing Administration, 34344–34365

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
1493 33825

9 CFR
112 33840
113 33840

12 CFR
324 33842

Proposed Rules:
207 33874
220 33874
221 33874

14 CFR
29 (2 documents) 33963
39 33874
71 (3 documents) 33843, 33844, 33845

Proposed Rules:

15 CFR
Proposed Rules:
922 33875

19 CFR
10 33845
12 33846
102 33845
134 33845

21 CFR
178 33846

25 CFR
Proposed Rules:
21 33876

29 CFR
Ch. XXVI 34002
Ch. XL 34002
2509 33847
2520 33847
2550 33847

38 CFR
1 33850

Proposed Rules:
1 33878

40 CFR
9 (2 documents) 33851, 34202
55 34202
63 34140
71 34202
257 34253
261 34252
271 34252

Proposed Rules:
81 33879
260 33881
261 33881
262 33881
264 33881
268 33881
269 33881
271 33881

44 CFR
65 (2 documents) 33852, 33854
67 33856

Proposed Rules:
67 33882

47 CFR
20 33859
24 33859

49 CFR
233 33871
235 33871
236 33871
571 33891

Proposed Rules:
1 33886
8 33886

Rules and Regulations

Federal Register
Vol. 61, No. 127
Monday, July 1, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1493

RIN 0551–AA30

Commodity Credit Corporation Supplier Credit Guarantee Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this interim rule which amends the regulations for the Commodity Credit Corporation's (CCC) Export Credit Guarantee Program (GSM–102) and the Intermediate Export Credit Guarantee Program (GSM–103) by adding a new subpart D, Supplier Credit Guarantee Program (SCGP). The SCGP is designed to assist exporters of U.S. agricultural commodities who wish to provide relatively short term (up to 180 days) credits to their foreign buyers. Under SCGP, CCC will guarantee payment of such credits by the foreign buyer, and the exporter may assign such guarantees to an eligible U.S. financial institution.

This program will be administered by the Office of the General Sales Manager (GSM), U.S. Department of Agriculture, on behalf of CCC.

DATES: The provisions of this interim rule are effective August 30, 1996; comments must be submitted on or before December 30, 1996.

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Director, CCC Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture (USDA), Ag. Box 1035, Washington, DC 20250–1035; telephone (202) 720–6211; FAX (202) 720–2949. The USDA prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs and marital or familial status. Persons with disabilities who require alternative means for communication of program information (braille, large print, audiotape, etc.) should contact the USDA Office of Communications at (202) 820–5881 (voice) or (202) 720–7808 (TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The paperwork requirements that would be imposed by this interim rule were described in the proposed rule and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The OMB-assigned number for those requirements is OMB No. 0551–0037. The public reporting burden for these collections is estimated to average 0.18 hours per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRA, Room 404–W, Washington DC 20250; and to the OMB, Paperwork Reduction Project # 0551–0037, Washington, DC 20503.

Executive Order 12778

This interim rule has been reviewed under the Executive Order 12778, Civil Justice Reform. The interim rule would have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The rule would not have retroactive effect. The interim rule requires that certain administrative remedies be exhausted before suit may be filed.

The USDA is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations.

Background

In the **Federal Register** of July 19, 1995 (60 FR 37025), CCC issued a proposed rule to amend the regulations for the CCC Export Credit Guarantee Programs (GSM–102/103), codified at 7 CFR part 1493, by adding a new subpart D. Subpart D establishes the terms and conditions for the Supplier Credit Guarantee Program (SCGP). The deadline for comments on the proposed rule was September 18, 1995. Comments were received from six U.S. exporters, one importer, three producer associations, seven agribusiness associations, one U.S. financial institution, and one U.S. Government agency (USDA Office of Inspector General). These nineteen parties made approximately 88 separate and significant comments regarding either the proposed rule, the Preliminary Economic Impact Analysis, or the policy issues involved in administering the SCGP.

Reason for Issuing an Interim Rather Than Final Rule

CCC is issuing this rule on an interim rather than a final basis because, based on comments received on the proposed rule, it has made several significant changes and is providing the public with an additional opportunity for

comment. Specifically, CCC is establishing a condition on its payment of a claim that results from a default under a guaranteed promissory note. CCC will pay claims unless it determines that the guaranteed portion of port value exceeds the prevailing U.S. market value of the agricultural commodity or product exported. The reasons for this change are discussed below under the General Comments section, Other general comments, and under the Section-by-Section Analysis of Subpart D, § 1493.450, Payment guarantee. Also, CCC has modified § 1493.510, Payment for loss, to remove the immunity of assignees from the effects of determinations by CCC not to pay claims based on the new exception. CCC is publishing this interim rule, but will establish a comment period of 120 days from the rule's effective date to permit program participants an opportunity to provide views based, if possible, on actual program experience.

Interim Economic Impact Analysis

Two of the commenters addressed, in part, the Preliminary Economic Impact Analysis (PEIA). One commenter felt that each program option, considered by CCC and briefly discussed in the PEIA, "should be implemented as each addresses a different need." The same commenter also questioned why the SCGP was selected as the preferred option, in that the PEIA did not discuss why the other options were ruled out. CCC concurs that the other program options considered have merit, although the reasons for selecting the SCGP option were given. CCC may, in the future, incorporate features of the other options into, the SCGP (subpart D), the GSM–102/103 programs (subpart B), or additional programs that could be developed.

Another commenter stated that CCC may want to "reassess the estimated $3.1 million subsidy level" determined for the SCGP. The commenter felt that this estimate may be too low and enclosed a news article discussing difficulties by some U.S. exporters in collecting payments from importers. CCC by itself does not determine the methodology used in estimating the subsidy level for its export credit guarantee programs. The model for estimating the subsidy amount was developed by the Office of Management and Budget (OMB). Country risk ratings which are an important component in determining the subsidy estimate are developed by a U. S. Government interagency group which is chaired by OMB. After assessing the results of the initial phase of operating the SCGP, CCC may propose changes in the subsidy model, or in the model inputs, to more accurately determine appropriate subsidy levels for the program.

The Interim Economic Impact Analysis of the SCGP is available upon request from Mary T. Chambliss, Deputy Administrator, Export Credits, FAS/USDA, Ag. Box 1030, Washington DC 20250–1030; telephone (202) 720–6301; FAX (202) 690–0727.

General Comments

Eighteen commenters commended CCC on its efforts to design a new program to promote the sale of U.S. agricultural products. They generally agreed that the program had potential for reducing export financing costs, allowing importers to enjoy the benefits of CCC credit guarantees more directly than is possible under the GSM–102/103 programs, and increasing the competitiveness of U.S. agricultural products overseas. One commenter neither supported nor opposed the program.

Guarantee Coverage

Eighteen respondents commented on CCC's proposal to inaugurate the program with maximum coverage of 50 percent of principal (defined as port value), with no coverage of interest. One commenter agreed that the structure of the SCGP entails certain financial risks for CCC that justify lower levels of coverage. Another commenter thought the proposed coverage may be a starting point, but adjustments would have to be made if the program is to gain wide acceptance, particularly from the banking sector. Sixteen of the commenters contended that the proposed coverage was too low to provide an incentive to exporters to use the program. One commenter asserted that the proposed coverage would be unattractive to exporters and the assignee bank, and that the added risk would increase the cost of the transaction to the importer. Two commenters suggested that CCC vary its level of coverage based on the past performance of the importer. They also suggested that the exporter be required to furnish information on the importer which, under criteria to be established, could permit a higher level of coverage. Suggestions for the level of coverage of principal ranged from 70 percent to 98 percent, depending on whether or not interest and/or freight would be included in the coverage.

After considering these comments, CCC has determined that during the initial phase of the program, CCC's coverage will normally be limited to 50 percent of principal. This level of coverage will provide an incentive to U.S. exporters and their assignees to evaluate carefully the credit risks posed by importers while still permitting an expansion of export sales of targeted commodities and products. The suggestion that CCC vary its level of coverage based on the past performance of the importer or other information furnished by the exporter on the importer may have merit. However, CCC will be in a better position to assess this approach after gaining experience operating the program. The amount of guaranteed coverage is not specified in the regulation because CCC wishes to retain the ability to adjust coverage, as necessary, to make the program workable, efficient, and responsive to market conditions.

Freight Coverage

Six comments were received regarding the inclusion of freight costs in the value on which guarantee coverage is based. Five commenters argued that, with freight excluded, coverage would be too low. Two commenters felt that, with freight coverage, exporters would be more likely to use the SCGP. One commenter suggested that when freight costs are more than 20 percent of export value, the level of coverage should be increased.

CCC recognizes the validity of the concerns expressed. In cost and freight (CFR) and cost, insurance and freight (CIF) transactions where freight costs are a high percentage of total export value, CCC coverage of 50% of commodity value would result in overall coverage of substantially less than 50 percent of transaction value. CCC therefore will retain the flexibility through Program Announcements to determine whether, and to what extent, to provide coverage on a free on board (FOB), free alongside ship (FAS), CFR, or CIF basis.

Guarantee Fees

Thirteen respondents commented on CCC's intention to set the guarantee fee "in the midpoint of the range of insurance premiums for good risk countries charged by Eximbank" (recently about 95 cents per $100.00 of guaranteed coverage). One commenter agreed that the benefits offered by the SCGP entail corresponding financial risks for CCC and, therefore, justify higher fees. Another thought that the proposed fee may be a starting point, but that adjustments would have to be made if the program is to gain wide acceptance. Ten commenters felt the proposed fee was too high given the proposed level of guaranteed coverage. In general, their additional comments can be summarized as follows: (1) Fees should be at or close to the GSM–102 (subpart B) fee levels; (2) fees should be reasonable because fees add to the overall financial exposure of the exporter; and (3) high fees could be a disincentive for program participation. Two commenters suggested that CCC vary its fees based on the past performance record of the importer. They also suggested that the exporter be required to furnish information on the importer which, under criteria to be established, could permit lower fees.

One commenter stated that the Foreign Credit Insurance Association varies its fees according to where exports are shipped, how shipments occur, the payment history of customer, and the payment collection history experienced by the exporter with the importer.

CCC appreciates these comments. To avoid a possible misconception concerning the proposed fee structure for the SCGP, CCC provides the following clarification: the fee would be assessed only on the value of actual CCC coverage, (e.g., 50 percent of the port value), not on the total port value registered. CCC recognizes that the 95 cents per $100.00 fee on covered value is high in comparison to the fees charged for credits of up to 180 days duration under the GSM–102 (subpart B) program. However, under subpart B, CCC is insuring risks of eligible foreign banks; under SCGP (subpart D), foreign buyer risk is likely to be higher. Exporters will have a greater incentive to investigate the creditworthiness of an importer if they have a larger degree of financial risk in the export sales transaction. Also, a higher fee may dissuade exporters from entering into speculative transactions because the fee will not normally be refundable if the transaction is not completed. Thus, CCC intends to initiate the SCGP with the fee policy it described in the proposed rule. Adjustments in fee schedules can be made in light of experience in operating the program.

Regarding the comment that CCC reduce its fee on transactions with importers who have a proven performance record, CCC has determined initially to have a single fee for all countries and commodities. However, a sliding fee scale based on the importer's past performance and other factors may have merit and remains an option as CCC gains experience operating the program. The level of the registration fee is not specified in the regulation, giving CCC flexibility in this matter.

Clarification

One respondent questioned what CCC meant by the statement in the background of the proposed rule that CCC does not intend to routinely conduct independent evaluations of the creditworthiness of individual importers.

Although CCC does not at this time intend to make such evaluations routinely, the proposed rule provides that CCC may request that the exporter submit information/documentation on the importer as a condition to CCC's approval of the exporter's application of a payment guarantee. Such instances will, at the outset, be determined on a case-by-case basis and will be related to the degree of experience CCC has with the parties to the transaction, or to other pertinent credit risk-related factors.

Country and Commodity Selection

Four respondents commented on the selection of countries and commodities under the SCGP. One commenter felt that it would be a mistake to direct SCGP primarily towards high value products and that the program should be available for all U.S. agricultural commodities. One commenter felt that the best way to determine where, and for what commodities, the program should be used would be to begin operation of the SCGP. The response of the financial and commodity markets would act as the "best barometer" for the size and scope of the program. Another respondent, an importer, urged CCC to include poultry to the Commonwealth of Independent States under the SCGP. The importer stated that the cost of obtaining a letter of credit in Russia was high and further required payment in full to the bank in 30 days. By using SCGP, the importer could have the certainty of financing and could proceed with plans for building a facility in Russia to process U.S. poultry. One commenter urged that country allocations for GSM–102/103 (subpart B) and the SCGP be made separately.

CCC has given careful consideration to the issues of programming countries and commodities under the SCGP. CCC intends initially to program countries and commodities and/or products which it considers may benefit from the SCGP and may not have benefitted from GSM–102. Commodity and country selections will be made separately from the GSM–102/103 (subpart B) program, but will follow the same criteria specified in 7 CFR 1493.5. CCC will retain the flexibility, through Program Announcements, to revise the SCGP country and commodity allocations, as necessary, to ensure the most effective use of the program.

Other General Comments

One commenter, a government agency, recommended that the provisions of the Office of Management and Budget (OMB) Circular A–129, "Policies for Federal Credit Programs and Non-Tax Receivables," be applied to the SCGP. The commenter recommended that: (1) Fees should be high enough to cover the cost of making the loan guarantee, including administrative costs, default and other subsidy costs; (2) in view of budget constraints, the maximum fee permitted by law (7 U.S.C. 5641(b)(1)(B)), $1.00 per $100, should be charged; (3) lower fees may be justified in instances where borrowers (importers) prepay part of the shipment because the risk of default would be reduced; (4) riskier buyers should be charged more in fees than those who pose less risk; and (5) fees should be set on a sliding scale reflecting country and commercial risk factors. According to this commenter, such factors should include the strength of the country's central bank and whether or not the country subscribes to uniform commercial code agreements that govern international commerce. The commenter further suggested that CCC require exporters to certify and document that they cannot obtain credit from private sources, and that CCC determine whether the applicant is delinquent on any Federal debt, including tax debt, before approving the guarantee. This commenter also suggested that CCC should require exporters to follow due diligence in collecting past due accounts and in using litigation to enforce payment on guaranteed credits. The commenter recommended that CCC require that the export sales contract state that CCC will, in the event of nonpayment, assess interest, penalties, and administrative charges against the importer. The commenter further recommended that all accounts due CCC that are six months or more past due be turned over to a collection contractor unless CCC is involved in litigation.

Although applicable statutes do not require the CCC to apply the provisions of OMB Circular No. A–12, CCC agrees that program rules should operate not only to lower CCC's risk, but also to assure that CCC and exporters are sharing the risk of loan defaults. The proposed rule includes certain provisions, i.e. lower level of coverage and higher fees, that are intended to encourage exporters to evaluate carefully importer creditworthiness. However, the provisions of the proposed

rule may not adequately ensure that (1) the risk sharing objectives outlined in the Background section of the proposed rule (part C, How certain SCGP provision differ from GSM–102) will be achieved, or (2) CCC would be protected from paying excessive claims stemming from export transactions with prices inflated far above prevailing market levels. Therefore, CCC is establishing a condition on its payment of a claim to address these two concerns. This new provision and required related modifications are discussed below under Section-by-Section Analysis of Subpart D, Section 1493.450, Payment guarantee.

The other suggestions of the commenter have also been considered carefully and evaluated in terms of cost-effectiveness and relevance to protecting the financial interests of CCC. Many of the suggestions of the commenter could be implemented as a matter of policy under the rule as proposed. CCC has therefore determined not to incorporate the suggestions into this interim rule, but will continue to review them in light of experience gained in operating the SCGP.

Other commenters addressed issues other than the proposed regulations. CCC has determined not to discuss these unrelated comments. CCC will, however, take these additional views into consideration as they relate to CCC's other commercial export programs.

Section-by-Section Analysis of Subpart D

The numbering system of the interim rule differs somewhat from that of the proposed rule. One section was deleted. For the purposes of this discussion, the numbering system of the interim rule will be used, except where otherwise indicated.

Section 1493.400 General Statement

Two respondents commented on § 1493.400(a), *Overview*. One commenter felt that the proposed 180 day maximum terms are adequate for single transactions. However, this commenter suggested that to better coincide with existing trade practices, CCC should guarantee lines of credit, rather than single transactions. This commenter also thought that annual (or shorter) revolving credit guarantees would reduce administrative costs for the exporter, importer, and CCC without reducing the ability of CCC to manage its risk. The commenter stated that established buyers would have better procurement planning and control under a line of credit. The second commenter felt that because of small profit margins on cotton, exporters would not find open accounts for up to 180 days a viable business practice. The commenter added that some countries under GSM–102/103 operate with strict central bank guidelines regarding foreign exchange that require letters of credit to make the import purchases. The commenter wondered how the SCGP could be successful in such countries.

CCC recognizes that the SCGP may not work effectively for all commodities in all countries. Exporters who have successfully used the GSM–102 program may continue to rely on that program.

Regarding revolving lines of credit, CCC finds this an interesting concept and will continue to assess its merits. However, at this time the budget allocation and subsidy funding for SCGP are not based on revolving lines of credit. A revolving line of credit would require fundamental changes in CCC accounting and computer database systems. CCC will not be in a position to consider implementing revolving lines of credit guarantees until these and other issues are resolved.

Section 1493.410 Definition of Terms

Although no public comment was received specifically regarding the definition of Importer obligation, found at § 1493.410(n), comments were received on § 1493.470, Importer obligation of the proposed rule (see Section-by-Section Analysis of Subpart D, § 1493.470 Importer Obligation). Based on those comments, CCC revised the definition to read: "A promissory note or notes that conform(s) with the requirements for such note(s) specified in the applicable country or regional Program Announcement(s)." By specifying the provisions of the promissory note(s) in the Program Announcement, CCC will retain flexibility to specify provisions for a particular country or region and, if necessary, to make changes in such provisions in light of changing circumstances. In addition to specifying the form of the promissory note in Program Announcement, CCC will refer to the particular form of promissory note in the special terms and conditions described on the face of the guarantee and attach the required form of the promissory note to the guarantee. This change requires deletion of § 1493.470 Importer Obligation, from the interim rule.

Three respondents made comments regarding § 1493.410(x), the definition of a U.S. agricultural commodity. Two commenters stated that for the SCGP to be effective and increase sales of high value or value added products, changes would be needed regarding permissible levels of foreign-origin agricultural components in such products. One commenter stated that Congress should better define the term "U.S. origin" or provide a tolerance for foreign components.

The Department of Agriculture agrees with these comments and supports legislation to change the definition of "product of an agricultural commodity" now contained in section 102(7)(B) of the Agricultural Trade Act of 1978, as amended, (7 U.S.C. 5602)(7)(B)). Until such legislative action, the definition contained in the proposed rule must be retained.

Section 1493.420 Information Required for Program Participation

No public comments were received on this section. No changes have been made in this section of the interim rule.

Section 1493.430 Application for Payment Guarantee

Two respondents made comments regarding § 1493.430(a), which requires that a firm export sale exist before an exporter may submit an application for a payment guarantee. Both commenters suggested that this requirement be changed to allow the export sale to be contingent upon approval of the payment guarantee. The commenters advocated that an exporter and importer should agree on the terms of the sale but, if the payment guarantee is not obtained, cancellation of the sale should be allowed. One commenter recommended that CCC require a copy of the sales contract be submitted at the time the payment guarantee is requested. The commenter believed that the list of the 17 requested items could be reduced if the sales contract was provided.

The "firm" sale requirement of § 1493.430(a) does not preclude a sales contract from being contingent on approval by CCC of a payment guarantee. At a minimum, this rule requires that the exporter and importer be in agreement regarding the terms and conditions required to be reported in an application for a payment guarantee.

Regarding the comment that CCC require exporters to submit sales contracts, CCC disagrees that the suggestion would save time. Sales contracts often contain terms and conditions that CCC does not need to review. CCC does not want the burden of reviewing and safeguarding a large quantity of business confidential and sensitive private documents where that is unnecessary. CCC reserves the right to request an exporter's sales contract in reviewing applications from newly

eligible applicants, where questions of program compliance or control arise.

Three comments were received regarding § 1493.430(16). These concerned the statement that CCC would reserve the right to require exporters to submit additional information about the importer. One respondent was concerned about the nature of the information. If CCC requested proprietary information, would CCC protect the information from public disclosure? The respondent felt that exporters may be reluctant to provide importer information unless there are clear protections against its release. Another commenter felt that providing information regarding the importer could be a potential paperwork burden. The third respondent suggested that information be requested for all first-time applicants of the program. This commenter suggested that the information requested should, at a minimum, include credit rating, trade references, and bank references and should be submitted before CCC approves the payment guarantee.

As stated in the background section of the proposed rule (part C(5), Application), CCC will not routinely conduct independent evaluations of the creditworthiness of individual importers, but will reserve the right to require exporters, in the application process, to provide additional information concerning the importer. Such information may include the importer's credit and payment history with the applicant, and any credit analysis the exporter has done regarding the importer. CCC will protect any proprietary information submitted by exporters to the extent permitted by law.

Three comments were received regarding CCC's price review process established under § 1493.430(b). Two commenters asked whether the SCGP would be subject to price review. One commenter stated that elimination of price review would save time and reduce paperwork. The commenter also felt that if price review were included in the SCGP, it would make the program unattractive. Another commenter wondered how prices would be reviewed because for short term credit transactions it is a common commercial practice to build interest into the sales price. One commenter noted that the rule does not contain a detailed discussion of price review and urged CCC to be as flexible as possible in the administration of this function. The respondent noted that for fresh produce, price review must be sensitive to prices which can vary from hour to hour.

To the extent that SCGP transactions may be subject to price review, CCC may choose to price review different commodities differently or exempt some commodities from price review. Although CCC does not intend to provide guarantee coverage for interest risk separately, CCC realizes that, under SCGP, exporters may build interest into their sales prices. If CCC were to subject the SCGP to price review, CCC could take this into account.

Four respondents commented on § 1493.430(c), Ineligible Exporter. One commenter felt strongly that no financial or ownership connection should exist between exporter and importer. The commenter indicated that if such a connection existed, defaults would be encouraged and make the program unworkable. Another commenter felt that restrictions on relationships between importers and exporters would dissuade many potential participants. In particular it would restrict many smaller import/export companies because the U.S.-based exporter may be related to the importer. One commenter felt that CCC may be increasing its export risk, in some cases, with its prohibition against within-company and joint venture transactions. This commenter agreed that taxpayers should not finance intra-company sales. However, in some instances, particularly common-owner or joint-venture sales, such restrictions would force export sales to competing foreign suppliers. The commenter requested greater flexibility to allow CCC to choose export transactions benefiting U.S. agriculture.

The "ineligible exporter" provision is intended to avoid the situation in which CCC would receive a claim for loss from an exporter that directly or indirectly owns or controls, or is owned or controlled by, the importer responsible for the default. CCC has determined not to change this provision.

One commenter felt that any exporter who has three defaults under the program in five years should be considered ineligible for further participation. With respect to this comment, CCC does not wish to qualify exporters based upon the performance of importers. However, CCC will continue to evaluate whether program modifications may be needed to provide incentives/disincentives to exporters based on program participation experience.

Section 1493.440 Certification Requirements for a Payment Guarantee

No public comments were received on this section. No changes have been made in this section of the interim rule.

Section 1493.450 Payment Guarantee

To address the risk issues raised by comments from a government agency (see General Comments, Other general comments), CCC has revised the first sentence of § 1493.450(e) to read: "The payment guarantee will provide that CCC agrees to pay the exporter or the exporter's assignee an amount not to exceed the guaranteed value, plus eligible interest, in the event that the importer fails to pay under the importer obligation unless CCC determines, with respect to the particular transaction and claim, that the guaranteed portion of the port value exceeded the prevailing U. S. market value for the same, or same type of, agricultural commodity or product. In making this determination, CCC will adjust the prevailing U.S. market value for estimated freight and/or insurance costs if the export sale was made on a CFR or CIF basis."

CCC recognizes that determining a prevailing U.S. market value may be difficult for some products, particularly for some high value and value added products. CCC will, therefore, utilize information from all available sources including, when appropriate, information furnished by participants to the transaction to support the validity of the claim. Exporters using normal pricing practices, i.e., pricing at or near the market without excessive markups intended to shift to CCC all risk of loss, need not be concerned that the new claim review provision will result in a denial of a claim should a default occur.

In instances where CCC has reviewed the unit price of the commodity in the process of approving an exporter's application for a payment guarantee pursuant to § 1493.430(b), and the price of the commodity reported by the exporter in the evidence of export report has not changed (§ 1493.470(a)(7)), CCC will not conduct another review of the price of the transaction as a condition for paying a claim. Although CCC may conduct some price reviews pursuant to § 1493.430(b) as it deems desirable, it does not intend to do so with respect to all exporter applications. Such price reviews will be done entirely at CCC's discretion, and nothing in the SCGP regulations provides exporters the right to demand or expect that such price reviews take place prior to issuing a payment guarantee.

This new provision is intended to ensure that there will be substantial risk sharing on the part of the exporter, and that CCC will not pay claims inflated by transaction prices far above prevailing market levels. CCC has no intention of avoiding payment of normal claims, nor does it intend to regulate or control

exporters' profit margins. CCC's sole intention is to enhance the integrity of the SCGP. CCC encourages and welcomes any comments regarding this provision.

Section 1493.460 Guarantee Rates and Fees

No public comments were received on this section. No changes have been made in this section of the interim rule.

Section 1493.470 Importer Obligation (as in the Proposed Rule)

As stated in § 1493.410, Definition of Terms, of the Section-by-Section Analysis of Subpart D, CCC has determined to delete § 1493.470. Three comments were received regarding this section. One commenter thought that the terms of the promissory note were too onerous. Another commenter felt that use of a promissory note as evidence of indebtedness was a step in the right direction. However, the commenter was concerned that not enough is known about the legal enforceability of the promissory note in countries whose commercial code is different from ours. Having a foreign bank aval or guarantee would mitigate the risk of possibly having a legally unenforceable document. The commenter also recommended that the optional provision regarding late interest under § 1493.470(d)(1), be made a requirement since it is customary business practice to charge late interest when payments are not made on the due date. The commenter felt that this would also provide CCC with a mechanism to be paid interest on outstanding claims. Another commenter felt the promissory note may need to include a "sound product provision." This commenter suggested that if there were quality problems upon arrival, it may be appropriate to be flexible in adjusting the value of the promissory note.

CCC's decision to retain flexibility in adapting the provisions of the promissory note should partially address the concerns expressed that the note contained in the proposed rule would be too onerous and may not be legally enforceable in some countries. Although CCC continues to believe that the previously proposed promissory note, or one substantially similar to it, will be the basic instrument required by most Program Announcements in the initial implementation of the SCGP, CCC will make adaptations, including adaptations specific to a particular country or region, if they appear necessary to enhance the likelihood of enforceability. Similarly, if experience demonstrates that the terms of the proposed note are too onerous, modifications will be considered that are consistent with overall program goals and criteria.

CCC's intention to make adaptations, as necessary, in the form of the required promissory note would be compatible with the objectives stated by other commenters. For example, CCC could adopt a note permitting a foreign bank aval or a guarantee. For now, however, CCC has determined not to make this a program requirement because one of the primary intentions of the SCGP is to remove the foreign bank's mandatory involvement in the transaction. Additionally, CCC could choose to incorporate a provision regarding late interest into the importer's promissory note. Regarding a "sound product provision," value adjustments could be agreed to by exporters and importers. In the event the promissory note had already been executed prior to establishing the actual export value, a substitute promissory note might need to be executed. If the exporter had submitted an Evidence of Export (EOE) before the value adjustment is made, the exporter would have to file an amended EOE with CCC. In any event, CCC's principal coverage would be limited to the lower of the value of the export transaction established by the EOE or the principal amount of the promissory note.

Section 1493.470 Evidence of Export

One comment was received regarding § 1493.470(b), Time limit for submission of the EOE (of the interim rule). The respondent suggested that CCC allow a standard 60 days to submit the EOE. The respondent thought exporters would be seeking extensions of the proposed 30-day period in order to obtain a fully executed promissory note from the importer.

Under the proposed rule, EOEs must be filed in 30 days if export is by vessel, and 60 days if export is by truck or rail. Experience under the GSM–102/103 programs has not shown a need to increase the 30 day filing requirement for EOEs on vessels. However, under the proposed rule, an exporter needing additional time to file an EOE may request that the General Sales Manager extend the time limit for filing. CCC has determined not to change the time limit for filing the EOE, but to assess the need for such a change after the SCGP has been in operation. Timely submission of the EOEs will be important to permit CCC to keep accurate program data for release to the public as well as for internal program monitoring and controls.

Section 1493.480 Certification Requirements for Evidence of Export

No public comments were received on this section. No changes have been made in this section of the interim rule.

Section 1493.490 Proof of Entry

One comment was received regarding § 1493.490(b), Records of proof of entry (of the interim rule). From the viewpoint of the commenter, the requirement that exporters obtain written proof that the exported goods entered the country would be particularly problematic for fresh produce exporters. Traditionally, once the product leaves the dock the exporter ceases to have any control or liability for the goods. It is not currently a practice in the produce industry to provide proof the goods actually left the U.S. The commenter requested that CCC seek an alternate approach which will satisfy the requirements of the program, but be practical for fresh produce exporters.

CCC has determined to make no changes in this section. The requirement that exporters maintain records of an official or customary commercial nature, or other documents to verify the arrival in the foreign country of the agricultural commodity exported, is mandated by section 401(a)(1) of the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5661(a)(1)). Furthermore, if a default occurred under a guaranteed transaction in which the commodity was exported by truck or rail, the entry certificate or similar document would be included when filing a claim for loss (see § 1494.500(b)). If traditional forms of entry documentation are unobtainable, § 1494.490(b) permits CCC to consider other types of documents which can be deemed acceptable by the General Sales Manager. CCC believes that these provisions are flexible enough to meet the concerns raised by the commenter.

Section 1493.500 Notice of Default and Claims for Loss

One comment was received regarding § 1493.500, Notice of default and claims for loss (of the interim rule). This commenter suggested that CCC pre-approve documents that are normally submitted in the claim procedure. The respondent stated that there is a need for greater certainty in the approval of documentation in case of a default, and that exporters would be willing to pay a fee to cover the cost of pre-approval.

Partly because of the added administrative burden that pre-approval of documents would place on CCC, this suggestion will not be adopted at this time. However, CCC will continue to consider this issue which is also relevant to the GSM–102/103 (subpart B) programs.

This same commenter suggested that CCC provide an example of subrogation language in an addendum to its regulations. Since exporters are not banks, they require specific language to fulfill their responsibility in the event of a default. CCC agrees with the comment and will make available an example of language for an Instrument of Subrogation and Assignment.

Section 1493.510 Payment for Loss

Although no comments were received regarding §§ 1493.510 (b) and (e), CCC has revised these provisions to be consistent with the changes made in § 1493.450(a), CCC's obligation.

Section 1493.510(b), Amount of CCC's liability, is revised to read in part: "Subject to a determination by CCC with respect to prevailing U.S. market value pursuant to § 1493.450(a), of this part, CCC's maximum liability for any claims for loss * * * ."

Section 1493.510(e), Action against the assignee, is revised to read: "Notwithstanding * * *. CCC will not, except pursuant to a determination under § 1493.450(a) of this part, hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission, or statement by the exporter of which the assignee has no knowledge provided that:"

Section 1493.520 Recovery of Losses

No public comments were received on this section. No changes have been made in this section of the interim rule.

Section 1493.530 Miscellaneous Provisions

One comment was received regarding § 1493.530(a), Assignment (of the interim rule). The commenter suggested that greater flexibility is needed in the assignment of proceeds, including the sub-assignment to more than one party. The commenter felt this would bring the transaction in line with standard practice for similar financial instruments.

CCC has traditionally not allowed assignment of a payment guarantee to more than one party. However the proposed rule permits further assignment if " * * * approved in advance by CCC." Therefore, CCC has determined it is not necessary at this time to change § 1494.530(a).

List of Subjects in 7 CFR Part 1493

Administrative practice and procedures, Agriculture, Agricultural commodities, Credits, Exports, Guarantees, Reporting and recordkeeping requirements.

PART 1493—[AMENDED]

Accordingly, part 1493 of title 7 is amended by adding and reserving subpart C and adding subpart D reading as follows:

Subpart C—[Reserved]

Subpart D—CCC Supplier Credit Guarantee Program Operations

Sec.

1493.400 General statement.
1493.410 Definition of terms.
1493.420 Information required for program participation.
1493.430 Application for a payment guarantee.
1493.440 Certification requirements for a payment guarantee.
1493.450 Payment guarantee.
1493.460 Guarantee rates and fees.
1493.470 Evidence of export.
1493.480 Certification requirements for the evidence of export.
1493.490 Proof of entry.
1493.500 Notice of default and claims for loss.
1493.510 Payment for loss.
1493.520 Recovery of losses.
1493.530 Miscellaneous provisions.

Authority: 7 U.S.C. 5602, 5622, 5661, 5662, 5663, 5664, 5676; 15 U.S.C. 714b(d), 714c(f).

Subpart C—[Reserved]

Subpart D—CCC Supplier Credit Guarantee Program Operations

§ 1493.400 General statement.

(a) *Overview.* (1) This subpart contains the regulations governing the operations of the Supplier Credit Guarantee Program (SCGP). The restrictions and criteria set forth at subpart A for the Commodity Credit Corporation (CCC) Export Credit Guarantee Program (GSM–102) and the Intermediate Credit Guarantee Program (GSM–103) will apply to this subpart. The SCGP was developed to expand U.S. agricultural exports by making available payment guarantees to encourage U.S. exporters to extend financing on credit terms of not more than 180 days to importers of U.S. agricultural commodities.

(2) The SCGP operates in cases where credit is necessary to increase or maintain U.S. exports to a foreign market and where private U.S. exporters would be unwilling to provide financing without CCC's guarantee. The program is operated in a manner intended not to interfere with markets for cash sales. The program is targeted toward those countries where the guarantees are necessary to secure financing of the exports but which have sufficient financial strength so that foreign exchange will be available for scheduled payments. In providing this credit guarantee facility, CCC seeks to expand market opportunities for U.S. agricultural exporters and assist long-term market development for U.S. agricultural commodities.

(3) The credit facility created by this program is the SCGP payment guarantee (payment guarantee). The payment guarantee is an agreement by CCC to pay the exporter, or the U.S. financial institution that may take assignment of the exporter's right to proceeds, specified amounts of principal and, where applicable, interest due from, but not paid by, the importer incurring the obligation in connection with the export sale to which CCC's guarantee coverage pertains. By approving an exporter's application for a payment guarantee, CCC encourages private sector, rather than government, financing and incurs a substantial portion of the risk of default by the importer. CCC assumes this risk, in order to be able to operate the program for the purposes specified in § 1493.2.

(b) *Credit facility mechanism.* (1) For the purpose of the SCGP, CCC will consider applications for payment guarantees only in connection with export sales of U.S. agricultural commodities where the payment for the agricultural commodities will be made under an unconditional and irrevocable importer obligation to a U.S. exporter payable in U.S. dollars, as defined in § 1493.410(n).

(2) The exporter may assign the right to proceeds under the importer obligation to a U.S. bank or other financial institution so that the exporter may realize the proceeds of the sale prior to the deferred payment date(s) as set forth in the importer obligation.

(3) The SCGP payment guarantee is designed to protect the exporter or the exporter's assignee against those losses specified in the payment guarantee resulting from defaults, whether for commercial or noncommercial reasons, by the importer under the importer's obligation.

(c) *Program administration.* The SCGP will be administered pursuant to subpart A and this subpart and any Program Announcements and Notices to Participants issued by CCC pursuant to, and not inconsistent with, this subpart. This program is under the general administrative responsibility of the General Sales Manager (GSM), Foreign Agricultural Service (FAS/USDA). The review and payment of claims for loss will be administered by the Office of the Controller, CCC. Information regarding specific points of contact for the public, including names, addresses, and

telephone and facsimile numbers of particular USDA or CCC offices, will be announced by a public press release (see § 1493.410(c), "Contacts P/R").

(d) *Country allocations and program announcements.* From time to time, CCC will issue a Program Announcement to announce a SCGP allocation for a specific country. The Program Announcement for a country allocation will designate specific allocations for U.S. agricultural commodities or products thereof, will indicate the form of promissory note required by CCC, and will provide other pertinent information. Exporters may negotiate export sales to importers in that country for one of the commodities specified in the Program Announcement and seek payment guarantee coverage within the dollar amounts of specified coverage for that commodity. The Program Announcement will contain a requirement that the exporter's sales contract contain a shipping deadline within the applicable program year. The final date for a contractual shipping deadline will be stated in the Program Announcement. Program Announcements may also contain a specified "undesignated" or "unallocated" dollar amount for the purpose that if dollar amounts specified for a specific commodity for a country become fully used, an additional allocation from the "unallocated" or "undesignated" portion of the total country allocation may then be designated for a specific commodity. Program Announcements that include an "unallocated" or "undesignated" dollar amount will contain further information on the "unallocated" or "undesignated" portion of the country allocation.

§ 1493.410 Definition of terms.

Terms set forth in this subpart and in CCC Program Announcements, Notices to Participants, and any other CCC-originated documents pertaining to the SCGP will have the following meanings:

(a) *Assignee.* A financial institution in the United States which, for adequate consideration given, has obtained the legal rights to receive the payment of proceeds under the payment guarantee.

(b) *CCC.* The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture, authorized pursuant to the Commodity Credit Corporation Charter Act of 1948 (15 U.S.C. 714 et seq.), and subject to the general supervision and direction of the Secretary of Agriculture.

(c) *Contacts P/R.* A notice issued by FAS/USDA by public press release which contains specific names, addresses, and telephone and facsimile numbers of contacts within FAS/USDA and CCC for use by persons interested in obtaining information concerning the operations of the SCGP. The Contacts P/R also contains details about where to submit information required to qualify for program participation, to apply for payment guarantees, to request amendments of payment guarantees, to submit evidence of export reports, and to give notices of default and file claims for loss.

(d) *Date of export.* One of the following dates, depending upon the method of shipment: the on-board date of an ocean bill of lading or the on-board ocean carrier date of an intermodal bill of lading; the on-board date of an airway bill; or, if exported by rail or truck, the date of entry shown on an entry certificate or similar document issued and signed by an official of the Government of the importing country.

(e) *Date of sale.* The earliest date on which a contractual obligation exists between the exporter, or an intervening purchaser, if applicable, and the importer under which a firm dollar-and-cent price for the sale of agricultural commodities to the importer has been established or a mechanism to establish such price has been agreed upon.

(f) *Discounts and allowances.* Any consideration provided directly or indirectly, by or on behalf of the exporter, or an intervening purchaser, to the importer in connection with a sale of an agricultural commodity, above and beyond the commodity's value, stated on the appropriate FOB, FAS, CFR or CIF basis. Discounts and allowances include, but are not limited to, the provision of additional goods, services or benefits; the promise to provide additional goods, services or benefits in the future; financial rebates; the assumption of any financial or contractual obligations; the whole or partial release of the importer from any financial or contractual obligations; or settlements made in favor of the importer for quality or weight.

(g) *Eligible interest.* The maximum amount of interest, based on the interest rate indicated in CCC's payment guarantee or any amendments to such payment guarantee, which CCC agrees to pay the exporter or the exporter's assignee in the event that CCC pays a claim for loss. The maximum interest rate stated in the payment guarantee, when determined or adjusted by CCC, will not exceed the average investment rate of the most recent Treasury 52-week bill auction in effect at that time.

(h) *Exported value.* (1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity is sold on a FAS or FOB basis, the value, FAS or FOB basis, U.S. point of export, of the export sale, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, is measured by the CFR or CIF value of the agricultural commodity less the cost of ocean freight, as determined at the time of application and, in the case of CIF sales, less the cost of marine and war risk insurance, as determined at the time of application, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a CFR or CIF basis, and where the commodity is sold on a CFR or CIF basis, point of entry, the total value of the export sale, CFR or CIF basis, point of entry, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a CFR or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo) which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the exported value.

(i) *Exporter.* A seller of U.S. agricultural commodities or products thereof that has qualified in accordance with the provisions of § 1493.420.

(j) *FAS/USDA.* The Foreign Agricultural Service, U.S. Department of Agriculture.

(k) *GSM.* The General Sales Manager, FAS/USDA, acting in his capacity as Vice President, CCC, or his designee.

(l) *Guaranteed value.* The maximum amount, exclusive of interest, that CCC agrees to pay the exporter or assignee under CCC's payment guarantee, as indicated on the face of the payment guarantee.

(m) *Importer.* A foreign buyer that enters into a contract with an exporter, or with an intervening purchaser, for an export sale of agricultural commodities to be shipped from the U.S. to the foreign buyer.

(n) *Importer obligation.* A promissory note or notes that conform(s) with the requirements for such note(s) specified in the applicable country or regional Program Announcement(s).

(o) *Incoterms.* The following customary terms, as defined by the International Chamber of Commerce, Incoterms © current revision):

(1) Free Alongside Ship (FAS);

(2) Free on Board (FOB);

(3) Cost and Freight (CFR, or alternatively, C&F, C and F, or CNF); and

(4) Cost Insurance and Freight (CIF).

(p) *Intervening purchaser.* A party that agrees to purchase U.S. agricultural commodities from an exporter and sell the same agricultural commodities to an importer.

(q) *Late interest.* Interest, in addition to the interest due under the payment guarantee, which CCC agrees to pay in connection with a claim for loss, accruing during the period beginning on the first day after receipt of a claim which CCC has determined to be in good order and ending on the day on which payment is made on such claim for loss.

(r) *Notice to participants.* A notice issued by CCC by public press release which serves one or more of the following functions: to remind participants of the requirements of the program; to clarify the program requirements contained in these regulations in a manner which is not inconsistent with the regulations; to instruct exporters to provide additional information in applications for payment guarantees under specific country and/or commodity allocations; and to supplement the provisions of a payment guarantee, in a manner not inconsistent with these regulations, before the exporter's application for such payment guarantee is approved.

(s) *Payment guarantee.* An agreement under which CCC, in consideration of a fee paid, and in reliance upon the statements and declarations of the exporter, subject to the terms set forth in the written guarantee (including the required form of promissory note), this subpart, and any applicable Program Announcements or Notices to Participants, agrees to pay the exporter or the exporter's assignee in the event of a default by an importer under the importer obligation.

(t) *Port value.* (1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity is sold on a FAS or FOB basis, U.S. point of export, the value, FAS or FOB basis, U.S. point of export, of the export sale, including the upward tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, including the upward tolerance, if any, as provided by the export sales contract, is measured by the CFR or CIF value of the agricultural commodity less the value of ocean freight and, in the case of CIF sales, less the value of marine and war risk insurance, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a CFR or CIF basis and where the commodity was sold on CFR or CIF basis, point of entry, the total value of the export sale, CFR or CIF basis, point of entry, including the upward tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a CFR or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo), which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the port value.

(u) *Program announcement.* An announcement issued by CCC which provides information on specific country and commodity allocations and may identify eligible agricultural commodities and countries, length of credit periods which may be covered, specify dollar limitations for CCC exposure in particular countries, the form of promissory note required for a particular country or region, and include other information and requirements.

(v) *SCGP.* The Supplier Credit Guarantee Program described by this subpart.

(w) *United States or U.S.* All of the 50 states, the District of Columbia, and the territories and possessions of the United States.

(x) *U.S. agricultural commodity.* (1) With respect to any agricultural commodity other than a product of an agricultural commodity, an agricultural commodity entirely produced in the United States; and

(2) With respect to a product of an agricultural commodity:

(i) A product all of the agricultural components of which are entirely produced in the United states; or

(ii) Any other product the Secretary may designate that contains any agricultural component that is not entirely produced in the United States if:

(A) Such component is an added, de minimis component;

(B) Such component is not commercially produced in the United States; and

(C) There is not acceptable substitute for such component that is commercially produced in the United States (For purposes of this paragraph, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters [including the territorial sea] of a foreign country).

(y) *USDA.* United States Department of Agriculture.

§ 1493.420 Information required for program participation.

Before CCC will accept an application for a payment guarantee under the SCGP, the applicant must qualify for participation in this program. Based upon the information submitted by the applicant and other publicly available sources, CCC will determine whether the applicant is eligible for participation in the program.

(a) *Submission of documentation.* In order to qualify for participation in the SCGP, an applicant must submit to CCC, at the address specified in the Contacts P/R, the following information:

(1) The address of the applicant's headquarters office and the name and address of an agent in the U.S. for the service of process;

(2) The legal form of doing business of the applicant, e.g., sole proprietorship, partnership, corporation, etc.;

(3) The place of incorporation of the applicant, if the applicant is a corporation;

(4) The name and U.S. address of the office(s) of the applicant, and statement indicating whether the applicant is a U.S. domestic corporation, a foreign corporation or another foreign entity. If the applicant has multiple offices, the address included in the information should be that which is pertinent to the particular export sale contemplated by the applicant under this subpart;

(5) A certified statement describing the applicant's participation, if any, during the past three years in U.S. Government programs, contracts or agreements; and

(6) A certification that: "I certify, to the best of my knowledge and belief, that neither [name of applicant] nor any of its principals has been debarred, suspended, or proposed for debarment from contracting with or participating in

programs administered by any U.S. Government agency. ["Principals," for the purpose of this certification, means officers; directors; owners of five percent or more of stock; partners; and persons having primary management or supervisory responsibility within a business entity (e.g., general manager, plant manager, head of a subsidiary division, or business segment, and similar positions).] I further agree that, should any such debarment, suspension, or notice of proposed debarment occur in the future, [name of applicant] will immediately notify CCC."

(b) *Previous qualification.* Any exporter that is qualified under subpart B, § 1493.30 is qualified under this section to submit applications for a SCGP payment guarantee, and the information provided by the exporter pursuant to § 1493.30 will be deemed to also have been provided under this section. Each application must include the statement required by § 1493.430(a)(17) incorporating the certifications of § 1493.440, including the certification in § 1493.440(e) that the information previously provided pursuant to § 1493.420 has not changed. If the exporter is unable to provide such certification, such exporter must update the information required by paragraph (a) of this section which has changed and certify that the remainder of the information previously provided has not changed.

(c) *Additional submissions.* CCC will promptly notify applicants that have submitted information required by this section whether they have qualified to participate in the program. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by CCC.

(d) *Ineligibility for program participation.* An applicant may be ineligible to participate in the SCGP if:

(1) Such applicant is currently debarred, suspended, or proposed for debarment from contracting with or participating in any program administered by a U.S. Government agency; or

(2) Such applicant is controlled or can be controlled, in whole or in part, by any individuals or entities currently debarred, suspended or proposed for debarment from contracting with or participating in programs administered by any U.S. Government agency.

§ 1493.430 Application for a payment guarantee.

(a) A firm export sale must exist before an exporter may submit an application for a payment guarantee. An application for a payment guarantee may be submitted in writing or may be made by telephone, but, if made by telephone, it must be confirmed in writing to the office specified in the Contacts P/R. An application must identify the name and address of the exporter and include the following information:

(1) Name of the destination country;

(2) Name and address of the importer;

(3) Name and address of the intervening purchaser, if any, and a statement that the commodity will be shipped directly to the importer in the destination country;

(4) Date of sale;

(5) Exporter's sale number;

(6) Delivery period as agreed between the exporter and the importer;

(7) A full description of the commodity (including packaging, if any);

(8) Mean quantity, contract loading tolerance and, if the exporter chooses, a request for CCC to reserve coverage up to the maximum quantity permitted by the contract loading tolerance;

(9) Unit sales price of the commodity, or a mechanism to establish the price, as agreed between the exporter and the importer. If the commodity was sold on the basis of CFR or CIF, the actual (if known at the time of application) or estimated value of freight and, in the case of sales made on a CIF basis, the actual (if known at the time of application) or estimated value of marine and war risk insurance, must be specified;

(10) Description and value of discounts and allowances, if any;

(11) Port value (includes upward loading tolerance, if any);

(12) Guaranteed value;

(13) Guarantee fee;

(14) The term length for the credit being extended and the intervals between principal payments for each shipment to be made under the export sale;

(15) A statement indicating whether any portion of the export sale for which the exporter is applying for a payment guarantee is also being used as the basis for an application for participation in any of the following CCC or USDA export programs: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program. The number of the Agreement assigned by USDA under one of these programs should be included, as applicable;

(16) Other information as requested by CCC or specified in Program Announcements and Notices to Participants, as applicable; and

(17) The exporter's statement, "ALL SECTION 1493.440 CERTIFICATIONS ARE BEING MADE IN THIS APPLICATION" which, when included in the application by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.440.

(b) An application for a payment guarantee may be approved as submitted, approved with modifications agreed to by the exporter, or rejected by the GSM. In the event that the application is approved, the GSM will cause a payment guarantee to be issued in favor of the exporter. Such payment guarantee will become effective at the time specified in § 1493.450(b). If, based upon a price review, the unit sales price of the commodity does not fall within the prevailing commercial market level ranges, as determined by CCC, the application will not be approved.

(c) Ineligible exporter. An exporter will be ineligible to obtain a payment guarantee if such exporter:

(1) Directly or indirectly owns or controls the importer;

(2) Is directly or indirectly owned or controlled by the importer; or

(3) Is directly or indirectly owned or controlled by a person(s) or entity(ies) which also owns or controls the importer.

§ 1493.440 Certification requirements for payment guarantee.

By providing the statement in § 1493.430(a)(17), the exporter is certifying that the information provided in the application is true and correct and, further, that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to applications that do not include this statement. The exporter, in submitting an application for a payment guarantee and providing the statement set forth in § 1493.430(a)(17), certifies that:

(a) The agricultural commodity or product to be exported under the payment guarantee is a United States agricultural commodity or a product thereof, as defined in § 1493.410(x);

(b) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law;

(c) If the agricultural commodity is vegetable oil or a vegetable oil product, that none of the agricultural commodity or product has been or will be used as a basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, 19 U.S.C. 1313, of any duty, tax or fee imposed under Federal law on an imported commodity or product;

(d) No person or selling agency has been employed or retained to solicit or secure the payment guarantee, and that there is no agreement or understanding for a commission, percentage, brokerage, or contingent fee, except in the case of bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business; and

(e) The information provided pursuant to § 1493.420 has not changed, the exporter still meets all of the qualification requirements of § 1493.420, and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements. If the exporter breaches or violates these certifications with respect to a SCGP payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter.

§ 1493.450 Payment guarantee.

(a) *CCC's obligation.* The payment guarantee will provide that CCC agrees to pay the exporter or the exporter's assignee an amount not to exceed the guaranteed value, plus eligible interest, in the event that the importer fails to pay under the importer obligation, unless CCC determines with respect to the particular transaction and claim that the guaranteed portion of the port value exceeded the prevailing U.S. market value for the same, or same type of agricultural commodity or product. In making this determination, CCC will adjust the prevailing U.S. market value for estimated freight and/or insurance costs if the export sale was made on a CFR or CIF basis. Payment by CCC will be in U.S. dollars.

(b) *Period of guarantee coverage.* The payment guarantee will apply to a credit period not exceeding 180 days beginning either on the date(s) of export(s) or from the date when interest begins to accrue whichever is earlier, and will continue during the credit term specified in the payment guarantee or amendments thereto. However, the payment guarantee becomes effective on the date(s) of export(s) of the agricultural commodities or products thereof specified in the exporter's application for a payment guarantee.

(c) *Terms of the CCC payment guarantee.* The terms of CCC's coverage will be set forth in the payment guarantee, as approved by CCC, and will include the provisions of this subpart, which may be supplemented by any Program Announcements and/or Notices to Participants in effect at the time the payment guarantee is approved by CCC.

(d) *Final date to export.* The final date to export shown on the payment guarantee will be one month, as determined by CCC, after the contractual deadline for shipping.

(e) *Reserve coverage for loading tolerances.* The exporter may apply for a payment guarantee and, if coverage is available, pay the guarantee fee, based at least on, the amount of the lower loading tolerance of the export sales contract; however, the exporter may also request that CCC reserve additional guarantee coverage to accommodate up to the amount of the upward loading tolerance specified in the export sales contract. If such additional guarantee coverage is available at the time of application and CCC determines to make such reservation, it will so indicate to the exporter. In the event that the exporter ships a quantity greater than the amount on which the guarantee fee was paid (i.e., lower loading tolerance), it may obtain the additional coverage from CCC, up to the amount of the upward loading tolerance, by filing for an amendment to the payment guarantee, and by paying the additional amount of fee applicable. If such amendment to the payment guarantee is not filed with CCC by the exporter within 30 days after the date of the last export against the sales contract, CCC may determine not to reserve the coverage originally set aside for the exporter.

(f) *Ineligible exports.* Commodities with a date of export prior to the date of receipt by CCC of the exporter's telephonic or written application for a payment guarantee, or with a date of export made after the final date for export shown on the payment guarantee or any amendments thereof, are ineligible for guarantee coverage under this subpart, except where it is determined by the GSM to be in the best interests of CCC to provide guarantee coverage on such commodities.

(g) *Foreign agricultural component.* CCC may approve payment guarantees under this subpart only in connection with sales of United States agricultural commodities as defined in § 1493.410(x). CCC may not provide guarantee coverage under this subpart on credit extended for the value of any foreign agricultural component.

(h) *Additional requirements.* The payment guarantee may contain such additional terms, conditions, and limitations as deemed necessary or desirable by the GSM. Such additional terms, conditions or qualifications, as stated in the payment guarantee are binding on the exporter or the exporter's assignee.

(i) *Amendments.* A request for an amendment of a payment guarantee may be submitted only by the exporter (with the concurrence of the assignee, if any). CCC will consider such a request only if the amendment sought is consistent with this subpart and any applicable Program Announcements and Notices to Participants. Amendments may include, but will not be limited to, a change in the credit period and an extension of time to export. Any amendment to the payment guarantee, particularly those that result in an increase in CCC's liability under the payment guarantee, may result in an increase in the guarantee fee. (Technical corrections or corrections of a clerical error which may be submitted by the exporter or the exporter's assignee are not viewed as amendments.)

§ 1493.460 Guarantee rates and fees.

(a) *Guarantee fee rates.* The current payment guarantee fee rate(s) will be available by Program Announcement.

(b) *Calculation of fee.* The guarantee fee will be computed by multiplying the guaranteed value by the guarantee fee rate.

(c) *Payment of fee.* The exporter shall remit, with his written application, the full amount of the guarantee fee. Applications will not be approved until the guarantee fee has been received by CCC. The exporter's check for the guarantee fee shall be made payable to CCC and mailed or delivered by courier to the office specified in the Contacts P/R.

(d) *Refunds of fee.* Guarantee fees paid in connection with approved applications will ordinarily not be refundable. CCC's approval of the application will be final and refund of the guarantee fee will not be made after approval unless the GSM determines that such refund will be in the best interest of CCC. If the application for a payment guarantee is not approved or is approved only for a part of the guarantee coverage requested, a full or pro rata refund of the fee remittance will be made.

§ 1493.470 Evidence of export.

(a) *Report of export.* The exporter is required to provide CCC an evidence of export report for each shipment made under the payment guarantee. This report must include the following:

(1) Payment guarantee number;

(2) Date of export;

(3) Exporter's sale number;

(4) Exported value;

(5) Quantity;
(6) A full description of the commodity exported;
(7) Unit sales price received for the commodity exported and the basis (e.g., FOB, CFR, CIF). Where the unit sales price at export differs from the unit sales price indicated in the exporter's application for a payment guarantee, the exporter is also required to submit a statement explaining the reason for the difference;
(8) Description and value of discounts and allowances, if any;
(9) Number of the Agreement assigned by USDA under any other program if any portion of the export sale was also approved for participation in any of the following CCC or USDA export program: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program; and
(10) The exporter's statement, "ALL SECTION 1493.480 CERTIFICATIONS ARE BEING MADE IN THIS EVIDENCE OF EXPORT" which, when included in the evidence of export by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.480.

(b) *Time limit for submission of evidence of export.* The exporter must provide a written report to the office specified in the Contacts P/R within 60 calendar days if the export was by rail or truck; or 30 calendar days if the export was by any other carrier. The time period for filing a report of export will commence upon each date of export of the commodity covered under a payment guarantee. If the evidence of export report is not received by CCC within the time period for filing, the payment guarantee will become null and void only if and only to the extent that failure to make timely filing resulted, or would be likely to result, in:
(1) Significant financial harm to CCC;
(2) The undermining of an essential regulatory purpose of the program;
(3) Obstruction of the fair administration of the program; or
(4) A threat to the integrity of the program. The time limit for submission of an evidence of export report may be extended if such extension is determined by the GSM to be in the best interests of CCC.

(c) *Export sales reporting.* Exporters may have a mandatory reporting responsibility under section 602 of the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5712) for exports of wheat and wheat flour, feed grains, oilseeds, cotton, and other agricultural commodities and products thereof.

§ 1493.480 Certification requirements for the evidence of export.

By providing the statement contained in § 1493.470(a)(10), the exporter is certifying that the information provided in the evidence of export report is true and correct and, further, that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to reports that do not include this statement. If the exporter breaches or violates these certifications with respect to a SCGP payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter. The exporter, in submitting the evidence of export and providing the statement set forth in § 1493.470(a)(10), certifies that:
(a) The agricultural commodity or product exported under a payment guarantee is a United States agricultural commodity or product thereof, as defined in § 1493.410(x);
(b) Agricultural commodities of the grade, quality and quantity called for in the exporter's sales contract with the importer have been exported to the country specified in the payment guarantee;
(c) There is an importer obligation as defined in § 1493.410(n) to cover the exported value of the commodity exported;
(d) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law; and
(e) The information provided pursuant to § 1493.420 has not changed, the exporter still meets all of the qualification requirements of § 1493.420 and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements.

§ 1493.490 Proof of entry.

(a) *Diversion.* The diversion of commodities covered by a SCGP payment guarantee to a country other than that shown on the payment guarantee is prohibited, unless expressly authorized by the GSM.
(b) *Records of proof of entry.* Exporters must obtain and maintain records of an official or customary commercial nature and grant authorized USDA officials access to such documents or records as may be necessary to demonstrate the arrival of the agricultural commodities exported in connection with the SCGP in the country that was the intended country of destination of such commodities. Records demonstrating proof of entry must be in English or be accompanied by a certified or other translation acceptable to CCC. Records acceptable to meet this requirement include an original certification of entry signed by a duly authorized customs or port official of the importing country, by the importer, by an agent or representative of the vessel or shipline which delivered the agricultural commodity to the importing country, or by a private surveyor in the importing country, or other documentation deemed acceptable by the GSM showing:
(1) That the agricultural commodity entered the importing country;
(2) The identification of the export carrier;
(3) The quantity of the agricultural commodity;
(4) The kind, type, grade and/or class of the agricultural commodity; and
(5) The date(s) and place(s) of unloading of the agricultural commodity in the importing country. (Records of proof of entry need not be submitted with a claim for loss, except as may be provided in § 1493.500(b)(4)(ii).)

§ 1493.500 Notice of default and claims for loss.

(a) *Notice of default.* If the importer fails to make payment pursuant to the terms of the importer obligation, the exporter or the exporter's assignee must submit a notice of default to CCC as soon as possible, but not later than 10 calendar days after the date that payment was due from the importer (the due date). A notice of default must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. If the exporter or the exporter's assignee fails to promptly notify CCC of defaults in accordance with this paragraph, CCC may make the payment guarantee null and void with respect to any payment(s) applicable to such default. This time limit may be extended only under extraordinary circumstances and if such extension is determined by the Controller, CCC, to be in the best interests of CCC. The notice of default must include:
(1) Payment guarantee number;
(2) Name of the country;
(3) Name of the defaulting importer;
(4) Due date;
(5) Total amount of the defaulted payment due, indicating separately the amounts for principal and interest;
(6) Date of importer's refusal to pay, if applicable; and
(7) Reason for importer's refusal to pay, if known.

(b) *Filing a claim for loss.* A claim for a loss by the exporter or the exporter's assignee will not be paid if it is made later than six months from the due date of the defaulted payment. A claim for loss must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. The claim for loss must include the following information and documents:
(1) Payment guarantee number;
(2) A certification that the scheduled payment has not been received;
(3) A certification of the amount of accrued interest in default, the date interest began to accrue, and the interest rate on the importer obligation applicable to the claim;
(4) A copy of each of the following documents, with a cover document containing a signed certification by the exporter or the exporter's assignee that each page of each document is a true and correct copy:
(i) The importer obligation;
(ii) Depending upon the method of shipment, the negotiable ocean carrier or intermodal bill(s) of lading signed by the shipping company with the onboard ocean carrier date for each shipment, the airway bill, or, if shipped by rail or truck, the entry certificate or similar document signed by an official of the importing country;
(iii)(A) The exporter's invoice showing, as applicable, the FAS, FOB, CFR or CIF values; or
(B) If there was an intervening purchaser, both the exporter's invoice to the intervening purchaser and the intervening purchaser's invoice to the importer;
(iv) An instrument, in form and substance satisfactory to CCC, subrogating to CCC the respective rights of the exporter and the exporter's assignee, if applicable, to the amount of payment in default under the applicable export sale. The instrument must reference the applicable importer obligation; and
(v) A copy of the report(s) of export previously submitted by the exporter to CCC pursuant to § 1493.470(a).

(c) *Subsequent claims for defaults on installments.* If the initial claim is found in good order, the exporter or an exporter's assignee need only provide all of the required claims documents with the initial claim relating to a covered transaction. For subsequent claims relating to failure of the importer to make scheduled installments on the same export shipment, the exporter or the exporter's assignee need only submit to CCC a notice of such failure containing the information stated in paragraph (b) (1), (2), and (3) of this section; an instrument of subrogation as per paragraph (b)(4)(iv) of this section, and including the date the original claim was filed with CCC.

§ 1493.510 Payment for loss.

(a) *Determination of CCC's liability.* Upon receipt in good order of the information and documents required under § 1493.500, CCC will determine whether or not a loss has occurred for which CCC is liable under the applicable payment guarantee, this subpart and any applicable supplemental Program Announcements and Notices to Participants. If CCC determines that it is liable to the exporter and/or the exporter's assignee, CCC will pay the exporter or the exporter's assignee in accordance with paragraphs (b) and (c) of this section.

(b) *Amount of CCC's liability.* Subject to a determination by CCC with respect to prevailing U.S. market value pursuant to § 1493.450(a) of this part, CCC's maximum liability for any claims for loss submitted with respect to any payment guarantee, not including any late interest payments due in accordance with paragraph (c) of this section, will be limited to the lesser of:
(1) The guaranteed value as stated in the payment guarantee, plus eligible interest; or
(2) The guaranteed percentage (as indicated in the payment guarantee) of the exported value indicated in the evidence of export, plus eligible interest.

(c) *Late interest payment.* If a claim is not paid within one day of receipt of a claim which CCC has determined to be in good order, late interest will accrue in favor of the exporter or the exporter's assignee beginning with the first day after the day of receipt of a claim found by CCC to be in good order and continuing until and including the date that payment is made by CCC. Late interest will be paid on the guaranteed amount, as determined by paragraphs (b)(1) and (2) of this section, and will be calculated based on the average investment rate of the most recent Treasury 91-day bill auction as announced by the Department of Treasury as of the due date.

(d) *Accelerated payments.* CCC will pay claims only for losses on amounts not paid as scheduled. CCC will not pay claims for amounts due under an accelerated payment clause in the export sales contract or the importer obligation unless it is determined to be in the best interests of CCC by the Controller, CCC. Notwithstanding the foregoing, CCC at its option may declare the entire amount of the unpaid balance, plus accrued interest, in default and make payment to the exporter or the exporter's assignee in addition to such other claimed amount as may be due from CCC.

(e) *Action against the assignee.* Notwithstanding any other provision in this subpart to the contrary, with regard to commodities covered by a payment guarantee, CCC will not, except pursuant to a determination under § 1493.450(a) of this part, hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission, or statement by the exporter of which the assignee has no knowledge, provided that:
(1) The exporter complies with the reporting requirements under §§ 1493.470 and 1493.480, excluding post-export adjustments (i.e., corrections to evidence of export reports); and
(2) The exporter or the exporter's assignee furnishes the statements and documents specified in § 1493.500.

§ 1493.520 Recovery of losses.

(a) *Notification.* Upon payment of loss to the exporter or the exporter's assignee, CCC will notify the importer of CCC's rights under the subrogation agreement to recover all moneys in default.

(b) *Receipt of monies.* (1) In the event that monies for a defaulted payment are recovered by the exporter or the exporter's assignee from the importer or any other source whatsoever, such monies shall be immediately paid to the Treasurer, CCC. If such monies are not received by CCC within 15 business days from the date of recovery by the exporter or the exporter's assignee, the exporter or the exporter's assignee will owe to CCC interest from the date of recovery to the date of receipt by CCC. This interest will be calculated based on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by the exporter or the exporter's assignee to CCC. Such interest will be charged only on CCC's share of the recovery.
(2) If CCC recovers monies that should be applied to a payment guarantee for which a claim has been paid by CCC, CCC will pay the holder of the payment guarantee its pro rata share immediately, provided that the required information necessary for determining pro rata distribution has been furnished. If payment is not made by CCC within 15 business days from the date of recovery or 15 business days from receiving the required information for determining pro rata distribution, whichever is later, CCC will pay interest

calculated on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and such interest will accrue from such date to the date of payment by CCC. The interest will apply only to the portion of the recovery payable to the holder of the payment guarantee.

(c) *Allocation of recoveries.* Recoveries made by CCC from the importer, and recoveries received by CCC from the exporter, the exporter's assignee, or any other source whatsoever, will be allocated by CCC to the exporter or the exporter's assignee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default. Once CCC has paid out a particular claim under a payment guarantee, CCC pro rates any collections it receives and shares these collections proportionately with the holder of the guarantee until both CCC and the holder of the guarantee have been reimbursed in full. Appendix A to § 1493.520—Illustration of Pro Rata Allocation of Recoveries—provides an example of the methodology used by CCC in applying this paragraph (c).

(d) *Liabilities to CCC.* Notwithstanding any other terms of the payment guarantee, the exporter may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter has engaged in fraud, or has been or is in material breach of any contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the payment guarantee or for fulfilling obligations under SCGP. Further, the exporter's assignee may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter's assignee has engaged in fraud or otherwise violated program requirements.

(e) *Good faith.* The violation by an exporter of the certifications in §§ 1493.440(b) and 1493.480(d) or the failure of an exporter to comply with the provisions of §§ 1493.490 or 1493.530(e) will not affect the validity of any payment guarantee with respect to an assignee which had no knowledge of such violation or failure to comply at the time such exporter applied for the payment guarantee or at the time of assignment of the payment guarantee.

(f) *Cooperation in recoveries.* Upon payment by CCC of a claim to the exporter or the exporter's assignee, the exporter or the exporter's assignee will cooperate with CCC to effect recoveries from the importer.

Appendix A to § 1493.520—Illustration of Pro Rata Allocation of Recoveries

The following example illustrates CCC's policy, as set forth in § 1493.520(c), regarding pro rata sharing of recoveries made for claims filed under the SCGP. A typical case might be as follows:

1. The U.S. exporter enters into a $200,000, 180 day credit arrangement with the importer calling for two equal payments of principal and two equal payments of interest at a rate of 10 percent per annum and a penalty interest rate of 12 percent per annum (basis 360 days) on overdue amounts until the overdue amount is paid. (Basis for interest calculation may be 360 or 365 days.)

2. The importer fails to make the final principal payment of $100,000 and an interest payment of $2,500.00 (10% per annum for 90 days on $100,000), both due on January 31.

3. On February 10, the U.S. exporter files a claim in good order with CCC.

4. CCC's guarantee states that CCC's maximum liability is limited to 60 percent of the principal amount due ($60,000) and interest at a rate of 8 percent per annum (basis 365 days) on 60 percent of the principal outstanding ($1,183.56) (8% per annum for 90 days on $60,000). (CCC's basis for interest calculation is 365 days.)

5. CCC pays the claim on February 22.

6. The average investment rate of the most recent 91-day Treasury Bill auction average which has been published by the Department of Treasury in effect on the date of nonpayment by CCC (January 31) is 7 percent. (CCC's late interest rate.)

Computation of Obligations

Using the above case, CCC's payment to the holder of the payment guarantee would be computed as follows:

1. CCC's Obligation under the Payment Guarantee:	
(a) Principal coverage—(60% $100,000)	$60,000.00
(b) Interest coverage—(8% per annum for 90 days on $60,000, basis 365 days)	1,183.56
	$61,183.56
(c) Late interest due from CCC (7% per annum for 11 days on $61,183.56, basis 365 days)	129.07
(d) Amount paid by CCC on February 22	$61,312.63
2. Importer's obligation under the importer obligation	
(a) Principal due January 31	$100,000.00
Interest due January 31	
(10% per annum for 90 days on $100,000, basis 360 days)	2,500.00
Amount owed by importer as of January 31	$102,500.00
(b) Penalty interest due (12% per annum for 22 days on $102,500.00, basis 360 days)	751.67
(c) Amount owed by importer as of February 22	$103,251.67
3. Amount of importer's obligation not covered by CCC's payment guarantee: $41,939.04 ($103,251.67–$61,312.63).	

Computation of Pro Rata Sharing in Recovery of Losses

In establishing each party's respective interest in any recovery of losses, the total amount due under the importer obligation would be determined as of the date the claim is paid by CCC (February 22). Using the above example in which the amount owed by the importer is $103,251.67, CCC would be entitled to 59.38 percent ($61,312.63 divided by $103,251.67) and the holder of the payment guarantee would be entitled to 40.62 percent ($41,939.04 divided by $103,251.67) of any recoveries of losses after settlement of the claim. Since in this example, the losses were recovered after the claim has been paid by CCC, § 1493.520(b) would apply.

§ 1493.530 Miscellaneous provisions.

(a) *Assignment.* (1) The exporter may assign the proceeds which are, or may become, payable by CCC under a payment guarantee or the right to such proceeds only to a financial institution in the U.S. The assignment must cover all amounts payable under the payment guarantee not already paid, may not be made to more than one party, and may not, unless approved in advance by CCC, be:

(i) Made to one party acting for two or more parties; or

(ii) Subject to further assignment.

(2) An original and two copies of the written notice of assignment signed by the parties thereto must be filed by the assignee with the Treasurer, CCC, at the address specified in the Contacts P/R.

(3) Receipt of the notice of assignment will ordinarily be acknowledged to the exporter and its assignee in writing by an officer of CCC. In cases where a financial institution is determined to be ineligible to receive an assignment, in accordance with paragraph (b) of this section, CCC will provide notice thereof, to the financial institution and to the exporter issued the payment guarantee, in lieu of an acknowledgment of assignment.

(4) The name and address of the assignee must be included on the written notice of assignment.

(b) *Ineligibility of financial institutions to receive an assignment.* A financial institution will be ineligible to receive an assignment of proceeds which may become payable under a payment guarantee if, at the time of assignment, such financial institution:

(1) Is not in sound financial condition, as determined by the Treasurer of CCC;

(2) Owns or controls the entity issuing the importer obligation; or

(3) Is owned or controlled by an entity that owns or controls the entity issuing the importer obligation.

(c) *Ineligibility of financial institutions to receive proceeds.* A financial institution will be ineligible to receive proceeds payable under a payment guarantee approved by CCC if such financial institution:

(1) At the time of assignment of a payment guarantee, is not in sound financial condition, as determined by the Treasurer of CCC;

(2) Owns or controls the entity issuing the importer obligation; or

(3) Is owned or controlled by an entity that owns or controls the entity issuing the importer obligation.

(d) *Alternative satisfaction of payment guarantees.* CCC may, with the agreement of the exporter (or if the right to proceeds payable under the payment guarantee has been assigned, with the agreement of the exporter's assignee), establish procedures, terms and/or conditions for the satisfaction of CCC's obligations under a payment guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms, and/or conditions are appropriate in rescheduling the debts arising out of any transaction covered by the payment guarantee and would not result in CCC paying more than the amount of CCC's obligation.

(e) *Maintenance of records and access to premises.* (1) For a period of five years after the date of expiration of the coverage of a payment guarantee, the exporter or the exporter's assignee, as applicable, must maintain and make available all records pertaining to sales and deliveries of and extension of credit for agricultural commodities exported in connection with a payment guarantee, including those records generated and maintained by agents, intervening purchasers, and related companies involved in special arrangements with the exporter. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the exporter or the exporter's assignee, as applicable, during regular business hours from the effective date of the payment guarantee until the expiration of such five-year period to inspect, examine, audit, and make copies of the exporter's, exporter's assignee's, agent's, intervening purchaser's, or related company's books, records and accounts concerning transactions relating to the payment guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, processing, and administrative and incidental costs, both normal and unforeseen. During such period, the exporter or the exporter's assignee may be required to make available to the Secretary of Agriculture or the Comptroller General of the United States, through their authorized representatives, records that pertain to transactions conducted outside the program, if, in the opinion of the GSM, such records would pertain directly to the review of transactions undertaken by the exporter in connection with the payment guarantee.

(2) The exporter must maintain the proof of entry required by § 1493.490(b), and must provide access to such documentation if requested by the Secretary of Agriculture or his authorized representative for the five-year period specified in paragraph (e)(1) of this section.

(f) *Responsibility of program participants.* It is the responsibility of all program participants to review, and fully acquaint themselves with, all regulations, Program Announcements, and Notices to Participants issued pursuant to this subpart. Applicants for payment guarantees are hereby on notice that they will be bound by any terms contained in applicable Program Announcements or Notices to Participants issued prior to the date of approval of a payment guarantee.

(g) *Submission of documents by principal officers.* All required submissions, including certifications, applications, reports, or requests (i.e., requests for amendments), by exporters or exporters' assignees under this subpart must be signed by a principal or officer of the exporter or exporter's assignee or their authorized designee(s). In cases where the designee is acting on behalf of the principal or the officer, the signature must be accompanied by: Wording indicating the delegation of authority or, in the alternative, by a certified copy of the delegation of authority; and the name and title of the authorized person or officer. Further, the exporter or exporter's assignee must ensure that all information/reports required under these regulations are submitted within the required time limits. If requested in writing, CCC will acknowledge receipt of a submission by the exporter or the exporter's assignee. If acknowledgment of receipt is requested, the exporter or exporter's assignee must submit an extra copy of each document and a stamped self-addressed envelope for return by U.S. mail. If courier services are desired for the return receipt, the exporter or exporter's assignee must also submit a self-addressed courier service order which includes the recipient's billing code for such service.

(h) *Officials not to benefit.* No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the payment guarantee or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the payment guarantee if made with a corporation for its general benefit.

(i) *OMB control number assigned pursuant to the Paperwork Reduction Act.* The information requirements contained in this part (7 CFR part 1493, subpart D) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551–0037.

Signed this 25th day of June 1996 at Washington, DC.

Mary T. Chambliss,

Acting General Sales Manager, Foreign Agricultural Service and Acting Vice President, Commodity Credit Corporation.

[FR Doc. 96–16674 Filed 6–28–96; 8:45 am]

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Animal and Plant Health Inspection Service

9 CFR Parts 112 and 113

[Docket No. 94–046–2]

Viruses, Serums, Toxins, and Analogous Products; Marek's Disease Vaccines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the standard requirements for Marek's disease vaccines by including vaccines prepared from any of the three Marek's disease virus serotypes, and by defining the identity, safety, and efficacy requirements for vaccines prepared from each serotype or combinations of serotypes. We are also amending the requirements for labeling Marek's disease vaccines. These amendments are necessary based on the evolution of virus serotypes in the field, advances in the development of vaccines that are currently prepared to prevent the disease, and advances in the methods for evaluating such vaccines. The effect of this rule will be to save license applicants time by clarifying and codifying the guidelines developed for licensing these products over the past several years.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. David Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, 4700 River Road Unit 148, Riverdale, MD, 20737–1237, (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

Veterinary biologics are regulated under the Virus-Serum-Toxin Act of 1913, as amended by the Food Security Act of 1985 (21 U.S.C. 151–159; hereinafter referred to as the Act). In accordance with the Act, the Animal and Plant Health Inspection Service (APHIS) promulgates standard requirements that establish the purity, safety, potency, and efficacy requirements for these products.

The current standard requirements in § 113.330 (hereinafter referred to as the regulations) for licensing Marek's disease vaccines were promulgated at a time when only Serotype 3 Marek's disease vaccines were prepared. Also, the standard requirements did not include the evaluation of vaccine efficacy. Since that time, vaccines for Serotypes 1 and 2 have been developed, very virulent forms of the field virus have emerged, and other advances in our understanding of this virus have occurred. In response to these changes, APHIS has developed guidelines over the past several years for licensing these products.

On May 9, 1995, we published in the **Federal Register** (60 FR 24584–24587, Docket No. 94–046–1) a proposal to amend the standard requirement for Marek's disease vaccines to include Serotypes 1 and 2, and to codify appropriate efficacy standards and guidelines which license applicants have utilized.

We solicited comments concerning our proposal for 60 days ending July 10, 1995. We received two comments by that date. They were from an association of poultry producers and a poultry producer. Both commenters agreed with the need for the establishment of standard requirements for vaccines prepared from any of the three Marek's disease virus serotypes. Both commenters were in favor of the rule as proposed.

In preparing the final rule, APHIS observed that it is necessary to clarify the appropriate use of the group 4 controls in § 113.330, paragraphs (c)(1)(4) and (c)(4), to assess the severity of serotype 1 virus challenge in an immunogenicity test. The proposed rule specified that "at least" (i.e., "greater than or equal to") 20 percent of the birds in group 4 must have lesions for a valid test after serotype 1 virus challenge in birds vaccinated with a serotype 3 vaccine (see § 113.330, paragraph (c)(4)). For a satisfactory serotype 3 vaccine immunogenicity test, the proposed rule specified that 80 percent of vaccinated birds must be free of lesions (see § 113.330, paragraph (c)(5)). Stated another way, 20 percent of the vaccinated birds may have lesions for a satisfactory serotype 3 vaccine immunogenicity test.

When the severity of virulence of the challenge virus for a serotype 1 or 2 vaccine in group 4 controls is equal to that for serotype 3 vaccine, the result would be inconsistent with a claim to aid in the prevention of disease against a very virulent serotype 1 virus (see § 113.330(c)(5)). If the birds in group 4 show 20 percent or fewer lesions, the challenge virus is deemed not sufficiently virulent and the test is declared invalid.

Therefore, proposed § 113.330(c)(4) is amended to read "greater than" (in place of "at least") 20 percent of vaccinated birds in group 4 controls must have lesions for a valid immunogenicity test after challenge with more virulent serotype 1 virus. The amendment to proposed § 113.330(c)(4) should not hold the vaccine producer to a higher standard than was originally proposed. This is because the proposed rule specified that the group 4 control would not apply to the case of a serotype 3 vaccine challenge virus that requires that 20 per cent of the vaccinated birds have lesions (see § 113.330(c)(1)(iv)). Thus, the amendment to § 113.330(c)(4) is consistent with APHIS' original intent that immunogenicity tests for serotype 1 and 2 vaccines be based on challenge viruses more virulent than that for serotype 3 vaccines.

Therefore, based on the rationale set forth in the proposed rule and this document, we are adopting the provisions of the proposal as a final rule with the change discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The amendments to the standard requirements for Marek's disease vaccines codify guidelines developed for licensing these products over the past several years. These amendments affect all (currently a total of eight) manufacturers of Marek's disease vaccines, some of which may be small businesses. By clarifying licensing requirements for Marek's disease vaccines, the rule will save time during the application process and will not cause an adverse economic impact on industry.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 112

Animal biologics, Exports, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 112 and 113 are amended as follows:

PART 112—PACKAGING AND LABELING

1. The authority citation for part 112 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 112.7 is amended by adding paragraph (m) to read as follows:

§ 112.7 Special additional requirements.

* * * * *

(m) In the case of biological products containing Marek's disease virus, all labels shall specify the Marek's disease virus serotype(s) used in the product.

PART 113—STANDARD REQUIREMENTS

3. The authority citation for part 113 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.2(d).

4. Section 113.330 is revised to read as follows:

§ 113.330 Marek's Disease Vaccines.

Marek's disease vaccine shall be prepared from virus-bearing tissue culture cells. Only Master Seed Virus which has been established as pure, safe, and immunogenic shall be used for preparing the production seed virus for vaccine production.

(a) The Master Seed Virus shall meet the applicable requirements prescribed in § 113.300, and the requirements prescribed in this section. The identity test required in § 113.300(c) shall be conducted in a serotype-specific manner by a method acceptable to APHIS. Each lot of Master Seed Virus shall also be tested for pathogens by the chicken embryo inoculation test prescribed in § 113.37, except that, if the test is inconclusive because of a vaccine virus override, the chicken inoculation test prescribed in § 113.36 may be conducted and the virus judged accordingly.

(b) *Safety test.* The Master Seed Virus shall be nonpathogenic for chickens as determined by the following procedure:

(1) Specific pathogen free chickens or embryos, negative for Marek's disease virus antibodies, and from the same source, shall be isolated into the following groups:

(i) *Group 1.* At least 50 test subjects shall be inoculated with 10 times as much viable virus as will be contained in one dose of vaccine, by the route recommended for vaccination.

(ii) *Group 2.* At least 50 test subjects shall be injected with a very virulent Marek's disease virus provided or approved by APHIS, at a dosage level that will cause gross lesions of Marek's disease in at least 80 per cent of the chickens within 50 days.

(iii) *Group 3.* Fifty uninoculated controls. For *in ovo* studies, this group should receive a sham inoculation of diluent.

(iv) *Group 4.* For studies evaluating Serotype 1 Master Seed Viruses, a group of 50 uninoculated control chickens shall be housed in contact with the group 1 vaccinated chickens.

(2) At least 40 chickens in each group shall survive to 5 days of age. All chickens that die shall be necropsied and examined for lesions of Marek's disease and cause of death. The test shall be judged according to the following criteria:

(i) At 50 days of age, the remaining chickens in group 2 shall be killed and examined for gross lesions of Marek's disease. If at least 80 percent of this group do not develop Marek's disease, the test is inconclusive and may be repeated.

(ii) At 120 days of age, the remaining chickens in groups 1, 3, and 4 shall be weighed, killed, and necropsied. If less than 30 of the chickens in group 3 survive the 120 day period, or if any of the chickens in group 3 have gross lesions of Marek's disease at necropsy, the test is declared inconclusive. If less than 30 chickens in groups 1 and 4 survive the 120 day period; or if any of the chickens in groups 1 and 4 have gross lesions of Marek's disease at necropsy; or if the average body weight of the chickens in groups 1 or 4 is significantly (statistically) different from the average in group 3 at the end of the 120 days, the lot of Master Seed Virus is unsatisfactory.

(3) For tests involving *in ovo* inoculation, hatchability results shall also be reported for each group.

(c) *Immunogenicity.* Each lot of Master Seed Virus used for vaccine production shall be tested for immunogenicity at the highest passage level allowed for the product, and the virus dose to be used shall be established as follows:

(1) Specific pathogen free chickens or embryos, negative for Marek's disease antibodies, and from the same source, shall be isolated into the following groups:

(i) *Group 1.* A minimum of 35 test subjects shall be inoculated with the vaccine, using the recommended route, at 1 day of age for chicks or 18 days of embryonation for embryos. The dose used shall be established by 5 replicate virus titrations conducted by a cell culture system or other titration method acceptable to APHIS.

(ii) *Group 2.* A minimum of 35 nonvaccinated test subjects shall be held as challenge controls.

(iii) *Group 3.* A minimum of 25 nonvaccinated test subjects shall be held as nonchallenge controls.

(iv) *Group 4.* Except for studies evaluating vaccines which contain only a Serotype 3 virus as the Marek's disease fraction, a minimum of 35 chicks shall be vaccinated at 1 day of age with a licensed Serotype 3 vaccine, in order to document the severity of the very virulent challenge.

(2) At least 30 chickens in groups 1, 2, and 4, and at least 20 chickens in group 3, shall survive to 5 days of age. All chickens in groups 1, 2, and 4 shall be challenged at 5 days of age in the following manner:

(i) For studies evaluating vaccines which contain only a Serotype 3 virus as the Marek's disease fraction, groups 1 and 2 shall be inoculated with a standard virulent challenge virus provided or approved by APHIS.

(ii) For all other Marek's disease vaccines, groups 1, 2, and 4 shall be inoculated with a very virulent challenge virus provided or approved by APHIS.

(3) All chickens shall be observed until 7 weeks of age, necropsied, and examined for grossly observable lesions consistent with Marek's disease. All chickens dying before the end of the 7 week observation period shall be necropsied and evaluated for gross lesions of Marek's disease. Any chickens not so examined shall be scored as positive for Marek's disease.

(4) For a valid test, at least 80 percent of the chickens in group 2 must develop grossly observable lesions, none of the chickens in group 3 shall develop

grossly observable lesions, and (when included) greater than 20 percent of the chickens in group 4 must develop grossly observable lesions.

(5) For a valid test to be considered satisfactory, at least 80 percent of the chickens in group 1 must remain free of grossly observable lesions. The appropriate product claim resulting from a satisfactory test would be to aid in the prevention of Marek's disease, for vaccines containing only a Serotype 3 virus as the Marek's disease fraction, or to aid in the prevention of very virulent Marek's disease, for all other vaccines.

(d) *Test requirements for release.* Each serial and subserial shall meet the applicable requirements prescribed in § 113.300. The identity test required in § 113.300(c) shall be conducted in a serotype-specific manner by a method acceptable to APHIS. Final container samples of completed product shall also meet the requirements in paragraphs (d)(1), (2), and (3) of this section. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Purity test.* The chicken embryo inoculation test prescribed in § 113.37 shall be conducted, except that, if the test is inconclusive because of a vaccine virus override, the chicken inoculation test prescribed in § 113.36 may be conducted and the virus judged accordingly.

(2) *Safety test.* At least 25 one-day-old, specific pathogen free chickens shall be injected, by the subcutaneous route, with the equivalent of 10 chicken doses of virus (vaccine concentrated 10X). The chickens shall be observed each day for 21 days. Chickens dying during the period shall be examined, cause of death determined, and the results recorded.

(i) If at least 20 chickens do not survive the observation period, the test is inconclusive.

(ii) If lesions of any disease or cause of death are directly attributable to the vaccine, the serial is unsatisfactory.

(iii) If less than 20 chicks survive the observation period and there are no deaths or lesions attributable to the vaccine, the test may be repeated one time, *Provided*, that if the test is not repeated, the serial shall be declared unsatisfactory.

(3) *Potency test.* The samples shall be titrated using a cell culture system or other titration method acceptable to APHIS. For vaccines composed of more than one Marek's disease virus serotype, each fraction shall be titrated in a serotype-specific manner.

(i) Samples of desiccated vaccine shall be incubated at 37°C for 3 days before preparation for use in the potency test. Samples of desiccated or frozen vaccine shall be reconstituted in diluent according to the label recommendations, and held in an ice bath at 0°C to 4°C for 2 hours prior to use in the potency test.

(ii) For a serial or subserial to be eligible for release, each serotype contained in the vaccine shall have a virus titer per dose which is at least 3 times greater than the number of plaque forming units (pfu) used in the immunogenicity test prescribed in paragraph (c) of this section, but not less than 1000 pfu per dose.

(iii) When tested (without the pretest incubation of desiccated products) at any time within the expiration period, each serotype contained in the vaccine shall have a virus titer per dose which is at least 2 times the number of pfu used in the immunogenicity test, but not less than 750 pfu per dose.

Done in Washington, DC, this 25th day of June 1996.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–16710 Filed 6–28–96; 8:45 am]

BILLING CODE 3410-34-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3067–AB77

Agricultural Loan Loss Amortization

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC is removing its regulation governing agricultural loan loss amortization. This action is needed to eliminate the regulation when it becomes obsolete on January 1, 1999.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Robert W. Walsh, Manager, Planning and Program Development, (202) 898–6896, Division of Supervision; Susan van den Toorn, Counsel, (202) 898–8707, Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires each federal banking agency to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires each federal banking agency to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies.

As part of this review, the FDIC is removing 12 CFR part 324. This action is appropriate because the regulation implemented legislation which permitted agricultural banks to amortize qualified agricultural loan losses incurred only between 1984 and 1991 with a resulting amortization period not to exceed seven years. Consequently, this regulation will become obsolete at the end of the permissible amortization period. Therefore, the FDIC is eliminating the rule effective January 1, 1999. The Office of the Comptroller of the Currency (OCC), as part of its Regulation Review Program, has previously reviewed its regulation on Agricultural Loan Loss Amortization, 12 CFR part 35, and determined that the regulation becomes obsolete on January 1, 1999. The OCC issued a proposed rule on February 8, 1995 (60 FR 7467) and a final rule on May 24, 1995 (60 FR 27401) to remove its regulation on January 1, 1999. The Federal Reserve Board (FRB) has under consideration a similar proposal with regard to 12 CFR 208.15.

Title VIII of the Competitive Equality Banking Act of 1987 (Act), Pub. L. 100–86, 101 Stat. 635 (1987), added 12 U.S.C. 1823(j) in an attempt to alleviate some of the financial pressures then facing agricultural banks. In particular, 12 U.S.C. 1823(j) permits an agricultural bank to amortize over a period not to exceed seven years: (1) Any loss on a qualified agricultural loan that the bank would otherwise be required to show on its annual financial statement for any year between December 31, 1983, and January 1, 1992; and (2) any loss resulting from the reappraisal of property that the bank owned or acquired between January 1, 1983, and January 1, 1992, in connection with a qualified agricultural loan. The FDIC implemented this statutory provision by promulgating 12 CFR part 324 with a final rule published on November 2, 1987 (52 FR 41968). Pursuant to section 1823(j)(3) of the Act, the OCC and the FRB issued substantively similar regulations. *See*, 12 CFR part 35 and 12 CFR 208.15 respectively.

Because the statute requires that a loss occur on or before December 31, 1991, to qualify, and that the amortization period may not exceed seven years, the program becomes obsolete on January 1, 1999. Reflecting this fact, the FDIC's rule requires that loans under the program must be fully amortized by December 31, 1998. 12 CFR 324.3(b).

In light of the statutory termination of the agricultural loan loss amortization program, the FDIC is removing 12 CFR part 324, effective January 1, 1999, to obviate the need for any regulatory action in the future. Prior to that date, an annotation to part 324 in title 12 of the Code of Federal Regulations would indicate the effective date for removal of the part.

Exemption from Public Notice and Comment

The FDIC believes that it is unnecessary to seek public comment on this rule because the agricultural loan loss amortization program becomes obsolete by operation of law on January 1, 1999. Accordingly, the rule is being adopted in final, rather than proposed, form with a protracted effective date that will coincide with cessation of the statutory program.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the FDIC hereby certifies that this regulation will not have a significant economic impact on a substantial number of small entities because only three institutions are affected. Accordingly, a regulatory flexibility analysis is not required. This regulation has no material impact on insured depository institutions and state nonmember banks, regardless of size.

Paperwork Reduction Act

The collection of information contained in 12 CFR 324.7 has been approved by the Office of Management and Budget (OMB) under OMB Control Number 3064–0091. This final rule will remove as unnecessary, for the reasons set forth in the preamble, that collection of information effective January 1, 1999.

List of Subjects in 12 CFR Part 324

Accounting, Agriculture, Banks, Banking, State nonmember banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, and under the authority of 12 U.S.C. 1823(j), chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 324—[REMOVED]

1. Part 324 is removed effective January 1, 1999.

By Order of the Board of Directors.

Dated at Washington, D.C., this 17th day of June, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96–16724 Filed 6–28–96; 8:45 am]

BILLING CODE 6714-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ANM–004]

Amendment of Class E Airspace; Jackson, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Jackson, Wyoming, Class E airspace by providing additional controlled airspace to accommodate a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to the Jackson Hole Airport. A correction is made herein clarifying that the intent of this rulemaking action is to amend existing Class E airspace rather than establish Class E airspace as was stated in the notice of proposed rulemaking action. A minor correction is also being made to the geographic position coordinates of the Jackson Hole Airport.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: James C. Frala, Operations Branch, ANM–532.4, Federal Aviation Administration, Docket No. 96–ANM–004, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Jackson, Wyoming, by providing additional controlled airspace to accommodate a new GPS SIAP to the Jackson Hole Airport (61 FR 17606). A correction is made herein clarifying that the intent of this action is to amend existing Class E airspace rather than establish Class E airspace as was stated in the notice of proposed rulemaking action. A minor correction is also being made to the geographical position coordinates of the Jackson Hole Airport.

Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations amends Class E airspace at Jackson, Wyoming. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WY E5 Jackson, WY [Revised]

Jackson Hole Airport, WY
(lat. 43°36'24"N, long. 110°44'17"W)
Jackson VOR/DME
(lat. 43°36'30"N, long 110°44'05"W)
Dunoir VOR/DME
(lat. 43°49'42"N, long. 110°20'06"W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Jackson Hole Airport, and within 4.4 miles west and 8.3 miles east of the Jackson VOR/DME 200° radial extending from the VOR/DME to 21.4 miles south of the VOR/DME, and within 2.2 mile each side of the Jackson VOR/DME 020° radial extending from the VOR/DME to 10.5 miles north of the VOR/DME; that airspace extending upward from 1,200 feet above the surface within 7 miles west and 10.5 miles east of the Jackson VOR/DME 020° radial extending from the VOR/DME to 33.5 miles north of the VOR/DME, and within 4.3 miles each side of the Jackson VOR/DME 107° 33.5 radial extending from the VOR/DME to 13.1 miles east of the VOR/DME, and within 5.3 miles north and 7.9 miles south of the Dunoir VOR/DME 102° and 282° radials extending from 7 miles east to 18.2 miles west of the Dunior VOR/DME, and that airspace south of the Jackson VOR/DME bounded on the east by the southwest edge of V–328, on the south by lat. 42°30'00"N, and on the west by the southeast edge of V–465; excluding the Big Piney, WY, Class E airspace area.

* * * * *

Issued in Seattle, Washington, on June 12, 1996.

Richard E. Prang,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–16734 Filed 6–28–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ANM–008]

Amendment of Class E Airspace; La Grande, Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the La Grande, Oregon, Class E airspace to accommodate a new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to the La Grande/Union County Airport. Additionally, this action corrects a typographical error of an airway referenced in the legal description and corrects the spelling of the name of the Class E airspace area that is excluded from this action.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: James C. Frala, Operations Branch, ANM–532.4, Federal Aviation Administration, Docket No. 96–ANM–008, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

On May 2, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at La Grande, Oregon, to accommodate a new GPS SIAP to the La Grande/Union County Airport (61 FR 19593). In the proposed legal description of the Class E airspace, there was a typographical error to an airway and the name of the Class E airspace area that is excluded from this action was misspelled. Those errors are corrected herein.

Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations amends Class E airspace at La Grande, Oregon. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM OR E5 La Grande, OR

La Grande/Union County Airport, OR
(Lat. 45°17'25"N, long. 118°00'26"W)
Walla Walla VOR/DME
(Lat. 45°05'13"N, long. 118°17'33"W)

That airspace extending upward from 700 feet above the surface bounded on the north by a line beginning at lat. 45°38'59"N, long. 118°02'04"W, extending eastwardly to lat. 45°37'00"N, long. 117°44'34"W, on the east by a line extending to lat. 45°15'29"N, long. 117°49'04"W, on the south by a line extending to lat. 45°17'29"N, long. 118°07'04"W, on the west by a line extending to the point of beginning, and within a 4.3-mile radius of the La Grande/Union County Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 45°38'59"N, long. 118°02'04"W, extending northwest along V–357 to the Walla Walla VOR/DME 16.6-mile radius, thence north along the Walla Walla VOR/DME 16.6-mile radius until intercepting lat. 46°00'00"N, thence eastward along lat. 46°00'00"N, to long. 117°02'00"W, thence south along long. 117°02'00"W until intercepting V–298, thence westward along V–298 to lat. 45°23'30"N, long. 117°47'10"W, to lat. 45°37'00"N, long. 117°44'34"W, thence to the point of beginning, and that airspace bounded on the north by the southwest edge of V–298, on the east by the Boise, ID, Enroute Domestic Airspace Area, on the south by the north edge of V–121, on the west by the east edge of V–182–357, excluding that airspace within Federal airways and the Baker City, OR, Class E airspace area.

* * * * *

Issued in Seattle, Washington, on June 19, 1996.

Richard E. Prang,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–16733 Filed 6–28–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ACE–4]

Amendment to Class E Airspace; Abilene, KS, and Independence, KS

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Abilene Municipal Airport, Abilene, KS, and Independence Municipal Airport, Independence, KS, to accommodate a new Standard Instrument Approach Procedure (SIAP) at the two airports. This action will provide for additional controlled airspace necessary for aircraft executing the SIAP utilizing the Global Positioning System (GPS) at Abilene Municipal Airport, and for aircraft executing the Instrument Landing System (ILS) procedure at Independence Municipal Airport. This will also correct a minor error in geographical coordinates of the above listed airports.

EFFECTIVE DATE: 0901 UTC August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO, 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On April 9, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying the Class E airspace area at Abilene, KS and Independence, KS. (61 FR 15742). The proposed action would provide additional controlled airspace to accommodate the new SIAP to Abilene KS, and Independence, KS.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraphs 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the Class E airspace area at Abilene, KS and Independence, KS, by providing additional controlled airspace for aircraft executing the SIAP's to the airports.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Abilene, KS

Abilene Municipal Airport, KS.
(Lat. 38°54'15" N., long 97°14'09" W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Abilene Municipal Airport and within 2.6 miles each side of the 180° bearing from the Abilene Municipal Airport extending from the 6.3-mile radius to 7 miles south of the airport.

* * * * *

* * * * *

ACE KS E5 Independence, KS

Independence Municipal Airport, KS
(Lat. 37°09'32" N., long. 95°46'44" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Independence Municipal Airport.

* * * * *

Issued in Kansas City, MO on June 11, 1996.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 96–16732 Filed 6–28–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 12, 102 and 134

[T.D. 96–48]

RIN 1515–AB34

Rules for Determining the Country of Origin of a Good for Purposes of Annex 311 of the North American Free Trade Agreement; Corrections

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; corrections.

SUMMARY: This document makes corrections to the document published in the **Federal Register** which set forth final amendments to the Customs Regulations regarding the rules for determining when the country of origin of a good is one of the parties to the North American Free Trade Agreement (NAFTA) as required by Annex 311 of the NAFTA.

EFFECTIVE DATE: These corrections are effective August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Sandra L. Gethers, Office of Regulations and Rulings (202–482–6980).

SUPPLEMENTARY INFORMATION:

Background

On June 6, 1996, Customs published in the **Federal Register** (61 FR 28932) as T.D. 96–48 a document which adopted as a final rule, with some modifications, interim amendments to the Customs Regulations that established the rules for determining when the country of origin of a good is one of the parties to the North American Free Trade Agreement (NAFTA) as required by Annex 311 of the NAFTA. Those final NAFTA Marking Rules apply only to all goods imported from Canada or Mexico other than textile and apparel products, and do not apply to trade with other countries. The June 6, 1996, notice provided for an August 5, 1996, effective date for the final regulations.

This document corrects some errors published in T.D. 96–48.

Several errors involved the Background discussion under the **SUPPLEMENTARY INFORMATION** portion of the document. In the discussion of the effective date of the final regulations in relation to previously-published final regulations regarding country of origin rules for textile products, reference was inadvertently made to July 1, 1996, thus creating some confusion since the **EFFECTIVE DATE** portion of T.D. 96–48 specified August 5, 1996. In addition, four Harmonized Tariff Schedule of the United States (HTSUS) heading or subheading references were inadvertently omitted from the list of conforming changes made to the regulatory texts to reflect the 1996 version of the HTSUS.

Two errors also appeared in the final regulatory texts in the table under § 102.20 which sets forth the specific rules by tariff classification. First, in the second tariff shift rule for subheading 2836.99, the words "other than to bismuth carbonate" were omitted, with the result that the rule as published overlaps with the first tariff shift rule for that subheading and thus does not properly reflect the changes made in the 1996 HTSUS. Second, the final regulatory texts inadvertently failed to implement a proposal, set forth in a document published in the **Federal Register** on May 5, 1995 (60 FR 22312), to remove the Note to Section XVI which, as stated in that May 5, 1995, document, would no longer be necessary in view of a proposed change to § 102.17(e) that was adopted in the final regulatory texts.

Corrections of Publication

Accordingly, the document published in the **Federal Register** as T.D. 96–48 on June 6, 1996 (61 FR 28932) is corrected as set forth below.

Corrections to the Background Section

1. On page 28934, in the first column in the second full paragraph, in the second sentence, the words "will take effect on July 1, 1996, when" are corrected to read "will not take effect before".

2. On page 28934, in the third column under the heading "Changes to Conform to 1996 HTSUS", after the colon in the third sentence, the reference "1517.90," is added after "0901.90,".

3. On page 28935, in the first column, the references "8545.11, 8547.90, 8548," are added at the end of the first line after "8543.40–8543.89,".

Corrections to the Final Regulations

4. On page 28961, in the "Tariff shift and/or other requirements" column opposite the "HTSUS" column listing for 2836.99, in the second tariff shift rule, the words "other than to bismuth carbonate" are added after the words "A change to subheading 2836.99".

5. On page 28971, the Note to Section XVI is removed.

Dated: June 26, 1996.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 96–16743 Filed 6–28–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 96F–0052]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the additional safe use of dimethyldibenzylidene sorbitol as a clarifying agent for propylene homopolymers and high-propylene copolymer articles intended for contact with food. This action is in response to a petition filed by Milliken & Co.

DATES: Effective July 1, 1996; written objections and requests for a hearing by July 31, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 26, 1996 (61 FR 7111), FDA announced that a food additive petition (FAP 6B4495) had been filed by Milliken & Co., c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) to provide for the additional safe use of dimethyldibenzylidene sorbitol as a clarifying agent for olefin polymers complying with § 177.1520 (21 CFR 177.1520), items 1.1, 3.1, and 3.2, for contact with food under condition of use A, described in Table 2 of § 176.170(c) of this chapter.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe, that the additive will have the intended technical effect, and that the regulations in § 178.3295 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before July 31, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.3295 is amended in the table by revising the entry for "Dimethyldibenzylidene sorbitol" to read as follows:

§ 178.3295 Clarifying agents for polymers.

* * * * *

Substances	Limitations
. . .	. . .
Dimethyldibenzylidene sorbitol (CAS Reg. No 135861–56–2).	For use only as a clarifying agent at a level not to exceed 0.4 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, items 1.1, 3.1, and 3.2, where the co-polymers complying with items 3.1 and 3.2 contain not less than 85 weight percent of polymer units derived from polypropylene. The finished polymers shall be used in contact with food under conditions of use A through H described in Table 2 of § 176.170(c) of this chapter.
. . .	. . .

Dated: June 12, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–16662 Filed 6–28–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Parts 2509, 2520 and 2550

RIN 1210–AA51

Removal of Interpretive Bulletins and Regulations Relating to ERISA

AGENCY: Pension and Welfare Benefits Administration, DOL.

ACTION: Final rule.

SUMMARY: This rule removes from the Code of Federal Regulations certain interpretive bulletins and regulations (or portions thereof) under the Employee Retirement Income Security Act of 1974 (ERISA), that the Department of Labor (the Department) believes are obsolete (collectively, the obsolete regulations). The obsolete regulations generally provided transitional relief for plan sponsors, plan administrators, and others subject to the requirements of title I of ERISA, in coming into compliance with ERISA's requirements in the first several years following ERISA's enactment in 1974. Because the election periods or dates of applicability under these rules have expired, the Department believes that the regulations are no longer needed. In other instances, the obsolete regulations are unnecessary because they merely provide notice of a rescission or withdrawal of prior guidance or regulations, or were rendered ineffective by a subsequent Supreme Court decision.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Katherine D. Lewis, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Rm. N–5669, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (telephone (202) 219–7461), or Vicki Shteir-Dunn, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Rm. N–4611, 200 Constitution Ave., N.W., Washington, D.C. 20210 telephone (202) 219–8610).

SUPPLEMENTARY INFORMATION: In accordance with the President's Executive Order No. 12866 of September 1993, "Regulatory Planning and Review," and the President's directive of March 4, 1995, "Regulatory Reinvention Initiative," the Department has undertaken to identify and eliminate regulations which are no longer needed. Pursuant to a review of regulations under the Employee Retirement Income Security Act of 1974 (ERISA), the Department identified 28 interpretive bulletins and regulations (or portions thereof) which it believes to be obsolete. Nearly all of these interpretive bulletins and regulations were issued over fifteen years ago. This rule removes these interpretive bulletins, regulations and paragraphs of regulations from the Code of Federal Regulations, and makes conforming amendments where necessary to accommodate the removal of identified provisions. In order to ensure that members of the public had the opportunity to comment, the Department initially published this rule in the **Federal Register** (61 FR 14690, April 3, 1996) as a notice of proposed rulemaking. The Department received one public comment, which was fully supportive of the proposal.

The rule removes the obsolete regulations prospectively, as of the date of publication of this final rule, and has no effect on their legal effectiveness prior to that date. Following is a brief description of each of the obsolete interpretive bulletins and regulations (or portions thereof) removed by the Department. All of these items were in title 29 of the Code of Federal Regulations.

I. Part 2509—Interpretive Bulletins Relating to the Employee Retirement Income Security Act of 1974

This rule removes interpretive bulletins 75–1, 75–7, 76–2 and 76–3 from subchapter A, part 2509 of the Code of Federal Regulations (29 CFR §§ 2509.75–1, 2509.75–7, 2509.76–2 and 2509.76–3). In addition, the rule removes paragraph (b) of interpretive bulletin 75–2 (29 CFR 2509.75–2).

Interpretive bulletin 75–1 outlined and clarified section 414(c)(4) of ERISA, which provided that sections 406 and 407(a) of ERISA (relating to prohibited transactions) are not applicable to the provision of certain services between a plan and a party in interest before June 30, 1977, if certain conditions described in that section are met. Interpretive bulletin 75–7 supplemented interpretive bulletin 75–1 and provided examples of its application. Interpretive bulletins 76–2 and 76–3 merely gave notice of the rescission or withdrawal of earlier guidance relating to the definition of "seasonal industries," a matter now under the jurisdiction of the Internal Revenue Service pursuant to Reorganization Plan No. 4 of 1978. Paragraph (b) of interpretive bulletin 75–2 took the position that consideration paid for a contract or policy of insurance issued to a plan would not be considered plan assets if placed in the general account of the issuing insurance company, and therefore could not give rise to

prohibited transactions. This interpretation may no longer be relied on as a result of the December 13, 1993 Supreme Court decision in *John Hancock Mutual Life Insurance Co.* v. *Harris Trust & Savings Bank*, 114 S. Ct. 517 (1993), and therefore, has no force or effect.

II. Part 2520—Rules and Regulations for Reporting and Disclosure

The rule removes ten regulations and provisions of two other regulations from subchapter C, part 2520 of the Code of Federal Regulations (29 CFR Part 2520), pertaining to reporting and disclosure under ERISA.

From subpart C of Part 2520, the rule removes § 103–6(b)(1)(ii), which defined the current value of plan assets for purposes of schedules of reportable transactions for plan years beginning in 1975. The remainder of § 103–6(b)(1) is revised to eliminate the reference to § 103–6(b)(1)(ii), and to otherwise conform to this change. The rule also removes § 103–7. This regulation, which provided special accounting rules for plans filing the annual report for plan years beginning in 1975, applied only with respect to plan years beginning in 1975 and not to any subsequent plan years.

The rule removes the following seven regulations from subpart D of part 2520. The Department's regulation at § 104–2 postponed the effective date of annual reporting requirements for non-calendar year plans and extended the reporting requirements under prior legislation for such plans until the end of the first plan year beginning after January 1, 1975. The Department's regulation at § 104–3 deferred certain reporting and disclosure requirements for welfare plans, and provided an alternative method of compliance for pension plans, until May 30, 1976. The Department's regulation at § 104–5 deferred, until no later than November 16, 1977, the application of certain reporting and disclosure requirements relating to the summary plan description for welfare plans. The Department's regulation at § 104–6 provided an alternative method of compliance for pension plans which elected to defer the summary plan description reporting and disclosure requirements. The availability of the deferral expired on November 16, 1977. The Department's regulation at § 104–28 provided an extension of time for filing and disclosure of the initial summary plan description for certain employee benefit plans that became subject to part 1 of title I of ERISA on or before July 17, 1977. The Department's regulation at § 104–45 provided a temporary exemption and alternative method of compliance with respect to the requirement to report insurance fees and commissions for insured plans with fewer than 100 participants. The regulation applied only to annual reports required to be filed for the plan years beginning in 1975 and 1976.

From subpart F of part 2520, the rule removes and reserves certain paragraphs of § 104b–2 and § 104b–4, and removes §§ 104b–5 and 104b–12.

With respect to § 104b–2, the rule revises paragraphs (b)(1) and (b)(2), and removes and reserves paragraphs (c), (d), (e), (f) and (h). Paragraphs (b)(1) and (b)(2) establish the periods within which updated summary plan descriptions must be furnished to participants and beneficiaries receiving benefits under the plan (which differ depending on whether there have been amendments to the plan). In both cases, the periods for providing an updated summary plan description are no later than 210 days after the end of the plan year within which occurs the later of a date certain (November 16, 1983 or November 16, 1987) or a period of years after the last date a change in the information required to be disclosed by section 102 of ERISA or § 102–3 would have been reflected in the most recently distributed summary plan description. The rule revises paragraphs (b)(1) and (b)(2) to eliminate the references to the dates certain.

Paragraph (c) of § 104b–2 pertained to plans making elections under §§ 2520.104–5 and 2520.104–6, for which the election periods expired in 1977. Paragraph (d) of the regulation provided an alternative method of compliance for plans using a Form EBS–1 with a print date of April 1975 as the summary plan description. The Form EBS–1 was eliminated in 1976. Paragraph (e) of the regulation provided an alternative method of compliance with ERISA's summary plan description requirements for plans which filed and disclosed an initial summary plan description on or before May 30, 1976, in reliance upon earlier guidance of the Department. The availability of the alternative method of compliance was conditioned on the disclosure by such plans, prior to November 16, 1977, of a statement of ERISA rights which complied with § 2520.102–3(t). Paragraph (f) of the regulation provided an alternative method of compliance for plans which were not described in paragraphs (d) or (e) and which met certain requirements. The alternative method of compliance under paragraph (f) expired on November 16, 1977. Paragraph (h) of the regulation merely referred to §§ 2520.104–5 and 2520.104–6, both of which authorized alternative methods of compliance which expired on November 16, 1977.

With respect to § 104b–4, the rule removes paragraph (d). This paragraph required certain plans to furnish information to certain classes of participants or beneficiaries by November 16, 1977.

The rule also removes § 104b–5 and § 104b–12. The Department's regulation at § 104b–5 created a new disclosure document, the "ERISA Notice", for use as an interim disclosure document by welfare and pension benefit plans electing to use the deferral until November 16, 1977 provided under §§ 2520.104–5 and 2520.104–6. The Department's regulation at § 104b–12 provided multiemployer plans lacking records of covered participants with optional methods of distributing the first summary annual report to participants covered under the plan. The regulation generally applied to reports distributed before February 15, 1977.

III. Part 2550—Rules and Regulations for Fiduciary Responsibility

The rule removes eight regulations from subchapter F, part 2550 of title 29 of the Code of Federal Regulations, pertaining to fiduciary responsibility under ERISA. These include §§ 407a–3, 407a–4, 407c–3, 414b–1, 414c–1, 414c–2, 414c–3 and 414c–4, all of which provided transitional relief for the first several years following ERISA's enactment.

The Department's regulation at § 407a–3 provided plan administrators with prospective guidance clarifying the meaning of section 407(a)(3)(B) of ERISA. This guidance assisted plan administrators in determining whether their plans held qualifying employer securities and/or qualifying employer real property the fair market value of which, on any date between January 1, 1975 and December 31, 1984, did not exceed ten percent of the fair market value of the plan's assets, and thus would not be subject to the ten percent holding limitation contained in section 407(a)(3)(A) of ERISA. The period for which plan administrators needed such prospective guidance was from January 1, 1975 until December 31, 1984. Accordingly, the need for such guidance no longer exists.

The Department's regulation at § 407a–4 clarified the requirements of section 407(a)(4) of ERISA, which required that plans divest, by December 31, 1979, 50 percent of the qualifying employer securities and qualifying real property which they would be required to divest before January 1, 1985, under section 407(a)(3) or 407(c) of ERISA. Accordingly, the transactions addressed by the regulation were transactions that were required to occur on or before December 31, 1979.

The Department's regulation at § 407c–3 described an election plans could make, prior to January 1, 1976, to utilize an alternate method of calculating the value of employer securities for purposes of satisfying the limitations of section 407(a)(3) of ERISA on the holding of such securities or real property. The regulation also provided that after making such an election, and before January 1, 1985, the plan could not acquire any real property.

The Department's regulation at § 414b–1 provided guidance to plans applying to the Department of Labor, in accordance with section 414(b)(1) of ERISA, for postponement, until no later than January 1, 1976, of the effective date of certain provisions of ERISA. Applications for such postponement generally had to be submitted to the Department on or before December 31, 1974.

The Department's regulations at §§ 414c–1, 414c–2, and 414c–3 provided guidance concerning transitional rules relating to certain types of transactions prior to June 30, 1984, after which the rules became inapplicable. Specifically, § 414c–1 related to certain loans or other extensions of credit prior to June 30, 1984; § 414c–2 related to certain leases or joint uses of property prior to June 30, 1984; and § 414c–3 related to certain sales, exchanges, or other dispositions of property prior to June 30, 1984. The Department's regulation at § 414c–4 provided guidance regarding a transitional rule relating to the provision of certain services until June 30, 1977, after which the rule became inapplicable.

Executive Order 12866

The Department has determined that this regulatory action is not a "significant rule" within the meaning of Executive Order 12866 concerning Federal regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et. seq., requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions; under ERISA, a "small plan" is one with less than 100 participants. ERISA section 104(a)(2), 29 U.S.C. 1024(a)(2).

The Assistant Secretary of the Pension and Welfare Benefits Administration certifies that the modifications set forth in this rule will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are as follows:

(1) The rule merely removes obsolete or unnecessary interpretive bulletins and regulations (or portions thereof) from the Code of Federal Regulations, and, where appropriate, makes conforming amendments to accommodate such removal; and

(2) The rule does not impose any new requirements on any entity.

Paperwork Reduction Act

This rule is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it contains no "collection of information" as defined in 44 U.S.C. 3502(3).

List of Subjects

29 CFR Part 2509

Employee benefit plans, Pensions.

29 CFR Part 2520

Employee benefit plans, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2550

Employee benefit plans, Pensions, Prohibited transactions.

Authority

For the reasons described in the preamble, parts 2509, 2520, and 2550 of chapter XXV of title 29 of the Code of Federal Regulations, are amended as set forth below:

PART 2509—INTERPRETIVE BULLETINS RELATING TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

1. The authority citation for part 2509 is revised to read as follows:

Authority: 29 U.S.C. 1135. Sections 2509.75–10 and 2509.75–2 issued under 29 U.S.C. 1052, 1053, 1054. Secretary of Labor's Order No. 1–87 (52 FR 13139).

§ 2509.75–1 [Removed]

2. Section 2509.75–1 is removed.

§ 2509.75–2 [Amended]

3. Section 2509.75–2 is amended by removing and reserving paragraph (b).

§§ 2509.75–7, 2509.76–2, 2509.76–3 [Removed]

4. Sections 2509.75–7, 2509.76–2 and 2509.76–3 are removed.

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

5. The authority citation for part 2520 continues to read as follows:

Authority: Secs. 101, 102, 103, 104, 105, 109, 110, 111(b)(2), 111(c), and 505, Pub. L. 93–406, 88 Stat. 840–52 and 894 (29 U.S.C. 1021–25, 1029–31, and 1135); Secretary of Labor's Order No. 27–74, 13–76, 1–87, and Labor Management Services Administration Order No. 2–6.

Subpart C—[Amended]

6. Section 2520.103–6 is amended by revising paragraph (b)(1) to read as follows:

§ 2520.103–6 Definition of reportable transaction for Annual Return/Report.

* * * * *

(b) *Definitions.* (1) Except as provided in paragraphs (c)(2) and (d)(1)(vi) of this section (relating to assets acquired or disposed of during the plan year), "current value" shall mean the current value, as defined in section 3(26) of the Act, of plan assets as of the beginning of the plan year, or the end of the previous plan year.

* * * * *

§ 2520.103–7 [Removed]

7. Section 2520.103–7 is removed.

Subpart D—[Amended]

§§ 2520.104–2, 2520.104–3, 2520.104–5, 2520.104–6, 2520.104–28, 2520.104–45 [Removed and Reserved]

8. Sections 2520.104–2, 2520.104–3, 2520.104–5, 2520.104–6, 2520.104–28, and 2520.104–45 are removed and reserved.

Subpart F—[Amended]

9. Section 2520.104b–2 is amended by revising paragraph (b) to read as follows:

§ 2520.104b–2 Summary plan description.

* * * * *

(b) *Periods for furnishing updated summary plan description.* (1) For

purposes of the requirement to furnish the updated summary plan description to each participant and each beneficiary receiving benefits under the plan (other than beneficiaries receiving benefits under a welfare plan) required by section 104(b)(1) of the Act, the administrator of an employee benefit plan shall furnish such updated summary plan description no later than 210 days following the end of the plan year which occurs five years after the last date a change in the information required to be disclosed by section 102 or 29 CFR 2520.102–3 would have been reflected in the most recently distributed summary plan description (or updated summary plan description) as described in section 102 of the Act.

(2) In the case of a plan to which no amendments have been made between the end of the time period covered by the last distributed summary plan description (or updated summary plan description), described in section 102 of the Act, and the next occurring applicable date described in paragraph (b)(1) of this section, for purposes of the requirement to furnish the updated summary plan description to each participant, and to each beneficiary receiving benefits under the plan (other than beneficiaries receiving benefits under a welfare plan), required by section 104(b)(1) of the Act, the administrator of an employee benefit plan shall furnish such updated summary plan description no later than 210 days following the end of the plan year which occurs ten years after the last date a change in the information required to be disclosed by section 102 or 29 CFR 2520.102–3 would have been reflected in the most recently distributed summary plan description (or updated summary plan description), as described in section 102 of the Act.

* * * * *

§ 2520.104b–2 [Amended]

10. Paragraphs (c), (d), (e), (f) and (h) of § 2520.104b–2 are removed and reserved.

§ 2520.104b–4 [Amended]

11. Paragraph (d) of § 2520.104b–4 is removed.

§§ 2520.104b–5—2520.104b–12 [Removed]

12. Sections 2520.104b–5 and 2520.104b–12 are removed.

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

13. The authority citation for part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135. Section 2550.401b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978), effective December 31, 1978 (44 FR 1065, Jan. 3, 1979), 3 CFR, 1978 Comp., p. 332. Section 2550.404c–1 also issued under 29 U.S.C. 1104. Section 2550.407c–3 also issued under 29 U.S.C. 1107. Section 2550.408b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978), effective December 31, 1978 (44 FR 1065, Jan. 3, 1979), 3 CFR, 1978 Comp., p. 332, and 29 U.S.C. 1108(b)(1). Section 2550.412–1 also issued under 29 U.S.C. 1112. Secretary of Labor's Order No. 1–87 (52 FR 13139).

§§ 2550.407a–3, 2550.407a–4, 2550.407c–3, 2550.414b–1, 2550.414c–1, 2550.414c–2, 2550.414c–3, 2550.414c–4 [Removed]

14. Sections 2550.407a–3, 2550.407a–4, 2550.407c–3, 2550.414b–1, 2550.414c–1, 2550.414c–2, 2550.414c–3, 2550.414c–4 are removed.

Signed at Washington, D.C., this 25th day of June, 1996.

Olena Berg,

Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.

[FR Doc. 96–16594 Filed 6–28–96; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AI32

Reestablishing Rulemaking Procedures; Public Participation in Regulatory Development

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: In a document published in the **Federal Register** on March 20, 1996 (61 FR 11309), the Department of Veterans Affairs (VA) amended 38 CFR Part 1 by promulgating a final rule that included the elimination of § 1.12. The provisions of § 1.12 set forth a policy statement concerning prior notice-and-comment for rulemaking. Judicial review of VA's action eliminating § 1.12 has been sought on the basis that such action did not comply with notice-and-comment provisions. While we believe such a position is not legally correct, we are by this document reestablishing § 1.12, and, in a companion document published in the Proposed Rules section of this issue of the **Federal Register**, proposing to eliminate § 1.12. This will provide interested parties an opportunity to provide comments concerning this matter, thus mooting the pending litigation.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas O. Gessel, Director, Office of Regulations Management (02D), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8605.

SUPPLEMENTARY INFORMATION: This final rule merely concerns VA policy. Accordingly, in accordance with the provisions of 5 U.S.C. 553, it is promulgated without notice-and-comment and without a delayed effective date.

No notice of proposed rulemaking was required in connection with this rulemaking action. Accordingly, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601–612). Nevertheless, the Secretary of Veterans Affairs certifies that this rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This rule will not have a direct effect on small entities.

There is no Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Investigations, Parking, Penalties, Postal Service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Approved: June 21, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is amended as set forth below:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. An undesignated center heading and section 1.12 are added to read as follows:

Public Participation

§ 1.12 Public participation in regulatory development.

It is the policy of the Department of Veterans Affairs to afford the public general notice, published in the **Federal Register**, of proposed regulatory development, and an opportunity to participate in the regulatory development in accordance with the provisions of the Administrative Procedure Act (APA). All written comments received will be available for public inspection. Exceptions to the policy of permitting public participation in the regulatory development may be authorized by the Secretary or one of the Secretary's deputies if adequately justified and concurred in by the General Counsel. Such exceptions, unless public comment is required by statute, may be recommended when:

(a) The proposed regulations consist of interpretative rules, general statements of policy, or rules of Department of Veterans Affairs organization, procedure, or practice, or

(b) When the Department of Veterans Affairs for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(Authority: 38 U.S.C. 501)

[FR Doc. 96–16642 Filed 6–28–96; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[OPPTS–00191; FRL–5379–8]

Technical Amendments to OMB Approval Numbers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the list of OMB control numbers which are issued under the Paperwork Reduction Act for regulations with information collection requirements. This is a technical amendment which only updates the table to include any approvals that have published in the **Federal Register** since July 1, 1995, or to delete any approval that have been terminated since that date.

DATES: The effective date of this rule is July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Susan H. Hazen, Director, Environmental Assistance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, e-mail address: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This document will consolidate the OMB control numbers for various regulations issued under the Toxic Substances Control Act and section 313 of the Emergency Planning and Community Right-to-Know Act that have published since July 1, 1995.

The information collection requests and the OMB control numbers included in this technical amendment were previously subject to public notice and comment prior to OMB approval. As such, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 533) to issue this technical amendment without prior notice and comment.

List of Subjects in 40 CFR Part 9

Environmental protection, Information collection request, Reporting and recordkeeping requirements.

Dated: June 27, 1996.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I, part 9 is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

§ 9.1 [Amended]

2. In § 9.1 the table is amended as follows:

a. By adding the following entries in ascending section number order, under the headings "Toxic Chemical Release Reporting: Community Right-to-Know," and "Significant New Uses of Chemical Substances," and adding an entry for part 745 under a new heading "Lead-Based Paint Poisioning Prevention in Certain Residential Structures" to read as follows:

40 CFR citation	OMB control No.
Toxic Chemical Release Reporting: Community Right-to-Know	
. . . . .	
part 372, subpart A	2070-0093 and 2070-0143
372.22	2070-0093 and 2070-0143
372.25	2070-0093
372.27	2070-0143
372.30	2070-0093 and 2070-0143
372.38	2070-0093 and 2070-0143
part 372, subpart C	2070-0093 and 2070-0143
part 372, subpart D	2070-0093 and 2070-0143
372.85	2070-0093
372.95	2070-0143
. . . . .	
Significant New Uses of Chemical Substances	
. . . . .	
721.562	2070-0012
. . . . .	
721.639	2070-0012
. . . . .	
721.1193	2070-0012
. . . . .	
721.1643	2070-0012
. . . . .	
721.2089	2070-0012
. . . . .	
721.2815	2070-0012
. . . . .	
721.3152	2070-0012
. . . . .	
721.3486	2070-0012
. . . . .	
721.3760	2070-0012
. . . . .	
721.4463	2070-0012
721.4466	2070-0012
. . . . .	
721.4473	2070-0012
. . . . .	
721.5192	2070-0012
. . . . .	
721.5278	2070-0012
721.5282	2070-0012
. . . . .	
721.5763	2070-0012
721.5769	2070-0012
. . . . .	
721.5867	2070-0012
. . . . .	
721.6110	2070-0012

40 CFR citation	OMB control No.
* * * * *	
721.7046	2070-0012
* * * * *	
721.8090	2070-0012
* * * * *	
721.9526	2070-0012
* * * * *	
721.9656	2070-0012
721.9658	2070-0012
* * * * *	
721.9692	2070-0012
* * * * *	
Lead-Based Paint Poisoning Prevention in Certain Residential Structures	
part 745, subpart F	2070-0151

* * * * *

b. Under the heading "Reporting and Recordkeeping Requirements" by removing the entire entry for "704.30."

[FR Doc. 96–16818 Filed 6–28–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Acting Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. The tables published under the authority of § 65.4 are amended as follows:

§ 65.4 [Amended]

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa (FEMA Docket No. 7147).	City of Scottsdale	June 1, 1995, June 8, 1995, *Scottsdale Progress.*	The Honorable Herbert Drinkwater, Mayor, City of Scottsdale, P.O. Box 1000, Scottsdale, Arizona 85252–1000.	May 5, 1995	045012
Arkansas:					
Benton (FEMA Docket No. 7171).	Unincorporated areas.	Dec. 1, 1995, Dec. 8, 1995, *Benton County Daily Record.*	The Honorable Bruce Rutherford, Benton County Judge, P.O. Box 278, Bentonville, Arkansas 72712.	Nov. 3, 1995	050419
Benton (FEMA Docket No. 7171).	City of Rogers	Dec. 1, 1995, Dec. 8, 1995, *Benton County Daily Record.*	The Honorable John W. Sampier, Jr., Mayor, City of Rogers, 300 West Poplar, Rogers, Arkansas 72756.	Nov. 3, 1995	050013
Colorado:					
Boulder (FEMA Docket No. 7167).	Unincorporated areas	Nov. 23, 1995, Nov. 30, 1995, *Daily Camera.*	The Honorable Ronald K. Stewart, Chairperson, Boulder County Board of Supervisors, P.O. Box 471, Boulder, Colorado 80306.	Nov. 1, 1995	080023
Boulder (FEMA Docket No. 7167).	City of Boulder	Nov. 23, 1995, Nov. 30, 1995, *Daily Camera.*	The Honorable Leslie Durgin, Mayor, City of Boulder, P.O. Box 791, Boulder, Colorado 80306.	Nov. 1, 1995	080024
Hawaii: Honolulu (FEMA Docket No. 7171).	City and county of Honolulu.	Dec. 7, 1995, Dec. 14, 1995, *Honolulu Advertiser.*	The Honorable Jeremy Harris, Mayor, City and County of Honolulu, 530 South King Street, Room 300, Honolulu, Hawaii 96813.	Nov. 13, 1995	150001
Idaho: Bannock (FEMA Docket No. 7167).	City of Pocatello	Nov. 23, 1995, Nov. 30, 1995, *Idaho State Journal.*	The Honorable Peter Angstadt, Mayor, City of Pocatello, P.O. Box 4169,Pocatello, Idaho 83205.	Oct. 12, 1995	160012
Oklahoma: Oklahoma (FEMA Docket No. 7167).	City of Oklahoma City	Nov. 23, 1995, Nov. 30, 1995, *Journal Record.*	The Honorable Ronald J. Norick, Mayor, City of Oklahoma City, 200 North Walker Avenue, Oklahoma City, Oklahoma 73102.	Oct. 19, 1995	405378
Texas:					
Tarrant (FEMA Docket No. 7171).	City of Arlington	Dec. 1, 1995, Dec. 8, 1995, *Fort Worth Telegram.*	The Honorable Richard Greene, Mayor, City of Arlington, P.O. Box 231, Arlington, Texas 76004–0231.	Nov. 10, 1995	485454
Dallas (FEMA Docket No. 7171).	City of Coppell	Dec. 1, 1995, Dec. 8, 1995, *Citizen's Advocate.*	The Honorable Tom Morton, Mayor, City of Coppell, P.O. Box 478, Coppell, Texas 75019.	Nov. 10, 1995	480170
Harris (FEMA Docket No. 7171).	Unincorporated areas.	Dec. 6, 1995, Dec. 13, 1995, *Houston Chronicle.*	The Honorable Jon Lindsay, Harris County Judge, 1001 Preston Street, Houston, Texas 77002.	Nov. 8, 1995	480287
Dallas (FEMA Docket No. 7171).	City of Irving	Dec. 1, 1995, Dec. 8, 1995, *Citizen's Advocate.*	The Honorable Bobby Joe Raper, Mayor, City of Irving, P.O. Box 152288, Irving, Texas 75015–2288.	Nov. 10, 1995	480180

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Collin (FEMA Docket No. 7171).	City of Murphy	Dec. 20, 1995, Dec. 27, 1995, *Wylie News.*	The Honorable Greg Singleton, Mayor, City of Murphy, 205 North Murphy Road,Murphy, Texas 75094.	Nov. 30, 1995	480137
Collin (FEMA Docket No. 7162).	City of Plano	Nov. 23, 1995, Nov. 30, 1995, *Plano Star Courier.*	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	Oct. 27, 1995	480140
Collin (FEMA Docket No. 7171).	City of Plano	Dec. 20, 1995, Dec. 27, 1995, *Plano Star Courier.*	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	Nov. 30, 1995	480140

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: June 25, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–16701 Filed 6–28–96; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 65

[Docket No. FEMA–7185]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim final rule.

SUMMARY: This interim final rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate 500 C Street SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa	City of Glendale	Apr. 4, 1996, Apr. 11, 1996, *Arizona Republic.*	The Honorable Elaine Scruggs, Mayor, City of Glendale, 5850 West Glendale Avenue, Glendale, Arizona 85301.	Feb. 26, 1996	040045
Maricopa	City of Phoenix	Apr. 4, 1996, Apr. 11, 1996, *Arizona Republic.*	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, Phoenix, Arizona 85003–1611.	Feb. 26, 1996	040051
California: Orange	City of Orange	Apr. 4, 1996, Apr. 11, 1996, *Orange County Register.*	The Honorable Joanne Coontz, Mayor, City of Orange, P.O. Box 449, Orange, California 92666–1591.	Mar. 7, 1996	060228
Colorado:					
Denver	City and county of Denver.	Apr. 4, 1996, Apr. 11, 1996, *Daily Journal.*	The Honorable Wellington E. Webb, Mayor, City and County of Denver, 2000 West Third Avenue, Denver, Colorado 80223.	Mar. 7, 1996	080046
Jefferson	Unincorporated areas	Apr. 19, 1996, April 26, 1996, *Golden Transcript.*	The Honorable Gary D. Laura. Chairperson, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, Colorado 80419.	Mar. 19, 1996	080087
Arapahoe and Douglas.	City of Littleton	Apr. 11, 1996, Apr. 18, 1996, *Littleton Independent.*	The Honorable Dennis Reynolds, Mayor, City of Littleton, 2255 West Berry Avenue, Littleton, Colorado 80165.	Mar. 11, 1996	080017
Boulder	City of Louisville	Apr. 10, 1996, Apr. 17, 1996, *Louisville Times.*	The Honorable Tom Davidson, Mayor, City of Louisville, 749 Main Street, Louisville, Colorado 80027.	Mar. 19, 1996	085076
Iowa: Polk	City of Des Monies	Apr. 11, 1996, Apr. 18, 1996, *Des Moines Register.*	The Honorable Arthur Davis, Mayor, City of Des Moines, 400 East First Street, Des Moines, Iowa 50309–1891.	Mar. 19, 1996	190227
Oklahoma: Cleveland	City of Norman	Apr. 12, 1996, Apr.19, 1996, *Norman Transcript.*	The Honorable William Nations, Mayor, City of Norman, 201 West Gray, Norman, Oklahoma 73070.	Mar. 27, 1996	400046
Texas:					
Collin	City of Frisco	Apr. 19, 1996, Apr. 26, 1996, *Frisco Enterprise.*	The Honorable Robert Warren, Mayor, City of Frisco, P.O. Drawer 1100, Frisco, Texas 75034.	Mar. 27, 1996	480134

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Lubbock	City of Lubbock	Apr. 18, 1996, Apr. 25, 1996, *Lubbock Avalanche Journal.*	The Honorable David R. Langston, Mayor, City of Lubbock, P.O. Box 2000, Lubbock, Texas 79457.	Apr. 1, 1996	480452
Montgomery	Unincorporated areas	Apr. 12, 1996, Apr. 19, 1996. *Conroe Courier.*	The Honorable Alan B. Sadler, Montgomery County Judge, 301 North Thompson, Suite 210, Conroe, Texas 77301.	Mar. 27, 1996	480483
Collin	City of Plano	Apr. 17, 1996, Apr. 24, 1996, *Plano Star Courier.*	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	Mar. 27, 1996	480140

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: June 25, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–16700 Filed 6–28–96; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ARIZONA	
Camp Verde (town), Yavapai County (FEMA Docket No. 7166)	
Verde River:	
Just downstream of State Route 260	*3,074
Just upstream of State Route 260	*3,075
Just upstream of Montezuma Castle Highway	*3,094
Approximately 1,000 feet upstream of Interstate Highway 17	*3,107
Approximately 2.62 miles upstream of Interstate Highway 17	*3,132
Cherry Creek:	
At confluence with Verde River	*3,164
At State Route 279	*3,252
At corporate limits (approximately 3,400 feet upstream of State Route 279)	*3,314
Lucky Canyon Wash:	
At confluence with Verde River	*3,060
At Salt Mine Road	*3,100
Approximately 930 feet upstream of Salt Mine Road	*3,126
Copper Canyon Wash:	
At confluence with Verde River	*3,063
At Salt Mine Road	*3,142
Approximately 980 feet upstream of Salt Mine Road	*3,164
Maps are available for inspection at Town Hall, 473 South Main Street, Camp Verde, Arizona.	
Yavapai County (unincorporated areas) (FEMA Docket No. 7166)	
Verde River:	
Just upstream of State Route 260	*3,074
Just upstream of Montezuma Castle Highway	*3,094
Just upstream of Interstate Highway 17	*3,107
Just downstream of Middle Verde Indian Reservation	*3,132
Chino Valley Stream—East:	
At confluence with Chino Valley Stream	*4,732
At Center Street	*4,760
Approximately 1.55 miles upstream of confluence with Chino Valley Stream	*4,796
Approximately 1.79 miles upstream of confluence with Chino Valley Stream	*4,808
Approximately 3.69 miles upstream of confluence with Chino Valley Stream	*4,906
Miller Creek:	
Approximately 3,400 feet downstream of U.S. Route 89	*4,458
Approximately 2,350 feet downstream of U.S. Route 89	*4,463
Approximately 1,300 feet downstream of U.S. Route 89	*4,468
Approximately 300 feet downstream of U.S. Route 89	*4,473
Approximately 600 feet upstream of U.S. Route 89	*4,478
Approximately 1,250 feet upstream of U.S. Route 89	*4,483
Approximately 2,250 feet upstream of U.S. Route 89	*4,488
Approximately 3,100 feet upstream of U.S. Route 89	*4,493
Approximately 3,800 feet upstream of U.S. Route 89	*4,498
Approximately 4,350 feet upstream of U.S. Route 89	*4,503
Approximately 4,900 feet upstream of U.S. Route 89	*4,508
Approximately 5,600 feet upstream of U.S. Route 89	*4,513
Approximately 6,400 feet upstream of U.S. Route 89	*4,519
At corporate limits (upstream of City of Prescott)	*5,478
At Idylwild Drive	*5,517
At Pine Drive	*5,612
Approximately 2,500 feet upstream of Pine Drive (at limit of detailed study)	*5,672
Cherry Creek:	
At corporate limits	*3,314
Approximately 200 feet upstream of corporate limits (at limit of detailed study)	*3,318
Texas Gulch Main Stem:	
At confluence with Aqua Fria River	*4,490
At Quarter Horse Lane	*4,536
At confluence of Texas Gulch West Branch	*4,568
Texas Gulch West Branch:	
At confluence with Texas Gulch Main Stem	*4,568
Approximately 0.5 mile upstream of confluence with Texas Gulch Main Stem	*4,600
Approximately 1.20 miles upstream of confluence with Texas Gulch Main Stem	*4,660
Approximately 1.58 miles upstream of confluence with Texas Gulch Main Stem	*4,700
Zalesky Wash Main Stem:	
Approximately 0.04 mile upstream of confluence with Verde River	*3,259
Approximately 0.86 mile upstream of confluence with Verde River	*3,293
Robert Wash:	
At U.S. Route 89	*4,394
Approximate 0.25 mile upstream of U.S. Route 89	*4,398
Telephone Tank Wash:	
At confluence with Green Wash	*4,394
At U.S. Highway 89	*4,404
Approximately 0.88 mile upstream of confluence with Green Wash	*4,434
Telephone Tank Wash Breakout:	
At confluence with Green Wash	*4,388
At confluence of Robert Wash	*4,394
At divergence from Telephone Tank Wash	*4,430
J.W. Draw:	
At confluence with Green Wash	*4,394
At Bayberry Drive	*4,412
At Naples Street	*4,462
Approximately 0.41 mile upstream of Naples Street	*4,488
Green Wash:	
At confluence with Big Chino Wash	*4,364
At Big Chino Road	*4,388
Just upstream of Grand Canyon Road	*4,398
At Apsen Drive	*4,460
Approximately 0.36 mile upstream of Enid Drive	*4,504
Dry Well Wash:	
At confluence with Clayton Canyon Wash	*4,420
At Patricia Road	*4,502
At Barbara Road	*4,596
Approximately 500 feet upstream of Barbara Road	*4,608
Clayton Canyon Wash:	
Approximately 0.08 mile upstream of confluence with Big Chino Wash	*4,376
Just downstream of Clayton Canyon Dam	*4,480
Just upstream of Clayton Canyon Dam	*4,500
At Barbara Road	*4,520
Approximately 320 feet upstream of Barbara Road	*4,525
Timon Wash:	
Approximately 0.50 mile upstream of confluence with Big Chino Wash	*4,395
At Ahonen Road	*4,438
At Barbara Road	*4,524
Approximately 320 feet upstream of Barbara Road	*4,528
Model Creek:	
Just upstream of U.S. Route 89	*4,460
Approximately 1,000 feet upstream of U.S. Route 89	*4,461
Approximately 2,000 feet upstream of U.S. Route 89	*4,464
Approximately 3,000 feet upstream of U.S. Route 89	*4,467
Approximately 4,000 feet upstream of U.S. Route 89	*4,473
Approximately 4,400 feet upstream of U.S. Route 89	*4,476
West Fork Miller Creek:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 500 feet upstream of confluence with Model Creek	*4,460
Approximately 1,500 feet upstream of confluence with Model Creek	*4,463
Approximately 2,500 feet upstream of confluence with Model Creek	*4,465
Approximately 3,500 feet upstream of confluence with Model Creek	*4,470
Approximately 4,500 feet upstream of confluence with Model Creek	*4,474
Approximately 4,800 feet upstream of confluence with Model Creek	*4,475
Maps are available for inspection at the Yavapai County Flood Control District, 500 South Marina Street, Prescott, Arizona.	
CALIFORNIA	
Red Bluff (city), Tehama County (FEMA Docket No. 7170)	
Reeds Creek:	
Approximately 430 feet upstream of Southern Pacific Railroad	*268
Just downstream of South Jackson Street	*271
Approximately 180 feet downstream of western corporate limits	*279
East Sand Slough:	
Just upstream of Gilmore Ranch Road extended, at corporate limits	*267
Approximately 150 feet downstream of Antelope Boulevard	*269
Approximately 550 feet upstream of Antelope Boulevard	*271
Brewery Creek Tributary:	
Approximately 750 feet downstream of Monroe Avenue	*274
Approximately 130 feet downstream of Monroe Avenue	*280
Just upstream of Monroe Avenue	*291
Maps are available for inspection at the Community Development Department, City of Red Bluff, City Hall, 555 Washington Street, Red Bluff, California.	
NEW MEXICO	
Bernalillo County and Incorporated Areas (FEMA Docket No. 7166)	
Rio Grande:	
Approximately 1,000 feet downstream of Interstate 25	*4,902
Approximately 3,000 feet upstream of Interstate 25	*4,906
At confluence with South Diversion Channel	*4,924
Rio Grande East Overbank:	
Approximately 1,300 feet downstream of Interstate 25	*4,900
Just downstream of Interstate 25	*4,903
Approximately 3,500 feet upstream of Interstate 25	*4,905
Approximately 20,400 feet upstream of Interstate 25	*4,922
Arroyo A–B:	
Approximately 150 feet north of Amalia Road	*4,970
Approximately 550 feet north of Amalia Road	*4,990
Just upstream of Sage Road	*4,995
Ponding area west of Arenal Canal	*4,951
Ponding area northwest of intersection of Sage Road and Coors Boulevard	*5,001
Ponding area north of Tower Road and west of Coors Boulevard	*5,029
Arroyo A–C:	
Approximately 1,140 feet downstream of Gonzales Road	*5,006
Just upstream of Gonzales Road	*5,008
Approximately 630 feet upstream of intersection of Forsythe Road and Corregidor Place	*5,012
Ponding area just upstream of Old Coors Road	*5,012
Arroyo B–A:	
Approximately 100 feet upstream of Unser Boulevard	*5,087
Just upstream of 86th Street	*5,115
Approximately 1,000 feet upstream of 86th Street (limit of detailed study)	*5,133
Ponding area west of 94th Street and south of Central Avenue	*5,169
Arroyo B–B:	
Approximately 650 feet downstream of Unser Boulevard	*5,081
Just upstream of 86th Street	*5,105
Approximately 400 feet upstream of 90th Street	*5,135
Approximately 1,900 feet upstream of 90th Street (limit of detailed study)	*5,171
Shallow flooding between Stinson Street and 300 feet upstream of 75th Street	*5,080
Arroyo B–C:	
Just upstream of Unser Boulevard	*5,079
Approximately 80 feet downstream of 86th Street	*5,093
Approximately 240 feet downstream of 94th Street	*5,120
Approximately 1,060 feet upstream of 94th Street (limit of detailed study)	*5,140
Shallow flooding between Unser Boulevard and Abeyta Road	#1
Ponding Area 18:	*5,009
Ponding Area:	
Along Trujillo Road approximately 500 feet east of Bataan Drive	*5,008
Ponding Area:	
Along Dennison Road approximately 500 feet east of Bataan Drive	*5,009
Ponding Area:	
North of Eucariz Avenue approximately 500 feet east of Bataan Drive	*5,008
Ponding Area:	
Along Yerba Road south of Eucariz Avenue	*5,002
Ponding Area:	
Between Coors Boulevard and Corona Drive and between Redlands Road and Pheasant Avenue	*5,100
Maps are available for inspection at the Bernalillo County Planning Office, One Civic Plaza Northwest, Fifth Floor, Room 5025, Albuquerque, New Mexico.	
Maps are available for inspection at the City of Albuquerque Planning Department, One Civic Plaza Northwest, Albuquerque, New Mexico.	
WYOMING	
Laramie (city), Albany County (FEMA Docket No. 7170)	
Laramie River:	
Approximately 2,260 feet downstream of Curtis Street	*7,129
Just upstream of Curtis Street	*7,132
Just downstream of new Wyoming Highway	*7,137
Just upstream of Interstate Highway 80	*7,141
Approximately 1,000 feet upstream of Interstate Highway 80	*7,143
Maps are available for inspection at the City of Laramie, City Engineer's Office, City Hall, 406 Ivinson Street, Laramie, Wyoming.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: June 25, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–16699 Filed 6–28–96; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 24

[WT Docket No. 96–59; GN Docket No. 90–314; FCC 96–278]

Broadband Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order amends the Commission's broadband Personal Communications Services ("PCS") rules. The Commission concludes that the present record is insufficient to support the race-based F block rules under the strict scrutiny standard of judicial review required by the Supreme Court's decision in *Adarand Constructors, Inc.* v. *Peña*, or to support the gender-based rules under the intermediate scrutiny standard that currently applies to those rules. Taking account of the need to award the remaining broadband PCS licenses expeditiously and to promote the rapid deployment of new services to the public, as well as the statutory objective of disseminating licenses among a wide variety of applicants, the Commission makes the F block rules race- and gender-neutral to avoid the delay that would likely result from legal challenges to the special provisions for minority- and women-owned businesses. The Commission also amends its D, E, and F block rules and broadband PCS rules generally to streamline procedures, reduce administrative burdens, and minimize the possibility of insincere bidding and bidder default. Finally, the Commission, in response to *Cincinnati Bell Telephone Co.* v. *FCC*, eliminates the cellular/PCS cross-ownership rule and the PCS spectrum cap in favor of the 45 MHz cap on Commercial Mobile Radio Services spectrum.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Bollinger, Wireless Telecommunications Bureau, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in WT Docket No. 96–59; GN Docket No. 90–314; FCC 96–278, adopted June 21, 1996, and released June 24, 1996. The complete text is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, DC. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, N.W., Washington, DC 20037.

Synopsis of the Report and Order

I. Introduction

1. In this Report and Order, the Commission modifies the competitive bidding and ownership rules for broadband Personal Communications Services ("PCS"). Many of the rule modifications concern the treatment of "designated entities," *i.e.*, small businesses, rural telephone companies, and businesses owned by members of minority groups and women, under the broadband PCS F block rules. The Commission also amends the D, E, and F block rules and other broadband PCS rules in order to encourage sincere bidding, streamline the auction process, and lessen administrative burdens. In addition, in response to the remand from the U.S. Court of Appeals for the Sixth Circuit in *Cincinnati Bell Telephone Co.* v. *FCC*, 69 F.3d 752 (6th Cir. 1995), the Commission modifies the rules governing cellular licensees' ownership of broadband PCS licenses in all frequency blocks.

II. Rules Affecting Designated Entities

A. Meeting the Adarand Standard

2. In *Adarand Constructors, Inc.* v. *Peña*, 115 S. Ct. 2097 (1995), the Supreme Court held that all racial classifications, whether imposed at the federal, state or local government level, must be analyzed by a reviewing court under strict scrutiny, which requires such classifications to be narrowly tailored to further a compelling governmental interest. An intermediate scrutiny standard of review (under which a provision is constitutional if it serves an important governmental objective and is substantially related to achievement of that objective) applies to gender-based measures. Having evaluated the record before it, the Commission concludes that this record is insufficient to support the race- and gender-based F block provisions and revises the F block rules in this Report and Order to make them race- and gender-neutral. Overall, the commenters agree that this approach will best serve the goal of rapidly conducting the F block auction with the least risk of judicial delay. Moreover, this type of approach was upheld by the D.C. Circuit Court of Appeals, which held in *Omnipoint* v. *FCC*, 78 F.3d 620 (D.C. Cir. 1996), that the Commission acted reasonably in concluding that, in light of the additional time it would take to develop a record to support the race- and gender-based provisions of the C block rules, it should revise these rules by providing the most favorable terms to all small businesses. The Commission concludes that making the F block rules race- and gender-neutral will serve the public interest by enabling it to auction the remaining broadband PCS licenses as expeditiously as possible. Because many minority- and women-owned entities are small businesses and will therefore qualify for the same special provisions that would have applied to them under the previous rules, the Commission also believes that the amended rules will continue to fulfill the mandate under Section 309(j) of the Communications Act, as amended, 47 U.S.C. 309(j)(3), to provide opportunities for minority- and women-owned businesses to become providers of spectrum-based services.

1. Control Group Equity Structures

3. The F block auction is limited to applicants that, together with their affiliates and persons or entities that hold interests in them, have gross revenues of less than $125 million in each of the last two years and total assets of less than $500 million. As part of its decision to make the F block rules race- and gender-neutral, the Commission concludes that the 50.1/49.9 percent equity option, previously available to minority- and women-owned applicants only, should be available to all small businesses and entrepreneurs. Applicants may use this control group equity structure to establish eligibility to participate in the F block auction. It requires the control group to own at least 50.1 percent of the applicant's total equity; of that 50.1 percent equity, at least 30 percent must be held by qualifying investors. If these and certain other requirements are met, the remaining 49.9 percent of the applicant's equity may be held by non-controlling investors, and the gross revenues and total assets of any such investor will not be attributed.

4. The Commission adopts this rule modification because it reduces the likelihood of legal challenges to the F block rules and enhances the opportunities for a wide variety of applicants to obtain licenses and rapidly deploy broadband PCS; and because it believes that making the same equity structures available to both C and F block applicants is necessary so that C

block participants will not be required to structure themselves differently in order to participate in the F block auction. Moreover, this rule amendment will benefit other entities that did not participate in the C block auction because it continues equity structures that are familiar to the industry and the financial community.

5. The Commission declines to make adjustments to the financial eligibility thresholds in the F block rules. The Commission believes that retaining the same thresholds as those used for the C block auction will allow for participation by entities that used the C block rules as guidelines for determining their structure in preparation for the F block auction. Moreover, these thresholds were used by C block bidders, many of whom will be interested in participating in the F block auction. The Commission declines to further restrict participation in the F block (or any of the other 10 MHz blocks) to small businesses and rural telephone companies. It believes that setting aside the F block for both entrepreneurs and small businesses will be sufficient to achieve the objectives of providing opportunities for small businesses to obtain 10 MHz licenses and ensuring broad dissemination of 10 MHz licenses.

6. In addition, the Commission declines to treat C block licenses as assets that could potentially preclude C block winners from F block eligibility. It believes it would be unfair to disqualify C block winners on the basis of their success in acquiring capital to participate in that auction, primarily because the Commission has indicated previously that the C and F blocks are linked. The Commission believes that treating C block winners' licenses as an asset for purposes of eligibility for the F block auction could frustrate business plans and auction strategies made in reliance on its previous statements. Applicants should be aware that other licenses (such as Specialized Mobile Radio ("SMR"), cellular, narrowband PCS, and broadband PCS A and B block licenses) should be included in their total asset calculations for F block eligibility.

2. Affiliation Rules

7. The affiliation rules applicable to the F block identify all individuals and entities whose gross revenues and assets must be aggregated with those of the applicant to determine whether the applicant exceeds the financial caps for the entrepreneurs' blocks or for small business size status. There are two exceptions to these rules. Under the first exception, Indian tribes and Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*, are not considered affiliates of an applicant owned and controlled by such tribes and corporations. Under the second exception, the gross revenues and assets of affiliates controlled by minority investors who are members of the applicant's control group are not attributed to the applicant.

8. The Commission will eliminate the exception to the affiliation rules pertaining to minority investors for purposes of the F block auction. To retain this exception in its present state poses legal risks that, as discussed above, could delay the award of F block licenses. Furthermore, the Commission declines to adopt the modification of this rule that it utilized for the C block, which allowed all small business applicants to exclude any affiliates who would otherwise qualify as entrepreneurs by having gross revenues of $125 million or less and total assets of $500 million or less and whose total assets and gross revenues, when considered on a cumulative basis and aggregated with each other, do not exceed these amounts. The Commission adopted the modified exception for the C block at a time when a number of minority-owned applicants had relied on the rule and had structured their business arrangements accordingly. However, the Commission is not convinced that the C block exception is needed under current circumstances, and it acknowledges the argument made by certain commenters that the exception may qualify too many larger entities as small businesses. For applicants that participated in the C block auction and relied on the affiliation exception in structuring themselves, the Commission will consider requests to waive the rules to allow them to be eligible to participate in the F block auction. Finally, the Commission will retain the exception to the affiliation rules for Indian tribes and Alaska Regional or Village Corporations. The Commission notes that certain comments support its tentative conclusion in the Notice of Proposed Rule Making that the Indian Commerce Clause of the U.S. Constitution provides a basis for this exception which is not implicated by *Adarand*.

3. Installment Payments

9. The Commission amends its F block rules concerning installment payments to provide for three rather than five installment payment plans and to make all small businesses, rather than only those owned by minorities and women, eligible for the most favorable installment plan. The Commission concludes that extending the most favorable payment plan to all small businesses will give minority- and women-owned businesses an opportunity to participate in the provision of spectrum-based services. The Commission also concludes, however, that it should shorten the period during which F block auction winners eligible for this plan may make interest-only payments. Thus, the most favorable plan will have a two-year interest-only payment period, rather than a six-year interest-only period. The plan will provide for installments at a rate equal to ten-year U.S. Treasury obligations applicable on the date the license is granted, with payments of principal and interest amortized over the remaining eight years of the license term. Principal will be repaid as part of equal quarterly payments of interest and principal (as with a standard mortgage amortization schedule).

10. The Commission believes that these terms will provide small businesses with the appropriate level of U.S. government assisted financing to overcome the difficulties they face in accessing capital to compete in the PCS marketplace. It further believes that reducing the interest-only period to two years will deter speculation; encourage bidding, business, and financial strategies based upon market forces rather than the financial terms of installment payment plans; and still provide small businesses with the ability to obtain the necessary funds for construction and initial operation of their systems. Finally, shortening the interest-only period to two years will not foreclose opportunities for small businesses to compete in PCS. The terms that the Commission is offering are extremely attractive compared to other terms small businesses may be able to obtain.

11. Entrepreneurs that are not small businesses will be eligible for installment payments as provided in Sections 24.716(b)(1) and 24.716(b)(2) of the rules. These rules provide for installments at a rate equal to ten-year U.S. Treasury obligations applicable on the date the license is granted plus 3.5 percent, with payments of principal and interest amortized over the license term for eligible licensees with gross revenues exceeding $75 million in each of the two preceding years. Eligible licensees with gross revenues not exceeding $75 million in each of the two preceding years may make installment payments at a rate equal to ten-year U.S. Treasury obligations applicable on the date the license is granted plus 2.5 percent, with interest-only payments for the first year and payments of interest and principal amortized over the remaining nine years of the license term.

12. The Commission also concludes that it should amend the terms of the installment payment plans to provide for late payment fees. Therefore, when licensees are more than fifteen days late in their scheduled installment payments, the Commission will charge a late payment fee equal to 5 percent of the amount of the past due payment. Without this late payment fee, licensees may not have adequate financial incentives to make installment payments on time. The 5 percent payment adopted here is an approximation of late payment fees applied in typical commercial lending transactions. Payments will be applied in the following order: late charges, interest charges, principal payments.

4. Bidding Credits

13. Consistent with its concerns about avoiding litigation based on *Adarand*, the Commission will eliminate the race- and gender-based aspects of the F block bidding credits. In place of these provisions, the Commission adopts a two-tiered bidding credit for small businesses. It believes that this approach will promote dissemination of licenses to a broader variety of applicants than a 25 percent bidding credit for all small businesses and will encourage smaller businesses, possibly businesses that are very well suited to provide 10 MHz niche services, to participate in the F block auction.

14. The Commission modifies its rules to provide that entities with average gross revenues greater than $15 million but not more than $40 million for the past three years are eligible for a 15 percent bidding credit; entities with average gross revenues of not more than $15 million for the past three years are eligible for a 25 percent bidding credit. The Commission believes that the timing of the modification here allows it to take a different approach than it took for the C block. Entities interested in bidding on F block licenses have not had expectations similar to those of entities that were interested in bidding on the C block licenses and that formulated business strategies in reliance on the tiered bidding credits originally adopted.

5. Information Collection

15. The Commission will request information regarding minority- and women-owned status in the F block short-form applications. The Commission believes that continuing to collect such information will assist it in analyzing applicant pools and auction results to determine whether it has promoted substantial participation in auctions by minorities and women, as directed by Congress, through the special provisions it makes available to small businesses.

B. Definitions

1. Small Business

16. Under the current F block rules, a "small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has average gross revenues of not more than $40 million for the preceding three years. The Commission will continue to define small businesses in this way. Maintaining the $40 million definition of small businesses avoids disruption to the business plans of potential bidders, particularly participants in the C block auction. Additionally, however, the Commission defines a second tier of small businesses, which it will refer to as "very small businesses," as entities that, together with their affiliates and persons or entities that hold interests in such entities and their affiliates, have average gross revenues of not more than $15 million for the preceding three years. Creation of this subcategory of small businesses enables the Commission to tailor its benefits to better meet the needs of bidders likely to participate in the F block auction. Smaller license size may mean that smaller businesses are likely to participate in the F block auction. Thus, as discussed above, the Commission's goals can best be served by offering varying bidding credits depending on the applicant's size.

17. The Commission declines to make special provisions for small business winners of C block licenses as requested by some commenters. As a practical matter, C block small business winners will likely not have accrued substantial gross revenues by the time the Commission auctions the D, E, and F blocks. Therefore, most of these winners should continue to qualify as small businesses. On the other hand, if they have grown in size beyond the established financial cap, or if they can no longer avail themselves of the exception to the affiliation rules, they may no longer qualify as a small business.

2. Rural Telephone Company

18. The Telecommunications Act of 1996 ("1996 Act") defines 'rural telephone company' to include a larger number of local exchange carriers than the Commission's F block rules, which define a rural telephone company as "a local exchange carrier having 100,000 or fewer access lines, including all affiliates." The Commission adopts the definition of rural telephone company contained in the 1996 Act. It finds compelling the argument that this definition will increase the number of entities eligible for partitioning and expedite the delivery of advanced services to rural areas. Although this decision may result in larger rural telephone companies being eligible to partition licenses, the Commission recognizes that the number of accesslines—including those provided by rural telephone companies—continues to grow rapidly as the uses of telecommunications services expand. Thus, most rural telephone companies will benefit from a definition that accounts for their growth. Adopting the 1996 Act definition for purposes of Section 309(j) will also promote uniformity of regulations and is therefore consistent with the mandate of this legislation of easing regulatory burdens and eliminating unnecessary regulation.

19. The Commission agrees with commenters who assert that the definition is one of general applicability and it therefore elects not to adopt the definition of rural telephone company contained in Section 251(f)(2) of the 1996 Act, as proposed by one commenter. This definition applies to rural telephone companies only in the context of suspensions or modifications of the application of certain statutory requirements to rural carriers. Absent a specific definition of rural telephone company for purposes of Section 309(j), and reading the statute as a whole, the Commission is constrained to adopt the more generalized definition.

C. Extending Small Business Provisions to the D and E Blocks

20. The Commission declines to extend installment payment plans or any other special provisions to small businesses bidding on the D and E blocks, believing that the special provisions for small businesses in the F block rules sufficiently further the objective of encouraging wide dissemination of broadband PCS licenses. Since the F block is an entrepreneurs' block, it guarantees that one third of the 10 MHz broadband PCS licenses will be assigned to entrepreneurs and small businesses. The Commission believes that it would undermine the justification for the F block as an entrepreneurs' block if it were to open the D and E blocks to special provisions for small businesses, and that departing from the original

plan to establish two contiguous blocks of broadband PCS spectrum for the exclusive use of entrepreneurs and small businesses is not warranted.

D. Adjusting Payment Provisions for 10 MHz Licenses

21. The Commission modifies the upfront payment requirement for the F block to raise it to the same level as the D and E block requirement and eliminate the discount previously provided to entrepreneurs. The Commission originally discounted upfront payments for entrepreneurs because their down payment requirement was low (5 percent) and it was concerned that if it required them to pay upfront payments larger than the required down payment it might discourage their participation. The Commission's experience to date, however, indicates that it has underestimated the value of spectrum and that upfront payments have not created a barrier to entrepreneur participation in auctions. The Commission is also concerned, based on defaults in the C block auction, that there is a need to obtain a higher payment up front to guard against default. The Commission also agrees that requiring a uniform upfront payment (per bidding unit) of all bidders for D, E, and F block licenses will greatly simplify the auction process for bidders interested in bidding on two or more of the blocks. The Commission also believes that if it conducts a single simultaneous multiple round auction of the D, E, and F block licenses, it is necessary for operational reasons to have the same upfront payment and activity requirements across all three blocks.

22. Further, because the Commission wants the payment terms to more accurately reflect the value of the licenses, it will raise the upfront payment requirement for all three blocks. It believes that this action is consistent with the policy reason for requiring upfront payments—to deter insincere and speculative bidding and to ensure that bidders have the financial capability to build out their systems. The formula for calculating upfront payments was intended to approximate 5 percent of the estimated license value. Based on the license values established in the completed PCS auctions, however, the formula of $0.02 per MHz-pop underestimates actual value. The Commission adopts an upfront payment of $.06 per MHz-pop for the D, E, and F blocks. Based on its analysis of the prices paid in the C block auction, the Commission believes that such an upfront payment is sufficient to ensure sincere bidding and guard against defaults. The Commission also delegates authority to the Wireless Telecommunications Bureau to modify the upfront payment requirement for any C block licenses that are reauctioned in the future. The Commission notes that it also favors the suggested approach that would require applicants to supplement their upfront payments during the auction to ensure that their payment is a certain percentage of their bids. Operationally the Commission cannot implement this proposal at this time, but it will look for ways to implement it in future auctions.

23. For similar reasons, the Commission also modifies the rule governing down payments for the F block. It finds that a 20 percent down payment, the same down payment that is required of D and E block auction winners, should be required of F block winners. Under this approach, F block entrepreneurs and small businesses will be required to supplement their upfront payments to bring their total payment to 10 percent of their winning bid within 5 business days of the close of the auction. Prior to licensing, they will be required to pay an additional 10 percent. The government will then finance the remaining 80 percent of the purchase price. The Commission believes an increased down payment will provide it with strong assurance against default and sufficient funds to cover default payments in the unlikely event of default. Increasing the amount of the bidder's funds at risk in the event of default discourages insincere bidding and therefore increases the likelihood that licenses are awarded to parties who are best able to serve the public.

E. Rules Regarding the Holding of Licenses

24. The Commission amends the holding requirement for F block licensees and extends this change to the C block rules. The Commission amends 47 CFR § 24.839 to permit the transfer of entrepreneurs' block licenses in the first five years to any entity that either holds other entrepreneurs' block licenses (and thus at the time of auction satisfied the entrepreneurs' block criteria) or that satisfies the criteria at the time of transfer. There will be no restrictions on transfers after the fifth year. The Commission notes, however, that the unjust enrichment provisions will continue to apply as before. The Commission further amends the holding rule to exempt *pro forma* transfers and assignments because trafficking concerns do not exist under such circumstances. The Commission concludes that allowing transfers and assignments in the first five years—but only to entrepreneurs—provides a sufficient safeguard. It also has the experience of the C block auction behind it, and understands that strict holding requirements may actually be hampering the ability of entrepreneurs to attract the capital necessary to construct and operate their systems. In particular, lenders and investors have expressed concern about the need for more flexibility in the event of financial distress and default. Because the Commission does not want investors to shy away from financing C and F block winners due to such concerns, it modifies the holding rule in a manner that continues to promote small and entrepreneurial ownership in broadband PCS licenses. The Commission believes that by not eliminating the transfer restriction entirely, it continues to have a useful safeguard to ensure that small businesses and entrepreneurs retain the opportunity to build out and operate broadband PCS licenses. At the same time, by allowing entrepreneurs to transfer their licenses to other entrepreneurs, the Commission believes that it allows market transactions to occur that balance the objectives of ensuring that entrepreneurs have an opportunity to participate in PCS and putting spectrum in the hands of those who value it most in the event the auction fails to accomplish this objective. In addition, the Commission believes that its amendment to the holding requirement serves the public interest by helping to ensure rapid and uninterrupted service to the public. Market-oriented solutions in the event of financial distress will help avoid PCS license defaults to the Commission and the accompanying investor and/or service disruption that such defaults engender.

III. The Cincinnati Bell Remand

A. The Cellular/PCS Cross-ownership Rule

25. In light of the Sixth Circuit's ruling in *Cincinnati Bell Telephone Co.* v. *FCC*, remanding the Commission's rule limiting cellular operators' eligibility for PCS licenses, the Commission will maintain the 45 MHz Commercial Mobile Radio Services ("CMRS") spectrum cap set forth in 47 CFR 20.6 and eliminate the PCS and cellular/PCS spectrum cap contained in Sections 24.229 and 24.204, respectively. The Commission finds that a spectrum cap is necessary to avoid excessive concentration of licenses and promote and preserve competition in the CMRS marketplace and therefore declines to eliminate all limitations on

the amount of CMRS spectrum a single entity (or affiliated entities) may acquire.

26. The Commission adopted the 45 MHz CMRS spectrum cap to discourage anticompetitive behavior while at the same time maintaining incentives for innovation and efficiency. The Commission was concerned that excessive aggregation of spectrum by any one of several CMRS licensees could reduce competition by precluding entry by other service providers and might thus confer excessive market power on incumbents. The continuation of the 45 MHz spectrum cap will promote competition and prevent anticompetitive horizontal concentration in the CMRS business.

27. For determining when concentration reduces competition to an undesirable level, one accepted tool is the Herfindahl-Hirschman Index ("HHI"), which is used in the Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("DOJ/ FTC Guidelines") to measure market concentration. In addition to considering the arguments presented by commenters in this proceeding and in response to the Sixth Circuit's concern about the lack of economic support for the cellular/PCS spectrum cap, the Commission's competitive analysis staff performed an HHI analysis for various possible structures of a hypothetical market for mobile two-way voice communications service in the same geographic area. The Commission staff's HHI analysis indicates that the 45 MHz CMRS spectrum cap is needed to prevent undue market concentration and the noncompetitive conditions in local markets that result from such concentration.

28. The 45 MHz spectrum cap is also needed specifically to prevent cellular licensees from gaining too great a competitive advantage over new entrants to the wireless telephony market. Cellular companies already hold licenses for 25 MHz of clear spectrum, and they already have technical expertise, customer bases, marketing operations, and antenna and transmitter sites. In short, cellular operators have a competitive position that is superior to that of any new market entrant. By limiting current cellular licensees to an additional 20 MHz of spectrum (*i.e.*, two of the three 10 MHz broadband PCS licenses), the 45 MHz cap will help to level the playing field for all new entrants, while ensuring that incumbent providers are not placed at any disadvantage.

29. The 45 MHz spectrum cap also furthers the goal of diversity of ownership that the Commission is mandated to promote under Section 309(j). Section 309(j) directs the Commission, in specifying eligibility for licenses and permits, to avoid excessive concentration of licenses and disseminate licenses among a wide variety of applicants. The statute further states that in prescribing regulations, the Commission must, *inter alia*, prescribe area designations and bandwidth assignments that promote economic opportunity for a wide variety of applicants. A spectrum cap is one of the most effective mechanisms the Commission could employ to achieve these goals.

30. The court in the *Cincinnati Bell* decision was concerned that the cellular/PCS spectrum cap would "have a profound impact on businesses in an industry enmeshed in this country's telecommunications culture." It stated that "[t]he continued existence of some wireless communications businesses rests on their ability to bid on Personal Communications Service licenses" and that "Cellular providers foreclosed from obtaining Personal Communications Service licenses may ultimately be left holding the remnants of an obsolete technology." *Cincinnati Bell*, 69 F.3d at 764. The Commission's amendment of its rules provides cellular licensees additional flexibility to expand into or migrate to PCS technology. Under the old rule, they were limited to one 10 MHz channel until the year 2000. The shift to a single 45 MHz spectrum cap will allow incumbent cellular operators to acquire up to two of the 10 MHz broadband PCS licenses (20 MHz) in the upcoming auction for the D, E, and F blocks. As many commenters point out, an additional 20 MHz of spectrum will be sufficient to develop and provide new digital services. The Commission also notes that cellular carriers have been rapidly implementing digital and other new technologies with their current 25 MHz of spectrum.

31. While the Commission's analysis of the CMRS market under the DOJ/FTC Guidelines indicates that the 45 MHz spectrum cap is needed to ensure competition, it also shows that this cap adequately addresses the Commission's concerns about anticompetitive behavior. Indeed, the Commission's HHI analysis indicates that the concentration levels under the single 45 MHz spectrum cap would not be higher than the level that would be possible under all three of the existing caps. Thus, the Commission concludes that the PCS and cellular/PCS spectrum caps are unnecessary.

32. The Commission also believes that elimination of the cellular/PCS cross-ownership rule and the PCS spectrum cap in favor of the single 45 MHz CMRS spectrum cap has important advantages. Applying the single 45 MHz CMRS cap will give both cellular and PCS providers more flexibility to participate in a more competitive marketplace. The elimination of the cellular/PCS and PCS limits will give PCS providers greater flexibility to own interests in other providers and provide additional services and, hence, enhanced opportunities to compete. In addition, PCS providers will no longer be restricted to less than a 5 percent ownership interest in cellular and other PCS licensees in order to avoid attribution. Instead, they will be subject to the more liberal 20 percent attribution level for all CMRS.

33. The Commission also notes that the 1996 Act requires it to determine in every even-numbered year (beginning with 1998) "whether any regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service" and to modify or repeal such regulation. 47 CFR 161(a)(2). In an effort to streamline regulations consistent with the spirit of the 1996 Act, and in light of the findings set forth above, the Commission believes that simplifying the rules to include a single 45 MHz CMRS cap in place of the three separate spectrum caps is warranted. In addition, at the next biennial review of the Commission's regulations under the 1996 Act and in annual reports on the state of competition in the CMRS market, the Commission will continue to evaluate the need for the 45 MHz spectrum cap in its present form.

34. The Commission declines to alter the 10 percent overlap restriction for the CMRS cap as some commenters suggest. It continues to believe that an overlap of less than 10 percent of the population is sufficiently small that the potential for exercise of undue market power by the cellular operator is slight. Given its decision to eliminate the cellular/PCS and PCS ownership limitations, the Commission is concerned that greater overlap might lead to anticompetitive practices. It will, however, expand the post-auction divestiture provisions of 47 CFR § 20.6 to conform with the divestiture provisions that previously applied in the cellular/PCS cross-ownership rule, including the relaxed rule applicable to situations where the overlap exceeds 10 percent, but is less than 20 percent. Thus, any party holding an attributable ownership interest in a CMRS licensee may be a party to a broadband PCS application if it certifies that, if necessary, it will come

into compliance with the CMRS spectrum cap through post-auction divestiture procedures.

B. The 20 Percent Attribution Standard

35. The Commission's decision to eliminate the 35 MHz cellular/PCS spectrum cap renders the issue of whether to modify the attribution standard of 47 CFR 24.204(d) moot. The Commission reaffirms, however, the 20 percent attribution standard for the purpose of determining whether an entity is subject to the 45 MHz CMRS spectrum aggregation limit. The Commission also concludes that the attribution standard for the 45 MHz spectrum cap should be made race- and gender-neutral such that a 40 percent attribution standard applies to all small businesses and rural telephone companies. The Commission believes that extending the 40 percent threshold to noncontrolling investors in small businesses as it did for the C block licenses will promote additional investment in small business applicants and ensure broad participation in PCS by designated entities.

36. The Commission believes that a 20 percent interest held by a single entity would create a possibility of *de facto* control. Such an interest (whether 20 percent or less) that conveys to its holder actual working control (including investor control) is already attributable under the rules. The Commission believes generally, however, that even an entity that does not have *de facto* or *de jure* control but owns a 20 percent or more interest in a licensee would have sufficient influence to reduce competition and should be subject to the CMRS spectrum aggregation limit. The Commission notes that attribution rules for other services typically apply much lower ownership benchmarks of 5 to 10 percent. Both cable and broadcast use a 5 to 10 percent attribution level. The Commission further notes, as do some commenters, that the 1996 Act defines "affiliate" as a "person that * * * owns or controls, is owned or controlled by, or is under common ownership or control with, another person. * * *. [The] term 'own' means to own an equity interest (or the equivalent thereof) of more than 10 percent." 47 U.S.C. 153 (1).

37. The Commission continues to believe that a higher benchmark of 20 percent should apply for purposes of the CMRS spectrum cap to encourage capital investment and business opportunities in CMRS. Given the changing technology and the variety of competing services that will be subject to this limitation, it believes that increased flexibility in the rules will enable CMRS providers to adapt their services to meet customer demand. Furthermore, the Commission originally adopted a 20 percent attribution level in the cellular/PCS cross-ownership rules to allow partial owners of cellular licensees to participate in PCS, in light of several partial and often passive ownership interests that may have resulted from early settlements during the initial phase of cellular licensing. The Commission believes that maintaining a 20 percent attribution level for the CMRS cap will allow a wide variety of players (*i.e.*, PCS, cellular and SMR providers) to enter the marketplace while still preventing anticompetitive practices that would have harmful effects on consumers.

38. The Commission disagrees with suggestions that only controlling interests should be attributable. Establishing a control test would require the Commission to conduct frequent case-by-case determinations of control, which are time-consuming, fact specific, and subjective. The bright line 20 percent attribution rule avoids these problems. Also, for the reasons discussed below, a single majority shareholder exception to the rule is not appropriate for all situations involving CMRS licensees and their owners, and so adoption of such an exception is not a suitable bright line substitute for 20 percent attribution. However, the Commission adopts a less restrictive alternative and allows licensees with non-controlling minority investors with potentially conflicting CMRS ownership interests to seek waivers of the spectrum cap rule where the licensee is controlled by a single majority shareholder or controlling general partner.

39. The Commission rejects a control-based attribution test because significant, but non-controlling, investments have sufficient potential to affect the level of competition in the CMRS market. The CMRS spectrum cap ownership attribution rule, just as all other ownership attribution rules and similar statutory provisions, must take such interests into account. Economic theory predicts that where a CMRS licensee owns a substantial portion of one of its competitors, neither company has as strong an incentive to compete vigorously against its partner as it does with respect to an unrelated competitor. Theoretical analysis has demonstrated that partial ownership interests can create the very non-competitive markets that the Commission wants to avoid. Indeed, as noted above, Congress was also apparently concerned about competitive incentives when it defined ownership in the 1996 Act to mean an interest of ten percent. The Communications Act also limits foreign ownership interests in CMRS licenses to 20 percent. Although these statutory ownership attribution criteria do not directly apply to the CMRS ownership attribution rules, they indicate that Congress believed that even non-controlling, minority ownership interests can convey significant influence to their holders.

40. The Commission recognizes that small businesses and rural telephone companies, as well as non-controlling investors in small businesses, may have non-attributable ownership of up to 40 percent under the rules. But these relaxed attribution rules present a situation entirely different from the 20 percent attribution rule. The Commission has been charged expressly by Congress to ensure that small businesses, including businesses owned by women and minorities, and rural telephone companies are given meaningful opportunities to participate in the provision of wireless services. The rules must also promote the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas. One of the most formidable barriers to such participation is the difficulty such businesses face in raising sufficient capital to compete in the highly capital-intensive wireless communications businesses. By increasing the attribution threshold for such designated entities and their investors, the Commission's goal was to make capital more readily available by reducing the number of investors such businesses must seek out. The Commission also concluded that smaller entities that have some interests in cellular operations may be especially effective PCS competitors because of their cellular experience. This will help ensure that service is brought quickly to underserved areas and that designated entities become viable competitors. In particular, rural telephone companies and some small cellular companies, due to their existing infrastructure, are uniquely positioned rapidly to introduce PCS services into their service areas or adjacent areas.

41. However, the Commission did not exempt small businesses and rural telephone companies entirely from the cellular eligibility rules because such an exemption could foreclose competition from a new PCS entrant. In maintaining the 45 MHz spectrum cap, the Commission remains concerned that there is potential for some of these parties to compete less vigorously in the nascent PCS industry. While it recognizes that its relaxation of the rules for the CMRS spectrum cap presents a risk of lower than optimal competition, the Commission must balance competing public policies and believes that this is the proper balance to fulfill the various statutory mandates under Section 309(j) of the Communications Act.

42. Further, the Commission declines to adopt a single majority shareholder exception for the CMRS spectrum cap rule. As discussed above, economic theory indicates that an entity holding less than a majority interest may influence the CMRS market in an anticompetitive manner. In those circumstances, it makes no difference whether there is another shareholder that exercises control since significant minority ownership that does not convey control still poses a serious danger of hindering competition in a concentrated market such as CMRS. In addition, the Commission notes that, although the single majority shareholder exception currently applies in the broadcast context, it believes that the broadcast and CMRS markets are sufficiently different to warrant different treatment (and even in the broadcast arena the Commission has recently sought comment on whether to restrict the single majority shareholder rule). Mass media entities subject to the broadcast ownership rules with the single majority shareholder exception—including AM and FM radio licensees, UHF and VHF television licensees, cable television operators and newspaper publishers—offer the audience with numerous competing "voices" from which to choose. There are as many as 30 or more broadcast stations in some areas. In contrast, as the Commission envisions CMRS (particularly in the short term), consumers will be able to choose from only about 5 or 6 competing service providers at most—as noted above, a fairly concentrated market. The concerns the Commission has expressed above about the potential of common ownership to influence the entire market may be far less serious in a less concentrated market such as that for mass media services. That is because the participants in a non-oligopoly market are less likely to act jointly in order to preserve high prices. In addition, the type of "product" on which competition in broadcasting is based is different from the product offered by CMRS providers. Broadcasters compete for advertising dollars (by attracting audience share) on the basis of non-quantifiable programming choices, while CMRS providers are expected to offer commodity-type services that compete in terms of prices charged directly to consumers. The Commission believes that it is more important to preserve vigorous competition in a commodity-based market than in a market like broadcasting. CMRS prices will be lowered only where competitors must vie to survive, whereas it is not so clear that programming will improve or become more diverse as the result of competition in free over-the-air television and radio. Indeed, some economists suggest that less competitive markets may actually offer more diverse programming. Thus, even if the single majority shareholder rule is appropriate for the mass media industry, that sector is sufficiently different from the CMRS market to justify somewhat different regulation.

43. Hence, the Commission believes that, as a general matter, minority stock interests and limited partnership interests should be deemed attributable CMRS ownership interests even if a single holder (or group of affiliated holders) that owns more than 50 percent of the outstanding stock or partnership equity or has voting control of the CMRS licensee. Nevertheless, the Commission believes that there may be limited circumstances where the existence of a single majority shareholder (or a single, controlling general partner) may mitigate the competitive impact of common ownership and the ability of the non-controlling interest holder to influence the licensee. Accordingly, the Commission will implement two less restrictive measures as an alternative to attributing ownership in such cases.

44. First, as was previously done with the cellular/PCS cross-ownership rule, the Commission will allow parties with non-controlling, attributable interests in CMRS licensees to have an attributable (or controlling) interest in another CMRS application that would exceed the 45 MHz cap so long as certain post-licensing divestiture procedures are followed. A "non-controlling attributable interest" is one where the holder has less than a 50 percent voting interest and there is an unaffiliated single holder of a 50 percent or greater voting interest. This will allow interest holders in licensees with a single majority shareholder to obtain another CMRS license (or attributable interest therein) through an auction or other means, subject to the interest holder coming into compliance with the divestiture provisions within 90 days of grant of the conflicting license.

45. Second, the Commission will consider requests for waivers of the CMRS spectrum cap that make an affirmative showing that an otherwise attributable ownership interest should not be attributed to its holder because: the interest holder has less than a 50 percent voting interest and there is an unaffiliated single holder of a 50 percent or greater voting interest; the interest holder is not likely to affect the local market in an anticompetitive manner because the market is highly competitive; the interest holder is not involved in operations of the licensee and does not have the ability to influence the licensee on a regular basis; and grant of a waiver is in the public interest because the benefits of such common ownership to the public outweigh any potential for anticompetitive harm to the market.

46. Finally, the Commission believes that retroactive application of any cross-ownership or spectrum cap rule changes would be contrary to the public interest. PCS licensees that participated in the A, B, and C block auctions have already incurred enormous expenses to, *inter alia*, design their systems, relocate incumbent users of the spectrum, acquire cell sites, and establish marketing plans. Retroactive application of the rules would disrupt this burgeoning industry and delay service to the public. Furthermore, entities that may have been precluded from participating in past auctions for CMRS spectrum based on the prior rules may now acquire additional spectrum through future auctions, assignments of licenses, transfers of control or investments. Thus, the Commission concludes that any changes to the spectrum cap and cross-ownership rules will apply prospectively.

IV. Ownership Disclosure Provisions

47. The Commission amends Section 24.813(a)(1) and Section 24.813(a)(2) of the rules, 47 CFR §§ 24.813 (a)(1) and (a)(2), to limit the information disclosure requirement with respect to outside ownership interests of applicants' attributable stockholders, and will require only the disclosure of attributable stockholders' direct, attributable ownership in other businesses holding or applying for CMRS or PMRS licenses. The Commission believes that the more extensive ownership disclosure requirements are burdensome and difficult to administer, and that the more limited requirements will continue to ensure participation of only eligible bidders. The Commission also amends 47 CFR 24.813(a)(4) to delete the requirement that partnerships file a signed and dated copy of their partnership agreement with their short-form and long-form applications. The Commission has found this requirement

to be overly burdensome and is concerned that confidential or strategic bidding information could be unnecessarily disclosed through submissions of such agreements.

48. The Commission also amends Sections 24.720(f) and 24.720(g) of the rules, to allow each applicant that does not otherwise use audited financial statements to provide a certification from its chief financial officer that the gross revenue and total asset figures indicated in its short-form and long-form applications are true, full, and accurate and, that it does not have the audited financial statements that are otherwise required under the rules. The Commission believes the requirement of using audited financial statements to be unnecessarily burdensome, especially for small businesses that do not normally rely on such statements.

49. Finally, the Commission amends its rules to require that an applicant's determination of average gross revenues be based on the three most recently completed fiscal or calendar years. With regard to concerns about inadvertent release of confidential data, the Commission will require that confidential data be filed separately on paper. Similarly, any requests that information be treated as confidential will not be accepted electronically and must otherwise comply with the rules governing confidential treatment of documents.

V. Auction Schedule

50. The Commission concludes that it should auction the D, E, and F blocks at the same time. It also intends to auction the D, E, and F blocks in a single auction. The Commission believes that auctioning the three blocks in one simultaneous multiple round auction will benefit bidders by reducing administrative inefficiencies and by providing maximum flexibility for bidders to choose between similar licenses. The Commission believes that if it uses uniform upfront payments, which it adopts for the three blocks in this *Report and Order*, it will reduce the complexity of a single auction. The Commission also believes that this method will expedite service to the public. Although the Commission believes that a single auction is the best option, it delegates authority to the Wireless Telecommunications Bureau to conduct one auction for the D and E blocks and one for the F block concurrently if such an approach is operationally necessary or otherwise furthers the public interest.

VI. Other Issues

A. Limit on Licenses Acquired at Auction

51. Several commenters suggested modifying the limitation on the number of licenses that a single entity may acquire at auction to ensure wide distribution of entrepreneurs' block licenses. Commission rules provide that a single entity may win no more than 10 percent of the licenses available in the entrepreneurs' blocks; these licenses may be all C block licenses or F block licenses or some combination of the two. Several commenters proposed that the Commission change this limitation to one based on population rather than on the number of licenses. The Commission declines to modify the rule as requested. First, C block licenses were disseminated to a large number of auction winners. Second, bidding strategies in the C block auction and the business plans of many firms may have been formulated in reliance on this rule. The Commission finds no basis for modifying it here.

B. Partitioning and Disaggregation

52. Numerous commenters argue that the Commission's geographic partitioning provisions, which currently apply only to rural telephone companies, should be expanded to include broadband PCS licensees and spectrum disaggregation should be permitted in the near term. Under the current rules, broadband PCS licensees may disaggregate licensed broadband PCS spectrum after January 1, 2000, if they have met the five-year construction requirement. Because the issues of partitioning and disaggregation exceed the scope of this proceeding, the Commission will consider these issues in a separate proceeding.

C. Bid Withdrawal

53. One commenter suggested that the bid submission software should be enhanced to warn bidders whenever a bid is entered that exceeds the minimum bid by more than 10 bid increments. For the D, E, and F block auction, the Wireless Telecommunications Bureau will employ a procedure in addition to those in place that will warn bidders of the possibility of a mistaken bid.

54. The same commenter also states that since the Commission cannot distinguish honest mistakes from strategic mistakes, it should impose a penalty for mistaken bids. The rules provide for a bid withdrawal payment that is equal to the difference between the withdrawn bid amount and the subsequent winning bid, if the subsequent winning bid is lower. No withdrawal payment is assessed if the subsequent winning bid exceeds the withdrawn bid.

55. For the D, E, and F block auction, the Commission adopts the approach of *Atlanta Trunking*, where it held that in cases of erroneous bids, some relief from the bid withdrawal payment requirement appears necessary. (Atlanta Trunking Associates, Inc. and MAP Wireless L.L.C. Requests to Waive Bid Withdrawal Payment Provisions, Order, FCC 96–203, 61 FR 25807 (May 23, 1996)). In *Atlanta Trunking*, the Commission fashioned the following guidelines to be followed when addressing individual requests for waiver of withdrawal payments: If a mistaken bid is withdrawn in the round immediately following the round in which it was submitted, and the auction is in Stage I or Stage II, the withdrawal payment should be the greater of (a) two times the minimum bid increment during the round in which the mistaken bid was submitted or (b) the standard withdrawal payment calculated as if the bidder had made a bid at one bid increment above the minimum accepted bid. If the mistaken bid is withdrawn two or more rounds following the round in which it was submitted, the bidder should not be eligible for any reduction in the bid withdrawal payment. Similarly, during Stage III of an auction, if a mistaken bid is not withdrawn during the round in which it was submitted, the bidder should not be eligible for any reduction in the bid withdrawal payment. The Commission believes that under this approach, the required bid withdrawal payment would be substantial enough to discourage strategic placement of erroneous bids without being so severe as to impose an untenable burden on bidders.

VII. Conclusion

In this *Order*, the Commission concludes that making the F block rules race- and gender-neutral will avoid the uncertainty and delay that could result from legal challenges to the special provisions for minority- and women-owned businesses in the broadband PCS F block rules. The Commission also takes steps to streamline procedures and minimize the possibility of insincere bidding and bidder default. The Commission also responds to the *Cincinnati Bell* remand issues. Finally, to expedite the delivery of broadband PCS services to the public, the Commission plans to offer the D, E, and F block licenses together in one simultaneous multiple round auction and delegates authority to the Wireless Telecommunications Bureau to conduct two concurrent auctions if circumstances warrant.

VIII. Procedural Matters and Ordering Clauses

57. The Final Regulatory Flexibility Analysis, as required by Section 604 of the Regulatory Flexibility Act, is set forth in Appendix C of the Report and Order. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

58. *It is ordered*, That the rule changes specified below *are adopted* and are *effective* July 31, 1996.

59. This action is taken pursuant to Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 309(j).

List of Subjects in 47 CFR Parts 20 and 24

Commercial Mobile Radio Service, Personal Communications Services.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 20 and 24 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 20.6 is amended by revising paragraphs (d)(2), (e), and Note 1 to § 20.6 to read as follows:

§ 20.6 CMRS spectrum aggregation limit.

* * * * *

(d) * * *

(2) Partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a broadband PCS, cellular or SMR licensee shall be attributed, except that ownership will not be attributed unless the partnership and other ownership interests and any stock interest amount to at least 40 percent of the equity, or outstanding stock, or outstanding voting stock of a broadband PCS, cellular or SMR licensee if the ownership interest is held by a small business or a rural telephone company, as these terms are defined in § 1.2110 of this chapter or other related provisions of the Commission's rules, or if the ownership interest is held by an entity with a non-controlling equity interest in a broadband PCS licensee or applicant that is a small business.

* * * * *

(e) Divestiture. (1) Any party holding controlling or attributable ownership interests in broadband PCS, cellular, and/or SMR licensees regulated as CMRS providers that would exceed the spectrum aggregation limitation defined in paragraph (a) of this section, if granted additional licenses, may be a party to a broadband PCS, cellular, or SMR application (i.e., have a controlling or attributable interest in the applicant), and such applicant will be eligible for licenses amounting to more than 45 MHz of broadband PCS, cellular, and/or SMR spectrum regulated as CMRS in a geographical area, pursuant to the divestiture procedures set forth in paragraphs (e)(2) through (e)(4) of this section; provided, however, that in the case of parties holding controlling or attributable ownership interests in broadband PCS, cellular, and/or SMR licensees, these divestiture procedures shall be available only to:

(i) Parties with controlling or attributable ownership interests in broadband PCS, cellular, and/or SMR licenses where the geographic license areas cover 20 percent or less of the applicant's service area population;

(ii) Parties with attributable interests in broadband PCS, cellular, and/or SMR licenses solely due to management agreements or joint marketing agreements; and

(iii) Parties with non-controlling attributable interests in broadband PCS, cellular, and/or SMR licenses, regardless of the degree to which the geographic license areas cover the applicant's service area population. For purposes of this paragraph, a "non-controlling attributable interest" is one in which the holder has less than a fifty (50) percent voting interest and there is an unaffiliated single holder of a fifty (50) percent or greater voting interest.

(2) The applicant for a license that, if granted, would exceed the 45 MHz limitation shall certify on its application that it and all parties to the application will come into compliance with this limitation.

(3) If such an applicant is a successful bidder in an auction, it must submit with its long-form application a signed statement describing its efforts to date and future plans to come into compliance with the 45 MHz spectrum limitation. A similar statement must also be included with any application for assignment of licenses or transfer of control that, if granted, would exceed the spectrum aggregation limit.

(4) If such an applicant is otherwise qualified, its application will be granted subject to a condition that the licensee shall come into compliance with the 45 MHz spectrum limitation within ninety (90) days of final grant.

(i) Parties holding controlling interests in broadband PCS, cellular, and/or SMR licensees that conflict with the attribution threshold or geographic overlap limitations set forth in this section will be considered to have come into compliance if they have submitted to the Commission an application for assignment of license or transfer of control of the conflicting licensee (see §§ 24.839 of this chapter (PCS), 22.39 of this chapter (cellular), 90.158 of this chapter (SMR)) by which, if granted, such parties no longer would have an attributable interest in the conflicting license. If no such assignment or transfer application is tendered to the Commission within ninety (90) days of final grant of the initial license, the Commission may consider the certification and the divestiture statement to be material, bad faith misrepresentations and shall invoke the condition on the initial license or the assignment or transfer, cancelling or rescinding it automatically, shall retain all monies paid to the Commission, and, based on the facts presented, shall take any other action it may deem appropriate. Divestiture may be to an interim trustee if a buyer has not been secured in the required period of time, as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the license as it sees fit.

(ii) Where parties to broadband PCS, cellular, or SMR applications hold less than controlling (but still attributable) interests in broadband PCS, cellular, or SMR licensee(s), they shall submit, within ninety (90) days of final grant, a certification that the applicant and all parties to the application have come into compliance with the limitations on spectrum aggregation set forth in this section.

Note 1 to § 20.6: Waivers of § 20.6(d) may be granted upon an affirmative showing:

(1) That the interest holder has less than a 50 percent voting interest in the licensee and there is an unaffiliated single holder of a 50 percent or greater voting interest;

(2) That the interest holder is not likely to affect the local market in an anticompetitive manner;

(3) That the interest holder is not involved in the operations of the licensee and does not have the ability to influence the licensee on a regular basis; and

(4) That grant of a waiver is in the public interest because the benefits to the public of common ownership outweigh any potential anticompetitive harm to the market.

* * * * *

PART 24—PERSONAL COMMUNICATIONS SERVICES

3. The authority citation for Part 24 continues to read as follows:

Authority: Secs. 4, 301, 302, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 301, 302, 303, 309 and 332, unless otherwise noted.

§ 24.204 [Removed]

4. Section 24.204 is removed.

5. Section 24.229 is amended by removing paragraph (c) and redesignating paragraph (d) as paragraph (c) and revising it to read as follows.

§ 24.229 Frequencies.

* * * * *

(c) After January 1, 2000, licensees that have met the 5-year construction requirement may assign portions of licensed PCS spectrum.

6. Section 24.704 is amended by adding paragraph (a)(3) to read as follows:

§ 24.704 Withdrawal, default and disqualification penalties.

(a) * * *

(3) *Erroneous Bids.* If at any point during an auction an erroneous bid is withdrawn in the same round in which it was submitted, the bid withdrawal payment will be the greater of

(i) The minimum bid increment for that license and round; and

(ii) The standard bid withdrawal payment, as defined in paragraph (a)(1) of this section, calculated as if the bidder had made the minimum accepted bid. If an erroneous bid is withdrawn in the round immediately following the round in which it was submitted, and the auction is in Stage I or Stage II, the withdrawal payment will be the greater of

(A) Two times the minimum bid increment during the round in which the erroneous bid was submitted, and

(B) The standard withdrawal payment, as defined in paragraph (a)(1) of this section, calculated as if the bidder had made a bid one bid increment above the minimum accepted bid. If an erroneous bid is withdrawn two or more rounds following the round in which it was submitted, the bidder will not be eligible for any reduction in the bid withdrawal payment as defined in paragraph (a)(1) of this section. During Stage III of an auction, if an erroneous bid is not withdrawn during the round in which it was submitted, the bidder will not be eligible for any reduction in the bid withdrawal payment as defined in paragraph (a)(1) of this section.

* * * * *

7. Section 24.706 is revised to read as follows:

§ 24.706 Submission of upfront payments and down payments.

(a) Where the Commission uses simultaneous multiple round auctions or oral sequential auctions, bidders will be required to submit an upfront payment in accordance with § 1.2106 of this chapter, paragraph (c) of this section, and §§ 24.711(a)(1) and 24.716(a)(1).

(b) Winning bidders in an auction must submit a down payment to the Commission in accordance with § 1.2107(b) of this chapter and §§ 24.711(a)(2) and 24.716(a)(2).

(c) Each eligible bidder for licenses on frequency Blocks D and E subject to auction shall pay an upfront payment of $0.06 per MHz per pop for the maximum number of licenses (in terms of MHz-pops) on which it intends to bid pursuant to § 1.2106 of this chapter and procedures specified by Public Notice.

8. Section 24.709 is amended by revising the section heading, paragraphs (a)(1), (a)(2), (c)(1) introductory text, (c)(2) introductory text, and (c)(2)(ii) to read as follows:

§ 24.709 Eligibility for licenses for frequency Blocks C and F.

(a) * * *

(1) No application is acceptable for filing and no license shall be granted for frequency block C or frequency block F, unless the applicant, together with its *affiliates* and persons or entities that hold interests in the applicant and their *affiliates*, have *gross revenues* of less than $125 million in each of the last two years and *total assets* of less than $500 million at the time the applicant's short-form application (Form 175) is filed.

(2) The *gross revenues* and *total assets* of the applicant (or licensee), and its *affiliates*, and (except as provided in paragraph (b) of this section) of persons or entities that hold interests in the applicant (or licensee), and their *affiliates*, shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for a license for frequency block C or frequency block F under this section.

* * * * *

(c) * * *

(1) *Short-form Application.* In addition to certifications and disclosures required by Part 1, subpart Q of this chapter and § 24.813, each applicant for a license for frequency block C or frequency block F shall certify on its short-form application (Form 175) that it is eligible to bid on and obtain such license(s), and (if applicable) that it is eligible for designated entity status pursuant to this section and § 24.720, and shall append the following information as an exhibit to its Form 175:

* * * * *

(2) *Long-form Application.* In addition to the requirements in subpart I of this part and other applicable rules (e.g., §§ 20.6(e) and 20.9(b) of this chapter), each applicant submitting a long-form application for a license(s) for frequency block C or frequency block F shall, in an exhibit to its long-form application:

* * * * *

(ii) List and summarize all agreements or other instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility for a license(s) for frequency block C or frequency block F and its eligibility under §§ 24.711, 24.712, 24.714 and 24.720, including the establishment of *de facto* and *de jure* control; such agreements and instruments include articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, partnership agreements, management agreements, joint marketing agreements, franchise agreements, and any other relevant agreements (including letters of intent), oral or written; and

* * * * *

§ 24.715 [Removed]

9. Section 24.715 is removed.

10. Section 24.716 is amended by revising paragraphs (a)(1), (a)(2), (b), redesignating paragraph (c) as paragraph (d); revising newly-redesignated paragraph (d)(2); and adding a new paragraph (c) to read as follows:

§ 24.716 Upfront payments, down payments, and installment payments for licenses for frequency Block F.

(a) * * *

(1) Each eligible bidder for licenses on frequency Block F subject to auction shall pay an upfront payment of $0.06 per MHz per pop for the maximum number of licenses (in terms of MHz-pops) on which it intends to bid pursuant to § 1.2106 of this chapter and procedures specified by Public Notice;

(2) Each winning bidder shall make a down payment equal to 20 percent of its winning bid (less applicable bidding credits); a winning bidder shall bring its total amount on deposit with the Commission (including upfront payment) to 10 percent of its net winning bid within five business days after the auction closes, and the remainder of the down payment (10 percent) shall be paid within five business days after the application required by § 24.809(b) is granted; and

(b) *Installment Payments.* Each eligible licensee of frequency Block F may pay the remaining 80 percent of the net auction price for the license in installment payments pursuant to § 1.2110(e) of this chapter and under the following terms:

(1) For an eligible licensee with *gross revenues* exceeding $75 million (calculated in accordance with § 24.709 (a)(2) and (b)) in each of the two preceding years (calculated in accordance with § 24.720(f)), interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 3.5 percent; payments shall include both principal and interest amortized over the term of the license;

(2) For an eligible licensee with *gross revenues* not exceeding $75 million (calculated in accordance with § 24.709 (a)(2) and (b)) in each of the two preceding years (calculated in accordance with § 24.720(f)), interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; payments shall include interest only for the first year and payments of interest and principal amortized over the remaining nine years of the license term; or

(3) For an eligible licensee that qualifies as a small business or as a consortium of small businesses, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted; payments shall include interest only for the first two years and payments of interest and principal amortized over the remaining eight years of the license term.

(c) *Late Installment Payments.* Any licensee that submits a scheduled installment payment more than 15 days late will be charged a late payment fee equal to 5 percent of the amount of the past due payment. Payments will be applied in the following order: late charges, interest charges, principal payments.

(d) * * *

(2) If a licensee that utilizes installment financing under this section seeks to make any change in ownership structure that would result in the licensee losing eligibility for installment payments, the licensee shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of such change as a condition of approval. A licensee's (or other attributable entity's) increased gross revenues or increased total assets due to nonattributable equity investments (i.e., from sources whose gross revenues and total assets are not considered under § 24.709(b)), debt financing, revenue from operations or other investments, business development or expanded service shall not be considered to result in the licensee losing eligibility for installment payments.

* * * * *

11. Section 24.717 is amended by revising paragraphs (a) and (b), removing paragraph (c), and redesignating paragraph (d) as paragraph (c) to read as follows:

§ 24.717 Bidding credits for licenses for frequency Block F.

(a) A winning bidder that qualifies as a *small business* or a *consortium of small businesses* may use a bidding credit of 15 percent to lower the cost of its winning bid.

(b) A winning bidder that qualifies as a *very small business* or a *consortium of very small businesses* may use a bidding credit of 25 percent to lower the cost of its winning bid.

* * * * *

12. Section 24.720 is amended by revising the heading of paragraph (b) redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4) and revising them; adding new paragraphs (b)(2) and (b)(5); and revising paragraphs (c)(2), (e), (f), (g), (j)(2), (l)(11)(i), (n)(1), (n)(3) and (n)(4) to read as follows:

§ 24.720 Definitions.

* * * * *

(b) *Small business; very small business; consortia.* * * *

(2) A *very small business* is an entity that, together with its *affiliates* and persons or entities that hold interests in such entity and their *affiliates*, has average annual *gross revenues* that are not more than $15 million for the preceding three years.

(3) For purposes of determining whether an entity meets the $40 million average annual *gross revenues* size standard set forth in paragraph (b)(1) of this section or the $15 million average annual *gross revenues* size standard set forth in paragraph (b)(2) of this section, the *gross revenues* of the entity, its *affiliates*, persons or entities holding interests in the entity and their *affiliates* shall be considered on a cumulative basis and aggregated subject to the exceptions set forth in § 24.709(b).

(4) A *small business consortium* is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a *small business* in paragraphs (b)(1) and (b)(3) of this section.

(5) A *very small business consortium* is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a *very small business* in paragraphs (b)(2) and (b)(3) of this section.

(c) * * *

(2) That complies with the requirements of § 24.709(b)(3) and (b)(5) or § 24.709(b)(4) and (b)(6).

* * * * *

(e) *Rural Telephone Company.* A *rural telephone company* is a local exchange carrier operating entity to the extent that such entity:

(1) Provides common carrier service to any local exchange carrier study area that does not include either;

(i) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(2) Provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(3) Provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(4) Has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

(f) *Gross Revenues. Gross revenues* shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (*e.g.*, cost of goods sold), as evidenced by audited financial statements for the relevant number of most recently completed calendar years, or, if audited financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the applicant's short-form application (Form 175). If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate. When an applicant does not otherwise use

audited financial statements, its gross revenues may be certified by its chief financial officer or its equivalent.

(g) *Total Assets. Total assets* shall mean the book value (except where generally accepted accounting principles (GAAP) require market valuation) of all property owned by an entity, whether real or personal, tangible or intangible, as evidenced by the most recent audited financial statements or certified by the applicant's chief financial officer or its equivalent if the applicant does not otherwise use audited financial statements.

* * * * *

(j) * * *

(2) For purposes of assessing compliance with the equity limits in § 24.709 (b)(3)(i) and (b)(4)(i), where such interests are not held directly in the applicant, the total equity held by a person or entity shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain.

* * * * *

(l) * * *

(11) * * *

(i) For purposes of §§ 24.709(a)(2) and paragraphs (b)(2) and (d) of this section, Indian tribes or Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or entities owned and controlled by such tribes or corporations, are not considered affiliates of an applicant (or licensee) that is owned and controlled by such tribes, corporations or entities, and that otherwise complies with the requirements of § 24.709 (b)(3) and (b)(5) or § 24.709 (b)(4) and (b)(6), except that gross revenues derived from gaming activities conducted by affiliated entities pursuant to the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) will be counted in determining such applicant's (or licensee's) compliance with the financial requirements of § 24.709(a) and paragraphs (b) and (d) of this section, unless such applicant establishes that it will not receive a substantial unfair competitive advantage because significant legal constraints restrict the applicant's ability to access such gross revenues.

* * * * *

(n) * * *

(1) A qualifying investor is a person who is (or holds an interest in) a member of the applicant's (or licensee's) control group and whose gross revenues and total assets, when aggregated with those of all other attributable investors and affiliates, do not exceed the gross revenues and total assets limits specified in § 24.709(a), or, in the case of an applicant (or licensee) that is a small business, do not exceed the gross revenues limit specified in paragraph (b) of this section.

* * * * *

(3) For purposes of assessing compliance with the minimum equity requirements of § 24.709(b) (5) and (6), where such equity interests are not held directly in the applicant, interests held by qualifying investors or qualifying minority and/or woman investors shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain.

(4) For purposes of § 24.709 (b)(5)(i)(C) and (b)(6)(i)(C), a qualifying investor is a person who is (or holds an interest in) a member of the applicant's (or licensee's) control group and whose gross revenues and total assets do not exceed the gross revenues and total assets limits specified in § 24.709(a).

* * * * *

13. Section 24.813 is amended by revising paragraphs (a)(1), (a)(2) and (a)(4) to read as follows:

§ 24.813 General application requirements.

(a) * * *

(1) A list of any business, holding or applying for CMRS or PMRS licenses, five percent or more of whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, attributable stockholder or key management personnel of the applicant. This list must include a description of each such business' principal business and a description of each such business' relationship to the applicant.

(2) A list of any party which holds a five percent or more interest (or a ten percent or more interest for institutional investors as defined in § 24.720(h)) in the applicant, or any entity holding or applying for CMRS or PMRS licenses in which a five percent or more interest (or a ten percent or more interest for institutional investors as defined in § 24.720(h)) is held by another party which holds a five percent or more interest (or a ten percent or more interest for institutional investors as defined in § 24.720(h)) in the applicant (*e.g.* If Company A owns 5% of Company B (the applicant) and 5% of Company C, a company holding or applying for CMRS or PMRS licenses, then Companies A and C must be listed on Company B's applications.)

* * * * *

(4) In the case of partnerships, the name and address of each partner, each partner's citizenship and the share or interest participation in the partnership. This information must be provided for all partners, regardless of their respective ownership interest in the partnership.

* * * * *

14. Section 24.839 is amended by revising paragraphs (a), (d)(1), and (d)(2) and adding paragraphs (d)(3), (d)(4), and (d)(5) to read as follows:

§ 24.839 Transfer of control or assignment of licenses.

(a) Approval required. Authorization shall be transferred or assigned to another party, voluntarily (for example, by contract) or involuntarily (for example, by death, bankruptcy or legal disability), directly or indirectly or by transfer of control of any corporation holding such authorization, only upon application and approval by the Commission. A transfer of control or assignment of station authorization in the broadband Personal Communications Service is also subject to §§ 24.711(e), 24.712(d), 24.713(b), 24.717(c) (unjust enrichment) and 1.2111(a) (reporting requirement).

* * * * *

(d) * * *

(1) The application for assignment or transfer of control is filed after five years from the date of the initial license grant; or

(2) The proposed assignee or transferee meets the eligibility criteria set forth in § 24.709 at the time the application for assignment or transfer of control is filed, or the proposed assignee or transferee holds other license(s) for frequency blocks C and F and, at the time of receipt of such license(s), met the eligibility criteria set forth in § 24.709;

(3) The application is for partial assignment of a partitioned service area to a rural telephone company pursuant to § 24.714 and the proposed assignee meets the eligibility criteria set forth in § 24.709;

(4) The application is for an involuntary assignment or transfer of control to a bankruptcy trustee appointed under involuntary bankruptcy, an independent receiver appointed by a court of competent jurisdiction in a foreclosure action, or, in the event of death or disability, to a person or entity legally qualified to succeed the deceased or disabled person under the laws of the place having jurisdiction over the estate involved; provided that, the applicant requests a waiver pursuant to this paragraph; or

(5) The assignment or transfer of control is *pro forma.*

* * * * *

[FR Doc. 96–16665 Filed 6–28–96; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 233, 235 and 236

[FRA Docket No. RSSI–1 ; Notice No. 1]

RIN 2130—AB06; 2130—AB05

Signal and Train Control; Miscellaneous Amendments

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Interim final rule.

SUMMARY: In accord with President Clinton's Regulatory Reinvention Initiative, FRA is amending FRA's signal system reporting requirements to reduce signal system reporting burdens on the rail industry. FRA is also amending its regulations governing applications for approval of discontinuance or material modification of a signal system and is consolidating certain pneumatic valve cleaning and testing intervals to eliminate overlapping and unnecessary test schedules.

DATES: This interim final rule is effective August 30, 1996. Written comments concerning this rule must be filed no later than July 31, 1996.

FOR FURTHER INFORMATION CONTACT: William Goodman, Staff Director, Signal and Train Control, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–366–2231), or Mark Tessler, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–366–0628).

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1993, President Clinton issued Executive Order No. 12866, "Regulatory Planning and Review". This Executive Order was based on the recognition that government must govern in a focused, tailored, and sensible way. In order to reaffirm and implement the principles of Executive Order No. 12866, President Clinton, in March of 1995, announced a Regulatory Reinvention Initiative in which federal agencies were directed to conduct a review of agency regulations with a view toward eliminating or revising those outdated or otherwise in need of reform. This proceeding is part of that effort.

FRA has not provided prior notice and request for public comment prior to making the amendments contained in this rule. FRA has concluded that such notice and comment are impracticable, unnecessary and contrary to the public interest under 5 U.S.C 553 since FRA is making only minor changes in reporting requirements, administrative procedures, and is clarifying contradictory regulatory provisions. However, FRA is soliciting comments on this rule and will consider those comments in determining whether there is a need to take further action to improve these regulations. For this reason, FRA has issued this as an interim final rule so that it can take effect while any comments are being considered. If comments persuade FRA that amendments are necessary, it will address them in a subsequent notice. As noted above, comments must be submitted no later than July 31, 1996.

Section-by-Section Analysis

49 CFR Part 233.9 "Signal System Reporting Requirements"

The Signal Systems Annual Report has historically been used to monitor changes in the types of signal systems installed on the nation' s railroads. Based on its regulatory review, FRA has concluded that the signal system information base can be maintained while at the same time the reporting burden imposed on railroads can be reduced. FRA has concluded that the information provided by this report does not need to be updated annually. Using the information base already in existence, FRA can monitor incremental changes in railroad signal systems through reports of agency field personnel. Additionally, because railroads must file an application with FRA to discontinue or materially modify a signal system under 49 CFR Part 235, FRA will be well informed regarding incremental changes in signal systems. FRA is amending this section to provide for filing of signal system reports every five years rather than on an annual basis, as is required presently. This more realistic time frame will reduce the reporting burden to the industry while maintaining an adequate information base. FRA is also revising the information to be reported in order to reflect technological changes in the industry and in accord with information needs of FRA. FRA will submit the report form to the Office of Management and Budget (OMB) for approval. The new reporting requirements contained in this section are not mandatory until approval has been obtained from OMB. Section 233.9 is thus being revised to require that not later than April 1, 1997 and every 5 years thereafter, each carrier shall file with FRA a Signal System Five-year Report on a form to be provided by FRA and in accordance with instructions provided on the report.

49 CFR Part 235.7 "Changes not Requiring Filing of Application"

Section 235.7 currently specifies those modifications to signal systems that can be made by a railroad without the necessity of filing an application for FRA approval. Those listed modifications are of a type that increase either the safety of a signal system or which do not affect the existing level of safety. FRA is adding a provision which permits the installation, removal or relocation of intermediate or automatic signals in conjunction with the elimination of signal system pole lines when replaced with electronic track circuits. Improving a signal system with electronic track circuits provides a railroad with the benefit of a signal system not adversely affected by ice, snow storms, and floods. Installation of electronic track circuits and the elimination of open pole lines often results in the extension and equalization of block limits and relieves the railroads from maintaining and replacing many poles and cross arms and eliminates signal problems created by wire crosses and grounds on the open wire signal circuits. Section 235.7(c)(24) provides that it is not necessary to file an application for approval for the installation, relocation, or removal of signals, interlocked switches, derails, movable-point frogs, or electric locks in an existing system directly associated with the installation of new track; the elimination of existing track other than a second main track; the extension or shortening of a passing siding; elimination of second main track in certain stated circumstances or a line relocation. FRA is adding to this list conversion of pole line circuits to electronic (coded) track circuits provided that the railroad gives notice and a profile plan of the change to the FRA regional office having jurisdiction over that territory at least 60 days in advance of the change. In addition, the railroad must provide at the same time a copy of the notice and profile plan to representatives of employees responsible for maintenance, inspection and testing of the signal system under 49 CFR Part 236. The signal system modification will be deemed acceptable, unless within 60 days, the Regional Adminstrator stays action by written notice to the railroad and refers the issue to the Railroad Safety Board for decision. The proposed change will enable railroads to better manage the timing and budgeting for signal system upgrades while at the same time

maintaining protection and safety of train movements.

49 CFR 236.590 "Pneumatic Apparatus"

This section presently requires that automatic train stop ("ATS"), automatic train control ("ATC"), or automatic cab signal ("ACS") pneumatic apparatus be inspected and cleaned at least once every 736 days. This section also requires that the pneumatic apparatus be stenciled, tagged or otherwise marked to indicate the last cleaning date. Locomotive safety standard regulations at 49 CFR 229.29 require that valves, valve portions, MU locomotive brake cylinders and electric pneumatic master controllers in the air brake system be cleaned, repaired, and tested at least once every 736 days. The section also requires that the date and place of the cleaning, repairing and testing be recorded on a specified form. A record of the parts of the air brake system that are cleaned, repaired, and tested are required to be kept in the railroad's files or in the cab of the locomotive.

FRA intends that the inspection and cleaning time interval requirements for pneumatic apparatus (ATS, ATC, and ACS) be governed by the air brake testing intervals established in 229.29. In that way, railroads will not be faced with conflicting testing schedules. Maintenance schedules will be simplified and locomotive down-time will be reduced as a result. Although both section 229.29 and 236.590 require a 736-day test interval, due to existing waivers, the testing and cleaning intervals for air brake systems and pneumatic systems on many locomotives do not coincide. In 1985, FRA granted a waiver of compliance with § 229.29 (see 50 FR 3910, January 29, 1985) to allow locomotives equipped with 26L airbrake equipment to operate for periods not to exceed three years before receiving the detailed inspections required by § 229.29. Under the terms of this waiver, which extended an earlier test waiver (see 46 FR 33401, June 29, 1981), "train control pneumatic valves (suppression and timing valves)" were included within the waiver. Thus railroads have been able to perform periodic testing and maintenance of air brake and train control pneumatic valves on locomotive 26L brake equipment at the same time. It has come to our attention that many railroads were not aware of the extent of the waiver issued in 1985 and thus may not have been taking advantage of the scheduling advantages this waiver provided. By conforming the requirements of § 236.590 to those of § 229.29, any changes in inspection and testing intervals or recordkeeping requirements made to air brake systems will automatically apply to pneumatic train control valves on similar types of locomotives. Since pneumatic train control valves utilize the same air supply system, a decision as to safe testing intervals for one component would apply to the other component as well. In addition to the above changes, FRA is providing "out of service" credit that is applied to air brake systems under § 229.33 to train control systems under § 236.590. This will further conform the two sets of testing and maintenance requirements.

FRA is thus amending § 236.590 to provide that automatic train stop, train control, or cab signal pneumatic apparatus shall be inspected, cleaned, and the results of such inspection recorded as provided by § 229.29(a). When a locomotive with automatic train stop, train control, or cab signal pneumatic apparatus receives out-of-use credit pursuant to § 229.33, the automatic train stop, train control, or cab signal apparatus shall be tested in accordance with § 236.588 prior to the locomotive being placed in service.

E.O. 12866 and DOT Regulatory Policies and Procedures

These amendments have been evaluated in accordance with existing policies and procedures and because they are primarily technically oriented and generally reduce the regulatory burden on railroads, FRA has concluded that the revisions do not constitute significant rule under either Executive Order 12866 or DOT's regulatory policies and procedures.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this rule will not have a significant impact on a substantial number of small entities. There are no substantial economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

These amendments reduce information collection requirements and therefore reduce reporting burdens imposed on railroads.

Environmental Impact

FRA has evaluated these regulations in accordance with its procedure for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. FRA has determined that the revision of Parts 233, 235 and 236 of Title 49 of the CFR does not constitute a major FRA action requiring an environmental assessment.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, "Federalism," and it has been determined that these amendments do not have federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

49 CFR Part 233

Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 235

Railroad safety, Administrative practice and procedure.

49 CFR Part 236

Railroad safety.

The Rule

In consideration of the foregoing, FRA amends Parts 233, 235, and 236 of Title 49 of the Code of Federal Regulations as set forth below:

PART 233—[AMENDED]

1. The authority citation for Part 233 continues to read as follows:

Authority: 49 App. U.S.C. 26, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49 (f), (g), and (m).

2. Section 233.9 is revised to read as follows:

§ 233.9 Reports.

Not later than April 1, 1997 and every 5 years thereafter, each carrier shall file with FRA a signal system status report "Signal System Five-year Report" on a form to be provided by FRA in accordance with instructions and definitions provided on the report.

PART 235—[AMENDED]

3. The authority citation for Part 235 continues to read as follows:

Authority: 49 App. U.S.C. 26, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49 (f), (g), and (m).

4. Paragraph (c)(24) of § 235.7 is amended by a adding at the end thereof a new paragraph (c)(24) (vi) to read as follows:

§ 235.7 Changes not requiring filing of application.

* * * * *

(c) * * *

(24) * * *

(vi) The conversion of pole line circuits to electronic (coded) track circuits provided that the railroad gives notice and a profile plan of the change to the FRA regional office having jurisdiction over that territory at least 60 days in advance of the change. The railroad must also at the same time provide a copy of the notice and profile plan to representatives of employees responsible for maintenance, inspection and testing of the signal system under 49 CFR Part 236. The signal system modification will be deemed acceptable, unless within 60 days, the Regional Adminstrator stays action by written notice to the railroad and refers the issue to the Railroad Safety Board for decision.

PART 236—[AMENDED]

5. The authority citation for Part 236 continues to read as follows:

Authority: 49 App. U.S.C. 26, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49 (f), (g), and (m).

6. Section 236.590 is revised to read as follows:

§ 236.590 Pneumatic apparatus

Automatic train stop, train control, or cab signal pneumatic apparatus shall be inspected, cleaned, and the results of such inspection recorded as provided by § 229.29(a). When a locomotive with automatic train stop, train control, or cab signal pneumatic apparatus receives out-of-use credit pursuant to § 229.33, the automatic train stop, train control, or cab signal apparatus shall be tested in accordance with § 236.588 prior to the locomotive being placed in service.

Issued in Washington, D.C. on May 30, 1996.

Donald M. Itzkoff,

Deputy Administrator.

[FR Doc. 96–15296 Filed 6–28–96; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 61, No. 127
Monday, July 1, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, and 221

[Regulations G, T, and U; Docket No. R–0923]

Securities Credit Transactions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Board is extending the comment period on its proposal to amend its margin regulations, Regulations G, T, and U, to give the public additional time to comment on the proposal. The Secretary of the Board, acting pursuant to delegated authority, has extended the comment period from July 1, 1996 to August 2, 1996, to give the public additional time to provide comments.

DATES: Comments should be received on or before August 2, 1996.

ADDRESSES: Comments should refer to Docket R–0923, and may be mailed to William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street NW (between Constitution Avenue and C Street NW) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.9 of the Board's Rules Regarding the Availability of Information.

FOR FURTHER INFORMATION CONTACT: Scott Holz, Senior Attorney or Angela Desmond, Senior Counsel, Division of Banking Supervision and Regulation (202) 452–2781; Oliver Ireland, Associate General Counsel (202) 452–3625 or Gregory Baer, Managing Senior Counsel (202) 452–3236, Legal Division; for the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202) 452–3544.

SUPPLEMENTARY INFORMATION: On May 6, 1996, the Board requested comment on amendments to its margin regulations, Regulations G, T, and U (61 FR 20399).

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, June 25, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–16647 Filed 6–28–96; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–10–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300–600 series airplanes. This proposal would require inspections to detect cracking of the upper radius of the forward fitting of frame 47, and repair, if necessary. This proposal is prompted by results of full-scale fatigue testing, which revealed cracking in the upper radius of frame 47. The actions specified by the proposed AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of frame 47 of the fuselage.

DATES: Comments must be received by August 12, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–10–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2146; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–10–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–10–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Airbus Model A300–600 series airplanes. The DGAC advises that, during a full-scale fatigue test, cracks were found on the left and right upper radius of frame 47 on a Model A300 series airplane that had accumulated 48,000 flights. Similar cracking also was found on an in-service Model A300 B2 series airplane that had accumulated 18,000 flights. Fatigue cracking of the upper radius could result in rupture of the forward fitting of the frame. Such fatigue cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of frame 47 of the fuselage.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–53–6029, Revision 2, dated November 7, 1994, which describes procedures for repetitive eddy current inspections to detect cracking of the upper radius of the left and right forward fitting of frame 47. For airplanes on which cracking is found, the service bulletin describes procedures for modification of the sealing fitting and sealing sham, and repetitive ultrasonic inspections to detect cracking of the rear of the forward fitting. Among other things, the modification involves performing PR sealing on the fitting and on the fasteners inside the center wing box.

The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 93–162–148(B), dated September 15, 1993, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive eddy current inspections to detect cracking of the upper radius of the left and right forward fitting of frame 47, and repair, if necessary. The inspections would be required to be accomplished in accordance with the service bulletin described previously. The repair would be required to be accomplished in accordance with a method approved by the FAA.

Explanation of Differences Between Service Bulletin and Proposed Rule

Operators should note that, unlike the procedures recommended in the referenced service bulletin, this proposed rule would not permit further flight after detection of cracking in the upper radius of the fitting within certain limits. Instead, this proposed rule would require, prior to further flight, repair of cracking in accordance with a method approved by the FAA. The FAA finds that, in light of the safety implications and consequences associated with such cracking, an adequate level of safety for the affected fleet requires that cracking in the upper radius must be repaired prior to further flight.

Additionally, this proposed AD does not require accomplishment of the modification described in the referenced service bulletin. The service bulletin specifies that purpose of the modification is to provide access to the forward fitting of frame 47 to enable operators to accomplish an ultrasonic inspection to detect longer cracks of the rear of the fitting. The FAA finds that since accomplishment of this modification will not prevent fatigue cracking of the upper radius, in lieu of accomplishing that modification, any cracking detected during the eddy current inspection must be repaired prior to further flight.

In addition, the service bulletin specifies that inspection thresholds and intervals may be adjusted based on certain average flight operations of the airplane. However, the FAA has determined that such adjustments would not address the unsafe condition in a timely manner. Therefore, this proposed AD does not permit such adjustments. In developing the appropriate compliance time for the proposed rule, the FAA considered not only the manufacturers recommendation, but the safety implications involved with cracking in the upper radius of the fitting of frame 47 and the number of landings that had been accumulated when cracking was detected. In light of these factors, the FAA finds the compliance times specified in the proposed AD for initiating the required actions to be warranted, in that they represent an appropriate interval of time allowable for the affected airplanes to continue to operate without compromising safety.

Further, the service bulletin specifies that operators need not count touch-and-go landings in determining the total number of landings between two consecutive inspections, even if those landings are less than five percent of the landings between inspection intervals. Since fatigue cracking that was found in the upper radius of the fitting of frame 47 is aggravated by landing operations, the FAA finds that all touch-and-go landings must be counted in determining the total number of landings between two consecutive inspections.

Cost Impact

The FAA estimates that 35 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $8,400, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if

promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 96–NM–10–AD.

Applicability: All Model A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of frame 47 of the fuselage, accomplish the following:

(a) Prior to the accumulation of 17,300 total landings, or within one year after the effective date of this AD, whichever occurs later: Perform an eddy current inspection to detect cracking of the upper radius of the left and right forward fitting of frame 47, in accordance with Airbus Service Bulletin A300–53–6029, Revision 2, dated November 7, 1994.

(1) If no cracking is found during an eddy current inspection: Repeat the inspection thereafter at intervals not to exceed 6,600 landings.

(2) If any cracking is found during an eddy current inspection: Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 25, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–16651 Filed 6–28–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Gulf of the Farallones National Marine Sanctuary: Petition to Ban the Use of Motorized Personal Watercraft Within the Gulf of the Farallones National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of receipt of a petition.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) has received a petition from the Environmental Action Committee of West Marin County to ban the use of motorized personal watercraft within the Gulf of the Farallones National Marine Sanctuary.

FOR FURTHER INFORMATION CONTACT: Ed Ueber at 415–556–3509 or Elizabeth Moore at 301–713–3141.

SUPPLEMENTARY INFORMATION: The Gulf of the Farallones National Marine Sanctuary (GFNMS) was designated in January 1981, and encompasses 948 square nautical miles of ocean and coastal waters off the coast of San Francisco. The GFNMS presently has no regulations restricting the use of motorized personal watercraft.

The Sanctuaries and Reserves Division within NOAA's National Ocean Service (NOS) received a petition on April 18, 1996, from the Environmental Action Committee of West Marin, California (EAC) to ban the use of motorized personal watercraft in the GFNMS. EAC believes that "the use of motorized personal watercraft * * * is completely incompatible with the existence of a marine sanctuary," and gives such reasons as the danger of such craft to biological resources; danger to other human users; noise, water, and air pollution; and incompatibility with other Sanctuary uses such as mariculture and small non-motorized watercraft. NOS is reviewing the petition and will notify the petitioner of its decision whether or not to proceed with a rulemaking to ban the use of motorized personal watercraft in the GFNMS. If NOS decides to initiate rulemaking proceedings, then the public will be provided with an opportunity to comment on the proposed rulemaking in accordance with the procedures of the National Marine Sanctuaries Act and the Administrative Procedures Act.

Dated: June 25, 1996.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 96–16676 Filed 6–28–96; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 21

RIN 1076–AD 61

Social Welfare Arrangements With States or Other Agencies

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to revise the regulations in this part to improve the clarity of the regulations and understanding by the public.

DATES: Comments must be received on or before August 30, 1996.

ADDRESSES: Mail comments to Larry Blair, Chief, Division of Social Services, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 1849 C St. NW., Mail Stop 4603–MIB, Washington, DC 20240; or, hand deliver them to Room 4603 at the above address. Comments will be available for inspection at this address from 9:00 a.m. to 4:00 p.m., Monday through Friday beginning approximately July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Larry Blair, Chief of the Division of Social Services, Bureau of Indian Affairs at telephone number (202) 208–2721.

SUPPLEMENTARY INFORMATION: The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9.

Publication of the proposed rule by the Department of the Interior (Department) provides the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding the proposed rule to the location identified in the ADDRESSES section of this document.

Executive Order 12778

The Department has certified to the Office of Management and Budget (OMB) that this rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Executive Order 12866

This rule is not a significant regulatory action under Executive Order 12866 and does not require review by the Office of Management and Budget.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12630

The Department has determined that this rule does not have "significant takings" implications. This rule does not pertain to "taking" of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this rule does not have significant federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

NEPA Statement

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

This rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Paperwork Reduction Act of 1995

Sections 21.3 and 21.4 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of the Interior has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

The Bureau of Indian Affairs may enter into agreements with state, county, or other Federal agencies to provide welfare services for Indians. The information collected will be used to determine the amount of funds necessary to provide services for Indians within specified service areas. It will detail the services to be rendered and a plan for the expenditure of funds by the contractor. The information collected will also be used to measure performance of the contractor and plan future services.

No similar agreement specific information pertaining to welfare services for Indians is collected by the Bureau of Indian Affairs or any other Federal agency. Since tribal circumstances vary from one location to another, no information is available which can be used to contract this service.

The information to be collected from third parties is the same information that a state, county, or other Federal agency would otherwise collect in the provision of welfare services.

The estimate of total burden hours is based upon staff expertise in the program area responsible for the management of welfare services budgets.

CFR section	Number of respondents	Frequency of response	Total annual responses	Burden hours per response	Annual burden hours	Cost to respondents
21.3	50	1	1	16	16	$400
21.4	50	5	1	32	32	800

Organizations and individuals desiring to submit comments on the information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10202, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the U.S. Department of the Interior.

The Department considers comments by the public on this proposed collection of information in:

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;

Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to the OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Bureau of Indian Affairs on the proposed regulations.

Drafting Information: The primary author of this document was Larry Blair, Division of Social Services, Bureau of Indian Affairs, Department of the Interior.

List of Subjects in 25 CFR Part 21

Indians, Indians—welfare contracts.

For the reasons given in the preamble, part 21 of title 25, chapter I of the Code of Federal Regulations is proposed to be revised as set forth below.

PART 21—SOCIAL WELFARE ARRANGEMENTS WITH STATES OR OTHER AGENCIES

Sec.

21.1 Who may negotiate agreements with States, Counties, and other Federal agencies?
21.2 Who may sign agreements for the relief of distress and social welfare of Indians?
21.3 What must the State, County, or other Federal welfare agency provide?
21.4 What standards must welfare service providers meet?
21.5 What will the Bureau of Indian Affairs provide?
21.6 What information is collected?
21.7 Definitions.

Authority: 25 U.S.C. 454.

§ 21.1 Who may negotiate agreements with States, Counties, and other Federal agencies?

The Secretary may negotiate with State, county, or other Federal welfare agencies to provide welfare services for Indians within a particular State and within the exterior boundaries of Indian reservations or on trust or restricted lands that are under the jurisdiction of the Bureau of Indian Affairs.

§ 21.2 Who may sign agreements for the relief of distress and social welfare of Indians?

The proper officer of the State, county, or other Federal welfare agency must sign agreements to provide welfare services. Evidence of the officer's authority must accompany the agreement. Agreements to provide welfare services are not effective until the Secretary approves and signs them.

§ 21.3 What must the State, County, or other Federal welfare agency provide?

(a) *Plan of operation.* A plan of operation describing the services and assistance to be rendered and a budget showing the plan of expenditures of funds must be submitted with the agreement. No change in the plan of operation may be made without the Secretary's prior approval.

(b) *Financial statements.* Thirty days after the close of each fiscal year, a detailed financial statement showing all expenditures must be submitted to the Secretary. Any deviations from the approved plan of operation must be explained and the records of the contractor must remain available for inspection by representatives of the Bureau of Indian Affairs.

§ 21.4 What standards must welfare service providers meet?

(a) *Service.* The standards of aid, care, and service for Indians can be no less than the standards for other clients requiring similar aid, care, and services.

(b) *Personnel.* Unless the Secretary has agreed otherwise, the personnel employed for provision of public welfare services to Indians are subject to the contractor's merit system and the approval of the Secretary and local welfare authorities.

§ 21.5 What will the Bureau of Indian Affairs provide?

(a) *Cooperative services.* The Bureau will maintain cooperative services at the local level.

(b) *Government property and facilities.* The agreement must specify the terms under which the contractor may use Federal property, facilities and equipment. Agreements that allow use of Federal automobiles must require the contractor be responsible for damage or injury to property or persons and to return the equipment in good condition. The contractor must carry sufficient insurance and expressly relieve the Federal Government of any and all liability for any personal injury or property damages.

§ 21.6 What information is collected?

The information collection requirements contained in § 21.3 will be approved by the Office of Management and Budget as required by 44 U.S.C. 1320 *et seq.* The information collected in the plan of operation will be used to determine how contract funds are utilized and to measure performance of the contractor and plan for future agreements . The information collected in the financial statement will be used to determine the adequacy of services and utilization of the budget provided to the contractor. A response is required to obtain a benefit.

§ 21.7 Definitions.

Must means a mandatory or imperative act or requirement.

Secretary means the Secretary of the Interior.

Dated: June 6, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–16038 Filed 6–28–96; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AI33

Rulemaking procedures; Public Participation

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: In a document recently published in the **Federal Register** (61 FR 11309), the Department of Veterans Affairs (VA) amended the "GENERAL PROVISIONS" regulations by eliminating a policy statement concerning prior notice-and-comment for rulemaking. That action, taken without prior notice-and-comment, concluded that the policy statement was unnecessary. Judicial review has been sought on the basis that such action did not comply with notice-and-comment provisions. While we believe such position is not legally correct, we do not object to providing interested parties with an opportunity to comment on whether the policy statement should be eliminated. Accordingly, a companion document published in the Rules and Regulations section of this issue of the **Federal Register** reestablishes the policy statement and this document proposes to eliminate it, thus affording interested parties the opportunity to comment thereon. For reasons stated below, it does not appear that there is a need to retain the policy statement.

DATES: Comments must be received on or before August 30, 1996.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AI33." All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Thomas O. Gessel, Director, Office of Regulations Management (02D), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8605.

SUPPLEMENTARY INFORMATION: This document proposes to amend the "GENERAL PROVISIONS" regulations in 38 CFR part 1 by removing § 1.12.

This section consists of a policy statement concerning prior notice-and-comment for rulemaking.

The provisions of 5 U.S.C. 553 set forth notice-and-comment requirements for rulemaking and include an exemption from the notice-and-comment requirements for rulemaking concerning public property, loans, grants, benefits, or contracts. Regardless of whether the rulemaking concerns public property, loans, grants, benefits, or contracts, the provisions of 5 U.S.C. 553 also contain exemptions from the notice-and-comment requirements for interpretative rules; general statements of policy; rules of organization, procedure, or practice; and for rules published with an appropriate statement of "good cause." The regulatory history of § 1.12 indicates that, despite the statutory exemption for public property, loans, grants, benefits, or contracts, VA intended to utilize the notice-and-comment provisions for rulemaking unless it were determined that it was appropriate to use an applicable exemption other than an exemption based on the mere fact that the subject matter concerned property, loans, grants, benefits, or contracts (see 37 FR 3552, Feb. 17, 1972).

Subsequent to the promulgation of § 1.12, statutory provisions were established that specifically apply the public notice-and-comment provisions of 5 U.S.C. 553 to VA rulemaking concerning loans, grants, or benefits (see 38 U.S.C. 501(d)). These statutory provisions do not impose notice-and-comment provisions for rulemaking concerning public property or contracts.

Also, subsequent to the promulgation of § 1.12, statutory provisions were established that specifically apply notice-and-comment provisions to certain rulemaking concerning contracts. In this regard, 41 U.S.C. 418b provides, with certain exceptions, that "no procurement policy, regulation, procedure, or form (including amendments or modifications thereto) relating to the expenditure of appropriated funds that has (1) a significant effect beyond the internal operating procedures of the agency issuing the procurement policy, regulation, procedure or form, or (2) a significant cost or administrative impact on contractors or offerors, may take effect until 60 days after the procurement policy, regulation, procedure, or form is published for public comment in the **Federal Register**."

It does not appear that there is a need for VA to self-impose additional notice-and-comment requirements for rulemaking beyond those imposed by statute.

A companion document reestablishing § 1.12 is published in the Rules and Regulations section of this issue of the **Federal Register**.

No notice of proposed rulemaking was required in connection with this rulemaking action. Accordingly, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601–612). Nevertheless, the Secretary of Veterans Affairs certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. The adoption of the proposed rule would not have a direct effect on small entities.

There is no Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Investigations, Parking, Penalties, Postal Service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Approved: June 21, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is proposed to be amended as set forth below:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 1.12 [Removed]

Section 1.12 and the undesignated center heading preceding § 1.12 are removed.

[FR Doc. 96–16643 Filed 6–28–96; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[WA 54–7127; FRL–5529–9]

Clean Air Act Reclassification; Spokane, Washington Carbon Monoxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to find that the Spokane, Washington carbon monoxide (CO) nonattainment area has not attained the CO national ambient air quality standard (NAAQS) by the Clean Air Act (CAA) mandated attainment date for moderate nonattainment areas, December 31, 1995. This proposed finding is based on EPA's review of monitored air quality data for compliance with the CO NAAQS. If EPA takes final action on this proposed finding, the Spokane CO nonattainment area will be reclassified by operation of law as a serious nonattainment area. The intended effect of such a reclassification would be to allow the State additional time to submit a new State implementation plan (SIP) providing for attainment of the CO NAAQS by no later than December 31, 2000, the CAA attainment deadline for serious CO areas.

DATES: Written comments on this proposal must be received by July 31, 1996.

ADDRESSES: Written comments should be sent to: Montel Livingston, SIP Manager, Office of Air Quality, M/S OAQ–107, EPA Region 10, Docket #54–7127, 1200 Sixth Avenue, Seattle, Washington 98101. The rulemaking docket for this notice is available for public review during normal business hours at the following location: EPA, Region 10, Office of Air Quality, M/S OAQ–107, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the docket are also available at the Washington Department of Ecology, Attention Tami Dahlgren, Olympia, Washington 98504–7600, telephone (360) 407–6830; and at the Spokane County Air Pollution Control Authority, West 1101 College, Suite 403, Spokane, Washington 99201, telephone (509) 456–4727.

FOR FURTHER INFORMATION CONTACT: William M. Hedgebeth of the EPA Region 10 Office of Air Quality, (206) 553–7369.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements and EPA Actions Concerning Designation and Classifications

The CAA Amendments of 1990 (CAAA) were enacted on November 15, 1990. Under section 107(d)(1)(C) of the CAA, each carbon monoxide (CO) area designated nonattainment prior to enactment of the 1990 Amendments, such as the Spokane area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. Under section 186(a) of

the CAA, each CO area designated nonattainment under section 107(d) was also classified by operation of law as either "moderate" or "serious" depending on the severity of the area's air quality problem. CO areas with design values between 9.1 and 16.4 parts per million (ppm), such as the Spokane area, were classified as moderate. These nonattainment designations and classifications were codified in 40 CFR part 81. See 56 FR 56694 (November 6, 1991). States containing areas that were classified as moderate nonattainment by operation of law under section 107(d) were required to submit State implementation plans (SIPs) designed to attain the CO national ambient air quality standard (NAAQS) as expeditiously as practicable but no later than December 31, 1995.[1]

B. Reclassification to a Serious Nonattainment Area

1. EPA has the responsibility, pursuant to sections 179(c) and 186(b)(2) of the CAA, of determining, within six months of the applicable attainment date whether the Spokane area has attained the CO NAAQS. Under section 186(b)(2)(A), if EPA finds that the area has not attained the CO NAAQS, it is reclassified as serious by operation of law. Pursuant to section 186(b)(2)(B) of the Act, EPA must publish a notice in the **Federal Register** identifying areas which failed to attain the standard and therefore must be reclassified as serious by operation of law. EPA makes attainment determinations for CO nonattainment areas based upon whether an area has two years (or eight consecutive quarters) of clean air quality data.[2] Section 179(c)(1) of the CAA states that the attainment determination must be based upon an area's "air quality as of the attainment date." Consequently, EPA will determine whether an area's air quality has met the CO NAAQS by December 31, 1995, based upon the most recent two years of air quality data entered into the Aerometric Information Retrieval System (AIRS) data base.

EPA determines a CO nonattainment area's air quality status in accordance with 40 CFR part 50.8 and EPA policy.[3] EPA has promulgated two NAAQS for CO: an 8-hour average concentration and a 1-hour average concentration. Because there were no violations of the 1-hour standard in the Spokane area in 1994 and 1995, this notice addresses only the air quality status of the Spokane area with respect to the 8-hour standard. The 8-hour CO NAAQS requires that not more than one non-overlapping 8-hour average per year per monitoring site can exceed 9.0 ppm (values below 9.5 are rounded down to 9.0 and they are not considered exceedances). The second exceedance of the 8-hour CO NAAQS at a given monitoring site within the same year constitutes a violation of the CO NAAQS.

2. SIP Requirements for Serious CO Areas: CO nonattainment areas reclassified as serious under section 186(b)(2) of the CAA are required to submit, within 18 months of the area's reclassification, SIP revisions demonstrating attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000. The serious CO area planning requirements are set forth in section 187(b) of the CAA. EPA has issued two general guidance documents related to the planning requirements for CO SIPs. The first is the "General Preamble for the Implementation of Title I of the CAAA of 1990" that sets forth EPA's preliminary views on how the Agency intends to act on SIPs submitted under Title I of the CAA. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). The second general guidance document for CO SIPs issued by EPA is the "Technical Support Document to Aid the States with the Development of Carbon Monoxide State Implementation Plans," July 1992. If the Spokane area is reclassified to serious, the State would have to submit a SIP revision to EPA that, in addition to the attainment demonstration, includes: (1) A forecast of vehicle miles travelled (VMT) for each year before the attainment year and provisions for annual updates of these forecasts; (2) adopted contingency measures; and (3) adopted transportation control measures and strategies to offset any growth in CO emissions from growth in VMT or number of vehicle trips. See CAA sections 187(a)(7), 187(a)(2)(A), 187(a)(3), 187(b)(2), and 187(b)(1). Upon reclassification, contingency measures in the moderate area plan for the Spokane area must be implemented.

C. Attainment Date Extensions

If a state does not have the two consecutive years of clean data necessary to show attainment of the NAAQS, it may apply, under section 186(a)(4) of the CAA, for a one year attainment date extension. EPA may, in its discretion, grant such an extension if the state has: (1) Complied with the requirements and commitments pertaining to the applicable implementation plan for the area, and (2) the area has measured no more than one exceedance of the CO NAAQS at any monitoring site in the nonattainment area in the year preceding the extension year. Under section 186(a)(4), EPA may grant up to two such extensions if these conditions have been met. Because the Spokane nonattainment area had four exceedances in 1995, the area does not qualify for an extension.

II. This Action

By today's action, EPA is proposing to find that the Spokane CO nonattainment area has failed to demonstrate attainment of the CO NAAQS by December 31, 1995. This proposed finding is based upon air quality data showing violations of the CO NAAQS during 1995.

Ambient Air Monitoring Data: The following table lists the monitoring site in the Spokane CO nonattainment area where the 8-hour CO NAAQS has been exceeded during 1995, based on data validated by the Washington Department of Ecology and entered into the AIRS data base.

EXCEEDANCES OF 8-HOUR CO NAAQS FOR SPOKANE NONATTAINMENT AREA

Monitoring site	1995	
	Concentration	Date of exceedance
3rd and Washington.	10.4 ppm	Jan. 9, 1995.
3rd and Washington.	13.1 ppm	Dec. 11, 1995.
3rd and Washington.	11.2 ppm	Dec. 12, 1995.
3rd and Washington.	9.6 ppm ...	Dec. 15, 1995.

In letters to EPA of February 20, 1996, and March 19, 1996, the City of Spokane raised questions whether the monitoring data from the CO monitor located at 3rd Avenue and Washington Street is representative of the ambient air. In a letter to the City of Spokane dated April 9, 1996, EPA Region 10 advised that any analysis of whether the monitor was properly sited would need to be conducted in the context of 40 CFR part 58, Appendix E, which provides specific criteria for the placement of CO monitors, including consideration of the placement of such monitors vis-a-vis street canyons and traffic corridors. In addition, the State of Washington Department of Ecology provided EPA with copies of four audit reports from 1995 which indicate that that CO monitor met the Part 58 siting criteria and that the monitor was reporting accurately with the acceptance criteria. This information was provided to the City of Spokane in a letter dated May 28, 1996.

EPA believes that the 1995 exceedances are valid for use in determining the attainment status of the Spokane area. EPA is therefore proposing to find, based on the 1995 CO violations discussed above, that the area did not attain the CO NAAQS by December 31, 1995.

III. Executive Order (EO) 12866

Under E.O. 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities." The Agency has determined that the finding of failure to attain proposed today would result in none of the effects identified in section 3(f). Under section 186(b)(2) of the CAA, findings of failure to attain and reclassification of nonattainment areas are based upon air quality considerations and must occur by operation of law in light of certain air quality conditions. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities.

IV. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. As discussed in section III of this notice, findings of failure to attain and reclassification of nonattainment areas under section 186(b)(2) of the CAA do not in and of themselves create any new requirements. Therefore, I certify that today's proposed action does not have a significant impact on small entities.

V. Unfunded Mandates

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local or tribal governments in the aggregate. EPA believes, as discussed above, that the proposed finding of failure to attain and reclassification of the Spokane nonattainment area are factual determinations based upon air quality considerations and must occur by operation of law and, hence, do not impose any Federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Carbon monoxide.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 17, 1996.

Chuck Clarke,

Regional Administrator.

[FR Doc. 96–16670 Filed 6–28–96; 8:45 am]

BILLING CODE 6560–50–P

[1] The moderate area SIP requirements are set forth in section 187(a) of the Act and differ depending on whether the area's design value is below or above 12.7 ppm. The Spokane area has a design value above 12.7 ppm. 40 CFR part 81.348.

[2] See generally memorandum from Sally L. Shaver, Director, Air Quality Strategies and Standards Division, EPA, to Regional Air Office Directors, entitled "Criteria for Granting Attainment Date Extensions, Making Attainment Determinations, and Determinations of Failure to Attain the NAAQS for Moderate CO Nonattainment Areas," October 23, 1995 (Shaver memorandum).

[3] See memorandum from William G. Laxton, Director Technical Support Division, entitled "Ozone and Carbon Monoxide Design Value Calculations", June 18, 1990. See also Shaver memorandum.

40 CFR Parts 260, 261, 262, 264, 268, 269 and 271

[FRL–5528–9]

Requirements for Management of Hazardous Contaminated Media (HWIR-media); Proposed Rule—Notice of Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule: notice of extension of comment period.

SUMMARY: Since publication of the proposed rule for Requirements for Management of Hazardous Contaminated Media (HWIR-media) (61 FR 18780 (April 29, 1996)), EPA has received several requests to extend the comment period. Today, the Agency is extending the comment period 30 days to August 28, 1996.

DATES: The comment period on the proposed rule for Requirements for Management of Hazardous Contaminated Media (61 FR 18780) is extended from July 29, 1996 to August 28, 1996.

ADDRESSES: Commenters on the HWIR-media proposal must send an original and two copies of their comments referencing Docket Number F–96–MHWP–FFFFF to: (1) If using regular US Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW., Washington, DC 20460, or (2) if using special delivery, such as overnight express service : RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. For other information regarding submitting comments electronically or viewing the comments received and supporting information, please refer to the proposed rule (61 FR 17870 (April 29, 1996)). The RCRA Information Center is located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington Virginia and is open for public inspection and copying of supporting information for RCRA rules from 9 am to 4 pm Monday through Friday, except for Federal holidays. The public must make an appointment to view docket materials by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired).

Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Hotline is open Monday-Friday, 9 a.m. to 6 p.m., Eastern Standard Time. For more detailed information on specific aspects of the HWIR-media rulemaking, contact Carolyn L. Hoskinson, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, phone (703) 308–8626.

SUPPLEMENTARY INFORMATION: On April 29, 1996, EPA proposed Requirements for Management of Hazardous Contaminated Media (HWIR-media). See 61 FR 17870. The Agency established a 90-day comment period and indicated that comments on the proposal would be accepted until July 29, 1996.

EPA has received written requests to extend the comment period for HWIR-media from the Commonwealth of Massachusetts, WMX Technologies, Inc., American Petroleum Institute, and the American Industrial Health Council. The additional time requested was for 60 days.

As justification for a time extension, stakeholders noted: (1) the significant impact on state superfund and hazardous waste programs, (2) the need to coordinate comments with other organizations, (3) the complexity of the rulemaking, (4) the overlap of this comment period with the comment period for the Advanced Notice of Proposed Rulemaking (ANPR) for Corrective Action for releases from Solid Waste Management Units at Hazardous Waste Management Facilities (61 FR 19432 (May 1, 1996)) which ends July 30, 1996, and (5) the need to gather and evaluate data.

The Agency has decided to grant an additional 30 days beyond the proposed 90-day comment period to allow stakeholders enough time to review the provisions of the rulemaking and to formulate comments and recommendations for the Agency's consideration in developing the final rule. The Agency believes that 120 days allows for sufficient time for commenters to evaluate the proposal, coordinate comments with others, and gather and evaluate data. This 30 day extension will stagger the comment deadlines for this proposed rule and the corrective action ANPR (61 FR 19432) mentioned above.

The Agency does not believe that the 60 day extension requested is necessary. The Agency has extensively involved stakeholders during the preparation of the proposed rulemaking, beginning in January 1993. EPA announced public meetings of the HWIR Federal Advisory Committee in the **Federal Register** and the public was invited to attend and participate in the discussions between January 1993 and September 1994. Stakeholders were aware of the types of issues that would be discussed in the proposed rule, and therefore have had adequate time to prepare to present comments and data to the Agency on the general issues. As for the specific requirements proposed in the April 29, 1996 proposal, 120 days provides sufficient time to respond. There is broad agreement that reform of the RCRA Subtitle C management requirements for remediation wastes is needed. The Agency wishes to move forward with this important reform, and believes that the requested 60 day extension would cause unnecessary delay. Accordingly, the Agency is extending the comment period 30 days to August 28, 1996 to provide for a 120-day comment period.

The Agency also received requests to extend the comment period for 60 additional days for the RCRA corrective action Advance Notice of Proposed Rulemaking ("ANPR") (61 FR 19432) from American Petroleum Institute and the American Industrial Health Council. As justification for a time extension, stakeholders noted: (1) The need for adequate time for public review, and (2) limited expert resources to comment on both the HWIR-media (61 FR 18780) proposal and the corrective action ANPR (61 FR 19432) at the same time. The Agency has decided to retain the current 90 day comment period for the ANPR; comments on the ANPR are due by July 30, 1996. Although the ANPR requests comment on a range of corrective action issues, it does not propose any specific changes to the program, and is primarily soliciting views of interested parties rather than detailed technical analysis. Therefore, the Agency believes that a 90 day public comment period is adequate time. The Agency intends to move expeditiously forward with its plans to identify and implement improvements to the corrective action program. Any newly proposed or reproposed corrective action regulations which follow the ANPR will undergo appropriate public involvement and review as part of the rulemaking process. In addition, the Agency is providing relief from commenting on HWIR-media and the corrective action ANPR at the same time by extending the comment period for the HWIR-media proposal.

One of the requests for an extension asked that the Agency specifically identify those portions of the 1990 corrective action proposal (55 FR 30798 (July 27, 1990)) which EPA plans to promulgate as final. EPA has not determined what, if any, portions of the 1990 proposal are appropriate for finalizing, but rather solicited comment on this issue. EPA provided opportunity for notice and comment on the 1990 proposal at the time of that proposal. Comments submitted during the 1990 comment period, as well as comments on this ANPR, will be considered before the Agency takes final action on any part of the 1990 proposal. In the May 1, 1996 ANPR (61 FR 19432) EPA requests that commenters identify specific elements of the 1990 proposal which could be promulgated without additional public review and the advantages and disadvantages of immediately promulgating such provisions. Please see the May 1, 1996 ANPR (61 FR 19432, 19456) for additional discussion of this issue.

Dated: June 20, 1996.

Elliott Laws,

Assistant Administrator for the Office of Solid Waste and Emergency Response.

[FR Doc. 96–16669 Filed 6–28–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7184]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612 Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arkansas	Adona (City) Perry County.	Howell Creek	At confluence with Rocky Cypress Creek	None	*363
			Approximately 400 feet upstream of Locust Road.	None	*411
		Rocky Cypress Creek	Approximately 6,950 feet downstream of Railroad Street.	None	*339
			Approximately 1,500 feet upstream of Railroad Street.	None	*366
Maps are available for inspection at the City of Adona, City Hall, Highway 10 West, Adona, Arkansas.					
Send comments to The Honorable Bill Greene, Mayor, City of Adona, P.O. Box 101, Adona, Arkansas 72001.					
Arkansas	Houston (City) Perry County.	West Fork Mill Creek	Approximately 450 feet upstream of Little Rock and Western Railroad bridge.	N/A	*285
			Approximately 1,650 feet upstream of Route 113 bridge.	N/A	*285
		West Fork Mill Creek Tributary 1.	Approximately 200 feet above confluence with West Fork Mill Creek.	N/A	*286
			Approximately 250 feet upstream of Route 216 bridge.	N/A	*297
		West Fork Mill Creek Tributary 2.	Approximately 650 feet upstream of confluence with West Fork Mill Creek.	N/A	*287
			Approximately 300 feet upstream of private drive (northern).	N/A	*295
		Houston Creek	Approximately 1,400 feet downstream of Little Rock and Western Railroad bridge.	N/A	*305
			Approximately 1,100 feet upstream of Route 113 bridge.	N/A	*329

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at City Hall, City of Houston, Main Street, Houston, Arkansas.					
Send comments to The Honorable Jerry Lawson, Mayor, City of Houston, P.O. Box 166, Houston, Arkansas 72070.					
Arkansas	Searcy (City) White County.	Deener Creek	At confluence with Little Red River	*221	*221
			Just upstream of North Main Street	*221	*221
			Approximately 100 feet upstream of North Maple (Highway 16).	*223	*225
			Approximately 100 feet downstream of Ella Street.	*232	*233
		Gin Creek	At confluence with Deener Creek	*221	*221
			Just upstream of Davis Drive	*221	*221
Maps are available for inspection at the City of Searcy, City Hall, 401 West Arch, Searcy, Arkansas.					
Send comments to The Honorable David Evans, Mayor, City of Searcy, 401 West Arch, Searcy, Arkansas 72143.					
Arkansas	Washington County and Incorporated Areas.	Middle Fork White River	Approximately 0.22 mile upstream of Highway 16.	None	*1,182
			Just downstream of Harris Drive (Extended).	None	*1,192
		White River	Approximately 2.8 miles downstream of Highway 74.	None	*1,181
			Just downstream of Highway 74	None	*1,195
			Approximately 0.8 mile upstream of East First Avenue.	None	*1,215
Maps are available for inspection at the Washington County Courthouse, 2 North College, Fayetteville, Arkansas.					
Send comments to The Honorable Charles Johnson, Washington County Judge, 2 North College, Fayetteville, Arkansas 72701.					
Maps are available for inspection at the City of Fayetteville, City Hall, 113 West Mountain Street, Fayetteville, Arkansas.					
Send comments to The Honorable Fred Hanna, Mayor, City of Fayetteville, 113 West Mountain Street, Fayetteville, Arkansas 72701.					
Maps are available for inspection at the City of Elkins, City Hall, 201 West First Street, Elkins, Arkansas.					
Send comments to The Honorable Barbara King, Mayor, City of Elkins, P.O. Box 331, Elkins, Arkansas 72727.					
California	Grass Valley (City) Nevada County.	Wolf Creek	At corporate limits (approximately 4,100 feet downstream of confluence of Little Wolf Creek).	None	*2,220
			At confluence of Little Wolf Creek	*2,314	*2,312
			Just downstream of Freeman Lane	*2,351	*2,351
Maps are available for inspection at the City of Grass Valley, 125 East Main Street, Grass Valley, California.					
Send comments to The Honorable Devere Mautino, Mayor, City of Grass Valley, 125 East Main Street, Grass Valley, California 95945.					
California	Nevada County (Unincorporated Areas).	Wolf Creek	At Allison Ranch Road	None	*2,041
			Just downstream of Marlor Bridge	None	*2,066
			Approximately 2,950 feet upstream of Marlor Bridge.	None	*2,110
			Approximately 100 feet upstream of private bridge.	None	*2,206
			Approximately 4,050 feet upstream of confluence of Allison Ranch Ditch.	None	*2,300
			Just upstream of Brunswick Road	None	*2,605
			Approximately 2,980 feet upstream of Brunswick Road.	None	*2,677
		Little Wolf Creek	Approximately 3,300 feet above confluence with Wolf Creek.	None	*2,451
			Approximately 3,740 feet above confluence with Wolf Creek.	None	*2,455
Maps are available for inspection at Nevada County, 950 Maidu Avenue, Nevada City, California.					
Send comments to The Honorable Karen Knecht, Chairperson, Nevada County Board of Supervisors, 950 Maidu Avenue, Nevada City, California 95959–8617.					
California	San Joaquin County (Unincorporated Areas).	North Fork Mokelumne River.	At divergence from South Fork Mokelumne River.	*15	*15
			Approximately 5,500 feet upstream of divergence from South Fork Mokelumne River.	*15	*15

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 14,000 feet upstream of divergence from South Fork Mokelumne River.	None	*18
			At Interstate Highway 5	None	*19
			At confluence with Cosumnes River	None	*19
Maps are available for inspection at the San Joaquin County Flood Control and Water Conservation District, 1810 East Hazelton Avenue, Stockton, California.					
Send comments to The Honorable Robert J. Cabral, Chairman, San Joaquin County Board of Supervisors, 222 East Weber Avenue, Room 701, Stockton, California 95202.					
Missouri	Butler County (Unincorporated Areas).	Pike Creek	Just upstream of U.S. Highway 67 southbound.	*339	*339
			Approximately 800 feet upstream of Roxie Road.	*342	*340
			Just upstream of Highway PP	*345	*346
			Approximately 800 feet upstream of confluence of North Branch Pike Creek.	None	*347
		North Branch Pike Creek	Approximately 700 feet downstream of Holly Trail at the City of Poplar Bluff corporate limits.	*410	*411
		Just upstream of Holly Trail.	At Oak Grove Road	*421	*420
				*427	*427
Maps are available for inspection at 114 Elm Street, Poplar Bluff, Missouri.					
Send comments to The Honorable Bob Manne, Chairman, County Commissioners, County Courthouse, Poplar Bluff, Missouri 63901.					
Missouri	Poplar Bluff (City)	Pike Creek	Just upstream of the Missouri Pacific Railroad.	*335	*336
	Butler County	At confluence of Black Creek.		*338	*339
			At confluence of Sunset Creek	*342	*340
			Approximately 400 feet downstream of confluence of North Branch Pike Creek.	*347	*346
		North Branch Pike Creek	Approximately 350 feet upstream of confluence with Pike Creek.	*348	*347
			Approximately 2,000 feet upstream of confluence with Pike Creek.	*363	*364
			At confluence of East Fork Pike Creek	*383	*382
			Approximately 100 feet upstream of Russell Road.	*409	*410
		Hogg Creek	Just upstream of Oak Grove Road	*427	*427
		Just upstream of Tremont Street.	At confluence with Pike Creek	*339	*339
				*345	*345
			Approximately 150 feet upstream of Pershing Street.	*354	*354
			Just upstream of Gray Street	*393	*393
			Just upstream of North 14th Street	*424	*422
		Hogg Creek Tributary	At confluence with Hogg Creek	*349	*347
			Approximately 500 feet upstream of confluence with Hogg Creek.	*351	*351
			Just downstream of Highland Road	*360	*358
		Park Creek	Just upstream of 5th Street	*338	*338
			At 6th Street	*338	*339
			Just upstream of 8th Street	*340	*340
			Just upstream of Oakwood Drive	*346	*346
		Shady Creek	Approximately 400 feet downstream of North Main Street.	None	*352
			Approximately 150 feet upstream of Montclair Drive.	None	*359
			Just upstream of Fox Drive	None	*379
			Just upstream of Shady Lane	None	*399
			Approximately 500 feet upstream of Woodstone Road.	None	*429
		Woodlawn Branch	Approximately 200 feet downstream of East Avondale Drive.	None	*346
			Just upstream of confluence of Clay Creek.	None	*351
			Just upstream of South Avondale Drive	None	*354

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the City of Poplar Bluff, 114 Elm Street, Poplar Bluff, Missouri.					
Send comments to The Honorable Ron Black, Mayor, City of Poplar Bluff, P.O. Box 460, Poplar Bluff, Missouri 63902.					
Oklahoma	Adair County (Unincorporated Areas).	Caney Creek	Approximately 3,900 feet downstream of confluence with Spring Tributary.	None	*976
			Approximately 1,600 feet upstream of County Road.	None	*1,042
			Approximately 1,850 feet upstream of County Road.	None	*1,044
			Approximately 5,500 feet upstream of confluence with Eighth Street Tributary.	None	*1,059
			Approximately 1,600 feet upstream of Oklahoma Avenue.	None	*1,118
		Eigth Street Tributary	At confluence with Caney Creek	None	*1,054
			Approximately 150 feet downstream of Eighth Street.	None	*1,068
		Master Drain Tributary	At confluence with Caney Creek	None	*1,050
Maps are available for inspection at the Adair County Courthoose, Stilwell, Oklahoma.					
Send comments to The Honorable Darryll Wilson, Chairperson, Adair County Board of Commissioners, P.O. Box 169, Stilwell, Oklahoma 74960.					
Oklahoma	Stilwell (City) Adair County.	Caney Creek	Approximately 3,000 feet downstream of Olive Street (at the corporate limits).	None	*1,042
			Approximately 2,700 feet downstream of Olive Street (at the corporate limits).	None	*1,044
			Approximately 700 feet downstream of Olive Street (at the corporate limits).	None	*1,059
			Just downstream of Elm Street	None	*1,085
			Just upstream of Oklahoma Avenue (at the corporate limits).	None	*1,118
		Eighth Street Tributary	Approximately 350 feet downstream of Eighth Street (at the corporate limits).	None	*1,065
			Approximately 100 feet downstream of Eighth Street (at the corporate limits).	None	*1,068
Maps are available for inspection at the City Clerk's Office, 503 West Division, Stilwell, Oklahoma.					
Send comments to The Honorable Neil Morton, Mayor, City of Stilwell, 503 West Division, Stilwell, Oklahoma 74960.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: June 25, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–16698 Filed 6–28–96; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 1 and 8

[Docket No. OST–96–1427; Notice 96–16]

RIN: 2105–AC51

Classified Information; Revision

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: DOT proposes to revise its regulations regarding classification and declassification of, and access to, classified information, and to delegate to the Assistant Secretary for Administration authority to ensure compliance within DOT with the regulations and the underlying Executive Orders. This action is taken in response to the President's Regulatory Reinvention Initiative and in order to implement recent Executive Orders.

DATES: Comments are due August 30, 1996.

ADDRESSES: Comments should be addressed to Documentary Services Division, Attention: Docket Section, Room PL401, Docket No. OST–96–1427, Department of Transportation, C–55, Washington, DC 20590. Any person wishing acknowledgment that his/her comments have been received should include a self-addressed stamped postcard. Comments received will be available for public inspection and copying in the Documentary Services Division, Room PL401, Department of Transportation Building, 400 Seventh Street, SW, Washington, DC, from 10:00 a.m. to 5:00 p.m. ET Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C–10, Department of Transportation, Washington, DC 20590, telephone (202) 366–9156, FAX (202) 366–9170.

SUPPLEMENTARY INFORMATION: In 1995, the President of the United States issued two Executive Orders making substantial revisions to the rules under which agencies of the Executive Branch, such as DOT, manage information that requires special treatment in the interest of national security. Briefly stated, Executive Order 12958 of April 17, 1995, Classified National Security Information, requires that less information be classified; and Executive Order 12968 of August 2, 1995, Access to Classified Information, requires agencies to provide administrative review of decisions to deny access to classified information. This proposal seeks to implement both Orders. To

foster uniform administration within DOT, authority to ensure compliance is being delegated to the Assistant Secretary for Administration.

Analysis of Regulatory Impacts

This amendment is not a "significant regulatory action" within the meaning of Executive Order 12866. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this proposal will not have a significant economic impact on a substantial number of small entities.

This proposal does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Finally, the proposal does not contain any collection of information requirements, requiring review under the Paperwork Reduction Act of 1980.

List of Subjects

49 CFR Part 1

Authority delegations (government agencies), Organization and functions (government agencies), Transportation Department.

49 CFR Part 8

Classified information.

In accordance with the above, DOT proposes to amend 49 CFR, as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 would continue to read as follows:

Authority: 49 USC 322.

2. In § 1.59, a new paragraph (e)(9) would be added to read as follows:

§ 1.59 Delegations to the Assistant Secretary for Administration.

(e) * * *.

(9) Ensure Department-wide compliance with Executive Orders 10450, 12829, 12958, 12968, and related regulations and issuances.

* * * * *

3. Part 8 would be revised to read as follows:

PART 8—CLASSIFIED INFORMATION: CLASSIFICATION/ DECLASSIFICATION/ACCESS

Subpart A—General

Sec.
8.1 Scope.
8.3 Applicability.
8.5 Definitions.
8.7 Spheres of responsibility.

Subpart B—Classification/Declassification of Information

8.9 Information Security Review Committee.
8.11 Authority to classify information.
8.13 Authority to downgrade or declassify.
8.15 Mandatory review for classification.
8.17 Classification challenges.
8.19 Procedures for submitting and processing requests for classification reviews.
8.21 Burden of proof.
8.23 Classified information transferred to the Department of Transportation.

Subpart C—Access to Information

8.25 Personnel Security Review Board.
8.27 Public availability of declassified information.
8.29 Access by historical researchers and former Presidential appointees.
8.31 Industrial security.

Authority: EO 10450, 18 FR 2489, 3 CFR 1949–1953, Com., p. 936; EO 12829, 58 FR 3479; EO 12458, 60 FR 19825; EO 12968, 60 FR 40245.

Subpart A—General

§ 8.1 Scope.

This part sets forth procedures for the classification, declassification, and availability of information that must be protected in the interest of national security, in implementation of Executive Order 12958 of April 17, 1995, "Classified National Security Information;" and for the review of decisions to revoke, or not to issue, national security information clearances, or to deny access to classified information, under Executive Order 12968 of August 2, 1995, "Access to National Security Information".

§ 8.3 Applicability.

This part applies to all elements of the Department of Transportation.

§ 8.5 Definitions.

As used in this part:

Classification means the act or process by which information is determined to be classified information.

Classification levels means the following three levels at which information may be classified:

(a) *Top Secret.* Information that requires the highest degree of protection, and the unauthorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security that the original classification authority is able to identify or describe.

(b) *Secret.* Information that requires a substantial degree of protection, and the unauthorized disclosure of which could reasonably be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.

(c) *Confidential.* Information that requires protection and the unauthorized disclosure of which could reasonably be expected to cause damage to the national security that the original classification authority is able to identify or describe.

Classified information or *classified national security information* means information that has been determined under Executive Order 12958, or any predecessor or successor order, to require protection against unauthorized disclosure, and is marked to indicate its classified status when in documentary form.

Clearance means that an individual is eligible, under the standards of Executive Orders 10450 and 12968 and appropriate DOT regulations, for access to classified information.

Damage to the national security means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, to include the sensitivity, value, and utility of that information.

Declassification means the authorized change in the status of information from classified information to unclassified information.

Downgrading means a determination by a declassification authority that information classified and safeguarded at a specific level shall be classified and safeguarded at a lower level.

Information means any knowledge that can be communicated, or documentary material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government. *Control* means the authority of the agency that originates information, or its successor in function, to regulate access to the information.

Mandatory declassification review means the review for declassification of classified information in response to a request for declassification that qualifies under Section 3.6 of Executive Order 12958.

Original classification means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure.

Original classification authority means an individual authorized in

writing, either by the President or by agency heads or other officials designated by the President, to classify information in the first instance.

§ 8.7 Spheres of responsibility.

(a) Pursuant to Section 5.6(c) of Executive Order 12958, and to Section 6.1 of Executive Order 12968, the Assistant Secretary for Administration is hereby designated as the senior agency official of the Department of Transportation with assigned responsibilities to assure effective compliance with and implementation of Executive Order 12958, Executive Order 12968, Office of Management and Budget Directives, these regulations, and related issuances.

(b) In the discharge of these responsibilities, the Assistant Secretary for Administration will be assisted by the Director of Security, who, in addition to other actions directed by this part, will evaluate the overall application of and adherence to the security policies and requirements prescribed herein and who will report his/her findings and recommendations to the Assistant Secretary for Administration, heads of Departmental elements, and, as appropriate, to the Secretary.

(c) Secretarial Officers and heads of Departmental elements will assure that the provisions herein are effectively administered, that adequate personnel and funding are provided for this purpose, and that corrective actions that may be warranted are taken promptly.

Subpart B—Classification/ Declassification of Information

§ 8.9 Information Security Review Committee.

(a) There is hereby established a Department of Transportation Information Security Review Committee, which will have authority to:

(1) Act on all suggestions and complaints not otherwise resolved with respect to the Department's administration of Executive Order 12958 and implementing directives, including those regarding overclassification, failure to declassify, or delay in declassifying;

(2) Act on appeals of requests for classification reviews, and appeals of requests for records under 5 U.S.C. 552 (Freedom of Information Act) when the initial, and proposed final, denials are based on continued classification of the record; and

(3) Recommend to the Secretary, when necessary, appropriate administrative action to correct abuse or violation of any provision of Executive Order 12598 and implementing directives.

(b) The Information Security Review Committee will be composed of the Assistant Secretary for Administration, who will serve as Chair; the General Counsel; and the Director of Security. When matters affecting a particular Departmental agency are at issue, the Associate Administrator for Administration for that agency, or the Chief of Staff for the U.S. Coast Guard, as the case may be, will participate as an ad hoc member, together with the Chief Counsel of that agency. Any regular member may designate a representative with full power to serve in his/her place.

(c) In carrying out its responsibilities to review decisions to revoke or not to issue clearances, or to deny access to classified information, the Committee will establish whatever procedures it deems fit.

§ 8.11 Authority to classify information.

(a) Executive Order 12958 confers upon the Secretary of Transportation the authority to originally classify information as SECRET with further authorization to delegate this authority.

(b) The following delegations of authority to originally classify information as "SECRET", which may not be redelegated, are hereby made:

(1) *Office of the Secretary of Transportation.* The Deputy Secretary; Assistant Secretary for Administration; Director of Intelligence and Security; Director of Security.

(2) *United States Coast Guard.* Commandant; Chief, Office of Law Enforcement and Defense Operations.

(3) *Federal Aviation Administration.* Administrator; Assistant Administrator for Civil Aviation Security.

(4) *Maritime Administration.* Administrator.

(c) Although the delegations of authority set out in paragraph (b) of this section are expressed in terms of positions, the authority is personal and is invested only in the individual occupying the position. The authority may not be exercised "by direction of" a designated official. The formal appointment or assignment of an individual to one of the identified positions or a designation in writing to act in the absence of one of these officials, however, conveys the authority to originally classify information as "SECRET".

(d) Previous delegations and redelegations of authority within the Department of Transportation to originally classify information are hereby rescinded.

§ 8.13 Authority to downgrade or declassify.

Information originally classified by the Department may be specifically downgraded or declassified by either the official authorizing the original classification, if that official is still serving in the same position, the originator's current successor in function, a supervisory official of either, officials delegated declassification authority in writing by the Secretary, or by the Departmental Information Security Review Committee.

§ 8.15 Mandatory review for classification.

(a) All information classified by the Department of Transportation under Executive Order 12958 or predecessor orders shall be subject to a review for declassification if:

(1) the request for review describes the information with sufficient specificity to enable its location with a reasonable amount of effort; and

(2) the information has not been reviewed for declassification within the prior two years. If the information has been reviewed within the prior two years, or the information is the subject of pending litigation, the requestor will be informed of this fact, and of the Department's decision not to declassify the information and of his/her right to appeal the Department's decision not to declassify the information to the Interagency Security Classification Appeals Panel.

(b) All information reviewed for declassification because of a mandatory review will be declassified if it does not meet the standards for classification in Executive Order 12958. The information will then be released unless withholding is otherwise authorized and warranted under applicable law.

§ 8.17 Classification challenges.

(a) Authorized holders of information classified by the Department of Transportation who, in good faith, believe that its classification status is improper are encouraged and expected to challenge the classification status of the information before the Departmental Information Security Review Committee.

(1) No individual will be subject to retribution for bringing such a challenge; and

(2) Each individual whose challenge is denied will be advised that he/she may appeal to the Interagency Security Classification Appeals Panel established by § 5.4 of Executive Order 12958.

(b) This classification challenge provision is not intended to prevent an authorized holder of information classified by the Department of Transportation from informally questioning the classification status of particular information. Such information inquiries should be encouraged as means to resolve classification concerns and reduce the administrative burden of formal challenges.

§ 8.19 Procedures for submitting and processing requests for classification reviews.

(a) The Director of Security is hereby designated as the official to whom a member of the public or another department or agency should submit a request for a classification review of classified information produced by or under the primary cognizance of the Department. Elements of the Department that receive a request directly will immediately notify the Director.

(b) If the request for classification review involves material produced by or under the cognizance of the U.S. Coast Guard or the Federal Aviation Administration, the Director will forward the request to the headquarters security staff of the element concerned for action. If the request involves material produced by other Departmental elements, the Director will serve as the office acting on the request.

(c) The office acting on the request will:

(1) Immediately acknowledge receipt of the request and provide a copy of the correspondence to the Director. If a fee for search of records is involved pursuant to 49 CFR part 7, the requester will be so notified;

(2) Conduct a security review, which will include consultation with the office that produced the material and with source authorities when the classification, or exemption of material from automatic declassification, was based upon determinations by an original classifying authority; and

(3) Assure that the requester is notified of the determination within 30 calendar days or given an explanation as to why further time is necessary, and provide a copy of the notification to the Director.

(d) If the determination reached is that continued classification is required, the notification to the requester will include, whenever possible, a brief statement as to why the requested material cannot be declassified. The notification will also advise the requester of the right to appeal the determination to the Departmental Information Security Review Committee. A requester who wishes to appeal a classification review decision, or who has not been notified of a decision after 60 calendar days, may submit an appeal to the Departmental Information Security Review Committee.

(e) If the determination reached is that continued classification is not required, the information will be declassified and the material remarked accordingly. The office acting on the request will then refer the request to the office originating the material or higher authority to determine if it is otherwise withholdable from public release under the Freedom of Information Act (5 U.S.C. 552) and the Department's implementing regulations (49 CFR part 7).

(1) If the material is available under the Freedom of Information Act, the requester will be advised that the material has been declassified and is available. If the request involves the furnishing of copies and a fee is to be collected, the requester will be so advised pursuant to 49 CFR part 7, Departmental regulations implementing the Freedom of Information Act.

(2) If the material is not available under the Freedom of Information Act, the requester will be advised that the material has been declassified but that the record is unavailable pursuant to the Freedom of Information Act, and that the provisions concerning procedures for reconsidering decisions not to disclose records, contained in 49 CFR part 7, apply.

(f) Upon receipt of an appeal from a classification review determination based upon continued classification, the Departmental Information Security Review Committee will acknowledge receipt immediately and act on the matter within 30 calendar days. With respect to information originally classified by or under the primary cognizance of the Department, the Committee, acting for the Secretary, has authority to overrule previous determinations in whole or in part when, in its judgment, continued protection in the interest of national security is no longer required. When the classification of the material produced in the Department is based upon a classification determination made by another department or agency, the Committee will immediately consult with its counterpart committee for that department or agency.

(1) If it is determined that the material produced in the Department requires continued classification, the requester will be so notified and advised of the right to appeal the decision to the Interagency Classification Review Committee.

(2) If it is determined that the material no longer requires classification, it will be declassified and remarked. The Committee will refer the request to the General Counsel, or to the head of the Departmental agency concerned, as the case may be, to determine if the material is otherwise withholdable from the public under the Freedom of Information Act (5 U.S.C. 552) and Departmental regulations, (49 CFR Part 7), and paragraphs (f)(1) and (2) of this section will be followed. A copy of the response to the requester will be provided to the Committee.

(g) Requests for a classification review of material more than 25 years old will be referred directly to the Archivist of the United States and the requester will be notified of the referral. In this event, the provisions of § 8.19 apply.

(h) Whenever a request is insufficient in the description of the record sought, the requester will be asked to limit his request to records that are reasonably obtainable. If, in spite of these steps, the requester does not describe the records with sufficient particularity, or the record requested cannot be obtained with a reasonable amount of effort, the requester will be notified of the reasons why the request is denied and of his/her right to appeal the determination to the Departmental Information Security Review Committee.

§ 8.21 Burden of proof.

For the purpose of determinations to be made under §§ 8.13, 8.15, and 8.17, the burden of proof is on the originating Departmental agency to show that continued classification is warranted.

§ 8.23 Classified information transferred to the Department of Transportation.

(a) Classified information officially transferred to the Department in conjunction with a transfer of function, and not merely for storage purposes, will be considered to have been originated by the Department.

(b) Classified information in the custody of the Department originated by a department or agency that has ceased to exist and for whom there is no successor agency will be deemed to have been originated by the Department. This information may be declassified or downgraded by the Department after consultation with any other agency that has an interest in the subject matter of the information. Such agency will be allowed 30 calendar days in which to express an objection, if it so desires, before action is taken. A difference of opinion that cannot be resolved will be referred to the Departmental Information Security Review Committee, which will consult with its

counterpart committee for the other agency.

(c) Classified information transferred to the National Archives and Records Administration will be declassified or downgraded by the Archivist in accordance with Executive Order 12958, Departmental classification guides, and any existing procedural agreement between the Archivist and the Department. The Department will take all reasonable steps to declassify information contained in records determined to have permanent historical value before they are accessioned in the National Archives.

(d) To the extent practicable, the Department will adopt a system of records management that will facilitate the public release of documents at the time such documents are declassified under the provisions of this part for automatic declassification. To the maximum extent possible without destroying the integrity of the Department's files, all such material will be segregated or set aside for public release upon request. The Department will cooperate with the Archivist in efforts to establish a Government-wide database of information that has been declassified.

Subpart C—Access to Information

§ 8.25 Personnel Security Review Board.

(a) There is hereby established a Department of Transportation Personnel Security Review Board, which will, on behalf of the Secretary of Transportation (except in any case in which the Secretary personally makes the decision), make the administratively final decision on an appeal arising in any part of the Department from:

(1) A decision not to grant access to classified information;

(2) A decision to revoke access to classified information; or

(3) A decision under § 8.29 of this part to deny access to classified information.

(b) The Personnel Security Review Board will be composed of:

(1) two persons appointed by the Assistant Secretary for Administration: one from the Office of Personnel and Training, and one, familiar with personnel security adjudication, from the Office of Security, who will serve as Chair;

(2) one person appointed by the General Counsel, who, in addition to serving as a member of the Board, will provide to the Board whatever legal services it may require; and

(3) one person appointed by each of the Commandant of the Coast Guard and the Federal Aviation Administrator.

(4) Any member may designate a representative, meeting the same criteria as the member, with full power to serve in his/her place.

(c) In carrying out its responsibilities to review final decisions to revoke or deny access to classified information, the Board will establish whatever procedures it deems fit.

§ 8.27 Public availability of declassified information.

(a) It is a fundamental policy of the Department to make information available to the public to the maximum extent permitted by law. Information that is declassified for any reason loses its status as material protected in the interest of national security. Accordingly, declassified information will be handled in every respect on the same basis as all other unclassified information. Declassified information is subject to the Departmental public information policies and procedures, with particular reference to the Freedom of Information Act (5 U.S.C. 552) and implementing Departmental regulations (49 CFR part 7).

(b) In furtherance of this policy, all classified material produced after June 1, 1972 that is of sufficient historical or other value to warrant preservation as permanent records in accordance with appropriate records administrative standards, and that becomes declassified, will be systematically reviewed prior to the end of each calendar year for the purpose of making the material publicly available. To the maximum extent possible without destroying the integrity of the Department's files, all such material will be segregated or set aside for public release upon request.

§ 8.29 Access by historical researchers and former Presidential appointees.

(a) *Historical researchers.* (1) Persons outside the executive branch who are engaged in historical research projects may have access to classified information provided that:

(i) Access to the information is clearly consistent with the interests of national security; and

(ii) The person to be granted access is trustworthy.

(2) The provisions of this paragraph apply only to persons who are conducting historical research as private individuals or under private sponsorship and do not apply to research conducted under Government contract or sponsorship. The provisions are applicable only to situations where the classified information concerned, or any part of it, was originated by the Department or its contractors, or where the information, if originated elsewhere, is in the sole custody of the Department. Any person requesting access to material originated in another agency or to information under the exclusive jurisdiction of the National Archives and Records Administration will be referred to the other agency or to the National Archives and Records Administration, as appropriate.

(3) When a request for access to classified information for historical research is received, it will be referred to the appropriate local security office. That office will obtain from the applicant completed Standard Form 86, Questionnaire for National Security Positions, in triplicate, and Standard Form 87, Fingerprint Chart; a statement in detail to justify access, including identification of the kind of information desired and the organization or organizations, if any, sponsoring the research; and a written statement (signed, dated, and witnessed) with respect to the following:

(i) That the applicant will abide by regulations of the Department:

(A) To safeguard classified information; and

(B) To protect information that has been determined to be proprietary or privileged and is therefore not eligible for public dissemination.

(ii) That the applicant understands that any classified information that the applicant receives affects the security of the United States.

(iii) That the applicant acknowledges an obligation to safeguard classified information or privileged information of which the applicant gains possession or knowledge as a result of the applicant's access to files of the Department.

(iv) That the applicant agrees not to reveal to any person or agency any classified information or privileged information obtained as a result of the applicant's access except as specifically authorized in writing by the Department, and further agrees that the applicant shall not use the information for purposes other than those set forth in the applicant's application.

(v) That the applicant agrees to authorize a review of the applicant's notes and manuscript for the sole purpose of determining that no classified information or material is contained therein.

(vi) That the applicant understands that failure to abide by conditions of this statement will constitute sufficient cause for canceling the applicant's access to classified information and for denying the applicant any future access, and may subject the applicant to criminal provisions of Federal law as referred to in this statement.

(vii) That the applicant is aware and fully understands that title 18, United States Code, Crimes and Criminal Procedures, and the Internal Security Act of 1950, as amended, title 50, United States Code, prescribe, under certain circumstances, criminal penalties for the unauthorized disclosure of information respecting the national security, and for loss, destruction, or compromise of such information.

(viii) That this statement is made to the U.S. Government to enable it to exercise its responsibilities for the protection of information affecting the national security.

(ix) That the applicant understands that any material false statement that the applicant makes knowingly and willfully will subject the applicant to the penalties of 18 U.S.C. 1001.

(4) The security office will process the forms in the same manner as specified for a preappointment national agency check for a critical-sensitive position. Upon receipt of the completed national agency check, the security office, if warranted, may determine that access by the applicant to the information will be clearly consistent with the interests of national security and the person to be granted access is trustworthy. If deemed necessary, before making its determination, the office may conduct or request further investigation. Before access is denied in any case, the matter will be referred through channels to the Director of Security for review and submission to the Personnel Security Review Board for final review.

(5) If access to TOP SECRET or intelligence or communications security information is involved a special background investigation is required. However, this investigation will not be requested until the matter has been referred through channels to the Director of Security for determination as to adequacy of the justification and the consent of other agencies as required.

(6) When it is indicated that an applicant's research may extend to material originating in the records of another agency, approval must be obtained from the other agency prior to the grant of access.

(7) Approvals for access will be valid for the duration of the current research project but no longer than 2 years from the date of issuance, unless renewed. If a subsequent request for similar access is made by the individual within 1 year from the date of completion of the current project, access may again be granted without obtaining a new National Agency Check. If more than 1 year has elapsed, a new National Agency Check must be obtained. The local security office will promptly advise its headquarters security staff of all approvals of access granted under these provisions.

(8) An applicant may be given access only to that classified information that is directly pertinent to the applicant's approved project. The applicant may review files or records containing classified information only in offices under the control of the Department. Procedures must be established to identify classified material to which the applicant is given access. The applicant must be briefed on local procedures established to prevent unauthorized access to the classified material while in the applicant's custody, for the return of the material for secure storage at the end of the daily working period, and for the control of the applicant's notes until they have been reviewed. In addition to the security review of the applicant's manuscript, the manuscript must be reviewed by appropriate offices to assure that it is technically accurate insofar as material obtained from the Department is concerned, and is consistent with the Department's public release policies.

(b) *Former Presidential appointees.* Persons who previously occupied policymaking positions to which they were appointed by the President may be granted access to classified information or material that they originated, reviewed, signed, or received, while in public office, provided that:

(1) It is determined that such access is clearly consistent with the interests of national security; and

(2) The person agrees to safeguard the information, to authorize a review of the person's notes to assure that classified information is not contained therein, and that the classified information will not be further disseminated or published.

§ 8.31 Industrial security.

(a) *Background.* The National Industrial Security Program was established by Executive Order 12829 of January 6, 1993 for the protection of information classified pursuant to Executive Order 12356 of April 2, 1982, National Security Information, or its predecessor or successor orders, and the Atomic Energy Act of 1954, as amended. The Secretary of Defense serves as the Executive Agent for inspecting and monitoring contractors, licensees, grantees, and certificate holders that require or will require access to, or that store or will store, classified information, and for determining the eligibility for access to classified information of contractors, licensees, certificate holders, and grantees, and their respective employees.

(b) *Implementing regulations.* The Secretary of Transportation has entered into agreement for the Secretary of Defense to render industrial security services for the Department of Transportation. Regulations prescribed by the Secretary of Defense to fulfill the provisions of Executive Order 12829 have been extended to protect release of classified information for which the Secretary of Transportation is responsible. Specifically, this regulation is DOD 5220.22–M, National Industrial Security Program Operating Manual. This regulation is effective within the Department of Transportation, which functions as a User Agency as prescribed in the regulation. Appropriate security staffs, project personnel, and contracting officers assure that actions required by the regulation are taken.

Issued in Washington, DC, on May 31, 1996.

Federico Peña,

Secretary of Transportation.

[FR Doc. 96–16524 Filed 6–28–96; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 96–066; Notice 01]

RIN 2127–AG19

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment; Heavy Truck Conspicuity; Evaluation Plan

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comment on proposed collection of information.

SUMMARY: NHTSA is initiating a study to evaluate the safety effects of the Conspicuity Systems requirement (Section 5.7) of Federal Motor Vehicle Safety Standard (FMVSS) No.108, "Lamps, Reflective Devices, and Associated Equipment. To carry out the study, NHTSA has requested that special motor vehicle crash data be collected by two state law enforcement agencies. Before a Federal agency can collect certain information, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal Agencies must solicit public comment on the proposed collection of

information. In compliance with these procedures, NHTSA requests comments on the issues contained at the end of this notice.

DATES: Comments must be received by August 30, 1996.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted to the Docket Section, NHTSA, Room 5109, 400 Seventh Street SW., Washington, DC 20590 (Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday). It is requested, but not required, that one original plus 2 copies of the comments be provided.

FOR FURTHER INFORMATION CONTACT: Charles J. Kahane, Chief, Evaluation Division, Office of Strategic Planning and Evaluation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–1574. (For information on OMB processing procedures for the proposed information collection, contact: Ed Kosek, NHTSA Information Collection Clearance Officer, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Telephone (202) 366–2589).

SUPPLEMENTARY INFORMATION: In September 1992, the NHTSA amended FMVSS Number 108 (49 CFR 571.108), "Lamps, Reflective Devices, and Associated Equipment". This revision, effective December 1, 1993, requires that heavy truck trailers (i.e., those 80 or more inches in width with a Gross Vehicle Weight Rating over 10,000 pounds) manufactured after this date be equipped with retroreflective material (57 FR 58406). Two types of material are permitted—(1) retroreflective sheeting, or tape, and (2) reflex reflectors. The purpose of the material is to reduce traffic accidents, and resulting deaths and injuries, by increasing the visibility of heavy truck trailer combination vehicles and making them more conspicuous to other motorists. Nighttime collisions of other vehicles into the sides and rear of large tractor trailer trucks are the primary types of crashes targeted to be reduced by the retroreflective material.

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735), NHTSA is required to conduct periodic evaluations to assess the effectiveness of the vehicle safety standards it has promulgated. These studies estimate the actual safety benefits achieved by the standards and provide a basis for assessing whether the standards are functioning as intended. Typically, the evaluation studies consist of the analyses of highway crash data which compare the experience of vehicles equipped with a given standard with the experience of vehicles not equipped with the standard. In addition to all trailers manufactured since December 1993, which are required to have conspicuity marking, some companies have also equipped their older trailers with the material. Trailers equipped prior to December 1993 sometimes used colors and patterns which differ from those specified in the standard. A data collection effort is planned to provide crash information for the purpose of evaluating the safety effects of the conspicuity requirement under FMVSS No.108. NHTSA will analyze the data to estimate the safety benefits, in terms of crashes, injuries, and fatalities avoided that can be attributed to the requirement.

It is proposed that the data be collected by state law enforcement officers (i.e., state police) who investigate and report on highway motor vehicle crashes as part of their regularly assigned duties. For each crash involving a large truck trailer combination vehicle, the information to be provided will consist of a copy of the standard state accident report, which is regularly filed with applicable state authorities, plus a special accident report supplement designed to record data specific to the study of the effects of the retroreflective material on the trailers. The officers investigating the heavy truck crashes will complete the data items on the supplement for each such crash occurring within their jurisdiction. Data from both the report supplement and the corresponding state accident report are required in order to evaluate the safety effects of the conspicuity standard. Two states, Pennsylvania and Florida, are being proposed as the data collection sites. All state-reported crashes of tractor trailer combination vehicles which occur within the boundaries of the two states will be reported. A tractor trailer combination vehicle is defined as a truck tractor pulling one or two trailers—i.e., tractor with semi-trailer or tractor with double trailers.

The data to be provided to NHTSA will consist of two parts. Part 1 will be a copy of the official state motor vehicle accident report involving a heavy truck tractor combination vehicle that is filed with the applicable authorities in the states where the study is being conducted. Part 2 will consist of the special supplement to each state motor vehicle accident report for the designated truck crashes. A copy of the proposed supplement, "Investigator's Supplementary Truck-Tractor Trailer Accident Report," is shown in the accompanying illustration. The instructions for completing the supplement are also shown. The supplement would be printed as a one-page form with the report form on one side and the instructions on the other side. In order to have sufficient data for a definitive statistical evaluation, it is proposed that the two states collect and provide the specified information for a two-year period. The accident reports would be collected at the state level and forwarded to NHTSA on a monthy basis.

NHTSA estimates that the reporting burden per heavy truck crash report will average 30 minutes. This includes the time to review the instructions, complete the accident report supplement, transmit the information (state report plus supplement), and to coordinate and oversee the collection at the state level. Based on recent crash statistics from the two selected states, it is estimated that approximately 2,000 reports of tractor trailer crashes per year will be reported by each state. The number of respondents (officers who file reports for the designated crashes) cannot be precisely determined, but based on the annual number of crashes and the size of the law enforcement agencies in the two states, the typical officer would complete one report per year. In actuality, some officers may complete no reports while others could complete several reports. This will be a function of where, throughout the state road systems, the crashes occur, and the specific officers who have investigation and reporting jurisdiction over those areas at the time the crashes occur. The total reporting burden for the proposed information collection project is therefore best estimated on the basis of the total estimated number of crashes expected to be reported. For the two study states over the two-year period, it is estimated that 8,000 crashes will be reported. Thus, the total reporting burden is estimated at 4,000 hours (8,000 crashes times 0.5 hours per crash).

NHTSA has consulted with the two selected states and has obtained their consent to support the agency in its evaluation study of retroreflective marking on heavy truck trailers. In compliance with the requirements of the Office of Management and Budget (5 CFR part 1320, "Reporting and Recordkeeping Requirements," effective August 29, 1995), NHTSA requests comments on the proposed collection of information. Comments will be used by the agency in:

a. Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

b. Evaluating the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

c. Enhancing the quality, utility, and clarity of the information to be collected; and

d. Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Submission of Comments

Interested persons are invited to submit comments. All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered.

Authority: 44 U. S. C. 3506 (c); delegation of authority at 49 CFR 1.50.

L. Robert Shelton,

Acting Associate Administrator for Plans and Policy.

BILLING CODE 4910-59-P

U.S. Department of Transportation
National Highway Traffic Safety Administration

Investigator's Supplementary Truck-Tractor Trailer Accident Report

National Highway Traffic Safety Administration Special Study

(To be completed for all accidents involving a truck-tractor pulling one, or more, trailers)
(See instructions on reverse side)

1

Date of Accident ___ / ___ / ___ | Day of Accident ❑ Sun ❑ M ❑ T ❑ W ❑ T ❑ F ❑ Sat | Time of Accident Military Time _____ hrs | **ACCIDENT REPORT NUMBER** *(from state accident report)*

Address *(Place where accident occurred)*

County *City, Town or Township*

Road on which accident occurred *(Give name of street or highway no.)* | Posted Speed Limit

2

Light Condition: ❑ Daylight ❑ Dark ❑ Dark, Lighted ❑ Dawn ❑ Dusk

Weather Condition: ❑ Clear ❑ Rain ❑ Fog ❑ Snow/Sleet

3

TRAILER—UNIT 1

Trailer Type: ❑ Van ❑ Tanker ❑ Flatbed ❑ Garbage ❑ Auto Transporter ❑ Other *(Specify)* _____

Trailer Vehicle Identification No. (VIN):

Retroreflective Tape: ❑ Yes ❑ No

Tape Pattern: ❑ Side/Rear, per FMVSS 108 or similar *(See Figure below)* ❑ Other Pattern

Tape Color: ❑ Red/White, per FMVSS 108 ❑ Solid White ❑ Solid Yellow ❑ Solid Blue ❑ Other *(Specify)* _____

TAPE CONDITION—
Trailer Sides: ❑ Clean ❑ Some Dirt ❑ Very Dirty ❑ Tape peeling, missing segments
Trailer Rear: ❑ Clean ❑ Some Dirt ❑ Very Dirty ❑ Tape peeling, missing segments

4

TRAILER—UNIT 2

Trailer Type: ❑ Van ❑ Tanker ❑ Flatbed ❑ Garbage ❑ Auto Transporter ❑ Other *(Specify)* _____

Trailer Vehicle Identification No. (VIN):

Retroreflective Tape: ❑ Yes ❑ No

Tape Pattern: ❑ Side/Rear, per FMVSS 108 or similar *(See Figure below)* ❑ Other Pattern

Tape Color: ❑ Red/White, per FMVSS 108 ❑ Solid White ❑ Solid Yellow ❑ Solid Blue ❑ Other *(Specify)* _____

TAPE CONDITION—
Trailer Sides: ❑ Clean ❑ Some Dirt ❑ Very Dirty ❑ Tape peeling, missing segments
Trailer Rear: ❑ Clean ❑ Some Dirt ❑ Very Dirty ❑ Tape peeling, missing segments

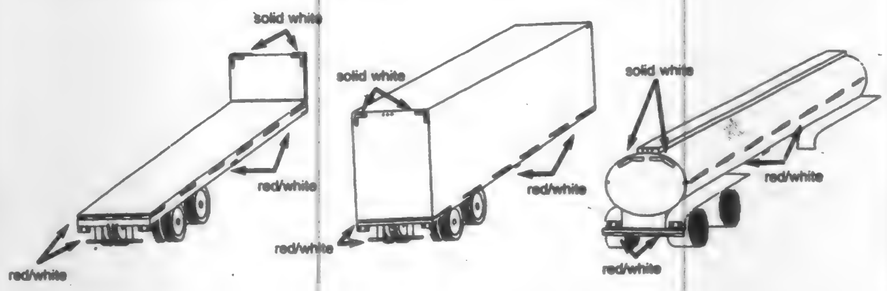

Typical Trailer Conspicuity Treatments

Instructions for Completing Supplementary Report on Truck-Tractor Trailer Accidents

National Highway Traffic Safety Administration Special Study

When To Use Form

If the accident involved a truck-tractor pulling one or more trailers—i.e., tractor with semi-trailer, or tractor with double trailers. Both single vehicle and multi-vehicle accidents are to be reported. *NOTE:* The vehicle data to be reported concerns only **trailers**.

DATA ELEMENT INSTRUCTIONS

Accident Information

Block 1

Date of Accident: Enter month, day, and year.

Day of Accident: Enter day of week.

Time of Accident: Enter the time *(military)*

Place Where Accident Occurred: Enter county, city *(town or township)*.

Road on Which Accident Occurred: Enter Street, or State Highway Number.

Posted Speed Limit: Enter speed limit in m.p.h.

Accident Report Number: enter Number of the state accident report.

Block 2

Light Condition: Check the appropriate light condition.

Weather Condition: Check the appropriate weather condition.

Vehicle (Trailer) Information

Complete the trailer information corresponding to the respective traffic UNIT—i.e., "1" or "2"—as recorded on the state report form. NOTE: If a tractor was pulling more than 1 trailer, complete the information for each trailer, numbering the trailers "1", "2", with "1" being the lead trailer. If more than 2 trailers were involved in the accident, use additional **SUPPLEMENTARY REPORT** Forms, as needed, to record information on all trailers.

Block 3/Block 4

Trailer Type: Check the trailer type.

Trailer VIN: Enter the Vehicle Identification No. (VIN) of the trailer.

Retroreflective Tape: Check whether or not the trailer was equipped with retroreflective tape.

Tape Pattern: Check whether or not the tape pattern was similar to FMVSS requirement *(refer to illustration)*.

Tape Color: Check whether or not the tape color was similar to FMVSS requirement *(refer to illustration)*

Tape Conditon, Sides: Check the box which best describes the condition of the tape on the sides of the trailer.

Tape Conditon, Rear: Check the box which best describes the condition of the tape on the rear of the trailer.

Comments

[FR Doc. 96–16697 Filed 6–28–96; 8:45 am]
BILLING CODE 4910–59–C

Notices

Federal Register
Vol. 61, No. 127
Monday, July 1, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–96–00–1]

Nominations for Members of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Organic Foods Production Act (OFPA) of 1990, as amended, requires the establishment of a National Organic Standards Board (NOSB) to assist in the development of standards for substances to be used in organic production and to advise the Secretary of Agriculture on any other aspects of the implementation of the Act. The NOSB was originally established on January 24, 1992, with individual members appointed for staggered appointments of 3, 4, and 5 years. Appointments for five members will be up in January 1997, and the Secretary seeks nominations of individuals to be considered for selection as NOSB members.

DATES: Written nominations, with resumes, must be postmarked on or before August 31, 1996.

ADDRESSES: Nominations should be sent to Dr. Harold S. Ricker, Program Manager, National Organic Program, Transportation and Marketing Division, Room 2945 South Building, Agricultural Marketing Service, U.S. Department of Agriculture (USDA), P. O. Box 96456, Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Dr. Harold S. Ricker, (202) 720–3252.

SUPPLEMENTARY INFORMATION: The OFPA of 1990 requires the Secretary to establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods. In developing this program, the Secretary is required to establish an NOSB. The purpose of the NOSB is to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of the program.

The current NOSB has worked to develop recommendations to the Secretary to establish the initial program. It is anticipated that the NOSB will continue to work on recommendations as appropriate and on the continuing review of substances considered for organic production and processing.

A member of the NOSB shall serve for a term of 5 years, except that the Secretary appointed the original members of the NOSB for staggered terms of 3, 4, and 5 years. The terms of five members of the current NOSB, who were appointed for 5-year terms, will be completed on January 24, 1997. A member may serve consecutive terms if such member served an original term that was less than 5 years as provided for in the OFPA of 1990.

Nominations are sought for the positions of farmer/grower (1), handler/processor (1), consumer/public interest (1), environmentalist (1), and scientist (1). Individuals desiring to be appointed to the NOSB at this time must be either an owner or operator of an organic farming operation, an owner or operator of an organic handling operation, an individual who represents public interest or consumer interest groups, an expert in the area of environmental protection or resource conservation, or an individual with expertise in the fields of toxicology, ecology, or biochemistry.

Selection criteria will include such factors as: demonstrated experience and interest in organics; commodity and geographic representation; endorsed support of consumer and public interest organizations; demonstrated experience with environmental concerns; and other factors as may be appropriate for specific positions.

After applications have been reviewed, individuals receiving nominations will be contacted and supplied with biographical forms. The biographical information must be completed and returned to USDA within 10 working days of its receipt, to expedite the background clearance that is required by USDA.

Dated: June 24, 1996.

Eileen S. Stommes,

Director, Transportation and Marketing Division.

[FR Doc. 96–16634 Filed 6–28–96; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

[Docket No. 96–036–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that four environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. For copies of the environmental assessments and findings of no significant impact, contact Mr. Clayton Givens at (301) 734–7612; e-mail: cgivens@aphis.usda.gov. Please refer to

the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
96–017–02	Monsanto Company	5–2–96	Potato plants genetically engineered to express glyphosate herbicide tolerance and altered carbohydrate metabolism.	Idaho, Maine, and Missouri.
96–071–02	VanderHave USA	5–3–96	Sunflower plants USA genetically engineered to contain novel genes for insect resistance.	North Dakota.
96–099–02	Calgene, Inc.	5–16–96	Tomato plants genetically engineered for virus resistance.	California and Florida.
96–064–01	S.R. Noble Foundation, Inc..	5–20–96	Barrel medic plants genetically engineered to express tolerance to phosphinothricin herbicides.	Oklahoma.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 25th day of June 1996.

Donald W. Luchsinger,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–16709 Filed 6–28–96; 8:45 am]

BILLING CODE 3410–34–P

Commodity Credit Corporation

Methodology for Evaluating Applications for Participation in the Market Access Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In an effort to improve administration of the Market Access Program (MAP), formerly the Market Promotion Program, authorized by section 203 of the Agricultural Trade Act of 1978 (7 U.S.C. 5623), the Commodity Credit Corporation (CCC) invites suggestions regarding the methodology to be used by CCC to evaluate and allocate funding among applicants. Criteria for the approval of MAP applications and for allocating MAP resources appears at 7 CFR 1485.14. Specifically, CCC is interested in suggestions as to weights or scores that should be assigned to the individual criteria or other ways to effectively assess the individual criteria. CCC does not intend at this time to change the actual approval criteria or allocation factors it considers when evaluating applications and, therefore, any comment should be limited to methods to evaluate existing criteria.

DATES: In order to be considered, written comments must be received by July 31, 1996.

ADDRESSES: Send comments to U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, STOP 1042, 1400 Independence Ave., S.W., Washington, D.C. 20250–1042.

FOR FURTHER INFORMATION CONTACT:

Sharon McClure or Denise Fetters at (202) 720–5521.

Signed at Washington, D.C. on June 21, 1996.

Timothy J. Galvin,

Acting Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 96–16633 Filed 6–28–96; 8:45 am]

BILLING CODE 3410–10–M

Grain Inspection, Packers and Stockyards Administration

Graben Livestock Auction Sales, Tisgah, AL

Correction

On June 6, 1996, a notice was published in the **Federal Register** (61 FR 28837) of the proposed posting for certain stockyards listing their facility number, name, and location.

This notice is to correct the posting number and the location assigned to Graben Livestock Auction Sales.

The notice should have read:

AL–189 Graben Livestock Auction Sales, Pisgah, Alabama

Done at Washington, DC, this 24th day of June 1996.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division.

[FR Doc. 96–16632 Filed 6–28–96; 8:45 am]

BILLING CODE 3410–EN–M

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATE: July 9–10, 1996.

PLACE: ARRB, 600 E Street, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Review and Accept Minutes of Closed Meeting
2. Review of Assassination Records
3. Other Business

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Associate Director for Communications, 600 E Street, NW., Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,

Executive Director.

[FR Doc. 96–16860 Filed 6–27–96; 3:03 pm]

BILLING CODE 6118–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 6:00 p.m. and recess at 9:00 p.m. on Wednesday, July 10, 1996, and reconvene on Thursday, July 11, 1996, at 9:00 a.m. and adjourn at 12:00 p.m., at the Delta State University Performing Arts Center, Highway 8, West, Cleveland, MS 38733. The purpose of the meeting is to allow Committee members to receive a briefing on race relations issues in the aftermath of church burnings.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 25, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–16664 Filed 6–28–96; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 53–96]

Foreign-Trade Subzone 183A—Dell Computer Corporation Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign Trade Zone of Central Texas, Inc., grantee of FTZ 183, requesting authority to expand Subzone 183A at the computer manufacturing facilities of Dell Computer Corporation (Dell) located in Austin, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 19, 1996.

Subzone 183A was approved on November 16, 1992 (Board Order 607, 57 FR 56902; 12/1/92). The subzone currently consists of the following three sites: *Site 1:* (32 acres) located in the Braker Center Industrial Park, at the intersection of Braker Lane and Metric Boulevard; *Site 2:* McKalla 2 (124,000 sq. ft.) located at 2500 McHale Court within the Rutland Center Industrial Park; and, *Site 3:* Research 1 (100,685 sq. ft.) located at 8701 Research Boulevard, Austin, Texas. Sites 2 and 3 are temporary sites, which expire on December 31, 1996.

The applicant is now requesting authority to expand the subzone as follows:

—Expand Site 1 to include three buildings (Braker C, D & F, 9 acres, 143,280 sq. ft.)
—Add Site 2 to the subzone plan on a permanent basis
—Expand Site 2 by adding a building (McKalla I, 135,000 sq. ft.) located at 10220 McKalla Drive; and,
—Add Site 3 to the subzone plan on a permanent basis.

Dell is authorized to manufacture computers and related products under zone procedures within Subzone 183A. This proposal does not involve any new manufacturing authority under zone procedures.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment (original and 3 copies) is invited from interested parties (see FTZ Board address below). The closing date for their receipt is August 30, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 16, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 410 E. 5th Street, Suite 414–A, Austin, TX 78711

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: June 24, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–16748 Filed 6–28–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Intent To Revoke Antidumping Duty Orders and Findings and To Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty orders and findings and to terminate suspended investigations.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the antidumping duty orders and findings and to terminate the suspended investigations listed below. Domestic interested parties who object to these revocations and terminations must submit their comments in writing no later than the last day of July 1996.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding or terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are

notifying the public of our intent to revoke the following antidumping duty orders and findings and to terminate the suspended investigations for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Proceeding

Armenia
Solid Urea
A–831–801
52 FR 26366
July 14, 1987
Contact: Thomas Barlow at (202) 482–0410

Azerbaijan
Solid Urea
A–832–801
52 FR 26366
July 14, 1987
Contact: Thomas Barlow at (202) 482–0410

Belarus
Solid Urea
A–822–801
52 FR 26366
July 14, 1987
Contact: Thomas Barlow at (202) 482–0410

Georgia
Solid Urea
A–833–801
52 FR 26366
July 14, 1987
Contact: Thomas Barlow at (202) 482–0410

Germany
Industrial Nitrocellulose
A–428–803
55 FR 28271
July 10, 1990
Contact: Todd Peterson at (202) 482–4195

Iran
In-Shell Pistachio Nuts
A–507–502
51 FR 25922
July 17, 1986
Contact: Valerie Turoscy at (202) 482–0145

Japan
Cast Iron Pipe Fittings
A–588–605
52 FR 25281
July 6, 1987
Contact: Sheila Forbes at (202) 482–5253

Japan
High Power Microwave Amplifiers and Components Thereof
A–588–005
47 FR 31413
July 20, 1982
Contact: Hermes Pinilla at (202) 482–3477

Japan
Industrial Nitrocellulose
A–588–812
55 FR 28268
July 10, 1990
Contact: Rebecca Trainor at (202) 482–0666

Japan
Synthetic Methionine
A–588–041
38 FR 18382
July 10, 1973
Contact: Charles Riggle at (202) 482–0650

Kazakhstan
Solid Urea
A–834–801
52 FR 26366
July 14, 1987
Contact: Thomas Barlow at (202) 482–0410

Kyrgyzstan
Solid Urea
A–835–801
52 FR 26366
July 14, 1987
Contact: Thomas Barlow at (202) 482–0410

Latvia
Solid Urea
A–449–801
52 FR 26366
July 14, 1987
Contact: Thomas Barlow at (202) 482–0410

Lithuania
Solid Urea
A–451–801
52 FR 26366
July 14, 1987
Contact: Thomas Barlow at (202) 482–0410

Moldova
Solid Urea
A–841–801
52 FR 26366
July 14, 1987
Contact: Thomas Barlow at (202) 482–0410

Romania
Solid Urea
A–485–601
53 FR 26366
July 14, 1987
Contact: Tom Futtner at (202) 482–3813

Russia
Solid Urea
A–821–801
52 FR 26366
July 14, 1987
Contact: Thomas Barlow at (202) 482–0410

South Korea
Industrial Nitrocellulose
A–580–805
55 FR 28266
July 10, 1990
Contact: Rebecca Trainor at (202) 482–0666

Tajikistan
Solid Urea
A–842–801
52 FR 26366
July 14, 1987
Contact: Thomas Barlow at (202) 482–0410

The People's Republic of China
Industrial Nitrocellulose
A–570–802
55 FR 28267
July 10, 1990
Contact: Rebecca Trainor at (202) 482–0666

The Ukraine
Solid Urea
A–823–801
52 FR 26366
July 14, 1987
Contact: Thomas Barlow at (202) 482–0410

Turkmenistan
Solid Urea
A–843–801
52 FR 26366
July 14, 1987
Contact: Thomas Barlow at (202) 482–0410

Uzbekistan
Solid Urea
A–844–801
52 FR 26366
July 14, 1987
Contact: Thomas Barlow at (202) 482–0410

If no interested party requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, and no domestic interested party objects to the Department's intent to revoke or terminate pursuant to this notice, we shall conclude that the antidumping duty orders, findings, and suspended investigations are no longer of interest to interested parties and shall proceed with the revocation or termination.

Opportunity To Object

Domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings or to terminate the suspended investigations by the last day of July 1996. Any submission to the Department must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k) (3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203. This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 24, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–16747 Filed 6–28–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–843]

Notice of Amendment of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson at (202) 482– 4929, Shawn Thompson at (202) 482–1776, or James Terpstra at (202) 482–3965, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 by the Uruguay Rounds Agreements Act (URAA).

Amendment to the Final Determination

We are amending the final determination of sales at less than fair value of bicycles from the People's Republic of China (PRC), to reflect the correction of ministerial errors made in the margin calculations in that determination. Although the International Trade Commission (ITC) has already issued its negative final injury determination in this investigation, we are publishing this amendment to the final determination in accordance with section 353.28(c) of the Department's regulations.

Scope of Investigation

The product covered by this investigation is bicycles of all types, whether assembled or unassembled, complete or incomplete, finished or unfinished, including industrial bicycles, tandems, recumbents, and folding bicycles. For purposes of this investigation, the following definitions apply irrespective of any different definition that may be found in Customs rulings, U.S. Customs law, or the Harmonized Tariff Schedule of the United States (HTSUS): (1) The term "unassembled" means fully or partially unassembled or disassembled; (2) the term "incomplete" means lacking one or more parts or components with which the complete bicycle is intended to be equipped; and (3) the term "unfinished" means wholly or partially unpainted or lacking decals or other essentially aesthetic material. Specifically, this investigation is intended to cover: (1) Any assembled complete bicycle, whether finished or unfinished; (2) any unassembled complete bicycle, if shipped in a single shipment, regardless of how it is packed and whether it is finished or unfinished; and (3) any incomplete bicycle, defined for purposes of this investigation as a frame, finished or unfinished, whether or not assembled together with a fork, and imported in the same shipment with any two of the following components: (a) The rear wheel; (b) the front wheel; (c) a rear derailleur; (d) a front derailleur; (e) any one caliper or cantilever brake; (f) an integrated brake lever and shifter, or separate brake lever and click stick lever; (g) crankset; (h) handlebars, with or without a stem; (i) chain; (j) pedals; and (k) seat (saddle), with or without seat post and seat pin.

The scope of this investigation is not intended to cover bicycle parts except to the extent that they are attached to or in the same shipment as an unassembled complete bicycle or an incomplete bicycle, as defined above.

Complete bicycles are classifiable under subheadings 8712.00.15, 8712.00.25, 8712.00.35, 8712.00.44, and 8712.00.48 of the 1995 HTSUS. Incomplete bicycles, as defined above, may be classified for tariff purposes under any of the aforementioned HTSUS subheadings covering complete bicycles or under HTSUS subheadings 8714.91.20–8714.99.80, inclusive (covering various bicycle parts). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this investigation is dispositive.

Case History

In accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), on April 30, 1996, the Department published its final determination that bicycles from the PRC were being, or were likely to be, sold in the United States at less than fair value (61 FR 19026). Subsequent to the final determination, we received allegations that the Department made ministerial errors in the margin calculations.

On June 12, 1996, the Department was formally notified by the ITC that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded by reason of imports of bicycles from the PRC that are sold in the United States at less than fair value.

Amendment of Final Determination

On May 1, 1996, Chitech Industries Ltd. (Chitech) submitted allegations that ministerial errors were made in the Department's final determination. On May 2, 1996, petitioners submitted ministerial error allegations with regard to China Bicycle Co. (Holdings) Ltd. (CBC). On May 3, 1996, CBC, CATIC Bicycle Co., Ltd. (CATIC), Giant China Co., Ltd. (Giant), and Hua Chin Bicycle (S.Z.) Co., Ltd. (Hua Chin) submitted their ministerial error allegations. On May 6, 1996, Bo An Bicycle (Shenzhen) Co., Ltd. (Bo An), Merida Bicycle (Shenzhen) Co., Ltd. (Merida), Shenzhen Overlord Bicycle Co., Ltd. (Overlord), and Universal Cycle Corporation (Guangzhou) (Universal) submitted their ministerial error allegations. Also, on May 6, 1996, petitioners submitted additional ministerial error allegations. On May 7, 1996, petitioners responded to CATIC, Merida, Giant, and Hua Chin's ministerial error allegations.

For a detailed discussion of the alleged ministerial errors and the Department analysis, *see*, the memo from The Team to Paul Joffe, Acting Assistant Secretary for Import Administration, regarding Clerical Error Allegations in the Final Determination of Bicycles From the People's Republic of China, dated May 10, 1996. (Clerical Error Memo). Pursuant to section 735(e) of the Act and section 353.28(c) of the Department's regulations, we have corrected the ministerial errors in the final determination. However, certain alleged errors were not corrected because we determined that they were not ministerial errors. *See*, Clerical Error Memo. The revised final weighted-average dumping margins are as follows:

Manufacturer/ producer/ exporter	Original final margin percentage	Revised final percentage
Bo An	0.00	0.00
CATIC	13.67	2.02
Giant	*0.97	*0.67
Hua Chin	0.00	0.00
Merida	7.44	*0.37
CBC	3.25	2.95
Overlord	0.00	0.00
Chitech (Shun Lu)	2.05	*1.83
Universal	11.06	2.27
PRC-Wide	61.67	61.67

*De minimis.

Discontinuation of Suspension of Liquidation

Although the aforementioned ministerial error corrections affect the rates for CATIC, Giant, Merida, CBC, Chitech, and Overlord, in accordance with section 735(c)(2) of the Act, because of the negative determination by the ITC, we have already directed the Customs Service to discontinue suspension of liquidation for entries of bicycles imported from the PRC, entered or withdrawn from warehouse, for consumption between November 9, 1995 and May 7, 1996, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

This determination is published pursuant to section 735(d) of the Act (19 USC 1673(d)) and 19 CFR 353.20.

Dated: June 24, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–16750 Filed 6–28–96; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–058. Applicant: American Museum of Natural History, Department of Earth & Planetary Sciences, Central Park West at 79th Street, New York, NY 10024–5192. Instrument: Electron Microprobe, Model SX 100. Manufacturer: Cameca, France. Intended Use: The instrument will be used for studies of rocks, minerals, meteorites, volcanic glasses, experimental glasses, synthetic materials, metals and alloys. Experiments conducted will include: (1) Measurement of x-ray intensities, (2) backscattered and secondary electron imaging of sample and (3) cathodoluminescence emission of samples when bombarded by a ray of electrons. In addition, the instrument will be used for educational purposes in courses for petrology and mineralogy students. Application accepted by Commissioner of Customs: May 24, 1996.

Docket Number: 96–059. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Instrument: Electronic Speckle Pattern Interferometry System, Model SD–10–S. Manufacturer: Newport Instruments AG, Switzerland. Intended Use: The instrument will be used for measuring deformations of the graphite epoxy host structure of a composite actuator developed for studies of the reduction of sound that is transmitted through plates and cylinders. The speckle pattern produced by the laser is viewed with a CCD camera and digitized in real time for analysis by a computer which calculates the deformation. Application accepted by Commissioner of Customs: May 24, 1996.

Docket Number: 96–060. Applicant: University of Minnesota, Department of Biochemistry, 1479 Gortner Avenue, St. Paul, MN 55108. Instrument: EPR Spectrometer. Manufacturer: Bruker, Germany. Intended Use: The instrument will be used to study paramagnetic species in photosynthetic proteins; in particular to obtain structural information about redox active tryosines and the manganese cluster of photosystem II. These species will be oxidized during the enzymatic mechanism, and the instrument will be used to verify that this oxidation has occurred and to study the kinetics of the oxidation and reduction. Application accepted by Commissioner of Customs: May 31, 1996.

Docket Number: 96–061. Applicant: University of Hawaii, Manoa, School of Ocean Earth Science & Technology, 1000 Pope Road, Honolulu, HI 96822. Instrument: Individual Acid Bath Carbonate Device. Manufacturer: Finnigan MAT, Germany. Intended Use: The instrument will be used to automatically generate carbon dioxide gases from solid samples containing carbonate, under vacuum, from individual reaction chambers, provide cryogenic distillation of said gases and automatically feed said gases into the sample inlet of an existing mass spectrometer to measure the stable isotope ratios of carbon and oxygen of generated gases. Application accepted by Commissioner of Customs: June 3, 1996.

Docket Number: 96–062. Applicant: University of Oklahoma, 660 Parrington Oval, Norman, OK 73019. Instrument: ESR Spectrometer System. Manufacturer: Bruker Instruments, Germany. Intended Use: The instrument will be used for a variety of experimental needs including the following: (1) Analysis of nitroxide spin-labeled proteins as a measure of polypeptide structure, folding and conformational dynamics, (2) analysis of allosteric transition metal complexes, electron structures of cytochrome P–450 model compounds, (3) characterization of stable free radical/cations and anions and paramagnetic metallocenes, (4) determination of the distribution of spin density and molecular structure of organocobalt radicals, (5) study of spin states and oxidation states of both porphyrin and non-porphyrin Fe(II) and Fe(III) complexes and (6) photo-ESR, to probe the photogeneration of charges in photoconducting polymers. Application accepted by Commissioner of Customs: June 5, 1996.

Docket Number: 96–063. Applicant: University of Georgia, Institute of Ecology, Athens, GA 30602–2022. Instrument: SIR Mass Spectrometer, Model Delta C. Manufacturer: Finnigan Corporation, Germany. Intended Use: The instrument will be used for the application of stable isotope studies of nitrogen-15 and carbon-13 to ecological research. Specific studies will include the following: (1) long term ecological consequences of field manipulations on soil organic matter dynamics across a spectrum of croplands, old fields and deciduous forest, (2) influence of soil arthropods on below-ground processes, (3) microbial-faunal interactions, (4) forest ecosystem dynamics following disturbance in the southern Appalachians and (5) influence of microarthropod-microbial interactions on forest floor nitrogen dynamics. The instrument will also be used for educational purposes in the courses: ECL 863, Nuclear Tracers in Ecology and ECL 900, Problems in Ecology.

Application accepted by Commissioner of Customs: June 6, 1996.

Docket Number: 96–064. Applicant: University of California, Davis, Department of Geology, Davis, CA 95616. Instrument: Magnetometer and Demagnetizer. Manufacturer: Molspin Instruments, United Kingdom. Intended Use: The instruments will be used for the study of the magnetic properties of sedimentary rocks retrieved as part of the Cape Roberts Drilling Project, a collaboration that will provide information about the climatic and tectonic history of the Antarctic continent during the past 65 million years. The magnetometer will be used to determine the direction of magnetization of rocks and the alternating field demagnetizer will be used to determine whether the directions measured with the magnetometer are reliable. Application accepted by Commissioner of Customs: June 9, 1996.

Docket Number: 96–065. Applicant: University of Massachusetts, Amherst, Amherst, MA 01003. Instrument: Electron Microscope, Model JEM–3010. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument will be used to investigate the morphology and structure of polymers, proteins, ceramics, electronic materials and metals. In addition, the instrument will be used for educational purposes in the courses PSE 899 Ph.D. Dissertation, PSE 699 Master's Thesis, PSE 721 Morphology of Polymers and PSE 602 Polymer Characterization Laboratory. Application accepted by Commissioner of Customs: June 11, 1996.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–16617 Filed 6–28–96; 8:45 am]

BILLING CODE 3510–DS–P

The Pennsylvania State University, et al. Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–122. Applicant: The Pennsylvania State University, University Park, PA 16802. Instrument: Trace Gas Preconcentrator. Manufacturer: Finnigan MAT, Germany. Intended Use: See notice at 61 FR 6629, February 21, 1996. Advice received from: The National Institutes of Health, March 20, 1996.

Docket Number: 95–123. Applicant: Carnegie Institution of Washington, Washington, DC 20015–1305. Instrument: Upgrade of 252 Mass Spectrometer. Manufacturer: Finnigan MAT, Germany. Intended Use: See notice at 61 FR 6629, February 21, 1996. Advice received from: The National Institutes of Health, March 20, 1996.

Docket Number: 95–128. Applicant: University of Maryland at College Park, College Park, MD 20742. Instrument: Extended SpectraKinetics Photomultiplier, Model SK.1E. Manufacturer: Applied Photophysics, United Kingdom. Intended Use: See notice at 61 FR 6630, February 21, 1996. Advice received from: The National Institutes of Health, March 21, 1996.

Docket Number: 95–129. Applicant: Massachusetts Institute of Technology, Cambridge, MA 02139. Instrument: Rapid Scanning Diode Array, Model MG 6040. Manufacturer: Hi-Tech Scientific, United Kingdom. Intended Use: See notice at 61 FR 6630, February 21, 1996. Advice received from: The National Institutes of Health, March 21, 1996.

Docket Number: 95–130. Applicant: University of Wisconsin-Madison, Madison, WI 53706. Instrument: Upgraded Pulse Compressor, Model DMP–100. Manufacturer: Microlase Optical Systems Ltd., United Kingdom. Intended Use: See notice at 61 FR 6630, February 21, 1996. Advice received from: The National Institutes of Health, March 21, 1996.

Docket Number: 96–001. Applicant: University of California, Davis, Davis, CA 95616–8605. Instrument: Water Gas Phase Equilibration System. Manufacturer: Finnigan MAT, Germany. Intended Use: See notice at 61 FR 8041, March 1, 1996. Advice received from: The National Institutes of Health, March 25, 1996.

Docket Number: 96–013. Applicant: Northern Illinois University, DeKalb, IL 60115–2862. Instrument: Diode-Array Detector for Stopped-Flow Spectrometer, Model PDA.1. Manufacturer: Applied Photophysics, Ltd., United Kingdom. Intended Use: See notice at 61 FR 11614, March 21, 1996. Advice received from: The National Institutes of Health, March 27, 1996.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States. Reasons: These are compatible accessories for instruments previously imported for the use of the applicants. In each case, the instrument and accessory were made by the same manufacturer. The National Institutes of Health advises that the accessories are pertinent to the intended uses and that it knows of no comparable domestic accessories.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–16615 Filed 6–28–96; 8:45 am]

BILLING CODE 3510–DS–P

University of California, Los Alamos; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–008. Applicant: University of California, Los Alamos National Laboratory, Los Alamos, CA 87545. Instrument: Mass Spectrometer, Model Plasma Trace 2. Manufacturer: Fisons Instruments, United Kingdom. Intended Use: See notice at 61 FR 8042, March 1, 1996.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides a magnet sector analyzer with sub-ppt detection limits for Be, Co, In, Bi and U with abundance sensitivities of 5×10^{-7} for Zn and 1×10^{-6} for U at resolution 400. These capabilities are pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–16616 Filed 6–28–96; 8:45 am]

BILLING CODE 3510–DS–P

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty.

SUMMARY: The Department of Commerce (the Department), in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Maria MacKay, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (as amended)(the Act) requires the Department to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h)(4) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: June 25, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

APPENDIX.—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross [1] Subsidy (cents per pound)	Net [2] Subsidy (cents per pound)
Austria	European Union (EU) Restitution Payments	32.6	32.6
Belgium	EU Restitution Payments	29.4	29.4
Canada	Export Assistance on Certain Types of Cheese	25.5	25.5
Denmark	EU Restitution Payments	30.5	30.5
Finland	EU Restitution Payments	30.4	30.4
France	EU Restitution Payments	28.5	28.5
Germany	EU Restitution Payments	32.2	32.2
Greece	EU Restitution Payments	0.00	0.00
Ireland	EU Restitution Payments	29.1	29.1
Italy	EU Restitution Payments	56.5	56.5
Luxembourg	EU Restitution Payments	29.4	29.4
Netherlands	EU Restitution Payments	27.6	27.6
Norway	Indirect (Milk) Subsidy	19.1	19.1
	Consumer Subsidy	42.3	42.3
		61.4	61.4
Portugal	EU Restitution Payments	28.1	28.1
Spain	EU Restitution Payments	28.9	28.9
Switzerland	Deficiency Payments	182.2	182.2
U.K.	EU Restitution Payments	29.7	29.7

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

Dated: June 25, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–16749 Filed 6–28–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–559–802]

Antifriction Bearings and Parts Thereof (AFBs.) From Singapore; Termination of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of countervailing duty administrative reviews.

SUMMARY: On June 15, 1995 (60 FR 31447), in response to a request from the Government of Singapore (GOS) and the Minebea group of companies (NMB Singapore Ltd., Pelmec Industries Pte. Ltd., Minebea Trading Pte. Ltd., and Minebea Company Limited Singapore Branch), the Department of Commerce (the Department) initiated administrative reviews of the countervailing duty orders on antifriction bearings and parts thereof from Singapore for the Minebea group. In accordance with 19 CFR 355.22(a)(5) (Interim Regulations, 60 FR 25137, (May 11, 1995)), the Department is now terminating these reviews because the GOS and the Minebea group have withdrawn their request for reviews.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Norma Paola Hernández, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 31, 1995, the Department received a request for administrative reviews of these countervailing duty orders from the GOS and the Minebea group, producers and exporters of the subject merchandise from Singapore, for the period January 1, 1994, through December 31, 1994. No other interested party requested reviews of the countervailing duty order. On June 15, 1995, the Department published in the **Federal Register** (60 FR 31447) a notice of "Initiation of Countervailing Duty Administrative Reviews" initiating administrative reviews of the countervailing duty orders on the Minebea group for that period. On June 16, 1996, the GOS and the Minebea group withdrew their request for reviews.

Section 355.22(a)(5) of the Department's regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request not later than 90 days after the date of publication of the notice of initiation of the requested review. This regulation also provides that the Secretary may extend the time limit for withdrawal of the request if it is reasonable to do so.

Based on a statement of no further interest in the orders filed by the petitioner, the Department completed changed circumstances reviews and revoked these orders effective January 1, 1995. (See Antifriction Bearings and Parts Thereof from Singapore; Final Results of Changed Circumstances Countervailing Duty Reviews and Revocation Countervailing Duty Orders, 61 FR 20796, May 8, 1996). Further, no other interested party requested reviews of the countervailing duty orders in this case, and we have received no submissions regarding the GOS and the Minebea group's withdrawal of their request for reviews. Therefore, under the circumstances presented in these reviews, we are waiving the 90-day requirement in section 355.22(a)(5) of the Department's regulations. Accordingly, we are terminating these reviews of the countervailing duty orders on antifriction bearings and parts thereof from Singapore.

This notice is published in accordance with 19 CFR 355.22(a)(5).

[FR Doc. 96–16746 Filed 6–28–96; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[I.D. 062596A]

RIN 0648–AH58

Atlantic Coast Weakfish; Intent to Prepare a Supplemental Environmental Impact Statement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS); request for written comments.

SUMMARY: NMFS announces its intent to prepare an SEIS to assess the impact of Atlantic Coast weakfish harvests and possible proposed regulations on the natural and human environment. This notice of intent requests public input (written comments) on issues that NMFS should consider in preparing the SEIS. In addition, the SEIS will examine specific recommendations to the Secretary of Commerce (Secretary) by the Atlantic States Marine Fisheries Commission (Commission) in its Amendment 3 to the Fishery Management Plan For Weakfish (Plan) and new stock assessment information. Public hearings for the SEIS will be scheduled at a later date. This notice also references the published Final Environmental Impact Statement (FEIS) information and announces that NMFS is considering measures for the 1996 fishing year and beyond for the Atlantic Coast weakfish fishery in the exclusive economic zone (EEZ).

DATES: Written comments on the intent to prepare the SEIS will be accepted until July 22, 1996. Public hearings will be announced in the **Federal Register** at a later date.

ADDRESSES: Comments should be sent to: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Tom Meyer, telephone (301) 713–2339.

SUPPLEMENTARY INFORMATION:

Section 804(b) of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA) enacted in December 1993, (Public Law 103–206) states that, in the absence of an approved and implemented fishery management plan (FMP) under the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*, and after consultation with the appropriate Fishery Management Council(s) (Council), the Secretary of Commerce (Secretary) may implement regulations to govern fishing in the EEZ that are:

1. Necessary to support the effective implementation of an Atlantic States Marine Fisheries Commission (Commission) coastal fishery management plan (CFMP); and

2. Consistent with the national standards set forth in section 301 of the Magnuson Act (16 U.S.C. 1851).

These regulations may include measures recommended by the Commission to the Secretary that are necessary to support the provisions of a CFMP. Regulations issued by the Secretary to implement an approved FMP prepared by the appropriate Council(s) or the Secretary under the Magnuson Act shall supersede any conflicting regulations issued by the Secretary under section 804(b) of ACFCMA.

The provisions of sections 307 through 311 of the Magnuson Act (16 U.S.C. 1857 through 1861) regarding prohibited acts, civil penalties, criminal offenses, civil forfeitures, and enforcement shall apply with respect to regulations issued under section 804(b) of ACFCMA as if such regulations were issued under the Magnuson Act.

In accordance with the ACFCMA, the Secretary of Commerce (Secretary) implemented a final rule, after publishing an FEIS, to impose a moratorium on fishing for weakfish in the EEZ, **Federal Register** (60 FR 58246) on November 27, 1995. However, the rule was vacated by the U.S. Federal District Court, Norfolk, Virginia, on February 16, 1996. The basis for the court's decision was that the Atlantic States Marine Fisheries Commission's (Commission) Fishery Management Plan For Weakfish (FMP) did not contain recommendations to the Secretary and, therefore, cannot be considered a valid FMP under the Act.

The regulations have not been enforced since the judge issued his order.

The Commission has recently adopted Amendment 3 to the FMP (Amendment 3); it includes the following specific recommendations for Secretarial action in the EEZ to support the Commission's FMP:

1. Require a minimum weakfish size of 12 inches total length;
2. Require that weakfish harvested in the EEZ be landed in accordance with the landing laws of the state in which they are landed, with the exception that weakfish harvested in the EEZ may not be landed in a "de minimus" state;
3. Require minimum mesh sizes in the EEZ "consistent" with a 12–inch minimum fish size. Non-directed fisheries using smaller mesh sizes may possess no more than 150 pounds of weakfish in any one day; and
4. Require that any "flynets" used in the EEZ south of Cape Hatteras be operated in compliance with the applicable regulations of the adjacent state(s).

All states which have declared an interest in the management of fisheries for weakfish are to implement Amendment 3 by October 1, 1996. NMFS will assess the Commission's recommendations during the SEIS process.

Management responsibility for weakfish resides primarily with the coastal states through the Commission's Fishery Management Plan For Weakfish (Plan). This Plan was adopted in 1985 by the coastal states from Maine through Florida in response to severe declines in the weakfish catches and populations along the coast. Increasingly strict state regulations have been imposed by amendments to the Plan since 1985 to restrict further the harvest of weakfish by recreational and commercial fisheries and to allow rebuilding of the stocks.

However, as indicated in the FEIS published in September 1995, even with these restrictions, the weakfish population is not showing signs of recovery . The FEIS clearly indicates that the weakfish stock is overfished and beginning to suffer recruitment failure. Harvest restrictions are definitely needed if weakfish are to recover.

Based on the recent stock assessments, NMFS will consider measures to regulate the Atlantic Coast weakfish fishery in the EEZ for the 1996 fishing year and beyond, including: (1) A prohibition on the taking or possession of weakfish in the EEZ; (2) applying state regulations to the EEZ; (3) imposition of specific Federal regulations on weakfish fishing in the EEZ as recommended by the Commission's Amendment 3 to Plan; and (4) status quo or no action taken.

The Mid-Atlantic Council's workload will not permit it to undertake a Plan at this time. NMFS has determined that regulations in the EEZ must be implemented to support the CFMP for weakfish if there is to be a cooperative state and Federal effort to rebuild the weakfish stock.

NMFS has determined that the preparation of an SEIS is appropriate, because of the potentially significant impact of EEZ regulations on the human environment, and because no specific EEZ recommendations were available in the Commission's Plan when the 1995 FEIS was prepared. The current Amendment 3 to the Plan has such recommendations (alternative 3), which will be assessed during the SEIS process. Participants in this fishery will be affected and may face more restricted harvest of the weakfish resource while the natural stocks of weakfish are allowed to recover.

Date: June 25, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–16623 Filed 6–28–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 051696C]

Marine Mammals; Scientific Research Permit No. 1004 (P595)

AGENCY: National Marine Fisheries Service, (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that a permit for scientific research has been issued to the Whale Conservation Institute, 191 Weston Road, Lincoln, MA 01773.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250).

SUPPLEMENTARY INFORMATION: On September 28, 1995, notice was published in the **Federal Register** (60 FR 50189) that a request for a scientific research permit had been submitted by the above-named organization. The request was to import biopsy samples collected from both dead stranded and living, free-ranging animals in the territorial waters of Argentina, Mexico, Costa Rica, Ecuador, Peru, and Chile, over a 2-year period. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972 as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA) as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing endangered species permits (50 CFR parts 217–227).

Issuance of this Permit as required by the ESA of 1973 was based on a finding that the permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 21, 1996.

William W. Windom,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–16622 Filed 6–28–96; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Correction of Information Collection Activity Proposed

AGENCY: Corporation for National and Community Service (CNCS).

ACTION: Correction to information collection activity proposed.

SUMMARY: This document contains corrections to the notice of 60-day comment period prior to submitting Volunteers In Service To America Pre-Application Inquiry, Volunteers In Service To America Project Application, Volunteers In Service To America Project Grant Application, and AmeriCorps*VISTA Project Progress Report forms, published in the **Federal Register** Volume 61, No. 116 (June 14, 1996), pp. 30226–30227.

DATES: AmeriCorps*VISTA will consider written comments on the proposed applications and reporting requirements received no later than August 13, 1996.

SUPPLEMENTARY INFORMATION:

As published, the Notice omitted the need for each proposed collection of information to solicit comments which:

- Evaluate the accuracy of the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used:
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Dated: June 25, 1996.

Diana A. London,

*Deputy Director AmeriCorps*VISTA.*

[FR Doc. 96–16636 Filed 6–28–96; 8:45 am]

BILLING CODE 6050–28–M

Information Collection Activity Proposed

AGENCY: The Corporation for National and Community Service (CNCS).

ACTION: Correction to information collection activity proposed.

SUMMARY: This document contains corrections to the Notice of 60-Day Review and Comment on National Service Trust Interest Accrual Form which was published Monday, June 10, 1996, Vol. 61. No. 112, page 29359.

DATES: CNCS will consider comments on the proposed collection of information to be used by AmeriCorps members enrolled in national service to request interest accural information for his or her term of service on qualified student loans from lending organizations, and payment of such interest by the Corporation to lending institutions for individuals enrolled in national service who were granted forbearance under the National and Community Service Trust Act of 1993.

SUPPLEMENTARY INFORMATION: As published, the notice omitted the need for each proposed collection of information to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected: and

(iv) minimize the burden of the collection of information on those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Gary Kowalcryk,

Acting Chief Financial Officer.

[FR Doc. 96–16638 Filed 6–28–96; 8:45 am]

BILLING CODE 6050–28–M

Revision of National Senior Service Corps' Grant Application

AGENCY: Corporation for National and Community Service.

ACTION: Notice of 60-Day Review and Comment Period on National Senior Service Corps (NSSC) Project Grant Application.

SUMMARY: The National Senior Service Corps announces a 60-day review and comment period during which project sponsors and the public are encouraged to submit comments on suggested revisions to the NSSC Project Grant Application (424–NSSC). The Project Grant Application is submitted by prospective grantees to apply for or renew sponsorship of projects under the Retired and Senior Volunteer Program (RSVP), Foster Grandparent Program (FGP), and Senior Companion Program (SCP), collectively known as the National Senior Service Corps. Completion of the application is required to obtain or retain sponsorship.

DATES: The National Senior Service Corps will consider written comments on the Project Grant Application received on or before August 30, 1996. Comments are particularly invited which—

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

(5) Assess how well the existing Grant Application collects appropriate information to allow agency decision-makers to fully assess applicant capabilities and plans for quality sponsorship and ability to program for community impacts.

ADDRESS TO SEND COMMENTS: Janice Forney Fisher, National Senior Service Corps (NSSC), Corporation for National Service, 1201 New York Avenue, N.W., Washington, D.C. 20525.

ESTABLISHED ANNUAL REPORTING OR DISCLOSURE BURDEN: 19,398 hours (1,220 annual respondents at an average 15.9 hours burden per respondent).

This document will be made available in alternate format upon request. TDD (202 606–5000 ext. 164.

FOR FURTHER INFORMATION PLEASE CONTACT: Janice Forney Fisher (202) 606–5000 ext. 275.

Regulatory Authority: National Service Trust Act of 1993.

Dated: June 20, 1996.

Thomas E. Endres,

Deputy Director, National Senior Service Corps.

[FR Doc. 96–16637 Filed 6–28–96; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review; Notice

The Department of Defense has submitted to OMB for clearance, the following proposal for revision to a currently approved collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title; Associated Form; and OMB Control Number: Application for MSC Afloat Employment; MSC 12310/1; OMB Control Number 0703–0014.

Type of Request: Reinstatement without change.

Number of Respondents: 11,700.

Responses Per Respondent: 1.

Annual Responses: 11,700.

Average Burden Per Response: 2 hours.

Annual Burden Hours: 23,400.

Needs and Uses: This collection of information is used to identify specific knowledges, skills, and abilities, as well as to determine qualifications of, merchant marine applicants for positions on Military Sealift Command ships. The associated form is used by the applicant to provide information beyond that inherent in the licenses and documents held by the individual.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 25, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–16610 Filed 6–28–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Land-Attack Cruise Missile Defense; Notice of Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Land-Attack Cruise Missile Defense will meet in closed session on July 22–23, 1996 at Science Applications International Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will focus on architectures and implementation strategies for achieving a US military capability against this emerging threat. Organizational issues and issues related to the potential use of common sensors and/or weapons from Cruise Missile Defense and Ballistic Missile Defense should also be addressed.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: June 25, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–16611 Filed 6–28–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Draft Environmental Impact Statement on the Disposal of the S1C Prototype Reactor Plant; Notice of Availability and Announcement of a Public Hearing

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) Office of Naval Reactors (Naval Reactors) has completed a Draft Environmental Impact Statement on the Disposal of the S1C Prototype Reactor Plant. The Draft Environmental Impact Statement was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969; Council on Environmental Quality regulations implementing NEPA (40 CFR Parts 1500–1508); and DOE NEPA Implementing Procedures (10 CFR Part 1021). Naval Reactors will conduct a public hearing and receive comments on the Draft Environmental Impact Statement, which addresses the potential environmental impacts related to the disposal of the S1C Prototype reactor plant, located in Windsor, Connecticut.

This Notice announces that the Draft Environmental Impact Statement will be available to the public at the Windsor, Connecticut Public Library or by mail upon request. Upon completion of general distribution of the document, Naval Reactors will file the Draft Environmental Impact Statement with the Environmental Protection Agency, which will then publish a notice in the **Federal Register** to start the formal comment period.

DATES: Naval Reactors invites interested agencies, organizations, and the general public to provide oral or written comments on the Draft Environmental Impact Statement. All written comments on the Draft Environmental Impact Statement are due by August 19, 1996. Oral comments will be accepted at the public hearing to be held August 7, 1996 at Windsor Town Hall at the address listed below.

ADDRESSES: Comments should be sent to Mr. C. G. Overton, Chief, Windsor Field Office, Office of Naval Reactors, U.S. Department of Energy, P.O. Box 393, Windsor, CT 06095; telephone (860) 687–5610. Copies of the Draft Environmental Impact Statement also may be requested from Mr. Overton. The public hearing will be held at 7:00 pm on August 7, 1996 at the Windsor Town Hall, 275 Broad Street, Windsor, CT 06095.

SUPPLEMENTARY INFORMATION:

Background

The S1C Prototype reactor plant is located on the 10.8 acre Windsor Site in Windsor, Connecticut, approximately 5 miles north of Hartford. The S1C Prototype reactor plant first started operation in 1959 and served for more than 30 years as both a facility for testing reactor plant components and equipment and for training Naval personnel. As a result of the end of the Cold War and the downsizing of the Navy, the S1C Prototype reactor plant was shut down in 1993. Since then, the S1C Prototype reactor plant has been defueled, drained, and placed in a stable protective storage condition.

Alternatives Considered

1. Prompt Dismantlement

This alternative would involve the prompt dismantlement of the reactor plant. All structures would be removed from the Windsor Site, and the Windsor Site would be released for unrestricted use. To the extent practicable, the resulting low-level radioactive metals would be recycled at existing commercial facilities that recycle radioactive metals. The remaining low-level radioactive waste would be disposed of at the DOE Savannah River Site in South Carolina. The Savannah River Site currently receives low-level radioactive waste from Naval Reactors sites in the eastern United States. Both the volume and radioactive content of the S1C Prototype reactor plant waste would be within the range of impacts of low-level radioactive waste that is currently received at Savannah River from Naval Reactors sites. Transportation of low-level radioactive waste to the DOE Hanford Site in Washington State also is evaluated.

2. Deferred Dismantlement

This alternative would involve keeping the defueled S1C Prototype reactor plant in protective storage for 30 years before dismantling it. Deferring dismantlement for 30 years would allow nearly all of the cobalt-60 radioactivity to decay away. Nearly all of the gamma radiation within the reactor plant comes from cobalt-60.

3. No Action

This alternative would involve keeping the defueled S1C Prototype reactor plant in protective storage indefinitely. Since there is some residual radioactivity with very long half lives such as nickel-59 in the defueled reactor plant, this alternative would leave this radioactivity at the Windsor Site indefinitely.

4. Other Alternatives Considered

These alternatives include permanent on-site disposal. Such on-site disposal could involve building an entombment structure over the S1C Prototype reactor plant or developing a below ground disposal area at the Windsor Site. Another alternative would be to remove the S1C Prototype reactor plant as a single large reactor compartment package for offsite disposal. Each of these alternatives was considered but eliminated from detailed analysis.

Public Hearing

The purpose of the hearing is to receive comments on the Draft Environmental Impact Statement. The meeting will be chaired by a presiding officer and will not be conducted as an evidentiary hearing; speakers will not be cross-examined, although the presiding officer and Naval Reactors representatives present may ask clarifying questions of those who provide oral comments. To ensure that everyone has an adequate opportunity to speak, five minutes will be allotted for each speaker. Depending on the number of persons requesting to speak, the presiding officer may allow more time for elected officials, or speakers representing multiple parties, or organizations. Persons wishing to speak on behalf of organizations should identify the organization. Persons wishing to speak may either notify Mr. Overton in writing at the address below or register at the meeting. As time permits, individuals who have spoken subject to the five minute rule will be afforded additional speaking time. Written comments also will be accepted at the meeting.

Availability of Copies of the Draft Environmental Impact Statement

Copies of the Draft Environmental Impact Statement are being distributed to interested Federal, State, and local agencies, and to individuals who have expressed interest. Copies of the Draft Environmental Impact Statement and its supporting references are available for inspection at the Windsor Public Library at 323 Broad Street, Windsor, CT 06095. Copies of the Draft Environmental Impact Statement may be requested from Mr. Overton at the above phone number.

Issued at Arlington, VA this 20th day of June 1996.

B. DeMars,

Admiral, U.S. Navy, Director, Naval Nuclear Propulsion Program.

[FR Doc. 96–16680 Filed 6–28–96; 8:45 am]

BILLING CODE 5650–01–P

Storage and Disposition of Weapons-Usable Fissile Materials—Nonproliferation and Arms Control Assessment

AGENCY: Department of Energy.

ACTION: Notice of intent; request for public comment.

SUMMARY: The Department of Energy intends to conduct a Nuclear Nonproliferation and Arms Control Assessment of the weapons-usable fissile materials storage and disposition alternatives contained in the Storage and Disposition of Weapons-Usable Fissile Materials Draft Programmatic Environmental Impact Statement (Draft PEIS) (February 1996, DOE/EIS–0229–D). While not conducted as part of the formal National Environmental Policy Act process, the study will be performed to provide the fullest possible public involvement in the Department's consideration of weapons-usable fissile materials storage and plutonium disposition. The Assessment will be considered in identifying preferred alternatives for storage of weapons-usable fissile materials and disposition of plutonium. The goals of the proposed Assessment will be to help identify the nuclear nonproliferation and arms control benefits and vulnerabilities associated with each of the storage and disposition alternatives considered in the Draft PEIS and identify potential steps to maximize nonproliferation and arms control benefits and mitigate any vulnerabilities associated with the various alternatives.

DATES: All comments on the outline are due by August 9, 1996 and those received by that time will be considered by DOE in drafting the nonproliferation and arms control assessment. Comments received after that date will be considered by DOE to the extent practicable.

Meetings will be held in following locations:

July 23, 1996, 2:00pm–4:30pm (local time), University of Texas at Austin, Texas Union, North Entrance, 3.304, Quadrangle Room, 24th and Guadalupe, Austin, Texas 78712.

July 25, 1996, 2:00pm–4:30pm (local time), Stanford University, Galvez House Conference Room, 320 Galvez Street, Stanford, CA 94305.

July 29, 1996, 2:00pm–4:30pm (local time), Northwestern University, Norris Student Center, Louis South, 2nd Floor, 1999 South Campus Drive, Evanston, IL 60208.

July 31, 1996, 2:00pm–4:30pm (local time), Massachusetts Institute of Technology, Stratton Student Center, Mezzanine Lounge, 3rd Floor, 84 Massachusetts Ave., Cambridge, MA 02139.

August 1, 1996, 2:00pm–4:30pm, Department of Energy Headquarters, Forrestal Building, Room 1E245, Washington, DC 20585.

ADDRESSES: The Department of Energy invites interested agencies, organizations, and the general public to provide oral and/or written comments on the outline of the proposed Nonproliferation and Arms Control Assessment as set forth in this Notice. Written and oral comments will be accepted at the public meetings to be held at the times and locations listed above. Persons desiring to participate in the meetings are requested to pre-register by calling the toll-free number listed no later than one week prior to the meeting.

Written comments on the outline, requests for the President's Nonproliferation and Export Control Policy Statement, the National Academy of Sciences report, or the Draft Programmatic Environmental Impact Statement should be sent to: Mr. Jon B. Wolfsthal, Office of Arms Control and Nonproliferation (NN–42), Attn.: Assessment, U.S. Department of Energy, 1000 Independence Ave, S.W., Washington, DC 20585–0001. Electronic mail comments can be sent to Jon.Wolfsthal@HQ.DOE.GOV. Comments are due by August 9, 1996.

Persons wanting additional information or to pre-register for any of the public meetings can do so by calling 1–800–835–8009. Additional information can be obtained by visiting the Office of Nonproliferation and National Security's world wide web homepage at HTTP:/WWW.NN.DOE.GOV/NN/.

SUPPLEMENTARY INFORMATION: There are a number of reasons behind the Department's effort to identify and implement safe, secure and timely storage and disposition of these weapons-usable materials. Many of these reasons relate to U.S. efforts to prevent the spread of nuclear weapons to additional nations or sub-national groups, and to encourage safe and secure storage and disposition of weapons-usable materials by other countries. Identifying the various implications for these goals presented

by the alternatives being evaluated by the Department is the central goal of the proposed Assessment.

The end of the Cold War and the east-west confrontation have significantly affected the way in which the United States and other countries approach the management of weapons-usable fissile materials (primarily highly enriched uranium (HEU) and plutonium). The reductions of nuclear weapons agreed to by the United States and Russia in bilateral treaties and through other initiatives has reduced U.S. national security requirements for fissile materials and, as a result, substantial amounts of weapons-usable fissile materials have been declared surplus to U.S. defense needs, and decisions about the storage of all weapons-usable fissile materials and the disposition of plutonium will therefore be required. The national policy, as outlined by the President on September 27, 1993 (White House Press Release), is to seek to eliminate where possible the accumulation of stockpiles of HEU and plutonium, and to ensure that where these materials already exist they are subject to the highest standards of safety, security and international accountability.

In addition, the President in September 1993 initiated a comprehensive review of long-term options for plutonium disposition, taking into account technical, nonproliferation, environmental, budgetary and economic considerations. The proposed Nonproliferation and Arms Control Assessment represents a vital part of that review.

In early 1994, the National Academy of Sciences published a report, Management and Disposition of Excess Weapons Plutonium. This study, commissioned by the President's National Security Council, provides information regarding management and disposition of surplus nuclear materials, in particular plutonium.

In the United States, weapons-usable fissile nuclear materials are currently stored at several DOE sites, including the Pantex Plant (Amarillo, Texas), the Hanford Site (Richland, Washington), Idaho National Engineering Laboratory (Idaho Falls, Idaho), the Rocky Flats Environmental Technology Site (Golden, Colorado), the Savannah River Site (Aiken, South Carolina), Lawrence Livermore National Laboratory (Livermore, California), Los Alamos National Laboratory (Los Alamos, New Mexico), and the Oak Ridge Reservation (Oak Ridge, Tennessee).

Recent nuclear arms reduction agreements and pledges, along with Presidential decisions concerning what stocks of nuclear materials are surplus to national defense and defense-related program needs, will largely determine how much material will be available for disposition, and when.

The outline will be used to draft a Nonproliferation and Arms Control Assessment, which will then be reviewed and commented on by a panel of experts. This panel, which will be convened as a sub-committee of the Secretary of Energy's Advisory Board (SEAB), will include members of the SEAB and other experts and will be chaired by a SEAB member. The comments by the SEAB panel will be incorporated into the draft assessment, which will then be published and made available for public comment and additional public meetings in the fall. Following those meetings and comments, a final assessment will be prepared and published by the end of 1996.

Alternatives Considered

The Department is evaluating the following reasonable long-term storage alternatives: (1) Upgrade or replacement of current Plutonium and HEU storage facilities at multiple DOE sites, (2) consolidation of Plutonium at a single DOE site, and (3) collocation of Plutonium and HEU at a single DOE site. The six candidate storage sites are: the Hanford Site, Washington; the Idaho National Engineering Laboratory (INEL), Idaho; the Nevada Test Site (NTS), Nevada; the Oak Ridge Reservation (ORR), Tennessee; the Pantex Plant, Texas; and the Savannah River Site (SRS), South Carolina. For disposition, the Draft PEIS analyzes broader, programmatic strategies and technologies. The reasonable disposition alternatives fall into three categories: (1) The Deep Borehole Category consisting of two alternatives—Direct Disposition, and Immobilized Disposition; (2) the Immobilization Category consisting of three alternatives—Vitrification, Ceramic Immobilization, and Electrometallurgical Treatment; and (3) the Reactor Category consisting of four alternatives—Existing Light Water Reactors (LWRs), Evolutionary LWRs, Partially Completed LWRs, and the Canadian Deuterium Uranium (CANDU) Reactor. In addition, No Action Alternatives are analyzed, in which no change in storage and/or no disposition would occur.

The outline and the subsequent study will review the nonproliferation and arms control implications of the reasonable alternatives under evaluation, assess the relative nonproliferation and arms control benefits and vulnerabilities of each alternative, and identify potential steps that could be taken to maximize the associated benefits and to minimize the associated liabilities. The report will be used in conjunction with environmental impact analyses, analyses of the cost, schedule and technical viability assessments of each option, other reports and public comments in making a final decision on how to store weapons-usable fissile materials and dispose of surplus plutonium.

Dated: June 26, 1996.

Kenneth N. Luongo,

Senior Advisor to the Secretary of Energy for Nonproliferation Policy and Director, Office of Arms Control and Nonproliferation,

Outline for Nonproliferation and Arms Control Assessment of Weapons-Usable Fissile Material Storage and Disposition Alternatives

(A) Introduction and Summary

I. Current situation and upcoming developments
II. Need for action
  (a) Internal U.S. management of materials
  (b) International imperatives/objectives
III. Background and previous studies
IV. Alternatives under consideration
V. Main nonproliferation considerations (Summary)
  (a) Technical factors
  (b) Policy factors

(B) Policy Factors

I. Relevant policy documents
  (a) Relevant Presidential Decision Directives and statements
  (b) US/Russian & P–8 summit statements
  (c) Other documents and guidance
II. International initiatives/cooperation

(C) Long-Term Storage of Fissile Materials

I. Description of four main storage alternatives (contained in Draft PEIS)
  (a) Upgrade facilities at multiple sites (separate/multiple HEU and Pu Storage sites)
  (b) Consolidation of Plutonium storage
  (c) Collocation of Plutonium and Highly enriched uranium storage
  (d) No action
II. Nonproliferation and arms control analysis of four main storage alternatives
  (a) Nonproliferation and arms control-related benefits
  —Technical
  —Policy
  (b)—Nonproliferation and arms control liabilities/vulnerabilities
  —Technical
  — Policy
III. Identify/Recommend steps to maximize positive and reduce negative impacts of main storage options

(D) Disposition Options for Surplus Plutonium

I. Description and analysis of four groups of alternatives (See Figure 1 for factors to be considered)
  (a) Reactor Options (US and/or European MOX fabrication)
    Evolutionary LWRs
    Partially Completed LWRs
    Existing LWRs
    Candu Reactor in Canada
  (b) Immobilization
    Vitrification
    Ceramic Immobilization
    Electrometalurgical Treatment
  (c) Deep Borehole Review
    Direct Disposition
    Immobilized Disposition
  (d) No Action
II. Nonproliferation analysis of three main categories of options (See Figure I).
  (a) Nonproliferation and arms control benefits
    Technical
    Policy
  (b) Nonproliferation and arms control liabilities/vulnerabilities
    Technical
    Policy
III. Identify/Recommend steps to maximize benefits and reduce any negative nonproliferation impacts of options

(E) General Recommendations/Conclusions

(The Assessment will not rank the alternatives based on nonproliferation criteria, but will recommend possible ways to maximize benefits or mitigate any negative nonproliferation implications associated with particular alternatives.)

FIGURE 1.—TECHNICAL/POLICY FACTORS AND MITIGATING STEPS

Technical factors	Policy factors	Mitigating steps
TIME LINES —Time to Start —Time to Finish RISK OF DIVERSION IN PROCESS —Material form and attractiveness —Material security and accounting —Transport security —Process through-put —Other process issues —Material inventories —Number of facilities and sites —Bilateral and international monitoring —Political and security conditions in countries involved RISK OF RE-USE IN WEAPONS —Final material form and attractiveness —Physical access to material —Cost, time and observability of recovery —Bilateral and international monitoring.	Impacts on foreign programs and activities Impact on current and future U.S. policy Impacts on nonproliferation agreements and regimes Political implementability Impacts on current and future fissile material related negotiations Impact on future dismantlement activities	Safeguards and Security International monitoring and access Implementation variations Stated justifications Bilateral or multilateral agreements or PAGE arrangements

[FR Doc. 96–16679 Filed 6–28–96; 8:45 am]

BILLING CODE 6453–01–P

Federal Energy Regulatory Commission

[Docket No. RP96–282–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 25, 1996.

Take notice that on June 20, 1996, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of July 20, 1996:

Twenty-eighth Revised Sheet No. 20A
Original Sheet No. 93C
Fourth Revised Sheet No. 700
Third Revised Sheet No. 701
Second Revised Sheet No. 702
Fourth Revised Sheet No. 703

Algonquin states that the purpose of this filing is to flow through $177,225.78 of take-or-pay charges billed to Algonquin by National Fuel Gas Supply Corporation under the revised allocation methodology. Algonquin requests that the Commission grant any waiver that may be necessary to place these tariff sheets into effect on the date requested.

Algonquin states that copies of this filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16631 Filed 6–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–95–012]

Colorado Interstate Gas Company; Notice of Compliance Filing

June 25, 1996.

Take notice that on June 21, 1996, Colorado Interstate Gas Company (CIG), tendered for filing a semiannual compliance filing consisting of work papers detailing accrued interest payments made by CIG to its affected customers related to the unused portion

of transportation credits in the above referenced docket.

CIG states that this is the final report and the appropriate refund has been made to all affected customers.

CIG states that copies of the filing were served upon all of the parties to this proceeding and affected state commissions and affected parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 2, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestant parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16629 Filed 6–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OR96–14–000]

Exxon Company, U.S.A., a division of Exxon Corporation, v. Amerada Hess Pipeline Company, et al.; Notice of Complaint June 25, 1996.

Take notice that on June 19, 1996, Exxon Company, U.S.A. (EUSA), a division of Exxon Corporation, filed a complaint against the seven Trans Alaska Pipeline System (TAPS) owners, Amerada Hess Pipeline Corporation, ARCO Transportation Alaska, Inc., BP Pipelines (Alaska) Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation, and Unocal Pipeline Company (TAPS Carriers), pursuant to Sections 9, 13(1) and 15(1) of the Interstate Commerce Act, 49 U.S.C. App. Sections 9, 13(1), 15(1), and Rule 206 of the Commission's Rules of Practice and Procedures.

EUSA alleges that the TAPS Carriers have violated sections 1(5), 3(1) and 6(7) of the ICA, 49 U.S.C. App. Sections 1(5), 3(1), 6(1) and 6(7), by imposing certain TAPS Quality Bank charges which are unjust and unreasonable by unjustifiably giving a preference to shippers of heavier petroleum, thereby unduly discriminating against shippers of lighter petroleum, and by failing to adhere to the TAPS Quality Banks tariffs.

EUSA requests that the Commission (1) Consolidate this proceeding with the Quality Bank proceedings in Docket Nos. OR89–2–009, *et al.;* (2) find that the current Quality Bank methodology violates sections 1(5), 3(1), 6(1), and 6(7) of the ICA; (3) award damages to EUSA; (4) prescribe as appropriate Quality Bank methodology; and (5) amend the TAPS Quality Bank tariffs to provide expressly for EUSA and other shippers to audit administration of the Quality Bank methodology.

Any person desiring to be heard or to protest the instant complaint should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before July 19, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before July 19, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16628 Filed 6–28–96; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. MG96–15–000]

Koch Gateway Pipeline Company; Notice of Filing

June 25, 1996.

Take notice that on June 17, 1996, Koch Gateway Pipeline Company (Koch) submitted revised standards of conduct under Order Nos. 497 *et al.*[1] and Order Nos. 566 *et seq.*[2]

Koch states that the changes are the result of its contracting with its marketing affiliate, Koch Gas Services Company, to act as its agent for Koch's merchant services.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before July 10, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16627 Filed 6–28–96; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. CP96–573–000]

Northwest Pipeline Corporation; Notice of Application

June 25, 1996.

Take notice that on June 17, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108–0900, filed in Docket No. CP96–573–000 an application pursuant to Section 7(b) of the Natural Gas Act and Section 157.18 of the Commission's regulations for an order permitting and approving an abandonment by removal the following five inactive receipt point meter stations.

- Klondike Receipt Meter Station located in Grand County, Utah
- Amoco Wheeler Receipt Meter Station located in La Plata County, Colorado
- C. C. Company Receipt Meter Station located in Grand County, Utah
- Papoose Canyon Receipt Meter Station located in Dolores County, Colorado
- Unicon Producing Company (UPC) Durango Receipt Meter Station located in La Plata County, Colorado

Northwest states that at each meter station it plans to remove all above ground facilities except for the valve taps; that the removed facilities will be scrapped, except for a 70 barrel tank at the Amoco Wheeler Receipt Meter Station and the meters which will be used at other locations; that the accounting treatment for the abandonments will be as proposed in its Exhibit Y to the application; and that the sites will be restored to original conditions; all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 16, 1996, file with the Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application, if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16626 Filed 6–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–281–000]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 25, 1996.

Take notice that on June 19, 1995, Williams Natural Gas Company (WNG), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective on July 1, 1996:

Thirteenth Revised Sheet No. 6A
Second Revised Sheet No. 6B
Third Revised Sheet No. 204
Fifth Revised Sheet No. 205

WNG states that this filing is being made pursuant to part 154 of the Commission's regulations and as contemplated in WNG's abandonment of facilities filing in Docket No. CP94–196. In that filing WNG stated that tariff sheets reflecting the abandonment would be filed upon the Commission's issuance of an order approving the abandonment.

WNG states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in Docket No. CP94–196 and on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in section 154.210 of the Commission's Regulations. Any person wishing to become a party must file a motion to intervene. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16630 Filed 6–28–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5530–1]

Sustainable Development Challenge Grant Program

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Solicitation of Proposals for FY 1996; Request for Comments on Program Design for Full Implementation in FY 1997.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces and solicits applications for a new competitive grant program, the Sustainable Development Challenge Grant (SDCG) program, one of President Clinton's "high priority" actions described in the March 16, 1995 report, "Reinventing Environmental Regulation." The EPA expects to fund a limited number of pilot projects in FY 1996 through the new SDCG program. EPA is also asking for comments on the program design to help develop a full scale program for FY 1997. The Sustainable Development Challenge Grant program is intended to "encourage community, business, and government to work cooperatively to develop flexible, locally-oriented approaches that link place-based environmental management with sustainable development and revitalization." The SDCG program will challenge communities to invest in a sustainable future that links environmental protection and economic prosperity to provide equitable opportunities for health, safety and well-being. These grants are intended to: catalyze community-based and regional projects to promote sustainable development; build partnerships to increase community long-term capacity to protect the environment; and leverage public and private investments to enhance environmental quality by enabling sustainable community efforts to continue beyond EPA funding.

This document includes: background information on the Sustainable Development Challenge Grant program; a description of the program; the

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992), Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. Preambles ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993), Order No. 497–F (*order denying rehearing and granting clarification*), 66 FERC ¶ 61,347 (March 24, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994).

criteria; the process for selection of projects; and the program's relationship to other related EPA activities.

DATES: The period for submission of proposals for FY 1996 will begin upon publication of this **Federal Register** notice pursuant to the Information Collection Request (ICR No. 1755.01) approved by the Office of Management and Budget (OMB Approval No. 2010–0026) under the Paperwork Reduction Act. Project pre-applications must be postmarked by August 1, 1996. Comments on this **Federal Register** notice concerning program design for full implementation in FY 1997 are due August 30, 1996.

ADDRESSES: Comments on the FY 1997 program may be provided in writing. Please send your comments by mail *or* fax to: Pamela A. Hurt, U.S. EPA, Office of Regional Operations and State/Local Relations (1501), 401 M St., S. W., Washington, D.C. 20460. The fax number for the office is 202–260–9365.

Applications. Pre-application kits for FY 1996 project proposals are available upon request from EPA Headquarters. These kits will include more detailed guidance and may be requested in writing from the address above, *or* by fax addressed to Pamela A. Hurt at 202–260–9365, *or* by voice mail at 202–260–0422. EPA will notify successful applicants in writing and provide technical assistance in preparation of formal applications.

The original plus one copy of the pre-application, should be sent to: Pamela A. Hurt, U.S. EPA, Office of Regional Operations and State/Local Relations, (1501), 401 M Street, S.W., Washington, D.C. 20460. Pre-applications should include a one page cover sheet that summarizes: the amount of assistance requested from EPA; the various entities or organizations that will be partners in the project; and the project's anticipated results. The cover sheet should also include the applicant's name, address, and phone number. The project proposal narrative should be limited to five (5) double-sided pages and explain the relationship of the proposal to the criteria for project selection described in this notice.

FOR FURTHER INFORMATION CONTACT: Pamela A. Hurt, U.S. EPA, Office of Regional Operations and State/Local Relations (1501), 401 M Street, S.W., Washington, D.C. 20460, or by voice mail at (202) 260–0422.

SUPPLEMENTARY INFORMATION:

Purpose

EPA intends these competitive grants to be catalysts that challenge communities to invest in a sustainable future, recognizing that sustainable environmental quality and economic prosperity are inextricably linked. The Sustainable Development Challenge Grant program is an important opportunity for EPA to award competitive grants for seed funding to leverage private and other public sector investment in communities (and larger geographic areas such as watersheds) to build partnerships that increase a community's long-term capacity to protect the environment through sustainable development. This grant program challenges local communities to invest in their own sustainable futures.

Overview of the Sustainable Development Challenge Grant Approach

The grant program encourages communities to recognize and build the fundamental connection between environmental protection and economic development. Accomplishing this linkage requires integrating environmental protection in policy and decision-making at all levels of government and throughout the economy. The SDCG program recognizes the significant role that communities have and should play in environmental protection. The program acknowledges that sustainable development is often best designed and implemented at a community level. This program also requires a stakeholder process that will identify measurable milestones as steps in an iterative process that integrates environmental and economic goals. The EPA will implement this program consistent with the principles of Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (February 11, 1994). Projects funded must ensure that no one is subjected to unjust or disproportionate environmental impacts.

Achieving sustainability is a responsibility shared by environmental, community and economic interests at all levels of government and the private sector. This emphasis on strong community involvement requires a commitment to ensuring that all Americans, of varying economic and social groups, are afforded opportunities to participate in decision-making. Only through the combined efforts, and collaboration of governments, private organizations, and individuals can our communities, regions, states, and nation achieve the benefits of sustainable development.

Linkages to Other Initiatives

The Sustainable Development Challenge Grant (SDCG) program is a new competitive grant program, one of 25 major environmental reforms announced by President Clinton in March 1995, as part of EPA's Reinventing Environmental Regulation.

EPA and its state and local partners are reinventing the way environmental protection is accomplished in the United States. The Agency recognizes that environmental progress will not be achieved solely by regulation, but also requires individual, institutional, and corporate responsibility, commitment and stewardship. The Sustainable Development Challenge Grant program is consistent with other community-based efforts EPA has introduced, such as Brownfields, Project XL, and the Community-Based Environmental Protection Approach, which stimulate broad community participation. The Sustainable Development Challenge Grant program is also a step in implementing Agenda 21, the Global Plan of Action on Sustainable Development, agreed to by the United States at the Earth Summit in Rio de Janeiro in 1992.

Through the Sustainable Development Challenge Grant Program, EPA intends to further the vision and goals of the President's Council on Sustainable Development (PCSD), created in 1993 by President Clinton. The Council, composed of corporate, government, and non-profit representatives, was charged to find ways to "bring people together to meet the needs of the present without jeopardizing the future." The Council has declared this vision:

"Our vision is of a life-sustaining Earth. We are committed to the achievement of a dignified, peaceful and equitable existence. We believe a sustainable United States will have a growing economy that equitably provides opportunities for satisfying livelihoods and a safe, healthy, high quality of life for current and future generations. Our nation will protect its environment, its natural resource base, and the functions and viability of natural systems on which all life depends." (February 1996)

The Sustainable Development Challenge Grant program furthers this vision by encouraging community initiatives that achieve environmental quality with economic prosperity through public and private involvement and investment.

Examples of Potential Projects

EPA welcomes proposals for many types of projects. The following examples of the types of projects EPA envisions funding. These examples are only illustrative and are not intended to limit proposals in any way.

- Demonstrate environmental and economic benefits in a rural community through the development of community-based agricultural pollution prevention practices. Reduced use of fertilizers and pesticides by area farmers should result in economic benefits in lower drinking water treatment and monitoring costs, and reduced water treatment costs for local businesses. It is also expected to lower human exposure to agricultural chemicals and minimize adverse impacts to habitat with associated quality of life benefits.
- Demonstrate the design and establishment of an eco-industrial park. Enlist the participation of local officials, environmental groups, and business interests in designing and establishing an eco-industrial park that will attract industries that can use each other's wastes as raw materials, and that pioneer environmentally sound technologies, thereby promoting new and existing locally based companies that are "zero dischargers". The goal would be to reduce costs for the businesses involved for water treatment, waste incineration, and landfilling. These improvements would be intended to have positive long-term water and air quality benefits.
- Demonstrate a cooperative effort among business interests, environmental groups, and government agencies to design and implement a plan for managing timber lands in such a way that they continue to provide jobs and bring money into the local economy, but also protect critical habitats and sensitive species. As part of the plan development, wildlife agencies and organizations commit to conducting or funding the scientific research needed. The project will also explore opportunities for using extracted timber in local manufacturing and finished goods.
- Demonstrate the interrelationship between federal environmental mandates and sound urban redevelopment as an alternative to suburban sprawl. The project will demonstrate the benefits of development that uses existing urban infrastructure close to the urban core and also protects drinking water sources, air quality, and wildlife habitat. By providing open spaces for natural sumps for the treatment of stormwater runoff, green spaces can be provided to increase aesthetic value and recreational opportunities. The project will increase residential spaces with good access to public transportation, and will assess improvements in air quality, as well as the impact on use of other infrastructure, sewers, sidewalks and roads. The project will assess the environmental quality benefits gained from urban redevelopment.

Selection Criteria

After determining that the proposed project meets the two statutory threshold determinations described below in the **STATUTORY AUTHORITY** section, EPA will also consider the following criteria, weighting each as indicated:

(1) Sustainability: 40 points

- How well does the proposal integrate environmental protection and economic prosperity?
- Does the proposal define the community it will benefit, either by geographic or political boundaries? Does the proposal define how it relates to regional sustainability?
- Does the proposal take a comprehensive multi-media approach (e.g. air, water, land) to assess environmental quality and set priorities for action?
- Does the proposal use a proactive environmental approach, for example, pollution prevention or watershed protection?
- Will the proposal result in sustainable economic development benefits, such as more appropriate, efficient use of resources so that jobs created will be sustained, or the amount of money retained in the local economy will be maximized?
- Does the proposal represent new solutions for the community, given their previous history and current circumstances?

(2) Community Commitment and Contribution: 30 points

- Do the partners fully represent those in the community who have an interest in or will be affected by the project?
- Will the proposal's outcomes and results benefit all affected groups in the community?
- Does the proposal describe effective methods for community involvement to assure that all affected by the project are provided an opportunity to participate?
- Does the proposal describe the depth and breadth of the community's support (financial and in-kind) for the proposal? Does it provide evidence of long-term commitment to the proposal?

(3) Measurable Results: 30 points

- Does the proposal describe the specific environmental and economic benefits to be gained by the community? What non-sustainable behaviors will be addressed by the proposal?
- Does the proposal include achievable short-term (within three years) and long-term targets or benchmarks to measure the proposal's contribution to the community's sustainability? (These may be quantitative and/or qualitative.)
- Does the proposal set goals for the proactive environmental approaches it employs?
- After seed funds from EPA are exhausted, does the proposal demonstrate how the work will continue, or how it will evolve into or generate other sustainability efforts, either locally or regionally?
- Will the experiences gained during the project be transferable to other communities?

Statutory Authority

EPA expects to award Sustainable Development Challenge Grants program under the following eight grant authorities: Clean Air Act section 103(b)(3); Clean Water Act section 104 (b)(3); Resource Conservation and Recovery Act section 8001; Toxics Substances Control Act section 10; Federal Insecticide, Fungicide, and Rodenticide Act section 20; Safe Drinking Water Act sections 1442(a) and (b); National Environmental Education Act, section 6; and Pollution Prevention Act, section 6605.

As a threshold determination, to be selected for funding, a project must consist of activities within the statutory terms of these EPA grant authorities. Most of the statutes authorize grants for the following activities: "research, investigations, experiments, training, demonstrations, surveys and studies." These activities relate generally to the gathering or transferring of information or advancing the state of knowledge. Grant proposals should emphasize this "learning" concept, as opposed to "fixing" an environmental problem via a well-established method. For example, a proposal to plant some trees in an economically depressed area, in order to prevent erosion, would probably not, in itself, fall within the statutory terms "research, studies" etc., nor would a proposal to start a routine recycling program.

On the other hand, the statutory term "demonstration" can encompass the first instance of the application of a pollution control technique, or an innovative application of a previously used method. Similarly, the application of established practices may qualify when they are part of a broader project which qualifies under the term "research."

As a second threshold determination, in order to be funded, a project's subject generally must be one that is specified in the statutes listed above. For most of

the statutes, a project must address the causes, effects, extent, prevention, reduction, and elimination of air, water, or solid/hazardous waste pollution, or, in the case of grants under the Toxic Substances Control Act or the Federal Insecticide, Fungicide and Rodenticide Act, to "carrying out the purposes of the Act." While the purpose of this program's grants will include the other two aspects of sustainable development and economic prosperity, the overarching concern or principal focus must be on the statutory purpose of the applicable grant authority, in most cases "to control pollution." Note that proposals relating to other topics which are sometimes included within the term "environment" such as recreation, conservation, restoration, protection of wildlife habitats, etc., should describe the relationship of these topics to the statutorily required purpose of pollution control.

Definitions

Sustainable Development: Sustainable development means integrating environmental protection, and community and economic goals. Sustainable development meets the needs of the present generation without compromising the ability of future generations to meet their own needs. The sustainable development approach seeks to encourage broad-based community participation and public and private investment in decisions and activities that define a community's environmental and economic future.

Community: The scale used to define "community" under this challenge grant program will vary with the issues, problems, or opportunities that an applicant intends to address. The SDCG program recognizes the significant role that communities have and should play in environmental protection. "Community" means a geographic area within which different groups and individuals share common interests related to their homes and businesses, their personal and professional lives, the surrounding natural landscape and environment, and the local or regional economy. A community can be one or more local governments, a neighborhood within a small or large city, a large metropolitan area, a small or large watershed, an airshed, tribal lands, ecosystems of various scales, or some other specific geographic area with which people identify.

Who Should Apply

Eligible applicants include: (1) Incorporated non-profit (or not-for-profit) private agencies, institutions and organizations; and (2) public (state, county, regional or local) agencies, institutions and organizations, including those of federally-recognized Indian tribes. While state agencies are eligible they are encouraged to work in partnership with community groups to strengthen their proposals.

Applicants are not required to have a formal Internal Revenue Service (IRS) non-profit designation, such as 501(c)(3) or 501(c)(4), however they should present their letter of incorporation or other documentation demonstrating their nonprofit or not-for-profit status. Applicants who do have an IRS 501(c)(4) designation are not eligible for grants if they engage in lobbying, no matter what the source of funding for the lobbying activity. (No recipient may use grant funds for lobbying.) Further, profit-makers are not eligible to receive sub-grants from eligible recipients, although they may receive contracts, subject to EPA's regulations on procurement under assistance agreements, 40 Code of Federal Regulations (CFR) 30.40 (for non-governmental recipients) and 40 CFR 31.36 (for governments).

Funding Ranges and Match

Applicants may compete for funding in two ranges for FY 1996: (1) $50,000 or less, and (2) between $50,001 and $100,000. [Please note that for FY 1997 these levels may be changed based on EPA's assessment of FY 1996 experience.] Proposals will be compared to other proposals in the same range (i.e. a proposal for $50,000 will not compete against a proposal for $100,000.)

In FY 1996, EPA expects to fund a limited number of projects in the two funding ranges. Applicants may submit multiple proposals, but each specific proposal can only be submitted in one funding range and must be for a separate and distinct project. A separate solicitation will be issued for FY 1997. No organization may receive funding for more than one proposal each year. In addition, projects awarded will be ineligible for future competition. The number of grants awarded in FY 1997 for each range will depend on the total amount of funds available for the Sustainable Development Challenge Grantsprogram.

This program is intended to provide seed money to leverage a broader public and private investment in sustainability activities. As a result, the program requires a minimum non-Federal match of at least 20 percent of the total project budget. EPA strongly encourages applicants to leverage as much investment in community sustainability as possible. EPA funds can be used for no more than 80 percent of the total cost of the project. The match can come from a variety of public and private sources and can include in-kind goods and services. No Federal funds, however, can be used as matching funds without specific statutory authority.

Selection Process

In order to ensure a fair selection process, an evaluation panel consisting of EPA Regional and Headquarters staff will evaluate the pre-applications. The evaluation panel will assess how well the proposals meet the selection criteria outlined above. The panel's recommendations will be presented to EPA Senior Management for final selection.

What Costs Can Be Paid

Even though a proposal may involve an eligible applicant, eligible activity, and eligible purpose, grant funds cannot necessarily pay for all of the costs which the recipient might incur in the course of carrying out the project. Allowable costs are determined by reference to the EPA regulations cited below and to OMB Circulars A–122, "Cost Principles for Non-profit Organizations", A–21 "Cost Principles for Education Institutions" and A–87, "Cost Principles for State, Local, and Indian Tribal Governments." Generally, costs which are allowable include salaries, equipment, supplies, training, rental of office space, etc., as long as these are "necessary and reasonable." Entertainment costs are an example of unallowable costs.

Applicable Grant Regulations

40 CFR Part 30 (for other than State/local governments e.g. non-profit organizations) (recently revised, see 61 FR 6065 (Feb. 15, 1996)), and Part 31 (for State and local governments and Indian tribes).

Paperwork Reduction Act

The information collection provisions in this Notice, for solicitation of proposals, have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. (ICR No. 1755.01 and OMB Approval No. 2010–0026). The approved Information Collection Request (ICR No. 1755.01) is in effect and will cover all burdens associated with Sustainable Development Challenge Grants. Copies of the ICRs (ICR Nos. 1755.01 and 1755.02) may be obtained from the Information Policy Branch, EPA, 401 M Street, SW., (Mail Code 2136), Washington, DC 20460 or by calling (202) 260–2740.

Dated: June 25, 1996.

Fred Hansen,

Deputy Administrator.

[FR Doc. 96–16696 Filed 6–28–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5530–2]

Science Advisory Board Amendment To Previously Published Federal Register Notice and Notification of Public Advisory Committee Meeting; Open Meeting

On June 25, 1996, notice of several meetings of the EPA's Science Advisory Board (SAB) was published in the **Federal Register** 61 FR 32796. This notice amends section 4 of that notice concerning the July 16–18 meeting of the Drinking Water Committee (DWC). This notice also announces the meeting of the Valuation Subcommittee of the Integrated Risk Project Committee which will meet on July 19, 1996.

1. Drinking Water Committee—Amended Notice of Meeting

This notice amends the statement of purpose and background from section 4 of the **Federal Register** notice of June 25, 1996 concerning the July 16–18 meeting of the Drinking Water Committee (DWC) at the Holiday Inn Georgetown, 2101 Wisconsin Avenue NW., Washington, D.C. 20007, telephone (202) 338–4600.

As amended, the main purpose of the meeting is to: (a) Evaluate EPA's basis for concluding that protozoan monitoring, required under the Information Collection Rule (ICR), will provide data adequate for supporting a national impact analysis for the Enhanced Surface Water Treatment Rule (ESWTR); (b) discuss the proposals submitted for DWC review in Fiscal Year 1997; (c) discuss emerging requirements regarding testing and evaluation of endocrine disruptors; (d) consider the impacts revisions to the Cancer Guidelines may have on the assessment of waterborne cancer hazards; and, (e) finish drafting the DWC's report on the Agency's Five Year Research Plan for Microbes and Disinfectant By-Products.

Background on the Statistical Evaluation of Pathogenic Parasites: The Agency has promulgated an Information Collection Rule (ICR) which among other things will provide data about the occurrence of the pathogenic parasites *Cryptosporidium* and *Giardia* in the source waters of several hundred water supplies. Information about pathogen occurrence is needed for a Regulatory Impact Analysis of the ESWTR. The Office of Water (OW) does not believe that current protozoan methods are appropriate for evaluating occurrence at individual sites for the purpose of complying with a regulation. However, OW does think the method is adequate for obtaining data to support a National Impact Analysis.

2. Integrated Risk Project Committee

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Valuation Subcommittee (Committee) of the Integrated Risk Project Committee (IRP) of the Science Advisory Board (SAB) will meet on July 19, 1996, from 8:30 am to no later than 5:00 pm (Eastern Daylight Time) in Room 17 of the Washington Information Center (WIC) of the US EPA, 401 M Street SW., Washington, DC 20460. This meeting is open to the public, however, due to limited space, seating will be on a first-come basis. The purpose of the meeting is to refine the charge to the Committee and to plan the Committee's efforts as part of the larger IRP effort of the SAB.

Background: In a letter dated October 25, 1995, Deputy Administrator Fred Hansen requested the SAB to update the assessment of environmental risks, priorities, and risk reduction opportunities contained in the 1990 SAB report, Reducing Risk: Setting Priorities and Strategies for Environmental Protection (EPA–SAB–EC–90–021). In subsequent discussions with the Deputy Administrator, the SAB has also agreed to provide insights on economic analysis of risk reduction options and ecosystem valuation. In summary, the current charge to the Valuation Subcommittee is to propose a new framework for assessing the value of ecosystems to humans, including ecological services and environmentally mediated health and quality of life values.

FOR FURTHER INFORMATION: Single copies of the information provided to the Committee can be obtained by contacting Ms. Diana Pozun, Staff Secretary, Committee Operations Staff, Science Advisory Board (1400), US EPA, 401 M Street SW., Washington, DC 20460, telephone (202) 260–8414, fax (202) 260–7118, or Internet at: pozun.diana@epamail.epa.gov. Single copies of Reducing Risk, the report of the previous relative risk ranking effort of the SAB, can be obtained by contacting the SAB's Committee Evaluation and Support Staff (1400), 401 M Street, SW., Washington, DC 20460, telephone (202) 260–8414, or fax (202) 260–1889. Anyone wishing to make an oral presentation at the meeting must contact Mr. Thomas Miller, Designated Federal Official for the Valuation Subcommittee IRP, *in writing* no later than 4:00 pm (Eastern Daylight Time) July 12 1996, at the above address, via fax (202) 260–7118, or via the Internet at: Miller.Tom@epamail.epa.gov. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Miller no later than the time of the presentation for distribution to the Committee and the interested public. To discuss technical aspects of the meeting, please contact Mr. Miller by telephone at (202) 260–8414.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: June 21, 1996.

John R. Fowle III,

Acting Staff Director, Science Advisory Board.

[FR Doc. 96–16667 Filed 6–28–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 96–962]

Telecommunications Services Between the United States and Cuba

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On June 17, 1996, the Commission approved the application of AT&T Corp. to acquire and operate additional facilities to provide telecommunications services between the United States and Cuba. The services authorized include both switched voice and private line services.

Grant of the application will permit AT&T to continue to provide improved service to Cuba, pursuant to the new service agreement it entered into with its correspondent in Cuba, EMTELCUBA, which became effective upon grant of a previous application. The Commission has authorized AT&T to provide service between the United States and Cuba in accordance with the provisions of the Cuban Democracy Act. This will allow AT&T to help meet the large demand for direct telecommunications services between the United States and Cuba. Under the guidelines established by the Department of State, AT&T is to submit reports indicating the numbers of circuits activated by facility, on or before June 30, and December 31 of each year, and on the one-year anniversary of this notification in the **Federal Register**.

EFFECTIVE DATE: June 17, 1996.

FOR FURTHER INFORMATION CONTACT: Troy F. Tanner, Attorney, Common Carrier Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION:

Adopted: June 17, 1996.
Released: June 20, 1996.

1. Upon consideration of the above-captioned uncontested application, filed by American Telephone and Telegraph Company (AT&T) pursuant to Section 214 of the Communications Act of 1934, as amended, we find that the present and future public convenience and necessity require a grant thereof.

2. Accordingly, *it is ordered* that application File No. I–T–C–96–231 is granted, and AT&T is authorized to:

a. lease from Comsat and operate 24 64-kbps satellite circuits between appropriately licensed U.S. earth stations and an appropriate INTELSAT satellite over the Atlantic Ocean, connecting with similar circuits between the satellite and an earth station in Cuba, furnished by AT&T's correspondent;

b. multiplex the circuits authorized in a., above, through the use of Digital Circuit Multiplexing Equipment, to derive up to 120 circuits from the 30 circuits authorized; and

c. use said facilities to provide AT&T's regularly authorized services between the United States and Cuba.

3. It is further ordered that our authorization of AT&T to provide private lines as part of its authorized services is limited to the provision of such private lines only between the United States and Cuba— that is, private lines which originate in the United States and terminate in Cuba or which originate in Cuba and terminate in the United States. In addition, AT&T may not—and AT&T's tariffs must state that its customers may not—connect private lines provided over these facilities to the public switched network at either the U.S. or Cuban end, or both, for the provision of international switched basic services, unless authorized to do so by the Commission upon a finding that Cuba affords resale opportunities equivalent to those available under U.S. law, in accordance with *Foreign Carrier Entry Order*, 60 FR 67332, December 29, 1995. The limitations in this paragraph are subject to the exceptions contained in Sections 63.01(k)(6)(i) and 63.17 of the Commission's Rules, 47 CFR §§ 63.01(k)(6)(i) and 63.17. See also *Cable & Wireless et al.*, 11 FCC Rcd 1766 (1996), para. 36.

4. *It is further ordered* that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 CFR Section 43.61.

5. It is further ordered that the applicant shall file annual circuit status reports in accordance with the requirements set forth in *Rules for Filing of International Circuit Status Reports*, CC Docket No. 93–157, Report and Order, 10 FCC Rcd 8605 (1995), 60 FR 51366, October 2, 1995.

6. It is further ordered that AT&T shall split 50/50 with ETESCA the $1.20 per minute accounting rate for the IMTS services.

7. *It is further ordered* That the surcharge agreed to between AT&T and ETESCA for received collect calls shall be no greater than $1.00 per call.

8. *It is further ordered* That AT&T shall submit reports on or before June 30, and December 31, of each year, and on the one-year anniversary of the notification of the grant of this application in the **Federal Register**, indicating the number of circuits activated by facility.

9. *It is further ordered* That this authorization is subject to AT&T's obtaining all necessary licenses and authorizations from the Departments of Treasury and Commerce.

10. It is further ordered That this order is subject to revocation without a hearing in the event the Department of State or the Federal Communications Commission determines that the continuation of communications between the United States and Cuba is no longer in the national interest.

11. This order is issued under Section 0.261 of the Commission's Rules and is effective June 17, 1996. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

Federal Communications Commission.

Diane J. Cornell,

Chief, Telecommunications Division, International Bureau.

[FR Doc. 96–16609 Filed 6–28–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1120–DR]

Commonwealth of Pennsylvania; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA–1120–DR), dated June 18, 1996, and related determinations.

EFFECTIVE DATE: June 18, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 18, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Commonwealth of Pennsylvania, resulting from flooding on June 12, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Commonwealth of Pennsylvania.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas. Public Assistance may be added at a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Jack Schuback of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Pennsylvania to have been affected adversely by this declared major disaster:

Bucks County for Individual Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–16702 Filed 6–28–96; 8:45 am]

BILLING CODE 6718–02–P

Open Meeting, Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

Name: Technical Mapping Advisory Council.

Date of Meeting: July 15, 1996.

Place: The meeting will be held via TeleVideoconference from 7 sites across the United States.

Time: 12:30 p.m. to 3:30 p.m.

Proposed Agenda: Discussion of goals to be pursued by the Council in the upcoming year; assign action items for the September meeting.

Status: This meeting is open to the public. However, in order to participate you must submit a request in writing. Fax the written request to Mike Buckley at (202) 646–4596 by July 9, 1996. Be sure to include your name and a daytime telephone number.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, DC 20472; telephone (202) 646–2756 or by fax as noted above.

Dated: June 25, 1996.

Richard W. Krimm,

Acting Associate Director, Mitigation Directorate.

[FR Doc. 96–16703 Filed 6–28–96; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–010099–021.

Title: International Council of Containership Operators.

Parties:

American President Lines, Ltd.
A.P. Moller-Maersk
Atlantic Container Line
The Australian National Line
Blue Star Line Ltd.
The Cast Group Limited
China Ocean Shipping (Group) Co.
Cho Yang Shipping Co., Ltd.
Compagnie Generale Maritime
Crowley Maritime Corp.
DSR-Senator Line (Bremen) Gmbh
Evergreen Marine Corporation (Taiwan) Ltd.
Hamburg-Sudamerikanische Dampfschifffahrtsgesellschaft Eggert & Amsinck
Hanjin Shipping Co. Ltd.
Hapag-Lloyd AG
Hyundai Merchant Marine Co., Ltd.
Italia di Navigazone, SpA
Kawasaki Kisen Kaisha, Ltd.
Lykes Bros. Steamship Co., Inc.
Malaysian International Shipping Corporation Berhad
Mediterranean Shipping Company S.A.
Mitsui OSK Lines, Ltd.
Nippon Yusen Kaisha (NYK Line)
Nedlloyd Lines B.V.
Neptune Orient Lines Ltd.
Orient Overseas Container Line Ltd.
P&O Containers Line
Sea-Land Service, Inc.
South African Marine Corp., Ltd.
Transortacion Maritima Mexicana, S.A. de C.V.
United Arab Shipping Co. (S.A.G)
Wilh, Wilhelmsen Lines A/S
Yangming Marine Transport Corp.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment adds Compagnie Maritime D'Affretement as a party to the Agreement.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–16619 Filed 6–28–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 25, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. National City Bancshares, Inc., Evansville, Indiana; to acquire 100 percent of the voting shares of First National Bank of Wayne City, Wayne City, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. River Bancorp, Inc., Ramsey, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Northland Security Bank, Ramsey, Minnesota, a *de novo* bank.

Board of Governors of the Federal Reserve System, June 25, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–16645 Filed 6-28-96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 96-16087) published on page 32817 of the issue for June 25, 1996.

Under the Federal Reserve Bank of Chicago heading, the entry for Great Lakes Financial Resources, Inc., ESOP, Matteson, Illinois, is revised to read as follows:

1. Great Lakes Financial Resources, Inc., ESOP, Matteson, Illinois; to acquire 52.2 percent of the voting shares of Great Lakes Financial Resources, Inc., Matteson, Illinois, and thereby indirectly acquire Bank of Homewood, Homewood, Illinois, Bank of Matteson, Matteson, Illinois, and First National Bank of Blue Island, Blue Island, Illinois.

Comments on this application must be received by July 12, 1996.

Board of Governors of the Federal Reserve System, June 25, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–16646 Filed 6-28-96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 15, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Southern Bancshares, Inc., Lithonia, Georgia; to acquire certain assets of American Financial Mortgage Corp., Decatur, Georgia, through a newly-formed subsidiary, FSB Mortgage Services, Inc., Lithonia, Georgia, and thereby engage in mortgage lending activities, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

2. First State Bancshares of Blakely, Inc., Blakely, Georgia; to acquire First Southwest Bancorp, Inc., Donalsonville, Georgia, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 25, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–16644 Filed 6-28-96; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement 13655.892]

Grants for Supportive and Nutritional Services to Older Native Hawaiians

AGENCY: Administration on Aging (AoA), Office of the Secretary, Health and Human Services.

ACTION: Announcement of availability of funds and opportunity to apply under the Older Americans Act (Act), Title VI, Grants for Native Americans, part B—Native Hawaiian Program.

SUMMARY: The AoA will accept applications for funding in fiscal year 1996 under the Act, Title VI, Grants for Native Americans, part B—Native Hawaiian Program.

DATES: August 30, 1996.

ADDRESSES: Applicants must be sent to the Department of Health and Human Services, Administration on Aging, Margaret Tolson, Director, Grants Management Division, 330 Independence Avenue, SW, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: M. Yvonne Jackson, Director, Office for American Indian, Alaskan Native, and Native Hawaiian Programs, Administration on Aging, Department of Health and Human Services, Wilbur J. Cohen Federal Building, Room 4257, 330 Independence Avenue, SW, Washington, DC 20201, (202) 619–2713.

SUPPLEMENTRY INFORMATION:

1. Background and Program Purpose

The AoA is responsible for administering the Act which provides for the delivery of supportive and nutritional services to older Americans who are 60 years of age or older. The Act Amendments of 1987 established part B, under title VI of the Act, for the provision of supportive and nutrition services to Native Hawaiian elders who are 60 years of age or older.

The Act provides that a public or nonprofit private organization having the capacity to provide services for Native Hawaiians is eligible for assistance under Title VI, part B, if the organization will serve at least 50 Native Hawaiian individuals who attained 60 years of age or older, and the organizational demonstrate the ability to deliver supportive services and nutrition services.

For the purposes of Title VI, part B, the term "Native Hawaiian" means an individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1778.

Nutritional services, and information and assistance services, are required by the Act. Nutritional services include congregate meals and home-delivered meals. Supportive services include information and assistance, transportation, chore services, and other Native Hawaiians. The information and assistance services must be available for older Native Hawaiians living in the geographic boundaries of the Title VI, part B, service area proposed by the applicant organization and approved by the Assistant Secretary for Aging.

Organizations receiving funds to provide services to older Native Hawaiians shall assure that all activities will be conducted in close coordination with the State Agency and the Area Agency on Aging.

2. Eligibility and Funding Information

Public or private nonprofit organization having the capacity to provide services for Native Hawaiians is eligible to receive a grant only if the organization will serve at least 50 Native Hawaiians who have attained 60 years of age or older, and the organization demonstrates the ability to deliver supportive and nutritional services.

3. Available Funds

Funds for fiscal year 1996 will be approximately $1,600,000. The amounts awarded will include funds for both direct and indirect costs.

For grants make in fiscal year 1996, the budget period will be one year, September 30, 1996, through September 29, 1997. The project period will be for three years, September 30, 1996, through September 29, 1999.

4. Application Process

Applicants should submit applications, describing their proposed plans for nutritional and supportive services for older Native Hawaiians for project period September 30, 1996, through September 29, 1999, as described in Section 5 below, "Content of the Application."

A three-year project period was chosen in order to reduce the paperwork burden on the grantees. It is the intent of this agency to conduct on-site monitoring at least once during the three-year project period.

The Program Performance and Financial Status reports, due on a semi-annual basis, will be reviewed for compliance with the program regulations. Failure to submit the required reports during the project period may result in loss of future funds, and possibly termination of the grant within the project period. Thirty days prior to the end of each budget period, within the three-year project period, grantees shall notify AoA as to their desire to continue as a grantee. Failure to submit this documentation within the required time frame may result in loss of grant funding. At the beginning of each budget period, within the three-year project period, grantees will be notified of the funding level for the subsequent year.

One original application, signed by the project director, and two copies of the complete application including all attachments, must be submitted to the Administration on Aging, Grants Management Division, Margaret Tolson, Director, 330 Independence Ave., SW, Washington, DC 20201. Incomplete applications will not be considered for funding.

5. Content of the Application

The application must meet the criteria in section 624(a) of the Act, and Title 45 of the Code of Federal Regulations, § 1328.19. The application may be presented in any format selected by the applicant. No standard federal forms are required. Contact Percy Devine, Bi-Regional Administrator, 50 United Nations Plaza, Room 480, San Francisco, CA 94102, telephone number (415) 437–8780 if you have questions concerning the content of the application. The application must include the following information:

A. Objectives and Need for Assistance

This section must include objectives, expressed in measurable terms, which are related to the current nutrition and supportive service needs of the service population. This section must also include a discussion of how the needs were evaluated.

B. Results or Benefits Expected

The application should describe the results or benefits expected from each service proposed.

C. Approach

(1) Description and Method of Delivery of Each Service

(a) Nutrition—Nutrition services are required. There should be a description of the methods, facilities, and staff to be used in preparing, serving, and delivering meals, and the estimated number of persons to be served. The nutrition services provided, either directly or by way of a grant or contract, must be substantially in compliance with the provisions of part C, Title III, which include:

1. Provide at least one hot or other appropriate meal a day, five or more days a week in a congregate setting, and any additional meals which the recipient of a grant may elect to provide. A "meal", as used in section 307(a)(13), 308(b)(7), 311(a)(4), 331(1), 336, 338(a)(1), and 339, 339A of the Act and § 1321.17, § 1321.59 and § 1321.64, is a planned event in a day at which a variety of prepared foods are provided to an individual. These foods shall comply with the U.S. Dietary Guidelines for Americans, published by the Secretary of the Department of Health and the Secretary of the Department of Agriculture, and provide the nutrients specified in the current, daily Recommended Dietary Allowances, as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences, as specified in Section 339(2) unless the meal is a special meal provided to meet the health, religious, or ethnic considerations of eligible individuals. Snacks, partial meals, and second helpings are not considered meals.

2. Provide at least one home delivered hot, cold, frozen, dried, canned, or supplemental food (with a satisfactory storage life) meal per day, file or more days a week, and any additional meals which the recipient of a grant may elect to provide. The above definition of a meal also applies here. Thus neither individual grocery items nor food vouchers may be used in lieu of home delivered meals.

If no Title VI, part B, funds are to be used for nutrition services, the application must state how such services are provided in other ways, and how they are financed.

(b) Information and Assistance—Information and assistance services are required. They must be available for older Native Hawaiians living in the Title VI, part B, service area and there should be a description of what information and assistance services will be provided and how they will be provided. The estimated number of individuals to be served should be

stated. If no Title VI, part B, funds are to be used for information and assistance services, the application must state how such services are provided in other ways, and how they are financed.

(c) Other Supportive Services—The application must describe any other supportive services to be provided wholly or partly by Title VI, part B, funds. The description should include what supportive services will be provided and how they will be provided. The estimated number of persons to be served by each service should be stated.

Legal assistance and ombudsman services may be provided, but are not required. However, if provided, they should be included under "Supportive Services."

If the applicant agency elects to provide legal services, it must substantially comply with the requirements in Title 45 of the Code of Federal Regulations § 1321.71, and all legal assistance providers must comply fully with the requirements in § 1321.71(d) through § 1321.71(k).

Transportation of persons to nutrition sites or other places is a part of "Supportive Services."

(d) Coordination with Title III—The application should provide a description of how Title VI and Title III resources are to be coordinated within the Title VI service area, including information and assistance service.

(2) Evaluation Criteria

The application must discuss the criteria to be used to evaluate the results and successes of the program, based on the objective indicated in Item A above. It will also explain the methodology that will be used to determine if the needs identified and discussed are being met, and if the results and benefits identified in item B above are being achieved.

D. Geographic Location

The application must include a narrative description of the Title VI, part B, service area, and a map with the service area identified. The area to be served by Title VI, part B, must have clear geographic boundaries. There is no prohibition, however, on its overlapping with areas served by Title III.

E. Additional Information

(1) Program Assurances

Title VI, part B, Program Assurances must be included in the application. The Title VI, part B, Program Assurances are those provisions identified in section 624(a) of the Act, and in Title 45 of the Code of Federal Regulations § 1328.19(d), issued August 31, 1988 (see Appendix A). The public or nonprofit private organization must state that it agrees to abide by all the provisions for the entire project period being applied for in fiscal year 1996.

Copies of the Title III and Title VI current law and regulations, and of part 92, may be obtained from the Bi-Regional Administrator for the AoA.

(2) Certification Forms

Certifications are required of the applicant regarding (a) lobbying; (b) debarment, suspension, and other responsibility matters; and (c) drug-free workplace requirements. Please note that a duly authorized representative of the applicant organization must attest to the applicant's compliance with these certifications.

(3) Identifying Information

Applications must identify the project director: Name, Title, Address including Zip Code, Telephone Number, and if available, the FAX number. The organization's EIN (Employer Identification Number) must also be included.

6. Closing Date for Application

To be eligible for consideration, applications must be received or postmarked on or before (60 days from date of publication). (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark, or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service, private metered postmarks are not acceptable as proof of timely mailing.)

7. Action on Applications

Awards will be made by the Assistant Secretary of Aging. Funding decisions will be announced as soon as possible.

Catalog of Federal Domestic Assistance Program #93.655 Grants to Indian Tribes and Native Hawaiians. This Program Announcement is not subject to E.O. 12372.

Fernando M. Torres-Gil,

Assistant Secretary for Aging.

Program Assurances

The Older Americans Act, section 624(a), provides that no grant may be made under this part unless the public or nonprofit private organization submits an application to the Assistant Secretary for Aging which meets such criteria as the Assistant Secretary for Aging may by regulation prescribe. Each such application shall:

(1) provide that the organization will evaluate the need for supportive and nutrition services among older Native Hawaiians to be represented by the organization;

(2) provide for the use of such methods of administration as are necessary for the proper and efficient administration of the program to be assisted;

(3) provide assurances that the organization will coordinate its activities with the State Agency on Aging;

(4) provide that the organization will make such reports in such form and containing such information as the Assistant Secretary for Aging may reasonably require, and comply with such requirements as the Assistant Secretary for Aging may impose to ensure that correctness of such reports;

(5) provide for periodic evaluation of activities and projects carried out under the application;

(6) establish objectives, consistent with the purpose of this title, toward which activities described in the application will be directed, identify obstacles to the attainment of such objectives, and indicate the manner in which the organization proposes to overcome such obstacles;

(7) provide for establishing and maintaining information and assistance services to assure that older Native Hawaiians, to be served by the assistance made available under this part, will have reasonably convenient access to such services;

(8) provide a preference for Native Hawaiians 60 years of age and older for full- or part-time staff positions wherever feasible;

(9) provide that any legal or ombudsman services made available to older Native Hawaiians, represented by the public or nonprofit private organization, will be substantially in compliance with the provisions of Title III relating to the furnishing of similar services; and

(10) provide satisfactory assurance that the fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, federal funds paid under this part to the public or nonprofit private organization, including any funds paid by the organization to a recipient of a grant or contract.

45 CFR 1328.19(d) requires that the application shall provide for assurances as prescribed by the Assistant Secretary for Aging that:

(1) The eligible organization represents at least 50 older Native Hawaiians who have attained 60 years of age or older;

(2) The eligible organization shall conduct all activities, on behalf of older Native Hawaiians, in close coordination with the State Agency and Area Agency on Aging;

(3) The eligible organization shall comply with all applicable state and local license and safety requirements for the provision of those services;

(4) The eligible organization shall ensure that all services under this part are provided without use of any means tests;

(5) The eligible organization shall comply with all requirements set forth in § 1328.7 through § 1328.17; and

(6) The services provided under this part will be coordinated, where applicable, with services provided under Title III of the Act;

(7) Signature of the principal official of the eligible organization.

Signature _____

Date _____

Title _____

Organization _____

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identity the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available to Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll' or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs, and (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation or a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) form an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, of every grant officer or other designee on whose grant activity the convicted employee was working unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance work done in connection with the specific grant (Use Attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code) _____

Check __ If there are workplaces on file that are not identified here. Sections 76.630(c) and (d)(2) and 76.635 (a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and or notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW., Washington, DC 20201.

Signature _____

Date _____

Title _____

Organization _____

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that its principals involved:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department of agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forger, bribery, falsification or destruction of records, making false statement, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation for this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions", provided below, without modification in all lower tier covered transactions and in all solicitations for lower tier covered actions.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS (To Be Supplied to Lower Tier Participants).

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge an belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal Department of agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Signature _____

Date _____

Title _____

Organization _____

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Organization _____

Authorized Signature Title Date

Note: If disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, Room 341F, HHH Building, 200 Independence Avenue, SW., Washington, D.C. 20201–0001.

[FR Doc. 96–16681 Filed 6–28–96; 8:45 am]

BILLING CODE 4130–01–M

Centers for Disease Control and Prevention

[30DAY–15]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request more information on these projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 30 days of this notice.

The following requests have been submitted for review since the last publication date on June 21, 1996.

Proposed Projects

1. Ethnographic Study of Tuberculosis Outreach Worker Activities—New—This data collection will generate descriptive data from those directly involved and responsible for providing outreach to identified TB patients to gain an understanding of outreach activities, how they occur, and their level of effectiveness. Three interview guides have been developed for use with TB outreach workers, their supervisor and a small number of outreach patients. This effort will result in a more comprehensive picture of effective and efficient TB outreach activities. The major product of this effort will be a descriptive analytical report detailing the "lessons learned".

Respondents	Number of respondents	Number of responses/ respondents	Average burden (in hrs.)
Outreach Workers	36	1	0.75
Outreach Workers' Supervisor	36	1	0.75
TB Patients	72	1	0.33

The total annual burden is 78.00. Send comments to Desk officer, CDC; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503.

Dated: June 25, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–16648 Filed 6–28–96; 8:45 am]

BILLING CODE 4163–18–P

National Center for Environmental Health; Meeting

The National Center for Environmental Health (NCEH), of the Centers for Disease Control and Prevention (CDC) will convene the following meeting cosponsored by the American Association for Clinical Chemistry and the American Heart Association.

Name: Frontiers in Lipid and Lipoprotein Research: Basic Science, Analytical, Clinical, and Public Health Applications.

Times and Dates: 8 a.m.–5 p.m., October 4, 1996; 8 a.m.–5 p.m., October 5, 1996; 8 a.m.–12 noon, October 6, 1996.

Place: Renaissance Hotel—Dallas, 2222 Stemmons Freeway, Dallas, Texas 75207, telephone 214/631–2222.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 500 people.

Purpose: The purpose of this meeting is to provide a forum for presentation of recent advances in lipid and lipoprotein research by recognized experts in the areas of clinical practice, biochemistry, analytical measurement, and public health.

Matters To Be Discussed: Agenda includes: significant advances in lipid and lipoprotein research and new observations that are of critical importance to clinical practice and public health; an integrated review of relevant advances in basic science, measurement technology, epidemiological and clinical research, and public health practice to clearly define the state of the art for understanding and preventing morbidity and mortality due to heart disease.

Contact Persons For More Information: Mary M. Kimberly, Ph.D., Research Chemist, Special Activities Branch, Division of Environmental Health Laboratory Sciences, M/S F25, NCEH, CDC, 4770 Buford Highway, NE., Chamblee, Georgia 30341–3724, telephone 770/488–4683, or Paula M. Steiner, Medical Research Laboratories, 2 Tesseneer Drive, Highland Heights, Kentucky 41076, telephone 606/781–8877 extension 252, fax 606/781–9310.

Dated: June 24, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–16649 Filed 6–28–96; 8:45 am]

BILLING CODE 4163–18–M

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title 45 CFR 303.7—Provision of Services in Interstate Child Support Enforcement Cases; Standard Forms.

OMB No.: 0970–0085.

Description: Regulations at 45 CFR 303.7 require a State child support enforcement agency to transmit child support case information on standard interstate forms when referring a case to another State for processing. The forms promote uniformity and standardization.

States will have the choice of using one of two sets of forms—one set accommodates the Uniform Reciprocal Enforcement of Support Act (URESA) and the other set accommodates the Uniform Interstate Family Support Act (UIFSA). The URESA forms are the existing forms currently used by States. The UIFSA forms were recently developed by a workgroup of child support practitioners; these forms have been pilot-tested in several jurisdictions. UIFSA has now been adopted by over 30 States. OCSE contemplates that UIFSA forms will eventually be used for all cases.

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Standard forms	54	5000	.2666667	43,200

Estimated Total Annual Hours: 43,200.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 25, 1996.

Larry Guerrero,

Director, Office of Information Services.

[FR Doc. 96–16694 Filed 6–28–96; 8:45 am]

BILLING CODE 4184–01–M

Submission for OMB Review; Comment Request

Title: State Plan for Foster Care and Adoption Assistance—Title IV–E.

OMB No.: 0980–0141.

Description: A State Plan for foster care and adoption assistance is required by section 471 of the Social Security Act from any State wishing to claim Federal Financial Participation for foster care and adoption assistance. States may use a preprinted format or may develop their own format which meets the requirements of the law. The Plan is

submitted only once and amended as necessary. Our experience is that a State will amend a Plan once every 4 years; approximately 12 per year.

Respondents: State governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Case plan	51	1	15	180

Estimated Total Annual Burden Hours: 180.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: June 12, 1996.

Larry Guerrero,

Director, Office of Information Services.

[FR Doc. 96–16620 Filed 6–28–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 96M–0193]

Kaneka America Corp.; Premarket Approval of Liposorber LA–15 System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Kaneka America Corp., New York, NY, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Liposorber LA–15 System. After reviewing the recommendation of the Gastroenterology and Urology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of February 21, 1996, of the approval of the application.

DATES: Petitions for administrative review by July 31, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Linda L. Dart, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corpotate Blvd., Rockville, MD 20850, 301–594–1220.

SUPPLEMENTARY INFORMATION: On October 3, 1991, Kaneka America Corp., New York, NY 10022, submitted to CDRH an application for premarket approval of the Liposorber LA–15 System. The device is a low density lipoprotein (LDL) apheresis system, indicated for use in performing low density lipoprotein cholesterol (LDL–C) apheresis to acutely remove LDL–C from the plasma of the following high risk patient populations for whom diet has been ineffective and maximum drug therapy has either been ineffective or not tolerated: Group A—functional hypercholesterolemic homozygotes with LDL–C > 500 milligrams/deciliter (mg/dL); Group B—functional hypercholesterolemic heterozygotes with LDL–C ≥ 300 mg/dL; and Group C—functional hypercholesterolemic heterozygotes with LDL–C ≥ 200 mg/dL and documented coronary heart disease (CHD).

The LDL–C levels for the indicated patient populations are baseline LDL–C levels obtained after the patient has had, at a minimum, a 6-month trial of an American Heart Association Step II diet (or equivalent) and maximum tolerated combination drug therapy designed to reduce LDL–C. Maximum tolerated combination drug therapy is an adequate trial of drugs from at least two separate classes of hypolipidemic agents such as, bile acid sequesterants, HMG–CoA reductase inhibitors, fibric acid derivatives, niacin/nicotinic acid, etc. Documented CHD includes documentation of coronary artery disease by coronary angiography or a history of myocardial infarction, coronary artery bypass surgery, percutaneous transluminal coronary angioplasty (PTCA) or alternative revascularization procedure (e.g., atherectomy or stent), or progressive angina documented by exercise or nonexercise stress test. Baseline lipid levels are to be determined after stabilization on diet and drug therapy by making two measurements during a 2- to 4-week period. (Note: the two values should be within 10 percent of each other, indicating a stable condition.)

Although clinical benefit of LDL–C lowering has been documented in several diet, drug and/or surgical intervention trials, clinical studies using the Liposprber LA–15 System were not designed to address and did not establish the long-term clinical benefit of acutely lowering LDL–C.

On April 21, 1995, the Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory panel, reviewed and recommended approval of the application. On February 21, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 31, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 9, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–16663 Filed 6–28–96; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Advisory Committee for Reproductive Health Drugs

Date, time, and place. July 19, 1996, 9 a.m., FDA Technical Center, 16071 Industrial Dr., Gaithersburg, MD. Attendees should allow time to proceed through security procedures. Admission to the facility by public participants will be available on a first come, first serve basis, and will be limited to approximately 200, the number of seats available to the public in the conference room. There will be an overflow room with both audio and video link to the meeting. The overflow room is located at the Hilton Hotel, 620 Perry Pkwy., Gaithersburg, MD.

Type of meeting and contact person. Open committee discussion, 9 a.m. to 1:30 p.m.; open public hearing, 1:30 p.m. to 3:30 p.m., unless public participation does not last that long; open committee discussion, 3:30 p.m. to 5 p.m.; Philip A. Corfman, Center for Drug Evaluation and Research (HFD–580), Food and Drug Administration, 5600 Fishers Lane, rm. 14B–04, Rockville, MD 20857, 301–443–3510, FAX 301–443–9282, or e-mail july19@cder.fda.gov. Information concerning the meeting is available from FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Advisory Committee for Reproductive Health Drugs, code 12537. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of obstetrics, gynecology, and related specialties.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person in writing by mail, e-mail, or fax no later than 5 p.m., EDT on July 12, 1996, with a brief statement of the general nature of the evidence or arguments they wish to present, the names, telephone numbers, and addresses of proposed participants, and an indication of the approximate time required to make their comments. The time for presentations will be allotted equitably, and will depend on how many individuals give advance notice within the time indicated of their intention to speak. In the interest of time, the agency may require persons with common interests to make joint presentations.

Open committee discussion. The committee will discuss the new drug application for mifepristone for the interruption of early pregnancy.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published

in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above in writing, prior to the meeting.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: June 25, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–16770 Filed 6–28–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[BPD–847–CN]

RIN 0938–AH34

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1997 Rates; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction notice.

SUMMARY: On May 31, 1996, we published a proposed rule (61 FR 27444) that would revise the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes arising from our continuing experience with the systems. In the addendum to the proposed rule, we announced the prospective payment rates for Medicare hospital inpatient services for operating costs and capital-related costs that would apply to discharges occurring on or after October 1, 1996, and set forth the factors for determining the rate-of-increase limits for hospital and hospital units excluded from the prospective payment system. This notice corrects errors made in that document.

FOR FURTHER INFORMATION CONTACT: Tzvi Hefter, (410) 786–1304.

SUPPLEMENTARY INFORMATION: In the May 31, 1996 proposed rule (61 FR 27444), we indicated that the addendum would discuss our proposed update of the factors for determining the rate-of-increase limits for cost reporting periods beginning in Federal fiscal year 1997 for hospitals and hospital units excluded from the prospective payment system. This discussion was inadvertently omitted from the published document.

In addition, there were errors in our calculations of the Geographic Adjustment Factors (GAFs) in tables 4a and 4b. The tables are reprinted in their entirety in this document. The GAFs set forth in table 4c are correct.

The proposed rule also contained other technical and typographical errors. Therefore, we are making the following corrections to the May 31, 1996 proposed rule:

1. On page 27474, in the table entitled Initial Residency Period, after "Allopathy" and before "ANESTHESIOLOGY" insert the following row:

ALLERGY AND IMMUNOLOGY .....3.

2. On page 27504, in the second column before "V. Tables", the following information should be inserted:

IV. Proposed Rate-of-Increase Percentages for Excluded Hospitals and Hospital Units

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in § 413.40 of the regulations. Under these limits, an annual target amount (expressed in terms of the inpatient operating cost per discharge) is set for each hospital, based on the hospital's own historical cost experience trended forward by the applicable rate-of-increase percentages (update factors). The target amount is multiplied by the number of Medicare discharges in a hospital's cost reporting period, yielding the ceiling on aggregate Medicare inpatient operating costs for the cost reporting period.

Effective with cost reporting periods beginning on or after October 1, 1991, a hospital that has Medicare inpatient operating costs in excess of its ceiling is paid its ceiling plus 50 percent of its costs in excess of the ceiling. Total payment may not exceed 110 percent of the ceiling. A hospital that has inpatient operating costs less than its ceiling is paid its costs plus the lower of—

- Fifty percent of the difference between the allowable inpatient operating costs and the ceiling; or
- Five percent of the ceiling.

Each hospital's target amount is adjusted annually, at the beginning of its cost reporting period, by an applicable rate-of-increase percentage. Section 1886(b)(3)(B) of the Act provides that for cost reporting periods beginning on or after October 1, 1993, and before October 1, 1994, the applicable rate-of-increase percentage is the market basket percentage increase minus the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital's "update adjustment percentage" of at least 10 percent. The rate-of-increase percentage for hospitals in the latter case is the market basket percentage increase. The "update adjustment percentage" is the percentage by which a hospital's allowable inpatient operating costs exceeds the hospital's ceiling for the cost reporting period beginning in Federal fiscal year (FY) 1990. For cost reporting periods beginning on or after October 1, 1994, and before October 1, 1997, the update adjustment percentage is the update adjustment percentage from the previous year plus the previous year's applicable reduction. The applicable reduction and applicable rate-of-increase percentage are then determined in the same manner as for FY 1994. The most recent forecasted market basket increase for FY 1997 for hospitals and hospital units excluded from the prospective payment system is 2.7 percent.

3. On pages 27521 to 27527, Table 4a—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas is corrected by replacing the table with the following table:

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index	GAF
0040 Abilene, TX	0.8055	0.8623
Taylor, TX		
0060 Aguadilla, PR	0.4430	0.5726
Aguada, PR		
Aguadilla, PR		
Moca, PR		
0080 Akron, OH	0.9875	0.9914
Portage, OH		
Summit, OH		
0120 Albany, GA	0.8353	0.8841
Dougherty, GA		
Lee, GA		
0160 Albany-Schenectady-Troy, NY	0.8510	0.8954
Albany, NY		
Montgomery, NY		
Rensselaer, NY		
Saratoga, NY		
Schenectady, NY		
Schoharie, NY		
0200 Albuquerque, NM	0.9390	0.9578
Bernalillo, NM		
Sandoval, NM		
Valencia, NM		
0220 Alexandria, LA	0.8213	0.8739
Rapides, LA		
0240 Allentown-Bethlehem-Easton, PA	1.0014	1.0010
Carbon, PA		
Lehigh, PA		
Northampton, PA		
0280 Altoona, PA	0.9531	0.9676
Blair, PA		
0320 Amarillo, TX	0.8557	0.8988
Potter, TX		
Randall, TX		
0380 Anchorage, AK	1.3285	1.2147
Anchorage, AK		
0440 Ann Arbor, MI	1.1688	1.1127
Lenawee, MI		
Livingston, MI		
Washtenaw, MI		
0450 Anniston, AL	0.7848	0.8471
Calhoun, AL		
0460 Appleton-Oshkosh-Neenah, WI	0.8910	0.9240
Calumet, WI		
Outagamie, WI		
Winnebago, WI		
0470 Arecibo, PR	0.4631	0.5903
Arecibo, PR		
Camuy, PR		
Hatillo, PR		
0480 Asheville, NC	0.9365	0.9561
Buncombe, NC		
Madison, NC		
0500 Athens, GA	0.9259	0.9486
Clarke, GA		
Madison, GA		
Oconee, GA		
0520 *Atlanta, GA	1.0089	1.0061
Barrow, GA		
Bartow, GA		
Carroll, GA		
Cherokee, GA		
Clayton, GA		
Cobb, GA		
Coweta, GA		
DeKalb, GA		
Douglas, GA		
Fayette, GA		
Forsyth, GA		
Fulton, GA		
Gwinnett, GA		
Henry, GA		
Newton, GA		
Paulding, GA		
Pickens, GA		
Rockdale, GA		
Spalding, GA		
Walton, GA		
0560 Atlantic-Cape May, NJ		
Atlantic, NJ		
Cape May, NJ	1.1102	1.0742
0600 Augusta-Aiken, GA–SC		
Columbia, GA		
McDuffie, GA		
Richmond, GA		
Aiken, SC		
Edgefield, SC	0.8849	0.9197
0640 Austin-San Marcos, TX		
Bastrop, TX		
Caldwell, TX		
Hays, TX		
Travis, TX		
Williamson, TX	0.9252	0.9482
0680 Bakersfield, CA		
Kern, CA	1.0202	1.0138
0720 *Baltimore, MD		
Anne Arundel, MD		
Baltimore, MD		
Baltimore City, MD		
Carroll, MD		
Harford, MD		
Howard, MD		
Queen Anne's, MD	0.9820	0.9876
0733 Bangor, ME		
Penobscot, ME	0.9412	0.9594
0743 Barnstable-Yarmouth, MA		
Barnstable, MA	1.3682	1.2395
0760 Baton Rouge, LA		
Ascension, LA		
East Baton Rouge, LA		
Livingston, LA		
West Baton Rouge, LA	0.8442	0.8905
0840 Beaumont-Port Arthur, TX		
Hardin, TX		
Jefferson, TX		
Orange, TX	0.8578	0.9003
0860 Bellingham, WA		
Whatcom, WA	1.1342	1.0901
0870 Benton Harbor, MI		
Berrien, MI	0.8553	0.8985
0875 *Bergen-Passaic, NJ		
Bergen, NJ		
Passaic, NJ	1.1717	1.1146
0880 Billings, MT		
Yellowstone, MT	0.8903	0.9235
0920 Biloxi-Gulfport-Pascagoula, MS		
Hancock, MS		
Harrison, MS		
Jackson, MS	0.8573	0.8999
0960 Binghamton, NY		
Broome, NY		
Tioga, NY	0.8842	0.9192
1000 Birmingham, AL		
Blount, AL		
Jefferson, AL		
St. Clair, AL		
Shelby, AL	0.9047	0.9337
1010 Bismarck, ND		
Burleigh, ND		
Morton, ND	0.7976	0.8565
1020 Bloomington, IN		
Monroe, IN	0.8619	0.9032
1040 Bloomington-Normal, IL		
McLean, IL	0.8921	0.9248
1080 Boise City, ID		
Ada, ID		
Canyon, ID	0.9260	0.9493
1123 *Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	1.1639	1.1095
Bristol, MA		
Essex, MA		
Middlesex, MA		
Norfolk, MA		
Plymouth, MA		
Suffolk, MA		
Worcester, MA		
Hillsborough, NH		
Merrimack, NH		
Rockingham, NH		
Strafford, NH		
1125 Boulder-Longmont CO	0.9383	0.9573
Boulder, CO		
1145 Brazoria, TX	0.8565	0.9208
Brazoria, TX		
1150 Bremerton, WA	1.0926	1.0625

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Kitsap, WA		
1240 Brownsville-Harlingen-San Benito, TX	0.8561	0.8991
Cameron, TX		
1260 Bryan-College Station, TX	0.8760	0.9133
Brazos, TX		
1280 *Buffalo-Niagara Falls, NY	0.9123	0.9391
Erie, NY		
Niagara, NY		
1303 Burlington, VT	0.9126	0.9393
Chittenden, VT		
Franklin, VT		
Grand Isle, VT		
1310 Caguas, PR	0.4651	0.5929
Caguas, PR		
Cayey, PR		
Cidra, PR		
Gurabo, PR		
San Lorenzo, PR		
1320 Canton-Massillon, OH	0.8567	0.9067
Carroll, OH		
Stark, OH		
1350 Casper, WY	0.8841	0.9191
Natrona, WY		
1360 Cedar Rapids, IA	0.8477	0.8930
Linn, IA		
1400 Champaign-Urbana, IL	0.9413	0.9594
Champaign, IL		
1440 Charleston-North Charleston, SC	0.8984	0.9293
Berkeley, SC		
Charleston, SC		
Dorchester, SC		
1480 Charleston, WV	0.9547	0.9688
Kanawha, WV		
Putnam, WV		
1520 *Charlotte-Gastonia-Rock Hill, NC-SC	0.9531	0.9746
Cabarrus, NC		
Gaston, NC		
Lincoln, NC		
Mecklenburg, NC		
Rowan, NC		
Union, NC		
York, SC		
1540 Charlottesville, VA	0.9175	0.9427
Albemarle, VA		
Charlottesville City, VA		
Fluvanna, VA		
Greene, VA		
1560 Chattanooga, TN-GA	0.8867	0.9210
Catoosa, GA		
Dade, GA		
Walker, GA		
Hamilton, TN		
Marion, TN		
1580 Cheyenne, WY	0.7595	0.8357
Laramie, WY		
1600 *Chicago, IL	1.0756	1.0512
Cook, IL		
DeKalb, IL		
DuPage, IL		
Grundy, IL		
Kane, IL		
Kendall, IL		
Lake, IL		
McHenry, IL		
Will, IL		
1620 Chico-Paradise, CA	1.0441	1.0300
Butte, CA		
1640 *Cincinnati, OH–KY–IN	0.9477	0.9639
Dearborn, IN		
Ohio, IN		
Boone, KY		
Campbell, KY		
Gallatin, KY		
Grant, KY		
Kenton, KY		
Pendleton, KY		
Brown, OH		
Clermont, OH		
Hamilton, OH		
Warren, OH		
1660 Clarksville-Hopkinsville, TN–KY	0.7733	0.8386
Christian, KY		
Montgomery, TN		
1680 *Cleveland-Lorain-Elyria, OH	0.9908	0.9937
Ashtabula, OH		
Cuyahoga, OH		
Geauga, OH		
Lake, OH		
Lorain, OH		
Medina, OH		
1720 Colorado Springs, CO	0.9456	0.9624
El Paso, CO		
1740 Columbia, MO	0.8919	0.9246
Boone, MO		
1760 Columbia, SC	0.9178	0.9430
Lexington, SC		
Richland, SC		
1800 Columbus, GA–AL	0.7655	0.8328
Russell, AL		
Chattahoochee, GA		
Harris, GA		
Muscogee, GA		
1840 *Columbus, OH	0.9699	0.9793
Delaware, OH		
Fairfield, OH		
Franklin, OH		
Licking, OH		
Madison, OH		
Pickaway, OH		
1880 Corpus Christi, TX	0.8541	0.9048
Nueces, TX		
San Patricio, TX		
1900 Cumberland, MD–WV	0.8613	0.9028
Allegany, MD		
Mineral, WV		
1920 *Dallas, TX	0.9530	0.9676
Collin, TX		
Dallas, TX		
Denton, TX		
Ellis, TX		
Henderson, TX		
Hunt, TX		
Kaufman, TX		
Rockwall, TX		
1950 Danville, VA	0.8516	0.8958
Danville City, VA		
Pittsylvania, VA		
1960 Davenport-Moline-Rock Island, IA–IL	0.8407	0.8860
Scott, IA		
Henry, IL		
Rock Island, IL		
2000 Dayton-Springfield, OH	0.9582	0.9712
Clark, OH		
Greene, OH		
Miami, OH		
Montgomery, OH		
2020 Daytona Beach, FL	0.8891	0.9227
Flagler, FL		
Volusia, FL		
2030 Decatur, AL	0.8403	0.8877
Lawrence, AL		
Morgan, AL		
2040 Decatur, IL	0.7866	0.8484
Macon, IL		
2080 *Denver, CO	1.0291	1.0198
Adams, CO		
Arapahoe, CO		
Denver, CO		
Douglas, CO		
Jefferson, CO		
2120 Des Moines, IA	0.8772	0.9142
Dallas, IA		
Polk, IA		
Warren, IA		
2216 *Detroit, MI	1.0748	1.0506
Lapeer, MI		
Macomb, MI		
Monroe, MI		
Oakland, MI		
St. Clair, MI		
Wayne, MI		
2180 Dothan, AL	0.7758	0.8404
Dale, AL		
Houston, AL		
2190 Dover, DE	0.9017	0.9316
Kent, DE		

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
2000 Dubuque, IA	0.8149	0.8692
Dubuque, IA		
2240 Duluth-Superior, MN-WI	0.9437	0.9611
St. Louis, MN		
Douglas, WI		
2281 Dutchess County, NY	1.0604	1.0410
Dutchess, NY		
2290 Eau Claire, WI	0.8698	0.9089
Chippewa, WI		
Eau Claire, WI		
2320 El Paso, TX	0.9456	0.9645
El Paso, TX		
2330 Elkhart-Goshen, IN	0.8820	0.9176
Elkhart, IN		
2335 Elmira, NY	0.8436	0.8901
Chemung, NY		
2340 Enid, OK	0.7879	0.8494
Garfield, OK		
2360 Erie, PA	0.9137	0.9401
Erie, PA		
2400 Eugene-Springfield, OR	1.1503	1.1006
Lane, OR		
2440 Evansville-Henderson, IN-KY	0.8990	0.9297
Posey, IN		
Vanderburgh, IN		
Warrick, IN		
Henderson, KY		
2520 Fargo-Moorhead, ND-MN	0.9010	0.9311
Clay, MN		
Cass, ND		
2560 Fayetteville, NC	0.9025	0.9322
Cumberland, NC		
2580 Fayetteville-Springdale-Rogers, AR	0.7236	0.8013
Benton, AR		
Washington, AR		
2620 Flagstaff, AZ-UT	0.9039	0.9331
Coconino, AZ		
Kane, UT		
2640 Flint, MI	1.1273	1.0855
Genesee, MI		
2650 Florence, AL	0.8157	0.8696
Colbert, AL		
Lauderdale, AL		
2655 Florence, SC	0.8614	0.9029
Florence, SC		
2670 Fort Collins-Loveland, CO	1.0628	1.0426
Larimer, CO		
2680 *Ft. Lauderdale, FL	1.0958	1.0653
Broward, FL		
2700 Fort Myers-Cape Coral, FL	0.9093	0.9370
Lee, FL		
2710 Fort Pierce-Port St. Lucie, FL	1.0192	1.0131
Martin, FL		
St. Lucie, FL		
2720 Fort Smith, AR–OK	0.7885	0.8499
Crawford, AR		
Sebastian, AR		
Sequoyah, OK		
2750 Fort Walton Beach, FL	0.9186	0.9435
Okaloosa, FL		
2760 Fort Wayne, IN	0.8819	0.9175
Adams, IN		
Allen, IN		
DeKalb, IN		
Huntington, IN		
Wells, IN		
Whitley, IN		
2800 *Forth Worth-Arlington, TX	1.0095	1.0065
Hood, TX		
Johnson, TX		
Parker, TX		
Tarrant, TX		
2840 Fresno, CA	1.1202	1.0808
Fresno, CA		
Madera, CA		
2880 Gadsden, AL	0.8901	0.9234
Etowah, AL		
2900 Gainesville, FL	0.9455	0.9623
Alachua, FL		
2920 Galveston-Texas City, TX	1.1022	1.0689
Galveston, TX		
2960 Gary, IN	0.9176	0.9428
Lake, IN		
Porter, IN		
2975 Glens Falls, NY	0.8560	0.8990
Warren, NY		
Washington, NY		
2980 Goldsboro, NC	0.8412	0.8883
Wayne, NC		
2985 Grand Forks, ND–MN	0.9228	0.9455
Polk, MN		
Grand Forks, ND		
2995 Grand Junction, CO	0.8847	0.9195
Mesa, CO		
3000 Grand Rapids-Muskegon-Holland, MI	1.0088	1.0060
Allegan, MI		
Kent, MI		
Muskegon, MI		
Ottawa, MI		
3040 Great Falls, MT	0.9007	0.9309
Cascade, MT		
3060 Greeley, CO	0.9712	0.9802
Weld, CO		
3080 Green Bay, WI	0.9387	0.9576
Brown, WI		
3120 *Greensboro-Winston-Salem-High Point, NC	0.9327	0.9534
Alamance, NC		
Davidson, NC		
Davie, NC		
Forsyth, NC		
Guilford, NC		
Randolph, NC		
Stokes, NC		
Yadkin, NC		
3150 Greenville, NC	0.9098	0.9373
Pitt, NC		
3160 Greenville-Spartanburg-Anderson, SC	0.8947	0.9256
Anderson, SC		
Cherokee, SC		
Greenville, SC		
Pickens, SC		
Spartanburg, SC		
3180 Hagerstown, MD	0.9195	0.9441
Washington, MD		
3200 Hamilton-Middletown, OH	0.9515	0.9665
Butler, OH		
3240 Harrisburg-Lebanon-Carlisle, PA Cumberland, PA	1.0181	1.0124
Dauphin, PA		
Lebanon, PA		
Perry, PA.		
3283 *Hartford, CT	1.2395	1.1584
Hartford, CT		
Litchfield, CT		
Middlesex, CT		
Tolland, CT		
3285 Hattiesburg, MS	0.7269	0.8035
Forrest, MS		
Lamar, MS		
3290 Hickory-Morganton-Lenoir, NC	0.7945	0.8542
Alexander, NC		
Burke, NC		
Caldwell, NC		
Catawba, NC		
3320 Honolulu, HI	1.1487	1.0995
Honolulu, HI		
3350 Houma, LA	0.7843	0.8467
Lafourche, LA		
Terrebonne, LA		
3360 *Houston, TX	0.9790	0.9856
Chambers, TX		
Fort Bend, TX		
Harris, TX		
Liberty, TX		
Montgomery, TX		
Waller, TX		
3400 Huntington-Ashland, WV-KY-OH	0.9194	0.9441
Boyd, KY		
Carter, KY		

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Greenup, KY		
Lawrence, OH		
Cabell, WV		
Wayne, WV		
3440 Huntsville, AL	0.8145	0.8689
Limestone, AL		
Madison, AL		
3480 *Indianapolis, IN	0.9950	0.9966
Boone, IN		
Hamilton, IN		
Hancock, IN		
Hendricks, IN		
Johnson, IN		
Madison, IN		
Marion, IN		
Morgan, IN		
Shelby, IN		
3500 Iowa City, IA	0.9382	0.9573
Johnson, IA		
3520 Jackson, MI	0.9066	0.9351
Jackson, MI		
3560 Jackson, MS	0.7906	0.8514
Hinds, MS		
Madison, MS		
Rankin, MS		
3580 Jackson, TN	0.8340	0.8831
Madison, TN		
3600 Jacksonville, FL	0.9018	0.9317
Clay, FL		
Duval, FL		
Nassau, FL		
St. Johns, FL		
3605 Jacksonville, NC	0.7071	0.7887
Onslow, NC		
3610 Jamestown, NY	0.7679	0.8346
Chautauqua, NY		
3620 Janesville-Beloit, WI	0.8554	0.9065
Rock, WI		
3640 Jersey City, NJ	1.1408	1.0944
Hudson, NJ		
3660 Johnson City-Kingsport-Bristol, TN-VA	0.8921	0.9248
Carter, TN		
Hawkins, TN		
Sullivan, TN		
Unicoi, TN		
Washington, TN		
Bristol City, VA		
Scott, VA		
Washington, VA		
3680 Johnstown, PA	0.8417	0.8887
Cambria, PA		
Somerset, PA		
3710 Joplin, MO	0.7409	0.8144
Jasper, MO		
Newton, MO		
3720 Kalamazoo-Battlecreek, MI	1.0565	1.0384
Calhoun, MI		
Kalamazoo, MI		
Van Buren, MI		
3740 Kankakee, IL	0.8998	0.9302
Kankakee, IL		
3760 *Kansas City, KS-MO	0.9522	0.9570
Johnson, KS		
Leavenworth, KS		
Miami, KS		
Wyandotte, KS		
Cass, MO		
Clay, MO		
Clinton, MO		
Jackson, MO		
Lafayette, MO		
Platte, MO		
Ray, MO		
3800 Kenosha, WI	0.9166	0.9421
Kenosha, WI		
3810 Killeen-Temple, TX	1.0415	1.0282
Bell, TX		
Coryell, TX		
3840 Knoxville, TN	0.8520	0.8961
Anderson, TN		
Blount, TN		
Knox, TN		
Loudon, TN		
Sevier, TN		
Union, TN		
3850 Kokomo, IN	0.8609	0.9025
Howard, IN		
Tipton, IN		
3870 La Crosse, WI-MN	0.8638	0.9046
Houston, MN		
La Crosse, WI		
3880 Lafayette, LA	0.8183	0.8717
Acadia, LA		
Lafayette, LA		
St. Landry, LA		
St. Martin, LA		
3920 Lafayette, IN	0.8824	0.9179
Clinton, IN		
Tippecanoe, IN		
3960 Lake Charles, LA	0.8052	0.8621
Calcasieu, LA		
3980 Lakeland-Winter Haven, FL	0.8677	0.9074
Polk, FL		
4000 Lancaster, PA	0.9605	0.9728
Lancaster, PA		
4040 Lansing-East Lansing, MI	1.0016	1.0011
Clinton, MI		
Eaton, MI		
Ingham, MI		
4080 Laredo, TX	0.7092	0.79034100
Webb, TX		
4100 Las Cruces, NM	0.8516	0.8956
Dona Ana, NM		
4120 *Las Vegas, NV-AZ	1.0894	1.0604
Mohave, AZ		
Clark, NV		
Nye, NV		
4150 Lawrence, KS	0.8616	0.9030
Douglas, KS		
4200 Lawton, OK	0.8339	0.8830
Comanche, OK		
4243 Lewiston-Auburn, ME	0.9431	0.9607
Androscoggin, ME		
4280 Lexington, KY	0.8387	0.8665
Bourbon, KY		
Clark, KY		
Fayette, KY		
Jessamine, KY		
Madison, KY		
Scott, KY		
Woodford, KY		
4320 Lima, OH	0.8752	0.9126
Allen, OH		
Auglaize, OH		
4360 Lincoln, NE	0.9193	0.9440
Lancaster, NE		
4400 Little Rock-North Little Rock, AR	0.8616	0.9030
Faulkner, AR		
Lonoke, AR		
Pulaski, AR		
Saline, AR		
4420 Longview-Marshall, TX	0.8633	0.9042
Gregg, TX		
Harrison, TX		
Upshur, TX		
4480 *Los Angeles-Long Beach, CA	1.2396	1.1585
Los Angeles, CA		
4520 Louisville, KY-IN	0.9445	0.9617
Clark, IN		
Floyd, IN		
Harrison, IN		
Scott, IN		
Bullitt, KY		
Jefferson, KY		
Oldham, KY		
4600 Lubbock, TX	0.8525	0.8965
Lubbock, TX		
4640 Lynchburg, VA	0.8035	0.8609
Amherst, VA		
Bedford, VA		
Bedford City, VA		
Campbell, VA		
Lynchburg City, VA		
4680 Macon, GA	0.8836	0.9187
Bibb, GA		
Houston, GA		
Jones, GA		
Peach, GA		
Twiggs, GA		
4720 *Madison, WI	1.0048	1.0033
Dane, WI		

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
4800 Mansfield, OH	0.8543	0.8978
Crawford, OH		
Richland, OH		
4840 Mayaguez, PR	0.4186	0.5508
Anasco, PR		
Cabo Rojo, PR		
Hormigueros, PR		
Mayaguez, PR		
Sabana Grande, PR		
San German, PR		
4880 McAllen-Edinburg-Mission, TX	0.8502	0.8948
Hidalgo, TX		
4890 Medford-Ashland, OR	1.0213	1.0145
Jackson, OR		
4900 Melbourne-Titusville-Palm Bay, FL	0.9069	0.9367
Brevard, Fl		
4920 *Memphis, TN-AR-MS	0.8185	0.8718
Crittenden, AR		
DeSoto, MS		
Fayette, TN		
Shelby, TN		
Tipton, TN		
4940 Merced, CA	1.0684	1.0463
Merced, CA		
5000 *Miami, FL	0.9240	0.9473
Dade, FL		
5015 *Middlesex-Somerset-Hunterdon, NJ	1.0777	1.0526
Hunterdon, NJ		
Middlesex, NJ		
Somerset, NJ		
5080 *Milwaukee-Waukesha, WI	0.9667	0.9771
Milwaukee, WI		
Ozaukee, WI		
Washington, WI		
Waukesha, WI		
5120 *Minneapolis-St. Paul, MN–WI	1.0785	1.0531
Anoka, MN		
Carver, MN		
Chisago, MN		
Dakota, MN		
Hennepin, MN		
Isanti, MN		
Ramsey, MN		
Scott, MN		
Sherburne, MN		
Washington, MN		
Wright, MN		
Pierce, WI		
St. Croix, WI		
5160 Mobile, AL	0.7999	0.8582
Baldwin, AL		
Mobile, AL		
5170 Modesto, CA	1.0135	1.0092
Stanislaus, CA		
5190 *Monmouth-Ocean, NJ	1.0842	1.0569
Monmouth, NJ		
Ocean, NJ		
5200 Monroe, LA	0.8234	0.8754
Ouachita, LA		
5240 Montgomery, AL	0.7949	0.8545
Autauga, AL		
Elmore, AL		
Montgomery, AL		
5280 Muncie, IN	0.9736	0.9818
Delaware, IN		
5330 Myrtle Beach, SC	0.7798	0.8434
Horry, SC		
5345 Naples, FL	1.0222	1.0151
Collier, FL		
5360 *Nashville, TN	0.9065	0.9350
Cheatham, TN		
Davidson, TN		
Dickson, TN		
Robertson, TN		
Rutherford, TN		
Sumner, TN		
Williamson, TN		
Wilson, TN		
5380 *Nassau-Suffolk, NY	1.2852	1.1875
Nassau, NY		
Suffolk, NY		
5483 *New Haven-Bridgeport-Stamford-Waterbury	1.2778	1.1828
Danbury, CT		
Fairfield, CT		
New Haven, CT		
5523 New London-Norwich, CT	1.2345	1.1552
New London, CT		
5560 *New Orleans, LA	0.9434	0.9609
Jefferson, LA		
Orleans, LA		
Plaquemines, LA		
St. Bernard, LA		
St. Charles, LA		
St. James, LA		
St. John The Baptist, LA		
St. Tammany, LA		
5600 *New York, NY	1.4041	1.2616
Bronx, NY		
Kings, NY		
New York, NY		
Putnam, NY		
Queens, NY		
Richmond, NY		
Rockland, NY		
Westchester, NY		
5640 *Newark, NJ	1.1057	1.0712
Essex, NJ		
Morris, NJ		
Sussex, NJ		
Union, NJ		
Warren, NJ		
5660 Newburgh, NY–PA	1.0829	1.0561
Orange, NY		
Pike, PA		
5720 *Norfolk-Virginia Beach-Newport News, VA–NC	0.8326	0.8821
Currituck, NC		
Chesapeake City, VA		
Gloucester, VA		
Hampton City, VA		
Isle of Wight, VA		
James City, VA		
Mathews, VA		
Newport News City, VA		
Norfolk City, VA		
Poquoson City, VA		
Portsmouth City, VA		
Suffolk City, VA		
Virginia Beach City, VA		
Williamsburg City, VA		
York, VA		
5775 *Oakland, CA	1.5113	1.3268
Alameda, CA		
Contra Costa, CA		
5790 Ocala, FL	0.8929	0.9303
Marion, FL		
5800 Odessa-Midland, TX	0.8552	0.8984
Ector, TX		
Midland, TX		
5880 *Oklahoma City, OK	0.8463	0.8826
Canadian, OK		
Cleveland, OK		
Logan, OK		
McClain, OK		
Oklahoma, OK		
Pottawatomie, OK		
5910 Olympia, WA	1.0713	1.0483
Thurston, WA		
5920 Omaha, NE–IA	0.9425	0.9600
Pottawattamie, IA		
Cass, NE		
Douglas, NE		
Sarpy, NE		
Washington, NE		
5945 *Orange County, CA	1.1929	1.1284
Orange, CA		
5960 *Orlando, FL	0.9491	0.9649
Lake, FL		
Orange, FL		
Osceola, FL		
Seminole, FL		
5990 Owensboro, KY	0.7578	0.8270
Daviess, KY		

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
6015 Panama City, FL ..... Bay, FL	0.8080	0.8642
6020 Parkersburg-Marietta, WV–OH ..... Washington, OH Wood, WV	0.7895	0.8506
6080 Pensacola, FL ..... Escambia, FL Santa Rosa, FL	0.8212	0.8738
6120 Peoria-Pekin, IL ..... Peoria, IL Tazewell, IL Woodford, IL	0.8923	0.9249
6160 *Philadelphia, PA–NJ ..... Burlington, NJ Camden, NJ Gloucester, NJ Salem, NJ Bucks, PA Chester, PA Delaware, PA Montgomery, PA Philadelphia, PA	1.1197	1.0805
6200 *Phoenix-Mesa, AZ ..... Maricopa, AZ Pinal, AZ	0.9832	0.9885
6240 Pine Bluff, AR ..... Jefferson, AR	0.7904	0.8512
6280 *Pittsburgh, PA ..... Allegheny, PA Beaver, PA Butler, PA Fayette, PA Washington, PA Westmoreland, PA	0.9726	0.9812
6323 Pittsfield, MA ..... Berkshire, MA	1.0570	1.0387
6360 Ponce, PR ..... Guayanilla, PR Juana Diaz, PR Penuelas, PR Ponce, PR Villalba, PR Yauco, PR	0.4500	0.5788
6403 Portland, ME ..... Cumberland, ME Sagadahoc, ME York, ME	0.9615	0.9735
6440 *Portland-Vancouver, OR–WA ..... Clackamas, OR Columbia, OR Multnomah, OR Washington, OR Yamhill, OR Clark, WA	1.1267	1.0851
6483 Providence-Warwick-Pawtucket, RI ..... Bristol, RI Kent, RI Newport, RI Providence, RI Washington, RI	1.1116	1.0751
6520 Provo-Orem, UT ..... Utah, UT	1.0139	1.0095
6560 Pueblo, CO ..... Pueblo, CO	0.8302	0.8804
6580 Punta Gorda, FL ..... Charlotte, FL	0.8284	0.8790
6600 Racine, WI ..... Racine, WI	0.8855	0.9201
6640 Raleigh-Durham-Chapel Hill, NC ..... Chatham, NC Durham, NC Franklin, NC Johnston, NC Orange, NC Wake, NC	0.9740	0.9821
6660 Rapid City, SD ..... Pennington, SD	0.8493	0.8942
6680 Reading, PA ..... Berks, PA	0.9467	0.9632
6690 Redding, CA ..... Shasta, CA	1.1631	1.1090
6720 Reno, NV ..... Washoe, NV	1.1043	1.0703
6740 Richland-Kennewick-Pasco, WA ..... Benton, WA Franklin, WA	0.9993	0.9955
6760 Richmond-Petersburg, VA ..... Charles City County, VA Chesterfield, VA Colonial Heights City, VA Dinwiddie, VA Goochland, VA Hanover, VA Henrico, VA Hopewell City, VA New Kent, VA Petersburg City, VA Powhatan, VA Prince George, VA Richmond City, VA	0.9189	0.9437
6780 *Riverside-San Bernardino, CA ..... Riverside, CA San Bernardino, CA	1.1251	1.0841
6800 Roanoke, VA ..... Botetourt, VA Roanoke, VA Roanoke City, VA Salem City, VA	0.8721	0.9105
6820 Rochester, MN ..... Olmsted, MN	1.0452	1.0307
6840 *Rochester, NY ..... Genesee, NY Livingston, NY Monroe, NY Ontario, NY Orleans, NY Wayne, NY	0.9611	0.9732
6880 Rockford, IL ..... Boone, IL Ogle, IL Winnebago, IL	0.9015	0.9315
6895 Rocky Mount, NC ..... Edgecombe, NC Nash, NC	0.8951	0.9269
6920 *Sacramento, CA ..... El Dorado, CA Placer, CA Sacramento, CA	1.2382	1.1576
6960 Saginaw-Bay City-Midland, MI ..... Bay, MI Midland, MI Saginaw, MI	0.9605	0.9725
6980 St. Cloud, MN ..... Benton, MN Stearns, MN	0.9478	0.9640
7000 St. Joseph, MO ..... Andrews, MO Buchanan, MO	0.8570	0.8997
7040 *St. Louis, MO–IL ..... Clinton, IL Jersey, IL Madison, IL Monroe, IL St. Clair, IL Franklin, MO Jefferson, MO Lincoln, MO St. Charles, MO St. Louis, MO St. Louis City, MO Warren, MO	0.8926	0.9251
7080 Salem, OR ..... Marion, OR Polk, OR	0.9749	0.9827
7120 Salinas, CA ..... Monterey, CA	1.3835	1.2489
7160 *Salt Lake City-Ogden, UT ..... Davis, UT Salt Lake, UT Weber, UT	0.9677	0.9778
7200 San Angelo, TX ..... Tom Green, TX	0.7594	0.8282

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
7240 *San Antonio, TX ..... Bexar, TX Comal, TX Guadalupe, TX Wilson, TX	0.8365	0.8849
7320 *San Diego, CA ..... San Diego, CA	1.2183	1.1448
7360 *San Francisco, CA ..... Marin, CA San Francisco, CA San Mateo, CA	1.4210	1.2720
7400 *San Jose, CA ..... Santa Clara, CA	1.4435	1.2858
7440 *San Juan-Bayamon, PR ..... Aguas Buenas, PR Barceloneta, PR Bayamon, PR Canovanas, PR Carolina, PR Catano, PR Ceiba, PR Comerio, PR Corozal, PR Dorado, PR Fajardo, PR Florida, PR Guaynabo, PR Humacao, PR Juncos, PR Los Piedras, PR Loiza, PR Luguillo, PR Manati, PR Morovis, PR Naguabo, PR Naranjito, PR Rio Grande, PR San Juan, PR Toa Alta, PR Toa Baja, PR Trujillo Alto, PR Vega Alta, PR Vega Baja, PR Yabucoa, PR	0.4616	0.5890
7460 San Luis Obispo-Atascadero-Paso Robles, CA ..... San Luis Obispo, CA	1.1587	1.1061
7480 Santa Barbara-Santa Maria-Lompoc, CA ..... Santa Barbara, CA	1.1267	1.0851
7485 Santa Cruz-Watsonville, CA ..... Santa Cruz, CA	1.3551	1.2313
7490 Santa Fe, NM ..... Los Alamos, NM Santa Fe, NM	1.0847	1.0573
7500 Santa Rosa, CA ..... Sonoma, CA	1.2558	1.1688
7510 Sarasota-Bradenton, FL ..... Manatee, FL Sarasota, FL	0.9770	0.9842
7520 Savannah, GA ..... Bryan, GA Chatham, GA Effingham, GA	1.0089	1.0061
7560 Scranton—Wilkes-Barre—Hazleton, PA ..... Columbia, PA Lackawanna, PA Luzerne, PA Wyoming, PA	0.8767	0.9138
7600 *Seattle-Bellevue-Everett, WA ..... Island, WA King, WA Snohomish, WA	1.1410	1.0945
7610 Sharon, PA ..... Mercer, PA	0.8764	0.9136
7620 Sheboygan, WI ..... Sheboygan, WI	0.7782	0.8422
7640 Sherman-Denison, TX ..... Grayson, TX	0.8650	0.9055
7680 Shreveport-Bossier City, LA ..... Bossier, LA Caddo, LA Webster, LA	0.9379	0.9570
7720 Sioux City, IA-NE ..... Woodbury, IA Dakota, NE 7760	0.8331	0.8825
7760 Sioux Falls, SD ..... Lincoln, SD Minnehaha, SD	0.8606	0.9023
7800 South Bend, IN ..... St. Joseph, IN	0.9957	0.9971
7840 Spokane, WA ..... Spokane, WA	1.0548	1.0372
7880 Springfield, IL ..... Menard, IL Sangamon, IL	0.8783	0.9150
7920 Springfield, MO ..... Christian, MO Greene, MO Webster, MO	0.7840	0.8465
8003 Springfield, MA ..... Hampden, MA Hampshire, MA	1.0609	1.0413
8050 State College, PA ..... Centre, PA	0.8875	0.9215
8080 Steubenville-Weirton, OH–WV ..... Jefferson, OH Brooke, WV Hancock, WV	0.8244	0.8761
8120 Stockton-Lodi, CA ..... San Joaquin, CA	1.1417	1.0950
8140 Sumter, SC ..... Sumter, SC	0.7716	0.8373
8160 Syracuse, NY ..... Cayuga, NY Madison, NY Onondaga, NY Oswego, NY	0.9406	0.9589
8200 Tacoma, WA ..... Pierce, WA	1.0891	1.0602
8240 Tallahassee, FL ..... Gadsden, FL Leon, FL	0.8332	0.8825
8280 *Tampa-St. Petersburg-Clearwater, FL ..... Hernando, FL Hillsborough, FL Pasco, FL Pinellas, FL	0.9322	0.9531
8320 Terre Haute, IN ..... Clay, IN Vermillion, IN Vigo, IN	0.8611	0.9027
8360 Texarkana, AR-Texarkana, TX ..... Miller, AR Bowie, TX	0.8484	0.8935
8400 Toledo, OH ..... Fulton, OH Lucas, OH Wood, OH	1.0383	1.0261
8440 Topeka, KS ..... Shawnee, KS	1.0108	1.0074
8480 Trenton, NJ ..... Mercer, NJ	1.0572	1.0388
8520 Tucson, AZ ..... Pima, AZ	0.9050	0.9339
8560 Tulsa, OK ..... Creek, OK Osage, OK Rogers, OK Tulsa, OK Wagoner, OK	0.8113	0.8666
8600 Tuscaloosa, AL ..... Tuscaloosa, AL	0.7723	0.8378
8640 Tyler, TX ..... Smith, TX	1.0158	1.0108
8680 Utica-Rome, NY ..... Herkimer, NY Oneida, NY	0.8421	0.8890
8720 Vallejo-Fairfield-Napa, CA ..... Napa, CA Solano, CA	1.3483	1.2271

TABLE 4a.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
8735 Ventura, CA Ventura, CA	1.1169	1.0786
8750 Victoria, TX Victoria, TX	0.8478	0.8931
8760 Vineland-Millville-Bridgeton, NJ Cumberland, NJ	1.0015	1.0010
8780 Visalia-Tulare-Porterville, CA Tulare, CA	1.0174	1.0119
8800 Waco, TX McLennan, TX	0.7789	0.8427
8840 *Washington, DC–MD–VA–WV District of Columbia, DC Calvert, MD Charles, MD Frederick, MD Montgomery, MD Prince Georges, MD Alexandria City, VA Arlington, VA Clarke, VA Culpepper, VA Fairfax, VA Fairfax City, VA Falls Church City, VA Fauquier, VA Fredericksburg City, VA King George, VA Loudoun, VA Manassas City, VA Manassas Park City, VA Prince William, VA Spotsylvania, VA Stafford, VA Warren, VA Berkeley, WV Jefferson, WV	1.0842	1.0569
8920 Waterloo-Cedar Falls, IA Black Hawk, IA	0.8724	0.9108
8940 Wausau, WI Marathon, WI	1.0347	1.0236
8960 West Palm Beach-Boca Raton, FL Palm Beach, FL	1.0016	1.0011
9000 Wheeling, OH–WV Belmont, OH Marshall, WV Ohio, WV	0.7580	0.8272
9040 Wichita, KS Butler, KS Harvey, KS Sedgwick, KS	0.9447	0.9618
9080 Wichita Falls, TX	0.6070	0.8634
Archer, TX Wichita, TX		
9140 Williamsport, PA Lycoming, PA	0.8487	0.8937
9160 Wilmington-Newark, DE–MD New Castle, DE Cecil, MD	1.1341	1.0900
9200 Wilmington, NC New Hanover, NC Brunswick, NC	0.9072	0.9355
9260 Yakima, WA Yakima, WA	1.0049	1.0034
9270 Yolo, CA Yolo, CA	1.1470	1.0985
9280 York, PA York, PA	0.9124	0.9391
9320 Youngstown-Warren, OH Columbiana, OH Mahoning, OH Trumbull, OH	0.9764	0.9838
9340 Yuba City, CA Sutter, CA Yuba, CA	1.0437	1.0297
9360 Yuma, AZ Yuma, AZ	0.9518	0.9667

*Large Urban Area

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS—Continued

Nonurban Area	Wage index	GAF
Massachusetts	1.0794	1.0537
Michigan	0.8837	0.9168
Minnesota	0.8161	0.8701
Mississippi	0.6808	0.7685
Missouri	0.7249	0.8023
Montana	0.8137	0.8683
Nebraska	0.7245	0.8020
Nevada	0.8795	0.9158
New Hampshire	0.9776	0.9846
New Jersey[1]		
New Mexico	0.7873	0.8489
New York	0.8565	0.8994
North Carolina	0.7945	0.8542
North Dakota	0.7370	0.8114
Ohio	0.8349	0.8638
Oklahoma	0.6963	0.7805
Oregon	0.9715	0.9804
Pennsylvania	0.8480	0.8932
Puerto Rico	0.4182	0.5505
Rhode Island[1]		
South Carolina	0.7679	0.8345
South Dakota	0.7085	0.7898
Tennessee	0.7372	0.8116
Texas	0.7430	0.8159
Utah	0.8954	0.9200
Vermont	0.8941	0.9262
Virginia	0.7760	0.8406
Washington	0.9956	0.9970
West Virginia	0.7943	0.8541
Wisconsin	0.8449	0.8910
Wyoming	0.8202	0.8731

[1] All counties within the State are classified urban.

4. On pages 27527 to 27528, Table 4b—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas is corrected by replacing the table with the following table:

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

Nonurban Area	Wage index	GAF
Alabama	0.7160	0.7955
Alaska	1.2472	1.1833
Arizona	0.7946	0.8543
Arkansas	0.7000	0.7833
California	0.9991	0.9994
Colorado	0.8156	0.8597
Connecticut	1.2788	1.1834
Delaware	0.9464	0.9630
Florida	0.8677	0.9074
Georgia	0.7659	0.8331
Hawaii	1.0268	1.0183
Idaho	0.8356	0.8843
Illinois	0.7567	0.8262
Indiana	0.8119	0.8670
Iowa	0.7394	0.8102
Kansas	0.7113	0.7919
Kentucky	0.7772	0.8415
Louisiana	0.7284	0.8049
Maine	0.8335	0.8827
Maryland	0.8446	0.8908

5. On page 27544, top of the page, the title of table 6c is corrected to read as follows: "TABLE 6C—INVALID DIAGNOSIS CODES."

6. On page 27590, column two, between the end of the fifth paragraph and the beginning of the letter to The Honorable Albert Gore, Jr., the following text should be inserted: "Appendix D: Report to Congress on the Update Factor for Prospective Payment Hospitals and Hospitals Excluded from the Prospective Payment System."

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 24, 1996.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resource Management.

[FR Doc. 96–16568 Filed 6–28–96; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

Proposed Collection, Comment Request; "Alcoholism Prevalence and Gene/Environment Interactions in Native America Tribes (a 10 Tribe Study)" and "A Native American Tribe With Low Alcoholism Prevalence: Transmission Analysis, Linkage Analysis and Gene/Environment Interactions (a 1 Tribe Study)"

SUMMARY: In compliance with Section 3506 (c) (2) (A) of the Paperwork Reduction Act of 1995, which provides for an opportunity for public comment on proposed data collection projects, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: The Laboratory of Neurogenetics (LN), Division of Intramural Clinical and Biological Research, NIAAA, intends to conduct the study for "Alcoholism Prevalence and Gene/Environment Interactions in Native American Tribes (a 10 tribe study)" and "A Native American Tribe with Low Alcoholism Prevalence: Transmission Analysis, Linkage and Gene/Environment Intersactions (a 1 tribe study)."

The LN is authorized by Section 452 of Part G of Title IV of the Public Health Service Act (42 USC 288) as amended by the NIH Revitalization Act of 1993 (Pub. Law 103–43). The information proposed for collection in both studies will be used by the NIAAA to define the prevalence in alcoholism and associated problems in tribes in which the rates of alcoholism have been reported to be widely divergent. Additional information will be collected on severe trauma and stress, alcohol availability and socioeconomic factors to identify how these variables interact with hereditary factors in the development of alcoholis and related problems. In the single tribe study, a large pedigree (or a few large pedigrees) will be constructed in order to address issues of transmission of alcoholism vulnerability, linkage to chromosomally mapped DNA markers, and the issues of mutations in candidate genes.

The annual burden estimates are as follows:

Type and number of respondents	Responses per respondent	Total responses	Hours	Total hours
Clients 3300	1	3300	6.0	19,800

Total Number of Respondents: 3,300 (1,100 per year)

Total Number of Responses: 3,300 (1,100 per year)

Total Hours: 19,800 (6,600 per year)

REQUEST FOR COMMENTS: Comments are invited on: (a) whether the proposed collection is necessary, including whether the information has practical use; (b) ways to enhance the clarity, quality, and use of the information to be collected; (c) the accuracy of the agency estimate of burden of the proposed collection; and (d) ways to minimize the collection burden of the respondents. Send written comments to Ms. Ronni Nelson, Laboratory of Neurogenetics, Division of Intramural Clinical and Biological Research, NIAAA, NIH, DANAC4 (Flow Labs), 12501 Washington Ave., Rockville, Maryland 20852.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans, contact Ms. Ronni Nelson, Laboratory of Neurogenetics, Division of Intramural Clinical and Biological Research, NIAAA, DANAC4 (Flow Labs), 12501 Washington Ave., Rockville, Maryland 20852, or call non-toll-free number (301) 443–5781.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before August 30, 1996.

Dated: June 20, 1996.

Martin K. Trustry,

Executive Officer, NIAAA.

[FR Doc. 96–16720 Filed 6–28–96; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Eye Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Institutional National Research Service Awards.

Date: July 19, 1996.

Time: 9:00 a.m.

Place: National Eye Institute, Executive Plaza South, Suite 350, 6120 Executive Blvd., Bethesda, MD 20892–7164.

Contact Person: Andrew P. Mariani, Ph.D., Executive Plaza South, Suite 350, 6120 Executive Blvd., Bethesda, MD 20892–7164, (301) 496–5561.

Purpose/Agenda: Review of Grant Applications.

The meeting will be closed in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research: National Institutes of Health.)

Dated: June 24, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–16715 Filed 6–28–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: Modeling DNA Diversity in Cardiovascular Health/Disease.

Date: July 22–23, 1996.

Time: 7:30 p.m.

Place: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland.

Contact Person: Anthony M. Coelho, Jr., Ph.D., Rockledge II, Room 7182, 6701 Rockledge Drive, Bethesda, Maryland 20892–7924, (301) 435–0277.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Historically Black Colleges and Universities Research Scientist Award.

Date: August 5, 1996.

Time: 8:00 a.m.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Contact Person: Joyce A. Hunter, Ph.D., Rockledge II, Room 7192, 6701 Rockledge Drive, Bethesda, Maryland 20892–7924, (301) 435–0287.

Purpose/Agenda: To review and evaluate cooperative agreement grant applications.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: June 24, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–16717 Filed 6–28–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: Pathways—Full Scale Study (Telephone Conference Call).
Date: July 18, 1996.
Time: 10:00 a.m.
Place: Two Rockledge Center, 6701 Rockledge Drive, Rm. 7220, Bethesda, Maryland 20892.
Contact Person: C. James Scheirer, Ph.D., Two Rockledge Center, Room 7220, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0266.
Purpose/Agenda: To review and evaluate grant applications.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Regulation of Human Immunodeficiency Virus in the Lung.
Date: July 22–23, 1996.
Time: 8:00 a.m.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.
Contact Person: Deborah P. Beebe, Ph.D., Two Rockledge Center, Room 7206, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0303.
Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: June 24, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–16718 Filed 6–28–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Master Agreement for HIV Preclinical Vaccine Development Category B: Evaluation of AIDS Vaccines in Non-Human Primates (Telephone Conference Call).
Date: July 3, 1996.
Time: 12:00 p.m.
Place: Telephone Conference Call, 6003 Executive Blvd., Solar Bldg., Room 4C03, Bethesda, MD 20892–7610, (301) 402–4596.
Contact Person: Dr. Christopher E. Beisel, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C03, Bethesda, MD 20892–7610, (301) 402–4596.
Purpose/Agenda: To evaluate contract proposals.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: June 24, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–16719 Filed 6–28–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Clinical Sciences.
Date: July 10, 1996.
Time: 3:00 p.m.
Place: NIH, Rockledge 2, Room 4126, Telephone Conference.
Contact Person: Dr. Jerrold Fried, Scientific Review Administrator, 6701 Rockledge Drive, Room 4126, Bethesda, Maryland 20892, (301) 435–1777.

Name of SEP: Biological and Physiological Sciences.
Date: July 15, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 5122, Telephone Conference.
Contact Person: Dr. Michael Lang, Scientific Review Administrator, 6701 Rockledge Drive, Room 5122, Bethesda, Maryland 20892, (301) 435–1265.

Name of SEP: Biological and Physiological Sciences.
Date: July 16, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 5122, Telephone Conference.
Contact Person: Dr. Michael Lang, Scientific Review Administrator, 6701 Rockledge Drive, Room 5122, Bethesda, Maryland 20892, (301) 435–1265.

Name of SEP: Biological and Physiological Sciences.
Date: July 17, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 5122, Telephone Conference.
Contact Person: Dr. Michael Lang, Scientific Review Administrator, 6701 Rockledge Drive, Room 5122, Bethesda, Maryland 20892, (301) 435–1265.

Name of SEP: Multidisciplinary Sciences.
Date: July 17, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 5208, Telephone Conference.
Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5208, Bethesda, Maryland 20892, (301) 435–1175.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Biological and Physiological Sciences.
Date: July 18, 1996.
Time: 9:00 a.m.
Place: One Washington Circle Hotel, Washington, DC.
Contact Person: Dr. Anita Sostek, Scientific Review Administrator, 6701 Rockledge Drive, Room 5202, Bethesda, Maryland 20892, (301) 435–1260.

Name of SEP: Microbiological and Immunological Sciences.
Date: July 23, 1996.
Time: 10:00 a.m.
Place: NIH, Rockledge 2, Room 4180, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Microbiological and Immunological Sciences.
Date: July 23, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4180, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Biological and Physiological Sciences.
Date: July 24, 1996.
Time: 3:00 p.m.
Place: NIH, Rockledge 2, Room 5196, Telephone Conference.
Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435–1257.

Name of SEP: Microbiological and Immunological Sciences.
Date: July 24, 1996.
Time: 10:00 a.m.
Place: NIH, Rockledge 2, Room 4180, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Microbiological and Immunological Sciences.
Date: July 24, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4180, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Microbiological and Immunological Sciences.
Date: July 25, 1996.
Time: 10:00 a.m.
Place: NIH, Rockledge 2, Room 4180, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435–1147.

Name of SEP: Microbiological and Immunological Sciences.
Date: July 25, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4180, Telephone Conference.
Contact Person: Dr. Tim Henry, Scientific Review Administrator, 6701 Rockledge Drive, Room 4180, Bethesda, Maryland 20892, (301) 435–1147.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Biological and Physiological Sciences.
Date: July 18–19, 1996.
Time: 11:00 a.m.
Place: One Washington Circle Hotel, Washington, DC.
Contact Person: Dr. Anita Sostek, Scientific Review Administrator, 6701 Rockledge Drive, Room 5202, Bethesda, Maryland 20892, (301) 435–1260.

Name of SEP: Microbiological and Immunological Sciences.
Date: July 24–26, 1996.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Martin Slater, Scientific Review Administrator, 6701 Rockledge Drive, Room 4184, Bethesda, Maryland 20892, (301) 435–1149.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 24, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–16714 Filed 6–28–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Biological and Physiological Sciences.
Date: July 19, 1996.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5196, Telephone Conference.
Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435–1257.

Name of SEP: Biological and Physiological Sciences.
Date: July 30, 1996.
Time: 11:30 a.m.
Place: NIH, Rockledge 2, Room 4150, Telephone Conference.
Contact Person: Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, Maryland 20892, (301) 435–1719.

Name of SEP: Biological and Physiological Sciences.
Date: July 31, 1996.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 4150, Telephone Conference.
Contact Person: Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, Maryland 20892, (301) 435–1719.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 24, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–16716 Filed 6–28–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3960–N–05]

Office of the Assistant Secretary for Policy Development and Research; Announcement of Funding Award for the Education Component of the Community Renaissance Fellows Program (CRFP)

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of the funding award for the education component of the Community Renaissance Fellows Program. This award will be used to develop and offer an education component as part of the Department's new Community Renaissance Fellows Program. Under this program, HUD will create fellowships to foster a cadre of community building professionals who apply the practical experience gained in working on public housing transformation projects and apply this knowledge to other complex neighborhood revitalization projects. The purpose of this document is to

announce the name and address of the awardee and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Marcia Marker Feld, Ph.D., Director, Office of University Partnerships, U.S. Department of Housing and Urban Development, room 8130, 451 Seventh Street, S.W., Washington, DC 20410, telephone (202) 708–3061. (This is not a toll free number.) A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: The Community Renaissance Fellows Program (CRFP) is authorized by the Department's FY 1995 Appropriation Act (Pub. L. 103–327, approved September 28, 1994). A notice published in the **Federal Register** on November 30, 1995 (60 FR 61634) announced the Department's funding of at least 20 Fellows to assist in distressed public housing developments undergoing conversion to mixed-income communities. The Fellows will be trained to become community building experts through on-the-job training with Public Housing Authorities or their private development partners, and through seminars. The curriculum of these seminars must be specially designed for the kinds of experiences the Fellows will have and the expertise they will need. In addition, the faculty and "best practices" professionals brought in to teach the seminars are expected to be on the "cutting edge" of their fields.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipient, as follows:

Award for the Development of the Education Component for the Community Renaissance Fellows Program

Professor Douglas Rae, Yale University, 71 Livingston, New Haven, CT 06511, (203) 432–9899, Amount: $657,458.

Dated: June 24, 1996.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research.

[FR Doc. 96–16713 Filed 6–28–96; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF THE INTERIOR

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Bureau of Indian Affairs.

ACTION: Notice.

SUMMARY: The Department of the Interior (Department) announces that an information collection request has been submitted to the Office of Management and Budget as required by the Paperwork Reduction Act of 1995. The information collection will be used by tribes to conduct background investigations of individuals whose duties and responsibilities allow them regular contact with or control over Indian children, and to process contracts, grants or compacts for award of funds as mandated by the Indian Child Protection and Family Violence Prevention Act (Act), Pub. L. 101–630, 25 U.S.C. 3201–3211. The Department invites comment on the information collection described below.

DATES: Interested persons are invited to submit comments on or before August 30, 1996.

FOR FURTHER INFORMATION CONTACT: Contact Bettie Rushing, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, Room 4629 Main Interior Building, Washington, DC 20240, or (202) 208–3463.

SUPPLEMENTARY INFORMATION:

1. Information Collection Request

The Department is seeking comments on the following Information Collection Request.

Type of review: New.

Title: (1) Background Investigations of Individuals Whose Duties and Responsibilities Allow Them Regular Contact With or Control Over Indian Children, 25 CFR § 63.15.

(2) Indian Child Protection and Family Violence Prevention Program Awards, 25 CFR § 63.33 and 25 CFR § 63.34.

Effected Entities: Tribal Governments; Tribal Organizations.

Abstract: The Bureau of Indian Affairs (BIA) is establishing regulations as mandated by the Indian Child Protection and Family Violence Prevention Act. The regulations prescribe minimum standards of character and suitability for employment of individuals whose duties and responsibilities allow them regular contact with or control over Indian children as required by Title IV, Section 408 of the Act, 25 U.S.C. 3207, and establish the method for distribution of funds to support tribally operated programs to protect Indian children and reduce the incidents of family violence in Indian country as authorized by Title IV, Section 411 of the Act, 25 U.S.C. 3210(f)(3).

The Bureau of Indian Affairs developed the regulations in consultation with tribes. A working group of tribal and BIA representatives developed a draft of each section that was then presented to participants at a national tribal consultation meeting in Oklahoma City, Oklahoma, August 31 through September 1, 1994. The Notice of Proposed Rulemaking was published in the **Federal Register** on September 1, 1995.

Background Investigations of Individuals Whose Duties and Responsibilities Allow Them Regular Contact With or Control Over Indian Children. Indian tribes and tribal organizations receiving funds under the authority of the Indian Self-Determination and Education Assistance Act or the Tribally Controlled Schools Act of 1988 must conduct a background investigation for individuals whose duties and responsibilities would allow them regular contact with or control over Indian children, and employ only individuals who meet standards of character that are no less stringent than those prescribed for the Bureau of Indian Affairs. Indian tribes and tribal organizations may conduct their own background investigations, contract with private firms, or request the Office of Personnel Management to conduct an investigation. Third party notification or public disclosure is associated with this collection.

Indian Child Protection and Family Violence Prevention Program Awards. The Bureau of Indian Affairs will use the application for funding to determine applicant eligibility, scope of service population, safeguard Federal funds and other resources, and administer and evaluate programs. Tribal governments or tribal organizations provide the information by submitting Indian Self-determination and Education Assistance Act, Pub. L. 93–638, as amended, 25 U.S.C. § 450 *et seq.*, contract, compact, or grant proposals to the Bureau of Indian Affairs. No third party notification or public disclosure burden is associated with this collection.

In addition to the Indian Self-Determination and Education Assistance Act requirements, each applicant must provide the name and address of the agency or official to be responsible for the investigation of reported cases of child abuse and child neglect, the treatment and prevention of incidents of family violence, and the provision of immediate shelter and related assistance for victims of family violence and their dependents; the projected service population of the program; the projected service area of the program; and the projected number of cases per month.

Funds will be distributed, subject to the availability of appropriations. In any fiscal year that the appropriation exceeds 50 percent of the level of funding authorized by the Act, 49 percent must be distributed equally to all tribes and tribal organizations and 49 percent must be distributed on a per capita basis according to the population of children residing in the service area. Two percent of the annual appropriation will be set aside for distribution to tribes demonstrating special circumstances. Special circumstances include but are not limited to a high incidence of child sexual abuse, a high incidence of violent crimes, a high incidence of violent crimes against women, or the existence of a significant victim population within the community.

Any tribe not wishing to receive Indian child protection and family violence prevention funds must inform its respective area office in writing within 90 days after receiving notice of the allocation from the area office. Each area office may reallocate unused Indian child protection and family violence prevention program funds as provided in this section.

Burden Statement: Section 63.15 Background Investigations, as mandated by statute, require an average 40 hours per employee, with an estimated employee base of 10,000, a total burden of 400,000 hours. Funding information is to be collected annually from each applicant. It is anticipated that the number of third party collection (background investigations) will be less in subsequent years.

Sections 63.33 and 63.34 Funding Applications require an annual reporting and record keeping burden of 30 hours for each response for 554 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and review collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 16,620 hours, which is in addition to the background investigation burden.

CFR section	Number of respondents	Third party collection	Frequency of response	Total annual responses	Burden hours per response	Annual burden hours	Cost to respondents
63.15	554	10,000	1	10,000	40	400,000	$8,000,000
63.33	554	0	1	554	20	11,080	221,600
63.34	554	0	1	554	10	5,540	110,800

The Bureau of Indian Affairs will not conduct or require tribes and tribal organizations to respond to a collection of information until 25 CFR 63.4, Information Collection, references a currently valid Office of Management and Budget control number.

2. Request for Comments

The Department solicits comments to:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(b) Evaluate the accuracy of the agencies' estimates of burden of the proposed collection of information, including the methodology and assumptions used.

(c) Enhance the quality, utility, and clarity of the information to be collected.

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Tribes, organizations and individuals desiring to submit comments on the information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10202, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for the U.S. Department of the Interior.

Dated: June 17, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–16671 Filed 6–28–96; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Indian Affairs

The Confederated Tribes of the Grand Ronde; Community of Oregon Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that the Confederated Tribes of the Grand Ronde Community of Oregon Liquor Ordinance was duly adopted by Resolution No. 022–96 of the Confederated Tribes of the Grand Ronde Community of Oregon on April 10, 1996. The Ordinance provides for the regulation, sale, possession and use of alcoholic liquor on the Grand Ronde Reservation and other lands subject to Tribal jurisdiction.

DATES: This Ordinance is effective as of July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street, N.W., MS 4603 MIB, Washington, D.C. 20240–4001; telephone (202) 208–4401.

SUPPLEMENTARY INFORMATION: The Confederated Tribes of the Grand Ronde Community of Oregon Liquor Ordinance is to read as follows:

(a) Authority and Purpose

(1) The authority for the Ordinance and its adoption by Tribal Council is found in the Tribal Constitution under Article III, Section 1, and in the Act of August 15, 1953, Public Law 83–277, 18 U.S.C. § 1161.

(2) This Ordinance is for the purpose of regulating the sale, possession and use of alcoholic liquor on the Grand Ronde Reservation and other lands subject to Tribal jurisdiction.

(b) Definitions

To the extent that definitions are consistent with tribal or federal law, terms used herein shall have the same meaning as defined in Oregon Revised Statutes Chapter 471, and in Oregon Administrative Rules Chapter 845.

(1) "Alcoholic liquor" shall mean any alcoholic beverage containing more than one-half of one percent alcohol by volume, and every liquid or solid, patented or not, containing alcohol and capable of being consumed by a human being.

(2) "Grand Ronde Reservation" shall mean all lands held in trust by the United States for the Tribe or its members and all lands owned by the Tribe, wherever located.

(3) Whenever the words "sell" or "to sell" refer to anything forbidden by this Chapter and related to alcoholic liquor, they include:

(A) To solicit or receive an order.

(B) To keep or expose for sale.

(C) To deliver for value or in any way other than purely gratuitously.

(D) To peddle.

(E) To keep with intent to sell.

(F) To traffic in.

(G) For any consideration, promise or obtained directly or indirectly under any pretext or by any means or procure or allow to be procured for any other person.

(4) The word "sale" includes every act of selling as defined in subsection 2 of this section.

(c) Prohibited Activity

(1) It shall be unlawful for any person to sell, trade or manufacture any alcoholic liquor on the Grand Ronde Reservation except as provided for in this Ordinance.

(2) It shall be unlawful for any business establishment or person on the Grand Ronde Reservation to possess, transport or keep with intent to sell, barter or trade to another, any liquor, except for those commercial liquor establishments on the Grand Ronde Reservation licensed by the Tribe, provided, however, that a person may transport liquor from a licensed establishment consistent with the terms of the license.

(3) It shall be unlawful for any person to consume alcoholic liquor on a public highway.

(4) It shall be unlawful for any person to publicly consume any alcoholic liquor at any community function, or at or near any place of business, Indian celebration grounds, recreational areas, including ballparks, and public camping areas, the Tribal Headquarters area and any other area where minors gather for meetings or recreation, except within a tribally licensed establishment where alcohol is sold.

(5) It shall be unlawful for any person under the age of 21 years to buy, attempt to buy or to misrepresent their age in attempting to buy, alcoholic liquor. It shall be unlawful for any person under the age of 21 years to transport, possess or consume any alcoholic liquor on the Grand Ronde Reservation, or to be under the influence of alcohol or to be at an established commercial liquor establishment, except as authorized under Section (e) of this Ordinance . No person shall sell or furnish alcoholic liquor to any minor.

(6) Alcoholic liquor may not be given as a prize, premium or consideration for a lottery, contest, game of chance or skill, or competition of any kind.

(d) Procedure for License

(1) Any request for a license under this Ordinance must be presented to the Tribal Council at least 30 days prior to the requested effective date. Tribal Council shall set license conditions at least as strict as those required by federal law, including at a minimum:

(A) Liquor may only be served and handled in a manner no less strict than allowed under Oregon Revised Statutes Chapter 471.

(B) Liquor may only be served by staff of the licensee; and

(C) Liquor may only be served in rooms where gambling is not taking place.

(2) Council action on a license request must be taken at a regular or special meeting. Unless the request is for a special event license, the Council shall give at least 14 days notice of the meeting at which the request will be considered. Notice shall be posted at the Tribal Council offices and at the establishment requesting the license, and will be sent by Certified Mail to the Oregon Liquor Control Commission.

(e) Sale or Service of Liquor by Licensee's Minor Employees

(1) The holder of a license issued under this Ordinance or Oregon Revised Statutes Chapter 472 may employ persons 18, 19 and 20 years of age who may take orders for, serve and sell alcoholic liquor in any part of the licensed premises when that activity is incidental to the serving of food except in those areas classified by the Oregon Liquor Control Commission as being prohibited to the use of minors. However, no person who is 18, 19 or 20 years of age shall be permitted to mix, pour or draw alcoholic liquor except when pouring is done as a service to the patron at the patron's table or drawing is done in a portion of the premises not prohibited to minors.

(2) Except as stated in this section, it shall be unlawful to hire any person to work in connection with the sale and service of alcoholic beverages in a tribally licensed liquor establishment if such person is under the age of 21 years.

(f) Warning Signs Required

(1) Any person in possession of a valid retail liquor license, who sells liquor by the drink for consumption on the premises or sells for consumption off the premises, shall post a sign informing the public of the effects and risks of alcohol consumption during pregnancy.

(2) The sign shall:

(A) Contain the message: "Pregnancy and alcohol do not mix. Drinking alcoholic beverages, including wine, coolers and beer, during pregnancy can cause birth defects."

(B) Be either:

(i) A large sign, no smaller than eight and one-half inches by 11 inches in size with lettering no smaller than five-eighths of an inch in height; or

(ii) A reduced sign, five by seven inches in size with lettering of the same proportion as the large sign described in paragraph (a) of this subsection.

(C) Contain a graphic depiction of the message to assist nonreaders in understanding the message. The depiction of a pregnant female shall be universal and shall not reflect a specific race or culture.

(D) Be in English unless a significant number of the patrons of the retail premises use a language other than English as a primary language. In such cases, the sign shall be worded both in English and the primary language or languages of the patrons.

(E) Be displayed on the premises of all licensed retail liquor premises as either a large sign at the point of entry, or a reduced sized sign at points of sale.

(3) The person described in subsection (1) of this section shall also post signs of any size at places where alcoholic beverages are displayed.

(g) Civil Penalty

(1) Any person who violates the provisions of this Ordinance is deemed to have consented to the jurisdiction of the Tribal Court and may be subject to a civil penalty in Tribal Court for a civil infraction. Such civil penalty shall not exceed the sum of $1,000 for each such infraction, provided, however, that the penalty shall not exceed $5,000 if it involves minors.

(2) The procedures governing the adjudication in Tribal Court of such civil infractions shall be those set out in the Trial Court rules.

(3) The Tribal Council hereby specifically finds that such civil penalties are reasonably necessary and are related to the expense of governmental administration necessary in maintaining law and order and public safety on the Reservation and in managing, protecting and developing the natural resources on the Reservation. It is the legislative intent of the Tribal Council that all violations of this Chapter, whether committed by tribal members, non-member Indians, or non-Indians, be considered civil in nature rather than criminal.

(h) Severability

(1) If a court of competent jurisdiction finds any provision of this Ordinance to be invalid or illegal under applicable Federal or Tribal law, such provision shall be severed from this Ordinance and the remainder of this Ordinance shall remain in full force and effect.

(i) Consistency With State Law

(1) The Confederated Tribes of Grand Ronde agrees to perform in the same manner as any other Oregon business entity for the purpose of liquor licensing and regulations, including but not limited to licensing, compliance with the regulations of the Oregon Liquor Control Commission, maintenance of liquor liability insurance, as more specifically set forth in a certain "Memorandum of Understanding Governing Liquor Licensing and Regulation," negotiated under the approved terms of the Tribal/State Compact for the regulation of Class III gaming, entered into between The Confederated Tribes of Grand Ronde and the State of Oregon, which is incorporated as if specifically set forth herein, as it may be amended from time to time.

(j) Effective Date

(1) This Ordinance shall be effective upon publication in the **Federal Register** after approval by the Secretary of the Interior or his designee.

Dated: June 25, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–16635 Filed 6–28–96; 8:45 am]

BILLING CODE 4310–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–378]

Certain Asian-Style Kamaboko Fish Cakes; Notice of Commission Determinations Not To Review Two Initial Determinations Finding a Violation of Section 337 and Two Respondents in Default, and of the Schedule for Filing Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review two initial determinations (IDs) issued in Order No. 15 on May 21, 1996, by the presiding administrative law judge (ALJ) in the above-captioned investigation. The first found a violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain Asian-style kamaboko fish cakes and the second found two respondents in default.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3116. Copies of the nonconfidential versions of the IDs and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 12, 1995, based on a complaint filed by Yamasa Enterprises of Los Angles, California. 60 *Fed Reg.* 48722. The following six firms were names as respondents: Yamasa Kamaboko Co., Ltd. (YKCL); Alpha Oriental Foods, Inc. (Alpha); N.A. Sales, Inc.; New Japan Food Corp.; Rhee Brothers, Inc.; and Rokko Trading Co., Inc. Respondents N.A. Sales and Rokko Trading Co. were subsequently terminated from the investigation on the basis of a settlement agreement. Respondent Alpha is believed to have gone out of business.

On May 21, 1996, the presiding ALJ issued Order No. 15 which included two IDs. In one ID the ALJ granted complainant's motion for summary determination on each substantive issue in the investigation. In the other ID the ALJ granted complainant's motion that respondents New Japan Food Corp. and Rhee Brothers be found in default. Respondent YKCL filed a petition for review of the IDs, and complainant and the Commission investigative attorney filed oppositions to YKCL's petition. On June 6, 1996, the ALJ also issued a recommended determination on the issues of remedy and bonding.

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents New Japan Food Corp. and Rhee Brothers being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see the Commission Opinion, *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed, if remedial orders are issued.

WRITTEN SUBMISSIONS: The parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the June 6, 1996, recommended determination by the ALJ. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on July 15, 1996. Reply submissions must be filed no later than the close of

business on July 8, 1996. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and rules 210.42 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR §§ 210.42 and 210.50).

Issued: June 21, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–16613 Filed 6–28–96; 8:45 am]

BILLING CODE 7020–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, as Amended

Notice is hereby given that a proposed consent decree in the action entitled *United States* v. *A & N Cleaners & Launderers, Inc., et al.*, Civil Action No. 89–6865 (S.D.N.Y.), was lodged on June 20, 1996, with the United States District Court for the Southern District of New York. The proposed consent decree resolves the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, on behalf of the U.S. Environmental Protection Agency ("EPA") and the U.S. Department of the Interior ("DOI"), against the defendants—A & N Cleaners & Launderers, Inc.; Ben Forcucci; Marine Midland Bank, N.A.; Jordan W. Berkman; John A. Petrillo; Joseph Curto; and Mario Curot—for response costs incurred and to be incurred in connection with the Brewster Well Field Superfund Site ("Site") in Putnam County, New York, and for damages for injury to, destruction of, or loss of natural resources as a result of the release of hazardous substances at or from the Site. Under the proposed consent decree, the United States and its co-plaintiff the State of New York will receive $2.3 million from the defendants in reimbursement of response costs. The United States will also receive $20,000 from defendants as damages for injury to, or destruction or loss of, natural resources, to be spent only for natural resources restoration and reimbursement of assessment costs incurred by the natural resource trustees.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. In addition, since the United States is further providing defendants with a covenant not to sue under the Resources Conservation & Recovery Act, 42 U.S.C. 6901, *et seq*, the United States will also provide an opportunity for a public meeting in the affected area, if requested within the thirty (30) day public comment period. *See* 42 U.S.C. § 6973(d). Any comments and/or request for a public meeting should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *A & N Cleaners & Launderers, Inc., et al.*, Civil Action No. 89–6865, DOJ Ref. Number 90–11–2–311.

The proposed consent decree may be examined at the Office of the United States Attorney, 100 Church Street, 19th Floor, New York, New York 10007; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York 10278; and the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $9.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–16707 Filed 6–28–96; 8:45 am]

BILLING CODE 4410–01–M

Membership of the 1996 Senior Executive Service Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of Department of Justice's 1996 Senior Executive Service Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs is to provide fair and impartial review of SES performance appraisals and bonus recommendations. The PRBs will make recommendations to the Deputy Attorney General regarding the final performance ratings to be assigned and SES bonuses to be awarded.

FOR FURTHER INFORMATION CONTACT: Henry Romero, Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, D.C. 20530; (202) 514–6788.

Valerie M. Willis,

Executive Secretary, Senior Executive Resources Board.

Department of Justice, 1996 Senior Executive Service Performance Review Board Members

Antitrust Division

John F. Greaney, Chief, Computers and Finance Section
Mary Jean Moltenbrey, Chief, Civil Task Force

Civil Division

David J. Anderson, Director, Federal Programs Branch
James G. Bruen, Jr., Special Litigation Counsel, Commercial Litigation Branch
John L. Euler, Deputy Director, Torts Branch

Civil Rights Division

Katherine A. Baldwin, Chief, Employment Litigation Section
David K. Flynn, Chief, Appellate Section

Criminal Division

Joshua R. Hochberg, Deputy Chief for Litigation, Public Integrity Section
Eli H. Rosenbaum, Director, Office of Special Investigations
Jan M. Stromsem, Director, International Criminal Investigative Training Assistance Program

Environment and Natural Resources Division

Bruce S. Gelber, Principal Deputy Chief, Environmental Enforcement Section

James C. Kilbourne, Chief, Appellate Section
Pauline H. Milius, Chief, Policy, Legislation, and Special Litigation Section

Justice Management Division

Mary Ellen Condon, Director, Information Management and Security Staff
Theodius McBurrows, Director, Equal Employment Opportunity Staff
Daphne B. Sampson, Director, Library Staff

Tax Division

Stanley F. Krysa, Chief, Criminal Section
E. Ralph Pierce, Chief, Criminal Enforcement Section, Northern Region
Steven Shapiro, Chief, Civil Trial Section, Southern Region

Bureau of Prisons

Wallace H. Cheney, General Counsel
Thomas R. Kane, Assistant Director, Information, Policy, and Public Affairs Division
Ira B. Kirschbaum, General Counsel for Federal Prison Industries (UNICOR)
Ronald G. Thompson, Assistant Director, Human Resource Management Division

Executive Office for Immigration Review

Neil P. Miller, Chief Attorney-Examiner

Immigration and Naturalization Service

John P. Chase, Director of Internal Audit
Joan C. Higgins, Assistant Commissioner for Detention and Deportation
John R. Schroeder, Assistant Commissioner for Administrative Centers
Jeffrey L. Weiss, Director, Asylum Division

United States Marshals Service

Kenneth C. Holecko, Assistant Director for Business Services

[FR Doc. 96–16706 Filed 6–28–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of Labor-Management Standards

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Labor-Management Standards (OLMS) is soliciting comments concerning the proposed extension of the collection of information requirements of Labor Organization and Auxiliary Reports. A copy of the proposed information collection request (ICR) and/or the reporting forms can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before August 30, 1996. The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSEE: John Kotch, Deputy Assistant Secretary, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5605, Washington, DC 20210, (202) 219–7337 (this is not a toll-free number). Fax number: (202) 219–6459.

SUPPLEMENTARY INFORMATION:

I

Background: Congress enacted the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), to provide for the disclosure of information on the financial transactions and administrative practices of labor organizations. The statute also provides, under certain circumstances, for reporting by labor organization officers and employees, employers, labor relations consultants, and surety companies. Section 208 of the LMRDA authorizes the Secretary to issue rules and regulations prescribing the form of the required reports. The reporting provisions were devised to implement a basic tenet of the LMRDA: the guarantee of democratic procedures and safeguards within labor organizations that are designed to protect the basic rights of union members. Section 205 of the LMRDA provides that the reports are public information.

II

Current Actions: The Department of Labor is seeking extension of the current approval of the collection of information with the minor modification of reducing the total burden hours by 61 due to the elimination of Form LM–6 (a signature sheet for labor organizations held in trusteeship). An extension is necessary because the LMRDA explicitly requires the reporting and establishes the frequency of the required filings. The information collected by OLMS is used by union members to help self-govern their unions, by the general public, and as research material for both outside researchers and within the Department of Labor. The information is also used to assist DOL and other government agencies in detecting improper practices on the part of labor organizations, their officers and/or representatives, and is used by Congress in oversight and legislative functions. OLMS receives approximately 800 requests per month for public disclosure of reports.

III

Type of Review: Extension.

IV

Agency: Office of Labor-Management Standards.

V

Title: Labor Organization and Auxiliary Reports.

VI

OMB Number: 1214–0001.

VII

Agency Number: 1294.

VIII

Reporting and Recordkeeping Burden Summary:

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden hours
Form LM–1	330	Annually	330	55 minutes	302
Form LM–2	5,098	Annually	5,095	15.25 hours	77,714
Form LM–3	16,275	Annually	16,275	6.75 hours	109,857
Form LM–4	14,000	Annually	14,000	.86 hours	12,086
Form LM–10	177	Annually	177	35 minutes	104
Form LM–15	732	As Necessary	732	1.83 hours	1,342
Form LM–15A	61	Semi-Annually	61	22 minutes	22
Form LM–16	224	As Necessary	224	21 minutes	78
Form LM–20	168	As Necessary	168	22 minutes	61
Form LM–21	50	Annually	50	35 minutes	29
Form LM–30	78	Annually	78	35 minutes	45
Form S–1	200	Annually	200	35 minutes	117
Simplified Annual Report Format	3,298	Annually	3,298	12 minutes	671
Total	40,689		40,689		202,429

Total Burden Cost (capital/startup): There are no capital/startup costs. Any capital investments including computers and software are excluded from the regulatory definition of burden as capital investments which are usual and customary expenses incurred by persons in the normal course of their business.

Total Burden Cost (operating/maintaining): Total burden costs to respondents and recordkeepers is estimated to be $3,844,296. The cost estimates are based on wage rate data obtained from the Bureau of Labor Statistics for personnel employed in service industries (i.e., accountant, accounting clerk, attorney, personnel, manager/supervisor, etc.). The estimates used for labor union officials were obtained from the annual financial reports filed with OLMS.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 25, 1996.

John Kotch,

Deputy Assistant Secretary.

[FR Doc. 96–16704 Filed 6–28–96; 8:45 am]

BILLING CODE 4510–86–P

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974; Amendment System of Records Notice

AGENCY: Merit Systems Protection Board.

ACTION: Notice of amendment to existing system of records.

SUMMARY: The Merit Systems Protection Board (MSPB) publishes this document pursuant to the requirements of the Privacy Act of 1974 at 5 U.S.C. 552a(e)(4) to update the existence and character of its government-wide system of records, MSPB/GOVT–1, Appeal and Case Records.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Michael H. Hoxie, Office of the Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: This notice amends the text of MSPB/GOVT–1, Appeal and Case Records to reflect changes in the Board's organization, office locations, telephone and fax numbers and the extension of the approved records disposition schedule from six to seven years.

Dated: June 26, 1996.

Robert E. Taylor,

Clerk of the Board.

MSPB/GOVT–1

SYSTEM NAME:

Appeals and Case Records.

SYSTEM LOCATIONS:

Office of the Clerk of the Board, Merit System Protection Board (MSPB), Information Resources Management Division, 1120 Vermont Avenue, NW., Washington, DC 20419, and the MSPB regional and field offices (see list of Office addresses in the Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former Federal employees, applicants for employment, annuitants, and other individuals who have filed appeals with MSPB or its predecessor agency, or with respect to whom the Special Counsel or a Federal agency has petitioned MSPB concerning any matter over which MSPB has jurisdiction.

b. Current and former employees of state and local governments who have been investigated by the Special Counsel and have had a hearing before MSPB concerning possible violation of the Hatch Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. These records contain information or documents such as briefs, pleadings, motions, exhibits, hearing transcripts, and MSPB decisions, which comprise the administrative records of appeals and other matters arising under the adjudicatory authority of MSPB. These records also contain individual appellant's names, social security numbers, home addresses, veterans status, race, sex, national origin and disability status data.

b. This system also includes the Board's automated Case Management System. The system, resident on MSPB headquarter's minicomputer, which contains information from the above records, is used to record the location, history, status, and case processing information on cases brought before the Board for adjudication.

Note.—This system includes records and documents compiled by Federal agencies in processing adverse actions and actions based on unacceptable performance, covered by OPM/GOVT–3, when such actions are appealed to the MSPB.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1205, 1206, 1207, 1208, 7701, 7702.

PURPOSE:

a. These records are used to document and adjudicate appeals and other matters arising under the MSPB original and appellate jurisdiction.

b. These records also serve a management information function by providing statistical data for reports, physical file location and staff productivity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information from the record may be disclosed:

a. To officials of the Equal Employment Opportunity Commission or the Special Panel convened under authority of 5 U.S.C. 7702 when requested in connection with the performance of their authorized duties;

b. To officials of the Office of Personnel Management, the Federal Labor Relations Authority, the Equal Employment Opportunity Commission, and the Office of Special Counsel in connection with the performance of their authorized duties;

c. To the Government Accounting Office in response to an official inquiry or investigation;

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual;

e. To an appropriate Federal or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where there is an indication of a violation or potential violation of civil or criminal law or regulation;

f. To the Office of Management and Budget at any stage in the legislative process in connection with private relief legislation as set forth in OMB Circular No. A–19;

g. To the Department of Justice when:

(1) The Board, or any component thereof; or

(2) Any employee of the Board in the employee's official capacity; or

(3) Any employee of the Board in the employee's individual capacity where the Department of Justice has agreed to represent the employee; or

(4) The United States is a party to litigation or has an interest in such litigation and the use of such records is deemed to be relevant and necessary to the litigation, providing that the disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the records were collected, or approval or consultation is required.

h. In any proceeding before a court or adjudicative body before which the Board is authorized to appear, when:

(1) The Board, or any component thereof;

(2) Any employee of the Board in the employee's official capacity; or

(3) Any employee of the Board in the employee's individual capacity where the agency has agreed to represent the employee; or

(4) The United States is a party to litigation or has an interest in such litigation and the use of such records is deemed to be relevant and necessary to the litigation, providing that the disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the records were collected, or approval or consultation is required.

i. To any person making a status inquiry regarding a proceeding before the MSPB;

j. To the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906;

k. In response to a request for discovery or for appearance of a witness, if the requested information is relevant to the subject matter involved in a pending judicial or administrative proceeding;

l. To Federal and state agencies for the purpose of providing MSPB with information concerning MSPB appellants, which information will be used, absent personal identifiers, in the MSPB research projects mandated by 5 U.S.C. 1205(a)(3), or

m. To officials of the U.S. Court of Appeals for the Federal Circuit in connection with the performance of their judicial functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and binders and in computer processible storage media.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained, by social security numbers and by MSPB docket numbers.

SAFEGUARDS:

Access to these records is limited to persons whose official duties require such access. Personal screening is employed to prevent unauthorized disclosure. Automated records in this system are maintained in a secure computer room in a building with restricted access. Automated records are protected from unauthorized access through password identification procedures and other system-based protection methods.

RETENTION AND DISPOSAL:

Paper records are maintained for up to one year after a final determination by MSPB or, in some instances, other administrative authorities or the courts. Thereafter, they are transferred to Regional Federal Records Centers or other appropriate facilities. Paper records are destroyed by the Federal Records Centers when the records are seven years old. Electronic records of the Case Management System may be maintained indefinitely, or until the Board no longer needs them.

SYSTEM MANAGER(S) AND ADDRESS:

The Clerk of the Board, and the Information Resources Management Division, 1120 Vermont Avenue, NW., Washington, DC 20419, and the MSPB regional and field offices (see list of regional office addresses in the Appendix).

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about them should contact the Clerk of the Board and must follow the MSPB Privacy Act regulations at 5 CFR 1205.11 regarding such inquiries.

RECORD ACCESS PROCEDURES:

Individuals requesting access to their records should contact the Clerk of the Board. If the requester has reason to believe the records in question are located in a regional or field office, it is appropriate to submit the request to that office. Such requests should be addressed to the regional director or chief administrative judge (See the list of office addresses in the appendix). Requests for access to records must follow the MSPB Privacy Act regulations at 5 CFR 1205.11.

CONTESTING RECORD PROCEDURES:

Individuals requesting amendment should write the Clerk of the Board. If the requester has reason to believe the records in question are located in a regional or field office, it is appropriate to submit the request to that office. Requests to the regions should be addressed to the regional director or chief administrative judge (See the list of office addresses in the appendix). Requests for amendment of records must follow the MSPB Privacy Act regulations at 5 CFR 1205.21.

These provisions for amendment of the record are not intended to permit the alternation of evidence presented in the course of adjudication before the MSPB either before or after the MSPB has rendered a decision on the appeal.

RECORD SOURCE CATEGORIES:

The sources of these records are:

a. The individual to whom the record pertains;

b. The agency employing the above individual;

c. The Merit Systems Protection Board, the Office of Personnel Management, the Equal Employment Opportunity Commission, the Office of the Special Counsel; and

d. Other individuals or organizations from whom the MSPB has received

testimony, affidavits or other documents.

APPENDIX

Regional and Field Offices of the Merit Systems Protection Board

1. Atlanta Regional Office, Merit Systems Protection Board, 401 W. Peachtree Street, N.E., Suite 1050, Atlanta, Georgia 30308–3519
2. Boston Field Office, Merit Systems Protection Board, 99 Summer Street, Suite 1810, Boston, Massachusetts 02110–1200
3. Central Regional Office, Merit Systems Protection Board, 230 South Dearborn Street, 31st Floor, Chicago, Illinois 60604–1509
4. Dallas Field Office, Merit Systems Protection Board, 1100 Commerce Street, Room 6F20, Dallas, Texas 75242–0102.
5. Denver Field Office, Merit Systems Protection Board, 12567 W. Cedar Dr. Suite 100, Lakewood, Colorado 80228
6. New York Field Office, Merit Systems Protection Board, 26 Federal Plaza, Room 3137–A, New York, New York 10278–0022
7. Northeastern Regional Office, U.S. Customhouse, Room 501, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106–2904
8. Western Regional Office, Merit Systems Protection Board, 250 Montgomery, Suite 400, San Francisco, California 94104–3401
9. Seattle Field Office, Merit Systems Protection Board, 915 Second Avenue, Room 1840, Seattle, Washington 98174–1050
10. Washington, D.C. Regional Office, Merit Systems Protection Board, 5203 Leesburg Pike Suite, 1109, Falls Church, Virginia 22041–3401

[FR Doc. 96–16751 Filed 6–28–96; 8:45am]
BILLING CODE 7400–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of the Federal Register

Agreements Between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States

AGENCY: Office of the Federal Register, NARA.

ACTION: Notice of availability of agreements.

SUMMARY: The American Institute in Taiwan has concluded a number of agreements with the Taipei Economic and Cultural Representative Office in the United States (formerly the Coordination Council for North American Affairs) in order to maintain cultural, commercial and other unoffficial relations between the American people and the people on Taiwan. The Director of the Federal Register is publishing the list of these agreements on behalf of the American Institute in Taiwan in the public interest.

SUPPLEMENTARY INFORMATION: Cultural, commercial and other unofficial relations between the American people and the people on Taiwan are maintained on a nongovernmental basis through the American Institute in Taiwan (AIT), a private nonprofit corporation created under the Taiwan Relations Act (Pub. L. 96–8; 93 Stat. 14). The Coordination Council for North American Affairs (CCNAA) was established as its nongovernmental Taiwan counterpart. On October 10, 1994, the Coordination Council for North American Affairs was renamed the Taipei Economic and Cultural Representative Office in the United States (TECRO).

Under section 1(a) of the Act, agreements concluded between the AIT and the TECRO (CCNAA) are transmitted to the Congress, and according to sections 6 and 10(a) of the Act, such agreements have full force and effect under the law of the United States.

The texts of the agreements are available from the American Institute in Taiwan, 1700 North Moore Street, 17th Floor, Arlington, Virginia 22209. For further information contact the Corporate Secretary of AIT at this address, telephone: (703)525–8474, fax: (703)841–1385.

Following is a list of agreements between AIT and TECRO (CCNAA) which were in force as of January 1, 1996.

Dated: June 14, 1996.

J. Richard Bock,

Deputy Managing Director and Corporate Secretary.

Dated: June 25, 1996.

Richard L. Claypoole,

Director, Office of the Federal Register.

AIT–TECRO Agreements

Status of TECRO

The Exchange of Letters concerning the change in the name of the Coordination Council for North American Affairs (CCNAA) to the Taipei Economic and Cultural Representative Office in the United States (TECRO). Signed December 27, 1994 and January 3, 1995. Entered into force January 3, 1995.

Agriculture

1. Guidelines for a cooperative program in the agriculture sciences. Signed January 15 and 28, 1986. Entered into force January 28, 1986.
2. Amendment to the 1986 guidelines for a cooperative program in the agricultural sciences. Effected by exchange of letters September 1 and 11, 1989. Entered into force September 11, 1989.
3. Memorandum on cooperation in enhancing commodity situation and outlook reporting. Signed February 7, 1991. Entered into force February 7, 1991.
4. Agreement amending and extending the memorandum of February 7, 1991 on cooperation in enhancing commodity situation and outlook reporting. Signed November 22, 1993. Entered into force November 22, 1993.
5. Cooperative service agreement to facilitate fruit and vegetable inspection through their designated representatives, the United States Department of Agriculture Animal and Plant Health Inspection Service (APHIS) and the Taiwan Provincial Fruit Marketing Cooperative (TPFMC) supervised by the Taiwan Council of Agriculture (COA). Signed April 28, 1993. Entered into force April 28, 1993.
6. Memorandum of agreement between the American Institute in Taiwan and the Coordination Council for North American Affairs (Sanitary/Phytosanitary and Agricultural Standards). Signed November 4, 1993. Entered into force November 4, 1993.

Aviation

1. Air transport agreement, with annexes and exchanges of letters. Signed at Washington, March 5, 1980. Entered into force March 5, 1980.
2. Agreement implementing the air transport agreement of March 5, 1980. Effected by exchange of letters at Arlington and Washington March 31, 1981. Entered into force March 31, 1981.
3. Memorandum of understanding for consultations relating to the air transport agreement of March 5, 1980. Signed at Taipei October 15, 1981. Entered into force October 15, 1981.
4. Agreement amending Article 6 of the air transport agreement of March 5, 1980. Effected by exchange of letters at Taipei May 8 and July 28, 1985. Entered into force July 28, 1986.
5. Memorandum of agreement concerning the arrangement for certain aeronautical equipment and services relating to civil aviation, with annexes. Signed September 24 and October 23, 1981. Entered into force October 23, 1981.
6. Amendment 1 to memorandum of agreement concerning aeronautical equipment and services of September 24 and October 23, 1981. Signed September 18 and 23, 1985. Entered into force September 23, 1985.
7. Amendment 2 to memorandum of agreement of September 24 and October 23, 1981, concerning aeronautical equipment and services. Signed September 23 and October 17, 1991. Entered into force October 17, 1991.

Conservation

1. Memorandum on cooperation in forestry and natural resources conservation. Signed May 23 and July 4, 1991. Entered into force July 4, 1991.
2. Memorandum on cooperation in soil and water conservation under the guidelines for a cooperative program in the agricultural sciences. Signed at Washington on October 5, 1992. Entered into force October 5, 1992.
3. Agreement on technical cooperation in conservation of flora and fauna. Signed February 24 and March 6, 1995. Entered into force March 6, 1995.

Customs

1. Agreement for technical assistance in customs operations and management, with attachment. Signed May 14 and June 4, 1991. Entered into force June 4, 1991.

Education and Culture

1. Agreement amending the agreement for financing certain educational and cultural exchange programs of April 23, 1964. Effected by exchange of letters at Taipei on April 14 and June 4, 1979. Entered into force June 4, 1979.
2. Agreement concerning the Taipei American School, with annex. Signed at Taipei February 3, 1983. Entered into force February 3, 1983.

Energy

1. Agreement relating to the establishment of a joint standing committee on civil nuclear cooperation. Signed at Taipei October 3, 1984. Entered into force October 3, 1984.
2. Agreement amending and extending the agreement of October 3, 1984, relating to the establishment of a joint standing committee on civil nuclear cooperation. Signed October 19, 1989. Entered into force October 19, 1989.
3. Agreement Amending and Extending the Agreement between the American Institute in Taiwan and the Coordination Council for North American Affairs Relating to the Establishment of a Joint Standing Committee on Civil Nuclear Cooperation. Signed October 3, 1994. Entered into force October 3, 1994.
4. Agreement abandoning in place in Taiwan the Argonaut Research Reactor loaned to National Tsing Hua University. Signed November 28, 1990.
5. Agreement concerning safeguards arrangements for nuclear materials transferred from France to Taiwan. Effected by exchange of letters of February 12 and May 13, 1993. Entered into force May 13, 1993.
6. Agreement relating to participation in the USNRC program of severe accident research, with appendix. Signed February 18 and June 24, 1993. Entered into force June 24, 1993; effective January 1, 1993.
7. Agreement regarding participation in the Second USNRC International Piping Integrity Research Group Program, with addendum. Signed at Arlington and Washington February 7 and June 30, 1994. Entered into force June 30, 1994.
8. Agreement relating to participation in the USNRC program of Thermal-Hydraulic Code applications and maintenance, with addendum. Signed at Arlington and Washington February 7 and June 30, 1994. Entered into force June 30, 1994.
9. Memorandum of Agreement for release of an Energy and Power Evaluation Program (ENPEP) computer software package. Signed January 25 and February 27, 1995. Entered into force February 27, 1995.

Environment

1. Agreement for Technical Cooperation in the field of Environmental Protection. Signed June 21, 1993. Entered into force June 21, 1993.

Health

1. Guidelines for a cooperative program in the biomedical sciences. Signed May 21, 1984. Entered into force May 21, 1984.
2. Amendment No. 1 to the 1984 guidelines for a cooperative program in the biomedical sciences, with attachment. Signed April 20, 1989. Entered into force April 20, 1989.
3. Amendment No. 2 to the 1984 guidelines for a cooperative program in the biomedical sciences, with attachment. Signed August 24, 1989. Entered into force August 24, 1989.
4. Guidelines for a cooperative program in food hygiene. Signed January 15 and 28, 1985. Entered into force January 28, 1985.
5. Guidelines for a cooperative program in public health and preventive medicine. Signed at Arlington and Washington June 30 and July 19, 1994. Entered into force July 19, 1994.
6. Agreement for Technical Cooperation in Vaccine and Immunization-related Activities. Signed at Washington October 6 and 7, 1994. Entered into force October 7, 1994.

Intellectual Property

1. Agreement concerning the protection and enforcement of rights in audiovisual works. Effected by exchange of letters at Arlington and Washington June 6 and June 27, 1989. Entered into force June 27, 1989.
2. Understanding concerning the protection of intellectual property rights. Signed at Washington June 5, 1992. Entered into force June 5, 1992.
3. Agreement for the protection of copyright, with appendix. Signed July 16, 1993. Entered into force July 16, 1993.

Judicial Procedure

1. Memorandum of understanding on cooperation in the field of criminal investigations prosecutions. Signed at Taipei October 5, 1992. Entered into force October 5, 1992.

Labor

1. Guidelines for a cooperative program in labor affairs. December 6, 1991. Entered into force December 6, 1991.
2. Guidelines for a cooperative program in labor mediation and alternative dispute resolution. Signed April 7, 1995. Entered into force April 7, 1995.

Mapping

1. Agreement concerning mapping, charting, and geodesy cooperation. Signed November 28, 1995. Entered into force November 28, 1995.

Maritime

1. Agreement concerning mutual implementation of the 1974 Convention for the safety of life at sea. Effected by exchange of letters at Arlington and Washington August 17 and Septembes 7, 1982. Entered into force September 7, 1982.
2. Agreement concerning mutual implementation of the 1969 international convention on tonnage measurement. Effected by exchange of letters at Arlington and Washington May 13 and 26, 1983. Entered into force May 26, 1983.
3. Agreement concerning mutual implementation of the protocol of 1978 relating to the 1974 international convention for the safety of life at sea. Effected by exchange of letters at Arlington and Washington January 22 and 31, 1985. Entered into force January 31, 1985.
4. Agreement concerning mutual implementation of the protocol of 1978 relating to the international convention for the prevention of pollution from ships, 1973. Effected by exchange of letters at Arlington and Washington January 22 and 31, 1985. Entered into force January 31, 1985.
5. Agreement concerning mutual implementation of the 1966

international convention on load lines. Effected by exchange of letters at Arlington and Washington March 26 and April 10, 1985. Entered into force April 10, 1985.

6. Agreement concerning the operating environment for ocean carriers. Effected by exchange of letters at Washington and Arlington October 25 and 27, 1989. Entered into force October 27, 1989.

Postal

1. Agreement concerning establishment of INTELPOST service. Effected by exchange of letters at Arlington and Washington April 19 and November 26, 1990. Entered into force November 26, 1990.

2. International business reply service agreement, with detailed regulations. Signed at Washington February 7, 1992. Entered into force February 7, 1992.

Privileges and Immunities

1. Agreement on privileges, exemptions and immunities, with addendum. Signed at Washington October 2, 1980. Entered into force October 2, 1980.

2. Agreement governing the use and disposal of vehicles imported by the American Institute in Taiwan and its personnel. Signed at Taipei April 21, 1986. Entered into force April 21, 1986.

Scientific & Technical Cooperation

1. Agreement on scientific cooperation. Effected by exchange of letters at Arlington and Washington on September 4, 1980. Entered into force September 4, 1980.

2. Agreement concerning renewal & extension of the 1980 agreement on scientific cooperation. Signed and accepted March 10, 1987. Entered into force March 10, 1987.

3. Contract relating to provision to the AIT of ionospheric weather observations by the CCNAA, with attachments, as extended. Signed November 26, 1980. Entered into force November 26, 1980.

4. Agreement for technical assistance in dam design and construction, with appendices. Signed August 24, 1987. Entered into force August 24, 1987.

5. Agreement amending and extending the agreement of August 24, 1987, for technical assistance in dam design and construction. Signed May 11 and June 9, 1992. Entered into force June 9, 1992.

6. Agreement for a cooperative program in the sale and exchange of technical, scientific, and engineering information. Signed November 17, 1987. Entered into force November 17, 1987.

7. Agreement renewing and extending the agreement of November 17, 1987, for a cooperative program in the sale and exchange of technical, scientific and engineering information. Signed and accepted August 8, 1990. Entered into force August 8, 1990.

8. Cooperative program on Hualien soil-structure interaction experiment. Signed and accepted September 28, 1990.

9. Guidelines for a cooperative program in the physical sciences. Signed March 10, 1987. Entered into force March 10, 1987.

10. Amendment No. 1 to the guidelines of March 10, 1987, for a cooperative program in the physical sciences. Signed on January 26, 1989. Entered into force January 26, 1989.

11. Amendment No. 2 to the guidelines of March 10, 1987, for a cooperative program in the physical sciences. Signed October 25, 1990 and March 22, 1991. Entered into force March 22, 1991.

12. Guidelines for a cooperative program in atmospheric research. Signed May 4, 1987. Entered into force May 4, 1987.

13. Agreement for procurement of equipment for the Taiwan Synchrotron Radiation Research Laboratory, with appendices. Signed April 20, 1988. Entered into force April 20, 1988.

14. Agreement for technical cooperation in meteorology and forecast systems development, with implementing arrangements. Signed June 5 and 28, 1990. Entered into force June 28, 1990.

15. Agreement for technical cooperation in energy and water resources, with annex. Signed December 21, 1990 and February 13, 1991. Entered into force February 13, 1991.

16. Agreement for technical cooperation in geodetic research and use of advanced geodetic technology, with implementing arrangement. Signed January 11 and February 21, 1991. Entered into force February 21, 1991.

17. Cooperative program in highway-related sciences. Signed October 30, 1990 and January 7, 1992. Entered into force January 7, 1992.

18. Agreement for technical cooperation in seismology and earthquake monitoring systems development, with implementing arrangement. Signed July 22 and 24, 1992. Entered into force July 24, 1992.

Security of Information

1. Protection of information agreement. Signed September 15, 1981. Entered into force September 15, 1981.

Taxation

1. Agreement concerning the reciprocal exemption from income tax of income derived from the international operation of ships and aircraft. Effected by exchange of letters at Taipei May 31, 1988. Entered into force May 31, 1988.

2. Agreement for technical assistance in tax administration, with appendices. Signed August 1, 1989. Entered into force August 1, 1989.

Trade

1. Agreement concerning trade matters, with annexes. Effected by exchange of letters at Arlington and Washington October 24, 1979. Entered into force October 24, 1979; effective January 1, 1980.

2. Agreement concerning trade matters. Effected by exchange of letters at Arlington and Washington December 31, 1981. Entered into force December 31, 1981.

3. Agreement concerning measures that the CCNAA will undertake in connection with implementation of the GATT Customs Valuation Code. Effected by exchange of letters at Bethesda and Arlington August 22, 1986. Entered into force August 22, 1986.

4. Agreement concerning the export performance requirement affecting investment in the automotive sector. Effected by exchange of letters at Washington and Arlington of October 9, 1986. Entered into force October 9, 1986.

5. Agreement concerning beer, wine and cigarettes. Signed at Washington December 12, 1986. Entered into force December 12, 1986; effective January 1, 1987.

6. Agreement implementing the 1986 beer, wine and cigarettes agreement. Effected by exchange of letters at Taipei April 29, 1987. Entered into force April 29, 1987; effective January 1, 1987.

7. Agreement regarding new requirements for health warning legends on cigarettes sold in the territory represented by CCNAA. Effected by exchange of letters at Washington and Arlington October 7 and 16, 1991. Entered into force October 16, 1991.

8. Agreement concerning trade in whole turkeys, turkey parts, processed turkey products and whole ducks, with memorandum of understanding. Effected by exchange of letters at Arlington and Washington of March 16, 1989. Entered into force March 16, 1989.

9. Agreement concerning the protection of trade in strategic commodities and technical data, with memorandum of understanding. Effected by exchange of letters at Arlington and Washington December 4, 1990 and April 8, 1991. Entered into force April 8, 1991.

10. Administrative arrangement concerning the textile visa system. Effected by exchange of letters at Arlington and Washington April 18 and May 1, 1991. Entered into force May 1, 1991.

11. Memorandum of understanding concerning a new quota arrangement for cotton-and man-made fiber trousers. Signed at Washington December 18, 1992. Entered into force December 18, 1992.

12. Memorandum of understanding on the exchange of information concerning commodity futures and options matters, with appendix. Signed January 11, 1993. Entered into force January 11, 1993.

13. Agreement concerning a framework of principles and procedures for consultations regarding trade and investment, with annex. Signed at Washington September 19, 1994. Entered into force September 19, 1994.

14. Memorandum of understanding to amend and extend the Bilateral Textile Agreement of June 4 and 24, 1993 (Relating to trade in cotton, wool, man-made fiber, silk blend and Other non-cotton vegetable fiber textile products.) Signed December 29, 1995. Entered into force December 29, 1995.

[FR Doc. 96–16621 Filed 6–28–96; 8:45 am]

BILLING CODE 1505–02–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: Generic Letter 91–02, "Reporting Mishaps Involving LLW Forms Prepared for Disposal."

2. Current OMB approval number: 3150–0156.

3. How often the collection is required: Reports are made only when the licensee or waste processor experiences a mishap that is reportable under the guidelines described in the Generic Letter.

4. Who is required or asked to report: Nuclear power reactor licensees and Agreement State and non-Agreement State waste processors and disposal site operators.

5. The number of annual respondents: 34.

6. The number of hours needed annually to complete the requirement or request: 272 hours (an average of 8 hours per response).

7. Abstract: Generic Letter 91–02 encourages voluntary reporting (by both waste form generators and processors) of information concerning mishaps to low-level radioactive waste (LLW) forms prepared for disposal. The information is used by NRC to determine whether followup action is necessary to assure protection of public health and safety.

Submit, by August 30, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW., (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 20th day of June, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–16741 Filed 6–28–96; 8:45 am]

BILLING CODE 7590–01–P

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 73—Physical Protection of Plants and Materials

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* On occasion. Required reports are collected and evaluated on a continuing basis as events occur.

5. *Who will be required or asked to report:* Persons who possess, use, import, export, transport, or deliver to a carrier for transport, special nuclear material.

6. *An estimate of the number of responses:* 68,643.

7. *The estimated number of annual respondents:* 76.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 410,602.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR Part 73 prescribes requirements for establishment and maintenance of a physical protection system with capabilities for protection of special nuclear material at fixed sites and in transit and of plants in which special

nuclear material is used. The revision relects an increase in burden because of requirements for the physical fitness, day firing, and vehicle bomb rulemakings that were previously approved by OMB. There was also an adjustment to the burden because of the elimination of the requirement to have licensees submit quarterly log reports.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by (July 31, 1996): Peter Francis, Office of Information and Regulatory Affairs (3150–0002), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 21st day of June, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–16742 Filed 6–28–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 55–21849–OT, ASLBP No. 96–716–01–OT]

Emrick S. McDaniel, (Denial of Application for Reactor Operator License); Notice of Hearing

June 25, 1996.

Notice is hereby given that, by Memorandum and Order dated June 25, 1996, the Presiding Officer in this proceeding has granted the April 28, 1996 request for a hearing of Emerick S. McDaniel. On April 4, 1996, the Nuclear Regulatory Commission Staff denied Mr. McDaniel's application for a reactor operator's license. The hearing will involve Mr. McDaniel's appeal from this denial.

This proceeding will be conducted under the Commission's Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings, set forth in 10 CFR Part 2, Subpart L. Documents relating to this proceeding are available for public inspection and copying at the Commission's Public Document Room, Gelman Building, 2120 L Street, N.W., Washington, D.C.

Mr. McDaniel and the NRC Staff are parties to this proceeding. In accordance with 10 CFR 2.1205(l)(4), any person whose interest may be affected by this proceeding may, within 30 days of publication of this Notice, file a petition for leave to intervene. The petition must identify: (1) the interest of the petitioner in the proceeding; (2) how that interest may be affected by the results of the proceeding with particular reference to the factors set out in 10 CFR 2.1205(g) (1996) (especially, whether the petitioner's specified areas of concern are germane to the subject matter of ; the proceeding); (3) the petitioner's area of concern about the licensing activity that is the subject matter of the proceeding; and (4) the circumstances establishing that the request is timely in accordance with the standards set forth in this Notice.

Each petition must be submitted to the Secretary of the Commission, ATTN: Chief, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington D.C. 20555. Copies should be served upon the Presiding Officer, the Special Assistant, the Assistant General Counsel for Hearings and Enforcement, Mr. McDaniel (who resides at 417 McIntosh Drive, Waynesboro, GA 30830), and the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Pursuant to 10 CFR 2.1205(j)(2)(1996), any party may file an answer to a petition to intervene within 10 days of service of such petition.

Pursuant to 10 CFR 2.1211(a)(1996), any member of the public who is not a party to the proceeding may make a limited appearance in order to state his or her views on the issues involved in this license-renewal proceeding. These statements are not evidence and do not become part of the decisional record under 10 CFR 1251(c)(1996). Written statements, and requests to make oral statements, should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of statements and requests should be forwarded to the Presiding Officer.

Dated: June 25, 1996, Rockville, Maryland.

B. Paul Cotter, Jr.,

Presiding Officer, Chief Administrative Judge.

[FR Doc. 96–16721 Filed 6–28–96; 8:45 am]

BILLING CODE 7590–01–P

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

On January 6, 1982 (47 FR 596 and 47 FR 600), the Nuclear Regulatory Commission (NRC) published in the **Federal Register** final amendments to 10 CFR Parts 71 and 73 (effective July 6, 1982), that require advance notification to Governors or their designees by NRC licensees prior to transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in Part 73 is for spent nuclear reactor fuel shipments and the notification for Part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR Part 73).

The following list updates the names, addresses and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the **Federal Register** on or about June 30, to reflect any changes in information.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS

State	Part 71	Part 73
Alabama	Col. Gene Mitchell, Director, Alabama Department of Public Safety, P.O. Box 1511, Montgomery, AL 36102–1511; (334) 242–4578.	Same

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

State	Part 71	Part 73
Alaska	Doug Dasher, Alaska Department of Environmental Conservation, Northern Regional Office, 610 University Avenue, Fairbanks, AK 99709–3643; (907) 451–2184.	Same
Arizona	Aubrey V. Godwin, Director, Arizona Radiation Regulatory, Agency, 4814 South 40th Street, Phoenix, AZ 85040; (602) 255–4845 24 hours: (602) 223–2212.	Same
Arkansas	Bernard R. Bevill, Acting Director, Division of Radiation Control and Emergency Management Programs, Arkansas Department of Health, 4815 West Markham Street, Little Rock, AR 72205–3867; (501) 661–2301. 24 hours: (501) 661–2136 or 661–2000.	Same
California	L. Denno, Chief Enforcement Services Division, California Highway Patrol, 444 North Third Street, Suite 310 Sacramento, CA 95814; (916) 445–3253.	Same
Colorado	Captain Allan M. Turner, Hazardous Materials Section, Colorado State Patrol, 700 Kipling Street, Suite 1000, Denver, CO 80215–5865; (303) 239–4546. 24 hours: (303) 239–4501.	Same
Connecticut	Commissioner Sidney J. Holbrook, Department of Environmental Protection, 79 Elm Street, Hartford, CT 06106–5127; (860) 424–3001. 24 hours: (860) 424–3333.	Same
Delaware	Karen L. Johnson, Secretary, Department of Public Safety, P.O. Box 818, Dover, DE 19903; (302) 739–4321. 24 hours: (302) 739–5851.	Same
Florida	Harlan Keaton, Manager, Environmental Radiation Program, Office of Radiation Control, Department of Health & Rehabilitative Services, P.O. Box 680069, Orlando, FL 32868–0069; (407) 297–2095.	Same
Georgia	Al Hatcher, Director, Transportation Division, Public Service Commission, 1007 Virginia Avenue, Suite 310, Hapeville, GA 30354; (404) 559–6600.	Same
Hawaii	Bruce S. Anderson, Ph.D., Deputy Director for Environmental Health, State of Hawaii Department of Health, P.O. Box 3378, Honolulu, HI 96813; (808) 586–4424.	Same
Idaho	Captain David C. Rich, Department of Law Enforcement, Idaho State Police, 700 South Stratford Drive, P.O. Box 700, Meridian, ID 83680–0700; (208) 884–7206. 24 hours: (208) 334–3731.	Same
Illinois	Thomas W. Ortciger, Director, Illinois Department of Nuclear Safety, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704; (217) 785–9868. 24 hours: (217) 785–9900.	Same
Indiana	Lloyd R. Jennings, Superintendent, Indiana State Police, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, IN 46204; (317) 232–8248.	Same
Iowa	Ellen M. Gordon, Administrator, Emergency Management Division, Hoover State Office Building, Des Moines, IA 50319–0113; (515) 281–3231.	Same
Kansas	Frank H. Mousse, M.S.A., Technological Hazards Administrator, Department of the Adjutant General, Division of Emergency Management, 2800 S.W. Topeka Boulevard, Topeka, KS 66611–1287; (913) 274–1409. 24 hours: (913) 296–3176.	Same
Kentucky	John A. Volpe, Ph.D., Manager, Radiation Control Division, Cabinet for Human Resources, 275 East Main Street, Frankfort, KY 40621–0001; (502) 564–3700.	Same
Louisiana	Lt. Russell R. Robinson, Louisiana State Police, 7901 Independence Boulevard, P.O. Box 66614 (#21), Baton Rouge, LA 70896; (504) 925–6113.	Same
Maine	Chief of the State Police, Maine Dept. of Public Safety, 36 Hospital Street, Augusta, ME 04333; (207) 624–7074.	Same
Maryland	Captain Guy E. Guyton, Jr., Commander, Communications Services Division, Maryland State Police, 1201 Reisterstown Road, Pikesville, MD 21208; (410) 653–4229. 24 hours: (410) 653–4200.	Same
Massachusetts	Robert M. Hallisey, Director, Radiation Control Program, Massachusetts Department of Public Health, State Laboratory Institute, 305 South Street, 7th Floor, Jamaica Plain, MA 02130; (617) 727–6214.	Same
Michigan	Captain Allen L. Byam, Commanding Officer, Special Operations Division, Michigan Department of State Police, 714 S. Harrison Road, East Lansing, MI 48823; (517) 336–6263. 24 hours: (517) 336–6100.	Same
Minnesota	John R. Kerr, Assistant Director, Planning Branch, Minnesota Division of Emergency Management, B5—State Capitol, 75 Constitution Avenue, St. Paul, MN 55155; (612) 296–0481. 24 hours: (612) 649–5451.	Same
Mississippi	James E. Maher, Director, Emergency Management Agency, P.O. Box 4501, Fondren Station, Jackson, MS 39296–4501; (601) 352–9100.	Same
Missouri	Jerry B. Uhlmann, Director, Emergency Management Agency, 2302 Militia Drive, P.O. Box 116, Jefferson City, MO 65102; (314) 526–9101. 24 hours: (314) 751–2748.	Same

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

State	Part 71	Part 73
Montana	George Eicholtz, Coordinator, Radiation Control Section, DEQ/AQD,1520 East Sixth Avenue, P.O. Box 200901, Helena, MT 59620–0901; (406) 444–5246.	Jim Greene, Administrator, Disaster & Emergency Services, P.O. Box 4789, Helena, MT 59604; (406) 444–6911.
Nebraska	Colonel Ron Tussing, Superintendent, Nebraska State Patrol, P.O. Box 94907, Lincoln, NE 68509–4907; (402) 479–4931. 24 hours: (402) 471–4545.	Same
Nevada	Stanley R. Marshall, Supervisor, Radiological Health Section, Bureau of Health Protection Services, Nevada Division of Health, 505 East King Street, Carson City, NV 89710; (702) 687–5394. 24 hours: (702) 687–5300.	Same
New Hampshire	Richard M. Flynn, Commissioner, New Hampshire Dept. of Safety, James H. Hayes Building, 10 Hazen Drive, Concord, NH 03305; (603) 271–3636 (24 hours).	Same
New Jersey	Kent Tosch, Manager, Bureau of Nuclear Engineering, Department of Environmental Protection, CN 415, Trenton, NJ 08625–0415; (609) 984–7701.	Same
New Mexico	Max D. Johnson, Bureau Chief, Technological Hazards Bureau, Department of Public Safety, P.O. Box 1628, Santa Fe, NM 87504–1628; (505) 827–9223. 24 hours: (505) 827–9126.	Same
New York	Edward F. Jacoby, Jr., Director, State Emergency Management Office, 1220 Washington Avenue, Building 22—Suite 101, Albany, NY 12226–2251; (518) 457–2222.	Same
North Carolina	First Sergeant T. C. Stroud, Hazardous Materials Coordinator, North Carolina Highway Patrol Headquarters, 512 N. Salisbury St., P.O. Box 27687, Raleigh, NC 27611–7687; (919) 733–5282. After hours: (919) 733–3861.	Same
North Dakota	Dana K. Mount, Director, Division of Environmental Engineering, North Dakota Department of Health, 1200 Missouri Avenue, Box 5520, Bismarck, ND 58506–5520; (701) 328–5188. After hours: (701) 328–2121.	Same
Ohio	Maj. Gen. James R. Williams, Chief of Staff, Ohio Emergency Management Agency, 2855 W. Dublin-Granville Road, Columbus, OH 43235–2206; (614) 889–7150.	Same
Oklahoma	Bob A. Ricks, Commissioner of Public Safety, Oklahoma Department of Public Safety, P.O. Box 11415, Oklahoma City, OK 73136–0145; (405) 425–2001. 24 hours: (405) 425–2424.	Same
Oregon	David Stewart-Smith, Administrator, Energy Resources Division, Oregon Office of Energy, 625 Marion Street, N.E., Salem, OR 97310; (503) 378–6469.	Same
Pennsylvania	John Bahnweg, Director of Operations, Pennsylvania Emergency Management Agency, P.O. Box 3321, Harrisburg, PA 17105–3321; (717) 783–8150.	Same
Rhode Island	William A. Maloney, Associate Administrator, Motor Carriers Section, Division of Public Utilities and Carriers, 100 Orange Street, Providence, RI 02903; (401) 277–3500; ext. 150.	Same
South Carolina	Virgil R. Autry, Director, Division of Radioactive Waste Management, South Carolina Department of Health & Environmental Control, 2600 Bull Street, Columbia, SC 29201; (803) 896–4244. Emergency: (803) 253–6488.	Same
South Dakota	Gary N. Whitney, Division Director, Emergency Management, 500 E. Capitol Avenue, Pierre, SD 57501–5060; (605) 773–3231.	Same
Tennessee	John White, Director, Tennessee Emergency Management Agency, State Emergency Operations Center, 3041 Sidco Drive, Nashville, TN 37204; (615) 741–0001. After hours: (inside TN) 1–800–262–3300 (Outside TN) 1–800–258–3300.	Same
Texas	Richard A. Ratliff, Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, TX 78756; (512) 834–6688.	Col. James Wilson, Director, Texas Department of Public Safety, 5805 N. Lamar Blvd, Austin, TX 78752; (512) 424–2000
Utah	William J. Sinclair, Director, Division of Radiation Control, 168 North 1950 West, P.O. Box 144850, Salt Lake City, UT 84114–4850; (801) 536–4250. After hours: (801) 536–4123.	Same
Vermont	Patrick J. Garahan, Secretary, Vermont Transportation Agency, 133 State Street, Montpelier, VT 05633–5001; (802) 828–3657.	Same
Virginia	L. Ralph Jones, Jr., Director, Technological Hazards Division, Department of Emergency Services, Commonwealth of Virginia, 310 Turner Road, Richmond, VA 23225; (804) 674–2400.	Same
Washington	Commander Maurice C. King, Washington State Patrol, General Administration Building, P.O. Box 42613, Olympia, WA 98504–2613; (360) 586–2340.	Same
West Virginia	Colonel Thomas L. Kirk, Superintendent, Division of Public Safety, West Virginia State Police, 725 Jefferson Road, South Charleston, WV 25309; (304) 746–2111.	Same
Wisconsin	Steven D. Sell, Administrator, Wisconsin Division of Emergency Management, P.O. Box 7865, Madison, WI 53707–7865; (608) 242–3232.	Same
Wyoming	Captain L. S. Gerard, Motor Carrier Officer, Wyoming Highway Patrol, 5300 Bishop Boulevard, P.O. Box 1708, Cheyenne, WY 82003–1708; (307) 777–4317. 24 hours: (307) 777–4323.	Same

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

State	Part 71	Part 73
District of Columbia	Norma J. Stewart, Program Manager, Pharmaceutical, Radiological, and Medical Devices Control Division, Department of Consumer and Regulatory Affairs, 614 H Street, NW, Washington, DC 20001; (202) 727–7218. After hours: (202) 727–6161.	Same
Puerto Rico	Hector Russe Martinez, Chairman, Environmental Quality Board, P.O. Box 11488, San Juan, PR 00910; (809) 767–8056 or (809) 725–5140.	Same
Guam	Fred M. Castro, Administrator, Environmental Protection Agency, P.O. Box 2999, Agana, Guam 96910; (671) 646–8863/64/65.	Same
Virgin Islands	Roy L. Schneider, Governor, Governor's Office, 21–22 Kongens Gade, St. Thomas, Virgin Islands 00802; (809) 774–0001.	Same
American Samoa	Pati Faiai, Government Ecologist, Environmental Protection Agency, Office of the Governor, Pago Pago, American Samoa 96799; (684) 633–2304.	Same
Commonwealth of the Northern Mariana Islands.	Nicolas M. Leon Guerrero, Director, Department of Natural Resources, Commonwealth of Northern, Mariana Islands Government, Capitol Hill, Saipan, MP 96950; (670) 322–9830 or (670) 322–9834.	Same

Questions regarding this matter should be directed to Spiros Droggitis, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (INTERNET Address: SCD@NRC.GOV) or at (301) 415–2367.

Dated at Rockville, Maryland this 20th day of June, 1996.

For the Nuclear Regulatory Commission.

Richard L. Bangart,

Director, Office of State Programs.

[FR Doc. 96–16740 Filed 6–28–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22038; 811–7147]

Emerging Americas Fund, Inc.; Notice of Application

June 24, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Emerging Americas Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 11, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 17, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, P.O. Box 9011, Princeton, New Jersey 08543–9011.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a non-diversified, closed-end management investment company organized as a corporation under the laws of Maryland. On March 9, 1994, applicant filed a notification of registration on Form N–8A and a registration statement on Form N–2. Applicant's registration statement has not been declared effective and was declared abandoned by order of the Commission on March 7, 1996.

2. Applicant has not issued or sold any securities. Applicant has no shareholders, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding.

3. Applicant intends to terminate its existence under Maryland law as soon as practicable after its deregistration.

4. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary to wind up its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–16625 Filed 6–28–96; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending June 21, 1996

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–1461.
Date filed: June 18, 1996.
Parties: Members of the International Air Transport Association.
Subject: COMP Reso/C 0664 dated May 31, 1996, Expedited Cargo Resolution (Summary attached), Intended effective date: August 1, 1996.

Docket Number: OST–96–1462.
Date filed: June 18, 1996.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/P 1960 dated June 14, 1996 r1, TC2 Reso/P 1961 dated June 14, 1996 r-7, TC2 Reso/P 1962 dated June 14, 1996 r8, Within Middle East Expedited Resos (Summary attached), Intended effective date: July 31/August 1, 1996.

Docket Number: OST–96–1463.
Date filed: June 18, 1996.

Parties: Members of the International Air Transport Association.

Subject: TC3 Telex Mail Vote 808, Osaka-Ulan Bator fare decrease, Intended effective date: July 1, 1996.

Docket Number: OST–96–1471.

Date filed: June 20, 1996.

Parties: Members of the International Air Transport Association.

Subject: TC3 Telex Mail Vote 807, Japan-China fares, Intended effective date: July 1, 1997.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–16641 Filed 6–28–96; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary

Fitness Redetermination of Merlin Express, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Redetermination—Order 96–6–46 Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that Merlin Express, Inc., continues to be fit, willing, and able to conduct scheduled passenger operations as a commuter air carrier.

DATES: Persons wishing to file objections should do so no later than July 9, 1996.

ADDRESSES: Objections and answers to objections should be filed with the Air Carrier Fitness Division, X–56, Room 6401, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590, (202) 366–9721.

Dated: June 24, 1996.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 96–16618 Filed 6–28–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier/General Aviation Maintenance Issues

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier/general aviation maintenance issues.

DATES: The meeting will be held on July 18 and 19, 1996, beginning at 8:30 both days. The meeting is expected to last 1½ days. Arrange for oral presentations by July 11, 1996.

ADDRESSES: The meeting will be held at the General Aviation Manufactures Association, Suite 801, 1400 K St. NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Brenda Courtney, Office of Rulemaking, (ARM–200), 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3327.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on July 18 and 19, 1996, at the General Aviation Manufactures Association, Suite 801, 1400 D St. NW., Washington, DC 20005. The agenda for the meeting will include:

- Opening Remarks
- Working Group Reports

Part 65—The working group will present to ARAC an NPRM and 3 Advisory circulars for ARAC's consideration for recommendation to the FAA. These documents can be obtained by contacting Phaneuf Associates at (202) 898–1455.

General Aviation Maintenance
International Airworthiness
Communications
Maintenance Training—prolonged discussion anticipated
Major/Minor Repair Definitions
Maintenance Recordkeeping—prolonged discussion anticipated

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements by July 11, 1996, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Aircraft Certification Procedures or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading FOR FURTHER INFORMATION CONTACT.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on June 24, 1996.

Richard C. Berg,

Air Carrier/General Aviation Maintenance Issues, Acting Assistant Executive Director.

[FR Doc. 96–16737 Filed 6–28–96; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 185; Aeronautical Spectrum Planning Issues

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 185 meeting to be held on July 17–19, 1996, starting at 9:00 a.m. The meeting will be held at NBAA Conference Room, 1200 Eighteenth Street, N.W., Washington, DC 20036 on July 17 and at RTCA, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036, on July 18–19.

The agenda will be as follows: (1) Administrative Remarks; (2) General Introductions; (3) Approval of the Agenda; (4) Review and Approval of the Summary of the Previous Meeting; (5) Review and Resolve Comments on Draft Version 9 of SC–185 Report; (6) Consider/Approve Version 9 with Corrections for Distribution for Ballot; (7) Other Business; (8) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 24, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–16735 Filed 6–28–96; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc. Special Committee 186; Automatic Dependent Surveillance—Broadcast (ADS–B)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 186 meeting to be held July 15–16, 1996, beginning at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Chairman's Introductory Remarks/Review of Meeting Agenda; (2) Review and Approval of Minutes of the Previous Meeting; (3) Report of Working Group Activities: a. Working Group 1 Report (Operations Working Group); b. Working Group 2 Report (Technical Working Group); c. Working Group 3 Report (CDTI Working Group); (4) Review of Open Items in Chapter 1 of the MASPS; (5) Review of Chapter 2 of the MASPS; (6) Other Business; (7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 24, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–16736 Filed 6–28–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Daytona Beach International Airport, Daytona Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Daytona Beach International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 31, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Dennis R. McGee, Airport Director, of the Daytona Beach International Airport at the following address: County of Volusia, 700 Catalina Drive, Suite 300, Daytona Beach Int'l Airport, FL 32114.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Volusia, Florida, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Richard M. Owen, Program Manager, 9677 Tradeport Drive, Suite 130, Orlando, Florida, 32827, 407–648–6586. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Daytona Beach International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 24, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Volusia, Florida, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 5, 1996.

The following is a brief overview of PFC Application No. 96–02–C–00–DAB.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 2001.

Proposed charge expiration date: January 31, 2005.

Total estimated PFC revenue: $4,318,671.00.

Brief description of proposed project: Reduction of debt service for the eligible portions of the 175,000 square foot passenger terminal facility expansion project completed in October, 1992.

Any person may inspect the application in person at the FAA office listed above under FOR FURTHER INFORMATION CONTACT.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Daytona Beach International Airport.

Issued in Orlando, Florida on June 24, 1996.

Charles E. Blair,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 96–16738 Filed 6–28–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Duluth International Airport and Use the Revenue From a Passenger Facility Charge at Duluth International Airport and Sky Harbor Airport, Duluth, MN

AGENCY: Department of Transpostation (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Duluth International Airport and use the revenue from a PFC at Duluth International Airport and Sky Harbor Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 31, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John C. Grinden, Executive Director, Duluth Airport Authority, at the following address: Duluth Airport Authority, Duluth International Airport, Duluth, MN 55811.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Duluth Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon Nelson, Program Manager, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706, telephone (612) 725–4358. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public

comment on the application to impose a PFC at Duluth International Airport and use the revenue from a PFC at Duluth International Airport and Sky Harbor Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 17, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Duluth Airport Authority was substantially complete with the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 1, 1996.

The following is a brief overview of the application.

PFC application number: 96–02–C–00–DLH

Level of the proposed PFC: $3.00

Proposed charge effective date: December 1, 1996

Proposed charge expiration date: July 1, 1999

Total estimated PFC revenue: $784,268

Brief description of proposed project(s):

PFC Projects Duluth International

1. Complete Phase I construction (approximately 2,575'×75' for Taxiway "B" (previously identified as Taxiway "K") including paving, marking, installation of Medium Intensity Taxiway Edge Lights, and airport guidance signs.
2. Rehabilitate Runway 9/27 and a portion of the edge lighting system for Runway 3/21.
3. Acquire snow removal equipment (high speed runway broom).
4. Extend Taxiway "B" by approximately 1,000' including grading, paving, and extension of Medium Intensity Taxiway Edge Lighting System.
5. Rehabilitate Runway 3/21 including rout, clean, and seal pavement cracks and seal coat.
6. Update Airport Master Plan.
7. Prepare PFC application and assist with PFC administration.

PFC Project at Sky Harbor

8. Rehabilitate Runway 14/32.

Class or classes or air carriers which the public agency has requested not be required to collect PFCs: non-scheduled Part 135 Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Duluth Airport Authority Office.

Issued in Des Plaines, Illinois, on June 25, 1996.

Benito DeLeon,

Manager, Airports Planning/Programming Branch, Great Lakes Region.

[FR Doc. 96–16739 Filed 6–28–96; 8:45 am]

BILLING CODE 4910–13–M

Surface Transportation Board [1]

[STB Docket No. AB–55 (Sub-No. 530)]

CSX Transportation, Inc.—Abandonment—In Vermilion County, IL

AGENCY: Surface Transportation Board.

ACTION: Notice of findings.

SUMMARY: The Board has found that the public convenience and necessity require or permit the abandonment by CSX Transportation, Inc. (CSXT) of its 7.15-mile line of railroad from milepost ZE–113.0 at Henning, to milepost ZE–120.15 at Collison, in Vermilion County, IL, subject to a public use condition and a labor protective condition. The Board's decision will be effective 30 days after publication of this notice unless the Board finds that a financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to continue.

DATES: Any financial assistance offer must be filed with the Board and the railroad no later than July 11, 1996. Any offer previously made must be remade by the due date.

ADDRESSES: Send offers referring to STB Docket No. AB–55 (Sub-No. 530) to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW, Washington, DC 20423; and (2) CSXT's representative: Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer mailed to the Board: "Office of Proceedings, AB–OFA."

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. (TDD for the hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10904 and 49 CFR 1152.27.

Decided: June 25, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–16712 Filed 6–28–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Docket No. AB–3 (Sub-No. 136X)]

Missouri Pacific Railroad Company—Abandonment Exemption—In Shawnee County, KS

Missouri Pacific Railroad Company (MP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.81-mile portion of the Topeka Industrial Lead from milepost 404.72 at the end of the line to milepost 406.53, near Topeka, in Shawnee County, KS.

MP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted from the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 31, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by July 11, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 22, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Joseph D. Anthofer, Missouri Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

MP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by July 5, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 25, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–16711 Filed 6–28–96; 8:45 am]

BILLING CODE 4915–00–P

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[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application Permit For User Limited Special Fireworks (18 U.S.C. Chapter 40, Explosives).

DATES: Written comments should be received on or before August 30, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Robert Mosley, Chief, Firearms and Explosives Operations Branch, 650 Massachusetts Ave, NW., Washington, DC 20226.

SUPPLEMENTARY INFORMATION:

Title: Application Permit For User Limited Special Fireworks (18 U.S.C. Chapter 40, Explosives).

OMB Number: 1512–0399.

Form Number: ATF F 5400.21.

Abstract: ATF F 5400.21 is used to verify the eligibility of and grant permission to the holder to buy or transport explosives in interstate commerce on a one-time basis.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 1800.

Estimated Time Per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 540.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Also, ATF requests information regarding any monetary expenses you may incur while completing these forms.

Dated: June 24, 1996.

John W. Magaw,

Director.

[FR Doc. 96–16682 Filed 6–28–96; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Reporting of Plastic Explosives Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996.

DATES: Written comments should be received on or before August 30, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Gail Hosey, Firearms and Explosives Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226.

SUPPLEMENTARY INFORMATION:

Title: Reporting of Plastic Explosives Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996.

OMB Number: 1512–0535.

Abstract: Possession of plastic explosives by anyone on April 24, 1996, must be reported to the Secretary within 120 days of this date. The report must be submitted in writing by August 22, 1996, and shall describe the quantity, name of manufacturer or importer, marks of identification, and storage location. By statute, failure to report this information subjects the person to fine and or imprisonment under Title 18 U.S.C. Chapter 40.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 100.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Also, ATF requests information regarding any monetary expenses you may incur while completing these forms.

Dated: June 24, 1996.

John W. Magaw,

Director.

[FR Doc. 96–16683 Filed 6–28–96; 8:45 am]

BILLING CODE 4810–31–P

Fiscal Service

Proposed Collection of Information: Trace Request for EFT Payment

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the forms "Trace Request for EFT Payments."

DATES: Written comments should be received on or before August 30, 1996.

ADDRESSES: Direct all written comments to Financial Management Service, 3361–L 75th Avenue, Landover, Maryland 20785.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dorothy Wilson, Financial Management Service, Room 357–D, 401 14th St., SW., Washington, DC. 20227, (202) 874–7157.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Trace Request for EFT Payment.

OMB Number: 1510–0045.

Form Number: FMS–145.

Abstract: The purpose of the form is to notify the financial institution that a customer beneficiary has claimed non-receipt of credit for payment. The information is collected to identify the circumstances that results in the non-receipt claims and to keep the customer informed of all actions taken to resolve the claims.

Current Actions: There are no changes to this information collection. It is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business/Financial Institutions.

Estimated Number of Respondents: 80,775.

Estimated Time Per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 10,500.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: June 24, 1996.

Mitchell A. Levine,

Assistant Commissioner.

[FR Doc. 96–16661 Filed 6–28–96; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1995—Rev., Supp. No 22]

Surety Companies Acceptable on Federal Bonds; Termination of Authority: Aetna Life and Casualty Company, Century American Casualty Company, Reliance National Insurance Company of New York, Titan Indemnity Company, United Pacific Insurance Company of New York

Notice is hereby given that the Certificates of Authority issued by the Treasury to the above listed companies, under the United States Code, Title 31, Sections 9304–9308, to qualify as acceptable sureties on Federal bonds are terminated effective June 30, 1996.

The Companies were last listed as acceptable sureties on Federal bonds at 60 FR 34436, June 30, 1995.

With respect to any bonds currently in force with the above listed companies, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from these Companies. In addition, bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet (http://www.ustreas.gov/treasury/bureaus/finman/c570.html) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6817/6872/6953/7034/8608. A hard copy may be purchased from the Government Printing Office (GPO), Washington, DC, telephone (202) 512–0132.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West highway, Room 6F04, Hyattsville, MD 20872, telephone (202/FTS) 874–6850.

Dated: June 25, 1996.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 96–16657 Filed 6–28–96; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1995—Rev., Supp. No. 19]

Surety Companies Acceptable on Federal Bonds; Merger and Change of Name: Frankona America Reinsurance Company

Frankona America Reinsurance Company, a Missouri corporation, has formally merged with and into First Excess and Reinsurance Corporation, a Missouri corporation, effective January 2, 1996. Frankona America Reinsurance Company was last listed as an acceptable reinsurer on Federal bonds at 60 FR 34450, June 30, 1995.

A Certificate of Authority as an acceptable reinsurer on Federal bonds, dated March 11, 1996, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to First Excess and Reinsurance Corporation, Kansas City, Missouri. This new certificate replaces the Certificate of Authority issued to the company under its former name. The underwriting limitation of $11,214,000 previously established for Frankona America Reinsurance Company as of July 1, 1995, remains unchanged until June 30, 1996.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1, in Treasury Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1995 Revision, at page 34450 to reflect this change.

The Circular may be viewed or downloaded by calling the U.S. Department of the Treasury, Financial Management Service, computerized public bulletin board system (FMS Inside Line) at (202) 874–6817/7034/6953/6872. A hard copy may be purchased from the Government Printing Office (GPO), Washington, DC, telephone (202) 512–0132. When ordering the Circular from GPO, use the following stock number: 048–000–00489–0.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202) 874–6602.

Dated: June 24, 1996.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Services.

[FR Doc. 96–16659 Filed 6–28–96; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1995—Rev., Supp. No. 20]

Survey Companies Acceptable on Federal Bonds; Change of Name and Underwriting Limitation: Signet Star Reinsurance Company

Signet Star Reinsurance Company, a Delaware corporation, has formally changed its name to North Star Reinsurance Corporation, effective December 18, 1995. The Company was last listed as an acceptable surety on Federal bonds at 60 FR 34447, June 30, 1995.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to North Star Reinsurance Corporation, Wilmington, Delaware. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The previous underwriting limitation $22,507,000 established for Signet Star Reinsurance Company as of July 1, 1995 is no longer in effect. The new underwriting limit for North Star Reinsurance Corporation of $1,000,000 is effective immediately, and will remain unchanged until June 10, 1996.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1995 Revision, to reflect this change of name and underwriting limit.

The Circular may be viewed or downloaded by calling the U.S. Department of the Treasury, Financial Management Service, computerized public bulletin board system (FMS Inside Line) at (202) 874–6817/7034/6953/6872. A hard copy may be purchased from the Government Printing Office (GOP), Washington, DC, telephone (202) 512–0132. When ordering the Circular from GPO, use the following stock number: 048–000–00489–0.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202) 874–6696.

Dated: June 25, 1996.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 96–16656 Filed 6–28–96; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1995—Rev., Supp. No. 21]

Surety Companies Acceptable on Federal Bonds; Signet Star Reinsurance Company (formerly signet Reinsurance Company)

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued effective December 28, 1995, to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1995 Revision, on page 34447 to reflect this addition:

Signet Star Reinsurance Company. BUSINESS ADDRESS; 100 Campus Drive, P.O. Box 853, Florham Park, New Jersey, 07932-0853, Phone: (201) 301–8000. UNDERWRITING LIMITATION *b/*: $10,902,000. SURETY LICENSES *c/*: AK,CA, CO, DE, DC, FL, ID, IL, IA, LA, MD, MI, MN, NE, OH, OK, OR, SD, TN, TX, UT, WA. INCORPORATED IN: Delaware.

This Signet Star Reinsurance Company should not be confused with Signet Star Reinsurance Company previously listed on 60 FR 34447, June 30, 1995, which changed its name to North Star Reinsurance Corporation effective December 18, 1995 (Please see Supplement No. __ published on _____). Subsequent to that event, but also on December 18, 1995, Signet Reinsurance Company changed its name to Signet Star Reinsurance Corporation.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to

transact surety business and other information.

Copies of the Circular may be obtained by calling the U.S. Department of the Treasury, Financial Management Service, computerized public bulletin board system (FMS Inside Line) at (202) 874–6817/7034/6953/6872 or by purchasing a hard copy from the Government Printing Office (GPO), Washington, DC, telephone (202) 512–0132. When ordering the Circular from GPO, use the following stock number: 048–000–00489–0.

For further assistance, contact the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202) 874–6775.

Dated: June 25, 1996.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 96–16658 Filed 6–28–96; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register

Vol. 61, No. 127

Monday, July 1, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. 24802; Amendment No. 29–40]
RIN 2120–AB36

Airworthiness Standards; Transport Category Rotorcraft Performance

Correction

In rule document 96–11494 beginning on page 21894 in the issue of Friday, May 10, 1996, make the following corrections:

1. On page 21895, in the 3d column, in the 25th line from the top, "fee" should read "feet".

2. On page 21896, in the 1st column, in the 12th line from the botton, "fee" should read "feet".

3. On the same page, in the same column, in the 8th through the 10th lines from the bottom, "Thus, the takeoff distance will be shorter for rotorcraft that take off from an elevated heliport." should not have appeared.

4. On the same page, in the same column, in the fifth line from the bottom, "that" should read "than".

5. On the same page, in the second column, under *14 CFR 29.65 Climb: All Engines Operating,* in the second line, "Category a" should read "Category A".

6. On page 21897, in the 1st column, in the 18th line from the bottom, "working" should read "wording".

§ 29.1 [Corrected]

7. On page 21898, in the third column, in §29.1(e), in the third line, "passengers" should read "passenger"; and in the fourth line, "category" should be capitalized.

§ 29.49 [Corrected]

8. On page 21899, in the first column, in § 29.49(b), in the fifth line, "certificate" should read "certification".

§ 29.53 [Corrected]

9. On the same page, in the same column, in § 29.53, in the third line, insert "after" after "time"; and in the fourth line, "rotocraft" should read "rotorcraft".

§ 29.59 [Corrected]

10. On the same page, in the second column, in § 29.59(a)(2), in the first line, "rotocraft" should read "rotorcraft"; and in § 29.59(a)(5), in the second line, insert "rate of" after "positive".

11. On the same page, in the same column, in § 29.59(b), in the seventh line, "rotocraft" should read "rotorcraft".

§ 29.60 [Corrected]

12. On the same page, in the third column, in § 29.60(a)(2), in the second and fifth lines, respectively, "rotocraft" should read "rotorcraft".

§ 29.65 [Corrected]

13. On page 21900, in the first column, in § 29.65(a)(3), in the first line, "A" should read "At".

§ 29.67 [Corrected]

14. On the same page, in the same column, the section heading "**§ Climb: one-engine-inoperative (OEI).**" should read "**§ 29.67 Climb: one-engine-inoperative (OEI).**"

15. On the same page, in the second column, in § 29.67(a)(3), in the fourth line, "rotocraft" should read "rotorcraft".

§ 29.83 [Corrected]

16. On page 21901, in the first column, in § 29.83(a)(1), in the second line, "rotocraft" should read "rotorcraft".

§ 29.85 [Corrected]

17. On the same page, in the same column, in §29.85, in the first line, "rotocraft should read "rotorcraft"; and in § 29.85(c), in the first line, "rotocraft" should read " rotorcraft".

§ 29.87 [Corrected]

18. On the same page, in the second column, in § 29.87(a)(2), in the first line, "Wright" should read "Weight".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. 28008; Amendment No. 27–33, 29–39]

RIN 2120–AF65

Rotorcraft Regulatory Changes Based on European Joint Aviation Requirements

Correction

In rule document 96–11493 beginning on page 21904 in the issue of Friday, May 10, 1996, make the following corrections:

§ 29.610 [Corrected]

1. On page 21907, in the third column, § 29.610(d)(3) should read: "Provide and electrical return path, under both normal and fault conditions, on rotorcraft having grounded electrical systems; and".

2. On the same page, in the same column, in § 29.610(d)(4), in the third line, insert "electrical and" after "essential".

§ 29.631 [Correctd]

3. On the same page, in the same column, in § 29.631, in the first line, "designated" should read "designed".

BILLING CODE 1505–01–D

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federal register

Monday
July 1, 1996

Part II

Pension Benefit Guaranty Corporation

29 CFR Chapters XXVI and XL
Reorganization, Renumbering and Reinvention of Regulations; Final Rule

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Chs. XXVI and XL

RIN 1212-AA75

Reorganization, Renumbering, and Reinvention of Regulations

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: In accordance with the President's Regulatory Reinvention Initiative, the Pension Benefit Guaranty Corporation is reorganizing, renumbering, and reinventing its regulations. The amendments will clarify and simplify the PBGC's regulations and make them easier to use.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Marc L. Jordan, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, 202-326-4024 (202-326-4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: The PBGC is renumbering and reorganizing its regulations to make it easier for practitioners and the public to research and use the rules under Title IV of the Employee Retirement Income Security Act of 1974. Under the new approach, the regulations will be numbered to track the statutory sections they implement.

On July 8, 1994 (at 59 FR 35067), the PBGC published a notice in the **Federal Register** inviting public comment on a proposal to reorganize and renumber its regulations to track Title IV. No comments were received.

On March 4, 1995, the President issued his Regulatory Reinvention Initiative, directing Federal agencies to eliminate or revise those regulations that are outdated or otherwise in need of reform. The PBGC is reorganizing, renumbering, and reinventing its regulations. The reinvention is limited to nonsubstantive corrections and clarifications and deletion of material that is unnecessary or that has been substantially superseded (or is no longer applicable).

For example, the reinvented regulations omit existing provisions dealing with the allocation of residual assets (part 2618, subpart C) because these provisions were largely superseded by changes in section 4044(d) of ERISA made by the Pension Protection Act of 1987. Similarly, the provision regarding interest rate assumptions for paying lump sums (existing § 2619.26(b)(2)) has been eliminated because of changes in section 417(e)(3) of the Internal Revenue Code and section 205(g)(3) of ERISA made by the Retirement Equity Act of 1984, the Tax Reform Act of 1986, and the Retirement Protection Act of 1994.

To clarify the rules on missing participants in terminating plans, nonsubstantive language changes have been made in the missing participants regulation (existing part 2629, new part 4050), related sections in the termination regulations (existing parts 2616 and 2617, new part 4041), and in the definition of "distribution date" in new § 4001.2.

The new regulation on premium rates (part 4006, which contains portions of existing part 2610) omits the variable-rate premium cap reduction rules (which have expired) and the cap rules themselves (repealed by the Retirement Protection Act of 1994). The rule reflects new provisions in the Retirement Protection Act of 1994 dealing with regulated public utility plans.

In some cases, provisions that may have been partially superseded by statutory changes have been retained pending revision—for example, the regulation on allocation of assets in terminating single-employer plans (renumbered part 4044). A note at the beginning of part 4044 and reminders within the part alert readers that some regulatory material republished in part 4044 must be read in the light of these other changes in the law.

The PBGC welcomes public comment on this rule to correct any editorial errors—*e.g.*, in cross-references—that may have been overlooked due to the magnitude of the revision project.

Under this final rule, the PBGC's regulations will be moved from chapter XXVI to chapter XL of title 29 of the CFR. Sections will be numbered in the 4000's. Part 4000 consists of finding aids—tables correlating provisions of old chapter XXVI and new chapter XL. Part 4001 contains definitions of terms used throughout the PBGC's regulations. A table of contents showing the rest of the new structure, along with the full text of the revised regulations, is set forth below.

Rulemaking Requirements and E.O. 12866

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

The PBGC has determined that the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b)) do not apply to this final rule. The PBGC previously notified the public of the primary changes made by this rule and provided an opportunity for public comment. None of the amendments in this rule (including those that clarify the regulations or remove or replace provisions made obsolete by the passage of time or by subsequent statutory or regulatory changes) affects applicable substantive legal requirements. Therefore, the PBGC has, for good cause, found that further notice and public procedure thereon are unnecessary.

For the same reasons, the PBGC finds pursuant to section 553(d)(3) of the Administrative Procedure Act (5 U.S.C. 553(d)(3)) that there is good cause to make this rule effective less than 30 days from the date of its publication.

The PBGC also certifies that the amendments in this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 of the Regulatory Flexibility Act do not apply. None of the amendments in this rule affects applicable substantive legal requirements.

Issued in Washington, DC, on the 24th day of June 1996.

Robert B. Reich,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

James J. Keightley,

Secretary, Board of Directors Pension Benefit Guaranty Corporation.

List of Subjects in 29 CFR Chapters XXVI and XL

Parts 2601 and 4002

Authority delegations (Government agencies), Organization and functions (Government agencies).

Part 2602

Conflict of interests, Government employees, Penalties, Political activities (Government employees), Production and disclosure of information, Testimony.

Parts 2603 and 4901

Freedom of Information.

Parts 2604 and 4906

Administrative practice and procedure, Conflict of interests, Penalties.

Parts 2606 and 4003

Administrative practice and procedure, Organization and functions (Government agencies), Pension insurance, Pensions.

Parts 2607 and 4902

Privacy.

Parts 2608 and 4907

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Parts 2609 and 4903

Administrative practice and procedure, Claims, Organization and functions (Government agencies).

Part 2610 and 4007

Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

Parts 2611, 2615, 2616, 2617, 2623, 2642, 2674, 4022, 4041, 4041A, 4065, 4211, and 4245

Pension insurance, Pensions, Reporting and recordkeeping requirements.

Parts 2612 and 4068

Business and industry, Pension insurance, Pensions, Small businesses.

Parts 2613, 2618, 2619, 2620, 2621, 2640, 2670, 4006, 4022, 4022B, 4044, and 4061

Pension insurance, Pensions.

Parts 2622, 2643, 4062, 4063, 4064, and 4204

Business and industry, Pension insurance, Pensions, Reporting and recordkeeping requirements, Small businesses.

Parts 2641 and 4221

Business and industry, Pensions, Small businesses.

Parts 2644, 2645, 2647, 2649, 2676, 2677, 4203, 4206, 4207, and 4220

Pensions.

Parts 2627, 2628, 2629, 2646, 2648, 2672, 2675, 4001, 4010, 4050, 4208, 4219, 4231, 4261, and 4281

Pensions, Reporting and recordkeeping requirements.

Part 2673

Pension insurance.

Part 4000

Administrative practice and procedure, Authority delegations (Government agencies), Blind, Business and industry, Civil rights, Claims, Conflict of interests, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Freedom of Information, Government employees, Handicapped, Nondiscrimination, Organization and functions (Government agencies), Penalties, Pension insurance, Pensions, Physically handicapped, Political activities (Government employees), Privacy, Production and disclosure of information, Reporting and recordkeeping requirements, Small businesses, Testimony.

Part 4001

Business and industry, Organization and functions (Government agencies), Pension insurance, Pensions, Small businesses.

Part 4903

Conflict of interests, Government employees, Penalties, Political activities (Government employees).

Part 4904

Government employees, Penalties, Production and disclosure of information, Testimony.

For the reasons set forth above, the PBGC is amending subtitle B of title 29 of the Code of Federal Regulations as follows:

CHAPTER XXVI—[REMOVED]

1. Chapter XXVI is removed.

2. Chapter XL is added to read as follows:

CHAPTER XL—PENSION BENEFIT GUARANTY CORPORATION

SUBCHAPTER A—GENERAL

Part 4000—Finding Aids

Sec.
4000.1 Distribution table.
4000.2 Derivation table.

Authority: 29 U.S.C. 1302(b)(3).

Part 4001—Terminology

Sec.
4001.1 Purpose and scope.
4001.2 Definitions.
4001.3 Trades or businesses under common control; controlled groups.

Authority: 29 U.S.C. 1301(a), 1301(b)(1), 1302(b)(3).

Part 4002—Bylaws of the Pension Benefit Guaranty Corporation

Sec.
4002.1 Name.
4002.2 Offices.
4002.3 Board of Directors.
4002.4 Chairman.
4002.5 Quorum.
4002.6 Meetings.
4002.7 Place of meetings; use of conference call communications equipment.
4002.8 Alternate voting procedure.
4002.9 Amendments.

Authority: 29 U.S.C. 1302(f).

Part 4003—Rules for Administrative Review of Agency Decisions

Subpart A—General Provisions

Sec.
4003.1 Purpose and scope.
4003.2 Definitions.
4003.3 PBGC assistance in obtaining information.
4003.4 Extension of time.
4003.5 Non-timely request for review.
4003.6 Representation.
4003.7 Exhaustion of administrative remedies.
4003.8 Request for confidential treatment.
4003.9 Filing of documents.
4003.10 Computation of time.

Subpart B—Initial Determinations

4003.21 Form and contents of initial determinations.
4003.22 Effective date of determinations.

Subpart C—Reconsideration of Initial Determinations

4003.31 Who may request reconsideration.
4003.32 When to request reconsideration.
4003.33 Where to submit request for reconsideration.
4003.34 Form and contents of request for reconsideration.
4003.35 Final decision on request for reconsideration.

Subpart D—Administrative Appeals

4003.51 Who may appeal or participate in appeals.
4003.52 When to file.
4003.53 Where to file.
4003.54 Contents of appeal.
4003.55 Opportunity to appear and to present witnesses.
4003.56 Consolidation of appeals.
4003.57 Appeals affecting third parties.
4003.58 Powers of the Appeals Board.
4003.59 Decision by the Appeals Board.
4003.60 Referral of appeal to the Executive Director.

Authority: 29 U.S.C. 1302(b)(3).

SUBCHAPTER B—PREMIUMS

Part 4006—Premium Rates

Sec.
4006.1 Purpose and scope.
4006.2 Definitions.
4006.3 Premium rate.
4006.4 Determination of unfunded vested benefits.
4006.5 Exemptions and special rules.

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

Part 4007—Payment of Premiums

Sec.
4007.1 Purpose and scope.
4007.2 Definitions.
4007.3 Filing requirement and forms.
4007.4 Filing address.
4007.5 Date of filing.
4007.6 Computation of time.
4007.7 Late payment interest charges.
4007.8 Late payment penalty charges.
4007.9 Coverage for guaranteed basic benefits.
4007.10 Recordkeeping requirements; PBGC audits.

4007.11 Due dates.
4007.12 Liability for single-employer premiums.
Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

SUBCHAPTER C—CERTAIN REPORTING AND DISCLOSURE REQUIREMENTS

Part 4010—Annual Financial and Actuarial Information Reporting

Sec.
4010.1 Purpose and scope.
4010.2 Definitions.
4010.3 Filing requirement.
4010.4 Filers.
4010.5 Information year.
4010.6 Information to be filed.
4010.7 Identifying information.
4010.8 Plan actuarial information.
4010.9 Financial information.
4010.10 Due date and filing with the PBGC.
4010.11 Waivers and extensions.
4010.12 Confidentiality of information submitted.
4010.13 Penalties.
4010.14 OMB control number.
Authority: 29 U.S.C. 1302(b)(3); 29 U.S.C. 1310.

Part 4011—Disclosure to Participants

Sec.
4011.1 Purpose and scope.
4011.2 Definitions.
4011.3 Notice requirement.
4011.4 Small plan rules.
4011.5 Exemption for new and newly-covered plans.
4011.6 Mergers, consolidations, and spinoffs.
4011.7 Persons entitled to receive notice.
4011.8 Time of notice.
4011.9 Manner of issuance of notice.
4011.10 Form of notice.
4011.11 OMB control number.
Appendix A to part 4011—Model participant notice.
Appendix B to part 4011—Table of maximum guaranteed benefits.
Authority: 29 U.S.C. 1302(b)(3), 1311.

SUBCHAPTER D—COVERAGE AND BENEFITS

Part 4022—Benefits Payable in Terminated Single-Employer Plans

Subpart A—General Provisions; Guaranteed Benefits

Sec.
4022.1 Purpose and scope.
4022.2 Definitions.
4022.3 Guaranteed benefits.
4022.4 Entitlement to a benefit.
4022.5 Determination of nonforfeitable benefits.
4022.6 Annuity payable for total disability.
4022.7 Benefits payable in a single installment.

Subpart B—Limitations on Guaranteed Benefits

4022.21 Limitations; in general.
4022.22 Maximum guaranteeable benefit.
4022.23 Computation of maximum guaranteeable benefit.
4022.24 Benefit increases.
4022.25 Five-year phase-in of benefit guarantee for participants other than substantial owners.
4022.26 Phase-in of benefit guarantee for participants who are substantial owners.
4022.27 Effect of tax disqualification.

Subpart C—Calculation and Payment of Unfunded Nonguaranteed Benefits [Reserved]

Subpart D—Benefit Reductions in Terminating Plans

4022.61 Limitations on benefit payments by plan administrator.
4022.62 Estimated guaranteed benefit.
4022.63 Estimated title IV benefit.

Subpart E—PBGC Recoupment and Reimbursement of Benefit Overpayments and Underpayments

4022.81 General rules.
4022.82 Method of recoupment.
4022.83 PBGC reimbursement of benefit underpayments.
Appendix to Part 4022—Maximum Guaranteeable Monthly Benefit
Authority: 29 U.S.C. 1302(b)(3), 1322, 1322b, 1341(c)(3)(D), 1344.

Part 4022B—Aggregate Limits on Guaranteed Benefits

Sec.
4022B.1 Aggregate payments limitation.
Authority: 29 U.S.C. 1302(b)(3).

SUBCHAPTER E—PLAN TERMINATIONS

Part 4041—Termination of Single-Employer Plans

Subpart A—General Provisions

Sec.
4041.1 Purpose and scope.
4041.2 Definitions.
4041.3 Requirements for a standard or a distress termination.
4041.4 Administration of plan during pendency of termination proceedings.
4041.5 Challenges to plan termination under collective bargaining agreement.
4041.6 Annuity requirements.
4041.7 Facilitating plan sufficiency in a standard termination.
4041.8 Disaster relief—distress termination.
4041.9 Filing with the PBGC.
4041.10 Computation of time.
4041.11 Maintenance of plan records.
4041.12 Information collection.

Subpart B—Standard Terminations

4041.21 Notice of intent to terminate.
4041.22 Issuance of notices of plan benefits.
4041.23 Form and contents of notices of plan benefits.
4041.24 Standard termination notice.
4041.25 PBGC action upon filing of standard termination notice.
4041.26 Notice of noncompliance.
4041.27 Closeout of plan.

Subpart C—Distress Terminations

4041.41 Notice of intent to terminate.
4041.42 PBGC review of notice of intent to terminate.
4041.43 Distress termination notice.
4041.44 PBGC determination of compliance with requirements for distress termination.
4041.45 PBGC determination of plan sufficiency/insufficiency.
4041.46 Notices of benefit distribution.
4041.47 Verification of plan sufficiency prior to closeout.
4041.48 Closeout of plan.
Appendix to Part 4041—Agreement for Commitment to Make Plan Sufficient for Benefit Liabilities
Authority: 29 U.S.C. 1302(b)(3), 1341, 1344.

Part 4041A—Termination of Multiemployer Plans

Subpart A—General Provisions

Sec.
4041A.1 Purpose and scope.
4041A.2 Definitions.
4041A.3 Submission of documents.

Subpart B—Notice of Termination

4041A.11 Requirement of notice.
4041A.12 Contents of notice.

Subpart C—Plan Sponsor Duties

4041A.21 General rule.
4041A.22 Payment of benefits.
4041A.23 Imposition and collection of withdrawal liability.
4041A.24 Annual plan valuations and monitoring.
4041A.25 Periodic determinations of plan solvency.
4041A.26 Financial assistance.
4041A.27 PBGC approval to pay benefits not otherwise permitted.

Subpart D—Closeout of Sufficient Plans

4041A.41 General rule.
4041A.42 Method of distribution.
4041A.43 Benefit forms.
4041A.44 Cessation of withdrawal liability.
Authority: 29 U.S.C. 1302(b)(3), 1341a, 1441.

Part 4043—Reportable Events and Certain Other Notification Requirements

Subpart A—Reportable Events; In General

Sec.
4043.1 Purpose and scope.
4043.2 Definitions.
4043.3 Requirement of notice.
4043.4 Reporting of reportable events on annual report.
4043.5 Obligation of contributing sponsor.
4043.6 Date of filing.
4043.7 Computation of time.
4043.11 Tax disqualification.
4043.12 Title I non-compliance.
4043.13 Amendment decreasing benefits payable.
4043.14 Active participant reduction.
4043.15 Termination or partial termination.
4043.16 Failure to meet minimum funding standards and granting of funding waiver.
4043.17 Inability to pay benefits when due.
4043.18 Distribution to a substantial owner.
4043.19 Plan merger, consolidation or transfer.
4043.20 Alternative compliance with reporting and disclosure requirements of Title I.
4043.21 Bankruptcy, insolvency, or similar settlements.
4043.22 Liquidation or dissolution.

4043.23 Transactions involving a change in contributing sponsor or controlled group.

Subpart B—Section 302(f); Notice of Failure to Make Required Contributions

4043.31 PBGC Form 200, notice of failure to make required contributions.
Authority: 29 U.S.C. 1302(b)(3), 1343, 1365.

Part 4044—Allocation of Assets in Single-Employer Plans

Subpart A—Allocation of Assets

General Provisions

Sec.
4044.1 Purpose and scope of subpart A.
4044.2 Definitions.
4044.3 General rule.
4044.4 Violations.

Allocation of Assets to Benefit Categories

4044.10 Manner of allocation.
4044.11 Priority category 1 benefits.
4044.12 Priority category 2 benefits.
4044.13 Priority category 3 benefits.
4044.14 Priority category 4 benefits.
4044.15 Priority category 5 benefits.
4044.16 Priority category 6 benefits.
4044.17 Subclasses.

Allocation of Residual Assets

4044.30 [Reserved.]

Subpart B—Valuation of Benefits and Assets

4044.41 General valuation rules.

Trusteed Plans

4044.51 Benefits to be valued.
4044.52 Valuation of benefits.
4044.53 Mortality assumptions—in general.
4044.54 Mortality assumptions—lump sums.

Expected Retirement Age

4044.55 XRA when a participant must retire to receive a benefit.
4044.56 XRA when a participant need not retire to receive a benefit.
4044.57 Special rule for facility closing.

Non-Trusteed Plans

4044.71 Valuation of annuity benefits.
4044.72 Form of annuity to be valued.
4044.73 Lump sums and other alternative forms of distribution in lieu of annuities.
4044.74 Withdrawal of employee contributions.
4044.75 Other lump sum benefits.
Appendix A to Part 4044—Mortality Rate Tables
Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums
Appendix C to Part 4044—Loading Assumptions
Appendix D to Part 4044—Tables Used To Determine Expected Retirement Age
Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

Part 4047—Restoration of Terminating and Terminated Plans

Sec.
4047.1 Purpose and scope.
4047.2 Definitions.
4047.3 Funding of restored plan.
4047.4 Payment of premiums.
4047.5 Repayment of PBGC payments of guaranteed benefits.
Authority: 29 U.S.C. 1302(b)(3), 1347.

Part 4050—Missing Participants

Sec.
4050.1 Purpose and scope.
4050.2 Definitions.
4050.3 Method of distribution for missing participants.
4050.4 Diligent search.
4050.5 Designated benefit.
4050.6 Payment and required documentation.
4050.7 Benefits of missing participants—in general.
4050.8 Automatic lump sum.
4050.9 Annuity or elective lump sum—living missing participant.
4050.10 Annuity or elective lump sum—beneficiary of deceased missing participant.
4050.11 Limitations.
4050.12 Special rules.
4050.13 OMB control number.

SUBCHAPTER F—LIABILITY

Part 4061—Amounts Payable by the Pension Benefit Guaranty Corporation

Sec.
4061.1 Cross-references.
Authority: 29 U.S.C. 1302(b)(3).

Part 4062—Liability for Termination of Single-Employer Plans

Sec.
4062.1 Purpose and scope.
4062.2 Definitions.
4062.3 Amount and payment of section 4062(b) liability.
4062.4 Determinations of net worth and collective net worth.
4062.5 Net worth record date.
4062.6 Net worth notification and information.
4062.7 Calculating interest on liability and refunds of overpayments.
4062.8 Arrangements for satisfying liability.
4062.9 Notification of and demand for liability.
4062.10 Filing of documents.
4062.11 Computation of time.

Part 4063—Withdrawal Liability; Plans Under Multiple Controlled Groups

Sec.
4063.1 Cross-references.
Authority: 29 U.S.C. 1302(b)(3).

Part 4064—Liability on Termination of Single-Employer Plans Under Multiple Controlled Groups

Sec.
4064.1 Cross-references.
Authority: 29 U.S.C. 1302(b)(3).

SUBCHAPTER G—ANNUAL REPORTING REQUIREMENTS

Part 4065—Annual Report

Sec.
4065.1 Purpose and scope.
4065.2 Definitions.
4065.3 Filing requirement.
Authority: 29 U.S.C. 1302, 1365.

SUBCHAPTER H—ENFORCEMENT PROVISIONS

Part 4067—Recovery of Liability for Plan Terminations

Sec.
4067.1 Cross-reference.
Authority: 29 U.S.C. 1302, 1367.

Part 4068—Lien for Liability

Sec.
4068.1 Purpose; cross-references.
4068.2 Definitions.
4068.3 Notification of and demand for liability.
4068.4 Lien.
Authority: 29 U.S.C. 1302(b)(3), 1368.

SUBCHAPTER I—WITHDRAWAL LIABILITY FOR MULTIEMPLOYER PLANS

Part 4203—Extension of Special Withdrawal Liability Rules

Sec.
4203.1 Purpose and scope.
4203.2 Plan adoption of special withdrawal rules.
4203.3 Requests for PBGC approval of plan amendments.
4203.4 PBGC action on requests.
4203.5 OMB control number.
Authority: 29 U.S.C. 1302(b)(3), 1383(f), 1388(e)(3).

Part 4204—Variances for Sale of Assets

Subpart A—General

Sec.
4204.1 Purpose and scope.
4204.2 Definitions.

Subpart B—Variance of the Statutory Requirements

4204.11 Variance of the bond/escrow and sale-contract requirements.
4204.12 *De minimis* transactions.
4204.13 Net income and net tangible assets tests.

Subpart C—Procedures for Individual and Class Variances or Exemptions

4204.21 Requests to PBGC for variances and exemptions.
4204.22 PBGC action on requests.
Authority: 29 U.S.C. 1302(b)(3), 1384(c).

Part 4206—Adjustment of Liability for a Withdrawal Subsequent to a Partial Withdrawal

Sec.
4206.1 Purpose and scope.
4206.2 Definitions.
4206.3 Credit against liability for a subsequent withdrawal.
4206.4 Amount of credit in plans using the presumptive method.
4206.5 Amount of credit in plans using the modified presumptive method.
4206.6 Amount of credit in plans using the rolling-5 method.
4206.7 Amount of credit in plans using the direct attribution method.
4206.8 Reduction of credit for abatement or other reduction of prior partial withdrawal liability.
4206.9 Amount of credit in plans using alternative allocation methods.

4206.10 Special rule for 70-percent decline partial withdrawals.

Authority: 29 U.S.C. 1302(b)(3), 1386(b).

Part 4207—Reduction or Waiver of Complete Withdrawal Liability

Sec.
4207.1 Purpose and scope.
4207.2 Definitions.
4207.3 Abatement.
4207.4 Withdrawal liability payments during pendency of abatement determination.
4207.5 Requirements for abatement.
4207.6 Partial withdrawals after reentry.
4207.7 Liability for subsequent complete withdrawals and related adjustments for allocating unfunded vested benefits.
4207.8 Liability for subsequent partial withdrawals.
4207.9 Special rules.
4207.10 Plan rules for abatement.

Authority: 29 U.S.C. 1302(b)(3), 1387.

Part 4208—Reduction or Waiver of Partial Withdrawal Liability

Sec.
4208.1 Purpose and scope.
4208.2 Definitions.
4208.3 Abatement.
4208.4 Conditions for abatement.
4208.5 Withdrawal liability payments during pendency of abatement determination.
4208.6 Computation of reduced annual partial withdrawal liability payment.
4208.7 Adjustment of withdrawal liability for subsequent withdrawals.
4208.8 Multiple partial withdrawals in one plan year.
4208.9 Plan adoption of additional abatement conditions.

Authority: 29 U.S.C. 1302(b)(3), 1388 (c) and (e).

Part 4211—Allocating Unfunded Vested Benefits

Subpart A—General

Sec.
4211.1 Purpose and scope.
4211.2 Definitions.
4211.3 Special rules for construction industry and IRC section 404(c) plans.

Subpart B—Changes Not Subject to PBGC Approval

4211.11 Changes not subject to PBGC approval.
4211.12 Modifications to the presumptive, modified presumptive and rolling-5 methods.
4211.13 Modifications to the direct attribution method.

Subpart C—Changes Subject to PBGC Approval

4211.21 Changes subject to PBGC approval.
4211.22 Requests for PBGC approval.
4211.23 Approval of alternative method.
4211.24 Special rule for certain alternative methods previously approved.

Subpart D—Allocation Methods for Merged Multiemployer Plans

4211.31 Allocation of unfunded vested benefits following the merger of plans.
4211.32 Presumptive method for withdrawals after the initial plan year.
4211.33 Modified presumptive method for withdrawals after the initial plan year.
4211.34 Rolling-5 method for withdrawals after the initial plan year.
4211.35 Direct attribution method for withdrawals after the initial plan year.
4211.36 Modifications to the determination of initial liabilities, the amortization of initial liabilities, and the allocation fraction.
4211.37 Allocating unfunded vested benefits for withdrawals before the end of the initial plan year.

Authority: 29 U.S.C. 1302(b)(3), 1391 (c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), (c)(5) (D), and (f).

Part 4219—Notice, Collection, and Redetermination of Withdrawal Liability

Subpart A—General

Sec.
4219.1 Purpose and scope.
4219.2 Definitions.

Subpart B—Redetermination of Withdrawal Liability Upon Mass Withdrawal

4219.11 Withdrawal liability upon mass withdrawal.
4219.12 Employers liable upon mass withdrawal.
4219.13 Amount of liability for *de minimis* amounts.
4219.14 Amount of liability for 20-year-limitation amounts.
4219.15 Determination of reallocation liability.
4219.16 Imposition of liability.
4219.17 Filings with PBGC.
4219.18 Withdrawal in a plan year in which substantially all employers withdraw.
4219.19 Information collection.

Subpart C—Overdue, Defaulted, and Overpaid Withdrawal Liability

Sec.
4219.31 Overdue and defaulted withdrawal liability; overpayment.
4219.32 Interest on overdue, defaulted and overpaid withdrawal liability.
4219.34 Plan rules concerning overdue and defaulted withdrawal liability.

Authority: 29 U.S.C. 1302(b)(3), 1389 (c) and (d), 1399 (c)(1)(D) and (c)(6).

Part 4220—Procedures for PBGC Approval of Plan Amendments

Sec.
4220.1 Purpose and scope.
4220.2 Requests for PBGC approval.
4220.3 PBGC action on requests.

Authority: 29 U.S.C. 1302(b)(3), 1400.

Part 4221—Arbitration of Disputes in Multiemployer Plans

Sec.
4221.1 Purpose and scope.
4221.2 Definitions.
4221.3 Initiation of arbitration.
4221.4 Appointment of the arbitrator.
4221.5 Powers and duties of the arbitrator.
4221.6 Hearing.
4221.7 Reopening of proceedings.
4221.8 Award.
4221.9 Reconsideration of award.
4221.10 Costs.
4221.11 Waiver of rules.
4221.12 Calculation of periods of time.
4221.13 Filing or service of documents.
4221.14 PBGC-approved arbitration procedures.

Authority: 29 U.S.C. 1302(b)(3), 1401.

SUBCHAPTER J—INSOLVENCY, REORGANIZATION, TERMINATION, AND OTHER RULES APPLICABLE TO MULTIEMPLOYER PLANS

Part 4231—Mergers and Transfers Between Multiemployer Plans

Sec.
4231.1 Purpose and scope.
4231.2 Definitions.
4231.3 Requirements for mergers and transfers.
4231.4 Preservation of accrued benefits.
4231.5 Valuation requirement.
4231.6 Plan solvency tests.
4231.7 *De minimis* mergers and transfers.
4231.8 Notice of merger or transfer.
4231.9 Request for compliance determination.
4231.10 Actuarial calculations and assumptions.

Authority: 29 U.S.C. 1302(b)(3), 1411.

Part 4245—Notice of Insolvency

Sec.
4245.1 Purpose and scope.
4245.2 Definitions.
4245.3 Notice of insolvency.
4245.4 Contents of notice of insolvency.
4245.5 Notice of insolvency benefit level.
4245.6 Contents of notice of insolvency benefit level.
4245.7 PBGC address.

Authority: 29 U.S.C. 1302(b)(3), 1426(e).

Part 4261—Financial Assistance to Multiemployer Plans

Sec.
4261.1 Cross-reference.

Authority: 29 U.S.C. 1302(b)(3).

Part 4281—Duties of Plan Sponsor Following Mass Withdrawal

Subpart A—General

Sec.
4281.1 Purpose and scope.
4281.2 Definitions.
4281.3 Submission of documents.
4281.4 Collection of information.

Subpart B—Valuation of Plan Benefits and Plan Assets

4281.11 Valuation dates.
4281.12 Benefits to be valued.
4281.13 Benefit valuation methods—in general.
4281.14 Mortality assumptions—in general.
4281.15 Mortality assumptions—lump sums under trusteed plans.
4281.16 Benefit valuation methods—plans closing out.
4281.17 Asset valuation methods—in general.
4281.18 Outstanding claims for withdrawal liability.

Subpart C—Benefit Reductions

4281.31 Plan amendment.
4281.32 Notices of benefit reductions.
4281.33 Restoration of benefits.

Subpart D—Benefit Suspensions

4281.41 Benefit suspensions.
4281.42 Retroactive payments.
4281.43 Notices of insolvency and annual updates.
4281.44 Contents of notices of insolvency and annual updates.
4281.45 Notices of insolvency benefit level.
4281.46 Contents of notices of insolvency benefit level.
4281.47 Application for financial assistance.
Appendix A to Part 4281—Interest Rates Used to Value Lump Sums and Annuities
Appendix B to Part 4281—Loading Assumptions

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1399(c)(1)(D), and 1441.

SUBCHAPTER K—INTERNAL AND ADMINISTRATIVE RULES AND PROCEDURES

Part 4901—Examination and Copying of Pension Benefit Guaranty Corporation Records

Subpart A—General

Sec.
4901.1 Purpose and scope.
4901.2 Definitions.
4901.3 Disclosure facilities.
4901.4 Information maintained in public reference room.
4901.5 Disclosure of other information.

Subpart B—Procedure for Formal Requests

4901.11 Submittal of requests for access to records.
4901.12 Description of information requested.
4901.13 Receipt by agency of request.
4901.14 Action on request.
4901.15 Appeals from denial of requests.
4901.16 Extensions of time.
4901.17 Exhaustion of administrative remedies.

Subpart C—Restrictions on Disclosure

4901.21 Restrictions in general.
4901.22 Partial disclosure.
4901.23 Records of concern to more than one agency.
4901.24 Special rules for trade secrets and confidential commercial or financial information submitted to the PBGC.

Subpart D—Fees

4901.31 Charges for services.
4901.32 Fee schedule.
4901.33 Payment of fees.
4901.34 Waiver or reduction of charges.

Authority: 5 U.S.C. 552; 29 U.S.C. 1302(b)(3); E.O. 12600, 52 FR 23781.

Part 4902—Disclosure and Amendment of Records Under the Privacy Act

Sec.
4902.1 Purpose and scope.
4902.2 Definitions.
4902.3 Procedures for determining existence of and requesting access to records.
4902.4 Disclosure of record to an individual.
4902.5 Procedures for requesting amendment of a record.
4902.6 Action on request for amendment of a record.
4902.7 Appeal of a denial of a request for amendment of a record.
4902.8 Fees.
4902.9 Specific exemptions.

Authority: 5 U.S.C. 552a; 29 U.S.C. 1302(b)(3).

Part 4903—Debt Collection

Subpart A—General

Sec.
4903.1 Purpose and scope.
4903.2 General.
4903.3 Definitions.

Subpart B—Administrative Offset

4903.21 Application of Federal Claims Collection Standards.
4903.22 Administrative offset procedures.
4903.23 PBGC requests for offset to other agencies.
4903.24 Requests for offset from other agencies.

Subpart C—Tax Refund Offset

4903.31 Eligibility of debt for tax refund offset.
4903.32 Tax refund offset procedures.
4903.33 Referral of debt for tax refund offset.

Subpart D—Salary Offset [Reserved]

Authority: 29 U.S.C. 1302(b); 31 U.S.C. 3701, 3711(f), 3720A; 4 CFR part 102; 26 CFR 301.6402–6.

Part 4904—Ethical Conduct of Employees

Sec.
4904.1 Ethical conduct; standards and requirements.

Authority: 29 U.S.C. 1302(b)(3).

Part 4905—Appearances in Certain Proceedings

Sec.
4905.1 Purpose and scope.
4905.2 Definitions.
4905.3 General.
4905.4 Appearances by PBGC employees.
4905.5 Requests for authenticated copies of PBGC records.
4905.6 Penalty.

Authority: 29 U.S.C. 1302(b).

Part 4906—[Reserved]

Part 4907—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Pension Benefit Guaranty Corporation

Sec.
4907.101 Purpose.
4907.102 Application.
4907.103 Definitions.
4907.110 Self-evaluation.
4907.111 Notice.
4907.130 General prohibitions against discrimination.
4907.140 Employment.
4907.149 Program accessibility: Discrimination prohibited.
4907.150 Program accessibility: Existing facilities.
4907.151 Program accessibility: New construction and alterations.
4907.160 Communications.
4907.170 Compliance procedures.

Authority: 29 U.S.C. 794, 1302(b)(3).

PART 4000—FINDING AIDS

Sec.
4000.1 Distribution table.
4000.2 Derivation table.

Authority: 29 U.S.C. 1302(b)(3).

§ 4000.1 Distribution table.

The following table shows where in chapter XL of 29 CFR to find regulations previously codified in chapter XXVI.

Ch. XXVI Part Subpart(s)/Section(s)	Ch. XL Part(s)/Subpart(s) Subpart(s)/Section(s)
Subchapter A—Internal and Administrative Rules	
2601	4002
2602:	
Subpart A	4904
Subpart B	4905
2603	4901
2604	Repealed
2606	4003
2607	4902
2608	4907
2609	4903

Ch. XXVI Part Subpart(s)/Section(s)	Ch. XL Part(s)/Subpart(s) Subpart(s)/Section(s)
Subchapter B—Rules Applicable to Single-Employer and Multiemployer Plans	
2610	4006 & 4007
§§ 2610.1, 2610.21, 2610.31	§§ 4006.1 & 4007.1
§§ 2610.2	§§ 4006.2 & 4007.2
§§ 2610.3–2610.9 & 2610.11	4007
§ 2610.10	4006.5(e)
§§ 2610.22–2610.24 & 2610.33	4006
§§ 2610.25, 2610.26 & 2610.34	4007
2611	4065
2612	4001, Subpart B
2613	4022, Subpart A
Subchapter C—Single-Employer Plans	
2615	4043
2616	4041
Subpart A	Subpart A
Subpart B	Subpart C
2617	4041
Subpart A	Subpart A
Subpart B	Subpart B
2618	4044, Subpart A
2619	4044, Subpart B
2620	4044, Subpart B
2621 (except § 2621.23(b))	4022, Subpart B
2621.23(b)	4022B
2622 (except 2622.9)	4062
§ 2622.9	4068
2623	4022, Subparts D & E
2625	4047
2627	4011
2628	4010
2629	4050
Subchapter F—Withdrawal Liability in Multiemployer Plans	
2640:	
§ 2640.2	§ 4001.2
§ 2640.3	§ 4221.2
§ 2640.4	§ 4211.2
§ 2640.5	§ 4204.2
§ 2640.6	§ 4207.2, 4206.2
§ 2640.7	§ 4219.2
§ 2640.8	§ 4206.2
2641	4221
2642	4211
2643	4204
2644	4219, Subpart C
2645	4203
2646	4206
2647	4207
2648	4219, Subpart B
2649	4206
Subchapter H—Other Rules Applicable to Multiemployer Plans	
2670:	
§ 2670.2	§ 4001.2
§ 2670.3	§ 4231.2
§ 2670.4	§§ 4041A.2, 4245.2, & 4281.2
2672	4231
2673	4041A, Subpart B, & 4041A.3(a)
2674	4245
2675	4041A, Subparts C & D, & 4281, Subparts C & D
2676	4281, Subpart B
2677	4220

§ 4000.2 Derivation table.

The following table shows where in previous chapter XXVI of 29 CFR to find regulations now codified in chapter XL.

Ch. XL Part Subpart/Section(s)	Ch. XXVI Part(s) Subpart/Section(s)
Subchapter A—General	
4000	[tables]
4001:	
Subpart A	[various statutory and regulatory definitions]
Subpart B	2612
4002	2601
4003	2606
Subchapter B—Premiums	
4006	2610
4007	2610
Subchapter C—Certain Reporting and Disclosure Requirements	
4010	2628
4011	2627
Subchapter D—Coverage and Benefits	
4022:	
Subpart A	2613
Subpart B	2621 (except § 2621.23(b))
Subparts D & E	2623
4022B	§ 2621.23(b)
Subchapter E—Plan Terminations	
4041:	
Subpart A	§§ 2616 & 2617, Subparts A
Subpart B	2617, Subpart B
Subpart C	2616, Subpart B
4041A:	
Subpart A	§§ 2670.4, 2673.1, 2673.4, 2675.1 & 2675.2
Subpart B	§§ 2673.2 & .3
Subparts C & D	2675, Subparts B & E
4043	2615
4044	2618, 2619 & 2620
4047	2625
4050	2629
Subchapter F—Liability	
4061	[cross-references]
4062	2622 (except § 2622.9)
4063	[cross-references]
4064	[cross-references]
Subchapter G—Annual Reporting Requirements	
4065	2611
Subchapter H—Enforcement Provisions	
4067	[cross-reference]
4068	2622.9
Subchapter I—Withdrawal Liability in Multiemployer Plans	
4203	2645
4204	2643 & § 2640.5
4206	2649 & § 2640.8
4207	2647 & 2640.6
4208	2646 & 2640.6
4211	2642 & 2640.4
4219:	
Subpart A	§ 2640.7
Subpart B	2648
Subpart C	2644
4220	2677
4221	2641 & § 2640.3
Subchapter J—Insolvency, Reorganization, Termination, and Other Rules Applicable to Multiemployer Plans	
4231	2672 & § 2670.3

Ch. XL Part Subpart/Section(s)	Ch. XXVI Part(s) Subpart/Section(s)
4245	2674 & 2670.4
4261	(cross-reference)
4281:	
Subpart A	2675, Subpart A, & 2670.4
Subpart B	2676
Subpart C	2675, Subpart C
Subpart D	2675, Subpart D
Subchapter K—Internal Administrative Rules and Procedures	
4901	2603
4902	2607
4903	2609
4904	2602, Subpart A
4905	2602, Subpart B
4907	2608

PART 4001—TERMINOLOGY

Sec.
4001.1 Purpose and scope.
4001.2 Definitions.
4001.3 Trades or businesses under common control; controlled groups.

Authority: 29 U.S.C. 1301, 1302(b)(3).

§ 4001.1 Purpose and scope.

This part contains definitions of certain terms used in this chapter and the regulations under which the PBGC makes various controlled group determinations.

§ 4001.2 Definitions.

For purposes of this chapter (unless otherwise indicated or required by the context):

Affected party means, with respect to a plan—

(1) Each participant in the plan;

(2) Each beneficiary of a deceased participant;

(3) Each alternate payee under an applicable qualified domestic relations order, as defined in section 206(d)(3) of ERISA;

(4) Each employee organization that currently represents any group of participants;

(5) For any group of participants not currently represented by an employee organization, the employee organization, if any, that last represented such group of participants within the 5-year period preceding issuance of the notice of intent to terminate; and

(6) the PBGC. If an affected party has designated, in writing, a person to receive a notice on behalf of the affected party, any reference to the affected party (in connection with the notice) shall be construed to refer to such person.

Annuity means a series of periodic payments to a participant or surviving beneficiary for a fixed or contingent period.

Basic-type benefit means a benefit that is guaranteed under the provisions of part 4022, subpart A, of this chapter, or would be guaranteed if the guarantee limits in part 4022, subpart B, of this chapter did not apply.

Benefit liabilities means the benefits of participants and their beneficiaries under the plan (within the meaning of section 401(a)(2) of the Code).

Code means the Internal Revenue Code of 1986, as amended.

Complete withdrawal means a complete withdrawal as described in section 4203 of ERISA.

Contributing sponsor means a person who is a contributing sponsor as defined in section 4001(a)(13) of ERISA.

Controlled group means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined under section 4001.3 of this part. For purposes of determining the persons liable for contributions under section 412(c)(11)(B) of the Code or section 302(c)(11)(B) of ERISA, or for premiums under section 4007(e)(2) of ERISA, a controlled group also includes any group treated as a single employer under section 414 (m) or (o) of the Code.

Corporation means the Pension Benefit Guaranty Corporation, except where the context demonstrates that a different meaning is intended.

Defined benefit plan means a plan described in section 3(35) of ERISA.

Distress termination means the voluntary termination of a single-employer plan in accordance with section 4041(c) of ERISA and part 4041, subpart C, of this chapter.

Distribution date means:

(1) Except as provided in paragraph (2)—

(i) For benefits provided through the purchase of irrevocable commitments, the date on which the obligation to provide the benefits passes from the plan to the insurer; and

(ii) For benefits provided other than through the purchase of irrevocable commitments, the date on which the benefits are delivered to the participant or beneficiary (or to another plan or benefit arrangement or other recipient authorized by the participant or beneficiary in accordance with applicable law and regulations) personally or by deposit with a mail or courier service (as evidenced by a postmark or written receipt); or

(2) Other than for purposes of determining the interest rate to be used in calculating the value of a benefit to be paid as a lump sum to a late-discovered participant, the deemed distribution date (as defined in § 4050.2) in the case of a designated benefit paid to the PBGC, a benefit provided after the deemed distribution date to a late-discovered participant, or an irrevocable commitment purchased from an insurer after the deemed distribution date for a recently-missing participant in accordance with part 4050 of this chapter (dealing with missing participants).

Employer means all trades or businesses (whether or not incorporated) that are under common control, within the meaning of § 4001.3 of this chapter.

ERISA means the Employee Retirement Income Security Act of 1974, as amended.

Fair market value means the price at which property would change hands between a willing buyer and a wfilling seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.

FOIA means the Freedom of Information Act, as amended (5 U.S.C. 552).

Funding standard account means an account established and maintained under section 302(b) of ERISA or section 412(b) of the Code.

Guaranteed benefit means a benefit under a single-employer plan that is guaranteed by the PBGC under section 4022(a) of ERISA and part 4022 of this chapter, or a benefit under a multiemployer plan that is guaranteed by the PBGC under section 4022A of ERISA.

Insurer means a company authorized to do business as an insurance carrier under the laws of a State or the District of Columbia.

Irrevocable commitment means an obligation by an insurer to pay benefits to a named participant or surviving beneficiary, if the obligation cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and is legally enforceable by the participant or beneficiary.

IRS means the Internal Revenue Service.

Mandatory employee contributions means amounts contributed to the plan by a participant that are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

Mass withdrawal means the withdrawal of every employer from the plan, or the withdrawal of substantially all employers pursuant to an agreement or arrangement to withdraw.

Multiemployer Act means the Multiemployer Pension Plan Amendments Act of 1980.

Multiemployer plan means a plan that is described in section 4001(a)(3) of ERISA and that is covered by title IV of ERISA.

Multiple employer plan means a single-employer plan maintained by two or more contributing sponsors that are not members of the same controlled group, under which all plan assets are available to pay benefits to all plan participants and beneficiaries.

Nonbasic-type benefit means any benefit provided by a plan other than a basic-type benefit.

Nonforfeitable benefit means a benefit described in section 4001(a)(8) of ERISA. Benefits that become nonforfeitable solely as a result of the termination of a plan will be considered forfeitable.

Normal retirement age means the age specified in the plan as the normal retirement age. This age shall not exceed the later of age 65 or the age attained after 5 years of participation in the plan. If no normal retirement age is specified in the plan, it is age 65.

Notice of intent to terminate means the notice of a proposed termination of a single-employer plan, as required by section 4041(a)(2) of ERISA and § 4041.21 (in a standard termination) or § 4041.41 (in a distress termination) of this chapter.

PBGC means the Pension Benefit Guaranty Corporation.

Person means a person defined in section 3(9) of ERISA.

Plan means a defined benefit plan within the meaning of section 3(35) of ERISA that is covered by title IV of ERISA.

Plan administrator means an administrator, as defined in section 3(16)(A) of ERISA.

Plan sponsor means, with respect to a multiemployer plan, the person described in section 4001(a)(10) of ERISA.

Plan year means the calendar, policy, or fiscal year on which the records of the plan are kept.

Proposed termination date means the date specified as such by the plan administrator of a single-employer plan in a notice of intent to terminate or, if later, in the standard or distress termination notice, in accordance with section 4041 of ERISA and part 4041 of this chapter.

Single-employer plan means any defined benefit plan (as defined in section 3(35) of ERISA) that is not a multiemployer plan (as defined in section 4001(a)(3) of ERISA) and that is covered by title IV of ERISA.

Standard termination means the voluntary termination, in accordance with section 4041(b) of ERISA and part 4041, subpart B, of this chapter, of a single-employer plan that is able to provide for all of its benefit liabilities when plan assets are distributed.

Substantial owner means a substantial owner as defined in section 4022(b)(5)(A) of ERISA.

Sufficient for benefit liabilities means that there is no amount of unfunded benefit liabilities, as defined in section 4001(a)(18) of ERISA.

Sufficient for guaranteed benefits means that there is no amount of unfunded guaranteed benefits, as defined in section 4001(a)(17) of ERISA.

Termination date means the date established pursuant to section 4048(a) of ERISA.

Title IV benefit means the guaranteed benefit plus any additional benefits to which plan assets are allocated pursuant to section 4044 of ERISA and part 4044 of this chapter.

Voluntary employee contributions means amounts contributed by an employee to a plan, pursuant to the provisions of the plan, that are not mandatory employee contributions.

§ 4001.3 Trades or businesses under common control; controlled groups.

For purposes of title IV of ERISA:

(a)(1) The PBGC will determine that trades and businesses (whether or not incorporated) are under common control if they are "two or more trades or businesses under common control", as defined in regulations prescribed under section 414(c) of the Code.

(2) The PBGC will determine that all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer, and all such trades and businesses shall be treated as a single employer.

(3) An individual who owns the entire interest in an unincorporated trade or business is treated as his own employer, and a partnership is treated as the employer of each partner who is an employee within the meaning of section 401(c)(1) of the Code.

(b) In the case of a single-employer plan:

(1) In connection with any person, a controlled group consists of that person and all other persons under common control with such person.

(2) Persons are under common control if they are members of a "controlled group of corporations", as defined in regulations prescribed under section 414(b) of the Code, or if they are "two or more trades or businesses under common control", as defined in regulations prescribed under section 414(c) of the Code.

PART 4002—BYLAWS OF THE PENSION BENEFIT GUARANTY CORPORATION

Sec.
4002.1 Name.
4002.2 Offices.
4002.3 Board of Directors.
4002.4 Chairman.
4002.5 Quorum.

4002.6 Meetings.
4002.7 Place of meetings; use of conference call communications equipment.
4002.8 Alternate voting procedure.
4002.9 Amendments.

Authority: 29 U.S.C. 1302(f).

§ 4002.1 Name.

The name of the Corporation is the Pension Benefit Guaranty Corporation.

§ 4002.2 Offices.

The principal office of the Corporation shall be in the Metropolitan area of the City of Washington, District of Columbia. The Corporation may have additional offices at such other places as the Board of Directors may deem necessary or desirable to the conduct of its business.

§ 4002.3 Board of Directors.

(a) The Board of Directors shall establish the policies of the Corporation and shall perform the other functions assigned to the Board of Directors in title IV of the Employee Retirement Income Security Act of 1974. The Board of Directors of the Corporation shall be composed of the Secretary of Labor, the Secretary of the Treasury, and the Secretary of Commerce. Members of the Board shall serve without compensation, but shall be reimbursed by the Corporation for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Board. A person at the time of a meeting of the Board of Directors who is serving as Secretary of Labor, Secretary of the Treasury or Secretary of Commerce in an acting capacity, shall serve as a member of the Board of Directors with the same authority and effect as the designated Secretary.

(b) The following powers are expressly reserved to the Board of Directors and shall not be delegated:

(1) Approval of all final substantive regulations prior to publication in the **Federal Register**, except for amendments to the regulations on Allocation of Assets in Single-employer Plans and Duties of Plan Sponsor Following Mass Withdrawal (parts 4044 and 4281 of this chapter) establishing new interest rates and factors, which may be approved by the Executive Director of the PBGC.

(2) Approval of all reports or recommendations to the Congress that are required by statute;

(3) Establishment from time to time of the Corporation's budget and debt ceiling up to the statutory limit;

(4) Determination from time to time of limits on advances to the revolving funds administered by the Corporation pursuant to section 4005(a) of ERISA;

(5) Final decision on any policy matter that would materially affect the rights of a substantial number of employers or covered participants and beneficiaries.

(c) Final non-substantive regulations and all proposed regulations shall be approved by the Executive Director prior to publication in the **Federal Register**; provided that all proposed substantive regulations shall first be circulated for review to the Board of Directors or their designees, and may thereafter be issued by the Executive Director after responding to any comments made within 21 days after circulation of the proposed regulation, or, if no comments are received, after expiration of the 21-day period.

§ 4002.4 Chairman.

The Secretary of Labor shall be the Chairman of the Board of Directors and he shall be the administrator of the Corporation with responsibility for its management, including overall supervision of the Corporation's personnel, organization, and budget practices, and shall exercise such incidental powers as may be necessary to carry out his administrative responsibilities. The Chairman may delegate his administrative responsibilities.

§ 4002.5 Quorum.

A majority of the Directors shall constitute a quorum for the transaction of business. Any act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board, except as may otherwise be provided in these bylaws.

§ 4002.6 Meetings.

Regular meetings of the Board of Directors shall be held at such times as the Chairman shall select. Special meetings of the Board of Directors shall be called by the Chairman on the request of any other Director. Reasonable notice of any meetings shall be given to each Director. The General Counsel of the Corporation shall serve as Secretary to the Board of Directors and keep its minutes. As soon as practicable after each meeting, a draft of the minutes of such meeting shall be distributed to each member of the Board for correction or approval.

§ 4002.7 Place of meetings; use of conference call communications equipment.

Meetings of the Board of Directors shall be held at the principal office of the Corporation unless otherwise determined by the Board of Directors or the Chairman. Any Director may participate in a meeting of the Board of Directors through the use of conference call telephone or similar communications equipment, by means of which all persons participating in the meeting can simultaneously speak to and hear each other. Any Director so participating in a meeting shall be deemed present for all purposes. Actions taken by the Board of Directors at meetings conducted through the use of such equipment, including the votes of each member, shall be recorded in the usual manner in the minutes of the meetings of the Board of Directors. A resolution of the Board of Directors signed by each of its three members shall have the same force and effect as if agreed at a duly called meeting and shall be recorded in the minutes of the Board of Directors.

§ 4002.8 Alternate voting procedure.

(a) A Director shall be deemed to have participated in a meeting of the Board of Directors for all purposes if,

(1) That Director was represented at that meeting by an individual who was designated to act on his behalf, and

(2) That Director ratified in writing the actions taken by his designee at that meeting within a reasonable period of time after such meeting.

(b) For purposes of this section, a Director, including an individual serving as Acting Secretary, shall designate a representative at a level not below that of Assistant Secretary within his Department. Such designation shall be in writing and shall be effective until withdrawn or until a date specified therein.

(c) For purposes of this section, a Director's approval of the minutes of a meeting of the Board of Directors shall constitute ratification of the actions of his designee at such meeting.

§ 4002.9 Amendments.

These bylaws may be amended or new bylaws adopted by unanimous vote of the Board.

PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

Subpart A—General Provisions

Sec.
4003.1 Purpose and scope.
4003.2 Definitions.
4003.3 PBGC assistance in obtaining information.
4003.4 Extension of time.
4003.5 Non-timely request for review.
4003.6 Representation.
4003.7 Exhaustion of administrative remedies.
4003.8 Request for confidential treatment.
4003.9 Filing of documents.
4003.10 Computation of time.

Subpart B—Initial Determinations

4003.21 Form and contents of initial determinations.
4003.22 Effective date of determinations.

Subpart C—Reconsideration of Initial Determinations

4003.31 Who may request reconsideration.
4003.32 When to request reconsideration.
4003.33 Where to submit request for reconsideration.
4003.34 Form and contents of request for reconsideration.
4003.35 Final decision on request for reconsideration.

Subpart D—Administrative Appeals

4003.51 Who may appeal or participate in appeals.
4003.52 When to file.
4003.53 Where to file.
4003.54 Contents of appeal.
4003.55 Opportunity to appear and to present witnesses.
4003.56 Consolidation of appeals.
4003.57 Appeals affecting third parties.
4003.58 Powers of the Appeals Board.
4003.59 Decision by the Appeals Board.
4003.60 Referral of appeal to the Executive Director.

Authority: 29 U.S.C. 1302(b)(3).

Subpart A—General Provisions

§ 4003.1 Purpose and scope.

(a) *Purpose.* This part sets forth the rules governing the issuance of all initial determinations by the PBGC on cases pending before it involving the matters set forth in paragraph (b) of this section and the procedures for requesting and obtaining administrative review by the PBGC of those determinations. Subpart A contains general provisions. Subpart B sets forth rules governing the issuance of all initial determinations of the PBGC on matters covered by this part. Subpart C establishes procedures governing the reconsideration by the PBGC of initial determinations relating to the matters set forth in paragraphs (b)(1) through (b)(4). Subpart D establishes procedures governing administrative appeals from initial determinations relating to the matters set forth in paragraphs (b)(5) through (b)(10).

(b) *Scope.* This part applies to the following determinations made by the PBGC in cases pending before it and to the review of those determinations:

(1) Determinations that a plan is covered under section 4021 of ERISA;

(2) Determinations with respect to premiums, interest and late payment penalties pursuant to section 4007 of ERISA;

(3) Determinations with respect to voluntary terminations under section 4041 of ERISA, including—

(i) A determination that a notice requirement or a certification requirement under section 4041 of ERISA has not been met,

(ii) A determination that the requirements for demonstrating distress under section 4041(c)(2)(B) of ERISA have not been met, and

(iii) A determination with respect to the sufficiency of plan assets for benefit liabilities or for guaranteed benefits;

(4) Determinations with respect to allocation of assets under section 4044 of ERISA, including distribution of excess assets under section 4044(d);

(5) Determinations that a plan is not covered under section 4021 of ERISA;

(6) Determinations under section 4022 (a) or (c) or section 4022A(a) of ERISA with respect to benefit entitlement of participants and beneficiaries under covered plans and determinations that a domestic relations order is or is not a qualified domestic relations order under section 206(d)(3) of ERISA and section 414(p) of the Code;

(7) Determinations under section 4022 (b) or (c), section 4022A (b) through (e), or section 4022B of ERISA of the amount of benefits payable to participants and beneficiaries under covered plans;

(8) Determinations of the amount of money subject to recapture pursuant to section 4045 of ERISA;

(9) Determinations of the amount of liability under section 4062(b)(1), section 4063, or section 4064 of ERISA;

(10) Determinations—

(i) That the amount of a participant's or beneficiary's benefit under section 4050(a)(3) of ERISA has been correctly computed based on the designated benefit paid to the PBGC under section 4050(b)(2) of ERISA, or

(ii) That the designated benefit is correct, but only to the extent that the benefit to be paid does not exceed the participant's or beneficiary's guaranteed benefit.

(c) *Matters not covered by this part.* Nothing in this part limits—

(1) The authority of the PBGC to review, either upon request or on its own initiative, a determination to which this part does not apply when, in its discretion, the PBGC determines that it would be appropriate to do so, or

(2) The procedure that the PBGC may utilize in reviewing any determination to which this part does not apply.

§ 4003.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, contributing sponsor, controlled group, ERISA, multiemployer plan, PBGC, person, plan administrator, and single-employer plan.

In addition, for purposes of this part:

Aggrieved person means any participant, beneficiary, plan administrator, contributing sponsor of a single-employer plan or member of such a contributing sponsor's controlled group, plan sponsor of a multiemployer plan, or employer that is adversely affected by an initial determination of the PBGC with respect to a pension plan in which such person has an interest. The term "beneficiary" includes an alternate payee (within the meaning of section 206(d)(3)(K) of ERISA) under a qualified domestic relations order (within the meaning of section 206(d)(3)(B) of ERISA).

Appeals Board means a board consisting of three PBGC officials. The Executive Director shall appoint a senior PBGC official to serve as Chairperson and three or more other PBGC officials to serve as regular Appeals Board members. The Chairperson shall designate the three officials who will constitute the Appeals Board with respect to a case, provided that a person may not serve on the Appeals Board with respect to a case in which he or she made a decision regarding the merits of the determination being appealed. The Chairperson need not serve on the Appeals Board with respect to all cases.

Appellant means any person filing an appeal under subpart D of this part.

Director means the Director of any department of the PBGC and includes the Executive Director of the PBGC, Deputy Executive Directors, and the General Counsel.

§ 4003.3 PBGC assistance in obtaining information.

A person who lacks information or documents necessary to file a request for review pursuant to subpart C or D of this part, or necessary to a decision whether to seek review, or necessary to participate in an appeal pursuant to § 4003.57 of this part or necessary to a decision whether to participate, may request the PBGC's assistance in obtaining information or documents in the possession of a party other than the PBGC. The request shall state or describe the missing information or documents, the reason why the person needs the information or documents, and the reason why the person needs the assistance of the PBGC in obtaining the information or documents. The request may also include a request for an extension of time to file pursuant to § 4003.4 of this part.

§ 4003.4 Extension of time.

(a) *General rule.* When a document is required under this part to be filed within a prescribed period of time, an extension of time to file will be granted only upon good cause shown and only

when the request for an extension is made before the expiration of the time prescribed. The request for an extension shall be in writing and state why additional time is needed and the amount of additional time requested. The filing of a request for an extension shall stop the running of the prescribed period of time. When a request for an extension is granted, the PBGC shall notify the person requesting the extension, in writing, of the amount of additional time granted. When a request for an extension is denied, the PBGC shall so notify the requestor in writing, and the prescribed period of time shall resume running from the date of denial.

(b) *Disaster relief.* When the President of the United States declares that, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), a major disaster exists, the Executive Director of the PBGC (or his or her designee) may, by issuing one or more notices of disaster relief, extend the due date for filing a request for reconsideration under § 4003.32 or an appeal under § 4003.52 by up to 180 days.

(1) The due date extension or extensions shall be available only to an aggrieved person who is residing in, or whose principal place of business is within, a designated disaster area, or with respect to whom the office of the service provider, bank, insurance company, or other person maintaining the information necessary to file the request for reconsideration or appeal is within a designated disaster area; and

(2) The request for reconsideration or appeal shall identify the filing as one for which the due date extension is available.

§ 4003.5 Non-timely request for review.

The PBGC will process a request for review of an initial determination that was not filed within the prescribed period of time for requesting review (see §§ 4003.32 and 4003.52) if—

(a) The person requesting review demonstrates in his or her request that he or she did not file a timely request for review because he or she neither knew nor, with due diligence, could have known of the initial determination; and

(b) The request for review is filed within 30 days after the date the aggrieved person, exercising due diligence at all relevant times, first learned of the initial determination where the requested review is reconsideration, or within 45 days after the date the aggrieved person, exercising due diligence at all relevant times, first learned of the initial determination where the request for review is an appeal.

§ 4003.6 Representation.

A person may file any document or make any appearance that is required or permitted by this part on his or her own behalf or he or she may designate a representative. When the representative is not an attorney-at-law, a notarized power of attorney, signed by the person making the designation, which authorizes the representation and specifies the scope of representation shall be filed with the PBGC in accordance with § 4003.9(b) of this part.

§ 4003.7 Exhaustion of administrative remedies.

Except as provided in § 4003.22(b), a person aggrieved by an initial determination of the PBGC covered by this part, other than a determination subject to reconsideration that is issued by a Department Director, has not exhausted his or her administrative remedies until he or she has filed a request for reconsideration under subpart C of this part or an appeal under subpart D of this part, whichever is applicable, and a decision granting or denying the relief requested has been issued.

§ 4003.8 Request for confidential treatment.

If any person filing a document with the PBGC believes that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552, he or she shall specify the information with respect to which confidentiality is claimed and the grounds therefor.

§ 4003.9 Filing of documents.

(a) *Date of filing.* Any document required or permitted to be filed under this part is considered filed on the date of the United States postmark stamped on the cover in which the document is mailed, provided that—

(1) The postmark was made by the United States Postal Service; and

(2) The document was mailed postage prepaid, properly packaged and addressed to the PBGC.

If the conditions stated in both paragraphs (a)(1) and (a)(2) of this section are not met, the document is considered filed on the date it is received by the PBGC. Documents received after regular business hours are considered filed on the next regular business day.

(b) *Where to file.* Any document required or permitted to be filed under this part in connection with a request for reconsideration shall be submitted to the Director of the department within the PBGC that issued the initial determination. Any document required or permitted to be filed under this part in connection with an appeal shall be submitted to the Appeals Board, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

§ 4003.10 Computation of time.

In computing any period of time prescribed or allowed by this part, the day of the act, event, or default from which the designated period of time begins to run is not counted. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a Federal holiday.

Subpart B—Initial Determinations

§ 4003.21 Form and contents of initial determinations.

All determinations to which this subpart applies shall be in writing, shall state the reason for the determination, and, except when effective on the date of issuance as provided in § 4003.22(b), shall contain notice of the right to request review of the determination pursuant to subpart C or subpart D of this part, as applicable, and a brief description of the procedures for requesting review.

§ 4003.22 Effective date of determinations.

(a) *General Rule.* Except as provided in paragraph (b) of this section, an initial determination covered by this subpart will not become effective until the prescribed period of time for filing a request for reconsideration under subpart C of this part or an appeal under subpart D of this part, whichever is applicable, has elapsed. The filing of a request for review under subpart C or D of this part shall automatically stay the effectiveness of a determination until a decision on the request for review has been issued by the PBGC.

(b) *Exception.* The PBGC may, in its discretion, order that the initial determination in a case is effective on the date it is issued. When the PBGC makes such an order, the initial determination shall state that the determination is effective on the date of issuance and that there is no obligation to exhaust administrative remedies with respect to that determination by seeking review of it by the PBGC.

Subpart C—Reconsideration of Initial Determinations

§ 4003.31 Who may request reconsideration.

Any person aggrieved by an initial determination of the PBGC to which this subpart applies may request reconsideration of the determination.

§ 4003.32 When to request reconsideration.

Except as provided in §§ 4003.4 and 4003.5, a request for reconsideration must be filed within 30 days after the date of the initial determination of which reconsideration is sought or, when administrative review includes a procedure in § 4903.33 of this chapter, by a date 60 days (or more) thereafter that is specified in the PBGC's notice of the right to request review.

§ 4003.33 Where to submit request for reconsideration.

A request for reconsideration shall be submitted to the Director of the department within the PBGC that issued the initial determination, except that a request for reconsideration of a determination described in § 4003.1(b)(3)(ii) shall be submitted to the Executive Director.

§ 4003.34 Form and contents of request for reconsideration.

A request for reconsideration shall—

(a) Be in writing;

(b) Be clearly designated as a request for reconsideration;

(c) Contain a statement of the grounds for reconsideration and the relief sought; and

(d) Reference all pertinent information already in the possession of the PBGC and include any additional information believed to be relevant.

§ 4003.35 Final decision on request for reconsideration.

(a) Except as provided in paragraphs (a)(1) or (a)(2), final decisions on requests for reconsideration will be issued by the same department of the PBGC that issued the initial determination, by an official whose level of authority in that department is higher than that of the person who issued the initial determination.

(1) When an initial determination is issued by a Department Director, the Department Director (or an official designated by the Department Director) will issue the final decision on request for reconsideration of a determination other than one described in § 4003.1(b)(3)(ii).

(2) The Executive Director (or an official designated by the Executive Director) will issue the final decision on a request for reconsideration of a determination described in § 4003.1(b)(3)(ii).

(b) The final decision on a request for reconsideration shall be in writing, specify the relief granted, if any, state the reason(s) for the decision, and state that the person has exhausted his or her administrative remedies.

Subpart D—Administrative Appeals

§ 4003.51 Who may appeal or participate in appeals.

Any person aggrieved by an initial determination to which this subpart applies may file an appeal. Any person who may be aggrieved by a decision under this subpart granting the relief requested in whole or in part may participate in the appeal in the manner provided in § 4003.57.

§ 4003.52 When to file.

Except as provided in §§ 4003.4 and 4003.5, an appeal under this subpart must be filed within 45 days after the date of the initial determination being appealed or, when administrative review includes a procedure in § 4903.33 of this chapter, by a date 60 days (or more) thereafter that is specified in the PBGC's notice of the right to request review.

§ 4003.53 Where to file.

An appeal or a request for an extension of time to appeal shall be submitted to the Appeals Board, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

§ 4003.54 Contents of appeal.

(a) An appeal shall—

(1) Be in writing;

(2) Be clearly designated as an appeal;

(3) Contain a statement of the grounds upon which it is brought and the relief sought;

(4) Reference all pertinent information already in the possession of the PBGC and include any additional information believed to be relevant;

(5) State whether the appellant desires to appear in person or through a representative before the Appeals Board; and

(6) State whether the appellant desires to present witnesses to testify before the Appeals Board, and if so, state why the presence of witnesses will further the decision-making process.

(b) In any case where the appellant believes that another person may be aggrieved if the PBGC grants the relief sought, the appeal shall also include the name(s) and address(es) (if known) of such other person(s).

§ 4003.55 Opportunity to appear and to present witnesses.

(a) At the discretion of the Appeals Board, any appearance permitted under this subpart may be before a hearing officer designated by the Appeals Board.

(b) An opportunity to appear before the Appeals Board (or a hearing officer) and an opportunity to present witnesses will be permitted at the discretion of the Appeals Board. In general, an opportunity to appear will be permitted if the Appeals Board determines that there is a dispute as to a material fact; an opportunity to present witnesses will be permitted when the Appeals Board determines that witnesses will contribute to the resolution of a factual dispute.

(c) Appearances permitted under this section will take place at the main offices of the PBGC, 1200 K Street NW., Washington, DC 20005–4026, unless the Appeals Board, in its discretion, designates a different location, either on its own initiative or at the request of the appellant or a third party participating in the appeal.

§ 4003.56 Consolidation of appeals.

(a) *When consolidation may be required.* Whenever multiple appeals are filed that arise out of the same or similar facts and seek the same or similar relief, the Appeals Board may, in its discretion, order the consolidation of all or some of the appeals.

(b) *Representation of parties.* Whenever the Appeals Board orders the consolidation of appeals, the appellants may designate one (or more) of their number to represent all of them for all purposes relating to their appeals.

(c) *Decision by Appeals Board.* The decision of the Appeals Board in a consolidated appeal shall be binding on all appellants whose appeals were subject to the consolidation.

§ 4003.57 Appeals affecting third parties.

(a) Before the Appeals Board issues a decision granting, in whole or in part, the relief requested in an appeal, it shall make a reasonable effort to notify third persons who will be aggrieved by the decision of the following:

(1) The pendency of the appeal;

(2) The grounds upon which the appeal is based;

(3) The grounds upon which the Appeals Board is considering reversing the initial determination;

(4) The right to submit written comments on the appeal;

(5) The right to request an opportunity to appear in person or through a representative before the Appeals Board and to present witnesses; and

(6) That no further opportunity to present information to the PBGC with

respect to the determination under appeal will be provided.

(b) Written comments and a request to appear before the Appeals Board must be filed within 45 days after the date of the notice from the Appeals Board.

(c) If more than one third party is involved, their participation in the appeal may be consolidated pursuant to the provisions of § 4003.56.

§ 4003.58 Powers of the Appeals Board.

In addition to the powers specifically described in this part, the Appeals Board may request the submission of any information or the appearance of any person it considers necessary to resolve a matter before it and to enter any order it considers necessary for or appropriate to the disposition of any matter before it.

§ 4003.59 Decision by the Appeals Board.

(a) In reaching its decision, the Appeals Board shall consider those portions of the file relating to the initial determination, all material submitted by the appellant and any third parties in connection with the appeal, and any additional information submitted by PBGC staff.

(b) The decision of the Appeals Board constitutes the final agency action by the PBGC with respect to the determination which was the subject of the appeal and is binding on all parties who participated in the appeal and who were notified pursuant to § 4003.57 of their right to participate in the appeal.

(c) The decision of the Appeals Board shall be in writing, specify the relief granted, if any, state the bases for the decision, including a brief statement of the facts or legal conclusions supporting the decision, and state that the appellant has exhausted his or her administrative remedies.

§ 4003.60 Referral of appeal to the Executive Director.

The Appeals Board may, in its discretion, refer any appeal to the Executive Director of the PBGC for decision. In such a case, the Executive Director shall have all the powers vested in the Appeals Board by this subpart and the decision of the Executive Director shall meet the requirements of and have the effect of a decision issued under § 4003.59 of this part.

PART 4006—PREMIUM RATES

Sec.

4006.1 Purpose and scope.
4006.2 Definitions.
4006.3 Premium rate.
4006.4 Determination of unfunded vested benefits.
4006.5 Exemptions and special rules.

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

§ 4006.1 Purpose and scope.

This part, which applies to all plans covered by title IV of ERISA, provides rules for computing the premiums imposed by sections 4006 and 4007 of ERISA. (See part 4007 of this chapter for rules for the payment of premiums, including due dates and late payment charges.)

§ 4006.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, contributing sponsor, ERISA, fair market value, insurer, irrevocable commitment, multiemployer plan, notice of intent to terminate, PBGC, plan administrator, plan, plan year, and single-employer plan.

In addition, for purposes of this part:

New plan means a plan that became effective within the premium payment year and includes a plan resulting from a consolidation or spinoff. A plan that meets this definition is considered to be a new plan even if the plan constitutes a successor plan within the meaning of section 4021(a) of ERISA.

Newly-covered plan means a plan that is not a new plan and that was not covered by title IV of ERISA immediately prior to the premium payment year.

Participant means any individual who is included in one of the categories below:

(a) *Active.* (1) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan. This category includes any individual who is considered covered under the plan for purposes of meeting the minimum coverage requirements, but because of offset or other provisions (including integration with Social Security benefits), the individual does not have any accrued benefits.

(2) Any non-vested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan. This category does not include a non-vested former employee who has incurred a break in service the greater of one year or the break in service period specified in the plan.

(b) *Inactive*—(1) *Inactive receiving benefits.* Any individual who is retired or separated from employment covered by the plan and who is receiving benefits under the plan. This category does not include an individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

(2) *Inactive entitled to future benefits.* Any individual who is retired or separated from employment covered by the plan and who is entitled to begin receiving benefits under the plan in the future. This category does not include an individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

(c) *Deceased.* Any deceased individual who has one or more beneficiaries who are receiving or entitled to receive benefits under the plan. This category does not include an individual if an insurer has made an irrevocable commitment to pay all the benefits to which the beneficiaries of that individual are entitled under the plan.

Premium payment year means the plan year for which the premium is being paid.

Short plan year means a plan year that is less than twelve full months.

§ 4006.3 Premium rate.

Subject to the provisions of § 4006.5 (dealing with exemptions and special rules), the premium paid for basic benefits guaranteed under section 4022(a) of ERISA shall equal the flat-rate premium under paragraph (a) of this section plus, in the case of a single-employer plan, the variable-rate premium under paragraph (b) of this section.

(a) *Flat-rate premium.* The flat-rate premium is equal to the number of participants in the plan on the last day of the plan year preceding the premium payment year, multiplied by—

(1) $19 for a single-employer plan, or

(2) $2.60 for a multiemployer plan.

(b) *Variable-rate premium.* The variable-rate premium is $9 for each $1,000 of a single-employer plan's unfunded vested benefits, as determined under § 4006.4.

§ 4006.4 Determination of unfunded vested benefits.

(a) *General rule.* Except as permitted by paragraph (c) of this section or as provided in the exemptions and special rules under § 4006.5, the amount of a plan's unfunded vested benefits (as defined in paragraph (b) of this section) shall be determined as of the last day of the plan year preceding the premium payment year, based on the plan provisions and the plan's population as of that date. The determination shall be made in accordance with paragraph (a)(1) or (a)(2), and shall be certified to in accordance with paragraph (a)(4).

(1) The unfunded vested benefits shall be determined using the actuarial assumptions and methods described in paragraph (a)(3) for the plan year preceding the premium payment year (or, in the case of a new or newly-covered plan, for the premium payment year), except to the extent that other actuarial assumptions or methods are specifically prescribed by this section or are necessary to reflect the occurrence of a significant event described in paragraph (d) of this section between the date of the funding valuation and the last day of the plan year preceding the premium payment year. (If the plan does a valuation as of the last day of the plan year preceding the premium payment year, no separate adjustment for significant events is needed.)

(2) Under this rule, the determination of the unfunded vested benefits may be based on a plan valuation done as of the first day of the premium payment year, provided that—

(i) The actuarial assumptions and methods used are those described in paragraph (a)(3) for the premium payment year, except to the extent that other actuarial assumptions or methods are specifically prescribed by this. section or are required to make the adjustment described in paragraph (a)(2)(ii) of this section; and

(ii) If an enrolled actuary determines that there is a material difference between the values determined under the valuation and the values that would have been determined as of the last day of the preceding plan year, the valuation results are adjusted to reflect appropriately the values as of the last day of the preceding plan year. (This adjustment need not be made if the unadjusted valuation would result in greater unfunded vested benefits.)

(3) For purposes of paragraphs (a)(1) and (a)(2), the actuarial assumptions and methods for a plan year are those used by the plan for purposes of determining the additional funding requirement under section 302(d) of ERISA and section 412(1) of the Code (or, in the case of a plan that is not required to determine such additional funding requirement, any assumptions and methods that would be permitted for such purpose if the plan were so required).

(4) In the case of any plan that determines the amount of its unfunded vested benefits under the general rule described in this paragraph, an enrolled actuary must certify, in accordance with the PBGC annual Premium Payment Package provided for in § 4007.3 of this part, that the determination was made in a manner consistent with generally accepted actuarial principles and practices.

(b) *Unfunded vested benefits.* The amount of a plan's unfunded vested benefits under this section shall be the excess of the plan's vested benefits amount (determined under paragraph (b)(1) of this section) over the value of the plan's assets (determined under paragraph (b)(2) of this section).

(1) *Vested benefits amount.* A plan's vested benefits amount under this section shall be the plan's current liability (within the meaning of section 302(d)(7) of ERISA and section 412(1)(7) of the Code) determined by taking into account only vested benefits and by using an interest rate equal to the applicable percentage of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15, for the calendar month preceding the calendar month in which the premium payment year begins. If the interest rate (or rates) used by the plan to determine current liability was (or were all) not greater than the required interest rate, the vested benefits need not be revalued if an enrolled actuary certifies that the interest rate (or interest rates) used was (or were all) not greater than the required interest rate. For purposes of this paragraph (b)(1) (subject to the provisions of § 4006.5(g), dealing with plans of regulated public utilities), the applicable percentage is—

(i) For a premium payment year that begins before July 1997, 80 percent;

(ii) For a premium payment year that begins after June 1997 and before the first premium payment year to which the first tables prescribed under section 302(d)(7)(C)(ii)(II) of ERISA and section 412(1)(7)(C)(ii)(II) of the Code apply, 85 percent; and

(iii) For the first premium payment year to which the first tables prescribed under section 302(d)(7)(C)(ii)(II) of ERISA and section 412(1)(7)(C)(ii)(II) of the Code apply and any subsequent plan year, 100 percent.

(2) *Value of assets.* (i) *Actuarial value.* For a premium payment year that is described in paragraph (b)(1)(i) or (b)(1)(ii) of this section, the value of the plan's assets shall be their actuarial value determined in accordance with section 302(c)(2) of ERISA and section 412(c)(2) of the Code.

(ii) *Fair market value.* For a premium payment year that is described in paragraph (b)(1)(iii) of this section, the value of the plan's assets shall be their fair market value.

(iii) *Use of credit balance.* The value of the plan's assets shall not be reduced by a credit balance in the funding standard account.

(iv) *Contributions.* Contributions owed for any plan year preceding the premium payment year shall be included for plans with 500 or more participants and may be included for any other plan. Contributions may be included only to the extent such contributions have been paid into the plan on or before the earlier of the due date for payment of the variable-rate portion of the premium under § 4007.11 or the date that portion is paid. Contributions included that are paid after the last day of the plan year preceding the premium payment year shall be discounted at the plan asset valuation rate (on a simple or compound basis in accordance with the plan's discounting rules) to such last day to reflect the date(s) of payment. Contributions for the premium payment year may not be included for any plan.

(c) *Alternative method for calculating unfunded vested benefits.* In lieu of determining the amount of the plan's unfunded vested benefits pursuant to paragraph (a) of this section, a plan administrator may calculate the amount of a plan's unfunded vested benefits under this paragraph (c) using the plan's Form 5500, Schedule B, for the plan year preceding the premium payment year. Pursuant to this paragraph (c), unfunded vested benefits shall be determined, in accordance with the Premium Payment Package, from values for the plan's vested benefits and assets that are required to be reported on the plan's Schedule B. The value of the vested benefits shall be adjusted in accordance with paragraph (c)(1) of this section to reflect accruals during the plan year preceding the premium payment year and with paragraph (c)(2) of this section to reflect the interest rate prescribed in paragraph (b)(1) of this section, and the value of the assets shall be adjusted in accordance with paragraph (c)(4) of this section. (If the plan administrator certifies that the interest rate (or rates) used to determine the vested benefit values taken from the Schedule B was (or were all) not greater than the interest rate prescribed in paragraph (b)(1) of this section, the interest rate adjustment prescribed in paragraph (c)(2) of this section is not required.) The resulting unfunded vested benefits amount shall be adjusted in accordance with paragraph (c)(5) of this section to reflect the passage of time from the date of the Schedule B data to the last day of the plan year preceding the premium payment year.

(1) *Vested benefits adjustment for accruals.* The total value of the plan's current liability as of the first day of the plan year preceding the premium payment year for vested benefits of active and terminated vested participants not in pay status, computed in accordance with section 302(d)(7) of ERISA and section 412(l)(7) of the Code,

shall be adjusted to reflect the increase in vested benefits attributable to accruals during the plan year preceding the premium payment year by multiplying that value by 1.07.

(2) *Vested benefits interest rate adjustment.* The value of vested benefits as entered on the Schedule B shall be adjusted in accordance with the following formula (except as provided in paragraph (c)(3) of this section) to reflect the interest rate prescribed in paragraph (b)(1) of this section:

$$VB_{adj}=VB_{PAY}\times.94^{(RIR-BIR)}+VB_{NON\text{-}PAY}\times.94^{(RIR-BIR)}\times((100+BIA)/(100+RIR))^{(ARA-50)};$$

where—

(i) VB_{adj} is the adjusted vested benefits amount (as of the first day of the plan year preceding the premium payment year) under the alternative calculation method;

(ii) VB_{PAY} is the plan's current liability as of the first day of the plan year preceding the premium payment year for vested benefits of participants and beneficiaries in pay status, computed in accordance with section 302(d)(7) of ERISA and section 412(l)(7) of the Code;

(iii) $VB_{NON\text{-}PAY}$ is the total of the plan's current liability as of the first day of the plan year preceding the premium payment year for vested benefits of active and terminated vested participants not in pay status, computed in accordance with section 302(d)(7) of ERISA and section 412(l)(7) of the Code, multiplied by 1.07 in accordance with paragraph (c)(1) of this section;

(iv) RIR is the required interest rate prescribed in paragraph (b)(1) of this section;

(v) BIR is the post-retirement current liability interest rate used to determine the pay-status current liability figure referred to in paragraph (c)(2)(ii) of this section;

(vi) BIA is the pre-retirement current liability interest rate used to determine the pre-pay-status current liability figures referred to in paragraph (c)(2)(iii) of this section; and

(vii) ARA is the plan's assumed weighted average retirement age.

(3) *Optional use of substitution factors in interest rate adjustment formula.* In lieu of the term, $.94^{(RIR-BIR)}$, in the formula prescribed by paragraph (c)(2) of this section, a plan administrator may use the optional substitution factor provided in the Premium Payment Package.

(4) *Adjusted value of plan assets.* The value of plan assets shall be the actuarial value of plan assets as of the first day of the plan year preceding the premium payment year, determined in accordance with section 302(c)(2) of ERISA and section 412(c)(2) of the Code without reduction for any credit balance in the plan's funding standard account, unless that amount was determined as of a date other than the first day of the plan year preceding the premium payment year or the premium payment year is described in § 4006.4(b)(1)(iii). In either of those events, the value of plan assets shall be the current value of assets (as reported on Form 5500) as of that first day or (if Form 5500–EZ is filed) as of the last day of the plan year preceding the Schedule B year. The value of assets from the Schedule B shall be adjusted in accordance with paragraph (b)(2) of this section, except that the amount of all contributions that are included in the value of assets and that were made after the first day of the plan year preceding the premium payment year shall be discounted to such first day at the interest rate prescribed in paragraph (b)(1) of this section for the premium payment year, compounded annually except that simple interest may be used for any partial years.

(5) *Adjustment for passage of time.* The amount of the plan's unfunded vested benefits shall be adjusted to reflect the passage of time between the date of the Schedule B data (the first day of the plan year preceding the premium payment year) and the last day of the plan year preceding the premium payment year in accordance with the following formula:

$$UVB_{adj}=(VB_{adj}-A_{adj})\times(1+RIR/100)^{Y};$$

where—

(i) UVB_{adj} is the amount of the plan's adjusted unfunded vested benefits;

(ii) VB_{adj} is the value of the adjusted vested benefits calculated in accordance with paragraphs (c)(1) and (c)(2) of this section;

(iii) A_{adj} is the adjusted asset amount calculated in accordance with paragraph (c)(3) of this section; (iv) RIR is the required interest rate prescribed in paragraph (b)(1) of this section; and

(v) Y is deemed to be equal to 1 (unless the plan year preceding the premium payment year is a short plan year, in which case Y is the number of years between the first day and the last day of the short plan year, expressed as a decimal fraction of 1.0 with two digits to the right of the decimal point).

(d) *Restrictions on alternative calculation method for large plans.*

(1) The alternative calculation method described in paragraph (c) of this section may be used for a plan with 500 or more participants as of the last day of the plan year preceding the premium payment year only if—

(i) No significant event, as described in paragraph (d)(2) of this section, has occurred between the first day and the last day of the plan year preceding the premium payment year, and an enrolled actuary so certifies in accordance with the Premium Payment Package; or

(ii) An enrolled actuary makes an appropriate adjustment to the value of unfunded vested benefits to reflect the occurrence of significant events that have occurred between those dates and certifies to that fact in accordance with the Premium Payment Package.

(2) The significant events described in this paragraph are—

(i) An increase in the plan's actuarial costs (consisting of the plan's normal cost under section 302(b)(2)(A) of ERISA and section 412(b)(2)(A) of the Code, amortization charges under section 302(b)(2)(B) of ERISA and section 412(b)(2)(B) of the Code, and amortization credits under section 302(b)(3)(B) of ERISA and section 412(b)(3)(B) of the Code) attributable to a plan amendment, unless the cost increase attributable to the amendment is less than 5 percent of the actuarial costs determined without regard to the amendment;

(ii) The extension of coverage under the plan to a new group of employees resulting in an increase of 5 percent or more in the plan's liability for accrued benefits;

(iii) A plan merger, consolidation or spinoff that is not *de minimis* pursuant to the regulations under section 414(l) of the Code;

(iv) The shutdown of any facility, plant, store, etc., that creates immediate eligibility for benefits that would not otherwise be immediately payable for participants separating from service;

(v) The offer by the plan for a temporary period to permit participants to retire at benefit levels greater than that to which they would otherwise be entitled;

(vi) A cost-of-living increase for retirees resulting in an increase of 5 percent or more in the plan's liability for accrued benefits; and

(vii) Any other event or trend that results in a material increase in the value of unfunded vested benefits.

§ 4006.5 Exemptions and special rules.

(a) *Variable-rate premium exemptions.* A plan described in any of paragraphs (a)(1)–(a)(5) of this section is not required to determine its unfunded vested benefits under § 4006.4 and does not owe a variable-rate premium under § 4006.3(b).

(1) *Certain fully funded plans.* A plan is described in this paragraph if the plan had fewer than 500 participants on the last day of the plan year preceding the premium payment year, and an enrolled actuary certifies in accordance with the Premium Payment Package that, as of that date, the plan had no unfunded vested benefits (valued at the interest rate prescribed in § 4006.4(b)(1)).

(2) *Plans without vested benefit liabilities.* A plan is described in this paragraph if it did not have any participants with vested benefits as of the last day of the plan year preceding the premium payment year, and the plan administrator so certifies in accordance with the Premium Payment Package.

(3) *Section 412(i) plans.* A plan is described in this paragraph if the plan was a plan described in section 412(i) of the Code and the regulations thereunder at all times during the plan year preceding the premium payment year and the plan administrator so certifies, in accordance with the Premium Payment Package. If the plan is a new plan or a newly-covered plan, the certification under this paragraph shall be made as of the due date for the premium under § 4007.11(c) and shall certify to the plan's status at all times during the premium payment year through such due date.

(4) *Plans terminating in standard terminations.* The exemption for a plan described in this paragraph is conditioned upon the plan's making a final distribution of assets in a standard termination. If a plan is ultimately unable to do so, the exemption is revoked and all variable-rate amounts not paid pursuant to this exemption are due retroactive to the applicable due date(s). A plan is described in this paragraph if—

(i) The plan administrator has issued notices of intent to terminate the plan in a standard termination in accordance with section 4041(a)(2) of ERISA; and

(ii) The proposed termination date set forth in the notice of intent to terminate is on or before the last day of the plan year preceding the premium payment year.

(5) *Plans at full funding limit.* A plan is described in this paragraph if, on or before the earlier of the due date for payment of the variable-rate portion of the premium under § 4007.11 or the date that portion is paid, the plan's contributing sponsor or contributing sponsors made contributions to the plan for the plan year preceding the premium payment year in an amount not less than the full funding limitation for such preceding plan year under section 302(c)(7) of ERISA and section 412(c)(7) of the Code (determined in accordance with paragraphs (a)(5)(i) and (a)(5)(ii) of this section). In order for a plan to qualify for this exemption, an enrolled actuary must certify that the plan has met the requirements of this paragraph.

(i) *Determination of full funding limitation.* The determination of whether contributions for the preceding plan year were in an amount not less than the full funding limitation under section 302(c)(7) of ERISA and section 412(c)(7) of the Code for such preceding plan year shall be based on the methods of computing the full funding limitation, including actuarial assumptions and funding methods, used by the plan (provided such assumptions and methods met all requirements, including the requirements for reasonableness, under section 302 of ERISA and section 412 of the Code) with respect to such preceding plan year. Plan assets shall not be reduced by the amount of any credit balance in the plan's funding standard account.

(ii) *Rounding of de minimis amounts.* Any contribution that is rounded down to no less than the next lower multiple of one hundred dollars (in the case of full funding limitations up to one hundred thousand dollars) or to no less than the next lower multiple of one thousand dollars (in the case of full funding limitations above one hundred thousand dollars) shall be deemed for purposes of this paragraph to be in an amount equal to the full funding limitation.

(b) *Special rule for determining vested benefits for certain large plans.* With respect to a plan that had 500 or more participants on the last day of the plan year preceding the premium payment year, if an enrolled actuary determines pursuant to § 4006.4(a) that the actuarial value of plan assets equals or exceeds the value of all benefits accrued under the plan (valued at the interest rate prescribed in § 4006.4(b)(1)), the enrolled actuary need not determine the value of the plan's vested benefits, and may instead report in the Premium Payment Package the value of the accrued benefits.

(c) *Special rule for determining unfunded vested benefits for plans terminating in distress or involuntary terminations.* A plan described in this paragraph may determine its unfunded vested benefits by using the special alternative calculation method set forth in this paragraph. A plan is described in this paragraph if it has issued notices of intent to terminate in a distress termination in accordance with section 4041(a)(2) of ERISA with a proposed termination date on or before the last day of the plan year preceding the premium payment year, or if the PBGC has instituted proceedings to terminate the plan in accordance with section 4042 of ERISA and has sought a termination date on or before the last day of the plan year preceding the premium payment year. Pursuant to this paragraph, a plan shall determine its unfunded vested benefits in accordance with the alternative calculation method in § 4006.4(c), except that—

(1) The calculation shall be based on the Form 5500, Schedule B, for the plan year which includes (in the case of a distress termination) the proposed termination date or (in the case of an involuntary termination) the termination date sought by the PBGC, or, if no Schedule B is filed for that plan year, on the Schedule B for the immediately preceding plan year;

(2) All references in § 4006.4(c) and § 4006.4(d) to the first day of the plan year preceding the premium payment year shall be deemed to refer to the first day of the plan year for which the Schedule B was filed;

(3) The value of the sum of the plan's current liability as of the first day of the plan year preceding the premium payment year for vested benefits of active and terminated vested participants not in pay status, computed in accordance with section 302(d)(7) of ERISA and section 412(l)(7) of the Code, shall be adjusted (in lieu of the adjustment required by § 4006.4(c)(1)) by multiplying that value by the sum of 1 plus the product of .07 and the number of years (rounded to the nearest hundredth of a year) between the date of the Schedule B data and (in the case of a distress termination) the proposed termination date or (in the case of an involuntary termination) the termination date sought by the PBGC; and

(4) The exponent, "Y," in the time adjustment formula of § 4006.4(c)(5) shall be deemed to equal the number of years (rounded to the nearest hundredth of a year) between the date of the Schedule B data and the last day of the plan year preceding the premium payment year.

(d) *Special determination date rule for new and newly-covered plans.* In the case of a new plan or a newly-covered plan, all references in §§ 4006.3, 4006.4, and paragraphs (a) and (b) of this section to the last day of the plan year preceding the premium payment year shall be deemed to refer to the first day of the premium payment year or, if later, the date on which the plan became effective for benefit accruals for future service, and for purposes of determining the plan's premium, the number of plan participants, and (for a single-employer plan) the amount of the plan's unfunded vested benefits and the applicability of any exemption or special rule under

paragraph (a) or (b) of this section, shall be determined as of such first day or later date.

(e) *Special determination date rule for certain mergers and spinoffs.* (1) With respect to a plan described in paragraph (e)(2) of this section, all references in §§ 4006.3, 4006.4, and this section, as applicable, to the last day of the plan year preceding the premium payment year shall be deemed to refer to the first day of the premium payment year.

(2) A plan is described in this paragraph (e)(2) if—

(i) The plan engages in a merger or spinoff that is not *de minimis* pursuant to the regulations under section 414(l) of the Code (in the case of single-employer plans) or pursuant to part 4231 of this chapter (in the case of multiemployer plans), as applicable;

(ii) The merger or spinoff is effective on the first day of the plan's premium payment year; and

(iii) The plan is the transferee plan in the case of a merger or the transferor plan in the case of a spinoff.

(f) *Special refund rule for certain short plan years.* A plan described in this paragraph (f) is entitled to a refund for a short plan year. The amount of the refund will be determined by prorating the premium for the short plan year by the number of months (treating a part of a month as a month) in the short plan year. A plan is described in this paragraph if—

(1) The plan is a new or newly-covered plan that becomes effective for premium purposes on a date other than the first day of its first plan year;

(2) The plan adopts an amendment changing its plan year, resulting in a short plan year;

(3) The plan's assets are distributed pursuant to the plan's termination, in which case the short plan year for purposes of computing the amount of the refund under this paragraph shall be deemed to end on the asset distribution date or, if later (in the case of a single-employer plan), the date 30 days prior to the date the PBGC receives the plan's post-distribution certification; or

(4) The plan is a single-employer plan and a trustee of the plan is appointed pursuant to section 4042 of ERISA, in which case the short plan year for purposes of computing the amount of the refund under this paragraph shall be deemed to end on the date of appointment.

(g) *Special rules for plans of regulated public utilities.* (1) This paragraph (g) applies to a premium payment year beginning before 1998 of a plan maintained by one or more contributing sponsors at least one of which is a regulated public utility. For this purpose, a regulated public utility is one that, as of the beginning of the premium payment year, is described in section 7701(a)(33)(A)(i) of the Code and has not begun to collect from utility customers rates that reflect the costs incurred or projected to be incurred for additional premiums under section 4006(a)(3)(E) of ERISA pursuant to final and nonappealable determinations by all public utility commissions (or other authorities having jurisdiction over the rates and terms of service by the regulated public utility) that the costs are just and reasonable and recoverable from customers of the regulated public utility.

(2) *Limitation on variable-rate premium and required interest rate.* If every contributing sponsor of a plan described in paragraph (a) of this section is a regulated public utility, then, notwithstanding the provisions of §§ 4006.3(b) and 4006.4(b)(1),—

(i) The variable-rate premium shall not be greater than $53 multiplied by the number of participants in the plan on the last day of the plan year preceding the premium payment year; and

(ii) If the premium payment year begins after June 1997, § 4006.4(b)(1) shall be applied as if the applicable percentage referred to therein were 80 percent.

(3) *Proportional application of limitation rules.* If a plan is described in paragraph (g)(1) of this section but also has a contributing sponsor that is not a regulated public utility and participants who are not regulated public utility participants (determined under any reasonable method consistently applied among participants and from year to year), the limitations in paragraph (g)(2) of this section shall be applied in proportion to the number of regulated public utility participants in accordance with the Premium Payment Package.

(4) *Special variable-rate premium rule for certain small regulated public utility plans paying maximum variable-rate premium.* A plan whose variable-rate premium is subject to the limitation described in paragraph (g)(2)(i) of this section is not required to determine its unfunded vested benefits under § 4006.4 if—

(i) The number of participants required to be taken into account in computing the plan's premium for the premium payment year is fewer than 500; and

(ii) The plan pays a variable-rate premium equal to $53 multiplied by the number of participants in the plan on the last day of the plan year preceding the premium payment year.

(5) *Effect of omitted or inadequate information.* The variable-rate premium of a plan described in paragraph (g)(2) of this section may be deemed to be $53 multiplied by the number of participants in the plan on the last day of the plan year preceding the premium payment year if—

(i) Any item or items necessary to establish the correct variable-rate premium for the plan are omitted from the plan's premium filing; or

(ii) In connection with an audit, the plan's records fail, in the PBGC's judgment, to establish that the plan's unfunded vested benefits were of the amount reported by the plan for the premium payment year.

PART 4007—PAYMENT OF PREMIUMS

Sec.

4007.1 Purpose and scope.
4007.2 Definitions.
4007.3 Filing requirement and forms.
4007.4 Filing address.
4007.5 Date of filing.
4007.6 Computation of time.
4007.7 Late payment interest charges.
4007.8 Late payment penalty charges.
4007.9 Coverage for guaranteed basic benefits.
4007.10 Recordkeeping requirements; PBGC audits.
4007.11 Due dates.
4007.12 Liability for single-employer premiums.

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

§ 4007.1 Purpose and scope.

This part, which applies to all plans that are covered by title IV of ERISA, provides procedures for paying the premiums imposed by sections 4006 and 4007 of ERISA. (See part 4006 of this chapter for premium rates and computational rules.)

§ 4007.2 Definitions.

(a) The following terms are defined in § 4001.2 of this chapter: Code, contributing sponsor, ERISA, insurer, IRS, multiemployer plan, notice of intent to terminate, PBGC, plan, plan administrator, plan year, and single-employer plan.

(b) For purposes of this part, the following terms are defined in § 4006.2 of this chapter: new plan, newly covered plan, participant, premium payment year, and short plan year.

§ 4007.3 Filing requirement and forms.

The estimation, declaration, reconciliation and payment of premiums shall be made using the forms prescribed by and in accordance with the instructions in the PBGC annual Premium Payment Package. The plan administrator of each covered plan shall file the prescribed form or forms, and any premium payments due, no later than the applicable due date specified in § 4007.11.

§ 4007.4 Filing address.

Plan administrators shall file all forms required to be filed under this part and all payments for premiums, interest, and penalties required to be made under this part at the address specified in the Premium Payment Package.

§ 4007.5 Date of filing.

(a) Any form required to be filed under this part and any payment required to be made under this part shall be deemed to have been filed or made on the date on which it is mailed.

(b) A form or payment shall be presumed to have been mailed on the date on which it is postmarked by the United States Postal Service, or three days prior to the date on which it is received by the PBGC if it does not contain a legible United States Postal Service postmark.

§ 4007.6 Computation of time.

In computing any period of time prescribed by this part, the day of the act, event, or default from which the designated period of time begins to run is not counted. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or federal holiday. For purposes of computing late payment interest charges under § 4007.7 and late payment penalty charges under § 4007.8, a Saturday, Sunday or federal holiday referred to in the previous sentence shall be included.

§ 4007.7 Late payment interest charges.

(a) If any premium payment due under this part is not paid by the due date prescribed for such payment by § 4007.11, an interest charge will accrue on the unpaid amount at the rate imposed under section 6601(a) of the Code for the period from the date payment is due to the date payment is made. Late payment interest charges are compounded daily.

(b) When PBGC issues a bill for premium payments necessary to reconcile the premiums paid with the actual premium due, interest will be accrued on the unpaid premium until the date of the bill if paid no later than 30 days after the date of such bill. If the bill is not paid within the 30-day period following the date of such bill, interest will continue to accrue throughout such 30-day period and thereafter, until the date paid.

(c) PBGC bills for interest assessed under this section will be deemed paid when due if paid no later than 30 days after the date of such bills. Otherwise, interest will accrue in accordance with paragraph (a) of this section on the amount of the bill from the date of the bill until the date of payment.

§ 4007.8 Late payment penalty charges.

(a) *Penalty charge.* If any premium payment due under this part is not paid by the due date prescribed for such payment by § 4007.11, the PBGC will, unless a waiver is granted pursuant to paragraph (b) of this section, assess a late payment charge (not to exceed 100% of the unpaid premium) equal to the greater of—

(i) 5% per month (or fraction thereof) of the unpaid premiums; or

(ii) $25.

(b) *Waiver of penalty charge.* The late payment penalty charge will be waived, in whole or in part—

(1) With respect to any premium payment made within 60 days after the due date prescribed for such payment in § 4007.11, if, before such due date, the PBGC grants a waiver upon a showing of substantial hardship arising from the timely payment of the premium and a showing that the premium will be paid within such 60-day period;

(2) If the PBGC grants a waiver based on any other demonstration of good cause;

(3) If the PBGC, on its own motion, waives the application of paragraph (a) of this section;

(4) With respect to any premium payment (excluding any variable-rate premium under § 4006.3(b)), if a plan that is required to make a reconciliation filing described in § 4007.11(b)(2)(iii)—

(i) Paid at least 90 percent of the flat-rate premium due for the premium payment year by the due date specified in § 4007.11(b)(2)(i); or

(ii) Paid by the due date specified in § 4007.11(b)(2)(i) an amount equal to the premium that would be due for the premium payment year, computed using the flat per capita premium rate for the premium payment year and the participant count upon which the prior year's premium was based; and

(iii) Pays 100 percent of the flat-rate premium due for the premium payment year under § 4006.3 on or before the due date for the reconciliation filing under § 4007.11(b)(2)(iii); or

(5) With respect to any PBGC bills for the premium payment necessary to reconcile the premium paid with the actual premium due, if such bills are paid no later than 30 days after the date of such bills.

§ 4007.9 Coverage for guaranteed basic benefits.

(a) The failure by a plan administrator to pay the premiums due under this part will not result in that plan's loss of coverage for basic benefits guaranteed under sections 4022(a) or 4022A(a) of ERISA.

(b) The payment of the premiums imposed by this part will not result in coverage for basic benefits guaranteed under sections 4022(a) or 4022A(a) of ERISA for plans not covered under title IV of ERISA.

§ 4007.10 Recordkeeping requirements; PBGC audits.

(a) *Retention of records to support premium payments.* All plan records, including calculations and other data prepared by an enrolled actuary or, for a plan described in section 412(i) of the Code, by the insurer from which the insurance contracts are purchased, that are necessary to support or to validate premium payments under this part shall be retained by the plan administrator for a period of six years after the premium due date. Records that must be retained pursuant to this paragraph include, but are not limited to, records that establish the number of plan participants and that reconcile the calculation of the plan's unfunded vested benefits with the actuarial valuation upon which the calculation was based. Records retained pursuant to this paragraph shall be made available to the PBGC upon request for inspection and photocopying.

(b) *PBGC audit.* Premium payments under this part are subject to audit by the PBGC. If, upon audit, the PBGC determines that a premium due under this part was underpaid, the late payment interest charges under § 4007.7 and the late payment penalty charges under § 4007.8 shall apply to the unpaid balance from the premium due date to the date of payment. In determining the premium due, if, in the judgment of the PBGC, the plan's records fail to establish the number of plan participants with respect to whom premiums were required for any premium payment year, the PBGC may rely on data it obtains from other sources (including the IRS and the Department of Labor) for presumptively establishing the number of plan participants for premium computation purposes.

§ 4007.11 Due dates.

(a) *In general.* The premium filing due date for small plans is prescribed in paragraph (a)(1) of this section and the premium filing due dates for large plans are prescribed in paragraph (a)(2) of this section.

(1) *Plans with fewer than 500 participants.* If the plan has fewer than 500 participants, as determined under paragraph (b) of this section, the due date is the fifteenth day of the eighth full calendar month following the month in which the plan year began.

(2) *Plans with 500 or more participants.* If the plan has 500 or more participants, as determined under paragraph (b) of this section—

(i) The due date for the flat-rate premium required by § 4006.3(a) is the last day of the second full calendar month following the close of the plan year preceding the premium payment year; and

(ii) The due date for the variable-rate premium required by § 4006.3(b) for single-employer plans is the fifteenth day of the eighth full calendar month following the month in which the premium payment year begins.

(iii) If the number of plan participants on the last day of the plan year preceding the premium payment year is not known by the date specified in paragraph (a)(2)(i) of this section, a reconciliation filing (on the form prescribed by this part) and any required premium payment or request for refund shall be made by the date specified in paragraph (a)(2)(ii) of this section.

(3) *Plans that change plan years.* For any plan that changes its plan year, the premium form or forms and payment or payments for the short plan year shall be filed by the applicable due date or dates specified in paragraphs (a)(1), (a)(2), or (c) of this section. For the plan year that follows a short plan year, the due date or dates for the premium forms and payments shall be, with respect to each such due date, the later of—

(i) The applicable due date or dates specified in paragraph (a)(1) or (a)(2) of this section; or

(ii) 30 days after the date on which the amendment changing the plan year was adopted.

(b) *Participant count rule for purposes of determining filing due dates.* For purposes of determining under paragraph (a) of this section whether a plan has fewer than 500 participants, or 500 or more participants, the plan administrator shall use—

(1) For a single-employer plan, the number of participants for whom premiums were payable for the plan year preceding the premium payment year, or

(2) For a multiemployer plan,—

(i) If the premium payment year is the plan's second plan year, the first day of the first plan year; or

(ii) If the premium payment year is the plan's third or a subsequent plan year, the last day of the second preceding plan year.

(c) *Due dates for new and newly covered plans.* Notwithstanding paragraph (a) of this section, the premium form and all premium payments due for the first plan year of coverage of any new plan or newly covered plan shall be filed on or before the latest of—

(1) The fifteenth day of the eighth full calendar month following the month in which the plan year began or, if later, in which the plan became effective for benefit accruals for future service;

(2) 90 days after the date of the plan's adoption; or

(3) 90 days after the date on which the plan became covered by title IV of ERISA.

(d) *Continuing obligation to file.* The obligation to file the form or forms prescribed by this part and to pay any premiums due continues through the plan year in which all plan assets are distributed pursuant to a plan's termination or in which a trustee is appointed under section 4042 of ERISA, whichever occurs earlier. The entire premium computed under this part is due, irrespective of whether the plan is entitled to a refund for a short plan year pursuant to § 4006.5(f).

(e) *Improper filings.* Any form not filed in accordance with this part, not filed in accordance with the instructions in the Premium Payment Package, not accompanied by the required premium payment, or otherwise incomplete, may, in the discretion of the PBGC, be returned with any payment accompanying the form to the plan administrator, and such payment shall be treated as not having been made.

§ 4007.12 Liability for single-employer premiums.

(a) The designation under this part of the plan administrator as the person required to file the applicable forms and to submit the premium payment for a single-employer plan is a procedural requirement only and does not alter the liability for premium payments imposed by section 4007 of ERISA. Pursuant to section 4007(e) of ERISA, both the plan administrator and the contributing sponsor of a single-employer plan are liable for premium payments, and, if the contributing sponsor is a member of a controlled group, each member of the controlled group is jointly and severally liable for the required premiums. Any entity that is liable for required premiums is also liable for any interest and penalties assessed with respect to such premiums.

(b) For any plan year in which a plan administrator issues (pursuant to section 4041(a)(2) of ERISA) notices of intent to terminate in a distress termination under section 4041(c) of ERISA or the PBGC initiates a termination proceeding under section 4042 of ERISA, and for each plan year thereafter, the obligation to pay the premiums (and any interest or penalties thereon) imposed by ERISA and this part for a single-employer plan shall be an obligation solely of the contributing sponsor and the members of its controlled group, if any.

(Approved by the Office of Management and Budget under control number 1212–0009)

PART 4010—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

Sec.

4010.1 Purpose and scope.
4010.2 Definitions.
4010.3 Filing requirement.
4010.4 Filers.
4010.5 Information year.
4010.6 Information to be filed.
4010.7 Identifying information.
4010.8 Plan actuarial information.
4010.9 Financial information.
4010.10 Due date and filing with the PBGC.
4010.11 Waivers and extensions.
4010.12 Confidentiality of information submitted.
4010.13 Penalties.
4010.14 OMB control number.

Authority: 29 U.S.C. 1302(b)(3); 29 U.S.C. 1310.

§ 4010.1 Purpose and scope.

This part prescribes the requirements for annual filings with the PBGC under section 4010 of ERISA. This part applies to filers for any information year ending on or after December 31, 1995.

§ 4010.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: benefit liabilities, Code, contributing sponsor, controlled group, ERISA, fair market value, IRS, PBGC, person, plan, and plan year.

In addition, for purposes of this part:

Exempt entity means a person who does not have to file information and about whom information does not have to be filed, as described in § 4010.4(d) of this part.

Exempt plan means a plan about which actuarial information does not have to be filed, as described in § 4010.8(c) of this part.

Fair market value of the plan's assets means the fair market value of the plan's assets at the end of the plan year ending within the filer's information year (determined without regard to any contributions receivable).

Filer means a person who is required to file reports, as described in § 4010.4 of this part.

Fiscal year means, with respect to a person, the person's annual accounting period or, if the person has not adopted a closing date, the calendar year.

Information year means the year determined under § 4010.5 of this part.

§ 4010.3 Filing requirement.

(a) *In general.* Except as provided in § 4010.8(c) (relating to exempt plans) and except where waivers have been granted under § 4010.11 of this part, each filer shall submit to the PBGC annually, on or before the due date specified in § 4010.10, all information specified in § 4010.6(a) with respect to all members of a controlled group and all plans maintained by members of a controlled group.

(b) *Single controlled group submission.* Any filer or other person may submit the information specified in § 4010.6(a) on behalf of one or more members of a filer's controlled group. If a person other than a filer submits the information, the submission must also include a written power of attorney signed by a filer authorizing the person to act on behalf of one or more filers.

§ 4010.4 Filers.

(a) *General.* A contributing sponsor of a plan and each member of the contributing sponsor's controlled group is a filer with respect to an information year (unless exempted under paragraph (d) of this section) if—

(1) the aggregate unfunded vested benefits of all plans (including any exempt plans) maintained by the members of the contributing sponsor's controlled group exceed $50 million (disregarding those plans with no unfunded vested benefits);

(2) any member of a controlled group fails to make a required installment or other required payment to a plan and, as a result, the conditions for imposition of a lien described in section 302(f)(1)(A) and (B) of ERISA or section 412(n)(1)(A) and (B) of the Code have been met during the information year, and the required installment or other required payment is not made within ten days after its due date; or

(3) any plan maintained by a member of a controlled group has been granted one or more minimum funding waivers under section 303 of ERISA or section 412(d) of the Code totaling in excess of $1 million that, as of the end of the plan year ending within the information year, are still outstanding (determined in accordance with paragraph (c) of this section).

(b) *Unfunded vested benefits*—(1) *General.* Except as provided in paragraph (b)(2) of this section, for purposes of the $50 million test in paragraph (a)(1) of this section, the value of a plan's unfunded vested benefits is determined at the end of the plan year ending within the filer's information year in accordance with section 4006(a)(3)(E)(iii) of ERISA and § 4006.4 of this chapter (without reference to the exemptions and special rules under § 4006.5).

(2) *Optional assumptions.* Prior to the first information year in which the mortality assumptions prescribed under section 302(d)(7)(C)(ii)(II) of ERISA apply to all of the plans maintained by a controlled group, the value of unfunded vested benefits for a plan may be determined by substituting for the respective assumptions used under paragraph (b)(1) of this section (but not using the alternative calculation method under § 4006.4(c) of this chapter) all of the following assumptions:

(i) an interest rate equal to 100% of the annual yield for 30-year Treasury constant maturities (as reported in Federal Reserve Statistical Release G.13 and H.15) for the last full calendar month in the plan year;

(ii) the fair market value of the plan's assets; and

(iii) the mortality tables described in section 302(d)(7)(C)(ii)(I) of ERISA or section 412(l)(7)(C)(ii)(I) of the Code; provided that for any plan year ending on or after the effective date of an amendment changing the mortality assumptions used to value benefits to be paid as annuities in trusteed plans under part 4044 of this chapter, those amended mortality assumptions shall be used.

(c) *Outstanding waiver.* Before the end of the statutory amortization period, a minimum funding waiver for a plan is considered outstanding unless—

(1) a credit balance exists in the funding standard account (described in section 302(b) of ERISA and section 412(b) of the Code) that is no less than the outstanding balance of all waivers for the plan;

(2) a waiver condition or contractual obligation requires that a credit balance as described in paragraph (c)(1) continue to be maintained as of the end of each plan year during the remainder of the statutory amortization period for the waiver; and

(3) no portion of any credit balance described in paragraph (c)(1) is used to make any required installment under section 302(e) of ERISA or section 412(m) of the Code for any plan year during the remainder of the statutory amortization period.

(d) *Exempt entities.* A person is an exempt entity if the person—

(1) is not a contributing sponsor of a plan (other than an exempt plan);

(2) has revenue for its fiscal year ending within the controlled group's information year that is five percent or less of the controlled group's revenue for the fiscal year(s) ending within the information year;

(3) has annual operating income for the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) five percent of the controlled group's annual operating income for the fiscal year(s) ending within the information year, or

(ii) $5 million; and

(4) has net assets at the end of the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) five percent of the controlled group's net assets at the end of the fiscal year(s) ending within the information year, or

(ii) $5 million.

§ 4010.5 Information year.

(a) *Determinations based on information year.* An information year is used under this part to determine which persons are filers (§ 4010.4), what information a filer must submit (§§ 4010.6–4010.9), whether a plan is an exempt plan (§ 4010.8(c)), and the due date for submitting the information (§ 4010.10(a)).

(b) *General.* Except as provided in paragraph (c) of this section, a person's information year shall be the fiscal year of the person. A filer is not required to change its fiscal year or the plan year of a plan, to report financial information for any accounting period other than an existing fiscal year, or to report actuarial information for any plan year other than an existing plan year.

(c) *Controlled group members with different fiscal years*— (1) *Use of calendar year.* If members of a controlled group (disregarding any exempt entity) report financial information on the basis of different fiscal years, the information year shall be the calendar year.

(2) *Example.* Filers A and B are members of the same controlled group. Filer A has a July 1 fiscal year, and filer B has an October 1 fiscal year. The information year is the calendar year. Filer A's financial information with respect to its fiscal year ending June 30, 1996, and filer B's financial information with respect to its fiscal year ending September 30, 1996, must be submitted to the PBGC following the end of the 1996 calendar year (the calendar year in

which those fiscal years end). If filer B were an exempt entity, the information year would be filer A's July 1 fiscal year.

§ 4010.6 Information to be filed.

(a) *General.* A filer must submit the information specified in § 4010.7 (identifying information), § 4010.8 (plan actuarial information) and § 4010.9 (financial information) of this part with respect to each member of the filer's controlled group and each plan maintained by any member of the controlled group.

(b) *Additional information.* By written notification, the PBGC may require any filer to submit additional actuarial or financial information that is necessary to determine plan assets and liabilities for any period through the end of the filer's information year, or the financial status of a filer for any period through the end of the filer's information year. The information must be submitted within ten days after the date of the written notification or by a different time specified therein.

(c) *Previous submissions.* If any required information has been previously submitted to the PBGC, a filer may incorporate this information into the required submission by referring to the previous submission.

§ 4010.7 Identifying information.

(a) *Filers.* Each filer is required to provide the following identifying information with respect to each member of the controlled group (excluding exempt entities)—

(1) the name, address, and telephone number of each member of the controlled group and the legal relationships of each (for example, parent, subsidiary); and

(2) the nine-digit Employer Identification Number (EIN) assigned by the IRS to each member (or if there is no EIN for a member, an explanation).

(b) *Plans.* Each filer is required to provide the following identifying information with respect to each plan (including exempt plans) maintained by any member of the controlled group (including exempt entities)—

(1) the name of each plan;

(2) the EIN and the three-digit Plan Number (PN) assigned by the contributing sponsor to each plan (or if there is no EIN or PN for a plan, an explanation); and

(3) if the EIN or PN of a plan has changed since the beginning of the filer's information year, the previous EIN or PN and an explanation.

§ 4010.8 Plan actuarial information.

(a) *Required information.* For each plan (other than an exempt plan) maintained by any member of the filer's controlled group, each filer is required to provide the following actuarial information—

(1) the fair market value of the plan's assets;

(2) the value of the plan's benefit liabilities (determined in accordance with paragraph (d) of this section) at the end of the plan year ending within the filer's information year;

(3) a copy of the actuarial valuation report for the plan year ending within the filer's information year that contains or is supplemented by the following information—

(i) each amortization base and related amortization charge or credit to the funding standard account (as defined in section 302 (b) of ERISA or section 412 (b) of the Code) for that plan year (excluding the amount considered contributed to the plan as described in section 302(b)(3)(A) of ERISA or section 412(b)(3)(A) of the Code),

(ii) the itemized development of the additional funding charge payable for that plan year pursuant to section 412(l) of the Code,

(iii) the minimum funding contribution and the maximum deductible contribution for that plan year,

(iv) the actuarial assumptions and methods used for that plan year for purposes of section 302(b) and (d) of ERISA or section 412(b) and (l) of the Code (and any change in those assumptions and methods since the previous valuation and justifications for any change), and

(v) a summary of the principal eligibility and benefit provisions on which the valuation of the plan was based (and any changes to those provisions since the previous valuation), along with descriptions of any benefits not included in the valuation, any significant events that occurred during that plan year, and the plan's early retirement factors; and

(4) a written certification by an enrolled actuary that, to the best of his or her knowledge and belief, the actuarial information submitted is true, correct, and complete and conforms to all applicable laws and regulations, provided that this certification may be qualified in writing, but only to the extent the qualification(s) are permitted under 26 CFR § 301.6059–1(d).

(b) *Alternative compliance for plan actuarial information.* If any of the information specified in paragraph (a)(3) of this section is not available by the date specified in § 4010.10(a), a filer may satisfy the requirement to provide such information by—

(1) including a statement, with the material that is submitted to the PBGC, that the filer will file the unavailable information by the alternative due date specified in § 4010.10(b) of this part, and

(2) filing such information (along with a certification by an enrolled actuary under paragraph (a)(4) of this section) with the PBGC by that alternative due date.

(c) *Exempt plan.* The actuarial information specified in this section is not required with respect to a plan that, as of the end of the plan year ending within the filer's information year, has fewer than 500 participants or has benefit liabilities (determined in accordance with paragraph (d) of this section) equal to or less than the fair market value of the plan's assets, provided that the plan—

(1) has received, on or within ten days after their due dates, all required installments or other payments required to be made during the information year under section 302 of ERISA or section 412 of the Code; and

(2) has no minimum funding waivers outstanding (as described in § 4010.4(c) of this part) as of the end of the plan year ending within the information year.

(d) *Value of benefit liabilities.* The value of a plan's benefit liabilities at the end of a plan year shall be determined using the plan census data described in paragraph (d)(1) of this section and the actuarial assumptions and methods described in paragraph (d)(2) or, where applicable, (d)(3) of this section.

(1) *Census data.*

(i) *Census data period.* Plan census data shall be determined (for all plans for any information year) either as of the end of the plan year or as of the beginning of the next plan year.

(ii) *Projected census data.* If actual plan census data is not available, a plan may use a projection of plan census data from a date within the plan year. The projection must be consistent with projections used to measure pension obligations of the plan for financial statement purposes and must give a result appropriate for the end of the plan year for these obligations. For example, adjustments to the projection process will be required where there has been a significant event (such as a plan amendment or a plant shutdown) that has not been reflected in the projection data.

(2) *Actuarial assumptions and methods.* The value of benefit liabilities shall be determined using the assumptions and methods applicable to the valuation of benefits to be paid as annuities in trusteed plans terminating at the end of the plan year (as prescribed in §§ 4044.51 through 4044.57 of this chapter).

(3) *Special actuarial assumptions for exempt plan determination.* Solely for purposes of determining whether a plan is an exempt plan, the value of benefit liabilities may be determined by substituting for the retirement age assumptions in paragraph (d)(2) the retirement age assumptions used by the plan for that plan year for purposes of section 302(d) of ERISA or section 412(l) of the Code.

§ 4010.9 Financial information.

(a) *General.* Except as provided in this section, each filer is required to provide the following financial information for each controlled group member (other than an exempt entity)—

(1) audited financial statements for the fiscal year ending within the information year (including balance sheets, income statements, cash flow statements, and notes to the financial statements);

(2) if audited financial statements are not available by the date specified in § 4010.10(a), unaudited financial statements for the fiscal year ending within the information year; or

(3) if neither audited nor unaudited financial statements are available by the date specified in § 4010.10(a), copies of federal tax returns for the tax year ending within the information year.

(b) *Consolidated financial statements.* If the financial information of a controlled group member is combined with the information of other group members in consolidated financial statements, a filer may provide the following financial information in lieu of the information required in paragraph (a) of this section—

(1) the audited consolidated financial statements for the filer's information year or, if the audited consolidated financial statements are not available by the date specified in § 4010.10(a), unaudited consolidated financial statements for the fiscal year ending within the information year; and

(2) for each controlled group member included in the consolidated financial statements that is a contributing sponsor of a plan (other than an exempt plan), the contributing sponsor's revenues and operating income for the information year, and net assets at the end of the information year.

(c) *Subsequent submissions.* If unaudited financial statements are submitted as provided in paragraph (a)(2) or (b)(1) of this section, audited financial statements must thereafter be filed within 15 days after they are prepared. If federal tax returns are submitted as provided in paragraph (a)(3) of this section, audited and unaudited financial statements must thereafter be filed within 15 days after they are prepared.

(d) *Submission of public information.* If any of the financial information required by paragraphs (a) through (c) of this section is publicly available, the filer, in lieu of submitting such information to the PBGC, may include a statement with the other information that is submitted to the PBGC indicating when such financial information was made available to the public and where the PBGC may obtain it. For example, if the controlled group member has filed audited financial statements with the Securities and Exchange Commission, it need not file the financial statements with PBGC but instead can identify the SEC filing as part of its submission under this part.

(e) *Inclusion of information about non-filers and exempt entities.* Consolidated financial statements provided pursuant to paragraph (b)(1) of this section may include financial information of persons who are not controlled group members (*e.g.*, joint ventures) or are exempt entities.

§ 4010.10 Due date and filing with the PBGC.

(a) *Due date.* Except as permitted under paragraph (b) of this section, a filer shall file the information required under this part with the PBGC on or before the 105th day after the close of the filer's information year.

(b) *Alternative due date.* A filer that includes the statement specified in § 4010.8(b)(1) with its submission to the PBGC by the date specified in paragraph (a) of this section must submit the actuarial information specified in § 4010.8(b)(2) within 15 days after the deadline for filing the plan's annual report (Form 5500 series) for the plan year ending within the filer's information year (see § 2520.104a–5(a)(2) of this title).

(c) *How to file.* Requests and information may be delivered by mail, by delivery service, by hand, or by any other method acceptable to the PBGC, to: Corporate Finance and Negotiations Department, Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, DC 20005–4026.

(d) *Date when information filed.* Information filed under this part is considered filed—

(1) on the date of the United States postmark stamped on the cover in which the information is mailed, if—

(i) the postmark was made by the United States Postal Service; and

(ii) the document was mailed postage prepaid, properly addressed to the PBGC; or

(2) if the conditions stated in paragraph (d)(1) of this section are not met, on the date it is received by the PBGC. Information received on a weekend or Federal holiday or after 5:00 p.m. on a weekday is considered filed on the next regular business day.

(e) *Computation of time.* In computing any period of time under this part, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a weekend or Federal holiday, in which event the period runs until the end of the next day that is not a weekend or Federal holiday.

§ 4010.11 Waivers and extensions.

The PBGC may waive the requirement to submit information with respect to one or more filers or plans or may extend the applicable due date or dates specified in § 4010.10 of this part. The PBGC will exercise this discretion in appropriate cases where it finds convincing evidence supporting a waiver or extension; any waiver or extension may be subject to conditions. A request for a waiver or extension must be filed in writing with the PBGC at the address provided in § 4010.10(c) no later than 15 days before the applicable date specified in § 4010.10 of this part, and must state the facts and circumstances on which the request is based.

§ 4010.12 Confidentiality of information submitted.

In accordance with § 4901.21(a)(3) of this chapter and section 4010(c) of ERISA, any information or documentary material that is not publicly available and is submitted to the PBGC pursuant to this part shall not be made public, except as may be relevant to any administrative or judicial action or proceeding or for disclosures to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

§ 4010.13 Penalties.

If all of the information required under this part is not provided within the specified time limit, the PBGC may assess a separate penalty under section 4071 of ERISA against the filer and each member of the filer's controlled group (other than an exempt entity) of up to $1,000 a day for each day that the failure continues. The PBGC may also pursue other equitable or legal remedies available to it under the law.

§ 4010.14 OMB control number.

The collection of information requirements contained in this part have been approved by the Office of Management and Budget under OMB Control Number 1212–0049.

PART 4011—DISCLOSURE TO PARTICIPANTS

Sec.

4011.1 Purpose and scope.
4011.2 Definitions.
4011.3 Notice requirement.
4011.4 Small plan rules.
4011.5 Exemption for new and newly-covered plans.
4011.6 Mergers, consolidations, and spinoffs.
4011.7 Persons entitled to receive notice.
4011.8 Time of notice.
4011.9 Manner of issuance of notice.
4011.10 Form of notice.
4011.11 OMB control number.

Appendix A to Part 4011—Model Participant Notice. Appendix B to Part 4011—Table of maximum Guaranteed Benefits.

Authority: 29 U.S.C. 1302(b)(3), 1311.

§ 4011.1 Purpose and scope.

This part prescribes rules and procedures for complying with the requirements of section 4011 of ERISA. This part applies for any plan year beginning on or after January 1, 1995, with respect to any single-employer plan that is covered by section 4021 of ERISA.

§ 4011.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: contributing sponsor, employer, ERISA, normal retirement age, PBGC, person, plan, plan administrator, plan year, and single-employer plan.

In addition, for purposes of this part:

Participant has the meaning in § 4041.2 of this chapter.

Participant Notice means the notice required pursuant to section 4011 of ERISA and this part.

§ 4011.3 Notice requirement.

(a) *General.* Except as otherwise provided in this part, the plan administrator of a plan must provide a Participant Notice for a plan year if a variable rate premium is payable for the plan under section 4006(a)(3)(E) of ERISA and part 4006 of this chapter for that plan year, unless, for that plan year or for the prior plan year, the plan meets the Deficit Reduction Contribution ("DRC") Exception Test in paragraph (b) of this section. The DRC Exception Test may be applied using the Small Plan DRC Exception Test rules in § 4011.4(b), where applicable.

(b) *DRC Exception Test*—(1) *Basic rule.* A plan meets the DRC Exception Test for a plan year if it is exempt from the requirements of section 302(d) of ERISA for that plan year by reason of section 302(d)(9), without regard to the small plan exemption in section 302(d)(6)(A).

(2) *1994 plan year.* A plan satisfies the DRC Exception Test for the 1994 plan year if, for any two of the plan years beginning in 1992, 1993, and 1994 (whether or not consecutive), the plan satisfies any requirement of section 302(d)(9)(D)(i) of ERISA.

(c) *Penalties for non-compliance.* If a plan administrator fails to provide a Participant Notice within the specified time limit or omits material information from a Participant Notice, the PBGC may assess a penalty under section 4071 of ERISA of up to $1,000 a day for each day that the failure continues.

§ 4011.4 Small plan rules.

(a) *1995 plan year exemption.* A plan that is exempt from the requirements of section 302(d) of ERISA for the 1994 or 1995 plan year by reason of section 302(d)(6)(A) is exempt from the Participant Notice requirement for the 1995 plan year.

(b) *Small Plan DRC Exception Test.* In determining whether the Participant Notice requirement applies for a plan year beginning after 1995, the plan administrator of a plan that is exempt from the requirements of section 302(d) of ERISA by reason of section 302(d)(6)(A) for the plan year being tested may use any one or more of the following rules in determining whether the plan meets the DRC Exception Test for that plan year:

(1) *Use of Schedule B data.* For any plan year for which the plan is exempt from the requirements of section 302(d) of ERISA by reason of section 302(d)(6)(A), provided both of the following adjustments are made—

(i) The market value of the plan's assets as of the beginning of the plan year (as required to be reported on Form 5500, Schedule B) may be substituted for the actuarial value of the plan's assets as of the valuation date; and

(ii) The plan's current liability for all participants' total benefits as of the beginning of the plan year (as required to be reported on Form 5500, Schedule B) may be substituted for the plan's current liability as of the valuation date.

(2) *Pre-1995 plan year 90 percent test.* A plan that is exempt from the requirements of section 302(d) of ERISA for a pre-1995 plan year by reason of section 302(d)(6)(A) satisfies the requirements of section 302(d)(9)(D)(i) for that pre-1995 plan year if the ratio of its assets to its current liability for that plan year is at least 90 percent. For this purpose, the plan's assets are valued without subtracting any credit balance under section 302(b) of ERISA, and its current liability is determined using the highest interest rate allowable for the plan year under section 302(d)(7)(C).

(3) *Interest rate adjustment.* If the interest rate used to calculate current liability for a plan year is less than the highest rate allowable for the plan year under section 302(d)(7)(C) of ERISA, the current liability may be reduced by one percent for each tenth of a percentage point by which the highest rate exceeds the rate so used.

§ 4011.5 Exemption for new and newly-covered plans.

A plan (other than a plan resulting from a consolidation or spinoff) is exempt from the Participant Notice requirement for the first plan year for which the plan must pay premiums under parts 4006 and 4007 of this chapter.

§ 4011.6 Mergers, consolidations, and spinoffs.

In the case of a plan involved in a merger, consolidation, or spinoff transaction that becomes effective during a plan year, the plan administrator shall apply the requirements of section 4011 of ERISA and of this part for that plan year in a reasonable manner to ensure that the Participant Notice serves its statutory purpose.

§ 4011.7 Persons entitled to receive notice.

The plan administrator must provide the Participant Notice to each person who is a participant, a beneficiary of a deceased participant, an alternate payee under an applicable qualified domestic relations order (as defined in section 206(d)(3) of ERISA), or an employee organization that represents any group of participants for purposes of collective bargaining. To determine who is a person that must receive the Participant Notice for a plan year, the plan administrator may select any date during the period beginning with the last day of the previous plan year and ending with the day on which the Participant Notice for the plan year is due, provided that a change in the date from one plan year to the next does not exclude a substantial number of participants and beneficiaries.

§ 4011.8 Time of notice.

The plan administrator must issue the Participant Notice for a plan year no later than two months after the deadline (including extensions) for filing the annual report for the previous plan year (*see* § 2520.104a–5(a)(2) of this title).

The plan administrator may change the date of issuance from one plan year to the next, provided that the effect of any change is not to avoid disclosing a minimum funding waiver under § 4011.10(b)(5) or a missed contribution under § 4011.10(b)(6). When the President of the United States declares that, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), a major disaster exists, the PBGC may extend the due date for providing the Participant Notice by up to 180 days.

§ 4011.9 Manner of issuance of notice.

The Participant Notice shall be issued by using measures reasonably calculated to ensure actual receipt by the persons entitled to receive it. It may be issued together with another document, such as the summary annual report required under section 104(b)(3) of ERISA for the prior plan year, but must be in a separate document.

§ 4011.10 Form of notice.

(a) *General.* The Participant Notice (and any additional information under paragraph (d) of this section) shall be readable and written in a manner calculated to be understood by the average plan participant and not to mislead recipients. The Model Participant Notice in Appendix A to this part (when properly completed) is an example of a Participant Notice meeting the requirements of this section.

(b) *Content.* The Participant Notice for a plan year shall include—

(1) Identifying information (the name of the plan and the contributing sponsor, the employer identification number of the contributing sponsor, the plan number, the date (at least the month and year) on which the Participant Notice is issued, and the name, title, address and telephone number of the person(s) who can provide information about the plan's funding);

(2) A statement to the effect that the Participant Notice is required by law;

(3) The Notice Funding Percentage for the plan year, determined in accordance with paragraph (c) of this section, and the date as of which the Notice Funding Percentage is determined;

(4) A statement to the effect that—

(i) To pay pension benefits, the employer is required to contribute money to the plan over a period of years;

(ii) A plan's funding percentage does not take into consideration the financial strength of the employer; and

(iii) The employer, by law, must pay for all pension benefits, but benefits may be at risk if the employer faces a severe financial crisis or is in bankruptcy;

(5) If, for any of the five plan years immediately preceding the plan year, the plan has been granted a minimum funding waiver under section 303 of ERISA that has not (as of the end of the prior plan year) been fully repaid, a statement identifying each such plan year and an explanation of a minimum funding waiver;

(6) For any payment subject to the requirements of this paragraph, a statement identifying the due date for the payment and noting that the payment has or has not been made and (if made) the date of the payment. Once participants have been notified (under this part or Title I of ERISA) of a missed contribution that is subject to the requirements of this paragraph, the delinquency need not be reported in a Participant Notice for a subsequent plan year if the missed contribution has been paid in full by the time the subsequent Participant Notice is issued. The payments subject to the requirements of this paragraph are—

(i) Any minimum funding payment necessary to satisfy the minimum funding standard under section 302(a) of ERISA for any plan year beginning on or after January 1, 1994, if not paid by the earlier of the due date for that payment (the latest date allowed under section 302(c)(10)) or the date of issuance of the Participant Notice; and

(ii) An installment or other payment required by section 302 of ERISA for a plan year beginning on or after January 1, 1995, that was not paid by the 60th day after the due date for that payment;

(7) A statement to the effect that if a plan terminates before all pension benefits are fully funded, the PBGC pays most persons all pension benefits, but some persons may lose certain benefits that are not guaranteed;

(8) A summary of plan benefits guaranteed by the PBGC, with an explanation of the limitations on such guarantee; and

(9) A statement that further information about the PBGC's guarantee may be obtained by requesting a free copy of the booklet "Your Guaranteed Pension" from Consumer Information Center, Dept. YGP, Pueblo, Colorado 81009. The Participant Notice may include a statement that the booklet may be obtained through electronic access via the World Wide Web from the PBGC Homepage at http://www.pbgc.gov/ygp.htm.

(c) *Notice Funding Percentage*—

(1) *General Rule.* The Notice Funding Percentage that must be included in the Participant Notice for a plan year is the "funded current liability percentage" (as that term is defined in section 302(d)(9)(C) of ERISA) for that plan year or the prior plan year.

(2) *Small plans.* A plan that is exempt from the requirements of section 302(d) of ERISA for a plan year by reason of section 302(d)(6)(A) may determine its funded current liability percentage for that plan year using the Small Plan DRC Exception Test rules in § 4011.4(b).

(d) *Additional information.* The plan administrator may include with the Participant Notice any information not described in paragraph (b) of this section only if it is in a separate document.

(e) *Foreign languages.* In the case of a plan that (as of the date selected under § 4011.7) covers the numbers or percentages specified in § 2520.104b–10(e) of this title of participants literate only in the same non-English language, the plan administrator shall provide those participants either—

(1) An English-language Participant Notice that prominently displays a legend, in their common non-English language, offering them assistance in that language, and clearly setting forth any procedures participants must follow to obtain such assistance, or

(2) A Participant Notice in that language.

§ 4011.11 OMB control number.

The collections of information contained in this part have been approved by the Office of Management and Budget under OMB control number 1212–0050.

Appendix A to Part 4011—Model Participant Notice

The following is an example of a Participant Notice that satisfies the requirements of § 4011.10 when the required information is filled in (subject to §§ 4011.10(d)–(e), where applicable).

Notice to Participants of [Plan Name]

The law requires that you receive information on the funding level of your defined benefit pension plan and the benefits guaranteed by the Pension Benefit Guaranty Corporation (PBGC), a federal insurance agency. YOUR PLAN'S FUNDING

As of [DATE], your plan had [INSERT NOTICE FUNDING PERCENTAGE (DETERMINED IN ACCORDANCE WITH § 4011.10(c))] percent of the money needed to pay benefits promised to employees and retirees.

To pay pension benefits, your employer is required to contribute money to the pension plan over a period of years. A plan's funding percentage does not take into consideration the financial strength of the employer. Your employer, by law, must pay for all pension benefits, but your benefits may be at risk if your employer faces a severe financial crisis or is in bankruptcy.

[INCLUDE THE FOLLOWING PARAGRAPH ONLY IF, FOR ANY OF THE PREVIOUS FIVE PLAN YEARS, THE PLAN HAS BEEN GRANTED AND HAS NOT FULLY REPAID A FUNDING WAIVER.]

Your plan received a funding waiver for [LIST ANY OF THE FIVE PREVIOUS PLAN YEARS FOR WHICH A FUNDING WAIVER WAS GRANTED AND HAS NOT BEEN FULLY REPAID]. If a company is experiencing temporary financial hardship, the Internal Revenue Service may grant a funding waiver that permits the company to delay contributions that fund the pension plan.

[INCLUDE THE FOLLOWING WITH RESPECT TO ANY UNPAID OR LATE PAYMENT THAT MUST BE DISCLOSED UNDER § 4011.10(b)(6):]

Your plan was required to receive a payment from the employer on [LIST APPLICABLE DUE DATE(S)]. That payment [has not been made] [was made on [LIST APPLICABLE PAYMENT DATE(S)]].

PBGC GUARANTEES

When a pension plan ends without enough money to pay all benefits, the PBGC steps in to pay pension benefits. The PBGC pays most people all pension benefits, but some people may lose certain benefits that are not guaranteed.

The PBGC pays pension benefits up to certain maximum limits.

- The maximum guaranteed benefit is [INSERT FROM TABLE IN APPENDIX B] per month or [INSERT FROM TABLE IN APPENDIX B] per year for a 65-year-old person in a plan that terminates in [INSERT APPLICABLE YEAR].
- The maximum benefit may be reduced for an individual who is younger than age 65. For example, it is [INSERT FROM TABLE IN APPENDIX B] per month or [INSERT FROM TABLE IN APPENDIX B] per year for an individual who starts receiving benefits at age 55. [IN LIEU OF AGE 55, YOU MAY ADD OR SUBSTITUTE ANY AGE(S) RELEVANT UNDER THE PLAN. FOR EXAMPLE, YOU MAY ADD OR SUBSTITUTE THE MAXIMUM BENEFIT FOR AGES 62 OR 60 FROM THE TABLE IN APPENDIX B. IF THE PLAN PROVIDES FOR NORMAL RETIREMENT BEFORE AGE 65, YOU MUST INCLUDE THE NORMAL RETIREMENT AGE.]

[IF THE PLAN DOES NOT PROVIDE FOR COMMENCEMENT OF BENEFITS BEFORE AGE 65, YOU MAY OMIT THIS PARAGRAPH.]

- The maximum benefit will also be reduced when a benefit is provided for a survivor.

The PBGC does not guarantee certain types of benefits.

[INCLUDE THE FOLLOWING GUARANTEE LIMITS THAT APPLY TO THE BENEFITS AVAILABLE UNDER YOUR PLAN.]

- The PBGC does not guarantee benefits for which you do not have a vested right when a plan ends, usually because you have not worked enough years for the company.
- The PBGC does not guarantee benefits for which you have not met all age, service, or other requirements at the time the plan ends.
- Benefit increases and new benefits that have been in place for less than a year are not guaranteed. Those that have been in place for less than 5 years are only partly guaranteed.
- Early retirement payments that are greater than payments at normal retirement age may not be guaranteed. For example, a supplemental benefit that stops when you become eligible for Social Security may not be guaranteed.
- Benefits other than pension benefits, such as health insurance, life insurance, death benefits, vacation pay, or severance pay, are not guaranteed.
- The PBGC does not pay lump sums exceeding $3,500.

WHERE TO GET MORE INFORMATION

Your plan, [EIN–PN], is sponsored by [CONTRIBUTING SPONSOR(S)]. If you would like more information about the funding of your plan, contact [INSERT NAME, TITLE, BUSINESS ADDRESS AND PHONE NUMBER OF INDIVIDUAL OR ENTITY].

For more information about the PBGC and the benefits it guarantees, you may request a free copy of "Your Guaranteed Pension" by writing to Consumer Information Center, Dept. YGP, Pueblo, Colorado 81009.

[THE FOLLOWING SENTENCE MAY BE INCLUDED:] "Your Guaranteed Pension" is also available from the PBGC Homepage on the World Wide Web at http://www.pbgc.gov/ygp.htm.

Issued: [INSERT AT LEAST MONTH AND YEAR]

Appendix B to Part 4011—Table of Maximum Guaranteed Benefits

If a plan terminates in—	The maximum guaranteed benefit for an individual starting to receive benefits at the age listed below is the amount (monthly or annual) listed below:							
	Age 65		Age 62		Age 60		Age 55	
	Monthly	Annual	Monthly	Annual	Monthly	Annual	Monthly	Annual
1995	$2,573.86	$30,886.32	$2,033.35	$24,400.20	$1,673.01	$20,076.12	$1,158.24	$13,898.88
1996	$2,642.05	$31,704.60	$2,087.22	$25,046.64	$1,717.33	$20,607.96	$1,188.92	$14,267.04

The maximum guaranteed benefit for an individual starting to receive benefits at ages other than those listed above can be determined by applying the PBGC's regulation on computation of maximum guaranteeable benefits (29 CFR 4022.22).

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

Subpart A—General Provisions; Guaranteed Benefits

Sec.
4022.1 Purpose and scope.
4022.2 Definitions.
4022.3 Guaranteed benefits.
4022.4 Entitlement to a benefit.
4022.5 Determination of nonforfeitable benefits.
4022.6 Annuity payable for total disability.
4022.7 Benefits payable in a single installment.

Subpart B—Limitations on Guaranteed Benefits

4022.21 Limitations; in general.
4022.22 Maximum guaranteeable benefit.
4022.23 Computation of maximum guaranteeable benefits.
4022.24 Benefit increases.
4022.25 Five-year phase-in of benefit guarantee for participants other than substantial owners.
4022.26 Phase-in of benefit guarantee for participants who are substantial owners.
4022.27 Effect of tax disqualification.

Subpart C—Calculation and Payment of Unfunded Nonguaranteed Benefits [Reserved]

Subpart D—Benefit Reductions in Terminating Plans

4022.61 Limitations on benefit payments by plan administrator.
4022.62 Estimated guaranteed benefit.
4022.63 Estimated title IV benefit.

Subpart E—PBGC Recoupment and Reimbursement of Benefit Overpayments and Underpayments

4022.81 General rules.
4022.82 Method of recoupment.
4022.83 PBGC reimbursement of benefit underpayments.

Appendix A to Part 4022—Maximum Guaranteeable Monthly Benefit

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

Subpart A—General Provisions; Guaranteed Benefits

§ 4022.1 Purpose and scope.

The purpose of this part is to prescribe rules governing the calculation and payment of benefits payable in terminated single-employer plans under section 4022 of ERISA. Subpart A, which applies to each plan providing benefits guaranteed under title IV of ERISA, contains definitions applicable to all subparts, and describes basic-type benefits that are guaranteed by the PBGC subject to the limitations set forth in Subpart B. Subpart C is reserved for rules relating to the calculation and payment of unfunded nonguaranteed benefits under section 4022(c) of ERISA. Subpart D prescribes procedures that minimize the overpayment of benefits by plan administrators after initiating distress terminations of single-employer plans that are not expected to be sufficient for guaranteed benefits. Subpart E sets forth the method of recoupment of benefit payments in excess of the amounts permitted under sections 4022, 4022B, and 4044 of ERISA from participants and beneficiaries in PBGC-trusteed plans, and provides for reimbursement of benefit underpayments. (The provisions of this part have not been amended to take account of changes made in section 4022 of ERISA by sections 766 and 777 of the Retirement Protection Act of 1994.)

§ 4022.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: annuity, Code, employer, ERISA, guaranteed benefit, mandatory employee contributions, nonforfeitable benefit, normal retirement age, notice of intent to terminate, PBGC, person, plan, plan administrator, plan year, proposed termination date, substantial owner, and title IV benefit.

In addition, for purposes of this part (unless otherwise required by the context):

Accumulated mandatory employee contributions means mandatory employee contributions plus interest credited on those contributions under the plan, or, if greater, interest required by section 204(c) of ERISA.

Benefit in pay status means that one or more benefit payments have been made or would have been made except for administrative delay.

Benefit increase means any benefit arising from the adoption of a new plan or an increase in the value of benefits payable arising from an amendment to an existing plan. Such increases include, but are not limited to, a scheduled increase in benefits under a plan or plan amendment, such as a cost-of-living increase, and any change in plan provisions which advances a participant's or beneficiary's entitlement to a benefit, such as liberalized participation requirements or vesting schedules, reductions in the normal or early retirement age under a plan, and changes in the form of benefit payments. In the case of a plan under which the amount of benefits depends on the participant's salary and the participant receives a salary increase the resulting increase in benefits to which the participant becomes entitled will not, for the purpose of this part, be treated as a benefit increase. Similarly, in the case of a plan under which the amount of benefits depends on the participant's age or service, and the participant becomes entitled to increased benefits solely because of advancement in age or service, the increased benefits to which the participant becomes entitled will not, for the purpose of this part, be treated as a benefit increase.

Covered employment means employment with respect to which benefits accrue under a plan.

Pension benefit means a benefit payable as an annuity, or one or more payments related thereto, to a participant who permanently leaves or has permanently left covered employment, or to a surviving beneficiary, which payments by themselves or in combination with Social Security, Railroad Retirement, or workmen's compensation benefits provide a substantially level income to the recipient.

Straight life annuity means a series of level periodic payments payable for the life of the recipient, but does not include any combined annuity form, including an annuity payable for a term certain and life.

§ 4022.3 Guaranteed benefits.

Except as otherwise provided in this part, the PBGC will guarantee the amount, as of the termination date, of a benefit provided under a plan to the extent that the benefit does not exceed the limitations in ERISA and in subpart B, if—

(a) The benefit is a nonforfeitable benefit;

(b) The benefit qualifies as a pension benefit as defined in § 4022.2; and

(c) The participant is entitled to the benefit under § 4022.4.

§ 4022.4 Entitlement to a benefit.

(a) A participant or his surviving beneficiary is entitled to a benefit if under the provisions of a plan:

(1) The benefit was in pay status on the date of the termination of the plan.

(2) A benefit payable at normal retirement age is an optional form of payment to the benefit otherwise payable at such age and the participant elected the benefit before the termination date of the plan.

(3) Except for a benefit described in paragraph (a)(2) of this section, before the termination date the participant had satisfied the conditions of the plan necessary to establish the right to receive the benefit prior to such date other than application for the benefit, satisfaction of a waiting period described in the plan, or retirement; or

(4) Absent an election by the participant, the benefit would be payable upon retirement.

(5) In the case of a benefit that returns all or a portion of a participant's accumulated mandatory employee contributions upon death, the participant (or beneficiary) had satisfied the conditions of the plan necessary to establish the right to the benefit other than death or designation of a beneficiary.

(b) If none of the conditions set forth in paragraph (a) of this section is met, the PBGC will determine whether the participant is entitled to a benefit on the basis of the provisions of the plan and the circumstances of the case.

§ 4022.5 Determination of nonforfeitable benefits.

(a) A guaranteed benefit payable to a surviving beneficiary is not considered to be forfeitable solely because the plan provides that the benefit will cease upon the remarriage of such beneficiary or his attaining a specified age. However, the PBGC will observe the provisions of the plan relating to the effect of such remarriage or attainment of such specified age on the surviving beneficiary's eligibility to continue to receive benefit payments.

(b) Any other provision in a plan that the right to a benefit in pay status will cease or be suspended upon the occurrence of any specified condition does not automatically make that benefit forfeitable. In each such case the PBGC will determine whether the benefit is forfeitable.

(c) A benefit guaranteed under § 4022.6 shall not be considered forfeitable solely because the plan provides that upon recovery of the participant the benefit will cease.

§ 4022.6 Annuity payable for total disability.

(a) Except as provided in paragraph (b) of this section, an annuity which is payable (or would be payable after a waiting period described in the plan, whether or not the participant is in receipt of other benefits during such waiting period), under the terms of a plan on account of the total and permanent disability of a participant which is expected to last for the life of the participant and which began before the termination date is considered to be a pension benefit.

(b) In any case in which the PBGC determines that the standards for

determining such total and permanent disability under a plan were unreasonable, or were modified in anticipation of termination of the plan, the disability benefits payable to a participant under such standard shall not be guaranteed unless the participant meets the standards of the Social Security Act and the regulations promulgated thereunder for determining total disability.

(c) For the purpose of this section, a participant may be required, upon the request of the PBGC, to submit to an examination or to submit proof of continued total and permanent disability. If the PBGC finds that a participant is no longer so disabled, it may suspend, modify, or discontinue the payment of the disability benefit.

§ 4022.7 Benefits payable in a single installment.

(a) *Alternative benefit.* If a benefit that is guaranteed under this part is payable in a single installment or substantially so under the terms of the plan, or an option elected under the plan by the participant, the benefit will not be guaranteed or paid as such, but the PBGC will guarantee the alternative benefit, if any, in the plan which provides for the payment of equal periodic installments for the life of the recipient. If the plan provides more than one such annuity, the recipient may within 30 days after notification of the proposed termination of the plan elect to receive one of those annuities. If the plan does not provide such an annuity, the PBGC will guarantee an actuarially equivalent life annuity.

(b)(1) *Payment in single installments.* Notwithstanding paragraph (a) of this section, in any case in which the value of a guaranteed benefit payable by the PBGC is $3,500 or less, the total value of the guaranteed benefit may be paid in a single payment. For purposes of determining the value of the guaranteed benefit, subtract from the value of the guaranteed benefit, any amounts that are returned under paragraph (b)(2) of this section, but only to the extent such amounts do not exceed the value of the portion of an individual's benefit derived from mandatory employee contributions that is guaranteed.

(2) *Return of employee contributions—*

(i) *General.* Notwithstanding any other provision of this part, the PBGC may pay in a single installment (or a series of installments) instead of as an annuity, the value of the portion of an individual's basic-type benefit derived from mandatory employee contributions, if:

(A) The individual elects payment in a single installment (or a series of installments) before the sixty-first (61st) day after the date he or she receives notice that such an election is available; and

(B) Payment in a single installment (or a series of installments) is consistent with the plan's provisions. For purposes of this part, the portion of an individual's basic-type benefit derived from mandatory employee contributions is determined under § 4044.12 (priority category 2 benefits) of this chapter, and the value of that portion is computed under the applicable rules contained in part 4044, subpart B, of this chapter.

(ii) *Set-off for distributions after termination.* The amount to be returned under paragraph (b)(2)(i) of this section is reduced by the set-off amount. The set-off amount is the amount by which distributions made to the individual after the termination date exceed the amount that would have been distributed, exclusive of mandatory employee contributions, if the individual had withdrawn the mandatory employee contributions on the termination date.

Example: Participant A is receiving a benefit of $600 per month when the plan terminates, $200 of which is derived from mandatory employee contributions. If the participant had withdrawn his contributions on the termination date, his benefit would have been reduced to $400 per month. The participant receives two monthly payments after the termination date. The set-off amount is $400. (The $600 actual payment minus the $400 the participant would have received if he had withdrawn his contributions multiplied by the two months for which he received the extra payment.)

(c) *Death benefits—*

(1) *General.* Notwithstanding paragraph (a) of this section, a benefit that would otherwise be guaranteed under the provisions of this subpart, except for the fact that it is payable solely in a single installment (or substantially so) upon the death of a participant, shall be paid by the PBGC as an annuity that has the same value as the single installment. The PBGC will in each case determine the amount and duration of the annuity based on all the facts and circumstances.

(2) *Exception.* Upon the death of a participant the PBGC may pay in a single installment (or a series of installments) that portion of the participant's accumulated mandatory employee contributions that is payable under the plan in a single installment (or a series of installments) upon the participant's death.

Subpart B—Limitations on Guaranteed Benefits

§ 4022.21 Limitations; in general.

(a)(1) Subject to paragraphs (b), (c) and (d) of this section, the PBGC will not guarantee that part of an installment payment that exceeds the dollar amount payable as a straight life annuity commencing at normal retirement age, or thereafter, to which a participant would have been entitled under the provisions of the plan in effect on the termination date, on the basis of his credited service to such date. If the plan does not provide a straight life annuity either as its normal form of retirement benefit or as an option to the normal form, the PBGC will for purposes of this paragraph convert the plan's normal form benefit to a straight life annuity of equal actuarial value as determined by the PBGC.

(2) The limitation of paragraph (a)(1) of this section shall not apply to:

(i) A survivor's benefit payable as an annuity on account of the death of a participant that occurred before the plan terminates and before the participant retired;

(ii) A disability pension described in section 4022.6 of this part; or

(iii) A benefit payable in non-level installments that in combination with Social Security, Railroad Retirement, or workman's compensation benefits yields a substantially level income if the projected income from the plan benefit over the expected life of the recipient does not exceed the value of the straight life annuity described in paragraph (a)(1) of this section.

(b) The PBGC will not guarantee the payment of that part of any benefit that exceeds the limitations in section 4022(b) of ERISA and this subpart B.

(c)(1) Except as provided in paragraph (c)(2) of this section, the PBGC does not guarantee a benefit payable in a single installment (or substantially so) upon the death of a participant or his surviving beneficiary unless that benefit is substantially derived from a reduction in the pension benefit payable to the participant or surviving beneficiary.

(2) Paragraphs (a) and (c)(1) of this section do not apply to that portion of accumulated mandatory employee contributions payable under a plan upon the death of a participant, and such a benefit is a pension benefit for purposes of this part.

(d) The PBGC will not guarantee a benefit payable to other than natural persons, or a trust or estate for the benefit of one or more natural persons.

§ 4022.22 Maximum guaranteeable benefit.

Subject to section 4022B of ERISA and part 4022B of this chapter, benefits payable with respect to a participant under a plan shall be guaranteed only to the extent that such benefits do not exceed the actuarial value of a benefit in the form of a life annuity payable in monthly installments, commencing at age 65 equal to the lesser of the amounts computed in paragraphs (a) and (b) of this section.

(a) One-twelfth of the participant's average annual gross income from his employer during either his highest-paid five consecutive calendar years in which he was an active participant under the plan, or if he was not an active participant throughout the entire such period, the lesser number of calendar years within that period in which he was an active participant under the plan.

(1) As used in this paragraph, "gross income" means "earned income" as defined in section 911(b) of the Code, determined without regard to any community property laws.

(2) For the purposes of this paragraph, if the plan is one to which more than one employer contributes, and during any calendar year the participant received gross income from more than one such contributing employer, then the amounts so received shall be aggregated in determining the participant's gross income for the calendar year.

(b) $750 multiplied by the fraction x/$13,200 where "x" is the Social Security contribution and benefit base determined under section 230 of the Social Security Act in effect at the termination date of the plan.

§ 4022.23 Computation of maximum guaranteeable benefits.

(a) *General.* Where a benefit is payable in any manner other than as a monthly benefit payable for life commencing at age 65, the maximum guaranteeable monthly amount of such benefit shall be computed by applying the applicable factor or factors set forth in paragraphs (c)–(e) of this section to the monthly amount computed under § 4022.22. In the case of a step-down life annuity, the maximum guaranteeable monthly amount of such benefit shall be computed in accordance with paragraph (f) of this section.

(b) *Application of adjustment factors to monthly amount computed under § 4022.22.* (1) Each percentage increase or decrease computed under paragraphs (c), (d), and (e) of this section shall be added to or subtracted from a base of 1.00, and the resulting amounts shall be multiplied.

(2) The monthly amount computed under § 4022.22 shall be multiplied by the product computed pursuant to paragraph (b)(1) of this section in order to determine the participant's and/or beneficiary's maximum benefit guaranteeable.

(c) *Annuitant's age factor.* If a participant or the beneficiary of a deceased participant is entitled to and chooses to receive his benefit at an age younger than 65, the monthly amount computed under § 4022.22 shall be reduced by the following amounts for each month up to the number of whole months below age 65 that corresponds to the later of the participant's age at the termination date or his age at the time he begins to receive the benefit: For each of the 60 months immediately preceding the 65th birthday, the reduction shall be 7/12 of 1%; For each of the 60 months immediately preceding the 60th birthday, the reduction shall be 5/12 of 1%; For each of the 120 months immediately preceding the 55th birthday, the reduction shall be 3/12 of 1%; and For each succeeding 120 months period, the monthly percentage reduction shall be ½ of that used for the preceding 120 month period.

(d) *Factor for benefit payable in a form other than as a life annuity.* When a benefit is in a form other than a life annuity payable in monthly installments, the monthly amount computed under § 4022.22 shall be adjusted by the appropriate factors on a case-by-case basis by PBGC. This paragraph sets forth the adjustment factors to be used for several common benefit forms payable in monthly installments.

(1) *Period certain and continuous annuity.* A period certain and continuous annuity means an annuity which is payable in periodic installments for the participant's life, but for not less than a specified period of time whether or not the participant dies during that period. The monthly amount of a period certain and continuous annuity computed under § 4022.22 shall be reduced by the following amounts for each month of the period certain subsequent to the termination date:

For each month up to 60 months deduct 1/24 of 1%;

For each month beyond 60 months deduct 1/12 of 1%.

(i) A cash refund annuity means an annuity under which if the participant dies prior to the time when he has received pension payments equal to a fixed sum specified in the plan, then the balance is paid as a lump-sum death benefit. A cash refund annuity shall be treated as a benefit payable for a period certain and continuous. The period of certainty shall be computed by dividing the amount of the lump-sum refund by the monthly amount to which the participant is entitled under the terms of the plan.

(ii) An installment refund annuity means an annuity under which if the participant dies prior to the time he has received pension payments equal to a fixed sum specified in the plan, then the balance is paid as a death benefit in periodic installments equal in amount to the participant's periodic benefit. An installment refund annuity shall be treated as a benefit payable for a period certain and continuous. The period of certainty shall be computed by dividing the amount of the remaining refund by the monthly amount to which the participant is entitled under the terms of the plan.

(2) *Joint and survivor annuity (contingent basis).* A joint and survivor annuity (contingent basis) means an annuity which is payable in periodic installments to a participant for his life and upon his death is payable to his beneficiary for the beneficiary's life in the same or in a reduced amount. The monthly amount of a joint and survivor annuity (contingent basis) computed under § 4022.22 shall be reduced by an amount equal to 10% plus 3/10 of 1% for each percentage point in excess of 50% of the participant's benefit that will continue to be paid to the beneficiary. If the benefit payable to the beneficiary is less than 50 percent of the participant's benefit, PBGC shall provide the adjustment factors to be used.

(3) *Joint and survivor annuity (joint basis).* A joint and survivor annuity (joint basis) means an annuity which is payable in periodic installments to a participant and upon his death or the death of his beneficiary is payable to the survivor for the survivor's life in the same or in a reduced amount. The monthly amount of a joint and survivor annuity (joint basis) computed under § 4022.22 shall be reduced by an amount equal to 4/10 of 1% for each percentage point in excess of 50% of the participant's original benefit that will continue to be paid to the survivor. If the benefit payable to the survivor is less than 50 percent of the participant's original benefit, PBGC shall provide the adjustment factors to be used.

(e) When a benefit is payable in a form described in paragraph (d) (2) or (3) of this section, and the beneficiary's age is different from the participant's age, by 15 years or less, the monthly amount computed under § 4022.22 shall be adjusted by the following amounts: If the beneficiary is younger than the

participant, deduct 1% for each year of the age difference; If the beneficiary is older than the participant, add ½ of 1% for each year of the age difference. In computing the difference in ages, years over 65 years of age shall not be counted. If the difference in age between the beneficiary and the participant is greater than 15 years, PBGC shall provide the adjustment factors to be used.

(f) *Step-down life annuity.* A step-down life annuity means an annuity payable in a certain amount for the life of the participant plus a temporary additional amount payable until the participant attains an age specified in the plan.

(1) The temporary additional amount payable under a step-down life annuity shall be converted to a life annuity payable in monthly installments by multiplying the appropriate factor based on the participant's age and the number of remaining years of the temporary additional benefit by the amount of the temporary additional benefit. The factors to be used are set forth in the table below. The amount of the monthly benefit so calculated shall be added to the level amount of the monthly benefit payable for life to determine the level-life annuity that is equivalent to the step-down life annuity.

FACTORS FOR CONVERTING TEMPORARY ADDITIONAL BENEFIT UNDER STEP-DOWN LIFE ANNUITY

Age of participant[1] at the later of the date the temporary additional benefit commences or the date of plan termination	Number of years temporary additional benefit is payable under the plan as of the date of plan termination[2]									
	1	2	3	4	5	6	7	8	9	10
45	0.060	0.117	0.170	0.220	0.268	0.315	0.355	0.395	0.435	0.475
46	.061	.119	.173	.224	.273	.321	.362	.403	.444	.485
47	.062	.121	.176	.228	.278	.327	.369	.411	.453	.495
48	.063	.123	.179	.232	.283	.333	.376	.419	.462	.505
49	.064	.125	.182	.236	.288	.339	.383	.427	.471	.515
50	.065	.127	.185	.240	.293	.345	.390	.435	.480	.525
51	.066	.129	.188	.244	.298	.351	.397	.443	.489	.535
52	.068	.133	.194	.252	.308	.363	.411	.459	.507	.555
53	.067	.131	.191	.248	.303	.357	.404	.451	.498	.545
54	.069	.135	.197	.256	.313	.369	.418	.467	.516	.565
55	.070	.137	.200	.260	.318	.375	.425	.475	.525	.575
56	.072	.141	.206	.268	.328	.387	.439	.491	.543	.....
57	.074	.145	.212	.276	.338	.399	.453	.507	.....	.....
58	.076	.149	.218	.284	.348	.411	.467	.....	.....	.....
59	.075	.153	.224	.292	.358	.423	.....	.....	.....	.....
60	.080	.157	.230	.300	.368	.....	.....	.....	.....	.....
61	.082	.161	.236	.308	.....	.....	.....	.....	.....	.....
62	.084	.165	.242	.....	.....	.....	.....	.....	.....	.....
63	.086	.169	.....	.....	.....	.....	.....	.....	.....	.....
64	.088	.....	.....	.....	.....	.....	.....	.....	.....	.....

[1] Age of participant is his age at his last birthday.

[2] If the benefit is payable for less than 1 yr, the appropriate factor is obtained by multiplying the factor for 1 yr by a fraction, the numerator of which is the number of months the benefit is payable, and the denominator of which is 12. If the benefit is payable for 1 or more whole years, plus an additional number of months less than 12, the appropriate factor is obtained by linear interpolation between the factor for the number of whole years the benefit is payable and the factor for the next year.

(2) If a participant is entitled to and chooses to receive a step-down life annuity at an age younger than 65, the monthly amount computed under § 4022.22 shall be adjusted by applying the factors set forth in paragraph (c) of this section in the manner described in paragraph (b) of this section.

(3) If the level-life monthly benefit calculated pursuant to paragraph (f)(1) of this section exceeds the monthly amount calculated pursuant to paragraph (f)(2) of this section, then the monthly maximum benefit guaranteeable shall be a step-down life annuity under which the monthly amount of the temporary additional benefit and the amount of the monthly benefit payable for life, respectively, shall bear the same ratio to the monthly amount of the temporary additional benefit and the monthly benefit payable for life provided under the plan, respectively, as the monthly benefit calculated pursuant to paragraph (f)(2) of this section bears to the monthly benefit calculated pursuant to paragraph (f)(1) of this section.

§ 4022.24 Benefit increases.

(a) *Scope.* This section applies:

(1) To all benefit increases, as defined in § 4022.2, payable with respect to a participant other than a substantial owner, which have been in effect for less than five years preceding the termination date; and

(2) To all benefit increases payable with respect to a substantial owner, which have been in effect for less than 30 years preceding the termination date.

(b) *General rule.* Benefit increases described in paragraph (a) of this section shall be guaranteed only to the extent provided in § 4022.25 with respect to a participant other than a substantial owner and in § 4022.26 with respect to a participant who is a substantial owner.

(c) *Computation of guaranteeable benefit increases.* Except as provided in paragraph (d) of this section pertaining to multiple benefit increases, the amount of a guaranteeable benefit increase shall be the amount, if any, by which the monthly benefit calculated pursuant to paragraph (c)(1) of this section (the monthly benefit provided under the terms of the plan as of the termination date, as limited by § 4022.22) exceeds the monthly benefit calculated pursuant to paragraph (c)(4) of this section (the monthly benefit which would have been payable on the termination date if the benefit provided subsequent to the increase were equivalent, as of the date of the increase, to the benefit provided prior to the increase).

(1) Determine the amount of the monthly benefit payable on the termination date (or, in the case of a deferred benefit, the monthly benefit which will become payable thereafter)

under the terms of the plan subsequent to the increase, using service credited to the participant as of the termination date, that is guaranteeable pursuant to § 4022.22;

(2) Determine, as of the date of the benefit increase, in accordance with the provisions of § 4022.23, the factors which would be used to calculate the monthly maximum benefit guaranteeable (i) under the terms of the plan prior to the increase and (ii) under the terms of the plan subsequent to the increase. However, when the benefit referred to in paragraph (c)(2)(ii) of this section is a joint and survivor benefit deferred as of the termination date and there is no beneficiary on that date, the factors computed in paragraph (c)(2)(ii) of this section shall be determined as if the benefit were payable only to the participant. Each set of factors determined under this paragraph shall be stated in the manner set forth in § 4022.23(b)(1);

(3) Multiply the monthly benefit which would have been payable (or, in the case of a deferred benefit, would have become payable) under the terms of the plan prior to the increase based on service credited to the participant as of the termination date by a fraction, the numerator of which is the product of the factors computed pursuant to paragraph (c)(2)(ii) of this section and the denominator of which is the product of the factors computed pursuant to paragraph (c)(2)(i) of this section.

(4) Calculate the amount of the monthly benefit which would be payable on the termination date if the monthly benefit computed in paragraph (c)(3) of this section had been payable commencing on the date of the benefit increase (or, in the case of a deferred benefit, would have become payable thereafter.) In the case of a benefit which does not become payable until subsequent to the termination date, the amount of the monthly benefit determined pursuant to this paragraph is the same as the amount of the monthly benefit calculated pursuant to paragraph (c)(3) of this section.

(d) *Multiple benefit increases.* (1) Where there has been more than one benefit increase described in paragraph (a) of this section, the amounts of guaranteeable benefit increases shall be calculated beginning with the earliest increase, and each such amount (except for the amount resulting from the final benefit increase) shall be multiplied by a fraction, the numerator of which is the product of the factors, stated in the manner set forth in § 4022.23(b)(1), used to calculate the monthly maximum guaranteeable benefit under § 4022.22 and the denominator of which is the product of the factors used in the calculation under paragraph (c)(2)(i) of this section.

(2) Each benefit increase shall be treated separately for the purposes of § 4022.25, except as otherwise provided in paragraph (d) of that section, and for the purposes of § 4022.26, as appropriate.

(e) For the purposes of this subpart, a benefit increase is deemed to be in effect commencing on the later of its adoption date or its effective date.

§ 4022.25 Five-year phase-in of benefit guarantee for participants other than substantial owners.

(a) *Scope.* This section applies to the guarantee of benefit increases which have been in effect for less than five years with respect to participants other than substantial owners.

(b) *Phase-in formula.* The amount of a benefit increase computed pursuant to § 4022.24 shall be guaranteed to the extent provided in the following formula: the number of years the benefit increase has been in effect, not to exceed five, multiplied by the greater of (1) 20 percent of the amount computed pursuant to § 4022.24; or (2) $20 per month.

(c) *Computation of years.* In computing the number of years a benefit increase has been in effect, each complete 12-month period prior to the termination date during which such benefit increase was in effect shall constitute one year.

(d) *Multiple benefit increases.* In applying the formula contained in paragraph (b) of this section, multiple benefit increases within any 12-month period prior to the termination date and calculated from that date shall be aggregated and treated as one benefit increase.

(e) Notwithstanding the provisions of paragraph (b) of this section, a benefit increase described in paragraph (a) of this section shall be guaranteed only if PBGC determines that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by PBGC.

§ 4022.26 Phase-in of benefit guarantee for participants who are substantial owners.

(a) *Scope.* This section shall apply to the guarantee of all benefits described in subpart A with respect to participants who are substantial owners at the termination date or who were substantial owners at any time within the 5-year period preceding that date.

(b) *Phase-in formula when there have been no benefit increases.* Benefits provided by a plan under which there has been no benefit increase, other than the adoption of the plan, shall be guaranteed to the extent provided in the following formula: The monthly amount computed under § 4022.22 multiplied by a fraction not to exceed 1, the numerator of which is the number of full years prior to the termination date that the substantial owner was an active participant under the plan, and the denominator of which is 30. Active participation under a plan commences at the later of the date on which the plan is adopted or becomes effective.

(c) *Phase-in formula when there have been benefit increases.* If there has been a benefit increase under the plan, other than the adoption of the plan, benefits provided by each such increase shall be guaranteed to the extent provided in the following formula: The amount of the guaranteeable benefit increase computed under § 4022.24 multiplied by a fraction not to exceed 1, the numerator of which is the number of full years prior to the termination date that the benefit increase was in effect and during which the substantial owner was an active participant under the plan, and the denominator of which is 30. However, in no event shall the total benefits guaranteed under all such benefit increases exceed the benefits which are guaranteed under paragraph (b) of this section with respect to a plan described therein.

(d) For the purpose of computing the benefits guaranteed under this section, in the case of a substantial owner who becomes an active participant under a plan after a benefit increase (other than the adoption of the plan) has been put into effect, the plan as it exists at the time he commences his participation shall be deemed to be the original plan with respect to him.

§ 4022.27 Effect of tax disqualification.

(a) *General rule.* Except as provided in paragraph (b) of this section, benefits accrued under a plan after the date on which the Secretary of the Treasury or his delegate issues a notice that any trust which is part of the plan no longer meets the requirements of section 401(a) of the Code or that the plan no longer meets the requirements of section 404(a) of the Code or after the date of adoption of a plan amendment that causes the issuance of such a notice shall not be guaranteed under this part.

(b) *Exceptions.* The restriction on the guarantee of benefits set forth in paragraph (a) of this section shall not apply if:

(1) The Secretary of the Treasury or his delegate issues a notice stating that the original notice referred to in

paragraph (a) of this section was erroneous;

(2) The Secretary of the Treasury or his delegate finds that, subsequent to the issuance of the notice referred to in paragraph (a) of this section, appropriate action has been taken with respect to the trust or plan to cause it to meet the requirements of sections 401(a) or 404(a)(2) of the Code, respectively, and issues a subsequent notice stating that the trust or plan meets such requirements; or

(3) The plan amendment is revoked retroactively to its original effective date.

Subpart C—Calculation and Payment of Unfunded Nonguaranteed Benefits [Reserved]

Subpart D—Benefit Reductions in Terminating Plans

§ 4022.61 Limitations on benefit payments by plan administrator.

(a) *General.* When section 4041.4 of this chapter requires a plan administrator to reduce benefits, the plan administrator shall limit benefit payments in accordance with this section.

(b) *Accrued benefit at normal retirement.* Except to the extent permitted by paragraph (d) of this section, a plan administrator may not pay that portion of a monthly benefit payable with respect to any participant that exceeds the participant's accrued benefit payable at normal retirement age under the plan. For the purpose of applying this limitation, post-retirement benefit increases, such as cost-of-living adjustments, are not considered to increase a participant's benefit beyond his or her accrued benefit payable at normal retirement age.

(c) *Maximum guaranteeable benefit.* Except to the extent permitted by paragraph (d) of this section, a plan administrator may not pay that portion of a monthly benefit payable with respect to any participant, as limited by paragraph (b) of this section, that exceeds the maximum guaranteeable benefit under section 4022(b)(3)(B) of ERISA and § 4022.22(b) of this part, adjusted for age and benefit form, for the year of the proposed termination date.

(d) *Estimated benefit payments.* A plan administrator shall pay the monthly benefit payable with respect to each participant as determined under § 4022.62 or § 4022.63, whichever produces the higher benefit.

(e) *PBGC authority to modify procedures.* In order to avoid abuse of the plan termination insurance system, inequitable treatment of participants and beneficiaries, or the imposition of unreasonable burdens on terminating plans, the PBGC may authorize or direct the use of alternative procedures for determining benefit reductions.

(f) *Examples.* This section is illustrated by the following examples:

Example 1—*Facts.* On October 10, 1992, a plan administrator files with the PBGC a notice of intent to terminate in a distress termination that includes December 31, 1992, as the proposed termination date. A participant who is in pay status on December 31, 1992, has been receiving his accrued benefit of $2,500 per month under the plan. The benefit is in the form of a joint and survivor annuity (contingent basis) that will pay 50 percent of the participant's benefit amount (i.e., $1,250 per month) to his surviving spouse following the death of the participant. On December 31, 1992, the participant is age 66, and his wife is age 56.

Benefit reductions. Paragraph (b) of this section requires the plan administrator to cease paying benefits in excess of the accrued benefit payable at normal retirement age. Because the participant is receiving only his accrued benefit, no reduction is required under paragraph (b).

Paragraph (c) of this section requires the plan administrator to cease paying benefits in excess of the maximum guaranteeable benefit, adjusted for age and benefit form in accordance with the provisions of subpart B. The maximum guaranteeable benefit for plans terminating in 1992, the year of the proposed termination date, is $2,352.27 per month, payable in the form of a single life annuity at age 65. Because the participant is older than age 65, no adjustment is required under § 4022.23(c) based on the annuitant's age factor. The benefit form is a joint and survivor annuity (contingent basis), as defined in § 4022.23(d)(2). The required benefit reduction for this benefit form under § 4022.23(d) is 10 percent. The corresponding adjustment factor is 0.90 (1.00–0.10). The benefit reduction factor to adjust for the age difference between the participant and the beneficiary is computed under § 4022.23(e). In computing the difference in ages, years over 65 years of age are not taken into account. Therefore, the age difference is 9 years (65–56). The required percentage reduction when the beneficiary is 9 years younger than the participant is 9 percent. The corresponding adjustment factor is 0.91 (1.00–0.09).

The maximum guaranteeable benefit adjusted for age and benefit form is $1,926.51 ($2,352.27×0.90×0.91) per month. Therefore, the plan administrator must reduce the participant's benefit payment from $2,500 to $1,926.51. If the participant dies after December 31, 1992, the plan administrator will pay his spouse $963.26 (0.50×$1,926.51) per month.

Example 2—*Facts.* The benefit of a participant who retired under a plan at age 60 is a reduced single life annuity of $400 per month plus a temporary supplement of $400 per month payable until age 62 (*i.e.*, a step-down benefit). The participant's accrued benefit under the plan is $450 per month, payable from the plan's normal retirement age. On the proposed termination date, June 30, 1992, the participant is 61 years old.

The maximum guaranteeable benefit adjusted for age under § 4022.23(c) of this chapter is $1,693.63 ($2,352.27 × 0.72) per month. Since the benefit is payable as a single life annuity, no adjustment is required under § 4022.23(d) for benefit form.

Benefit reductions. The plan benefit of $800 per month payable until age 62 exceeds the participant's accrued benefit at normal requirement age of $450 per month. Paragraph (b) of this section requires that, except to the extent permitted by paragraph (d), the plan benefit must be reduced to $450 per month. Since the levelized benefit of $404.10 ((0.082 × 50) + $400) per month, determined under § 4022.23(f), is less than the adjusted maximum guaranteeable benefit of $1,693.63 per month, no further reduction in the $450 per month benefit payment is required under paragraph (c) of this section. The plan administrator next would determine the amount of the participant's estimated benefit under paragraph (d).

Example 3—*Facts.* A retired participant is receiving a reduced early retirement benefit of $1,100 per month plus a temporary supplement of $700 per month payable until age 62. The benefit is in the form of a single life annuity. On the proposed termination date, November 30, 1992, the participant is 56 years old.

The participant's accrued benefit at normal retirement age under the plan is $1,200 per month. The maximum guaranteeable benefit adjusted for age is $1,152.61 ($2,352.27 × 0.49) per month. A form adjustment is not required.

Benefit reductions. The plan benefit of $1,800 per month payable from age 56 to age 62 exceeds the participant's accrued benefit at normal retirement age of $1,200 per month. Therefore, under paragraph (b) of this section, the plan administrator must reduce the temporary supplement to $100 per month.

For the purpose of determining whether the reduced benefit, *i.e.*, a level-life annuity of $1,100 per month and a temporary annuity supplement of $100 per month to age 62, exceeds the maximum guaranteeable benefit adjusted for age, the temporary annuity supplement of $100 per month is converted to a level-life annuity equivalent in accordance with § 4022.23(f) of this chapter. The level-life annuity equivalent is $38.70 ($100 × 0.387). This, added to the life annuity of $1,100 per month, equals $1,138.70. Since the maximum guaranteeable benefit of $1,152.61 per month exceeds $1,138.70 per month, no further reduction is required under paragraph (c) of this section.

The plan administrator next would determine the participant's estimated benefit under paragraph (d). Assume that the estimated benefit under paragraph (d) is $780 per month until age 62 and $715 per month thereafter. The plan administrator would pay the participant $780 per month, reduced to $715 per month at age 62, subject to the final benefit determination made under title IV.

Example 4—*Facts.* A retired participant is receiving a reduced early retirement benefit of $2,650 per month plus a temporary supplement of $800 per month payable until age 62. The benefit is in the form of a joint and survivor annuity (contingent basis) that will pay 50 percent of the participant's benefit amount to his surviving spouse following the death of the participant. On the proposed termination date, December 20, 1992, the participant and his spouse are each 56 years old.

The participant's accrued benefit at normal retirement age under the plan is $3,000 per month. The maximum guaranteeable benefit adjusted for age and the joint and survivor annuity (contingent basis) annuity form is $1,037.35 per month. An adjustment for age difference is not required because the participant and his spouse are the same age.

Benefit reductions. The plan benefit of $3,450 per month payable from age 56 to age 62 exceeds the participant's accrued benefit at normal retirement age, which is $3,000 per month. Therefore, under paragraph (b) of this section, the plan administrator must reduce the participant's benefit so that it does not exceed $3,000 per month.

The level-life equivalent of the participant's reduced benefit, determined using the § 4022.23(f) adjustment factor, is $2,785.45 (($350 × 0.387) + $2,650) per month. Since this benefit exceeds the participant's maximum guaranteeable benefit of $1,037.35 per month, the plan administrator must reduce the participant's benefit payment so that it does not exceed the maximum guaranteeable benefit.

The ratio of (i) the participant's maximum guaranteeable benefit to (ii) the level-life equivalent of the participant's reduced benefit (computed under the "accrued for normal retirement age" limitation) is used in converting the level-life maximum guaranteeable benefit to the step-down benefit form. The level-life equivalent of the reduced benefit computed under the "accrued for normal retirement age" limitation is 37.24 percent ($1,037.35/$2,785.45). Thus, the plan administrator must reduce the participant's level-life benefit of $2,650 per month to $986.86 ($2,650 × 0.3724) and must further reduce the reduced temporary benefit of $350 per month to $130.34 ($350 × 0.3724). Under paragraph (c) of this section, therefore, the participant's maximum guaranteeable benefit is $1,117.20 ($986.86 + $130.34) per month to age 62 and $986.86 per month thereafter, subject to any adjustment under paragraph (d) of this section.

Assume that the estimated benefit under paragraph (d) is $1,005.48 per month to age 62 and $888.17 per month thereafter. The plan administrator would reduce the participant's benefit from $3,450 per month to $1,005.48 per month and pay this amount until age 62, at which time the benefit payment would be reduced to $888.17 per month, subject to the final benefit determination made under title IV.

§ 4022.62 Estimated guaranteed benefit.

(a) *General.* The estimated guaranteed benefit payable with respect to each participant who is not a substantial owner is computed under paragraph (c) of this section. The estimated guaranteed benefit payable with respect to each participant who is a substantial owner is computed under paragraph (d) of this section.

(b) *Rules for determining benefits.* For the purposes of determining entitlement to a benefit and the amount of the estimated benefit under this section, the following rules apply:

(1) *Participants in pay status on the proposed termination date.* For benefits payable with respect to a participant who is in pay status on or before the proposed termination date, the plan administrator shall use the participant's age and benefit payable under the plan as of the proposed termination date.

(2) *Participants who enter pay status after the proposed termination date.* For benefits payable with respect to a participant who enters pay status after the proposed termination date, the plan administrator shall use the participant's age as of the benefit commencement date and his or her service and compensation as of the proposed termination date.

(3) *Participants with new benefits or benefit improvements.* For the purpose of determining the estimated guaranteed benefit under paragraph (c) of this section, only new benefits and benefit improvements that affect the benefit of the participant or beneficiary for whom the determination is made are taken into account.

(4) *Limitations on estimated guaranteed benefits.* For the purpose of determining the estimated guaranteed benefit under paragraph (c) or (d) of this section, the benefit determined under paragraph (b)(1) or (b)(2) of this section is subject to the limitations set forth in § 4022.61 (b) and (c).

(c) *Estimated guaranteed benefit payable with respect to a participant who is not a substantial owner.* For benefits payable with respect to a participant who is not a substantial owner, the estimated guaranteed benefit is determined under paragraph (c)(1) of this section, if no portion of the benefit is subject to the phase-in of plan termination insurance guarantees set forth in section 4022(b)(1) of ERISA. In any other case, the estimated guaranteed benefit is determined under paragraph (c)(2). "Benefit subject to phase-in" means a benefit that is subject to the phase-in of plan termination insurance guarantees set forth in section 4022(b)(1) of ERISA, determined without regard to section 4022(b)(7) of ERISA.

(1) *Participants with no benefits subject to phase-in.* In the case of a participant or beneficiary with no benefit improvement (as defined in paragraph (c)(2)(ii)) or new benefit (as defined in paragraph (c)(2)(i)) in the five years preceding the proposed termination date, the estimated guaranteed benefit is the benefit to which he or she is entitled under the rules in paragraph (b) of this section.

(2) *Participants with benefits subject to phase-in.* In the case of a participant or beneficiary with a benefit improvement or new benefit in the five years preceding the proposed termination date, the estimated guaranteed benefit is the benefit to which he or she is entitled under the rules in paragraph (b) of this section, multiplied by the multiplier determined according to paragraphs (i), (ii), and (iii), but not less than the benefit to which he or she would have been entitled if the benefit improvement or new benefit had not been adopted.

(i) From column (a) of Table I, select the line that applies according to the number of full years before the proposed termination date since the plan was last amended to provide for a new benefit (or the number of full years since the plan was established, if it has never been amended to provide for a new benefit). "New benefit" means a change in the terms of the plan that results in (a) a participant's or a beneficiary's eligibility for a benefit that was not previously available or to which he or she was not entitled (excluding a benefit that is actuarially equivalent to the normal retirement benefit to which the participant was previously entitled) or (b) an increase of more than twenty percent in the benefit to which a participant is entitled upon entering pay status before his or her normal retirement age under the plan. "New benefits" result from liberalized participation or vesting requirements, reductions in the age or service requirements for receiving unreduced benefits, additions of actuarially subsidized benefits, and increases in actuarial subsidies. The establishment of a plan creates a new benefit as of the effective date of the plan. A change in the amount of a benefit is not deemed to be a "new benefit" if it results solely from a benefit improvement. "New benefit" and "benefit improvement" are mutually exclusive terms.

(ii) If there was no benefit improvement under the plan during the one-year period ending on the proposed termination date, use the multiplier set forth in column (b) of Table I on the line selected from column (a). "Benefit improvement" means a change in the terms of the plan that results in (a) an increase in the benefit to which a participant is entitled at his or her normal retirement age under the plan or (b) an increase in the benefit to which a participant or beneficiary in pay status is entitled.

(iii) If there was any benefit improvement during the one-year period ending on the proposed termination date, use the multiplier set forth in column (c) of Table I on the line selected from column (a).

TABLE I.—APPLICABLE MULTIPLIER IF—

Full years since last new benefit (a)	No benefit improvement during last year (b)	Benefit improvement during last year (c)
Five or more	.90	.80
Four	.80	.70
Three	.65	.55
Two	.50	.45
Fewer than two	.35	.30

Note: The foregoing method of estimating guaranteed benefits is based upon the PBGC's experience with a wide range of plans and may not provide accurate estimates in certain circumstances. In accordance with § 4022.61(e), a plan administrator may use a different method of estimation if he or she demonstrates to the PBGC that his proposed method will be more equitable to participants and beneficiaries. The PBGC may require the use of a different method in certain cases.

(d) *Estimated guaranteed benefit payable with respect to a substantial owner.* For benefits payable with respect to each participant who is a substantial owner and who commenced participation under the plan fewer than five full years before the proposed termination date, the estimated guaranteed benefit is determined under paragraph (d)(1). With respect to any other substantial owner, the estimated guaranteed benefit is determined under paragraph (d)(2).

(1) *Fewer than five years of participation.* The estimated guaranteed benefit under this paragraph is the benefit to which the substantial owner is entitled, as determined under paragraph (b) of this section, multiplied by a fraction, not to exceed one, the numerator of which is the number of full years prior to the proposed termination date that the substantial owner was an active participant under the plan and the denominator of which is thirty.

(2) *Five or more years of participation.* The estimated guaranteed benefit under this paragraph is the lesser of—

(i) the estimated guaranteed benefit calculated under paragraph (d)(1) of this section; or

(ii) the benefit to which the substantial owner would have been entitled as of the proposed termination date (or benefit commencement date in the case of a substantial owner whose benefit commences after the proposed termination date) under the terms of the plan in effect when he or she first began participation, as limited by § 4022.61 (b) and (c), multiplied by a fraction, not to exceed one, the numerator of which is two times the number of full years of his or her active participation under the plan prior to the proposed termination date and the denominator of which is thirty.

(e) *Examples.* This section is illustrated by the following examples:

Example 1—*Facts.* A participant who is not a substantial owner retired on December 31, 1991, at age 60 and began receiving a benefit of $600 per month. On January 1, 1989, the plan had been amended to allow participants to retire with unreduced benefits at age 60. Previously, a participant who retired before age 65 was subject to a reduction of 1/15 for each year by which his or her actual retirement age preceded age 65. On January 1, 1992, the plan's benefit formula was amended to increase benefits for participants who retired before January 1, 1992. As a result, the participant's benefit was increased to $750 per month. There have been no other pertinent amendments. The proposed termination date is December 15, 1992.

Estimated guaranteed benefit. No reduction is required under § 4022.61 (b) or (c) because the participant's benefit does not exceed either the participant's accrued benefit at normal retirement age or the maximum guaranteeable benefit. (Post-retirement benefit increases are not considered as increasing accrued benefits payable at normal retirement age.)

The amendment as of January 1, 1989, resulted in a "new benefit" because the reduction in the age at which the participant could receive unreduced benefits increased the participant's benefit entitlement at actual retirement age by 5/15, which is more than a 20 percent increase. The amendment of January 1, 1992, which increased the participant's benefit to $750 per month, is a "benefit improvement" because it is an increase in the amount of benefit for persons in pay status. (No percentage test applies in determining whether such an increase is a benefit improvement.)

The multiplier for computing the amount of the estimated guaranteed benefit is taken from the third row of Table I (because the last new benefit had been in effect for 3 full years as of the proposed termination date) and column (c) (because there was a benefit improvement within the 1-year period preceding the proposed termination date). This multiplier is 0.55. Therefore, the amount of the participant's estimated guaranteed benefit is $412.50 (0.55×$750) per month.

Example 2—*Facts.* A participant who is not a substantial owner terminated employment on December 31, 1990. On January 1, 1992, she reached age 65 and began receiving a benefit of $250 per month. She had completed 3 years of service at her termination of employment and was fully vested in her accrued benefit. The plan's vesting schedule had been amended on July 1, 1988. Under the schedule in effect before the amendment, a participant with 5 years of service was 100 percent vested. There have been no other pertinent amendments. The proposed termination date is December 31, 1992.

Estimated guaranteed benefit. No reduction is required under § 4022.61 (b) or (c) because the participant's benefit does not exceed either her accrued benefit at normal retirement age or the maximum guaranteeable benefit. The plan's change of vesting schedule created a new benefit for the participant. Because the amendment was in effect for 4 full years before the proposed termination date, the second row of Table I is used to determine the applicable multiplier for estimating the amount of the participant's guaranteed benefit. Because the participant did not receive any benefit improvement during the 12-month period ending on the proposed termination date, column (b) of the table is used. Therefore, the multiplier is 0.80, and the amount of the participant's estimated guaranteed benefit is $200 (0.80×$250) per month.

Example 3—*Facts.* A participant who is a substantial owner retired prior to the proposed termination date after 5½ years of active participation in the plan. The benefit under the terms of the plan when he first began active participation was $800 per month. On the proposed termination date of April 30, 1992, he was entitled to receive a benefit of $2000 per month. No reduction of this benefit is required under § 4022.61 (b) or (c).

Estimated guaranteed benefit. Paragraph (d)(2) of this section is used to compute the amount of the estimated guaranteed benefit of substantial owners with 5 or more years of active participation prior to the proposed termination date. Consequently, the amount of this participant's estimated guaranteed benefit is the lesser of—

(i) the amount calculated as if he had been an active participant in the plan for fewer than 5 full years on the proposed termination date, or $333.33 ($2000×4/30) per month, or

(ii) the amount to which he would have been entitled as of the proposed termination date under the terms of the plan when he first began participation, as limited by § 4022.61 (b) and (c), multiplied by 2 times the number of years of active participation and divided by 30, or $266.67 ($800×2 ×4/30) per month. Therefore, the amount of the participant's estimated guaranteed benefit is $266.67 per month.

§ 4022.63 Estimated title IV benefit.

(a) *General.* If the conditions specified in paragraph (b) exist, the plan administrator shall determine each participant's estimated title IV benefit. The estimated title IV benefit payable with respect to each participant who is not a substantial owner is computed under paragraph (c) of this section. The estimated title IV benefit payable with respect to each participant who is a substantial owner is computed under paragraph (d) of this section.

(b) *Conditions for use of this section.* The conditions set forth in this paragraph must be satisfied in order to make use of the procedures set forth in this section. If the specified conditions exist, estimated title IV benefits must be determined in accordance with these procedures (or in accordance with alternative procedures authorized by the PBGC under § 4022.61(f)) for each participant and beneficiary whose benefit under the plan exceeds the limitations contained in § 4022.61(b) or (c) or who is a substantial owner or the beneficiary of a substantial owner. If the specified conditions do not exist, title IV benefits may be estimated by the plan administrator in accordance with procedures authorized by the PBGC, but no such estimate is required. The conditions are as follows:

(1) An actuarial valuation of the plan has been performed for a plan year beginning not more than eighteen months before the proposed termination date. If the interest rate used to value plan liabilities in this valuation exceeded the applicable valuation interest rates and factors under appendix B to part 4044 of this chapter in effect on the proposed termination date, the value of benefits in pay status and the value of vested benefits not in pay status on the valuation date must be converted to the PBGC's valuation rates and factors.

(2) The plan has been in effect for at least five full years before the proposed termination date, and the most recent actuarial valuation demonstrates that the value of plan assets, reduced by employee contributions remaining in the plan and interest credited thereon under the terms of the plan, exceeds the present value, adjusted as required under paragraph (b)(1), of all plan benefits in pay status on the valuation date.

(c) *Estimated title IV benefit payable with respect to a participant who is not a substantial owner.* For benefits payable with respect to a participant who is not a substantial owner, the estimated title IV benefit is the estimated priority category 3 benefit computed under this paragraph. Priority category 3 benefits are payable with respect to participants who were, or could have been, in pay status three full years prior to the proposed termination date. The estimated priority category 3 benefit is computed by multiplying the benefit payable with respect to the participant under § 4022.62 (b)(1) and (b)(2) by a fraction, not to exceed one—

(1) The numerator of which is the benefit that would be payable with respect to the participant at normal retirement age under the provisions of the plan in effect on the date five full years before the proposed termination date, based on the participant's age, service, and compensation as of the earlier of the participant's benefit commencement date or the proposed termination date, and

(2) The denominator of which is the benefit that would be payable with respect to the participant at normal retirement age under the provisions of the plan in effect on the proposed termination date, based on the participant's age, service, and compensation as of the earlier of the participant's benefit commencement date or the proposed termination date.

(d) *Estimated title IV benefit payable with respect to a substantial owner.* For benefits payable with respect to a participant who is a substantial owner, the estimated title IV benefit is the higher of the benefit computed under paragraph (c) of this section or the benefit computed under this paragraph.

(1) The plan administrator shall first calculate the estimated guaranteed benefit payable with respect to the substantial owner as if he or she were not a substantial owner, using the method set forth in § 4022.62(c).

(2) The benefit computed under paragraph (d)(1) shall be multiplied by the priority category 4 funding ratio. The category 4 funding ratio is the ratio of x to y, not to exceed one, where—

(i) in a plan with priority category 3 benefits, x equals plan assets minus employee contributions remaining in the plan on the valuation date, with interest credited thereon under the terms of the plan, and the present value of benefits in pay status, and y equals the present value of all vested benefits not in pay status minus such employee contributions and interest; or

(ii) in a plan with no priority category 3 benefits, x equals plan assets minus employee contributions remaining in the plan on the valuation date, with interest credited thereon under the terms of the plan, and y equals the present value of all vested benefits minus such employee contributions and interest.

(e) *Examples.* This section is illustrated by the following examples:

Example 1—*Facts.* A participant who is not a substantial owner was eligible to retire 3½ years before the proposed termination date. The participant retired 2 years before the proposed termination date with 20 years of service. Her final 5 years' average salary was $45,000, and she was entitled to an unreduced early retirement benefit of $1,500 per month payable as a single life annuity. This retirement benefit does not exceed the limitation in § 4022.61 (b) or (c).

On the participant's benefit commencement date, the plan provided for a normal retirement benefit of 2 percent of the final 5 years' salary times the number of years of service. Five years before the proposed termination date, the percentage was 1½ percent. The amendments improving benefits were put into effect 3½ years prior to the proposed termination date. There were no other amendments during the 5-year period.

The participant's estimated guaranteed benefit computed under § 4022.62(c) is $1,500 per month times 0.90 (the factor from column (b) of Table I in § 4022.62(c)(2)), or $1,350 per month. It is assumed that the plan meets the conditions set forth in paragraph (b) of this section, and the plan administrator is therefore required to estimate the title IV benefit.

Estimated title IV benefit. For a participant who is not a substantial owner, the amount of the estimated title IV benefit is the estimated priority category 3 benefit computed under paragraph (c) of this section. This amount is computed by multiplying the participant's benefit under the plan as of the later of the proposed termination date or the benefit commencement date by the ratio of (i) the normal retirement benefit under the provisions of the plan in effect 5 years before the proposed termination date and (ii) the normal retirement benefit under the plan provisions in effect on the proposed termination date.

Thus, the numerator of the ratio is the benefit that would be payable to the participant under the normal retirement provisions of the plan 5 years before the proposed termination date, based on her age, service, and compensation on her benefit commencement date. The denominator of the ratio is the benefit that would be payable to the participant under the normal retirement provisions of the plan in effect on the proposed termination date, based on her age, service, and compensation as of the earlier of her benefit commencement date or the proposed termination date. Since the only different factor in the numerator and denominator is the salary percentage, the amount of the estimated title IV benefit is $1,125 (0.015/0.020 × $1,500) per month. This amount is less than the estimated guaranteed benefit of $1,350 per month. Therefore, in accordance with § 4022.61(d), the benefit payable to the participant is $1,350 per month.

Example 2—*Facts.* A participant who is a substantial owner retires at the plan's normal retirement age, having completed 5 years of active participation in the plan, on October 31, 1992, which is the proposed termination date. Under provisions of the plan in effect 5 years prior to the proposed termination date, the participant is entitled to a single life annuity of $500 per month. Under the most recent plan amendments, which were put into effect 1½ years prior to the proposed termination date, the participant is entitled to a single life annuity of $1,000 per month. The participant's estimated guaranteed benefit computed under § 4022.62(d)(2) is $166.67 per month.

It is assumed that all of the conditions in paragraph (b) of this section have been met. Plan assets equal $2 million. The present value of all benefits in pay status is $1.5 million based on applicable PBGC interest rates. There are no employee contributions

and the present value of all vested benefits that are not in pay status is $0.75 million based on applicable PBGC interest rates.

Estimated title IV benefit. Paragraph (d) of this section provides that the amount of the estimated title IV benefit payable with respect to a participant who is a substantial owner is the higher of the estimated priority category 3 benefit computed under paragraph (c) of this section or the estimated priority category 4 benefit computed under paragraph (d) of this section.

Under paragraph (c), the participant's estimated priority category 3 benefit is $500 ($1,000 × $500/$1000) per month.

Under paragraph (d), the participant's estimated priority category 4 benefit is the estimated guaranteed benefit computed under § 4022.62(c) (*i.e.*, as if the participant were not a substantial owner) multiplied by the priority category 4 funding ratio. Since the plan has priority category 3 benefits, the ratio is determined under paragraph (d)(2)(i). The numerator of the ratio is plan assets minus the present value of benefits in pay status. The denominator of the ratio is the present value of all vested benefits that are not in pay status. The participant's estimated guaranteed benefit under § 4022.62(c) is $1,000 per month times 0.90 (the factor from column (b) of Table I in § 4022.62(c)(2)), or $900 per month. Multiplying $900 by the category 4 funding ratio of ⅔ (($2 million—$1.5 million)/$0.75 million) produces an estimated category 4 benefit of $600 per month.

Because the estimated category 4 benefit so computed is greater than the estimated category 3 benefit so computed, the estimated category 4 benefit is the estimated title IV benefit. Because the estimated category 4 benefit so computed is greater than the estimated guaranteed benefit of $166.67 per month, in accordance with § 4022.61(d), the benefit payable to the participant is the estimated category 4 benefit of $600 per month.

Subpart E—PBGC Recoupment and Reimbursement of Benefit Overpayments and Underpayments

§ 4022.81 General rules.

(a) *Recoupment of benefit overpayments.* If at any time the PBGC determines that net benefits paid with respect to any participant in a PBGC-trusteed plan exceed the total amount to which the participant or his or her beneficiary is entitled up to that time under title IV of ERISA, and the participant or beneficiary is entitled to receive future benefit payments, the PBGC shall recoup the overpayment in accordance with paragraph (c) of this section and § 4022.82. Notwithstanding the previous sentence, the PBGC may, in its discretion, recover overpayments by methods other than recouping in accordance with the rules in this subpart. The PBGC will not normally exercise this right unless net benefits paid after the termination date exceed those to which a participant or beneficiary is entitled under the terms of the plan before any reductions under subpart D.

(b) *Reimbursement of benefit underpayments.* If at any time the PBGC determines that net benefits paid with respect to a participant in a PBGC-trusteed plan are less than the amount to which the participant or his or her beneficiary is entitled up to that time under title IV of ERISA, the PBGC shall reimburse the participant or beneficiary for the net underpayment in accordance with paragraphs (c) and (d) of this section and § 4022.83.

(c) *Payments subject to recoupment or reimbursement.* The PBGC shall recoup net overpayments and reimburse net underpayments made on or after the latest of the proposed termination date, the termination date, or, if no notice of intent to terminate was issued, the date on which proceedings to terminate the plan are instituted pursuant to section 4042 of ERISA.

(d) *Interest.* The PBGC will compute interest on overpayments and underpayments using the interest rate established for valuing immediate annuities as set forth in part 4044, appendix B, of this chapter according to the following rules:

(1) *Overpayments before recoupment begins.* Except as provided in paragraph (d)(2), no interest is charged on overpayments from the date of the payment to the date on which recoupment begins.

(2) *Receipt of both overpayments and underpayments.* If both benefit overpayments and benefit underpayments are made with respect to a participant, the PBGC will determine the amount of the net overpayment or underpayment by charging or crediting interest on each payment from the first day of the month after the date of payment to the first day of the month in which recoupment begins. If the net overpayment thus computed is greater than the sum of the actual overpayments (unadjusted for interest to the date on which recoupment begins), computations under § 4022.82 will be based upon the sum of the actual overpayments.

§ 4022.82 Method of recoupment.

(a) *Future benefit reductions.* Unless a participant or beneficiary elects otherwise under paragraph (b) of this section, the PBGC shall recoup overpayments of benefits in accordance with this paragraph. The benefit reduction under this paragraph shall be an amount equal to the fraction determined under paragraphs (a)(1) and (a)(2) of this section, multiplied by each future benefit payment to which the participant or beneficiary is entitled.

(1) *Computation.* The PBGC shall determine the fractional multiplier by dividing the amount of the benefit overpayment by the present value of the benefit payable with respect to the participant under title IV of ERISA. The PBGC shall determine the present value of the benefit to which a participant or beneficiary is entitled under title IV of ERISA as of the termination date, using the PBGC interest rates and factors in effect on that date. The PBGC may, however, utilize a different date of determination if warranted by the facts and circumstances of a particular case.

(2) *Limitation on benefit reduction.* Except as provided in paragraph (a)(1) of this section, the PBGC shall reduce benefits with respect to a participant or beneficiary by no more than the greater of (i) ten percent per month or (ii) the amount of benefit per month in excess of the maximum guaranteeable benefit payable under section 4022(b)(3)(B) of ERISA, determined without adjustment for age and benefit form.

(3) *PBGC notice to participant or beneficiary.* Before effecting a benefit reduction pursuant to this paragraph, the PBGC shall notify the participant or beneficiary in writing of the amount of the benefit overpayment and of the amount of the reduced benefit computed under this section. The notice will advise the participant or beneficiary of the repayment option set forth in paragraph (b) of this section and inform him or her that the PBGC will proceed to recover the benefit overpayment in accordance with this paragraph unless an election to repay in a lump sum is made in accordance with paragraph (b).

(b) *Lump sum repayment.* A participant or beneficiary who has received a net benefit overpayment may elect to repay the excess in a single payment on or before a date agreed to by the participant or beneficiary and the PBGC. If the full payment is not made by the agreed upon date or a date is not agreed upon, the PBGC may proceed to recover the overpayment in accordance with paragraph (a) of this section.

§ 4022.83 PBGC reimbursement of benefit underpayments.

When the PBGC determines that there has been a net benefit underpayment made with respect to a participant, it shall pay the participant or beneficiary the amount of the net underpayment, determined in accordance with § 4022.81(d), in a single payment.

Appendix to Part 4022—Maximum Guaranteeable Monthly Benefit

The following table lists by year the maximum guaranteeable monthly benefit payable in the form of a life annuity commencing at age 65 as described by § 4022.22(b) to a participant in a plan that terminated in that year:

Year	Maximum guaranteeable monthly benefit
1974	$750.00
1975	801.14
1976	869.32
1977	937.50
1978	1,005.68
1979	1,073.86
1980	1,159.09
1981	1,261.36
1982	1,380.68
1983	1,517.05
1984	1,602.27
1985	1,687.50
1986	1,789.77
1987	1,857.95
1988	1,909.09
1989	2,028.41
1990	2,164.77
1991	2,250.00
1992	2,352.27
1993	2,437.50
1994	2,556.82
1995	2,573.86
1996	2,642.05

PART 4022B—AGGREGATE LIMITS ON GUARANTEED BENEFITS

§ 4022B.1 Aggregate payments limitation.

If a person is entitled to benefits under two or more plans or with respect to two or more participants, or if more than one person is entitled to benefits payable with respect to one participant, the aggregate benefits payable by PBGC from its funds shall be limited to the extent set forth in § 4022.22 computed without regard to the provisions of § 4022.22(a). The limitation contained in § 4022.22 shall be applied separately to each plan at the date of its termination, and the amounts payable by PBGC under each plan shall be aggregated up to the limitation contained in this section.

PART 4041—TERMINATION OF SINGLE-EMPLOYER PLANS

Subpart A—General Provisions

Sec.
4041.1 Purpose and scope.
4041.2 Definitions.
4041.3 Requirements for a standard termination or a distress termination.
4041.4 Administration of plan during pendency of termination proceedings.
4041.5 Challenges to plan termination under collective bargaining agreement.
4041.6 Annuity requirements.
4041.7 Facilitating plan sufficiency in a standard termination.
4041.8 Disaster relief.
4041.9 Filing with the PBGC.
4041.10 Computation of time.
4041.11 Maintenance of plan records.
4041.12 Information collection.

Subpart B—Standard Termination Process

4041.21 Notice of intent to terminate.
4041.22 Issuance of notices of plan benefits.
4041.23 Form and contents of notices of plan benefits.
4041.24 Standard termination notice.
4041.25 PBGC action upon filing of standard termination notice.
4041.26 Notice of noncompliance.
4041.27 Closeout of plan.

Subpart C—Distress Termination Process

4041.41 Notice of intent to terminate.
4041.42 PBGC review of notice of intent to terminate.
4041.43 Distress termination notice.
4041.44 PBGC determination of compliance with requirements for distress termination.
4041.45 PBGC determination of plan sufficiency/insufficiency.
4041.46 Notices of benefit distribution.
4041.47 Verification of plan sufficiency prior to closeout.
4041.48 Closeout of plan.

Appendix to Part 4041—Agreement for Commitment to Make Plan Sufficient for Benefit Liabilities

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344, 1350.

Subpart A—General Provisions

§ 4041.1 Purpose and scope.

This part sets forth the rules and procedures for terminating a single-employer pension plan in a standard termination or in a distress termination under ERISA. Subpart A contains various general rules that apply to both standard terminations and distress terminations. Subpart B sets forth the specific steps that a plan administrator must follow in order to terminate a plan in a standard termination. Subpart C sets forth the specific steps that a plan administrator must follow in order to terminate a plan in a distress termination. This part applies to the termination of any single-employer plan covered under section 4021(a) of ERISA and not excluded by section 4021(b). This part does not reflect the amendments to sections 4041(b)(2)(C)(i) (relating to the PBGC's authority not to nullify a termination if nullification would be inconsistent with the interests of participants and beneficiaries) or 4041(c)(2)(B)(i)(I) (relating to the liquidation criteria for a distress termination) that were contained in the Retirement Protection Act of 1994 (Pub. L. 103–465, section 778 (a) and (b)).

§ 4041.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: affected party, annuity, benefit liabilities, Code, contributing sponsor, controlled group, distress termination, distribution date, employer, ERISA, guaranteed benefit, insurer, irrevocable commitment, IRS, mandatory employee contributions, normal retirement age, notice of intent to terminate, PBGC, person, plan, plan administrator, plan year, single-employer plan, standard termination, termination date, and title IV benefit.

In addition, for purposes of this part:

Distress termination notice means the notice filed with the PBGC pursuant to section 4041(c)(2)(A) of ERISA and § 4041.43. PBGC Form 601 (including Schedule EA–D) is the distress termination notice.

Distribution notice means the notice issued to the plan administrator by the PBGC pursuant to § 4041.45(c) of this part upon the PBGC's determination that the plan has sufficient assets to pay at least guaranteed benefits.

Existing collective bargaining agreement means a collective bargaining agreement that—

(1) By its terms, either has not expired or is extended beyond its stated expiration date because neither of the collective bargaining parties took the required action to terminate it, and

(2) Has not been made inoperative by a judicial ruling. When a collective bargaining agreement no longer meets these conditions, it ceases to be an "existing collective bargaining agreement," whether or not any or all of its terms may continue to apply by operation of law.

Majority owner means, with respect to a contributing sponsor of a single-employer plan, an individual who owns, directly or indirectly, 50 percent or more of—

(1) An unincorporated trade or business,

(2) The capital interest or the profits interest in a partnership, or

(3) Either the voting stock of a corporation or the value of all of the stock of a corporation. For this purpose, the constructive ownership rules of section 414 (b) and (c) of the Code shall apply.

Notice of benefit distribution means the notice to each participant and beneficiary required by § 4041.46 of this part describing the benefit to be distributed to him or her.

Notice of noncompliance means a notice issued to a plan administrator by the PBGC pursuant to section 4041(b)(2)(C) of ERISA and § 4041.26 of this part advising the plan administrator that the requirements for a standard

termination have not been satisfied and that the plan is an ongoing plan.

Notice of plan benefits means the notice to each participant and beneficiary required by section 4041(b)(2)(B) of ERISA and §§ 4041.22 and 4041.23 of this part describing his or her plan benefits.

Participant means—

(1) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan, including any individual who is considered covered under the plan for purposes of meeting the minimum participation requirements but who, because of offset or similar provisions, does not have any accrued benefits;

(2) Any nonvested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan; and

(3) Any individual who is retired or separated from employment covered by the plan and who is receiving benefits under the plan or is entitled to begin receiving benefits under the plan in the future, excluding any such individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

Plan benefits means the benefits to which a participant is, or may become, entitled under the plan's provisions in effect as of the termination date, based on the participant's accrued benefit under the plan as of that date. Each participant's "plan benefits" equals that participant's "benefit liabilities," and the sum of all "plan benefits" equals the plan's "benefit liabilities."

Proposed distribution date means the date chosen by the plan administrator as the tentative date for the distribution of plan assets pursuant to a standard termination. A proposed distribution date may not be earlier than the 61st day, nor later than the 240th day, following the day on which the plan administrator files a standard termination notice with the PBGC.

Proposed termination date means the date specified as such by the plan administrator in the notice of intent to terminate or, if later, in the standard termination notice or the distress termination notice. A proposed termination date specified in the notice of intent to terminate may not be earlier than the 60th day, nor later than the 90th day, after the issuance of the notice of intent to terminate. A proposed termination date becomes the 'termination date' if a plan terminates in a standard termination. A proposed termination date specified in the distress termination notice may not be earlier than the proposed termination date specified in the notice of intent to terminate, or (except with PBGC approval) later than the 90th day after the issuance of the notice of intent to terminate.

Residual assets means the plan assets remaining after all benefit liabilities and other liabilities of the plan have been satisfied.

Standard termination notice means the notice filed with the PBGC pursuant to section 4041(b)(2)(A) of ERISA and § 4041.24 of this part advising the PBGC of a proposed standard termination. PBGC Form 500 (including Schedule EA–S) is the standard termination notice.

§ 4041.3 Requirements for a standard termination or a distress termination.

(a) *Exclusive means of voluntary plan termination.* A plan may be voluntarily terminated by the plan administrator only if all of the requirements for a standard termination set forth in paragraph (b) of this section are satisfied or all of the requirements for a distress termination set forth in paragraph (c) of this section are satisfied.

(b) *Requirements for a standard termination.* A plan may be terminated in a standard termination only if—

(1) The plan administrator issues a notice of intent to terminate to each affected party in accordance with § 4041.21 at least 60 days and not more than 90 days before the proposed termination date;

(2) The plan administrator files a standard termination notice with the PBGC in accordance with § 4041.24 no later than 120 days after the proposed termination date or, if applicable, no later than the due date established in an extension notice issued under § 4041.8;

(3) The plan administrator issues notices of plan benefits to plan participants and beneficiaries in accordance with §§ 4041.22 and 4041.23 no later than the date that the standard termination notice is filed with the PBGC;

(4) The PBGC does not issue a notice of noncompliance to the plan administrator pursuant to § 4041.26; and

(5) The plan administrator distributes plan assets in accordance with § 4041.27(c) within the 180-day (or extended) distribution period under § 4041.27(a), (e), and (f) (or, where applicable, within the time prescribed in part 4050 of this chapter), in satisfaction of all benefit liabilities under the plan.

(c) *Requirements for a distress termination.* A plan may be terminated in a distress termination only if—

(1) The plan administrator issues a notice of intent to terminate to each affected party in accordance with § 4041.41 at least 60 days and not more than 90 days before the proposed termination date;

(2) The plan administrator files a distress termination notice with the PBGC in accordance with § 4041.43 no later than 120 days after the proposed termination date or, if applicable, no later than the due date established in an extension notice issued under § 4041.8; and

(3) The PBGC determines that each contributing sponsor and each member of its controlled group satisfy one of the distress criteria set forth in paragraph (e) of this section.

(d) *Effect of failure to satisfy requirements.* (1) If the plan administrator does not satisfy all of the requirements of paragraph (b) of this section for a standard termination or, except as provided in paragraph (d)(2)(i) of this section, all of the requirements of paragraph (c) of this section for a distress termination, any action taken to effect the plan termination shall be null and void, and the plan shall be an ongoing plan. A plan administrator who still desires to terminate the plan shall initiate the termination process again, starting with the issuance of a new notice of intent to terminate.

(2)(i) The PBGC may, upon its own motion, waive any requirement with respect to notices to be filed with the PBGC under paragraph (c)(1) or (c)(2) of this section if the PBGC believes that it will be less costly or administratively burdensome to the PBGC to do so. The PBGC will not entertain requests for waivers under this paragraph.

(ii) Notwithstanding any other provision of this part, the PBGC retains the authority in any case to initiate a plan termination in accordance with the provisions of section 4042 of ERISA.

(e) *Distress criteria.* In a distress termination, each contributing sponsor and each member of its controlled group shall satisfy at least one (but not necessarily the same one) of the following criteria in order for a distress termination to occur:

(1) *Liquidation.* This criterion is met if, as of the proposed termination date—

(i) A person has filed or had filed against it a petition seeking liquidation in a case under title 11, United States Code, or under a similar federal law or law of a State or political subdivision of a State, or a case described in paragraph (e)(2) of this section has been converted to such a case; and

(ii) The case has not been dismissed.

(2) *Reorganization.* This criterion is met if—

(i) As of the proposed termination date, a person has filed or had filed against it a petition seeking reorganization in a case under title 11, United States Code, or under a similar law of a state or a political subdivision of a state, or a case described in paragraph (e)(1) of this section has been converted to such a case;

(ii) As of the proposed termination date, the case has not been dismissed;

(iii) The person notifies the PBGC of any request to the bankruptcy court (or other appropriate court in a case under such similar law of a state or a political subdivision of a state) for approval of the plan termination by concurrently filing with the PBGC a copy of the motion requesting court approval, including any documents submitted in support of the request; and

(iv) The bankruptcy court or other appropriate court determines that, unless the plan is terminated, such person will be unable to pay all its debts pursuant to a plan of reorganization and will be unable to continue in business outside the reorganization process and approves the plan termination.

(3) *Inability to continue in business.* This criterion is met if a person demonstrates to the satisfaction of the PBGC that, unless a distress termination occurs, the person will be unable to pay its debts when due and to continue in business.

(4) *Unreasonably burdensome pension costs.* This criterion is met if a person demonstrates to the satisfaction of the PBGC that the person's costs of providing pension coverage have become unreasonably burdensome solely as a result of declining covered employment under all single-employer plans for which that person is a contributing sponsor.

(f) *Non-duplicative efforts.* (1) If a person requests approval of the plan termination by a court, as described in paragraph (e)(2) of this section, the PBGC—

(i) Will normally enter an appearance to request that the court make specific findings as to whether the contributing sponsor or controlled group member meets the distress test in paragraph (e)(3) of this section, or state that it is unable to make such findings;

(ii) Will provide the court with any information it has that may be germane to the court's ruling;

(iii) Will, if the person has requested, or later requests, a determination by the PBGC under paragraph (e)(3) of this section, defer action on the request until the court makes its determination; and

(iv) Will be bound by a final and non-appealable order of the court.

(2) If a person requests a determination by the PBGC under paragraph (e)(3) of this section, the PBGC determines that the distress criterion is not met, and the person thereafter requests approval of the plan termination by a court, as described in paragraph (e)(2) of this section, the PBGC will advise the court of its determination and make its administrative record available to the court.

(g) *Non-recognition of certain actions.* If the PBGC finds that a person undertook any action or failed to act for the principal purpose of satisfying any of the distress criteria contained in paragraph (e) of this section, rather than for a reasonable business purpose, the PBGC shall disregard such act or failure to act in determining whether the person has satisfied any of those criteria.

§ 4041.4 Administration of plan during pendency of termination proceedings.

(a) *General rule.* Except to the extent specifically prohibited by this section, during the pendency of termination proceedings the plan administrator shall continue to carry out the normal operations of the plan, such as putting participants into pay status, collecting contributions due the plan, investing plan assets, and, during the pendency of a standard termination, making loans to participants, in accordance with plan provisions and applicable law and regulations.

(b) *Prohibitions after issuance of notice of intent to terminate in a standard termination.* Except as provided in paragraph (d) of this section, during the period beginning on the first day the plan administrator issues a notice of intent to terminate and ending on the last day of the PBGC's 60-day (or extended) review period, as described in § 4041.25(a), the plan administrator shall not—

(1) Distribute plan assets pursuant to or in furtherance of the termination of the plan;

(2) Pay benefits attributable to employer contributions, other than death benefits, in any form other than as an annuity; or

(3) Purchase irrevocable commitments to provide benefits from an insurer.

(c) *Prohibitions after issuing notice of intent to terminate in a distress termination.* The plan administrator shall not make loans to plan participants beginning on the first day he or she issues a notice of intent to terminate, and from that date until a distribution is permitted pursuant to § 4041.48, the plan administrator shall not—

(1) Distribute plan assets pursuant to, or (except as required by this part) take any other actions to implement, the termination of the plan;

(2) Pay benefits attributable to employer contributions, other than death benefits, in any form other than as an annuity; or

(3) Purchase irrevocable commitments to provide benefits from an insurer.

(d) *Exceptions in a standard termination.* During the period set forth in paragraph (b) of this section, the plan administrator may pay benefits attributable to employer contributions either through the purchase of irrevocable commitments from an insurer or in a form other than an annuity if—

(1) The participant has separated from active employment;

(2) The distribution is consistent with prior plan practice; and

(3) The distribution is not reasonably expected to jeopardize the plan's sufficiency for benefit liabilities.

(e) *Effect of notice of noncompliance in a standard termination.* If the PBGC issues a notice of noncompliance pursuant to § 4041.26, the prohibitions described in paragraphs (b)(2) and (b)(3) of this section shall cease to apply—

(1) Upon expiration of the period during which reconsideration may be requested under § 4041.26(c) or, if earlier, at the time the plan administrator decides not to request reconsideration; or

(2) If reconsideration is requested, upon PBGC issuance of its decision on reconsideration.

(f) *Limitation on benefit payments on or after proposed termination date in a distress termination.* Beginning on the proposed termination date, the plan administrator shall reduce benefits to the level determined under part 4022, subpart D, of this chapter.

(g) *Failure to qualify for distress termination.* In any case where the PBGC determines, pursuant to § 4041.42(c) or § 4041.44(c)(1), that the requirements for a distress termination are not satisfied—

(1) The prohibitions in paragraph (c) of this section, other than those in paragraph (c)(1), shall cease to apply—

(i) Upon expiration of the period during which reconsideration may be requested under §§ 4041.42(e) and 4041.44(d) or, if earlier, at the time the plan administrator decides not to request reconsideration; or

(ii) If reconsideration is requested, upon PBGC issuance of its decision on reconsideration.

(2) Any benefits that were not paid pursuant to paragraph (f) of this section shall be due and payable as of the

effective date of the PBGC's determination, together with interest from the date (or dates) on which the unpaid amounts were originally due until the date on which they are paid in full at the rate or rates prescribed under § 4022.81(d) of this chapter.

(h) *Effect of subsequent insufficiency.* If the plan administrator makes a finding of subsequent insufficiency for guaranteed benefits pursuant to § 4041.47(b), or the PBGC notifies the plan administrator that it has made a finding of subsequent insufficiency for guaranteed benefits pursuant to § 4041.47(d), the prohibitions in paragraph (c) of this section shall apply in accordance with § 4041.47(e).

§ 4041.5 Challenges to plan termination under collective bargaining agreement.

(a) *Suspension upon formal challenge to termination.* (1)(i) If the PBGC is advised, before the 60-day (or extended) period specified in § 4041.25 ends (in a standard termination) or before issuance of a notice of inability to determine sufficiency or a distribution notice pursuant to § 4041.45(b) or (c) (in a distress termination), that a formal challenge to the termination (as described in paragraph (b) of this section) has been initiated, the PBGC shall suspend the termination proceeding and shall so advise the plan administrator in writing.

(ii) If the PBGC is advised of a challenge described in paragraph (a)(1)(i) of this section after the 60-day (or extended) period specified in § 4041.25 ends (in a standard termination) or after issuance of a notice of inability to determine sufficiency or a distribution notice pursuant to § 4041.45(b) or (c) (in a distress termination) but before the termination procedure is concluded pursuant to this part, the PBGC may suspend the termination proceeding and, if it does, shall so advise the plan administrator in writing.

(2) The rules in paragraphs (a)(3) or (a)(4) (as appropriate) shall apply during a period of suspension beginning on the date of the PBGC's written notification to the plan administrator and ending with the final resolution of the challenge to the termination:

(3) In a standard termination—

(i) The running of all time periods specified in ERISA or this part relevant to the termination shall be suspended; and

(ii) The plan administrator shall comply with the prohibitions in § 4041.4.

(4) In a distress termination—

(i) The suspension shall stay the issuance by the PBGC of any notice of inability to determine sufficiency or distribution notice or, if any such notice was previously issued, shall stay its effectiveness;

(ii) The plan administrator shall comply with the prohibitions in § 4041.4; and

(iii) The plan administrator shall file a distress termination notice with the PBGC in the manner and within the time specified in § 4041.43.

(b) *Formal challenge to termination.* For purposes of this section, a formal challenge to a plan termination is initiated when any of the following actions is taken, asserting that the termination would violate the terms and conditions of an existing collective bargaining agreement:

(1) The commencement of any procedure specified in the collective bargaining agreement for resolving disputes under the agreement; or

(2) The commencement of any action before an arbitrator, administrative agency or board, or court under applicable labor-management relations law.

(c) *Resolution of challenge.* Immediately upon the final resolution (as described in paragraph (d) of this section) of the formal challenge to the termination, the plan administrator shall notify the PBGC in writing of the outcome of the challenge, and shall provide the PBGC with a copy of the award or order, if any. If the validity of the proposed termination has been upheld, the plan administrator also shall advise the PBGC whether the plan administrator wishes to continue the proposed termination.

(1) *Challenge sustained.* If the arbitrator, agency, board, or court has determined (or the parties have agreed) that the proposed termination violates an existing collective bargaining agreement, the PBGC shall dismiss the termination proceeding, all actions taken to effect the plan termination shall be null and void, and the plan shall be an ongoing plan. In this event, in a distress termination, § 4041.4(g) shall apply as of the date of the dismissal by the PBGC.

(2) *Termination sustained.* If the arbitrator, agency, board, or court has determined (or the parties have agreed) that the proposed termination does not violate an existing collective bargaining agreement and the plan administrator wishes to proceed with the termination, the PBGC shall reactivate the termination proceeding by sending a written notice thereof to the plan administrator, and the following rules shall apply:

(i) The termination proceeding shall continue from the point where it was suspended;

(ii) All actions taken to effect the termination before the suspension shall be effective;

(iii) Any time periods that were suspended shall resume running from the date of the PBGC's notice of the reactivation of the proceeding;

(iv) Any time periods that had rewer than 15 days remaining shall be extended to the 15th day after the date of the PBGC's notice, or such later date as the PBGC may specify, and

(v) In a distress termination, the PBGC shall proceed to issue a notice of inability to determine sufficiency or a distribution notice (or reactivate any such notice stayed under paragraph (a)(3) of this section), either with or without first requesting updated information from the plan administrator pursuant to § 4041.43(c).

(d) *Final resolution of challenge.* For purposes of this section, a formal challenge to a proposed termination is finally resolved when—

(1) The parties involved in the challenge enter into a settlement that resolves the challenge;

(2) A final award, administrative decision, or court order is issued that is not subject to review or appeal; or

(3) A final award, administrative decision, or court order is issued that is not appealed, or review or enforcement of which is not sought, within the time for filing an appeal or requesting review or enforcement.

(e) *Involuntary termination by the PBGC.* Notwithstanding any other provision of this section, the PBGC retains the authority in any case to initiate a plan termination in accordance with the provisions of section 4042 of ERISA.

§ 4041.6 Annuity requirements.

(a) *General rule.* Except as provided in paragraphs (b) and (d) of this section (or, where applicable, in part 4050 of this chapter), when a plan is closed out under § 4041.27 (in a standard termination) or § 4041.48 (in a distress termination), any benefit that is payable as an annuity under the provisions of the plan must be provided in annuity form through the purchase from an insurer of a single premium, nonparticipating, nonsurrenderable annuity contract that constitutes an irrevocable commitment by the insurer to provide the benefits purchased.

(b) *Exceptions to annuity requirement.* A benefit that is payable as an annuity under the provisions of a plan need not be provided in annuity form if the plan provides for an alternative form of distribution and either paragraph (b)(1) or (b)(2) of this section applies:

(1) The participant is not in pay status as of the distribution date, and the present value of the participant's total benefit under the plan, including amounts previously distributed to the participant, is $3,500 or less, determined in accordance with sections 411(a)(11) and 417(e)(3) of the Code and the regulations thereunder. The present value of such benefits shall be determined using the interest rate or rates as of—

(i) The date set forth in the plan for such purpose, provided that the plan provision is in accord with section 417(e)(3) of the Code and the regulations thereunder (substituting "distribution date" for "annuity starting date" wherever used in the plan); or

(ii) If the plan does not provide for such a date, the distribution date.

(2) The participant elected the alternative form of distribution in writing, with the written consent of his or her spouse, in accordance with the requirements of sections 401(a)(11), 411(a)(11), and 417 of the Code and the regulations thereunder.

(c) *Optional benefit forms.* Except as permitted by sections 401(a)(11), 411(d)(6), and 417 of the Code and the regulations thereunder, an annuity contract purchased to satisfy the annuity requirement shall preserve all applicable benefit options provided under the plan as of the termination date.

(d) *Participating annuities.* (1) *General rule.* Notwithstanding the requirement of paragraph (a) of this section that an annuity contract be nonparticipating, a participating annuity contract may be purchased to satisfy the annuity requirement if the plan can provide for all benefit liabilities and—

(i) All benefit liabilities will be guaranteed under the annuity contract as the unconditional, irrevocable, and noncancellable obligation of the insurer;

(ii) In no event, including unfavorable investment or actuarial experience, can the amounts payable to participants under the annuity contract decrease except to correct mistakes; and

(iii) As provided in paragraph (d)(2) of this section, no amount of residual assets to which participants are entitled will be used to pay for the participation feature.

(2) *Plans with residual assets.* If all or a portion of the residual assets of a plan will be distributed to participants—

(i) The additional premium for the participation feature must be paid from the contributing sponsor's share, if any, of the residual assets or from assets of the contributing sponsor; and

(ii) If the plan provided for mandatory employee contributions, the amount of residual assets must be determined using the price of the annuities for all benefit liabilities without the participation feature.

§ 4041.7 Facilitating plan sufficiency in a standard termination.

(a) *Commitment to make plan sufficient—(1) General rule.* At any time before a standard termination notice is filed with the PBGC, in order to enable the plan to terminate in that standard termination, a contributing sponsor or a member of a controlled group of a contributing sponsor may make a commitment to contribute any additional sums necessary to make the plan sufficient for all benefit liabilities. Any such commitment shall be treated as a plan asset for all purposes under this part. A sample commitment is included in the appendix to this part.

(2) *Requirements for valid commitment.* A commitment to make a plan sufficient for all benefit liabilities shall be valid for purposes of this part only if the commitment—

(i) Is made to the plan;

(ii) Is in writing, signed by the contributing sponsor and/or controlled group member(s); and

(iii) If the contributing sponsor or controlled group member is the subject of a bankruptcy liquidation or reorganization proceeding, as described in § 4041.3(e)(1) or (e)(2) of this part, is approved by the court before which the liquidation or reorganization proceeding is pending or is unconditionally guaranteed, by a person not in bankruptcy, to be met at or before the time distribution of assets is required in the standard termination.

(b) *Alternative treatment of majority owner's benefit—(1) General rule.* In order to facilitate the termination of the plan and distribution of assets in a standard termination, a majority owner may agree to forego receipt of all or part of his or her benefit until the benefit liabilities of all other plan participants have been satisfied.

(2) *Requirements for valid agreement.* Any agreement by a majority owner to an alternative treatment of his or her benefit is valid only if—

(i) The agreement is in writing;

(ii) In any case in which the total value of the benefit (determined in accordance with § 4041.6(b) of this part) is greater than $3,500, the spouse, if any, of the majority owner consents, in writing, to the alternative treatment of the benefit; and

(iii) The agreement is not inconsistent with a qualified domestic relations order (as defined in section 206(d)(3) of ERISA).

§ 4041.8 Disaster relief.

(a) Notwithstanding any other provision in this part, when the President of the United States declares that, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), a major disaster exists, the Executive Director of the PBGC (or his or her designee) may, by issuing one or more notices of disaster relief, extend by up to 180 days the due date for—

(1) Filing the standard termination notice under § 4041.24;

(2) Completing the distribution of plan assets in a standard termination under § 4041.27;

(3) Filing the distress termination notice pursuant to § 4041.43;

(4) Issuing the notices of benefit distribution in a distress termination pursuant to § 4041.46(a)(1); or

(5) Completing the distribution of plan assets in a distress termination pursuant to § 4041.48.

(b) The due date extension or extensions described in paragraph (a) of this section shall apply only to plan terminations with respect to which the principal place of business of the contributing sponsor or the plan administrator, or the office of the service provider, bank, insurance company, or other person maintaining the information necessary to file the standard or distress termination notice, issue notices of plan benefits or benefit distribution, or complete the distribution of plan assets (as applicable), is within a designated disaster area.

(c) The standard or distress termination notice or the post-distribution certification shall identify the termination as being qualified for the due date extension.

§ 4041.9 Filing with the PBGC.

(a) *Date of filing.* Any document required or permitted to be filed with the PBGC under this part shall be deemed filed on the date that it is received at the PBGC, providing it is received no later than 4:00 p.m. on a day other than Saturday, Sunday, or a Federal holiday. Documents received after 4:00 p.m. or on Saturday, Sunday, or a Federal holiday shall be deemed filed on the next regular business day.

(b) *How to file.* Except as may otherwise be provided in applicable forms and instructions, any document to be filed under this part may be delivered by mail or by hand to: Reports

Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026

§ 4041.10 Computation of time.

In computing any period of time prescribed or allowed by this part, the day of the act or event from which the designated period of time begins to run is not counted. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Notwithstanding the preceding sentence, a proposed termination date may be any day, including a Saturday, Sunday, or Federal holiday.

§ 4041.11 Maintenance of plan records.

Either the contributing sponsor or the plan administrator of a plan terminating in a standard termination or a plan terminating in a distress termination that closes out in accordance with § 4041.48 pursuant to a distribution notice issued under § 4041.45(c) shall maintain and preserve all records used to compute benefits with respect to each individual who is a plan participant or a beneficiary of a deceased participant as of the termination date in accordance with the following rules:

(a) The records to be maintained and preserved are those used to compute the benefit for purposes of distribution to each individual in accordance with § 4041.27(c) (in a standard termination) or § 4041.48 (in a distress termination) and include, but are not limited to, the plan documents and all underlying data, including worksheets prepared by or at the direction of the enrolled actuary, used in determining the amount, form, and value of benefits.

(b) All records subject to this section shall be preserved for six years after the date the post-distribution certification required under § 4041.27(h) (in a standard termination) or § 4041.48(b) (in a distress termination) is filed with the PBGC.

(c) The contributing sponsor or plan administrator, as appropriate, shall make records subject to this section available to the PBGC upon request for inspection and photocopying, and shall submit such records to the PBGC within 30 days after receipt of the PBGC's written request therefor (or such other period as may be specified in such written request).

§ 4041.12 Information collection.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under control number 1212–0036.

Subpart B—Standard Termination Process

§ 4041.21 Notice of intent to terminate.

(a) *General rule.* At least 60 days and no more than 90 days before the proposed termination date, the plan administrator shall issue to each person who is (as of the proposed termination date) an affected party (other than the PBGC) a written notice of intent to terminate containing all of the information specified in paragraph (d) of this section. Failure to comply with the requirements of this section shall nullify the proposed termination.

(b) *Discovery of other affected parties.* Notwithstanding the provisions of paragraph (a) of this section, if the plan administrator discovers additional affected parties after the expiration of the time period specified in paragraph (a) of this section, the failure to issue the notice of intent to terminate to such parties within the specified time period will not cause the notice to be untimely under paragraph (a) of this section if the plan administrator could not reasonably have been expected to know of the additional affected parties and if he or she promptly issues the notice to each additional affected party.

(c) *Issuance*—(1) *Method.* The plan administrator shall issue the notice of intent to terminate to each affected party (other than the PBGC) individually either by hand delivery or by first-class mail or courier service directed to the affected party's last known address.

(2) *When issued.* The notice of intent to terminate is deemed issued to each affected party on the date on which it is handed to the affected party or deposited with a mail or courier service (as evidenced by a postmark or written receipt).

(d) *Contents of notice.* The plan administrator shall include in the notice of intent to terminate all of the following information:

(1) The name of the plan and of the contributing sponsor;

(2) The employer identification number ("EIN") of the contributing sponsor and the plan number ("PN"); if there is no EIN or PN, the notice shall so state;

(3) The name, address, and telephone number of the person who may be contacted by an affected party with questions concerning the plan's termination;

(4) A statement that the plan administrator expects to terminate the plan in a standard termination on a proposed termination date that is either—

(i) A specific date set forth in the notice, or

(ii) A date to be determined that is dependent on the occurrence of some future event;

(5) If the proposed termination date is dependent on the occurrence of a future event, the nature of the event (such as the merger of the contributing sponsor with another entity), generally when the event is expected to occur, and when the termination will occur in relation to the other event;

(6) A statement that benefit and service accruals will continue until the termination date or, if applicable, that benefit accruals were or will be frozen as of a specific date in accordance with section 204(h) of ERISA;

(7) A statement that, in order to terminate in a standard termination, plan assets must be sufficient to provide all benefit liabilities under the plan with respect to each participant and each beneficiary of a deceased participant;

(8) A statement that, after plan assets have been distributed to provide all benefit liabilities with respect to a participant or a beneficiary of a deceased participant, either by the purchase of an irrevocable commitment or commitments from an insurer to provide benefits or by an alternative form of distribution provided for under the plan, the PBGC's guarantee with respect to that participant's or beneficiary's benefit ends;

(9) If distribution of benefits under the plan may be wholly or partially by the purchase of irrevocable commitments from an insurer—

(i) The name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase the irrevocable commitments; or

(ii) If the plan administrator has not identified an insurer or insurers at the time the notice of intent to terminate is issued, a statement that—

(A) Irrevocable commitments may be purchased from an insurer to provide some or all of the benefits under the plan,

(B) The insurer or insurers have not yet been identified, and

(C) Affected parties (other than the PBGC) will be notified at a later date (but no later than 45 days before the distribution date) of the name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase the irrevocable commitments;

(10) A statement that if the termination does not occur, the plan administrator will notify the affected parties (other than the PBGC) in writing of that fact;

(11) A statement that each affected party, other than the PBGC or any employee organization, will receive a written notification of the benefits that the person will receive; and

(12) For retirees only, a statement that their monthly (or other periodic) benefit amounts will not be affected by the plan's termination.

(e) *Supplemental notice requirements.* (1) The plan administrator shall issue a supplemental notice (or notices) of intent to terminate to each affected party (other than the PBGC) in accordance with the rules in paragraph (e)(2) of this section if—

(i) The plan administrator has not yet identified an insurer or insurers at the time the notice of intent to terminate is issued; or

(ii) The plan administrator notifies affected parties (other than the PBGC) of the insurer or insurers from whom (or from among whom) he or she intends to purchase the irrevocable commitments, either in the notice of intent to terminate or in a later notice, but subsequently decides to select a different insurer.

(2) The plan administrator shall issue each supplemental notice in the manner provided in paragraph (c) of this section no later than 45 days before the distribution date and shall include the name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase the irrevocable commitments.

(3) Any supplemental notice or notices meeting the requirements of paragraph (e)(2) of this section shall be deemed a part of the notice of intent to terminate.

(f) *Spin-off/termination transactions.* In the case of a spin-off/termination transaction, the plan administrator shall provide all participants in the original plan who are covered by the ongoing plan (as of the proposed termination date) with a notice describing the transaction no later than the date on which the plan administrator completes the issuance of notices of intent to terminate under this section. A spin-off/termination is a transaction in which a single defined benefit plan is split into two or more plans, in conjunction with the termination of one or more of the plans, resulting in a reversion of residual assets to the employer.

§ 4041.22 Issuance of notices of plan benefits.

(a) *General rule.* No later than the date on which the plan administrator files the standard termination notice with the PBGC, as required by § 4041.24, the plan administrator shall issue to each person described in paragraph (b) of this section a notice of that individual's plan benefits. The notice shall be in the form and contain the information specified in § 4041.23. Failure to comply with the requirements of this section shall nullify the proposed termination.

(b) *Persons entitled to notice.* The plan administrator shall issue a notice of plan benefits to each person (other than the PBGC or any employee organization) who is an affected party as of the proposed termination date (and, in the case of a spin-off/termination transaction as described in § 4043.21(f), each person who is, as of the proposed termination date, a participant in the original plan who is covered by the ongoing plan).

(c) *Discovery of other affected parties.* Notwithstanding the provisions of paragraph (a) of this section, if the plan administrator discovers additional persons entitled to a notice of plan benefits after the expiration of the time period specified in paragraph (a) of this section, the failure to issue a notice of plan benefits to such persons within the specified time period will not cause such notices to be untimely under paragraph (a) of this section if the plan administrator could not reasonably have been expected to know of the additional persons and if he or she promptly issues, to each such additional person, a notice of plan benefits in the form and containing the information specified in § 4041.23.

(d) *Issuance*—(1) *Method.* The plan administrator shall issue a notice of plan benefits individually to each person described in paragraph (b) of this section, either by hand-delivery or by first-class mail or courier service directed to the person's last known address.

(2) *When issued.* A notice of plan benefits is deemed issued to each person on the date it is handed to the person or deposited with a mail or courier service (as evidenced by a postmark or written receipt).

§ 4041.23 Form and contents of notices of plan benefits.

(a) *Form of notices.* The plan administrator shall provide notices of plan benefits written in plain, non-technical English that is likely to be understood by the average participant or beneficiary. If technical terms must be used, their meaning shall be explained in non-technical language.

(b) *Foreign languages.* The plan administrator of a plan described in this paragraph shall comply with paragraph (a) of this section and also shall include in the notices a statement, prominently displayed, in the foreign language (or languages) common to the non-English speaking plan participants advising them of how they may obtain assistance in understanding the notice. The assistance need not involve written materials, but shall be adequate to reasonably ensure that the participants and beneficiaries understand the information contained in their notices and shall be provided through media and at times and places that are reasonably accessible to the participants and beneficiaries. A plan is described in this paragraph if, as of the proposed termination date, the plan either—

(1) Covers fewer than 100 participants and at least 25 percent of those participants speak only the same non-English language or

(2) Covers 100 or more participants and at least the lesser of 500 or 10 percent of those participants speak the same non-English language.

(c) *Contents of notice.* In addition to the information described in paragraph (d), (e), or (f) of this section, as applicable, the plan administrator shall include in each notice of plan benefits the following information:

(1) The name of the plan, the employer identification number ("EIN") of the contributing sponsor, and the plan number ("PN"); if there is no EIN or PN, the notice shall so state;

(2) The name, address, and telephone number of the person who may be contacted to answer questions concerning a participant's or beneficiary's benefit;

(3) The proposed termination date and, if applicable, a statement that this date is later than the proposed termination date given in the notice of intent to terminate; and

(4) If the amount of the plan benefits set forth in a notice is an estimate, a statement that the amount is an estimate and that benefits paid may be greater than or less than the estimate.

(d) *Benefits of persons in pay status.* The plan administrator shall include in the notice of plan benefits for a participant or beneficiary in pay status as of the proposed termination date the following information:

(1) The amount and form of the participant's plan benefits payable as of the proposed termination date;

(2) The amount and form of benefit, if any, payable to a beneficiary upon the

participant's death and the name of the beneficiary;

(3) The amount and date of any increase or decrease in the benefit scheduled to occur after the proposed termination date (or that has already occurred) and an explanation of the increase or decrease, including, where applicable, a reference to the pertinent plan provision; and

(4) For benefits of participants or beneficiaries in pay status for one year or less as of the proposed termination date, the specific personal data used to calculate the plan benefits described in paragraphs (d)(1) and (d)(2) of this section, *e.g.*, participant's age at retirement, spouse's age, participant's length of service, and including, for Social Security offset benefits, the participant's actual or, if unknown, estimated Social Security benefit and, for an estimated benefit, the assumptions used for the participant's earnings history.

(e) *Benefits of participants not in pay status but form and starting date known.* The plan administrator shall include in the notice of plan benefits for a participant who is not in pay status as of the proposed termination date, but who has, as of that date, elected to retire and has elected a form and starting date, or with respect to whom the plan administrator has determined a lump sum distribution will be made, the following information:

(1) The amount and form of the participant's plan benefits payable as of the projected benefit starting date, and what that date is;

(2) The amount and form of benefit, if any, payable to a beneficiary upon the participant's death and the name of the beneficiary;

(3) The amount and date of any increase or decrease in the benefit scheduled to occur after the proposed termination date (or that has already occurred) and an explanation of the increase or decrease, including, where applicable, a reference to the pertinent plan provision; and

(4) If the age at which, or form in which, the plan benefits will be paid differs from the age or form in which the participant's accrued benefit at normal retirement age is stated in the plan, the age or form stated in the plan and the age or form adjustment factors, including, in the case of a lump sum benefit, the interest rate used to convert to the lump sum benefit described in paragraph (e)(1) of this section and a reference to the pertinent plan provision;

(5) The specific personal data, as described in paragraph (d)(4) of this section, used to calculate the plan benefits (other than a lump sum benefit) described in paragraphs (e)(1) and (e)(2) of this section and, with respect to a benefit payable as a lump sum, the personal data used to calculate the underlying annuity; and

(6) If the plan benefits will be paid in a lump sum, an explanation of how the interest rate is used to calculate the lump sum; a statement that the higher the interest rate used, the smaller the lump sum amount; and, if applicable, a statement that the lump sum amount given is an estimate because the applicable interest rate may change before the distribution date.

(f) *Benefits of all other participants not in pay status.* The plan administrator shall include in the notice of plan benefits for any participant not described in paragraph (d) or (e) of this section, the following information:

(1) The amount and form of the participant's plan benefits payable at normal retirement age in any form permitted under the plan;

(2) The availability of any alternative benefit forms, including those payable to a beneficiary upon the participant's death either before or after retirement, and, for any benefits to which the participant is or may become entitled that would be payable before normal retirement age, the earliest benefit commencement date, the amount payable on and after such date, and whether the benefit would be subject to future reduction;

(3) The specific personal data, as described in paragraph (d)(4) of this section, used to calculate the plan benefits described in paragraph (f)(1) of this section and, with respect to a benefit that may be paid in a lump sum, the personal data used to calculate the underlying annuity; and

(4) If the plan benefits may be paid in a lump sum, an explanation of when a lump sum may be paid without a participant's consent; an explanation of how the interest rate is used to calculate the lump sum; and a statement that the higher the interest rate used, the smaller the lump sum amount.

§ 4041.24 Standard termination notice.

(a) *Form.* The plan administrator shall file with the PBGC a PBGC Form 500, Standard Termination Notice, Single-Employer Plan Termination, with Schedule EA–S, Standard Termination Certification of Sufficiency, that has been completed in accordance with the instructions thereto. Except as provided in § 4041.8, the plan administrator shall file the standard termination notice on or before the 120th day after the proposed termination date.

(b) *Supplemental notice requirement.* If any of the benefits of the terminating plan may be provided in annuity form through the purchase of irrevocable commitments from an insurer and either of the conditions in paragraph (b)(1) of this section is met, the plan administrator shall file a supplemental notice (or notices) with the PBGC in accordance with the provisions in paragraph (b)(2) of this section.

(1) The plan administrator shall file with the PBGC a supplemental notice (or notices) if—

(i) The insurer or insurers from whom the plan administrator intends to purchase irrevocable commitments is not identified in the standard termination notice filed with the PBGC, or

(ii) The plan administrator has notified the PBGC of the insurer or insurers from whom he or she intends to purchase irrevocable commitments, either in the standard termination notice or in a later notice pursuant to paragraph (b)(2) of this section, and subsequently decides to select a different insurer.

(2) The supplemental notice (or notices) may be filed at any time after the filing of the standard termination notice, but no later than 45 days before the distribution date, and shall—

(i) Be in writing addressed to: Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

(ii) Give information identifying the contributing sponsor and the plan by name, address, employer identification and plan numbers ("EIN/PN"), and PBGC case number (if applicable); and

(iii) Give the name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase the irrevocable commitments.

§ 4041.25 PBGC action upon filing of standard termination notice.

(a) *Review period upon filing of standard termination notice*—(1) *General rule.* After a complete standard termination notice has been filed in accordance with § 4041.9, the PBGC has 60 days to review the notice, determine whether to issue a notice of noncompliance pursuant to § 4041.26, and issue any such notice. The 60-day review period begins on the day following the filing of a complete standard termination notice and includes the 60th day. If the PBGC does not issue a notice of noncompliance by the last day of this 60-day period, the plan administrator shall proceed to close out the plan in accordance with § 4041.27.

(2) *Extension of review period.* The 60-day review period may be extended according to the following rules:

(i) The PBGC and the plan administrator may agree in writing, before the expiration of the 60-day review period, to extend the period for up to an additional 60 days;

(ii) More than one such extension may be made; and

(iii) Any extension may be made upon whatever terms and conditions are agreed to by the PBGC and the plan administrator.

(3) *Suspension of review period.* The 60-day review period shall be suspended in accordance with paragraph (d) of this section if the PBGC requests supplemental information.

(b) *Acknowledgment of complete standard termination notice.* The PBGC shall notify the plan administrator in writing of the date on which a complete standard termination notice was filed, so that the plan administrator may determine when the 60-day review period will expire.

(c) *Return of incomplete standard termination notice.* The PBGC shall return an incomplete standard termination notice and advise the plan administrator in writing of the missing item(s) of information and that the complete standard termination notice must be filed no later than the 120th day after the proposed termination date or the 20th day after the date of the PBGC notice, whichever is later.

(d) *Authority to request supplemental information.* Whenever the PBGC has reason to believe that any of the requirements of §§ 4041.21 through 4041.24 of this part were not complied with, or in any proposed termination that will result in a reversion of residual assets to the contributing sponsor, the PBGC may require the submission of information supplementing that furnished pursuant to § 4041.24. A request for additional information under this paragraph shall be in writing and shall suspend the running of the 60-day (or extended) review period described in paragraph (a) of this section. That period shall begin running again on the day following the filing of the required information. If a plan administrator or contributing sponsor fails to submit information required under this paragraph within the period specified in the PBGC's request, the PBGC may issue a notice of noncompliance in accordance with § 4041.26 or take other appropriate action to enforce the requirements of Title IV of ERISA.

(e) *Authority to suspend or nullify proposed termination.* Notwithstanding any other provision of this part, the PBGC may, by written notice to the plan administrator, suspend or nullify a proposed termination after expiration of the 60-day (or extended) review period in any case in which it determines that such action is necessary to carry out the purposes of Title IV of ERISA.

§ 4041.26 Notice of noncompliance.

(a) *General.* (1) The PBGC shall issue to the plan administrator a written notice of noncompliance, within the period prescribed by § 4041.25, whenever it makes one of the following determinations:

(i) A determination that the plan administrator failed to issue the notice of intent to terminate in accordance with § 4041.21.

(ii) A determination that the plan administrator failed to issue notices of plan benefits in accordance with §§ 4041.22 and 4041.23.

(iii) A determination that the standard termination notice, or any supplemental notice, was not filed in accordance with § 4041.24.

(iv) A determination that, as of the proposed distribution date, plan assets will not be sufficient to satisfy all benefit liabilities under the plan.

(2) The PBGC shall base any determination described in paragraph (a)(1) of this section on the information contained in the standard termination notice, including any supplemental submission under § 4041.25(d) and any supplemental notice under § 4041.24(b), or on information provided by any affected party or otherwise obtained by the PBGC.

(b) *Effect of notice of noncompliance.* A notice of noncompliance ends the standard termination proceeding, nullifies all actions taken to terminate the plan, and renders the plan an ongoing plan. The notice of noncompliance is effective upon the expiration of the period within which the plan administrator may request reconsideration pursuant to paragraph (c) of this section but, once a notice is issued, the plan administrator shall take no further action to terminate the plan (except by initiation of a new termination) unless and until the notice is revoked pursuant to a decision by the PBGC on reconsideration.

(c) *Reconsideration of notice of noncompliance.* A plan administrator may request reconsideration of a notice of noncompliance in accordance with the rules prescribed in part 4003, subpart C, of this chapter. Any request for reconsideration automatically stays the effectiveness of the notice of noncompliance until the PBGC issues its decision on reconsideration.

(d) *Notice to affected parties*—(1) *General rule.* Upon a decision by the PBGC on reconsideration affirming the issuance of a notice of noncompliance (or, if earlier, upon the plan administrator's decision not to request reconsideration), the plan administrator shall notify the affected parties (other than the PBGC), and any persons who were provided notice under § 4041.21(f)), in writing that the plan is not going to terminate or, if applicable, that the termination was invalid but that a new notice of intent to terminate is being issued.

(2) *Method of issuance.* The notices shall be delivered by first-class mail or by hand to each person described in paragraph (d)(1) who is an employee organization or a participant or beneficiary who is then in pay status. The notices to other participants and beneficiaries shall be provided in any manner reasonably calculated to reach those participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites or publishing the notice in an employee organization newsletter or newspaper of general circulation in the area or areas where participants and beneficiaries reside.

§ 4041.27 Closeout of plan.

(a) *General rules*—(1) *Distribution.* Except as provided in paragraphs (b), (e), and (f) of this section and § 4041.8 of this part, if the PBGC does not issue a notice of noncompliance within the period specified in § 4041.25 or, if a notice of noncompliance is issued and later revoked after reconsideration under § 4041.26(c), the plan administrator shall complete the distribution of plan assets in accordance with paragraph (c) of this section within 180 days after the expiration of the review period specified in § 4041.25 (or, if applicable, the date on which the PBGC revokes the notice of noncompliance) or, if applicable, within the time prescribed in part 4050 of this chapter.

(2) *Post-distribution requirements.* The plan administrator shall file with the PBGC a post-distribution certification in accordance with paragraph (h) of this section and, if any of the plan's benefit liabilities payable to a participant or beneficiary have been distributed through the purchase of irrevocable commitments, the plan administrator also shall provide such participant or beneficiary with a notice, contract, or certificate in accordance with paragraph (g) of this section.

(b) *Assets insufficient to satisfy benefit liabilities.* Before distributing

plan assets to close out the plan, the plan administrator shall determine that plan assets are, in fact, sufficient to satisfy all benefit liabilities. In determining if plan assets are sufficient, the plan administrator shall subtract all liabilities (other than the future benefit liabilities that will be provided when assets are distributed), *e.g.*, benefit payments due before the distribution date; PBGC premiums for all plan years through and including the plan year in which assets are distributed; expenses, fees, and other administrative costs. If plan assets are not sufficient to satisfy all benefit liabilities, the plan administrator shall not make any distribution of assets to effect the plan's termination. In the event of an insufficiency, the plan administrator shall promptly notify the PBGC.

(c) *Method of distribution.* The plan administrator shall distribute plan assets in accordance with § 4041.6 by purchasing irrevocable commitments from an insurer in satisfaction of all benefit liabilities that must be provided in annuity form, and by otherwise providing all benefit liabilities that need not be provided in annuity form. The plan administrator shall comply with part 4050 of this chapter (dealing with missing participants), if applicable.

(d) *Failure to distribute within 180-day period.* Except as provided in paragraphs (e) and (f) of this section, failure to distribute assets in accordance with paragraph (c) of this section within the 180-day distribution period set forth in paragraph (a)(1) of this section, because of an insufficiency of plan assets as described in paragraph (b) of this section or for any other reason, shall nullify the termination. All actions taken to effect the plan's termination shall be null and void, and the plan shall be an ongoing plan. In this event, the plan administrator shall notify affected parties (other than the PBGC) in writing, in accordance with § 4041.26(d), that the plan is not going to terminate or, if applicable, that the termination was invalid but that a new notice of intent to terminate is being issued.

(e) *Automatic extension of time for distribution.* (1) *Requirements for automatic extension.* The plan administrator shall be entitled to an automatic extension of the 180-day period in which to complete the distribution of plan assets if the plan administrator—

(i) Submits to the IRS a complete request for a determination with respect to the plan's tax-qualification status upon termination ("determination letter") on or before the date that the plan administrator files the standard termination notice with the PBGC;

(ii) Does not receive a determination letter at least 60 days before the expiration of the 180-day period; and

(iii) On or before the expiration of the 180-day period, notifies the PBGC in writing that an extension of the distribution deadline is required and certifies that the conditions in this paragraph have been met.

(2) *Extension period.* If the requirements in paragraph (e)(1) of this section are met, the time within which the plan administrator shall complete the distribution of plan assets is automatically extended until the 60th day after receipt of a favorable determination letter from the IRS.

(f) *Discretionary extension of time for distribution.* If the plan administrator will be unable to complete the distribution of plan assets within the 180-day (or extended) period for any reason other than an insufficiency described in paragraph (b) of this section, the plan administrator may request, and the PBGC shall grant or deny, in its discretion, an extension of time within which to complete the distribution according to the following rules:

(1) The plan administrator shall file a written request for a discretionary extension with the PBGC at least 30 days before the expiration of the 180-day (or extended) distribution period, explain the reason(s) for the request, and provide a date certain by which the distribution will be made if the extension is granted.

(2) The PBGC will not grant a discretionary extension based on failure to meet the requirements for an automatic extension under paragraph (e) of this section or failure to locate all participants or beneficiaries.

(3) The PBGC will grant a discretionary extension, in whole or in part, only if it is satisfied that the delay in making the distribution is not due to the action or inaction of the plan administrator or the contributing sponsor and that the distribution can in fact be completed by the date requested.

(g) *Notice of annuity contract.* In the case of the distribution of benefit liabilities through the purchase of irrevocable commitments—

(1) Either the plan administrator or the insurer shall, as soon as practicable, provide each participant and beneficiary with a copy of the annuity contract or certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's benefit; (2) If such a contract or certificate is not available on or before the date on which the post-distribution certificate is required to be filed pursuant to paragraph (h) of this section, the plan administrator shall, no later than such date, provide each participant and beneficiary with a written notice stating—

(i) That the obligation for providing the participant's or beneficiary's plan benefits has transferred to the insurer;

(ii) The name and address of the insurer;

(iii) The name, address, and telephone number of the person designated by the insurer to answer questions concerning the annuity; and

(iv) That the participant or beneficiary will receive from the plan administrator or insurer a copy of the annuity contract or a certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's benefit; and

(3) The plan administrator shall certify to the PBGC, as part of the post-distribution certification required under paragraph (h) of this section, that the requirements in paragraph (g)(1) or (g)(2) of this section have been satisfied.

(h) *Post-distribution certification.* Within 30 days after the last distribution date, the plan administrator shall file with the PBGC a PBGC Form 501, Post-Distribution Certification for Standard Termination, that has been completed in accordance with the instructions thereto. This requirement shall be considered satisfied if, in accordance with § 4050.6(a)(2) and (a)(3) of this chapter, the plan administrator files a preliminary post-distribution certification within 30 days after the last distribution date and, in addition, timely files an amended post-distribution certification that otherwise satisfies all applicable requirements.

Subpart C—Distress Termination Process

§ 4041.41 Notice of intent to terminate.

(a) *General rules.* (1) At least 60 days and no more than 90 days before the proposed termination date, the plan administrator shall issue to each person who is (as of the proposed termination date) an affected party a written notice of intent to terminate.

(2) The plan administrator shall issue the notice of intent to terminate to all affected parties other than the PBGC at or before the time he or she files the notice with the PBGC.

(3) The notice to affected parties other than the PBGC shall contain all of the information specified in paragraph (d) of this section.

(4) The notice to the PBGC shall be filed on PBGC Form 600, Distress Termination, Notice of Intent to Terminate, completed in accordance with the instructions thereto.

(b) *Discovery of other affected parties.* Notwithstanding the provisions of paragraphs (a)(1) and (a)(2) of this section, if the plan administrator discovers additional affected parties after the expiration of the time period specified in paragraphs (a)(1) or (a)(2) of this section, the failure to issue the notice of intent to terminate to such parties within the specified time periods will not cause the notice to be untimely under paragraph (a) of this section if the plan administrator could not reasonably have been expected to know of the additional affected parties and if he or she promptly issues the notice to each additional affected party.

(c) *Issuance*—(1) *Method.* The plan administrator shall issue the notice of intent to terminate individually to each affected party. The notice to the PBGC shall be filed in accordance with § 4041.9. The notice to each of the other affected parties shall be either hand delivered or delivered by first-class mail or courier service directed to the affected party's last known address.

(2) *When issued.* The notice of intent to terminate is deemed issued to the PBGC on the date on which it is filed and to any other affected party on the date on which it is handed to the affected party or deposited with a mail or courier service (as evidenced by a postmark or written receipt).

(d) *Contents of notice to affected parties other than the PBGC.* The plan administrator shall include in the notice of intent to terminate to each affected party other than the PBGC all of the following information:

(1) The name of the plan and of the contributing sponsor;

(2) The employer identification number ("EIN") of the contributing sponsor and the plan number ("PN"), if there is no EIN or PN, the notice shall so state;

(3) The name, address, and telephone number of the person who may be contacted by an affected party with questions concerning the plan's termination;

(4) A statement that the plan administrator expects to terminate the plan in a distress termination on a specified proposed termination date.

(5) A statement that benefit and service accruals will continue until the termination date or, if applicable, that benefit accruals were or will be frozen as of a specific date in accordance with section 204(h) of ERISA;

(6) A statement of whether plan assets are sufficient to pay all guaranteed benefits or all benefit liabilities;

(7) A brief description of what benefits are guaranteed by the PBGC (*e.g.*, if only a portion of the benefits are guaranteed because of the phase-in rule, this should be explained), and a statement that participants and beneficiaries also may receive a portion of the benefits to which each is entitled under the terms of the plan in excess of guaranteed benefits; and

(8) A statement, if applicable, that benefits may be subject to reduction because of the limitations on the amounts guaranteed by the PBGC or because plan assets are insufficient to pay for full benefits (pursuant to part 4022, subparts B and D, of this chapter) and that payments in excess of the amount guaranteed by the PBGC may be recouped by the PBGC (pursuant to part 4022, subpart E, of this chapter).

(e) *Spin-off/termination transactions.* In the case of a spin-off/termination transaction (as described in § 4041.21(f)), the plan administrator shall provide all participants and beneficiaries in the original plan who are also participants or beneficiaries in the ongoing plan (as of the proposed termination date) with a notice describing the transaction no later than the date on which the plan administrator completes the issuance of notices of intent to terminate under this section.

§ 4041.42 PBGC review of notice of intent to terminate.

(a) *General.* When a notice of intent to terminate is filed with it, the PBGC—

(1) Shall determine whether the notice was issued in compliance with § 4041.41; and

(2) Shall advise the plan administrator of its determination, in accordance with paragraph (b) or (c) of this section, no later than the proposed termination date specified in the notice.

(b) *Tentative finding of compliance.* If the PBGC determines that the issuance of the notice of intent to terminate appears to be in compliance with § 4041.41, it shall notify the plan administrator in writing that—

(1) The PBGC has made a tentative determination of compliance;

(2) The distress termination proceeding may continue; and

(3) After reviewing the distress termination notice filed pursuant to § 4041.43, the PBGC will make final, or reverse, this tentative determination.

(c) *Finding of noncompliance.* If the PBGC determines that the issuance of the notice of intent to terminate was not in compliance with § 4041.41 (except for requirements that the PBGC elects to waive under § 4041.3(d)(2)(i) with respect to the notice filed with the PBGC), the PBGC shall notify the plan administrator in writing—

(1) That the PBGC has determined that the notice of intent to terminate was not properly issued; and

(2) That the proposed distress termination is null and void and the plan is an ongoing plan.

(d) *Information on need to institute section 4042 proceedings.* The PBGC may require the plan administrator to submit, within 20 days after the plan administrator's receipt of the PBGC's written request (or such other period as may be specified in such written request), any information that the PBGC determines it needs in order to decide whether to institute termination or trusteeship proceedings pursuant to section 4042 of ERISA, whenever—

(1) A notice of intent to terminate indicates that benefits currently in pay status (or that should be in pay status) are not being paid or that this is likely to occur within the 180-day period following the issuance of the notice of intent to terminate;

(2) The PBGC issues a determination under paragraph (c) of this section; or

(3) The PBGC has any reason to believe that it may be necessary or appropriate to institute proceedings under section 4042 of ERISA.

(e) *Reconsideration of finding of noncompliance.* A plan administrator may request reconsideration of the PBGC's determination of noncompliance under paragraph (c) of this section in accordance with the rules prescribed in part 4003, subpart C, of this chapter. Any request for reconsideration automatically stays the effectiveness of the determination until the PBGC issues its decision on reconsideration, but does not stay the time period within which information must be submitted to the PBGC in response to a request under paragraph (d) of this section.

(f) *Notice to affected parties.* Upon a decision by the PBGC affirming a finding of noncompliance or upon the expiration of the period within which the plan administrator may request reconsideration of a finding of noncompliance (or, if earlier, upon the plan administrator's decision not to request reconsideration), the plan administrator shall notify the affected parties (and any persons who were provided notice under § 4041.41(e)) in writing that the plan is not going to terminate or, if applicable, that the termination is invalid but that a new notice of intent to terminate is being issued. The notice required by this

paragraph shall be provided in the manner described in § 4041.26(d)(2).

§ 4041.43 Distress termination notice.

(a) *General rule.* The plan administrator shall file with the PBGC a PBGC Form 601, Distress Termination Notice, Single-Employer Plan Termination, with Schedule EA–D, Distress Termination Enrolled Actuary Certification, that has been completed in accordance with the instructions thereto, on or before the 120th day after the proposed termination date or, if applicable, no later than the due date established in an extension notice issued under § 4041.8.

(b) *Participant and benefit information.* (1) *Plan insufficient for guaranteed benefits.* Unless the enrolled actuary certifies, in the Schedule EA–D filed in accordance with paragraph (a) of this section, that the plan is sufficient either for guaranteed benefits or for benefit liabilities, the plan administrator shall file with the PBGC the participant and benefit information described in PBGC Form 601 and the instructions thereto by the later of—

(i) 120 days after the proposed termination date, or

(ii) 30 days after receipt of the PBGC's determination, pursuant to § 4041.44(b), that the requirements for a distress termination have been satisfied.

(2) *Plan sufficient for guaranteed benefits or benefit liabilities.* If the enrolled actuary certifies that the plan is sufficient either for guaranteed benefits or for benefit liabilities, the plan administrator need not submit the participant and benefit information described in PBGC Form 601 and the instructions thereto unless requested to do so pursuant to paragraph (c) of this section.

(3) *Effect of failure to provide information.* The PBGC may void the distress termination if the plan administrator fails to provide complete participant and benefit information in accordance with this section.

(c) *Additional information.* The PBGC may in any case require the submission of any additional information that it needs to make the determinations that it is required to make under this part or to pay benefits pursuant to section 4061 or 4022(c) of ERISA. The plan administrator shall submit any information requested under this paragraph within 30 days after receiving the PBGC's written request (or such other period as may be specified in such written request).

(d) *Due date extension.* Notwithstanding the provisions of paragraphs (a), (b), and (c) of this section, the due date for filing PBGC Form 601 or other information required under this section may be extended by a notice issued under § 4041.8.

§ 4041.44 PBGC determination of compliance with requirements for distress termination.

(a) *General.* Based on the information contained in and submitted with the PBGC Form 600 and the PBGC Form 601, with Schedule EA–D, and on any information submitted by an affected party or otherwise obtained by the PBGC, the PBGC shall determine whether the requirements for a distress termination set forth in § 4041.3(c) have been met and shall notify the plan administrator in writing of its determination, in accordance with paragraph (b) or (c) of this section.

(b) *Qualifying termination.* If the PBGC determines that all of the requirements of § 4041.3(c) have been satisfied, it shall so advise the plan administrator and shall also advise the plan administrator of whether participant and benefit information must be submitted in accordance with § 4041.43(b).

(c) *Non-qualifying termination.* (1) Except as provided in paragraph (c)(2) of this section, if the PBGC determines that any of the requirements of § 4041.3(c) has not been met, it shall notify the plan administrator of its determination, the basis therefor, and the effect thereof (as provided in § 4041.3(d)).

(2) If the only basis for the PBGC's determination described in paragraph (c)(1) of this section is that the distress termination notice is incomplete, the PBGC shall advise the plan administrator of the missing item(s) of information and that the information must be filed with the PBGC no later than the 120th day after the proposed termination date or the 30th day after the date of the PBGC's notice of its determination, whichever is later, or, if applicable, no later than the due date established in an extension notice issued under § 4041.8.

(d) *Reconsideration of determination of non-qualification.* A plan administrator may request reconsideration of the PBGC's determination under paragraph (c)(1) of this section in accordance with the rules prescribed in part 4003, subpart C, of this chapter. The filing of a request for reconsideration automatically stays the effectiveness of the determination until the PBGC issues its decision on reconsideration.

(e) *Notice to affected parties.* Upon a decision by the PBGC affirming a determination of non-qualification or upon the expiration of the period within which the plan administrator may request reconsideration of a determination of non-qualification (or, if earlier, upon the plan administrator's decision not to request reconsideration), the plan administrator shall notify the affected parties (and any persons who were provided notice under § 4041.41(e)) in writing that the plan is not going to terminate or, if applicable, that the termination is invalid but that a new notice of intent to terminate is being issued. The notice required by this paragraph shall be provided in the manner described in § 4041.26(d)(2).

§ 4041.45 PBGC determination of plan sufficiency/insufficiency.

(a) *General.* Upon receipt of participant and benefit information filed pursuant to § 4041.43 (b)(1) or (c), the PBGC shall determine the degree to which the plan is sufficient and notify the plan administrator in writing of its determination in accordance with paragraph (b) or (c) of this section.

(b) *Insufficiency for guaranteed benefits.* If the PBGC finds that it is unable to determine that a plan is sufficient for guaranteed benefits, it shall issue a "notice of inability to determine sufficiency" notifying the plan administrator of this finding and advising the plan administrator that—

(1) The plan administrator shall continue to administer the plan under the restrictions imposed by § 4041.4; and

(2) The termination shall be completed under section 4042 of ERISA.

(c) *Sufficiency for guaranteed benefits or benefit liabilities.* If the PBGC determines that a plan is sufficient for guaranteed benefits but not for benefit liabilities or is sufficient for benefit liabilities, the PBGC shall issue to the plan administrator a distribution notice advising the plan administrator—

(1) To issue notices of benefit distribution in accordance with § 4041.46;

(2) To close out the plan in accordance with § 4041.48;

(3) To file a timely post-distribution certification with the PBGC in accordance with § 4041.48(b); and

(4) That either the plan administrator or the contributing sponsor must preserve and maintain plan records in accordance with § 4041.11.

§ 4041.46 Notices of benefit distribution.

(a) *General rules.* When a distribution notice is issued by the PBGC pursuant to § 4041.45(c), the plan administrator shall—

(1) No later than 60 days after receiving the distribution notice or, if applicable, no later than the due date established in an extension notice issued under § 4041.8, issue a notice of benefit distribution in accordance with the rules described in paragraphs (c) and (d) of this section to each person (other than any employee organization or the PBGC) who is an affected party as of the termination date (and, in the case of a spin-off/termination transaction as described in § 4041.21(f), each person who is, as of the termination date, a participant in the original plan and covered by the ongoing plan); and

(2) No later than 15 days after the date on which the plan administrator completes the issuance of the notices of benefit distribution, file with the PBGC a certification that the notices were so issued in accordance with the requirements of this section.

(b) *Discovery of other affected parties.* Notwithstanding the provisions of paragraph (a) of this section, if the plan administrator discovers additional persons entitled to a notice of benefit distribution after the expiration of the time period specified in paragraph (a)(1) of this section, the failure to issue the notices of benefit distribution to such persons within the specified time period will not cause such notices to be untimely under paragraph (a) of this section if the plan administrator could not reasonably have been expected to know of the additional persons and if he or she promptly issues, to each such additional person, a notice of benefit distribution in the form and containing the information specified in paragraph (d) of this section.

(c) *Issuance*—(1) *Method.* The plan administrator shall issue a notice of benefit distribution individually to each person, either by hand-delivery or by first-class mail or courier service directed to the person's last known address.

(2) *When issued.* A notice of benefit distribution is deemed issued to each person on the date it is handed to the person or deposited with a mail or courier service (as evidenced by a postmark or written receipt).

(d) *Form and content of notices.* The plan administrator shall provide notices of benefit distribution in the form described in § 4041.23 (a) and (b) of this part and shall include in each—

(1) The information described in § 4041.23(c) of this part;

(2) The information described in § 4041.23 (d), (e), or (f) of this part, as applicable (replacing the term "plan benefits" with "Title IV benefits" and "proposed termination date" with "termination date".

(3) A statement that, after plan assets have been distributed to provide all of the Title IV benefits payable with respect to a participant or a beneficiary of a deceased participant, either by the purchase of an irrevocable commitment or commitments from an insurer to provide benefits or by an alternative form of distribution provided for under the plan, the PBGC's guarantee with respect to that participant's or beneficiary's benefit ends; and

(4) If distribution of benefits under the plan may be wholly or partially by the purchase of irrevocable commitments from an insurer—

(i) The name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase the irrevocable commitments; or

(ii) If the plan administrator has not identified an insurer or insurers at the time the notice of distribution is issued, a statement that the affected party to whom the notice is directed will be notified at a later date (but no later than 45 days before the distribution date) of the name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, irrevocable commitments may be purchased.

(e) *Supplemental notice requirements.* (1) The plan administrator shall issue a supplemental notice (or notices) of distribution to each person in accordance with the rules in paragraph (e)(2) of this section if—

(i) The plan administrator has not yet identified an insurer or insurers at the time the notice of distribution is issued; or

(ii) The plan administrator included in the notice of distribution the name or names of the insurer or insurers from whom (or from among whom) he or she intends to purchase the irrevocable commitments, but subsequently decides to select a different insurer.

(2) The plan administrator shall issue each supplemental notice in the manner provided in paragraph (c) of this section no later than 45 days before the distribution date and shall include the name and address of the insurer or insurers from whom, or (if not then known) the insurers from among whom, the plan administrator intends to purchase the irrevocable commitments.

§ 4041.47 Verification of plan sufficiency prior to closeout.

(a) *General rule.* Before distributing plan assets pursuant to a closeout under § 4041.48, the plan administrator shall verify whether the plan's assets are still sufficient to provide for benefits at the level determined by the PBGC, *i.e.*, guaranteed benefits or benefit liabilities. If the plan administrator finds that the plan is no longer able to provide for benefits at the level determined by the PBGC, then paragraph (b) or (c) of this section, as appropriate, shall apply.

(b) *Subsequent insufficiency for guaranteed benefits.* When a plan administrator finds that a plan is no longer sufficient for guaranteed benefits, the plan administrator shall promptly notify the PBGC in writing of that fact and shall take no further action to implement the plan termination, pending the PBGC's determination and notice pursuant to paragraph (b)(1) or (b)(2) of this section.

(1) *PBGC concurrence with finding.* If the PBGC concurs with the plan administrator's finding, the distribution notice shall be void, and the PBGC shall—

(i) Issue the plan administrator a notice of inability to determine sufficiency in accordance with § 4041.45(b); and

(ii) Require the plan administrator to submit a new valuation, certified to by an enrolled actuary, of the benefit liabilities and guaranteed benefits under the plan, valued in accordance with §§ 4044.41 through 4044.57 of this chapter as of the date of the plan administrator's notice to the PBGC.

(2) *PBGC non-concurrence with finding.* If the PBGC does not concur with the plan administrator's finding, it shall so notify the plan administrator in writing, and the distribution notice shall remain in effect.

(c) *Subsequent insufficiency for benefit liabilities.* When a plan administrator finds that a plan is sufficient for guaranteed benefits but is no longer sufficient for benefit liabilities, the plan administrator shall immediately notify the PBGC in writing of this fact, but shall continue with the distribution of assets in accordance with § 4041.48.

(d) *Finding by PBGC of subsequent insufficiency.* In any case in which the PBGC finds on its own initiative that a subsequent insufficiency for guaranteed benefits has occurred, paragraph (b)(1) of this section shall apply, except that the guaranteed benefits shall be revalued as of the date of the PBGC's finding.

(e) *Restrictions upon finding of subsequent insufficiency.* When the plan administrator makes the finding described in paragraph (b) of this section or receives notice that the PBGC has made the finding described in paragraph (d) of this section, the plan administrator shall (except to the extent the PBGC otherwise directs) be subject to the prohibitions in § 4041.4(c).

§ 4041.48 Closeout of plan.

(a) *General rules*—(1) *Distribution.* If a plan administrator receives a distribution notice from the PBGC pursuant to § 4041.45(c) and neither the plan administrator nor the PBGC makes the finding described in § 4041.47 (b) or (d), the plan administrator shall distribute plan assets in accordance with §§ 4041.6 and 4041.27(c) of this part no earlier than the 61st day and (except as provided in § 4041.8 or 4041.27 (e) or (f)) no later than the 180th day following the day on which the plan administrator completes the issuance of the notices of benefit distribution pursuant to § 4041.46(a), or, where applicable, within the time prescribed in part 4050 of this chapter. For purposes of applying § 4041.27(e)(1)(i), the phrase "the date that the plan administrator files the standard termination notice with the PBGC" shall be replaced by "the date that the plan administrator completes issuance of the notices of benefit distribution."

(2) *Notice of annuity contract.* If any of the plan's benefit liabilities payable to a participant or beneficiary have been distributed through the purchase of irrevocable commitments, the plan administrator shall provide such participant or beneficiary with a notice, contract, or certificate in accordance with § 4041.27(g).

(b) *Post-distribution certification.* Within 30 days after the last distribution date, the plan administrator shall file with the PBGC a PBGC Form 602, Post-Distribution Certification for Distress Termination, that has been completed in accordance with the instructions thereto. This requirement shall be considered satisfied if, in accordance with § 4050.6 (a)(2) and (a)(3) of this chapter, the plan administrator files a preliminary post-distribution certification within 30 days after the last distribution date and, in addition, timely files an amended post-distribution certification that otherwise satisfies all applicable requirements.

Appendix to Part 4041—Agreement for Commitment To Make Plan Sufficient for Benefit Liabilities

This agreement, by and between [name of company] XXXXXXXXXX (the "Company") and [name of plan] XXXXXXXXXX (the "Plan") shall be effective as of the last date executed.

Whereas, the Plan is an employee pension benefit plan as described in section 3(2)(A) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. 1001–1461; and

Whereas the Company is [describe entity, *e.g.*, corporation, partnership] XXXXXXXXXX; and

Whereas, the Company is a contributing sponsor of the Plan, or a member of the contributing sponsor's controlled group, as described in section 4001(a) (13) and (14) of ERISA, 29 U.S.C. 1301(2) (13) and (14); and

Whereas, the Plan is covered by the termination insurance provisions of Title IV of ERISA, 29 U.S.C. 1301–1461; and

Whereas, the Plan administrator has issued or intends to issue to each affected party a notice of intent to terminate the Plan, pursuant to section 4041(a)(2) of ERISA, 29 U.S.C. 1341(a)(2); and

Whereas, the Company wishes the Plan to be sufficient for benefit liabilities, as described in section 4001(a)(16) of ERISA, 29 U.S.C. 1301(a)(16); and

Whereas, the parties understand that if the Plan is not able to satisfy all its obligations for benefit liabilities, it will not be able to terminate in a standard termination under section 4041(b) of ERISA, 29 U.S.C. 1341(b); and

Whereas, the Company is not a debtor in a bankruptcy or other insolvency proceeding.

[Alternative Paragraph]

Whereas, the Company is a debtor in a bankruptcy or other insolvency proceeding and the court before which the proceeding is pending approves this commitment.

Whereas, the Company is a debtor in a bankruptcy or other insolvency proceeding and this commitment is unconditionally guaranteed, by an entity or person not in bankruptcy, to be met at or before the time distribution is required in this standard termination.

Now Therefore, the parties hereto agree as follows:

1. The Company promises to pay to the Plan, on or before the date prescribed for distribution of Plan assets by the plan administrator, the amount necessary, if any, to ensure that, on the date the plan administrator distributes the assets of the Plan, the Plan is able to provide all benefit liabilities.

2. For the sole purpose of determining whether the Plan is sufficient to provide all benefit liabilities, an amount equal to the amount described in paragraph 1 shall be deemed a Plan asset available for allocation among the participants and beneficiaries of the Plan, in accordance with section 4044 of ERISA, 29 U.S.C. 1344.

3. This Agreement shall in no way relieve the Company of its obligations to pay contributions under the Plan.

Date:
By:
Company:
By:
Plan:

PART 4041A—TERMINATION OF MULTIEMPLOYER PLANS

Subpart A—General Provisions

Sec.
4041A.1 Purpose and scope.
4041A.2 Definitions.
4041A.3 Submission of documents.

Subpart B—Notice of Termination

4041A.11 Requirement of notice.
4041A.12 Contents of notice.

Subpart C—Plan Sponsor Duties

4041A.21 General rule.
4041A.22 Payment of benefits.
4041A.23 Imposition and collection of withdrawal liability.
4041A.24 Annual plan valuations and monitoring.
4041A.25 Periodic determinations of plan solvency.
4041A.26 Financial assistance.
4041A.27 PBGC approval to pay benefits not otherwise permitted.

Subpart D—Closeout of Sufficient Plans

4041A.41 General rule.
4041A.42 Method of distribution.
4041A.43 Benefit forms.
4041A.44 Cessation of withdrawal liability.

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1441.

Subpart A—General Provisions

§ 4041A.1 Purpose and scope.

The purpose of this part is to establish rules for notifying the PBGC of the termination of a multiemployer plan and rules for the administration of multiemployer plans that have terminated by mass withdrawal. Subpart B prescribes the contents of and procedures for filing a Notice of Termination for a multiemployer plan. Subpart C prescribes basic duties of plan sponsors of mass-withdrawal-terminated plans. (Other duties are prescribed in part 4281 of this chapter.) Subpart D contains procedures for closing out sufficient plans. This part applies to terminated multiemployer plans covered by title IV of ERISA but, in the case of subparts C and D, only to plans terminated by mass withdrawal under section 4041A(a)(2) of ERISA (including plans created by partition pursuant to section 4233 of ERISA).

§ 4041A.2 Definitions.

The following terms are defined in § 4001.1 of this chapter: annuity, ERISA, insurer, IRS, mass withdrawal, multiemployer plan, nonforfeitable benefit, PBGC, plan, and plan year.

In addition, for purposes of this part:

Available resources means, for a plan year, available resources as described in section 4245(b)(3) of ERISA.

Benefits subject to reduction means those benefits accrued under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreements entered into after March 26, 1980, that are not eligible for the PBGC's guarantee under section 4022A(b) of ERISA.

Financial assistance means financial assistance from the PBGC under section 4261 of ERISA.

Insolvency benefit level means the greater of the resource benefit level or the benefit level guaranteed by the PBGC for each participant and beneficiary in pay status.

Insolvency year means insolvency year as described in section 4245(b)(4) of ERISA.

Insolvent means that a plan is unable to pay benefits when due during the plan year. A plan terminated by mass withdrawal is not insolvent unless it has been amended to eliminate all benefits that are subject to reduction under section 4281(c) of ERISA, or, in the absence of an amendment, no benefits under the plan are subject to reduction under section 4281(c) of ERISA.

Nonguaranteed benefits means those benefits that are eligible for the PBGC's guarantee under section 4022A(b) of ERISA, but exceed the guarantee limits under section 4022A(c).

Resource benefit level means resource benefit level as described in section 4245(b)(2) of ERISA.

§ 4041A.3 Submission of documents.

(a) *Filing date.* Any notice, document, or information required to be filed with the PBGC under this part shall be deemed filed on the date of the postmark stamped on the cover in which the notice, document, or information is mailed, provided that the postmark was made by the United States Postal Service and the document was mailed postage prepaid, properly packaged and addressed to the PBGC. If these conditions are not met, the document is considered filed on the date it is received by the PBGC. Documents received after regular business hours are considered filed on the next regular business day.

(b) *Address.* Any notice, document, or information required to be filed with the PBGC under this part shall be sent by mail or submitted by hand during normal working hours to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

Subpart B—Notice of Termination

§ 4041A.11 Requirement of notice.

(a) *General.* A Notice of Termination shall be filed with the PBGC by a multiemployer plan when the plan has terminated as described in section 4041A(a) of ERISA.

(b) *Who shall file.* The plan sponsor or a duly authorized representative acting on behalf of the plan sponsor shall sign and file the Notice.

(c) *When to file.* (1) For a termination pursuant to a plan amendment, the Notice shall be filed with the PBGC within thirty days after the amendment is adopted or effective, whichever is later.

(2) For a termination that results from a mass withdrawal, the Notice shall be filed with the PBGC within thirty days after the last employer withdrew from the plan or thirty days after the first day of the first plan year for which no employer contributions were required under the plan, whichever is earlier.

(Approved by the Office of Management and Budget under control number 1212–0020)

§ 4041A.12 Contents of notice.

(a) *Information to be contained in notice.* Except to the extent provided in paragraph (d), each Notice shall contain:

(1) The name of the plan;

(2) The name, address and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any;

(3) The name, address, and telephone number of the person that will administer the plan after the date of termination, if other than the plan sponsor;

(4) A copy of the plan's most recent Form 5500 (Annual Report Form), including schedules; and

(5) The date of termination of the plan.

(b) *Information to be contained in a notice involving a mass withdrawal.* In addition to the information contained in paragraph (a) and except as provided in paragraph (d), the following information shall be contained in a Notice filed by a plan that has terminated by mass withdrawal:

(1) A copy of the plan document in effect 5 years prior to the date of termination and copies of any amendments adopted after that date.

(2) A copy (or copies) of the trust agreement (or agreements), if any, authorizing the plan sponsor to control and manage the operation and administration of the plan.

(3) A copy of the most recent actuarial statement and opinion (if any) relating to the plan.

(4) A statement of any material change in the assets or liabilities of the plan occurring after either the date of the actuarial statement referred to in item (5) or the date of the plan's Form 5500 submitted as part of the Notice.

(5) Complete copies of any letters of determination issued by the IRS relating to the establishment of the plan, any letters of determination relating to the disqualification of the plan and any subsequent requalification, and any letters of determination relating to the termination of the plan.

(6) A statement whether the plan assets will be sufficient to pay all benefits in pay status during the 12-month period following the date of termination.

(7) If plan assets on hand are sufficient to satisfy all nonforfeitable benefits under the plan, and if the plan sponsor intends to distribute such assets, a brief description of the proposed method of distributing the plan assets.

(8) If plan assets on hand are not sufficient to satisfy all nonforfeitable benefits under the plan, the name and address of any employer who contributed to the plan within 3 plan years prior to the date of termination.

(c) *Certification.* As part of the Notice, the plan sponsor or duly authorized representatives shall certify that all information and documents submitted pursuant to this section are true and correct to the best of the plan sponsor's or representative's knowledge and belief.

(d) *Avoiding duplication.* Information described in paragraphs (a) and (b) of this section need not be supplied if it duplicates information contained in Form 5500, or a schedule thereof, that a plan submits as part of the Notice.

(e) *Additional information.* In addition to the information described in paragraphs (a) and (b) of this section, the PBGC may require the submission of any other information which the PBGC determines is necessary for review of a Notice of Termination.

Subpart C—Plan Sponsor Duties

§ 4041A.21 General rule.

The plan sponsor of a multiemployer plan that terminates by mass withdrawal shall continue to administer the plan in accordance with applicable statutory provisions, regulations, and plan provisions until a trustee is appointed under section 4042 of ERISA or until plan assets are distributed in accordance with subpart D of this part. In addition, the plan sponsor shall be responsible for the specific duties described in this subpart.

§ 4041A.22 Payment of benefits.

(a) Except as provided in paragraph (b), the plan sponsor shall pay any benefit attributable to employer contributions, other than a death benefit, only in the form of an annuity.

(b) The plan sponsor may pay a benefit in a form other than an annuity if—

(1) The plan distributes plan assets in accordance with subpart D of this part;

(2) The PBGC approves the payment of the benefit in an alternative form pursuant to § 4041A.27; or

(3) The value of the entire nonforfeitable benefit does not exceed $1,750.

(c) Except to the extent provided in the next sentence, the plan sponsor

shall not pay benefits in excess of the amount that is nonforfeitable under the plan as of the date of termination, unless authorized to do so by the PBGC pursuant to § 4041A.27. Subject to the restriction stated in paragraph (d) of this section, however, the plan sponsor may pay a qualified preretirement survivor annuity with respect to a participant who died after the date of termination.

(d) The payment of benefits subject to reduction shall be discontinued to the extent provided in § 4281.31 if the plan sponsor determines, in accordance with § 4041A.24, that the plan's assets are insufficient to provide all nonforfeitable benefits.

(e) The plan sponsor shall, to the extent provided in § 4281.41, suspend the payment of nonguaranteed benefits if the plan sponsor determines, in accordance with § 4041A.25, that the plan is insolvent.

(f) The plan sponsor shall, to the extent required by § 4281.42, make retroactive payments of suspended benefits if it determines under that section that the level of the plan's available resources requires such payments.

§ 4041A.23 Imposition and collection of withdrawal liability.

Until plan assets are distributed in accordance with subpart D of this part, or until the end of the plan year as of which the PBGC determines that plan assets (exclusive of claims for withdrawal liability) are sufficient to satisfy all nonforfeitable benefits under the plan, the plan sponsor shall be responsible for determining, imposing and collecting withdrawal liability (including the liability arising as a result of the mass withdrawal), in accordance with part 4219, subpart C, of this chapter and sections 4201 through 4225 of ERISA.

§ 4041A.24 Annual plan valuations and monitoring.

(a) *Annual valuation.* Not later than 150 days after the end of the plan year, the plan sponsor shall determine or cause to be determined in writing the value of nonforfeitable benefits under the plan and the value of the plan's assets, in accordance with part 4281, subpart B. This valuation shall be done as of the end of the plan year in which the plan terminates and each plan year thereafter (exclusive of a plan year for which the plan receives financial assistance from the PBGC under section 4261 of ERISA) up to but not including the plan year in which the plan is closed out in accordance with subpart D of this part.

(b) *Plan monitoring.* Upon receipt of the annual valuation described in paragraph (a) of this section, the plan sponsor shall determine whether the value of nonforfeitable benefits exceeds the value of the plan's assets, including claims for withdrawal liability owed to the plan. When benefits do exceed assets, the plan sponsor shall—

(1) If the plan provides benefits subject to reduction, amend the plan to reduce those benefits in accordance with the procedures in part 4281, subpart C, of this chapter to the extent necessary to ensure that the plan's assets are sufficient to discharge when due all of the plan's obligations with respect to nonforfeitable benefits; or

(2) If the plan provides no benefits subject to reduction, make periodic determinations of plan solvency in accordance with § 4041A.25.

(c) *Notices of benefit reductions.* The plan sponsor of a plan that has been amended to reduce benefits shall provide participants and beneficiaries and the PBGC notice of the benefit reduction in accordance with § 4281.32.

§ 4041A.25 Periodic determinations of plan solvency.

(a) *Annual insolvency determination.* The plan sponsor of a plan that has been amended to eliminate all benefits that are subject to reduction under section 4281(c) of ERISA shall determine in writing whether the plan is expected to be insolvent for the first plan year beginning after the effective date of the amendment and for each plan year thereafter. In the event that a plan adopts more than one amendment reducing benefits under section 4281(c) of ERISA, the initial determination shall be made for the first plan year beginning after the effective date of the amendment that effects the elimination of all such benefits, and a determination shall be made for each plan year thereafter. The plan sponsor of a plan under which no benefits are subject to reduction under section 4281(c) of ERISA as of the date the plan terminated shall determine in writing whether the plan is expected to be insolvent. The initial determination shall be made for the second plan year beginning after the first plan year for which it is determined under section 4281(b) of ERISA that the value of nonforfeitable benefits under the plan exceeds the value of the plan's assets. The plan sponsor shall also make a solvency determination for each plan year thereafter. A determination required under this paragraph shall be made no later than six months before the beginning of the plan year to which it applies.

(b) *Other determination of insolvency.* Whether or not a prior determination of plan solvency has been made under paragraph (a) of this section (or under section 4245 of ERISA), a plan sponsor that has reason to believe, taking into account the plan's recent and anticipated financial experience, that the plan is or may be insolvent for the current or next plan year shall determine in writing whether the plan is expected to be insolvent for that plan year.

(c) *Benefit suspensions.* If the plan sponsor determines that the plan is, or is expected to be, insolvent for a plan year, it shall suspend benefits in accordance with § 4281.41.

(d) *Insolvency notices.* If the plan sponsor determines that the plan is, or is expected to be, insolvent for a plan year, it shall issue notices of insolvency or annual updates and notices of insolvency benefit level of the PBGC and to plan participants and beneficiaries in accordance with part 4281, subpart D.

§ 4041A.26 Financial assistance.

A plan sponsor that determines a resource benefit level under section 4245(b)(2) of ERISA that is below the level of guaranteed benefits or that determines that the plan will be unable to pay guaranteed benefits for any month during an insolvency year shall apply for financial assistance from the PBGC in accordance with § 4281.47.

§ 4041A.27 PBGC approval to pay benefits not otherwise permitted.

Upon written application by the plan sponsor, the PBGC may authorize the plan to pay benefits other than nonforfeitable benefits or to pay benefits valued at more than $1,750 in a form other than an annuity. The PBGC will approve such payments if it determines that the plan sponsor has demonstrated that the payments are not adverse to the interests of the plan's participants and beneficiaries generally and do not unreasonably increase the PBGC's risk of loss with respect to the plan.

Subpart D—Closeout of Sufficient Plans

§ 4041A.41 General rule.

If a plan's assets, excluding any claim of the plan for unpaid withdrawal liability, are sufficient to satisfy all obligations for nonforfeitable benefits provided under the plan, the plan sponsor may close out the plan in accordance with this subpart by distributing plan assets in full satisfaction of all nonforfeitable benefits under the plan.

§ 4041A.42 Method of distribution.

The plan sponsor shall distribute plan assets by purchasing from an insurer contracts to provide all benefits required by § 4041A.43 to be provided in annuity form and by paying in a lump sum (or other alternative elected by the participant) all other benefits.

§ 4041A.43 Benefit forms.

(a) *General rule.* Except as provided in paragraph (b) of this section, the sponsor of a plan that is closed out shall provide for the payment of any benefit attributable to employer contributions only in the form of an annuity.

(b) *Exceptions.* The plan sponsor may pay a benefit attributable to employer contributions in a form other than an annuity if:

(1) The present value of the participant's entire nonforfeitable benefit, determined using the interest assumption under §§ 4044.41 through 4044.57, does not exceed $3,500.

(2) The payment is for death benefits provided under the plan.

(3) The participant elects an alternative form of distribution under paragraph (c) of this section.

(c) *Alternative forms of distribution.* The plan sponsor may allow participants to elect alternative forms of distribution in accordance with this paragraph. When a form of distribution is offered as an alternative to the normal form, the plan sponsor shall notify each participant, in writing, of the form and estimated amount of the participant's normal form of distribution. The notification shall also describe any risks attendant to the alternative form. Participants' elections of alternative forms shall be in writing.

§ 4041A.44 Cessation of withdrawal liability.

The obligation of an employer to make payments of initial withdrawal liability and mass withdrawal liability shall cease on the date on which the plan's assets are distributed in full satisfaction of all nonforfeitable benefits provided by the plan.

PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS

Subpart A—Reportable Events; In General

Sec.
4043.1 Purpose and scope.
4043.2 Definitions.
4043.3 Requirement of notice.
4043.4 Reporting events on annual report.
4043.5 Obligation of contributing sponsor.
4043.6 Date of filing.
4043.7 Computation of time.
4043.11 Tax disqualification.
4043.12 Title I non-compliance.
4043.13 Amendment decreasing benefits payable.
4043.14 Active participant reduction.
4043.15 Termination or partial termination.
4043.16 Failure to meet minimum funding standards and granting of funding waiver.
4043.17 Inability to pay benefits when due.
4043.18 Distribution to a substantial owner.
4043.19 Plan merger, consolidation or transfer.
4043.20 Alternative compliance with reporting and disclosure requirements of Title I.
4043.21 Bankruptcy, insolvency, or similar settlements.
4043.22 Liquidation or dissolution.
4043.23 Transaction involving a change in contributing sponsor or controlled group.

Subpart B—Section 302(f); Notice of Failure to Make Required Contributions

4043.31 PBGC Form 200, notice of failure to make required contributions; supplementary information.

Authority: 29 U.S.C. 1082(f), 1302(b)(3), 1343, 1365.

Subpart A—Reportable Events; In General

§ 4043.1 Purpose and scope.

(a) Subpart A of this part contains definitions applicable to this part and prescribes specific requirements for notification of the reportable events in section 4043 of ERISA, including the reportable events specified in section 4043 (c)(1) through (c)(8) and other events that the PBGC has determined, under section 4043(c)(13) (formerly section 4043(b)(9)), may be indicative of a need to terminate the plan. It also implements the PBGC's authority to waive the requirement that plan administrators notify the PBGC with respect to certain reportable events and with respect to certain plans. (The PBGC has waived the requirements of section 4043 with respect to multiemployer plans.) However, it does not include rules based on the amendments made to section 4043 by the Retirement Protection Act of 1994 (Pub. L. 103–465, section 771). Subpart B contains rules for notifying the PBGC of a failure to make certain required contributions under section 302(f)(4) of ERISA or section 412(n)(4) of the Code.

(b) This subpart applies with respect to any single-employer plan which is covered by section 4021 of ERISA and for which either no notice of intent to terminate has been issued or, if such a notice has been issued, until the proposed termination date specified under section 4041 (b) or (c) of ERISA and part 4041 of this chapter; provided, that, if a termination proceeding is suspended pursuant to § 4041.5 of this chapter, this subpart continues to apply unless and until the PBGC reactivates the termination proceeding. The collection of information requirements contained in this subpart have been approved by the Office of Management and Budget under control number 1212–0013.

§ 4043.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, contributing sponsor, controlled group, ERISA, fair market value, insurer, irrevocable commitment, IRS, multiemployer plan, nonforfeitable benefit, notice of intent to terminate, PBGC, person, plan, plan administrator, plan year, proposed termination date, and single-employer plan.

In addition, for purposes of this part, the following definitions apply:

Distribution means a direct or indirect benefit payment made in any form by a plan to a participant, including but not limited to, a monthly annuity payment, a lump-sum payment or a direct transfer of a plan asset other than cash. A cash payment made by an insurer pursuant to an irrevocable commitment shall not be considered a distribution.

Nonforfeitable benefits which are not funded means nonforfeitable benefits, as provided in § 4022.5 of this chapter, in excess of plan assets.

Parent means the parent of a parent-subsidiary controlled group of corporations or group of trades or businesses under common control (within the meaning of subsection (b) or (c) of section 414 of the Code and the regulations thereunder). Where there is more than one parent in a parent-subsidiary group, the term parent (for purposes of subpart B) refers to the parent at the highest level in the chain of corporations and/or other organizations comprising the group.

Participant has the same meaning as in § 4007.2 of this chapter.

Retirement benefit means a benefit payable upon late, normal, early, or disability retirement, other than a welfare benefit described in section 3(1) of ERISA, to a participant who leaves or has left covered employment.

§ 4043.3 Requirement of notice.

(a) *Obligation to file.* Except where the requirement is expressly waived by this subpart, the plan administrator, or a duly authorized representative, shall file with the PBGC a notice of all reportable events described in this subpart no later than 30 days after the plan administrator knows or has reason to know a reportable event has occurred. When a notice is submitted by a plan administrator's duly authorized representative, other than an attorney at

law, it shall be accompanied by a notarized power of attorney, signed by the plan administrator, which authorizes the representative to sign and submit a notice and, if desired, also authorizes the representative to act on behalf of the plan administrator in connection with the notice.

(b) *Contents of notice.* The plan administrator shall include the information listed in this paragraph, and when applicable, the information specified in paragraph (c) of this section, in a notice required to be submitted under this section. The plan administrator shall submit the most recent information available. The plan administrator shall identify the response to each numbered item in this paragraph by item number. If any requested information is included in an IRS form or submission attached to the notice, instead, the information may be incorporated by reference to the number, date, and page(s) of the IRS form or submission where it appears. Any required documentation previously filed with the PBGC need not be refiled, but may be incorporated by reference to the previous submission. The plan administrator shall include the following information in a notice:

(1) The name of the plan;

(2) The name, address, and telephone number of the contributing sponsor(s);

(3) The name, address, and telephone number of the plan administrator. If the plan administrator is a corporate body, the name of an individual that should be contacted;

(4) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the contributing sponsor and the three-digit Plan Number (PN) assigned by the contributing sponsor to the plan, and, if different, also state the EIN–PN last filed with the PBGC. If an EIN–PN has not been assigned, so indicate;

(5) A brief statement of the pertinent facts relating to the reportable event;

(6) A copy of the plan document currently in effect, *i.e.*, a copy of the last restatement of the plan and all subsequent amendments;

(7) A copy of the most recent actuarial statement and opinion (if any) relating to the plan;

(8) A statement of any material change in the assets or liabilities of the plan occurring after the date of the most recent actuarial statement and opinion relating to the plan; and

(9) A copy of the most recent determination letter issued by the IRS (if any) relating to the plan.

(c) *Additional information.* With respect to the following reportable events, the information specified below must be submitted in addition to that listed in paragraph (b) of this section:

(1) For an event described in § 4043.14(a) (relating to an active participant reduction): The number of participants and the number of active participants as of the beginning of the immediately preceding and the current plan year and as of the date of the event; the number of active participants with fully vested rights, the number of such participants with partially vested rights, and the number of such participants without vested rights, as of the date of the event or, if this information is not available as of this date, as of the beginning of the current plan year; the number of retired participants receiving benefits as of the date of the event or, if this information is not available as of this date, as of the beginning of the current plan year; the number of former employees with vested rights and the number of deceased participants whose beneficiaries are receiving or entitled to receive benefits as of the date of the event or, if this information is not available as of this date, the beginning of the current plan year. (For those plans determining the number of active participants as of the end of a plan year, instead of at the beginning of a plan year, in accordance with § 4043.14(c), the information required by this paragraph as of the beginning of a plan year shall be provided as of the end of the previous plan year.)

(2) For an event described in § 4043.16(a) (relating to a minimum funding violation):

A statement of the current funding standard account, or its alternative, showing the balance at the beginning of the plan year and the charges and credits to the account for the plan year that are required under section 302 of ERISA and section 412 of the Code; in the case of a plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group, a copy of the most recent audited (or if not available, unaudited) financial statements, and the most recent interim financial statements, of the contributing sponsor (individually or where financial statements are only available on a consolidated basis with other members of the same controlled group, on a consolidated basis), including balance sheets, income statements, statements of changes in financial position and annual reports.

(3) For an event described in § 4043.17(a) (relating to an inability to pay benefits when due):

The reason(s) why the plan is unable to pay benefits, including a statement of how long this inability is likely to continue; the amount of the benefits due during the current payment period and the amount of assets available to pay those benefits; the normal date of benefit payment; the amount and date of the last benefit payment.

(4) For an event described in § 4043.18(a) (relating to a distribution to a substantial owner):

The amount and form of the distribution; a statement of whether an indemnity agreement has been entered into between the participant receiving the distribution and the plan trustee concerning lump-sum distributions to the 25 highest paid employees of the benefits subject to the early termination restrictions of Treas. Reg. § 1.401–4(c).

(5) For an event described in § 4043.21(a) (relating to a bankruptcy, insolvency, or similar settlement):

A copy of all papers filed in the relevant proceedings, including but not limited to, petitions and supporting schedules; the last date for filing claims, if known; the name, address and telephone number of any trustee or receiver of the contributing sponsor.

(6) For an event described in § 4043.23(a) (relating to a transaction involving a change in the same controlled group as a contributing sponsor):

The name, address, and telephone number of the new contributing sponsor or of the person no longer under common control with the contributing sponsor, as applicable; a copy of the most recent audited (or if not available, unaudited) financial statements, and the most recent interim financial statements, of the contributing sponsor before and after the transaction and of the person no longer under common control with the contributing sponsor (individually or where financial statements are only available on a consolidated basis with other members of the same controlled group, on a consolidated basis), including balance sheets, income statements, statements of changes in financial position and annual reports.

(d) *Requests for additional information.* The PBGC may, in any case, require the submission of additional information.

(e) *How and where to file.* A notice and information required to be filed with the PBGC by this subpart may be sent by mail or submitted by hand during normal working hours to: Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

(f) *Optional consolidated filing.* A plan administrator may file a single notice with respect to the occurrence of more than one reportable event, or two or more plan administrators may file a single notice with respect to one or more reportable events when—

(1) More than one event for which a notice is required by this section has occurred and the plan administrator is able to give the PBGC simultaneous timely notification of the events; or

(2) An event described in §§ 4043.21(a), 4043.22(a), or 4043.23(a) has occurred, and all plan administrators who are required to file a notice pursuant to this section sign the same notice.

(g) *Effect of failure to file.* Failure to file a notice required by this section or failure to include all information required in the notice constitutes a violation of title IV of ERISA.

§ 4043.4 Reporting of reportable events on annual report.

The requirement that the plan administrator report the occurrence of a reportable event described in this subpart in the annual report filed pursuant to part 4065 of this chapter is waived pursuant to the provisions of section 4065 of ERISA.

§ 4043.5 Obligation of contributing sponsor.

Whenever a contributing sponsor under a plan covered by section 4021 of ERISA, knows or has reason to know that a reportable event has occurred, it shall notify the plan administrator immediately.

§ 4043.6 Date of filing.

(a) Any notice or document required to be filed under this subpart is considered filed on the date of the United States postmark stamped on the cover in which the document is mailed, if—

(1) The postmark was made by the United States Postal Service; and

(2) The document was mailed postage prepaid, properly packaged and addressed to the PBGC. If the conditions stated in both paragraphs (a)(1) and (a)(2) are not met, the notice or document is considered filed on the date it is received by the PBGC. Notices or documents received after regular business hours are considered filed on the next regular business day.

§ 4043.7 Computation of time.

In computing any period of time prescribed or allowed by the rules of this subpart, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday.

§ 4043.11 Tax disqualification.

(a) *Reportable event.* A reportable event occurs when the Secretary of the Treasury issues a notice that a plan has ceased to be a plan described in section 4021(a)(2) of ERISA.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3(a) is waived for the event described in this section.

§ 4043.12 Title I non-compliance.

(a) *Reportable event.* A reportable event occurs when the Secretary of Labor determines that a plan is not in compliance with title I of ERISA.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3(a) is waived for the event described in this section.

§ 4043.13 Amendment decreasing benefits payable.

(a) *Reportable event.* A reportable event occurs when an amendment to a plan is adopted under which the retirement benefit payable from employer contributions with respect to any participant may be decreased.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3(a) is waived for the event described in this section.

§ 4043.14 Active participant reduction.

(a) *Reportable event.* A reportable event occurs when the number of active participants under a plan is less than 80 percent of the number of active participants at the beginning of the plan year, or is less than 75 percent of the number of active plan participants at the beginning of the previous plan year.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3(a) is waived for the event described in this section, if the conditions in paragraph (b)(1), (b)(2), or (b)(3) of this section exist.

(1) The plan has less than 100 participants as of the beginning of either the current or the previous plan year.

(2) With respect to a plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group, as of the date of the event, the total number of active participants covered by all the plans covered by this part that are maintained by a contributing sponsor and all members of the same controlled group, if any, either is not less than 80 percent of the total number of active participants in all such plans determined as of the beginning of each such plan's current plan year, or is not less than 75 percent of the total number of active participants in all such plans determined as of the beginning of each such plan's previous plan year.

(3) The present value of unfunded vested benefits under the plan (as reported on the most recently filed IRS/DOL/PBGC Form 5500 or Form 5500–C/R) is less than $250,000.

(c) *Determination of the number of active participants.* (1) The number of active participants as of the beginning of a plan year may be determined as of the end of the previous plan year.

(2) For purposes of this section and information submitted pursuant to § 4043.3(c)(1), with respect to a plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group, include as "active" only a participant who—

(i) Is receiving compensation for work performed;

(ii) Is on paid or unpaid leave granted for a reason other than a layoff;

(iii) Is laid off from work for a period of time that has lasted less than 30 days; or

(iv) Is absent from work due to a recurring reduction in employment that occurs at least annually.

§ 4043.15 Termination or partial termination.

(a) *Reportable event.* A reportable event occurs when the Secretary of the Treasury determines that there has been a termination or partial termination of a plan within the meaning of section 411(d)(3) of the Code.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3(a) is waived for the events described in this section.

§ 4043.16 Failure to meet minimum funding standards and granting of funding waiver.

(a) *Reportable event.* A reportable event occurs when a plan fails to meet the minimum funding standards or is granted a minimum funding waiver under section 412 of the Code or section 302 of ERISA.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3(a) is waived for the event described in this section, unless a plan fails to meet minimum funding standards or is granted a minimum funding waiver and the present value of unfunded vested benefits under the plan (as reported on the most recently filed IRS/DOL/PBGC Form 5500 or Form 5500–C/R) equals or exceeds $250,000. In addition, the 30-day notice requirement contained in § 4043.3(a) is waived for the event described in this section if, with respect to the same failure, Form 200 has been

completed and submitted (including all required documentation and other information) in accordance with subpart B of this part.

§ 4043.17 Inability to pay benefits when due.

(a) *Reportable event.* A reportable event occurs when a plan is unable to pay benefits when due. Except as provided in paragraph (c) of this section, a plan is unable to pay benefits when due if the plan does not pay any participant, who is then entitled to benefit payments, the full promised benefits to which he or she is entitled in the form prescribed under the terms of the plan.

(b) *Waiver.* The 30-day notice requirement in § 4043.3(a) is not waived for the event described in this section.

(c) *Administrative delays.* A plan shall not be treated as being unable to pay benefits when due if its failure to pay benefits is caused solely by: (1) The need to verify any participant's eligibility for benefits; (2) the inability to locate any participant; or (3) any other administrative delay if such delay lasts less than the shorter of two months or two full benefit payment periods.

§ 4043.18 Distribution to a substantial owner.

(a) *Reportable event.* A reportable event occurs when there is a distribution or distributions under the plan to a participant who is a substantial owner if—

(1) The total of all distributions to the substantial owner within a 24-month period has a value of $10,000 or more;

(2) The distribution or distributions were not made by reason of the death of the participant; and

(3) Immediately after the distribution or the last distribution in a series, the plan has nonforfeitable benefits which are not funded.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3 is waived for the event described in this section, unless—

(1) A plan makes a distribution or distributions within a 12-month period to a substantial owner having a total value of $10,000 or more; and

(2) The amount of the distribution or distributions exceeds the amount of the maximum guaranteeable benefit for the substantial owner, determined under § 4022.27 of this chapter, for the year in which the distribution or the last distribution in a series was made.

(c) *Valuation of distribution.* The value of a distribution described in paragraph (a) or (b) of this section is determined in accordance with the provisions of this paragraph.

(1) The value of a distribution, other than an irrevocable commitment, equals the sum of the cash amounts actually received by the participant and the fair market value of any assets distributed in a form other than cash, determined as of the distribution date.

(2) The value of an irrevocable commitment is the purchase price of the irrevocable commitment, or the value, determined in accordance with reasonable actuarial assumptions, of the benefits payable pursuant to that irrevocable commitment. For this purpose, reasonable actuarial assumptions are the actuarial assumptions used by the PBGC under subpart B of part 4044 of this chapter, or the actuarial assumptions used by the plan for purposes of section 302 of ERISA and section 412 of the Code.

(d) *Date of substantial owner distribution.* The date of distribution to a substantial owner of an irrevocable commitment is the date on which the obligation to provide benefits passes from the plan to the insurer. The date of distribution to a substantial owner of a cash distribution shall be the date it is received by the participant. The date of all other distributions to a substantial owner shall be the date when the plan relinquishes control over the assets transferred directly or indirectly to the participant.

(e) *Determination date.* The determination of whether a participant is a substantial owner, or has been in the preceding 60 months, is made on the date when there has been a distribution or distributions with a total value of $10,000 or more.

(f) *Valuation of assets and benefits.* For purposes of paragraph (a)(3) of this section, in determining whether a plan has nonforfeitable benefits which are not funded—

(1) Assets are valued at fair market value; and

(2) Benefits are valued in accordance with reasonable actuarial assumptions. For this purpose, reasonable actuarial assumptions are the actuarial assumptions used by the PBGC under subpart B of part 4044 of this chapter, or the actuarial assumptions used by the plan for purposes of section 302 of ERISA and section 412 of the Code.

§ 4043.19 Plan merger, consolidation or transfer.

(a) *Reportable event.* A reportable event occurs when a plan merges, consolidates, or transfers its assets or liabilities under section 208 of ERISA or section 414(1) of the Code.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3(a) is waived for the events described in this section.

§ 4043.20 Alternative compliance with reporting and disclosure requirements of Title I.

(a) *Reportable event.* A reportable event occurs when an alternative method of compliance (not of general applicability) is prescribed for a plan by the Secretary of Labor under section 110 of ERISA.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3(a) is waived for the event described in this section.

§ 4043.21 Bankruptcy, insolvency, or similar settlements.

(a) *Reportable event.* A reportable event occurs with respect to a plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group when a contributing sponsor—

(1) Commences a bankruptcy case (under Title 11, U.S.C.), or has a bankruptcy case commenced against it;

(2) Commences or has commenced against it, any other type of insolvency proceeding (including, but not limited to the appointment of a receiver);

(3) Commences, or has commenced against it, a proceeding to effect a composition, extension or settlement with creditors;

(4) Executes a general assignment for the benefit of creditors; or

(5) Undertakes to effect any other non-judicial composition, extension or settlement with substantially all its creditors.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3(a) is not waived for the event described in this section.

§ 4043.22 Liquidation or dissolution.

(a) *Reportable event.* Except as provided in paragraph (c) of this section, a reportable event occurs with respect to a plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group when a contributing sponsor—

(1) Is involved in any transaction to implement its complete liquidation; or

(2) Institutes or has instituted against it a proceeding to be dissolved, or is dissolved, whichever occurs first.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3(a) is not waived for the event described in this section.

(c) *Reorganizations described in section 4069(b).* This section does not cover any of the reoganizations described in section 4069(b) of ERISA.

§ 4043.23 Transaction involving a change in contributing sponsor or controlled group.

(a) *Reportable event.* Except as provided in paragraph (c) of this section, a reportable event occurs with respect to a plan maintained by one contributing sponsor or by two or more contributing sponsors that are members of the same controlled group with nonforfeitable benefits which are not funded of $1 million or more when—

(1) As a result of a transaction involving a transfer of assets of or an ownership interest in a contributing sponsor—

(i) There is or will be a new contributing sponsor that is not a member of the controlled group of the previous contributing sponsor;

(ii) The contributing sponsor leaves or will leave the controlled group; or

(iii) The contributing sponsor becomes or will become a member of a different controlled group, except where the new controlled group is or will be the same, but for the addition of another person, as the contributing sponsor's controlled group before the transaction; or

(2) As a result of a transaction involving a transfer by a contributing sponsor of assets of or an ownership interest in another person, the contributing sponsor and that person are or will be no longer part of the same controlled group.

(b) *Waiver.* The 30-day notice requirement contained in § 4043.3(a) is not waived for the event described in this section.

(c) *Certain reorganizations.* This section does not apply to—

(1) A reorganization involving a mere change in identity, form or place of organization, however effected;

(2) A reorganization involving a liquidation into a parent corporation; and

(3) A reorganization involving a merger, consolidation, or division solely between (or among) members of the same controlled group as the contributing sponsor.

(d) *Definition of transaction.* For purposes of this section, the term transaction includes, but is not limited to, a legally binding agreement, whether or not written, to transfer, and a change in ownership that occurs as a matter of law or through the exercise or lapse of pre-existing rights.

(e) *Valuation of assets and benefits.* For purposes of paragraph (a) of this section, in determining whether a plan has nonforfeitable benefits which are not funded of $1 million or more—

(1) Assets are valued at fair market value; and

(2) Benefits are valued in accordance with reasonable actuarial assumptions. For this purpose, reasonable actuarial assumptions are the actuarial assumptions used by the PBGC under subpart B of part 4044 of this chapter, or the actuarial assumptions used by the plan for purposes of section 302 of ERISA and section 412 of the Code.

Subpart B—Section 302(f); Notice of Failure To Make Required Contributions

§ 4043.31 PBGC Form 200, notice of failure to make required contributions; supplementary information.

(a) *General rules.* To comply with the notification requirement in section 302(f)(4) of ERISA and section 412(n)(4) of the Code, a contributing sponsor of a single-employer plan that is covered under section 4021 of ERISA and, if that contributing sponsor is a member of a parent-subsidiary controlled group, the parent must complete and submit a properly certified Form 200 that includes all required documentation and other information, as described in the related filing instructions, in accordance with this section. Notice of failure to make required contributions is required whenever the unpaid balance of a required installment or any other payment required under section 302 of ERISA and section 412 of the Code (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made when due (including interest), exceeds $1 million.

(1) Form 200 must be filed with the PBGC no later than 10 days after the due date for any required payment for which payment was not made when due.

(i) The 10-day period for filing Form 200 is computed in accordance with § 4043.7 of this chapter.

(ii) The filing date for Form 200 is the date on which it is received by the PBGC office specified in the instructions if it is received no later than 4 p.m. on a weekday other than a Federal holiday. If it is received after 4 p.m. or on a weekend or Federal holiday, the Form 200 is deemed to be filed on the next regular business day.

(2) If a contributing sponsor or the parent completes and submits Form 200 in accordance with this section, the PBGC will deem the other person to have so filed and it will consider the notification requirement in section 302(f)(4) of ERISA and section 412(n)(4) of the Code to be satisfied by all members of a controlled group of which the person who has filed Form 200 is a member.

(b) *Supplementary information.* If, upon review of a Form 200, the PBGC concludes that it needs additional information in order to make decisions regarding enforcement of a lien imposed by section 302(f) of ERISA and section 412(n) of the Code, the PBGC, by written notification, may require any contributing sponsor or member of a controlled group of which a contributing sponsor is a member to supplement the Form 200. Such additional information must be filed with the PBGC office specified within 7 days after the date of the written notification, as determined in accordance with §§ 4043.6 and 4043.7 of this chapter, or by a different time specified therein.

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

Subpart A—Allocation of Assets

General Provisions

Sec.
4044.1 Purpose and scope.
4044.2 Definitions.
4044.3 General rule.
4044.4 Violations.

Allocation of Assets to Benefit Categories

4044.10 Manner of allocation.
4044.11 Priority category 1 benefits.
4044.12 Priority category 2 benefits.
4044.13 Priority category 3 benefits.
4044.14 Priority category 4 benefits.
4044.15 Priority category 5 benefits.
4044.16 Priority category 6 benefits.
4044.17 Subclasses.

Allocation of Residual Assets

4044.30 [Reserved.]

Subpart B—Valuation of Benefits and Assets

General Provisions

4044.41 General valuation rules.

Trusteed Plans

4044.51 Benefits to be valued.
4044.52 Valuation of benefits.
4044.53 Mortality assumptions—in general.
4044.54 Mortality assumptions—lump sums.

Expected Retirement Age

4044.55 XRA when a participant must retire to receive a benefit.
4044.56 XRA when a participant need not retire to receive a benefit.
4044.57 Special rule for facility closing.

Non-Trusteed Plans

4044.71 Valuation of annuity benefits.
4044.72 Form of annuity to be valued.
4044.73 Lump sums and other alternative forms of distribution in lieu of annuities.
4044.74 Withdrawal of employee contributions.
4044.75 Other lump sum benefits.

Appendix A to Part 4044—Mortality Rate Tables

Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums

Appendix C to Part 4044—Loading Assumptions

Appendix D to Part 4044—Tables Used To Determine Expected Retirement Age

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

Note: Certain provisions of part 4044 have been superseded by legislative changes. For example, there are references to provisions formerly codified in 29 CFR part 2617, subpart C (and to the Notice of Sufficiency provided for thereunder) that no longer exist because of changes in the PBGC's plan termination regulations in response to the Single-Employer Pension Plan Amendments Act of 1986 and the Pension Protection Act of 1987. The PBGC intends to amend part 4044 at a later date to conform it to current statutory provisions.

Subpart A—Allocation of Assets

General Provisions

§ 4044.1 Purpose and scope.

This part implements section 4044 of ERISA, which contains rules for allocating a plan's assets when the plan terminates. These rules have been in effect since September 2, 1974, the date of enactment of ERISA. This part applies to any single-employer plan covered by title IV of ERISA that submits a notice of intent to terminate, or for which PBGC commences an action to terminate the plan under section 4042 of ERISA.

(a) *Subpart A.* Sections 4044.1 through 4044.4 set forth general rules for applying §§ 4044.10 through 4044.17. Sections 4044.10 through 4044.17 interpret the rules and describe procedures for allocating plan assets to priority categories 1 through 6.

(b) *Subpart B.* The purpose of subpart B is to establish the method of determining the value of benefits and assets under terminating single-employer pension plans covered by title IV of ERISA. This valuation is needed for both plans trusteed under title IV and plans which are not trusteed. For the former, the valuation is needed to allocate plan assets in accordance with subpart A of this part and to determine the amount of any plan asset insufficiency. For the latter, the valuation is needed to allocate assets in accordance with subpart A and to distribute the assets in accordance with subpart B of part 4041 of this chapter.

(1) Section 4044.41 sets forth the general provisions of subpart B and applies to all terminating single-employer plans. Sections 4044.51 through 4044.57 prescribe the benefit valuation rules for plans that receive or that expect to receive a Notice of Inability to Determine Sufficiency from PBGC and are placed into trusteeship by PBGC, including (in §§ 4044.55 through 4044.57) the rules and procedures a plan administrator shall follow to determine the expected retirement age (XRA) for a plan participant entitled to early retirement benefits for whom the annuity starting date is not known as of the valuation date. This applies to all trusteed plans which have such early retirement benefits. The plan administrator shall determine an XRA under § 4044.55, § 4044.56 or § 4044.57, as appropriate, for each active participant or participant with a deferred vested benefit who is entitled to an early retirement benefit and who as of the valuation date has not selected an annuity starting date. [See Note at beginning of part 4044.]

(2) Sections 4044.71 through 4044.75 prescribe the benefit valuation rules for calculating the value of a benefit to be paid a participant or beneficiary under a terminating pension plan that is distributing assets where the plan has received a Notice of Sufficiency issued by PBGC pursuant to part 2617 of this chapter and has not been placed into trusteeship by PBGC. [See Note at beginning of part 4044.]

§ 4044.2 Definitions.

(a) The following terms are defined in § 4001.2 of this chapter: annuity, basic-type benefit, Code, distribution date, ERISA, fair market value, guaranteed benefit, insurer, IRS, irrevocable commitment, mandatory employee contributions, nonbasic-type benefit, nonforfeitable benefit, normal retirement age, notice of intent to terminate, PBGC, person, plan, plan administrator, single-employer plan, substantial owner, termination date, and voluntary employee contributions.

(b) For purposes of this part:

Deferred annuity means an annuity under which the specified date or age at which payments are to begin occurs after the valuation date.

Earliest retirement age at valuation date means the later of (a) a participant's age on his or her birthday nearest to the valuation date, or (b) the earliest age at which the participant can retire under the terms of the plan.

Early retirement benefit means an annuity benefit payable under the terms of the plan, under which the participant is entitled to begin receiving payments before his or her normal retirement age and which is not payable on account of the disability of the participant. It may be reduced according to the terms of the plan.

Expected retirement age (XRA) means the age, determined in accordance with §§ 4044.55 through 4044.57, at which a participant is expected to begin receiving benefits when the participant has not elected, before the allocation date, an annuity starting date. This is the age to which a participant's benefit payment is assumed to be deferred for valuation purposes. An XRA is equal to or greater than the participant's earliest retirement age at valuation date but less than his or her normal retirement age.

Non-trusteed plan means a single-employer plan which receives a Notice of Sufficiency from PBGC and is able to close out by purchasing annuities in the private sector in accordance with part 2617 of this chapter. [See Note at beginning of part 4044.]

Notice of Sufficiency means a notice issued by the PBGC that it has determined that plan assets are sufficient to discharge when due all obligations of the plan with respect to benefits in priority categories 1 through 4 after plan assets have been allocated to benefits in accordance with section 4044 of ERISA and this subpart. [See Note at beginning of part 4044.]

Priority category means one of the categories contained in sections 4044 (a)(1) through (a)(6) of ERISA that establish the order in which plan assets are to be allocated.

Trusteed plan means a single-employer plan which has been placed into trusteeship by PBGC.

Unreduced retirement age (URA) means the earlier of the normal retirement age specified in the plan or the age at which an unreduced benefit is first payable.

Valuation date means (1) for non-trusteed plans, the date of distribution and (2) for trusteed plans, the date of termination.

(c) For purposes of subpart B of this part (unless otherwise required by the context):

Age means the participant's age at his or her nearest birthday and is determined by rounding the individual's exact age to the nearest whole year. Half years are rounded to the next highest year. This is also known as the "insurance age."

(d) For purposes of §§ 4044.55 through 4044.57:

Monthly benefit means the guaranteed benefit payable by PBGC.

(e) For purposes of §§ 4044.71 through 4044.75:

Lump sum payable in lieu of an annuity means a benefit that is payable in a single installment and is derived from an annuity payable under the plan.

Other lump sum benefit means a benefit in priority category 5 or 6, determined under subpart A of this part, that is payable in a single installment (or substantially so) under the terms of the plan, and that is not derived from an annuity payable under the plan. The benefit may be a severance pay benefit, a death benefit or other single installment benefit.

Qualifying bid means a bid obtained from an insurer in accordance with § 2617.14(b) of this chapter. [See Note at beginning of part 4044.]

§ 4044.3 General rule.

(a) *Asset allocation.* Upon the termination of a single-employer plan, the plan administrator shall allocate the plan assets available to pay for benefits under the plan in the manner prescribed by this subpart. Plan assets available to pay for benefits include all plan assets (valued according to § 4044.41(b)) remaining after the subtraction of all liabilities, other than liabilities for future benefit payments, paid or payable from plan assets under the provisions of the plan. Liabilities include expenses, fees and other administrative costs, and benefit payments due before the allocation date. Except as provided in § 4044.4(b), an irrevocable commitment by an insurer to pay a benefit, which commitment is in effect on the date of the asset allocation, is not considered a plan asset, and a benefit payable under such a commitment is excluded from the allocation process.

(b) *Allocation date.* For plans that close out pursuant to a Notice of Sufficiency under the provisions of subpart C of part 2617 of this chapter, assets shall be allocated as of the date plan assets are to be distributed. For other plans, assets shall be allocated as of the termination date. [See Note at beginning of part 4044.]

§ 4044.4 Violations.

(a) *General.* A plan administrator violates ERISA if plan assets are allocated or distributed upon plan termination in a manner other than that prescribed in section 4044 of ERISA and this subpart, except as may be required to prevent disqualification of the plan under the Code and regulations thereunder.

(b) *Distributions in anticipation of termination.* A distribution, transfer, or allocation of assets to a participant or to an insurance company for the benefit of a participant, made in anticipation of plan termination, is considered to be an allocation of plan assets upon termination, and is covered by paragraph (a) of this section. In determining whether a distribution, transfer, or allocation of assets has been made in anticipation of plan termination PBGC will consider all of the facts and circumstances including—

(1) Any change in funding or operation procedures;

(2) Past practice with regard to employee requests for forms of distribution;

(3) Whether the distribution is consistent with plan provisions; and

(4) Whether an annuity contract that provides for a cutback based on the guarantee limits in subpart B of part 4022 of this chapter could have been purchased from an insurance company.

Allocation of Assets to Benefit Categories

§ 4044.10 Manner of allocation.

(a) *General.* The plan administrator shall allocate plan assets available to pay for benefits under the plan using the rules and procedures set forth in paragraphs (b) through (f) of this section, or any other procedure that results in each participant (or beneficiary) receiving the same benefits he or she would receive if the procedures in paragraphs (b) through (f) were followed.

(b) *Assigning benefits.* The basic-type and nonbasic-type benefits payable with respect to each participant in a terminated plan shall be assigned to one or more priority categories in accordance with §§ 4044.11 through 4044.16. Benefits derived from voluntary employee contributions, which are assigned only to priority category 1, are treated, under section 204(c)(4) of ERISA and section 411(d)(5) of the Code, as benefits under a separate plan. The amount of a benefit payable with respect to each participant shall be determined as of the termination date.

(c) *Valuing benefits.* The value of a participant's benefit or benefits assigned to each priority category shall be determined, as of the allocation date, in accordance with the provisions of subpart B of this part. The value of each participant's basic-type benefit or benefits in a priority category shall be reduced by the value of the participant's benefit of the same type that is assigned to a higher priority category. Except as provided in the next two sentences, the same procedure shall be followed for nonbasic-type benefits. The value of a participant's nonbasic-type benefits in priority categories 3, 5, and 6 shall not be reduced by the value of the participant's nonbasic-type benefit assigned to priority category 2. Benefits in priority category 1 shall neither be included in nor subtracted from lower priority categories. In no event shall a benefit assigned to a priority category be valued at less than zero.

(d) *Allocating assets to priority categories.* Plan assets available to pay for benefits under the plan shall be allocated to each priority category in succession, beginning with priority category 1. If the plan has sufficient assets to pay for all benefits in a priority category, the remaining assets shall then be allocated to the next lower priority category. This process shall be repeated until all benefits in priority categories 1 through 6 have been provided or until all available plan assets have been allocated.

(e) *Allocating assets within priority categories.* Except for priority category 5, if the plan assets available for allocation to any priority category are insufficient to pay for all benefits in that priority category, those assets shall be distributed among the participants according to the ratio that the value of each participant's benefit or benefits in that priority category bears to the total value of all benefits in that priority category. If the plan assets available for allocation to priority category 5 are insufficient to pay for all benefits in that category, the assets shall be allocated, first, to the value of each participant's nonforfeitable benefits that would be assigned to priority category 5 under § 4044.15 after reduction for the value of benefits assigned to higher priority categories, based only on the provisions of the plan in effect at the beginning of the 5-year period immediately preceding the termination date. If assets available for allocation to priority category 5 are sufficient to fully satisfy the value of those benefits, assets shall then be allocated to the value of the benefit increase under the oldest amendment during the 5-year period immediately preceding the termination date, reduced by the value of benefits assigned to higher priority categories (including higher subcategories in priority category 5). This allocation procedure shall be repeated for each succeeding plan amendment within the 5-year period until all plan assets available for allocation have been exhausted. If an amendment decreased benefits, amounts previously allocated with respect to each participant in excess of the value of the reduced benefit shall be reduced accordingly. In the subcategory in which assets are exhausted, the assets shall be distributed among the participants according to the ratio that the value of each participant's benefit or benefits in that subcategory bears to the total value of all benefits in that subcategory.

(f) *Applying assets to basic-type or nonbasic-type benefits within priority*

categories. The assets allocated to a participant's benefit or benefits within each priority category shall first be applied to pay for the participant's basic-type benefit or benefits assigned to that priority category. Any assets allocated on behalf of that participant remaining after satisfying the participant's basic-type benefit or benefits in that priority category shall then be applied to pay for the participant's nonbasic-type benefit or benefits assigned to that priority category. If the assets allocable to a participant's basic-type benefit or benefits in all priority categories are insufficient to pay for all of the participant's guaranteed benefits, the assets allocated to that participant's benefit in priority category 4 shall be applied, first, to the guaranteed portion of the participant's benefit in priority category 4. The remaining assets allocated to that participant's benefit in priority category 4, if any, shall be applied to the nonguaranteed portion of the participant's benefit.

(g) *Allocation to established subclasses.* Notwithstanding paragraphs (e) and (f) of this section, the assets of a plan that has established subclasses within any priority category may be allocated to the plan's subclasses in accordance with the rules set forth in § 4044.17.

§ 4044.11 Priority category 1 benefits.

(a) *Definition.* The benefits in priority category 1 are participants' accrued benefits derived from voluntary employee contributions.

(b) *Assigning benefits.* Absent an election described in the next sentence, the benefit assigned to priority category 1 with respect to each participant is the balance of the separate account maintained for the participant's voluntary contributions. If a participant has elected to receive an annuity in lieu of his or her account balance, the benefit assigned to priority category 1 with respect to that participant is the present value of that annuity.

§ 4044.12 Priority category 2 benefits.

(a) *Definition.* The benefits in priority category 2 are participants' accrued benefits derived from mandatory employee contributions, whether to be paid as an annuity benefit with a pre-retirement death benefit that returns mandatory employee contributions or, if a participant so elects under the terms of the plan and subpart A of part 4022 of this chapter, as a lump sum benefit. Benefits are primarily basic-type benefits although nonbasic-type benefits may also be included as follows:

(1) *Basic-type benefits.* The basic-type benefit in priority category 2 with respect to each participant is the sum of the values of the annuity benefit and the pre-retirement death benefit determined under the provisions of paragraph (c)(1) of this section.

(2) *Nonbasic-type benefits.* If a participant elects to receive a lump sum benefit and if the value of the lump sum benefit exceeds the value of the basic-type benefit in priority category 2 determined with respect to the participant, the excess is a nonbasic-type benefit. There is no nonbasic-type benefit in priority category 2 for a participant who does not elect to receive a lump sum benefit.

(b) *Conversion of mandatory employee contributions to an annuity benefit.* Subject to the limitation set forth in paragraph (b)(3) of this section, a participant's accumulated mandatory employee contributions shall be converted to an annuity form of benefit payable at the normal retirement age or, if the plan provides for early retirement, at the expected retirement age. The conversion shall be made using the interest rates and factors specified in paragraph (b)(2) of this section. The form of the annuity benefit (*e.g.*, straight life annuity, joint and survivor annuity, cash refund annuity, etc.) is the form that the participant or beneficiary is entitled to on the termination date. If the participant does not have a nonforfeitable right to a benefit, other than the return of his or her mandatory contributions in a lump sum, the annuity form of benefit is the form the participant would be entitled to if the participant had a nonforfeitable right to an annuity benefit under the plan on the termination date.

(1) *Accumulated mandatory employee contributions.* Subject to any addition for the cost of ancillary benefits plus interest, as provided in the following sentence, the amount of the accumulated mandatory employee contributions for each participant is the participant's total nonforfeitable mandatory employee contributions remaining in the plan on the termination date plus interest, if any, under the plan provisions. Mandatory employee contributions, if any, used after the effective date of the minimum vesting standards in section 203 of ERISA and section 411 of the Code for costs or to provide ancillary benefits such as life insurance or health insurance, plus interest under the plan provisions, shall be added to the contributions that remain in the plan to determine the accumulated mandatory employee contributions.

(2) *Interest rates and conversion factors.* The interest rates and conversion factors used in the administration of the plan shall be used to convert a participant's accumulated mandatory contributions to the annuity form of benefit. In the absence of plan rules and factors, the interest rates and conversion factors established by the IRS for allocation of accrued benefits between employer and employee contributions under the provisions of section 204(c) of ERISA and section 411(c) of the Code shall be used.

(3) *Minimum accrued benefit.* The annuity benefit derived from mandatory employee contributions may not be less than the minimum accrued benefit under the provisions of section 204(c) of ERISA and section 411(c) of the Code.

(c) *Assigning benefits.* If a participant or beneficiary elects to receive a lump sum benefit, his or her benefit shall be determined under paragraph (c)(2) of this section. Otherwise, the benefits with respect to a participant shall be determined under paragraph (c)(1) of this section.

(1) *Annuity benefit and pre-retirement death benefit.* The annuity benefit and the pre-retirement death benefit assigned to priority category 2 with respect to a participant are determined as follows:

(i) The annuity benefit is the benefit computed under paragraph (b) of this section.

(ii) Except for adjustments necessary to meet the minimum lump sum requirements as hereafter provided, the pre-retirement death benefit is the benefit under the plan that returns all or a portion of the participant's mandatory employee contributions upon the death of the participant before retirement. A benefit that became payable in a single installment (or substantially so) because the participant died before the termination date is a liability of the plan within the meaning of § 4044.3(a) and should not be assigned to priority category 2. A benefit payable upon a participant's death that is included in the annuity form of the benefit derived from mandatory employee contributions (*e.g.*, the survivor's portion of a joint and survivor annuity or the cash refund portion of a cash refund annuity) is assigned to priority category 2 as part of the annuity benefit under paragraph (c)(1)(i) of this section and is not assigned as a death benefit. The pre-retirement death benefit may not be less than the minimum lump sum required upon withdrawal of mandatory employee contributions by the IRS under section 204(c) of ERISA and section 411(c) of the Code.

(2) *Lump sum benefit.* Except for adjustments necessary to meet the minimum lump sum requirements as hereafter provided, if a participant elects to receive a lump sum benefit under the provisions of the plan, the amount of the benefit that is assigned to priority category 2 with respect to the participant is—

(i) The combined value of the annuity benefit and the pre-retirement death benefit determined according to paragraph (c)(1) (which constitutes the basic-type benefit) plus

(ii) The amount, if any, of the participant's accumulated mandatory employee contributions that exceeds the combined value of the annuity benefit and the pre-retirement death benefit (which constitutes the nonbasic-type benefit), but not more than

(iii) The amount of the participant's accumulated mandatory contributions.

(3) For purposes of paragraph (c)(2) of this section, accumulated mandatory contributions means the contributions with interest, if any, payable under plan provisions to the participant or beneficiary on termination of the plan or, in the absence of such provisions, the amount that is payable if the participant withdrew his or her contributions on the termination date. The lump sum benefit may not be less than the minimum lump required by the IRS under section 204(c) of ERISA and section 411(c) of the Code upon withdrawal of mandatory employee contributions.

§ 4044.13 Priority category 3 benefits.

(a) *Definition.* The benefits in priority category 3 are those annuity benefits that were in pay status before the beginning of the 3-year period ending on the termination date, and those annuity benefits that could have been in pay status for participants who were eligible to receive annuity benefits before the beginning of the 3-year period ending on the termination date. Benefit increases that became effective before the beginning of the 5-year period ending on the termination date, including automatic benefit increases after that date to the extent provided in paragraph (b)(5) of this section, shall be included in determining the priority category 3 benefit. Benefits are primarily basic-type benefits, although nonbasic-type benefits will be included if any portion of a participant's priority category 3 benefit is not guaranteeable under the provisions of subpart A of part 4022 of this chapter.

(b) *Assigning benefits.* The annuity benefit that is assigned to priority category 3 with respect to each participant is the lowest annuity that was paid or payable under the rules in paragraphs (b)(2) through (b)(6) of this section.

(1) *Eligibility of participants and beneficiaries.* A participant or beneficiary is eligible for a priority category 3 benefit if either of the following applies:

(i) The participant's (or beneficiary's) benefit was in pay status before the beginning of the 3-year period ending on the termination date.

(ii) The participant was eligible for an annuity and his or her benefit could have been in pay status before the beginning of the 3-year period ending on the termination date. Whether a participant was eligible to receive an annuity before the beginning of the 3-year period shall be determined using the plan provisions in effect on the day before the beginning of the 3-year period.

(iii) If a participant described in either of the preceding two paragraphs died during the 3-year period ending on the date of the plan termination and his or her beneficiary is entitled to an annuity, the beneficiary is eligible for a priority category 3 benefit.

(2) *Plan provisions governing determination of benefit.* In determining the amount of the priority category 3 annuity with respect to a participant, the plan administrator shall use the participant's age, service, actual or expected retirement age, and other relevant facts as of the following dates:

(i) Except as provided in the next sentence, for a participant or beneficiary whose benefit was in pay status before the beginning of the 3-year period ending on the termination date, the priority category 3 benefit shall be determined according to plan provisions in effect on the date the benefit commenced. Benefit increases that became effective before the beginning of the 5-year period ending on the date of plan termination, including automatic benefit increases after that date to the extent provided in paragraph (b)(5) of this section, shall be included in determining the priority category 3 benefit. The form of annuity elected by a retiree is considered the normal form of annuity for that participant.

(ii) For a participant who was eligible to receive an annuity before the beginning of the 3-year period ending on the termination date but whose benefit was not in pay status, the priority category 3 benefit and the normal form of annuity shall be determined according to plan provisions in effect on the day before the beginning of the 3-year period ending on the termination date as if the benefit had commenced at that time.

(3) *General benefit limitations.* The general benefit limitation is determined as follows:

(i) If a participant's benefit was in pay status before the beginning of the 3-year period, the benefit assigned to priority category 3 with respect to that participant is limited to the lesser of the lowest annuity benefit in pay status during the 3-year period ending on the termination date and the lowest annuity benefit payable under the plan provisions at any time during the 5-year period ending on the termination date.

(ii) Unless a benefit was in pay status before the beginning of the 3-year period ending on the termination date, the benefit assigned to priority category 3 with respect to a participant is limited to the lowest annuity benefit payable under the plan provisions, including any reduction for early retirement, at any time during the 5-year period ending on the termination date. If the annuity form of benefit under a formula that appears to produce the lowest benefit differs from the normal annuity form for the participant under paragraph (b)(2)(ii) of this section, the benefits shall be compared after the differing form is converted to the normal annuity form, using plan factors. In the absence of plan factors, the factors in subpart B of part 4022 of this chapter shall be used.

(iii) For purposes of this paragraph, if a terminating plan has been in effect less than five years on the termination date, computed in accordance with paragraph (b)(6) of this section, the lowest annuity benefit under the plan during the 5-year period ending on the termination date is zero. If the plan is a successor to a previously established defined benefit plan within the meaning of section 4021(a) of ERISA, the time it has been in effect will include the time the predecessor plan was in effect.

(4) *Determination of beneficiary's benefit.* If a beneficiary is eligible for a priority category 3 benefit because of the death of a participant during the 3-year period ending on the termination date, the benefit assigned to priority category 3 for the beneficiary shall be determined as if the participant had died the day before the 3-year period began.

(5) *Automatic benefit increases.* If plan provisions adopted and effective before the beginning of the 5-year period ending on the termination date provided for automatic increases in the benefit formula for both active participants and those in pay status or for participants in pay status only, the lowest annuity benefit payable during the 5-year period ending on the termination date determined under paragraph (b)(3) of this section includes the automatic

increases scheduled during the fourth and fifth years preceding termination, subject to the restriction that benefit increases for active participants in excess of the increases for retirees shall not be taken into account.

(6) *Computation of time periods.* For purposes of this section, a plan or amendment is "in effect" on the later of the date on which it is adopted or the date it becomes effective.

§ 4044.14 Priority category 4 benefits.

The benefits assigned to priority category 4 with respect to each participant are the participant's basic-type benefits that do not exceed the guarantee limits set forth in subpart B of part 4022 of this chapter, except as provided in the next sentence. The benefit assigned to priority category 4 with respect to a participant is not limited by the aggregate benefits limitations set forth in § 4022B.1 of this chapter for individuals who are participants in more than one plan or by the phase-in limitation applicable to substantial owners set forth in § 4022.26.

§ 4044.15 Priority category 5 benefits.

The benefits assigned to priority category 5 with respect to each participant are all of the participant's nonforfeitable benefits under the plan.

§ 4044.16 Priority category 6 benefits.

The benefits assigned to priority category 6 with respect to each participant are all of the participant's benefits under the plan, whether forfeitable or nonforfeitable.

§ 4044.17 Subclasses.

(a) *General rule.* A plan may establish one or more subclasses within any priority category, other than priority categories 1 and 2, which subclasses will govern the allocation of assets within that priority category. The subclasses may be based only on a participant's longer service, older age, or disability, or any combination thereof.

(b) *Limitation.* Except as provided in paragraph (c) of this section, whenever the allocation within a priority category on the basis of the subclasses established by the plan increases or decreases the cumulative amount of assets that otherwise would be allocated to guaranteed benefits, the assets so shifted shall be reallocated to other participants' benefits within the priority category in accordance with the subclasses.

(c) *Exception for subclasses in effect on September 2, 1974.* A plan administrator may allocate assets to subclasses within any priority category, other than priority categories 1 and 2, without regard to the limitation in paragraph (b) of this section if, on September 2, 1974, the plan provided for allocation of plan assets upon termination of the plan based on a participant's longer service, older age, or disability, or any combination thereof, and—

(1) Such provisions are still in effect; or

(2) The plan, if subsequently amended to modify or remove those subclasses, is re-amended to re-establish the same subclasses on or before July 28, 1981.

(d) *Discrimination under Code.* Notwithstanding the provisions of paragraphs (a) through (c) of this section, allocation of assets to subclasses established under this section is permitted only to the extent that the allocation does not result in discrimination prohibited under the Code and regulations thereunder.

Allocation of Residual Assets

§ 4044.30 [Reserved.]

Subpart B—Valuation of Benefits and Assets

General Provisions

§ 4044.41 General valuation rules.

(a) *Valuation of benefits*—(1) *Trusteed plans.* The plan administrator of a plan that has been or will be placed into trusteeship by the PBGC shall value plan benefits in accordance with §§ 4044.51 through 4044.57.

(2) *Non-trusteed plans.* The plan administrator of a non-trusteed plan shall value plan benefits in accordance with § 4044.71 through 4044.75. If a plan with respect to which PBGC has issued a Notice of Sufficiency is unable to satisfy all benefits assigned to priority categories 1 through 4 on the distribution date, the PBGC will place it into trusteeship and the plan administrator shall re-value the benefits in accordance with §§ 4044.51 through 4044.57. [See Note at beginning of part 4044.]

(b) *Valuation of assets.* Plan assets shall be valued at their fair market value, based on the method of valuation that most accurately reflects such fair market value.

Trusteed Plans

§ 4044.51 Benefits to be valued.

(a) *Form of benefit.* The plan administrator shall determine the form of each benefit to be valued in accordance with the following rules:

(1) If a benefit is in pay status as of the valuation date, the plan administrator shall value the form of the benefit being paid.

(2) If a benefit is not in pay status as of the valuation date but a valid election with respect to the form of benefit has been made on or before the valuation date, the plan administrator shall value the form of benefit so elected.

(3) If a benefit is not in pay status as of the valuation date and no valid election with respect to the form of benefit has been made on or before the valuation date, the plan administrator shall value the form of benefit that, under the terms of the plan, is payable in the absence of a valid election.

(b) *Timing of benefit.* The plan administrator shall value benefits whose starting date is subject to election using the assumption specified in paragraph (b)(1) or (b)(2) of this section.

(1) *Where election made.* If a valid election of the starting date of a benefit has been made on or before the valuation date, the plan administrator shall assume that the starting date of the benefit is the starting date so elected.

(2) *Where no election made.* If no valid election of the starting date of a benefit has been made on or before the valuation date, the plan administrator shall assume that the starting date of the benefit is the later of—

(i) The expected retirement age, as determined under §§ 4044.55 through 4044.57, of the participant with respect to whom the benefit is payable, or

(ii) The valuation date.

§ 4044.52 Valuation of benefits.

(a) *General rule.* Except as otherwise provided in paragraph (b) of this section (regarding the valuation of benefits payable as lump sums), the plan administrator shall value annuity benefits as of the valuation date by—

(1) Using the mortality assumptions prescribed by § 4044.53 and the interest assumptions prescribed by Table I of appendix B to this part;

(2) Using interpolation methods, where necessary, at least as accurate as linear interpolation;

(3) Using valuation formulas that accord with generally accepted actuarial principles and practices;

(4) Taking mortality into account during the deferral period of a deferred joint and survivor benefit only with respect to the participant (or other principal annuitant), if upon the death of the beneficiary the participant may elect an actuarially increased single life annuity or if a new beneficiary may succeed to the survivor portion of the benefit; and

(5) Adjusting the values to reflect the loading for expenses in accordance with appendix C to this part.

(b) *Benefits payable as lump sums.* For valuing benefits payable as lump sums (including the return of accumulated employee contributions upon death), and for determining whether the lump sum value of a benefit exceeds $3,500, the plan administrator shall value benefits in the same manner as benefits to be paid as annuities except that—

(1) The mortality assumptions prescribed in § 4044.54 and the interest assumptions set forth in Table II of appendix B to this part shall apply,

(2) There shall be no adjustment to reflect the loading for expenses, and

(3) Beneficiary mortality during the deferral period shall be disregarded as provided in paragraph (a)(4) of this section without regard to whether the participant may elect an actuarially increased single life annuity upon the death of the beneficiary or whether a new beneficiary may succeed to the survivor portion of the benefit.

§ 4044.53 Mortality assumptions—in general.

(a) *General rule.* Subject to paragraph (b) of this section (regarding certain death benefits), the plan administrator shall use the mortality factors prescribed in paragraphs (c), (d), and (e) of this section to value benefits under § 4044.52(a).

(b) *Certain death benefits.* If an annuity for one person is in pay status on the valuation date, and if the payment of a death benefit after the valuation date to another person, who need not be identifiable on the valuation date, depends in whole or in part on the death of the pay status annuitant, then the plan administrator shall value the death benefit using—

(1) the mortality rates that are applicable to the annuity in pay status under this section to represent the mortality of the pay status annuitant; and

(2) the mortality rates applicable to annuities not in pay status and to deferred benefits other than annuities, under paragraph (c) of this section, to represent the mortality of the death beneficiary.

(c) *Mortality rates for healthy lives.* The mortality rates applicable to annuities in pay status on the valuation date that are not being received as disability benefits, to annuities not in pay status on the valuation date, and to deferred benefits other than annuities, are—

(1) For male participants, the rates in Table 1 of appendix A to this part, and

(2) For female participants, the rates in Table 1 of appendix A to this part, set back 6 years.

(d) *Mortality rates for disabled lives (other than Social Security disability).* The mortality rates applicable to annuities in pay status on the valuation date that are being received as disability benefits and for which neither eligibility for, nor receipt of, Social Security disability benefits is a prerequisite, are—

(1) For male participants, the rates in Table 1 of appendix A to this part, set forward 3 years, and

(2) For female participants, the rates in Table 1 of appendix A to this part, set back 3 years.

(e) *Mortality rates for disabled lives (Social Security disability).* The mortality rates applicable to annuities in pay status on the valuation date that are being received as disability benefits and for which either eligibility for, or receipt of, Social Security disability benefits is a prerequisite, are the rates in Tables 2–M and 2–F of appendix A to this part.

§ 4044.54 Mortality assumptions—lump sums.

For determining whether the value of a benefit is $3,500 or less under § 4022.7(b)(1) of this chapter and for calculating the amount of a lump sum benefit, the PBGC will use the mortality rates in Table 3 of appendix A to this part.

Expected Retirement Age

§ 4044.55 XRA when a participant must retire to receive a benefit.

(a) *Applicability.* Except as provided in § 4044.57, the plan administrator shall determine the XRA under this section when plan provisions or established plan practice require a participant to retire from his or her job to begin receiving an early retirement benefit.

(b) *Data needed.* The plan administrator shall determine for each participant who is entitled to an early retirement benefit—

(1) The amount of the participant's monthly benefit payable at unreduced retirement age in the normal form payable under the terms of the plan or in the form validly elected by the participant before the termination date;

(2) The calendar year in which the participant reaches unreduced retirement age ("URA");

(3) The participant's URA; and

(4) The participant's earliest retirement age at the valuation date.

(c) *Procedure.* (1) The plan administrator shall determine whether a participant is in the high, medium or low retirement rate category using the applicable Selection of Retirement Rate Category Table in appendix D, based on the participant's benefit determined under paragraph (b)(1) of this section and the year in which the participant reaches URA.

(2) Based on the retirement rate category determined under paragraph (c)(1), the plan administrator shall determine the XRA from Table II–A, II–B or II–C, as appropriate, by using the participant's URA and earliest retirement age at valuation date.

§ 4044.56 XRA when a participant need not retire to receive a benefit.

(a) *Applicability.* Except as provided in § 4044.57, the plan administrator shall determine the XRA under this section when plan provisions or established plan practice do not require a participant to retire from his or her job to begin receiving his or her early retirement benefit.

(b) *Data needed.* The plan administrator shall determine for each participant—

(1) The participant's URA; and

(2) The participant's earliest retirement age at valuation date.

(c) *Procedure.* Participants in this case are always assigned to the high retirement rate category and therefore the plan administrator shall use Table II–C of appendix D to determine the XRA. The plan administrator shall determine the XRA from Table II–C by using the participant's URA and earliest retirement age at termination date.

§ 4044.57 Special rule for facility closing.

(a) *Applicability.* The plan administrator shall determine the XRA under this section, rather than § 4044.55 or § 4044.56, when both the conditions set forth in paragraphs (a)(1) and (a)(2) of this section exist.

(1) The facility at which the participant is or was employed permanently closed within one year before the valuation date, or is in the process of being permanently closed on the valuation date.

(2) The participant left employment at the facility less than one year before the valuation date or was still employed at the facility on the valuation date.

(b) *XRA.* The XRA is equal to the earliest retirement age at valuation date.

Non-Trusteed Plans

§ 4044.71 Valuation of annuity benefits.

The value of a benefit which is to be paid as an annuity is the cost of purchasing the annuity on the date of distribution from an insurer under the qualifying bid.

§ 4044.72 Form of annuity to be valued.

(a) When both the participant and beneficiary are alive on the date of distribution, the form of annuity to be valued is—

(1) For a participant or beneficiary already receiving a monthly benefit, that form which is being received, or

(2) For a participant or beneficiary not receiving a monthly benefit, the normal annuity form payable under the plan or the optional form for which the participant has made a valid election pursuant to § 2617.4(c) of this chapter. [See Note at beginning of part 4044.]

(b) When the participant dies after the date of plan termination but before the date of distribution, the form of annuity to be valued is determined under paragraph (b)(1) or (b)(2) of this section:

(1) For a participant who was entitled to a deferred annuity—

(i) If the form was a single or joint life annuity, no benefit shall be valued; or

(ii) If the participant had made a valid election of a lump sum benefit before he or she died, the form to be valued is the lump sum.

(2) For a participant who was eligible for immediate retirement, and for a participant who was in pay status at the date of termination—

(i) If the form was a single life annuity, no benefit shall be valued;

(ii) If the form was an annuity for a period certain and life thereafter, the form to be valued is an annuity for the certain period;

(iii) If the form was a joint and survivor annuity, the form to be valued is a single life annuity payable to the beneficiary, unless the beneficiary has also died, in which case no benefit shall be valued;

(iv) If the form was an annuity for a period certain and joint and survivor thereafter, the form to be valued is an annuity for the certain period and the life of the beneficiary thereafter, unless the beneficiary has also died, in which case the form to be valued is an annuity for the certain period;

(v) If the form was a cash refund annuity, the form to be valued is the remaining lump sum death benefit; or

(vi) If the participant had elected a lump sum benefit before he or she died, the form to be valued is the lump sum.

(c) When the participant is still living and the named beneficiary or spouse dies after the date of termination but before the date of distribution, the form of annuity to be valued is determined under paragraph (c)(1) or (c)(2) of this section:

(1) For a participant entitled to a deferred annuity—

(i) If the form was a joint and survivor annuity, the form to be valued is a single life annuity payable to the participant; or

(ii) If the form was an annuity for a period certain and joint and survivor thereafter, the form to be valued is an annuity for the certain period and the life of the participant thereafter.

(2) For a participant eligible for immediate retirement and for a participant in pay status at the date of termination—

(i) If the form was a joint and survivor annuity, the form to be valued is a single life annuity payable to the participant; or

(ii) If the form was an annuity for a period certain and joint survivor thereafter annuity, the form to be valued is an annuity for the certain period and for the life of the participant thereafter.

§ 4044.73 Lump sums and other alternative forms of distribution in lieu of annuities.

(a) *Valuation.* (1) The value of the lump sum or other alternative form of distribution is the present value of the normal form of benefit provided by the plan payable at normal retirement age, determined as of the date of distribution using reasonable actuarial assumptions as to interest and mortality.

(2) If the participant dies before the date of distribution, but had elected a lump sum benefit, the present value shall be determined as if the participant were alive on the date of distribution.

(b) *Actuarial assumptions.* The plan administrator shall specify the actuarial assumptions used to determine the value calculated under paragraph (a) of this section when the plan administrator submits the benefit valuation data to the PBGC pursuant to § 2617.12 of part 2617 of this chapter. The same actuarial assumptions shall be used for all such calculations. The PBGC reserves the right to review the actuarial assumptions used and to re-value the benefits determined by the plan administrator if the actuarial assumptions are found to be unreasonable.

[See Note at beginning of part 4044.]

§ 4044.74 Withdrawal of employee contributions.

(a) If a participant has not started to receive monthly benefit payments on the date of distribution, the value of the lump sum which returns mandatory employee contributions is equal to the total amount of contributions made by the participant, plus interest that is payable to the participant under the terms of the plan, plus interest on that total amount from the date of termination to the date of distribution. The rate of interest credited on employee contributions up to the date of termination shall be the greater of the interest rate provided under the terms of the plan or the interest rate required under section 204(c) of ERISA or section 411(c) of the IRC.

(b) If a participant has started to receive monthly benefit payments on the date of distribution, part of which are attributable to his or her contributions, the value of the lump sum which returns employee contributions is equal to the excess of the amount described in paragraph (b)(1) of this section over the amount computed in paragraph (b)(2) of this section.

(1) The amount of accumulated mandatory employee contributions remaining in the plan as of the date of termination plus interest from the date of termination to the date of distribution.

(2) The excess of benefit payments made from the plan between date of plan termination and the date of distribution, over the amount of payments that would have been made if the employee contributions had been paid as a lump sum on the date of plan termination, with interest accumulated on the excess from the date of payment to the date of distribution.

(c) *Interest assumptions.* The interest rate used under this section to credit interest between the date of termination to the date of distribution shall be a reasonable rate and shall be the same for both paragraphs (a) and (b).

§ 4044.75 Other lump sum benefits.

The value of a lump sum benefit which is not covered under § 4044.73 or § 4044.74 is equal to—

(a) The value under the qualifying bid, if an insurer provides the benefit; or

(b) The present value of the benefit as of the date of distribution, determined using reasonable actuarial assumptions, if the benefit is to be distributed other than by the purchase of the benefit from an insurer. The PBGC reserves the right to review the actuarial assumptions as to reasonableness and re-value the benefit if the actuarial assumptions are unreasonable.

[See Note at beginning of part 4044.]

Appendix A to Part 4044—Mortality Rate Tables

The tables in this appendix set forth for each age x the probability q_x that an individual aged x will not survive to attain age x+1.

TABLE 1.—MORTALITY TABLE FOR HEALTHY MALE PARTICIPANTS

Age x	q_x
5	0.000342
6	0.000318
7	0.000302
8	0.000294
9	0.000292

TABLE 1.—MORTALITY TABLE FOR HEALTHY MALE PARTICIPANTS—Continued

Age x	q_x
10	0.000293
11	0.000298
12	0.000304
13	0.000310
14	0.000317
15	0.000325
16	0.000333
17	0.000343
18	0.000353
19	0.000365
20	0.000377
21	0.000392
22	0.000408
23	0.000424
24	0.000444
25	0.000464
26	0.000488
27	0.000513
28	0.000542
29	0.000572
30	0.000607
31	0.000645
32	0.000687
33	0.000734
34	0.000785
35	0.000860
36	0.000907
37	0.000966
38	0.001039
39	0.001128
40	0.001238
41	0.001370
42	0.001527
43	0.001715
44	0.001932
45	0.002183
46	0.002471
47	0.002790
48	0.003138
49	0.003513
50	0.003909
51	0.004324
52	0.004755
53	0.005200
54	0.005660
55	0.006131
56	0.006618
57	0.007139
58	0.007719
59	0.008384
60	0.009158
61	0.010064
62	0.011133
63	0.012391
64	0.013868
65	0.015592
66	0.017579
67	0.019804
68	0.022229
69	0.024817
70	0.027530
71	0.030354
72	0.033370
73	0.036680
74	0.040388
75	0.044597
76	0.049388
77	0.054758
78	0.060678
79	0.067125

TABLE 1.—MORTALITY TABLE FOR HEALTHY MALE PARTICIPANTS—Continued

Age x	q_x
80	0.074070
81	0.081484
82	0.089320
83	0.097525
84	0.106047
85	0.114836
86	0.124170
87	0.133870
88	0.144073
89	0.154859
90	0.166307
91	0.178214
92	0.190460
93	0.203007
94	0.217904
95	0.234086
96	0.248436
97	0.263954
98	0.280803
99	0.299154
100	0.319185
101	0.341086
102	0.365052
103	0.393102
104	0.427255
105	0.469531
106	0.521945
107	0.586518
108	0.665268
109	0.760215
110	1.000000

TABLE 2–M.—MORTALITY TABLE FOR DISABLED MALE PARTICIPANTS RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS

Age x	$T2_x$
5	0.000000
6	0.000000
7	0.000000
8	0.000000
9	0.000000
10	0.000000
11	0.000000
12	0.000000
13	0.000000
14	0.000000
15	0.000000
16	0.000000
17	0.000000
18	0.000000
19	0.000000
20	0.048300
21	0.048300
22	0.048300
23	0.048300
24	0.048300
25	0.048300
26	0.046100
27	0.043600
28	0.041100
29	0.038600
30	0.036200
31	0.033900
32	0.032000
33	0.032000

TABLE 2–M.—MORTALITY TABLE FOR DISABLED MALE PARTICIPANTS RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS—Continued

Age x	$T2_x$
34	0.028800
35	0.027600
36	0.027200
37	0.027100
38	0.027300
39	0.027600
40	0.028200
41	0.028800
42	0.029700
43	0.030500
44	0.031400
45	0.032200
46	0.033000
47	0.034000
48	0.035300
49	0.036700
50	0.038300
51	0.040100
52	0.042000
53	0.043900
54	0.046000
55	0.048200
56	0.050600
57	0.053100
58	0.055500
59	0.058100
60	0.060300
61	0.062400
62	0.064300
63	0.065700
64	0.066800
65	0.069225
66	0.071813
67	0.074526
68	0.077350
69	0.080356
70	0.083676
71	0.087384
72	0.091593
73	0.096384
74	0.101754
75	0.107674
76	0.114121
77	0.121066
78	0.128480
79	0.136316
80	0.144521
81	0.153043
82	0.161832
83	0.171166
84	0.180866
85	0.191069
86	0.201855
87	0.213303
88	0.225210
89	0.237456
90	0.250003
91	0.264900
92	0.281082
93	0.295432
94	0.310950
95	0.327799
96	0.346150
97	0.366181
98	0.388062
99	0.412048
100	0.440098
101	0.474251

TABLE 2–M.—MORTALITY TABLE FOR DISABLED MALE PARTICIPANTS RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS—Continued

Age x	$_{12}p_x$
102	0.516527
103	0.568941
104	0.633514
105	0.712264
106	0.807211
107	1.000000

TABLE 2–F.—MORTALITY TABLE FOR DISABLED FEMALE PARTICIPANTS RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS

Age x	q_x
5	0.000000
6	0.000000
7	0.000000
8	0.000000
9	0.000000
10	0.000000
11	0.000000
12	0.000000
13	0.000000
14	0.000000
15	0.000000
16	0.000000
17	0.000000
18	0.000000
19	0.000000
20	0.026300
21	0.026300
22	0.026300
23	0.026300
24	0.026300
25	0.026300
26	0.025700
27	0.025300
28	0.024700
29	0.024200
30	0.023700
31	0.023200
32	0.022700
33	0.022200
34	0.021800
35	0.021400
36	0.021200
37	0.021000
38	0.020800
39	0.020800
40	0.020900
41	0.021000
42	0.021300
43	0.021600
44	0.021900
45	0.022400
46	0.022900
47	0.023500
48	0.024200
49	0.024900
50	0.025700
51	0.026400
52	0.027200
53	0.028100
54	0.028800
55	0.029500
56	0.030100
57	0.030700

TABLE 2–F.—MORTALITY TABLE FOR DISABLED FEMALE PARTICIPANTS RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS—Continued

Age x	q_x
58	0.031500
59	0.032300
60	0.033100
61	0.033900
62	0.034700
63	0.035500
64	0.036200
65	0.037269
66	0.038527
67	0.040004
68	0.041728
69	0.043715
70	0.045940
71	0.048365
72	0.050953
73	0.053666
74	0.056490
75	0.059506
76	0.062816
77	0.066524
78	0.070733
79	0.057524
80	0.080894
81	0.086814
82	0.093261
83	0.100206
84	0.107620
85	0.115456
86	0.123661
87	0.132183
88	0.140972
89	0.150306
90	0.160006
91	0.170209
92	0.180995
93	0.192443
94	0.204350
95	0.216596
96	0.229143
97	0.244040
98	0.260222
99	0.274572
100	0.290090
101	0.306939
102	0.325290
103	0.345321
104	0.367222
105	0.391188
106	0.419238
107	0.453391
108	0.495667
109	0.548081
110	0.612654
111	0.691404
112	0.786351
113	1.000000

TABLE 3.—LUMP SUM MORTALITY TABLE

Age	q_x
12	0.000000
13	0.000000
14	0.000000
15	0.000000

TABLE 3.—LUMP SUM MORTALITY TABLE—Continued

Age	q_x
16	0.001437
17	0.001414
18	0.001385
19	0.001351
20	0.001311
21	0.001267
22	0.001219
23	0.001167
24	0.001149
25	0.001129
26	0.001107
27	0.001083
28	0.001056
29	0.001083
30	0.001111
31	0.001141
32	0.001173
33	0.001208
34	0.001297
35	0.001398
36	0.001513
37	0.001643
38	0.001792
39	0.001948
40	0.002125
41	0.002327
42	0.002556
43	0.002818
44	0.003095
45	0.003410
46	0.003769
47	0.004180
48	0.004635
49	0.005103
50	0.005616
51	0.006196
52	0.006853
53	0.007543
54	0.008278
55	0.009033
56	0.009875
57	0.010814
58	0.011863
59	0.012952
60	0.014162
61	0.015509
62	0.017010
63	0.018685
64	0.020517
65	0.022562
66	0.024847
67	0.027232
68	0.029634
69	0.032073
70	0.034743
71	0.037667
72	0.040871
73	0.044504
74	0.048504
75	0.052913
76	0.057775
77	0.063142
78	0.068628
79	0.074648
80	0.081256
81	0.088518
82	0.096218
83	0.104310
84	0.112816
85	0.122079
86	0.132174

TABLE 3.—LUMP SUM MORTALITY TABLE—Continued

Age	q_x
87	0.143179
88	0.155147
89	0.168208
90	0.182461
91	0.198030
92	0.215035
93	0.232983
94	0.252545
95	0.273878

TABLE 3.—LUMP SUM MORTALITY TABLE—Continued

Age	q_x
96	0.297152
97	0.322563
98	0.349505
99	0.378865
100	0.410675
101	0.445768
102	0.483830
103	0.524301
104	0.568365

TABLE 3.—LUMP SUM MORTALITY TABLE—Continued

Age	q_x
105	0.616382
106	0.668696
107	0.725745
108	0.786495
109	0.852659
110	0.924666
111	1.000000

Appendix B to Part 4044—Interest Rates Used To Value Annuities and Lump Sums

TABLE I.—[ANNUITY VALUATIONS]

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, . . ., and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_1	for t=	i_2	for t=	i_3	for t=
November 1993	.0560	1–25	.0525	>25	N/A	N/A
December 1993	.0560	1–25	.0525	>25	N/A	N/A
January 1994	.0590	1–25	.0525	>25	N/A	N/A
February 1994	.0590	1–25	.0525	>25	N/A	N/A
March 1994	.0580	1–25	.0525	>25	N/A	N/A
April 1994	.0620	1–25	.0525	>25	N/A	N/A
May 1994	.0650	1–25	.0525	>25	N/A	N/A
June 1994	.0670	1–25	.0525	>25	N/A	N/A
July 1994	.0690	1–25	.0525	>25	N/A	N/A
August 1994	.0700	1–25	.0525	>25	N/A	N/A
September 1994	.0690	1–25	.0525	>25	N/A	N/A
October 1994	.0700	1–25	.0525	>25	N/A	N/A
November 1994	.0730	1–25	.0625	>25	N/A	N/A
December 1994	.0750	1–25	.0625	>25	N/A	N/A
January 1995	.0750	1–20	.0575	>20	N/A	N/A
February 1995	.0730	1–20	.0575	>20	N/A	N/A
March 1995	.0730	1–20	.0575	>20	N/A	N/A
April 1995	.0710	1–20	.0575	>20	N/A	N/A
May 1995	.0690	1–20	.0575	>20	N/A	N/A
June 1995	.0680	1–20	.0575	>20	N/A	N/A
July 1995	.0630	1–20	.0575	>20	N/A	N/A
August 1995	.0620	1–20	.0575	>20	N/A	N/A
September 1995	.0640	1–20	.0575	>20	N/A	N/A
October 1995	.0630	1–20	.0575	>20	N/A	N/A
November 1995	.0620	1–20	.0575	>20	N/A	N/A
December 1995	.0600	1–20	.0575	>20	N/A	N/A
January 1996	.0560	1–20	.0475	>20	N/A	N/A
February 1996	.0540	1–20	.0475	>20	N/A	N/A
March 1996	.0550	1–20	.0475	>20	N/A	N/A
April 1996	.0580	1–20	.0475	>20	N/A	N/A
May 1996	.0600	1–20	.0475	>20	N/A	N/A
June 1996	.0620	1–20	.0475	>20	N/A	N/A
July 1996	.0620	1–20	.0475	>20	N/A	N/A

TABLE II.—[LUMP SUM VALUATIONS]

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_1 + n_2$); interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years; interest rate i_2 shall apply for the following n_2 years; interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
1	11–1–93	12–1–93	4.25	4.00	4.00	4.00	7	8
2	12–1–93	1–1–94	4.25	4.00	4.00	4.00	7	8
3	1–1–94	2–1–94	4.50	4.00	4.00	4.00	7	8
4	2–1–94	3–1–94	4.50	4.00	4.00	4.00	7	8
5	3–1–94	4–1–94	4.50	4.00	4.00	4.00	7	8
6	4–1–94	5–1–94	4.75	4.00	4.00	4.00	7	8
7	5–1–94	6–1–94	5.25	4.50	4.00	4.00	7	8
8	6–1–94	7–1–94	5.25	4.50	4.00	4.00	7	8
9	7–1–94	8–1–94	5.50	4.75	4.00	4.00	7	8
10	8–1–94	9–1–94	5.75	5.00	4.00	4.00	7	8
11	9–1–94	10–1–94	5.50	4.75	4.00	4.00	7	8
12	10–1–94	11–1–94	5.50	4.75	4.00	4.00	7	8
13	11–1–94	12–1–94	6.00	5.25	4.00	4.00	7	8
14	12–1–94	1–1–95	6.25	5.50	4.25	4.00	7	8
15	1–1–95	2–1–95	6.00	5.25	4.00	4.00	7	8
16	2–1–95	3–1–95	6.00	5.25	4.00	4.00	7	8
17	3–1–95	4–1–95	6.00	5.25	4.00	4.00	7	8
18	4–1–95	5–1–95	5.75	5.00	4.00	4.00	7	8
19	5–1–95	6–1–95	5.50	4.75	4.00	4.00	7	8
20	6–1–95	7–1–95	5.50	4.75	4.00	4.00	7	8
21	7–1–95	8–1–95	4.75	4.00	4.00	4.00	7	8
22	8–1–95	9–1–95	4.75	4.00	4.00	4.00	7	8
23	9–1–95	10–1–95	5.00	4.25	4.00	4.00	7	8
24	10–1–95	11–1–95	4.75	4.00	4.00	4.00	7	8
25	11–1–95	12–1–95	4.75	4.00	4.00	4.00	7	8
26	12–1–95	1–1–96	4.50	4.00	4.00	4.00	7	8
27	1–1–96	2–1–96	4.50	4.00	4.00	4.00	7	8
28	2–1–96	3–1–96	4.25	4.00	4.00	4.00	7	8
29	3–1–96	4–1–96	4.25	4.00	4.00	4.00	7	8
30	4–1–96	5–1–96	4.75	4.00	4.00	4.00	7	8
31	5–1–96	6–1–96	5.00	4.25	4.00	4.00	7	8
32	6–1–96	7–1–96	5.00	4.25	4.00	4.00	7	8
33	7–1–96	8–1–96	5.00	4.25	4.00	4.00	7	8

Appendix C to Part 4044—Loading Assumptions

If the total value of the plan's benefit liabilities (as defined in 29 U.S.C. § 1301(a)(16)), exclusive of the loading charge, is—		The loading charge equals—
greater than	but less than or equal to	
$0	$200,000	5% of the total value of the plan's benefits, plus $200 for each plan participant.
$200,000		$10,000, plus a percentage of the excess of the total value over $200,000, plus $200 for each plan participant; the percentage is equal to 1%+[(P%−7.50%)/10], where P% is the initial rate, expressed as a percentage, set forth in Table I of appendix B for the valuation of annuities.

Appendix D to Part 4044—Tables Used To Determine Expected Retirement Age

TABLE I–96.—SELECTION OF RETIREMENT RATE CATEGORY

[For Plans with valuation dates after December 31, 1995, and before January 1, 1997]

Participant reaches NRA in year—	Participant's retirement rate category is—			
	Low[1] if monthly benefit at NRA is less than—	Medium[2] if monthly benefit at NRA is		High[3] if monthly benefit at NRA is greater than—
		From	To	
1997	400	400	1,684	1,684
1998	413	413	1,738	1,738
1999	426	426	1,794	1,794
2000	440	440	1,850	1,850
2001	453	453	1,907	1,907
2002	467	467	1,966	1,966
2003	482	482	2,027	2,027
2004	497	497	2,090	2,090
2005	512	512	2,155	2,155
2006 or later	528	528	2,221	2,221

[1] Table II–A.
[2] Table II–B.
[3] Table II–C.

TABLE II–A.—EXPECTED RETIREMENT AGES FOR INDIVIDUALS IN THE LOW CATEGORY

Participant's earliest retirement age at valuation date.	Normal retirement age										
	60	61	62	63	64	65	66	67	68	69	70
42	53	53	53	54	54	54	54	54	54	54	54
43	53	54	54	54	55	55	55	55	55	55	55
44	54	54	55	55	55	55	55	56	56	56	56
45	54	55	55	56	56	56	56	56	56	56	56
46	55	55	56	56	56	57	57	57	57	57	57
47	56	56	56	57	57	57	57	57	57	57	57
48	56	57	57	57	58	58	58	58	58	58	58
49	56	57	58	58	58	58	59	59	59	59	59
50	57	57	58	58	59	59	59	59	59	59	59
51	57	58	58	59	59	60	60	60	60	60	60
52	58	58	59	59	60	60	60	60	60	60	60
53	58	59	59	60	60	61	61	61	61	61	61
54	58	59	60	60	61	61	61	61	61	61	61
55	59	59	60	61	61	61	62	62	62	62	62
56	59	60	60	61	61	62	62	62	62	62	62
57	59	60	61	61	62	62	62	62	62	62	62
58	59	60	61	61	62	62	63	63	63	63	63
59	59	60	61	62	62	63	63	63	63	63	63
60	60	60	61	62	62	63	63	63	63	63	63
61	.....	61	61	62	63	63	63	63	64	64	64
62	.....	.....	62	62	63	63	63	64	64	64	64
63	.....	.....	.....	63	63	64	64	64	65	65	65
64	.....	.....	.....	.....	64	64	65	65	65	65	65
65	.....	.....	.....	.....	.....	65	65	65	65	65	65
66	.....	.....	.....	.....	.....	.....	66	66	66	66	66
67	.....	.....	.....	.....	.....	.....	.....	67	67	67	67
68	.....	.....	.....	.....	.....	.....	.....	.....	68	68	68
69	.....	.....	.....	.....	.....	.....	.....	.....	.....	69	69
70	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	70

TABLE II–B.—EXPECTED RETIREMENT AGES FOR INDIVIDUALS IN THE MEDIUM CATEGORY

Participant's earliest retirement age at valuation date	Normal retirement age										
	60	61	62	63	64	65	66	67	68	69	70
42	49	49	49	49	49	49	49	49	49	49	49
43	50	50	50	50	50	50	50	50	50	50	50
44	50	51	51	51	51	51	51	51	51	51	51
45	51	51	52	52	52	52	52	52	52	52	52
46	52	52	52	53	53	53	53	53	53	53	53

TABLE II–B.—EXPECTED RETIREMENT AGES FOR INDIVIDUALS IN THE MEDIUM CATEGORY—Continued

Participant's earliest retirement age at valuation date	Normal retirement age										
	60	61	62	63	64	65	66	67	68	69	70
47	53	53	53	53	53	54	54	54	54	54	54
48	54	54	54	54	54	54	54	54	54	54	54
49	54	55	55	55	55	55	55	55	55	55	55
50	55	55	56	56	56	56	56	56	56	56	56
51	56	56	56	57	57	57	57	57	57	57	57
52	56	57	57	57	57	58	58	58	58	58	58
53	57	57	58	58	58	58	58	58	58	58	58
54	57	58	58	59	59	59	59	59	59	59	59
55	58	58	59	59	59	60	60	60	60	60	60
56	58	59	59	60	60	60	60	60	60	60	60
57	59	59	60	60	61	61	61	61	61	61	61
58	59	60	60	61	61	61	61	61	61	61	61
59	59	60	61	61	62	62	62	62	62	62	62
60	60	60	61	62	62	62	62	62	62	62	62
61	.....	61	61	62	62	63	63	63	63	63	63
62	.....	.....	62	62	62	63	63	63	63	63	63
63	.....	.....	.....	63	63	64	64	64	64	64	64
64	.....	.....	.....	.....	64	64	64	64	64	64	64
65	.....	.....	.....	.....	.....	65	65	65	65	65	65
66	.....	.....	.....	.....	.....	.....	66	66	66	66	66
67	.....	.....	.....	.....	.....	.....	.....	67	67	67	67
68	.....	.....	.....	.....	.....	.....	.....	.....	68	68	68
69	.....	.....	.....	.....	.....	.....	.....	.....	.....	69	69
70	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	70

TABLE II–C.—EXPECTED RETIREMENT AGES FOR INDIVIDUALS IN THE HIGH CATEGORY

Participant's earliest retirement age at valuation date.	Normal retirement age										
	60	61	62	63	64	65	66	67	68	69	70
42	46	46	46	46	46	47	47	47	47	47	47
43	47	47	47	47	47	47	47	47	47	47	47
44	48	48	48	48	48	48	48	48	48	48	48
45	49	49	49	49	49	49	49	49	49	49	49
46	50	50	50	50	50	50	50	50	50	50	50
47	51	51	51	51	51	51	51	51	51	51	51
48	52	52	52	52	52	52	52	52	52	52	52
49	53	53	53	53	53	53	53	53	53	53	53
50	54	54	54	54	54	54	54	54	54	54	54
51	54	55	55	55	55	55	55	55	55	55	55
52	55	55	56	56	56	56	56	56	56	56	56
53	56	56	56	57	57	57	57	57	57	57	57
54	57	57	57	57	57	58	58	58	58	58	58
55	57	58	58	58	58	58	58	58	58	58	58
56	58	58	59	59	59	59	59	59	59	59	59
57	58	59	59	60	60	60	60	60	60	60	60
58	59	59	60	60	60	60	61	61	61	61	61
59	59	60	60	61	61	61	61	61	61	61	61
60	60	60	61	61	61	62	62	62	62	62	62
61	.....	61	61	62	62	62	62	62	62	62	62
62	.....	.....	62	62	62	62	62	62	62	62	62
63	.....	.....	.....	63	63	63	64	64	64	64	64
64	.....	.....	.....	.....	64	64	64	64	64	64	64
65	.....	.....	.....	.....	.....	65	65	65	65	65	65
66	.....	.....	.....	.....	.....	.....	66	66	66	66	66
67	.....	.....	.....	.....	.....	.....	.....	67	67	67	67
68	.....	.....	.....	.....	.....	.....	.....	.....	68	68	68
69	.....	.....	.....	.....	.....	.....	.....	.....	.....	69	69
70	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	70

PART 4047—RESTORATION OF TERMINATING AND TERMINATED PLANS

Sec.

4047.1 Purpose and scope.
4047.2 Definitions.
4047.3 Funding of restored plan.
4047.4 Payment of premiums.
4047.5 Repayment of PBGC payments of guaranteed benefits.

Authority: 29 U.S.C. 1302(b)(3), 1347.

§ 4047.1 Purpose and scope.

Section 4047 of ERISA gives the PBGC broad authority to take any necessary actions in furtherance of a plan restoration order issued pursuant to section 4047. This part (along with Treasury regulation 26 CFR 1.412(c)(1)–3) describes certain legal obligations that arise incidental to a plan restoration under section 4047. This part also establishes procedures with respect to these obligations that are intended to facilitate the orderly transition of a restored plan from terminated (or terminating) status to ongoing status, and to help ensure that the restored plan will continue to be ongoing consistent with the best interests of the plan's participants and beneficiaries and the single-employer insurance program. This part applies to terminated and terminating single-employer plans (except for plans terminated and terminating under ERISA section 4041(b)) with respect to which the PBGC has issued or is issuing a plan restoration order pursuant to ERISA section 4047.

§ 4047.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: controlled group, ERISA, IRS, PBGC, plan, plan administrator, plan year, and single-employer plan.

§ 4047.3 Funding of restored plan.

(a) *General.* Whenever the PBGC issues or has issued a plan restoration order under ERISA section 4047, it shall issue to the plan sponsor a restoration payment schedule order in accordance with the rules of this section. PBGC, through its Executive Director, shall also issue a certification to its Board of Directors and the IRS, as described in paragraph (c) of this section. If more than one plan is or has been restored, the PBGC shall issue a separate restoration payment schedule order and separate certification with respect to each restored plan.

(b) *Restoration payment schedule order.* A restoration payment schedule order shall set forth a schedule of payments sufficient to amortize the initial restoration amortization base described in paragraph (b) of 26 CFR 1.412(c)(1)–3 over a period extending no more than 30 years after the initial post-restoration valuation date, as defined in paragraph (a)(1) of 26 CFR 1.412(c)(1)–3. The restoration payment schedule shall be consistent with the requirements of 26 CFR 1.412(c)(1)–3 and may require payments at intervals of less than one year, as determined by the PBGC. The PBGC may, in its discretion, amend the restoration payment schedule at any time, consistent with the requirements of 26 CFR 1.412(c)(1)–3.

(c) *Certification.* The Executive Director's certification to the Board of Directors and the IRS pursuant to paragraph (a) of this section shall state that the PBGC has reviewed the funding of the plan, the financial condition of the plan sponsor and its controlled group members, the payments required under the restoration payment schedule (taking into account the availability of deferrals as permitted under paragraph (c)(4) of 26 CFR 1.412(c)(1)–3) and any other factor that the PBGC deems relevant, and, based on that review, determines that it is in the best interests of the plan's participants and beneficiaries and the single-employer insurance program that the restored plan not be reterminated.

(d) *Periodic PBGC review.* As long as a restoration payment schedule order issued under this section is in effect, the PBGC shall review annually the funding status of the plan with respect to which the order applies. As part of this review, the PBGC, through its Executive Director, shall issue a certification in the form described in paragraph (c) of this section. As a result of its funding review, PBGC may amend the restoration payment schedule, consistent with the requirements of paragraph (c)(2) of 26 CFR 1.412(c)(1)–3.

§ 4047.4 Payment of premiums.

(a) *General.* Upon restoration of a plan pursuant to ERISA section 4047, the obligation to pay PBGC premiums pursuant to ERISA section 4007 is reinstated as of the date on which the plan was trusteed under section 4042 of ERISA. Except as otherwise specifically provided in paragraphs (b) and (c) of this section, the amount of the outstanding premiums owed shall be computed and paid by the plan administrator in accordance with part 4006 of this chapter (Premium Rates) and the forms and instructions issued pursuant thereto, as in effect for the plan years for which premiums are owed.

(b) *Notification of premiums owed.* Whenever the PBGC issues or has issued a plan restoration order, it shall send a written notice to the plan administrator of the restored plan advising the plan administrator of the plan year(s) for which premiums are owed. PBGC will include with the notice the necessary premium payment forms and instructions. The notice shall prescribe the payment due dates for the outstanding premiums.

(c) *Methods for determining variable rate portion of the premium.* In general, the variable rate portion of the outstanding premiums shall be determined in accordance with the premium regulation and forms, as provided in paragraph (a) of this section, except that for any plan year following a plan year for which Form 5500, Schedule B was not filed because the plan was terminated, the alternative calculation method in § 4006.4(c) of this chapter may not be used.

§ 4047.5 Repayment of PBGC payments of guaranteed benefits.

(a) *General.* Upon restoration of a plan pursuant to ERISA section 4047, amounts paid by the PBGC from its single-employer insurance fund (the fund established pursuant to ERISA section 4005(a)) to pay guaranteed benefits and related expenses under the plan while it was terminated are a debt of the restored plan. The terms and conditions for payment of this debt shall be determined by the PBGC.

(b) *Repayment terms.* The PBGC shall prescribe reasonable terms and conditions for payment of the debt described in paragraph (a) of this section, including the number, amount and commencement date of the payments. In establishing the terms, PBGC will consider the cash needs of the plan, the timing and amount of contributions owed to the plan, the liquidity of plan assets, the interests of the single-employer insurance program, and any other factors PBGC deems relevant. PBGC may, in its discretion, revise any of the payment terms and conditions, upon written notice to the plan administrator in accordance with paragraph (c) of this section.

(c) *Notification to plan administrator.* Whenever the PBGC issues or has issued a plan restoration order, it shall send a written notice to the plan administrator of the restored plan advising the plan administrator of the amount owed the PBGC pursuant to paragraph (a) of this section. The notice shall also include the terms and conditions for payment of this debt, as established under paragraph (b) of this section.

PART 4050—MISSING PARTICIPANTS

Sec.

4050.1 Purpose and scope.
4050.2 Definitions.
4050.3 Method of distribution for missing participants.
4050.4 Diligent search.
4050.5 Designated benefit.
4050.6 Payment and required documentation.
4050.7 Benefits of missing participants—In general.
4050.8 Automatic lump sum.
4050.9 Annuity or elective lump sum—living missing participant.
4050.10 Annuity or elective lump sum—beneficiary of deceased missing participant.
4050.11 Limitations.
4050.12 Special rules.
4050.13 OMB control number.

Appendix A to Part 4050—Examples of Designated Benefit Determinations for Missing Participants Under § 4050.5

Appendix B to Part 4050—Examples of Benefit Payments for Missing participants Under §§ 4050.8 Through 4050.10

§ 4050.1 Purpose and scope.

This part prescribes rules for distributing benefits under a terminating single-employer plan for any individual whom the plan administrator has not located when distributing benefits under § 4041.27(c) of this chapter. This part applies to a plan if the plan's deemed distribution date (or the date of a payment made in accordance with § 4050.12) is in a plan year beginning on or after January 1, 1996.

§ 4050.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: annuity, benefit liabilities, Code, ERISA, insurer, irrevocable commitment, mandatory employee contributions, normal retirement age, PBGC, person, plan, plan administrator, plan year and title IV benefit.

In addition, for purposes of this part:

Deemed distribution date means the last day of the period in which distribution may be made (determined without regard to the provisions of this part) under § 4041.27(a) or § 4041.48(a) of this chapter (whichever applies) or such earlier date as may be selected by the plan administrator of a terminating plan that is on or after the date when all benefit distributions have been made under the plan except for distributions to—

(1) Late-discovered participants,

(2) Missing participants (including recently-missing participants) whose designated benefits are paid to the PBGC, and

(3) Recently-missing participants whose benefits are distributed by purchasing an irrevocable commitment from an insurer.

Designated benefit means the amount payable to the PBGC for a missing participant pursuant to § 4050.5.

Designated benefit interest rate means the rate of interest applicable to underpayments of guaranteed benefits by the PBGC under § 4022.81(d) of this chapter.

Guaranteed benefit form means, with respect to a benefit, the form in which the PBGC would pay a guaranteed benefit to a participant or beneficiary in the PBGC's program for trusteed plans under subparts A and B of part 4022 of this chapter (treating the deemed distribution date as the termination date for this purpose).

Late-discovered participant means a participant or beneficiary entitled to a distribution under a terminating plan whom the plan administrator locates before the plan administrator pays the individual's designated benefit to the PBGC (or distributes the individual's benefit by purchasing an irrevocable commitment from an insurer) and not more than 90 days before the deemed distribution date.

Missing participant means a participant or beneficiary entitled to a distribution under a terminating plan whom the plan administrator has not located as of the date when the plan administrator pays the individual's designated benefit to the PBGC (or distributes the individual's benefit by purchasing an irrevocable commitment from an insurer). In the absence of proof of death, individuals not located are presumed living.

Missing participant annuity assumptions means the interest rate assumptions and actuarial methods (using the interest rates for annuity valuations in Table I of appendix B to part 4044 of this chapter) for valuing a benefit to be paid by the PBGC as an annuity under subpart B of part 4044, applied—

(1) As if the deemed distribution date were the termination date;

(2) Using unisex mortality rates that are a fixed blend of 50 percent of the male mortality rates and 50 percent of the female mortality rates from the 1983 Group Annuity Mortality Table as prescribed in Rev. Rul. 95–6, 1995–1 C.B. 80 (Cumulative Bulletins are available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402);

(3) Without using the expected retirement age assumptions in §§ 4044.55 through 4044.57 of this chapter;

(4) Without making the adjustment for expenses provided for in § 4044.52(a)(5) of this chapter; and

(5) By adding $300, as an adjustment (loading) for expenses, for each missing participant whose designated benefit without such adjustment would be greater than $3,500.

Missing participant forms and instructions means PBGC Forms 501 and 602, Schedule MP thereto, and related forms, and their instructions.

Missing participant lump sum assumptions means the interest rate assumptions and actuarial methods (using the interest rates for lump sum valuations in Table II of appendix B to part 4044 of this chapter) for valuing a benefit to be paid by the PBGC as a lump sum under subpart B of part 4044 of this chapter, applied—

(1) As if the deemed distribution date were the termination date;

(2) Using mortality assumptions from Table 3 of appendix A to part 4044 of this chapter; and

(3) Without using the expected retirement age assumptions in §§ 4044.55 through 4044.57 of this chapter.

Pay status means, with respect to a benefit under a plan, that the plan administrator has made or (except for administrative delay or a waiting period) would have made one or more benefit payments.

Post-distribution certification means the post-distribution certification required by § 4041.27(h) or § 4041.48(b) of this chapter.

Recently-missing participant means a participant or beneficiary whom the plan administrator discovers to be a missing participant on or after the 90th day before the deemed distribution date.

Unloaded designated benefit means the designated benefit reduced by $300; except that the reduction shall not apply in the case of a designated benefit determined using the missing participant annuity assumptions without adding the $300 load described in paragraph (5) of the definition of "missing participant annuity assumptions."

§ 4050.3 Method of distribution for missing participants.

The plan administrator of a terminating plan shall distribute benefits for each missing participant by—

(a) purchasing from an insurer an irrevocable commitment that satisfies the requirements of § 4041.27(c) or § 4041.48(a)(1) of this chapter (whichever is applicable); or

(b) paying the PBGC a designated benefit in accordance with §§ 4050.4 through 4050.6 (subject to the special rules in § 4050.12).

§ 4050.4 Diligent search.

(a) *Search required.* A diligent search shall be made for each missing participant whose designated benefit (or voluntary employee contributions under § 4050.12(d)(2)) is paid to the PBGC. The search shall be made before the payment is made.

(b) *Diligence.* A search is a diligent search only if the search—

(1) Begins not more than 6 months before notices of intent to terminate are issued and is carried on in such a manner that if the individual is found, distribution to the individual can reasonably be expected to be made on or before the deemed distribution date (or, in the case of a recently-missing participant, on or before the 90th day after the deemed distribution date);

(2) Includes inquiry of any plan beneficiaries (including alternate payees) of the missing participant whose names and addresses are known to the plan administrator; and

(3) Includes use of a commercial locator service to search for the missing participant (without charge to the missing participant or reduction of the missing participant's plan benefit).

§ 4050.5 Designated benefit.

(a) *Amount of designated benefit.* The amount of the designated benefit shall be the amount determined under paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this section (whichever is applicable) or, if less, the maximum amount that could be provided under the plan to the missing participant in the form of a single sum in accordance with section 415 of the Code.

(1) *Mandatory lump sum.* The designated benefit of a missing participant required under a plan to receive a mandatory lump sum as of the deemed distribution date shall be the lump sum payment that the plan administrator would have distributed to the missing participant as of the deemed distribution date.

(2) *De minimis lump sum.* The designated benefit of a missing participant not described in paragraph (a)(1) of this section whose benefit is not in pay status as of the deemed distribution date and whose benefit has a *de minimis* actuarial present value ($3,500 or less) as of the deemed distribution date under the missing participant lump sum assumptions shall be such value.

(3) *No lump sum.* The designated benefit of a missing participant not described in paragraph (a)(1) or (a)(2) of this section who, as of the deemed distribution date, cannot elect an immediate lump sum under the plan shall be the actuarial present value of the missing participant's benefit as of the deemed distribution date under the missing participant annuity assumptions.

(4) *Elective lump sum.* The designated benefit of a missing participant not described in paragraph (a)(1), (a)(2), or (a)(3) of this section shall be the greater of the amounts determined under the methodologies of paragraph (a)(1) or (a)(3) of this section.

(b) *Assumptions.* When the plan administrator uses the missing participant annuity assumptions or the missing participant lump sum assumptions for purposes of determining the designated benefit under paragraph (a) of this section, the plan administrator shall value the most valuable benefit, as determined under paragraph (b)(1) of this section, using the assumptions described in paragraph (b)(2) or (b)(3) of this section (whichever is applicable).

(1) *Most valuable benefit.* For a missing participant whose benefit is in pay status as of the deemed distribution date, the most valuable benefit is the pay status benefit. For a missing participant whose benefit is not in pay status as of the deemed distribution date, the most valuable benefit is the benefit payable at the age on or after the deemed distribution date (beginning with the participant's earliest early retirement age and ending with the participant's normal retirement age) for which the present value as of the deemed distribution date is the greatest. The present value as of the deemed distribution date with respect to any age is determined by multiplying:

(i) the monthly (or other periodic) benefit payable under the plan; by

(ii) the present value (determined as of the deemed distribution date using the missing participant annuity assumptions) of a $1 monthly (or other periodic) annuity beginning at the applicable age.

(2) *Participant.* A missing participant who is a participant, and whose benefit is not in pay status as of the deemed distribution date, is assumed to be married to a spouse the same age, and the form of benefit that must be valued is the qualified joint and survivor annuity benefit that would be payable under the plan. If the participant's benefit is in pay status as of the deemed distribution date, the form and beneficiary of the participant's benefit are the form of benefit and beneficiary of the pay status benefit.

(3) *Beneficiary.* A missing participant who is a beneficiary, and whose benefit is not in pay status as of the deemed distribution date, is assumed not to be married, and the form of benefit that must be valued is the survivor benefit that would be payable under the plan. If the beneficiary's benefit is in pay status as of the deemed distribution date, the form and beneficiary of the beneficiary's benefit are the form of benefit and beneficiary of the pay status benefit.

(4) *Examples.* See Appendix A to this part for examples illustrating the provisions of this section.

(c) *Missed payments.* In determining the designated benefit, the plan administrator shall include the value of any payments that were due before the deemed distribution date but that were not made.

(d) *Payment of designated benefits.* Payment of designated benefits shall be made in accordance with § 4050.6 and shall be deemed made on the deemed distribution date.

§ 4050.6 Payment and required documentation.

(a) *Time of payment and filing*—(1) *General rule.* The plan administrator shall pay designated benefits, and file the information and certifications (of the plan administrator and the plan's enrolled actuary) specified in the missing participant forms and instructions, by the time the post-distribution certification is due (determined in accordance with § 4041.9 of this chapter). Except as otherwise provided in the missing participant forms and instructions, the plan administrator shall submit the designated benefits, information, and certifications with the post-distribution certification.

(2) *Recently-missing participants.* For a recently-missing participant, the plan administrator shall either purchase an irrevocable commitment from an insurer not later than 90 days after the deemed distribution date or pay a designated benefit to the PBGC by the time the amended post-distribution certification is due under paragraph (a)(2)(ii) of this section. Except as otherwise provided in the missing participant forms and instructions—

(i) *Payment.* The plan administrator shall submit the designated benefit with the amended post-distribution certification described in paragraph (a)(2)(ii) of this section; and

(ii) *Filing.* If (in the case of a recently-missing participant for whom a designated benefit is to be paid to the PBGC) a diligent search has not been completed or (in the case of any other recently-missing participant) an irrevocable commitment has not been

purchased when the plan administrator submits the filing described in paragraph (a)(1) of this section, the plan administrator shall so indicate in that filing and submit an amended filing (including an amended post-distribution certification) within 120 days after the deemed distribution date (subject to extension under § 4050.12(h)) in accordance with the missing participant forms and instructions.

(3) *Late-discovered participants.* When it is impracticable for the plan administrator to include complete and accurate final information on a late-discovered participant in a timely post-distribution certification, the plan administrator shall submit an amended post-distribution certification within 120 days after the deemed distribution date (subject to extension under § 4050.12(h)) in accordance with the missing participant forms and instructions.

(b) *Interest on late payments.* If the plan administrator does not pay a designated benefit by the time specified in paragraph (a) of this section, the plan administrator shall pay interest as assessed by the PBGC for the period beginning on the deemed distribution date and ending on the date when the payment is received by the PBGC. Interest will be assessed at the rate provided for late premium payments in § 4007.7 of this chapter. Interest assessed under this paragraph shall be deemed paid in full if payment of the amount assessed is received by the PBGC within 30 days after the date of a PBGC bill for such amount.

(c) *Supplemental information.* Within 30 days after the date of a written request from the PBGC, a plan administrator required to provide the information and certifications described in paragraph (a) of this section shall file supplemental information, as requested, for the purpose of verifying designated benefits, determining benefits to be paid by the PBGC under this part, and substantiating diligent searches.

(1) *Information mailed.* Supplemental information filed under this paragraph (c) is considered filed on the date of the United States postmark stamped on the cover in which the information is mailed, if—

(i) The postmark was made by the United States Postal Service; and

(ii) The information was mailed postage prepaid, properly addressed to the PBGC.

(2) *Information delivered.* When the plan administrator sends or transmits the information to the PBGC by means other than the United States Postal Service, the information is considered filed on the date it is received by the PBGC. Information received on a weekend or Federal holiday or after 5:00 p.m. on a weekday is considered filed on the next regular business day.

§ 4050.7 Benefits of missing participants—in general.

(a) *If annuity purchased.* If a plan administrator distributes a missing participant's benefit by purchasing an irrevocable commitment from an insurer, and the missing participant (or his or her beneficiary or estate) later contacts the PBGC, the PBGC will inform the person of the identity of the insurer and the relevant policy number.

(b) *If designated benefit paid.* If the PBGC locates or is contacted by a missing participant (or his or her beneficiary or estate) for whom a plan administrator paid a designated benefit to the PBGC, the PBGC will pay benefits in accordance with §§ 4050.8 through 4050.10 (subject to the limitations and special rules in §§ 4050.11 and 4050.12).

(c) *Examples.* See Appendix B to this part for examples illustrating the provisions of §§ 4050.8 through 4050.10.

§ 4050.8 Automatic lump sum.

This section applies to a missing participant whose designated benefit was determined under § 4050.5(a)(1) (mandatory lump sum) or § 4050.5(a)(2) (*de minimis* lump sum).

(a) *General rule*—(1) *Benefit paid.* The PBGC will pay a single sum benefit equal to the designated benefit plus interest at the designated benefit interest rate from the deemed distribution date to the date on which the PBGC pays the benefit.

(2) *Payee.* Payment shall be made—

(i) To the missing participant, if located;

(ii) If the missing participant died before the deemed distribution date, and if the plan so provides, to the missing participant's beneficiary or estate; or

(iii) If the missing participant dies on or after the deemed distribution date, to the missing participant's estate.

(b) *De minimis annuity alternative.* If the guaranteed benefit form for a missing participant whose designated benefit was determined under § 4050.5(a)(2) (*de minimis* lump sum) (or the guaranteed benefit form for a beneficiary of such a missing participant) would provide for the election of an annuity, the missing participant (or the beneficiary) may elect to receive an annuity. If such an election is made—

(1) The PBGC will pay the benefit in the elected guaranteed benefit form, beginning on the annuity starting date elected by the missing participant (or the beneficiary), which shall not be before the later of the date of the election or the earliest date on which the missing participant (or the beneficiary) could have begun receiving benefits under the plan; and

(2) The benefit paid will be actuarially equivalent to the designated benefit, *i.e.*, each monthly (or other periodic) benefit payment will equal the designated benefit divided by the present value (determined as of the deemed distribution date under the missing participant lump sum assumptions) of a $1 monthly (or other periodic) annuity beginning on the annuity starting date.

§ 4050.9 Annuity or elective lump sum—living missing participant.

This section applies to a missing participant whose designated benefit was determined under § 4050.5(a)(3) (no lump sum) or § 4050.5(a)(4) (elective lump sum) and who is living on the date as of which the PBGC begins paying benefits.

(a) *Missing participant whose benefit was not in pay status as of the deemed distribution date.* The PBGC will pay the benefit of a missing participant whose benefit was not in pay status as of the deemed distribution date as follows.

(1) *Time and form of benefit.* The PBGC will pay the missing participant's benefit in the guaranteed benefit form, beginning on the annuity starting date elected by the missing participant (which shall not be before the later of the date of the election or the earliest date on which the missing participant could have begun receiving benefits under the plan).

(2) *Amount of benefit.* The PBGC will pay a benefit that is actuarially equivalent to the unloaded designated benefit, *i.e.*, each monthly (or other periodic) benefit payment will equal the unloaded designated benefit divided by the present value (determined as of the deemed distribution date under the missing participant annuity assumptions) of a $1 monthly (or other periodic) annuity beginning on the annuity starting date.

(b) *Missing participant whose benefit was in pay status as of the deemed distribution date.* The PBGC will pay the benefit of a missing participant whose benefit was in pay status as of the deemed distribution date as follows.

(1) *Time and form of benefit.* The PBGC will pay the benefit in the form that was in pay status, beginning when the missing participant is located.

(2) *Amount of benefit.* The PBGC will pay the monthly (or other periodic) amount of the pay status benefit, plus a lump sum equal to the payments the missing participant would have received under the plan, plus interest on the missed payments (at the plan rate up to the deemed distribution date and thereafter at the designated benefit interest rate) to the date as of which the PBGC pays the lump sum.

(c) *Payment of lump sum.* If a missing participant whose designated benefit was determined under § 4050.5(a)(4) (elective lump sum) so elects, the PBGC will pay his or her benefit in the form of a single sum. This election is not effective unless the missing participant's spouse consents (if such consent would be required under section 205 of ERISA). The single sum equals the designated benefit plus interest (at the designated benefit interest rate) from the deemed distribution date to the date as of which the PBGC pays the benefit.

§ 4050.10 Annuity or elective lump sum—beneficiary of deceased missing participant.

This section applies to a beneficiary of a deceased missing participant whose designated benefit was determined under § 4050.5(a)(3) (no lump sum) or § 4050.5(a)(4) (elective lump sum) and whose benefit is not payable under § 4050.9.

(a) *If deceased missing participant's benefit was not in pay status as of the deemed distribution date.* The PBGC will pay a benefit with respect to a deceased missing participant whose benefit was not in pay status as of the deemed distribution date as follows.

(1) *General rule.*—(i) *Beneficiary.* The PBGC will pay a benefit to the surviving spouse of a missing participant who was a participant (unless the surviving spouse has properly waived a benefit in accordance with section 205 of ERISA).

(ii) *Form and amount of benefit.* The PBGC will pay the survivor benefit in the form of a single life annuity. Each monthly (or other periodic) benefit payment will equal 50% of the quotient that results when the unloaded designated benefit is divided by the present value (determined as of the deemed distribution date under the missing participant annuity assumptions, and assuming that the missing participant survived to the deemed distribution date) of a $1 monthly (or other periodic) joint and 50 percent survivor annuity beginning on the annuity starting date, under which reduced payments (at the 50 percent level) are made only after the death of the missing participant during the life of the spouse (and not after the death of the spouse during the missing participant's life).

(iii) *Time of benefit.* The PBGC will pay the survivor benefit beginning at the time elected by the surviving spouse (which shall not be before the later of the date of the election or the earliest date on which the surviving spouse could have begun receiving benefits under the plan).

(2) *If missing participant died before deemed distribution date.* Notwithstanding the provisions of paragraph (a)(1) of this section, if a beneficiary of a missing participant who died before the deemed distribution date establishes to the PBGC's satisfaction that he or she is the proper beneficiary or would have received benefits under the plan in a form, at a time, or in an amount different from the benefit paid under paragraph (a)(1)(ii) or (a)(1)(iii) of this section, the PBGC will make payments in accordance with the facts so established, but only in the guaranteed benefit form.

(3) *Elective lump sum.* Notwithstanding the provisions of paragraphs (a)(1) and (a)(2) of this section, if the beneficiary of a missing participant whose designated benefit was determined under § 4050.5(a)(4) (elective lump sum) so elects, the PBGC will pay his or her benefit in the form of a single sum. The single sum will be equal to the actuarial present value (determined as of the deemed distribution date under the missing participant annuity assumptions) of the death benefit payable on the annuity starting date, plus interest (at the designated benefit interest rate) from the deemed distribution date to the date as of which the PBGC pays the benefit.

(b) *If deceased missing participant's benefit was in pay status as of the deemed distribution date.* The PBGC will pay a benefit with respect to a deceased missing participant whose benefit was in pay status as of the deemed distribution date as follows.

(1) *Beneficiary.* The PBGC will pay a benefit to the beneficiary (if any) of the benefit that was in pay status as of the deemed distribution date.

(2) *Form and amount of benefit.* The PBGC will pay a monthly (or other periodic) amount equal to the monthly (or other periodic) amount, if any, that the beneficiary would have received under the form of payment in effect, plus a lump sum payment equal to the payments the beneficiary would have received under the plan subsequent to the missing participant's death and prior to the date as of which the benefit is paid under paragraph (b)(4) of this section, plus interest on the missed payments (at the plan rate up to the deemed distribution date and thereafter at the designated benefit interest rate) to the date as of which the benefit is paid under paragraph (b)(4) of this section.

(3) *Lump sum payment to estate.* The PBGC will make a lump sum payment to the missing participant's estate equal to the payments that the missing participant would have received under the plan for the period prior to the missing participant's death, plus interest on the missed payments (at the plan rate up to the deemed distribution date and thereafter at the designated benefit interest rate) to the date when the lump sum is paid. Notwithstanding the preceding sentence, if a beneficiary of a missing participant other than the estate establishes to the PBGC's satisfaction that the beneficiary is entitled to the lump sum payment, the PBGC will pay the lump sum to such beneficiary.

(4) *Time of benefit.* The PBGC will pay the survivor benefit beginning when the beneficiary is located.

(5) *Spouse deceased.* If the PBGC locates the estate of the deceased missing participant's spouse under circumstances where a benefit would have been paid under this paragraph (b) if the spouse had been located while alive, the PBGC shall pay to the spouse's estate a lump sum payment computed in the same manner as provided for in paragraph (b)(2) of this section based on the period from the missing participant's death to the death of the spouse.

§ 4050.11 Limitations.

(a) *Exclusive benefit.* The benefits provided for under this part shall be the only benefits payable by the PBGC to missing participants or to beneficiaries based on the benefits of deceased missing participants.

(b) *Limitation on benefit value.* The total actuarial present value of all benefits paid with respect to a missing participant under §§ 4050.8 through 4050.10, determined as of the deemed distribution date, shall not exceed the missing participant's designated benefit.

(c) *Guaranteed benefit.* If a missing participant or his or her beneficiary establishes to the PBGC's satisfaction that the benefit under §§ 4050.8 through 4050.10 (based on the designated benefit actually paid to the PBGC) is less than the minimum benefit in this paragraph (c), the PBGC shall instead pay the minimum benefit. The minimum benefit shall be the lesser of:

(1) The benefit as determined under the PBGC's rules for paying guaranteed benefits in trusteed plans under subparts A and B of part 4022 of this chapter (treating the deemed distribution date as the termination date for this purpose); or

(2) The benefit based on the designated benefit that should have been paid under § 4050.5.

(d) *Limitation on annuity starting date.* A missing participant (or his or her survivor) may not elect an annuity starting date after the later of—

(1) the required beginning date under section 401(a)(9) of the Code; or

(2) the date when the missing participant (or the survivor) is notified of his or her right to a benefit.

§ 4050.12 Special rules.

(a) *Late-discovered participants.* The plan administrator of a plan that terminates with one or more late-discovered participants shall (after issuing notices to each such participant in accordance with §§ 4041.21 and 4041.41 or 4041.46 of this chapter (whichever apply)), distribute each such late-discovered participant's benefit within the period (determined without regard to the provisions of this part) described in § 4041.27(a) or § 4041.48(a) of this chapter (whichever applies) if practicable or (if not) as soon thereafter as practicable, but not more than 90 days after the deemed distribution date (subject to extension under § 4050.12(h)).

(b) *Missing participants located quickly.* Notwithstanding the provisions of §§ 4050.8 through 4050.10, if the PBGC or the plan administrator locates a missing participant within 30 days after the PBGC receives the missing participant's designated benefit, the PBGC may in its discretion return the missing participant's designated benefit to the plan administrator, and the plan administrator shall treat the missing participant like a late-discovered participant.

(c) *Qualified domestic relations orders.* Plan administrators and the PBGC shall take the provisions of qualified domestic relations orders (QDROs) under section 206(d)(3) of ERISA or section 414(p) of the Code into account in determining designated benefits and benefit payments by the PBGC, including treating an alternate payee under an applicable QDRO as a missing participant or as a beneficiary of a missing participant, as appropriate, in accordance with the terms of the QDRO. For purposes of calculating the amount of the designated benefit of an alternate payee, the plan administrator shall use the assumptions for a missing participant who is a beneficiary under § 4050.5(b).

(d) *Employee contributions*—(1) *Mandatory employee contributions.* Notwithstanding the provisions of § 4050.5, if a missing participant made mandatory contributions (within the meaning of section 4044(a)(2) of ERISA), the missing participant's designated benefit shall not be less than the sum of the missing participant's mandatory contributions and interest to the deemed distribution date at the plan's rate or the rate under section 204(c) of ERISA (whichever produces the greater amount).

(2) *Voluntary employee contributions.*

(i) *Applicability.* This paragraph (d)(2) applies to any employee contributions that were not mandatory (within the meaning of section 4044(a)(2) of ERISA) to which a missing participant is entitled in connection with the termination of a defined benefit plan.

(ii) *Payment to PBGC.* A plan administrator, in accordance with the missing participant forms and instructions, shall pay the employee contributions described in paragraph (d)(2)(i) of this section (together with any earnings thereon) to the PBGC, and shall file Schedule MP with the PBGC, by the time the designated benefit is due under § 4050.6. Any such amount shall be in addition to the designated benefit and shall be separately identified.

(iii) *Payment by PBGC.* In addition to any other amounts paid by the PBGC under §§ 4050.8 through 4050.10, the PBGC shall pay any amount paid to it under paragraph (d)(2)(ii) of this section, with interest at the designated benefit interest rate from the date of receipt by the PBGC to the date of payment by the PBGC, in the same manner as described in § 4050.8 (automatic lump sums), except that if the missing participant died before the deemed distribution date and there is no beneficiary, payment shall be made to the missing participant's estate.

(e) *Residual assets.* The PBGC shall determine, in a manner consistent with the purposes of this part and section 4050 of ERISA, how the provisions of this part shall apply to any distribution, to participants and beneficiaries who cannot be located, of residual assets remaining after the satisfaction of benefit liabilities in connection with the termination of a defined benefit plan. Unless the PBGC otherwise determines, the deadline for payment of residual assets for a missing participant and for submission to the PBGC of a Schedule MP (or an amended Schedule MP) is the 30th day after the date on which all residual assets have been distributed to all participants and beneficiaries other than missing participants for whom payment of residual assets is made to the PBGC.

(f) *Sufficient distress terminations.* In the case of a plan undergoing a distress termination (under section 4041(c) of ERISA) that is sufficient for at least all guaranteed benefits and that distributes its assets in the manner described in section 4041(b)(3) of ERISA, the benefit assumed to be payable by the plan for purposes of determining the amount of the designated benefit under § 4050.5 shall be limited to the Title IV benefit plus any benefit to which funds under section 4022(c) of ERISA have been allocated.

(g) *Similar rules for later payments.* If the PBGC determines that one or more persons should receive benefits (which may be in addition to benefits already provided) in order for a plan termination to be valid (*e.g.*, upon audit of the termination), and one or more of such individuals cannot be located, the PBGC shall determine, in a manner consistent with the purposes of this part and section 4050 of ERISA, how the provisions of this part shall apply to such benefits.

(h) *Discretionary extensions.* The PBGC may in its sole discretion extend the 120-day amended filing periods in § 4050.6(a)(2)(ii) and (3) and the 90-day distribution periods in § 4050.6(a)(2) and in paragraph (a) of this section—

(1) Where a recently-missing participant becomes a late-discovered participant,

(2) Where the PBGC returns the designated benefit of a missing participant who is located quickly to the plan administrator under § 4050.12(b), or

(3) In other unusual circumstances.

(i) *Payments beginning after age 70½.* If the PBGC begins paying an annuity under § 4050.9(a) or 4050.10(a) to a participant or a participant's spouse after the January 1 following the date when the participant attained or would have attained age 70½, the PBGC shall pay to the participant or the spouse (or their respective estates) or both, as appropriate, the lump sum equivalent of the past annuity payments the participant and spouse would have received if the PBGC had begun making payments on such January 1. The PBGC shall also pay lump sum equivalents under this paragraph (i) if the PBGC locates the estate of the participant or spouse after both are deceased. (Nothing in this paragraph (i) shall increase the total value of the benefits payable with respect to a missing participant.)

§ 4050.13 OMB control number.

The collection of information requirements contained in this part have been approved by the Office of Management under OMB Control Number 1212–0036.

Appendix A to part 4050—Examples of Designated Benefit Determinations for Missing Participants under § 4050.5

The calculation of the designated benefit under § 4050.5 is illustrated by the following examples.

Example 1. Plan A provides that any participant whose benefit has a value at distribution of $1,750 or less will be paid a lump sum, and that no other lump sums will be paid. P, Q, and R are missing participants.

(1) As of the deemed distribution date, the value of P's benefit is $1,700 under plan A's assumptions. Under § 4050.5(a)(1), the plan administrator pays the PBGC $1,700 as P's designated benefit.

(2) As of the deemed distribution date, the value of Q's benefit is $3,700 under plan A's assumptions and $3,200 under the missing participant lump sum assumptions. Under § 4050.5(a)(2), the plan administrator pays the PBGC $3,200 as Q's designated benefit.

(3) As of the deemed distribution date, the value of R's benefit is $3,400 under plan A's assumptions, $3,600 under the missing participant lump sum assumptions, and $3,450 under the missing participant annuity assumptions. Under § 4050.5(a)(3), the plan administrator pays the PBGC $3,450 as R's designated benefit.

Example 2. Plan B provides for a normal retirement age of 65 and permits early commencement of benefits at any age between 60 and 65, with benefits reduced by 5 percent for each year before age 65 that the benefit begins. The qualified joint and 50 percent survivor annuity payable under the terms of the plan requires in all cases a 16 percent reduction in the benefit otherwise payable. The plan does not provide for elective lump sums.

(1) M is a missing participant who separated from service under plan B with a deferred vested benefit. M is age 50 at the deemed distribution date, and has a normal retirement benefit of $1,000 per month payable at age 65 in the form of a single life annuity. M's benefit as of the deemed distribution date has a value greater than $3,500 using either plan assumptions or the missing participant lump sum assumptions. Accordingly, M's designated benefit is to be determined under § 4050.5(a)(3).

(2) For purposes of determining M's designated benefit, M is assumed to be married to a spouse who is also age 50 on the deemed distribution date. M's monthly benefit in the form of the qualified joint and survivor annuity under the plan varies from $840 at age 65 (the normal retirement age) ($1,000 × (1 − .16)) to $630 at age 60 (the earliest retirement age) ($1,000 × (1 − 5 × (.05)) × (1 − .16)).

(3) Under § 4050.5(a)(3), M's benefit is to be valued using the missing participant annuity assumptions. The select and ultimate interest rates on Plan B's deemed distribution date are 7.50 percent for the first 20 years and 5.75 percent thereafter. Using these rates and the blended mortality table described in paragraph (2) of the definition of "missing participant annuity assumptions" in § 4050.2, the plan administrator determines that the benefit commencing at age 60 is the most valuable benefit (*i.e.*, the benefit at age 60 is more valuable than the benefit at ages 61, 62, 63, 64 or 65). The present value as of the deemed distribution date of each dollar of annual benefit (payable monthly as a joint and 50 percent survivor annuity) is $5.4307 if the benefit begins at age 60. (Because a new spouse may succeed to the survivor benefit, the mortality of the spouse during the deferral period is ignored.) Thus, without adjustment (loading) for expenses, the value of the benefit beginning at age 60 is $41,056 (12 × $630 × 5.4307). The designated benefit is equal to this value plus an expense adjustment of $300, or a total of $41,356.

Appendix B to Part 4050—Examples of Benefit Payments for Missing Participants Under §§ 4050.8 Through 4050.10

The provisions of §§ 4050.8 through 4050.10 are illustrated by the following examples.

Example 1. Participant M from Plan B (see Example 2 in Appendix A of this part) is located. M's spouse is ten years younger than M. M elects to receive benefits in the form of a joint and 50 percent survivor annuity commencing at age 62.

(1) M's designated benefit was $41,356. The unloaded designated benefit was $41,056. As of Plan B's deemed distribution date (and using the missing participant annuity assumptions), the present value per dollar of monthly benefit (payable monthly as a joint and 50 percent survivor annuity commencing at age 62 and reflecting the *actual* age of M's spouse) is $4.7405. Thus, the monthly benefit to M at age 62 is $722 ($41,056 / (4.7405 × 12)). M's spouse will receive $361 (50 percent of $722) per month for life after the death of M.

(2) If M had instead been found to have died on or after the deemed distribution date, and M's spouse wanted benefits to commence when M would have attained age 62, the same calculation would be performed to arrive at a monthly benefit of $361 to M's spouse.

Example 2. Participant P is a missing participant from Plan C, a plan that allows elective lump sums upon plan termination. Plan C's administrator pays a designated benefit of $10,000 to the PBGC on behalf of P, who was age 30 on the deemed distribution date.

(1) P's spouse, S, is located and has a death certificate showing that P died on or after the deemed distribution date with S as spouse. S is the same age as P, and would like survivor benefits to commence immediately, at age 55 (as permitted by the plan). S's benefit is the survivor's share of the joint and 50 percent survivor annuity which is actuarially equivalent, as of the deemed distribution date, to $9,700 (the unloaded designated benefit).

(2) The select and ultimate interest rates on Plan C's deemed distribution date were 7.50 percent for the first 20 years and 5.75 percent thereafter. Using these rates and the blended mortality table described in paragraph (2) of the definition of "missing participant annuity assumptions" in § 4050.2, the present value as of the deemed distribution date of each dollar of annual benefit (payable monthly as a joint and 50 percent survivor annuity) is $2.4048 if the benefit begins when S and P would have been age 55. Thus, the monthly benefit to S commencing at age 55 is $168 (50 percent of $9,700 / (2.4048 × 12)). Since P could have elected a lump sum upon plan termination, S may elect a lump sum. S's lump sum is the present value as of the deemed distribution date (using the missing participant annuity assumptions) of the monthly benefit of $168, accumulated with interest at the designated benefit interest rate to the date paid.

PART 4061—AMOUNTS PAYABLE BY THE PENSION BENEFIT GUARANTY CORPORATION

§ 4061.1 Cross-references.

See part 4022 of this chapter regarding benefits payable under terminated single-employer plans and § 4281.47 of this chapter regarding financial assistance to pay benefits under insolvent multiemployer plans.

PART 4062—LIABILITY FOR TERMINATION OF SINGLE-EMPLOYER PLANS

Sec.

4062.1 Purpose and scope.
4062.2 Definitions
4062.3 Amount and payment of section 4062(b) liability.
4062.4 Determinations of net worth and collective net worth.
4062.5 Net worth record date.
4062.6 Net worth notification and information.
4062.7 Calculating interest on liability and refunds of overpayments.
4062.8 Arrangements for satisfying liability.
4062.9 Filing of documents.
4062.10 Computation of time.

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367, 1368.

§ 4062.1 Purpose and scope.

The purpose of this part is to set forth rules for determination and payment of the liability incurred, under section 4062(b) of ERISA, upon termination of any single-employer plan and, to the extent appropriate, determination of the liability incurred with respect to multiple employer plans under sections 4063 and 4064 of ERISA. The provisions of this part regarding the amount of liability to the PBGC that is incurred upon termination of a single-employer plan apply with respect to a plan for which a notice of intent to terminate under section 4041(c) of ERISA is issued or proceedings to terminate under section 4042 of ERISA are instituted after December 17, 1987. Those provisions also apply, to the extent described in paragraph (a) of this section, to the amount of liability for withdrawal from a multiple employer plan after that date.

§ 4062.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: benefit liabilities, Code, contributing sponsor, controlled group, ERISA, fair market value, guaranteed benefit, multiple employer plan, notice of intent to terminate, PBGC, person, plan, plan administrator, proposed termination date, single-employer plan, and termination date.

In addition, for purposes of this part, the term *collective net worth of persons subject to liability in connection with a plan termination* means the sum of the individual net worths of all persons that have individual net worths which are greater than zero and that (as of the termination date) are contributing sponsors of the terminated plan or members of their controlled groups, as determined in accordance with section 4062(d)(1) of ERISA and § 4062.4 of this part.

§ 4062.3 Amount and payment of section 4062(b) liability.

(a) *Amount of liability.—(1) General rule.* Except as provided in paragraph (a)(2) of this section, the amount of section 4062(b) liability is the total amount (as of the termination date) of the unfunded benefit liabilities (within the meaning of section 4001(a)(18) of ERISA) to all participants and beneficiaries under the plan, together with interest calculated from the termination date in accordance with § 4062.7.

(2) *Special rule in case of subsequent finding of inability to pay guaranteed benefits.* In any distress termination proceeding under section 4041(c) of ERISA and part 4041 of this chapter in which (as described in section 4041(c)(3)(C)(ii) of ERISA), after a determination that the plan is sufficient for benefit liabilities or for guaranteed benefits, the plan administrator finds that the plan is or will be insufficient for guaranteed benefits and the PBGC concurs with that finding, or the PBGC makes such a finding on its own initiative, actuarial present values shall be determined as of the date of the notice to, or the finding by, the PBGC of insufficiency for guaranteed benefits.

(b) *Payment of liability.* Section 4062(b) liability is due and payable as of the termination date, in cash or securities acceptable to the PBGC, except that, as provided in § 4062.8(c), the PBGC shall prescribe commercially reasonable terms for payment of so much of such liability as exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination. The PBGC may make alternative arrangements, as provided in § 4062.8(b).

§ 4062.4 Determinations of net worth and collective net worth.

(a) *General rules.* When a contributing sponsor, or member(s) of a contributing sponsor's controlled group, notifies and submits information to the PBGC in accordance with § 4062.6, the PBGC shall determine the net worth, as of the net worth record date, of that contributing sponsor and any members of its controlled group based on the factors set forth in paragraph (c) of this section and shall include the value of any assets that it determines, pursuant to paragraph (d) of this section, have been improperly transferred. In making such determinations, the PBGC will consider information submitted pursuant to § 4062.6. The PBGC shall then determine the collective net worth of persons subject to liability in connection with a plan termination.

(b) *Partnerships and sole proprietorships.* In the case of a person that is a partnership or a sole proprietorship, net worth does not include the personal assets and liabilities of the partners or sole proprietor, except for the assets included pursuant to paragraph (d) of this section. As used in this paragraph, "personal assets" are those assets which do not produce income for the business being valued or are not used in the business.

(c) *Factors for determining net worth.* A person's net worth is equal to its fair market value and fair market value shall be determined on the basis of the factors set forth below, to the extent relevant; different factors may be considered with respect to different portions of the person's operations.

(1) A bona fide sale of, agreement to sell, or offer to purchase or sell the business of the person made on or about the net worth record date.

(2) A bona fide sale of, agreement to sell, or offer to purchase or sell stock or a partnership interest in the person, made on or about the net worth record date.

(3) If stock in the person is publicly traded, the price of such stock on or about the net worth record date.

(4) The price/earnings ratios and prices of stocks of similar trades or businesses on or about the net worth record date.

(5) The person's economic outlook, as reflected by its earnings and dividend projections, current financial condition, and business history.

(6) The economic outlook for the person's industry and the market it serves.

(7) The appraised value, including the liquidating value, of the person's tangible and intangible assets.

(8) The value of the equity assumed in a plan of reorganization of a person in a case under title 11, United States Code, or any similar law of a state or political subdivision thereof.

(9) Any other factor relevant in determining the person's net worth.

(d) *Improper transfers.* A person's net worth shall include the value of any assets transferred by the person which the PBGC determines were improperly transferred for the purpose, as inferred from all the facts and circumstances, and with the effect of avoiding liability under this part. Assets "improperly transferred" include but are not limited to assets sold, leased or otherwise transferred for less than adequate consideration and assets distributed as gifts, capital distributions and stock redemptions inconsistent with past practices of the employer. The word "transfer" includes but is not limited to sales, assignments, pledges, leases, gifts and dividends.

§ 4062.5 Net worth record date.

(a) *General.* Unless the PBGC establishes an earlier net worth record date pursuant to paragraph (b) of this section, the net worth record date, for all purposes under this part, is the plan's termination date.

(b) *Establishment of an earlier net worth record date.* At any time during a termination proceeding, the PBGC, in order to prevent undue loss to or abuse of the plan termination insurance system, may establish as the net worth record date an earlier date during the 120-day period ending with the termination date.

(c) *Notification.* Whenever the PBGC establishes an earlier net worth record date, it shall immediately give liable person(s) written notification of that fact. The written notice may also include a request for additional information, as provided in § 4062.6(a)(3).

§ 4062.6 Net worth notification and information.

(a) *General.* (1) A contributing sponsor or member of the contributing sponsor's controlled group that believes section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination shall—

(i) So notify the PBGC by the 90th day after the notice of intent to terminate is filed with the PBGC or, if no notice of intent to terminate is filed with the PBGC and the PBGC institutes proceedings under section 4042 of ERISA, within 30 days after the establishment of the plan's termination date in such proceedings; and

(ii) Submit to the PBGC the information specified in paragraph (b) of this section with respect to the contributing sponsor and each member of the contributing sponsor's controlled group (if any)—

(A) By the 120th day after the proposed termination date, or

(B) If no notice of intent to terminate is filed with the PBGC and the PBGC institutes proceedings under section 4042 of ERISA, within 120 days after the establishment of the plan's termination date in such proceedings.

(2) If a contributing sponsor or a member of its controlled group complies with the requirements of paragraph (a)(1) of this section, the PBGC will consider the requirements to be satisfied by all members of that controlled group.

(3) The PBGC may require any person subject to liability—

(i) To submit the information specified in paragraph (b) of this section within a shorter period whenever the PBGC believes that its ability to obtain information or payment of liability is in jeopardy, and

(ii) To submit additional information within 30 days, or a different specified time, after the PBGC's written notification that it needs such information to make net worth determinations.

(4) If a provision of paragraph (b) of this section or a PBGC notice specifies information previously submitted to the PBGC, a person may respond by identifying the previous submission in which the response was provided.

(b) *Net worth information.* The following information specifications apply, individually, with respect to each person subject to liability:

(1) An estimate, made in accordance with § 4062.4, of the person's net worth on the net worth record date and a statement, with supporting evidence, of the basis for the estimate.

(2) A copy of the person's audited (or if not available, unaudited) financial statements for the 5 full fiscal years plus any partial fiscal year preceding the net worth record date. The statements must include balance sheets, income statements, and statements of changes in financial position and must be accompanied by the annual reports, if available.

(3) A statement of all sales and copies of all offers or agreements to buy or sell at least 25 percent of the person's assets or at least 5 percent of the person's stock or partnership interest, made on or about the net worth record date.

(4) A statement of the person's current financial condition and business history.

(5) A statement of the person's business plans, including projected earnings and, if available, dividend projections.

(6) Any appraisal of the person's fixed and intangible assets made on or about the net worth record date.

(7) A copy of any plan of reorganization, whether or not confirmed, with respect to a case under title 11, United States Code, or any similar law of a state or political subdivision thereof, involving the person and occurring within 5 calendar years prior to or any time after the net worth record date.

(c) *Incomplete submission.* If a contributing sponsor and/or members of the contributing sponsor's controlled group do not submit all of the information required pursuant to paragraph (a) of this section (other than the estimate described in paragraph (b)(1) of this section) with respect to each person subject to liability, the PBGC may base determinations of net worth and the collective net worth of persons subject to liability in connection with a plan termination on any such information that such person(s) did submit, as well as any other pertinent information that the PBGC may have. In general, the PBGC will view information as of a date further removed from the net worth record date as having less probative value than information as of a date nearer to the net worth record date.

§ 4062.7 Calculating interest on liability and refunds of overpayments.

(a) *Interest.* Whether or not the PBGC has granted deferred payment terms pursuant to § 4062.8, the amount of liability under this part includes interest, from the termination date, on any unpaid portion of the liability. Such interest accrues at the rate set forth in paragraph (c) of this section until the liability is paid in full and is compounded daily. When liability under this part is paid in more than one payment, the PBGC will apply each payment to the satisfaction of accrued interest and then to the reduction of principal.

(b) *Refunds.* If a contributing sponsor or member(s) of a contributing sponsor's controlled group pays the PBGC an amount that exceeds the full amount of liability under this part, the PBGC shall refund the excess amount, with interest at the rate set forth in paragraph (c) of this section. Interest on an overpayment accrues from the later of the date of the overpayment or 10 days prior to the termination date until the date of the refund and is compounded daily.

(c) *Interest rate.* The interest rate on liability under this part and refunds thereof is the annual rate prescribed in section 6601(a) of the Code, and will change whenever the interest rate under section 6601(a) of the Code changes.

§ 4062.8 Arrangements for satisfying liability.

(a) *General.* The PBGC will defer payment, or agree to other arrangements for the satisfaction, of any portion of liability to the PBGC only when—

(1) As provided in paragraph (b) of this section, the PBGC determines that such action is necessary to avoid the imposition of a severe hardship and that there is a reasonable possibility that the terms so prescribed will be met and the entire liability paid; or

(2) As provided in paragraph (c) of this section, the PBGC determines that section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination.

(b) *Upon request.* If the PBGC determines that such action is necessary to avoid the imposition of a severe hardship on persons that are or may become liable under section 4062, 4063, or 4064 of ERISA and that there is a reasonable possibility that persons so liable will be able to meet the terms prescribed and pay the entire liability, the PBGC, in its discretion and when so requested in accordance with paragraph (b)(2) of this section, may grant deferred payment or other terms for the satisfaction of such liability.

(1) In determining what, if any, terms to grant, the PBGC shall examine the following factors:

(i) The ratio of the liability to the net worth of the person making the request and (if different) to the collective net worth of persons subject to liability in connection with a plan termination.

(ii) The overall financial condition of persons that are or may become liable, including, with respect to each such person—

(A) The amounts and terms of existing debts;

(B) The amount and availability of liquid assets;

(C) Current and past cash flow; and

(D) Projected cash flow, including a projection of the impact on operations that would be caused by the immediate full payment of the liability.

(iii) The availability of credit from private sector sources to the person making the request and to other liable persons.

(2) A contributing sponsor or member of a contributing sponsor's controlled

group may request deferred payment or other terms for the satisfaction of any portion of the liability under section 4062, 4063, or 4064 of ERISA at any time by filing a written request. The request must include the information specified in § 4062.6(b), except that—

(i) If the request is filed one year or more after the net worth record date, references to "the net worth record date" in § 4062.6(b) shall be replaced by "the most recent annual anniversary of the net worth record date"; and

(ii) Information that already has been submitted to the PBGC need not be submitted again.

(c) *Liability exceeding 30 percent of collective net worth.* If the PBGC determines that section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to the liability, the PBGC will, after making a reasonable effort to reach agreement with such persons, prescribe commercially reasonable terms for payment of so much of the liability as exceeds 30 percent of the collective net worth of such persons. The terms prescribed by the PBGC for payment of that portion of the liability (including interest) will provide for deferral of 50 percent of any amount otherwise payable for any year if a person subject to such liability demonstrates to the satisfaction of the PBGC that no person subject to such liability has any individual pre-tax profits (within the meaning of section 4062(d)(2) of ERISA) for such person's last full fiscal year ending during that year.

(d) *Interest.* Interest on unpaid liability is calculated in accordance with § 4062.7(a).

(e) *Security during period of deferred payment.* As a condition to the granting of deferred payment terms, PBGC may, in its discretion, require that the liable person(s) provide PBGC with such security for its obligations as the PBGC deems adequate.

§ 4062.9 Filing of documents.

(a) *Date of filing.* Any document (including information) required or permitted to be filed under this part is considered filed on the date of the United States postmark stamped on the cover in which the document is mailed, provided that—

(1) The postmark was made by the United States Postal Service; and

(2) The document was mailed postage prepaid, properly packaged and addressed to the PBGC. If the conditions stated in both paragraphs (a)(1) and (a)(2) of this section are not met, the document is considered filed on the date it is received by the PBGC. Documents received after regular business hours are considered filed on the next regular business day.

(b) *Where to file.* Payments of liability shall be clearly designated as such and include the name of the plan. Such payments shall be sent to the address specified in the notification or demand for liability issued by the PBGC under § 4068.3 or, if not so specified, to the address provided, upon request, by the Investment Management Division, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026. Any document (including information) required or permitted to be filed under this part, except for documents relating to appeals, shall be submitted to the Insurance Operations Department, Pension Benefit Guaranty Corporation, at the above address. Any document submitted pursuant to part 4003 in connection with an appeal of an initial determination shall be submitted to the Appeals Board, Pension Benefit Guaranty Corporation, at the above address.

§ 4062.10 Computation of time.

In computing any period of time prescribed or allowed by this subpart, the day of the act, event, or default from which the designated period of time begins to run is not counted. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a Federal holiday. For the purpose of computing interest accrued, a Saturday, Sunday or Federal holiday referred to in the previous sentence shall be included.

(Approved by the Office of Management and Budget under control number 1212–0017.)

PART 4063—WITHDRAWAL LIABILITY; PLANS UNDER MULTIPLE CONTROLLED GROUPS

Authority: 29 U.S.C. 1302(b)(3).

§ 4063.1 Cross-references.

(a) Part 4062, subpart A, of this chapter sets forth rules for determination and payment of the liability incurred, under section 4062(b) of ERISA, upon termination of any single-employer plan and, to the extent appropriate, determination of the liability incurred with respect to multiple employer plans under sections 4063 and 4064 of ERISA.

(b) Part 4068 of this chapter includes rules regarding the PBGC's lien under section 4068 of ERISA with respect to liability arising under section 4062, 4063, or 4064.

PART 4064—LIABILITY ON TERMINATION OF SINGLE-EMPLOYER PLANS UNDER MULTIPLE CONTROLLED GROUPS

Authority: 29 U.S.C. 1302(b)(3).

§ 4064.1 Cross-references.

(a) Part 4062, subpart A, of this chapter sets forth rules for determination and payment of the liability incurred under section 4062(b) of ERISA, upon termination of any single-employer plan and, to the extent appropriate, determination of the liability incurred with respect to multiple employer plans under sections 4063 and 4064 of ERISA.

(b) Part 4068 of this chapter includes rules regarding the PBGC's lien under section 4068 of ERISA with respect to liability arising under section 4062, 4063, or 4064.

PART 4065—ANNUAL REPORT

Sec.

4065.1 Purpose and scope.
4065.2 Definitions.
4065.3 Filing requirement.

Authority: 29 U.S.C. 1302, 1365.

§ 4065.1 Purpose and scope.

The purpose of this part is to specify the form and content of the Annual Report required by section 4065 of ERISA. This part applies to all plans covered by title IV of ERISA.

§ 4065.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: ERISA, IRS, PBGC, and plan.

§ 4065.3 Filing requirement.

Plan administrators shall file the Annual Report on IRS/DOL/PBGC Forms 5500, 5500–C, 5500–K or 5500–R, as appropriate, in accordance with the instructions therein. (Approved by the Office of Management and Budget under control number 1212–0026.)

PART 4067—RECOVERY OF LIABILITY FOR PLAN TERMINATIONS

§ 4067.1 Cross-reference.

Section 4062.8 of this chapter contains rules on deferred payment and other arrangements for satisfaction of liability to the PBGC after termination of single-employer plans.

PART 4068—LIEN FOR LIABILITY

Sec.

4068.1 Purpose; cross-references.
4068.2 Definitions.
4068.3 Notification of and demand for liability.
4068.4 Lien.

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367–1368.

§ 4068.1 Purpose; cross-references.

This part contains rules regarding the PBGC's lien under section 4068 of ERISA with respect to liability arising under section 4062, 4063, or 4064 of ERISA.

§ 4068.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: ERISA, PBGC, person, plan, and termination date.

Collective net worth of persons subject to liability in connection with a plan termination has the meaning in § 4062.2.

§ 4068.3 Notification of and demand for liability.

(a) *Notification of liability.* Except as provided in paragraph (c) of this section, when the PBGC has determined the amount of the liability under part 4062 and whether or not the liability has already been paid, the PBGC shall notify liable person(s) in writing of the amount of the liability. If the full liability has not yet been paid, the notification will include a request for payment of the full liability and will indicate that, as provided in § 4062.8, the PBGC will prescribe commercially reasonable terms for payment of so much of the liability as it determines exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination. In all cases, the notification will include a statement of the right to appeal the assessment of liability pursuant to part 4003.

(b) *Demand for liability.* Except as provided in paragraph (c) of this section, if person(s) liable to the PBGC fail to pay the full liability and no appeal is filed or an appeal is filed and the decision on appeal finds liability, the PBGC will issue a demand letter for the liability—

(1) If no appeal is filed, upon the expiration of time to file an appeal under part 4003; or

(2) If an appeal is filed, upon issuance of a decision on the appeal finding that there is liability under this part.

The demand letter will indicate that, as provided in § 4062.8, the PBGC will prescribe commercially reasonable terms for payment of so much of the liability as it determines exceeds 30 percent of the collective net worth of such persons.

(c) *Special rule.* Notwithstanding paragraphs (a) and (b) of this section, the PBGC may, in any case in which it believes that its ability to assert or obtain payment of liability is in jeopardy, issue a demand letter for the liability under this part immediately upon determining the liability, without first issuing a notification of liability pursuant to paragraph (a) of this section. When the PBGC issues a demand letter under this paragraph, there is no right to an appeal pursuant to part 4003 of this chapter.

§ 4068.4 Lien.

If any person liable to the PBGC under section 4062, 4063, or 4064 of ERISA fails or refuses to pay the full amount of such liability within the time specified in the demand letter issued under § 4068.3, the PBGC shall have a lien in the amount of the liability, including interest, arising as of the plan's termination date, upon all property and rights to property, whether real or personal, belonging to that person, except that such lien may not be in an amount in excess of 30 percent of the collective net worth of all persons described in section 4062(a) of ERISA and part 4062 of this chapter.

PART 4203—EXTENSION OF SPECIAL WITHDRAWAL LIABILITY RULES

Sec.

4203.1 Purpose and scope.
4203.2 Definitions.
4203.3 Plan adoption of special withdrawal rules.
4203.4 Requests for PBGC approval of plan amendments.
4203.5 PBGC action on requests.
4203.6 OMB control number.

Authority: 29 U.S.C. 1302(b)(3).

§ 4203.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe procedures whereby a multiemployer plan may, pursuant to sections 4203(f) and 4208(e)(3) of ERISA, request the PBGC to approve a plan amendment which establishes special complete or partial withdrawal liability rules.

(b) *Scope.* This part applies to a multiemployer pension plan covered by Title IV of ERISA.

§ 4203.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: complete withdrawal, employer, ERISA, multiemployer plan, PBGC, person, plan, plan sponsor, and plan year.

§ 4203.3 Plan adoption of special withdrawal rules.

(a) *General rule.* A plan may, subject to the approval of the PBGC, establish by plan amendment special complete or partial withdrawal liability rules. A complete withdrawal liability rule adopted pursuant to this part shall be similar to the rules for the construction and entertainment industries described in section 4203 (b) and (c) of ERISA. A partial withdrawal liability rule adopted pursuant to this part shall be consistent with the complete withdrawal rule adopted by the plan. A plan amendment adopted under this part may not be put into effect until it is approved by the PBGC.

(b) *Discretionary provisions of the plan amendment.* A plan amendment adopted pursuant to this part may—

(1) Cover an entire industry or industries, or be limited to a segment of an industry; and

(2) Apply to cessations of the obligation to contribute that occurred prior to the adoption of the amendment.

§ 4203.4 Requests for PBGC approval of plan amendments.

(a) *Filing of request.* A plan shall apply to the PBGC for approval of a plan amendment which establishes special complete or partial withdrawal liability rules. The request for approval shall be filed after the amendment is adopted. PBGC approval shall also be required for any subsequent modification of the plan amendment, other than a repeal of the amendment which results in employers being subject to the general statutory rules on withdrawal.

(b) *Who may request.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign and submit the request.

(c) *Where to file.* The request shall be delivered by mail or submitted by hand to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

(d) *Information.* Each request shall contain the following information:

(1) The name and address of the plan for which the plan amendment is being submitted, and the telephone number of the plan sponsor or its authorized representative.

(2) A copy of the executed amendment, including the proposed effective date.

(3) A statement certifying that notice of the adoption of the amendment and the request for approval filed under this part has been given to all employers who have an obligation to contribute under the plan and to all employee organizations representing employees covered under the plan.

(4) A statement indicating how the withdrawal rules in the plan amendment would operate in the event of a sale of assets by a contributing employer or the cessation of the obligation to contribute or the cessation of covered operations by all employers.

(5) A copy of the plan's most recent actuarial valuation.

(6) For each of the previous five plan years, information on the number of plan participants by category (active, retired and separate vested) and a complete financial statement. This requirement may be satisfied by the submission for each of those years of Form 5500, including schedule B, or similar reports required under prior law.

(7) A detailed description of the industry to which the plan amendment will apply, including information sufficient to demonstrate the effect of withdrawals on the plan's contribution base, and information establishing industry characteristics which would indicate that withdrawals in the industry do not typically have an adverse effect on the plan's contribution base. Such industry characteristics include the mobility of employees, the intermittent nature of employment, the project-by-project nature of the work, extreme fluctuations in the level of an employer's covered work under the plan, the existence of a consistent pattern of entry and withdrawal by employers, and the local nature of the work performed.

(e) *Supplemental information.* In addition to the information described in paragraph (d) of this section, a plan may submit any other information it believes is pertinent to its request. The PBGC may require the plan sponsor to submit any other information the PBGC determines it needs to review a request under this part.

§ 4203.6 PBGC action on requests.

(a) *General.* The PBGC shall approve a plan amendment providing for the application of special complete or partial withdrawal liability rules upon a determination by the PBGC that the plan amendment—

(1) Will apply only to an industry that has characteristics that would make use of the special withdrawal rules appropriate; and

(2) Will not pose a significant risk to the insurance system.

(b) *Notice of pendency of request.* As soon as practicable after receiving a request for approval of a plan amendment containing all the information required under § 4203.4, the PBGC shall publish a notice of the pendency of the request in the **Federal Register**. The notice shall contain a summary of the request and invite interested persons to submit written comments to the PBGC concerning the request. The notice will normally provide for a comment period of 45 days.

(c) *PBGC decision on request.* After the close of the comment period, PBGC shall issue its decision in writing on the request for approval of a plan amendment. Notice of the decision shall be published in the **Federal Register**.

§ 4203.8 OMB control number.

The collections of information contained in this part have been approved by the Office of Management and Budget under OMB control number 1212–0050.

PART 4204—VARIANCES FOR SALE OF ASSETS

Subpart A—General

Sec.

4204.1 Purpose and scope.
4204.2 Definitions.

Subpart B—Variance of the Statutory Requirements

4204.11 Variance of the bond/escrow and sale-contract requirements.
4204.12 *De minimis* transactions.
4204.13 Net income and net tangible assets tests.

Subpart C—Procedures for Individual and Class Variances or Exemptions

4204.21 Requests to PBGC for variances and exemptions.
4204.22 PBGC action on requests.

Authority: 29 U.S.C. 1302(b)(3), 1384(c).

Subpart A—General

§ 4204.1 Purpose and scope.

(a) *Purpose.* Under section 4204 of ERISA, an employer that ceases covered operations under a multiemployer plan, or ceases to have an obligation to contribute for such operations, because of a bona fide, arm's-length sale of assets to an unrelated purchaser does not incur withdrawal liability if certain conditions are met. One condition is that the sale contract provide that the seller will be secondarily liable if the purchaser withdraws from the plan within five years and does not pay its withdrawal liability. Another condition is that the purchaser furnish a bond or place funds in escrow, for a period of five plan years, in a prescribed amount. Section 4204 also authorizes the PBGC to provide for variances or exemptions from these requirements. Subpart B of this part provides variances and exemptions from the requirements for certain sales of assets. Subpart C of this part establishes procedures under which a purchaser or seller may, when the conditions set forth in subpart B are not satisfied or when the parties decline to provide certain financial information to the plan, request the PBGC to grant individual or class variances or exemptions from the requirements.

(b) *Scope.* In general, this part applies to any sale of assets described in section 4204(a)(1) of ERISA. However, this part does not apply to a sale of assets involving operations for which the seller is obligated to contribute to a plan described in section 404(c) of the Code, or a continuation of such a plan, unless the plan is amended to provide that section 4204 applies.

§ 4204.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, employer, ERISA, IRS, multiemployer plan, PBGC, person, plan, plan administrator, plan sponsor, and plan year.

In addition, for purposes of this part:

Date of determination means the date on which a seller ceases covered operations or ceases to have an obligation to contribute for such operations as a result of a sale of assets within the meaning of section 4204(a) of ERISA.

Net income after taxes means revenue minus expenses after taxes (excluding extraordinary and non-recurring income or expenses), as presented in an audited financial statement or, in the absence of such statement, in an unaudited financial statement, each prepared in conformance with generally accepted accounting principles.

Net tangible assets means tangible assets (assets other than licenses, patents copyrights, trade names, trademarks, goodwill, experimental or organizational expenses, unamortized debt discounts and expenses and all other assets which, under generally accepted accounting principles, are deemed intangible) less liabilities (other than pension liabilities). Encumbered assets shall be excluded from net tangible assets only to the extent of the amount of the encumbrance.

Purchaser means a purchaser described in section 4204(a)(1) of ERISA.

Seller means a seller described in section 4204(a)(1) of ERISA.

Subpart B—Variance of the Statutory Requirements

§ 4204.11 Variance of the bond/escrow and sale-contract requirements.

(a) *General rule.* A purchaser's bond or escrow under section 4204(a)(1)(B) of ERISA and the sale-contract provision under section 4204(a)(1)(C) are not required if the parties to the sale inform the plan in writing of their intention that the sale be covered by section 4204 of ERISA and demonstrate to the satisfaction of the plan that at least one of the criteria contained in § 4204.12 or § 4204.13(a) is satisfied.

(b) *Requests after posting of bond or establishment of escrow.* A request for a variance may be filed at any time. If, after a purchaser has posted a bond or placed money in escrow pursuant to section 4204(a)(1)(B) of ERISA, the purchaser demonstrates to the satisfaction of the plan that the criterion in either § 4204.13 (a)(1) or (a)(2) is satisfied, then the bond shall be cancelled or the amount in escrow shall be refunded. For purposes of considering a request after the bond or escrow is in place, the words "the year preceding the date of the variance request" shall be substituted for "the date of determination" for the first mention of that term in both § 4204.13 (a)(1) and (a)(2). In addition, in determining the purchaser's average net income after taxes under § 4204.13(a)(1), for any year included in the average for which the net income figure does not reflect the interest expense incurred with respect to the sale, the purchaser's net income shall be reduced by the amount of interest paid with respect to the sale in the fiscal year following the date of determination.

(c) *Information required.* A request for a variance shall contain financial or other information that is sufficient to establish that one of the criteria in § 4204.12 or § 4204.13(a) is satisfied. A request on the basis of either § 4204.13 (a)(1) or (a)(2) shall also include a copy of the purchaser's audited (if available) or (if not) unaudited financial statements for the specified time period.

(d) *Limited exemption during pendency of request.* Provided that all of the information required to be submitted is submitted before the first day of the first plan year beginning after the sale, a plan may not, pending its decision on the variance, require a purchaser to post a bond or place an amount in escrow pursuant to section 4204(a)(1)(B). In the event a bond or escrow is not in place pursuant to the preceding sentence, and the plan determines that the request does not qualify for a variance, the purchaser shall comply with section 4204(a)(1)(B) within 30 days after the date on which it receives notice of the plan's decision.

(Approved by the Office of Management and Budget under control number 1212—0021)

§ 4204.12 De minimis transactions.

The criterion under this section is that the amount of the bond or escrow does not exceed the lesser of $250,000 or two percent of the average total annual contributions made by all employers to the plan, for the purposes of section 412(b)(3)(A) of the Code, for the three most recent plan years ending before the date of determination. For this purpose, "contributions made" shall have the same meaning as the term has under § 4211.12(a) of this chapter.

§ 4204.13 Net income and net tangible assets tests.

(a) *General.* The criteria under this section are that either—

(1) *Net income test.* The purchaser's average net income after taxes for its three most recent fiscal years ending before the date of determination (as defined in § 4204.12), reduced by any interest expense incurred with respect to the sale which is payable in the fiscal year following the date of determination, equals or exceeds 150 percent of the amount of the bond or escrow required under ERISA section 4204(a)(1)(B); or

(2) *Net tangible assets test.* The purchaser's net tangible assets at the end of the fiscal year preceding the date of determination (as defined in § 4204.12), equal or exceed—

(i) If the purchaser was not obligated to contribute to the plan before the sale, the amount of unfunded vested benefits allocable to the seller under section 4211 (with respect to the purchased operations), as of the date of determination, or

(ii) If the purchaser was obligated to contribute to the plan before the sale, the sum of the amount of unfunded vested benefits allocable to the purchaser and to the seller under ERISA section 4211 (with respect to the purchased operations), each as of the date of determination.

(b) *Special rule when more than one plan is covered by request.* For the purposes of paragraphs (a)(1) and (a)(2), if the transaction involves the assumption by the purchaser of the seller's obligation to contribute to more than one multiemployer plan, then the total amount of the bond or escrow or of the unfunded vested benefits, as applicable, for all of the plans with respect to which the purchaser has not posted a bond or escrow shall be used to determine whether the applicable test is met.

(c) *Non-applicability of tests in event of purchaser's insolvency.* A purchaser will not qualify for a variance under this subpart pursuant to paragraph (a)(1) or (a)(2) of this section if, as of the earlier of the date of the plan's decision on the variance request or the first day of the first plan year beginning after the date of determination, the purchaser is the subject of a petition under title 11, United States Code, or of a proceeding under similar provisions of state insolvency laws.

Subpart C—Procedures for Individual and Class Variances or Exemptions

§ 4204.21 Requests to PBGC for variances and exemptions.

(a) *General.* If a transaction covered by this part does not satisfy the conditions set forth in subpart B of this part, or if the parties decline to provide to the plan privileged or confidential financial information within the meaning of section 552(b)(4) of the Freedom of Information Act (5 U.S.C. 552), the purchaser or seller may request from the PBGC an exemption or variance from the requirements of section 4204(a)(1) (B) and (C) of ERISA.

(b) *Who may request.* A purchaser or a seller may file a request for a variance or exemption. The request may be submitted by one or more duly authorized representatives acting on behalf of the party or parties. When a contributing employer withdraws from a plan as a result of related sales of assets involving several purchasers, or withdraws from more than one plan as a result of a single sale, the application may request a class variance or exemption for all the transactions.

(c) *Where to file.* The request shall be delivered by mail or submitted by hand to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

(d) *Information.* Each request shall contain the following information:

(1) The name and address of the plan or plans for which the variance or exemption is being requested, and the telephone number of the plan administrator of each plan.

(2) For each plan described in paragraph (d)(1) of this section, the nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Identification Number (PN) assigned by the plan sponsor to the plan, and, if different, also the EIN and PN last filed with the PBGC. If an EIN or PN has not been assigned, that should be indicated.

(3) The name, address and telephone number of the seller and of its duly authorized representative, if any.

(4) The name, address and telephone number of the purchaser and of its duly authorized representative, if any.

(5) A full description of each transaction for which the request is being made, including effective date.

(6) A statement explaining why the requested variance or exemption would not significantly increase the risk of financial loss to the plan, including evidence, financial or otherwise, that supports that conclusion.

(7) When the request for a variance or exemption is filed by the seller alone, a statement signed by the purchaser indicating its intention that section 4204 of ERISA apply to the sale of assets.

(8) A statement indicating the amount of the purchaser's bond or escrow required under section 4204(a)(1)(B) of ERISA.

(9) The estimated amount of withdrawal liability that the seller would otherwise incur as a result of the sale if section 4204 did not apply to the sale.

(10) A certification that a complete copy of the request has been sent to each plan described in paragraph (d)(1) of this section and each collective bargaining representative of the seller's employees by certified mail, return receipt requested.

(e) *Additional information.* In addition to the information described in paragraph (d) of this section, the PBGC may require the purchaser, the seller, or the plan to submit any other information the PBGC determines it needs to review the request.

(f) *Disclosure of information.* Any party submitting information pursuant to this section may include a statement of whether any of the information is of a nature that its disclosure may not be required under the Freedom of Information Act, 5 U.S.C. 552. The statement should specify the information that may not be subject to disclosure and the grounds therefor.

(Approved by the Office of Management and Budget under control number 1212–0021)

§ 4204.22 PBGC action on requests.

(a) *General.* The PBGC shall approve a request for a variance or exemption if PBGC determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of title IV of ERISA; and

(2) Would not significantly increase the risk of financial loss to the plan.

(b) *Notice of pendency of request.* As soon as practicable after receiving a variance or exemption request containing all the information specified in § 4204.21, the PBGC shall publish a notice of the pendency of the request in the **Federal Register**. The notice shall provide that any interested person may, within the period of time specified therein, submit written comments to the PBGC concerning the request. The notice will usually provide for a comment period of 45 days.

(c) *PBGC decision on request.* The PBGC shall issue a decision on a variance or exemption request as soon as practicable after the close of the comment period described in paragraph (b) of this section. PBGC's decision shall be in writing, and if the PBGC disapproves the request, the decision shall state the reasons therefor. Notice of the decision shall be published in the **Federal Register**.

PART 4206—ADJUSTMENT OF LIABILITY FOR A WITHDRAWAL SUBSEQUENT TO A PARTIAL WITHDRAWAL

Sec.

4206.1 Purpose and scope.
4206.2 Definitions.
4206.3 Credit against liability for a subsequent withdrawal.
4206.4 Amount of credit in plans using the presumptive method.
4206.5 Amount of credit in plans using the modified presumptive method.
4206.6 Amount of credit in plans using the rolling-5 method.
4206.7 Amount of credit in plans using the direct attribution method.
4206.8 Reduction of credit for abatement or other reduction of prior partial withdrawal liability.
4206.9 Amount of credit in plans using alternative allocation methods:
4206.10 Special rule for 70-percent decline partial withdrawals.

Authority: 29 U.S.C. 1302(b)(3) and 1386(b).

§ 4206.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe rules, pursuant to section 4206(b) of ERISA, for adjusting the partial or complete withdrawal liability of an employer that previously partially withdrew from the same multiemployer plan. Section 4206(b)(1) provides that when an employer that has partially withdrawn from a plan subsequently incurs liability for another partial or a complete withdrawal from that plan, the employer's liability for the subsequent withdrawal is to be reduced by the amount of its liability for the prior partial withdrawal (less any waiver or reduction of that prior liability). Section 4206(b)(2) requires the PBGC to prescribe regulations adjusting the amount of this credit to ensure that the liability for the subsequent withdrawal properly reflects the employer's share of liability with respect to the plan. The purpose of the credit is to protect a withdrawing employer from being charged twice for the same unfunded vested benefits of the plan. The reduction in the credit protects the other employers in the plan from becoming responsible for unfunded vested benefits properly allocable to the withdrawing employer. In the interests of simplicity, the rules in this part provide for, generally, a one-step calculation of the adjusted credit under section 4206(b)(2) against the subsequent liability, rather than for separate calculations first of the credit under section 4206(b)(1) and then of the reduction in the credit under paragraph (b)(2) of that section. In cases where the withdrawal liability for the prior partial withdrawal was reduced by an abatement or other reduction of that liability, the adjusted credit is further reduced in accordance with § 4206.8 of this part.

(b) *Scope.* This part applies to multiemployer plans covered under Title IV of ERISA, and to employers that have partially withdrawn from such plans after September 25, 1980 and subsequently completely or partially withdraw from the same plan.

§ 4206.2 Definitions.

The following are defined in § 4001.2 of this chapter: Code, employer, ERISA, multiemployer plan, PBGC, plan, and plan year.

In addition, for purposes of this part:

Complete withdrawal means a complete withdrawal as described in section 4203 of ERISA.

Partial withdrawal means a partial withdrawal as described in section 4205 of ERISA.

§ 4206.3 Credit against liability for a subsequent withdrawal.

Whenever an employer that was assessed withdrawal liability for a partial withdrawal from a plan partially or completely withdraws from that plan in a subsequent plan year, it shall receive a credit against the new withdrawal liability in an amount greater than or equal to zero, determined in accordance with this part. If the credit determined under §§ 4206.4 through 4206.9 is less than zero, the amount of the credit shall equal zero.

§ 4206.4 Amount of credit in plans using the presumptive method.

(a) *General.* In a plan that uses the presumptive allocation method described in section 4211(b) of ERISA, the credit shall equal the sum of the unamortized old liabilities determined under paragraph (b) of this section, multiplied by the fractions described or determined under paragraph (c) of this section. When an employer's prior partial withdrawal liability has been reduced or waived, this credit shall be adjusted in accordance with § 4206.8.

(b) *Unamortized old liabilities.* The amounts determined under this paragraph are the employer's proportional shares, if any, of the unamortized amounts as of the end of the plan year preceding the withdrawal for which the credit is being calculated, of—

(1) The plan's unfunded vested benefits as of the end of the last plan year ending before September 26, 1980;

(2) The annual changes in the plan's unfunded vested benefits for plan years ending after September 25, 1980, and before the year of the prior partial withdrawal; and

(3) The reallocated unfunded vested benefits (if any), as determined under section 4211(b)(4) of ERISA, for plan years ending before the year of the prior partial withdrawal.

(c) *Employer's allocable share of old liabilities.* The sum of the amounts determined under paragraph (b) are multiplied by the two fractions described in this paragraph in order to determine the amount of the old liabilities that was previously assessed against the employer.

(1) The first fraction is the fraction determined under section 4206(a)(2) of ERISA for the prior partial withdrawal.

(2) The second fraction is a fraction, the numerator of which is the amount of the liability assessed against the employer for the prior partial withdrawal, and the denominator of which is the product of—

(i) The amount of unfunded vested benefits allocable to the employer as if it had completely withdrawn as of the date of the prior partial withdrawal (determined without regard to any adjustments), multiplied by—

(ii) The fraction determined under section 4206(a)(2) of ERISA for the prior partial withdrawal.

§ 4206.5 Amount of credit in plans using the modified presumptive method.

(a) *General.* In a plan that uses the modified presumptive method described in section 4211(c)(2) of ERISA, the credit shall equal the sum of the unamortized old liabilities determined under paragraph (b) of this section, multiplied by the fractions described or determined under paragraph (c) of this section. When an employer's prior partial withdrawal liability has been reduced or waived, this credit shall be adjusted in accordance with § 4206.8.

(b) *Unamortized old liabilities.* The amounts described in this paragraph shall be determined as of the end of the plan year preceding the withdrawal for which the credit is being calculated, and are the employer's proportional shares, if any, of—

(1) The plan's unfunded vested benefits as of the end of the last plan year ending before September 26, 1980, reduced as if those obligations were being fully amortized in level annual installments over 15 years beginning with the first plan year ending on or after such date; and

(2) The aggregate post-1980 change amount determined under section 4211(c)(2)(C) of ERISA as if the employer had completely withdrawn in the year of the prior partial withdrawal, reduced as if those obligations were being fully amortized in level annual installments over the 5-year period beginning with the plan year in which the prior partial withdrawal occurred.

(c) *Employer's allocable share of old liabilities.* The sum of the amounts determined under paragraph (b) are multiplied by the two fractions described in this paragraph in order to determine the amount of old liabilities that was previously assessed against the employer.

(1) The first fraction is the fraction determined under section 4206(a)(2) of ERISA for the prior partial withdrawal.

(2) The second fraction is a fraction, the numerator of which is the amount of the liability assessed against the employer for the prior partial withdrawal, and the denominator of which is the product of—

(i) The amount of unfunded vested benefits allocable to the employer as if it had completely withdrawn as of the date of the prior partial withdrawal (determined without regard to any adjustments), multiplied by—

(ii) The fraction determined under section 4206(a)(2) of ERISA for the prior partial withdrawal.

§ 4206.6 Amount of credit in plans using the rolling-5 method.

In a plan that uses the rolling-5 allocation method described in section 4211(c)(3) of ERISA, the credit shall equal the amount of the liability assessed for the prior partial withdrawal, reduced as if that amount was being fully amortized in level annual installments over the 5-year period beginning with the plan year in which the prior partial withdrawal occurred. When an employer's prior partial withdrawal liability has been reduced or waived, this credit shall be adjusted in accordance with § 4206.8.

§ 4206.7 Amount of credit in plans using the direct attribution method.

In a plan that uses the direct attribution allocation method described in section 4211(c)(4) of ERISA, the credit shall equal the amount of the liability assessed for the prior partial withdrawal, reduced as if that amount was being fully amortized in level annual installments beginning with the plan year in which the prior partial withdrawal occurred, over the greater of 10 years or the amortization period for the resulting base when the combined charge base and the combined credit base are offset under section 412(b)(4) of the Code. When an employer's prior partial withdrawal liability has been reduced or waived, this credit shall be adjusted in accordance with § 4206.8.

§ 4206.8 Reduction of credit for abatement or other reduction of prior partial withdrawal liability.

(a) *General.* If an employer's withdrawal liability for a prior partial withdrawal has been reduced or waived, the credit determined pursuant to §§ 4206.4 through 4206.7 shall be adjusted in accordance with this section.

(b) *Computation.* The adjusted credit is calculated by multiplying the credit determined under the preceding sections of this part by a fraction—

(1) the numerator of which is the excess of the total partial withdrawal liability of the employer for all partial withdrawals in prior years (excluding those partial withdrawals for which the credit is zero) over the present value of each abatement or other reduction of that prior withdrawal liability calculated as of the date on which that prior partial withdrawal liability was determined; and

(2) the denominator of which is the total partial withdrawal liability of the employer for all partial withdrawals in prior years (excluding those partial withdrawals for which the credit is zero).

§ 4206.9 Amount of credit in plans using alternative allocation methods.

A plan that has adopted an alternative method of allocating unfunded vested benefits pursuant to section 4211(c)(5) of ERISA and part 4211 of this chapter shall adopt, by plan amendment, a method of calculating the credit provided by § 4206.3 that is consistent with the rules in §§ 4206.4 through 4206.8 for plans using the statutory allocation method most similar to the plan's alternative allocation method.

§ 4206.10 Special rule for 70-percent decline partial withdrawals.

For the purposes of applying the rules in §§ 4206.4 through 4206.9 in any case in which either the prior or subsequent partial withdrawal resulted from a 70-percent contribution decline (or a 35-percent decline in the case of certain retail food industry plans), the first year of the 3-year testing period shall be deemed to be the plan year in which the partial withdrawal occurred.

PART 4207—REDUCTION OR WAIVER OF COMPLETE WITHDRAWAL LIABILITY

Sec.

4207.1 Purpose and scope.
4207.2 Definitions.
4207.3 Abatement.
4207.4 Withdrawal liability payments during pendency of abatement determination.
4207.5 Requirements for abatement.
4207.6 Partial withdrawals after reentry.
4207.7 Liability for subsequent complete withdrawals and related adjustments for allocating unfunded vested benefits.
4207.8 Liability for subsequent partial withdrawals.
4207.9 Special rules.
4207.10 Plan rules for abatement.

Authority: 29 U.S.C. 1302(b)(3), 1387.

§ 4207.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe rules, pursuant to section 4207(a) of ERISA, for reducing or waiving the withdrawal liability of certain employers that have completely withdrawn from a multiemployer plan and subsequently resume covered operations under the plan. This part prescribes rules pursuant to which the plan must waive the employer's obligation to make future liability payments with respect to its complete withdrawal and must calculate the amount of the employer's liability for a partial or complete withdrawal from the plan after its reentry into the plan. This part also provides procedures, pursuant to section 4207(b) of ERISA, for plan sponsors of multiemployer plans to apply to PBGC for approval of plan amendments that provide for the reduction or waiver of complete withdrawal liability under conditions other than those specified in section 4207(a) of ERISA and this part.

(b) *Scope.* This part applies to multiemployer plans covered under title IV of ERISA, and to employers that have completely withdrawn from such plans after September 25, 1980, and that have not, as of the date of their reentry into the plan, fully satisfied their obligation to pay withdrawal liability arising from the complete withdrawal.

§ 4207.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: employer, ERISA, IRS, Multiemployer Act, multiemployer plan, nonforfeitable benefit, PBGC, plan, and plan year .

In addition, for purposes of this part:

Complete withdrawal means a complete withdrawal as described in section 4203 of ERISA.

Eligible employer means the employer, as defined in section 4001(b) of ERISA, as it existed on the date of its initial partial or complete withdrawal, as applicable. An eligible employer shall continue to be an eligible employer notwithstanding the occurrence of any of the following events:

(1) A restoration involving a mere change in identity, form or place of organization, however effected;

(2) A reorganization involving a liquidation into a parent corporation;

(3) A merger, consolidation or division solely between (or among) trades or businesses (whether or not incorporated) of the employer; or

(4) An acquisition by or of, or a merger or combination with another trade or business.

Partial withdrawal means a partial withdrawal as described in section 4205 of ERISA.

Period of withdrawal means the plan year in which the employer completely withdrew from the plan, the plan year in which the employer reentered the plan and all intervening plan years.

§ 4207.3 Abatement.

(a) *General.* Whenever an eligible employer that has completely withdrawn from a multiemployer plan reenters the plan, it may apply to the plan for abatement of its complete withdrawal liability. Applications shall be filed by the date of the first scheduled withdrawal liability payment falling due after the employer resumes covered operations or, if later, the fifteenth calendar day after the employer resumes covered operations. Applications shall identify the eligible employer, the withdrawn employer, if different, the date of withdrawal, and the date of resumption of covered operations. Upon receiving an application for abatement, the plan sponsor shall determine, in accordance with paragraph (b) of this section, whether the employer satisfies the requirements for abatement of its complete withdrawal liability under § 4207.5, § 4207.9, or a plan amendment which has been approved by PBGC pursuant to § 4207.10. If the plan sponsor determines that the employer satisfies the requirements for abatement of its complete withdrawal liability, the provisions of paragraph (c) of this section shall apply. If the plan sponsor determines that the employer does not satisfy the requirements for abatement of its complete withdrawal liability, the provisions of paragraphs (d) and (e) of this section shall apply.

(b) *Determination of abatement.* As soon as practicable after an eligible employer that completely withdrew from a multiemployer plan applies for abatement, the plan sponsor shall determine whether the employer satisfies the requirements for abatement of its complete withdrawal liability under this part and shall notify the employer in writing of its determination and of the consequences of its determination, as described in paragraphs (c) or (d) and (e) of this section, as appropriate. If a bond or escrow has been provided to the plan under § 4207.4, the plan sponsor shall send a copy of the notice to the bonding or escrow agent.

(c) *Effects of abatement.* If the plan sponsor determines that the employer satisfies the requirements for abatement of its complete withdrawal liability under this part, then—

(1) The employer shall have no obligation to make future withdrawal liability payments to the plan with respect to its complete withdrawal;

(2) The employer's liability for a subsequent withdrawal shall be determined in accordance with § 4207.7 or § 4207.8, as applicable;

(3) Any bonds furnished under § 4207.4 shall be cancelled and any amounts held in escrow under § 4207.4 shall be refunded to the employer; and

(4) Any withdrawal liability payments due after the reentry and made by the employer to the plan shall be refunded by the plan without interest.

(d) *Effects of non-abatement.* If the plan sponsor determines that the employer does not satisfy the requirements for abatement of its complete withdrawal liability under this part, then—

(1) The bond or escrow furnished under § 4207.4 shall be paid to the plan within 30 days after the date of the plan sponsor's notice under paragraph (b) of this section;

(2) The employer shall pay to the plan within 30 days after the date of the plan sponsor's notice under paragraph (b) of this section, the amount of its withdrawal liability payment or payments, with respect to which the bond or escrow was furnished, in excess of the bond or escrow;

(3) The employer shall resume making its withdrawal liability payments as they are due to the plan; and

(4) The employer shall be treated as a new employer for purposes of any future application of the withdrawal liability rules in sections 4201–4225 of title IV of ERISA with respect to its participation in the plan after its reentry into the plan, except that in plans using the "direct attribution" method (section 4211(c)(4) of ERISA), the nonforfeitable benefits attributable to service with the employer shall include nonforfeitable benefits attributable to service prior to reentry that were not nonforfeitable at that time.

(e) *Collection of payments due and review of non-abatement determination.* The rules in part 4219, subpart C, of this chapter (relating to overdue, defaulted, and overpaid withdrawal liability) shall apply with respect to all payments required to be made under paragraphs (d)(2) and (d)(3) of this section. For this purpose, a payment required to be made under paragraph (d)(2) shall be treated as a withdrawal liability payment due on the 30th day after the date of the plan sponsor's notice under paragraph (b) of this section.

(1) *Review of non-abatement determination.* A plan sponsor's determination that the employer does not satisfy the requirements for abatement under this part shall be subject to plan review under section 4219(b)(2) of ERISA and to arbitration under section 4221 of ERISA, within the times prescribed by those sections. For this purpose, the plan sponsor's notice under paragraph (b) of this section shall be treated as a demand under section 4219(b)(1) of ERISA.

(2) *Determination of abatement.* If the plan sponsor or an arbitrator determines that the employer satisfies the requirements for abatement of its complete withdrawal liability under this part, the plan sponsor shall immediately refund the following payments (plus interest, except as indicated below, determined in accordance with § 4219.31(d) of this chapter as if the payments were overpayments of withdrawal liability) to the employer in a lump sum:

(i) The amount of the employer's withdrawal liability payment or payments, without interest, due after its reentry and made by the employer.

(ii) The bond or escrow paid to the plan under paragraph (d)(1) of this section.

(iii) The amount of the employer's withdrawal liability payment or payments in excess of the bond or escrow, paid to the plan under paragraph (d)(2) of this section.

(iv) Any withdrawal liability payment made by the employer to the plan pursuant to paragraph (d)(3) of this section after the plan sponsor's notice under paragraph (b) of this section.

§ 4207.4 Withdrawal liability payments during pendency of abatement determination.

(a) *General rule.* An eligible employer that completely withdraws from a multiemployer plan and subsequently reenters the plan may, in lieu of making withdrawal liability payments due after its reentry, provide a bond to, or establish an escrow account for, the plan that satisfies the requirements of paragraph (b) of this section or any plan rules adopted under paragraph (d) of this section, pending a determination by the plan sponsor under § 4207.3(b) of whether the employer satisfies the requirements for abatement of its complete withdrawal liability. An employer that applies for abatement and neither provides a bond/escrow nor pays its withdrawal liability payments remains eligible for abatement.

(b) *Bond/escrow.* The bond or escrow allowed by this section shall be in an amount equal to 70 percent of the withdrawal liability payments that would otherwise be due. The bond or escrow relating to each payment shall be furnished before the due date of that payment. A single bond or escrow may be provided for more than one payment due during the pendency of the plan sponsor's determination. The bond or escrow agreement shall provide that if the plan sponsor determines that the employer does not satisfy the requirements for abatement of its complete withdrawal liability under this part, the bond or escrow shall be paid to the plan upon notice from the plan sponsor to the bonding or escrow agent. A bond provided under this paragraph shall be issued by a corporate surety company that is an acceptable surety for purposes of section 412 of ERISA.

(c) Notice of bond/escrow. Concurrently with posting a bond or establishing an escrow account under paragraph (b) of this section, the employer shall notify the plan sponsor. The notice shall include a statement of the amount of the bond or escrow, the scheduled payment or payments with respect to which the bond or escrow is being furnished, and the name and address of the bonding or escrow agent.

(d) *Plan amendments concerning bond/escrow.* A plan may, by amendment, adopt rules decreasing the amount specified in paragraph (b) of a bond or escrow allowed under this section. A plan amendment adopted under this paragraph may be applied only to the extent that it is consistent with the purposes of ERISA.

§ 4207.5 Requirements for abatement.

(a) *General rule.* Except as provided in § 4207.9 (d) and (e) (pertaining to acquisitions, mergers and other combinations), an eligible employer that completely withdraws from a multiemployer plan and subsequently reenters the plan shall have its liability for that withdrawal abated in accordance with § 4207.3(c) if the employer resumes covered operations under the plan, and the number of contribution base units with respect to which the employer has an obligation to contribute under the plan for the measurement period (as defined in paragraph (b) of this section) after it resumes covered operations exceeds 30 percent of the number of contribution base units with respect to which the employer had an obligation to contribute under the plan for the base year (as defined in paragraph (c) of this section).

(b) *Measurement period.* If the employer resumes covered operations under the plan at least six full months prior to the end of a plan year and would satisfy the test in paragraph (a) based on its contribution base units for that plan year, then the measurement period shall be the period from the date it resumes covered operations until the end of that plan year. If the employer would not satisfy this test, or if the employer resumes covered operations under the plan less than six full months prior to the end of the plan year, the measurement period shall be the first twelve months after it resumes covered operations.

(c) *Base year.* For purposes of paragraph (a) of this section, the employer's number of contribution base units for the base year is the average number of contribution base units for the two plan years in which its contribution base units were the highest, within the five plan years immediately preceding the year of its complete withdrawal.

§ 4207.6 Partial withdrawals after reentry.

(a) *General rule.* For purposes of determining whether there is a partial withdrawal of an eligible employer whose liability is abated under this part upon the employer's reentry into the plan or at any time thereafter, the plan sponsor shall apply the rules in section 4205 of ERISA, as modified by the rules in this section, and section 108 of the Multiemployer Act. A partial withdrawal of an employer whose liability is abated under this part may occur under these rules upon the employer's reentry into the plan. However, a plan sponsor may not demand payment of withdrawal liability for a partial withdrawal occurring upon the employer's reentry before the plan sponsor has determined that the employer's liability for its complete withdrawal is abated under this part and has so notified the employer in accordance with § 4207.3(b).

(b) *Partial withdrawal—70-percent contribution decline.* The plan sponsor shall determine whether there is a partial withdrawal described in section 4205(a)(1) of ERISA (relating to a 70-

percent contribution decline) in accordance with the rules in section 4205 of ERISA and section 108 of the Multiemployer Act, as modified by the rules in this paragraph, and shall determine the amount of an employer's liability for that partial withdrawal in accordance with the rules in § 4207.8(b).

(1) *Definition of "3-year testing period."* For purposes of section 4205(b)(1) of ERISA, the term "3-year testing period" means the period consisting of the plan year for which the determination is made and the two immediately preceding plan years, excluding any plan year during the period of withdrawal.

(2) *Contribution base units for high base year.* For purposes of section 4205(b)(1) of ERISA and except as provided in section 108(d)(3) of the Multiemployer Act, in determining the number of contribution base units for the high base year, if the five plan years immediately preceding the beginning of the 3-year testing period include a plan year during the period of withdrawal, the number of contribution base units for each such year of withdrawal shall be deemed to be the greater of—

(i) The employer's contribution base units for that plan year; or

(ii) The average of the employer's contribution base units for the three plan years preceding the plan year in which the employer completely withdrew from the plan.

(c) *Partial withdrawal—partial cessation of contribution obligation.* The plan sponsor shall determine whether there is a partial withdrawal described in section 4205(a)(2) of ERISA (relating to a partial cessation of the employer's contribution obligation) in accordance with the rules in section 4205 of ERISA, as modified by the rules in this paragraph, and section 108 of the Multiemployer Act. In making this determination, the sponsor shall exclude all plan years during the period of withdrawal. A partial withdrawal under this paragraph can occur no earlier than the plan year of reentry. If the sponsor determines that there was a partial withdrawal, it shall determine the amount of an employer's liability for that partial withdrawal in accordance with the rules in § 4207.8(c).

§ 4207.7 Liability for subsequent complete withdrawals and related adjustments for allocating unfunded vested benefits.

(a) *General.* When an eligible employer that has had its liability for a complete withdrawal abated under this part completely withdraws from the plan, the employer's liability for that subsequent withdrawal shall be determined in accordance with the rules in sections 4201–4225 of title IV, as modified by the rules in this section, and section 108 of the Multiemployer Act. In the case of a combination described in § 4207.9(d), the modifications described in this section shall be applied only with respect to that portion of the eligible employer that had previously withdrawn from the plan. In the case of a combination described in § 4207.9(e), the modifications shall be applied separately with respect to each previously withdrawn employer that comprises the eligible employer. In addition, when a plan has abated the liability of a reentered employer, if the plan uses either the "presumptive" or the "direct attribution" method (section 4211(b) or (c)(4), respectively) for allocating unfunded vested benefits, the plan shall modify those allocation methods as described in this section in allocating unfunded vested benefits to any employer that withdraws from the plan after the reentry.

(b) *Allocation of unfunded vested benefits for subsequent withdrawal in plans using "presumptive" method.* In a plan using the "presumptive" allocation method under section 4211(b) of ERISA, the amount of unfunded vested benefits allocable to a reentered employer for a subsequent withdrawal shall equal the sum of—

(1) The unamortized amount of the employer's allocable shares of the amounts described in section 4211(b)(1), for the plan years preceding the initial withdrawal, determined as if the employer had not previously withdrawn;

(2) The sum of the unamortized annual credits attributable to the year of the initial withdrawal and each succeeding year ending prior to reentry; and

(3) The unamortized amount of the employer's allocable shares of the amounts described in section 4211(b)(1)(A) and (C) for plan years ending after its reentry. For purposes of paragraph (b)(2), the annual credit for a plan year is the amount by which the employer's withdrawal liability payments for the year exceed the greater of the employer's imputed contributions or actual contributions for the year. The employer's imputed contributions for a year shall equal the average annual required contributions of the employer for the three plan years preceding the initial withdrawal. The amount of the credit for a plan year is reduced by 5 percent of the original amount for each succeeding plan year ending prior to the year of the subsequent withdrawal.

(c) *Allocation of unfunded vested benefits for subsequent withdrawal in plans using "modified presumptive" or "rolling-5" method.* In a plan using either the "modified presumptive" allocation method under section 4211(c)(2) of ERISA or the "rolling-5" method under section 4211(c)(3), the amount of unfunded vested benefits allocable to a reentered employer for a subsequent withdrawal shall equal the sum of—

(1) The amount determined under section 4211 (c)(2) or (c)(3) of ERISA, as appropriate, as if the date of reentry were the employer's initial date of participation in the plan; and

(2) The outstanding balance, as of the date of reentry, of the unfunded vested benefits allocated to the employer for its previous withdrawal (as defined in paragraph (c)(2)(i) of this section) reduced as if that amount were being fully amortized in level annual installments, at the plan's funding rate as of the date of reentry, over the period described in paragraph (c)(2)(ii), beginning with the first plan year after reentry.

(i) The outstanding balance of the unfunded vested benefits allocated to an employer for its previous withdrawal is the excess of the amount determined under section 4211 (c)(2) or (c)(3) of ERISA as of the end of the plan year in which the employer initially withdrew, accumulated with interest at the plan's funding rate for that year, from that year to the date of reentry, over the withdrawal liability payments made by the employer, accumulated with interest from the date of payment to the date of reentry at the plan's funding rate for the year of entry.

(ii) The period referred to in paragraph (c)(2) for plans using the modified presumptive method is the greater of five years, or the number of full plan years remaining on the amortization schedule under section 4211(c)(2)(B)(i) of ERISA. For plans using the rolling-5 method, the period is five years.

(d) *Adjustments applicable to all employers in plans using "presumptive" method.* In a plan using the "presumptive" allocation method under section 4211(b) of ERISA, when the plan has abated the withdrawal liability of a reentered employer pursuant to this part, the following adjustments to the allocation method shall be made in computing the unfunded vested benefits allocable to any employer that withdraws from the plan in a plan year beginning after the reentry:

(1) The sum of the unamortized amounts of the annual credits of a reentered employer shall be treated as a reallocated amount under section 4211(b)(4) of ERISA in the plan year in which the employer reenters.

(2) In the event that the 5-year period used to compute the denominator of the fraction described in section 4211 (b)(2)(E) and (b)(4)(D) of ERISA includes a year during the period of withdrawal of a reentered employer, the contributions for a year during the period of withdrawal shall be adjusted to include any actual or imputed contributions of the employer, as determined under paragraph (b) of this section.

(e) *Adjustments applicable to all employers in plans using "direct attribution" method.* In a plan using the "direct attribution" method under section 4211(c)(4) of ERISA, when the plan has abated the withdrawal liability of a reentered employer pursuant to this part, the following adjustments to the allocation method shall be made in computing the unfunded vested benefits allocable to any employer that withdraws from the plan in a plan year beginning after the reentry:

(1) The nonforfeitable benefits attributable to service with a reentered employer prior to its initial withdrawal shall be treated as benefits that are attributable to service with that employer.

(2) For purposes of section 4211(c)(4)(D) (ii) and (iii) of ERISA, withdrawal liability payments made by a reentered employer shall be treated as contributions made by the reentered employer.

(f) *Plans using alternative allocation methods under section 4211(c)(5).* A plan that has adopted an alternative method of allocating unfunded vested benefits pursuant to section 4211(c)(5) of ERISA and part 4211 of this chapter shall adopt by plan amendment a method of determining a reentered employer's allocable share of the plan's unfunded vested benefits upon its subsequent withdrawal. The method shall treat the reentered employer and other withdrawing employers in a manner consistent with the treatment under the paragraph(s) of this section applicable to plans using the statutory allocation method most similar to the plan's alternative allocation method.

(g) *Adjustments to amount of annual withdrawal liability payments for subsequent withdrawal.* For purposes of section 4219(c)(1)(C) (i)(I) and (ii)(I) of ERISA, in determining the amount of the annual withdrawal liability payments for a subsequent complete withdrawal, if the period of ten consecutive plan years ending before the plan year in which the withdrawal occurs includes a plan year during the period of withdrawal, the employer's number of contribution base units, used in section 4219(c)(1)(C)(i)(I), or the required employer contributions, used in section 4219(c)(1)(C)(ii)(I), for each such plan year during the period of withdrawal shall be deemed to be the greater of—

(1) The employer's contribution base units or the required employer contributions, as applicable, for that year; or

(2) The average of the employer's contribution base units or of the required employer contributions, as applicable, for those plan years not during the period of withdrawal, within the ten consecutive plan years ending before the plan year in which the employer's subsequent complete withdrawal occurred.

§ 4207.8 Liability for subsequent partial withdrawals.

(a) *General.* When an eligible employer that has had its liability for a complete withdrawal abated under this part partially withdraws from the plan, the employer's liability for that subsequent partial withdrawal shall be determined in accordance with the rules in sections 4201–4225 of ERISA, as modified by the rules in § 4207.7 (b) through (g) of this part and the rules in this section, and section 108 of the Multiemployer Act.

(b) *Liability for a 70-percent contribution decline.* The amount of an employer's liability under section 4206(a) (relating to the calculation of liability for a partial withdrawal), section 4208 (relating to the reduction of liability for a partial withdrawal) and section 4219(c)(1) (relating to the schedule of partial withdrawal liability payments) of ERISA, for a subsequent partial withdrawal described in section 4205(a)(1) of ERISA (relating to a 70-percent contribution decline) shall be modified in accordance with the rules in this paragraph.

(1) *Definition of "3-year testing period."* For purposes of sections 4206(a) and 4219(c)(1) of ERISA, and paragraphs (b)(2)–(b)(4) of this section, the term "3-year testing period" means the period consisting of the plan year for which the determination is made and the two immediately preceding plan years, excluding any plan year during the period of withdrawal.

(2) *Determination date of section 4211 allocable share.* For purposes of section 4206(a)(1)(B) of ERISA, the amount determined under section 4211 shall be determined as if the employer had withdrawn from the plan in a complete withdrawal on the last day of the first plan year in the 3-year testing period or the last day of the plan year in which the employer reentered the plan, whichever is later.

(3) *Calculation of fractional share of section 4211 amount.* For purposes of sections 4206(a)(2)(B)(ii) and 4219(c)(1)(E)(ii) of ERISA, if the five plan years immediately preceding the beginning of the 3-year testing period include a plan year during the period of withdrawal, then, in determining the denominator of the fraction described in section 4206(a)(2), the employer's contribution base units for each such year of withdrawal shall be deemed to be the greater of—

(i) The employer's contribution base units for that plan year; or

(ii) The average of the employer's contribution base units for the three plan years preceding the plan year in which the employer completely withdrew from the plan.

(4) *Contribution base units for high base year.* If the five plan years immediately preceding the beginning of the 3-year testing period include a plan year during the period of withdrawal, then for purposes of section 4208 (a) and (b)(1) of ERISA, the number of contribution base units for the high base year shall be the number of contribution base units determined under paragraph (b)(3) of this section.

(c) *Liability for partial cessation of contribution obligation.* The amount of an employer's liability under section 4206(a) (relating to the calculation of liability for a partial withdrawal) and section 4219(c)(1) (relating to the amount of the annual partial withdrawal liability payments) of ERISA, for a subsequent partial withdrawal described in section 4205(a)(2) of ERISA (relating to a partial cessation of the contribution obligation) shall be modified in accordance with the rules in this paragraph. For purposes of sections 4206(a)(2)(B)(i) and 4219(c)(1)(E)(ii) of ERISA, if the five plan years immediately preceding the plan year in which the partial withdrawal occurs include a plan year during the period of withdrawal, the denominator of the fraction described in section 4206(a)(2) shall be determined in accordance with the rule set forth in paragraph (b)(3) of this section.

§ 4207.9 Special rules.

(a) *Employer that has withdrawn and reentered the plan before the effective date of this part.* This part shall apply, in accordance with the rules in this paragraph, with respect to an eligible employer that completely withdraws from a multiemployer plan after September 25, 1980, and is performing covered work under the plan on the

effective date of this part. Upon the application of an employer described in the preceding sentence, the plan sponsor of a multiemployer plan shall determine whether the employer satisfies the requirements for abatement of its complete withdrawal liability under this part. Pending the plan sponsor's determination, the employer may provide the plan with a bond or escrow that satisfies the requirements of § 4207.4, in lieu of making its withdrawal liability payments due after its application for an abatement determination. The plan sponsor shall notify the employer in writing of its determination and the consequences of its determination as described in § 4207.3 (c) or (d) and (e), as applicable. If the plan sponsor determines that the employer qualifies for abatement, only withdrawal liability payments made prior to the employer's reentry shall be retained by the plan; payments made by the employer after its reentry shall be refunded to the employer, with interest on those made prior to the application for abatement, in accordance with § 4207.3(e)(2). If a bond or escrow has been provided to the plan in accordance with § 4207.4, the plan sponsor shall send a copy of the notice to the bonding or escrow agent. Sections 4207.6 through 4207.8 shall apply with respect to the employer's subsequent complete withdrawal occurring on or after the effective date of this part, or partial withdrawal occurring either before or after that date. This paragraph shall not negate reasonable actions taken by plans prior to the effective date of this part under plan rules implementing section 4207(a) of ERISA that were validly adopted pursuant to section 405 of the Multiemployer Act.

(b) *Employer with multiple complete withdrawals that has reentered the plan before effective date of this part.* If an employer described in paragraph (a) of this section has completely withdrawn from a multiemployer plan on two or more occasions before the effective date of this part, the rules in paragraph (a) of this section shall be applied as modified by this paragraph.

(1) The plan sponsor shall determine whether the employer satisfies the requirements for abatement under § 4207.5 based on the most recent complete withdrawal.

(2) If the employer satisfies the requirements for abatement, the employer's liability with respect to all previous complete withdrawals shall be abated.

(3) If the liability is abated, §§ 4207.6 and 4207.7 shall be applied as if the employer's earliest complete withdrawal were its initial complete withdrawal.

(c) *Employer with multiple complete withdrawals that has not reentered the plan as of the effective date of this part.* If an eligible employer has completely withdrawn from a multiemployer plan on two or more occasions between September 26, 1980 and the effective date of this part and is not performing covered work under the plan on the effective date of this regulation, the rules in this part shall apply, subject to the modifications specified in paragraphs (b)(1)–(b)(3) of this section, upon the employer's reentry into the plan.

(d) *Combination of withdrawn employer with contributing employer.* If a withdrawn employer merges or otherwise combines with an employer that has an obligation to contribute to the plan from which the first employer withdrew, the combined entity is the eligible employer, and the rules of § 4207.5 shall be applied—

(1) By subtracting from the measurement period contribution base units the contribution base units for which the non-withdrawn portion of the employer was obligated to contribute in the last plan year ending prior to the combination;

(2) By determining the base year contribution base units solely by reference to the contribution base units of the withdrawn portion of the employer; and

(3) By using the date of the combination, rather than the date of resumption of covered operations, to begin the measurement period.

(e) *Combination of two or more withdrawn employers.* If two or more withdrawn employers merge or otherwise combine, the combined entity is the eligible employer, and the rules of § 4207.5 shall be applied by combining the number of contribution base units with respect to which each portion of the employer had an obligation to contribute under the plan for its base year. However, the combined number of contribution base units shall not include contribution base units of a withdrawn portion of the employer that had fully paid its withdrawal liability as of the date of the resumption of covered operations.

§ 4207.10 Plan rules for abatement.

(a) *General rule.* Subject to the approval of the PBGC, a plan may, by amendment, adopt rules for the reduction or waiver of complete withdrawal liability under conditions other than those specified in §§ 4207.5 and 4207.9 (c) and (d), provided that such conditions relate to events occurring or factors existing subsequent to a complete withdrawal year. The request for PBGC approval shall be filed after the amendment is adopted. A plan amendment under this section may not be put into effect until it is approved by the PBGC. However, an amendment that is approved by the PBGC may apply retroactively to the date of the adoption of the amendment. PBGC approval shall also be required for any subsequent modification of the amendment, other than repeal of the amendment. Sections 4207.6, 4207.7, and 4207.8 shall apply to all subsequent partial withdrawals after a reduction or waiver of complete withdrawal liability under a plan amendment approved by the PBGC pursuant to this section.

(b) *Who may request.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign and submit the request.

(c) *Where to file.* The request shall be addressed to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

(d) *Information.* Each request shall contain the following information:

(1) The name and address of the plan for which the plan amendment is being submitted and the telephone number of the plan sponsor or its duly authorized representative.

(2) The nine-digit Employer Identification Number (EIN) assigned to the plan sponsor by the IRS and the three-digit Plan Identification Number (PN) assigned to the plan by the plan sponsor, and, if different, the EIN and PN last filed with the PBGC. If no EIN or PN has been assigned, that should be indicated.

(3) A copy of the executed amendment, including—

(i) The date on which the amendment was adopted;

(ii) The proposed effective date; and

(iii) The full text of the rules on the reduction or waiver of complete withdrawal liability.

(4) A copy of the most recent actuarial valuation report of the plan.

(5) A statement certifying that notice of the adoption of the amendment and of the request for approval filed under this section has been given to all employers that have an obligation to contribute under the plan and to all employee organizations representing employees covered under the plan.

(e) *Supplemental information.* In addition to the information described in paragraph (d) of this section, a plan may submit any other information that it believes it pertinent to its request. The PBGC may require the plan sponsor to submit any other information that the PBGC determines it needs to review a request under this section.

(f) *Criteria for PBGC approval.* The PBGC shall approve a plan amendment authorized by paragraph (a) of this section if it determines that the rules therein are consistent with the purposes of ERISA. An abatement rule is not consistent with the purposes of ERISA if—

(1) Implementation of the rule would be adverse to the interest of plan participants and beneficiaries; or

(2) The rule would increase the PBGC's risk of loss with respect to the plan.

(Approved by the Office of Management and Budget under control number 1212–0044)

PART 4208—REDUCTION OR WAIVER OF PARTIAL WITHDRAWAL LIABILITY

Sec.

4208.1 Purpose and scope.
4208.2 Definitions.
4208.3 Abatement.
4208.4 Conditions for abatement.
4208.5 Withdrawal liability payments during pendency of abatement determination.
4208.6 Computation of reduced annual partial withdrawal liability payment.
4208.7 Adjustment of withdrawal liability for subsequent withdrawals.
4208.8 Multiple partial withdrawals in one plan year.
4208.9 Plan adoption of additional abatement conditions.

Authority: 29 U.S.C. 1302(b)(3), 1388 (c) and (e).

§ 4208.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to establish rules for reducing or waiving the liability of certain employers that have partially withdrawn from a multiemployer pension plan.

(b) *Scope.* This part applies to multiemployer pension plans covered under title IV of ERISA and to employers that have partially withdrawn from such plans after September 25, 1980, and that have not, as of the date on which they satisfy the conditions for reducing or eliminating their partial withdrawal liability, fully satisfied their obligation to pay that partial withdrawal liability. This rule shall not negate reasonable actions taken by plans prior to the effective date of this part under plan rules implementing section 4208 of ERISA that were validly adopted pursuant to section 405 of the Multiemployer Act.

§ 4208.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: employer, ERISA, IRS, Multiemployer Act, multiemployer plan, PBGC, plan, and plan year.

In addition, for purposes of this part:

Complete withdrawal means a complete withdrawal as described in section 4203 of ERISA.

Eligible employer means the employer, as defined in section 4001(b) of ERISA, as it existed on the date of its initial partial or complete withdrawal, as applicable. An eligible employer shall continue to be an eligible employer notwithstanding the occurrence of any of the following events:

(1) A restoration involving a mere change in identity, form or place of organization, however effected;

(2) A reorganization involving a liquidation into a parent corporation;

(3) A merger, consolidation or division solely between (or among) trades or businesses (whether or not incorporated) of the employer; or

(4) An acquisition by or of, or a merger or combination with another trade or business.

Partial withdrawal means a partial withdrawal as described in section 4205 of ERISA.

Partial withdrawal year means the third year of the 3-year testing period in the case of a partial withdrawal caused by a 70-percent contribution decline, or the year of the partial cessation in the case of a partial withdrawal caused by a partial cessation of the employer's contribution obligation.

§ 4208.3 Abatement.

(a) *General.* Whenever an eligible employer that has partially withdrawn from a multiemployer plan satisfies the requirements in § 4208.4 for the reduction or waiver of its partial withdrawal liability, it may apply to the plan for abatement of its partial withdrawal liability. Applications shall identify the eligible employer, the withdrawn employer (if different), the date of withdrawal, and the basis for reduction or waiver of its withdrawal liability. Upon receiving a complete application for abatement, the plan sponsor shall determine, in accordance with paragraph (b) of this section, whether the employer satisfies the requirements for abatement of its partial withdrawal liability under § 4208.4. If the plan sponsor determines that the employer satisfies the requirements for abatement of its partial withdrawal liability, the provisions of paragraph (c) of this section shall apply. If the plan sponsor determines that the employer does not satisfy the requirements for abatement of its partial withdrawal liability, the provisions of paragraphs (d) and (e) of this section shall apply.

(b) *Determination of abatement.* Within 60 days after an eligible employer that partially withdrew from a multiemployer plan applies for abatement in accordance with paragraph (a) of this section, the plan sponsor shall determine whether the employer satisfies the requirements for abatement of its partial withdrawal liability under § 4208.4 and shall notify the employer in writing of its determination and of the consequences of its determination, as described in paragraphs (c) or (d) and (e) of this section, as appropriate. If a bond or escrow has been provided to the plan under § 4208.5 of this part, the plan sponsor shall send a copy of the notice to the bonding or escrow agent.

(c) *Effects of abatement.* If the plan sponsor determines that the employer satisfies the requirements for abatement of its partial withdrawal liability under § 4208.4, then—

(1) The employer's partial withdrawal liability shall be eliminated or its annual partial withdrawal liability payments shall be reduced in accordance with § 4208.6, as applicable;

(2) The employer's liability for a subsequent withdrawal shall be determined in accordance with § 4208.7;

(3) Any bonds furnished under § 4208.5 shall be canceled and any amounts held in escrow under § 4208.5 shall be refunded to the employer; and

(4) Any withdrawal liability payments originally due and paid after the end of the plan year in which the conditions for abatement were satisfied, in excess of the amount due under this part after that date shall be credited to the remaining withdrawal liability payments, if any, owed by the employer, beginning with the first payment due after the revised payment schedule is issued pursuant to this paragraph. If the credited amount is greater than the outstanding amount of the employer's partial withdrawal liability, the amount remaining after satisfaction of the liability shall be refunded to the employer. Interest on the credited amount at the rate prescribed in part 4219, subpart C, of this chapter (relating to overdue, defaulted, and overpaid withdrawal liability) shall be added if the plan sponsor does not issue a revised payment schedule reflecting the credit or make the required refund within 60 days after receipt by the plan sponsor of a complete abatement application. Interest shall accrue from the 61st day.

(d) *Effects of non-abatement.* If the plan sponsor determines that the employer does not satisfy the requirements for abatement of its partial

withdrawal liability under § 4208.4, then the employer shall take or cause to be taken the actions set forth in paragraphs (d)(1)–(d)(3) of this section. The rules in part 4219, subpart C, shall apply with respect to all payments required to be made under paragraphs (d)(2) and (d)(3). For this purpose, a payment required under paragraph (d)(2) shall be treated as a withdrawal liability payment due on the 30th day after the date of the plan sponsor's notice under paragraph (b) of this section.

(1) Any bond or escrow furnished under § 4208.5 shall be paid to the plan within 30 days after the date of the plan sponsor's notice under paragraph (b) of this section.

(2) The employer shall pay to the plan within 30 days after the date of the plan sponsor's notice under paragraph (b) of this section, the amount of its withdrawal liability payment or payments, with respect to which the bond or escrow was furnished, in excess of the bond or escrow.

(3) The employer shall resume or continue making its partial withdrawal liability payments as they are due to the plan.

(e) *Review of non-abatement determination.* A plan sponsor's determinations that the employer does not satisfy the requirements for abatement under § 4208.4 and of the amount of reduction determined under § 4208.6 shall be subject to plan review under section 4219(b)(2) of ERISA and to arbitration under section 4221 of ERISA and part 4221 of this chapter, within the times prescribed by those provisions. For this purpose, the plan sponsor's notice under paragraph (b) of this section shall be treated as a demand under section 4219(b)(1) of ERISA. If the plan sponsor upon review or an arbitrator determines that the employer satisfies the requirements for abatement of its partial withdrawal liability under § 4208.4, the plan sponsor shall immediately refund the amounts described in paragraph (e)(1) of this section if the liability is waived, or credit and refund the amounts described in paragraph (e)(2) if the annual payment is reduced.

(1) *Refund for waived liability.* If the employer's partial withdrawal liability is waived, the plan sponsor shall refund to the employer the payments made pursuant to paragraphs (d)(1)–(d)(3) of this section (plus interest determined in accordance with § 4219.31(d) of this chapter as if the payments were overpayments of withdrawal liability).

(2) *Credit for reduced annual payment.* If the employer's annual partial withdrawal liability payment is reduced, the plan sponsor shall credit the payments made pursuant to paragraphs (d)(1)–(d)(3) of this section (plus interest determined in accordance with § 4219.31(d) of this chapter as if the payments were overpayments of withdrawal liability) to future withdrawal liability payments owed by the employer, beginning with the first payment that is due after the determination, and refund any credit (including interest) remaining after satisfaction of the outstanding amount of the employer's partial withdrawal liability.

§ 4208.4 Conditions for abatement.

(a) *Waiver of liability for a 70-percent contribution decline.* An employer that has incurred a partial withdrawal under section 4205(a)(1) of ERISA shall have no obligation to make payments with respect to that partial withdrawal (other than delinquent payments) for plan years beginning after the second consecutive plan year in which the conditions of either paragraph (a)(1) or (a)(2) are satisfied for each of the two years:

(1) The number of contribution base units with respect to which the employer has an obligation to contribute under the plan for each year is not less than 90 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the high base year (as defined in paragraph (d) of this section).

(2) The conditions of this paragraph are satisfied if—

(i) The number of contribution base units with respect to which the employer has an obligation to contribute for each year exceeds 30 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the high base year (as defined in paragraph (d) of this section); and

(ii) The total number of contribution base units with respect to which all employers under the plan have obligations to contribute in each of the two years is not less than 90 percent of the total number of contribution base units for which all employers had obligations to contribute in the partial withdrawal year.

(b) *Waiver of liability for a partial cessation of the employer's contribution obligation.* Except as provided in § 4208.8, an employer that has incurred partial withdrawal liability under section 4205(a)(2) of ERISA shall have no obligation to make payments with respect to that partial withdrawal (other than delinquent payments) for plan years beginning after the second consecutive plan year in which the employer satisfies the conditions under either paragraph (b)(1) or (b)(2) of this section.

(1) *Partial restoration of withdrawn work.* The employer satisfies the conditions under this paragraph if, for each of two consecutive plan years—

(i) The employer makes contributions for the same facility or under the same collective bargaining agreement that gave rise to the partial withdrawal;

(ii) The employer's contribution base units for that facility or under that agreement exceed 30 percent of the contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the high base year (as defined in paragraph (d) of this section); and

(iii) The total number of contribution base units with respect to which the employer has an obligation to contribute to the plan equals at least 90 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute under the plan for the high base year (as defined in paragraph (d) of this section).

(2) *Substantial restoration of withdrawn work.* The employer satisfies the conditions under this paragraph if, for each of two consecutive plan years—

(i) The employer makes contributions for the same facility or under the same collective bargaining agreement that gave rise to the partial withdrawal;

(ii) The employer's contribution base units for that facility or under that agreement are not less than 90 percent of the contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the high base year (as defined in paragraph (d) of this section); and

(iii) The total number of contribution base units with respect to which the employer has an obligation to contribute to the plan equals or exceeds the sum of—

(A) The number of contribution base units with respect to which the employer had an obligation to contribute in the year prior to the partial withdrawal year, determined without regard to the contribution base units for the facility or under the agreement that gave rise to the partial withdrawal; and

(B) 90 percent of the contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement in either the year prior to the partial withdrawal year or the high base year (as defined in paragraph (d) of this section), whichever is less.

(c) *Reduction in annual partial withdrawal liability payment—*

(1) *Partial withdrawals under section 4205(a)(1).* An employer shall be entitled to a reduction of its annual partial withdrawal liability payment for a plan year if the number of contribution base units with respect to which the employer had an obligation to contribute during the plan year exceeds the greater of—

(i) 110 percent (or such lower number as the plan may, by amendment, adopt) of the number of contribution base units with respect to which the employer had an obligation to contribute in the partial withdrawal year; or

(ii) The total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the plan year following the partial withdrawal year.

(2) *Partial withdrawals under section 4205(a)(2).* An employer that resumes the obligation to contribute with respect to a facility or collective bargaining agreement that gave rise to a partial withdrawal, but does not qualify to have that liability waived under paragraph (b) of this section, shall have its annual partial withdrawal liability payment reduced for any plan year in which the total number of contribution base units with respect to which the employer has an obligation to contribute equals or exceeds the sum of—

(i) The number of contribution base units for the reentered facility or agreement during that year; and

(ii) The total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the year following the partial withdrawal year.

(d) *High base year.* For purposes of paragraphs (a) and (b)(1)(iii) of this section, the high base year contributions are the average of the total contribution base units for the two plan years for which the employer's total contribution base units were highest within the five plan years immediately preceding the beginning of the 3-year testing period defined in section 4205(b)(1)(B)(i) of ERISA, with respect to paragraph (a) of this section, or the partial withdrawal year, with respect to paragraph (b)(1)(iii) of this section. For purposes of paragraphs (b)(1)(ii) and (b)(2) of this section, the high base year contributions are the average number of contribution base units for the facility or under the agreement for the two plan years for which the employer's contribution base units for that facility or under that agreement were highest within the five plan years immediately preceding the partial withdrawal.

§ 4208.5 Withdrawal liability payments during pendency of abatement determination.

(a) *Bond/Escrow.* An employer that has satisfied the requirements of § 4208.4(a)(1) without regard to "90 percent of" or § 4208.4(b) for one year with respect to all partial withdrawals it incurred in a plan year may, in lieu of making scheduled withdrawal liability payments in the second year for those withdrawals, provide a bond to, or establish an escrow account for, the plan that satisfies the requirements of paragraph (b) of this section or any plan rules adopted under paragraph (d) of this section, pending a determination by the plan sponsor of whether the employer satisfies the requirements of § 4208.4 (a)(1) or (b) for the second consecutive plan year. An employer that applies for abatement and neither provides a bond/escrow nor makes its withdrawal liability payments remains eligible for abatement.

(b) *Amount of bond/escrow.* The bond or escrow allowed by this section shall be in an amount equal to 50 percent of the withdrawal liability payments that would otherwise be due. The bond or escrow relating to each payment shall be furnished before the due date of that payment. A single bond or escrow may be provided for more than one payment due during the pendency of the plan sponsor's determination. The bond or escrow agreement shall provide that if the plan sponsor determines that the employer does not satisfy the requirements for abatement of its partial withdrawal liability under § 4208.4 (a)(1) or (b), the bond or escrow shall be paid to the plan upon notice from the plan sponsor to the bonding or escrow agent. A bond provided under this paragraph shall be issued by a corporate surety company that is an acceptable surety for purposes of section 412 of ERISA.

(c) *Notice of bond/escrow.* Concurrently with posting a bond or establishing an escrow account under this section, the employer shall notify the plan sponsor. The notice shall include a statement of the amount of the bond or escrow, the scheduled payment or payments with respect to which the bond or escrow is being furnished, and the name and address of the bonding or escrow agent.

(d) *Plan amendments concerning bond/escrow.* A plan may, by amendment, adopt rules decreasing the amount of the bond or escrow specified in paragraph (b) of this section. A plan amendment adopted under this paragraph may be applied only to the extent that it is consistent with the purposes of ERISA. An amendment satisfies this requirement only if it does not create an unreasonable risk of loss to the plan.

(e) *Plan sponsor determination.* Within 60 days after the end of the plan year in which the bond/escrow is furnished, the plan sponsor shall determine whether the employer satisfied the requirements of § 4208.4 (a)(1) or (b) for the second consecutive plan year. The plan sponsor shall notify the employer and the bonding or escrow agent in writing of its determination and of the consequences of its determination, as described in § 4208.3 (c) or (d) and (e), as appropriate.

§ 4208.6 Computation of reduced annual partial withdrawal liability payment.

(a) *Amount of reduced payment.* An employer that satisfies the requirements of § 4208.4 (c)(1) or (c)(2) shall have its annual partial withdrawal liability payment for that plan year reduced in accordance with paragraph (a)(1) or (a)(2) of this section, respectively.

(1) The reduced annual payment amount for an employer that satisfies § 4208.4(c)(1) shall be determined by substituting the number of contribution base units in the plan year in which the requirements are satisfied for the number of contribution base units in the year following the partial withdrawal year in the numerator of the fraction described in section 4206(a)(2)(A) of ERISA.

(2) The reduced annual payment for an employer that satisfies § 4208.4(c)(2) shall be determined by adding the contribution base units for which the employer is obligated to contribute with respect to the reentered facility or agreement in the year in which the requirements are satisfied to the numerator of the fraction described in section 4206(a)(2)(A) of ERISA.

(b) *Credit for reduction.* The plan sponsor shall credit the account of an employer that satisfies the requirements of § 4208.4(c)(1) or (c)(2) with the amount of annual withdrawal liability that it paid in excess of the amount described in paragraph (a)(1) or (a)(2) of this section, as appropriate. The credit shall be applied, a revised payment schedule issued, refund made and interest added, all in accordance with § 4208.3(c)(4).

§ 4208.7 Adjustment of withdrawal liability for subsequent withdrawals.

The liability of an employer for a partial or complete withdrawal from a plan subsequent to a partial withdrawal from that plan in a prior plan year shall be reduced in accordance with part 4206 of this chapter.

§ 4208.8 Multiple partial withdrawals in one plan year.

(a) *General rule.* If an employer partially withdraws from the same multiemployer plan on two or more occasions during the same plan year, the rules of § 4208.4 shall be applied as modified by this section.

(b) *Partial withdrawals under section 4205 (a)(1) and (a)(2) in the same plan year.* If an employer partially withdraws from the same multiemployer plan as a result of a 70-percent contribution decline and a partial cessation of the employer's contribution obligation in the same plan year, the employer shall not be eligible for abatement under § 4208.4 (b) or (c)(2) or under paragraph (c) of this section. The employer may qualify for abatement under § 4208.4(a) and (c)(1) and under any rules adopted by the plan pursuant to § 4208.9.

(c) *Multiple partial cessations of the employer's contribution obligation.* If an employer permanently ceases to have an obligation to contribute for more than one facility, under more than one collective bargaining agreement, or for one or more facilities and under one or more collective bargaining agreements, resulting in multiple partial withdrawals under section 4205(b)(2)(A) in the same plan year, the abatement rules in § 4208.4(b) shall be applied as modified by this paragraph. If an employer resumes work at all such facilities and under all such collective bargaining agreements, the determination of whether the employer qualifies for elimination of its liability under § 4208.4(b) shall be made by substituting the test set forth in paragraph (c)(1) of this section for that prescribed by § 4208.4 (b)(1)(ii) or (b)(2)(ii), as applicable. If the employer resumes work at or under fewer than all the facilities or collective bargaining agreements described in this paragraph, the employer cannot qualify for elimination of its liability under § 4208.4(b). However, the employer may qualify for a reduction in its partial withdrawal liability pursuant to paragraph (c)(2) of this section.

(1) *Resumption of work at all facilities and under all bargaining agreements.* The test under this paragraph is satisfied if for each of the two consecutive plan years referred to in § 4208.4(b), the employer's total contribution base units for the facilities and under the collective bargaining agreements with respect to which the employer incurred the multiple partial withdrawals exceed 30 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute for those facilities and under those agreements for the base year (as defined in paragraph (d) of this section).

(2) *Resumption at fewer than all facilities or under fewer than all bargaining agreements.* If the employer satisfies the conditions in § 4208.4 (b)(1)(i) and (b)(1)(iii) and paragraph (c)(2)(i) of this section, or the conditions in § 4208.4 (b)(2)(i) and (b)(2)(iii) and paragraph (c)(2)(ii) of this section, as applicable, the employer's withdrawal liability shall be partially waived as set forth in paragraph (c)(2)(iii) of this section.

(i) With respect to a resumption of work under § 4208.4(b)(1), the condition under this paragraph is satisfied if, for the two consecutive plan years referred to in § 4208.4(b)(1), the employer's contribution base units for any reentered facility or agreement exceed 30 percent of the number of contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the base year (as defined in paragraph (d) of this section).

(ii) With respect to a resumption of work under § 4208.4(b)(2), the condition under this paragraph is satisfied if, for the two consecutive plan years referred to in § 4208.4(b)(2), the employer's contribution base units for any reentered facility or agreement exceed 90 percent of the number of contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the base year (as defined in paragraph (d) of this section).

(iii) The employer's reduced withdrawal liability and, if any, the reduced annual payments of the liability shall be determined by adding the average number of contribution base units that the employer is required to contribute for those two consecutive years for that facility(ies) or agreement(s) to the numerator of the fraction described in section 4206(a)(2)(A) of ERISA. The amount of any remaining partial withdrawal liability shall be paid over the schedule originally established starting with the first payment due after the revised payment schedule is issued under § 4208.3(c)(4).

(d) *Base Year.* For purposes of this section, the base year contribution base units for a reentered facility(ies) or under a reentered agreement(s) are the average number of contribution base units for the facility(ies) or under the agreement(s) for the two plan years for which the employer's contribution base units for that facility(ies) or under that agreement(s) were highest within the five plan years immediately preceding the partial withdrawal.

§ 4208.9 Plan adoption of additional abatement conditions.

(a) *General rule.* A plan may by amendment, subject to the approval of the PBGC, adopt rules for the reduction or waiver of partial withdrawal liability under conditions other than those specified in § 4208.4, provided that such conditions relate to events occurring or factors existing subsequent to a partial withdrawal year. The request for PBGC approval shall be filed after the amendment is adopted. PBGC approval shall also be required for any subsequent modification of the amendment, other than repeal of the amendment. A plan amendment under this section may not be put into effect until it is approved by the PBGC. An amendment that is approved by the PBGC may apply retroactively.

(b) *Who may request.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign and submit the request.

(c) *Where to file.* The request shall be addressed to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

(d) *Information.* Each request shall contain the following information:

(1) The name and address of the plan for which the plan amendment is being submitted and the telephone number of the plan sponsor or its duly authorized representative.

(2) The nine-digit Employer Identification Number (EIN) assigned to the plan sponsor by the IRS and the three-digit Plan Identification Number (PIN) assigned to the plan by the plan sponsor, and, if different, also the EIN–PIN last filed with the PBGC. If an EIN–PIN has not been assigned, that should be indicated.

(3) A copy of the executed amendment, including—

(i) the date on which the amendment was adopted;

(ii) the proposed effective date;

(iii) the full text of the rules on the reduction or waiver of partial withdrawal liability; and

(iv) the full text of the rules adjusting the reduction in the employer's liability for a subsequent partial or complete withdrawal, as required by section 4206(b)(1) of ERISA.

(4) A copy of the most recent actuarial valuation report of the plan.

(5) A statement certifying that notice of the adoption of the amendment and of the request for approval filed under this section has been given to all employers that have an obligation to contribute under the plan and to all employee organizations representing employees covered under the plan.

(e) *Supplemental information.* In addition to the information described in paragraph (d) of this section, a plan may submit any other information that it believes is pertinent to its request. The PBGC may require the plan sponsor to submit any other information that the PBGC determines that it needs to review a request under this section.

(f) *Criteria for PBGC approval.* The PBGC shall approve a plan amendment authorized by paragraph (a) of this section if it determines that the rules therein are consistent with the purposes of ERISA. An abatement amendment is not consistent with the purposes of ERISA unless the PBGC determines that—

(1) The amendment is not adverse to the interests of plan participants and beneficiaries in the aggregate; and

(2) The amendment would not significantly increase the PBGC's risk of loss with respect to the plan.

(Approved by the Office of Management and Budget under control no. 1212–0039)

PART 4211—ALLOCATING UNFUNDED VESTED BENEFITS TO WITHDRAWING EMPLOYERS

Subpart A—General

Sec.

4211.1 Purpose and scope.
4211.2 Definitions.
4211.3 Special rules for construction industry and IRC section 404(c) plans.

Subpart B—Changes Not Subject to PBGC Approval

4211.11 Changes not subject to PBGC approval.
4211.12 Modifications to the presumptive, modified presumptive and rolling-5 methods.
4211.13 Modifications to the direct attribution method.

Subpart C—Changes Subject to PBGC Approval

4211.21 Changes subject to PBGC approval.
4211.22 Requests for PBGC approval.
4211.23 Approval of alternative method.
4211.24 Special rule for certain alternative methods previously approved.

Subpart D—Allocation Methods for Merged Multiemployer Plans

4211.31 Allocation of unfunded vested benefits following the merger of plans.
4211.32 Presumptive method for withdrawals after the initial plan year.
4211.33 Modified presumptive method for withdrawals after the initial plan year.
4211.34 Rolling-5 method for withdrawals after the initial plan year.
4211.35 Direct attribution method for withdrawals after the initial plan year.
4211.36 Modifications to the determination of initial liabilities, the amortization of initial liabilities, and the allocation fraction.
4211.37 Allocating unfunded vested benefits for withdrawals before the end of the initial plan year.

Authority: 29 U.S.C. 1302(b)(3); 1391(c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), (c)(5)(D), and (f).

Subpart A—General

§ 4211.1 Purpose and scope.

(a) *Purpose.* Section 4211 of ERISA provides four methods for allocating unfunded vested benefits to employers that withdraw from a multiemployer plan: the presumptive method (section 4211(b)); the modified presumptive method (section 4211(c)(2)); the rolling-5 method (section 4211(c)(3)); and the direct attribution method (section 4211(c)(4)). With the minor exceptions covered in § 4211.3, a plan determines the amount of unfunded vested benefits allocable to a withdrawing employer in accordance with the presumptive method, unless the plan is amended to adopt an alternative allocative method. Generally, the PBGC must approve the adoption of an alternative allocation method. On September 25, 1984, 49 FR 37686, the PBGC granted a class approval of all plan amendments adopting one of the statutory alternative allocation methods. Subpart C sets forth the criteria and procedures for PBGC approval of nonstatutory alternative allocation methods. Section 4211(c)(5) of ERISA also permits certain modifications to the statutory allocation methods. The PBGC is to prescribe these modifications in a regulation, and plans may adopt them without PBGC approval. Subpart B contains the permissible modifications to the statutory methods. Plans may adopt other modifications subject to PBGC approval under subpart C. Finally, under section 4211(f) of ERISA, the PBGC is required to prescribe rules governing the application of the statutory allocation methods or modified methods by plans following merger of multiemployer plans. Subpart D sets forth alternative allocative methods to be used by merged plans. In addition, such plans may adopt any of the allocation methods or modifications described under subparts B and C in accordance with the rules under subparts B and C.

(b) *Scope.* This part applies to all multiemployer plans covered by title IV of ERISA.

§ 4211.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, employer, IRS, multiemployer plan, nonforfeitable benefit, PBGC, plan, and plan year.

In addition, for purposes of this part:

Initial plan year means a merged plan's first complete plan year that begins after the establishment of the merged plan.

Initial plan year unfunded vested benefits means the unfunded vested benefits as of the close of the initial plan year, less the value as of the end of the initial plan year of all outstanding claims for withdrawal liability that can reasonably be expected to be collected from employers that had withdrawn as of the end of the initial plan year.

Merged plan means a plan that is the result of the merger of two or more multiemployer plans.

Merger means the combining of two or more multiemployer plans into one multiemployer plan.

Prior plan means the plan in which an employer participated immediately before that plan became a part of the merged plan.

Unfunded vested benefits means an amount by which the value of nonforfeitable benefits under the plan exceeds the value of the assets of the plan.

Withdrawing employer means the employer for whom withdrawal liability is being calculated under section 4201 of ERISA.

Withdrawn employer means an employer who, prior to the withdrawing employer, has discontinued contributions to the plan or covered operations under the plan and whose obligation to contribute has not been assumed by a successor employer within the meaning of section 4204 of ERISA. A temporary suspension of contributions, including a suspension described in section 4218(2) of ERISA, is not considered a discontinuance of contributions.

§ 4211.3 Special rules for construction industry and IRC section 404(c) plans.

(a) *Construction plans.* Except as provided in §§ 4211.11(b) and 4211.21(b), a plan that primarily covers employees in the building and construction industry shall use the presumptive method for allocating unfunded vested benefits.

(b) *Section 404(c) plans.* A plan described in section 404(c) of the Code or a continuation of such a plan shall allocate unfunded vested benefits under the rolling-5 method unless the plan, by amendment, adopts an alternative method or modification.

Subpart B—Changes Not Subject to PBGC Approval

§ 4211.11 Changes not subject to PBGC approval.

(a) *General rule.* A plan, other than a plan that primarily covers employees in the building and construction industry, may adopt, by amendment, any of the statutory allocation methods and any of the modifications set forth in §§ 4211.12 and 4211.13, without the approval of the PBGC.

(b) *Building and construction industry plans.* A plan that primarily covers employees in the building and construction industry may adopt, by amendment, any of the modifications to the presumptive rule set forth in § 4211.12 without the approval of the PBGC.

§ 4211.12 Modifications to the presumptive, modified presumptive and rolling-5 methods.

(a) *"Contributions made" and "total amount contributed".* Each of the allocation fractions used in the presumptive, modified presumptive and rolling-5 methods is based on contributions that certain employers have made to the plan for a five-year period. For purposes of these methods, and except as provided in paragraph (b) of this section, "the sum of all contributions made" or "total amount contributed" by employers for a plan year means the amounts (other than withdrawal liability payments) considered contributed to the plan for the plan year for purposes of section 412(b)(3)(A) of the Code. For plan years before section 412 applies to the plan, "the sum of all contributions made" or "total amount contributed" means the amount reported to the IRS or the Department of Labor as total contributions for the plan year; for example, for plan years in which the plan filed the Form 5500, the amount reported as total contributions on that form. Employee contributions, if any, shall be excluded from the totals.

(b) *Changing the period for counting contributions.* A plan sponsor may amend a plan to modify the denominators in the presumptive, modified presumptive and rolling-5 methods in accordance with one of the alternatives described in this paragraph. Except as provided in paragraph (b)(4) of this section, any amendment adopted under this paragraph shall be applied consistently to all plan years. Contributions counted for one plan year may be not counted for any other plan year. If a contribution is counted as part of the "total amount contributed" for any plan year used to determine a denominator, that contribution may not also be counted as a contribution owed with respect to an earlier year used to determine the same denominator, regardless of when the plan collected that contribution.

(1) A plan sponsor may amend a plan to provide that "the sum of all contributions made" or "total amount contributed" for a plan year means the amount of contributions that the plan actually received during the plan year, without regard to whether the contributions are treated as made for that plan year under section 412(b)(3)(A) of the Code.

(2) A plan sponsor may amend a plan to provide that "the sum of all contributions made" or "total amount contributed" for a plan year means the amount of contributions actually received during the plan year, increased by the amount of contributions received during a specified period of time after the close of the plan year not to exceed the period described in section 412(c)(10) of the Code and regulations thereunder.

(3) A plan sponsor may amend a plan to provide that "the sum of all contributions made" or "total amount contributed" for a plan year means the amount of contributions actually received during the plan year, increased by the amount of contributions accrued during the plan year and received during a specified period of time after the close of the plan year not to exceed the period described in section 412(c)(10) of the Code and regulations thereunder.

(4) A plan sponsor may amend a plan to provide that—

(i) For plan years ending before September 26, 1980, "the sum of all contributions made" or "total amount contributed" means the amount of total contributions reported on Form 5500 and, for years before the plan was required to file Form 5500, the amount of total contributions reported on any predecessor reporting form required by the Department of Labor or the IRS; and

(ii) For subsequent plan years, "the sum of all contributions made" or "total amount contributed" means the amount described in paragraph (a) of this section, or the amount described in paragraph (b)(1), (b)(2) or (b)(3) of this section.

(c) *Excluding contributions of significant withdrawn employers.* Contributions of certain withdrawn employers are excluded from the denominator in each of the fractions used to determine a withdrawing employer's share of unfunded vested benefits under the presumptive, modified presumptive and rolling-5 methods. Except as provided in paragraph (c)(1) of this section, contributions of all employers that permanently cease to have an obligation to contribute to the plan or permanently cease covered operations before the end of the period of plan years used to determine the fractions for allocating unfunded vested benefits under each of those methods (and contributions of all employers that withdrew before September 26, 1980) are excluded from the denominators of the fractions.

(1) The plan sponsor of a plan using the presumptive, modified presumptive or rolling-5 method may amend the plan to provide that only the contributions of significant withdrawn employers shall be excluded from the denominators of the fractions used in those methods.

(2) For purposes of this paragraph (c), "significant withdrawn employer" means—

(i) An employer to which the plan has sent a notice of withdrawal liability under section 4219 of ERISA; or

(ii) A withdrawn employer that in any plan year used to determine the denominator of a fraction contributed at least $250,000 or, if less, 1% of all contributions made by employers for that year.

(3) If a group of employers withdraw in a concerted withdrawal, the plan shall treat the group as a single employer in determining whether the members are significant withdrawn employers under paragraph (c)(2) of this section. A "concerted withdrawal" means a cessation of contributions to the plan during a single plan year—

(i) By an employer association;

(ii) By all or substantially all of the employers covered by a single collective bargaining agreement; or

(iii) By all or substantially all of the employers covered by agreements with a single labor organization.

§ 4211.13 Modifications to the direct attribution method.

(a) *Error in direct attribution method.* The unfunded vested benefits allocated to a withdrawing employer under the direct attribution method are the sum of the employer's attributable liability, determined under section 4211(c)(4)(A)(i) and (B) of ERISA, and the employer's share of the plan's unattributable liability, determined under section 4211(c)(4)(E) and allocated to the employer under section 4211(c)(4)(F). Plan sponsors should allocate unattributable liabilities on the basis of the employer's share of the attributable liabilities. However, section 4211(c)(4)(F) of ERISA, which describes the allocation of unattributable liabilities, contains a typographical error. Therefore, plans adopting the direct attribution method shall modify the phrase "as the amount determined under subparagraph (C) for the employer bears to the sum of the amounts determined under subparagraph (C) for all employers under the plan" in section 4211(c)(4)(F) by substituting "subparagraph (B)" for "subparagraph (C)" in both places it appears.

(b) *Allocating unattributable liability based on contributions in period before withdrawal.* A plan that is amended to adopt the direct attribution method may provide that instead of allocating the unattributable liability in accordance with section 4211(c)(4)(F) of ERISA, the employer's share of the plan's unattributable liability shall be determined by multiplying the plan's unattributable liability determined under section 4211(c)(4)(E) by a fraction—

(1) The numerator of which is the total amount of contributions required to be made by the withdrawing employer over a period of consecutive plan years (not fewer than five) ending before the withdrawal; and

(2) The denominator of which is the total amount contributed under the plan by all employers for the same period of years used in paragraph (b)(1) of this section, decreased by any amount contributed by an employer that withdrew from the plan during those plan years.

Subpart C—Changes Subject to PBGC Approval

§ 4211.21 Changes subject to PBGC approval.

(a) *General rule.* Subject to the approval of the PBGC pursuant to this subpart, a plan, other than a plan that primarily covers employees in the building and construction industry, may adopt, by amendment, any allocation method or modification to an allocation method that is not permitted under subpart B of this part.

(b) *Building and construction industry plans.* Subject to the approval of the PBGC pursuant to this subpart, a plan that primarily covers employees in the building and construction industry may adopt, by amendment, any allocation method or modification to an allocation method that is not permitted under § 4211.12 if the method or modification is applicable only to its employers that are not construction industry employers within the meaning of section 4203(b)(1)(A) of ERISA.

(c) *Substantial overallocation not allowed.* No plan may adopt an allocation method or modification to an allocation method that results in a systematic and substantial overallocation of the plan's unfunded vested benefits.

(d) *Use of method prior to approval.* A plan may implement an alternative allocation method or modification to an allocation method that requires PBGC approval before that approval is given. However, the plan sponsor shall assess liability in accordance with this paragraph.

(1) *Demand for payment.* Until the PBGC approves the allocation method or modification, a plan may not demand withdrawal liability under section 4219 of ERISA in an amount that exceeds the lesser of the amount calculated under the amendment or the amount calculated under the allocation method that the plan would be required to use if the PBGC did not approve the amendment. The plan must inform each withdrawing employer of both amounts and explain that the higher amount may become payable depending on the PBGC's decision on the amendment.

(2) *Adjustment of liability.* When necessary because of the PBGC decision on the amendment, the plan shall adjust the amount demanded from each employer under paragraph (c)(1) of this section and the employer's withdrawal liability payment schedule. The length of the payment schedule shall be increased, as necessary. The plan shall notify each affected employer of the adjusted liability and payment schedule and shall collect the adjusted amount in accordance with the adjusted schedule.

§ 4211.22 Requests for PBGC approval.

(a) *General.* A plan shall submit a request for approval of an alternative allocation method or modification to an allocation method to the PBGC in accordance with the requirements of this section as soon as practicable after the adoption of the amendment.

(b) *Who shall submit.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign the request.

(c) *Where to submit.* The plan shall submit the request by first class mail or courier service to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or by hand to the above address.

(d) *Content.* Each request shall contain the following information:

(1) The name, address and telephone number of the plan sponsor, and of the duly authorized representative, if any, of the plan sponsor.

(2) The name of the plan.

(3) The nine-digit Employer Identification Number (EIN) that the Internal Revenue Service assigned to the plan sponsor and the three-digit Plan Identification Number (PIN) that the plan sponsor assigned to the plan, and, if different, also the EIN-PIN that the plan last filed with the PBGC. If the plan has no EIN-PIN, the request shall so indicate.

(4) The date the amendment was adopted.

(5) A copy of the amendment, setting forth the full text of the alternative allocation method or modification.

(6) The allocation method that the plan currently uses and a copy of the plan amendment (if any) that adopted the method.

(7) A statement certifying that notice of the adoption of the amendment has been given to all employers that have an obligation to contribute under the plan and to all employee organizations that represent employees covered by the plan.

(e) *Additional information.* In addition to the information listed in paragraph (d) of this section, the PBGC may require the plan sponsor to submit any other information that the PBGC determines is necessary for the review of an alternative allocation method or modification to an allocation method.

(Approved by the Office of Management and Budget under control number 1212–0035)

§ 4211.23 Approval of alternative method.

(a) *General.* The PBGC shall approve an alternative allocation method or modification to an allocation method if the PBGC determines that adoption of the method or modification would not significantly increase the risk of loss to plan participants and beneficiaries or to the PBGC.

(b) *Criteria.* An alternative allocation method or modification to an allocation method satisfies the requirements of paragraph (a) of this section if it meets the following three conditions:

(1) The method or modification allocates a plan's unfunded vested benefits, both for the adoption year and for the five subsequent plan years, to the same extent as any of the statutory allocation methods, or any modification to a statutory allocation method permitted under subpart B.

(2) The method or modification allocates unfunded vested benefits to each employer on the basis of either the employer's share of contributions to the plan or the unfunded vested benefits attributable to each employer. The method or modification may take into account differences in contribution rates paid by different employers and

differences in benefits of different employers' employees.

(3) The method or modification fully reallocates among employers that have not withdrawn from the plan all unfunded vested benefits that the plan sponsor has determined cannot be collected from withdrawn employers, or that are not assessed against withdrawn employers because of sections 4209, 4219(c)(1)(B) or 4225 of ERISA.

(c) *PBGC action on request.* The PBGC's decision on a request for approval shall be in writing. If the PBGC disapproves the request, the decision shall state the reasons for the disapproval and shall include a statement of the sponsor's right to request a reconsideration of the decision pursuant to part 4003 of this chapter.

§ 4211.24 Special rule for certain alternative methods previously approved.

A plan may not apply to any employer withdrawing on or after November 25, 1987, an allocation method approved by the PBGC before that date that allocates to the employer the greater of the amounts of unfunded vested benefits determined under two different allocation rules. Until a plan that has been using such a method is amended to adopt a valid allocation method, its allocation method shall be deemed to be the statutory allocation method that would apply if it had never been amended.

Subpart D—Allocation Methods for Merged Multiemployer Plans

§ 4211.31 Allocation of unfunded vested benefits following the merger of plans.

(a) *General Rule.* Except as provided in paragraphs (b) through (d) of this section, when two or more multiemployer plans merge, the merged plan shall adopt one of the statutory allocation methods, in accordance with subpart B of this part, or one of the allocation methods prescribed in §§ 4211.32 through 4211.35, and the method adopted shall apply to all employer withdrawals occurring after the initial plan year. Alternatively, a merged plan may adopt its own allocation method in accordance with subpart C of this part. If a merged plan fails to adopt an allocation method pursuant to this subpart or subpart B or C, it shall use the presumptive allocation method prescribed in § 4211.32. In addition, a merged plan may adopt any of the modifications prescribed in § 4211.36 or in subpart B of this part.

(b) *Construction plans.* Except as provided in the next sentence, a merged plan that primarily covers employees in the building and construction industry shall use the presumptive allocation method prescribed in § 4211.32. However, the plan may, with respect to employers that are not construction industry employers within the meaning of section 4203(b)(1)(A) of ERISA, adopt, by amendment, one of the alternative methods prescribed in §§ 4211.33 through 4211.35 or any other allocation method. Any such amendment shall be adopted in accordance with subpart C of this part. A construction plan may, without the PBGC's approval, adopt by amendment any of the modifications set forth in § 4211.36 or any of the modifications to the statutory presumptive method set forth in § 4211.12.

(c) *Section 404(c) plans.* A merged plan that is a continuation of a plan described in section 404(c) of the Code shall use the rolling-5 allocation method prescribed in § 4211.34, unless the plan, by amendment, adopts an alternative method. The plan may adopt one of the statutory allocation methods or one of the allocation methods set forth in §§ 4211.32 through 4211.35 without PBGC approval; adoption of any other allocation method is subject to PBGC approval under subpart B of this plan. The plan may, without the PBGC's approval, adopt by amendment any of the modifications set forth in § 4211.36 or in subpart B of this part.

(d) *Withdrawals before the end of the initial plan year.* For employer withdrawals after the effective date of a merger and prior to the end of the initial plan year, the amount of unfunded vested benefits allocable to a withdrawing employer shall be determined in accordance with § 4211.37.

§ 4211.32 Presumptive method for withdrawals after the initial plan year.

(a) *General rule.* Under this section, the amount of unfunded vested benefits allocable to an employer that withdraws from a merged plan after the initial plan year is the sum (but not less than zero) of—

(1) The employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits, as determined under paragraph (b) of this section;

(2) The employer's proportional share of the unamortized amount of the change in the plan's unfunded vested benefits for plan years ending after the initial plan year, as determined under paragraph (c) of this section; and

(3) The employer's proportional share of the unamortized amounts of the reallocated unfunded vested benefits (if any) as determined under paragraph (d) of this section.

(b) *Share of initial plan year unfunded vested benefits.* An employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits is the sum of the employer's share of its prior plan's liabilities (determined under paragraph (b)(1) of this section) and the employer's share of the adjusted initial plan year unfunded vested benefits (determined under paragraph (b)(2) of this section), with such sum reduced by five percent of the original amount for each plan year subsequent to the initial year.

(1) *Share of prior plan liabilities.* An employer's share of its prior plan's liabilities is the amount of unfunded vested benefits that would have been allocable to the employer if it had withdrawn on the first day of the initial plan year, determined as if each plan had remained a separate plan.

(2) *Share of adjusted initial plan year unfunded vested benefits.* An employer's share of the adjusted initial plan year unfunded vested benefits equals the plan's initial plan year unfunded vested benefits, less the amount that would be determined under paragraph (b)(1) of this section for each employer that had not withdrawn as of the end of the initial plan year, multiplied by a fraction—

(i) The numerator of which is the amount determined under paragraph (b)(1) of this section; and

(ii) The denominator of which is the sum of the amounts that would be determined under paragraph (b)(1) of this section for each employer that had not withdrawn as of the end of the initial plan year.

(c) *Share of annual changes.* An employer's proportional share of the unamortized amount of the change in the plan's unfunded vested for the plan years ending after the end of the initial plan year is the sum of the employer's proportional shares (determined under paragraph (c)(2) of this section) of the unamortized amount of the change in unfunded vested benefits (determined under paragraph (c)(1) of this section) for each plan year in which the employer has an obligation to contribute under the plan ending after the initial plan year and before the plan year in which the employer withdraws.

(1) *Change in plan's unfunded vested benefits.* The change in a plan's unfunded vested benefits for a plan year is the amount by which the unfunded vested benefits at the end of a plan year, less the value as of the end of such year of all outstanding claims for withdrawal liability that can reasonably be expected to be collected from employers that had withdrawn as of the end of the initial plan year, exceed the sum of the unamortized amount of the initial plan year unfunded vested benefits (determined under paragraph (c)(1)(i) of this section) and the unamortized amounts of the change in unfunded vested benefits for each plan year ending after the initial plan year and preceding the plan year for which the change is determined (determined under paragraph (c)(1)(ii) of this section).

(i) *Unamortized amount of initial plan year unfunded vested benefits.* The unamortized amount of the initial plan year unfunded vested benefits is the amount of those benefits reduced by five percent of the original amount for each succeeding plan year.

(ii) *Unamortized amount of the change.* The unamortized amount of the change in a plan's unfunded vested benefits with respect to a plan year is the change in unfunded vested benefits for the plan year, reduced by five percent of such change for each succeeding plan year.

(2) *Employer's proportional share.* An employer's proportional share of the amount determined under paragraph (c)(1) of this section is computed by multiplying that amount by a fraction—

(i) The numerator of which is the total amount required to be contributed under the plan (or under the employer's prior plan) by the employer for the plan year in which the change arose and the four preceding full plan years; and

(ii) The denominator of which is the total amount contributed under the plan (or under employer's prior plan) for the plan year in which the change arose and the four preceding full plan years by all employers that had an obligation to contribute under the plan for the plan year in which such change arose, reduced by any amount contributed by an employer that withdrew from the plan in the year in which the change arose.

(d) *Share of reallocated amounts.* An employer's proportional share of the unamortized amounts of the reallocated unfunded vested benefits, if any, is the sum of the employer's proportional shares (determined under paragraph (d)(2) of this section) of the unamortized amount of the reallocated unfunded vested benefits (determined under paragraph (d)(1) of this section) for each plan year ending before the plan year in which the employer withdrew from the plan.

(1) *Unamortized amount of reallocated unfunded vested benefits.* The unamortized amount of the reallocated unfunded vested benefits with respect to a plan year is the sum of the amounts described in paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii) of this section for the plan year, reduced by five percent of such sum for each succeeding plan year.

(i) *Uncollectible amounts.* Amounts included as reallocable under this paragraph are those that the plan sponsor determines in that plan year to be uncollectible for reasons arising out of cases or proceedings under Title 11, United States Code, or similar proceedings, with respect to an employer that withdrew after the close of the initial plan year.

(ii) *Relief amounts.* Amounts included as reallocable under this paragraph are those that the plan sponsor determines in that plan year will not be assessed as a result of the operation of sections 4209, 4219(c)(1)(B), or 4225 of ERISA with respect to an employer that withdrew after the close of the initial plan year.

(iii) *Other amounts.* Amounts included as reallocable under this paragraph are those that the plan sponsor determines in that plan year to be uncollectible or unassessable for other reasons under standards not inconsistent with regulations prescribed by the PBGC.

(2) *Employer's proportional share.* An employer's proportional share of the amount of the reallocated unfunded vested benefits with respect to a plan year is computed by multiplying the unamortized amount of the reallocated unfunded vested benefits (as of the end of the year preceding the plan year in which the employer withdraws) by the allocation fraction described in paragraph (c)(2) of this section for the same plan year.

§ 4211.33 Modified presumptive method for withdrawals after the initial plan year.

(a) *General rule.* Under this section, the amount of unfunded vested benefits allocable to an employer that withdraws from a merged plan after the initial plan year is the sum of the employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits (determined under paragraph (b) of this section) and the employer's proportional share of the unamortized amount of the unfunded vested benefits arising after the initial plan year (determined under paragraph (c) of this section).

(b) *Share of initial plan year unfunded vested benefits.* An employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits is the sum of the employer's share of its prior plan's liabilities, as determined under § 4211.32(b)(1), and the employer's share of the adjusted initial plan year unfunded vested benefits, as determined under § 4211.32(b)(2), with such sum reduced as if it were being fully amortized in level annual installments over fifteen years beginning with the first plan year after the initial plan year.

(c) *Share of unfunded vested benefits arising after the initial plan year.* An employer's proportional share of the amount of the plan's unfunded vested benefits arising after the initial plan year is the employer's proportional share (determined under paragraph (c)(2) of this section) of the plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws, reduced by the amount of the plan's unfunded vested benefits as of the close of the initial plan year (determined under paragraph (c)(1) of this section).

(1) *Amount of unfunded vested benefits.* The plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws shall be reduced by the sum of—

(i) The value as of that date of all outstanding claims for withdrawal liability that can reasonably be expected to be collected, with respect to employers that withdrew before that plan year; and

(ii) The sum of the amounts that would be allocable under paragraph (b) of this section to all employers that have an obligation to contribute in the plan year preceding the plan year in which the employer withdraws and that also had an obligation to contribute in the first plan year ending after the initial plan year.

(2) *Employer's proportional share.* An employer's proportional share of the amount determined under paragraph (c)(1) of this section is computed by multiplying that amount by a fraction—

(i) The numerator of which is the total amount required to be contributed under the plan (or under the employer's prior plan) by the employer for the last five full plan years ending before the date on which the employer withdraws; and

(ii) The denominator of which is the total amount contributed under the plan (or under each employer's prior plan) by all employers for the last five full plan years ending before the date on which the employer withdraws, increased by the amount of any employer contributions owed with respect to earlier periods that were collected in those plan years, and decreased by any amount contributed by an employer that

withdrew from the plan (or prior plan) during those plan years.

§ 4211.34 Rolling-5 method for withdrawals after the initial plan year.

(a) *General rule.* Under this section, the amount of unfunded vested benefits allocable to an employer that withdraws from a merged plan after the initial plan year is the sum of the employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits (determined under paragraph (b) of this section) and the employer's proportional share of the unamortized amount of the unfunded vested benefits arising after the initial plan year (determined under paragraph (c) of this section).

(b) *Share of initial plan year unfunded vested benefits.* An employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits is the sum of the employer's share of its prior plan's liabilities, as determined under § 4211.32(b)(1), and the employer's share of the adjusted initial plan year unfunded vested benefits, as determined under § 4211.32(b)(2), with such sum reduced as if it were being fully amortized in level annual installments over five years beginning with the first plan year after the initial plan year.

(c) *Share of unfunded vested benefits arising after the initial plan year.* An employer's proportional share of the amount of the plan's unfunded vested benefits arising after the initial plan year is the employer's proportional share determined under § 4211.33(c).

§ 4211.35 Direct attribution method for withdrawals after the initial plan year.

The allocation method under this section is the allocation method described in section 4211(c)(4) of ERISA.

§ 4211.36 Modifications to the determination of initial liabilities, the amortization of initial liabilities, and the allocation fraction.

(a) *General rule.* A plan using any of the allocation methods described in §§ 4211.32 through 4211.34 may, by plan amendment and without PBGC approval, adopt any of the modifications described in this section.

(b) *Restarting initial liabilities.* A plan may be amended to allocate the initial plan year unfunded vested benefits under § 4211.32(b), § 4211.33(b), or § 4211.34(b) without separately allocating to employers the liabilities attributable to their participation under their prior plans. An amendment under this paragraph must include an allocation fraction under paragraph (d) of this section for determining the employer's proportional share of the total unfunded benefits as of the close of the initial plan year.

(c) *Amortizing initial liabilities.* A plan may by amendment modify the amortization of initial liabilities in either of the following ways:

(1) If two or more plans that use the presumptive allocation method of section 4211(b) of ERISA merge, the merged plan may adjust the amortization of initial liabilities under § 4211.32(b) to amortize those unfunded vested benefits over the remaining length of the prior plans' amortization schedules.

(2) A plan that has adopted the allocation method under § 4211.33 or § 4211.34 may adjust the amortization of initial liabilities under § 4211.33(b) or § 4211.34(b) to amortize those unfunded vested benefits in level annual installments over any period of at least five and not more than fifteen years.

(d) *Changing the allocation fraction.* A plan may by amendment replace the allocation fraction under § 4211.32(b), § 4211.33(b), or § 4211.34(b) with any of the following contribution-based fractions—

(1) A fraction, the numerator of which is the total amount required to be contributed under the merged and prior plans by the withdrawing employer in the 60-month period ending on the last day of the initial plan year, and the denominator of which is the sum for that period of the contributions made by all employers that had not withdrawn as of the end of the initial plan year;

(2) A fraction, the numerator of which is the total amount required to be contributed by the withdrawing employer for the initial plan year and the four preceding full plan years of its prior plan, and the denominator of which is the sum of all contributions made over that period by employers that had not withdrawn as of the end of the initial plan year; or

(3) A fraction, the numerator of which is the total amount required to be contributed to the plan by the withdrawing employer since the effective date of the merger, and the denominator of which is the sum of all contributions made over that period by employers that had not withdrawn as of the end of the initial plan year.

§ 4211.37 Allocating unfunded vested benefits for withdrawals before the end of the initial plan year.

If an employer withdraws after the effective date of a merger and before the end of the initial plan year, the amount of unfunded vested benefits allocable to the employer shall be determined as if each plan had remained a separate plan. In making this determination, the plan sponsor shall use the allocation method of the withdrawing employer's prior plan and shall compute the employer's allocable share of the plan's unfunded vested benefits as if the day before the effective date of the merger were the end of the last plan year prior to the withdrawal.

PART 4219—NOTICE, COLLECTION, AND REDETERMINATION OF WITHDRAWAL LIABILITY

Subpart A—General

Sec.
4219.1 Purpose and scope.
4219.2 Definitions.

Subpart B—Redetermination of Withdrawal Liability Upon Mass Withdrawal

4219.11 Withdrawal liability upon mass withdrawal.
4219.12 Employers liable upon mass withdrawal.
4219.13 Amount of liability for de minimis amounts.
4219.14 Amount of liability for 20-year-limitation amounts.
4219.15 Determination of reallocation liability.
4219.16 Imposition of liability.
4219.17 Filings with PBGC.
4219.18 Withdrawal in a plan year in which substantially all employers withdraw.
4219.19 Information collection.

Subpart C—Overdue, Defaulted, and Overpaid Withdrawal Liability

4219.31 Overdue and defaulted withdrawal liability; overpayment.
4219.32 Interest on overdue, defaulted and overpaid withdrawal liability.
4219.33 Plan rules concerning overdue and defaulted withdrawal liability.

Authority: 29 U.S.C. 1302(b)(3) and 1399(c)(6).

Subpart A—General

§ 4219.1 Purpose and scope.

(a) *Subpart A.* Subpart A of this part describes the purpose and scope of the provisions in this part and defined terms used in this part.

(b) *Subpart B.*

(1) *Purpose.* When a multiemployer plan terminates by the withdrawal of every employer from the plan, or when substantially all employers withdraw from a multiemployer plan pursuant to an agreement or arrangement to withdraw from the plan, section 4219(c)(1)(D)(i) of ERISA requires that the liability of such withdrawing employers be determined (or redetermined) without regard to the 20-year limitation on annual payments established in section 4219(c)(1)(B) of ERISA. In addition, section 4219(c)(1)(D)(ii) requires that, upon the occurrence of a withdrawal described above, the total unfunded vested benefits of the plan be fully allocated among such withdrawing employers in a manner that is not inconsistent with PBGC regulations. Section 4209(c) of ERISA provides that the *de minimis* reduction established in sections 4209 (a) and (b) of ERISA shall not apply to an employer that withdraws in a plan year in which substantially all employers withdraw from the plan, or to an employer that withdraws pursuant to an agreement to withdraw during a period of one or more plan years during which substantially all employers withdraw pursuant to an agreement or arrangement to withdraw. The purpose of subpart B of this part is to prescribe rules, pursuant to sections 4219(c)(1)(D) and 4209(c) of ERISA, for redetermining an employer's withdrawal liability and fully allocating the unfunded vested benefits of a multiemployer plan in either of two mass-withdrawal situations: the termination of a plan by the withdrawal of every employer and the withdrawal of substantially all employers pursuant to an agreement or arrangement to withdraw. Subpart B also prescribes rules for redetermining the liability of an employer without regard to section 4209 (a) or (b) when the employer withdraws in a plan year in which substantially all employers withdraw, regardless of the occurrence of a mass withdrawal. (See part 4281 regarding the valuation of unfunded vested benefits to be fully allocated under subpart B, and parts 4041A and 4281 regarding the powers and duties of the plan sponsor of a plan terminated by mass withdrawal.)

(2) *Scope.* Subpart B applies to multiemployer plans covered by title IV of ERISA, with respect to which there is a termination by the withdrawal of every employer (including a plan created by a partition pursuant to section 4233 of ERISA) or a withdrawal of substantially all employers in the plan pursuant to an agreement or arrangement to withdraw from the plan, and to employers that withdraw from such multiemployer plans. The obligations of a plan sponsor of a mass-withdrawal-terminated plan under subpart B shall cease to apply when the plan assets are distributed in full satisfaction of all nonforfeitable benefits under the plan. Subpart B also applies, to the extent appropriate, to multiemployer plans with respect to which there is a withdrawal of substantially all employers in a single plan year and to employers that withdraw from such plans in that plan year.

(c) *Subpart C.* Subpart C establishes the interest rate to be charged on overdue, defaulted and overpaid withdrawal liability under section 4219(c)(6) of ERISA, and authorizes multiemployer plans to adopt alternative rules concerning assessment of interest and related matters. Subpart C applies to multiemployer plans covered under title IV of ERISA, and to employers that have withdrawn from such plans after April 28, 1980 (May 2, 1979, for certain employers in the seagoing industry).

§ 4219.2 Definitions.

(a) The following terms are defined in section 4001.2 of this chapter: employer, ERISA, IRS, mass withdrawal, multiemployer plan, nonforfeitable benefit, PBGC, plan, and plan year.

(b) For purposes of this part:

Initial withdrawal liability means the amount of withdrawal liability determined in accordance with sections 4201 through 4225 of title IV without regard to the occurrence of a mass withdrawal.

Mass withdrawal liability means the sum of an employer's liability for *de minimis* amounts, liability for 20-year-limitation amounts, and reallocation liability.

Mass withdrawal valuation date means—

(1) In the case of a termination by mass withdrawal, the last day of the plan year in which the plan terminates; or

(2) in the case of a withdrawal of substantially all employers pursuant to an agreement or arrangement to withdraw, the last day of the plan year as of which substantially all employers have withdrawn.

Reallocation liability means the amount of unfunded vested benefits allocated to an employer in the event of a mass withdrawal.

Reallocation record date means a date selected by the plan sponsor, which shall be not earlier than the date of the plan's actuarial report for the year of the mass withdrawal and not later than one year after the mass withdrawal valuation date.

Redetermination liability means the sum of an employer's liability for *de minimis* amounts and the employer's liability for 20-year-limitation amounts

Unfunded vested benefits means the amount by which the present value of a plan's vested benefits exceeds the value of plan assets (including claims of the plan for unpaid initial withdrawal liability and redetermination liability), determined in accordance with section 4281 of ERISA and part 4281, subpart B.

(c) For purposes of subpart B—

Withdrawal means a complete withdrawal as defined in section 4203 of ERISA.

Subpart B—Redetermination of Withdrawal Liability Upon Mass Withdrawal

§ 4219.11 Withdrawal liability upon mass withdrawal.

(a) *Initial withdrawal liability.* The plan sponsor of a multiemployer plan that experiences a mass withdrawal shall determine initial withdrawal liability pursuant to section 4201 of ERISA of every employer that has completely or partially withdrawn from the plan and for whom the liability has not previously been determined and, in accordance with section 4202 of ERISA, notify each employer of the amount of the initial withdrawal liability and collect the amount of the initial withdrawal liability from each employer.

(b) *Mass withdrawal liability.* The plan sponsor of a multiemployer plan that experiences a mass withdrawal shall also—

(1) Notify withdrawing employers, in accordance with § 4219.16(a), that a mass withdrawal has occurred;

(2) Within 150 days after the mass withdrawal valuation date, determine the liability of withdrawn employers for *de minimis* amounts and for 20-year-limitation amounts in accordance with §§ 4219.13 and 4219.14;

(3) Within one year after the reallocation record date, determine the reallocation liability of withdrawn employers in accordance with § 4219.15;

(4) Notify each withdrawing employer of the amount of mass withdrawal liability determined pursuant to this subpart and the schedule for payment of such liability, and demand payment of and collect that liability, in accordance with § 4219.16; and

(5) Notify the PBGC of the occurrence of a mass withdrawal and certify, in accordance with § 4219.17, that determinations of mass withdrawal liability have been completed.

(c) *Extensions of time.* The plan sponsor of a multiemployer plan that experiences a mass withdrawal may apply to the PBGC for an extension of the deadlines contained in paragraph (b) of this section. The PBGC shall approve such a request only if it finds that failure to grant the extension will create an unreasonable risk of loss to plan participants or the PBGC.

§ 4219.12 Employers liable upon mass withdrawal.

(a) *Liability for de minimis amounts.* An employer shall be liable for *de*

minimis amounts to the extent provided in section 4219(c)(1)(D) of ERISA if the employer's initial withdrawal liability was reduced pursuant to section 4209 (a) or (b) of ERISA.

(b) *Liability for 20-year-limitation amounts.* An employer shall be liable for 20-year-limitation amounts to the extent provided in section 4219(c)(1)(D) of ERISA.

(c) *Liability for reallocation liability.* An employer shall be liable for reallocation liability if the employer withdrew pursuant to an agreement or arrangement to withdraw from a multiemployer plan from which substantially all employers withdrew pursuant to an agreement or arrangement to withdraw, or if the employer withdrew after the beginning of the second full plan year preceding the termination date from a plan that terminated by the withdrawal of every employer, and, as of the reallocation record date—

(1) The employer has not been completely liquidated or dissolved;

(2) The employer is not the subject of a case or proceeding under title 11, United States Code, or any case or proceeding under similar provisions of state insolvency laws, except that a plan sponsor may determine that such an employer is liable for reallocation liability if the plan sponsor determines that the employer is reasonably expected to be able to pay its initial withdrawal liability and its redetermination liability in full and on time to the plan; and

(3) The plan sponsor has not determined that the employer's initial withdrawal liability or its redetermination liability is limited by section 4225 of ERISA.

(d) *General exclusion.* In the event that a plan experiences successive mass withdrawals, an employer that has been determined to be liable under this subpart for any component of mass withdrawal liability shall not be liable as a result of the same withdrawal for that component of mass withdrawal liability with respect to a subsequent mass withdrawal.

(e) *Free-look rule.* An employer that is not liable for initial withdrawal liability pursuant to a plan amendment adopting section 4210(a) of ERISA shall not be liable for *de minimis* amounts or for 20-year-limitation amounts, but shall be liable for reallocation liability in accordance with paragraph (c) of this section.

(f) *Payment of initial withdrawal liability.* An employer's payment of its total initial withdrawal liability, whether by prepayment or otherwise, for a withdrawal which is later determined to be part of a mass withdrawal shall not exclude the employer from or otherwise limit the employer's mass withdrawal liability under this subpart.

(g) *Agreement presumed.* Withdrawal by an employer during a period of three consecutive plan years within which substantially all employers withdraw from a plan shall be presumed to be a withdrawal pursuant to an agreement or arrangement to withdraw unless the employer proves otherwise by a preponderance of the evidence.

§ 4219.13 Amount of liability for de minimis amounts.

An employer that is liable for *de minimis* amounts shall be liable to the plan for the amount by which the employer's allocable share of unfunded vested benefits for the purpose of determining its initial withdrawal liability was reduced pursuant to section 4209 (a) or (b) of ERISA. Any liability for *de minimis* amounts determined under this section shall be limited by section 4225 of ERISA to the extent that section would have been limiting had the employer's initial withdrawal liability been determined without regard to the *de minimis* reduction.

§ 4219.14 Amount of liability for 20-year-limitation amounts.

An employer that is liable for 20-year-limitation amounts shall be liable to the plan for an amount equal to the present value of all initial withdrawal liability payments for which the employer was not liable pursuant to section 4219(c)(1)(B) of ERISA. The present value of such payments shall be determined as of the end of the plan year preceding the plan year in which the employer withdrew, using the assumptions that were used to determine the employer's payment schedule for initial withdrawal liability pursuant to section 4219(c)(1)(A)(ii) of ERISA. Any liability for 20-year-limitation amounts determined under this section shall be limited by section 4225 of ERISA to the extent that section would have been limiting had the employer's initial withdrawal liability been determined without regard to the 20-year limitation.

§ 4219.15 Determination of reallocation liability.

(a) *General rule.* In accordance with the rules in this section, the plan sponsor shall determine the amount of unfunded vested benefits to be reallocated and shall fully allocate those unfunded vested benefits among all employers liable for reallocation liability.

(b) *Amount of unfunded vested benefits to be reallocated.* For purposes of this section, the amount of a plan's unfunded vested benefits to be reallocated shall be the amount of the plan's unfunded vested benefits, determined as of the mass withdrawal valuation date, adjusted to exclude from plan assets the value of the plan's claims for unpaid initial withdrawal liability and unpaid redetermination liability that are deemed to be uncollectible under § 4219.12(c)(1) or (c)(2).

(c) *Amount of reallocation liability.* An employer's reallocation liability shall be equal to the sum of the employer's initial allocable share of the plan's unfunded vested benefits, as determined under paragraph (c)(1) of this section, plus any unassessable amounts allocated to the employer under paragraph (c)(2), limited by section 4225 of ERISA to the extent that section would have been limiting had the employer's reallocation liability been included in the employer's initial withdrawal liability. If a plan is determined to have no unfunded vested benefits to be reallocated, the reallocation liability of each liable employer shall be zero.

(1) *Initial allocable share.* Except as otherwise provided in rules adopted by the plan pursuant to paragraph (d) of this section, and in accordance with paragraph (c)(3) of this section, an employer's initial allocable share shall be equal to the product of the plan's unfunded vested benefits to be reallocated, multiplied by a fraction—

(i) The numerator of which is the sum of the employer's initial withdrawal liability and the employer's redetermination liability, if any; and

(ii) The denominator of which is the sum of all initial withdrawal liabilities and all the redetermination liabilities of all employers liable for reallocation liability.

(2) *Allocation of unassessable amounts.* If after computing each employer's initial allocable share of unfunded vested benefits, the plan sponsor knows that any portion of an employer's initial allocable share is unassessable as withdrawal liability because of the limitations in section 4225 of ERISA, the plan sponsor shall allocate any such unassessable amounts among all other liable employers. This allocation shall be done by prorating the unassessable amounts on the basis of each such employer's initial allocable share. No employer shall be liable for unfunded vested benefits allocated under paragraph (c)(1) or this paragraph to another employer that are determined to be unassessable or uncollectible

subsequent to the plan sponsor's demand for payment of reallocation liability.

(3) *Special rule for certain employers with no or reduced initial withdrawal liability.* If an employer has no initial withdrawal liability because of the application of the free-look rule in section 4210 of ERISA, then, in computing the fraction prescribed in paragraph (c)(1), the plan sponsor shall use the employer's allocable share of unfunded vested benefits, determined under section 4211 of ERISA at the time of the employer's withdrawal and adjusted in accordance with section 4225 of ERISA, if applicable. If an employer's initial withdrawal liability was reduced pursuant to section 4209(a) or (b) of ERISA and the employer is not liable for *de minimis* amounts pursuant to § 4219.13, then, in computing the fraction prescribed in paragraph (c)(1) of this section, the plan sponsor shall use the employer's allocable share of unfunded vested benefits, determined under section 4211 of ERISA at the time of the employer's withdrawal and adjusted in accordance with section 4225 of ERISA, if applicable.

(d) *Plan rules.* Plans may adopt rules for calculating an employer's initial allocable share of the plan's unfunded vested benefits in a manner other than that prescribed in paragraph (c)(1) of this section, provided that those rules allocate the plan's unfunded vested benefits to substantially the same extent the prescribed rules would. Plan rules adopted under this paragraph shall operate and be applied uniformly with respect to each employer. If such rules would increase the reallocation liability of any employer, they may be effective with respect to that employer earlier than three full plan years after their adoption only if the employer consents to the application of the rules to itself. The plan sponsor shall give a written notice to each contributing employer and each employee organization that represents employees covered by the plan of the adoption of plan rules under this paragraph.

§ 4219.16 Imposition of liability.

(a) *Notice of mass withdrawal.* Within 30 days after the mass withdrawal valuation date, the plan sponsor shall give written notice of the occurrence of a mass withdrawal to each employer that the plan sponsor reasonably expects may be a liable employer under § 4219.12. The notice shall include—

(1) The mass withdrawal valuation date;

(2) A description of the consequences of a mass withdrawal under this subpart; and

(3) A statement that each employer obligated to make initial withdrawal liability payments shall continue to make those payments in accordance with its schedule. Failure of the plan sponsor to notify an employer of a mass withdrawal as required by this paragraph shall not cancel the employer's mass withdrawal liability or waive the plan's claim for such liability.

(b) *Notice of redetermination liability.* Within 30 days after the date as of which the plan sponsor is required under § 4219.11(b)(2) to have determined the redetermination liability of employers, the plan sponsor shall issue a notice of redetermination liability in writing to each employer liable under § 4219.12 for *de minimis* amounts or 20-year-limitation amounts, or both. The notice shall include—

(1) The amount of the employer's liability, if any, for *de minimis* amounts determined pursuant to § 4219.13;

(2) The amount of the employer's liability, if any, for 20-year-limitation amounts determined pursuant to § 4219.14;

(3) The schedule for payment of the liability determined under paragraph (f) of this section;

(4) A demand for payment of the liability in accordance with the schedule; and

(5) A statement of when the plan sponsor expects to issue notices of reallocation liability to liable employers.

(c) *Notice of reallocation liability.* Within 30 days after the date as of which the plan sponsor is required under § 4219.11(b)(3) to have determined the reallocation liability of employers, the plan sponsor shall issue a notice of reallocation liability in writing to each employer liable for reallocation liability. The notice shall include—

(1) The amount of the employer's reallocation liability determined pursuant to § 4219.15;

(2) The schedule for payment of the liability determined under paragraph (f) of this section; and

(3) A demand for payment of the liability in accordance with the schedule.

(d) *Notice to employers not liable.* The plan sponsor shall notify in writing any employer that receives a notice of mass withdrawal under paragraph (a) of this section and subsequently is determined not to be liable for mass withdrawal liability or any component thereof. The notice shall specify the liability from which the employer is excluded and shall be provided to the employer not later than the date by which liable employers are to be provided notices of reallocation liability pursuant to paragraph (c) of this section. If the employer is not liable for mass withdrawal liability, the notice shall also include a statement, if applicable, that the employer is obligated to continue to make initial withdrawal liability payments in accordance with its existing schedule for payment of such liability.

(e) *Combined notices.* A plan sponsor may combine a notice of redetermination liability with the notice of and demand for payment of initial withdrawal liability. If a mass withdrawal and a withdrawal described in § 4219.18 occur concurrently, a plan sponsor may combine—

(1) A notice of mass withdrawal with a notice of withdrawal issued pursuant to § 4219.18(d); and

(2) A notice of redetermination liability with a notice of liability issued pursuant to § 4219.18(e).

(f) *Payment schedules.* The plan sponsor shall establish payment schedules for payment of an employer's mass withdrawal liability in accordance with the rules in section 4219(c) of ERISA, as modified by this paragraph. For an employer that owes initial withdrawal liability as of the mass withdrawal valuation date, the plan sponsor shall establish new payment schedules for each element of mass withdrawal liability by amending the initial withdrawal liability payment schedule in accordance with the paragraph (f)(1) of this section. For all other employers, the payment schedules shall be established in accordance with paragraph (f)(2).

(1) *Employers owing initial withdrawal liability as of mass withdrawal valuation date.* For an employer that owes initial withdrawal liability as of the mass withdrawal valuation date, the plan sponsor shall amend the existing schedule of payments in order to amortize the new amounts of liability being assessed, *i.e.*, redetermination liability and reallocation liability. With respect to redetermination liability, the plan sponsor shall add that liability to the total initial withdrawal liability and determine a new payment schedule, in accordance with section 4219(c)(1) of ERISA, using the interest assumptions that were used to determine the original payment schedule. For reallocation liability, the plan sponsor shall add that liability to the present value, as of the date following the mass withdrawal valuation date, of the unpaid portion of the amended payment schedule described in the preceding sentence and determine a new payment schedule of level annual payments, calculated as if the first payment were made on the day

following the mass withdrawal valuation date using the interest assumptions used for determining the amount of unfunded vested benefits to be reallocated.

(2) *Other employers.* For an employer that had no initial withdrawal liability, or had fully paid its liability prior to the mass withdrawal valuation date, the plan sponsor shall determine the payment schedule for redetermination liability, in accordance with section 4219(c)(1) of ERISA, in the same manner and using the same interest assumptions as were used or would have been used in determining the payment schedule for the employer's initial withdrawal liability. With respect to reallocation liability, the plan sponsor shall follow the rules prescribed in paragraph (f)(1) of this section.

(g) *Review of mass withdrawal liability determinations.* Determinations of mass withdrawal liability made pursuant to this subpart shall be subject to plan review under section 4219(b)(2) of ERISA and to arbitration under section 4221 of ERISA within the times prescribed by those sections. Matters that relate solely to the amount of, and schedule of payments for, an employer's initial withdrawal liability are not matters relating to the employer's liability under this subpart and are not subject to review pursuant to this paragraph.

(h) *Cessation of withdrawal liability obligations.* If the plan sponsor of a terminated plan distributes plan assets in full satisfaction of all nonforfeitable benefits under the plan, the plan sponsor's obligation to impose and collect liability, and each employer's obligation to pay liability, in accordance with this subpart ceases on the date of such distribution.

(i) *Determination that a mass withdrawal has not occurred.* If a plan sponsor determines, after imposing mass withdrawal liability pursuant to this subpart, that a mass withdrawal has not occurred, the plan sponsor shall refund to employers all payments of mass withdrawal liability with interest, except that a plan sponsor shall not refund payments of liability for *de minimis* amounts to an employer that remains liable for such amounts under § 4219.18. Interest shall be credited at the interest rate prescribed in subpart C and shall accrue from the date the payment was received by the plan until the date of the refund.

§ 4219.17 Filings with PBGC.

(a) *Filing requirements.* The plan sponsor shall file with PBGC a notice that a mass withdrawal has occurred and separate certifications that determinations of redetermination liability and reallocation liability have been made and notices provided to employers in accordance with this subpart.

(b) *Who shall file.* The plan sponsor or a duly authorized representative acting on behalf of the plan sponsor shall sign and file the notice and the certifications.

(c) *When to file.* A notice of mass withdrawal for a plan from which substantially all employers withdraw pursuant to an agreement or arrangement to withdraw shall be filed with the PBGC no later than 30 days after the mass withdrawal valuation date. A notice of mass withdrawal termination shall be filed within the time prescribed for the filing of that notice in part 4041A, subparts A and B, of this chapter. Certifications of liability determinations shall be filed with the PBGC no later than 30 days after the date on which the plan sponsor is required to have provided employers with notices pursuant to § 4219.16.

(d) *Where to file.* The notice and certifications may be sent by mail or submitted by hand during normal working hours to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

(e) *Filing date.* For purposes of paragraph (c)—

(1) The notice is considered filed on the date of the postmark stamped on the cover in which the notice is mailed if—

(i) The postmark was made by the United States Postal Service; and

(ii) The notice was mailed postage prepaid, properly packaged and addressed to the PBGC.

(2) If both conditions described in paragraph (e)(1) are not met, the notice is considered filed on the date it is received by the PBGC, except that notices received after regular business hours are considered filed on the next regular business day.

(f) *Contents of notice of mass withdrawal.* If a plan terminates by the withdrawal of every employer, a notice of termination filed in accordance with part 4041A, subparts A and B, of this chapter shall satisfy the requirements for a notice of mass withdrawal under this subpart. If substantially all employers withdraw from a plan pursuant to an agreement or arrangement to withdraw, the notice of mass withdrawal shall contain the following information:

(1) The name of the plan.

(2) The name, address and telephone number of the plan sponsor and of the duly authorized representative, if any, of the plan sponsor.

(3) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with the PBGC. If no EIN or PIN has been assigned, the notice shall so indicate.

(4) The mass withdrawal valuation date.

(5) A description of the facts on which the plan sponsor has based its determination that a mass withdrawal has occurred, including the number of contributing employers withdrawn and the number remaining in the plan, and a description of the effect of the mass withdrawal on the plan's contribution base.

(g) *Contents of certifications.* Each certification shall contain the following information:

(1) The name of the plan.

(2) The name, address and telephone number of the plan sponsor and of the duly authorized representative, if any, of the plan sponsor.

(3) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Identification Number (PIN) last assigned by the plan sponsor to the plan, and, if different, the EIN or PIN filed with the PBGC. If no EIN or PIN has been assigned, the notice shall so indicate.

(4) Identification of the liability determination to which the certification relates.

(5) A certification, signed by the plan sponsor or a duly authorized representative, that the determinations have been made and the notices given in accordance with this subpart.

(6) For reallocation liability certifications—

(i) A certification, signed by the plan's actuary, that the determination of unfunded vested benefits has been done in accordance with part 4281, subpart B; and

(ii) A copy of plan rules, if any, adopted pursuant to § 4219.15(d).

(h) *Additional information.* In addition to the information described in paragraph (g) of this section, the PBGC may require the plan sponsor to submit any other information the PBGC determines it needs in order to monitor compliance with this subpart.

§ 4219.18 Withdrawal in a plan year in which substantially all employers withdraw.

(a) *General rule.* An employer that withdraws in a plan year in which substantially all employers withdraw from the plan shall be liable to the plan for *de minimis* amounts if the employer's initial withdrawal liability was reduced pursuant to section 4209(a) or (b) of ERISA.

(b) *Amount of liability.* An employer's liability for *de minimis* amounts under this section shall be determined pursuant to § 4219.13.

(c) *Plan sponsor's obligations.* The plan sponsor of a plan that experiences a withdrawal described in paragraph (a) shall—

(1) Determine and collect initial withdrawal liability of every employer that has completely or partially withdrawn, in accordance with sections 4201 and 4202 of ERISA;

(2) Notify each employer that is or may be liable under this section, in accordance with paragraph (d) of this section;

(3) Within 90 days after the end of the plan year in which the withdrawal occurred, determine, in accordance with paragraph (b) of this section, the liability of each withdrawing employer that is liable under this section;

(4) Notify each liable employer, in accordance with paragraph (e) of this section, of the amount of its liability under this section, demand payment of and collect that liability; and

(5) Certify to the PBGC that determinations of liability have been completed, in accordance with paragraph (g) of this section.

(d) *Notice of withdrawal.* Within 30 days after the end of a plan year in which a plan experiences a withdrawal described in paragraph (a), the plan sponsor shall notify in writing each employer that is or may be liable under this section. The notice shall specify the plan year in which substantially all employers have withdrawn, describe the consequences of such withdrawal under this section, and state that an employer obligated to make initial withdrawal liability payments shall continue to make those payments in accordance with its schedule.

(e) *Notice of liability.* Within 30 days after the determination of liability, the plan sponsor shall issue a notice of liability in writing to each liable employer. The notice shall include—

(1) The amount of the employer's liability for *de minimis* amounts;

(2) A schedule for payment of the liability, determined under § 4219.16(f); and

(3) A demand for payment of the liability in accordance with the schedule.

(f) *Review of liability determinations.* Determinations of liability made pursuant to this section shall be subject to plan review under section 4219(b)(2) of ERISA and to arbitration under section 4221 of ERISA, subject to the limitations contained in § 4219.16(g).

(g) *Notice to the PBGC.* No later than 30 days after the notices of liability under this section are required to be provided to liable employers, the plan sponsor shall file with the PBGC a notice. The notice shall include the items described in § 4219.17 (g)(1) through (g)(3), as well as the information listed below. In addition, the PBGC may require the plan sponsor to submit any further information that the PBGC determines it needs in order to monitor compliance with this section.

(1) The plan year in which the withdrawal occurred.

(2) A description of the effect of the withdrawal, including the number of contributing employers that withdrew in the plan year in which substantially all employers withdrew, the number of employers remaining in the plan, and a description of the effect of the withdrawal on the plan's contribution base.

(3) A certification, signed by the plan sponsor or duly authorized representative, that determinations have been made and notices given in accordance with this section.

§ 4219.19 Information collection.

The information collection requirements contained in §§ 4219.16, 4219.17, and 4219.18 have been approved by the Office of Management and Budget under control number 1212–0034.

Subpart C—Overdue, Defaulted, and Overpaid Withdrawal Liability

§ 4219.31 Overdue and defaulted withdrawal liability; overpayment.

(a) *Overdue withdrawal liability payment.* Except as otherwise provided in rules adopted by the plan in accordance with § 4219.33, a withdrawal liability payment is overdue if it is not paid on the date set forth in the schedule of payments established by the plan sponsor.

(b) *Default.*

(1) Except as provided in paragraph (c)(1), "default" means—

(i) The failure of an employer to pay any overdue withdrawal liability payment within 60 days after the employer receives written notification from the plan sponsor that the payment is overdue; and

(ii) Any other event described in rules adopted by the plan which indicates a substantial likelihood that an employer will be unable to pay its withdrawal liability.

(2) In the event of a default, a plan sponsor may require immediate payment of all or a portion of the outstanding amount of an employer's withdrawal liability, plus interest. In the event that the plan sponsor accelerates only a portion of the outstanding amount of an employer's withdrawal liability, the plan sponsor shall establish a new schedule of payments for the remaining amount of the employer's withdrawal liability.

(c) *Plan review or arbitration of liability determination.* The following rules shall apply with respect to the obligation to make withdrawal liability payments during the period for plan review and arbitration and with respect to the failure to make such payments:

(1) A default as a result of failure to make any payments shall not occur until the 61st day after the last of—

(i) Expiration of the period described in section 4219(b)(2)(A) of ERISA;

(ii) If the employer requests review under section 4219(b)(2)(A) of ERISA of the plan's withdrawal liability determination or the schedule of payments established by the plan, expiration of the period described in section 4221(a)(1) of ERISA for initiation of arbitration; or

(iii) If arbitration is timely initiated either by the plan, the employer or both, issuance of the arbitrator's decision.

(2) Any amounts due before the expiration of the period described in paragraph (c)(1) shall be paid in accordance with the schedule established by the plan sponsor. If a payment is not made when due under the schedule, the payment is overdue and interest shall accrue in accordance with the rules and at the same rate set forth in § 4219.32.

(d) *Overpayments.* If the plan sponsor or an arbitrator determines that payments made in accordance with the schedule of payments established by the plan sponsor have resulted in an overpayment of withdrawal liability, the plan sponsor shall refund the overpayment, with interest, in a lump sum. The plan sponsor shall credit interest on the overpayment from the date of the overpayment to the date on which the overpayment is refunded to the employer at the same rate as the rate for overdue withdrawal liability payments, as established under § 4219.32 or by the plan pursuant to § 4219.33.

§ 4219.32 Interest on overdue, defaulted and overpaid withdrawal liability.

(a) *Interest assessed.* The plan sponsor of a multiemployer plan—

(1) Shall assess interest on overdue withdrawal liability payments from the due date, as defined in paragraph (d) of

this section, until the date paid, as defined in paragraph (e); and

(2) In the event of a default, may assess interest on any accelerated portion of the outstanding withdrawal liability from the due date, as defined in paragraph (d) of this section, until the date paid, as defined in paragraph (e).

(b) *Interest rate.* Except as otherwise provided in rules adopted by the plan pursuant to § 4219.33, interest under this section shall be charged or credited for each calendar quarter at an annual rate equal to the average quoted prime rate on short-term commercial loans for the fifteenth day (or next business day if the fifteenth day is not a business day) of the month preceding the beginning of each calendar quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

(c) *Calculation of interest.* The interest rate under paragraph (b) of this section is the nominal rate for any calendar quarter or portion thereof. The amount of interest due the plan for overdue or defaulted withdrawal liability, or due the employer for overpayment, is equal to the overdue, defaulted, or overpaid amount multiplied by:

(1) For each full calendar quarter in the period from the due date (or date of overpayment) to the date paid (or date of refund), one-fourth of the annual rate in effect for that quarter;

(2) For each full calendar month in a partial quarter in that period, one-twelfth of the annual rate in effect for that quarter; and

(3) For each day in a partial month in that period, one-three-hundred-sixtieth of the annual rate in effect for that month.

(d) *Due date.* Except as otherwise provided in rules adopted by the plan, the due date from which interest accrues shall be, for an overdue withdrawal liability payment and for an amount of withdrawal liability in default, the date of the missed payment that gave rise to the delinquency or the default.

(e) *Date paid.* Any payment of withdrawal liability shall be deemed to have been paid on the date on which it is received.

§ 4219.33 Plan rules concerning overdue and defaulted withdrawal liability.

Plans may adopt rules relating to overdue and defaulted withdrawal liability, provided that those rules are consistent with ERISA. These rules may include, but are not limited to, rules for determining the rate of interest to be charged on overdue, defaulted and overpaid withdrawal liability (provided that the rate reflects prevailing market rates for comparable obligations); rules providing reasonable grace periods during which late payments may be made without interest; additional definitions of default which indicate a substantial likelihood that an employer will be unable to pay its withdrawal liability; and rules pertaining to acceleration of the outstanding balance on default. Plan rules adopted under this section shall be reasonable. Plan rules shall operate and be applied uniformly with respect to each employer, except that the rules may take into account the creditworthiness of an employer. Rules which take into account the creditworthiness of an employer shall state with particularity the categories of creditworthiness the plan will use, the specific differences in treatment accorded employers in different categories, and the standards and procedures for assigning an employer to a category.

PART 4220—PROCEDURES FOR PBGC APPROVAL OF PLAN AMENDMENTS

Sec.

4220.1 Purpose and scope.
4220.2 Definitions.
4220.3 Requests for PBGC approval.
4220.4 PBGC action on requests.

Authority: 29 U.S.C. 1302(b)(3), 1400.

§ 4220.1 Purpose and scope.

(a) *General.* This part establishes procedures under which a plan sponsor shall request the PBGC to approve a plan amendment under section 4220 of ERISA. This part applies to all multiemployer plans covered by title IV of ERISA that adopt amendments pursuant to the authorization of sections 4201–4219 of ERISA (except for amendments adopted pursuant to section 4211(c)(5)). (The covered amendments are set forth in paragraph (b) of this section.) The subsequent modification of a plan amendment adopted by authorization of those sections is also covered by this part. This part does not, however, cover a plan amendment that merely repeals a previously adopted amendment, returning the plan to the statutorily prescribed rule.

(b) *Covered amendments.* Amendments made pursuant to the following sections of ERISA are covered by this part:

(1) Section 4203 (b)(1)(B)(ii).
(2) Section 4203(c)(4).
(3) Section 4205(c)(1).
(4) Section 4205(d).
(5) Section 4209(b).
(6) Section 4210(b)(2).
(7) Section 4211(c)(1).
(8) Section 4211(c)(4)(D).
(9) Section 4211(d)(1).
(10) Section 4211(d)(2).
(11) Section 4219(c)(1)(C)(ii)(I).
(12) Section 4219(c)(1)(C)(iii).

(c) *Exception.* Submission of a request for approval under this part is not required for a plan amendment for which the PBGC has published a notice in the **Federal Register** granting class approval.

§ 4220.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: employer, ERISA, IRS, multiemployer plan, PBGC, plan, and plan sponsor.

§ 4220.3 Requests for PBGC approval.

(a) *Filing of request.* A request for approval of an amendment filed with the PBGC in accordance with this section shall constitute notice to the PBGC for purposes of the 90-day period specified in section 4220 of ERISA. A request is deemed filed on the date on which a request containing all information required by paragraph (d) of this section is received by the PBGC.

(b) *Who may request.* The plan sponsor, or a duly authorized representative acting on behalf of a plan sponsor, shall sign and submit the request.

(c) *Where to file.* The request shall be delivered by hand or by mail to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

(d) *Information.* Each request filed shall contain the following information:

(1) The name of the plan for which the amendment is being submitted, and the name, address and the telephone number of the plan sponsor or its duly authorized representative.

(2) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with PBGC. If no EIN or PIN has been assigned, that fact must be indicated.

(3) A copy of the amendment as adopted, including its proposed effective date.

(4) A copy of the most recent actuarial valuation of the plan.

(5) A statement containing a certification that notice of the adoption of the amendment has been given to all employers who have an obligation to contribute under the plan and to all employee organizations representing employees covered by the plan.

(6) Any other information that the plan sponsor believes to be pertinent to its request.

(e) *Supplemental information.* The PBGC may require a plan sponsor to submit any other information that the PBGC determines to be necessary to review a request under this part. The PBGC may suspend the running of the 90-day period pursuant to § 4220.4(c), pending the submission of the supplemental information.

(Approved by the Office of Management and Budget under control number 1212–0031)

§ 4220.4 PBGC action on requests.

(a) *General.* Upon receipt of a complete request, the PBGC shall notify the plan sponsor in writing of the date of commencement of the 90-day period specified in section 4220 of ERISA. Except as provided in paragraph (c) of this section, the PBGC shall approve or disapprove a plan amendment submitted to it under this part within 90 days after receipt of a complete request for approval. If the PBGC fails to act within the 90-day period, or within that period notifies the plan sponsor that it will not disapprove the amendment, the amendment may be made effective without the approval of the PBGC.

(b) *Decision on request.* The PBGC's decision on a request for approval shall be in writing. If the PBGC disapproves the plan amendment, the decision shall state the reasons for the disapproval. An approval by the PBGC constitutes its finding only with respect to the issue of risk as set forth in section 4220(c) of ERISA, and not with respect to whether the amendment is otherwise properly adopted in accordance with the terms of ERISA and the plan in question.

(c) *Suspension of the 90-day period.* The PBGC may suspend the running of the 90-day period referred to in paragraph (a) of this section if it determines that additional information is required under § 4220.3(e). When it does so, PBGC's request for additional information will advise the plan sponsor that the running of 90-day period has been suspended. The 90-day period will resume running on the date on which the additional information is received by the PBGC, and the PBGC will notify the plan sponsor of that date upon receipt of the information.

PART 4221—ARBITRATION OF DISPUTES IN MULTIEMPLOYER PLANS

Sec.

4221.1 Purpose and scope.
4221.2 Definitions.
4221.3 Initiation of arbitration.
4221.4 Appointment of the arbitrator.
4221.5 Powers and duties of the arbitrator.
4221.6 Hearing.
4221.7 Reopening of proceedings.
4221.8 Award.
4221.9 Reconsideration of award.
4221.10 Costs.
4221.11 Waiver of rules.
4221.12 Calculation of periods of time.
4221.13 Filing or service of documents.
4221.14 PBGC-approved arbitration procedures.

Authority: 29 U.S.C. 1302(b)(3), 1401.

§ 4221.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to establish procedures for the arbitration, pursuant to section 4221 of ERISA, of withdrawal liability disputes arising under sections 4201 through 4219 and 4225 of ERISA.

(b) *Scope.* This part applies to arbitration proceedings initiated pursuant to section 4221 of ERISA and this part on or after September 26, 1985. On and after the effective date, any plan rules governing arbitration procedures (other than a plan rule adopting a PBGC-approved arbitration procedure in accordance with § 4221.14) are effective only to the extent that they are consistent with this part and adopted by the arbitrator in a particular proceeding.

§ 4221.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: ERISA, IRS, multiemployer plan, PBGC, plan, and plan sponsor.

In addition, for purposes of this part:

Arbitrator means an individual or panel of individuals selected according to this part to decide a dispute concerning withdrawal liability.

Employer means an individual, partnership, corporation or other entity against which a plan sponsor has made a demand for payment of withdrawal liability pursuant to section 4219(b)(1) of ERISA.

Party or *parties* means the employer and the plan sponsor involved in a withdrawal liability dispute.

Withdrawal liability dispute means a dispute described in § 4221.1(a) of this chapter.

§ 4221.3 Initiation of arbitration.

(a) *Time limits—in general.* Arbitration of a withdrawal liability dispute may be initiated within the time limits described in section 4221(a)(1) of ERISA.

(b) *Waiver or extension of time limits.* Arbitration shall be initiated in accordance with this section, notwithstanding any inconsistent provision of any agreement entered into by the parties before the date on which the employer received notice of the plan's assessment of withdrawal liability. The parties may, however, agree at any time to waive or extend the time limits for initiating arbitration.

(c) *Establishment of timeliness of initiation.* A party that unilaterally initiates arbitration is responsible for establishing that the notice of initiation of arbitration was timely received by the other party. If arbitration is initiated by agreement of the parties, the date on which the agreement to arbitrate was executed establishes whether the arbitration was timely initiated.

(d) *Contents of agreement or notice.* If the employer initiates arbitration, it shall include in the notice of initiation a statement that it disputes the plan sponsor's determination of its withdrawal liability and is initiating arbitration. A copy of the demand for withdrawal liability and any request for reconsideration, and the response thereto, shall be attached to the notice. If a party other than an employer initiates arbitration, it shall include in the notice a statement that it is initiating arbitration and a brief description of the questions on which arbitration is sought. If arbitration is initiated by agreement, the agreement shall include a brief description of the questions submitted to arbitration. In no case is compliance with formal rules of pleading required.

(e) *Effect of deficient agreement or notice.* If a party fails to object promptly in writing to deficiencies in an initiation agreement or a notice of initiation of arbitration, it waives its right to object.

§ 4221.4 Appointment of the arbitrator.

(a) *Appointment of and acceptance by arbitrator.* The parties shall select the arbitrator within 45 days after the arbitration is initiated, or within such other period as is mutually agreed after the initiation of arbitration, and shall mail to the designated arbitrator a notice of his or her appointment. The notice of appointment shall include a copy of the notice or agreement initiating arbitration, a statement that the arbitration is to be conducted in accordance with this part, and a request for a written acceptance by the arbitrator. The arbitrator's appointment becomes effective upon his or her written acceptance, stating his or her availability to serve and making any disclosures required by paragraph (b) of this section. If the arbitrator does not accept in writing within 15 days after the notice of appointment is mailed or delivered to him or her, he or she is deemed to have declined to act, and the parties shall select a new arbitrator in accordance with paragraph (d) of this section.

(b) *Disclosure by arbitrator and disqualification.* Upon accepting the appointment, the arbitrator shall disclose to the parties any circumstances likely to affect his or her impartiality, including any bias or any financial or personal interest in the result of the arbitration and any past or present relationship with the parties or their counsel. If any party determines that the arbitrator should be disqualified because of the information disclosed, that party shall notify all other parties and the arbitrator no later than 10 days after the arbitrator makes the disclosure required by this paragraph (but in no event later than the commencement of the hearing under § 4221.6). The arbitrator shall then withdraw, and the parties shall select another arbitrator in accordance with paragraph (d) of this section.

(c) *Challenge and withdrawal.* After the arbitrator has been selected, a party may request that he or she withdraw from the proceedings at any point before a final award is rendered on the ground that he or she is unable to render an award impartially. The request for withdrawal shall be served on all other parties and the arbitrator by hand or by certified or registered mail and shall include a statement of the circumstances that, in the requesting party's view, affect the arbitrator's impartiality and a statement that the requesting party has brought these circumstances to the attention of the arbitrator and the other parties at the earliest practicable point in the proceedings. If the arbitrator determines that the circumstances adduced are likely to affect his or her impartiality and have been presented in a timely fashion, he or she shall withdraw from the proceedings and notify the parties of the reasons for his or her withdrawal. The parties shall then select a new arbitrator in accordance with paragraph (d) of this section.

(d) *Filling vacancies.* If the designated arbitrator declines his or her appointment or, after accepting his or her appointment, is disqualified, resigns, dies, withdraws, or is unable to perform his or her duties at any time before a final award is rendered, the parties shall select another arbitrator to fill the vacancy. The selection shall be made, in accordance with the procedure used in the initial selection, within 20 days after the parties receive notice of the vacancy. The matter shall then be reheard by the newly chosen arbitrator, who may, in his or her discretion, rely on all or any portion of the record already established.

(e) *Failure to select arbitrator.* If the parties fail to select an arbitrator within the time prescribed by this section, either party or both may seek the designation and appointment of an arbitrator in a United States district court pursuant to the provisions of title 9 of the United States Code.

§ 4221.5 Powers and duties of the arbitrator.

(a) *Arbitration hearing.* Except as otherwise provided in this part, the arbitrator shall conduct the arbitration hearing under § 4221.6 in the same manner, and shall possess the same powers, as an arbitrator conducting a proceeding under title 9 of the United States Code.

(1) *Application of the law.* In reaching his or her decision, the arbitrator shall follow applicable law, as embodied in statutes, regulations, court decisions, interpretations of the agencies charged with the enforcement of ERISA, and other pertinent authorities.

(2) *Prehearing discovery.* The arbitrator may allow any party to conduct prehearing discovery by interrogatories, depositions, requests for the production of documents, or other means, upon a showing that the discovery sought is likely to lead to the production of relevant evidence and will not be disproportionately burdensome to the other parties. The arbitrator may impose appropriate sanctions if he or she determines that a party has failed to respond to discovery in good faith or has conducted discovery proceedings in bad faith or for the purpose of harassment. The arbitrator may, at the request of any party or on his or her own motion, require parties to give advance notice of expert or other witnesses that they intend to introduce.

(3) *Admissibility of evidence.* The arbitrator determines the relevance and materiality of the evidence offered during the course of the hearing and is the judge of the admissibility of evidence offered. Conformity to legal rules of evidence is not necessary. To the extent reasonably practicable, all evidence shall be taken in the presence of the arbitrator and the parties. The arbitrator may, however, consider affidavits, transcripts of depositions, and similar documents.

(4) *Production of documents or other evidence.* The arbitrator may subpoena witnesses or documents upon his or her own initiative or upon request by any party after determining that the evidence is likely to be relevant to the dispute.

(b) *Prehearing conference.* If it appears that a prehearing conference will expedite the proceedings, the arbitrator may, at any time before the commencement of the arbitration hearing under § 4221.6, direct the parties to appear at a conference to consider settlement of the case, clarification of issues and stipulation of facts not in dispute, admission of documents to avoid unnecessary proof, limitations on the number of expert or other witnesses, and any other matters that could expedite the disposition of the proceedings.

(c) *Proceeding without hearing.* The arbitrator may render an award without a hearing if the parties agree and file with the arbitrator such evidence as the arbitrator deems necessary to enable him or her to render an award under § 4221.8.

§ 4221.6 Hearing.

(a) *Time and place of hearing established.* Unless the parties agree to proceed without a hearing as provided in § 4221.5(c), the parties and the arbitrator shall, no later than 15 days after the written acceptance by the arbitrator is mailed to the parties, establish a date and place for the hearing. If agreement is not reached within the 15-day period, the arbitrator shall, within 10 additional days, choose a location and set a hearing date. The date set for the hearing may be no later than 50 days after the mailing date of the arbitrator's written acceptance.

(b) *Notice.* After the time and place for the hearing have been established, the arbitrator shall serve a written notice of the hearing on the parties by hand or by certified or registered mail.

(c) *Appearances.* The parties may appear in person or by counsel or other representatives. Any party that, after being duly notified and without good cause shown, fails to appear in person or by representative at a hearing or conference, or fails to file documents in a timely manner, is deemed to have waived all rights with respect thereto and is subject to whatever orders or determinations the arbitrator may make.

(d) *Record and transcript of hearing.* Upon the request of either party, the arbitrator shall arrange for a record of the arbitration hearing to be made by stenographic means or by tape recording. The cost of making the record and the costs of transcription and copying are costs of the arbitration proceedings payable as provided in § 4221.10(b) except that, if only one party requests that a transcript of the record be made, that party shall pay the cost of the transcript.

(e) *Order of hearing.* The arbitrator shall conduct the hearing in accordance with the following rules:

(1) *Opening.* The arbitrator shall open the hearing and place in the record the

notice of initiation of arbitration or the initiation agreement. The arbitrator may ask for statements clarifying the issues involved.

(2) *Presentation of claim and response.* The arbitrator shall establish the procedure for presentation of claim and response in such a manner as to afford full and equal opportunity to all parties for the presentation of their cases.

(3) *Witnesses.* All witnesses shall testify under oath or affirmation and are subject to cross-examination by opposing parties. If testimony of an expert witness is offered by a party without prior notice to the other party, the arbitrator shall grant the other party a reasonable time to prepare for cross-examination and to produce expert witnesses on its own behalf. The arbitrator may on his or her own initiative call expert witnesses on any issue raised in the arbitration. The cost of any expert called by the arbitrator is a cost of the proceedings payable as provided in § 4221.10(b).

(f) *Continuance of hearing.* The arbitrator may, for good cause shown, grant a continuance for a reasonable period. When granting a continuance, the arbitrator shall set a date for resumption of the hearing.

(g) *Filing of briefs.* Each party may file a written statement of facts and argument supporting the party's position. The parties' briefs are due no later than 30 days after the close of the hearing. Within 15 days thereafter, each party may file a reply brief concerning matters contained in the opposing brief. The arbitrator may establish a briefing schedule and may reduce or extend these time limits. Each party shall deliver copies of all of its briefs to the arbitrator and to all opposing parties.

§ 4221.7 Reopening of proceedings.

(a) *Grounds for reopening.* At any time before a final award is rendered, the proceedings may be reopened, on the motion of the arbitrator or at the request of any party, for the purpose of taking further evidence or rehearing or rearguing any matter, if the arbitrator determines that—

(1) The reopening is likely to result in new information that will have a material effect on the outcome of the arbitration;

(2) Good cause exists for the failure of the party that requested reopening to present such information at the hearing; and

(3) The delay caused by the reopening will not be unfairly injurious to any party.

(b) *Comments on and notice of reopening.* The arbitrator shall allow all affected parties the opportunity to comment on any motion or request to reopen the proceedings. If he or she determines that the proceedings should be reopened, he or she shall give all parties written notice of the reasons for reopening and of the schedule of the reopened proceedings.

§ 4221.8 Award.

(a) *Form.* The arbitrator shall render a written award that—

(1) States the basis for the award, including such findings of fact and conclusions of law (which need not be explicitly designated as such) as are necessary to resolve the dispute;

(2) Adjusts (or provides a method for adjusting) the amount or schedule of payments to be made after the award to reflect overpayments or underpayments made before the award was rendered or requires the plan sponsor to refund overpayments in accordance with § 4219.31(d); and

(3) Provides for an allocation of costs in accordance with § 4221.10.

(b) *Time of award.* Except as provided in paragraphs (c), (d), and (e) of this section, the arbitrator shall render the award no later than 30 days after the proceedings close. The award is rendered when filed or served on the parties as provided in § 4221.13. The award is final when the period for seeking modification or reconsideration in accordance with § 4221.9(a) has expired or the arbitrator has rendered a revised award in accordance with § 4221.9(c).

(c) *Reopened proceedings.* If the proceedings are reopened in accordance with § 4221.7 after the close of the hearing, the arbitrator shall render the award no later than 30 days after the date on which the reopened proceedings are closed.

(d) *Absence of hearing.* If the parties have chosen to proceed without a hearing, the arbitrator shall render the award no later than 30 days after the date on which final statements and proofs are filed with him or her.

(e) *Agreement for extension of time.* Notwithstanding paragraphs (b), (c), and (d), the parties may agree to an extension of time for the arbitrator's award in light of the particular facts and circumstances of their dispute.

(f) *Close of proceedings.* For purposes of paragraphs (b) and (c) of this section, the proceedings are closed on the date on which the last brief or reply brief is due or, if no briefs are to be filed, on the date on which the hearing or rehearing closes.

(g) *Publication of award.* After a final award has been rendered, the plan sponsor shall make copies available upon request to the PBGC and to all companies that contribute to the plan. The plan sponsor may impose reasonable charges for copying and postage.

§ 4221.9 Reconsideration of award.

(a) *Motion for reconsideration and objections.* A party may seek modification or reconsideration of the arbitrator's award by filing a written motion with the arbitrator and all opposing parties within 20 days after the award is rendered. Opposing parties may file objections to modification or reconsideration within 10 days after the motion is filed. The filing of a written motion for modification or reconsideration suspends the 30-day period under section 4221(b)(2) of ERISA for requesting court review of the award. The 30-day statutory period again begins to run when the arbitrator denies the motion pursuant to paragraph (c) of this section or renders a revised award.

(b) *Grounds for modification or reconsideration.* The arbitrator may grant a motion for modification or reconsideration of the award only if—

(1) There is a numerical error or a mistake in the description of any person, thing, or property referred to in the award; or

(2) The arbitrator has rendered an award upon a matter not submitted to the arbitrator and the matter affects the merits of the decision; or

(3) The award is imperfect in a matter of form not affecting the merits of the dispute.

(c) *Decision of arbitrator.* The arbitrator shall grant or deny the motion for modification or reconsideration, and may render an opinion to support his or her decision within 20 days after the motion is filed with the arbitrator, or within 30 days after the motion is filed if an objection is also filed.

§ 4221.10 Costs.

The costs of arbitration under this part shall be borne by the parties as follows:

(a) *Witnesses.* Each party to the dispute shall bear the costs of its own witnesses.

(b) *Other costs of arbitration.* Except as provided in § 4221.6(d) with respect to a transcript of the hearing, the parties shall bear the other costs of the arbitration proceedings equally unless the arbitrator determines otherwise. The parties may, however, agree to a different allocation of costs if their agreement is entered into after the employer has received notice of the plan's assessment of withdrawal liability.

(c) *Attorneys' fees.* The arbitrator may require a party that initiates or contests an arbitration in bad faith or engages in dilatory, harassing, or other improper conduct during the course of the arbitration to pay reasonable attorneys' fees of other parties.

§ 4221.11 Waiver of rules.

Any party that fails to object in writing in a timely manner to any deviation from any provision of this part is deemed to have waived the right to interpose that objection thereafter.

§ 4221.12 Calculation of periods of time.

For purposes of calculating any period of time under this part, the period begins to run on the day following the day that a communication is received or an act is completed. If the last day of the period is a Federal, State, or local holiday or a non-business day for one of the parties or the arbitrator, the period runs until the end of the first business day that follows. Holidays or non-business days occurring during the running of the period of time are included in calculating the period.

§ 4221.13 Filing or service of documents.

(a) *By mail.* A document that is to be filed or served under this part is considered filed or served on—

(1) The date of the receipt provided to the sender by the United States Postal Service, if the document was sent by certified or registered mail, postage prepaid, properly packaged, and properly addressed; or

(2) The date of the United States Postal Service postmark stamped on the cover in which the document is mailed, if paragraph (a)(1) is not applicable, a legible postmark was made, and the document was sent postage prepaid, properly packaged, and properly addressed.

(b) *By means other than mail.* A document required to be delivered under this part that is not mailed in accordance with paragraph (a) of this section is considered filed or served on the date on which it is received.

§ 4221.14 PBGC-approved arbitration procedures.

(a) *Use of PBGC-approved arbitration procedures.* In lieu of the procedures prescribed by this part, an arbitration may be conducted in accordance with an alternative arbitration procedure approved by the PBGC in accordance with paragraph (c) of this section. A plan may by plan amendment require the use of a PBGC-approved procedure for all arbitrations of withdrawal liability disputes, or the parties may agree to the use of a PBGC-approved procedure in a particular case.

(b) *Scope of alternative procedures.* If an arbitration is conducted in accordance with a PBGC-approved arbitration procedure, the alternative procedure shall govern all aspects of the arbitration, with the following exceptions:

(1) The time limits for the initiation of arbitration may not differ from those provided for by § 4221.3.

(2) The arbitrator shall be selected after the initiation of the arbitration.

(3) The arbitrator shall give the parties opportunity for prehearing discovery substantially equivalent to that provided by § 4221.5(a)(2).

(4) The award shall be made available to the public to at least the extent provided by § 4221.8(g).

(5) The costs of arbitration shall be allocated in accordance with § 4221.10.

(c) *Procedure for approval of alternative procedures.* The PBGC may approve arbitration procedures on its own initiative by publishing an appropriate notice in the **Federal Register**. The sponsor of an arbitration procedure may request PBGC approval of its procedures by submitting an application to the PBGC. The application shall be submitted to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, and shall include:

(1) A copy of the procedures for which approval is sought;

(2) A description of the history, structure and membership of the organization that sponsors the procedures; and

(3) A discussion of the reasons why, in the sponsoring organization's opinion, the procedures satisfy the criteria for approval set forth in this section.

(d) *Criteria for approval of alternative procedures.* The PBGC shall approve an application if it determines that the proposed procedures will be substantially fair to all parties involved in the arbitration of a withdrawal liability dispute and that the sponsoring organization is neutral and able to carry out its role under the procedures. The PBGC may request comments on the application by publishing an appropriate notice in the **Federal Register**. Notice of the PBGC's decision on the application shall be published in the **Federal Register**. Unless the notice of approval specifies otherwise, approval will remain effective until revoked by the PBGC through a **Federal Register** notice.

PART 4231—MERGERS AND TRANSFERS BETWEEN MULTIEMPLOYER PLANS

Sec.

4231.1 Purpose and scope.
4231.2 Definitions.
4231.3 Requirements for mergers and transfers.
4231.4 Preservation of accrued benefits.
4231.5 Valuation requirement.
4231.6 Plan solvency tests.
4231.7 *De minimis* mergers and transfers.
4231.8 Notice of merger or transfer.
4231.9 Request for compliance determination.
4231.10 Actuarial calculations and assumptions.

Authority: 29 U.S.C. 1302(b)(3), 1411.

§ 4231.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe notice requirements under section 4231 of ERISA for mergers and transfers of assets or liabilities among multiemployer pension plans. This part also interprets the other requirements of section 4231 and prescribes special rules for *de minimis* mergers and transfers.

(b) *Scope.* This part applies to mergers and transfers among multiemployer plans where all of the plans immediately before and immediately after the transaction are multiemployer plans covered by title IV of ERISA.

§ 4231.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: ERISA, fair market value, IRS, multiemployer plan, PBGC, plan, and plan year.

In addition, for purposes of this part:

Actuarial valuation means a valuation of assets and liabilities performed by an enrolled actuary using the actuarial assumptions used for purposes of determining the charges and credits to the funding standard account under section 302 of ERISA and section 412 of the Code.

Certified change of collective bargaining representative means a change of collective bargaining representative certified under the Labor-Management Relations Act of 1947, as amended, or the Railway Labor Act, as amended.

Fair market value of assets has the same meaning as the term has for minimum funding purposes under section 302 of ERISA and section 412 of the Code.

Merger means the combining of two or more plans into a single plan. For example, a consolidation of two plans into a new plan is a merger.

Significant transfer means the transfer of assets that equal or exceed 15% of the assets of the transferor plan before the transfer or the transfer of unfunded accrued benefits that equal or exceed 15% of the assets of the transferee plan (including a plan that did not exist prior to the transfer) before the transfer.

Transfer and *transfer of assets or liabilities* mean a diminution of assets or liabilities with respect to one plan and the acquisition of these assets or the assumption of these liabilities by another plan or plans (including a plan that did not exist prior to the transfer). However, the shifting of assets or liabilities pursuant to a written reciprocity agreement between two multiemployer plans in which one plan assumes liabilities of another plan is not a transfer of assets or liabilities. In addition, the shifting of assets between several funding media used for a single plan (such as between trusts, between annuity contracts, or between trusts and annuity contracts) is not a transfer of assets or liabilities.

§ 4231.3 Requirements for mergers and transfers.

(a) *General requirements.* A plan sponsor may not cause a multiemployer plan to merge with one or more multiemployer plans or transfer assets or liabilities to or from another multiemployer plan unless the merger or transfer satisfies all of the following requirements:

(1) No participant's or beneficiary's accrued benefit may be lower immediately after the effective date of the merger or transfer than the benefit immediately before the merger or transfer.

(2) Actuarial valuations of the plans involved in the merger or transfer shall have been performed in accordance with § 4231.5.

(3) For each plan involved in the transaction, an enrolled actuary shall-

(i) Determine that the plan meets the applicable plan solvency requirement set forth in § 4231.6; or

(ii) Otherwise demonstrate that benefits under the plan are not reasonably expected to be subject to suspension under section 4245 of ERISA.

(4) The plan sponsor shall notify the PBGC of the merger or transfer in accordance with § 4231.8.

(b) *Compliance determination.* If a plan sponsor requests a determination that a merger or transfer that may otherwise be prohibited by section 406(a) or (b)(2) of ERISA satisfies the requirements of section 4231 of ERISA, the plan sponsor shall submit the information described in § 4231.9 in addition to the information required by § 4231.8. PBGC may request additional information if necessary to determine whether a merger or transfer complies with the requirements of section 4231 and this part. Plan sponsors are not required to request a compliance determination. Under section 4231(c) of ERISA, if the PBGC determines that the merger or transfer complies with section 4231 of ERISA and this part, the merger or transfer will not constitute a violation of the prohibited transaction provisions of section 406(a) and (b)(2) of ERISA.

(c) *Certified change in bargaining representative.* Transfers of assets and liabilities pursuant to a certified change in bargaining representative are governed by section 4235 of ERISA. Plan sponsors involved in such transfers are not required to comply with this part. However, under section 4235(f)(1) of ERISA, the plan sponsors of the plans involved in the transfer may agree to a transfer that complies with sections 4231 and 4234 of ERISA. Plan sponsors that elect to comply with sections 4231 and 4234 must comply with the rules in this part.

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§ 4231.4 Preservation of accrued benefits.

Section 4231(b)(2) of ERISA and § 4231.3(a)(1) require that no participant's or beneficiary's accrued benefit may be lower immediately after the effective date of the merger or transfer than the benefit immediately before the merger or transfer. A plan that assumes an obligation to pay benefits for a group of participants satisfies this requirement only if the plan contains a provision preserving all accrued benefits. The determination of what is an accrued benefit shall be made in accordance with section 411 of the Code and the regulations thereunder.

§ 4231.5 Valuation requirement.

(a) *Mergers and non-significant transfers.* A merger or a transfer that is not significant ("non-significant transfer") satisfies section 4231(b)(4) of ERISA and § 4231.3(a)(2) (requiring an actuarial valuation) if an actuarial valuation has been performed for each plan involved in the merger or transfer, based on the assets and liabilities of the plan as of a date not more than three years before the date on which the notice of the merger or transfer is filed.

(b) *Significant transfers.* A significant transfer satisfies section 4231(b)(4) of ERISA and § 4231.3(a)(2) if an actuarial valuation has been performed for each plan involved in the transfer, based on the assets and liabilities of the plan as of a date not earlier than the first day of the last plan year ending before the proposed effective date of the transfer. The valuation shall separately identify assets, contributions and liabilities being transferred, and shall be based on the actuarial assumptions and methods that are expected to be used for the first plan year beginning after the transfer.

§ 4231.6 Plan solvency tests.

(a) *Significant transfers.* A significant transfer satisfies the plan solvency requirement of section 4231(b)(3) of ERISA and § 4231.3(a)(3)(i) if all of the following requirements are met by each plan involved in the transfer:

(1) Expected contributions shall equal or exceed the estimated amount necessary to satisfy the minimum funding requirement of section 412(a) of the Code (including reorganization funding, if applicable) for the five plan years beginning on or after the proposed effective date of the transfer.

(2) The fair market value of plan assets immediately after the transfer shall equal or exceed the total amount of expected benefit payments during the first five plan years beginning on or after the proposed effective date of the transfer.

(3) Expected contributions for the first plan year beginning on or after the proposed effective date of the transfer shall equal or exceed expected benefit payments for that plan year.

(4) Contributions for the amortization period shall equal or exceed unfunded accrued benefits plus expected normal costs.

(i) Notwithstanding paragraph (c)(4) of this section, "unfunded accrued benefits" means the excess of the present value of accrued benefits over the fair market value of the assets, determined on the basis of the actuarial valuation required under § 4231.5(b).

(ii) "Amortization period" means either 25 plan years or the amortization period for the resulting base when the combined charge base and the combined credit base are offset under section 412(b)(4) of the Code. The actuary may select either period.

(b) *Mergers and non-significant transfers.* A merger or non-significant transfer satisfies the plan solvency requirement of section 4231(b)(3) of ERISA and § 4231.3(a)(3)(i) if, for the merged plan or for each plan that continues after the transfer—

(1) The fair market value of plan assets immediately after the merger or transfer equals or exceeds five times the benefit payments in the last plan year ending before the proposed effective date of the merger or transfer; or

(2) In each of the first five plan years beginning after the proposed effective date of the merger or transfer, expected plan assets plus expected contributions and investment earnings equal or

exceed expected expenses and benefit payments for the plan year.

(c) *Rules for determinations.* In determining whether a transaction satisfies the plan solvency requirements set forth in this section, the following rules apply:

(1) Expected contributions after a merger or transfer shall be determined by assuming that contributions will equal contributions received in or accrued for the last full plan year ending before the date on which the notice of merger or transfer is filed with the PBGC. Contributions shall be adjusted, however, to reflect any change in the rate of employer contributions that has been negotiated (whether or not in effect), or a trend of changing contribution base units over the preceding five plan years or other period of time that can be demonstrated to be more appropriate.

(2) Expected normal costs shall be determined under the funding method and assumptions used by the plan actuary for purposes of determining the minimum funding requirement under section 412 of the Code (which requires that such assumptions be reasonable in the aggregate). If the plan is using an aggregate funding method, normal costs shall be determined under the entry age normal method.

(3) Expected benefit payments shall be determined by assuming that current benefits remain in effect and that all scheduled increases in benefits occur.

(4) The fair market value of plan assets immediately after the merger or transfer shall be based on the most recent data available to the plan sponsor immediately before the date on which the notice is filed.

(5) Expected investment earnings shall be determined using the same interest assumption used for determining the minimum funding requirement under section 412 of the Code.

(6) Expected expenses shall be determined using expenses in the last plan year ending before the notice is filed, adjusted to reflect any anticipated changes.

(7) Expected plan assets for a plan year shall be determined by adjusting the most current data on fair market value of plan assets to reflect expected contributions, investment earnings, benefit payments and expenses for each plan year between the date of the most current data and the beginning of the plan year for which expected assets are being determined.

§ 4231.7 De minimis mergers and transfers.

(a) *Special plan solvency rule.* In order to determine whether a *de minimis* merger or transfer satisfies the plan solvency requirement in § 4231.6(b), the plan assets, expected contributions and expected benefits may be determined without regard to any *de minimis* mergers or transfers that have occurred since the last valuation performed to establish charges and credits to the minimum funding standard account under section 412(b) of the Code.

(b) *De minimis merger defined.* A merger is *de minimis* if the present value of accrued benefits (whether or not vested) of one plan is less than 3 percent of the fair market value of the other plan's assets.

(c) *De minimis transfer defined.* A transfer of assets or liabilities is *de minimis* if—

(1) The fair market value of the assets transferred, if any, is less than 3 percent of the fair market value of all the assets of the transferor plan; and

(2) The present value of the accrued benefits transferred (whether or not vested) is less than 3 percent of the fair market value of all the assets of the transferee plan.

(d) *Value of assets and benefits.* For purposes of paragraphs (b) and (c) of this section, the value of plan assets and accrued benefits may be determined as of any date prior to the proposed effective date of the merger or transfer, but not earlier than the date of the most recent valuation performed for purposes of section 412(b) of the Code.

(e) *Aggregation required.* In determining whether a merger or transfer is *de minimis*, the assets and accrued benefits transferred in previous *de minimis* mergers and transfers within the same plan year shall be aggregated as described in paragraphs (e)(1) and (e)(2) of this section. For the purposes of those paragraphs, the value of plan assets may be determined as of the date during the plan year on which the total value of the plan's assets is the highest.

(1) A merger is not *de minimis* if the total present value of accrued benefits merged into a plan, when aggregated with all prior *de minimis* mergers of and transfers to that plan effective within the same plan year, equals or exceeds 3 percent of the value of the plan's assets.

(2) A transfer is not *de minimis* if, when aggregated with all previous mergers and transfers effective within the same plan year—

(i) The value of all assets transferred from the plan equals or exceeds 3 percent of the value of the plan's assets; or

(ii) The present value of all accrued benefits transferred to the plan equals or exceeds 3 percent of the plan's assets.

§ 4231.8 Notice of merger or transfer.

(a) *When to file.* Except as provided in paragraph (f) of this section, a notice of a proposed merger or transfer shall be filed not less than 120 days before the effective date of the transaction. For purposes of this part, the effective date of a merger or transfer is the earlier of—

(1) The date on which one plan assumes liability for benefits accrued under another plan involved in the transaction; or

(2) The date on which one plan transfers assets to another plan involved in the transaction.

(b) *Who shall file.* The plan sponsors of all plans involved in a merger or transfer, or the duly authorized representative(s) acting on behalf of the plan sponsors, shall jointly file the notice required by this section.

(c) *Where to file.* The notice shall be delivered by mail or submitted by hand to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

(d) *Filing date.* For purposes of paragraph (a) of this section, the notice is not considered filed until all of the information required by paragraph (e) of this section has been submitted. Except as provided in the next sentence, the notice is considered filed on the date it is received by the PBGC, unless it is received after regular business hours, in which event it is considered filed on the next regular business day. The notice is considered filed on the date of the postmark stamped on the cover in which the notice is mailed if—

(1) The postmark was made by the United States Postal Service; and

(2) The notice was mailed postage prepaid, properly packaged and addressed to the PBGC.

(e) *Information required.* Each notice shall contain the following information:

(1) For each plan involved in the merger or transfer—

(i) The name of the plan;

(ii) The name, address and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any; and

(iii) The nine-digit employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with the PBGC. If no EIN or PIN has been assigned, the notice shall so indicate.

(2) The kind of transaction being reported (merger, significant transfer or non-significant transfer).

(3) The proposed effective date of the merger or transfer.

(4) A copy of the plan provision stating that no participant's or beneficiary's accrued benefit will be lower immediately after the merger or transfer than the benefit immediately before the transaction.

(5) One of the following statements, certified by an enrolled actuary:

(i) A statement that the merger or transfer is *de minimis* as defined in § 4231.7. A notice of a *de minimis* merger or transfer is not required to include the information described in paragraph (e)(6) or (e)(7) of this section.

(ii) A statement that the merger or transfer satisfies the applicable plan solvency test set forth in § 4231.6, indicating which is the applicable test.

(iii) A statement of the basis on which the actuary has determined that benefits under the plan are not reasonably expected to be subject to suspension under section 4245 of ERISA, including the supporting data or calculations, assumptions and methods.

(6) For mergers or transfers (other than *de minimis* mergers or transfers), a copy of the most recent actuarial valuation report that satisfies the requirements of § 4231.5.

(7) For a significant transfer, the following information used in making the plan solvency determination under § 4231.6(a):

(i) The present value of the accrued benefits and fair market value of plan assets under the valuation required by § 4231.5(b), allocable to each plan after the transfer.

(ii) The fair market value of assets in each plan after the transfer (determined in accordance with § 4231.6(c)(4)).

(iii) The expected benefit payments for each plan in the first plan year beginning on or after the proposed effective date of the transfer (determined in accordance with § 4231.6(c)(3)).

(iv) The contribution rates in effect for each plan for the first plan year beginning on or after the proposed effective date of the transfer.

(v) The expected contributions for each plan in the first plan year beginning on or after the proposed effective date of the transfer (determined in accordance with § 4231.6(c)(1)).

(f) *Waiver of notice.* PBGC may waive the notice requirements of this section and section 4231(b)(1) of ERISA if the plan sponsor demonstrates to the satisfaction of the PBGC that failure to complete the merger or transfer in less than 120 days after filing the notice will cause harm to participants or beneficiaries of the plans involved in the transaction.

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§ 4231.9 Request for compliance determination.

(a) *General.* A request for a determination that a merger or transfer complies with the requirements of section 4231 of ERISA may be filed by the plan sponsor or sponsors of one or more plans involved in a merger or transfer. The request shall contain the information described in paragraph (b) or (c) of this section, as applicable.

(1) *The place of filing.* The request shall be delivered to the address set forth in § 4231.8(c).

(2) *Single request permitted for all de minimis transactions.* Because the plan solvency test for *de minimis* mergers and transfers is based on the most recent valuation (without adjustment for intervening *de minimis* transactions), a plan sponsor may submit a single request for a compliance determination covering all *de minimis* mergers or transfers that occur between one plan valuation and the next. However, the plan sponsor must still notify PBGC of each *de minimis* merger or transfer separately, in accordance with § 4231.8. The single request for a compliance determination may be filed concurrently with any one of the notices of a *de minimis* merger or transfer.

(b) *Contents of request: merger or transfer that is not de minimis.* A request for a compliance determination concerning a merger or transfer that is not *de minimus* shall contain—

(1) A copy of the merger or transfer agreement;

(2) A summary of the required calculations, including a complete description of assumptions and methods, on which the enrolled actuary based the certification that the merger or transfer satisfied a plan solvency test described in § 4231.6; and

(3) For a significant transfer, copies of all actuarial valuations performed within the 5 years preceding the proposed effective date of the transfer.

(c) *Contents of request: De minimus merger or transfer.* A request for a compliance determination concerning a *de minimis* merger or transfer shall contain one of the following statements, certified by an enrolled actuary:

(1) A statement that the merger or transfer satisfies one of the plan solvency tests set forth in § 4231.6(b), indicating which test is satisfied.

(2) A statement of the basis on which the actuary has determined that benefits under the plan are not reasonably expected to be subject to suspension under section 4245 of ERISA, including supporting data or calculations, assumptions and methods.

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§ 4231.10 Actuarial calculations and assumptions.

(a) *Most recent valuation.* All calculations required by this part shall be based on the most recent actuarial valuation as of the date of filing the notice, updated to show any material changes.

(b) *Assumptions.* All calculations required by this part shall be based on methods and assumptions that are reasonable in the aggregate, based on generally accepted actuarial principles.

(c) *Updated calculations.* If the actual date of the merger or transfer is more than one year after the date the notice is filed with the PBGC, PBGC may require the plans involved to provide updated calculations and representations based on the actual effective date of the transaction.

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PART 4245—NOTICE OF INSOLVENCY

Sec.

4245.1 Purpose and scope.
4245.2 Definitions.
4245.3 Notice of insolvency.
4245.4 Contents of notice of insolvency.
4245.5 Notice of insolvency benefit level.
4245.6 Contents of notice of insolvency benefit level.
4245.7 PBGC address.

Authority: 29 U.S.C. 1302(b)(3), 1426(e).

§ 4245.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe notice requirements pertaining to insolvent multiemployer plans that are in reorganization.

(b) *Scope.* This part applies to multiemployer plans in reorganization covered by title IV of ERISA, other than plans that have terminated by mass withdrawal under section 4041A(a)(2) of ERISA.

§ 4245.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: employer, ERISA, IRS, multiemployer plan, nonforfeitable benefit, PBGC, person, plan, and plan year.

In addition, for purposes of this part:

Actuarial valuation means a report submitted to the plan in connection with a valuation of plan assets and liabilities, which, in the case of a plan covered by subparts C and D of part 4281, shall be performed in accordance with subpart B of part 4281.

Available resources means, for a plan year, available resources as described in section 4245(b)(3) of ERISA.

Benefits subject to reduction means those benefits accrued under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreements entered into after March 26, 1980, that are not eligible for the PBGC's guarantee under section 4022A(b) of ERISA.

Financial assistance means financial assistance from the PBGC under section 4261 of ERISA.

Insolvency benefit level means the greater of the resource benefit level or the benefit level guaranteed by the PBGC for each participant and beneficiary in pay status.

Insolvency year means insolvency year as described in section 4245(b)(4) of ERISA.

Insolvent means that a plan is unable to pay benefits when due during the plan year. A plan terminated by mass withdrawal is not insolvent unless it has been amended to eliminate all benefits that are subject to reduction under section 4281(c) of ERISA, or, in the absence of an amendment, no benefits under the plan are subject to reduction under section 4281(c) of ERISA.

Reasonably expected to enter pay status means, with respect to plan participants and beneficiaries, persons (other than those in pay status) who, according to plan records, are disabled, have applied for benefits, or have reached or will reach during the applicable period the normal retirement age under the plan, and any others whom it is reasonable for the plan sponsor to expect to enter pay status during the applicable period.

Reorganization means reorganization under section 4241(a) of ERISA.

Resource benefit level means resource benefit level as described in section 4245(b)(2) of ERISA.

§ 4245.3 Notice of insolvency.

(a) *Requirement of notice.* A plan sponsor of a multiemployer plan in reorganization that determines under section 4245 (b)(1), (d)(1) or (d)(2) of ERISA that the plan's available resources are or may be insufficient to pay benefits when due for a plan year shall so notify the PBGC and the interested parties, as defined in paragraph (d) of this section. A single notice may cover more than one plan year. The notices shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4245.4.

(b) *When delivered.* A plan sponsor shall mail or otherwise deliver the notices of insolvency no later than 30 days after it determines that the plan is or may become insolvent, as described in paragraph (a) of this section. However, the notice to participants and beneficiaries in pay status may be delivered concurrently with the first benefit payment made more than 30 days after the determination of insolvency.

(c) *Methods of delivery.* The notice of insolvency shall be delivered by mail or by hand to the PBGC and the interested parties described in paragraph (d) of this section, other than participants and beneficiaries who are not in pay status when the notice is required to be delivered. The notice to participants and beneficiaries who are not in pay status shall be provided in any manner reasonably calculated to reach those participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

(d) *Interested parties.* For purposes of this part, the term "interested parties" means—

(1) Employers required to contribute to the plan;

(2) Employee organizations that, for collective bargaining purposes, represent plan participants employed by such employers; and

(3) Plan participants and beneficiaries.

§ 4245.4 Contents of notice of insolvency.

(a) *Notice to the PBGC.* A notice of insolvency required to be filed with the PBGC pursuant to § 4245.3 shall contain the information set forth below:

(1) The name of the plan.

(2) The name, address and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any.

(3) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with the PBGC. If no EIN or PIN has been assigned, the notice shall so indicate.

(4) The IRS key district that has jurisdiction over determination letters with respect to the plan.

(5) The case number assigned to the plan by the PBGC. If the plan has no case number, the notice shall state whether the plan has previously filed a notice of insolvency with the PBGC and, if so, the date on which the notice was filed.

(6) The plan year or years for which the plan sponsor has determined that the plan is or may become insolvent.

(7) A copy of the plan document, including the last restatement of the plan and all subsequent amendments in effect, or to become effective, during the insolvency year or years. However, if a copy of the plan document was submitted to the PBGC with a previous notice of insolvency or notice of insolvency benefit level, only subsequent plan amendments need be submitted, and the notice shall state when the copy of the plan document was filed.

(8) A copy of the most recent actuarial valuation for the plan and a copy of the most recent Schedule B (Form 5500) filed for the plan, if the Schedule B contains more recent information than the actuarial valuation. If the actuarial valuation or Schedule B was previously submitted to the PBGC, it may be omitted, and the notice shall state the date on which the document was filed and that the information is still accurate and complete.

(9) The estimated amount of annual benefit payments under the plan (determined without regard to the insolvency) for each insolvency year.

(10) The estimated amount of the plan's available resources for each insolvency year.

(11) A certification, signed by the plan sponsor (or a duly authorized representative), that notices of insolvency have been given to all interested parties in accordance with the requirements of this part.

(b) *Notices to interested parties.* A notice of insolvency required under § 4245.3 to be given to an interested party, as defined in § 4245.3(d), shall contain the information set forth below:

(1) The name of the plan.

(2) The plan year or years for which the plan sponsor has determined that the plan is or may become insolvent.

(3) The estimated amount of annual benefit payment under the plan (determined without regard to the insolvency) for each insolvency year.

(4) The estimated amount of the plan's available resources for each insolvency year.

(5) A statement that, during the insolvency year, benefits above the amount that can be paid from available resources or the level guaranteed by the PBGC, whichever is greater, will be suspended, with a brief explanation of which benefits are guaranteed by the PBGC. The following statement may be included as an explanation of PBGC-guaranteed benefits:

Should the plan become insolvent, each participant's benefit guaranteed by the Pension Benefit Guaranty Corporation (PBGC) is determined as follows. Each participant's nonforfeitable monthly benefit payable under the plan at retirement is computed. This benefit is then divided by the participant's years of credited service under the plan. Of the resulting figure (the accrual rate), the first $5 is guaranteed at 100%. Any additional amount (up to $15) is either 75% or 65% guaranteed, depending on the past funding practices of the plan. Any remaining amount that exceeds $20 is not guaranteed. The PBGC guarantees the payment of a monthly benefit equal to this adjusted accrual rate times years of credited service. The PBGC does not guarantee benefits or benefit increases that have been in effect for fewer than 60 months before the plan becomes insolvent or is amended to reduce accrued benefits.

(6) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits during the plan's insolvency.

§ 4245.5 Notice of insolvency benefit level.

(a) *Requirement of notice.* Except as provided in paragraph (b) of this section, for each insolvency year the plan sponsor shall notify the PBGC and the interested parties, as defined in § 4245.3(d), of the level of benefits expected to be paid during the year (the "insolvency benefit level"). These notices shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4245.6.

(b) *Waiver of notice to certain interested parties.* The notice of insolvency benefit level required under this section need not be given to interested parties, other than participants and beneficiaries who are in pay status or are reasonably expected to enter pay status during the insolvency year, for an insolvency year immediately following the plan year in which a notice of insolvency was required to be delivered pursuant to § 4245.3, provided that the notice of insolvency was in fact delivered.

(c) *When delivered.* The plan sponsor shall mail or otherwise deliver the required notices of insolvency benefit level no later than 60 days before the beginning of the insolvency year, except that if the determination of insolvency is made fewer than 120 days before the beginning of the insolvency year, the notices shall be delivered within 60 days after the date of the plan sponsor's determination.

(d) *Methods of delivery.* The notice of insolvency benefit level shall be delivered by mail or by hand to the PBGC and to the interested parties described in § 4245.3(d), other than participants and beneficiaries who are neither in pay status nor reasonably expected to enter pay status during the insolvency year for which the notice is given. The notice to participants and beneficiaries not in pay status, nor reasonably expected to enter pay status during the insolvency year, shall be provided in any manner reasonably calculated to reach those participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

§ 4245.6 Contents of notice of insolvency benefit level.

(a) *Notice to the PBGC.* A notice of insolvency benefit level required to be filed with the PBGC pursuant to § 4245.5(a) shall contain the information set forth below, except as provided in the next sentence. The information required in paragraphs (a)(7) to (a)(10) need be submitted only if it is different from the information submitted to the PBGC with the notice of insolvency filed for that insolvency year (see § 4245.4 (a)(7) to (a)(10)) or the notice of insolvency benefit level filed for a prior year. When any information is omitted under this exception, the notice shall so state and indicate when the notice of insolvency or prior notice of insolvency benefit level was filed.

(1) The name of the plan.

(2) The name, address and telephone number of the plan sponsor and of the plan sponsor's authorized representative, if any.

(3) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with the PBGC. If no EIN or PIN has been assigned, the notice shall so indicate.

(4) The IRS key district that has jurisdiction over determination letters with respect to the plan.

(5) The case number assigned to the plan by the PBGC.

(6) The plan year for which the notice is filed.

(7) A copy of the plan document, including any amendments, in effect during the insolvency year.

(8) A copy of the most recent actuarial valuation for the plan and a copy of the most recent Schedule B (Form 5500) filed for the plan, if the Schedule B contains more recent information than the actuarial valuation.

(9) The estimated amount of annual benefit payments under the plan (determined without regard to the insolvency) for the insolvency year.

(10) The estimated amount of the plan's available resources for the insolvency year.

(11) The estimated amount of the annual benefit payments guaranteed by the PBGC for the insolvency year.

(12) The amount of financial assistance, if any, requested from the PBGC.

(13) A certification, signed by the plan sponsor (or a duly authorized representative), that notices of insolvency benefit level have been given to all interested parties in accordance with the requirements of this part.

When financial assistance is requested, the PBGC may require the plan sponsor to submit additional information necessary to process the request.

(b) *Notices to interested parties other than participants in or entering pay status.* A notice of insolvency benefit level required by § 4245.5(a) to be delivered to interested parties, as defined in § 4245.3(d), other than a notice to a participant or beneficiary who is in pay status or is reasonably expected to enter pay status during the insolvency year, shall include the information set forth below:

(1) The name of the plan.

(2) The plan year for which the notice is issued.

(3) The estimated amount of annual benefit payments under the plan (determined without regard to the insolvency) for the insolvency year.

(4) The estimated amount of the plan's available resources for the insolvency year.

(5) The amount of financial assistance, if any, requested from the PBGC.

(c) *Notices to participants and beneficiaries in or entering pay status.* A notice of insolvency benefit level required by § 4245.5(a) to be delivered to participants and beneficiaries who are in pay status or are reasonably expected to enter pay status during the insolvency year for which the notice is given, shall include the following information:

(1) The name of the plan.

(2) The plan year for which the notice is issued.

(3) A statement of the monthly benefit expected to be paid to the participant or beneficiary during the insolvency year.

(4) A statement that in subsequent plan years, depending on the plan's available resources, this benefit level may be increased or decreased but will not fall below the level guaranteed by the PBGC, and that the participant or beneficiary will be notified in advance of the new benefit level if it is less than his full nonforfeitable benefit under the plan.

(5) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits during the plan's insolvency.

§ 4245.7 PBGC address.

All notices required to be filed with the PBGC under this part shall be addressed to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

(Approved by the Office of Management and Budget under control number 1212–0033)

PART 4281—FINANCIAL ASSISTANCE TO MULTIEMPLOYER PLANS

§ 4281.1 Cross-reference.

See § 4281.47 for procedures for applying to the PBGC for financial assistance under section 4261 of ERISA.

PART 4281—DUTIES OF PLAN SPONSOR FOLLOWING MASS WITHDRAWAL

Subpart A—General

Sec.

4281.1 Purpose and scope.
4281.2 Definitions.
4281.3 Submission of documents.
4281.4 Collection of information.

Subpart B—Valuation of Plan Benefits and Plan Assets

4281.11 Valuation dates.
4281.12 Benefits to be valued.
4281.13 Benefit valuation methods—in general.
4281.14 Mortality assumptions—in general.
4281.15 Mortality assumptions—lump sums under trusteed plans.
4281.16 Benefit valuation methods—plans closing out.
4281.17 Asset valuation methods—in general.
4281.18 Outstanding claims for withdrawal liability.

Subpart C—Benefit Reductions

4281.31 Plan amendment.
4281.32 Notices of benefit reductions.
4281.33 Restoration of benefits.

Subpart D—Benefit Suspensions

4281.41 Benefit suspensions.
4281.42 Retroactive payments.
4281.43 Notices of insolvency and annual updates.
4281.44 Contents of notices of insolvency and annual updates.
4281.45 Notices of insolvency benefit level.
4281.46 Contents of notices of insolvency benefit level.
4281.47 Application for financial assistance.

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1399(c)(1)(D), and 1441.

Subpart A—General Provisions

§ 4281.1 Purpose and scope.

(a) *General.*

(1) *Purpose.* When a multiemployer plan terminates by mass withdrawal under section 4041A(a)(2) of ERISA, the plan's assets and benefits must be valued annually under section 4281(b) of ERISA, and plan benefits may have to be reduced or suspended to the extent provided in section 4281 (c) or (d). This part implements the provisions of section 4281 and provides rules for applying for financial assistance from the PBGC under section 4261 of ERISA. The plan valuation rules in this part also apply to the determination of reallocation liability under section 4219(c)(1)(D) of ERISA and subpart B of part 4219 of this chapter for multiemployer plans that undergo mass withdrawal (with or without termination).

(2) *Scope.* This part applies to multiemployer plans covered by Title IV of ERISA that have terminated by mass withdrawal under section 4041A(a)(2) of ERISA (including plans created by partition pursuant to section 4233 of ERISA). Subpart B of this part also applies to covered multiemployer plans that have undergone mass withdrawal without terminating.

(b) *Subpart B.* Subpart B establishes rules for determining the value of multiemployer plan benefits and assets, including outstanding claims for withdrawal liability, for plans required to perform annual valuations under section 4281(b) of ERISA or allocate unfunded vested benefits under section 4219(c)(1)(D) of ERISA.

(c) *Subpart C.* Subpart C sets forth procedures under which the plan sponsor of a terminated plan shall amend the plan to reduce benefits subject to reduction in accordance with section 4281(c) of ERISA and § 4041A.24(b) of this chapter. Subpart C applies to a plan for which the annual valuation required by § 4041A.24(a) indicates that the value of nonforfeitable benefits under the plan exceeds the value of the plan's assets (including claims for withdrawal liability) if, at the end of the plan year for which that valuation was done, the plan provided any benefits subject to reduction. Benefit reductions required to be made under subpart C shall not apply to accrued benefits under plans or plan amendments adopted on or before March 26, 1980, or under collective bargaining agreements entered into on or before March 26, 1980.

(d) *Subpart D.* Subpart D sets forth the procedures under which the plan sponsor of an insolvent plan must suspend benefit payments and issue insolvency notices in accordance with section 4281(d) of ERISA and § 4041A.25 (c) and (d) of this chapter. Subpart D applies to a plan that has been amended under section 4281(c) of ERISA and subpart C of this part to eliminate all benefits subject to reduction and to a plan that provided no benefits subject to reduction as of the date on which the plan terminated.

§ 4281.2 Definitions.

The following terms are defined in section 4001.2 of this chapter: annuity, employer, ERISA, fair market value, IRS, insurer, irrevocable commitment, mass withdrawal, multiemployer plan, nonforfeitable benefit, normal retirement age, PBGC, person, plan, plan administrator, and plan year.

In addition, for purposes of this part:

Available resources means, for a plan year, available resources as described in section 4245(b)(3) of ERISA.

Benefits subject to reduction means those benefits accrued under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreements entered into after March 26, 1980, that are not eligible for the PBGC's guarantee under section 4022A(b) of ERISA.

Financial assistance means financial assistance from the PBGC under section 4261 of ERISA.

Insolvency benefit level means the greater of the resource benefit level or the benefit level guaranteed by the PBGC for each participant and beneficiary in pay status.

Insolvency year means insolvency year as described in section 4245(b)(4) of ERISA.

Insolvent means that a plan is unable to pay benefits when due during the plan year. A plan terminated by mass withdrawal is not insolvent unless it has been amended to eliminate all benefits that are subject to reduction under section 4281(c), or, in the absence of an amendment, no benefits under the plan are subject to reduction under section 4281(c) of ERISA.

Pro rata means that the required benefit reduction or payment shall be allocated among affected participants in the same proportion that each such participant's nonforfeitable benefits under the plan bear to all nonforfeitable benefits of those participants under the plan.

Reasonably expected to enter pay status means, with respect to plan participants and beneficiaries, persons (other than those in pay status) who, according to plan records, are disabled, have applied for benefits, or have reached or will reach during the applicable period the normal retirement age under the plan, and any others whom it is reasonable for the plan sponsor to expect to enter pay status during the applicable period.

Resource benefit level means resource benefit level as described in section 4245(b)(2) of ERISA.

Valuation date means the last day of the plan year in which the plan terminates and the last day of each plan year thereafter.

§ 4281.3 Submission of documents.

(a) *Filing date.* Any notice, document or information required to be filed with the PBGC under this part shall be considered filed on the date of the United States postmark stamped on the cover in which the document or information is mailed, provided that the postmark was made by the United States Postal Service and the document was mailed postage prepaid, properly packaged and addressed to the PBGC. If these conditions are not met, the document shall be considered filed on the date on which it was received by the PBGC.

(b) *Address.* All notices, documents and information required to be filed with the PBGC under this part shall be addressed to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

§ 4281.4 Collection of information.

The collection of information requirements contained in this part have been approved by the Office of Management and Budget under control number 1212–0032.

Subpart B—Valuation of Plan Benefits and Plan Assets

§ 4281.11 Valuation dates.

(a) *Annual valuations of mass-withdrawal-terminated plans.* The valuation dates for the annual valuation required under section 4281(b) of ERISA shall be the last day of the plan year in which the plan terminates and the last day of each plan year thereafter.

(b) *Valuations related to mass withdrawal reallocation liability.* The valuation date for determining the value of unfunded vested benefits (for purposes of allocation) under section 4219(c)(1)(D) of ERISA shall be—

(1) If the plan terminates by mass withdrawal, the last day of the plan year in which the plan terminates; or

(2) If substantially all the employers withdraw from the plan pursuant to an agreement or arrangement to withdraw from the plan, the last day of the plan year as of which substantially all employers have withdrawn from the plan pursuant to the agreement or arrangement.

§ 4281.12 Benefits to be valued.

(a) *Form of benefit.* The plan sponsor shall determine the form of each benefit to be valued, without regard to the form of benefit valued in any prior year, in accordance with the following rules:

(1) If a benefit is in pay status as of the valuation date, the plan sponsor shall value the form of benefit being paid.

(2) If a benefit is not in pay status as of the valuation date but a valid election with respect to the form of benefit has been made on or before the valuation date, the plan sponsor shall value the form of benefit so elected.

(3) If a benefit is not in pay status as of the valuation date and no valid election with respect to the form of benefit has been made on or before the valuation date, the plan sponsor shall value the form of benefit that, under the terms of the plan or applicable law, is payable in the absence of a valid election.

(b) *Timing of benefit.* The plan sponsor shall value benefits whose starting date is subject to election—

(1) By assuming that the starting date of each benefit is the earliest date, not preceding the valuation date, that could be elected; or

(2) By using any other assumption that the plan sponsor demonstrates to the satisfaction of the PBGC is more reasonable under the circumstances.

§ 4281.13 Benefit valuation methods—in general.

(a) *General rule.* Except as otherwise provided in paragraph (b) of this section (regarding the valuation of benefits payable as lump sums under trusteed plans) and § 4281.16 (regarding plans that are closing out), the plan sponsor shall value benefits as of the valuation date by—

(1) Using the interest assumptions described in Table I of appendix B to part 4044 of this chapter;

(2) Using the mortality assumptions described in § 4281.14;

(3) Using interpolation methods, where necessary, at least as accurate as linear interpolation;

(4) Applying valuation formulas that accord with generally accepted actuarial principles and practices; and

(5) Adjusting the values to reflect the loading for expenses in accordance with appendix C to part 4044 of this chapter (substituting the term "benefits" for the term "benefit liabilities (as defined in 29 U.S.C. § 1301(a)(16))").

(b) *Benefits payable as lump sums under trusteed plans.* If the PBGC is trustee of a multiemployer plan, for determining whether the value of a benefit is $3,500 or less under § 4022.7(b)(1) and for calculating the amount of a lump sum benefit, the PBGC shall value benefits to be paid as lump sums in the same manner as benefits to be paid as annuities except that the interest assumptions prescribed by Table II of appendix B to part 4044 of this chapter and the mortality assumptions prescribed by § 4281.15 shall apply, and there shall be no adjustment to reflect the loading for expenses.

§ 4281.14 Mortality assumptions—in general.

(a) *General rule.* Except as otherwise provided in § 4281.15 (regarding the valuation of benefits payable as lump sums under trusteed plans), and subject to paragraph (b) of this section (regarding certain death benefits), the plan administrator shall use the mortality factors prescribed in paragraphs (c), (d), and (e) of this section to value benefits under § 4281.13.

(b) *Certain death benefits.* If an annuity for one person is in pay status on the valuation date, and if the payment of a death benefit after the valuation date to another person, who need not be identifiable on the valuation date, depends in whole or in part on the death of the pay status annuitant, then the plan administrator shall value the death benefit using—

(1) the mortality rates that are applicable to the annuity in pay status under this section to represent the mortality of the pay status annuitant; and

(2) the mortality rates applicable to annuities not in pay status and to deferred benefits other than annuities, under paragraph (c) of this section, to represent the mortality of the death beneficiary.

(c) *Mortality rates for healthy lives.* The mortality rates applicable to annuities in pay status on the valuation date that are not being received as disability benefits, to annuities not in

pay status on the valuation date, and to deferred benefits other than annuities, are,—

(1) For male participants, the rates in Table 1 of appendix A to part 4044 of this chapter, and

(2) For female participants, the rates in Table 1 of appendix A to part 4044 of this chapter, set back 6 years.

(d) *Mortality rates for disabled lives (other than Social Security disability).* The mortality rates applicable to annuities in pay status on the valuation date that are being received as disability benefits and for which neither eligibility for, nor receipt of, Social Security disability benefits is a prerequisite, are,—

(1) For male participants, the rates in Table 1 of appendix A to part 4044 of this chapter, set forward 3 years, and

(2) For female participants, the rates in Table 1 of appendix A to part 4044 of this chapter, set back 3 years.

(e) *Mortality rates for disabled lives (Social Security disability).* The mortality rates applicable to annuities in pay status on the valuation date that are being received as disability benefits and for which either eligibility for, or receipt of, Social Security disability benefits is a prerequisite, are the rates in Tables 2–M and 2–F of appendix A to part 4044 of this chapter.

§ 4281.15 Mortality assumptions—lump sums under trusteed plans.

(a) *General rule.* If the PBGC is trustee of a multiemployer plan, for determining whether the value of a benefit is $3,500 or less under § 4022.7(b)(1) and for calculating the amount of a lump sum benefit, the PBGC will use the mortality rates in Table 3 of appendix A to part 4044 of this chapter.

§ 4281.16 Benefit valuation methods—plans closing out.

(a) *Applicability.* For purposes of the annual valuation required by section 4281(b) of ERISA, the plan sponsor shall value the plan's benefits in accordance with paragraph (b) of this section if,—

(1) *Plans closed out before valuation.* Before the time when the valuation is performed, the plan has satisfied in full all liabilities for payment of nonforfeitable benefits, in a manner consistent with the terms of the plan and applicable law, by the purchase of one or more nonparticipating irrevocable commitments from one or more insurers, with respect to all benefits payable as annuities, and by the payment of single-sum cash distributions, with respect to benefits not payable as annuities; or

(2) *Plans to be closed out after valuation.* As of the time when the valuation is performed, the plan sponsor reasonably expects that the plan will close out before the next annual valuation date and the plan sponsor has a currently exercisable bid or bids to provide the irrevocable commitment(s) described in paragraph (a)(1) of this section and the total cost of the irrevocable commitment(s) under the bid, plus the total amount of the single-sum cash distributions described in paragraph (a)(1), does not exceed the value of the plan's assets, exclusive of outstanding claims for withdrawal liability, as determined under this subpart.

(b) *Valuation rule.* The present value of nonforfeitable benefits under this section is the total amount of single-sum cash distributions made or to be made plus the cost of the irrevocable commitment(s) purchased or to be purchased in order to satisfy in full all liabilities of the plan for nonforfeitable benefits.

§ 4281.17 Asset valuation methods—in general.

(a) *General rule.* The plan sponsor shall value plan assets as of the valuation date, using the valuation methods prescribed by this section and § 4281.18 (regarding outstanding claims for withdrawal liability), and deducting administrative liabilities in accordance with paragraph (c) of this section.

(b) *Assets other than withdrawal liability claims.* The plan sponsor shall value any plan asset (other than an outstanding claim for withdrawal liability) by such method or methods as the plan sponsor reasonably believes most accurately determine fair market value.

(c) *Adjustment for administrative liabilities.* In determining the total value of plan assets, the plan sponsor shall subtract all plan liabilities, other than liabilities to pay benefits. For this purpose, any obligation to repay financial assistance received from the PBGC under section 4261 of ERISA is a plan liability other than a liability to pay benefits. The obligation to repay financial assistance shall be valued by determining the value of the scheduled payments in the same manner as prescribed in § 4281.18(a) for valuing claims for withdrawal liability.

§ 4281.18 Outstanding claims for withdrawal liability.

(a) *Value of claim.* The plan sponsor shall value an outstanding claim for withdrawal liability owed by an employer described in paragraph (b) of this section in accordance with paragraphs (a)(1) and (a)(2) of this section:

(1) If the schedule of withdrawal liability payments provides for one or more series of equal payments, the plan sponsor shall value each series of payments as an annuity certain in accordance with the provisions of § 4281.13.

(2) If the schedule of withdrawal liability payments provides for one or more payments that are not part of a series of equal payments as described in paragraph (a)(1) of this section, the plan sponsor shall value each such unequal payment as a lump-sum payment in accordance with the provisions of § 4281.13.

(b) *Employers neither liquidated nor in insolvency proceedings.* The plan sponsor shall value an outstanding claim for withdrawal liability under paragraph (a) of this section if, as of the valuation date—

(1) The employer has not been completely liquidated or dissolved; and

(2) The employer is not the subject of any case or proceeding under title 11, United States Code, or any case or proceeding under similar provisions of state insolvency laws; except that the claim for withdrawal liability of an employer that is the subject of a proceeding described in this paragraph (b)(2) shall be valued under paragraph (a) of this section if the plan sponsor determines that the employer is reasonably expected to be able to pay its withdrawal liability in full and on time.

(c) *Claims against other employers.* The plan sponsor shall value at zero any outstanding claim for withdrawal liability owed by an employer that does not meet the conditions set forth in paragraph (b) of this section.

Subpart C—Benefit Reductions

§ 4281.31 Plan amendment.

The plan sponsor of a plan described in § 4281.31 shall amend the plan to eliminate those benefits subject to reduction in excess of the value of benefits that can be provided by plan assets. Such reductions shall be effected by a pro rata reduction of all benefits subject to reduction or by elimination or pro rata reduction of any category of benefit. Benefit reductions required by this section shall apply only prospectively. An amendment required under this section shall take effect no later than six months after the end of the plan year for which it is determined that the value of nonforfeitable benefits exceeds the value of the plan's assets.

§ 4281.32 Notices of benefit reductions.

(a) *Requirement of notices.* A plan sponsor of a multiemployer plan under which a plan amendment reducing benefits is adopted pursuant to section 4281(c) of ERISA shall so notify the PBGC and plan participants and beneficiaries whose benefits are reduced by the amendment. The notices shall be delivered in the manner and within the time prescribed, and shall contain the information described, in this section. The notice required in this section shall be filed in lieu of the notice described in section 4244A(b)(2) of ERISA.

(b) *When delivered.* The plan sponsor shall mail or otherwise deliver the notices of benefit reduction no later than the earlier of—

(1) 45 days after the amendment reducing benefits is adopted; or

(2) The date of the first reduced benefit payment.

(c) *Method of delivery.* The notices of benefit reductions shall be delivered by mail or by hand to the PBGC and to plan participants and beneficiaries who are in pay status when the notice is required to be delivered or who are reasonably expected to enter pay status before the end of the plan year after the plan year in which the amendment is adopted. The notice to other participants and beneficiaries whose benefit is reduced by the amendment shall be provided in any manner reasonably calculated to reach those participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites or publishing the notice in a union newsletter or newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to the participant's beneficiary or beneficiaries.

(d) *Contents of notice to the PBGC.* A notice of benefit reduction required to be filed with the PBGC pursuant to paragraph (a) of this section shall contain the following information:

(1) The name of the plan.

(2) The name, address, and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any.

(3) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Number (PN) assigned by the plan sponsor to the plan, and, if different, the EIN or PN last filed with the PBGC. If no EIN or PN has been assigned, the notice shall so state.

(4) The case number assigned by the PBGC to the filing of the plan's notice of termination pursuant to part 4041A, subpart B, of this chapter.

(5) A statement that a plan amendment reducing benefits has been adopted, listing the date of adoption and the effective date of the amendment.

(6) A certification, signed by the plan sponsor or its duly authorized representative, that notice of the benefit reductions has been given to all participants and beneficiaries whose benefits are reduced by the plan amendment, in accordance with the requirements of this section.

(e) *Contents of notice to participants and beneficiaries.* A notice of benefit reductions required under paragraph (a) of this section to be given to plan participants and beneficiaries whose benefits are reduced by the amendment shall contain the following information:

(1) The name of the plan.

(2) A statement that a plan amendment reducing benefits has been adopted, listing the date of adoption and the effective date of the amendment.

(3) A summary of the amendment, including a description of the effect of the amendment on the benefits to which it applies.

(4) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

§ 4281.33 Restoration of benefits.

(a) *General.* The plan sponsor of a plan that has been amended to reduce benefits under this subpart shall amend the plan to restore those benefits before adopting any amendment increasing benefits under the plan. A plan is not required to make retroactive benefit payments with respect to any benefit that was reduced and subsequently restored in accordance with this section.

(b) *Notice to the PBGC.* The plan sponsor shall notify the PBGC in writing of any restoration under this section. The notice shall include the information specified in § 4281.32 (d)(1) through (d)(4); a statement that a plan amendment restoring benefits has been adopted, the date of adoption, and the effective date of the amendment; and a certification, signed by the plan sponsor or its duly authorized representative, that the amendment has been adopted in accordance with this section.

Subpart D—Benefit Suspensions

§ 4281.41 Benefit suspensions.

If the plan sponsor determines that the plan is or is expected to be insolvent for a plan year, the plan sponsor shall suspend benefits to the extent necessary to reduce the benefits to the greater of the resource benefit level or the level of guaranteed benefits.

§ 4281.42 Retroactive payments.

(a) *Erroneous resource benefit level.* If, by the end of a year in which benefits were suspended under § 4281.41, the plan sponsor determines in writing that the plan's available resources in that year could have supported benefit payments above the resource benefit level determined for that year, the plan sponsor may distribute the excess resources to each affected participant and beneficiary who received benefit payments that year on a pro rata basis. The amount distributed to each participant under this paragraph may not exceed the amount that, when added to benefit payments already made, brings the total benefit for the plan year up to the total benefit provided under the plan.

(b) *Benefits paid below resource benefit level.* If, by the end of a plan year in which benefits were suspended under § 4281.41, any benefit has not been paid at the resource benefit level, amounts up to the resource benefit level that were unpaid shall be distributed to each affected participant and beneficiary on a pro rata basis to the extent possible, taking into account the plan's total available resources in that year.

§ 4281.43 Notices of insolvency and annual updates.

(a) *Requirement of notices of insolvency.* A plan sponsor that determines that the plan is, or is expected to be, insolvent for a plan year shall issue notices of insolvency to the PBGC and to plan participants and beneficiaries. Once notices of insolvency have been issued to the PBGC and to plan participants and beneficiaries, no notice of insolvency needs to be issued for subsequent insolvency years. Notices shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4281.44.

(b) *Requirement of annual updates.* A plan sponsor that has issued notices of insolvency to the PBGC and to plan participants and beneficiaries shall thereafter issue annual updates to the PBGC and participants and beneficiaries for each plan year beginning after the plan year for which the notice of insolvency was issued. However, the plan sponsor need not issue an annual update to plan participants and beneficiaries who are issued notices of insolvency benefit level in accordance with § 4281.45 for the same insolvency year. A plan sponsor that, after issuing annual updates for a plan year, determines under § 4041A.25(b) that the plan is or may be insolvent for that plan

year need not issue revised annual updates. Annual updates shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4281.44.

(c) *Notices of insolvency—when delivered.* Except as provided in the next sentence, the plan sponsor shall mail or otherwise deliver the notices of insolvency no later than 30 days after the plan sponsor determines that the plan is or may be insolvent. However, the notice to plan participants and beneficiaries in pay status may be delivered concurrently with the first benefit payment made after the determination of insolvency.

(d) *Annual updates—when delivered.* Except as provided in the next sentence, the plan sponsor shall mail or otherwise deliver annual updates no later than 60 days before the beginning of the plan year for which the annual update is issued. A plan sponsor that determines under § 4041A.25(b) that the plan is or may be insolvent for a plan year and that has not at that time issued annual updates for that year, shall mail or otherwise deliver the annual updates by the later of 60 days before the beginning of the plan year or 30 days after the date of the plan sponsor's determination under § 4041A.25(b).

(e) *Notices of insolvency—method of delivery.* The notices of insolvency shall be delivered by mail or by hand to the PBGC and to plan participants and beneficiaries in pay status when the notice is required to be delivered. Notice to participants and beneficiaries not in pay status shall be provided in any manner reasonably calculated to reach those participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites or publishing the notice in a union newsletter or newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

(f) *Annual updates—method of delivery.* Each annual update shall be delivered by mail or by hand to the PBGC. Each annual update to plan participants and beneficiaries shall be provided in any manner reasonably calculated to reach participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites and publishing the notice in a union newsletter of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

§ 4281.44 Contents of notices of insolvency and annual updates.

(a) *Notice of insolvency to the PBGC.* A notice of insolvency required under § 4281.43(a) to be filed with the PBGC shall contain the following information:

(1) The name of the plan.

(2) The name, address, and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any.

(3) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Number (PN) assigned by the plan sponsor to the plan, and, if different, the EIN or PN last filed with the PBGC. If no EIN or PN has been assigned, the notice shall so state.

(4) The IRS Key District that has jurisdiction over determination letters with respect to the plan.

(5) The case number assigned by the PBGC to the filing of the plan's notice of termination pursuant to part 4041A, subparts A and B, of this chapter.

(6) The plan year for which the plan sponsor has determined that the plan is or may be insolvent.

(7) A copy of the plan document currently in effect, *i.e.*, a copy of the last restatement of the plan and all subsequent amendments. However, if a copy of the plan document was submitted to the PBGC with a previous filing, only subsequent plan amendments need be submitted, and the notice shall state when the copy of the plan document was filed.

(8) A copy of the most recent actuarial valuation for the plan (*i.e.*, the most recent report submitted to the plan in connection with a valuation of plan assets and liabilities, which shall be performed in accordance with subpart B of this part). If the actuarial valuation was previously submitted to the PBGC, it may be omitted, and the notice shall state the date on which the document was filed and that the information is still accurate and complete.

(9) The estimated amount of annual benefit payments under the plan (determined without regard to the insolvency) for the insolvency year.

(10) The estimated amount of the plan's available resources for the insolvency year.

(11) The estimated amount of the annual benefits guaranteed by the PBGC for the insolvency year.

(12) A statement indicating whether the notice of insolvency is the result of an insolvency determination under § 4041A.25 (a) or (b).

(13) A certification, signed by the plan sponsor or its duly authorized representative, that notices of insolvency have been given to all plan participants and beneficiaries in accordance with this part.

(b) *Notice of insolvency to participants and beneficiaries.* A notice of insolvency required under § 4281.43(a) to be issued to plan participants and beneficiaries shall contain the following information:

(1) The name of the plan.

(2) A statement of the plan year for which the plan sponsor has determined that the plan is or may be insolvent.

(3) A statement that benefits above the amount that can be paid from available resources or the level guaranteed by the PBGC, whichever is greater, will be suspended during the insolvency year, with a brief explanation of which benefits are guaranteed by the PBGC.

(4) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

(c) *Annual update to the PBGC.* Each annual update required by § 4281.43(b) to be filed with the PBGC shall contain the following information:

(1) The case number assigned by the PBGC to the filing of the plan's notice of termination pursuant to part 4041A, subparts A and B, of this chapter.

(2) A copy of the annual update to plan participants and beneficiaries, as described in paragraph (d) of this section, for the plan year.

(3) A statement indicating whether the annual update is the result of an insolvency determination under § 4041A.25(a) or (b).

(4) A certification, signed by the plan sponsor or a duly authorized representative, that the annual update has been given to all plan participants and beneficiaries in accordance with this part.

(d) *Annual updates to participants and beneficiaries.* Each annual update required by § 4281.43(b) to be issued to plan participants and beneficiaries shall contain the following information:

(1) The name of the plan.

(2) The date the notice of insolvency was issued and the insolvency year identified in the notice.

(3) The plan year to which the annual update pertains and the plan sponsor's determination whether the plan may be insolvent in that year.

(4) If the plan may be insolvent for the plan year, a statement that benefits above the amount that can be paid from available resources or the level guaranteed by the PBGC, whichever is greater, will be suspended during the insolvency year, with a brief explanation of which benefits are guaranteed by the PBGC.

(5) If the plan will not be insolvent for the plan year, a statement that full nonforfeitable benefits under the plan will be paid.

(6) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

§ 4281.45 Notices of insolvency benefit level.

(a) *Requirement of notices.* For each insolvency year, the plan sponsor shall issue a notice of insolvency benefit level to the PBGC and to plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year. The notices shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4281.46.

(b) *When delivered.* The plan sponsor shall mail or otherwise deliver the notices of insolvency benefit level no later than 60 days before the beginning of the insolvency year. A plan sponsor that determines under § 4041A.25(b) that the plan is or may be insolvent for a plan year shall mail or otherwise deliver the notices of insolvency benefit level by the later of 60 days before the beginning of the insolvency year or 60 days after the date of the plan sponsor's determination under § 4041A.25(b).

(c) *Method of delivery.* The notices of insolvency benefit level shall be delivered by mail or by hand to the PBGC and to plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year.

§ 4281.46 Contents of notices of insolvency benefit level.

(a) *Notice to the PBGC.* A notice of insolvency benefit level required by § 4281.45(a) to be filed with the PBGC shall contain the information specified in § 4281.44(a)(1) through (a)(5) and (a)(7) through (a)(11) and:

(1) The insolvency year for which the notice is being filed.

(2) The amount of financial assistance, if any, requested from the PBGC. (When financial assistance is requested, the plan sponsor shall submit an application in accordance with § 4281.47.)

(3) A statement indicating whether the notice of insolvency benefit level is the result of an insolvency determination under § 4041A.25(a) or (b).

(4) A certification, signed by the plan sponsor or its duly authorized representative, that a notice of insolvency benefit level has been sent to all plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year, in accordance with this part.

(b) *Notice to participants in or entering pay status.* A notice of insolvency benefit level required by § 4281.45(a) to be delivered to plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year for which the notice is given, shall contain the following information:

(1) The name of the plan.

(2) The insolvency year for which the notice is being sent.

(3) The monthly benefit that the participant or beneficiary may expect to receive during the insolvency year.

(4) A statement that in subsequent plan years, depending on the plan's available resources, this benefit level may be increased or decreased but not below the level guaranteed by the PBGC, and that the participant or beneficiary will be notified in advance of the new benefit level if it is less than the participant's full nonforfeitable benefit under the plan.

(5) The amount of the participant's or beneficiary's monthly nonforfeitable benefit under the plan.

(6) The amount of the participant's or beneficiary's monthly benefit that is guaranteed by the PBGC.

(7) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

§ 4281.47 Application for financial assistance.

(a) *General.* If the plan sponsor determines that the plan's resource benefit level for an insolvency year is below the level of benefits guaranteed by PBGC or that the plan will be unable to pay guaranteed benefits when due for any month during the year, the plan sponsor shall apply to the PBGC for financial assistance pursuant to section 4261 of ERISA. The application shall be filed within the time prescribed in paragraph (b) of this section. When the resource benefit level is below the guarantee level, the application shall contain the information set forth in paragraph (c) of this section. When the plan is unable to pay guaranteed benefits for any month, the application shall contain the information set forth in paragraph (d) of this section.

(b) *When to apply.* When the plan sponsor determines a resource benefit level that is less than guaranteed benefits, it shall apply for financial assistance at the same time that it submits its notice of insolvency benefit level pursuant to § 4281.45. When the plan sponsor determines an inability to pay guaranteed benefits for any month, it shall apply for financial assistance within 15 days after making that determination.

(c) *Contents of application—resource benefit level below level of guaranteed benefits.* A plan sponsor applying for financial assistance because the plan's resource benefit level is below the level of guaranteed benefits shall file an application that includes the information specified in § 4281.44 (a)(1) through (a)(5) and:

(1) The insolvency year for which the application is being filed.

(2) A participant data schedule showing each participant and beneficiary in pay status or reasonably expected to enter pay status during the year for which financial assistance is requested, listing for each—

(i) Name;

(ii) Sex;

(iii) Date of birth;

(iv) Credited service;

(v) Vested accrued monthly benefit;

(vi) Monthly benefit guaranteed by PBGC;

(vii) Benefit commencement date; and

(viii) Type of benefit.

(d) *Contents of application—unable to pay guaranteed benefits for any month.* A plan sponsor applying for financial assistance because the plan is unable to pay guaranteed benefits for any month shall file an application that includes the data described in § 4281.44 (a)(1) through (a)(5), the month for which financial assistance is requested, and the plan's available resources and guaranteed benefits payable in that month. The participant data schedule described in paragraph (c)(2) of this section shall be submitted upon the request of the PBGC.

(e) *Additional information.* The PBGC may request any additional information that it needs to calculate or verify the amount of financial assistance necessary as part of the conditions of granting financial assistance pursuant to section 4261 of ERISA.

PART 4901—EXAMINATION AND COPYING OF PENSION BENEFIT GUARANTY CORPORATION RECORDS

Subpart A—General

Sec.

4901.1 Purpose and scope.
4901.2 Definitions.
4901.3 Disclosure facilities.
4901.4 Information maintained in public reference room.
4901.5 Disclosure of other information.

Subpart B—Procedure for Formal Requests

4901.11 Submittal of requests for access to records.
4901.12 Description of information requested.
4901.13 Receipt by agency of request.
4901.14 Action on request.
4901.15 Appeals from denial of requests.
4901.16 Extensions of time.
4901.17 Exhaustion of administrative remedies.

Subpart C—Restrictions on Disclosure

4901.21 Restrictions in general.
4901.22 Partial disclosure.
4901.23 Records of concern to more than one agency.
4901.24 Special rules for trade secrets and confidential commercial or financial information submitted to the PBGC.

Subpart D—Fees

4901.31 Charges for services.
4901.32 Fee schedule.
4901.33 Payment of fees.
4901.34 Waiver or reduction of charges.

Authority: 5 U.S.C. 552; 29 U.S.C. 1302(b)(3); E.O. 12600, 52 FR 23781.

Subpart A—General

§ 4901.1 Purpose and scope.

This part contains the general rules of the PBGC implementing the Freedom of Information Act. This part sets forth generally the categories of records accessible to the public, the types of records subject to prohibitions or restrictions on disclosure, and the procedure whereby members of the public may obtain access to and inspect and copy information from records in the custody of the PBGC.

§ 4901.2 Definitions.

In addition to terminology in part 4001 of this chapter, as used in this part—

Agency, person, party, rule, rulemaking, order, and *adjudication* have the meanings attributed to these terms by the definitions in 5 U.S.C. 551, except where the context demonstrates that a different meaning is intended, and except that for purposes of the Freedom of Information Act the term agency as defined in 5 U.S.C. 551 includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President) or any independent regulatory agency.

Disclosure officer means the designated official in the Communications and Public Affairs Department, PBGC.

FOIA means the Freedom of Information Act, as amended (5 U.S.C. 552).

Working day means any weekday excepting Federal holidays.

§ 4901.3 Disclosure facilities.

(a) *Public reference room.* The PBGC will maintain a public reference room in its offices located at 1200 K Street NW., Washington, DC 20005–4026, wherein persons may inspect and copy all records made available for such purposes under this part.

(b) *No withdrawal of records.* No person may remove any record made available for inspection or copying under this part from the place where it is made available except with the written consent of the General Counsel of the PBGC.

§ 4901.4 Information maintained in public reference room.

The PBGC shall make available in its public reference room for inspection and copying without formal request—

(a) *Information published in the* **Federal Register**. Copies of **Federal Register** documents published by the PBGC, and copies of **Federal Register** indexes;

(b) *Information in PBGC publications.* Copies of informational material, such as press releases, pamphlets, and other material ordinarily made available to the public without cost as part of a public information program;

(c) *Rulemaking proceedings.* All papers and documents made a part of the official record in administrative proceedings conducted by the PBGC in connection with the issuance, amendment, or revocation of rules and regulations or determinations having general applicability or legal effect with respect to members of the public or a class thereof (with a register being kept to identify the persons who inspect the records and the times at which they do so);

(d) Except to the extent that deletion of identifying details is required to prevent a clearly unwarranted invasion of personal privacy (in which case the justification for the deletion shall be fully explained in writing)—

(1) *Adjudication proceedings.* Final opinions, orders, and (except to the extent that an exemption provided by FOIA must be asserted in the public interest to prevent a clearly unwarranted invasion of personal privacy or violation of law or to ensure the proper discharge of the functions of the PBGC) other papers and documents made a part of the official record in adjudication proceedings conducted by the PBGC,

(2) *Policy statements and interpretations.* Statements of policy and interpretations affecting a member of the public which have been adopted by the PBGC and which have not been published in the **Federal Register**, and

(3) *Staff manuals and instructions.* Administrative staff manuals and instructions to staff issued by the PBGC that affect any member of the public, and

(e) *Indexes to certain records.* Current indexes (updated at least quarterly) identifying materials described in paragraph (a)(2) of FOIA and paragraph (d) of this section.

§ 4901.5 Disclosure of other information.

(a) *In general.* Upon the request of any person submitted in accordance with subpart B of this part, the disclosure officer shall make any document (or portion thereof) from the records of the PBGC in the custody of any official of the PBGC available for inspection and copying unless exempt from disclosure under the provisions of subsection (b) of FOIA and subpart C of this part. The subpart B procedures must be used for records that are not made available in the PBGC's public reference room under § 4901.4 and may be used for records that are available in the public reference room. Records that could be produced only by manipulation of existing information (such as computer analyses of existing data), thus creating information not previously in being, are not records of the PBGC and are not required to be furnished under FOIA.

(b) *Discretionary disclosure.* Notwithstanding the applicability of an exemption under subsection (b) of FOIA and subpart C of this part (other than an exemption under paragraph (b)(1) or (b)(3) of FOIA and § 4901.21 (a)(2) and (a)(3)), the disclosure officer may (subject to 18 U.S.C. 1905 and § 4901.21(a)(1)) make any document (or portion thereof) from the records of the PBGC available for inspection and copying if the disclosure officer determines that disclosure furthers the public interest and does not impede the discharge of any of the functions of the PBGC.

Subpart B—Procedure for Formal Requests

§ 4901.11 Submittal of requests for access to records.

A request to inspect or copy any record subject to this subpart shall be submitted in writing to the Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026. To expedite processing, the words "FOIA request" should appear clearly on the request and its envelope.

§ 4901.12 Description of information requested.

(a) *In general.* Each request should reasonably describe the record or records sought in sufficient detail to permit identification and location with a reasonable amount of effort. So far as practicable, the request should specify the subject matter of the record, the place where and date or approximate date when made, the person or office that made it, and any other pertinent identifying details.

(b) *Deficient descriptions.* If the description is insufficient to enable a professional employee familiar with the subject area of the request to locate the record with a reasonable amount of effort, the disclosure officer will notify the requester and, to the extent possible, indicate the additional information required. Every reasonable effort shall be made to assist a requester in the identification and location of the record or records sought. Records will not be withheld merely because it is difficult to find them.

(c) *Requests for categories of records.* Requests calling for all records falling within a reasonably specific category will be regarded as reasonably described within the meaning of this section and paragraph (a)(3) of FOIA if the PBGC is reasonably able to determine which records come within the request and to search for and collect them without unduly interfering with PBGC operations. If PBGC operations would be unduly disrupted, the disclosure officer shall promptly notify the requester and provide an opportunity to confer in an attempt to reduce the request to manageable proportions.

§ 4901.13 Receipt by agency of request.

The disclosure officer shall note the date and time of receipt on each request for access to records. A request shall be deemed received and the period within which action on the request shall be taken, as set forth in § 4901.14 of this part, shall begin on the next business day following such date, except that a request shall be deemed received only if and when the PBGC receives—

(a) A sufficient description under § 4901.12;

(b) Payment or assurance of payment if required under § 4901.33(b); and

(c) The requester's consent to pay substantial search, review, and/or duplication charges under subpart D of this part if the PBGC determines that such charges may be substantial and so notifies the requester. Consent may be in the form of a statement that costs under subpart D will be acceptable either in any amount or up to a specified amount. To avoid possible delay, a requester may include such a statement in a request.

§ 4901.14 Action on request.

(a) *Time for action.* Promptly and in any event within 10 working days after receipt of a disclosure request (subject to extension under § 4901.16), the disclosure officer shall take action with respect to each requested item (or portion of an item) under either paragraph (b), (c), or (d) of this section.

(b) *Request granted.* If the disclosure officer determines that the request should be granted, the requester shall be so advised and the records shall be promptly made available to the requester.

(c) *Request denied.* If the disclosure officer determines that the request should be denied, the requester shall be so advised in writing with a brief statement of the reasons for the denial, including a reference to the specific exemption(s) authorizing the denial and an explanation of how each such exemption applies to the matter withheld. The denial shall also include the name and title or position of the person(s) responsible for the denial and outline the appeal procedure available.

(d) *Records not promptly located.* As to records that are not located in time to make an informed determination, the disclosure officer may deny the request and so advise the requester in writing with an explanation of the circumstances. The denial shall also include the name and title or position of the person(s) responsible for the denial, outline the appeal procedure available, and advise the requester that the search or examination will be continued and that the denial may be withdrawn, modified, or confirmed when processing of the request is completed.

§ 4901.15 Appeals from denial of requests.

(a) *Submittal of appeals.* If a disclosure request is denied in whole or in part by the disclosure officer, the requester may file a written appeal within 30 days from the date of the denial or, if later (in the case of a partial denial), 30 days from the date the requester receives the disclosed material. The appeal shall state the grounds for appeal and any supporting statements or arguments, and shall be addressed to the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026. To expedite processing, the words "FOIA appeal" should appear clearly on the appeal and its envelope.

(b) *Receipt and consideration of appeal.* The General Counsel shall note the date and time of receipt on each appeal and notify the requester thereof. Promptly and in any event within 20 working days after receipt of an appeal (subject to extension under § 4901.16), the General Counsel shall issue a decision on the appeal.

(1) The General Counsel may determine de novo whether the denial of disclosure was in accordance with FOIA and this part.

(2) If the denial appealed from was under § 4901.14(d), the General Counsel shall consider any supplementary determination by the disclosure officer in deciding the appeal.

(3) Unless otherwise ordered by the court, the General Counsel may act on an appeal notwithstanding the pendency of an action for judicial relief in the same matter and, if no appeal has been filed, may treat such an action as the filing of an appeal.

(c) *Decision on appeal.* As to each item (or portion of an item) whose nondisclosure is appealed, the General Counsel shall either—

(1) Grant the appeal and so advise the requester in writing, in which case the records with respect to which the appeal is granted shall be promptly made available to the requester; or

(2) Deny the appeal and so advise the requester in writing with a brief statement of the reasons for the denial, including a reference to the specific exemption(s) authorizing the denial, an explanation of how each such exemption applies to the matter withheld, and notice of the provisions for judicial review in paragraph (a)(4) of FOIA. The General Counsel's decision shall be the final action of the PBGC with respect to the request.

(d) *Records of appeals.* Copies of both grants and denials of appeals shall be collected in one file available in the PBGC's public reference room under § 4901.4(d)(1) and indexed under § 4901.4(e).

§ 4901.16 Extensions of time.

In unusual circumstances (as described in subparagraph (a)(6)(B) of FOIA), the time to respond to a disclosure request under § 4901.14(a) or an appeal under § 4901.15(b) may be extended as reasonably necessary to process the request or appeal. The disclosure officer (with the prior approval of the General Counsel) or the General Counsel, as appropriate, shall notify the requester in writing within the original time period of the reasons for the extension and the date when a response is expected to be sent. The maximum extension for responding to a disclosure request shall be 10 working days, and the maximum extension for responding to an appeal shall be 10

working days minus the amount of any extension on the request to which the appeal relates.

§ 4901.17 Exhaustion of administrative remedies.

If the disclosure officer fails to make a determination to grant or deny access to requested records, or the General Counsel does not make a decision on appeal from a denial of access to PBGC records, within the time prescribed (including any extension) for making such determination or decision, the requester's administrative remedies shall be deemed exhausted and the requester may apply for judicial relief under FOIA. However, since a court may allow the PBGC additional time to act as provided in FOIA, processing of the request or appeal shall continue and the requester shall be so advised.

Subpart C—Restrictions on Disclosure

§ 4901.21 Restrictions in general.

(a) *Records not disclosable.* Records shall not be disclosed to the extent prohibited by—

(1) 18 U.S.C. 1905, dealing in general with commercial and financial information;

(2) Paragraph (b)(1) of FOIA, dealing in general with matters of national defense and foreign policy; or

(3) Paragraph (b)(3) of FOIA, dealing in general with matters specifically exempted from disclosure by statute, including information or documentary material submitted to the PBGC pursuant to sections 4010 and 4043 of ERISA.

(b) *Records disclosure of which may be refused.* Records need not (but may, as provided in § 4901.5(b)) be disclosed to the extent provided by—

(1) Paragraph (b)(2) of FOIA, dealing in general with internal agency personnel rules and practices;

(2) Paragraph (b)(4) of FOIA, dealing in general with trade secrets and commercial and financial information;

(3) Paragraph (b)(5) of FOIA, dealing in general with inter-agency and intra-agency memoranda and letters;

(4) Paragraph (b)(6) of FOIA, dealing in general with personnel, medical, and similar files;

(5) Paragraph (b)(7) of FOIA, dealing in general with records or information compiled for law enforcement purposes;

(6) Paragraph (b)(8) of FOIA, dealing in general with reports on financial institutions; or

(7) Paragraph (b)(9) of FOIA, dealing in general with information about wells.

§ 4901.22 Partial disclosure.

If an otherwise disclosable record contains some material that is protected from disclosure, the record shall not for that reason be withheld from disclosure if deletion of the protected material is feasible. This principle shall be applied in particular to identifying details the disclosure of which would constitute an unwarranted invasion of personal privacy.

§ 4901.23 Record of concern to more than one agency.

If the release of a record in the custody of the PBGC would be of concern not only to the PBGC but also to another Federal agency, the record will be made available by the PBGC only if its interest in the record is the primary interest and only after coordination with the other interested agency. If the interest of the PBGC in the record is not primary, the request will be transferred promptly to the agency having the primary interest, and the requester will be so notified.

§ 4901.24 Special rules for trade secrets and confidential commercial or financial information submitted to the PBGC.

(a) *Application.* To the extent permitted by law, this section applies to a request for disclosure of a record that contains information that has been designated by the submitter in good faith in accordance with paragraph (b) of this section or a record that the PBGC has reason to believe contains such information, unless—

(1) Access to the information is denied;

(2) The information has been published or officially made available to the public;

(3) Disclosure of the information is required by law other than FOIA; or

(4) The designation under paragraph (b) of this section appears obviously frivolous, except that in such a case the PBGC will notify the submitter in writing of a determination to disclose the information within a reasonable time before the disclosure date (which shall be specified in the notice).

(b) *Designation by submitter.* To designate information as being subject to this section, the submitter shall, at the time of submission or by a reasonable time thereafter, assert that information being submitted is confidential business information and designate, with appropriate markings, the portion(s) of the submission to which the assertion applies. Any designation under this paragraph shall expire 10 years after the date of submission unless a longer designation period is requested and reasonable justification is provided therefor.

(c) *Notification to submitter of disclosure request.* When disclosure of information subject to this section may be made, the disclosure officer or (where disclosure may be made in response to an appeal) the General Counsel shall promptly notify the submitter, describing (or providing a copy of) the information that may be disclosed, and afford the submitter a reasonable period of time to object in writing to the requested disclosure. (The notification to the submitter may be oral or written; if oral, it will be confirmed in writing.) When a submitter is notified under this paragraph, the requester shall be notified that the submitter is being afforded an opportunity to object to disclosure.

(d) *Objection of submitter.* A submitter's statement objecting to disclosure should specify all grounds relied upon for opposing disclosure of any portion(s) of the information under subsection (b) of FOIA and, with respect to the exemption in paragraph (b)(4) of FOIA, demonstrate why the information is a trade secret or is commercial or financial information that is privileged or confidential. Facts asserted should be certified or otherwise supported. (Information provided pursuant to this paragraph may itself be subject to disclosure under FOIA.) Any timely objection of a submitter under this paragraph shall be carefully considered in determining whether to grant a disclosure request or appeal.

(e) *Notification to submitter of decision to disclose.* If the disclosure officer or (where disclosure is in response to an appeal) the General Counsel decides to disclose information subject to this section despite the submitter's objections, the disclosure officer (or General Counsel) shall give the submitter written notice, explaining briefly why the information is to be disclosed despite those objections, describing the information to be disclosed, and specifying the date when the information will be disclosed to the requester. The notification shall, to the extent permitted by law, be provided a reasonable number of days before the disclosure date so specified, and a copy shall be provided to the requester.

(f) *Notification to submitter of action to compel disclosure.* The disclosure officer or the General Counsel shall promptly notify the submitter if a requester brings suit seeking to compel disclosure.

Subpart D—Fees

§ 4901.31 Charges for services.

(a) *Generally.* Pursuant to the provisions of FOIA, as amended, charges will be assessed to cover the direct costs of searching for, reviewing, and/or duplicating records requested under FOIA from the PBGC, except where the charges are limited or waived under paragraph (b) or (d) of this section, according to the fee schedule in § 4901.32 of this part. No charge will be assessed if the costs of routine collection and processing of the fee would be equal to or greater than the fee itself.

(1) "Direct costs" means those expenditures which the PBGC actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request under FOIA and this part. Direct costs include, for example, the salary of the employee performing work (*i.e.*, the basic rate of pay plus benefits) or an established average pay for a homogeneous class of personnel (*e.g.*, all administrative/clerical or all professional/executive), and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) "Search" means all time spent looking for material that is responsive to a request under FOIA and this part, including page-by-page or line-by-line identification of materials within a document, if required, and may be done manually or by computer using existing programming. "Search" should be distinguished from "review" which is defined in paragraph (a)(3) of this section.

(3) "Review" means the process of examining documents located in response to a request under FOIA and this part to determine whether any portion of any document located is permitted or required to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(4) "Duplication" means the process of making a copy of a document necessary to respond to a request under FOIA and this part, in a form that is reasonably usable by the requester. Copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (*e.g.*, magnetic tape or disk), among others.

(b) *Categories of requesters.* Requesters who seek access to records under FOIA and this part are divided into four categories: commercial use requesters, educational and noncommercial scientific institutions, representatives of the news media, and all other requesters. The PBGC will determine the category of a requester and charge fees according to the following rules.

(1) *Commercial use requesters.* When records are requested for commercial use, the PBGC will assess charges, as provided in this subpart, for the full direct costs of searching for, reviewing for release, and duplicating the records sought. Fees for search and review may be charged even if the record searched for is not found or if, after it is found, it is determined that the request to inspect it may be denied under the provisions of subsection (b) of FOIA and this part.

(i) "*Commercial use*" request means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(ii) In determining whether a request properly belongs in this category, the PBGC will look to the use to which a requester will put the documents requested. Moreover, where the PBGC has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the PBGC will require the requester to provide clarification before assigning the request to this category.

(2) *Educational and noncommercial scientific institution requesters.* When records are requested by an educational or noncommercial scientific institution, the PBGC will assess charges, as provided in this subpart, for the full direct cost of duplication only, excluding charges for the first 100 pages.

(i) "Educational institution" means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(ii) "Noncommercial scientific institution" means an institution that is not operated on a "commercial" basis as that term is defined in paragraph (b)(1)(i) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(iii) To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(3) *Requesters who are representatives of the news media.* When records are requested by representatives of the news media, the PBGC will assess charges, as provided in this subpart, for the full direct cost of duplication only, excluding charges for the first 100 pages.

(i) "Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(ii) To be eligible for inclusion in this category, the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester who is a representative of the news media shall not be considered to be a request that is for a commercial use.

(4) *All other requesters.* When records are requested by requesters who do not fit into any of the categories in paragraphs (b)(1) through (b)(3) of this section, the PBGC will assess charges, as provided in this subpart, for the full direct cost of searching for and duplicating the records sought, with the exceptions that there will be no charge for the first 100 pages of duplication and the first two hours of manual search time (or its cost equivalent in computer search time). Notwithstanding the preceding sentence, there will be no charge for search time in the event of requests under the Privacy Act of 1974 from subjects of records filed in the PBGC's systems of records for the disclosure of records about themselves. Search fees, where applicable, may be charged even if the record searched for is not found.

(c) *Aggregation of requests.* If the PBGC reasonably believes that a

requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the PBGC will aggregate any such requests and charge accordingly. In no case will the PBGC aggregate multiple requests on unrelated subjects from one requester.

(d) *Waiver or reduction of charges.* Circumstances under which searching, review, and duplication facilities or services may be made available to the requester without charge or at a reduced charge are set forth in § 4901.34 of this part.

§ 4901.32 Fee schedule.

(a) *Charges for searching and review of records.* Charges applicable under this subpart to the search for and review of records will be made according to the following fee schedule:

(1) *Search and review time.* (i) Ordinary search and review by custodial or clerical personnel, $1.75 for each one-quarter hour or fraction thereof of employee worktime required to locate or obtain the records to be searched and to make the necessary review; and (ii) search or review requiring services of professional or supervisory personnel to locate or review requested records, $4.00 for each one-quarter hour or fraction thereof of professional or supervisory personnel worktime.

(2) *Additional search costs.* If the search for a requested record requires transportation of the searcher to the location of the records or transportation of the records to the searcher, at a cost in excess of $5.00, actual transportation costs will be added to the search time cost.

(3) *Search in computerized records.* Charges for information that is available in whole or in part in computerized form will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to the request, personnel salaries apportionable to the search, and tape or printout production or an established agency-wide average rate for CPU operating costs and operator/programmer salaries involved in FOIA searches. Charges will be computed at the rates prescribed in paragraphs (a) and (b) of this section.

(b) *Charges for duplication of records.* Charges applicable under this subpart for obtaining requested copies of records made available for inspection will be made according to the following fee schedule and subject to the following conditions.

(1) *Standard copying fee.* $0.15 for each page of record copies furnished. This standard fee is also applicable to the furnishing of copies of available computer printouts as stated in paragraph (a)(3) of this section.

(2) *Voluminous material.* If the volume of page copy desired by the requester is such that the reproduction charge at the standard page rate would be in excess of $50, the person desiring reproduction may request a special rate quotation from the PBGC.

(3) *Limit of service.* Not more than 10 copies of any document will be furnished.

(4) *Manual copying by requester.* No charge will be made for manual copying by the requesting party of any document made available for inspection under the provisions of this part. The PBGC shall provide facilities for such copying without charge at reasonable times during normal working hours.

(5) *Indexes.* Pursuant to paragraph (a)(2) of FOIA copies of indexes or supplements thereto which are maintained as therein provided but which have not been published will be provided on request at a cost not to exceed the direct cost of duplication.

(c) *Other charges.* The scheduled fees, set forth in paragraphs (a) and (b) of this section, for furnishing records made available for inspection and duplication represent the direct costs of furnishing the copies at the place of duplication. Upon request, single copies of the records will be mailed, postage prepaid, free of charge. Actual costs of transmitting records by special methods such as registered, certified, or special delivery mail or messenger, and of special handling or packaging, if required, will be charged in addition to the scheduled fees.

§ 4901.33 Payment of fees.

(a) *Medium of payment.* Payment of the applicable fees as provided in this subsection shall be made in cash, by U.S. postal money order, or by check payable to the PBGC. Postage stamps will not be accepted in lieu of cash, checks, or money orders as payment for fees specified in the schedule. Cash should not be sent by mail.

(b) *Advance payment or assurance of payment.* Payment or assurance of payment before work is begun or continued on a request may be required under the following rules.

(1) Where the PBGC estimates or determines that charges allowable under the rules in this subpart are likely to exceed $250, the PBGC may require advance payment of the entire fee or assurance of payment, as follows:

(i) Where the requester has a history of prompt payment of fees under this part, the PBGC will notify the requester of the likely cost and obtain satisfactory assurance of full payment; or

(ii) Where the requester has no history of payment for requests made pursuant to FOIA and this part, the PBGC may require the requester to make an advance payment of an amount up to the full estimated charges.

(2) Where the requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), the PBGC may require the requester to pay the full amount owed plus any applicable interest as provided in paragraph (c) of this section (or demonstrate that he has, in fact, paid the fee) and to make an advance payment of the full amount of the estimated fee.

(c) *Late payment interest charges.* The PBGC may assess late payment interest charges on any amounts unpaid by the 31st day after the date a bill is mailed to a requester. Interest will be assessed at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date the bill is mailed.

§ 4901.34 Waiver or reduction of charges.

(a) The disclosure officer may waive or reduce fees otherwise applicable under this subpart when disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. A fee waiver request shall set forth full and complete information upon which the request for waiver is based.

(b) The disclosure officer may reduce or waive fees applicable under this subpart when the requester has demonstrated his inability to pay such fees.

PART 4902—DISCLOSURE AND AMENDMENT OF RECORDS PERTAINING TO INDIVIDUALS UNDER THE PRIVACY ACT

Sec.

4902.1 Purpose and scope.
4902.2 Definitions.
4902.3 Procedures for determining existence of and requesting access to records.
4902.4 Disclosure of record to an individual.
4902.5 Procedures for requesting amendment of a record.
4902.6 Action on request for amendment of a record.
4902.7 Appeal of a denial of a request for amendment of a record.
4902.8 Fees.
4902.9 Specific exemptions.

Authority: 5 U.S.C. 552a.

§ 4902.1 Purpose and scope.

This part establishes procedures whereby an individual can determine whether the PBGC maintains any system of records that contains a record pertaining to the individual, procedures to effect access to an individual's record upon his or her request, and procedures for making requests to amend records, for making the initial determinations on such requests, and for appealing denials of such requests. This part also prescribes the fees for making copies of an individual's record. Finally, this part sets forth those systems of records that are exempted from certain disclosure and other provisions of the Privacy Act (5 U.S.C. 552a).

§ 4902.2 Definitions.

In addition to terminology in part 4001 of this chapter, as used in this part:

Disclosure officer means the designated official in the Communications and Public Affairs Department, PBGC.

Record means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

System of records means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

Working day means any weekday excepting Federal holidays.

§ 4902.3 Procedures for determining existence of and requesting access to records.

(a) Any individual may submit a written request, either by mail to the Disclosure Officer, Communications and Public Affairs Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, or in person between the hours of 9 a.m. and 4 p.m. on any working day in Suite 240 at the above address, for the purpose of—

(1) Learning whether a system of records maintained by the PBGC contains any record pertaining to the requester, or

(2) Obtaining access to such a record.

(b) Each request submitted pursuant to paragraph (a) of this section shall include the name of the system of records to which the request pertains and the requester's full name, home address and date of birth, and shall clearly state on the envelope and on the request "Privacy Act Request." If this information is insufficient to enable the PBGC to identify the record in question, the disclosure officer shall request such further identifying data as the disclosure officer deems necessary to locate the record.

(c) Unless the request is only for notification of the existence of a record and such notification is required under the Freedom of Information Act (5 U.S.C. 552), the requester shall be required to provide verification of his or her identity to the PBGC as set forth in paragraph (c) (1) or (2) of this section, as appropriate.

(1) If the request is made by mail, the requester shall submit a notarized statement establishing his or her identity.

(2) If the request is made in person, the requester shall show identification satisfactory to the disclosure officer, such as a driver's license, employee identification, annuitant identification or Medicare card.

(d) The disclosure officer shall respond to the request in writing within 10 working days after receipt of the request or of such additional information as may be required under paragraph (b) of this section. If a request for access to a record is granted, the response shall state when the record will be made available.

§ 4902.4 Disclosure of record to an individual.

(a) When the disclosure officer grants a request for access to records under § 4902.3, such records shall be made available when the requester is advised of the determination or as promptly thereafter as possible. At the requester's option, the record will be made available for the requester's inspection and copying at the Communications and Public Affairs Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, between the hours of 9 a.m. and 4 p.m. on any working day, or a copy of the record will be mailed to the requester.

(b) If the requester desires to be accompanied by another individual during the inspection and/or copying of the record, the requester shall, either when the record is made available or at any earlier time, submit to the disclosure officer a signed statement identifying such other individual and authorizing such other individual to be present during the inspection and/or copying of the record.

§ 4902.5 Procedures for requesting amendment of a record.

(a) Any individual about whom the PBGC maintains a record contained in a system of records may request that the record be amended. Such a request shall be submitted in the same manner described in § 4902.3(a).

(b) Each request submitted under paragraph (a) of this section shall include the information described in § 4902.3(b) and a statement specifying the changes to be made in the record and the justification therefor. The disclosure officer may request further identifying data as described in § 4902.3(b).

(c) An individual who desires assistance in the preparation of a request for amendment of a record shall submit such request for assistance in writing to the Deputy General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026. The Deputy General Counsel shall respond to such request as promptly as possible.

§ 4902.6 Action on request for amendment of a record.

(a) Within 20 working days after receipt by the PBGC of a request for amendment of a record under § 4902.5, unless for good cause shown the Executive Director of the PBGC extends such 20-day period, the disclosure officer shall notify the requester in writing whether and to what extent the request shall be granted. To the extent that the request is granted, the disclosure officer shall cause the requested amendment to be made promptly.

(b) When a request for amendment of a record is denied in whole or in part, the denial shall include a statement of the reasons therefor, the procedures for appealing such denial, and a notice that the requester has a right to assistance in preparing an appeal of the denial.

(c) An individual who desires assistance in preparing an appeal of a denial under this section shall submit a request in writing to the Deputy General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026. The Deputy General Counsel shall respond to the request as promptly as possible, but in no event more than 30 days after receipt.

§ 4902.7 Appeal of a denial of a request for amendment of a record.

(a) An appeal from a denial of a request for amendment of a record under § 4902.6 shall be submitted, within 45 days of receipt of the denial, to the General Counsel, Pension Benefit

Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, unless the record subject to such request is one maintained by the Office of the General Counsel, in which event the appeal shall be submitted to the Deputy Executive Director at the same address. The appeal shall state in detail the basis on which it is made and both the envelope and the appeal shall clearly state "Privacy Act Request".

(b) Within 30 working days after the receipt of the appeal, unless for good cause shown the Executive Director of the PBGC extends such 30-day period, the General Counsel or, where appropriate, the Deputy Executive Director, shall issue a decision in writing granting or denying the appeal in whole or in part. To the extent that the appeal is granted, the General Counsel or, where appropriate, the Deputy Executive Director, shall cause the requested amendment to be made promptly. To the extent that the appeal is denied, the decision shall include the reasons for the denial and a notice of the requester's right to submit a brief statement setting forth reasons for disputing the denial of appeal, to seek judicial review of the denial pursuant to 5 U.S.C. 552a(g)(1)(A), and to obtain further information concerning the provisions for judicial review under that section.

(c) An individual whose appeal has been denied in whole or in part may submit a brief summary statement setting forth reasons for disputing such denial. Such statement shall be submitted within 30 days of receipt of the denial of the appeal to the Disclosure Officer. Any such statement shall be made available by the PBGC to anyone to whom the record is subsequently furnished and may also be accompanied, at the discretion of the PBGC, by a brief statement summarizing the PBGC's reasons for refusing to amend the record. The PBGC shall also provide copies of the individual's statement of dispute to all prior recipients of the record with respect to whom an accounting of the disclosure of the record was maintained pursuant to 5 U.S.C. 552a(c)(1).

(d) To request further information concerning the provisions for judicial review, an individual shall submit such request in writing to the Deputy General Counsel, who shall respond to such request as promptly as possible.

§ 4902.8 Fees.

When an individual requests a copy of his or her record under § 4902.4, charges for the copying shall be made according to the following fee schedule:

(a) *Standard copying fee.* There shall be a charge of $0.15 per page of record copies furnished. Where the copying fee is less than $1.50, it shall not be assessed.

(b) *Voluminous material.* If the volume of page copy desired by the requester is such that the reproduction charge at the standard page rate would be in excess of $50, the individual desiring reproduction may request a special rate quotation from the PBGC.

(c) *Manual copying by requester.* No charge will be made for manual copying by the requester of any document made available for inspection under § 4902.4. The PBGC shall provide facilities for such copying without charge between the hours of 9 a.m. and 4 p.m. on any working day.

§ 4902.9 Specific exemptions.

(a) Under the authority granted by 5 U.S.C. 552a(k)(5), the PBGC hereby exempts the system of records entitled "Personnel Security Investigation Records—PBGC" from the provisions of 5 U.S.C. §§ 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f), to the extent that the disclosure of such material would reveal the identity of a source who furnished information to PBGC under an express promise of confidentiality or, before September 27, 1975, under an implied promise of confidentiality.

(b) The reasons for asserting this exemption are to insure the gaining of information essential to determining suitability and fitness for PBGC employment, access to information, and security clearances, to insure that full and candid disclosures are obtained in making such determinations, to prevent subjects of such determinations from thwarting the completion of such determinations, and to avoid revealing the identities of persons who furnish information to the PBGC in confidence.

PART 4903—DEBT COLLECTION

Subpart A—General

Sec.

4903.1 Purpose and scope.
4903.2 General.
4903.3 Definitions.

Subpart B—Administrative Offset

4903.21 Application of Federal Claims Collection Standards.
4903.22 Administrative offset procedures.
4903.23 PBGC requests for offset by other agencies.
4903.24 Requests for offset from other agencies.

Subpart C—Tax Refund Offset

4903.31 Eligibility of debt for tax refund offset.
4903.32 Tax refund offset procedures.
4903.33 Referral of debt for tax refund offset.

Subpart D—Salary Offset [Reserved]

Authority: 29 U.S.C. 1302(b); 31 U.S.C. 3701, 3711(f), 3720A; 4 CFR part 102; 26 CFR 301.6402–6.

Subpart A—General

§ 4903.1 Purpose and scope.

(a) *Subpart A.* Subpart A of this part contains definitions and general provisions applicable to debt collection generally.

(b) *Subpart B.* Subpart B of this part prescribes procedures for debt collection by administrative offset, as authorized by the Federal Claims Collection Act (31 U.S.C. 3716), and consistent with applicable provisions of the Federal Claims Collection Standards. These procedures apply when the PBGC determines that collection by administrative offset of a claim that is liquidated or certain in amount is feasible and not otherwise prohibited or when another agency seeks administrative offset against a payment to be made by the PBGC.

(c) *Subpart C.* Subpart C of this part prescribes procedures for debt collection by tax refund offset, as authorized by section 3720A of subchapter II, chapter 37 of title 31 of the United States Code (31 U.S.C. 3720A) and in accordance with applicable IRS regulations (26 CFR 301–6402.6), including a related procedure for disclosure to a consumer reporting agency. These procedures apply to determinations that a debt of at least $25 is past-due and legally enforceable, to referrals by the PBGC of past-due, legally enforceable debts to the IRS for offset, and to any subsequent corrections of information contained in such referrals.

§ 4903.2 General.

(a) Certain PBGC efforts to obtain payment of debts arising out of activities under ERISA are authorized by and subject to requirements prescribed under other federal statutes. When, and to the extent, such requirements apply to collection of a debt by the PBGC, PBGC activities will be consistent with such requirements, as well as with any other applicable requirements (see, *e.g.*, parts 4003, 4007, and 4062 of this chapter).

(b)(1) The Executive Director of the PBGC has delegated to the Director of the Financial Operations Department primary responsibility for PBGC debt collection activities. This delegation includes responsibility for procedures implementing requirements prescribed under federal statutes other than ERISA, and for coordinating the activities of other PBGC departments with functional responsibilities for different types of claims.

(2) PBGC departments are responsible for ascertaining indebtedness and other aspects of agency collection activities within their areas of functional responsibility.

§ 4903.3 Definitions.

The following terms are defined in § 4001.2 of this chapter: IRS, PBGC, and person. In addition, for purposes of this part:

Administrative offset has the meaning set forth in 31 U.S.C. 3701(a)(1).

Agency means an executive or legislative agency (within the meaning of 31 U.S.C. 3701(a)(4)).

Claim and *debt*, as defined in the Federal Claims Collection Standards (4 CFR 101.2(a)), are used synonymously and interchangeably to refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or entity, except another Federal agency.

Consumer reporting agency has the meaning set forth in 31 U.S.C. 3701(a)(3).

Federal Claims Collection Act means the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 *et seq.*).

Federal Claims Collection Standards means 4 CFR parts 101 through 105, which are regulations issued jointly by the Comptroller General of the United States and the Attorney General of the United States that implement the Federal Claims Collection Act.

Repayment agreement means a written agreement by a debtor to repay a debt to the PBGC.

Tax refund offset means the reduction by the IRS of a tax overpayment payable to a taxpayer by the amount of past-due, legally enforceable debt owed by that taxpayer to a federal agency that has entered into an agreement with the IRS with regard to its participation in the tax refund offset program, pursuant to IRS regulations (26 CFR 301.6402–6).

Subpart B—Administrative Offset

§ 4903.21 Application of Federal Claims Collection Standards.

The PBGC will determine the feasibility of collection by administrative offset, whether to accept a repayment agreement in lieu of offset, and how to apply amounts collected by administrative offset on multiple debts as provided in the Federal Claims Collection Standards (4 CFR 102.3).

(a) *Feasibility.* The PBGC will determine whether collection by administrative offset is feasible on a case-by-case basis in the exercise of sound discretion. In making such determinations, the PBGC will consider:

(1) Whether administrative offset can be accomplished, both practically and legally;

(2) Whether administrative offset is best suited to further and protect all governmental interests;

(3) In appropriate circumstances, the debtor's financial condition; and

(4) Whether offset would tend to interfere substantially with or defeat the purposes of the program authorizing the payments against which offset is contemplated.

(b) *Repayment agreements.* The PBGC will exercise its discretion in determining whether to accept a repayment agreement in lieu of offset, balancing the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent (within the meaning of 4 CFR 101.2(b)) and the debtor has not disputed its existence or amount, the PBGC will accept a repayment agreement in lieu of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

(c) *Multiple debts.* When the PBGC collects multiple debts by administrative offset, it will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 4903.22 Administrative offset procedures.

(a) *General.* Except as otherwise required by law or as provided in paragraph (e) of this section, the PBGC will not effect administrative offset against a payment to be made to a debtor prior to the completion of the procedures specified in paragraphs (b) and (c) of this section. However, the PBGC will not duplicate any notice or other procedural protection it previously provided in connection with the same debt under some other statutory or regulatory authority, such as part 4003 of this chapter.

(b) *Notice.* The PBGC will provide written notice informing the debtor of the following:

(1) The nature and amount of the debt, and the PBGC's intention to collect by offset;

(2) That the debtor may inspect and copy PBGC records pertaining to the debt in accordance with part 4901 or part 4902 of this chapter, as applicable (access under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (5 U.S.C. 552a), respectively);

(3) How and from whom the debtor may obtain administrative review of a determination of indebtedness;

(4) The facts and circumstances that the PBGC will consider in determining whether to accept a repayment agreement in lieu of offset; and

(5) If the PBGC has not previously demanded payment of the debt, the date by which payment must be made to avoid further collection action.

(c) *Administrative review.* (1) A debtor may obtain review within the PBGC of a determination of indebtedness by submitting a written request for review, designated as such, to the PBGC official specified in the notice of indebtedness. Unless another regulation in this chapter specifies a different period of time, such a request must be submitted within 30 days after the date of a PBGC notice under paragraph (b) of this section.

(2) A request for review must:

(i) State the ground(s) on which the debtor disputes the debt; and

(ii) Reference all pertinent information already in the possession of the PBGC and include any additional information believed to be relevant.

(3) The PBGC will review a determination of indebtedness, when requested to do so in a timely manner. The PBGC will issue a written decision, based on the written record, and will notify the debtor of its decision.

(i) The review will be conducted by an official of at least the same level of authority as the person who made the determination of indebtedness.

(ii) The notice of the PBGC's decision on review will include a brief statement of the reason(s) why the determination of indebtedness has or has not been changed.

(4) Upon receipt of a request for administrative review, the PBGC may, in its discretion, temporarily suspend transactions in any of the debtor's accounts maintained by the PBGC. If the PBGC resolves the dispute in the debtor's favor, it will lift the suspension immediately.

(d) *Repayment agreement in lieu of offset.* (1) The PBGC will not consider entering a repayment agreement in lieu of offset unless a debtor submits a copy of the debtor's most recent audited (or if not available, unaudited) financial statement (with balance sheets, income statements, and statements of changes in financial position), to the extent such documents have been prepared, and other information regarding the debtor's financial condition (*e.g.*, the types of information on assets, liabilities,

earnings, and other factors specified in paragraphs (b)(3) through (b)(7) of § 4062.6 of this chapter).

(2) The PBGC may require appropriate security as a condition of accepting a repayment agreement in lieu of offset.

(e) *Exception.* (1) The PBGC may effect administrative offset against a payment to be made to the debtor prior to completing the procedures specified in paragraphs (b) and (c) of this section if:

(i) Failure to take the offset would substantially prejudice the government's ability to collect the debt; and

(ii) The time before the payment is to be made does not reasonably permit the completion of those procedures.

(2) The PBGC has determined that a case in which it applies the special rule in § 4068.3(c) of this chapter meets the criteria in paragraph (e)(1) of this section.

(3) If the PBGC effects administrative offset against a payment to be made to a debtor prior to completing the procedures specified in paragraphs (b) and (c) of this section, the PBGC—

(i) Will promptly complete those procedures; and

(ii) Will promptly refund any amounts recovered by offset but later found not to be owed to the Government.

§ 4903.23 PBGC requests for offset by other agencies.

(a) *General.* The PBGC may request that funds payable to its debtor by another agency be administratively offset to collect a debt owed to the PBGC by the debtor. A PBGC request for administrative offset against amounts due and payable from the Civil Service Retirement and Disability Fund will be made in accordance with 5 CFR part 831, subpart R (Agency Requests to OPM for Recovery of a Debt from the Civil Service Retirement and Disability Fund).

(b) *Certification.* In requesting administrative offset, the Director of the Financial Operations Department (or a department official designated by the Director) will certify in writing to the agency holding funds of the debtor—

(1) That the debtor owes the debt (including the amount) and that the PBGC has fully complied with the provisions of 4 CFR 102.3; and

(2) In a request for administrative offset against amounts due and payable from the Civil Service Retirement and Disability Fund, that the PBGC has complied with applicable statutes and the regulations and procedures of the Office of Personnel Management.

§ 4903.24 Requests for offset from other agencies.

(a) *General.* As provided in the Federal Claims Collections Standards (4 CFR 102.3(d)), the PBGC generally will comply with requests from other agencies to initiate administrative offset to collect debts owed to the United States unless the requesting agency has not complied with the applicable provisions of the Federal Claims Collection Standards or the offset would be otherwise contrary to law.

(b) *Submission of requests.* (1) Any agency may request that funds payable to its debtor by the PBGC be administratively offset to collect a debt owed to such agency by the debtor by submitting the certification described in paragraph (c) of this section.

(2) All such requests should be directed to the Director, Financial Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

(c) *Certification required.* The PBGC will not initiate administrative offset in response to a request from another agency until it receives written certification from the requesting agency, signed by an appropriate agency official, that the debtor owes the debt (including the amount) and that the requesting agency has fully complied with the provisions of 4 CFR 102.3 (with a citation to the agency's own administrative offset regulations).

Subpart C—Tax Refund Offset

§ 4903.31 Eligibility of debt for tax refund offset.

The PBGC will determine whether a debt is eligible for tax refund offset in accordance with IRS regulations (26 CFR 301.6402–6 (c) and (d)). The PBGC may refer a past-due, legally enforceable debt to the IRS for offset if:

(a) The debt is a judgment debt, or the PBGC's right of action accrued not more than 10 years earlier (unless the debt is specifically exempt from this requirement);

(b) The PBGC cannot currently collect the debt by salary offset (pursuant to 5 U.S.C. 5514(a)(1));

(c) The debt is ineligible for administrative offset (by reason of 31 U.S.C. 3716(c)(2)), or the PBGC cannot currently collect the debt by administrative offset (under 31 U.S.C. 3716 and subpart B of this part) against amounts payable by the debtor to the PBGC;

(d) The PBGC has notified, or attempted to notify, the debtor of its intent to refer the debt, given the debtor an opportunity to present evidence that all or part of the debt is not past-due or not legally enforceable, considered any evidence presented by the debtor in accordance with § 4903.32, and determined that the debt is past-due and legally enforceable;

(e) If the debt is a consumer debt and exceeds $100, the PBGC has disclosed the debt to a consumer reporting agency (as authorized by 31 U.S.C. 3711(f) and provided in § 4903.32), unless a consumer reporting agency would be prohibited from reporting information concerning the debt (by reason of 15 U.S.C. 1681c); and

(f) The debt is at least $25.

§ 4903.32 Tax refund offset procedures.

(a) *General.* Before referring a debt for tax refund offset, the PBGC will complete the procedures specified in paragraph (b) and, if applicable, paragraph (c) of this section. The PBGC may satisfy these requirements in conjunction with any other procedures that apply to the same debt, such as those prescribed in § 4903.22 or part 4003 of this chapter.

(b) *Notice, opportunity to present evidence, and determination of indebtedness.*

(1) The PBGC will notify, or make a reasonable attempt to notify, a person owing a debt (a "debtor") that a debt is past-due and if not repaid within 60 days, the PBGC will refer the debt to the IRS for offset against any overpayment of tax. For this purpose, compliance with IRS procedures (26 CFR 301.6402–6(d)(1)) constitutes a reasonable attempt to notify a debtor.

(2) A debtor will have at least 60 days to present evidence, for consideration by the PBGC, that all or part of a debt is not past-due or not legally enforceable.

(3) If evidence that all or part of a debt is not past-due or not legally enforceable is considered by an agent or person other than a PBGC employee acting on behalf of the PBGC, a debtor will have at least 30 days from the date of the determination on the debt to request review by the Director of the Financial Operations Department (or a department official designated by the Director).

(4) The PBGC will notify a debtor of its determination as to whether all or part of a debt is past-due and legally enforceable.

(c) *Consumer reporting agency disclosure.*

(1)(i) If a consumer debt exceeds $100, the Director of the Financial Operations Department (or a department official designated by the Director), after verifying the validity and overdue status of the debt and that section 605 of the Consumer Credit Protection Act (15 U.S.C. 1681c) does not prohibit a consumer reporting agency from reporting information concerning the debt because it is obsolete, will send the individual who owes the debt a written notice—

(A) That the debt is past-due;

(B) That the PBGC intends to disclose to a consumer reporting agency that the individual is responsible for the debt and the specific information to be disclosed; and

(C) How the individual may obtain an explanation of the debt, dispute the information in PBGC's records, and obtain administrative review of the debt.

(ii) If the PBGC does not have a current address for an individual, the Director of the Financial Operations Department (or a department official designated by the Director) will take reasonable action to locate the individual.

(2) The Director of the Financial Operations Department (or a department official designated by the Director) will disclose the debt if, within 60 days (or, at his or her discretion, more than 60 days) after sending the notice described in paragraph (c)(1) of this section, the individual has not repaid the debt, or agreed to repay the debt under a written agreement, or requested administrative review of the debt.

§ 4903.33 Referral of debt for tax refund offset.

The Director of the Financial Operations Department (or a department official designated by the Director) will refer debts to the IRS for refund offset, and will correct referrals, in accordance with IRS regulations (26 CFR 301.6402–6(e) and (f)).

Subpart D—Salary Offset [Reserved]

PART 4904—ETHICAL CONDUCT OF EMPLOYEES

Sec.

4904.1 Outside employment and other activity.

Authority: 29 U.S.C. 1302(b); E.O. 11222, 30 FR 6469; 5 CFR 735.104.

§ 4904.1 Outside employment and other activity.

(a)–(c) [Reserved].

(d) An employee who is engaged in or is planning to engage in outside employment, business, professional or other such activities for pay shall obtain clearance:

(1) When such activities raise a question of conflict with this subpart or any applicable laws, orders, regulations or standards, or

(2) When applicable laws, orders or regulations require clearance of such activities.

(e) A request for clearance shall be in writing and shall include a statement of the nature of and the amount of time to be devoted to the activity. The heads of offices shall receive and review requests for clearance submitted by members of their staff. The Executive Director or his designee shall receive and review requests for clearance submitted by the heads of offices and special Government employees. The employee reviewing the request for clearance may require the employee making the request to furnish such other information as may be appropriate in considering the request and shall consult with the Corporation's Ethics Counselor where appropriate. The request may be granted only if such activity would be consistent with applicable laws, orders and regulations. If the request for clearance is not granted, the employee making the request shall not commence or continue in the activity unless the Executive Director or his designee, upon written request of the employee, determines that such activity would be consistent with applicable laws, orders and regulations.

PART 4905—APPEARANCES IN CERTAIN PROCEEDINGS

Sec.

4905.1 Purpose and scope.
4905.2 Definitions.
4905.3 General.
4905.4 Appearances by PBGC employees.
4905.5 Requests for authenticated copies of PBGC records.
4905.6 Penalty.

Authority: 29 U.S.C. 1302(b); E.O. 11222, 30 FR 6469; 5 CFR 735.104.

§ 4905.1 Purpose and scope.

(a) *Purpose.* This part sets forth the rules and procedures to be followed when a PBGC employee or former employee is requested or served with compulsory process to appear as a witness or produce documents in a proceeding in which the PBGC is not a party, if such appearance arises out of, or is related to, his or her employment with the PBGC. It provides a centralized decisionmaking mechanism for responding to such requests and compulsory process.

(b) *Scope.* (1) This part applies when, in a judicial, administrative, legislative, or other proceeding, a PBGC employee or former employee is requested or served with compulsory process to provide testimony concerning information acquired in the course of performing official duties or because of official status and/or to produce material acquired in the course of performing official duties or contained in PBGC files.

(2) This part does not apply to:

(i) Proceedings in which the PBGC is a party;

(ii) Congressional requests or subpoenas for testimony or documents; or

(iii) Appearances by PBGC employees in proceedings that do not arise out of, or relate to, their employment with PBGC (*e.g.*, outside activities that are engaged in consistent with applicable standards of ethical conduct).

§ 4905.2 Definitions.

For purposes of this part:

Appearance means testimony or production of documents or other material, including an affidavit, deposition, interrogatory, declaration, or other required written submission.

Compulsory Process means any subpoena, order, or other demand of a court or other authority (*e.g.*, an administrative agency or a state or local legislative body) for the appearance of a PBGC employee or former employee.

Employee means any officer or employee of the PBGC, including a special government employee.

Proceeding means any proceeding before any federal, state, or local court; federal, state, or local agency; state or local legislature; or other authority responsible for administering regulatory requirements or adjudicating disputes or controversies, including arbitration, mediation, and other similar proceedings.

Special government employee means an employee of the PBGC who is retained, designated, appointed or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis (18 U.S.C. 202).

§ 4905.3 General.

No PBGC employee or former employee may appear in any proceeding to which this part applies to testify and/or produce documents or other material unless authorized under this part.

§ 4905.4 Appearances by PBGC employees.

(a) Whenever a PBGC employee or former employee is requested or served with compulsory process to appear in a proceeding to which this part applies, he or she will promptly notify the General Counsel.

(b) The General Counsel or his or her designee will authorize an appearance by a PBGC employee or former employee if, and to the extent, he or she determines that such appearance is in the interest of the PBGC.

(1) In determining whether an appearance is in the interest of the PBGC, the General Counsel or his or her designee will consider relevant factors, including:

(i) What, if any, objective of the PBGC (and, where relevant, any federal agency, if the United States is a party) would be promoted by the appearance;

(ii) Whether the appearance would unnecessarily interfere with the employee's official duties;

(iii) Whether the appearance would result in the appearance of improperly favoring one litigant over another; and

(iv) Whether the appearance is appropriate under applicable substantive and procedural rules.

(2) If the General Counsel or his or her designee concludes that compulsory process is essentially a request for PBGC record information, it will be treated as a request under the Freedom of Information Act, as amended, in accordance with part 4901 of this chapter, except to the extent that the Privacy Act of 1974, as amended, and part 4902 of this chapter govern disclosure of a record maintained on an individual.

(c) If, in response to compulsory process in a proceeding to which this part applies, the General Counsel or his or her designee has not authorized an appearance by the return date, the employee or former employee shall appear at the stated time and place (unless advised by the General Counsel or his or her designee that process either was not validly issued or served or has been withdrawn), accompanied by a PBGC attorney, produce a copy of this part of the regulations, and respectfully decline to provide any testimony or produce any documents or other material. When the demand is under consideration, the employee shall respectfully request that the court or other authority stay the demand pending the employee's receipt of instructions from the General Counsel.

§ 4905.5 Requests for authenticated copies of PBGC records.

The PBGC will grant requests for authenticated copies of PBGC records, for purposes of admissibility under 28 U.S.C. 1733 and Rule 44 of the Federal Rules of Civil Procedure, for records that are to be disclosed pursuant to this part or part 4901 of this chapter. Appropriate fees will be charged for providing authenticated copies of PBGC records, in accordance with part 4901, subpart D, of this chapter.

§ 4905.6 Penalty.

A PBGC employee who testifies or produces documents or other material in violation of a provision of this part of the regulations shall be subject to disciplinary action.

PART 4907—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE PENSION BENEFIT GUARANTY CORPORATION

Sec.

4907.101 Purpose.
4907.102 Application.
4907.103 Definitions.
4907.104–4907.109 [Reserved]
4907.110 Self-evaluation.
4907.111 Notice.
4907.112–4907.129 [Reserved]
4907.130 General prohibitions against discrimination.
4907.131–4907.139 [Reserved]
4907.140 Employment.
4907.141–4907.148 [Reserved]
4907.149 Program accessibility: Discrimination prohibited.
4907.150 Program accessibility: Existing facilities.
4907.151 Program accessibility: New construction and alterations.
4907.152–4907.159 [Reserved]
4907.160 Communications.
4907.161–4907.169 [Reserved]
4907.170 Compliance procedures.
4907.171–4907.999 [Reserved]

Authority: 29 U.S.C. 794, 1302(b)(3).

§ 4907.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 4907.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 4907.103 Definitions.

For purposes of this part, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Handicapped person means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) Major life activities includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Qualified handicapped person means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) Qualified handicapped person is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 4907.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial Impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 4907.104–4907.109 [Reserved]

§ 4907.110 Self-evaluation.

(a) The agency shall, by August 24, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) a description of areas examined and any problems identified, and

(2) a description of any modifications made.

§ 4907.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 4907.112–4907.129 [Reserved]

§ 4907.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive Order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive Order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 4907.131–4907.139 [Reserved]

§ 4907.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally-conducted programs or activities.

§§ 4907.141–4907.148 [Reserved]

§ 4907.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 4907.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 4907.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 4907.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods—*

(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 4907.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of § 4907.150 (a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by February 23, 1987 a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 4907.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 4907.152–4907.159 [Reserved]

§ 4907.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf person (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 4907.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 4907.161–4907.169 [Reserved]

§ 4907.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Equal Opportunity Manager shall be responsible for coordinating implementation of this section. Complaints may be sent to Equal Opportunity Manager, Human Resources Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 4907.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

§§ 4907.171–4907.999 [Reserved]

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federal register

Monday
July 1, 1996

Part III

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5516–7]

RIN 2060–AE05

National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates National Emission Standards for Hazardous Air Pollutants (NESHAP) under the authority of Section 112 of the Clean Air Act for off-site waste and recovery operations that emit hazardous air pollutants (HAP). The NESHAP applies to specific types of facilities that are determined to be major sources of HAP emissions and receive certain wastes, used oil, and used solvents from off-site locations for storage, treatment, recovery, or disposal at the facility. The rule requires use of maximum achievable control technology (MACT) to reduce HAP emissions from tanks, surface impoundments, containers, oil-water separators, individual drain systems and other material conveyance systems, process vents, and equipment leaks.

The final rule is estimated to reduce HAP emissions from the source category by approximately 82 percent or 43,000 megagrams per year (47,000 tons per year). In addition, application of MACT required by this rule will achieve similar levels of reduction in volatile organic compounds (VOC) emissions from the source category. The human health effects associated with exposure to the HAP emissions can range from mild to severe and may include reduction of lung function, respiratory irritation, and neurotoxic effects. Similarly, emissions of VOC are associated with a variety of adverse health and welfare impacts.

The HAP and VOC emissions reductions achieved by implementing this rule in combination with similar rules will achieve the primary Clean Air Act goal to "enhance the quality of the Nation's air resources so as to promote the public health and welfare and productive capacity of its population." The intent of this final rule is to protect public health by requiring the maximum degree of reduction of HAP emissions from new and existing sources, taking into consideration the cost of achieving such emission reduction; any non air quality, health, and environmental impacts; and energy requirements.

EFFECTIVE DATE: July 1, 1996. See the Supplementary Information section concerning judicial review.

ADDRESSES: *Docket.* The docket for this rulemaking containing the information considered by the EPA in development of the final rule is Docket No. A–92–16. This docket is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW, Washington, D.C. 20460; telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

Basis and Support Document. A basis and support document, titled "National Emission Standards for Hazardous Air Pollutants, Off-Site Waste and Recovery Operations—Basis and Support for Final Standards," has been prepared summarizing the significant public comments made on the proposed rule and the Administrator's response to those comments. This document is available in the docket for this rulemaking, and also is available for downloading from the Technology Transfer Network (see below) under the Clean Air Act Amendments, Recently Signed Rules.

Technology Transfer Network. The Technology Transfer Network is one of the EPA's electronic bulletin boards. The Technology Transfer Network provides information and technology exchange in various areas of air pollution control. The service is free except for the cost of a phone call. Dial (919) 541–5472 for up to a 14,400 bps modem. If more information on the Technology Transfer Network is needed call the HELP line at (919) 541–5384.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact the appropriate regional representative:

Region I: Greg Rosco, Air Programs Compliance Branch Chief, U.S. EPA, Region I, ASO, JFK Federal Building, Boston, MA 02203, (617) 565–3221

Region II: Kenneth Eng, Air Compliance Branch Chief, U.S. EPA, Region II, 290 Broadway, New York, NY 10007–1866, (212) 637–4000

Region III: Bernard Turlinski, Air Enforcement Branch Chief, U.S. EPA, Region III, 3AT10, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–3989

Region IV: Jewell A. Harper, Air Enforcement Branch, U.S. EPA, Region IV, 345 Courtland Street, N.E., Atlanta, GA 30365, (404) 347–2904

Region V: George T. Czerniak, Jr., Air Enforcement Branch Chief, U.S. EPA, Region V, 5AE–26, 77 West Jackson Street, Chicago, IL 60604, (312) 353–2088

Region VI: John R. Hepola, Air Enforcement Branch Chief, U.S. EPA, Region VI, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733, (214) 655–7220

Region VII: Royan Teeter, Air Planning and Development Branch, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7609

Region VIII: Douglas M. Skie, Air and Technical Operations Branch Chief, U.S. EPA, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6432

Region IX: Colleen W. McKaughan, Air Compliance Branch Chief, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA, (415) 744–1198

Region X: Chris Hall, Air and Radiation Branch, U.S. EPA, Region X, OAQ–107, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–1949

For information concerning the analyses performed in developing this rule, contact Ms. Michele Aston, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone number (919) 541–2363.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action include the following types of facilities if the facility receives off-site material, as defined in the rule, and the facility is determined to be a major source of HAP emissions as defined in 40 CFR 63.2.

Category	Examples of regulated entities
Industry	Businesses that operate any of the following: hazardous waste treatment, storage, and disposal facilities (TSDF); RCRA exempt hazardous wastewater treatment facilities; nonhazardous wastewater treatment facilities other than publicly-owned treatment works; used solvent recovery plants; RCRA exempt hazardous waste recycling operations; used oil re-refineries.
Federal Government	Federal agency facilities that operate any of the waste management or recovery operations that meet the description of the entities listed under the "industry" category in this table.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by the action, you should carefully examine the applicability criteria in § 63.680 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review

The NESHAP for off-site waste and recovery operations was proposed in the **Federal Register** on October 13, 1994 (59 FR 51913). This **Federal Register** action announces the EPA's final decisions on the rule. Under section 307(b)(1) of the Act, judicial review of the NESHAP is available only by the petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

The following outline is provided to aid in reading this preamble to the final rule.

I. Background
  A. Section 112 Statutory Requirements
  B. Listing of Source Category
  C. Public Participation in Rule Development
  D. Relationship of Rule to Other EPA Regulatory Actions
II. Basis and Purpose
  A. Purpose of Regulation
  B. Source Category Description
  C. Definition of Affected Sources
  D. MACT Floor Determination
  E. Format of Standards
  F. Unit-Specific Subparts
  G. Alternative Test Validation Method
III. Summary of Impacts
IV. Summary of Responses to Major Comments
V. Summary of Changes Since Proposal
VI. Administrative Requirements
  A. Docket
  B. Paperwork Reduction Act
  C. Executive Order 12866
  D. Regulatory Flexibility Act
  E. Unfunded Mandates
  F. Review
VII. Statutory Authority

I. Background

A. Section 112 Statutory Requirements

Section 112 of the Clean Air Act (Act) regulates stationary sources of hazardous air pollutants (HAP). This section of the Act was comprehensively amended under Title III of the 1990 Amendments to the Clean Air Act (1990 Amendments). In the 1990 Amendments, Congress listed 189 chemicals, compounds, or groups of chemicals as HAP. The EPA is directed by the 1990 Amendments to regulate the emission of these HAP from stationary sources by establishing national emission standards (i.e., National Emission Standards for Hazardous Air Pollutants or NESHAP).

Each NESHAP for a specific source category is technology-based and is developed based on application of Maximum Achievable Control Technology (MACT). Section 112(d)(2) of the 1990 Amendments defines MACT as "* * * the maximum degree of reduction in emissions of the HAP * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies * * *."

B. Listing of Source Category

Section 112(c) of the 1990 Amendments required the EPA to develop and publish a list of source categories that emit HAP for which NESHAP will be developed. This list is required under Section 112 to include all known categories and subcategories of "major sources." The term "major source" is defined by the Act to mean "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate 10 tons per year (ton/yr) or more of any HAP or 25 ton/yr or more of any combination of HAP."

The EPA published its initial list of HAP emission source categories in the **Federal Register** on July 16, 1992 (57 FR 31576). On this list, the EPA included one source category which the Agency intended to represent those waste management and recovery operations that would not be subject to air standards under other listed NESHAP source categories. This source category was titled on the initial list as "solid waste treatment, storage, and disposal facilities." After publication of the initial source category list, the EPA decided that it was appropriate to change the title of the NESHAP source category to better reflect the types of operations for which the EPA intended to establish air standards under a NESHAP for the source category. Therefore at proposal, the EPA changed the title of the source category subject to "off-site waste and recovery operations" (see 59 FR 51918, October 13, 1994).

For the purpose of developing the rules for this source category, the term "off-site" is used in the context that the source category represents those waste management and recovery operations which receive material delivered, transferred, or otherwise moved to the plant or facility where the operation is located from a separate site. In other words, the material placed in the waste management or recovery operation is not produced or generated at the same site where the operation is located.

C. Summary of Public Participation in Rule Development

The EPA published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** on December 20, 1993 (58 FR 66336) to inform owners and operators of the potentially affected waste management and recovery operations and the general public of the planned scope of this NESHAP rulemaking. In the ANPR, the EPA requested information that would aid the Agency in the development of the rule. A 30-day comment period, from December 20, 1993 to January 19, 1994 was provided for interested parties to submit comments on the ANPR. The comments received by the EPA were

considered in developing the proposed rule.

The EPA proposed the Off-Site Waste and Recovery Operations NESHAP on October 13, 1994 (refer to 59 FR 51913). A proposed regulatory text for the rule and the background information document (BID) (EPA–453/R–94–070a) that presented information used in the development of the proposed rule was made available to the public for review and comment. A 90-day comment period from October 13, 1994 to January 11, 1995 (an initial 60 days plus a 30-day extension) was provided to accept written comments from the public on the proposed rule. The opportunity for a public hearing was provided to allow interested persons to present oral comments to the EPA on the rulemaking. However, the EPA did not receive a request for a public hearing, so a public hearing was not held.

A total of 89 comment letters regarding the proposed Off-Site Waste and Recovery Operations NESHAP were received by the EPA. A copy of each comment letter is available for public inspection in the docket for the rulemaking (Docket No. A–92–16; see the **ADDRESSES** section of this notice for information on inspecting the docket). The EPA received 70 letters containing specific comments on the proposed Off-Site Waste and Recovery Operations NESHAP. The other 19 letters were regarding extension of the public comment period and requests for copies of the regulatory text. The EPA has had extensive follow-up discussions with various commenters regarding specific issues initially raised in their written comments that were submitted to the Agency during the comment period. Copies of correspondence and other information exchanged between the EPA and the commenters during the post-comment period are available for public inspection in the docket for the rulemaking.

All of the comments received by the EPA were reviewed and carefully considered by the Agency. Changes to the rule were made when the EPA determined it to be appropriate. A summary of the EPA's responses to selected major comments on the proposed rule is presented in Section IV of this notice. Additional responses to comments are presented in the basis and support document described in the **ADDRESSES** section of this notice.

D. Relationship of Rule to Other EPA Regulatory Actions

1. Clean Air Act

Owners and operators of sites at which are located waste management and recovery operations that are subject to Off-Site Waste and Recovery Operations NESHAP may also be subject to another NESHAP because of other operations conducted at the site. For example, a waste management or recovery operation receiving materials from off-site may be located at a synthetic organic chemical manufacturing plant that is subject to 40 CFR 63 subparts F, G, and H—National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (referred to hereafter in this notice as the "HON") or at a petroleum refinery that is subject to 40 CFR 63 subpart CC—National Emission Standards for Organic Hazardous Air Pollutants from Petroleum Refineries. At plants subject to both the Off-Site Waste and Recovery Operations NESHAP and another NESHAP, the Off-Site Waste and Recovery Operations NESHAP applies only to those specific waste management or recovery operations listed in the rule that receive off-site material. The Off-Site Waste and Recovery Operations NESHAP does not apply to other units or equipment components at the site that are not part of the waste management and recovery operations specified in the rule.

Some NESHAP already regulate air emissions from the off-site management of certain wastes containing HAP. To avoid duplication of requirements in these cases, the Off-Site Waste and Recovery Operations NESHAP does not apply to waste management units that either receive waste from units complying with all applicable regulations under the HON, or receive waste from units complying with all applicable requirements specified by § 61.342(b) under 40 CFR 61 subpart FF—National Emission Standards for Benzene Waste Operations for a plant at which the total annual benzene quantity is greater than or equal to 10 Mg/yr.

2. Resource Conservation and Recovery Act

The EPA establishes rules for the management of solid wastes under authority of the Resource Conservation and Recovery Act (RCRA). Under authority of subtitle C of RCRA, the EPA has established rules in 40 CFR parts 260 through 271 regulating the management of solid wastes determined to be hazardous waste. Municipal solid wastes and other types of nonhazardous solid wastes are regulated by rules established under authority of subtitle D of RCRA in 40 CFR Parts 257 and 258.

The Clean Air Act requires that the requirements of rules developed under the Act be consistent, but avoid duplication, with requirements of rules developed under RCRA. The final Off-Site Waste and Recovery Operations NESHAP includes several provisions to ensure that this directive of the Act is met. First, certain types of wastes regulated under RCRA are excluded outright from the definition of "off-site material" used to determine the applicability of the Off-Site Waste and Recovery Operation NESHAP. These wastes include household waste as defined in 40 CFR 258.2; waste that is generated by remedial activities required under the RCRA corrective action authorities (RCRA section 3004(u), 3004(v), or 3008(h)), CERCLA authorities, or similar Federal or State authorities; and radioactive mixed waste.

The EPA also is fully aware that at some sites managing hazardous wastes not generated onsite, the owner and operator of a hazardous waste treatment, storage, and disposal facility (TSDF) could be subject to both the Off-Site Waste and Recovery Operations NESHAP and RCRA air rules under subparts AA, BB, and CC of 40 CFR parts 264 and 265. At a particular TSDF, some waste management units may be required to use air emission controls under one or the other, but not both, the Off-Site Waste and Recovery Operations NESHAP and the RCRA rules. However, some other waste management units could be subject to using air emission controls to comply with both sets of rules. It is unnecessary for owners and operators of those waste management units subject to air standards under both sets of rules to perform duplicative testing and monitoring, keep duplicate sets of records, or perform other duplicative actions. The EPA has decided that the best way to eliminate any regulatory overlap is to amend the RCRA rules to exempt units that are using air emission controls in accordance with the requirements of Off-Site Waste and Recovery Operations NESHAP or any other applicable NESHAP. The EPA therefore plans to amend the RCRA rules this summer and expects that these revisions will be finalized prior to the effective dates of both rules.

3. Pollution Prevention Act

The Pollution Prevention Act of 1990 (42 U.S.C. 13101 et seq., Pub. L. 101–508, November 5, 1990) establishes the national policy of the United States for pollution prevention. This act declares that: (1) Pollution should be prevented or reduced whenever feasible; (2) pollution that cannot be prevented or reduced should be recycled or reused in an environmentally-safe manner wherever feasible; (3) pollution that cannot be recycled or reused should be treated; and (4) disposal or release into the atmosphere should be chosen only as a last resort.

Opportunities for applying pollution prevention to the Off-Site Waste and Recovery Operations NESHAP are basically limited to treatment to remove HAP (e.g., treatment of waste prior to its disposal). The off-site waste and recovery operations source category consists only of operations used to manage certain materials that have already been generated at other locations such as a manufacturing plant. Thus, there are no pollution prevention practices such as modifying the manufacturing process to reduce the quantity of HAP contained in materials or to recycle the materials back to the process which can be implemented once the material arrives at a site at which waste management and recovery operations subject to the NESHAP are located. The EPA has incorporated the pollution prevention policy into the NESHAP by requiring off-site materials be treated to remove or destroy HAP prior to management in units open directly to the environment. Thus, to the extent possible, pollution prevention has been considered in the development of this rulemaking. The Off-Site Waste and Recovery Operations NESHAP is consistent with the pollution prevention policy.

II. Basis and Purpose

A. Purpose of Regulation

The Clean Air Act was created in part "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population" [Act section 101(b)(1)]. Title III of the 1990 Amendments establishes a control technology-based program to reduce stationary source emissions of HAP. The goal of section 112(d) of the 1990 Amendments is to apply such control technology to reduce emissions and thereby reduce the hazard of the HAP emitted from stationary sources.

This final rule is technology-based (i.e., based on application of MACT to off-site waste and recovery operations). The Clean Air Act strategy avoids the dependence on a risk-based approach which would be limited by incomplete information on what HAP are emitted, what level of emissions is occurring, what health and safety benchmarks are available to assess risk, what health effects may be caused by certain pollutants and how best to model these effects, among other things. Because of these issues a quantitative risk assessment of the potential effects from the HAP emitted from off-site waste and recovery operations is not included in this rulemaking.

The EPA does recognize that the degree of adverse effects to health can range from mild to severe. The extent and degree to which the health effects may be experienced is dependent upon: (1) The ambient concentrations observed in the area; (2) duration of exposures; and (3) characteristics of exposed individuals (e.g., genetics, age, preexisting health conditions, and lifestyle) which vary significantly with the population. Some of these factors are also influenced by source-specific characteristics (e.g., emission rates and local meteorological conditions) as well as pollutant specific characteristics such as toxicity.

On a nationwide basis, the off-site waste and recovery operations at the facilities regulated by this rule emit significant quantities of organic HAP. Implementation of Off-Site Waste and Recovery Operations NESHAP will result in substantial reductions of these organic HAP emissions to the atmosphere. The final Off-Site Waste and Recovery Operations NESHAP will require control of material streams containing 1 or more of 98 specified compounds listed in Table 1 of the rule. This table is subset of the 189 HAP compounds listed in the Clean Air Act. Following is a summary of the potential health and environmental effects associated with exposures, at some level, to the emitted pollutants that would be reduced by this NESHAP.

The range of potential human health effects associated with exposure to organic HAP include cancer, aplastic anemia, pulmonary (lung) structural changes, dyspnea (difficulty in breathing), upper respiratory tract irritation with cough, conjunctivitis, and neurotoxic effects (e.g., visual blurring, tremors, delirium, unconsciousness, coma, convulsions). The EPA estimates that implementation of the Off-Site Waste and Recovery Operations NESHAP will reduce nationwide organic HAP emissions by approximately 43,000 megagrams per year (Mg/yr). Thus, this rule has the potential for providing both cancer and noncancer related health benefits.

By requiring facilities to reduce organic HAP emitted from off-site waste and recovery operations, today's rule will also reduce emissions of volatile organic compounds (VOC). Many VOC react photochemically with nitrogen oxides in the atmosphere to form tropospheric ozone. A number of factors affect the degree to which VOC emission reductions will reduce ambient ozone concentrations.

Human laboratory and community studies have shown that exposure to tropospheric ozone levels that exceed the National Ambient Air Quality Standards (NAAQS) can result in various adverse health impacts such as alterations in lung capacity; eye, nose, and throat irritation; and aggravation of existing respiratory disease. Animal studies have shown increased susceptibility to respiratory infection and lung structure changes.

Among the welfare impacts from exposure to tropospheric ozone levels that exceed the ozone NAAQS are damage to selected commercial timber species and economic losses for commercially valuable crops such as soybeans and cotton. Studies have shown that exposure to ozone can disrupt carbohydrate production and distribution in plants. The reduction in carbohydrate production and allocation can lead to reduced root growth, reduced biomass or yield, reduced plant vigor (which can cause increased susceptibility to attack from insects and disease and damage from cold) and diminished ability to successfully compete with more tolerant species. These effects have been observed in native vegetation in natural ecosystems as well as for selected number of commercial trees and agricultural crops that have been studied.

Although the final Off-Site Waste and Recovery Operations NESHAP does not specifically require control of VOC emissions, the organic emission control technologies upon which the final rule is based also significantly reduce VOC emissions from the source category. The EPA conservatively estimates that implementation of the Off-Site Waste and Recovery Operations NESHAP will reduce nationwide VOC emissions from the source category by 52,000 Mg/yr. Therefore, it is anticipated that additional health and welfare benefits will be associated with this reduction in VOC emissions.

B. Source Category Description

The final Off-Site Waste and Recovery Operations NESHAP only applies to certain waste management and recovery operations at those sites determined to "major sources" as defined in section 112(a)(1) of the 1990 Amendments. This means those plants or facilities where the stationary sources located within a contiguous area and under common control emit or have the potential to emit, considering controls, in total 10 ton/yr or more of any single HAP or 25 ton/yr or more of any combination of

HAP. Waste management and recovery operations receiving materials from off-site that are located at plants or facilities which are area sources are not being regulated at this time. These area sources could be considered at a future date by the EPA for regulation as part of the area source strategy authorized under section 112(k) of the Act.

At proposal, the EPA identified the types of waste management and recovery operations the Agency was considering for inclusion in the off-site waste and recovery operations source category. In response to public comments on the proposed rule and considering decisions made by the Agency since proposal regarding other related rulemakings, the EPA has reconsidered the types of waste management and recovery operations to be regulated under the Off-Site Waste and Recovery Operations NESHAP. The EPA reviewed information used for the source category impact analysis at proposal and evaluated new information provided to the Agency since proposal by commenters. As a result of this review, the EPA decided that the final Off-Site Waste and Recovery Operations NESHAP should not apply to owners and operators of certain operations originally considered to be in the scope of the rulemaking. The rationale for including or excluding specific waste management or recovery operations in the final rule applicability is presented below.

Facilities where operations are conducted to treat, store, and dispose of wastes determined to be hazardous wastes under RCRA may be subject to organic air emission standards under 40 CFR parts 264 and 265. At these facilities, referred to under the RCRA rules as a hazardous waste treatment, storage, and disposal facility (TSDF), a RCRA hazardous waste may be generated at the same site where a TSDF is located, or may be generated at one site and then transported to a TSDF at a separate location. At TSDF where RCRA hazardous waste is received from off-site, certain types of waste management units such as wastewater treatment tanks and hazardous waste recycling units can be exempted from the air standards specified in 40 CFR parts 264 and 265. Many (but not all) TSDF are expected by the EPA to be located at sites that are major sources of HAP emissions. Therefore, the EPA decided that the final Off-Site Waste and Recovery Operations NESHAP be applicable to hazardous waste TSDF as well as to sites where waste or recovery operations managing hazardous waste are performed and the entire operation is exempted under RCRA from the air standards in subparts AA, BB, and CC under 40 CFR parts 264 and 265.

Wastewater treatment facilities are operated by public entities and private companies throughout the United States for the treatment of wastewaters other than those that are RCRA hazardous wastewaters. Publicly owned treatment works (POTW) are not included in the off-site waste operations source category because POTW are listed as a separate NESHAP source category. A review of nationwide survey data by the EPA indicates that privately-owned wastewater treatment plants are operated at some locations in the United States for which the predominate function performed at the site is to treat wastewaters received from off-site. Although a wastewater may not be a RCRA hazardous waste, this wastewater can still contain significant quantities of HAP. The EPA concluded this group of wastewater treatment plants would not be subject to other NESHAP and would likely include some individual facilities that are major sources of HAP emissions.

Used oils from motor vehicles and other sources can contain HAP. While the management of used oils which are recycled is regulated by separate rules promulgated by the EPA under section 3014 of RCRA, these RCRA rules do not specifically establish air standards for used oil management operations. A major portion of the used oil is processed for sale as fuel for burning in boilers, furnaces, and space heaters. The remainder of the recycled used oil is sent to facilities categorized as "used oil re-refiners." At these facilities the used oil is processed into base lube oil stocks and other products. The EPA determined that some used oil re-refining facilities are likely to be major sources of HAP emissions. Consequently, the EPA decided that the final Off-Site Waste and Recovery Operations NESHAP apply to operations that reprocess or re-refine used oil and are subject to regulation under 40 CFR 279 subpart F–Standards for Used Oil Processors and Refiners.

Another recovery operation analogous to used oil re-refining operations is solvent recovery operations. Organic solvents are used in many types of businesses to clean oils, grease, dirt, or other foreign matter from mechanical parts and like items. These used organic solvents are often collected and reprocessed by a company for re-sale as a product or for use by another company as a process feedstock. The EPA expects that some solvent recovery operations could be major sources of HAP emissions. Therefore, the EPA decided that the final Off-Site Waste and Recovery Operations NESHAP be applicable to operations that reprocess or re-refine used solvents except in situations where the operation is not part of a chemical, petroleum, or other manufacturing process that is required to use air emission controls by another subpart of 40 CFR part 63.

Many landfill facilities operated in the United States are used for disposal of waste received from off-site. Municipal solid waste (MSW) landfills are not included in the off-site waste and recovery operations source category because these facilities are listed as a separate NESHAP source category. However, other landfill facilities operate in the United States which are not MSW landfills and accept only nonhazardous wastes. It is the EPA's understanding that landfills used for disposal of construction/demolition debris do not accept wastes containing significant amounts of organic HAP. One commeter submitted to the EPA additional information regarding operations, waste characterizations, and HAP emission estimates from industrial waste landfills. The potential for some industrial waste landfills to be a major source is possible due to special circumstances (e.g., accepting predominately soils contaminated with organics). However, under current operating practices, the EPA concluded that it is unlikely that any of the existing industrial waste landfills nationwide is a major source of HAP emissions. Therefore, the EPA decided that the final Off-Site Waste and Recovery Operations NESHAP not be applicable to any landfill facilities.

Some wastes generated during oil and gas exploration and production (E&P) are subsequently transferred to operations at other locations for centralized treatment or disposal. At proposal, the EPA identified these centralized treatment and disposal operations as waste management operations that would be subject to the Off-Site Waste and Recovery Operations NESHAP. Additional information was received by the EPA from commenters on the proposed rule regarding the nature of E&P operations as presently practiced in oil and gas production fields. Upon further consideration, the EPA decided it is not necessary to include E&P waste operations under the final Off-Site Waste and Recovery Operations NESHAP. Instead, the EPA is planning to address these sources under the Oil and Gas Production NESHAP currently being developed by the Agency.

C. Definition of Affected Source

For the purpose of implementing NESHAP under 40 CFR Part 63, "affected source" is defined to mean the stationary source, or portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to section 112 of the Act. Each relevant standard is to designate the "affected source" for the purposes of that standard. Within a source category, the EPA decides which HAP emission sources (i.e., emission points or groupings of emission points) are most appropriate for establishing separate emission standards in the context of the Clean Air Act statutory requirements and the industry operating practices for the particular source category.

At proposal, the EPA considered different options for defining "affected source" for the Off-Site Waste and Recovery Operations NESHAP ranging from using a broad definition (e.g., the entire plant or facility site) to narrow definitions (e.g., individual emission points) (59 FR 51923). The EPA proposed using the narrowest definition of affected source for the Off-Site Waste and Recovery Operations NESHAP by defining the affected sources to be each of the individual emission point types identified for the rule (e.g., each individual tank). The EPA received comments that its proposed designation of affected source for the Off-Site Waste and Recovery Operations NESHAP was too restrictive and would complicate an owner's or operator's determination of when reconstruction of a source has occurred triggering the requirement to comply with the standards for new sources. Upon consideration of these comments, the EPA decided that using a broader definition is a more appropriate approach for defining the affected sources for the Off-Site Waste and Recovery Operations NESHAP.

Designating the affected source for the Off-Site Waste and Recovery Operations NESHAP as the entire plant site was rejected by the EPA. This approach would allow the MACT floor to be established by the plant-wide emission reduction indicative of the level that is achieved by the best performing 12 percent of the existing sources. Application of a single MACT floor to all of the emission points located at the plant site and selected for control under the Off-Site Waste and Recovery Operations NESHAP would be difficult, if not technically infeasible, for several reasons. First, the EPA's data base for the off-site waste and recovery operations NESHAP lacks sufficient data regarding the type of information required to implement this approach for the source category. Also, the mechanism by which organic HAP are emitted to the atmosphere and the types of controls relevant for reducing these air emissions is not the same for all of the emission point types identified for off-site waste and recovery operation source category. For example, covers frequently are installed on tanks to control air emissions while work practice programs are used to control air emissions from equipment leaks. Furthermore, not all waste management and recovery operations at a particular plant site may be subject to this rulemaking because they are not used to manage off-site material, as defined in the rule.

A second approach is to designate several different affected sources by grouping the similar emission points for each waste management and recovery operation used at the plant site to manage off-site materials. Under this approach, each affected source consists of the group of similar emission point types for the entire sequence of units or equipment components in which a particular off-site material is managed at the site. An example of such a group of emission points is the collection of tanks, containers, surface impoundments, and similar units that are used at a site to manage a waste from the point where the waste is received at the site to the point where the material enters an on-site disposal unit not regulated under this rule (e.g., waste incinerator, landfill unit). An individual MACT floor is established for the entire group of emission points comprising each designated affected source.

This second approach offers several advantages for implementing the Off-Site Waste and Recovery Operations NESHAP. Designating the affected source to be a group of similar emission point types ensures that air emission controls of equivalent performance are applied at the same time to all of the units used to manage a particular off-site material stream. In contrast, had the EPA maintained the proposed designation for the affected sources (i.e., each individual emission point), situations could have occurred where an owner or operator was required to use controls on a new tank (or other newly installed unit) downstream of existing tanks managing the same off-site material but not required to use air emission controls under the rule. This would be an inefficient application of air emission controls since a significant portion of the HAP contained in the off-site material likely would have escaped to the atmosphere before the material entered the controlled unit. The approach also provides a logical grouping of equipment by which an owner or operator readily can determine when reconstruction of the affected source triggers the air emission control requirements under the rule for new sources. Therefore, for the final off-site waste and recovery operations NESHAP, the EPA decided to designate the affected sources by three distinct groups of the emission point types for the waste management and recovery operation subject to using air emission controls under the rule.

The first group of similar emission points designated to be an affected source for the Off-Site Waste and Recovery Operations NESHAP is the group of tanks, containers, surface impoundments, oil-water and organic-water separators, individual drain systems and other stationary material conveyance systems used to manage off-site material in each of the waste management and recovery operations specified in the rule that are located at the plant site. The units regulated under this affected source designation are collectively referred to hereafter in this notice as "off-site material management units."

The second the group of similar emission points designated to be an affected source for the Off-Site Waste and Recovery Operations NESHAP is process vents on units used to manage off-site material in each of the waste management and recovery operations specified in the rule that are located at the plant site. As defined for the rule, a process vent is an open-ended pipe, stack, or duct used for passage of gases, vapors, or fumes to the atmosphere and this passage is caused by mechanical means (such as compressors or vacuum-producing systems) or by process-related means (such as volatilization produced by heating). A stack or duct used to exhaust combustion products from an enclosed combustion unit (e.g., boiler, furnace, heater, incinerator) is not a process vent for this rulemaking.

The third group of similar emission points designated to be an affected source for the Off-Site Waste and Recovery Operations NESHAP is the group of equipment components prone to emitting HAP as a result of equipment leaks. This group of equipment consists of pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves and lines, valves, connectors, and instrumentation systems that contain or contact off-site material in each of the waste management and recovery operations specified in the rule that are located at the plant site.

D. MACT Floor Determination

Specific statutory directives set out in section 112 of the 1990 Amendments require the EPA to establish standards under a NESHAP to reflect application of maximum achievable control technology (MACT). A statutory minimum or baseline level of HAP emission control that the EPA can select to be MACT for a particular source category is defined under section 112(d)(3) of the 1990 Amendments, and is referred to as the "MACT floor." For new sources, the MACT floor is the level of HAP emission control that is achieved in practice by the best controlled similar source. The statute allows standards under a NESHAP for existing sources to be less stringent than standards for new sources. The determination of MACT floor for existing sources is dependent on the nationwide number of existing sources within the source category. The off-site waste and recovery operations source category contains more than 30 existing sources nationwide. For a source category with 30 or more existing sources, the MACT floor is the average emission limitation achieved by the best performing 12 percent of the existing sources.

Once the MACT floors are determined for new and existing sources in a source category, the EPA must establish standards under a NESHAP that are no less stringent than the applicable MACT floors. The Administrator may promulgate standards that are more stringent than the MACT floor when such standards are determined by the EPA to be achievable taking into consideration the cost of implementing the standards as well as any non-air quality health and environmental impacts and energy requirements.

1. MACT Floor for Existing Sources

a. *Off-site Material Management Units.* As discussed in Section II.C of this notice, the EPA has revised the affected source designation for the off-site material management units at a plant site subject to the Off-Site Waste and Recovery Operations NESHAP. For the final rule, the designated affected source is the group of off-site material management units (e.g., tanks, surface impoundments, containers, oil-water and organic-water separators, individual drain systems and other stationary transfer systems) in each of the waste management and recovery operations specified in the rule that are located at the plant site. Because the MACT floor determination for these off-site material management units used at proposal was based on the application of the floor to individual units rather than the group of units, the EPA reconsidered the MACT floor determination following revision of the affected source designation for the rule.

The EPA reviewed site-specific information in the source category data base regarding existing air emission control practices for off-site material management units. In addition, the EPA considered the air emission controls that off-site material management units could be required to use by new air rules promulgated since the Off-Site Waste and Recovery Operations NESHAP was proposed (e.g., air rules for hazardous waste tanks, surface impoundments, and containers in subpart CC under 40 CFR parts 264 and 265).

Based on the EPA's review of the air emission control information in the data base for the off-site waste and recovery operations source category, the Agency concluded that most groups of off-site material management units (significantly more than 12 percent) manage off-site material, at a minimum, in covered units. A portion of these off-site material management units use more effective air emission controls such as venting the covered unit to a control device. However, based on the information available to Agency, the EPA cannot definitively determine whether the higher level of air emission control achieved by that portion of units using controls in addition to covers is representative of the average of the top 12 percent of all existing off-site material management units. Thus, the EPA decided to establish the MACT floor control technology for the existing off-site material managements as use of a cover.

For other source categories, the EPA has established whether a particular unit warrants the use of air emission controls under rules for the source category on the basis of a characteristic parameter for the materials placed in the unit (e.g., vapor pressure or organic concentration). The EPA believes that using this approach provides an effective and enforceable means for identifying the units that warrant air emission controls while excluding those units for which installation of controls is unnecessary because the units have no or little potential for HAP emissions. Consequently, to complete the definition of the MACT floor for this affected source, an applicability cutoff provision (referred to hereafter in this notice as an "action level") is needed to identify which off-site material management units use the selected air emission controls.

Establishing an action level required first selecting an appropriate format for the action level that allows the value to be relatively simple to be determined by an owner or operator and expeditiously checked by EPA or State enforcement personnel. For the proposed rule, the EPA evaluated several possible action level formats and decided that an action level based on the volatile organic HAP concentration (VOHAP) of the off-site materials is appropriate for identifying those units which emit HAP and warrant the application of air emission controls.

The data available to the EPA at this time for the off-site waste and recovery operations source category are insufficient to perform a rigorous statistical analysis for the purpose of establishing the minimum VOHAP concentration value for off-site material management units currently using air emission controls. From a qualitative perspective, application of air emission controls under the Off-Site Waste and Recovery Operations NESHAP is not needed when a material managed in an uncontrolled unit has little or no potential for HAP emissions. In general, these off-site materials can be characterized as materials having low VOHAP concentrations.

The EPA considered a range of possible values to establish the VOHAP concentration limit for the Off-Site Waste and Recovery Operations NESHAP. The EPA proposed a VOHAP concentration value of 100 ppmw to be used as the action level for the rule. However, in proposing this value, the EPA acknowledged that some off-site material management units subject to the Off-Site Waste and Recovery Operations NESHAP could be subject to other NESHAP and NSPS with differing action levels. The EPA therefore requested comment on establishing the VOHAP concentration action level for the rule at 100 ppmw, as well as information that could be used to support alternative action levels such as 500 ppmw (59 FR 51924). The EPA received comments stating that the 100 ppmw VOHAP concentration action level proposed by the EPA for the Off-site Waste and Recovery Operations NESHAP is inappropriate and inconsistent with other applicable NSPS and NESHAP and recommending that the EPA select a higher action level for the rule.

The EPA considered the comments received regarding the proposed action level, other revisions to the final Off-Site Waste and Recovery Operations NESHAP, and changes that the EPA anticipates making for other waste and wastewater related rules. The EPA concluded that a reexamination of the MACT floor action level determination was appropriate. Based on consideration of the information available to the Agency regarding HAP emissions from waste management and recovery operations receiving off-site material, the EPA has concluded that a VOHAP concentration value of 500 ppmw best represents the MACT floor for existing off-site material management units using covers.

Having established the MACT floor for existing off-site material management units, the EPA consider control options that are more stringent than the MACT floor based on the air emission control requirements under existing EPA rules for HAP emission sources similar to off-site material management units (e.g., air standards for tanks under the HON, air standards for tanks, surface impoundments, and containers at hazardous waste TSDF under 40 CFR parts 264 and 265). These existing rules establish requirements for application of controls more effective than covers on certain categories of tanks, containers, and other units based on air emission potential related characteristics such as the capacity of the unit and the vapor pressure of the material managed in the unit. In the development of these other rules, the EPA determined for these particular units that the more effective controls are appropriate for control of the pollutants emitted from the units and that implementing these controls is cost-effective. Therefore, for the Off-Site Waste and Recovery Operations NESHAP the EPA concluded that it is reasonable to establish standards for certain off-site waste management units that are more stringent than the MACT floor when such standards are determined by the EPA to be appropriate and consistent with the control requirements for similar HAP emission sources under other existing EPA rules.

b. *Process Vents.* The MACT floor for affected sources consisting of process vents is the same MACT floor used at proposal with one revision to the action level. As discussed in the proposal notice (59 FR 51925), this MACT floor is based on adapting, to the extent applicable and relevant to the Off-Site Waste and Recovery Operations NESHAP, the air emission standards for process vents on hazardous waste management units and recycling units under 40 CFR 264 subpart AA and 40 CFR 265 subpart AA. The action level identifying application of air emission controls on process vents has been revised to be consistent with the 500 ppmw action level selected for MACT floor for off-site material management units. The control technology selected for the floor is connecting the process vents to appropriate control devices such that an organic HAP emission control efficiency of 95 percent or more is achieved.

c. *Equipment Leaks.* The same MACT floor selected at proposal is used for affected sources consisting of the group of equipment components consisting of pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves and lines, valves, connectors, and instrumentation systems that contain or contact off-site material in each of the waste management and recovery operations specified in the rule that are located at the plant site. The MACT floor requires control of HAP emissions from equipment leaks by implementing leak detection and repair (LDAR) work practices and equipment modifications for those equipment components containing or contacting off-site material having a total organic HAP concentrations equal to or greater than 10 percent. As discussed in the proposal notice (59 FR 51925), the EPA selected this MACT floor based on the existing equipment leak air standards applicable to waste management operations to treat hazardous waste under 40 CFR 264 subpart BB and 40 CFR 265 subpart BB. The requirements of the MACT floor selected for the Off-Site Waste and Recovery Operations NESHAP are also consistent with existing NSPS equipment leak standards (e.g., 40 CFR 60 subparts VV, GG, and KK) and for certain NESHAP equipment leak standards (e.g., 40 CFR 61 subpart V).

2. MACT Floor for New Sources

At proposal, the EPA concluded that the MACT floor determined for existing sources also represents the HAP emission control that is achieved in practice by the best controlled similar sources in the off-site waste and recovery operation source category with the exception of new tanks. The MACT floor for new tanks was established based on the level of emission control that is required for new tanks under the HON (i.e., 40 CFR 63 subpart G). The EPA still believes these are appropriate decisions for establishing the MACT floor for new sources under the revised affected source designations selected for the final Off-Site Waste and Recovery Operations NESHAP.

E. Format of Standards

Section 112 of the Act requires promulgation of an emission standard whenever it is feasible; section 112(h) states that "if it is not feasible in the judgment of the Administrator to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, the Administrator may, in lieu thereof, promulgate a design, equipment, work practice, or operational standard, or combination thereof * * *" The term "not feasible" is applicable if the emission cannot be captured and vented through a vent or stack designed for that purpose, or if the application of a measurement methodology is not practicable because of technical or economic limitations. Alternative formats were considered for the three types of affected sources defined for the Off-Site Waste and Recovery Operations NESHAP.

For off-site material management units, the EPA concluded that a numerical emission standard would not be feasible because it would be difficult to capture and measure emissions from these units for the purpose of evaluating compliance. Therefore, the format of the rule for these affected sources includes a combination of design, equipment, work practice, and operational standards. For process vents, the EPA considered two alternative numerical emission limitation formats. These emission limitation formats are a mass percent reduction of HAP from process vents and a mass limitation of HAP emission from process vents. The percent reduction format was chosen for the Off-Site Waste and Recovery Operations NESHAP because it is the best representation of control technology performance, and provides flexibility to owners and operators. This format is based on the HAP removal efficiency of conventional air pollution control devices and any control technology that can achieve the reduction efficiency can be applied to any configuration of process vents to comply with the standards. For equipment leak sources (i.e., pumps, valves, etc.), numerical emission standards are not feasible and the final standards for equipment leaks are in the format of work practice and equipment specifications.

F. Unit-Specific Subparts

The regulatory text that EPA proposed for the Off-Site Waste and Recovery Operations NESHAP included all of the requirements for the rule in a single subpart to be added to 40 CFR part 63. The EPA decided to promulgate the final requirements for the Off-Site Waste and Recovery Operations NESHAP as a series of six new subparts added to 40 CFR part 63. These subparts are Subpart DD—National Emission Standards for Off-Site Waste and Recovery

Operations, Subpart OO—National Emission Standards for Tanks—Level 1, Subpart PP—National Emission Standards for Containers, Subpart QQ—National Emission Standards for Surface Impoundments, Subpart RR—National Emission Standards for Individual Drain Systems, and Subpart VV—National Emission Standards for Oil-Water Separators and Organic-Water Separators.

The air emission control requirements promulgated in Subparts OO, PP, QQ, and RR are derived from and incorporate public comments on the air emission control requirements originally proposed in Subpart DD for tanks, surface impoundments, containers, and individual drain systems. In addition, an individual subpart (Subpart VV) has been added to the final rule specifying air emission control requirements for oil-water separators and organic-water separators (referred to collectively hereafter as "separators"). At proposal, the EPA assumed that if a separator was subject to using air emission controls under the Off-Site Waste and Recovery Operations NESHAP it would be considered a type of tank. As such, this separator would have been required to meet the air emission control requirements specific in the rule for tanks. In actual practice, application of these controls to a separator in strict accordance with the requirements specified in the proposed rule may not be practical given special design and operating characteristics for separators. Therefore, the EPA concluded that it is appropriate to add an individual subpart specifically for separators that will provide a level of air emission control comparable to the control level established for tanks yet address the special design and operating features of separators.

The EPA decided to promulgate the air emission control requirements for selected types of units in individual subparts for ease of reference, administrative convenience, and as a step towards assuring consistency of the air emission control requirements applied to similar types of units under different rules. The EPA believes adopting the format of codifying the air emission control requirements for specific unit types in individual subparts will provide significant advantages to both regulated industries and to the Agency.

By today's notice, the air emission control requirements promulgated in Subparts OO, PP, QQ, RR, and VV presently are applicable only to units in waste management and recovery operations regulated under Subpart DD. For application of the unit-specific subparts to new rules for other source categories, the EPA is planning to reference these unit-specific subparts to specify the air emission control requirements for the units subject to using controls under the rule. The applicability, action level, designation of which units are required to use controls, treatment requirements, and any other requirements specific to the source category will be in the regulatory text under the source-specific subpart (i.e., the same format that is being promulgated today for the Off-Site Waste and Recovery Operations NESHAP) Also, the EPA may, in the future, amend existing NSPS, NESHAP, or other rules to reference the appropriate unit-specific subparts, whether as a replacement for the air emission control requirements in the existing rule or as an alternative means of compliance. In these rulemaking cases, the EPA will first propose the Agency's intention of applying the requirements of Subparts OO, PP, QQ, RR, and VV, as applicable, to other rules. The public will have the opportunity to comment on the appropriateness and application of using these unit-specific subparts for the particular sources regulated by the new or amended rule.

A major advantage for using the unit-specific subpart format for NESHAP and other air rules is for those situations when more than one rule applies to a particular source (e.g., a tank) and each of these rules requires use of air emission controls on that source (e.g., a fixed roof). By establishing unit-specific subparts, all of the rules will reference a common set of design, operating, testing, inspection, monitoring, repair, recordkeeping, and reporting requirements for air emission controls. This eliminates the potential for duplicative or conflicting air emission control requirements being placed on the unit by the different rules, and assures consistency of the air emission control requirements applied to the same types of units.

In the future, the EPA may decided it is appropriate to amend the air emission control requirements for different types of units to reflect improvements in control technologies or to add other control alternatives. When this occurs, using a unit-specific subpart format will simplify the amendment process and ensure that all source-specific subparts are amended in a consistent and timely manner. To incorporate the desired changes in the air emission control requirements, the EPA will need to amend only one subpart instead of amending each of the individual source category specific subparts. The identical amended regulatory language will automatically apply to all of the source category specific subparts that reference the amended unit-specific subpart. The amendments will become effective for all of the source category specific subparts at the same time.

G. Alternative Test Method Validation Procedure

As part of today's action, the EPA is promulgating a new validation procedure titled "Alternative Validation Procedure for EPA Waste Methods" that can be used as an alternative to Method 301 in Appendix A under 40 CFR part 63 for the validation of a test method established by the EPA Office of Water (OW) or the EPA Office of Solid Waste (OSW) when this test method is used for air emission standards. The alternative method is less rigorous than Method 301. A proposed version of the alternative validation procedure was made available for public review and comment on August 14, 1996 (60 FR 41870) as part of the information placed in the public docket and being considered by the Agency in revising air standards in the RCRA rules. Comments on the information were accepted by the EPA through October 13, 1995. No significant comments were received by the EPA regarding the proposed alternative validation procedure.

For the Off-Site Waste and Recovery Operations NESHAP, the EPA decided it is appropriate to allow organic concentration data test that are validated in accordance with the alternative validation method to be used as direct measurement data. Today's action promulgates "Alternative Validation Procedure for EPA Waste and Wastewater Methods" as Appendix D in 40 CFR part 63. This final version of Appendix D is the same as the proposed version. As promulgated, the alternative validation procedure is to be applied exclusively to those EPA methods developed by OW and OSW when the method is being applied to EPA air emission standards. If an owner or operator wants to use a test method not issued by either of these two EPA offices as an alternative to the test methods specifically listed in the rule, this test method must be validated according to the procedures in Sections 5.1 and 5.3 of Test Method 301.

III. Summary of Impacts

The EPA estimates that implementation of the Off-Site Waste and Recovery Operations NESHAP will reduce HAP emissions from the source category on a nationwide basis by approximately 82 percent, from 52,000 Mg/yr to 9,000 Mg/yr.

The EPA also estimated the reduction in VOC emissions from the source category. The Off-Site Waste and Recovery Operations NESHAP is estimated to reduce nationwide VOC emissions by approximately 52,000 Mg/yr. This value was calculated using the estimated nationwide HAP emission value times a value of approximately 1.2 to represent the ratio of VOC-to-HAP constituents in the off-site material regulated under the rule. The value for this ratio was derived from information in the data base for the off-site waste and recovery operations source category. This derived value is lower than VOC-to-HAP ratios indicated for other HAP emission sources. Thus, the procedure used to estimate nationwide VOC emissions for the source category is considered by the EPA to be conservative and may understate the actual quantity of VOC emission reduction that will occur from implementing the Off-Site Waste and Recovery Operations NESHAP.

The EPA prepared estimates of the cost to owners and operators of implementing the requirements of the final Off-Site Waste and Recovery Operations NESHAP at plant sites the EPA expects are likely to be subject to the rule. The total nationwide capital investment cost to purchase and install the air emission controls that are required by the rule is estimated by the EPA to be approximately $42 million. The total nationwide annual cost of the Off-Site Waste and Recovery Operations NESHAP is estimated to be approximately $18 million per year. This corresponds to an average cost of approximately $420 per megagram of HAP controlled.

Price increases in affected markets are projected at less than 0.01 percent of baseline price, and decreases in production are projected at less than 0.1 percent. No businesses or facilities are projected by the EPA to close as a result of implementing the requirements of the final rule. For more information regarding the economic analysis, consult the Economic Impact Analysis of National Emissions Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations available in the docket (Docket No. A–92–16).

IV. Summary of Responses to Major Comments

A summary of responses to selected major comments received on the proposed rule is presented below. Additional discussion of the EPA's responses to public comments is presented in the Basis and Support Document (see ADDRESSES section of this preamble).

A. Rule Applicability

Comment: Many commenters stated that the proposed applicability of the Off-Site Waste and Recovery Operations NESHAP would be too broad and should be narrower. Major reasons presented by individual commenters include: (1) the rule's applicability was expanded by the EPA beyond the scope of the initial source category listing without providing adequate notice to the public; (2) including operations managing "recoverable materials" received from off-site in the rule's applicability discourages recycling, provides a disincentive to pollution prevention, and is inconsistent with the Pollution Prevention Act; and (3) range of facility types subject to the rule is too broad because many of these facility types have significantly different HAP emission sources.

Response: The EPA proposed that the Off-Site Waste and Recovery Operations NESHAP be applicable to owners and operators of facilities that are "major sources" (as defined in 40 CFR 63.2) and at which operations are conducted to manage, convey, or handle "wastes" or "recoverable materials" received from off-site and containing specific organic HAP constituents (as specified in Table 1 of the rule). Under the proposed rule, waste management and recovery operations listed by the EPA as separate NESHAP source categories were specifically exempted from the requirements of the rule.

The EPA has not expanded the applicability of the Off-Site Waste and Recovery Operations NESHAP beyond the scope of the initial source category listing without providing adequate notice to the public. The EPA published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** on December 20, 1993 (58 FR 66336) announcing the EPA's intent to develop a NESHAP for the off-site waste and recovery operations source category. In the ANPR, the EPA provided a general description of the types of facilities the EPA planned to regulate under this rulemaking (see 58 FR 66337). The EPA further provided a definition of "waste" that the Agency intended to be used for this rulemaking which included materials managed prior to being recycled. Thus, the Agency clearly expressed its intent in the ANPR to include recovery operations in the scope of this rulemaking.

As described in Section II.D.3 of this notice, the Pollution Prevention Act of 1990 (42 U.S.C. 13101 *et seq.*, Pub. L. 101–508, November 5, 1990) establishes the national policy of the United States for pollution prevention. The EPA believes that applying the Off-Site Waste and Recovery Operations NESHAP to units managing materials that are collected and transported to a facility for subsequent reprocessing or recycling is fully consistent with the Pollution Prevention Act. The final rule neither discourages recycling nor provides a disincentive to pollution prevention. The final rule does not prohibit or discourage an owner or operator from continuing to use the recovery operation; the rule only requires that the owner or operator control the organic HAP emitted to the atmosphere from the operation. This is consistent with the Pollution Prevention Act's declaration that operations to recycle or reuse materials be performed in an environmentally-safe manner.

In proposed regulatory text, the EPA split the definition of "waste" the Agency stated in the ANPR, into two separate terms; "waste" being defined as materials managed prior to being discarded or discharged, and "recoverable materials" being defined as materials managed prior to being recycled, reprocessed, or reused. Based on the comments received by the EPA, it appears that commenters interpreted the proposed regulatory text using these terms to extend the applicability of the rule to certain types of recycling and recovery operations that the Agency never intended to be subject to this rulemaking. To clarify the EPA's intent, the general term "recoverable material" is not used in the final rule. Instead, the EPA has added to the final rule the new terms "used oil" and "used solvent" to define the specific types of recycled or reprocessed materials subject to the rule. In each case where the final Off-Site Waste and Recovery Operations NESHAP is applicable to a used oil or used solvent recovery operation, the EPA has included this operation because the Agency has concluded that the operation when uncontrolled can be a significant source of HAP emissions and the operation will not be regulated by another NESHAP.

The EPA disagrees that the applicability of the Off-Site Waste and Recovery Operations NESHAP is too broad because many of the types of waste management and recovery operations included in the source category have significantly different HAP emission sources. In the **Federal Register** notice for the proposed rule, the EPA provided examples of specific types of facilities included in the off-site waste and recovery operations source category (see 59 FR 51920). At all of

these facilities, similar types of units are used to manage wastes or the other materials subject to the rule (e.g., tanks, containers, surface impoundments). Organic HAP are emitted from each type of unit by the same emission mechanisms regardless of the type of facility at which the unit is located. Common organic HAP control technologies are applicable to the units used at all of the off-site waste and recovery operations facility types. There are no significant differences in the organic HAP emissions or the control technologies applicable to controlling these emissions from the off-site waste and recovery operations facility types subject to this rulemaking.

Many commenters mistakenly interpreted the regulatory language of the proposed rule to extend the applicability of the Off-Site Waste and Recovery Operations NESHAP to facilities that the Agency never intended to be subject to this rulemaking. In response to the different interpretation of the proposed rule's applicability by commenters versus the Agency's intent for this rulemaking, the EPA reviewed the proposed regulatory text for the rule. The EPA decided to revise the format to be inclusive by specifically identifying those waste management and recovery operations that are subject to the Off-Site Waste and Recovery Operations NESHAP. Owners and operators of waste and recovery operations not explicitly included in the set of conditions specified for the final Off-Site Waste and Recovery NESHAP are not subject to the rule.

B. Data Base Used for Rule Development

Comment: Commenters stated that the data base used by the EPA to develop the Off-Site Waste and Recovery Operations NESHAP is not representative of all of the waste management recovery operations that would be potentially subject to the rule; and the information in the data base is not representative of current waste management and recovery operation practices.

Response: In the development of the Off-Site Waste and Recovery Operations NESHAP, the EPA used the best information available to the Agency. Earlier in the development of the rule, the EPA recognized that more up-to-date data and additional information would be beneficial for evaluating the different types of waste management and recovery operations included in the source category and for estimating the impacts associated with this rulemaking. The EPA made several requests for information from the public to supplement the Agency's information regarding the off-site waste and recovery operations source category.

Prior to proposal of the Off-Site Waste and Recovery NESHAP, the EPA announced in the ANPR the data bases the Agency was using for the impact analyses and requested information from the public (see 58 FR 66338 and 66339). The EPA specifically requested more information on off-site material characteristics (types, quantities, organic composition), operating practices, and waste and recovery operation emission points and air emission data. No additional information regarding these topics was received by the EPA.

At proposal, the EPA requested additional information to improve the Agency's understanding and profile of the waste management and recovery operations intended to be addressed by this rulemaking (see 59 FR 51921). Additional information was provided to the EPA by commenters regarding the following topics: (1) industrial waste landfill operations, waste characterizations, and HAP emissions; (2) general practices for waste management and recovery operations commonly used at chemical manufacturing plants and petroleum refineries; and (3) general waste management practices used at oil exploration and production leases. In addition, the EPA obtained additional information regarding used solvent collection and management practices for businesses that reprocess used solvent for sale to other users.

The data base used for the impact analysis for the rulemaking was compiled by collecting information related to off-site waste and recovery operations from nationwide surveys of hazardous waste TSDF, wastewater treatment facilities, and used oil management facilities that the EPA conducted for other rulemakings. The EPA is fully aware that off-site waste and recovery operations have changed since the surveys were conducted. These changes are the result of multiple factors including reductions in the quantities of certain wastes sent to waste management facilities as waste minimization programs have been implemented by generators; changes in waste disposal practices to comply with RCRA land disposal restrictions and other rules; and changes in ownership arrangements of waste management and recovery operations located within large petrochemical and other manufacturing complexes. In recognition of these changes, the EPA adjusted the data base to reflect these changes to the extent possible using other information available to the Agency.

The EPA reviewed the data base used to develop the Off-Site Waste and Recovery Operations NESHAP with respect to the Agency's decisions regarding the rule revisions made to the applicability of the final rule. The EPA believes that the data base contains sufficient information regarding the types of the waste management and recovery operations that are subject to the final Off-Site Waste and Recovery Operations NESHAP to support the Agency's decisions for this rulemaking.

C. Land Disposal Unit Requirements

Comment: Commenters disagreed with the proposed requirement to treat wastes prior to being placed in land disposal units because they state that the requirement is inconsistent with the RCRA land disposal restrictions and any solid waste land disposal restrictions should be promulgated by the EPA's Office of Solid Waste.

Response: The EPA proposed that, prior to being placed in land disposal units, owners and operators treat those off-site materials having a VOHAP concentration equal to or greater than the action level. Based on the EPA's decisions regarding applicability of the rule to landfills and considering the existing requirements under RCRA land disposal restrictions, the EPA concluded that the proposed requirement is not needed for the Off-Site Waste and Recovery Operations NESHAP. The final rule places no restrictions on the disposal of wastes in land disposal units nor places any other air emission control requirements on these units.

D. Off-Site Material Determination Test Methods

Comment: Commenters stated that proposed requirements for determining the average VOHAP concentration of a off-site material use inappropriate test methods and are excessive, impractical, and too costly to implement at many facilities potentially subject to the rule.

Response: Under the Off-Site Waste and Recovery Operations NESHAP, air emission controls are not required for those off-site material management units located in the affected source when the unit manages off-site material having a VOHAP concentration less than the action level. As part of the procedure for determining the VOHAP concentration of the off-site material, the EPA proposed that an owner or operator could use either: (1) Direct measurement using Method 305 of samples of the material collected in accordance with the procedures specified in the rule; or (2) the owner's or operator's knowledge of the VOHAP concentration in material based on information, as specified in the rule.

For the final Off-Site Waste and Recovery Operations NESHAP, the EPA decided to add other appropriate test methods that an owner or operator can choose to use for direct measurement of the VOHAP concentration of an off-site material. In addition, the EPA has made certain other changes to facilitate the use of organic concentration data obtained using other alternative test methods not specifically listed in the rule. The EPA believes that the changes incorporated into waste determination requirements in conjunction with changes to the applicability and action level for the final Off-Site Waste and Recovery Operations NESHAP provide a range of options for determining the VOHAP concentration of an off-site material such that every owner and operator of facilities subject to the final rule has available practical and inexpensive waste determination alternatives.

The EPA developed Method 305 to provide a relative measure of the potential for specific volatile organic compounds to be emitted from waste materials. In developing Method 305, the EPA solicited public comments on a proposed version of the method and addressed these comments in the final version of the method (59 FR 19402). Method 305 has been validated and the EPA considers Method 305 to be an appropriate method for determining the VOHAP concentration of off-site materials subject to the Off-Site Waste and Recovery Operations NESHAP.

Method 305 uses the same waste sample collection procedures and sample recovery conditions established by Method 25D (40 CFR part 60, Appendix A). When using Method 25D, the waste sample is analyzed to determine the total concentration, by weight, of all organics recovered from the waste sample. When using Method 305, the waste sample is analyzed to determine the purged concentration, by weight, of only those specific hazardous air pollutants in the waste sample which are listed in Table 1 in the rule (i.e.; the VOHAP concentration). Any hazardous air pollutant or organic constituent that may be contained in the sample but is not listed in Table 1 in the rule is not counted in the VOHAP concentration determination. For the off-site materials typically managed in the operations subject to the Off-Site Waste and Recovery Operations NESHAP, the EPA concluded that using Method 25D is a reasonable alternative to using Method 305 for the purpose of this rulemaking. Therefore, the final Off-Site Waste and Recovery Operations NESHAP includes use of Method 25D as one of the test methods an owner or operator may choose among for direct measurement of the VOHAP concentration of an off-site material.

Other test methods have been developed by the EPA for use in rulemakings under the Clean Water Act that measure the concentration of organic pollutants in municipal and industrial wastewaters (see Appendix A to 40 CFR part 136). Commenters suggested that certain of these test methods are applicable to EPA air rulemakings affecting wastewater management units. After extensive review, the EPA decided that as alternatives to using Method 305 or Method 25D for direct measurement of VOHAP concentration in an off-site material for the Off-Site Waste and Recovery Operations NESHAP it is appropriate to add Methods 624, 1624, and 1625 (all contained in 40 CFR 136, Appendix A) when used under certain specified conditions. Because these methods measure the total concentration of the HAP constituents listed in Table 1 of the rule, owners and operators may choose to "correct" these measured values to equate to the values that would be measured using Method 305. This is accomplished by multiplying the total concentration measured values times the appropriate "f_m factor" presented in Table 1 of the rule to obtain the Method 305 VOHAP concentration.

Sufficient recovery study results are available for Methods 1624 and 1625 to correct for possible bias, and therefore, these methods are considered adequate by the EPA to characterize the concentration of a off-site material sample. In addition, Method 624 is appropriate provided the initial calibration of the analytical system is performed with the target compounds to be measured. However, none of these methods specifies a sample collection and handling procedure that is considered by the EPA adequate to minimize the volatilization of organics from the sample prior to analysis. Therefore, to ensure that an adequately representative sample of an off-site material is analyzed by the method, an owner or operator that chooses to use either Method 624, 1624, or 1625 for the Off-Site waste and Recovery Operations NESHAP is required to develop and follow a written sampling plan. This plan describes a step-by-step procedure for collecting representative samples of the off-site materials such that material integrity is maintained and minimal loss of organics from the sample occurs throughout the collection and analysis process. An example of an acceptable sampling plan is one that incorporates sample collection and sample handing procedures similar to those specified in Method 25D. The sampling plan is to be maintained on-site in the facility records.

The EPA proposed use of knowledge-of-the-waste, allowing a facility owner or operator to use test data obtained using a test method other than Method 305 provided that the method was validated in accordance with Method 301 (40 CFR part 63, Appendix A). Under this application of Method 301, the owner or operator would be validating the alternative test method results as compared to test results obtained using Method 305. Since proposal, the EPA decided to allow organic concentration data test that are validated in accordance specifically with Sections 5.1 and 5.3 of Method 301 to be used as direct measurement data. This makes validation of the alternative test method a self-check of the method being validated. Also, if appropriate, owners and operators may choose to "correct" values measured by the alternative test method to equate to the values that would be measured using Method 305 by multiplying the measured values times the appropriate "f_m factor" presented for each hazardous air pollutant listed in Table 1 of the rule.

Finally, as discussed in Section II.G of this notice, the EPA is promulgating today a less rigorous validation procedure, "Alternative Validation Procedure for EPA Waste Methods," in Appendix to 40 CFR part 63 as an alternative to Method 301 for the validation of a test method established by the EPA Office of Water (OW) or the EPA Office of Solid Waste (OSW) when this test method is used for air emission standards. The EPA decided it is appropriate to allow organic concentration data test that are validated in accordance with this method to be used as direct measurement data.

E. Container Air Emission Controls

Comment: Commenters stated that proposed air emission control requirements for containers are commercially unavailable or impractical to implement. Also, commenters stated that the requirements should be consistent with the container air emission control requirements under the RCRA rules.

Response: Since proposal, the EPA has obtained more information on the practices and equipment currently used to manage waste and used solvents in containers. Based on consideration of this information, the EPA decided to

revise the air emission control requirements for containers to better reflect the container organic HAP emission potential, the various container types, and the common container management practices used for off-site waste and recovery operations. The EPA believes that these revised requirements are technically feasible and practical to implement on all types of containers that the Agency expects to be subject to the rule. These revisions are described in detail in Section V.G of this notice.

The EPA is addressing consistency between the air emission control requirements for containers (as well as the other affected units) in the Off-Site Waste and Recovery Operations NESHAP and the RCRA rules by amending the RCRA rules to include an exemption for those affected units using organic emission controls in accordance with the requirements of the Off-Site Waste and Recovery Operations NESHAP or any other applicable NESHAP.

F. Recordkeeping and Reporting

Comment: Commenters stated that the recordkeeping and reporting requirements proposed for the Off-Site Waste and Recovery Operations NESHAP would be excessive and inconsistent with other NSPS, NESHAP, and RCRA rules that also may be applicable to a unit subject to the rule.

Response: Under section 114(a) of the Act, the EPA may require any owner or operator of a source subject to a NESHAP to establish and maintain records as well as prepare and submit notifications and reports to the EPA or authorized State. Review by EPA and State officials of appropriate information that is maintained in facility records and is submitted in facility prepared reports provides one means for checking the compliance status of the facility with the NESHAP technical requirements. However, the EPA also recognizes that excessive and duplicative recordkeeping and reporting requirements can create a burden to facility owners and operators complying with a NESHAP as well as to the EPA and State officials responsible for assuring compliance with the NESHAP. Thus, it is the EPA's intention to limit the amount of recordkeeping and reporting required for a particular NESHAP to reasonable requirements which will provide the appropriate information needed by EPA and State officials to enforce the rule.

For the Off-Site Waste and Recovery Operations NESHAP, the EPA proposed adopting the recordkeeping and reporting requirements as specified in the Part 63 General Provisions. The EPA reviewed the recordkeeping and reporting needed for the final rule considering the revisions made to the rule applicability and technical requirements. Based on this review, the EPA decided that certain changes to simplify the recordkeeping and reporting requirements for the final Off-Site Waste and Recovery Operations NESHAP can be made without compromising the enforceability of the rule.

VI. Summary of Changes Since Proposal

Changes have been incorporated into the final Off-Site Waste and Recovery Operations NESHAP in response to comments on the proposed rule. Also, the EPA has made many changes to the specific air emission control requirements to clarify the EPA's intent in the application and implementation of these requirements and to make these requirements consistent and up-to-date with EPA decisions made for other related NESHAP and RCRA rules. The substantive changes to the Off-Site Waste and Recovery Operations NESHAP since proposal are summarized below.

A. Applicability

Several major changes have been made to the applicability of the final Off-Site Waste and Recovery Operations NESHAP to address comments on the proposed rule and to clarify the specific waste management and recovery operations that the EPA intends to be subject to the Off-Site Waste and Recovery Operations NESHAP. These changes include: (1) Deleting the proposed term "recoverable material" and defining new terms "off-site material", "used oil", and "used solvent" to explicitly specify the types of materials that the EPA is regulating under this rule; (2) adding a list of the specific wastes and other materials which can be received at a plant site but not considered by the EPA to be off-site materials for the purpose of implementing the rule; and (3) using an inclusive format to limit the rule applicability to six specific types of waste management and recovery operations. A detailed description of each of these changes is presented in the following paragraphs.

The Off-Site Waste and Recovery Operations NESHAP is applicable to owners and operators of a plant site that meet both of the following conditions: (1) The plant site is a major source of HAP emissions as defined in the General Provisions to 40 CFR part 63; and (2) at the plant site, the owner or operator manages "off-site material," as defined in the rule, in one or more of the specific waste management or recovery operations listed in the rule. If either one (or both) of the conditions do not apply to a plant site, then the owner and operator of the plant site is not subject to the Off-Site Waste and Recovery Operations NESHAP, and no action is required by the owner or operator in regards to this rule.

For the purpose of implementing the Off-Site Waste and Recovery Operations NESHAP, a "plant site" is all contiguous or adjoining property that is under common control including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof. A unit or group of units within a contiguous property that are not under common control (e.g., a wastewater treatment unit or solvent recovery unit located at the site but is sold to a different company) is a different plant site.

The first applicability condition for the Off-Site Waste and Recovery Operations NESHAP is determined by whether or not the plant site is a major source of HAP emissions as defined in 40 CFR 63.2. In general, this would be a plant site that emits or has the potential to emit considering controls, in total, 10 tons per year or more of any one HAP or 25 tons per year or more of any combination of HAP. If the plant site is not a major source, then the owner and operator of the plant site is not subject to the Off-Site Waste and Recovery Operations NESHAP regardless of the types of materials received from off-site.

The second applicability condition involves the combined requirement that "off-site material" must be received at the plant site and this material must be managed in one of the six types of waste management or recovery operations specified in the rule. The first part of the applicability condition involves determining whether an "off-site material" as defined in the rule is received at the plant site. The second part of the applicability condition involves determining whether one or more of the following types of waste management or recovery operations is located at the plant site: (1) a hazardous waste treatment, storage, and disposal facility (TSDF) regulated under 40 CFR part 264 or 265 that manages waste received from off-site; (2) a wastewater treatment facility that manages wastewater received from off-site and this facility is exempted from regulation as a TSDF under 40 CFR 264.1(g)(6) or 40 CFR 265.1(c)(10); (3) a wastewater treatment facility other than a POTW that manages wastewaters received from off-site and operation of this facility is the predominant function performed at the plant site; (4) a facility that recycles off-site material and this facility is exempted from regulation as a TSDF under 40 CFR 264.1(g)(2) or 40 CFR 265.1(c)(6); (5) a facility in which used solvents received from off-site are reprocessed or recovered; and (6) a facility in which used oil received from off-site is reprocessed or re-refined and this facility is regulated under 40 CFR Part 279, subpart F—Standards for Used Oil Processors and Refiners.

For the purpose of implementing the rule, "off-site material" is defined to be a material for which all three of the following criteria apply: (1) The material is a "waste", "used oil", or "used solvent" as defined in the rule; (2) this material is delivered, transferred, or otherwise moved to the plant site from another location; and (3) this material contains one or more of the specific HAP constituents listed in Table 1 in the rule. If the material received at the plant site does not meet any one of these criteria, then the material is not an "off-site material" under the rule.

The term "waste" used for the final rule is the same definition proposed for the rule. Waste types that EPA does not intend to be regulated under this rulemaking are specifically listed in the final rule. For the purpose of the implementing the Off-Site Waste and Recovery Operations NESHAP, none of the following wastes are "off-site materials": household waste as defined in 40 CFR 258.2; radioactive mixed waste managed in accordance with all applicable regulations under Atomic Energy Act and Nuclear Waste Policy Act authorities; waste that is generated by remedial activities required under the RCRA corrective action authorities (RCRA sections 3004(u), 3004(v), or 3008(h)), CERCLA authorities, or similar Federal or State authorities; waste containing HAP that is generated by residential households (e.g., old paint, home garden pesticides) and subsequently is collected as a community service by government agencies, businesses, or other organizations for the purpose of promoting the proper disposal of this waste; waste that is generated by or transferred from units complying with all applicable regulations under 40 CFR Part 63, subparts F and G—National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry; waste containing benzene that is generated by or transferred from units complying with all applicable requirements specified by § 61.342(b) under 40 CFR Part 61, subpart FF—National Emission Standards for Benzene Waste Operations for a facility at which the total annual benzene quantity from facility waste is equal to or greater than 10 Mg/yr; and ship ballast water that is pumped from a ship to an onshore wastewater treatment facility.

"Used oil" means any oil refined from crude oil or any synthetic oil that has been used and as a result of such use is contaminated by physical or chemical impurities. This definition is consistent with the definition used by the EPA for the RCRA used oil management standards under 40 CFR Part 279, subpart F.

"Used solvent" means a solvent composed of mixtures of one or more aliphatic hydrocarbons or aromatic hydrocarbons that has been used and as a result of such use is contaminated by physical or chemical impurities.

Based on the applicability conditions for the final Off-Site Waste and Recovery Operations NESHAP, an owner or operator is not subject to the rule and no action is required by the rule for the following cases. If a plant site is not a major source of HAP emissions, then the owner and operator of the plant site are not subject to the Off Site Waste and Recovery Operations NESHAP regardless of whether the site receives off-site material. If at a plant site is located one or more of the specific waste management or recovery operations listed in the rule but off-site material received at the plant site is not managed in these operations, then the owner and operator of the plant site are not subject to the Off-Site Waste and Recovery Operations NESHAP. In a case when a plant site receives off-site material and is a major source of HAP emissions but there is not one of the waste management or recovery operations listed in the rule located at the site, then owner and operator of the plant site are not subject to the Off-Site Waste and Recovery Operations NESHAP.

At a plant site subject to the Off-Site Waste and Recovery Operations NESHAP, the rule only applies to the affected sources used to manage off-site material in the waste management and recovery operations specified in the rule that are located at the plant site. Units and equipment used to manage off-site material at the plant site but are not part of one of the waste management or recovery operations specified in the rule are not affected sources under the rule.

The first affected source for the Off-Site Waste and Recovery Operations NESHAP is the group of tanks, surface impoundments, separators, transfer systems, and containers used to manage off-site material in each of the waste management and recovery operations specified in the rule that are located at the plant site. The second affected source for the rule is the group of process vents on units in each of the waste management and recovery operations specified in the rule that are located at the plant site.

The third affected source for the rule is the group of equipment components consisting of pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves and lines, valves, connectors, and instrumentation systems that contain or contact off-site material in each of the waste management and recovery operations specified in the rule that are located at the plant site.

The compliance date for existing sources subject to the Off-Site Waste and Recovery Operations NESHAP (i.e., affected sources that commenced construction or reconstruction before October 13, 1994) to meet the air emission control requirements of the rule is beginning 3 years after today's date. If management of off-site material in the source is discontinued by this date, then source would no longer subject to the rule. On the other hand, if an existing waste management operation or recovery operation does not presently receive off-site material but begins receiving off-site materials for the first time 3 years after today's date (and meets the other applicability conditions in the rule), then the source is a new source subject to the rule. In this case, the owner or operator of the source must achieve compliance with the provisions of the rule upon the first date that the waste management operation or recovery operation begins to manage the off-site material.

Finally, the list of the specific HAP constituents for the Off-Site Waste and Recovery Operations NESHAP (Table 1 in Subpart DD) was revised by the EPA for the final rule. The EPA decided to delete eight chemicals from the proposed list because of the low potential for these chemicals to be emitted from the waste management and recovery operations subject to the rule. The criterion used to characterize and evaluate emission potential was based on a chemical constituent's Henry's law constant. The following chemical compounds were deleted from the proposed list: acrylic acid, aniline, o-cresol, dibutylphthalate, 1,1-

dimethylhydrazine, formaldehyde, methyl hydrazine, and n-nitrosodimethylamine.

B. General Standards

Several major changes have been made to the general standards for the final rule. First, the average VOHAP concentration action level for off-site material required to be managed in the units using air emission controls under the rule has been changed to 500 ppmw (as determined at the point-of-delivery). Units managing off-site materials determined by the owner or operator to have average VOHAP concentrations that remain less than 500 ppmw are not required to use air emission controls under the rule. The second change is land disposal units have been deleted as an affected source and the final rule places no restrictions on the disposal of wastes in land disposal units.

A third change is the addition of an exemption to the general standards in the final Off-Site Waste and Recovery Operations NESHAP that relates to the treatment of the off-site material. This exemption provides that an off-site material management unit is exempted from the air emission control requirements if the off-site material placed in the unit is a hazardous waste that meets the numerical concentration limits, applicable to the hazardous waste, as specified in 40 CFR part 268—Land Disposal Restrictions under both of the following tables: (1) Table "Treatment Standards for Hazardous Waste" in 40 CFR 268.40, and (2) Table UTS—"Universal Treatment Standards" in 40 CFR 268.48.

C. Treatment Standards

The final Off-Site Waste and Recovery Operations NESHAP provides owners or operators with a selection of alternative provisions for determining when a treated off-site material is no longer required to be managed in units meeting the air emission control requirements of the rule. The proposed treatment alternatives have been revised where appropriate to reflect the new action level of 500 ppmw and additional alternatives have been added to the rule to provide greater flexibility to the owner or operator in the treatment of off-site materials.

D. Tank Standards

The tank standards have been revised to address comments on the proposed requirements, to be consistent with tank standards established for related NESHAP source categories, and to reduce the inspection, monitoring, recordkeeping, and reporting requirements. In general, the final Off-Site Waste and Recovery Operations NESHAP establishes two levels of air emission control for tanks managing off-site materials having a maximum HAP vapor pressure less than 76.6 kPa. The control level applicable to a tank required to use controls is determined by the tank design capacity and the maximum organic HAP vapor pressure of the off-site material in the tank. Different capacity and vapor pressure limits have been established for tanks determined to be part of an existing affected source and those determined to be part of a new affected source. Tanks used for waste stabilization processes are required to use Tank Level 2 air emission controls. The designation of which tanks are required to use controls and the required control level for the tank are specified in 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations. The specific air emission control requirements for Tank Level 1 controls are specified in 40 CFR part 63, subpart OO—National Emission Standards for Tanks-Level 1. The specific air emission control requirements for Tank Level 2 controls remain in 40 CFR part 63, subpart DD.

The tank capacity limits for existing tanks in which the maximum HAP vapor pressure of the off-site material in the tank is less than 76.6 kPa have been corrected to be consistent with the EPA's original intent to be compatible with other RCRA and NESHAP air emission standards already promulgated by the Agency which potentially could be applicable to the same tank. The proposed rule was incorrectly drafted to exclude existing tanks having a design capacity less than 75 m^3 (approximately 20,000 gallons) from using any air emission controls. The EPA never intended to exclude this group of tanks from this rulemaking. Under the final rule, when applicable, use of Tank Level 1 air emission controls is required for an existing tank having a design capacity less than 75 m^3.

For a tank required to use Level 1 controls, the final rule specifies that the off-site material be managed in a tank using a fixed-roof. For the Level 2 controls, the final rule requires that off-site material be managed in one of the following: (1) a fixed roof tank equipped with an internal floating roof; (2) a tank equipped with an external floating roof; (3) a tank vented through a closed-vent system to a control device; (4) a pressure tank; or (5) a tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device.

E. Oil-Water Separator and Organic-Water Standards

Under the final Off-Site Waste and Recovery Operations NESHAP, individual air emission control requirements have been established for oil-water separator or organic-waster separators. For each separator required to use controls under the rule, the owner or operator is required to control air emissions from the separator by installing and operating on each section of the unit either a floating roof or a fixed-roof that is vented through a closed-vent system to a control device. The designation of which separators are required to use controls is specified in 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations. The specific air emission control requirements are specified in 40 CFR part 63, subpart VV—National Emission Standards for Oil-Water and Organic-Water Separators.

F. Surface Impoundment Standards

Revisions have been made to the surface impoundment standards so that, where relevant and appropriate, the inspection, monitoring, recordkeeping, and reporting requirements for surface impoundments are consistent with the requirements established for tanks and separators. The designation of which surface impoundments are required to use controls is specified in 40 CFR 63 subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations. The specific air emission control requirements are specified in 40 CFR part 63, subpart QQ—National Emission Standards for Surface Impoundments.

G. Container Standards

The container standards have been significantly revised to address comments on the proposed requirements, to make this rule compatible with the existing U.S. Department of Transportation (DOT) regulations for transporting hazardous materials, and to reduce the inspection, monitoring, recordkeeping, and reporting requirements. The designation of which containers are required to use controls and the required control level for the container are specified in 40 CFR 63 subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations. The specific air emission control requirements for each control level are specified in 40 CFR Part 63 subpart PP—National Emission Standards for Containers.

The revised container standards for the Off-Site Waste and Recovery Operations NESHAP establish three levels of air emission control. The control level applicable to a container is determined by the container design capacity, the total organic content of the material in the container, and use of the container. For example, containers with a design capacity less than or equal to 0.1 m^3 (approximately 26 gallons) are not subject to any requirements under the rule.

Under the final rule, Level 1 controls are required for the following container categories (except when the container remains uncovered for waste stabilization processes): (1) containers having a design capacity greater than 0.1 m^3 and less than or equal to 0.46 m^3 (approximately 119 gallons); and (2) containers with a design capacity greater than 0.46 m^3 and used to manage off-site materials that do not meet the definition of "light material." Level 2 controls are required for containers with a design capacity greater than 0.46 m^3 and used to handle "light materials" (i.e., off-site materials where the vapor pressure of one or more of the components in the material is greater than 0.3 kilopascals [kPa] at 20 °C, and the total concentration of the pure components having a vapor pressure greater than 0.3 kPa at 20 °C is equal to or greater than 20 percent by weight), except when the container remains uncovered for waste stabilization processes. Level 3 controls are required for containers having a design capacity greater than 0.1 m^3 that must remain uncovered for waste stabilization processes.

For the containers required to use Level 1 controls, the final rule requires that the off-site material be managed either: (1) in a container that meets the relevant DOT regulations on packaging hazardous materials for transportation under 49 CFR parts 173, 178, 179, and 180; or (2) a covered container that meets the requirements specified in the final rule. No additional requirements are specified by the final rule for containers complying with the applicable DOT regulations. In the case when an owner or operator elects to comply with the covered container requirements (i.e., non-DOT containers), the container must be equipped with a tight-fitting cover that has no visible gaps, spaces, holes, or other openings. The rule does require a visual inspection when the cover is applied and, thereafter, annually if the container remains in on-site storage for a period longer than 1 year. No testing for detectable organic emissions using Method 21 is required. No recordkeeping and reporting are required under the final rule for containers using Level 1 controls.

For the containers required to use Level 2 controls, the final rule requires that the off-site material be managed in one of the following: (1) a container that meets the relevant DOT regulations on packaging hazardous materials for transportation under 49 CFR parts 173, 178, 179, and 180; or (2) a container that has been demonstrated within the preceding 12 months to operate with no detectable organic emissions by using Method 21; or (3) a container that has been demonstrated within the preceding 12 months to be vapor-tight by using Method 27. No additional requirements are specified by the final rule for containers complying with the applicable DOT regulations. Specific design, operating, inspection and monitoring, repair, recordkeeping, and reporting requirements for containers tested using either Method 21 or 27 are specified in the rule.

For the containers required to use Level 3 controls, the final rule requires that an open container be placed in an enclosure vented through a closed-vent system to a control device or a covered container be vented directly to a control device. If an enclosure is used, the enclosure is to be designed in accordance with the criteria for a permanent total enclosure as specified in 40 CFR 52.741, Appendix B, Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure.

Requirements for loading off-site material into a container have been revised since proposal. Under the final rule there are no requirements for loading off-site material into containers using Level 1 controls. For containers using Level 2 controls, the loading requirements have been revised to allow flexibility to use any appropriate loading method that will minimize exposure of the off-site material to the atmosphere and thereby reduce organic air emissions, to the extent practical considering the physical properties of the off-site material and good engineering and safety practices. Examples of container loading procedures that the EPA considers to meet these requirements include, but are not limited to, using a submerged-fill pipe or other submerged-fill method to load liquids into the container; or using a vapor-balancing or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations.

The inspection, monitoring, recordkeeping, and reporting requirements for containers have been significantly simplified from those proposed. Owners and operators of containers using either Container Level 1 or Container Level 2 controls in accordance with the provisions of the rule are required to visually inspect the container and its cover and closure devices to check for defects at the time the owner or operator first accepts possession of the container at the facility site with the exception of those containers emptied within 24 hours of being received. Also, in the case when a container used for managing regulated-material remains at the facility site for a period of 1 year or more, the container and its cover and closure devices are to be visually inspected to check for defects at least once every 12 months.

There are no requirements for periodic Method 21 leak monitoring of containers. There are no recordkeeping nor reporting requirements under this final rulemaking for containers using either Container Level 1 or Container Level 2 controls.

H. Transfer System Standards

The major change to the transfer system standards is the addition of specific requirements for individual drain systems to the final rule. The designation of which individual drain systems are required to use controls is specified in 40 CFR 63 subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations. The specific air emission control requirements are specified in 40 CFR 63 subpart RR—National Emission Standards for Individual Drain systems. Other revisions have been made, where relevant and appropriate, so that the requirements for transfer systems other than an individual drain system are consistent with the requirements established for the other types of off-site material management units.

I. Process Vent Standards

In response to comments, several changes have been made to the air emission control requirements for process vents under the Off-Site Waste and Recovery Operations NESHAP. The term "enclosed treatment unit" proposed for the rule has been deleted from the final rule and replaced with a definition for the term "process vent." The EPA decided to use this new term to clarify the process vents that must use air emission controls under the rule. The final rule has also been revised to require an average emission reduction of

at least 95 percent by weight in total HAP emissions from the combination of all affected process vents at the plant site (i.e., all process vents that are a part of the affected sources subject to the Off-Site Waste and Recovery Operations NESHAP).

J. Equipment Leak Air Standards

The EPA has not included in the final Off-Site Waste and Recovery Operations NESHAP a definition for "ancillary equipment" as was originally proposed. Instead, the specific equipment types subject to equipment leak standards under the Off-Site Waste and Recovery Operations NESHAP are listed directly in the applicability section of the rule (§ 63.690). These equipment types are consistent with other NESHAP equipment leak standards.

K. Control Device and Closed-Vent System Standards

Revisions to the control device and closed-vent system standards consist of incorporating changes to the closed-vent system and control device requirements so that these requirements are consistent and up-to-date with the general decisions the EPA has made regarding NESHAP inspection, monitoring, maintenance, repair, malfunctions, recordkeeping, and reporting requirements for organic emission control devices. Also, to improve the readability and user understanding of the requirements, the format used to present the standards has been revised. In the final rule, all of the requirements for a particular type of control device (e.g., vapor incinerator, carbon adsorber, or condenser) are grouped together.

L. Test Methods and Procedures

For the final Off-Site Waste and Recovery Operations NESHAP, the EPA decided to allow an owner or operator to use any one of several existing EPA test methods for direct measurement of the VOHAP concentration of an off-site material. In addition, the EPA has made certain other changes to the rule to facilitate the use of organic concentration data obtained using other alternative test methods not specifically listed in the rule.

The final rule allows an owner or operator to directly measure the volatile organic concentration using any one of the following methods: Method 305 in 40 CFR part 63, Appendix A; Method 25D in 40 CFR part 60, Appendix A; or Method 624, Method 1624, or Method 1625 in 40 CFR part 136, Appendix A (when used in accordance with the procedure specified in the rule). In addition, an owner or operator may use any other alternative method that has been validated in accordance with the procedures specified in Sections 5.1 and 5.3 of Method 301 or specified in the Appendix D—Alternative Validation Procedure for EPA Waste Methods promulgated by this action in 40 CFR part 63.

M. Recordkeeping and Reporting Requirements

The EPA has changed the recordkeeping and reporting requirements for the final Off-Site Waste and Recovery Operations NESHAP to reflect the revisions to the rule applicability and technical requirements and reduce the burden of these requirements on owners and operators.

VII. Administrative Requirements

A. Docket

The docket is an organized and complete file of information considered by the EPA in the development of a rulemaking. The docket pertaining to the Off-Site Waste and Recovery Operations NESHAP is Docket No. A–92–16. This docket contains a copy of the regulatory text of the proposed rule, the BID, and copies of all BID references and other information related to the development of the proposed and final rule. The public may review all materials in this docket at the EPA's Air and Radiation Docket and Information Center (see the ADDRESSES section at the beginning of this notice).

B. Paperwork Reduction Act

The information collection requirements for this NESHAP have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1717.02), and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division (2137), U.S. Environmental Protection Agency, 401 M Street, S.W.; Washington, DC 20460, or by calling (202) 260–2740.

The public recordkeeping and reporting burden for this collection of information is estimated to average approximately 830 hours per respondent for each of the first 3 years following promulgation of the rule. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the recordkeeping and reporting burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2137), U.S. Environmental Protection Agency, 401 M Street, S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

C. Executive Order 12866

Under Executive Order 12866 (58 FR 5173, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order 12866, it has been determined that this action will be treated as a "significant regulatory action" within the meaning of the Executive Order. As such, this action was submitted to the Office of Management and Budget (OMB) for review. Changes made in response to OMB suggestions or recommendations are documented in the docket pertaining to the Off-Site Waste and Recovery Operations NESHAP rulemaking (Docket No. A–92–16).

D. Regulatory Flexibility Act

Section 605 of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), the EPA Regulatory Flexibility guidelines (April, 1992), and the Small Business Regulatory Fairness Act of 1996 requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are small businesses, small organizations, and small governments. The major purpose of the Regulatory Flexibility Act, the EPA guidelines, and the Small Business Fairness Act is to keep paperwork and regulatory requirements

from being out of proportion to the scale of the entities being regulated, without compromising the objectives of, in this case, the Clean Air Act.

A small business with establishments in Standard Industrial Classification 4953, Refuse Systems, is defined by the Small Business Administration as one receiving less than $6 million per year, averaged over the most recent three fiscal years. A small organization is a not-for-profit enterprise that is independently owned and operated and is not dominant in the waste disposal industry. A small government is one that serves a population of less than 50,000 people. The EPA may use other definitions, but elects to use these. The EPA believes that small organizations and small governments have at most a very minor involvement with the types of waste management and recovery operations subject to this rule, and therefore would not be significantly affected by the Off-Site Waste and Recovery Operations NESHAP. Hence, the EPA has concentrated its attention on small businesses.

The Regulatory Flexibility Act specifies that Federal agencies must prepare an initial regulatory flexibility analysis if a proposed regulatory action would have "a significant economic impact on a substantial number of small entities." The data bases available to the EPA reflect the state of the hazardous waste TSDF industry in 1986, and provide limited basis for updating the economic factors. Furthermore, the EPA does not have reliable projections of construction of new facilities with the types of waste management and recovery operations that will be subject to the rule. The EPA, based on its initial Regulatory Flexibility analysis, therefore assumed that the rule may have a significant impact on a substantial number of small businesses, and conducted a final regulatory flexibility analysis. This analysis is part of the economic impact analysis (titled *Economic Impact Analysis of National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations*) prepared for the rulemaking and available in the docket (Docket No. A–92–16).

Even though many facilities at which are located waste management and recovery operations receiving off-site materials are expected to be area sources and would not be subject to this NESHAP, the EPA assumed for the regulatory flexibility analysis that all facilities listed in the source category data base are collocated at major sources. Also, the analysis did not exclude those facilities that are major sources but would not be subject to the air emission control requirements under the Off-Site Waste and Recovery Operations NESHAP because the facility qualifies for the rule exemption for a facility at which the total annual organic HAP mass content of all off-site material is less than 1 Mg/yr.

From the source category data base, the EPA identified for the analysis 110 small businesses that own 112 facilities subject to the Off-Site Waste and Recovery Operations NESHAP. As a result of exemptions allowed by the final rule, none of these small businesses would incur costs beyond costs for recordkeeping and reporting. All of these small businesses would meet at least one of the exemption criteria in the rule and, therefore, would not need to use the air emission controls required by the rule. The small costs for recordkeeping and reporting are required to document compliance with the rule exemptions. For a median small business, the same costs come to less than 0.1 percent of sales—compared with about 0.01 percent for the median large business. Since there are no capital costs to small businesses, none of the small businesses would exceed the capital cost retained earning breakpoints (the maximum amount of new capital a business can raise without issuing new stock and without changing its existing capital structure). By way of comparison, 30 percent of large businesses would have capital costs of compliance exceeding their breakpoints. None of these large businesses are expected to receive significant economic impacts.

Finally, the EPA evaluated the possibility that the final rule might cause a small business to close. Based on this review, no small businesses are expected to close as a result of having to comply with the requirements of the final rule.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, the EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

F. Review

The off-site waste and recovery operations NESHAP will be reviewed 8 years from today's date of promulgation. This review will include an assessment of such factors as evaluation of the residual health risks, any duplication with other air programs, the existence of alternative methods, enforceability, improvements in air emission control technology and health data, and the recordkeeping and reporting requirements.

VII. Statutory Authority

The statutory authority for this proposal is provided by section 101, 112, 114, 116, and 301 of the Clean Air Act, as amended; 42. U.S.C., 7401, 7412, 7414, 7416, and 7601.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Containers, Equipment leaks, Hazardous air pollutants, Individual drain systems, NESHAP, Off-site waste and recovery operations, Oil-water separators, Process vents, Tanks, Surface impoundments, Used oil, Used solvents, Waste.

Dated: May 28, 1996.

Carol M. Browner,

The Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations are amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1–3. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

4. Part 63 is amended by adding subpart DD consisting of §§ 63.680 through 63.698 to read as follows:

Subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations

Sec.

63.680 Applicability and designation of affected sources.
63.681 Definitions.
63.682 [Reserved]
63.683 Standards: General.
63.684 Standards: Off-site material treatment.
63.685 Standards: Tanks.
63.686 Standards: Oil-water and organic-water separators.
63.687 Standards: Surface impoundments.
63.688 Standards: Containers.
63.689 Standards: Transfer systems..
63.690 Standards: Process vents.
63.691 Standards: Equipment leaks.
63.692 [Reserved]
63.693 Standards: Closed-vent systems and control devices.
63.694 Testing methods and procedures.
63.695 Inspection and monitoring requirements.
63.696 Recordkeeping requirements.
63.697 Reporting requirements.
63.698 Delegation of Authority.
Table 1 to Subpart DD—List of Hazardous Air Pollutants (HAP) for Subpart DD.
Table 2 to Subpart DD—Applciability of paragraphs in 40 CFR Subpart A, General Provisions, to Subpart DD.
Table 3 to Subpart DD—Tank Control Levels for Tanks at Existing Affected Sources as Required by 40 CFR 63.685(b)(1).
Table 4 to Subpart DD—Tank Control Levels for Tanks at New Affected Sources as Required by 40 CFR 63.685(b)(2).

Subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations

§ 63.680 Applicability and designation of affected sources.

(a) The provisions of this subpart apply to the owner and operator of a plant site for which both of the conditions specified in paragraphs (a)(1) and (a)(2) of this section are applicable. If either one of these conditions does not apply to the plant site, then the owner and operator of the plant site are not subject to the provisions of this subpart.

(1) The plant site is a major source of hazardous air pollutant (HAP) emissions as defined in 40 CFR 63.2.

(2) At the plant site is located one or more of operations that receives off-site materials as specified in paragraph (b) of this section and the operations is one of the following waste management operations or recovery operations as specified in paragraphs (a)(2)(i) through (a)(2)(vi) of this section.

(i) A waste management operation that receives off-site material and the operation is regulated as a hazardous waste treatment, storage, and disposal facility (TSDF) under either 40 CFR part 264 or part 265.

(ii) A waste management operation that treats wastewater which is an off-site material and the operation is exempted from regulation as a hazardous waste treatment, storage, and disposal facility under 40 CFR 264.1(g)(6) or 40 CFR 265.1(c)(10).

(iii) A waste management operation that treats wastewater which is an off-site material and the operation meets both of the following conditions:

(A) The operation is subject to regulation under either section 402 or 307(b) of the Clean Water Act but is not owned by a "state" or "municipality" as defined by section 502(3) and 502(4), respectively, of the Clean Water Act; and

(B) The treatment of wastewater received from off-site is the predominant activity performed at the plant site.

(iv) A recovery operation that recycles or reprocesses hazardous waste which is an off-site material and the operation is exempted from regulation as a hazardous waste treatment, disposal, and storage facility under 40 CFR 264.1(g)(2) or 40 CFR 265.1(c)(6).

(v) A recovery operation that recycles or reprocesses used solvent which is an off-site material and the operation is not part of a chemical, petroleum, or other manufacturing process that is required to use air emission controls by another subpart of 40 CFR part 63.

(vi) A recovery operation that re-refines or reprocesses used oil which is an off-site material and the operation is regulated under 40 CFR 279 subpart F—Standards for Used Oil Processors and Refiners.

(b) For the purpose of implementing this subpart, an off-site material is a material that meets all of the criteria specified in paragraph (b)(1) of this section but is not one of the materials specified in paragraph (b)(2) of this section.

(1) An off-site material is a material that meets all of the criteria specified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section. If any one of these criteria do not apply to the material, then the material is not an off-site material subject to this subpart.

(i) The material is a waste, used oil, or used solvent as defined in § 63.681 of this subpart;

(ii) The material is not produced or generated within the plant site, but the material is delivered, transferred, or otherwise moved to the plant site from a location outside the boundaries of the plant site; and

(iii) The material contains one or more of the hazardous air pollutants (HAP) listed in Table 1 of this subpart based on the composition of the material at the point-of-delivery, as defined in § 63.681 of this subpart.

(2) For the purpose of implementing this subpart, the following materials are not off-site materials:

(i) Household waste as defined in 40 CFR 258.2.

(ii) Radioactive mixed waste managed in accordance with all applicable regulations under Atomic Energy Act and Nuclear Waste Policy Act authorities.

(iii) Waste that is generated as a result of implementing remedial activities required under the Resource Conservation and Recovery Act (RCRA) corrective action authorities (RCRA sections 3004(u), 3004(v), or 3008(h)), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) authorities, or similar Federal or State authorities.

(iv) Waste containing HAP that is generated by residential households (e.g., old paint, home garden pesticides) and subsequently is collected as a community service by government agencies, businesses, or other organizations for the purpose of promoting the proper disposal of this waste.

(v) Waste that is generated by or transferred from units complying with all applicable regulations under 40 CFR 63 subparts F and G—National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.

(vi) Waste that is generated by or transferred from units complying with all applicable requirements specified by § 61.342(b) under 40 CFR 61 subpart FF—National Emission Standards for Benzene Waste Operations for a facility at which the total annual benzene quantity from the facility waste is equal to or greater than 10 megagrams per year.

(vii) Ship ballast water pumped from a ship to an onshore wastewater treatment facility.

(c) For the purpose of implementing this subpart, the affected sources at a plant site subject to this subpart are as follows:

(1) Off-site material management units. The affected source is the group of tanks, containers, oil-water or organic-water separators, surface impoundments, and transfer systems used to manage off-site material in each of the waste management operations and recovery operations specified in paragraphs (a)(2)(i) through (a)(2)(vi) of this section that is located at the plant site.

(2) Process vents. The affected source is the group of process vents on units used to manage off-site material in each of the waste management operations and recovery operations specified in paragraphs (a)(2)(i) through (a)(2)(vi) of this section that is located at the plant site.

(3) Equipment leaks. The affected source is the group of equipment specified in § 63.683(b)(2)(i) through (b)(2)(iii) of this subpart that is used to handle off-site material in each of the waste management operations and recovery operations specified in paragraphs (a)(2)(i) through (a)(2)(vi) of this section that is located at the plant site.

(d) Owners and operators of plant sites at which are located affected sources subject to this subpart are exempted from the requirements of §§ 63.682 through 63.699 of this subpart in situations when the total annual quantity of the HAP that is contained in the off-site material received at the plant site is less than 1 megagram per year. This total annual HAP quantity for the off-site material shall be based on the total quantity of the HAP listed in Table 1 of this subpart as determined at the point-of-delivery for each off-site material stream. Documentation shall be prepared by the owner or operator and maintained at the plant site to support the initial determination of the total annual HAP quantity for the off-site material. The owner or operator shall perform a new determination when the extent of changes to the quantity or composition of the off-site material received at the plant site could cause the total annual HAP quantity in the off-site material to the exceed limit of 1 megagram per year.

(e) Compliance dates.

(1) Existing sources. The owner or operator of an affected source that commenced construction or reconstruction before October 13, 1994, shall achieve compliance with the provisions of the subpart no later than July 1, 1999 unless an extension has been granted by the Administrator as provided in 40 CFR 63.6(i).

(2) New sources. The owner or operator of an affected source for which construction or reconstruction commences on or after October 13, 1994, shall achieve compliance with the provisions of this subpart by July 1, 1996 or upon initial startup of operations, whichever date is later as provided in 40 CFR 63.6(b). For the purpose of implementing this subpart, a waste management operation or recovery operation that commenced construction or reconstruction before October 13, 1994, and receives off-site material for the first time after July 1, 1999 is a new source, and the owner or operator of this affected source shall achieve compliance with the provisions of this subpart upon the first date that the waste management operation or recovery operation begins to manage the off-site material.

(f) The provisions of 40 CFR part 63, subpart A—General Provisions that apply and those that do not apply to this subpart are specified in Table 2 of this subpart.

§ 63.681 Definitions.

All terms used in this subpart shall have the meaning given to them in this section, 40 CFR 63.2 of this part, and the Act.

Boiler means an enclosed combustion device that extracts useful energy in the form of steam and is not an incinerator or a process heater.

Closed-vent system means a system that is not open to the atmosphere and is composed of hard-piping, ductwork, connections, and, if necessary, fans, blowers, or other flow-inducing devices that conveys gas or vapor from an emission point to a control device.

Closure device means a cap, hatch, lid, plug, seal, valve, or other type of fitting that prevents or reduces air pollutant emissions to the atmosphere by blocking an opening in a cover when the device is secured in the closed position. Closure devices include devices that are detachable from the cover (e.g., a sampling port cap), manually operated (e.g., a hinged access lid or hatch), or automatically operated (e.g., a spring-loaded pressure relief valve).

Container means a portable unit used to hold material. Examples of containers include but are not limited to drums, dumpsters, roll-off boxes, bulk cargo containers commonly known as "portable tanks" or "totes", cargo tank trucks, and tank rail cars.

Continuous record means documentation of data values measured at least once every 15 minutes and recorded at the frequency specified in this subpart.

Continuous recorder means a data recording device that either records an instantaneous data value at least once every 15 minutes or records 15-minutes or more frequent block averages.

Continuous seal means a seal that forms a continuous closure that completely covers the space between the edge of the floating roof and the wall of a tank. A continuous seal may be a vapor-mounted seal, liquid-mounted seal, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

Control device means equipment used for recovering or oxidizing organic vapors. Examples of such equipment include but are not limited to carbon adsorbers, condensers, vapor incinerators, flares, boilers, and process heaters.

Cover means a device that prevents or reduces air pollutant emissions to the atmosphere by forming a continuous barrier over the off-site material managed in a unit. A cover may have openings (such as access hatches, sampling ports, gauge wells) that are necessary for operation, inspection, maintenance, and repair of the unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the unit or a cover may be formed by structural features permanently integrated into the design of the unit.

Emission point means an individual tank, surface impoundment, container, oil-water or organic-water separator, transfer system, process vent, or enclosure.

Enclosure means a structure that surrounds a tank or container, captures organic vapors emitted from the tank or container, and vents the captured vapor through a closed vent system to a control device.

External floating roof means a pontoon-type or double-deck type cover that rests on the liquid surface in a tank with no fixed roof.

Fixed roof means a cover that is mounted on a unit in a stationary position and does not move with fluctuations in the level of the liquid managed in the unit.

Flame zone means the portion of the combustion chamber in a boiler or process heater occupied by the flame envelope.

Floating roof means a cover consisting of a double deck, pontoon single deck, or internal floating cover which rests upon and is supported by the liquid being contained, and is equipped with a continuous seal.

HAP means hazardous air pollutants.

Hard-piping means pipe or tubing that is manufactured and properly installed in accordance with relevant standards and good engineering practices.

Hazardous waste means a waste that is determined to be hazardous under the Resource Conservation and Recovery Act (PL 94–580) (RCRA), as implemented by 40 CFR parts 260 and 261.

Individual drain system means a stationary system used to convey wastewater streams or residuals to a waste management unit or to discharge

or disposal. The term includes hard-piping, all drains and junction boxes, together with their associated sewer lines and other junction boxes (e.g., manholes, sumps, and lift stations) conveying wastewater streams or residuals. For the purpose of this subpart, an individual drain system is not a drain and collection system that is designed and operated for the sole purpose of collecting rainfall runoff (e.g., stormwater sewer system) and is segregated from all other individual drain systems.

Internal floating roof means a cover that rests or floats on the liquid surface (but not necessarily in complete contact with it inside a tank that has a fixed roof).

Light-material service means the container is used to manage an off-site material for which both of the following conditions apply: the vapor pressure of one or more of the organic constituents in the off-site material is greater than 0.3 kilopascals (kPa) at 20 °C; and the total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kPa at 20 °C is equal to or greater than 20 percent by weight.

Liquid-mounted seal means a foam- or liquid-filled continuous seal mounted in contact with the liquid in a unit.

Maximum HAP vapor pressure means the sum of the individual HAP equilibrium partial pressure exerted by an off-site material at the temperature equal to either: the local maximum monthly average temperature as reported by the National Weather Service when the off-site material is stored or treated at ambient temperature; or the highest calendar-month average temperature of the off-site material when the off-site material is stored at temperatures above the ambient temperature or when the off-site material is stored or treated at temperatures below the ambient temperature. For the purpose of this subpart, maximum HAP vapor pressure is determined using the procedures specified in § 63.694(j) of this subpart.

Metallic shoe seal means a continuous seal that is constructed of metal sheets which are held vertically against the wall of the tank by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

No detectable organic emissions means no escape of organics to the atmosphere as determined using the procedure specified in § 63.694(k) of this subpart.

Off-site material means a material that meets all of the criteria specified in paragraph § 63.680(b)(1) of this subpart but is not one of the materials specified in § 63.680(b)(2) of this subpart.

Off-site material management unit means a tank, container, surface impoundment, oil-water separator, organic-water separator, or transfer system used to manage off-site material.

Off-site material stream means an off-site material produced or generated by a particular process or source such that the composition and form of the material comprising the stream remain consistent. An off-site material stream may be delivered, transferred, or otherwise moved to the plant site in a continuous flow of material (e.g., wastewater flowing through a pipeline) or in a series of discrete batches of material (e.g., a truckload of drums all containing the same off-site material or multiple bulk truck loads of an off-site material produced by the same process).

Oil-water separator means a separator as defined for this subpart that is used to separate oil from water.

Operating parameter value means a minimum or maximum value established for a control device or treatment process parameter which, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with an applicable emission limitation or standard.

Organic-water separator means a separator as defined for this subpart that is used to separate organics from water.

Plant site means all contiguous or adjoining property that is under common control including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof. A unit or group of units within a contiguous property that are not under common control (e.g., a wastewater treatment unit or solvent recovery unit located at the site but is sold to a different company) is a different plant site.

Point-of-delivery means the point at the boundary or within the plant site where the owner or operator first accepts custody, takes possession, or assumes responsibility for the management of an off-site material stream managed in a waste management operation or recovery operation specified in § 63.680 (a)(2)(i) through (a)(2)(vi) of this subpart. The characteristics of an off-site material stream are determined prior to combining the off-site material stream with other off-site material streams or with any other materials.

Point-of-treatment means a point where the off-site material to be treated in accordance with § 63.683(b)(1)(ii) of this subpart exits the treatment process. The characteristics shall be determined before this material is conveyed, handled, or otherwise managed in such a manner that the material has the potential to volatilize to the atmosphere.

Process heater means an enclosed combustion device that transfers heat released by burning fuel directly to process streams or to heat transfer liquids other than water.

Process vent means any open-ended pipe, stack, or duct that allows the passage of gases, vapors, or fumes to the atmosphere and this passage is caused by mechanical means (such as compressors or vacuum-producing systems) or by process-related means (such as volatilization produced by heating). For the purpose of this subpart, a process vent is not a stack or duct used to exhaust combustion products from a boiler, furnace, process heater, incinerator, or other combustion device.

Recovery operation means the collection of off-site material management units, process vents, and equipment components used at a plant site to manage an off-site material stream from the point-of-delivery through the point where the material has been recycled, reprocessed, or re-refined to obtain the intended product or to remove the physical and chemical impurities of concern.

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, combustible, explosive, reactive, or hazardous materials.

Separator means a waste management unit, generally a tank, used to separate oil or organics from water. A separator consists of not only the separation unit but also the forebay and other separator basins, skimmers, weirs, grit chambers, sludge hoppers, and bar screens that are located directly after the individual drain system and prior to any additional treatment units such as an air flotation unit clarifier or biological treatment unit. Examples of a separator include, but are not limited to, an API separator, parallel-plate interceptor, and corrugated-plate interceptor with the associated ancillary equipment.

Single-seal system means a floating roof having one continuous seal. This seal may be vapor-mounted, liquid-mounted, or a metallic shoe seal.

Surface impoundment means a unit that is a natural topographical depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquids. Examples of surface impoundments include holding, storage, settling, and aeration pits, ponds, and lagoons.

Tank means a stationary unit that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provide structural support and is designed to hold an accumulation of liquids or other materials.

Transfer system means a stationary system for which the predominant function is to convey liquids or solid materials from one point to another point within a waste management operation or recovery operation. For the purpose of this subpart, the conveyance of material using a container (as defined for this subpart) or a self-propelled vehicle (e.g., a front-end loader) is not a transfer system. Examples of a transfer system include but are not limited to a pipeline, an individual drain system, a gravity-operated conveyor (such as a chute), and a mechanically-powered conveyor (such as a belt or screw conveyor).

Temperature monitoring device means a piece of equipment used to monitor temperature and having an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius (°C) or ±1.2 degrees °C, whichever value is greater.

Treatment process means a process in which an off-site material stream is physically, chemically, thermally, or biologically treated to destroy, degrade, or remove hazardous air pollutants contained in the off-site material. A treatment process can be composed of a single unit (e.g., a steam stripper) or a series of units (e.g., a wastewater treatment system). A treatment process can be used to treat one or more off-site material streams at the same time.

Used oil means any oil refined from crude oil or any synthetic oil that has been used and as a result of such use is contaminated by physical or chemical impurities. This definition is the same definition of "used oil" in 40 CFR 279.1.

Used solvent means a solvent composed of a mixture of aliphatic hydrocarbons or a mixture of one and two ring aromatic hydrocarbons that has been used and as a result of such use is contaminated by physical or chemical impurities.

Vapor-mounted seal means a continuous seal that is mounted such that there is a vapor space between the liquid in the unit and the bottom of the seal.

Volatile organic hazardous air pollutant concentration or VOHAP concentration means the fraction by weight of the HAP listed in Table 1 of this subpart that are contained in an off-site material. For the purpose of this subpart, VOHAP concentration is determined in accordance with the test methods and procedures specified in § 63.694 (b) and (c) of this subpart.

Waste means a material generated from industrial, commercial, mining, or agricultural operations or from community activities that is discarded, discharged, or is being accumulated, stored, or physically, chemically, thermally, or biologically treated prior to being discarded or discharged.

Waste management operation means the collection of off-site material management units, process vents, and equipment components used at a plant site to manage an off-site material stream from the point-of-delivery to the point where the waste exits or is discharged from the plant site or the waste is placed for on-site disposal in a unit not subject to this subpart (e.g., a waste incinerator, a land disposal unit).

Waste stabilization process means any physical or chemical process used to either reduce the mobility of hazardous constituents in a waste or eliminate free liquids as determined by Test Method 9095—Paint Filter Liquids Test in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW–846, Third Edition, September 1986, as amended by Update I, November 15, 1992. A waste stabilization process includes mixing the waste with binders or other materials, and curing the resulting waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification." A waste stabilization process does not include the adding of absorbent materials to the surface of a waste, without mixing, agitation, or subsequent curing, to absorb free liquid.

§ 63.682 [Reserved]

§ 63.683 Standards: General.

(a) This section applies to owners and operators of affected sources as defined in § 63.680(c) of this subpart.

(b) The owner or operator shall control the air emissions from each affected source in accordance with the following requirements:

(1) For each off-site material management unit that is part of an affected source, the owner or operator shall perform one of the following except when the unit is exempted under provisions of paragraph (c) of this section:

(i) Install and operate air emission controls on the off-site material management unit in accordance with the standards specified in §§ 63.685 through 63.689 of this subpart, as applicable to the unit;

(ii) Treat the off-site material to remove or destroy the HAP in accordance with the treatment standards specified in § 63.684 of this subpart before placing the material in the off-site material management unit; or

(iii) Determine that the average VOHAP concentration of each off-site material stream managed in the off-site material unit remains at a level less than 500 parts per million by weight (ppmw) based on the HAP content of the off-site material stream at the point-of-delivery. The owner or operator shall perform an initial determination of the average VOHAP concentration of each off-site material stream using the procedures specified in § 63.694(b) of this subpart before the first time any portion of the off-site material stream is placed in the unit. Thereafter, the owner or operator shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the off-site material stream.

(2) For each process vent that is part of an affected source, the owner or operator shall control the HAP emitted from the process vent by implementing one of the following control measures.

(i) Install and operate air emission controls on the process vent in accordance with the standards specified in § 63.690 of this subpart.

(ii) Determine that the average VOHAP concentration of each off-site material stream managed in the unit on which the process vent is used remains at a level less than 500 parts per million by weight (ppmw) based on the HAP content of the off-site material stream at the point-of-delivery. The owner or operator shall perform an initial determination of the average VOHAP concentration of each off-site material stream using the procedures specified in § 63.694(b) of this subpart before the first time any portion of the off-site material stream is placed in the unit. Thereafter, the owner or operator shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the off-site material stream.

(3) For each equipment component that is part of an affected source and meets all of the criteria specified in paragraphs (b)(3)(i) through (b)(3)(iii) of this section, the owner or operator shall control the HAP emitted from equipment leaks by implementing control measures in accordance with the standards specified in § 63.691 of this subpart.

(i) The equipment component contains or contacts off-site material having a total HAP concentration equal to or greater than 10 percent by weight;

(ii) The equipment piece is a pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, or instrumentation system; and

(iii) The equipment piece is intended to operate 300 hours or more during a 12-month period.

(c) Exempted off-site material management units. An off-site material management unit is exempted from the requirements specified in paragraph (b) of this section when the unit meets any one of the exemptions provided in paragraphs (c)(1) through (c)(5) of this section.

(1) An off-site material management unit is exempted from the requirements specified in paragraph (b) of this section if the unit is also subject to another subpart under 40 CFR part 61 or 40 CFR part 63, and the owner or operator is controlling the HAP listed in Table 1 of this subpart that are emitted from the unit in compliance with the provisions specified in the other applicable subpart.

(2) One or more off-site material management units located at a plant site can be exempted from the requirements specified in paragraph (b) of this section at the discretion of the owner or operator provided that the total annual quantity of HAP contained in the off-site material placed in the off-site material management units selected by the owner or operator to be exempted under this provision is less than 1 megagram per year. This total annual HAP quantity for the off-site material shall be based on the total quantity of the HAP listed in Table 1 of this subpart as determined at the point where the off-site material is placed in each exempted unit. For the off-site material management unit selected by the owner or operator to be exempted from the under this provision, the owner or operator shall meet the following requirements:

(i) Documentation shall be prepared by the owner or operator and maintained at the plant site to support the initial determination of the total annual HAP quantity of the off-site material. This documentation shall include identification of each off-site material management unit selected by the owner or operator to be exempted under paragraph (c)(2) of this section and the basis for determining the HAP content of the off-site material. The owner or operator shall perform a new determination when the extent of changes to the quantity or composition of the off-site material placed in the exempted units could cause the total annual HAP content in the off-site material to exceed 1 megagram per year.

(ii) Each of the off-site material management units exempted under paragraph (c)(2) of this section shall be permanently marked in such a manner that it can be readily identified as an exempted unit from the other off-site material management units located at the plant site.

(3) A tank or surface impoundment is exempted from the requirements specified in paragraph (b) of this section if the unit is used for a biological treatment process that destroys or degrades the HAP contained in the material entering the unit, such that either of the following conditions is met:

(i) The HAP reduction efficiency (R) for the process is equal to or greater than 95 percent, and the HAP biodegradation efficiency (R_{bio}) for the process is equal to or greater than 95 percent. The HAP reduction efficiency (R) shall be determined using the procedure specified in § 63.694(g) of this subpart. The HAP biodegradation efficiency (R_{bio}) shall be determined in accordance with the requirements of § 63.694(h) of this subpart.

(ii) The total actual HAP mass removal rate (MR_{bio}) as determined in accordance with the requirements of § 63.694(i) of this subpart for the off-site material treated by the process is equal to or greater than the required HAP mass removal rate (RMR) as determined in accordance with the requirements of § 63.694(e) of this subpart.

(4) An off-site material management unit is exempted from the requirements specified in paragraph (b) of this section if the off-site material placed in the unit is a hazardous waste that meets the numerical concentration limits, applicable to the hazardous waste, as specified in 40 CFR part 268—Land Disposal Restrictions under both of the following tables:

(i) Table "Treatment Standards for Hazardous Waste" in 40 CFR 268.40; and

(ii) Table UTS—"Universal Treatment Standards" in 40 CFR 268.48.

(5) A tank used for bulk feed of off-site material to a waste incinerator is exempted from the requirements specified in paragraph (b) of this section if all of the following conditions are met:

(i) The tank is located inside an enclosure vented to a control device that is designed and operated in accordance with all applicable requirements specified under 40 CFR part 61, subpart FF—National Emission Standards for Benzene Waste Operations for a facility at which the total annual benzene quantity from the facility waste is equal to or greater than 10 megagrams per year;

(ii) The enclosure and control device serving the tank were installed and began operation prior to July 1, 1996; and

(iii) The enclosure is designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, Appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or to direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" annually.

§ 63.684 Standards: Off-Site Material Treatment.

(a) The provisions of this section apply to the treatment of off-site material to control air emissions for which § 63.683(b)(1)(ii) of this subpart references the requirements of this section for such treatment.

(b) The owner or operator shall remove or destroy the HAP contained in off-site material streams to be managed in the off-site material management unit in accordance with § 63.683(b)(1)(ii) of this subpart using a treatment process that continuously achieves, under normal operations, one of the following performance levels for the range of off-site material stream compositions and quantities expected to be treated:

(1) *VOHAP concentration.* The treatment process shall reduce the VOHAP concentration of the off-site material using a means, other than by dilution, to achieve one of the following performance levels, as applicable:

(i) In the case when every off-site material stream entering the treatment process has an average VOHAP concentration equal to or greater than 500 ppmw at the point-of-delivery, then the VOHAP concentration of the off-site material shall be reduced to a level that is less than 500 ppmw at the point-of-treatment.

(ii) In the case when the off-site material streams entering the treatment process include off-site material streams having average VOHAP concentrations less than 500 ppmw at the point-of-delivery, then the VOHAP concentration of the off-site material shall be reduced to a level at the point-of-treatment that is either:

(A) Less than the VOHAP concentration limit (C_m) established for the treatment process using the procedure specified in § 63.694(d) of this subpart; or

(B) Less than the lowest VOHAP concentration determined for each of the off-site material streams entering the treatment process as determined by the VOHAP concentration of the off-site material at the point-of-delivery.

(2) *HAP mass removal.* The treatment process shall achieve a performance level such that the total quantity of HAP actually removed from the off-site material stream (MR) is equal to or greater than the required mass removal (RMR) established for the off-site material stream using the procedure specified in § 63.694(e) of this subpart. The MR for the off-site material streams shall be determined using the procedures specified in § 63.694(f) of this subpart.

(3) *HAP reduction efficiency.* The treatment process shall achieve a performance level such that the total quantity of HAP in the off-site material stream is reduced to one of the following performance levels, as applicable:

(i) In the case when the owner or operator determines that off-site material stream entering the treatment process has an average VOHAP concentration less than 10,000 ppmw at the point-of-delivery, then the treatment process shall achieve a performance level such that the total quantity of HAP in the off-site material stream is reduced by 95 percent or more. The HAP reduction efficiency (R) for the treatment process shall be determined using the procedure specified in § 63.694(g) of this subpart. The average VOHAP concentration of the off-site material stream at the point-of-delivery shall be determined using the procedure specified in § 63.694(b) of this subpart.

(ii) In the case when the off-site material stream entering the treatment process has an average VOHAP concentration equal to or greater than 10,000 ppmw at the point-of-delivery, then the treatment process shall achieve a performance level such that the total quantity of HAP in the off-site material stream is reduced by 95 percent or more, and the average VOHAP concentration of the off-site material at the point-of-treatment is less than 100 parts per million by weight (ppmw). The HAP reduction efficiency (R) for the treatment process shall be determined using the procedure specified in § 63.694(g) of this subpart. The average VOHAP concentration of the off-site material stream at the point-of-treatment shall be determined using the procedure specified in § 63.694(c) of this subpart.

(4) *Biological degradation.* The treatment process shall achieve either of the following performance levels:

(i) The HAP reduction efficiency (R) for the treatment process is equal to or greater than 95 percent, and the HAP biodegradation efficiency (R_{bio}) for the treatment process is equal to or greater than 95 percent. The HAP reduction efficiency (R) shall be determined using the procedure specified in § 63.694(g) of this subpart. The HAP biodegradation efficiency (R_{bio}) shall be determined in accordance with the requirements of § 63.694(h) of this subpart.

(ii) The total quantity of HAP actually removed from the off-site material stream by biological degradation (MR_{bio}) shall be equal to or greater than the required mass removal (RMR) established for the off-site material stream using the procedure specified in § 63.694(e) of this subpart. The MR_{bio} of the off-site material stream shall be determined using the procedures specified in § 63.694(i) of this subpart.

(5) *Incineration.* The HAP contained in the off-site material stream shall be destroyed using one of the following combustion devices:

(i) An incinerator for which the owner or operator has either:

(A) Been issued a final permit under 40 CFR part 270, and the incinerator is designed and operated in accordance with the requirements of 40 CFR 264 subpart O—Incinerators, or

(B) Has certified compliance with the interim status requirements of 40 CFR 265 subpart O—Incinerators.

(ii) A boiler or industrial furnace for which the owner or operator has either:

(A) Been issued a final permit under 40 CFR part 270, and the combustion unit is designed and operated in accordance with the requirements of 40 CFR part 266 subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces, or

(B) Has certified compliance with the interim status requirements of 40 CFR part 266 subpart H Hazardous Waste Burned in Boilers and Industrial Furnaces.

(c) For a treatment process that removes the HAP from the off-site material by a means other than thermal destruction or biological degradation to achieve one of the performances levels specified in paragraph (b)(1), (b)(2), or (b)(3) of this section, the owner or operator shall manage the HAP removed from the off-site material in such a manner to minimize release of these HAP to the atmosphere, to the extent practical. Examples of HAP emission control measures that meet the requirements of this paragraph include managing the HAP removed from the off-site material in units that use air emission controls in accordance with the standards specified in §§ 63.685 through 63.689 of this subpart, as applicable to the unit.

(d) When the owner or operator treats the off-site material to meet one of the performance levels specified in paragraphs (b)(1) through (b)(4) of this section, the owner or operator shall demonstrate that the treatment process achieves the selected performance level for the range of expected off-site material stream compositions expected to be treated. An initial demonstration shall be performed as soon as possible but no later than 30 days after first time an owner or operator begins using the treatment process to manage off-site material streams in accordance with the requirements of § 63.683(b)(1)(ii) of this subpart. Thereafter, the owner or operator shall review and update, as necessary, this demonstration at least once every 12 months following the date of the initial demonstration.

(e) When the owner or operator treats the off-site material to meet one of the performance levels specified in paragraphs (b)(1) through (b)(4) of this section, the owner or operator shall ensure that the treatment process is

achieving the applicable performance requirements by continuously monitoring the operation of the process when it is used to treat off-site material:

(1) A continuous monitoring system shall be installed and operated for each treatment that measures operating parameters appropriate for the treatment process technology. This system shall include a continuous recorder that records the measured values of the selected operating parameters. The monitoring equipment shall be installed, calibrated, and maintained in accordance with the equipment manufacturer's specifications. The continuous recorder shall be a data recording device that records either an instantaneous data value at least once every 15 minutes or an average value for intervals of 15 minutes or less.

(2) For each monitored operating parameter, the owner or operator shall establish a minimum operating parameter value or a maximum operating parameter value, as appropriate, to define the range of conditions at which the treatment process must be operated to continuously achieve the applicable performance requirements of this section.

(3) When the treatment process is operating to treat off-site material, the owner or operator shall inspect the data recorded by the continuous monitoring system on a routine basis and operate the treatment process such that the actual value of each monitored operating parameter is greater than the minimum operating parameter value or less than the maximum operating parameter value, as appropriate, established for the treatment process.

(f) The owner or operator shall maintain records for each treatment process in accordance with the requirements of § 63.696 of this subpart.

(g) The owner or operator shall prepare and submit reports for each treatment process in accordance with the requirements of § 63.697 of this subpart.

(h) The Administrator may at any time conduct or request that the owner or operator conduct testing necessary to demonstrate that a treatment process is achieving the applicable performance requirements of this section. The testing shall be conducted in accordance with the applicable requirements of this section. The Administrator may elect to have an authorized representative observe testing conducted by the owner or operator.

§ 63.695 Standards: Tanks.

(a) The provisions of this section apply to the control of air emissions from tanks for which § 63.683(b)(1)(i) of this subpart references the use of this section for such air emission control.

(b) The owner or operator shall control air emissions from each tank subject to this section in accordance with the following applicable requirements:

(1) For a tank that is part of an existing affected source but the tank is not used to manage off-site material having a maximum organic vapor pressure that is equal to or greater than 76.6 kPa nor is the tank used for a waste stabilization process as defined in § 63.681 of this subpart, the owner or operator shall determine whether the tank is required to use either Tank Level 1 controls or Tank Level 2 controls as specified for the tank by Table 3 of this subpart based on the off-site material maximum HAP vapor pressure and the tank's design capacity. The owner or operator shall control air emissions from a tank required by Table 3 to use Tank Level 1 controls in accordance with the requirements of paragraph (c) of this section. The owner or operator shall control air emissions from a tank required by Table 3 to use Tank Level 2 controls in accordance with the requirements of paragraph (d) of this section.

(2) For a tank that is part of a new affected source but the tank is not used to manage off-site material having a maximum organic vapor pressure that is equal to or greater than 76.6 kPa nor is the tank used for a waste stabilization process as defined in § 63.681 of this subpart, the owner or operator shall determine whether the tank is required to use either Tank Level 1 controls or Tank Level 2 controls as specified for the tank by Table 4 of this subpart based on the off-site material maximum HAP vapor pressure and the tank's design capacity. The owner or operator shall control air emissions from a tank required by Table 4 to use Tank Level 1 controls in accordance with the requirements of paragraph (c) of this section. The owner or operator shall control air emissions from a tank required by Table 4 to use Tank Level 2 controls in accordance with the requirements of paragraph (d) of this section.

(3) For a tank that is used for a waste stabilization process, the owner or operator shall control air emissions from the tank by using Tank Level 2 controls in accordance with the requirements of paragraph (d) of this section.

(4) For a tank that manages off-site material having a maximum organic vapor pressure that is equal to or greater than the 76.6 kPa, the owner or operator shall control air emissions from the tank by venting the tank through a closed-vent system to a control device in accordance with the requirements of paragraph (g) of this section.

(c) Owners and operators controlling air emissions from a tank using Tank Level 1 controls shall meet the following requirements:

(1) The owner or operator shall determine the maximum HAP vapor pressure for an off-site material to be managed in the tank using Tank Level 1 controls before the first time the off-site material is placed in the tank. The maximum HAP vapor pressure shall be determined using the procedures specified in § 63.694(j) of this subpart. Thereafter, the owner or operator shall perform a new determination whenever changes to the off-site material managed in the tank could potentially cause the maximum HAP vapor pressure to increase to a level that is equal to or greater than the maximum HAP vapor pressure limit for the tank design capacity category specified in Table 3 or Table 4 of this subpart, as applicable to the tank.

(2) The owner or operator shall control air emissions from the tank using a fixed-roof in accordance with the provisions specified in 40 CFR 63 subpart OO—National Emission Standards for Tanks—Level 1.

(d) Owners and operators controlling air emissions from a tank using Tank Level 2 controls shall use one of the following tanks:

(1) A fixed-roof tank equipped with an internal floating roof in accordance with the requirements specified in paragraph (e) of this section;

(2) A tank equipped with an external floating roof in accordance with the requirements specified in paragraph (f) of this section;

(3) A tank vented through a closed-vent system to a control device in accordance with the requirements specified in paragraph (g) of this section;

(4) A pressure tank designed and operated in accordance with the requirements specified in paragraph (h) of this section; or

(5) A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements specified in paragraph (i) of this section.

(e) The owner or operator who elects to control air emissions from a tank using a fixed-roof with an internal floating roof shall meet the requirements specified in paragraphs (e)(1) through (e)(3) of this section.

(1) The tank shall be equipped with a fixed roof and an internal floating roof

in accordance with the following requirements:

(i) The internal floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(ii) The internal floating roof shall be equipped with a continuous seal between the wall of the tank and the floating roof edge that meets either of the following requirements:

(A) A single continuous seal that is either a liquid-mounted seal or a metallic shoe seal, as defined in § 63.681 of this subpart; or

(B) Two continuous seals mounted one above the other. The lower seal may be a vapor-mounted seal.

(iii) The internal floating roof shall meet the following specifications:

(A) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the liquid surface.

(B) Each opening in the internal floating roof shall be equipped with a gasketed cover or a gasketed lid except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains.

(C) Each penetration of the internal floating roof for the purpose of sampling shall have a slit fabric cover that covers at least 90 percent of the opening.

(D) Each automatic bleeder vent and rim space vent shall be gasketed.

(E) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(F) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(2) The owner or operator shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as soon as practical.

(ii) Automatic bleeder vents are to be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(iii) Prior to filling the tank, each cover, access hatch, gauge float well or lid on any opening in the internal floating roof shall be bolted or fastened closed (i.e., no visible gaps). Rim spaces vents are to be set to open only when the internal floating roof is not floating or when the pressure beneath the rim exceeds the manufacturer's recommended setting.

(3) The owner or operator shall inspect the internal floating roof in accordance with the procedures specified in § 63.695(b) of this subpart.

(f) The owner or operator who elects to control tank emissions by using an external floating roof shall meet the requirements specified in paragraphs (f)(1) through (f)(3) of this section.

(1) The owner or operator shall design the external floating roof in accordance with the following requirements:

(i) The external floating roof shall be designed to float on the liquid surface except when the floating roof must be supported by the leg supports.

(ii) The floating roof shall be equipped with two continuous seals, one above the other, between the wall of the tank and the roof edge. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

(A) The primary seal shall be a liquid-mounted seal or a metallic shoe seal, as defined in § 63.681 of this subpart. The total area of the gaps between the tank wall and the primary seal shall not exceed 212 square centimeters (cm^2) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 3.8 centimeters (cm). If a metallic shoe seal is used for the primary seal, the metallic shoe seal shall be designed so that one end extends into the liquid in the tank and the other end extends a vertical distance of at least 61 centimeters above the liquid surface.

(B) The secondary seal shall be mounted above the primary seal and cover the annular space between the floating roof and the wall of the tank. The total area of the gaps between the tank wall and the secondary seal shall not exceed 21.2 square centimeters (cm^2) per meter of tank diameter, and the width of any portion of these gaps shall not exceed 1.3 centimeters (cm).

(iii) The external floating roof shall be meet the following specifications:

(A) Except for automatic bleeder vents (vacuum breaker vents) and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the liquid surface.

(B) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be equipped with a gasketed cover, seal, or lid.

(C) Each access hatch and each gauge float wells shall be equipped with covers designed to be bolted or fastened when the cover is secured in the closed position.

(D) Each automatic bleeder vent and each rim space vents shall be equipped with a gasket.

(E) Each roof drain that empties into the liquid managed in the tank shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(F) Each unslotted and slotted guide pole well shall be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.

(G) Each unslotted guide pole shall be equipped with a gasketed cap on the end of the pole.

(H) Each slotted guide pole shall be equipped with a gasketed float or other device which closes off the surface from the atmosphere.

(I) Each gauge hatch and each sample well shall be equipped with a gasketed cover.

(2) The owner or operator shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as soon as practical.

(ii) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be secured and maintained in a closed position at all times except when the closure device must be open for access.

(iii) Covers on each access hatch and each gauge float well shall be bolted or fastened when secured in the closed position.

(iv) Automatic bleeder vents shall be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(v) Rim space vents shall be set to open only at those times that the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(vi) The cap on the end of each unslotted guide pole shall be secured in the closed position at all times except when measuring the level or collecting samples of the liquid in the tank.

(vii) The cover on each gauge hatch or sample well shall be secured in the closed position at all times except when the hatch or well must be opened for access.

(viii) Both the primary seal and the secondary seal shall completely cover the annular space between the external floating roof and the wall of the tank in a continuous fashion except during inspections.

(3) The owner or operator shall inspect the external floating roof in accordance with the procedures specified in § 63.695(b) of this subpart.

(g) The owner or operator who controls tank air emissions by venting to a control device shall meet the requirements specified in paragraphs (g)(1) through (g)(3) of this section.

(1) The tank shall be covered by a fixed roof and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank.

(ii) Each opening in the fixed roof not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions.

(iii) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the off-site material to the atmosphere, to the extent practical, and will maintain the integrity of the equipment throughout its intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: organic vapor permeability, the effects of any contact with the liquid and its vapor managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(iv) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 63.693 of this subpart.

(2) Whenever an off-site material is in the tank, the fixed roof shall be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device except as follows:

(i) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of separator.

(ii) Opening of a safety device, as defined in § 63.681 of this subpart, is allowed at any time conditions require it to do so to avoid an unsafe condition.

(3) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the procedures specified in § 63.695 of this subpart.

(h) The owner or operator who elects to control tank air emissions by using a pressure tank shall meet the following requirements.

(1) The tank shall be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the tank during filling of the tank to its design capacity.

(2) All tank openings shall equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in § 63.694(k) of this subpart.

(3) Whenever an off-site material is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except in the event that opening of a safety device, as defined in § 63.681 of this subpart, is required to avoid an unsafe condition.

(i) The owner or operator who elects to control air emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device shall meet the requirements specified in paragraphs (i)(1) through (i)(4) of this section.

(1) The tank shall be located inside an enclosure. The enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, Appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or to direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(2) The enclosure shall be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in § 63.693 of this subpart.

§ 63.686 Standards: Oil-water and organic-water separators.

(a) The provisions of this section apply to the control of air emissions from oil-water separators and organic-water separators for which § 63.683(b)(1)(i) of this subpart references the use of this section for such air emission control.

(b) The owner or operator shall control air emissions from the separator subject to this section by installing and operating one of the following:

(1) A floating roof in accordance with all applicable provisions specified in 40 CFR 63 subpart VV—National Emission Standards for Oil-Water Separators and Organic-Water Separators. For portions of the separator where it is infeasible to install and operate a floating roof, such as over a weir mechanism, the owner or operator shall comply with the requirements specified in paragraph (b)(2) of this section.

(2) A fixed-roof that is vented through a closed-vent system to a control device in accordance with all applicable provisions specified in 40 CFR 63 subpart VV—National Emission Standards for Oil-Water Separators and Organic-Water Separators.

§ 63.687 Standards: Surface impoundments.

(a) The provisions of this section apply to the control of air emissions from surface impoundments for which § 63.683(b)(1)(i) of this subpart references the use of this section for such air emission control.

(b) The owner or operator shall control air emissions from each surface impoundment subject to this section by installing and operating one of the following, as relevant to the surface impoundment design and operation:

(1) A floating membrane cover in accordance with the applicable provisions specified in 40 CFR 63 subpart QQ—National Emission Standards for Surface Impoundments; or

(2) A cover that is vented through a closed-vent system to a control device in accordance with all applicable provisions specified in 40 CFR 63 subpart QQ—National Emission Standards for Surface Impoundments.

§ 63.688 Standards: Containers.

(a) The provisions of this section apply to the control of air emissions from containers for which § 63.683(b)(1)(i) of this subpart references the use of this section for such air emission control.

(b) The owner or operator shall control air emissions from each container subject to this section in accordance with the following requirements, as applicable to the container, except when the special provisions for waste stabilization processes specified in paragraph (c) of this section apply to the container.

(1) For a container having a design capacity greater than 0.1 m^3 and less than or equal to 0.46 m^3, the owner or operator shall control air emissions from the container in accordance with the standards for Container Level 1 controls as specified in 40 CFR 63 subpart PP—National Emission Standards for Containers.

(2) For a container having a design capacity greater than 0.46 m^3 and the container is not in light-material service as defined in § 63.681 of this subpart, the owner or operator shall control air emissions from the container in accordance with the standards for Container Level 1 controls as specified in 40 CFR 63 subpart PP—National Emission Standards for Containers.

(3) For a container having a design capacity greater than 0.46 m^3 and the container is in light-material service as defined in § 63.681 of this subpart, the owner or operator shall control air emissions from the container in accordance with the standards for Container Level 2 controls as specified in 40 CFR 63 subpart PP—National Emission Standards for Containers.

(c) When a container subject to this subpart and having a design capacity greater than 0.1 m^3 is used for treatment of an off-site material by a waste stabilization process as defined in § 63.681 of this subpart, the owner or operator shall control air emissions from the container at those times during the process when the off-site material in container is exposed to the atmosphere in accordance with the standards for Container Level 3 controls as specified in 40 CFR 63 subpart PP—National Emission Standards for Containers.

§ 63.689 Standards: Transfer systems.

(a) The provisions of this section apply to the control of air emissions from transfer systems for which § 63.683(b)(1)(i) of this subpart references the use of this section for such air emission control.

(b) For each transfer system that is subject to this section and is an individual drain system, the owner or operator shall control air emissions from in accordance with the standards specified in 40 CFR 63 subpart RR—National Emission Standards for Individual Drain Systems.

(c) For each transfer system that is subject to this section but is not an individual drain system, the owner or operator shall control air emissions by installing and operating one of the following:

(1) A transfer system that uses covers in accordance with the requirements specified in paragraph (d) of this section.

(2) A transfer system that consists of continuous hard-piping. All joints or seams between the pipe sections shall be permanently or semi-permanently sealed (e.g., a welded joint between two sections of metal pipe or a bolted and gasketed flange).

(3) A transfer system that is enclosed and vented through a closed vent system to a control device in accordance with the following requirements:

(i) The transfer system is designed and operated such that an internal pressure in the vapor headspace in the system is maintained at a level less than atmospheric pressure when the control device is operating, and

(ii) The closed vent system and control device are designed and operated in accordance with the requirements of § 63.693 of this subpart.

(d) Owners and operators controlling air emissions from a transfer system using covers in accordance with the provisions of paragraph (c)(1) of this section shall meet the following requirements:

(1) The cover and its closure devices shall be designed to form a continuous barrier over the entire surface area of the off-site material as it is conveyed by the transfer system except for the openings at the inlet and outlet to the transfer system through which the off-site material passes. The inlet and outlet openings used for passage of the off-site material through the transfer system shall be the minimum size required for practical operation of the transfer system.

(2) The cover shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between cover section joints or between the interface of the cover edge and its mounting.

(3) Except for the inlet and outlet openings to the transfer system through which the off-site material passes, each opening in the cover shall be equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device.

(4) The cover and its closure devices shall be made of suitable materials that will minimize exposure of the off-site material to the atmosphere, to the extent practical, and will maintain the integrity of the equipment throughout its intended service life. Factors to be considered when selecting the materials for and designing the cover and closure devices shall include: organic vapor permeability; the effects of any contact with the material or its vapors conveyed in the transfer system; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the transfer system on which the cover is installed.

(5) Whenever an off-site material is in the transfer system, the cover shall be installed with each closure device secured in the closed position except as follows:

(i) Opening of closure devices or removal of the cover is allowed to provide access to the transfer system for performing routine inspection, maintenance, repair, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a hatch or remove the cover to repair conveyance equipment mounted under the cover or to clear a blockage of material inside the system. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable.

(ii) Opening of a safety device, as defined in § 63.681 of this subpart, is allowed at any time conditions require it to do so to avoid an unsafe condition.

(6) The owner or operator shall inspect the air emission control equipment in accordance with the requirements specified in § 63.695 of this subpart.

§ 63.690 Standards: Process vents.

(a) The provisions of this section apply to the control of air emissions from process vents for which § 63.683(b)(2)(i) of this subpart references the use of this section for such air emission control.

(b) The owner or operator shall control HAP emitted from the process vent within the affected source by connecting each process vent through a closed-vent system to a control device that is designed and operated in

accordance with the standards specified in § 63.693 of this subpart with the following exceptions.

(1) Each individual control device used to comply with the requirements of this section is not required to meet the level of performance, as applicable to the particular control technology used, specified in §§ 63.693 (d)(1), (e)(1), (f)(1)(i), and (g)(1)(i) of this subpart provided that these control devices are designed and operated to achieve a total reduction of 95 weight percent or more in the quantity of HAP, listed in Table 1 of this subpart, that is emitted from all process vents within the affected source.

(2) For the purpose of complying with this section, a device for which the predominate function is the recovery or capture of solvents or other organics for use, reuse, or sale (e.g., a primary condenser or a solvent recovery unit) is not a control device.

§ 63.691 Standards: Equipment leaks.

(a) The provisions of this section apply to the control of air emissions from equipment leaks for which § 63.683(b)(3) of this subpart references the use of this section for such air emission control.

(b) The owner or operator shall control the HAP emitted from equipment leaks in accordance with the applicable provisions of either:

(1) Section 61.242 through § 61.247 in 40 CFR Part 61 subpart V—National Emission Standards for Equipment Leaks; or

(2) Section 63.162 through § 63.182 in 40 CFR Part 63 subpart H—National Emission Standards for Organic Hazardous Air Pollutants from Equipment Leaks.

§ 63.692 [Reserved]

§ 63.693 Standards: Closed-vent systems and control devices.

(a) The provisions of this section apply to closed-vent systems and control devices used to control air emissions for which another standard references the use of this section for such air emission control.

(b) For each closed-vent system and control device used to comply with this section, the owner or operator shall meet the following requirements:

(1) The closed-vent system shall be designed and operated in accordance with the requirements specified in paragraph (c) of this section.

(2) The control device shall remove, recover, or destroy HAP at a level of performance that achieves the requirements applicable to the particular control device technology as specified in paragraphs (d) through (h) of this section. The owner or operator shall demonstrate that the control device achieves the applicable performance requirements by either conducting a performance test or preparing a design analysis for the control device in accordance with the requirements specified in this section.

(3) Whenever gases or vapors containing HAP are vented through a closed-vent system connected to a control device used to comply with this section, the control device shall be operating except at the following times:

(i) The control device may be bypassed for the purpose of performing planned routine maintenance of the closed vent system or control device in situations when the routine maintenance cannot be performed during periods that the emission point vented to the control device is shutdown. On an annual basis, the total time that the closed-vent system or control device is bypassed to perform routine maintenance shall not exceed 240 hours per each 12 month period.

(ii) The control device may be bypassed for the purpose of correcting a malfunction of the closed vent system or control device. The owner or operator shall perform the adjustments or repairs necessary to correct the malfunction as soon as practicable after the malfunction is detected.

(4) The owner or operator shall ensure that the control device is achieving the performance requirements specified in paragraph (b)(2) of this section by continuously monitoring the operation of the control device as follows:

(i) A continuous monitoring system shall be installed and operated for each control device that measures operating parameters appropriate for the control device technology as specified in paragraphs (d) through (h) of this section. This system shall include a continuous recorder that records the measured values of the selected operating parameters. The monitoring equipment shall be installed, calibrated, and maintained in accordance with the equipment manufacturer's specifications. The continuous recorder shall be a data recording device that records either an instantaneous data value at least once every 15 minutes or an average value for intervals of 15-minutes or less.

(ii) For each monitored operating parameter, the owner or operator shall establish a minimum operating parameter value or a maximum operating parameter value, as appropriate, to define the range of conditions at which the control device must be operated to continuously achieve the applicable performance requirements of this section. Each minimum or maximum operating parameter value shall be established as follows:

(A) If the owner or operator conducts a performance test to demonstrate control device performance, then the minimum or maximum operating parameter value shall be established based on values measured during the performance test and supplemented, as necessary, by control device design analysis and manufacturer recommendations.

(B) If the owner or operator uses a control device design analysis to demonstrate control device performance, then the minimum or maximum operating parameter value shall be established based on the control device design analysis and the control device manufacturer's recommendations.

(C) When the control device is required to be operating in accordance with the provisions of paragraph (b)(3) of this section, the owner or operator shall inspect the data recorded by the continuous monitoring system on a routine basis and operate the control device such that the actual value of each monitored operating parameter is greater than the minimum operating parameter value or less than the maximum operating parameter value, as appropriate, established for the control device.

(5) The owner or operator shall inspect and monitor the closed-vent system in accordance with the requirements of § 63.695(c) of this subpart.

(6) The owner or operator shall maintain records for each closed-vent system and control device in accordance with the requirements of § 63.696 of this subpart.

(7) The owner or operator shall prepare and submit reports for each closed-vent system and control device in accordance with the requirements of § 63.697 of this subpart.

(8) The Administrator may at any time conduct or request that the owner or operator conduct a performance test to demonstrate that a closed-vent system and control device achieves the applicable performance requirements of this section. The performance test shall be conducted in accordance with the requirements of § 63.694(l) of this subpart. The Administrator may elect to have an authorized representative observe a performance test conducted by the owner or operator. Should the results of this performance test not agree with the determination of control device performance based on a design analysis, then the results of the performance test

shall be used to establish compliance with this section.

(c) Closed-vent system requirements.

(1) The vent stream required to be controlled shall be conveyed to the control device by either of the following closed-vent systems:

(i) A closed-vent system that is designed to operate with no detectable organic emissions using the procedure specified in § 63.694(k) of this subpart; or

(ii) A closed-vent system that is designed to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gage or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the control device is operating.

(2) In situations when the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device shall be equipped with either a flow indicator as specified in paragraph (c)(2)(i) or a seal or locking device as specified in paragraph (c)(2)(ii) of this section. For the purpose of complying with this paragraph, low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring-loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices.

(i) If a flow indicator is used to comply with paragraph (c)(2) of this section, the indicator shall be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the atmosphere at a point upstream of the control device inlet. For this paragraph, a flow indicator means a device which indicates either the presence of gas or vapor flow in the bypass line.

(ii) If a seal or locking device is used to comply with paragraph (c)(2) of this section, the device shall be placed on the mechanism by which the bypass device position is controlled (e.g., valve handle, damper lever) when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to, a car-seal or a lock-and-key configuration valve. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position.

(d) Carbon adsorption control device requirements.

(1) The carbon adsorption system shall be designed and operated to achieve one of the following performance specifications:

(i) Recover 95 percent or more, on a weight-basis, of the total organic compounds (TOC), less methane and ethane, contained in the vent stream entering the carbon adsorption system; or

(ii) Recover 95 percent or more, on a weight-basis, of the total HAP listed in Table 1 of this subpart contained in the vent stream entering the carbon adsorption system.

(2) The owner or operator shall demonstrate that the carbon adsorption system achieves the performance requirements of paragraph (d)(1) of this section by one of the following methods:

(i) Conduct a performance test in accordance with the requirements of § 63.694(l) of this subpart.

(ii) Prepare a design analysis. This analysis shall address the vent stream characteristics and control device operating parameters for the applicable carbon adsorption system type as follows:

(A) For a regenerable carbon adsorption system, the design analysis shall address the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration, adsorption cycle time, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total regeneration steam flow over the period of each complete carbon bed regeneration cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of the carbon.

(B) For a nonregenerable carbon adsorption system (e.g., a carbon canister), the design analysis shall address the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration, carbon bed capacity, activated carbon type and working capacity, and design carbon replacement interval based on the total carbon working capacity of the control device and emission point operating schedule.

(3) To meet the monitoring requirements of paragraph (b)(4) of this section, the owner or operator shall use one of the following continuous monitoring systems:

(i) For a regenerative-type carbon adsorption system, an integrating regeneration stream flow monitoring device equipped with a continuous recorder and a carbon bed temperature monitoring device for each adsorber vessel equipped with a continuous recorder. The integrating regeneration stream flow monitoring device shall have an accuracy of ±10 percent and measure the total regeneration stream mass flow during the carbon bed regeneration cycle. The temperature monitoring device shall measure the carbon bed temperature after regeneration and within 15 minutes of completing the cooling cycle and the duration of the carbon bed steaming cycle.

(ii) A continuous monitoring system that measures the concentration level of organic compounds in the exhaust vent stream from the control device using an organic monitoring device equipped with a continuous recorder.

(iii) A continuous monitoring system that measures other alternative operating parameters upon approval of the Administrator as specified in 40 CFR 63.8 (f)(1) through (f)(5) of this part.

(4) The owner or operator shall manage the carbon used for the carbon adsorption system, as follows:

(i) Following the initial startup of the control device, all carbon in the control device shall be replaced with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established for the carbon adsorption system.

(ii) The spent carbon removed from the carbon adsorption system shall be managed in one of the following ways:

(A) Regenerated or reactivated in a thermal treatment unit that is designed and operated in accordance with the requirements of 40 CFR 264 subpart X and is permitted under 40 CFR part 270 of this chapter, or certified to be in compliance with the interim status requirements of 40 CFR 265 subpart P of this chapter.

(B) Burned in a hazardous waste incinerator that is designed and operated in accordance with the requirements of 40 CFR 264 subpart O and is permitted under 40 CFR part 270 of this chapter, or certified to be in compliance with the interim status requirements of 40 CFR part 265 subpart O.

(C) Burned in a boiler or industrial furnace that is designed and operated in accordance with the requirements of 40 CFR 266 subpart H and is permitted under 40 CFR part 270 of this chapter, or certified to be in compliance with the interim status requirements of 40 CFR part 266 subpart H of this chapter.

(e) Condenser control device requirements.

(1) The condenser shall be designed and operated to achieve one of the following performance specifications:

(i) Recover 95 percent or more, on a weight-basis, of the total organic compounds (TOC), less methane and ethane, contained in the vent stream entering the condenser; or

(ii) Recover 95 percent or more, on a weight-basis, of the total HAP, listed in Table 1 of this subpart, contained in the vent stream entering the condenser.

(2) The owner or operator shall demonstrate that the condenser achieves the performance requirements of paragraph (e)(1) of this section by one of the following methods:

(i) Conduct performance tests in accordance with the requirements of § 63.694(l) of this subpart.

(ii) Prepare a design analysis. This design analysis shall address the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet.

(3) To meet the continuous monitoring requirements of paragraph (b)(3)(ii) of this section, the owner or operator shall use one of the following continuous monitoring systems:

(i) A temperature monitoring device equipped with a continuous recorder. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser.

(ii) A continuous monitoring system that measures the concentration level of organic compounds in the exhaust vent stream from the control device using an organic monitoring device equipped with a continuous recorder.

(iii) A continuous monitoring system that measures other alternative operating parameters upon approval of the Administrator as specified in 40 CFR 63.8 (f)(1) through (f)(5) of this part.

(f) Vapor incinerator control device requirements.

(1) The vapor incinerator shall be designed and operated to achieve one of the following performance specifications:

(i) Destroy the total organic compounds (TOC), less methane and ethane, contained in the vent stream entering the vapor incinerator either:

(A) By 95 percent or more, on a weight-basis, or

(B) To achieve a total incinerator outlet concentration for the TOC, less methane and ethane, of less than or equal to 20 parts per million by volume (ppmv) on a dry basis corrected to 3 percent oxygen.

(ii) Destroy the HAP listed in Table 1 of this subpart contained in the vent stream entering the vapor incinerator either:

(A) By 95 percent or more, on a total HAP weight-basis, or

(B) To achieve a total incinerator outlet concentration for the HAP, listed in table 1 of this subpart, of less than or equal to 20 parts per million by volume (ppmv) on a dry basis corrected to 3 percent oxygen.

(iii) Maintain the conditions in the vapor incinerator combustion chamber at a residence time of 0.5 seconds or longer and at a temperature of 760°C or higher.

(2) The owner or operator shall demonstrate that the vapor incinerator achieves the performance requirements of paragraph (f)(1) of this section by one of the following methods:

(i) Conduct performance tests in accordance with the requirements of § 63.694(l) of this subpart; or

(ii) Prepare a design analysis. The design analysis shall include analysis of the vent stream characteristics and control device operating parameters for the applicable vapor incinerator type as follows:

(A) For a thermal vapor incinerator, the design analysis shall address the vent stream composition, constituent concentrations, and flow rate and shall establish the design minimum and average temperatures in the combustion chamber and the combustion chamber residence time.

(B) For a catalytic vapor incinerator, the design analysis shall address the vent stream composition, constituent concentrations, and flow rate and shall establish the design minimum and average temperatures across the catalyst bed inlet and outlet, and the design service life of the catalyst.

(3) To meet the monitoring requirements of paragraph (b)(4) of this section, the owner or operator shall use one of the following continuous monitoring systems, as applicable:

(i) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(ii) For a catalytic vapor incinerator, a temperature monitoring device capable of monitoring temperature at two locations equipped with a continuous recorder. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(iii) For either type of vapor incinerator, a continuous monitoring system that measures the concentration level of organic compounds in the exhaust vent stream from the control device using an organic monitoring device equipped with a continuous recorder.

(iv) For either type of vapor incinerator, a continuous monitoring system that measures alternative operating parameters other than those specified in paragraphs (f)(3)(i) or (f)(3)(ii) of this section upon approval of the Administrator as specified in 40 CFR 63.8 (f)(1) through (f)(5) of this part.

(g) Boilers and process heaters control device requirements.

(1) The boiler or process heater shall be designed and operated to achieve one of the following performance specifications:

(i) Destroy the total organic compounds (TOC), less methane and ethane, contained in the vent stream introduced into the flame zone of the boiler or process heater either:

(A) By 95 percent or more, on a weight-basis, or

(B) To achieve in the exhausted combustion gases a total concentration for the TOC, less methane and ethane, of less than or equal to 20 parts per million by volume (ppmv) on a dry basis corrected to 3 percent oxygen.

(ii) Destroy the HAP listed in Table 1 of this subpart contained in the vent stream entering the vapor incinerator either:

(A) By 95 percent or more, on a total HAP weight-basis, or

(B) To achieve in the exhausted combustion gases a total concentration for the HAP, listed in table 1 of the subpart, of less than or equal to 20 parts per million by volume (ppmv) on a dry basis corrected to 3 percent oxygen.

(iii) Introduce the vent stream into the flame zone of the boiler or process heater and maintain the conditions in the combustion chamber at a residence time of 0.5 seconds or longer and at a temperature of 760°C or higher.

(iv) Introduce the vent stream with the fuel that provides the predominate heat input to the boiler or process heater (i.e., the primary fuel); or

(v) Introduce the vent stream to a boiler or process heater for which the owner or operator either has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266 subpart H of this chapter; or has certified compliance with the interim status requirements of 40 CFR part 266 subpart H of this chapter.

(2) The owner or operator shall demonstrate that the boiler or process heater achieves the performance requirements of paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this section using one of the following methods:

(i) Conduct performance tests in accordance with the requirements of § 63.694(l) of this subpart.

(ii) Prepare a design analysis. The design analysis shall address the vent stream composition, constituent concentrations, and flow rate; shall establish the design minimum and average flame zone temperatures and combustion zone residence time; and shall describe the method and location where the vent stream is introduced into the flame zone.

(3) The owner or operator shall demonstrate that the boiler or process heater achieves the performance requirements of paragraph (g)(1)(iv) or (g)(1)(v) of this section by keeping records that document that the boiler or process heater is designed and operated in accordance with the applicable requirements of this section.

(4) To meet the monitoring requirements of paragraph (b)(4) of this section, the owner or operator shall use any of the following continuous monitoring systems:

(i) A temperature monitoring device equipped with a continuous recorder. The temperature sensor shall be installed at a location in the combustion chamber downstream of the flame zone.

(ii) A continuous monitoring system that measures the concentration level of organic compounds in the exhaust vent stream from the control device using an organic monitoring device equipped with a continuous recorder.

(iii) A continuous monitoring system that measures alternative operating parameters other than those specified in paragraphs (g)(3)(i) or (g)(3)(ii) of this section upon approval of the Administrator as specified in 40 CFR 63.8 (f)(1) through (f)(5) of this part.

(h) Flare control device requirements. The flare shall be designed and operated in accordance with the requirements of 40 CFR 63.11(b). To meet the monitoring requirements of paragraph (b)(4) of this section, the owner or operator shall use a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

§ 63.694 Testing methods and procedures.

(a) This section specifies the testing methods and procedures required for this subpart to perform the following:

40 CFR part 266 subpart H of this chapter.

(2) The owner or operator shall demonstrate that the boiler or process heater achieves the performance requirements of paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this section using one of the following methods:

(i) Conduct performance tests in accordance with the requirements of § 63.694(l) of this subpart.

(ii) Prepare a design analysis. The design analysis shall address the vent stream composition, constituent concentrations, and flow rate; shall establish the design minimum and average flame zone temperatures and combustion zone residence time; and shall describe the method and location where the vent stream is introduced into the flame zone.

(3) The owner or operator shall demonstrate that the boiler or process heater achieves the performance requirements of paragraph (g)(1)(iv) or (g)(1)(v) of this section by keeping records that document that the boiler or process heater is designed and operated in accordance with the applicable requirements of this section.

(4) To meet the monitoring requirements of paragraph (b)(4) of this section, the owner or operator shall use any of the following continuous monitoring systems:

(i) A temperature monitoring device equipped with a continuous recorder. The temperature sensor shall be installed at a location in the combustion chamber downstream of the flame zone.

(ii) A continuous monitoring system that measures the concentration level of organic compounds in the exhaust vent stream from the control device using an organic monitoring device equipped with a continuous recorder.

(iii) A continuous monitoring system that measures alternative operating parameters other than those specified in paragraphs (g)(3)(i) or (g)(3)(ii) of this section upon approval of the Administrator as specified in 40 CFR 63.8 (f)(1) through (f)(5) of this part.

(h) Flare control device requirements. The flare shall be designed and operated in accordance with the requirements of 40 CFR 63.11(b). To meet the monitoring requirements of paragraph (b)(4) of this section, the owner or operator shall use a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

§ 63.694 Testing methods and procedures.

(a) This section specifies the testing methods and procedures required for this subpart to perform the following:

(1) To determine the average VOHAP concentration for off-site material streams at the point-of-delivery for compliance with standards specified § 63.683 of this subpart, the testing methods and procedures are specified in paragraph (b) of this section.

(2) To determine the average VOHAP concentration for treated off-site material streams at the point-of-treatment for compliance with standards specified § 63.684 of this subpart, the testing methods and procedures are specified in paragraph (c) of this section.

(3) To determine the treatment process VOHAP concentration limit (C_R) for compliance with standards specified § 63.684 of this subpart, the testing methods and procedures are specified in paragraph (d) of this section.

(4) To determine treatment process required HAP removal rate (RMR) for compliance with standards specified § 63.684 of this subpart, the testing methods and procedures are specified in paragraph (e) of this section.

(5) To determine treatment process actual HAP removal rate (MR) for compliance with standards specified § 63.684 of this subpart, the testing methods and procedures are specified in paragraph (f) of this section.

(6) To determine treatment process required HAP reduction efficiency (R) for compliance with standards specified in § 63.684 of this subpart, the testing methods and procedures are specified in paragraph (g) of this section.

(7) To determine treatment process required HAP biodegradation efficiency (R_{bio}) for compliance with standards specified in § 63.684 of this subpart, the testing methods and procedures are specified in paragraph (h) of this section.

(8) To determine treatment process required actual HAP mass removal rate (MR_{bio}) for compliance with standards specified in§ 63.684 of this subpart, the testing methods and procedures are specified in paragraph (i) of this section.

(9) To determine maximum organic HAP vapor pressure of off-site materials in tanks for compliance with the standards specified in § 63.685 of this subpart, the testing methods and procedures are specified in paragraph (j) of this section.

(10) To determine no detectable organic emissions, the testing methods and procedures are specified in paragraph (k) of this section.

(11) To determine closed-vent system and control device performance for compliance with the standards specified in § 63.693 of this subpart, the testing methods and procedures are specified in paragraph (l) of this section.

(b) Testing methods and procedures to determine average VOHAP concentration of an off-site material stream at the point-of-delivery.

(1) The average VOHAP concentration of an off-site material at the point-of-delivery shall be determined using either direct measurement as specified in paragraph (b)(2) of this section or by knowledge as specified in paragraph (b)(3) of this section.

(2) Direct measurement to determine VOHAP concentration.

(i) Sampling. Samples of the off-site material stream shall be collected from the container, pipeline, or other device used to deliver the off-site material stream to the plant site in a manner such that volatilization of organics contained in the sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

(A) The averaging period to be used for determining the average VOHAP concentration for the off-site material stream on a mass-weighted average basis shall be designated and recorded. The averaging period can represent any time interval that the owner or operator determines is appropriate for the off-site material stream but shall not exceed 1 year.

(B) A sufficient number of samples, but no less than four samples, shall be collected to represent the complete range of HAP compositions and HAP quantities that occur in the off-site material stream during the entire averaging period due to normal variations in the operating conditions for the source or process generating the off-site material stream. Examples of such normal variations are seasonal variations in off-site material quantity or fluctuations in ambient temperature.

(C) All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the off-site material stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the plant site operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW–846 or Method 25D in 40 CFR part 60, appendix A.

(ii) Analysis. Each collected sample shall be prepared and analyzed in accordance with one of the following methods:

(A) Method 25D in 40 CFR part 60, appendix A.

(B) Method 305 in 40 CFR part 63, appendix A.

(C) Method 624 in 40 CFR part 136, appendix A.

(D) Method 1624 in 40 CFR part 136, appendix A.

(E) Method 1625 in 40 CFR part 136, appendix A.

(F) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 and Section 5.3 of Method 301 in 40 CFR part 63, appendix A.

(iii) Calculations. The average VOHAP concentration (C) on a mass-weighted basis shall be calculated by using the results for all samples analyzed in accordance with paragraph (b)(2)(ii) of this section and the following equation:

$$\bar{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} (Q_i \times C_i)$$

where:

$\bar{C}$=Average VOHAP concentration of the off-site material at the point-of-delivery on a mass-weighted basis, ppmw.

i=Individual sample "i" of the off-site material.

n=Total number of samples of the off-site material collected (at least 4) for the averaging period (not to exceed 1 year).

Q_i=Mass quantity of off-site material stream represented by C_i, kg/hr.

Q_T=Total mass quantity of off-site material during the averaging period, kg/hr.

C_i=Measured VOHAP concentration of sample "i" as determined in accordance with the requirements of § 63.693(b)(2)(ii), ppmw.

(3) Knowledge of the off-site material to determine VOHAP concentration.

(i) Documentation shall be prepared that presents the information used as the basis for the owner's or operator's knowledge of the off-site material stream's average VOHAP concentration. Examples of information that may be used as the basis for knowledge include: material balances for the source or process generating the off-site material stream; species-specific chemical test data for the off-site material stream from previous testing that are still applicable to the current off-site material stream; previous test data for other locations managing the same type of off-site material stream; or other knowledge based on information included in manifests, shipping papers, or waste certification notices.

(ii) If test data are used as the basis for knowledge, then the owner or operator shall document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the average VOHAP concentration. For example, an owner or operator may use HAP concentration test data for the off-site material stream that are validated in accordance with Method 301 in 40 CFR part 63, appendix A of this part as the basis for knowledge of the off-site material.

(iii) An owner or operator using species-specific chemical concentration test data as the basis for knowledge of the off-site material may adjust the test data to the corresponding average VOHAP concentration value which would be obtained had the off-site material samples been analyzed using Method 305. To adjust these data, the measured concentration for each individual HAP chemical species contained in the off-site material is multiplied by the appropriate species-specific adjustment factor (f_{m305}) listed in Table 1 of this subpart.

(iv) In the event that the Administrator and the owner or operator disagree on a determination of the average VOHAP concentration for an off-site material stream using knowledge, then the results from a determination of VOHAP concentration using direct measurement as specified in paragraph (b)(2) of this section shall be used to establish compliance with the applicable requirements of this subpart. The Administrator may perform or request that the owner or operator perform this determination using direct measurement.

(c) Determination of average VOHAP concentration of an off-site material stream at the point-of-treatment.

(1) Sampling. Samples of the off-site material stream shall be collected at the point-of-treatment in a manner such that volatilization of organics contained in the sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

(i) The averaging period to be used for determining the average VOHAP concentration for the off-site material stream on a mass-weighted average basis shall be designated and recorded. The averaging period can represent any time interval that the owner or operator determines is appropriate for the off-site material stream but shall not exceed 1 year.

(ii) A sufficient number of samples, but no less than four samples, shall be collected to represent the complete range of HAP compositions and HAP quantities that occur in the off-site material stream during the entire averaging period due to normal variations in the operating conditions for the treatment process. Examples of such normal variations are seasonal variations in off-site material quantity or fluctuations in ambient temperature.

(iii) All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the off-site material stream such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the plant site operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW–846 or Method 25D in 40 CFR part 60, appendix A.

(2) Analysis. Each collected sample shall be prepared and analyzed in accordance with the one of the following methods:

(i) Method 25D in 40 CFR part 60, appendix A.

(ii) Method 305 in 40 CFR part 63, appendix A.

(iii) Method 624 in 40 CFR part 136, appendix A.

(iv) Method 1624 in 40 CFR part 136, appendix A.

(v) Method 1625 in 40 CFR part 136, appendix A.

(3) Calculations. The average VOHAP concentration ($\bar{C}$) on a mass-weighted basis shall be calculated by using the results for all samples analyzed in accordance with paragraph (c)(2) of this section and the following equation:

$$\bar{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} (Q_i \times C_i)$$

Where:

$\bar{C}$=Average VOHAP concentration of the off-site material on a mass-weighted basis, ppmw.

i=Individual sample "i" of the off-site material.

n=Total number of samples of the off-site material collected (at least 4) for the averaging period (not to exceed 1 year).

Q_i=Mass quantity of off-site material stream represented by C_i, kg/hr.

Q_T=Total mass quantity of off-site material during the averaging period, kg/hr.

C_i=Measured VOHAP concentration of sample "i" as determined in accordance with the requirements of § 63.693(c)(2), ppmw.

(d) Determination of treatment process VOHAP concentration limit (C_R).

(1) All of the off-site material streams entering the treatment process shall be identified.

(2) The average VOHAP concentration of each off-site material stream at the point-of-delivery shall be determined

$$C_R = \frac{\sum_{x=1}^{m} (Q_x \times \bar{C}_x) + \sum_{y=1}^{n} (Q_y \times 500\,\text{ppmw})}{\sum_{x=1}^{m} Q_x + \sum_{y=1}^{n} Q_y}$$

where:

C_R=VOHAP concentration limit, ppmw.

x=Individual off-site material stream "x" that has a VOHAP concentration less than 500 ppmw at the point-of-delivery.

y=Individual off-site material stream "y" that has a VOHAP concentration equal to or greater than 500 ppmw at the point-of-delivery.

m=Total number of "x" off-site material streams treated by process.

n=Total number of "y" off-site material streams treated by process.

Q_x=Total mass quantity of off-site material stream "x", kg/yr.

Q_y=Total mass quantity of off-site material stream "y", kg/yr.

$\bar{C}_x$=VOHAP concentration of off-site material stream "x" at the point-of-delivery, ppmw.

(e) Determination of required HAP mass removal rate (RMR).

(1) All of the off-site material streams entering the treatment process shall be identified.

(2) The average VOHAP concentration of each off-site material stream at the point-of-delivery shall be determined in accordance with the requirements of paragraph (b) of this section.

$$RMR = \sum_{y=1}^{n} \left[V_y \times k_y \times \frac{(\bar{C}_y - 500\,\text{ppmw})}{10^6} \right]$$

where:

RMR=Required HAP mass removal rate, kg/hr.

y=Individual off-site material stream "y" that has a VOHAP concentration equal to or greater than 500 ppmw at the point-of-delivery as determined in accordance with the requirements of § 63.693(b).

n=Total number of "y" off-site material streams treated by process.

V_y=Average volumetric flow rate of off-site material stream "y" at the point-of-delivery, m^3/hr.

k_y=Density of off-site material stream "y", kg/m^3

$\bar{C}_y$=Average VOHAP concentration of off-site material stream "y" at the point-of-delivery as determined in accordance with the requirements of § 63.693(b), ppmw.

(f) Determination of actual HAP mass removal rate (MR).

(1) The actual HAP mass removal rate (MR) shall be determined based on results for a minimum of three consecutive runs. The sampling time for each run shall be 1 hour.

(2) The off-site material HAP mass flow entering the process (E_b) and the off-site material HAP mass flow exiting the process (E_a) shall be determined in accordance with the requirements of paragraph (g)(4) of this section.

(3) The actual mass removal rate shall be calculated by using the mass flow rates determined in accordance with the requirements of paragraph (f)(2) of this section and the following equation:

$MR = E_b - E_a$

where:

MR=Actual HAP mass removal rate, kg/hr.

E_b=Off-site material HAP mass flow entering process as determined in accordance with the requirements of paragraph (f)(2) of this section, kg/hr.

E_a=Off-site material HAP mass flow exiting process as determined in accordance with the requirements of paragraph (f)(2) of this section, kg/hr.

(g) Determination of treatment process HAP reduction efficiency (R).

(1) The HAP reduction efficiency (R) for a treatment process shall be determined based on results for a minimum of three consecutive runs.

(2) All off-site material streams entering the treatment process and all off-site material streams exiting the treatment process shall be identified. The owner or operator shall prepare a sampling plan for measuring these streams that accurately reflects the retention time of the off-site material in the process.

(3) For each run, information shall be determined for each off-site material stream identified in paragraph (g)(2) of this section using the following procedures:

(i) The mass quantity of each off-site material stream entering the process (Q_b) and the mass quantity of each off-site material stream that has an average VOHAP concentration equal to or greater than 500 ppmw at the point-of-delivery, the average volumetric flow rate and the density of the off-site material stream at the point-of-delivery shall be determined using the procedures specified in paragraph (b) of this section.

(3) The VOHAP concentration limit (C_R) shall be calculated by using the results determined for each individual off-site material stream and the following equation:

(3) For each individual off-site material stream that has an average VOHAP concentration equal to or greater than 500 ppmw at the point-of-delivery, the average volumetric flow rate and the density of the off-site material stream at the point-of-delivery shall be determined.

(4) The required HAP mass removal rate (RMR) shall be calculated by using the average VOHAP concentration, average volumetric flow rate, and density determined for each off-site material stream and the following equation:

site material stream exiting the process (Q_a) shall be determined.

(ii) The average VOHAP concentration at the point-of-delivery of each off-site material stream entering the process ($\bar{C}_b$) during the run shall be determined in accordance with the requirements of paragraph (b) of this section. The VOHAP concentration of the off-site material stream at the point-of-treatment (C_a) during the run shall be determined in accordance with the applicable requirements of paragraph (c) of this section.

(4) The off-site material HAP mass flow entering the process (E_b) and the off-site material HAP mass flow exiting the process (E_a) shall be calculated by using the results determined in accordance with paragraph (g)(3) of this section and the following equations:

$$E_b = \frac{1}{10^6}\sum_{j=1}^{m}\left(Q_{bj}\times\bar{C}_{bj}\right)$$

$$E_a = \frac{1}{10^6}\sum_{j=1}^{m}\left(Q_{aj}\times\bar{C}_{aj}\right)$$

where:

E_b=Off-site material HAP mass flow entering process, kg/hr.

E_a=Off-site material HAP mass flow exiting process, kg/hr.

m=Total number of runs (at least 3)

j=Individual run "j"

Q_V=Mass quantity of off-site material entering process during run "j", kg/hr.

Q_{aj}=Average mass quantity of off-site material exiting process during run "j", kg/hr.

$\bar{C}_{aj}$=Average VOHAP concentration of off-site material exiting process during run "j" as determined in accordance with the requirements of § 63.693(b), ppmw.

$\bar{C}_V$=Average VOHAP concentration of off-site material entering process during run "j" as determined in accordance with the requirements of § 63.693(b), ppmw.

(5) The HAP reduction efficiency (R) shall be calculated by using the results determined in accordance with paragraph (g)(4) of this section and the following equation:

$$R = \frac{E_b - E_a}{E_b}\times 100$$

where:

R=HAP reduction efficiency, percent.

E_b=Off-site material HAP mass flow entering process as determined in accordance with the requirements of paragraph (d)(4) of this section, kg/hr.

E_a=Off-site material HAP mass flow exiting process as determined in accordance with the requirements of paragraph (d)(4) of this section, kg/hr.

(h) Determination of HAP biodegradation efficiency (R_{bio}).

(1) The fraction of HAP biodegraded (F_{bio}) shall be determined using the procedure specified in 40 CFR part 63, appendix C of this part.

(2) The HAP biodegradation efficiency (R_{bio}) shall be calculated by using the following equation:

$$R_{bio}=F_{bio}\times 100$$

where:

R_{bio} = HAP biodegradation efficiency, percent.

F_{bio} = Fraction of HAP biodegraded as determined in accordance with the requirements of paragraph (h)(1) of this section.

(i) Determination of actual HAP mass removal rate (MR_{bio}).

(1) The actual HAP mass removal rate (MR_{bio}) shall be determined based on results for a minimum of three consecutive runs. The sampling time for each run shall be 1 hour.

(2) The off-site material HAP mass flow entering the process (E_b) shall be determined in accordance with the requirements of paragraph (g)(4) of this section.

(3) The fraction of HAP biodegraded (F_{bio}) shall be determined using the procedure specified in 40 CFR part 63, appendix C of this part.

(4) The actual mass removal rate shall be calculated by using the HAP mass flow rates and fraction of HAP biodegraded determined in accordance with the requirements of paragraphs (i)(2) and (i)(3), respectively, of this section and the following equation:

$$MR_{bio}=E_b\times F_{bio}$$

where:

MR_{bio}=Actual HAP mass removal rate, kg/hr.

E_b=Off-site material HAP mass flow entering process, kg/hr.

F_{bio}=Fraction of HAP biodegraded.

(j) Determination of maximum HAP vapor pressure for off-site material in a tank.

(1) The maximum HAP vapor pressure of the off-site material composition managed in a tank shall be determined using either direct measurement as specified in paragraph (j)(2) of this section or by knowledge of the off-site material as specified by paragraph (j)(3) of this section.

(2) Direct measurement to determine the maximum HAP vapor pressure of an off-site material.

(i) Sampling. A sufficient number of samples shall be collected to be representative of the off-site material contained in the tank. All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the off-site material is collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the plant site operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW–846 or Method 25D in 40 CFR part 60, appendix A.

(ii) Analysis. Any one of the following methods may be used to analyze the samples and compute the maximum HAP vapor pressure of the off-site material:

(A) Method 25E in 40 CFR part 60 appendix A;

(B) Methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss from External Floating Roof Tanks,";

(C) Methods obtained from standard reference texts;

(D) ASTM Method 2879–83; or

(E) Any other method approved by the Administrator.

(3) Use of knowledge to determine the maximum HAP vapor pressure of the off-site material. Documentation shall be prepared and recorded that presents the information used as the basis for the owner's or operator's knowledge that the maximum HAP vapor pressure of the off-site material is less than the maximum vapor pressure limit listed in Table 3 or Table 4 of this subpart for the applicable tank design capacity category. Examples of information that may be used include: the off-site material is generated by a process for which at other locations it previously has been determined by direct measurement that the off-site material maximum HAP vapor pressure is less than the maximum vapor pressure limit for the appropriate tank design capacity category.

(k) Procedure for determining no detectable organic emissions for the purpose of complying with this subpart.

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: the interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the unit contains a material having an organic HAP concentration representative of the range of concentrations for the off-site materials expected to be managed in the unit. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the off-site material placed in the unit, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air (less than 10 ppmv hydrocarbon in air); and

(ii) A mixture of methane in air at a concentration of approximately, but less than 10,000 ppmv.

(6) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60 appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (e.g., some pressure relief devices), the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 ppmv. If the difference is less than 500 ppmv, then the potential leak interface is determined to operate with no detectable organic emissions.

(l) Control device performance test procedures.

(1) Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites at the inlet and outlet of the control device.

(i) To determine compliance with a control device percent reduction requirement, sampling sites shall be located at the inlet of the control device as specified in paragraphs (l)(1)(i)(A) and (l)(1)(i)(B) of this section, and at the outlet of the control device.

(A) The control device inlet sampling site shall be located after the final product recovery device.

(B) If a vent stream is introduced with the combustion air or as a auxiliary fuel into a boiler or process heater, the location of the inlet sampling sites shall be selected to ensure that the measurement of total HAP concentration or TOC concentration, as applicable, includes all vent streams and primary and secondary fuels introduced into the boiler or process heater.

(ii) To determine compliance with an enclosed combustion device concentration limit, the sampling site shall be located at the outlet of the device.

(2) The gas volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate.

(3) To determine compliance with the control device percent reduction requirement, the owner or operator shall use Method 18 of 40 CFR part 60, appendix A of this chapter; alternatively, any other method or data that has been validated according to the applicable procedures in Method 301 in 40 CFR part 63, appendix A of this part may be used. The following procedures shall be used to calculate percent reduction efficiency:

(i) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time such as 15 minute intervals during the run.

(ii) The mass rate of either TOC (minus methane and ethane) or total HAP (E_i and E_o ,respectively) shall be computed.

(A) The following equations shall be used:

$$E_i = K_2\left(\sum_{\text{scalesym150 jscalesym150 = scalesym1501}}^{\text{scalesym}} 150nC_{ij}M_{ij}\right)Q_i$$

$$E_o = K_2\left(\sum_{\text{scalesym150 jscalesym150 = scalesym1501}}^{\text{scalesym}} 150nC_{oj}M_{oj}\right)Q_o$$

where:

C_{ij}, C_{oj}=Concentration of sample component j of the gas stream at the inlet and outlet of the control device, respectively, dry basis, parts per million by volume.

E_i, E_o=Mass rate of TOC (minus methane and ethane) or total HAP at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour.

M_{ij}, M_{oj}=Molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole.

Q_i, Q_o=Flow rate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meter per minute.

K_2=Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature (gram-mole per standard cubic meter) is 20 °C.

(B) When the TOC mass rate is calculated, all organic compounds (minus methane and ethane) measured by Method 18 of 40 CFR part 60, appendix A shall be summed using the equation in paragraph (l)(3)(ii)(A) of this section.

(C) When the total HAP mass rate is calculated, only the HAP constituents shall be summed using the equation in paragraph (l)(3)(ii)(A) of this section.

(iii) The percent reduction in TOC (minus methane and ethane) or total HAP shall be calculated as follows:

$$R_{cd} = \frac{E_i - E_o}{E_i} \times 100$$

where:

R_{cd}=Control efficiency of control device, percent.

E_i=Mass rate of TOC (minus methane and ethane) or total HAP at the inlet to the control device as calculated under paragraph (l)(3)(ii) of this section, kilograms TOC per hour or kilograms HAP per hour.

E_o=Mass rate of TOC (minus methane and ethane) or total HAP at the outlet of the control device, as calculated under paragraph (l)(3)(ii) of this section, kilograms TOC per hour or kilograms HAP per hour.

(iv) If the vent stream entering a boiler or process heater is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total HAP or TOC (minus methane and ethane) across the device shall be determined by comparing the TOC (minus methane and ethane) or total HAP in all combusted vent streams and primary and secondary fuels with the TOC (minus methane and ethane) or total HAP exiting the device, respectively.

(4) To determine compliance with the enclosed combustion device total HAP concentration limit of this subpart, the owner or operator shall use Method 18 of 40 CFR part 60, appendix A to measure either TOC (minus methane and ethane) or total HAP. Alternatively, any other method or data that has been validated according to Method 301 in appendix A of this part, may be used. The following procedures shall be used to calculate parts per million by volume concentration, corrected to 3 percent oxygen:

(i) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15 minute intervals during the run.

(ii) The TOC concentration or total HAP concentration shall be calculated according to paragraph (m)(4)(ii)(A) or (m)(4)(ii)(B) of this section.

(A) The TOC concentration (C_{TOC}) is the sum of the concentrations of the individual components and shall be computed for each run using the following equation:

$$C_{TOC} = \sum_{i=1}^{x} \frac{\sum_{j=1}^{n} C_{ij}}{x}$$

where:

C_{TOC}=Concentration of total organic compounds minus methane and ethane, dry basis, parts per million by volume.

C_{ij}=Concentration of sample components j of sample i, dry basis, parts per million by volume.

n=Number of components in the sample.

x=Number of samples in the sample run.

(B) The total HAP concentration (C_{HAP}) shall be computed according to the equation in paragraph (l)(4)(ii)(A) of this section except that only HAP constituents shall be summed.

(iii) The measured TOC concentration or total HAP concentration shall be corrected to 3 percent oxygen as follows:

(A) The emission rate correction factor or excess air, integrated sampling and analysis procedures of Method 3B of 40 CFR part 60, appendix A shall be used to determine the oxygen concentration ($\%O_{2dry}$). The samples shall be collected during the same time that the samples are collected for determining TOC concentration or total HAP concentration.

(B) The concentration corrected to 3 percent oxygen (C_c) shall be computed using the following equation:

$$C_c = C_m\left(\frac{17.9}{20.9 - \%0_{2dry}}\right)$$

where:

C_c=TOC concentration or total HAP concentration corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_m=Measured TOC concentration or total HAP concentration, dry basis, parts per million by volume.

$\%O_{2dry}$=Concentration of oxygen, dry basis, percent by volume.

§ 63.695 Inspection and monitoring requirements.

(a) This section specifies the inspection and monitoring procedures required to perform the following:

(1) To inspect tank fixed-roofs and floating roofs for compliance with the Tank level 2 controls standards specified in § 63.685 of this subpart, the inspection procedures are specified in paragraph (b) of this section.

(2) To inspect and monitor closed-vent systems for compliance with the standards specified in § 63.693 of this subpart, the inspection and monitoring procedure are specified in paragraph (c) of this section.

(3) To inspect and monitor transfer system covers for compliance with the standards specified in § 63.689(c)(1) of this subpart, the inspection and monitoring procedure are specified in paragraph (d) of this section.

(b) Tank Level 2 fixed roof and floating roof inspection requirements.

(1) Owners and operators that use a tank equipped with an internal floating roof in accordance with the provisions of § 63.685(e) of this subpart shall meet the following inspection requirements:

(i) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air emissions. Defects include, but are not limited to, the internal floating roof is not floating on the surface of the liquid inside the tank; liquid has accumulated on top of the internal floating roof; any portion of the roof seals have detached from the roof rim; holes, tears, or other openings are visible in the seal fabric; the gaskets no longer close off the waste surfaces from the atmosphere; or the slotted membrane has more than 10 percent open area.

(ii) The owner or operator shall inspect the internal floating roof components as follows except as provided for in paragraph (b)(1)(iii) of this section:

(A) Visually inspect the internal floating roof components through openings on the fixed-roof (e.g., manholes and roof hatches) at least once every 12 months after initial fill, and

(B) Visually inspect the internal floating roof, primary seal, secondary seal (if one is in service), gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 10 years. Prior to each inspection, the owner or operator shall notify the Administrator in accordance with the reporting requirements specified in § 63.697 of this subpart.

(iii) As an alternative to performing the inspections specified in paragraph (b)(1)(ii) of this section for an internal floating roof equipped with two continuous seals mounted one above the other, the owner or operator may visually inspect the internal floating roof, primary and secondary seals, gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed and at least every 5 years. Prior to each inspection, the owner or operator shall notify the Administrator in accordance with the reporting requirements specified in § 63.697 of this subpart.

(iv) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (b)(4) of this section.

(v) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.696 of this subpart.

(2) Owners and operators that use a tank equipped with an external floating roof in accordance with the provisions of § 63.685(f) of this subpart shall meet the following requirements:

(i) The owner or operator shall measure the external floating roof seal gaps in accordance with the following requirements:

(A) The owner or operator shall perform measurements of gaps between the tank wall and the primary seal within 60 days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every 5 years. Prior to each inspection, the owner or operator shall notify the Administrator in accordance with the reporting requirements specified in § 63.697 of this subpart.

(B) The owner or operator shall perform measurements of gaps between the tank wall and the secondary seal within 60 days after initial operation of the separator following installation of the floating roof and, thereafter, at least once every year. Prior to each inspection, the owner or operator shall notify the Administrator in accordance with the reporting requirements specified in § 63.697 of this subpart.

(C) If a tank ceases to hold off-site material for a period of 1 year or more, subsequent introduction of off-site material into the tank shall be considered an initial operation for the purposes of paragraphs (b)(2)(i)(A) and (b)(2)(i)(B) of this section.

(D) The owner shall determine the total surface area of gaps in the primary seal and in the secondary seal individually using the following procedure.

(*1*) The seal gap measurements shall be performed at one or more floating roof levels when the roof is floating off the roof supports.

(*2*) Seal gaps, if any, shall be measured around the entire perimeter of the floating roof in each place where a 0.32-centimeter (cm) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the tank and measure the circumferential distance of each such location.

(*3*) For a seal gap measured under paragraph (b)(2) of this section, the gap surface area shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

(*4*) The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal perimeter of the tank. These total gap areas for the primary seal and secondary seal are then are compared to the respective standards for the seal type as specified in § 63.685(f)(1) of this subpart.

(E) In the event that the seal gap measurements do not conform to the specifications in § 63.685(f)(1) of this subpart, the owner or operator shall repair the defect in accordance with the requirements of paragraph (b)(4) of this section.

(F) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.696 of this subpart.

(ii) The owner or operator shall visually inspect the external floating roof in accordance with the following requirements:

(A) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air emissions. Defects include, but are not limited to: holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the tank; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The owner or operator shall perform the inspections following installation of the external floating roof and, thereafter, at least once every year.

(C) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (b)(4) of this section.

(D) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.696(d) of this subpart.

(3) Owners and operators that use a tank equipped with a fixed roof in accordance with the provisions of § 63.685(g) of this subpart shall meet the following requirements:

(i) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the separator wall; broken, cracked,

or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The owner or operator shall perform the inspections following installation of the fixed roof and, thereafter, at least once every year.

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (b)(4) of this section.

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.696(e) of this subpart.

(4) The owner or operator shall repair each defect detected during an inspection performed in accordance with the requirements of paragraph (b)(1), (b)(2), or (b)(3) of this section in the following manner:

(i) The owner or operator shall within 45 calendar days of detecting the defect either repair the defect or empty the tank and remove it from service. If within this 45-day period the defect cannot be repaired or the tank cannot be removed from service without disrupting operations at the plant site, the owner or operator is allowed two 30-day extensions. In cases when an owner or operator elects to use a 30-day extension, the owner or operator shall prepare and maintain documentation describing the defect, explaining why alternative storage capacity is not available, and specify a schedule of actions that will ensure that the control equipment will be repaired or the tank emptied as soon as possible.

(ii) When a defect is detected during an inspection of a tank that has been emptied and degassed, the owner or operator shall repair the defect before refilling the tank.

(c) Owners and operators that use a closed vent system in accordance with the provisions of § 63.693 of this subpart shall meet the following inspection and monitoring requirements:

(1) Each closed-vent system that is used to comply with § 63.693(c)(1)(i) of this subpart shall be inspected and monitored in accordance with the following requirements:

(i) At initial startup, the owner or operator shall monitor the closed-vent system components and connections using the procedures specified in § 63.693(k) of this subpart to demonstrate that the closed-vent system operates with no organic detectable emissions.

(ii) After initial startup, the owner or operator shall inspect and monitor the closed-vent system as follows:

(A) Closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of hard piping or a bolted and gasketed ducting flange) shall be visually inspected at least once per year to check for defects that could result in air emissions. The owner or operator shall monitor a component or connection using the procedures specified in § 63.693(k) of this subpart to demonstrate that it operates with no detectable organic emissions following any time the component is repaired or replaced (e.g., a section of damaged hard piping is replaced with new hard piping) or the connection is unsealed (e.g., a flange is unbolted).

(B) Closed-vent system components or connections other than those specified in paragraph (c)(1)(ii)(A) of this section, shall be monitored at least once per year using the procedures specified in § 63.693(k) of this subpart to demonstrate that components or connections operate with no detectable organic emissions.

(iii) In the event that a defect or leak is detected, the owner or operator shall repair the defect or leak in accordance with the requirements of paragraph (3) of this section.

(iv) The owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in § 63.696 of this subpart.

(2) Each closed-vent system that is used to comply with § 63.693(c)(1)(ii) of this subpart shall be inspected and monitored in accordance with the following requirements:

(i) The closed-vent system shall be visually inspected by the owner or operator to check for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwok or piping; loose connections; or broken or missing caps or other closure devices.

(ii) The owner or operator shall perform the inspections following installation of the closed-vent system and, thereafter, at least once every year.

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (3) of this section.

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.696 of this subpart.

(3) The owner or operator shall repair all detected defects as follows:

(i) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 45 calendar days after detection.

(ii) The owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in § 63.696 of this subpart.

(d) Owners and operators that use a transfer system equipped with a cover in accordance with the provisions of § 63.689(c)(1) of this subpart shall meet the following inspection requirements:

(1) The cover and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover sections or between the cover and its mounting; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(2) The owner or operator shall perform the inspections following installation of the cover and, thereafter, at least once every year.

(3) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (5) of this section.

(4) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.696 of this subpart.

(5) The owner or operator shall repair all detected defects as follows:

(i) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in paragraph (c)(5)(ii) of this section.

(ii) The owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in § 63.696 of this subpart.

§ 63.696 Recordkeeping requirements.

(a) The owner or operator subject to this subpart shall comply with the recordkeeping requirements in § 63.10 under 40 CFR 63 subpart A—General Provisions that are applicable to this subpart as specified in Table 2 of this subpart.

(b) The owner or operator of a control device subject to this subpart shall maintain the records in accordance with the requirements of 40 CFR 63.10 of this part.

(c) [Reserved]

(d) Each owner or operator using an internal floating roof to comply with the tank control requirements specified in § 63.685(e) of this subpart or using an external floating roof to comply with the tank control requirements specified in § 63.685(f) of this subpart shall prepare and maintain the following records:

(1) Documentation describing the floating roof design and the dimensions of the tank.

(2) A record for each inspection required by § 63.695(b) of this subpart, as applicable to the tank, that includes the following information: a tank identification number (or other unique identification description as selected by the owner or operator) and the date of inspection.

(3) The owner or operator shall record for each defect detected during inspections required by § 63.695(b) of this subpart the following information: the location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of § 63.695(b)(4) of this section, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(4) Owners and operators that use a tank equipped with an external floating roof in accordance with the provisions of § 63.685(f) of this subpart shall prepare and maintain records for each seal gap inspection required by § 63.695(b) describing the results of the seal gap measurements. The records shall include the date of that the measurements are performed, the raw data obtained for the measurements, and the calculations of the total gap surface area. In the event that the seal gap measurements do not conform to the specifications in § 63.695(b) of this subpart, the records shall include a description of the repairs that were made, the date the repairs were made, and the date the separator was emptied, if necessary.

(e) Each owner or operator using a fixed roof to comply with the tank control requirements specified in § 63.685(g) of this subpart shall prepare and maintain the following records:

(1) A record for each inspection required by § 63.695(b) of this subpart, as applicable to the tank, that includes the following information: a tank identification number (or other unique identification description as selected by the owner or operator) and the date of inspection.

(2) The owner or operator shall record for each defect detected during inspections required by § 63.695(b) of this subpart the following information: the location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of § 63.695(b)(4) of this section, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(f) Each owner or operator using an enclosure to comply with the tank control requirements specified in § 63.685(i) of this subpart shall prepare and maintain records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, Appendix B.

(g) An owner or operator shall record, on a semiannual basis, the information specified in paragraphs (g)(1) and (g)(2) of this section for those planned routine maintenance operations that would require the control device not to meet the requirements of § 63.693(d) through (h) of this subpart, as applicable.

(1) A description of the planned routine maintenance that is anticipated to be performed for the control device during the next 6 months. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

(2) A description of the planned routine maintenance that was performed for the control device during the previous 6 months. This description shall include the type of maintenance performed and the total number of hours during these 6 months that the control device did not meet the requirement of § 63.693 (d) through (h) of this subpart, as applicable, due to planned routine maintenance.

(h) An owner or operator shall record the information specified in paragraphs (h)(1) through (h)(3) of this section for those unexpected control device system malfunctions that would require the control device not to meet the requirements of § 63.693 (d) through (h) of this subpart, as applicable.

(1) The occurrence and duration of each malfunction of the control device system.

(2) The duration of each period during a malfunction when gases, vapors, or fumes are vented from the waste management unit through the closed-vent system to the control device while the control device is not properly functioning.

(3) Actions taken during periods of malfunction to restore a malfunctioning control device to its normal or usual manner of operation.

§ 63.697 Reporting requirements.

(a) The owner or operator subject to this subpart shall comply with the notification requirements in § 63.9 and the reporting requirements in § 63.10 under 40 CFR 63 subpart A—General Provisions that are applicable to this subpart as specified in Table 2 of this subpart.

(b) The owner or operator of a control device used to meet the requirements of § 63.693 of this subpart shall submit the following reports to the Administrator:

(1) A Notification of Performance Tests specified in § 63.7 and § 63.9(g) of this part,

(2) Performance test reports specified in § 63.10(d)(2) of this part

(3) Startup, shutdown, and malfunction reports specified in § 63.10(d)(5) of this part,

(i) If actions taken by an owner or operator during a startup, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are not completely consistent with the procedures specified in the source's startup, shutdown, and malfunction plan specified in § 63.6(e)(3) of this part, the owner or operator shall state such information in the report. The startup, shutdown, or malfunction report shall consist of a letter, containing the name, title, and signature of the responsible official who is certifying its accuracy, that shall be submitted to the Administrator, and

(ii) Separate startup, shutdown, or malfunction reports are not required if the information is included in the report specified in paragraph (b)(6) of this section.

(4) A summary report specified in § 63.10(e)(3) of this part shall be submitted on a semi-annual basis (i.e., once every 6-month period).

(c) Each owner or operator using an internal floating roof or external floating roof to comply with the Tank Level 2 control requirements specified in § 63.685(d) of this subpart shall notify the Administrator in advance of each inspection required under § 63.695(b) of this subpart to provide the Administrator with the opportunity to have an observer present during the inspection. The owner or operator shall notify the Administrator of the date and location of the inspection as follows:

(1) Prior to each inspection to measure external floating roof seal gaps as required under § 63.695(b) of this subpart, written notification shall be prepared and sent by the owner or operator so that it is received by the Administrator at least 30 calendar days

before the date the measurements are scheduled to be performed.

(2) Prior to each visual inspection of an internal floating roof or external floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the owner or operator so that it is received by the Administrator at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in paragraph (c)(3) of this section.

(3) When a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Administrator as soon as possible, but no later than 7 calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Administrator at least 7 calendar days before refilling the tank.

§ 63.698 Delegation of Authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authority listed in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authority will not be delegated to States for § 63.694 of this subpart.

TABLE 1 TO SUBPART DD.—LIST OF HAZARDOUS AIR POLLUTANTS (HAP) FOR SUBPART DD

CAS No.[a]	Chemical name	$f_{m\ 305}$
75070	Acetaldehyde	1.000
75058	Acetonitrile	0.989
98862	Acetophenone	0.314
107028	Acrolein	1.000
107131	Acrylonitrile	0.999
107051	Allyl chloride	1.000
71432	Benzene (includes benzene in gasoline)	1.000
98077	Benzotrichloride (isomers and mixture)	0.958
100447	Benzyl chloride	1.000
92524	Biphenyl	0.864
542881	Bis(chloromethyl)ether[b]	0.999
75252	Bromoform	0.998
106990	1,3-Butadiene	1.000
75150	Carbon disulfide	1.000
56235	Carbon tetrachloride	1.000
43581	Carbonyl sulfide	1.000
133904	Chloramben	0.633
108907	Chlorobenzene	1.000
67663	Chloroform	1.000
107302	Chloromethyl methyl ether[b]	1.000
126998	Chloroprene	1.000
98828	Cumene	1.000
94757	2,4-D, salts and esters	0.167
334883	Diazomethane[c]	0.999
132649	Dibenzofurans	0.967
96128	1,2-Dibromo-3-chloropropane	1.000
106467	1,4-Dichlorobenzene(p)	1.000
107062	Dichloroethane (Ethylene dichloride)	1.000
111444	Dichloroethyl ether (Bis(2-chloroethyl ether)	0.757
542756	1,3-Dichloropropene	1.000
79447	Dimethyl carbamoyl chloride[c]	0.150
57147	1,1-Dimethyl hydrazine	0.383
64675	Diethyl sulfate	0.0025
77781	Dimethyl sulfate	0.086
121697	N,N-Dimethylaniline	0.0008
51285	2,4-Dinitrophenol	0.0077
121142	2,4-Dinitrotoluene	0.0848
123911	1,4-Dioxane (1,4-Diethyleneoxide)	0.869
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	0.939
106887	1,2-Epoxybutane	1.000
140885	Ethyl acrylate	1.000
100414	Ethyl benzene	1.000
75003	Ethyl chloride (Chloroethane)	1.000
106934	Ethylene dibromide (Dibromoethane)	0.999
107062	Ethylene dichloride (1,2-Dichloroethane)	1.000
151564	Ethylene imine (Aziridine)	0.867
75218	Ethylene oxide	1.000
75343	Ethylidene dichloride (1,1-Dichloroethane)	1.000
	Glycol ethers[d]	[e]
118741	Hexachlorobenzene	0.97
87683	Hexachlorobutadiene	0.88
67721	Hexachloroethane	0.499
110543	Hexane	1.000
78591	Isophorone	0.506
58899	Lindane (all isomers)	1.000
67561	Methanol	0.855

TABLE 1 TO SUBPART DD.—LIST OF HAZARDOUS AIR POLLUTANTS (HAP) FOR SUBPART DD—Continued

CAS No.[a]	Chemical name	$f_{m\ 305}$
74839	Methyl bromide (Bromomethane)	1.000
74873	Methyl chloride (Choromethane)	1.000
71556	Methyl chloroform (1,1,1-Trichloroethane)	1.000
78933	Methyl ethyl ketone (2-Butanone)	0.990
74884	Methyl iodide (Iodomethane)	1.000
108101	Methyl isobutyl ketone (Hexone)	0.979
624839	Methyl isocyanate	1.000
80626	Methyl methacrylate	0.999
1634044	Methyl tert butyl ether	1.000
75092	Methylene chloride (Dichloromethane)	1.000
91203	Naphthalene	0.954
98953	Nitrobenzene	0.394
79469	2-Nitropropane	0.989
82688	Pentachloronitrobenzene (Quintobenzene)	0.839
87865	Pentachlorophenol	0.0898
75445	Phosgene[c]	1.000
123386	Propionaldehyde	0.999
78875	Propylene dichloride (1,2-Dichloropropane)	1.000
75569	Propylene oxide	1.000
75558	1,2-Propylenimine (2-Methyl aziridine)	0.945
100425	Styrene	1.000
96093	Styrene oxide	0.830
79345	1,1,2,2-Tetrachloroethane	0.999
127184	Tetrachloroethylene (Perchloroethylene)	1.000
108883	Toluene	1.000
95534	o-Toluidine	0.152
120821	1,2,4-Trichlorobenzene	1.000
71556	1,1,1-Trichloroethane (Methyl chloriorm)	1.000
79005	1,1,2-Trichloroethane (Vinyl trichloride)	1.000
79016	Trichloroethylene	1.000
95954	2,4,5-Trichlorophenol	0.108
88062	2,4,6-Trichlorophenol	0.132
121448	Triethylamine	1.000
540841	2,2,4-Trimethylpentane	1.000
108054	Vinyl acetate	1.000
593602	Vinyl bromide	1.000
75014	Vinyl chloride	1.000
75354	Vinylidene chloride (1,1-Dichloroethylene)	1.000
1330207	Xylenes (isomers and mixture)	1.000
95476	o-Xylenes	1.000
108383	m-Xylenes	1.000
106423	p-Xylenes	1.000

Notes:

$f_{m\ 305}$=Method 305 fraction measure factor

a. CAS numbers refer to the Chemical Abstracts Services registry number assigned to specific compounds, isomers, or mixtures of compounds.

b. Denotes a HAP that hydrolyzes quickly in water, but the hydrolysis products are also HAP chemicals.

c. Denotes a HAP that may react violently with water, exercise caustic is an expected analyte.

d. Denotes a HAP that hydrolyzes slowly in water.

e. Several glycol ethers meet the criteria used to select HAP for the purposes of this subpart. The $f_{m\ 305}$ factors for some of the more common glycol ethers are listed below:

Ethylene glycol dimethyl ether ($f_{m\ 305}$=0.861)
Ethylene glycol monoethyl ether acetate ($f_{m\ 305}$=0.0887)
Ethylene glycol monomethyl ether acetate ($f_{m\ 305}$=0.0926)
Diethylene glycol diethyl ether ($f_{m\ 305}$=0.216)

TABLE 2 TO SUBPART DD.—APPLICABILITY OF PARAGRAPHS IN 40 CFR 63 SUBPART A, GENERAL PROVISIONS, TO SUBPART DD

Subpart A reference	Applies to subpart DD	Comment
63.1(a)(1)	Yes.	
63.1(a)(2)	Yes.	
63.1(a)(3)	Yes.	
63.1(a)(4)	No	Subpart DD (this table) specifies applicability of each paragraph in subpart A to subpart DD.
63.1(a)(5)–63.1(a)(9)	No.	
63.1(a)(10)	Yes.	
63.1(a)(11)	Yes.	
63.1(a)(12)	Yes.	
63.1(a)(13)	Yes.	

TABLE 2 TO SUBPART DD.—APPLICABILITY OF PARAGRAPHS IN 40 CFR 63 SUBPART A, GENERAL PROVISIONS, TO SUBPART DD—Continued

Subpart A reference	Applies to subpart DD	Comment
63.1(a)(14)	Yes.	
63.1(b)(1)	No	Subpart DD specifies its own applicability.
63.1(b)(2)	Yes.	
63.1(b)(3)	No.	
63.1(c)(1)	No	Subpart DD explicitly specifies requirements that apply.
63.1(c)(2)	No	Area sources are not subject to subpart DD.
63.1(c)(3)	No.	
63.1(c)(4)	Yes.	
63.1(c)(5)	Yes	Except that sources are not required to submit notifications overridden by this table.
63.1(d)	No.	
63.1(e)	No.	
63.2	Yes	§ 63.681 of subpart DD specifies that if the same term is defined in subparts A and DD, it shall have the meaning given in subpart DD.
63.3	Yes.	
63.4(a)(1)–63.4(a)(3)	Yes.	
63.4(a)(4)	No	Reserved.
63.4(a)(5)	Yes.	
63.4(b)	Yes.	
63.4(c)	Yes.	
63.5(a)(1)	Yes	Except replace term "source" and "stationary source" in § 63.5(a)(1) of subpart A with "affected source."
63.5(a)(2)	Yes.	
63.5(b)(1)	Yes.	
63.5(b)(2)	No	Reserved.
63.5(b)(3)	Yes.	
63.5(b)(4)	Yes	Except the cross-reference to § 63.9(b) is changed to § 63.9(b)(4) and (5). Subpart DD overrides § 63.9(b)(2) and (b)(3).
63.5(b)(5)	Yes.	
63.5(b)(6)	Yes.	
63.5(c)	No	Reserved.
63.5(d)(1)(i)	Yes.	
63.5(d)(1)(ii)	Yes.	
63.5(d)(1)(iii)	Yes.	
63.5(d)(2)	No.	
63.5(d)(3)	Yes.	
63.5(d)(4)	Yes.	
63.5(e)	Yes.	
63.5(f)(1)	Yes.	
63.5(f)(2)	Yes.	
63.6(a)	Yes.	
63.6(b)(1)	No	Subpart DD specifies compliance dates for sources subject to subpart DD.
63.6(b)(2)	No.	
63.6(b)(3)	Yes.	
63.6(b)(4)	No	May apply when standards are proposed under section 112(f) of the Clean Air Act.
63.6(b)(5)	No	§ 63.697 of subpart DD includes notification requirements.
63.6(b)(6)	No.	
63.6(b)(7)	No.	
63.6(c)(1)	No	§ 63.680 of subpart DD specifies the compliance date.
63.6(c)(2)–63.6(c)(4)	No.	
63.6(c)(5)	Yes.	
63.6(d)	No.	
63.6(e)	Yes.	
63.6(f)(1)	Yes.	
63.6(f)(2)(i)	Yes.	
63.6(f)(2)(ii)	Yes	Subpart DD specifies the use of monitoring data in determining compliance with subpart DD.
63.6(f)(2)(iii) (A), (B), and (C)	Yes.	
63.6(f)(2)(iii) (D)	No.	
63.6(f)(2)(iv)	Yes.	
63.6(f)(2)(v)	Yes.	
63.6(f)(3)	Yes.	
63.6(g)	Yes.	
63.6(h)	No	Subpart DD does not require opacity and visible emission standards.
63.6(i)	Yes	Except for § 63.6(i)(15), which is reserved.
63.6(j)	Yes.	
63.7(a)(1)	No	Subpart DD specifies required testing and compliance demonstration procedures.
63.7(a)(2)	Yes.	
63.7(a)(3)	Yes.	
63.7(b)	No.	
63.7(c)	No.	

TABLE 2 TO SUBPART DD.—APPLICABILITY OF PARAGRAPHS IN 40 CFR 63 SUBPART A, GENERAL PROVISIONS, TO SUBPART DD—Continued

Subpart A reference	Applies to subpart DD	Comment
63.7(d)	Yes.	
63.7(e)(1)	Yes.	
63.7(e)(2)	Yes.	
63.7(e)(3)	No	Subpart DD specifies test methods and procedures.
63.7(e)(4)	Yes.	
63.7(f)	No	Subpart DD specifies applicable methods and provides alternatives.
63.7(g)	Yes.	
63.7(h)(1)	Yes.	
63.7(h)(2)	Yes.	
63.7(h)(3)	Yes.	
63.7(h)(4)	No.	
63.7(h)(5)	Yes.	
63.8(a)	No.	
63.8(b)(1)	Yes.	
63.8(b)(2)	No	Subpart DD specifies locations to conduct monitoring.
63.8(b)(3)	Yes.	
63.8(c)(1)(i)	Yes.	
63.8(c)(1)(ii)	Yes.	
63.8(c)(1)(iii)	Yes.	
63.8(c)(2)	Yes.	
63.8(c)(3)	Yes.	
63.8(c)(4)	No	Subpart DD specifies monitoring frequency
63.8(c)(5)–63.8(c)(8)	No.	
63.8(d)	No.	
63.8(e)	No.	
63.8(f)(1)	Yes.	
63.8(f)(2)	Yes.	
63.8(f)(3)	Yes.	
63.8(f)(4)(i)	Yes.	
63.8(f)(4)(ii)	Yes.	
63.8(f)(4)(iii)	No.	
63.8(f)(5)(i)	Yes.	
63.8(f)(5)(ii)	No.	
63.8(f)(5)(iii)	Yes.	
63.8(f)(6)	Yes.	
63.8(g)	Yes.	
63.9(a)	Yes.	
63.9(b)(1)(i)	Yes.	
63.9(b)(1)(ii)	No.	
63.9(b)(2)	Yes.	
63.9(b)(3)	No.	
63.9(b)(4)	Yes.	
63.9(b)(5)	Yes.	
63.9(c)	Yes.	
63.9(d)	Yes.	
63.9(e)	No.	
63.9(f)	No.	
63.9(g)	No.	
63.9(h)	Yes.	
63.9(i)	Yes.	
63.9(j)	No.	
63.10(a)	Yes.	
63.10(b)(1)	Yes.	
63.10(b)(2)(i)	Yes.	
63.10(b)(2)(ii)	Yes.	
63.10(b)(2)(iii)	No.	
63.10(b)(2)(iv)	Yes.	
63.10(b)(2)(v)	Yes.	
63.10(b)(2) (vi)–(ix)	No.	
63.10(b)(2)(x)	Yes.	
63.10(b)(2) (xii)–(xiv)	No.	
63.10(b)(3)	No.	
63.10(c)	No.	
63.10(d)(1)	No.	
63.10(d)(2)	Yes.	
63.10(d)(3)	No.	
63.10(d)(4)	Yes.	
63.10(d)(5)(i)	Yes.	
63.10(d)(5)(ii)	Yes.	
63.10(e)	No.	

TABLE 2 TO SUBPART DD.—APPLICABILITY OF PARAGRAPHS IN 40 CFR 63 SUBPART A, GENERAL PROVISIONS, TO SUBPART DD—Continued

Subpart A reference	Applies to subpart DD	Comment
63.10(f)	Yes.	
63.11–63.15	Yes.	

Note: Wherever subpart A specifies "postmark" dates, submittals may be sent by methods other than the U.S. Mail (e.g., by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not required.

TABLE 3 TO SUBPART DD.—TANK CONTROL LEVELS FOR TANKS AT EXISTING AFFECTED SOURCES AS REQUIRED BY 40 CFR 63.685(b)(1)

Tank design capacity (cubic meters)	Maximum HAP vapor pressure of off-site material managed in tank (kilopascals)	Tank control level
Design capacity less than 75 m^3	Maximum HAP vapor pressure less than 76.6 kPa	Level 1.
Design capacity equal to or greater than 75 m^3 and less than 151 m^3.	Maximum HAP vapor pressure less than 27.6 kPa	Level 1.
	Maximum HAP vapor pressure equal to or greater than 27.6 kPa.	Level 2.
Design capacity equal to or greater than 151 m^3	Maximum HAP vapor pressures less than 5.2 kPa	Level 1.
	Maximum HAP vapor pressure equal to or greater than 5.2 kPa	Level 2.

TABLE 4 TO SUBPART DD.—TANK CONTROL LEVELS FOR TANKS AT NEW AFFECTED SOURCES AS REQUIRED BY 40 CFR 63.685(b)(2)

Tank design capacity (cubic meters)	Maximum HAP vapor pressure of off-site material managed in tank (kilopascals)	Tank control level
Design capacity less than 38 m^3	Maximum HAP vapor pressure less than 76.6 kPa	Level 1.
Design capacity equal to or greater than 38 m^3 and less than 151 m^3.	Maximum HAP vapor pressure less than 13.1 kPa	Level 1.
	Maximum HAP vapor pressure equal to or greater than 13.1 kPa.	Level 2.
Design capacity equal to or greater than 151 m^3	Maximum HAP vapor pressure less than 0.7 kPa	Level 1.
	Maximum HAP vapor pressure equal to or greater than 0.7 kPa	Level 2.

5. Part 63 is amended by adding subpart OO consisting of §§ 63.900 through 63.907 to read as follows:

Subpart OO—National Emission Standards for Tanks—Level 1

Sec.

63.900 Applicability.
63.901 Definitions.
63.902 Standards—Tank fixed roof.
63.903 [Reserved]
63.904 [Reserved]
63.905 Test methods and procedures.
63.906 Inspection and monitoring requirements.
63.907 Recordkeeping requirements.

Subpart OO—National Emission Standards for Tanks—Level 1

§ 63.900 Applicability.

The provisions of this subpart apply to the control of air emissions from tanks for which another subpart of 40 CFR parts 60, 61, or 63 references the use of this subpart for such air emission control. These air emission standards for tanks are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the other subparts that reference this subpart. The provisions of 40 CFR part 63, subpart A—General Provisions do not apply to this subpart except as noted in the subpart that references this subpart.

§ 63.901 Definitions.

All terms used in this subpart shall have the meaning given to them in the Act and in this section. If a term is defined in both this section and in another subpart that references the use of this subpart, then the definition in this subpart shall take precedence when implementing this subpart.

Closure device means a cap, hatch, lid, plug, seal, valve, or other type of fitting that, when the device is secured in the closed position, prevents or reduces air emissions to the atmosphere by blocking an opening in a fixed roof. Closure devices include devices that are detachable from the cover (e.g., a sampling port cap), manually operated (e.g., a hinged access lid or hatch), or automatically operated (e.g., a spring-loaded pressure relief valve).

Fixed roof means a cover that is mounted on a tank in a stationary position and does not move with fluctuations in the level of the liquid managed in the tank.

No detectable organic emissions means no escape of organics to the atmosphere as determined using the procedure specified in § 63.905(a) of this subpart.

Regulated-material means the material (e.g. waste, wastewater, off-site material) required to be managed in tanks using air emission controls in accordance with the standards specified in this subpart.

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to the tank air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath the tank cover. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

Tank means a stationary unit that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provide structural support and is designed to hold an accumulation of liquids or other materials.

§ 63.902 Standards—Tank fixed roof.

(a) This section applies to owners and operators subject to this subpart and controlling air emissions from a tank using a fixed roof.

(b) The tank shall be equipped with a fixed roof designed to meet the following specifications:

(1) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank. The fixed roof may be a separate cover installed on the tank (e.g., a removable cover mounted on an open-top tank) or may be an integral part of the tank structural design (e.g., a horizontal cylindrical tank equipped with a hatch).

(2) The fixed roof shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the tank wall.

(3) Each opening in the fixed roof shall be either:

(i) equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device; or

(ii) connected by a closed-vent system that is vented to a control device. The control device shall remove or destroy organics in the vent stream, and shall be operating whenever regulated material is managed in the tank.

(4) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the regulated-material to the atmosphere, to the extent practical, and will maintain the integrity of the equipment throughout its intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: organic vapor permeability, the effects of any contact with the liquid or its vapors managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(c) Whenever a regulated-material is in the tank, the fixed roof shall be installed with each closure device secured in the closed position except as follows:

(1) Opening of closure devices or removal of the fixed roof is allowed at the following times:

(i) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(ii) To remove accumulated sludge or other residues from the bottom of tank.

(2) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the owner or operator based on the tank manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, combustible, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the container internal pressure exceeds the internal pressure operating range for the tank as a result of loading operations or diurnal ambient temperature fluctuations.

(3) Opening of a safety device, as defined in § 63.901 of this subpart, is allowed at any time conditions require it to do so to avoid an unsafe condition.

(d) The owner or operator shall inspect the air emission control equipment in accordance with the requirements specified in § 63.906(a) of this subpart.

§ 63.903 [Reserved]

§ 63.904 [Reserved]

§ 63.905 Test methods and procedures.

(a) Procedure for determining no detectable organic emissions for the purpose of complying with this subpart.

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: the interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the tank contains a material having an organic HAP concentration representative of the range of concentrations for the regulated-materials expected to be managed in the tank. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the regulated-material placed in the tank, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air (less than 10 ppmv hydrocarbon in air); and

(ii) A mixture of methane in air at a concentration less than 10,000 ppmv.

(6) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60 appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as

possible, as described in Method 21. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (e.g., some pressure relief devices), the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 ppmv. If the difference is less than 500 ppmv, then the potential leak interface is determined to operate with no detectable organic emissions.

§ 63.906 Inspection and monitoring requirements.

(a) Owners and operators that use a tank equipped with a fixed roof in accordance with the provisions of § 63.902 of this subpart shall meet the following requirements:

(1) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(2) The owner or operator shall perform the inspections following installation of the fixed roof and, thereafter, at least once every year.

(3) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (b) of this section.

(4) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.907 (a) of this subpart.

(b) The owner or operator shall repair all detected defects as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in paragraph (b)(2) of this section.

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the tank and no alternative tank capacity is available at the site to accept the regulated-material normally managed in the tank. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the regulated-material managed in the tank stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(c) The owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in § 63.907(b) of this subpart.

§ 63.907 Recordkeeping requirements.

(a) Each owner or operator shall prepare and maintain a record for each tank that includes the following information:

(1) A tank identification number (or other unique identification description as selected by the owner or operator).

(2) A description of the tank dimensions and the tank design capacity.

(3) The date that each inspection required by § 63.906 of this subpart is performed.

(b) The owner or operator shall record the following information for each defect detected during inspections required by § 63.906 of this subpart: the location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of § 63.907(b)(2) of this section, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

6. Part 63 is amended by adding subpart PP consisting of §§ 63.920 through 63.928 to read as follows:

Subpart PP—National Emission Standards for Containers

Sec.

63.920 Applicability.
63.921 Definitions.
63.922 Standards—Container Level 1 controls.
63.923 Standards—Container Level 2 controls.
63.924 Standards—Container Level 3 controls.
63.925 Test methods and procedures.
63.926 Inspection and monitoring requirements.
63.927 Recordkeeping requirements.
63.928 Reporting requirements.

Subpart PP—National Emission Standards for Containers

§ 63.920 Applicability.

The provisions of this subpart apply to the control of air emissions from containers for which another subpart of 40 CFR parts 60, 61, or 63 references the use of this subpart for such air emission control. These air emission standards for containers are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the other subparts that reference this subpart. The provisions of 40 CFR Part 63, subpart A—General Provisions do not apply to this subpart except as noted in the subpart that references this subpart.

§ 63.921 Definitions.

All terms used in this subpart shall have the meaning given to them in the Act and in this section. If a term is defined in both this section and in another subpart that references the use of this subpart, then the definition in this subpart shall take precedence when implementing this subpart.

Container means a portable unit in which a material can be stored, transported, treated, disposed of, or otherwise handled. Examples of containers include but are not limited to drums, dumpsters, roll-off boxes, bulk cargo containers commonly known as "portable tanks" or "totes," cargo tank trucks, and tank railcars.

Closure device means a cover, cap, hatch, lid, plug, seal, valve, or other type of fitting that prevents or reduces air emissions to the atmosphere by blocking an opening in a container or its cover when the device is secured in the closed position. Closure devices include devices that are detachable from the container (e.g., a drum head, a threaded plug), manually operated (e.g., a hinged dumpster lid, a truck tank hatch), or automatically operated (e.g., a spring loaded pressure relief valve).

Empty container means a container for which either of the following conditions exists, as applicable: the regulated-material is a hazardous waste and the container meets the conditions for an empty container specified in 40 CFR 261.7(b); or all regulated-material has been removed from the container except for any regulated-material that remains on the interior surfaces of the container as clingage or in pools on the container bottom due to irregularities in the container.

No detectable organic emissions means no escape of organics to the atmosphere as determined using the procedure specified in § 63.925(a) of this subpart.

Regulated-material means the material (e.g. waste, wastewater, off-site material) required to be managed in containers using air emission controls in accordance with the standards specified in this subpart.

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a container or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the container such as during filling of the container or to adjust the internal pressure of the container in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the container and its air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

§ 63.922 Standards—Container Level 1 controls.

(a) This section applies to owners and operators subject to this subpart and required to control air emissions from containers using Container Level 1 controls.

(b) A container using Container Level 1 controls is one of the following:

(1) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in paragraph (f) of this section.

(2) A container equipped with a cover and closure devices that form a continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container (e.g., a lid on a drum, a suitably secured tarp on a roll-off box) or may be an integral part of the container structural design (e.g., a bulk cargo container equipped with a screw-type cap).

(3) An open-top container in which an organic vapor-suppressing barrier is placed on or over the regulated-material in the container such that no regulated-material is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.

(c) A container used to meet the requirements of either paragraph (b)(2) or (b)(3) of this section shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the regulated-material to the atmosphere and to maintain the equipment integrity for as long as it is in service. Factors to be considered when selecting the materials for and designing the cover and closure devices shall include: organic vapor permeability, the effects of contact with the material or its vapor managed in the container; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for container on which the cover is installed.

(d) Whenever a regulated-material is in a container using Container Level 1 controls, the owner or operator shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:

(1) Opening of a closure device or cover is allowed for the purpose of adding material to the container as follows:

(i) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(ii) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either: the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaves the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(2) Opening of a closure device or cover is allowed for the purpose of removing material from the container as follows:

(i) For the purpose of meeting the requirements of this section, an empty container as defined in § 63.921 of this subpart may be open to the atmosphere at any time (e.g., covers and closure devices are not required to be secured in the closed position on an empty container).

(ii) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in § 63.921 of this subpart, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes, or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(3) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of regulated-material. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(4) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the container internal pressure in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the container internal pressure is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive,

reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the container internal pressure exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(5) Opening of a safety device, as defined in § 63.921 of this subpart, is allowed at any time conditions require it to do so to avoid an unsafe condition.

(e) The owner or operator shall inspect containers using Container Level 1 controls in accordance with the procedures specified in § 63.926(a) of this subpart.

(f) For the purpose of compliance with paragraph (b)(1) of this section, containers shall be used that meet the applicable U.S. DOT regulations on packaging hazardous materials for transportation as follows:

(1) The container meets the applicable requirements specified in 49 CFR part 178—Specifications for Packagings or 49 CFR part 179—Specifications for Tank Cars.

(2) Regulated-material is managed in the container in accordance with the applicable requirements specified in 49 CFR part 107 subpart B—Exemptions; 49 CFR part 172—Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements; 49 CFR part 173—Shippers—General Requirements for Shipments and Packaging; and 49 CFR part 180—Continuing Qualification and Maintenance of Packagings.

(3) For the purpose of complying with this subpart, no exceptions to the 49 CFR part 178 or part 179 regulations are allowed except as provided for in paragraph (f)(4) of this section.

(4) For a lab pack that is managed in accordance with the requirements of 49 CFR part 178 for the purpose of complying with this subpart, an owner or operator may comply with the exceptions for those packagings specified in 49 CFR 173.12(b).

§ 63.923 Standards—Container Level 2 controls.

(a) This section applies to owners and operators subject to this subpart and required to control air emissions from containers using Container Level 2 controls.

(b) A container using Container Level 2 controls is one of the following:

(1) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in paragraph (f) of this section.

(2) A container that has been demonstrated to operate with no detectable organic emissions as defined in § 63.921 of this subpart.

(3) A container that has been demonstrated within the preceding 12 months to be vapor-tight by using Method 27 in Appendix A of 40 CFR part 60 in accordance with the procedure specified in § 63.925(b) of this subpart.

(c) Transfer of regulated-material in to or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the regulated-material to the atmosphere, to the extent practical, considering the physical properties of the regulated-material and good engineering and safety practices for handling flammable, ignitable, explosive, or other hazardous materials. Examples of container loading procedures that meet the requirements of this paragraph include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the regulated-material is filled, with subsequent purging of the transfer line before removing it from the container opening.

(d) Whenever a regulated-material is in a container using Container Level 2 controls, the owner or operator shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:

(1) Opening of a closure device or cover is allowed for the purpose of adding material to the container as follows:

(i) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(ii) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level, the completion of a batch loading after which no additional material will be added to the container within 15 minutes, the person performing the loading operation leaves the immediate vicinity of the container, or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(2) Opening of a closure device or cover is allowed for the purpose of removing material from the container as follows:

(i) For the purpose of meeting the requirements of this section, an empty container as defined in § 63.921 of this subpart may be open to the atmosphere at any time (e.g., covers and closure devices are not required to be secured in the closed position on an empty container).

(ii) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in § 63.921 of this subpart, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(3) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of regulated-material. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(4) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the container internal pressure in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the container internal pressure is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, combustible, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the container internal pressure exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(5) Opening of a safety device, as defined in § 63.921 of this subpart, is allowed at any time conditions require it to do so to avoid an unsafe condition.

(e) The owner or operator shall inspect containers using Container Level 2 controls in accordance with the procedures specified in § 63.926(a) of this subpart.

(f) For the purpose of compliance with paragraph (b)(1) of this section, containers shall be used that meet the applicable U.S. DOT regulations on packaging hazardous materials for transportation as follows:

(1) The container meets the applicable requirements specified in 49 CFR part 178—Specifications for Packagings or 49 CFR part 179—Specifications for Tank Cars.

(2) Regulated-material is managed in the container in accordance with the applicable requirements specified in 49 CFR part 107 subpart B—Exemptions; 49 CFR part 172—Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements; 49 CFR part 173—Shippers—General Requirements for Shipments and Packaging; and 49 CFR part 180—Continuing Qualification and Maintenance of Packagings.

(3) For the purpose of complying with this subpart, no exceptions to the 49 CFR part 178 or part 179 regulations are allowed except as provided for in paragraph (f)(4) of this section.

(4) For a lab pack that is managed in accordance with the requirements of 49 CFR part 178 for the purpose of complying with this subpart, an owner or operator may comply with the exceptions for those packagings specified in 49 CFR 173.12(b).

§ 63.924 Standards—Container Level 3 controls.

(a) This section applies to owners and operators subject to this subpart and required to control air emissions from containers using Container Level 3 controls.

(b) A container using Container Level 3 controls is one of the following:

(1) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of paragraphs (c)(2) of this section.

(2) A container that is vented inside an enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of paragraphs (c)(1) and (c)(2) of this section.

(c) The owner or operator shall meet the following requirements as applicable to the type of air emission control equipment selected by the owner or operator:

(1) The enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, Appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or to direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(2) The closed-vent system and control device shall be designed and operated in accordance with the requirements of 40 CFR 63.692.

(d) Safety devices, as defined in § 63.921 of this subpart, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with this section.

§ 63.925 Test methods and procedures.

(a) Procedure for determining no detectable organic emissions for the purpose of complying with of this subpart.

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the container, its cover, and associated closure devices, as applicable to the container, shall be checked. Potential leak interfaces that are associated with containers include, but are not limited to: the interface of the cover rim and the container wall; the periphery of any opening on the container or container cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the container filled with a material having an organic HAP concentration representative of the range of concentrations for the regulated-materials expected to be managed in this type of container. During the test, the container cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the material placed in the container, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air (less than 10 ppmv hydrocarbon in air); and

(ii) A mixture of methane in air at a concentration of approximately, but less than 10,000 ppmv.

(6) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60 appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (e.g., some pressure relief devices), the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 ppmv. If the difference is less than 500 ppmv, then the potential leak interface is determined to operate with no detectable organic emissions.

(b) Procedure for determining a container to be vapor-tight for the purpose of complying with this subpart.

(1) The test shall be performed in accordance with Method 27 of 40 CFR part 60, appendix A of this chapter.

(2) A pressure measurement device shall be used that has a precision of ± 2.5 mm water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(3) If the test results determined by Method 27 indicate that the container sustains a pressure change less than or equal to 750 Pascals within 5 minutes after it is pressurized to a minimum of 4,500 Pascals, then the container is determined to be vapor-tight.

§ 63.926 Inspection and monitoring requirements.

(a) Owners and operators of containers using either Container Level 1 or Container Level 2 controls in accordance with the provisions of §§ 63.922 and 63.923 of this subpart, respectively, shall inspect the container and its cover and closure devices as follows:

(1) In the case when a regulated-material already is in the container at the time the owner or operator first accepts possession of the container at the facility site and the container is not emptied (i.e., does not meet the conditions for an empty container) within 24 hours after the container arrives at the facility site, the container and its cover and closure devices shall be visually inspected by the owner or operator to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (a)(3) of this section.

(2) In the case when a container used for managing regulated-material remains at the facility site for a period of 1 year or more, the container and its cover and closure devices shall be visually inspected by the owner or operator initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (a)(3) of this section.

(3) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect no later than 24 hours after detection and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the regulated-material shall be removed from the container and the container shall not be used to manage regulated-material until the defect is repaired.

(b) Owners and operators using Container Level 3 controls in accordance with the provisions of § 63.924 of this subpart shall inspect and monitor the closed-vent systems and control devices in accordance with the requirements of § 63.693 in 40 CFR Part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

§ 63.927 Recordkeeping requirements.

(a) Owners and operators that use Container Level 3 controls in accordance with the provisions of § 63.924 of this subpart shall prepare and maintain the following records:

(1) Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, Appendix B.

(2) Records required for the closed-vent system and control device in accordance with the requirements of § 63.693 in 40 CFR Part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

§ 63.928 Reporting requirements.

(a) For owners and operators that use Container Level 3 controls in accordance with the provisions of § 63.924 of this subpart, the owner or operator shall prepare and submit to the Administrator the reports required for closed-vent systems and control devices in accordance with the requirements of § 63.693 in 40 CFR Part 63, subpart DD—National Emission Standards for Hazardous Air Pollutant Standards from Off-Site Waste and Recovery Operations.

7. Part 63 is amended by adding subpart QQ consisting of §§ 63.940 through 63.948 to read as follows:

Subpart QQ—National Emission Standards for Surface Impoundments

Sec.

63.940 Applicability.
63.941 Definitions.
63.942 Standards—Surface impoundment floating membrane cover.
63.943 Standards—Surface impoundment cover vented to control device.
63.944 [Reserved]
63.945 Test methods and procedures.
63.946 Inspection and monitoring requirements.
63.947 Recordkeeping requirements.
63.948 Reporting requirements.

Subpart QQ—National Emission Standards for Surface Impoundments

§ 63.940 Applicability.

The provisions of this subpart apply to the control of air emissions from surface impoundments for which another subpart of 40 CFR parts 60, 61, or 63 references the use of this subpart for such air emission control. These air emission standards for surface impoundments are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the other subparts that reference this subpart. The provisions of 40 CFR part 63, subpart AA—General Provisions do not apply to this subpart except as noted in the subpart that references this subpart.

§ 63.941 Definitions.

All terms used in this subpart shall have the meaning given to them in the Act and in this section. If a term is defined in both this section and in another subpart that references the use of this subpart, then the definition in this subpart shall take precedence when implementing this subpart.

Closure device means a cap, hatch, lid, plug, seal, valve, or other type of fitting that prevents or reduces air emissions to the atmosphere by blocking an opening in a surface impoundment cover when the device is secured in the closed position. Closure devices include devices that are detachable from the cover (e.g., a sampling port cap), manually operated (e.g., a hinged access lid or hatch), or automatically operated (e.g., a spring loaded pressure relief valve).

Cover means an air-supported structure, rigid roof, or other device that prevents or reduces air pollutant emissions to the atmosphere by forming a continuous barrier over the material managed in a surface impoundment. A cover may have openings (such as access hatches) that are necessary for operation, inspection, maintenance, and repair of equipment in the surface impoundment on which the cover is used.

No detectable organic emissions means no escape of organics to the atmosphere as determined using the procedure specified in § 63.944(a) of this subpart.

Regulated-material means the material (e.g. waste, wastewater, off-site material) required to be managed in containers using air emission controls in accordance with the standards specified in this subpart.

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to the surface impoundment air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath the surface impoundment cover such as during filling of the surface impoundment or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitible, explosive, reactive, or hazardous materials.

Surface impoundment means a unit that is a natural topographical depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquids. Examples of surface impoundments include holding, storage, settling, and aeration pits, ponds, and lagoons.

§ 63.942 Standards—Surface impoundment floating membrane cover.

(a) This section applies to owners and operators subject to this subpart and controlling air emissions from a surface impoundment using a floating membrane cover.

(b) The surface impoundment shall be equipped with a floating membrane cover designed to meet the following specifications:

(1) The floating membrane cover shall be designed to float on the liquid surface during normal operations, and form a continuous barrier over the entire surface area of the liquid.

(2) The cover shall be fabricated from a synthetic membrane material that is either:

(i) High density polyethylene (HDPE) with a thickness no less than 2.5 millimeters (mm); or

(ii) A material or a composite of different materials determined to have both organic permeability properties that are equivalent to those of the material listed in paragraph (b)(2)(i) of this section; and chemical and physical properties that maintain the material integrity for the intended service life of the material.

(3) The cover shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between cover section seams or between the interface of the cover edge and its foundation mountings.

(4) Except as provided for in paragraph (b)(5) of this section, each opening in the floating membrane cover shall be equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device.

(5) The floating membrane cover may be equipped with one or more emergency cover drains for removal of stormwater. Each emergency cover drain shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening or a flexible fabric sleeve seal.

(6) The closure devices shall be made of suitable materials that will minimize exposure of the regulated-material to the atmosphere, to the extent practical, and will maintain the integrity of the equipment throughout its intended service life. Factors to be considered when selecting the materials for and designing the cover and closure devices shall include: organic vapor permeability; the effects of any contact with the liquid and its vapor managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the floating membrane cover is installed.

(c) Whenever a regulated-material is in the surface impoundment, the floating membrane cover shall float on the liquid and each closure device shall be secured in the closed position except as follows:

(1) Opening of closure devices or removal of the cover is allowed at the following times:

(i) To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly replace the cover and secure the closure device in the closed position, as applicable.

(ii) To remove accumulated sludge or other residues from the bottom of surface impoundment.

(2) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the pressure in the vapor headspace underneath the cover in accordance with the cover design specifications. The device shall be designed to operate with no detectable organic emissions as defined in § 63.941 of this subpart when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the cover vapor headspace pressure is within the pressure operating range determined by the owner or operator based on the cover manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitible, explosive, reactive, or hazardous materials.

(3) Opening of a safety device, as defined in § 63.941 of this subpart, is allowed at any time conditions require it to do so to avoid an unsafe condition.

(d) The owner or operator shall inspect the floating membrane cover in accordance with the procedures specified in § 63.946(a) of this subpart.

§ 63.943 Standards—Surface impoundment vented to control device.

(a) This section applies to owners and operators subject to this subpart and controlling air emissions from a surface impoundment using a cover and venting the vapor headspace underneath the cover through a closed-vent system to a control device.

(b) The surface impoundment shall be covered by a cover and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(1) The cover and its closure devices shall be designed to form a continuous

barrier over the entire surface area of the liquid in the surface impoundment.

(2) Each opening in the cover not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the cover is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the cover is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions using the procedure specified in § 63.945(a) of this subpart.

(3) The cover and its closure devices shall be made of suitable materials that will minimize exposure of the regulated-material to the atmosphere, to the extent practical, and will maintain the integrity of the equipment throughout its intended service life. Factors to be considered when selecting the materials for and designing the cover and closure devices shall include: organic vapor permeability; the effects of any contact with the liquid or its vapors managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the cover is installed.

(4) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 63.693 in 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutant Standards from Off-Site Waste and Recovery Operations.

(c) Whenever a regulated-material is in the surface impoundment, the cover shall be installed with each closure device secured in the closed position and the vapor headspace underneath the cover vented to the control device except as follows:

(1) Venting to the control device is not required, and opening of closure devices or removal of the cover is allowed at the following times:

(i) To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the surface impoundment.

(ii) To remove accumulated sludge or other residues from the bottom of surface impoundment.

(2) Opening of a safety device, as defined in § 63.941 of this subpart, is allowed at any time conditions require it to do so to avoid an unsafe condition.

(d) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the procedures specified in § 63.946(b) of this subpart.

§ 63.944 [Reserved]

§ 63.945 Test methods and procedures.

(a) Procedure for determining no detectable organic emissions for the purpose of complying with this subpart.

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: the interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the surface impoundment contains a material having an organic HAP concentration representative of the range of concentrations for the regulated-materials expected to be managed in the surface impoundment. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the regulated-material placed in the surface impoundment, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air (less than 10 ppmv hydrocarbon in air); and

(ii) A mixture of methane in air at a concentration of approximately, but less than 10,000 ppmv.

(6) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (e.g., some pressure relief devices), the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 ppmv. If the difference is less than 500 ppmv, then the potential leak interface is determined to operate with no detectable organic emissions.

§ 63.946 Inspection and monitoring requirements.

(a) Owners and operators that use a surface impoundment equipped with a floating membrane cover in accordance with the provisions of § 63.942 of this subpart shall meet the following requirements:

(1) The floating membrane cover and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(2) The owner or operator shall perform the inspections following installation of the floating membrane cover and, thereafter, at least once every year.

(3) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c) of this section.

(4) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.947(a)(2) of this subpart.

(b) Owners and operators that use a surface impoundment equipped with a cover and vented through a closed-vent system to a control device in accordance with the provisions of § 63.943 of this subpart shall inspect the air emission control equipment as follows:

(1) The owner or operator shall visually inspect the cover in accordance with the following requirements:

(i) The cover and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the interface of the roof edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The owner or operator shall perform the inspections following installation of the cover and, thereafter, at least once every year.

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (c) of this section.

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.947(a)(2) of this subpart.

(2) The owner or operator shall inspect and monitor the closed-vent system and the control device in accordance with the requirements specified in § 63.693 in 40 CFR part 63 subpart DD—National Emission Standards for Hazardous Air Pollutant Standards from Off-Site Waste and Recovery Operations.

(c) The owner or operator shall repair all detected defects as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in paragraph (c)(2) of this section.

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the surface impoundment and no alternative surface impoundment or tank capacity is available at the site to accept the regulated-material normally managed in the surface impoundment. In this case, the owner or operator shall repair the defect at the next time the process or unit that is generating the regulated-material managed in the surface impoundment stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(3) The owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in § 63.947 of this subpart.

§ 63.947 Recordkeeping requirements.

(a) Each owner or operator shall prepare and maintain the following records:

(1) Documentation describing the floating membrane cover or cover design, as applicable to the surface impoundment.

(2) A record for each inspection required by § 63.946 of this subpart that includes the following information: a surface impoundment identification number (or other unique identification description as selected by the owner or operator) and the date of inspection.

(3) The owner or operator shall record for each defect detected during inspections required by § 63.946 of this subpart the following information: the location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of § 63.946(c)(2) of this section, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(b) Owners and operators that use a surface impoundment equipped with a fixed-roof and vented through a closed-vent system to a control device in accordance with the provisions of § 63.943 of this subpart shall prepare and maintain the records required for the closed-vent system and control device in accordance with the requirements of § 63.693 in 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutant Standards from Off-Site Waste and Recovery Operations.

§ 63.948 Reporting requirements.

Owners and operators that use a surface impoundment equipped with a fixed-roof and vented through a closed-vent system to a control device in accordance with the provisions of § 63.943 of this subpart shall prepare and submit to the Administrator the reports required for closed-vent systems and control devices in accordance with the requirements of § 63.693 in 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutant Standards from Off-Site Waste and Recovery Operations.

8. Part 63 is amended by adding subpart RR consisting of §§ 63.960 through 63.966 to read as follows:

Subpart RR—National Emission Standards for Individual Drain Systems

Sec.

63.960 Applicability.
63.961 Definitions.
63.962 Standards.
63.963 [Reserved]
63.964 Inspection and monitoring requirements.
63.965 Recordkeeping requirements.
63.966 Reporting requirements.

Subpart RR—National Emission Standards for Individual Drain Systems

§ 63.960 Applicability.

(a) The provisions of this subpart apply to the control of air emissions from individual drain systems for which another subpart of 40 CFR parts 60, 61, or 63 references the use of this subpart for such air emission control. These air emission standards for individual drain systems are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the other subparts that reference this subpart. The provisions of 40 CFR part 63, subpart A—General Provisions do not apply to this subpart except as noted in the subpart that references this subpart.

§ 63.961 Definitions.

All terms used in this subpart shall have the meaning given to them in the Act and in this section. If a term is defined in both this section and in another subpart that references the use of this subpart, then the definition in this subpart shall take precedence when implementing this subpart.

Closure device means a cap, cover, hatch, lid, plug, seal, valve, or other type of fitting that, when the device is secured in the closed position, prevents or reduces air emissions to the atmosphere by blocking an opening to the individual drain system. Closure devices include devices that are detachable (e.g., a plug or manhole cover), manually operated (e.g., a hinged access lid or hatch), or automatically operated (e.g., a spring-loaded pressure relief valve).

Hard-piping means pipe or tubing that is manufactured and properly installed in accordance with relevant standards (e.g., ANSI B31–3) and good engineering practices.

Individual drain system means a stationary system used to convey wastewater streams or residuals to a waste management unit or to discharge or disposal. The term includes hard-piping, all drains and junction boxes, together with their associated sewer

lines and other junction boxes (e.g., manholes, sumps, and lift stations) conveying wastewater streams or residuals. For the purpose of this subpart, an individual drain system is not a drain and collection system that is designed and operated for the sole purpose of collecting rainfall runoff (e.g., stormwater sewer system) and is segregated from all other individual drain systems.

Junction box means a sump, manhole, or access point to a sewer line or a lift station.

Sewer line means a lateral, trunk line, branch line, or other conduit used to convey wastewater to a downstream waste management unit. Sewer lines include pipes, grates, and trenches.

Waste management unit means the equipment, structure, or device used to convey, store, treat, or dispose of wastewater streams or residuals. Examples of waste management units include: wastewater tanks, surface impoundments, individual drain systems, and biological wastewater treatment units. Examples of equipment that may be waste management units include containers, air flotation units, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units.

Water seal means a seal pot, p-leg trap, or other type of trap filled with water (e.g., flooded sewers that maintain liquid levels adequate to prevent air flow through the system) that creates a liquid barrier between the sewer line and the atmosphere. The liquid level of the seal must be maintained in the vertical leg of a drain in order to be considered a water seal.

§ 63.962 Standards.

(a) The owner or operator subject to this subpart shall control air emissions from the individual drain system using one or a combination of the following:

(1) Covers, water seals, and other air emission control equipment as specified in paragraph (b) of this section.

(2) Hard-piping.

(3) Venting of the individual drain system through a closed vent system to a control device in accordance with the following requirements:

(i) The individual drain system is designed and operated such that an internal pressure in the vapor headspace in the system is maintained at a level less than atmospheric pressure when the control device is operating, and

(ii) The closed vent system and control device are designed and operated in accordance with the requirements of § 63.693 in 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutant Standards from Off-Site Waste and Recovery Operations.

(b) Owners and operators controlling air emissions from an individual drain system in accordance with paragraph (a)(1) of this section shall meet the following requirements:

(1) The individual drain system shall be designed to segregate the organic vapors from wastewater managed in the controlled individual drain system from entering any other individual drain system that is not controlled for air emissions in accordance with the standards specified in this subpart.

(2) *Drain control requirements.* Each drain shall be equipped with either a water seal or a closure device in accordance with the following requirements:

(i) When a water seal is used, the water seal shall be designed such that either:

(A) The outlet to the pipe discharging the wastewater extends below the liquid surface in the water seal of the drain; or

(B) A flexible shield or other device is installed which restricts wind motion across the open space between the outlet of the pipe discharging the wastewater and the drain.

(ii) When a closure device is used (e.g., securing a cap or plug on a drain that is not receiving wastewater), the closure device shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the drain opening and the closure device.

(3) *Junction box control requirements.* Each junction box shall be equipped with controls as follows:

(i) The junction box shall be equipped with a closure device (e.g., manhole cover, access hatch) that is designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the junction box opening and the closure device.

(ii) If the junction box is vented, the junction box shall be vented in accordance with the following requirements:

(A) The junction box shall be vented through a closed vent system to a control device except as provided for in paragraph (b)(3)(ii)(B) of this section. The closed vent system and control device shall be designed and operated in accordance in accordance with the standards specified in § 63.693 in 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutant Standards from Off-Site Waste and Recovery Operations.

(B) As an alternative to paragraph (b)(3)(ii)(A) of this section, the owner or operator may vent the junction box directly to the atmosphere when all of the following conditions are met:

(*1*) The junction box is filled and emptied by gravity flow (i.e., there is no pump) or is operated with no more than slight fluctuations in the liquid level. Large changes in the size of the junction box vapor headspace created by using a pump to repeatedly empty and then refill the junction box do not meet this condition.

(*2*) The vent pipe installed on the junction box shall be at least 90 centimeters in length and no greater than 10.2 centimeter in diameter.

(*3*) Water seals are installed at the liquid entrance(s) to or exit from the junction box to restrict ventilation in the individual drain system and between components in the individual drain system. The owner or operator shall demonstrate (e.g., by visual inspection or smoke test) upon request by the Administrator that the junction box water seal is properly designed and restricts ventilation.

(4) *Sewer line control requirements.* Each sewer line shall not be open to the atmosphere and shall be covered or closed in a manner such that there are no visible cracks, holes, gaps, or other open spaces in the sewer line joints, seals, or other emission interfaces.

(5) *Operating requirements.* The owner or operator shall operate the air emission controls required by paragraphs (b)(2) through (b)(4) of this section in accordance with the following requirements:

(i) Each closure device shall be maintained in a closed position whenever wastewater is in the individual drain system except when it is necessary to remove or open the closure device for sampling or removing material in the individual drain system, or for equipment inspection, maintenance, or repair.

(ii) Each drain equipped with a water seal and open to the atmosphere shall be operated to ensure that the liquid in the water seal is maintained at the appropriate level. Examples of acceptable means for complying with this provision include but are not limited to using a flow-monitoring device indicating positive flow from a main to a branch water line supplying a trap; continuously dripping water into the trap using a hose; or regular visual observations.

(iii) Each closed-vent system and the control device used to comply with paragraph (b)(3)(ii)(A) of this section shall be operated in accordance with the standards specified in 40 CFR 63.693.

§ 63.963 [Reserved].

§ 63.964 Inspection and monitoring requirements.

(a) The owner or operator shall inspect the individual drain system in accordance with the following requirements:

(1) The individual drain system shall be visually inspected by the owner or operator as follows to check for defects that could result in air emissions to the atmosphere.

(i) The owner or operator shall visually inspect each drain as follows:

(A) In the case when the drain is using a water seal to control air emissions, the owner or operator shall verify appropriate liquid levels are being maintained and identify any other defects that could reduce water seal control effectiveness.

(B) In the case when the drain is using a closure device to control air emissions, the owner or operator shall visually inspect each drain to verify that the closure device is in place and there are no defects. Defects include, but are not limited to, visible cracks, holes, or gaps in the closure devices; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing plugs, caps, or other closure devices.

(ii) The owner or operator shall visually inspect each junction box to verify that closure devices are in place and there are no defects. Defects include, but are not limited to, visible cracks, holes, or gaps in the closure devices; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(iii) The owner or operator shall visually inspect the unburied portion of each sewer line to verify that all closure devices are in place and there are no defects. Defects include, but are not limited to, visible cracks, holes, gaps, or other open spaces in the sewer line joints, seals, or other emission interfaces.

(iv) The owner or operator shall perform the inspections initially at the time of installation of the water seals and closure devices for the individual drain system and, thereafter, at least once every year.

(v) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (b) of this section.

(vi) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.965(a) of this subpart.

(2) The owner or operator shall inspect and monitor the closed-vent system and the control device in accordance with the requirements specified in § 63.693 in 40 CFR 63 subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

(b) The owner or operator shall repair all detected defects as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 15 calendar days after detection except as provided in paragraph (b)(2) of this section.

(2) Repair of a defect may be delayed beyond 15 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the individual drain system and no alternative capacity is available at the facility site to accept the wastewater normally managed in the individual drain system. In this case, the owner or operator shall repair the defect at the next time the process or unit that is generating the wastewater managed in the individual drain system stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(3) The owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in § 63.965(a)(3) of this subpart.

§ 63.965 Recordkeeping requirements.

(a) Each owner or operator complying with § 63.962(a)(1) of this subpart shall prepare and maintain the following records:

(1) A written site-specific individual drain system inspection plan that includes a drawing or schematic of the individual drain system and identifies each drain, junction box, and sewer line location.

(2) A record of the date that each inspection required by § 63.964(a) of this subpart is performed.

(3) When applicable, a record for each defect detected during inspections required by § 63.964(a) of this subpart that includes the following information: the location of the defect, a description of the defect, the date of detection, the corrective action taken to repair the defect, and the date that the corrective action was completed. In the event that repair of the defect is delayed in accordance with the provisions of § 63.964(b)(2) of this section, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(b) Owners and operators that use a closed-vent system and a control device in accordance with the provisions of § 63.962(a)(3) or § 63.692(b)(3)(ii)(A) of this subpart shall prepare and maintain the records required for the closed-vent system and control device in accordance with the requirements of § 63.693 in 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

§ 63.966 Reporting requirements.

Owners and operators that use a closed-vent system and a control device in accordance with the provisions of § 63.962(a)(3) or § 63.962(b)(3)(ii)(A) of this subpart shall prepare and submit to the Administrator the reports required for closed-vent systems and control devices in accordance with the requirements of § 63.693 in 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

9. Part 63 is amended by adding subpart VV consisting of §§ 63.1040 through 63.1049 to read as follows:

Subpart VV—National Emission Standards for Oil-Water Separators and Organic-Water Separators

Sec.

63.1040 Applicability.
63.1041 Definitions.
63.1042 Standards—Separator fixed roof.
63.1043 Standards—Separator floating roof.
63.1044 Standards—Separator vented to control device.
63.1045 [Reserved]
63.1046 Test methods and procedures.
63.1047 Inspection and monitoring requirements.
63.1048 Recordkeeping requirements.
63.1049 Reporting requirements.

Subpart VV—National Emission Standards for Oil-Water Separators and Organic-Water Separators

63.1040 Applicability.

The provisions of this subpart apply to the control of air emissions from oil-water separators and organic-water separators for which another subpart of 40 CFR parts 60, 61, or 63 references the use of this subpart for such air emission control. These air emission standards for oil-water separators and organic-water separators are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the other subparts that reference this subpart. The provisions of 40 CFR part 63, subpart

A—General Provisions do not apply to this subpart except as noted in the subpart that references this subpart.

§ 63.1041 Definitions.

All terms used in this subpart shall have the meaning given to them in the Act and in this section. If a term is defined in both this section and in another subpart that references the use of this subpart, then the definition in this subpart shall take precedence when implementing this subpart.

Closure device means a cap, hatch, lid, plug, seal, valve, or other type of fitting that, when the device is secured in the closed position, prevents or reduces air emissions to the atmosphere by blocking an opening in a fixed roof or floating roof. Closure devices include devices that are detachable from the cover (e.g., a sampling port cap), manually operated (e.g., a hinged access lid or hatch), or automatically operated (e.g., a spring-loaded pressure relief valve).

Continuous seal means a seal that forms a continuous closure that completely covers the space between the edge of the floating roof and the wall of a separator. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

Fixed roof means a cover that is mounted on a separator in a stationary position and does not move with fluctuations in the level of the liquid managed in the separator.

Floating roof means a pontoon-type or double-deck type cover that rests upon and is supported by the liquid managed in a separator.

Liquid-mounted seal means a foam- or liquid-filled continuous seal that is mounted between the wall of the separator and the floating roof, and the seal is in contact with the liquid in a separator.

Oil-water separator means a separator as defined for this subpart that is used to separate oil from water.

Organic-water separator means a separator as defined for this subpart that is used to separate organics from water.

Metallic shoe seal means a continuous seal that is constructed of metal sheets which are held vertically against the wall of the separator by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

No detectable organic emissions means no escape of organics to the atmosphere as determined using the procedure specified in § 63.1046(a) of this subpart,

Regulated-material means the material (e.g. waste, wastewater, off-site material) required to be managed in separators using air emission controls in accordance with the standards specified in this subpart.

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to the separator air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath the separator cover. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

Separator means a waste management unit, generally a tank, that is used to separate oil or organics from water. A separator consists of not only the separation unit but also the forebay and other separator basins, skimmers, weirs, grit chambers, sludge hoppers, and bar screens that are located directly after the individual drain system and prior to any additional treatment units such as an air flotation unit clarifier or biological treatment unit. Examples of a separator include an API separator, parallel-plate interceptor, and corrugated-plate interceptor with the associated ancillary equipment.

§ 63.1042 Standards—Separator fixed roof.

(a) This section applies to owners and operators subject to this subpart and controlling air emissions from an oil-water separator or organic-water separator using a fixed roof.

(b) The separator shall be equipped with a fixed roof designed to meet the following specifications:

(1) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the separator.

(2) The fixed roof shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the separator wall.

(3) Each opening in the fixed roof shall be equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device.

(4) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the regulated-material to the atmosphere, to the extent practical, and will maintain the integrity of the equipment throughout its intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: organic vapor permeability; the effects of any contact with the liquid and its vapors managed in the separator; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the separator on which the fixed roof is installed.

(c) Whenever a regulated-material is in the separator, the fixed roof shall be installed with each closure device secured in the closed position except as follows:

(1) Opening of closure devices or removal of the fixed roof is allowed at the following times:

(i) To provide access to the separator for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the separator, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the separator.

(ii) To remove accumulated sludge or other residues from the bottom of separator.

(2) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the pressure in vapor headspace underneath the fixed roof in accordance with the separator design specifications. The device shall be designed to operate with no detectable organic emissions, as determined using the procedure specified in § 63.1046(a) of this subpart, when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the pressure in the vapor headspace underneath the fixed roof is within the pressure operating range determined by the owner or operator based on the cover manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

(3) Opening of a safety device, as defined in § 63.1041 of this subpart, is allowed at any time conditions require it to do so to avoid an unsafe condition.

(d) The owner or operator shall inspect the fixed roof and any closure devices in accordance with the requirements specified in § 63.1047(a) of this subpart.

§ 63.1043 Standards—Separator floating roof.

(a) This section applies to owners and operators subject to this subpart and controlling air emissions from an oil-water separator or organic-water separator using a floating roof.

(b) The separator shall be equipped with a floating roof designed to meet the following specifications:

(1) The floating roof shall be designed to float on the liquid surface during normal operations.

(2) The floating roof shall be equipped with two continuous seals, one above the other, between the wall of the separator and the roof edge. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

(i) The primary seal shall be a liquid-mounted seal or a metallic shoe seal, as defined in § 63.1041 of this subpart. The total area of the gaps between the separator wall and the primary seal shall not exceed 67 square centimeters (cm^2) per meter of separator wall perimeter, and the width of any portion of these gaps shall not exceed 3.8 centimeters (cm).

(ii) The secondary seal shall be mounted above the primary seal and cover the annular space between the floating roof and the wall of the separator. The total area of the gaps between the separator wall and the secondary seal shall not exceed 6.7 square centimeters (cm^2) per meter of separator wall perimeter, and the width of any portion of these gaps shall not exceed 1.3 centimeters (cm).

(3) Except as provided for in paragraph (b)(4) of this section, each opening in the floating roof shall be equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device.

(4) The floating roof may be equipped with one or more emergency roof drains for removal of stormwater. Each emergency roof drain shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening or a flexible fabric sleeve seal.

(c) Whenever a regulated-material is in the separator, the floating roof shall float on the liquid (i.e., off the roof supports) and each closure device shall be secured in the closed position except as follows:

(1) Opening of closure devices is allowed at the following times:

(i) To provide access to the separator for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the separator, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position.

(ii) To remove accumulated sludge or other residues from the bottom of separator.

(2) Opening of a safety device, as defined in § 63.1041 of this subpart, is allowed at any time conditions require it to do so to avoid an unsafe condition.

(d) The owner or operator shall inspect the floating roof in accordance with the procedures specified in § 63.1047(b) of this subpart.

§ 63.1044 Standards—Separator vented to control device.

(a) This section applies to owners and operators controlling air emissions from an oil-water or organic-water separator using a fixed roof and venting the vapor headspace underneath the fixed roof through a closed-vent system to a control device.

(b) The separator shall be covered by a fixed roof and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(1) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the separator.

(2) Each opening in the fixed roof not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions, as determined using the procedure specified in § 63.1046(a) of this subpart.

(3) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the regulated-material to the atmosphere, to the extent practical, and will maintain the integrity of the equipment throughout its intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: organic vapor permeability; the effects of any contact with the liquid or its vapors managed in the separator; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the separator on which the fixed roof is installed.

(4) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 63.693 in 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

(c) Whenever a regulated-material is in the separator, the fixed roof shall be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device except as follows:

(1) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is allowed at the following times:

(i) To provide access to the separator for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the separator, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity,

the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the separator.

(ii) To remove accumulated sludge or other residues from the bottom of separator.

(2) Opening of a safety device, as defined in § 63.1041 of this subpart, is allowed at any time conditions require it to do so to avoid an unsafe condition.

(d) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the procedures specified in § 63.1047(c) of this subpart.

§ 63.1045 [Reserved]

§ 63.1046 Test methods and procedures.

(a) Procedure for determining no detectable organic emissions for the purpose of complying with this subpart.

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: the interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the separator contains a material having an organic HAP concentration representative of the range of concentrations for the regulated-materials expected to be managed in the separator. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the regulated-material placed in the separator, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air (less than 10 ppmv hydrocarbon in air); and

(ii) A mixture of methane in air at a concentration of approximately, but less than, 10,000 ppmv.

(6) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60 appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn (e.g., some pressure relief devices), the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 ppmv. If the difference is less than 500 ppmv, then the potential leak interface is determined to operate with no detectable organic emissions.

(b) Procedure for performing floating roof seal gap measurements for the purpose of complying with this subpart.

(1) The owner or operator shall determine the total surface area of gaps in the primary seal and in the secondary seal individually.

(2) The seal gap measurements shall be performed at one or more floating roof levels when the roof is floating off the roof supports.

(3) Seal gaps, if any, shall be measured around the entire perimeter of the floating roof in each place where a 0.32-centimeter (cm) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the separator and measure the circumferential distance of each such location.

(4) For a seal gap measured under paragraph (b)(2) of this section, the gap surface area shall be determined by using probes of various widths to measure accurately the actual distance from the separator wall to the seal and multiplying each such width by its respective circumferential distance.

(5) The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal perimeter of the separator basin. These total gap areas for the primary seal and secondary seal then are compared to the respective standards for the seal type as specified in § 63.1043(b)(2) of this subpart.

§ 63.1047 Inspection and monitoring requirements.

(a) Owners and operators that use a separator equipped with a fixed roof in accordance with the provisions of § 63.1042 of this subpart shall meet the following requirements:

(1) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air emissions to the atmosphere. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the separator wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(2) The owner or operator shall perform the inspections following installation of the fixed roof and, thereafter, at least once every year.

(3) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d) of this section.

(4) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.1048(a)(2) of this subpart.

(b) Owners and operators that use a separator equipped with a floating roof in accordance with the provisions of § 63.1043 of this subpart shall meet the following requirements:

(1) The owner or operator shall measure the floating roof seal gaps using the procedure specified in § 63.1046(b) of this subpart in accordance with the following requirements:

(i) The owner or operator shall perform measurements of gaps between the separator wall and the primary seal within 60 days after initial operation of the separator following installation of the floating roof and, thereafter, at least once every 5 years.

(ii) The owner or operator shall perform measurements of gaps between the separator wall and the secondary seal within 60 days after initial operation of the separator following installation of the floating roof and, thereafter, at least once every year.

(iii) If a separator ceases to hold regulated-material for a period of 1 year or more, subsequent introduction of regulated-material into the separator shall be considered an initial operation for the purpose of complying with paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(iv) In the event that the seal gap measurements do not conform to the specifications in § 63.1043(b)(2) of this subpart, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d) of this section.

(v) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.1048 (a)(2) and (b) of this subpart.

(2) The owner or operator shall visually inspect the floating roof in accordance with the following requirements:

(i) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air emissions to the atmosphere. Defects include, but are not limited to: holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the separator; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The owner or operator shall perform the inspections following installation of the floating roof and, thereafter, at least once every year.

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d) of this section.

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.1048(a)(2) of this subpart.

(c) Owners and operators that use a separator equipped with a fixed roof and vented through a closed-vent system to a control device in accordance with the provisions of § 63.1044 of this subpart shall inspect the air emission control equipment as follows:

(1) The owner or operator shall visually inspect the fixed roof in accordance with the following requirements:

(i) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the separator wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The owner or operator shall perform the inspections following installation of the fixed roof and, thereafter, at least once every year.

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of paragraph (d) of this section.

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in § 63.1048(a)(2) of this subpart.

(2) The owner or operator shall inspect and monitor the closed-vent system and the control device in accordance with the requirements specified in § 63.693 in 40 CFR 63 subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

(d) The owner or operator shall repair all detected defects as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in paragraph (d)(2) of this section.

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the separator and no alternative treatment capacity is available at the facility site to accept the regulated-material normally treated in the separator. In this case, the owner or operator shall repair the defect at the next time the process or unit that is generating the regulated-material managed in the separator stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(3) The owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in § 63.1048(a)(3) of this subpart.

§ 63.1048 Recordkeeping requirements.

(a) Each owner or operator shall prepare and maintain the following records:

(1) Documentation describing the design of each floating roof and fixed roof installed on a separator, as applicable to the separator. When a floating roof is used, the documentation shall include the dimensions of the separator bay or section in which the floating roof is installed.

(2) A record for each inspection required by § 63.1047 of this subpart that includes the following information: a separator identification number (or other unique identification description as selected by the owner or operator) and the date of inspection.

(3) The owner or operator shall record for each defect detected during inspections required by § 63.1047 of this subpart the following information: the location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of § 63.1047(d)(2) of this section, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(b) Owners and operators that use a separator equipped with a floating roof in accordance with the provisions of § 63.1043 of this subpart shall prepare and maintain records for each inspection required by § 63.1047(b)(1) describing the results of the seal gap measurements. The records shall include the date of the measurements performed, the raw data obtained for the measurements, and the calculations of the total gap surface area. In the event that the seal gap measurements do not conform to the specifications in § 63.1043(b)(2) of this subpart, the records shall include a description of the repairs that were made, the date the repairs were made, and the date the separator was emptied, if necessary.

(c) Owners and operators that use a separator equipped with a fixed-roof and vented through a closed-vent system to a control device in accordance with the provisions of § 63.1044 of this subpart shall prepare and maintain the records required for the closed-vent system and control device in accordance with the requirements of § 63.693 in 40 CFR 63 subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

§ 63.1049 Reporting requirements.

(a) Owners and operators that use a separator equipped with a floating roof in accordance with the provisions of § 63.1043 of this subpart shall notify the Administrator at least 30 calendar days prior to each seal gap measurement inspection performed to comply with the requirements in § 63.1047(b)(1) of this subpart.

(b) Owners and operators that use a separator equipped with a fixed-roof and vented through a closed-vent system to a control device in accordance with the provisions of § 63.1044 of this subpart shall prepare and submit to the Administrator the reports required for

closed-vent systems and control devices in accordance with the requirements of § 63.693 in 40 CFR 63 subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

10. Part 63 is amended by adding appendix D to read as follows:

Appendix D to Part 63—Alternative Validation Procedure for EPA Waste and Wastewater Methods

1. Applicability

This procedure is to be applied exclusively to Environmental Protection Agency methods developed by the Office of Water and the Office of Solid Waste. Alternative methods developed by any other group or agency shall be validated according to the procedures in Sections 5.1 and 5.3 of Test Method 301, 40 CFR Part 63, Appendix A. For the purposes of this appendix, "waste" means waste and wastewater.

2. Procedure

This procedure shall be applied once for each waste matrix. Waste matrix in the context of this procedure refers to the target compound mixture in the waste as well as the formulation of the medium in which the target compounds are suspended. The owner or operator shall prepare a sampling plan. Wastewater samples shall be collected using sampling procedures which minimize loss of organic compounds during sample collection and analysis and maintain sample integrity. The sample plan shall include procedures for determining recovery efficiency of the relevant compounds regulated in the applicable subpart. An example of an acceptable sampling plan would be one that incorporates similar sampling and sample handling requirements to those of Method 25D of 40 CFR part 60, appendix A.

2.1. Sampling and Analysis

2.1.1. For each waste matrix, collect twice the number of samples required by the applicable regulation. Designate and label half the sample vials the "spiked" sample set, and the other half the "unspiked" sample set. Immediately before or immediately after sampling (immediately after in the context of this procedure means after placing the sample into the sample vial, but before the sample is capped, cooled, and shipped to the laboratory for analysis), inject, either individually or as a solution, all the target compounds into each spiked sample.

2.1.2. The mass of each spiked compound shall be 40 to 60 percent of the mass expected to be present in the waste matrix. If the concentration of the target compounds in the waste are not known, the mass of each spiked compound shall be 40 to 60 percent of the limit allowed in the applicable regulation. Analyze both sets of samples (spiked and unspiked) with the chosen method.

3. Calculations

For each pair of spiked and unspiked samples, determine the fraction of spiked compound recovered (R) using the following equations.

where:

m_r = mass spiked compound measured (μg).

m_s = total mass of compound measured in spiked sample (μg).

m_u = total mass of compound measured in unspiked sample (μg).

where:

S = theoretical mass of compound spiked into spiked sample (μg).

3.1. Method Evaluation

In order for the chosen method to be acceptable for a compound, $0.70 \leq R \leq 1.30$ (R in this case is an average value of all the spiked and unspiked sample set R values). If the average R value does not meet this criterion for a target compound, the chosen method is not acceptable for that compound, and therefore another method shall be evaluated for acceptance (by repeating the procedures outlined above with another method).

3.2. Records and Reports

Report the average R value in the test report and correct all reported measurements made with the method with the calculated R value for that compound by using the following equation:

$$\text{Reported Result} = \frac{\text{Measured Mass of Compound}}{\text{R for that compound}}$$

3.3. Optional Correction Step

If the applicable regulation allows for correction of the mass of the compound in the waste by a published f_m value, multiply the reported result calculated above with the appropriate f_m value for that compound.

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July 1, 1996

Part IV

Environmental Protection Agency

40 CFR Parts 9, 55 and 71
Federal Operating Permits Program; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 55 and 71

[FRL–5526–7]

RIN 2060–AD68

Federal Operating Permits Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates regulations setting forth the procedures and terms under which the Administrator will administer programs for issuing operating permits to covered stationary sources, pursuant to title V of the Clean Air Act as amended in 1990 (Act). Although the primary responsibility for issuing operating permits to such sources rests with State, local, and Tribal air agencies, EPA will remedy gaps in air quality protection by administering a Federal operating permits program in areas lacking an EPA-approved or adequately administered operating permits program. Federally issued permits will clarify which requirements apply to sources and will enhance understanding of and compliance with air quality regulations.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Candace Carraway (telephone 919–541–3189) or Kirt Cox (telephone 919–541–5399), U. S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Information Transfer and Program Integration Division, Mail Drop 12, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Docket

Supporting information used in developing the promulgated rules is contained in Docket No. A–93–51. Supporting information used in developing 40 CFR part 70 is contained in Dockets No. A–90–33 and No. A–93–50. These dockets are available for public inspection and copying between 8:30 a.m. and 3:30 p.m. Monday through Friday at EPA's Air Docket, Room M–1500, Waterside Mall, 401 M Street SW, Washington, D.C. 20460. A reasonable fee may be charged for copying.

Background Information Document

A background information document (BID) for the promulgated rule may be obtained from the docket. Please refer to "Federal Operating Permits Program - Response to Comments." The BID contains a summary of the public comments made on the proposed Federal Operating Permits Program rule and EPA responses to the comments.

Regulated Entities

Entities potentially regulated by this action are major sources, affected sources under title IV of the Act (acid rain sources), solid waste incineration units required to obtain a permit under section 129 of the Act, and those areas sources subject to a standard under section 111 or 112 of the Act which have not been exempted or deferred from title V permitting requirements. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Major sources under title I or section 112 of the Act; affected sources under title IV of the Act (acid rain sources); solid waste incineration units required to obtain a permit under section 129 of the Act; area sources subject to new source performance standards or national emission standards for hazardous air pollutants that are not exempted or deferred from permitting requirements under title V.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in section 71.3(a) of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section or the EPA Regional Office that is administering the part 71 permit program for the State or area in which the relevant source or facility is located.

Outline. The information presented in this preamble is organized as follows:

I. Background
II. Summary of Promulgated Rule
III. Significant Changes to the Proposed Rule
IV. Administrative Requirements
A. Docket
B. Executive Order 12286
C. Regulatory Flexibility Act
D. Paperwork Reduction Act
E. Unfunded Mandates Reform Act

I. Background

A. Background of EPA's Development of the Proposed Part 71 Rule

Title V of the Act requires that if a permits program meeting the requirements of title V has not been approved for any State by November 15, 1995, EPA must promulgate, administer, and enforce a Federal title V program for that State (42 U.S.C. section 7661a(d)(3)). Thus, from the date of enactment of the 1990 Amendments to the Act, EPA was subject to a 5-year deadline to establish a Federal program for States that do not obtain EPA approval of their State programs within that time. The Act had also placed EPA under a 1-year deadline to promulgate regulations establishing the minimum elements of approvable State permit programs (42 U.S.C. section 7661a(b)). The EPA promulgated its regulations establishing these criteria, codified at 40 CFR part 70 (the part 70 rule), on July 21, 1992 (57 FR 32250). States were then to submit their title V programs for EPA review by November 15, 1993, and EPA was to approve or disapprove those submitted programs within 1 year of receiving them (42 U.S.C. section 7661a(d)(1)). Thus, under the temporal scheme of title V, EPA was to approve or disapprove timely submitted State title V programs by November 15, 1994, exactly 1 year before EPA's duty to establish a Federal program for unapproved States would ripen.

Almost immediately upon promulgation of part 70, numerous industry, State and local government, and environmentalist petitioners challenged EPA's final rule in litigation in the Court of Appeals. See *Clean Air Implementation Project v. EPA*, No. 92–1303 (D.C. Cir.). Petitioners identified dozens of issues to which they objected in the part 70 rule, and EPA decided to conduct broad-based settlement discussions with all petitioners concerning these issues. These discussions occurred for over a year following the commencement of the litigation, and resulted in EPA, with the consultation of all of the litigants, developing proposed revisions to many provisions in the part 70 rule. These provisions mainly concerned the flexibility provisions of part 70, which governed when permits would need to be revised to reflect changes in operation at sources, and the procedures by which permits would be revised. On August 29, 1994, EPA published proposed substantial revisions to part 70 reflecting the outcome of these discussions (59 FR 44460) (hereafter "August 1994 proposed revisions to part 70"). That proposal reflected EPA's most current thinking at the time concerning the proper implementation of title V, and departed in numerous respects from positions taken in the existing promulgated part 70 rule.

When EPA began developing part 71 in the fall of 1993, settlement discussions concerning part 70 were still ongoing and were yielding what appeared to be fruitful results. The Agency believed at the time that any needed revisions to part 70 would be finalized well in advance of the deadline for establishing any necessary Federal programs, and so decided to develop part 71 based on contemplated proposed revisions to part 70, as EPA wished to model part 71 on its long-term implementation goals for title V, rather than on provisions of a part 70 rule that EPA did not believe would remain as promulgated in the current rule.

When EPA published its proposed revisions to part 70 in August 1994, the Agency still believed that the revisions would be finalized in time for EPA to base its part 71 Federal program rule on the revised part 70. Consequently, when EPA published its proposed part 71 regulations on April 27, 1995, the proposal was based on the August 1994 proposed revisions to part 70 (60 FR 20804; hereafter, "part 71 proposal"). The part 71 proposal thus contained provisions concerning critical definitions under title V, the scope of applicability of the program to sources, requirements governing applications and permit content, and, most significantly, operational flexibility and permit revisions that departed from the current part 70 rule's corresponding provisions. In the proposal notice, the Agency specifically solicited comment on whether the Agency had appropriately based part 71 upon the relevant provision of the existing part 70 rule and the recently proposed revision to part 70. See 60 FR at 20805.

At the time of proposal of part 71, the Agency was aware of many adverse comments on the August 1994 proposed revisions to part 70, and EPA had engaged in discussions with stakeholders to obtain recommendations for publishing a supplemental proposal to revise the flexibility provisions of part 70. See 60 FR at 20805, 20817. The part 71 proposal notice indicated that the Agency believed it might not be possible to promulgate final permit revision procedures for part 71, in light of the ongoing discussions to develop part 70 permit revision procedures in time to meet the statutory deadline for establishing Federal programs in States lacking approved part 70 programs. As a result, the notice suggested that EPA may have to finalize the part 71 rule in two phases, the first without any provisions for revising permits, which would be addressed in a later supplemental proposal. Id. Indeed, EPA's supplemental proposal for both parts 70 and 71, published on August 31, 1995, described how part 71's future permit revision procedures would be modelled upon the part 70 procedures for permit revisions proposed in that notice (60 FR 45530; hereafter, "August 1995 supplemental proposal").

B. The Need for Part 71 To Facilitate Transition

In the part 71 proposal notice, EPA stressed the need for implementation of part 71 to facilitate a smooth transition to State implementation of title V through approved part 70 programs. See 60 FR at 20805, 20816. The EPA continues to believe that Congress envisioned that States would have primary responsibility for implementing title V, just as they do for implementing much of the rest of the Act. See, for example, section 101(a)(3) of the Act, in which Congress found that air pollution prevention and air pollution control at its source is the primary responsibility of States and local governments (42 U.S.C. section 7401(a)(3)). Note also that under title V of the Act, Congress gave States the initial opportunity to develop and administer title V programs, while directing EPA to function as a backstop if States are unable to adopt provisions under State law to take on title V responsibilities, rather than directing EPA to establish the Federal program first and then allowing States to apply to take over title V administration, as under prior permitting programs such as the prevention of significant deterioration (PSD) and the national pollutant discharge elimination system (NPDES) under the Clean Water Act.

The EPA believes that granting States primary responsibility to implement title V makes good policy sense. States are far better positioned than EPA to administer permitting programs covering their resident sources for several reasons. First, States are more familiar with the operational characteristics of resident sources, and with the applicable requirements to which they are subject. In having had the lead on developing State implementation plans (SIP's) and implementing other provisions of the Act that apply to these sources, States have developed substantial expertise in, among other things, running air permit programs that govern new construction and changes in emissions of air pollutants such as the new source review (NSR) and PSD programs. States have developed enforcement programs based on this structure, and are able to coordinate their permitting programs with the goals and needs of their overall air pollution control programs. Finally, compared to EPA Regional offices, States are simply closer to their sources, have greater resources, and are better able to respond to the regulated community and its needs for expeditious permit processing.

In light of this, EPA has repeatedly stated its belief that federally-implemented part 71 programs would be of short duration, lasting only until the few remaining States that have not developed approvable part 70 programs are able to submit title V programs that meet the requirements of the Act. Rather than viewing part 71 only as a means of exerting leverage in States that have not yet adopted adequate part 70 programs, EPA has also viewed part 71 as an opportunity to aid States in taking up responsibility to implement title V. To this end, EPA has attempted to structure the rule so that States in which part 71 programs are established will be able to use the program as an aid to adopting and implementing their own part 70 programs. For example, today's rule provides that States can take delegation of administration of the Federal program in their States. If a State that for whatever reason has not been successful in developing its own statutes and regulations to implement title V is nevertheless capable of running a Federal program, EPA sees no reason not to offer the State the opportunity to more efficiently run the permit program than EPA believes the Agency could. The EPA also believes that the experience of running the Federal program may assist States in overcoming any remaining hurdles that have so far prevented them from adopting adequate title V programs under State law.

C. Basing Part 71 on the Part 70 Program

In the part 71 proposal notice, EPA stated its view that it is appropriate to model part 71 procedures on those required by part 70, in order to promote national consistency between title V programs that are administered throughout the country. See 60 FR at 20816. Such national consistency would ensure that sources are not faced with substantially different programs simply because EPA, as opposed to State agencies, is the relevant title V permitting authority, would promote uniformity in affected State and public participation, and would provide a level playing field for sources. Basing part 71 on part 70 would also encourage States

that are still developing their title V programs to take delegation of the part 71 program, as it would be more consistent with the programs they are preparing to implement under State law. States taking delegation would in turn ensure smoother transition to State administration of part 70 programs, as sources would have already become familiar with the State as the title V permitting authority and would not need to restart their permit application process anew when the State program receives EPA approval.

Since at the time the part 71 proposal was being developed it appeared to EPA that part 70 would soon be revised in many significant respects, EPA chose to base the proposal upon the recent proposed revisions to part 70, rather than on the existing promulgated rule. This was due in part to the fact that the August 1994 proposed revisions to part 70 addressed a number of basic issues under title V that necessarily would govern how those issues are addressed in part 71 (such as the definition of major source and the necessary provisions to implement section 502(b)(10) of the Act), and in part to the Agency's wish to provide in the Federal rule many of the benefits of the August 1994 proposed revisions to part 70. As noted above, however, EPA specifically asked commenters to address whether EPA had inappropriately either followed or departed from the approaches taken in both the current part 70 rule and its proposed revisions.

Echoing their comments on the August 1994 proposed revisions to part 70, industry commenters unanimously argued that the permit revisions procedures contained in the part 71 proposal were too complex and confusing and would hinder sources' abilities to make rapid changes in response to market needs. In addition, most industry commenters presented three general arguments in response to EPA's proposal to establish a uniform national part 71 rule based on the August 1994 proposed revisions to part 70. The first type of argument was that EPA should not promulgate a uniform national part 71 rule at all, but rather should develop part 71 programs case-by-case, taking into account the specific characteristics of the State's existing air program, and basing the State's part 71 program as much as possible on the State's part 70 program that it has developed to date and that EPA had not found to be inadequate. According to this argument, the best way to facilitate transition from Federal to State implementation of title V is to make sure the Federal and State programs are virtually identical in each relevant State, even if that means the Federal programs would differ from State to State. It would follow that EPA should approve whatever adequate elements a State had adopted for its title V program, and then only fill the remaining gaps with Federal provisions as necessary. This argument also held that section 502 of the Act actually requires a case-by-case approach to developing part 71 programs for States, and that the Act does not authorize EPA to promulgate a nationally uniform rule.

While EPA agrees that in theory the smoothest transition from Federal to State implementation might occur where the Federal program is identical to the State's, the Agency does not agree that it is inappropriate to promulgate a nationally uniform rule for part 71. At the outset, EPA disagrees with the assertion that the Agency lacks legal authority to establish a nationally uniform rule for part 71. While section 502(d)(3) of the Act does require EPA to promulgate, administer and enforce a title V program "for" any State that does not obtain part 70 approval, 42 U.S.C. section 7661a(d)(3), that language does not compel a separate State-by-State approach to establishing a Federal title V program; nor does it compel a Federal program that is based on the State's existing but as yet unapproved State program. Indeed, EPA would be hard-pressed to base a Federal program on a State program where no State program has ever been adopted or submitted for EPA evaluation. Even if a State had adopted and submitted a program, EPA stresses that the Agency can only evaluate the adequacy of State programs through notice and comment rulemaking, which might not occur before a Federal program is due. The EPA believes Congress must have recognized the possibility that EPA would be called upon to establish a Federal program even where a State has never adopted any State program of its own or where a program had not been submitted in time for EPA to find it adequate; in such situations, it would be impossible for EPA to base the Federal program on the State's. The EPA also believes that the resource burden of establishing and implementing different case-by-case programs for States would overwhelm EPA Regional offices and establishing a generic template for part 71 is a far more efficient use of Agency resources to get the Federal program up and running. The EPA has consequently concluded that a nationally uniform regulation is necessary for purposes of carrying out the Agency's functions under title V. Section 301(a)(1) of the Act authorizes EPA to prescribe such regulations as are necessary to carry out the Administrator's functions under the Act (42 U.S.C. section 7601(a)(1)). Thus, EPA believes it has ample statutory authority to establish the most efficient and nationally consistent part 71 regulation possible. Finally, EPA notes that EPA's other permitting programs under its environmental statutes, such as the NPDES program and the PSD program, are governed by nationally uniform regulations, implementation of which have been very successful. The EPA sees no reason to depart from this established approach for purposes of running Federal title V programs, especially since Congress clearly did anticipate that EPA would first address title V through establishing regulations that would govern the minimum elements of title V programs to be administered by any air pollution control agency. See section 502(b) of the Act, 42 U.S.C. section 7661a(b).

The second type of industry argument in response to basing the part 71 proposal on the proposed revisions to part 70 stressed that EPA should delay promulgation of any part 71 rule until the revisions to part 70 are finalized. This argument pointed out that promulgating part 71 based on the August 1994 proposed revisions to part 70 would result in the part 71 rule being based on an approach that the Agency itself had begun to revise in developing the supplemental proposed revisions to part 70 (which were eventually published just 4 months after the date of the part 71 proposal). The argument noted that since EPA is envisioning substantial changes to the part 70 rule, the part 71 rule should not finalize title V issues that will remain in transition until the part 70 rule is finally revised. This argument also specifically responded adversely to EPA's statement in the proposal that it may be necessary to split finalization of part 71 into two phases in which the operational flexibility and permit revision procedures would remain reserved until a second phase. In the view of these commenters, such provisions are critical components of any part 71 rule that is adopted, and it would not be appropriate to leave them out of part 71 for any unspecified time. This argument also stated that finalizing part 71 now based upon the proposed revisions to part 70 would actually impede transition to approved State part 70 programs, since the Federal program, and the approved State program based on the current part 70 that replaces it, would take very different approaches to such fundamental issues as applicability of the program, operational flexibility and permit revision procedures. Finally, this argument offered a theory that title V actually does not require EPA to adopt part 71 programs for States until May 15, 1997; under this theory, a commenter argued that the Act actually gives States until May 15, 1995, rather than November 15, 1993, to submit initial title V programs, since States have 18 months following the first "due date" to submit any remedies to deficient programs and avoid sanctions that would fall after that 18-month period. The commenter would interpret the date on which the 18-month period expires as the date referred to in section 502(d)(3) and argues that EPA is not required to promulgate a Federal program until 2 years after the expiration of the 18-month period.

First, EPA is not persuaded by the commenter's argument that part 71 programs are not due until May 15, 1997. Section 502(d)(1) of the Act clearly provides that States are to submit their title V programs "[n]ot later than 3 years after the date of enactment of the Clean Air Act Amendments of 1990," 42 U.S.C. section 7661a(d)(1), which occurred on November 15, 1990. Moreover, section 502(d)(3) clearly refers to "the date required for submission of such a program under paragraph (1) (of section 502)," 42 U.S.C. section 7661a(d)(3), as the trigger for the 2-year period after which EPA must establish Federal programs. There is no reference to any 18-month grace-period in section 502(d)(3), and EPA disputes the assertion that the date on which a sanctions clock expires under section 502(d)(2) can be viewed as the "real" deadline for submission of State programs in the face of the plain language of section 502(d)(1) and section 502(d)(3)'s reference to the deadline in section 502(d)(1). Thus, while EPA is sympathetic to concerns that finalizing part 71 in advance of the Agency finally revising part 70 could result in the Agency promulgating provisions that are essentially moving targets in the Federal rule, EPA does not believe it has the authority to delay issuance of part 71 beyond the deadline prescribed by Congress. Moreover, as a policy matter, EPA believes it is necessary to put part 71 in place to aid States that to date have unsuccessfully struggled to develop approvable title V programs, as it is a potential vehicle for State administration of title V (through delegation of part 71) even where obstacles remain that block certain States from obtaining part 70 approval. The EPA does not believe that the environmental benefits of title V should be delayed simply due to the fact that some States have not been successful at developing title V programs. Moreover, EPA does not feel it would be appropriate to attempt to justify delaying promulgation and implementation of the Federal program because of the continuing difficulties in revising the part 70 rule. However, EPA is persuaded by commenters that the part 71 rule should not contain gaps to be filled in at a second stage for provisions for operational flexibility and permit revisions, and is sympathetic to concerns that basing these provisions on the August 1994 proposed revisions to part 70 might even interfere with transition to State programs approved under the current part 70 rule. These latter points are discussed in more detail below.

The third general type of industry argument in response to basing part 71 on the August 1994 proposal was that if EPA must establish a Federal program now, it should do so based on the existing part 70 rule, and revise the program later when part 70 is revised. This argument recognized that EPA may simply be unable in certain cases to base a State-specific part 71 program on an existing State program, but stressed the fact that any program that the State is still struggling to adopt would be based on the existing part 70 rule, rather than on the proposed revisions thereto. The argument pointed out the fact that under the August 1994 proposed revisions to part 70, EPA planned to allow States several years following final promulgation before States would be expected to implement new part 70 programs based on the revised rule. Thus, commenters observed, States would likely be developing and implementing part 70 programs based on the July 1992 rule for considerable time. In light of this, it would actually interfere with smooth transition from Federal to State implementation to base part 71 on the future part 70 rule, especially in light of the fact that at this point how part 70 will be ultimately revised is only speculative; rather, transition could be facilitated only where the Federal rule resembles the model that the State rule is expected to follow. States might be less inclined to take delegation of a Federal rule that does not resemble existing part 70 and the State analogues that are being developed, and thus sources would be more likely to be faced with different permitting authorities under part 71 and part 70 programs. Moreover, the relevant guidance that EPA had issued to date to aid implementation of the current rule, such as the Agency's "White Paper for Streamlined Development of Part 70 Permit Applications" (herein referred to as the "first white paper") and the March 5, 1996 guidance document entitled "White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program, could be less valuable as an aid in implementing a Federal rule that is not based on the current part 70, and both sources and part 71 permitting authorities could be forced to start somewhat from scratch in implementing the program.

The EPA agrees that the most appropriate course of action is to promulgate, on an interim basis, part 71 based on the current part 70 rule. In reaching this conclusion, EPA was persuaded by concerns about impeding transition to part 70 approval under the current rule and by industry concerns about issuing a rule containing gaps regarding operational flexibility and permit revisions. Moreover, as many issues in part 70 are still outstanding following the August 1994 and August 1995 proposals, and as many of those issues concern key definitions and procedures under title V, it would be premature for EPA to finalize part 71 based upon the proposed revisions to part 70 until it makes final decisions on these issues in part 70. Thus, the only way EPA can fulfill its mandate to step in as the title V permitting authority for States that have not obtained part 70 approval at this time, and to do so by establishing a complete part 71 program that provides the flexibility needed by industry and mandated by title V, is to promulgate the rule based upon the current part 70 regulation. The EPA stresses, however, that by finalizing this interim approach in part 71, the Agency does not preclude itself from revising part 71 in the future as based on appropriate aspects of either the August 1994, April 1995, or August 1995 proposals for parts 70 and 71. In fact, EPA intends to issue a second round of final rulemaking for part 71 (hereafter "phase II rulemaking) in the future once the Agency has resolved with relevant stakeholders the outstanding issues and is prepared to promulgate final revisions to part 70. As a general matter, EPA stresses that the most current reflection of the Agency's intended policy regarding many of these provisions is the August 31, 1995 supplemental proposal. Consequently, while the provisions adopted today in part 71 that relate to outstanding issues under the definitions, applicability, permit application, permit content, permit revisions and reopenings, and affected State and EPA review sections are consistent with the corresponding

provisions in the existing part 70 rule, rather than with provisions in the proposals mentioned above, it should be expected that EPA will issue a second final rulemaking, without a second round of proposal, to conform part 71 to the revised part 70 rule when the Agency is prepared to issue it.

The EPA believes that this approach is a logical outgrowth of the part 71 proposal issued in April 1995. While that proposal only contained regulatory provisions based on the August 1994 proposed revisions to part 70, EPA explicitly solicited comment on whether the proposal was in any way inappropriately inconsistent with the current part 70 rule. Clearly, the commenters noted such inconsistencies, and the proposal facilitated meaningful comment on what approach the Agency should take in promulgating part 71 vis-a-vis the outstanding issues in the part 70 revision process. As discussed above, the proposal enabled industry commenters to fall into three basic categories in response to the proposal—in fact, many commenters advanced more than one of the basic types of arguments in their comments, realizing that the different arguments might have different force depending upon the extent to which States had actually developed and submitted their own programs. The approach adopted today was urged by numerous industry commenters as the most reasonable in light of the need to issue a part 71 program now, as opposed to leaving gaps to be filled in later at a second stage of final rulemaking. In addition, today's rule is consistent with the existing part 70 rule under which States continue to submit programs, and under which EPA continues to approve those programs. Thus, EPA does not believe that a second round of proposed rulemaking is necessary before finalizing part 71 to conform to the Agency's currently effective regulation implementing title V, part 70.

In the following sections of this notice, the specific provisions that are being finalized based upon current part 70 rather than upon the provisions of the part 71 proposal are identified and further discussed. For each of them, the general governing principle is that while the Agency has proposed to revise part 70 to modify many of the provisions corresponding to the part 71 provisions adopted today, EPA is not yet prepared to adopt final positions on those issues and so, in the interests of promoting smooth transition from Federal to State implementation of title V, is choosing to issue, on an interim basis, a part 71 rule that matches as closely as possible the existing part 70 rule. The EPA's finalization of those provisions today in no way reflects the Agency's ultimate decision to renounce any of the positions articulated in the proposed revisions to part 70 or the corresponding proposals for part 71.

II. Summary of Promulgated Rule

A. Applicability

The Federal operating permits program requires all part 71 sources to submit permit applications to the permitting authority no later than within 1 year of the effective date of the program. The operating permit program applies to the following sources:

1. Major sources, defined as follows:

a. Air toxics sources, as defined in section 112 of the Act, with the potential to emit 10 tons per year (tpy), or more, of any hazardous air pollutant (HAP) listed pursuant to 112(b); 25 tpy, or more, of any combination of HAP listed pursuant to 112(b); or a lesser quantity of a given pollutant, if the Administrator so specifies (501(2)(A)).

b. Sources of air pollutants, as defined in section 302, with the potential to emit 100 tpy, or more, of any pollutant (501(2)(B)).

c. Sources subject to the nonattainment area provisions of title I, part D, with the potential to emit, depending on the nonattainment area designation 10 or more tpy of volatile organic compound (VOC) or oxides of nitrogen, 50 or more tpy of carbon monoxide, and seventy or more tpy of particulate matter (501(2)(B)).

2. Any other sources subject to a standard under section 111 or 112.

3. Sources subject to the acid rain program (501(1)).

4. Any source subject to the PSD program or the NSR program under title I, part C or D.

5. Any other stationary source in a category EPA designates, in whole or in part, by regulation, after notice and comment.

For purposes of determining applicability, a source's total emissions of a pollutant are found by summing the potential emissions of that pollutant from all emissions units under common control at the same plant site. If a source is a major source, even if only due to the total emissions from one pollutant, then a source must submit (with few exceptions) a permit application that includes all emissions of all regulated air pollutants from all emissions units located at the plant.

Part 71 follows the approach of part 70 in deferring nonmajor sources from permitting requirements. The permitting requirements for nonmajor sources subject to a standard under section 111 or 112 of the Act prior to July 21, 1992 are deferred for 5 years from the effective date of the first approved part 70 program that deferred nonmajor sources. The EPA may determine on a case-by-case basis permitting requirements for nonmajor sources when they become subject to new section 111 or 112 standards. Sources subject to the new source performance standard for new residential wood heaters or the national emission standards for hazardous air pollutants for asbestos as it applies to demolition and renovation activities are permanently exempt from permitting requirements.

B. Program Implementation

The EPA will administer a part 71 program for those portions of a State that lack EPA approval for its operating permits program or for a State that fails to adequately administer and enforce an approved program. However, the requirement that EPA establish a Federal program for States lacking a fully approved program is suspended if a State program is granted interim approval. The EPA will also administer part 71 programs in Tribal areas. Should a part 71 program become effective prior to the issuance of part 70 permits to all sources (under an approved part 70 program), EPA will require part 71 permit applications from sources that have not received part 70 permits. Applications shall be due within a year of the effective date of the part 71 program. The EPA will take final action on at least one-third of the applications annually.

Section 71.4 also establishes procedures that would be used for issuing permits to certain sources located on the Outer Continental Shelf (OCS) and after EPA objects to a proposed or issued State permit.

The EPA may also delegate the responsibility for administering the part 71 program to the State or eligible Tribe if the requirements of section 71.10 have been met. However, delegation will not constitute approval of a State or Tribal operating permits program under part 70.

The EPA will suspend the issuance of part 71 permits upon publication of notice of approval of a State or Tribal operating permits program under part 70. The EPA or the delegate agency will continue to administer and enforce part 71 permits until they are replaced by permits issued under the approved part 70 program.

The EPA will publish a notice in the **Federal Register** informing the public of the effective dates or delegation of any part 71 programs for States, Tribal areas, and OCS sources. Where practicable, EPA will also publish notice in a newspaper of general circulation within the area subject to the part 71 program and will notify the affected government.

C. Permit Applications

Each source meeting the applicability criteria of this part is required to submit timely and complete information on standard application forms provided by the permitting authority. Streamlined forms for electronic formats may be provided.

An initial part 71 permit application is required within 12 months of the later of:

1. The effective date of this part in a State, Tribal area, or OCS area where a source is located, unless the source has an existing part 70 permit;

2. The expiration of any deferral for a nonmajor source;

3. The date a source commences operation; or

4. The date a source meets any of the applicability criteria of section 71.3.

Sources with part 70 permits in force at the time part 71 becomes effective in the area where they are located would not have to apply for a part 71 permit until their part 70 permit expires. Prior to its expiration, the part 70 permit may be modified by EPA.

Sources would be notified of the requirement to submit an application at least 180 days prior to when the application is due.

The permitting authority will perform a completeness determination within 60 days of receipt of an application, or the application will be deemed complete by default. A complete application would contain all the information needed to begin processing the permit application, including, at a minimum, a completed standard application form (or forms) and a compliance plan.

The compliance plan describes how the source plans to maintain or to achieve compliance with all applicable air quality requirements under the Act. This plan must include a schedule of compliance and a schedule for the source to submit progress reports to the permitting authority. Each source must submit a compliance certification report in which it certifies its status with respect to each requirement, and the method used to determine the status.

Each operating permit application, report, or compliance certification submitted pursuant to part 71 must include a certification signed by a responsible official attesting to the truth, accuracy, and completeness of the information submitted.

Applicants may be required to update information in the application after the filing date and prior to the release of the draft permit.

D. Permit Content

Part 71 permits must meet all applicable requirements of the Act and, among other things, must contain:

1. A 5-year term for acid rain sources, up to a 12-year term for certain municipal waste combustors, and up to a 5-year term for all other sources.

2. Limits and conditions to assure compliance with all applicable requirements under the Act.

3. A schedule of compliance, where applicable.

4. Inspection, entry, monitoring, compliance certification, recordkeeping, and reporting requirements to assure compliance with the permit terms and conditions.

5. A provision describing permit reopening conditions.

6. Provisions under which the permit can be revised, terminated, modified, or reissued for cause.

7. Provisions ensuring operational flexibility so that certain changes can be made within a permitted facility without a permit revision.

8. A provision that nothing in the permit or compliance plan affects allowances under the acid rain program.

All terms and conditions in a part 71 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act.

Like part 70, part 71 would allow sources to apply for a permit shield, i.e., a provision in the permit that states that if the source complies with terms and conditions of the permit, the source shall be deemed in compliance with any applicable requirements reflected in the permit as of the date of permit issuance.

E. Permit Issuance and Review

Regulations concerning the processes for permit issuance, review, renewal, revision, and reopening are found in sections 71.7 and 71.11. Briefly, these include:

1. Action on Applications for Permit Issuance and Permit Renewal

Section 71.7(a) describes the conditions that must be satisfied before EPA or a delegate agency may issue a permit. These include receipt of a complete application, compliance with public participation requirements, and notification of affected States, Indian Tribes, and EPA (if the program has been delegated). Except during the initial phase-in of the program, the permitting authority is required to act on permit applications within 18 months after receiving a complete application.

The timely submittal of a complete application and any additional required information creates a "shield" against enforcement for failure to have a part 70 or part 71 permit. Permits being renewed are subject to the same procedural requirements that apply to initial permit issuance, as provided in section 71.7(c). The administrative procedures for permit issuance are contained in section 71.11 and are generally based on analogous provisions governing other EPA permitting programs at 40 CFR part 124.

2. Permit Revisions

Sections 71.7 (d) and (e) outline the mechanisms for permit modification and administrative amendments that are needed to revise part 71 permits to accommodate changes that would otherwise violate terms and conditions of the permit.

Administrative amendments can be accomplished by the permitting authority without public or EPA review. These permit revisions include correction of typographical errors, changes in address or source ownership, as well as incorporation of requirements established under State preconstruction review that meet certain procedural and compliance requirements.

If a change is not prohibited or addressed by the permit, the permittee may make the change after submitting a notice, and the permit is revised at renewal.

The regulations establish minor and significant permit modification procedures for changes that go beyond the activities allowed in the original permit or that increase the total emissions allowed under the permit.

Minor permit modifications reflect increases in permitted emissions that do not amount to modifications under any requirement of title I and that do not meet certain other requirements. Minor permit modification procedures require a source to provide advance notice of the proposed change, but allow a change to take effect prior to the conclusion of the revision procedures.

A source that makes a change before the minor permit modification has been issued does so at its own risk. It is not protected from underlying applicable requirements by any shield. It is only afforded a temporary exemption from the formal requirement that it operate in accordance with the permit terms that it seeks to change in its modification application. Should the proposed permit modification be rejected, the source would be subject to enforcement

proceedings for any violation of these requirements.

Significant permit modifications are inherently more complex, and will require additional time to accomplish. Permitting authorities will initiate their review of the proposed changes after receipt of an application.

Sources subject to requirements of the acid rain program must hold allowances to cover their emissions of sulfur dioxide (SO_2). Allowance transactions registered by the Administrator will be incorporated into the source's permit as a matter of law, without following either the permit modification or amendment procedures described above.

3. Reopening for Cause

The permitting authority may terminate, modify, or revoke and reissue a permit for cause. Reopening and reissuing procedures follow the same procedures as apply to initial issuance. Advance notice is required before permit reopenings may be initiated.

Section 71.7(f) requires that permits issued to major sources with 3 or more years remaining in the permit's term be reopened to incorporate applicable requirements which are promulgated after the issuance of the permit. Revisions must be made as expeditiously as practicable, but no later than 18 months after the promulgation of such additional requirements.

4. Permit Notification to EPA and Affected States

Consistent with 40 CFR section 70.8(b), EPA or the delegate agency would be required to provide notice of draft permits to all affected States and to certain Indian Tribes.

Affected States are those whose air quality may be affected and that are contiguous to the State in which the source is located, or that are within 50 miles of the source. The permitting authority must give affected States an opportunity to submit written recommendations for the permit and notify any affected State in writing of any refusal to accept all of its recommendations.

Although Indian Tribes are not considered affected States unless they establish their compliance with criteria for being treated in the same manner as States pursuant to section 301(d) of the Act, the Agency believes federally recognized Tribes should be given notice of draft permits that may be issued to sources that could affect Tribal air quality. The regulation requires that the permitting authority send such notices.

The Act authorizes EPA to object to any permit that would not be in compliance with the applicable requirements of the Act. In the case of a delegated program, the permitting authority may not issue a part 71 permit if the Administrator has objected to its issuance in writing within 45 days of receipt of the proposed permit.

5. Administrative and Judicial Review

After the close of the public comment period on a draft permit, the permitting authority will issue a final permit decision. Within 30 days of the final permit decision, anyone who filed comments on the draft permit or participated in the public hearing may petition the Environmental Appeals Board (EAB) to review any condition of the permit. In general, the objections in the petition must have been raised during the public participation period on the permit. The petition will stay the effectiveness of the specific terms of the permit which are the subject of the request for review, pending conclusion of the appeal proceedings.

The EAB will issue an order either granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final agency action and are subject to judicial review in the United States Court of Appeals under section 307(b) of the Act. The decision of the EAB to issue or deny the permit is also subject to judicial review.

Interested persons (including permittees) are authorized to petition the Administrator to reopen an already issued permit for cause. Petitions would be required to be in writing and to contain facts or reasons supporting the request.

F. Permit Fees

Section 71.9 establishes the Federal operating permits program fee requirements for owners or operators of part 71 sources. The fees must be sufficient to cover the permits program costs, including the following:

1. Reviewing and acting on any permit, permit revision, or permit renewal, and processing permit reopenings.
2. Administering the permit program.
3. Implementing and enforcing the terms of any part 71 permit.
4. Monitoring, modeling, manipulating, and tracking emissions.
5. Providing support to small business stationary sources.

Consistent with the two-phased approach to part 71 promulgation described in this notice, EPA is today implementing a two-phased approach to part 71 fee requirements. Phase I fee collection will be sufficient to cover Phase I costs. Since Phase II fee collection is associated with permit revision procedures, a fee amount for Phase II cannot be finalized in today's rule. The Phase II fee will add the costs for the permit revision procedures that are finalized in that rulemaking.

The dollar per ton fee will vary depending on the implementation mechanism EPA uses to administer a part 71 program. A program that is administered completely by EPA would charge $32 per ton per year (ton/yr). Permit fees for a program for which EPA relies on contractor assistance to the greatest extent possible would be approximately $57 per ton/yr. Program costs (and fees) would vary among part 71 programs depending on the hourly rate paid to the contractor for its work on the particular State's part 71 program. The costs of a program that is staffed in part by EPA employees and in part by contractors or by the delegate agency would vary in accordance with the percentage of personnel time allocated to non-EPA staff and the hourly rate paid to the contractor for its work on the State's part 71 program.

The EPA may suspend collection of part 71 fees for part 71 programs which are fully delegated to States and for which EPA incurs no administrative costs.

The EPA may promulgate a separate fee schedule for a particular part 71 program if the Administrator determines that the fee schedule in the rule does not adequately reflect the cost of administering the program.

Sources are required to submit fee calculation worksheets and fees at the same time as their initial permit applications are due and thereafter on an annual basis.

Part 71 program costs and permit fees will be reviewed by the Administrator at least every 2 years, and changes will be made to the fee schedule as necessary to reflect permit program costs.

G. Federal Oversight of Delegated Programs

Section 71.10 establishes the procedures EPA would follow when delegating the authority to administer a part 71 program to a State, eligible Indian Tribe, or other air pollution control agency. The EPA will delegate authority to run the program where possible in order to take advantage of existing expertise of the delegate agency or where it seems probable that the delegate agency's submitted part 70 program will be approved within a short time by EPA, provided in both cases that the delegate agency has the authority to administer the program that would be delegated.

A delegate agency must submit a formal request for delegation and other documentation that shows the agency or eligible Tribe has adequate legal authority and capacity to administer and enforce the part 71 program. If the request for delegation is accepted, EPA and the delegate agency will enter into an agreement that sets forth the terms and conditions of the delegation.

As part of its oversight of delegated programs, EPA would review copies of applications, compliance plans, proposed permits and final permits that the delegate agency would be required to send to EPA. The EPA would have 45 days in which to review proposed permits. If EPA objects to the issuance of a permit within that time, the delegate agency would be required to revise and resubmit the proposed permit to EPA.

Delegation of a part 71 program would not relieve a State of its obligation to submit an approvable part 70 program, nor from any sanctions that the Administrator may apply for the State's failure to have an approved part 70 program.

H. Enforcement

The Federal enforcement authority available under section 113 of the Act for violations of title V and the regulations thereunder provides broader enforcement authority than States are required to have under the part 70 regulations. Examples of the Federal enforcement authorities available under the Act include, but are not limited to, the authority to: (1) restrain or enjoin immediately any person by order or by suit in court from engaging in any activity in violation of the Act that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment; (2) seek injunctive relief in court to enjoin any violation of the Act; (3) issue administrative orders that assess civil administrative penalties; (4) assess and recover civil penalties; and (5) assess criminal fines.

III. Significant Changes to the Proposed Regulations

A. Section 71.2—Definitions

The Agency has adopted definitions in today's rulemaking that are consistent with and are mainly modelled on corresponding definitions in the current part 70 rule, rather than on the part 71 proposal. Consequently, many of the definitions adopted today differ from those contained in the part 71 proposal which were largely based upon the August 1994 proposed revisions to corresponding definitions in part 70 which the Agency is not yet prepared to finalize.

Several definitions found in the proposed section 71.2 have been revised to conform more closely to the definitions used in the current part 70 rule. These include "affected State," "applicable requirements," "final permit," "major source," "permit revision," "permitting authority," and "responsible official," each of which is discussed briefly below. Similarly, EPA adopted definitions for "permit modification" and "section 502(b)(10) change" from the current part 70 rule, because these terms are integral parts of today's rulemaking, which is based on the existing part 70 regulations. Also, several definitions in the part 71 proposal describe terms and concepts that the Agency has concluded are either not necessary or are not ready to be finalized in today's rulemaking. The terms for which EPA has not adopted a definition include "insignificant activity or emissions," "major new source review," "minor new source review," "potential to emit," "title I modification," and "Tribal area." To the extent these proposed terms were based on the August 1994 proposed revisions to part 70, EPA will finally address them in the Phase II rulemaking.

In addition, the Agency has retained several definitions found in the part 71 proposal that are not found in the current part 70 rule, but are needed for part 71. These include definitions for "delegate agency," "part 71 permit," "part 71 program," and "part 71 source." The Agency has also adopted definitions for "eligible Indian Tribe," "Federal Indian reservation," and "Indian Tribe," which were added to clarify which Tribes would be eligible to receive delegation of the part 71 program and to be considered "affected States."

The part 71 proposal and the August 1995 supplemental proposal reflect the Agency's position on what definitions would be appropriate in conjunction with the permit revision procedures, operational flexibility provisions, and other provisions that have been proposed for finalization in the Phase II rulemaking. Subsequent to reviewing all of the comments on both of these proposals, EPA may finalize definitions that differ from those adopted today.

1. Affected States

a. *Indian Tribes.* The EPA received numerous comments from Indian Tribes suggesting that federally recognized Indian Tribes should be considered to be "affected States" if their air quality may be affected or the Tribal area is contiguous to the State in which the permittee is located or is within 50 miles of the permittee. They contended that Tribes should not have to meet any type of eligibility criteria in order to be considered an "affected State." Contrary to the view of these commenters, the EPA interprets section 301(d)(2) of the Act as authorizing the Agency to treat Indian Tribes in the same manner as a State for purposes of being an "affected State" only when EPA has determined that the Indian Tribe has demonstrated that it has met the eligibility criteria of section 301(d)(2) of the Act. The second paragraph of the proposed definition of "affected State" was inconsistent with this interpretation in that it would have treated Tribes in the same manner as States if the permitting action concerned a source located in a Tribal area, regardless of the Tribe's eligibility status. Therefore, EPA has amended this paragraph to include the same eligibility requirement as the first paragraph. That is, that the Indian Tribe must have demonstrated that it has met the eligibility criteria of section 301(d)(2). However, in the interest of furthering government-to-government relationships with Tribes, EPA has adopted a provision in section 71.8 that requires the part 71 permitting authority to provide notice of draft permits to any federally recognized Indian Tribe whose air quality may be affected by the permitting actions and whose reservation or Tribal area is contiguous to the jurisdiction in which the part 71 permit is proposed or is within 50 miles of the permitted source. (See discussion at section III.G. of this notice.)

b. *Local agencies.* The proposed definition of "affected State" in the part 71 proposal added language not found in the current part 70 definition of "affected State" to the effect that, when a part 71 permit, permit modification, or permit renewal is proposed for a source located within the jurisdiction of a local agency, that agency would be considered an affected State. Today's rulemaking retains this approach because it pertains to a situation which is unique to part 71, i.e., when EPA administers a part 71 program in an area where the local agency would normally be the permitting authority of record under an approved part 70 program. The proposal also differed from today's rulemaking in that under the proposal, local agencies would not otherwise be considered affected States. Since the approach taken to such jurisdictions is an issue for both parts 70 and 71, it will be addressed in the Phase II rulemaking. In the interim, the proposed language has been deleted to comport with the current part 70 definition.

2. Applicable Requirements

The part 71 proposal expanded the part 70 definition of "applicable requirement" to include the provision that any requirement enforceable by the Administrator and by citizens under the Act which limits emissions for the purpose of creating offset credits or avoiding any applicability requirement is itself an applicable requirement. This addition, while helpful for understanding what constitutes an applicable requirement, was based on the August 1994 proposed revisions to part 70, which EPA is not yet prepared to finally promulgate. As such, EPA believes it is not appropriate to finalize this change for purposes of part 71 at this time, but intends to address this issue in the Phase II rulemaking. It was therefore deleted to comport with the current part 70 definition.

The definition of "applicable requirement" in the part 71 proposal also differed from the definition in the current part 70 rule in that it limited the title VI requirements that would have to be included in a title V permit. This proposed language, while consistent with the August 1994 proposed revisions to part 70, which, again, EPA is not yet prepared to finalize, was removed so that the definition would conform to the definition in the current part 70 regulation.

3. Final Permit

The proposal contained a proposed definition of "final action or final permit action." The final rule changes this term to "final permit" in order to better harmonize the definition with the term "final permit" in the current part 70 regulation promulgated at section 70.2.

4. Major Source

The proposed part 71 rule contained a definition of "major source" that was based on the proposed change to the term contained in the August 1994 proposed revisions to part 70. Since publication of the part 71 proposal, EPA has also proposed additional changes to the term in the August 1995 supplemental proposal for parts 70 and 71. The EPA is currently in the process of reviewing, evaluating and developing positions in response to comments on this very important term and other issues raised in the August 1995 proposal. Consequently, EPA is not yet prepared to promulgate part 71 in general, or the major source definition in particular, as based on the August 1994, April 1995 or August 1995 proposals. The only exception to this approach is in regard to source categories for which fugitive emissions are to be counted in determining whether a source is a major source under section 302 of the Act.

Consistent with PSD and nonattainment NSR, current part 70 requires the counting of fugitive emissions from source categories which have been listed pursuant to section 302(j) in major source applicability determinations. See the definition of "major source" at 40 CFR section 70.2. The one difference, however, between the list of source categories under PSD and nonattainment NSR and current part 70 is in regard to the 27th category of sources that are required to count fugitive emissions. In parts 51 and 52, the 27th category is stated as follows:

> Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

In current part 70, the 27th category reads as follows:

> All other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category;

As can be seen from the above, one of the principal differences between these two paragraphs is the date of August 7, 1980, which is specified in the PSD and nonattainment NSR regulations, but is absent from the current part 70 regulation. The result of this difference is that part 70 literally requires sources to count fugitives even where those sources are not required to do so in determining whether they are major for purposes of PSD or nonattainment NSR. As stated in the preamble to the August 1994 part 70 proposal, EPA acknowledges that it did not follow the procedural steps necessary under section 302(j) to expand the scope of sources in this category for which fugitives must be counted in part 70 major source determinations. See memorandum of June 2, 1995, entitled "EPA Reconsideration of Application of Collocation Rules to Unlisted Sources of Fugitive Emissions for Purposes of Title V Permitting," from Lydia Wegman, Deputy Director, Office of Air Quality Planning and Standards, to Regional Air Directors. Instead of perpetuating this problem by following this aspect of current part 70, and even though the Agency is not yet ready to finalize the approach taken in the August 1995 supplemental proposal for parts 70 and 71, EPA believes that an appropriate interim solution is to finalize this category similar to how it was proposed in the April 1995 part 71 proposal and consistent with the provisions in the PSD and nonattainment NSR regulations. As a result, the 27th category will read as follows:

> Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

Use of the above language best ensures that, until EPA is prepared to finalize part 70's proposed revisions, there will be no discrepancy between the treatment of fugitive emissions under PSD and nonattainment NSR and the corresponding provision in this phase I part 71 rule. This language further ensures that sources which are considered major sources under PSD and nonattainment NSR are also major sources under part 71. This consistency is compelled by section 501(2) which requires any stationary source to be considered major under title V if it is a major source under section 112 or a major stationary source under section 302 or part D of title I.

It is important to remember that EPA has proposed additional modifications to the list of source categories, including this 27th category, in the August 1995 proposal for parts 70 and 71. However, as EPA is currently in the process of reviewing and evaluating comments regarding these revisions, EPA cannot at this time finalize any of these proposed modifications.

The EPA stresses that the definition of major source in today's rulemaking does not constitute a decision to reject other proposed changes to the term contained in the recent proposals. Rather, EPA expects the Phase II part 71 rulemaking to make whatever changes to the term are necessary in order to maintain harmonization with part 70, if the part 70 definition of major source is ultimately revised as the Agency intends. In the meantime, however, in order to avoid delay in fulfilling the Agency's responsibilities under title V, and in order to avoid repeating a procedural mistake that occurred in the development of the first part 70 rule, EPA has concluded, in response to the commenters, that at this point it is most reasonable to promulgate a definition that is consistent with the major source definition contained in the current part 70 rule, except for the 27th category of sources listed pursuant to section 302(j). As EPA has already told States that they may receive interim approval of their State programs even if they do not literally match with current part 70's 27th category, due to EPA's concession that the Agency did not take the procedural steps necessary in part 70 to constitute a section 302(j) rulemaking, EPA believes it is reasonable to take this limited departure from part 70. The EPA will respond to specific comments on the major source definition as proposed in April 1995 and August 1995 in the context of finalizing the Phase II part 71 rule.

5. Permit Modification and Permit Revision

For the purposes of this rulemaking, EPA adopted the definition of permit modification in the current part 70 regulation and revised the definition of "permit revision" to be consistent with the current part 70 definition.

6. Permitting Authority

The final rule changes the proposed definition of "permitting authority" to more closely match the definition of the term currently promulgated at section 70.2.

7. Potential to Emit

Today's rule does not include a final regulatory definition of the term "potential to emit." The part 71 proposal contained a proposed definition of potential to emit that was based on the August 1994 proposed revisions to part 70. The current part 70 definition of the term provides that physical or operational limits on a source's capacity to emit an air pollutant shall be considered part of the source's design if the limitation is enforceable by the Administrator. Under the proposed definition, the phrase "and by citizens under the Act" would have been added. The EPA is still in the process of evaluating comments on the proposed revisions to part 70 with respect to this issue, and is not yet prepared to adopt the revision to the definition into a final rule. Consequently, it is premature to adopt this change into the final part 71 rule at this time.

In addition, EPA also received substantial adverse comment on the proposed requirement that limitations on potential to emit be enforceable by the Administrator (i.e., "federally enforceable"). Industry commenters noted that EPA's policy on Federal enforceability was the subject of several pending lawsuits against the Agency in the Court of Appeals. These commenters have long held that emissions limitations enforceable under State law should not have to be federally enforceable in order to be considered part of a source's physical or operational design and a valid limit on potential to emit. These commenters also urged EPA to codify the Agency's January 25, 1995, memorandum in which EPA stated it would not require certain sources that otherwise have the potential to emit an air pollutant in major amounts to obtain permits under state part 70 programs. See, memorandum of January 25, 1995, entitled "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)," from John Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors (hereafter "January 25, 1995 memorandum from John Seitz").

Since the close of the comment period, the U.S. Court of Appeals for the District of Columbia Circuit has ruled on two occasions that EPA in two separate regulations had failed to explain why the Agency had adopted a restrictive interpretation of "potential to emit." See *National Mining Association v. EPA*, 59 F.3d 1351 (D.C. Cir. July 21, 1995), and *Chemical Manufacturers Association v. EPA*, No. 89–1514 (D.C. Cir. Sept. 15, 1995). In response to these rulings, EPA has begun a rulemaking effort that would consistently apply to all of its regulations and programs that base applicability on sources' potential to emit. This rulemaking will address potential to emit not only in the regulations that were the subject of the two court rulings (EPA's "General Provisions" regulations under section 112 of the Act promulgated at 40 CFR part 63, and the NSR and PSD regulations at parts 51 and 52), but also to parts 70 and 71.

In the meantime, however, the Agency believes it would not be appropriate to delay issuance of the part 71 regulation (and implementation of the Federal operating permit program in States that have not yet obtained part 70 approval) due to the pendency of the Agency's general potential to emit rulemaking. At the same time, EPA does not believe it would be appropriate to merely recodify the part 70 definition of potential to emit in this Phase I part 71 rule, in light of the recent court decisions concerning the section 112 and NSR and PSD regulations. Consequently, for this interim part 71 rule, EPA is not adopting a regulatory definition of potential to emit for purposes of part 71. This definition will be added to part 71 at a later time, when the Agency completes its general rulemaking to define potential to emit for its various stationary source programs under the Act.

Nevertheless, the absence of a regulatory definition of potential to emit in today's rule should not prevent sources from being able to determine whether they are subject to the part 71 program because they are major sources. The EPA stresses that the term "major source" is already defined as a statutory matter in title V at section 501(2) of the Act to mean a major source as defined in section 112 and a major stationary source as defined in section 302 or part D of title I of the Act. Moreover, the definition of major source adopted today also tracks these statutory provisions, and, as discussed in the recent memorandum entitled "Interim Policy on Federal Enforceability Requirement for Limitations on Potential to Emit," from John Seitz, Director, Office of Air Quality Planning and Standards (hereafter January 22, 1996 memorandum from John Seitz), most current regulatory requirements and policies regarding potential to emit, including the interim policy discussed in the January 25, 1995 Seitz memorandum, remain in effect while EPA conducts expedited rulemaking to address these issues in detail. Consequently, in determining whether a source is major, the part 71 permitting authority and source operator should look to the regulatory definition of major source adopted in today's rule and the statutory definitions in section 112, section 302, and part D of title I (as those provisions are implemented by applicable regulations thereunder) as controlling for purposes of this Phase I part 71 rule.

In *National Mining Association v. EPA*, 59 F.3d 1351 (D.C. Cir. July 21, 1995), the Court dealt with the potential to emit definition under the hazardous air pollutant programs promulgated pursuant to section 112. In this decision, the Court agreed with EPA that only "effective" State-issued controls should be cognizable in limiting potential to emit. In addition, the Court did not question the validity of current federally enforceable mechanisms in limiting potential to emit. However, the Court found that EPA had not adequately explained why only federally enforceable measures should be considered in assessing the effectiveness of State-issued controls. Accordingly, the Court remanded the section 112 General Provisions regulation to EPA for further proceedings. Thus, EPA must either provide a better explanation as to why Federal enforceability promotes the effectiveness of State controls, or remove the exclusive Federal enforceability requirement. The Court did not vacate the section 112 regulations, and they remain in effect pending completion of EPA rulemaking proceedings in response to the Court's remand.

The EPA reiterates that independent from the decision in *National Mining*, current EPA policy already recognizes State-enforceable potential to emit limits under section 112 and title V in many circumstances under the

transition policy discussed in the January 25, 1995 John Seitz memorandum, as recently revised by the January 22, 1996 John Seitz memorandum. In recognition of the absence in some States of suitable federally enforceable mechanisms to limit potential to emit applicable to sources that might otherwise be subject to section 112 major source requirements or to title V, EPA's policy provides for the consideration of State-enforceable limits as a gap-filling measure during a transition period that extends until January 1997. Under this policy, restrictions contained in State permits issued to sources that actually emit more than 50 percent, but less than 100 percent, of a relevant major source threshold are treated by EPA as acceptable limits on potential to emit, provided that the permit and the restriction in particular are enforceable as a practical matter. In addition, sources with consistently low levels of actual emissions relative to major source thresholds can avoid section 112 major source requirements even absent any permit or other enforceable limit on potential to emit. Specifically, the policy provides that sources which maintain their emissions at levels that do not exceed 50 percent of any applicable major source threshold are not treated as major sources and do not need a permit to limit potential to emit, so long as they maintain adequate records to demonstrate that the 50 percent level is not exceeded.

Under today's Phase I part 71 rule, sources that are not treated as major under this policy would also not be treated as major for purposes of part 71. However, if a source would be treated as major under the applicable regulations implementing section 112 and this policy, the source would be required to obtain a part 71 permit. The EPA notes that this policy is to end in January 1997. In conjunction with the general rulemaking on potential to emit, EPA will consider whether it is appropriate to extend the transition period beyond January 1997.

In *Chemical Manufacturers Association* v. *EPA*, No. 89–1514 (D.C. Cir. Sept. 15, 1995), the Court addressed the potential to emit definition in the PSD and NSR programs. Specifically, this case challenged the June 1989 rulemaking in which EPA reaffirmed the requirement for Federal enforceability of potential to emit limits taken to avoid major source permitting requirements in these programs. In a briefly worded judgment, the Court, in light of *National Mining*, remanded the PSD and NSR regulations to EPA. In addition, in contrast to its disposition of the section 112 regulations in *National Mining*, the Court in *Chemical Manufacturers* vacated the federal enforceability requirement of the potential to emit definitions in the PSD and NSR regulations.

The EPA interprets the Court's decision to vacate the PSD/NSR Federal enforceability requirement as causing an immediate change in how EPA regulations should be read, although EPA expects that the effect of this change will be limited. Specifically, regarding provisions of the definitions of potential to emit and related definitions requiring that physical or operational changes or limitations be "federally enforceable" to be taken into account in determining PSD/NSR applicability, the term "federally enforceable" should now be read to mean "federally enforceable or legally and practically enforceable by a State or local air pollution control agency."

However, the effects of the vacatur will be limited during the period prior to completion of new EPA rulemaking on this issue. Thus, during this interim period, Federal enforceability is still required to create "synthetic minor" new and modified sources in most circumstances pending completion of EPA rulemaking. This is because EPA interprets the order vacating certain provisions of the PSD/NSR regulations as not affecting the provisions of any current State or Federal implementation plan (SIP or FIP), or of any permit issued under any current SIP or FIP. Thus, previously issued federally enforceable permits issued under such programs remain in effect.

Moreover, new or modified sources that seek to lawfully avoid compliance with the major source requirements of PSD or nonattainment NSR by limiting potential to emit to achieve synthetic minor status must still obtain a general or "minor" NSR preconstruction permit under section 110(a)(2)(C) of the Act and 40 CFR section 52.23. (This requirement was not at issue in the *Chemical Manufacturers* case, and is unaffected by the Court's ruling.) Every SIP contains a minor NSR program that applies generally to new or modified sources of air pollutants, and permits issued under such programs are, like all other SIP measures, federally enforceable. In sum, the precise impact of the vacatur on PSD/NSR applicability in any State, and hence the applicability of part 71 under the section 302 and part D of title I prongs of the definition of major source adopted in part 71, can be definitively established only by reviewing the provisions of the particular SIP or FIP to which the source is subject.

8. Regulated Air Pollutant

In the August 1995 supplemental proposal, EPA proposed a less inclusive definition than is currently promulgated in part 70 or was proposed for part 71 in the April 1995 notice. However, for purposes of today's rulemaking, EPA is retaining the definition in the part 71 proposal, which is consistent with the current part 70 definition. The EPA intends to take final action on the term as proposed in the supplemental proposal in the Phase II rulemaking.

9. Responsible Official

Although EPA has proposed, in the August 1994 proposed revisions to part 70, to clarify that the criteria for selecting the designated representative is the same at an affected source as at other sources, the Agency has adopted a definition of this term for purposes of today's rulemaking that is consistent with the definition in current part 70. The EPA will take final action in Phase II consistent with the Agency's final resolution of this issue in response to comments on the August 1994 notice.

10. Section 502(b)(10) Changes

The part 71 proposal, in omitting the definition of "section 502(b)(10) changes" from section 71.2, followed the approach used in the August 1994 proposed revisions to part 70. The Agency's reasons for the omission are articulated in that proposal at 59 FR 44467–8. As indicated in the August 1995 supplemental proposal, this is still the Agency position. However, EPA will not adopt a final position on proposed revisions regarding operational flexibility for part 70 or 71 until the Phase II rulemaking. For purposes of today's rulemaking, EPA has adopted a definition of the section 502(b)(10) changes that comports with the current part 70 regulation, in order to better harmonize the Phase I part 71 rule and the current part 70 regulation.

11. Title I Modification

The part 71 proposal, based on the August 1994 proposed revision to part 70, contained a proposed definition of the phrase "Title I modification or modification under any provision of title I of the Act." Subsequently, EPA issued a revised proposed definition in the August 1995 supplemental proposal for parts 70 and 71. The EPA is in the process of reviewing and developing a position in response to the comments on the several proposals with respect to this issue, and is not yet prepared to define the term in a final rule. The EPA will add a definition in the Phase II rulemaking that is consistent with how EPA ultimately defines the term under part 70.

A detailed discussion of the history of this definition is contained in the preamble to the August 1995 part 70 proposal (60 FR 45545). At issue is whether the phrase "modifications under any provision of title I" as used in section 502(b)(10) of the Act includes not only modifications subject to major NSR requirements of parts C and D of title I but also modifications subject to minor NSR programs established by the States pursuant to section 110(a)(2)(C).

In August 1994, EPA proposed to interpret the title I modification language of part 70 to include minor as well as major NSR modifications (55 FR 44527). The EPA received many comments from industry and States contesting this interpretation. The commenters argued that EPA had defined title I modification in the preamble to the May 1991 proposed part 70 rule to exclude minor NSR (56 FR 21746–47 and footnote 6) and did not redefine it in the final July 1992 rule. As a result, they argued that they were relying on the current rule to be interpreted consistent with the proposed rule preamble and that EPA could not change its interpretation without undertaking further rulemaking.

Based in part on the arguments raised by commenters, EPA revised its proposed interpretation of the definition of title I modification in the August 1995 supplemental notice to exclude modifications subject to minor NSR. In addition, EPA proposed regulatory language defining title I modification which excluded the reference to section 110(a)(2) of the Act.

While EPA is not yet prepared to adopt a final definition for the term, in implementing the Phase I part 71 program EPA will treat the issue consistently with the approach the Agency has advised States to take under the current part 70 regulation. Consequently, it will not consider title I modifications to include changes subject to State minor NSR programs.

B. Section 71.3—Sources Subject to Permitting Requirements

The final rule promulgates provisions regarding applicability of the program at section 71.3. These provisions are based on their counterparts in the currently promulgated part 70 rule at section 70.3. Consequently, in several aspects, they differ from section 71.3 as proposed, which was based on the August 1994 proposed revisions to section 70.3 which the Agency is not yet prepared to finalize.

Paragraph (a)(1) of the part 71 proposal contained an exemption from title V for major sources that would be subject to title V only if they have the potential to accidentally release pollutants listed pursuant to section 112(r)(3) in major amounts. This exemption has been deleted, even though it garnered reviewer support, consistent with the decision to match the part 70 requirements except where unique circumstances make a change necessary. If EPA ultimately revises part 70 to add the deleted language, the Agency would intend to revise part 71 consistently.

Proposed section 71.3(a)(4) which was modelled upon the August 1994 proposed revisions to part 70 and would have stated that any source subject to title I parts C or D would be required to obtain a permit was also deleted from the final regulation to comport with the part 70 regulation. The purpose of this provision was to ensure that all sources subject to preconstruction permitting as major sources under parts C or D of the Act are also subject to title V permitting. Again, if part 70 is ultimately revised to add this provision, EPA would intend to revise part 71 to add it as well.

Similarly, paragraph (b)(2) has been changed to conform with section 70.3(b)(2), which addresses applicability for sources subject to section 111 or 112 standards promulgated after July 21, 1992. Proposed section 71.3(b)(2) differed from both existing section 70.3(b)(2) and the August 1994 proposed revisions thereto. If section 70.3(b)(2) is ultimately revised, EPA would expect to revise section 71.3(b)(2) to harmonize it with part 70.

Paragraphs (c) and (d) of this section, found in the proposal at sections 71.6(a)(1)(iv) and 71.5(f)(3)(i), respectively, were moved to this section for compatibility with the current part 70 provisions at sections 70.3 (c) and (d).

C. Section 71.4—Program Implementation

The major issues raised by commenters on proposed section 71.4 related to the need to base part 71 on finalized (as opposed to proposed) provisions of part 70, how the part 71 program should be customized to fit the unique needs of the State or area for which the program is administered, and jurisdictional issues with respect to programs on Tribal lands. The Agency's approach to the first issue is discussed at length in section II of this document. This section addresses the second and third issues in addition to several minor changes to the proposed rule that were adopted today.

1. National Template Approach

With respect to the second issue, EPA received divergent comments. For example, commenters suggested that a national template should be flexible, that a national template should be used only to fill in the gaps of deficient State programs, and that there should be no national template because title V does not authorize EPA to develop such a rule.

The Agency carefully considered the statutory framework for the program and interprets title V as authorizing a national template approach. For a further discussion of this issue, see section II of this document. The EPA chose a national template approach because EPA believes the national template is flexible enough to be an effective program in nearly all areas, and individual rulemakings for each area that has a part 71 program would be needlessly burdensome on the Agency. Since the national template will serve the needs of most areas, it is more efficient to promulgate the program once while allowing for separate rulemakings, as needed, in some areas. The EPA recognizes the desirability of providing a flexible approach to administering the program, as the commenters have suggested, when the national template does not adequately fit the unique State or Tribal situation. Such flexibility is already contained in section 71.4. When EPA determines that the national template rule is not appropriate for a State, EPA may adopt, through a separate rulemaking, appropriate portions of a State or Tribal program in combination with provisions of part 71 in order to craft a suitable part 71 program, as provided in section 71.4(f). Furthermore, section 71.9(c)(7) provides that when the national fee structure would not reflect the cost of administering a part 71 program, the Administrator shall through a separate rulemaking set an appropriate fee. Finally, as provided in section 71.5 and as discussed in section III.D of this document, EPA has designed part 71 to provide significant flexibility to accommodate the localized air quality issues. For example, EPA will use State application forms whenever possible and will try to match the list of trivial activities which may be left off application forms to the lists established in the State operating permit program.

2. Part 71 Programs in Tribal Areas

The EPA is deferring promulgation of regulations that would describe how the Agency would determine the boundaries of a part 71 program for a

Tribal area. The EPA has published a proposed rule, pursuant to section 301(d)(2) of the Act, specifying the provisions of the Act for which EPA believes it is appropriate to treat Indian Tribes in the same manner as States and outlining the Agency's position on the authority of Indian Tribes to administer air programs under the Act. See 59 FR 43956 (Aug. 25, 1994)("Indian Tribes: Air Quality Planning and Management," hereafter "proposed Tribal rule"). As indicated in the part 71 proposal, EPA intends to follow the approach of the Tribal rule with respect to issues of jurisdiction and resolution of jurisdictional disputes. The EPA agrees that it would be more practical to defer addressing jurisdictional issues until the promulgation of the Tribal rule. The Agency will finalize an approach to jurisdiction as well as a definition of Tribal area in the Phase II rulemaking or in conjunction with finalizing the Tribal rule. In the interim, the Agency will not be able to implement part 71 programs in Tribal areas unless it completes a rulemaking that establishes the boundaries of the part 71 program in the Tribal area. Rulemakings for the Tribal rule and Phase II will be completed well in advance of the November 1997 deadline for EPA to implement part 71 programs on Tribal lands. Therefore, EPA does not expect that the deferral of jurisdictional issues will delay implementation of the part 71 program. Although part 71 contains no definition of "Tribal area," EPA will provide (and will require delegate agencies to provide) notice of proposed permitting actions pursuant to section 71.8(d) even prior to the Phase II rulemaking. In the interim, federally recognized Indian Tribes will receive notice with respect to permitting actions related to sources whose emissions may affect Tribal air quality and that are located in contiguous jurisdictions or are within 50 miles of the exterior boundaries of the reservation.

3. Expiration of Part 71 Permits

The Agency received comments suggesting that part 71 permits should be rescinded automatically, without the Agency taking any action, when they are replaced by a part 70 permit. The EPA agrees that no separate agency action should be required when a part 71 permit is replaced by a part 70 permit issued under the approved part 70 program because unless the rescission happens simultaneously with the issuance of the part 70 permit, a source could be subject to a part 70 and a part 71 permit which may contain different requirements. Accordingly, EPA has deleted proposed section 71.4(l)(3) which provided that the Administrator would rescind part 71 permits when they were replaced with part 70 permits. Further, the EPA has adopted section 71.6(a)(11) which provides that part 71 permits shall contain a provision to ensure that a part 71 permit will expire when the source is issued a part 70 permit.

4. Suspension of Issuance of Part 71 Permits

The EPA revised the first paragraph of proposed section 71.4(l) to clarify, consistent with EPA's original intent, that EPA may suspend issuance of part 71 permits whenever the Agency has granted full or interim approval to a State part 70 program. Section 502(e), which addresses suspension of the issuance of part 71 permits, provides that the triggering event for suspension is publication of notice of approval. Thus, there is no statutory requirement that a State program must "fully" meet the requirements of part 70 or be fully approvable in order for EPA to suspend permit issuance. The Agency believes it is appropriate to suspend issuance of part 71 permits when a State program substantially meets the requirements of part 70 and has received interim approval because it would be confusing and burdensome to have two title V permit programs operating simultaneously in the same jurisdiction. Therefore, EPA has deleted the word "fully" from the first paragraph of proposed section 71.4(l).

5. Delegation Agreements

The final rule makes a minor change to proposed section 71.4(j) in parallel with a change to proposed section 71.10(b) to reflect the fact that under the final rule, EPA will not publish its delegation agreement with a delegate agency. Therefore, section 71.4(j) provides that the roles of the delegate agency and EPA in administering the part 71 program will be defined in a delegation agreement, not in a **Federal Register** notice. The EPA will follow the procedures for delegation agreements established for the PSD program under which EPA does not publish its delegation agreements. Delegation agreements reflect the understanding of EPA and the delegate agency as to their respective responsibilities and are not subject to any notice requirement. This approach allows EPA and the delegate agency to modify their agreement as circumstances change, without the burden of publishing a **Federal Register** notice.

6. Early Reductions Permits

The Agency retained in section 71.4(i)(3) the requirement that the permitting authority take action on complete permit applications containing an early reduction demonstration within 12 months of receipt of the complete application. Although the current part 70 regulation sets a 9 month deadline for State action, EPA Regional offices are allowed 12 months to take action on the permit applications submitted under the interim permitting rule for early reduction sources that EPA adopted prior to the approval of any State part 70 programs. See 40 CFR section 71.26(a)(2). The Agency believes that this time frame is reasonable given the effort required to process the permits and the need for sources qualifying for a compliance extension under the Early Reductions Rule to obtain a permit prior to certain deadlines set by the rule.

D. Section 71.5—Permit Applications

The part 71 proposal addressed permit applications at proposed section 71.5 (a) through (i). This proposed section was based upon a combination of corresponding provisions in the existing part 70 rule and in the August 1994 proposed revisions to part 70, and was presented in a slightly different structure from the part 70 rule. In light of EPA's decision to promulgate part 71 on an interim basis, more consistently with the existing part 70 rule, the provisions based upon the August 1994 proposal are not being adopted today. Moreover, in order to facilitate transition from implementing part 71 to part 70 programs, the final rule is being adopted in a structure that is more consistent with that of the current part 70 rule.

1. Timely Application

Under section 71.5(b)(1) of the proposal all initial permit applications would have to be submitted within 12 months or an earlier date after the source becomes subject to part 71. The proposal would have required that the permitting authority provide notice of the earlier date to the source and that this notice would be given at least 120 days in advance of the application submittal date.

Several commenters argued that the 120 days (4 months) minimum notice would not give sources sufficient time to prepare an application. They also argued that 4 months was insufficient time for sources to submit their applications early for purposes of addressing deficiencies and ensuring they receive the application shield.

In response to these comments, EPA has lengthened the notice period from 4 months to 6 months. Section 503(c) of the Act requires the submittal of all applications within 12 months of the effective date of a permit program or such earlier date as the permitting authority may establish and that one-third of these applicants be issued permits in this first year. In order to issue one-third of the permits in the first year, EPA must receive at least one-third of the applications prior to 12 months after the effective date of the program.

The EPA considered and rejected commenters' suggestions for 8 to 12 months' advance notice because they would interfere with EPA's requirement to issue one-third of the permits in the first year. The EPA believes that the 6 month alternative will allow EPA enough time to process and issue permits. The EPA believes that 6 months is sufficient time for sources to prepare applications for several reasons that had not been announced at time of proposal. First, on July 10, 1995, EPA issued the first white paper that examines options for simplifying part 70 permit applications and sets minimum expectations concerning how much information must be included in order for the application to be found complete. In today's notice EPA announces its intention to implement both of the white papers for part 71 program purposes. Second, EPA has revised the rule to clarify that part 71 permit application forms may be developed by the delegate agency or the EPA allowing a part 71 application form to be based on a State form developed for part 70 purposes, as long as the form meets the minimum requirements of part 71 (discussed in more detail below). Third, because the final rule more closely follows the part 70 program upon which most State operating programs are based, sources will be familiar with most part 71 permit application requirements.

In addition, proposed sections 71.5(b)(2) and (3) have been deleted because they referred to off-permit changes and a four-track permit revision system which the Agency is not finalizing today.

2. Complete Applications

The final rule adopts the language from the current part 70 rule concerning complete applications. However, EPA believes that several clarifications will help applicants understand the flexibility available for submitting simplified permit applications that can be found complete. The terms "simplified permit application" or "streamlined permit application" refer to applications that require less information.

In the part 71 proposal, EPA proposed to adopt language from the August 29, 1994 part 70 revision notice (59 FR 44518) that would have clarified that an application would be found complete if it contained information "sufficient to begin processing the application." As stated previously, today's rulemaking is based on provisions of current part 70; therefore, this language does not appear in today's rulemaking. However, EPA believes, as stated more fully in the first white paper, that considerable flexibility already exists in the part 70 rule to find simplified permit applications complete. Since the white papers will be implemented for part 71 purposes, this flexibility also exists in the part 71 permit program.

Furthermore, the proposed revisions to part 70 (August 29, 1994) and the part 71 proposal discussed several additional options currently available to States for developing simplified permit applications and finding them complete, and did not propose any rule changes necessary to implement these options. These options were: (1) a two-step application completeness determination process for simplified applications and (2) simplified application content requirements for applicable requirements with future compliance dates. After the publication of these proposal notices, the first white paper included these two flexibility options, as well as many additional options, and reaffirmed EPA's interpretation that implementation of these options does not depend on making changes to the part 70 rule or State part 70 programs.

The EPA believes this approach will provide flexibility for sources to prepare simplified permit applications and for permitting authorities to find them complete. This approach will also promote consistency between the part 71 and part 70 programs, which in turn, will provide for a smoother transition between the programs. Guidance on the implementation of the white papers and other flexibility options for completeness determinations for a part 71 program implemented in a particular State may be provided by the EPA or delegate agency soon after the program takes effect.

Additionally, proposed section 71.5(d), concerning the treatment of business confidential information, has been revised in the final rule. The language of the proposal discussed the responsibilities of permitting authorities to process requests for confidential treatment and included a general reference to 40 CFR part 2. Considering the structure of these regulations and this section's position in these regulations, the Agency believes that the promulgated language clarifies the procedures that applicants must follow to request confidential treatment for business information in applications, provides a more precise cross-reference to those procedures, and does not add any new requirements regarding the treatment of confidential information not intended by the proposal.

Note also that certain technical changes are being made to part 71's completeness provisions as a result of the final rule's greater harmonization with the existing part 70 rule. First, the completeness criteria are being promulgated at section 71.5(a)(2) while the proposal addressed completeness at section 71.5(c). In addition, the final rule references section 71.5(c) as the provision setting out required information in permit applications, while the proposal referenced proposed section 71.5(f). Moreover, the final rule cites section 71.5(d) as the provision concerning certification by a responsible official, while the proposal cited proposed section 71.5(i). Finally, the citation in the proposal to section 71.7(a)(3) has been changed in the final rule to section 71.7(c)(4) as a result of the changes to section 71.7.

3. Standard Application Form and Required Application

Proposed section 71.5(f) would have required part 71 sources to submit "applications provided by the permitting authority, or if provided by the permitting authority, an electronic reporting method" and did not include any preamble discussion of the interpretation of this phase. One commenter on the proposal encouraged EPA to use existing State forms in States where EPA assumes part 71 authority. Final section 71.5(c) has been revised to more closely follow the corresponding language of section 70.5(c). The EPA agrees with the commenter and will provide forms developed by delegate agencies (States), or the EPA, including electronic application methods, for purposes of applying for part 71 permits. This approach to application development is possible because "permitting authority" is defined in section 71.2 as including the EPA or the delegate agency. This approach to providing part 71 forms will lead to less disruption and a smoother transition for sources preparing initial part 71 applications because, in many cases, sources will be familiar with the State form on which the part 71 form is based. For example, sources may already be collecting information and drafting an operating permit using the State form in expectation of part 70 program approval by EPA. In addition, commenters asked

that EPA clarify and simplify the requirements for emissions-related information in part 71 applications consistent with EPA's guidance in the first white paper. In response to these comments, EPA intends to implement the white paper guidance with respect to the collection and reporting of emission-related information and EPA believes that no changes to part 71 are necessary to do so.

Numerous technical changes have been made to the final rule regarding information to be required in permit applications to better match the current part 70 rule. In the proposal, information requirements were addressed at proposed sections 71.5(f) through (i), while the final rule follows part 70 by covering these requirements in sections 71.5(c) and (d). New citations to other provisions of part 71 are also due to the final rule's harmonization with part 70.

4. Insignificant Activities and Emission Levels

Extensive comments were received on the proposed insignificant activity and emission levels provisions of proposed section 71.5(g). Commenters argued, in part, that activities subject to applicable requirements should be eligible for the exemption for insignificant activities and emission levels, that the requirement that applications not exclude information needed to determine whether a source is subject to the requirement to obtain a part 71 permit would be too restrictive, that the list of insignificant activities in the final rule should be expanded, that the list of trivial activities in the first white paper should be codified in part 71, that the exemption for mobile sources as insignificant activities should be removed, that the single emissions unit emissions thresholds for insignificant emissions should be raised, and that the aggregate source-wide emission thresholds for insignificant emissions should be deleted.

a. *Eligibility for Insignificant Treatment and Information Required in Applications.* Section 71.5(c) of the final rule addresses, in part, information that must not be omitted from permit applications. These requirements have special relevance for applicants when determining what information must be included in applications for emission units that are eligible for insignificant treatment. To be consistent with current part 70, final section 71.5(c) deletes certain proposed provisions that do not follow the corresponding language of section 70.5(c) and that were based upon the proposed revisions to part 70 published in August 1994. Accordingly, deleted from final section 71.5(c) is the proposed language that would have not allowed the application to omit information needed to: (1) Determine whether a source is major, and (2) determine whether a source is subject to the requirement to obtain a part 71 permit. Notwithstanding these deletions, EPA continues to believe that the definition of major source at section 71.2 controls the determination of which units are counted for major source applicability purposes and that emissions of units that qualify for insignificant treatment in the application are not exempt from these determinations. Consistent with the Agency's approach in implementing the current part 70 rule, the EPA is reversing its interpretation, first expressed in the proposed preamble, that would have excluded the eligibility of activities for treatment as insignificant when such activities are subject to applicable requirements. The EPA believes that no change to the final rule is necessary to implement this new interpretation.

Industry commenters were particularly concerned that EPA's interpretation that proposed section 71.5(g) would not allow activities with applicable requirements to be eligible for insignificant treatment would render the insignificant activity and emissions level provisions meaningless because few sources would be eligible for streamlined treatment in the application.

The EPA now believes that it was overly broad in stating that emission units were precluded from eligibility as "insignificant" if such units would be subject to applicable requirements. As discussed below, EPA believes there are circumstances in which an emission unit or activity can be treated as "insignificant" under a Federal operating permits program, even if it is subject to an applicable requirement. However, a title V application must still contain information needed to determine the applicability of or to impose any applicable requirement or any required fee and a permit must still meet the requirements of section 71.6 for all emission units subject to applicable requirements, including those eligible for insignificant treatment.

Both sections 71.5(c) and 71.5(c)(3)(i) require sufficient information to verify the requirements applicable to the source and to collect appropriate permit fees.

This means that some of the information required by sections 71.5(c)(3) through (9) may be needed in the permit application for insignificant activities in order for the permitting authority to draft an adequate operating permit. As an example, where an insignificant activity is not in compliance with an applicable requirement at the time of permit issuance, the permit application would need to contain a compliance plan, including a compliance schedule, for achieving compliance with the applicable requirement. As another example, if a source has some insignificant activities within a category that are subject to an applicable requirement and some within that same category that are not subject to that applicable requirement because the applicability criteria for the applicable requirement are different from the applicability criteria for insignificant activities, the permit application would generally be required to include sufficient information on the insignificant activity for the permitting authority to determine which units are subject to the applicable requirement and to include that applicable requirement in the permit for the subject insignificant activity. The EPA believes that a part 71 permit application may simply list the applicable requirements that apply to insignificant activities generally, rather than requiring the permit application to explicitly identify which insignificant activities are subject to which applicable requirements. The permitting authority would then issue a permit imposing the applicable requirements in the permit, but not specifically identifying which insignificant activities are subject to those applicable requirements. (For a more detailed discussion, see the first white paper and the proposed interim approval and proposed notice of correction for the State of Washington's part 70 program, 60 FR 50166 (September 28, 1995).)

b. *Insignificant Activity Lists.* Section 70.5(c), in part, allows States to develop lists of insignificant activities and emission levels that need not be included in applications and requires activities (or equipment) exempted due to size or production rate to be listed in the application. State part 70 program submittals were approved by EPA that implement this provision in a variety of ways. The structure of the proposed regulations was based on the structure of these State implementing regulations, and included a short list of insignificant activities and provisions setting insignificant emissions levels. The proposed list of insignificant activities, section 71.5(g)(1), included a list of specific source categories, activities, or equipment that could be left off the application. The proposed insignificant

emissions provisions, section 71.5(g)(ii), allowed sources the flexibility to treat additional source categories, equipment, or activities as insignificant, provided certain eligibility criteria were met, including not exceeding certain emissions levels, and provided that the activities were listed in the application. The EPA believed that the proposed insignificant emissions approach was flexible enough that extensive lists of insignificant activities would not be needed in the final rule. The EPA reasoned that no list of insignificant activities would ever be so inclusive as to list every type of activity potentially eligible for insignificant treatment at industrial sources, and therefore, additions to the list would require resource-intensive notice and comment rulemaking on an ongoing basis. The proposal asked for comment on its approach and asked whether the proposed approach would be compatible with approaches developed by States.

Numerous industry commenters argued, in general, that the proposed part 71 list was not extensive enough to provide meaningful relief for industry from the administrative burdens associated with submitting detailed information for emission units or activities that pose little or no environmental risk and that the part 71 list was not as extensive as lists developed by States for their part 70 programs.

The EPA is finalizing the proposed list of insignificant activities with one revision. The EPA believes that the commenters' concerns that there be more opportunities for streamlining the information required by part 71 permit applications is best addressed by implementing the white papers for part 71 purposes, and that no changes to the final rule are necessary to implement this approach. The EPA believes that the white papers provide for application streamlining that is comparable and, in many ways, superior to approaches based on omitting certain emission unit or activities from the application only when eligibility for insignificant treatment is established in a rule. In general, the white papers allow sources to provide little or no detailed source-specific information for emissions units or activities where the information is not reasonably available and to the extent the information is not needed to resolve disputed questions of major source status, applicability of requirements, compliance with applicable requirements, or needed to calculate fees.

For example, section B.3. *Insignificant Activities* of the first white paper allows trivial activities to be completely omitted from applications. The white paper defines trivial activities as activities without specific applicable requirements (although they may have "generic" applicable requirements, explained below) and with extremely small emissions and included a list of trivial activities in Appendix A. Many of the trivial activities identified in the first white paper are common to State lists of insignificant activities. Under part 71, sources may rely on this list, and EPA or the delegate agency may add to it without the need for Federal rulemaking. This allows EPA to expand the list of trivial activities for a part 71 program in a specific location, consistent with trivial activity lists established in the State operating permit program, thus tailoring the program for a specific program implemented in a State.

Also providing considerable streamlining is section B.4 *Generic Grouping of Emission Units and Activities* of the first white paper which allows emissions units or activities with "generic" applicable requirements to be omitted from the application, independent of eligibility for insignificant treatment. Under this section, sources may provide little or no detailed source-specific information, even for units with "generic" requirements, provided that the "generic" requirements are described in the application such that their scope and manner of enforcement are clear. "Generic" requirements are certain broadly applicable requirements that apply and are enforced in the same manner for all subject units or activities and that are often found in the SIP. Examples of such requirements include requirements that apply identically to all emissions units at a facility (e.g., source-wide opacity limits), general housekeeping requirements, and requirements that apply identical emissions limits to small units (e.g., certain process weight requirements). Where the applicable requirement is amenable to this approach, part 71 permitting authorities may follow this approach regardless of whether subject activities have been listed as trivial or insignificant. A lengthy list of the types of requirements suitable for this treatment is not possible here because, among other reasons, the examples of which EPA is aware are SIP requirements, and so vary from State to State. The EPA or delegate agency will decide which SIP requirements can be treated in this generic fashion for specific locations where part 71 programs are implemented.

The EPA has determined that the insignificant activity exemption for air-conditioning units used for human comfort at final section 71.5(c)(11)(i)(B) should be changed to clarify that substances other than class I or II substances may be regulated under title VI of the Act. This change is necessary because effective November 15, 1995, title VI requires recycling or recovery of substitute refrigerants regardless of whether or not they are ozone depleting substances (Class I and Class II substances) unless EPA makes a refrigerant-specific decision that the substitute will not harm human health or the environment and can, therefore, be vented.

c. *Insignificant Emissions Levels.* In response to comments, EPA has revised proposed section 71.5(g)(2)(i), which is section 71.5(c)(11)(ii)(A) of the final rule, to increase the insignificant emissions threshold for regulated air pollutants other than (HAP) from a single emissions unit from 1 tpy to 2 tpy and to delete the 1,000 pounds (lb) per year threshold in extreme ozone nonattainment areas. The EPA believes this decision is appropriate since, as commenters pointed out, EPA has previously stated in part 70 approval notices that insignificant emissions thresholds set at 2 tpy would be approvable in most locations. The EPA believes that due to the similarity between part 70 and part 71 programs it can logically conclude that this level is also appropriate for a part 71 program, regardless of where it is located. This level will provide a measure of additional flexibility for sources to exempt insignificant activities, thus simplifying the application, with little additional risk that significant emission units will be excluded from the application. As further discussed below, there are several safeguards available in the final rule that should ensure that significant units are not excluded from applications due to their eligibility for insignificant treatment. In addition, EPA is deleting the proposed 1,000 lb per year threshold for extreme ozone nonattainment areas. This will simplify the rule by setting the same tpy emission thresholds for attainment and nonattainment pollutants, while requiring the thresholds in relative terms to be no more than 20 percent of the major source threshold for nitrogen oxides and VOC and 2 percent of the major source threshold for the remaining criteria pollutants. Two tpy is considered trivial by EPA for all pollutants other than HAP in relation to major source thresholds in all attainment or

nonattainment areas and will not prevent the EPA from collecting information of a consequential or significant nature. In addition, these levels are more commonly found in State part 70 programs and therefore should help to ease the transition from part 71 to part 70 operating permit programs.

In response to comments, EPA has decided to delete the aggregate source-wide emissions criteria for insignificant emissions of regulated air pollutants (sections 71.5(c)(11)(ii) (A) and (B) of the final rule). The EPA proposed these aggregate source-wide emissions criteria as an additional means to ensure that emissions that might otherwise trigger the applicability of applicable requirements or major source status would not be excluded from applications. However, EPA now believes that the proposed aggregate emissions thresholds would have significantly limited the value of the insignificant emissions provisions for most medium to large sources. This deletion should not impede the permitting authority's ability to write permits which assure compliance with applicable requirements and the requirements of part 71. The EPA also believes that the utility of aggregate plant-wide thresholds is negligible because of various other safeguards already provided in the rule; in particular, section 71.5(c)(11) requires applications to not exclude information needed to determine the applicability of, or to impose, any applicable requirement. In addition, the requirement of section 71.5(c)(11)(ii) that units or activities with insignificant emissions be listed in the application provides an opportunity for the permitting authority to review the source's decision to treat emissions as insignificant, while the single-unit emissions thresholds of sections 71.5(c)(11)(ii) (A) and (B) limit the size of emissions to levels that would normally ensure that the units are not covered by extensive control requirements.

5. Compliance Certification

The part 71 proposal would have required sources to submit certifications that they were in compliance with all applicable requirements. Commenters requested further clarification of the certification requirements and argued that it was not clear exactly what efforts a source was required to make to determine its compliance status prior to certifying that it was in compliance with all applicable requirements, and that it was unclear whether or not a source was obliged to reconsider past applicability determinations prior to making such a certification. The EPA does not believe that any revisions to the rule are necessary to address the commenters' points. This is true because the white papers for part 70 address these issues and sources may follow that guidance for purposes of completing part 71 permit applications.

E. Section 71.6—Permit Content

Today's permit content provisions more closely track the provisions contained in current 70.4 and 70.6 than did those in the proposal. Thus, the order of the paragraphs in section 71.6 is more similar to the permit content section of current part 70 than to the part 71 proposal. For example, the provisions dealing with the permitting authority's duty to address emissions units in the permit has been moved from section 71.6(a)(iv) to section 71.3(c), consistent with current part 70. In addition, using current part 70 as the template for permit content means that the provisions for "off-permit" contained in today's rulemaking mirror those found at section 70.4(b), while the off-permit provisions of the proposed rule tracked those contained in the August 1994 proposed revisions to part 70. Similarly, today's rulemaking adopts the requirements for emissions trading and operational flexibility that are found in current part 70.

In addition, EPA retains a provision related to the prompt reporting of deviations from permit conditions from the part 71 proposal. Current part 70 requires States to define "prompt" in their own programs, and today's rulemaking defines the term for the part 71 program and closes this gap in the proposed rule. Today's rulemaking also establishes a part 71 permit expiration date.

The EPA reiterates that today's rulemaking finalizes provisions for permit content on an interim basis in order to better facilitate smooth transition from implementation of part 71 to approved State programs established pursuant to the current part 70 rule. With respect to permit content provisions, the April 1995 and August 1995 proposals contain provisions which reflect the Agency's current best thinking, and subsequent to reviewing all of the comments on both proposals, EPA may finalize provisions for permit content that differ from those adopted today consistent with the approaches EPA eventually takes in promulgating final revisions to part 70.

1. Off-permit Operations

Under today's rulemaking, sources are allowed to make changes at a facility that are not addressed or prohibited by the permit terms, provided they meet the requirements of section 71.6(a)(12). The provision adopted today is patterned on 70.4(b) (14) and (15), the analogous provisions in current part 70. Like part 70, part 71 requires that the source provide the permitting authority with contemporaneous written notification for these types of changes, that these changes be incorporated into the permit at renewal, and that the source keep certain records of these changes. Consistent with current part 70, section 71.6(a)(12) limits off-permit changes to those that do not constitute title I modifications, are not subject to any requirements under title IV of the Act, and meet all applicable requirements of the Act. In applying this provision, the Agency will use the interpretation of the term "title I modification" that States are allowed to use under the current part 70 rule. EPA expects that allows a significant number of minor NSR changes, to the extent that they are not prohibited by the title V permit, to qualify for off-permit treatment.

Like part 70, part 71 does not allow off-permit changes to alter the permitted facility's obligation to comply with the compliance provisions of its title V permit and does not grant the permit shield to off-permit changes. For a more thorough discussion of the concept of off-permit changes, see the rationale for part 70's off-permit provision found at 57 FR 32269.

The part 71 proposal contained a modified off-permit provision at proposed section 71.6(q) that was designed in light of the four-track permit revision procedures contained in the proposal and modeled on the off-permit provision contained in the August 1994 proposed revisions to part 70. Proposed section 71.6(q) would have allowed certain changes to remain off-permit but would have required the source to submit an application to revise its permit to reflect that change within 6 months of commencing operation of that change. In the August 1995 supplemental proposal to parts 70 and 71, the Agency indicated that off-permit provisions may be unnecessary if the streamlined permit revisions procedures for parts 70 and 71 are adopted as proposed therein. After reviewing comments on both proposals, EPA will decide whether to retain an off-permit provision in the Phase II rulemaking, consistent with the approach EPA takes in finalizing permit revisions procedures. Off-permit treatment is available in the interim, consistent with that provided by current part 70, but EPA does not believe that many permits will be issued prior to the Phase II rulemaking and that the off-permit provision therefore will not be greatly utilized.

2. Operational Flexibility

Under the rule adopted today, sources will enjoy the same operational flexibility as is provided to part 70 sources under current part 70. Section 502(b)(10) of the Act requires that the minimum elements of an approvable permit program include provisions to allow changes within a permitted facility without requiring a permit revision. In the current part 70 rule at section 70.4(b)(12) (i)–(iii), and the rule adopted today, there are three different methods for implementing this mandate. Accordingly, section 71.6(a)(13)(i) provides for sources to make certain changes within a permitted facility that contravene specific permit terms without requiring a permit revision, as long as the source does not exceed the emissions allowable under the permit and the change is not a title I modification. Under the interpretation of the term "title I modification" that EPA is allowing States to take under the current part 70 rule, section 502(b)(10) changes may include changes subject to minor NSR, provided the change does not exceed the emissions allowable under the permit. Section 71.6(a)(13)(ii) also allows emissions trading at the facility to meet limits in the applicable implementation plan when the plan provides for such trading on 7-days notice in cases where trading is not already provided for in the permit. Additionally, section 71.6(a)(13)(iii) allows emissions trading for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. For a thorough discussion of the flexibility allowed under the analogous part 70 provisions, see 57 FR 32266.

The part 71 proposal contained an approach to operational flexibility that was modeled on the August 1994 proposed revisions to part 70, not current part 70. The August 1995 supplemental proposal suggested further refinements to the concept. After reviewing comments on both proposals, EPA may adopt an approach to operational flexibility that is different from the one found in today's rulemaking, consistent with the approach EPA takes in finally revising part 70. While the approach adopted today differs significantly from that of the proposal, the Agency is adopting it on an interim basis in order to better facilitate transition to the State part 70 programs that are similarly based on the provisions governing operational flexibility under the current part 70 rule.

3. Affirmative Defense

In order to remain consistent with current part 70, EPA is adopting a provision from the part 71 proposal that would allow sources to assert an affirmative defense to an enforcement action based on noncompliance with certain requirements due to an emergency. Such a defense would be independent of any emergency or upset provision contained in an applicable requirement. See section 71.6(g). This provision is consistent with that found in the current part 70 rule at section 70.6(g)..

As a result of concerns identified in legal challenges to part 70, the Agency, in the August 1995 supplemental proposal, solicited comment on the need for, scope and terms of an emergency affirmative defense provision. The Agency is reviewing those comments, but has not yet made a decision on whether or not to modify or remove this additional affirmative defense provision from part 70. The Agency will make part 71 consistent with the decision reached for part 70 in the part 71 Phase II promulgation. In the interim, sources may rely on the affirmative defense offered by section 71.6(g).

4. Definition of Prompt Reporting

The proposal contained provisions concerning prompt reporting of deviations from permitting requirements at proposed sections 71.6(f) (3) and (4). The final rule at section 71.6(a)(3)(iii) requires that each permit contain provisions for prompt notification of deviations.

Two commenters requested that the prompt reporting deadlines in part 71 be adjusted to reflect other environmental regulation timelines or to reflect State program guidelines that have been approved by the Agency for part 70 programs. The Agency disagrees with the request. Section 503(b)(2) of the Act requires permittees to promptly report any deviations from permit requirements to the permitting authority. Since individual permitting authorities are responsible for having programs to attain and/or maintain air quality within their geographical boundaries, they are obligated under the operating permits program to determine, among other things, what constitutes a prompt notification. Included as factors in determining prompt notification would be elements such as pollutant concentration, deviation duration, and authority response time. Because sources and pollutants of concern vary among permitting authorities, States have adopted differing prompt reporting schedules. The Agency has reviewed its obligation to protect air quality on a national level, and has determined that its prompt reporting deadline is appropriate for this obligation. Therefore the deadlines contained in part 71 remain unchanged from the proposal.

Two commenters requested that part 71 clarify prompt reporting requirements for deviations other than those associated with hazardous, toxic, or regulated air pollutants, as described in sections 71.6(a)(3)(iii)(B)(1) and (2). The Agency believes that the requirement contained in section 71.6(a)(3)(iii)(A), in which sources are to report all instances of deviations from permit requirements at least every 6 months, provides the basis for prompt reporting of all other deviations. However, the Agency is willing to clarify this reporting requirement and has modified section 71.6(a)(3)(iii)(B) by adding a statement that directs sources to submit all other deviation reports in accordance with the timeframe given in section 71.6(a)(3)(iii)(A).

5. Inclusion of Federally Enforceable Applicable Requirements in Permits

Two commenters requested that EPA include in part 71 the analogue to section 70.6(b)(2), a provision that requires the permitting authority to identify in the permit any applicable requirements that are not federally enforceable. The EPA disagrees with this request because part 71 permits will not include any non-federally enforceable applicable requirements; therefore, a requirement for the Agency to identify such terms as non-federally enforceable would be moot, and a part 71 analogue to section 70.6(b)(2) is not needed. Part 71 differs from part 70 in this respect. However, section 71.6(b) is consistent with the first paragraph of section 70.6(b), which provides that part 70 permit terms and conditions are to otherwise be federally enforceable.

6. General Permits

The proposal contained provisions at proposed section 71.6(l) addressing general permits, which were based on the proposed revisions to the general permits provisions in the August 1994 notice. Under part 70, the EPA afforded other permitting authorities the choice of utilizing general permits, and the Agency intended to provide this flexibility to itself. The Agency believes that general permits offer cost-effective means of issuing permits for certain

source categories. The Agency has not yet decided on the proper approach concerning opportunities for public review and judicial review associated with general permits, and in the interim, has decided to remain consistent with the current part 70 rule. Therefore, under today's notice, EPA's authorization to allow a source to operate pursuant to a general permit may proceed without public notice and does not constitute final permit action for judicial review purposes. Today's part 71 general permit provisions are found at section 71.6(d) and are patterned after the analogous provisions at current section 70.6(d). In the Phase II rulemaking, EPA intends to revise the part 71 general permit provisions if necessary to remain consistent with the approach the Agency ultimately takes in the final revisions to part 70.

7. Permit Expiration

The proposed rule contained a provision for rescinding part 71 permits at proposed section 71.4(i)(3). Under today's rulemaking at section 71.6(a)(11), part 71 permits would contain a provision that automatically cancels the part 71 permit upon expiration of the initial permit term or upon issuance of a part 70 permit, without the need for separate action to rescind the permit. The Agency believes that a clear expiration date is necessary in order to avoid potential confusion over which title V permit terms and conditions are valid. The majority of permitting authorities are moving towards final approval of part 70 programs. In those few instances where a particular permitting authority may not have final part 70 program acceptance by the deadline for implementation of part 71, the Agency expects that final program approval will occur well before the 5-year part 71 permit term (12 years for certain municipal waste combustors) has expired. Once the part 70 program is approved, sources and permitting authorities may desire to begin implementation as soon as possible. The Agency has no desire to be a stumbling block in those efforts, nor does the Agency wish to promote confusion over which permit (part 71 or 70) would be in effect at a particular time.

One of the purposes of title V was to provide sources with certainty as to their applicable requirements. Part 71 and part 70 permits will be similar, but not necessarily congruent, e.g., part 71 permits would contain only federally-enforceable requirements, insignificant activities could differ, and reporting provisions would differ. In order to prevent the potential confusion stemming from an unexpired part 71 permit remaining in effect concurrent with a part 70 permit, the Agency has decided to preclude the event from occurring. No such comparable provisions are needed in part 70 because that program provides just one title V permit per source. Consequently, section 71.6(a)(11) provides that a part 71 permit automatically expires upon the earlier of the expiration of its term or the issuance of a part 70 permit to the source.

F. Section 71.7—Permit Review, Issuance, Renewal, Reopenings, and Revisions

As discussed above, EPA is, on an interim basis, promulgating final regulations regarding permit issuance, renewal, reopenings, and revisions for part 71 that are based upon the existing provisions governing State title V programs at 40 CFR, section 70.7. Consequently, the provisions adopted today differ from those contained in the part 71 proposal, which were based upon the August 1994 proposed revisions to part 70. The EPA is still in the process of adopting revisions to part 70, and thus is not able at this time to base part 71's provisions on the expected future changes to part 70. As a result, EPA has concluded, in response to comments, that the most reasonable approach is to model part 71's permit issuance, renewal, reopenings, and revisions procedures on the corresponding provisions in the existing part 70 rule. These changes from the proposal, in addition to other changes in response to comments, are identified below.

1. Permitting Authority's Action on Permit Application

First, the organization of the paragraphs has been changed from the proposal to be consistent with 40 CFR section 70.7(a). In addition, in section 71.7(a)(1), the word "modification" is now used in place of the word "revisions," which was used in the proposal. This is a technical change to the rule to make it conform with the language used in corresponding provisions in the current part 70 rule. Also, section 71.7(a)(1)(ii) has been changed to track section 70.7(a)(1)(ii) by explicitly providing that changes subject to minor permit modification procedures need not comply with the public participation requirements of sections 71.7 and 71.11. This change from the proposal is a result of the Agency's adoption in today's rule of permit revision procedures modelled on those contained in the existing part 70 rule. Moreover, section 71.7(a)(1)(iv) has been adopted without the language providing that, in some cases, the terms of the permit need not provide for compliance with all applicable requirements that are in force as of the date of permit issuance. Again, this change is necessary to make section 71.7(a)(1)(iv) consistent with the corresponding provision at section 70.7(a)(1)(iv), which does not contain the proposal's language. That language was first proposed in the August 1994 proposed revisions to part 70, and the Agency is not yet prepared to adopt it into a final title V rule. Likewise, section 71.7(a)(1)(v) is being promulgated without references to the administrative amendment and *de minimis permit* revision procedures contained in the proposal in order to better match the current part 70 provisions at section 70.7(a)(1)(v).

Section 71.7(a)(2) is being adopted without the language in the proposal which would have required permitting authorities to take final action within 12 months after receipt of a complete application for early reductions permits under section 112(i)(5) of the Act because regulatory language addressing this requirement was moved to section 71.4(i)(3). Furthermore, this provision is being adopted without the language in the proposal that would have allowed permitting authorities to delay final action where an applicant fails to provide additional information in a timely manner as requested by the permitting authority, as section 70.7(a)(2) currently does not provide such authority.

A new section 71.7(a)(3) is being promulgated to require the permitting authority to ensure that priority is given to taking action on applications for construction or modification under title I of the Act. This change is made to make part 71 consistent with the corresponding provision in current part 70 at section 70.7(a)(3).

Section 71.7(a)(4) (section 71.7(a)(3) in the proposal) deletes the references in the proposal to the proposed regulatory provisions addressing administrative amendments, *de minimis* permit revisions, and minor permit revisions, and tracks current section 70.7(a)(4) by providing that permitting authorities need not make completeness determinations for applications for minor permit modifications. This change is a result of EPA's basing section 71.7 on the current section 70.7. In addition, sections 71.7(a) (5) and (6) (sections 71.7(a) (4) and (5) in the proposal) are renumbered in order to track existing sections 70.7(a) (5) and (6).

The proposal contained a provision at proposed section 71.7(a)(6) addressing how draft and final permits may be issued with respect to applicable requirements that are approved or promulgated by EPA during the permit process. This provision was proposed in the August 1994 proposed revisions to part 70 and is not contained in the current part 70 rule. For the reasons stated above, EPA is not yet prepared to adopt it into part 71, and so is deleting the proposed provision from today's final rule.

2. Requirement To Apply for a Permit

One commenter suggested revising 71.7(b) regarding the application shield to say that the permitting authority must set a reasonable deadline for the submission of additional information, and commented that EPA should not be able to request information that is "needed to process the application" but only that which is "reasonable and necessary to issue the permit". The Agency disagrees that the regulation should set a specific deadline for the submission of additional information because the determination of what is a reasonable time will vary depending on the information requested. Also, EPA disagrees that there is a distinction between information needed to process the application and information that is reasonable and necessary to issue the permit.

One commenter suggested revising section 71.7(b) to allow sources to operate subsequent to submission of a complete, but late, application or application for renewal. The Agency believes that extending an application shield to sources that fail to submit timely applications is inconsistent with the Act. The proposal for part 70 contained a provision that would have provided a grace period of up to three months to submit applications after the required submittal date. The EPA deleted this provision from the final part 70 rule because extending the application shield to sources that did not submit a timely application would have been inconsistent with section 503(c) of the Act. The Agency is promulgating section 71.7(b) to closely track the corresponding provision at current section 70.7(b). Consequently, the references in proposed section 71.7(b) to the proposed provisions addressing administrative amendments, de minimis permit revisions, and minor permit revisions have been deleted and replaced by references to provisions addressing section 502(b)(10) changes and minor permit modifications. In addition, the proposal's reference to section 71.7(a)(3) has been replaced with a reference to section 71.7(a)(4), due to the restructuring of section 71.7(a).

3. Permit Renewal and Expiration

Section 71.7(c) is being promulgated to more closely match the corresponding provision under current section 70.7(c) than did the proposal. The references in proposed section 71.7(c)(2) to proposed sections 71.5(b) and 71.5(c) have been replaced by a reference to section 71.5(a)(1)(iii), due to the restructuring of section 71.5. Moreover, section 71.7(c)(2) (section 71.7(c)(3) in the proposal) is being promulgated without the language that would have provided that, where the permitting authority fails to act on a timely renewal application before the end of the term of title V permit, the permit shall remain in effect until the permitting authority does take final action. Instead that language (which is based upon the existing section 70.4(b)(10) of the current part 70 rule) is being promulgated at section 71.7(c)(3).

4. Permit Revisions

Commenters remarked that the Federal title V permit program as proposed in April 1995 would establish a new, added layer of permitting which would add unacceptably to the amount of time needed before a source could implement process changes. They suggested that even though the April 1995 permit revision tracks attempt to build on existing preconstruction programs, they still pose substantial new requirements (e.g., new criteria for adequate prior review in NSR). These commenters opined that if EPA believes that insufficient public review is afforded by existing programs, the Agency should address those shortcomings, not start a new process. Another commenter suggested that clerical changes should be handled through notification of the change by an amendment letter to the permitting authority that would then be attached to the permit without any EPA review until permit renewal. The commenter further suggested that all minor source changes which do not violate any permit term and do not render the source newly subject to an applicable requirement should be allowed to follow this amendment procedure. Other commenters opined that the April 1995 proposed four track permit revision procedures were fundamentally flawed and must be replaced with simpler procedures. One commenter suggested that EPA Regions, not just delegated States, should be authorized to conduct "merged processing" to add NSR or section 112(g) terms to title V permits, if such processing is retained in the final rule. Some suggested that EPA promote consistency between part 70 and part 71 permit programs to reduce confusion for sources that have to make a transition between different regulatory programs.

In light of these and other comments, EPA proposed in August 1995 a revised permit revision process, developed with extensive stakeholder input, which proposes several ways of streamlining permit revisions, particularly for those changes subject to prior State review (e.g., NSR changes). In the interim, as discussed earlier in this preamble, rather than adopting the four-track permit revision system that the Agency proposed for part 71 on April 25, 1995, the EPA has decided to adopt, for the first phase of part 71, the permit revision system in the current (July 1992) part 70 rule. Current part 70 provides three ways to revise a permit: the administrative amendment process, the minor permit modification process and the significant permit modification process. The specific regulatory changes to proposed part 71 taken to adopt these procedures are described below.

One commenter requested that EPA not follow the approach to "title I Modification" in the August 1994 proposed revisions to part 70 in defining the term for part 71. In implementing the current part 70 permit revision procedures during the interim period, EPA would apply the interpretation of "title I modifications" that States are allowed to apply under the current part 70 rule. Under this interpretation, minor NSR actions may be incorporated into the title V permit using the minor permit modification procedures of current part 70, or alternatively, may be made as off-permit changes if they are eligible.

a. *Rationale for Providing Interim Permit Revision Procedures.* The proposal indicated that due to the ongoing discussions with stakeholders regarding permit revision procedures under title V, EPA was considering finalizing part 71 in the interim without provisions for permit revision procedures. Several commenters suggested that EPA not finalize any portion of part 71 until permit revision procedures are finalized because they will influence how sources design their initial permit applications. The commenters argued that sources will need the ability to obtain expeditious revisions to permits, and that there is thus a need for provisions governing modifications. As discussed previously, EPA has decided to include the permit revision procedures of current part 70 in

this interim part 71 rule, while reserving the right to adopt procedures based upon future changes to part 70, when part 70 revisions are promulgated and Phase II of this rule is completed.

The EPA agrees with commenters that including current part 70 revision procedures is most appropriate for several reasons. First, EPA believes that it is premature to adopt the procedures proposed in April 1995 for part 71, or in August 1995 for part 70, because both of these proposals involve outstanding issues. Although the August 1995 proposal contains the latest thinking on streamlined permit revision procedures, it would be inappropriate to rush to promulgate a proposed system before the Agency has taken time to consider comments on the August 1995 proposal and arrive at a final position. In the meantime, the Agency has at its disposal the permit procedures of the current part 70 rule under which the Agency continues to approve State programs.

Second, industry commenters note that a clear understanding of permit revision procedures is important as sources prepare their part 71 permit applications. The revision procedures of part 70 are more clearly understood than any proposed procedures, having been promulgated by EPA and adopted by many State programs. Third, adopting the existing part 70 permit revision procedures insures a smooth transition from a Federal operating permits program to a State program due to the similarity between the two programs.

Finally, the Agency does not believe that many permit revisions will occur during Phase I of this program. The timing of permit issuance under part 71 is such that the Agency believes that few part 71 permits will be issued and fewer will need to be revised before States receive part 70 approval or before Phase II of part 71 is promulgated. Permit revision procedures in Phase I of the part 71 rule become more essential the longer part 71 programs are in place without a Phase II rule, which is possible if the Phase II rulemaking is delayed.

b. *Description of Permit Revision Procedures.* The part 71 proposal addressed permit revisions at proposed sections 71.7(d)–(h) using proposed provisions from the August 1994 part 70 notice. Proposed section 71.7(d) would have defined when a permit revision is necessary; proposed section 71.7(e) would have addressed administrative amendments; proposed sections 71.7 (f) and (g) would have addressed de minimis permit revisions and minor permit revisions, respectively; and proposed section 71.7(h) would have covered significant permit revisions. All of these provisions have been deleted in today's rule, and replaced with new provisions at sections 71.7 (d) and (e) that track the corresponding provisions in the current part 70 rule governing administrative amendments, minor permit modifications, and significant permit modifications. The EPA directs interested persons to the preamble to the final part 70 rule, 57 FR 32250 (July 21, 1992) for a detailed description of these permit revision procedures.

Under section 71.7(d), changes eligible to be processed as administrative amendments include administrative changes such as correction of typographical errors, changes in mailing address, ownership of the source (or part of the source) unless restricted by title IV, contact persons, and changes in individuals who have assigned responsibilities, (including the responsibility to sign permit applications). Administrative permit amendments can be handled by direct correspondence from the permitting authority to the facility after the appropriate information related to the changes has been supplied by the facility. As under current part 70, administrative amendments could also be used to address "enhanced NSR" changes, to which the permitting authority could also extend the permit shield. Sections 71.7(e) (1) and (2), which address minor permit modification procedures, are designed for small changes at a facility which will not involve complicated regulatory determinations. A source may make a change immediately upon filing an application for a minor permit modification, prior to the time the permitting authority, affected States, and EPA (in the case of a program delegated pursuant to section 71.10) review the application. Eligible changes could be processed individually or in groups, but the permit shield may not extend to these changes. Section 71.7(e)(3) covers significant modifications. In this track, the public, the permitting authority, affected States, and EPA (in the case of a program delegated pursuant to section 71.10) will review the modification in the same manner as review during permit issuance. The permit shield may extend to changes processed under this track.

5. Permit Reopenings

The proposal addressed permit reopenings at proposed 71.7 (i) and (j). These provisions were modeled on the existing provisions at section 70.7 (f) and (g), as proposed to be revised in the August 1994 notice. One of the features of that approach was a specific provision for reopening permits to incorporate new maximum achievable control technology (MACT) standards promulgated under section 112 of the Act. As part 70 has not yet been finally revised to adopt this approach, it is premature at this time to adopt it for part 71. Consequently, in order to more closely track the current part 70 rule and promote consistency with State programs developed and approved under the current rule, the part 71 provisions for permit reopenings adopted today at sections 71.7 (f) and (g) are modeled on the existing provisions at sections 70.7 (f) and (g), and do not include the proposed provisions concerning reopening permits to incorporate new MACT standards.

G. Section 71.8—Affected State Review

The provisions of section 71.8 differ from provisions proposed in the part 71 proposal in several respects. First, because today's rulemaking adopts permit revision procedures based on the current part 70 rule, rather than those that were proposed in April, the cross references to section 71.7 were changed and the reference to de minimis permit revisions has been deleted. In addition, the final rule specifically provides, consistent with part 70, that timing of notice to affected States of major permit modifications is not tied to the timing of notice to the public.

Second, section 71.8(b) is being adopted to more consistently follow section 70.8(b)(2) in providing that where EPA delegates administration of a part 71 program, the permitting authority shall transmit notice of refusal to accept recommendations of an affected State as part of the permitting authority's submittal of the proposed permit to EPA.

Third, as discussed in section III.B of this document, a new paragraph (d) has been added to section 71.8 that requires that part 71 permitting authorities provide notice of certain permitting actions to federally recognized Indian Tribes. While this is a departure from what part 70 currently requires of State permitting authorities, EPA agrees with commenters who suggested that federally recognized Indian Tribes should not be required to establish compliance with any eligibility criteria in order to be entitled to notice of Federal permitting decisions that may affect Tribal air quality. One commenter suggested that applying for treatment in the same manner as a State was a time consuming and burdensome process for Indian Tribes and urged the elimination of that requirement for Tribes to receive notice of permitting actions. Consistent with the Agency's policy of maintaining government-to-government relationships with Indian Tribes, EPA (and delegate agencies) will notify federally recognized Indian Tribes of draft permits that may be issued to sources that could affect Tribal air quality, including all draft permits issued by EPA for the Tribal area and all draft permits for sources that are within 50 miles of the reservation boundary or the Tribal area. Accordingly, the Agency has added a new paragraph that provides that the part 71 permitting authority shall send notices of draft permits to federally recognized Indian Tribes whose air quality may be affected by the permitting action. The EPA is imposing upon itself this responsibility in order to further its government-to-government relationship with Tribes.

H. Section 71.9—Permit Fees

1. Two-Phase Promulgation of Fee Requirements

Consistent with the two-phased approach to part 71 promulgation described in this notice, EPA is today adopting a two-phased approach to part 71 fee requirements. Upon Phase I promulgation, collection of fees should be sufficient to cover the anticipated program costs of Phase I. On the other hand, because the cost of Phase II is tied to procedures which will not be finalized until the Phase II rulemaking (i.e., revised and streamlined permit revision procedures), a fee amount for Phase II cannot be finalized in today's rule. Thus, the Phase I fee covers all program costs except those associated with permit revisions which are excluded because the Phase II rulemaking will finalize streamlined permit revision procedures that will ultimately differ substantially from those contained in today's rule. Instead, the Phase II rulemaking will add to the fee the costs for the new permit revision procedures when they are finalized. More information on the determination of specific activities and costs associated with each phase is contained in the document entitled "Federal Operating Permits Program Costs and Fee Analysis (Revised)," which is contained in the docket for this rulemaking.

The two-phased approach to fee requirements will not impact the ultimate fee amount owed by a source. For the majority of sources, EPA expects that the part 71 application and associated fee submittal will occur after the Phase II rulemaking. For these sources, the fee will be paid all at once. Sources that submit their applications prior to the Phase II rulemaking will pay a Phase I fee in full at the time of application. The balance of the fee necessary to cover the costs of the Phase II provisions will be collected once the Phase II rule is promulgated. The specific timing and amount of the Phase II fee collection will be discussed in the Phase II rulemaking.

The EPA fully expects that the Phase II rulemaking finalizing permit revision procedures will be completed before any part 71 permits are issued and that no program costs will be incurred in the interim period as a result of permit revisions. However, EPA recognizes that in the unlikely event that a part 71 permit is both issued and revised (under the interim revision procedures in today's rule) fees will not have yet been collected to cover the cost of the revision and that if the Phase II fee is finalized based on a streamlined permit revision process, there may be a shortfall in revenue. However, the alternative would be to finalize today a Phase I fee based on the interim revision procedures that potentially overcharges sources and would necessitate, if and when the permit revision procedures are streamlined as expected, a refund. The EPA wishes to avoid this unnecessary and burdensome process.

2. Fee Amount

The part 71 proposal proposed a base fee amount of $45 per ton/year which was based on a fee analysis which projected EPA's direct and indirect costs for implementing the part 71 program nationwide and dividing that by the total emissions subject to the fee. A detailed discussion of this methodology is found in "Federal Operating Permits Program Costs and Fee Analysis," which is contained in the docket for this rulemaking. Using the same basic methodology as the original fee analysis, EPA has calculated the costs of Phase I and has set the base Phase I fee amount at $32 per ton/year to cover these costs. The determination of this amount is contained in the report entitled, "Federal Operating Permits Program Costs and Fee Analysis (Revised)" (hereafter "Revised Fee Analysis"), which is contained in the docket for this rulemaking. As proposed, the fee will be adjusted based on the level of contractor support needed for those programs where it is necessary for EPA to use contractors.

One commenter suggested that the $3 per ton surcharge to cover EPA oversight of contractor and delegated programs should be eliminated, noting that EPA does not charge oversight fees for State part 70 programs. The EPA agrees and believes that such a surcharge would be inconsistent with the approach taken in part 70. A full evaluation of the April 1995 comments was made after the development of the August 1995 proposal, in which EPA proposed to eliminate the surcharge. This evaluation of comments confirmed the direction EPA took in the August 1995 proposal. Therefore, today's action both responds to the April comments and is consistent with the August 1995 proposal. Accordingly, EPA is today deleting the surcharge provisions from sections 71.9(c)(2) and (3). The EPA will continue to consider any comments received on the supplemental proposal, and, if necessary, will take any additional action on the surcharge in the Phase II rulemaking.

For reasons similar to those described in the preceding paragraphs on the surcharge, the EPA is deleting "preparing generally applicable guidance regarding the permit program or its implementation or enforcement" from the list of activities in section 71.9(b) whose costs are subject to fees. The EPA believes that this category partially duplicates the fourth category under section 71.9(b), general administrative costs. To the extent that it is not duplicative, it refers to guidance that is issued before an individual part 71 program is in place. The EPA does not require that States charge fees for these activities for part 70 programs, and the Agency does not believe that such costs should be included in part 71 fees. This change does not result in a change in the fee structure because costs of activities which occur before the effective date of the part 71 program were not included in the original fee analysis. This change simply adjusts the list of activities in section 71.9(b) to more accurately reflect the activities whose costs were included in the fee analysis. Consistent with the deletion of the surcharge, the EPA is taking this action based on comments received on the part 71 proposal. If adverse public comment is received regarding this change as proposed in the August 1995 supplemental proposal, the EPA will take additional action as necessary in the Phase II rulemaking.

3. Fees for Delegated Programs

As discussed in the part 71 proposal, EPA intends to allow delegation of part 71 programs to States in many cases. Originally, EPA envisioned funding these delegated part 71 programs with revenue generated from part 71 fees. However, EPA is aware that many delegate agencies have the authority under State or local law to collect fees adequate to fund delegated part 71 programs. In some cases, these agencies could continue to collect fees even

though EPA would be collecting part 71 fees. Several commenters pointed out that this would result in the undesirable situation of paying fees to two permitting authorities. On the other hand, one commenter noted that if a delegate agency, in deference to part 71, rescinds its authority to collect fees, funding for the Small Business Assistance Program (SBAP) in that State could be adversely affected.

The EPA believes that the best way to address both of these situations is to suspend collection of part 71 fees for part 71 programs which are fully delegated to States and for which the State has adequate authority under State law to fund fully-delegated part 71 activities with fees collected from part 71 sources. This ensures that State revenue is available to administer the program, including the SBAP, while addressing the commenters' concerns about double fees. However, EPA cannot suspend fee collection for partially delegated part 71 programs, since in those situations EPA will still incur substantial administrative costs. Suspension of EPA fee collection does not constitute approval of the State's fee structure for part 70 purposes. Rule language codifying this approach has been added to section 71.9(c)(2).

The suspension of part 71 fees for delegated programs was proposed in the August 1995 supplemental proposal. While the timing of today's promulgation has not allowed thorough evaluation of comments on that proposal, the EPA agrees with the concerns about duplicate fees and the SBAP which were raised in reference to the part 71 proposal. A full evaluation of these comments was made after the development of the August 1995 proposal on this issue. This evaluation confirmed the direction EPA had taken in the August 1995 proposal. Therefore, today's action both responds to the April comments and is consistent with the August proposal. Furthermore, today's action is consistent with EPA's position that its fees be based on program costs, because EPA will not incur any program costs after it fully delegates a part 71 program. The EPA will still evaluate all comments received on the August 1995 proposal and will take any necessary additional regulatory action on the suspension of part 71 fees for delegated programs in the Phase II rulemaking.

For part 71 programs that are delegated but for which EPA does not waive fee collection, EPA's policy will be to continue to collect part 71 fees itself. The proposed fee amount for part 71 programs was based on the assumption that certain activities would be more costly for EPA to implement than for States due to increased travel, unfamiliarity with individual sources, etc. However, commenters pointed out that when a program is delegated, this assumption is not applicable. The EPA agrees with this comment, and is today promulgating language establishing a lower part 71 fee for delegated programs which omits the increased cost assumption made for EPA-administered part 71 programs. Where EPA continues to collect part 71 fees for a fully-delegated program, the Phase I part 71 fee amount will be $24 per ton/year. The determination of this amount is contained in the Revised Fee Analysis. Furthermore, for partially delegated programs, the part 71 fee that EPA collects will be lower than the fee for an EPA-administered program because the fee will be adjusted to account for the proportion of effort performed by the delegate agency at a lower cost. For these programs, the Administrator will determine the fee according to the formula in section 71.9(c)(4).

4. Timing of Fee Payment

The part 71 proposal provided that sources submitting their initial fee calculation worksheets must pay one-third of the initial fee upon submittal, and must pay the balance of the fee within 4 months. However, EPA believes that two changes discussed in today's preamble make this installment approach to fee payment infeasible. First, EPA is promulgating a later due date for permit applications, which would mean that under the proposed installment approach, receipt of two-thirds of the fee revenues would be delayed until the end of the first year of the program, which would not provide adequate funding for initial program activities. Second, EPA is promulgating a two-phased approach to fee collection. The EPA believes that it would be unnecessarily complicated and potentially confusing to provide for installment payment of the fee for one or both phases. For these reasons, EPA is promulgating language at section 71.9(e)(1) which clarifies that payment of the full fee amount for the first year is due upon submittal of the initial fee calculation worksheet.

In addition, because today's rule changes the due date for permit applications, a change must also be made to the deadlines for the initial part 71 fee calculation worksheets in the event that EPA withdraws approval of a part 70 program. The proposal contained a schedule for submission of the fee calculation worksheet based on SIC code. The due dates ranged from 4 to 7 months after the effective date of the part 71 program. Changes to section 71.9(f)(1) adjust the fee calculation worksheet due dates to range from 6 to 9 months after the part 71 effective date, depending on SIC code.

5. Computation of Emissions Subject to Fees

A commenter pointed out that the rule language in proposed section 71.9(c)(5)(ii) inadvertently limits the 4000 ton cap on emissions subject to fees solely to programs administered by EPA, not delegated or contractor-administered programs. Accordingly, the EPA has amended this paragraph to clarify that the 4000 ton cap applies to all types of part 71 programs.

6. Penalties

The part 71 proposal contained a penalty charge of 50 percent of the fee amount if the fee is not paid within 30 days of the due date. In addition, the proposal assessed a penalty of 50 percent on underpayments with the 50 percent penalty assessed on the amount by which the source underpaid the fee owed. The proposal also provided relief from the penalty for certain underpayments where the source is making an initial fee calculation based on estimated rather than actual emissions. The proposal provided that where the underpayment results from an underestimate of future emissions and where the underpayment does not exceed 20 percent of the fee amount (i.e., where the source pays more than 80 percent of the fee owed), no penalty would be assessed.

Some industry commenters were concerned that establishing a penalty for underpayment for a source that underpays by as little as 20 percent would be too harsh in light of the uncertainty in making emissions estimates. Although title V requires a penalty to be assessed for failure to pay any fee lawfully imposed by the Administrator, the EPA agrees that there is a degree of uncertainty in estimating emissions, particularly for HAP sources, which are often smaller, and for which emission factors are not well-defined.

Upon consideration of comments and evaluation of the relative uncertainty of emission estimates for HAP listed pursuant to section 112(b) of the Act, the EPA is today promulgating in section 71.9(l)(4) an underpayment penalty which differs slightly from the proposal. For sources who base their initial fee calculation worksheet on estimated rather than actual emissions, the EPA will, for HAP emissions, apply the penalty to an underpayment of 50 percent or more. The penalty will still apply to an underpayment of 20 percent or more for non-HAP emissions. If a source is subject to fees for both HAP and non-HAP emissions, the underpayment which would trigger a penalty will be prorated based on what portion of the source's emissions are HAP versus non-HAP. Thus, to determine whether an underpayment would incur a penalty, such a source's HAP emissions would be multiplied by the 50 percent rate, and its non-HAP emissions would be multiplied by the 20 percent rate. The sum of these emissions rates determines the level of underpayment which, if exceeded, would incur the underpayment penalty. The EPA believes that this approach offers significant relief to sources faced with difficulty in accurately estimating their emissions, while still ensuring that adequate fee revenues can be collected in a fair and timely manner.

7. Certification Requirement

The EPA believes that the correct interpretation of the part 71 certification requirement at section 71.5(d) is that it applies to all fee calculation documents. However, for clarity, EPA is today adding a requirement to sections 71.9(e) and (h) which requires certification of the fee calculation worksheets by a responsible official. The added language in section 71.9 is simply a cross reference to the language in section 71.5(d).

I. Section 71.10—Delegation of Part 71 Program

1. Delegation of Authority Agreement

With respect to the content of Delegation of Authority Agreements, EPA wishes to clarify that the adequacy of State permit fees must be addressed when EPA waives collection of part 71 permit fees. As described in section III.F.3 of this preamble, when EPA has determined that a delegate agency has raised adequate fee revenue from sources subject to title V to administer a fully-delegated part 71 program absent any financial assistance from EPA, then EPA will waive collection of part 71 fees. In such a case, the Delegation of Authority Agreement would specify that the delegate agency has sufficient revenue and will collect sufficient revenue from sources subject to title V to administer all of its duties as outlined in the Agreement. The EPA will not waive fees when the part 71 program is partially delegated or when the delegate agency lacks sufficient revenue to fund the delegated part 71 program.

2. Appeal of Permits

The Agency has revised proposed section 71.10(i), which addresses the petition process for permits issued by delegate agencies. In lieu of restating which persons and parties may submit petitions to the Environmental Appeal Board pursuant to section 71.11(l)(1), section 71.10(i) provides that the appeals of permits under delegated program shall follow the procedures of section 71.11(l)(1).

3. Transmission of Information to EPA, Prohibition of Default Issuance, and EPA Objections

The final rule also makes certain changes to the proposed provisions addressing transmission of information to the Administrator, the prohibition of default issuance of permits, and EPA objections to proposed permits at sections 71.10(d), (f) and (g). Essentially, these changes are being made today in order to better harmonize the final rule with corresponding provisions in the currently promulgated part 70 rule at 70.8(a), (c) and (e). Regarding transmission of information to EPA, the reference in proposed section 71.10(d)(1) to proposed section 71.7(a)(1)(v) has been rewritten, and proposed paragraphs (2) and (3) have been merged into it in order to more closely track part 70. New paragraph (2) has been adopted in order to achieve consistency with section 70.8(a)(2).

The provision on prohibition of default issuance has been changed to follow the existing provision at section 70.8(e). In proposed section 71.10(f)(2), EPA had provided that the prohibition would not apply to permit revisions processed through the proposed de minimis permit revision track, following the August 1994 proposed revisions to part 70. As that track is not being adopted in this Phase I rule, the exception has been deleted.

Finally, section 71.10(g) on EPA objections has been changed from the proposal in order to follow the test established under the current part 70 rule for when EPA would object to proposed permits, and to follow the promulgated part 70 language providing for what shall happen when a permitting authority refuses to respond adequately to an EPA objection. This change includes deletion of the proposed reference to proposed section 71.7(a)(6), which is not being adopted as proposed in this final rule.

J. Section 71.11—Administrative Record, Public Participation, and Administrative Review

The Agency has chosen to establish part 71-specific rules in today's promulgated section 71.11 for administrative procedures in order to clarify for the public and the regulated community those requirements associated specifically with Federal operating permits under title V of the Act. Today's promulgated section 71.11 is based closely on the provisions of 40 CFR part 124. Part 124 covers a number of EPA permitting programs, and the process of identifying the separate and distinct requirements associated with those individual programs can be complex. The Agency feels that it is advantageous in this case to describe the administrative procedures for today's promulgated part 71 within the rule itself, since that will avoid potential confusion as to which provisions of part 124 apply to the part 71 program, and since interested parties will not be required to refer to separate regulations in discerning applicable administrative procedures.

Certain aspects of section 71.11 that would correspond to proposed streamlined part 71 permit revision processes discussed in the preamble to the supplemental part 70 and 71 proposed rules published on August 31, 1995 (60 FR 45529), are not addressed in today's notice because the Agency is not yet prepared to conduct final rulemaking for those processes. In the meantime, EPA is promulgating permit revision processes based on the current part 70 rule in response to numerous comments on the proposed part 71.

To accommodate basing part 71's permit revision procedures on the existing part 70 rule, today's notice makes certain changes to the regulatory language of section 71.11 as proposed on April 27, 1995 (60 FR 20804) in order to apply administrative procedures to the permit revision tracks as appropriate. Changes to the regulatory language that make reference to permit revision procedures were made in the first paragraph of section 71.11 and in section 71.11(l)(1). These sections make reference to specific types of permit revisions which in this promulgated rule are those permit revision procedures found in 40 CFR part 70, rather than the four-track permit revision procedures in the April 27, 1995 proposed part 71. Section 71.11(l)(1) describes the 30-day period within which a person may request review of a final permit decision. For significant modifications, the 30-day period begins with the service of notice of the permitting authority's action. This is unchanged from the proposal. For minor permit modifications and administrative amendments, the 30-day period begins on the date the minor permit modification or administrative amendment is effective.

Section 71.11(d)(3)(i)(D) has been modified in response to comments

received which noted that under the proposal a requirement to notify any unit of local government having jurisdiction over the area where a source is located would result in notices to components of government which have no relationship to air quality and its impacts. Promulgated section 71.11(d)(3)(i)(D) stipulates that the local emergency planning committee (not "any" unit of local government) and State agencies having authority under State law with respect to the operation of the source are among the entities to receive a copy of notices of activities described in section 71.11(d)(1)(i).

Additional changes to the regulatory language of section 71.11 relate to treatment of a final permit decision as enforceable and effective where review by the EAB has been requested. In proposed sections 71.11(i)(2) and 71.11(l)(6), the Agency proposed that a final permit decision would become effective immediately upon issuance of that decision unless a later effective date were specified in the decision. It was pointed out by several commenters that, in other EPA permitting programs, such as the Resource Conservation and Recovery Act and PSD programs, an appeal request stays the effectiveness of a final permit decision. See 40 CFR section 124.15(b)(2). The EPA agrees that it would be unfair to force permittees to comply with permit terms during the time that they are subject to appeal, and that the proposal was inappropriately inconsistent with part 124 on this point. Thus, sections 71.11(i)(2) and 71.11(l)(6) have been promulgated to conform to the longstanding Agency approach reflected in 40 CFR section 124.15, so that permittees are not unfairly required to comply with permit terms pending their review by the EAB. Under the final rule, those specific permit terms and conditions that are the subject of an appeal to EAB would be stayed, while the rest of the permit would become effective as otherwise provided in section 71.11(i)(2). Moreover, section 71.11 (i)(2) itself has been changed so that it better tracks part 124, which makes final permit issuance decisions immediately effective only where no comments requested a change in the draft permit; otherwise, permits are effective than sooner than 30 days after the issuance decision or following the conclusion of appeal proceedings, as applicable.

In response to comments which expressed concern that applicants should be able to appeal a final permit decision even in the absence of having commented on a draft permit, the Agency believes that applicants can appeal if the final permit differs from the draft permit, even if the applicant did not submit comments on the draft permit. The Agency does not believe it would be appropriate to allow applicants to appeal where the final permit is identical to the draft permit, and the applicant had not commented on the draft permit. It is a far more efficient use of resources to resolve permitting issues in the administrative issuance process, rather than to allow applicants to raise issues on draft permits for the first time on appeal. To further clarify the ability of the applicant to appeal a final permit, the following language has been added to section 71.11(l)(1): "or other new grounds that were not reasonably foreseeable during the public comment period on the draft permit".

Section 71.11(l)(6) has been added, incorporating language from 40 CFR part 124. Part 124 establishes general procedures clarifying the rules to which appellants are subject in all permit programs under part 124, and therefore EPA believes it is appropriate to extend these provisions to part 71 as well. This section outlines procedures for motions for reconsideration of appeals of final orders. It stipulates a 10 day deadline for motions, and notes that motions are to be directed to the EAB, unless the case had been referred to the Administrator by the Board, and in which the Administrator had issued the final order. The effective date of the final order is not stayed unless specifically so ordered by the Board.

One commenter suggested that the proposal's requirement of a right to appeal every permit decision would be overly burdensome, commenting that even de minimis revisions would be subject to appeal. The EPA notes that final part 71 permitting actions are final actions for purposes of judicial review under section 307(b)(1) of the Act. Consequently, EPA does not have the discretion to eliminate the opportunity for judicial review of final part 71 permitting actions. Moreover, EPA disagrees that requiring administrative appeal to the EAB as a prerequisite to judicial review is either redundant or jeopardizes a source's ability to rely on its permit. Requiring administrative exhaustion of remedies is longstanding practice in EPA permit programs, and EPA notes that States with approved part 70 programs generally require administrative appeal as a prerequisite to challenging permits in State court. Also, in requiring administrative exhaustion, litigation in Federal court over permit actions will often be avoided, thus conserving both public and private resources. Finally, since pending administrative appeal sources will be able to rely on the application shield, they will not be placed in any greater "jeopardy" than if they had directly appealed the final permit to Federal court.

Changes have been made to section 71.11(n) to replace the term "Administrator" with "permitting authority," to allow for those circumstances where a State has been delegated a part 71 program by EPA.

IV. Administrative Requirements

A. Docket

The docket for this regulatory action is A–93–51. All the documents referenced in this preamble fall into one of two categories. They are either reference materials that are considered to be generally available to the public, or they are memoranda and reports prepared specifically for this rulemaking. Both types of documents can be found in Docket No. A–93–51.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan program or the rights and obligation of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant" regulatory action. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The EPA has estimated the annualized cost of the part 71 program based on the number of sources that would be subject to part 71 permitting requirements in the 8 States where EPA believes the program will be implemented. A survey of those States showed that the number of part 71 sources in those States (many of which are not heavily industrialized) is much smaller than EPA's original estimates. The EPA had previously assumed that part 71 sources in 8 States would comprise 16 percent of all title V sources. However, in the States where EPA is likely to administer a part 71 program, the part 71 source population comprises slightly less than 6 percent of all title V sources. The estimated annualized cost of implementing the part 71 program is $19.8 million to the Federal government and $18.1 million to respondents, for a total of $37.9 million which reflects industry's total expected costs of complying with the program. Since any costs incurred by the Agency in administering a program would be recaptured through fees imposed on sources, the true cost to the Federal government is zero. The requirements for the costs result from section 502(d) of title V which mandates that EPA develop a Federal operating permits program. The draft regulatory impact analysis (RIA) was made available for public comment as part of the April 27, 1995 proposal. The primary difference between the current RIA and the prior draft is that the RIA now assesses impacts based on the streamlined permit revision procedures that were proposed for part 70 and 71 in August of 1995, in lieu of the more cumbersome 4-track permit revision procedure that was contained in the part 71 proposal. The proposed program is designed to improve air quality by: indirectly improving the quality of State-administered operating permits programs; encouraging the adoption of lower cost control strategies based on economic incentive approaches; improving the effectiveness of enforcement and oversight of source compliance; facilitating the implementation of other titles of the Act, such as title I; and improving the quality of emissions data and other source-related data.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601) requires EPA to consider potential impacts of proposed regulations on small entities. If a preliminary analysis indicates that a proposed regulation would have a significant adverse economic impact on a substantial number of small entities, then a regulatory flexibility analysis must be prepared.

The original part 70 rule and the recently proposed revisions to part 70 were determined to not have a significant adverse impact on small entities. *See* 57 FR 32250, 32294 (July 21, 1992), and 60 FR 45530, 45563 (Aug. 31, 1995). Similarly, a regulatory flexibility screening analysis of the part 71 rule revealed that the rule would not have a significant adverse impact on a substantial number of small entities, since few small entities would be subject to part 71 permitting requirements as a result of the rule's deferral of the requirement to obtain a permit for nonmajor sources.

Consequently, I hereby certify that the part 71 regulations will not have a significant adverse effect on a substantial number of small entities.

D. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq. and has assigned OMB control number 2060–0336.

The information is planned to be collected to enable EPA to carry out its obligations under the Act to determine which sources are subject to the Federal Operating Permits Program and what requirements should be included in permits for sources subject to the program. Responses to the collection of information will be mandatory under section 71.5(a) which requires owners or operators of sources subject to the program to submit a timely and complete permit application and under sections 71.6 (a) and (c) which require that permits include requirements related to recordkeeping and reporting. As provided in 42 U.S.C. 7661b(e), sources may assert a business confidentiality claim for the information collected under section 114(c) of the Act.

The annual average burden on sources for the collection of information is approximately 678,000 hours per year, or 329 hours per source. The annual cost for the collection of information to respondents is $18.1 million per year. The EPA has estimated the annualized costs based on the number of sources that would be subject to part 71 permitting requirements in the 8 States where EPA believes the program will be implemented, most of which have fewer than average number of part 71 sources per State. There is no burden for State and local agencies. The annual cost to the Federal government is $19.8 million (assuming part 71 programs are delegated), which is recovered from sources through permit fees. Thus, the total annual cost to sources would be $37.9 million. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The EPA is amending the table in 40 CFR part 9 of currently approved information collection request (ICR) control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Regulatory Information Division, Office of Policy, Planning, and Evaluation, U.S. Environmental Protection Agency (2136), 401 M Street, S.W., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence.

E. Unfunded Mandates Reform Act

As noted in the ICR document, today's action imposes no costs on State, local and Tribal governments. This is because the EPA incurs all costs in cases where it implements a part 71 program. A State, local, or Tribal government will incur costs where it elects to take delegation of a part 71 program. As noted in the ICR document, EPA expects that, of the estimated eight part 71 programs, States will take delegation of all eight programs. However, the costs of running these delegated programs do not represent costs imposed by today's action. This is because the costs of running a delegated part 71 program are essentially the same

as those of running an approved part 70 program. Furthermore, taking delegation is optional on the part of States. Regardless of whether a State, local, or Tribal agency chooses to take delegation of a part 71 program, the costs to these agencies imposed by this rule over and above the costs of existing part 70 requirements are zero.

Regarding the private sector, the EPA estimates that the total cost of complying with the part 71 program would be $37.9 million per year, assuming that the part 71 program is in effect in 8 States. The estimated costs of collection of information would be $18.1 million per year, and $19.8 million would be collected in fees.

For these reasons, EPA believes that the total direct costs to industry under today's action would not exceed $100 million in any 1 year. Therefore, the Agency concludes that it is not required by Section 202 of the Unfunded Mandates Reform Act of 1995 to provide a written statement to accompany this regulatory action because promulgation of the rule would not result in the expenditure by State, local, and Tribal governments, in the aggregate or by the private sector, of $100,000,000 or more in any 1 year.

F. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

List of Subjects

40 CFR Part 9

Reporting and Recordkeeping Requirements

40 CFR Part 55

Environmental Protection Air pollution control, Outer continental shelf, Operating permits.

40 CFR Part 71

Air pollution control, Prevention of significant deterioration, New source review, Fugitive emissions, Particulate matter, Volatile organic compounds, Nitrogen dioxide, Carbon monoxide, Hydrocarbons, Lead, Operating permits, Indian Tribes, Air pollution control—Tribal authority.

Dated: June 19, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below.

PART 9—[AMENDED]

1. In Part 9:

a. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

b. Section 9.1 is amended by adding the new entries to the table under the indicated heading in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR Citation	OMB control No.
. . . . .	
Federal Operating Permit Programs	
71.5	2060–0336
71.6(a),(e),(d),(g)	2060–0336
71.7	2060–0336
71.9(e)–(l)	2060–0336
. . . . .	

PART 55—[AMENDED]

2. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (Act) (42 U.S.C. 7401, et seq.) as amended by Public Law 101–549.

3. Section 55.6 is amended by adding paragraph (c)(3) to read as follows:

§ 55.6 Permit requirements.

* * * * *

(c) * * *

(3) If the COA does not have an operating permits program approved pursuant to 40 CFR part 70 or if EPA has determined that the COA is not adequately implementing an approved program, the applicable requirements of 40 CFR part 71, the Federal operating permits program, shall apply to the OCS sources. The applicable requirements of 40 CFR part 71 will be implemented and enforced by the Administrator. The Administrator may delegate the authority to implement and enforce all or part of a Federal operating permits program to a State pursuant to § 55.11 of this part.

* * * * *

4. Section 55.10 is amended by revising paragraph (a)(1) and by adding paragraph (b) to read as follows:

§ 55.10 Fees.

(a) * * *

(1) The EPA will calculate and collect operating permit fees from OCS sources in accordance with the requirements of 40 CFR part 71.

* * * * *

(b) The OCS sources located beyond 25 miles of States' seaward boundaries. The EPA will calculate and collect operating permit fees from OCS sources in accordance with the requirements of 40 CFR part 71.

5. Section 55.13 is amended by adding paragraph (f) to read as follows:

§ 55.13 Federal requirements that apply to OCS sources.

* * * * *

(f) 40 CFR part 71 shall apply to OCS sources:

(1) Located within 25 miles of States' seaward boundaries if the requirements of 40 CFR part 71 are in effect in the COA.

(2) Located beyond 25 miles of States' seaward boundaries.

(3) When an operating permits program approved pursuant to 40 CFR part 70 is in effect in the COA and a Federal operating permit is issued to satisfy an EPA objection pursuant to 40 CFR 71.4(e).

* * * * *

PART 71—[AMENDED]

6. The authority citation for part 71 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

7. Subpart A of part 71 consisting of §§ 71.1 through 71.12 is added to read as follows:

Subpart A—Operating Permits

Sec.

71.1 Program overview.
71.2 Definitions.
71.3 Sources subject to permitting requirements.
71.4 Program implementation.
71.5 Permit applications.
71.6 Permit content.
71.7 Permit issuance, renewal, reopenings, and revisions.
71.8 Affected State review.
71.9 Permit fees.
71.10 Delegation of part 71 program.
71.11 Administrative record, public participation, and administrative review.
71.12 Prohibited acts.

Subpart A—Operating Permits

§ 71.1 Program overview.

(a) This part sets forth the comprehensive Federal air quality operating permits permitting program consistent with the requirements of title V of the Act (42 U.S.C. 7401 *et seq.*) and defines the requirements and the corresponding standards and procedures by which the Administrator will issue operating permits. This permitting program is designed to promote timely and efficient implementation of goals and requirements of the Act.

(b) All sources subject to the operating permit requirements of title V and this part shall have a permit to operate that assures compliance by the source with all applicable requirements.

(c) The requirements of this part, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to the permitting of affected sources under the acid rain program, except as provided herein or as modified by title IV of the Act and 40 CFR parts 72 through 78.

(d) Issuance of permits under this part may be coordinated with issuance of permits under the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*) and under the Clean Water Act (33 U.S.C. 1251 *et seq.*), whether issued by the State, the U.S. Environmental Protection Agency (EPA), or the U.S. Army Corps of Engineers.

(e) Nothing in this part shall prevent a State from administering an operating permits program and establishing more stringent requirements not inconsistent with the Act.

§ 71.2 Definitions.

The following definitions apply to part 71. Except as specifically provided in this section, terms used in this part retain the meaning accorded them under the applicable requirements of the Act.

Act means the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

Affected source shall have the meaning given to it in 40 CFR 72.2.

Affected States are:

(1) All States and Tribal areas whose air quality may be affected and that are contiguous to the State or Tribal area in which the permit, permit modification or permit renewal is being proposed; or that are within 50 miles of the permitted source. A Tribe and any associated Tribal area shall be treated as a State under this paragraph (1) only if EPA has determined that the Tribe is an eligible Tribe.

(2) The State or Tribal area in which a part 71 permit, permit modification, or permit renewal is being proposed. A Tribe and any associated Tribal area shall be treated as a State under this paragraph (2) only if EPA has determined that the Tribe is an eligible Tribe.

(3) Those areas within the jurisdiction of the air pollution control agency for the area in which a part 71 permit, permit modification, or permit renewal is being proposed.

Affected unit shall have the meaning given to it in 40 CFR 72.2.

Applicable requirement means all of the following as they apply to emissions units in a part 71 source (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future compliance dates):

(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter;

(2) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act;

(3) Any standard or other requirement under section 111 of the Act, including section 111(d);

(4) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;

(5) Any standard or other requirement of the acid rain program under title IV of the Act or 40 CFR parts 72 through 78;

(6) Any requirements established pursuant to section 114(a)(3) or 504(b) of the Act;

(7) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

(8) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

(9) Any standard or other requirement for tank vessels, under section 183(f) of the Act;

(10) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

(11) Any standard or other requirement of the regulations promulgated at 40 CFR part 82 to protect stratospheric ozone under title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a title V permit; and

(12) Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

Delegate agency means the State air pollution control agency, local agency, other State agency, Tribal agency, or other agency authorized by the Administrator pursuant to § 71.10 to carry out all or part of a permit program under part 71.

Designated representative shall have the meaning given to it in section 402(26) of the Act and 40 CFR 72.2.

Draft permit means the version of a permit for which the permitting authority offers public participation under § 71.7 or § 71.11 and affected State review under § 71.8.

Eligible Indian Tribe or *eligible Tribe* means a Tribe that has been determined by EPA to meet the criteria for being treated in the same manner as a State, pursuant to the regulations implementing section 301(d)(2) of the Act.

Emissions allowable under the permit means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

Emissions unit means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. This term is not meant to alter or affect the definition of the term "unit" for purposes of title IV of the Act.

EPA or the *Administrator* means the Administrator of the U.S. Environmental Protection Agency (EPA) or his or her designee.

Federal Indian reservation, Indian reservation or *reservation* means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

Final permit means the version of a part 71 permit issued by the permitting

authority that has completed all review procedures required by §§ 71.7, 71.8, and 71.11.

Fugitive emissions are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

General permit means a part 71 permit that meets the requirements of § 71.6(d).

Indian Tribe or *Tribe* means any Indian Tribe, band, nation, or other organized group or community, including any Alaskan native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Major source means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)), belonging to a single major industrial grouping and that are described in paragraph (1), (2), or (3) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(1) A major source under section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tpy or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(2) A major stationary source of air pollutants or any group of stationary sources as defined in section 302 of the Act, that directly emits, or has the potential to emit, 100 tpy or more of any air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);
(ii) Kraft pulp mills;
(iii) Portland cement plants;
(iv) Primary zinc smelters;
(v) Iron and steel mills;
(vi) Primary aluminum ore reduction plants;
(vii) Primary copper smelters;
(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(ix) Hydrofluoric, sulfuric, or nitric acid plants;
(x) Petroleum refineries;
(xi) Lime plants;
(xii) Phosphate rock processing plants;
(xiii) Coke oven batteries;
(xiv) Sulfur recovery plants;
(xv) Carbon black plants (furnace process);
(xvi) Primary lead smelters;
(xvii) Fuel conversion plants;
(xviii) Sintering plants;
(xix) Secondary metal production plants;
(xx) Chemical process plants;
(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(xxiii) Taconite ore processing plants;
(xxiv) Glass fiber processing plants;
(xxv) Charcoal production plants;
(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

(3) A major stationary source as defined in part D of title I of the Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious"; 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph (3)(i) to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f) (1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas:

(A) That are classified as "serious," and

(B) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and

(iv) For particulate matter (PM–10) nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM–10.

Part 70 permit means any permit or group of permits covering a part 70 source that has been issued, renewed, amended or revised pursuant to 40 CFR part 70.

Part 70 program or *State program* means a program approved by the Administrator under 40 CFR part 70.

Part 70 source means any source subject to the permitting requirements of 40 CFR part 70, as provided in §§ 70.3(a) and 70.3(b).

Part 71 permit, or *permit* (unless the context suggests otherwise) means any permit or group of permits covering a part 71 source that has been issued, renewed, amended or revised pursuant to this part.

Part 71 program means a Federal operating permits program under this part.

Part 71 source means any source subject to the permitting requirements of this part, as provided in §§ 71.3(a) and 71.3(b).

Permit modification means a revision to a part 71 permit that meets the requirements of § 71.7(e).

Permit program costs means all reasonable (direct and indirect) costs required to administer an operating permits program, as set forth in § 71.9(b).

Permit revision means any permit modification or administrative permit amendment.

Permitting authority means one of the following:

(1) The Administrator, in the case of EPA-implemented programs;

(2) A delegate agency authorized by the Administrator to carry out a Federal permit program under this part; or

(3) The State air pollution control agency, local agency, other State agency, Indian Tribe, or other agency authorized by the Administrator to carry out a permit program under 40 CFR part 70.

Proposed permit means the version of a permit that the delegate agency proposes to issue and forwards to the Administrator for review in compliance with § 71.10(d).

Regulated air pollutant means the following:

(1) Nitrogen oxides or any volatile organic compounds;

(2) Any pollutant for which a national ambient air quality standard has been promulgated;

(3) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(4) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or

(5) Any pollutant subject to a standard promulgated under section 112 of the Act or other requirements established under section 112 of the Act, including sections 112 (g), (j), and (r) of the Act, including the following:

(i) Any pollutant subject to requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and

(ii) Any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to section 112(g)(2) requirements.

Regulated pollutant (for fee calculation), which is used only for purposes of § 71.9(c), means any regulated air pollutant except the following:

(1) Carbon monoxide;

(2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or

(3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the Act.

Renewal means the process by which a permit is reissued at the end of its term.

Responsible official means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) the delegation of authority to such representative is approved in advance by the permitting authority;

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(3) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(4) For affected sources:

(i) The designated representative insofar as actions, standards, requirements, or prohibitions under title IV of the Act or 40 CFR parts 72 through 78 are concerned; and

(ii) The designated representative for any other purposes under part 71.

Section 502(b)(10) changes are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

State means any non-Federal permitting authority, including any local agency, interstate association, or statewide program. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas Islands. Where such meaning is clear from the context, "State" shall have its conventional meaning. For purposes of the acid rain program, the term "State" shall be limited to authorities within the 48 contiguous States and the District of Columbia as provided in section 402(14) of the Act.

Stationary source means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act.

§ 71.3 Sources Subject to Permitting Requirements.

(a) *Part 71 sources.* The following sources are subject to the permitting requirements under this part:

(1) Any major source;

(2) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the Act;

(3) Any source, including an area source, subject to a standard or other requirement under section 112 of the Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Act;

(4) Any affected source; and

(5) Any source in a source category designated by the Administrator pursuant to this section.

(b) *Source category exemptions.* (1) All sources listed in paragraph (a) of this section that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act are exempted from the obligation to obtain a part 71 permit until such time as the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources and the appropriateness of any permanent exemptions in addition to those provided for in paragraph (b)(4) of this section.

(2) In the case of nonmajor sources subject to a standard or other requirement under either section 111 or 112 of the Act after July 21, 1992 publication, the Administrator will determine whether to exempt any or all such applicable sources from the requirement to obtain a part 70 or part 71 permit at the time that the new standard is promulgated.

(3) Any source listed in paragraph (a) of this section exempt from the requirement to obtain a permit under this section may opt to apply for a permit under a part 71 program.

(4) The following source categories are exempted from the obligation to obtain a part 71 permit:

(i) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 60, Subpart AAA—Standards of Performance for New Residential Wood Heaters; and

(ii) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 61, Subpart M—National Emission Standard for Hazardous Air

Pollutants for Asbestos, § 61.145, Standard for Demolition and Renovation.

(c) *Emissions units and part 71 sources.* (1) For major sources, the permitting authority shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(2) For any nonmajor source subject to the part 71 program under paragraphs (a) or (b) of this section, the permitting authority shall include in the permit all applicable requirements applicable to emissions units that cause the source to be subject to the part 71 program.

(d) *Fugitive emissions.* Fugitive emissions from a part 71 source shall be included in the permit application and the part 71 permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

§ 71.4 Program implementation.

(a) *Part 71 programs for States.* The Administrator will administer and enforce a full or partial operating permits program for a State (excluding Tribal areas) in the following situations:

(1) A program for a State meeting the requirements of part 70 of this chapter has not been granted full approval under § 70.4 of this chapter by the Administrator by July 31, 1996, and the State's part 70 program has not been granted interim approval under § 70.4(d) of this chapter for a period extending beyond July 31, 1996. The effective date of such a part 71 program is July 31, 1996.

(2) An operating permits program for a State which was granted interim approval under § 70.4(d) of this chapter has not been granted full approval by the Administrator by the expiration of the interim approval period or July 31, 1996, whichever is later. Such a part 71 program shall be effective upon expiration of the interim approval or July 31, 1996 whichever is later.

(3) Any partial part 71 program will be effective only in those portions of a State that are not covered by a partial part 70 program that has been granted full or interim approval by the Administrator pursuant to § 70.4(c) of this chapter.

(b) *Part 71 programs for Tribal areas.* The Administrator may administer and enforce an operating permits program for a Tribal area, as defined in § 71.2, or by a rulemaking, when an operating permits program for the area which meets the requirements of part 70 of this chapter has not been granted full or interim approval by the Administrator by July 31, 1996.

(1) [Reserved]

(2) The effective date of a part 71 program for a Tribal area shall be November 15, 1997.

(3) Notwithstanding paragraph (b)(2) of this section, the Administrator, in consultation with the governing body of the Tribal area, may adopt an earlier effective date.

(4) Notwithstanding paragraph (i)(2) of this section, within 2 years of the effective date of the part 71 program for the Tribal area, the Administrator shall take final action on permit applications from part 71 sources that are submitted within the first full year after the effective date of the part 71 program.

(c) *Part 71 programs imposed due to inadequate implementation.* (1) The Administrator will administer and enforce an operating permits program for a permitting authority if the Administrator has notified the permitting authority, in accordance with § 70.10(b)(1) of this chapter, of the Administrator's determination that a permitting authority is not adequately administering or enforcing its approved operating permits program, or any portion thereof, and the permitting authority fails to do either of the following:

(i) Correct the deficiencies within 18 months after the Administrator issues the notice; or

(ii) Take significant action to assure adequate administration and enforcement of the program within 90 days of the Administrator's notice.

(2) The effective date of a part 71 program promulgated in accordance with this paragraph (c) shall be:

(i) Two years after the Administrator's notice if the permitting authority has not corrected the deficiency within 18 months after the date of the Administrator's notice; or

(ii) Such earlier time as the Administrator determines appropriate if the permitting authority fails, within 90 days of the Administrator's notice, to take significant action to assure adequate administration and enforcement of the program.

(d) *Part 71 programs for OCS sources.* (1) Using the procedures of this part, the Administrator will issue permits to any source which is an outer continental shelf (OCS) source, as defined under § 55.2 of this chapter, is subject to the requirements of part 55 of this chapter and section 328(a) of the Act, is subject to the requirement to obtain a permit under title V of the Act, and is either:

(i) Located beyond 25 miles of States' seaward boundaries; or

(ii) Located within 25 miles of States' seaward boundaries and a part 71 program is being administered and enforced by the Administrator for the corresponding onshore area, as defined in § 55.2 of this chapter, for that source.

(2) The requirements of § 71.4(d)(1)(i) shall apply on July 31, 1996.

(3) The requirements of § 71.4(d)(1)(ii) apply upon the effective date of a part 71 program for the corresponding onshore area.

(e) *Part 71 program for permits issued to satisfy an EPA objection.* Using the procedures of this part and 40 CFR 70.8 (c) or (d), or 40 CFR 70.7(g)(4) or (5) (i) and (ii), as appropriate, the Administrator will deny, terminate, revise, revoke or reissue a permit which has been proposed or issued by a permitting authority or will issue a part 71 permit when:

(1) A permitting authority with an approved part 70 operating permits program fails to respond to a timely objection to the issuance of a permit made by the Administrator pursuant to section 505(b) of the Act and § 70.8(c) and (d) of this chapter.

(2) The Administrator, under § 70.7(g) of this chapter, finds that cause exists to reopen a permit and the permitting authority fails to either:

(i) Submit to the Administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate; or

(ii) Resolve any objection EPA makes to the permit which the permitting authority proposes to issue in response to EPA's finding of cause to reopen, and to terminate, revise, or revoke and reissue the permit in accordance with that objection.

(3) The requirements of this paragraph (e) shall apply on July 31, 1996.

(f) *Use of selected provisions of this part.* The Administrator may utilize any or all of the provisions of this part to administer the permitting process for individual sources or take action on individual permits, or may adopt through rulemaking portions of a State or Tribal program in combination with provisions of this part to administer a Federal program for the State or Tribal area in substitution of or addition to the Federal program otherwise required by this part.

(g) *Public notice of part 71 programs.* In taking action to administer and enforce an operating permits program under this part, the Administrator will publish a notice in the **Federal Register** informing the public of such action and the effective date of any part 71 program as set forth in § 71.4 (a), (b), (c), or (d)(1)(ii). The publication of this part in the **Federal Register** on July 1, 1996 serves as the notice for the part 71 permit programs described in § 71.4(d)(1) (i) and (e). The EPA will also publish a notice in the **Federal Register** of any delegation of a portion of the part 71 program to a State, eligible Tribe, or local agency pursuant to the provisions of § 71.10. In addition to notices published in the **Federal Register** under this paragraph (g), the Administrator will, to the extent practicable, publish notice in a newspaper of general circulation within the area subject to the part 71 program effectiveness or delegation, and will send a letter to the Tribal governing body for an Indian Tribe or the Governor (or his or her designee) of the affected area to provide notice of such effectiveness or delegation.

(h) *Effect of limited deficiencies in State or Tribal programs.* The Administrator may administer and enforce a part 71 program in a State or Tribal area even if only limited deficiencies exist either in the initial program submittal for a State or eligible Tribe under part 70 of this chapter or in an existing State or Tribal program that has been approved under part 70 of this chapter.

(i) *Transition plan for initial permit issuance.* If a full or partial part 71 program becomes effective in a State or Tribal area prior to the issuance of part 70 permits to all part 70 sources under an existing program that has been approved under part 70 of this chapter, the Administrator shall take final action on initial permit applications for all part 71 sources in accordance with the following transition plan.

(1) All part 71 sources that have not received part 70 permits shall submit permit applications under this part within 1 year after the effective date of the part 71 program.

(2) Final action shall be taken on at least one-third of such applications annually over a period not to exceed 3 years after such effective date.

(3) Any complete permit application containing an early reduction demonstration under section 112(i)(5) of the Act shall be acted on within 12 months of receipt of the complete application.

(4) Submittal of permit applications and the permitting of affected sources shall occur in accordance with the deadlines in title IV of the Act and 40 CFR parts 72 through 78.

(j) *Delegation of part 71 programs.* The Administrator may promulgate a part 71 program in a State or Tribal area and delegate part of the responsibility for administering the part 71 program to the State or eligible Tribe in accordance with the provisions of § 71.10; however, delegation of a part of a program will not constitute any type of approval of a State or Tribal operating permits program under part 70 of this chapter. Where only selected portions of a part 71 program are administered by the Administrator and the State or eligible Tribe is delegated the remaining portions of the program, the Delegation Agreement referred to in § 71.10 will define the respective roles of the State or eligible Tribe and the Administrator in administering and enforcing the part 71 operating permits program.

(k) *EPA administration and enforcement of part 70 permits.* When the Administrator administers and enforces a part 71 program after a determination and notice under § 70.10(b)(1) of this chapter that a State or Tribe is not adequately administering and enforcing an operating permits program approved under part 70 of this chapter, the Administrator will administer and enforce permits issued under the part 70 program until part 71 permits are issued using the procedures of part 71. Until such time as part 70 permits are replaced by part 71 permits, the Administrator will revise, reopen, revise, terminate, or revoke and reissue part 70 permits using the procedures of part 71 and will assess and collect fees in accordance with the provisions of § 71.9.

(l) *Transition to approved part 70 program.* The Administrator will suspend the issuance of part 71 permits promptly upon publication of notice of approval of a State or Tribal operating permits program that meets the requirements of part 70 of this chapter. The Administrator may retain jurisdiction over the part 71 permits for which the administrative or judicial review process is not complete and will address this issue in the notice of State program approval. After approval of a State or Tribal program and the suspension of issuance of part 71 permits by the Administrator:

(1) The Administrator, or the permitting authority acting as the Administrator's delegated agent, will continue to administer and enforce part 71 permits until they are replaced by permits issued under the approved part 70 program. Until such time as part 71 permits are replaced by part 70 permits, the Administrator will revise, reopen, revise, terminate, or revoke and reissue part 71 permits using the procedures of the part 71 program. However, if the Administrator has delegated authority to administer part 71 permits to a delegate agency, the delegate agency will revise, reopen, terminate, or revoke and reissue part 71 permits using the procedures of the approved part 70 program. If a part 71 permit expires prior to the issuance of a part 70 permit, all terms and conditions of the part 71 permit, including any permit shield that may be granted pursuant to § 71.6(f), shall remain in effect until the part 70 permit is issued or denied, provided that a timely and complete application for a permit renewal was submitted to the permitting authority in accordance with the requirements of the approved part 70 program.

(2) A State or local agency or Indian Tribe with an approved part 70 operating permits program may issue part 70 permits for all sources with part 71 permits in accordance with a permit issuance schedule approved as part of the approved part 70 program or may issue part 70 permits to such sources at the expiration of the part 71 permits.

(m) *Exemption for certain territories.* Upon petition by the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Marianas Islands, the Administrator may exempt any source or class of sources in such territory from the requirement to have a part 71 permit under this chapter. Such an exemption does not exempt such source or class of sources from any requirement of section 112 of the Act, including the requirements of section 112 (g) or (j).

(1) Such exemption may be granted if the Administrator finds that compliance with part 71 is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant. Any such petition shall be considered in accordance with section 307(d) of the Act, and any exemption granted under this paragraph (m) shall be considered final action by the Administrator for the purposes of section 307(b) of the Act.

(2) The Administrator shall promptly notify the Committees on Energy and Commerce and on Interior and Insular Affairs of the House of Representatives and the Committees on Environment and Public Works and on Energy and Natural Resources of the Senate upon receipt of any petition under this paragraph (m) and of the approval or rejection of such petition and the basis for such action.

(n) *Retention of records.* The records for each draft, proposed, and final permit application, renewal, or modification shall be kept by the Administrator for a period of 5 years.

§ 71.5 Permit applications.

(a) *Duty to apply.* For each part 71 source, the owner or operator shall submit a timely and complete permit

application in accordance with this section.

(1) *Timely application.* (i) A timely application for a source which does not have an existing operating permit issued by a State under the State's approved part 70 program and is applying for a part 71 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish. Sources required to submit applications earlier than 12 months after the source becomes subject to the permit program will be notified of the earlier submittal date at least 6 months in advance of the date.

(ii) Part 71 sources required to meet the requirements under section 112(g) of the Act, or to have a permit under the preconstruction review program approved into the applicable implementation plan under part C or D of title I of the Act, shall file a complete application to obtain the part 71 permit or permit revision within 12 months after commencing operation or on or before such earlier date as the permitting authority may establish. Sources required to submit applications earlier than 12 months after the source becomes subject to the permit program will be notified of the earlier submittal date at least 6 months in advance of the date. Where an existing part 70 or 71 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(iii) For purposes of permit renewal, a timely application is one that is submitted at least 6 months but not more that 18 months prior to expiration of the part 70 or 71 permit.

(iv) Applications for initial phase II acid rain permits shall be submitted to the permitting authority by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.

(2) *Complete application.* To be deemed complete, an application must provide all information required pursuant to paragraph (c) of this section, except that applications for permit revision need supply such information only if it is related to the proposed change. To be found complete, an initial or renewal application must remit payment of fees owed under the fee schedule established pursuant to § 71.9(b). Information required under paragraph (c) of this section must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. A responsible official must certify the submitted information consistent with paragraph (d) of this section. Unless the permitting authority determines that an application is not complete within 60 days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in § 71.7(a)(4). If, while processing an application that has been determined or deemed to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in § 71.7(b), shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority.

(3) *Confidential information.* An applicant may assert a business confidentiality claim for information requested by the permitting authority using procedures found at part 2, subpart B of this chapter.

(b) *Duty to supplement or correct application.* Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(c) *Standard application form and required information.* The permitting authority shall provide sources a standard application form or forms. The permitting authority may use discretion in developing application forms that best meet program needs and administrative efficiency. The forms and attachments chosen, however, shall include the elements specified below. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the schedule established pursuant to § 71.9.

(1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

(2) A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(i) All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under this paragraph (c). The permitting authority shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule established pursuant to § 71.9(b).

(ii) Identification and description of all points of emissions described in paragraph (c)(3)(i) of this section in sufficient detail to establish the basis for fees and applicability of requirements of the Act.

(iii) Emissions rates in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

(iv) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(v) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(vi) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the part 71 source.

(vii) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to section 123 of the Act).

(viii) Calculations on which the information in paragraphs (c)(3) (i) through (vii) of this section is based.

(4) The following air pollution control requirements:

(i) Citation and description of all applicable requirements; and

(ii) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of this part or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the permitting authority to define alternative operating scenarios identified by the source pursuant to § 71.6(a)(9) or to define permit terms and conditions implementing § 71.6(a)(10) or § 71.6(a)(13).

(8) A compliance plan for all part 71 sources that contains all the following:

(i) A description of the compliance status of the source with respect to all applicable requirements.

(ii) A description as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(C) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(iii) A compliance schedule as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(C) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(iv) A schedule for submission of certified progress reports no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation.

(v) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under parts 72 through 78 of this chapter with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including the following:

(i) A certification of compliance with all applicable requirements by a responsible official consistent with paragraph (d) of this section and section 114(a)(3) of the Act;

(ii) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(iii) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the permitting authority; and

(iv) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under parts 72 through 78 of this chapter.

(11) *Insignificant activities and emissions levels.* The following types of insignificant activities and emissions levels need not be included in permit applications. However, for insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to calculate the fee amount required under the schedule established pursuant to § 71.9 of this part.

(i) *Insignificant activities:*

(A) Mobile sources;

(B) Air-conditioning units used for human comfort that are not subject to applicable requirements under title VI of the Act and do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;

(C) Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;

(D) Heating units used for human comfort that do not provide heat for any manufacturing or other industrial process;

(E) Noncommercial food preparation;

(F) Consumer use of office equipment and products;

(G) Janitorial services and consumer use of janitorial products; and

(H) Internal combustion engines used for landscaping purposes.

(ii) *Insignificant emissions levels.* Emissions meeting the criteria in paragraph (c)(11)(ii)(A) or (c)(11)(ii)(B) of this section need not be included in the application, but must be listed with sufficient detail to identify the emission unit and indicate that the exemption applies. Similar emission units, including similar capacities or sizes, may be listed under a single description, provided the number of emission units is included in the description. No additional information is required at time of application, but the permitting authority may request additional information during application processing.

(A) *Emission criteria for regulated air pollutants, excluding hazardous air pollutants (HAP).* Potential to emit of regulated air pollutants, excluding HAP, for any single emissions unit shall not exceed 2 tpy.

(B) *Emission criteria for HAP.* Potential to emit of any HAP from any single emissions unit shall not exceed 1,000 lb per year or the de minimis level established under section 112(g) of the Act, whichever is less.

(d) Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

§ 71.6 Permit content.

(a) *Standard permit requirements.* Each permit issued under this part shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

(i) The permit shall specify and reference the origin of and authority for each term or condition, and identify any

difference in form as compared to the applicable requirement upon which the term or condition is based.

(ii) The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of 40 CFR parts 72 through 78, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.

(iii) If an applicable implementation plan allows a determination of an alternative emission limit at a part 71 source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the permitting authority elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) *Permit duration.* The permitting authority shall issue permits for a fixed term of 5 years in the case of affected sources, and for a term not to exceed 5 years in the case of all other sources. Notwithstanding this requirement, the permitting authority shall issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years and shall review such permits at least every 5 years.

(3) *Monitoring and related recordkeeping and reporting requirements.* (i) Each permit shall contain the following requirements with respect to monitoring:

(A) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act;

(B) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to paragraph (a)(3)(iii) of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph (a)(3)(i)(B); and

(C) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(ii) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(A) Records of required monitoring information that include the following:

(*1*) The date, place as defined in the permit, and time of sampling or measurements;

(*2*) The date(s) analyses were performed;

(*3*) The company or entity that performed the analyses;

(*4*) The analytical techniques or methods used;

(*5*) The results of such analyses; and

(*6*) The operating conditions as existing at the time of sampling or measurement;

(B) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(iii) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

(A) Submittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with § 71.5(d).

(B) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. Where the underlying applicable requirement contains a definition of prompt or otherwise specifies a time frame for reporting deviations, that definition or time frame shall govern. Where the underlying applicable requirement fails to address the time frame for reporting deviations, reports of deviations shall be submitted to the permitting authority based on the following schedule:

(*1*) For emissions of a hazardous air pollutant or a toxic air pollutant (as identified in an applicable regulation) that continue for more than an hour in excess of permit requirements, the report must be made with 24 hours of the occurrence.

(*2*) For emissions of any regulated air pollutant, excluding those listed in paragraph (a)(3)(iii)(B)(*1*) of this section, that continue for more than two hours in excess of permit requirements, the report must be made within 48 hours.

(*3*) For all other deviations from permit requirements, the report shall be contained in the report submitted in accordance with the timeframe given in paragraph (a)(3)(iii)(A).

(*4*) A permit may contain a more stringent reporting requirement than required by paragraphs (a)(3)(iii)(B)(*1*), (*2*), or (*3*).

If any of the above conditions are met, the source must notify the permitting authority by telephone or facsimile based on the timetable listed in paragraphs (a)(3)(iii)(B) (*1*) through (*4*) of this section. A written notice, certified consistent with § 71.5(d), must be submitted within 10 working days of the occurrence. All deviations reported under paragraph (a)(3)(iii)(A) of this section must also be identified in the 6 month report required under paragraph (a)(3)(iii)(A) of this section.

(C) For purposes of paragraph (a)(3)(iii)(B) of this section, deviation means any condition determined by observation, by data from any monitoring protocol, or by any other monitoring which is required by the permit that can be used to determine compliance, that identifies that an emission unit subject to a part 71 permit term or condition has failed to meet an applicable emission limitation or standard or that a work practice was not complied with or completed. For a condition lasting more than 24 hours which constitutes a deviation, each 24 hour period is considered a separate deviation. Included in the meaning of deviation are any of the following:

(*1*) A condition where emissions exceed an emission limitation or standard;

(*2*) A condition where process or control device parameter values demonstrate that an emission limitation or standard has not been met;

(*3*) Any other condition in which observations or data collected demonstrates noncompliance with an emission limitation or standard or any work practice or operating condition required by the permit.

(*4*) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under 40 CFR parts 72 through 78.

(i) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(ii) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(iii) Any such allowance shall be accounted for according to the procedures established in regulations 40 CFR parts 72 through 78.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Provisions stating the following:

(i) The permittee must comply with all conditions of the part 71 permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(ii) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(iii) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(iv) The permit does not convey any property rights of any sort, or any exclusive privilege.

(v) The permittee shall furnish to the permitting authority, within a reasonable time, any information that the permitting authority may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the permitting authority copies of records required to be kept by the permit or, in the case of a program delegated pursuant to § 71.10, for information claimed to be confidential, the permittee may furnish such records directly to the Administrator along with a claim of confidentiality.

(7) A provision to ensure that a part 71 source pays fees to the Administrator consistent with the fee schedule approved pursuant to § 71.9.

(8) *Emissions trading.* A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(9) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the permitting authority. Such terms and conditions:

(i) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions under each such operating scenario; and

(iii) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this part.

(10) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(i) Shall include all terms required under paragraphs (a) and (c) of this section to determine compliance;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions that allow such increases and decreases in emissions; and

(iii) Must meet all applicable requirements and requirements of this part.

(11) *Permit expiration.* A provision to ensure that a part 71 permit expires upon the earlier occurrence of the following events:

(i) twelve years elapses from the date of issuance to a solid waste incineration unit combusting municipal waste subject to standards under section 112(e) of the Act; or

(ii) five years elapses from the date of issuance; or

(iii) the source is issued a part 70 permit.

(12) *Off Permit Changes.* A provision allowing changes that are not addressed or prohibited by the permit, other than those subject to the requirements of 40 CFR parts 72 through 78 or those that are modifications under any provision of title I of the Act to be made without a permit revision, provided that the following requirements are met:

(i) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition;

(ii) Sources must provide contemporaneous written notice to the permitting authority (and EPA, in the case of a program delegated pursuant to § 71.10) of each such change, except for changes that qualify as insignificant under § 71.5(c)(11). Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change;

(iii) The change shall not qualify for the shield under § 71.6(f);

(iv) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(13) *Operational flexibility.* Provisions consistent with paragraphs (a)(3)(i) through (iii) of this section to allow changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions): Provided, that the facility provides the Administrator (in the case of a program delegated pursuant to § 71.10) and the permitting authority with written notification as required below in advance of the proposed changes, which shall be a minimum of 7 days.

(i) The permit shall allow the permitted source to make section 502(b)(10) changes without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions).

(A) For each such change, the written notification required above shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(B) The permit shield described in § 71.6(f) shall not apply to any change made pursuant to this paragraph (a)(13)(i).

(ii) The permit may provide for the permitted source to trade increases and decreases in emissions in the permitted facility, where the applicable

implementation plan provides for such emissions trades without requiring a permit revision and based on the 7-day notice prescribed in this paragraph (a)(13)(ii) of this section. This provision is available in those cases where the permit does not already provide for such emissions trading.

(A) Under this paragraph (a)(13)(ii), the written notification required above shall include such information as may be required by the provision in the applicable implementation plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the applicable implementation plan and that provide for the emissions trade.

(B) The permit shield described in § 71.6(f) shall not extend to any change made under this paragraph (a)(13)(ii). Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the applicable implementation plan authorizing the emissions trade.

(iii) The permit shall require the permitting authority, if a permit applicant requests it, to issue permits that contain terms and conditions, including all terms required under § 71.6 (a) and (c) to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The permitting authority shall not be required to include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements.

(A) Under this paragraph (a)(13)(iii), the written notification required above shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(B) The permit shield described in § 71.6(f) may extend to terms and conditions that allow such increases and decreases in emissions.

(b) *Federally-enforceable requirements.* All terms and conditions in a part 71 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act.

(c) *Compliance requirements.* All part 71 permits shall contain the following elements with respect to compliance:

(1) Consistent with paragraph (a)(3) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a part 71 permit shall contain a certification by a responsible official that meets the requirements of § 71.5(d).

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the permitting authority or an authorized representative to perform the following:

(i) Enter upon the permittee's premises where a part 71 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(iii) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(iv) As authorized by the Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

(3) A schedule of compliance consistent with § 71.5(c)(8).

(4) Progress reports consistent with an applicable schedule of compliance and § 71.5(c)(8) to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the permitting authority. Such progress reports shall contain the following:

(i) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(ii) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(i) The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the permitting authority) of submissions of compliance certifications;

(ii) In accordance with § 71.6(a)(3), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(iii) A requirement that the compliance certification include the following:

(A) The identification of each term or condition of the permit that is the basis of the certification;

(B) The compliance status;

(C) Whether compliance was continuous or intermittent;

(D) The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with paragraph (a)(3) of this section; and

(E) Such other facts as the permitting authority may require to determine the compliance status of the source;

(iv) A requirement that all compliance certifications be submitted to the Administrator as well as to the permitting authority; and

(v) Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act.

(6) Such other provisions as the permitting authority may require.

(d) *General permits.* (1) The permitting authority may, after notice and opportunity for public participation provided under § 71.11, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other part 71 permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the permitting authority shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions of paragraph (f) of this section, the source shall be subject to enforcement action for operation without a part 71 permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under the acid rain program unless otherwise provided in 40 CFR parts 72 through 78.

(2) Part 71 sources that would qualify for a general permit must apply to the permitting authority for coverage under the terms of the general permit or must apply for a part 71 permit consistent with § 71.5. The permitting authority may, in the general permit, provide for applications which deviate from the requirements of § 71.5, provided that such applications meet the requirements of title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under § 71.11, the permitting authority may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.

(e) *Temporary sources.* The permitting authority may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator notify the permitting authority at least 10 days in advance of each change in location; and

(3) Conditions that assure compliance with all other provisions of this section.

(f) *Permit shield.* (1) Except as provided in this part, the permitting authority may expressly include in a part 71 permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(i) Such applicable requirements are included and are specifically identified in the permit; or

(ii) The permitting authority, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) A part 71 permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this paragraph or in any part 71 permit shall alter or affect the following:

(i) The provisions of section 303 of the Act (emergency orders), including the authority of the Administrator under that section;

(ii) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(iii) The applicable requirements of the acid rain program, consistent with section 408(a) of the Act; or

(iv) The ability of EPA to obtain information from a source pursuant to section 114 of the Act.

(g) *Emergency provision.* (1) *Definition.* An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) *Effect of an emergency.* An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph (g)(3) of this section are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(ii) The permitted facility was at the time being properly operated;

(iii) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(iv) The permittee submitted notice of the emergency to the permitting authority within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of paragraph (a)(3)(iii)(B) of this section. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

§ 71.7 Permit issuance, renewal, reopenings, and revisions.

(a) *Action on application.* (1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(i) The permitting authority has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under § 71.6(d);

(ii) Except for modifications qualifying for minor permit modification procedures under paragraphs (e) (1) and (2) of this section, the permitting authority has complied with the requirements for public participation under this section or § 71.11, as applicable;

(iii) The permitting authority has complied with the requirements for notifying and responding to affected States under § 71.8(a);

(iv) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this part; and

(v) In the case of a program delegated pursuant to § 71.10, the Administrator has received a copy of the proposed permit and any notices required under § 71.10(d) and has not objected to issuance of the permit under § 71.10(g) within the time period specified therein.

(2) Except as provided under the initial transition plan provided for under § 71.4(i) or under 40 CFR part 72 or title V of the Act for the permitting of affected sources under the acid rain program, the permitting authority shall take final action on each permit application (including a request for permit modification or renewal) within 18 months after receiving a complete application.

(3) The permitting authority shall ensure that priority is given to taking action on applications for construction or modification under title I, parts C and D of the Act.

(4) The permitting authority shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the

application shall be deemed complete. For modifications processed through minor permit modification procedures, such as those in paragraphs (e) (1) and (2) of this section, the permitting authority need not make a completeness determination.

(5) The permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to any person who requests it, and to EPA, in the case of a program delegated pursuant to § 71.10.

(6) The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under title I of the Act.

(b) *Requirement for a permit.* Except as provided in the following sentence, § 71.6(a)(13), and paragraphs (e)(1)(v) and e(2)(v) of this section, no part 71 source may operate after the time that it is required to submit a timely and complete application under this part, except in compliance with a permit issued under this part. If a part 71 source submits a timely and complete application for permit issuance (including for renewal), the source's failure to have a part 71 permit is not a violation of this part until the permitting authority takes final action on the permit application, except as noted in this section. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to paragraph (a)(4) of this section, and as required by § 71.5(c), the applicant fails to submit by the deadline specified in writing by the permitting authority any additional information identified as being needed to process the application.

(c) *Permit renewal and expiration.* (1) (i) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected State review, and EPA review (in the case of a program delegated pursuant to § 71.10) that apply to initial permit issuance.

(ii) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with paragraph (b) of this section and § 71.5(a)(1)(iii).

(2) In the case of a program delegated pursuant to § 71.10, if the permitting authority fails to act in a timely way on permit renewal, EPA may invoke its authority under section 505(e) of the Act to terminate or revoke and reissue the permit.

(3) If a timely and complete application for a permit renewal is submitted, consistent with § 71.5(a)(2), but the permitting authority has failed to issue or deny the renewal permit before the end of the term of the previous part 70 or 71 permit, then the permit shall not expire until the renewal permit has been issued or denied and any permit shield that may be granted pursuant to § 71.6(f) may extend beyond the original permit term until renewal; or all the terms and conditions of the permit including any permit shield that may be granted pursuant to § 71.6(f) shall remain in effect until the renewal permit has been issued or denied.

(d) *Administrative permit amendments.* (1) An "administrative permit amendment" is a permit revision that:

(i) Corrects typographical errors;

(ii) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(iii) Requires more frequent monitoring or reporting by the permittee;

(iv) Allows for a change in ownership or operational control of a source where the permitting authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the permitting authority;

(v) Incorporates into the part 71 permit the requirements from preconstruction review permits authorized under an EPA-approved program, provided that such a program meets procedural requirements substantially equivalent to the requirements of §§ 71.7 and 71.8 (and § 71.10 in the case of a delegated program) that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in § 71.6; or

(vi) Incorporates any other type of change which the Administrator has determined to be similar to those in paragraphs (d)(1)(i) through (iv) of this section.

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by 40 CFR part 72.

(3) *Administrative permit amendment procedures.* An administrative permit amendment may be made by the permitting authority consistent with the following:

(i) The permitting authority shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that it designates any such permit revisions as having been made pursuant to this paragraph.

(ii) The permitting authority shall submit a copy of the revised permit to the Administrator in the case of a program delegated pursuant to § 71.10.

(iii) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) The permitting authority may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in § 71.6(f) for administrative permit amendments made pursuant to paragraph (d)(1)(v) of this section which meet the relevant requirements of §§ 71.6, 71.7, and 71.8 for significant permit modifications.

(e) *Permit modifications.* A permit modification is any revision to a part 71 permit that cannot be accomplished under the provisions for administrative permit amendments under paragraph (d) of this section. A permit modification for purposes of the acid rain portion of the permit shall be governed by 40 CFR part 72.

(1) *Minor permit modification procedures.*

(i) Criteria.

(A) Minor permit modification procedures may be used only for those permit modifications that:

(*1*) Do not violate any applicable requirement;

(*2*) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(*3*) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(*4*) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

(*i*) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of title I; and

(*ii*) An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Act;

(*5*) Are not modifications under any provision of title I of the Act; and

(*6*) Are not required to be processed as a significant modification.

(B) Notwithstanding paragraphs (e)(1)(i)(A) and (e)(2)(i) of this section, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA.

(ii) *Application.* An application requesting the use of minor permit modification procedures shall meet the requirements of § 71.5(c) and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(B) The source's suggested draft permit;

(C) Certification by a responsible official, consistent with § 71.5(d), that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

(D) Completed forms for the permitting authority to use to notify affected States (and the Administrator in the case of a program delegated pursuant to § 71.10) as required under §§ 71.8 and 71.10(d).

(iii) *EPA and affected State notification.* Within 5 working days of receipt of a complete permit modification application, the permitting authority shall meet its obligation under § 71.8(a) to notify affected States (and its obligation under § 71.10(d) to notify the Administrator in the case of a program delegated pursuant to § 71.10) of the requested permit modification. In the case of a program delegated pursuant to § 71.10, the permitting authority promptly shall send any notice required under § 71.8(b) to the Administrator.

(iv) *Timetable for issuance.* In the case of a program delegated pursuant to § 71.10, the permitting authority may not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the permitting authority that EPA will not object to issuance of the permit modification, whichever is first, although the permitting authority can approve the permit modification prior to that time. Within 90 days of the permitting authority's receipt of an application under minor permit modification procedures (or 15 days after the end of the Administrator's 45-day review period under § 71.10(g) in the case of a program delegated pursuant to § 71.10, whichever is later), the permitting authority shall:

(A) Issue the permit modification as proposed;

(B) Deny the permit modification application;

(C) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(D) Revise the draft permit modification (and, in the case of a program delegated pursuant to § 71.10, transmit to the Administrator the new proposed permit modification as required by § 71.10(d)).

(v) *Source's ability to make change.* The source may make the change proposed in its minor permit modification application immediately after it files such application. After the source makes the change allowed by the preceding sentence, and until the permitting authority takes any of the actions specified in paragraphs (e)(1)(iv) (A) through (C) of this section, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(vi) *Permit shield.* The permit shield under § 71.6(f) may not extend to minor permit modifications.

(2) *Group processing of minor permit modifications.* Consistent with this paragraph, the permitting authority may modify the procedure outlined in paragraph (e)(1) of this section to process groups of a source's applications for certain modifications eligible for minor permit modification processing.

(i) *Criteria.* Group processing of modifications may be used only for those permit modifications:

(A) That meet the criteria for minor permit modification procedures under paragraph (e)(1)(i)(A) of this section; and

(B) That collectively are below the threshold level of 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, 20 percent of the applicable definition of major source in § 71.2, or 5 tpy, whichever is least.

(ii) *Application.* An application requesting the use of group processing procedures shall meet the requirements of § 71.5(c) and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(B) The source's suggested draft permit.

(C) Certification by a responsible official, consistent with § 71.5(d), that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

(D) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under paragraph (e)(2)(i)(B) of this section.

(E) Certification, consistent with § 71.5(d), that, in the case of a program delegated pursuant to § 71.10, the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

(F) Completed forms for the permitting authority to use to notify affected States as required under § 71.8 (and the Administrator as required under § 71.10(d) in the case of a program delegated pursuant to § 71.10).

(iii) *EPA and affected State notification.* On a quarterly basis or within 5 business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under paragraph (e)(2)(i)(B) of this section, whichever is earlier, the permitting authority promptly shall meet its obligation under § 71.8(a) to notify affected States (and its obligation under § 71.10(d) to notify EPA in the case of a program delegated pursuant to § 71.10) of the requested permit modification. The permitting authority shall send any notice required under § 71.8(b) to the Administrator in the case of a program delegated pursuant to § 71.10.

(iv) *Timetable for issuance.* The provisions of paragraph (e)(1)(iv) of this section shall apply to modifications eligible for group processing, except that the permitting authority shall take one of the actions specified in paragraphs (e)(1)(iv) (A) through (D) of this section within 180 days of receipt of the application (or, in the case of a program delegated pursuant to § 71.10, 15 days

after the end of the Administrator's 45-day review period under § 71.10(g), whichever is later).

(v) *Source's ability to make change.* The provisions of paragraph (e)(1)(v) of this section shall apply to modifications eligible for group processing.

(vi) *Permit shield.* The provisions of paragraph (e)(1)(vi) of this section shall also apply to modifications eligible for group processing.

(3) *Significant modification procedures.*

(i) *Criteria.* Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with this part that would render existing permit compliance terms and conditions irrelevant.

(ii) Significant permit modifications shall meet all requirements of this part, including those for applications, public participation, review by affected States, and review by EPA (in the case of a program delegated pursuant to § 71.10), as they apply to permit issuance and permit renewal. The permitting authority shall design and implement this review process to complete review on the majority of significant permit modifications within 9 months after receipt of a complete application.

(f) *Reopening for cause.* (1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(i) Additional applicable requirements under the Act become applicable to a major part 71 source with a remaining permit term of 3 or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to paragraph (c)(3) of this section.

(ii) Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

(iii) The permitting authority (or EPA, in the case of a program delegated pursuant to § 71.10) determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(iv) The permitting authority (or EPA, in the case of a program delegated pursuant to § 71.10) determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists, and shall be made as expeditiously as practicable.

(3) Reopenings under paragraph (f)(1) of this section shall not be initiated before a notice of such intent is provided to the part 71 source by the permitting authority at least 30 days in advance of the date that the permit is to be reopened, except that the permitting authority may provide a shorter time period in the case of an emergency.

(g) *Reopenings for cause by EPA for delegated programs.* (1) In the case of a program delegated pursuant to § 71.10, if the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to paragraph (f) of this section, the Administrator will notify the permitting authority and the permittee of such finding in writing.

(2) The permitting authority shall, within 90 days after receipt of such notification, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend this 90-day period for an additional 90 days if he or she finds that a new or revised permit application is necessary or that the permitting authority must require the permittee to submit additional information.

(3) The Administrator will review the proposed determination from the permitting authority within 90 days of receipt.

(4) The permitting authority shall have 90 days from receipt of an EPA objection to resolve any objection that EPA makes and to terminate, modify, or revoke and reissue the permit in accordance with the Administrator's objection.

(5) If the permitting authority fails to submit a proposed determination pursuant to paragraph (g)(2) of this section or fails to resolve any objection pursuant to paragraph (g)(4) of this section, the Administrator will terminate, modify, or revoke and reissue the permit after taking the following actions:

(i) Providing at least 30 days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in paragraphs (g) (1) through (4) of this section.

(ii) Providing the permittee an opportunity for comment on the Administrator's proposed action and an opportunity for a hearing.

§ 71.8 Affected State review.

(a) *Notice of draft permits.* When a part 71 operating permits program becomes effective in a State or Tribal area, the permitting authority shall provide notice of each draft permit to any affected State, as defined in § 71.2, on or before the time that the permitting authority provides this notice to the public pursuant to § 71.7 or § 71.11(d) except to the extent § 71.7(e)(1) or (2) requires the timing of the notice to be different.

(b) *Notice of refusal to accept recommendations.* Prior to issuance of the final permit, the permitting authority shall notify any affected State in writing of any refusal by the permitting authority to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the permitting authority's reasons for not accepting any such recommendation. The permitting authority is not required to accept recommendations that are not based on applicable requirements or the requirements of this part. In the case of a program delegated pursuant to § 71.10, the permitting authority shall include such notice as part of the submittal of the proposed permit to the Administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under § 71.7(e)(1) or (2)).

(c) *Waiver of notice requirements.* The Administrator may waive the requirements of paragraph (a) of this section for any category of sources (including any class, type, or size within such category) other than major sources by regulation for a category of sources nationwide.

(d) *Notice provided to Indian Tribes.* The permitting authority shall provide notice of each draft permit to any federally recognized Indian Tribe whose air quality may be affected by the permitting action and whose reservation

or Tribal area is contiguous to the jurisdiction in which the part 71 permit is proposed or is within 50 miles of the permitted source.

§ 71.9 Permit fees

(a) *Fee requirement.* The owners or operators of part 71 sources shall pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs, in accordance with the procedures described in this section.

(b) *Permit program costs.* These costs include, but are not limited to, the costs of the following activities as they relate to a part 71 program:

(1) Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;

(2) Processing permit reopenings;

(3) General administrative costs of the permit program, including transition planning, interagency coordination, contract management, training, informational services and outreach activities, assessing and collecting fees, the tracking of permit applications, compliance certifications, and related data entry;

(4) Implementing and enforcing the terms of any part 71 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;

(5) Emissions and ambient monitoring, modeling, analyses, demonstrations, preparation of inventories, and tracking emissions, provided these activities are needed in order to issue and implement part 71 permits; and

(6) Providing direct and indirect support to small business stationary sources in determining applicable requirements and in receiving permits under this part (to the extent that these services are not provided by a State Small Business Stationary Source Technical and Environmental Compliance Assistance Program).

(c) *Establishment of fee schedule.* (1) For part 71 programs that are administered by EPA, each part 71 source shall pay an annual fee in the amount of $32 per ton (as adjusted pursuant to the criteria set forth in paragraph (n)(1) of this section) times the total tons of the actual emissions of each regulated pollutant (for fee calculation) emitted from the source, including fugitive emissions.

(2) For part 71 programs that are fully delegated pursuant to § 71.10:

(i) Where the EPA has not suspended its part 71 fee collection pursuant to paragraph (c)(2)(ii) of this section, the annual fee for each part 71 source shall be $24 per ton (as adjusted pursuant to the criteria set forth in paragraph (n)(1) of this section) times the total tons of the actual emissions of each regulated pollutant (for fee calculation) emitted from the source, including fugitive emissions.

(ii) Where the delegate State collects fees from part 71 sources under State law which are sufficient to fund the delegated part 71 program, the EPA may suspend its collection of part 71 fees. The specific terms and conditions regarding the suspension of fee collection will be addressed in the applicable delegation agreement pursuant to § 71.10.

(3) For part 71 programs that are administered by EPA with contractor assistance, the per ton fee shall vary depending on the extent of contractor involvement and the cost to EPA of contractor assistance. The EPA shall establish a per ton fee that is based on the contractor costs for the specific part 71 program that is being administered, using the following formula:

Cost per ton=$(E\times 32)+[(1-E)\times \$C]$

Where E represents EPA's proportion of total effort (expressed as a percentage of total effort) needed to administer the part 71 program, $1-E$ represents the contractor's effort, and C represents the contractor assistance cost on a per ton basis. C shall be computed by using the following formula:

$C=[B+T+N]$ divided by 12,300,000

Where B represents the base cost (contractor costs), where T represents travel costs, and where N represents nonpersonnel data management and tracking costs.

(4) For programs that are delegated in part, the fee shall be computed using the following formula:

Cost per ton=$(E\times 32)+(D\times 24)+[(1-E-D)\times \$C]$

Where E and D represent, respectively, the EPA and delegate agency proportions of total effort (expressed as a percentage of total effort) needed to administer the part 71 program, $1-E-D$ represents the contractor's effort, and C represents the contractor assistance cost on a per ton basis. C shall be computed using the formula for contractor assistance cost found in paragraph (c)(3) of this section and shall be zero if contractor assistance is not utilized.

(5) The following emissions shall be excluded from the calculation of fees under paragraph (c)(1) through (c)(4) of this section:

(i) The amount of a part 71 source's actual emissions of each regulated pollutant (for fee calculation) that the source emits in excess of four thousand (4,000) tpy;

(ii) A part 71 source's actual emissions of any regulated pollutant (for fee calculation) already included in the fee calculation; and

(iii) The insignificant quantities of actual emissions not required to be listed or calculated in a permit application pursuant to § 71.5(c)(11).

(6) "Actual emissions" means the actual rate of emissions in tpy of any regulated pollutant (for fee calculation) emitted from a part 71 source over the preceding calendar year. Actual emissions shall be calculated using each emissions unit's actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year.

(7) Notwithstanding the provisions of paragraph (c) (1) through (4) of this section, if the Administrator determines that the fee structures provided in paragraphs (c)(1) through (4) of this section do not reflect the costs of administering a part 71 program, then the Administrator shall by rule set a fee which adequately reflects permit program costs for that program.

(d) *Prohibition on fees with respect to emissions from affected units.* Notwithstanding any other provision of this section, during the years 1995 through 1999 inclusive, no fee for purposes of title V shall be required to be paid with respect to emissions from any affected unit under section 404 of the Act.

(e) *Submission of initial fee calculation work sheets and fees.* (1) Each part 71 source shall complete and submit an initial fee calculation work sheet as provided in paragraphs (e)(2), (f), and (g) of this section and shall complete and submit fee calculation work sheets thereafter as provided in paragraph (h) of this section. Calculations of actual or estimated emissions and calculation of the fees owed by a source shall be computed by the source on fee calculation work sheets provided by EPA. Fee payment of the full amount must accompany each initial fee calculation work sheet.

(2) The fee calculation work sheet shall require the source to submit a report of its actual emissions for the preceding calendar year and to compute fees owed based on those emissions. For sources that have been issued part 70 or part 71 permits, actual emissions shall be computed using compliance methods required by the most recent permit. If actual emissions cannot be determined

using the compliance methods in the permit, the actual emissions should be determined using federally recognized procedures. If a source commenced operation during the preceding calendar year, the source shall estimate its actual emissions for the current calendar year. In such a case, fees for the source shall be based on the total emissions estimated.

(3) The initial fee calculation worksheet shall be certified by a responsible official consistent with § 71.5(d).

(f) *Deadlines for submission.* (1) When EPA withdraws approval of a part 70 program and implements a part 71 program, part 71 sources shall submit initial fee calculation work sheets and fees in accordance with the following schedule:

(i) Sources having SIC codes between 0100 and 2499 inclusive shall complete and submit fee calculation work sheets and fees within 6 months of the effective date of the part 71 program;

(ii) Sources having SIC codes between 2500 and 2999 inclusive shall complete and submit fee calculation work sheets and fees within 7 months of the effective date of the part 71 program;

(iii) Sources having SIC codes between 3000 and 3999 inclusive shall complete and submit fee calculation work sheets and fees within 8 months of the effective date of the part 71 program;

(iv) Sources having SIC codes higher than 3999 shall complete and submit fee calculation work sheets and fees within 9 months of the effective date of the part 71 program.

(2) Sources that are required under either paragraph (f)(1) or (g) of this section to submit fee calculation work sheets and fees between January 1 and March 31 may estimate their emissions for the preceding calendar year in lieu of submitting actual emissions data. If the source's initial fee calculation work sheet was based on estimated emissions for the source's preceding calendar year, then the source shall reconcile the fees owed when it submits its annual emissions report, as provided in paragraph (h)(3) of this section.

(3) When EPA implements a part 71 program that does not replace an approved part 70 program, part 71 sources shall submit initial fee calculation work sheets and initial fees when submitting their permit applications in accordance with the requirements of § 71.5(a)(1).

(4) Notwithstanding the above, sources that become subject to the part 71 program after the program's effective date shall submit an initial fee calculation work sheet and initial fees when submitting their permit applications in accordance with the requirements of § 71.5(a)(1).

(g) *Fees for sources that are issued part 71 permits following an EPA objection pursuant to § 71.4(e).* Fees for such sources shall be determined as provided in paragraph (c)(1) of this section. However, initial fee calculation work sheets for such sources and full payment of the initial fee shall be due three months after the date on which the source's part 71 permit is issued.

(h) *Annual emissions reports*—(1) *Deadlines for submission.* Each part 71 source shall submit an annual report of its actual emissions for the preceding calendar year, a fee calculation work sheet (based on the report), and full payment of the annual fee each year on the anniversary date of its initial fee calculation work sheet, except that sources that were required to submit initial fee calculation work sheets between January 1 and March 31 inclusive shall submit subsequent annual emissions reports and fee calculation work sheets by April 1.

(2) Annual emissions reports and fee calculation worksheets shall be certified by a responsible official consistent with § 71.5(d).

(3) For sources that have been issued part 70 or part 71 permits, actual emissions shall be computed using methods required by the most current permit for determining compliance.

(4) If the source's initial fee calculation work sheet was based on estimated emissions for the source's current or preceding calendar year, then the source shall reconcile the fees owed when it submits its annual emissions report. The source shall compare the estimated emissions from the initial work sheet and the actual emissions from the report and shall enter such information on the fee calculation work sheet that accompanies the annual report. The source shall recompute the initial fee accordingly and shall remit any underpayment with the report and work sheet. The EPA shall credit any overpayment to the source's account.

(i) *Recordkeeping requirements.* Part 71 sources shall retain, in accordance with the provisions of § 71.6(a)(3)(ii), all work sheets and other materials used to determine fee payments. Records shall be retained for 5 years following the year in which the emissions data is submitted.

(j) *Fee assessment errors.* (1) If EPA determines than a source has completed the fee calculation work sheet incorrectly, the permitting authority shall bill the applicant for the corrected fee or credit overpayments to the source's account.

(2) Each source notified by the permitting authority of additional amounts due shall remit full payment within 30 days of receipt of an invoice from the permitting authority.

(3) An owner or operator of a part 71 source who thinks that the assessed fee is in error shall provide a written explanation of the alleged error to the permitting authority along with the assessed fee. The permitting authority shall, within 90 days of receipt of the correspondence, review the data to determine whether the assessed fee was in error. If an error was made, the overpayment shall be credited to the account of the part 71 source.

(k) *Remittance procedure.* (1) Each remittance under this section shall be in United States currency and shall be paid by money order, bank draft, certified check, corporate check, or electronic funds transfer payable to the order of the U.S. Environmental Protection Agency.

(2) Each remittance shall be sent to the Environmental Protection Agency to the address designated on the fee calculation work sheet or the invoice.

(l) *Penalty and interest assessment.* (1) The permitting authority shall assess interest on payments which are received later than the date due. The interest rate shall be the sum of the Federal short-term rate determined by the Secretary of the Treasury in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986, plus 3 percentage points.

(2) The permitting authority shall assess a penalty charge of 50 percent of the fee amount if the fee is not paid within 30 days of the payment due date.

(3) If a source underpays the fee owed, except as provided in paragraph (l)(4) of this section, the permitting authority shall assess a penalty charge of 50 percent on the amount by which the fee was underpaid. Interest shall also be assessed, computed under paragraph (l)(1) of this section, on the amount by which the fee was underpaid.

(4) If a source bases its initial fee calculation on estimated emissions from the source's current or preceding calendar year, as provided under paragraph (h)(4) of this section, and underpays its fee based on an underestimation of these emissions, the permitting authority shall assess a penalty charge of 50 percent on certain of these underpayments, according to the following provisions:

(i) The penalty charge shall be assessed whenever a source's underpayment exceeds the underpayment penalty cutoff established in paragraph (l)(4)(iii) of this section. The penalty amount shall be 50 percent of the portion of the underpayment which is in excess of the underpayment penalty cutoff.

(ii) Where a source is subject to a penalty for underpayment pursuant to paragraph (l)(4)(i) of this section, interest as computed under paragraph (l)(1) of this section shall be assessed on that portion of the underpayment which is in excess of the underpayment penalty cutoff established in paragraph (l)(4)(iii) of this section.

(iii) The underpayment penalty cutoff for a source shall be the sum of the following:

(A) 50 percent of the portion of the initial fee amount which was calculated from estimated emissions of HAP listed pursuant to 112(b) of the Act, and

(B) 20 percent of the portion of initial fee amount which was calculated from estimated emissions of the remainder of the regulated air pollutants (for fee calculation).

(m) *Failure to remit fees.* The permitting authority shall not issue a final permit or permit revision until all fees, interest and penalties assessed against a source under this section are paid. The initial application of a source shall not be found complete unless the source has paid all fees owed.

(n) *Adjustments of fee schedules.* (1) The fee schedules provided in paragraphs (c) (1) through (4) of this section shall remain in effect until December 31, 1996. Thereafter, the fee schedules shall be changed annually by the percentage, if any, of any annual increase in the Consumer Price Index.

(2) Part 71 permit program costs and fees will be reviewed by the Administrator at least every 2 years, and changes will be made to the fee schedule as necessary to reflect permit program costs.

(3) When changes to a fee schedule are made based on periodic reviews by the Administrator, the changes will be published in the **Federal Register**.

(o) *Use of revenue.* All fees, penalties, and interest collected under this part shall be deposited in a special fund in the U.S. Treasury; which thereafter shall be available for appropriation, to remain available until expended, subject to appropriation, to carry out the activities required by this part.

§ 71.10 Delegation of part 71 program.

(a) *Delegation of part 71 program.* The Administrator may delegate, in whole or in part, with or without signature authority, the authority to administer a part 71 operating permits program to a State, eligible Tribe, local, or other non-State agency in accordance with the provisions of this section. In order to be delegated authority to administer a part 71 program, the delegate agency must submit a legal opinion from the Attorney General from the State, or the attorney for the State, local, interstate, or eligible Tribal agency that has independent legal counsel, stating that the laws of the State, locality, interstate compact or Indian Tribe provide adequate authority to carry out all aspects of the delegated program. A Delegation of Authority Agreement (Agreement) shall set forth the terms and conditions of the delegation, shall specify the provisions that the delegate agency shall be authorized to implement, and shall be entered into by the Administrator and the delegate agency. The Agreement shall become effective upon the date that both the Administrator and the delegate agency have signed the Agreement. Once delegation becomes effective, the delegate agency will be responsible, to the extent specified in the Agreement, for administering the part 71 program for the area subject to the Agreement.

(b) *Publication of Notice of Delegation of Authority Agreement.* The Administrator shall publish a notice in the **Federal Register** informing the public of any delegation of a portion of the part 71 program to a State, eligible Tribe, or local agency.

(c) *Revision or revocation of Delegation of Authority Agreement.* An Agreement may be modified, amended, or revoked, in part or in whole, by the Administrator after consultation with the delegate agency.

(d) *Transmission of information to the Administrator.*

(1) When a part 71 program has been delegated in accordance with the provisions of this section, the delegate agency shall provide to the Administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final part 71 permit. The applicant may be required by the delegate agency to provide a copy of the permit application (including the compliance plan) directly to the Administrator. Upon agreement with the Administrator, the delegate agency may submit to the Administrator a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with EPA's national database management system.

(2) The Administrator may waive the requirements of paragraph (d)(1) of this section for any category of sources (including any class, type, or size within such category) other than major sources by regulation for a category of sources nationwide.

(e) *Retention of records.* The records for each draft, proposed, and final permit, and application for permit renewal or modification shall be kept for a period of 5 years by the delegate agency. The delegate agency shall also submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the delegate agency is implementing, administering, and enforcing the delegated part 71 program in compliance with the requirements of the Act and of this part.

(f) *Prohibition of default issuance.* (1) For the purposes of Federal law and title V of the Act, when a part 71 program has been delegated in accordance with the provisions of this section, no part 71 permit (including a permit renewal or modification) will be issued until affected States have had an opportunity to review the draft permit as required pursuant to § 71.8(a) and EPA has had an opportunity to review the proposed permit.

(2) To receive delegation of signature authority, the legal opinion submitted by the delegate agency pursuant to paragraph (a) of this section shall certify that no applicable provision of State, local or Tribal law requires that a part 71 permit or renewal be issued after a certain time if the delegate agency has failed to take action on the application (or includes any other similar provision providing for default issuance of a permit), unless EPA has waived such review for EPA and affected States.

(g) *EPA objection.* (1) The Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements or requirements under this part. No permit for which an application must be transmitted to the Administrator under paragraph (d)(1) of this section shall be issued if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information. When a part 71 program has been delegated in accordance with the provisions of this section, failure of the delegate agency to do any of the following shall constitute grounds for an objection by the Administrator:

(i) Comply with paragraph (d) of this section;

(ii) Submit any information necessary to review adequately the proposed permit;

(iii) Process the permit under the procedures required by §§ 71.7 and 71.11; or

(iv) Comply with the requirements of § 71.8(a).

(2) Any EPA objection under paragraph (g)(1) of this section shall include a statement of the Administrator's reason(s) for objection and a description of the terms and conditions that the permit must include to respond to the objection. The Administrator will provide the permit applicant a copy of the objection.

(3) If the delegate agency fails, within 90 days after the date of an objection under paragraph (g)(1) of this section, to revise and submit to the Administrator the proposed permit in response to the objection, the Administrator shall issue or deny the permit in accordance with the requirements of this part.

(h) *Public petitions.* In the case of a delegated program, any interested person may petition the Administrator to reopen a permit for cause as provided in § 71.11(n).

(i) *Appeal of permits.* When a part 71 program has been delegated with signature authority in accordance with the provisions of this section, any person or affected State that submitted recommendations or comments on the draft permit, or that participated in the public hearing process may petition the Environmental Appeals Board in accordance with § 71.11(l)(1).

(j) *Nondelegable conditions.* (1) The Administrator's authority to object to the issuance of a part 71 permit cannot be delegated to an agency not within EPA.

(2) The Administrator's authority to act upon petitions submitted pursuant to paragraph (h) of this section cannot be delegated to an agency not within EPA.

§ 71.11 Administrative record, public participation, and administrative review.

The provisions of this section shall apply to all permit proceedings. Notwithstanding the preceding sentence, paragraphs (a) through (h) and paragraph (j) of this section shall not apply to permit revisions qualifying as minor permit modifications or administrative amendments, except that public notice of the granting of appeals of such actions under paragraph (l)(3) of this section shall be provided pursuant to paragraph (d)(1)(i)(E) of this section, and except that affected States shall be provided notice of minor permit modifications under § 71.8 as pursuant to paragraph (d)(3)(i)(B) of this section.

(a) *Draft permits.* (1) The permitting authority shall promptly provide notice to the applicant of whether the application is complete pursuant to § 71.7(a)(3).

(2) Once an application for an initial permit, permit revision, or permit renewal is complete, the permitting authority shall decide whether to prepare a draft permit or to deny the application.

(3) If the permitting authority initially decides to deny the permit application, it shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit and follows the same procedures as any draft permit prepared under this section. If the permitting authority's final decision is that the initial decision to deny the permit application was incorrect, it shall withdraw the notice of intent to deny and proceed to prepare a draft permit under paragraph (a)(4) of this section.

(4) If the permitting authority decides to prepare a draft permit, it shall prepare a draft permit that contains the permit conditions required under § 71.6.

(5) All draft permits prepared under this section shall be publicly noticed and made available for public comment.

(b) *Statement of basis.* The permitting authority shall prepare a statement of basis for every draft permit subject to this section. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the initial decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

(c) *Administrative record for draft permits.*

(1) The provisions of a draft permit shall be based on the administrative record defined in this section.

(2) For preparing a draft permit, the administrative record shall consist of:

(i) The application and any supporting data furnished by the applicant;

(ii) The draft permit or notice of intent to deny the application or to terminate the permit;

(iii) The statement of basis;

(iv) All documents cited in the statement of basis; and

(v) Other documents contained in the supporting file for the draft permit.

(3) Material readily available at the permitting authority or published material that is generally available, and that is included in the administrative record under paragraphs (b) and (c) of this section need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis.

(d) *Public notice of permit actions and public comment period.*

(1) *Scope.*

(i) The permitting authority shall give public notice that the following actions have occurred:

(A) A permit application has been initially denied under paragraph (a) of this section;

(B) A draft permit has been prepared under paragraph (a) of this section;

(C) A hearing has been scheduled under paragraph (f) of this section; and

(D) A public comment period has been reopened under paragraph (h) of this section;

(E) An appeal has been granted under paragraph (l)(3) of this section.

(ii) No public notice is required when a request for permit revision, revocation and reissuance, or termination has been denied under paragraph (a)(2) of this section. Written notice of that denial shall be given to the requester and to the permittee.

(iii) Public notices may describe more than one permit or permit action.

(2) *Timing.* (i) Public notice of the preparation of a draft permit, (including a notice of intent to deny a permit application), shall allow at least 30 days for public comment.

(ii) Public notice of a public hearing shall be given at least 30 days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

(iii) The permitting authority shall provide such notice and opportunity for participation to affected States on or before the time that the permitting authority provides this notice to the public.

(3) *Methods.* Public notice of activities described in paragraph (d)(1)(i) of this section shall be given by the following methods:

(i) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under paragraph (d) of this section may waive his or her rights to receive notice for any permit):

(A) The applicant;

(B) Affected States;

(C) Air pollution control agencies of affected States, Tribal and local air pollution control agencies which have jurisdiction over the area in which the source is located, the chief executives of the city and county where the source is located, any comprehensive regional land use planning agency and any State or Federal Land Manager whose lands may be affected by emissions from the source;

(D) The local emergency planning committee having jurisdiction over the area where the source is located, and State agencies having authority under State law with respect to the operation of such source;

(E) Persons on a mailing list developed by:

(*1*) Including those who request in writing to be on the list;

(*2*) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

(*3*) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and, where deemed appropriate by the permitting authority, in such publications as regional and State funded newsletters, environmental bulletins, or State law journals. The permitting authority may update the mailing list from time to time by requesting written indication of continued interest from those listed. The permitting authority may delete from the list the name of any person who fails to respond to such a request.

(ii) By publication of a notice in a daily or weekly newspaper of general circulation within the area affected by the source.

(iii) By any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) *Contents*—(i) *All public notices.* All public notices issued under this subpart shall contain the following minimum information:

(A) The name and address of the permitting authority processing the permit;

(B) The name and address of the permittee or permit applicant and, if different, of the facility regulated by the permit, except in the case of draft general permits;

(C) The activity or activities involved in the permit action;

(D) The emissions change involved in any permit revision;

(E) The name, address, and telephone number of a person whom interested persons may contact for instructions on how to obtain additional information, such as a copy of the draft permit, the statement of basis, the application, relevant supporting materials, and other materials available to the permitting authority that are relevant to the permitting decision.

(F) A brief description of the comment procedures required by paragraph (e) of this section, a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

(G) The location of the administrative record, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant are available as part of the administrative record; and

(H) Any additional information considered necessary or proper.

(ii) *Public notices for hearings.* Public notice of a hearing may be combined with other notices required under paragraph (d)(1) of this section. Any public notice of a hearing under paragraph (f) of this section shall contain the following information:

(A) The information described in paragraph (d)(4)(i) of this section;

(B) Reference to the date of previous public notices relating to the permit;

(C) The date, time, and place of the hearing; and

(D) A brief description of the nature and purpose of the hearing, including the applicable rules and the comment procedures.

(5) All persons identified in paragraphs (d)(3)(i) (A), (B), (C), (D), and (E) of this section shall be mailed a copy of the public hearing notice described in paragraph (d)(4)(ii) of this section.

(e) *Public comments and requests for public hearings.* During the public comment period provided under paragraph (a) of this section, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised at the hearing. All comments shall be considered in making the final decision and shall be answered as provided in paragraph (j) of this section. The permitting authority will keep a record of the commenters and of the issues raised during the public participation process, and such records shall be available to the public.

(f) *Public hearings.* (1) The permitting authority shall hold a hearing whenever it finds, on the basis of requests, a significant degree of public interest in a draft permit.

(2) The permitting authority may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision..

(3) Public notice of the hearing shall be given as specified in paragraph (d) of this section.

(4) Whenever a public hearing is held, the permitting authority shall designate a Presiding Officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(5) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under paragraph (d) of this section shall be automatically extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(6) A tape recording or written transcript of the hearing shall be made available to the public.

(g) *Obligation to raise issues and provide information during the public comment period.* All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the permitting authority's initial decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably ascertainable arguments supporting their position by the close of the public comment period (including any public hearing). Any supporting materials that are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. In the case of a program delegated pursuant to § 71.10, if requested by the Administrator, the permitting authority shall make supporting materials not already included in the administrative record available to EPA. The permitting authority may direct commenters to provide such materials directly to EPA. A comment period longer than 30 days may be necessary to give commenters a reasonable opportunity to comply with the requirements of this section. Additional time shall be granted to the extent that a commenter who requests additional time demonstrates the need for such time.

(h) *Reopening of the public comment period.* (1) The permitting authority may order the public comment period reopened if the procedures of paragraph (h) of this section could expedite the decision making process. When the public comment period is reopened under paragraph (h) of this section, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the permitting authority's initial decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their

position, including all supporting material, by a date not less than 30 days after public notice under paragraph (h)(2) of this section, set by the permitting authority. Thereafter, any person may file a written response to the material filed by any other person, by a date, not less than 20 days after the date set for filing of the material, set by the permitting authority.

(2) Public notice of any comment period under this paragraph (h) shall identify the issues to which the requirements of paragraphs (h)(1) through (4) of this section shall apply.

(3) On its own motion or on the request of any person, the permitting authority may direct that the requirements of paragraph (h)(1) of this section shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (h)(1) of this section will substantially expedite the decision making process. The notice of the draft permit shall state whenever this has been done.

(4) A comment period of longer than 30 days may be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods and they may be granted to the extent the permitting authority finds it necessary.

(5) If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the permitting authority may take one or more of the following actions:

(i) Prepare a new draft permit, appropriately modified;

(ii) Prepare a revised statement of basis, and reopen the comment period; or

(iii) Reopen or extend the comment period to give interested persons an opportunity to comment on the information or arguments submitted.

(6) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused the reopening. The public notice shall define the scope of the reopening.

(7) Public notice of any of the above actions shall be issued under paragraph (d) of this section.

(i) *Issuance and effective date of permit.* (1) After the close of the public comment period on a draft permit, the permitting authority shall issue a final permit decision. The permitting authority shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit. For the purposes of this section, a final permit decision means a final decision to issue, deny, revise, revoke and reissue, renew, or terminate a permit.

(2) A final permit decision shall become effective 30 days after the service of notice of the decision, unless:

(i) A later effective date is specified in the decision;

(ii) Review is requested under paragraph (l) of this section (in which case the specific terms and conditions of the permit which are the subject of the request for review shall be stayed); or

(iii) No comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

(j) *Response to comments.* (1) At the time that any final permit decision is issued, the permitting authority shall issue a response to comments. This response shall:

(i) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(ii) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(2) Any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in paragraph (k) of this section. If new points are raised or new material supplied during the public comment period, the permitting authority may document its response to those matters by adding new materials to the administrative record.

(3) The response to comments shall be available to the public.

(4) The permitting authority will notify in writing any affected State of any refusal to accept recommendations for the permit that the State submitted during the public or affected State review period.

(k) *Administrative record for final permits.* (1) The permitting authority shall base final permit decisions on the administrative record defined in paragraph (k)(2) of this section.

(2) The administrative record for any final permit shall consist of:

(i) All comments received during any public comment period, including any extension or reopening;

(ii) The tape or transcript of any hearing(s) held;

(iii) Any written material submitted at such a hearing;

(iv) The response to comments and any new materials placed in the record;

(v) Other documents contained in the supporting file for the permit;

(vi) The final permit;

(vii) The application and any supporting data furnished by the applicant;

(viii) The draft permit or notice of intent to deny the application or to terminate the permit;

(ix) The statement of basis for the draft permit;

(x) All documents cited in the statement of basis;

(xi) Other documents contained in the supporting file for the draft permit.

(3) The additional documents required under paragraph (k)(2) of this section should be added to the record as soon as possible after their receipt or publication by the permitting authority. The record shall be complete on the date the final permit is issued.

(4) Material readily available at the permitting authority, or published materials which are generally available and which are included in the administrative record under the standards of paragraph (j) of this section need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or in the response to comments.

(l) *Appeal of permits.* (1) Within 30 days after a final permit decision has been issued, any person who filed comments on the draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision or other new grounds that were not reasonably foreseeable during the public comment period on the draft permit. The 30-day period within which a person may request review under this section begins with the service of notice of the permitting authority's action unless a later date is specified in that notice, except that the 30-day period within which a person may request review of a minor permit modification or administrative amendment begins upon the effective date of such action to revise the permit. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues raised were raised during the public comment period (including any public hearing) to the extent required by these regulations unless the petitioner demonstrates that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period, and, when appropriate, a showing that the condition in question is based on:

(i) A finding of fact or conclusion of law which is clearly erroneous; or

(ii) An exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review.

(2) The Board may also decide on its initiative to review any condition of any permit issued under this part. The Board must act under paragraph (l) of this section within 30 days of the service date of notice of the permitting authority's action.

(3) Within a reasonable time following the filing of the petition for review, the Board shall issue an order either granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final agency action. Public notice of any grant of review by the Board under paragraph (l)(1) or (2) of this section shall be given as provided in paragraph (d) of this section. Public notice shall set forth a briefing schedule for the appeal and shall state that any interested person may file an amicus brief. Notice of denial of review shall be sent only to the permit applicant and to the person(s) requesting review.

(4) A petition to the Board under paragraph (l)(1) of this section is, under 42 U.S.C. 307(b), a prerequisite to seeking judicial review of the final agency action.

(5) For purposes of judicial review, final agency action occurs when a final permit is issued or denied by the permitting authority and agency review procedures are exhausted. A final permit decision shall be issued by the permitting authority:

(i) When the Board issues notice to the parties that review has been denied;

(ii) When the Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(6) Motions to reconsider a final order shall be filed within ten (10) days after service of the final order. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision shall be directed to, and decided by, the Board. Motions for reconsideration directed to the Administrator, rather than to the Board, will not be considered, except in cases that the Board has referred to the Administrator and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the final order unless specifically so ordered by the Board.

(m) *Computation of time.* (1) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

(2) Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event, except as otherwise provided.

(3) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

(4) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days shall be added to the prescribed time.

(n) *Public petitions to the Permitting Authority.*

(1) Any interested person (including the permittee) may petition the permitting authority to reopen a permit for cause, and the permitting authority may commence a permit reopening on its own initiative. However, the permitting authority shall not revise, revoke and reissue, or terminate a permit except for the reasons specified in § 71.7(f)(1) or § 71.6(a)(6)(i). All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the permitting authority decides the request is not justified, it shall send the requester a brief written response giving a reason for the decision. Denials of requests for revision, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the permitting authority may be informally appealed to the Environmental Appeals Board by a letter briefly setting forth the relevant facts. The Board may direct the permitting authority to begin revision, revocation and reissuance, or termination proceedings under paragraph (n)(3) of this section. The appeal shall be considered denied if the Board takes no action within 60 days after receiving it. This informal appeal is, under 42 U.S.C. 307, a prerequisite to seeking judicial review of EPA action in denying a request for revision, revocation and reissuance, or termination.

(3) If the permitting authority decides the request is justified and that cause exists to revise, revoke and reissue or terminate a permit, it shall initiate proceedings to reopen the permit pursuant to § 71.7(f) or § 71.7(g).

§ 71.12 Prohibited acts.

Violations of any applicable requirement; any permit term or condition; any fee or filing requirement; any duty to allow or carry out inspection, entry, or monitoring activities; or any regulation or order issued by the permitting authority pursuant to this part are violations of the Act and are subject to full Federal enforcement authorities available under the Act.

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federal register

Monday
July 1, 1996

Part V

Environmental Protection Agency

40 CFR Part 257, et al.
Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for Authorization of State Hazardous Waste Programs; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257, 261, and 271

[FRL–5523–4]

RIN 2050–AE11

Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for Authorization of State Hazardous Waste Programs

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency today is promulgating revisions to the existing criteria for solid waste disposal facilities and practices. These revisions were developed in response to the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA). Today's final revisions establish that only those non-municipal non-hazardous waste disposal units that meet specific standards may receive conditionally exempt small quantity generator (CESQG) hazardous wastes. Today's final revisions establish standards pertaining to location restrictions, ground-water monitoring and corrective action.

The EPA is also finalizing revisions to regulations for hazardous wastes generated by CESQGs. Today's final language will clarify acceptable disposal options under Subtitle D of RCRA by specifying that CESQG hazardous waste may be managed at municipal solid waste landfills subject to Part 258 and at nonmunicipal non-hazardous waste disposal units subject to today's revised Criteria.

EFFECTIVE DATES: January 1, 1998, except §§ 257.21 through 257.28 which are effective July 1, 1998, and §§ 261.5(f), 261.5(g) and 271.1 which are effective January 1, 1997, but which have a compliance date of January 1, 1998. The information collection requirements contained in §§ 257.24, 257.25, and 257.27 have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them.

ADDRESSES: The public docket for this rulemaking (docket number F–96–NCEF–FFFFF) is located at the U.S. Environmental Protection Agency, Crystal Gateway Building, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The public docket is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. Appointments may be made by calling (703) 603–9230. Copies cost $0.15/page.

FOR FURTHER INFORMATION CONTACT: For specific information on aspects of the final rule, please contact Paul Cassidy of the Industrial Solid Waste Branch of the Office of Solid Waste at 1–703–308–7281. For a paper copy of the **Federal Register** notice or for general information, please contact the RCRA Hotline at 1–800–424–9346 or at 1–703–412–9810.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are owners/operators of non-municipal non-hazardous waste disposal units that may receive conditionally exempt small quantity generator (CESQG) hazardous waste. Regulated categories and entities include:

Category	Examples of regulated entities
Construction and demolition waste disposal firms.	Owners/operators of construction and demolition waste disposal units that may receive CESQG hazardous waste.
Industrial manufacturing plants.	Owners/operators of non-municipal non-hazardous waste disposal units that may receive CESQG hazardous waste.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the type of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your non-municipal non-hazardous waste disposal unit is regulated by this action, you should carefully examine the applicability section of this final rule (i.e., section 257.5). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

This **Federal Register** notice will be available in electronic format on the Internet system through the EPA Public Access Server @ gopher.epa.gov.

How to Access the Net

1. Through Gopher: Go to: gopher.epa.gov. From the main menu, choose "EPA Offices and Regions". Next, choose "Office of Solid Waste and Emergency Response (OSWER)". Next, choose "Office of Solid Waste". Then, choose "Non-Hazardous Waste—RCRA Subtitle D". Finally, choose "Industrial".

2. Through FTP: Go to: ftp.epa.gov.
Login: anonymous
Password: Your Internet Address
Files are located in directories/pub/gopher. All OSW files are in directories beginning with "OSW".

3. Through MOSAIC: Go to: http://www.epa.gov. Choose the EPA Public Access Gopher. From the main (Gopher) menu, choose "EPA Offices and Regions". Next, choose "Office of Solid Waste and Emergency Response (OSWER)". Next, choose "Office of Solid Waste". Then, choose "Non-Hazardous Waste—RCRA Subtitle D". Finally, choose "Industrial".

4. Through dial-up access: Dial 919–558–0335. Choose EPA Public Access Gopher. From the main (Gopher) menu, choose "EPA Offices and Regions". Next, choose "Office of Solid Waste and Emergency Response (OSWER)". Next, choose "Office of Solid Waste". Then, choose "Non-Hazardous Waste—RCRA Subtitle D". Finally, choose "Industrial".

Preamble Outline

I. Authority
II. Background
A. Current Solid Waste Controls under the Resource Conservation and Recovery Act (RCRA)—Non-Hazardous Waste Management: Municipal Wastes
B. Sierra Club Lawsuit
C. Summary of Proposal Rule
III. Summary of Regulatory Approach of Today's Final Rule
IV. Major Issues
A. Non-Municipal Non-Hazardous Waste Disposal Units that May Receive CESQG Hazardous Wastes
B. Decision to Impose or Go Beyond the Statutory Minimum Components
C. Decision to Use the Part 258 Criteria Language or General Performance Language
V. Summary of Today's Final Rule
VI. Specifics of Today's Final Rule
A. Section 257.5—Applicability
B. Sections 257.7–257.13—Location Restrictions
C. Sections 257.21–257.28—Ground-Water Monitoring and Corrective Action
D. Section 257.30—Recordkeeping Requirements
E. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators
1. Changes to Section 261.5
2. CESQG Wastes
3. Screening Procedures
VII. Implementation of Today's Final Rule
VIII. Executive Order No. 12866
IX. Regulatory Flexibility Act
X. Submission to Congress and the General Accounting Office
XI. Paperwork Reduction Act
XII. Environmental Justice
XIII. Unfunded Mandates Reform Act

I. Authority

Today's rule is being promulgated under the authority of sections 1008, 2002 (general rulemaking authority), 3001(d)(4), 4004 and 4010 of RCRA, as amended. Section 3001(d)(4) authorizes EPA to promulgate standards for generators who do not generate more than 100 kilograms per month of hazardous waste. Section 4010(c) directs EPA to revise Criteria promulgated under sections 1008 and 4004 for facilities that may receive hazardous household wastes (HHW) or small quantity generator (SQG) hazardous waste.

II. Background

A. Current Solid Waste Controls Under the Resource Conservation and Recovery Act (RCRA)—Non-Hazardous Waste Management: Municipal Wastes

As added by the Hazardous and Solid Waste Amendments (HSWA) of 1984, section 4010(c) requires that the Administrator revise the existing Part 257 Subtitle D Criteria used to classify facilities as sanitary landfills or open dumps by March 31, 1988, for facilities that may receive household hazardous waste or hazardous waste from small quantity generators. The required revisions are those necessary to protect human health and the environment and which take into account the practicable capability of such facilities. At a minimum, the revised Criteria must include ground-water monitoring as necessary to detect contamination, location restrictions, and provide for corrective action, as appropriate.

On October 9, 1991, EPA promulgated revised Criteria for Solid Waste Disposal Facilities accepting household hazardous wastes. Those revisions fulfilled the part of the statutory mandate found in RCRA section 4010 for all facilities that receive household hazardous wastes. (Any facility receiving any household waste is subject to the revised Criteria, which were relocated at 40 CFR part 258 for purposes of clarity). Revisions to the Part 257 Criteria for other Subtitle D disposal facilities that may receive conditionally exempt small quantity generator (CESQG) hazardous wastes were delayed as the Agency had little information concerning the potential or actual impacts that these types of facilities may have on human health and the environment.

B. Sierra Club Lawsuit

The Sierra Club, on October 21, 1993, filed suit against the EPA in the United States District Court for the District of Columbia, seeking to compel the EPA to promulgate revised Criteria for non-municipal facilities that may receive small quantity generator hazardous waste.

As a result of the October 21, 1993 lawsuit, the EPA and the Sierra Club reached agreement on a schedule concerning revised Criteria for non-municipal facilities that may receive CESQG wastes. This schedule requires that the EPA Administrator sign a proposal by May 15, 1995 and a final rule by July 1, 1996. On May 15, 1995, the Administrator signed proposed standards for non-municipal non-hazardous waste disposal units that may receive CESQG hazardous wastes. These proposed standards were published in the **Federal Register** on June 12, 1995 (see 60 FR 30964).

C. Summary of Proposed Regulatory Approach

The June 12, 1995 proposal stated that any non-municipal non-hazardous waste disposal unit[1] that meets the proposed requirements may receive CESQG hazardous waste; if such units do not meet the proposed requirements, they may not receive CESQG waste. Sections 257.5 through 257.30 were proposed to address appropriate facility standards for owners/operators of non-municipal non-hazardous waste disposal units that receive CESQG hazardous wastes. The requirements proposed in §§ 257.5 through 257.30 were substantially the same as 40 CFR part 258. The location restrictions were proposed to be effective 18 months after publication of the final rule, while the ground-water monitoring and corrective action requirements were proposed to be effective 24 months after publication of the final rule.

The June 12, 1995 proposal also proposed to amend the existing language of § 261.5 clarifying acceptable Subtitle D management options for CESQGs. The existing language in § 261.5, paragraphs (f)(3) and (g)(3) allows for a CESQG hazardous waste to be managed at a hazardous waste facility (either in interim status or permitted), a reuse or recycling facility, or a non-hazardous solid waste facility that is permitted, licensed, or registered by a State to manage municipal or industrial waste. The June 12 proposal proposed to continue to allow CESQG waste to be managed at a hazardous waste facility or at a reuse or recycling facility; however, if CESQG waste is managed in a Subtitle D disposal facility, it must be managed in a MSWLF that is subject to part 258 or a non-municipal non-hazardous waste disposal unit that would be subject to the facility standards in §§ 257.5 through 257.30.

[1] Proposed phrase "Non-municipal solid waste disposal facility" has been replaced in the final rule with the phrase "non-municipal non-hazardous waste disposal unit". See Section VI. A2 of today's preamble for an explanation.

III. Summary of Regulatory Approach of Today's Final Rule

Based on comments received on the proposed regulatory approach, the EPA is today finalizing a rule that is almost identical to the proposed requirements for non-municipal non-hazardous waste disposal units that receive CESQG hazardous wastes. Commentors clearly did not favor imposing additional requirements, beyond those proposed, based on the lack of risks presented by non-municipal non-hazardous waste disposal units that receive CESQG hazardous wastes. Furthermore, commentors were somewhat divided on whether to use the part 258 requirements or general performance standards in writing the requirements. The EPA has elected to use the part 258 requirements.

Elsewhere in today's final rule, and again based on comments that agreed with the EPA's proposed regulatory approach for CESQGs, EPA is finalizing the proposed changes to the special requirements for CESQGs (i.e., § 261.5) to clarify the obligation that the generators of CESQG wastes have to ensure proper management of such wastes. CESQGs are those that generate no more than 100 kilograms of hazardous waste or no more than one kilogram of acutely hazardous waste in a month and who accumulate no more than 1000 kilograms of hazardous waste or no more than one kilogram of acutely hazardous waste at one time.

As previously discussed, today's final rule responds to the statutory language in RCRA section 4010(c). In responding initially to the statutory language of section 4010(c), EPA elected to regulate municipal solid waste landfills first, due to the comparatively higher risks presented by these types of facilities. As discussed in the proposed rule, the subject of today's final rule—non-municipal non-hazardous waste disposal units that receive CESQG waste—present a small risk relative to risks presented by other environmental conditions or situations. Given this lower risk, the Agency would have elected not to issue this final rule at this time. In a time of limited resources,

common sense dictates that we deal with higher priorities first, a principle on which EPA, members of the regulated community, and the public can agree. However, given the D.C Circuit's reading of RCRA section 4010(c), *Sierra Club* v. *EPA*, 992 F.2d 337, 347 (D.C. Cir. 1993), and a schedule established as a result of litigation, the Agency must issue this final rule now. Faced with having to issue this final rule for a class of facilities that do not generally pose risks as high as municipal solid waste landfills, the Agency is finalizing requirements that address only the statutory minimum requirements in an attempt to reduce the economic burden on the regulated community.

A complete discussion of the main issues associated with today's final rule is presented in the next section of today's preamble while a discussion of today's requirements is presented later in today's preamble.

IV. Major Issues

A. Non-Municipal Non-Hazardous Waste Disposal Units That May Receive CESQG Hazardous Waste

The proposed rule was written to provide that only those non-municipal non-hazardous waste disposal units which meet the requirements in §§ 257.5 through 257.30 "may receive" CESQG waste, as required by RCRA section 4010(c). Any non-municipal non-hazardous waste disposal unit that did not meet the proposed requirements may not receive CESQG hazardous wastes. The proposal was written to apply to non-municipal non-hazardous waste disposal units that receive CESQG waste for storage, treatment, or disposal, including such units as surface impoundments, landfills, land application units and waste piles. The regulatory definition of the term "disposal" cover all placement of wastes on the land. See 40 CFR 257.2.

Several commentors addressed the Agency's interpretation of the statutory language "may receive". One commentor supported the Agency's decision to limit the proposed regulatory requirements to only those non-municipal non-hazardous waste disposal units that receive CESQG wastes. Another commentor, however, stated that a closer reading of Section 4010(c) reveals that Congress was not only concerned about modifying the criteria for "facilities that may receive hazardous household wastes or hazardous wastes from small quantity generators * * *" but also for "facilities potentially receiving such wastes." According to the commentor, the "may receive" clause of the first sentence in Section 4010(c) merely refers to whether a facility may legally receive CESQG waste for disposal. The "potentially receiving such wastes" clause of the third sentence of Section 4010(c) refers to the actual potential for such facilities to receive CESQG wastes. The potential for CESQG waste to be disposed of at many types of industrial D landfills is high even with the proposed prohibition under § 261.5. It is the "potentially receiving" clause that specifically commands the Agency to promulgate provisions for all industrial facilities that could potentially receive CESQG wastes.

EPA disagrees with the commentor's interpretation of the statutory language in RCRA section 4010(c). More specifically, for a number of reasons, the Agency does not believe that the statutory language cited by the commentor evidences congressional intent that the revised criteria being promulgated today should address disposal of solid waste in all industrial disposal facilities. First, EPA believes that the commentor errs by focusing only on the "facilities potentially receiving" language in the last sentence of section 4010(c). If one reviews this language together with the statutory language in RCRA section 4010(a), it is clear that Congress did not intend for the revised criteria being promulgated today to apply to all industrial landfills.

RCRA section 4010(a) required EPA to conduct a study of the then existing guidelines and criteria issued under RCRA sections 1008 and 4004 which were applicable to "solid waste management and disposal facilities, including, but not limited to landfills and surface impoundments." 42 U.S.C. § 6949a(a). This statutory language does indeed suggest that EPA was to study a wide range of solid waste disposal facilities, including industrial landfills. (As the commentor stated, because the information on industrial disposal facilities was quite limited, EPA's report to Congress did focus on municipal landfills.)

However, the statutory language in section 4010(c) directing EPA to promulgate a rule revising the criteria in 40 CFR Part 257 limits the rule's applicability only to those facilities which may receive hazardous household waste or small quantity generator waste. 42 U.S.C. 6949a(c). If Congress had intended the revised criteria under section 4010(c) to apply to all solid waste disposal facilities, including industrial landfills and surface impoundments, it clearly could have done so by enacting language similar to that already used in section 4010(a).

Secondly, the legislative history of RCRA section 4010 suggests that Congress expressly rejected a provision that would have required rules to be promulgated under section 4010(c) to apply to the entire universe of RCRA Subtitle D solid waste disposal facilities. Indeed, the House version of section 4010 would have required EPA to promulgate revised guidelines and criteria such that they would be applicable to all "solid waste management and disposal facilities, including, but not limited to landfills and surface impoundments * * *." H.R. 2867, section 30, 98th Cong., 1st Sess. (as introduced in the Senate on November 9, 1983). However, the Conference Committee instead adopted a Senate amendment which limited the scope of the revised criteria to those facilities that may receive hazardous household waste or small quantity generator waste. H. Rept. No. 98–1133, 98th Cong., 2d Sess., at 116–117.

Another indication that RCRA section 4010(c) was not intended to cover the entire universe of solid waste disposal facilities is the fact that subsequent to the enactment of section 4010(c) (as part of the Hazardous and Solid Waste Amendments in 1984), a number of bills were introduced in Congress which would have either authorized or required EPA to issue additional regulations that would address all disposal facilities receiving industrial waste as opposed to addressing those which may receive CESQG waste as stated in Section 4010(c). See, e.g., H.R. 3735, "Waste Materials Management Act of 1989," section 324 (would have required EPA to promulgate standards for the management of industrial solid waste) (Luken Bill); S. 1113, "Waste Minimization and Control Act of 1989," section 204 (would have required EPA to promulgate requirements for facilities that manage different types of industrial waste) (Baucus Bill). Neither of these provisions (although neither was enacted) would have been necessary if RCRA section 4010(c) required EPA to promulgate revised criteria for all types of industrial disposal facilities.

This same commentor cites to language in both the Report to Congress (as provided for in RCRA section 4010(b)) and the MSWLF rulemaking to suggest that EPA acknowledged that all industrial landfills, even those not receiving CESQG waste, should fall within the scope of today's rule. EPA acknowledges that it expressed a concern about the potential risks that industrial solid waste disposal facilities might pose; however, EPA indicated that it did not have the level of information necessary to conduct a rulemaking for such disposal facilities. At the time of issuing the final MSWLF rule, EPA indicated that it would attempt to study these facilities to gain a better understanding of the risks that they may pose. See 56 FR 51000 (Oct. 9, 1991).

After investigating available information in more detail, it became clear that of all industrial solid waste disposal facilities, only construction and demolition and off-site commercial facilities typically receive CESQG waste. As discussed in the proposed rule, recent information and discussions with the relevant industries indicate that on-site industrial disposal facilities (which make up the vast majority of industrial disposal facilities) generally do not receive CESQG waste. However, the commentor should be aware that EPA has drafted the rule such that it will apply to such industrial on-site facilities if they receive CESQG waste. See sections 257.5(a) (1) and (3).

B. Decision To Impose or Go Beyond the Statutory Minimum Components

RCRA section 4010(c) requires that the revised criteria must at a minimum include location restrictions, ground-water monitoring as necessary to detect contamination, and corrective action, as appropriate. The June 12, 1995, proposal discussed how the Part 258 Municipal Solid Waste Landfill Criteria went beyond these requirements. (See 60 FR 39968.) The proposal for non-municipal non-hazardous waste disposal units did not, however, go beyond these statutory minimum requirements. The Agency presented data, in the June 12 proposal, which showed that the establishment of additional facility management requirements, beyond these types of requirements, for non-municipal non-hazardous waste disposal units that may receive CESQG waste was not warranted.

The Agency received comments on both sides of this issue. Some commentors felt that the statutory minimum components were adequate to address the potential risks from non-municipal non-hazardous waste disposal units that may receive CESQG wastes. However, other commentors believed that additional regulatory controls should have been required.

Commentors stated that the level of documented releases and environmental problems do not merit extensive regulations. Commentors also stated that the final regulations should be limited to the proposed requirements as they felt that those requirements were indeed adequate given the low risks associated with the disposal of CESQG waste in non-municipal non-hazardous waste disposal units. Some commentors argued that less stringent requirements, less than the proposed requirements, would have been more appropriate.

On the other hand, some commentors raised the concern that the cumulative effect of allowing small quantities of hazardous waste to be disposed of in non-municipal non-hazardous waste disposal units would result in a major source of ground-water pollution. Commentors further felt that because MSWLF owners/operators have upgraded their units to meet the requirements in Part 258 in order to minimize the risk associated with the disposal of household hazardous wastes and CESQG wastes, non-municipal non-hazardous waste disposal units disposing of CESQG wastes should be required to meet the same standards as in Part 258 (e.g., closure and post-closure care, financial assurance and operating requirements). In addition, one commentor believed that the Agency's conclusions, concerning the potential risks associated with non-municipal non-hazardous waste disposal units receiving CESQG wastes, were based on outdated and limited data. The commentor felt that the data cited by EPA failed to justify the Agency's conclusion that non-municipal non-hazardous waste disposal units pose low risk but rather simply indicate a lack of information on the subject.

The Agency agrees with those commentors who believe that the proposed requirements are adequate to address the potential risks from non-municipal non-hazardous waste disposal units that receive CESQG hazardous wastes. In the June 1995 proposal, the Agency took the position that only the proposed requirements were necessary because "construction and demolition (C&D) waste units, in general, do not currently pose significant risks and that individual damage cases are limited in occurrence" and that off-site commercial landfills are subject to more "stringent environmental controls". The Agency requested additional data concerning C&D units to further assess the potential risks these types of units may pose as well as additional data on commercial industrial solid waste units or other types of units that may be subject to the proposal.

The Agency did not receive any new data concerning the potential risks associated with C&D units or any other types of units potentially subject to the proposal. Thus, EPA has no information suggesting that the facilities subject to this rule pose any risks beyond those limited ones discussed in the proposed rule. (One commentor submitted leachate data on bulky waste landfills but that data was previously considered by the Agency during the development of the proposal.) In response to the commentor that suggested that the cumulative effects of allowing small amounts of hazardous waste would result in a major source of ground-water pollution the Agency disagrees. The Agency believes that the limited number of documented damage cases and cases of ground-water contamination, discussed in the proposal to this rule, do not support the commentor's concern about the creation of major sources of ground-water pollution. As such, the Agency believes that it should not go beyond the requirements that were proposed.

For those commentors who expressed the need to impose Federal controls on C&D units beyond the proposed requirements, in the form of closure/post-closure standards and/or financial assurance requirements, the Agency wishes to point out that these types of standards are prevalent among State programs for C&D units. Most States (44) specify some thickness for a final cover, 34 States require post-closure care for some period of time while 33 and 32 States require financial assurance for closure and post-closure care, respectively, for C&D units. Given the lack of data suggesting that C&D facilities pose the same risks as MSWLFs and the fact that most States already require additional regulatory controls, EPA does not believe it is appropriate to establish requirements that go beyond the statutory minimum requirements of Section 4010(c).

C. Decision To Use the Part 258 Criteria Language or General Performance Language

The June 12, 1995 proposal identified two options for writing the proposed requirements. One was to use the Part 258 criteria as the baseline for these requirements. Part 258 is a combination of performance standards and additional detail to help the owner/operator achieve compliance with the performance standards. Part 258 also establishes minimum national criteria for municipal solid waste landfills, and as such, a minimum national level of protection. The second option was to use general performance standards that could be met by facility owners/operators as they implement the standards as well as to guide States in designing new regulatory programs (or revising existing regulatory programs).

Reasons cited in the proposal for using the Part 258 Criteria included: (1) Part 258 Criteria provide sufficient detail so that an individual owner/operator can self-implement them without State interaction in those instances where States do not seek approval of their permitting program as required in RCRA Section 4005(c); (2) EPA believes that the national minimum requirements are necessary for collection of reliable and consistent ground-water monitoring data and to allow the owner/operator and States to respond to contamination from the unit; (3) They contain a substantial amount of flexibility that allows approved States to tailor standards to individual and classes of facilities; (4) Some States expressed strong support for using 258 standards as the baseline for solid waste disposal facilities that receive CESQG hazardous waste; and (5) While some States have standards for non-municipal facilities that are not identical to the 258 standards, the Agency believed there was a strong likelihood that many State programs would be approvable.

Reasons cited in the preamble in support of using the general performance standard approach included: (1) Although the Part 258 standards contain substantial flexibility for States to tailor the programs to their conditions, the Part 258 standards put certain limits on State flexibility to design a program tailored to local conditions; (2) The Part 258 standards also include certain national minimum requirements (which States can not modify) that EPA promulgated because of the risks posed by MSWLFs; (3) In the absence of a significant Federal program, over half of the States have adopted location standards, ground-water monitoring requirements, and corrective action requirements that are significantly less extensive than the Part 258 standards; and (4) a general performance standard would provide the maximum flexibility for States and owners to adopt new methodologies and technologies (e.g., detecting ground-water contamination using technologies other than monitoring wells) to meet the standard at the lowest possible cost.

Comments were received in support of both approaches. Commentors supported the use of the Part 258 Criteria because they thought general performance standards would be difficult to implement and enforce. Another commentor stated that Section 4010(c) requires EPA to spell-out the requirements that facilities must implement; he argues that by not specifying how to attain the statutory minimum requirements, a performance-based approach would fall short of the statute. The performance-based approach would spawn endless uncertainty, requiring the wheel to be re-invented for each facility. This uncertainty would fall most heavily on citizens who are concerned about individual facilities. Other commentors argued against promulgating general performance standards and stated that the Part 258 rules provide a clear, flexible, common sense approach. Using Part 258 provides both the regulated community and the State Agencies a familiar, well-thought out scheme that is easy to administer and implement and offers sufficient flexibility to address site-specific conditions in approved States. The Agency received extensive comment in the Part 258 rulemaking indicating why general performance standards were inappropriate for landfills; those comments are as relevant today for landfills receiving CESQG waste. Finally, developing a significantly different set of rules from either Part 257 or Part 258 would also be confusing to the regulated community because it would create one set of rules for household wastes (Part 258), one for sites that accept CESQG wastes (this rule) and one for all other non-hazardous wastes (Part 257).

Other commentors supported the use of general performance standards by reiterating the reasons provided in the proposal in support of such an approach. Other commentors stated that due to the nature of the demolition waste stream being landfilled, they supported the use of general performance standards vs. all of the Part 258 standards. Commentors supported maximum State flexibility to address local conditions and requirements tailored to the perceived risk, not automatically adopting the more restrictive MSWLF regime. Another commentor stated that the Part 258 ground-water monitoring standards were developed for MSWLFs and if the ground-water monitoring program for non-municipal non-hazardous waste disposal units is not based on a performance standard that allows for site-specific design, certain facilities will be overregulated. Another commentor stated that the general performance standard is preferable as long as it provides an adequate description of the performance objective. Guidance manuals could be used to implement the general performance standards.

The Agency agrees with the majority of commentors who supported the use of the Part 258 Criteria. The Agency believes, for all of the reasons discussed by the commentors, that the use of the Part 258 criteria is the preferable option to utilize in the final rule. The Part 258 Criteria are a clear, flexible set of regulations that can be tailored by approved States to address site-specific conditions while protecting human health and the environment. The ground-water and corrective action requirements of today's final rule offer owners/operators in approved States great flexibility in establishing a ground-water monitoring program and in selecting a corrective measure should corrective action become necessary.

In a sense, the Part 258 Criteria for ground-water monitoring and corrective action are general performance standards. However, the big difference between the use of the Part 258 Criteria and the use of a general performance standard approach is the detail that is contained in the Part 258 Criteria, the same detail would not be a part of a general performance standard approach. Both the Part 258 Criteria and the general performance standard approach use performance standards; the general performance standard approach would provide only general standards to be followed by the owner/operator, while the Part 258 Criteria would provide additional detail and guidance to an owner/operator in trying to comply with the performance standards contained in Part 258. This additional detail in the Part 258 Criteria is what the Agency believes commentors were referring to when they stated that "using Part 258 provides both the regulated community and the State Agencies a familiar, well-thought out scheme that is easy to administer and implement and offers sufficient flexibility to address site-specific conditions". It is this additional detail in Part 258 that if not contained in the general performance standard approach would create confusion among the regulated community and "spawn endless uncertainty".

The Agency believes that the use of the detail in the Part 258 Criteria for ground-water monitoring and corrective action, in the form of factors to consider vs. design standards, clearly guides an owner/operator in achieving compliance with the performance standards in Part 258 while maximizing the owners/operators ability to take into account and use site-specific data. Part 258 guides an owner/operator and State Agencies by specifying (1) what factors should be considered in determining the number, depth, and spacing of the wells in the monitoring system; (2) how wells should be cased, (3) that any statistical test comply with basic performance standards, (4) what factors should be considered in establishing an initial list of monitoring parameters and frequency, (5) what factors should be considered in selecting any potential remedy under corrective action, and (6) what factors should be considered in developing interim measures under a corrective action program. The Agency does not believe that the use of the detail in the Part 258 Criteria will result in "facilities being overregulated". EPA also believes that this detail is necessary to protect human health and the environment.

V. Summary of Today's Final Rule

Today's final rule specifies that non-municipal non-hazardous waste disposal units that do not meet the requirements (i.e., location restrictions, ground-water monitoring and corrective action) in sections 257.5 through 257.30 may not receive CESQG hazardous waste. The ground-water monitoring and corrective action requirements being finalized today are substantially the same as those that were proposed. The location restrictions have been changed from the proposal with the major change being that in the proposal 6 location restrictions were proposed but in today's final rule only 2 location restrictions are being finalized (floodplains and wetlands). Differences between the final requirements and those that were proposed are discussed in the appropriate sections of today's preamble.

The location restrictions will be effective 18 months after publication of the final rule. The location restrictions being finalized today are the floodplains and wetlands restrictions. The floodplains restriction is applicable to new units, existing units, and lateral expansions of existing units that receive CESQG waste. Only new units and lateral expansions of existing units that receive CESQG hazardous waste must comply with the wetlands location restriction.

The ground-water monitoring and corrective action requirements will be effective 24 months after publication of the final rule. Any existing unit, new unit, or lateral expansion of an existing unit that receives CESQG hazardous waste after the effective date will be required to comply with the final ground-water monitoring and corrective action requirements. The ground-water monitoring provisions are being finalized to ensure that units that receive CESQG hazardous waste will have monitoring systems in place that will enable the detection of any contamination of ground-waters along with appropriate sampling and analysis procedures to allow for the statistical analysis of monitoring results. The corrective action requirements will allow for the evaluation, selection, and implementation of an appropriate remedial technology to clean-up any contamination of ground-waters.

Today's final rule also amends the existing language of § 261.5 clarifying acceptable Subtitle D management options for CESQGs. The language in § 261.5, paragraphs (f)(3) and (g)(3) currently allows a CESQG hazardous waste to be managed at a hazardous waste facility (either in interim status or permitted), a reuse or recycling facility, or a non-hazardous waste disposal unit that is permitted, licensed, or registered by a State to manage municipal or industrial waste. Today's final rule would continue to allow CESQG waste to be managed at a hazardous waste facility or at a reuse or recycling facility. Today's final rule will require that if CESQG waste is managed in a Subtitle D disposal facility, it may be managed in a MSWLF that is subject to Part 258 or managed in a non-municipal non-hazardous waste disposal unit that is subject to the standards being finalized in §§ 257.5 through 257.30.

VI. Specifics of Today's Final Rule

A. Section 257.5—Applicability

1. Applicability

EPA proposed that any owner/operator of a non-municipal non-hazardous waste disposal unit that wanted to receive CESQG hazardous waste would have to comply with the proposed requirements in §§ 257.5–257.30 prior to the actual receipt of the CESQG waste. The proposal stated that owners/operators of non-municipal non-hazardous waste disposal units that do not meet the proposed criteria may not receive CESQG hazardous waste.

The proposal further stated that owners/operators of non-municipal non-hazardous waste disposal units that receive CESQG hazardous waste after the effective date would have to comply with the location restrictions (§§ 257.7–257.12) within 18 months after the date of publication of the final rule and with the ground-water monitoring and corrective action requirements (§§ 257.21–257.28) within 24 months after the date of publication of the final rule.

The Agency is finalizing the applicability of the final rule as proposed and retaining the effective dates as proposed. The Agency received no specific comments in regard to the effective dates with the exception of one comment that stated that the commentor had no problem with the two-year effective date for the ground-water monitoring and corrective action requirements.

2. Definitions

EPA proposed a number of definitions for terms in the proposal and received limited comments. One commentor thought that the term "non-municipal solid waste disposal facility" should be more appropriately called "non-municipal non-hazardous waste disposal facility". The commentor stated that by discussing only "solid waste" facilities, hazardous waste facilities are not excluded because they are a subset of "solid waste". Furthermore, this commentor thought the term "non-municipal solid waste landfill" should also more appropriately be called a "non-municipal non-hazardous waste disposal facility". This same commentor also expressed a concern that the terms "facility" and "unit" as used in §§ 257.7 through 257.9 were used interchangeably and that some clarification and/or consistency was necessary.

The EPA agrees that the term "non-municipal solid waste disposal facility" could be confusing and that the term "non-municipal non-hazardous waste disposal facility" more clearly defines the types of facilities potentially subject to today's final rule. The EPA also agrees that the terms "facility" and "unit" were used interchangeably and that the term "unit" is more appropriate to use in defining what is potentially subject to today's final rule. Therefore, in today's preamble and in the final rule language the term non-municipal non-hazardous waste disposal unit is used. Correspondingly, the terms "existing facility" and "new facility" have been changed in the final rule to refer to "exiting unit" and "new unit". Existing unit refers to any non-municipal non-hazardous waste disposal unit that is receiving CESQG hazardous waste as of the effective date (i.e., 18 months after the final rule is published in the **Federal Register**). A new unit is any non-municipal non-hazardous waste disposal unit that has not received CESQG hazardous waste prior to the effective date (i.e., 18 months after the final rule is published in the **Federal Register**).

Today's applicability section (§ 257.5) has also been changed to clarify the situation where a non-municipal non-hazardous waste disposal unit decides to receive CESQG hazardous waste after the effective date of today's rule. The applicability section (section 257.5(a)(5)) has been changed to clarify that any non-municipal non-hazardous waste disposal unit that first receives CESQG hazardous waste after the date 18 months after the date of publication of this final rule in the **Federal Register**

must be in compliance with all the requirements prior to the receipt of the CESQG hazardous waste.

One additional change from the proposed rule language concerns the definition of the term State/Tribal Director. In the proposal the term State/Tribal Director was defined to mean the chief administrative of the State/Tribal agency responsible for implementing the State/Tribal permit program for Subtitle D regulated facilities. The remainder of the proposed rule language, however, consistently used the term State Director. This was done as a means of efficiency and the Agency did not imply any other substantive effect on the character, authority, and/or rights of Tribes. The final rule will include Indian Tribes in the definition of the term "State" (as was proposed) and Tribal Director in the definition of "State Director". This change is being made to be consistent with the proposed changes to Part 258 language in the proposed State/Tribal Permit Program Determination of Adequacy (See 61 *FR* 2584, January 26, 1996). The State/Tribal Permit Program Determination of Adequacy contains a complete discussion of the opportunities that are available to Indian Tribes to apply for program approval.

B. Sections 257.7–257.13—Location Restrictions

EPA proposed a set of location restrictions for new and existing units that receive CESQG waste which mirrored restrictions already established for MSWLFs. 40 CFR 258.10 to 258.16. However, in response to comment received on the proposal, EPA has modified the proposed location restrictions in a number of ways. Because units receiving CESQG waste pose a smaller risk to human health and the environment than do MSWLF facilities and for the reasons discussed below, EPA believes that the restrictions being promulgated today satisfy the statutory standard contained in RCRA Section 4010(c). 42 U.S.C. § 6949a(c).

1. Airport Safety

EPA proposed that new, existing, and lateral expansions of existing non-municipal non-hazardous waste disposal units, that receive CESQG hazardous waste, demonstrate that the unit does not pose a bird hazard to aircraft. The proposed airport safety provision was the same as the current Part 257 requirment; only the

Several commentors objected to the airport safety provision in Section 257.7 and requested that the provision be removed. Commentors stated that units that accept CESQG wastes will be non-putrescible operations that do not provide a source of food or nesting for birds. One commentor stated that actual observations of over 30 sites across the country support the conclusion that birds are virtually nonexistent at C&D units. Lastly, one commentor referenced the recent FAA report titled "Draft Report to Congress on Potential Hazards to Aircraft by Locating Waste Disposal Sites in Vicinity of Airports", wherein, the FAA stated that recent FAA sponsored research has shown that non-putrescible waste landfills (i.e., construction and demolition waste landfills, ...) do not attract wildlife that could create a wildlife/aircraft strike hazard.

In response to commentors concerns, the Agency has eliminated the airport safety provision from today's final rulemaking. The Agency's original requirement under Part 257 was designed to regulate units that dispose of putrescible wastes; based on the fact that units potentially subject to today's final rule do not receive putrescible wastes (e.g., C&D units), the Agency sees no reason to have this requirement as part of today's final rule.

2. Floodplains

EPA proposed that new, existing, and lateral expansions of existing non-municipal non-hazardous waste disposal units, that receive CESQG hazardous wastes, located in the 100-year floodplain demonstrate that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain or result in washout of solid waste so as to pose a hazard to human health and the environment.

No comments were received on the substance of the floodplain provision; therefore, the Agency is finalizing the floodplain provision as it was proposed.

3. Wetlands

The Agency proposed that new facilities and lateral expansions of existing non-municipal non-hazardous waste disposal units, that receive CESQG hazardous wastes, not be located in a wetland unless specified demonstrations can be met by the owner/operator. The demonstrations were to ensure that if a non-municipal

proposal was consistent with the Agency's goal of achieving no net loss of the nation's wetlands.

No comments were received on the substance of the wetlands provision, therefore, the Agency is finalizing the wetlands provision as it was proposed.

4. Fault Areas

EPA proposed that new and lateral expansions of existing non-municipal non-hazardous waste disposal units, that receive CESQG hazardous waste, not be located within 200 feet of a fault that has had displacement in Holocene time unless the owner/operator demonstrates that an alternative setback distance of less than 200 feet will not affect the structural integrity of the unit during displacement and will be protective of human health and the environment.

One commentor questioned the need for a fault area restriction because this location provision is premised on the fact that if movement along a fault occurs, the structural integrity of the engineering features will be disrupted. Given the low risks imposed by many of the facilities potentially subject to the rule and the fact the Agency is not regulating the design features (i.e., liners, leachate collection systems) of these facilities, imposing siting restrictions is not warranted.

The Agency agrees that the fault area restriction is designed to guard against disruptions to the engineering features that provide structural integrity to the unit. Because of the low-risks posed by non-municipal non-hazardous waste units that receive CESQG waste, EPA did not propose any liner requirements or other provisions bearing on the structural integrity of the units. Thus, the Agency agrees that imposing this restriction is not warranted, and as such, the fault area restriction is not a part of today's final rule.

5. Seismic Impact Zones

EPA proposed that new and lateral expansions of existing non-municipal non-hazardous waste disposal units, that receive CESQG hazardous waste, not be located in seismic impact zones unless the owner/operator demonstrates that all containment structures are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

No specific comments were received on this provision. However, this provision like the fault area provision,

restrictions applies to this restriction as well, and as such, the Agency sees no reason to include this location restriction as part of today's final rulemaking.

6. Unstable Areas

EPA proposed that new, existing and lateral expansions of existing non-municipal non-hazardous waste disposal units, that receive CESQG hazardous waste, located in an unstable area demonstrate that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the facility will not be disrupted.

As with the seismic impact zone restriction, no specific comments were received on this part of the proposal. However, for the same reasons as discussed above under the fault area and seismic impact zone restrictions, this location restriction is also not part of today's final rule.

7. Deadline for Making Demonstrations

EPA proposed that existing non-municipal non-hazardous waste disposal units, that receive CESQG hazardous wastes, that could not make the demonstrations pertaining to airports, floodplains, or unstable areas, would not be allowed to accept CESQG hazardous waste for disposal 18 months after the date of publication of the final rule.

No specific comments were received on this provision of the proposal. As the final rule only applies to existing units located in floodplains, this provision has been changed to require that only existing units in floodplains will not be allowed to accept CESQG hazardous waste for disposal 18 months after the date of publication of the final rule.

C. Sections 257.21–257.28—Ground-Water Monitoring and Corrective Action

1. Applicability

The Agency proposed a number of requirements under the heading "applicability." The Agency proposed that the ground-water monitoring requirements could be suspended by the Director of an approved State if the owner/operator could demonstrate that there was no potential for migration of hazardous constituents from the facility to the uppermost aquifer during the active life plus 30 years.

The Agency also proposed the existing units had to be in compliance

monitoring requirements when waste is first placed in the unit. The Director of an approved State could specify an alternative schedule for compliance for existing units. The proposed alternative schedule called for 50% of existing units to be in compliance within 2 years and for all existing units to be in compliance within 3 years.

The Agency also proposed that ground-water monitoring be conducted throughout the active life plus 30 years. The director of an approved State could decrease the 30 year period.

Lastly, the Agency proposed to grant the Director of an approved State the flexibility to establish and use an alternative list of indicator parameters for some or all of the constituents listed in Appendix I (appendix I to Part 258) and to allow small, dry, remote non-municipal non-hazardous waste disposal units to use an alternative form of detecting ground-water contamination.

The Agency received no adverse comment on most of these provisions. The flexibility for small, dry, remote non-municipal units was considered an example of increased flexibility by a commentor. The Agency has slightly altered the regulatory language for the proposed flexibility for small, dry, remote non-municipal non-hazardous waste disposal units that may be allowed to use alternative forms of detecting ground-water contamination. The proposed language required, in two places, that an owner or operator had to submit results or seek approval of corrective measures within 60 days. These deadlines have been removed to allow for increased flexibility. The deadlines have been replaced with language that allows the Director of an approved State to establish a schedule for the owner or operator for the above mentioned activities. This change is also being done to be consistent with the rule language that was proposed for MSWLFs, allowing small, dry, remote MSWLFs to use alternative forms of detecting ground-water contamination. See 60 *FR* 40799, August 10, 1995. The proposed language allowing for alternatives to be used for small, dry, remote MSWLFs was the basis for the proposed language to allow small, dry, remote non-municipal, nonhazardous waste disposal units to also use alternative forms of detecting ground-water monitoring. See 60 *FR* 30976, June 12, 1995.

Agency's decision to impose the ground-water monitoring period through the active life plus 30 years. The commentors believed that the time frame was consistent with other similar rules, and based upon the flexibility in the rule, was not overly burdensome to units in comparison to the environmental protection it affords.

Several commentors requested that the Agency reduce the ground-water monitoring period to a shorter time period or to a time period based on an individual unit's performance standard. In regard to a performance standard, one commentor argued a performance standard could be used by an owner/operator to demonstrate that an alternative time period is appropriate. One example suggested was that the performance standard be based on a specified number of years without significant changes in ground-water quality. No specific number of years was provided.

In regard to a shorter period of time, commentors generally agreed that the 30 years was not reflective of the low risks posed by units that may potentially receive CESQG wastes. One commentor requested 10 years for existing and 15 years for new units. Another commentor stated that a shorter period was necessary because most States have a post-closure period that ranges from 5–10 years. A third commentor stated that applying an extremely burdensome 30 years period places an economic burden on operators that is not remotely balanced by any real environmental benefit. This commentor suggested a 5-year period and that the rules could be extended if problems are discovered during the 5 years. Lastly, one commentor questioned what incentive existed to monitor groundwater for 30 years beyond the final receipt of waste. This commentor considered it unreasonable to expect that the monitoring program will be met after a disposal unit has no further economic value.

After a consideration of the comments, the Agency has elected to retain the requirement that ground-water monitoring be conducted for 30 years after the active life of the unit for the same reasons that were discussed in the proposal. The Agency believes that there is sufficient flexibility within § 257.21(e) for an approved State to decrease the 30-year period. The final regulation allows the Director of an

the length of the monitoring period if an owner/operator can demonstrate, for example, that no adverse changes in ground-water quality have been detected for some period of time less than 30 years. Furthermore, although some commentors expressed concern over the length of the 30-year period, the Agency did not receive any data supporting any such reduction in the length of the monitoring period.

Today's final rule continues to provide flexibility for an approved State to suspend the ground-water monitoring requirements in hydrogeologic settings that may preclude the migration of hazardous constituents from the unit to the ground water.

2. Ground-Water Monitoring Systems

The Agency proposed a number of requirements under the proposed section "ground-water monitoring systems". The Agency proposed that ground-water monitoring systems consist of a sufficient number of wells, installed at appropriate locations and depths to yield ground-water samples from the uppermost aquifer that represent the quality of background ground water and the quality of ground water passing the relevant point of compliance. The downgradient monitoring system was to be installed at the relevant point of compliance, as allowed by the Director of an approved State, or at the waste management unit boundary in unapproved States. The relevant point of compliance specified by the Director of an approved State was proposed to be no more than 150 meters from the waste management unit boundary and located on land owned by the owner/operator. Furthermore, the proposal allowed for multi-unit monitoring under specific conditions.

The only area to receive comments was the point of compliance. A number of commentors expressed concern regarding the 150 meter limit for the point of compliance. One commentor requested EPA to either allow a site-specific decision regarding the point of compliance or allow the use of a point of compliance within the facility boundary. A second commentor requested that EPA not specify a specific distance but rather authorize a site-specific identification of a compliance point based on the location for the potential for exposure. For example, if a unit is located a considerable distance from a drinking water well, having the point of compliance 150 meters from the unit boundary may be needlessly stringent. A third commentor stated that a flexible approach to establishing the point of compliance is well suited to low-risk facilities.

After a consideration of the comments, the Agency has decided to retain the proposed language regarding the point of compliance. The final rule will require that the downgradient monitoring wells be installed at the waste management unit boundary in unapproved States or at the relevant point of compliance, as allowed by the Director of an approved State. The relevant point of compliance can be up to 150 meters from the waste management unit boundary. The Agency retained the 150 meter limit because the Agency believes it is essential to set a maximum distance limit for the point of compliance that would limit ground-water contamination, yet still provide flexibility to owners/operators of non-municipal non-hazardous waste disposal units that receive CESQG wastes. A point of compliance set some distance much farther from the unit boundary would result in a situation where ground-water contamination, when first detected, would be more wide-spread and result in higher corrective action costs to remedy the situation.

The Agency realizes that the point of compliance can have significant implications associated with the scope, magnitude and cost of ground-water remedial actions. Because of these implications, the point of compliance continues to be an area of discussion and debate. At this point in time, the Agency is finalizing the point of compliance language for Subtitle D units as described in the proposal for this rule. However, the Agency is addressing the point of compliance issue in an Advance Notice of Proposed Rulemaking (ANPR) (See 61 FR 19432, May 1, 1996) as part of developing regulations concerning "Corrective Action for Releases from Solid Waste Management Units at Hazardous Waste Management Facilities" (subpart S of 40 CFR part 264). The Agency intends to use the ANPR to invite comments on a number of issues, including the point of compliance pertaining to corrective action under Subtitle C of RCRA. It is possible that future regulations, which address new point of compliance approaches for Subtitle C facilities, could also address Subtitle D units subject to today's final rule.

3. Ground-Water Sampling and Analysis Requirements

The proposal required the use of consistent sampling and analysis procedures that would be designed to ensure monitoring results that provide an accurate representation of ground-water quality at the background and downgradient monitoring wells. The Agency received no substantial comments on this section of the proposal; therefore, the sampling and analysis requirements are being finalized as proposed. Comments concerning sampling and analysis requirements are addressed in the comment response document associated with this final rule.

4. Detection Monitoring Program

The proposal addressed numerous requirements associated with detection monitoring, the first phase of ground-water monitoring. The majority of the proposed requirements pertained to which constituents had to be monitored for and the required frequency of monitoring. The proposal required that those constituents identified in Appendix I of part 258 were to be monitored for during the detection monitoring phase of ground-water monitoring and that the frequency of monitoring was to be at least semi-annual. The proposal also specified the areas of flexibility that existed for an owner/operator during detection monitoring.

The Agency received no comments on the frequency of monitoring during the detection monitoring period, and as such, the final rule requires at least semi-annual monitoring during detection monitoring. The final rule also continues to allow the Director of an approved State to specify an alternative frequency of monitoring during the active life plus 30 years (no less than annual during the active life).

The Agency did receive some comments regarding the constituents to be monitored for during detection monitoring. A commentor raised the issue of developing a new list of ground-water parameters for facilities that accept CESQG wastes. Another commentor stated that MSWLFs contain a much larger portion of waste that is biodegradable and therefore creates its own chemical degradation byproducts. Unless EPA has data that shows that leachates from non-municipal non-hazardous waste facilities are similar to municipal solid waste landfills, the Agency should not be imposing similar requirements. According to the commentor, the ground-water monitoring program should require testing only for constituents that are related to the waste accepted at the facility, not a list of constituents that could be found at any facility that may accept CESQG wastes. Lastly, the commentor stated that the monitoring parameters should be representative of those constituents that are most mobile in the ground-water environment so that early detection is accomplished without undue cost of over regulation.

After a consideration of the comments, the Agency has decided to retain the requirements as proposed in the detection monitoring section of the proposal. The Agency believes that developing a new list of ground-water constituents for facilities that accept CESQG wastes would cause undue confusion for the regulated community. However, EPA has provided some flexibility for approved States in regard to testing for constituents that are related to the wastes accepted at the unit. Today's final rule provides flexibility to the Director of an approved State to remove from the detection monitoring list of constituents, any constituent that is not reasonably expected to be in or derived from the waste contained in the unit. Furthermore, the Director of an approved State may establish an alternative list of indicator parameters in lieu of some or all of the constituents in appendix I of part 258, if the alternative indicator parameter(s) provides a reliable indication of releases from the unit to the ground water.

The June 1995 proposal allowed the Director of an approved State to develop only an alternative list of inorganic indicator parameters; the organic parameters in appendix I of part 258 were to be monitored for and no substitutions were allowed. However, in today's final rule, the Agency has provided additional flexibility in that the Director of an approved State can establish an alternative list of indicator parameters for some or all of the constituents in appendix I of part 258 including the organic constituents. The Agency has provided this area of increased flexibility because an alternative list of indicator parameters, approved by the Director of an approved State, could be appropriate in specific circumstances, and the Agency continues to believe that the risks posed by non-municipal non-hazardous waste disposal units that may elect to receive CESQG wastes is relatively small when compared to MSWLFs. Non-municipal non-hazardous waste units that elect to receive CESQG wastes will be mostly C&D units. The Agency stated in the proposal for this rulemaking, that these types of units, in general, do not pose a significant risk. As such, the Agency believes that Directors of approved State programs can exercise additional flexibility in establishing the appropriate list of detection monitoring constituents or indicator parameters.

This area of increased flexibility can serve to alleviate commentor's concerns regarding the appropriate parameters to monitor for during detection monitoring. This area of flexibility will allow the Director of an approved State to tailor the detection monitoring list to those wastes accepted at the facility and/or those that are expected to be a concern due to mobility. One commentor expressed concern that the detection monitoring list (Appendix I to Part 258) for today's final rule should not be identical to the detection monitoring list developed for municipal solid waste landfills. The Agency, however, believes that leachates from non-municipal units are somewhat similar, in that some of same types of organics and inorganics can appear in non-municipal leachates but at lesser concentrations, and as such, saw no reason to create a separate and new detection monitoring list.

5. Assessment Monitoring Program

The proposal would have required that once a statistically significant increase over background was detected during detection monitoring, a full assessment of any impacts on ground-water quality had to be undertaken. The purpose of assessment monitoring was to sample for a larger list of constituents to determine which were present. The assessment monitoring program also required the establishment of ground-water protection standards.

The Agency received no comments on the proposed assessment monitoring requirements; therefore, the assessment monitoring program requirements are being finalized as proposed.

6. Assessment of Corrective Measures, Selection of Remedy, and Implementation of the Corrective Action Program

The proposal required that once a statistically significant increase was detected over the ground-water protection standard for any constituent detected during assessment monitoring, the owner/operator was required to assess available corrective measures. Available corrective measures were those that could meet the performance standards established under the proposed selection of remedy requirements. Lastly, the proposal would have required that once a corrective measure was selected, the owner/operator would be required to implement the selected remedy.

The Agency received no comments on the proposed corrective action requirements; therefore, the corrective action requirements are being finalized as proposed.

D. Section 257.30—Recordkeeping Requirements

EPA proposed that owners/operators of non-municipal non-hazardous waste disposal units record and retain various pieces of information in an operating record. The operating record was proposed to be at the facility or at an alternative location as approved by the Director of an approved State. The following type of information was proposed to be retained: any location restriction demonstration and any demonstration, certification, finding, monitoring, testing, or analytical data required as part of complying with the ground-water monitoring and corrective action requirements.

No comments were received on the substance of the recordkeeping requirements; therefore, the Agency is finalizing the recordkeeping requirements provision as it was proposed.

E. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators

1. Changes to Section 261.5

The proposal would have amended the existing language of § 261.5 by establishing acceptable Subtitle D management options for CESQG waste. The existing language in § 261.5, paragraphs (f)(3) and (g)(3), allows for a CESQG hazardous waste to be managed at a hazardous waste facility (either in interim status or permitted), a reuse or recycling facility, or a non-hazardous solid waste facility that is permitted, licensed, or registered by a State to manage municipal or industrial wastes. The proposed rule would have continued to allow CESQG waste to be managed at a hazardous waste facility, or at a reuse or recycling facility; however, the proposal would have required that if CESQG waste was to be managed at a Subtitle D disposal facility, it must be managed in a MSWLF that is subject to Part 258 or a non-municipal non-hazardous waste disposal unit that is subject to the standards that were proposed for units receiving CESQG waste.

Commentors supported the proposed rule changes to paragraphs (f)(3) and (g)(3) in § 261.5 regarding waste generated by CESQGs. Commentors stated that the continuation of the CESQG rules was very important as these rules were developed to ease the burden of small generators. Other commentors also supported the proposed generator changes for various reasons: proposed changes will help CESQGs ensure that their wastes are properly managed, CESQGs may

investigate the recycling or reuse of their waste streams, or use of alternative, less-hazardous materials in their operations, and the proposed changes are a wise-policy decision.

Given the agreement that commentors had with the proposed changes to § 261.5, the Agency has decided to largely finalize the requirements as proposed.

One small change has been made in today's final rule language, however, in paragraphs (f)(3) and (g)(3). This small conforming change deals with final regulatory language that was developed in the universal waste rule (see 60 FR 25541, May 11, 1995). Universal wastes are the following hazardous wastes that are subject to the universal waste rule: batteries as described in 40 CFR 273.2, pesticides as described in 40 CFR 273.3, and thermostats as described in 40 CFR 273.4. The conforming changes are found in today's final rule language in paragraphs (f)(3)(vii) and (g)(3)(vii). The conforming changes in today's final rule allow a CESQG to manage universal wastes in a facility that is a universal waste hauler or destination, provided that facility is subject to the universal waste requirements in 40 CFR Part 273. See 60 FR 25492, May 11, 1995. The possibility that some CESQG waste could be considered a universal waste was discussed in the proposal to this final rule. See 60 FR 30968, June 12, 1995.

RCRA Section 3010(b) states that regulations respecting requirements applicable to the generation, transportation, treatment, or disposal of hazardous waste that are promulgated under Subtitle C shall take effect six months after the date of promulgation. The Administrator is authorized to establish a shorter effective date. 42 U.S.C. 6930(b).

The revisions to 40 CFR Section 261.5 and 271.1 are being promulgated, in part, under RCRA section 3001(d)(4), and thus, are subject to the six month effective date provision in section 3010(b). In the proposed rule, EPA stated that it intended to make these revisions to the Subtitle C regulations effective 18 months after their publication so as to coincide with the effective dates of the Subtitle D provisions. See 60 FR 30979. In the final rule, EPA is making the Subtitle C provisions effective in six months in accordance with RCRA section 3010(b). However, to ensure that there will be consistency in implementation of both the Subtitle C and D provisions, as suggested in the proposal, EPA has chosen to delay the compliance date for the Subtitle C provisions until 18 months after today's date. Thus, although the Subtitle C revisions go into effect in six months, those who generate CESQG waste will have to comply with the revised disposal standards in section 261.5 (f) and (g) only when the Subtitle D revised location restrictions for CESQG waste go into effect in 18 months. The final rule language for section 261.5 and 271.1 reflect this delayed compliance date.

2. CESQG Wastes

Comments were received concerning various aspects related to the requirements for CESQGs. Comments were also received requesting that the Agency provide a clearer picture of what constitutes a CESQG waste. Lastly, other commentors stated that the final rule needed to have a screening requirement in place for facilities that elect not to receive CESQG wastes.

In regard to the comments concerning the need to better identify what is a CESQG waste, the proposal identified examples of CESQG wastes, particularly for the construction and demolition waste industry. See 60 FR 30967, June 12, 1995. CESQG hazardous wastes generated in the construction, renovation, and demolition waste industry are more likely to be specific chemicals or products used in these activities. Building demolition debris can be a CESQG waste if based on generator knowledge or a representative sample of the entire building debris, the building debris is determined to be a hazardous waste (i.e., it exhibits one of the four characteristics of a hazardous waste), and if hazardous, is under the waste quantity cutoff limit for a CESQG waste (See 60 FR 30967, June 12, 1995).

Commentors requested a comprehensive listing of C&D wastes which may be typically hazardous. The Agency's supporting document "Construction and Demolition Waste Landfills" identified a number of wastes that were considered potentially "hazardous" by various sources. The Agency continues to believe, as stated in the proposal, that not all of the wastes identified in the report are hazardous as determined under Subtitle C; however, the listing provided in the supporting document provides an indication of the types of wastes that may be present in the construction and demolition waste industry that could be a concern. Given that the Subtitle C and D regulations are generally implemented by the States, the Agency believes that owners/operators should work with their State Agencies to determine what specific rules or guidance applies with regard to the types of wastes that their State Agency considers to be hazardous.

3. Screening Procedures

Comments were also received requesting that the Agency acknowledge the use of existing screening procedures. With regard to the comments concerning the need to acknowledge the use of existing screening procedures and the need to have a screening procedure in place for facilities that elect not to receive CESQG wastes, the proposal did not require non-municipal non-hazardous waste disposal units to screen incoming wastes in order to assure that they were not receiving CESQG wastes. Rather, it left it up to the owner/operator to assure, through what ever means he/she determined, that the facility was not receiving CESQG waste. This could include certifications by waste haulers that their wastes destined for the facility will not contain CESQG wastes, written prohibitions in contracts between waste haulers and the owner/operator stating that the facility does not receive CESQG waste for disposal, and/or random screening procedures at the facility. Commentors were concerned that CESQG wastes would find their way into C&D landfills that elect not to upgrade and comply with today's final requirements, particularly given that the proposal did not require the use of a formal screening procedure to prove that the facility was not receiving CESQG wastes. Specifically, one commentor stated that without a stringent method of restricting wastes and documenting these efforts, C&D landfills that do not meet the proposed requirements may become low-cost alternatives for the unscrupulous. Two other commentors stated that the proposed rule, as written, lacked an affirmative demonstration on the part of a facility that elected not to comply with the proposed requirements, that the facility was in reality not receiving CESQG waste for disposal. The commentor argued that "without a screening method at facilities that elect not to comply, the proposed rule is insufficient to satisfy the mandate of RCRA Section 4010(c)". Several of these commentors suggested the use of the screening procedure specified in the Part 258 Criteria for municipal solid waste landfills.

Other commentors acknowledged that screening exists today for C&D facilities and that it is successful. Screening is done at most C&D facilities and, thus, regulatory criteria made applicable to such facilities should take into account screening practices that significantly reduce the risks that C&D facilities present to human health and the environment. These commentors wanted EPA to expressly acknowledge that screening programs reduce risks at C&D facilities or to develop a regulatory approach that allows C&D facilities with established screening programs to be exempted from a majority of the proposed criteria or EPA should develop relaxed regulatory criteria that take into account such risk-reduction operational practices.

The proposal explained that owners/operators implementing a screening procedure should contact their State Agency to determine that the screening procedure ensures that the facility does not receive CESQG wastes. Responding to this statement, one commentor said that the Agency should not delegate this obligation to the states because doing so will lead to unwarranted lawsuits against owners/operators that do not want to accept CESQG wastes and confusion at the state level caused by widely divergent screening requirements that may or may not be acceptable.

In response to the comments about the need for screening requirements as part of today's final rule, the Agency is concerned that the establishment of specific and/or detailed screening standards would limit flexibility that owners/operators and State Agencies have in developing an appropriate screening method, if one is considered necessary. Under the rule as proposed and promulgated, if an owner/operator of a non-municipal non-hazardous waste disposal unit elects not to receive CESQG wastes, and therefore, does not upgrade to meet the requirements in today's final rule, he/she is not legally allowed to accept CESQG wastes. See 40 CFR 257.5(a)(3). If the owner/operator does accept CESQG wastes, then he/she would be in violation of today's final rule and would be subject to enforcement actions. See 40 CFR 257.5(a)(1). CESQGs that send their CESQG waste to landfills that are not subject to today's requirements for non-municipal units would, likewise, be subject to enforcement actions.

Owners/operators that elect not to upgrade and therefore not receive CESQG hazardous wastes, may on their own elect to develop a screening procedure that is effective in screening out CESQG materials. Owners/operators who elect to develop a screening procedure are encouraged to work with their State Agency to determine what screening procedures, may at a State level be required, recommended or in guidance. The Agency believes that the adoption of a Federal screening program as a condition of not receiving CESQG hazardous waste, will limit the flexibility that both States and owners/operators can exercise in developing a successful screening program. The Agency does not want to interfere in the development of acceptable screening programs that, based on comments received on this rule, can be developed and are being used in the field .

VII. Implementation of Today's Final Rule

A. State Activities Under Subtitle C (Regulation of CESQGs of Hazardous Waste)

1. Hazardous and Solid Waste Amendments to RCRA

Today's final rule changes the existing requirements in § 261.5, paragraphs (f)(3) and (g)(3) pertaining to the special requirements for CESQGs. Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under Sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibilities.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facility which the State was authorized to permit. When new, more stringent, Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time they take effect in unauthorized States. EPA is directed to carry out these requirements and prohibitions in previously authorized States, including the issuance of permits and primary enforcement, until the State is granted HSWA authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA provisions apply in authorized States in the interim.

The amendments to § 261.5, paragraphs (f)(3) and (g)(3), are finalized pursuant to section 3001(d)(4) of RCRA, which is a provision added by HSWA. Therefore, the Agency has added the requirements to Table 1 in § 271.1(j) which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1.

2. Effect on State Authorizations

As noted above, EPA will implement today's rule (i.e., the revision to § 261.5) in authorized States until they modify their programs to adopt the Section 261.5 rule change and the modification is approved by EPA. Because the rule has been finalized pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under Section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire January 1, 2003. (See § 271.24(c) and 57 *FR* 60129 (December 18, 1992)).

40 CFR 271.21(e)(2) provides that States that have final authorization must modify their programs to reflect Federal program changes, and must subsequently submit the modifications to EPA for approval. The deadline by which the State must modify its program to adopt these regulations and submit its application for approval is specified in 40 CFR 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements act in lieu of Subtitle C RCRA requirements.

States with authorized RCRA programs may already have adopted requirements under State law similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being finalized today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Although revisions to 40 CFR Parts 257 and 261 are being finalized, for the purpose of authorization under Subtitle C, only the final changes to § 261.5 would be assessed against the Federal program. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize

duplication of efforts. In many cases EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit their official applications for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadlines set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their applications. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

3. States With More Stringent Programs

EPA is aware that a number of States have more stringent requirements for the disposal of waste generated by CESQGs. In particular, some States do not allow the disposal of this waste into any Subtitle D landfill (i.e., some States do not allow permitted MSWLFs to accept CESQG hazardous waste). For these States, today's final rule would clearly be considered less stringent than the applicable provisions in these States' authorized programs. Section 3009 of RCRA allows States to adopt or retain provisions that are more stringent than the Federal provisions. Therefore, regarding today's final rule, EPA believes that States which do not allow the disposal of wastes generated by CESQGs into Subtitle D landfills under their existing authorized Subtitle C program would not be required to revise their programs and obtain authorization for today's proposed rule. Of course this situation would only apply in those cases where a State is not changing its authorized regulatory language. Further, the authorized State requirements in such States, since they would be more stringent than today's final rule, would continue to apply in that State, even though today's rule is proposed pursuant to HSWA authority.

For a State to not be required to submit an authorization revision application for today's final rule, the State must have provisions that are authorized by EPA and that are more stringent than the analogous Subtitle C provisions in today's rule. For those States that would not be required to revise their authorization, EPA encourages States to inform their EPA Regional Office by letter that for this final rule, they are not required to submit a revision application pursuant to 40 CFR 271.21(e), because in accordance with RCRA Section 3009 the authorized State provision currently in effect is more stringent than the requirements contained in today's final rule. Otherwise, EPA might conclude that a revised authorization application is required.

B. State Activities Under Subtitle D (Regulation of Receiving Non-Municipal Non-Hazardous Units)

States are the lead entities in implementing and enforcing Subtitle D rules. The Agency intends to maintain the State's lead in implementing the Subtitle D program. RCRA Section 4005 requires States to adopt and implement, within 18 months of the publication of a final rule, a permit program or other system of prior approval and conditions to ensure that non-municipal non-hazardous waste disposal units receiving CESQG waste comply with today's standards. The statute requires EPA to determine whether States have developed adequate permit programs. States will need to review their existing programs to determine where their programs need to be revised and to complete program changes, if changes are necessary. The process for evaluating the adequacy of State programs has been set forth in a separate proposal, the State/Tribal Permit Program Determination of Adequacy. See 61 *FR* 2584, January 26, 1996.

For the purpose of determining adequacy and granting approval under Subtitle D for today's rule, only the proposed technical changes in §§ 257.5 through 257.30 will be evaluated by the Agency. The State may need to meet other procedural and administrative provisions identified in the State/Tribal Permit Program Determination of Adequacy. EPA policy on approval of permit programs for non-municipal non-hazardous waste disposal units receiving CESQG waste is the same process that the Agency used for determining the adequacy of State programs for the Municipal Solid Waste Landfill Criteria. In States already approved for the Part 258 MSWLF Criteria, changes required by this rulemaking will constitute a program revision.

The Agency believes that for many approved States, changes required by this rulemaking will affect the technical Criteria only and should warrant limited changes to the approved State program. For example, if non-municipal non-hazardous waste disposal units subject to this rule are already subject to an approved State MSWLF program (i.e., the non-municipal non-hazardous waste disposal units receiving CESQG waste are currently subject to the Part 258 location restrictions, ground-water monitoring, and corrective action criteria), the State may only be required to submit documentation that the non-municipal non-hazardous waste disposal units receiving CESQG waste are subject to their approved program. In most cases, the Agency anticipates that a streamlined approval process would be appropriate. States are encouraged to contact their appropriate EPA Regional office to determine the specifics of the approval process.

In the proposed State/Tribal permit program determination of adequacy, the Agency originally proposed that a streamlined approval process would not be used for permit programs that related to additional classifications other than MSWLFs. See 61 *FR* 2599, January 26, 1996. As suggested above, the Agency is re-evaluating its proposed position and a final determination will be made in the final State/Tribal permit program determination of adequacy.

In States that have not been approved for the MSWLF Criteria, these revisions can be incorporated into an application for overall program approval of Part 258 and §§ 257.5 through 257.30. For purposes of today's rule, States that currently restrict CESQG disposal to Subtitle C facilities (and States that may choose to adopt that restriction) or approved States which currently restrict CESQG disposal to Part 258 municipal solid waste landfills will not need to seek further EPA approval of their Subtitle D program. RCRA Section 4005(c)(1)(B) requires States to adopt and implement permit programs to ensure that facilities which receive CESQG waste will comply with the revised Criteria promulgated under Section 4010(c). However, the Agency sees no need for approved States that already require CESQG waste to be disposed of in either Subtitle C facilities or facilities subject to the Part 258 MSWLF Criteria to adopt and implement a permit program based upon the standards being finalized today.

RCRA Section 7004(b)(1) requires the Administrator and the States to encourage and provide for public participation in the development, revision, implementation, and enforcement of this regulation and, once it is promulgated, in the State permit programs which implement it. EPA provides for public participation in its decisions on whether State permit programs are adequate under RCRA Section 4005(c)(1)(c). In developing and implementing permit programs, States must provide for public participation in accordance with the provisions of 40 CFR Part 239 (specifically § 239.6).

Permit programs have been defined in the proposed State/Tribal Permit Program Determination of Adequacy to include other systems of prior approval and conditions, including licenses or registrations.

C. Summary of Comments and EPA Response

Several commenters supported EPA's approach in the proposal toward States with approved Subtitle D programs that have CESQG disposal restrictions in their Subtitle D programs. In particular, the commenters supported EPA's statement that States which require CESQG waste to be disposed of in either Subtitle C facilities or facilities subject to the part 258 MSWLF Criteria do not need EPA approval for a permit program based on today's final (Subtitle D) standards. However, the commenters believed that for these States, the absence of a required EPA approval should be extended to the Subtitle C program.

EPA believes that its approach toward States with programs that are more stringent than this final rule is the same for both the Subtitle C and Subtitle D programs. Those States with approved Subtitle D or authorized Subtitle C program that do not allow CESQG waste to be disposed of in a landfill addressed by today's technical standards do not need approval by EPA for that program. EPA's position is detailed in sections VII.A. and VII.B. above. EPA believes that since the existing approved State requirements are more stringent than the provisions in today's rule, in such States, program revisions are not necessary for the State programs to remain at least equivalent to the Federal rules.

Other commenters raised the possibility of State self-certification for State authorization for both the RCRA Subtitle C and D programs, particularly where the State already has rules that are equivalent to today's rule in its waste management programs. The commenters argued that this self-certification will result in significant resource savings.

Regarding the commenters suggestion on allowing State self-certification, EPA is currently examining this issue for Subtitle C authorization as part of the HWIR-Media rulemaking (see 61 *FR* 18780, April 29, 1996). In the proposed Phase IV LDR rule, EPA proposed an abbreviated authorization process for new minor rule changes (see 60 *FR* 43686, August 22, 1995). Although this authorization proposal did not address the rule changes in the June 12, 1995 proposal, EPA is committed to streamlining the Subtitle C authorization process.

EPA believes that the authorization process for the Subtitle C portion of today's final rule will be very straightforward because today's rule only added two new provisions to the hazardous waste regulations. EPA will work with States and EPA regions to ensure that the Subtitle C authorization process for this rule will be completed swiftly. EPA believes that it can take such certifications into account to a large degree, thereby, greatly reducing review time. Further, EPA believes that many States will not require revisions to their authorized programs because their authorized programs are currently more stringent than today's rule.

D. Owner/Operator Responsibilities

1. Owner/Operator Responsibility and Flexibility in Approved States

The regulatory structure of the Part 258 MSWLF Criteria is based on an owner/operator achieving compliance through self-implementation with the various requirements while allowing approved States the flexibility to consider local conditions in setting appropriate alternative standards that still achieve compliance with the basic goal of the Part 258 Criteria. This flexibility that exists for approved States under Part 258 has been retained in today's final rule and can be used by approved States in determining facility specific requirements. Owners/operators of non-municipal non-hazardous waste disposal units that are receiving CESQG wastes as of the effective dates of today's final rule, due to the self-implementing nature of this final rule, would be required to comply with the promulgated standards regardless of the status of the States approval determination under Subtitle D. If an owner/operator of a non-municipal non-hazardous waste disposal unit is receiving CESQG waste and is located in a State that has not been approved under Subtitle D for these revised criteria, then the owner/operator would have to comply with the promulgated standards, without the benefit of the flexibility allowed to be granted by the Director of an approved State.

Owners/operators of non-municipal non-hazardous waste disposal units that receive CESQG waste and are located in approved States may be subject to alternate requirements based on the approved State standards.

2. CESQG's Responsibilities Relating to the Revisions in § 261.5, Paragraphs (f) and (g)

Today's final rule allows that CESQG waste go to either a hazardous waste facility, a reuse or recycling facility, a municipal solid waste landfill subject to Part 258, a non-municipal solid waste disposal facility that is subject to the requirements being proposed in §§ 257.5 through 257.30 or a solid waste management facility (i.e., incinerator) that is permitted, licensed, or registered by a State to manage municipal or non-municipal waste. Today's final rule does not mandate that CESQG waste go to a MSWLF or to a non-municipal non-hazardous waste disposal unit subject to today's final requirements. These are just two of the options as to where CESQG hazardous waste can be send for management.

The Agency does not believe that today's final rule amendment to § 261.5 will result in a larger obligation for any CESQG. The Agency knows that the majority of CESQG waste is managed off-site. For the CESQG waste managed off-site, recycling is the predominant form of management. The Agency assumes that for the small amount of CESQG waste that is currently being sent off-site to a MSWLF, this practice can continue to occur, as long as allowed under State regulations, as all MSWLFs where CESQG waste could be sent are subject to Part 258. Hazardous waste regulations applicable to CESQGs require that CESQG hazardous waste be managed in a unit permitted, licensed, or registered by the State to manage municipal or industrial waste. Those CESQGs, including construction and demolition waste generators, who wish to send their CESQG waste to a non-municipal non-hazardous waste disposal unit and are uncertain whether the unit has the appropriate permit, license, or registration should contact his/her State Agency to ascertain if the non-municipal non-hazardous waste disposal unit in question can legally accept CESQG waste.

A CESQG may elect to screen-out or segregate out the CESQG hazardous wastes from his non-hazardous waste and then manage the CESQG hazardous portion in compliance with today's final amendments to § 261.5(f)(3) and (g)(3). The remaining non-hazardous waste would not be subject to the final requirements in § 261.5; however, it must be managed in a facility that complies with either the Part 258 Criteria or the existing Criteria in §§ 257.1–257.4. On the other hand, a CESQG may elect not to screen-out or segregate the CESQG hazardous waste

preferring instead to leave it mixed with the mass of non-hazardous waste. If the CESQG elects this option, the entire mass of material must be managed in a Subtitle C or Subtitle D facility as per today's final language in § 261.5.

E. Enforcement

1. Hazardous Waste Enforcement

Today's final rule amends § 261.5, paragraphs (f)(3) and (g)(3), and as such any CESQG who mismanages their CESQG hazardous waste on-site or delivers the CESQG hazardous waste to an inappropriate Subtitle D facility becomes subject to enforcement actions which could include loss of CESQG status for any CESQG waste that is improperly disposed of.

2. Subtitle D Enforcement

States that adopt programs meeting the standards in §§ 257.5 through 257.30 may enforce them in accordance with State authorities. Under RCRA Section 7002, citizens may seek enforcement of the standards in §§ 257.5 through 257.30 independent of any State enforcement program. Section 7002 provides that any person may commence a civil action on his/her own behalf against any person who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order that has become effective pursuant to RCRA. Once the self-implementing provisions in §§ 257.5 through 257.30 become effective, they constitute the basis for citizen enforcement. Federal enforcement by EPA can be done only in States that EPA has determined have inadequate programs. EPA has no enforcement authorities under Section 4005 in approved States. EPA does, however, retain enforcement authority under Section 7003 to protect against imminent and substantial endangerment to health and the environment in all States.

VIII. Executive Order 12866

Under Executive Order No. 12866, EPA must determine whether a new regulation is significant. A significant regulatory action is defined as an action likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to the terms of the Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

A. Cost Impacts

In the Cost and Economic Impact Analysis (May, 1995) accompanying the proposed rule, the Agency estimated the total annual costs to the economy resulting from the proposed rule ranged from $10.0 million to $47.0 million.

The national low-end cost assumes that all CESQG hazardous waste is separated at the point of generation for the construction industry. It assumes there will be no CESQG waste generated by the demolition industry. The CESQG portion is disposed of at hazardous waste facilities while the remaining non-hazardous waste portion is disposed of in non-upgraded construction and demolition waste facilities. The costs include the separation costs at the point of generation, costs of transporting/disposing the hazardous portion at a Subtitle C facility, and the costs of screening incoming wastes at all of the construction and demolition waste facilities.

The national annual high-end cost assumes that generators will not separate out CESQG waste from 30% of construction and demolition wastes and that this fraction will be sent to upgraded construction and demolition waste facilities that elect to comply with today's proposed requirements. Under this scenario, the Agency assumed that most medium to large size construction and demolition waste facilities (162) will upgrade. The costs include separation costs at the point of generation for waste not going to an upgraded landfill, costs of screening incoming wastes at 80% of the affected construction and demolition waste facilities which do not upgrade and costs for 20% of the affected construction and demolition wastes facilities to upgrade. Upgrade costs include ground-water monitoring and corrective action.

Upon receipt and incorporation of public comments, the Agency prepared a revised Cost and Economic Impact Analysis (June, 1996). In the revised analysis, the Agency estimates the total annual costs to the economy for today's final rule will range from $12.65 to $51.0 million dollars. These costs fall upon approximately three types of facilities: 600 manufacturing-sector CESQGs, at an average annual cost of $280 per facility; 10,000 construction-sector CESQGs, at an average cost of $930 per facility; and 700 construction/demolition-waste landfills, at an average cost of $4500 per facility.

One commentor suggested that EPA had understated the costs of compliance with the new regulation. The commentor supported this conclusion based on several contentions:

(1) The commentor maintained that EPA's estimates of total construction and demolition wastes were flawed because some data sources were inappropriate, including European data. Although EPA agrees that U.S. data would be preferable, the European information provided an important and relevant insight for our analysis. EPA believes that many aspects of construction technology are similar from one developed western country to another. EPA also notes that the costing methodology used in the analysis rests mostly on costs per facility, rather than costs per ton.

(2) The commentor suggested that EPA underestimated the labor required for screening hazardous waste at construction/demolition waste landfills. Data that EPA has collected from construction/demolition landfill owner/operators, however, indicates that screening programs are already in affect at most of these facilities. EPA has collected information on the number of hours required for screening wastes per year per landfill, and believes that the nationwide estimate of one additional hour of labor per day per landfill is reasonable.

(3) The commentor also suggested that EPA had underestimated the amount of labor which would be required to separate wastes at construction sites. The Cost and Economic Impact Analysis estimated one labor hour per week per company for separating hazardous wastes. Since a company can have multiple job-sites operating simultaneously, the commentor indicated that it would be more reasonable to estimate one hour per job-site, rather than per company. EPA agrees, and notes that the wording in the original analysis was incorrect; the estimate was actually labor hours per establishment, where each establishment represents a group of job sites. Therefore, EPA has used the costing methodology that the commentor recommends.

(4) Finally, the commentor disputes EPA's estimate of the hourly labor cost for screening wastes at the landfill and separating wastes at the generator site. EPA re-examined the labor costs, consulting with the Bureau of Labor Statistics and a standard construction industry costing guide. As a result, EPA agrees with this comment and has adjusted the labor figure by 27% (from $13.60 per hour to $17.32 per hour).

Further discussion of the cost analysis can be found in Cost and Economic Impact Analysis of the CESQG Rule, June 1996, available in the docket.

B. Benefits

The Agency believes that the requirements being proposed for non-municipal solid waste disposal facilities will result in more Subtitle D facilities providing protection against ground-water contamination from the disposal of small amounts of hazardous waste. Today's action will force some non-municipal solid waste disposal facilities to either upgrade and install ground-water monitoring and perform corrective action if contamination is detected, or stop accepting hazardous waste. Today's action will also cause some generators of CESQG wastes to separate out these small quantities of hazardous waste and send them to more heavily regulated facilities (i.e., Subtitle C facilities or MSWLFs). These are the direct benefits of today's proposal, however, additional benefits will be realized due to this proposal.

Today's final rule will require that any ground-water contamination that is occurring at units that continue to receive CESQG hazardous waste will be quickly detected, and therefore, corrective action can be initiated sooner avoiding a more costly corrective action.

To the extent that existing non-municipal non-hazardous waste disposal units that receive CESQG hazardous waste upgrade their units to include ground-water monitoring, and to the extent that new facilities will be located outside of floodplains and wetlands, public confidence in these types of units will be increased. Having a higher level of confidence should result in these types of units being easier to site in the future.

Finally, to the extent that CESQGs separate out the small volumes of hazardous waste, the resulting mass of clean non-hazardous waste would have a better potential to be recycled.

IX. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, Pub. L. 96–354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), EPA must consider whether a regulatory action will have a significant adverse impact on small entities. For a rule promulgated after June 27, 1996, EPA must either certify that the regulation will not have a significant impact on a substantial number of small entities or prepare a final regulatory flexibility analysis that contains an evaluation of five factors. 5 U.S.C. 604(a). Because EPA promulgated this rule prior to June 28, 1996, the revised requirements of SBREFA for an expanded regulatory flexibility analysis if a certification is not made do not apply. At the same time, however, EPA has conducted an analysis to determine whether the rule will have a significant impact on small entities. On the basis of that analysis, EPA certifies that this rule will not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows.

EPA anticipates that this rule will increase costs for two classes of facilities. CESQG generators that still handle their CESQG waste on site are expected to send their CESQG waste to Subtitle C facilities, at a maximum per-facility cost of $570 per year. Construction waste generators will incur maximum additional per-firm costs of $1,469 per year, for separation, transportation, and disposal of hazardous wastes. In each case, EPA's analysis shows that the impacts are less than one percent of annual revenues, for all sizes and types of companies.

This determination is based on EPA's projection of the response of CESQG waste generators and disposal facilities to today's rule. EPA performed a high end analysis, predicated on an assumption that C&D landfills upgrade to meet these standards. In this scenario, cost impacts would be higher. EPA does not expect C&D landfills to upgrade, however, since they would be unlikely to recover the high costs of upgrading. The analysis of effects on small entities is predicated on an assumption that the owners of C&D landfills act rationally, *i.e.*, they choose not to upgrade but rather choose to stop accepting CESQG wastes.

Moreover, EPA has modified the proposed rule in a number of ways so that cost to small entities may be decreased. For example, EPA has included a provision which authorizes Directors of approved state programs to establish an alternative list of indicator parameters not only for the inorganic constituents but also for the organic constituents to be monitored for in the detection monitoring phase of ground water monitoring. Thus, owner/operators of non-municipal, non-hazardous waste disposal units in approved states may have lower ground water monitoring costs.

In addition, EPA has removed four location restrictions (airports, fault areas, seismic impact zone, and unstable areas) from the final rule for the reasons set forth in Section VI.B of today's preamble. Costs for small entities that own non-municipal, non-hazardous waste disposal units that must comply with this rule would thus be reduced because no demonstrations to establish that these location restrictions have been met would need to be made.

X. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

XI. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1745.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 401 M St., S.W. Washington, DC 20460 or by calling (202) 260–2740. The information requirements are not effective until OMB approves them.

The information to be collected under this rulemaking would be used primarily by the States to regulate and ensure that non-municipal non-hazardous waste disposal units that may receive CESQG wastes are complying with the final requirements. The information collected would be used by the State Director to confirm compliance on the part of the owner/operator with the final requirements. All information will be reported to the States or kept in an operating record at the facility. EPA will not collect information from any of the facilities subject to today's requirements, except in any potential enforcement case.

The total annual public recordkeeping and reporting burden is estimated to be 12,100 hours with an average of 67 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 401 M St., S.W., Washington, DC 20460 or to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence.

XII. Environmental Justice

Executive Order 12898 requires Federal Agencies, to the greatest extent practicable, to identify and address disproportionately high adverse human health or environmental effects of its activities on minority and low-income populations.

The Agency does not currently have data on the demographics of populations surrounding the facilities affected by today's final rule (i.e., construction and demolition landfills). The Agency does not believe, however, that today's final rule will adversely impact minority or low-income populations. The facilities affected by the final rule pose limited risk to surrounding populations. In addition, today's final rule would further reduce this risk by requiring the affected facilities to either stop accepting CESQG hazardous waste or to begin ground-water monitoring and, if applicable, corrective action.

Thus, today's final rule will further reduce the already low risk for populations surrounding construction and demolition landfills, regardless of the population's ethnicity or income level. Minority and low-income populations will not be adversely affected.

XIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that today's final rule does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector, in any one year. EPA has estimated that the annual costs of today's final rule on generators of CESQG wastes and those entities which own or operate CESQG disposal facilities, including the private sector, States, local or tribal governments, range from $12.65–48.9M.

In addition to compliance costs for those who own or operate CESQG facilities, States will have a cost of developing permit programs or other systems of prior approval to ensure that CESQG units comply with the final rule. Adoption and implementation of such State permit programs is required under RCRA section 4005(c)(1)(B). 42 USC 6945(c)(1)(B). The Agency has estimated that the costs for a state to develop an application for approval of an MSWLF permit program to be approximately $15,000. Because these state permit programs already contain ground water monitoring, corrective action, and location standards for MSWLFs that are quite similar to those in this final rule, EPA believes that the additional costs for states to revise their permit programs to reflect the CESQG requirements are not expected to be significant. Also, because of the reduced level of regulatory requirements contained in this CESQG final rule as compared to the MSWLF Part 258 criteria, state costs for preparing applications for approval of a CESQG permit program should be considerably less than that $15,000 figure.

Indian tribes are not required to develop permit programs for approval by EPA, but the Agency believes tribal governments are authorized to development such permit programs and have them approved by EPA. This issue is discussed in the proposal STIR. See 61 *FR* 2584, January 26, 1996. EPA has estimated that it will cost a tribal government approximately $7,000 to prepare an application for approval of a MSWLF program. Because of the reduced regulatory provisions of the CESQG final rule, EPA expects that the costs which a tribal government might face in developing a permit program for CESQG units should be less than $7,000.

EPA has also finalized amendments to the requirements for generators of CESQG hazardous waste. These amendments to 40 CFR 261.5 (f)(3) and (g)(3) are finalized pursuant to RCRA Section 3001 (d)(4), which is a provision added by HSWA. The § 261.5 amendments are also more stringent than current Federal hazardous waste regulations. Subtitle C regulatory changes carried out under HSWA authority become effective in all states at the same time and are implemented by EPA until states revise their programs. States are obligated to revise their hazardous waste programs and seek EPA authorization of these program revisions, unless their programs already incorporate more stringent provisions. The Agency believes approximately 24 states already have more stringent CESQG hazardous waste provisions and would not have to take action because of these regulatory changes. About 26 states would have to revise their hazardous waste programs and seek authorization. States generally incorporate a number of hazardous waste program revisions and seek authorization for them at one time. The Agency estimates the State costs associated with Subtitle C program revision/authorization activity are approximately $7,320 per state. Since this estimate covers several separate program components at one time, the cost for revisions only to Section 261.5 in the remaining 26 States would be substantially less.

As to section 203 of the Act, EPA has determined that the requirements being finalized today will not significantly or uniquely affect small governments, including tribal governments. EPA recognizes that small governments may own or operate waste disposal units that receive CESQG waste. However, EPA continues to estimate that the majority of construction and demolition landfills, which are the primary facilities to be subject to this final rule, are owned by the private sector. Moreover, EPA is aware that a number of states already require owners/operators of C&D landfills to meet regulatory standards that are similar to those being finalized today. Thus, EPA believes that today's final rule contains no regulatory requirements that significantly or uniquely affect small governments.

EPA has, however, sought meaningful and timely input from the private sector, states, and small governments on the development of this final rule by seeking comments on the proposed CESQG rule and by attempting to adequately address issues and concerns expressed by these entities in their comments. Furthermore, the Agency highlighted, in the June 12, 1995 proposal, those actions that it took to get meaningful and timely input from these entities prior to proposal.

List of Subjects

40 CFR Part 257

Environmental protection, Reporting and recordkeeping requirements, Waste disposal.

40 CFR Part 261

Hazardous materials, Recycling, Waste treatment and disposal.

40 CFR Part 271

Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Indian-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: June 21, 1996.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, Chapter I of the Code of Federal Regulations is amended as set forth below:

PART 257—CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES

1. The authority citation for part 257 is revised to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944(a) and 6949(c), 33 U.S.C. 1345 (d) and (e).

§§ 257.1 through 257.4 [Redesignated as Subpart A]

2. Sections 257.1 through 257.4 are designated as Subpart A—Classification of Solid Waste Disposal Facilities and Practices.

3. Section 257.1(a) is revised to read as follows:

§ 257.1 Scope and purpose.

(a) Unless otherwise provided, the criteria in §§ 257.1 through 257.4 are adopted for determining which solid waste disposal facilities and practices pose a reasonable probability of adverse effects on health or the environment under sections 1008(a)(3) and 4004(a) of the Resource Conservation and Recovery Act (The Act). Unless otherwise provided, the criteria in §§ 257.5 through 257.30 are adopted for purposes of ensuring that non-municipal non-hazardous waste disposal units that receive conditionally exempt small quantity generator (CESQG) waste do not present risks to human health and the environment taking into account the practicable capability of such units in accordance with Section 4010(c) of the Act.

(1) Facilities failing to satisfy either the criteria in §§ 257.1 through 257.4 or §§ 257.5 though 257.30 are considered open dumps, which are prohibited under section 4005 of the Act.

(2) Practices failing to satisfy either the criteria in §§ 257.1 through 257.4 or §§ 257.5 through 257.30 constitute open dumping, which is prohibited under section 4005 of the Act.

* * * * *

4. Part 257 is amended by adding a new Subpart B to read as follows:

Subpart B—Disposal Standards for the Receipt of Conditionally Exempt Small Quantity Generator (CESQG) Wastes at Non-Municipal Non-Hazardous Waste Disposal Units

Sec.
257.5 Disposal standards for owners/operators of non-municipal non-hazardous waste disposal units that receive Conditionally Exempt Small Quantity Generator (CESQG) waste

Location Restrictions

257.7 Reserved
257.8 Floodplains.
257.9 Wetlands
257.10 Reserved
257.11 Reserved
257.12 Reserved
257.13 Deadline for making demonstrations.

Ground-Water Monitoring and Corrective Action

257.21 Applicability.
257.22 Ground-water monitoring systems.
257.23 Ground-water sampling and analysis requirements.
257.24 Detection monitoring program.
257.25 Assessment monitoring program.
257.26 Assessment of corrective measures.
257.27 Selection of remedy.
257.28 Implementation of the corrective action program.

Recordkeeping Requirement

257.30 Recordkeeping requirements.

Subpart B—Disposal Standards for the Receipt of Conditionally Exempt Small Quantity Generator (CESQG) Wastes at Non-Municipal Non-Hazardous Waste Disposal Units

§ 257.5 Disposal standards for owners/operators of non-municipal non-hazardous waste disposal units that receive Conditionally Exempt Small Quantity Generator (CESQG) waste.

(a) Applicability. (1) The requirements in this section apply to owners/operators of any non-municipal non-hazardous waste disposal unit that receives CESQG hazardous waste, as defined in 40 CFR 261.5. Non-municipal non-hazardous waste disposal units that meet the requirements of this section may receive CESQG wastes. Any owner/operator of a non-municipal non-hazardous waste disposal unit that receives CESQG hazardous waste continues to be subject to the requirements in §§ 257.3–2, 257.3–3, 257.3–5, 257.3–6, 257.3–7, and 257.3–8 (a), (b), and (d).

(2) Any non-municipal non-hazardous waste disposal unit that is receiving CESQG hazardous waste as of January 1, 1998, must be in compliance with the requirements in §§ 257.7 through 257.13 and § 257.30 by January 1, 1998, and the requirements in §§ 257.21 through 257.28 by July 1, 1998.

(3) Any non-municipal non-hazardous waste disposal unit that does not meet the requirements in this section may not receive CESQG wastes.

(4) Any non-municipal non-hazardous waste disposal unit that is not receiving CESQG Hazardous waste as of January 1, 1998, continues to be subject to the requirements in §§ 257.1 through 257.4.

(5) Any non-municipal non-hazardous waste disposal unit that first receives CESQG hazardous waste after January 1, 1998, must be in compliance with §§ 257.7 through 257.30 prior to the receipt of CESQG hazardous waste.

(b) Definitions.

Active life means the period of operation beginning with the initial receipt of solid waste and ending at the final receipt of solid waste.

Existing unit means any non-municipal non-hazardous waste disposal unit that is receiving CESQG hazardous waste as of January 1, 1998.

Facility means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of non-municipal non-hazardous waste.

Lateral expansion means a horizontal expansion of the waste boundaries of an existing non-municipal non-hazardous waste disposal unit.

New unit means any non-municipal non-hazardous waste disposal unit that has not received CESQG hazardous waste prior to January 1, 1998.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and Indian Tribes.

State Director means the chief administrative officer of the lead State/Tribal agency responsible for implementing the State/Tribal permit program for Subtitle D regulated facilities.

Uppermost aquifer means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

Waste management unit boundary means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

Location Restrictions

§ 257.7 [Reserved]

§ 257.8 Floodplains.

(a) Owners or operators of new units, existing units, and lateral expansions located in 100-year floodplains must demonstrate that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The owner or operator must place the demonstration in the operating record and notify the State Director that it has been placed in the operating record.

(b) For purposes of this section:

(1) "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.

(2) "100-year flood" means a flood that has a 1-percent or greater chance of recurring in any given year or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period.

(3) "Washout" means the carrying away of solid waste by waters of the base flood.

§ 257.9 Wetlands.

(a) Owners or operators of new units and lateral expansions shall not locate such units in wetlands, unless the owner or operator can make the following demonstrations to the Director of an approved State:

(1) Where applicable under section 404 of the Clean Water Act or applicable State wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involved wetlands is clearly rebutted:

(2) The construction and operation of the unit will not:

(i) Cause or contribute to violations of any applicable State water quality standard;

(ii) Violate any applicable toxic effluent standard or prohibition under Section 307 of the Clean Water Act;

(iii) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973; and

(iv) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

(3) The unit will not cause or contribute to significant degradation of wetlands. The owner/operator must demonstrate the integrity of the unit and its ability to protect ecological resources by addressing the following factors:

(i) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the unit;

(ii) Erosion, stability, and migration potential of dredged and fill materials used to support the unit;

(iii) The volume and chemical nature of the waste managed in the unit;

(iv) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the waste;

(v) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(vi) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

(4) To the extent required under section 404 of the Clean Water Act or applicable State wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by paragraph (a)(1) of this section, then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

(b) For purposes of this section, wetlands means those areas that are defined in 40 CFR 232.2(r).

§ 257.10 [Reserved]

§ 257.11 [Reserved]

§ 257.12 [Reserved]

§ 257.13 Deadline for making demonstrations.

Existing units that cannot make the demonstration specified in § 257.8(a) pertaining to floodplains by January 1, 1998, must not accept CESQG hazardous waste for disposal.

Ground-water monitoring and corrective action.

§ 257.21 Applicability.

(a) The requirements in this section apply to units identified in § 257.5(a), except as provided in paragraph (b) of this section.

(b) Ground-water monitoring requirements under §§ 257.22 through 257.25 may be suspended by the Director of an approved State for a unit identified in § 257.5(a) if the owner or operator can demonstrate that there is no potential for migration of hazardous constituents from that unit to the uppermost aquifer during the active life of the unit plus 30 years. This demonstration must be certified by a qualified ground-water scientist and approved by the Director of an approved State, and must be based upon:

(1) Site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport; and

(2) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and environment.

(c) Owners and operators of facilities identified in § 257.5(a) must comply with the ground-water monitoring requirements of this section according to the following schedule unless an alternative schedule is specified under paragraph (d) of this section:

(1) Existing units and lateral expansions must be in compliance with the ground-water monitoring requirements specified in §§ 257.22 through 257.25 by July 1, 1998.

(2) New units identified in § 257.5(a) must be in compliance with the ground-water monitoring requirements specified in §§ 257.22 through 257.25 before waste can be placed in the unit.

(d) The Director of an approved State may specify an alternative schedule for the owners or operators of existing units and lateral expansions to comply with the ground-water monitoring requirements specified in §§ 257.22 through 257.25. This schedule must ensure that 50 percent of all existing units are in compliance by July 1, 1998, and all existing units are in compliance by July 1, 1999. In setting the compliance schedule, the Director of an approved State must consider potential risks posed by the unit to human health and the environment. The following factors should be considered in determining potential risk:

(1) Proximity of human and environmental receptors;

(2) Design of the unit;

(3) Age of the unit;

(4) The size of the unit; and

(5) Resource value of the underlying aquifer, including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users; and

(iii) Ground-water quality and quantity.

(e) Once established at a unit, ground-water monitoring shall be conducted throughout the active life plus 30 years. The Director of an approved State may decrease the 30 year period if the owner/operator demonstrates that a shorter period of time is adequate to protect human health and the environment and the Director approves the demonstration.

(f) For the purposes of this section, a qualified ground-water scientist is a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in ground-water hydrology and related fields as may be demonstrated by State registration, professional Certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding ground-water monitoring, contaminant fate and transport, and corrective-action.

(g) The Director of an approved State may establish alternative schedules for demonstrating compliance with § 257.22(d)(2), pertaining to notification of placement of certification in operating record; § 257.24(c)(1), pertaining to notification that statistically significant increase (SSI) notice is in operating record; § 257.24(c)(2) and (3), pertaining to an assessment monitoring program; § 257.25(b), pertaining to sampling and analyzing appendix II of Part 258 constituents; § 257.25(d)(1), pertaining to placement of notice (appendix II of 40 CFR part 258 constituents detected) in record and notification of notice in record; § 257.25(d)(2), pertaining to sampling for appendix I and II of 40 CFR Part 258; § 257.25(g), pertaining to notification (and placement of notice in record) of SSI above ground-water protection standard; §§ 257.25(g)(1)(iv) and 257.26(a), pertaining to assessment of corrective measures; § 257.27(a), pertaining to selection of remedy and notification of placement in record; § 257.28(c)(4), pertaining to notification of placement in record (alternative corrective action measures); and § 257.28(f), pertaining to notification of placement in record (certification of remedy completed).

(h) Directors of approved States can use the flexibility in paragraph (i) of this section for any non-municipal non-hazardous waste disposal unit that receives CESQG waste, if the non-municipal non-hazardous waste disposal unit:

(1) Disposes of less than 20 tons of non-municipal waste daily, based on an annual average; and

(2) Has no evidence of ground-water contamination; and either

(3) Serves a community that experiences an annual interruption of at least three consecutive months of surface transportation that prevents access to a regional waste management facility; or

(4) Serves a community that has no practicable waste management alternative and the non-municipal solid waste disposal facility is located in an area that annually receives less than or equal to 25 inches of precipitation.

(5) Owners/operators of any non-municipal non-hazardous waste disposal unit that meets the criteria in paragraph (h) of this section must place in the operating record information demonstrating this.

(i) Directors of approved States may allow any non-municipal non-hazardous waste disposal unit meeting the criteria in paragraph (h) of this section to:

(1) Use alternatives to the ground-water monitoring system prescribed in §§ 257.22 through 257.25 so long as the alternatives will detect and, if necessary, assess the nature or extent of contamination from the non-municipal non-hazardous waste disposal unit on a site-specific basis; or establish and use, on a site-specific basis, an alternative list of indicator parameters for some or all of the constituents listed in Appendix I (Appendix I of 40 CFR Part 258. Alternative indicator parameters approved by the Director of an approved State under this section must ensure detection of contamination from the non-municipal non-hazardous waste disposal unit.

(2) If contamination is detected through the use of any alternative to the ground-water monitoring system prescribed in §§ 257.22 through 257.25, the non-municipal non-hazardous waste disposal unit owner or operator must perform expanded monitoring to determine whether the detected contamination is an actual release from the non-municipal solid waste disposal unit and, if so, to determine the nature and extent of the contamination. The Director of the approved State shall establish a schedule for the non-municipal non-hazardous waste disposal unit owner or operator to submit results from expanded monitoring in a manner that ensures protection of human health and the environment.

(i) If expanded monitoring indicates that contamination from the non-municipal non-hazardous waste disposal unit has reached the saturated zone, the owner or operator must install ground-water monitoring wells and sample these wells in accordance with §§ 257.22 through 257.25.

(ii) If expanded monitoring indicates that contamination from the non-municipal non-hazardous waste disposal unit is present in the unsaturated zone or on the surface, the Director of an approved State shall establish a schedule for the owner or operator to submit a description of any necessary corrective measures. The schedule shall ensure corrective

measures, where necessary, are undertaken in a timely manner that protects human health and the environment. The proposed corrective measures are subject to revision and approval by the Director of the approved State. The owner or operator must implement the corrective measures according to a schedule established by the Director of the approved State.

(3) When considering whether to allow alternatives to a ground-water monitoring system prescribed in §§ 257.22 through 257.25, including alternative indicator parameters, the Director of an approved State shall consider at least the following factors:

(i) The geological and hydrogeological characteristics of the site;

(ii) The impact of manmade and natural features on the effectiveness of an alternative technology;

(iii) Climatic factors that may influence the selection, use, and reliability of alternative ground-water monitoring procedures; and

(iv) The effectiveness of indicator parameters in detecting a release.

(4) The Director of an approved State can require an owner or operator to comply with the requirements of §§ 257.22 through 257.25, where it is determined by the Director that using alternatives to ground-water monitoring approved under this paragraph are inadequate to detect contamination and, if necessary, to assess the nature and extent of contamination.

§ 257.22 Ground-water monitoring systems.

(a) A ground-water monitoring system must be installed that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield ground-water samples from the uppermost aquifer (as defined in § 257.5(b)) that:

(1) Represent the quality of background ground water that has not been affected by leakage from a unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

(i) Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; or

(ii) Sampling at other wells will provide an indication of background ground-water quality that is as representative or more representative than that provided by the upgradient wells; and

(2) Represent the quality of ground water passing the relevant point of compliance specified by the Director of an approved State or at the waste management unit boundary in an unapproved State. The downgradient monitoring system must be installed at the relevant point of compliance specified by the Director of an approved State or at the waste management unit boundary in an unapproved State that ensures detection of ground-water contamination in the uppermost aquifer. The relevant point of compliance specified by the Director of an approved State shall be no more than 150 meters from the waste management unit boundary and shall be located on land owned by the owner of the facility. In determining the relevant point of compliance the State Director shall consider at least the following factors: the hydrogeologic characteristics of the unit and surrounding land, the volume and physical and chemical characteristics of the leachate, the quantity, quality and direction of flow of ground water, the proximity and withdrawal rate of the ground-water users, the availability of alternative drinking water supplies, the existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water, public health, safety, and welfare effects, and practicable capability of the owner or operator. When physical obstacles preclude installation of ground-water monitoring wells at the relevant point of compliance at existing units, the down-gradient monitoring system may be installed at the closest practicable distance hydraulically down-gradient from the relevant point of compliance specified by the Director of an approved State that ensures detection of groundwater contamination in the uppermost aquifer.

(b) The Director of an approved State may approve a multi-unit ground-water monitoring system instead of separate ground-water monitoring systems for each unit when the facility has several units, provided the multi-unit ground-water monitoring system meets the requirement of § 257.22(a) and will be as protective of human health and the environment as individual monitoring systems for each unit, based on the following factors:

(1) Number, spacing, and orientation of the units;

(2) Hydrogeologic setting;

(3) Site history;

(4) Engineering design of the units; and

(5) Type of waste accepted at the units.

(c) Monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of ground-water samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the ground water.

(1) The owner or operator must notify the State Director that the design, installation, development, and decommission of any monitoring wells, piezometers and other measurement, sampling, and analytical devices documentation has been placed in the operating record; and

(2) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(d) The number, spacing, and depths of monitoring systems shall be:

(1) Determined based upon site-specific technical information that must include thorough characterization of:

(i) Aquifer thickness, ground-water flow rate, ground-water flow direction including seasonal and temporal fluctuations in ground-water flow; and

(ii) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer; including, but not limited to: thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities.

(2) Certified by a qualified ground-water scientist or approved by the Director of an approved State. Within 14 days of this certification, the owner or operator must notify the State Director that the certification has been placed in the operating record.

§ 257.23 Ground-water sampling and analysis requirements.

(a) The ground-water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground-water quality at the background and downgradient wells installed in compliance with § 257.22(a). The owner or operator must notify the State Director that the sampling and analysis program documentation has been placed in the operating record and the program must include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures;

(4) Chain of custody control; and

(5) Quality assurance and quality control.

(b) The ground-water monitoring program must include sampling and analytical methods that are appropriate for ground-water sampling and that accurately measure hazardous constituents and other monitoring parameters in ground-water samples. Ground-water samples shall not be field-filtered prior to laboratory analysis.

(c) The sampling procedures and frequency must be protective of human health and the environment.

(d) Ground-water elevations must be measured in each well immediately prior to purging, each time ground water is sampled. The owner or operator must determine the rate and direction of ground-water flow each time ground water is sampled. Ground-water elevations in wells which monitor the same waste management area must be measured within a period of time short enough to avoid temporal variations in ground-water flow which could preclude accurate determination of ground-water flow rate and direction.

(e) The owner or operator must establish background ground-water quality in a hydraulically upgradient or background well(s) for each of the monitoring parameters or constituents required in the particular ground-water monitoring program that applies to the unit, as determined under § 257.24(a), or § 257.25(a). Background ground-water quality may be established at wells that are not located hydraulically upgradient from the unit if it meets the requirements of § 257.22(a)(1).

(f) The number of samples collected to establish ground-water quality data must be consistent with the appropriate statistical procedures determined pursuant to paragraph (g) of this section. The sampling procedures shall be those specified under § 257.24(b) for detection monitoring, § 257.25 (b) and (d) for assessment monitoring, and § 257.26(b) for corrective action.

(g) The owner or operator must specify in the operating record one of the following statistical methods to be used in evaluating ground-water monitoring data for each hazardous constituent. The statistical test chosen shall be conducted separately for each hazardous constituent in each well.

(1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(2) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test method that meets the performance standards of paragraph (h) of this section. The owner or operator must place a justification for this alternative in the operating record and notify the State Director of the use of this alternative test. The justification must demonstrate that the alternative method meets the performance standards of paragraph (h) of this section.

(h) Any statistical method chosen under paragraph (g) of this section shall comply with the following performance standards, as appropriate:

(1) The statistical method used to evaluate ground-water monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a ground-water protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(3) If a control chart approach is used to evaluate ground-water monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(4) If a tolerance interval or a predictional interval is used to evaluate ground-water monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(i) The owner or operator must determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the particular ground-water monitoring program that applies to the unit, as determined under §§ 257.24(a) or 257.25(a).

(1) In determining whether a statistically significant increase has occurred, the owner or operator must compare the ground-water quality of each parameter or constituent at each monitoring well designated pursuant to § 257.22(a)(2) to the background value of that constituent, according to the statistical procedures and performance standards specified under paragraphs (g) and (h) of this section.

(2) Within a reasonable period of time after completing sampling and analysis, the owner or operator must determine whether there has been a statistically significant increase over background at each monitoring well.

§ 257.24 Detection monitoring program.

(a) Detection monitoring is required at facilities identified in § 257.5(a) at all ground-water monitoring wells defined under §§ 257.22 (a)(1) and (a)(2). At a minimum, a detection monitoring program must include the monitoring for the constituents listed in appendix I of 40 CFR Part 258.

(1) The Director of an approved State may delete any of the appendix I (Appendix I of 40 CFR Part 258) monitoring parameters for a unit if it can be shown that the removed constituents are not reasonably expected to be contained in or derived from the waste contained in the unit.

(2) The Director of an approved State may establish an alternative list of indicator parameters for a unit, in lieu of some or all of the constituents in appendix I to 40 CFR Part 258, if the alternative parameters provide a reliable indication of releases from the unit to the ground water. In determining alternative parameters, the Director shall consider the following factors:

(i) The types, quantities, and concentrations of constituents in waste managed at the unit;

(ii) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the unit;

(iii) The detectability of indicator parameters, waste constituents, and reaction products in the ground water; and

(iv) The concentration or values and coefficients of variation of monitoring parameters or constituents in the groundwater background.

(b) The monitoring frequency for all constituents listed in appendix I to 40 CFR Part 258, or in the alternative list approved in accordance with paragraph (a)(2) of this section, shall be at least semiannual during the active life of the unit plus 30 years. A minimum of four independent samples from each well (background and downgradient) must be collected and analyzed for the appendix I (Appendix I of 40 CFR, Part 258) constituents, or the alternative list approved in accordance with paragraph (a)(2) of this section, during the first semiannual sampling event. At least one sample from each well (background and downgradient) must be collected and analyzed during subsequent semiannual sampling events. The Director of an approved State may specify an appropriate alternative frequency for repeated sampling and analysis for appendix I (Appendix I of 40 CFR Part 258) constituents, or the alternative list approved in accordance with paragraph (a)(2) of this section, during the active life plus 30 years. The alternative frequency during the active life shall be no less than annual. The alternative frequency shall be based on consideration of the following factors:

(1) Lithology of the aquifer and unsaturated zone;

(2) Hydraulic conductivity of the aquifer and unsaturated zone;

(3) Ground-water flow rates;

(4) Minimum distance between upgradient edge of the unit and downgradient monitoring well screen (minimum distance of travel); and

(5) Resource value of the aquifer.

(c) If the owner or operator determines, pursuant to § 257.23(g), that there is a statistically significant increase over background for one or more of the constituents listed in appendix I to 40 CFR Part 258, or in the alternative list approved in accordance with paragraph (a)(2) of this section, at any monitoring well at the boundary specified under § 257.22(a)(2), the owner or operator:

(1) Must, within 14 days of this finding, place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels, and notify the State Director that this notice was placed in the operating record; and

(2) Must establish an assessment monitoring program meeting the requirements of § 257.25 within 90 days except as provided for in paragraph (c)(3) of this section.

(3) The owner/operator may demonstrate that a source other than the unit caused the contamination or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist or approved by the Director of an approved State and be placed in the operating record. If a successful demonstration is made and documented, the owner or operator may continue detection monitoring as specified in this section. If, after 90 days, a successful demonstration is not made, the owner or operator must initiate an assessment monitoring program as required in § 257.25.

§ 257.25 Assessment monitoring program.

(a) Assessment monitoring is required whenever a statistically significant increase over background has been detected for one or more of the constituents listed in appendix I of 40 CFR Part 258 or in the alternative list approved in accordance with § 257.24(a)(2).

(b) Within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator must sample and analyze the ground water for all constituents identified in appendix II of 40 CFR Part 258. A minimum of one sample from each downgradient well must be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells as the result of the complete appendix II (Appendix II of 40 CFR Part 258) analysis, a minimum of four independent samples from each well (background and downgradient) must be collected and analyzed to establish background for the new constituents. The Director of an approved State may specify an appropriate subset of wells to be sampled and analyzed for appendix II (Appendix II of 40 CFR Part 258) constituents during assessment monitoring. The Director of an approved State may delete any of the appendix II (Appendix II of 40 CFR Part 258) monitoring parameters for a unit if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

(c) The Director of an approved State may specify an appropriate alternate frequency for repeated sampling and analysis for the full set of appendix II (Appendix II of 40 CFR part 258) constituents, or the alternative list approved in accordance with paragraph (b) of this section, during the active life plus 30 years considering the following factors:

(1) Lithology of the aquifer and unsaturated zone;

(2) Hydraulic conductivity of the aquifer and unsaturated zone;

(3) Ground-water flow rates;

(4) Minimum distance between upgradient edge of the unit and downgradient monitoring well screen (minimum distance of travel);

(5) Resource value of the aquifer; and

(6) Nature (fate and transport) of any constituents detected in response to this section.

(d) After obtaining the results from the initial or subsequent sampling events required in paragraph (b) of this section, the owner or operator must:

(1) Within 14 days, place a notice in the operating record identifying the appendix II (appendix II of 40 CFR part 258) constituents that have been detected and notify the State Director that this notice has been placed in the operating record;

(2) Within 90 days, and on at least a semiannual basis thereafter, resample all wells specified by § 257.22(a) to this section, conduct analyses for all

constituents in appendix I (Appendix I of 40 CFR part 258) to this part or in the alternative list approved in accordance with § 257.24(a)(2), and for those constituents in appendix II to 40 CFR part 258 that are detected in response to paragraph (b) of this section, and record their concentrations in the facility operating record. At least one sample from each well (background and downgradient) must be collected and analyzed during these sampling events. The Director of an approved State may specify an alternative monitoring frequency during the active life plus 30 years for the constituents referred to in this paragraph. The alternative frequency for appendix I (Appendix I of 40 CFR part 258) constituents, or the alternative list approved in accordance with § 257.24(a)(2), during the active life shall be no less than annual. The alternative frequency shall be based on consideration of the factors specified in paragraph (c) of this section;

(3) Establish background concentrations for any constituents detected pursuant to paragraphs (b) or (d)(2) of this section; and

(4) Establish ground-water protection standards for all constituents detected pursuant to paragraph (b) or (d) of this section. The ground-water protection standards shall be established in accordance with paragraphs (h) or (i) of this section.

(e) If the concentrations of all appendix II (Appendix II of 40 CFR part 258) constituents are shown to be at or below background values, using the statistical procedures in § 257.23(g), for two consecutive sampling events, the owner or operator must notify the State Director of this finding and may return to detection monitoring.

(f) If the concentrations of any appendix II (Appendix II of part 258) constituents are above background values, but all concentrations are below the ground-water protection standard established under paragraphs (h) or (i) of this section, using the statistical procedures in § 257.23(g), the owner or operator must continue assessment monitoring in accordance with this section.

(g) If one or more appendix II (Appendix II of CFR part 258) constituents are detected at statistically significant levels above the ground-water protection standard established under paragraphs (h) or (i) of this section in any sampling event, the owner or operator must, within 14 days of this finding, place a notice in the operating record identifying the appendix II (Appendix II of 40 CFR part 258) constituents that have exceeded the ground-water protection standard and notify the State Director and all appropriate local government officials that the notice has been placed in the operating record. The owner or operator also:

(1)(i) Must characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(ii) Must install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with paragraph (d)(2) of this section;

(iii) Must notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site if indicated by sampling of wells in accordance paragraph (g)(1) of this section; and

(iv) Must initiate an assessment of corrective measures as required by § 257.26 within 90 days; or

(2) May demonstrate that a source other than the non-municipal non-hazardous waste disposal unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist or approved by the Director of an approved State and placed in the operating record. If a successful demonstration is made the owner or operator must continue monitoring in accordance with the assessment monitoring program pursuant to this § 257.25, and may return to detection monitoring if the appendix II (Appendix II of 40 CFR part 258) constituents are at or below background as specified in paragraph (e) of this section. Until a successful demonstration is made, the owner or operator must comply with § 257.25(g) including initiating an assessment of corrective measures.

(h) The owner or operator must establish a ground-water protection standard for each appendix II (Appendix II of 40 CFR part 258) constituent detected in the ground-water. The ground-water protection standard shall be:

(1) For constituents for which a maximum contaminant level (MCL) has been promulgated under section 1412 of the Safe Drinking Water Act (codified) under 40 CFR part 141, the MCL for that constituent;

(2) For constituents for which MCLs have not been promulgated, the background concentration for the constituent established from wells in accordance with § 257.22(a)(1); or

(3) For constituents for which the background level is higher than the MCL identified under subparagraph (h)(1) of this section or health based levels identified under paragraph (i)(1) of this section, the background concentration.

(i) The Director of an approved State may establish an alternative ground-water protection standard for constituents for which MCLs have not been established. These ground-water protection standards shall be appropriate health based levels that satisfy the following criteria:

(1) The level is derived in a manner consistent with Agency guidelines for assessing the health risks of environmental pollutants (51 FR 33992, 34006, 34014, 34028, September 24, 1986);

(2) The level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 CFR part 792) or equivalent;

(3) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) within the 1×10^{-4} to 1×10^{-6} range; and

(4) For systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed to on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this subpart, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

(j) In establishing ground-water protection standards under paragraph (i) of this section, the Director of an approved State may consider the following:

(1) Multiple contaminants in the ground water;

(2) Exposure threats to sensitive environmental receptors; and

(3) Other site-specific exposure or potential exposure to ground water.

§ 257.26 Assessment of corrective measures.

(a) Within 90 days of finding that any of the constituents listed in appendix II (Appendix II of 40 CFR Part 258) have been detected at a statistically significant level exceeding the ground-water protection standards defined under § 257.25 (h) or (i), the owner or operator must initiate an assessment of corrective measures. Such an assessment must be completed within a reasonable period of time.

(b) The owner or operator must continue to monitor in accordance with

the assessment monitoring program as specified in § 257.25.

(c) The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under § 257.27, addressing at least the following:

(1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) The time required to begin and complete the remedy;

(3) The costs of remedy implementation; and

(4) The institutional requirements such as State or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy(s).

(d) The owner or operator must discuss the results of the corrective measures assessment, prior to the selection of remedy, in a public meeting with interested and effected parties.

§ 257.27 Selection of remedy.

(a) Based on the results of the corrective measures assessment conducted under § 257.26, the owner or operator must select a remedy that, at a minimum, meets the standards listed in paragraph (b) of this section. The owner or operator must notify the State Director, within 14 days of selecting a remedy, that a report describing the selected remedy has been placed in the operating record and how it meets the standards in paragraph (b) of this section.

(b) Remedies must:

(1) Be protective of human health and the environment;

(2) Attain the ground-water protection standard as specified pursuant to §§ 257.25 (h) or (i);

(3) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of appendix II (Appendix II of 40 CFR part 258) constituents into the environment that may pose a threat to human health or the environment; and

(4) Comply with standards for management of wastes as specified in § 257.28(d).

(c) In selecting a remedy that meets the standards of § 257.27(b), the owner or operator shall consider the following evaluation factors:

(1) The long- and short-term effectiveness and protectiveness of the potential remedy(s), along with the degree of certainty that the remedy will prove successful based on consideration of the following:

(i) Magnitude of reduction of existing risks;

(ii) Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;

(iii) The type and degree of long-term management required, including monitoring, operation, and maintenance;

(iv) Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and re-disposal or containment;

(v) Time until full protection is achieved;

(vi) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, re-disposal, or containment;

(vii) Long-term reliability of the engineering and institutional controls; and

(viii) Potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

(i) The extent to which containment practices will reduce further releases;

(ii) The extent to which treatment technologies may be used.

(3) The ease or difficulty of implementing a potential remedy(s) based on consideration of the following types of factors:

(i) Degree of difficulty associated with constructing the technology;

(ii) Expected operational reliability of the technologies;

(iii) Need to coordinate with and obtain necessary approvals and permits from other agencies;

(iv) Availability of necessary equipment and specialists; and

(v) Available capacity and location of needed treatment, storage, and disposal services.

(4) Practicable capability of the owner or operator, including a consideration of the technical and economic capability.

(5) The degree to which community concerns are addressed by a potential remedy(s).

(d) The owner or operator shall specify as part of the selected remedy a schedule(s) for initiating and completing remedial activities. Such a schedule must require the initiation of remedial activities within a reasonable period of time taking into consideration the factors set forth in paragraphs (d)(1) through (d)(8) of this section. The owner or operator must consider the following factors in determining the schedule of remedial activities:

(1) Extent and nature of contamination;

(2) Practical capabilities of remedial technologies in achieving compliance with ground-water protection standards established under §§ 257.25 (g) or (h) and other objectives of the remedy;

(3) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy;

(4) Desirability of utilizing technologies that are not currently available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;

(5) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

(6) Resource value of the aquifer including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users;

(iii) Ground-water quantity and quality;

(iv) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituent;

(v) The hydrogeologic characteristic of the unit and surrounding land;

(vi) Ground-water removal and treatment costs; and

(vii) The cost and availability of alternative water supplies.

(7) Practicable capability of the owner or operator.

(8) Other relevant factors.

(e) The Director of an approved State may determine that remediation of a release of an appendix II (Appendix II of 40 CFR part 258) constituent from the unit is not necessary if the owner or operator demonstrates to the Director of the approved state that:

(1) The ground-water is additionally contaminated by substances that have originated from a source other than the unit and those substances are present in concentrations such that cleanup of the release from the unit would provide no significant reduction in risk to actual or potential receptors; or

(2) The constituent(s) is present in ground water that:

(i) Is not currently or reasonably expected to be a source of drinking water; and

(ii) Is not hydraulically connected with waters to which the hazardous constituents are migrating or are likely

to migrate in a concentration(s) that would exceed the ground-water protection standards established under § 257.25 (h) or (i); or

(3) Remediation of the release(s) is technically impracticable; or

(4) Remediation results in unacceptable cross-media impacts.

(f) A determination by the Director of an approved State pursuant to paragraph (e) of this section shall not affect the authority of the State to require the owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the ground-water, to prevent exposure to the ground-water, or to remediate the ground-water to concentrations that are technically practicable and significantly reduce threats to human health or the environment.

§ 257.28 Implementation of the corrective action program.

(a) Based on the schedule established under § 257.27(d) for initiation and completion of remedial activities the owner/operator must:

(1) Establish and implement a corrective action ground-water monitoring program that:

(i) At a minimum, meets the requirements of an assessment monitoring program under § 257.25;

(ii) Indicates the effectiveness of the corrective action remedy; and

(iii) Demonstrates compliance with ground-water protection standard pursuant to paragraph (e) of this section.

(2) Implement the corrective action remedy selected under § 257.27; and

(3) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to § 257.27. The following factors must be considered by an owner or operator in determining whether interim measures are necessary:

(i) Time required to develop and implement a final remedy;

(ii) Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

(iii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iv) Further degradation of the ground-water that may occur if remedial action is not initiated expeditiously;

(v) Weather conditions that may cause hazardous constituents to migrate or be released;

(vi) Risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and

(vii) Other situations that may pose threats to human health and the environment.

(b) An owner or operator may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of § 257.27(b) are not being achieved through the remedy selected. In such cases, the owner or operator must implement other methods or techniques that could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under § 257.28(c).

(c) If the owner or operator determines that compliance with requirements under § 257.27(b) cannot be practically achieved with any currently available methods, the owner or operator must:

(1) Obtain certification of a qualified ground-water scientist or approval by the Director of an approved State that compliance with requirements under § 257.27(b) cannot be practically achieved with any currently available methods;

(2) Implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; and

(3) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:

(i) Technically practicable; and

(ii) Consistent with the overall objective of the remedy.

(4) Notify the State Director within 14 days that a report justifying the alternative measures prior to implementing the alternative measures has been placed in the operating record.

(d) All solid wastes that are managed pursuant to a remedy required under § 257.27, or an interim measure required under § 257.28(a)(3), shall be managed in a manner:

(1) That is protective of human health and the environment; and

(2) That complies with applicable RCRA requirements.

(e) Remedies selected pursuant to § 257.27 shall be considered complete when:

(1) The owner or operator complies with the ground-water protection standards established under §§ 257.25 (h) or (i) at all points within the plume of contamination that lie beyond the ground-water monitoring well system established under § 257.22(a).

(2) Compliance with the ground-water protection standards established under §§ 257.25 (h) or (i) has been achieved by demonstrating that concentrations of appendix II (Appendix II of Part 258) constituents have not exceeded the ground-water protection standard(s) for a period of three consecutive years using the statistical procedures and performance standards in § 257.23 (g) and (h). The Director of an approved State may specify an alternative length of time during which the owner or operator must demonstrate that concentrations of appendix II (Appendix II of 40 CFR part 258) constituents have not exceeded the ground-water protection standard(s) taking into consideration:

(i) Extent and concentration of the release(s);

(ii) Behavior characteristics of the hazardous constituents in the ground-water;

(iii) Accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and

(iv) Characteristics of the ground-water.

(3) All actions required to complete the remedy have been satisfied.

(f) Upon completion of the remedy, the owner or operator must notify the State Director within 14 days that a certification that the remedy has been completed in compliance with the requirements of § 257.28(e) has been placed in the operating record. The certification must be signed by the owner or operator and by a qualified ground-water scientist or approved by the Director of an approved State.

Recordkeeping Requirements

§ 257.30 Recordkeeping requirements.

(a) The owner/operator of a non-municipal non-hazardous waste disposal unit must record and retain near the facility in an operating record or in an alternative location approved by the Director of an approved State the following information as it becomes available:

(1) Any location restriction demonstration required under §§ 257.7 through 257.12; and

(2) Any demonstration, certification, finding, monitoring, testing, or analytical data required in §§ 257.21 through 257.28.

(b) The owner/operator must notify the State Director when the documents from paragraph (a) of this section have been placed or added to the operating record, and all information contained in the operating record must be furnished

upon request to the State Director or be made available at all reasonable times for inspection by the State Director.

(c) The Director of an approved State can set alternative schedules for recordkeeping and notification requirements as specified in paragraphs (a) and (b) of this section, except for the notification requirements in § 257.25(g)(1)(iii).

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTES

5. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

Subpart A—General

6. Section 261.5 is amended by revising paragraphs (f)(3) and (g)(3) to read as follows:

§ 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

* * * * *

(f) * * *

(3) A conditionally exempt small quantity generator may either treat or dispose of his acute hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under part 270 of this chapter;

(ii) In interim status under parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to Part 258 of this chapter;

(v) Permitted, licensed, or registered by a State to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in §§ 257.5 through 257.30 of this chapter; or

(vi) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(vii) For universal waste managed under part 273 of this chapter, a universal waste handler or destination facility subject to the requirements of part 273 of this chapter.

(g) * * *

(3) A conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under part 270 of this chapter;

(ii) In interim status under parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to Part 258 of this chapter;

(v) Permitted, licensed, or registered by a State to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in §§ 257.5 through 257.30 of this chapter; or

(vi) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(vii) For universal waste managed under part 273 of this chapter, a universal waste handler or destination facility subject to the requirements of part 273 of this chapter.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

7. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

8. In § 271.1, paragraph (j), Table 1 is amended by adding the following entry in chronological order by publication date:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
July 1, 1996	Revisions to Criteria applicable to solid waste facilities that may accept CESQG hazardous wastes, excluding MSWLFs.	61 FR 34278	January 1, 1998.

[FR Doc. 96–16585 Filed 6–26–96; 11:51 am]
BILLING CODE 6560–50–P

federal register

Monday
July 1, 1996

Part VI

Department of the Treasury

Fiscal Service

Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and As Acceptable Reinsuring Companies; Annual List; Notice

DEPARTMENT OF THE TREASURY

FISCAL SERVICE

(Dept. Circular 570; 1996 Revision)

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETIES ON FEDERAL BONDS AND AS ACCEPTABLE REINSURING COMPANIES

Effective July 1, 1996

This Circular is published annually, solely for the information of Federal bond-approving officers and persons required to give bonds to the United States. Copies of the Circular and interim changes may be obtained directly from the Government Printing Office (202) 512-1800. (Interim changes are published in the FEDERAL REGISTER as they occur.) Other information pertinent to Federal sureties may be obtained from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 3700 East West Highway, Room 6F04, Hyattsville, MD 20782, Telephone (FTS/202) 874-6850 or (Fax/202) 874-9978.

For the most current list of Treasury authorized companies, all year round, 24 hours a day, free of charge, use your computer modem and dial into our *computerized public bulletin board* at (202) 874-6817/6872/6953/7034/8608. The list is also available through the Internet (http://www.ustreas.gov/treasury/bureaus/finman/c570.html). *Please note that the underwriting limitation published herein is on a per bond basis but this does not limit the amount of a bond that a company can write.* Companies are allowed to write bonds with a penal sum over their underwriting limitation as long as they protect the excess amount with reinsurance, coinsurance or other methods as specified at 31 CFR 223.10-11. Please refer to footnote (b) at the end of this publication.

The following companies have complied with the law and the regulations of the U.S. Department of the Treasury. Those listed in the front of this Circular are acceptable as sureties and reinsurers on Federal bonds under Title 31 of the United States Code, Sections 9304 to 9308 [See Note (a)]. Those listed in the back are acceptable only as reinsurers on Federal bonds under 31 CFR 223.3(b) [See Note (e)].

If we can be of any assistance, please feel free to contact the Surety Bond Branch at (202) 874-6850.

Diane E. Clark
Assistant Commissioner, Financial Information
Financial Management Service

IMPORTANT INFORMATION IS CONTAINED IN THE NOTES AT THE END OF THIS CIRCULAR. PLEASE READ THE NOTES CAREFULLY.

Acadia Insurance Company
BUSINESS ADDRESS: P.O. BOX 9010, Westbrook, ME 04098-5010. PHONE: (207) 772-4300. UNDERWRITING LIMITATION [b/]: $2,930,000. SURETY LICENSES [c/]: ME, NH, VT. INCORPORATED IN: Maine.

Acceptance Insurance Company
BUSINESS ADDRESS: 222 South 15th Street, Suite 600 North, Omaha, NE 68102. PHONE: (402) 344-8800. UNDERWRITING LIMITATION [b/]: $10,792,000. SURETY LICENSES [c/]: AL, AZ, AR, CO, GA, IL, IA, KY, ME, MI, NE, ND, OH, TN, VA, WI. INCORPORATED IN: Nebraska.

ACCREDITED SURETY AND CASUALTY COMPANY, INC.
BUSINESS ADDRESS: P.O. Box 568529, Orlando, FL 32856-8529. PHONE: (407) 841-8500. UNDERWRITING LIMITATION [b/]: $653,000. SURETY LICENSES [c/]: AL, FL, GA, IN, LA, MD, MS, VA. INCORPORATED IN: Florida.

ACSTAR INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 2350, New Britain, CT 06050-2350. PHONE: (860) 224-2000. UNDERWRITING LIMITATION [b/]: $1,769,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Aegis Security Insurance Company
BUSINESS ADDRESS: P.O. Box 3153, Harrisburg, PA 17105. PHONE: (717) 657-9671. UNDERWRITING LIMITATION [b/]: $1,192,000. SURETY LICENSES [c/]: AL, AZ, AR, CA, CO, CT, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Aetna Casualty & Surety Company of America
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-9062. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $33,358,000. SURETY LICENSES [c/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Aetna Casualty and Surety Company (The)
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-9062. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $120,052,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Aetna Casualty and Surety Company of Illinois
BUSINESS ADDRESS: 2525 Cabot Drive, Lisle, IL 60532-3629. PHONE: (708) 245-4001. UNDERWRITING LIMITATION [b/]: $26,379,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Affiliated FM Insurance Company
BUSINESS ADDRESS: Allendale Park, P.O. Box 7500, Johnston, RI 02919-0500. PHONE: (401) 275-3000. UNDERWRITING LIMITATION [b/]: $3,149,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Allegheny Mutual Casualty Company
BUSINESS ADDRESS: P.O. Box 1116, Meadville, PA 16335-7116. PHONE: (814) 336-2521. UNDERWRITING LIMITATION [b/]: $952,000. SURETY LICENSES [c/]: CA, DC, FL, ID, IL, IN, LA, MD, MI, MS, NJ, OH, OK, PA, SC, SD, TN, TX, WA, WI. INCORPORATED IN: Pennsylvania.

See Footnotes/Notes at end of Circular

Allendale Mutual Insurance Company
BUSINESS ADDRESS: Allendale Park, P.O. Box 7500, Johnston, RI 02919-0500. PHONE: (401) 275-3000. UNDERWRITING LIMITATION [b/]: $81,347,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Alliance Assurance Company of America
BUSINESS ADDRESS: 25 Independence Blvd., Warren, NJ 07059. PHONE: (212) 753-8130. UNDERWRITING LIMITATION [b/]: $15,763,000. SURETY LICENSES [c/]: IN, KY, ME. INCORPORATED IN: New York.

Allied Mutual Insurance Company
BUSINESS ADDRESS: 701 5th Avenue, Des Moines, IA 50391-2007. PHONE: (515) 280-4211. UNDERWRITING LIMITATION [b/]: $19,447,000. SURETY LICENSES [c/]: AZ, AR, CA, CO, DC, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

ALLSTATE INSURANCE COMPANY
BUSINESS ADDRESS: 3075 Sanders Rd. STE H1A, Northbrook, IL 60062-7127. PHONE: (847) 402-5000. UNDERWRITING LIMITATION [b/]: $808,517,000. SURETY LICENSES [c/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

AMCO Insurance Company
BUSINESS ADDRESS: 701 5th Avenue, Des Moines, IA 50391-2007. PHONE: (515) 280-4211. UNDERWRITING LIMITATION [b/]: $15,688,000. SURETY LICENSES [c/]: AZ, CA, CO, DC, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NM, ND, OH, OR, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

AMERICAN ALLIANCE INSURANCE COMPANY
BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION [b/]: $712,000. SURETY LICENSES [c/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Arizona.

American Automobile Insurance Company
BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION [b/]: $4,427,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA
BUSINESS ADDRESS: 11222 Quail Roost Dr., Miami, FL 33157. PHONE: (305) 253-2244. UNDERWRITING LIMITATION [b/]: $3,322,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Florida.

American Casualty Company of Reading, Pennsylvania
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $27,814,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

AMERICAN CONTRACTORS INDEMNITY COMPANY
BUSINESS ADDRESS: 9841 Airport Blvd,, Suite 1414, Los Angeles, CA 90045. PHONE: (310) 649-0990. UNDERWRITING LIMITATION [b/]: $291,000. SURETY LICENSES [c/]: CA, NM. INCORPORATED IN: California.

See Footnotes/Notes at end of Circular

American Economy Insurance Company
BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46204-1275. PHONE: (317) 262-6262. UNDERWRITING LIMITATION [b/]: $38,424,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Employers' Insurance Company
BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. PHONE: (617) 725-6000. UNDERWRITING LIMITATION [b/]: $20,119,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

American Fidelity Insurance Company
BUSINESS ADDRESS: P.O. Box 25523, Oklahoma City, OK 73125-0523. PHONE: (405) 523-2000. UNDERWRITING LIMITATION [b/]: $2,952,000. SURETY LICENSES [c/]: AZ, AR, CA, CO, GA, ID, IA, KS, LA, MS, MO, MT, NE, NV, NJ, NM, ND, OK, OR, PA, SD, TN, TX, UT, VA, WA, WI. INCORPORATED IN: Oklahoma.

American Fire and Casualty Company
BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513) 867-3000. UNDERWRITING LIMITATION [b/]: $6,345,000. SURETY LICENSES [c/]: AL, AR, CO, DC, FL, GA, KS, KY, LA, MD, MS, NC, SC, TN, TX, VA. INCORPORATED IN: Ohio.

American Guarantee and Liability Insurance Company
BUSINESS ADDRESS: 1400 American Lane, Schaumburg, IL 60196. PHONE: (847) 605-6000. UNDERWRITING LIMITATION [b/]: $18,478,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Home Assurance Company
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION [b/]: $170,300,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Insurance Company (The)
BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION [b/]: $32,834,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

American International Pacific Insurance Company
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION [b/]: $1,678,000. SURETY LICENSES [c/]: AK, CO, CT, DC, IA, ME, MD, MA, MS, NE, NH, ND, RI, SD, UT, VT, WV. INCORPORATED IN: Colorado.

American Manufacturers Mutual Insurance Company
BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (847) 320-2000. UNDERWRITING LIMITATION [b/]: $19,248,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

American Motorists Insurance Company
BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (847) 320-2000. UNDERWRITING LIMITATION [b/]: $25,311,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

American National Fire Insurance Company
BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION [b/]: $2,181,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Re-Insurance Company
BUSINESS ADDRESS: 555 College Road East, P.O. Box 5241, Princeton, NJ 08543. PHONE: (609) 243-4200. UNDERWRITING LIMITATION [b/]: $110,027,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

AMERICAN RELIABLE INSURANCE COMPANY
BUSINESS ADDRESS: 8655 East Via De Ventura, Scottsdale, AZ 85258. PHONE: (602) 483-8666. UNDERWRITING LIMITATION [b/]: $2,651,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

American Safety Casualty Insurance Company
BUSINESS ADDRESS: 1845 The Exchange, Suite 200, Atlanta, GA 30339. PHONE: (770) 916-1908. UNDERWRITING LIMITATION [b/]: $766,000. SURETY LICENSES [c/]: AL, AK, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, MD, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI. INCORPORATED IN: Delaware.

American States Insurance Company
BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46204-1275. PHONE: (317) 262-6262. UNDERWRITING LIMITATION [b/]: $101,099,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Surety and Casualty Company
BUSINESS ADDRESS: P.O. Box 24827, Jacksonville, FL 32241-4827. PHONE: (904) 733-6661. UNDERWRITING LIMITATION [b/]: $427,000. SURETY LICENSES [c/]: AL, FL, GA. INCORPORATED IN: Florida.

American Surety Company
BUSINESS ADDRESS: 3901 West 86th Street, Suite 450, Indianapolis, IN 46268-0932. PHONE: (317) 875-8700. UNDERWRITING LIMITATION [b/]: $384,000. SURETY LICENSES [c/]: AL, CA, FL, MD, NV, ND, TN, TX. INCORPORATED IN: California.

Amwest Surety Insurance Company
BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365-4500. PHONE: (818) 704-1111. UNDERWRITING LIMITATION [b/]: $3,095,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

Antilles Insurance Company
BUSINESS ADDRESS: P.O. Box 3507, Old San Juan, PR 00902. PHONE: (809) 721-4900. UNDERWRITING LIMITATION [b/]: $1,829,000. SURETY LICENSES [c/]: PR. INCORPORATED IN: Puerto Rico.

See Footnotes/Notes at end of Circular

Arkwright Mutual Insurance Company
BUSINESS ADDRESS: 225 Wyman Street, P.O. Box 9198, Waltham, MA 02254-9198. PHONE: (617) 890-9300. UNDERWRITING LIMITATION [b/]: $69,488,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Associated Indemnity Corporation
BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION [b/]: $3,033,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

ATLANTIC ALLIANCE FIDELITY AND SURETY COMPANY
BUSINESS ADDRESS: P.O. Box 985, Cherry Hill, NJ 08003. PHONE: (609) 795-5575. UNDERWRITING LIMITATION [b/]: $369,000. SURETY LICENSES [c/]: AL, AK, AZ, CT, DE, DC, FL, GA, IL, KY, MD, MA, MO, NJ, NY, PA, TN, TX. INCORPORATED IN: New Jersey.

Atlantic Mutual Insurance Company
BUSINESS ADDRESS: 100 Wall Street, New York, NY 10005. PHONE: (212) 943-1800. UNDERWRITING LIMITATION [b/]: $28,971,000. SURETY LICENSES [c/]: AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Auto-Owners Insurance Company
BUSINESS ADDRESS: P.O. Box 30660, Lansing, MI 48909. PHONE: (517) 323-1200. UNDERWRITING LIMITATION [b/]: $142,590,000. SURETY LICENSES [c/]: AL, AK, AZ, CO, FL, GA, IL, IN, IA, KS, KY, MI, MN, MO, NE, NM, NC, ND, OH, OR, SC, SD, TN, TX, VA, WI. INCORPORATED IN: Michigan.

BANKERS INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 15707, St. Petersburg, FL 33733-5707. PHONE: (813) 823-4000. UNDERWRITING LIMITATION [b/]: $3,037,000. SURETY LICENSES [c/]: AL, AZ, AR, CA, CT, DE, DC, FL, GA, HI, ID, IL, IA, KY, LA, MD, MS, MO, MT, NE, NV, NM, NC, OH, OK, PA, SC, SD, TN, TX, VA, WY. INCORPORATED IN: Florida.

BITUMINOUS CASUALTY CORPORATION
BUSINESS ADDRESS: 320 - 18th Street, Rock Island, IL 61201. PHONE: (309) 786-5401 x-268. UNDERWRITING LIMITATION [b/]: $13,287,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

BOND SAFEGUARD INSURANCE COMPANY
BUSINESS ADDRESS: 246 E. Janata Blvd., Lombard, IL 60148. PHONE: (708) 495-9380. UNDERWRITING LIMITATION [b/]: $417,000. SURETY LICENSES [c/]: IL, IN, KS, MO, NC, OK, TN, TX. INCORPORATED IN: Illinois.

Boston Old Colony Insurance Company
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $1,028,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Buckeye Union Insurance Company [The]
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $31,549,000. SURETY LICENSES [c/]: AK, DC, FL, IL, IN, IA, KS, KY, MD, MI, MO, NY, OH, PA, RI, SD, VA, WV. INCORPORATED IN: Ohio.

See Footnotes/Notes at end of Circular

Capitol Indemnity Corporation
BUSINESS ADDRESS: P.O. Box 5900, Madison, WI 53705-0900. PHONE: (608) 231-4450. UNDERWRITING LIMITATION [b/]: $6,262,000. SURETY LICENSES [c/]: AZ, AR, CO, DE, FL, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, PA, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Wisconsin.

Carolina Casualty Insurance Company
BUSINESS ADDRESS: P.O. Box 2575, Jacksonville, FL 32203. PHONE: (904) 363-0900. UNDERWRITING LIMITATION [b/]: $4,917,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Florida.

Centennial Insurance Company
BUSINESS ADDRESS: 100 Wall Street, New York, NY 10005. PHONE: (212) 943-1800. UNDERWRITING LIMITATION [b/]: $16,638,000. SURETY LICENSES [c/]: AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

CENTURY SURETY COMPANY
BUSINESS ADDRESS: P.O. Box 163340, Columbus, OH 43216-3340. PHONE: (614) 895-2000. UNDERWRITING LIMITATION [b/]: $2,032,000. SURETY LICENSES [c/]: AZ, IN, OH, WV, WI. INCORPORATED IN: Ohio.

Charter Oak Fire Insurance Company (The)
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $12,717,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Chartwell Reinsurance Company
BUSINESS ADDRESS: 300 Atlantic Street, Suite 400, Stamford, CT 06901. PHONE: (203) 961-7300. UNDERWRITING LIMITATION [b/]: $8,901,000. SURETY LICENSES [c/]: AK, AZ, CA, DE, DC, GA, HI, ID, KS, MD, MS, MT, NE, NV, NJ, NM, NY, ND, OH, PA, TN, TX, UT, WA, WI. INCORPORATED IN: Minnesota.

Chatham Reinsurance Corporation
BUSINESS ADDRESS: 100 Campus Drive, Florham Park, NJ 07932-1006. PHONE: (201) 443-0443. UNDERWRITING LIMITATION [b/]: $3,060,000. SURETY LICENSES [c/]: AK, AZ, CA, CO, DC, ID, IL, IA, MD, MA, MN, NE, NJ, NY, OK, OR, PA, SC, SD, TX, UT, WA, WI. INCORPORATED IN: California.

CHRISTIANIA GENERAL INSURANCE CORPORATION OF NEW YORK
BUSINESS ADDRESS: 120 White Plains Road, Tarrytown, NY 10591-0005. PHONE: (914) 333-9200. UNDERWRITING LIMITATION [b/]: $10,640,000. SURETY LICENSES [c/]: AL, AK, AR, CA, DC, IA, KY, MD, MS, NV, NY, ND, OH, PA, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: New York.

CHRYSLER INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 5168, Southfield, MI 48086-5168. PHONE: (810) 948-3443. UNDERWRITING LIMITATION [b/]: $11,347,000. SURETY LICENSES [c/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

CHUBB INDEMNITY INSURANCE COMPANY
BUSINESS ADDRESS: 15 Mountain View Rd.,P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION [b/]: $1,113,000. SURETY LICENSES [c/]: AK, AZ, CA, CT, DE, DC, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MO, MT, NJ, NY, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, VA, WA, WI. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

CIGNA INDEMNITY INSURANCE COMPANY 1
BUSINESS ADDRESS: 1601 Chestnut Street, P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION [b/]: $2,569,000. SURETY LICENSES [c/]: AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, OH, OR, PA, RI, SC, SD, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

CIGNA Insurance Company of Illinois
BUSINESS ADDRESS: 8755 West Higgins Rd., Chicago, IL 60631. PHONE: (312) 380-8100. UNDERWRITING LIMITATION [b/]: $3,105,000. SURETY LICENSES [c/]: IL. INCORPORATED IN: Illinois.

CIGNA Insurance Company of Texas
BUSINESS ADDRESS: 600 East Las Colinas Blvd., Suite 620, Irving, TX 75039. PHONE: (214) 869-8500. UNDERWRITING LIMITATION [b/]: $3,019,000. SURETY LICENSES [c/]: NM, OK, TX. INCORPORATED IN: Texas.

CIGNA Insurance Company of the Midwest
BUSINESS ADDRESS: 9200 Keystone Crossing, P.O. Box 80995, Suite 303, Indianapolis, IN 46240. PHONE: (215) 761-1000. UNDERWRITING LIMITATION [b/]: $2,509,000. SURETY LICENSES [c/]: IN. INCORPORATED IN: Indiana.

Cincinnati Casualty Company (The)
BUSINESS ADDRESS: P.O. Box 145496, Cincinnati, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION [b/]: $10,684,000. SURETY LICENSES [c/]: AL, AZ, CO, FL, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, NE, NM, NC, OH, OK, PA, SC, SD, TN, TX, UT, VT, VA, WV, WI, WY. INCORPORATED IN: Ohio.

Cincinnati Insurance Company (The)
BUSINESS ADDRESS: P.O. Box 145496, Cincinnati, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION [b/]: $113,660,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
BUSINESS ADDRESS: 210 North Charles Street, Baltimore, MD 21201. PHONE: (410) 539-0800. UNDERWRITING LIMITATION [b/]: $1,563,000. SURETY LICENSES [c/]: DC, FL, IL, IN, IA, KS, MD, MI, MO, NJ, NY, OH, OK, TN, TX, VA. INCORPORATED IN: Maryland.

COLONIAL SURETY COMPANY
BUSINESS ADDRESS: 50 Chestnut Ridge Road, Montvale, NJ 07645. PHONE: (201) 573-8788. UNDERWRITING LIMITATION [b/]: $256,000. SURETY LICENSES [c/]: CT, DE, DC, MD, MA, NJ, NM, NY, PA. INCORPORATED IN: Pennsylvania.

Commercial Casualty Insurance Company of Georgia
BUSINESS ADDRESS: 160 Technology Parkway, Norcross, GA 30092-2911. PHONE: (770) 729-8101. UNDERWRITING LIMITATION [b/]: $ 725,000. SURETY LICENSES [c/]: FL, GA. INCORPORATED IN: Georgia.

Commercial Insurance Company of Newark, New Jersey
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $4,035,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

See Footnotes/Notes at end of Circular

Commercial Union Insurance Company
BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. PHONE: (617) 725-6000. UNDERWRITING LIMITATION [b/]: $48,884,000. SURETY LICENSES [c/]: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

CONNECTICUT INDEMNITY COMPANY (THE)
BUSINESS ADDRESS: P.O. Box 420, Hartford, CT 06141. PHONE: (860) 674-6600. UNDERWRITING LIMITATION [b/]: $5,925,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Connecticut Surety Company (The)
BUSINESS ADDRESS: City Place II 185 Asylum Street, Hartford, CT 06103-3403. PHONE: (860) 527-7806. UNDERWRITING LIMITATION [b/]: $942,000. SURETY LICENSES [c/]: AR, CA, CT, DE, DC, LA, NE, NY, ND, OH, PA, SC, TX. INCORPORATED IN: Connecticut.

Continental Casualty Company
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $350,353,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Continental Insurance Company (The)
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $43,603,000. SURETY LICENSES [c/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

CONTINENTAL INSURANCE COMPANY OF PUERTO RICO (THE)
BUSINESS ADDRESS: B 2 Calle Tabonuco, PMC - Suite 431, Guaynabo, PR 00968-3004. PHONE: (809) 793-6111. UNDERWRITING LIMITATION [b/]: $14,266,000. SURETY LICENSES [c/]: PR. INCORPORATED IN: Puerto Rico.

Continental Reinsurance Corporation
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $21,227,000. SURETY LICENSES [c/]: AK, AZ, AR, CA, CO, DC, FL, HI, ID, IL, IN, IA, LA, MI, MS, MT, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, TX, UT, VA, WA, WY. INCORPORATED IN: California.

Continental Western Insurance Company
BUSINESS ADDRESS: P.O. Box 1594, Des Moines, IA 50306. PHONE: (515) 278-3000. UNDERWRITING LIMITATION [b/]: $8,110,000. SURETY LICENSES [c/]: AZ, AR, CO, ID, IL, IN, IA, KS, KY, ME, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

CONTRACTORS BONDING AND INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 9271, Seattle, WA 98109-0271. PHONE: (206) 622-7053. UNDERWRITING LIMITATION [b/]: $1,878,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Washington.

Cooperativa de Seguros Multiples de Puerto Rico
BUSINESS ADDRESS: G.P.O. Box 363846, San Juan, PR 00936-3846. PHONE: (809) 758-8585. UNDERWRITING LIMITATION [b/]: $10,372,000. SURETY LICENSES [c/]: PR. INCORPORATED IN: Puerto Rico.

See Footnotes/Notes at end of Circular

CREDIT GENERAL INSURANCE COMPANY
BUSINESS ADDRESS: 3201 Enterprise Pkwy, Beachwood, OH 44122. PHONE: (216) 778-6920. UNDERWRITING LIMITATION [b/]: $2,173,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, PA, SC, SD, TN, UT, VA, WA, WV, WI. INCORPORATED IN: Ohio.

CUMBERLAND CASUALTY & SURETY COMPANY
BUSINESS ADDRESS: 4311 West Waters Avenue, Suite 401, Tampa, FL 33614. PHONE: (813) 885-2112. UNDERWRITING LIMITATION [b/]: $513,000. SURETY LICENSES [c/]: DE, DC, FL, GA, GU, ID, IN, LA, MD, MA, MO, MT, NE, NV, ND, OK, SC, SD, TX, WY. INCORPORATED IN: Florida.

Cumberland Surety Insurance Company, Inc.
BUSINESS ADDRESS: 367 West Short Street, Lexington, KY 40507. PHONE: (800) 767-8622. UNDERWRITING LIMITATION [b/]: $269,000. SURETY LICENSES [c/]: DC, FL, IL, IN, KY, MS, OH, TN. INCORPORATED IN: Kentucky.

CUMIS INSURANCE SOCIETY, INC.
BUSINESS ADDRESS: Post Office Box 1084, Madison, WI 53701. PHONE: (608) 238-5851. UNDERWRITING LIMITATION [b/]: $21,667,000. SURETY LICENSES [c/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

DAIRYLAND INSURANCE COMPANY
BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. PHONE: (715) 346-6000. UNDERWRITING LIMITATION [b/]: $7,378,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

DEVELOPERS INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92713. PHONE: (714) 263-3300. UNDERWRITING LIMITATION [b/]: $678,000. SURETY LICENSES [c/]: AK, AZ, CA, HI, ID, NV, OR, UT, WA. INCORPORATED IN: California.

Developers Surety and Indemnity Company
BUSINESS ADDRESS: 1603 22nd Street Suite 200, West Des Moines, IA 50266. PHONE: (515) 267-9070. UNDERWRITING LIMITATION [b/]: $524,000. SURETY LICENSES [c/]: AZ, CO, DC, ID, IL, IA, KS, MN, MO, MT, NE, NM, ND, OK, SD, WI, WY. INCORPORATED IN: Iowa.

DIAMOND STATE INSURANCE COMPANY
BUSINESS ADDRESS: Three Bala Plaza East, Suite 300, Bala Cynwyd, PA 19004. PHONE: (610) 664-1500. UNDERWRITING LIMITATION [b/]: $2,535,000. SURETY LICENSES [c/]: AL, AZ, AR, CO, CT, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NC, ND, OH, OK, OR, RI, SC, SD, TN, UT, VT, VA, WA, WV, WY. INCORPORATED IN: Indiana.

Empire Fire and Marine Insurance Company
BUSINESS ADDRESS: 1624 Douglas Street, Omaha, NE 68102. PHONE: (402) 341-0135. UNDERWRITING LIMITATION [b/]: $11,532,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DE, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

EMPLOYERS INSURANCE OF WAUSAU A Mutual Company
BUSINESS ADDRESS: P.O. Box 8017, Wausau, WI 54402-8017. PHONE: (715) 845-5211. UNDERWRITING LIMITATION [b/]: $43,790,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

See Footnotes/Notes at end of Circular

Employers Mutual Casualty Company
BUSINESS ADDRESS: P.O. Box 712, Des Moines, IA 50303-0712. PHONE: (515) 280-2511. UNDERWRITING LIMITATION [b/]: $35,930,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Employers Reinsurance Corporation
BUSINESS ADDRESS: P.O. Box 2991, Overland Park, KS 66201-1391. PHONE: (913) 676-5200. UNDERWRITING LIMITATION [b/]: $323,598,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

EMPLOYERS' FIRE INSURANCE COMPANY (THE)
BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. PHONE: (617) 725-6000. UNDERWRITING LIMITATION [b/]: $7,535,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Erie Insurance Company
BUSINESS ADDRESS: 100 Erie Insurance Place, Erie, PA 16530. PHONE: (814) 870-2000. UNDERWRITING LIMITATION [b/]: $4,672,000. SURETY LICENSES [c/]: DC, IN, KY, MD, NY, NC, OH, PA, TN, VA, WV. INCORPORATED IN: Pennsylvania.

Everest Reinsurance Company
BUSINESS ADDRESS: 3 Gateway Center, Newark, NJ 07102-4082. PHONE: (201) 802-8000. UNDERWRITING LIMITATION [b/]: $54,464,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI. INCORPORATED IN: Delaware.

Evergreen National Indemnity Company
BUSINESS ADDRESS: P.O. Box 18295, Columbus, OH 43218. PHONE: (614) 895-1773. UNDERWRITING LIMITATION [b/]: $1,077,000. SURETY LICENSES [c/]: AL, AK, CO, DE, DC, GA, ID, IA, KY, MI, MN, MT, NJ, NM, ND, OH, OK, PA, SC, SD, TN, UT, WA, WI. INCORPORATED IN: Ohio.

EXPLORER INSURANCE COMPANY (THE)
BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (619) 546-2400. UNDERWRITING LIMITATION [b/]: $2,041,000. SURETY LICENSES [c/]: AZ, CA, ID, IL, IA, MT, NV, NM, OR, TX, UT, WA. INCORPORATED IN: Arizona.

FAR WEST INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365-4500. PHONE: (818) 704-1111. UNDERWRITING LIMITATION [b/]: $587,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DE, DC, HI, ID, IL, IN, IA, KS, KY, MD, MA, MN, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OR, PA, RI, SC, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Nebraska.

Farmers Alliance Mutual Insurance Company
BUSINESS ADDRESS: 1122 North Main Street, McPherson, KS 67460. PHONE: (316) 241-2200. UNDERWRITING LIMITATION [b/]: $5,819,000. SURETY LICENSES [c/]: AZ, CO, ID, IN, IA, KS, MN, MO, MT, NE, NM, ND, OK, SD, TX, WY. INCORPORATED IN: Kansas.

Farmington Casualty Company
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-9062. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $13,035,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

See Footnotes/Notes at end of Circular

Farmland Mutual Insurance Company
BUSINESS ADDRESS: 1963 Bell Avenue, Des Moines, IA 50315. PHONE: (515) 245-8800. UNDERWRITING LIMITATION [b/]: $6,493,000. SURETY LICENSES [c/]: CO, ID, IL, IN, IA, KS, KY, MI, MN, MS, MO, MT, NE, NV, ND, OH, OK, OR, SC, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

Federal Insurance Company
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION [b/]: $226,745,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Indiana.

FEDERATED MUTUAL INSURANCE COMPANY
BUSINESS ADDRESS: 121 East Park Square, Owatonna, MN 55060. PHONE: (507) 455-5200. UNDERWRITING LIMITATION [b/]: $61,810,000. SURETY LICENSES [c/]: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Fidelity and Casualty Company of New York (The)
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $13,868,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Fidelity and Deposit Company of Maryland
BUSINESS ADDRESS: 210 North Charles Street, Baltimore, MD 21201. PHONE: (410) 539-0800. UNDERWRITING LIMITATION [b/]: $26,458,000. SURETY LICENSES [c/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

FIDELITY AND GUARANTY INSURANCE COMPANY
BUSINESS ADDRESS: TW3001, P.O. Box 1138, Baltimore, MD 21203-1138. PHONE: (410) 547-3000. UNDERWRITING LIMITATION [b/]: $1,254,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Fidelity and Guaranty Insurance Underwriters, Inc.
BUSINESS ADDRESS: TW3001, P.O. Box 1138, Baltimore, MD 21203-1138. PHONE: (410) 547-3000. UNDERWRITING LIMITATION [b/]: $1,538,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Financial Pacific Insurance Company
BUSINESS ADDRESS: P.O. Box 292220, Sacramento, CA 95829-2220. PHONE: (916) 381-8067. UNDERWRITING LIMITATION [b/]: $1,239,000. SURETY LICENSES [c/]: CA, OR. INCORPORATED IN: California.

Fireman's Fund Insurance Company
BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION [b/]: $186,323,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

See Footnotes/Notes at end of Circular

Firemen's Insurance Company of Newark, New Jersey
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $30,962,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

First Community Insurance Company
BUSINESS ADDRESS: 360 Central Avenue, St. Petersburg, FL 33701. PHONE: (813) 823-4000. UNDERWRITING LIMITATION [b/]: $751,000. SURETY LICENSES [c/]: AL, AZ, DC, FL, HI, ID, IL, IN, IA, KS, KY, MD, MA, MS, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

First Excess and Reinsurance Corporation
BUSINESS ADDRESS: P.O. Box 419369, Kansas City, MO 64141-6369. PHONE: (913) 676-5520. UNDERWRITING LIMITATION [b/]: $23,689,000. SURETY LICENSES [c/]: AK, AZ, CA, CT, DC, GA, ID, IL, IN, IA, KS, KY, MI, MS, MO, MT, NE, NM, NY, OH, OK, SD, TX, WA, WV, WI. INCORPORATED IN: Missouri.

FIRST FINANCIAL INSURANCE COMPANY
BUSINESS ADDRESS: 238 Smith School Road, Burlington, NC 27215. PHONE: (910) 538-2800. UNDERWRITING LIMITATION [b/]: $3,041,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NV, NM, NY, ND, OH, OR, RI, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

First Insurance Company of Hawaii, Ltd.
BUSINESS ADDRESS: P.O. Box 2866, Honolulu, HI 96803. PHONE: (808) 527-7777. UNDERWRITING LIMITATION [b/]: $8,373,000. SURETY LICENSES [c/]: GU, HI. INCORPORATED IN: Hawaii.

First Liberty Insurance Corporation (The)
BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION [b/]: $1,408,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WV, WI, WY. INCORPORATED IN: Iowa.

First National Insurance Company of America
BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION [b/]: $7,410,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

FRONTIER INSURANCE COMPANY [2]
BUSINESS ADDRESS: 195 Lake Louise Marie Road, Rock Hill, NY 12775-8000. PHONE: (914) 796-2100. UNDERWRITING LIMITATION [b/]: $12,546,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Frontier Pacific Insurance Company
BUSINESS ADDRESS: 4250 Executive Square, Suite 200, La Jolla, CA 92037. PHONE: (619) 642-5000. UNDERWRITING LIMITATION [b/]: $1,716,000. SURETY LICENSES [c/]: CA, NV. INCORPORATED IN: California.

GENERAL ACCIDENT INSURANCE COMPANY (PUERTO RICO) LIMITED
BUSINESS ADDRESS: P.O. Box 363786, San Juan, PR 00936-3786. PHONE: (809) 765-8700. UNDERWRITING LIMITATION [b/]: $6,035,000. SURETY LICENSES [c/]: PR, VI. INCORPORATED IN: Puerto Rico.

See Footnotes/Notes at end of Circular

GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA
BUSINESS ADDRESS: 436 Walnut Street, P.O. Box 1109, Philadelphia, PA 19105-1109. PHONE: (215) 625-1000. UNDERWRITING LIMITATION [b/]: $139,650,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

General Insurance Company of America
BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION [b/]: $69,298,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Washington.

General Reinsurance Corporation
BUSINESS ADDRESS: 695 East Main Street, P.O. Box 10350, Stamford, CT 06904-2350. PHONE: (203) 328-5000. UNDERWRITING LIMITATION [b/]: $459,667,000. SURETY LICENSES [c/]: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Glens Falls Insurance Company (The)
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $1,469,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Global Surety & Insurance Co.
BUSINESS ADDRESS: 3555 Farnam Street, Omaha, NE 68131. PHONE: (402) 271-2846. UNDERWRITING LIMITATION [b/]: $1,795,000. SURETY LICENSES [c/]: AZ, CA, CO, NE. INCORPORATED IN: Nebraska.

Grain Dealers Mutual Insurance Company
BUSINESS ADDRESS: P.O. Box 1747, Indianapolis, IN 46206. PHONE: (317) 923-2453. UNDERWRITING LIMITATION [b/]: $2,922,000. SURETY LICENSES [c/]: AZ, AR, CO, GA, IL, IN, IA, KS, KY, LA, MN, MS, MO, NE, NV, NM, NC, OH, OK, OR, SD, TN, TX, VA, WA, WI, WY. INCORPORATED IN: Indiana.

GRAMERCY INSURANCE COMPANY
BUSINESS ADDRESS: 110 South French Street, #404, Wilmington, DE 19801. PHONE: (302) 571-0525. UNDERWRITING LIMITATION [b/]: $217,000. SURETY LICENSES [c/]: DE, LA, MD, NM, OK, TX. INCORPORATED IN: Delaware.

GRANITE RE, INC.
BUSINESS ADDRESS: P.O. Box 26967, Oklahoma City, OK 73126. PHONE: (405) 524-7811. UNDERWRITING LIMITATION [b/]: $140,000. SURETY LICENSES [c/]: MN, ND, OK, SD. INCORPORATED IN: Oklahoma.

Granite State Insurance Company
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION [b/]: $1,705,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Great American Insurance Company
BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION [b/]: $71,514,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

See Footnotes/Notes at end of Circular

Great Northern Insurance Company
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION [b/]: $10,489,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CO, CT, DC, FL, GA, HI, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Gulf Insurance Company
BUSINESS ADDRESS: P.O. Box 1771, Dallas, TX 75221-1771. PHONE: (214) 650-2800. UNDERWRITING LIMITATION [b/]: $26,918,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Hamilton Mutual Insurance Company of Cincinnati, Ohio (The)
BUSINESS ADDRESS: 1520 Madison Road, Cincinnati, OH 45206-1787. PHONE: (513) 221-6010. UNDERWRITING LIMITATION [b/]: $500,000. SURETY LICENSES [c/]: IN, KY, MI, OH, TN. INCORPORATED IN: Ohio.

Hanover Insurance Company (The)
BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. PHONE: (508) 853-7200. UNDERWRITING LIMITATION [b/]: $98,953,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

HARCO NATIONAL INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 68309, Schaumburg, IL 60168-0309. PHONE: (847) 734-4100. UNDERWRITING LIMITATION [b/]: $4,725,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Harleysville Mutual Insurance Company
BUSINESS ADDRESS: 355 Maple Avenue, Harleysville, PA 19438-2297. PHONE: (215) 256-5000. UNDERWRITING LIMITATION [b/]: $30,707,000. SURETY LICENSES [c/]: AR, CA, CO, DE, DC, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, NJ, NM, NC, OH, PA, SC, TN, TX, UT, VA, WV, WI. INCORPORATED IN: Pennsylvania.

Hartford Accident and Indemnity Company
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $176,288,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hartford Casualty Insurance Company
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $28,507,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Hartford Fire Insurance Company
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547-5000. UNDERWRITING LIMITATION [b/]: $360,512,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hartford Insurance Company of Illinois
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $38,490,000. SURETY LICENSES [c/]: IL, PA. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

Hartford Insurance Company of the Midwest
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $4,120,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Hartford Insurance Company of the Southeast
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $2,405,000. SURETY LICENSES [c/]: CT, FL, GA, LA, PA. INCORPORATED IN: Florida.

Hartford Underwriters Insurance Company
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $20,895,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Heritage Mutual Insurance Company 1
BUSINESS ADDRESS: 2800 South Taylor Drive, P.O. Box 58, Sheboygan, WI 53082-0058. PHONE: (414) 458-9131. UNDERWRITING LIMITATION [b/]: $7,291,000. SURETY LICENSES [c/]: AZ, AR, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, MI, MN, MO, NE, NV, ND, OH, OR, PA, SD, TN, TX, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Highlands Insurance Company
BUSINESS ADDRESS: 10370 Richmond Avenue, Houston, TX 77042-4123. PHONE: (713) 952-9555. UNDERWRITING LIMITATION [b/]: $12,010,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

Highlands Underwriters Insurance Company
BUSINESS ADDRESS: 10370 Richmond Avenue, Houston, TX 77042-4121. PHONE: (713) 952-9555. UNDERWRITING LIMITATION [b/]: $3,005,000. SURETY LICENSES [c/]: AK, AZ, AR, CA, FL, GA, ME, MS, NM, OR, TX. INCORPORATED IN: Texas.

Houston General Insurance Company
BUSINESS ADDRESS: P.O. Box 2932, Fort Worth, TX 76113-2932. PHONE: (817) 377-6000. UNDERWRITING LIMITATION [b/]: $4,476,000. SURETY LICENSES [c/]: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NJ, NM, NY, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Texas.

ILLINOIS NATIONAL INSURANCE CO.
BUSINESS ADDRESS: 500 West Madison Street, Chicago, IL 60606-2511. PHONE: (312) 930-5417. UNDERWRITING LIMITATION [b/]: $2,293,000. SURETY LICENSES [c/]: AK, IL, IN, IA, KY, MD, MI, MO, MT, NE, NV, NM, NM, NY, ND, OH, RI, SD, TX, UT, VT, WV, WY. INCORPORATED IN: Illinois.

Indemnity Company of California
BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92713. PHONE: (714) 263-3300. UNDERWRITING LIMITATION [b/]: $1,098,000. SURETY LICENSES [c/]: AK, AZ, CA, HI, ID, NV, OR, UT, WA. INCORPORATED IN: California.

Indemnity Insurance Company of North America 1
BUSINESS ADDRESS: 1601 Chestnut St., P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION [b/]: $27,688,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

See Footnotes/Notes at end of Circular

Independence Casualty and Surety Company
BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (619) 546-2400. UNDERWRITING LIMITATION [b/]: $219,000. SURETY LICENSES [c/]: TX. INCORPORATED IN: Texas.

Indiana Lumbermens Mutual Insurance Company
BUSINESS ADDRESS: P.O. Box 68600, Indianapolis, IN 46268-1168. PHONE: (800) 428-1441 x-710. UNDERWRITING LIMITATION [b/]: $2,524,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Inland Insurance Company
BUSINESS ADDRESS: P.O. Box 80468, Lincoln, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION [b/]: $4,920,000. SURETY LICENSES [c/]: AZ, CO, IA, KS, MN, MT, NE, ND, OK, SD, WY. INCORPORATED IN: Nebraska.

Insurance Company of North America
BUSINESS ADDRESS: 1601 Chestnut St.,P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION [b/]: $30,492,000. SURETY LICENSES [c/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Insurance Company of the State of Pennsylvania
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION [b/]: $51,806,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Insurance Company of the West
BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (619) 546-2400. UNDERWRITING LIMITATION [b/]: $15,722,000. SURETY LICENSES [c/]: AK, AZ, CA, CO, HI, ID, IL, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, OH, OK, OR, RI, SC, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: California.

Insurors Indemnity Company
BUSINESS ADDRESS: P.O. Box 23004, Waco, TX 76702-3004. PHONE: (817) 750-8128. UNDERWRITING LIMITATION [b/]: $207,000. SURETY LICENSES [c/]: TX. INCORPORATED IN: Texas.

INTEGRAND ASSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 70128, San Juan, PR 00936-8128. PHONE: (787) 781-0707 x-269. UNDERWRITING LIMITATION [b/]: $3,739,000. SURETY LICENSES [c/]: PR, VI. INCORPORATED IN: Puerto Rico.

Intercargo Insurance Company
BUSINESS ADDRESS: 1450 East American Lane, 20th Floor, Schaumburg, IL 60173. PHONE: (847) 517-2950. UNDERWRITING LIMITATION [b/]: $2,664,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VI, WA, WI, WY. INCORPORATED IN: Illinois.

International Business & Mercantile REassurance Company
BUSINESS ADDRESS: 307 N. Michigan Ave., Chicago, IL 60601. PHONE: (312) 346-8100. UNDERWRITING LIMITATION [b/]: $8,896,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

International Fidelity Insurance Company
BUSINESS ADDRESS: One Newark Center, 20th Floor, Newark, NJ 07102-5207. PHONE: (201) 624-7200 x-226. UNDERWRITING LIMITATION [b/]: $3,035,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WY. INCORPORATED IN: New Jersey.

ISLAND INSURANCE COMPANY, LIMITED
BUSINESS ADDRESS: P.O. Box 1520, Honolulu, HI 96806. PHONE: (808) 531-1311. UNDERWRITING LIMITATION [b/]: $8,481,000. SURETY LICENSES [c/]: HI. INCORPORATED IN: Hawaii.

ITT Lyndon Property Insurance Company [f]

John Deere Insurance Company
BUSINESS ADDRESS: 3400 80th Street, Moline, IL 61265. PHONE: (800) 447-0633. UNDERWRITING LIMITATION [b/]: $11,898,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Kansas Bankers Surety Company (The)
BUSINESS ADDRESS: P. O. Box 1654, Topeka, KS 66601-1654. PHONE: (913) 234-2631. UNDERWRITING LIMITATION [b/]: $4,275,000. SURETY LICENSES [c/]: AR, CO, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NM, ND, OK, SD, TN, WI, WY. INCORPORATED IN: Kansas.

Kansas City Fire and Marine Insurance Company
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $1,613,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

KEMPER REINSURANCE COMPANY
BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049. PHONE: (847) 320-2600. UNDERWRITING LIMITATION [b/]: $46,027,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, NE, NV, NJ, NM, OH, OK, OR, PA, RI, TN, UT, WA, WI. INCORPORATED IN: Illinois.

Liberty Mutual Insurance Company
BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION [b/]: $281,809,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Lincoln General Insurance Company
BUSINESS ADDRESS: 3350 Whiteford Road, York, PA 17402. PHONE: (717) 757-0000. UNDERWRITING LIMITATION [b/]: $2,266,000. SURETY LICENSES [c/]: AL, CO, DE, GA, ID, IN, IA, KS, KY, LA, ME, MD, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

LM Insurance Corporation
BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION [b/]: $1,408,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WV, WI, WY. INCORPORATED IN: Iowa.

See Footnotes/Notes at end of Circular

London Assurance of America Inc. (The)
BUSINESS ADDRESS: 25 Independence Blvd., Warren, NJ 07059. PHONE: (212) 753-8130. UNDERWRITING LIMITATION [b/]: $24,363,000. SURETY LICENSES [c/]: AK, IA, ME, MI, MN, NJ, NY, ND, OH, UT, VT. INCORPORATED IN: New York.

Lumbermens Mutual Casualty Company
BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (847) 320-2000. UNDERWRITING LIMITATION [b/]: $80,330,000. SURETY LICENSES [c/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Lyndon Property Insurance Company [1]
BUSINESS ADDRESS: 645 Maryville Centre Drive, St. Louis, MO 63141. PHONE: (314) 275-5200. UNDERWRITING LIMITATION [b/]: $4,251,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

MARKEL INSURANCE COMPANY
BUSINESS ADDRESS: Shand Morahan Plaza, Evanston, IL 60201. PHONE: (847) 866-2800. UNDERWRITING LIMITATION [b/]: $3,905,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Massachusetts Bay Insurance Company
BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. PHONE: (508) 853-7200. UNDERWRITING LIMITATION [b/]: $1,582,000. SURETY LICENSES [c/]: AL, AR, CA, CO, CT, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, OH, OK, OR, PA, RI, SC, TN, TX, VT, VA, WA, WV, WI. INCORPORATED IN: New Hampshire.

Merchants Bonding Company (Mutual)
BUSINESS ADDRESS: 2100 Fleur Drive, Des Moines, IA 50321-1158. PHONE: (515) 243-8171. UNDERWRITING LIMITATION [b/]: $1,504,000. SURETY LICENSES [c/]: AL, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Iowa.

Michigan Millers Mutual Insurance Company
BUSINESS ADDRESS: P.O. Box 30060, Lansing, MI 48909-7560. PHONE: (517) 482-6211. UNDERWRITING LIMITATION [b/]: $6,900,000. SURETY LICENSES [c/]: AZ, AR, CA, CO, ID, IN, KS, KY, MI, MO, NE, NY, NC, OH, OK, PA, VA, WI. INCORPORATED IN: Michigan.

Mid-Century Insurance Company
BUSINESS ADDRESS: P. O. Box 2478, Terminal Annex, Los Angeles, CA 90051. PHONE: (213) 932-3200. UNDERWRITING LIMITATION [b/]: $51,474,000. SURETY LICENSES [c/]: AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NV, NM, NY, ND, OH, OK, OR, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: California.

MID-CONTINENT CASUALTY COMPANY
BUSINESS ADDRESS: P.O. Box 1409, Tulsa,.OK 74101. PHONE: (918) 587-7221 x-200. UNDERWRITING LIMITATION [b/]: $5,505,000. SURETY LICENSES [c/]: AL, AZ, AR, CO, IL, IN, IA, KS, MN, MS, MO, MT, NE, NM, ND, OK, TX, UT, WA. INCORPORATED IN: Oklahoma.

Mid-State Surety Corporation
BUSINESS ADDRESS: 3400 East Lafayette, Detroit, MI 48207. PHONE: (313) 882-7979. UNDERWRITING LIMITATION [b/]: $599,000. SURETY LICENSES [c/]: KY, MI, OH, PA. INCORPORATED IN: Michigan.

See Footnotes/Notes at end of Circular

MIDWESTERN INDEMNITY COMPANY (THE) [1]
BUSINESS ADDRESS: 1700 Edison Drive, Milford, OH 45150. PHONE: (513) 576-3200. UNDERWRITING LIMITATION [b/]: $2,034,000. SURETY LICENSES [c/]: AL, GA, IL, IA, KS, KY, MI, MN, MS, MO, NE, NJ, NC, OH, PA, TN, VA, WV, WI. INCORPORATED IN: Ohio.

Millers Mutual Fire Insurance Company (The)
BUSINESS ADDRESS: P.O. Box 2269, Fort Worth, TX 76113-2269. PHONE: (817) 332-7761. UNDERWRITING LIMITATION [b/]: $5,661,000. SURETY LICENSES [c/]: AL, AZ, AR, CA, CO, DC, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NM, ND, OH, OK, OR, SC, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Texas.

Millers Mutual Insurance Association
BUSINESS ADDRESS: 111 East Fourth Street, P.O. Box 9006, Alton, IL 62002-9006. PHONE: (618) 463-3636. UNDERWRITING LIMITATION [b/]: $3,672,000. SURETY LICENSES [c/]: AL, AR, CO, GA, IL, IN, IA, KS, KY, LA, MN, MS, MO, MT, NE, NC, ND, OH, SD, TN, TX, WI. INCORPORATED IN: Illinois.

Minnesota Trust Company of Austin
BUSINESS ADDRESS: P.O. Box 463, Austin, MN 55912-0463. PHONE: (507) 437-3231. UNDERWRITING LIMITATION [b/]: $155,000. SURETY LICENSES [c/]: CO, MN, MT, ND, SD, UT. INCORPORATED IN: Minnesota.

MOTORS INSURANCE CORPORATION
BUSINESS ADDRESS: 3044 West Grand Blvd., Detroit, MI 48202. PHONE: (313) 556-5000. UNDERWRITING LIMITATION [b/]: $84,022,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Mountbatten Surety Company, Inc. (The)
BUSINESS ADDRESS: 33 Rock Hill Road, Bala Cynwyd, PA 19004. PHONE: (610) 664-2259. UNDERWRITING LIMITATION [b/]: $669,000. SURETY LICENSES [c/]: DE, DC, KY, MD, NJ, NY, OH, PA, VA. INCORPORATED IN: Pennsylvania.

Munich American Reinsurance Company
BUSINESS ADDRESS: 560 Lexington Avenue, New York, NY 10022. PHONE: (212) 310-1600. UNDERWRITING LIMITATION [b/]: $32,309,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MT, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: New York.

MUTUAL SERVICE CASUALTY INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 64035, St. Paul, MN 55164-0035. PHONE: (612) 631-7000. UNDERWRITING LIMITATION [b/]: $9,257,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

NAC Reinsurance Corporation
BUSINESS ADDRESS: One Greenwich Plaza, P.O. Box 2568, Greenwich, CT 06836-2568. PHONE: (203) 622-5200. UNDERWRITING LIMITATION [b/]: $61,543,000. SURETY LICENSES [c/]: AL, AK, AZ, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

National American Insurance Company
BUSINESS ADDRESS: 1008 Manvel Avenue, Chandler, OK 74834. PHONE: (405) 258-0804. UNDERWRITING LIMITATION [b/]: $3,034,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

See Footnotes/Notes at end of Circular

National Fire Insurance Company of Hartford
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $49,618,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, LA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

National Grange Mutual Insurance Company
BUSINESS ADDRESS: 55 West Street, Keene, NH 03431. PHONE: (603) 352-4000. UNDERWRITING LIMITATION [b/]: $14,180,000. SURETY LICENSES [c/]: CT, DE, DC, ME, MD, MA, MI, NH, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI. INCORPORATED IN: New Hampshire.

National Indemnity Company
BUSINESS ADDRESS: 3024 Harney Street, Omaha, NE 68131. PHONE: (402) 536-3000. UNDERWRITING LIMITATION [b/]: $704,423,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

NATIONAL REINSURANCE CORPORATION
BUSINESS ADDRESS: 777 Long Ridge Road, Stamford, CT 06904-2167. PHONE: (203) 329-7700. UNDERWRITING LIMITATION [b/]: $43,230,000. SURETY LICENSES [c/]: AK, AZ, AR, CA, CO, DE, DC, FL, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MT, NE, NV, NJ, NY, NC, ND, OH, OK, PA, PR, RI, SC, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

National Surety Corporation
BUSINESS ADDRESS: 233 South Wacker Drive, Suite 2900, Chicago, IL 60606-6308. PHONE: (312) 441-5400. UNDERWRITING LIMITATION [b/]: $7,486,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

National Union Fire Insurance Company of Pittsburgh, PA
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION [b/]: $149,948,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

National-Ben Franklin Insurance Company of Illinois
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $5,575,000. SURETY LICENSES [c/]: DC, IL, IN, IA, KY, MD, MI, MN, NY, NC, ND, RI, SD, WI. INCORPORATED IN: Illinois.

Nationwide Mutual Insurance Company
BUSINESS ADDRESS: One Nationwide Plaza, Columbus, OH 43216. PHONE: (614) 249-7111. UNDERWRITING LIMITATION [b/]: $208,992,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Ohio.

NAVIGATORS INSURANCE COMPANY
BUSINESS ADDRESS: 123 William Street, New York, NY 10038. PHONE: (212) 406-2900. UNDERWRITING LIMITATION [b/]: $6,796,000. SURETY LICENSES [c/]: AL, AK, AZ, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, NE, NV, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: New York.

Netherlands Insurance Company (The)
BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION [b/]: $1,269,000. SURETY LICENSES [c/]: AZ, CA, CT, DC, GA, HI, ID, IL, IN, IA, KY, ME, MD, MI, NV, NH, NJ, NY, NC, OH, RI, SC, UT, VT, VA, VI, WA, WI. INCORPORATED IN: New Hampshire.

See Footnotes/Notes at end of Circular

New Hampshire Insurance Company
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION [b/]: $26,349,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Nobel Insurance Company
BUSINESS ADDRESS: 8001 LBJ Freeway - Suite 300, Dallas, TX 75251-1301. PHONE: (214) 644-0434. UNDERWRITING LIMITATION [b/]: $3,362,000. SURETY LICENSES [c/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Texas.

NORTH AMERICAN SPECIALTY INSURANCE COMPANY
BUSINESS ADDRESS: 650 Elm Street, Manchester, NH 03101-2524. PHONE: (603) 644-6600. UNDERWRITING LIMITATION [b/]: $4,794,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

North Star Reinsurance Corporation
BUSINESS ADDRESS: P.O. Box 120052, Stamford, CT 06912-0052. PHONE: (203) 328-5000. UNDERWRITING LIMITATION [b/]: $1,000,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Delaware.

NORTHBROOK PROPERTY AND CASUALTY INSURANCE COMPANY
BUSINESS ADDRESS: 3075 Sanders Rd., STE H1A, Northbrook, IL 60062-7127. PHONE: (847) 551-2000. UNDERWRITING LIMITATION [b/]: $20,728,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Northern Assurance Company of America (The)
BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. PHONE: (617) 725-6000. UNDERWRITING LIMITATION [b/]: $20,136,000. SURETY LICENSES [c/]: AL, AK, AS, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

NORTHWESTERN PACIFIC INDEMNITY COMPANY
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION [b/]: $2,486,000. SURETY LICENSES [c/]: CA, OR, TX, WA. INCORPORATED IN: Oregon.

Ohio Casualty Insurance Company (The)
BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513) 867-3000. UNDERWRITING LIMITATION [b/]: $63,104,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Ohio Farmers Insurance Company
BUSINESS ADDRESS: P.O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (216) 887-0101. UNDERWRITING LIMITATION [b/]: $46,987,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

See Footnotes/Notes at end of Circular

Oklahoma Surety Company
BUSINESS ADDRESS: P.O. Box 1409, Tulsa, OK 74101. PHONE: (918) 587-7221 x-200. UNDERWRITING LIMITATION [b/]: $700,000. SURETY LICENSES [c/]: AR, KS, OK, TX. INCORPORATED IN: Oklahoma.

Old Republic Insurance Company
BUSINESS ADDRESS: P.O. Box 789, Greensburg, PA 15601-0789. PHONE: (412) 834-5000. UNDERWRITING LIMITATION [b/]: $37,231,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Old Republic Surety Company
BUSINESS ADDRESS: P.O. Box 1635, Milwaukee, WI 53201. PHONE: (414) 797-2660. UNDERWRITING LIMITATION [b/]: $1,458,000. SURETY LICENSES [c/]: AL, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, MD, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Pacific Employers Insurance Company
BUSINESS ADDRESS: 1601 Chestnut Street,P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION [b/]: $16,811,000. SURETY LICENSES [c/]: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

Pacific Indemnity Company
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION [b/]: $50,083,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Pacific Insurance Company, Limited
BUSINESS ADDRESS: 150 Federal Street, Boston, MA 02110. PHONE: (617) 526-7600. UNDERWRITING LIMITATION [b/]: $31,112,000. SURETY LICENSES [c/]: CT, HI. INCORPORATED IN: Connecticut.

Peerless Insurance Company
BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION [b/]: $8,386,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Pekin Insurance Company
BUSINESS ADDRESS: 2505 Court Street, Pekin, IL 61558. PHONE: (309) 346-1161. UNDERWRITING LIMITATION [b/]: $3,824,000. SURETY LICENSES [c/]: IL, IN, IA, WI. INCORPORATED IN: Illinois.

Pennsylvania General Insurance Company
BUSINESS ADDRESS: 436 Walnut Street, P.O. Box 1109, Philadelphia, PA 19105-1109. PHONE: (215) 625-1000. UNDERWRITING LIMITATION [b/]: $12,189,000. SURETY LICENSES [c/]: AL, AZ, AR, CA, CO, CT, DE, DC, GA, IL, IN, KS, KY, LA, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NM, NY, NC, OH, OR, PA, RI, SC, TN, TX, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Pennsylvania Manufacturers' Association Insurance Company
BUSINESS ADDRESS: 380 Sentry Parkway, Blue Bell, PA 19422-2328. PHONE: (800) 222-2749. UNDERWRITING LIMITATION [b/]: $22,502,000. SURETY LICENSES [c/]: CA, CO, CT, DE, DC, FL, GA, ID, IL, IA, KY, LA, MD, MA, MI, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, WA, WV. INCORPORATED IN: Pennsylvania.

See Footnotes/Notes at end of Circular

Pennsylvania Millers Mutual Insurance Company
BUSINESS ADDRESS: P. O. Box P, Wilkes-Barre, PA 18773-0016. PHONE: (717) 822-8111. UNDERWRITING LIMITATION [b/]: $3,994,000. SURETY LICENSES [c/]: AL, AR, CT, DC, FL, GA, IL, IN, KS, KY, ME, MD, MA, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA. INCORPORATED IN: Pennsylvania.

Pennsylvania National Mutual Casualty Insurance Company
BUSINESS ADDRESS: P.O. Box 2361, Harrisburg, PA 17105-2361. PHONE: (717) 234-4941. UNDERWRITING LIMITATION [b/]: $17,709,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MS, MO, MT, NE, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Phoenix Assurance Company of New York
BUSINESS ADDRESS: 25 Independence Boulevard, Warren, NJ 07059. PHONE: (212) 753-8130. UNDERWRITING LIMITATION [b/]: $5,825,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Phoenix Insurance Company (The)
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $53,060,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Pioneer General Insurance Company
BUSINESS ADDRESS: 3900 East Mexico Avenue, Suite 330, Denver, CO 80210. PHONE: (303) 758-8122. UNDERWRITING LIMITATION [b/]: $141,000. SURETY LICENSES [c/]: CO. INCORPORATED IN: Colorado.

PLANET INDEMNITY COMPANY
BUSINESS ADDRESS: 216 Sixteenth Street, Suite 1300, Denver, CO 80202. PHONE: (303) 534-5300. UNDERWRITING LIMITATION [b/]: $665,000. SURETY LICENSES [c/]: CO. INCORPORATED IN: Colorado.

PREFERRED NATIONAL INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 407003, Ft. Lauderdale, FL 33340-7003. PHONE: (954) 752-1222. UNDERWRITING LIMITATION [b/]: $2,048,000. SURETY LICENSES [c/]: FL, SC. INCORPORATED IN: Florida.

Progressive Casualty Insurance Company
BUSINESS ADDRESS: 6300 Wilson Mills Road, Mayfield Village, OH 44143-2182. PHONE: (216) 461-5000. UNDERWRITING LIMITATION [b/]: $8,141,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Ohio.

PROTECTION MUTUAL INSURANCE COMPANY
BUSINESS ADDRESS: 300 S. Northwest Highway, Park Ridge, IL 60068. PHONE: (847) 825-4474. UNDERWRITING LIMITATION [b/]: $38,259,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

Protective Insurance Company
BUSINESS ADDRESS: 1099 North Meridian Street, Indianapolis, IN 46204. PHONE: (317) 636-9800. UNDERWRITING LIMITATION [b/]: $18,742,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Providence Washington Insurance Company
BUSINESS ADDRESS: P.O. Box 518, Providence, RI 02901-0518. PHONE: (401) 453-7000. UNDERWRITING LIMITATION [b/]: $6,230,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Ranger Insurance Company
BUSINESS ADDRESS: P.O. Box 2807, Houston, TX 77252. PHONE: (713) 954-8100. UNDERWRITING LIMITATION [b/]: $8,333,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Reinsurance Corporation of New York (The)
BUSINESS ADDRESS: 80 Maiden Lane, New York, NY 10038. PHONE: (212) 363-4440. UNDERWRITING LIMITATION [b/]: $2,455,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Reliance Insurance Company
BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION [b/]: $73,555,000. SURETY LICENSES [c/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Reliance Insurance Company of Illinois [Z]
BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION [b/]: $2,526,000. SURETY LICENSES [c/]: IL. INCORPORATED IN: Illinois.

Reliance National Indemnity Company
BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION [b/]: $4,234,000. SURETY LICENSES [c/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Reliance Surety Company
BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION [b/]: $2,135,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Republic Western Insurance Company
BUSINESS ADDRESS: 2721 North Central Avenue, Phoenix, AZ 85004-1163. PHONE: (602) 263-6755. UNDERWRITING LIMITATION [b/]: $9,827,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

See Footnotes/Notes at end of Circular

RLI INSURANCE COMPANY
BUSINESS ADDRESS: 9025 N. Lindbergh Drive, Peoria, IL 61615. PHONE: (309) 692-1000. UNDERWRITING LIMITATION [b/]: $15,265,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Royal Indemnity Company
BUSINESS ADDRESS: 9300 Arrowpoint Boulevard, P.O. Box 1000, Charlotte, NC 28201-1000. PHONE: (704) 522-2000. UNDERWRITING LIMITATION [b/]: $16,450,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

SAFECO Insurance Company of America
BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION [b/]: $92,236,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

SAFECO Insurance Company of Illinois
BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (708) 490-2900. UNDERWRITING LIMITATION [b/]: $11,308,000. SURETY LICENSES [c/]: AZ, CO, IL, KS, KY, MD, MI, MN, MS, NE, NM, OH, OR, PA, TN, TX, UT, WI, WY. INCORPORATED IN: Illinois.

SAFECO National Insurance Company
BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION [b/]: $5,715,000. SURETY LICENSES [c/]: CO, KY, MD, MO, NY, UT, WI, WY. INCORPORATED IN: Missouri.

SCOR REINSURANCE COMPANY
BUSINESS ADDRESS: 2 World Trade Center, New York, NY 10048. PHONE: (212) 390-5200. UNDERWRITING LIMITATION [b/]: $27,237,000. SURETY LICENSES [c/]: AL, AK, AZ, CA, DE, ID, IL, IN, IA, MI, MS, NE, NM, NY, NC, ND, OH, OK, OR, PA, TN, TX, UT, WV. INCORPORATED IN: New York.

Sea Insurance Company of America (The)
BUSINESS ADDRESS: 25 Independence Blvd., Warren, NJ 07059. PHONE: (212) 753-8130. UNDERWRITING LIMITATION [b/]: $14,269,000. SURETY LICENSES [c/]: AK, AZ, AR, CA, CT, DE, FL, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Seaboard Surety Company
BUSINESS ADDRESS: Burnt Mills Road and Route 206, Bedminster, NJ 07921. PHONE: (908) 658-3500. UNDERWRITING LIMITATION [b/]: $13,895,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

SECURITY INSURANCE COMPANY OF HARTFORD
BUSINESS ADDRESS: P.O. Box 420, Hartford, CT 06141. PHONE: (860) 674-6600. UNDERWRITING LIMITATION [b/]: $14,486,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Security National Insurance Company
BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION [b/]: $1,418,000. SURETY LICENSES [c/]: AL, AR, CA, CO, GA, ID, IL, IN, IA, KS, KY, MS, MO, MT, NE, NM, OH, OK, OR, TX, WA, WI, WY. INCORPORATED IN: Texas.

See Footnotes/Notes at end of Circular

Select Insurance Company
BUSINESS ADDRESS: P.O. Box 1771, Dallas, TX 75221-1771. PHONE: (214) 650-2800. UNDERWRITING LIMITATION [b/]: $2,997,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MI, MS, MO, MT, NE, NV, NM, NC, OH, OR, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

Selective Insurance Company of America
BUSINESS ADDRESS: Wantage Avenue, Branchville, NJ 07890. PHONE: (201) 948-3000. UNDERWRITING LIMITATION [b/]: $18,694,000. SURETY LICENSES [c/]: AL, DE, DC, GA, MD, MS, NJ, NY, NC, PA, SC, TX, VA. INCORPORATED IN: New Jersey.

SENTINEL INSURANCE COMPANY, LTD.
BUSINESS ADDRESS: 1001 Bishop Street, Honolulu, HI 96807. PHONE: (808) 546-5700. UNDERWRITING LIMITATION [b/]: $1,881,000. SURETY LICENSES [c/]: HI. INCORPORATED IN: Hawaii.

Sentry Insurance A Mutual Company
BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. PHONE: (715) 346-6000. UNDERWRITING LIMITATION [b/]: $113,684,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Signet Star Reinsurance Company
BUSINESS ADDRESS: 100 Campus Drive, P.O. Box 853, Florham Park, NJ 07932-0853. PHONE: (201) 301-8000. UNDERWRITING LIMITATION [b/]: $24,373,000. SURETY LICENSES [c/]: AK, CA, CO, DE, DC, FL, ID, IL, IA, LA, MD, MI, MN, NE, OH, OK, OR, SD, TN, TX, UT, WA. INCORPORATED IN: Delaware.

Skandia America Reinsurance Corporation
BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. PHONE: (212) 978-4700. UNDERWRITING LIMITATION [b/]: $22,931,000. SURETY LICENSES [c/]: AL, AZ, CA, DE, DC, GA, ID, IL, IN, IA, MI, MS, MT, NE, NY, OH, OK, OR, PA, TN, TX, UT, VA, WA, WI. INCORPORATED IN: Delaware.

SOREMA NORTH AMERICA REINSURANCE COMPANY
BUSINESS ADDRESS: 199 Water Street, New York, NY 10038-3526. PHONE: (212) 480-1900. UNDERWRITING LIMITATION [b/]: $16,012,000. SURETY LICENSES [c/]: AK, AZ, CA, CO, CT, DE, DC, FL, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, WA, WV, WI, WY. INCORPORATED IN: New York.

St. Paul Fire and Marine Insurance Company
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (612) 310-7911. UNDERWRITING LIMITATION [b/]: $120,687,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

ST. PAUL GUARDIAN INSURANCE COMPANY
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (612) 310-7911. UNDERWRITING LIMITATION [b/]: $3,050,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NM, NY, NC, ND, OH, OK, OR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

St. Paul Mercury Insurance Company
BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (612) 310-7911. UNDERWRITING LIMITATION [b/]: $5,814,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

See Footnotes/Notes at end of Circular

Standard Fire Insurance Company (The)
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-9062. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $59,191,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Star Insurance Company
BUSINESS ADDRESS: 26600 Telegraph Road, Southfield, MI 48034. PHONE: (810) 358-4020. UNDERWRITING LIMITATION [b/]: $5,530,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

State Automobile Mutual Insurance Company
BUSINESS ADDRESS: 518 East Broad Street, Columbus, OH 43215-3976. PHONE: (614) 464-5000. UNDERWRITING LIMITATION [b/]: $50,098,000. SURETY LICENSES [c/]: AL, AZ, AR, CO, FL, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NC, ND, OH, OK, PA, SC, SD, TN, VA, WV, WI, WY. INCORPORATED IN: Ohio.

State Farm Fire and Casualty Company
BUSINESS ADDRESS: 112 East Washington Street, Bloomington, IL 61701. PHONE: (309) 766-2311. UNDERWRITING LIMITATION [b/]: $159,668,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Statewide Insurance Company
BUSINESS ADDRESS: 325 North Genesee Street, Waukegan, IL 60085. PHONE: (847) 662-0073. UNDERWRITING LIMITATION [b/]: $1,044,000. SURETY LICENSES [c/]: AL, AR, IL, IN, IA, KY, MN, MO, MT, NE, NV, NC, OH, SD, TN, WI. INCORPORATED IN: Illinois.

Sun Insurance Office of America Inc.
BUSINESS ADDRESS: 25 Independence Blvd., Warren, NJ 07059. PHONE: (212) 753-8130. UNDERWRITING LIMITATION [b/]: $17,756,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Surety Company of the Pacific
BUSINESS ADDRESS: P.O. Box 10289, Van Nuys, CA 91410-0289. PHONE: (818) 609-9232. UNDERWRITING LIMITATION [b/]: $761,000. SURETY LICENSES [c/]: CA. INCORPORATED IN: California.

Swiss Reinsurance America Corporation
BUSINESS ADDRESS: 237 Park Avenue, New York, NY 10017. PHONE: (212) 907-8000. UNDERWRITING LIMITATION [b/]: $85,452,000. SURETY LICENSES [c/]: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI. INCORPORATED IN: New York.

TEXAS PACIFIC INDEMNITY COMPANY
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION [b/]: $745,000. SURETY LICENSES [c/]: AR, TX. INCORPORATED IN: Texas.

TIG Insurance Company
BUSINESS ADDRESS: P. O. Box 152870, Irving, TX 75015-8810. PHONE: (214) 831-5000. UNDERWRITING LIMITATION [b/]: $71,284,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

See Footnotes/Notes at end of Circular

TIG Insurance Company of Michigan
BUSINESS ADDRESS: 70 West Michigan Avenue, Battle Creek, MI 49017. PHONE: (216) 831-5000. UNDERWRITING LIMITATION [b/]: $2,085,000. SURETY LICENSES [c/]: AR, ID, IL, IN, IA, KS, KY, MI, MN, NY, SD, TX, UT, WY. INCORPORATED IN: Michigan.

TIG Premier Insurance Company
BUSINESS ADDRESS: P.O. BOX 152870, IRVING, TX 75015. PHONE: (214) 831-5000. UNDERWRITING LIMITATION [b/]: $2,701,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

TRANSATLANTIC REINSURANCE COMPANY
BUSINESS ADDRESS: 80 Pine Street, New York, NY 10005. PHONE: (212) 770-2000. UNDERWRITING LIMITATION [b/]: $71,171,000. SURETY LICENSES [c/]: AK, AZ, CO, DE, DC, GA, ID, IL, IN, IA, KY, LA, MS, NE, NV, NM, NY, OH, OK, PA, UT, WA, WI. INCORPORATED IN: New York.

Transcontinental Insurance Company
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $18,253,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Transportation Insurance Company
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $6,874,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Travelers Indemnity Company (The)
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $160,592,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

TRAVELERS INDEMNITY COMPANY OF AMERICA (THE)
BUSINESS ADDRESS: 211 Perimeter Center Parkway, Atlanta, GA 30346. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $8,331,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Georgia.

Travelers Indemnity Company of Connecticut (The)
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $21,517,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Indemnity Company of Illinois (The)
BUSINESS ADDRESS: 2500 Cabot Drive, Lisle, IL 60532. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $5,453,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

Tri-State Insurance Company of Minnesota
BUSINESS ADDRESS: One Roundwind Road, Luverne, MN 56156. PHONE: (507) 283-9561. UNDERWRITING LIMITATION [b/]: $3,714,000. SURETY LICENSES [c/]: CO, IL, IN, IA, MI, MN, MO, NE, ND, OH, SD, WI. INCORPORATED IN: Minnesota.

Trinity Universal Insurance Company
BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION [b/]: $28,138,000. SURETY LICENSES [c/]: AL, AZ, AR, CA, CO, GA, ID, IL, IN, IA, KS, KY, LA, MI, MS, MO, MT, NE, NM, OH, OK, OR, TN, TX, WA, WI, WY. INCORPORATED IN: Texas.

Trinity Universal Insurance Company of Kansas, Inc.
BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION [b/]: $920,000. SURETY LICENSES [c/]: AL, AZ, CO, GA, ID, IN, IA, KS, KY, LA, MS, MO, MT, NE, OH, OK, OR, TX, WA, WI, WY. INCORPORATED IN: Kansas.

Trumbull Insurance Company
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $2,418,000. SURETY LICENSES [c/]: AL, AK, CO, CT, DE, DC, ID, IL, IN, IA, MA, MI, MN, MO, NE, NJ, ND, OH, OK, RI, SC, SD, TX, VT, VA, WY. INCORPORATED IN: Connecticut.

Twin City Fire Insurance Company
BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $10,816,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, LA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

ULICO CASUALTY COMPANY
BUSINESS ADDRESS: 111 Massachusetts Avenue, NW, Washington, DC 20001. PHONE: (202) 682-0900. UNDERWRITING LIMITATION [b/]: $4,904,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Underwriters Indemnity Company
BUSINESS ADDRESS: 8 Greenway Plaza, Suite 400, Houston, TX 77046. PHONE: (713) 961-1300. UNDERWRITING LIMITATION [b/]: $368,000. SURETY LICENSES [c/]: AL, GA, KY, MS, NM, NC, SC, TX, WY. INCORPORATED IN: Texas.

UNDERWRITERS REINSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 4030, Woodland Hills, CA 91365. PHONE: (818) 225-1000. UNDERWRITING LIMITATION [b/]: $30,069,000. SURETY LICENSES [c/]: AZ, CA, DE, DC, ID, IL, IN, IA, KY, MI, MS, NE, NV, NM, NY, OH, PA, RI, TX, UT, WI, WY. INCORPORATED IN: New Hampshire.

Unigard Security Insurance Company
BUSINESS ADDRESS: 1215 Fourth Avenue, Suite 1800, Seattle, WA 98161-0196. PHONE: (206) 292-7861. UNDERWRITING LIMITATION [b/]: $9,011,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, IN, IA, KS, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Washington.

Union Insurance Company
BUSINESS ADDRESS: P.O. Box 80439, Lincoln, NE 68501-0439. PHONE: (402) 423-7688. UNDERWRITING LIMITATION [b/]: $3,070,000. SURETY LICENSES [c/]: AR, CO, DC, ID, IA, KS, MD, MN, MS, MO, MT, NE, ND, OK, SD, TX, UT, VA, WA, WY. INCORPORATED IN: Nebraska.

United Capitol Insurance Company [d]
BUSINESS ADDRESS: 400 Perimeter Center Terrace, Suite 345, Atlanta, GA 30346. PHONE: (770) 677-0330. UNDERWRITING LIMITATION [b/]: $6,803,000. SURETY LICENSES [c/]: AZ, WI. INCORPORATED IN: Wisconsin.

See Footnotes/Notes at end of Circular

United Coastal Insurance Company 2
BUSINESS ADDRESS: 233 Main Street, P.O. Box 2350, New Britain, CT 06050-2350. PHONE: (860) 223-5000. UNDERWRITING LIMITATION b/: $4,048,000. SURETY LICENSES c/: AZ. INCORPORATED IN: Arizona.

United Fire & Casualty Company
BUSINESS ADDRESS: P.O. Box 73909, Cedar Rapids, IA 52407. PHONE: (319) 399-5700. UNDERWRITING LIMITATION b/: $15,805,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, NT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, SC, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

UNITED NATIONAL INSURANCE COMPANY
BUSINESS ADDRESS: Three Bala Plaza East, Suite 300, Bala Cynwyd, PA 19004. PHONE: (610) 664-1500. UNDERWRITING LIMITATION b/: $11,093,000. SURETY LICENSES c/: PA. INCORPORATED IN: Pennsylvania.

United Pacific Insurance Company
BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION b/: $5,528,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

United States Fidelity and Guaranty Company
BUSINESS ADDRESS: TW3001, P.O. Box 1138, Baltimore, MD 21203-1138. PHONE: (410) 547-3000. UNDERWRITING LIMITATION b/: $72,225,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

UNITED STATES FIRE INSURANCE COMPANY
BUSINESS ADDRESS: 6 Sylvan Way, Parsippany, NJ 07054. PHONE: (201) 285-9300. UNDERWRITING LIMITATION b/: $49,428,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

UNITED SURETY AND INDEMNITY COMPANY
BUSINESS ADDRESS: P.O. Box 2111, San Juan, PR 00922-2111. PHONE: (809) 273-1818. UNDERWRITING LIMITATION b/: $706,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

UNIVERSAL BONDING INSURANCE COMPANY
BUSINESS ADDRESS: 518 Stuyvesant Avenue, Lyndhurst, NJ 07071. PHONE: (201) 438-7223. UNDERWRITING LIMITATION b/: $1,177,000. SURETY LICENSES c/: NJ, NY. INCORPORATED IN: New Jersey.

UNIVERSAL INSURANCE COMPANY
BUSINESS ADDRESS: G.P.O. Box 71338, San Juan, PR 00936. PHONE: (809) 793-7202. UNDERWRITING LIMITATION b/: $6,509,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

Universal Surety Company
BUSINESS ADDRESS: P.O. Box 80468, Lincoln, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION b/: $2,883,000. SURETY LICENSES c/: AZ, AR, CO, ID, IL, IA, KS, MI, MN, MO, MT, NE, NM, ND, OH, OK, OR, SD, UT, WA, WI, WY. INCORPORATED IN: Nebraska.

See Footnotes/Notes at end of Circular

Universal Surety of America
BUSINESS ADDRESS: P.O. Box 1068, Houston, TX 77251-1068. PHONE: (713) 722-4600. UNDERWRITING LIMITATION b/: $918,000. SURETY LICENSES c/: AL, AK, AR, CA, CO, DC, FL, GA, IN, IA, KS, KY, LA, MI, MS, MO, NE, NV, NM, NC, OK, SC, SD, TN, TX, VA. INCORPORATED IN: Texas.

UNIVERSAL UNDERWRITERS INSURANCE COMPANY
BUSINESS ADDRESS: 6363 College Blvd., Overland Park, KS 66211. PHONE: (913) 339-1000. UNDERWRITING LIMITATION b/: $46,793,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Utica Mutual Insurance Company
BUSINESS ADDRESS: P.O. Box 530, Utica, NY 13503-0530. PHONE: (315) 734-2000. UNDERWRITING LIMITATION b/: $25,818,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Valley Forge Insurance Company
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $14,562,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

VAN TOL SURETY COMPANY, INCORPORATED
BUSINESS ADDRESS: 424 Fifth Street, Brookings, SD 57006. PHONE: (605) 692-6294. UNDERWRITING LIMITATION b/: $218,000. SURETY LICENSES c/: SD. INCORPORATED IN: South Dakota.

VESTA FIRE INSURANCE CORPORATION
BUSINESS ADDRESS: P.O Box 43360, Birmingham, AL 35243-3360. PHONE: (205) 970-7000. UNDERWRITING LIMITATION b/: $31,900,000. SURETY LICENSES c/: AL, AK, AZ, AR, CO, DC, IL, IN, IA, KS, KY, LA, MA, MN, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Alabama.

Vigilant Insurance Company
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION b/: $43,574,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Washington International Insurance Company
BUSINESS ADDRESS: 1930 Thoreau Drive, Suite 101, Schaumburg, IL 60173. PHONE: (847) 490-1850. UNDERWRITING LIMITATION b/: $1,789,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Arizona.

West American Insurance Company 10
BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513) 867-3000. UNDERWRITING LIMITATION b/: $52,095,000. SURETY LICENSES c/: AL, AZ, AR, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

See Footnotes/Notes at end of Circular

Westchester Fire Insurance Company
BUSINESS ADDRESS: Six Concourse Parkway, Suite 2700, Atlanta, GA 30328-5346. PHONE: (770) 393-9955. UNDERWRITING LIMITATION [b/]: $19,425,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Western Surety Company
BUSINESS ADDRESS: P.O. Box 5077, Sioux Falls, SD 57117-5077. PHONE: (605) 336-0850. UNDERWRITING LIMITATION [b/]: $3,335,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: South Dakota.

Westfield Insurance Company
BUSINESS ADDRESS: P.O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (216) 887-0101. UNDERWRITING LIMITATION [b/]: $25,269,000. SURETY LICENSES [c/]: AL, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Westfield National Insurance Company
BUSINESS ADDRESS: P.O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (216) 887-0101. UNDERWRITING LIMITATION [b/]: $7,055,000. SURETY LICENSES [c/]: CA, IA, OH. INCORPORATED IN: Ohio.

WINTERTHUR REINSURANCE CORPORATION OF AMERICA
BUSINESS ADDRESS: Two World Financial Ctr, 225 Liberty Street, 42 Fl, New York, NY 10281. PHONE: (212) 416-5760. UNDERWRITING LIMITATION [b/]: $24,220,000. SURETY LICENSES [c/]: AL, AZ, CA, DE, DC, IL, IN, IA, KY, MD, MI, MN, MS, MT, NE, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, WA, WV, WI. INCORPORATED IN: New York.

ZENITH INSURANCE COMPANY
BUSINESS ADDRESS: 21255 Califa Street, Woodland Hills, CA 91367. PHONE: (818) 713-1000. UNDERWRITING LIMITATION [b/]: $20,156,000. SURETY LICENSES [c/]: AL, AZ, AR, CA, CO, FL, GA, HI, ID, IL, IN, IA, KY, LA, MA, MS, NE, NJ, NM, OK, OR, PA, SC, SD, TX, UT. INCORPORATED IN: California.

See Footnotes/Notes at end of Circular

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE REINSURING COMPANIES UNDER SECTION 223.3(b) OF TREASURY CIRCULAR NO. 297, REVISED SEPTEMBER 1, 1978 [See Note (e)]

Capital Reinsurance Company
BUSINESS ADDRESS: 1325 Avenue of the Americas, New York, NY 10019. PHONE: (212) 974-0100. UNDERWRITING LIMITATION [b/]: $28,804,000.

European Reinsurance Corporation of America [11]
BUSINESS ADDRESS: 380 Madison Avenue, New York, NY 10017. PHONE: (212) 973-5800. UNDERWRITING LIMITATION [b/]: $11,448,000.

FOLKSAMERICA REINSURANCE COMPANY
BUSINESS ADDRESS: One Liberty Plaza,19th Floor, New York, NY 10006. PHONE: (212) 312-2500. UNDERWRITING LIMITATION [b/]: $12,002,000.

Generali - U.S. Branch
BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. PHONE: (212) 602-7600. UNDERWRITING LIMITATION [b/]: $8,120,000.

GREAT LAKES AMERICAN REINSURANCE COMPANY
BUSINESS ADDRESS: 88 Pine Street, New York, NY 10005. PHONE: (212) 809-1061. UNDERWRITING LIMITATION [b/]: $10,152,000.

Munich Reinsurance Company, U.S. Branch
BUSINESS ADDRESS: 560 Lexington Ave., New York, NY 10022. PHONE: (212) 310-1800. UNDERWRITING LIMITATION [b/]: $53,281,000.

Tokio Marine and Fire Insurance Company, Limited (The), U.S. Branch
BUSINESS ADDRESS: 101 Park Avenue, New York, NY 10178. PHONE: (212) 297-6600. UNDERWRITING LIMITATION [b/]: $19,867,000.

Western Atlantic Reinsurance Corporation [11]

Zurich Insurance Company, U.S. Branch
BUSINESS ADDRESS: 1400 American Lane, Schaumburg, IL 60196. PHONE: (847) 605-6000. UNDERWRITING LIMITATION [b/]: $61,034,000.

See Footnotes/Notes at end of Circular

FOOTNOTES

1 CIGNA INDEMNITY INSURANCE COMPANY changed its state of incorporation from Iowa to Pennsylvania, effective October 16, 1995.

2 FRONTIER INSURANCE COMPANY is required by state law to conduct business in the states of Arkansas, Florida, Louisiana, North Dakota, Texas and Utah as Frontier Insurance Company, DBA Frontier Insurance Company of New York. In Missouri, FRONTIER INSURANCE COMPANY is required by state law to conduct business as New York Frontier Insurance Company.

3 This Company has a name very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular.

4 Indemnity Insurance Company of North America changed its state of incorporation from New York to Pennsylvania, effective December 31, 1995.

5 ITT Lyndon Property Insurance Company changed its name to Lyndon Property Insurance Company, effective December 1, 1995.

6 This Company has a name very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular.

7 Reliance Insurance Company of Illinois is an approved surplus lines carrier. Such approval by the State Insurance Department may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the state. Questions related to this, may be directed to the appropriate State Insurance Department. Refer to the list of the Departments at the end of this publication.

8 United Capitol Insurance Company is an approved surplus lines carrier. Such approval by the State Insurance Department may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the state. Questions related to this, may be directed to the appropriate State Insurance Department. Refer to the list of the Departments at the end of this publication.

9 United Coastal Insurance Company is an approved surplus lines carrier. Such approval by the State Insurance Department may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the state. Questions related to this, may be directed to the appropriate State Insurance Department. Refer to the list of the Departments at the end of this publication.

10 West American Insurance Company changed its state of incorporation from California to Indiana, effective April 17, 1995.

11 Western Atlantic Reinsurance Corporation changed its name to European Reinsurance Corporation of America, effective May 17, 1996.

NOTES

(a) All Certificates of Authority expire June 30, and are renewable July 1, annually. Companies holding Certificates of Authority as acceptable sureties on Federal bonds are also acceptable as reinsuring companies.

(b) The Underwriting Limitations published herein are on a per bond basis. Treasury requirements do not limit the penal sum (face amount) of bonds which surety companies may provide. However, when the penal sum exceeds a company's Underwriting Limitation, the excess must be protected by co-insurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised September 1, 1978 (31 CFR Section 223.10, Section 223.11). Treasury refers to a bond of this type as an Excess Risk. When Excess Risks on bonds in favor of the United States are protected by reinsurance, such reinsurance is to be effected by use of a Federal reinsurance form to be filed with the bond or within 45 days thereafter. In protecting such excess risks, the underwriting limitation in force on the day in which the bond was provided will govern absolutely.

(c) A surety company must be licensed in the State or other area in which it provides a bond, but need not be licensed in the State or other area in which the principal resides or where the contract is to be performed [28 Op. Atty. Gen. 127, Dec. 24, 1909; 31 CFR Section 223.5 (b)]. The term "other area" includes the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands.

License information in this Circular is provided to the Treasury Department by the companies themselves. For updated license information, you may contact the company directly or the applicable State Insurance Department. For further assistance, contact the Surety Bond Branch.

(d) FEDERAL PROCESS AGENTS: Treasury approved surety companies are required to appoint Federal process agents in accord with 31 U.S.C. 9306 and 31 CFR 224 in the following districts: Where the principal resides; where the obligation is to be performed; and in the District of Columbia where the bond is returnable or filed. No process agent is required in the State or other area where the company is incorporated (31 CFR Section 224.2). The name and address of a particular surety's process agent in a particular Federal Judicial District may be obtained from the Clerk of the U.S. District Court in that district. (The appointment documents are on file with the clerks.) (NOTE: A surety company's underwriting agent who furnishes its bonds may or may not be its authorized process agent.)

SERVICE OF PROCESS: Process should be served on the Federal process agent appointed by a surety in a judicial district, except where the appointment of such agent is pending or during the absence of such agent from the district. Only in the event an agent has not been duly appointed, or the appointment is pending, or the agent is absent from the district, should process be served directly on the Clerk of the court pursuant to the provisions of 31 U.S.C. 9306.

(e) Companies holding Certificates of Authority as acceptable reinsuring companies are acceptable only as reinsuring companies on Federal bonds.

(f) Some companies may be approved surplus lines carriers in various states. Such approval may indicate that the company is authorized to write surety in a particular state, even though the company is not licensed in the state. Questions related to this may be directed to the appropriate State Insurance Department.

STATE INSURANCE DEPARTMENTS	TELEPHONE NO.
Alabama, Montgomery 36130-3401	(205) 269-3550
Alaska, Juneau 99811-0805	(907) 465-2515
Arizona, Phoenix 85012	(602) 912-8420
Arkansas, Little Rock 72204	(501) 686-2900
California, Sacramento 95814	(916) 445-5544
Colorado, Denver 80202	(303) 894-7499
Connecticut, Hartford 06142-0816	(203) 297-3802
Delaware, Dover 19901	(302) 739-4251
D. C., Washington 20013-7200	(202) 727-8000
Florida, Tallahasse 32399-0300	(904) 922-3100
Georgia, Atlanta 30334	(404) 656-2056
Hawaii, Honolulu 96811	(808) 586-2799
Idaho, Boise 83720	(208) 334-2250
Illinois, Springfield 62767	(217) 782-4515
Indiana, Indianapolis 46204-2787	(317) 232-2385
Iowa, Des Moines 50319	(515) 281-5705
Kansas, Topeka 66612	(913) 296-7801
Kentucky, Frankfort 40602	(502) 564-3630
Louisiana, Baton Rouge 70804	(504) 342-5900
Maine, Augusta 04333	(207) 582-8707
Maryland, Baltimore 21202	(410) 333-6300
Massachusetts, Boston 02114	(617) 521-7794
Michigan, Lansing 48909	(517) 373-9273
Minnesota, St. Paul 55101	(612) 296-6848
Mississippi, Jackson 39205	(601) 359-3569
Missouri, Jefferson City 65102-0690	(314) 751-4126
Montana, Helena 59604-4009	(406) 444-2040
Nebraska, Lincoln 68508	(402) 471-2201
Nevada, Carson City 89710	(702) 687-4270
New Hampshire, Concord 03301	(603) 271-2261
New Jersey, Trenton 08625	(609) 292-5360
New Mexico, Sante Fe 87504-1269	(505) 827-4500
New York, New York 10013	(518) 474-6630
North Carolina, Raleigh 27611	(919) 733-7349
North Dakota, Bismarck 58505	(701) 224-2440
Ohio, Columbus 43266-0566	(614) 644-2651
Oklahoma, Oklahoma City 73152-3408	(405) 521-2828
Oregon, Salem 97310	(503) 378-4271
Pennsylvania, Harrisburg 17120	(717) 787-5173
Puerto Rico, Santurce 00910-8330	(809) 722-8686
Rhode Island, Providence 02903	(401) 277-2223
South Carolina, Columbia 29202-3105	(803) 737-6117
South Dakota, Pierre 57501	(605) 773-3563
Tennessee, Nashville 37243-0565	(615) 741-2241
Texas, Austin 78714-9104	(512) 463-6464
Utah, Salt Lake City 84114-1201	(801) 538-3800
Vermont, Montpelier 05620-3101	(802) 828-3301
Virginia, Richmond 23209	(804) 371-9741
Virgin Islands, St. Thomas 00802	(809) 774-2991
Washington, Olympia 98504	(206) 753-7301
West Virginia, Charleston 25305	(304) 558-3394
Wisconsin, Madison 53707-7873	(608) 266-0102
Wyoming, Cheyenne 82002	(307) 777-7401

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BILLING CODE 4810-35-C

federal register

Monday
July 1, 1996

Part VII

Department of Education

Postsecondary Education Programs for Individuals with Disabilities; Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Postsecondary Education Programs for Individuals With Disabilities

AGENCY: Department of Education.

ACTION: Notice of a final funding priority.

SUMMARY: The Secretary announces a final funding priority for four Regional Centers on Postsecondary Education for Individuals who are Deaf, a program administered by the Office of Special Education and Rehabilitative Services (OSERS) under the Individuals with Disabilities Education Act. The Secretary may use this priority in Fiscal Year 1996 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve educational opportunities and outcomes for postsecondary students who are deaf and hard of hearing. The final funding priority is intended to ensure wide and effective use of program funds. The Secretary also announces selection criteria that will be applied in evaluating applications submitted for this competition.

EFFECTIVE DATE: This priority takes effect on July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Ramon Rodriguez, U.S. Department of Education, 600 Independence Avenue, SW., Switzer Building, Room 3125, Washington, DC 20202–2524. Telephone: (202) 205–8555. Fax: (202) 205–9252. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9156. Internet: Ramon_Rodriguez@ed.gov

SUPPLEMENTARY INFORMATION: This notice contains information on the Regional Centers on Postsecondary Education for Individuals who are Deaf, authorized under section 625 of the Individuals with Disabilities Education Act, the Postsecondary Education Program for Individuals with Disabilities. The purpose of this program is to provide assistance for the development, operation, and dissemination of specially designed model programs of postsecondary, academic, vocational, technical, continuing, or adult education for individuals with disabilities.

This final funding priority supports the National Education Goal of every adult American being literate and

Funding of particular projects depends on the availability of funds, the content of the final funding priority, and the quality of the applications received. Further, the activities of the projects funded under this priority could be affected by the enactment of legislation reauthorizing the program. The publication of the final funding priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of final funding priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

On March 18, 1996, the Secretary published a notice of proposed priority for this program in the **Federal Register** (61 FR 11086).

It was brought to our attention during the comment period that it is necessary to clarify what population is to be served by the regional centers. These centers have traditionally served individuals who are deaf and hard of hearing. This priority is not intended to change the population being served by the centers. The Secretary has therefore added references to individuals who are hard of hearing throughout the priority.

In response to the Secretary's invitation in the notice of proposed priority, 28 comments were received. All 28 commenters expressed interest in the Department holding a competition under the proposed priority. Eleven of the commenters suggested changes in the activities the regional centers must complete. An analysis of the comments and of the changes in the proposed priority follows. Technical and other minor changes—as well as suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comment: Eight commenters recommended that the Secretary fund direct student support services programs such as interpreting and notetaking at current levels.

Discussion: Although funding of direct student support services such as interpreting and notetaking was allowed through this program in the past, the Secretary believes that the limited funds available to support four regional centers are more effectively used for the activities described in the priority of providing support services to students who are deaf and hard of hearing, and provided limited technical assistance and outreach services to other postsecondary institutions. The Secretary believes a technical assistance model will most efficiently use scarce resources and is the most effective strategy to ultimately increase postsecondary educational opportunities for students who are deaf and hard of hearing. Further, under Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act (ADA), institutions of higher education have the responsibility to provide these direct services. Under paragraph (e) of the priority, each center is required to disseminate information about these responsibilities and financial and other resources available for such purposes.

Changes: None.

Comment: Nineteen commenters recommended that the Secretary continue funding the current regional centers located at St. Paul Technical College, Seattle Community College, California State University at Northridge and the University of Tennessee at Knoxville.

Discussion: The Secretary does not have authority to non-competitively continue the current grantees. Section 625(a)(6) of the Individuals with Disabilities Education Act required the Secretary to continue to provide assistance to the current grantees operating the four regional centers for the deaf through September 30, 1995. Because current law does not provide authority for continuation of the current grantees, the Secretary must conduct a competition for fiscal year 1996 funds for this activity.

Change: None.

Comment: Three commenters suggested that the priority address the need to recruit or train interpreters, stenographers and other service specialists to provide services at a reasonable cost. In addition, an effort should be made to standardize training and develop compensation policies for interpreters and other support services personnel.

Discussion: The Secretary is aware of the need to train more interpreters and other service providers. The Office of Special Education Programs, Division of Personnel Preparation, and the Rehabilitation Services Administration have specific authorities to train both educational and general-service

institutions in locating resources and to provide leadership to address support service issues.

Changes: None.

Comment: Twelve commenters strongly stressed that the needs assessment to be performed by each regional center should also address the technical assistance needs of postsecondary institutions related to retaining and instructing students who are deaf and hard of hearing.

Discussion: The Secretary agrees with the commenters that the centers must identify the needs of institutions related to retaining and instructing deaf and hard of hearing students in order to provide assistance to postsecondary education institutions in developing strategies that will result in more deaf and hard of hearing students completing their programs.

Changes: The issue of retaining and instructing deaf and hard of hearing students has been added to the list of areas in paragraph (a) of the priority that must be addressed in the technical needs assessment to be performed by each regional center.

Comment: One commenter recommended that the Secretary add "and accommodation" to paragraph (b). The commenter states that the Secretary should distinguish between "access" and "accommodation." If this is not stressed, he suspects that many applications will focus on recruitment and admission variables, and give inadequate attention to factors which sustain the student throughout his or her postsecondary educational experiences. The commenter indicated also that the ability of applicants to articulate what "accommodation" means will help distinguish between strong and weak applications.

Discussion: The Secretary agrees with the commenter that adding "and accommodation of individuals who are deaf and hard of hearing throughout their postsecondary educational experiences," to paragraph (b) will clarify the distinction between "access" and "accommodation." Furthermore, it will ensure that the regional centers will not only provide postsecondary institutions with consultation and technical assistance related to special needs such as interpreters, notetakers, assistive devices and other essential aids, but continue providing accommodation support throughout the students' postsecondary educational programs.

throughout their postsecondary educational experiences" has been added to paragraph (b).

Comment: One commenter asked the Secretary to clarify what is meant by "develop training materials" in paragraph (f) and expressed concern that resources could be drained unless the regional centers collaborate on what materials should be developed and cooperate in their dissemination. Five commenters recommended that the Secretary require the centers to plan for national networking, coordination and collaboration to expand and share resources. These commenters expressed concern that the centers will duplicate many activities and that the centers should coordinate activities.

Discussion: The Secretary agrees with the commenters that clarification is needed regarding paragraph (f) and the phrase "develop training materials." It is the intent of the Secretary to have the regional centers make available, through development or acquisition, awareness-training materials for administration, faculty, and staff of postsecondary education institutions. It is anticipated that the regional centers will cooperate and collaborate in developing materials, standards, and other criteria that are needed. The regional centers are expected to collaborate in developing and conducting all major activities, such as the content of needs assessment and other instruments to be used, information about postsecondary education programs, administration/faculty/staff orientation materials used in serving students who are deaf and hard of hearing, training materials, evaluation criteria and instruments and other similar materials.

Change: Paragraph (f) is changed by deleting "develop training materials" and inserting: "Make available through development and acquisition, awareness-training materials for administrators, faculty and staff * * *." In order to ensure coordination and collaboration among the regions, paragraph (j) has been changed to: "Coordinate and collaborate on the development and establishment of needs-assessment activities, material development, technical assistance, outreach, information dissemination, and evaluation of the regional center's activities for the purpose of avoiding overlap and duplication of efforts * * *."

Comment: One commenter

also suggested that a national research and evaluation component be added.

Discussion: The Secretary is aware that the centers will need to form a network for intra/inter-regional cooperation. As noted in paragraphs (d) and (j) of the priority, the centers must undertake such efforts. The centers are also required to carry out evaluation activities, as described in paragraph (i). Finally, the Secretary believes that four regional centers, rather than three or six as suggested, represents the best combination of effort and national scope.

Changes: None.

Comments: One commenter recommended that the northeast region could be served by the two national institutions, Gallaudet University and the National Technical Institute for the Deaf at the Rochester Institute of Technology and, instead, the Secretary should create an additional region in the west. Four commenters recommended that the States in the four proposed regions be realigned. They indicated that the southern region accounted for approximately 33 percent of the Nation's population.

Discussion: The Secretary believes that the proposed regions represent a fair and reasonable geographical distribution. However, he agrees that each application must be assessed for the evidence of need in the target area and scope of work proposed by the project. The application notice, published elsewhere in this issue of the **Federal Register**, specifies a range of award amounts to allow the Secretary to take these factors into consideration in making awards.

Changes: None.

Comment: One commenter recommended that the priority stress cooperation with participating postsecondary educational institutions within each region in order to develop consistent outreach strategies and disseminate information to individuals who are deaf and hard of hearing to enhance their awareness of available postsecondary educational opportunities both within and outside the region.

Discussion: The Secretary agrees with the commenter on the need for coordination and collaboration of major center activities within each region and the need to develop consistent outreach strategies and disseminate information to individuals who are deaf and hard of

with participating postsecondary educational institutions within the region in developing outreach strategies and disseminating information to individuals who are deaf and hard of hearing to enhance their awareness of available postsecondary educational opportunities, both within and outside the region.

Comment: Two commenters recommended that the Secretary require the centers to provide technical assistance and transitional outreach services to secondary schools serving students who are deaf and hard of hearing, and linkages with other programs. One of the commenters indicated that there is no mention of a job-placement component to ensure linkages to employment opportunities. The commenter added that emphasis should be placed on these activities because, at the present time, there are few programs that offer strong job-placement activities for individuals graduating from postsecondary institutions.

Discussion: In paragraph (g), the Secretary directs the centers to "address the educational, remedial, support service, transitional, independent living, and employment needs of individuals who are deaf and hard of hearing." While the Secretary is aware of the need for comprehensive transitional services for students who are deaf and hard of hearing in secondary schools, scarce resources limit the level of regional centers' interaction with these schools to providing information about postsecondary educational opportunities. In order to ensure linkages to employment opportunities, the Secretary anticipates that the regional centers will coordinate their programs and activities with vocational rehabilitation and independent living agencies.

Change: None.

Comment: Two commenters recommended that the Secretary direct the centers to provide technical assistance to postsecondary education institutions in implementing strategies that will enhance the integration of students who are deaf and hard of hearing with other students.

Discussion: The Secretary expects the regional centers to provide training materials and disseminate information about proven models, components of models, and other exemplary practices that enhance the integration of students who are deaf and hard of hearing with other students. The Secretary believes that this issue is adequately addressed in paragraph (f).

Change: None.

Comments: Three commenters recommended the utilization of distance learning and other technologies in order to provide consultation and support services to a variety of postsecondary institutions regarding technical accommodations and model service programs.

Discussion: The Secretary anticipates that applicants will recommend creative and innovative ways that postsecondary institutions can provide services to students who are deaf and hard of hearing. Distance learning technology would be one appropriate method. However, the Secretary does not believe that it is appropriate to suggest or limit the potential methods for meeting the needs of students who are deaf and hard of hearing.

Changes: None.

Comments: Nine commenters indicated that for a support services program to be efficient and cost beneficial, a "critical mass" or significant number of deaf and hard of hearing students is required.

Discussion: The Department's survey, *Deaf and Hard of Hearing Students in Postsecondary Education*, by the National Center for Education Statistics through its postsecondary education quick information system (PEQIS), indicated that 1,850 institutions were providing services to varying numbers of deaf and hard of hearing students. The Secretary believes that many of these institutions, including those who do not have a significant number of deaf and hard of hearing students, need assistance. The type of assistance needed will depend on the type and size of the program and needs of the students enrolled. The centers will be able to provide technical assistance and outreach services to many institutions that wish to develop or improve service delivery.

Changes: None.

Comment: Three commenters recommended that the centers emphasize services to individuals from traditionally underserved populations. These individuals are late-deafened, deaf-blind, have multiple disabilities, or are from minority populations, including language minorities, who typically do not have services or resources readily available to them.

Discussion: The Secretary believes that the technical assistance needs assessments to be performed by each center will identify the technical assistance needs of the institutions of higher education, including how to serve deaf and hard of hearing populations that may be underserved. These identified needs will generate the necessary technical assistance services. However, the Secretary agrees that it is important to emphasize that technical assistance to enhance the access and accommodation of individuals who are deaf and hard of hearing to postsecondary education and training must include individuals from traditionally underserved populations.

Changes: In order to address the needs of individuals from traditionally underserved populations, "including those from language minorities" has been added to paragraph (a), and "including traditionally underserved populations who are deaf and hard of hearing" has been added to paragraph (b).

Comment: One commenter recommended that the Secretary include a provision to involve families of students who are deaf and hard of hearing, and students themselves, and to include parent training and information centers and the National Parent Network on Disabilities among the organizations listed in paragraph (h).

Discussion: The majority of students who are deaf and hard of hearing have reached the age of maturity as they prepare to attend postsecondary education programs. Therefore, they are the primary targets of this assistance. The Secretary anticipates that information about postsecondary education opportunities provided to students who are deaf and hard of hearing and their teachers and counselors in secondary programs through informational materials and orientation as indicated in paragraphs (d), (e), and (g) also will be shared with parents and families. Further, information for parents and families will be available through the clearinghouses and organizations listed in paragraph (h).

Change: None.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet this priority. The Secretary will fund under this competition only applications that meet the priority.

Absolute Priority—Regional Centers on Postsecondary Education for Individuals who are Deaf.

Purpose

The purpose of this priority is to support projects that assist educational institutions to implement proven models, components of models, and other exemplary practices, including innovative technology, to increase and improve postsecondary educational opportunities for individuals who are deaf and hard of hearing.

Background

This priority would support four regional centers on postsecondary education for individuals who are deaf and hard of hearing. Each center will provide technical assistance to a range of postsecondary institutions, including academic, vocational, technical, continuing, and adult education programs, to expand the array of educational opportunities within the region that are available to students who are deaf and hard of hearing. The centers must provide technical assistance to institutions currently not serving students who are deaf and hard of hearing to assist them to develop services. The centers must also provide technical assistance to institutions currently serving students who are deaf and hard of hearing to assist them to improve existing programs. In carrying out the objectives of this priority, projects must distribute technical assistance services and resources equitably, taking into account population and geographic size, within each State in its targeted geographic region.

Each regional center must:

(a) Conduct assessments of the technical assistance needs of postsecondary education institutions related to recruiting; enrolling; retaining; instructing; addressing the varying communication needs and methods used by individuals who are deaf and hard of hearing, including those from language minorities; and, otherwise effectively serving students who are deaf and hard of hearing;

(b) Provide consultation, in-service training, and planning and development assistance to postsecondary education institutions and their staff to enhance the access and accommodation of individuals who are deaf and hard of hearing, including traditionally underserved populations who are deaf and hard of hearing, throughout their postsecondary educational experiences, to postsecondary education and training;

(c) Provide technical assistance on the responsibilities of postsecondary education institutions under Federal statutes, including Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act;

(d) Cooperate with participating postsecondary educational institutions within the region in developing outreach strategies and disseminating information to individuals who are deaf and hard of hearing to enhance their awareness of available postsecondary educational opportunities, both within and outside the regions;

(e) Disseminate information about financial and other resources available to students who are deaf and hard of hearing and to postsecondary institutions to help them accommodate these students;

(f) Make available, through development and acquisition, awareness-training materials for administrators, faculty and staff, and disseminate information on proven models, components of models, and other exemplary practices, including innovative technology, among postsecondary educational programs to assist them in implementing effective and cost-efficient service-delivery systems that foster integration of students who are deaf and hard of hearing with other students;

(g) Encourage the use of consortia of postsecondary education institutions and other cooperative arrangements to provide services and assistance to students who are deaf and hard of hearing, including coordination of postsecondary education options with existing public and private community services that may address the educational, remedial, support service, transitional, independent living, and employment needs of individuals who are deaf and hard of hearing;

(h) Coordinate technical assistance and dissemination activities with relevant information clearinghouses and organizations such as the National Clearinghouse on Postsecondary Education for Individuals with Disabilities (HEATH), National Information Center for Children and Youth with Disabilities, National Transition Alliance, and Association of Higher Education and Disability;

(i) Evaluate the impact, effectiveness, and results of postsecondary institutions within the region in accommodating students who are deaf and hard of hearing; and

(j) Coordinate and collaborate on the development and establishment of needs-assessment activities, material development, technical assistance, outreach, information dissemination, and evaluation of the regional centers' activities for the purpose of avoiding overlap and duplication of efforts; ensuring that individuals who are deaf and hard of hearing have information on postsecondary programs throughout the country that provide accommodations; and ensuring that information on proven models, components of models, and other exemplary practices, including innovative technology, are equally available in each of the four regions. This coordination must include carrying out collaborative activities and cross-regional initiatives, where appropriate.

The Secretary anticipates funding four cooperative agreements, each for a project period of up to 60 months, subject to the requirements of 34 CFR 75.253(a), for continuation awards. In determining whether to continue a center for the fourth and fifth years of the project period, in addition to applying the requirements of 34 CFR 75.253(a), the Secretary will consider the recommendations of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day visit to the center, are to be performed during the last half of the center's second year and must be included in that year's evaluation required under 34 CFR 75.590. Funds to cover the costs of the review team must be included in the center's budget for year two. These costs are estimated to be approximately $4,000.

To ensure that all States benefit from these projects, the Secretary intends to support four projects which will be required to serve each State within one of the following geographic regions:

Northeast Region—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, and Vermont.

Southern Region—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, Virgin Islands, and West Virginia.

Midwest Region—Iowa, Illinois, Indiana, Kansas, Ohio, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin.

Western Region—Alaska, American Samoa, Arizona, California, Colorado, Guam, Hawaii, Idaho, Northern Marinas Islands, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

Selection Criteria for Evaluating Applications

The Secretary will use the following weighted criteria to evaluate an application under the Regional Centers on Postsecondary Education for Individuals who are Deaf competition.

The maximum score for all the criteria is 100 points.

(a) *Project design.* (40 points)

(1) The Secretary reviews each application to evaluate the quality of the proposed technical assistance project design.

(2) The Secretary determines the extent to which—

(i) The technical assistance objectives are designed to meet the purpose of the priority and are clearly defined, measurable, and achievable; and

(ii) The proposed technical assistance addresses the needs of a range of postsecondary institutions, including academic, vocational, technical, continuing, and adult education programs.

(3) The Secretary determines the extent to which each application provides for—

(i) Use of current research findings and information on model practices;

(ii) Methods for linking postsecondary institutions in need of technical assistance;

(iii) Innovative procedures for disseminating information and imparting skills to postsecondary institutions, staff of these institutions, and postsecondary students and potential postsecondary students who are deaf and hard of hearing; and

(iv) Innovative procedures for collaborating and coordinating with other entities that are involved with broader technical assistance efforts.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary considers—

(i) The extent to which the management plan will ensure proper and efficient administration of the project;

(ii) The quality of the activities proposed to accomplish the goals and objectives;

(iii) The adequacy of proposed timelines for accomplishing those activities; and

(iv) Effectiveness in the ways in which the applicant plans to use the resources and personnel to accomplish the program's goals and objectives.

(3) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use.

(2) The Secretary considers—

(i) The qualifications of the project director and project coordinator (if one is used);

(ii) The qualifications of each of the other key project personnel;

(iii) The time that each person referred in paragraphs (b)(2) (i) and (ii) plans to commit to the project; and

(iv) How the applicant will ensure that personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(3) To determine personnel qualifications under (b)(2) (i) and (ii), the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application to determine whether the project has an adequate budget and is cost-effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

(2) The Secretary considers—

(i) The extent to which the applicant's methods of evaluation are appropriate to the project; and

(ii) To the degree possible, the extent to which the applicant's methods of evaluation are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine whether the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the adequacy of the facilities and the technology, equipment, and supplies the applicant plans to use.

Intergovernmental Review

This notice is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 1424a.

(Catalog of Federal Domestic Assistance Number: Regional Postsecondary Centers for Individuals Who are Deaf, 84.078A)

Dated: June 25, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–16640 Filed 6–28–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.078A]

Postsecondary Education Programs for Individuals with Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996

Purpose of Program: To support projects that assist educational institutions to implement proven models, components of models, and other exemplary practices, including innovative technology, to increase and improve postsecondary opportunities for individuals who are deaf and hard of hearing.

This program supports the National Education Goal of every adult American being literate and possessing the knowledge and skills necessary to compete in a global economy by helping students who are deaf and hard of hearing to reach higher levels of academic achievement.

Eligible Applicants: Eligible applicants are State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other nonprofit educational agencies.

Applicable Regulations: (a) The regulations in part 338; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Applications Available: July 2, 1996.

Priority:

(a) The priority in the notice of final funding priority for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition.

(b) Within this priority, the Secretary particularly invites applications for projects from consortia or partnerships with expertise in accommodating students who are deaf and hard of hearing in a variety of academic, vocational, technical, continuing, and adult education environments. However, in accordance with EDGAR at 34 CFR 75.105 (c)(1), an application that meets this invitational priority receives no competitive or absolute preference over applications that otherwise meet the priority.

Deadline for Transmittal of Applications: August 2, 1996.

Deadline for Intergovernmental Review: September 5, 1996.

Estimated Number of Awards: 4.

Project Period: Up to 60 months.

Available Funds: In fiscal year 1996, the Department proposes to allocate approximately $4,000,000 to support an estimated 4 projects, with a range of awards of approximately $800,000–$1,200,000 for the first twelve months of the project. Multi-year projects will be level funded unless there are increases in costs attributable to significant changes in activity level.

Average Award: $1,000,000.

Note: The Department of Education is not bound by any estimates in this notice.

For Applications and General Information Contact: Requests for applications and general information should be addressed to: Ramon F. Rodriguez, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 3125, Washington, D.C. 20202–2526. Telephone: (202) 205–8555. FAX: (202) 205–9252. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9156. Internet: Ramon_Rodriguez@ed.gov

For Technical Information Contact: Michael Ward, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 4624, Washington, D.C. 20202–2732. Telephone: (202) 205–8163. FAX: (202) 205–8971.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web at (http://www.ed.gov/money.html). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1424a.

Dated: June 25, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitation Services.

[FR Doc. 96–16639 Filed 6–28–96; 8:45 am]

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Monday
July 1, 1996

Part VIII

Department of Education

Applications Invitation for New Awards Under Certain Programs for Fiscal Year 1997; Notice

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133F, 84.133G, and 84.133P]

Office of Special Education and Rehabilitative Services National Institute on Disability and Rehabilitation Research Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year 1997

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

These programs support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and the following program regulations:

Research Fellowships—34 CFR Part 356.

Field Initiated Research—34 CFR Parts 357.

Research Training and Career Development Program—34 CFR Part 360.

Program Title: Rehabilitation Research Fellowships.

CFDA Number: 84.133F.

Purpose: The purpose of this program is to build research capacity by providing support to highly qualified individuals to perform research on the rehabilitation of disabled persons.

Selection Criteria: The Secretary evaluates applications for fellowships according to the following criteria in 34 CFR 356.30.

(a) Quality and level of formal education, previous work experience, and recommendations of present or former supervisors or colleagues that include an indication of the applicant's ability to work creatively in scientific research; and

(b) The quality of a research proposal of no more than 12 pages containing the following information:

(1) The importance of the problem to be investigated to the purpose of the Act and the mission of NIDRR.

(2) The research hypotheses or related objectives and the methodology and design to be followed.

(3) Assurance of the availability of any necessary data resources, equipment, or institutional support, including technical consultation and support where appropriate, required to carry out the proposed activity.

Eligible Applicants: Individuals only are eligible to apply for research fellowships under this program.

Program Authority: 29 U.S.C. 761a(d).

APPLICATION NOTICE FOR FISCAL YEAR 1997 RESEARCH FELLOWSHIPS, CFDA NO. 84.133F

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Research Fellowships	8/30/96	10	Merit: $30,000 Distinguished: $40,000	12

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount (See 34 CFR 75.104(b)).

Program Title: Field-Initiated Research.

CFDA Number: 84.133G.

Purpose: This program is designed to encourage eligible parties to originate valuable ideas for research and demonstration, development, or knowledge dissemination projects to improve the lives of individuals with disabilities, and to support research and demonstration, development, or knowledge dissemination projects as described in program regulations that address important activities not supported by Institute-funded research or that complement that research in a promising way.

Note: The "Design of the project" section of the selection criteria for the Field-Initiated Research (FIR) program (Section 357.32(b)) includes different sets of selection criteria relating to three types of projects: research and demonstration projects, knowledge dissemination projects, and development projects. An applicant for an FIR grant should clearly identify on the cover page of the application which *one* of the three types of projects is being proposed. The "Design of project" selection criteria that will be used to review an application will be based on the applicant's identification of the type of project that is being proposed.

Selection Criteria: The Secretary uses the following criteria to evaluate an application under this program.

(a) Importance of the problem. (20 points) The Secretary reviews each application to determine the extent to which—

(1) The proposed project addresses a problem that is significant to persons with disabilities or to those who provide services to them;

(2) The proposed project is likely to produce new and useful knowledge, techniques, or devices that will develop or disseminate solutions to problems confronting persons with disabilities; and

(3) The application addresses the needs of individuals with disabilities from minority backgrounds.

(b) *Design of the project.* (45 points)

(1) The Secretary reviews each application for a research and demonstration project to determine the extent to which—

(i) The review of the literature is appropriate and indicates familiarity with the relevant current research;

(ii) The research hypotheses are theoretically sound and based on current knowledge;

(iii) The sample populations are adequate and appropriately selected;

(iv) The data collection instruments and methods are appropriate and likely to be successful;

(v) The data analysis measures are appropriate; and

(vi) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses.

(2) The Secretary reviews each application for a knowledge dissemination project to determine the extent to which—

(i) The need for the information has been demonstrated;

(ii) The target populations are appropriately specified;

(iii) The dissemination methods are appropriate to the target population;

(iv) The materials for dissemination are prepared in media accessible to the target population; and

(v) There are adequate means of documenting and evaluating the effectiveness of the dissemination activity.

(3) The Secretary reviews each application for a development project to determine the extent to which—

(i) The proposed project will use the most effective and appropriate technology available in developing the new device or technique;

(ii) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art in technology;

(iii) Devices or techniques will be developed and tested in an appropriate environment;

(iv) The applicant considers the cost-effectiveness and usefulness of the device or technique to be developed for persons with disabilities; and

(v) The applicant discusses the potential for commercial or private manufacture, marketing, and distribution of the product.

(c) *Personnel.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The key personnel have adequate training and experience in the required discipline to conduct the proposed activities;

(2) The allotment of staff time is adequate to accomplish the proposed activities; and

(3) The applicant ensures that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions.

(d) *Management and Evaluation.* (15 points) The Secretary reviews each application to determine the extent to which—

(1) The resources of the applicant are adequate, appropriate, and accessible to individuals with disabilities;

(2) The proposed budget is adequate and appropriate for the activities to be carried out;

(3) There is a plan, appropriate to the type of field-initiated project, to evaluate the effectiveness of the project in accomplishing its goals and objectives;

(4) The applicant provides a plan of operations, appropriate to the type of field-initiated project, indicating that it will achieve the project objectives in a timely and effective manner; and

(5) Appropriate collaboration with other agencies is assured.

Eligible Applicants: Public and private organizations, including institutions of higher education and Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Program Authority: 29 U.S.C. 762.

APPLICATION NOTICE FOR FISCAL YEAR 1997 FIELD-INITIATED RESEARCH, CFDA NO. 84.133G

Funding Priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Field-Initiated Research	9/30/96	25	$125,000	36

NOTE: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount (See 34 CFR 75.104(b)).

Program Title: Research Training and Career Development Program

CFDA Number: 84.133P.

Purpose: The purpose of this program is to expand capability in the field of rehabilitation research by supporting projects that provide advanced training in rehabilitation research. These projects provide research training and experience at an advanced level to individuals with doctorates or similar advanced degrees who have clinical or other relevant experience, including experience in management or basic science research, in fields pertinent to rehabilitation, in order to qualify those individuals to conduct independent research on problems related to disability and rehabilitation.

Invitational Priorities: The Secretary is particularly interested in applications that address one of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications. The invitational priorities are:

1. Training individuals with disabilities in advanced research in disability and rehabilitation-related fields.

2. Training individuals from minority backgrounds, particularly individuals with disabilities from minority backgrounds, in advanced disability and rehabilitation research.

Selection Criteria: The Secretary uses the following criteria in 34 CFR 360.31 to evaluate applications under this program.

(a) Importance and potential contribution. (20 points) The Secretary reviews each application to determine to what degree—

(1) The applicant is responsive to any priority established under § 360.32;

(2) The applicant proposes to provide training in a rehabilitation discipline or area of study in which there is a shortage of qualified researchers, or to provide training to a trainee population in which there is a need for more qualified researchers, such as clinicians in rural areas, or clinicians who are directly experienced with underserved populations; and

(3) The applicant is likely to make a significant increase in the number of trained rehabilitation researchers.

(b) *Quality of proposed training program.* (40 points) The Secretary reviews each application to determine to what degree—

(1) The applicant's proposed recruitment program is likely to be effective in recruiting highly qualified trainees;

(2) The proposed didactic and classroom training programs emphasize scientific methodology are multidisciplinary, comprehensive, and appropriate to the level of the trainees, and are likely to produce qualified independent researchers;

(3) The quality and extent of the academic mentorship, guidance, and supervision to be provided to each individual trainee are of a high level and are likely to produce highly qualified researchers;

(4) The type, extent, and quality of the proposed clinical and laboratory research experience, including the opportunity to participate in research on meaningful topics at an advanced level, are likely to develop individuals with the capacity to perform independent research; and

(5) The opportunities for collegial and collaborative activities, exposure to outstanding scientists in the field, and opportunities to participate in the preparation of scholarly or scientific publications and presentations are extensive and appropriate.

(c) *Personnel and resources committed to the project.* (30 points) The Secretary evaluates each application to determine to what degree—

(1) The activities of the project will be implemented by sufficient and qualified staff who are outstanding scientists in the field;

(2) The project director and other key staff are experienced in the delivery of advanced research training as well as knowledgeable about the methodology and literature of pertinent subject areas;

(3) All required disciplines are effectively included; and

(4) The applicant possesses the appropriate facilities, laboratories, and access to clinical populations and organizations representing persons with disabilities to support the conduct of advanced clinical rehabilitation research.

(d) Management and operating plans. (10 points) The Secretary evaluates each application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project;

(2) There is an effective plan for collaboration with other institutions of higher education and organizations whose participation is necessary to ensure effective classroom and clinical research training;

(3) The applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, gender, age or handicapping condition;

(4) The applicant has provided an adequate plan for the use of facilities, resources, supplies and equipment;

(5) The budget for the project is reasonable and adequate to support the proposed activities; and

(6) The applicant provides an appropriate plan for the evaluation of all phases of the project.

Eligible Applicants: Institutions of higher education are eligible to receive awards under this program.

Program Authority: 29. U.S.C. 761a(k).

APPLICATION NOTICE FOR FISCAL YEAR 1997 RESEARCH TRAINING AND CAREER DEVELOPMENT PROGRAM, CFDA NO. 84.133P

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Research Training and Career Development Program	8/30/96	3	$150,000	60

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount (See 34 CFR 75.104(b)).

Instructions for Application Narrative

The Secretary strongly recommends that the narrative for Field-Initiated Research and Research Training and Career Development applications be limited to no more than 40 double-spaced, typed pages (on one side only), not including appendices. This recommended page limit applies only to the narrative and not to the application forms, assurances, certifications and attachments to those forms, assurances, and certifications.

The research proposal for a Fellowship application must be limited to no more than 12 pages (34 CFR 356.30(b)).

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, DC time] on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

PART I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

PART II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

PART III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (NOTE: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instruction. This document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget at 61 FR 1413 (January 19, 1996).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

For Applications Contact: In order to obtain an application package, contact William H. Whalen, U.S. Department of Education, 600 Independence Avenue SW., Switzer Building, Room 3411, Washington, DC 20202. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web at http://www.ed.gov/.money.html.

However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 760–762.

Dated: June 19, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

Frequent Questions

1. CAN I GET AN EXTENSION OF THE DUE DATE?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. WHAT SHOULD BE INCLUDED IN THE APPLICATION?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. WHAT FORMAT SHOULD BE USED FOR THE APPLICATION?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. MAY I SUBMIT APPLICATIONS TO MORE THAN ONE NIDRR PROGRAM COMPETITION OR MORE THAN ONE APPLICATION TO A PROGRAM?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. WHAT IS THE ALLOWABLE INDIRECT COST RATE?

The limits on indirect costs vary according to the program and the type of application. Applicants in the Research Training and Career Development program should limit indirect charges to 8 percent. Applicants in the Field-Initiated Research program should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate. Fellowship awards are made to individuals, therefore indirect cost rates do not apply.

6. CAN PROFITMAKING BUSINESSES APPLY FOR GRANTS?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. CAN INDIVIDUALS APPLY FOR GRANTS?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. CAN NIDRR STAFF ADVISE ME WHETHER MY PROJECT IS OF INTEREST TO NIDRR OR LIKELY TO BE FUNDED?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. HOW DO I ASSURE THAT MY APPLICATION WILL BE REFERRED TO THE MOST APPROPRIATE PANEL FOR REVIEW?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. HOW SOON AFTER SUBMITTING MY APPLICATION CAN I FIND OUT IF IT WILL BE FUNDED?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. CAN I CALL NIDRR TO FIND OUT IF MY APPLICATION IS BEING FUNDED?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. IF MY APPLICATION IS SUCCESSFUL, CAN I ASSUME I WILL GET THE REQUESTED BUDGET AMOUNT IN SUBSEQUENT YEARS?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. WILL ALL APPROVED APPLICATIONS BE FUNDED?

No. It often happens that the peer review panels approve for funding more

applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000-01-P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. Applicant	$ .00	b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
c. State	$ .00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
g. TOTAL	$ .00	☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

Name of Institution/Organization

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

Name of Institution/Organization

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

BILLING CODE 4000-01-C

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1820–0027 (Expiration date 11/28/97). The time required to complete this information collection is estimated to average 30 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651. If you have comments or concerns regarding the status of your individual submission of this form, write directly to: William H. Whalen, U.S. Department of Education, 600 Independence Avenue, SW., Switzer Building, Room 3411, Washington, DC 20202.

Research Fellowships (CFDA No. 84.133F) 34 CFR Part 356.

Field-Initiated Research (CFDA No. 84.133G) 34 CFR Parts 350 and 357.

Research Training and Career Development Program—34 CFR Part 360.

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and the Office of Management and Budget, Paperwork Reduction Project 1875–0102, Washington, D.C. 20503.

Instructions for ED Form No. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A—Budget Summary—U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1–11.

Lines 1–11, columns (a)–(e):

For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1–11, column (f):

Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)–(e):

Show the total budget request for each project year for which funding is requested.

Line 12, column (f):

Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B—Budget Summary—Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1–11 of Section B.

Lines 1–11, columns (a)–(e):

For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1–11, column (f):

Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)–(e):

Show the total matching or other contribution for each project year.

Line 12, column (f):

Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this spece blank.

Section C—Other Budget Information—Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition; enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000-01-P

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 —

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 —

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year ____ quarter ____
date of last report ____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier ____, *if known:*
Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity Registrant
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:
(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C.1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

[FR Doc. 96–16231 Filed 6–28–96; 8:45 am]
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federal register

Monday
July 1, 1996

Part IX

Department of Health and Human Services

Health Care Financing Administration
Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning On or After July 1, 1996; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD–867–NC]

RIN 0938–AH54

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning On or After July 1, 1996

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice sets forth a revised schedule of limits on home health agency costs that may be paid under the Medicare program. These limits replace the per-visit limits that were set forth in our February 14, 1995 notice with comment period (60 FR 8389). This notice also responds to comments on the February 14, 1995 notice. This notice does not provide for a permanent extension of the provision of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) that there be no changes in the home health agency cost limits for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996. However, a proposal to extend the effects of the OBRA '93 freeze is included in President Clinton's FY 1997 Budget.

DATES: *Effective Date:* The schedule of limits is effective for cost reporting periods beginning on or after July 1, 1996.

Comment Date: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 30, 1996.

ADDRESSES: Mail comments (one original and three copies) to the following address:

Health Care Financing Administration,
Department of Health and Human Services,
Attention: BPD–867–NC
P.O. Box 7517
Baltimore, MD 21207–0517

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20221, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting please refer to file code BPD–867–NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783–3238 or by faxing to (202) 275–6802. The cost for each copy is $8.00. As an alternative, you may view and photocopy the **Federal Register** document at most libraries designated as U.S. Government Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Michael Bussacca, (410) 786–4602.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(v)(1)(A) of the Social Security Act (the Act) authorizes the Secretary to establish limits on allowable costs incurred by a provider of services that may be paid under the Medicare program, based on estimates of the costs necessary in the efficient delivery of needed health services. Under this authority, we have maintained limits on home health agency (HHA) per-visit costs since 1979. The limits may be applied to direct or indirect overall costs or to the costs incurred for specific items or services furnished by the provider. Implementing regulations are located at 42 CFR 413.30. Additional statutory provisions specifically governing the limits applicable to HHAs are contained at section 1861(v)(1)(L) of the Act. Section 1861(v)(1)(L)(i) of the Act specifies that the cost limits are not to exceed 112 percent of the mean of the labor-related and nonlabor per-visit costs for freestanding HHAs. For cost reporting periods beginning on or after July 1, 1986, and before October 1, 1993, section 1861(v)(1)(L)(ii) of the Act requires that the Secretary make an adjustment to the cost limits for the administrative and general (A&G) costs of hospital-based HHAs. Section 1861(v)(1)(L)(iii) of the Act requires that the Secretary establish HHA cost limits on an annual basis for cost reporting periods beginning on or after July 1 of each year [except for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996). In establishing these limits, the Act directs the Secretary to use the applicable hospital wage index, as discussed below.

On February 14, 1995, we published in the **Federal Register** (60 FR 8389) a notice with comment period that set forth a revised schedule of limits on HHA costs that may be paid under the Medicare program for cost reporting periods beginning on or after July 1, 1993. These limits replaced the per-visit limits that were set forth in our July 8, 1993 notice with comment period (58 FR 36748). Like the July 8, 1993 limits, the February 14, 1995 limits were computed using the actual cost-per-visit data from cost reporting periods ending on or after June 30, 1989, and before May 31, 1991, and were adjusted by later estimates in the "market basket" index to reflect changes in the prices of goods and services furnished by HHAs. The February 14, 1995 notice also provided, in accordance with section 13564(a) of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) (Public Law 103–66), that there be no changes in the HHA costs limits for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996 (except as needed to take into account the elimination of the A&G add-on for hospital-based HHAs, effective for cost reporting periods beginning on or after October 1, 1993).

This notice with comment period sets forth cost limits for cost reporting periods beginning on or after July 1, 1996. As required by section 1861(v)(1)(L)(iii) of the Act, we are using the area wage index applicable under section 1886(d)(3)(E) of the Act determined using the survey of the most recent available wages and wage-related costs of hospitals located in the geographic area in which the HHA is located. For purposes of this notice, the HHA wage index is based on the most recent hospital wage index, that is, the hospital wage index effective for hospital discharges on or after October 1, 1995, which uses FY 1992 wage data. As the statute also specifies, in applying the hospital wage index to HHAs, no adjustments are to be made to account for hospital reclassifications under section 1886(d)(8)(B) of the Act, decisions of the Medicare Geographic Classification Review Board under section 1886(d)(10) of the Act, or decisions by the Secretary.

II. Analysis of and Response to Public Comments

We received 14 items of timely correspondence on the February 14, 1995 notice with comment period. These comments and our responses are discussed below.

Comment: Nine commenters stated that, in view of the elimination, effective for cost reporting periods beginning on or after October 1, 1993, of the payment adjustment for the A&G cost of hospital-based HHAs, it was no longer appropriate to establish cost limits based only on cost reporting data from freestanding HHAs. Although the commenters acknowledged that section 1861(v)(1)(L)(i) of the Act continues to require that the limits be based on the "* * * per visit costs for freestanding home health agencies", they suggested that this provision was inconsistent with the elimination of the A&G add-on under section 13564(b) of OBRA '93 and requested that cost reporting data from both hospital-based and freestanding agencies be used in establishing the limits.

Response: As the commenters noted, section 1861(v)(1)(L)(i) of the Act specifies that the Secretary is to establish a single schedule of HHA cost limits based on the mean per-visit costs of freestanding agencies. Although section 13564(b) of OBRA '93 amended section 1861(v)(1)(L)(ii) of the Act to provide that, effective for cost reporting periods beginning on or after October 1, 1993, we no longer make a payment adjustment to the limits to account for the A&G costs of hospital-based agencies, this provision of OBRA '93 did not amend the explicit requirement of section 1861(v)(1)(L)(i) of the Act concerning the agency costs upon which the limits are to be based. Therefore, the limits continue to be based on the costs of freestanding home health agencies, as required by the Act. We have no discretion to include hospital-based providers in the calculation of HHA limits.

Comment: One commenter suggested that certain services be allowed when provided by a pharmacist in the patient's home such as patient counseling/education, clinical assessment, drug regimen review and drug therapy monitoring.

Response: Section 1861(m) of the Act provides for per-visit payment to HHAs solely for those services provided by the six home health disciplines. Current policy does not provide for payment for home visits by pharmacists as suggested by the commenter.

Comment: One commenter asked if the special adjustment factors for cost reporting periods of other than 12 months would have to be revised because of the changes in the revised schedule of limits published on February 14, 1995.

Response: The projected annual rates of inflation used in the July 8, 1993 and February 14, 1995 notices were the same, as were the adjustment factors in both notices. Therefore, no change in the special adjustment factors to be applied by the intermediaries was necessary.

Comment: Two commenters requested clarification on how HCFA applies the add-on adjustment to the limits for those agencies with costs in excess of their limit that are attributable to the Occupational Safety and Health Administration (OSHA) universal precaution requirement.

Response: As discussed in detail later, the OSHA add-on is no longer necessary for cost reporting periods beginning on or after July 1, 1996. Even for cost reporting periods prior to that date, the OSHA add-on is not an automatic adjustment to the home health agency cost limits. An agency must apply to the intermediary for the add-on amount and the agency must demonstrate that it will exceed its cost limit and provide adequate documentation to support the add-on adjustment. The agency must show that it has incurred expenses to comply with the OSHA requirements.

Documentation should include copies of the agency's infection control procedure, invoices documenting the purchase of gloves, gowns and other disposable items. The costs of inoculations of hepatitis B vaccine can also be used to support the adjustment. An HHA can also provide documentation that it has given training to the employees concerning blood-borne pathogens. We provided instructions to HCFA's intermediaries spelling out these requirements in a 1994 program memorandum.

Comment: One commenter stated that the HHA market basket increases have consistently lagged behind actual cost-per-visit increases.

Response: As discussed in detail below in section IV of this notice and the Appendix, we have used a revised and rebased market basket in calculating the cost limits set forth in this notice. Actual aggregate cost-per-visit increases reflect changes in both the mix of visit types and the quantity and intensity of services per visit, as well as discretionary purchase price increases higher than reasonable costs. In contrast, the HHA market basket is designed to measure price to inflation for inputs used to produce HHA service. Thus, we would not expect actual aggregate cost-per-visit increases to equal changes in an HHA market basket that reflects pure price increases for efficient purcheses.

Comment: Nine commenters questioned whether HCFA had correctly interpreted the requirement under section 13564(a) of OBRA '93 that there be no changes in the previous per-visit HHA cost limits for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996. The commenters pointed out that, under our July 8, 1993 notice, the cost limits of HHAs with cost reporting periods beginning on or after July 1, 1993, and before July 1, 1994, were subject to monthly cost reporting period adjustment factors to allow for the effects of inflation on the cost limits of HHAs with different cost reporting periods. Subsequently, under our February 14, 1995 notice, we specified that each HHA's latest per-visit cost limit for a period beginning on or after July 1, 1993, and before July 1, 1994, was to remain in effect until its cost reporting period beginning on or after July 1, 1996. Thus, HHAs with cost reporting periods beginning on July 1, 1993, for example, would be subject to lower limits than HHAs with cost reporting periods that began any time after that date. Commenters asserted that this policy created continuing inequities and suggested several alternatives, including:

- Eliminate the monthly cost reporting period adjustment factors for all HHAs.
- Set the cost reporting period adjustment factor for all HHAs to the level that would have been in effect for an agency whose cost reporting period began on June 30, 1994, effectively equalizing payment to all HHAs at the highest possible level under the limits effective for cost reporting periods beginning on or after July 1, 1993, until the establishment of the new limits effective for cost reporting periods beginning on or after July 1, 1996.
- Amend OBRA '93 to allow for the use of the market basket inflation factors set forth in our July 8, 1993 notice with comment period.

Response: We recognize that the provisions of OBRA '93 produced differences in per-visit limits for HHAs depending on their cost reporting periods. However, we do not believe that the interpretations of OBRA '93 suggested by the commenter are within our authority, given the explicit language of section 13564 of OBRA '93, which precludes "any change" to the existing limits (except for those related

to the elimination of the A&G add-on for hospital-based HHAs). The Congress undoubtedly was aware that not all HHAs have the same cost reporting periods, but chose not to make any adjustments to the existing cost limits in setting forth the relevant provisions. In our view, none of the three specific alternatives raised by the commenters could be accomplished through rulemaking, but would require further legislative action.

Comment: Several commenters recommended that HCFA study the weighting and price proxies of the present market basket index.

Response: As discussed in detail below, in the process of developing a revised and rebased market basket, we have thoroughly examined the current market basket cost categories, weights, and price proxies. We have tabulated freestanding HHA 1993 Medicare cost report data, the latest available data that are relatively complete, in order to develop the cost structure of freestanding home health agencies. New cost categories based on the latest Medicare Cost Reports and other sources have been used and revised price proxies have been applied that more accurately represent reasonable price changes of the new cost categories.

The 1993-based weights reflect the latest available structure of costs for HHAs. The 1993-based market basket has 12 cost categories, only three of which replicate the previous, 1976-based market basket cost categories. Both the wages and salaries and employee benefit price proxies are occupational indexes and have relative weights specific to the home health industry. Price proxies reflect economy-wide as well as hospital wages. The occupational indexes each contain four occupational subcategories: professional and technical workers (including registered nurses, therapists, medical social workers and other professional/technical workers); managerial and supervisory workers; clerical workers; and service workers (which includes home health aides). The non-labor proxies include price series which represent specific cost categories such as telephones and postage expenses as well as more general categories, such as All Other Expenses.

We believe that the 1993-based market basket cost categories accurately reflect the structure of HHA costs, and that the price proxies accurately reflect the price changes in the goods and services purchased by prudent HHAs.

Comment: Several commenters recommended that HCFA include service-related measures in order to make the market basket a better prognosticator of costs per visit.

Response: Under a case-mix system of payment, service-related measures may be useful in setting upper limits for particular illness levels for each of the categories of HHA visits, just as prospective payment system for hospitals uses different illness levels for various diagnostic groups. Under the current HHA payment system, however, different intensities of HHA services associated with patients' illness levels and needs for care are reflected in the mix of types of visits used and in the number and length of visits per week. The percent increase in costs per visit per unit of time are approximately the same for all categories of visits. Thus, we apply a uniform HHA market basket inflation adjustment, just as the hospital prospective payment system uses a single hospital market basket adjustment factor for all DRGs.

Comment: One commenter stated that the wage indices in the February 14, 1995 and July 8, 1993 notices should have reflected changes to the Metropolitan Statistical Areas (MSAs) that were included in the hospital prospective payment system proposed rule published on May 26, 1993 (58 FR 30222).

Response: Section 1861(v)(1)(L)(iii) of the Act specifies that in establishing the HHA cost limits, we use the area wage index applicable under section 1886(d)(3)(E) of the Act. The hospital wage index used in both our July 8, 1993 and February 14, 1995 notices was the index applicable on July 1, 1993, the effective date of the July 8, 1993 and February 14, 1995 cost limits notices. (Subsequently, section 13564(a) of OBRA '93 specified that there be no changes in the HHA costs limits, except those related to the elimination of the A&G add-on, for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996.) As noted in our May 26, 1993 proposed rule and confirmed in the September 1, 1993 hospital prospective payment system final rule, the revisions to MSA designations that were discussed in the May 26, 1993 proposed rule did not take effect until October 1, 1993 (58 FR 46292). Thus, for HHA payment purposes these MSA changes are now taking effect, under this notice, for cost reporting periods beginning on or after July 1, 1996.

III. Updating the Wage Index on a Budget-Neutral Basis

Section 4207(d)(2) of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Public Law 101–508) requires that, in updating the wage index, aggregate payments to HHAs will remain the same as they would have been if the wage index had not been updated. Therefore, overall payments to HHAs are not affected by changes in the wage index values.

To comply with the requirement of section 4207(d)(2) of OBRA '90 that updating the wage index be budget neutral, we determined that it is necessary to apply a budget neutrality adjustment factor of 0.91 to the labor-related portion of the cost limits. This adjustment ensures that aggregate payments to HHAs are not affected by the change to a wage index based on the hospital wage index published on September 1, 1995. That is, an adjustment of −9.1 percent in the labor-related portion of the limits results in the same program expenditures as if we had not updated the wage index (See the example in section VIII.A of this notice regarding the adjustment of cost limits by the wage index and the budget neutrality factor.)

IV. Update of Limits

The methodology used to develop the schedule of limits set forth in this notice is the same as that used in setting the limits effective July 1, 1993. We are continuing to use the latest settled cost report data from freestanding HHAs to develop the HHA cost limits. We have updated the cost limits to reflect the expected cost increases occurring between the cost reporting periods for the data contained in the data base and June 30, 1997.

A. Data Used

To develop the schedule of limits effective July 1, 1996, we extracted actual cost per-visit data from settled Medicare cost reports for periods beginning on or after June 1, 1991, and settled by October 1, 1995. The majority of the cost reports were from Federal fiscal year (FY) 1993. We then adjusted the data using the latest available market basket indexes to reflect expected cost increases occurring between the cost reporting periods contained in our data base and June 30, 1997.

In previous cost limits, HCFA used the market basket index to adjust the cost report data to the midpoint (December 31) of the first cost reporting period to which the limits applied (July 1). The present limits adjust the data to the end of the first cost reporting period to which the limits apply (June 30, 1997), a change that will enable fiscal intermediaries to calculate the applicable adjustment factors for HHAs with a cost reporting period of fewer than 12 months. Previously, the intermediaries had to contact HCFA's central office for this adjustment.

We note that, under this notice, we are no longer providing for an add-on to the HHA cost limits for those HHAs that incur costs associated with the OSHA universal precaution requirements. This add-on is no longer necessary because these updated limits were computed using a data base that includes the costs of complying with the OSHA standards.

B. Wage Index

The wage index is used to adjust the labor-related portion of the limits to reflect differing wage levels among areas. In setting this schedule of limits, we used the FY 1996 hospital wage index, which is based on 1992 hospital wage data.

Each HHA's labor market area is determined based on the definitions of MSAs issued by the Office of Management and Budget (OMB). Section 1861(v)(1)(L) of the Act requires that we use the current hospital wage index (that is, the FY 1996 hospital wage index, which was published in the **Federal Register** on September 1, 1995 (60 FR 45883)) to establish the HHA cost limits. Therefore, this schedule of limits reflects the MSA definitions that currently are in effect under the hospital prospective payment system.

We are continuing to incorporate exceptions to the MSA classification system for certain New England counties that were identified in the July 1, 1992 notice (57 FR 29410). These exceptions have been recognized in setting hospital cost limits for cost reporting periods beginning on and after July 1, 1979 (45 FR 41218), and were authorized under section 601(g) of the Social Security Amendments of 1983 (Public Law 98–21). Section 601(g) of Public Law 98–21 requires that any hospital in New England that was classified as being in an urban area under the classification system in effect in 1979 will be considered urban for the purposes of the hospital prospective payment system. This provision is intended to ensure equitable treatment under the hospital prospective payment system. Under this authority, the following counties have been deemed to be urban areas for purposes of payment under the inpatient hospital prospective payment system:

- Litchfield County, CT in the Hartford, CT MSA.
- York County, ME and Sagadahoc County, ME in the Portland, ME MSA.
- Merrimack County, NH in the Boston-Brockton-Nashua, MA–NH MSA.
- Newport County, RI in the Providence Fall-Warwick, RI MSA.

We are continuing to grant these urban exceptions for the purpose of applying the HCFA hospital wage index to the HHA cost limits. These exceptions result in the same New England County Metropolitan Area (NECMA) definitions for hospitals, SNFs, and HHAs. In New England, MSAs are defined on town boundaries rather than on county lines but exclude parts of the four counties cited above that would be considered urban under the MSA definition. Under this notice, those four counties are urban under either definition, NECMA or MSA.

V. Provisions of the HHA Schedule of Limits

The schedule of limits set forth below was calculated using 112 percent of the mean per-visit costs of free-standing HHAs and is adjusted by the latest estimates in the market basket index.

The schedule of limits effective for cost reporting periods beginning on or after July 1, 1996 is based on the latest settled cost data available and provides for the following:

- A classification system based on whether an HHA is located within an MSA, a NECMA, or a non-MSA area. (See Tables 7a and 7b in section X of this notice for the listing of MSAs, NECMAs, and rural areas.)
- The use of a single schedule of limits for hospital-based and freestanding agencies. This single limit is based on the cost experience of freestanding agencies.
- The use of a market basket index, which was developed from the price of goods and services purchased by HHAs to account for the impact of changing wage and price levels on HHA costs. The market basket has been rebased and revised as described in section VI of this notice.
- The use of the current hospital wage index. The wage index is used to adjust the labor-related portion of the limits. The employee wage portion of the market basket index, including a proportionate share of contract services (64.226 percent), and the employee benefits portion (13.442 percent) are used to determine the labor component (77.668 percent) of all HHA per-visit costs used to set the limits.
- Separate treatment of the labor-related and nonlabor components of per-visit costs. The separate components of costs are calculated by obtaining actual HHA cost data for each agency for cost periods beginning on or after June 1, 1991 and settled before October 1, 1995, and increasing those data by the actual and projected increases in the HHA market basket index. We then separate each HHA's per-visit costs into labor and nonlabor portions, and divide the labor portion by the wage index value for the agency's location to control for the effect of geographic variations in prevailing wage levels. Separate means are computed for the labor and nonlabor components of per-visit costs. For each comparison group, the resulting amounts are shown in Table 6 of section IX of this notice.
- The application of a cost-of-living adjustment to the nonlabor portion of the limit for HHAs located in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.
- Limits that are determined for the per-visit cost of each type of home health service: skilled nursing care, physical therapy, speech pathology, occupational therapy, medical social services, and home health aide.
- Application of the limits in the aggregate after an HHA's actual costs are adjusted. An HHA's actual costs are adjusted for individual items of cost that are found to be excessive under Medicare principles of provider payment and for costs that are not included in the limitation amount. The limits are applied in the aggregate to the cost remaining after these adjustments are made. Payment is limited to the lower of the actual costs or the cost limits.

VI. Rebasing and Revising of the Home Health Agency Market Basket

A. Background

Effective for cost reporting periods beginning on or after July 1, 1980, HCFA developed and adopted a home health agency input price index (that is, the home health agency "market basket"). Although "market basket" technically describes the mix of goods and services used to produce home health care, this term is also commonly used to denote the input price index derived from that market basket. Accordingly, the term "market basket" used in this notice refers to the home health agency input price index.

The percentage change in the market basket reflects the average change in the price of goods and services purchased by home health agencies to furnish reasonable cost home health care services. HCFA first used the market basket to adjust home health agency cost limits by an amount that reflected the average increase in the prices of the goods and services used to furnish reasonable cost home health care. This approach linked the increase in the cost limits to the efficient utilization of resources. For background information on the home health agency market basket, see the February 15, 1980

Federal Register (45 FR 10451) and the February 14, 1995 Federal Register (60 FR 8392).

The home health agency market basket is a fixed-weight Laspeyres type price index constructed in three steps. First, a base period is selected and total base period expenditures are estimated for mutually exclusive and exhaustive spending categories based upon type of expenditure. Then the proportion of total costs that each category represents is determined. These proportions are called "cost" or "expenditure weights." The next step essential for developing an input price index is to match each expenditure category to an appropriate price/wage variable, called a price proxy. These proxy variables are drawn from a publicly available statistical series published on a consistent schedule, preferably at least quarterly. In the final step, the price level for each spending category is multiplied by the expenditure weight for that category. The sum of these products (that is, weights multiplied by proxied indexed levels) for all cost categories yields the composite index level in the market basket in a given year. Repeating the third step (that is, establishing a price proxy for each expenditure category) for other years will produce a time series of market basket index levels. Dividing one index level by an earlier index will produce rates of growth in the input price index.

The market basket is described as a fixed-weight index because it answers the question of how much more or less it would cost, at a later time, to purchase the same mix of goods and services that was purchased in the base period. The effects on total expenditures resulting from changes in the quantity or mix of goods and services purchased subsequent to the base period are by design not considered.

HCFA believes that it is desirable to rebase the market basket so the cost weights reflect changes in the mix of goods and services that HHAs purchase (HHA inputs) in furnishing home health care. The current HHA cost weights are from calendar year 1976. To the extent feasible, the data used to rebase the home health agency market basket are from FY 1993. If data from other periods supplemented FY 1993 data, they were aged forward or backward for price changes.

B. Rebasing and Revising the Home Health Agency Market Basket

The terms "rebasing" and "revising", while often used interchangeably, actually denote different activities. Rebasing is the term used to define moving the base year for the structure of costs of an input price index (that is, for this notice we are moving the base year cost structure from calendar year 1976 to Federal fiscal year 1993). Revising is the term used to define changing data sources, cost categories, and/or price proxies used in the input price index.

HCFA has rebased and revised the home health agency market basket to:

- Reflect 1993 cost data, the latest available data on the structure of HHA costs, rather than 1976 cost data;
- Create additional cost categories; and
- Modify certain variables used as the price proxies for some of the cost categories, using improved price proxies that were not available when the current market basket was developed.

In developing the revised market basket, HCFA reviewed HHA expenditure data for the market basket cost categories. For each freestanding HHA, we reviewed the latest settled cost report whose cost reporting period began on or after June 1, 1991 and was settled by October 1, 1995. These reports primarily were from FY 1993. Earlier and later year cost data were aged forward or backward for price changes to FY 1993. Data on home health agency expenditures for nine major expense categories (wages and salaries, employee benefits, transportation, operation and maintenance, administrative and general, insurance, fixed capital, movable capital, and a residual "all other") were tabulated. Expenditures for contract services were also tabulated from these Medicare cost reports. After totals for these main cost categories were calculated, we then determined the proportion of total costs that each category represents. The proportions represent the major rebased market basket weights.

Weights for the telephone, paper and printing, postage, and residual all other administrative and general subcategories were determined using the latest available (1987) U.S. Department of Commerce Bureau of Economic Analysis (BEA) Input-Output Table, from which data for other medical and health services were extracted. These data were aged from 1987 to 1993 using relative price changes. The BEA Input-Output database, which is updated at 5-year intervals, was most recently described in the Survey of Current Business article, "Benchmark Input-Output Accounts for the U.S. Economy, 1987" (April 1994).

This work resulted in the identification of 12 separate cost categories. The 1976-based home health agency market basket had nine separate cost categories. Detailed descriptions of each category and respective price proxy are provided in the Appendix to this notice. The differences between the major categories for the 1993-based index and those used for the current 1976-based index are summarized in Table 1 below. HCFA has allocated the Contracted Services weight to the Wages and Salaries and Employee Benefits cost categories in the 1976-based index in the same way as the 1993-based index for consistency and ease of comparison. See Table 2 for documentation of how HCRIS contract services' labor was allocated to three cost category components.

TABLE 1.—COMPARISON OF 1993 AND 1976 HOME HEALTH AGENCY MAJOR COST CATEGORIES AND WEIGHTS

Cost categories	Rebased 1993 Home Health Agency market basket	1976-based market basket, adjusted for consistency of contract labor with rebased 1993-based market basket
Wages and Salaries, including allocated Contract Services' Labor	54.226	70.724
Employee benefits, including allocated Contract Services' Labor	13.442	8.577
Operations & Maintenance	0.832	0.832
Administrative & General, including allocated Contract Services' Non-Labor	9.569	9.569
Telephone	0.725	0.725
Paper & Printing	0.529	0.529
Postage	0.724	0.724
Other Administrative & General, including allocated Contract services Non-Labor	7.591	7.591
Transportation	3.405	3.405
Capital-Related	3.204	3.204
Insurance	0.560	0.560
Fixed Capital	1.764	1.764
Movable Capital	0.880	0.880
Other Expenses, including allocated Contract Services' Non-Labor	5.322	5.322
Total	100.000	100.000

The 1993-based cost categories and weights are listed in Table 2 below.

TABLE 2.—1993-BASED COST CATEGORIES, WEIGHTS, AND PRICE PROXIES

Cost Category	1993-based market basket weight	Price proxy
Compensation, including allocated Contract Services' Labor	77.668	
Wages and Salaries, including allocated Contract Services' Labor	64.226	HHA Occupational Wage Index.
Employee benefits, including allocated Contract Services' Labor	13.442	HHA Occupational Benefits Index.
Operations & Maintenance	0.832	CPI–U Fuel & Other Utilities.
Administrative & General, including allocated Contract Services' Non-Labor	9.569	
Telephone	0.725	CPI–U Telephone.
Paper & Printing	0.529	CPI–U Household Paper, Paper Products & Stationery Supplies.
Postage	0.724	CPI–U Postage.
Other Administrative & General, including allocated Contract services Non-Labor	7.591	CPI–U Services.
Transportation	3.405	CPI–U Private Transportation.
Capital-Related	3.204	
Insurance	0.560	CPI–U Household Insurance.
Fixed Capital	1.764	CPI–U Owner's Equivalent Rent.
Movable Capital	0.880	PPI Machinery & Equipment.
Other Expenses, including allocated Contract Services' Non-Labor	5.322	CPI–U All Items Less Food & Energy.
Total	100.000	

In the 1976-based market basket, the labor-related portion was 79.301 and the remaining share was 20.699. In the revised and rebased market basket, the labor-related share is 77.668. The labor-related share includes wages and salaries, employee benefits, and contracted services' labor. The nonlabor-related share is 22.332. The higher share of nonlabor-related cost in 1993 may reflect in part the changing cost structure associated with the post-prospective payment system case mix of home health agencies. Table 3 details the components of the labor-related share for the 1976-based and 1993-based market baskets.

TABLE 3.—LABOR-RELATED SHARE OF HOME HEALTH AGENCY MARKET BASKET

Cost category	1993-based market basket weight	1976-based market basket weight
Wages and Salaries, including Contract Services' Labor allocation	64.226	70.724
Employee Benefits, including Contract Services' Labor allocation	13.442	8.577
Contracted Services, Labor-Related share	(1)	(1)
Total Labor Related	77.668	79.301
Total Non-Labor Related	22.332	20.699

[1]Included above.

After the 1993 cost weights for the rebased home health agency market basket were computed, we selected the most appropriate wage and price proxies currently available to monitor the rate of increase for each expenditure category. The indicators are based on Bureau of Labor Statistics (BLS) data and are grouped into one of the occupational groups, not just by industry.

- Consumer Price Indexes—Consumer Price Indexes (CPIs) measure change in the prices of final goods and services bought by the typical consumer. Consumer price indexes were used when the expenditure was more similar to that of retail consumers in

employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. They are not affected by shifts in employment mix. ECIs were not available when we developed the calendar year 1976-based home health agency market basket. ECIs are superior

• Producer Price Indexes—PPIs are used to measure price changes for goods sold in other than retail markets. For example, a PPI for movable equipment was used, rather than a CPI for equipment. PPIs in some cases are preferable price proxies for goods that home health agencies purchase as inputs utilized in the process of producing their outputs.

• Average Hourly Earnings—Average Hourly Earnings (AHEs) are used to measure the rate of change of earnings for various industries and, therefore, can reflect a changing occupational mix within a particular industry. The AHE series is calculated by dividing gross payrolls by total hours, and it measures actual earnings rather than pure wage rates. It is a current-weight series rather than a fixed-weight index and thus reflects shifts in employment mix. An AHE rather than an ECI is used when there is no corresponding ECI category that is an appropriate measure of growth for a given labor category or when the ECI does not have sufficient length of history to be useful for our purpose. The 1993-based HHA input price index does not use AHE as a price proxy, but the 1976-based index did.

Our price proxies for the rebased home health agency market basket are summarized in the Appendix to this notice. The forecasted rate of growth for the fiscal year, beginning July 1, 1996, for the rebased home health agency market basket is 3.1 percent, while the forecasted rate of growth for the 1976-based home health agency market basket is 3.3 percent. A comparison of the yearly changes from 1993–1998 for the 1976-based market basket and the 1993-based market basket is shown below.

TABLE 4—COMPARISON OF THE 1993-BASED MARKET BASKET AND THE 1976–MARKET BASKET, PERCENT CHANGE, 1993–1998

Fiscal years beginning July 1	Home Health Agency market basket, FY 1993 base	Home Health Agency market basket, CY 1976 base	Difference (1993-based minus 1976-based
Historical:			
July 1992, FY 1993	3.4	3.8	(0.4)
July 1993, FY 1994	3.0	2.7	0.3
July 1994, FY 1995	2.9	3.2	(0.3)
Forecasted:			
July 1995, FY 1996	2.7	3.1	(0.4)
July 1996, FY 1997	3.1	3.3	(0.2)
July 1997, FY 1998	3.2	3.4	(0.2)
Historical Average: 1993–1995	3.1	3.2	(0.1)
Forecasted Average: 1996–1998	3.0	3.3	(0.3)

Source: DRI/McGraw Hill HCC, 1st QTR 1996;@USSIM/TREND25YR0296 @CISSIM/CONTROL961.
Released by HCFA, OACT, Office of National Health Statistics.

Note that the historical average rate of growth for 1993–1995 for the home health agency 1993-based market basket was only 0.1 percentage points less than that of the 1976-based market basket, an insignificant difference. HCFA believes that the 1993-based HHA market basket gives a more accurate measure of the annual increases in reasonable cost care because (1) The cost structure reflects 1993 rather than 1976 costs, and (2) superior new wage-price variables have been incorporated into the 1993-based index. The forecasted average annual rate of growth for 1996–1998 is 3.0 percent for the 1993-based market basket, and 3.3 percent for the 1976-based market basket. Given the complexities of forecasting, this difference is very small.

HCFA has developed a HHA Blended Wage and Salary Index and a HHA Blended Benefits Index. HCFA will use these blended indexes as price proxies for the wages and salary and the employee benefits portions of the market basket. In the 1976-based market basket, the average hourly earnings in the hospital industry (nonsupervisory workers) was used as a price proxy for wages and salaries, and the supplements to wages and salaries per worker in nonagricultural establishments were used as a price proxy for employee benefits.

The new price proxies for these two cost categories are similar to those used in the prospective payment hospital market basket and the excluded hospital market basket, but with occupational weights reflecting the occupational mix in home health agencies. These proxies are a combination of internal and external proxies (health industry specific and economy-wide). HCFA has disaggregated the mix of home health agency workers into specific categories and applied a combination of internal and external price proxies in the HCFA HHA Occupational Wage and Salary and Benefits Indexes. The supply and demand relationships for certain professional-technical occupations such as registered nurses may be more appropriately reflected in the blended indicators of compensation changes for professional and technical employees. The occupational composition of the HHA Occupational Wage and Salary Index and the HHA Occupational Benefits Index are shown in the Appendix to this notice.

VII. Methodology for Determining Cost-per-Visit Limits

A. Data

For this notice, the cost-per-visit limit values were determined by extracting settled actual cost-per-visit data from Medicare cost reports for periods beginning on or after June 30, 1991, and settled before October 1, 1995. We then adjusted the data using the latest available market basket factors to reflect expected cost increases occurring between the cost reporting periods contained in our data base and June 30, 1997. The following adjustment factors were used to compute the per-visit costs:

TABLE 5.—FACTORS FOR INFLATING DATA BASE DOLLARS TO JUNE 30, 1997

[Inflation Adjustment Factors][1]

Fiscal year end	1992	1993	1994
January 31	.....	1.13729	1.10178
February 28	.....	1.13412	1.09908
March 31	.....	1.13095	1.09642
April 30	.....	1.12782	1.09380
May 31	.....	1.12473	1.09121
June 30	1.15976	1.12172	1.08863
July 31	1.15643	1.11878	1.08606
August 31	1.15316	1.11589	1.08349
September 30	1.14995	1.11301	1.08090
October 31	1.14678	1.11015	1.07830
November 30	1.14363	1.10731	1.07571
December 31	1.14047	1.10453	1.07316

[1] By multiplying nominal dollars for a given fiscal year end by its respective inflation adjustment factor will express those dollars in the dollar levels for June 30, 1997.

Sources: Input Price Index used to develop adjustment factors were obtained from DRI/McGraw-Hill for the period between 1989:4 and 1999:4. The forecasts are from DRI's 1st QTR 1996;@USSIM/TREND25YR 0296 @CISSIM/Control 961 forecast exercise which has historical data through 1995:4.

B. Cost Reporting Periods Consisting of Fewer Than 12 Months

HHAs may have cost reporting periods that are fewer than 12 months in duration. This may happen, for example, when a new provider enters the Medicare program after its selected fiscal year has already begun, or when a provider experiences a change of ownership before the end of the cost reporting period. As explained in section IV of this preamble, the data used in calculating the cost limits were updated to June 30, 1997. Therefore, the cost limits published in this notice are for a 12-month cost reporting period beginning July 1, 1996 and ending June 30, 1997. For 12-month cost reporting periods beginning after July 1, 1996 and before July 1, 1997, cost reporting year adjustment factors are provided in Table 8. However, when a cost reporting period consists of fewer than 12 months, adjustments must be made to the data that have been developed for use with 12-month cost reporting periods. In previous notices, we instructed intermediaries to contact HCFA for short period adjustment factors. In this notice, however, to promote the efficient dissemination of cost limits to providers with cost reporting periods of fewer than 12 months, we are publishing the following examples and tables to enable intermediaries to calculate the applicable adjustment factors.

Cost reporting periods of fewer than 12 months may not necessarily begin on the first of the month or end on the last day of the month. In order to simplify the process in calculating "short period" adjustment factors, if the short cost reporting period begins before the sixteenth of the month, we will consider the period have begun on the first of that month. If the start period begins on or after the sixteenth of the month, it will be considered to have begun at the beginning of the next month. Also, if the short period ends before the sixteenth of the month, we will consider the period to have ended at the end of the preceding month; if the short period ends on or after the sixteenth of the month it will be considered to have ended at the end of that month.

Examples

1. After approval by its intermediary, an HHA changes its fiscal year end from June 30 to December 31. Therefore, the HHA had a short cost reporting period beginning on July 1, 1996 and ending on December 31, 1996. The cost limits that apply to this short period must be adjusted as follows:

Step 1—From Table 9, sum the index levels for the months of July, 1996 through December, 1996: 6.84863.

Step 2—Divide the results from Step 1 by the number of months in the short period.

6.84863 ÷ 6 = 1.141438

Step 3—From Table 9, sum the index levels for the months in the common period of July, 1996 through June, 1997.

13.79728

Step 4—Divide the results in Step 3 by the number of months in the common period.

13.79728 ÷ 12 = 1.149773

Step 5—Divide the results from Step 2 by the results from Step 4. This is the adjustment factor to be applied to the published limits

1.141438 ÷ 1.149773 = .992751

Step 6—Apply the results from Step 5 to the published cost limits.

a. Urban Skilled Nursing Labor Portion

$76.57 × .992751 = $76.01

b. Urban Skilled Nursing Nonlabor Portion

$21.62 × .992751 = $21.46.

2. A HHA with a fiscal year end of November 30, 1996 changes ownership on September 21, 1997. The HHA is required to file a terminated cost report for the period of December 1, 1996 to September 21, 1997. The cost limits that apply to this short period must be adjusted as follows:

Step 1—From Table 9, sum the index level for the month of December, 1996 through September, 1997.

11.61295

Step 2—Divide the results from Step 1 by the number of months in the short period.

11.61295 ÷ 10 = 1.161295

Step 3—From Table 9, sum the index levels for the months in the common period of July, 1996, through June, 1997.

13.79728

Step 4—Divide the results from Step 3 by the number of months in the common period.

13.79728 ÷ 12 = 1.149773

Step 5—Divide the results from Step 2 by the results from Step 4.

1.161295 ÷ 1.149773 = 1.010021

Step 6—Apply the results from Step 5 to the published cost limits.

a. Urban Skilled Nursing Labor Portion

$76.57 × 1.010021 = $77.34

b. Urban Skilled Nursing Non-Labor Portion

$21.62 × 1.010021 = $21.84

C. Standardization for Wage Levels

After adjustment by the market basket index, we divided each HHA's per-visit

costs into labor and nonlabor portions. The labor portion of costs (77.668 percent as determined by the market basket) represents the employee wage and benefit factor plus the contract services factor from the market basket. We then divided the labor portion of per-visit costs by the wage index applicable to the HHA's location to arrive at an adjusted labor cost.

D. Adjustment for "Outliers"

We transformed all per-visit cost data into their natural logarithms and grouped them by type of service and MSA, NECMA, or non-MSA location, in order to determine the mean cost and standard deviation for each group. We then eliminated all "outlier" costs, retaining only those per-visit costs within two standard deviations of the mean in each service.

E. Basic Service Limit

We calculate a basic service limit equal to 112 percent of the mean labor and nonlabor portions of the per-visit costs of freestanding HHAs for each type of service. (See Table 6 in section IX.)

VIII. Computing the Adjusted Limit

A. Adjustment of Cost Limits by Wage Index

To arrive at the adjusted limit, which is to be applied to each service furnished by an HHA, the HHA's intermediary first determines the adjusted labor-related component by multiplying the labor-related component of the limit by the appropriate wage index and by multiplying the adjusted labor-related component by the special labor adjustment for budget neutrality. (See example below and Tables 7a and 7b in section X of this notice.) The sum of the nonlabor component plus the labor-related component is the adjusted limit applicable to an HHA.

Example—Calculation of Adjusted Occupational Therapy Limit for a Freestanding HHA in Dallas, TX

Labor component (Table 6)	83.41
Wage index value (Table 7a)	0.9804
Labor portion	81.78
Special labor adjustment for budget neutrality	0.91
Adjusted labor portion	74.42
Nonlabor component (Table 6)	23.84
Adjusted occupational therapy limit	98.26

B. Adjustment for Reporting Year

If an HHA has a 12-month cost reporting period beginning on or after August 1, 1996, the adjusted per-visit limit for each service is again revised by an adjustment factor from Table 8 that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded rate of monthly increase derived from the projected annual increase in the market basket index, and is used to account for inflation in costs that will occur after the date on which the limits become effective.

For example, if the HHA in the example above had a cost reporting period beginning January 1, 1997, its per-visit therapy limit would be further adjusted as follows:

Computation of Revised Limit for Occupational Therapy

Adjusted per-visit limit	98.26
Adjustment factor from Table 8	1.01524
Revised per-visit limit	99.76

In this example, the revised adjusted per-visit limit for occupational therapy applicable to this HHA for the cost reporting period beginning January 1, 1997, is $99.76 per visit.

If an HHA uses a cost reporting period that is not 12 months in duration, a special calculation of the adjustment factor must be made. This results from the fact that projections are computed to June 30, 1997. This calculation is done using the methodology described in section VII.B.

IX. Schedule of Limits

The schedule of limits set forth below applies to cost reporting periods beginning on or after July 1, 1996. The intermediaries will compute the adjusted limits using the wage index published in Tables 7a and 7b of section X and will notify each HHA they service of its applicable cost per-visit limit for each type of service. Each HHA's aggregate limit cannot be determined prospectively, but depends on each HHA's Medicare visits for each type of service for the cost reporting periods subject to this notice.

The HHA costs that are subject to the limits include the cost of medical supplies routinely furnished in conjunction with patient care. Durable medical equipment, orthotics, prosthetics, and other medical supplies directly identifiable as services to an individual patient are excluded from the per-visit costs and are paid without regard to this schedule of limits. (See Chapter IV of the Home Health Agency Manual (HCFA Pub. 11).)

The intermediary will determine the limit for each HHA by multiplying the number of Medicare visits for each type of service furnished by the HHA, by the respective per-visit cost limit. The sum of these amounts is compared to the HHA's total allowable cost.

Example: HHA X, a freestanding agency located in Richmond, VA, furnished 5,000 covered skilled nursing visits, 2,000 physical therapy visits, and 4,000 home health aide visits to Medicare beneficiaries during its 12-month cost reporting period beginning July 1, 1996. The aggregate cost limit for the HHA is calculated as follows:

DETERMINING THE AGGREGATE COST LIMIT

Type of visit	Visits	Nonlabor portion	Adjusted labor portion	Adjusted limit [1]	Aggregate limit
Skilled nursing	5,000	$21.62	$63.09	$84.71	$423,550
Physical therapy	2,000	23.59	69.09	92.65	185,360
Home health aide	4,000	10.56	30.50	41.16	164,640
Total Visits	11,000				
Aggregate cost limit					773,5501

[1] Includes special labor adjustment of 0.91 for budget neutrality.

Before the limits are applied during settlement of the cost report, the HHA's actual costs are reduced by the amount of individual items of cost (for example, administrative compensation and contract services) that are found to be excessive under the Medicare principles of provider payment. That is, the intermediary reviews the various reported costs, taking into account all the Medicare payment principles; for example, the cost guidelines for physical therapy furnished under arrangements (see 42 CFR 413.106) and the limitation on costs that are substantially out of line with those comparable home health agencies (see 42 CFR 413.9).

TABLE 6.—PER VISIT LIMITS FOR HOME HEALTH AGENCIES

Type of visit	Limit	Labor portion	Nonlabor portion [1]
MSA (NECMA) location:			
Skilled nursing care	98.19	76.57	21.62
Physical therapy	107.43	83.84	23.59
Speech pathology	107.99	84.11	23.88
Occupational therapy	107.25	83.41	23.84
Medical social services	142.05	110.59	31.46
Home health aide	47.70	37.14	10.56
Non-MSA location:			
Skilled nursing care	109.62	89.53	20.09
Physical therapy	119.65	97.61	22.04
Speech pathology	130.61	106.31	24.30
Occupational therapy	129.30	105.06	24.24
Medical social services	184.03	149.82	34.21
Home health aide	47.50	38.57	8.73

[1] Nonlabor portion of limits for HHA located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands are increased by multiplying them by the following cost-of-living adjustment factors:

Location	Adjustment factor
Alaska	1.250
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui, Lanai, and Molokai	1.200
Hawaii (Island)	1.150
Puerto Rico	1.100
Virgin Islands	1.125

X. Wage Indexes

TABLE 7A.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
0040 Abilene, TX	0.8546
Taylor, TX	
0060 Aguadilla, PR	0.4744
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9558
Portage, OH	
Summit, OH	
0120 Albany, GA	0.8608
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8818
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9542
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.7917
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	1.0198
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9007
Blair, PA	
0320 Amarillo, TX	0.8759
Potter, TX	
Randall, TX	
0380 AK Anchorage, AK	1.3373
Anchorage,	
0440 Ann Arbor, MI	1.2116
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8158
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.8844
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4498
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9218
Buncombe, NC	
Madison, NC	
0500 Athens, GA	0.9097
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 *Atlanta, GA	1.0069
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
DeKalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic City- Cape May, NJ	1.0935
Atlantic City, NJ	
Cape May, NJ	
0600 Augusta-Aiken, GA-SC	0.8955
Columbia, GA	
McDuffie, GA	
Richmond, GA	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9255
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	1.0502
Kern, CA	
0720 *Baltimore, MD	0.9865
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
0733 Bangor, ME	0.9360
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.3457
Barnstable, MA	
0760 Baton Rouge, LA	0.8570
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8603
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.2681
Whatcom, WA	
0870 Benton Harbor, MI	0.8258
Berrien, MI	
0875 *Bergen-Passaic, NJ	1.1677
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.8705
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8448
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.9005
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.9144
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.8299
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8429
Monroe, IN	
1040 Bloomington-Normal, IL	0.8740
McLean, IL	
1080 Boise City, ID	0.9051
Ada, ID	
Canyon, ID	
1123 *Boston-Brockton-Nashua, MA-NH	1.1684
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	0.9780
Boulder, CO	
1145 Brazoria, TX	0.8814
Brazoria, TX	
1150 Bremerton, WA	1.0295
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8649
Cameron, TX	
1260 Bryan-College Station, TX	0.8987
Brazos, TX	
1280 *Buffalo-Niagara Falls, NY	0.9186
Erie, NY	
Niagara, NY	
1303 Burlington, VT	0.9252
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4706
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.8749
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.8429
Natrona, WY	
1360 Cedar Rapids, IA	0.8359
Linn, IA	
1400 Champaign-Urbana, IL	0.8867
Champaign, IL	
1440 Charleston-North Charleston, SC	0.8928
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.9498
Kanawha, WV	
Putnam, WV	
1520 *Charlotte-Gastonia-Rock Hill, NC-SC	0.9661
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	0.9179
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN–GA	0.9129
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.7935
Laramie, WY	
1600 *Chicago, IL	1.0632
Cook, IL	
DeKalb, IL	
DuPage, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	1.0531
Butte, CA	
1640 *Cincinnati, OH–KY–IN	0.9418
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN–KY	0.7542
Christian, KY	
Montgomery, TN	
1680 *Cleveland-Lorain-Elyria, OH	0.9835
Ashtabula, OH	
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9294
El Paso, CO	
1740 Columbia, MO	0.9461
Boone, MO	
1760 Columbia, SC	0.9033
Lexington, SC	
Richland, SC	
1800 Columbus, GA–AL	0.7756
Russell, AL	
Chattanoochee, GA	
Harris, GA	
Muscogee, GA	
1840 *Columbus, OH	0.9734
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8941
Nueces, TX	
San Patricio, TX	
1900 Cumberland, MD–WV	0.8372
Allegany, MD	
Mineral, WV	
1920 *Dallas, TX	0.9804
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
1950 Danville, VA	0.8465
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Rock Island-Moline, IA–IL	0.8347
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9428
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.8902
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.6180
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.7790
Macon, IL	
2080 *Denver, CO	1.0447
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.8792
Dallas, IA	
Polk, IA	
Warren, IA	
2160 *Detroit, MI	1.0831
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.7751
Dale, AL	
Houston, AL	
2190 Dover, DE	0.8960
Kent, DE	
2200 Dubuque, IA	0.8054
Dubuque, IA	
2240 Duluth-Superior, MN–WI	0.9560
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0754
Dutchess, NY	
2290 Eau Claire, WI	0.8660
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9266
El Paso, TX	
2330 Elkhart-Goshen, IN	0.8764
Elkhart, IN	
2335 Elmira, NY	0.8450
Chemung, NY	
2340 Enid, OK	0.8170
Garfield, OK	
2360 Erie, PA	0.9196
Erie, PA	
2400 Eugene-Springfield, OR	1.1138
Lane, OR	
2440 Evansville-Henderson, IN–KY	0.8899
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND–MN	0.8912
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8845
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.7090
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ–UT	0.8619
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.0738
Genesee, MI	
2650 Florence, AL	0.7700
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8522
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0595
Larimer, CO	
2680 *Ft. Lauderdale, FL	1.0499
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.9696
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	1.0401
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR–OK	0.7586
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.8705
Okaloosa, FL	
2760 Fort Wayne, IN	0.8691
Adams, IN	
Allen, IN	
DeKalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 *Forth Worth-Arlington, TX	1.0059
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0522
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8585
Etowah, AL	
2900 Gainesville, FL	0.9007
Alachua, FL	
2920 Galveston-Texas City, TX	1.0304
Galveston, TX	
2960 Gary, IN	0.9517
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.9276
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8165
Wayne, NC	
2985 Grand Forks, ND–MN	0.8946
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.8657
Mesa, CO	
3000 Grand Rapids-Muskegon-Holland, MI	1.0055
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.8913
Cascade, MT	
3060 Greeley, CO	0.9146
Weld, CO	
3060 Green Bay, WI	0.8910
Brown, WI	
3120 *Greensboro-Winston-Salem-High Point, NC	0.9160
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9102
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9047
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9074
Washington, MD	
3200 Hamilton-Middletown, OH	0.8782
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	0.9972
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 *Hartford, CT	1.2391
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7245
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.8677
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1212
Honolulu, HI	
3350 Houma, LA	0.7596
Lafourche, LA	
Terrebonne, LA	
3360 *Houston, TX	0.9674
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV–KY–OH	0.8997
Boyd, KY	
Carter, KY	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8113
Limestone, AL	
Madison, AL	
3480 *Indianapolis, IN	0.9757
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9371
Johnson, IA	
3520 Jackson, MI	0.9132
Jackson, MI	
3560 Jackson, MS	0.7543
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.6511
Madison, TN	
3600 Jacksonville, FL	0.8953
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC	0.6926
Onslow, NC	
3610 Jamestown, NY	0.7535
Chautauqua, NY	
3620 Janesville-Beloit, WI	0.8766
Rock, WI	
3640 Jersey City, NJ	1.1050
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN–VA	0.8746
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8948
Cambria, PA	
Somerset, PA	
3710 Joplin, MO	0.7923
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battlecreek, MI	1.0657
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	0.9114
Kankakee, IL	
3760 *Kansas City, KS–MO	0.9351
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.8872
Kenosha, WI	
3810 Killeen-Temple, TX	1.0526
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.8518
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.8834
Howard, IN	
Tipton, IN	
3870 La Crosse, WI–MN	0.8519
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8443
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.8328
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.8094
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.8879
Polk, FL	
4000 Lancaster, PA	0.9569
Lancaster, PA	
4040 Lansing-East Lansing, MI	1.0105
Clinton, MI	
Eaton, MI	
Ingham, MI	
4060 Laredo, TX	0.6834
Webb, TX	
4100 Las Cruces, NM	0.8861
Dona Ana, NM	
4120 *Las Vegas, NV–AZ	1.0934
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.8549
Douglas, KS	
4200 Lawton, OK	0.8594
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9433
Androscoggin, ME	
4280 Lexington, KY	0.8348
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.8863
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9093
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.8527
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8727
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 *Los Angeles-Long Beach, CA	1.2491
Los Angeles, CA	
4520 Louisville, KY–IN	0.9327
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.8443
Lubbock, TX	
4640 Lynchburg, VA	0.8319
Amherst, VA	
Bedford, VA	
Bedford City, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.8991
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0055
Dane, WI	
4800 Mansfield, OH	0.8373
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4644
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San Germain, PR	
4880 McAllen-Edinburg-Mission, TX	0.8689
Hidalgo, TX	
4890 Medford-Ashland, OR	0.9944
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	0.9323
Brevard, FL	
4920 *Memphis, TN–AR–MS	0.8399
Crittenden, AR	
DeSoto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	1.0877
Merced, CA	
5000 *Miami, FL	1.0163
Dade, FL	
5015 *Middlesex-Somerset-Hunterdon, NJ	1.0809
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 *Milwaukee-Waukesha, WI	0.9498
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 *Minneapolis-St. Paul, MN–WI	1.0744
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5160 Mobile, AL	0.7801
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.1161
Stanislaus, CA	
5190 *Monmouth-Ocean, NJ	1.0562
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.7900
Ouachita, LA	
5240 Montgomery, AL	0.7878
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	0.9125
Delaware, IN	
5330 Myrtle Beach, SC	0.7961
Horry, SC	
5345 Naples, FL	0.9871
Collier, FL	
5360 *Nashville, TN	0.9266
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 *Nassau-Suffolk, NY	1.3590
Nassau, NY	
Suffolk, NY	
5483 *New Haven-Bridgeport-Stamford-Danbury-Waterbury, CT	1.2534
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.1899
New London, CT	
5560 *New Orleans, LA	0.9454
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	
St. Tammany, LA	
5600 *New York, NY	1.3815
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 *Newark, NJ	1.1407
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY-PA	1.0619
Orange, NY	
Pike, PA	
5720 *Norfolk-Virginia Beach-Newport News, VA–NC	0.8411
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
5775 *Oakland, CA	1.5202
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.8942
Marion, FL	
5800 Odessa-Midland, TX	0.8753
Ector, TX	
Midland, TX	
5880 *Oklahoma City, OK	0.8358
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.1109
Thurston, WA	
5920 Omaha, NE–IA	0.9794
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 *Orange County, CA	1.2299
Orange, CA	
5960 *Orlando, FL	0.9515
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.7496
Daviess, KY	
6015 Panama City, FL	0.8182
Bay, FL	
6020 Parkersburg-Marietta, WV–OH	0.7751
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8183
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8619
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 *Philadelphia, PA–NJ	1.1112
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 *Phoenix-Mesa, AZ	0.9806
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7985
Jefferson, AR	
6280 *Pittsburgh, PA	0.9743
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0838
Berkshire, MA	
6360 Ponce, PR	0.4780
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9744
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 *Portland-Vancouver, OR–WA	1.1248
Clackamas, OR	
Columbia OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick, RI	1.1027
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	0.9843
Utah, UT	
6560 Pueblo, CO	0.8508
Pueblo, CO	
6580 Punta Gorda, FL	0.9402
Charlotte, FL	
6600 Racine, WI	0.8704
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	0.9639
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
6660 Rapid City, SD	0.8267
Pennington, SD	
6680 Reading, PA	0.9570
Berks, PA	
6690 Redding, CA	1.1796
Shasta, CA	
6720 Reno, NV	1.1087
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.0011
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9055
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 *Riverside-San Bernardino, CA	1.1616
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8483
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.0545
Olmsted, MN	
6840 *Rochester, NY	0.9585
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.8872
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.8760
Edgecombe, NC	
Nash, NC	
6920 *Sacramento, CA	1.2539
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	0.9489
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	0.9549
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO	0.8457
Andrews, MO	
Buchanan, MO	
7040 *St. Louis, MO–IL	0.8880
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
7080 Salem, OR	0.9590
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4263
Monterey, CA	
7160 *Salt Lake City-Ogden, UT	0.9681
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.7777
Tom Green, TX	
7240 *San Antonio, TX	0.8414
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 *San Diego, CA	1.1844
San Diego, CA	
7360 *San Francisco, CA	1.4413
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 *San Jose, CA	1.4429
Santa Clara, CA	
7440 *San Juan-Bayamon, PR	0.4514
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luquillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1405
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.1136
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.3944
Santa Cruz, CA	
7490 Santa Fe, NM	1.1108
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.2693
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9737
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.8968
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton—Wilkes-Barre—Hazleton, PA	0.8724
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 *Seattle-Bellevue-Everett, WA	1.1305
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.8903
Mercer, PA	
7620 Sheboygan, WI	0.7981
Sheboygan, WI	
7640 Sherman-Denison, TX	0.8750
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.9007
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA–NE	0.8436
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.8761
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9475
St. Joseph, IN	
7840 Spokane, WA	1.0377
Spokane, WA	
7880 Springfield, IL	0.8940
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.7696
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.0517
Hampden, MA	
Hampshire, MA	
8050 State College, PA	1.0162
Centre, PA	
8080 Steubenville-Weirton, OH–WV	0.8455
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.1536
San Joaquin, CA	
8140 Sumter, SC	0.8344
Sumter, SC	
8160 Syracuse, NY	0.9531
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.0825
Pierce, WA	
8240 Tallahassee, FL	0.8321
Gadsden, FL	
Leon, FL	
8280 *Tampa-St. Petersburg-Clearwater, FL	0.9262
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8672
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana, AR-Texarkana, TX	0.8198
Miller, AR	
Bowie, TX	
8400 Toledo, OH	1.0424
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9736
Shawnee, KS	
8480 Trenton, NJ	1.0033
Mercer, NJ	
8520 Tucson, AZ	0.9289
Pima, AZ	
8560 Tulsa, OK	0.8245
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8090
Tuscaloosa, AL	
8640 Tyler, TX	0.9439
Smith, TX	
8680 Utica-Rome, NY	0.8514
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3468
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.1924
Ventura, CA	
8750 Victoria, TX	0.8435
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	0.9986
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	1.0446
Tulare, CA	
8800 Waco, TX	0.7998
McLennan, TX	
8840 *Washington, DC–MD–VA–WV	1.1116
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpepper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8500
Black Hawk, IA	
8940 Wausau, WI	1.0034
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	1.0217
Palm Beach, FL	
9000 Wheeling, OH–WV	0.7518
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9562
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.7826
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8506
Lycoming, PA	
9160 Wilmington-Newark, DE–MD	1.1539
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9299
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	0.9951
Yakima, WA	
9270 Yolo, CA	1.1615
Yolo, CA	
9280 York, PA	0.9166
York, PA	
9320 Youngstown-Warren, OH	0.9555
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0611
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.9769
Yuma, AZ	

*Large Urban Area

TABLE 7B.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7154
Alaska	1.2034
Arizona	0.7995
Arkansas	0.6897
California	1.0096
Colorado	0.7988
Connecticut	1.3117
Delaware	0.9019
Florida	0.8668
Georgia	0.7721
Hawaii	0.9847
Idaho	0.8378
Illinois	0.7497
Indiana	0.8097
Iowa	0.7362
Kansas	0.7229
Kentucky	0.7650
Louisiana	0.7275
Maine	0.8435
Maryland	0.8468
Massachusetts	1.0577
Michigan	0.8744
Minnesota	0.8127
Mississippi	0.6887
Missouri	0.7186
Montana	0.8091
Nebraska	0.7219
Nevada	0.8788
New Hampshire	1.0013
New Jersey[1]	
New Mexico	0.8329
New York	0.8647
North Carolina	0.7999
North Dakota	0.7265
Ohio	0.8296
Oklahoma	0.8585
Oregon	0.9486
Pennsylvania	0.8521
Puerto Rico	0.4326
Rhode Island[1]	
South Carolina	0.7738
South Dakota	0.6997
Tennessee	0.7409
Texas	0.7316
Utah	0.8692
Vermont	0.9045
Virginia	0.7788
Washington	0.9775
West Virginia	0.8036
Wisconsin	0.9391
Wyoming	0.8013

[1] All counties within the State are classified urban.

TABLE 8.—COST REPORTING YEAR ADJUSTMENT FACTOR[1]

If the HHA cost reporting period begins	The adjustment factor is
August 1, 1996	1.00251
September 1, 1996	1.00505
October 1, 1996	1.00759
November 1, 1996	1.01012
December 1, 1996	1.01266
January 1, 1997	1.01524
February 1, 1997	1.01788
March 1, 1997	1.02056
April 1, 1997	1.02326
May 1, 1997	1.02599
June 1, 1997	1.02875

[1] Based on compounded projected market basket inflation rates.

These adjustment factors are subject to change based on later estimates of cost increases.

If for any reason we do not publish a new schedule of limits to be effective on July 1, 1997 or do not announce other changes in the current schedule by that date, the current limits will continue in effect. Intermediaries will be notified of the adjustment factors to be applied until a new schedule of limits or other provision is issued.

TABLE 9.—MONTHLY INDEX LEVELS FOR CALCULATING INFLATION FACTORS TO BE APPLIED TO HOME HEALTH AGENCY COST LIMITS

Month	Index level
July 1996	1.13366
August 1996	1.13700
September 1996	1.13999
October 1996	1.14299
November 1996	1.14600
December 1996	1.14899
January 1997	1.15199
February 1997	1.15500
March 1997	1.15700
April 1997	1.15900
May 1997	1.16100
June 1997	1.16466
July 1997	1.16832
August 1997	1.17200
September 1997	1.17499
October 1997	1.17799
November 1997	1.18100
December 1997	1.18466
January 1998	1.18832
February 1998	1.19200
March 1998	1.19433
April 1998	1.19666
May 1998	1.19900

Source: DR/McGraw-Hill HCC, 1st QTR 1996; @USSIM/TREND 25YR0296 @CISSIM/CONTROL961.

XI. Regulatory Impact Statement

For notices such as this, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless we certify that the notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all HHAs are treated as small entities.

As discussed below, the aggregate impact of this notice is relatively small, and we have no evidence that the economic impact on most HHAs will be significant. Moreover, this notice is necessary to implement the provisions of section 1861(v)(1)(L) of the Act; thus no alternatives to the provisions set forth in this notice are available. However, because this notice may have some effect on a large number of providers, we are providing a voluntary regulatory flexibility analysis.

This notice with comment period sets forth a schedule of HHA cost limits for cost reporting periods beginning on or after July 1, 1996. The methodology used to develop the schedule of limits set forth in this notice is the same as that used in setting the limits effective July 1, 1993. (As discussed in section IV.A of this notice, we are no longer providing for an add-on to the HHA cost limits for those HHAs that incur costs associated with the OSHA universal precaution requirements, since these updated limits are computed using a data base that includes the costs of complying with the OSHA standards.) In accordance with section 1861(v)(1)(L)(i) of the Act, we are continuing to set the limits not to exceed 112 percent of the mean of the labor-related and nonlabor per-visit costs for freestanding HHAs. As required by section 1861(v)(1)(L)(iii) of the Act, we are using the most recent hospital wage index to calculate the HHA cost limits, that is, the hospital wage index effective for discharges on or after October 1, 1995, which is based on 1992 wage survey data. The wage index is used to adjust the labor-related portion of the limits to reflect differing wage levels among areas. As discussed in section II of this notice, we are applying a budget neutrality adjustment factor of 0.91 to the labor-related portion of the limits to ensure that aggregate payments to HHAs are not affected by the updating of the wage index.

We continue to use the latest settled cost report data to develop the HHA cost-per-visit limit values for each type of home health service: skilled nursing care, physical therapy, speech pathology, occupational therapy, medical social services, and home health aide. Thus, for this notice, we have updated the cost-per-visit limits by using actual cost-per-visit data from settled Medicare cost reports for periods beginning on or after June 1, 1991, and settled by October 1, 1995. The majority of the cost reports were from FY 1993. The data have been adjusted by the most recent market basket factors to reflect the expected cost increases occurring between the cost reporting periods for the data contained in the data base and June 30, 1997. The intermediary determines the aggregate cost limit for each HHA by multiplying the number of Medicare visits for each type of service furnished by the HHA by the respective per-visit cost limit. Each HHA's aggregate limit cannot be determined prospectively, but depends on each HHA's Medicare visits for each type of service and actual costs for the cost reporting period subject to this notice.

The database used to calculate these limits consists of cost reporting data from 3,190 freestanding HHAs, compared with 2,992 freestanding HHAs used in calculating the limits in effect for cost reporting periods beginning on or after July 1, 1993. We estimate that the revised HHA cost limits implemented in this notice with public comment period will result in the following costs to the Medicare program:

TABLE 10.—HHA COST LIMITS

[Medicare Program Costs][1]

Fiscal year	Costs (in millions)
1996	0
1997	10

[1] Figures are rounded to the nearest million.

The costs associated with the new HHA cost limits represent the difference between projected aggregate Medicare expenditures under the new limits and projected aggregate expenditures using the limits in effect for cost reporting periods beginning on or after July 1, 1993, updated by the market basket increases since those limits took effect. This notice does not provide for a permanent extension of the OBRA '93 provision that there be no changes in the home health agency cost limits for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996. Because this change would require statutory authority, President Clinton's FY 1997 Budget includes a proposal to do so.

We are unable to identify the effects of changes to the cost limits on individual HHAs. In general, we believe that most HHAs will experience small revenue increases under the new limits; the degree of that increase will vary depending on the proportion of an HHA's revenues that come from Medicare, the distribution of services provided by the HHA, and the HHA's ability to operate within the cost limits. Table 11 below illustrates the proportion of HHAs that are likely to be affected by the limits:

TABLE 11.—HHAs EXCEEDING THE COST LIMITS

	HHAs in database	HHAs exceeding the limits	Percent of HHAs exceeding the limits
Total HHAs	4987	1720	34.5

TABLE 11.—HHAs EXCEEDING THE COST LIMITS—Continued

	HHAs in database	HHAs exceeding the limits	Percent of HHAs exceeding the limits
Freestanding	3190	773	24.2
Hospital-based	1797	947	52.7

Section 1102(b) of the act requires the Secretary to prepare a regulatory impact analysis if a final notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital located outside a Metropolitan Statistical Area with fewer than 50 beds.

We are not preparing a rural impact statement because the Secretary has determined, and certifies, that this notice will not have a significant impact on a substantial number of rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

XII. Other Required Information

A. Waiver of Proposed Notice and 30-Day Delay in Effective Date

In adopting notices such as this, we ordinarily publish a proposed notice in the **Federal Register** with a 60-day period for public comment as required under section 1871(b)(1) of the Act. We also normally provide a delay of 30 days in the effective date for documents such as this. However, we may waive these procedures if we find good cause that prior notice and comment or a delay in the effective date are impracticable, unnecessary, or contrary to public interest.

Section 1861(v)(1)(L)(iii) of the Act requires that the Secretary establish revised HHA cost limits for cost reporting periods beginning on or after July 1, 1991 and annually thereafter (except for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996). As discussed in section III above, in accordance with the statute, we have used the same methodology to develop the schedule of limits that was used in setting the limits effective for cost reporting periods beginning on or after July 1, 1993. The cost limits have been updated by the appropriate market basket adjustment factor to reflect the cost increases occurring between the cost reporting periods for the data contained in the data base and June 30, 1997. In addition, as required under section 1861(v)(1)(L)(iii) of the Act, we have updated the wage index using the most recent hospital wage index.

If HHAs are to receive timely the benefits of these new cost limits based on the updated wage index and market basket adjustment factors, it is necessary that these limits be published in time to take effect for cost reporting periods beginning on or after July 1, 1996. Because the methodology used to develop this schedule of limits is for the most part dictated by the statute and has been previously published for public comment, we believe that in this instance it would be impracticable, unnecessary, and contrary to the public interest to publish a proposed notice or to provide for a 30-day delay in the effective date of this notice. Therefore, we find good cause to waive publication of a proposed notice and the 30-day delay in the effective date. However, we are providing a 60-day period for public comment, as indicated at the beginning of this notice.

B. Paperwork Reduction Act

This final notice does not impose information collection requirements. Consequently, it does not need to be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

C. Public Comments

Because of the large number of items of correspondence we normally receive on a notice with comment period, we are not able to acknowledge or respond to them individually. However, we will consider all comments concerning the provisions of this notice that we receive by the date and time specified in the "DATES" section of this notice, and we will respond to those comments in a subsequent notice.

Appendix—Technical Features of the HHA Market Basket Index

As discussed in the preamble of this rule, we are rebasing and revising the home health agency market basket. This appendix describes the technical features of the 1993-based index that we are proposing for this notice. We present this description of the market basket in three steps:

- A synopsis of the structural differences between the 1976- and the 1993-based market baskets.
- A description of the methodology used to develop the cost category weights in the 1993-based market basket.
- A description of the data sources used to measure price change for each component of the 1993-based market basket, making note of the differences from the price proxies used in the 1976-based market basket.

I. Synopsis of Structural Changes Adopted in the Rebased 1993 Home Health Agency Market Basket

Three major structural differences exist between the 1976-based and the 1993-based home health agency market baskets.

1. More recent home health agency expenditure data are being used in the revised and rebased home health agency market basket.

The 1976-based market basket contained cost shares that were derived from 1976 Medicare cost reports and other available health industry surveys. The 1993-based market basket uses data from the latest settled Medicare Cost Reports for Freestanding Home Health Agencies whose cost reporting periods began after June 1, 1991 and were settled by October 1, 1995 (one per HHA). These data were primarily reports from Federal fiscal year 1993; earlier and later data were aged forward and backward to Federal fiscal year 1993 using price changes. Additional information from the U.S. Department of Commerce Bureau of Economic Analysis (BEA) 1987 Input-Output Tables was used for some subcategories. It was aged to 1993 for relative price changes.

2. Some cost categories have been disaggregated and some cost categories have been combined. These category changes reflect the availability of data in the cost reports and in the BEA Input-Output Tables.

3. We will use Blended HHA Occupational Wage and Benefits Indexes. This parallels the use of Blended Wage and Salary and Benefits Indexes in the PPS and Excluded Hospital market baskets, but with adjustments for the occupational mix of home health agencies.

II. Methodology for Developing the Cost Category Weights

Cost category weights for the 1993-based market basket were developed in two stages. First, base weights for nine main categories (Wages and Salaries, Employee Benefits, Transportation, Operation and Maintenance, Administrative and General, Insurance, Fixed Capital, Movable Capital, and a residual All Other) were derived from the Home Health Agency Medicare Cost Reports described above. A weight for

Contract Service Labor was derived from the HHA Medicare Cost Reports, and allocated to (a) Wages & Salaries, (b) Employee Benefits, (c) Other Administrative and General, and (d) Other Expenses. Contract Services costs were allocated to the above four categories with proportionally higher weight given to (a) Wages and Salaries and (b) Employee Benefits to reflect that a substantial portion of contract services are from individual independent contractors with lower overhead than the average home health agency.

Second, the weight for Administrative and General was divided into subcategories using cost shares from the 1987 Input-Output Table for the Other Medical and Health Services industry, produced by the U.S. Department of Commerce, Bureau of Economic Analysis, aged to 1993 using price changes. The Other Medical and Health Services industry is the residual of the Health Services industry less the Doctors and Dentists, Hospitals, and Nursing and Personal Care Facilities industries. It includes SIC 804, Other Health Practitioners; SIC 807, Medical and Dental Laboratories; SIC 808, Home Health Agencies; SIC 809 Health and Allied Services, not elsewhere classified; and SIC 074, Veterinary Services. The largest share of employment in these industries is in home health agencies.

Below we describe the source of the nine main category weights and their subcategories in the 1993-based market basket.

1. Wages and Salaries, including an allocation for contract services' labor: The wages and salaries cost category is one of the nine base weights derived from using the Medicare Cost Reports. Contract Services, which is also derived from the Medicare Cost Reports, is split among the (a) Wages and Salaries, (b) Employee Benefits, (c) Other Administrative and General, and (d) Other Expenses cost categories. An example of Contract Service Labor is registered nurses who are employed and paid by firms which contract for their work with home health agencies or a registered nurse who is an independent contractor and works out of his or her personal residence. The wages and salaries cost category was disaggregated into four occupational subcategories (professional and technical, executive and administrative, administrative support, home health aides, and all other service occupations) to reflect the mix of occupational inputs used by home health agencies. The 1993-based weights were developed from the Medicare Cost Reports. The 1976-based market basket had a separate cost category for Contracted Services' Labor.

2. Employee Benefits, including an allocation for contract services' labor: The employee benefits cost category is one of the nine base weights derived from the Medicare cost reports. A share of contract services' labor was allocated to this cost category. Like wages and salaries, the employee benefit weight in the 1993-based market basket is a composite of four labor subcategories. These were developed from the Medicare cost reports.

3. Transportation: The weight for Transportation was derived from the Medicare Cost Reports. The 1976-based market basket had a similar cost category.

4. Operations and Maintenance: The weight for Operations and Maintenance was derived from the Medicare Cost Reports. The 1976-based market basket had Utilities and Miscellaneous Cost Categories which have been replaced.

5. Administrative and General, including an allocation for non-labor associated with contract labor services: The weight for Administrative and General was derived from the Medicare cost reports. The subcategories of Telephone, Paper and Printing, Postage, and residual Other Administrative and General expenses were derived from the 1987 BEA Input-Output Tables, moved forward to 1993 using price changes. A share of contract services non-labor expenses (implied other expenses) was allocated to the Other Administrative and General subcategory. The 1976-based market basket contained an Office Administration Costs category.

6. Capital-related: The weights for the subcategories for Insurance, Fixed Capital, and Movable Capital were derived from the Medicare cost reports. The 1976-based market basket did not contain insurance, fixed capital or movable capital as separate categories, but did contain a Miscellaneous Costs, an Office Administration Costs, a Rental and Leasing, and a Medical Nursing Supplies cost category. Capital-related costs include interest expenses.

7. Other Expenses: The weight for Other Expenses was derived from the Medicare Cost Reports. A share of contract services non-labor expenses (implied other expenses) was allocated to the Other Expenses cost category. The 1976-based market basket had a Miscellaneous Costs cost category.

III. Price Proxies Used To Measure Cost Category Growth

1. Wages and Salaries, including an allocation for contract services' labor: For measuring price growth in the 1993-based market basket, price proxies are applied to the five occupational subcategories within the wages and salaries component, as is done in the hospital market baskets, weighted to reflect the home health agency occupational mix. The Professional and Technical occupational subcategory is represented by a blend of health industry and economy-wide price proxies. Therefore, there are five price proxies for four occupational subcategories (the Professional and Technical occupational subcategory has a blend of two). Table 4 at the end of this appendix describes the wages and salaries component of the market basket.

2. Employee Benefits, including an allocation for contract services' labor: For measuring price growth in the 1993-based market basket, price proxies are applied to the four occupational subcategories within the employee benefits component, as is done in the hospital market baskets, weighted to reflect the home health agency occupational mix. The Professional and Technical occupational subcategory is represented by a blend of health industry and economy-wide price proxies. Therefore there are five price proxies for four occupational subcategories (the Professional and Technical subcategory has a blend of two). Table 5 at the end of this appendix describes the employee benefits component of the market basket.

3. Operations and Maintenance: The percentage change in the price of Fuel and Other Utilities as measured by the Consumer Price Index was applied to this component. This is a revision from the 1976-based index in which the percentage change in the price of utilities was measured by a composite fuel and other utilities index.

4. Telephone: The percentage change in the price of Telephone Service as measured by the Consumer Price Index was applied to this component. This is a revision from the 1976-based index when the cost of telephone service was not specifically measured.

5. Paper and Printing: The percentage change in the price of Paper and Printing as measured by the Consumer Price Index for Household Paper Products and Stationery Supplies was applied to this component. This is a revision from the 1976-based index when the cost of paper and printing was not specifically measured.

6. Postage: The percentage change in the price of Postage as measured by the Consumer Price Index was applied to this component. This is a revision from the 1976-based index when the cost of postage was not specifically measured.

7. Other Administrative and General, including an allocation for non-labor expenses associated with contract services: The percentage change in the price of services as measured by the Consumer Price Index was applied to this component. In the 1976-based market basket the CPI for Services was used as a proxy for Office Administration costs.

8. Insurance: The percentage change in the price of Household Insurance as measured by the Consumer Price Index was applied to this component. This is a revision from the 1976-based market basket in which the price of insurance was not specifically measured.

9. Transportation: The percentage change in the price of Transportation as measured by the Consumer Price Index was applied to this component. The same proxy was used for Transportation in the 1976-based market basket.

10. Fixed capital: The percentage change in the price of Owner's Equivalent Rent as measured by the Consumer Price Index was applied to this component. The percentage change in the price of Residential Rent as measured by the Consumer Price Index was used as a proxy for Rental and Leasing in the 1976-based market basket.

11. Movable Capital: The percentage change in the price of Machinery and Equipment as measured by the Producer Price Index was applied to this component. In the 1976-based market basket the percentage change in the price of Medical Equipment and Supplies as measured by the Consumer Price Index was applied to the Medical Nursing Supplies component.

12. Other Expenses, including an allocation for non-labor expenses associated with contract services: The percentage change in the price of All Items Less Food and Energy as measured by the Consumer Price Index was applied to this component. This is a revision from the 1976-based index, when the percentage change in the price of All Items as measured by the Consumer Price Index was applied to the Miscellaneous Costs component.

A comparison of price proxies used in the 1993-based and the 1976-based home health agency market baskets follows:

APPENDIX TABLE 1.—A COMPARISON OF PRICE PROXIES USED IN THE 1993–BASED AND 1976–BASED HOME HEALTH AGENCY MARKET BASKETS

Cost category	1993–Based price proxy	1976–Based price proxy
Compensation:		
Wages and Salaries	HHA Occupational Wage Index	AHE Hospitals (Private nonsupervisory workers).
Employee Benefits	HHA Occupational Benefits Index	BEA Supplements to Wages & Salaries per Worker (BLS); (BEA Aggregate Supplements/number of workers from BLS).
Operations and Maintenance	CPI–U Fuel & Other Utilities	Index composed of CPI–U Water & Sewage; IPD Fuel & Oil Coal (PCE); IPD Electricity (PCE); IPD Natural Gas (PCE).
Administrative and General		CPI–U Services (category: Office Administration Costs).
Telephone	CPI–U Telephone	
Paper and Printing	CPI–U Household Paper, Paper Products & Stationery Supplies.	
Postage	CPI–U Postage	
Other Administrative and General	CPI–U Services	
Transportation	CPI–U Private Transportation	CPI–U Transportation.
Capital-Related:		
Insurance	CPI–U Household Insurance	
Fixed Capital	CPI–U Owner's Equivalent Rent	CPI–U Residential Rent category: Rental & Leasing.
Movable Capital	PPI Machinery & Equipment	CPI–U Nonprescription Medical Equipment & Supplies.
Other Expenses	CPI–U All Items Less Food & Energy	CPI–U All Items.
Contracted Services	Contained within Wages & Salaries, Employee Benefits, Other Administrative & General & Other Expenses cost categories; see those price proxies	Composite All Other HHA Cost Category Weights with associated price proxy variables.

We allocated the Contract Services' share of home health agency expenses among (a) Wages and Salaries, (b) Employee Benefits, (c) Other Administrative and General, and (d) Other Expenses. The split chosen is one of three alternatives that we examined. In Alternative A, we split the Contract Services cost share only between (a) Wages and Salaries and (b) Employee Benefits. In Alternative B, we split the Contract Services cost share among (a) Wages and Salaries, (b) Employee Benefits, (c) Other Administrative and General, and (d) Other Expenses. In Alternative C, the option selected, we split the Contract Services cost share among (a) Wages and Salaries, (b) Employee Benefits, (c) Other Administrative and General, and (d) Other Expenses, but we gave proportionally more to (a) Wages and Salaries and (b) Employee Benefits, and less to (c) Other Administrative and General and (d) Other Expenses. This third middle-ground option recognizes that personnel in Contract Services may be employees of a firm contracting with home health agencies or may be independent contractors, working out of their personal residences, with relatively small non-labor expenses.

Results of the three alternatives appear in Appendix Table 2, while a comparison of historical and forecasted percent changes are shown in Appendix Table 3.

APPENDIX TABLE 2.—THREE ALTERNATIVES FOR ALLOCATION OF CONTRACT SERVICES; COST SHARE

Cost category	Alternative A: Split of contract services' cost share between (a) wages and salaries and (b) employee benefits	Alternative B: Split of contract services' cost share among (a) wages and salaries, (b) employee benefits, (c) other administrative and general, and (d) other expenses	Alternative C: Split of contract services' cost share among (a) wages and salaries, (b) employee benefits, (c) other administrative and general, and (d) other expenses, with smaller allocation to (c) and (d) and larger allocation to (a) and (b) (selected)
Compensation	79.224	76.479	77.668
Wages & Salaries	65.512	63.243	64.226
Employee Benefits	13.712	13.327	13.442
Operations & Maintenance	0.832	0.832	0.832
Administrative & General	8.791	10.163	9.569
Telephone	0.725	0.725	0.725
Paper & Printing	0.529	0.529	0.529
Postage	0.724	0.724	0.724
Other Administrative & General	6.813	8.185	7.591
Transportation	3.405	3.405	3.405
Capital-Related	3.204	3.204	3.204
Insurance	0.560	0.560	0.560
Fixed Capital	1.764	1.764	1.764
Movable Capital	0.880	0.880	0.880
All Other Expenses	4.544	5.916	5.322
Total	100.000	100.000	100.000

APPENDIX TABLE 3.—A COMPARISON OF THREE ALTERNATIVES FOR ALLOCATION OF CONTRACT SERVICES' COST SHARE FOR THE 1993-BASED HOME HEALTH AGENCY MARKET BASKET, PERCENT CHANGE, 1993–1998

Fiscal Years beginning July 1	Alternative A: Split of Contract Services' cost share between (a) Wages and Salaries and (b) Employee Benefits	Alternative B: Split of Contract Services' cost share among (a) Wages and Salaries, (b) Employee Benefits, (c) Other Administrative and General, and (d) Other Expenses	Alternative C: Split of Contract Services' cost share among (a) Wages and Salaries, (b) Employee Benefits, (c) Other Administrative and General, and (d) Other Expenses, with smaller allocation to (c) and (d) and larger allocation to (a) and (b) (Selected)
Historical:			
July 1992, FY 1993	3.40	3.40	3.40
July 1993, FY 1994	3.00	3.00	3.00
July 1994, FY 1995	2.90	2.90	2.90
Forecasted:			
July 1995, FY 1996	2.70	2.70	2.70
July 1996, FY 1997	3.10	3.10	3.10
July 1997, FY 1998	3.20	3.20	3.20
Historical Average: 1993–1995	3.10	3.10	3.10
Forecasted Average: 1996–1998	3.00	3.00	3.00

Source: DRI/McGraw Hill HCC, 1st Qtr. 1996;@USSIM/TREND25 YR0296@CISSIM/CONTROL961.
Released by HCFA, OACT, Office of National Health Statistics.

Note that there is no difference in historical performance or forecasts among the three alternatives.

The components of the HHA Occupational Wages and Salaries and Occupational Benefit Indexes are listed below:

APPENDIX TABLE 4.— HCFA HHA OCCUPATIONAL WAGES AND SALARIES INDEX

Cost category	Weight	Price proxy.
Skilled Nursing & Therapists & Other Professional/Technical, Including an allocation for Contract Services' Labor.	45.756	50% ECI for Wages & Salaries in Private Industry for Professional. Specialty & Technical Workers and 50% ECI for Wages & Salaries for Civilian Hospital Workers.
Managerial/Supervisory, including an allocation for Contract Services' Labor.	5.527	ECO for Wages & Salaries in Private Industry for Executive, Administrative & Managerial Workers.
Clerical, including an allocation for Contract Services' Labor	15.019	ECI for Wages & Salaries in Private Industry for Administrative Support, Including Clerical Workers.
Service, including an allocation for Contract Services' Labor	33.696	ECI for Wages & Salaries in Private Industry Service Occupations

APPENDIX TABLE 4.— HCFA HHA OCCUPATIONAL WAGES AND SALARIES INDEX—Continued

Cost category	Weight	Price proxy.
Total	100.00	

The total weight for wages and salaries in the 1993-based Home Health Agency market basket is 64.226 percent.

APPENDIX TABLE 5.—HCFA HHA OCCUPATIONAL BENEFITS INDEX (EMPLOYEE BENEFITS COMPONENT OF THE 1993–BASED MARKET BASKET)

Cost category	Weight	Price proxy
Skilled Nursing & Therapists & Other Professional/Technical, including an allocation for Contract Services' Labor.	44.182	50% ECI for Benefits in Private Industry for Professional. Specialty & Technical Workers and 50% ECI for Benefits for Civilian Hospital Workers.
Managerial/Supervisory, including an allocation for Contract Services' Labor.	5.097	ECI for Benefits in Private Industry for Executive, Administrative & Managerial Workers.
Clerical, including an allocation for Contract Services' Labor	15.848	ECI for Benefits in Private Industry for Administrative Support, Including Clerical Workers.
Service, including an allocation for Contract Services' Labor	34.873	ECI for Benefits in Private Industry Service Occupations.
Total	100.00	

The total weight for employee benefits in the 1993-based Home Health Agency market basket is 13.442 percent.

Authority: Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)); section 4207(d) of Pub. L. 101–508 (42 U.S.C. 1395x (note)).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance)

Dated: June 24, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: June 26, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 96–16883 Filed 6–27–96; 4:06 pm]

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Vol. 61, No. 127

Monday, July 1, 1996

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FEDERAL REGISTER PAGES AND DATES, JULY

33825–34366 1

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

7 CFR
1493 33825

8 CFR
112 33840
113 33840

12 CFR
324 33842
Proposed Rules:
207 33874
220 33874
221 33874

14 CFR
29 33963
39 33874
71 ..... 33843, 33844, 33845

15 CFR
Proposed Rules:
922 33876

19 CFR
10 33845
12 33845
102 33845
134 33845

21 CFR
178 33846

25 CFR
Proposed Rules:
21 33876

29 CFR
Ch. XXVI 34002
Ch. XL 34002
2509 33847
2520 33847
2550 33847

36 CFR
1 33850
Proposed Rules:
1 33878

40 CFR
9 ..... 33851, 34202
55 34202
63 34140
71 34202
257 34253
261 34252
271 34252
Proposed Rules:
81 33879
260 33881
261 33881
262 33881
264 33881
268 33881
269 33881
271 33881

44 CFR
65 ..... 33852, 33854
67 33856
Proposed Rules:
67 33882

47 CFR
20 33859
24 33850

48 CFR
233 33871
235 33871
236 33871
571 891
Proposed Rules:
1 33886
8 33886

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing and standards:
Classification services to growers; 1996 user fees; published 5-2-96
Fluid milk promotion order; published 5-30-96
Grapes grown in California; published 5-31-96
Hazelnuts grown in Oregon and Washington; published 6-13-96
Livestock; grading, certification, and standards:
Slaughter cattle and carcass beef; published 1-30-96
Milk marketing orders:
Southeast; published 5-6-96
Onions grown in--
Idaho and Oregon; published 5-31-96
Papayas grown in Hawaii; published 6-4-96
Potatoes (Irish) grown in--
Oregon and California; published 5-31-96
Washington; published 5-6-96
Sheep promotion, research, and consumer information; published 5-9-96
AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Prior labeling approval system; published 12-29-95
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone; Federal regulatory reform; published 6-19-96
Atlantic striped bass and weakfish; published 6-10-96
Bering Sea and Aleutian Islands groundfish; published 6-26-96
Gulf of Alaska and Bering Sea and Aleutian Islands groundfish; published 5-31-96
Gulf of Alaska groundfish; published 6-27-96
Gulf of Alaska northern rockfish; published 7-2-96
Northeast multispecies; published 5-31-96
Northeastern United States fisheries; published 7-3-96
West Coast States and Western Pacific; exclusive economic zone; Federal regulatory reform; published 7-2-96
Western Pacific crustacean; published 2-21-96
Magnuson Act provisions; regulations consolidation and update; published 6-24-96
EDUCATION DEPARTMENT
Post secondary education:
Higher Education Act of 1965--
Student financial assistance programs; Federal regulatory review; correction; published 2-1-96
Postsecondary education:
Federal family education loan program; published 12-1-95
Federal family education loan program; reporting and recordkeeping requirements; published 4-17-96
Higher Education Act of 1965--
Student financial assistance programs; Federal regulatory review; published 12-1-95
Student assistance general provisions--
Federal family education loan program; default reduction initiative and prevention measures; published 12-1-95
Men's and women's intercollegiate athletic programs; Equity in Athletics Disclosure Act implementation; published 11-29-95
Men's and women's intercollegiate athletic programs; Equity in Athletics Disclosure Act implementation; reporting and recordkeeping requirements; published 5-13-96
Student Right-to-Know Act implementation; completion or graduation rate data; published 12-1-95
Tests for determining student eligibility; approval and administration; published 12-1-95
Tests for determining student eligibility; approval and administration; reporting and recordkeeping requirements; published 6-19-96
William D. Ford Federal direct loan program; published 12-1-95
William D. Ford Federal direct student loan program; published 6-19-96
ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Off-site waste and recovery operations; published 7-1-96
Air quality implementation plans; approval and promulgation; various States:
California; published 4-30-96
Pennsylvania; published 5-16-96
Reporting and recordkeeping requirements; published 7-1-96
FEDERAL RESERVE SYSTEM
Securities credit transactions; credit by brokers and dealers (Regulation T); published 5-6-96
Transactions with affiliates; conformity of capital stock and surplus definition to unimpaired capital stock and surplus definition, etc.; published 5-3-96
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food additives:
Adjuvants, production aids, and sanitizers--
Dimethyldibenzylidene sorbitol; published 7-1-96
HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare:
Health maintenance organizations; employer contribution to HMOs; published 5-31-96
HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Public housing units; public/private partnerships for mixed-finance development; published 5-2-96
Rental certificate and voucher programs (Section 8)--
Technical amendments; published 5-30-96
INTERIOR DEPARTMENT
Fish and Wildlife Service
Migratory bird hunting and conservation stamp (Federal Duck Stamp) contest; published 5-20-96
INTERIOR DEPARTMENT
Minerals Management Service
Royalty management:
Royalty relief for producing leases and existing leases in deep water; published 5-31-96
JUSTICE DEPARTMENT
Executive Office for Immigration Review:
Motions and appeals in immigration proceedings; published 4-29-96
Correction; published 5-9-96
Correction; published 6-26-96
LABOR DEPARTMENT
Pension and Welfare Benefits Administration
Employee Retirement Income Security Act:
Interpretive bulletins and regulations removed; published 7-1-96
NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Organization and operations--
Chartering and field of membership policy; senior citizens and retirees; interpretive ruling and policy statement; published 3-22-96
PENSION BENEFIT GUARANTY CORPORATION
Multiemployer and single-employer plans:
Valuation of plan benefits, etc.--
Interest rates, etc.; published 6-14-96
Regulations; reorganization, renumbering, and reinvention; Federal regulatory reform; published 7-1-96
PERSONNEL MANAGEMENT OFFICE
Allowances and differentials:

Separate maintenance allowance for Johnston Island duty; published 5-31-96
Prevailing rate systems; published 5-31-96
POSTAL RATE COMMISSION
Domestic mail classification schedule:
Mail classification reform and experimental first-class and priority mail small parcel automation rate category; published 6-25-96
POSTAL SERVICE
Domestic Mail Manual:
Mail classification reform; implementation standards; published 3-12-96
TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Tank cars; crashworthiness protection requirements, etc.; corrections, etc.; published 6-26-96
TREASURY DEPARTMENT
Comptroller of the Currency
Federal branches and agencies of foreign banks:
International operations of national and foreign banks; published 5-2-96
TREASURY DEPARTMENT
Customs Service
Country of origin marking:
Textile goods assembled abroad with components which were only cut to shape in United States; policy statement; published 6-26-96
VETERANS AFFAIRS DEPARTMENT
Practice and procedure:
Rulemaking notice-and-comment provisions
Reestablishment; published 7-1-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Agricultural commodities; U.S. grade standards and other selected regulations; removal from CFR; Federal regulatory reform; comment period extension; comments due by 7-9-96; published 3-11-96
Limes grown in Florida and imported; comments due by 7-8-96; published 6-26-96
AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Horses; importation permit applications and health certificate requirements; comments due by 7-9-96; published 5-10-96
AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
Texas citrus fruit crop; comments due by 7-8-96; published 6-5-96
ARMS CONTROL AND DISARMAMENT AGENCY
Freedom of Information Act; implementation; comments due by 7-8-96; published 5-30-96
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish; comments due by 7-8-96; published 6-12-96
Gulf of Mexico reef fish; comments due by 7-8-96; published 5-14-96
National Weather Service; modernization criteria; comments due by 7-8-96; published 6-6-96
COMMODITY FUTURES TRADING COMMISSION
Contract markets:
Trading cards and trading records; correction of erroneous information; procedures; comments due by 7-8-96; published 5-6-96
CONSUMER PRODUCT SAFETY COMMISSION
Consumer Product Safety Act:
Multi-purpose lighters; child-resistance standard; rulemaking petition; comments due by 7-8-96; published 5-7-96
ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric utilities (Federal Power Act):
Open access same-time information system (formerly real-time information networks) and standards of conduct for public utilities
Conference cancellation, etc.; comments due by 7-8-96; published 6-18-96
ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Radon emissions from phosphogypsum stacks; comments due by 7-8-96; published 5-8-96
Air quality implementation plans; √Avapproval and promulgation; various States; air quality planning purposes; designation of areas:
Washington; comments due by 7-8-96; published 6-11-96
Wisconsin; comments due by 7-11-96; published 6-11-96
Clean Air Act:
Acid rain provisions--
Direct sale elimination and independent power producers written guarantee program; comments due by 7-8-96; published 6-6-96
Direct sale elimination and independent power producers written guarantee program; comments due by 7-8-96; published 6-6-96
Drinking water:
National primary drinking water regulations--
Lead and copper; comments due by 7-11-96; published 4-12-96
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Telecommunications Act of 1996; implementation--
Local competition provisions; comments due by 7-8-96; published 7-2-96
Radio stations; table of assignments:
Texas; comments due by 7-8-96; published 5-23-96
Television broadcasting:
Digital broadcast television licensees; digital television standard requirement; comments due by 7-11-96; published 5-29-96
HEALTH AND HUMAN SERVICES DEPARTMENT
Public Health Service
Interstate shipment of etiologic agents:
Facilities transferring or receiving select infectious agents; additional requirements; comments due by 7-10-96; published 5-10-96
HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Mortgage and loan insurance programs:
Home equity conversion mortgage insurance demonstration; use of direct endorsement program; comments due by 7-9-96; published 5-10-96
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Federal regulatory review:
Permanent program and abandoned mine land reclamation plan submissions; comments due by 7-8-96; published 5-8-96
Permanent program and abandoned mine land reclamation plan submissions:
Ohio; comments due by 7-11-96; published 6-11-96
Virginia; comments due by 7-11-96; published 6-11-96
JUSTICE DEPARTMENT
Federal Bureau of Investigation
Communications Assistance for Law Enforcement Act of 1994; cost recovery regulations; comments due by 7-9-96; published 5-10-96
LABOR DEPARTMENT
Occupational Safety and Health Administration
Shipyard employment safety and health standards:
Fire Protection in Shipyard Employment Negotiated Rulemaking Advisory Committee; meeting; comments due by 7-8-96; published 6-6-96
SECURITIES AND EXCHANGE COMMISSION
Securities, etc.:
Independent Offices Appropriations Act fees; elimination; comments due by 7-8-96; published 5-22-96
TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
San Diego Bay, CA; security zone; comments due by 7-8-96; published 5-23-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operations:
Omnibus Transportation Employee Testing Act of 1991—
Preemployment alcohol testing requirements; comments due by 7-8-96; published 5-9-96
Airworthiness directives:
Beech; comments due by 7-8-96; published 5-30-96
Boeing; comments due by 7-8-96; published 5-9-96
Learjet; comments due by 7-8-96; published 5-30-96
McDonnell Douglas; comments due by 7-8-96; published 5-9-96
New Piper Aircraft, Inc.; comments due by 7-8-96; published 5-3-96
Airworthiness Directives:
New Piper Aircraft, Inc.; comments due by 7-8-96; published 5-3-96
Class E airspace; comments due by 7-8-96; published 5-22-96
TRANSPORTATION DEPARTMENT
Federal Highway Administration
Motor carrier safety standards:
Omnibus Transportation Employee Testing Act of 1991—
Preemployment alcohol testing requirements; comments due by 7-8-96; published 5-9-96
TRANSPORTATION DEPARTMENT
Federal Railroad Administration
Omnibus Transportation Employee Testing Act of 1991:
Preemployment alcohol testing requirements; comments due by 7-8-96; published 5-9-96
Rail passenger equipment safety standards; comments due by 7-8-96; published 6-17-96
TRANSPORTATION DEPARTMENT
Federal Transit Administration
Omnibus Transportation Employee Testing Act of 1991:
Preemployment alcohol testing requirements; comments due by 7-8-96; published 5-9-96
VETERANS AFFAIRS DEPARTMENT
Disabilities rating schedule:
Fibromyalgia; comments due by 7-8-96; published 5-7-96

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–028–00001–1)	$4.25	Feb. 1, 1996
3 (1995 Compilation and Parts 100 and 101)	(869–028–00002–9)	22.00	[1] Jan. 1, 1996
4	(869–028–00003–7)	5.50	Jan. 1, 1996
5 Parts:			
1–699	(869–028–00004–5)	26.00	Jan. 1, 1996
700–1199	(869–028–00005–3)	20.00	Jan. 1, 1996
1200–End, 6 (6 Reserved)	(869–028–00006–1)	25.00	Jan. 1, 1996
7 Parts:			
0–26	(869–028–00007–0)	22.00	Jan. 1, 1996
27–45	(869–028–00008–8)	11.00	Jan. 1, 1996
46–51	(869–028–00009–6)	13.00	Jan. 1, 1996
52	(869–028–00010–0)	5.00	Jan. 1, 1996
53–209	(869–028–00011–8)	17.00	Jan. 1, 1996
210–299	(869–028–00012–6)	35.00	Jan. 1, 1996
300–399	(869–028–00013–4)	17.00	Jan. 1, 1996
400–699	(869–028–00014–2)	22.00	Jan. 1, 1996
700–899	(869–028–00015–1)	25.00	Jan. 1, 1996
900–999	(869–028–00016–9)	30.00	Jan. 1, 1996
1000–1199	(869–028–00017–7)	35.00	Jan. 1, 1996
1200–1499	(869–028–00018–5)	29.00	Jan. 1, 1996
1500–1899	(869–028–00019–3)	41.00	Jan. 1, 1996
1900–1939	(869–028–00020–7)	16.00	Jan. 1, 1996
1940–1949	(869–028–00021–5)	31.00	Jan. 1, 1996
1950–1999	(869–028–00022–3)	39.00	Jan. 1, 1996
2000–End	(869–028–00023–1)	15.00	Jan. 1, 1996
8	(869–028–00024–0)	23.00	Jan. 1, 1996
9 Parts:			
1–199	(869–028–00025–8)	30.00	Jan. 1, 1996
200–End	(869–028–00026–6)	25.00	Jan. 1, 1996
10 Parts:			
0–50	(869–028–00027–4)	30.00	Jan. 1, 1996
51–199	(869–028–00028–2)	24.00	Jan. 1, 1996
200–399	(869–028–00029–1)	5.00	Jan. 1, 1996
400–499	(869–028–00030–4)	21.00	Jan. 1, 1996
500–End	(869–028–00031–2)	34.00	Jan. 1, 1996
11	(869–028–00032–1)	15.00	Jan. 1, 1996
12 Parts:			
1–199	(869–028–00033–9)	12.00	Jan. 1, 1996
200–219	(869–028–00034–7)	17.00	Jan. 1, 1996
220–299	(869–028–00035–5)	29.00	Jan. 1, 1996
300–499	(869–028–00036–3)	21.00	Jan. 1, 1996
500–599	(869–028–00037–1)	20.00	Jan. 1, 1996
600–End	(869–028–00038–0)	31.00	Jan. 1, 1996
13	(869–028–00039–8)	18.00	Mar. 1, 1996
14 Parts:			
1–59	(869–028–00040–1)	34.00	Jan. 1, 1996
60–139	(869–028–00041–0)	30.00	Jan. 1, 1996
140–199	(869–028–00042–8)	13.00	Jan. 1, 1996
200–1199	(869–028–00043–6)	23.00	Jan. 1, 1996
1200–End	(869–028–00044–4)	16.00	Jan. 1, 1996
15 Parts:			
0–299	(869–028–00045–2)	16.00	Jan. 1, 1996
300–799	(869–028–00046–1)	26.00	Jan. 1, 1996
800–End	(869–028–00047–9)	18.00	Jan. 1, 1996
16 Parts:			
0–149	(869–028–00048–7)	6.50	Jan. 1, 1996
150–999	(869–028–00049–5)	19.00	Jan. 1, 1996
1000–End	(869–028–00050–9)	26.00	Jan. 1, 1996
17 Parts:			
1–199	(869–028–00052–5)	21.00	Apr. 1, 1996
*200–239	(869–028–00053–3)	25.00	Apr. 1, 1996
240–End	(869–026–00056–5)	30.00	Apr. 1, 1995
18 Parts:			
1–149	(869–028–00055–0)	17.00	Apr. 1, 1996
150–279	(869–028–00056–8)	12.00	Apr. 1, 1996
280–399	(869–028–00057–6)	13.00	Apr. 1, 1996
400–End	(869–028–00058–4)	11.00	Apr. 1, 1996
19 Parts:			
1–140	(869–026–00061–1)	25.00	Apr. 1, 1995
141–199	(869–026–00062–0)	21.00	Apr. 1, 1995
200–End	(869–028–00061–4)	12.00	Apr. 1, 1996
20 Parts:			
1–399	(869–026–00064–6)	20.00	Apr. 1, 1995
400–499	(869–026–00065–4)	34.00	Apr. 1, 1995
500–End	(869–028–00064–9)	32.00	Apr. 1, 1996
21 Parts:			
1–99	(869–026–00067–1)	16.00	Apr. 1, 1995
100–169	(869–026–00068–9)	21.00	Apr. 1, 1995
170–199	(869–026–00069–7)	22.00	Apr. 1, 1995
*200–299	(869–028–00068–1)	7.00	Apr. 1, 1996
300–499	(869–026–00071–9)	39.00	Apr. 1, 1995
500–599	(869–026–00072–7)	22.00	Apr. 1, 1995
600–799	(869–026–00073–5)	9.50	Apr. 1, 1995
800–1299	(869–026–00074–3)	23.00	Apr. 1, 1995
1300–End	(869–026–00075–1)	13.00	Apr. 1, 1995
22 Parts:			
1–299	(869–026–00076–0)	33.00	Apr. 1, 1995
300–End	(869–028–00075–4)	24.00	Apr. 1, 1996
23	(869–026–00078–6)	22.00	Apr. 1, 1995
24 Parts:			
0–199	(869–026–00079–4)	40.00	Apr. 1, 1995
200–219	(869–026–00080–8)	19.00	Apr. 1, 1995
220–499	(869–026–00081–6)	23.00	Apr. 1, 1995
500–699	(869–026–00082–4)	20.00	Apr. 1, 1995
700–899	(869–026–00083–2)	24.00	Apr. 1, 1995
900–1699	(869–026–00084–1)	24.00	Apr. 1, 1995
1700–End	(869–026–00085–9)	17.00	Apr. 1, 1995
25	(869–026–00086–7)	32.00	Apr. 1, 1995
26 Parts:			
§§ 1.0–1–1.60	(869–028–00085–1)	21.00	Apr. 1, 1996
§§ 1.61–1.169	(869–026–00088–3)	34.00	Apr. 1, 1995
§§ 1.170–1.300	(869–026–00089–1)	24.00	Apr. 1, 1995
*§§ 1.301–1.400	(869–028–00088–6)	17.00	Apr. 1, 1996
§§ 1.401–1.440	(869–026–00091–3)	30.00	Apr. 1, 1995
*§§ 1.441–1.500	(869–028–00090–8)	22.00	Apr. 1, 1996
§§ 1.501–1.640	(869–028–00091–6)	21.00	Apr. 1, 1996
*§§ 1.641–1.850	(869–028–00092–4)	25.00	Apr. 1, 1996
§§ 1.851–1.907	(869–026–00095–6)	26.00	Apr. 1, 1995
§§ 1.908–1.1000	(869–028–00094–1)	26.00	Apr. 1, 1996
*§§ 1.1001–1.1400	(869–028–00095–9)	26.00	Apr. 1, 1996
*§§ 1.1401–End	(869–028–00096–7)	35.00	Apr. 1, 1996
*2–29	(869–028–00097–5)	28.00	Apr. 1, 1996
30–39	(869–028–00098–3)	20.00	Apr. 1, 1996
40–49	(869–026–00101–4)	14.00	Apr. 1, 1995
50–299	(869–028–00100–9)	14.00	Apr. 1, 1996
300–499	(869–026–00103–1)	24.00	Apr. 1, 1995

Title	Stock Number	Price	Revision Date
500-699	(869-028-00102-5)	6.00	[4] Apr. 1, 1990
600-End	(869-026-00105-7)	11.00	Apr. 1, 1995
27 Parts:			
1-199	(869-026-00106-5)	37.00	Apr. 1, 1995
200-End	(869-026-00107-3)	13.00	[6] Apr. 1, 1994
28 Parts:			
1-42	(869-026-00108-1)	27.00	July 1, 1995
43-end	(869-026-00109-0)	22.00	July 1, 1995
29 Parts:			
0-99	(869-026-00110-3)	21.00	July 1, 1995
100-499	(869-026-00111-1)	9.50	July 1, 1995
500-899	(869-026-00112-0)	36.00	July 1, 1995
900-1899	(869-026-00113-8)	17.00	July 1, 1995
1900-1910 (§§ 1901.1 to 1910.999)	(869-026-00114-6)	33.00	July 1, 1995
1910 (§§ 1910.1000 to end)	(869-026-00115-4)	22.00	July 1, 1995
1911-1925	(869-026-00116-2)	27.00	July 1, 1995
1926	(869-026-00117-1)	35.00	July 1, 1995
1927-End	(869-026-00118-9)	36.00	July 1, 1995
30 Parts:			
1-199	(869-026-00119-7)	25.00	July 1, 1995
200-699	(869-026-00120-1)	20.00	July 1, 1995
700-End	(869-026-00121-9)	30.00	July 1, 1995
31 Parts:			
0-199	(869-026-00122-7)	15.00	July 1, 1995
200-End	(869-026-00123-5)	25.00	July 1, 1995
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-026-00124-3)	32.00	July 1, 1995
191-399	(869-026-00125-1)	38.00	July 1, 1995
400-629	(869-026-00126-0)	26.00	July 1, 1995
630-699	(869-026-00127-8)	14.00	[5] July 1, 1991
700-799	(869-026-00128-6)	21.00	July 1, 1995
800-End	(869-026-00129-4)	22.00	July 1, 1995
33 Parts:			
1-124	(869-026-00130-8)	20.00	July 1, 1995
125-199	(869-026-00131-6)	27.00	July 1, 1995
200-End	(869-026-00132-4)	24.00	July 1, 1995
34 Parts:			
1-299	(869-026-00133-2)	25.00	July 1, 1995
300-399	(869-026-00134-1)	21.00	July 1, 1995
400-End	(869-026-00135-9)	37.00	July 5, 1995
35	(869-026-00136-7)	12.00	July 1, 1995
36 Parts			
1-199	(869-026-00137-5)	15.00	July 1, 1995
200-End	(869-026-00138-3)	37.00	July 1, 1995
37	(869-026-00139-1)	20.00	July 1, 1995
38 Parts:			
0-17	(869-026-00140-5)	30.00	July 1, 1995
18-End	(869-026-00141-3)	30.00	July 1, 1995
39	(869-026-00142-1)	17.00	July 1, 1995
40 Parts:			
1-51	(869-026-00143-0)	40.00	July 1, 1995
52	(869-026-00144-8)	39.00	July 1, 1995
53-59	(869-026-00145-6)	11.00	July 1, 1995
60	(869-026-00146-4)	38.00	July 1, 1995
61-71	(869-026-00147-2)	36.00	July 1, 1995
72-85	(869-026-00148-1)	41.00	July 1, 1995
86	(869-026-00149-9)	40.00	July 1, 1995
87-149	(869-026-00150-2)	41.00	July 1, 1995
150-189	(869-026-00151-1)	25.00	July 1, 1995
190-259	(869-026-00152-9)	17.00	July 1, 1995
260-299	(869-026-00153-7)	40.00	July 1, 1995
300-399	(869-026-00154-5)	21.00	July 1, 1995
400-424	(869-026-00155-3)	26.00	July 1, 1995
425-699	(869-026-00156-1)	30.00	July 1, 1995
700-789	(869-026-00157-0)	25.00	July 1, 1995
790-End	(869-026-00158-8)	15.00	July 1, 1995
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-026-00159-6)	9.50	July 1, 1995
101	(869-026-00160-0)	29.00	July 1, 1995
102-200	(869-026-00161-8)	15.00	July 1, 1995
201-End	(869-026-00162-6)	13.00	July 1, 1995
42 Parts:			
1-399	(869-026-00163-4)	26.00	Oct. 1, 1995
400-429	(869-026-00164-2)	26.00	Oct. 1, 1995
430-End	(869-026-00165-1)	39.00	Oct. 1, 1995
43 Parts:			
1-999	(869-026-00166-9)	23.00	Oct. 1, 1995
1000-3999	(869-026-00167-7)	31.00	Oct. 1, 1995
4000-End	(869-026-00168-5)	15.00	Oct. 1, 1995
44	(869-026-00169-3)	24.00	Oct. 1, 1995
45 Parts:			
1-199	(869-022-00170-7)	22.00	Oct. 1, 1995
200-499	(869-026-00171-5)	14.00	Oct. 1, 1995
500-1199	(869-026-00172-3)	23.00	Oct. 1, 1995
1200-End	(869-026-00173-1)	26.00	Oct. 1, 1995
46 Parts:			
1-40	(869-026-00174-0)	21.00	Oct. 1, 1995
41-69	(869-026-00175-8)	17.00	Oct. 1, 1995
70-89	(869-026-00176-6)	8.50	Oct. 1, 1995
90-139	(869-026-00177-4)	15.00	Oct. 1, 1995
140-155	(869-026-00178-2)	12.00	Oct. 1, 1995
156-165	(869-026-00179-1)	17.00	Oct. 1, 1995
166-199	(869-026-00180-4)	17.00	Oct. 1, 1995
200-499	(869-026-00181-2)	19.00	Oct. 1, 1995
500-End	(869-026-00182-1)	13.00	Oct. 1, 1995
47 Parts:			
0-19	(869-026-00183-9)	25.00	Oct. 1, 1995
20-39	(869-026-00184-7)	21.00	Oct. 1, 1995
40-69	(869-026-00185-5)	14.00	Oct. 1, 1995
70-79	(869-026-00186-3)	24.00	Oct. 1, 1995
80-End	(869-026-00187-1)	30.00	Oct. 1, 1995
48 Chapters:			
1 (Parts 1-51)	(869-026-00188-0)	39.00	Oct. 1, 1995
1 (Parts 52-99)	(869-026-00189-8)	24.00	Oct. 1, 1995
2 (Parts 201-251)	(869-026-00190-1)	17.00	Oct. 1, 1995
2 (Parts 252-299)	(869-026-00191-0)	13.00	Oct. 1, 1995
3-6	(869-026-00192-8)	23.00	Oct. 1, 1995
7-14	(869-026-00193-6)	28.00	Oct. 1, 1995
15-28	(869-026-00194-4)	31.00	Oct. 1, 1995
29-End	(869-026-00195-2)	19.00	Oct. 1, 1995
49 Parts:			
1-99	(869-026-00196-1)	25.00	Oct. 1, 1995
100-177	(869-026-00197-9)	34.00	Oct. 1, 1995
178-199	(869-026-00198-7)	22.00	Oct. 1, 1995
200-399	(869-026-00199-5)	30.00	Oct. 1, 1995
400-999	(869-026-00200-2)	40.00	Oct. 1, 1995
1000-1199	(869-026-00201-1)	18.00	Oct. 1, 1995
1200-End	(869-026-00202-9)	15.00	Oct. 1, 1995
50 Parts:			
1-199	(869-026-00203-7)	26.00	Oct. 1, 1995
200-599	(869-026-00204-5)	22.00	Oct. 1, 1995
600-End	(869-026-00205-3)	27.00	Oct. 1, 1995
CFR Index and Findings Aids	(869-028-00051-7)	35.00	Jan. 1, 1996

Title	Stock Number	Price	Revision Date
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1996. The CFR volume issued April 1, 1994, should be retained.

CFR ISSUANCES 1996
January—April 1996 Editions and Projected July, 1996 Editions

This list sets out the CFR issuances for the January–April 1996 editions and projects the publication plans for the **July, 1996** quarter. A projected schedule that will include the **October, 1996** quarter will appear in the first **Federal Register** issue of October.

For pricing information on available 1995–1996 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

Titles revised as of January 1, 1996:

Title	
CFR Index	200–End
1–2 (Revised as of Feb. 1, 1996)	10 Parts:
	0–50
	51–199
3 (Compilation)	200–399
	400–499
4	500–End
5 Parts:	11
1–699	
700–1199	12 Parts:
1200–End	1–199
	200–219
6 [Reserved]	220–299
	300–499
7 Parts:	500–599
0–26	600–End
27–45	
46–51	13 (Revised as of Mar. 1, 1996)
52	
53–209	
210–299	14 Parts:
300–399	1–59
400–699	60–139
700–899	140–199
900–999	200–1199
1000–1199	1200–End
1200–1499	
1500–1899	15 Parts:
1900–1939	0–299
1940–1949	300–799
1950–1999	800–End
2000–End	
	16 Parts:
8	0–149
	150–999
9 Parts:	1000–End
1–199	

Titles revised as of April 1, 1996:

Title	
17 Parts:	200–239
1–199	240–End
	200–219 (Revised May 1, 1996)
18 Parts:	220–499 (Revised May 1, 1996)
1–149	500–699 (Revised May 1, 1996)
150–279	700–899 (Revised May 1, 1996)
280–399	900–1699 (Revised May 1, 1996)
400–End	1700–End (Revised May 1, 1996)
19 Parts:	25
1–140	
141–199	26 Parts:
200–End	1 (§§ 1.0–1–1.60)
	1 (§§ 1.61–1.169)
20 Parts:	1 (§§ 1.170–1.300)
1–399	1 (§§ 1.301–1.400)
400–499	1 (§§ 1.401–1.440)
500–End	1 (§§ 1.441–1.500)
	1 (§§ 1.501–1.640)
21 Parts:	1 (§§ 1.641–1.850)
1–99	1 (§§ 1.851–1.907)
100–169	1 (§§ 1.908–1.1000)
170–199	1 (§§ 1.1001–1.1400)
200–299	1 (§ 1.1401–End)
300–499	2–29
500–599	30–39
600–799	40–49
800–1299	50–299
1300–End	300–499
	500–599 (Cover only)
22 Parts:	600–End
1–299	
300–End	27 Parts:
	1–199
23	200–End
24 Parts:	
0–199 (Revised May 1, 1996)	

Projected July 1, 1996 editions:

Title	
28 Parts:	34 Parts:
0–42	1–299
43–End	300–399
	400–End
29 Parts:	
0–99	35
100–499	
500–899	36 Parts:
900–1899	1–199
1900–1910.999	200–End
1910.1000–End	
1911–1925	37
1926	
1927–End	38 Parts:
	0–17
30 Parts:	18–End
1–199	
200–699	39
700–End	
	40 Parts:
31 Parts:	1–51
0–199	52
200–End	53–59
	60
32 Parts:	61–71
1–190	72–80
191–399	81–85
400–629	86
630–699 (Cover only)	87–135
700–799	136–149
800–End	150–189
	190–259
33 Parts:	260–299
1–124	300–399
125–199	400–424
200–End	

425–699	41 Parts:
700–789	Chs. 1–100
790–End	Ch. 101
	Chs. 102–200
	Ch. 201–End

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JULY 1996

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day:

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
July 1	July 16	July 31	August 15	August 30	September 30
July 2	July 17	August 1	August 16	September 3	September 30
July 3	July 18	August 2	August 19	September 3	October 1
July 5	July 22	August 5	August 19	September 3	October 3
July 8	July 23	August 7	August 22	September 6	October 7
July 9	July 24	August 8	August 23	September 9	October 7
July 10	July 25	August 9	August 26	September 9	October 8
July 11	July 26	August 12	August 26	September 9	October 9
July 12	July 29	August 12	August 26	September 10	October 10
July 15	July 30	August 14	August 29	September 13	October 15
July 16	July 31	August 15	August 30	September 16	October 15
July 17	August 1	August 16	September 3	September 16	October 15
July 18	August 2	August 19	September 3	September 16	October 16
July 19	August 5	August 19	September 3	September 17	October 17
July 22	August 6	August 21	September 5	September 20	October 21
July 23	August 7	August 22	September 6	September 23	October 21
July 24	August 8	August 23	September 9	September 23	October 22
July 25	August 9	August 26	September 9	September 23	October 23
July 26	August 12	August 26	September 9	September 24	October 24
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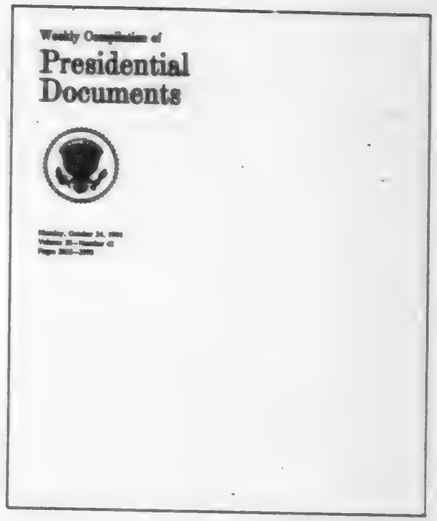

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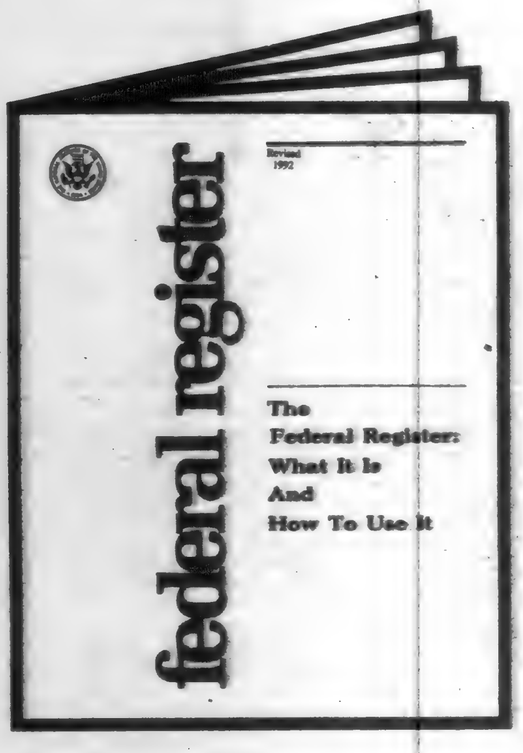

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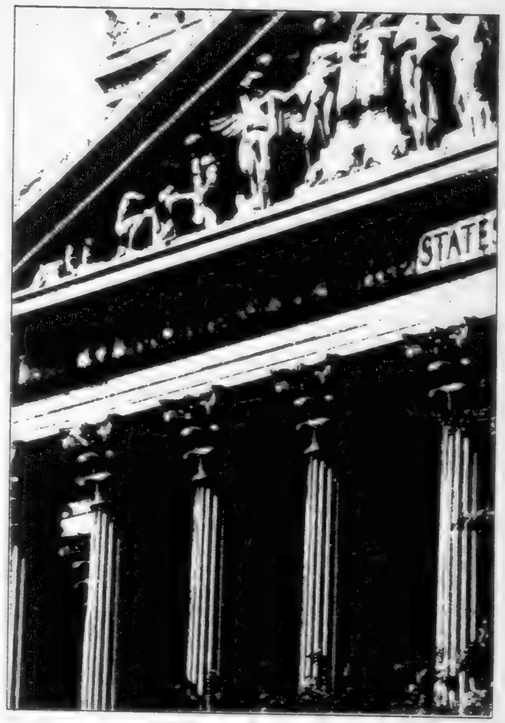

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federal register

Tuesday
July 2, 1996

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WHEN: July 9, 1996 at 9:00 am, and
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Contents

Federal Register
Vol. 61, No. 128
Tuesday, July 2, 1996

Agricultural Marketing Service
PROPOSED RULES
Honey research, promotion, and consumer information order; referendum, 34385–34386

Agricultural Research Service
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Seedbiotics, 34415

Agriculture Department
See Agricultural Marketing Service
See Agricultural Research Service
See Animal and Plant Health Inspection Service
See Federal Crop Insurance Corporation
See Natural Resources Conservation Service
See Rural Housing Service

Air Force Department
NOTICES
Base realignment and closure:
Disposal and reuse—
Kelly AFB, TX, 34423–34424

Animal and Plant Health Inspection Service
PROPOSED RULES
Animal welfare:
Humane treatment of dogs and cats—
Tethering and temperature requirements, 34386–34389
Wire flooring, 34389–34391
Plant-related quarantine, foreign:
Fruits and vegetables; importation, 34379–34385

Army Department
See Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Base realignment and closure—
Defense Personnel Support Center, Philadelphia, PA; correction, 34424

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 34419–34420

Commerce Department
See Census Bureau
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Costa Rica, 34492
El Salvador, 34492–34493
Guatemala, 34493
Malaysia, 34494
Pakistan, 34494–34495
Sri Lanka, 34495
Thailand, 34495–34496

Defense Department
See Air Force Department
See Army Department
See Defense Logistics Agency
See Engineers Corps
See Navy Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 34423
Meetings:
Defense Partnership Council, 34423

Defense Logistics Agency
NOTICES
Privacy Act:
Systems of records; correction, 34424

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Mallinckrodt Chemical, Inc., 34447

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Safe and Drug-Free Schools and Communities Federal Activities Grants Program—
Drug and violence prevention, 34690–34711
Hate crimes prevention, 34670–34688
Meetings:
National Library of Education Advisory task force, 34426

Energy Department
See Federal Energy Regulatory Commission
See Southwestern Power Administration
See Western Area Power Administration

Engineers Corps
NOTICES
Nationwide permits; issuance, reissuance, and modification; public hearings; correction, 34424–34425

Equal Employment Opportunity Commission
PROPOSED RULES
Unsupervised Waivers of Rights and Claims under Age Discrimination in Employment Act Regulatory Guidance Negotiated Rulemaking Advisory Committee:
Meetings, 34405

Executive Office of the President
See Trade Representative, Office of United States

Export Administration Bureau
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 34420–34421

Federal Aviation Administration
RULES
Air carrier certification and operations:
Aircraft flight simulator use in pilot training, testing, and checking and at training centers, 34508–34568

Airworthiness directives:
de Havilland, 34368–34370
PROPOSED RULES
Class E airspace, 34391–34399
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 34497–34498

Federal Communications Commission
RULES
Common carrier services:
Common and private carrier paging, geographic licensing procedures; competitive bidding
Site expansion, 34375–34376
Federal-State Joint Board on Universal Service—
Universal Service Fund; extension of indexed interim cap, 34376–34377
Radio stations; table of assignments:
South Carolina, 34377
PROPOSED RULES
Common carrier services:
Telecommunications Act of 1996; implementation—
Local competition provisions, 34405–34406
Radio stations; table of assignments:
Arkansas, 34406–34407
Hawaii, 34407
Missouri, 34407–34408
Television broadcasting:
Cable television systems—
Major television markets; list, 34408–34409
Video programming delivery; market competition status; annual assessment, 34409–34410
NOTICES
Emergency alert system, 34434

Federal Crop Insurance Corporation
RULES
Administrative regulations:
Federal Agriculture Improvement and Reform Act of 1996—
State catastrophic risk protection plan; reinsurance agreement, 34367–34368

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Growth Unlimited Investments, Inc., et al., 34427–34430
Washington Water Power Co. et al., 34430–34431
Environmental statements; availability, etc.:
Seattle City Light, 34432
Applications, hearings, determinations, etc.:
Centana Interstate Pipeline Co., 34426
Columbia Gulf Transmission Co., 34427
Texas Eastern Transmission Corp., 34427

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 34434–34435
Permissible nonbanking activities, 34435
Meetings; Sunshine Act, 34435

Federal Trade Commission
NOTICES
Vehicles repurchased due to warranty defects, resale disclosures; public forum and comment request, 34435–34436

Fish and Wildlife Service
NOTICES
Endangered and threatened species:
Recovery plans—
White sturgeon; Kootenai population in Idaho and Montana, 34441–34442

Food and Drug Administration
RULES
Food additives:
Polymers—
Nylon 46 resins, 34370–34371

General Services Administration
NOTICES
Federal travel:
Special actual subsistence expense reimbursement ceiling—
Oshkosh (Winnebago County), WI, 34436–34437

Health and Human Services Department
See Food and Drug Administration
See Health Care Financing Administration
See Substance Abuse and Mental Health Services Administration

Health Care Financing Administration
PROPOSED RULES
Medicare:
Physician fee schedule (1997 CY); payment policies; revisions, 34614–34662
NOTICES
Agency information collection activities:
Proposed collection; comment request, 34437–34438

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 34439
Grants and cooperative agreements; availability, etc.:
Market-to-market/portfolio reengineering demonstration, 34664–34667

Indian Affairs Bureau
RULES
Indian country detention facilities and programs, 34371–34375
PROPOSED RULES
Education:
Special education; Federal regulatory review, 34399–34400
Land and water:
Patents in fee, certificates of competency, restrictions removal, and Indian lands sale; issuance, 34400–34405

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office
NOTICES
National Environmental Policy Act; implementation, 34439–34441

International Trade Administration
NOTICES
Antidumping:
Clad steel plate from—
Japan, 34421
North American Free Trade Agreement (NAFTA); binational panel reviews:
Bacteriological culture media from—
United States, 34421–34422

Justice Department
See Drug Enforcement Administration
NOTICES
Meetings:
Violence Against Women Advisory Council, 34447

Labor Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 34447–34448

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
White River Resource Area, CO, 34442–34443
Pipeline right-of-way applications:
New Mexico, 34443
Realty actions; sales, leases, etc.:
Montana, 34443
Resource management plans, etc.:
Palm Springs-South Coast Resource Area, CA, 34444

Merit Systems Protection Board
NOTICES
Privacy Act:
Systems of records, 34448–34449

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 34449–34450

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 34450

National Highway Traffic Safety Administration
NOTICES
Motor vehicle theft prevention standard; exemption petitions, etc.:
Porsche Cars of North America, Inc., 34498–34500

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska northern rockfish, 34377
West Coast States and Western Pacific; exclusive economic zone; Federal regulatory reform, 34570–34611
NOTICES
Meetings:
Northwest Atlantic Fisheries Organization, 34422
Permits:
Marine mammals, 34422–34423

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 34444–34445

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 34450

Natural Resources Conservation Service
NOTICES
Environmental statements; availability, etc.:
Vermilion Parish, LA; Freshwater Bayou Wetlands Phase II, 34415

Navy Department
NOTICES
Base realignment and closure:
Surplus Federal property—
Naval Shipyard, Philadelphia, PA, 34425–34426

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 34454
Petitions; Director's decisions:
Arizona Public Service Co., 34454–34460
Applications, hearings, determinations, etc.:
Cleveland Electric Illuminating Co., 34450–34451
Crow Butte Resources, Inc., 34451–34452
Southern California Edison Co., 34452–34454

Office of United States Trade Representative
See Trade Representative, Office of United States

Postal Service
NOTICES
Domestic Mail Manual:
Postal security devices and indicia (postmarks); specifications, 34460–34461

Presidential Advisory Committee on Gulf War Veterans' Illnesses
NOTICES
Meetings, 34461–34462

Public Health Service
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Animas-La Plata Project, CO and NM, 34445
Meetings:
Bay-Delta Advisory Council, 34445–34446

Research and Special Programs Administration
PROPOSED RULES
Pipeline safety:
Personnel performing operating or maintenance activities on hazardous liquid, carbon dioxide, and gas pipelines; training; withdrawn, 34413–34414
Pipeline Personnel Qualification Negotiated Rulemaking Committee—
Intent to establish, 34410–34413

Rural Housing Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 34415–34416
Grants and cooperative agreements; availability, etc.:
Rural Rental Housing Guaranteed Loan program, 34416–34419

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Stock Exchange, Inc., 34462–34463
Municipal Securities Rulemaking Board, 34463–34464
Applications, hearings, determinations, etc.:
MacNeal-Schwendler Corp., 34462

Sentencing Commission, United States
See United States Sentencing Commission

Social Security Administration
NOTICES
Social security rulings:
Administrative findings of fact by State agency medical and psychological consultants, etc., 34466–34468
Allegations of pain and other symptoms; consideration in determining whether medically determinable impairment is severe, 34468–34470
Federal circuit court and district court decisions application, 34470–34471
Medical source opinions on issues reserved to Commissioner, 34471–34474
Residual functional capacity assessment in initial claims, 34474–34478
Residual functional capacity for less than full range of sedentary work, implications; determining capacity to do other work, 34478–34483
Symptoms evaluation in disability claims; individual's statements credibility assessment, 34483–34488
Symptoms, medically determinable physical and mental impairments, and exertional and nonexertional limitations, 34488–34489
Treating source medical opinions; controlling weight, 34490–34492

Southwestern Power Administration
NOTICES
Integrated System power rates and opportunities; extension, 34432–34433

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 34438–34439

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 34446–34447

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
Tariff-rate quota amount determinations:
Raw cane sugar, 34496–34497

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
NOTICES
Aviation proceedings:
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 34497

United States Sentencing Commission
NOTICES
Sentencing guidelines and policy statements for Federal courts, 34465–34466

Veterans Affairs Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 34503
Submission for OMB review; comment request, 34503–34505

Western Area Power Administration
NOTICES
Glen Canyon Dam; Grand Canyon Protection Act; replacement resources methods report, 34433–34434

Separate Parts in This Issue

Part II
Transportation Department; Federal Aviation Administration, 34508–34568

Part III
Commerce Department, National Oceanic and Atmospheric Administration, 34570–34611

Part IV
Health and Human Services Department, Health Care Financing Administration, 34614–34662

Part V
Housing and Urban Development Department, 34664–34667

Part VI
Education Department, 34670–34687

Part VII
Education Department, 34690–34711

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
400 34367
Proposed Rules:
300 34379
319 34379
1240 34385

9 CFR
Proposed Rules:
1 34386
3 (2 documents) 34386, 34389

14 CFR
1 34508
39 34368
61 34508
91 34508
121 34508
125 34508
135 34508
141 34508
142 34508
Proposed Rules:
71 (7 documents) 34391, 34393, 34394, 34395, 34396, 34398

15 CFR
902 34570

21 CFR
177 34370

25 CFR
10 34371
Proposed Rules:
45 34399
152 34400

29 CFR
Proposed Rules:
Ch. XIV 34405

42 CFR
Proposed Rules:
410 34614
415 34614

47 CFR
22 34375
36 34375
73 34368
90 34375
Proposed Rules:
Ch. I 34405
73 (4 documents) 34406, 34407
76 (2 documents) 34408, 34409

49 CFR
Proposed Rules:
192 (2 documents) 34410, 34413
195 (2 documents) 34410 34413

50 CFR
660 34570
661 34570
663 34570
679 34377
680 34570
681 34570
683 34570
685 34570

Rules and Regulations

Federal Register
Vol. 61, No. 128
Tuesday, July 2, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

General Administration Regulations; Reinsurance Agreement—Standards for Approval

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends its General Administrative Regulations by revising § 400.168. This amendment is intended to bring § 400.168 into conformance with the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) by clarifying the obligations of the reinsured companies with respect to the sale and service of the catastrophic risk protection (CAT) plan of insurance in those States, or portions of a State, where the Secretary of Agriculture has determined that there are, or are not, sufficient insurance agents and other personnel available to service CAT policyholders.

EFFECTIVE DATE: June 27, 1996.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Account Executive, Risk Management Agency, Insurance Services Division, Reinsurance Services Liaison Branch, United States Department of Agriculture (USDA), Washington, D.C. 20250, telephone (202) 720–2832.

SUPPLEMENTARY INFORMATION: Pursuant to section 161(d) of the 1996 Act, this rule is issued without regard to (1) the notice and comment provisions of section 553 of Title 5, United States Code,

(1) the notice and comment provisions of section 553 of Title 5, United States Code,

(2) the Statement of Policy of the Secretary of Agriculture (36 FR 13804) relating to notice of proposed rulemaking and public participation in rulemaking, and

(3) the Paperwork Reduction Act of 1995, (44 U.S.C., chapter 35) notice and comment requirements.

Executive Order 12866 and Departmental Regulation 1512–1

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is March 31, 1999.

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and private sector. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, the rule is not subject to the requirements of section 202 and 205 of the UMRA. Executive Order No. 12612.

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. This action does not increase the burden on the reinsured company because this action merely clarifies the obligations of participating insurance companies in providing for the delivery of catastrophic risk protection policies through approved private insurance providers consistent with the legislative requirement of the 1996 Act to foster a single delivery system. Although this action will require approved insurance providers to accept all eligible applicants for all plans of insurance in all counties within a State (or a portion of State) where it is determined that there is a sufficient number of active agents reasonably accessible to producers, the benefits in terms of greater underwriting capacity for the private sector will outweigh any increased underwriting risks associated with a single delivery system. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. § 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provision of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions

contained in these regulations and the appeal provisions promulgated by the Board of Contract Appeals, 7 CFR part 24, subtitle A, must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

Prior to enactment of the 1996 Act, CAT coverage was offered through approved insurance providers and through local offices of the Farm Service Agency, USDA on a nationwide basis. The 1996 Act amended the Federal Crop Insurance Act to require the USDA to phase in a single delivery of CAT coverage unless the Secretary of Agriculture determines that the number of private insurers in a State (or a portion of a State) is insufficient to provide the coverage. In response to the legislative elimination of the delivery of CAT through county Farm Service Agency offices, except in those areas where there are insufficient approved private insurance providers to provide CAT coverage to producers, FCIC must amend this regulation to update and clarify the obligations of participating insurance companies.

List of Subjects in 7 CFR Part 400

Crop insurance.

Final Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. § 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends General Administrative Regulations, 7 CFR part 400, subpart L, effective for the 1997 and succeeding reinsurance years, as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart L—Reinsurance Agreement—Standards for Approval; Regulations for the 1997 and Subsequent Reinsurance Years

1. The authority citation for 7 CFR part 400, subpart L is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. Paragraphs (b) and (c) of § 400.168 are revised to read as follows:

§ 400.168 Obligations of participating insurance company.

* * * * *

(b) The Company shall make available to all eligible producers in the areas designated in its plan of operations as approved by the Corporation:

(1) The crop insurance plans for the crops designated in its plan of operation in those counties within a State, or a portion of a State, where the Secretary of Agriculture has determined that insurance is available through local offices of the United States Department of Agriculture; and

(2) Catastrophic risk protection, limited, and additional coverage plans of insurance for all crops, for which such insurance is made available by the Corporation, in all counties within a state, or a portion of State, where the Secretary of Agriculture has determined that insurance is no longer available through local offices of the United States Department of Agriculture.

(c) The Company shall provide the Corporation, on forms approved by the Corporation all information that the Corporation may deem relevant in the administration of the Agreement, including a list of all applicants determined to be ineligible for crop insurance coverage in accordance with subpart U of part 400 and all insured producers cancelled or terminated from insurance, along with the reason for such action, the crop program, and the amount of coverage for each.

* * * * *

Signed in Washington, D.C., on June 26, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–16794 Filed 6–27–96; 12:36 pm]

BILLING CODE 3410–FA–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–268–AD; Amendment 39–9685; AD 96–14–03]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–301, –311, and –315 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain de Havilland Model DHC–8–301,–311, and–315 series airplanes, that currently requires modification of the airspeed limitations placard and revision of the Airplane Flight Manual to specify operating at lower airspeeds when the airplane is operating at full flaps. That action also provides for the optional termination of the requirements of the AD for certain airplanes. That action was prompted by a report that incorrect rivets were installed on the outboard flaps assemblies of these airplanes. The actions specified by that AD are intended to prevent structural failure of the outboard flaps of the wings due to the installation of incorrect rivets in the flap assemblies, which could result in reduced controllability of the airplane. This new amendment requires the installation of the previously optional terminating modification on certain airplanes.

DATES: Effective August 6, 1996.

The incorporation by reference of de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995; and DHC–8 Model 301 Flight Manual, PSM 1–83–1A, Flight Manual Revision 57, dated September 26, 1995; as listed in the regulations, was approved previously by the Director of the Federal Register as of February 27, 1996 (61 FR 5277, February 12, 1996).

ADDRESSES: Service information referenced in this amendment may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe Branch, ANE–171, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7526; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–26–17, amendment 39–9475 (61 FR 5277, February 12, 1996), which is applicable to certain de Havilland Model DHC–8–301,–311, and–315 series airplanes, was published in the **Federal Register** on April 23, 1996 (61 FR 17855).

For Model DHC–8–301 series airplanes, the action proposed to continue to require modification of the airspeed limitations placard and revision of the airplane flight manual (AFM) to specify operating at lower airspeeds when the airplane is operating at full flaps.

For Model DHC–8–311 and–315 series airplanes, the action proposed to require that the previously optional terminating modification (Modification 8/2066) be installed within two years. Once that modification is installed, the currently-required airspeed limitations placard and AFM revision may be removed. Additionally, the action proposed to require that Modification 8/2066 be installed on certain outboard flap assemblies prior to their installation on these airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 18 de Havilland Model DHC–8–301,–311, and–315 series airplanes of U.S. registry that will be affected by this proposed AD.

The actions that are currently required by AD 95–26–17 (modification of the airspeed limitations placard and revision of the Airplane Flight Manual) affect all 18 U.S.-registered airplanes. Those actions take approximately .5 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts is negligible. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $540, or $30 per airplane.

The new actions that are required by this new AD (installation of the terminating modification) will affect 14 U.S.-registered Model DHC–8–311 and–315 series airplanes. The required actions will take approximately 60 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact on U.S. operators of the new requirements of this AD is estimated to be $50,400, or $3,600 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9475 (61 FR 5277, February 12, 1996), and by adding a new airworthiness directive (AD), amendment 39–9685, to read as follows:

96–14–03 de Havilland, Inc.: Amendment 39–9685. Docket 95–NM–268–AD. Supersedes AD 95–26–17, Amendment 39–9475.

Applicability: Model DHC–8–301, –311, and –315 series airplanes; as listed in de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the outboard flaps of the wings due to the installation of incorrect rivets in the flap assemblies, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 30 days after February 27, 1996 (the effective date of AD 95–26–17, amendment 39–9475), accomplish the modification of the airspeed limitation placards (Modification 8/2498) in accordance with de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995.

(b) Prior to further flight following accomplishment of the modification required by paragraph (a) of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by accomplishing either paragraph (b)(1) or (b)(2) of this AD, as applicable; and operate the airplane in accordance with those limitations.

(1) For Model DHC–8–301 series airplanes: Include the information specified in DHC–8 Model 301 Flight Manual, PSM 1–83–1A, Flight Manual Revision 57, dated September 26, 1995, which specifies a lower airspeed limitation at full flaps. This may be accomplished by inserting a copy of Flight Manual Revision 57 into the AFM.

(2) For Model DHC–8–311 and –315 series airplanes: Include the following statement in section 2, paragraph 2.4.1.2., of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"Flap extended speed (V_{FE}): Flaps 35 degrees 130 knots IAS"

(c) For Model DHC–8–311 and –315 series airplanes: Within 2 years after the effective date of this AD, install Modification 8/2066 in accordance with de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995. Such installation constitutes terminating action for the

requirements of paragraphs (a) and (b) of this AD. Following accomplishment of Modification 8/2066, the airspeed limitations placard (Modification 8/2498) required by paragraph (a) of this AD and the AFM limitation required by paragraph (b) of this AD may be removed.

(d) Except as required by paragraph (e) of this AD: As of February 27, 1996 (the effective date of AD 95–26–17, amendment 39–9475), Modification 8/2498 must be accomplished in accordance with de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995, prior to installation of any outboard flap assembly having a part number and serial number that is listed in de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995.

(e) For Model DHC–8–311 and –315 series airplanes: As of two years after the effective date of this AD, prior to the installation of any outboard flap assembly having a part number and serial number that is listed in de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995, install Modification 8/2066 on the affected flap assembly in accordance with that service bulletin. Installation of this modification terminates the requirements specified in paragraphs (a), (b), and (d) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The modifications shall be done in accordance with de Havilland Service Bulletin S.B. 8–57–24, Revision 'A', dated September 26, 1995. The AFM revision may be done in accordance with DHC–8 Model 301 Flight Manual, PSM 1–83–1A, Flight Manual Revision 57, dated September 26, 1995. The incorporation by reference of these two documents was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of February 27, 1996 (61 FR 5277, February 12, 1996). Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on August 6, 1996.

Issued in Renton, Washington, on June 26, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–16807 Filed 7–1–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 93F–0167]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of Nylon 46 resins, which are manufactured by the condensation of 1,4-butanediamine and adipic acid, in membrane filters intended to contact beverages containing not more than 13 percent alcohol. This action responds to a petition filed by DSM Engineering Plastics.

DATES: Effective July 2, 1996; written objections and requests for a hearing by August 1, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 17, 1993 (58 FR 33447), FDA announced that a petition (FAP 3B4374) had been filed by DSM Engineering Plastics, 501 Crescent Ave., Reading, PA 19512–5051 (currently c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001). The petitioner proposed to amend the food additive regulations in § 177.1500 *Nylon resins* (21 CFR 177.1500) to provide for the safe use of Nylon 46 resins, which are manufactured by the condensation of 1,4-butanediamine and adipic acid, in membrane filters intended to contact alcoholic beverages.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe and that § 177.1500 should therefore be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before August 1, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.1500 is amended by adding new paragraph (a)(15) and in the table in paragraph (b) by adding new entry "15" to read as follows:

§ 177.1500 Nylon resins.

* * * * *

(a) * * *

(15) Nylon 46 resins (CAS Reg. No. 50327–77–0) are manufactured by the condensation of 1,4-butanediamine and adipic acid.

(b) * * *

Nylon resins	Specific gravity	Melting point (degrees Fahrenheit)	Solubility in boiling 4.2*N* HCL	Viscosity No. (mL/g)	Maximum extractable fraction in selected solvents (expressed in percent by weight of resin)			
					Water	95 percent ethyl alcohol	Ethyl acetate	Benzene
* * *								
15. Nylon 46 resins for use only in food-contact membrane filters intended for repeated use. The finished membrane filter is intended to contact beverages containing no more than 13 percent alcohol, under conditions of use E, F, and G listed in table 2 of § 176.170(c) of this chapter.	1.18 ± 0.015	551–592	Dissolves in 1 hour	.....	0.3	0.2	0.2	0.3

* * * * *

Dated: June 12, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–16769 Filed 7–1–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 10

RIN 1076–AD77

Indian Country Detention Facilities and Programs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (Bureau) is establishing regulations to ensure that all Bureau and tribal entities that receive Federal funding for the operation, maintenance, design and construction, or renovation of detention facilities are operated and maintained in a constitutionally sound manner and comply with the Indian Law Enforcement Reform Act of 1990, Public Law 101–379 (25 U.S.C. 2801 et seq.). These regulations define the policies, standards and guidelines for detention and rehabilitation programs within Indian country.

EFFECTIVE DATE: These regulations take effect on August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Theodore R. Quasula, 202–208–5786.

SUPPLEMENTARY INFORMATION:

Background

The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9. The proposed rule was published August 5, 1994, (59 FR 40086). Comments received during the comment period ending November 3, 1994, were considered in the drafting this final rule.

What is the purpose of this rule? The purpose of this rule is to provide standards and procedures for the operation of detention facilities funded under the Indian Alcohol and Substance Abuse Prevention and Treatment Act, Pub. L. 99–570, (25 U.S.C. § 2453).

Who must follow these regulations? Every BIA and tribal law enforcement program receiving Federal funding or performing duties during the operation of detention or rehabilitation facilities or functions must follow these minimum standards. These programs and functions are high risk activities that subject the Federal Government to the risk of liability for tort claims. Self-governance tribes and tribes with limited jurisdiction are encouraged to use this rule, Chapter 69 Bureau of Indian Affairs Manual (BIAM), and handbooks for detention and rehabilitation programs under their administration.

How will these regulations be enforced? All programs will be subject to periodic inspections or evaluations during which the BIA will provide technical assistance, will ensure compliance with the standards and procedures contained in this rule, and will identify necessary corrective actions or improvements to policies and procedures. The Bureau adopted a voluntary accreditation process with an audit and evaluation system.

Why were regulations rewritten and moved? Detention standards were published in 25 CFR § 11.305 and later moved to Section 12.104. The regulations had not been modified for sixteen years. They did not address current detention problems and were inconsistent with current acceptable detention practices and procedures. The regulations also failed to address code compliance and related physical plant issues, and lacked options to allow for alternative types of detention programs. The need for more detailed and contemporary standards was intensified by the provision of funding for detention programs under Indian Alcohol and Substance Abuse Prevention and Treatment Act.

Are all the standards and procedures applicable to adult and juvenile detention facilities, Inmate Handbook

facilities, and holding facilities and programs published in this rule? No. Although Part 10 is reserved entirely for Indian country detention and rehabilitation programs, Chapter 69 BIAM, and handbooks for detention and rehabilitation programs detail the standards and procedures.

How were the rules or regulations revised and updated? A multi-agency task force was assembled to develop the first draft of these standards. The task force included representatives from the Office of Law Enforcement Services, Area Office Supervisory Criminal Investigators, Agency Criminal Investigators, detention staff, and Indian Health Service program specialists. The task force also included individuals with experience working in tribal detention programs. Additional internal reviews were conducted at the Bureau area and agency level. Interested parties and professionals submitted written comments, suggestions or objections to the proposed rules.

Review of Public Comments

Building and Safety Code Compliance.

The Bureau of Indian Affairs, Facilities Management & Construction Center recommended the standards relating to building and safety code compliance be revised to reflect current requirements. If the facility is owned by the BIA, it must comply with the codes and standards adopted by the BIA in the Chapter 25 Bureau of Indian Affairs Manual (BIAM) Supplements 18 and 19. If the facility is owned by a tribe, it must comply with either tribally adopted building codes, tribally adopted state or municipal building codes, or the Chapter 25 BIAM Supplements 18 and 19. This change has been incorporated into each applicable standard.

Mississippi Band of Choctaw Indians

The Mississippi Band of Choctaw Indians expressed numerous concerns and recommendations. Each of the Tribe's concerns has been addressed:

(1) Development of requirements that are applicable to all facility types. As directed of the Department of the Interior, Office of Regulatory Affairs, the format for the rule must be general in nature. Specific requirements are published in the policy and standards manuals, rather than as rules. The recommendation will not be incorporated in this rule.

(2) Publication of an accreditation process prior to the approval of the final rule. An accreditation process has been drafted. A standards compliance information packet, corrective action plan workbook, self-audit workbook, and standard accreditation workbook have been developed. This process will be field tested and adopted by the BIA.

(3) Reduction of the levels of Bureau approval required for standard compliance—operational descriptions. Standards have been developed for Bureau operated detention/correctional facilities and programs. Through the contracting programs of the Indian Self-Determination and Education Assistance Act, The tribe can develop a facility specific line of authority and approval process of their own when contracting detention/correction programs under the Indian Self-Determination and Education Assistance Act.

(4) Involvement of the Indian Health Service and tribes in the drafting of these standards. The Bureau established a task force to draft these standards. The task force was comprised of representatives from the Office of Law Enforcement Services, Area Office Supervisory Criminal Investigators, Agency Criminal Investigators, detention staff, and Indian Health Service program specialists and tribes. They provided Indian Health Services and the tribes many opportunities to review the standards, including the publication of the proposed rule in the **Federal Register** on August 5, 1994.

(5) Incorporation of the numbering changes for various tables and charts for Mandatory Standards, Separation of Adults and Juveniles, and Suicide Screening. This has been done.

(6) Modification of accreditation requirements and the minimum qualifications for new recruits. The minimum standards are critical to a quantified accreditation process in order to evaluate compliance and performance. The recommendation will not be incorporated in this rule.

(7) Addition of Detention Officer to the definitions section. The definition section for this rule and the definition has been added.

(8) Provision of funds to train detention staff in the operation of new generation jails. The BIA Indian Police Academy offers detention officer training and is revamping its detention officers' curriculum to incorporate direct supervision methodologies and philosophies.

(9) Incorporation of the rate of facility capacity as a mandatory standard. During drafting of the rule, BIA agreed that mandatory standards would be limited to those areas that create a potential danger to the life, health, and safety of inmates, staff, and/or the community, and those areas in which there are other statutes, regulations, or directives that mandate compliance. The recommendation will not be incorporated in this rule.

(10) Inclusion and/or clarification of the following definitions: (a) Protective Holding Cell—a specialized cell or room that is utilized to detain or isolate an incapacitated or combative individual(s) for a short period of time, in the standards. The protective holding cell may be equipped with specialized security and/or medical equipment to control and manage individuals detained in these areas in a safe, secure, and humane environment. (b) Special Management—confinement of a detainee in an individual cell that is separated from the remainder of the population for the purpose of disciplinary, administrative segregation, protective custody, or medical segregation, in standards. The exceptions to house an inmate in special management must coincide with this criteria. (c) Multiple Occupancy Cells or Rooms—an area, room or cell housing more than two and less than fifty persons. These recommendations were incorporated in the standards or rule.

(11) Addition of Designated Security Post to clarify staffing requirements.

(12) Addition of Adult Holding Facility and Mass Arrest to the definitions for this rule. The Department of the Interior, Office of Regulatory Affairs established the definitions section for this rule. The recommendation will not be incorporated in this rule.

(13) Inclusion of square footage requirements as a mandatory standard. During drafting of the rule, BIA agreed that mandatory standards would be limited to those areas that create a potential danger to the life, health, and safety of inmates, staff, and/or the community, and those areas in which there are other statutes, regulations, or directives that mandate compliance. The recommendation will not be incorporated in this rule.

(14) Addition of a transition program for accepting, moving into, and operating a new facility beginning one year prior to the completion of a facility. The Planning of New Institutions (PONI) is the Bureau's process for constructing and operating new facilities in Indian country. The Bureau has determined that this transition must begin when the construction phase starts. The recommendation will not be incorporated in this rule.

(15) Consolidation of limitations on inmate correspondence and inspection of letters and packages. Upon review, it was decided that no change would be made. The limitations on inmate correspondence addresses the volume of lawful correspondence an inmate may send or receive. The standard dealing with the inspection of letters and packages addresses the search of inmate mail for contraband. The recommendation will not be incorporated in this rule.

(16) Removal of the requirement that a governing board or advisory committee oversee the operation of a residential facility. The structure of these programs will be the responsibility of the tribe. Oversight of these facilities should include representation from the community and the overall Tribal government. The recommendation will not be incorporated in this rule.

(17) Removal of the designated staff position for recreational and leisure activities, would not be realistic due to the limited staff resources. A position must be specified for accountability purposes, however, the administrator will have the latitude to designate collateral duties where staff is limited. The recommendation will not be incorporated in this rule.

(18) Amendment of Staffing Requirements to Administrative Review of Staff Requirement to include institutional operations dealing with staff requirements. The staffing requirement in the Administration and Management section is an institutional requirement that staff be on board at all times to operate the facility, rather than the administrative process to review staffing patterns within the institution. The recommendation will not be incorporated in this rule.

(19) Inclusion of comparable tribal regulations in the standards. The standards indicate that non-regulatory documents will not be incorporated into the rule. The standards were developed for BIA operated detention/correctional facilities and programs, but permit tribes to operate under comparable tribal regulations when the program is contracted under the Indian Self-Determination and Education Assistance Act. The recommendation will not be incorporated in this rule.

National Commission on Correctional Health Care and the American Psychiatric Association

The recommendation by the National Commission on Correctional Health Care (NCOCHC) and American Psychiatric Association suggested replacing the drafted health care standards developed in association with the Indian Health Service with the NCOCHC's standards for health services in jails. Indian country detention and holding facilities, in general, are smaller than the facilities referenced in NCOCHC standards. The NCOCHC standards are unrealistic for reservation facilities. The Indian Health Service has a legal obligation to provide health services to Indian people and to mandate NCOCHC's standards is duplicative. The Bureau standards are equal to or exceed the American Correctional Association standards. These standards are consistent with national professional standards. The recommendation will not be incorporated in this rule.

Changes Reflecting Department of the Interior Policy

The Office of Regulatory Affairs and the Office of the Solicitor, Department of the Interior, indicated that the proposed rule was predominately standards and procedures for the operation of detention or holding facilities in Indian country; as such they should not be published in the Code of Federal Regulations. This is consistent with Executive Order 12866 that mandates that agencies streamline the regulatory process and enhance the planning and coordination of new and existing regulations.

The Bureau has separated the operational standards and day-to-day guidance from the rulemaking process. The operational standards are now included in easy-to-read reference handbooks and guides. These handbooks and guides are specific to Indian country detention and holding facilities. They are now part of the Bureau's operations management handbook and are available to the public, tribal programs, and BIA employees upon request. Inmates will receive written guidelines at the time of booking into a facility detailing what behavior will be expected of them, their rights and privileges, and the nutritional/medical/emergency treatment to be provided.

Public comments have been incorporated in the "Indian Country Detention Facilities and Programs 69" (Chapter 69 Bureau of Indian Affairs Manual) and accompanying handbooks. The Inmate Handbook ensures that all persons incarcerated in Indian country detention or holding facilities understand their rights, privileges, safety procedures, detainee treatment during incarceration, and the behavior expected of detainees.

Evaluation and Certification

Executive Order 12988

The Department has determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This rule is not a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. § 601 et seq.)

Executive Order 12630

The Department has determined that this rule does not have "significant" takings implications. The rule does not pertain to "taking" of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this rule does not have significant federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

NEPA Statement

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

This proposed rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Paperwork Reduction Act of 1995

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements.

Drafting Information

The primary author of this document is Warren LeBeau, Detention Specialist, Bureau of Indian Affairs, Office of Law Enforcement Services.

List of Subjects in 25 CFR Part 10

Buildings, Indians, Law enforcement, Prisoners, Youth.

For the reasons given in the preamble, a new part 10 is added to Chapter I of title 25 of the Code of Federal Regulations as set forth below.

PART 10—INDIAN COUNTRY DETENTION FACILITIES AND PROGRAMS

Sec.

10.1 Why are policies and standards needed for Indian country detention programs?
10.2 Who is responsible for developing and maintaining the policies and standards for detention and holding facilities in Indian country?
10.3 Who must follow these policies and standards?
10.4 What happens if the policies and standards are not followed?
10.5 Where can I find the policies and standards for the administration, operation, services, and physical plant/construction of Indian country detention, Inmate Handbook, and holding facilities?
10.6 How is the BIA assured that the policies and standards are being applied uniformly and facilities are properly accredited?
10.7 Where do I find help or receive technical assistance in complying with the policies and standards?
10.8 What minimum records must be kept and reports made at each detention, Inmate Handbook, or holding facility in Indian country?
10.9 If a person is detained or incarcerated in an Indian country detention, Inmate Handbook, or holding facility, how would they know what their rights, privileges, safety, protection and expected behavior would be?
10.10 What happens if I believe my civil rights have been violated while incarcerated in an Indian country detention or holding facility?
10.11 How would someone detained or incarcerated, or their representative, get the BIA policies and standards?

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 13, 2417, 2453, and 2802.

§ 10.1 Why are policies and standards needed for Indian country detention programs?

Policies and standards are required to ensure that all Bureau of Indian Affairs (BIA) and tribal entities that receive Federal funding for the operation, maintenance, design and construction or renovation of detention facilities, Inmate Handbook, or holding facilities are supporting constitutional rights and are complying with the Indian Law Enforcement Reform Act of 1990. Self-governance tribes and tribes with limited jurisdiction are encouraged to follow the regulations in this part, and other BIA manuals and handbooks. The provision for funding tribes for detention programs under the Indian Alcohol and Substance Abuse Prevention and Treatment Act, Public Law 99–570, (25 U.S.C. 2453) requires standards and procedures for such facilities.

§ 10.2 Who is responsible for developing and maintaining the policies and standards for detention and holding facilities in Indian country?

The Director, Office of Law Enforcement Services who reports to the Deputy Commissioner of Indian Affairs, BIA, establishes policies, procedures, and standards for the operations, design, planning, maintenance, renovation, and construction of detention programs in the BIA and by tribal contract under Indian Self-Determination and Education Assistance Act, Public Law 93–638, as amended, 25 U.S.C. 450.

§ 10.3 Who must follow these policies and standards?

You must follow these minimum policies, standards, and guides if you are part of the BIA or tribal detention or rehabilitation program receiving Federal funding. Self-governance tribes and tribes with limited jurisdiction are encouraged to follow the regulations in this part, and other BIA manuals and handbooks. Detention officers, guards, cooks and other staff conducting business in the facilities must meet minimum standards of law enforcement personnel as prescribed in 25 CFR part 12, subpart D, "Qualifications and Training Requirements." Those tribal programs not receiving Federal funding under the Indian Self-Determination and Education Assistance Act (Public Law 93–638, as amended) who wish to be accredited are encouraged to use the policies and standards in that part since they have been modified and approved for Indian country.

§ 10.4 What happens if the policies and standards are not followed?

The risk for human and civil rights violations due to lack of common standards will subject the operation and/or facility to unnecessary exposure to liability. Lack of employee standards, particularly for training and background checks, will increase the risk of misconduct and vicarious liability of the tribes and the Federal government through tort claims. Funding sources for detention programs may become scarce to nonexistent because of contract noncompliance. The tribes' opportunity to receive funding from potential resource sharing agreements with other law enforcement agencies may be damaged because the facility may have to be closed for cause due to violation of the life safety codes.

§ 10.5 Where can I find the policies and standards for the administration, operation, services, and physical plant/construction of Indian country detention, Inmate Handbook, and holding facilities?

The Bureau of Indian Affairs, Department of the Interior, maintains a manual of policies and procedures called the *Bureau of Indian Affairs Manual (BIAM).* The Chapter 69 BIAM titled "Indian Country Detention Facilities and Programs," contains the BIA's policies, procedures, and standards for detention and holding programs in Indian country. The standards for the programs within the *BIAM* are in handbook format for easy field reference and use. Copies of the Chapter 69 *BIAM* and handbooks may be obtained from the Director, Office of Law Enforcement Services.

§ 10.6 How is the BIA assured that the policies and standards are being applied uniformly and facilities are properly accredited?

The tribes and BIA programs will use a phased approach to meeting all non-mandatory detention standards and will document progress on uniform reporting. The BIA Office of Law Enforcement Services will conduct periodic operational evaluations for oversight.

§ 10.7 Where do I find help or receive technical assistance in complying with the policies and standards?

The BIA has a trained Detention Specialist on the staff of the Office of Law Enforcement Services, Albuquerque, New Mexico, who is available to conduct evaluations and provide technical assistance or guidance in all facets of Indian country detention programs.

§ 10.8 What minimum records must be kept and reports made at each detention, Inmate Handbook, or holding facility in Indian country?

The Director, Office of Law Enforcement Services, BIA, will develop all necessary requirements for maintaining records, reporting data, and archiving information. These requirements will be published in 69 BIAM, "Indian Country Detention Facilities and Programs."

§ 10.9 If a person is detained or incarcerated in an Indian country detention, Inmate Handbook, or holding facility, how would they know what their rights, privileges, safety, protection and expected behavior would be?

When an individual is incarcerated in an Indian country detention, Inmate Handbook, or holding facility, he/she will be given, or in some cases notified of the availability of, an Inmate Handbook. This book of guidelines describes in detail the inmate's rights, privileges, protection and safety, cleanliness and sanitation, and general health and nutritional standards. The Inmate Handbook describes the emergency evacuation procedures, medical, counseling, rehabilitation services, visitation procedures, and other appropriate information. The Inmate Handbook is published by the Director, Office of Law Enforcement Services and maintained by the detention facility administrator at each facility location.

§ 10.10 What happens if I believe my civil rights have been violated while incarcerated in an Indian country detention or holding facility?

All allegations of civil rights violations must be reported immediately to the Internal Affairs Branch of the Office of Law Enforcement Services. This office will ensure that such allegations are immediately reported to the Civil Rights Division of the U.S. Department of Justice through established procedures. The BIA Internal Affairs Branch may also investigate alleged violations and make recommendations for additional action as necessary. Detailed instructions on the procedure to report violations can be found in the Inmate Handbook.

§ 10.11 How would someone detained or incarcerated, or their representative, get the BIA policies and standards?

At each detention, Inmate Handbook, or holding facility located in a tribal jurisdiction where federal funds are used for operations or maintenance programs, the BIA's policies, standards, and procedures will be made available upon request. The Inmate Handbook will be made available to all persons at the time they are incarcerated or detained in a facility. There may be times when this may be delayed due to the physical or mental condition of the person at time of incarceration. In these cases, the Inmate Handbook will be made available when the person is deemed receptive and cognizant by the detention officer in charge. All policies, standards, procedures, and guidelines are available at each facility to the public or by writing to the Director, Office of Law Enforcement Services.

Dated: May 28, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–16042 Filed 7–1–96; 8:45 am]

BILLING CODE 4310–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 90

[WT Docket No. 96–18; PP Docket No. 93–253; FCC 96–260]

Future Development of Paging Systems; Implementation of Section 309(J) of the Communications Act—Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final Rule; Order on Reconsideration of Interim Rules.

SUMMARY: In this *Order on Reconsideration* in WT Docket No. 96–18 and PP Docket No. 93–253, the Commission modifies the *First Report and Order* in this docket by expanding the number of licensees that can modify their paging systems by adding sites, due to the paging industry's claims that such relief is necessary to allow paging operators to meet customer needs and improve service to the public while this rulemaking is pending. The Commission will allow applications for additional sites by incumbent licensees who had filed paging applications by October 1, 1995, rather than February 8, 1996, thus expanding the potential number of paging licensees that can expand their systems.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Mika Savir or Rhonda Lien, Commercial Wireless Division at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This *Order on Reconsideration* in WT Docket No. 96–18, PP Docket No. 93–253, adopted June 10, 1996 and released June 11, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 230, 1919 M Street N.W., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington DC., 20037, (202) 857–3800.

Synopsis of Order on Reconsideration of First Report and Order:

I. Background

In the *Notice of Proposed Rulemaking (NPRM),* 61 FR 06199, February 16, 1996, the Commission suspended acceptance of new paging applications governed by parts 22 and 90 of the Commission's rules in conjunction with a proposal to convert from site-by-site licensing of paging channels to licensing on a geographic area basis. In the *First Report and Order* (*First R&O*), 61 FR 21380, May 10, 1996, the Commission adopted interim measures allowing incumbents on non-nationwide paging channels to apply for new sites to expand existing systems, subject to certain limitations, during the pendency of the rulemaking proceeding. On its own motion, the Commission makes certain modifications to the interim licensing rules established by the *First R&O*, as discussed below.

In the *First R&O*, the Commission allowed incumbents to expand the geographic coverage of their systems by adding transmission sites to their systems within a defined distance of existing, operating sites. Specifically, the *First R&O* provided that applications could be filed for new sites provided that the applicant certifies that the proposed site is within 65 kilometers (40 miles) of an operating site licensed to the same applicant on the same channel prior to the *NPRM*, that is, February 8, 1996. Thus, under the terms of the *First R&O*, incumbents may not use sites licensed after February 8, 1996 as the basis for filing applications for additional expansion sites under the interim rules.

II. Order on Reconsideration

At the time the Commission adopted the *NPRM*, the Wireless Telecommunications Bureau (Bureau) was engaged in reducing a significant backlog of pending paging applications, primarily in the 931 MHz band, many of which had been pending for a year or more. Since the *NPRM* was adopted, the Bureau has significantly reduced the backlog by processing all non-mutually exclusive applications filed through September 30, 1995. In *ex parte* presentations and in comments filed with the Commission, incumbent paging operators have argued that the processing backlog delayed licensing of sites that otherwise would have been granted prior to February 8, 1996. Accordingly, these commenters contend that they should not be precluded from using these newly licensed sites as a basis for expansion.

III. Discussion

The Commission agrees that because of the time it has taken to process certain paging applications, it should allow incumbents to use some sites that were not licensed as of February 8, 1996 as a basis for expansion. Due to the large number of 931 MHz applications filed in the past few years, the Bureau has developed a computer software program to identify and process non-mutually exclusive applications. The Bureau began using the program to process backlogged applications in mid-1995. However, some applications for 931

MHz licenses that were filed as early as January 1995 were still pending on February 8, 1996. The Bureau recently completed its computer run of 931 MHz applications filed between January 1 and September 30, 1995. The results of the run identified about 2,500 applications that were not mutually exclusive and are to be granted, if the applications are otherwise complete, eliminating most of the remaining application backlog. The Commission believes that the recipients of these license grants should be allowed to expand their systems based on these sites, as long as the licensed sites are operational at the time the expansion applications are filed. Therefore, the Commission will allow incumbents to expand 65 kilometers (40 miles) from sites for which applications were filed as of September 30, 1995, whether or not such applications were granted prior to February 8, 1996. This change to the Commission's interim measures will benefit applicants most affected by delays prior to adoption of the *NPRM*.

IV. Procedural Matters and Ordering Clauses

A. Regulatory Flexibility Act

As required by Section 604 of the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis of the expected impact on small entities of the modification of the interim rules set forth in this *Order on Reconsideration*.

Statement of the Need for and Objectives of Interim Rules: In this *Order on Reconsideration*, the Commission is modifying the interim measures, specifically, the interim freeze on new paging applications imposed in the *Notice of Proposed Rulemaking*, to permit incumbent paging licensees to apply for additional licenses to add transmission sites to existing paging systems on the same channel as the existing systems, provided that the additional transmission site is within 65 kilometers (40 miles) from an operating transmission site in the applicant's system. This modification of the interim rule will allow paging companies additional flexibility to expand their systems during the interim period.

Summary of Significant Issues Raised by Comments to the Initial Regulatory Flexibility Analysis (IRFA): There were no comments to the IRFA regarding the interim rules.

All significant alternatives are discussed in the *Order on Reconsideration*.

B. Ordering Clauses

It is ordered that, pursuant to the authority of Sections 4(i), 303(r), 309(c), 309(j), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(c), 309(j), and 332, and effective upon publication of this *Order on Reconsideration* in the **Federal Register**, the interim rules set forth in the *First Report and Order* in this docket are modified as set forth herein.

List of Subjects

47 CFR Part 22

Communications common carriers.

47 CFR Part 90

Common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–16874 Filed 7–1–96; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 36

[CC Docket 96–45; FCC–96–281]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Report and Order* extends the duration of the indexed interim cap ("interim cap") on the rate of growth of the Universal Service Fund ("USF"), amending the Commission's rules regarding jurisdictional separations. This action will moderate the growth of the USF while the Federal-State Joint Board on Universal Service and the Commission consider changes to the universal service rules. The interim cap is extended in order to facilitate the transition to any new universal service rules that are adopted consistent with the mandates of the Telecommunications Act of 1996.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Pam Szymczak, Accounting and Audits Division, Common Carrier Bureau at (202) 418–0389.

SUPPLEMENTARY INFORMATION: This *Report and Order* adopts the *Recommended Decision* of the Federal-State Joint Board on Universal Service, FCC 96J–1 (released June 19, 1996) and extends the interim cap on the growth of the Universal Service Fund. The *Report and Order* extends the interim cap until the Commission's final rules on universal service, to be adopted on or before May 8, 1997, become effective. The Federal-State Joint Board recommended, and the Commission concurs in the *Report and Order*, that extending the duration of the cap will facilitate a transition to any new universal service rules that may be implemented pursuant to the Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56 (1996). For all the reasons stated in the *Report and Order*, the Commission finds good cause for making the rule amendments effective on less than 30 days notice. The *Notice of Proposed Rulemaking* initiating this proceeding was released March 8, 1996 (FCC 96–93).

List of Subjects in 47 CFR Part 36

Communications common carriers, Telephone and Uniform System of Accounts.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 36 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for Part 36 continues to read as follows:

Authority: 47 U.S.C. Secs. 151, 154 (i) and (j), 205, 221(c), 403 and 410.

2. Section 36.601 is amended by revising paragraph (c) to read as follows:

§ 36.601 General.

* * * * *

(c) During an interim period commencing on January 1, 1994, and terminating on the effective date of the Commission's universal service rules, to be adopted in CC Docket 96–45 on or before May 8, 1997, the annual amount of the total Universal Service Fund shall not exceed the amount of the total Universal Service Fund for the immediately preceding calendar year, increased by a rate equal to the rate of increase in the total number of working loops nationwide during the calendar year preceding the June filing. The total Universal Service Fund shall consist of the Universal Service expense adjustments, including amounts calculated pursuant to §§ 36.612(a) and 36.631. The rate of increase in total working loops shall be based upon the difference between the number of total working loops on December 31 of the year preceding the June filing and the number of total working loops on December 31 of the second year preceding that filing, both calculated pursuant to § 36.611(a)(8).

3. Section 36.622 is amended by revising paragraph (c) to read as follows:

§ 36.622 National and study area average unseparated loop costs.

* * * * *

(c) During an interim period commencing on January 1, 1994, and terminating on the effective date of the Commission's universal service rules, to be adopted in CC Docket No. 96–45 on or before May 8, 1997, the National Average Unseparated Loop Cost per Working Loop shall be the greater of:

(1) The amount calculated pursuant to the method described in paragraph (a) of this section; or

(2) An amount calculated to produce the maximum total Universal Service Fund allowable pursuant to § 36.601(c).

[FR Doc. 96–16761 Filed 6–28–96; 10:18 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 91–75; RM–7230]

Radio Broadcasting Services; Conway and Myrtle Beach, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Lee W. Shubert, Trustee, reallots Channel 281C1 from Conway to Myrtle Beach, South Carolina, and modifies Station WYAV(FM)'s license accordingly. *See* 56 FR 14054, April 5, 1991. Channel 281C1 can be allotted to Myrtle Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.2 kilometers (12.6 miles) southwest to avoid a short-spacing to Station WLTT(FM), Channel 279C3, Shallotte, North Carolina, at petitioner's present transmitter site. The coordinates for Channel 281C1 at Myrtle Beach are North Latitude 33–35–27 and West Longitude 79–02–53. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 91–75, adopted June 14, 1996, and released June 21, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Channel 281C1 at Conway, and adding Channel 281C1 at Myrtle Beach.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–16762 Filed 7–1–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 062196A]

Fisheries of the Exclusive Economic Zone off Alaska; Northern Rockfish in the Western Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to use the total allowable catch (TAC) for northern rockfish in this area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), July 1, 1996, until 2400 hrs, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at Subpart H of 50 CFR part 600 and 50 CFR part 679.

The annual TAC for northern rockfish in the Western Regulatory Area was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996) as 640 metric tons (mt). See § 679.20(c)(3)(ii). The Final 1996 Harvest Specifications of Groundfish also closed the directed fishery for northern rockfish in the Western Regulatory Area of the GOA. See 679.20(d)(1).

The Director, Alaska Region, NMFS, has determined that the 1996 TAC for northern rockfish in the Western Regulatory Area has not been reached. Therefore, NMFS is terminating the previous closure and is opening directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska.

All other closures remain in full force and effect.

Classification

This action is taken under 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 26, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–16862 Filed 6–27–96; 2:46 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 128
Tuesday, July 2, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 95–098–1]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. All of the fruits and vegetables, as a condition of entry, would be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables would be required to undergo prescribed treatments for injurious plant pests as a condition of entry, or to meet other special conditions. The removal of these prohibitions would provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

DATES: For comments on all portions of this proposed rule except the rule's information collection and recordkeeping requirements that are subject to the Paperwork Reduction Act, consideration will be given only to comments received on or before August 1, 1996. For comments on the Paperwork Reduction Act requirements of this proposed rule, consideration will be given only to comments received on or before September 3, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–098–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–098–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Grosser, Senior Operations Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737–1236; (301) 734–8295.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as "the regulations") prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of fruit flies and other injurious plant pests that are new to or not widely distributed within and throughout the United States.

We are proposing to amend the regulations to allow additional fruits and vegetables to be imported into the United States from certain parts of the world under specified conditions. The importation of these fruits and vegetables has been prohibited because of the risk that the fruits and vegetables could introduce fruit flies or other injurious plant pests into the United States. We are proposing to allow these importations at the request of various importers and foreign ministries of agriculture, and after conducting pest risk analyses[1] that indicate the fruits or vegetables can be imported under certain conditions without significant pest risk.

All of the fruits and vegetables included in this document would be subject to the requirements in § 319.56–6 of the regulations. Section 319.56–6 provides, among other things, that all imported fruits and vegetables, as a condition of entry, shall be subject to inspection, disinfection, or both, at the port of first arrival, as may be required by a U.S. Department of Agriculture (USDA) inspector to detect and eliminate plant pests. Section 319.56–6 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is infested with fruit flies or other injurious plant pests and an inspector determines that it cannot be cleaned by disinfection or treatment.

Some of the fruits and vegetables proposed for importation would be required to undergo prescribed treatments for injurious plant pests as a condition of entry, or to meet other special conditions. The proposed conditions of entry, which are discussed in greater detail below, appear adequate to prevent the introduction and dissemination of fruit flies and other injurious plant pests by the importation of fruits and vegetables from certain foreign countries and localities into the United States.

Subject to Inspection and Treatment Upon Arrival

We are proposing to allow the following fruit and vegetables to be imported into the United States from the country or locality indicated in accordance with § 319.56–6 and all other applicable requirements of the regulations:

Country/locality	Common name	Botanical name	Plant part(s)
Argentina	Basil	*Ocimum* spp.	Above ground parts.
Korea	Angelica	*Aralia elata*	Edible shoot.
Morocco	Strawberry	*Fragaria* spp.	Fruit.

[1] Information on these pest risk analyses and any other pest risk analysis referred to in this document may be obtained by writing to the person listed under FOR FURTHER INFORMATION CONTACT.

Pest risk analyses conducted by the Animal and Plant Health Inspection Service (APHIS) have shown that the fruit and vegetables listed above are not attacked by fruit flies or other injurious plant pests, either because they are not hosts to the pests or because the pests are not present in the country or locality of origin. In addition, we have determined that any other injurious plant pests that might be carried by any of the listed fruit or vegetables would be readily detectable by a USDA inspector. Therefore, the provisions in § 319.56–6 concerning inspection, disinfection, or both, at the port of first arrival, appear adequate to prevent the introduction into the United States of fruit flies or other injurious plant pests by the importation of these fruits and vegetables.

Subject to Inspection and Treatment Upon Arrival; Additional Conditions

We would allow the following fruits and vegetables to be imported into the United States from the country indicated subject to the prescribed conditions and in accordance with § 319.56–6 and all other applicable requirements of the regulations:

Babaco from Chile

We are proposing to allow babaco (fruit, *Carica* x *heilborni* var. *pentagona*) from Chile to be imported into the United States if the fruit is grown in one of the designated districts of Chile that has been determined to be free of the Mediterranean fruit fly (Medfly). The babaco would have to be accompanied by a phytosanitary certificate issued by the Chilean Department of Agriculture stating that the fruit originated in a Medfly-free province. Currently, all of the provinces of Chile except the provinces of Arica, Iquique, and Parinacota have been determined to be free of Medfly. This determination is based on a national Medfly trapping program that has been conducted in Chile for more than 10 years with the cooperation and monitoring of APHIS.[2]

Pest risk analyses conducted by APHIS have determined that any other injurious plant pests that might be carried by the babaco would be readily detectable by a USDA inspector. As noted, the babaco would be subject to inspection, disinfection, or both, at the port of first arrival, in accordance with § 319.56–6.

[2] Details on APHIS-monitored trapping programs in Chile are available from Operational Support, IS, APHIS, Suite 5A03, 4700 River Road Unit 67, Riverdale, MD 20737–1233.

Clementine, Grapefruit, Lemon, Minneola, Navel Orange, Satsuma, and Valencia Orange from South Africa

We are proposing to allow clementine, grapefruit, lemon, minneola, navel orange, satsuma, and valencia orange (fruit, *Citrus* spp.) to be imported into the United States from South Africa under certain conditions designed to prevent the introduction of Medfly and other injurious plant pests into the United States.

First, we would require that the citrus be grown in, packed in, and shipped from the Western Cape Province of South Africa. We are proposing this requirement because scientific studies and surveys [3] conducted by the South African Department of Agriculture have demonstrated that this area is free from citrus blackspot, unlike other citrus-producing areas in South Africa. Further, we believe that both natural and regulatory barriers are in place that will help ensure that the Western Cape Province will remain free of citrus blackspot. The Western Cape Province's nearest citrus-producing neighbor, the Gamtoos River Valley, has, to date, had no findings or reports of citrus blackspot, and the citrus-producing areas in South Africa that are infested with citrus blackspot are separated from the Western Cape Province by mountain ranges, semi-desert areas, or long distances. Additionally, the South African government has in place regulations that prohibit the movement of nursery trees from the northern citrus-production area of South Africa into the Western Cape Province, and the South African government carefully monitors and regularly inspects citrus fruit for citrus blackspot in the growing areas and packinghouses of the Western Cape Province.

As such, we are also proposing that each shipment of citrus fruit intended for importation into the United States would have to be accompanied by a phytosanitary certificate issued by the South African Ministry of Agriculture stating that the citrus fruit was grown in, packed in, and shipped from the Western Cape Province of South Africa. This requirement would ensure that only citrus fruit from areas of South Africa free of citrus blackspot would be imported into the United States.

Finally, we would require that the citrus fruit be cold treated for false codling moth and fruit flies of the genus *Ceritatis*, including Medfly, and *Pterandrus* in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which has been incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1. The prescribed cold treatment would be conducted as follows:

22 days at −0.55 °C (31 °F) or below.

We believe that the proposed conditions described above, as well as all other applicable requirements in § 319.56–6, would be adequate to prevent the introduction of Medfly and other plant pests into the United States on citrus fruit imported from South Africa.

Treatment Required

Additionally, we are proposing to allow the fruits and vegetables listed below to be imported into the United States, or specified parts of the United States, only if they have been treated in accordance with the PPQ Treatment Manual. These fruits and vegetables are attacked by injurious plant pests, as specified below, in their country or locality of origin. Visual inspection cannot be relied upon to detect these insects. However, the fruits and vegetables can be treated to destroy the injurious plant pests.

We would revise the PPQ Treatment Manual to show that treatments are required as follows for the fruits and vegetables listed below:

Country	Common name, botanical name, and plant part(s)
Honduras	Hyancinth bean, *Lablab purpureus*, pod or shelled
	Methyl Bromide fumigation for *Cydia fabivora*, *Epinotia aporema*, and *Maruca testulalis* would be required; fumigation would be conducted as follows:
	With methyl bromide in a 15-inch vacuum:
	8 g/m³ (½ lb/1000 ft³) for 1½ hours at 37 °C (90 °F) or above; or
	16 g/m³ (1 lb/1000 ft³) for 1½ hours at 26.5–31.5 °C (80–89 °F); or
	24 g/m³ (1½ lbs/1000 ft³) for 1½ hours at 21–26 °C (70–79 °F); or
	32 g/m³ (2 lbs/1000 ft³) for 1½ hours at 15.5–20.5 °C (60–69 °F); or
	40 g/m³ (2½ lbs/1000 ft³) for 1½ hours at 10–15 °C (50–59 °F); or
	48 g/m³ (3 lbs/1000 ft³) for 1½ hours at 4.5–9.5 °C (40–49 °F).
	Alternative treatment:
	With methyl bromide at NAP—chamber or tarpaulin:

[3] Information on these studies and surveys may be obtained by writing to the person listed under FOR FURTHER INFORMATION CONTACT.

Country	Common name, botanical name, and plant part(s)
	24 g/m³ (1½ lbs/1000 ft³) for 2 hours at 26.5 °C (80 °F) or above, with minimum gas concentrations of:
	19 g (19 oz) at ½ hour after fumigation begins.
	14 g (14 oz) at 2 hours after fumigation begins; or
	32 g/m³ (2 lbs/1000 ft³) for 2 hours at 21–26 °C (70–79 °F), with minimum gas concentrations of:
	26 g (26 oz) at ½ hour after fumigation begins.
	19 g (19 oz) at 2 hours after fumigation begins; or
	40 g/m³ (2½ lbs/1000 ft³) for 2 hours at 15.5–20.5 °C (60–69 °F), with minimum gas concentrations of:
	32 g (32 oz) at ½ hour after fumigation begins.
	24 g (24 oz) at 2 hours after fumigation begins; or
	48 g/m³ (3 lbs/1000 ft³) for 2 hours at 10–15 °C (50–59 °F), with minimum gas concentrations of:
	38 g (38 oz) at ½ hour after fumigation begins.
	29 g (29 oz) at 2 hours after fumigation begins.
	Yard long bean, *Vigna unguiculata* subsp. *sesquipedalis*, pod or shelled.
	Methyl bromide fumigation for *Cydia fabivora*, *Epinotia aporema*, and *Maruca testulalis* as set forth above for hyacinth bean from Honduras.
Nicaragua	Broad bean, *Vicia faba*, pod or shelled.
	Methyl bromide fumigation for *Cydia fabivora*, *Epinotia aporema*, and *Maruca testulalis* as set forth above for hyacinth bean from Honduras.
	Green bean, *Phaseolus* spp., pod or shelled.
	Methyl bromide fumigation for *Cydia fabivora*, *Epinotia aporema*, and *Maruca testulalis* as set forth above for hyacinth bean from Honduras.
	Mung bean, *Vigna radiata*, pod or shelled.
	Methyl bromide fumigation for *Cydia fabivora*, *Epinotia aporema*, and *Maruca testulalis* as set forth above for hyacinth bean from Honduras.

The treatments described above have been determined to be effective against the specified insects. This determination is based on research evaluated and approved by the Department. A bibliography and additional information on this research may be obtained from APHIS by writing to the Oxford Plant Protection Center, 901 Hillsboro St., Oxford, NC 27555.

Pest risk analyses conducted by APHIS have determined that any other injurious plant pests that might be carried by the fruits and vegetables listed above would be readily detectable by a USDA inspector. As noted, the fruits and vegetables would be subject to inspection, disinfection, or both, at the port of first arrival, in accordance with § 319.56–6.

Use of Methyl Bromide

Methyl bromide is currently in widespread use as a fumigant. It is prescribed as a treatment for hyacinth beans and yard long beans from Honduras and broad beans, green beans, and mung beans from Nicaragua. The environmental effects of using methyl bromide, however, are being scrutinized by international, Federal, and State agencies. The U.S. Environmental Protection Agency (EPA), based on its evaluation of data concerning the ozone depletion potential of methyl bromide, published a notice of final rulemaking in the **Federal Register** on December 10, 1993 (58 FR 65018–65082). That rulemaking freezes methyl bromide production in the United States at 1991 levels and requires the phasing out of domestic use of methyl bromide by the year 2001. APHIS is studying the effectiveness and environmental acceptability of alternative treatments to prepare for the eventual unavailability of methyl bromide fumigation. Our current proposal assumes the continued availability of methyl bromide for use as a fumigant for at least the next few years.

Proposal of Expansion of Medfly-Free Area in Belize

We are proposing to recognize the northern portion of the district of Stann Creek in Belize as free from Medfly and to allow papaya to be imported into the United States from this area without treatment for Medfly.

Belize has conducted a national Medfly trapping program for more than 6 years with the cooperation and monitoring of APHIS.[4] An intensive, ongoing trapping program, combined with an aggressive eradication campaign including intensified trapping, ground spraying with malathion bait, and fruit stripping, in the district of Stann Creek has established that the northern portion of that district qualifies as a Medfly-free area. The area of the Stann Creek district that would not be included in the proposed Medfly-free zone is the Placencia Peninsula area because this area has ports of entry that receive cargo and travellers from Honduras and is therefore subject to occasional Medfly introductions. The exact boundaries of the excluded area are as follows: Beginning at the southernmost point of the Placencia Peninsula; then north along the coast of the Caribbean Sea to Riversdale Road; then west along Riversdale Road to Southern Highway; then south along the Southern Highway to Independence Road; then east along Independence Road to Big Creek Port; then east, on an imaginary line, from Big Creek Port across the Placencia Lagoon to the point of beginning.

Therefore, we are proposing to allow papaya to be imported from the Medfly-free area of the Stann Creek district without treatment for Medfly if the papaya is accompanied by a phytosanitary certificate issued by the Belizean Department of Agriculture stating that the fruit originated in the Medfly-free area of the Stann Creek district. As is routine, APHIS would continue to be directly involved in the monitoring of Belize's national Medfly trapping program in order to assist the district of Stann Creek in maintaining Medfly-free status. Currently, papaya from the Cayo, Corozal, and Orange Walk districts of Belize may be imported into the United States without treatment for Medfly if the papaya is accompanied by a phytosanitary certificate issued by the Belizean Department of Agriculture stating that the fruit originated in those Medfly-free districts. Papaya grown in Belize outside the Medfly-free areas may also be imported into the United States, provided the fruit is treated for Medfly in accordance with the PPQ Treatment Manual.

Like all other papaya imported into the United States from Belize, papaya grown in the Medfly-free area of the Stann Creek district would be prohibited entry into Hawaii—where most domestically grown papayas are produced—as a precaution against the possible introduction of papaya fruit fly (*Toxotrypana curvicauda*). Accordingly, the cartons in which the papaya are packed would have to be stamped "Not for importation into or distribution in HI."

Pest risk analyses conducted by APHIS have determined that any other injurious plant pests that might be carried by the papaya would be readily detectable by a USDA inspector. As noted, the papaya would be subject to inspection, disinfection, or both, at the

[4] Details on APHIS-monitored trapping programs in Belize are available from Operational Support, IS, APHIS, Suite 5A03, 4700 River Road Unit 67, Riverdale, MD 20737–1233.

port of first arrival, in accordance with § 319.56–6.

Miscellaneous

We are also proposing to make minor editorial changes to the table in § 319.56–2t for clarity and consistency. Our amendments would involve removing the common name "Yam bean" and replacing it with "jicama" and, for importations of tarragon from Guatemala and Panama, removing the plant part description "Leaf and stem" and replacing it with "Above ground parts." We believe that these amendments will clarify the regulations by keeping the common names in the table up-to-date and by keeping the plant part descriptions uniform.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this proposed rule on small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee, 150ff, 151–167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

This proposed rule would amend the regulations governing the importation of fruits and vegetables by allowing a number of previously prohibited fruits and vegetables to be imported into the United States from certain foreign countries and localities under specified conditions. The importation of these fruits and vegetables has been prohibited because of the risk that they could have introduced injurious plant pests into the United States.

Our proposal is based on pest risk assessments that were conducted by APHIS at the request of various importers and foreign ministries of agriculture. The pest risk assessments indicate that the fruits or vegetables listed in this proposed rule could, under certain conditions, be imported into the United States without significant pest risk. All of the fruits and vegetables, as a condition of entry, would be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a USDA inspector. In addition, some of the fruits and vegetables would be required to undergo mandatory treatment for injurious plant pests as a condition of entry, or to meet other special conditions. This action would provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction into the United States of injurious plant pests by imported fruits and vegetables.

Basil from Argentina

From 1990 to 1994, the value of U.S. basil imports averaged $3.3 million annually. This average includes import values for 1994 when, due to a record import volume of 3,220 metric tons, U.S. basil imports amounted to $4.6 million. No information is available on U.S. basil production.

It is estimated that Argentina produces about 1,500 metric tons of basil annually. If commercial conditions are favorable, basil exports to the United States could, over time, reach 200 metric tons a year. This amount is only about 6 percent of current U.S. basil imports and, therefore, is not expected to have a significant effect on the U.S. basil market.

Babaco from Chile

Chile produced 334 metric tons of babaco from 1994 to 1995. Of this amount, only 6.9 metric tons were exported, and all exported babaco went to Argentina. There is no data available on production or importation of babaco by the United States. We do not expect that babaco imported from Chile would have a significant impact on U.S. producers or other small entities.

Hyacinth Bean and Yard Long Bean from Honduras

No information is available on potential U.S. imports of hyacinth bean or yard long bean from Honduras or on U.S. production of these commodities.

Angelica From Korea

Korea produces about 1,300 metric tons of angelica a year. Of this amount, only 10 kilograms were exported in 1994 and 14 kilograms in 1995. Given the negligible quantities exported in the last 2 years, it is anticipated that very little angelica will be imported into the United States from Korea. Therefore, no significant impact on U.S. entities is expected.

Strawberry From Morocco

In 1994, total U.S. strawberry production was 737,580 metric tons. That year, the United States exported 57,332 metric tons of fresh strawberries and 28,687 metric tons of frozen strawberries and imported 19,843 metric tons of fresh strawberries and 25,050 metric tons of frozen strawberries. Therefore, in 1994, U.S. exports of fresh strawberries surpassed U.S. imports of fresh strawberries by nearly three times, while frozen strawberry exports and imports were more balanced.

Morocco produced about 35,000 metric tons of strawberries in the 1994–95 season. During that season, Morocco exported about 9,000 metric tons of fresh strawberries and 11,000 metric tons of frozen strawberries.

Future U.S. strawberry imports from Morocco are estimated at 160 metric tons of strawberries per year. As these estimated strawberry imports from Morocco constitute less than .02 percent of U.S. strawberry production, they are not expected to have a significant impact on U.S. entities, large or small.

Broad Bean, Green Bean, and Mung Bean from Nicaragua

In 1994, total U.S. green bean production was 916,750 metric tons. Of this amount, 20,324 metric tons, or 2.2 percent of total production, was exported. In 1994, green bean imports amounted to 11,230 metric tons.

U.S. production data is not available for broad bean and mung bean. However, in 1994, the United States exported 389 metric tons of dried broad bean and 2,134 metric tons of dried mung bean. U.S. imports of these commodities in 1994 totaled 610 metric tons of dried broad bean and 7,178 metric tons of dried mung bean.

No information is available on potential imports of green bean, broad bean, and mung bean from Nicaragua. Given the sizable quantity of green beans produced in the United States and given the import levels for broad bean and mung bean, potential import of these commodities from Nicaragua is not expected to have a significant impact on U.S. producers or other small entities.

Clementine, Grapefruit, Lemon, Minneola, Navel Orange, Satsuma, and Valencia Orange From South Africa

In the 1994–95 season, the total value of the U.S. citrus crop was $2.25 billion. The 1994–95 value of U.S.-produced navel oranges (early and midseason) was $636 million, valencia oranges $727 million, grapefruit $301 million, and lemon $265 million. Production value is not available for clementine, satsuma, and minneola.

In 1994, the United States exported fresh citrus and citrus products valued at more than $650 million and imported fresh citrus and citrus products valued at about $70 million. By weight, about 50 percent of 1994 fresh citrus exports were oranges and tangerines, about 40 percent grapefruit, and about 10 percent lemons and limes.

South Africa exports about two-thirds of its citrus crop. The 1996 projected exports of citrus from the Western Cape Province of South Africa to the United States include 10,500 metric tons of navel oranges; 12,750 metric tons of valencia oranges; 8,000 metric tons of clementines; 75 metric tons of grapefruit; 3,000 metric tons of lemons; 1,000 metric tons of satsuma; and 900 metric tons of minneola. These projections amount to only a fraction of one percent of U.S. production of citrus.

Additionally, as South Africa exports most of its fresh citrus and citrus products during the summer months, South African citrus would not compete with the late fall, winter, and early spring citrus production season in the United States.

Therefore, due to summer arrival of citrus from South Africa, the relatively negligible quantity of citrus expected to be imported into the United States from South Africa, and the fact that U.S. citrus exports are more than nine times greater than U.S. citrus imports, we expect that South African citrus exports to the United States would not have a significant impact on U.S. producers, exporters, or importers of citrus. Citrus importers in the United States could benefit from the increased availability of citrus fruit, especially navel oranges, during the time of year when U.S. production is at its lowest.

The alternative to this proposed rule was to make no changes in the regulations. After consideration, we rejected this alternative because there is no biological reason to prohibit the importation into the United States of the fruits and vegetables listed in this document.

Executive Order 12778

This proposed rule would allow certain fruits and vegetables to be imported into the United States from certain parts of the world. If this proposed rule is adopted, State and local laws and regulations regarding the importation of fruits and vegetables under this rule would be preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 95–098–1. Please send a copy of your comments to: (1) Docket No. 95–098–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue, SW, Washington, DC 20250. Comments on the information collection or recordkeeping requirements included in this proposed rule are due 60 days from the proposed rule's date of publication in the **Federal Register**. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would allow a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. In order for some of these fruits and vegetables to be safely imported into the United States, we would require the use of a phytosanitary certificate, issued by plant health officials of the exporting country, stating that the fruits or vegetables originated in an area free of certain plant pests. This requirement would help ensure that only fruits and vegetables that do not present an unacceptable risk of introducing injurious plant pests into the United States would be imported into the United States.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1.31 hours per response.

Respondents: Foreign plant health officials.

Estimated number of respondents: 300.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 393 hours.

Copies of this information collection can be obtained from: Clearance Officer, OIRM, USDA, Room 404–W, 14th Street and Independence Ave., SW, Washington, DC 20250.

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR parts 300 and 319 are proposed to be amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would continue to read as follows:

Authority: 7 U.S.C. 150ee, 154, 161, 162, and 167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 300.1, paragraph (a), the introductory text would be revised to read as follows:

§ 300.1 Materials incorporated by reference; availability.

(a) *Plant Protection and Quarantine Treatment Manual.* The Plant Protection

and Quarantine Treatment Manual, which was reprinted November 30, 1992, and includes all revisions through _____, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

4. A new § 319.56–2q would be added to read as follows:

§ 319.56–2q Administrative instructions: conditions governing the entry of citrus from South Africa.

Clementine (*Citrus reticulata*), grapefruit (*Citrus paradisi*), lemon (*Citrus limon*), minneola (*C. paradisi* x *C. reticulata*), navel orange (*Citrus sinensis*), satsuma (*Citrus reticulata*), and valencia orange (*Citrus sinensis*) may be imported into the United States from the Western Cape Province of South Africa only under the following conditions:

(a) The citrus fruit must be grown in, packed in, and shipped from the Western Cape Province of South Africa.

(b) The citrus fruit must be cold treated for false codling moth and fruit flies of the genus *Ceritatis* and *Pterandrus* in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

(1) If the cold treatment is to be conducted in the United States, entry of the citrus fruit into the United States is limited to ports listed in § 319.56–2d(b)(1).

(2) If the cold treatment is conducted in South Africa or in transit to the United States, entry of the citrus into the United States may be made through any U.S. port.

(c) Each shipment of citrus fruit must be accompanied by a phytosanitary certificate issued by the South African Ministry of Agriculture stating that the conditions of paragraph (a) of this section have been met.

5. In § 319.56–2t, the table would be amended as follows:

a. In the entries for Costa Rica, Guatemala, and Philippines, under the heading *Common name*, by removing the words "Yam bean" from each entry and adding the word "Jicama" in their places.

b. In the entries for Guatemala and Panama, the entry for Tarragon would be amended in the fourth column, under the heading *Plant part(s)*, by removing the words "Leaf and stem" and adding the words "Above ground parts" in their place.

c. In the entry for Belize, the entry for Papaya, by revising the text under the heading *Plant part(s)* to read as set forth below.

d. By adding, in alphabetical order, entries for Basil from Argentina, Babaco from Chile, Angelica from Korea, and Strawberry from Morocco to read as set forth below.

§ 319.56–2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)
Argentina			
	Basil	*Ocimum* spp.	Above ground parts.
Belize			
	Papaya	*Carica papaya*	Fruit (Must be accompanied by a phytosanitary certificate issued by the Belizean department of agriculture stating that the fruit originated in the district of Cayo, Corozal, or Orange Walk, or in any portion of the district of Stann Creek *except* the area bounded as follows: Beginning at the southernmost point of the Placencia Peninsula; then north along the coast of the Caribbean Sea to Riversdale Rd.; then west along Riversdale Rd. to Southern Hwy.; then south along the Southern Hwy. to Independence Rd.; then east along Independence Rd. to Big Creek Port; then east, on an imaginary line, from Big Creek Port across the Placencia Lagoon to the point of beginning. Papayas from other areas of Belize enterable only with treatment—see §319.56–2x). Prohibited entry into Hawaii due to the papaya fruit fly, *Toxotrypana curvicauda*. Cartons in which fruit is packed must be stamped "Not for importation into or distribution within HI."
Chile	Babaco	*Carica* x *heilborni* var. *pentagona*.	Fruit. (From Medfly-free areas—see §319.56–2j. Fruit must be accompanied by a phytosanitary certificate issued by the Chilean department of agriculture stating that the fruit originated in a Medfly-free province.)
Korea	Angelica	*Aralia elata*	Edible shoot.
Morocco	Strawberry	*Fragaria* spp.	Fruit.

6. In § 319.56–2x, paragraph (a), the table would be amended as follows:

a. In the entry for Belize, the entry for Papaya, by revising the text under the heading *Plant part(s)* to read as set forth below.

b. By adding, in alphabetical order, entries for Hyacinth bean and Yard long bean from Honduras and Broad bean, Green bean, and Mung bean from Nicaragua to read as set forth below.

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

(a) * * *

Country/locality	Common name	Botanical name	Plant part(s)
Belize	Papaya	*Carica papaya*	Fruit (Treatment for Medfly not required for fruit grown in the districts of Cayo, Corozal, and Orange Walk, or in any portion of the district of Stann Creek *except* the area bounded as follows: Beginning at the southernmost point of the Placencia Peninsula; then north along the coast of the Caribbean Sea to Riversdale Rd.; then west along Riversdale Rd. to Southern Hwy.; then south along the Southern Hwy. to Independence Rd.; then east along Independence Rd. to Big Creek Port; then east, on an imaginary line, from Big Creek Port across the Placencia Lagoon to the point of beginning—see §319.56–2t.) Papayas prohibited entry into Hawaii due to the papaya fruit fly, *Toxotrypana curvicauda*. Cartons in which fruit is packed must be stamped "Not for importation into or distribution within HI."
Honduras	Hyacinth bean.	*Lablab purpureus*	Pod or shelled.
	Yard long bean.	*Vigna unguiculata*, subsp. *sesquipedalis*.	Pod or shelled.
Nicaragua	Broad bean	*Vicia faba*	Pod or shelled.
	Green bean	*Phaseolus* spp	Pod or shelled.
	Mung bean	*Vigna radiata*	Pod or shelled.

* * * * *

Done in Washington, DC, this 27th day of June 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–16870 Filed 7–1–96; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR PART 1240

[FV–96–707]

Honey Research, Promotion, and Consumer Information Order; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document gives notice that a referendum will be conducted to determine whether the continuance of the Honey Research, Promotion, and Consumer Information Order is favored by a majority of the producers, producer-packers, and importers voting in the referendum. This action establishes the voting period, representative period, method of voting, and agents.

DATES: The referendum will be conducted by mail ballot from August 1 through August 30, 1996. The representative period for establishing voter eligibility shall be the period from January 1, 1994, through December 31, 1995.

ADDRESSES: Copies of the Honey Research, Promotion, and Consumer Information Order may be obtained from: Referendum Agent, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535–S, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Richard Schultz, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, Room 2535–S, P.O. Box 96456, Washington, D.C. 20090–6456. Telephone (202) 720–5976.

SUPPLEMENTARY INFORMATION: A referendum will be conducted among eligible honey producers, producer-packers, and importers to determine whether the continuance of the Honey Research, Promotion, and Consumer Information Order (Order) [7 CFR 1240] is favored by persons voting in the referendum. The Order is authorized under the Honey Research, Promotion, and Consumer Information Act, as amended (act) [7 U.S.C. 4601–4612].

The representative period for establishing voter eligibility for the referendum shall be the period from January 1, 1994, through December 31, 1995. Persons who are producers, producers and handlers, or importers of honey or honey products at the time of the referendum and during the representative period are eligible to vote. Persons who have received an exemption from assessment for the entire representive period are ineligible to vote. The referendum shall be conducted by mail ballot from August 1 through 30, 1996.

Section 13(b)(1) of the act provides that 5 years from the date on which the Secretary of Agriculture (Secretary) issues an order authorizing the collection of assessments, and every 5 years thereafter, the Secretary shall conduct a referendum to determine if honey producers and importers favor the termination or suspension of the Order. On July 21, 1986, the Secretary issued the Order, and the first continuance referendum was conducted in August 1991. Therefore, this order is issued pursuant to the Act's requirements and gives producers and importers a second opportunity to vote on whether the program will continue.

Section 13(d) also provides that the Secretary shall suspend or terminate the Order if termination or suspension is favored by a majority of the producers and importers voting in the referendum and that the producers and importers comprising this majority produce or

import more than 50 percent of the volume of honey produced or imported by those voting in the referendum.

In accordance with the Paperwork Reduction Act of 1995 [Pub. L. 104–13], the referendum ballot has been approved by the Office of Management and Budget (OMB) and has been assigned OMB number 0581–0093. It is estimated that there are 8,300 producers, 510 producer-packers, and 350 importers who will be eligible to vote in the referendum. It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot.

Referendum Order

It is hereby directed that a referendum be conducted among eligible producers, producer-packers, and importers to determine whether they favor the continuance of the Order. The representative period for establishing voter eligibility for the referendum shall be the period from January 1, 1994, through December 31, 1995. A referendum shall be conducted by mail ballot from August 1 through 30, 1996.

Section 13(d)(1) of the act provides that the Secretary shall conduct a referendum to determine if honey producers and importers favor the termination or suspension of the Order. Therefore, voters will vote on whether the program will continue. Section 13(d) also provides that the Secretary shall suspend or terminate the Order if termination or suspension is favored by a majority of the producers and importers voting in the referendum and that the producers and importers comprising this majority produce or import more than 50 percent of the volume of honey produced or imported by those voting in the referendum.

Richard Schultz and Martha B. Ransom, Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service, P.O. Box 96456, Department of Agriculture, Washington, DC 20090–6456, are designated as the referendum agents of the Secretary to conduct this referendum. The Procedure for the Conduct of Referenda in Connection with the Honey Research, Promotion, and Consumer Information Order [7 CFR 1240.200–1240.207] shall be used to conduct the referendum.

Ballots to be cast in the referendum, and any related material relevant to the referendum, will be mailed by the referendum agents to all known producers, producer-packers, and importers. Persons who have produced, produced and handled, or imported honey or honey products during the representative period are eligible to vote. Persons who have received an exemption from assessment for the entire representative period are ineligible to vote. Any eligible producer, producer-packer, or importer who does not receive a ballot and related material should immediately contact the referendum agents.

List of Subjects in 7 CFR Part 1240

Advertising, Agricultural research, Honey, Imports, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 4601–4612.

Dated: June 26, 1996.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 96–16839 Filed 6–27–96; 2:46 pm]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 3

[Docket No. 95–078–1]

RIN 0579–AA74

Humane Treatment of Dogs and Cats; Tethering and Temperature Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations for the humane treatment of dogs and cats under the Animal Welfare Act by removing the provisions for tethering dogs as a means of primary enclosure. We are also proposing to amend the regulations by revising the temperature requirements for indoor, sheltered, and mobile and traveling housing facilities, and for primary conveyances used in transportation, to require that the ambient temperature must never exceed 90 °F (32.2 °C) when dogs or cats are present. We are taking these actions because our experience in enforcing the Animal Welfare Act has led us to conclude that tethering dogs as a means of primary enclosure is not a humane practice. Also, temperatures exceeding 90 °F can be harmful to dogs and cats. These actions will help ensure that dogs and cats in facilities regulated under the Animal Welfare Act will be treated in a humane manner.

DATES: Consideration will be given only to comments received on or before September 3, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–078–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–078–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Smith, Staff Animal Health Technician, REAC, APHIS, suite 6D02, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–4972.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA)(7 U.S.C. 2131 *et seq.*) the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. Regulations established under the Act are contained in 9 CFR parts 1, 2, and 3. Subpart A of 9 CFR part 3 (referred to below as the regulations) contains requirements concerning dogs and cats.

Recently, the Animal and Plant Health Inspection Service (APHIS) hosted public meetings in Kansas City and St. Louis, MO, and in Washington, DC, to gather information on the regulations in 9 CFR part 3, subpart A, that apply to the care of dogs and cats in the commercial pet trade. People attending the meetings included representatives of animal protection organizations and members of affected industries, such as dealers, research facilities, and commercial animal transporters.

Each meeting was divided into four workshops covering specific topic areas: (1) space requirements for primary enclosures, including room for exercise; (2) sanitation, materials, flooring, and construction of primary enclosures; (3) veterinary care and breeding frequency; and (4) transportation by land and air. APHIS has considered all of the recommendations and opinions expressed by participants of these workshops at each of the meetings, as well as APHIS' own experience in enforcing the Act, in developing this proposal on tethering and temperature requirements. There were many recommendations expressed in the workshops on issues closely related to what we are proposing in this document, as well as recommendations on issues other than tethering and temperature requirements. APHIS is continuing to review and analyze all the recommendations received, and will initiate additional rulemaking for any changes deemed appropriate.

Tethering of Dogs

Currently, the regulations provide that dogs in outside housing facilities regulated under the AWA may be kept on tethers as a means of primary enclosure. Primary enclosure is defined in 9 CFR part 1 to mean:

> (A)ny structure or device used to restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment, pool, hutch, or tether. In the case of animals restrained by a tether (e.g., dogs on chains), it includes the shelter and the area within reach of the tether.

A dog whose primary enclosure is a tether would be attached to the tether almost all of the time, except when it is allowed off of the tether for exercise or other activities. The regulations require that a dog on a tether must have a shelter (such as a dog house or other structure) and the tether must allow the dog access to the shelter and to food and water containers. The housing area where the dog is tethered must be surrounded by a perimeter fence of sufficient height to keep out unwanted animals.

Our experience in enforcing the AWA has led us to conclude that continuous confinement of dogs by a tether is inhumane. A tether significantly restricts the dog's movement. A tether can also become tangled around or hooked on the dog's shelter structure or other objects, further restricting the dog's movement and potentially causing injury. We are proposing to remove the option for facilities to use tethering as a means of primary enclosure. We would remove all references to tethering from the definition of primary enclosure in 9 CFR part 1, and we would remove the provisions for tethering as a means of primary enclosure from the regulations in 9 CFR part 3. Facilities would still have a number of primary enclosure options available to them, such as a cage or a fenced-in run.

Temperature

The regulations for indoor housing facilities, sheltered housing facilities, and mobile or traveling housing facilities that are regulated under the AWA provide that the ambient temperature in the facilities may not exceed 85 °F (29.5 °C) for more than 4 consecutive hours when dogs or cats are present. The regulations also provide that when any person subject to the AWA transports dogs or cats, the cargo spaces in primary conveyances (motor vehicle, rail, and marine) and the holding areas in the terminal facilities (such as at airports, rail stations, or maritime ports) may not exceed 85 °F (29.5 °C) for more than 4 consecutive hours when dogs or cats are present. The regulations for air transportation provide that cargo areas must be heated or cooled as necessary to maintain an ambient temperature that ensures the health and well-being of the dogs or cats held there.

The regulations do not specify a maximum temperature at which dogs or cats may be held for up to 4 hours. Because there is no maximum temperature restriction in the regulations, it is conceivable that a dog or cat could be exposed to extremely high temperatures for up to 4 hours. Temperatures exceeding 90 °F can be harmful to dogs and cats even if they are exposed to those temperatures for less than 4 hours.

In the case of air transportation, there is no maximum temperature specified to which dogs or cats can be exposed, even for over 4 hours. Although the regulations do state that any cargo area where dogs or cats are held must be cooled as necessary to maintain an ambient temperature that ensures the health and well-being of the dogs or cats held there, there have been incidents where dogs or cats were exposed to extremely high temperatures during air travel. Such exposure resulted in serious harm or, in some cases, death to those animals.

For these reasons, we are proposing to require that the ambient temperature in indoor housing facilities, sheltered housing facilities, mobile or traveling housing facilities, primary conveyances (motor vehicle, rail, air, and marine), and terminal facilities must never rise above 90 °F (32.2 °C) when dogs or cats are present.

Licensed dog and cat dealers and transporters of dogs and cats would have several alternative methods of complying with this proposal. They could install air conditioning or electric fans to cool the air inside the facilities and conveyances. Dog and cat dealers could also comply by establishing outdoor shelters, which are not subject to temperature requirements, or providing animals in sheltered housing facilities with outdoor runs where they are not already available. Outdoor shelters and runs provide the dogs and cats with access to fresh air, air movement (breezes and winds), shade (required by the regulations), and other climatic and environmental factors which help to alleviate suffering from high temperatures. Also, humidity levels can become unbearable in enclosed facilities where the temperature exceeds 90 °F. Suffering from humidity levels outdoors, even when the temperature is above 90 °F, is usually mitigated by other climatic factors, as described above.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to-be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this rule on small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and size of licensed facilities that would have to make changes to comply with the proposed temperature requirements, and the kind of change those licensees would likely choose in order to comply (for example, installing air conditioning or constructing outdoor facilities).

Under the Animal Welfare Act (7 U.S.C. 2131 *et seq.*) the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers.

This proposed rule would eliminate the use of tethering as a means of primary enclosure for dogs, and would affect Class A and Class B licensed dog dealers. Over 95 percent of Class A and Class B licensed dog dealers are considered small businesses.

There is no information available on the actual number of Class A and Class B licensed dog dealers who use tethering as a means of primary enclosure. However, kennels and cages are currently the preferred means of primary enclosure, with tethering sometimes used as a temporary restraint. Tethering is no longer a generally accepted practice within the dog dealer industry, and some industry groups prohibit their members from using tethering as a means of permanent restraint. Therefore, we do not expect this proposal to have a significant impact on dog dealers, large or small, because tethering as a means of primary

enclosure is rarely, if ever, utilized by Class A and Class B licensed dog dealers.

This proposed rule would also revise the temperature requirements for indoor, sheltered, and mobile and traveling housing facilities, and for primary conveyances used in transportation, to state that the ambient temperature must never exceed 90 °F (32.2 °C) when dogs or cats are present. This temperature requirement would affect Class A and Class B licensed dog and cat dealers. Currently, the regulations state (except for air transportation) that the ambient temperature in a facility, holding area, or cargo space must not exceed 85 °F (29.5 °C) for more than 4 consecutive hours. The regulations for air transportation provide that cargo areas must be heated or cooled as necessary to maintain an ambient temperature that ensures the health and well-being of the dogs or cats held there.

There are currently a total of 4,325 licensed dog and cat dealers (over 95 percent of which are considered small businesses, as stated previously). We do not know precisely how many of these house only dogs and/or cats, but it is probably close to 90 percent or more. We expect that the additional temperature requirement would impact Class A and Class B licensed dog and cat dealers mainly in the States of Arkansas, Missouri, Kansas, Oklahoma, and Iowa. These are States in which there is a high concentration of Class A and Class B licensed dog and cat dealers (approximately 2,326 dealers), and in which the temperatures can be highly variable in the summer months, with many days reaching temperatures above 90 °F. In most cases, if a dealer has been able to comply with the requirement that the ambient temperature in the facility must not exceed 85 °F for more than 4 consecutive hours, they would likely be able to comply with this proposal without any additional expense. We estimate that at least 85 percent of potentially affected entities are already in compliance with the temperature requirements in this proposed rule.

However, if a dealer finds that he or she is not prepared to meet the new requirement, the cost of compliance would depend on what method the dealer chooses to cool the facility. For indoor and sheltered housing facilities, the alternatives would most likely include: (1) Installation of air conditioning. Installation of air conditioning could cost between $1,000 and $3,000 per unit, and operational expenditures for electricity could range between $200 to $500 per year; (2) Installation of electric fans. Installation of electric fans could cost between $300 and $500 per unit, and operational expenditures for electricity could range between $100 to $300 per year; (3) Establishing outdoor shelters, which are not subject to temperature requirements. We estimate that it would cost $17.00 to $29.00 to establish an outdoor facility for a single medium-sized dog that would meet the minimum requirements of the regulations (based on 18 feet of chain-link fence at $.40 to $.50 per foot, a $20 to $30 commercial dog house, and $10 to $20 in labor); or (4) Providing dogs and cats in sheltered housing facilities with outdoor runs where they are not already available. We estimate that it would cost $8.60 to $22.50 to construct an outdoor run for a single medium-sized dog that would meet the minimum requirements of the regulations (based on 9 to 15 feet of chain-link fence at $.40 to $.50 per foot plus $5.00 to $15.00 in labor).

All these cost estimates could vary considerably depending on the number of animals housed in the facility, the quality of the materials used in construction, and the adaptability of existing structures. Because most dog and cat dealers are small businesses, the cost of installing air conditioning may comprise a significant portion of their overall operational expenses. It is anticipated that the affected dealers would choose the less costly alternatives of installing electric fans or establishing outdoor shelters or runs.

We do not expect that this proposal would impact transporters of dogs and cats. Most transporters (motor vehicle, rail, air, and marine) already have the capacity to provide adequate ventilation and/or air conditioning for animals in their cargo areas and holding facilities. The majority of dog and cat deaths from extremely high temperatures in cargo areas or holding facilities have been due to human error. This proposal would help ensure that transporters utilize their existing capacity to maintain a healthy temperature range for the animals they transport, and would not likely require transporters to install additional cooling systems.

The alternative to this proposed rule would be to make no changes to the temperature and tethering requirements in the regulations. After consideration, we rejected this alternative because we believe that tethering dogs as a means of primary enclosure is not a humane practice, and because temperatures exceeding 90 °F can be harmful to dogs and cats.

This proposed rule contains no paperwork or recordkeeping requirements.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 1

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

9 CFR Part 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation.

Accordingly, 9 CFR parts 1 and 3 would be amended as follows:

PART 1—DEFINITION OF TERMS

1. The authority citation for part 1 would continue to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

2. In § 1.1, the definition for *primary enclosure* would be revised to read as follows:

§ 1.1 Definitions.

* * * * *

Primary enclosure means any structure or device used to restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment, pool, or hutch.

* * * * *

PART 3—STANDARDS

3. The authority citation for part 3 would continue to read as follows:

Authority: 7 U.S.C. 2131–2156; 7 CFR 2.22, 2.80, and 371.2(d).

§§ 3.2, 3.3, and 3.5 [Amended]

4. In §§ 3.2, 3.3, and 3.5, paragraph (a) of each section would be amended by adding a new identical sentence at the end of each paragraph to read as set forth below:

(a)* * * The ambient temperature in the facility must never rise above 90 °F (32.2 °C) when dogs and cats are present.

* * * * *

§ 3.6 [Amended]

5. Section 3.6 would be amended by removing paragraph (c)(2), and by redesignating paragraphs (c)(3) and (c)(4) as paragraphs (c)(2) and (c)(3), respectively.

6. In § 3.15, paragraphs (d) and (e) would be revised to read as follows:

§ 3.15 Primary conveyances (motor vehicle, rail, air, and marine).

* * * * *

(d) During air transportation, dogs and cats must be held in cargo areas that are heated and cooled as necessary to maintain an ambient temperature that ensures the health and well-being of the dogs or cats. The ambient temperature in the cargo areas must never rise above 90 °F (32.2 °C) when dogs or cats are present. The cargo areas must be pressurized when the primary conveyance used for air transportation is not on the ground, unless flying under 8,000 ft. Dogs and cats must have adequate air for breathing at all times when being transported.

(e) During surface transportation, the ambient temperature within any animal cargo space containing live dogs or cats must never rise above 90 °F (32.2 °C). Moreover, auxiliary ventilation, such as fans, blowers, or air conditioning, must be used when the ambient temperature within the animal cargo space reaches 85 °F (29.5 °C). The ambient temperature must not exceed 85 °F (29.5 °C) for more than 4 consecutive hours, nor fall below 45 °F (7.2 °C) for more than four consecutive hours.

* * * * *

7. In § 3.18, paragraph (d) would be revised to read as follows:

§ 3.18 Terminal facilities.

* * * * *

(d) *Temperature.* The ambient temperature in an animal holding area containing live dogs or cats must not fall below 45 °F (7.2 °C) or rise above 85 °F (29.5 °C) for more than 4 consecutive hours at any time dogs or cats are present. The ambient temperature in the animal holding area must never rise above 90 °F (32.2 °C) when dogs or cats are present.

* * * * *

Done in Washington, DC, this 27th day of June 1996.

Terry L. Medley

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–16871 Filed 7–1–96; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Part 3

[Docket No. 95–100–1]

RIN 0579–AA78

Humane Treatment of Dogs and Cats; Wire Flooring

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the requirements for the humane treatment of dogs and cats under the Animal Welfare Act to require that if the floor of a primary enclosure for dogs or cats is constructed of wire, the wire must be coated with a material such as plastic or fiberglass. Coated wire has a larger diameter than bare wire, and is therefore more comfortable on animals' feet. Coated wire is also not susceptible to rust, improving the floor's structural strength and making it easier to clean and sanitize than bare wire flooring. We believe that requiring coated wire to be used for wire floors in primary enclosures would improve comfort for dogs and cats housed in wire-floored enclosures, would help eliminate foot injuries, and would ensure that wire flooring for dogs and cats is clean and sanitary.

DATES: Consideration will be given only to comments received on or before September 3, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–100–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–100–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Smith, Staff Animal Health Technician, REAC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–4972.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (the Act)(7 U.S.C. 2131 *et seq.*) the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. Regulations established under the Act are contained in 9 CFR parts 1, 2, and 3. Subpart A of 9 CFR part 3 (referred to below as the regulations) contains specific standards for the humane handling, care, treatment, and transportation of dogs and cats.

Recently, the Animal and Plant Health Inspection Service (APHIS) hosted public meetings in Kansas City and St. Louis, MO, and in Washington, DC, to gather information on the regulations in 9 CFR part 3, subpart A, that apply to the care of dogs and cats in the commercial pet trade. People attending the meetings included representatives of animal protection organizations and members of affected industries, such as dealers, research facilities, and commercial animal transporters.

Each meeting was divided into four workshops covering specific topic areas. One of the workshop topic areas concerned sanitation, materials, flooring, and construction of primary enclosures. APHIS has considered all of the recommendations and opinions expressed by participants of this workshop at each of the meetings, as well as APHIS' own experience in enforcing the Act, in developing this proposal on flooring in primary enclosures. There were many recommendations expressed in the workshops on issues other than flooring in primary enclosures. APHIS is continuing to review and analyze all the recommendations received, and will initiate additional rulemaking for any changes deemed appropriate.

Currently, the regulations require that primary enclosures for dogs and cats must, among other things, enable all surfaces in contact with the animals to be readily cleaned and sanitized, or be replaceable when worn or soiled. Primary enclosures must also "(h)ave floors that are constructed in a manner that protects the dogs' and cats' feet and legs from injury, and that, if of mesh or slatted construction, do not allow the dogs' and cats' feet to pass through any openings in the floor. If the floor of the primary enclosure is constructed of wire, a solid resting surface or surfaces that, in the aggregate, are large enough

to hold all the occupants of the primary enclosure at the same time comfortably must be provided."

Wire floors are preferable to solid floors for many dealers, breeders, researchers, and exhibitors because waste material can pass through the openings in the floor, making the enclosures easier to keep clean. In many primary enclosures that have wire floors, the floors are constructed of bare wire. It is our experience in enforcing the Act, however, that bare wire flooring is inadequate in providing for the comfort and well-being of dogs and cats.

Bare wire can be uncomfortable on dogs' and cats' feet because the wire has a narrow diameter, providing inadequate support and potentially causing lesions and sores on the animals' feet. Bare wire is also prone to rust, which not only affects the structural strength of the primary enclosure, but can cause foot injuries because rusty wire is abrasive and because dogs and cats may be cut or poked by broken, rusty pieces of wire. Rusted wire is also difficult to clean and sanitize thoroughly, because the rust makes the wire semi-porous in places, allowing bacteria and viruses to remain even after thorough cleaning. Further, bare wire flooring often sags or bends between structural supports, creating an uncomfortable resting surface for the animals.

Wire that has been coated with plastic, fiberglass, or similar material has a larger diameter than bare wire, so that floors constructed from coated wire provide better support and are more comfortable on dogs' and cats' feet. Coated wire also eliminates the problem of rusting, making coated wire floors easier to clean and maintain, and less likely to cause foot injuries, than bare wire floors. In addition, the coating on the wire adds strength, making it less likely that coated wire would sag or bend between structural supports.

For these reasons, we are proposing to prohibit bare wire in the construction of primary floors and to require that if the floor of a primary enclosure for dogs or cats is constructed of wire, the wire must be coated with a material, such as plastic or fiberglass, that can be cleaned and sanitized readily. We are not proposing to limit the material with which the wire must be coated to only plastic or fiberglass because there is a variety of materials currently on the market that would be adequate, and new and better materials may be introduced in the future. Also, depending on the size of the openings in the flooring, and the size and weight of a particular animal, different diameters of coated wire may be adequate to provide increased comfort for the animals. Some wires are solid, however, that are coated with a very thin layer of material, which would not provide any increased comfort over bare wire. For this reason, we propose to further require that the coated wire must have a well-rounded surface and must be of a large enough diameter so that it is comfortable on the animals' feet and protects the animals' feet from injury. Also, coated wire floors would have to be strong enough so that the floor does not sag or bend between structural supports.

We realize that replacing existing bare wire flooring could be a substantial cost, depending on the size of the facility. Coated wire flooring is significantly more expensive than bare wire. To ease the burden of complying with the new requirement, we are proposing that the final rule would have two effective dates: one 30 days after publication of the final rule and one 2 years after publication of the final rule. Any new construction done on and after 30 days after publication of the final rule would have to be in compliance with the new flooring requirements. Also, on and after 30 days after publication of the final rule, any bare wire floors in existing primary enclosures that are replaced because of wear would have to be replaced in compliance with the new flooring requirements. On and after 2 years from the effective date of a final rule, all licensees and registrants would have to comply with the new requirements. Wire floors usually wear out from rust and general usage within a 2 year time-frame, so we believe that almost all existing bare wire floors would be replaced by coated wire before the 2 year grace period expired. The delayed effective date would give breeders, dealers, researchers, and exhibitors the opportunity to retain their existing bare wire floors until they wear out under normal usage. The 2 year delay would also give time to prepare for the additional cost of replacing existing floors.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this rule on small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining how many licensees and registrants would have to replace bare wire flooring as a result of this proposed rule and the average number of animals these licensees house, to help us better determine the economic impact of this proposal.

Under the Animal Welfare Act (7 U.S.C. 2131 *et seq.*) the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers.

This proposed rule would require that if the floor of a primary enclosure for dogs or cats is constructed of wire, the wire must be coated with a material, such as plastic or fiberglass, that can be cleaned and sanitized readily, is comfortable on the animals' feet, and protects the animals' feet from injury. The coated wire must also be strong enough so that the floor does not sag or bend between structural supports. We believe that requiring coated wire floors in primary enclosures would improve comfort for dogs and cats housed in wire-floored enclosures, would help eliminate foot injuries, and would ensure that wire flooring for dogs and cats is clean and sanitary.

This proposed rule would affect all breeders, dealers, research facilities, and exhibitors of dogs and cats that are licensed or registered under the Animal Welfare Act and that house their animals in primary enclosures with bare wire floors. There are currently 4,325 licensed breeders and dealers, 2,339 licensed exhibitors, and 2,688 registered research facilities and sites. We do not know how many of these licensees and registrants house dogs and cats. Further, we cannot determine the exact number of licensees and registrants that house their dogs and cats on wire flooring or the total number of animals involved, but it is known that a significant percentage of licensees and registrants do use wire flooring in primary enclosures because it is easier to maintain than solid flooring. Most wire floored enclosures are constructed with bare wire. Some licensees, however, have converted existing bare wire flooring to coated wire, and coated wire flooring is currently the preferred material for new construction.

The market price of both bare and coated wire varies depending on the quality and diameter width of the material. Floor space requirements for primary enclosures also vary depending on the size of the animals. Large dogs on average require about 13 square feet of floor space, while small dogs require about 6.5 square feet. Bare wire of the type most often used currently sells for about $1.50 per square foot. Coated wire that meets the other standards for use under the Animal Welfare Act sells for between $2.25 and $5.00 per square foot. Requiring the use of coated wire could result in increased costs for replacement of between 60 and 233 percent. Thus, replacing bare wire with coated wire could result in additional expenditures ranging from $4.87 to $22.75 for each small dog housed and from $13.00 to $45.50 for each large dog. We estimate that it would take approximately 1 to 1½ hours per cage to replace bare wire flooring with coated wire. Labor could run from $5.00 to $10.00 per hour.

The total cost to an individual licensee or registrant would depend on the number of animals being housed. However, because coated wire floors do not rust, they need to be replaced far less frequently than bare wire floors. Therefore, the initial cost of replacing the floors would be made up, in part, over a period of time, because the coated wire floor will provide longer use.

To ease the burden of complying with the new requirement, we are proposing that the final rule would have two effective dates: one 30 days after publication of the final rule and one 2 years after publication of the final rule. Any new construction done on and after 30 days after publication of the final rule would have to be in compliance with the new flooring requirements. Also, on and after 30 days after publication of the final rule, any bare wire floors in existing primary enclosures that are replaced because of wear would have to be replaced in compliance with the new flooring requirements. On and after 2 years from the effective date of a final rule, all licensees and registrants would have to comply with the new requirements. Wire floors usually wear out from rust and general usage within a 2 year time-frame, so we believe that almost all existing bare wire floors would be replaced by coated wire before the 2 year grace period expired. The delayed effective date would give breeders, dealers, researchers, and exhibitors the opportunity to retain their existing bare wire floors until they wear out under normal usage. The 2 year delay would also give time to prepare for the additional cost of replacing existing floors.

The alternative to this proposed rule would be to make no change to the flooring requirements for primary enclosures. After consideration, we rejected this alternative because we believe that bare wire floors are inadequate to provide for the comfort and well-being of dogs and cats.

This proposed rule contains no paperwork or recordkeeping requirements.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.028 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation.

Accordingly, 9 CFR part 3 would be amended as follows:

PART 3—STANDARDS

1. The authority citation for part 3 would continue to read as follows:

Authority: 7 U.S.C. 2131–2156; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 3.6, a new paragraph (a)(2)(xii) would be added to read as follows:

§ 3.6 Primary enclosures.

(a) *General requirements.* * * *

(2) * * *

(xii) *The following requirements are effective for primary enclosures constructed on or after [insert date 30 days after publication of final rule] and for bare wire floors replaced on or after [insert date 30 days after publication of final rule]. On or after [insert date 2 years after publication of final rule] the following requirements are effective for all primary enclosures.* The floor of the primary enclosure may not be constructed of bare wire. If the floor of the primary enclosure is constructed of wire, the wire must be coated with a material, such as plastic or fiberglass, that can be cleaned and sanitized readily. The coated wire must have a well-rounded surface and must be of a large enough diameter so that it is comfortable on the animals' feet and protects the animals' feet from injury. Coated wire floors must be strong enough so that the floor does not sag or bend between structural supports.

Done in Washington, DC, this 27th day of June 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–16872 Filed 7–1–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AAL–6]

Proposed Revision of Class E Airspace; Ketchikan, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action revises the Class E airspace at Ketchikan, AK. The development of the Global Positioning System (GPS) instrument approach (GPS-B) to Ketchikan International Airport, AK, and the establishment of the Special Visual Flight Rules (VFR) Seaplane holding area at Ward Cove have made this action necessary. The areas would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations and provide Special VFR seaplane holding at Ketchikan, AK.

DATES: Comments must be received on or before August 23, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 95–AAL–4, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5903.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–AAL–4." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Ketchikan, AK. This action is necessary to accommodate a new GPS instrument approach and incorporate Special VFR seaplane holding at Ketchikan, AK. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g), 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

* * * * *

Paragraph 6002 The Class E airspace areas listed below are designated as a surface area for an airport.

* * * * *

AAL AK E2 Ketchikan, AK [Revised]

Ketchikan International Airport, AK
(lat. 55°21'20"N, long. 131°42'49"W)
Ketchikan Localizer
(lat. 55°20'51"N, long. 131°42'00"W)

Within a 3-mile radius of the Ketchikan International Airport and within 1 mile each side of the Ketchikan localizer northwest/southeast courses extending from the 3-mile radius to 4.6 miles northwest and 4.1 miles southeast of the airport excluding that airspace beyond 2.5-miles beginning 1 mile east of the Ketchikan localizer northwest course clockwise to the 350° bearing from the Ketchikan International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska (Airport/Facility Directory).

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Ketchikan, AK [Revised]

Ketchikan International Airport, AK
(lat. 55°21'20"N, long. 131°42'49"W)
Annette Island VORTAC
(lat. 55°03'38"N, long. 131°34'42"W)
Ketchikan Localizer
(lat. 55°20'51"N, long. 131°42'00"W)

That airspace extending upward from 700 feet above the surface within 2.0 miles each side of the Ketchikan Localizer east course extending from the Ketchikan Localizer to 9.0 miles southeast of the Ketchikan International Airport and within 1.8 miles each side of the 353° radial of the Annette Island VORTAC extending from 11 miles north of the VORTAC to the Ketchikan localizer east course and within 1.9 miles either side of the Ketchikan Localizer west course extending from the localizer to 6.7 miles west of the airport; and that airspace extending upward from 1,200 feet above the surface within a 12-mile radius of the Annette Island VORTAC and within 10 miles east of the 169° bearing from the Clam Cove NDB extending to 10 miles southeast of the airport; and that airspace extending upward from 4,700 feet MSL within 13.2 miles east and 10.5 miles west of the 165° radial of the Annette Island VORTAC extending from the VORTAC to the U.S.-Canada border; and that airspace extending upward from 5,200 feet MSL within 10 miles either side of the 349° bearing from the Clam Cove NDB extending to 50 miles north of the airport; and that airspace extending upward from 5,700 feet MSL within 15.6 miles south of the 311° radial of the Annette Island VORTAC extending from 15.8 miles west of the VORTAC to 56.8 miles west of the VORTAC and within 9 miles north and 14 miles south of the Ketchikan Localizer west course extending from 4.3 miles west of the airport to 42.7 miles west of the airport.

* * * * *

Issued in Anchorage, AK, on June 21, 1996.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 96–16731 Filed 7–1–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 96–AAL–10]

Proposed Establishment of Class E Airspace; Nuiqsut, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action establishes Class E airspace at Nuiqsut, AK. The development of a Global Positioning System (GPS) instrument approach to RWY 4 and RWY 22 has made this action necessary. This action will change the airport status from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Nuiqsut, AK.

DATES: Comments must be received on or before August 23, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–10, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5902.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AAL–10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Nuiqsut, AK, due to the creation of GPS approaches to RWY 4 and RWY 22. The status of Nuiqsut Airport will change from VFR to IFR. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g), 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Nuiqsut, AK [New]

Nuiqsut Airport, AK
(lat. 70°12'36" N, long. 151°00'20" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Nuiqsut Airport.

* * * * *

Issued in Anchorage, AK, on June 21, 1996.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 96–16730 Filed 7–1–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 96–AAL–8]

Proposed Revision of Class E Airspace; Merle K. (Mudhole) Smith Airport, Cordova, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action revises the Class E airspace at Merle K. (Mudhole) Smith Airport, Cordova, AK. The development of the Required Navigation Performance (RNP) instrument approach to Merle K. (Mudhole) Smith Airport, Cordova, AK has made this action necessary. The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Cordova, AK.

DATES: Comments must be received on or before August 23, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–8, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AAL–8." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Cordova, AK. This action is necessary to accommodate a new RNP instrument approach to Runway 9 at Merle K. (Mudhole) Smith Airport, Cordova, AK. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g), 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Cordova, AK [Revised]

Cordova, Merle K. (Mudhole) Smith Airport, AK
(lat. 60°29'31" N, long. 145°28'39" W)
Glacier River NDB
(lat. 60°29'58" N, long. 145°28'28" W)
Merle K. (Mudhole) Smith Localizer
(lat. 60°29'31" N, long. 145°29'59" W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Merle K. (Mudhole) Smith Airport and within 4 miles each side of the 222° bearing of the Glacier River NDB extending from the 6.6-mile radius to 20 miles southwest of the airport and within 4 miles each side of the 142° bearing from the NDB extending from the 6.6-mile radius to 15.6 miles southeast of the airport; and that airspace extending upward from 1,200 feet above the surface within 6 miles each side of the Merle K. (Mudhole) Smith Localizer east course extending from the localizer to 40.6 miles east of the airport and within 4 miles each side of the 266° bearing from the NDB extending from the Glacier River NDB to 33.6 miles west of the airport and that airspace within 4 miles west and 8 miles east of the 222° bearing from the NDB extending from 10.3 miles southwest of the NDB to 26.3 miles southwest of the NDB and within 10 miles south and 5 miles north of the 299° bearing from the Glacier River NDB extending from the 6.6-mile radius to 25 miles northwest of the airport; excluding the airspace more than 12 miles beyond the shoreline.

* * * * *

Issued in Anchorage, AK, on June 21, 1996.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 96–16729 Filed 7–1–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 96–AAL–11]

Proposed Establishment of Class E Airspace; Wainwright, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action establishes Class E airspace at Wainwright, AK. The development of a Global Positioning System (GPS) instrument approach to RWY 4 and RWY 22 has made this action necessary. This action will change the airport status from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Wainwright, AK.

DATES: Comments must be received on or before August 23, 1996.

ADDRESSES: Send comments on the proposal in triplicate to:
Manager, System Management Branch, AAL–530, Docket No. 96–AAL–11, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5902.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AAL–11." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Wainwright, AK, due to the creation of GPS approaches to RWY 4 and RWY 22. The status of Wainwright Airport will change from VFR to IFR. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g), 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Wainwright, AK [New]

Wainwright Airport, AK
(lat. 70°16'16.72" N, long. 159°59'41.67" W)

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Wainwright Airport; and that airspace extending upward from 1,200 feet above the surface within 6 miles south and 4 miles north of the 247° bearing from the Wainwright airport extending from the 8.5-mile radius to 16 miles southwest, and 6 miles north of the 068° bearing extending from the 8.5-mile radius to 16 miles east.

* * * * *

Issued in Anchorage, AK, on June 21, 1996.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 96–16728 Filed 7–1–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 96–AAL–12]

Proposed Establishment of Class E Airspace; Selawik, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action establishes Class E airspace at Selawik, AK. The development of a Very High Frequency (VHF) omni-directional radio range (VOR) and VOR/Distance Measuring Equipment (DME) instrument approaches to RWY 3 and RWY 21 has made this action necessary. This action will change the airport status from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Selawik, AK.

DATES: Comments must be received on or before August 23, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–12, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5902.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AAL–12." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Selawik, AK, due to the creation of VOR and VOR/DME approaches to RWY 3 and RWY 21. The status of Selawik Airport will change from VFR to IFR. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g), 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Selawik, AK [New]

Selawik Airport, AK
(lat. 66°36'00" N, long. 159°59'10" W)
Selawik VOR/DME, AK
(lat. 66°36'00" N, long. 159°59'30" W)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the Selawik Airport; and that airspace extending upward from 1,200 feet above the surface within 6 miles north and 4 miles south of the 231° radial of the Selawik VOR/DME extending from the 8-mile radius to 16 miles southwest, and 6 miles north of the 058° radial extending from the 8-mile radius to 16 miles northeast.

* * * * *

Issued in Anchorage, AK, on June 21, 1996.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 96–16727 Filed 7–1–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 96–AAL–3]

Proposed Revision of Class E Airspace; Sand Point, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action revises the Class E airspace at Sand Point, AK. The development of the Microwave Landing System (MLS) and Non-Directional Beacon (NDB) standard instrument approach procedures to runway (RWY) 13 and a Global Positioning System (GPS) instrument approach to RWY 31 have made this action necessary. The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Sand Point, AK.

DATES: Comments must be received on or before August 19, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–3, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AAL–3." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Sand Point, AK. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034); February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g), 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Sand Point, AK [Revised]

Sand Point Airport, AK
(lat. 55°18'55"N, long. 160°31'13"W)
Borland NDB/DME
(lat. 55°18'56"N, long. 160°31'06"W)
Sand Point MLS
(lat. 55°18'47.4"N, long 160°31'10.1"W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Sand Point Airport and within 3 miles each side of the 175° bearing of the Borland NDB/DME extending from the 6.4-mile radius to 13.9 miles south of the airport and within 5.8 miles either side of the 326 azimuth from the Sand Point MLS extending from the 6.4 mile radius to 17 miles northwest of the airport; and that airspace extending upward from 1,200 feet above the surface within 4 miles west and 14 miles east of the 175° bearing from the Borland NDB/DME extending from the NDB/DME to 22 miles south of the NDB/DME and within 9 miles west and 7 miles east of the 330° bearing from the Borland NDB/DME extending from the NDB/DME to 23 miles north of the NDB/DME.

* * * * *

Issued in Anchorage, AK, on June 17, 1996.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 96–16726 Filed 7–1–96; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 71

[Airspace Docket No. 96–AAL–5]

Proposed Establishment of Class E Airspace; Buckland, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action establishes Class E airspace at Buckland, AK. The development of a Global Positioning System (GPS) instrument approach to RWY 10 has made this action necessary. This action will change the airport status from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Buckland, AK.

DATES: Comments must be received on or before August 19, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–5, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5902.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AAL–5." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Buckland, AK. The status of Buckland Airport will change from VFR to IFR. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034); February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g), 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Buckland, AK [New]

Buckland Airport, AK
(lat. 65°58'40"N, long. 161°07'44"W)
Buckland NDB
(lat. 65°58'45"N, long. 161°08'56"W)
Kotzebue VOR/DME
(lat. 66°53'09"N, long. 162°32'24"W)
Selawik VOR/DME
(lat. 66°36'00"N, long. 159°59'50"W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Buckland Airport; and that airspace extending upward from 1,200 feet above the surface within 6 miles southwest and 4 miles northeast of the 303° bearing of the Buckland NDB extending from the 6.5-mile radius to 21 miles northwest, and 4 miles eitherside of the Kotzebue VOR/DME 115° radial from the VOR/DME to 10.5 miles northwest on the 303° bearing from the Buckland NDB, and 4 miles eitherside of the Selawik VOR/DME 190° radial from the VOR/DME to 10.5 miles northwest on the 303° bearing from the Buckland NDB.

* * * * *

Issued in Anchorage, AK, on June 17, 1996.

Willis C. Nelson

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 96–16725 Filed 7–1–96; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 45

RIN 1076–AD16

Special Education

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is proposing the elimination of regulations governing special education to streamline the regulatory process and enhance the planning and coordination of existing regulations.

DATES: Comments must be received on or before September 3, 1996.

ADDRESSES: Mail comments to Ken Whitehorn, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., MS–MIB 3512, Washington, DC 20240. Comments may be hand delivered to the same address from 9:00 a.m. to 4:00 p.m. Comments will be available for inspection at this address from 9:00 a.m. to 4:00 p.m., Monday through Friday beginning approximately July 16, 1996.

FOR FURTHER INFORMATION CONTACT: Ken Whitehorn, Office of Indian Education Programs, Bureau of Indian Affairs, (202) 208–6675.

SUPPLEMENTARY INFORMATION:

Background

The Office of Indian Education programs is proposing to eliminate 25 CFR Part 45, Special Education, because the information contained in this part is already included in Chapter III of 34 CFR, Parts 300–399, Office of Special Education and Rehabilitative Services, Department of Education. The Office of Indian Education programs has entered into an agreement with the Department of Education to use 34 CFR Parts 300–399, as the standards for its special education programs.

Supplementary Information

The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9.

Publication of the proposed rule by the Department of the Interior (Department) provides the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding the proposed rule to the location identified in the "addresses" section of this document.

Executive Order 12988

The Department has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This rule is not a significant regulatory action under Executive Order 12866 and does not require review by the Office of Management and Budget.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12630

The Department has determined that this rule does not have "significant takings" implications. This rule does not pertain to "taking" of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this rule does not have significant federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

NEPA Statement

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

This rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Paperwork Reduction Act of 1995

This rule contains no information collection requirement the elimination of which would require notification to the Office of Management and Budget.

Drafting Information

The primary author of this document is Glenn Allison, Office of Indian Education Programs, Bureau of Indian Affairs.

List of Subjects in 25 CFR Part 45

Indians—education.

Under the authority of Executive Order 12866 and for the reasons stated above, Part 45 is proposed to be removed.

Dated: June 6, 1996.
Ada E. Deer,
Assistant Secretary—Indian Affairs.
[FR Doc. 96–16041 Filed 7–1–96; 8:45 am]
BILLING CODE 4310–02–P

25 CFR Part 152

RIN 1076–AD42

Issuance of Patents in Fee, Certificates of Competency, Removal of Restrictions, and Sale of Certain Indian Lands

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed rule making action is to revise the Issuance of Patents in Fee, Certificates of Competency, Removal of Restrictions, and Sale of Certain Indian Lands regulations. This rule was identified for reinvention under the National Performance Review. It is written in plain English to make the rule easier to read and understand for Indian landowners and Bureau realty staff.

DATES: Comments must be received on or before September 3, 1996.

ADDRESSES: Mail or hand carry your comments to Terrance L. Virden, Acting Director, Office of Trust Responsibilities, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, N.W., MS 4513 MIB, Washington, D.C. 20240. Comments may be hand delivered from 9:00 a.m. to 4:00 p.m., Monday through Friday or sent by facsimile to Facsimile No. (202) 219–1065.

FOR FURTHER INFORMATION CONTACT: Alice Harwood, Acting Chief, Division of Real Estates Services, Office of Trust Responsibilities, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, N.W., MS 4513 MIB, Washington, D.C. 20240, Telephone No. (202) 208–7737.

SUPPLEMENTARY INFORMATION: The primary author of this document is Pearl Kennedy, Realty Specialist, Division of Real Estate Services, Bureau of Indian Affairs, Department of the Interior. The proposed rule has been rewritten to facilitate its use by the general public and the individual Indians affected by the rule. Sections that no longer apply have been deleted and sections added for clarification. No substantive revisions are proposed in this rule.

The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9, and delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Publication of the proposed rule by the Department of the Interior (Department) provides the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding the proposed rule to the location identified in the "addresses" section of this document.

The Department has determined that this rule:

- does not have significant federalism effects.
- is not a major rule under E.O. 12866 and will not require a review by the Office of Management and Budget.
- will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) because this rule applies only to Indian applicants.
- does not have significant takings implications under E.O. 12630.
- does not have significant effects on the economy, nor will it result in increases in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographical regions.
- does not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.
- is categorically excluded from the National Environmental Policy Act of 1969 because it is of an administrative, technical, and procedural nature. Therefore, neither an environmental assessment nor an environmental impact statement is warranted.
- does not impose any unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.
- is exempt by OMB from the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and does not require a review by the Office of Management and Budget.

List of Subjects in Part 152

Indians—lands.

For the reasons given in the preamble, we propose to revise Part 152 to Title 25 Chapter 1 of the Code of Federal Regulations, as set forth below.

PART 152—ISSUANCE OF PATENTS IN FEE, CERTIFICATES OF COMPETENCY, REMOVAL OF RESTRICTIONS, AND SALE OF CERTAIN INDIAN LANDS

Sec.

152.1 What are the definitions of the terms used in this part?

Issuing Patents in Fee, Certificates of Competency, or Orders Removing Restrictions

152.2 Who can apply for a patent in fee?
152.3 How do I apply for a patent in fee?
152.4 What happens when I apply for a patent in fee?
152.5 Will patents in fee be issued to non-Indians and Indians with whom a special relationship does not exist?
152.6 Who can apply for a certificate of competency?
152.7 What happens when I apply for a certificate of competency?
152.8 Can certain Osage Indian adults apply for a certificate of competency?
152.9 Who can apply for an order removing restrictions?
152.10 How do I apply for an order removing restrictions?
152.11 What happens when I apply for an order removing restrictions?

Order Removing Restrictions for Members of the Five Civilized Tribes

152.12 If I am a member of the Five Civilized Tribes, how do I apply for removal of restrictions under authority other than section 2(a) of the Act of August 11, 1955?
152.13 If I am a member of the Five Civilized Tribes, what happens when I apply for removal of restrictions under section 2(a) of the Act of August 11, 1955?
152.14 If I am a member of the Five Civilized Tribes, can the restrictions be removed from my land without an application?
152.15 If I am a member of the Five Civilized Tribes, what happens when a removal of restrictions is issued to me without an application?
152.16 If I am a member of the Five Civilized Tribes, what is the effect of an order removing restrictions from my land under the Act of August 11, 1955 (69 Stat. 666)?

Sales, Exchanges, and Conveyances of Trust or Restricted Lands

152.17 Can I sell, exchange, or otherwise convey my Indian land?
152.18 Can a natural guardian or person designated by the Secretary sell my Indian land?
152.19 Can fiduciaries sell my Indian land?
152.20 Can the Secretary sell land owned by more than one person?
152.21 Can a tribe sell or exchange tribal land?
152.22 Is the Secretary's approval necessary to convey individual-owned trust or restricted lands or lands owned by a tribe?
152.23 Where do I file an application for sale, exchange, or gift?
152.24 Is an appraisal necessary?
152.25 Can I negotiate a sale, gift, or exchange of my trust or restricted lands?
152.26 How is my land advertised for sale?
152.27 What procedures are followed for an advertised sale?
152.28 What happens after the bid closing?
152.29 Can the Secretary reject bids or disapprove a sale?
152.30 Can employees of Indian Affairs bid?
152.31 Who pays for the cost of conveyance and fees?
152.32 Who pays irrigation fees and payments?

Partitions In Kind of Inherited Allotments

152.33 Can I partition my Indian lands?

Mortgages and Deeds of Trust To Secure Loans to Indians

152.34 Can I mortgage my land?
152.35 Can I make a sale on a deferred payment plan?

Denials Of Applications

152.36 When does the Secretary deny approval of my application?
152.37 Am I notified of a denial?

Receiving Information

152.38 Who can receive information regarding status of applications for patents in fee, certificates of competency, or orders removing restrictions of trust or restricted Indians lands?

Authority: 5 U.S.C. 301. Interpret or apply sec. 7, 32 Stat. 275; 34 Stat. 1018; sec. 1, 35 Stat. 444; sec. 1 and 2, 36 Stat. 855, as amended, 856, as amended; sec. 17, 39 Stat. 127; 40 Stat. 579; 62 Stat. 236; sec. 2, 40 Stat. 606; 68 Stat. 358; 69 Stat. 666; 25 U.S.C. 355, 372, 373, 378, 379, 404, 405, 483, unless otherwise noted.

Cross-Reference: See part 159 and part 160 in this chapter for further regulations regarding sale of irrigable lands.

§ 152.1 What are the definitions of the terms used in this part?

Agency means an Indian agency or other field unit of the Bureau of Indian Affairs having trust or restricted Indian land under its immediate jurisdiction.

Competent means that you posses sufficient ability, knowledge, experience, and judgment to manage your business affairs, including the administration,use, investment, and disposition of any property you own and the income or proceeds derived from the property, with a reasonable degree of prudence and wisdom to prevent the loss of such property or benefits. (Act of August 11, 1955 (69 Stat. 666)).

Fiduciary means a person acting primarily for another's benefit such as a trustee, guardian, or conservator.

I and *my* mean the Indian applicant.

Patent in fee means an instrument of conveyance issued by the government to transfer the title of trust, or any interest in trust land, to a non-Indian or Indian determined to be competent. A patent in fee removes all restrictions against alienation of all restriction property and terminates the trust responsibility of the Secretary of the Interior for the land.

Restricted land means land or any interest therein, the title to which is held by an individual Indian, subject to Federal restrictions against alienation or encumbrance.

Secretary means the Secretary of the Interior or authorized representative acting under delegated authority.

Tribe means any Indian tribe, band, nation, pueblo, community, corporation, rancheria, colony, or other group of Indians.

Trust land means land or any interest therein held in trust by the United States for an individual Indian or tribe.

We means the Secretary of the Interior or authorized representative acting under delegated authority.

You means the Indian applicant.

Your refers to the Indian applicant.

Issuing Patents in Fee, Certificates of Competency, or Orders Removing Restrictions

§ 152.2 Who can apply for a patent in fee?

Indians 21 years of age or over. The written application must be in a form approved by the Secretary and filed with the agency having immediate jurisdiction over the land.

§ 152.3 How do I apply for a patent in fee?

You must complete and submit a written application in the form approved by the Secretary and file it with the agency superintendent having immediate jurisdiction over the land.

§ 152.4 What happens when I apply for a patent in fee?

(a) If we determine that your are competent, we will issue you a fee patent and give you an inventory of your estate. (Acts of Feb. 8, 1887 (24 Stat. 388), as amended (25 U.S.C. 349); June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372); and May 14, 1948 (62 Stat. 236; 25 U.S.C. 483); and other authorizing acts.)

(b) If we deny your application, we will tell you why in a letter. You have the right to appeal the decision under 25 CFR part 2.

(c) White Earth Reservation: We will issue a patent in fee to any adult Indian of mixed-blood owning land within the White Earth Reservation in the State of Minnesota. When you apply, we do not consider your competency (Act of March 1, 1907 (34 Stat. 1015)).

(d) Fort Peck Reservation: Interests in oil and gas underlying certain allotments on the Fort Peck Reservation were granted to certain Indians to be held in trust for them. Provisions were made to issue patents in fee for such oil and gas or patents in fee for land in certain circumstances (Act of June 30, 1954 (68 Stat. 358)).

(1) Title to the entire interest in the oil and gas, underlying a parcel of land within the Fort Peck Reservation, was conveyed by the act in fee simple status to Indian grantees who received a patent or patent in fee before June 30, 1954.

(2) We will convey by patent, without application, unrestricted fee simple title to the entire interest in oil and gas granted by this act to Indians to whom a fee patent has been issued at any time for any land within the Fort Peck Reservation or who have been determined to be competent.

(3) When we determine that the entire interest in a tract of land on the Fort Peck Reservation is owned by a competent Indian grantee of oil and gas under the act, we will issue fee patents to them, covering all interests in the land, without application.

§ 152.5 Will patents in fee be issued to non-Indians and Indians with whom a special relationship does not exist?

We will issue a patent in fee to any non-Indian, or Indian to whom the United States owes no trust responsibility, without application, whenever we determine that trust land, or any interest in trust land, has been acquired through inheritance or devise.

§ 152.6 Who can apply for a certificate of competency?

Indians 21 years old or over, except certain adult members of the Osage Indian Tribe as provided in § 152.8, who hold land or an interest in land under a restricted fee patent. The written application must be in a form approved by the Secretary and filed with the agency having immediate jurisdiction over the land.

§ 152.7 What happens when I apply for a certificate of competency?

(a) If we determine that you are competent, we will approve your application, and a certificate of competency will be issued. The delivery of the certificate will have the effect of removing the restrictions from the described land. (Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372)).

(b) If we deny your request, we will tell you why in a letter. You have the right to appeal this action under part 2 of this chapter.

§ 152.8 Can certain Osage Indian adults apply for a certificate of competency?

Adult members of the Osage Indian Tribe of one-half or more Indian blood may apply for a certificate of competency. Applications must be in the form approved by the Secretary. If the Secretary determines that you are competent, a certificate of competency will be issued removing restrictions against alienation on all restricted property and terminating the United States trust responsibility on all restricted property. Your Osage headright interest remains under the trust responsibility of the United States. For regulations pertaining to the issuance of certificates of competency to adult Osage Indians of less than one-half Indian blood, see part 154 of this chapter.

§ 152.9 Who can apply for an order removing restrictions?

(a) You can apply for an order removing restrictions if you are:

(1) An Indian not under legal disability under the laws of the State where you reside or where the land is located; or

(2) A court-appointed guardian or conservator of any Indian.

(b) If you are a member of the Five Civilized Tribes, see § 152.13.

§ 152.10 How do I apply for an order removing restrictions?

(a) You must send a written application, in the form approved by the Secretary, telling why you need the removal of restrictions, to the agency having immediate jurisdiction over the lands.

(b) If you are a member of the Five Civilized Tribes, see § 152.12

§ 152.11 What happens when I apply for an order removing restrictions?

(a) If we determines that you are competent or that a removal of restrictions is in your best interest, we will approve your application and issue an order removing restrictions from the described lands.

(b) If you are a member of the Five Civilized Tribes, see § 152.13.

(c) If we deny the application, we will tell you why in a letter. You have the right to appeal this action under part 2 of this chapter.

Order Removing Restrictions for Members of the Five Civilized Tribes

§ 152.12 If I am a member of the Five Civilized Tribes, how do I apply for removal of restrictions under authority other than section 2(a) of the Act of August 11, 1955?

When you ask us to remove restrictions on your restricted lands under authority other than section 2(a) of the Act of August 11, 1955 (69 Stat. 666), you may not include lands, or interest in lands, acquired by inheritance or devise. You can apply in either of the two following ways:

(a) If you apply for an unconditional removal, we will grant the removal if we determine that you are competent.

(b) If you apply for a conditional removal, we will grant the removal. The conditional order will be effective only and simultaneously with the execution of a deed by you and upon completion of an advertised or negotiated sale acceptable to us.

§ 152.13 If I am a member of the Five Civilized Tribes, what happens when I apply for removal of restrictions under section 2(a) of the Act of August 11, 1955?

(a) If we determine that you are competent, we will issue an order removing restrictions having the effect stated in § 152.16.

(b) If your application is rejected, this action is not subject to administrative appeal.

(c) If the Secretary rejects, or takes no action within 90 days of the application date, you may apply to the State district court in the county in which you reside. If that State district court issues an order, it will have the effect stated in § 152.16.

§ 152.14 If I am a member of the Five Civilized Tribes, can the restrictions be removed from my land without an application?

(a) Yes. When you are determined to be competent, section 2(b) of the Act of August 11, 1955 (69 Stat. 666), authorizes the removal of restrictions on property belonging to members of the Five Civilized Tribes. The Secretary will issue an order removing restrictions without an application. We will tell you in a letter that we intend to issue an order removing restrictions 30 days after the date of the letter.

(b) This decision may be appealed under part 2 of this chapter within the 30 days.

(c) All administrative appeals will postpone the issuance of this order.

(d) An order removing restrictions will be issued when:

(1) The decision is not appealed within 30 days after the date of the notice;

(2) Any dismissal of an appeal is not appealed within the prescribed time limit; or

(3) The final appeal is dismissed.

§ 152.15 If I am a member of the Five Civilized Tribes, what happens when a removal of restrictions is issued to me without an application?

When an order removing restrictions is issued, under § 152.14:

(a) A copy of the order will be delivered to you, or any person acting on your behalf, and the Board of County Commissioners for the county in which you reside.

(b) Under the terms the Act of August 11,1955 (69 Stat. 66), the Secretary will tell you and the Board of County Commissioners in a letter that you and/or the Board have the right to appeal within six months of the date of this letter. The appeal must be to the State district court for the district in which you reside. The appeal will stay the effective date of the order until such proceedings are concluded. If the State district court dismisses the appeal, the order will become effective six months after the date of the letter. The effect of the order is described in § 152.16.

§ 152.16 If I am a member of the Five Civilized Tribes, what is the effect of an order removing restrictions from my land under the Act of August 11, 1955 (69 Stat. 666)?

(a) The effective date will remove all jurisdiction and supervision of the Bureau of Indian Affairs.

(b) Full ownership and control of money and property will be given to you, and the Secretary will issue title documents if necessary.

(c) The Secretary may make provisions to insure repayment of money lent to you by the Federal Government or by an Indian tribe.

(d) The interest of any lessee or permittee in any lease, contract, or permit that is outstanding when an order becomes effective will be preserved.

Sales, Exchanges, and Conveyances of Trust or Restricted Lands

§ 152.17 Can I sell, exchange, or otherwise convey my Indian land?

Trust or restricted lands acquired by allotment, devise, inheritance, purchase, exchange, or gift may be sold, exchanged, and conveyed by you with the approval of the Secretary or by the Secretary with your consent under the Acts of May 27, 1902 (32 Stat. 275; 25 U.S.C. 379); May 17, 1906 (34 Stat. 197), as amended August 2, 1956 (70 Stat. 954; 48 U.S.C. 357); March 1, 1907 (34 Stat. 1018; 25 U.S.C. 405); May 29, 1908 (35 Stat. 444; 25 U.S.C. 404); June 25, 1910 (36 Stat. 855; 25 U.S.C. 372), as amended May 25, 1926 (44 Stat. 629; 48 U.S.C. 355a-355d); June 18, 1934 (48 Stat. 984; U.S.C. 464); and May 14, 1948 (62 Stat. 236; 25 U.S.C. 483); and other authorizing acts.

§ 152.18 Can a natural guardian or person designated by the Secretary sell my Indian land?

(a) Under the Act of May 29, 1908 (35 Stat. 444; 25 U.S.C. 404), we may sell trust or restricted land belonging to:

(1) A minor, with the consent of the natural guardian of the minor;

(2) Indian orphans without a natural guardian; and

(3) Indians who are non compos mentis or otherwise under legal disability.

(b) The authority contained in the Act of May 29, 1908 is not applicable to lands in Oklahoma, Minnesota, and South Dakota, nor to lands authorized to be sold by the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483).

§ 152.19 Can fiduciaries sell my Indian land?

With our approval or consent, guardians, conservators, or other fiduciaries appointed by State courts, or by tribal courts operating under approved constitutions or law and order codes, may convey trust or restricted land belonging to Indians who are minors, no compos mentis, or otherwise under legal disability. This section is subject to the exceptions contained in 25 U.S.C. 954(b).

§ 152.20 Can the Secretary sell land owned by more than one person?

Under the Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372), lands or all interests in land may be sold if the Secretary determines that one or more of the heirs who have inherited trust land are incapable of managing their own affairs. This authority does not apply to lands authorized to be sold under the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483).

§ 152.21 Can a tribe sell or exchange tribal land?

Certain tribal land may be sold or exchanged under the Acts of February 14, 1920 (41 Stat. 415; 25 U.S.C. 294); June 18, 1934 (48 Stat. 984; 25 U.S.C. 464); August 10, 1939 (53 Stat. 1351; 25 U.S.C. 463(e)); July 1, 1948 (62 Stat. 1214); June 4, 1953 (67 Stat 41; 25 U.S.C. 293(a)); July 28, 1955 (69 Stat. 392), as amended August 31, 1964 (78 Stat. 747; 25 U.S.C. 608–608c); June 18, 1956 (70 Stat. 290; 25 U.S.C. 403a–2); July 24, 1956 (70 Stat. 626); May 19, 1958 (72 Stat. 121; 25 U.S.C. 463, Note); September 2, 1958 (72 Stat. 1762); April 4, 1960 (74 Stat. 13); April 29, 1960) 74 Stat. 85); December 11, 1963 (77 Stat. 349); August 11, 1964 (78 Stat. 389); January 12, 1983 (96 Stat. 2517, 25 U.S.C. 2201), and under other authorizing acts. Except as otherwise provided by law, the regulations in this part 152 apply to sale or exchanges of tribal land.

§ 152.22 Is the Secretary's approval necessary to convey individual-owned trust or restricted lands or lands owned by a tribe?

(a) *Individual lands.* Yes, except inherited lands of the Five Civilized Tribes, see § 152.12. Influencing an Indian to execute an instrument purporting to convey any interest in trust land, or the offering of any instrument for record is prohibited, and criminal penalties may be incurred. (See 25 U.S.C. 202 and 348.)

(b) *Tribal lands.* Yes, except where acts of Congress authorize sales without approval. (See 25 U.S.C. 177.)

§ 152.23 Where do I file an application for sale, exchange, or gift?

Applications must be filed in a form approved by the Secretary with the agency having immediate jurisdiction over the land. Applications may be approved if the transaction appears to be in the long-range best interest of the owner or owners, or under conditions in § 152.25(d).

§ 152.24 Is an appraisal necessary?

Yes. Except as otherwise provided by the Secretary, we must do an appraisal to determine the fair market value before making or approving a sale, exchange, or other transfer of title of trust or restricted land.

§ 152.25 Can I negotiate a sale, gift, or exchange of my trust or restricted lands?

Sales, exchanges, and gifts specifically described in paragraphs (a), (b), (c), and (d) of this section may be negotiated; all other sales must be by advertised sale, or as determined by the Secretary. With the approval of the Secretary:

(a) *Consideration not less than the appraised fair market value.* You may negotiate and sell trust or restricted land for not less than the appraised fair market value when:

(1) The sale is to the United States, States, or political subdivisions, or sale for a public purpose.

(2) The sale is to the tribe or another Indian; or

(3) The Secretary determines it is impractical to advertise.

(b) *Exchange at appraised fair market value.* You may exchange trust or restricted land in combination with other things of value. The value you receive in the exchange must be substantially equal to the appraised fair market value of the consideration given by you.

(c) *Sale to co-owners.* You may negotiate and sell trust or restricted land to a co-owner. The consideration may be less than the appraised fair market value, if we determine there is a special relationship between the co-owners or special circumstances exist.

(d) *Gifts and conveyances for less than the appraised fair market value.* You may convey trust or restricted land for less than the appraised fair market value or for no consideration, when:

(1) The prospective grantee is your spouse, brother, sister, lineal ancestor of Indian blood, or lineal descendant;

(2) Some other special relationship exists between you and grantee; or

(3) The Secretary determines that special circumstances exist that warrant the approval of the conveyance.

§ 152.26 How is my land advertised for sale?

(a) Once your application is approved, a notice of sale will be published not less than 30 days prior to the date fixed for the sale. A shorter period may be authorized by the Secretary.

(b) The notice of sale will include:

(1) Terms, conditions, place, date, hour, and methods of sale, including explanation of auction procedures set out in § 152.27(b)(2);

(2) Where and how bids must be submitted;

(3) A warning to all bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders or potential bidders; and

(4) Description of tracts, all reservations to which title will be subject, any restrictions and encumbrances of record with the Bureau of Indian Affairs, and any other information that may improve sale prospects.

§ 152.27 What procedures are followed for an advertised sale?

(a) Advertised sales are by sealed bids except as provided in this paragraph:

(1) Bids, along with a certified check, cashier's check, money order, or U.S. Treasury check, payable to the Bureau of Indian Affairs, for not less than 10 percent of the amount of the bid, must be enclosed in a sealed envelope marked as prescribed in the notice of sale. A cash deposit may be submitted in lieu of these negotiable instruments at the bidder's risk. Tribes submitting bids under this paragraph may guarantee the required 10 percent deposit by an appropriate resolution.

(2) The sealed envelopes containing the bids will be publicly opened at the

time fixed for sale. The bids will be announced and appropriately recorded.

(b) when the Secretary recognizes that a tribe or a tribal member has a valid interest in acquiring the trust or restricted lands offered for sale, the following apply:

(1) With the consent of the owner and when the notice of sale so states, the tribe or tribal members have the right to meet the high bid.

(2) An oral auction may be held following the bid opening if:

(i) The tribe is not the highest bidder;

(ii) One or more acceptable sealed bids are received; or

(iii) When so stated in the notice of sale.

(c) Bidding in the auction will be limited to the tribe and to those who submitted sealed bids at 75 percent or more of the appraised value of the land being auctioned. At the conclusion of the auction, the highest bidder must increase his deposit to not less than 10 percent of his auction bid.

§ 152.28 What happens after the bid closing?

(a) The apparent highest acceptable bid will be publicly announced. The deposits submitted by unsuccessful bidders will be returned immediately. The apparent successful bidder's deposit will be held in a special account.

(b) If the highest bid received is less than the appraised fair market value of the land, the Secretary, with the consent of the owner, may accept that bid if:

(1) The amount approximates said appraised fair market value; and

(2) The amount is the highest price that may be realized.

(c) The Secretary will notify the apparent successful bidder that the remainder of the purchase price must be submitted within 30 days.

(1) The Secretary may extend the time for payment of the balance due upon showing of cause.

(2) If the balance due is not paid within the time allowed, the bid will be rejected, and the apparent successful bidder's 10 percent deposit will be forfeited to the landowner.

(d) The issuance of the patent or delivery of a deed to the purchaser will not be authorized until the balance of the purchase price has been paid. The fee patent may be ordered in cases where the purchaser is obtaining a loan from an agency of the Federal Government, and that agency has given the Secretary a commitment that the balance due will be paid when the fee patent is issued.

§ 152.29 Can the Secretary reject bids or disapprove a sale?

Yes. The Secretary reserves the right to reject any and all bids before or after the award or prior to the issuance of a patent or delivery of a deed, when it has been determined the rejection is in the best interests of the Indian owner.

§ 152.30 Can employees of Indian Affairs bid?

No. No person employed in Indian Affairs will directly or indirectly bid, make, or prepare any bid, or assist any bidder in preparing his bid. Sales between Indians, either of whom is an employee of the U.S. Government, are governed by the provisions of part 140 of this chapter (see 25 U.S.C. 68 and 441).

§ 152.31 Who pays for the cost of conveyance and fees?

(a) Under the Act of February 14, 1920 (41 Stat. 415), as amended by the Act of March 1, 1933 (47 Stat. 1417; 25 U.S.C. 413), the Secretary may collect from a purchaser reasonable fees for work performed or expense incurred in the transaction. The amount collected will be deposited to the credit of the United States as general fund receipts, except as stated in paragraph (b) of the section.

(1) The amount of the fee will be $22.50 for each transaction.

(2) We may waive or reduce the fee to a lesser amount if justified.

(b) Subject to our approval, an alternate schedule of fees may be established if the cost of the work performed or expenses incurred are to be paid with tribal funds. Part of the fees may be credited to the tribe if appropriate.

(c) The collection of cost from the tribe may be waived if the tribe is the purchaser.

§ 152.32 Who pays irrigation fees and payments?

Under the Act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 386a), collection of all construction costs against any Indian-owned lands within Indian irrigation projects is deferred as long as Indian title has not been extinguished. This statute applies only where the land is owned by Indians either in trust or restricted status.

(a) Any person, whether Indian or non-Indian, acquiring Indian lands that are a part of an Indian Irrigation project must enter into an agreement to:

(1) Pay the pro rata share of the construction of the project chargeable to the land;

(2) Pay all construction costs that accrue in the future; and

(3) Pay all future charges assessable to the land which are based on the annual cost of operation and maintenance of the irrigation system.

(b) Any operation and maintenance charges that are delinquent when Indian land is sold will be deducted from the proceeds of sale unless other acceptable arrangements are made to provide for the payment prior to the approval of the sale.

(c) A lien clause covering all unpaid irrigation construction costs, past and future, will be inserted in the patent or other instrument of conveyance issued to all purchasers of restricted or trust lands that are under an Indian irrigation project.

Partitions in Kind of Inherited Allotments

§ 152.33 Can I partition my Indian lands?

(a) Land may be partitioned without an application if we find that any one or more inherited trust allotments are capable of partition in kind to the advantage of the heirs regardless of their competency. Patents in fee will be issued to the competent heirs for the lands set apart to them. The trust period will terminate in accordance with the terms of the original patent or order of extension of the trust period set out in the patent. (Act of May 18, 1916, (39 Stat. 127; 25 U.S.C. 378)). The authority contained in the Act of May 18, 1916, does not apply to lands authorized to be sold by the Act of May 14, 1948, nor to land held in restricted fee status.

(b) Heirs of a deceased allottee may submit a written application on an approved form for a partition of their trust or restricted land. If we approve the partition, new patents or deeds will be issued to the heirs for the portions set aside to them. If title to the allotment is held as restricted fee, a partition may be accomplished by the heirs executing approved deeds to the other heirs for their respective portions.

Mortgages and Deeds of Trust To Secure Loans to Indians

§ 152.34 Can I mortgage my land?

Yes. With the Secretary's approval, you may execute a mortgage or deed of trust to your land. The Secretary will secure appraisal information prior to approval of the mortgage or deed of trust. Such lands will be subject to foreclosure or sale, according to the terms of the mortgage or deed of trust, and in accordance with the laws of the State in which the lands are located. For the purpose of foreclosure or sale proceedings under this section, you will be regarded as vested with unrestricted fee simple title to the lands (Act of March 29, 1956) (70 Stat. 62; 25 U.S.C. 483a).

§ 152.35 Can I make a sale on a deferred payment plan?

Yes, when you and purchaser desire. The terms will be set out in a memorandum of sale which constitutes a contract for payment in full and delivery of title. The executed deed will be held by the superintendent to be delivered only upon full compliance with the terms of sale. Request for fee patent will be made only upon full compliance with the terms of the sale. As required by the Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372); the terms of the sale will require the purchaser to pay not less than 10 percent of the purchase price in advance. Terms for the payment of the remaining installment, plus interest, must be acceptable to the Secretary and the Indian owner. If the purchaser defaults on any deferred payment plan in the first or subsequent payments, all payments, including interest, previously made will be forfeited to the Indian owner.

Denials of Applications

§ 152.36 When does the Secretary deny approval of my application?

The Secretary denies any request under this part if a determination shows that it will adversely affect the best interest of other Indians, or the tribe.

§ 152.37 Am I notified of a denial?

Yes, the Secretary makes denials in a written letter. You have the right to appeal the decision under part 2 of this chapter.

Receiving Information

§ 152.38 Who receives information regarding status of applications for patents in fee, certificates of competency, or orders removing restrictions of trust or restricted Indian lands?

(a) The status of applications by Indians for patents in fee, certificates of competency, or orders removing restrictions must be disclosed to:

(1) Employees of the Department of the Interior whose duties require that the information be disclosed to them;

(2) The applicant or his attorney, upon request;

(3) Members of Congress on behalf of the applicant; and

(4) Owners of trust or restricted land whose property would be affected by the termination of trust or restricted status of the land covered by the application.

(b) All other persons, upon request and only after a patent in fee, certificate of competency, or an order removing restrictions has been issued, according to the following timeframes:

(1) 15 days after the fee patent has been issued by the Bureau of Land Management;

(2) 15 days after issuance of a certificate of competency or order removing restrictions; or

(3) After the application has been rejected, and you have been notified.

Dated: June 10, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–16037 Filed 7–1–96; 8:45 am]

BILLING CODE 4310–02–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Chapter XIV

Older Workers Benefit Protection Act of 1990 (OWBPA)

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Sixth Meeting of Negotiated Rulemaking Advisory Committee.

SUMMARY: EEOC announces the dates of the sixth meeting of the "Negotiated Rulemaking Advisory Committee for Regulatory Guidance on Unsupervised Waivers of Rights and Claims under the Age Discrimination in Employment Act" (the Committee). A Notice of Intent to form the Committee was published in the **Federal Register** on August 31, 1995, 60 FR 45388, and a Notice of Establishment of the Committee was published in the **Federal Register** on October 20, 1995, 60 FR 54207.

DATES: The sixth meeting will be held on July 23–24, 1996, beginning at 10:00 a.m. on July 23. It is anticipated that the meeting will last for two days. The session of July 24, 1996 will commence at 9:00 a.m.

ADDRESSES: The meeting will be held at the EEOC Headquarters, 1801 L Street, N.W., Washington, D.C. 20507.

FOR FURTHER INFORMATION CONTACT: Joseph N. Cleary, Paul E. Boymel, or John K. Light, ADEA Division, Office of Legal Counsel, EEOC, 1801 L Street, N.W., Washington, D.C. 20507, (202) 663–4692.

SUPPLEMENTARY INFORMATION: All Committee meetings, including the meeting of July 23–24, will be open to the public. Any member of the public may submit written comments for the Committee's consideration, and may be permitted to speak at the meeting if time permits. In addition, all Committee documents and minutes will be available for public inspection in EEOC's Library (6th floor of the EEOC Headquarters).

Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. To schedule an appointment call (202) 663–4630 (voice), (202) 663–4630 (TDD). Copies of this notice are available in the following alternate formats: large print, braille, electronic file on computer disk, and audio tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663–4395 (voice), (202) 663–4399 (TDD).

Purpose of Meeting/Summary of Agenda

At the meeting, the Committee will continue to discuss the unsupervised waiver legal issues that will be considered by the Committee in drafting a recommended notice of proposed rulemaking for EEOC approval.

Dated: June 25, 1996

Frances M. Hart,

Executive Officer.

[FR Doc. 96–16758 Filed 7–1–96; 8:45 am]

BILLING CODE 6570–06–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

Implementation of the Local Competition Provisions of 1996 Telecommunications Act

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment date.

SUMMARY: The Public Notice extends an additional Comment opportunity in CC Docket 96–98 in order to allow parties to that proceeding to comment on a staff-prepared working copy of an industry demand and supply simulation model. The model, using publicly-available, industry-wide information, allows users to simulate the relative impact of particular changes in the industry.

DATES: Comments are due on or before July 8, 1996. (No reply comments allowed).

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas J. Beers at (202) 418–0952.

SUPPLEMENTARY INFORMATION:

[DA 96–1030; IAD 96–176]

Supplemental Comment Period Extended for Local Competition Proceeding, CC Docket 96–98

Released June 25, 1996.

1. On June 17, 1996, the FCC's Industry Analysis Division, Common Carrier Bureau, and the Competition Division, Office of General Counsel, released a staff model of the telecommunications industry which allows model users to calculate a variety of outputs from nearly 200 specifications (News Release, "FCC Staff Releases Working Copy of an Industry Demand & Supply Simulation Model," released June 17, 1996.) The staff model allows the user to specify growth rates, pricing trends, demand elasticities and cost relationships to simulate effects in traditional industry segments. The staff model, using publicly-available, industry-wide information, allows the user to simulate the relative impact of particular changes in the industry. On June 20, 1996, the Common Carrier Bureau, on delegated authority, issued a Public Notice that announced that a copy of the staff model had been placed in the public file in CC Docket No. 96–98, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996. Parties were requested to file Comments on the staff model in that proceeding no later than Monday, July 1, 1996. (Public Notice, "Supplemental Comment Period Designated for Local Competition Proceeding, CC Docket 96–98," DA 96–1007, released June 20, 1996.) (61 FR 32766, June 25, 1996).

2. On June 21, 1996, Cox Communications, Inc. ("Cox") filed a Motion for Extension of Time seeking an extension, to July 8, 1996, to file its supplemental comments about the staff model.[1] In its petition, Cox argues, *inter alia*, that the comment period is insufficient to give parties a meaningful opportunity to analyze and comment on the staff model.[2]

3. The Commission faces severe time constraints, imposed by Section 251 of the Communications Act of 1934, as amended, 47 U.S.C. § 251, to resolve the interconnection proceeding within the timeframe prescribed. Nevertheless, in order to afford commenters in CC Docket No. 96–98 as much opportunity as possible to analyze and utilize the staff model, a limited extension of the supplemental comment period is authorized. Parties who wish to comment on the model, use the model, create variations of the model, or file models of their own, in that proceeding are requested to file Comments no later than Monday, July 8, 1996. As stated in the June 20 Public Notice, there will be no Reply Comment filing opportunity.

4. Copies of the model may be purchased by calling International Transcription Services, Inc. (ITS) at (202) 857–3800. The model also can be downloaded from the Common Carrier Bureau's home page on the World Wide Web. The home page can be accessed directly (http://www.fcc.gov/ccb.html) or through a direct link from the main FCC home page (http://www.fcc.gov). The model also can be downloaded from the FCC-State Link computer bulletin board at (202) 418–0241 [BBS file name: MODELV30.ZIP].

For further information, contact Thomas J. Beers at (202) 418–0952 (e-mail: tbeers@fcc.gov). For further information about the model, contact Jim Lande at (202) 418–0498 (e-mail: jlande@fcc.gov) or Doron Fertig at (202) 418–1869 (e-mail: dfertig@fcc.gov).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–16760 Filed 6–28–96; 8:45 am]

BILLING CODE 6712–01–P

[1] Motion for Extension of Time of Cox Communications, Inc. ("Cox Petition"), CC Docket No. 96–98 (filed June 21, 1996). On June 24, 1996, Cox supplemented its petition with an Attachment to the original motion. *See* Affidavit of Joshua E. Fine In Support of Cox Communications, Inc. Motion for Extension of Time (filed June 24, 1996).

[2] Cox Petition, 2–5.

47 CFR Part 73

[MM Docket No. 96–134; RM–8817]

Radio Broadcasting Services; Kansas City, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by TV–32, Inc. requesting the substitution of UHF Channel 29 for UHF Channel 32 at Kansas City, Missouri, and modification of the construction permit for Station KCWB to specify operation on Channel 29. The coordinates for Channel 29 at Kansas City are 39–05–01 and 94–30–57. We shall propose to modify the construction permit for Station KCWB and will not accept competing expressions of interest for the use of the channel. To accommodate the allotment of Channel 29 at Kansas City, we shall also propose to change the reference site coordinates for vacant Channel *22 at St. Joseph, Missouri, from 39–46–00 and 94–50–18 to 39–54–40 and 94–50–18.

DATES: Comments must be filed on or before August 12, 1996, and reply comments on or before August 27, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Meredith S. Senter, Jr., Renee L. Roland, Leventhal, Senter & Lerman, 2000 K. Street, NW., Suite 600, Washington, DC 20006–1809.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96–134, adopted June 14, 1996, and released June 21, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–16766 Filed 7–1–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–135; RM–8825]

Radio Broadcasting Services; Mena, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Wendell Harlan requesting the allotment of Channel 287C3 to Mena, Arkansas, as that community's third local FM transmission service. Coordinates used for Channel 287C3 at Mena, Arkansas, are 34–38–46 and 94–16–53.

DATES: Comments must be filed on or before August 12, 1996, and reply comments on or before August 27, 1996.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Wendell Harlan, 3906 Hwy 375 West, P.O. Box 1426, Mena, AR 71953.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96–135, adopted June 14, 1996, and released June 21, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–16765 Filed 7–1–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No.96–136; RM–8816]

Radio Broadcasting Services; Mililani Town, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by James Boersema seeking the allotment of UHF television Channel 60 to Mililani Town, Hawaii, as that locality's first local television service. Coordinates for this proposal are 21–27–29 North Latitude and 158–01–04 West Longitude. Although the Commission has imposed a freeze on TV allotments in certain metropolitan areas pending the outcome of an inquiry into the uses of advanced television systems (ATV) in broadcasting, this proposal is not affected thereby.

DATES: Comments must be filed on or before August 12, 1996, and reply comments on or before August 27, 1996.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: James Boersema, 733 Bishop Street, #170–460, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96–136, adopted June 14, 1996, and released June 21, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–16764 Filed 7–1–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No.96–138, RM–8822]

Radio Broadcasting Services; Shell Knob, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Galen Gilbert proposing the allotment of Channel 249A at Shell Knob, Missouri, as that community's first local service. The coordinates for Channel 249A are 36–42–51 and 93–34–36. There is a site restriction 10.5 kilometers northeast of the community. Petitioner has been requested to provide information demonstrating that Shell Knob qualifies as a community for allotment purposes. Since Shell Knob is located inside the Mark Twain National Forest, petitioner has also been requested to provide information showing a site is available that will provide city grade coverage to the community.

DATES: Comments must be filed on or before August 12, 1996, and reply comments on or before August 27, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: William J. Pennington, III, Post Office Box 1447, Mount Pleasant, South Carolina 29465.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MM Docket No.96–138, adopted June 14, 1996, and released June 21, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors,

International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–16763 Filed 7–1–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 76

[CS Docket No. 96–139; DA 96–1012]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, through this action, invites comments on its proposal to amend its rules regarding the listing of major television markets, to change the designation of the Houston television market to include the communities of Baytown, Galveston, Alvin, Rosenberg, Katy and Conroe, Texas. This action is taken at the request of Pray, Inc., licensee of television station KRTW(TV), Channel 57 (presently KVVV), Baytown, Texas and it is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before August 26, 1996 and reply comments are due on or before September 16, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Vanessa Stallings, Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking*, CS Docket 96–139, adopted June 21, 1996 and released June 24, 1996.

The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW, Washington, D.C. 20554.

Synopsis of the Notice of Proposed Rulemaking

1. The Commission, in response to a Petition for Rulemaking filed by the petitioner, proposed to amend Section 76.51 of the Rules to add the communities of Baytown, Galveston, Alvin, Rosenberg, Katy and Conroe to the Houston television market.

2. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) the distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."

3. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rule making process, including the comments of interested parties. It appears from the information before the Commission that the television stations licensed to Houston, Baytown, Galveston, Alvin, Rosenberg, Katy and Conroe, Texas do compete throughout much of the proposed combined market area, and that sufficient evidence has been presented tending to demonstrate commonality between the proposed communities to be added to the market designation and the market as a whole that "hyphenation" of the market should be proposed. Moreover, the petitioners' proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market. Accordingly, comment is requested on the proposed addition of Baytown, Galveston, Alvin, Rosenberg, Katy and Conroe to the Houston, Texas television market.

Initial Regulatory Flexibility Analysis

4. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

Ex Parte

5. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. *See generally* 47 CFR §§ 1.1202, 1.1203 and 1.1206(a).

Comment Dates

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before August 26, 1996 and reply comments on or before September 16, 1996. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

7. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's Rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William H. Johnson,

Deputy Chief, Cable Services Bureau.

[FR Doc. 96–16819 Filed 7–1–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 76

[CS Docket No. 96–133, FCC 96–265]

Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission is required to report annually to Congress on the status of competition in the market for the delivery of video programming pursuant to Section 628(g) of the Communications Act of 1934, as amended. On June 12, 1996, the Commission adopted a *Notice of Inquiry* to solicit information from the public for use in preparing the competition report that is to be submitted to Congress in December 1996. The *Notice of Inquiry* will provide parties with an opportunity to submit comments and information to be used in conjunction with publicly available information and filings submitted in relevant Commission proceedings to assess the extent of competition in the market for the delivery of video programming.

DATES: Comments are due by July 19, 1996, and reply comments are due by August 19, 1996.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Cable Services Bureau, (202) 418–7200, or Jeffrey Lanning, Office of the General Counsel, (202) 418–1880.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Inquiry* in CS Docket No. 96–133, FCC 96–265, adopted June 12, 1996, and released June 13, 1996. The complete text of this *Notice of Inquiry* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 1900 M Street, N.W., Washington, D.C. 20054.

Synopsis of the Notice of Inquiry

1. Section 628(g) of the Communications Act of 1934, as amended ("Communications Act"), 47 U.S.C. § 548(g), requires the Commission to deliver an annual report to Congress on the status of competition in the market for the delivery of video programming. The Commission submitted its first two reports to Congress in September 1994 and December 1995, respectively.

2. The *Notice of Inquiry* ("*NOI*") is designed to solicit comments and information that the Commission can use to prepare its 1996 Competition Report. Specifically, the *NOI* requests information on the cable industry, existing and potential competitors to cable systems, barriers to entry by new competitors, technological advances and the effects of the 1996 Act on competition in the market for the delivery of video programming. The Commission expects to use the information that is submitted by commenters to supplement publicly available information and relevant comments that have been filed in other Commission proceedings. The *NOI* highlights a wide range of competitive issues, and offers parties an opportunity to submit comments on these issues, as well as any other information they believe is relevant to an evaluation of competition in the market for the delivery of video programming.

3. The *NOI* begins with an overview of the 1996 Act, including a summary of the provisions that may promote competition among multichannel video programming distributors ("MVPDs"). These provisions include: (1) repeal of the cable-telco cross-ownership ban; (2) creation of the open video system ("OVS") option for local exchange carrier ("LEC") entry into the market for the delivery of video programming; (3) deregulation of small cable systems; (4) expansion of the definition of effective competition; and (5) elimination under a number of circumstances of the uniform cable service rate structure requirement for similarly situated subscribers.

4. The *NOI* then seeks information and comment on the status of the different MVPDs that serve subscribers in the market for the delivery of video programming and the changes that have occurred in the past year. The MVPDs include cable television (including overbuilds), multipoint multichannel distribution service ("MMDS" or "wireless cable"), direct broadcast satellites ("DBS") and home satellite dishes ("HSDs"), and satellite master antenna television ("SMATV") systems. The Commission also seeks information on potential rivals for incumbent cable systems, such as open video systems built by LECs.

5. The *NOI* asks a variety of questions concerning each of these video service providers and solicits information regarding barriers to entry and the nature of the services they provide. The *NOI* also indicates that the Commission intends to examine the effects on competition of broadcast television service, video cassette recorders ("VCRs") and interactive video and data services ("IVDS").

6. The Commission observes that there are technological advances that may affect the structure of the market for the delivery of video programming. In this regard, the *NOI* solicits information on digital compression, hybridization of different transmission media, and developments in set-top boxes and switched digital services.

7. In the *NOI*, the Commission requests comment on the structure of the market for the delivery of video programming and the effect of this structure on competition. The Commission expects to explore the status of horizontal concentration and vertical integration in the cable television industry and to analyze the market structure conditions that may affect competition in the market for the delivery of video programming. Information is requested also to help the Commission evaluate the effects on competition of the Commission's program access, program carriage, channel occupancy, and leased commercial access rules.

8. The *NOI* also requests comment on the current effects of actual or potential competition in local markets where consumers have, or soon will have, a choice between MVPDs. The Commission further requests information on any existing or potential impediments to entry into the market for the delivery of video programming. Finally, comment is sought on the outlook for competition in the future.

Administrative Matters

Ex Parte

9. There are no ex parte or disclosure requirements applicable to this proceeding pursuant to 47 CFR § 1.1204(a)(4).

Comment Dates

10. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments on or before July 19, 1996, and reply comments on or before

August 19, 1996. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus ten copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

Ordering Clauses

11. This Notice of Inquiry is issued pursuant to authority contained in Sections 4(i), 4(j), 403 and 628(g) of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

[FR Doc. 96–16817 Filed 7–1–96; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS–94; Notice 5]

RIN 2137–AB38

Qualification of Pipeline Personnel

AGENCY: Research and Special Programs Administration (RSPA); Department of Transportation (DOT).

ACTION: Notice of Intent (NOI) to Form a Negotiated Rulemaking Committee.

SUMMARY: RSPA proposes to establish a Negotiated Rulemaking Committee under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act of 1992 to develop a recommended rule on the qualification of personnel performing certain safety-related functions for pipelines subject to 49 CFR Parts 192 and 195. The Committee will adopt its recommendations through a negotiation process. The Committee will be composed of persons who represent the interests affected by the rule, such as gas pipeline operators, hazardous liquid and carbon dioxide pipeline operators, members of state and federal governments, and persons from the public sector. The purpose of this NOI is to invite interested parties to submit comments on the issues to be discussed and the interests and organizations to be considered for representation on the Committee.

DATES: RSPA must receive written comments and requests for representation or membership by August 1, 1996.

ADDRESSES: Written comments should be submitted in duplicate to the RSPA Dockets Office, attention Verdell Simpkins, Room 8421, Nassif building, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Albert C. Garnett, (202) 366–2036, or Eben M. Wyman, (202) 366–0918, regarding the subject matter of this NOI; or the Dockets Unit, (202) 366–4453, for copies of this NOI or other material in the docket.

SUPPLEMENTARY INFORMATION:

I. Background

Notice of Proposed Rulemaking (NPRM)

An NPRM titled "Qualification of Pipeline Personnel" was published on August 3, 1994 (Docket No. PS–94; 59 FR 39506). The NPRM proposed qualification standards for personnel who perform, or supervise persons performing, regulated operation, maintenance, and emergency-response functions. The purpose of the NPRM was to improve pipeline safety by requiring operators to assure the competency of affected personnel through training, testing, and periodic refresher training.

Written comments to the NPRM.

RSPA received 131 comments to the docket that expressed a wide variety of interests and concerns. Commenters stated that the NPRM was too prescriptive and that the many references to training requirements should be modified to place the focus of the NPRM on actual qualification, not the methods of achieving it. Most commenters asserted that the NPRM should have proposed a more general approach of broad requirements for persons performing "safety related" functions. Following review of the extensive comments to the NPRM, RSPA decided that a regulatory process other than traditional rulemaking would better address the issues surrounding operator qualifications.

Advisory Committees

The Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) were established by statute to evaluate proposed pipeline safety regulations. The committees are required to report on the technical feasibility, reasonableness, and practicability of the proposals.

Following consideration of the issues of this proposed rulemaking, both the TPSSC and THLPSSC expressed their disapproval of the NPRM. Instead the Committees presented several motions calling for amendments to the proposal. Those motions generally reflected written comments submitted to the Qualification of Pipeline Personnel proposed rulemaking.

Petition for Withdrawal

On December 1, 1995, the American Gas Association (AGA), the American Public Gas Association (APGA), and the Southern Gas Association (SGA) filed a petition for withdrawal of the August 3, 1994, NPRM and offered an alternative proposal.

Notice of withdrawal of NPRM

Along with this NOI, RSPA is publishing elsewhere in this issue of the **Federal Register** a document withdrawing the NPRM in Docket No. PS–94. RSPA briefly indicated the negotiated rulemaking process was an alternative method of rulemaking for use in this regulatory action. RSPA contends that a negotiated rulemaking process will provide the appropriate level of communication among interested parties that is needed to resolve the controversies surrounding the qualification issues.

II. Regulatory Negotiation

It can be difficult for an agency to craft effective regulatory solutions to certain problems. In the typical rulemaking process, the participants often develop adversarial relationships that prevent effective communication and creative solutions. The exchange of ideas that may lead to solutions acceptable to all interested groups often does not occur in the traditional notice and comment system. As the Administrative Conference of the United States (ACUS) noted in its Recommendation 82–4:

> Experience indicates that if the parties in interest were to work together to negotiate the text of a proposed rule, they might be able in some circumstances to identify the major issues, gauge their importance to the respective parties, identify the information and data necessary to resolve the issues, and develop a rule that is acceptable to the respective interests, all within the contours of the substantive statute.

47 FR 30708; June 18, 1982.

The thrust of this recommendation is that representatives of affected interests should be assembled to discuss the issue or hazard and all potential solutions, reach consensus, and prepare a proposed rule for consideration by the agency. After public comment on any proposal issued by the agency, the group would reconvene to review the comments and make recommendations for a final rule. This inclusive process is intended to make the rule more acceptable to all affected interests and prevent the need for petitions for reconsideration and litigation that often follow promulgation of a final rule.

The movement toward negotiated rulemaking gained impetus with enactment of the Negotiated Rulemaking Act of 1990, 5 U.S.C. 561 *et seq.* More recently, President Clinton issued Executive Order 12866 (EO) (58 FR 51735, October 4, 1993), which states the need to reform the current regulatory process into one that is effective, consistent, and understandable. The objectives of the EO are:

> To reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public.

Id. Section 6(a) of the EO charges government agencies with providing the public meaningful participation in the regulatory process:

> In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation. . . . Each agency is also directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Id. at 51740.

Negotiated rulemakings have been used successfully by the Department of Transportation, including the Federal Aviation Administration, the United States Coast Guard, the Federal Highway Administration, and the National Highway Traffic Safety Administration. In addition, the Environmental Protection Agency, and the Occupational Safety and Health Administration have successfully used the process.

RSPA now intends to use this process for the first time, and does so with enthusiasm and high expectations. RSPA welcomes the opportunity to work with those who will be affected directly by a personnel qualification rule, and is confident that the agency and its partners will benefit from the process by creating an effective and reasonable regulation.

Section 563(a) of the Negotiated Rulemaking Act and recommends that an agency consider whether:

(1) There is a need for the rule;
(2) There is a limited number of identifiable interests;
(3) These interests can be adequately represented by persons willing to negotiate in good faith to reach a consensus;
(4) There is a reasonable likelihood that the committee will reach consensus within a fixed period of time;
(5) The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking;
(6) The agency has adequate resources and is willing to commit such resources to the process; and
(7) The agency is committed to use the result of the negotiation in formulating a proposed rule if at all possible.

RSPA believes that these criteria have been met with respect to pipeline safety issues.

RSPA would charter a negotiated rulemaking committee (Committee) under the Federal Advisory Committee Act (FACA), 5 USCS App. 1, and would be represented on the Committee to take an active part in the negotiations. However, pursuant to section 566(c) of the Negotiated Rulemaking Act, the person(s) designated to represent RSPA would not facilitate or otherwise chair the proceedings. RSPA is committed to this process and is quite optimistic that it will result in the issuance of an NPRM and final rule that will be acceptable to the members of the Committee. Because of the mandate to issue a rule on this subject, RSPA is prepared to go forward with an NPRM that is not the product of the negotiations in the unlikely event the negotiation fails.

III. Procedures and Guidelines

The following proposed procedures and guidelines would apply to this process, subject to appropriate changes made as a result of comments on this Notice or as determined to be necessary during the negotiating process.

(A) *Facilitator:* RSPA is considering persons to serve as facilitator for the negotiating group. This individual will chair the negotiations, may offer alternative suggestions toward the desired consensus, will help participants define and reach consensus, and will determine the feasibility of negotiating particular issues. The facilitator may ask members to submit additional information or to reconsider their position. RSPA has contacted mediation organizations for candidates.

(B) *Feasibility:* RSPA has examined the issues and interests involved to determine whether it is possible to reach agreement on: (a) individuals to represent those interests; (b) the preliminary scope of the issues to be addressed; and (c) a schedule for developing a notice of proposed rulemaking. On the basis of the history of this issue and our preliminary inquiry, RSPA believes that regulatory negotiation can be successful in developing a workable proposal for a notice of proposed rulemaking and a final rule, and that the potential participants listed below would adequately represent the affected interests.

(C) *Requests for Representation:* The following have been tentatively identified as representing interests that are likely to be significantly affected by the rule:

(1) Small pipeline operators;
(2) Large pipeline operators;
(3) State pipeline safety representatives;
(4) Representatives of other interested Federal agencies;
(5) Public environmental organizations;
(6) Other interested public organizations;
(7) Representatives of labor unions; and
(8) RSPA's Office of Pipeline Safety.

RSPA proposes that persons or organizations selected by the various interests be named to the Committee. The following organizations have been tentatively identified as organizations that would serve on the committee:

(1) American Gas Association;
(2) American Petroleum Institute;
(3) Interstate Natural Gas Association of America;
(4) American Public Gas Association;
(5) National Association of Pipeline Safety Representatives;
(6) National Association of State Fire Marshals;
(7) Midwest Gas Association (a training organization);
(8) Environmental Defense Fund; and
(9) RSPA's Office of Pipeline Safety.

Each organization would send a representative to serve on the committee. RSPA will consider applications for representation from any interests not appropriately represented by those named in this list. Please identify such interests if they exist.

Each application for membership or nomination to the Committee should include: (i) the name of the applicant or nominee and the interests such person would represent; (ii) evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent; (iii) a written commitment that the applicant

or nominee would participate in good faith; and (iv) the reasons representatives identified in the Notice do not accurately portray the interests affected by the rule. If an additional person or interest requests membership or representation on the Committee, RSPA shall determine (i) whether that interest will be substantially affected by the rule, (ii) if such interest would be adequately represented by an individual already on the Committee, and (iii) whether the requester should be added to the group or whether interests can be consolidated to provide adequate representation. Please note that each individual or organization affected by a final rule need not have its own representative on the Committee. Rather, each interest must be adequately represented, and the Committee should be fairly balanced. Individuals who are not part of the Committee may attend sessions and confer with or provide their views to Committee members.

(D) *Good Faith:* Participants must be committed to negotiate in good faith. Therefore, it is important that senior individuals within each interest group be designated to represent that interest. No individual will be required to "bind" the interests he or she represents, but the individual should be at a high enough level to represent the interest with confidence. For this process to be successful, the interests represented should be willing to accept the final Committee product.

(E) *Notice of Intent to Establish Advisory Committee and Request for Comment:* In accordance with the requirements of FACA, an agency of the federal government cannot establish or utilize a group of people in the interest of obtaining consensus advice or recommendations unless that group is chartered as a Federal advisory committee. It is the purpose of this NOI to indicate our intent to create a Federal advisory committee, to identify the issues involved in the rulemaking, to identify the interests affected by the rulemaking, to identify potential participants who will adequately represent those interests, and to ask for comment on the use of regulatory negotiation and on the identification of the issues, interests, procedures, and participants. The first meeting is tentatively scheduled for August 28, 1996.

(F) *Final Notification:* After evaluating comments received as a result of this NOI, RSPA will issue a final document announcing the establishment of the Federal advisory committee, unless it determines that such action is inappropriate in light of comments received, and the composition of the Committee. After the Committee is chartered the negotiations would begin.

(G) *Administrative Support and Meetings:* Staff support would be provided by RSPA and meetings would take place in Washington, D. C., unless agreed otherwise by the Committee.

(H) *Tentative Schedule:* If the Committee is established and selected, RSPA will publish a schedule for the first meeting in the **Federal Register**. The first meeting will focus on procedural matters, including dates, times, and locations of future meetings. Notice of subsequent meetings would also be published in the **Federal Register**.

RSPA expects the Committee to reach consensus and prepare a report recommending a proposed rule within eight months of the first meeting. However, if unforeseen delays occur, the Administrator may agree to an extension of time if the consensus of the Committee is that additional time will result in agreement. The process may end earlier if the facilitator so recommends.

(I) *Committee Procedures:* Under the general guidance of the facilitator, and subject to legal requirements, the Committee would establish detailed procedures for the meetings.

(J) *Record of Meetings:* In accordance with FACA's requirements, RSPA would keep a record of all Committee meetings. This record would be placed in the public docket for this rulemaking. Meetings of the Committee would generally be open to the public.

(K) *Consensus:* The goal of the negotiating process is consensus. RSPA proposes that the Committee would develop its own definition of consensus, which may include unanimity, a simple majority, or substantial agreement such that no member will disapprove the final recommendation of the Committee. However, if the Committee does not develop its own definition, consensus shall be unanimous concurrence.

(L) *Notice of Proposed Rulemaking:* The Committee's first objective is to prepare a report containing a notice of proposed rulemaking, preamble, and economic evaluation. If consensus is not obtained on some issues, the report should identify the areas of agreement and disagreement, and explanations for any disagreement. It is expected that participants will address cost/benefit, paperwork reduction, and regulatory flexibility requirements. RSPA would prepare an economic assessment if appropriate.

RSPA would accept the Committee proposal unless it is inconsistent with statutory authority of the agency or other legal requirements or does not, in the agency's view, adequately address the subject matter. In that event, the preamble to the NPRM would explain the reasons for its decision.

(M) *Key Issues for Negotiation:* RSPA has reviewed written comments, petitions, and pipeline operating practices, and has engaged in extensive dialogue on the issue of qualification of pipeline personnel. Based on this information and rulemaking requirements, RSPA has tentatively identified major issues that should be considered in this negotiated rulemaking. Issues related to operator qualification not specifically listed in this Notice may be addressed as they arise in the course of the negotiation. Comments are invited concerning the appropriateness of these issues for consideration and whether other issues should be added:

(1) *Covered functions.* What is the definition of a covered function? What areas of an operator's pipeline system be covered by this rule? Should these be the specific duties named in the NPRM, or should a more general approach be implemented to describe what functions will be covered?

(2) *Level of proficiency.* What level of skill must be obtained to achieve qualification? How will this be measured in evaluating an employee's qualification?

(3) *Supervisory persons.* What is the definition of a supervisory position? What criteria must be maintained to allow one to "supervise" unqualified personnel performing covered functions?

(5) *Personnel to be qualified.* Which employees should be subject to this rule? How should contractor personnel qualification be addressed? How will small gas operators and master meter systems be required to comply?

(6) *Instructors.* Who will be responsible for qualifying unqualified personnel? Who will designate these individuals? What skill level will be appropriate for one to serve as an instructor?

(7) *Employee evaluation.* What criteria will be observed in evaluating qualification? Who will conduct this evaluation? How will previous training, testing, work experience, and other methods of qualification be addressed?

(8) *Elements of qualification.* What methods would be appropriate in order to make one qualified? Should these methods be specifically addressed, or should the operator have discretion in choosing how their personnel may become qualified?

(9) *Maintaining qualification.* How can operators ensure that employees performing covered functions maintain the proper amount of skill to be considered qualified? Are "refresher" courses needed?

(10) *Competency reviews.* In the event an incident or accident is attributed to error, how will the operator reevaluate and monitor an individual's qualification? How long should such a competency review take?

(11) *Recordkeeping.* How will qualification records be maintained? What sorts of qualification schedules (i.e.—training/testing results) must be maintained?

(12) *Compliance dates.* What time frame would be required for implementation of an operator's qualification program? When would personnel evaluation take place? Should time frames be consistent between large and small pipeline operators?

IV. Public Participation

RSPA invites comments on all issues, procedures, guidelines, interests, and suggested participants embodied in this NOI.

Issued in Washington, D.C. June 26, 1996.

Kelley S. Coyner,

Deputy Administrator.

[FR Doc. 96–16678 Filed 7–01–96; 8:45 am]

BILLING CODE 4910–60–P

49 CFR Parts 192 and 195

[Docket No. PS–94; Notice 4]

RIN 2137–AB38

Qualification of Pipeline Personnel

AGENCY: Research and Special Programs Administration (RSPA); Department of Transportation (DOT).

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document is to inform the public that RSPA is withdrawing the Notice of Proposed Rulemaking (NPRM) in Docket No. PS–94 titled "Qualification of Pipeline Personnel." RSPA is required by Congressional mandate to establish requirements on the qualification of personnel conducting certain tasks on a pipeline facility. The NPRM has been subject to considerable scrutiny from many commenters. However, RSPA believes that an alternative method of rulemaking can provide a better forum to establish communications between the interested parties and that a consensus may be achieved on a new rule on the qualification of pipeline personnel. RSPA is publishing elsewhere in this issue of the **Federal Register** a document titled "Notice of Intent to Form a Negotiated Rulemaking Committee" that will provide a complete description of the regulatory alternative.

FOR FURTHER INFORMATION CONTACT: Albert C. Garnett, (202) 366–2036, or Eben M. Wyman, (202) 366–0918, regarding the subject matter of this document; or the Dockets Unit, (202) 366–4453, for copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION: A NPRM titled "Qualification of Pipeline Personnel" was published on August 3, 1994 (Docket No. PS–94, Notice 2; 59 FR 39506). The NPRM proposed qualification standards for pipeline personnel who perform, or supervise persons performing, regulated operation, maintenance, and emergency-response functions. The intended effect of the NPRM was to improve pipeline safety by requiring operators to assure the competency of affected personnel through training, testing, and periodic refresher training. Following extensive interaction with the interested parties, this Notice withdraws that proposal from Docket No. PS–94. In light of the many concerns expressed by these parties, RSPA believes that an alternative to traditional rulemaking would be affective to reach consensus on an personnel qualifications rule. RSPA is planning to form a committee that will represent all affected parties to negotiate the many aspects of this issue, and to achieve consensus on a new NPRM to be published in the **Federal Register**. The following discussion of the written comments to the previous NPRM should be helpful in understanding the reasons for this withdrawal.

Discussion of Comments to NPRM and Development of Rules

RSPA received 131 comments to Docket No. PS–94, which expressed a wide variety of interests and concerns. Comments were received from 111 pipeline companies, 8 pipeline-related associations, 4 state and federal agencies, and 8 other interested parties. The following provides a summary of the commenters' issues.

Definitions

Comments were received on certain definitions in the NPRM. The definitions of "qualified administratively" and "supervisory persons" needed clarification, according to many commenters. Commenters alleged that the "qualified administratively" provisions would be redundant, because qualification in any manner would be sufficient, as long as the person was found proficient in performing a covered job function or supervised by a qualified person. Also, commenters noted that the word "supervisor" might be inappropriate because the term can be indicative of a number of positions, including those located away from a job site. These commenters thought the term "supervisor" should be deleted and alternate terms, such as "qualified employee," "lead person," or another term should be used to describe someone who directly oversees personnel performing job functions covered in the NPRM.

Personnel to be Qualified

A number of commenters expressed concern about those who would be subject to this rule. The role of a persons' educational background and work experience in determining qualification was also addressed. Concern was also expressed over whether small gas systems operated by mobile home parks should be subject to a qualification rule. Also, the question of how the proposed rule would cover contractor personnel was the subject of many comments. Most commenters argued that contractors should be held accountable for their own qualification and recordkeeping, because it would be overly burdensome to require pipeline operators to maintain qualification records for contractor personnel. RSPA never proposed to require operators to be responsible for qualifying contractor personnel, only to ensure that they are in fact qualified. This issue is a prime example of why RSPA believes an alternative rulemaking method would provide a better channel of communication to resolve the controversy surrounding this regulatory initiative.

Evaluation and Scheduling

Another major issue was the evaluation of personnel and how past experience, education, and other factors would be considered in assessing qualification. Many comments stressed that the operator or the operator's designee would know the capabilities of their personnel and therefore be in the best position to evaluate and to ensure their qualification. RSPA believes the NPRM's intent was not far from this view, and that, with open communication, consensus can be reached among interested parties.

Qualification Training

The NPRM listed training that would be required if an employee was found to be not qualified. This issue generated many written comments. The commenters alleged that the language in

this section was too prescriptive. Rather than list training requirements, many commenters asserted that RSPA should broaden the scope of the NPRM to cover safety related tasks and allow the operator to decide what those tasks are, who is presently qualified to perform them, and how other persons should obtain that qualification.

Qualification Testing

The comments on this issue were generally consistent with those on training. Specifically, commenters said the situations in which testing is needed to qualify a person and the methods of qualification should be left to the operator's discretion.

Refresher Training/Competency Reviews

RSPA received many comments calling for either revision or deletion of these sections. Commenters stated that requirements for refresher training would be unnecessary and overly burdensome, because many day-to-day tasks would not require a "refresher" in order to be safely performed. Moreover, they said the proposed requirement for a competency review was too prescriptive, and that the language in the NPRM did not indicate the scope of competency reviews. RSPA believes that the scope and methods of review, after an incident occurs due to performance of covered functions, can be properly addressed in an alternative rulemaking process.

Other Issues

Commenters expressed their views on other aspects of the NPRM, such as the proposed recordkeeping requirements. The concept of operator discretion was again the focus of these comments. Commenters felt that as long as proper records are kept and made available upon request, the methods of recordkeeping should be left to those that keep the records. In addition, many commenters suggested that RSPA lengthen the dates for compliance with the NPRM. Finally, a large number of commenters said the costs to comply with the NPRM would far exceed the benefits of the proposal. This was one of the most prevalent comments received.

Negotiated Rulemaking

As previously stated, RSPA is publishing elsewhere in this issue of the **Federal Register** a document titled Notice of Intent to form a *Negotiated Rulemaking Committee* to conduct a negotiated rulemaking as an alternative to the traditional rulemaking process for this regulatory action. RSPA believes these issues can be expeditiously resolved in a negotiated setting.

Issued in Washington, DC, on June 25, 1996.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 96–16677 Filed 7–1–96; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 61, No. 128

Tuesday, July 2, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agicultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Seedbiotics of Caldwell, Idaho, and exclusive license for all uses in the field of plant seed coatings to U.S. Patent Application Serial No. 08/233,173 filed April 26, 1994, "Non-Separable Starch-Oil Compositions." Notice of Availability was published in the **Federal Register** on October 24, 1994.

DATES: Comments must be received on or before August 31, 1996.

ADDRESS: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Seedbiotics has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 96–16774 Filed 7–1–96; 8:45 am]

BILLING CODE 3410–03–M

Natural Resources Conservation Service

Freshwater Bayou Wetlands Phase II (ME–4), Vermilion Parish, LA

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Freshwater Bayou Wetlands Phase II (ME–4), Vermilion Parish, Louisiana.

For further information contact Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana, 71302, telephone (318) 473–7751.

Supplemental information: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The purpose of the project is to reduce ponding and the resultant stress to emergent vegetation in the project area. The planned works of improvement include the installation of eight water control structures to provide for drainage of excess water.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Bennett C. Landreneau, Assistant State Conservationist/Water Resources, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana, 71302, telephone (318) 473–7756.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the catalog of Federal Domestic Assistance under NO.10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

Dated: June 17, 1996.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 96–16795 Filed 7–1–96; 8:45 am]

BILLING CODE 3410–16–M

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: The Rural Housing Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for the currently approved information collection in support of the program for Community Facility Loans.

DATES: Comments on this notice must be received by July 2; 1996, to be assured of consideration.

FOR FURTHER INFORMATION, CONTACT: Yoonie MacDonald, Loan Specialist, Community Programs Division, RHS, U.S. Department of Agriculture, Stop 3222, 1400 Independence Avenue, SW., Washington, DC 20250. Telephone (202) 720–1490.

SUPPLEMENTARY INFORMATION:

Title: Community Facility Loans.

OMB Number: 0575–0015.

Type of Request: Extension of a currently approved information collection.

Abstract: The Community Facilities loan program is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public entities, nonprofit corporations, and Indian tribes for the development of community facilities for public use in rural areas.

Community facilities programs have been in existence for many years. These programs have financed a wide range of projects varying in size and complexity from large general hospitals to small rural water systems. The facilities financed are designed to promote the development of rural communities by providing the infrastructure necessary to attract residents and rural jobs.

Information will be collected by the field offices from applicants, borrowers, and consultants. This information will be used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use funds for authorized purposes. Failure to collect proper information could result in improper determination of eligibility, improper use of funds, and/or unsound loans.

Expiration Date of Approval: December 31, 1996.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.47 hours per response.

Respondents: Public bodies, not for profits, or Indian Tribes.

Estimated Number of Respondents: 10,520.

Estimated Number of Responses per Respondent: 9.06.

Estimated Total Annual Burden on Respondents: 235,854 hours.

Copies of this information collection can be obtained from the Director, Regulations and Paperwork Management Division at (202) 720–9725.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Barbara Williams, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, Stop 0743, 1400 Independence Avenue, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 25, 1996.

Eileen Fitzgerald,

Acting Administrator, Rural Housing Service.

[FR Doc. 96–16854 Filed 7–01–96; 8:45 am]

BILLING CODE 3410–07–P

Notice of Availability of Funding and Requests for Proposals for the Section 538 Rural Rental Housing Guaranteed Loan Demonstration Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) announces the availability of the Section 538 Rural Rental Housing Guaranteed Loan program on a demonstration basis. The intended outcome is to produce new affordable rental housing by inviting qualified lenders and eligible housing providers to propose rental complexes that will serve a wide range of incomes and better serve rural residents. The purpose of the demonstration is to encourage proposals that show the feasibility of the program in varying markets and with innovative financing proposals.

DATES: The deadline for receipt of applications is 4:00 PM, Eastern Daylight Savings Time on August 5, 1996. Applications received after such date and time will be returned. Lenders are encouraged to submit applications prior to the end of the period, as applications will be reviewed as they are received. If there are differences between any additional guidelines and this Notice, the requirements of this notice shall prevail. Notification of selected applications will be made by September 1, 1996. Commitments for guarantees will be issued on or before September 16, 1996. If RHS is unable to obligate section 538 funds for guaranteed loans by September 16, 1996, any remaining section 538 funds will be transferred for use prior to September 30, 1996, under the section 515 program. Qualified lenders may call Patrick Sheridan at 202–720–1600 or Obediah G. Baker, Jr., at 202–720–1604 for a copy of the application package. This is not a toll-free number. Hearing- or speech-impaired persons may access that number by calling toll-free the Federal Information Relay Service at (800) 877–8339.

ADDRESSES: Applications for participation in the demonstration program must be identified as "Section 538 Demonstration Program" on the envelope or wrapper and be submitted as follows: Director, Multi-family Housing Processing Division, Rural Housing Service, US Department of Agriculture, South Agriculture Building, Room 5337 (stop 0781), 1400 Independence Ave., SW, Washington, DC 20250. Lenders shall submit an original and two copies (a FAX copy is NOT acceptable) of the application to the above address by the application deadline.

FOR FURTHER INFORMATION CONTACT: Patrick Sheridan, Chief, Management Branch, Multi-Family Housing Portfolio Management Division, US Department of Agriculture, South Agriculture Building, Room 5321 (stop 0782), 1400 Independence Ave., SW, Washington, DC 20250. Telephone: (202) 720–1600. (This number is not toll-free.) Hearing- or speech-impaired persons may access that number by calling toll-free the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On March 28, 1996, President Clinton signed the "Housing Opportunity Program Extension Act of 1996," Public Law 104–120. One of the actions was the authorization of the section 538 Rural Rental Housing Guaranteed Loan Program. The program is intended to reach the needs of rural America by complimenting the section 515 Rural Rental Housing Direct Loan Program. It is anticipated that beneficiaries of the program will be rural residents with low and moderate incomes provided rental housing through the use of loan guarantees. Partnership opportunities exist to utilize the section 538 program with other affordable housing programs.

In Fiscal Year (FY) 1996, approximately $25 million is available under the section 538 demonstration program that was funded under the "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1996," Public Law 104–37. If the program is extended, final regulations will be developed based on information gathered during administration of the demonstration program.

I. Purpose and Program Summary

Public Law 104–37 provided funds to the Department to implement a multifamily mortgage guarantee demonstration program subject to enactment of authorizing legislation. Public Law 104–120 provided authorization for that program with qualified lenders, the purpose of which is to demonstrate the effectiveness of providing new forms of Federal credit enhancement for the development of affordable multifamily housing by lenders.

The program has been designed to increase the supply of affordable multifamily housing through partnerships between RHS and major lending sources, as well as State and local housing finance agencies and bond issuers. Qualified lenders will be authorized to originate, underwrite, and close loans for multifamily housing projects requiring new construction. RHS will guarantee such loans upon presentation and review of appropriate certifications, project information and satisfactory completion of the appropriate level of environmental review by RHS. Lenders will be responsible for the full range of loan management, servicing, and property disposition activities associated with these projects. The lender will be expected to provide servicing or contract for servicing of each loan it underwrites. RHS, in turn, commits to pay up to a maximum of 90 percent of the outstanding principal and interest mortgage balance in the case of default of the loan and filing of a claim.

II. Eligible Housing and Tenants

A loan may be guaranteed only if the loan is generally used for the development costs of housing and related facilities as such term is defined in 7 CFR 1944.205 that also meet the following criteria:

(a) Occupancy Requirements. The housing must be available for occupancy only by low or moderate income families or persons, whose incomes at the time of initial occupancy do not exceed 115 percent of the median income of the area. After initial occupancy, a tenant's income may exceed these limits.

(b) Location. Projects must be located in areas considered eligible as defined in 7 CFR 1944.10. The eligible areas are the same as those eligible under the section 515 program.

(c) Minimum Project Size. Projects must consist of 5 or more rental dwelling units. The site may consist of two or more noncontiguous parcels of land situated so as to comprise a readily marketable real estate entity within an area small enough to allow convenient and efficient management.

(d) Types of Housing. For the purposes of the demonstration program, only proposals for new construction will be considered. The complexes may contain units that are detached, semi-detached, row houses, or multifamily structures.

(e) Housing Standards. The standards established under 7 CFR part 1944, subpart E for housing and related facilities assisted under section 515 shall generally apply to housing and related facilities, the development costs of which are financed in whole or in part with a loan guaranteed under this program. The Agency anticipates and will guarantee loans in which the fees and the proposed housing may exceed the amounts or size allowances and amenities contained in 7 CFR part 1944, subpart E provided such costs and features are generally found in similar housing proposals for similar income families in the market area. Such costs, features and amenities may include larger units, dishwashers, microwaves, increased and multi-purpose community spaces, developer's fees, etc. For loans where RHS is requested to provide interest credits, the proposed housing must more closely follow the standards contained in 7 CFR part 1944, subpart E.

(f) Tenant Protections. The standards for the treatment of tenants of housing developed using amounts from a loan guaranteed under this program shall incorporate standards for lease and grievance procedures and tenant appeals of adverse actions used under the section 515 Rural Rental Housing Program.

(g) Fair Housing and Equal Opportunity. No person shall be subjected to discrimination because of race, color, religion, sex, disability, familial status, or national origin in the sale, rental or advertising of dwellings, in the provisions of brokerage services, or in the availability of residential real estate related transactions involving RHS or housing in the Rural Development mission area.

(h) Environmental. The environmental requirements established under 7 CFR part 1940, subpart G, for housing and related facilities under the section 515 program shall apply to housing and related facilities under the section 538 program.

(i) Preservation. The housing developed will remain available for occupancy as provided in paragraph II (a) of this notice, for the period of the original term of the loan guaranteed unless the housing is acquired by foreclosure (or instrument in lieu of foreclosure) or the Administrator waives the applicability of such requirement for the loan only after determining, based on objective information, that:

(1) There is no longer a need for low- and moderate-income housing in the market area in which the housing is located;

(2) Housing opportunities for low-income households and minorities will not be reduced as a result of the waiver; and

(3) Additional Federal assistance will not be necessary as a result of the waiver.

(j) It is anticipated that complexes developed under this program may utilize other affordable housing programs such as the Low Income Housing Tax Credit, tax-exempt or taxable bonds, HOME Investment Partnerships Program (HOME) funds, and other State or locally funded tenant assistance or grants.

III. Loans Eligible for Guarantee

(a) Eligible Borrowers. A loan guaranteed under this program may be made to a nonprofit organization, an agency or body of any State government or political subdivision thereof, or a private entity.

(b) Loan Terms. Each loan guaranteed shall:

(1) Provide for complete amortization by periodic payments to be made for a term not to exceed 40 years;

(2) Involve a fixed rate of interest agreed upon by the borrower and the lender that does not exceed the maximum allowable rate established by the Administrator. For purposes of the demonstration program, the maximum allowable rate is 300 basis points over the 30-year Treasury Bond Rate as published in the Wall Street Journal as of the business day previous to the business day the rate is set;

(3) Involve a principal obligation (including initial service charges, appraisal, inspection, and other reasonable fees) not to exceed:

(i) In the case of a borrower that is a nonprofit organization or an agency or body of any State or local government, up to 97 percent of the development costs of the housing and related facilities or the value of the housing and facilities, whichever is less;

(ii) In the case of a borrower that is a for-profit entity or other entity not referred to in paragraph III(b)(3)(i) of this notice, up to 90 percent of the development costs of the housing and related facilities, whichever is less;

(iii) In the case of any borrower, for such part of the property as may be attributable to dwelling use, the

applicable maximum per unit dollar amount limitations under section 207(c) of the National Housing Act; and

(iv) In the case of a borrower utilizing Low Income Housing Tax Credits, a review will be conducted in conjunction with the applicable tax credit administration entity to determine if the proposal is in conformance with subsidy layering requirements.

(4) Be secured by a first mortgage on the housing and related facilities for which the loan is made, or in the case where the loan upon which the RHS guarantee is requested is not the primary funding source, be secured by a parity lien;

(5) May be a permanent loan or a combination construction and permanent loan; and

(6) For 20 percent of the loans made under the demonstration program, RHS shall provide the borrower with assistance in the form of interest credits to the extent necessary to reduce the rate of interest under paragraph III(b)(2) of this notice to the applicable Federal rate, as such term is used in section 42(I)(2)(D) of the Internal Revenue Code of 1986.

(c) Refinancing of Loans Made Under the Program. Any loan guaranteed under the program may be refinanced and extended in accordance with the terms and conditions that the Agency shall prescribe, but in no event for an additional amount or term that exceeds the limitations under paragraph III(b) of this notice.

(d) Nonassumption. The borrower under a loan that is guaranteed under this program and under which any portion of the principal obligation or interest remains outstanding may not be relieved of liability with respect to the loan, notwithstanding the transfer of property for which the loan was made. Loans guaranteed under this program may be made on a recourse or nonrecourse basis.

(e) Issuance of Guarantee on Permanent Loans. Guarantees may be issued on permanent loans financing new construction once the final certificate of occupancy for the complex has been issued by the appropriate governmental body.

IV. Guarantee Provisions

(a) Lender eligibility. Those lenders currently approved and considered eligible by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Department of Housing and Urban Development for guaranteed loan programs supporting multifamily housing will be considered approved lenders for this demonstration program. Lenders may use their own underwriting standards and loan terms and conditions with approval from RHS subject to statutory program constraints. In addition, State Housing Finance Agencies (HFAs) are also considered eligible lenders to participate in the demonstration program provided they demonstrate they have the ability to underwrite, originate, process, close, service, manage, and dispose of multifamily housing loans in a prudent manner.

(b) Extent of Guarantee. RHS will guarantee repayment of an amount not exceeding 90 percent of the total of the amount of the unpaid principal and interest of the loan.

(c) Guarantee Fee. At the time of issuance of a loan guarantee under this program, RHS will collect a fee equal to 1 percent of the guaranteed principal obligation of the loan from the lender.

(d) Transferability of the Guarantee. It is anticipated that loans guaranteed under this program may be sold into the secondary market. The guarantee may be transferred to other eligible lenders with the written consent of RHS.

(e) Payment Under Guarantee.

(1) Notice of default. In the event of default under the loan documents by the borrower on a loan guaranteed, the holder of the guarantee certificate for the loan shall provide written notice of the default to the Administrator.

(2) Lenders will be required to discuss future servicing strategies with RHS prior to proceeding to liquidation. Before any payment under a guarantee is made, the holder of the guarantee certificate must exhaust all reasonable possibilities of collection on the loan guaranteed.

(3) Foreclosure. After receiving notice under paragraph IV(e)(1) of this notice and providing written notice of action to RHS, the holder of the guarantee certificate for the loan may initiate foreclosure proceedings, with the concurrence of RHS, in a court of competent jurisdiction, to obtain possession of the security property. After the court issues a final order authorizing foreclosure on the property, the holder of the certificate shall be entitled to payment by RHS under the guarantee upon:

(i) Conveyance to RHS of title to the security property;

(ii) Submission to RHS of a claim for payment under the guarantee; and

(iii) Assignment to RHS of all the claims of the holder of the guarantee against the borrower or others arising out of the loan transaction or foreclosure proceedings, except claims released with the consent of RHS.

(4) Acceptance of the Assignment by RHS. After receiving notice under paragraph IV (e)(1) of this notice, RHS may accept assignment of the loan if RHS determines that the assignment is in the best interests of the United States. Assignment of a loan under this paragraph shall include conveyance to RHS of all rights and interests arising under the loan, and assignment to RHS of all claims against the borrower or others arising out of the loan transaction. Upon assignment of a loan under this paragraph, the holder of a guarantee for the loan shall be entitled to payment by RHS under the guarantee. Upon payment, in whole or in part, to the holder, the note or judgment evidencing the debt shall be assigned to the United States and the holder shall have no further claim against the borrower or the United States.

V. Demonstration Selection Criteria

(a) The Agency intends under the demonstration program to fund varying financing proposals to help determine the areas of need, the types of financing packages possible and the demand in the various eligible market areas. Selection of proposals under this demonstration program will be based on the following criteria:

(1) Flexibility, innovation and variation of funding models;

(2) Partnering and leveraging;

(3) No more than one viable application will be selected in any State (unless the number of viable applications are limited and sufficient funds remain to allow more than one application in any one State); and

(4) Administrator's discretion in order to effectively use funding to best explore program structure and effectiveness consistent with the best interests of the Government.

(b) For 20 percent of the loans made under the demonstration program, RHS shall provide the borrower with interest credits to the extent necessary to reduce the rate of the loan to the applicable Federal rate. Proposals that could be viable with or without interest credits are encouraged to submit an application showing financial and market feasibility under either scenario. Applications proposing to receive interest credit will be selected using the following criteria:

(1) Geographical location with emphasis on smaller rural communities versus larger rural communities;

(2) The most needy communities based on income limits;

(3) Commitments by the applicant to maintain occupancy standards throughout the term of the loan for families with low and moderate incomes, with a priority at initial occupancy for low income families.

(4) The lowest overall proportional effective subsidy cost to the Government when section 521 interest credit is involved.

VI. Review Criteria

RHS will review each request for participation under the demonstration program to determine if the lender and the proposal meet all the requirements of this notice and the lender demonstrates the ability to underwrite, originate, process, close, service, manage, and dispose of multifamily loans in a prudent manner. Applications will be reviewed to determine financial feasibility, compliance with cost limitations, and market need of the proposal. RHS will review each application for compliance with subsidy layering requirements of the Act. RHS also reserves the right to negotiate with potential lenders over the scope of the proposal to ensure the best interests of the Government and objectives of the demonstration program are achieved.

It is the policy of RHS to consider environmental quality as equal with economic, social, and other relevant factors in program development and decision making. Proposals which have the potential for adverse impact to protected resources (wetlands, floodplains, and important farmland, for example) will receive low priority, since the brief period of time allocated for obligation of funds may be insufficient for RHS to satisfactorily complete the environmental review process if the proposal has adverse environmental impacts. Therefore, it is important that lenders and applicants submit proposals which minimize the potential to adversely impact the environment.

Since RHS will complete the appropriate environmental review at the field level, the appropriate field office will need certain information from the lender or applicant in order to complete the environmental review. Lenders or applicants who plan to file an application should call *at the earliest date possible* for directions on how to contact the applicable field office.

VII. Other Matters

(a) *Environmental Finding.* A Finding of No Significant Impact with respect to the environment has been made in accordance with RHS regulations at 7 CFR part 1940, subpart G.

(b) *Civil Rights Impact Analysis.* It is the policy within the Rural Development mission area to ensure that the consequences of any proposed project approval do not negatively or disproportionately affect program beneficiaries by virtue of race, color, sex, national origin, religion, age, disability, marital or familial status. To ensure that any proposal under this demonstration program complies with these objectives, the RHS approval official will complete Form RECD 2006–38, "Civil Rights Impact Analysis Certification."

(c) *Executive Order 12612, Federalism.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this Notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the Notice is not subject to review under the Order.

(d) *Prohibition Against Advance Information on Funding Decisions.* The requirements of the rule continue to apply until the announcement of the selection of successful applicants. RHS employees involved in the review of applications and in the making of funding decisions are restricted from providing advance information to any person (other than an authorized employee of RHS) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage.

(e) *Paperwork Reduction Act.* The information collection requirements within this notice are covered under OMB Nos. 0575–0042, 0575–0047, 0575–100, 0575–0024, 0575–0029, and 0075–0137.

Dated: June 27, 1996.

Maureen Kennedy,

Administrator, Rural Housing Service.

[FR Doc. 96–16866 Filed 6–27–96; 4:08 pm]

BILLING CODE 3410-07-U

DEPARTMENT OF COMMERCE

Bureau of the Census

Broadwoven Fabrics (Gray) Average Weight and Width Study—MC22T Supplement

ACTION: Proposed agency information collection activity; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 3, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Robert Reinard, Bureau of the Census, Room 2132 FB–4, Washington, DC 20233, Telephone (301) 457–4637.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to conduct a study of Broadwoven Fabrics (Gray) Average Weight and Width. This study is conducted every five years and used to be part of the Census of Manufactures. To minimize the reporting burden and the cost to the Government and also to improve the timeliness of the report, it has been conducted separately for the past six censuses. The results of the survey provide Government and industry analysts with conversion factors to measure the relationship between fabric yardage produced and the volume of fiber consumed. These changes reflect the constant changes in fabric fiber content and machinery used by the textile industry.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect data. Companies will be asked to respond to the survey within 15 days of the initial mailing. Telephone calls and/or letters encouraging participation will be mailed to respondents that have not responded by the designated time.

III. Data

OMB Number: 0607–0752.

Form Number: MC–22T.

Type of Review: Regular Review.

Affected Public: Businesses, Other for Profit Institutions.

Estimated Number of Respondents: 350.

Estimated Time Per Response: 3 hours.

Estimated Total Annual Burden Hours: 1,050.

Estimated Total Annual Cost: 28,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 26, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–16805 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–07–P

Bureau of Export Administration

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13.

Agency: Bureau of Export Administration.

Title: Requests for Appointment of a Technical Advisory Committee.

Agency Number: Not applicable.

OMB Number: 0694–0100.

Type of Request: Renewal of an existing collection.

Burden: 5 hours

Number of Respondents: 1.

Avg. Hours Per Response: 5.

Needs and Uses: The Technical Advisory Committees (TACS) were established to advise and assist the U.S. Government on export control matters. In managing the operations of the TACs, the Department of Commerce is responsible for implementing the policies and procedures prescribed in the Federal Advisory Committee Act. The Bureau of Export Administration provides technical and administrative support for the committees. The TACs advise the government on proposed revisions to export control lists, licensing procedures, assessments of the foreign availability of controlled products, and export control regulations. Any producer of items subject to export controls can make application to the Secretary of Commerce requesting that a committee be established. The information provided is used to determine if the creation of a committee is appropriate.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk Officer: Victoria Wassmer, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Victoria Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 25, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–16827 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–DT–P

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Agency: Bureau of Export Administration.

Title: One-Time Report for Foreign Software or Technology Eligible for De Minimis Exclusion.

Form Number: Not applicable.

OMB Approval Number: 0694–0101.

Type of Request: Renewal of an existing collection.

Burden: 250 hours

Number of Respondents: 10.

Avg. Hours Per Response: 25.

Needs and Uses: Any company that is seeking exemption from export controls on foreign software and technology commingled with U.S. software or technology must file a one-time report for the foreign software or technology. The report must include the percentage of relevant values in determining U.S. content, assumptions, and the basis or methodologies for making the percentage calculation. The methodologies must be based upon accounting standards used in the operation of the relevant business, which must be specified in the report. The information will be used to determine if the exclusion applies.

Affected public: Individuals, businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion—one report per exclusion requested.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk Officer: Victoria Wassmer (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Victoria Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 25, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–16828 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–DT–P

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13.

Agency: Bureau of Export Administration.

Title: Miscellaneous Activities

Form Number: Not applicable.

OMB Approval Number: 0694–0102.

Type of Request: Renewal of an existing collection.

Burden: 10 hours.

Number of Respondents: 2.

Avg. Hours Per Response: 5.

Needs and Uses: On September 30, 1993, the Secretary of Commerce submitted a report of the Trade Promotion Coordinating Committee, entitled Toward a National Export Strategy. The report included the goal to "undertake a comprehensive review of the Export Administration Regulations to simplify, clarify, and make the regulations more userfriendly." Under this clearance, are three activities. Two of these—"Registration of U.S. Agricultural Commodities for Exemption from Short Supply Limitations" and "Petitions for the Imposition of Monitoring or Controls on Recyclable Metallic Materials" are statutory in nature and must remain in the regulations. The third—the Commerce Control List—became necessary as the rewrite of the regulations sought to harmonize the U.S. ECCN system with the European system for consistency and future simplicity.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk Officer: Victoria Wassmer (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, Department of Commerce, (202) 482–3272, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Victoria Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 25, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–16829 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–DT–P

International Trade Administration

[A–588–838]

Notice of Antidumping Order: Clad Steel Plate From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch, Dorothy Tomaszewski, or Erik Warga, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3773, (202) 482–0631 or (202) 482–0922, respectively.

Scope of Order

The scope of this order is all clad [1] steel plate of a width of 600 millimeters ("mm") or more and a composite thickness of 4.5 mm or more. Clad steel plate is a rectangular finished steel mill product consisting of a layer of cladding material (usually stainless steel or nickel) which is metallurgically bonded to a base or backing of ferrous metal (usually carbon or low alloy steel) where the latter predominates by weight.

Stainless clad steel plate is manufactured to American Society for Testing and Materials ("ASTM") specifications A263 (400 series stainless types) and A264 (300 series stainless types). Nickel and nickel-base alloy clad steel plate is manufactured to ASTM specification A265. These specifications are illustrative but not necessarily all-inclusive.

Clad steel plate within the scope of this order is classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") 7210.90.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Antidumping Duty Order

In accordance with sections 735(a) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") made its final determination that clad steel plate from Japan is being sold at less than fair value (61 FR 21158–21159, May 9, 1996). On June 26, 1996, the International Trade Commission notified the Department of its final determination, pursuant to section 735(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of imports of the subject merchandise from Japan.

Therefore, all unliquidated entries of clad steel plate from Japan, that are entered, or withdrawn from warehouse, for consumption on or after February 28, 1996, the date of the publication of the Department's preliminary determination in the **Federal Register**, are liable for the assessment of antidumping duties.

In accordance with section 736(a)(1) of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the normal value exceeds the export price for all relevant entries of clad steel plate from Japan. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The "All Others" rate applies to all exporters of Japanese clad steel plate not specifically listed below.

The ad valorem weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin percentage
The Japan Steel Company	118.53
All Others	118.53

This notice constitutes the antidumping duty order with respect to clad steel plate from Japan. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This determination is published pursuant to section 705 (d) of the Act.

Dated: June 27, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–17008 Filed 7–1 –96; 8:45 am]

BILLING CODE 3510–DS–P

[1] Cladding is the association of layers of metals of different colors or natures by molecular interpenetration of the surfaces in contact. This limited diffusion is characteristic of clad products and differentiates them from products metalized in other manners (e.g., by normal electroplating). The various cladding processes include pouring molten cladding metal onto the basic metal followed by rolling; simple hot-rolling of the cladding metal to ensure efficient welding to the basic metal; any other method of deposition of superimposing of the cladding metal followed by any mechanical or thermal process to ensure welding (e.g., electrocladding), in which the cladding metal (nickel, chromium, etc.) is applied to the basic metal by electroplating, molecular interpenetration of the surfaces in contact then being obtained by heat treatment at the appropriate temperature with subsequent cold rolling. See Harmonized Commodity Description and Coding System Explanatory Notes, Chapter 72, General Note (IV) (C) (2) (e).

North American Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On June 6, 1996 Fisher Scientific Limited filed a First Request for Panel Review with the Canadian Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final determination of dumping made by the

Deputy Minister of Revenue Canada concerning bacteriological culture media originating in or exported from the United States of America. The Canadian Section assigned Secretariat File No. CDA–96–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") established a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the Canadian Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on June 6, 1996, requesting panel review of the final determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is July 8, 1996);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is July 22, 1996); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: June 18, 1996.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 96–16845 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

[I.D.062596C]

Northwest Atlantic Fisheries Organization Annual Meeting; Public Information and Preparatory Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting; request for comments.

SUMMARY: NMFS will hold a public meeting to review issues expected to come before the 18th Annual Meeting of the Northwest Atlantic Fisheries Organization (NAFO), which will occur September 9–13, 1996, in St. Petersburg, Russia, and to receive comments from members of the interested public. Any member of the public is welcome to attend. To accommodate people unable to attend a hearing or wishing to provide additional comments, NMFS also solicits written comments.

DATES: The public meeting will be held Monday, July 22, 1996, from 10 a.m. to 4 p.m.

ADDRESSES: The public meeting will be held at the Holiday Inn, Logan Airport, 225 McClellan Highway, East Boston, MA (phone 617–569–5159). Written comments should be sent by August 9, 1996, to Will Martin, U.S. Commissioner to NAFO, National Oceanic and Atmospheric Administration, Herbert C. Hoover Building, Room 5809, 14th and Constitution Avenue, NW., Washington, D.C. 20230, with a copy to Dean Swanson, National Marine Fisheries Service, Room 14141, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dean Swanson at 301–713–2276; Allen E. Peterson, Jr., at 508–548–5123, Ext. 367.

SUPPLEMENTARY INFORMATION: NOAA will host an informal meeting to review the United States accession to NAFO. Officials from NOAA and the U.S. Department of State will discuss steps that have been initiated to join NAFO and preparations for participation in the 18th Annual Meeting of NAFO, which will occur September 9–13, 1996, in St. Petersburg, Russia.

All interested parties are invited to attend this informational meeting and provide comment. For those unable to attend, written comments may be submitted through August 9 (see **ADDRESSES**).

The agenda for the public meeting is as follows:

10:00 Registration (no charge)
10:15 Welcome and Opening Remarks
10:30 What is NAFO?
10:45 U.S. Implementing Legislation
11:00 Current Status of Appointments
11:15 Schedule of Events
11:30 U.S. Activities and Position
12:30 Break
1:30 Review of Morning Issues/Comments
2:00 Comments/Discussion of possible U.S. Position
3:40 Actions/Assignments
4:00 Adjournment

Dated: June 25, 1996.

Gary Matlock, Ph.D.,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 96–16788 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 061796E]

Marine Mammals; Permit No. 837 (P771#67)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Scientific research permit modification.

SUMMARY: Notice is hereby given that a request for modification of scientific research permit no. 837 submitted by the National Marine Mammal Laboratory has been granted.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221); and

Director, Northwest Region, NMFS, 7600 Point Way NE, BIN C15700, Building 1, Seattle, WA 98115–0070 (206/526–6150).

SUPPLEMENTARY INFORMATION: On May 6, 1996, notice was published in the **Federal Register** (61 FR 20244) that a modification of permit no. 837, issued June 4, 1993, had been requested by the above-named organization. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of paragraphs (d) and (e) of § 216.33 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The modification adds St. Paul and St. George as locations where roundups are authorized; increases the numbers that may be incidentally harassed, captured, weighed and measured on Bogoslof Island; adds harnesses or epoxy glue as means to attach time wet recorders; increases numbers to be fitted with time wet recorders on St. Paul and St George Islands; and authorizes the use of enemas St. Paul Island and St. George Island.

Dated: June 18, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–16863 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: Youth Attitude Tracking Study (YATS); OMB Number 0704–0069.

Type of Request: Revision.

Number of Respondents: 13,050.

Responses per Respondent: 1.

Annual Responses: 13,050.

Average Burden per Response: 26 minutes.

Annual Burden Hours: 5,618 hours.

Needs and Uses: The information collected by YATS is utilized by the Department of Defense to ascertain changes in youth attitudes that affect recruiting budgets, and to support analyses of recruiting incentives and diagnoses of recruiting difficulties.

Approximately 10,000 young men and women between the ages of 16 and 24 are interviewed by telephone each Fall to determine attitudes and opinions affecting military recruiting. On occasion, additional interviews of approximately 3,000 youth are conducted in the Spring or Summer, but not in the same year, when an information requirement precludes waiting for the normally scheduled Fall interviews. YATS provides an independent measure of youth awareness of military service recruitment advertising, and an efficient measure of potential incentives such as increased educational benefits. The collected information is also used to optimize the allocation of resources and to evaluate the effect of policy changes, as well as in the preparation of Congressional testimony regarding the state of recruiting.

Affected Public: Individuals and households.

Frequency: Annually and on occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 26, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–16833 Filed 7–1–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Change in meeting date.

SUMMARY: On June 20, 1996, the Department of Defense published a notice to announce a meeting of the Defense Partnership Council. (61 FR 31510–31511) This notice is to announce that the meeting date has been changed to July 24, 1996. Comments should be received by July 19, 1996, in order to be considered at the July 24 meeting. All other information remains the same.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Oprisko, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Boulevard, Suite B–200, Arlington, VA, 22209–5144, (703) 696–6301, ext. 704.

Dated: June 26, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–16834 Filed 7–1–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Community Redevelopment Authority and Available Surplus Buildings and Land at Kelly Air Force Base, located in San Antonio, TX

SUMMARY: This notice provides information regarding the redevelopment authority that has been established to plan the reuse of Kelly AFB, San Antonio TX. and the surplus property that is located at that base. The property is located 5 miles southwest of downtown San Antonio and is served by the metro public bus. Access to the property is available from Highway 90.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick McCullough, Senior Representative, Air Force Base Conversion Agency, Kelly Air Force Base, San Antonio, TX, telephone 210–925–3062. For more detailed information regarding particular properties identified in this notice (i.e., acreage, floor plans, sanitary facilities, exact street address, etc.), contact Mr. Don Webster, also at Kelly Air Force Base, telephone (210)–925–0580.

SUPPLEMENTARY INFORMATION: This surplus property is available under the provisions of the Federal Property and Administrative Services Act of 1949 and the Base Closure Community Redevelopment and Assistance Act of 1994.

Notice of Surplus Property

Pursuant to paragraph (7)(B) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Public Law 103–421), the following information regarding the redevelopment authority and surplus property at Kelly Air Force Base, San Antonio, TX is published in the **Federal Register**.

Redevelopment Authority

The redevelopment authority for Kelly Air Force Base, San Antonio, TX. for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended is the Greater Kelly Development Corporation. The

Executive Director is Mr. Paul Roberson in San Antonio, TX, telephone (210) 207–2124.

Surplus Property Descriptions

The following is a listing of the land and facilities at Kelly Air Force Base, San Antonio, TX that are surplus to the federal government.

Land

Approximately 968 acres of land at Kelly Air Force Base and a non-contiguous parcel known as East Kelly containing approximately 323 additional acres of land. These areas will be available between April 1998 and July 13, 2001.

Buildings

Improvements include single and multi family housing, office, industrial and commercial buildings, community support facilities including gas station and recreational facilities, and hangars and support buildings adjacent to the airfield.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. State and local governments, representatives of the homeless, and other interested parties located in the vicinity of Kelly Air Force Base, San Antonio, TX shall submit to the Greater Kelly Development Authority a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraph 7(C) of said section 2905(b), the Greater Kelly Development Corporation shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Texas the date by which expressions of interest must be submitted.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–16796 Filed 7–1–96; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army

Notice of Intent To Prepare an Environmental Assessment (EA) for Disposal of Property at the Defense Personnel Support Center (DPSC), Philadelphia, PA

AGENCY: Department of the Army, DoD.

ACTION: Correction notice.

SUMMARY: This document contains a correction to a previous notice published in the October 13, 1995, edition of the **Federal Register** (60 FR 53344–53345) and in subsequent advertisements published on November 9, 1995, in local media; i.e., *Philadelphia Inquirer, Philadelphia Daily News, South Philadelphia Review, Defense Personnel Support Center News.* In this previous notice, the Army indicated that it would, in accordance with the provisions and requirements of the National Environmental Policy Act (NEPA) of 1969, prepare an Environmental Impact Statement (EIS) whereby it would assess the potential direct, indirect and cumulative impacts resulting from its disposal (and, secondarily, the subsequent reuse by others) of the Defense Personnel Support Center (DPSC)—and Army-owned installation located in Philadelphia, Pennsylvania.

Nonetheless, after carefully considering the information gathered and analysis performed during the past eight months, the Army has not determined that it would be more appropriate to prepare an Environmental Assessment (EA) for the disposal and reuse of DPSC.

Accordingly, to afford the public the greatest opportunity practicable to participate in the assessment of impacts and alternatives associated with the preparation of an EA for the disposal and reuse of DPSC, the Army will (although not legally required to do so) proceed as follows:

(1) A draft copy of the DPSC EA will be made available to the public on Monday, July 15, 1996, at the Free Library of Philadelphia, the Passyunk Branch at 20th and Shunk Streets.

(2) Comments regarding this draft EA will be accepted by Mr. John Bravo, the Base Environmental Coordinator at DPSC, DPSC–DXE, 2800 South 20th Street, Philadelphia, PA, 19145 until 5 PM daylight savings time on Monday, July 29, 1996.

(3) Army representatives will host a public meeting at the Defense Personnel Support Center Auditorium on July 30, 1996, at 7 PM daylight savings time, at which meeting they will respond to comments the Army has received respecting the draft EA, and they will also solicit and respond to any other questions and comments concerning the Army's NEPA process at DPSC that members of the audience may raise at that time.

Following the conclusion of the July 30, 1996, meeting, the Army will proceed with its DPSC NEPA analysis in accordance with applicable legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: For further information regarding this environmental assessment, please contact the DPSC Project Manager, Army Corps of Engineers, Mobile District, at 334–690–2725.

Raymond J. Fatz,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 96–16809 Filed 7–1–96; 8:45 am]

BILLING CODE 3710–08–M

Defense Logistics Agency

Privacy Act of 1974; Notice To Amend Records Systems.

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to amend records systems; Correction.

SUMMARY: On June 25, 1996 (61 FR 32779) the Defense Logistics Agency proposed to amend five systems of records notices. This notice is being published to correct the identification of the System Names. The System Names were identified using the section symbol instead of the letter S. Correct "§ 322.11 DMDC" to read "S322.11 DMDC," "§ 322.20 DMDC" to read "S322.20 DMDC," "§ 322.35 DMDC" to read "S322.35 DMDC," "§ 322.50 DMDC" to read "S322.50 DMDC," and "§ 322.53 DMDC" to read "S322.53 DMDC."

Dated: June 25, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–16753 Filed 7–1–96; 8:45 am]

BILLING CODE 5000–04–M

Corps of Engineers

Proposal To Issue, Reissue, and Modify Nationwide Permits; Public Hearing

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Correction to notice of public hearing.

SUMMARY: This document contains a correction to the Corps notice of public hearing published Monday, 17 June 1996 (61 FR 30778). The notice of public hearing contained the purpose, time, place, and date of the public hearing. The purpose of the public hearing is to allow the public to submit written and/or oral comment on the Corps proposal to reissue the existing nationwide permits (NWPs) and conditions, with some modifications, and issue four new NWPs published Monday, 17 June 1996 (61 FR 30780). The time and place of the public hearing will remain the same. The dates and the speaker time limit stated are corrected.

DATES: The hearing will commence at 10:00 AM on 5 August 1996, and end at 4:00 PM or before, if all speakers present have had an opportunity to speak.

ADDRESS: The hearing will be held at the National Guard Association Building, One Massachusetts Avenue, N.W., Washington, D.C. Written comments may be submitted to HQUSACE, ATTN: CECW–OR, Washington, D.C., 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Zimmerman or Mr. Sam Collinson, Regulatory Branch, Office of the Chief of Engineers at (202) 761–0199.

SUPPLEMENTARY INFORMATION: As was stated in the original Notice, the hearing is open to the public. Comments may be submitted in person at the hearing or in writing to the Office of the Chief of Engineers at the address given in **ADDRESS.** Filing of a written statement at the time of giving an oral statement would be helpful and facilitate the job of the court reporter. The hearing will be transcribed. The hearing will be held in accordance with the Corps public hearing regulations in 33 CFR Part 327. The legal authority for this hearing is Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

Need for Correction

As published, the Notice contains two incorrect dates. The date for the public hearing found in the second column, twenty-first line, was stated as "17 July 1996", and should read "5 August 1996". The date for the hearing record found in the second column, nineteenth line, was stated as "1 August 1996" and should read "16 August 1996". Due to an anticipated higher volume of speakers than originally projected, the time limit is to be reduced from that stated in the second column, eleventh line, as "15 minutes" to "10 minutes".

Dated: June 27, 1996.

Approved:

Stanley G. Genega,

Major General, USA, Director of Civil Works.

[FR Doc. 96–16851 Filed 7–1–96; 8:45 am]

BILLING CODE 3710–92–M

Department of the Navy

Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Shipyard, Philadelphia, PA

SUMMARY: This Notice provides information regarding the redevelopment authority that has been established to plan the reuse of the Naval Shipyard, Philadelphia, Pennsylvania, and the surplus property that is located at that base closure site.

FOR FURTHER INFORMATION CONTACT: For further general information, contact John J. Kane, Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or Marian E. DiGiamarino, Special Assistant for Real Estate, Base Closure Team, Northern Division, Naval Facilities Engineering Command, Lester, PA 19113–2090, telephone (610) 595–0762. For more detailed information regarding particular properties identified in this Notice (i.e. acreage, floorplan, sanitary facilities, exact street address, etc.), contact Helen McCabe, Realty Specialist, Base Closure Team, Northern Division, Naval Facilities Engineering Command, Lester, PA 19113–2090, telephone (610) 595–0549.

SUPPLEMENTARY INFORMATION: In 1991, the Naval Shipyard, Philadelphia, Pennsylvania, was designated to close and the property be preserved pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. In 1995 this designation was revised to reflect closure and disposal of the property. Pursuant to this revised designation, on 28 September 1995 the land and facilities at this installation were declared excess to the Department of Navy and made available for use by other federal public agencies. No interest has been expressed.

Notice of Surplus Property

Pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the redevelopment authority for and surplus property at the Naval Shipyard, Philadelphia, Pennsylvania, is published in the **Federal Register**.

Redevelopment Authority

The redevelopment authority for the Naval Shipyard, Philadelphia, Pennsylvania for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the City of Philadelphia, acting by and through its Mayor, Edward G. Rendell. For further information contact Ms. Terry Gillen, Senior Vice President and Director, Office of Defense Conversion, Philadelphia Industrial Development Corporation, 2600 Centre Square West, 1500 Market Street, Philadelphia, Pennsylvania 19102–2126, telephone (215) 496–8020 and facsimile (215) 977–9618.

Surplus Property Descriptions

The following is a listing of the land and facilities at the Naval Shipyard, Philadelphia, Pennsylvania that are surplus to the federal government.

Land

Approximately 265.9 acres of improved and unimproved fee simple land including land under water at the Naval Shipyard, Philadelphia, Pennsylvania. In general, all areas will be available upon the closure of the Naval Shipyard, anticipated for September 1996.

Buildings

The following is a summary of the facilities located on the above described land. Property numbers are available on request.

—Administrative office facilities (9 structures), Comments: Approx. 312,300 square feet;
—Above ground fuel oil storage tanks (4 tanks), Comments: Approx. 4 million gallons;
—Cafeteria; Comments: Approx. 19,880 square feet;
—Drydocks (5 structures);
—Fixed cranes (5 crane structures);
—Fuel farm ops. Facilities (7 structures), Comments: Approx. 4,100 square feet;
—Lockers/showers/restroom facilities (2 structures), Comments: Approx. 15,850 square feet;
—Piers (4 structures);
—Public Works shop; Comments: Approx. 840 square feet;
—Ship/Industrial maintenance facilities (31 structures), Comments: Approx. 1,819,410 square feet;
—Shop storage facilities (6 structures), Comments: Approx. 48,302 square feet;

—Utilities/support facilities (21 structures and various distribution systems);
—Wharfs (5 structures).

Expressions of Interest

Pursuant to paragraph 7(C) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Shipyard, Philadelphia, shall submit to said redevelopment authority (City of Philadelphia) a notice of interest, of such governments, representatives and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. The redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in the City of Philadelphia, the date by which expressions of interest must be submitted.

Dated: June 19, 1996.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–16797 Filed 7–1–96; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

National Library of Education Advisory Task Force Meeting

AGENCY: National Library of Education Advisory Task Force.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for the third meeting of the National Library of Education Advisory Task Force (Task Force). This notice also describes the functions of the Task Force. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATE AND TIME: July 31, 1996, 9 a.m. to 12 p.m.; August 1, 1996, 9 a.m. to 4:30 p.m.; August 2, 1996, 9 a.m. to 12 p.m.

ADDRESSES: July 31, 1996, Room 5272, Boelter Hall, University of California at Los Angeles, Los Angeles, California; August 1 and 2, 1996, Room 3340, Moore Hall (Reading Room), University of California at Los Angeles, Los Angeles, California.

FOR FURTHER INFORMATION CONTACT: E. Stephen Hunt, National Library of Education, 555 New Jersey Ave., NW., Washington, DC 20208–5523. Telephone: (202) 219–1882; FAX: (202) 219–1970.

SUPPLEMENTARY INFORMATION: The National Library of Education Advisory Task Force is authorized by Part E, Section 951(h) of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Task Force prepares a set of recommendations on the establishment and development of the National Library of Education for presentation to the Assistant Secretary for the Office of Educational Research and Improvement.

The meeting of the Task Force is open to the public. The agenda for July 31–August 2, 1996 includes the discussion of drafts of sections of the Task Force Report, dialogue with members of the public from the Western United States who wish to attend and are unable to attend East Coast meetings, and the conduct of Task Force business including planning the completion and final presentation of the Task Force Report.

A final agenda will be available from the offices of the National Library of Education on July 12, 1996.

Records are kept of all Task Force proceedings, and are available for public inspection at the central office of the National Library of Education, 555 New Jersey Ave., NW., Washington, DC 20208–5523 between the hours of 8:30 a.m.–4:30 p.m.

Sharon P. Robinson,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 96–16693 Filed 7–1–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–588–000]

Centana Intrastate Pipeline Co.; Notice of Petition for Declaratory Order

June 26, 1996.

Take notice that on June 20, 1996, Centana Intrastate Pipeline Company (CIPCO), 5718 Westheimer Court, Houston, Texas 77057, filed in Docket No. CP96–588–000 a petition for an order declaring that the acquisition by CIPCO of the Silsbee, Big Hill and Line 14 facilities from Texas Eastern Transmission Corporation (Texas Eastern) and the ownership and operation of those facilities by CIPCO are not subject to the jurisdiction of the Commission under the Natural Gas Act and will not change CIPCO's status as an intrastate pipeline, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

CIPCO states that the Silsbee facilities consist of Lines 2–F and 2–J comprising 55.92 miles of various sized pipeline ranging from 3.5 inches to 10 inches in diameter and associated meter stations. CIPCO also states that the Big Hill facilities consist of Line 8–A comprising 13.61 miles various sized pipeline ranging from 6.625 to 8.625 inches in diameter and associated meter stations. CIPCO further states that Line 14 consists of 5.8 miles of 30-inch pipeline which parallels a portion of Texas Eastern's 30-inch mainline between Beaumont and Vidor, Texas.

CIPCO maintains that the facilities to be acquired from Texas Eastern will be owned and operated by CIPCO and will become an integral part of CIPCO's intrastate pipeline system. CIPCO states that the Silsbee and Big Hill facilities will provide access by CIPCO to additional wellhead supplies of natural gas to meet the requirements of CIPCO's customers. CIPCO maintains that the majority of natural gas supplied by other intrastate pipelines to CIPCO's customers last winter, and transported by CIPCO, was shut-off by those pipelines from time to time to meet other requirements; therefore, acquisition of these facilities will help CIPCO meet the requirements of its customers and increase service reliability to its intrastate customers. CIPCO states that acquisition of Line 14 will provide access to additional intrastate markets and will alleviate operational constraints on CIPCO's intrastate system.

Any person desiring to be heard or to make any protest with reference to said petition should on or before July 17, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16792 Filed 7–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–283–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 26, 1996.

Take notice that on June 21, 1996, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing, to become effective August 1, 1996.

Columbia Gulf states that the revised tariff sheets introduce two new services: (1) A Pool Balancing Service which will permit customers to schedule and receive different volumes at pooling points under Rate Schedules AS-Gulf and IPP-Gulf; and (2) a Title Tracking Service under which Columbia Gulf will track pool-to-pool transfers of nominated quantities when the points of receipt and delivery are pooling points established under Rate Schedules AS-Gulf and IPP-Gulf and are located within the same rate zone. Further, the revised tariff sheets include certain revisions to Rate Schedules FTS–1, FTS–2, ITS–1, ITS–2, AS-Gulf, and IPP-Gulf, and to the General Terms and Conditions of Columbia's Gulf's currently effective tariff.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16793 Filed 7–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–586–000]

Texas Eastern Transmission Corporation; Notice of Application

June 26, 1996.

Take notice that on June 20, 1996, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP96–586–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Centana Intrastate Pipeline Company (Centana) the facilities known as Silsbee, Big Hill and Line 14, located in Orange, Jasper, Hardin, Newton and Jefferson Counties, Texas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Eastern states that the Silsbee facilities consist of Lines 2–F and 2–J comprising 55.92 miles of various sized pipeline ranging from 3.5 inches to 10 inches in diameter and associated with meter stations. Texas Eastern further states that the Big Hill facilities consist of Line 8–A comprising 13.61 miles of various sized pipeline ranging from 6.625 inches to 8.625 inches in diameter and associated meter stations. In addition, Texas Eastern states that Line 14 consists of 5.80 miles of 30-inch pipeline paralleling a portion of Line 16 between the Beaumont, Texas compressor station and the Vidor, Texas compressor station.

It is stated that since June 1993, throughput on the Silsbee facilities has declined from 7.0 mdth per day to 5.5 mdth per day and is expected to continue to decline in the future. It is also stated that there has been no recorded throughput on the Big Hill facilities since December 1994. In addition, it is stated that throughput on Line 14 has averaged 1,280 dth per day with current line utilization at under 1 percent. Texas Eastern states that current production on the Silsbee facilities will continue to be available to Texas Eastern's customers at no additional transportation costs and that the throughput on Line 14 will be accommodated by another Texas Eastern line.

Texas Eastern states that it has the understanding that Centana will use the facilities for access to additional wellhead supplies of natural gas needed by Centana to meet the requirements of its intrastate customers, to increase its reliability of service to its intrastate customers, and to alleviate operational constraints on its intrastate system.

Any person desiring to be heard or to protest said reference to said application should on or before July 17, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16791 Filed 7–1–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1774–000, et al.]

Growth Unlimited Investments, Inc., et al. Electric Rate and Corporate Regulation Filings

June 25, 1996.

Take notice that the following filings have been made with the Commission:

1. Growth Unlimited Investments, Inc.

[Docket No. ER96–1774–000]

Take notice that on June 10, 1996, Growth Unlimited Investments, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. City of Needles, California v. Nevada Power Company

[Docket No. EL96–57–000]

Take notice that on June 6, 1996, the City of Needles, California filed a complaint concerning possible nonperformance under contracts by Nevada Power Company and Enova Energy Management, Inc. The complaint

arises out of two agreements between the City of Needles, California and Nevada Power Company. These are the "Agreement for the Sales of Electric Power and for Transmission Service between Nevada Power Company and the City of Needles, California," and a "Letter Agreement for Power Scheduling Service."

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before July 25, 1996.

3. Rio Grande Electric Cooperative, Inc. v. Central Power & Light Company

[Docket No. EL96–60–000]

Take notice that on June 12, 1996, Rio Grande Cooperative, Inc. (Rio Grande) tendered for filing a complaint against Central Power & Light Company (CP&L). Rio Grande states that this complaint emanates from a dispute between CPL and Rio Grande regarding a settlement in Docket No. ER90–289–000 and that it is filed in compliance with the Commission's Order in Docket No. ER95–1141–000. Rio Grande therefore requests that the Commission determine the appropriate termination fee owed by Rio Grande to CP&L under the earlier agreement between Rio Grande and CP&L that arose out of the settlement of Docket No. ER90–289–000.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before July 25, 1996.

4. Mid-American Resources, Inc. Kimball Power Company

[Docket Nos. ER95–78–002, ER95–232–006]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On June 20, 1996, Mid-American Resources, Inc. filed certain information as required by the Commission's April 6, 1995, order in Docket No. ER95–78–000.

On June 10, 1996, Kimball Power Company filed certain information as required by the Commission's February 1, 1995, order in Docket No. ER95–232–000.

5. Midwest Energy, Inc.

[Docket No. ER96–1791–000]

Take notice that on June 6, 1996, Midwest Energy, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Central Hudson Gas and Electric Corporation

[Docket No. ER96–2151–000]

Take notice that on June 17, 1996, Central Hudson Gas and Electric Corporation (CHG&G) tendered for filing a Service Agreement between CHG&E and Northeast Utilities Service Company. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Unitil Power Corp.

[Docket No. ER96–2162–000]

Take notice that on June 17, 1996, Unitil Power Corp., tendered for filing a service agreement for service under Unitil Power Corp., FERC Electric Tariff, Original Volume No. 2.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER96–2163–000]

Take notice that on June 18, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Wheeled Electric Power Company.

Cinergy and Wheeled Electric Power Company are requesting an effective date of June 17, 1996.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Company

[Docket No. ER96–2164–000]

Take notice that on June 18, 1996, New England Power Company submitted for filing a letter agreement for transmission service to PECO Energy Company.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Company

[Docket No. ER96–2165–000]

Take notice that on June 18, 1996, New England Power Company, tendered for filing a System Impact Study Agreement between U.S. Generating Company and New England Power Company.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. MidAmerican Energy Company

[Docket No. ER96–2166–000]

Take notice that on June 18, 1996, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801, filed with the Commission a Firm Transmission Service Agreement with Tennessee Power Company (Tennessee Power) dated June 12, 1996, and Non-Firm Transmission Service Agreement with Tennessee Power dated June 12, 1996, entered into pursuant to MidAmerican's Point-to-Point Transmission Service Tariff, FERC Electric Tariff, Original Volume No. 4.

MidAmerican requests an effective date of June 12, 1996, for the Agreements with Tennessee Power, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Tennessee Power, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. PECO Energy Company

[Docket No. ER96–2167–000]

Take notice that on June 18, 1996, PECO Energy Company (PECO), filed a Service Agreement dated May 17, 1996 with Rainbow Energy Marketing Corporation (Rainbow) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds Rainbow as a customer under the Tariff.

PECO requests an effective date of May 25, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to Rainbow and to the Pennsylvania Public Utility Commission.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. PECO Energy Company

[Docket No. ER96–2168–000]

Take notice that on June 18, 1996, PECO Energy Company (PECO), filed a Service Agreement dated June 13, 1996 with Great Bay Power Corporation (Great Bay) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds Great Bay as a customer under the Tariff.

PECO requests an effective date of June 13, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to Great Bay and to the Pennsylvania Public Utility Commission.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER96–2169–000]

Take notice that on June 18, 1996, PECO Energy Company (PECO), filed a Service Agreement dated June 13, 1996 with Consumers Power Company and the Detroit Edison Company, (collectively referred to as MICHIGAN COMPANIES) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds MICHIGAN COMPANIES as a customer under the Tariff.

PECO requests an effective date of June 13, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to MICHIGAN COMPANIES and to the Pennsylvania Public Utility Commission.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. ER96–2170–000]

Take notice that on June 18, 1996, PECO Energy Company (PECO), filed a Service Agreement dated June 5, 1996 with The United Illuminating Company (UI) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds UI as a customer under the Tariff.

PECO requests an effective date of June 5, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to UI and to the Pennsylvania Public Utility Commission.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER96–2171–000]

Take notice that on June 18, 1996, PECO Energy Company, (PECO), filed a Service Agreement dated June 4, 1996 with Vastar Power Marketing, Inc. (VASTAR) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds VASTAR as a customer under the tariff.

PECO requests an effective date of June 4, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to VASTAR and to the Pennsylvania Public Utility Commission.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. PECO Energy Company

[Docket No. ER96–2172–000]

Take notice that on June 18, 1996, PECO Energy Company (PECO), filed a Service Agreement dated June 4, 1996 with Vastar Power Marketing, Inc. (VASTAR) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds VASTAR as a customer under the Tariff.

PECO requests an effective date of June 4, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to VASTAR and to the Pennsylvania Public Utility Commission.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. PECO Energy Company

[Docket No. ER96–2173–000]

Take notice that on June 18, 1996, PECO Energy Company (PECO), filed a Service Agreement dated May 23, 1996 with Jacksonville Electric Authority (JEA) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds JEA as a customer under the Tariff.

PECO requests an effective date of May 23, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to JEA and to the Pennsylvania Public Utility Commission.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. PECO Energy Company

[Docket No. ER96–2174–000]

Take notice that on June 18, 1996, PECO Energy Company (PECO), filed a Service Agreement dated May 23, 1996 with Jacksonville Electric Authority (JEA) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds JEA as a customer under the Tariff.

PECO requests an effective date of May 23, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to JEA and to the Pennsylvania Public Utility Commission.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. New York State Electric & Gas Corporation

[Docket No. ER96–2175–000]

Take notice that on June 18, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Regulations, 18 CFR 35.12, as an initial rate schedule, an agreement with KN Marketing, Inc. (KN). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to KN and KN will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on June 19, 1996, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and KN.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. New York State Electric & Gas Corporation

[Docket No. ER96–2176–000]

Take notice that on June 18, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Regulations, 18 CFR 35.12, as an initial rate schedule, an agreement with Coral Power, L.L.C. (Coral). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to Coral and Coral will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on June 19, 1996, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and Coral.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. UNITIL Power Corp.

[Docket No. ER96–2177–000]

Take notice that on June 18, 1996, UNITIL Power Corp. (UPC), filed revised sheets to its FERC Electric Tariff, Original Volume No. 2 (Tariff No. 2). Tariff No. 2 was accepted for filing in a letter order dated May 24, 1996 in Docket No. ER96–1427–000, which letter order directed UPC to make certain changes to the Tariff. The revised sheets contain these changes.

UPC states that this filing was served on all existing customers under Tariff No. 2 and the New Hampshire Public Utilities Commission.

Comment date: July 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16813 Filed 7–1–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER96–2152–000, et al.]

The Washington Water Power Company, et al. Electric Rate and Corporate Regulation Filings

June 24, 1996.

Take notice that the following filings have been made with the Commission:

1. The Washington Water Power Company

[Docket No. ER96–2152–000]

Take notice that on June 17, 1996, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a signed service agreement under FERC Electric Tariff Volume No. 4 with Vantus Power Services.

Comment date: July 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Electric and Gas Company

[Docket No. ER96–2153–000]

Take notice that on June 17, 1996, Public Service Electric and Gas Company (PSE&G), tendered for filing agreements to provide non-firm transmission service to Federal Energy Sales, Inc., TransCanada Power Corp., and NorAm Energy Services, Inc., pursuant to PSE&G's Point-to-Point Transmission Tariff presently on file with the Commission in Docket No. ER96–1320–000.

PSE&G further requests waiver of the Commission's Regulations such that the agreements can be made effective as of the date on the agreements.

Comment date: July 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Western Resources, Inc.

[Docket No. ER96–2154–000]

Take notice that on June 17, 1996, Western Resources, Inc., (Western Resources), tendered for filing First Revised Service Schedule A to its Rate Schedule FERC No. 264. Western Resources states that the change is to revise the procedures under which the Parties may give notice to each other to reduce or terminate service under Service Schedule A.

Copies of the filing were served upon Kansas Electric Power Cooperative, Inc. and the Kansas Corporation Commission.

Comment date: July 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Phibro, Inc.

[Docket No. ER96–2155–000]

Take notice that on June 17, 1996, Phibro, Inc. (Phibro), tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that Phibro had completed all the steps for pool membership. Phibro requests that the Commission amend the WSPP Agreement to include it as a member.

Phibro requests an effective date of June 1, 1996, for the proposed amendment. Accordingly, Phibro requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: July 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER96–2156–000]

Take notice that on June 17, 1996, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Commonwealth Edison Company (Commonwealth), dated June 12, 1996. This Service Agreement specifies that Commonwealth has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and Commonwealth to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of June 12, 1996 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: July 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Jersey Central Power & Light Company; Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER96–2157–000]

Take notice that on June 17, 1996, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Coral Power, L.L.C. (CORAL), dated June 12, 1996. This Service Agreement specifies that CORAL has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co., and Pennsylvania Electric Co.*, Docket No. ER96–276–000 and allows GPU and CORAL to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of June 12, 1996 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: July 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER96–2158–000]

Take notice that on June 17, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated May 1, 1996 between Cinergy, CG&E, PSI and Southern Energy Marketing, Inc. (SEMI).

The Interchange Agreement provides for the following service between Cinergy and SEMI:

1. Exhibit A—Power Sales by SEMI
2. Exhibit B—Power Sales by Cinergy

Cinergy and SEMI have requested an effective date of June 24, 1996.

Copies of the filing were served on Southern Energy Marketing, Inc., Georgia Public Service Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: July 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Company

[Docket No. ER96–2159–000]

Take notice that on June 17, 1996, Arizona Public Service Company (APS), tendered for filing a Service Agreement under APS–FERC Electric Tariff Original Volume No. 1 (APS Tariff) with the following entity:

Ajo Improvement Company

A copy of this filing has been served on the above listed party and the Arizona Corporation Commission.

Comment date: July 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Company

[Docket No. ER96–2160–000]

Take notice that on June 17, 1996, New England Power Company, tendered amendments to two agreements under which it receives transmission and distribution service from Northeast Utilities Service Company and Western Massachusetts Electric Company. The amendments propose to lift the restrictions against retail wheeling in the agreements so that NEP's affiliate, Massachusetts Electric Company, may sponsor a retail wheeling experiment in selected areas of its service territory.

Comment date: July 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. PECO Energy Company

[Docket No. ER96–2161–000]

Take notice that on June 17, 1996, PECO Energy Company (PECO), filed a Service Agreement dated June 3, 1996, with Cincinnati Gas & Electric Company, PSI Energy, Inc., and Cinergy Services, Inc. (Cinergy Operating Companies and Cinergy Services) under PECO's FERC Electric Tariff First, Revised Volume No. 4 (Tariff). The Service Agreement adds Cinergy Operating Companies and Cinergy Services as a customer under the Tariff.

PECO requests an effective date of June 3, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to Cinergy Operating Companies and Cinergy Services and to the Pennsylvania Public Utility Commission.

Comment date: July 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Warbasse-Cogeneration Technologies Partnership L.P.

[Docket No. QF88–438–003]

On June 14, 1996, Warbasse-Cogeneration Technologies Partnership L.P. (Applicant), of 800 Fifth Avenue, Suite No. 7F, New York, New York 10021 submitted for filing an application for recertification of a facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the dual-fuel topping-cycle cogeneration facility is located in Kings County, Brooklyn, New York. The Commission subsequently certified and then recertified the facility as a qualifying cogeneration facility, *WCP Ltd. Partnership*, 44 FERC ¶ 62,115 (1988), and *Warbasse-Cogeneration Technologies Partnership L.P.*, 53 FERC ¶ 62,023 (1990), respectively. The instant request for recertification is due to the reconfiguration of the facility and an increase in the maximum net electric power production capacity from 31.93 MW to 34 MW. Consolidated Edison Company of New York, Inc. purchases the electric output of the Facility not taken by the Facility's host, Amalgamated Warbasse Houses, Inc.

Comment date: Fifteen days after the date of publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

12. Calpine Corporation

[Docket No. QF96–54–000]

On June 17, 1996, Calpine Corporation tendered for filing a supplement to its filing in this docket.

The supplement pertains to the ownership structure and technical aspects of the facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: Fifteen days after the date of publication of this notice in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16814 Filed 7–01–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2705–003 Washington]

Seattle City Light; Notice of Availability of Draft Environmental Assessment

June 26, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the existing Newhalem Creek Hydroelectric Project, and has prepared a Draft Environmental Assessment (DEA) for the project. The project is located on Newhalem Creek, a tributary of the Skagit River, near the town of Newhalem, in northern Washington.

In the DEA, the Commission's staff has analyzed the potential environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, D.C. 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426. For further information, contact Mr. John Costello, Environmental Coordinator, at (202) 219–2914.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16815 Filed 7–1–96; 8:45 am]

BILLING CODE 6717–01–M

Southwestern Power Administration

Integrated System Power Rates—Proposed Extension

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of public review and comment.

SUMMARY: The Current Integrated System rates were approved by the Federal Energy Regulatory Commission (FERC) on September 18, 1991, Docket No. EF91–4011–000. These rates were effective October 1, 1990, through September 30, 1994. These rates were extended on an interim basis by the Deputy Secretary of Energy through September 30, 1996. The Administrator, Southwestern, has prepared Current and Revised 1996 Power Repayment Studies for the Integrated System which show the need for a minor rate adjustment of $1,239,868 (1.3 percent increase) in annual revenues. In accordance with Southwestern's rate adjustment threshold, dated June 23, 1987, the Administrator, Southwestern, may determine, on a case by case basis, that for a revenue decrease or increase in the magnitude of plus-or-minus two percent, deferral of a formal rate filing is in the best interest of the Government. Also, the Deputy Secretary of Energy has the authority to extend rates, previously confirmed and approved by FERC, on an interim basis, pursuant to 10 CFR 903.22(h) and 902.23(a)(3). In accordance with DOE rate extension authority and Southwestern's rate adjustment threshold, the Administrator is proposing that the rate adjustment be deferred and that the current rates be extended for a one-year period effective through September 30, 1997.

DATES: Written comments are due on or before July 17, 1996.

ADDRESSES: Written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: George C. Grisaffe, Assistant Administrator, Office of Administration and Rates, Southwestern Power Administration, Department of Energy, PO Box 1619, Tulsa, Oklahoma 74101, (918) 595–6628.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of Energy Organization Act, Pub. L. 95–91, dated August 4, 1977, and Southwestern's power marketing activities were transferred from the Department of the Interior to the Department of Energy, effective October 1, 1977.

Southwestern markets power from 24 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the States of Arkansas, Missouri, Oklahoma and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. Of the total, 22 projects comprise an Integrated System and are interconnected through Southwestern's transmission system and exchange agreements with other utilities. The other two projects (Sam Rayburn and Robert Douglas Willis) are not interconnected with Southwestern's Integrated System. Instead, their power is marketed under separate contracts through which two customers purchase the entire power output of each of the projects at the dams.

Following Department of Energy Order Number RA 6120.2, the Administrator, Southwestern, prepared a 1996 Current Power Repayment Study (PRS) using existing Integrated System rate schedules. The PRS shows the cumulative amortization through FY 1995 at $355,572,353 on a total investment of $982,272,106. The FY 1996 Revised PRS indicates the need for an increase in annual revenues of $1,239,868, or 1.3 percent, over and above the present annual revenues.

As a matter of practice, Southwestern would defer an indicated rate adjustment that falls within Southwestern's plus-or-minus two percent rate adjustment threshold. The threshold was developed to add efficiency to the process of maintaining adequate rates and is consistent with cost recovery criteria within DOE Order Number RA 6120.2 regarding rate adjustment plans. The Integrated System's FY 1995 (last year's) PRS concluded that the annual revenues needed to be increased by 1.1 percent. At that time, it was determined prudent to defer the increase in accordance with the established threshold and extend the rates on an interim basis for one year. It once again seems prudent to defer this rate adjustment of 1.3 percent, or $1,239,868 per year in accordance with Southwestern's rate adjustment threshold and reevaluate the ability of the existing rate to provide sufficient revenues to satisfy costs projected in the FY 1997 (next year's) PRS.

On September 18, 1991, the current rate schedules for the Integrated System were confirmed and approved by the FERC on a final basis for a period that ended on September 30, 1994. In accordance with 10 CFR Sections 903.22(h) and 903.23(a)(3), the Deputy Secretary may extend existing rates on an interim basis beyond the period specified by the FERC.

On September 19, 1994, and August 8, 1995, the Deputy Secretary approved extensions of the Integrated System power rates on an interim basis for the periods October 1, 1994, through September 30, 1995, and October 1, 1995, through September 30, 1996. As a result of the benefits obtained by a rate adjustment deferral (reduced Federal expense and rate stability) and the Deputy Secretary's authority to extend a previously approved rate, Southwestern's Administrator is proposing to again extend the current Integrated System rate schedules for the one-year period beginning October 1, 1996, and extending through September 30, 1997.

Opportunity is presented for customers and interested parties to receive copies of the study data for the Integrated System. If you desire a copy of the Repayment Study Data Package for the Integrated System, please submit your request to: Mr. George Grisaffe, Assistant Administrator, Office of Administration and Rates, PO Box 1619, Tulsa, OK 74101, or call (918) 595–6628.

Following review of the written comments, the Administrator will submit the rate extension proposal for the Integrated System to the Deputy Secretary of Energy for confirmation and approval.

Issued in Tulsa, Oklahoma, this 21st day of June, 1996.

Michael A. Deihl,

Administrator.

[FR Doc. 96–16846 Filed 7–1–96; 8:45 am]

BILLING CODE 6450–01–P

Western Area Power Administration

Replacement Resources Methods Report, Grand Canyon Protection Act of 1992

AGENCY: Western Area Power Administration (Western), DOE.

ACTION: Notice of availability, meetings, and comments.

SUMMARY: Western has been engaged in a process to identify economically and technically feasible methods for replacing power resources which will be lost due to long-term, operational constraints at Glen Canyon Dam. This process will conclude with a report of the findings to Congress as required by the Grand Canyon Protection Act (GCP Act) of 1992, Title XVIII of Pub. L. 102–575. Section 1809 of the GCP Act requires the Secretary of Energy to consult with representatives of the Colorado River Storage Project (CRSP) power customers, environmental organizations, and the Colorado River Basin States and with the Secretary of the Interior in this process. The Secretary of Energy, acting through Western, has the responsibility of marketing power generated from Glen Canyon Dam and other CRSP power facilities, including power acquired by Western to replace the power lost due to operational changes at Glen Canyon Dam.

Western published a notice initiating the formal, public consultation process in the **Federal Register** on August 8, 1994 (59 FR 40357). An October 7, 1994, **Federal Register** notice (59 FR 51191) by Western announced four regional public consultation meetings. A 20-page, Replacement Resources Information Packet was prepared that included Western's proposed process to complete the method identification requirement of the GCP Act. On October 20, 1994, this information packet, along with the text of the October **Federal Register** notice, was mailed to approximately 900 entities and individuals on Western's Replacement Resources Process mailing list. In November 1994, four regional public involvement meetings were held in Salt Lake City, Utah; Denver, Colorado; Phoenix, Arizona; and Albuquerque, New Mexico. Public comments were received on the proposed process through December 19, 1994, the comment deadline. Newsletters that provided updates on the status of replacement resources activities were prepared by Western in February and October 1995. These newsletters were distributed to Western's mailing list. On April 30, 1996, at Western's CRSP Customer Service Center's Annual Customer Meeting in Salt Lake City, Western provided an update on replacement resources activities to CRSP power customers and to Bureau of Reclamation (Reclamation) representatives. This update included a discussion by Western of earlier public comment.

DATES: Western now announces the availability of the Draft Replacement Resources Methods Report (Draft Methods Report). Western is also seeking comments on the Draft Replacement Resources Methods Report. To be considered, comments need to be received by September 3,1996. In addition, Western will hold four public meetings to provide information and to accept public comment on the proposed methods included in this report. Public consultation meetings will be held:

July 23, 1996: Albuquerque, New Mexico, Courtyard Marriott Hotel, 1920 Yale Boulevard, SE., 9 a.m. to noon

July 24, 1996: Phoenix, Arizona, Embassy Suites Hotel, 3210 NW., Grand Avenue, at 9 a.m. to noon

July 25, 1996: Denver, Colorado, Denver West Marriott, 1717 Denver West Boulevard, 9 a.m. to noon

July 29, 1996: Salt Lake City, Utah, Doubletree Hotel, 215 South Temple, 8:30 a.m. to 11:30 a.m.

Background

The Replacement Resources Methods Report identifies economic and technically feasible methods to replace capacity made unavailable ("or lost") due to operational constraints. The report also includes a "proof-of-concept" analysis of five hypothetical resource options with varying degrees of complexity. The methods considered are consistent with other Western resource acquisition policies, such as Western's Principles of Integrated Resource Planning (IRP) and its Purchase Power Policy. The methods would also be consistent with the pending Salt Lake City Area/ Integrated Projects (SLCA/IP) Contract Amendment, the Records of Decision in Western's SLCA/IP Electric Power Marketing Environmental Impact Statement (EIS) and Energy Planning and Management Program, Reclamation's Glen Canyon Dam EIS, pertinent Federal Energy Regulatory Commission orders, and laws affecting DOE, Western, and CRSP.

In the Draft Methods Report, Western evaluates methods to replace capacity made unavailable ("or lost") due to operational constraints using spot market, seasonal (6 months), and mid- to long-term (1 year or more, up to the end of the contract term) resource acquisitions. Western would consult with firm power customers periodically about the amount and term of resource acquisitions to be made on their behalf, which Western could then acquire and deliver to them. Greater public involvement and more complex evaluation procedures and acquisition methods would be used for long-term acquisitions rather than for seasonal acquisitions, consistent with Western's Purchase Power Policy.

Western proposes to use a screening tool and a production cost computer model to evaluate future resource offers from potential suppliers. The Draft Methods Report details how these evaluation tools are applied to evaluate five hypothetical resource purchases. These resource alternatives were designed to illustrate the screening and evaluation tool's abilities to evaluate and select from among many diverse replacement resource options and to consider transmission system constraints and possible solutions. The Draft Methods Report concludes that the screening criteria and evaluation tools developed will enable Western to identify economically and technically feasible replacement power resources in the future.

Further Information

To provide written comments on the Draft Replacement Resources Methods Report, contact: Mr. Jeffrey McCoy, Resource Analysis Team Lead, CRSP Customer Service Center, Western Area

Power Administration, PO Box 11606, Salt Lake City, UT 84147–0606.

Environmental Compliance

Western will comply with the National Environmental Policy Act of 1969 through an appropriate level of environmental analysis of the impacts of specific replacement resources when such specific resources are being considered for acquisition.

Determination Under Executive Order 12866

DOE has determined this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Issued at Washington, DC, June 24, 1996.

Joel K. Bladow,

Assistant Administrator.

[FR Doc. 96–16847 Filed 7–1–96; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FO Docket Nos. 91–171/91–301; DA No. 96–941]

Emergency Alert System

AGENCY: Federal Communications Commission

ACTION: Notice.

SUMMARY: In accordance with the GSA final Rule on Federal Advisory Committee Management, the Federal Communications Commission (FCC) announces the amending and renewing of the advisory committee charter for the Emergency Broadcast System Advisory Committee. This amendment restructures this committee to reflect changes resulting from the new Emergency Alert System (EAS), and changes the name of the committee to the National Advisory Committee (NAC). The Advisory Committee is also renewed for a term that runs from July 25, 1996 to July 25, 1998. At the same time, the FCC terminates the National Business and Industry Advisory Council.

EFFECTIVE DATE: July 25, 1996.

FOR FURTHER INFORMATION CONTACT: The EAS staff by phone at 202–418–1220, or write the Office of the Emergency Alert System, Room 736, Stop Code 1500B1, Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554.

SUPPLEMENTAL INFORMATION: The purpose of the NAC is to assist the FCC in overseeing the new Emergency Alert System (EAS). The EAS recently replaced the Emergency Broadcast System as a means of alerting the public about emergencies. The primary mission of the NAC is to advise the Commission on all matters concerning the EAS and its implementation, including emergency alerting policies, technologies, plans, regulations, and procedures at the national, state, and local levels. The NAC also recommends and develops training and education regarding the EAS, and coordinates with state and local officials to assist in maintaining effective emergency alerting programs. The NAC is necessary and in the public interest because of the close coordination and exchange of information that is needed between the Federal Government, industry and state and local governments in implementing and operating the new EAS. The NAC's membership consists of volunteer government and industry personnel selected by the Commission. Members include representatives from broadcasting, cable, satellite, MMDS, other technologies, government agencies involved in emergency communications, State Emergency Communications Committees (SECC), and special audiences such as the hearing impaired. Officers of the NAC are elected for two year terms and consist of a President, and Subcommittee Chairs.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–16816 Filed 7–1–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 26, 1996.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Banponce Corporation, Hato Rey, Puerto Rico; Popular International Bank, Inc., Hato Rey, Puerto Rico; and Banponce Financial Corp., Wilmington, Delaware; to acquire 100 percent of the voting shares of Combancorp, Commerce, California; and thereby indirectly acquire Commerce National Bank, Commerce, California.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. St. Joseph Capital Corporation, South Bend, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of St. Joseph Capital Bank, Mishawaka, Indiana.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Mesaba Bancshares, Inc., Biwabik, Minnesota; and River Bancorp, Inc., Ramsey, Minnesota; to acquire 22.22 percent of Northland Security Bank, Ramsey, Minnesota, a *de novo* bank. In connection with this proposal, River Bancorp has applied to become a bank holding company by acquiring shares of Northland Security Bank.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Big Bend Bancshares Corporation, Presidio, Texas; and Rio Bancshares Corporation, Wilmington, Delaware; to acquire an additional 29.37 percent of the voting shares of Marfa National Bank, Marfa, Texas.

2. East Texas Bancorp, Inc., Longview, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of East Texas Delaware Financial Corporation, Dover, Delaware; and thereby indirectly acquire Community Bank, Longview, Texas.

3. East Texas Delaware Financial Corporation, Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank, Longview, Texas.

E. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Western Acquisitions, L.L.C., Buffalo Grove, Illinois; to become a bank holding company by acquiring 43.5 percent of the voting shares of Sunwest Bank, Tustin, California.

2. Western Acquisition Partners, L.P., Buffalo Grove, Illinois; to become a bank holding company by acquiring 43.5 percent of the voting shares of Sunwest Bank, Tustin, California.

Board of Governors of the Federal Reserve System, June 26, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–16811 Filed 7–1–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 16, 1996.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Great Falls Bancorp, Totowa, New Jersey; to engage *de novo* through its subsidiary Greater Community Financial L.L.C., Totowa, New Jersey, in full service brokerage activities providing portfolio investment advice and securities credit activities related to the company's securities brokerage activities and dealing in bank eligible securities pursuant to § 225.25(b)(4), (15) and (16) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 26, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–16812 Filed 7–1–96; 8:45 am]

BILLING CODE 6210–01–F

Government in the Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, July 8, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 28, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–17055 Filed 6–28–96; 3:22 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Notice of 30-Day Extension in Comment Period and Change in Date for Public Forum on Disclosures in the Resale of Vehicles Repurchased Due to Warranty Defects

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission ("the Commission" or "FTC") has extended the date by which comments must be submitted and has changed the date for the public forum concerning the practices used in the resale of vehicles previously repurchased from consumers because of warranty defects. This notice informs prospective participants of the changes and sets new dates of July 29, 1996, for the end of the comment period and October 3, 1996, for the forum.

On November 8, 1995, the Consumers for Auto Reliability and Safety and other consumer groups ("Consumer Coalition" or "Petitioners") filed a petition in which they requested that the Commission initiate either a rulemaking proceeding or an

enforcement action regarding the alleged industry practice of reselling vehicles repurchased due to defects without disclosure of the vehicle's prior history to the subsequent purchaser. On April 30, 1996, the Commission published this petition without endorsing or supporting the views expressed therein. In addition to seeking public comment on the issues raised by the petition and on other related issues, the Commission announced its intention to hold a public forum on July 15, 1996, to further discuss these issues with the affected interests. In order to provide sufficient time for interested parties to compile factual material in response to the request for comments, the Commission has extended until July 29, 1996, the date by which comments must be received. In addition, in order to provide participants with sufficient time to review the comments submitted in response to the April 30 notice, the Commission has changed the date of the public forum to October 3, 1996.

DATES: Notification of interest in participating in the public forum must be submitted on or before July 29, 1996. Comments must be received by close of business on July 29, 1996. The public forum will be held in Washington, D.C. on October 3, 1996, from 9 a.m. until 5 p.m.

ADDRESSES: Notification of interest in participating in the public forum should be submitted in writing to Carole I. Danielson, Division of Marketing Practices, Federal Trade Commission, Sixth and Pennsylvania Ave., N.W., Washington, D.C. 20580. The public forum will be held at the Federal Trade Commission, Sixth and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Carole I. Danielson (202) 326–3115, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: In a petition dated November 3, 1995, the Consumer Coalition requested that the FTC either initiate a rulemaking proceeding or an enforcement action in connection with the industry practice of allegedly reselling vehicles bought back because of defects without disclosure to the used car purchaser. The petitioners allege that auto manufacturers, their dealers and others are engaged in a pattern of conduct (which the petitioners term "lemon laundering") intended to conceal material information about the vehicle's safety and quality history from purchasers of vehicles purchased from consumers as a result of alleged defects. The petitioners also allege that this pattern of conduct often involves transporting the repurchased vehicles across state lines to avoid the operation of state law protections. On April 30, 1996, the Commission published a request for comment on the issues raised by the petition. (A copy of the petition was appended to the notice.) The comment period closes on June 28, 1996. The Commission also announced in the April 30 notice its intention of holding a public forum on July 15, 1996, to allow Commission staff an opportunity to discuss these issues with the various affected interests. The notice set forth the criteria by which such affected interests would be chosen.

Many of the prospective participants in the public forum have expressed concerns that there will not be sufficient time to complete compilation of the requested information before June 28 and have asked that the comment period be extended an additional 30 days to complete their data collection. The Commission is mindful of the need to deal with this matter expeditiously. However, the Commission is also aware that the issues raised are complex and welcomes as much substantive input as possible in order to facilitate its deliberations.

Accordingly, the Commission has decided to extend the comment period to July 29, 1996, and to postpone the public forum until Thursday, October 3, 1996. This extension will provide sufficient time for commenters to complete their data collection and, thereafter, will provide all parties with an opportunity to review the record and to prepare fully for further examination of the issues raised by the April 30 notice. Parties interested in participating in the forum must notify Commission staff by July 29, 1996. Prior to the forum, parties selected will be provided with copies of the comments received from the other participants in response to the April 30 notice.

List of Subjects

Used cars, Warranties, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–16848 Filed 7–1–96; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 20]

Federal Travel Regulation; Reimbursement of Higher Actual Subsistence Expenses for Official Travel to Oshkosh, WI

AGENCY: Office of Policy, Planning and Evaluation, GSA.

ACTION: Notice of bulletin.

SUMMARY: The attached bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to Oshkosh (Winnebago County), Wisconsin. The Secretary of Transportation (DOT) requested establishment of the increased rate to accommodate employees who perform temporary duty in Oshkosh and who experience a temporary but significant increase in lodging costs due to the escalation of lodging rates during the annual Experimental Aircraft Association Convention and Show in Oshkosh.

EFFECTIVE DATES: This special rate applies to claims for reimbursement during the period July 27 through August 10, 1996.

FOR FURTHER INFORMATION CONTACT: Devoanna R. Reels, General Services Administration, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION: The Administrator of General Services, pursuant to 41 CFR 301–8.3(c) and at the request of the Secretary of Transportation, has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to Oshkosh (Winnebago County), Wisconsin, for travel during the period July 27 through August 10, 1996. The attached GSA Bulletin FTR 20 is issued to inform agencies of the establishment of this special actual subsistence expense ceiling.

Dated: June 21, 1996

Becky Rhodes,

Deputy Associate Administrator, Office of Transportation and Personal Property.

Attachment

[GSA Bulletin FTR 20]
June 21, 1996.

To: Heads of Federal agencies
Subject: Reimbursement of higher actual subsistence expenses for official travel to Oshkosh (Winnebago County), Wisconsin.

1. *Purpose.* This bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to Oshkosh (Winnebago County), Wisconsin, due to the escalation of lodging rates during the annual Experimental Aircraft Association Convention and Show held there. This special rate applies to claims for reimbursement covering travel during the period July 26 through August 10, 1996.

2. *Background.* The Federal Travel Regulation (FTC) (41 CFR chapters 301–304) part 301–8 permits the Administrator of General Services to establish a higher maximum daily rate for the reimbursement of actual subsistence expenses of Federal employees on official travel to an area within the continental United States. The head of an agency may request establishment of such a rate when special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period. The Secretary of Transportation requested establishment of such a rate for Oshkosh to accommodate employees who perform temporary duty there and experience a temporary but significant increase in lodging costs due to the escalation of lodging rates during the annual Experimental Aircraft Association Convention and Show. These circumstances justify the need for higher subsistence expense reimbursement in Oshkosh during the designated period.

3. *Maximum rate and effective date.* The Administrator of General Services, pursuant to 41 CFR 301–8.3(c), has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to Oshkosh (Winnebago County), Wisconsin for travel during the period July 27 through August 10, 1996. Agencies may approve actual subsistence expense reimbursement not to exceed $167 ($137 maximum for lodging and a $30 allowance for meals and incidental expenses) for official travel to Oshkosh (Winnebago County), Wisconsin, during this time period.

4. *Expiration date.* This bulletin contains information of a continuing nature as it relates to the processing of travel reimbursement claims and will remain in effect until canceled.

5. *For further information contact.* Devoanna R. Reels, General Services Administration, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–1538.

[FR Doc. 96–16798 Filed 7–1–96; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–460]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Participating Physician or Supplier Agreement, HCFA 460; *Form No.:* HCFA 460; *Use:* The HCFA 460 is completed by nonparticipating physicians and suppliers if they choose to participate in Medicare Part B. By signing the agreement, the physician or supplier agrees to take assignment on all Medicare claims. To take assignment means to accept the Medicare allowed amount as payment in full for the services they furnish and to charge the beneficiary no more than the deductible and coinsurance for the covered service. In exchange for signing the agreement, the physician or supplier receives a significant number of program benefits not available to nonparticipating physicians and suppliers. The information is needed to know to whom to provide these benefits. *Frequency:* Once, unless re-enrolled; *Affected Public:* Individuals or Households, and Business or other for-profit; *Number of Respondents:* 70,000; *Total Annual Responses:* 70,000; *Total Annual Hours Requested:* 17,500.

To request copies of the proposed paperwork collections referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: June 25, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–16843 Filed 7–01–96; 8:45 am]

BILLING CODE 4120–03–P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* Information Collection Requirements in 42 CFR 473.18 (a) and (b), 473.34 (a) and (b), 473.36 (a) and (b), and 473.42 (a), Peer Review Organization (PRO) Reconsideration and Appeals; *Form No.:* HCFA–R–72; *Use:* These regulations contain procedures for PRO's to use in reconsideration of initial determinations. The information requirements contained in these regulations are on PROs to provide information to parties requesting a reconsideration review. These parties will use the information as guidelines for appeal rights in instances where issues are still in dispute; *Frequency:* On occasion; *Affected Public:* Business or other for profit; *Number of Respondents:* 53; *Total Annual Responses:* 15,670; *Total Annual Hours:* 3,578.

2. *Type of Information Collection Request:* Reinstatement, without change, of previously approved collection for

which approval has expired; *Title of Information Collection:* Request for Enrollment in Supplementary Medical Insurance; *Form No.:* HCFA–4040; *Use:* The HCFA–4040 is used to establish entitlement to Supplementary Medical Insurance by Beneficiaries not eligible under Part A of Title XVIII or Title II of the Social Security Act. The HCFA–4040SP is the Spanish edition of this form; *Frequency:* One time only; *Affected Public:* Individuals and households, Federal government, State, local, or tribal governments; *Number of Respondents:* 10,000; *Total Annual Responses:* 10,000; *Total Annual Hours:* 2,500.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Certification as a Rural Health Clinic, Rural Health Clinic Survey Report Form; *Form No.:* HCFA–29, 30; *Use:* The form HCFA–29 "Request for Certification as a Rural Health Clinics" is used by facilities to apply to participate in the Medicare program. The form HCFA–30 "Rural Health Clinic Survey Report Form, is used by State survey agencies to record data needed to determine compliance with the Federal requirements; *Frequency:* Annually; *Affected Public:* State, local or tribal governments; *Number of Respondents:* 390; *Total Annual Responses:* 390; *Total Annual Hours:* 582.

4. *Type of Information Collection Request:* Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* Quarterly Showing; *Form No.:* HCFA–R–41; *Use:* This form is used by State Medicaid agencies to list participating health care facilities and the dates the State agencies reviewed the facilities. The lists are required to assure the existence of an effective utilization (of services) control program, as required by law and regulation, to avoid a penalty; *Frequency:* Quarterly; *Affected Public:* State, local or tribal governments; *Number of Respondents:* 47; *Total Annual Responses:* 188; *Total Annual Hours:* 9,212.

5. *Type of Information Collection Request:* Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* Quarterly Showing Validation Survey; *Form No.:* HCFA–9050; *Use:* Reporting entities may be required to submit lists of Medicaid beneficiaries residing in a select number of institutions. State Medicaid agencies may also be required to submit procedures for conducting inspection of care reviews and other documentation necessary to validate the Quarterly Showing reports. The listings are required to determine those patients for which the State is currently responsible for their care. This part of the operation to determine that states have an effective utilization control program; *Frequency:* Annually; *Affected Public:* State, local or tribal governments; *Number of Respondents:* 47; *Total Annual Responses:* 8; *Total Annual Hours:* 376.

6. *Type of Information Collection Request:* Reinstatement, with change, of previously approved collection for which approval has expired; *Title of Information Collection:* Medicare Managed Care Disenrollment Form; *Form No.:* HCFA–566; *Use:* This form is used to process a beneficiaries request of disenrollment action from a health maintenance organization or competitive medical plan and to update the beneficiaries' health insurance master record; *Frequency:* On occasion; *Affected Public:* Individuals and households, Business or other for profit, not for profit institutions, Federal government, State, local, or tribal governments; *Number of Respondents:* 24,000; *Total Annual Responses:* 24,000; *Total Annual Hours:* 792.

7. *Type of Information Collection Request:* New collection; *Title of Information Collection:* "Maximizing the Effective Use of Telemedicine: A study of the Effects, Cost Effectiveness and Utilization Patterns of Consultations via Telemedicine."; *Form No.:* HCFA–R–197; *Use:* The major objective of this study is to evaluate the medical and cost effectiveness of three different categories of telemedicine services; *Frequency:* Other (periodically); *Affected Public:* Individuals and households, Business or other for profit, not for profit institutions; *Number of Respondents:* 1819; *Total Annual Responses:* 11,095; *Total Annual Hours:* 1,564.

8. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Business Proposal Formats for Utilization and Quality Control Peer Review Organizations (PROs); *Form No.:* HCFA–718–721; *Use:* Submission of proposal information by current PROs and other bidders, according to the business proposal instructions, will satisfy HCFA's need for consistent, and verifiable data with which to validate contract proposals; *Frequency:* Other (Tri-annually); *Affected Public:* Business or other for profit, not for profit institutions; *Number of Respondents:* 20; *Total Annual Responses:* 23; *Total Annual Hours:* 450.

9. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Request for Accelerated Payments; *Form No.:* HCFA–9042; *Use:* These forms are used by fiscal intermediaries to access a provider's eligibility for accelerated payments. Such payment is granted if there is an unusual delay in processing bills. *Frequency:* On occasion; *Affected Public:* Business or other for-profit and Not for-profit institutions; *Number of Respondents:* 854; *Total Annual Responses:* 854; *Total Annual Hours Requested:* 427.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov , or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: John Burke, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 25, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–16844 Filed 7–1–96; 8:45 am]

BILLING CODE 4120–03–P

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the SAMHSA Reports Clearance Officer on (301) 443–0525.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; © ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Evaluation of Model Programs Targeting Substance Abusing Pregnant and Postpartum Women and their Infants —Revision—Data are collected from clients, comparison group women, and staff on interventions received and maternal and child outcomes as part of an evaluation of model projects serving substance abusing pregnant and postpartum women and their infants. The model projects are funded by the Center for Substance Abuse Prevention, SAMHSA. This evaluation will assist CSAP in accomplishing national health objectives related to maternal and child health, especially those directly related to maternal substance abuse and its potential effects on birth outcomes and child development. In this proposed revision of an ongoing study, the data collection instruments remain unchanged. Sample sizes are somewhat smaller than originally anticipated resulting in a reduced annual burden. The estimated revised burden is shown below.

Number of respondents	Responses per respondent	Hours per response	Total burden hours
823	5.48	0.24	1082

Send comments to Deborah Trunzo, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 25, 1996.

Richard Kopanda

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 96–16831 Filed 7–01–96; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4100–N–01]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: September 3, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing and Urban Development, 451–7th Street SW., Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ann M. Sudduth, Telephone number (202) 708–0740 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Request for Occupied Conveyance.

OMB Control Number: 2502–0268.

Description of the need for the information and the proposed use: Information collected by this form provides information HUD needs to determine if the occupant is financially able to pay the fair market rent and/or whether a member of the immediate family residing in the residence suffers from a temporary, permanent or long-term illness or injury which would be aggravated by the process of moving. HUD field office personnel use this information to base its determination as whether to approve or deny occupied conveyance.

Agency form numbers: HUD–9539.

Members of affected public: Individuals or households.

An estimation of the total numbers of hours needed to prepare the information collection is 17,387.50, number of respondents is 11,025, frequency response is one-time, and the hours of response is 4,012.50.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 21, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–16789 Filed 7–1–96; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Environmental Policy Act: Implementing Procedures (516 DM 6, Appendix 9)

AGENCY: Department of the Interior.

ACTION: Notice of a proposed addition to the Department of the Interior's Categorical Exclusions for the Bureau of Reclamation.

SUMMARY: This notice announces a proposed addition to the categorical exclusions included in Departmental Manual 516 DM 6, appendix 9, that lists actions excluded from the National Environmental Policy Act of 1969 (NEPA) procedures for the Bureau of Reclamation (Reclamation). The proposed categorical exclusion pertains to transfer of title to single-purpose facilities within Reclamation projects to non-Federal entities.

DATES: Comments are due August 1, 1996.

ADDRESSES: Send comments to: Dr. Darrell Cauley, Manager, Environmental and Planning Coordination Office, Bureau of Reclamation, PO Box 25007, Denver Federal Center, Denver, CO 80225–0007.

FOR FURTHER INFORMATION CONTACT: Dr. Willie R. Taylor, Director, Office of Environmental Policy and Compliance; telephone (202) 208–3891. For Reclamation, Dr. Darrell Cauley, Manager, Environmental Planning and Coordination Office, telephone (303)–236–9336 extension 222.

SUPPLEMENTARY INFORMATION: The Reclamation program was founded in 1902. Its original mission was one of civil works construction to develop the water resources of the arid Western United States to promote the settlement and economic development of that region. The results of that work are well known in the hundreds of projects that were developed to store and deliver water. That substantial infrastructure made Reclamation the largest wholesale supplier of water in the United States, the sixth largest electric power generator, and the manager of 45 percent of the surface water in the Western United States. Many of these projects were constructed at a time when there were no local communities and utilities. Today much of the West is settled and is, in some respects, the most urbanized region of the country. Reclamation owns and operates public utility facilities which, if located in other parts of the country, would likely be owned, operated, and funded by publicly regulated private corporations or local government agencies. Reclamation's policy for decades has been to transfer operation and maintenance of projects to local entities where and when appropriate, while retaining title to the project facilities in Federal ownership.

As part of the second phase of the National Performance Review (REGO II), Reclamation is undertaking a program to transfer title of facilities that could be efficiently and effectively managed by non-Federal entities and that are not identified as having national importance. This effort is a recognition of Reclamation's commitment to a Federal Government that works better and costs less. The transfer of title will divest Reclamation of the responsibility for the operation, maintenance, management, regulation of, and liability for the project. The transfer of title to single-purpose facilities within a project will, in effect, sever Reclamation's ties with that facility. Reclamation recognizes that the complete severance of the relationship between Reclamation and the transferee may not be possible in all instances.

NEPA requires that when a major Federal action may have significant impacts on the quality of the human environment, a statement be prepared [section 102(2)(C)] detailing the impacts and effects to the human environment associated with the Federal action. When it is known in advance that a certain category of actions will not have a significant effect on the human environment, that category of actions may be excluded from further NEPA requirement (40 CFR 1508.4).

Introduction to Proposal

It is the intent of Reclamation to transfer title and responsibility for certain single-purpose facilities within projects, when and where appropriate, to entities who are currently operating and maintaining the facilities or managing the lands. The Department of the Interior (Department) proposes an additional categorical subparagraph 9.4.A(4) in appendix 9 in the Department Manual (516 DM 6). The excluded title transfer action would apply to a relatively small number of single-purpose facilities within projects where the transferees agree to make no significant changes in operations and maintenance, and/or land or water use after transfer. The proposed exclusion in a category of actions that does not individually or cumulatively have a significant effect on the quality of the human environment. If any of the proposed title transfers involve any of the following, an environmental assessment (EA) and/or environmental impact statement (EIS) will be prepared in accordance with Reclamation's NEPA Handbook.

1. If the title transfer action involves any of the Departmental exceptions to the categorical exclusions listed in Departmental Manual 516 DM 2, Appendix 2.

2. If the title transfer action would result in significant changes in the operation and maintenance of the facilities or lands transferred, or land and water use in the foreseeable future.

3. If the title transfer action involves any controversy or unresolved issue associated with: protection of interstate compacts and agreements; meeting the Secretary of the Interior's (Secretary) Native American trust responsibilities; fulfilling treaty and international agreement obligations; or protection of the public aspects of the project.

4. Other criteria as determined by Reclamation to warrant an EA or EIS.

Appendix 8 must be interpreted in conjunction with the Department's NEPA procedures (516 DM 1–6) and the Council on Environmental Quality regulations implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). The Department's procedures were published in the **Federal Register**, 45 FR 27541, Apr. 23, 1980, and revised in 49 FR 21437, May 21, 1984.

Proposed Categorical Exclusion A. (4)

Transfer of title to single-purpose facilities within Reclamation projects, to entities who are currently operating and maintaining the facilities or managing the lands, and who would agree to make no significant changes in operation and maintenance, and/or land and water use within the foreseeable future.

Eligibility for this categorical exclusion would be determined by Reclamation based on results of on-site inspections, surveys, and other methods of evaluation and documentation prepared by Reclamation to determine the presence or absence of the exceptions. A public involvement process will be utilized as part of the title transfer process. Details of this determination process would be added to Reclamation's NEPA Handbook. Projects that do not fully meet any of these exceptions would not qualify for this categorical exclusion.

Discussion of Exceptions

A title transfer action involving one of the Departmental exceptions to categorical exclusions will require the preparation of an environmental assessment. Briefly, the list of exceptions contains criteria including adverse effects on public health or safety, parks, recreation or refuge lands, wilderness areas, ecologically sensitive areas, wild and scenic rivers, wetlands, floodplains, properties listed or eligible for listing on the National Register of Historic Places, and species listed or proposed to be listed on the List of Endangered or Threatened Species, or on designated Critical Habitats for these species, cultural resources, and Indian Trust Assets. Also, included in the Departmental exceptions to categorical exclusions are concerns related to environmental controversy, uncertainty, individually insignificant but cumulatively significant environmental effects, precedent setting decisions about future actions, and compliance with Federal, State, Tribal or local environmental laws, executive orders, and requirements. The complete list of Departmental exceptions will be referred to when applying the categorical exclusion.

Reclamation's general exceptions from the categorical exclusion include title transfer action that incorporates problems or activities which will require the preparation of an environmental assessment. Single-purpose facilities within projects which would be ineligible for the categorical exclusion are those involving the following:

1. Unresolved issues involving the future operation and maintenance of the transferred facilities and lands. Potential transferees must be able to demonstrate the technical capability to maintain and operate the facilities and lands on a permanent basis and an ability to meet financial obligations associated with the transferred assets. Operations and maintenance of the facilities must not change in the foreseeable future.

2. Unresolved issues involving future use of lands or water associated with the transferred facilities and lands. Potential transferees must agree not to change the use of the lands or water associated with the transferred facilities for the foreseeable future.

3. Unresolved issues involving protection of interstate compacts and agreements. All transfers must be willing to assume responsibilities for commitments made under existing interstate compacts and agreements.

4. Unresolved issues involving meeting the Secretary's Native American trust responsibilities. All transfers must ensure the United States' Native American trust responsibilities are satisfied. In addition, outstanding Native American claims that are directly pending before the Department and that would be directly affected by the proposed transfer will be resolved prior to transfer.

5. Unresolved issues involving fulfilling treaty and international agreement obligations.

6. Unresolved issues involving protection of the public aspects of the project or facilities. Potentially affected State, local, and Tribal Governments, appropriate Federal agencies, and the public will be notified of the initiation of discussions to transfer title and will have (1) the opportunity to voice their views and suggest options for remedying any problems, and (2) full access to relevant information, including proposals, analyses, and reports related to the proposed transfer. The title transfer process will be carried out in an open and public manner. Once Reclamation has negotiated an agreement with a transferee, Reclamation will seek legislation specifically authorizing the negotiated terms of the transfer of each facility.

To be considered, any comments on this proposed addition to the list of categorical exclusions in the Departmental Manual must be received by August 1, 1996, at the location listed under **ADDRESSES** above. Comments received after that date will be considered only to the extent practicable.

Outline: Chapter 6 (516 DM 6) Managing the NEPA Process, Appendix 9—Bureau of Reclamation, 9.4 Categorical Exclusions.

Dated: June 25, 1996.

Kenneth D. Naser,

Acting Director, Office of Environmental Policy and Compliance.

516 DM 6, Appendix 9—Bureau of Reclamation, 9.4 Categorical Exclusions

* * * * *

A. * * *

4. Transfer of title to single-purpose facilities within Reclamation projects to entities who are currently operating and maintaining the facilities or managing the lands, and who would agree to make no significant changes in operation and maintenance, and/or land and water use within the foreseeable future.

[FR Doc. 96–16654 Filed 7–1–96; 8:45 am]

BILLING CODE 4310–RF–M

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Kootenai River Population of White Sturgeon in Idaho and Montana for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Kootenai River population of white sturgeon. The Kootenai River white sturgeon represents a land-locked population found in the Kootenai River from Kootenai Falls, Montana, downstream through Kootenay Lake to Corra Linn Dam on the lower West Arm of Kootenay Lake, British Columbia. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 30, 1996, to receive consideration by the Service.

ADDRESSES: The draft recovery plan is available for public inspection by appointment during normal business hours at either the Service's Upper Columbia River Basin Office, 11103 East Montgomery Drive, Suite #2, Spokane, Washington, 99206 or the Snake River Basin Office, 4696 Overland Road, Room 576, Boise, Idaho, 83705. Persons wishing to review the draft recovery plan may obtain a copy by contacting the Supervisor, Snake River Basin Office, at the above address or by calling (208) 334–1931. Written comments and materials regarding the plan should be sent to the Service's, Snake River Basin Office, attention Recovery Team Leader, at the above Boise address. Comments and materials received are available on request for public inspection by appointment at the Snake River Basin Office.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink or Steve Duke, at the Service's, Snake River Basin Office, 4696 Overland Road, Room 576, Boise, Idaho 83705. (208) 334–1931.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting and delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Kootenai River white sturgeon became isolated from other white sturgeon in the Columbia River basin during the last glacial age (approximately 10,000 years ago). Since then, the population has adapted to the pre-development habitat conditions in the Kootenai River drainage. Historically, spring runoff peaked during the first half of June in the Kootenai River upstream of the existing Libby Dam in Montana. Runoff from

lower elevations between Libby Dam and Bonners Ferry, Idaho, was somewhat earlier, peaking in late May. Combined flows were often in excess of 1700 cubic meters per second (m^3/s) [60,000 cubic feet per second (cfs)]. During the remainder of the year, river flows declined to basal conditions of 113 to 226 m^3/s (4,000 to 8,000 cfs). Annual flushing events re-sorted river sediments providing a clean cobble substrate conducive to insect production and sturgeon egg incubation. Side channels and low-lying deltaic marsh lands were unimpounded at this time, providing productive, low velocity backwater areas. Nutrient delivery in the system was unimpeded by dams and occurred primarily during spring runoff. Floodplain ecosystems like the Kootenai River are characterized by seasonal floods that promote the exchange of nutrients and organisms among a mosaic of habitats and thus enhance biological productivity.

Modification of the Kootenai River white sturgeon's habitat by human activities has changed the natural hydrograph of the Kootenai River, altering white sturgeon spawning, egg incubation, nursery, and rearing habitats, and reducing overall biological productivity. These factors have contributed to a general lack of recruitment in the white sturgeon population over the past 22 years.

Recovery of the Kootenai River white sturgeon is contingent upon re-establishing natural recruitment, minimizing additional loss of genetic variability to the population, and successfully mitigating biological and physical habitat changes caused by the construction and operation of Libby Dam. This draft recovery plan proposes conservation actions to benefit white sturgeon within the entire Kootenai River watershed in Canada and the United States. However, recovery tasks proposed for the Canadian portion of the white sturgeon's range are only recommendations since the Act does not impose any restrictions or commitments on Canada. The draft recovery plan also proposes a strategy for improving coordination and cooperation between the United States and Canada on the operation of Libby Dam with the operation of other hydroelectric facilities within the Kootenai River basin and elsewhere in Canada.

The draft plan was developed by a recovery team composed of representatives of the Kootenai Tribe of Idaho, Idaho Department of Fish and Game, Montana Fish, Wildlife and Parks, Bonneville Power Administration, U.S. Army Corps of Engineers, Canadian Department of Fisheries and Oceans, British Columbia Ministry of Environment, Lands and Parks, and the Service. Short-term recovery objectives proposed are: a) prevent extinction and b) begin to re-establish successful natural recruitment to the Kootenai River population of white sturgeon. Proposed recovery actions include providing additional Kootenai River flows necessary for natural recruitment and using aquaculture, i.e. hatchery propagation, to prevent extinction. The long-term objectives are to provide suitable habitat conditions to ensure a self-sustaining Kootenai River population of white sturgeon. Specific delisting criteria are not determinable or proposed at this time.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 25, 1996.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, OR.

[FR Doc. 96–16806 Filed 7–1–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[CO–017–1610–00]

Availability of White River Resource Area's Proposed Management Plan and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (40 CFR 1505.2), the Department of the Interior, Bureau of Land Management (BLM), has prepared a Proposed Resource Management Plan and Final Environmental Impact Statement (PRMP/FEIS) for the White River Resource Area. The PRMP/FEIS describes and analyzes the proposed management for 1,455,900 acres of public land and 365,000 acres of federal mineral estate in portions of Rio Blanco, Moffat and Garfield Counties in western Colorado.

Decisions generated as a result of this planning process will supersede and/or incorporate decisions of earlier land use plans, including the 1975 White River Management Framework Plan, the 1981 White River Resource Area Coal Amendment to the White River Management Framework Plan, the 1981 White River Resource Area Grazing Management Environmental Impact Statement, and the 1987 White River Resource Area Piceance Basin Resource Management Plan and Environmental Impact Statement.

DATES: Protests of the proposed plan must be received by August 5, 1996.

ADDRESSES: Written protests on the PRMP/FEIS should be addressed to: Director (480), Bureau of Land Management, Resource Planning Team, 1849 "C" Street, NW., Washington, DC 20240.

Copies of the PRMP/FEIS will be available for review at the following locations: (1) Bureau of Land Management, White River Resource Area Office, 73544 Highway 64, Meeker, Colorado 81641; (2) Bureau of Land Management, Craig District Office, 455 Emerson Street, Craig, Colorado 81625; and (3) Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Denver, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Bill Hill, RMP Team Leader, White River Resource Area Office, Meeker, Colorado 81641, (970) 878–4160.

SUPPLEMENTARY INFORMATION: The PRMP/FEIS addresses issues identified through public scoping and internal Bureau of Land Management review, including: (1) Salinity in the Colorado River; (2) mineral development throughout the resource area; (3) the spread of noxious and problem weeds; (4) reintroduction of the black-footed ferret; (5) unrestricted motorized travel throughout the resource area; and (6) habitat competition among wild horses, livestock and big game. Four alternatives were analyzed in the Draft RMP/EIS that was published in October 1994. The Proposed Resource Management Plan and Final Environmental Impact Statement combines ecosystem concepts, public comments, and components from the four alternatives described in the Draft.

Some of the major decisions developed in the proposed management plan deal with: (1) Making mineral resources available for exploration, leasing and development, in compliance with environmental laws, regulations and policies; (2) protecting sensitive resources by designating certain areas as closed or limited to off highway vehicle use until a subsequent travel management plan can be developed; (3) releasing the river and stream segments inventoried for Wild and Scenic River (WSR) Management from further WSR consideration; (4) managing wild horse herds in the Piceance-East Douglas Herd Management Area to maintain 95 to 140 head of horses; and (5) designating eleven additional areas as Areas of Critical Environmental Concern (ACEC).

Public participation has occurred throughout the RMP/EIS process starting with a Federal Register Notice of Intent to prepare a RMP in October 1990. Since that time, several open houses, public meetings, and public hearings were held to solicit comments and ideas. Public comments provided throughout the process were considered in the development of the document.

Robert Schneider,

Acting District Manager, Craig, CO.

[FR Doc. 96–16799 Filed 7–1–96; 8:45 am]

BILLING CODE 4310–BY–M

[NM–070–5101–00–018); NMNM 96322]

Notice of Right-of-Way Application; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: An application, serialized as NMNM 96322, was received for a 36 mile right-of-way for a 30-inch diameter pipeline.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973, (37 Stat. 576), Williams Gas Processing Company (WGP) has applied for a right-of-way serialized as NMNM 96327 to construct 36 miles of 30-inch diameter natural gas pipeline across public land in San Juan and Rio Arriba Counties, New Mexico. This is part of a project that will loop existing lines and/or roads most of route (74%). In May 1996, WFS's Trunk S pipeline failed along a reach of its alignment beneath Navajo Lake. The failure of the line has interrupted service to 31 oil/gas producers in the San Juan Basin which effects the movement of approximately 210–235 MMSCF/D of natural gas and liquid recovery product. A land re-route is proposed to reconnect affected gas producers south of Navajo Lake to the Ignacio Plant in southwestern Colorado. The pipeline is urgently needed by WGP to meet contractual obligations with numerous producers affected by the Trunk S pipeline failure. The proposed line crosses the following lands in San Juan County.

New Mexico Principal Meridian

T. 30 N., R. 6 W.,
Sec. 17, NW¼NW¼;
Sec. 18, N½NE¼, NE¼NW¼, S½NW¼, NW¼SW¼.
T. 30 N., R. 7 W.,
Sec. 13, NE¼SW¼. S½SW¼, N½SE¼;
Sec. 14, S½SE¼;
Sec. 15, NE¼SW¼; W½SE¼;
Sec. 17, Lot 8;
Sec. 19, Lots, 10, 11, NE¼SW¼;
Sec. 20, Lot 2, E½NW¼, NW¼SW¼;
Sec. 21, NW¼NE¼, NE¼NW¼;
Sec. 22, N½NE¼, NW¼NW¼;
T. 30 N., R. 8 W.,
Sec. 5, lots 3, 4, SW¼NW¼;
Sec. 6, lot 11, E½SE¼;
Sec. 7, NE¼SW¼;
Sec. 14, SW¼SE¼;
Sec. 19, lot 8, SE¼SE¼;
Sec. 20, lots 7, 8, 9, S½NE¼;
Sec. 21, SW¼NW¼, N½S½;
Sec. 22, NE¼NE¼, S½N½, NW¼SW¼;
Sec. 23, N½N½;
Sec. 24, SW¼NE¼, N½NW¼, SE¼NW¼, N½SE¼, SE¼SE¼.
T. 30 N., R. 9 W.,
Sec. 12, NE¼SE¼, S½SE¼;
Sec. 13, NE¼NE¼, W½E½;
Sec. 24, lots 2, 3, 5–8 inclusive.
T. 31 N., R. 8 W.,
Sec. 5, SW¼NE¼, N½SE¼;
Sec. 8, E½E½;
Sec. 17, E½E½;
Sec. 28, SW¼NW¼, W½SW¼;
Sec. 29, E½E¼;
Sec. 33, W½NW¼.
T. 32 N., R. 7 W.,
Sec. 17, lots 4–7, inclusive;
Sec. 18, lots 2, 3, E½SW¼NE¼, E½NW¼SW¼NE¼, W½SE¼NW¼, SE¼NW¼.
T. 32 N., R. 8 W.,
Sec. 13, NE¼SW¼, S½SW¼, N½SE¼;
Sec. 14, S½SE¼;
Sec. 22, NE¼SE¼, S½SE¼;
Sec. 23, NW¼NE¼, NE¼NW¼, S½NW¼, NW¼SW¼;
Sec. 27, NW¼NE¼, NE¼NW¼, SW¼NW¼, W½SW¼;
Sec. 28, SE¼SE¼;
Sec. 33, N½NE¼, SE¼NW¼, NW¼SW¼.

The purpose of this notice is to inform the public that the Bureau will be deciding whether the right-of-way should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, 1235 La Plata Highway, Farmington, New Mexico 87401 within 14 days of publication of this notice. Additional information can be obtained by contacting Mary Jo Albin at (505) 599–6332.

Dated: June 25, 1996.

Robert Moore,

Acting Assistant District Manager for Resources.

[FR Doc. 96–16802 Filed 7–1–96; 8:45 am]

BILLING CODE 4310–FB–M

[MT–070–96–1430–01; MTM–83735]

Notice of Realty Action; Proposed Sale of Public Land; Montana

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice.

SUMMARY: The following land has been found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, U.S.C. 1713), at not less than estimated fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

Principle Meridian, Montana

T. 7 N., R. 13 W.
Sec. 30, Lot 23.

Containing approximately 1.99 acres.

This land is being offered by direct sale to David Harris, Philipsburg, MT, and will resolve a long standing inadvertent unauthorized occupancy of the land. It has been determined that the reservation of minerals is interfering with appropriate nonmineral development of the lands; therefore, mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

The patent, when issued, will contain certain reservations to the United States and will be subject to valid existing rights. Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the Garnet Resource Area Office, Bureau of Land Management, 3255 Ft. Missoula Rd., Missoula, MT 59801.

FOR FURTHER INFORMATION CONTACT: Jim Ledger, Realty Specialist, Garnet Resource Area, at (406) 329–3914.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

For a period of 45 days from the date of issuance of this notice, interested parties may submit comments to the Area Manager, Garnet Resource Area, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: June 4, 1996.

W. Delon Potter,

Acting Area Manager.

[FR Doc. 96–16800 Filed 7–1–96; 8:45 am]

BILLING CODE 4310–DN–P

[CA-066-06-1610-00]

Proposed South Coast Resource Management Plan Amendment, Riverside County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) will prepare an environmental assessment addressing a proposed amendment to the South Coast Resource Management Plan affecting public lands within Riverside County. Under the proposed plan amendment, parcels previously available only for exchanges to acquire land in the Potrero Area of Critical Environmental Concern (ACEC) could also be used to acquire habitat for the Stephens' Kangaroo Rat, consistent with the Habitat Conservation Plan for the Stephens' Kangaroo Rat. Lands that are acquired under these exchanges would be managed in accordance with the Habitat Conservation Plan, and the plan amendment would also address such management issues as designation of a habitat management area, right of way avoidance area and mineral entry conflicts.

DATES: Citizens are requested to help identify significant issues related to the proposed plan amendment. Written comments must be submitted no later than August 1, 1996, to: Ms. Julia Dougan, Area Manager, Bureau of Land Management Palm Springs—South Coast Resource Area, P.O. Box 2000, North Palm Springs, CA 92258–2000. Anyone submitting comments will receive a copy of the proposed plan amendment and environmental assessment when available.

FOR FURTHER INFORMATION CONTACT: Ms. Elena Misquez, Bureau of Land Management Palm Springs—South Coast Resource Area, P.O. Box 2000, North Palm Springs, CA 92258–2000; telephone (619) 251–4826.

SUPPLEMENTARY INFORMATION: The South Coast Resource Management Plan designated 4,957 acres of federal land as available only for exchanges to acquire land at the Potrero ACEC. Subsequently, in 1996, the Habitat Conservation Plan for the Stephens' Kangaroo Rat established a regional system of seven core reserves, but did not include the Potrero ACEC as a core reserve. The proposed plan amendment would give BLM the flexibility to exchange federal lands to acquire lands in and around the seven core reserves, while retaining the option of acquiring lands in the Potrero ACEC. Once the acquisition objectives of the Habitat Conservation Plan for the Stephens' Kangaroo Rat have been met, the federal lands would be available for exchanges to meet Resource Condition Objectives in the South Coast Resource Management Plan. (40 Code of Federal Regulations (CFR) 1501.7 and 43 CFR 1610.2).

Julia Dougan,

Area Manager.

[FR Doc. 96–16756 Filed 7–1–96; 8:45 am]

BILLING CODE 4310–40–P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 22, 1996. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, PO Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 17, 1996.

Carol D. Shull,

Keeper of the National Register.

Arkansas

Faulkner County, Dunaway, O. L., House, 920 Center St., Conway, 96000797
Harton, D. O., House, 607 Davis St., Conway, 96000796

California

Los Angeles County, Bullock's Pasadena, 401 S. Lake Ave., Pasadena, 96000776
Charmont Apartments, 330 California Ave., Santa Monica, 96000777
Madera County, Villa Riviera, 800 E. Ocean Blvd., Long Beach, 96000778

Connecticut

Fairfield County, Hurlbutt Street School, 157 Hurlbutt St., Wilton, 96000774
Round Hill Historic District, Roughly, jct. of John St. and Round Hill Rd., Greenwich, 96000779
Middlesex County, Wadsworth Estate Historic District, 15, 30, 33, 59, 73, 89 Laurel Grove Rd., Wadsworth Falls State Park, and 421 Wadsworth St., Middletown, 96000775
New London County, Yantic Woolen Company Mill, 6 Franklin Rd., Norwich, 96000780
Windham County, Little Haddam Historic District, Roughly bounded by E. Haddam Rd., Orchard Rd., and Town St., East Haddam, 96000783
Millington Green Historic District, Roughly bounded by Millington, Tater Hill, Haywardville, and Old Hopyard Rds., East Haddam, 96000782
Wickham Road Historic District, Roughly, jct. of Wickham and Geoffrey Rds., East Haddam, 96000781

Florida

Orange County, Griffin Park Historic District, Roughly bounded by Avondale and S. Division Aves., Carter St., and I–4, Orlando, 96000784

Indiana

Jennings County, Benville Bridge, US Army Proving Ground, approximately 1 mi. E off Perimeter Rd., San Jacinto vicinity, 96000759
Edward's Ford Bridge, US Army Jefferson Proving Ground, off Northwest Rd., Nebraska vicinity, 96000788
Ripley County, Collin's Ford Bridge, US Army Proving Ground, approximately .75 mi. W of New Marion, New Marion vicinity, 96000787
Marble Creek Bridge, US Army Jefferson Proving Ground, approximately .75 mi. W of jct. of G and W. Recovery Rds., San Jacinto vicinity, 96000785
Old Timbers, US Army Jefferson Proving Ground, approximately .5 mi. SE of jct. of K Rd. and Northeast Exit, Madison vicinity, 96000786

Kentucky

Campbell County, Monmouth Street Historic District, Monmouth St. between 3rd and 11th Sts., Newport, 96000794
Fayette County, Wolf Wile Department Store Building, 248—250 E. Main St., Lexington, 96000795
Graves County, Mayfield Downtown Commercial District (Boundary Increase), Roughly bounded by N. 9th, W. and E. North, N. and S. 5th, E. Water, and S. and N. 8th Sts., Mayfield, 96000791
Hardin County, Three Bridge Site, N boundary of Ft. Knox at the foot of Muldraugh Hill and continuing S for 3 mi., Ft. Knox vicinity, 96000790
Jefferson County, Lindenberger—Grant House, 8200 Railroad Ave., Lyndon, 96000793
Jessamine County, Payne—Saunders House, 503 N. Central Ave., Nicholasville, 96000799
Kenton County, Lee—Holman Historic District, Bounded by W. Robbins, Holman, W. 12th, and Lee Sts., Covington, 96000798
Taylor County, Sanders, Durham, House, 1251 Sanders Rd., Campbellsville vicinity, 96000792

Michigan

Calhoun County, Homer Village Historic District, Roughly bounded by Leigh, Burgess, Hamilton, School, and Byron Sts., Homer, 96000805
Maple Street Historic District, 161–342 Capital Ave., NE, Battle Creek, 96000806
Iosco County, Cooke Hydroelectric Plant, Cook Dam Rd. at the Cook Dam on the Au Sable River, Oscoda vicinity, 96000803
Jackson County, Concord Village Historic District, Roughly, Hanover St. from Spring to Michigan Sts. and N. Main St. from Railroad to Monroe Sts., Concord, 96000810
Livingston County, St. Augustine Catholic Church and Cemetery, 6481 Faussett Rd., Deerfield Township, Hartland vicinity, 96000802
Macomb County, Clinton Grove Cemetery, 21189 Cass Ave., Clinton Township, Mt. Clemens vicinity, 96000807

Midland County, Parent's and Children's Schoolhouse, (Residential Architecture of Alden B. Dow in Midland 1933—1938 MPS), 1505 Crane Ct., Midland, 96000800
St. Joseph County, Morse—Scoville House, 685 S. Washington, Constantine, 96000801
Sanilac County, Port Sanilac Masonic and Town Hall, 20 N. Ridge St., Port Sanilac, 96000808
Wayne County, Deming, Paul Harvey, House, 111 Lake Shore Rd., Gross Pointe Farms, 96000811
Mies van der Rohe Residential District and Lafayette Park, Roughly bounded by Lafayette Ave., Rivard, Antietam, and Orleans Sts., Detroit, 96000809
Remick, Jerome H., and Company, Building, 1250 Library Ave., Detroit, 96000804
Royal Palm Hotel, 2305 Park Ave., Detroit, 96000812

New Jersey

Essex County, North Broad Street Historic District, 136–148 Broad St., Newark, 96000813

New York

Broome County, New York State Inebriate Asylum, 425 Robinson St., Binghamton, 96000814
Herkimer County, Russia Corners Historic District, Roughly, jct. of Military and Beecher Rds., Russia, 96000815

North Carolina

Durham County, Golden Belt Historic District (Boundary Increase), 1000–1004 E. Main St., Durham, 96000816

North Dakota

Cass County, Shea Site, Address Restricted, Embden vicinity, 96000817

South Carolina

Richland County, Southern Cotton Oil Company, 737 Gadsden St., Columbia, 94001552

Tennessee

Fayette County, Lauderdale Courts Public Housing Project (Public Housing Projects in Memphis MPS), Danny Thomas Blvd., Alabama Ave., Exchange Ave., 3rd St., and Winchester, Memphis, 96000819
LeMoyne Gardens Public Housing Project (Public Housing Projects in Memphis MPS), Walker, Porter, Provine, and Neptune Sts., Memphis, 96000820
McMinn County, Etowah Historic District, Roughly bounded by 5th St., Washington Ave., 11th St., and Indiana Ave., Etowah, 96000818.

[FR Doc. 96–16832 Filed 7–1–96; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

Animas-La Plata Project, Colorado and New Mexico

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of supporting Appendices for the Final Supplement to the 1980 Final Environmental Statement (FSFES): FSFES 96–23.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation) filed the Final Supplement to the 1980 Final Environmental Statement and published a notice of availability for the FSFES for the Animas-La Plata Project in Colorado and New Mexico on May 2, 1996.

The purpose of this notice of availability is to inform the public of the supporting Appendices to the FSFES and how to acquires copies or review this information.

The supporting Appendices include:

A–Hydrology
B–Water Quality
C–Socioeconomic Analysis
D–Indian Trust Assets
E–Cultural Resources
F–Soils and Trace Element Analysis
G–Vol. 1 Recreation
Vol. 2 Recreation
Vol. 3 Recreation
Vol. 4 Recreation
Vol. 5 Recreation
Vol. 6 Recreation
H–Vol. 1 Wetland, Riparian, and Vegetation Resources
Vol. 2 Wetland, Riparian, and Vegetation Resources
I–Aquatic and Wildlife Resources
J–Wild and Scenic Rivers
K–Threatened and Endangered Species
L–Geological Resources
M–Conceptual Mitigation and Monitoring Plan

ADDRESSES: Single copies of the supporting documents may be obtained on request to the following addresses: Western Colorado Area Office—Southern Division, Bureau of Reclamation, PO Box 460, Durango CO 81302–0640.

Copies are available for inspection at the following locations:

Bureau of Reclamation, Denver Office Library, Denver Federal Center, Building 67, Room 167, Denver Colorado 80225
Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City Utah 84138
Bureau of Reclamation, Western Colorado Area Office—Southern Division, 835 East Second Avenue, Durango, Colorado 81301
Bureau of Reclamation, Western Colorado Area Office—Northern Division, 2764 Compass Drive, Grand Junction, Colorado 81506.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Beck, Planning Team Leader, Bureau of Reclamation, PO Box 640, Durango, Colorado 81302–0640, Phone (970) 385–6558.

SUPPLEMENTARY INFORMATION: The supporting Appendices provide detailed information for the FSFES.

Dated: June 24, 1996.

Charles A. Calhoun,

Regional Director.

[FR Doc. 96–16868 Filed 7–1–96; 8:45 am]

BILLING CODE 4310–94–M

Bay-Delta Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss several issues including: an overview of the CALFED Bay-Delta Program; an overview and discussion of the CALFED Bay-Delta Program Phase II Alternatives to address the problems of the Bay-Delta system; the process to refine the alternative components in Phase II of the program; and updates from the fact finding groups on ecosystem restoration, finance and water use efficiency. This meeting is open to the public. Interested persons may make oral statements to the BDAC or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council meeting will be held from 10 a.m. to 5 p.m. on Friday, July 19, 1996.

ADDRESS: The Bay-Delta Advisory Council will meet at the Sacramento Convention Center, 1400 J Street, Room 204, Sacramento, CA.

CONTACT PERSON FOR FURTHER INFORMATION CONTACT: Sharon Gross, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint

State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The CALFED Bay-Delta Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the CALFED Bay-Delta Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff.

Minutes of the meeting will be maintained by the CALFED Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: June 24, 1996.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 96–16867 Filed 7–1–96; 8:45 am]

BILLING CODE 4310–94–M

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for the titles described below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collection and the expected burden and cost.

DATES: Comments must be submitted on or before August 1, 1996, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208–2783.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that OSM has submitted to OMB for extension. These collections are contained in (1) 30 CFR Part 710, Initial regulatory program; (2) 30 CFR Part 740, General requirements for surface coal mining and reclamation operations on Federal lands; (3) 30 CFR Part 870, Abandoned mine reclamation fund—fee collection and coal production reporting; and (4) 30 CFR Part 872, Abandoned mine reclamation funds.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for OSM's regulations are listed in 30 CFR Parts 700 through 955. As required under 5 CFR 1320.8(d), **Federal Register** notices soliciting comments on these collections of information were published on April 9, 1996 (61 FR 15830) for 30 CFR Parts 710, 740 and 870, and on April 11, 1996 (61 FR 16113) for 30 CFR Part 872. No comments were received on any of the collections of information.

Where appropriate, OSM has revised burden estimates to reflect current reporting levels, adjustments based on reestimates of the burden or number of respondents, and programmatic changes. OSM will request a 3-year term of approval for each information collection activity.

The following information is provided for each information collection: (1) title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: 30 CFR Part 710—Initial regulatory program.

OMB Control Number: 1029–0095.

Summary: Information collected is used to determine whether surface coal mining operations are subject to the initial regulatory program established by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Information collected is also used to grant small operators exemptions from some of the initial regulatory program requirements.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: Coal mine operators.

Total Annual Responses: 1.

Total Annual Burden Hours: 1.

Title: 30 CFR Part 740—General requirements for surface coal mining and reclamation operations on Federal lands.

OMB Control Number: 1029–0027.

Summary: Section 523 of SMCRA requires that a Federal lands program be established to govern surface coal mining and reclamation operations on Federal lands. The information requested is needed to assist the regulatory authority determine the eligibility of the applicant and compliance with the requirements of SMCRA.

Frequency of Collection: On occasion.

Description of Respondents: Coal mine operators on Federal lands.

Total Annual Responses: 30.

Total Annual Burden Hours: 643.

Title: 30 CFR Part 870—Abandoned mine reclamation fund—fee collection and coal production reporting.

OMB Control Number: 1029–0090.

Summary: Section 402 of SMCRA requires fees to be paid to the Abandoned Mine Reclamation Fund by coal operators on the basis of coal tonnage produced. This information collection request is needed to support verification of the moisture deduction allowance. The information will be OSM during audits to verify that the amount of excess moisture taken by the operator is appropriate.

Frequency of Collection: On occasion (recordkeeping).

Description of Respondents: Coal mine operators.

Total Annual Responses: 1,050.

Total Annual Burden Hours: 2,100.

Title: 30 CFR Part 872—Abandoned mine land reclamation funds.

OMB Control Number: 1029–0054.

Summary: Sections 401 and 402 of SMCRA provide for the creation of the Abandoned Mine Reclamation Fund and require the Secretary to make a determination regarding the use of allocated State/Indian tribe funds which have been granted but not expended within a three-year period. Granted funds that have not been expended within three years may be withdrawn if the Director finds in writing that the amounts involved are not necessary to carry out approved reclamation activities. This information collection and subsequent determinations serve as a safeguard to protect States and Indian tribes from automatic or indiscriminate withdrawal of funds.

Frequency of Collection: On occasion.

Description of Respondents: State and Tribal abandoned mine land reclamation agencies.

Total Annual Responses: 1.

Total Annual Burden Hours: 1.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following addresses. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 120—SIB, Washington, DC 20240.

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503.

Dated: June 26, 1996.

Ruth E. Stokes,

Acting Chief, Office of Technology Development and Transfer.

[FR Doc. 96–16810 Filed 7–1–96; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Advisory Council on Violence Against Women

AGENCIES: Department of Justice and Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: The Advisory Council on Violence Against Women, cochaired by the Attorney General and the Secretary of the Department of Health and Human Services, will meet on July 18, 1996, at the Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC. The meeting is currently scheduled to begin at 10:00 a.m. and to end at 4:30 p.m. The agenda consists of three breakout sessions in the morning, during which each of the Council's eight subgroups will meet. These subgroups are divided according to area of expertise and interest and include: Media and Entertainment; Colleges and Universities; Workplace; Religious Community; Sports Industry; Health Professionals; Primary and Secondary Education; and Law Enforcement. The afternoon session beginning at 1:30 p.m., will be a meeting of the full Advisory Council.

The breakout sessions and the full meeting will be open to the public on a space-available basis, but reservations are required. A photo ID will be requested for admittance. Space reservations and arrangements for any special needs will be handled through the contact point listed below. Sign language interpreters will be provided. Anyone wishing to submit written questions to this session should notify the Designated Federal Employee by Friday, July 12, 1996. The notification may be done by mail, telegram, facsimile, or a hand delivered note. It should contain the requestor's name; corporate designation, consumer affiliation, or Government designation; and a short statement describing the topic to be addressed. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to the Office of the Secretary, United States Department of Health and Human Services, Room 615F, 200 Independence Avenue, SW., Washington, DC. 20201, telephone (202) 690–8157, facsimile (202) 690–7595.

Dated: June 25, 1996.

Bonnie J. Campbell,

Director, Violence Against Women Office, Department of Justice.

[FR Doc. 96–16705 Filed 7–1–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Importer of Controlled Substances; Registration

By Notice dated March 27, 1996, and published in the **Federal Register** on April 4, 1996, (61 FR 15120), Mallinckrodt Chemical, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca Leaves (9040)	II
Opium, raw (9600)	II
Opium poppy (9650)	II
Poppy Straw Concentrate (9670)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Mallinckrodt Chemical, Inc. to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: June 17, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–16849 Filed 7–1–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 20, 1996.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5095). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219 4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Employment Standards Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration, Office of Federal Contract Compliance Programs.

Title: Recordkeeping and Reporting Requirements—Supply and Service.

OMB Number: 1215–0072.

Frequency: As requested.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 88,797.

Estimated Time Per Respondent: 163.83 hours.

Total Burden Hours: 14,547,229.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: This final rule makes three general types of revisions to the current regulations implementing section 503 of the Rehabilitation Act of 1973. First, the regulations' nondiscrimination provisions generally are conformed to the regulations published by the Equal Employment Opportunity Commission implementing Title I of the Americans with Disabilities Act of 1990. Second, the regulations incorporate recent statutory amendments to section 503. Third, the regulations are revised to strengthen and clarify various existing provisions relating to affirmative action for qualified individuals with disabilities, record retention, enforcement and other issues.

The interim rule published concurrent with this final rule modifies the OFCCP regulation requiring Government contractors to invite job applicants to inform the contractor whether the applicant believes that he or she may be covered by the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, and wishes to benefit under the contractor's affirmative action program. These changes are substantively identical to OFCCP's revision to the rule requiring invitations to self-identify under section 503 of the Rehabilitation Act of 1973.

Agency: Employment Standards Administration, Office of Federal Contract Compliance Programs.

Title: Recordkeeping and Reporting Requirements—Construction.

OMB Number: 1215–0163.

Frequency: As requested.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 136,321.

Estimated Time Per Respondent: 38.32 hours.

Total Burden Hours: 5.223.173.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: This final rule makes three general types of revisions to the current regulations implementing section 503 of the Rehabilitation Act of 1973. First, the regulations' nondiscrimination provisions generally are conformed to the regulations published by the Equal Employment Opportunity Commission implementing Title I of the Americans with Disabilities Act of 1990. Second, the regulations incorporate recent statutory amendments to section 503. Third, the regulations are revised to strengthen and clarify various existing provisions relating to affirmative action for qualified individuals with disabilities, record retention, enforcement and other issues.

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Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–16515 Filed 7–1–96; 8:45 am]

BILLING CODE 4510–27–M

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974; Proposed New System of Records

AGENCY: Merit Systems Protection Board.

ACTION: Privacy Act of 1974; Notice of New System of Records.

SUMMARY: As required by The Privacy Act of 1974, 5 U.S.C. 552a, the Merit Systems Protection Board (Board) is publishing a notice proposing establishment of a new system of records. This new records system is the Office of Appeals Counsel Decision Data Base. The system is intended to provide research materials to Board employees involved in the adjudication of petitions for review and other matters under the Board's original and appellate jurisdictions. Information contained in these records will be used in drafting various legal documents in the adjudication process.

DATES: Comments must be received on or before August 1, 1996. This system of records becomes effective as proposed, without further notice, on September 3, 1996, unless comments are received which would result in a contrary determination. Comments may be mailed to the Merit Systems Protection Board, Office of the Clerk of the Board, 1120 Vermont Avenue, NW., Washington, DC. 20419, or faxed to the same address on 202–653–7130. Electronic mail comments may be sent via the Internet to mspb@mspb.gov.

FOR FURTHER INFORMATION CONTACT: Michael H. Hoxie, Office of the Clerk of the Board, 202–653–7200.

Dated: June 27, 1996.

Robert E. Taylor,

Clerk of the Board.

MSPB/INTERNAL–4

SYSTEM NAME:

Office of Appeals Counsel Decision Data Base

SYSTEM LOCATION:

Office of Appeals Counsel, Merit Systems Protection Board (MSPB), 1120 Vermont Avenue, NW., Washington, DC 20419.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former Federal employees, applicants for employment, annuitants, and other individuals who have filed petitions or requests for review with MSPB or its predecessor agency, or have been a party in an original jurisdiction case.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. These records contain advisory memoranda prepared by the Office of Appeals Counsel for the Board, or individual members of the Board, and instructions from members of the Board regarding the preparation of decisions for Board issuance. These records also contain individual appellant's names, and may contain social security numbers, home addresses, veterans status, race, sex, national origin and disability status data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1205, 1206, 1207, 1208, 7701 and 7702.

PURPOSE:

These records are used for internal legal research by Board employees involved in adjudicating petitions for review and other matters arising under the Board's original and appellate jurisdictions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information from the record may be disclosed:

a. to the Government Accounting Office in response to an official inquiry or investigation;

b. to the Department of Justice for use in litigation when:

(1) The Board, or any component thereof; or

(2) Any employee of the Board in the employee's official capacity; or

(3) Any employee of the Board in the employee's individual capacity where the Department of Justice has agreed to represent the employee; or

(4) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected, or approval or consultation is required.

c. In any proceeding before a court or adjudicative body before which the Board is authorized to appear, when:

(1) The Board, or any component thereof; or

(2) Any employee of the Board in the employee's official capacity; or

(3) Any employee of the Board in the employee's individual capacity where the agency has agreed to represent the employee; or

(4) The United States, where they agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case the agency determines that the disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected, or approval or consultation is required.

d. To the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906; and

e. In response to a request for discovery or for appearance of a witness, if the requested information is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in electronic form on a file server connected to a local area network serving the Office of Appeals Counsel.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained, and by MSPB docket numbers.

SAFEGUARDS:

Access to these records is limited to persons whose official duties require such access. Automated records are protected from unauthorized access through password identification procedures and other system-based protection methods.

RETENTION AND DISPOSAL:

Electronic records in this system may be maintained indefinitely, or until the Board no longer needs them.

SYSTEM MANAGER AND ADDRESS:

The Office of Appeals Counsel, 1120 Vermont Avenue, NW., Washington, DC. 20419.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about them should contact the Clerk of the Board and must follow the MSPB Privacy Act regulations at 5 CFR 1205.11 regarding such inquires.

RECORD ACCESS PROCEDURES:

Individuals requesting access to their records should contact the Clerk of the Board. Such requests should be addressed to the Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419. Requests for access to records must follow the MSPB Privacy Act regulations at 5 CFR 1205.11.

CONTESTING RECORD PROCEDURES:

Individuals requesting amendment of records should write the Clerk of the Board. Requests must follow the MSPB Privacy act regulations at 5 CFR 1205.21.

These provisions for amendment of the record are not intended to permit the alteration of evidence presented in the course of adjudication before the MSPB either before or after the MSPB has rendered a decision on the appeal.

RECORD SOURCE CATEGORIES:

The sources of these records are:

a. The individual to whom the record pertains;

b. The agency employing the above individual;

c. The Merit Systems Protection Board, the Office of Personnel Management, the Equal Employment Opportunity Commission, the Office of the Special Counsel; and

d. Other individuals or organizations from whom the MSPB has received testimony, affidavits or other documents.

[FR Doc. 96–16865 Filed 7–1–96; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration, (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records

schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before August 16, 1996. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archives of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Executive Office of the President, National Critical Materials Council (N1–359–95–1). Routine and facilitative records maintained by the Council (substantive program records are being preserved).
2. Executive Office of the President, Office of the United States Trade Representative (N1–364–96–1). Electronic and textual records created between April 24, 1986 and January 27, 1993, that are duplicative or deal with routine administrative matters. (Master file of e-mail messages will be preserved).
3. Department of the Army (N1–AU–96–4). Radiation oncology records.
4. Department of the Army (N1–AU–96–5). Patient treatment film.
5. Department of Health and Human Services, National Institutes of Health (N1–443–96–1). Diagnostic Cardiac Records.
6. National Archives and Records Administration (N1–GRS–96–1). Updated General Records Schedule (GRS) 11, Space and Maintenance records.
7. Office of Government Ethics (N1–522–96–2). Records of the Office of Education.

Dated: June 20, 1996.

James W. Moore,

Assistant Archivist for Records Administration.

[FR Doc. 96–16801 Filed 7–1–96; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that its business required the addition of the following item which was closed to public observation, to the previously announced closed meeting (**Federal Register**, Vol. 61, No. 120, page 31557, Thursday, June 20, 1996) scheduled for Wednesday, June 26, 1996.

6. Request for Expanded Authorities Pending Final Adoption of Part 704. Closed pursuant to exemption (8).

The Board voted unanimously that agency business required that this item be considered with less than the usual seven days notice, that it be closed to the public, and that no earlier announcement of this change was possible.

The previously announced items were:

1. Approval of Minutes of Previous Closed Meetings.
2. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemption (8).
3. Request from Federal Credit Union to Convert to a Community Charter. Closed pursuant to exemption (8).
4. Appeal from Federal Credit Union of Regional Director's Denial of Request for Expansion to its Field of Membership. Closed pursuant to exemption (8).
5. Personnel Actions. Closed pursuant to exemptions (2) and (6).

For Further Information Contact: Becky Baker, Secretary of the Board, Telephone (703) 518–6300.

Becky Baker,

Secretary of the Board.

[FR Doc. 96–16940 Filed 6–27–96; 4:46 pm]

BILLING CODE 7535–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, July 9, 1996.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6486C—Aviation Accident Report: In-Flight Icing Encounter and Loss of Control, Simmons Airlines, d.b.a. American Eagle Flight 4184, ATR Model 72–212, Roselawn, Indiana, October 31, 1994.

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: June 28, 1996.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 96–17060 Filed 6–28–96; 3:49 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440–OLA–3]

In the Matter of: The Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Unit 1) Notice of Appointment of Adjudicatory Employees

Pursuant to 10 CFR § 2.4, notice is hereby given that Mr. Charles Serpan, a Commission employee in the Office of Nuclear Regulatory Research, and Mr. Allen Hansen, a Commission employee in the Office of Nuclear Reactor Regulation, have been appointed as Commission adjudicatory employees within the meaning of section 2.4, to advise the Commission on issues related to the pending appeal of LBP–95–17, 42 NRC 137 (1995). Messrs. Serpan and Hansen have not previously performed any investigative or litigating function connected with this or any factually-related proceeding.

Until such time as a final decision is issued in this matter, parties to the proceeding shall not communicate with Messrs. Serpan or Hansen with regard to the merits of this case.

It is so *ordered.*

Dated at Rockville, Maryland, this 26th day of June, 1996.

For the Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–16875 Filed 7–1–96; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8943]

Crow Butte Resources Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Final finding of no significant impact, notice of opportunity for hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to amend NRC Source Material License SUA–1534 to allow the licensee, Crow Butte Resources, Inc., to increase the maximum concentrations of radium, uranium, and sulfate in process waste fluids to be disposed by deep well injection at its in-situ leach uranium mining facility in Dawes County, Nebraska. An Environmental Assessment was performed by the NRC staff in accordance with the requirements of 10 CFR part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Park, Uranium Recovery Branch, Mail Stop TWFN 7–J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone 301/415–6699.

SUPPLEMENTARY INFORMATION:

Background

During April 1991, Crow Butte Resources, Inc. (Crow Butte) commenced uranium recovery operations at its Crow Butte in-situ leach (ISL) uranium mining facility in Dawes County, Nebraska. These activities are authorized by NRC Source Material License SUA–1534. The NRC staff prepared an Environmental Assessment (EA) based on its review of Crow Butte's license application and environmental report (ER); a Final Finding of No Significant Impact (FONSI) concerning the issuance of SUA–1534 was issued on December 27, 1989 (54 FR 53200). Supplemental EAs were prepared based on the NRC staff's review of Crow Butte's amendment requests to increase its maximum processing flow rate from 2500 gallons per minute (gpm) to 3500 gpm, and separately, from 3500 gpm to the currently approved level of 5000 gpm. The NRC staff issued Final FONSIs on March 12, 1993 (58 FR 13561), and February 28, 1996 (61 FR 7541), respectively, concerning these licensing actions.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is an amendment to SUA–1534 to allow Crow Butte to increase the maximum concentration limits for radium, uranium, and sulfate in process waste fluids to be disposed by deep well injection at its ISL facility. The concentration limits for these constituents would be increased as follows: (1) For radium, from 1000 picocuries per liter (pCi/l) to 5000 pCi/l; (2) for uranium, from 10 milligrams per liter (mg/l) to 25 mg/l; and (3) for sulfate, from 5000 mg/l to 10,000 mg/l. The NRC staff's review was conducted in accordance with the requirements of 10 CFR 40.32 and 10 CFR 40.45.

Need for the Proposed Action

Crow Butte requested NRC approval of this increase in the concentration limits because the concentrations of radium, uranium, and sulfate in its typical facility waste water may approach or exceed the currently approved limits.

Environmental Impacts of the Proposed Action

The NRC staff approved deep well injection as an alternate method of waste disposal for the Crow Butte ISL facility by amendment to SUA–1534 on October 4, 1994. The NRC staff's approval was conditional on the State of Nebraska issuing the necessary underground injection permit for the deep well disposal process, and finding that the potential for contamination of other usable aquifers by deep well injection was minimal. If the State determined in the affirmative on both of these issues, the NRC staff considered the potential impacts to a member of the public to be minimal. In addition, the NRC staff considered that worker exposure could be adequately managed under Crow Butte's radiation safety program. Finally, the NRC staff determined that the radiological constituent concentration limits requested by Crow Butte were comparable to levels allowed by the NRC at other ISL uranium recovery operations which employ deep well injection as a waste disposal option.

State of Nebraska Department of Environmental Quality (NDEQ) Permit No. NE0206369 was issued to Crow Butte on June 20, 1995. Under this permit, Crow Butte is authorized to operate a Class I non-hazardous waste injection well to inject waste fluids into the Morrison and Sundance Formations, which are located below the lowermost underground source of drinking water (USDW), at approximately 3500 to 3800 feet below ground surface. Due to elevated concentrations of total dissolved solids, water quality in these formations is not considered under Federal or State of Nebraska regulations to be a USDW.

Among other provisions, NDEQ Permit No. NE0206369 requires Crow Butte to continuously monitor the injection pressure to ensure that, coupled with the hydrostatic pressure, the fracture pressure of the injection zones is not exceeded, and to conduct regular mechanical integrity testing of the well to assure that process waste fluids are not injected into an unauthorized injection zone and thus pose a threat to fresh and/or usable waters of the State.

Based on its review of Crow Butte's proposed amendment request, the NRC staff considers that the requested concentration limits for uranium and radium continue to be comparable to levels approved for other ISL operations. The NRC staff defers to the NDEQ on a determination regarding the requested concentration limit for the non-radiological constituent, sulfate. The NRC staff notes that a revised NDEQ Permit No. NE0206369, issued on April 18, 1996, incorporates the increased sulfate concentration level. Finally, the monitoring and testing provisions required under NDEQ Permit No. NE0206369 are not impacted by the proposed amendment.

Conclusion

The NRC staff concludes that approval of Crow Butte's amendment request to increase the maximum

concentration limits for radium, uranium, and sulfate to be disposed by deep well injection will not cause significant environmental impacts.

Alternatives to the Proposed Action

Since the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the proposed action would be to deny the requested action. Since the environmental impacts of the proposed action and this no-action alternative are similar, there is no need to further evaluate alternatives to the proposed action.

Agencies and Persons Consulted

The NRC staff consulted with the State of Nebraska, Department of Environmental Quality (NDEQ), in the development of the Environmental Assessment. A facsimile copy of the final Environmental Assessment was transmitted to Mr. Frank Mills of the NDEQ on June 11, 1996. In a telephone conversation on June 11, 1996, Mr. Mills indicated that the NDEQ had no comments on the Environmental Assessment.

Finding of No Significant Impact

The NRC staff has prepared an Environmental Assessment for the proposed amendment of NRC Source Material License SUA–1534. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The Environmental Assessment and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, MD., this 25th day of June 1996.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–16876 Filed 7–1–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–361 and 50–362]

Southern California Edison Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–10 and NPF–15 issued to Southern California Edison Company (the licensee) for operation of the San Onofre Nuclear Generating Station, Unit Nos. 2 and 3 located in San Diego County, California.

The proposed amendment would revise Technical Specifications 3.3.11, "Post Accident Monitoring Instrumentation (PAMI)," and 5.5.2.13, "Diesel Fuel Oil Testing Program." Specifically, the number of instruments required to measure reactor coolant inlet temperature (T_{cold}), and reactor coolant outlet temperature (T_{hot}), will be revised from two per loop to two (with one per steam generator). The proposed change would also revise criteria for diesel fuel oil testing. The changes described above would reinstate provisions of the current San Onofre Nuclear Generating Station (SONGS), Unit Nos. 2 and 3 technical specifications that were revised as part of Amendment Nos. 127 and 116. These amendments adopted the recommendations of NUREG–1432, "Standard Technical Specifications Combustion Engineering Plants."

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Proposed Technical Specification Change Number NPF–10/15–466 (PCN–466), Supplement 1 addresses modifications to the Technical Specifications for San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 approved by NRC Amendment Nos. 127 and 116. NRC Amendment Nos. 127 and 116 approved changes to adopt the recommendations of NUREG–1432, "Standard Technical Specifications Combustion Engineering Plants," requested through Proposed Technical Specification Change Number NPF–10/15–299 (PCN–299). The proposed changes were identified during drafting of the procedure changes required to implement NRC Amendment Nos. 127 and 116.

PCN–466 Supplement 1 is required to restore certain provisions of the current Technical Specifications that were not properly incorporated in Amendment Nos. 127 and 116. Changes are proposed that would revise Technical Specification (TS) TS 3.3.11, "Post Accident Monitoring Instrumentation (PAMI)," and TS 5.5.2.13, "Diesel Fuel Oil Testing Program."

Specifically, the proposed change corrects the number of instruments required to measure T_{Cold} and T_{Hot} from two per loop to two (with one cold leg RDT [RTD] and one hot leg RTD per steam generator) in TS 3.3.11. Also, the proposed change revises diesel fuel oil testing requirements specified in TS 5.5.2.13. In particular, the viscosity limit specified in the Administrative Controls is revised to the correct range per ASTM–D975–81, which is consistent with the Bases to SR 3.8.3.3. Also, a typographical error in paragraph b is corrected. The ASTM standard for sampling fuel oil is restored to ASTM–D4057–81.

These provisions are contained in the current Technical Specifications, TS 3/4.3.3.6, "Accident Monitoring Instrumentation," and in SR 4.8.1.1.2.c of TS 3/4.8.1.1, "A.C. Sources."

Operation of the facility would remain unchanged as a result of the proposed changes. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will restore provisions of the current Technical Specifications for SONGS Units 2 and 3. The proposed change would correct the number of instruments required to be operable to measure T_{Cold} and T_{Hot} from two per loop to two (with one cold leg RDT [RTD] and one hot leg RTD per steam generator), and revise diesel fuel oil testing requirements.

Operation of the facility would remain unchanged as a result of the proposed change. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change will restore provisions of the current Technical Specifications for SONGS Units 2 and 3 and make certain changes for clarity. Operation of the facility would remain unchanged as a result of the proposed change. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 1, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Main Library, University of California, P.O. Box 19557, Irvine, California 92713. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union

operator should be given Datagram Identification Number N1023 and the following message addressed to William H. Bateman, Director, Project Directorate IV–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to T. E. Oubre, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 3, 1996, as superseded by application dated June 25, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 26th day of June 1996.

For the Nuclear Regulatory Commission.

Mel B. Fields,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–16877 Filed 7–1–96; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of July 1, 8, 15, and 22, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 1

Tuesday, July 2

10:00 a.m.

Briefing on Alternatives for Regulating Fuel Cycle Facilities (Public Meeting) (Contact: Ted Sherr, 301–415–7218)

Wednesday, July 3

10:00 a.m.

Briefing on BPR Project on Redesigned Material Licensing Process (Public Meeting)

(Contact: Pat Rathbun, 301–415–7178)

11:30 a.m.

Affirmation Session (Public Meeting) (if needed)

Week of July 8—Tentative

Wednesday, July 10

11:30 a.m.

Affirmation Session (Public Meeting) (if needed)

Week of July 15—Tentative

There are no meetings scheduled for the Week of July 15.

Week of July 22—Tentative

There are no meetings scheduled for the Week of July 22.

ADDITIONAL INFORMATION: By a vote of 3–0 on June 26, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Innovative Weaponry, Inc.—Request for a Hearing" (Public Meeting) be held on June 26, and on less than one weeks' notice to the public.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or dkw@nrc.gov.

Dated: June 28, 1996.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96–17011 Filed 6–28–96; 2:29 pm]

BILLING CODE 7590–01–M

[Docket Nos. 50–528, 50–529 and 50–530]

Arizona Public Service Company; Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3; Issuance of Director's Decision Under 10 CFR § 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has acted on a Petition for action under 10 CFR § 2.206 received from Mr. Thomas J. Saporito, Jr., on behalf of Florida Energy Consultants, Inc., dated May 27, 1994, as supplemented on July 8, 1994, for the Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3.

In a letter dated May 27, 1994, the Petitioner requested that the NRC (1) institute a show-cause proceeding pursuant to 10 CFR § 2.202 to modify, suspend, or revoke the operating licenses for Palo Verde; (2) issue a notice of violation against the licensee for continuing to employ The Atlantic Group (TAG) as a labor contractor at Palo Verde; (3) investigate alleged material false statements made by William F. Conway, Executive Vice President at Palo Verde, during his testimony at a Department of Labor hearing (ERA Case No. 92–ERA–030) and, in the interim, require that he be relieved of any authority over operations at Palo Verde; (4) investigate the licensee's statements in a letter of August 10, 1993, from Mr. Conway to the former NRC regional administrator, Mr. Bobby H. Faulkenberry, that Mr. Saporito gave materially false, inaccurate, and incomplete information on his application for unescorted access to Palo Verde and that, as a result, he lacks trustworthiness and reliability for access to Palo Verde; (5) investigate the circumstances surrounding the February 1994 termination of licensee employee Joseph Straub, a former radiation protection technician at Palo Verde, to determine if his employment was illegally terminated by the licensee because he engaged in "protected activity" during the course of his employment; (6) require the licensee to respond to a "chilling effect" letter regarding the circumstances surrounding Mr. Straub's termination from Palo Verde and to specify whether any measures were taken to ensure that his termination did not have a chilling effect at Palo Verde; and (7) initiate appropriate actions to require the licensee to immediately conduct eddy current testing on all steam generators at Palo Verde because the steam generator tubes were recently found to be subject to cracking.

In a letter dated July 8, 1994, the Petitioner raised six additional issues. This supplemental Petition asked the NRC to (1) institute a show-cause proceeding pursuant to 10 CFR § 2.202 for the modification, suspension, or revocation of the Palo Verde operating licenses for Units 1, 2, and 3; (2) modify the Palo Verde operating licenses to require operation at 86-percent power or less; (3) require the licensee to submit a No Significant Hazards safety analysis to justify operation of those units above 86-percent power; (4) take immediate action (e.g., by confirmatory order) to make the licensee reduce operation to 86-percent power or less; (5) require the licensee to analyze a design-basis steam generator tube rupture (SGTR) event to show that the offsite radiological consequences do not exceed a small fraction of the limits of 10 CFR Part 100; and (6) require the licensee to demonstrate that its emergency operating procedures for SGTR events are adequate and that the plant operators are sufficiently trained in emergency operating procedures.

The Director of the Office of Nuclear Reactor Regulation has determined that requests 1, 2, 3, 5, and 6 of the July 8, 1994, Petition supplement should be denied for the reasons stated in the "Director's Decision Under 10 CFR § 2.206" (DD–96–08), the complete text of which follows this notice and which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555, and at the local public document room located at the Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004. The Petitioners' two requests for immediate action (Request 7 of the May 27, 1994 Petition and Request 4 of the July 8, 1994, Petition supplement) were denied in a letter dated July 26, 1994. The remaining requests are under consideration and will be addressed in a separate decision. A Director's Decision (DD–96–04) regarding Requests 1 through 6 in the Petition of May 27, 1994, was issued under separate cover letter on June 3, 1996.

A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR § 2.206. As provided by the regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 25th day of June 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

I. Introduction

On May 27, 1994, Florida Energy Consultants, Inc. (FEC), by and through Thomas J. Saporito, Jr. (Petitioners), submitted a Petition pursuant to 10 CFR § 2.206 to the U.S. Nuclear Regulatory Commission (NRC). The Petition requested that the NRC (1) institute a show-cause proceeding pursuant to 10 CFR § 2.202 to modify, suspend, or revoke the operating licenses of Arizona Public Service Company (licensee or APS) for Palo Verde Nuclear Generating Station (PVNGS or Palo Verde); (2) issue a notice of violation against the licensee for continuing to employ The Atlantic Group (TAG) as a labor contractor at Palo Verde; (3) investigate alleged material false statements made by William F. Conway, Executive Vice President at Palo Verde, during his testimony at a Department of Labor hearing (ERA Case No. 92–ERA–030) and, in the interim, require that he be relieved of any authority over operations at Palo Verde; (4) investigate the licensee's statements in a letter dated August 10, 1993, from Mr. Conway to the former NRC regional administrator, Mr. Bobby H. Faulkenberry, that Mr. Saporito gave materially false, inaccurate, and incomplete information on his application for unescorted access to Palo Verde and that, as a result, Mr. Saporito lacks trustworthiness and reliability for access to Palo Verde; (5) investigate the circumstances surrounding the February 1994 termination of licensee employee Joseph Straub, a former radiation protection technician at Palo Verde, to determine if his employment was illegally terminated by the licensee because he engaged in "protected activity" during the course of his employment; (6) require the licensee to respond to a "chilling effect" letter regarding the circumstances surrounding Mr. Straub's termination from Palo Verde and specify whether any measures were taken to ensure that his termination did not have a chilling effect at Palo Verde; and (7) initiate appropriate actions to require the licensee to immediately conduct eddy current testing (ECT) on all steam generators (SGs) at Palo Verde because the SG tubes were recently found to be subject to cracking.

As the bases for these requests, the Petitioners allege that (1) a show-cause proceeding is necessary (a) because the public health and safety concerns alleged are significant and (b) to permit public participation to provide NRC with new and relevant information; (2) past practices of TAG demonstrate that employees of TAG were retaliated against for having raised safety concerns while employed at Palo Verde; (3) citations to testimony from transcripts and newspaper articles (appended as exhibits to the Petition) demonstrate that Mr. Conway's testimony is not credible; (4) statements in the letter of August 10, 1993, are inaccurate and materially false and characterize Mr. Saporito as an individual lacking trustworthiness and reliability for access to Palo Verde, and that such negative characterizations have caused the nuclear industry to blacklist him from continued employment, all in retaliation for his raising safety concerns about operations at Palo Verde; thus, the Petitioners ask that these statements be rescinded; (5) an investigation into the termination of Mr. Straub is warranted in view of the fact that the licensee has engaged in similar illegal conduct in the past for which the NRC has required the licensee to pay fines; (6) Mr. Straub is entitled to reinstatement with pay and benefits pending the NRC's investigation into his termination to offset the chilling effect his termination had on the Palo Verde workforce; and (7) in addition to cooling tower problems, the stress-corrosion and cracking in the SGs is a recurring problem of which the licensee is aware and has failed to properly correct, so that the NRC should be concerned about proper maintenance of safety systems and equipment at Palo Verde.

On July 8, 1994, the Petitioners filed a supplemental Petition (Petition supplement) raising six additional issues. The Petitioners requested that the NRC (1) institute a show-cause proceeding pursuant to 10 CFR § 2.202 for the modification, suspension, or revocation of the Palo Verde operating licenses for Units 1, 2, and 3; (2) modify the Palo Verde operating licenses to require operation at 86-percent power or less; (3) require the licensee to submit a No Significant Hazards safety analysis [1] to justify operation of those units above 86-percent power; (4) take immediate action (e.g., by confirmatory order) to require the licensee to reduce operation to 86-percent power or less; (5) require the licensee to analyze a design-basis steam generator tube rupture (SGTR) event to show that the offsite radiological consequences do not exceed a small fraction of the limits of 10 CFR Part 100; and (6) require the licensee to demonstrate that its emergency operating procedures (EOPs) for steam generator (SG) tube rupture events are adequate and the plant operators are sufficiently trained in EOPs.

As bases for these requests, the Petitioners allege that (1) the licensee experienced an SGTR in the free-span area on Unit 2 on March 14, 1993; (2) during a January 1994 inspection on

[1] Section 50.91 of the Commission's regulations provides that at the time a licensee requests an amendment it must provide the NRC its analysis of the issue of no significant hazards consideration, using the standards of Section 50.92.

Unit 2, 85 axial indications were identified, the longest indication being 7.5 inches; (3) as of May 1994, 28 axial indications were found at Unit 2 and 9 axial indications were found at Unit 1 (more extensive testing will confirm the existence of circumferential crack indications in the expansion and transition areas); (4) in May 1994, SG sludge from Units 1 and 2 indicated a lead content of 4,000 to 6,000 ppm, which is unusually high, accelerates the crevice corrosion process, and is believed to be caused by a feedwater source deficiency; (5) in eight instances, the licensee failed to properly implement operational procedures during the SGTR event on March 14, 1993; (6) the licensee's failure to comply with approved procedures in the above-mentioned event is indicative of a problem plant that warrants further NRC action; (7) in four instances, the NRC is aware of additional licensee weaknesses regarding the SGTR event; (8) the licensee cannot ensure that the radiation dose limits are satisfied for applicable postulated accidents; (9) the licensee is not maintaining an adequate level of public protection in that the offsite dose limits will be exceeded during an SGTR; (10) the licensee cannot demonstrate that a Palo Verde unit can safely be shut down and depressurized to stop SG tube leakage before a loss of reactor water storage tank inventory; (11) SG tubes are an integral part of the reactor coolant boundary and tube failures could lead to containment bypass and the escape of radioactive fission products directly into the environment and, therefore, must be carefully considered by NRC and the licensee; (12) the licensee cannot demonstrate compliance with 10 CFR Part 50, Appendix A, which establishes the fundamental requirements for SG tube integrity; (13) the licensee has failed to comply with NRC recommendations under NUREG–0800 to show that in the case of an SGTR event, "the offsite conditions and single failure do not exceed a small fraction of the limits of 10 CFR Part 100"; and (14) the licensee has posed an unacceptable risk to public health and safety by raising power on all three Palo Verde units above 86 percent, considering the severe degradation of the SG tubes.

In a letter dated July 26, 1994, I acknowledged receipt of the Petition of May 27, 1994, and the Petition supplement of July 8, 1994, and denied the Petitioners' two requests for immediate action. The Petitioners requested the initiation of actions to require the licensee to immediately conduct ECT on all SGs at Palo Verde (Request 7 of the May 27, 1994, Petition) and immediate action to cause the licensee to reduce operation to 86-percent power or less (Request 4 of the July 8, 1994, Petition supplement). Although these two requests for immediate action were denied, the concerns raised by the Petitioners regarding their requests for ECT and reduced power operation are addressed in this Decision.

The staff informed the Petitioners that the remaining requests were being evaluated under 10 CFR § 2.206 of the Commission's regulations and that a response would be forthcoming. This Decision addresses the Petitioners' concerns about ECT (Request 7 of the May 27, 1994, Petition), steam generator tube integrity, and emergency operating procedures for SGTR events and the remaining requests (Requests 1, 2, 3, 5, and 6) of the July 8, 1994, supplement. The staff has completed its review of the remaining issues in your supplemental Petition. A Director's Decision (DD–96–04) regarding Requests 1 through 6 in the Petition of May 27, 1994, was issued under separate cover letter on June 3, 1996. A discussion of the Director's Decision follows.

II. Background

The Petitioners' concerns addressed in this Decision appear to be based largely on the March 1993 SGTR event and the NRC staff findings concerning that event set forth in the NRC Augmented Inspection Team (AIT)[2] report. Palo Verde Unit 2 experienced an SGTR event in SG No. 2 on March 14, 1993. At the time, the unit was at about 98-percent power. The plant operators manually tripped the reactor, declared an Unusual Event,[3] which was subsequently upgraded to an Alert,[4] and entered the PVNGS Functional Recovery Procedure[5] to mitigate the event. The plant was cooled down and depressurized, and the event was terminated when Mode 5[6] was achieved on March 15, 1993.

During the period March 17–25, 1993, an NRC AIT conducted an inspection at PVNGS Unit 2. Overall, the AIT concluded that the response to the SGTR succeeded in bringing the unit safely to a cold-shutdown condition and limiting the release of radioactivity so that there was no threat to public health and safety. However, the AIT identified weaknesses in the licensee's implementation of emergency plan actions, including event classification, activation of the emergency response facilities, and prompt assignment of tasks to onsite personnel. Weaknesses were also found in the procedures, equipment, and training associated with responding to an SGTR event. The AIT inspection was documented in NRC Inspection Report No. 50–529/93–14, issued on April 16, 1993.

Enforcement action resulted from the AIT inspection in several areas (e.g., emergency preparedness, chemistry and radiation monitoring, and emergency operating procedures). All violations were issued as Severity Level IV.[7]

The NRC issued a confirmatory action letter[8] (CAL) to the licensee on June 4, 1993, for Unit 2. The NRC issued a safety evaluation by letter dated August 19, 1993, concluding that Unit 2 could safely resume operation for 6 months, the interval between steam generator tube inspections. This safety evaluation closed the CAL.

The NRC issued a second CAL[9] on October 4, 1993, for Unit 3 (amended on November 8 and 23, 1993), confirming the commitments made by the licensee in its September 29, 1993, letter. By letter dated December 3, 1993, the licensee reported that it had completed the actions discussed in the CAL. Satisfied that the licensee had completed the conditions of the CAL, the staff closed the CAL by letter dated April 1, 1994.

The licensee voluntarily reduced power to approximately 86-percent power in the fall of 1993 to minimize steam generator degradation. The licensee evaluated and implemented several improvements to the operation of its steam generators, one of which was a reduction in the reactor coolant system hot-leg temperature. The units were all returned to 100-percent power by the fall of 1994.

Following a midcycle outage on Unit 2 and midcycle and refueling outages on Unit 3, the NRC issued a safety evaluation on June 22, 1994, which concluded that both Unit 2 and 3 could safely operate for 6 months between steam generator tube inspections. Since that time, there have been additional midcycle outages on Units 2 and 3 and a refueling outage on all three units. Eddy current inspection results and outage planning for the Units currently support the following operating intervals between inspections: Unit 1, 16 months; Unit 2, 12 months; and Unit 3, 11 months.

III. Discussion

A. Eddy Current Testing on All Steam Generators at Palo Verde

Item 7 of the Petitioners' letter of May 27, 1994, requested the NRC to require the licensee to conduct immediate ECT on all SGs at Palo Verde to ascertain the integrity and life expectancy of the SG tubes. Although, as indicated above, this request for immediate action has been denied, the Petitioners' concerns regarding ECT are addressed below.

The Petitioners assert as a basis (Petition Basis 7) for their request concerning ECT that the licensee's SGs have recently developed cracks in the free-span portion of their internal structure, that tube stress corrosion and cracking is a recurring problem in SGs, and that there is a risk the emergency cooling system will be unable to prevent the melting of the fuel because of tube ruptures.[10]

The licensee has completed at least two eddy current inspections on each of the Palo Verde units since the SGTR event in March 1993. The staff issued safety evaluations (SEs) that addressed Unit 2 and 3 operating intervals by letters dated August 19, 1993, and June 22, 1994.[11] These SEs were based on the results of the licensee's eddy current inspections of Unit 1 in October 1993, of Unit 2 in May 1993 and January 1994, and of Unit 3 in December 1993 and May 1994. In summary, the staff concluded that Units 2 and 3 could be safely operated for up to 6 months between SG eddy current inspections. The licensee conducted five of these "minicycles"[12] (three on Unit 2 and two on Unit 3), thereby obtaining extensive SG eddy current data, which it used to validate models used for analysis. In May 1995, the licensee submitted a report supporting a cycle length of up to 11 months on Unit 3. Unit 1 completed a 16-month operating cycle in June 1995. After meeting with the licensee, the staff approved a Unit 3 cycle length of 11 months in a meeting summary dated August 22, 1995. During a September 20, 1995, meeting with the staff, the licensee presented its submittal and arguments to support a 12-month cycle for Unit 2. The staff incorporated data from the most recent Unit 3 steam generator inspection in its evaluation of the licensee's conclusion regarding a 12-month operating cycle on Unit 2. The staff approved the 12-month operating cycle by letter dated March 5, 1996.

In summary, the licensee performed the necessary eddy current inspections, and the staff extensively reviewed and approved Palo Verde SG eddy current inspection results and continues to review additional information regarding the integrity of the SG tubes. On the basis of its review of ECT, the staff has concluded that the Petitioners' concerns regarding the need for ECT have been satisfactorily addressed by the licensee and that no further action by the NRC staff is warranted.

B. Operation Above 86–Percent Power

Requests 1, 2, 3, and 4 of the Petition supplement, in essence, request actions requiring the Palo Verde licenses to be modified to require operation at 86-percent power or less.[13]

As bases for these requests, the Petitioners assert that on March 14, 1993, Palo Verde Unit 2 had an SGTR in the free-span section between the tube supports and that in January 1994, an inspection of Palo Verde's Unit 2 SGs found 85 axial indications (longest indication, 7.5 inches) (Petition supplement, Basis 2); and that as of May 1994, 28 axial indications were found at Unit 2 and 9 axial indications found at Unit 1. The Petitioners believe that more extensive testing will confirm the existence of circumferential crack indications in the expansion-transition area (Petition supplement, Basis 3). The Petitioners also assert that in May 1994, Units 1 and 2 SG sludge indicated a lead content of 4,000–6,000 ppm, which would accelerate the crevice corrosion cracking process (Petition supplement, Basis 4). The Petitioners also stated that the operation of Palo Verde units at above 86-percent power is unacceptable due to severe degradation of the SG tubes (Petition supplement, Basis 14).

Axial and Circumferential Steam Generator Tube Indications

With regard to the Petitioners' concern about identifiable axial indications (Petition supplement Basis 2), it is correct that 85 axial indications in the free-span area (longest indication, 7.5 inches) were discovered on SG tubes at Palo Verde Unit 2 during the January 1994 inspection. However, this number was apparently based on preliminary information from the licensee's eddy current inspection during the January 1994 eddy current inspection. The licensee's report of March 8, 1994, stated that actually 330 free-span axial indications were discovered during the Unit 2 first midcycle outage: 22 in SG 1 of Unit 2 (SG 21) and 308 in SG 2 of

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[2] An AIT is an NRC inspection team composed of experts from the responsible NRC Regional Office augmented by personnel from NRC Headquarters and other Regions with special technical qualifications. The purpose of an AIT is to determine the causes, conditions, and circumstances relevant to an event and to communicate its findings, safety concerns, and recommendations to NRC management.

[3] The lowest level of emergency classification as delineated in 10 C.F.R Part 50, Appendix E.

[4] The second lowest level of emergency classification as delineated in 10 C.F.R. Part 50, Appendix E.

[5] PVNGS Procedures providing operators' actions for responding to design basis events.

[6] The operational mode defined as cold shutdown in plant technical specifications.

[7] See EA 93–119 (issued July 1, 1993) and EA 93–039 (issued April 27, 1993). At the time, violations were categorized in terms of five levels of severity. Severity Level I and II violations were of very significant regulatory concern. Severity III violations were cause for significant regulatory concern. Severity Level IV violations were less serious but were of more than minor concern. Severity Level V were of minor safety or environmental concern. General Statement of Policy and Procedure for NRC Enforcement Actions, 10 CFR Part 2, Appendix C, Section IV. Effective June 30, 1995, the NRC's Enforcement Policy, as published in the **Federal Register** (60 FR 34381), is set forth in NUREG–1600.

[8] This CAL set forth commitments made by the licensee to the NRC staff on June 2, 1993, regarding the SGTR event on Unit 2. In the CAL, the staff confirmed the licensee's commitment (1) to notify the NRC prior to completion of ECT on the Unit 2 SGs; (2) to include the proposed operating interval to the next SG tube inspection in its safety analysis; and (3) not to restart Unit 2 until the NRC concurs with the restart of the facility.

[9] In this CAL, the staff confirmed the licensee's commitment to (1) shut down Unit 3 for ECT inspection of both SGs; (2) continue the review of Unit 3 ECT data to identify indications that were not identified in refueling outage 3R3 by bobbin coil ECT and to provide a written summary of the review; (3) continue to implement the Unit 1 SG inspection plan (SGIP); (4) implement changes to emergency operating procedures (EOPs), operator training, and leakage monitoring; and (5) continue to operate Unit 3 to take advantage of some of the preventive measures that can be taken to reduce outside-diameter stress corrosion cracking (ODSCC) rates.

[10] The Petitioner also mentioned cooling tower problems in this basis, stating that "the NRC should be concerned about proper maintenance of safety systems and equipment there." The cooling towers at Palo Verde are not safety-related systems. If the cooling towers of a unit were incapacitated, the unit might operate less efficiently, but that would be an economic penalty, rather than a safety problem. The Petitioners did not provide any specific examples of problems with the cooling towers, though the staff is aware of the general maintenance problems the licensee has had with the cooling towers. This issue was the subject of a previous Director's Decision, Arizona Public Service Company, (Palo Verde Nuclear Generating Station, Units 1, 2, and 3, DD–92–1, 35 NRC 133, 137 (1992), which found no substantial nuclear safety concern with the condition of the cooling towers.

[11] Unit 1 was not directly addressed in the SEs because no free span axial indications were identified on Unit 1 at the time.

[12] The Palo Verde operating cycle is normally 16–18 months.

[13] The specific request for immediate action to make the licensee reduce operation to 86-percent power or less (Request 4) was denied by letter of July 26, 1994. With regard to the request (Request 3) to require the licensee to submit a No Significant Hazards safety analysis to justify operation of the units above 86-percent power, the licensee is not required by the NRC regulations to submit a no significant hazards analysis, since a TS change was not required to resume operation above 86-percent power. The staff did, however, review a no significant hazards analysis related to operation of the Units at 100-percent power with a reduced hot-leg temperature. These TS changes were submitted by the licensee on February 18, 1994, for Units 1 and 3; and on July 1, 1994, for Unit 2. The NRC staff review of these TS changes and support for operation at a power level of 100 percent is discussed at page 17, *infra*.

Unit 2 (SG 22). Although a number of axial indications were detected by the licensee, it is not the number of indications that is of a safety concern but rather the severity of the indications (i.e., severity in terms of whether the tube indication had adequate structural and leakage integrity). As noted in the Petition supplement, the longest indication was 7.5 inches long. The safety significance of this indication, as with any eddy current indication, depends not only on the length of the indication but also on the depth of the indication. To assess the safety significance and/or severity of an indication, licensees size the indications in terms of length, depth, and/or voltage.[14] However, eddy current testing methods have not been qualified for determining the depth of stress corrosion cracks. Where qualified eddy current methods do not exist, licensees may pursue alternative methods such as in situ pressure testing[15] to further confirm or assess the condition of the tube (i.e., to confirm that the tube indication could withstand the required pressure loadings; thereby demonstrating that the tube had adequate structural integrity). The licensee did select nine tubes for in situ pressure testing during the outage. The 7.5 inch long indication did not meet the licensee's screening criteria for selecting the more severe indications. The screening criteria, discussed in the NRC staff's SE of June 22, 1994, considered the length, depth, and/or voltage of the indication. All nine tubes satisfactorily passed the in situ pressure test thereby providing reasonable assurance that the tube indications had adequate structural integrity. Furthermore, all tubes with axial free span indications were plugged before Unit 2 was returned to operation.

The Petitioners also assert as of May 1994, 28 axial indications were found on Unit 2 and 9 axial indications found at Unit 1 and that more extensive testing would confirm the existence of circumferential crack indications in the expansion transition areas (Petition supplement, Basis 3). These numbers are incorrect. Neither Unit 1 nor Unit 2 was in an outage conducting eddy current examinations in May 1994. Unit 1 had no axial indications identified as of this date. The Unit 2 data is described above. Unit 3 was in an outage at this time and identified a total of 20 axial indications. Regarding the performance of more extensive testing to confirm the existence of circumferential crack indications at the expansion transition area, the licensee has performed inspections in this region. In general, the licensee's steam generator tube inspection program consists of an initial inspection sample which is expanded, if necessary, based on the initial inspection sample results. The licensee has been examining the expansion transition locations with a motorized rotating pancake coil (MRPC) probe since, at least, 1993. These examinations permit the licensee to detect circumferential crack indications. In its SEs and meeting summaries, the NRC staff has reviewed the licensee's results from its MRPC inspections and found them acceptable.[16] To date, Palo Verde Units 2 and 3 have each exhibited a small number of circumferential crack indications per Unit. Unit 1 has exhibited the most extensive circumferential cracking both in terms of number of indications and the severity of the indications when compared to Units 2 and 3. Nonetheless, the staff concluded in a meeting summary dated October 19, 1994, that operating Unit 1 to the end of the operating cycle (April 1995) did not pose an undue risk to public health and safety in view of (1) the absence of detectable axial free-span cracks during the previous refueling outage inspection; (2) the improved secondary water chemistry performance at Palo Verde; (3) the reduced hot-leg temperature, which is expected to reduce crack growth rates; and (4) the implementation of enhanced MRPC inspection techniques at the expansion transition locations. The licensee will continue to perform extensive SG inspections at the end of each operating cycle to ensure continued safe operation of SGs.

Lead Content in Steam Generator Tube Sludge

The Petitioners assert without providing any supporting basis that the SG sludge of Units 1 and 2 has a lead content of 4,000–6,000 ppm (Petition supplement, Basis 4). The licensee performed sludge analyses during two consecutive Unit 1 outages. The data, which were reported in a letter from the licensee dated November 2, 1993, indicate a lead content of 78 ppm (from Unit 1, Refueling 3) and 98 ppm (Unit 1, Refueling 4).[17] Sludge samples were obtained from both Unit 2 SGs after the March 1993 SGTR event. The data were documented in the licensee's report, "Equipment Root Cause of Failure." Both the licensee and outside contractors analyzed the samples; all analyses indicated a lead content of 100 ppm or less.

The NRC staff conducted two Palo Verde chemistry inspections (Inspection Reports 94–15 and 94–27 on Units 50–528/50–529/50–530). The staff reviewed films and sludge for their lead content, and the data were consistent with the licensee's reports. Inspection Report 50–528/50–529/50–530/94–15 specifically referred to the inspector's determination to note "whether lead was detected, because of recent work which indicated it may have a deleterious effect." In referring to examinations of the burst region[18] of pulled tubes, the report stated that insignificant levels of lead were found in the sludge and in the films examined.

Inspection Report 50–528/50–529/50–530/94–15 also reviewed the licensee's secondary water chemistry control program.[19] The NRC inspection team found that the program requirements had fully conformed to the EPRI guidelines throughout Palo Verde's operating history with respect to chemical parameters, analytical frequency, limits for critical parameters, and required actions when critical parameters were exceeded. In summary, the Petitioners' assertions regarding lead content have not been substantiated and do not agree with available data. The licensee has verified[20] that lead content in both Units 1 and 2 SGs is 100 ppm or less, not 4,000–6,000 ppm as asserted by the Petitioners. Additionally, NRC Inspection Reports 94–15 and 94–27 on Units 50–528/50–529/50–530 have not revealed any information about elevated lead content.

Steam Generator Tube Degradation and Operation at a Reduced Power Level

The Petitioners also assert that the operation of Palo Verde units at above 86-percent power is unacceptable due to severe degradation of SG tubes (Petition supplement, Basis 14). In December 1993, the licensee volunteered to reduce power in all three units to approximately 86 percent as an interim measure to curtail steam generator degradation. The primary purpose of this administrative power limit was to operate with a lower reactor coolant system hot-leg temperature in order to reduce tube degradation. This specific power level had been selected because it provided for a T_{hot} that approximated the value that would be implemented if the licensee's proposed TS changes for operating at 100% power with a reduced T_{hot} were approved by the NRC. Additionally, the licensee's thermal-hydraulic analysis indicated that, at this reduced power level, the potential for freespan tube degradation from corrosion is reduced. The licensee took this action voluntarily to minimize further degradation of the SGs until corrective, mitigative, and preventive actions could be implemented to reduce steam generator tube degradation.

On June 7, 1994, the NRC issued a TS change for Units 1 and 3 that permitted the licensee to operate at full power with a lower T_{hot} temperature.[21] The Unit 2 TS change was reviewed separately because the licensee was continuing to perform analyses arising from the SG tube plugging in Unit 2. The staff issued this TS change on August 12, 1994.[22] These TS changes permitted operation at a power level of 100 percent as did the staff's post-March 1993 SGTR SEs dated August 19, 1993, and June 22, 1994, regarding the length of operating cycles of the Palo Verde units. Furthermore, as stated above, the staff did not impose any power restrictions or limits on the licensee.

In summary, the Petitioners' concerns regarding operation of the Palo Verde units above 86-percent power (including bases relating to the March 1993 SGTR event, identification of axial and circumferential steam generator tube indications, alleged elevated lead contents in steam generator sludge) have been satisfactorily addressed, and do not warrant any further action by the NRC staff.

C. Need To Reanalyze the Design-Basis SGTR Event

Request 5 (of the Petition supplement) is that the NRC require the licensee to analyze a design-basis SGTR event to show that the offsite radiological consequences do not exceed a small fraction of the limits of 10 CFR Part 100. The staff requires an analysis such as this to be completed for all pressurized-water reactors (PWRs) and documented in a final safety analysis report (FSAR) before plant operation. The licensee complied with this requirement.[23]

The Petitioners assert in the basis (Petition supplement, Bases 8, 9, 10, 11 and 13) that the licensee cannot ensure the dose limits are satisfied for applicable postulated SGTR events; the offsite dose limits would be exceeded during an SGTR event and adequate protection to the public would not be maintained; the licensee cannot demonstrate that the plant can be safely shut down and depressurized to stop SG tube leakage before reactor water storage tank inventory is lost; the NRC and the licensee must carefully consider SGTR; and "the licensee has failed to comply with NRC requirements under NUREG–0800 insofar as the licensee is required to analyze the consequences of a design basis SGTR event to show that the offsite conditions and single failure do not exceed a small fraction of limits of 10 CFR Part 100."

The AIT report documents findings regarding the Unit 2 SGTR event of March 1993. The report stated that the plant was safely brought to cold shutdown and no radioactivity was released off site. Additionally, the staff's SE, dated August 19, 1993, assessed a single SGTR event and single and multiple tube ruptures induced by a major secondary-side rapid depressurization and concluded that the radiological consequences were within applicable limits.[24] Finally, in a memorandum dated January 26, 1996, the staff performed a confirmatory review of the licensee's updated SGTR event analysis, submitted with Revision 6 to the FSAR (March 10, 1994), and concluded that the results are acceptable. The Petitioners also assert in the basis (Petition supplement, Basis 12) that the licensee cannot demonstrate compliance with certain criteria of Appendix A to 10 CFR Part 50,[25] which establishes the fundamental requirements for steam generator tube integrity. However, the Petitioners have failed to provide any details or support for this assertion.

In summary, on the basis of the NRC staff's review of the licensee's design-basis SGTR event and more recent confirmatory review, the staff has concluded that the Petitioners have not presented a basis for further NRC action.

D. Adequacy of Training and Procedures for an SGTR Event

Regarding Request 6 of the Petition supplement, that the NRC require the licensee to demonstrate that its emergency operating procedures (EOPs) for SGTR events are adequate and the plant operators are sufficiently trained in EOPs, the staff has already taken sufficient action. The Petitioners allege (Petition supplement, Bases 5, 6, and 7, respectively) that the licensee failed to properly implement operational procedures regarding the SGTR event of March 14, 1993, citing eight instances in Basis 5[26]; that the licensee's failure to comply with approved procedures in this event is indicative of a problem plant that warrants further NRC attention (Basis 6); and that the NRC is aware of additional licensee weaknesses regarding the SGTR event, citing four instances in Basis 7.[27] These bases

Continued

[14] Voltage is electrical force or potential difference. Voltage measurements can be used to estimate the severity of an indication.

[15] In situ pressure tests were conducted to determine whether the tubes could withstand the pressure loading specified in NRC Regulatory Guide 1.121 (i.e., whether the SG tubes have adequate structural integrity).

[16] The Staff's reviews are documented in SEs dated August 19, 1993, and June 22, 1994, and also in meeting summaries dated August 22, 1995, March 22, 1994, October 19, 1994, August 22, 1995, and September 20, 1995.

[17] During the Unit 2 midcycle outage in early 1994, the SGs were chemically cleaned before sludge lancing; therefore, the composition of the sludge was not tested.

[18] Burst region refers to the section of the crack in a pulled tube that is exposed as the result of a burst or rupture due to an applied pressure either during plant operation or laboratory testing.

[19] The NRC inspection team compared Electric Power Research Institue (EPRI) NP–6239, "PWR Secondary Water Chemistry Guidelines," Revisions 1 through 3, and EPRI TR–101230, "Interim PWR Secondary Water Chemistry Recommendations for IGA/IGSCC Control," with the licensee's secondary water chemistry control program for PVNGS.

[20] PVNGS performed its own inspections and also utilized contractors, ABB-Combustion Engineering (ABB-CE) and Babcock and Wilcox Nuclear Technologies (BWNT), to perform metallurgical examinations. The inspections revealed minor quantities of lead in surface deposits and films. See NRC Inspection Report 50–528/50–529/50–530/94–15, dated June 23, 1994.

[21] Noticed in the **Federal Register** on June 22, 1994 (59 Fed. Reg. 32240).

[22] Noticed in the **Federal Register** on August 31, 1994 (59 Fed. Reg. 45038).

[23] Updated Final Safety Analysis Report (UFSAR) Section 15.6.3.1.3.2 describes the radiological consequences of an SGTR, and the results are shown in UFSAR Table 15.6.3–5. The staff initially reviewed PVNGS's UFSAR in November 1981.

[24] In 10 CFR Part 100, acceptance criteria are specified for the dose analyzed during initial plant licensing at the exclusion area boundary (EAB) and low population zone (LPZ) for design-basis accidents. The dose in 2 hours at the EAB is not to exceed 25 rem to the whole body or 300 rem to the thyroid. The dose in 30 days at the boundary of the LPZ is not to exceed 25 rem to the whole body or 300 rem to the thyroid. The staff reviewed the licensee's Unit 2 steam generator tube rupture analysis, submitted by letter dated July 18, 1993, and concluded that the methods used by the licensee were acceptable. See the NRC staff's safety evaluation dated August 19, 1993.

The Petitioners assert that the licensee has failed to comply with NUREG–0800 requirements regarding consequences of a design basis SGTR event. However, NUREG–0800 does not set forth requirements; rather it sets forth acceptable approaches to satisfying NRC requirements.

[25] The Petitioners reference portions of General Design Criteria (GDC) 14, 15, 30, and 31 of Appendix A to 10 CFR Part 50.

[26] The Petitioners assert (Petition supplement, Basis 5) that the licensee (a) failed to classify the event in accordance with the EOPs, (b) failed to actuate the Emergency Operations Facility for the 1-hour time, (c) failed to activate the Emergency Response Data System, (d) violated 10 CFR § 50.72 requirements, activation of the Emergency Response Data System, (e) failed to take prompt corrective actions to repair the condenser vacuum pump exhaust radiation monitor, (f) failed to obtain required approvals for alarm setpoint change on waste gas area combined ventilation exhaust monitor, (g) failed to fully implement an alarm response procedure and, (h) failed to check the owner-controlled area.

[27] The Petitioners assert (Petition supplement, Basis 7) that the licensee's (a) alert and alarm setpoints for condenser vacuum pump exhaust and main steam line radiation monitor limits appear to be based on offsite dose limits rather on an SGTR

largely concern areas the staff reviewed after the SGTR event on March 14, 1993. Specifically, the Petitioners repeated several of the procedural and operator weaknesses that were described and evaluated in the staff's AIT report (Inspection Report 50–529/93–14, dated April 16, 1993).[28] Specifically, the AIT report stated that the use of a diagnostic logic tree caused the operators to misdiagnose the SGTR event twice and subsequently enter a Functional Recovery Procedure, contributing substantially to the delay in isolating the faulted steam generator. The staff concluded in its safety evaluation of August 19, 1993, that the licensee's modifications to the EOPs and the subsequent operator training provide sufficient enhancement for both diagnosis and mitigation of various SGTR scenarios.

Additionally, the licensee recently revised its EOPs to make them consistent with Combustion Engineering Owners Group (CEOG) guidance (CEN 0152, Rev. 3[29]). NRC Inspection Report 50–528/50–529/50–530/95–12, dated July 27, 1995, documents the staff's observations on the "high intensity team" training conducted for each crew in preparation for implementing the EOPs. In the inspection report, the staff stated that the EOPs enhanced crew performance and allowed for greater flexibility in responding to events. As an example, during the simulator-based SGTR scenario, the crew was able to isolate the faulted SG within 14 minutes of the start of the event. In contrast, during the March 1993 Unit 2 SGTR event, operators took about 3 hours to isolate the faulted SG, partly because of restrictions in the EOPs in use at the time. The staff will further evaluate the effectiveness of EOPs during future licensed operator examinations.

On the basis of its review of the Petitioners' request that the licensee demonstrate that its EOPs for SGTR events are adequate and that plant operators are sufficiently trained in EOPs, the staff has concluded that the Petitioners have not presented a basis for further NRC action.

III. Conclusion

The institution of proceedings in response to a request pursuant to Section 2.206 is appropriate only when substantial health or safety issues have been raised. See Consolidated Edison Co. of New York (Indian Point, Units 1, 2, and 3), CLI–75–8, 2 NRC 173, 176 (1975), and Washington Public Power Supply System (WPPSS Nuclear Project No. 2), DD–84–7, 19 NRC 899, 923 (1984). This standard has been applied to the concerns raised by the Petitioners to determine whether the actions requested by the Petitioners are warranted. With regard to the specific requests made by the Petitioners discussed herein, the NRC staff finds no basis for taking additional actions beyond those described above. Accordingly, the Petitioners' requests for additional actions pursuant to Section 2.206, specifically Requests 1, 2, 3, 5, and 6 submitted in the Petitioners' supplement dated July 8, 1994, are denied. Accordingly, no action pursuant to Section 2.206 is being taken in this matter.

A copy of this Decision will be filed with the Secretary of the Commission for Commission review in accordance with 10 CFR § 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 25th day of June 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–16878 Filed 7–1–96; 8:45 am]

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event, (b) simulator alarms occur within 2–3 minutes of an SGTR event, contrary to control room indications, (c) plant staff failed to fully respond to assembly notification, (d) plant staff failed to perform a formal evaluation of the safety significance of an abnormal crack growth in the Unit 2 SG.

[28] The licensee addressed the issues raised in the AIT report by implementing the necessary procedural changes and providing training. For example, with regard to the AIT finding (summarized by the Petitioners) regarding differences between alarm response on the simulator and in the control room, the staff's safety evaluation of August 19, 1993, stated that "the simulator has been modified to more realistically model the plant, particularly the response of the radiation monitoring system to an SGTR."

[29] A letter from the NRC to Combustion Engineering dated August 2, 1988, stated that, "pending NRC final review and approval, CE facilities may base their plant-specific emergency operating procedures on Revision 3 of CEN–152. Should future NRC review reveal modifications to Revision 3 to be necessary, CE facilities would be expected to update their procedures to reflect the identified changes. Schedules for such changes should be based on perceived safety significance of the changes." The objective of the CEN–152 report is to describe the CEOG emergency procedure guidelines system. The report contains the methodology used to develop and validate the licensee's emergency procedure guidelines and information on the implementation of guidelines.

POSTAL SERVICE

Specifications for Postal Security Devices and Indicia (Postmarks)

AGENCY: Postal Service.

ACTION: Notice of proposed specifications with request for comments.

SUMMARY: Historically, postage meters have been mechanical and electromechanical devices that (1) maintain through mechanical or electronic "registers" (postal security devices) an account of all postage printed and the remaining balance of prepaid postage, and (2) print postage postmarks (indicia) that are accepted by the Postal Service as evidence of the prepayment of postage. Two proposed specifications have been developed on these subjects, and are entitled "Information Based Indicia Program (IBIP) PSD Specification" and "Information Based Indicia Program (IBIP) Indicia Specification." The U.S. Postal Service is seeking comments on these specifications.

The Postal Service also seeks comments on intellectual property issues raised by the specifications if adopted in present form. If an intellectual property issue includes patents or patent applications covering any implementations of the specifications, the comment should include a listing of such patents and applications and the license terms available for such patents and applications.

DATES: Comments on the two specifications must be received on or before September 30, 1996. Comments addressing intellectual property issues must be received on or before July 15, 1996. A general meeting on this subject is being planned for mid-July in Washington, DC. All persons who have expressed an interest in the proposed specifications will be invited to attend the meeting. This meeting will focus solely on technical aspects of the two specifications. Interested parties may submit questions by July 1, 1996 which will be considered for incorporation into the meeting presentations.

ADDRESSES: Copies of the Indicium and Postal Security Device Specifications may be obtained from: Terry Goss, United States Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington, DC 20260–6807. Mail or deliver written comments to: Manager, Retail Systems and Equipment, United States Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington, DC 20260–6807. Copies of all written comments may be inspected and photocopied between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Terry Goss at (202) 268–3757.

SUPPLEMENTARY INFORMATION: There are approximately 1.5 million postage meters in use in the United States which collectively account for approximately $20 billion in postal revenue annually. The manufacture and use of postage meters is governed by Postal Service regulations (see 39 CFR Part 501; Domestic Mail Manual P030). For several years USPS has been actively proposing a solution of the problem of inadequate postage meter security. To respond to the threat of fraudulent use of meters by physical tampering, USPS intends to decertify and remove from the market, in risk-driven phases, all postage meters using mechanical registers. Another problem USPS has faced is that currently available meter indicia are susceptible to counterfeiting. The Postal Service is exploring using current technology special purpose units such as computers and independent printers to provide prepaid postage.

The Information Based Indicia Program (IBIP) is a Postal Service initiative supporting the development and implementation of a new form of postage indicia. This IBIP specification is intended to address the counterfeiting threat. USPS envisions that the new indicium standard may eventually support new or existing products and services. Specific products and services have not been determined. An "IBIP indicium" substitutes for a postage stamp or a postage meter imprint as evidence of the fact that postage has been paid on mailpieces. An "IBIP Postal Secure Device" provides cryptographic signature, financial accounting, indicium creation, device authorization, and audit functions.

The goal for IBIP is to provide an environment in which customers can apply postage through new technologies that improve postal revenue security. The IBIP indicia is expected eventually to replace all metered postage imprints that rely on letter press printing technology. This requires a new form of postage indicia and the adoption of standards to facilitate industry investment and product development.

The Postal Security Device will provide security services to support the creation of the new "IBIP indicium." The PSD provides security-critical functions for IBIP customers. The PSD will be a hardware component for use with either a computer-based or postage meter-based host system. Each PSD will be a unique security device. The PSD core security functions are cryptographic digital signature generation and verification, and the secure management of the registers that track the remaining amount of money available for indicium creation (i.e., descending register) and the total postage value used by the PSD (i.e., ascending register). The PSD will be a tamper-resistant device that may contain an internal random number generator, various storage registers, a date/time clock, and other circuits necessary to perform these functions. The PSD will comply with Federal Information Processing Standard (FIPS) 140–1 and will be validated through the National Institute of Standards and Technology (NIST) Computer Systems Laboratory's Cryptographic Module Validation Program.

It is emphasized that this proposed standard is being published for comments and is subject to final definition. In particular, evaluation of alternative digital signing, printing standards, and symbology is continuing.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410 (a), the Postal Service invites public comments on the proposed specifications.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 96–15778 Filed 7–1–96; 8:45 am]

BILLING CODE 7710–12–P

PRESIDENTIAL ADVISORY COMMITTEE ON GULF WAR VETERANS' ILLNESSES

Meeting

AGENCY: Presidential Advisory Committee on Gulf War Veterans' Illnesses.

ACTION: Notice of open meeting.

SUMMARY: This notice is hereby given to announce an open meeting of a panel of the Presidential Advisory Committee on Gulf War Veterans' Illnesses. The panel will discuss the biology and psychology of stress and will receive comment from members of the public. Dr. David A. Hamburg will chair this panel meeting.

DATES: July 23, 1996, 9:00 a.m.–4:00 p.m.

PLACE: Omni Netherland Plaza, 35 W. Fifth Street, Cincinnati, OH 45202.

SUPPLEMENTARY INFORMATION: The President established the Presidential Advisory Committee on Gulf War Veterans' Illnesses by Executive Order 12961, May 26, 1995. The purpose of this Advisory Committee is to review and provide recommendations on the full range of government activities associated with Gulf War veterans' illnesses. The Advisory Committee reports to the President through the Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Veterans Affairs. Advisory Committee members have expertise relevant to the functions of the Committee and are appointed by the President from non-Federal sectors.

Tentative Agenda

Tuesday, July 23, 1996

9:00 a.m. Call to order and opening remarks
9:10 a.m. Public comment
10:50 a.m. Break
11:10 a.m. Biology and psychology of stress: general overview
12:15 p.m. Lunch
1:30 p.m. Stress-related findings of the Department of Defense's Comprehensive Clinical Evaluation Program
2:00 p.m. Stress-related findings of the Department of Veterans Affairs' Persian Gulf Health Registry
2:30 p.m. Break
2:45 p.m. Risk factors and protective factors associated with differential outcomes in a cohort of Gulf War veterans
3:15 p.m. U.S. Army's Human Dimensions Research Program
3:40 p.m. Committee and staff discussion
4:00 p.m. Adjourn

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Members of the public who wish to make oral statements should contact the Advisory Committee at the address or telephone number listed below at least five business days prior to the meeting. Reasonable provisions will be made to include on the agenda presentations from individuals who have not yet had an opportunity to address the Advisory Committee. Priority will be given to Gulf War veterans and their families. The panel chair is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. People who wish to file written statements with the Advisory Committee may do so at any time.

FOR FURTHER INFORMATION CONTACT: Michael E. Kowalok, Presidential Advisory Committee on Gulf War Veterans' Illnesses, 1411 K Street, N.W., suite 1000, Washington, DC 20005–

3404, Telephone: (202) 761–0066, Fax: (202) 761–0310.

Dated: June 26, 1996.

C.A. Bock,

Federal Register Liaison Officer, Presidential Advisory Committee on Gulf War Veterans' Illnesses.

[FR Doc. 96–16757 Filed 7–1–96; 8:45 am]

BILLING CODE 3610–75–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration: (The MacNeal-Schwendler Corporation, Common Stock, $.01 Par Value, Convertible Subordinated Debentures Due 2004, and Common Stock Purchase Rights) File No. 1–8722

June 26, 1996.

The MacNeal-Schwendler Corporation's ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, in making the decision to withdraw its Common Stock, Debentures and Common Stock Purchase Rights from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Common Stock, Debentures and Common Stock Purchase Rights on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of its securities and believes that dual listing would fragment the market for its securities.

Any interested person may, on or before July 18, 1996 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz

Secretary.

[FR Doc. 96–16771 Filed 7–1–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37369; File No. SR–CHX–96–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Trading of Nasdaq/NM Securities on the CHX

June 25, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 14, 1996, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XX, Rule 37 and Article XX, Rule 43 relating to the trading of Nasdaq National Market ("Nasdaq/NM") securities (previously known as NASDAQ/NMS securities)[1] on the Exchange.

The text of the proposed rule change is available at the Office of the Secretary, the CHX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 4, 1987, the Commission approved certain Exchange rules and procedures relating to the trading of Nasdaq/NM securities on the Exchange.[2] Among other things, these rules made the Exchange's BEST Rule (Article XX, Rule 37(a)) guarantee applicable to Nasdaq/NM securities and made Nasdaq/NM securities eligible for the automatic execution feature of MAX. Under the BEST Rule, agency market orders in Nasdaq/NM securities are guaranteed executions[3] in substantially the same manner as Dual Trading System Issues[4] and under the MAX rules, market orders in Nasdaq/NM securities are automatically executed in substantially the same manner as Dual Trading System Issues.

As the CHX contemplates expanding its Nasdaq/NM securities program, it is apparent that the continuing lack of an appropriate trade-through rule and appropriate intermarket linkages in the over-the-counter market make it inappropriate at this time for the Exchange to continue to require automated execution at the National Best Bid and Offer ("NBBO") for orders where the CHX specialist is not in fact quoting at the NBBO.

The purpose of the proposed rule change is to change the automatic execution feature of the Exchange's MAX System (see Article XX, Rule 37(b)) and to alter the application for the Exchange's BEST Rule (Article XX, Rule 37(a)) for Nasdaq/NM securities.

MAX Parameters

One proposed change to the MAX rules relates to the auto-execution and auto-acceptance parameters for Nasdaq/NM securities. Currently, the MAX rules require the auto-execution parameter to be set at 1099 shares or greater and the auto-acceptance parameter to be set at 2099 shares or greater. As proposed, the auto-execution and auto-acceptance parameters for Nasdaq/NM securities will be set at 1000 shares or greater.

CHX Specialist Quoting at NBBO

When an Exchange specialist is disseminating the best bid or offer in a Nasdaq/NM security, market orders and marketable limit orders in that security will be automatically executed up to the size of the specialist's disseminated bid or offer, as the case may be, and the size of such bid or offer will automatically be decremented by the size of the execution. When the specialist's quote is exhausted, the system will generate an autoquote at ⅛ point away from the NBBO for 1000 shares.

CHX Specialist Not Quoting at NBBO

In the event that the CHX specialist is not quoting a Nasdaq/NM security at the NBBO, all MAX market and marketable limited orders in that security that are of a size equal to or less than the auto-execution threshold will automatically be executed at the NBBO after a twenty second delay unless the specialist elects to manually handled the order in accordance with the requirements set forth in proposed Rule 43 (d) of Article XX. In this regard, proposed Rule 43(d) requires a specialist to either manually execute the order at the NBBO or better during this twenty second period or to act as a agent for the order in seeking to obtain the best available price for the order on a marketplace other than the Exchange.[5] If the specialist decides to act as agent for the order, the rule requires the specialist to use order routing systems where appropriate. Market and marketable limit orders that are greater than the auto-execution threshold will not be subject to these requirements.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition.

The CHX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–96–16 and should be submitted July 23, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–16772 Filed 7–1–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37361; File No. SR–MSRB–96–4]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Fees for Annual Subscription and Backlog Document Collections of its Official Statement/Advance Refunding Document Subsystem of the Municipal Securities Information Library

June 25, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 28, 1996, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–96–4). The proposed rule change is described in Items, I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a proposed rule change to change certain fees relating to the operation of its Official Statement/Advance Refunding Document ("OS/ARD") subsystem of the Municipal Securities Information Library™ ("MSIL™") system.[1] The Board is changing from $12,000 to $14,000 (plus postage or delivery charges) the annual subscription fee for magnetic tapes of images of official statements and advance refunding documents. In addition, the Board is establishing a price of $9,000 (plus delivery or postage charges) for its 1995 document collection of official statements and refunding documents, sold as a "backlog" collection.

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[1] The Commission notes that NASDAQ/NMS securities are now known as Nasdaq/NM securities and, therefore, requests that the Exchange submit a rule proposal that amends all appropriate Exchange Rules and Interpretations to reflect this new terminology.

[2] Securities Exchange Act Release No. 24424 (May 4, 1987), 52 FR 17868 (May 12, 1987) (order approving File No. SR–MSE–87–2 (the "NM Order")).

[3] Under the BEST Rule, a CHX specialist is required to guarantee the execution of certain agency market orders, up to the lesser of the size associated with the national best bid or offer or 2099 shares, at the national best bid or offer, as the case may be, even if the specialist is not quoting at that price.

[4] According to the Exchange, Dual Trading System Issues are issues that are traded on the CHX and listed on either the New York Stock Exchange or American Stock Exchange. Telephone conversation on June 5, 1996 between David T. Rusoff, Attorney, Foley & Lardner, and George A. Villasana, Attorney, Division of Market Regulation, SEC.

[5] The Commission notes that, while the present proposal does not specify whether the "NBBO" for the purposes of this rule is the best price at the time the order is enter or at the time it is executed, the Exchange plans to amend the proposal to clarify that market and marketable limit orders in a Nasdaq/NM security of a size equal to or less than the auto-execution threshold are to be priced at the NBBO at the time the order is entered into the MAX system, and that the order must be executed at that price or better. Telephone conversation on June 24, 1996 between David Rusoff, Attorney, Foley & Lardner, and George A. Villasana, Attorney, Division of Market Regulation, SEC.

The Commission further expects that these orders will be provided an opportunity for price improvement during the period between the time that the order is entered and the time it is executed which should include, at a minimum, an opportunity to receive a better price if the NBBO improves before the order is executed.

[1] MUNICIPAL SECURITIES INFORMATION LIBRARY and MSIL are registered trademarks of the Board. The MSIL system, which was approved in Securities Exchange Act Release No. 29298 (June 13, 1991) 56 FR 28194, is a central facility through which information about municipal securities is collected, stored and disseminated.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in item IV below. The Board has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The OS/ARD subsystem, which was activated on April 20, 1992, is a central electronic facility through which information collected and stored pursuant to MSRB rule G–36 is made available electronically and in paper form to market participants and information vendors.[2] Since 1992, the annual subscription fee for daily tapes of images of current year documents from the OS/ARD system has been $12,000.[3] The Board proposes to increase the annual subscription fee to $14,000 because of the rise in the cost of operation of the system since the subscription fee was first instituted.

The fees for backlog document collections are substantially less than fees for an annual subscription because an annual subscription requires the Board to send a computer tape to the subscriber each business day, but a backlog collection requires fewer tapes.[4] The Board is establishing a price of $9,000 (plus delivery or postage charges) for the 1995 backlog collection.

The daily tape subscription service currently has eight subscribers. The $14,000 yearly subscription fee for the daily tape of images will not cover the complete costs of operation of the OS/ARD system. In its prior filings with the Commission, the Board stated that it intends to use its general revenues to help fund collecting, indexing and storing the OS/ARD subsystem's documents. However, the Board states its intention that the costs of producing and disseminating magnetic tapes (and paper copies) would be completely covered by user fees.[5] The Board is increasing the annual subscription fee and establishing the 1995 backlog fee to defray its costs of disseminating the collection tapes. This is consistent with the Commission's policy that self-regulatory organizations' fees be based on expenses incurred in providing information to the public. The Board believes that employing cost-based prices is in the public interest since it will ensure that a complete collection of vital information will be available, at fair and reasonable prices, for the life of the municipal securities.

2. Statutory Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which requires, in pertinent part, that the Board's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSIL system is designed to increase the integrity and efficiency of the municipal securities market by, among other things, helping to ensure that the price charged for an issue in the secondary market reflects all available official information about that issue. The Board believes that the annual subscription fee and the 1995 backlog fee are fair and reasonable in light of the costs associated with disseminating the information, and that the services provided by the MSIL system are available on reasonable and nondiscriminatory terms to any interested person.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act, because the proposal is "establishing or changing a due, fee or other charge." At any time within sixty days of filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–96–4 and should be submitted by July 23, 1996. For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–16773 Filed 7–1–96; 8:45 am]

BILLING CODE 8010–01–M

[2] Rule G–36 requires underwriters to provide copies of final official statements and advance refunding documents within certain specified time frames for most new issues issued since January 1, 1990.

[3] This fee was filed with the Commission. *See* Securities Exchange Act Release No. 30306 (Jan. 30, 1992) 57 FR 4657.

[4] Currently, several business day's worth of documents are on each tape in an annual collection. The backlog fee plus delivery costs for 1994 is $7,000; 1993 is $9,000; 1992 is $7,000; 1991 is $8,000; 1990 is $6,000. These fees were filed with the Commission. *See* Securities Exchange Act Release Nos. 35848 (June 14, 1995) 60 FR 32817 (1994 fee); 32482 (June 16, 1993) 58 FR 34115 (1992 and 1990 fees); 34602 (Aug. 25, 1994) 59 FR 45319 (1993 and 1991 fees). The fees for the backlog collections vary based on the number of documents received and processed in any given year.

[5] *See* Securities Exchange Act Release No. 28197 (July 12, 1990) 55 FR 29436.

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission

ACTION: Notice of priority areas for Commission research and amendment consideration. Request for public comment.

SUMMARY: As part of its continuing statutory responsibility to analyze sentencing issues, including the operation of the federal sentencing guidelines, the Commission preliminarily has identified certain priorities as the principal focus of its work in the coming year and, in some cases, beyond. Following the practice of past years, the Commission invites comment on identified priorities (including the scope and manner of study, particular problem areas and possible solutions, and any other matters relevant to an identified priority). The Commission also invites comment on any other aspect of guideline application that it should address during the coming year.

DATES: Public comment should be received not later than August 30, 1996, to be considered by the Commission in shaping its work during the next year.

ADDRESSES: Send comments to: United States Sentencing Commission, One Columbus Circle, NE, Suite 2–500, Washington, DC 20002–8002, Attention: Public Information—Priorities Comment.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 273–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent agency in the judicial branch of the United States Government, is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to periodically review and revise guidelines previously promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994(o), (p).

As in previous years, the Commission uses this announcement to solicit formal and informal comment regarding certain areas upon which the Commission expects to concentrate its attention during the coming year. This notice provides interested persons with an opportunity to inform the Commission of legal, operational, or policy concerns within the identified areas relating to the guidelines and to suggest specific solutions and alternative approaches.

Following are the anticipated priority areas for amendment study, research, or other planned actions identified by the Commission. In some cases, a general time frame for the initiative is indicated. These time frames are subject to change as the Commission deems necessary.

The Commission welcomes comments on these priorities as well as any other aspect of guideline application or implementation of the Sentencing Reform Act.

Authority: 28 U.S.C. 994(a), (o), (p).

Richard P. Conaboy,

Chairman.

I. Implementation of New Laws Affecting Criminal Penalties

The Commission will continue to give priority to developing guideline amendments that implement legislation enacted by Congress. In this regard, Congress has recently enacted, or is expected to pass in this Session, a number of bills that may necessitate changes in the sentencing guidelines. Some of the more significant legislative initiatives are:

- The Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104–132 (April 24, 1996). This Act contains several directives to amend the guidelines in specific ways, including a provision (section 730) granting the Commission emergency authority to amend the enhancement in USSG § 3A1.4 (International Terrorism) so that it applies broadly to any "Federal Crime of terrorism" as defined in 18 U.S.C. 2332b(g). The Act also contains numerous other provisions (e.g., increases in statutory maximum penalties, new offenses) that the Commission must analyze in order to ascertain whether guideline amendments are needed and, if so, what changes are appropriate.
- The Telecommunications Act of 1996, 104–104 (February 8, 1996). This Act contains several provisions on obscene, harassing, or wrongful use of telecommunications facilities that may necessitate guideline amendments. The Commission recently promulgated an amendment to USSG § 2G1.2 to implement a new offense created by section 508 of the Act (involving the solicitation of a minor to engage in prohibited sexual conduct). See 61 FR 20308–09 (May 6, 1996).
- The Sex Crimes Against Children Prevention Act of 1995, 104–71 (December 23, 1995). The Commission recently promulgated amendments to USSG §§ 2G2.1, 2G2.2, and 2G1.1 to implement directives of that Act. See 61 FR 20306–09, *supra*. The Commission is now considering additional conforming amendments to the child pornography guidelines in Chapter Two, Part G and possible amendments to the sexual abuse guidelines in Chapter Two, Part A, Subpart 3.
- Immigration Bill, Other Legislation. Congress is finalizing an Immigration Bill and is considering other bills affecting criminal penalties. Enactment of any such legislation may necessitate additional guideline amendments in the coming year.

II. Guideline Simplification and Modification

In 1995, the Commission announced that it was initiating a multi-year project to comprehensively assess and simplify provisions of the Guidelines Manual. See 60 F.R. 49316–17 (Sept. 22, 1995). After considering a number of staff papers and input from interested individuals and groups, the Commission anticipates focusing its attention and possible amendment consideration on the following specific issues:

- Relevant Conduct. Priority issues for the 1996–97 amendment cycle include: (1) Clarifying/streamlining the relevant conduct guideline assuming no substantive policy changes; and (2) developing options to limit the use of acquitted conduct at sentencing. Issues of lower priority that may be further explored during future amendment cycles include: (1) Substantively changing the relevant conduct guideline to limit the extent to which unconvicted conduct can affect the sentence; and (2) increasing the burden of proof at sentencing to a "clear and convincing" standard.
- Level of Detail/Guideline Complexity. Priority issues for the 1996–97 amendment cycle include: (1) Simplification of guideline/specific offense characteristics through consolidation or elimination; (2) clarification of the definition of loss; (3) examination of problematic cross references; and (4) revision of Acceptance of Responsibility adjustment.
- Departures/Offender Characteristics. Priority issues for the 1996–97 amendment cycle include: (1) Developing options for revising/clarifying the language describing the "heartland concept" in Chapter One and departure policy statements in Chapter Five in light of the recent U.S. Supreme Court decision in *Koon* v. *U.S.*, No. 94–1664, 1996 WL 315800 (U.S. June 17, 1996); and (2) focusing on family and

community ties, age, and combination of factors.

• Criminal History. Priority issues for the 1996–97 amendment cycle include: (1) Re-ordering and streamlining Chapter Four; and (2) revising assignment of criminal history points to better target serious, repeat offenders.

• Sentencing Table. Issues of lower immediate priority for discussion during future amendment cycles include: (1) Options to streamline sentencing table to reduce significantly the number of offense levels; (2) options to revise the current sentencing table's "zone" structure; and (3) additional or expanded sentencing options.

• Appellate Litigation and Other Statutory Issues. Priority issues for the 1996–97 amendment cycle include: (1) Consideration of the impact of the recent U.S. Supreme Court decision in *Koon* v. *United States*, supra, on appellate review of guideline sentences and on the need to revise the introduction to the Guidelines Manual and Departure Section (§ 5K2.0) to address the deference appellate courts should afford district courts on guideline determinations; and (2) consideration of widening the bands in monetary and drug tables to decrease litigation.

• Drug Sentencing/Role in the Offense. Priority issues for 1996–97 amendment cycle include: (1) Revising the Role in the Offense guideline to better reflect actual experience, case law development, and to provide sufficient flexibility when sentencing drug offenders.

• Introduction to Guidelines Manual. Priority issues for 1996–97 amendment cycle include: (1) Updating the introduction to reflect the evolution of the guideline sentencing process.

III. Circuit Conflicts, Miscellaneous Amendments

As part of the 1996–97 amendment cycle, the Commission expects to consider and propose for comment amendments that address some of the more important application issues involving conflicting court interpretations of guideline language.

IV. Cocaine Offenses

Under Public Law No. 104–38 (Oct. 30, 1995), the Commission is directed to submit recommendations to Congress regarding changes in the penalty statutes and sentencing guidelines for cocaine offenses (including crack). See 61 FR 80 (January 2, 1996). The Commission has been gathering and analyzing data and other relevant information, including public comment, in preparation for formulating the required recommendations. It expects to continue this process during the coming months and again invites comment regarding implementation of this congressional directive. Comment should focus on (1) the quantity ratio that should be substituted for the current 100-to-1 ratio in the relevant penalty statutes and sentencing guidelines (see USSG § 2D1.1(c)), and (2) appropriate enhancements in § 2D1.1 for violence and other harms associated with crack and powder cocaine.

V. Revisions to Money Laundering Guidelines

As directed by Public Law 104–38, *supra*, the Commission will respond to an expected Department of Justice report on money laundering charging and plea practices and will continue its study of the money laundering guidelines (U.S.S.G. §§ 2S1.1–2S1.2).

VI. Guideline Assessment, Research Initiatives

Under the direction of an outside consultant; Commission staff have initiated a number of research projects designed to assess the success of the guidelines. *See* 60 FR 49316–17 (Sept. 22, 1995). These efforts will continue in the coming year, focusing primarily on the use of an intensive study sample (ISS) of cases to better evaluate operation of the Relevant Conduct and Criminal History guidelines.

V. Administrative Initiatives

As indicated in its 1995 work priorities notice, see 60 FR 49316, 17 (Sept. 22, 1995), the Commission is engaged in an ongoing effort to maximize the efficiency of its limited staff resources. Additionally, the Commission expects to soon publish for comment a set of Rules of Practice and Procedure describing its internal operating practices and the manner in which interested persons can participate in the Commission's work.

[FR Doc. 96–16873 Filed 7–1–96; 8:45 am]

BILLING CODE 2210–40–P

SOCIAL SECURITY ADMINISTRATION

Social Security Ruling (SSR) 96–6p. Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling SSR 96–6p. This Ruling clarifies Social Security Administration policy regarding the consideration of findings of fact by State agency medical and psychological consultants and other program physicians and psychologists by adjudicators at the administrative law judge and Appeals Council levels. Also, the Ruling restores to the Rulings and clarifies policy interpretations regarding administrative law judge and Appeals Council responsibility for obtaining opinions of physicians or psychologists designated by the Commissioner of Social Security regarding equivalence to listings in the Listing of Impairments (appendix 1, subpart P of 20 CFR part 404) formerly in SSR 83–19, "Titles II and XVI: Finding Disability on the Basis of Medical Considerations Alone—The Listing of Impairments and Medical Equivalency." SSR 83–19 was rescinded without replacement by SSR 91–7c (C.E. 1990–1991, p. 92) as a result of the Supreme Court's decision in *Sullivan* v. *Zebley*, 493 U.S. 521 (1990), which invalidated the use of a medical "listings only" approach to evaluating disability claims of individuals under 18 years of age under the supplemental security income program. That decision has no bearing on the aspects of SSR 83–19 that we are restoring in this Ruling.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income)

Dated: June 7, 1996.

Shirley S. Chater,

Commissioner of Social Security.

Policy Interpretation Ruling—Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence

Purpose: To clarify Social Security Administration policy regarding the consideration of findings of fact by State agency medical and psychological consultants and other program physicians and psychologists by adjudicators at the administrative law judge and Appeals Council levels. Also, to restore to the Rulings and clarify policy interpretations regarding administrative law judge and Appeals Council responsibility for obtaining opinions of physicians or psychologists designated by the Commissioner regarding equivalence to listings in the Listing of Impairments (appendix 1, subpart P of 20 CFR part 404) formerly in SSR 83–19. In particular, to emphasize the following longstanding policies and policy interpretations:

1. Findings of fact made by State agency medical and psychological consultants and other program physicians and psychologists regarding the nature and severity of an individual's impairment(s) must be treated as expert opinion evidence of nonexamining sources at the administrative law judge and Appeals Council levels of administrative review.

2. Administrative law judges and the Appeals Council may not ignore these opinions and must explain the weight given to these opinions in their decisions.

3. An updated medical expert opinion must be obtained by the administrative law judge or the Appeals Council before a decision of disability based on medical equivalence can be made.

Citations (Authority): Sections 216(i), 223(d) and 1614(a) of the Social Security Act (the Act), as amended; Regulations No. 4, sections 404.1502, 404.1512(b)(6), 404.1526, 404.1527, and 404.1546; and Regulations No. 16, sections 416.902, 416.912(b)(6), 416.926, 416.927, and 416.946.

Introduction: Regulations 20 CFR 404.1527 and 416.927 set forth detailed rules for evaluating medical opinions about an individual's impairment(s) offered by medical sources[1] and the medical opinions of State agency medical and psychological consultants and other nonexamining sources. Paragraph (a) of these regulations provides that "medical opinions" are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of an individual's impairment(s), including symptoms, diagnosis and prognosis, what the individual can still do despite his or her impairment(s), and the individual's physical or mental restrictions. Paragraph (b) provides that, in deciding whether an individual is disabled, the adjudicator will always consider the medical opinions in the case record together with the rest of the relevant evidence. Paragraphs (c), (d), and (e) then provide general rules for evaluating the record, with particular attention to medical and other opinions from acceptable medical sources.

Paragraph (f) provides that findings of fact made by State agency medical and psychological consultants and other program physicians and psychologists become opinions at the administrative law judge and Appeals Council levels of administrative review and requires administrative law judges and the Appeals Council to consider and evaluate these opinions when making a decision in a particular case.

State agency medical and psychological consultants are highly qualified physicians and psychologists who are experts in the evaluation of the medical issues in disability claims under the Act. As members of the teams that make determinations of disability at the initial and reconsideration levels of the administrative review process (except in disability hearings), they consider the medical evidence in disability cases and make findings of fact on the medical issues, including, but not limited to, the existence and severity of an individual's impairment(s), the existence and severity of an individual's symptoms, whether the individual's impairment(s) meets or is equivalent in severity to the requirements for any impairment listed in 20 CFR part 404, subpart P, appendix 1 (the Listing of Impairments), and the individual's residual functional capacity (RFC).

Policy Interpretation: Because State agency medical and psychological consultants and other program physicians and psychologists are experts in the Social Security disability programs, the rules in 20 CFR 404.1527(f) and 416.927(f) require administrative law judges and the Appeals Council to consider their findings of fact about the nature and severity of an individual's impairment(s) as opinions of nonexamining physicians and psychologists. Administrative law judges and the Appeals Council are not bound by findings made by State agency or other program physicians and psychologists, but they may not ignore these opinions and must explain the weight given to the opinions in their decisions.

Paragraphs 404.1527(f) and 416.927(f) provide that the rules for considering medical and other opinions of treating sources and other sources in paragraphs (a) through (e) also apply when we consider the medical opinions of nonexamining sources, including State agency medical and psychological consultants and other program physicians and psychologists. The regulations provide progressively more rigorous tests for weighing opinions as the ties between the source of the opinion and the individual become weaker. For example, the opinions of physicians or psychologists who do not have a treatment relationship with the individual are weighed by stricter standards, based to a greater degree on medical evidence, qualifications, and explanations for the opinions, than are required of treating sources.

For this reason, the opinions of State agency medical and psychological consultants and other program physicians and psychologists can be given weight only insofar as they are supported by evidence in the case record, considering such factors as the supportability of the opinion in the evidence including any evidence received at the administrative law judge and Appeals Council levels that was not before the State agency, the consistency of the opinion with the record as a

[1] "Medical sources" are defined in 20 CFR 404.1502 and 416.902 as "treating sources," "sources of record" (i.e., medical sources that have provided an individual with medical treatment or evaluation, but do not have or did not have an ongoing treatment relationship with the individual), and "consultative examiners" for the Social Security Administration.

whole, including other medical opinions, and any explanation for the opinion provided by the State agency medical or psychological consultant or other program physician or psychologist. The adjudicator must also consider all other factors that could have a bearing on the weight to which an opinion is entitled, including any specialization of the State agency medical or psychological consultant.

In appropriate circumstances, opinions from State agency medical and psychological consultants and other program physicians and psychologists may be entitled to greater weight than the opinions of treating or examining sources. For example, the opinion of a State agency medical or psychological consultant or other program physician or psychologist may be entitled to greater weight than a treating source's medical opinion if the State agency medical or phychological consultant's opinion is based on a review of a complete case record that includes a medical report from a specialist in the individual's particular impairment which provides more detailed and comprehensive information than what was available to the individual's treating source.

The following additional guidelines apply at the administrative law judge and Appeals Council levels to opinions about equivalence to a listing in the Listing of Impairments and RFC assessments, issues that are reserved to the Commissioner in 20 CFR 404.1527(e) and 416.927(e). (See also SSR 96–5p, "Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner.")

Medical Equivalence to an Impairment in the Listing of Impairments.

The administrative law judge or Appeals Council is responsible for deciding the ultimate legal question whether a listing is met or equaled. As trier of the facts, an administrative law judge or the Appeals Council is not bound by a finding by a State agency medical or psychological consultant or other program physician or psychologist as to whether an individual's impairment(s) is equivalent in severity to any impairment in the Listing of Impairments. However, longstanding policy requires that the judgment of a physician (or psychologist) designated by the Commissioner on the issue of equivalence on the evidence before the administrative law judge or the Appeals Council must be received into the record as expert opinion evidence and given appropriate weight.

The signature of a State agency medical or psychological consultant on an SSA–831–U5 (Disability Determination and Transmittal Form) or SSA–832–U5 or SSA–833–U5 (Cessation or Continuance of Disability or Blindness) ensures that consideration by a physician (or psychologist) designated by the Commissioner has been given to the question of medical equivalence at the initial and reconsideration levels of administrative review. Other documents, including the Psychiatric Review Technique Form and various other documents on which medical and psychological consultants may record their findings, may also ensure that this opinion has been obtained at the first two levels of administrative review.

When an administrative law judge or the Appeals Council finds that an individual's impairment(s) is not equivalent in severity to any listing, the requirement to receive expert opinion evidence into the record may be satisfied by any of the foregoing documents signed by a State agency medical or psychological consultant. However, an administrative law judge and the Appeals Council must obtain an updated medical opinion from a medical expert[2] in the following circumstances:

- When no additional medical evidence is received, but in the opinion of the administrative law judge or the Appeals Council the symptoms, signs, and laboratory findings reported in the case record suggest that a judgment of equivalence may be reasonable; or
- When additional medical evidence is received that in the opinion of the administrative law judge or the Appeals Council may change the State agency medical or psychological consultant's finding that the impairment(s) is not equivalent in severity to any impairment in the Listing of Impairments.

When an updated medical judgment as to medical equivalence is required at the administrative law judge level in either of the circumstances above, the administrative law judge must call on a medical expert. When an updated medical judgment as to medical equivalence is required at the Appeals Council level in either of the circumstances above, the Appeals Council must call on the services of its medical support staff.

[2] The term "medical expert" is being used to refer to the source of expert medical opinion designated as a "medical advisor" in 20 CFR 404.1512(b)(6), 404.1527(f), 416.912(b)(6), and 416.927(f). This term is being used because it describes the role of the "medical expert" as an expert witness rather than an advisor in the course of an administrative law judge hearing.

Assessment of RFC

Although the administrative law judge and the Appeals Council are responsible for assessing an individual's RFC at their respective levels of administrative review, the administrative law judge or Appeals Council must consider and evaluate any assessment of the individual's RFC by a State agency medical or psychological consultant and by other program physicians or psychologists. At the administrative law judge and Appeals Council levels, RFC assessments by State agency medical or psychological consultants or other program physicians or psychologists are to be considered and addressed in the decision as medical opinions from nonexamining sources about what the individual can still do despite his or her impairment(s). Again, they are to be evaluated considering all of the factors set out in the regulations for considering opinion evidence.

Effective Date: This Ruling is effective on the date of its publication in the **Federal Register**.

Cross-References: SSR 96–5p, "Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner;" Program Operations Manual System, section DI 24515.007; and Hearings, Appeals, and Litigation Law Manual, section I–5–310.

[FR Doc. 96–16689 Filed 7–1–96; 8:45 am]
BILLING CODE 4190–29–P

Social Security Ruling (SSR) 96–3p. Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment is Severe

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 96–3p. This Ruling restates and clarifies the longstanding policies of the Social Security Administration for considering allegations of pain or other symptoms in determining whether individuals claiming disability benefits under Title II, Federal Old-Age, Survivors, and Disability Insurance Benefits, and Title XVI, Supplemental Security Income for the Aged, Blind, and Disabled, of the Social Security Act have a "severe" medically determinable physical or mental impairment(s).

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income)

Dated: June 7, 1996.

Shirley S. Chater,

Commissioner of Social Security.

Policy Interpretation Ruling—Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment is Severe

Purpose

To restate and clarify the longstanding policies of the Social Security Administration for considering allegations of pain or other symptoms in determining whether individuals claiming disability benefits under title II and title XVI of the Social Security Act (the Act) have a "severe" medically determinable physical or mental impairment(s). In particular, the purpose of this Ruling is to restate and clarify the policy that:

1. The evaluation of whether an impairment(s) is "severe" that is done at step 2 of the applicable sequential evaluation process set out in 20 CFR 404.1520, 416.920, or 416.924 requires an assessment of the functionally limiting effects of an impairment(s) on an individual's ability to do basic work activities or, for an individual under age 18 claiming disability benefits under title XVI, to do age-appropriate activities; and

2. An individual's symptoms may cause limitations and restrictions in functioning which, when considered at step 2, may require a finding that there is a "severe" impairment(s) and a decision to proceed to the next step of sequential evaluation.

Citations (Authority): Sections 216(i), 223(d), and 1614(a)(3) of the Social Security Act, as amended; Regulations No. 4, sections 404.1508, 404.1520(a) and (c), 404.1521, 404.1523, 404.1528, and 404.1529; and Regulations No. 16, sections 416.908, 416.920(a) and (c), 416.921, 416.923, 416.924(b) and (d), 416.924d, 416.928, and 416.929.

Introduction

Note: For clarity, the following discussions refer only to claims of individuals claiming disability benefits under title II and individuals age 18 or older claiming disability benefits under title XVI. However, the same principles regarding the evaluation of symptoms and their effects apply in determining whether the impairment(s) of an individual who is under age 18 and claiming title XVI disability benefits is severe under 20 CFR 416.924(d). For such an individual, an impairment(s) is considered "not severe" if it is a slight abnormality(ies) that causes no more than minimal limitation in the individual's ability to function independently, appropriately, and effectively in an age-appropriate manner.

To be found disabled, an individual must have a medically determinable "severe" physical or mental impairment or combination of impairments that meets the duration requirement. At step 2 of the sequential evaluation process, an impairment or combination of impairments is considered "severe" if it significantly limits an individual's physical or mental abilities to do basic work activities; an impairment(s) that is "not severe" must be a slight abnormality (or a combination of slight abnormalities) that has no more than a minimal effect on the ability to do basic work activities. (See SSR 85–28, "Titles II and XVI: Medical Impairments That Are Not Severe," C.E. 1981–1985, p. 394.)

Symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect an individual's ability to do basic work activities unless the individual first establishes by objective medical evidence (i.e., signs and laboratory findings) that he or she has a medically determinable physical or mental impairment(s) and that the impairment(s) could reasonably be expected to produce the alleged symptom(s). (See SSR 96–4p, "Titles II and XVI: Symptoms, Medically Determinable Physical and Mental Impairments, and Exertional and Nonexertional Limitations.") The finding that an individual's impairment(s) could reasonably be expected to produce the alleged symptom(s) does not involve a determination as to the intensity, persistence, or functionally limiting effects of the symptom(s). However, once the requisite relationship between the medically determinable impairment(s) and the alleged symptom(s) is established, the intensity, persistence, and limiting effects of the symptom(s) must be considered along with the objective medical and other evidence in determining whether the impairment or combination of impairments is severe.

Policy Interpretation

In determining the severity of an impairment(s) at step 2 of the sequential evaluation process set out in 20 CFR 404.1520 and 416.920, evidence about the functionally limiting effects of an individual's impairment(s) must be evaluated in order to assess the effect of the impairment(s) on the individual's ability to do basic work activities. The vocational factors of age, education, and work experience are not considered at this step of the process. A determination that an individual's impairment(s) is not severe requires a careful evaluation of the medical findings that describe the impairment(s) (i.e., the objective medical evidence and any impairment-related symptoms), and an informed judgment about the limitations and restrictions the impairment(s) and related symptom(s) impose on the individual's physical and mental ability to do basic work activities. (See SSR 96–7p, "Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements.")

Because a determination whether an impairment(s) is severe requires an assessment of the functionally limiting effects of an impairment(s), symptom-related limitations and restrictions must be considered at this step of the sequential evaluation process, provided that the individual has a medically

determinable impairment(s) that could reasonably be expected to produce the symptoms. If the adjudicator finds that such symptoms cause a limitation or restriction having more than a minimal effect on an individual's ability to do basic work activities, the adjudicator must find that the impairment(s) is severe and proceed to the next step in the process even if the objective medical evidence would not in itself establish that the impairment(s) is severe. In addition, if, after completing development and considering all of the evidence, the adjudicator is unable to determine clearly the effect of an impairment(s) on the individual's ability to do basic work activities, the adjudicator must continue to follow the sequential evaluation process until a determination or decision about disability can be reached.

Effective Date

This Ruling is effective on July 2, 1996.

Cross-References

SSR 85–28, "Titles II and XVI: Medical Impairments That are Not Severe," SSR 96–4p, "Titles II and XVI: Symptoms, Medically Determinable Physical and Mental Impairments, and Exertional and Nonexertional Limitations," and SSR 96–7p, "Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements;" and Program Operations Manual System, sections DI 24505.001, DI 24505.005, DI 24515.061, DI 25215.005, DI 25225.001, DI 26515.005, DI 26515.015, and DI 26516.010.

[FR Doc. 96–16686 Filed 7–1–96; 8:45 am]
BILLING CODE 4190–29–P

[Social Security Ruling (SSR) 96–1p]

Application by the Social Security Administration (SSA) of Federal Circuit Court and District Court Decisions

AGENCY: Social Security Administration.
ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 96–1p. This Ruling clarifies SSA's longstanding policies that (1) unless and until a Social Security Acquiescence Ruling is issued determining that a final circuit court holding conflicts with the Agency's interpretation of the Social Security Act or regulations and explaining how SSA will apply such a holding, SSA decisionmakers will continue to be bound by SSA's nationwide policy, rather than the court's holding, in adjudicating other claims within that circuit court's jurisdiction, and (2) despite a district court decision which may conflict with SSA's interpretation of the Social Security Act or regulations, SSA adjudicators will continue to apply SSA's nationwide policy when adjudicating other claims within that district court's jurisdiction unless the court directs otherwise.

This Ruling does not in any way modify SSA's acquiescence policy to which the Agency continues to remain firmly committed, but instead serves to emphasize consistent adjudication in the programs SSA administers.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income)

Dated: June 7, 1996.

Shirley S. Chater,
Commissioner of Social Security.

Policy Interpretation Ruling

Application by the Social Security Administration (SSA) of Federal Circuit Court and District Court Decisions

Purpose: To clarify longstanding policy that, unless and until a Social Security Acquiescence Ruling (AR) is issued determining that a final circuit court holding conflicts with the Agency's interpretation of the Social Security Act or regulations and explaining how SSA will apply such a holding, SSA decisionmakers continue to be bound by SSA's nationwide policy, rather than the court's holding, in adjudicating other claims within that circuit court's jurisdiction. This Ruling does not in any way modify SSA's acquiescence policy to which the Agency continues to remain firmly committed, but instead serves to emphasize consistent adjudication in the programs SSA administers. This Ruling is also issued to clarify longstanding Agency policy that, despite a district court decision which may conflict with SSA's interpretation of the Social Security Act or regulations, SSA adjudicators will continue to apply SSA's nationwide policy when adjudicating other claims within that district court's jurisdiction unless the court directs otherwise.

Citations (Authority): Sections 205(a), 702(a)(5) and 1631(d) of the Social Security Act; Sections 413(b), 426(a) and 508 of the Black Lung Benefits Act; Regulations No. 4, section 404.985; Regulations No. 10, section 410.670c; Regulations No. 16, section 416.1485; Regulations No. 22, section 422.406.

Background: Final regulations on the application of circuit court law in the Social Security, Supplemental Security Income, and Black Lung programs were published in the **Federal Register** on January 11, 1990 (55 FR 1012). SSA first adopted the acquiescence policy set forth in these rules in 1985, with the details evolving over the next 5 years. These rules explain how SSA acquiesces in circuit court law which conflicts with Agency policy; it does so by issuing an AR for a final circuit court decision which SSA determines is in conflict with the Agency's interpretation of the Social Security Act or regulations. 20 CFR 404.985(b), 410.670c(b) and 416.1485(b). The AR, which is issued through publication in the **Federal Register**, describes the administrative case and the court decision, identifies the issue(s), explains how the court decision differs from SSA policy, and explains how SSA will apply the court holding, instead of its nationwide policy, when deciding claims within the applicable circuit. ARs apply at all steps in the administrative process within the applicable circuit unless the court decision, by its nature, applies only at certain steps in this process. In the latter case, the AR may be so limited.

As of the effective date of this Ruling, SSA had issued a total of 62 ARs, averaging about 3–4 ARs per year in recent years; 42 of those ARs are still in effect. The majority of the ARs issued by SSA to date have dealt with nondisability issues, although a significant portion have dealt directly with the disability determination process. Decisions for which ARs are issued often involve complex and difficult issues. The court's holding may be unclear in its scope and susceptible to differing interpretations. Despite these difficulties, no AR has been found to be inadequate by the circuit court which issued the underlying decision.

Policy Interpretation: Unless and until an AR for a circuit court holding has been issued, SSA adjudicates other claims within that circuit by applying its nationwide policy. The preamble to the final acquiescence regulations published on January 11, 1990, explained the basis for this approach in responding to a public comment suggesting that administrative law judges (ALJs) and the Appeals Council should be allowed to apply circuit court holdings without the benefit of an Acquiescence Ruling:

> [W]e have not adopted this comment. First, under this final acquiescence policy, Acquiescence Rulings apply to all levels of adjudication, not only to the ALJ and Appeals Council levels, unless a holding by its nature applies only to certain levels of adjudication. Thus, the approach suggested in this comment would create different standards of adjudication at the different levels of administrative review. Second, interpreting and applying a circuit court holding is not always a simple matter, as we noted previously. [1] Finally, by statute, establishing policy is the Secretary's [2] responsibility; adjudicators are responsible for applying that policy to the facts in any given case. Therefore, we believe that to ensure the uniform and consistent adjudication necessary in the administration of a national program, the agency must analyze court decisions and provide adjudicators as specific a statement as possible explaining the agency's interpretation of a court of appeals holding, as well as providing direction on how to apply the holding in the course of adjudication.
>
> 55 FR 1013 (1990).

As explained in SSA's regulations at 20 CFR 404.985(b), 410.670c(b), and 416.1485(b), if SSA makes an administrative determination or decision on a claim between the date of a circuit court decision and the date of issuance of an AR for that decision, the claimant, upon request, is permitted to have the claim readjudicated by demonstrating that application of the AR could change the result. Thus, as explained in the preamble to the acquiescence regulations, a readjudication procedure is provided which allows a claimant, whose application was adjudicated during the interim period between a circuit court decision and the issuance of an AR for that decision, to seek immediate application of the AR once it is issued, without the necessity of appeal. 55 FR 1013 (1990).

Finally, in accordance with its regulations, SSA acquiesces only in decisions of the Federal circuit courts, and not in decisions of Federal district courts within a circuit. Thus, despite a district court decision which may conflict with SSA's interpretation of the Social Security Act or regulations, SSA adjudicators will continue to apply SSA's nationwide policy when adjudicating other claims within that district court's jurisdiction unless the court directs otherwise such as may occur in a class action.

Effective Date: This Ruling, which reflects longstanding procedures which SSA continues to believe represent the most effective and fair way to implement its acquiescence policy, is effective on July 2, 1996. This Ruling does not apply to the claims of New York disability claimants who are covered by the court-approved settlement in *Stieberger* v. *Sullivan.*

[FR Doc. 96–16684 Filed 7–1–96; 8:45 am]
BILLING CODE 4190–29–P

[1] The preamble previously noted that, "Whether or not the holding of a particular circuit court decision 'conflicts' with our policy is not always clear . . ." 55 FR 1012 (1990).

[2] As a result of Pub. L. 103–296, the Social Security Independence and Program Improvements Act of 1994, which made SSA an independent agency separate from the Department of Health and Human Services effective March 31, 1995, the responsibility for establishing policy now resides with the Commissioner of Social Security, rather than the Secretary of Health and Human Services.

Social Security Ruling (SSR) 96–5p. Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner

AGENCY: Social Security Administration.
ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 96–5p. This Ruling clarifies Social Security Administration policy on how we consider medical source opinions on issues reserved to the Commissioner of Social Security, including whether an individual's impairment(s) meets or is equivalent in severity to the requirements of any impairment(s) in the Listing of Impairments in appendix 1, subpart P of 20 CFR part 404 of the Social Security Administration regulations; what an individual's residual functional capacity is; whether an individual's residual functional capacity prevents him or her from performing past relevant work; how the vocational factors of age, education, and work experience apply; and whether an individual is "disabled" under the Social Security Act.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income.)

Dated: June 7, 1996.

Shirley S. Chater,

Commissioner of Social Security.

Policy Interpretation Ruling

Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner

Purpose: To clarify Social Security Administration (SSA) policy on how we consider medical source opinions on issues reserved to the Commissioner, including whether an individual's impairment(s) meets or is equivalent in severity to the requirements of any impairment(s) in the Listing of Impairments in appendix 1, subpart P of 20 CFR part 404 (the listings); what an individual's residual functional capacity (RFC) is; whether an individual's RFC prevents him or her from doing past relevant work; how the vocational factors of age, education, and work experience apply; and whether an individual is "disabled" under the Social Security Act (the Act). In particular, to emphasize:

1. The difference between issues reserved to the Commissioner and medical opinions.

2. That treating source opinions on issues reserved to the Commissioner are never entitled to controlling weight or special significance.

3. That opinions from any medical source about issues reserved to the Commissioner must never be ignored, and that the notice of the determination or decision must explain the consideration given to the treating source's opinion(s).

4. The difference between the opinion called a "medical source statement" and the administrative finding called a "residual functional capacity assessment."

Citations (Authority): Sections 205(a) and (b)(1), 216(i), 221(a)(1) and (g), 223(d), 1614(a), 1631(c)(1) and (d)(1), and 1633 of the Social Security Act, as amended; Regulations No. 4, sections 404.1503, 404.1504, 404.1512, 404.1513, 404.1520, 404.1526, 404.1527, and 404.1546; Regulations No. 16, sections 416.903, 416.904, 416.912, 416.913, 416.920, 416.924, 416.924d, 416.926, 416.926a, 416.927, and 416.946.

Introduction:[1] On August 1, 1991, SSA published regulations at 20 CFR 404.1527 and 416.927 that set out rules for evaluating medical opinions. The regulations provide general guidance for evaluating all evidence in a case record and provide detailed rules for evaluating medical opinion evidence. They explain the significance given to medical opinions from treating sources on the nature and severity of an individual's impairment(s). They also set out factors used to weigh opinions from all types of medical sources, including treating sources, other examining sources, and nonexamining physicians, psychologists, and other medical sources. In addition, the regulations provide that the final responsibility for deciding certain issues, such as whether an individual is disabled under the Act, is reserved to the Secretary of Health and Human Services (the Secretary).

On March 31, 1995, SSA became an independent agency under Public Law 103–296. As a result of this legislative change, the Commissioner of Social Security (the Commissioner) replaced the Secretary as the official responsible for making determinations of disability under titles II and XVI of the Act.

Policy Interpretation: The regulations at 20 CFR 404.1527(a) and 416.927(a) define medical opinions as "statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions." The regulations recognize that treating sources are important sources of medical evidence and expert testimony, and that their opinions about the nature and severity of an individual's impairment(s) are entitled to special significance; sometimes the medical opinions of treating sources are entitled to controlling weight. Paragraphs (b), (c), (d), and (f) of 20 CFR 404,1527 and 416.927 explain how we weigh treating source and other medical source opinions. (See, also, SSR 96–2p, "Titles II and XVI: Giving Controlling Weight to Treating Source Medical Opinions," and SSR 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence.")

Under 20 CFR 404.1527(e) and 416.927(e), some issues are not medical issues regarding the nature and severity of an individual's impairment(s) but are administrative findings that are dispositive of a case; i.e., that would direct the determination or decision of disability. The following are examples of such issues:

1. Whether an individual's impairment(s) meets or is equivalent in severity to the requirements of any impairment(s) in the listings;
2. What an individual's RFC is;
3. Whether an individual's RFC prevents him or her from doing past relevant work;
4. How the vocational factors of age, education, and work experience apply; and
5. Whether an individual is "disabled" under the Act.

The regulations provide that the final responsibility for deciding issues such as these is reserved to the Commissioner.

Nevertheless, our rules provide that adjudicators must always carefully consider medical source opinions about any issue, including opinions about issues that are reserved to the Commissioner. For treating sources, the rules also require that we make every reasonable effort to recontact such sources for clarification when they provide opinions on issues reserved to the Commissioner and the bases for such opinions are not clear to us.

However, treating source opinions on issues that are reserved to the Commissioner are never entitled to controlling weight or special significance. Giving controlling weight to such opinions would, in effect, confer upon the treating source the authority to make the determination or decision about whether an individual is under a disability, and thus would be an abdication of the Commissioner's statutory responsibility to determine whether an individual is disabled.

However, opinions from any medical source on issues reserved to the Commissioner must never be ignored. The adjudicator is required to evaluate all evidence in the case record that may have a bearing on the determination or decision of disability, including opinions from medical sources about issues reserved to the Commissioner. If the case record contains an opinion from a medical source on an issue reserved to the Commissioner, the adjudicator must evaluate all the evidence in the case record to determine the extent to which the opinion is supported by the record.

[1] Note: For clarity, the following discussions refer only to claims of individuals claiming disability benefits under title II and individuals age 18 or older claiming disability benefits under title XVI. However, the same principles regarding medical source opinions apply in determining disability for individuals under age 18 claiming disability benefits under title XVI. Therefore, it should be understood that references in this Ruling to the ability to do gainful activity, RFC, and other terms and rules that are applicable only to title II disability claims and title XVI disability claims of individuals age 18 or older, are also intended to refer to appropriate terms and rules applicable in determining disability for individuals under age 18 under title XVI.

In evaluating the opinions of medical sources on issues reserved to the Commissioner, the adjudicator must apply the applicable factors in 20 CFR 404.1527(d) and 416.927(d). For example, it would be appropriate to consider the supportability of the opinion and its consistency with the record as a whole at the administrative law judge and Appeals Council levels in evaluating an opinion about the claimant's ability to function which is from a State agency medical or psychological consultant who has based the opinion on the entire record (see *Findings of State Agency Medical and Psychological Consultants*, below). However, pursuant to paragraph (e)(2) of 20 CFR 404.1527 and 416.927, the adjudicator is precluded from giving any special significance to the source; e.g., giving a treating source's opinion controlling weight, when weighing these opinions on issues reserved to the Commissioner.

The following discussions provide additional policy interpretations and procedures for evaluating opinions on issues reserved to the Commissioner.

Opinions About Whether an Individual's Impairment Meets the Requirements of a Listed Impairment

Whether the findings for an individual's impairment meet the requirements of an impairment in the listings is usually more a question of medical fact than a question of medical opinion. Many of the criteria in the listings relate to the nature and severity of impairments; e.g., diagnosis, prognosis and, for those listings that include such criteria, symptoms and functional limitations. In most instances, the requirements of listed impairments are objective, and whether an individual's impairment manifests these requirements is simply a matter of documentation. To the extent that a treating source is usually the best source of this documentation, the adjudicator looks to the treating source for medical evidence with which he or she can determine whether an individual's impairment meets a listing. When a treating source provides medical evidence that demonstrates that an individual has an impairment that meets a listing, and the treating source offers an opinion that is consistent with this evidence, the adjudicator's administrative finding about whether the individual's impairment(s) meets the requirements of a listing will generally agree with the treating source's opinion. Nevertheless, the issue of meeting the requirements of a listing is still an issue ultimately reserved to the Commissioner.

Opinions on Whether an Individual's Impairment(s) Is Equivalent in Severity to the Requirements of a Listed Impairment

In 20 CFR 404.1526 and 416.926, equivalence is addressed as a "decision * * * on medical evidence only" because this finding does not consider the *vocational* factors of age, education, and work experience. A finding of equivalence involves more than findings about the nature and severity of medical impairments. It also requires a judgment that the medical findings equal a level of severity set forth in 20 CFR 404.1525(a) and 416.925(a); i.e., that the impairment(s) is "* * * severe enough to prevent a person from doing any gainful activity." This finding requires familiarity with the regulations and the legal standard of severity set forth in 20 CFR 404.1525(a), 404.1526, 416.925(a), and 416.926. Therefore, it is an issue reserved to the Commissioner.[2]

Residual Functional Capacity Assessments and Medical Source Statements

The regulations describe two distinct kinds of assessments of what an individual can do despite the presence of a severe impairment(s). The first is described in 20 CFR 404.1513(b) and (c) and 416.913(b) and (c) as a "statement about what you can still do despite your impairment(s)" made by an individual's medical source and based on that source's own medical findings. This "medical source statement" is an opinion submitted by a medical source as part of a medical report. The second category of assessments is the RFC assessment described in 20 CFR 404.1545, 404.1546, 416.945, and 416.946 which is the adjudicator's ultimate finding of "what you can still do despite your limitations." Even though the adjudicator's RFC assessment may adopt the opinions in a medical source statement, they are not the same thing: A medical source statement is evidence that is submitted to SSA by an individual's medical source reflecting the source's opinion based on his or her own knowledge, while an RFC assessment is the adjudicator's ultimate finding based on a consideration of this opinion and all the other evidence in the case record about what an individual can do despite his or her impairment(s).

Medical Source Statement

Medical source statements are medical opinions submitted by acceptable medical sources[3], including treating sources and consultative examiners, about what an individual can still do despite a severe impairment(s), in particular about an individual's physical or mental abilities to perform work-related activities on a sustained basis. Adjudicators are generally required to request that acceptable medical sources provide these statements with their medical reports. Medical source statements are to be based on the medical sources' records and examination of the individual; i.e., their personal knowledge of the individual. Therefore, because there will frequently be medical and other evidence in the case record that will not be known to a particular medical source, a medical source statement may provide an incomplete picture of the individual's abilities.

Medical source statements submitted by treating sources provide medical opinions which are entitled to special significance and may be entitled to controlling weight on issues concerning the nature and severity of an individual's impairment(s). Adjudicators must remember, however, that medical source statements may actually comprise separate medical opinions regarding diverse physical and mental functions, such as walking, lifting; seeing, and remembering instructions, and that it may be necessary to decide whether to adopt or not adopt each one.

RFC Assessment

The term "residual functional capacity assessment" describes an adjudicator's finding about the ability of an individual to perform work-related activities. The assessment is based upon consideration of all relevant evidence in the case record, including medical evidence and relevant nonmedical evidence, such as observations of lay witnesses of an individual's apparent symptomatology, an individual's own statement of what he or she is able or unable to do, and many other factors that could help the adjudicator determine the most reasonable findings in light of all the evidence.

[2] See the section below entitled "Findings of State Agency Medical and Psychological Consultants" for an explanation of how administrative law judges and the Appeals Council must evaluate State agency medical and psychological consultant findings about equivalence. See also SSR 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence."

[3] The term "acceptable medical sources" is defined in 20 CFR 404.1513(a) and 416.913(a).

Medical Source Statement vs. RFC Assessment

A medical source's statement about what an individual can still do is medical opinion evidence that an adjudicator must consider together with all of the other relevant evidence (including other medical source statements that may be in the case record) when assessing an individual's RFC. Although an adjudicator may decide to adopt all of the opinions expressed in a medical source statement, a medical source statement must not be equated with the administrative finding known as the RFC assessment. Adjudicators must weigh medical source statements under the rules set out in 20 CFR 404.1527 and 416.927, providing appropriate explanations for accepting or rejecting such opinions.

From time-to-time, medical sources may provide opinions that an individual is limited to "sedentary work," "sedentary activity," "light work," or similar statements that appear to use the terms set out in our regulations and Rulings to describe exertional levels of maximum sustained work capability. Adjudicators must not assume that a medical source using terms such as "sedentary" and "light" is aware of our definitions of these terms. The judgment regarding the extent to which an individual is able to perform exertional ranges of work goes beyond medical judgment regarding what an individual can still do and is a finding that may be dispositive of the issue of disability.

At steps 4 and 5 of the sequential evaluation process in 20 CFR 404.1520 and 416.920, the adjudicator's assessment of an individual's RFC may be the most critical finding contributing to the final determination or decision about disability. Although the overall RFC assessment is an administrative finding on an issue reserved to the Commissioner, the adjudicator must nevertheless adopt in that assessment any treating source medical opinion (i.e., opinion on the nature and severity of the individual's impairment(s)) to which the adjudicator has given controlling weight under the rules in 20 CFR 404.1527(d)(2) and 416.927(d)(2).

Opinions on Whether an Individual Is Disabled

Medical sources often offer opinions about whether an individual who has applied for title II or title XVI disability benefits is "disabled" or "unable to work," or make similar statements of opinions. In addition, they sometimes offer opinions in other work-related terms; for example, about an individual's ability to do past relevant work or any other type of work. Because these are administrative findings that may determine whether an individual is disabled, they are reserved to the Commissioner. Such opinions on these issues must not be disregarded. However, even when offered by a treating source, they can never be entitled to controlling weight or given special significance.

Findings of State Agency Medical and Psychological Consultants

Medical and psychological consultants in the State agencies are adjudicators at the initial and reconsideration determination levels (except in disability hearings—see 20 CFR 404.914 ff. and 416.1414 ff.). As such, they do not express opinions; they make findings of fact that become part of the determination. However, 20 CFR 404.1527(f) and 416.927(f) provide that, at the administrative law judge and Appeals Council levels of the administrative review process, medical and psychological consultant findings about the nature and severity of an individual's impairment(s), including any RFC assessments, become opinion evidence. Adjudicators at these levels, including administrative law judges and the Appeals Council, must consider these opinions as expert opinion evidence of nonexamining physicians and psychologists and must address the opinions in their decisions. In addition, under 20 CFR 404.1526 and 416.926, adjudicators at the administrative law judge and Appeals Council levels must consider and address State agency medical or psychological consultant findings regarding equivalence to a listed impairment.

At the administrative law judge and Appeals Council levels, adjudicators must evaluate opinion evidence from medical or psychological consultants using all of the applicable rules in 20 CFR 404.1527 and 416.927 to determine the weight to be given to the opinion. For additional detail regarding these policies and policy interpretations, see SSR 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence."

Requirements for Becontacting Treating Sources

Because treating source evidence (including opinion evidence) is important, if the evidence does not support a treating source's opinion on any issue reserved to the Commissioner and the adjudicator cannot ascertain the basis of the opinion from the case record, the adjudicator must make "every reasonable effort" to recontact the source for clarification of the reasons for the opinion.

Explanation of the Consideration Given to a Treating Source's Opinion

Treating source opinions on issues reserved to the Commissioner will never be given controlling weight. However, the notice of the determination or decision must explain the consideration given to the treating source's opinion(s).

Effective Date: This Ruling is effective on the date of its publication in the **Federal Register**.

Cross-References: SSR 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence," SSR 96–2p, "Titles II and XVI: Giving Controlling Weight to Treating Source Medical Opinions;" and Program Operations Manual System, section DI 24515.010.

[FR Doc. 96–16688 Filed 7–1–96; 8:45 am]
BILLING CODE 4190–29–P

Social Security Ruling (SSR) 96–8p. Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling SSR 96–8p. This Ruling states the Social Security Administration's policies and policy interpretations regarding the assessment of residual functional capacity (an individual's ability to perform sustained work activities in an ordinary work setting on a regular and continuing basis) in initial claims for disability benefits under title II of the Social Security Act (the Act) and supplemental security income payments based on disability under title XVI of the Act.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income.)

Dated: June 7, 1996.

Shirley S. Chater,

Commissioner of Social Security.

Policy Interpretation Ruling—Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims

Purpose: To state the Social Security Administration's policies and policy interpretations regarding the assessment of residual functional capacity (RFC) in initial claims for disability benefits under titles II and XVI of the Social Security Act (the Act). In particular, to emphasize that:

1. Ordinarily, RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis. A "regular and continuing basis" means 8 hours a day, for 5 days a week, or an equivalent work schedule.

2. The RFC assessment considers only functional limitations and restrictions that result from an individual's medically determinable impairment or combination of impairments, including the impact of any related symptoms. Age and body habitus are not factors in assessing RFC. It is incorrect to find that an individual has limitations beyond those caused by his or her medically determinable impairment(s) and any related symptoms, due to such factors as age and natural body build, and the activities the individual was accustomed to doing in his or her previous work.

3. When there is no allegation of a physical or mental limitation or restriction of a specific functional capacity, and no information in the case record that there is such a limitation or restriction, the adjudicator must consider the individual to have no limitation or restriction with respect to that functional capacity.

4. The RFC assessment must first identify the individual's functional limitations or restrictions and assess his or her work-related abilities on a function-by-function basis, including the functions in paragraphs (b), (c), and (d) of 20 CFR 404.1545 and 416.945. Only after that may RFC be expressed in terms of the exertional levels of work, sedentary, light, medium, heavy, and very heavy.

5. RFC is not the *least* an individual can do despite his or her limitations or restrictions, but the *most*.

6. Medical impairments and symptoms, including pain, are not intrinsically exertional or nonexertional. It is the functional limitations or restrictions caused by medical impairments and their related symptoms that are categorized as exertional or nonexertional.

Citations-(Authority): Sections 223(d) and 1614(a) of the Social Security Act, as amended; Regulations No. 4, subpart P, sections 404.1513, 404.1520, 404.1520a, 404.1545, 404.1546, 404.1560, 404.1561, 404.1569a, and appendix 2; and Regulations No. 16, subpart I, sections 416.913, 416.920, 416.920a, 416.945, 416.946, 416.960, 416.961, and 416.969a.

Introduction: In disability determinations and decisions made at steps 4 and 5 of the sequential evaluation process in 20 CFR 404.1520 and 416.920, in which the individual's ability to do past relevant work and other work must be considered, the adjudicator must assess RFC. This Ruling clarifies the term "RFC" and discusses the elements considered in the assessment. It describes concepts for both physical and mental RFC assessments.

This Ruling applies to the assessment of RFC in claims for initial entitlement to disability benefits under titles II and XVI. Although most rules and procedures regarding RFC assessment in deciding whether an individual's disability continues are the same, there are some differences.

Policy Interpretation

General

When an individual is not engaging in substantial gainful activity and a determination or decision cannot be made on the basis of medical factors alone (i.e., when the impairment is "severe" because it has more than a minimal effect on the ability to do basic work activities yet does not meet or equal in severity the requirements of any impairment in the Listing of Impairments), the sequential evaluation process generally must continue with an identification of the individual's functional limitations and restrictions and an assessment of his or her remaining capacities for work-related activities.[1] This assessment of RFC is used at step 4 of the sequential evaluation process to determine whether an individual is able to do past relevant work, and at step 5 to determine whether an individual is able to do other work, considering his or her age, education, and work experience.

Definition of RFC. RFC is what an individual can still do despite his or her limitations. RFC is an administrative assessment of the extent to which an individual's medically determinable impairment(s), including any related symptoms, such as pain, may cause physical or mental limitations or restrictions that may affect his or her capacity to do work-related physical and mental activities. (See SSR 96–4p, "Titles II and XVI: Symptoms, Medically Determinable Physical and Mental Impairments, and Exertional and Nonexertional Limitations.") Ordinarily, RFC is the individual's maximum remaining ability to do sustained work activities in an ordinary work setting on a regular and continuing basis, and the RFC assessment must include a discussion of the individual's abilities on that basis. A "regular and continuing basis" means 8 hours a day, for 5 days a week, or an equivalent work schedule.[2] RFC does not represent the

[1] However, a finding of "disabled" will be made for an individual who: a) has a severe impairment(s), b) has no past relevant work, c) is age 55 or older, and d) has no more than a limited education. (See SSR 82–63, "Titles II and XVI: Medical-Vocational Profiles Showing an Inability to Make an Adjustment to Other Work" (C.E. 1981–1985, p. 447.) In such a case, it is not necessary to assess the individual's RFC to determine if he or she meets this special profile and is, therefore, disabled.

[2] The ability to work 8 hours a day for 5 days a week is not always required when evaluating an individual's ability to do past relevant work at step 4 of the sequential evaluation process. Part-time

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least an individual can do despite his or her limitations or restrictions, but the most.[3] RFC is assessed by adjudicators at each level of the administrative review process based on all of the relevant evidence in the case record, including information about the individual's symptoms and any "medical source statements"—i.e., opinions about what the individual can still do despite his or her impairment(s)—submitted by an individual's treating source or other acceptable medical sources.[4]

The RFC Assessment Must be Based Solely on the Individual's Impairment(s). The Act requires that an individual's inability to work must result from the individual's physical or mental impairment(s). Therefore, in assessing RFC, the adjudicator must consider only limitations and restrictions attributable to medically determinable impairments. It is incorrect to find that an individual has limitations or restrictions beyond those caused by his or her medical impairment(s) including any related symptoms, such as pain, due to factors such as age or height, or whether the individual had ever engaged in certain activities in his or her past relevant work (e.g., lifting heavy weights.) Age and body habitus (i.e., natural body build, physique, constitution, size, and weight, insofar as they are unrelated to the individual's medically determinable impairment(s) and related symptoms) are not factors in assessing RFC in initial claims.[5]

Likewise, when there is no allegation of a physical or mental limitation or restriction of a specific functional capacity, and no information in the case record that there is such a limitation or restriction, the adjudicator must consider the individual to have no limitation or restriction with respect to that functional capacity.

RFC and Sequential Evaluation

RFC is an issue only at steps 4 and 5 of the sequential evaluation process. The following are issues regarding the RFC assessment and its use at each of these steps.

RFC and exertional levels of work. The RFC assessment is a function-by-function assessment based upon all of the relevant evidence of an individual's ability to do work-related activities. At step 4 of the sequential evaluation process, the RFC must not be expressed initially in terms of the exertional categories of "sedentary," "light," "medium," "heavy," and "very heavy" work because the first consideration at this step is whether the individual can do past relevant work as he or she actually performed it.

RFC may be expressed in terms of an exertional category, such as light, if it becomes necessary to assess whether an individual is able to do his or her past relevant work as it is generally performed in the national economy. However, without the initial function-by-function assessment of the individual's physical and mental capacities, it may not be possible to determine whether the individual is able to do past relevant work as it is generally performed in the national economy because particular occupations may not require all of the exertional and nonexertional demands necessary to do the full range of work at a given exertional level.

At step 5 of the sequential evaluation process, RFC must be expressed in terms of, or related to, the exertional categories when the adjudicator determines whether there is other work the individual can do. However, in order for an individual to do a full range of work at a given exertional level, such as sedentary, the individual must be able to perform substantially all of the exertional and nonexertional functions required in work at that level. Therefore, it is necessary to assess the individual's capacity to perform each of these functions in order to decide which exertional level is appropriate and whether the individual is capable of doing the full range of work contemplated by the exertional level.

Initial failure to consider an individual's ability to perform the specific work-related functions could be critical to the outcome of a case. For example:

1. At step 4 of the sequential evaluation process, it is especially important to determine whether an individual who is at least "closely approaching advanced age" is able to do past relevant work because failure to address this issue at step 4 can result in an erroneous finding that the individual is disabled at step 5. It is very important to consider first whether the individual can still do past relevant work as he or she *actually* performed it because individual jobs within an occupational category as performed for particular employers may not entail all of the requirements of the exertional level indicated for that category in the Dictionary of Occupational Titles and its related volumes.

2. The opposite result may also occur at step 4 of the sequential evaluation process. When it is found that an individual cannot do past relevant work as he or she actually performed it, the adjudicator must consider whether the individual can do the work as it is generally performed in the national economy. Again, however, a failure to first make a function-by-function assessment of the individual's limitations or restrictions could result in the adjudicator overlooking some of an individual's limitations or restrictions. This could lead to an incorrect use of an exertional category to find that the individual is able to do past relevant work as it is generally performed and an erroneous finding that the individual is not disabled.

3. At step 5 of the sequential evaluation process, the same failures could result in an improper application of the rules in appendix 2 to subpart P of the Regulations No. 4 (the "Medical-Vocational Guidelines) and could make the difference between a finding of "disabled" and "not disabled." Without a careful consideration of an individual's functional capacities to support an RFC assessment based on an exertional category, the adjudicator may either overlook limitations or restrictions that would narrow the ranges and types of work an individual may be able to do, or find that the individual has limitations or restrictions that he or she does not actually have.

RFC represents the most that an individual can do despite his or her limitations or restrictions. At step 5 of the sequential evaluation process, RFC must not be expressed in terms of the lowest exertional level (e.g., "sedentary" or "light" when the individual can perform "medium" work) at which the medical-vocational rules would still direct a finding of "not disabled." This would concede lesser functional abilities than the individual actually possesses and would not reflect the *most* he or she can do based on the evidence in the case record, as directed by the regulations.[6]

The psychiatric review technique. The psychiatric review technique described in 20 CFR 404.1520a and 416.920a and summarized on the Psychiatric Review Technique Form (PRTF) requires adjudicators to assess an individual's limitations and restrictions from a mental impairment(s) in categories identified in the "paragraph B" and "paragraph C" criteria of the adult mental disorders listings. The adjudicator must remember that the limitations identified in the "paragraph B" and "paragraph C" criteria are not an RFC assessment but are used to rate the severity of mental impairment(s) at steps 2 and 3 of the sequential evaluation process. The mental RFC assessment used at steps 4 and 5 of the sequential evaluation process requires a more detailed assessment by itemizing various functions contained in the broad categories found in paragraphs B and C of the adult mental disorders listings in 12.00 of the Listing of Impairments, and summarized on the PRTF.

Evidence Considered

The RFC assessment must be based on *all* of the relevant evidence in the case record, such as:

- Medical history,
- Medical signs and laboratory findings,
- The effects of treatment, including limitations or restrictions imposed by the mechanics of treatment (e.g., frequency of treatment, duration, disruption to routine, side effects of medication),
- Reports of daily activities,
- Lay evidence,
- Recorded observations,
- Medical source statements,
- Effects of symptoms, including pain, that are reasonably attributed to a medically determinable impairment,
- Evidence from attempts to work,
- Need for a structured living environment, and
- Work evaluations, if available.

The adjudicator must consider all allegations of physical and mental limitations or restrictions and make every reasonable effort to ensure that the file contains sufficient evidence to assess RFC. Careful consideration must be given to any available information about symptoms because subjective descriptions may indicate more severe limitations or restrictions than can be shown by objective medical evidence alone.

In assessing RFC, the adjudicator must consider limitations and restrictions imposed by *all* of an individual's impairments, even those that are not "severe." While a "not severe" impairment(s) standing alone may not significantly limit an individual's ability to do basic work activities, it may—when considered with limitations or restrictions due to other impairments—be critical to the outcome of a claim. For example, in combination with limitations imposed by an individual's other impairments, the limitations due to such a "not severe" impairment may prevent an individual from performing past relevant work or may narrow the range of other work that the individual may still be able to do.

Exertional and Nonexertional Functions

The RFC assessment must address both the remaining exertional and nonexertional capacities of the individual.

Exertional Capacity

Exertional capacity addresses an individual's limitations and restrictions of physical strength and defines the individual's remaining abilities to perform each of seven strength demands: Sitting, standing, walking, lifting, carrying, pushing, and pulling. Each function must be considered separately (e.g., "the individual can walk for 5 out of 8 hours and stand for 6 out of 8 hours"), even if the final RFC assessment will combine activities (e.g., "walk/stand, lift/carry, push/pull"). Although the regulations describing the exertional levels of work and the Dictionary of Occupational Titles and its related volumes pair some functions, it is not invariably the case that treating the activities together will result in the same decisional outcome as treating them separately.

It is especially important that adjudicators consider the capacities separately when deciding whether an individual can do past relevant work. However, separate consideration may also influence decisionmaking at step 5 of the sequential evaluation process, for reasons already given in the section on "RFC and Sequential Evaluation."

Nonexertional Capacity

Nonexertional capacity considers all work-related limitations and restrictions that do not depend on an individual's physical strength; i.e., all physical limitations and restrictions that are not reflected in the seven strength demands, and mental limitations and restrictions. It assesses an individual's abilities to perform physical activities such as postural (e.g., stooping, climbing), manipulative (e.g., reaching, handling), visual (seeing), communicative (hearing, speaking), and mental (e.g., understanding and remembering instructions and responding appropriately to supervision). In addition to these activities, it also considers the ability to tolerate various environmental factors (e.g., tolerance of temperature extremes).

As with exertional capacity, nonexertional capacity must be expressed in terms of work-related functions. For example, in assessing RFC for an individual with a visual impairment, the adjudicator must consider the individual's residual capacity to perform such work-related functions as working with large or small objects, following instructions, or avoiding ordinary hazards in the workplace. In assessing RFC with impairments affecting hearing or speech, the adjudicator must explain how the individual's limitations would affect his or her ability to communicate in the workplace. Work-related mental activities generally required by competitive, remunerative work include the abilities to: understand, carry out, and remember instructions; use judgment in making work-related decisions; respond appropriately to supervision, co-workers and work situations; and deal with changes in a routine work setting.

Consider the Nature of the Activity Affected

It is the nature of an individual's limitations or restrictions that determines whether the individual will have only exertional limitations or restrictions, only nonexertional limitations or restrictions, or a combination of exertional and nonexertional limitations or restrictions. For example, symptoms, including pain, are not intrinsically exertional or nonexertional. Symptoms often affect

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work that was substantial gainful activity, performed within the past 15 years, and lasted long enough for the person to learn to do it constitutes past relevant work, and an individual who retains the RFC to perform such work must be found not disabled.

[3] See SSR 83–10, "Titles II and XVI: Determining Capability to Do Other Work—The Medical Vocational Rules of Appendix 2" (C.E. 1981–1985, p. 516). SSR 83–10 states that "(T)he RFC determines a work capability that is exertionally sufficient to allow performance of at least substantially all of the activities of work at a particular level (e.g., sedentary, light, or medium), but is also insufficient to allow substantial performance of work at greater exertional levels."

[4] For a detailed discussion of the difference between the RFC assessment, which is an administrative finding of fact, and the opinion evidence called the "medical source statement" or "MSS," see SSR 96–5p, "Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner."

[5] The definition of disability in the Act requires that an individual's inability to work must be due to a medically determinable physical or mental impairment(s). The assessment of RFC must therefore be concerned with the impact of a disease process or injury on the individual. In determining a person's maximum RFC for sustained activity, factors of age or body habitus must not be allowed to influence the assessment.

[6] In the Fourth Circuit, adjudicators are required to adopt a finding, absent new and material evidence, regarding the individual's RFC made in a final decision by an administrative law judge or the Appeals Council on a prior disability claim arising under the same title of the Act. In this jurisdiction, an unfavorable determination or decision using the lowest exertional level at which the rules would direct a finding of not disabled could result in an unwarranted favorable determination or decision on an individual's subsequent application; for example, if the individual's age changes to a higher age category following the final decision on the earlier application. See Acquiescence Ruling (AR) 94–2(4), *"Lively v. Secretary of Health and Human Services,* 820 F.2d 1391 (4th Cir. 1987)—Effect of Prior Disability Findings on Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act." AR 94–2(4) applies to disability findings in cases involving claimants who reside in the Fourth Circuit at the time of the determination or decision on the subsequent claim.

the capacity to perform one of the seven strength demands and may or may not have effects on the demands of occupations other than the strength demands. If the only limitations or restrictions caused by symptoms, such as pain, are in one or more of the seven strength demands (e.g., lifting) the limitations or restrictions will be exertional. On the other hand, if an individual's symptoms cause a limitation or restriction that affects the individual's ability to meet the demands of occupations other than their strength demands (e.g., manipulation or concentration), the limitation or restriction will be classified as nonexertional. Symptoms may also cause both exertional and nonexertional limitations.

Likewise, even though mental impairments usually affect nonexertional functions, they may also limit exertional capacity by affecting one or more of the seven strength demands. For example, a mental impairment may cause fatigue or hysterical paralysis.

Narrative Discussion Requirements

The RFC assessment must include a narrative discussion describing how the evidence supports each conclusion, citing specific medical facts (e.g., laboratory findings) and nonmedical evidence (e.g., daily activities, observations). In assessing RFC, the adjudicator must discuss the individual's ability to perform sustained work activities in an ordinary work setting on a regular and continuing basis (i.e., 8 hours a day, for 5 days a week, or an equivalent work schedule [7]), and describe the maximum amount of each work-related activity the individual can perform based on the evidence available in the case record. The adjudicator must also explain how any material inconsistencies or ambiguities in the evidence in the case record were considered and resolved.

Symptoms. In all cases in which symptoms, such as pain, are alleged, the RFC assessment must:

- Contain a thorough discussion and analysis of the objective medical and other evidence, including the individual's complaints of pain and other symptoms and the adjudicator's personal observations, if appropriate;
- Include a resolution of any inconsistencies in the evidence as a whole; and
- Set forth a logical explanation of the effects of the symptoms, including pain, on the individual's ability to work.

[7] See Footnote 2.

The RFC assessment must include a discussion of why reported symptom-related functional limitations and restrictions can or cannot reasonably be accepted as consistent with the medical and other evidence. In instances in which the adjudicator has observed the individual, he or she is not free to accept or reject that individual's complaints *solely* on the basis of such personal observations. (For further information about RFC assessment and the evaluation of symptoms, see SSR 96–7p, "Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements.")

Medical opinions. The RFC assessment must always consider and address medical source opinions. If the RFC assessment conflicts with an opinion from a medical source, the adjudicator must explain why the opinion was not adopted.

Medical opinions from treating sources about the nature and severity of an individual's impairment(s) are entitled to special significance and may be entitled to controlling weight. If a treating source's medical opinion on an issue of the nature and severity of an individual's impairment(s) is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record, the adjudicator must give it controlling weight. (See SSR 96–2p, "Titles II and XVI: Giving Controlling Weight to Treating Source Medical Opinions," and SSR 96–5p, "Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner.") [8]

Effective Date: This ruling is effective on the date of its publication in the **Federal Register**.

Cross-References: SSR 82–52, "Titles II and XVI: Duration of the Impairment" (C.E. 1981–1985, p. 328), SSR 82–61, "Titles II and XVI: Past Relevant Work—The Particular Job Or the Occupation As Generally Performed" (C.E. 1981–1985, p. 427), SSR 82–62, "Titles II and XVI: A Disability Claimant's Capacity To Do Past Relevant Work, In General" (C.E. 1981–1985, p. 400), SSR 83–20, "Titles II and XVI: Onset of Disability" (C.E. 1981–1985, p. 375), SSR 85–16, "Titles II and XVI: Residual Functional Capacity for Mental Impairments" (C.E. 1981–1985, p. 390), SSR 86–8, "Titles II and XVI: The Sequential Evaluation Process" (C.E. 1986, p. 78), SSR 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence," SSR 96–2p, "Titles II and XVI: Giving Controlling Weight to Treating Source Medical Opinions," SSR 96–4p, "Titles II and XVI: Symptoms, Medically Determinable Physical and Mental Impairments, and Exertional and Nonexertional Limitations," SSR 96–5p, "Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner," SSR 96–9p, "Titles II and XVI: Determining Capability to Do Other Work—Implications of a Residual Functional Capacity for Less Than a Full Range of Sedentary Work," SSR 96–7p, "Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements;" and Program Operations Manual System, sections DI 22515.010, DI 24510.000 ff., DI 24515.002–DI 24515.007, DI 24515.061–DI 24515.062, DI 24515.064, DI 25501.000 ff., DI 25505.000 ff., and DI 28015.000 ff.

[8] A medical source opinion that an individual is "disabled" or "unable to work," has an impairment(s) that meets or is equivalent in severity to the requirements of a listing, has a particular RFC, or that concerns the application of vocational factors, is an opinion on an issue reserved to the Commissioner. Every such opinion must still be considered in adjudicating a disability claim; however, the adjudicator will not give any special significance to the opinion because of its source. See SSR 96–5p, "Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner." For further information about the evaluation of medical source opinions, SSR 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence."

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Social Security Ruling SSR 96–9p., Titles II and XVI: Determining Capability To Do Other Work—Implications of a Residual Functional Capacity for Less Than a Full Range of Sedentary Work

AGENCY: Social Security Administration.
ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling SSR 96–9p. This Ruling explains the Social Security Administration's policies regarding the impact of a residual functional capacity assessment for less than a full range of sedentary work on an individual's ability to do other work.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income)

Dated: June 7, 1996.

Shirley S. Chater,
Commissioner of Social Security.

Policy Interpretation Ruling—Titles II and XVI: Determining Capability To Do Other Work—Implications of a Residual Functional Capacity for Less Than a Full Range of Sedentary Work

Purpose: To explain the Social Security Administration's policies regarding the impact of a residual functional capacity (RFC) assessment for less than a full range of sedentary work on an individual's ability to do other work. In particular, to emphasize that:

1. An RFC for less than a full range of sedentary work reflects very serious limitations resulting from an individual's medical impairment(s) and is expected to be relatively rare.

2. However, a finding that an individual has the ability to do less than a full range of sedentary work does not necessarily equate with a decision of "disabled." If the performance of past relevant work is precluded by an RFC for less than the full range of sedentary work, consideration must still be given to whether there is other work in the national economy that the individual is able to do, considering age, education, and work experience.

Citations (Authority): Sections 223(d) and 1614(a) of the Social Security Act (the Act), as amended; Regulations No. 4, sections 404.1513(c), 404.1520, 404.1520a, 404.1545, 404.1546, 404.1560, 404.1561, 404.1562, 404.1563 through 404.1567, 404.1569, 404.1569a; appendix 1 of subpart P, section 12.00; appendix 2 of subpart P, sections 200.00 and 201.00; Regulations No. 16, sections 416.913(c), 416.920, 416.920a, 416.945, 416.946, 416.960, 416.961, 416.962, 416.963 through 416.967, 416.969 and 416.969a.

Introduction: Under the sequential evaluation process, once it has been determined that an individual is not engaging in substantial gainful activity and has a "severe" medically determinable impairment(s) which, though not meeting or equaling the criteria of any listing, prevents the individual from performing past relevant work (PRW), it must be determined whether the individual can do any other work, considering the individual's RFC, age, education, and work experience.

RFC is what an individual can still do despite his or her functional limitations and restrictions caused by his or her medically determinable physical or mental impairments. It is an administrative assessment of the extent to which an individual's medically determinable impairment(s), including any related symptoms, such as pain, may cause physical or mental limitations or restrictions that may affect his or her capacity to perform work-related physical and mental activities. RFC is assessed by adjudicators at each level of the administrative review process based on all of the relevant evidence in the case record, including information about the individual's symptoms and any "medical source statements"—i.e., opinions about what the individual can still do despite a severe impairment(s)—submitted by an individual's treating source(s) or other acceptable medical source.[1]

[1] For a detailed discussion of the difference between the RFC assessment, which is an administrative finding of fact, and the opinion evidence called the "medical source statement" or "MSS," see SSR 96–5p, "Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner."

RFC is the individual's maximum remaining ability to perform sustained work on a regular and continuing basis; i.e., 8 hours a day, for 5 days a week, or an equivalent work schedule. It is not the least an individual can do, but the most, based on all of the information in the case record. The RFC assessment considers only those limitations and restrictions that are caused by an individual's physical or mental impairments. It does not consider limitations or restrictions due to age or body habitus, since the Act requires that an individual's inability to work must result from the individual's physical or mental impairment(s). (See SSR 96–8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims.")

Initially, the RFC assessment is a function-by-function assessment based upon all of the relevant evidence of an individual's ability to perform work-related activities. This RFC assessment is first used for a function-by-function comparison with the functional demands of an individual's PRW as he or she actually performed it and then, if necessary, as the work is generally performed in the national economy.[2]

However, at the last step of the sequential evaluation process, the RFC assessment is used to determine an individual's "maximum sustained work capability" and, where solely non-exertional impairments are not involved, must be expressed in terms of the exertional classifications of work: sedentary, light, medium, heavy, and very heavy work. The rules of appendix 2 of subpart P of Regulations No. 4 take administrative notice of the existence of numerous unskilled occupations within each of these exertional levels. The rules are then used to direct decisions about whether an individual is disabled or, when the individual is unable to perform the full range of work contemplated by an exertional level(s), as a framework for decisionmaking considering the individual's RFC, age, education, and work experience.

The impact of an RFC for less than a full range of sedentary work is especially critical for individuals who have not yet attained age 50. Since age,

[2] RFC may be expressed in terms of an exertional category, such as "light," if it becomes necessary to assess whether an individual is able to perform past relevant work as it is generally performed in the national economy. However, without the initial function-by-function accounting of the individual's capacities, it may not be possible to determine whether the individual is able to perform past relevant work as it is generally performed in the national economy because particular occupations may not require all of the exertional and nonexertional demands necessary to perform the full range of work at a given exertional level. See SSR 96–8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims."

education, and work experience are not usually significant factors in limiting the ability of individuals under age 50 to make an adjustment to other work,[3] the conclusion whether such individuals who are limited to less than the full range of sedentary work are disabled will depend primarily on the nature and extent of their functional limitations or restrictions. On the other hand, since the rules in Table No. 1 of appendix 2, "Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s)," direct a decision of "disabled" for individuals age 50 and over who are limited to a full range of sedentary work, unless the individual has transferable skills or education that provides for direct entry into skilled sedentary work, the impact of an RFC for less than the full range of sedentary work in such individuals is less critical.

Policy Interpretation: Under the regulations, "sedentary work" represents a significantly restricted range of work. Individuals who are limited to no more than sedentary work by their medical impairments have very serious functional limitations. For the majority of individuals who are age 50 or older and who are limited to the full range of sedentary work by their medical impairments, the rules and guidelines in appendix 2 require a conclusion of "disabled."

Nevertheless, the rules in Table No. 1 in appendix 2 take administrative notice that there are approximately 200 separate unskilled sedentary occupations, each representing numerous jobs, in the national economy.[4] Therefore, even though "sedentary work" represents a significantly restricted range of work, this range in itself is not so prohibitively restricted as to negate work capability for substantial gainful activity in all individuals.

Moreover, since each occupation administratively noticed by Table No. 1 represents numerous jobs, the ability to do even a *limited* range of sedentary work does not in itself establish disability in all individuals, although a finding of "disabled" usually applies when the full range of sedentary work is significantly eroded (see *Using the Rules in Table No. 1 as a Framework: "Erosion" of the Occupational Base* below). In deciding whether an individual who is limited to a partial range of sedentary work is able to make an adjustment to work other than any PRW, the adjudicator is required to make an individualized determination, considering age, education, and work experience, including any skills the individual may have that are transferable to other work, or education that provides for direct entry into skilled work, under the rules and guidelines in the regulations.

Sedentary Work

The ability to perform the full range of sedentary work requires the ability to lift no more than 10 pounds at a time and occasionally to lift or carry articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one that involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. "Occasionally" means occurring from very little up to one-third of the time, and would generally total no more than about 2 hours of an 8-hour workday. Sitting would generally total about 6 hours of an 8-hour workday. Unskilled sedentary work also involves other activities, classified as "nonexertional," such as capacities for seeing, manipulation, and understanding, remembering, and carrying out simple instructions.

The Occupational Base for Sedentary Work

The term "occupational base" means the approximate number of occupations that an individual has the RFC to perform considering all exertional and nonexertional limitations and restrictions. (See SSR 83–10, "Titles II and XVI: Determining Capability to Do Other Work—The Medical-Vocational Rules of Appendix 2" (C.E. 1981–1985, p. 516).) A full range of sedentary work includes all or substantially all of the approximately 200[5] unskilled sedentary occupations administratively noticed in Table No. 1.

Thus, the RFC addressed by a particular rule in Table No. 1 establishes an occupational base that at a minimum includes the full range of unskilled sedentary occupations administratively noticed. The base may be broadened by the addition of specific skilled or semiskilled occupations that an individual with an RFC limited to sedentary work can perform by reason of his or her education or work experience. However, if the individual has no transferable skills or no education or training that provides for direct entry into skilled work, the occupational base represented by the rules in Table No. 1 comprises only the sedentary unskilled occupations in the national economy that such an individual can perform.

The rules in Table No. 1 direct conclusions as to disability where the findings of fact coincide with all of the criteria of a particular rule; i.e., RFC (a maximum sustained work capability for sedentary work) and the vocational factors of age, education, and work experience. In order for a rule in Table No. 1 to direct a conclusion of "not disabled," the individual must be able to perform the full range of work administratively noticed by a rule. This means that the individual must be able to perform substantially all of the strength demands defining the sedentary level of exertion, as well as the physical and mental nonexertional demands that are also required for the performance of substantially all of the unskilled work considered at the sedentary level. Therefore, in order for a rule to direct a conclusion of "not disabled," an individual must also have no impairment that restricts the nonexertional capabilities to a level below those needed to perform unskilled work, in this case, at the sedentary level.

[3] However, "younger individuals" age 45–49 who are unable to communicate in English or who are illiterate in English and who are limited to even a *full* range of sedentary work must be found disabled under rule 201.17 in Table No. 1.

[4] An "occupation" refers to a grouping of numerous individual "jobs" with similar duties. Within occupations (e.g., "carpenter") there may be variations among jobs performed for different employers (e.g., "rough carpenter").

[5] The regulations specify that this is an approximation. The revised fourth edition of the Dictionary of Occupational Titles and its companion volumes (the DOT, 1991) lists 137 separate occupations. However, the introduction to Volume I explains that the fourth edition of the DOT (1977) "substantially modified or combined with related definitions" several thousand definitions from the third edition. In 1992, we published a notice in the **Federal Register** explaining that an analysis of the revised fourth edition of the DOT and available data for the then upcoming volume of the Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles (SCO) showed "that the range of work of which the medical-vocational rules take administrative notice continues to represent more occupations than would be required to represent significant numbers," and that "we have received no significant data or other evidence to indicate that * * * the unskilled occupational base * * * has changed substantially." (See 57 FR 43005, September 17, 1992.) In February 1996, contact with the North Carolina Occupational Analysis Field Center, the organization that compiles the data the Department of Labor uses in the SCO, confirmed that there are no precise updated data but that the regulatory estimate of approximately 200 sedentary unskilled occupations is still valid, because some of the 137 occupations in the current edition of the DOT comprise more than one of the separate occupations of which we take administrative notice.

Using the Rules in Table No. 1 as a Framework: "Erosion" of the Occupational Base

Where any one of the findings of fact does not coincide with the corresponding criterion of a rule in Table No. 1 (except in those cases where the concept of borderline age applies[6]), the rule does not direct a decision. In cases such as the following, the medical-vocational rules must be used as a framework for considering the extent of any erosion of the sedentary occupational base:

- Any one of an individual's exertional capacities is determined to be less than that required to perform a full range of sedentary work; or
- Based on an individual's exertional capacities, a rule in Table No. 1 would direct a decision of "not disabled," but the individual also has a nonexertional limitation(s) that narrows the potential range of sedentary work to which he or she might be able to adjust (i.e., the individual has the exertional capacity to do the full range of sedentary work, but the sedentary occupational base is reduced because of at least one nonexertional limitation).

When there is a reduction in an individual's exertional or nonexertional capacity so that he or she is unable to perform substantially all of the occupations administratively noticed in Table No. 1, the individual will be unable to perform the full range of sedentary work: the occupational base will be "eroded" by the additional limitations or restrictions. However, the mere inability to perform substantially all sedentary unskilled occupations does not equate with a finding of disability. There may be a number of occupations from the approximately 200 occupations administratively noticed, and jobs that exist in significant numbers, that an individual may still be able to perform even with a sedentary occupational base that has been eroded.

Whether the individual will be able to make an adjustment to other work requires adjudicative judgment regarding factors such as the type and extent of the individual's limitations or restrictions and the extent of the erosion of the occupational base; i.e., the impact of the limitations or restrictions on the number of sedentary unskilled occupations or the total number of jobs to which the individual may be able to adjust, considering his or her age, education, and work experience, including any transferable skills or education providing for direct entry into skilled work. Where there is more than a slight impact on the individual's ability to perform the full range of sedentary work, if the adjudicator finds that the individual is able to do other work, the adjudicator must cite examples of occupations or jobs the individual can do and provide a statement of the incidence of such work in the region where the individual resides or in several regions of the country.

Exertional and Nonexertional Limitations and Restrictions

Exertional capacity addresses an individual's limitations and restrictions of physical strength and defines the individual's remaining ability to perform each of seven strength demands: Sitting, standing, walking, lifting, carrying, pushing, and pulling. An exertional limitation is an *impairment-caused* limitation of any one of these activities.

Nonexertional capacity considers any work-related limitations and restrictions that are not exertional. Therefore, a nonexertional limitation is an *impairment-caused* limitation affecting such capacities as mental abilities, vision, hearing, speech, climbing, balancing, stooping, kneeling, crouching, crawling, reaching, handling, fingering, and feeling. Environmental restrictions are also considered to be nonexertional.

Thus, it is the *nature of an individual's limitations and restrictions,* not certain impairments or symptoms, that determines whether the individual will be found to have only exertional limitations or restrictions, only nonexertional limitations or restrictions, or a combination of exertional and nonexertional limitations or restrictions. For example, even though mental impairments often affect nonexertional functions, they may also limit exertional capacity affecting one of the seven strength demands; e.g., from fatigue or hysterical paralysis. Likewise, symptoms, including pain, are not intrinsically exertional or nonexertional; when a symptom causes a limitation in one of the seven strength demands, the limitation must be considered exertional. (See SSR 96–8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims.")

Guidelines for Evaluating the Ability To Do Less Than a Full Range of Sedentary Work

The following sections provide adjudicative guidance as to the impact of various RFC limitations and restrictions on the unskilled sedentary occupational base. The RFC assessment must include a narrative that shows the presence and degree of any specific limitations and restrictions, as well as an explanation of how the evidence in file was considered in the assessment. The individual's maximum remaining capacities to perform sustained work on a regular and continuing basis (what he or she can still do 8 hours a day, for 5 days a week, or an equivalent work schedule) must be stated.

An accurate accounting of an individual's abilities, limitations, and restrictions is necessary to determine the extent of erosion of the occupational base, the types of sedentary occupations an individual might still be able to do, and whether it will be necessary to make use of a vocational resource. The RFC assessment must be sufficiently complete to allow an adjudicator to make an informed judgment regarding these issues.

Exertional Limitations and Restrictions

Lifting/carrying and pushing/pulling: If an individual is unable to lift 10 pounds or occasionally lift and carry items like docket files, ledgers, and small tools throughout the workday, the unskilled sedentary occupational base will be eroded. The extent of erosion will depend on the extent of the limitations. For example, if it can be determined that the individual has an ability to lift or carry slightly less than 10 pounds, with no other limitations or restrictions in the ability to perform the requirements of sedentary work, the unskilled sedentary occupational base would not be significantly eroded; however, an inability to lift or carry more than 1 or 2 pounds would erode the unskilled sedentary occupational base significantly. For individuals with limitations in lifting or carrying weights between these amounts, consultation with a vocational resource may be appropriate.

Limitations or restrictions on the ability to push or pull will generally have little effect on the unskilled sedentary occupational base.

Standing and walking: The full range of sedentary work requires that an individual be able to stand and walk for a total of approximately 2 hours during an 8-hour workday. If an individual can stand and walk for a total of slightly less than 2 hours per 8-hour workday, this, by itself, would not cause the occupational base to be significantly eroded. Conversely, a limitation to standing and walking for a total of only a few minutes during the workday would erode the unskilled sedentary occupational base significantly. For individuals able to stand and walk in between the slightly less than 2 hours and only a few minutes, it may be

[6] See 20 CFR 404.1563(a) and 416.963(a) and SSR 83–10.

appropriate to consult a vocational resource.

Sitting: In order to perform a full range of sedentary work, an individual must be able to remain in a seated position for approximately 6 hours of an 8-hour workday, with a morning break, a lunch period, and an afternoon break at approximately 2-hour intervals. If an individual is unable to sit for a total of 6 hours in an 8-hour work day, the unskilled sedentary occupational base will be eroded. The extent of the limitation should be considered in determining whether the individual has the ability to make an adjustment to other work. *See Alternate sitting and standing* below.

The fact that an individual cannot do the sitting required to perform the full range of sedentary work does not necessarily mean that he or she cannot perform other work at a higher exertional level. In unusual cases, some individuals will be able to stand and walk longer than they are able to sit. If an individual is able to stand and walk for approximately 6 hours in an 8-hour workday (and meets the other requirements for light work), there may be a significant number of light jobs in the national economy that he or she can do even if there are not a significant number of sedentary jobs.

Alternate sitting and standing: An individual may need to alternate the required sitting of sedentary work by standing (and, possibly, walking) periodically. Where this need cannot be accommodated by scheduled breaks and a lunch period, the occupational base for a full range of unskilled sedentary work will be eroded. The extent of the erosion will depend on the facts in the case record, such as the frequency of the need to alternate sitting and standing and the length of time needed to stand. The RFC assessment *must* be specific as to the frequency of the individual's need to alternate sitting and standing. It may be especially useful in these situations to consult a vocational resource in order to determine whether the individual is able to make an adjustment to other work.

Medically required hand-held assistive device: To find that a hand-held assistive device is medically required, there must be medical documentation establishing the need for a hand-held assistive device to aid in walking or standing, and describing the circumstances for which it is needed (i.e., whether all the time, periodically, or only in certain situations; distance and terrain; and any other relevant information). The adjudicator must always consider the particular facts of a case. For example, if a medically required hand-held assistive device is needed only for prolonged ambulation, walking on uneven terrain, or ascending or descending slopes, the unskilled sedentary occupational base will not ordinarily be significantly eroded.

Since most unskilled sedentary work requires only occasional lifting and carrying of light objects such as ledgers and files and a maximum lifting capacity for only 10 pounds, an individual who uses a medically required hand-held assistive device in one hand may still have the ability to perform the minimal lifting and carrying requirements of many sedentary unskilled occupations with the other hand.[7] For example, an individual who must use a hand-held assistive device to aid in walking or standing because of an impairment that affects one lower extremity (e.g., an unstable knee), or to reduce pain when walking, who is limited to sedentary work because of the impairment affecting the lower extremity, and who has no other functional limitations or restrictions may still have the ability to make an adjustment to sedentary work that exists in significant numbers. On the other hand, the occupational base for an individual who must use such a device for balance because of significant involvement of both lower extremities (e.g., because of a neurological impairment) may be significantly eroded.

In these situations, too, it may be especially useful to consult a vocational resource in order to make a judgment regarding the individual's ability to make an adjustment to other work.

Nonexertional Limitations and Restrictions

Postural limitations: Postural limitations or restrictions related to such activities as climbing ladders, ropes, or scaffolds, balancing, kneeling, crouching, or crawling would not usually erode the occupational base for a full range of unskilled sedentary work significantly because those activities are not usually required in sedentary work. In the SCO, "balancing" means maintaining body equilibrium to prevent falling when walking, standing, crouching, or running on narrow, slippery, or erratically moving surfaces. If an individual is limited in balancing only on narrow, slippery, or erratically moving surfaces, this would not, by itself, result in a significant erosion of the unskilled sedentary occupational base. However, if an individual is limited in balancing even when standing or walking on level terrain, there may be a significant erosion of the unskilled sedentary occupational base. It is important to state in the RFC assessment what is meant by limited balancing in order to determine the remaining occupational base. Consultation with a vocational resource may be appropriate in some cases.

An ability to stoop occasionally; i.e., from very little up to one-third of the time, is required in most unskilled sedentary occupations. A *complete* inability to stoop would significantly erode the unskilled sedentary occupational base and a finding that the individual is disabled would usually apply, but restriction to occasional stooping should, by itself, only minimally erode the unskilled occupational base of sedentary work. Consultation with a vocational resource may be particularly useful for cases where the individual is limited to less than occasional stooping.

Manipulative limitations: Most unskilled sedentary jobs require good use of both hands and the fingers; i.e., bilateral manual dexterity. Fine movements of small objects require use of the fingers; e.g., to pick or pinch. Most unskilled sedentary jobs require good use of the hands and fingers for repetitive hand-finger actions.

Any *significant* manipulative limitation of an individual's ability to handle and work with small objects with both hands will result in a significant erosion of the unskilled sedentary occupational base. For example, example 1 in section 201.00(h) of appendix 2, describes an individual who has an impairment that prevents the performance of *any* sedentary occupations that require bilateral manual dexterity (i.e., "limits the individual to sedentary jobs which do not require bilateral manual dexterity"). When the limitation is less significant, especially if the limitation is in the non-dominant hand, it may be useful to consult a vocational resource.

The ability to feel the size, shape, temperature, or texture of an object by the fingertips is a function required in very few jobs and impairment of this ability would not, by itself, significantly erode the unskilled sedentary occupational base.

Visual limitations or restrictions: Most sedentary unskilled occupations require working with small objects. If a visual limitation prevents an individual from seeing the small objects involved in most sedentary unskilled work, or if an individual is not able to avoid ordinary hazards in the workplace, such as boxes on the floor, doors ajar, or approaching people or vehicles, there will be a significant erosion of the sedentary occupational base. These cases may require the use of vocational resources.

Communicative limitations: Basic communication is all that is needed to do unskilled work. The ability to hear and understand simple oral instructions or to communicate simple information is sufficient. If the individual retains these basic communication abilities, the unskilled sedentary occupational base would not be significantly eroded in these areas.

Environmental restrictions: An "environmental restriction" is an impairment-caused need to avoid an environmental condition in a workplace. Definitions for various workplace environmental conditions are found in the SCO; e.g., "extreme cold" is exposure to nonweather-related cold temperatures.

In general, few occupations in the unskilled sedentary occupational base require work in environments with extreme cold, extreme heat, wetness, humidity, vibration, or unusual hazards. The "hazards" defined in the SCO are considered unusual in unskilled sedentary work. They include: moving mechanical parts of equipment, tools, or machinery; electrical shock; working in high, exposed places; exposure to radiation; working with explosives; and exposure to toxic, caustic chemicals. Even a need to avoid all exposure to these conditions would not, by itself, result in a significant erosion of the occupational base.

Since all work environments entail some level of noise, restrictions on the ability to work in a noisy workplace must be evaluated on an individual basis. The unskilled sedentary occupational base may or may not be significantly eroded depending on the facts in the case record. In such cases, it may be especially useful to consult a vocational resource.

Restrictions to avoid exposure to odors or dust must also be evaluated on an individual basis. The RFC assessment must specify which environments are restricted and state the extent of the restriction; e.g., whether only excessive or even small amounts of dust must be avoided.

Mental limitations or restrictions: A substantial loss of ability to meet any one of several basic work-related activities on a sustained basis (i.e., 8 hours a day, 5 days a week, or an equivalent work schedule), will substantially erode the unskilled sedentary occupational base and would justify a finding of disability. These mental activities are generally required by competitive, remunerative, unskilled work:

- Understanding, remembering, and carrying out simple instructions.
- Making judgments that are commensurate with the functions of unskilled work—i.e., simple work-related decisions.
- Responding appropriately to supervision, co-workers and usual work situations.
- Dealing with changes in a routine work setting.

A less than substantial loss of ability to perform any of the above basic work activities may or may not significantly erode the unskilled sedentary occupational base. The individual's remaining capacities must be assessed and a judgment made as to their effects on the unskilled occupational base considering the other vocational factors of age, education, and work experience. When an individual has been found to have a limited ability in one or more of these basic work activities, it may be useful to consult a vocational resource.

Use of Vocational Resources

When the extent of erosion of the unskilled sedentary occupational base is not clear, the adjudicator may consult various authoritative written resources, such as the DOT, the SCO, the Occupational Outlook Handbook, or County Business Patterns.

In more complex cases, the adjudicator may use the resources of a vocational specialist or vocational expert.[8] The vocational resource may be asked to provide any or all of the following: An analysis of the impact of the RFC upon the full range of sedentary work, which the adjudicator may consider in determining the extent of the erosion of the occupational base, examples of occupations the individual may be able to perform, and citations of the existence and number of jobs in such occupations in the national economy.

Effective Date: This Ruling is effective on the date of its publication in the **Federal Register**.

Cross-References: SSR 86–8, "Titles II and XVI: The Sequential Evaluation Process" (C.E. 1986, p. 78), SSR 83–10, "Titles II and XVI: Determining Capability to Do Other Work—The Medical-Vocational Rules of Appendix 2" (C.E. 1981–1985, p. 516), SSR 83–12, "Titles II and XVI: Capability to Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating Exertional Limitations Within a Range of Work or Between Ranges of Work" (C.E. 1981–1985, p. 529), SSR 83–14, "Titles II and XVI: Capability to Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating a Combination of Exertional and Nonexertional Impairments" (C.E. 1981–1985, p. 535), SSR 85–15, "Titles II and XVI: Capability to Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating Solely Nonexertional Impairments" (C.E. 1981–1985, p. 543), SSR–96 8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims;" Program Operations Manual System, sections DI 24510.001, DI 24510.005, DI 24510.010, DI 24510.050, DI 24515.061, DI 25001.001, DI 25010.001, DI 25020.005, DI 25020.010, DI 25020.015, DI 25025.001 and DI 28005.015; and Hearings, Appeals, and Litigation Law Manual, sections I–2–548 and I–2–550.

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[7] Bilateral manual dexterity is needed when sitting but is not generally necessary when performing the standing and walking requirements of sedentary work.

[8] At the hearings and appeals levels, vocational experts (VEs) are vocational professionals who provide impartial expert opinion during the hearings and appeals process either by testifying or by providing written responses to interrogatories. A VE may be used before, during, or after a hearing. Whenever a VE is used, the individual has the right to review and respond to the VE evidence prior to the issuance of a decision. The VE's opinion is not binding on an adjudicator, but must be weighed along with all other evidence.

[Social Security Ruling (SSR) 96–7p]

Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements

AGENCY: Social Security Administration.

ACTION: Notice of Social Security ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 96–7p. This Ruling clarifies when the evaluation of symptoms, including pain, under 20 CFR 404.1529 and 416.929 requires a finding about the credibility of an individual's statements about pain or other symptom(s) and its functional effects; explains the factors to be considered in assessing the credibility of the individual's statements about symptoms; and states the importance of explaining the reasons for the finding about the credibility of the individual's statements in the disability determination or decision. This Ruling also incorporates and elaborates upon the policy interpretation and procedures in SSR 95–5p, "Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Residual Functional Capacity and Individualized Functional Assessments and Explaining Conclusions Reached" (published in the

Federal Register on October 31, 1995, at 60 FR 55406). Consequently, this Ruling supersedes SSR 95–5p.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income.)

Dated: June 7, 1996.

Shirley S. Chater,

Commissioner of Social Security.

Policy Interpretation Ruling—Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements

This Ruling supersedes Social Security Ruling (SSR) 95–5p, "Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Residual Functional Capacity and Individualized Functional Assessments and Explaining Conclusions Reached."

Purpose: The purpose of this Ruling is to clarify when the evaluation of symptoms, including pain, under 20 CFR 404.1529 and 416.929 requires a finding about the credibility of an individual's statements about pain or other symptom(s) and its functional effects; to explain the factors to be considered in assessing the credibility of the individual's statements about symptoms; and to state the importance of explaining the reasons for the finding about the credibility of the individual's statements in the disability determination or decision.[1] In particular, this Ruling emphasizes that:

1. No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual's complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptoms.

2. When the existence of a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptoms has been established, the intensity, persistence, and functionally limiting effects of the symptoms must be evaluated to determine the extent to which the symptoms affect the individual's ability to do basic work activities. This requires the adjudicator to make a finding about the credibility of the individual's statements about the symptom(s) and its functional effects.

3. Because symptoms, such as pain, sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, the adjudicator must carefully consider the individual's statements about symptoms with the rest of the relevant evidence in the case record in reaching a conclusion about the credibility of the individual's statements if a disability determination or decision that is fully favorable to the individual cannot be made solely on the basis of objective medical evidence.

4. In determining the credibility of the individual's statements, the adjudicator must consider the entire case record, including the objective medical evidence, the individual's own statements about symptoms, statements and other information provided by treating or examining physicians or psychologists and other persons about the symptoms and how they affect the individual, and any other relevant evidence in the case record. An individual's statements about the intensity and persistence of pain or other symptoms or about the effect the symptoms have on his or her ability to work may not be disregarded solely because they are not substantiated by objective medical evidence.

5. It is not sufficient for the adjudicator to make a single, conclusory statement that "the individual's allegations have been considered" or that "the allegations are (or are not) credible." It is also not enough for the adjudicator simply to recite the factors that are described in the regulations for evaluating symptoms. The determination or decision must contain specific reasons for the finding on credibility, supported by the evidence in the case record, and must be sufficiently specific to make clear to the individual and to any subsequent reviewers the weight the adjudicator gave to the individual's statements and the reasons for that weight.

Citations (Authority): Sections 216(i), 223(d), and 1614(a)(3) of the Social Security Act, as amended; Regulations No. 4, sections 404.1528(a), 404.1529, and 404.1569a; and Regulations No. 16, sections 416.928(a), 416.929, and 416.969a.

Introduction: A symptom is an individual's own description of his or her physical or mental impairment(s).[2] Under the regulations, an individual's statement(s) about his or her symptoms is not enough in itself to establish the existence of a physical or mental impairment or that the individual is disabled.

The regulations describe a two-step process for evaluating symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness:

• First, the adjudicator must consider whether there is an underlying medically determinable physical or mental impairment(s)—i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques—that could reasonably be expected to produce the individual's pain or other symptoms.[3] The finding that an individual's impairment(s) could reasonably be expected to produce the individual's pain or other symptoms does not involve a determination as to the intensity, persistence, or functionally limiting effects of the individual's symptoms. If there is no medically determinable physical or mental impairment(s), or if there is a medically determinable physical or mental impairment(s) but the impairment(s) could not reasonably be expected to produce the individual's pain or other symptoms, the symptoms cannot be found to affect the individual's ability to do basic work activities.

• Second, once an underlying physical or mental impairment(s) that could reasonably be expected to produce the individual's pain or other symptoms has been shown, the adjudicator must evaluate the intensity, persistence, and limiting effects of the individual's symptoms to determine the extent to which the symptoms limit the individual's ability to do basic work activities. For this purpose, whenever the individual's statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, the adjudicator must make a finding on the credibility of the individual's statements based on a consideration of the entire case record. This includes the medical signs and laboratory findings, the individual's own statements about the symptoms, any statements and other information provided by treating or examining physicians or psychologists and other persons about the symptoms and how they affect the individual, and any other relevant evidence in the case record. This requirement for a finding on the credibility of the individual's statements about symptoms and their effects is reflected in 20 CFR 404.1529(c)(4) and 416.929(c)(4). These provisions of the regulations provide that an individual's symptoms, including pain, will be determined to diminish the individual's capacity for basic work activities to the extent that the individual's alleged functional limitations and restrictions due to symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence in the case record.

When additional information is needed to assess the credibility of the individual's statements about symptoms and their effects, the adjudicator must make every reasonable effort to obtain available information that could shed light on the credibility of the individual's statements. In recognition of the fact that an individual's symptoms can sometimes suggest a greater level of severity of impairment than can be shown by the objective medical evidence alone, 20 CFR 404.1529(c) and 416.929(c) describe the kinds of evidence, including the factors below, that the adjudicator must consider in addition to the objective medical evidence when assessing the credibility of an individual's statements:

1. The individual's daily activities;

2. The location, duration, frequency, and intensity of the individual's pain or other symptoms;

3. Factors that precipitate and aggravate the symptoms;

4. The type, dosage, effectiveness, and side effects of any medication the individual takes or has taken to alleviate pain or other symptoms;

5. Treatment, other than medication, the individual receives or has received for relief of pain or other symptoms;

6. Any measures other than treatment the individual uses or has used to relieve pain or other symptoms (e.g., lying flat on his or her back, standing for 15 to 20 minutes every hour, or sleeping on a board); and

7. Any other factors concerning the individual's functional limitations and restrictions due to pain or other symptoms.

Once the adjudicator has determined the extent to which the individual's symptoms limit the individual's ability to do basic work activities by making a finding on the credibility of the individual's statements, the impact of the symptoms on the individual's ability to function must be considered along with the objective medical and other evidence, first in determining whether the individual's impairment or combination of impairments is "severe" at step 2 of the sequential evaluation process for determining disability and, as necessary, at each subsequent step of the process.[4] (See SSR 96–3p, "Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment is Severe," and SSR 96–8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims.")

Policy Interpretation: A symptom is an individual's own description of his or her physical or mental impairment(s). Once the existence of a medically determinable physical or mental impairment(s) that could reasonably be expected to produce pain or other symptoms has been established, adjudicators must recognize that individuals may experience their symptoms differently and may be limited by their symptoms to a greater or lesser extent than other individuals with the same medical impairments and the same medical signs and laboratory findings. Because symptoms, such as pain, sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, any statements of the individual concerning his or her symptoms must be carefully considered if a fully favorable determination or decision cannot be made solely on the basis of objective medical evidence.

If an individual's statements about pain or other symptoms are not substantiated by the objective medical evidence, the adjudicator must consider all of the evidence in the case record, including any statements by the individual and other persons concerning the individual's symptoms. The adjudicator must then make a finding on the credibility of the individual's statements about symptoms and their functional effects.

Credibility

In general, the extent to which an individual's statements about symptoms can be relied upon as probative evidence in determining whether the individual is disabled depends on the credibility of the statements. In basic terms, the credibility of an individual's statements about pain or other symptoms and their functional effects is the degree to which the statements can be believed and accepted as true. When evaluating the credibility of an individual's statements, the adjudicator must consider the entire case record and give specific reasons for the weight given to the individual's statements.

The finding on the credibility of the individual's statements cannot be based on an intangible or intuitive notion about an individual's credibility. The reasons for the credibility finding must be grounded in the evidence and articulated in the determination or

[1] For clarity, the discussions in this Ruling refer only to claims of individuals claiming disability benefits under title II and individuals age 18 or older claiming disability benefits under title XVI. However, the same basic principles with regard to determining whether statements about symptoms are credible also apply to claims of individuals under age 18 claiming disability benefits under title XVI.

[2] For an individual under age 18 claiming disability benefits under title XVI who is unable to adequately describe his or her symptom(s), the adjudicator will accept as a statement of this symptom(s) the description given by the person most familiar with the individual, such as a parent, other relative, or guardian. 20 CFR 416.928(a).

[3] The adjudicator must develop evidence regarding the possibility of a medically determinable mental impairment when the record contains information to suggest that such an impairment exists, and the individual alleges pain or other symptoms, but the medical signs and laboratory findings do not substantiate any physical impairment(s) capable of producing the pain or other symptoms.

[4] In determining whether the impairment(s) of an individual claiming disability benefits under title II or an individual age 18 or older claiming disability benefits under title XVI is medically equivalent to a listed impairment in appendix 1 of subpart P of 20 CFR Part 404, the adjudicator will not substitute allegations of pain or other symptoms for a missing or deficient sign or laboratory finding to raise the severity of the individual's impairment(s) to that of a listed impairment. 20 CFR 404.1529(d)(3) and 416.929(d)(3). In determining whether the impairment(s) of an individual under age 18 claiming disability benefits under title XVI is equivalent to a listed impairment, if the adjudicator cannot find equivalence based on medical evidence only, the adjudicator will consider pain or another symptom(s) under 20 CFR 416.926a(b)(3) in determining whether the individual has an impairment(s) that results in overall functional limitations that are the same as the disabling functional consequences of a listed impairment. 20 CFR 416.929(d)(3).

decision. It is not sufficient to make a conclusory statement that "the individual's allegations have been considered" or that "the allegations are (or are not) credible." It is also not enough for the adjudicator simply to recite the factors that are described in the regulations for evaluating symptoms. The determination or decision must contain specific reasons for the finding on credibility, supported by the evidence in the case record, and must be sufficiently specific to make clear to the individual and to any subsequent reviewers the weight the adjudicator gave to the individual's statements and the reasons for that weight. This documentation is necessary in order to give the individual a full and fair review of his or her claim, and in order to ensure a well-reasoned determination or decision.

In making a finding about the credibility of an individual's statements, the adjudicator need not totally accept or totally reject the individual's statements. Based on a consideration of all of the evidence in the case record, the adjudicator may find all, only some, or none of an individual's allegations to be credible. The adjudicator may also find an individual's statements, such as statements about the extent of functional limitations or restrictions due to pain or other symptoms, to be credible to a certain degree. For example, an adjudicator may find credible an individual's statement that the abilities to lift and carry are affected by symptoms, but find only partially credible the individual's statements as to the extent of the functional limitations or restrictions due to symptoms; i.e., that the individual's abilities to lift and carry are compromised, but not to the degree alleged. Conversely, an adjudicator may find credible an individual's statement that symptoms limit his or her ability to concentrate, but find that the limitation is greater than that stated by the individual.

Moreover, a finding that an individual's statements are not credible, or not wholly credible, is not in itself sufficient to establish that the individual is not disabled. All of the evidence in the case record, including the individual's statements, must be considered before a conclusion can be made about disability.

Factors in Evaluating Credibility

Assessment of the credibility of an individual's statements about pain or other symptoms and about the effect the symptoms have on his or her ability to function must be based on a consideration of all of the evidence in the case record. This includes, but is not limited to:

- The medical signs and laboratory findings;
- Diagnosis, prognosis, and other medical opinions provided by treating or examining physicians or psychologists and other medical sources; and
- Statements and reports from the individual and from treating or examining physicians or psychologists and other persons about the individual's medical history, treatment and response, prior work record and efforts to work, daily activities, and other information concerning the individual's symptoms and how the symptoms affect the individual's ability to work.

The adjudicator must also consider any observations about the individual recorded by Social Security Administration (SSA) employees during interviews, whether in person or by telephone. In instances where the individual attends an administrative proceeding conducted by the adjudicator, the adjudicator may also consider his or her own recorded observations of the individual as part of the overall evaluation of the credibility of the individual's statements.

Consideration of the individual's statements and the statements and reports of medical sources and other persons with regard to the seven factors listed in the regulations,[5] along with any other relevant information in the case record, including the information described above, will provide the adjudicator with an overview of the individual's subjective complaints. The adjudicator must then evaluate all of this information and draw appropriate inferences and conclusions about the credibility of the individual's statements.

The following sections provide additional guidelines for the adjudicator to consider when evaluating the credibility of an individual's statements.

Consistency

One strong indication of the credibility of an individual's statements is their consistency, both internally and with other information in the case record. The adjudicator must consider such factors as:

- The degree to which the individual's statements are consistent with the medical signs and laboratory findings and other information provided by medical sources, including information about medical history and treatment.
- The consistency of the individual's own statements. The adjudicator must compare statements made by the individual in connection with his or her claim for disability benefits with statements he or she made under other circumstances, when such information is in the case record. Especially important are statements made to treating or examining medical sources and to the "other sources" defined in 20 CFR 404.1513(e) and 416.913(e). The adjudicator must also look at statements the individual made to SSA at each prior step of the administrative review process and in connection with any concurrent claim or, when available, prior claims for disability benefits under titles II and XVI. Likewise, the case record may contain statements the individual made in connection with claims for other types of disability benefits, such as workers' compensation, benefits under programs of the Department of Veterans Affairs, or private insurance benefits. However, the lack of consistency between an individual's statements and other statements that he or she has made at other times does not necessarily mean that the individual's statements are not credible. Symptoms may vary in their intensity, persistence, and functional effects, or may worsen or improve with time, and this may explain why the individual does not always allege the same intensity, persistence, or functional effects of his or her symptoms. Therefore, the adjudicator will need to review the case record to determine whether there are any explanations for any variations in the individual's statements about symptoms and their effects.
- The consistency of the individual's statements with other information in the case record, including reports and observations by other persons concerning the individual's daily activities, behavior, and efforts to work. This includes any observations recorded by SSA employees in interviews and observations recorded by the adjudicator in administrative proceedings.

Medical Evidence

Symptoms cannot be measured objectively through clinical or laboratory diagnostic techniques; however, their effects can often be clinically observed. The regulations at 20 CFR 404.1529(c)(2) and 416.929(c)(2) provide that objective medical evidence "is a useful indicator to assist us in making reasonable conclusions about the intensity and persistence of" an individual's symptoms and the effects those symptoms may have on the individual's ability to function. The examples in the regulations (reduced joint motion, muscle spasm, sensory deficit, and motor disruption) illustrate findings that may result from, or be associated with, the symptom of pain. When present, these findings tend to lend credibility to an individual's allegations about pain or other symptoms and their functional effects.

When there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the pain or other symptoms, the adjudicator must always attempt to obtain any available objective medical evidence concerning the intensity and persistence of the pain or other symptoms, and, when such evidence is obtained, must consider it in evaluating the individual's statements. However, allegations concerning the intensity and persistence of pain or other symptoms may not be disregarded *solely* because they are not substantiated by objective medical evidence. A report of negative findings from the application of medically acceptable clinical and laboratory diagnostic techniques is one of the many factors that appropriately are to be considered in the overall assessment of credibility. However, the absence of objective medical evidence supporting an individual's statements about the intensity and persistence of pain or other symptoms is only one factor that the adjudicator must consider in assessing an individual's credibility and must be considered in the context of all the evidence.

Over time, there may also be medical signs and laboratory findings that, though not directly supporting or refuting statements about the intensity or persistence of pain or other symptoms, demonstrate worsening or improvement of the underlying medical condition. Such signs and findings may also help an adjudicator to draw appropriate inferences about the credibility of an individual's statements.

Apart from the medical signs and laboratory findings, the medical evidence, especially a longitudinal medical record, can be extremely valuable in the adjudicator's evaluation of an individual's statements about pain or other symptoms.

Important information about symptoms recorded by medical sources and reported in the medical evidence may include:

- Onset, description of the character and location of the symptoms, precipitating and aggravating factors, frequency and duration, course over time (e.g., whether worsening, improving, or static), and daily activities. Very often, this information will have been obtained by the medical source from the individual and may be compared with the individual's other statements in the case record. However, the evidence provided by a medical source may also contain medical opinions of the source about the individual's symptoms and their effects, and such opinions must be weighed applying the factors in 20 CFR 404.1527 and 416.927.
- A longitudinal record of any treatment and its success or failure, including any side effects of medication.
- Indications of other impairments, such as potential mental impairments, that could account for the allegations.

Although longitudinal records showing regular contact with a treating source are the most desirable, longitudinal medical records can be valuable even when they are not treating source records. For example, an individual may receive treatment at a clinic and see different physicians, but the clinic records may still show a longitudinal history of complaints and attempts at relief.

Medical Treatment History

In general, a longitudinal medical record demonstrating an individual's attempts to seek medical treatment for pain or other symptoms and to follow that treatment once it is prescribed lends support to an individual's allegations of intense and persistent pain or other symptoms for the purposes of judging the credibility of the individual's statements. Persistent attempts by the individual to obtain relief of pain or other symptoms, such as by increasing medications, trials of a variety of treatment modalities in an attempt to find one that works or that does not have side effects, referrals to specialists, or changing treatment sources may be a strong indication that the symptoms are a source of distress to the individual and generally lend support to an individual's allegations of intense and persistent symptoms.[6]

On the other hand, the individual's statements may be less credible if the level or frequency of treatment is inconsistent with the level of complaints, or if the medical reports or records show that the individual is not following the treatment as prescribed and there are no good reasons for this failure. However, the adjudicator must not draw any inferences about an individual's symptoms and their functional effects from a failure to seek or pursue regular medical treatment without first considering any explanations that the individual may provide, or other information in the case record, that may explain infrequent or irregular medical visits or failure to seek medical treatment. The adjudicator may need to recontact the individual or question the individual at the administrative proceeding in order to determine whether there are good reasons the individual does not seek medical treatment or does not pursue treatment in a consistent manner. The explanations provided by the individual may provide insight into the individual's credibility. For example:

- The individual's daily activities may be structured so as to minimize symptoms to a tolerable level or eliminate them entirely, avoiding physical or mental stressors that would exacerbate the symptoms. The individual may be living with the symptoms, seeing a medical source only as needed for periodic evaluation and renewal of medications.
- The individual's symptoms may not be severe enough to prompt the individual to seek ongoing medical attention or may be relieved with over-the-counter medications.
- The individual may not take prescription medication because the side effects are less tolerable than the symptoms.
- The individual may be unable to afford treatment and may not have access to free or low-cost medical services.
- The individual may have been advised by a medical source that there is no further, effective treatment that can be prescribed and undertaken that would benefit the individual.
- Medical treatment may be contrary to the teaching and tenets of the individual's religion.

Other Sources of Information

Other sources may provide information from which inferences and conclusions may be drawn about the credibility of the individual's statements. Such sources may provide information about the seven factors listed in the regulations and may be especially helpful in establishing a longitudinal record. Examples of such sources include public and private agencies, other practitioners, and nonmedical sources such as family and friends.

[5] The seven factors are also set out in the "Introduction," above.

[6] The adjudicator must also remember that medical treatment need not always be specifically for the relief of a symptom. Often, treatment will be aimed at ameliorating the underlying medical condition which, in turn, may result in improvement in symptoms. The treatment may also cause symptoms as a side effect.

Observations of the Individual

In instances in which the adjudicator has observed the individual, the adjudicator is not free to accept or reject the individual's complaints solely on the basis of such personal observations, but should consider any personal observations in the overall evaluation of the credibility of the individual's statements.

In evaluating the credibility of the individual's statements, the adjudicator must also consider any observations recorded by SSA personnel who previously interviewed the individual, whether in person or by telephone.

Consideration of Findings by State Agency and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review

Under 20 CFR 404.1527(f) and 416.927(f), administrative law judges and the Appeals Council are required to consider findings of fact by State agency medical and psychological consultants and other program physicians and psychologists about the existence and severity of an individual's impairment(s), including the existence and severity of any symptoms, as opinions of nonexamining physicians and psychologists. Administrative law judges and the Appeals Council are not bound by any State agency findings, but they may not ignore these opinions and must explain the weight given to the opinions in their decisions. Therefore, if the case record includes a finding by a State agency medical or psychological consultant or other program physician or psychologist on the credibility of the individual's statements about limitations or restrictions due to symptoms, the adjudicator at the administrative law judge or Appeals Council level of administrative review must consider and weigh this opinion of a nonexamining source under the applicable rules in 20 CFR 404.1527 and 416.927 and must explain the weight given to the opinion in the decision. (See SSR 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence.")

Effective Date: This Ruling is effective on July 2, 1996.

Cross-References: SSR 96–3p, "Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment is Severe," SSR 96–8p, "Titles II and XVI: Assessing Resídual Functional Capacity in Initial Claims," SSR 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence;" and Program Operations Manual System, sections DI 24515.061 and DI 24515.064.B.3.

[FR Doc. 96–16690 Filed 7–1–96; 8:45 am]
BILLING CODE 4190–29–P

Social Security Ruling (SSR) 96–4p. Titles II and XVI: Symptoms, Medically Determinable Physical and Mental Impairments, and Exertional and Nonexertional Limitations

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 96–4p. This Ruling clarifies the Social Security Administration's longstanding policy on the evaluation of symptoms in the adjudication of claims for disability benefits under Title II, Federal Old-Age, Survivors, and Disability Insurance Benefits, and Title XVI, Supplemental Security Income for the Aged, Blind, and Disabled, of the Social Security Act.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security-Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income)

Dated: June 7, 1996.

Shirley S. Chater,

Commissioner of Social Security.

Policy Interpretation Ruling—Titles II and XVI: Symptoms, Medically Determinable Physical and Mental Impairments, and Exertional and Nonexertional Limitations

Purpose: The purpose of this Ruling is to clarify longstanding policy of the Social Security Administration on the evaluation of symptoms in the adjudication of claims for disability benefits under title II and title XVI of the Social Security Act (the Act). In particular, this Ruling emphasizes that:

1. A "symptom" is not a "medically determinable physical or mental impairment" and no symptom by itself can establish the existence of such an impairment.

2. In the absence of a showing that there is a "medically determinable physical or mental impairment," an individual must be found not disabled at step 2 of the sequential evaluation process. No symptom or combination of symptoms can be the basis for a finding of disability, no matter how genuine the individual's complaints may appear to be, unless there are medical signs and laboratory findings demonstrating the existence of a medically determinable physical or mental impairment.

3. The terms "exertional" and "nonexertional" in the regulations describe types of functional limitations or restrictions resulting from a medically determinable physical or mental impairment; i.e., exertional limitations affect an individual's ability to meet the strength demands of jobs, and nonexertional limitations or restrictions affect an individual's ability to meet the nonstrength demands of jobs. Therefore, a symptom in itself is neither exertional nor nonexertional. Rather, it is the nature of the functional limitations or restrictions caused by an impairment-related symptom that determines whether the impact of the symptom is exertional, nonexertional, or both.

4. The application of the medical-vocational rules in appendix 2 of subpart P of Regulations No. 4 depends on the nature of the limitations and restrictions imposed by an individual's medically determinable physical or mental impairment(s), and any related symptoms.

Citations (Authority): Sections 216(i), 223(d) and 1614(a)(3) of the Social Security Act, as amended; Regulations No. 4, sections 404.1505, 404.1508, 404.1520, 404.1528(a), 404.1529, 404.1569a and subpart P, appendix 2; and Regulations No. 16, sections 416.905, 416.908, 416.920, 416.924, 416.928(a), 416.929 and 416.969a.

Policy Interpretation

Need To Establish the Existence of a Medically Determinable Physical or Mental Impairment

The Act defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.[1] An "impairment" must result from anatomical, physiological, or psychological abnormalities that can be shown by medically acceptable clinical and laboratory diagnostic techniques. Although the regulations provide that the existence of a medically determinable physical or mental impairment must be established by medical evidence consisting of signs, symptoms,[2] and laboratory findings, the regulations further provide that under no circumstances may the existence of an impairment be established on the basis of symptoms alone. Thus, regardless of how many symptoms an individual alleges, or how genuine the individual's complaints may appear to be, the existence of a medically determinable physical or mental impairment cannot be established in the absence of objective medical abnormalities; i.e., medical signs and laboratory findings.

No symptom or combination of symptoms by itself can constitute a medically determinable impairment. In claims in which there are no medical signs or laboratory findings to substantiate the existence of a medically determinable physical or mental impairment, the individual must be found not disabled at step 2 of the sequential evaluation process set out in 20 CFR 404.1520 and 416.920 (or, for an individual under age 18 claiming disability benefits under title XVI, 20 CFR 416.924).

In addition, 20 CFR 404.1529 and 416.929 provide that an individual's symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect the individual's ability to do basic work activities (or, for an individual under age 18 claiming disability benefits under title XVI, to function independently, appropriately, and effectively in an age-appropriate manner) unless medical signs and laboratory findings show that there is a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the symptom(s) alleged.

Exertional and Nonexertional Limitations

Once the existence of a medically determinable physical or mental impairment(s) that could reasonably be expected to produce the pain or other symptoms alleged has been established on the basis of medical signs and laboratory findings, allegations about the intensity and persistence of the symptoms must be considered with the objective medical abnormalities, and all other evidence in the case record, in evaluating the functionally limiting effects of the impairment(s). In addition, for determinations or decisions at step 5 of the sequential evaluation process for individuals claiming disability benefits under title II and individuals age 18 or older claiming disability benefits under title XVI, 20 CFR 404.1569a and 416.969a explain that an individual's impairment(s) and related symptoms, such as pain, may cause limitations of function or restrictions that limit an individual's ability to meet certain demands of jobs. These sections divide limitations or restrictions into three classifications: Exertional, nonexertional, and combined exertional and nonexertional. Exertional limitations or restrictions affect an individual's ability to meet the seven strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, and pulling), while nonexertional limitations or restrictions affect an individual's ability to meet the nonstrength demands of jobs (all physical limitations and restrictions that are not reflected in the seven strength demands, and mental limitations and restrictions). The nature of the limitations or restrictions affects whether the rules in appendix 2 to subpart P of Regulations No. 4 may be used to direct a decision or must be used as a framework for decisionmaking.

Likewise, under the regulations, symptoms in themselves are neither exertional nor nonexertional. An individual's symptoms, however, can cause limitations or restrictions that are classified as exertional, nonexertional, or a combination of both. For example, pain can result in an exertional limitation if it limits the ability to perform one of the strength activities (e.g., lifting), or a nonexertional limitation if it limits the ability to perform a nonstrength activity (e.g., fingering or concentrating). It is the nature of the limitations or restrictions resulting from the symptom (i.e., exertional, nonexertional, or both) that will determine whether the medical-vocational rules in appendix 2 may be used to direct a decision or must be used as a framework for decisionmaking. For additional discussion of this longstanding policy, see SSR 96–8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims."

Effective Date: This Ruling is effective on July 2, 1996.

Cross-References: SSR 96–3p, "Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment is Severe," SSR 96–7p, "Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements," and SSR 96–8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims;" and Program Operations Manual System, sections DI 24501.020, DI 24515.061, and DI 24515.063.

[FR Doc. 96–16687 Filed 7–1–96; 8:45 am]
BILLING CODE 4190–29–P

[1] This definition of disability applies to individuals claiming disability benefits under title II and individuals age 18 or older claiming disability benefits under title XVI. For title XVI, an individual under age 18 will be considered disabled if he or she is suffering from a medically determinable physical or mental impairment of comparable severity to an impairment that would disable an adult.

[2] 20 CFR 404.1528, 404.1529, 416.928, and 416.929 provide that symptoms, such as pain, fatigue, shortness of breath, weakness or nervousness, are an individual's own perception or description of the impact of his or her physical or mental impairment(s). (20 CFR 416.928 further provides that, for an individual under age 18 who is unable to adequately describe his or her symptom(s), the adjudicator will accept as a statement of this symptom(s) the description given by the person most familiar with the individual, such as a parent, other relative, or guardian.) However, when any of these manifestations is an anatomical, physiological, or psychological abnormality that can be shown by medically acceptable clinical diagnostic techniques, it represents a medical "sign" rather than a "symptom."

[Social Security Ruling (SSR) 96–2p.]

Titles II and XVI: Giving Controlling Weight To Treating Source Medical Opinions

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 96–2p. This Ruling explains terms used in the Social Security Administration regulations on evaluating medical opinions concerning when treating source medical opinions are entitled to controlling weight, and clarifies how the policy is applied.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income)

Dated: June 7, 1995.

Shirley S. Chater,

Commissioner of Social Security.

Policy Interpretation Ruling

Titles II and XVI: Giving Controlling Weight To Treating Source Medical Opinions

Purpose: To explain terms used in our regulations on evaluating medical opinions concerning when treating source medical opinions are entitled to controlling weight, and to clarify how the policy is applied. In particular, to emphasize that:

1. A case cannot be decided in reliance on a medical opinion without some reasonable support for the opinion.

2. Controlling weight may be given only in appropriate circumstances to medical opinions, i.e., opinions on the issue(s) of the nature and severity of an individual's impairment(s), from treating sources.

3. Controlling weight may not be given to a treating source's medical opinion unless the opinion is well-supported by medically acceptable clinical and laboratory diagnostic techniques.

4. Even if a treating source's medical opinion is well-supported, controlling weight may not be given to the opinion unless it also is "not inconsistent" with the other substantial evidence in the case record.

5. The judgment whether a treating source's medical opinion is well-supported and not inconsistent with the other substantial evidence in the case record requires an understanding of the clinical signs and laboratory findings and what they signify.

6. If a treating source's medical opinion is well-supported and not inconsistent with the other substantial evidence in the case record, it *must* be given controlling weight; i.e., it must be adopted.

7. A finding that a treating source's medical opinion is not entitled to controlling weight does not mean that the opinion is rejected. It may still be entitled to deference and be adopted by the adjudicator.

Citations (Authority): Sections 205(a), 216(i), 223(d), 1614(a)(3), and 1631(d) of the Social Security Act, as amended; Regulations No. 4, sections 404.1502 and 404.1527, and Regulations No. 16, sections 416.902 and 416.927.

Pertinent History: Our regulations at 20 CFR 404.1502, 404.1527, 416.902, and 416.927 were revised on August 1, 1991, to define who we consider to be a "treating source" and to set out detailed rules for evaluating treating source medical opinions and other opinions. Among the provisions of these rules is a special provision in 20 CFR 404.1527(d)(2) and 416.927(d)(2) that requires adjudicators to adopt treating source medical opinions (i.e., opinions on the issue(s) of the nature and severity of an individual's impairment(s)) in one narrowly defined circumstance. As we stated in the preamble to the publication of the final rules:

> The provision recognizes the deference to which a treating source's medical opinion should be entitled. It does not permit us to substitute our own judgment for the opinion of a treating source on the issue(s) of the nature and severity of an impairment when the treating source has offered a medical opinion that is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with other substantial evidence.

56 FR 36932, 36936 (1991).

Policy Interpretation: Explanation of Terms

Controlling weight. This is the term used in 20 CFR 404.1527(d)(2) and 416.927(d)(2) to describe the weight we give to a medical opinion from a treating source that must be adopted. The rule on controlling weight applies when *all* of the following are present:

1. The opinion must come from a "treating source," as defined in 20 CFR 404.1502 and 416.902. Although opinions from other acceptable medical sources may be entitled to great weight, and may even be entitled to more weight than a treating source's opinion in appropriate circumstances, opinions from sources other than treating sources can never be entitled to "controlling weight."

2. The opinion must be a "medical opinion." Under 20 CFR 404.1527(a) and 416.927(a), "medical opinions" are opinions about the nature and severity of an individual's impairment(s) and are the only opinions that may be entitled to controlling weight. (See SSR 96–5p, "Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner.")

3. The adjudicator must find that the treating source's medical opinion is "well-supported" by "medically acceptable" clinical and laboratory diagnostic techniques. The adjudicator cannot decide a case in reliance on a medical opinion without some reasonable support for the opinion.

4. Even if well-supported by medically acceptable clinical and laboratory diagnostic techniques, the treating source's medical opinion also must be "not inconsistent" with the other "substantial evidence" in the individual's case record.

If any of the above factors is not satisfied, a treating source's opinion cannot be entitled to controlling weight. It is an error to give an opinion controlling weight simply because it is the opinion of a treating source if it is not well-supported by medically acceptable clinical and laboratory diagnostic techniques or if it is inconsistent with the other substantial evidence in the case record. However, when all of the factors are satisfied, the adjudicator *must* adopt a treating source's medical opinion irrespective of any finding he or she would have made in the absence of the medical opinion.

For a medical opinion to be *well-supported* by medically acceptable clinical and laboratory diagnostic techniques, it is not necessary that the opinion be *fully* supported by such evidence. Whether a medical opinion is well-supported will depend on the facts of each case, It is a judgment that adjudicators must make based on the extent to which the opinion is supported by medically acceptable clinical and laboratory diagnostic techniques and requires an understanding of the clinical signs and laboratory findings in the case record and what they signify.

It is not unusual for a single treating source to provide medical opinions about several issues; for example, at least one diagnosis, a prognosis, and an opinion about what the individual can still do. Although it is not necessary in every case to evaluate each treating source medical opinion separately, adjudicators must always be aware that one or more of the opinions may be controlling while others may not. Adjudicators must use judgment based on the facts of each case in determining whether, and the extent to which, it is necessary to address separately each medical opinion from a single source.

Medically acceptable. This term means that the clinical and laboratory diagnostic techniques that the medical source uses are in accordance with the medical standards that are generally accepted within the medical community as the appropriate techniques to establish the existence and severity of an impairment. The requirement that controlling weight can be given to a treating source medical opinion only if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques helps to ensure that there is a sound medical basis for the opinion.

Not inconsistent. This is a term used to indicate that a well-supported treating source medical opinion need not be supported directly by all of the other evidence (i.e., it does not have to be *consistent* with all the other evidence) as long as there is no other substantial evidence in the case record that contradicts or conflicts with the opinion.

Whether a medical opinion is "not inconsistent" with the other substantial evidence is a judgment that adjudicators must make in each case. Sometimes, there will be an obvious inconsistency between the opinion and the other substantial evidence; for example, when a treating source's report contains an opinion that the individual is significantly limited in the ability to do work-related activities, but the opinion is inconsistent with the statements of the individual's spouse about the individual's actual activities, or when two medical sources provide inconsistent medical opinions about the same issue. At other times, the inconsistency will be less obvious and require knowledge about, or insight into, what the evidence means. In this regard, it is especially important to have an understanding of the clinical signs and laboratory findings and any treatment provided to determine whether there is an inconsistency between this evidence and medical opinions about such issues as diagnosis, prognosis (for example, when deciding whether an impairment is expected to last for 12 months), or functional effects. Because the evidence is in medical, not lay, terms and information about these issues may be implied rather than stated, such an inconsistency may not be evident without an understanding of what the clinical signs and laboratory findings signify.

Substantial evidence. This term describes a quality of evidence. Substantial evidence is "* * * more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." (*Richardson* v. *Perales*, 402 U.S. 389 (1971), SSR 71–53c, C.E. 1971–1975, p. 418.) The term is intended to have this same meaning in 20 CFR 404.1527(d)(2) and 416.927(d)(2). It is intended to indicate that the evidence that is inconsistent with the opinion need not prove by a preponderance that the opinion is wrong. It need only be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion that is contrary to the conclusion expressed in the medical opinion.

Depending upon the facts of a given case, any kind of medical or nonmedical evidence can potentially satisfy the substantial evidence test. For example, a treating source's medical opinion on what an individual can still do despite his or her impairment(s) will not be entitled to controlling weight if substantial, nonmedical evidence shows that the individual's actual activities are greater than those provided in the treating source's opinion. The converse is also true: Substantial evidence may demonstrate that an individual's ability to function may be less than what is indicated in a treating source's opinion, in which case the opinion will also not be entitled to controlling weight.

When a Treating Source's Medical Opinion Is Not Entitled to Controlling Weight

Adjudicators must remember that a finding that a treating source medical opinion is not well-supported by medically acceptable clinical and laboratory diagnostic techniques or is inconsistent with the other substantial evidence in the case record means only that the opinion is not entitled to "controlling weight," not that the opinion should be rejected. Treating source medical opinions are still entitled to deference and must be weighed using all of the factors provided in 20 CFR 404.1527 and 416.927. In many cases, a treating source's medical opinion will be entitled to the greatest weight and should be adopted, even if it does not meet the test for controlling weight.

Also, in some instances, additional development required by a case—for example, to obtain more evidence or to clarify reported clinical signs or laboratory findings—may provide the requisite support for a treating source's medical opinion that at first appeared to be lacking or may reconcile what at first appeared to be an inconsistency between a treating source's medical opinion and the other substantial evidence in the case record. In such instances, the treating source's medical opinion will become controlling if, after such development, the opinion meets the test for controlling weight. Conversely, the additional development may show that the treating source's medical opinion is not well-supported by medically acceptable clinical and laboratory diagnostic techniques or may create an inconsistency between the medical opinion and the other substantial evidence in the case record, even though the medical opinion at first appeared to meet the test for controlling weight. Ordinarily, development should not be undertaken for the purpose of determining whether a treating source's medical opinion should receive controlling weight if the case record is otherwise adequately developed. However, in cases at the administrative law judge (ALJ) or Appeals Council (AC) level, the ALJ or the AC may need to

consult a medical expert to gain more insight into what the clinical signs and laboratory findings signify in order to decide whether a medical opinion is well-supported or whether it is not inconsistent with other substantial evidence in the case record.

Explanation of the Weight Given to a Treating Source's Medical Opinion

Paragraph (d)(2) of 20 CFR 404.1527 and 416.927 requires that the adjudicator will always give good reasons in the notice of the determination or decision for the weight given to a treating source's medical opinion(s), i.e., an opinion(s) on the nature and severity of an individual's impairment(s). Therefore:

- When the determination or decision:

—Is not fully favorable, e.g., is a denial; or

—is fully favorable based in part on a treating source's medical opinion, e.g., when the adjudicator adopts a treating source's opinion about the individual's remaining ability to function;

the notice of the determination or decision must contain specific reasons for the weight given to the treating source's medical opinion, supported by the evidence in the case record, and must be sufficiently specific to make clear to any subsequent reviewers the weight the adjudicator gave to the treating source's medical opinion and the reasons for that weight.

- When the determination or decision is fully favorable and would be even without consideration of a treating source's medical opinion, the notice of the determination or decision must contain an explanation of the weight given to the treating source's medical opinion. This explanation may be brief.

Effective Date: This Ruling is effective on July 2, 1996.

Cross-References: SSR 96–5p, "Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner;" Program Operations Manual System, sections DI 22505.001, and DI 24515.001–24515.003; Hearings, Appeals, and Litigation Law manual, sections I–2–530, I–2–532, I–2–534, I–2–539, I–2–540, I–2–825, I–3–111, I–3–712, I–3–812, and Temporary Instruction 5–310.

[FR Doc. 96–16685 Filed 7–1–96; 8:45 am]

BILLING CODE [illegible]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

June 26, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: June 27, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 61 FR 3002, published on January 30, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 26, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on June 27, 1996, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
340/640	987,044 dozen.
342/642	364,373 dozen.
347/348	1,663,387 dozen.
443	216,806 numbers.
447	12,517 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

The guaranteed access levels for the foregoing categories remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–16820 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

June 26, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 27, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on April 17, 1996 (61 FR 16762) announces that if no solution is agreed upon in consultations between the Governments of the United States and El Salvador on Categories 342/642, the Committee for the Implementation of Textile Agreements may establish a limit at a level of not less than 209,563 dozen for the twelve-month period beginning on March 29, 1996 and extending through March 28, 1997.

Inasmuch as no agreement was reached during the consultation period on a mutually satisfactory solution on Categories 342/642, the United States Government has decided to control imports in these categories for the period beginning on March 29, 1996 and extending through March 28, 1997 at a level of 209,563 dozen.

This action is taken in accordance with the Uruguay Round Agreement on Textiles and Clothing and the Uruguay Round Agreements Act.

The United States remains committed to finding a mutual solution concerning Categories 342/642. Should such a solution be reached in consultations with the Government of El Salvador, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995).

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 26, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing; and in accordance with the provisions of Executive Order 11651 of March 30, 1972, as amended, you are directed to prohibit, effective on June 27, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 342/642, produced or manufactured in El Salvador and exported during the twelve-month period beginning on March 29, 1996 and extending through March 28, 1997, in excess of 209,563 dozen [1].

[1] The limit has not been adjusted to account for any imports exported after March 28, 1996.

Textile products in Categories 342/642 which have been exported to the United States prior to March 29, 1996 shall not be subject to the limit established in this directive.

Textile products in Categories 342/642 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–16803 Filed 6–27–96; 12:03 pm]

BILLING CODE 3510–DR–F

Adjustment of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

June 26, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for Categories 443 and 448 are being increased by application of swing, reducing the limit for Categories 351/651 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62398, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 26, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996.

Effective on July 1, 1996 you are directed to adjust the limits for the following categories, as provided for by the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
351/651	270,476 dozen.
443	81,654 numbers.
448	46,391 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

The guaranteed access levels for the foregoing categories remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–16821 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced of Manufactured in Malaysia

June 26, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–6712. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Categories 336/636 is being reduced for carryforward used during the previous period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62394, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 26, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on July 1, 1996, you are directed to reduce the limit for Categories 336/636 to 412,061 dozen[1], as provided for under the terms of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–16822 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

June 26, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–6714. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryover and recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62393, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 26, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on July 2, 1996, you are directed to amend the November 29, 1995 directive to adjust the limits for the following categories, as provided for under the terms of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit[1]
219	7,636,274 square meters.
226/318	113,687,603 square meters.
237	296,468 dozen.
239	1,157,963 kilograms.
314	5,553,654 square meters.
315	70,503,799 square meters.
317/617	29,844,402 square meters.
331/631	2,397,501 dozen pairs.
334/634	267,867 dozen.
335/635	328,892 dozen.
336/636	455,565 dozen.
338	4,807,211 dozen.
340/640	609,142 dozen of which not more than 200,757 dozen shall be in Categories 340–D/640–D[2].
341/641	668,522 dozen.
342/642	330,883 dozen.
347/348	845,231 dozen.
351/651	290,178 dozen.
352/652	716,033 dozen.
359–C/659–C[3]	1,230,909 kilograms.
363	42,975,448 numbers.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1995.

Category	Adjusted twelve-month limit[1]
369–F/369–P[4]	2,214,872 kilograms.
369–R[5]	10,024,470 kilograms.
369–S[6]	655,830 kilograms.
613/614	20,248,735 square meters.
615	21,944,309 square meters.
625/626/627/628/629	66,884,707 square meters of which not more than 33,177,281 square meters shall be in Category 625; not more than 33,177,281 square meters shall be in Category 626; not more than 33,177,281 square meters shall be in Category 627; not more than 6,864,265 square meters shall be in Category 628; and not more than 33,177,281 square meters shall be in Category 629.
638/639	204,795 dozen.
647/648	678,467 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

[2] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[5] Category 369–R: only HTS number 6307.10.2020.

[6] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–16823 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–DR–F

Cancellation of a Limit and Amendment of Visa Requirements for Certain Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

June 26, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs cancelling a limit and amending visa requirements.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The United States Government has decided to cancel the current limit on imports of man-made fiber luggage in Category 670–L from Sri Lanka established on January 1, 1996.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to cancel the limit established for Category 670–L for the period January 1, 1996 through December 31, 1996. Also, for goods produced or manufactured in Sri Lanka, visa requirements are being amended to no longer require a 670–L and 670–O part-category visa. Goods in Category 670 shall not be denied entry if visaed as 670, 670–L or 670–O.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 53 FR 34573, published on September 7, 1988; and 60 FR 66265, published on December 21, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 26, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 15, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the period which began on January 1, 1996 and extends through December 31, 1996.

Effective on July 1, 1996, you are directed to cancel the current limit for Category 670–L[1].

For visa purposes, you are directed to amend the directive dated September 1, 1988 to no longer require a 670–L and 670–O[2] part-category visa. Goods in Category 670 shall not be denied entry if visaed as 670, 670–L or 670–O.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–16825 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

June 26, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: June 27, 1996.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota

[1] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

[2] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

status of these limits, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–6717. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being reduced for carryforward used in 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62396, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 26, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on June 27, 1996, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
363	17,386,624 numbers.
619	5,787,631 square meters.
Sublevels in Group II	
442	19,037 dozen.
638/639	1,937,966 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementatin of Textile Agreements.

[FR Doc.96–16824 Filed 7–1–96; 8:45 am]

BILLING CODE 3510–DR–F

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

USTR Allocation of the Tariff-Rate Quota Increase for Raw Cane Sugar; Announcement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of United States Trade Representative (USTR) is providing notice of the country-by-country allocation of the 150,000 metric ton increase in the tariff-rate quota for imported raw cane sugar for the period that begins October 1, 1995, and ends September 30, 1996. This is in addition to the previous allocations of the tariff-rate quota of 2,017,195 mt for imported raw cane sugar.

EFFECTIVE DATE: June 12, 1996.

ADDRESSES: Inquiries may be mailed or delivered to Tom Perkins, Senior Economist, Office of Agricultural Affairs (Room 421), Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT:

Tom Perkins, Office of Agricultural Affairs, 202–395–6127.

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains a tariff-rate quota for imports of raw sugar. The in-quota quantity of the tariff-rate quota for the period October 1, 1995–September 30, 1996, has been increased by 150,000 metric tons by the Secretary of Agriculture, resulting in a new total of 2,167,195 metric tons, raw value.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas. The President delegated this authority to the United States Trade Representative under paragraph (3) of Presidential Proclamation No. 6763 (60 FR 1007).

I have determined to allocate the increase in the tariff-rate quota among supplying countries or customs areas. Accordingly, the country-by-country tariff-rate quota allocations in metric tons, raw value, for raw cane sugar allowed into the United States at the in-quota quantity tariff rate for the October 1, 1995-September 30, 1996, period are as follows:

1995–96 RAW SUGAR TRQ ALLOCATION

Country [1] [2]	Current FY 1996 allocation	New additional allocation	FY 1996 allocation
Argentina	85,741	10,125	95,866
Australia	165,500	19,544	185,044
Barbados	12,311	0	12,311
Belize	21,934	2,590	24,524
Bolivia	15,952	1,884	17,836
Brazil	289,127	34,144	323,270
Colombia	47,855	5,651	53,507
Congo	7,258	0	7,258
Cote d'Ivoire	7,258	0	7,258
Costa Rica	29,910	3,532	33,442
Dominican Republic	350,940	0	350,940
Ecuador	21,934	2,590	24,524

1995–96 RAW SUGAR TRQ ALLOCATION—Continued

Country [1] [2]	Current FY 1996 allocation	New additional allocation	FY 1996 allocation
El Salvador	51,843	6,122	57,966
Fiji	17,946	2,119	20,065
Gabon	7,258	0	7,258
Guatemala	95,711	11,303	107,014
Guyana	23,928	2,826	26,753
Haiti	7,258	0	7,258
Honduras	19,940	2,355	22,295
India	15,952	0	15,952
Jamaica	21,934	2,590	24,524
Madagascar	7,258	0	7,258
Malawi	19,940	2,355	22,295
Mauritius	23,928	2,826	26,753
Mexico	7,258	0	7,258
Mozambique	25,922	3,061	25,983
Nicaragua	41,873	4,945	46,818
Panama	57,825	0	57,825
Papua New Guinea	7,258	0	7,258
Paraguay	7,258	0	7,258
Peru	81,753	9,654	91,407
Philippines	237,422	0	237,422
South Africa	45,861	5,416	51,277
St. Kitts & Nevis	7,258	0	7,258
Swaziland	31,904	3,768	35,671
Taiwan	23,928	2,826	26,753
Thailand	27,916	3,297	31,212
Trinidad-Tobago	13,958	1,648	15,606
Uruguay	7,258	0	7,258
Zimbabwe	23,928	2,826	26,753
	2,017,195	150,000	2,167,195

[1] Additional increases in the TRQ were not allocated to Barbados, the Dominican Republic, India, Panama and the Philippines at this time because market conditions indicate they are unable to supply additional sugar.

[2] The additional allocation amount is zero for the ten minimum quota-holding countries including: Congo, Cote D'Ivoire, Gabon, Haiti, Madagascar, Mexico, Papua New Guinea, Paraguay, St. Kitts & Nevis, and Uruguay. The previously announced minimum allocation for these countries exceeds the base import quota plus any additional increases in the tariff-rate quota.

Conversion factor: 1 metric ton=1.10231125 short tons.

Charlene Barshefsky,

Acting United States Trade Representative.

[FR Doc. 96–16759 Filed 7–1–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending December 30, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1190.

Date filed: December 28, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 26, 1995.

Description: Application of Challengair, S.A., pursuant to 49 U.S.C. Section 40109, applies for a foreign air carrier permit, to perform charter foreign air transportation of persons, property and/or mail between a point or points in the Kingdom of Belgium and a point or points in the United States, commencing upon approval of this Application or upon the granting of exemption authority—for which ChallengAir also files.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–16804 Filed 7–1–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Interested persons are invited to submit comments on or before July 29, 1996.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to the Office of Management and Budget, New Executive Office

Building, Room 10202, Attention DOT/FAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1995, requires that agencies prepare a notice for publication in the **Federal Register**, listing information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Title: Certification and Operations: Air Carriers and Commercial Operators of Large Aircraft-FAR 121.

OMB Control Number: 2120–0008.

Abstract: Each operation which seeks to obtain, or is in possession of, an air carrier operating certificate must comply with the requirements of FAR 121 in order to maintain data which is used to determine if the air carrier is operating in accordance with minimum standards.

Need: Title 49, United States Code, Section 44701, prescribes the requirements governing air carrier operations. Air carriers are respondents and the information collected is used to determine operators compliance and applicant eligibility.

Respondents: The respondents are an estimated 140 air carriers and commercial operators certificated under FAR 121.

Frequency: Annually.

Burden: The estimated total burden is 3.3 million hours.

Title: Aviator Safety Studies.

OMB Control Number: 2120–0587.

Abstract: In order to conduct effective research on the contribution of pilots to aircraft accidents, data are required on the normative distribution of various pilot attributes and their association with accident

Need: In order to develop effective intervention programs to improve safety, data are required on the type and range of various pilot attributes related to their skill in making safety-related aeronautical decisions. The information collected will be used to develop new training methods particularly suited to general aviation pilots.

Respondents: The respondents are an estimated 4,000 certified pilots.

Frequency: On occasion.

Burden: The estimated total burden is 8,000 hours.

Issued in Washington, DC, on June 27, 1996.

Phillip A. Leach,

Information Clearance Officer, United States Department of Transportation.

[FR Doc. 96–16864 Filed 7–1–96; 8:45 am]

BILLING CODE 4910–13–P

National Highway Traffic Safety Administration

Petition for Modification of a Previously Approved Antitheft Device; Porsche

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).

ACTION: Grant of petition for modification of a previously approved antitheft device.

SUMMARY: On June 2, 1989, this agency granted Porsche Cars of North America, Inc.'s (Porsche) petition for exemption from the parts-marking requirements of the vehicle theft prevention standard for the 911 and 928 car lines. On September 9, 1994, the agency determined that the proposed changes made on the 911 antitheft device for model year (MY) 1995 were *de minimis* changes and did not require Porsche to submit a petition to modify its exemption pursuant to 49 CFR 543.9(c)(2). This notice grants Porsche's petition for a new modification to its previously approved antitheft device for the 911 car line beginning with the 1998 model year. The agency grants this petition because it has determined, based on substantial evidence, that the modified antitheft device described in Porsche's petition to be placed on the car line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–1740. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: In its MY 1989 petition, Porsche included a detailed description and diagrams of the identity, design, and location of the components of the antitheft device for the MY 1990 Porsche 911 and 928 car lines. The antitheft device consisted of a central-locking system, a starter-interrupt feature and an audible and visible alarm system. The device was activated by locking either the driver or passenger door with the ignition key. When the ignition key was used to lock either the driver or passenger door, the remaining door was automatically locked. When all the doors were locked, the vehicle's alarm system automatically armed to monitor the protected areas of the vehicle. The alarm monitored the doors, front hood, rear trunk (911) or hatch (928), radio and ignition switch. If any of the protected areas were violated, the alarm horn would sound, and the fog and brake lights would flash. In its petition, Porsche stated that the car would not start as long as the alarm remained armed. Disarming the device was accomplished by unlocking either the driver or passenger door with the ignition key. The agency determined that the antitheft device Porsche intended to install on the MY 1990 911 and 928 car lines as standard equipment was likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

In its MY 1995 request for modification, Porsche included a detailed description of the identity, design and location of the components of the antitheft device, including diagrams of components and their location in the vehicle. Porsche stated that the MY 1995 device added a remote control, automatic activation and expanded anti-start features to the MY 1990 device. Porsche also described the antitheft device installed as standard equipment as passively activated. By letter dated September 9, 1994, the agency determined that the proposed changes made on the MY 1995 911 antitheft device were *de minimis* changes and did not require Porsche Cars North America, Inc. (Porsche) to submit a petition to modify its exemption. The agency determined that the antitheft device, which Porsche intended to install on the 911 car line as standard equipment, would be likely to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of the Theft Prevention Standard.

By letter dated February 21, 1996, Porsche submitted its petition for a second modification to its previously approved antitheft device. Porsche's submittal is a complete petition, as required by 49 CFR 543.9(d), in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

Porsche stated that the antitheft device on the MY 1998 car line differs from the MY 1995 device in that it is simpler and better integrated. In the MY 1998 device, the disablement of the engine can only be accomplished by using the key in the ignition, while in the MY 1995 device it could be done through the use of the remote control. Also, in the MY 1995 antitheft device the vehicle could only be locked or unlocked using the remote control, while in the MY 1998 antitheft device, it can be done by using the key or the remote control.

The MY 1998 antitheft device will consist of a micro-processor based immobilizer system, which prevents the engine management system from functioning when the system is engaged, and a central-locking and alarm system. The immobilizer system is automatically activated by removing the correct key from the ignition switch/steering lock. The ignition key contains a radio signal transponder which sends a signal to the control unit to allow the engine to start. According to Porsche, only by inserting the proper key into the ignition switch will the correct signal be sent to the control unit. The time for the control unit to verify the correct signal takes only milliseconds and is completed in the time it takes to turn the key to start the engine. Disablement of the immobilizer system is virtually impossible, since the only way to enable the engine management system is by using the correct ignition key to send the proper code to the immobilizer system, which then signals the engine management system to operate. Removal of the key returns the device to its normal "off" state where engine operation is impossible. Therefore, even if the driver/operator forgets to lock the doors upon leaving the vehicle, an unauthorized person will be unable to move the vehicle unless the proper ignition key is used to disable the immobilizer system.

Porsche also stated that, for MY 1998, the antitheft device will feature a central-locking system that can be activated by using either the ignition key or the remote control. When either the ignition key or the remote control is used to lock any door, all doors are locked and the vehicle's alarm system is automatically armed to monitor the protected areas of the vehicle. The device monitors for opening of the doors, front luggage compartment, rear decklid, fuel filler door, soft top storage compartment, glove compartment, radio contact switches and interior movement via an infra-red sensor. If one of the protected areas of the vehicle is violated, the horn will sound and the lights will flash.

The antitheft device will function separately from the immobilizer system in that the immobilizer system cannot be disabled by any manipulation of the door locks or the central-locking system. Porsche states that any manipulation of the door locks or the central-locking system will not disable the immobilizer system because neither the door locks or the central-locking system are capable of sending the necessary codes to the control unit. When the alarm system is armed, a "safe" function is activated that removes the mechanical link between the inside and outside door handles and the locking mechanism. This prevents the manipulation of the door handles from having any influence on the door locks.

Porsche states that an unauthorized person will be unable to operate the vehicle without the use of the proper key. Porsche also states that disconnection of power to the antitheft device or the engine management system does not affect their operation.

The immobilizer and alarm systems are located within the passenger compartment of the vehicle. The control unit is located under the driver seat and the battery and alarm horn are inaccessibly located inside the front trunk of the vehicle.

Porsche addressed the reliability and durability of its antitheft device by providing a list of specific tests that ensure the system's integrity. The tests included testing for extreme temperature, voltage spike, reverse polarity, electromagnetic interference, vibration and endurance. Additionally, the antitheft device utilizes a built-in self test which constantly checks for system failures. If a failure is detected, the driver/operator is signaled by the alarm indicator.

Porsche compares its MY 1998 antitheft device to similar devices that have previously been granted exemptions by the agency. It compared its proposed device to devices that do not have alarms such as the General Motors' PASS-Key device, the Mercedes-Benz 202 car line device and the Porsche MY 1997 (confidential nameplate) device. Porsche states that the agency has previously determined that these devices without alarms are as effective as parts marking. Therefore, Porsche contends that since the MY 1998 device will include the same features and an alarm as standard equipment, its device will also be as effective in reducing and deterring theft as parts marking. Based on data from the FBI's National Crime Information Center, NHTSA's official source of theft data, Porsche showed that the theft rate of the Chevrolet Camaro fell below the median after installation of the PASS-Key device in MY 1989. Porsche reports that for MY 1988, the Chevrolet Camaro had a theft rate of 25.7394 (per thousand vehicles produced) and for MY 1993, it fell to 2.7243. Preliminary theft data for MY 1994 show that theft rates for the Chevrolet Camaro and Mercedes-Benz 202 car lines remain below the median of 3.5826. The preliminary data for MY 1994 show a theft rate of 3.5375 for the Chevrolet Camaro and 1.3810 for the Mercedes-Benz 202 car line. Porsche also stated that other GM models equipped with the PASS-KEY device, such as the Pontiac Firebird and Chevrolet Corvette, have shown large decreases in theft rates. Preliminary theft data for MY 1994 show a theft rate of 3.0927 for the Pontiac Firebird and 4.5884 for the Chevrolet Corvette. Additionally, Porsche reaffirmed that its MY 1998 device will provide engine disablement for its 911 line, which it believes is at least as effective as that provided by the GM PASS-Key device.

For these reasons, Porsche believes that the antitheft device proposed for installation on its 911 car line is likely to be as effective in reducing thefts as compliance with the parts-marking requirements of part 541.

NHTSA believes that there is substantial evidence indicating that the modified antitheft device installed as standard equipment on the MY 1998 Porsche 911 car line will likely be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of the Theft Prevention Standard (49 CFR part 541). This determination is based on the information that Porsche submitted with its petition and other available information. The agency believes that the modified device will continue to provide the types of performance listed in § 543.6(a)(3): promoting activation; attracting attention to unauthorized entries; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 CFR 543.6(a)(4), the agency also finds that Porsche has provided adequate reasons for its belief that the modified antitheft device will reduce and deter theft. This information included a description of reliability and functional tests conducted by Porsche for the antitheft device and its components.

For the foregoing reasons, the agency hereby exempts the Porsche 911 car line that is the subject of this notice, in

whole, from the requirements of 49 CFR part 541.

If, in the future, Porsche decides not to use the exemption for the car line that is the subject of this notice, it should formally notify the agency. If such a decision is made, the car line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Porsche wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: June 27, 1996.

Patricia Breslin,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 96–16840 Filed 7–1–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection Activities: Proposed Collection; Comment

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received by no later than September 3, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document the VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0055.

Title and Form Number: Request for Determination of Loan Guaranty Eligibility—Unremarried Surviving Spouses, VA Form 26–1817.

Type of Review: Extension of a currently approved collection.

Need and Uses: A completed VA Form 26–1817 constitutes a formal request by an unremarried surviving spouse of a veteran for a certificate of eligibility for home loan benefits. The information is used to determine the applicant's basic eligibility for the benefit.

Current Actions: Title 38, U.S.C., 3701(b)(2), authorizes the VA to extend home loan benefits to unremarried surviving spouses of veterans whose deaths occurred either while serving on active duty or were a direct result of service-connected disabilities.

Affected Public: Individuals or households.

Estimated Annual Burden: 187 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 750.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 273–8032 or FAX (202) 273–5981.

Dated: June 24, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–16779 Filed 7–1–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received by no later than September 3, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0092.

Title and Form Number: Counseling Record—Personal Information, VA Form 28–1902.

Type of Review: Extension of a currently approved collection.

Need and Uses: A counseling psychologist uses the form to evaluate veteran claimants and assist eligible veterans to plan a suitable program of vocational rehabilitation. If needed, VA must develop a program of assistance and services to improve the veteran's potential to participate in vocational rehabilitation. VA must also provide counseling services to help a veteran or other beneficiary to select an educational, training, or employment objective.

Current Actions: VA Form 28–1902 is used as part of the application for benefits, primary for Title 38 U.S.C., Chapter 31, vocational rehabilitation, but also for counseling under other VA educational benefit programs. The collection of information is necessary to provide educational, vocational, psychological, employment, and personal adjustment counseling that are part of the chapter 31 program.

Affected Public: Individuals or households.

Estimated Annual Burden: 30,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 60,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the reports should be directed to Department of Veterans Affairs, Attn: Ron Taylor, VA Clearance Officer (045A4), 810 Vermont Avenue, NW., Washington, DC 20420, Telephone (202) 273–8015 or FAX (202) 273–5981.

Dated: June 24, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–16780 Filed 7–1–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received by no later than September 3, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document the VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0029.

Titles and Form Numbers:

a. Offer to Purchase and Contract of Sale, VA Form 26–6705

b. Credit Statement of Prospective Purchaser, VA Form 26–6705b

c. Addendum to VA Form 26–6705, VA Form 26–6705c

d. Addendum to VA Form 26–6705 (Virginial), VA Form 26–6705d

Type of Review: Revision of a currently approved collection.

Needs and Uses:

a. VA Form 26–6705 is used by the private sector sales broker to submit an offer to the VA on behalf of a prospective purchaser of a VA-acquired property. The form will be prepared for each proposed contract submitted to the VA. If the VA accepts the offer to purchase, it then becomes a contract of sale. The form defines the terms of sale, provides the prospective purchaser with a receipt for his/her earnest money deposit, eliminates the need for separate transmittal of a purchase offer and develops the contract without such intermediate processing steps and furnishes evidence of the station decision with respect to the acceptance of the contract as tendered. Without this information, a determination of the best offer for a property cannot be made.

b. VA Form 26–6705b is used as a credit application to determine the creditworthiness of a prospective purchaser in those instances when the prospective purchaser seeks the VA vendee financing, along with VA Form 26–6705. In such sales, the offer to purchase will not be accepted until the purchaser's income and credit history have been verified and a loan analysis has been completed, indicating loan approval. Without this information, the creditworthiness of a prospective purchaser cannot be determined and the offer to purchase cannot be accepted.

c. VA Form 26–6705c, using the "highest net return/cash equivalent value" (EWCEV) procedure, is intended to simplify the selection process among competing offers and ensure that the offer selected provides the greatest value to the VA. The procedure requires one or more calculations on each offer in order to convert it to a "net to VA" basis which can easily be compared to other offers, and thus enable the VA to be sure that the highest real dollar offer is accepted. The sole purpose of the HNR/CEV is to determine which offer is the most financially advantageous to the VA and in turn, the taxpayers. This procedure is very similar to the calculation prepared on most private sector transactions in order to show the seller what he or she will receive as proceeds of sale.

d. VA Form 26–6705d is an addendum to VA Form 26–6705 for use in Virginia. It includes requirements of State law which must be acknowledged by the purchaser at or prior to closing.

Current Actions: Under the authority of Title 38 U.S.C 3720(a) (5) and (6), VA acquires properties for sale to the general public utilizing the services of private real estate brokers.

Affected Public: Individuals or households.

Estimated Annual Burden: 64,583 hours.

a. VA Form 26–7605—33,333 hours.

b. VA Form 26–6705b—33,500 hours.

c. VA Form 26–6705c—8,333 hours.

d. VA Form 26–6705d—417 hours.

Estimated Average Burden Per Respondent: 14 minutes (average).

a. VA Form 26–7605—20 minutes.

b. VA Form 26–6705b—20 minutes.

c. VA Form 26–6705c—5 minutes.

d. VA Form 26–6705d—5 minutes.

Frequency of Response: Generally one-time.

Estimated Number of Total Respondents: 272,500.

a. VA Form 26–7605—100,000.

b. VA Form 26–6705b—67,500.

c. VA Form 26–6705c—100,000.

d. VA Form 26–6705d—5,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), 810 Vermont Avenue, NW., Washington, DC 20420, Telephone (202) 273–8032 or FAX (202) 273–5981.

Dated: June 24, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–16781 Filed 7–1–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received by no later than September 3, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document the VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0171.

Title and Form Number: Application and Enrollment Certification for Individualized Tutorial Assistance, VA Form 22–1990t.

Type of Review: Extension of a currently approved collection.

Need and Uses: The VA uses the information collected to determine eligibility for tutorial assistance. The form is sent by the applicant to the school for certification and transmission to the VA. The school will transmit the form to the appropriate VA regional office (i.e., Atlanta, Buffalo, Muskogee, or St. Louis) with jurisdiction over the area where the school is located. Without the information on this form, the VA would be unable to determine the applicant's eligibility for tutorial assistance.

Current Actions: The VA is authorized to pay tutorial assistance under 38 U.S.C. chapters 30, 32 and 35, and under 10 U.S.C. chapter 1606. Tutorial assistance is a supplementary allowance payable on a monthly basis for up to 12 months. The student must be training at one-half time or more in a post-secondary degree program, and must have a deficiency in a unit course or subject that is required as part of, or prerequisite to, his or her approved program. The student uses VA Form 22–1990t, Application and Enrollment Certification for Individualized Tutorial Assistance, to apply for the supplemental allowance. On the form the student provides information such as: name; Social Security Number; mailing address; telephone number; program and enrollment information; the course or courses for which he or she requires tutoring, the name of the tutor; and the date, number of hours and charges for each tutorial session. The tutor must verify that he or she provided the tutoring at the specified charges, and that he or she is not a close relative of the student. The Certifying Official at the student's school must verify that the tutoring was necessary for student's pursuit of a program, that the tutor was qualified, and that the charges for the tutoring did not exceed the customary charges for other students.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 273–8032 or FAX (202) 273–5981.

Dated: June 24, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–16782 Filed 7–1–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Cemetery System, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the National Cemetery System (NCS) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received by no later than September 3, 1996.

ADDRESSES: Direct all written comments to Frances Wills, National Cemetery System (402D2), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the NCS request for Office of Management and Budget (OMB) approval. In this document the NCS is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0365.

Title and Form Number: Request for Disinterment, VA Form 40–4970.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used to allow a person who has a sincere wish and cogent reason to request removal of remains from a national cemetery for interment at another location. The information is used for approving or disapproving the disinterment request.

Current Actions: Interments made in national cemeteries are permanent and final. Disinterments will be permitted for cogent reasons, and then with prior written authorization only, usually by the Cemetery Director. Approval can be made when all immediate family members of the decedent, which includes the person who initiated the interment (whether or not he/she is a member of the immediate family), give their written consent. (Next-of-kin are generally initiators of disinterment requests.) An order from a court of local jurisdiction can be accepted in lieu of submitting VA form 40–4970.

Affected Public: Individuals or households.

Estimated Annual Burden: 33 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency On occasion.

Estimated Number of Respondents: 197.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–8032 or FAX (202) 273–5981.

Dated: June 24, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–16783 Filed 7–1–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0242.

Title and Form Number: Water-Plumbing Systems Inspection Report (Manufactured Home), VA Form 26–8731a.

Type of Review: Extension of a currently approved collection.

Need and Uses: Inspections are ordered by lending institutions and performed by experienced plumbers or manufactured home service personnel. VA Form 26–8731a will be completed by the inspector after the tests described on the form have been made. The lender submits the report form to the applicable VA regional office with its report of loan closing. If the report is satisfactory, and the loan is otherwise proper, the regional office then issues a certificate of guaranty covering the loan. Without proof of satisfactory water and plumbing systems, VA would be guaranteeing loans on used manufactured homes which could be unsafe and which would not be acceptable security on which to base an increase in the government's contingent liability.

Affected Public: Individuals or households and Business or other for-profit.

Estimated Annual Burden: 800 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 400.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by no later than August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: June 24, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–16784 Filed 7–1–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0243.

Title and Form Number: Fuel and Heating Systems Inspection Report (Manufactured Home), VA Form 26–8731c.

Type of Review: Extension of a currently approved collection.

Need and Uses: Inspections are ordered by lending institutions and performed by experienced heating company personnel, or manufactured home service personnel. VA Form 26–8731c is completed by the inspector after the tests described on the form have been made. The lender submits the report form to the applicable VA regional office with its report of loan closing. If the report is satisfactory, and the loan is otherwise proper, the regional office then issues a certificate of guaranty covering the loan. Without proof of satisfactory fuel and heating systems, VA would be guaranteeing loans on used manufactured homes which could be unsafe and which would not be acceptable security on which to base an increase in the government's contingent liability.

Affected Public: Individuals or households and Business or other for-profit.

Estimated Annual Burden: 800 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: Generally one-time.

Estimated Number of Respondents: 400.

ADDRESSES: Copies of these submissions may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submissions should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collections should be directed to the OMB Desk Officer on or before August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: June 24, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–16775 Filed 7–01–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0162.

Title and Form Number: Monthly Certification of Flight Training, VA Form 22–6553c.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used by students (veterans, servicemembers and reservists) and flight schools to report the hours and costs of flight training received and the termination of training.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions.

Estimated Annual Burden: 6,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,000.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 1, 1994.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: June 24, 1996.

By direction of the Secretary.

William T. Morgan

Management Analyst.

[FR Doc. 96–16776 Filed 7–01–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0459.

Title and Form Number: Property Management Consolidated Invoice, VA Form 26–8974.

Type of Review: Extension of a currently approved collection.

Need and Uses: VA Form 26–8974 is generated monthly by the computerized Property Management System at the VA Automation Center, Austin, Texas. Invoices show assigned properties with the assigned numerical identification and property location for each. Fixed fees, as applicable, are computer-entered for each property for certain management services, such as monthly inspection. The invoice is sent to the broker from Austin on or about the 25th day of each month. The broker then enters any additional charges for each property, affixes supporting documentation for reimbursement of expenses claimed, such as for utilities, and mails the invoice to the VA regional office of jurisdiction. Invoices are then reviewed by Realty Specialists to verify accuracy of charges, and forwarded to the Finance activity for audit and payment.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 32,215 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 1,895.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: June 24, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–16777 Filed 7–01–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Office of General Counsel, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of General Counsel, Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0018.

Title and Form Number: Application for Accreditation as Service Organization Representative, VA Form 21; and Appointment of Attorney or Agent as Claimant's Representative, VA Form 22a.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Need and Uses:

VA Form 21 will be used to obtain basic information necessary to determine whether an individual may be accredited as a service organization representative for purposes of representation of claimants before the VA. The information will be used by VA to evaluate qualifications, ensure against conflicts of interest, and allow appropriate organization officials to certify the character and qualifications of applicants.

VA Form 22a will be used by a claimant for VA benefits to confer power of attorney upon an attorney or agent in order that the attorney or agent may represent the claimant in proceedings before the VA. The information is necessary for determining whether access to claimant records may be provided and for notification purposes.

Affected Public: Individuals and households, Business or other for-profit, Not-for-profit institutions and State, Local or Tribal Government

Estimated Annual Burden: 1,750 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 7,000.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by no later than August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: June 24, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–16778 Filed 7–1–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: None Assigned.

Title and Form Number: Survey of Health Promotion and Preventative Medicine, VA Form 10–21000(NR)

Type of Review: New collection.

Need and Uses: Congressional mandate that the VA assess the rates that veterans are offered and receive critical health promotion and disease prevention services, and report these rates to Congress on an annual basis, Public Law 102–585. Existing data resources in the VA are unable to provide complete documentation regarding receipt of those services. An annual mail survey will be used to obtain the necessary information.

Affected Public: Individuals and households.

Estimated Annual Burden: 5,777 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 51,900.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by no later than August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: June 24, 1996.

By direction of the Secretary:

William T. Morgan,

Management Analyst.

[FR Doc. 96–16785 Filed 7–1–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0118.

Title and Form Number: Veterans Benefits, Veterans Education, Education or Training, VA Form Letter 22–315

Type of Review: Extension of a currently approved collection.

Need and Uses: The information is used to determine whether a claimant is eligible for payment for training at an institution other than the institution which will grant a degree or certificate upon completion of training. Without the information, benefits cannot be authorized for any courses pursued at other than the primary institution.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Annual Burden: 207 hours.

Estimated Average Burden Per Respondent: 7½ minutes per application.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,244.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by no later than August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: June 24, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–16786 Filed 7–1–96; 8:45 am]

BILLING CODE 8320–01–P

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federal register

Tuesday
July 2, 1996

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 1, et al.

Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking and at Training Centers; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 61, 91, 121, 125, 135, 141, 142

[Docket No. 26933; Amendment No. 1–45, 61–100, 91–251, 121–259, 125–27, 135–63, 141–7, 142; SFAR–58–2]

RIN 2120–AA83

Aircraft Flight Simulator Use in Pilot Training, Testing, and Checking and at Training Centers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule implements new regulations that contain certification and operating rules for training centers that will use aircraft flight simulators and flight training devices for pilot training, testing, and checking. This rule will increase the use of flight simulators and flight training devices by permitting their use for most airman certification training, testing, and checking tasks. This use of simulation for training, testing, and checking is more liberal than that currently permitted under the Federal Aviation Regulations. The training center concept will provide a common source for standardized, quality training accessible to any individual or corporate operator and air carriers. This action is consistent with a state-of-the-art training concept and recognizes industry recommendations for the expanded use of sophisticated flight simulation. The new rule also adds regulations regarding Category III instrument landing system operations.

EFFECTIVE DATE: This final rule is effective August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Warren Robbins, Airman Certification Branch, (AFS–840), General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267–8196.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the notice number of this final rule.

Persons interested in being placed on the mailing list for future rules should request from the above office a copy of Advisory Circular No. 11–2A which describes the application procedure.

Background

Flight simulation technology has shown enormous advancement during the past 30 years. The Federal Aviation Administration (FAA) has permitted greater use of aircraft flight simulators and flight training devices in training, testing, and checking airmen. The increased complexity and operating costs of the modern turbine-powered aircraft and the current operating environment have created an even greater need for the use of flight simulators and flight training devices. In many cases, flight simulators have proven to provide more in-depth training than can be accomplished in the aircraft. The use of flight simulators and flight training devices in lieu of aircraft has resulted in a reduction in air traffic congestion, noise and air pollution, and training costs. The increased use of flight simulators is also consistent with the national policy for fuel conservation.

Flight simulators provide a safe flight training environment. They may reduce the number of training accidents by allowing training for emergency situations, such as fire, total loss of thrust, and systems failures, that cannot be safely conducted in flight. The FAA has traditionally recognized the value of flight simulation and has awarded credit for the completion of certain required training, testing, and checking by use of simulation.

The first aircraft flight simulators approved by the FAA were relatively unsophisticated and were authorized for only a limited number of maneuvers and procedures. As flight simulator technology developed, the FAA expanded the use of flight simulators but still required students to perform a number of maneuvers in an aircraft. Among these were takeoffs, landings, taxiing, and some approaches.

In Amendment No. 121–55 (35 FR 84; January 3, 1970), the FAA revised parts 61 and 121 to authorize the use of flight simulators and flight training devices for airman training, testing, and checking. This use applied only to part 121 air carriers.

In Amendment No. 61–60 (38 FR 3156; February 1, 1973), the FAA authorized the § 61.58 proficiency check for the pilot of an aircraft requiring more than one pilot to be accomplished in its entirety either in an airplane or in a flight simulator or flight training device. In alternating 12-month periods, the proficiency check consists of maneuvers and procedures that may be performed in a flight simulator or flight training device as set forth in appendix F of part 121.

Subsequently, the FAA issued Amendments 61–82 and 121–108 (38 FR 35443; December 28, 1973), effective December 19, 1973. These amendments, in part, revised parts 61 and 121 by authorizing certain maneuvers and procedures of the pilot-in-command proficiency check to be performed in an approved visual flight simulator, if the pilot being checked accomplished two landings in an airplane of the same type.

The FAA issued Amendments 61–69 and 121–161 (45 FR 44176; June 30, 1980), effective July 30, 1980, that further expanded the use of advanced flight simulators for air carriers. Amendments 61–69 and 121–161 formed the basis of the Advanced Simulation Plan, which included Phase I, II, IIA, and III flight simulators (part 121, appendix H).

Since the infancy of simulation training, the training roles of several elements of the aviation community have expanded, most notably those of part 121 and part 135 certificate holders providing training for other certificate holders. Also, aircraft manufacturers are providing more simulation training now than they did in the past. This expansion has led to an ever-increasing need to issue exemptions.

In June 1988, the FAA received from a joint industry/FAA task force [1] several recommendations on the expanded use of flight simulators in new and innovative training programs. The recommendations included (1) Establishing a training center certificate for a separate training entity certificated to conduct training, testing, and checking under 14 Code of Federal Aviation Regulations parts 61, 63, 91, 121, 125, 135, and 141; (2) centralizing an approval process for course programs and check airmen at the national level, with local approvals only for specialty (local or unique) courses; and (3) expanding and standardizing the use of flight simulators and flight training devices, while at the same time providing relief from certain provisions of part 121, appendix H. The task force recommended single point oversight of a certificate by the FAA (instead of separate Flight Standards District Offices (FSDO's) approving centers in their geographic areas), defining training center recordkeeping requirements, and providing relief from the medical certificate requirements for instructors and check airmen conducting training in only flight simulators and flight training devices. The task force submitted aircraft manufacturer recommendations as an addendum recommending that a manufacturer's training center provide the initial operating experience (IOE) for air carriers.

In April 1989, this task force examined the role of training centers that provide training, testing, and checking for air carrier and general aviation pursuant to contracts, particularly training using flight simulators and flight training devices. This task force, which was comprised of aviation representatives from special interest groups, aircraft manufacturers, air carriers, university flight departments, and training centers such as SimuFlite, FlightSafety International, and Northwest Aerospace Training Corporation, examined flight simulation instructor and evaluator issues, including prerequisites; initial and recurrent training; requirements for current medical certificates; necessary in-flight experience; training center issues such as recordkeeping, facilities, and equipment; and the training program approval process.

The formal recommendations of this task force were forwarded to the FAA in October 1989. Essentially, the task force recommended that the FAA standardize the use of flight simulators and flight training devices, provide a means to certificate entities called training centers, and permit the training centers to apply for national approval of core curriculums that could be used by individuals receiving training under parts 61, 121, 125, and 135. Following receipt of the recommendations, the FAA appointed an internal working group to consider the recommendations.

The FAA working group concurred with most of the recommendations of the task force and recommended that the FAA undertake a rulemaking project that would include the concept of a certificated training center.

Related Activity

Several other FAA rulemaking projects address some of the same sections of 14 Code of Federal Regulations (14 CFR) that are revised in this rule; however, this rulemaking addresses those sections as they relate to the use of simulation.

Special Federal Aviation Regulation (SFAR) No. 58, "Advanced Qualification Program," (Amendment 61–88, effective October 2, 1990, 55 FR 40262) allows air carriers conducting training and testing under part 121 or part 135 to develop innovative approaches to training. Most AQP training programs will involve the use of simulation.

Three projects, listed below, are final rules that the FAA expects to issue soon:

"Pilot, Flight Instructor, Ground Instructor, and Pilot Certification Rules," proposed on August 11, 1995 [60 FR 41160], revises parts 61, 141, and 143.

"Training and Qualifications Requirements for Check Airmen and Flight Instructors," proposed on February 22, 1996 [61 FR 6898], changes certain provisions of §§ 121.411, 121.413, 135.337, and 135.339.

"Part 121; Appendix H, Advanced Simulation Plan Revisions," proposed on February 14, 1995 [60 FR 8490], updates and revises appendix H of part 121.

Discussion of the Amendments and the New Rule

General

This final rule addresses the following: (1) The creation of a new part 142 that contains certification rules and operating rules for training centers; (2) an expanded use of, and credit for, training, testing, and checking conducted in flight simulators and flight training devices in accordance with approved programs conducted at training centers to satisfy all or some of the requirements of SFAR 58, part 61, part 121, part 125, or part 135; and (3) new rules pertaining to Category III authorizations.

The advantage of the training center concept is that it is a common source for standardized, quality training, testing, and checking accessible to any individual, operator, and air carriers. Program approval will be standardized through national guidance, which should prove especially helpful for training centers operating in different FAA regions. The rules applicable to training centers apply nationwide, and training programs, except specialty training courses, are subject to approval by local FAA offices only after detailed review for compliance with national guidance. A key concept in the proposal is standardization of certain elements of training programs, notably: the extent of the use of simulation, the prerequisites for the use of simulation for specific tasks, and simulation instructor and evaluator qualifications.

The FAA proposed a national office to ensure standardization in simulation training. Several commenters supported the proposal to create a national office for standardization purposes. The FAA has decided not to create a national office at this time, however. In the present economic environment, government is increasingly exploring alternative methods of accomplishing many of its missions. Additionally, the FAA subscribes to the concept of decentralization of government to make it more responsive to the users, and accomplishing the objectives of this rulemaking without a national office is consistent with the precept of government decentralization. The FAA is convinced that it can attain and maintain the concept of standardization of simulation training by means more economical than creating a national office.

Detailed guidance will be provided to FAA inspectors and potential training center certificate applicants in the form of handbooks, advisory circulars, and FAA orders. The Flight Standards Service will appoint an ad hoc group of several persons from within existing resources with experience in subjects related to simulation training centers. The ad hoc group will process the initial certificate applications, training specifications, and curriculum approvals. It will ensure that those approvals are standardized nationally and that they represent a smooth transition of existing training programs to the new training regulations.

The Flight Standards Service also will train all its inspectors on features of part 142 training centers. It will provide detailed training to those inspectors who will have training center oversight responsibilities and to Principal Operations Inspectors (POI's) of air carrier certificate holders that may use a training center.

After the steps outlined above are accomplished and the initial workload of certificate applications is completed, the ad hoc group will be dissolved, and approval of training center certificate applications and oversight of training centers will be decentralized in accordance with existing FAA structure and management practices.

This rule does not take away any of the uses for flight training devices currently allowed by 14 CFR, and will have no adverse impact on the airmen who use flight simulation. Providers of flight simulation training, testing, and checking under part 142 will come under new regulatory controls that will enhance the use of qualified flight simulation in approved training programs. The changes are consistent with a state-of-the-art training concept, and they recognize industry

[1] This task force was later subsumed by the Air Transportation Personnel Training and Qualifications Advisory Committee, established by FAA Order 1110.115, May 2, 1990. Today it continues to function as an issues area by the same name under the Aviation Rulemaking Advisory Committee.

recommendations for the expanded use of sophisticated flight simulation. The FAA has determined that, if a student has prerequisite experience, a qualified flight simulator or flight training device used in an approved training program will provide for an effective transfer of skills to the actual aircraft.

In this rule, the FAA implements the joint industry/FAA task force recommendations concerning training centers by using an operational concept that requires a training center to obtain a certificate plus a training specification (similar to an operating specification for part 121 and part 135 operators). This approach will add flexibility to accommodate changing conditions without changing the certificate itself.

Part 142 allows training centers that do not hold a part 121 or part 135 operating certificate to use approved flight simulators and approved flight training devices for airman training, testing, and checking. This rule also changes certain sections of parts 61, 121, 125, and 135 to provide a mechanism for crediting training, testing, and checking in flight simulators toward some of the aeronautical experience, testing, and checking requirements of 14 CFR. Part 121 and part 135 certificate holders will continue to train personnel under those parts; however, those certificate holders will be required to acquire a part 142 training certificate in order to conduct training, testing, and checking for persons not subject to those parts.

The authority to issue pilot certificates and the provisions permitting certain training, testing, and checking in a flight simulator or flight training device, rather than in an aircraft, remains in part 61.

Part 142 regulates training center certification and operation to ensure that qualified flight simulators or flight training devices are used in conjunction with approved courses and curricula. The benefits of completing a course of standardized instruction in a structured training environment, and in a timeframe that allows for a building-block approach to learning, has been recognized and is reflected in the part 141 flight experience prerequisites for pilot certificates. Thus, part 141 flight experience requirements were used as the basis for many of the part 142 initial requirements.

Part 141 Pilot Schools

Pilot schools certificated under part 141 may continue to operate as they do now. Certification of new pilot schools will also continue under part 141. A part 141 pilot school wishing to use a Level A through Level D flight simulator for more than the hours currently allowed in a pilot ground trainer as described in § 141.41(a)(1), however, will have to become certificated under part 142. (See Advisory Circular (AC) 120–40, Airplane Simulator Qualification, as amended, for the current descriptions of levels of flight simulators).

This rule does not include an increase in credits for use of simulators except in the structured environment created by part 142, or as may be individually approved for an air carrier. Part 141 pilot schools that desire to undertake training by use of more sophisticated simulation, in addition to training accomplished by aircraft and flight training devices, may become training centers certificated under part 142. They would apply for certification and course approval under part 142 in the same manner as other applicants.

Advanced Qualification Program (AQP)

This final rule has minimal impact on AQP. It provides the administrative structure for presentation of AQP to any group other than aircrews subject to a part 121 or part 135 approved training program who might receive the AQP training exclusively from their employing certificate holder. All AQP approval criteria, application procedures, instructor qualifications, recordkeeping, and data collection procedures, among others, remain as they are described in SFAR 58 or its superseding rules.

This final rule changes the definition of a training center that appears in SFAR 58 to make it compatible with that term as used in part 142; provides that trainers other than part 121 or part 135 certificate holders presenting an approved AQP to their aircrew employees will have to do so under a part 142 certificate; and allows persons other than part 121 or part 135 certificate holders to present training under AQP if that training is approved in accordance with SFAR 58.

Specific relationships between training center certificate holders and holders of AQP authorizations, and of training center certificate holders who become holders of AQP authorizations, are discussed in the section of this document entitled "Section-by-Section Summary of the Comments" which follows.

Terms

In response to comments, the FAA has either added or revised terms to expand and clarify the final rule. Each modification of a term or word is discussed in the "Section-by-Section Summary of the Comments." A summary of the important new terms and words is provided below.

Flight Simulator

Section 61.2 defines a flight simulator. In the past, the terms "simulator" and "training device" have created confusion, so they are more clearly defined under this section. As defined, the terms make clear those devices that are not considered a flight simulator or a flight training device for purposes of this part.

In this final rule, a flight simulator is defined as a full-sized replica of a specific type or make, model, and series aircraft cockpit, including the equipment and programs necessary to represent the aircraft in ground and flight operations. As defined, a flight simulator also includes a force cueing (motion) system providing cues at least equivalent to a three-degree of freedom motion system. A flight simulator is a device that is approved by the Administrator for uses that may lead to credit for aeronautical experience, required training, testing, or checking.

Devices such as airborne ILS simulators, ground trainers, instrument trainers, and flight trainers are not considered flight simulators or flight training devices under this part unless specifically evaluated and approved as such by the Administrator.

Flight Training Device

In several sections in this rule, flight training devices are listed with aircraft and flight simulators as permitted flight training equipment for various training, testing, or checking tasks of pilots, although no flight training device may exist for some tasks. The FAA intends to allow the possibility of approving flight training devices for training, testing, and checking a wide variety of tasks to allow and encourage the development of flight training devices in the future. By permitting the possibility of a wide variety of uses for flight training devices, which are generally less expensive than flight simulators, the FAA hopes to encourage the growth of simulation.

Section 61.2 defines a flight training device as a replica of an aircraft's instruments, equipment, panels, and controls that is located in an open flight deck area or in an enclosed aircraft cockpit. This definition includes the equipment and programs necessary to represent the aircraft in ground operations and flight conditions. As defined, a flight training device is not required to have a force cueing or visual system. However, like a flight simulator, a flight training device is a device that requires approval by the Administrator for all uses that may lead to credit for aeronautical experience, required training, testing, and checking.

Category III Operations

This rule recognizes that technological advances permit aircraft operated under part 91 to conduct Category III extreme reduced visibility landing approaches. Part 91, specifically § 91.191 and 91.205, proposed to include implementing requirements to conduct Category III operations. Part 61 has been amended to specify the training and testing requirements for Category III operations. Part 1, § 1.1, Category III approaches.

Simulated Instrument Flight Rules (IFR) Conditions

Some airmen have expressed concern about the meaning of the terms "simulated IFR conditions" or "simulated instrument conditions" in part 61. There appears to be confusion over whether these conditions can be achieved by the use of hood devices only. These terms are used throughout the 14 CFR to mean that instrument conditions may be simulated by artificially limiting pilot visibility outside the cockpit. Pilot visibility can be limited by a hood device, by artificially limiting visibility in an approved flight simulator or flight training device, or by other appropriate means. Section 61.45 permits the artificial limitation of visibility by these various means.

Tests and Checks

Generally, this rule uses the word "test" in lieu of the word "check." Specifically, this rule uses the terms "initial test," "recurrent test," and "practical test." These terms refer to an examination, whatever its nature, on which the applicant receives a grade, even though the grade may be only "pass" or "fail."

An exception is found in § 61.58 that requires a "proficiency check" for a pilot in command (PIC) of an aircraft. A "proficiency check" is one type of periodic review of a pilot's proficiency as a PIC, whereas an initial test determines that pilot's qualification to be a pilot. Thus, when referring to this type of requirement, the FAA believes that the word "check" is more appropriate.

Aircraft

Prior to this rule, the only flight simulators referred to in the regulations were airplane simulators. The word "aircraft" is used throughout this rule, however, to indicate that the rule applies to training, testing, and checking in helicopters as well as in airplanes. When a requirement is meant to apply to only a particular category or class of aircraft, the appropriate category or class, such as "airplane," "rotorcraft," or "helicopter," is specified.

Normal Landings and Normal Takeoffs

The terms "normal landing" and "normal takeoff" are used in several places in the new or amended sections of part 61. "Normal" is meant to describe maneuvers that are not emergency maneuvers or those that are not done under abnormal conditions. A "normal" takeoff or landing includes those: (1) With different flight path angles, from steep to shallow; (2) with different configurations, such as flaps down or up; (3) to or from different surfaces, such as sod, concrete, and wet or slushy surfaces, or (4) made under various other circumstances that may be described in an aircraft flight manual. An emergency takeoff or landing is not a "normal" takeoff or landing. A takeoff or landing is not "normal" if it is labeled "abnormal" by the aircraft flight manual.

Easily Reached Controls

There has been some question about the meaning of the term "easily reached and operable in a normal manner" which appeared in § 61.45. This term, as amended, means that controls that are "easily reached" are those that can be reached by any airman or applicant seated in a designated pilot seat, with seat belts, shoulder harness, or other provided restraints fastened.

Conventional Manner

This rule also changes the term "normal manner," as it refers to the operation of an aircraft, to "conventional manner" and defines this term. This new definition should eliminate potential confusion associated with the use of such terms as "normal," "abnormal," or "emergency" performance. These different terms appear in many aircraft flight manuals and training curriculums. As used in this rule, in order to perform a normal, abnormal, or emergency maneuver in a "conventional manner," an applicant must use an aircraft that is equipped with one of the following: (1) A control wheel, stick, yoke, or cyclic control that in cruise flight, and in a forward movement, causes a decrease in pitch attitude, and rearward pressure causes an increase in pitch attitude; a left movement causes a bank to the left, and a movement to the right causes a bank to the right; and (2) rudder pedals or antitorque pedals which, when depressing the left pedal, cause the aircraft nose to yaw left and, when depressing the right pedal, cause the nose to yaw right. Aircraft with controls that operate differently than described above may still be used for a practical test, if the examiner determines that the flight test can be conducted safely in the aircraft.

Training Center

The characteristics of a training center are addressed in section 2 of SFAR 58 and several sections of part 142. Generally, it is defined as an entity that must hold an air agency certificate issued under part 142 and must comply with all applicable sections of part 142. It should be noted that whenever the term training center appears in this rule it includes satellite training center.

Supervised Operating Experience

Supervised operating experience (SOE) is experience required to remove certain limitations from an airman's certificate. The limitation that may be removed by SOE is a limitation on PIC privileges for a specified aircraft type issued to certain less-experienced pilots who use high level simulation only for all training and testing for a certificate, an added rating, or a certificate with an added rating. The required SOE must be accomplished by serving as PIC under the supervision of a qualified and current PIC in the airplane type to which the limitation applies. The SOE must be performed in the seat normally available to the PIC. The limitation may be removed by presenting evidence of the SOE to any FSDO. SOE parallels the operating experience requirement long a feature of air carrier training and qualification programs, but is less burdensome in that a current and qualified PIC instead of a check airman may provide the supervision. More detailed discussion on this matter follows in the response to comments about §§ 61.64 and 61.158.

Summary of Comments

Notice 92–10 was published in the **Federal Register** on August 11, 1992 (57 FR 35888). The comment period closed on December 9, 1992. The FAA received 328 comments in response to Notice No. 92–10: 223 comments from various sectors of the interested public, namely pilots and certificated flight instructors; 48 comments from various aviation businesses; 13 comments from the major aviation associations; 11 comments from commercial air carriers; 11 comments from the aviation/academic training school community; and 4 comments from governmental organizations. Eighteen miscellaneous comments were either duplicates or entered to this

docket in error. The FAA considered all of the comments, even those received after the comment period closed.

Of the 328 comments received, 278 comments made reference to proposals contained in § 61.197 which addresses renewal of flight instructor certificates. (Of these 278 comments, 216 comments referenced only § 61.197, 62 referenced § 61.197 among other sections.) These comments, as well as those relating to §§ 61.187, 142.49, and 142.53 concerning instructor flight proficiency, training center instructor privileges and limitations, and training and testing requirements, were addressed in Notice No. 92–10A, a Supplemental Notice of Proposed Rulemaking (SNPRM) published in the **Federal Register** on February 19, 1993 [58 FR 9514]. The remaining 50 commenters expressed both support and opposition to the proposals. Many of these commenters supported the NPRM in concept and purpose, and made various recommendations for textual revisions. Other commenters made recommendations with no statement of strong support or opposition to the proposals. For purposes of discussion, the comments have been grouped into several broad categories and are discussed in further detail below. Each comment is discussed in the section of this document entitled "Section-by-Section Analysis of the Comments."

General Issues Covered in the Comments

The following subjects received the most comments. These comments are responded to individually in a separate section of this document to follow entitled "Section-by-Section Summary of the Comments." The issues raised and the nature of the comments are summarized below:

1. The proposed definitions and guidelines regarding the use of flight simulators and flight training devices will ensure standardization of training.

Approximately 15 commenters supported the standardization of training offered by new part 142. Several of the commenters, including Simulator Training, Inc., (STI) and the Aircraft Owners and Pilots Association (AOPA), suggested that part 142 define and standardize training center operations, and reduce the number of exemptions required for the use of simulation. Additionally, the Air Line Pilots Association (ALPA) supported the standardized certification requirements proposed by part 142. ALPA stated that the certification process "will assure some level of minimum performance for these training centers, require accountability for training programs and equipment, and provide more consistent FAA oversight."

Northwest Airlines, Inc., (NWA) stated that "the proliferation of programs has reached a level where increased regulatory controls must be imposed." NWA and other commenters, including FlightSafety International (FSI), strongly supported the proposal of an FAA part 142 national office. These commenters suggested that the establishment of centralized resources would help to promote standardization and consistency in training and evaluation.

2. The requirements for obtaining a part 142 certificate are burdensome, costly, and over restrictive.

Approximately 30 commenters objected to various proposals for the part 142 certification process. The majority of these commenters specifically cited proposed §§ 142.17(b)(3) and 142.17(d), suggesting that they are unnecessarily burdensome and costly.

Fifteen commenters, primarily pilot schools, opposed the proposal that the principal business office of a part 142 certificate holder cannot be shared with another certificate holder. The commenters see this proposed restriction as imposing costly and unnecessary administrative duplication. Various commenters indicated that the requirement that a training center own or lease at least one FAA-approved flight simulator would exclude many smaller training institutions from the benefits of part 142 participation due to costs and thereby preclude some students from receiving the benefits of advanced simulation training. In addition, several commenting part 121 certificate holders stated that if part 121 certificate holders are required to apply for a separate certificate under part 142, they would be required to purchase duplicate flight training equipment and facilities. They stated further that part 142 certificate holders would be precluded from leasing "dry" simulator time from part 121 certificate holders possessing such training equipment.

3. A part 142 certificate should not be required to continue to provide training to employees of other part 121 or part 135 certificate holders.

Several commenters opposed the proposals which would require training entities providing currently approved training programs to be certificated under part 142. These commenters represented a diverse group that included air carrier certificate holders, persons interested in AQP, and current simulator exemption holders.

4. Flight experience gained from the use of simulation cannot fully replace the operational experience gained in the actual flight environment.

Several commenters, namely some individuals and the National Transportation Safety Board (NTSB), expressed concern regarding the reduced hours of actual flight experience proposed in various sections of the NPRM and posited that flight experience gained through the use of flight simulation cannot fully replace the operational experience gained in the actual flight environment.

Section-by-Section Analysis of the Comments

NWA suggested that some readers may have been confused by the structure of the NPRM, in that it set forth the proposed text, but did not show the text that remained unchanged. Asterisks were used to designate the text which the FAA proposed to leave unchanged. The use of asterisks for this purpose is consistent with the Federal Register's *Document Drafting Handbook*.

Several commenters said that several of the proposals should be deleted in this rulemaking and considered in the part 61, 141, and 143 review. The FAA carefully considered which topics to include in this rulemaking and which to include in the part 61, 141, and 143 review. Generally, if a topic relates to simulation, it was addressed in the NPRM for this rulemaking. Some other part 61 topics also are addressed in this rulemaking if it was necessary to revise the section for consistency of style and paragraph numbering.

SFAR 58

SFAR 58.2 *Definitions.* The FAA proposed in Notice 92–10 to make the definition of training centers in this section compatible with the definition of that term as contained in § 142.3.

Several commenters expressed the belief that the proposed definition was confusing or ambiguous. The FAA agrees that the definition should be more clear and has simplified the definition. The revised definition includes those persons who obtain, and operate under, a part 142 certificate, and those part 121 and part 135 certificate holders who present, under AQP, training that they are required to present under part 121 or part 135.

Other commenters suggested rewording the definition to exclude those training providers who already hold a part 121 or part 135 certificate, or those persons who might provide AQP training for those certificate holders. This is an issue of the applicability of part 142, which is discussed in the section-by-section analysis of § 142.1 and further defined in § 142.3.

SFAR 58.11. Approval of Training, Qualification, or Evaluation by a Person Who Provides Training by Arrangement.

Delta Air Lines, Inc., (Delta) in a comment typical of several others, said that there appears to be no sound reason to change the existing SFAR 58 provision for approval of AQP training, qualification, or evaluation to be offered by a part 142 training center. It went on to say that approval under SFAR 58 of training programs, instructor or evaluator qualification, and use of training equipment should constitute approval under part 142.

The FAA agrees. The FAA had that intent when making the original proposals. For example, in the NPRM preamble discussion of § 142.39, the FAA stated:

> "The FAA believes that approval of a curriculum under SFAR 58, Advanced Qualification Program (AQP), should, for that applicant, constitute complete approval of that curriculum for use by a training center certificated under part 142, since the AQP application contains curriculum criteria at least as detailed as the part 142 curriculum requirements set forth in proposed §§ 142.39 and 142.77."

Several air carriers asked why the FAA proposed in this rulemaking to fix an expiration date for SFAR 58.

SFAR 58 may or may not expire as determined by separate rulemaking action underway at this time. Under this final rule, a part 121 certificate holder with an AQP authorization may continue, without certification under part 142, to train persons who are aircrew employees of another certificate holder who has an AQP authorization.

Minor editorial changes have been made to clarify the intent of the proposed rule. This section is adopted with the revisions discussed above.

Part 61

§ 61.1a (adopted as § 61.2) *Definition of terms.* This section has been amended to include definitions for terms used in part 61. The following terms are defined:

(1) An instructor who has a valid ground instructor certificate or current flight instructor certificate with appropriate ratings issued by the Administrator;

(2) An instructor authorized under SFAR 58, part 121, part 135, or part 142 of this chapter to give instruction under those parts; or

(3) Any other person authorized by the Administrator to give instruction under this part.

(b) "Flight Simulator, Airplane" means a device that—

(1) Is a full-sized airplane cockpit replica of a specific type of airplane, or make, model, and series of airplane;

(2) Includes the hardware and software necessary to represent the airplane in ground operations and flight operations;

(3) Utilizes a force cueing system that provides cues at least equivalent to those cues provided by a 3 degree freedom of motion system;

(4) Utilizes a visual system that provides at least a 45° horizontal field of view and a 30° vertical field of view simultaneously for each pilot; and

(5) Has been evaluated, qualified, and approved by the Administrator.

(c) "Flight Simulator, Helicopter" means a device that—

(1) Is a full-sized helicopter cockpit replica of a specific type of aircraft, or make, model, and series of helicopter;

(2) Includes the hardware and software necessary to represent the helicopter in ground operations and flight operations;

(3) Utilizes a force cueing system that provides cues at least equivalent to those cues provided by a 3 degree freedom of motion system;

(4) Utilizes a visual system that provides at least a 45° horizontal field of view and 30° vertical field of view simultaneously for each pilot; and

(5) Has been evaluated, qualified, and approved by the Administrator.

(d) "Flight Training Device" means a device that—

(1) Is a full-sized replica of instruments, equipment, panels, and controls of an airplane or rotorcraft, or set of airplanes or rotorcraft, in an open flight deck area or in an enclosed cockpit, including the hardware and software for systems installed, necessary to simulate the airplane or rotorcraft in ground operations and flight operations;

(2) Does not require a force (motion) cueing or visual system; and

(3) Has been evaluated, qualified, and approved by the Administrator.

(e) "Set of airplanes or rotorcraft" means airplanes or rotorcraft which all share similar performance characteristics, such as similar airspeed and altitude operating envelope, similar handling characteristics, and the same number and type of propulsion system or systems.

Aerospace Industries Association (AIA) and Boeing Commercial Airplane Group (Boeing), in identical comments, stated that this part should not have new definitions for flight simulators and flight training devices, but should instead incorporate by reference the definitions for these items as contained in Advisory Circular (AC) 120–40B and AC 120–45A.

The definitions of "flight simulator" and "flight training device" set forth in new part 142 are, in all aspects, identical to those contained in the referenced AC's. The FAA has determined that the definitions should be contained in the regulatory text so that they are readily available to applicants for, and holders of, a part 142 certificate and other persons who have an interest in the regulations concerning training centers.

Crew Systems, Andrews University, and an individual stated that definitions should not be in this section, but rather in part 1 of 14 CFR, and that the proposed definitions might have a different meaning to different people. The definitions contained in part 61 are applicable to that part of 14 CFR. Some of the words or terms might have a different definition in the context of a different part of 14 CFR. Only those definitions that have general applicability to all parts of 14 CFR are placed in part 1.

Airbus Service Company, Inc., (Airbus) recommended that this section be amended to include Air Transportation Ground Instructor, Air Transportation Flight Instructor, and Air Transportation Flight Instructor (Simulator Only) in the definition of authorized instructor.

The authority of the persons cited by Airbus to function as instructors is limited to service in part 121 or part 135. The persons with the instructor titles cited by Airbus are not necessarily holders of an FAA flight instructor certificate, and may perform certain flight instructor functions by virtue of holding an airline transport pilot (ATP) certificate. The privileges of persons cited by Airbus are not changed by this definition; they remain the same for the operating part for which the person was designated. Additionally, many of the persons cited by Airbus could qualify as an authorized instructor in other parts, including part 142. See the provision of § 61.2 (a)(2) as adopted.

One person stated that including the words "full-sized replica" in the definition of a flight training device precludes the approval of personal computer flight simulation technology.

The comment is accurate. The FAA is convinced that simulation has benefit only if behaviors learned can be transferred to the aircraft. The FAA is convinced that no effective transfer of learning has been demonstrated except from flight simulators and flight training devices that accurately replicate the performance of an aircraft. As discussed in the NPRM, AC 120–45, as amended, describes the minimum criteria for flight training devices which will result in

replication of aircraft performance suitable for specific training, testing, and checking. The FAA has under development a new AC 120–46, "Use of Airplane Flight Training Devices (In Flight Training and Checking for Airman Qualification and Certification)," which will provide details about which tasks a particular level of flight training device may be used for training credit and which tasks one may be used for testing. At this time, no flight training aid based on what is commonly known as "personal computers" meets the criteria of AC 120–45. Accordingly, the use of personal computer flight simulation technology is considered unacceptable.

One commenter stated that this section, and all other proposed revised sections of part 61, should be deleted and considered in the phase II of the part 61, 141, and 143 review, which was referenced earlier as a related rulemaking project.

The FAA does not agree that this would be an appropriate action. The purpose of this rulemaking was to undertake a comprehensive review, and revision if necessary, of all rules with the potential for increasing the use of simulation for airman training, testing, and checking. Many of these rules are contained in part 61; therefore, the FAA proposed revisions to certain sections contained in that part.

§ 61.2 (adopted as § 61.3) Certification of foreign pilots and flight instructors.

This section proposed rules for training centers and their satellite training centers for issuing certificates and ratings outside the United States. Specifically, this section proposed that training centers, and their satellite training centers, certificated under part 142 of this chapter, be allowed to do the following outside the United States: (1) Add additional ratings and endorsements to certificates issued by the Administrator under the provisions of part 142; and (2) issue certificates to U.S. citizens within the authority granted to the training center by the Administrator.

The National Association of Flight Instructors (NAFI) commented that it has long been an FAA policy to not issue U.S. certificates or additional ratings to foreign nationals outside the United States.

The FAA agrees with the commenter that, under § proposed 61.2 (adopted as § 61.3), the FAA does not issue U.S. certificates to foreign nationals outside the United States unless issuance meets the need stipulated in that section. However § 61.2 (adopted as § 61.3), has, for several years, allowed rating(s) to be added to a U.S. certificate of a foreign national outside the United States. Further, § 61.13 has, for several years, allowed the FAA to issue certificates and added ratings, subject to this need and to collection of the reimbursement fee required by part 187 [60 FR 19628; April 19, 1995; Fees for Certification Services and Approvals Performed Outside the United States, Rule and Notices.]

NAFI further states that proposed paragraph (b)(1) does not have a limitation contained in proposed paragraph (a)(1). It recommends that the following limitation contained in paragraph (a)(1) be added to paragraph (b)(1): "The pilot certificate or rating is needed for the operation of a U.S.-registered civil aircraft."

Modern multinational corporations may operate aircraft of different countries of registry. The commenter has not provided sufficient rationale for imposing the U. S. certification restriction. The FAA has determined, therefore, that proposed paragraph (b) should not contain a restriction on need to operate an aircraft of U.S. registry.

Some commenters, namely United Airlines (United), Trans World Airlines (TWA), the Air Transport Association (ATA), and the Federal Express Corporation said, in essence, that the proposed part 142 sections that would permit the certification of training centers located outside the United States, and that would permit them to add additional ratings and endorsements, threatens the standardization concept of part 142 training centers and should be dropped.

The FAA plans to maintain standardization by providing adequate guidance on instructor and evaluator qualification, simulation approvals, curriculum approvals, and by emphasizing review and inspection of that guidance.

Other commenters indicated that maintaining standardization of training center activities for those training centers outside the United States will cause a workload on the FAA.

The FAA agrees that creation of foreign training centers will impose a workload on the FAA. See the FAA plan for compensation for the workload imposed by training centers outside the United States in the discussion of comments received in response to proposed § 142.20 (adopted as § 142.19), "Foreign training centers: Special rules."

For the reasons discussed, this section is adopted as proposed, except for editorial changes to make it clear that training centers prepare, train, and recommend applicants for a certificate or rating, but do not actually issue a certificate or rating unless the training center has specific authorization to issue airman certificates.

§ 61.3 (adopted as § 61.5) Requirement for certificates, ratings, and authorizations.

The FAA proposed to amend the lead-in paragraph for § 61.3(d) (adopted as § 61.5 (d)) and to add a new paragraph (i).

As proposed, paragraph (d) inadvertently would have prevented lighter-than-air instruction without a flight instructor certificate. That was not the intent of this rule. Therefore, language allowing such instruction without a flight instructor certificate is restored to paragraph (d) of this section. The FAA did not receive any comments on proposed paragraph (d), therefore, with this minor correction, paragraph (d) is adopted as proposed.

Proposed paragraph (i) prescribed requirements for pilot category III authorization. It reads as follows:

(i) Category III pilot authorization.

(1) No person may act as pilot in command of a civil aircraft during Category III operations unless—

(i) That person holds a current Category III pilot authorization for that category or class of aircraft, and the type of aircraft, if applicable; or

(ii) In the case of a civil aircraft of foreign registry, that person is authorized by the country of registry to act as pilot in command of that aircraft in Category III operations.

(2) No person may act as second-in-command (SIC) of a civil aircraft during Category III operations unless that person—

(i) Holds a valid pilot certificate with category and class ratings for that aircraft and a current instrument rating for that category aircraft;

(ii) Holds an airline transport pilot certificate with category and class ratings for that aircraft; or

(iii) In the case of a civil aircraft of foreign registry, is authorized by the country of registry to act as SIC of that aircraft during Category III operations.

Some commenters, namely TWA, Delta, American Airlines (American), ATA, British Aerospace Inc., Training Center (BAe), and AMR Combs (AMR), believe that part 121 and part 135 certificate holders should not be required to comply with paragraph (i) of this section, as they have not been required to comply with the Category II requirements of paragraph (f) of this section in the past.

There is an alternate mechanism in part 121 to authorize certificate holders under that part to conduct reduced visibility instrument approaches. That alternative assures a level of safety equivalent to this rule. Because of the alternate mechanism in part 121 to authorize the commenters and similarly-situated persons to conduct Category II and Category III operations, the FAA agrees with the commenters, and has added a new paragraph (j) to except part 121 and part 135 certificate holders from compliance with paragraph (i). Current paragraph (f) has been revised in this final rule to conform it to the format of new paragraph (i). The flush paragraph at the end of paragraph (f) has been replaced with a new paragraph (j).

§ 61.4 Qualification and approval of flight simulators and flight training devices. In this new section, flight simulators and flight training devices must be qualified and approved by the Administrator for training, testing, and checking, if the airman using flight simulators or flight training devices is to get credit to satisfy any part of 14 CFR. In addition, each particular maneuver, procedure, or crewmember function to be performed would be subject to the approval of the Administrator.

A few commenters suggested that flight simulators and flight training devices should not have to be approved unless the person using them expected to get some credit for that use to satisfy some requirement of 14 CFR.

The FAA agrees, and the rule text has been amended to clarify that only those flight simulators and flight training devices used to satisfy training, testing, or checking functions, as may be necessary to meet FAA regulatory requirements, must be qualified by the Administrator.

NAFI said that guidelines must be established to specify the requirements for qualification and approval of flight simulators and flight training devices to prevent FAA inspectors from arbitrarily applying their personal standards, and that, once a flight simulator or flight training device is approved by the FAA, the FAA should not require another inspector to approve another of the same make and model.

The FAA agrees that each FAA inspector should not arbitrarily determine standards for qualification and approval of flight simulators. The FAA has established guidelines and technical standards for flight simulators and flight training devices, in AC 120–40, as amended, and AC 120–45, as amended, respectively. These publications are available from the Government Printing Office and may be reviewed at any FSDO. These advisory circulars are made available to facilitate standardization, qualification, and recommendations for approval of particular maneuvers and procedures for each flight simulator and level 5 through 7 flight training device, as they are defined at this time. FAA inspectors may approve the use of flight simulators and flight training devices for the maneuvers and procedures of a particular curriculum. To help ensure standardization, the FAA will provide national guidance for approval of training programs for all part 142 training centers. This guidance should preclude widespread interpretation on the part of individual inspectors.

§ 61.13 Application and qualification. The FAA proposed to revise paragraph (e) to make this section apply to Category III authorizations as well as to Category II authorizations. The revised paragraph reads as follows:

(e) The following requirements apply to a Category II pilot authorization and to a Category III pilot authorization:

(1) The authorization is issued by a letter of authorization as a part of the applicant's instrument rating or airline transport pilot certificate.

(2) Upon original issue the authorization contains a visibility limitation—

(i) For Category II operations, the limitation is 1,600 feet RVR and a 150-foot decision height; and

(ii) For Category III operations, each initial limitation is specified in the authorization document.

(3) Limitations on an authorization may be removed as follows:

(i) In the case of Category II limitations, a limitation is removed when the holder shows that, since the beginning of the sixth preceding month, the holder has made three Category II ILS approaches with a 150-foot decision height to a landing under actual or simulated instrument conditions.

(ii) In the case of Category III limitations, a limitation is removed as specified in the authorization.

(4) For the practical test required by this part for a Category II or a Category III authorization, a flight simulator or flight training device may be used for simulated instrument conditions, if approved by the Administrator for simulated instrument conditions.

AIA and Boeing said that § 61.13(e)(3)(i) should contain the same provision regarding simulated instrument conditions that appears in § 61.13(e)(4); i.e., "* * * a flight simulator or flight training device may be used for simulated instrument conditions. * * *"

The FAA agrees with the suggestion of the commenters. Paragraph (e)(4) has been reworded to make it clear that an approved flight simulator may be used to meet the experience requirement of paragraph (e)(3) as well as to meet the Category II and Category III practical test requirements of part 61.

ATA and several air carriers commented that this proposal fails to include language excepting part 121 and part 135 certificate holders from compliance with this section. They point out that § 61.3 (adopted as § 61.5) contains an exception for part 121 and part 135 operators from the qualification requirements for Category II operations.

The provisions of § 61.13 were not intended to apply to operations conducted by part 121 and 135 certificate holders since the FAA did not intend to propose, under § 61.3, (adopted as § 61.5) that a letter of authorization be required for these operations. These parts prescribe their own requirements for such operations.

Proposed § 61.3 (adopted as § 61.5) has been revised to make it clear that the exception for part 121 and part 135 certificate holders also applies to Category III authorization. (See the discussion of § 61.3 (adopted as 61.5)).

Airbus suggested additional text for this section that would delete ILS approaches, because MLS, GPS, and other approaches are likely in the future.

The FAA agrees that the regulations need to be modified to reflect changing technology; however, this was not a subject of these proposals and cannot be addressed in this rule at this time.

Airbus also suggested that this section be amended to specify the quality of the simulated visual scene required for the practical test.

The FAA agrees that the quality of the simulated visual scene that may be used to complete the Category II or Category III practical test is of great importance. The sections of the rule that actually require and authorize training and testing to show competence in reduced visibility operations, §§ 61.3 (adopted as § 61.5), 61.67, and 61.68, specify that the practical test must be accomplished under an approved training program of an air carrier for that air carrier's aircrews, or in an approved training program of a part 142 certificate holder. Training program approval criteria for each of those training programs specify, or will specify, that a flight simulator must be qualified and approved by the FAA for each maneuver, procedure, and crewmember task. Further guidance for the technical requirements of flight simulation is published in AC 120–40 and AC 120–45, as amended. The FAA believes that the quality control provided by the provisions described above is satisfactory. Quality of the visual scene in all modes of flight and the quality of simulation in general is a high priority for the FAA. For the reasons discussed, this section rewords

paragraph (e)(4) and is otherwise adopted as proposed.

§ 61.21 Duration of Category II and Category III pilot authorizations. In addition to a change in the title, this section proposed that Category II and Category III pilot authorizations would expire 6 months after last issued or renewed.

ATA and a few member air carriers commented that these proposals included a duration of authorizations that is too restrictive for part 135 and part 121 certificate holders.

The provisions of § 61.21 were not intended to apply to operations conducted by part 121 and 135 certificate holders since the FAA did not intend to propose, under § 61.3 (adopted as § 61.5), that a letter of authorization be required for these operations. These parts prescribe their own requirements for such operations.

Proposed § 61.3 (adopted as § 61.5) has been revised to make it clear that the exception for part 121 and part 135 certificate holders also applies to Category III authorization. (See the discussion of § 61.3 (adopted as § 61.5)).

Therefore, this section does not apply to a part 121 or part 135 certificate holder.

Therefore, this section is adopted as proposed.

§ 61.39 Prerequisites for flight tests. The FAA proposed in this section to specify a 60-calendar-day time limit for completion of all increments of the practical test (i.e., the oral increment, the flight simulator increment, and the flight increment).

In the event that the entire practical test is not satisfactorily completed within the prescribed 60 calendar days, an applicant is required to retake the entire practical test, including those increments satisfactorily completed more than 60 calendar days previously.

NAFI recommended minor editorial changes to the proposed rule text, and those minor changes were made in the final rule.

One commenter said that the proposals of this section should be withdrawn and considered in a subsequent review of part 61.

The FAA cannot defer the implementation of these proposals, since they relate to simulation testing, a subject covered by this rulemaking.

No other changes were suggested by commenters. Accordingly, except for editorial changes, this section is being adopted as proposed.

§ 61.45 Flight tests: Required aircraft and equipment.

Proposed paragraph (a) provides that an applicant may use a flight simulator or a flight training device for those tasks of a practical test for which the flight simulator or flight training device has been approved. Previously, this section did not clearly permit the use of flight simulators or flight training devices for practical tests.

Previously under part 61, a flight simulator or flight training device could be used only to demonstrate some SIC qualifications and also to train and test for the ATP certificate. NAFI commented that the FAA should complete guidelines to specify which maneuvers, procedures, and crewmember tasks can be trained, tested, or both, by use of each level of simulation. The FAA agrees, and is drafting such a document (AC 120–46) at the present time. (See also the response to comments about § 61.1).

ATA said, in a comment similar to several others, that the proposed amendments to this section are not necessary, since "* * * the purpose of the current rule was not to specify that an aircraft must be used for the flight test, but rather to prescribe the aircraft requirements for registration, airworthiness, and equipment." ATA continues by observing that "Amendment 61.45, effective Feb. 2, 1970, clearly authorizes the use of simulators for part of the ATPC/TR flight test. * * *"

Current paragraph (a) of this section deals with the equipment an applicant must furnish for each test, as well as with the requirements for registration and airworthiness of that equipment. The wording of the current paragraph excludes any equipment except aircraft from being used for the practical test, except as provided in §§ 61.55 and 61.157. The proposed rule would allow simulation to be used for those tasks of the practical test for which the simulator is approved. The FAA considers this expanded use of simulation justified for reasons stated in the preamble to the NPRM. Accordingly, this section is adopted as proposed.

Jeppesen-Sanderson and AMR questioned how such tasks as cross-country skills, rectangular courses, S-turns across a road, and turns around a point can be evaluated by use of simulation.

At the date of this final rule, there are no flight simulators or flight training devices that have been approved to evaluate several tasks, including the examples offered by these commenters.

The intent in the proposal was to permit an increased use of simulation, in appropriate cases, without having to amend the rules each time that technological advances permit one of these tasks to be evaluated in flight simulation. With the assurance that simulation may be used to meet practical test requirements when it has the technical capability to do so, manufacturers of such devices should be encouraged to develop increasingly realistic simulation. Even with regulatory authority to use simulation for tasks of a practical test, simulation cannot be used for those tasks until the simulation medium has been developed, evaluated, and qualified by the FAA to evaluate such tasks.

Airbus commented that the proposed revisions are unworkable for an aircraft manufacturer's training center and, if implemented, would impose a severe economic burden on the training center and the part 121 operators it supports.

Although Airbus did not specifically reference § 142.57 in its comment, it appears Airbus is addressing the aircraft certification, registration, and airworthiness requirements that are discussed under § 142.57 below. Training centers, which are to be certificated under part 142, have distinct requirements for aircraft certification, registration, and airworthiness. Those requirements, as adopted, are further discussed in § 142.57.

Proposed paragraph (c) provided that an applicant for a practical test must provide an aircraft with engine and flight controls that are easily reached, and that can be operated in a conventional manner by both the applicant and the evaluator. The paragraph also provided that the evaluator may conduct a practical test in an aircraft with different features.

AMR stated that "* * * 61.45(c)(2)(ii) seems to assume that an evaluator will be in a pilot's seat when conducting a practical test in an aircraft. However, evaluators and FAA inspectors currently may conduct the practical test from a jump seat, or some other location other than a pilot's seat. * * *" It recommended rewording to better state this practice.

The FAA agrees that the practice described by AMR has been and will be acceptable, and has reworded paragraph 61.45(c)(2)(ii) accordingly.

Proposed paragraph (d) provided that each applicant for a practical test that requires flight maneuvers and procedures to be accomplished solely by reference to instruments, must provide equipment that excludes the applicant's visual reference to objects outside the aircraft.

Airbus commented that proposed paragraph (d) is unnecessarily restrictive, in that it prohibits the use of vision-restricting devices that more realistically create the seeing conditions the pilot is likely to encounter during the instrument-to-visual transition, including visual illusions associated with maneuvering by visual reference to landing in restricted seeing conditions. Airbus suggests rewording the paragraph to allow equipment that restricts an applicant's visual reference to replicate what might be seen during a reduced visibility approach transition to a landing.

The FAA notes that this section is directed at maneuvers and procedures that must be done solely by reference to flight instruments; it was not intended to, and is not adequate to address, maneuvering partially by reference to instruments and partially by reference to obscure visual references to objects outside the cockpit. The FAA lists, in separate publications, what objects must be visible at a specified point on an instrument approach in order to continue by visual reference. The FAA is not aware of a device that can be used in an aircraft to obscure visibility of objects other than those listed for continuation of an instrument approach.

The FAA agrees with the commenter that this area of flight is critical. This is an area of flight that simulation can replicate much better than an actual aircraft. For simulation, the FAA requires that the simulated visual presentation be capable of displaying a scene with visibility as restricted as the visibility that the applicant will be authorized to observe when completing approaches. Guidance for scene presentation for simulation is contained in AC 120–40, as amended.

This section is adopted with the changes discussed.

§ 61.51 Pilot logbooks.

The FAA proposed to revise paragraph (b)(1)(ii) to allow pilots to log the time accrued in a simulated flight lesson. The proposed text read as follows:

"(b) * * *
(1) * * *
(ii) Total time of flight or lesson.

AMR commented that the word "flight" should be added before "lesson."

The FAA agrees and has changed the paragraph accordingly.

AMR also commented that the requirement of present paragraph (b)(1)(iii), which states "Place, or points of departure and arrival" is pointless in the context of a simulated flight lesson, as it is quite possible to conduct a simulator training session and have no point of departure or arrival.

The FAA agrees, and has changed the paragraph to except simulated flights from those sessions for which a point of departure and arrival must be entered.

As proposed, § 61.51(c)(2)(i) has been revised, including shifting the provision for recreational pilots to a new paragraph (iv), to make that paragraph easier to read. No substantive change has been made to the previous provision. The reference to a sole occupant of an aircraft has been removed since such a person by definition is the pilot in command.

The FAA proposed to revise paragraphs (b)(3)(iii) and (c)(4)(ii) to permit the logging of instrument flight time in an approved flight simulator or approved flight training device.

One commenter said that paragraph (c)(4)(ii) "* * * only permits logging of simulated instrument conditions in an approved and qualified flight simulator or qualified and approved flight training device. It leaves the logging of simulated instrument flight time by utilization of a view limiting device in limbo and not discussed."

The FAA points out that the wording of this paragraph states that flight simulation "may" be used, not that it "must" be used, and that, in both the NPRM preamble and in the preamble to this final rule, a separate section entitled "Simulated IFR Conditions" is devoted to this discussion to make it clear that a variety of view-limiting devices may be used. Paragraph 61.45(d) as proposed and as adopted makes it clear that view-limiting devices, as well as flight simulation, are acceptable for practical tests.

Andrews University commented that paragraph (c)(4)(ii) is good in that it allows logging of flight simulator and flight training device time both with and without a flight instructor.

The FAA points out that this rule does not create any new authority for a pilot to log flight time in simulation equipment without an authorized instructor. On the contrary, this paragraph specifies that an authorized instructor must be present in order to log pilot time in flight simulation equipment. Further, § 61.51(c)(5) provides that all time logged as instruction time must be certified by the authorized instructor from whom it was received. This requirement is intended to ensure that an applicant's logbook reflects all required instruction which was provided by an authorized instructor.

With the amendment discussed, this section is adopted as proposed.

§ 61.55 Second-in-command qualifications. The FAA proposed in § 61.55 (b)(4) that initial SIC qualification tests for a particular category and class or type of aircraft require at least one takeoff and one landing to be satisfactorily completed in an aircraft of that category, class, and type as applicable.

Several commenters expressed overall agreement with this proposed section.

Boeing and AIA commented that, if the simulator used is qualified for the landing maneuver, the use of an airplane is unnecessary.

The FAA believes that some minimal experience with the category, class, and type of aircraft, if applicable, is required for those SIC applicants not previously qualified in any capacity in an aircraft requiring a crew of more than one person. With the exception of the takeoff and landing that must be performed in the aircraft, the FAA believes that, based on its evaluation of the results of training and testing in flight simulators, the training and testing for SIC qualifications can be satisfactorily demonstrated in a part 142 training course that is subject to FAA approval.

Paragraph (b)(4) of this section was reworded slightly to make it clear that the requirement to complete only one takeoff and one landing in an actual aircraft applies only to persons who complete the rest of the requirements of this section in an approved course at a training center certificated under part 142.

§ 61.56 Flight review. Under the previous § 61.56, the flight review could be performed only in an aircraft. A new paragraph 61.56(h) to this section proposed the use of flight simulators or flight training devices for the flight review if: (1) The flight simulator or flight training device is approved by the Administrator for that purpose; and (2) the flight review is accomplished in an approved course conducted by a training center certificated under part 142.

Jeppesen-Sanderson and the National Air Transportation Association (NATA), representing a consensus of General Aviation Manufacturers Association, Helicopter Association International, and others, commented that simulation should be allowed for the review, in approved courses conducted under part 141 or part 142.

The FAA does not agree that part 141 should be changed in this rule to allow pilot schools to conduct the flight review. Part 142 training centers may conduct flight reviews using simulation because they will have substantially more required in the way of training capability by having the following: (1) at least one flight simulator or Level 6 or Level 7 flight training device; (2) considerably more detailed and structured training programs; and (3) more demanding instructor

qualifications than those required under part 141.

United, in a comment similar to several others, recommended that the flight review should be permitted by simulation in an approved course conducted by a training center certificated under part 121 or part 142.

There are no training centers now certificated under part 121 or any other part. Part 121 certificate holders have a training apparatus that may be called a school, branch, division, center, and a variety of other names. There is little doubt that many of them, with minimal effort at tailoring present training programs, could become training centers certificated under new part 142. There is no need to change the rules to allow part 121 certificate holders to conduct a course to satisfy § 61.56; several courses presented by part 121 schools already satisfy the requirements of § 61.56. In accordance with the current provisions of that section, a person need not accomplish the flight review if that person has satisfactorily completed a pilot proficiency check, or a test for a certificate, rating, or operating privilege. Most, if not all, training and qualification activities undertaken by a part 121 or part 135 certificate holder are for one of these purposes.

Jeppesen-Sanderson commented that discussion and provisions for simulation not qualified for the landing maneuver should be deleted.

Based on experience with simulation, the FAA believes that the flight review can be successfully accomplished in an appropriate flight simulator or flight training device. Previously, landing maneuvers, which likely would be required during a flight review, could be conducted only in a flight simulator qualified as Level B or higher. Section 61.57(g)(3), however, provides a means for the review to be accomplished in a Level A flight simulator or in a flight training device.

One commenter said, in essence, that he believed the flight review should be an evaluation of maneuvers and procedures required for the issuance of the certificate applied for, and that not all maneuvers and procedures can be evaluated in a simulator.

The FAA agrees that not all maneuvers and procedures can be evaluated in a flight simulator at the present time. Turns about a point, chandelles, lazy eights, among others, currently cannot be simulated. However, § 61.56 does not require any specific maneuvers and procedures. An airman may complete a flight review in a simulator only if the review is undertaken after completion of an approved course. The FAA believes that the potential benefits of a structured review, subject to FAA approval, consisting of various subjects and a selection of various, but unspecified, maneuvers and procedures outweigh the fact that flight simulators cannot, at this time, replicate all maneuvers and procedures required of all certificate levels.

For the reasons discussed, this section is adopted as proposed.

§ 61.57 Recent flight experience: Pilot in command. In addition to a change in the title of this section to indicate that it contains PIC currency requirements, the NPRM proposed to revise paragraphs (c) and (d) to read as follows:

(c) General experience.

(1) Except as otherwise provided in this paragraph, no person may act as pilot in command of an aircraft carrying passengers, or of an aircraft certificated for more than one required pilot flight crewmember, unless that person meets the following requirements—

(i) Within the preceding 90 calendar days, that person must have made three takeoffs and three landings as the sole manipulator of the flight controls in an aircraft of the same category and class and, if a type rating is required, of the same type of aircraft.

(ii) If the aircraft operated under paragraph (c)(1)(i) of this section is a tailwheel airplane, that person must have made to a full stop the landings required by that paragraph in a tailwheel airplane.

(2) For the purpose of meeting the requirements of this section, a person may act as pilot in command of a flight under day visual flight rules or day instrument flight rules if no persons or property are carried other than as necessary for compliance with this part.

(3) Paragraph (c) does not apply to operations conducted under part 121 or part 135 of this chapter.

(4) The takeoffs and landings required by paragraph (c)(1) of this section may be accomplished in a flight simulator or flight training device subject to the following—

(i) The flight training device or flight simulator must have been qualified and approved by the Administrator for landings; and

(ii) The flight simulator or flight training device must be used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(d) Night experience.

(1) No person may act as pilot in command of an aircraft carrying passengers at night (the period beginning 1 hour after sunset and ending 1 hour before sunrise as published in the American Air Almanac) unless, within the preceding 90 days, that person has made not fewer than three takeoffs and three landings to a full stop, at night, as the sole manipulator of the flight controls in the same category and class of aircraft.

(2) Paragraph (d)(1) of this section does not apply to operations conducted under part 121 or part 135 of this chapter.

(3) The takeoffs and landings required by paragraph (d)(1) of this section may be accomplished in a flight training device or flight simulator that is—

(i) Qualified and approved by the Administrator for takeoffs and landings, if the visual system is adjusted to represent the time of day described in paragraph (d)(1) of this section; and

(ii) Used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

FSI suggested that paragraphs (c) and (d) of this section should be changed to "be consistent with § 121.439."

The FAA must presume that the recommendation is to change paragraph (c), as paragraph (d) pertains to night recency of experience, and there is no night recency of experience requirement in § 121.439. The deletion of the night landing requirement was not proposed and is not considered in the final rule. To make paragraph (c), general experience, including day landings, consistent with § 121.439 would require operators to have check airmen, operations specifications, and require each airman to have specific previous experience in the airplane type (with no provision for aircraft not requiring a type rating) in operating parts other than part 121 and part 135. Such dramatic changes to part 91, or other parts of 14 CFR, would simply not be economically justified. This rulemaking is intended to encourage and accommodate the use of simulation for more extant training, testing, and checking tasks, but not to change the tasks required for any particular certificate, rating, or privilege. Therefore, paragraphs (c) and (d) are adopted as proposed.

Also, the NPRM proposed to amend paragraph (e) to permit pilots to meet instrument currency requirements in an approved flight simulator or flight training device.

NWA recommended that proposed paragraph (e) include an exception stating that the requirements of § 61.57 do not apply to operations conducted under part 121 and part 135, similar to the construction of paragraphs (c) and (d) of § 61.57.

During the comment period and final drafting stage for this final rule, the FAA was separately considering a petition for exemption or other regulatory relief from the requirements of paragraph (e) for members of ATA. On November 11, 1994 the FAA published a final rule [59 FR 56385] that revised § 61.57(f) to provide that PICs employed by a part 121 or part 135 operator are excepted from compliance with the recency of experience requirements of § 61.57, only if they are qualified under §§ 121.437 or 135.243 and meet the recent experience

requirements under §§ 121.439 or 135.247. Therefore, this exception in paragraph (f) will provide the relief suggested by the commenter.

NATA commented that "approved course," as used in this section, should include "those courses approved under part 141 and part 61." Several other commenters asked what is meant by "approved course," and whether such a course is limited to takeoffs and landings.

The reference is to courses approved for training centers for establishing or maintaining currency in those tasks specified in this section. The content of such courses would not have to be restricted to takeoffs and landings. The courses might include, for example, different abnormal and emergency situations for takeoffs and landings, such as power loss, runway contamination, gusts and shear, factors causing visual illusion, physiological factors affecting night takeoffs and landings, and others. There is no such course approved under part 141 and, as discussed earlier under § 61.56, adding new courses to part 141 was not proposed and is not considered in this rulemaking.

AMR commented that the preamble suggests that a simulator or flight training device can be used to meet instrument currency requirements, but the regulation requires that at least 3 of the required 6 hours be conducted in an aircraft. It recommended clarification of this point.

The FAA agrees that there was an apparent conflict between the preamble to the NPRM and the rule text dealing with instrument currency. The rule text has been changed to reflect the intent of the preamble; paragraph (e)(1)(i)(A) has been changed to read, in part:

[A) Logged at least 6 hours of instrument time including at least six instrument approaches under actual or simulated instrument conditions, not more than 3 hours of which may be in approved simulation representing aircraft other than gliders.

A few air carriers commented that they disagree with the proposed change of verbiage which requires an instrument competency check to be given by "a person authorized by the Administrator" instead of by "an FAA inspector, a member of an armed force of the United States authorized to conduct flight tests, an approved FAA-approved check pilot, or a certified instrument flight instructor."

The proposed revision is needed to permit other persons to give the instrument competency check. For example, the new wording will include evaluators for part 142 training centers, designated examiners, pilot proficiency examiners, simulator-only instructors who do not hold a medical certificate, as well as all those persons named in the previous rule.

For the reasons discussed, this section is adopted as changed.

§ 61.58 Pilot-in-command proficiency check: Operation of aircraft requiring more than one required pilot. The FAA proposed to revise this section to permit airmen, under certain conditions, to accomplish required PIC proficiency checks entirely in a qualified and approved flight simulator.

Proposed paragraph (a) provided that:

(a) Except as otherwise provided in this section, to serve as pilot in command of an aircraft that is type certificated for more than one required pilot crewmember, a person must—

(1) Within the preceding 12 calendar months, complete a pilot-in-command check in an aircraft that is type certificated for more than one required pilot crewmember; and

(2) Within the preceding 24 calendar months, complete a pilot-in-command check in the particular type of aircraft in which that person will serve as pilot in command.

NAFI, apparently commenting on § 61.58(a), commented that this section should be revised to close a loophole that allows certain large or turbojet aircraft, such as the DC–3 and some Cessna C–500 series aircraft, to be operated by a single pilot. It points out that, under the current and proposed sections, pilots of those aircraft may not be required to undertake the pilot proficiency checks.

While NAFI's comment may have merit, changing the applicability of § 61.58 is not the purpose of this rulemaking, and the FAA did not propose to change the tasks required for proficiency checks. As stated earlier, the purpose of this rulemaking is to encourage and accommodate the use of simulation for more training, testing, and checking tasks, but not to change the tasks required for any particular certificate, rating, or privilege.

Proposed § 61.58(e)(1) stated the following:

"Except as provided in paragraph (f) of this section, a check or a test described in paragraphs (d)(1) through (d)(4) of this section may be accomplished in a flight simulator qualified and approved under part 142 of this chapter subject to the following:

(1) Except as allowed in paragraphs (e)(2) and (e)(3) of this section, if an otherwise qualified and approved flight simulator used for a PIC proficiency check is not qualified and approved for a specific required maneuver—

(i) The training center shall annotate, in the applicant's training record, the maneuver or maneuvers omitted; and

(ii) Prior to acting as PIC, the pilot shall demonstrate proficiency in each omitted maneuver in an aircraft or flight simulator qualified and approved for each omitted maneuver.

Proposed § 61.58(e)(1) would have had the effect of requiring a flight simulator qualified as Level B or higher to satisfy the requirements of § 61.58, since only Level B or higher level flight simulators are qualified for landing.

FSI commented that exemptions have allowed successfully an alternative that permits the proficiency check to be accomplished in flight simulators not qualified for landing. That alternative requires the applicant to complete an approved curriculum, hold a type rating in the type aircraft for which the proficiency check is required, and have completed three takeoffs and three landings (one to a full stop) as the sole manipulator of the flight controls within the 90 days preceding the proficiency check.

The FAA agrees that the alternative is a current and acceptable practice. Therefore, paragraph 61.58(e) is reworded to include this alternative.

Paragraphs 61.58 (e)(2) and (e)(3) contain proposals pertaining to circling approaches and landings in certain simulators. For example, under the proposed rule, a proficiency check, which requires a circle-to-land maneuver, would have to be accomplished in a flight simulator equipped with a visual system that permits accomplishment of the circling approach task. If the flight simulator used is not qualified for circling approaches and the applicant does not demonstrate circling approaches at the training center, proposed § 61.58(e)(2) would require that the training center annotate the applicant's records with the statement, "Proficiency in circling approaches not demonstrated." In addition, proposed § 61.58(e)(2) would restrict the applicant from performing circling approaches as PIC, during conditions less than basic VFR weather minimums. This proposed restriction would remain until proficiency in circling approaches in either an aircraft or a flight simulator qualified for circling approaches is demonstrated to a person authorized by the Administrator to conduct the required check.

FSI commented that helicopter pilots should not be required to perform circling approaches to satisfy the requirement of this section because, in essence, a helicopter can land to a downwind hover, then make a hovering

turn to make a landing to touchdown into the wind.

While this comment may have merit, the FAA did not propose to change the circling approach requirement. This rule considers what tasks may be accomplished by use of simulation, either now or in the future, but does not attempt to determine what tasks should be required for any particular certificate, rating, or privilege. Those tasks are being evaluated in a separate rulemaking project (phase II of the part 61, 141, and 143 review).

Airbus commented that § 61.58(e)(3) is not appropriate for training centers providing training for part 121 and part 135 certificate holders. It continues that an air carrier's operations specifications prohibit circling approaches unless the pilot is qualified to perform circling approaches, and that the approved training for a particular air carrier does not require training in circling approaches unless the employing air carrier is approved to conduct circling approaches. Airbus suggests that this paragraph be written to exclude applicants who are currently employed by a part 121 or part 135 certificate holder.

The FAA agrees in part with the commenter. The comment appears to pertain to proposed § 61.157 however. Therefore, the commenter's suggestion will be addressed in the preamble discussion pertaining to proposed § 61.157.

Section 61.58(f) proposed that, in order to accomplish the recurrent check entirely in a flight simulator, the pilot must have performed the 12-and-24-month proficiency checks in an aircraft, as described in § 61.58(a) (1) and (2).

FSI and Simuflite Training International (SFI) commented that the words "if an applicant for a check required by this section has not satisfactorily completed a PIC check within the period required by paragraph (a)(1) or (a)(2) * * *" that appear in proposed § 61.58(e) are essentially the same as the provisions contained in proposed paragraph (f) which reads as follows:

(f) If a pilot has not completed a pilot-in-command proficiency check within the period required by paragraph (a)(1) or (a)(2) of this section, that pilot must complete the required pilot-in-command proficiency check in an aircraft.

These commenters point out that both paragraphs would therefore preclude reestablishment of PIC proficiency by use of a simulator, which may be more restrictive than current exemptions.

The FAA agrees. It was not intended to propose that § 61.58(e) be made more restrictive than recent practice has allowed. Accordingly, § 61.58(e) has been reworded in the final rule. Paragraph (e) now reads as follows:

(e) A check or a test described in paragraphs (d)(1) through (d)(4) of this section may be accomplished in a flight simulator qualified and approved under part 142 of this chapter subject to the following:

(1) Except as allowed in paragraphs (e)(2) and (e)(3) of this section, if an otherwise qualified and approved flight simulator used for a pilot-in-command proficiency check is not qualified and approved for a specific required maneuver—

(i) The training center shall annotate, in the applicant's training record, the maneuver or maneuvers omitted; and

(ii) Prior to acting as pilot in command, the pilot shall demonstrate proficiency in each omitted maneuver in an aircraft or flight simulator qualified and approved for each omitted maneuver.

(2) If the flight simulator used pursuant to this paragraph is not qualified and approved for circling approaches—

(i) The applicant's record shall be annotated with the statement, "Proficiency in circling approaches not demonstrated;" and

(ii) The applicant may not perform circling approaches as pilot in command when weather conditions are less than the basic VFR conditions described in § 91.155 of this chapter, until proficiency in circling approaches has been successfully demonstrated in an approved simulator or aircraft to a person authorized by the Administrator to conduct the check required by this section.

(3) If the flight simulator used pursuant to this paragraph is not qualified and approved for landings—

(i) The applicant must hold a type rating in the airplane represented by the simulator; and

(ii) Have completed, within the preceding 90 days, at least three takeoffs and three landings (one to a full stop) as the sole manipulator of the flight controls in the type airplane for which the pilot-in-command proficiency check is sought.

In an apparent reference to proposed paragraph (g), which required a pilot's first PIC proficiency check to be accomplished in an aircraft, FSI commented that it believes that part 142 will have the same supervision and scrutiny required of training programs currently conducted under part 121, and that even the first proficiency check should be allowed in a flight simulator, as currently permitted under § 121.439 (sic). (Apparently the commenter was referring to § 121.441.)

The FAA has considered the comment in the overall context of increasing the use of simulation in lieu of checking in an aircraft. The inclusion of a certificate limitation, as described in the discussion of §§ 61.64 and 61.158, requiring SOE for certain less experienced pilots, will assure that pilots first due a PIC proficiency check in a specific type aircraft will have had some aircraft experience. Accordingly, after further consideration, the FAA has concluded that proposed paragraph (g) is unnecessary and it has not been adopted.

Proposed paragraph (i) stated the following:

(i) If a pilot takes the check required by this section in the calendar month before, or the calendar month after, the month in which it is due, the pilot is considered to have taken it when due, and future proficiency check due dates do not change.

AMR commented, "The proposed paragraph 61.58(i) leaves open the same questions that the existing language in parts 61.58(g) and 135.301(a) leave open. The proposed paragraph establishes a base month, and a 90-day window for checking." AMR continues that there are any number of good reasons why a pilot may not get the check required by this section within the specified time period, and that the proposed language does not address the case of a pilot whose currency has lapsed. It recommends that the period for checking be extended to include the period from the month before the month a check is due until 2 months after the month a check is due. It further recommends that another subparagraph be added to specify that, for those pilots who do not complete a proficiency check during the period due, a new 12-month period for proficiency check due dates will begin upon completion of the proficiency check.

The FAA does not agree that extending the acceptable time period for completion of a proficiency check for 2 months beyond the due date, and allowing a total window of 4 months for an annual proficiency check, is warranted. Safety dictates that a pilot's proficiency be checked regularly and with some degree of frequency. The FAA has found it acceptable to conduct annual proficiency checks. The scenario described by the commenter would allow annual proficiency checks to become 14-month proficiency checks.

The FAA does not agree that a new provision is necessary for pilots whose currency has lapsed. Paragraph (a) speaks to such a situation in that the pilot must be able to look back over the current month and the preceding 12 months or 24 months and find that he or she has completed the required check.

AIA and Boeing commented that this section should not contain new flight training device definitions.

Flight training device definitions are contained in § 61.2 as adopted, and the rationale for adding those definitions is provided in the discussion of that section.

As discussed above, the FAA has revised proposed paragraph (e) and deleted proposed paragraphs (f), (g) and (i), and redesignated remaining paragraphs accordingly. This section is adopted with the changes discussed.

§ 61.63 Additional aircraft ratings for other than airline transport pilot certificate (for parts 121 and 135 use only).

The FAA proposed to revise this section title to make it clear that this section is applicable only to applicants who are pilot crewmember employees of a part 121 or part 135 certificate holder. This section would continue to set forth the requirements for adding additional aircraft ratings to pilot certificates other than ATP certificates.

The NPRM proposed a new § 61.64, titled "Additional aircraft ratings for other than airline transport pilot certificates (for other than parts 121 and 135 use)." This proposed section contains provisions for adding ratings for airmen other than pilots applying for an additional type rating through successful completion of a part 121 or part 135 approved training program. The detailed testing guidelines are contained in FAA *Practical Test Standards*. More discussion on PTS follows in subsequent paragraphs, and under the analysis of comments about proposed § 61.158 and appendix A of part 61).

Several commenters, including TWA, said that the phrase, "(for parts 121 and 135 use only)" is confusing, and that the FAA should "enforce one, and only one, set of standards for an ATP certificate." Crew Systems said that the proposals appear to create two types of pilot certificates, one for part 121 and part 135 operations and one for all other operations.

The FAA has but one set of standards for the ATP certificate, or for any other certificate. Section 61.63 and § 61.64 are written differently to articulate the different procedures for gaining added ratings, including an added rating to the ATP certificate. Neither section addresses standards for the application of the ATP certificate. Part 61 has for years listed, under several paragraphs entitled "Flight proficiency", broad areas of operations in which each applicant must demonstrate competence to be awarded any airman's certificate except for the ATP certificate. For the last several years, the specific tasks appropriate for an applicant for any certificate or rating, the conditions under which the tasks are to be performed, and the standards for each task have been published in PTS.

Additionally, the FAA points out that there are now and have been for many years at least two different ways to gain an ATP certificate, or ratings to that certificate, or both. The certificate and ratings may be earned pursuant to the successful completion of an air carrier training program or by meeting the requirements of § 61.63 or § 61.157 outside an air carrier training program. Sections 61.63 and 61.64 recognize the different ways to gain added ratings, and address the use of simulation for each of those ways.

AIA, Boeing, and AMR commented about this section (and § 61.64) in general. They stated that these sections are redundant, and that the requirements for a type rating or an ATP should be the same regardless of the employment status of the airman concerned.

NATA commented that there was insufficient basis for the formation of what amounts to two types of ATP certificates, and that the certification standards for additional ratings should be the same regardless of employment. These comments were similar to several others.

To clear some confusion apparently held by the commenters referenced in the previous paragraph, the FAA points out that § 61.63 (and new § 61.64) set forth the proposed requirements that would have to be met to add all additional ratings to airman certificates other than the ATP certificate, but not the requirements for the ATP certificate nor added ratings to that certificate.

As stated earlier in the discussion of this section, the FAA agrees that there is only one standard for any added rating. The commenters have observed that there have been two different sets of certification requirements (but not standards) for an added rating to the ATP certificate. One requirement is the PTS, which requires all applicants who are not applying by virtue of having successfully completed an employing air carrier training program to complete all listed tasks. Another requirement, appendix A of part 61, allows waiver of training, testing, and checking of tasks that are excluded by an air carrier's operations specifications for those applicants who are applying by virtue of having successfully completed an employing air carrier training program.

Airbus commented that proposed § 61.63 this section inadvertently imposes an unnecessary economic burden on training centers of aircraft manufacturers which manufacture airplanes to meet the standards of part 25. It states that this section proposed § 61.63 should be applicable to FAA inspectors and employees of a manufacturer training center, along with aircrew employees of a part 121 or part 135 certificate holder.

The FAA does not see a different economic impact as a result of applying the alternatives of this section, instead of § 61.64, to individuals who are not aircrew employees of a part 121 or part 135 certificate holder. The persons mentioned by the commenter have always been required to complete all the requirements now enunciated in § 61.64; the exclusion from the requirement to train and test in certain tasks (for example, the circling approach maneuver) never applied to a pilot not employed by a certificate holder subject to the operating rules of part 121. Therefore, the requirements of § 61.64 are not additional requirements for the persons mentioned by the commenter, and do not impose an additional economic burden.

In response to the comment about the requirements to be met by FAA inspectors to gain an added rating, the FAA is clear that the requirements for an individual airman apply to an FAA inspector.

For the reasons described, this section is adopted as proposed.

§ 61.64 Additional aircraft ratings for other than airline transport pilot certificates (for other than part 121 and 135 use). The FAA proposed in paragraphs (b)(1) and (c)(1) of this section that an applicant who holds a pilot certificate and applies to add a category or class rating must present a record of training certified by an authorized flight instructor showing that the applicant has accomplished certain training. Paragraph (d)(1) proposed that an applicant who holds a pilot certificate and applies to add a type rating must present a record of training certified by an authorized ground or flight instructor showing that the applicant has accomplished certain training.

In addition to the comments on this section already addressed in the discussion relating to proposed § 61.63, FSI commented that the wording of proposed §§ 61.64(b)(1), (c)(1), and (d)(1) be changed to delete the words "flight" and "ground" wherever they appear before the word "instructor." In essence, it says that, as proposed, this section would not allow authorized instructors, who do not hold flight instructor certificates, to certify flight training accomplished in simulation. It states that this practice already is permitted under existing exemptions.

The FAA agrees. Accordingly, the final rule incorporates the revisions suggested by FSI.

Paragraph (e) proposed the following:

(e) The tasks required by paragraphs (b), (c), and (d) of this section shall be performed in—

(1) An airplane of the same type, for which the type rating is sought; or

(2) Subject to the limitations of paragraph (e)(3) of this section, a flight simulator or a flight training device that represents the airplane type for which the type rating is sought.

(3) The flight simulator or flight training device use permitted by paragraph (e)(2) of this section shall be conducted in accordance with an approved course at a training center certificated under part 142 of this chapter; or

(4) In another manner approved by the Administrator.

STI asked, "What could be a possible (sic) another manner approved by the Administrator?" It asked if the intent is to allow current part 61 exemption holders to submit a program outside of a part 142 certificated training center. STI believes that to do so would allow organizations to offer additional type ratings without a part 142 certificate, and that would negate "the level playing field for all operators subject to part 142 certification."

The new rule will allow current part 61 exemption-holding simulator training centers to continue to operate only if they obtain a part 142 certificate. The phrase in question was intended to allow for approval of unforeseen circumstances for completing the tasks required to obtain a part 142 certificate without changing the rule. The FAA has determined, therefore, that proposed paragraph (e)(4) can be withdrawn and has renumbered several paragraphs accordingly.

In a general comment concerning actual aircraft flight experience, the NTSB stated the following:

> The Safety Board realizes that there are limitations to simulation and believes that the proposed regulations must be sensitive to the safety needs served by retaining some aspects of actual flight experience.

The NTSB continued:

> The Safety Board recognizes that experience in * * * training devices cannot fully replicate operational experience in the actual flight environment and the "seasoning" that such experience provides * * *. The Safety Board urges the FAA to review the proposed regulations to ensure that they achieve the intent while still safeguarding basic pilot and instructor skills provided by the physical operating environment.

In another comment addressing general experience in actual aircraft flight, ALPA stated the following:

> While it is true that aircraft simulation has reached unparalleled levels of realism, and we strongly support increased use of advanced simulation, there are other factors which are important, especially for low-time pilots.

One factor is familiarity with and management of the air traffic control (ATC) environment. Unless every simulator flight is conducted as line oriented flight training (LOFT), a great deal of the required ATC interaction is missed. Under ideal circumstances, LOFT will include realistic interaction with ATC and other aircraft. Unfortunately, LOFT sessions are not always conducted with this degree of environmental realism. It is the operation and decision-making experience which one receives in an aircraft in an ATC environment, including interaction with other aircraft, which makes them a safer pilot. This is especially important early in a pilot's learning experience.

ALPA added: "For these reasons, caution should be exercised in relying too heavily on simulator training in a pilot's early training and experience," and "A pilot who is a candidate for an ATP has likely flown for a commercial operator for several years. * * *"

The FAA agrees with the commenters' analysis of the importance of actual aircraft experience when an applicant will use flight simulation for a large portion of required training and testing. The FAA has had, for years, mechanisms for part 121 air carriers and for part 91 and part 125 operators to ensure the flying public that PIC's have actual aircraft experience prior to acting as PIC for aircraft requiring a type rating. Part 121 has a requirement for a potential PIC to receive specified initial operating experience (commonly known as IOE, required by § 121.434) under the supervision of a check pilot. This operating experience requirement applies only to the ATP certificate.

Notwithstanding the recency of experience requirement of § 61.57, experienced pilots who operate under part 91 or under part 125 have no further operating experience requirement. Relatively inexperienced pilots who intend to operate under part 91 or under part 125 and who gained an airman certificate with a type rating or added a type rating to any level of airman certificate entirely by training and testing in a flight simulator have had a limitation placed on their airman certificate requiring operating experience similar to that required by § 121.434. The terms of exemptions permitting these pilots to train and test entirely in flight simulators defined the experience level thresholds and set the requirements for SOE. The SOE requirement applies to any level of airman certificate. The SOE requirement applies only to a pilot who is to act as PIC for the first time in a particular type aircraft, and may be completed under the supervision of another qualified and current PIC.

In light of its long-standing requirements for operating experience for new PIC's of aircraft requiring a type rating and to implement the NTSB recommendations and those of other commenters, the FAA is convinced that, in the interest of safety, it is essential to continue requirements for sufficient operating experience before newly certificated or rated pilots act as PIC's of aircraft requiring a type rating.

For the reasons discussed in the preceding paragraphs, the FAA has added new paragraphs (e)(4) through (e)(12) specifying SOE requirements for certain less experienced pilots who apply for an additional rating. These revisions are fully responsive to the NTSB's and ALPA's comments. They reflect current FAA practice with limitations contained in exemptions or placed directly on pilot certificates or ratings obtained through simulation.

With the exception of the revisions discussed above, § 61.64 is adopted as proposed.

§ 61.65 Instrument rating requirements. The FAA proposed in paragraph (c)(3) of this section, that an applicant for an instrument rating would have to have received instruction in instrument approaches using two different nonprecision approach systems and one precision approach system. Paragraph (g)(3)(i) proposed that the practical test for the instrument rating must include at least one published precision, nonprecision, and circling approach. Previously, this section had listed specific types of precision and nonprecision instrument approaches that an applicant had to receive instruction for, and had to satisfactorily accomplish, during practical testing.

One commenter said that this section should continue to list specific non-precision and precision approaches that an applicant must train for and show competence in, instead of changing to the generic description, as proposed.

The FAA believes that this change will help keep the rule from being or becoming obsolete and will provide relief to some applicants. With ever-changing technology, some instrument approaches may become obsolete in a few years. New instrument approaches have been added since the current rule was written, and other new ones are certain to be added.

For the reasons discussed, paragraphs (c)(3) and (g)(3)(i) are adopted as proposed.

Section 61.65(e)(2)(ii) proposed that the 20 hours of instrument instruction by an authorized instructor in a flight simulator or flight training device, currently allowed under part 61, be

increased to 30 hours of instruction in a flight simulator or flight training device if the instruction is accomplished in an approved course conducted by a training center certificated under part 142.

Paragraph (h)(1) of the proposed revision to this section would permit the total pilot aeronautical experience requirement for the instrument rating to be reduced from 125 hours of pilot flight time as currently required by § 61.65(e)(1) to 95 hours of pilot flight time, which may include 35 hours of simulated or actual instrument flight time if the entire instrument curriculum is accomplished under an approved part 142 course.

Andrews University asked why the increase in credit, and why part 141 pilot schools could not also have an increase to 30 hours.

AMR Combs (AMR), an affiliate of American Airlines, and NATA commented that the proposals for certain reductions in aeronautical experience or instructional hours for the instrument rating conducted at a part 142 training center place part 141 pilot schools at a competitive disadvantage. They recommended that the FAA grant similar authority to part 141 schools that have approved flight simulators or flight training devices.

Jeppesen-Sanderson commented that if a reduction of required hours from 125 hours of pilot flying time to 95 hours is valid for part 142 then it is valid for part 141.

Another commenter said that the proposed reduction of pilot flying time to 95 hours under proposed paragraph (h)(i) does not do justice to the level of exposure a person should have to operate safely in the IFR environment. The commenter continues that he can attest to the difficulties encountered when experience requirements were reduced from 200 to 125 hours. The commenter believes that the level of skill required of the single-pilot IFR operation is the most demanding in aviation. The commenter states that the rigid oversight proposed for part 142 is commendable, but inadequate to compensate for the lack of experience.

The FAA believes that the proposed changes discussed above are justified based on innovative training concepts that will be a feature of part 142 training centers. The reasons for the creation of a new training entity and assigning specific authorities and privileges to it are discussed under a previous section in this document entitled "Discussion of the Amendments and the New Rule."

While part 141 allows the use of ground trainers, except for part 121 and part 135 certificate holders training their own aircrews, under this final rule, all flight simulator training, testing, and checking for which an airman is to receive credit to satisfy any requirement of 14 CFR must be accomplished in part 142 training centers. These training centers will be subject to more stringent training program requirements than part 141 pilot schools. Part 142 training centers will be substantially more sophisticated than schools certificated under part 141 by virtue of the use of the most advanced levels of flight simulation. They will have considerably more detailed and structured training programs, their instructors will be subject to more demanding qualifications, and they will have more interaction with potential air carrier clients than part 141 pilot schools have.

Experience has shown that there is a greater efficacy in more structured training using high fidelity simulation than in traditional aircraft-only or aircraft and complementary flight training device training such as provided by a part 141 pilot school. At present, under § 141.41, a part 141 pilot school may use a flight simulator only to the extent that a flight training device may be used. The requirements for the part 142 certificate are discussed in more detail in the applicable section-by-section discussion.

In response to the comment about placing part 141 pilot schools at an economic disadvantage, the FAA believes that the considerations discussed above justify the treatment afforded part 142 training centers. For the reasons discussed, the aeronautical experience requirements for the instrument rating can be reduced as proposed; all other proposals discussed above also are adopted in the final rule.

§ 61.67 Category II pilot authorization requirements.

The FAA proposed in paragraph (c)(4) of this section that the practical test for this authorization include approaches that need not be conducted down to the alert height or decision height, as applicable, authorized for Category II operations but only if the approaches are conducted in a flight simulator or flight training device. This section applies only to ILS approaches, since Category II applies only to ILS approaches by definition.

Airbus Service Company, Inc., (Airbus) commented that references to ILS in this section should be deleted, since other means of conducting Category II operations will soon be available. It also recommended that references to alert height be deleted, because it is not appropriate for Category II operations.

The FAA agrees that other means of conducting precision instrument approaches may soon be available. Those approach procedures may not include different categories, as ILS procedures do. It would not be appropriate to determine category requirements for other instrument approach procedures that do not yet exist. Therefore, the references to ILS contained in the proposed rule (this section and § 61.68) are adopted in this final rule.

The FAA agrees that alert height is a term not normally applicable to Category II operations, and the term is deleted in the final rule.

The FAA stated in paragraph (d)(3) of this proposed section that oral questioning could be conducted at any time during the flight increment of the practical test.

One commenter stated that oral questioning must never be allowed during the operation of an aircraft. He states that the demands placed on an applicant being tested are great enough without the applicant having to interrupt a train of thought to answer a question.

The FAA agrees that an applicant should not be carelessly questioned during the conduct of a practical test. Routine questions that can be effectively conducted in an interview situation while on the ground should and will be conducted on the ground to the maximum extent possible. However, the FAA believes that it is in the interest of safety to allow evaluators to conduct limited oral questioning during the practical test. The FAA needs to be able to determine that an applicant is capable of recognizing and responding to outside questions, statements, or directions. A verbal warning from air traffic control (ATC) or another crewmember, an ATC inquiry about the status of flight progress or windshear encounter, report of a windshear, traffic, or other hazard to landing are examples of outside questions or interruptions that a crewmember must be able to cope with and respond to in the interest of safety. An effective method to determine that an applicant can cope with these examples and all the requirements of a practical test is to allow the person conducting the practical test to insert realistic distractions or to make simulated instructions or warnings to an applicant during the actual conduct of practical tests.

The FAA has determined that the duration of this authorization should remain in § 61.21. Accordingly, proposed paragraph (e) is not adopted.

For the reasons discussed above, this paragraph is adopted as proposed

except for the changes discussed, minor typographical corrections, and deletion of the term "alert height."

§ 61.68 Category III pilot authorization requirements. This new proposed section sets forth the requirements for a pilot to conduct Category III operations. Several part 121 certificate holders commented that the section should be amended to include the authority for part 121 and part 135 certificate holders to conduct the authorization practical test pursuant to their approved training programs.

The FAA agrees that part 121 and part 135 certificate holders should be authorized to conduct the practical test pursuant to their approved training programs. A new § 61.3(j) is adopted (as § 61.5 (j) by this final rule to permit this practice.

The FAA stated in paragraph (e)(4) of this proposed section that oral questioning could be conducted at any time during the flight increment of the practical test.

Boeing and AIA commented that paragraph (e)(4) should be amended to clarify that the oral increment and flight increment do not occur simultaneously.

The FAA agrees that the two increments should be separate to the extent possible, but believes that the authority of inspectors and examiners to ask clarifying questions during the flight increment as and if necessary should be stated in the rule. See the discussion of oral questioning during the flight increment of the practical test in the analysis of § 61.67. Therefore, paragraph (e)(4) is adopted as proposed.

Crew Systems commented that inclusion of Category III pilot authorization provisions in this rulemaking is inappropriate, for such provisions do not relate to the purpose of the rulemaking-the certification of training centers.

One objective of this rulemaking is to facilitate the use of simulation and to cause growth in that industry. One task that flight simulators are being used for now, and almost certainly will be more in the future, is Category III training and testing. Thus, the provisions of this proposed section relate directly to the primary purpose of this rulemaking.

AMR commented that the "excruciatingly detailed practical test procedures in proposed paragraph 61.68(e)" are not appropriate regulatory material. It suggests that the FAA delete proposed paragraph (e) of § 61.68 in its entirety. It recommends that the proposed training and practical test procedures be included in AC 120–28C, or published in PTS. Ferrarese Associates, Inc., made essentially the same comment.

The FAA has determined that it is appropriate to set forth those mandatory requirements for experience and testing of airmen applying for Category III authorization in a regulation. An advisory circular gives non-mandatory advice only for a means, but not the only means, to accomplish certain actions. The information in this section is similar to the regulatory language concerning Category II approach authorization, contained, for many years, in § 61.67.

The FAA has determined that the duration of this authorization should remain in § 61.21. Accordingly, proposed paragraph (f) is not adopted. With this change, this section is adopted as proposed.

§ 61.109 Airplane rating: Aeronautical experience. The FAA proposed to allow credit for instruction received in approved flight simulators and approved flight training devices in this section. The FAA previously required 20 hours of flight instruction, and all of that instruction must have been received in an airplane.

Under this proposed section, a maximum of 2.5 hours of flight simulator or flight training device instruction from an authorized instructor is creditable toward the 20 hours of flight instruction required for a private pilot certificate, whether or not that instruction is accomplished in a training center certificated under part 142. The 2.5 hours of instruction time may be increased to 5 hours of instruction in a flight simulator or flight training device, provided the instruction is accomplished in an approved course conducted by a training center certificated under part 142.

The flight instruction received in a flight simulator or flight training device must be accomplished in a flight simulator or flight training device representing an airplane.

Previously, § 61.109 required at least 40 hours of flight instruction and solo flight time. Under this proposed section, the 40 hours of aeronautical experience may be reduced to 35 hours provided that the entire private pilot curriculum is accomplished under an approved part 142 course.

The 35 hours of aeronautical experience may be further reduced under paragraph (i) of this section if the applicant completes an approved private pilot course and if the Administrator determines that a further reduction is appropriate based on a demonstration of training program effectiveness that warrants testing such a reduction. Under this exception, a training center might propose a test training curriculum the effectiveness of which might be validated by reference to post-training data covering at least 1 year of student performance before such a reduction could be considered for other students.

Andrews University commented that it agrees with this proposed section.

The Japanese Civil Aviation Bureau commented that the reduced aeronautical experience requirements of this section and §§ 61.113, 61.129, and 61.131 may have an impact on Convention on International Civil Aviation (ICAO) agreements, in that students meeting reduced aeronautical experience requirements may not meet ICAO member states' requirements for certificates based on a U.S. certificate.

The FAA points out that the reduced aeronautical experience requirements authorized for part 142 training centers are the same as the reduced aeronautical requirements that have been authorized for part 141 pilot schools for many years. Therefore, certificates and ratings issued under part 142 would have the same ICAO member states' acceptance as certificates and ratings issued under part 141. The provision of paragraph (i), which might allow a particular course with fewer hours of aeronautical experience than otherwise specified in this section, might lead to a limitation on an airman's certificate that is similar to the limitation specified in § 61.111(c) and in several other sections in this part.

ALPA commented that the preamble discussion of paragraph (i) of this section, and similar paragraphs contained in other proposed sections, includes vague statements of data that a training center would have to track to validate its ability to train effectively in fewer than the minimum number of hours specified in each proposed section.

The FAA agrees that the few terms offered as examples are not elaborately discussed. The intention is to allow maximum flexibility to a training center to develop, at some future date, innovative curriculums that might adequately train for a specific certificate or rating in fewer than the current minimum number of hours. In order to gain the privilege of further reducing minimum training hours, a training center will be required to demonstrate that it can provide proper training in fewer hours. To accomplish this, it would have to propose a method of tracking graduates and collecting data to validate training program effectiveness. Data to be tracked to point to program effectiveness might include incidents, accidents, hours flown, and type of flying. A training center would have to present historical data covering at least

1 year (or other period of time approved by the Administrator) before it could be granted a reduction in the minimum hours prescribed in this section. Data covering performance over this period of time is considered necessary to properly evaluate student performance. Data covering a shorter term would not be sufficient to allow the FAA to evaluate performance during varying seasonal conditions.

ALPA also commented that 1 year of data collection is an inadequate period to collect data from which to draw conclusions used to validate the effectiveness of training students in fewer than the minimum number of hours set forth in the proposed rule. In support of this comment, it stated that accident and incident rates are difficult to quantify for even 10-year periods.

The FAA points out that accidents and incidents are just examples of pilot performance that may be tracked, and are not meant to be the only items tracked. The FAA believes that it is in the public interest, and safe, to allow a reduction if data collected and evaluated justify such a reduction. If the performance data do not clearly justify the reduction, none will be undertaken. If, after a test is undertaken, the FAA determines that the performance of the pilots in the test group is below standard, the FAA will modify the validation data collection period or any other control measure that may be indicated.

AMR commented that part 141 pilot schools would be at a disadvantage in that, unlike training centers, they would not be permitted to reduce the number of hours of aeronautical experience as proposed in this and similar sections. It recommends that pilot schools be allowed the same opportunity if the pilot school has approved flight simulators or flight training devices.

The minimum number of hours of aeronautical experience proposed in the NPRM for purposes of part 142 is the same aeronautical experience required under part 141 for several years. The potential for an even further reduction is extended to part 142 training centers only, because the FAA is convinced that further reduction would be possible at this time only under the more sophisticated training environment required of these schools.

AMR also commented that in the training environment it is relatively normal for a student to have more than one instructor during a course of instruction. Proposed § 61.109(a), it points out, speaks of a singular instructor, as does the existing regulation. To better reflect the training center environment, and to avoid the implication that a trainee must have one and only one instructor, it recommends that the proposed language be changed to say "flight instruction from an authorized instructor or instructors."

The FAA agrees that students are likely to have more than one instructor, and it does not intend to prohibit this practice. The term "authorized instructor" as used throughout this final rule is intended to mean that instruction may be received from one instructor or from more than one instructor. The interpretive rules in 14 CFR part 1 state that words importing the singular include the plural, and that words importing the plural include the singular.

Therefore, for the reasons stated, this section is adopted as proposed.

§ 61.113 Rotorcraft rating: Aeronautical experience. Under current § 61.113, an applicant for a private pilot certificate with a rotorcraft category rating must have at least 40 hours of flight instruction and solo flight time in aircraft. Instruction in flight simulators or flight training devices is not authorized. The FAA proposed in paragraph (a)(1) of this section that the 40 hours of flight instruction and solo flight time must include at least 20 hours of flight instruction from an authorized flight instructor.

AMR made substantially the same comment that it made about proposed § 61.109 about a student having more than one instructor. See that section for the FAA response.

With minor revisions to its format and structure, this section is adopted as proposed.

§ 61.129 Airplane rating: Aeronautical experience. Under proposed § 61.129(b), an applicant for a commercial pilot certificate with an airplane rating would have to have at least 250 hours of flight time as a pilot, which could include not more than 50 hours of instruction in a ground trainer acceptable to the Administrator.

Under proposed § 61.129(b)(1)(ii), up to 100 hours of flight simulator instruction or flight training device instruction could be credited toward the 250 hours of total flight time if the instruction is accomplished in an approved course conducted by a training center certificated under part 142. To be credited toward the total flight time requirement for a commercial pilot certificate, flight simulator or flight training device instruction received would have to be accomplished in a flight simulator or flight training device representing an airplane.

AMR, in a comment identical to several others, commented that the terms of proposed § 61.129(b)(1)(ii) should be made applicable to training under part 121, part 135, part 141, or SFAR 58.

For reasons discussed in the analysis of comments to § 61.65, additional flight time may be performed in a simulator and credited toward total flight time, only if the simulated flight time is accomplished in accordance with a training program approved under part 142, part 121, or part 135.

NATA commented that this section should be left unchanged.

Jeppesen-Sanderson commented that an approved part 142 commercial course would allow all training, including cross-country experience, to be conducted in a flight simulator or flight training device, and that "* * * it is impractical to conduct the entire commercial training program in a simulator or flight training device."

In fact, the proposed rule would not affect the current requirement pertaining to cross country flights, and it proposed that a maximum of 100 hours of the total of 190 hours of aeronautical experience may be accomplished in a flight simulator under part 142. The justification for permitting up to 100 hours of training to be accomplished in a flight simulator may be found in the discussion of comments to § 61.65 and in the section of this document entitled "Discussion of the Amendments and the New Rule."

The FAA has decided to omit the words "Approved commercial pilot training program conducted under part 142" from the title of paragraph (c). Paragraphs within a section do not normally have titles. With this change, this section is adopted as proposed.

§ 61.131 Rotorcraft rating: Aeronautical experience. Under current § 61.131, an applicant for a commercial pilot certificate with a rotorcraft category rating must have at least 150 hours of flight time, including at least 100 hours in powered aircraft, 50 hours of which must have been in a helicopter.

Under the proposed revision to this section, the applicant may obtain 35 hours of credit toward total flight time requirement in a flight simulator or flight training device, or a credit of up to 50 hours of the total required flight time in a flight simulator or flight training device if the flight simulator time or flight training device time is obtained from a training center certificated part 142. Previously, there was no provision for crediting flight simulation time toward this rating. Under the proposed rule, to be credited toward the total 150-hour flight time requirement, flight simulator or flight training device instruction received

would have to be accomplished in a flight simulator or flight training device representing a rotorcraft.

A provision to allow a further reduction of the 150-hour flight time requirement, based on demonstrated ability to accomplish training requirements in less time, was also proposed.

AMR commented that the ratio of dual time to solo time is out of balance, and that each of those categories of aeronautical experience should be adjusted.

The ratio of dual to solo aeronautical experience is not appropriate to consider in this rule, which is aimed at increased use of simulation. The NPRM did not propose any changes to either solo or dual flight time requirements.

With minor typographical changes, this section is adopted as proposed.

§ 61.155 Airplane rating: Aeronautical experience. The FAA proposed to amend this section to allow more credit for the use of simulation toward the total required aeronautical experience requirement for an airplane rating on an ATP certificate.

Under existing § 61.155 (b)(2), an applicant for an ATP certificate with an airplane rating must have had at least 1,500 hours of flight time as a pilot, including, among other things, at least 75 hours of actual or simulated instrument time, at least 50 hours of which were in actual flight. Up to 25 hours could have been obtained in a simulator.

Under the provisions of paragraph (a)(2)(iii)(B) (3)(ii) of the proposal, the 25 hours of simulated instrument time previously allowed could have been increased to 50 hours if accomplished in an approved course conducted by a training center certificated under part 142.

ALPA and Andrews University commented that it is inconsistent to propose to allow an increase of only 50 hours of simulated flight time for an applicant for an ATP certificate since proposed § 61.129 would permit a student to credit up to 100 hours of simulated flight experience toward the total requirement for the commercial certificate.

The FAA believes that the proposal is not inconsistent. The flying hour credit allowed by proposed § 61.129 was for total flight hours; the credit in this proposed section is for simulated instrument experience. However, in response to comments, paragraph (a)(3), as adopted, allows not more than 100 hours of total simulated pilot experience to be credited toward the total requirement for this certificate. This recognizes that those 100 hours could already be a part of time accumulated in obtaining a commercial pilot certificate.

NATA and ATA commented, in a comment similar to that of several of its member organizations, that the proposal permitting increased amounts of simulated flight time to be credited as aeronautical experience should be extended to part 121 and part 135 certificate holders, and to holders of AQP authorization.

It was not the purpose of this rulemaking to extend increased training credits to holders of certificates issued under part 121 or part 135. However, any curriculum can be organized for presentation under principles described by AQP, presented to the FAA for approval and, upon approval, presented to aircrew employees of the authorization holder or, if the authorization holder also holds a part 142 certificate, to any other person.

Boeing commented that this proposed section is not applicable to foreign pilots and military pilots.

The provisions of this proposed section, however, do apply to military pilots and foreign pilots.

This proposed section is adopted with the changes described above.

§ 61.157 Airplane rating: Aeronautical skill (for parts 121 and 135 use only). The FAA proposed to revise this section title to make it clear that it is applicable only to applicants for an ATP certificate (with an airplane rating) who are pilot crewmember employees of a part 121 or part 135 certificate holder applying pursuant to that employer's approved training program. The FAA proposed a new § 61.158 that applies to other applicants, as discussed under the next heading.

Numerous comments were received concerning this section. In addition to the persons commenting on proposed § 61.63, which concerns a similar subject, American Airlines (American), Delta, and FSI commented on this section. The comments were substantially the same as the comments regarding proposed § 61.63.

See the response to comments concerning proposed § 61.63 for a discussion of the reasons for reserving § 61.63 for part 121 and part 135 use. The same rationale applies to this proposed section.

The FAA will continue the practice of allowing waiver of certain maneuvers, on an individual basis, as currently provided in appendix A of part 61 and the PTS, for those persons who have successfully completed an employing air carrier's approved training program for the type airplane involved within the preceding 6 calendar months. The waiver authority will apply only to applicants whose employer does not have the procedure authorized in the operations specifications, for example, circling approaches authorized by operations specifications. The waiver authority will not apply to all persons who are employed by an air carrier simply because of that person's employment.

The FAA restructured proposed paragraph (a) to better conform to proper outline and grammatical construction. The subject matter of proposed paragraph (a)(2) is better placed in existing paragraph (c). However, in the final rule, the FAA has determined that only paragraph (g) should be added and therefore has withdrawn proposed paragraphs (a) and (c).

The FAA has, for years, received questions about whether completion of a proficiency check taken under part 121 or part 135 would suffice for the certification requirements of this section. The FAA has maintained a policy that the proficiency checks in question suffice to meet the certification requirements of this section. To make that position clear, the FAA has added a new paragraph (g) to this proposed section.

This section is adopted with the changes discussed.

§ 61.158 Airplane rating: Aeronautical skill (for other than parts 121 and 135 use). The FAA proposed in this new section general skill requirements for each ATP certificate applicant with a single-engine or multiengine class rating or type rating if the applicant is not a participant in an air carrier training program as an aircrew employee of an air carrier. This proposed section was intended to clarify which certification procedures apply to aircrew employee applicants of air carrier approved training programs and which apply to other applicants.

Paragraph (c) proposed the following:

> (c) The tasks required by paragraphs (a) and (b) of (§ 61.158) shall be performed in—
>
> (1) An airplane of the same class, and, if applicable, an airplane of the same type, for which the class rating or type rating is sought; or
>
> (2) Subject to the limitations of paragraph (c)(3) of this section, a flight simulator or a flight training device that represents the airplane type for which the type rating is sought, or set of airplanes if the airplane for which the class rating is sought does not require a type rating.
>
> (3) The flight simulator or flight training device use permitted by paragraph (c)(2) of this section shall be conducted in accordance with an approved course at a training center certificated under part 142 of this chapter; or
>
> (4) In another manner approved by the Administrator.

STI asked, in essence, whether paragraph (c)(4) is intended to allow current part 61 simulator exemption holders to submit a training program for FAA approval without first obtaining certification under part 142.

This is the same question that STI asked concerning proposed § 61.64. Proposed paragraph (c)(4) is withdrawn for the same reasons stated in the response to the comment regarding proposed § 61.64, and subsequent subparagraphs have been added to include the requirements for SOE for certain pilots who train and test for added ratings predominately or entirely by flight simulation.

Several other commenters stated that the FAA appears to be proposing two different standards for the ATP certificate or added ratings to that certificate, one standard applicable to applicants who will conduct air carrier operations and a second standard for applicants who will conduct other than air carrier operations. See § 61.64 for the FAA response to comments made by the NTSB and ALPA that applies also to this section.

An editorial change was made to paragraph (a)(1) of this section to make the titles of the areas of operation exactly match the table of contents for those areas of operation in PTS "FAA–S–8081–5." Editorial changes were made to paragraph (2) to make it clear that that paragraph applies only to additional airplane ratings. Additionally, although no comments were received about these proposals, the FAA has withdrawn proposed paragraph (2) (iii) and (iv) of this section given that they cover issues not germane to the objectives of this final rule.

A few part 121 certificate holders asked if proposed § 61.158 would apply if a type rating is sought from a trainer other than one's own employer.

As proposed, this section would apply to all applicants, who are not aircrew employees of a certificate holder, being trained in accordance with the requirements of subpart N of part 121 or subpart H of part 135, as applicable.

Andrews University asked what minimum level of flight simulator or flight training device would be required by proposed paragraph (c)(2) to conduct a practical test.

As discussed elsewhere throughout the proposal, the simulation medium, in addition to the requirements set forth under proposed paragraph (c)(2), must be qualified and approved for each maneuver, procedure, and crewmember function for which a training center proposes to use that simulation medium. The qualification standards are listed in AC 120–40, as amended, and AC 120–45, as amended, as applicable. In addition to the guidance contained in these AC's, the FAA is preparing a new AC 120–46, mentioned earlier in the discussion under § 61.1, which will assist training center certificate applicants by presenting a matrix showing the level of simulation that is approved for various maneuvers, procedures, and crewmember functions. The availability of that AC will be announced separately.

This proposed section is adopted with the changes discussed in the preceding paragraphs.

§ 61.161 Rotorcraft rating: Aeronautical experience. Under current § 61.161(b), an applicant for an ATP certificate with a rotorcraft category and helicopter class rating must have had at least 1,200 hours of flight time as a pilot, including 75 hours of instrument time, 25 hours of which may have been simulated instrument time in a flight simulator or flight training device. Proposed § 61.161 would allow the 25 hours of simulated instrument flight time to be increased to 50 hours if accomplished in an approved course at a training center certificated under part 142. To be credited toward the total flight time requirement, flight simulator or flight training device instruction would have to be accomplished in a flight simulator or flight training device representing a rotorcraft.

AMR commented that the 25 hours of simulated instrument flight time should be increased to 50 hours if accomplished under part 121, part 135, or part 141 if accomplished pursuant to an AQP authorization.

The FAA does not agree that it is appropriate to increase simulated flight time as recommended by this commenter. See the section-by-section discussion under § 61.65 and the section of this preamble entitled "Discussion of the Amendments and the New Rule" for the rationale behind FAA's position on this issue.

For the reasons discussed above, this section is adopted as proposed.

§ 61.163 Rotorcraft rating: Aeronautical skill. The FAA proposed to revise this section to allow an airman to complete the practical test for a helicopter rating in a flight simulator or flight training device if the practical test is taken as a part of a curriculum at a training center certificated under part 142.

FSI asked if it is an oversight that this section does not contain some of the same proposed paragraphs that are contained in proposed § 61.158, which is the parallel section for airplane ratings.

It is not an oversight that this section does not exactly parallel § 61.158. The proposals that FSI questions contain provisions that would require an applicant to present a record of having received ground training and flight training on specified subjects, and to have been shown competent in specified areas of aeronautical knowledge.

Proposed § 61.158(a)(2)(iii) and (iv), which are the two paragraphs the commenter suggested that the FAA parallel in this section, have been withdrawn from § 61.158 in this final rule as issues not germane to the objectives of this rulemaking. The FAA did not propose similar provisions in proposed § 61.163. Therefore, it is inappropriate to consider this comment at this time. The comment will be considered if such proposals are made in the future for rotorcraft ratings.

FSI also recommended that the proposed areas of operations listed in § 61.163(a) be titled and re-ordered to be consistent with the table of contents contained in "Airline Transport Pilot and Type Rating," (PTS FAA–S–8081–5).

The FAA has changed the listing of areas of operation as suggested.

In response to the comments addressed in the discussion of § 61.158 and for the reasons stated there, the FAA has placed additional paragraphs in this section concerning added ratings obtained substantially or entirely in flight simulation.

This section is adopted as amended.

§ 61.169 Instruction in air transportation service. This proposed section would require that ATP's giving instruction in Category II or Category III operations be trained and tested in Category II or Category III operations, as applicable.

Paragraph (a)(3) proposed that all instruction provided by ATP certificate holders be conducted in aircraft with functioning dual controls.

BAe, in a comment similar to several others, commented that proposed paragraph (a)(3) would allow an ATP to instruct only in aircraft with functioning dual controls, not in flight simulators or flight training devices.

Although the FAA did not specifically include simulation in this proposed section, the intent of this rulemaking is to provide for increased use of simulation wherever practical and where safety permits. Therefore, the FAA agrees that this paragraph should be revised to clarify that privileges of an ATP while instructing in air transportation service includes instruction in a flight simulator or flight

training device. A new paragraph (a)(2) has been added accordingly.

Proposed paragraph (b) continued the existing limitation that an ATP could not instruct in an aircraft for more than 8 hours in any 24-consecutive-hour period, nor for more than 36 hours in any 7 consecutive days.

Continental Airlines, FSI, and others commented that proposed paragraph (b) should specify that the instruction time limitations apply to aircraft only. These commenters specifically remarked that, with a briefing and debriefing session that each last for 2 hours, a simulator instructor's duty day may exceed 8 hours. FSI made the same comment in reference to §§ 142.49 and 142.87, and this proposed section.

Proposed paragraph (b) did not include simulation in the instructor's time limitation and simulator instruction would not have been permitted by the proposal. However, because the FAA has modified the proposal to allow simulator instruction, the FAA believes that duty time limitations should apply to both simulation and aircraft.

Further, flight instruction time limitations regarding preflight and post flight activities or briefings and debriefings have never been addressed. The FAA has determined that, in this final rule, it is appropriate to clarify that time spent performing these activities does not count toward the proposed flight instruction time limitations. Therefore, the words "excluding briefings and debriefings" have been added to paragraph (b) of this section in the final rule.

AMR commented that, by proposing time limitations, the FAA is mandating work rules, and that the FAA does not provide any justification for the arbitrary limitations imposed.

The proposed time limitations are not new; they have been contained in current § 61.169 for many years. The clarification to paragraph (b) discussed above should remove any confusion about not establishing new instructor duty times for simulation instruction.

SFI commented that this rule is archaic and attaches a privilege (instructing) to a certificate that demands neither training nor a demonstration of skill as an instructor. It continues that the rules applicable to instruction in air transportation service should be contained in part 61 and that specialized requirements for air transportation instructors should be contained in §§ 121.411 and 135.337, as appropriate.

In addition to holding an ATP certificate, persons who instruct in air transportation service in part 121 and part 135 must train, and in implementing guidance requirements as an instructor and demonstrate skill as an instructor, for the specialized application of air transportation service. The FAA is convinced that these requirements assure a level of safety for instruction equivalent to provisions of part 61, for privileges limited to air transportation service.

This section is adopted with the changes discussed above.

§ 61.187 Flight proficiency. As proposed, this section would permit an applicant for the flight instructor certificate to receive the required instruction for a flight instructor certificate in a flight simulator or flight training device used as part of an approved course conducted by a training center certificated under part 142. Previously, there was no provision for accomplishing the required instruction in anything other than an aircraft.

An overwhelming number of comments favored expansion of simulation to authorize its use for part or all of the instruction that flight instructor applicants are required to receive. Commenters objected, however, to the apparent requirement that all instruction must be received in an approved part 142 training center course. Several commenters, responding to the NPRM, suggested that the instruction permitted by this section be permitted for air carriers, part 141 schools, and holders of AQP or other authorizations.

The FAA does not agree. This option has been considered in detail in previous discussion of comments on §§ 61.56, 61.57, and 61.155.

Jeppesen-Sanderson, and other organizations representing part 141 and part 61 pilot schools commented, also in response to the NPRM, that a flight simulator could not do all the tasks in which a flight instructor must demonstrate competence.

The FAA agrees that this comment is true. The reason for extending the permitted uses for simulation to training and testing for the flight instructor certificate, even though simulation will not currently perform all the requisite tasks for that training and testing, is the same as discussed in the section-by-section discussion of § 61.56, regarding future use of simulators.

A wording error in NPRM Notice 92–10 resulted in the proposed rule text saying that an applicant for a flight instructor certificate must have received instruction in a accordance with an approved course at a training center certificated under part 142; the intention was to say an applicant may receive instruction in such a course. Therefore, the FAA announced in an SNPRM (FR 58 9514, February 19, 1993) that it had inadvertently proposed to require that all instruction in preparation for the airman practical test for this for this certificate be accomplished in a part 142 course, when it intended to propose that, as an additional option, the required instruction could be obtained in an approved flight simulator or flight training device, if that instruction is received during an approved course offered by a training center.

AOPA, in its comment to the SNPRM, expressed support for the changes proposed for this section.

One person, in response to the SNPRM, stated that he objected to a change that would allow simulation to be used to satisfy any flight time required for a flight instructor certificate. In his comment, he stated: "There * * * is no gain to be obtained * * * other than the cost reduction by the big companies."

The FAA believes that there are potentially significant cost benefits for all persons involved in aviation training, including individuals who may choose to use a training center for flight instructor training whenever it becomes available.

In addition, the FAA has determined that allowing the training and testing for a flight instructor certificate would result in additional safety benefits if accomplished in a simulator rather than in an aircraft.

After further analysis, the FAA believes that paragraphs (c)(2) and (c)(4), as they appeared in the SNPRM, are inaccurate, in that paragraph (c)(2) refers to a nonexistent flight instructor course meeting part 61, subpart G, requirements, and paragraph (c)(4) refers to a nonexistent flight instructor course under part 135. Additionally, paragraph (c)(3) is repetitive of other provisions of subpart G of part 61.

Therefore, the FAA has revised these paragraphs in the final rule.

This section is adopted with the corrections discussed.

§ 61.191 Additional flight instructor ratings. The FAA proposed to revise this section to permit an airman to accomplish the required practical tests for flight instructor ratings in a flight simulator or flight training device used as part of an approved course conducted by a training center certificated under part 142. Previously, there was no provision for accomplishing the practical test in anything other than an aircraft.

The comments regarding this section are essentially the same as those submitted in response to proposed § 61.187. For the reasons discussed in response to proposed § 61.187, this section is adopted as proposed.

§ 61.195 Flight instructor limitations. This section proposed to require flight instructors giving instruction in Category II or Category III operations to be trained and tested in Category II or Category III operations, as applicable.

One commenter agreed with the proposal, but remarked that he would like a better definition of what the Category II and Category III training would be.

While development of such a definition is not the purpose of this rulemaking, testing requirements for these areas are described in §§ 61.67 and 61.68 and training should track the requirements of the appropriate test.

This section is adopted as proposed, with an added reference to § 61.68.

§ 61.197 Renewal of flight instructor certificates. The FAA proposed to amend this section to permit an applicant for renewal of a flight instructor certificate to conduct the required practical test in a flight simulator or flight training device in a course conducted by a training center certificated under part 142. Previously, there was no provision for accomplishing the practical test in anything other than an aircraft.

In addition to the proposal stated above, the FAA inadvertently included certain other proposals in this section. The inadvertent proposals would have required medical qualifications for the renewal of a flight instructor certificate (proposed § 61.197(a)(1) and (a)(2)), permitted alternative methods of renewal of the certificate without accomplishing a practical test (§ 61.197(b)(1) and (b)(2)(iv), and prohibited the use of a flight instructor refresher clinic for more than two consecutive renewals of a flight instructor certificate (§ 61.197(c)). After publication in the **Federal Register**, the FAA realized that these proposals had been inadvertently included in the NPRM. The FAA proposed to correct the error in an SNPRM, Notice 92–10A, (59 FR 9514, February 19, 1993). In effect, the SNPRM proposed to restore the provisions of current § 61.197.

Over 200 comments were received concerning this proposed section as written in the NPRM; nearly all opposed the inadvertent proposals. However, a few comments were received concerning the proposal to allow an applicant to renew a flight instructor certificate by taking a practical test in flight simulation pursuant to part 142. These comments were generally favorable.

Ten comments were received concerning the revised proposals contained in the SNPRM. These commenters disagreed with the original proposals contained in the NPRM, which in fact made them comments in favor of the SNPRM. No comments were received that opposed the text as proposed in the SNPRM.

For the reasons discussed, this section is adopted as proposed in the SNPRM, except for deleting the words "in an aircraft" from proposed paragraph (d). That revision was necessary to avoid an inference that an applicant has to complete an approved course conducted by a part 142 certificate holder in order to take the practical test in an aircraft.

Appendix A to Part 61

The FAA proposed to change the title of appendix A to part 61 to read "Practical Test Requirements For Airplane Airline Transport Pilot Certificate and Associated Class and Type Ratings (For part 121 and part 135 Use Only)." This proposal was a companion change to the proposed change to § 61.157, since appendix A implements § 61.157.

Boeing, AIA, and Crew Systems had the same comment that they had concerning proposed §§ 61.63 and 61.64. Essentially, the comment was that the proposals appear to create two types of pilot certificates, one for part 121 and part 135 operations and one for all other operations.

The FAA response to this comment may be found by reference to the discussion of comments about proposed §§ 61.63 and 61.157.

Airbus commented that appendix A should be deleted, and that the provisions of proposed § 61.158 should be used instead. It adds that if appendix A cannot be deleted, it must be amended to accommodate modern aircraft.

The FAA agrees that appendix A has become somewhat obsolete. However, the deletion or updating of appendix A does not relate to the purpose of the proposed rulemaking upon which the final rule is based.

Therefore, in this final rule, appendix A is retitled, but otherwise unchanged. The deletion or updating of appendix A will be addressed as part of Phase II of the part 61 review which is referred to under the section entitled "Related Activity."

Integration of Appendix B to Part 61 Into Practical Test Standards

The FAA proposed to delete appendix B to part 61. FSI asked about the future of a document to replace appendix B.

The FAA does not plan to replace appendix B, as such. Instead, the FAA lists broad areas of aeronautical knowledge in several sections which specify requirements for various certificates and ratings. The specific tasks recommended for an airman to demonstrate competence in the broad areas of aeronautical knowledge are listed in implementing documents, such as the PTS.

Therefore, appendix B is deleted in this final rule, as proposed.

Part 91

§ 91.191 Category II and Category III manual. The FAA proposed to change the title of this section to include Category III manuals. The text of the proposed section sets forth the requirements for Category III manuals for civil aircraft conducting reduced visibility operations. These operations are defined as Category III operations elsewhere in part 91. Previously, there were no regulatory provisions applicable to part 91 operators who might anticipate Category III operations.

Airbus, in the only comment received, commented that part 91 is not mature enough to warrant regulatory action.

The FAA does not agree. Earlier in this preamble the FAA discussed the sophistication of aircraft operated under part 91, and the intent to not wait until a greater number of aircraft are capable of Category III operations before changing the rule to permit such operations under part 91. The FAA is convinced that it is time to amend part 91 to establish rules for reduced visibility operations.

AMR, in a general comment about the proposed changes to part 91, stated that the proposals to amend part 91 appear to be totally unrelated to the thrust of the NPRM.

The FAA believes that these proposals are related to the subject of the NPRM. Simulation is and will be used as a primary training vehicle for reduced visibility approaches. The NPRM proposed to require testing for those persons who will be authorized to conduct such approaches in a new § 61.68. The proposed changes to §§ 91.191 and 91.205 provide requirements for aircraft equipment and procedures for Category III operations, which did not exist previously.

The FAA has determined that, in order to allow time for compliance, persons desiring to obtain Category III

authorization should be given until August 1, 1997, to develop a Category III manual. Persons developing a Category III manual may use as general guidance Appendix A, modified as applicable, to address Category III Manual, Instruments, Equipment, and Maintenance. Because there will be few part 91 operators seeking Category III authorization, the FAA does not anticipate that development of Category III manual will impose a significant economic burden on a significant number of operators.

This section is adopted as proposed, except for a change to establish a separate effective date.

§ 91.205 *Powered civil aircraft with standard category U.S. airworthiness certificates: Instrument and equipment requirements.* This proposed section included requirements concerning instruments and equipment for Category III operations.

Airbus made the same comment about this section that it made about proposed § 91.191.

The FAA response is the same as that set forth under § 91.191.

This section is adopted as proposed.

Part 121

The FAA received numerous comments from major airline associations and air carriers that a part 142 certificate should not be required to continue to provide training to employees of other part 121 or part 135 certificate holders. These commenters stated that parts 121 and 135 contain sufficient requirements for instructors, evaluators (check airman), and training program approval and that the FAA does not need to separately specify those requirements in a new part to 14 CFR (part 142).

After reconsideration of the proposal in light of these comments, the FAA agrees that parts 121 and 135 contain sufficient requirements for training, testing, and checking any aircrew subject to those parts. For that reason, the following proposed revisions to these sections of part 121 have been withdrawn: §§ 121.1, 121.401, 121.403, 121.405, 121.407, 121.432a, 121.439, and 121.441. Upon evaluation of comments received, the FAA has concluded that the proposed subparts of part 142 that were applicable to air carriers also were not needed and should be withdrawn. Therefore subparts F, G, H, and I, of proposed part 142 also have been withdrawn.

In addition, the proposed revisions to part 121, appendix H and appendix I have been withdrawn. Part 121, appendix H issues are being addressed under separate rulemaking, as discussed under the section of this document above entitled "Related Activity," and have, therefore, been removed from this final rule. The discussion below entitled "Part 142" explains the rationale for withdrawing proposed appendix I and all proposed sections relating to drug testing.

The FAA has determined, however, that a part 121 or part 135 certificate holder, without obtaining a part 142 certificate, should not be allowed to provide training, testing, or checking to persons who are not aircrew employees of an air carrier certificated under the same part. Operations conducted by these individuals are not sufficiently similar to those of certificate holders to warrant such an exception.

An air carrier interested in providing training, testing, or checking to such persons could modify its training program to suit the needs of those persons and meet the necessary requirements for a training program suitable for approval under part 142.

Operating and training environments of other operators are different from those for air carriers. For example, air carrier training on dispatch (flight release and flight following) and crew resource management (CRM) training that includes dispatch as a resource may not be appropriate for some operators. Therefore, for a part 142 program, a more extensive review of certain flight procedures is needed. Areas of training not common to all operators is further discussed in response to comments about §§ 142.1 and 142.3.

As discussed below, the following sections, §§ 121.400, 121.402, and 121.431, are retained for this final rule.

Subpart N—Training Program

§ 121.400 *Applicability and terms used.* Upon reconsideration of the ability of air carriers to train aircrews of other air carriers, the FAA has withdrawn most of this proposed section. However, the FAA will retain the definition of "training center" as proposed but will modify it to conform to the definition used under § 142.3 as adopted.

In addition, the FAA received a suggestion to add the term "requalification training" to the companion section in part 135 (§ 135.321). That term is already in common usage and is defined along with the terms defined in this section in FAA Order 8400.10, "The Air Transportation Operations Inspector's Handbook." Because requalification training is and will be accomplished in whole or in part by simulation, the FAA agrees that it should be defined in §§ 135.321 and 121.400. Accordingly, a definition of requalification training is added as paragraph (b)(7) of this section. The FAA further determined that it would be preferable to place the proposed definitions of "facility" and "courseware" only in part 142. Therefore, these definitions are deleted from this section.

§ 121.402 *Training program: Special rules.* The FAA proposed in this section that a part 121 certificate holder may provide training, testing, and checking services to others by contract. To provide training, testing, and checking for another part 121 certificate holder, the certificate holder would have been required to also hold a part 142 certificate and appropriate training specifications issued under part 142.

Several commenters said that the section is entirely a description of functions under part 142 and that it duplicates language in part 142.

The FAA agrees with the commenters that the description of functions proposed in this section duplicates a description of functions covered in part 142. Therefore, the FAA has revised this section in order to eliminate the duplication and to expressly allow part 121 certificate holders to use part 142 training centers to meet all or part of its training requirements if the POI approves that training.

NATCO stated that if each instructor, check airman, and evaluator can be shown to be qualified to fulfill the responsibilities, then a prerequisite for 1 year of employment should have no bearing on that person's effectiveness.

The FAA agrees. As mentioned in the section entitled "Related Activity" there is a separate rulemaking action underway, a final rule, to amend appendix H of part 121 accordingly.

After re-examination following analysis of comments, the FAA revised proposed § 121.402(a) to provide that a part 121 certificate holder may continue to provide training, testing, and checking to another part 121 certificate holder provided the training meets the requirements of part 121 and the POI of that receiving certificate holder approves that training.

The FAA further revised this section to indicate that the only entity, other than another part 121 certificate holder, that may provide training to a part 121 certificate holder is a training center certificated under part 142 of this chapter. This revision will ensure standardization and increase safety through the use of state-of-the-art training media that are inherent in training centers.

This section is adopted with the changes discussed.

Subpart O—Crewmember Qualifications

§ 121.431 Applicability. The FAA proposed to amend this section to permit training centers to provide testing and checking services by contract or otherwise to persons subject to the requirements of part 121.

Several similar comments were received which stated that the section would preclude part 121 certificate holders from providing training to other persons without being certified under part 142.

The FAA agrees that the commenters' analysis is true to the extent that a part 142 certificate will be required for training, testing, and checking offered to persons other than aircrew employees of another part 121 certificate holder.

For the reasons discussed earlier, this proposed section is deleted with the exception of the provision in paragraph (a)(2) permitting a part 121 certificate holder to contract with a part 142 certificate holder for all or part of the training required by part 121. Paragraph (a)(1) as adopted incorporates changes made to this section on June 14, 1996 (61 FR 30432). The section is adopted as revised.

Part 125

§ 125.285 Pilot qualifications: Recent experience. There were no comments concerning this proposed section. Therefore, it is adopted as proposed.

§ 125.296 Training, testing, and checking conducted by training centers: Special rules. The FAA proposed this new section to permit a crewmember to credit the training, testing, and checking received under part 142 toward the training, testing, and checking required by part 125.

AMR commented that training centers certificated under part 121, as well as those certificated under part 142, should be allowed to accomplish training, testing, and checking to satisfy this section.

As discussed earlier, there are no training centers certificated under part 121.

For the reasons in the general discussion of part 121 this section is adopted as proposed.

§ 125.297 Approval of flight simulators and flight training devices. There were no comments concerning this proposed section. Therefore, this section is adopted as proposed.

Part 135

As discussed above in part 121, the FAA received numerous comments from major airline associations and air carriers that a part 142 certificate should not be required for a part 121 or part 135 certificate holder to continue to provide training to other than its own employees. These commenters stated that parts 121 and 135 contain sufficient detail regarding requirements for instructors, evaluators (check airman), and training program approval and that the FAA does not need to separately specify those requirements in a new part to 14 CFR (part 142).

In general, the comments about the several new proposals or proposed revisions to existing sections of part 135 are very similar to those made in response to similar proposals in part 121. However, there were considerably fewer comments. Nevertheless, all comments received have been carefully reviewed and thoroughly considered.

In response to comments, the FAA has decided to allow a part 135 certificate holder to train the flight crewmembers of another part 135 certificate holder without being certificated under part 142. Like part 121 certificate holders, part 135 certificate holders must obtain a part 142 certificate in order to train persons who are not aircrew employees of another part 135 certificate holder.

The FAA agrees that parts 121 and 135 contain sufficient requirements for training, testing, and checking of aircrews subject to those parts. For that reason, the proposed revisions involving the following proposed sections of part 135 have been withdrawn: §§ 135.1, 135.292, 135.293, 135.297, 135.299, 135.323, and 135.325. Upon evaluation of comments received, the FAA has concluded that the proposed subparts of part 142 that were applicable to air carriers also were not needed and should be withdrawn. Therefore subparts F, G, H, and I, of proposed part 142 also have been withdrawn.

The FAA has determined, however, that a part 121 or part 135 certificate holder, without obtaining a part 142 certificate, should not be allowed to provide training, testing, or checking to persons who are not aircrew employees of an air carrier certificated under the same part. Operations conducted by these individuals are not sufficiently similar to those of certificate holders to warrant such an exception.

An air carrier interested in providing training, testing, or checking to such persons could modify its training program to suit the needs of those persons and meet the necessary requirements for a training program suitable for approval under part 142.

Operating and training environments of other operators are different from those for air carriers. For example, air carrier training on dispatch (flight release and flight following) and CRM training that includes dispatch as a resource may not be appropriate for some operators. Therefore, for a part 142 program, a more extensive review of certain flight procedures is needed. Areas of training not common to all operators is further discussed in response to comments about §§ 142.1 and 142.3.

As discussed below, the following sections, §§ 135.291, 135.321, and 135.324, are retained for this final rule.

Subpart G—Crewmember Testing Requirements

§ 135.291 Applicability. There were no comments about the proposed amendments to this section. However, the FAA decided to revise the section editorially slightly to more closely parallel § 121.431, which concerns the same subject. This section is adopted as revised.

Subpart H—Training

§ 135.321 Applicability and terms used. The FAA proposed to amend this section to make the requirements of subpart H of part 135 applicable to a training center if the training center provides training, testing, or checking by contract or other arrangement for a certificate holder subject to the requirements of part 135.

Several commenters remarked that this section should be left as currently worded.

The FAA has determined that certain terms should be added to better describe the training, testing, and checking required under this section.

AMR agreed with the section as proposed and suggested that it be expanded to include a definition of requalification training, which is already in common usage and which is defined, along with the terms defined in this section, in FAA Order 8400.10, "The Air Transportation Operations Inspector's Handbook."

Because requalification training is and will be accomplished in whole or in part by simulation, the FAA agrees that it should be addressed in this section. Accordingly, a definition of requalification training is added to paragraph (b) of this section, and the terms have been rearranged to accommodate this definition in its logical order. It should also be noted that the definition of "training center" used in this section is modified in the final as set forth in § 142.3 as adopted.

The FAA determined that it would be preferable to place the definitions of "facility" and "courseware" in part 142.

Therefore, these definitions are deleted from this section.

With the revisions discussed above, the section is adopted.

§ 135.324 Training program: Special rules. The FAA proposed this new section to permit a part 135 certificate holder to contract with a training center certificated under part 142 to satisfy the training program requirements of part 135.

The FAA also proposed in this section to permit a part 135 certificate holder to provide training, testing, and checking to others by contract. Under the proposal, to provide training, testing, and checking for another part 135 certificate holder, the certificate holder would have been required to hold a part 142 certificate and appropriate training specifications issued under part 142.

Under this final rule, a part 135 certificate holder may continue to provide training, testing, and checking to another part 135 certificate holder. A part 142 certificate will not be needed. The proposed section was revised further to indicate that the only entity other than another part 135 certificate holder that may provide training, testing, and checking to a part 135 certificate holder is a training center certificated under part 142.

The rationale for these changes may be found by reference to the general discussion of this part and § 121.402.

Several commenters said that the section is entirely a description of functions under part 142 and that it duplicates language in part 142.

The FAA agrees with the commenters that this subject is covered in part 142. However, the FAA considers it necessary to include provisions in this section expressly allowing a part 135 certificate holder to contract with a part 142 training center, if the part 135 certificate holder desires to use a part 142 training center for all or part of its training. This training meets the requirements of part 135 and the POI approves that training.

This section is adopted with the changes discussed.

Part 141

§ 141.26 Training Agreements.

No comments were received concerning this section, and it is adopted as proposed.

Broward Community College, Northwest Accelerated Ground School, and an individual made general comments that pilot schools will be placed at a disadvantage, apparently from not being able to take advantage of the capabilities of flight simulators.

The FAA's response to these comments may be found by reference to the discussion under §§ 61.65 and 61.109.

Part 142

As discussed above under parts 121 and 135, the FAA received numerous comments that a part 142 certificate should not be required for a part 121 or part 135 certificate holder to continue to provide training to other than its own employees.

After a review of comments received, the FAA has determined that part 121 and part 135 are adequate for air carrier training programs and the qualification and training of persons who present these training programs. For this reason, proposed subparts F, G, H, and I of part 142 that govern air carrier training, testing, or checking have been withdrawn.

As explained in the discussion of parts 121 and 135 above, however, the FAA has determined that a part 121 or part 135 certificate holder, without obtaining a part 142 certificate, should not be allowed to provide training, testing, or checking to persons who are not aircrew employees of an air carrier certificated under the same part.

A number of commenters also noted that the provisions regarding drug testing appear to be duplicative of requirements adopted since the publication of the NPRM, primarily in FAA's anti-drug rule, part 121, appendix I. The FAA concurs with these commenters.

Under part 121, appendix I, individuals who provide flight instruction, including simulator training, either directly or by contract for specified aviation employers, must be subject to an FAA-approved anti-drug program that includes all elements of proposed §§ 142. 21, 142.23, and 142.25. Similarly, these individuals must be subject to an alcohol misuse prevention program, including alcohol testing, under regulations published in 1994, found primarily at part 121, appendix J. The FAA has determined that these regulations adequately cover those individuals performing safety-sensitive functions. Therefore, proposed §§ 142.21, 142.23, and 142.25, and as discussed above part 121, appendix I, have not been adopted.

The FAA proposed § 142.11 entitled "Training center ratings." This proposed section would have required that, in addition to a training center certificate, a training center certificate holder would have had to obtain a rating to conduct each curriculum. The FAA has determined that ratings will not be necessary, since the subject matter that would have been addressed by ratings will be covered by training specifications. Accordingly, this proposed section has not been adopted as "Training center ratings." It has been adopted as "Application for issuance or amendment."

The FAA also proposed § 142.51, entitled "Qualifications to instruct in a flight simulator or a flight training device." Because the FAA simplified and consolidated instructor eligibility requirements into § 142.47 as adopted, § 142.51 is no longer needed and has not been adopted.

Lastly, in this final rule, all references to "training center certificate holder" have been replaced with "certificate holder" because the meaning is clear within the context of part 142.

Subpart A—General

This general subpart, subpart A, contains the requirements necessary to obtain and maintain certification as a part 142 training center.

§ 142.1 Applicability. This section, as proposed, specified the entities that would have to be certificated under part 142 to provide training, testing, and checking of flight crewmembers.

Boeing commented that the FAA should permit training centers operating under exemption and other means to be granted a "grandfather" certificate immediately. Other commenters were of the same opinion.

The FAA has allowed a 2-year period in order to accommodate applications for certification. Different training entities in operation now are structured to meet different regulatory standards. The time allowed for certification will permit current training entities to design training programs to meet part 142 standards. The FAA has determined that existing training programs approved for air carrier certificate holders and exemption holders should require only minor amendments to receive approval under part 142.

Accordingly, this proposed section has been revised by adding paragraphs (b)(4) and (5) to indicate that part 121 certificate holders may continue to train the flight crews of other part 121 certificate holders and that part 135 certificate holders may continue to train the flight crews of other part 135 certificate holders without obtaining a part 142 certificate.

A new paragraph (c) has been added to make it clear that training, testing, and checking in flight simulators or advanced flight training devices may only be conducted in accordance with part 142 certificate and training specifications. Exceptions are listed in paragraph (b).

This section is adopted with the changes discussed above.

§ 142.3 Definitions. This section proposed terms applicable to part 142.

AIA commented that this section would not allow airplane manufacturers the flexibility they enjoy today to revise training programs to accommodate customer-unique training needs.

The FAA believes that the definition of "specialty training" can accommodate any customer need, and was designed specifically to allow for subjects that are not generic.

ATA and several part 121 certificate holders commented that the definition of "core curriculum" is ambiguous and at odds with an air carrier POI's authority for approval of all components of an air carrier training program.

In this final rule, the FAA has more clearly and completely defined "core curriculum." The NPRM incorrectly referred to a "core training program." The definitions contained in this final rule now make a clear distinction between "training program" and "core curriculum." The FAA reiterates in this final rule that the POI is responsible for approving all training for the air carrier to which the POI is assigned.

ATA and others suggested that the term "Line Oriented Flight Training" (LOFT) be changed to "Line Operational Simulation" (LOS) to better accommodate special operational training.

The FAA agrees. The term "LOFT" has been retitled as LOS, which is defined in § 142.3. LOFT was consistent with the term in appendix H of part 121, but LOS and the new terms included in its definition are more descriptive and comprehensive, and they appear in certain AC's, particularly AC 120–35, "Line Operational Simulations; Line Oriented Flight Training, Special Purpose Orientation Training, Line Operational Evaluation," as amended.

Boeing and AIA commented that an evaluator need not be a pilot to certify certain training, such as ground training.

The FAA agrees with Boeing and AIA; however, such a restriction was not proposed. Under proposed § 142.55, a training center would have the flexibility to use someone without an airman's certificate to be an evaluator.

Airbus commented that the definition of "evaluator" is "too restrictive, narrow in scope, and inconsistent with the definition of evaluator contained in SFAR 58."

The FAA believes that the definition of "evaluator" now in this section is sufficiently broad to provide training centers with maximum flexibility for scheduling and personnel assignments. However, the proposed definition of "evaluator" has been reworded to make it clear that an evaluator may perform tests for authorizations and proficiency checks, when the evaluator is qualified under the applicable operational part, as well as for the test for certification and added ratings. While the definition of "evaluator" under part 142 is somewhat different than the definition of that term under SFAR 58, the FAA did not attempt to reconcile the definition with SFAR 58. Although different, the definition for "evaluator" contained in each of these parts adequately addresses the functions performed in these parts.

Boeing also commented that the proposed definition of "specialty training" could imply that FAA approval is required for training that is not required by any part of 14 CFR. Several other persons made similar comments in reference to other sections.

The FAA agrees with the commenters. The definition of "specialty training" has been reworded to exclude training not designed to satisfy the requirements for any FAA certificate, rating, authorization, test, review, check, or qualification.

Boeing and AIA also requested that the term "instructor" be defined throughout proposed part 142. They stated that airplane manufacturers and other training organizations use instructors for airplane, full-flight simulator, fixed-base simulator, and airplane systems training. They believe that it would be unreasonable and unnecessary to require a certificate to perform instructor duties other than for airplane and full-flight simulator flight instruction.

The FAA did not propose to require an instructor certificate for persons who would be employed by training centers to instruct in flight simulators or flight training devices. Further, since the publication of the NPRM, and in response to a petition from the public to amend existing exemptions, the FAA has allowed persons to qualify as simulator-only instructors without holding an instructor certificate, if those persons meet certain alternative qualifications. The FAA has determined that it is appropriate to include those alternative qualifications in this final rule. (See also the discussion below under § 142.47.)

With the changes discussed, this section is adopted as proposed.

§ 142.5 Certificate and training specifications required. This section proposed that no person may operate a training center without a training center certificate and training specifications, as described in part 142. Paragraph (b) further proposed that a training center certificate applicant would be issued a training center certificate and training specifications if the applicant complied with the applicable sections of part 142.

In the only comment received, AIA commented that a training center certificate should be optional if a training center is now operating under existing rules.

Prior to this amendment, there have been no training centers defined and regulated by 14 CFR. Training under previous rules is addressed in the initial discussion of part 142 above.

For the reasons discussed in the previous section, this section is adopted as proposed except for deleting a reference to § 142.77.

§ 142.7 Duration of a certificate. This section, as proposed, provided that a training center certificate would have no expiration date, but that it could be suspended, revoked, or otherwise terminated by the Administrator. Further, under paragraph (b) of this section, a certificate holder would have to return its certificate to the Administrator if that certificate is suspended, revoked, or terminated.

Jeppesen-Sanderson commented that the provision of no expiration date for a part 142 certificate should be extended to part 141 certificates as well.

The FAA believes that questions about the administration of part 141 that are not directly connected to training by simulation are best left to the review of that part. That review is discussed in the section entitled "Related Activity." Therefore, no changes are made to this section in response to the comment.

Comments made about proposed §§ 61.2 (adopted as § 61.3) and 142.20, which concern training centers located outside the United States, and other initiatives of the FAA, caused the FAA to change this section as it applies to training centers located outside the United States. Under this final rule, training centers located outside the United States will be issued a certificate which will expire annually. This revision is more thoroughly discussed under proposed § 142.20 (adopted as § 142.19).

This proposed section is adopted with the changes discussed.

§ 142.9 Deviations or waivers. This section proposed deviation and waiver procedures for a training center certificate holder or an applicant for a training center certificate.

Only one comment was received concerning this section. Professional Instrument Courses, Inc., stated that it does all its training by traveling to different airports around the country and that it uses an "apparent" flight training device instead of a flight simulator. It asked if the intent of the section entitled "Deviations and

waivers," is to allow affected companies to operate without facilities and without at least one flight simulator.

It was not the intent of this section to allow operation without facilities and at least one flight simulator or advanced flight training device. It was the intent to allow for unforeseen circumstances that may arise that may warrant a deviation or a waiver, as they have in the past with other rules. The scenario described by the commenter was not unforeseen and is specifically addressed by §§ 142.17 and 142.20 (adopted as § 142.19).

Accordingly, the section is adopted as proposed.

§ 142.11 (withdrawn) *Training center ratings.*

§ 142.13 (adopted as § 142.11) *Application for issuance or amendment.* Paragraph (a) of this section proposed that an application for a training center certificate be made on a form and in a manner prescribed by the Administrator. Proposed paragraph (a)(3) provides timeframes for processing applications.

In response to the requirement to submit an application to the FSDO with jurisdiction over the area in which the applicant's business office is located, Boeing asked if it would no longer be acceptable for it to file an application with the FAA Aircraft Evaluation Group (AEG) for part 121 training.

The FAA has determined that review and preliminary approval of certificate applications and training programs is more within the charter of FSDO's than AEG's. Accordingly, under this final rule, an application for certification under part 142 must be filed with the FSDO having jurisdiction over the area in which the applicant's training center is located.

Paragraph (b), as proposed, would require that each certificate application provide information about, but not limited to, each management position, facility, record, and curriculum of the training center. Paragraph (b)(1) proposed:

(b) Each application for a training center certificate and training specification shall provide—

(1) A statement showing that the minimum qualification requirements for each management position are met or exceeded.

Several commenters stated that proposed paragraph (b)(1) is redundant with proposed § 142.15.

The proposals were different in that proposed paragraph (b)(1) would require a statement that would have to accompany a certificate application, while proposed § 142.15 would require qualification of management personnel and a statement about adequate numbers of those persons.

In the final rule, however, paragraph (b)(1) has been reworded slightly in the interest of brevity and clarity.

Paragraph (b)(6) proposed:

(b) Each application for a training center certificate and training specification shall provide—

* * * * *

(6) A description of the applicant's training facilities, equipment, qualifications of personnel to be used, and proposed evaluation plans;

While no comments were received concerning evaluation plans, the FAA has decided to remove the reference to "evaluation plans" in order to simplify the application process and the quality control procedures to be used by the certificate holder. Separate evaluation plans would be largely redundant with features of a quality control system.

Paragraph (b)(7) proposed the following:

(b) Each application for a training center certificate and training specification shall provide—

* * * * *

(7) A training program, including curriculum, syllabi, outlines, courseware, procedures, and documentation to support the items required in subpart B or subpart F of this part, upon request by the Administrator.

FSI commented that paragraph (b)(7) should be reworded to prevent the FAA from being inundated by materials accompanying an application for certificate. Boeing and Airbus made similar comments.

As suggested by commenters, the FAA has reworded paragraph (b)(7) to require submission of specified material only upon request of the Administrator.

Airbus commented that the text of § 142.13(b)(7) should be changed to improve clarity and to be consistent with FAA Order 8400.10, VOL 3, Ch 2, Sec 1. It states that the words "syllabus" and "syllabi" have unclear definitions in the context of crewmember training programs and were, for that reason, not used in the 8400.10 definitions.

To promote clarity, the FAA has revised several terms pertaining to training programs. The revised terms are, to the extent possible, consistent with the definitions contained in the order that the commenter cites. The term syllabus, however, is retained. The FAA believes that the generic definition of that word adds clarity to the training program requirements.

Paragraph (b)(10) proposed the following:

(b) Each application for a training center certificate and training specification shall provide—

* * * * *

(10) A method of demonstrating the applicant's qualification and ability to provide training for a certificate or rating in fewer than the minimum hours prescribed in part 61 of this chapter if the applicant proposes to do so.

Boeing and AIA commented that paragraph (b)(10) should be made consistent with SFAR 58.

The FAA believes that this paragraph is consistent with SFAR 58. This paragraph refers to § 61.109 and other sections of part 61 that specify minimum hours of aeronautical experience that a part 142 certificate holder may wish to reduce further in non-traditional courses other than AQP.

United commented that "to require United, or any other (part) 121 certificate holder similarly situated, to duplicate all of its facilities, equipment, courseware and personnel in order to continue training by contract or other arrangement and then have the FAA inspect and approve the requirements..." is not conserving resources.

The FAA did not intend to require duplication of facilities and equipment. The buildings, classrooms, flight training equipment, and instructors may be the same that are used in pursuit of normal business in accordance with a part 121 or part 135 certificate. Some training programs offered to persons other than aircrew employees of another air carrier may be essentially the same as programs now in use. With minor modification, training programs can be presented under a part 142 certificate to persons other than air carrier certificate holder employees. ATA and several part 121 certificate holders had concerns similar to United in their comments to proposed § 142.17. The FAA addresses their comments in the discussion below under proposed § 142.17.

Paragraph (c) proposed that facilities actually be in place at the time of application, and not simply planned or expected.

Several commenters stated that this would be an unduly burdensome expenditure for equipment too far in advance of its use, especially for new entrants into the training industry.

The FAA agrees that facilities need not already be in place at the time of application. This paragraph has been reworded to require that facilities and equipment be available for inspection and evaluation prior to approval. This will preclude expenditure of FAA resources on frivolous or tentative plans that may never come to fruition due to changed business plans. It will permit the FAA to evaluate actual facilities rather than those that are merely planned and subject to later change. The FAA believes that such measures are necessary in order to conserve public resources and in order to maintain the highest standard of facilities in training centers. Paragraph (d)(2) proposed:

(d) An applicant who meets the requirements of this part and is approved by the Administrator is entitled to—

* * * * *

(2) Training specifications, issued by the Administrator to the training center certificate holder, containing—

(i) The type of training authorized, including—

(A) Training center ratings; and

(B) Approved courses;

(ii) The category and class of aircraft that may be used for training;

(iii) Registration numbers and types of aircraft that are—

(A) Subject to an airworthiness maintenance program required by parts 91, 121, 125, 135, or any other parts of this chapter; and

(B) Suitable for the type of training, testing, or checking being conducted;

(iv) For each flight simulator or flight training device, the make, model, and series of airplane or the set of airplanes being simulated and the qualification level assigned, or the make, model, and series of rotorcraft, or set of rotorcraft being simulated and the qualification level assigned;

(v) For each flight simulator and flight training device subject to qualification evaluation by the National Simulator Program Manager, the serial number assigned by the manufacturer;

(vi) The name and address of all satellite training centers, and the approved courses offered at each satellite training center;

(vii) Authorized deviations or waivers from this part; and

(viii) Any other items the Administrator may require or allow.

Several air carrier operators, commenting on proposed paragraph (d)(2), stated that training specifications would not be convenient, and that courses approved under parts 121, 135, or 142 would provide all the course specification that is required.

Based on prior experience, the FAA believes that many administrative matters not concerning course specification have been accommodated very well by the use of operations specifications for air carrier operators. This is a new concept for training entities, but experience with similar operating specifications issued to air carrier certificate holders has shown that the procedure will allow maximum administrative convenience. Especially in light of the removal of the proposed requirement for ratings for training centers, the FAA concludes that providing for training specifications is administratively wise. As stated previously in this preamble, a part 142 certificate (and attendant training specifications) will not be required for part 121 certificate holders to train other part 121 certificate holders or for part 135 certificate holders to train other part 135 certificate holders. Therefore, training specifications will be applicable to air carrier certificate holders only if those certificate holders choose to apply for a part 142 certificate.

For the reasons stated, § 142.13(d)(2) is adopted as proposed and renumbered as § 142.11(d)(2).

FSI commented that proposed paragraph (d)(2)(iii) would preclude short-notice change of aircraft and the use of customer-owned aircraft unless there is a 1-day change notification procedure. Airbus made similar comments about aircraft to be used by aircraft manufacturer training centers.

The FAA agrees that the proposal may be too restrictive on certain potential training centers, including aircraft manufacturer training centers, which might offer training in aircraft rather than in a flight simulator or flight training device. Therefore, proposed paragraph (d)(2)(iii) has been deleted. Proposed paragraphs (d)(2)(iv) through (d)(2)(viii) have been redesignated as (d)(2)(iii) through (d)(2)(vii).

Regarding proposed paragraph (d)(2)(vi), Boeing commented that the proposed requirement to list the name, address, and courses approved for each satellite training center would preclude "offload training."

The FAA does not agree that these proposed requirements would preclude the training to which Boeing referred. The proposal does not prevent training at sites other than the training center location or satellite training center location, as long as a training center or satellite training center of the certificate holder complies with the certification requirements of part 142. Therefore paragraph (d)(2)(vi) is adopted as proposed; however, since proposed paragraph (d)(2)(iii) has been deleted, proposed paragraph (d)(2)(vi) is adopted as paragraph (d)(2)(v).

The FAA has decided that effective reference to and tracking of simulation equipment requires the use of FAA-assigned identification numbers for that equipment instead of serial numbers assigned by the manufacturer of such equipment. Accordingly, proposed paragraph (d)(2)(v) has been reworded to reflect this requirement and is adopted as paragraph (d)(2)(iv).

Paragraph (e) proposed the following:

(e) The Administrator may deny, suspend, revoke, or terminate a certificate under this part if the Administrator finds that—

(1) Any certificate the Administrator previously issued to the applicant for, or holder of, a training center certificate, was revoked, suspended, or terminated within the previous 5 years;

(2) An applicant for, or holder of, a training center certificate employs or proposes to employ a person who—

(i) Was previously employed in a management or supervisory position;

(ii) Exercised control over any certificate holder whose certificate has been revoked, suspended, or terminated within the last 5 years; and

(iii) Contributed materially to the revocation, suspension, or termination of that certificate and who will be employed in a management or supervisory position, or who will be in control of or have a substantial ownership interest in the training center.

STI commented that proposed paragraph (e)(2)(i) should be modified to specifically state that the management or supervisory person formerly worked in a management or supervisory position for a certificate holder whose certificate had been revoked, suspended, or terminated within the previous 5 years. FSI also suggested that proposed (e)(2)(i) be linked with subparagraph (e)(2)(ii) with an "and" at the end of (e)(2)(i).

The construction of proposed paragraph (e) means that the conditions of (e)(2)(i), (e)(2)(ii), and (e)(2)(iii) all apply to persons that a training center employs or proposes to employ. These three paragraphs are linked together by the semicolons and the "and" following (e)(2)(ii). It is not necessary to repeat the "and" after (e)(2)(i). To correct an editorial error in the proposal, the FAA has inserted the word "or" to appropriately separate paragraphs (e)(1) and (e)(2).

This section is renumbered as § 142.11 and adopted with the several changes discussed.

§ 142.15 (adopted as § 142.13) *Management and personnel requirements.* The FAA proposed in this section that a training center must show that it has and maintains a sufficient number of qualified instructors, evaluators, and management personnel competent to perform required duties.

Only one comment was received concerning this section. That comment stated that this section was unnecessary and should be deleted.

The FAA has determined that the proposal referred to above is necessary to ensure that a training center can operate in compliance with the certification provisions contained in proposed part 142. The FAA needs this information, along with the other information required by this part, to

approve applications for certification under part 142. Therefore, this section is renumbered as § 142.13 and adopted as proposed.

§ 142.17 (adopted as § 142.15) *Facilities.* In this section, the FAA proposed the following in paragraph (b):

(b) An applicant for, or holder of, a training center certificate shall establish and maintain a principal business office that—

(1) Has a mailing address in the name shown on its training center certificate application, or training center certificate, after it is issued; and

(2) Has facilities adequate to maintain the records required by this part.

(3) Is not shared with another certificate holder; however, automated recordkeeping systems approved by the Administrator may be shared by more than one training center or certificate holder.

This paragraph would require a training center to establish and maintain a principal business office that could not be shared with a part 121, 135, 141, or 142 certificate holder. The intent of this paragraph was to ensure that the principal business office of a training center is located at a permanent physical location with the characteristics of an ordinary business office. It was intended to preclude the use of transient locations with inadequate facilities for properly maintaining records.

The FAA proposed this paragraph to preclude certain difficulties with commingled records or with changing standards for some students of training entities offering training under more than one part of 14 CFR. Commingling is considered undesirable because different standards apply to entities certificated under the several 14 CFR parts. However, upon reconsideration, the FAA does not believe that proposed paragraph (b)(3) is necessary because the FAA can prevent the commingling of records by better guidance on recordkeeping requirements and special emphasis on surveillance and inspection of that recordkeeping. Therefore, the proposed restriction has been deleted.

Paragraph (b)(2) of § 142.17 proposed that records required by part 142 must be kept at a principal business office. This proposed requirement was to permit the FAA to locate and periodically review records in order to determine compliance with part 142 standards.

AMR commented that the recordkeeping location requirement in proposed paragraph (b)(2) would work only where the principal business office and the training facility are co-located, and in no case would it be workable for a satellite training center.

The FAA has considered AMR's comment and has revised proposed paragraph (b) accordingly to provide that records may be kept where training or testing takes place.

Under the NPRM, training centers certificated under part 142 would be permitted to provide ground instruction as well as training in flight simulators, flight training devices, and aircraft; however, in order to be certificated under part 142 paragraph (d) proposed that a training center applicant, in effect, would be required to "have exclusive use of" at least one FAA-approved flight simulator.

Several comments had to do with sharing of training facilities or flight simulators by several arrangements between the sharing parties.

FSI, several part 121 certificate holders, and the Regional Airline Association (RAA), commenting on proposed paragraph (d) stated, that the proposed requirement to have "exclusive use of" at least one flight simulator would preclude "dry leasing" of flight simulator time.

For the purposes of this section, the FAA intended that the term "exclusive use" include "dry leasing." The FAA recognizes that "dry leasing" is a normal practice in the industry, and that its continuation is essential to the industry for at least the foreseeable future. However, for clarity, the wording of this provision has been revised to require that the training center have the flight training equipment "available exclusively" for adequate periods of time. This is to distinguish the requirements of this section from other "exclusive use" requirements of other regulations, which may not include "dry leasing." It should be noted that the FAA did not propose to prohibit sharing of flight training equipment. In fact, the FAA anticipated that such sharing would be likely. Therefore, the FAA has revised proposed paragraph (d) by adding the words "available exclusively for adequate periods of time."

A few commenters, also commenting on proposed paragraph (d), recommended that the proposal to have readily available at least one flight simulator as a prerequisite to apply for a part 142 certificate be clarified in the rule language. Gateway Technical College commented that institutions such as theirs are unable to afford to own or lease a flight simulator, but that they are able to provide a needed service by use of flight training devices only. Gateway and Broward Community College suggest that the FAA allow a "low-end part 142 school" or a limited part 142 certificate.

The FAA believes that flight training in aircraft and in flight training devices is adequately covered by part 141 pilot schools and that the primary emphasis of part 142 training centers will be training with flight simulators. However, the FAA believes that essentially equivalent training can be accomplished by use of advanced flight training devices that represent a specific aircraft in cockpit configuration, function, and flight handling characteristics when those flight training devices are supplemented with training in the same type aircraft. Advanced flight training devices with those characteristics are currently qualified by the FAA as Level 6 and Level 7 flight training devices. Therefore, proposed paragraph (d) has been reworded to permit an applicant to obtain a part 142 certificate if it has an advanced flight training device.

In an apparent comment to proposed § 142.17 (d), ATA and several part 121 certificate holders commented that this section would "require a part 121 certificate holder...to purchase duplicate simulators, CBT stations, training aids, and other training devices for use in the part 142 school even if its part 121 devices are not 100% utilized and (are) available for contract training."

As also discussed above under proposed § 142.13 in response to a comment from United, the FAA did not intend to require duplication of flight training equipment. The commenters may have interpreted proposed paragraph (d) to mean that the exclusive use provision of proposed § 142.17 (d) could require some duplication. The FAA did not intend for air carriers to needlessly duplicate existing equipment. It only intended that the training center have exclusive use of the equipment for the period of time that is needed. As stated above, the FAA has revised proposed paragraph (d) to state that the facilities must be available exclusively for adequate periods of time to complete the required training, testing, or checking. Therefore, the duplication described by the commenters is not required.

TWA commented that the proposals in this section implied two different standards for aircraft type ratings - one for part 142 training centers and one for part 121, 135, and 141 certificate holders.

TWA, and other commenters, also raised this issue in comments to § 61.63. The FAA disposed of comments on added type ratings in the section-by-section analysis of § 61.63. In this discussion, the FAA explains that there are not two different standards for airman performance for an added type rating.

This proposed section has been changed as indicated above, has been renumbered as § 142.15, and is adopted with the changes discussed.

§ 142.19 (adopted as § 142.17) *Satellite training centers.* This section proposed that training centers would be permitted to establish satellite training centers.

Boeing and AIA commented that some provision should be made for training in remote areas.

Although part 142 provides for training centers and satellite training centers, the FAA does not intend to prevent training at sites other than the training center location or satellite training center location. Such training is permissible if the training center or satellite training center of the certificate holder complies with the requirements of part 142 relating to that remote training. The FAA will provide for training at remote sites through the training specifications.

AMR asked if a satellite training center also would have to have a flight simulator, its own principal business office, and if the parent training center's instructors could instruct at both a training center and at a satellite training center. It stated that there is an inference that a satellite training center would have to apply for a certificate, but that proposed § 142.19 would not require a certificate for a training center. It suggested that only the main training center hold a certificate.

The FAA agrees. The FAA proposed that only the principal training center must hold a training center certificate and this proposal has not been changed in the final rule.

The discussion of this section in the NPRM indicated that a satellite training center would have to have at least one simulator and the other facilities required by this part. However, it should be noted that proposed § 142.17 has been revised in response to comments to allow a person with an advanced flight training device (i.e., a Level 6 or Level 7 flight training device) to apply for a training center certificate. Thus, a satellite training center would be permitted to operate with such a device in lieu of a flight simulator.

A satellite training center need not have separate management personnel. It does not have to have a separate principal business office. Instructors and evaluators may work at more than one training center or satellite training center, provided those persons meet the requirements of part 142, as required by proposed § 142.19 (a)(2), which is adopted as § 142.17 (a)(2) in the final rule.

See the discussion of the following section for restrictions on satellite training centers located outside the United States.

This section is renumbered as § 142.17 and adopted by revising proposed paragraph (a)(2) to better clarify the location of the supervisors.

§ 142.20 (adopted as § 142.19) *Foreign training centers: Special rules.* The FAA proposed, under § 142.20, that a training center or satellite training center may be located outside the United States only if it is in a location approved by the Administrator. This section further proposed that a training center or satellite training center located outside the United States may issue U.S. pilot certificates to U.S. citizens only but may add ratings, authorizations, and endorsements to all pilot certificates issued by the FAA.

Three comments were received concerning this proposed section.

FSI asked what authority the FAA has to approve or deny locations of training centers outside the United States, since the Departments of Commerce, Defense, and State have jurisdiction over this matter.

The FAA is withdrawing its proposal to approve the location of training centers outside the United States. It is sufficient to set the standards for certification of training centers located inside and outside of the United States. Therefore, proposed paragraph (a) has been amended to remove references that the Administrator must approve the location of training centers outside the United States. Further, paragraph (a), as adopted, specifically states that certificates for training centers outside the United States are issued at the discretion of the Administrator.

AMR commented that this section seems to ignore the possibility of part 121 and part 135 initial and recurrent checks being conducted at a foreign training center.

The FAA agrees that those areas need to be specifically addressed. (See also the § 61.2 (adopted as § 61.3) discussion related to this matter.) A new paragraph (c) has been added to this section to make explicit the authority of foreign training centers to conduct proficiency checks, pilot reviews, recency of experience requirements, SIC qualifications, and other training subject to approval of the Administrator.

AIA commented that this section seems to imply that all foreign training centers must be approved by the FAA.

As indicated above in response to FSI's comment regarding approval of the location of training centers, the FAA has amended proposed paragraph (a).

In paragraph (b), the FAA proposed that a training center or satellite training center located outside the United States may issue U.S. pilot certificates to U.S. citizens only but may add ratings, authorizations, and endorsements to all pilot certificates issued by the FAA when approved to do so.

Proposed paragraph (b) is revised in this final rule to remove the reference to satellite training centers located outside the United States.

The FAA has made editorial changes to this section to make it clear that a training center may prepare and recommend applicants for certificates and ratings, but may not actually issue a certificate or rating without authorization to issue a specific kind of certificate or rating.

Also, the FAA proposed, in § 142.7, a permanent certificate. The certificate could have been suspended or terminated, but would not require renewal. The objective of this proposal was to simplify paperwork and reduce the workload for the FAA and applicants. However, the FAA has determined that there is a need to provide for periodic renewal of a certificate for those training centers outside the United States in order to ensure adequate safety oversight. Other air agencies outside the United States, such as repair stations certificated under part 145, have annual renewal requirements.

This section is renumbered as § 142.19 and adopted with the changes discussed.

§ 142.21 Prohibited drugs. Reserved. See the discussion above entitled "Part 142."

§ 142.23 Testing for prohibited drugs. Reserved. See the discussion above entitled "Part 142."

§ 142.25 Refusal to submit to a drug test. Reserved. See the discussion above entitled "Part 142."

§ 142.27 Display of certificate. No comments were received concerning this proposed section. Therefore, it is adopted as proposed.

§ 142.29 Inspections. This proposed section would require training centers to permit inspections by the FAA at reasonable times and places.

AMR made some suggestions for essentially editorial changes.

This section was adopted as proposed, with the small editorial changes suggested by the commenter.

§ 142.31 Advertising limitations. This section proposed to restrict training center advertising to that training that has been approved by the Administrator.

Boeing and AIA commented that the proposal would restrict it from offering non-FAA approved training to non-U.S. customers. Several air carrier certificate holders commented that the proposal would preclude the conduct of training not under the jurisdiction of the Administrator, such as training for foreign corporations that would meet the requirements of that foreign country. Others commented that some training centers might want to offer training in ancillary subjects that are not required by any part of 14 CFR. Commenters offered first aid, maintenance technician procedures, and meteorology as examples.

The FAA agrees that the proposed advertising limitations should be reworded to provide for circumstances such as those described by the commenters. Therefore proposed paragraph (a) has been revised to indicate that this section applies to training that is designed to satisfy any requirement of 14 CFR. Any training offered by a training center that goes in whole or in part to satisfying a requirement of 14 CFR must be approved. Training for other purposes need not be approved. Training that is not specifically approved by the FAA may not be advertised as FAA approved.

Andrews University asked whether this section would preclude a part 142 training center from operating under part 61. It suggested that training centers should be allowed to operate under part 61.

Part 61 is not considered an "operating" part of 14 CFR. Training centers certificated under part 142 will train to meet the requirements of part 61, among other parts. A training program or curriculum approved for presentation under part 142 may not be presented to meet the requirements of part 61 without a part 142 training center certificate.

This section is adopted as revised.

§ 142.33 Training agreements. No comments were received concerning this proposed section. Therefore, it is adopted as proposed.

Subpart B—Aircrew Curriculum and Syllabus Requirements

§ 142.35 Applicability. This section specifies that the training programs described by this subpart apply to that segment of aviation frequently called "general aviation" that operates under part 91, and that is not required by regulation to have a training program.

Airbus commented that this subpart is not applicable to training provided "by part 25 aircraft manufacturer's training centers to its employees, U.S. certificated employees of the aircraft manufacturer, and FAA air carrier inspectors."

This subpart applies to all training center activity except that provided by a part 121 certificate holder to another part 121 certificate holder or by a part 135 certificate holder to another part 135 certificate holder, unless the certificate holder providing such training chooses to become a part 142 certificate holder.

This section is adopted as proposed.

§ 142.37 Approval of flight aircrew training program.

The FAA proposed, in proposed paragraph (c)(1), that training programs submitted for approval specify which courses are part of a specialty training curriculum. Core curricula and specialty curricula are defined in § 142.3.

Proposed paragraphs (c)(2) and (3) require applicants, when filing an application for training program approval, to indicate which requirements the training program curriculum will satisfy and which requirements the training program curriculum will not satisfy.

AMR commented that the proposed provision of § 142.37 (c)(1) needs clarification. In simplest terms, it states, not every course must be designed to accomplish all the learning objectives required for every practical test.

ATA and several part 121 certificate holders commented that proposed paragraph (c)(1) does not make clear what constitutes an approved training program. They cite the detail of § 121.424 and appendix H of part 121 as examples of training program detail for the ATP certificate and airplane type rating. They state that it appears that an approved training program for a particular certificate or rating would consist of the maneuvers, procedures, and exercises required for the certification practical test.

The FAA agrees with the commenters about training to meet the requirements of the PTS. The areas of aeronautical knowledge for each certificate and rating are listed in the applicable section of part 61. The PTS lists the tasks, conditions, and standards of performance for all certificates and ratings. Currently, the PTS, inspector's handbooks, appendix A of part 61, and appendices E, F, and G of part 121 list maneuvers and procedures for a curriculum for only the ATP certificate and airplane type rating. Guidance on the content, style, and length of all written tests is in other documents. Other considerations to include in a training program are listed in handbooks, advisory circulars, and in other FAA publications. Section 142.37(d) outlines the general requirements for a training program. It is not necessary and not practical to put all details in 14 CFR.

FSI commented that, since paragraph (c)(2) requires an applicant for each curriculum approval to indicate which requirements of part 61 would be satisfied, the requirement in paragraph (c)(3) is redundant.

The FAA believes that both paragraphs are needed to help ensure that no requirement goes unaddressed by oversight or by assuming that the requirement will be met in some other way.

In a general comment to this section, ATA and other commenters stated that they "would strongly object to any attempt by the FAA to impose additional requirements or restrictions not related to training as a condition of (approval of a training program)." They state that they would object on the grounds that the public was not given an opportunity to comment on requirements imposed administratively.

The commenters did not provide information on their specific concerns; however, the FAA agrees in general that additional requirements unrelated to training should not be imposed without opportunity for public comment.

This section was amended by making minor editorial changes and by adding a new paragraph (b) and rearranging other proposed paragraphs. The FAA determined that a new paragraph (b) is needed to make clear that curricula approved under SFAR 58 are approved without modification for use in this part.

The section is adopted as revised.

§ 142.39 Training program curriculum requirements. This section proposed that each training program curriculum submitted for approval would have to contain a syllabus, minimum flight training equipment requirements, and minimum instructor and evaluator qualifications for each proposed curriculum. However, for AQP, the FAA proposed that approval of a curriculum under SFAR 58 would, for an applicant, constitute complete approval of that curriculum for use by a training center certificated under part 142, since the AQP application contains curriculum criteria at least as detailed as the part 142 curriculum requirements set forth in § 142.39.

Airbus commented that the section should be restructured to provide for initial and final approval of training program curricula.

Different stages of initial and final approval are specifically not a feature of part 142. After determining that a proposed training program meets all applicable requirements, the Administrator will approve the training program. If approval of a training program curriculum proves to have been inappropriate, the Administrator may use the authority of §§ 142.7 or 142.13(e) to suspend or revoke a certificate. The intention is to simplify the application and approval process. For the reason stated, this section is not revised to include a provision for initial and final approval stages.

Paragraphs (c) and (d) of this section proposed that each curriculum submitted for approval must include:

(c) Minimum instructor and evaluator qualifications for each proposed curriculum;

(d) A curriculum for initial training and continuing training of each instructor or evaluator employed to instruct in a proposed curriculum.

United commented that paragraphs (c) and (d) are not required and are overly burdensome for part 121 certificate holders.

The FAA believes that these paragraphs are necessary controls, and that presenting the instructor and evaluator qualifications to the FAA at the time of application for a part 142 certificate and changes to its curriculums would cause almost no additional burden to a part 121 certificate holder. It is even likely that existing documentation for these positions could be used in its existing format. The FAA has determined that these paragraphs should be adopted to ensure that instructors meet, and maintain, the skills considered essential for properly instructing their students.

Paragraph (e) proposed:

(e) For each training program that provides for the issuance of a certificate or rating in fewer than the minimum hours prescribed by part 61 of this chapter for training, testing, and checking conducted under part 142 of this chapter—

(1) A means of demonstrating the ability to reduce the minimum hours prescribed in part 61 of this chapter for training, testing, and checking conducted under part 142 of this chapter; and

(2) A means of tracking student performance.

Boeing and AIA commented that proposed paragraphs (e)(1) and (2) do not allow credit for previous experience in similar aircraft "per AC 120–53."

Paragraph (e) is directed to those hours which are specified in part 61, as stated, and has no impact on AC 120–53.

ATA and several part 121 certificate holders commented that the tracking required in proposed paragraph (e)(2) would be a costly and near-impossible task, that data would be sparse, and would not necessarily validate success or failure of the attempted program.

As discussed also in § 61.109, the intention of allowing a further reduction in the minimum hours of aeronautical experience is to allow maximum flexibility to a training center to develop, at some future date, innovative curriculums that might adequately train for a specific certificate or rating in fewer than the current minimum number of hours. In order to gain the privilege of further reducing minimum training hours, a training center will be required to demonstrate that it can provide proper training in fewer hours. To accomplish this, it would have to propose a method of tracking graduates and collecting data to validate training program effectiveness. Data to be tracked to point to program effectiveness might include incidents, accidents, hours flown, and type of flying. A training center would have to present historical data covering at least 1 year (or other period of time approved by the Administrator) before it could be granted a reduction in the minimum hours prescribed in this section. Data covering performance over this period of time is considered necessary to properly evaluate student performance. Data covering a shorter term would not be sufficient to allow the FAA to evaluate performance during varying seasonal conditions.

In a general comment to this section, TWA pointed out that the requirement for a letter of authorization did not appear in the proposed rule text.

The FAA did not intend to propose such a requirement. The NPRM preamble mistakenly stated that proposed paragraph (a)(4) would require a training center to issue annually a letter of authorization to each instructor for each course that instructor may teach. The final rule does not adopt such a requirement.

The FAA has reworded the reference to a curriculum, which appeared in this proposed section to instead reference a curriculum containing a syllabus to indicate that a curriculum is implemented by a syllabus. This editorial change is to maximize standardization with training program terms already in use and widely accepted.

This section is adopted with the changes discussed.

Subpart C—Personnel and Flight Training Equipment Requirements

This subpart contains instructor and evaluator eligibility requirements, addresses instructor and evaluator privileges and limitations, and addresses instructor and evaluator training, testing, and qualification for training programs approved under subpart B. This subpart also contains rules governing flight training equipment requirements.

§ 142.45 Applicability. This proposed section sets forth the personnel and equipment required for training that is to meet the requirements of part 61.

Airbus commented that this section should be restructured to exempt employees of the training center, U.S. certificated employees of the aircraft manufacturer, and FAA inspectors.

The FAA does not agree. The persons cited by the commenter are required to meet the training and certification requirements of part 61.

AMR commented that the proposal does not make clear whether an instructor or evaluator would be subject to the proposed requirements contained in both subpart C and subpart G of this part. It states that current training center practice is to use instructors to teach pilots who operate under various parts of 14 CFR.

Because the FAA has decided to delete proposed subpart G, the commenter's question is academic in this instance. However, an instructor or evaluator may instruct non-air-carrier customers and air carrier customers if the instructor or evaluator is otherwise qualified and designated by the training center to perform both functions.

With editorial changes for clarity and brevity, this section is adopted as proposed.

§ 142.47 Training center instructor eligibility requirements.

To make as many qualified instructors as possible eligible, the FAA proposed in paragraph (a) of this section that training center instructors meet only one of the following standards: Hold at least a commercial pilot certificate with an instrument rating; at the time of accepting employment, be currently qualified to instruct under part 121 or part 135; or hold a ground instructor certificate with instrument rating and meet at least the commercial pilot aeronautical experience requirements.

ATA and several other part 121 certificate holders commented that the words "at the time of accepting employment" in proposed paragraph (a)(3)(ii) was too restrictive and might preclude the hiring of some otherwise well-qualified potential instructors.

The FAA agrees with the commenters. Accordingly, this paragraph has been revised to provide that instructors may qualify for designation by training centers within 2 years of having been qualified and current to instruct for a part 121 or part 135 certificate holder in the type airplane in which the instructor

is to be designated by the training center.

ATA and others also commented that ATP certificate holders should be able to instruct others without holding any other certificate.

The FAA does not believe that the holder of an ATP certificate should be permitted to instruct persons by virtue of holding the ATP certificate, except in air transportation service as authorized by § 61.169 of this chapter. The authority of § 61.169 does not extend to instructing other airmen to qualify for the ATP certificate or instructing other holders of an ATP certificate for added ratings, except within the narrow and specific instance of instructing in air transportation service.

Moreover, in response to these commenters, the FAA has determined that instructor qualification requirements of part 142 are at least equivalent to the knowledge and skill requirements for a ground instructor certificate regardless of whether the instructor holds an ATP certificate. Accordingly, the FAA has deleted paragraph (a)(3). Other provisions of proposed paragraph (a)(3) have been moved to other paragraphs.

AMR commented that training centers should be permitted to employ persons who are not pilots to be instructors, such as maintenance instructors, and that the rule language should address that possibility.

The FAA agrees and paragraph (a) has been reworded to make it clear that the requirements of the section, and the subpart, apply only to persons who are employed as instructors in a flight training course that is subject to approval of the Administrator, as discussed under § 142.31. The FAA stated in the discussion of that section that any training offered by a training center that goes in whole or in part to satisfying a requirement of 14 CFR must be approved; however, training for other purposes need not be approved.

Paragraph (b) proposed the following:

(b) A training facility operating under an exemption to part 61 prior to August 1, 1996 may allow a person who has been employed as a simulator instructor for that training facility to continue to instruct provided the training facility—

* * * * *

(ii) Instructs only in qualified and approved flight simulators in which that person has been authorized by the Administrator to instruct within the 12 months immediately preceding certification of the employing training center.

AIA commented that paragraph (b)(2)(ii) does not allow existing instructors to transition to new equipment without complying with the new part 142 instructor qualification provisions. It states that the proposal is too restrictive and recommends that it be deleted.

AIA is correct in its interpretation that instructors transitioning to new equipment must comply with part 142 instructor qualification provisions. As an exception, proposed paragraph (b)(2)(ii) (revised and adopted as paragraph (a)(6)(iii)) is a "grandfather" provision only for persons who are employed as simulation instructors on the effective date of this final rule and who instruct only on the same equipment. Those persons who do not meet the instructor qualifications of part 142 will not be allowed expanded instructor privileges unless the instructor applicant meets the standards prescribed by part 142.

FSI commented that proposed paragraph (b)(2)(ii) (revised and adopted as (a)(6)(iii)) should be reworded to grandfather privileges of instructors in approved flight training devices as well as privileges in flight simulators.

The FAA agrees with this recommended change because instructors will be using simulation media, not just flight simulators. Proposed paragraph (b)(2)(ii) has been reworded accordingly and, as indicated above, is adopted as new paragraph (a)(6)(iii).

AMR commented that this section indirectly requires a training center instructor to hold at least a second class medical certificate.

This is not a correct interpretation of the proposal. The alternative requirements for instructors that are outlined in preceding paragraphs provide for a training center to employ instructors in simulation only who do not hold an airman medical certificate.

Since the publication of the NPRM, and in response to a petition from the public to amend existing exemptions, the FAA has allowed persons to qualify as simulator-only instructors without holding an instructor certificate, if those persons meet certain alternative qualifications. The FAA has determined that it is appropriate to include those alternative qualifications in this final rule; therefore, this section has been restructured accordingly. The alternative qualifications will allow training centers to employ as instructors persons who are former military pilots, former or current airline pilots, and other persons who may not hold an instructor certificate. Instructors who instruct in a required crewmember seat in flight must hold a flight instructor certificate with appropriate ratings and an airman medical certificate. The alternative qualification requires a training center to train a potential instructor in specified subjects, and to administer a written test following the instruction. The written test must be approved as a part of the training program. The test must be of similar complexity, difficulty, and scope as the written test for flight instructor airplane and instrument flight instructor. Training center certificate applicants and training centers may consult publication FAA–T–8081–18, *Flight and Ground Instructor Written Test Book* for guidance in developing the written test. The FAA does not intend that the test include questions about flight maneuvers such as turns about a point, chandelles, and spins.

This section is adopted with the changes discussed.

§ 142.49 Training center instructor privileges and limitations. This section proposed that, to instruct in an aircraft, a training center instructor must hold a current flight instructor certificate with certificates and ratings applicable to the aircraft used for instruction, hold at least a valid second class medical certificate, and meet the recency of experience requirements of part 61. These proposed requirements for aircraft flight instructors are the same as those currently required by part 61.

AMR commented that, by using the words "training, testing, and checking" in proposed paragraph (b), the FAA would impose these requirements on evaluators as well as instructors, and noted that there are no proposed sections dealing with evaluator privileges and limitations. AMR suggested changing the title of this section to include evaluators.

The FAA agrees that the title should be changed as recommended and has reworded the title accordingly and has added evaluation to this paragraph.

Proposed paragraph (c) included the following:

(c) A training center may not allow an instructor to—

(1) Excluding briefings and debriefings, conduct more than 8 hours of instruction in any 24-consecutive-hour period.

FSI, ATA, and several air carrier certificate holders commented that the duty times proposed in this paragraph are too restrictive.

Flight instructor duty time was discussed under § 61.169. As discussed in that section, the FAA is convinced that it is in the interest of safety to assure that instructors are not unduly fatigued when instructing pilots. The proposed duty-time limitations are considered necessary to ensure that instructors are sufficiently alert when giving required instruction.

The FAA has, however, amended this and § 61.169 to exclude briefings and debriefings in response to the concerns of these commenters.

FSI commented that the words "* * * any 24-consecutive-hour period" in proposed paragraph (c)(1) be changed to "* * * a day."

The FAA disagrees with the commenter's suggested wording, for such wording would allow an instructor to conduct 16 consecutive hours of instruction, excluding briefings and debriefings. This practice is considered unacceptable for the reasons stated above.

Proposed paragraph (c)(3)(iv) states that a training center may not allow an instructor to provide flight instruction in an aircraft unless that instructor holds at least a valid second class medical certificate.

ATA and several part 121 certificate holders commented that this paragraph should specify that an instructor who instructs only in simulation need not hold a medical certificate.

AIA commented that there was no need to require a medical certificate for flight instructors, since it was not required before.

The FAA agrees with both commenters. Paragraph (c)(3)(iv) has been amended to specify that a medical certificate is required only when instructing from a required crewmember seat in an aircraft in flight. This change simply reiterates part 61 requirements for an instructor to have a medical certificate when acting as required flight crewmember.

This section is adopted with the changes discussed.

§ 142.51 Qualifications to instruct in a flight simulator or a flight training device. Reserved. See the discussion above entitled "Part 142."

§ 142.53 Training center instructor training and testing requirements. Section 142.53 proposed initial and annual recurrent training that would be required of all training center instructors.

Paragraph (a) proposed:

(a) Prior to authorization to instruct a course of training, testing, and checking, and except as provided in paragraph (c) of this section, every 12 calendar months beginning the first day of the month following an instructor's initial authorization, a training center certificate holder must ensure that each of its instructors meet the following requirements:

(1) Each instructor must satisfactorily demonstrate to an authorized evaluator knowledge of, and proficiency in, instructing each course of training for which that instructor is authorized to instruct under this part.

FSI commented that the proposal in paragraph (a)(1) should provide that an instructor's demonstration would be made "* * * in a representative segment of a course." According to FSI, this change would provide a more suitable way to determine an instructor's knowledge and proficiency in multiple subjects in different courses for various aircraft types.

Paragraph (a) has been reworded. Changing the wording to "instructing in a representative segment of each curriculum," allows evaluation of instructors in a broad sampling of all subjects. However, the FAA has specified that the evaluation must include a representative segment from each curriculum.

Paragraph (b)(2), as originally proposed, provided that "An instructor who is unable to hold a medical certificate may not instruct. * * *" In the SNPRM referred to earlier, the FAA proposed a change to paragraph (b)(2) to eliminate the words "who is unable to hold a medical certificate," because that restriction was believed to be unnecessary.

For clarification, the FAA has further revised paragraph (b)(2) of the final rule to specifically permit an instructor to provide instruction even if he or she does not hold an airman medical certificate, provided that the instructor is otherwise qualified. It is also revised by removing an obsolete reference "advanced simulation plan."

Proposed paragraph (b)(2)(ii)(B) requires instructors to participate in an in-flight observation training course, that includes three takeoffs and three landings, and that includes performing at least 1 hour of LOFT as the sole manipulator of the controls. The 1 hour of LOFT must be performed in a flight simulator that replicates an aircraft of the same class and, if a type rating is required, of the same type as the aircraft represented by the qualified and approved flight simulator in which that instructor is designated to instruct.

Several commenters stated that paragraph (b)(2)(ii)(B) refers to Level C or Level D flight simulators, and suggested that appendix H of part 121 be changed by this rulemaking to indicate levels instead of phases.

The proposed requirement contained in this paragraph can be accomplished only in Level C or Level D flight simulators, as the Administrator currently qualifies flight simulators. As discussed above in the section of this document entitled "Related Activity," the FAA has issued an NPRM entitled "Part 121; Appendix H, Advanced Simulation Plan Revisions" [60 FR 8490; February 14, 1995] to update and revise appendix H of part 121. In that NPRM, the FAA proposes to change all references from "phases" to "levels" in part 121, appendix H.

ATA and several other commenters stated that paragraph (c) of this section establishes a base-month concept for instructor recurrent qualifications, and suggested instead an annual requirement only, similar to the requirement appropriate to part 121 certificate holders.

The FAA does not agree. The commenter's suggestion apparently would allow training centers to provide recurrent training to instructors as infrequently as every 24 months. The FAA believes that 12 months is the maximum period that should be allowed between recurrent qualifications. Therefore, the FAA has adopted the recurrent training requirement once each 12-month period, as proposed.

General Comments to § 142.53 as Proposed

ATA commented that, in many cases, part 121 instructor training is more comprehensive than the training that would be required under this section and under § 142.55. It recommended that wording be incorporated to credit an instructor with equivalent training that he or she may have completed in a part 121 instructor training course.

The FAA agrees. Accordingly, a new paragraph (d) has been added to permit an instructor to receive credit for equivalent instructor training courses taken under part 121 or other courses the Administrator finds equivalent.

AMR commented that this section and title should be amended to specify that instructors who teach in courses not leading to pilot certification under part 61 are not subject to the provisions of this section.

The proposed requirements contained in this section apply to instruction designed to satisfy only various requirements of 14 CFR. They address, among other things, courses for review, proficiency, added ratings, and authorizations in addition to certification. As discussed in the section-by-section discussion of § 142.31, the instructor qualification requirements of part 142 do not apply to courses that are not designed to satisfy any part of 14 CFR and that are not subject to approval of the Administrator.

One commenter asked why simulation-only instructors are not required to complete initial or recurrent training in aircraft, the same as instructors who instruct in flight.

The FAA has used past experience and recommendations from a joint industry-FAA working group to form alternatives to in-flight training, testing, and checking that ensure an equivalent level of safety, since simulation-only instructors will not be instructing in aircraft.

ATA and several part 121 certificate holders commented that proposed § 142.91 in subpart G, which paralleled this section and has been withdrawn, should have a paragraph added to require an annual written test and an annual proficiency check in each flight simulator, flight training device, and/or aircraft in which the instructor will be instructing. According to these commenters, the test and check should cover the maneuvers that the instructors will be instructing in.

The FAA agrees and has revised this proposed parallel section accordingly.

AMR asked if an instructor could instruct under subpart C and subpart G at the same time. It recommended that this should be permitted.

Although subpart G has been withdrawn, instructors will be permitted to provide instruction to air carrier clients and non-air-carrier clients if otherwise qualified.

AIA commented: "This (sic) is more restrictive than existing check pilot requirements. Why?"

The commenter apparently is referring to this entire section as being restrictive. The FAA would not describe this as more, or less, restrictive than existing check pilot requirements. Check pilots are employed in parts 121 and 135. They provide checks pursuant to the comprehensive training programs required by those parts. A check pilot has functions and responsibilities different from those of a part 142 training center instructor. Thus, the training and checking provisions proposed for part 142 instructors have been tailored to meet part 142 requirements. They necessarily are different than the training and testing requirements applicable to check pilots performing checks under part 121 and part 135.

This section is adopted with the several changes discussed.

§ 142.55 Training center evaluator requirements. Paragraph (a) of this section proposed the requirements for an evaluator, as follows:

> (a) In order to authorize a person as evaluator, a training center must ensure that the person—
>
> (1) Is approved by the Administrator;
>
> (2) Is in compliance with §§ 142.47, 142.49, and 142.53 of this part; and
>
> (3) Prior to authorization, and except as provided in paragraph (b) of this section, every 12-calendar-month period following initial designation satisfactorily completes a course of training provided by the training center that includes the following:
>
> (i) Pilot evaluator duties, functions, and responsibilities;
>
> (ii) Methods, procedures, and techniques for conducting required checks;
>
> (iii) Evaluation of pilot performance; and
>
> (iv) Management of unsatisfactory checks and subsequent corrective action.

AMR, commenting on proposed paragraph (a), stated that it was not clear if training center evaluators will have authority equivalent to designated examiners or pilot proficiency examiners, and asked for clarification.

Under part 142 an "evaluator" is a person who determines competence of persons applying for a number of different certificates and ratings subject to 14 CFR on behalf of the Administrator. By contrast, designated examiners and pilot proficiency examiners have more limited authority.

ATA and several part 121 certificate holders commented that proposed § 142.93 in subpart G, which paralleled this section and has been withdrawn, should have a paragraph added to require an annual written test and an annual proficiency check in each flight simulator, flight training device, and/or aircraft in which the instructor will be instructing. According to these commenters, the test and check should cover the maneuvers that the instructors will be instructing in.

The FAA agrees and has added a new paragraph (a)(4) to clarify the request of the commenters.

As discussed above, under § 142.53, pursuant to an ATA comment, the FAA has determined that it is appropriate to give credit to potential evaluators who have completed a part 121 evaluator training course.

Accordingly, a new paragraph (c) has been added to permit an evaluator to receive credit for equivalent evaluator training courses taken under part 121 or part 135 that the Administrator finds equivalent.

In response to several comments on proposed § 142.93 (withdrawn) the FAA has added a new paragraph (d) to this parallel section to except evaluators, qualified in accordance with SFAR 58, from the evaluator requirements of this section.

In addition to the above-referenced revisions, several editorial changes have been made. In proposed paragraph (b) the term "instructor" is replaced with "evaluator." The term "curriculum" has been substituted for the term "training course" and the term "tests" has been substituted for the term "checks." The editorial changes have been made to bring the terms into conformity with the commonly accepted definitions as used in numerous other parts of 14 CFR and numerous FAA publications.

With the changes discussed, this section is adopted as proposed.

§ 142.57 Aircraft requirements. Paragraph (a)(1) and (a)(2) of this section proposed that training center aircraft used for instruction be civil aircraft of U.S. registry if used in the United States, and that training centers located outside the country could use aircraft registered in the host country.

Several commenters, including in effect Airbus, discussed the need to train in customer-owned aircraft which might be registered in another country, be operated by the aircraft manufacturer during pre-certification, or be operated under an export certificate of airworthiness.

The FAA agrees and has determined that it is unnecessary to specifically provide for the registration of the aircraft being used. It is sufficient that the training center will have to comply with the registration requirements of the country of operation. Accordingly, proposed paragraphs (a)(1) and (2) have not been adopted. This change should relieve the commenter's concern. These changes will allow training centers more flexibility to train customers in customer-owned aircraft.

With minor editorial changes and restructuring to proposed paragraph (b), this section is adopted as amended.

§ 142.59 Flight simulators and flight training devices. Section 142.59(a) proposed that flight simulators and flight training devices used in an approved training program must be qualified by the Administrator. Paragraph (a) of this section also proposed that a flight simulator or flight training device be approved for use in a training center training program curriculum. The preamble to paragraph (a) contained the statements "Simulation has benefit only if behaviors learned can be transferred to the aircraft. No effective transfer of learning has been demonstrated except from flight simulators and flight training devices that accurately replicate the performance of an aircraft."

ATA and several part 121 air carriers commented that the statement about effective transfer of learning is untrue.

Based on its experience with flight simulation and on study evidence available to its National Simulator Program Manager (NSPM), the FAA has concluded that the statements are true. While some learning may transfer from devices that do not accurately replicate aircraft, the experience gained is not adequate to justify their use as a sole means of training, testing, and checking.

A few air carriers commented that they were not sure what was meant by the words "make, model, and series" used in an example that was provided in the NPRM preamble to proposed paragraph (a)(1), which stated, "If part 61 * * * requires landing in a particular make, model, and series aircraft, then a flight simulator used to simulate that aircraft would have to be qualified and approved both for the visual landing and to simulate the make, model, and series of aircraft." They provide an example of an aircraft type and different models of that type.

The commenters are correct. The FAA did not intend to distinguish between manufacturers' models of the same aircraft type. To make it clear that only the particular aircraft type need be simulated, as intended, the FAA has added the words "or aircraft type" to the text of paragraph (a)(1) in the final rule. Section 142.59(c)(1) proposed that flight simulators and flight training devices used by training centers be maintained to ensure the reliability of the performances, functions, and all other characteristics that were required for initial qualification of the equipment.

One commenter pointed out an editorial omission of the word "qualification" in the text of this paragraph. The commenter indicated that the last word of proposed paragraph (c)(1) should be "qualification" and not "approval."

The technical guidelines for flight simulators are listed in AC 120–45, as amended. That AC defines qualification as distinct from, and preceding, approval of a flight simulator. The FAA has determined that it should continue the use of commonly accepted words to avoid possible confusion.

Section 142.59(c)(3) proposed that flight simulators and flight training devices used under part 142 be given a functional check before being used. Further, this paragraph proposed that training center instructors must keep a discrepancy log, and enter all discrepancies in that log at the end of each training session or check.

One commenter asked how often the preflight requirement must be met and also the purpose of the requirement.

The preflight is required each day the flight simulator is used. The FAA added the words "each day" to proposed paragraph (c)(3) to make clear the requirement for frequency of preflight inspections. The purpose of preflight inspections is for the instructor to determine whether the applicable Simulator Component Inoperative Guide (SCIG), if any, has been met, or whether all simulator components needed for a specific training or testing period are present and operative. The FAA believes that, to ensure effective training, a flight simulator or flight training devices must accurately replicate the performance of an aircraft. The FAA can determine that flight simulation accurately replicates an aircraft only if all components of a flight simulator or flight training device are checked for proper operation before the device is used.

Section 142.59(d) proposed that, unless otherwise authorized by the Administrator (in an SCIG), all components on a flight simulator or flight training device used by a training center must be operative to ensure faithful replication of aircraft capabilities.

Several comments were received concerning this proposal. Generally, the comments addressed aircraft Minimum Equipment List (MEL), and the fact that the FAA has not developed a master MEL for flight simulators.

The FAA is amending paragraph (d) this section to provide that no component of a simulator may be inoperative, missing, or malfunctioning if that component is required for or involved in the planned training, testing, or checking. A flight simulator or flight training device SCIG is a guide approved by the Administrator that indicates the specific training, testing, or testing tasks that are authorized. It also indicates the restrictions imposed, if a component is inoperative, malfunctioning, or missing. At this time, the FAA does not plan to issue an SCIG or master SCIG, but intends instead to allow any training center applicant or training center to develop its own for the various courses which it may teach and submit it to the FAA for approval. The FAA will review and approve an SCIG developed and submitted by a training center.

Section 142.59(e) proposed to allow training centers to use flight simulators in approved courses without specific route or terminal aids and visual scenes.

While the FAA did not receive comments on this proposed section, ATA and others commented in response to the proposed companion section, § 142.97, (since withdrawn), that operator specific routes may be necessary. The commenters stated that the relaxed specific route requirements during LOFT would not meet the requirements of § 121.409(b)(3).

The FAA understands the commenter's concern. LOFT or other LOS may be used for purposes other than necessarily satisfying § 121.409. If a particular air carrier wants a particular route or other detail represented, it may require that of the training center with which it contracts. It is inefficient for certification and type rating training and testing for all airmen to be subject to an absolute requirement for training along a particular route, which may be "repositioned along" anyway. The FAA believes it is appropriate to leave it to the discretion of a particular air carrier to determine if it wants a specific route simulation in its training program. Therefore, this section is adopted as proposed.

Jet Exam, commented that the language of this section could be interpreted to mean that a training center applicant would have to obtain training program approval or a training course approval before it could request approval of a simulator, and that this would be an unnecessary burden on the applicant.

The FAA agrees with the commenter's observation that obtaining approval of a training course before obtaining approval for a flight simulator could be an economic burden. However, the FAA did not propose that a certificate applicant would have to obtain training program approval or a training course approval before it could request approval of a simulator.

A commenter suggested that the acronym "NSPM" should be changed to "the Administrator." According to the commenter, this would allow for the possibility of renaming of that function or redelegation of its functions.

The FAA notes that, while the acronym "NSPM" is used in the NPRM preamble to this section, it did not appear in the NPRM proposed rule text. However, the FAA did use the term "Administrator" in the rule text of the NPRM and final rule as the commenter has suggested.

The FAA added a clause excepting AQP from the requirements of this section, to be consistent with the exception of AQP from the requirements of § 142.39. With that addition, and the other changes discussed, this section is adopted as proposed.

Subpart D—Operating Rules

This subpart sets forth proposed operating rules for training centers that provide training in accordance with subpart B of part 142.

§ 142.61 Applicability. The FAA proposed in this section that the operating rules in this subpart would apply to training centers providing training to clients other than air carrier clients.

Airbus commented that the applicability of subparts D and E should

be amended to permit aircraft manufacturer training centers who intend to train only part 121 aircrews, their own employees, U.S. certificated employees of the manufacturer, and FAA inspectors to conduct that training under subparts F, G, H, and I of part 121. The commenter states that part 121 requirements are the most appropriate criteria for these trainees since their duties are related to large aircraft that are operating in air carrier service. Airbus made the same comment about FAA inspectors in comments about several other sections. Other commenters made an essentially identical comment in reference to some applicability sections.

The FAA does not agree that the groups of trainees identified by the commenter should be trained under any rules different from the rules governing certification and type rating requirements for airmen at large. The only exception (a waiver under the authority of appendix A of part 61) is for aircrew employees completing an air carrier training program and meeting other terms of the waiver provision of appendix A. The persons identified by the commenters specifically do not meet the waiver requirements. Large airplanes are operated by persons other than air carrier certificate holders. The FAA certificates airmen to operate aircraft of various sizes under the provisions of several parts of 14 CFR. The part of 14 CFR under which a pilot is operating, and not the size of the airplane flown by the pilot, determines the pilot's prerequisite qualification and certification requirements.

Several of the comments made about this section are similar, or identical to, comments made about proposed §§ 61.63, 61.64, 61.157, and 61.158. The comments generally addressed applicability of specific training programs to various groups of airmen and the perception of a dual standard for an ATP certificate.

The FAA response to those similar or identical comments apply also to this section. Refer to those sections for discussion of related comments.

For the reasons discussed, this section is adopted as proposed.

§ 142.63 Privileges. Section 142.63 proposed to permit training center instructors and evaluators to meet recency of experience requirements in a flight simulator or flight training device, if the flight simulator or flight training device is used in a course approved in accordance with subpart B or subpart F, as applicable.

This section was revised to delete a reference to subpart F, which has been withdrawn, and to recognize that AQP makes separate and valid provisions for recency of experience of simulation instructors. With the revisions mentioned, this section is adopted as proposed.

§ 142.65 Limitations. Because the FAA intends that flight simulators used in testing, checking, or LOS provide the same time constraints and sequential, or overlapping, circumstances that occur in an actual aircraft, § 142.65 (a) proposed to prohibit the use of flight simulator or flight training device repositioning, freeze, or slow motion features during testing, checking, and LOFT.

ATA, several part 121 certificate holders, and an aircraft manufacturer commented that prohibiting the use of repositioning during LOFT might cause several hours of simulated cruise flight with very little value.

The FAA agrees with the commenters, and has revised proposed paragraph (a) by adding paragraph (a)(2) to permit the use of reposition along a route of flight to a point where the descent and approach phase of the flight begins. Also, in paragraph (a)(1), any slow motion, hold, or reposition features may be used at any time during training and practice, to help stimulate the simulation industry by helping minimize nonproductive time spent in a flight simulator.

Proposed § 142.65(b)(1) would require a crewmember qualified in the aircraft category, class, and type, if a type rating is required, to occupy each crewmember position during testing, checking, or LOS. During Category II and Category III testing, the copilot position would have to be occupied by a pilot qualified to perform the duties of an SIC for Category II or Category III operations, as applicable.

Airbus commented that this section would effectively prohibit the use of a medically disqualified (simulated) PIC during SIC training and testing unless the PIC had been fully qualified before serving in this capacity.

The FAA believes that a PIC should be able to function as a required crewmember during simulation testing even though he or she does not hold a valid medical certificate, provided that he or she is otherwise qualified in the flight simulator or was qualified in the aircraft type before losing medical certification. The FAA has determined that there is no safety hazard created by persons operating flight simulators without a valid medical certificate. Accordingly, a new paragraph (b)(3) has been added to allow for use of a PIC meeting the circumstances just discussed, and the section is adopted as otherwise proposed.

Subpart E—Recordkeeping

§ 142.71 Applicability. Proposed subpart E, "Recordkeeping," prescribed the records that a training center certificate holder must maintain for students who are not aircrew employees of operators under parts 121, 125, or 135, and the records that would have to be maintained for instructors and evaluators authorized in accordance with subpart B of part 142.

Airbus offered the only comment. It suggested that certain persons, including FAA inspectors, should be excluded from the applicability of training or testing under this subpart.

The FAA does not agree with the suggestion. All of the persons identified by Airbus, including FAA inspectors, must complete the same certification requirements of 14 CFR that apply to other airmen.

For the reason discussed, this section is adopted as proposed.

§ 142.73 Recordkeeping requirements. Under this proposed section, the FAA specified that a training record would have to be maintained for each person who is enrolled in a course for which that person is to gain credit toward satisfying any requirement of 14 CFR. Paragraph (d) proposed:

(d) The certificate holder must provide to the Administrator, upon request and at a reasonable time and in a reasonable place, the records required by paragraphs (a) and (b) of this section.

Only one comment was received. The commenter suggested that the only practical place to keep the required records is at the training center where the activity requiring records takes place. It suggested that paragraph (d) be reworded accordingly.

The FAA agrees and has reworded paragraph (d) to require that the records be kept at the training center or satellite training center where the training is conducted, or at another site approved by the Administrator.

The FAA has revised paragraph (c) to provide that records of qualification to act as instructor or evaluator must be maintained for the period of time that the individual is employed.

This section is adopted as otherwise proposed.

Subpart J—Other Approved Courses (adopted as Subpart F)

§ 142.115 (adopted as § 142.81) Conduct of other approved courses. The FAA proposed in this section (formerly numbered as § 142.115 and now renumbered to § 142.81) to provide that training centers or training center applicants may apply for approval to conduct training for persons other than pilot crew members. Under the proposal, a course may be approved by the Administrator upon a finding that it provides a curriculum that will achieve a level of competency equal to, or greater than that required by the appropriate part of 14 CFR.

A few commenters stressed that many types of training do not require FAA approval and that subpart J should be deleted.

While it is true that many courses of training do not require FAA approval, there are several that do, and others that may at some future date require such approval. This proposed subpart is intended to allow a training center or a training center applicant to apply for approval of curricula for persons other than air crews.

TDM Group, Inc., described a flight attendant training program that it is undertaking with McDonnell Douglas and Continental Airlines. It remarked that it would like to begin such training under part 142, and encouraged the Administrator to keep and to expand this subpart.

For the reasons discussed, this section is renumbered as § 142.81 instead of § 142.115 and is adopted as proposed. A minor editorial change has been made to proposed paragraph (c) to indicate that an applicant for course approval must comply with the applicable requirements of "subpart A through subpart F of this part" rather than "subpart B or subpart F of this part" as stated in the proposal.

Editorial Corrections

In addition to the revisions discussed above, a number of editorial changes have been made to the text of the final rule including the renumbering of several paragraphs to conform to the current format and style of the regulations.

Harmonization With ICAO, JAA, and JAR

The proposals adopted in this rulemaking have been compared to ICAO Annex I, "Personnel Licensing," and the JAA/JAR. This rule is compatible with international agreements and parallel regulations, except for the differences which follow:

1. Section 61.65, "Instrument rating requirements," will allow credit for 35 hours of simulated or actual instrument time for those applicants who complete an entire approved instrument curriculum at a training center certificated under part 142. ICAO Annex I, Chapter 2, § 2.6.1.2.2 allows only 30 hours of credit, and requires 10 hours of that experience to be in an actual aircraft.

2. Section 61.113, "Rotorcraft rating: Aeronautical experience," will allow an applicant to qualify for this rating with 35 hours of flight experience, any part of which may be simulated flight, if that applicant completes an entire approved helicopter rating curriculum at a training center certificated under part 142. ICAO Annex I, Chapter 7, § 2.7.1.3.1 requires 40 hours of flight experience for this rating, of which only 5 hours can be simulated flight.

3. Section 61.129, "(Commercial) Airplane rating: Aeronautical experience," will allow up to 100 hours of flight time to be simulated flight if accomplished in an approved flight simulator or approved flight training device, and any part of the 190 hour total experience requirement to be simulated flight if the applicant completes an entire approved commercial airplane curriculum at a training center certificated under part 142. ICAO Annex I, Chapter 7, § 2.4.1.3 allows credit for only 10 hours of simulated flight experience. It should be noted that the superseded § 61.129 allowed credit for 50 hours of simulated flight time toward this rating, which was different from ICAO standards.

The FAA will file a Statement of Differences with ICAO to notify that body of the listed differences.

Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this rule have been approved by the Office of Management and Budget and have been assigned number 2120–0570. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Regulatory Evaluation Summary

Changes to Federal regulations are required to undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. With respect to this final rule, the FAA has determined that it: (1) Will generate benefits that justify its costs and is a "significant regulatory action" as defined in the Executive Order; (2) is significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; and (4) will not constitute a barrier to international trade. Therefore, a full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise analysis of this final rule in a regulatory evaluation, which is summarized in the following paragraphs.

Benefits

This rule provides benefits by reducing the amount of training aircraft flight hours. The increased substitution of on-the-ground training in flight simulators and flight training devices for in-the-air training in aircraft decreases the risk of fatal aviation accidents while training. The increased substitution also yields cost savings resulting from reduced fuel and oil consumption (energy conservation), as well as reduced required maintenance costs.

Most of the cost savings come from lowered operations costs, resulting from using simulators and training devices instead of aircraft. The estimated savings from existing simulator training centers training pilots under parts 121, 135, and 91 will be $1.2 billion ($808 million discounted) over the next 10 years. Furthermore, the final rule will generate additional savings from increased simulator training of general aviation pilots over the next decade that total $37 million ($23 million discounted). The total discounted savings attributed to reduced training aircraft flight hours equals $831 million over the next 10 years.

The FAA also estimates the value of the safety benefit at $42 million ($26 million discounted) over the same period. Thus, the total discounted value of part 142 benefits equals $857 million: $832 million resulting from greater energy conservation, and $26 million resulting from reduced training accidents.

Costs

Two elements make up the additional administrative cost of part 142: (1) The cost for organizations currently engaged in flight instruction to apply to qualify for a part 142 certificate; and (2) the cost for the government to process and to monitor those applications as well as to inspect and to train the inspectors of part 142 training centers. Over one-half of the estimated administrative costs to

implement the simulator rule will be incurred in the first 2 years.

The total 10-year additional administrative cost to implement part 142 is estimated to be about $1.6 million ($1.3 million discounted) of which over one-half or $881,000 ($797,000 discounted), is expected to be incurred in the first 2 years. Of this amount, $57,000 ($52,000 discounted) are applicant costs, and $824,000 ($745,000 discounted) are FAA costs. The balance, $731,000 ($477,000 discounted) represents FAA monitoring costs over the remaining 8 years.

The FAA expects that the costs of operating simulators for the newly certificated part 142 training centers will continue to be the same as those incurred in operating those same simulators under the rigid standards and requirements imposed by FAA exemptions. The costs of meeting these FAA standards and requirements are captured in this analysis as part of the operating costs of a simulator. This cost has been subtracted from the cost of in-flight training which it replaces, in computing the cost savings from simulator training.

Benefit-Cost Comparison

The preceding sections show that this final rule will result in benefits ($858 million discounted) that far exceed the costs ($1.3 million discounted) imposed by the rule. Therefore, the FAA has determined that the simulator final rule is cost beneficial.

The NPRM established the benefit-to-cost ratio as 3:1; the final rule, using a more comprehensive definition of benefits, establishes the benefit-to-cost ratio as approximately 660:1. This is explained, in part, by a reduction in total costs from approximately § 3.5 million, discounted in the NPRM estimate to approximately § 1.3 million, discounted in the final rule estimate. This reduction results from the abandoning of the concept of an FAA national field office to manage certificated simulator training centers.

Most of the increase in the benefit-cost ratio, however, is explained by the substantial increase in cost-savings benefits ($11 million, discounted NPRM estimate relative to $858 million discounted final rule estimate) resulting from a more comprehensive definition of benefits. Both the NPRM and the final rule take into account cost-saving benefits attributed to the substitution of simulator hours for training aircraft flight hours as well as to the averting of some aircraft training accidents. In the NPRM, however, the FAA only accounted for cost savings attributed to the incremental hours of simulator training substituted for general aviation pilot training. The final rule assigns cost savings to not only this subgroup, but to all parts 121, 135, and other 91 subgroups that currently provide training under exemption. Finally, the value of life used in the final rule to measure potential training accident fatalities averted was revised from $1.5 million to $2.7 million.

International Trade Impact Analysis

The FAA has determined that this rule will not have a significant impact on international trade. The FAA believes that the final rule will not negatively effect operators in the training of foreign citizens who accomplish such pilot training in the United States. Nor will the final rule have a significant impact on international trade should the training occur outside the United States, so long as the use of simulators outside the United States is in compliance with FAA standards and requirements if the intent is for U.S. pilot certification.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of small entities."

The FAA has adopted criteria and guidelines for rulemaking officials to apply when determining whether a proposed or existing rule has any significant economic impact on a substantial number of small entities. Based on these criteria, a small air carrier is one that owns nine or fewer aircraft. A small simulator training school has 10 or fewer employees. A substantial number of small entities is not less than 11 or more than one-third of affected small entities.

The FAA has determined that 37 pilot training schools and 10 contract trainers now train under exemption from specific part 61 requirements. These organizations will incur some costs in applying for part 142 certification. Most of these schools employ more than 10 employees (the small entity threshold); however, the FAA does not expect that those that do not will experience any unnecessary and disproportionate burden by Federal regulations.

With regard to seven part 121 and part 135 operators holding exemptions to train using simulators, each has more than nine aircraft. Hence, no part 121 or 135 air carriers affected by this rule are small entities.

The FAA, therefore, has determined that this rule will not have a substantial impact on a significant number of small entities.

Federalism Implications

The regulations announced herein would not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12286 and that this rule would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the rule, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the regulatory docket.

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 61

Aircraft, Airmen.

14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Part 125

Aircraft, Airmen, Aviation safety.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety.

14 CFR Part 141

Airmen, Educational facilities, Schools.

14 CFR Part 142

Administrative practice and procedure, Aircraft, Airmen, Drug testing, Educational facilities, Reporting and recordkeeping requirements.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR chapter I as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

3. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

4. Section 1.1 is amended by adding the following definitions in alphabetical order to read as follows:

§ 1.1 General definitions.

* * * * *

Category IIIa operations, an ILS approach and landing with no decision height (DH), or a DH below 100 feet (30 meters), and controlling runway visual range not less than 700 feet (200 meters).

Category IIIb operations, an ILS approach and landing with no DH, or with a DH below 50 feet (15 meters), and controlling runway visual range less than 700 feet (200 meters), but not less than 150 feet (50 meters).

Category IIIc operations, an ILS approach and landing with no DH and no runway visual range limitation.

* * * * *

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

5. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

6. Section 61.2, 61.3, and 61.5 are redesignated as §§ 61.3, 61.5, and 61.6.

6A. A new § 61.2 is added to read as follows:

§ 61.2 Definition of terms.

For the purpose of this part:

(a) *Authorized Instructor* means—

(1) An instructor who has a valid ground instructor certificate or current flight instructor certificate with appropriate ratings issued by the Administrator;

(2) An instructor authorized under part 121 (SFAR 58), part 135, or part 142 of this chapter to give instruction under those parts; or

(3) Any other person authorized by the Administrator to give instruction under this part.

(b) *Flight Simulator, Airplane* means a device that—

(1) Is a full-sized airplane cockpit replica of a specific type of airplane, or make, model, and series of airplane;

(2) Includes the hardware and software necessary to represent the airplane in ground operations and flight operations;

(3) Utilizes a force cueing system that provides cues at least equivalent to those cues provided by a 3 degree freedom of motion system;

(4) Utilizes a visual system that provides at least a 45° horizontal field of view and a 30° vertical field of view simultaneously for each pilot; and

(5) Has been evaluated, qualified, and approved by the Administrator.

(c) *Flight Simulator, Helicopter* means a device that—

(1) Is a full-sized helicopter cockpit replica of a specific type of aircraft, or make, model, and series of helicopter;

(2) Includes the hardware and software necessary to represent the helicopter in ground operations and flight operations;

(3) Utilizes a force cueing system that provides cues at least equivalent to those cues provided by a 3 degree freedom of motion system;

(4) Utilizes a visual system that provides at least a 45° horizontal field of view and 30° vertical field of view simultaneously for each pilot; and

(5) Has been evaluated, qualified, and approved by the Administrator.

(d) *Flight Training Device* means a device that—

(1) Is a full-sized replica of instruments, equipment, panels, and controls of an airplane or rotorcraft, or set of airplanes or rotorcraft, in an open flight deck area or in an enclosed cockpit, including the hardware and software for systems installed, necessary to simulate the airplane or rotorcraft in ground operations and flight operations;

(2) Need not have a force (motion) cueing or visual system; and

(3) Has been evaluated, qualified, and approved by the Administrator.

(e) *Set of airplanes or rotorcraft* means airplanes or rotorcraft which all share similar performance characteristics, such as similar airspeed and altitude operating envelope, similar handling characteristics, and the same number and type of propulsion systems.

7. Section 61.3 is revised to read as follows:

§ 61.3 Certification of foreign pilots and flight instructors.

(a) A person who is neither a U.S. citizen nor a resident alien may be issued a pilot certificate or flight instructor certificate under this part (other than under § 61.75 or § 61.77), outside the United States, only when the Administrator finds that—

(1) The pilot certificate is needed for the operation of a U.S.-registered civil aircraft; or

(2) The flight instructor certificate is needed for the training of students who are citizens of the United States.

(b) Training centers, and their satellite training centers certificated under part 142 of this chapter, may, outside the United States—

(1) Prepare and recommend applicants for additional ratings and endorsements to certificates issued by the Administrator under the provisions of this part, and award additional ratings and endorsements within the authority granted to that training center by the Administrator; and

(2) Prepare and recommend U.S. citizen applicants for airman certificates, and issue certificates to U.S. citizens within the authority granted to that training center by the Administrator.

8. Section 61.5 is amended by revising the introductory text of paragraph (d), revising paragraph (f), and adding new paragraphs (i) and (j) to read as follows:

§ 61.5 Requirement for certificates, rating, and authorizations.

* * * * *

(d) *Flight instructor certificate.* Unless otherwise authorized by the Administrator, and except for lighter-than-air instruction in lighter-than-air aircraft, no person other than the holder of a flight instructor certificate issued in accordance with subpart G of this part, with an appropriate rating on that certificate, may—

* * * * *

(f) *Category II pilot authorization.* (1) No person may act as pilot in command of a civil aircraft during Category II operations unless—

(i) That person holds a current Category II pilot authorization for that category or class of aircraft, and the type of aircraft, if applicable; or

(ii) In the case of a civil aircraft of foreign registry, that person is authorized by the country of registry to act as pilot in command of that aircraft in Category II operations.

(2) No person may act as second in command of a civil aircraft during Category II operations unless that person—

(i) Holds a valid pilot certificate with category and class ratings for that aircraft and a current instrument rating for that category aircraft;

(ii) Holds an airline transport pilot certificate with category and class ratings for that aircraft; or

(iii) In the case of a civil aircraft of foreign registry, is authorized by the country of registry to act as second in command of that aircraft during Category II operations.

* * * * *

(i) *Category III pilot authorization.* (1) No person may act as pilot in command of a civil aircraft during Category III operations unless—

(i) That person holds a current Category III pilot authorization for that category or class of aircraft, and the type of aircraft, if applicable; or

(ii) In the case of a civil aircraft of foreign registry, that person is authorized by the country of registry to act as pilot in command of that aircraft in Category III operations.

(2) No person may act as second in command of a civil aircraft during Category III operations unless that person—

(i) Holds a valid pilot certificate with category and class ratings for that aircraft and a current instrument rating for that category aircraft;

(ii) Holds an airline transport pilot certificate with category and class ratings for that aircraft; or

(iii) In the case of a civil aircraft of foreign registry, is authorized by the country of registry to act as second in command of that aircraft during Category III operations.

(j) *Exceptions.* Paragraphs (f) and (i) of this section do not apply to operations conducted by the holder of a certificate issued under part 121 or part 135 of this chapter.

9. A new § 61.4 is added to read as follows:

§ 61.4 Qualification and approval of flight simulators and flight training devices.

Each flight simulator and each flight training device used for training, for which an airman is to receive credit to satisfy any training, testing, or checking requirement under this chapter, must be qualified and approved by the Administrator for—

(a) The training, testing, and checking for which it is used;

(b) Each particular maneuver, procedure, or crewmember function performed; and

(c) The representation of the specific category and class of aircraft, type of aircraft, particular variation within type of aircraft, or set of aircraft in the case of some flight training devices.

10. Section 61.13 is amended by revising paragraph (e) to read as follows:

§ 61.13 Application and qualification.

* * * * *

(e) The following requirements apply to a Category II pilot authorization and to a Category III pilot authorization:

(1) The authorization is issued by a letter of authorization as a part of the applicant's instrument rating or airline transport pilot certificate.

(2) Upon original issue the authorization contains a visibility limitation—

(i) For Category II operations, the limitation is 1,600 feet RVR and a 150-foot decision height; and

(ii) For Category III operations, each initial limitation is specified in the authorization document.

(3) Limitations on an authorization may be removed as follows:

(i) In the case of Category II limitations, a limitation is removed when the holder shows that, since the beginning of the sixth preceding month, the holder has made three Category II ILS approaches with a 150-foot decision height to a landing under actual or simulated instrument conditions.

(ii) In the case of Category III limitations, a limitation is removed as specified in the authorization.

(4) To meet the experience requirement of paragraph (e)(3) of this section, and for the practical test required by this part for a Category II or a Category III authorization, a flight simulator or flight training device may be used if it is approved by the Administrator for such use.

* * * * *

11. Section 61.21 is amended by revising the section heading and the first sentence to read as follows:

§ 61.21 Duration of Category II and Category III pilot authorization. (for other than part 121 and part 135 use).

A Category II pilot authorization and a Category III pilot authorization expire on the last day of the sixth month after the month last issued or renewed. * * *

12. Section 61.39 is amended by adding new paragraphs (a)(6) and (a)(7) to read as follows:

§ 61.39 Prerequisites for flight tests.

* * * * *

(a) * * *

(6) If all increments of the practical test for a certificate or rating are not completed on one date, all remaining increments of the test must be satisfactorily completed not more than 60 calendar days after the date on which the applicant begins the test.

(7) If all increments of the practical test are not satisfactorily completed within 60 calendar days as required by paragraph (a)(6) of this section, the applicant must retake the entire practical test, including those increments satisfactorily completed.

* * * * *

13. Section 61.45 is amended by revising the section heading and paragraphs (a), (c), and (d) to read as follows:

§ 61.45 Practical tests: Required aircraft and equipment.

(a) *General.* Except when an applicant for a certificate or rating under this part is permitted to accomplish the entire flight increment of the practical test in a qualified and approved flight simulator or in a qualified and approved flight training device:

(1) The applicant must furnish for each required test, except as provided by paragraph (a)(2) of this section, an aircraft of U.S. registry—

(i) Of the category and class aircraft, and type aircraft, if applicable, for which the applicant is applying for a certificate or rating; and

(ii) That has a current standard or limited airworthiness certificate.

(2) At the discretion of the person authorized by the Administrator to conduct the test, the applicant may furnish—

(i) An aircraft that has a current airworthiness certificate other than standard or limited, but that otherwise meets the requirement of paragraph (a)(1) of this section;

(ii) An aircraft of the category and class, and type aircraft, if applicable, of foreign registry that is certificated by the country of registry; or

(iii) A military aircraft of the category and class aircraft, and type aircraft, if applicable, for which the applicant is applying for a certificate or rating.

* * * * *

(c) *Required controls.* An applicant must furnish for each practical test an aircraft—

(1) (Other than lighter-than-air) listed in paragraph (a) of this section.

(2) That has engine controls and flight controls—

(i) That are easily reached; and

(ii) Unless the evaluator conducting the test accepts otherwise, that can be operated in a conventional manner by the applicant, other required crewmembers, and the evaluator if the evaluator occupies a pilot's seat.

(d) *Simulated instrument flight equipment.* An applicant for any practical test involving flight maneuvers and flight procedures accomplished solely by reference to instruments, must furnish equipment that—

(1) Excludes the applicant's visual reference to objects outside the aircraft; and

(2) Is otherwise acceptable to the Administrator.

* * * * *

14. Section 61.51 is amended by revising paragraphs (b)(1)(ii), (b)(1)(iii), (b)(1)(iv), (b)(3)(iii), (c)(2)(i), (c)(4), and (c)(5), and by adding new paragraphs (b)(2)(viii) and (c)(2)(iv) to read as follows:

§ 61.51 Pilot logbooks.

* * * * *

(b) * * *

(1) * * *

(ii) Total time of flight or flight lesson.

(iii) Except for simulated flight, the place, or points of departure and arrival.

(iv) Type and identification of aircraft, flight simulator, or flight training device.

(2) * * *

(viii) Instruction in a flight simulator or instruction in a flight training device.

(3) * * *

(iii) Simulated instrument conditions in actual flight, in a flight simulator, or in a flight training device.

(c) * * *

(2) * * *

(i) A private or commercial pilot may log as pilot-in-command time that flight time when the pilot is—

(A) The sole manipulator of the controls of an aircraft for which the pilot is rated; or

(B) Acting as pilot in command of an aircraft on which more than one pilot is required under the type certification of the aircraft or the regulation under which the flight is conducted.

* * * * *

(iv) A recreational pilot may log as pilot-in-command time only that time when the pilot is the sole manipulator of the controls of an aircraft for which the pilot is rated.

* * * * *

(4) *Instrument flight time.*

(i) Except as provided in paragraph (c)(4)(iv) of this section, a pilot may log as instrument flight time only that time when the pilot operates an aircraft solely by reference to instruments under actual or simulated instrument flight conditions.

(ii) For simulated instrument conditions a qualified and approved flight simulator or qualified and approved flight training device may be used, provided an authorized instructor is present during the simulated flight.

(iii) Each entry in the pilot logbook must include—

(A) The place and type of each instrument approach completed; and

(B) The name of the safety pilot for each simulated instrument flight conducted in flight.

(iv) An instrument flight instructor conducting instrument flight instruction in actual instrument weather conditions may log instrument time.

(5) *Instruction time.* All time logged as instruction time must be certified by the authorized instructor from whom it was received.

* * * * *

15. Section 61.55 is amended by revising paragraphs (b)(2)(ii) and by adding new paragraphs (b)(3) and (b)(4) to read as follows:

§ 61.55 Second-in-command qualifications.

* * * * *

(b) * * *

(2) * * *

(ii) Engine-out procedures and maneuvering with an engine out while executing the duties of a pilot in command.

(3) Except as provided in paragraph (b)(4) of this section, the requirements of this paragraph (b)(3) may be accomplished in a flight simulator that is—

(i) Qualified and approved by the Administrator for such purposes; and

(ii) Used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(4) An applicant for an initial second-in-command qualification for a particular type of aircraft who is qualifying under the terms of paragraph (b)(3) of this section shall satisfactorily complete a minimum of one takeoff and one landing in an aircraft of the same type for which the qualification is sought.

* * * * *

16. Section 61.56 is amended by revising paragraph (e) and adding a new paragraph (h) to read as follows:

§ 61.56 Flight review.

* * * * *

(e) An applicant who has, within the period specified in paragraphs (c) and (d) of this section, satisfactorily completed a test for a pilot certificate, rating, or operating privilege, need not accomplish the flight review required by this section if the test was conducted by a person authorized by the Administrator, or authorized by a U.S. Armed Force, to conduct the test.

* * * * *

(h) A flight simulator or flight training device may be used to meet the flight review requirements of this section subject to the following conditions:

(1) The flight simulator or flight training device must be approved by the Administrator for that purpose.

(2) The flight simulator or flight training device must be used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(3) Unless the review is undertaken in a flight simulator that is approved for landings, the applicant must meet the takeoff and landing requirements of § 61.57 (c) or (d).

(4) The flight simulator or flight training device used must represent an aircraft, or set of aircraft, for which the pilot is rated.

17. Section 61.57 is amended by revising paragraphs (c), (d), and (e) to read as follows:

§ 61.57 Recent flight experience: Pilot in command.

* * * * *

(c) *General experience.* (1) Except as otherwise provided in paragraph (f) of this section, no person may act as pilot in command of an aircraft carrying passengers, or of an aircraft certificated for more than one required pilot flight crewmember, unless that person meets the following requirements—

(i) Within the preceding 90 calendar days, that person must have made three takeoffs and three landings as the sole manipulator of the flight controls in an aircraft of the same category and class and, if a type rating is required, of the same type of aircraft.

(ii) If the aircraft operated under paragraph (c)(1)(i) of this section is a tailwheel airplane, that person must have made to a full stop the landings required by that paragraph.

(2) For the purpose of meeting the requirements of this section, a person may act as pilot in command of a flight under day visual flight rules (VFR) or day instrument flight rules (IFR) if no persons or property are carried other than as necessary for compliance with this part.

(3) The takeoffs and landings required by paragraph (c)(1) of this section may be accomplished in a flight simulator or flight training device—

(i) Qualified and approved by the Administrator for landings; and

(ii) Used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(d) *Night experience.* (1) Except as provided in paragraph (f) of this section, no person may act as pilot in command of an aircraft carrying passengers at night (the period beginning 1 hour after sunset and ending 1 hour before sunrise (as published in the American Air Almanac) unless, within the preceding 90 days, that person has made not fewer than three takeoffs and three landings to a full stop, at night, as the sole manipulator of the flight controls in the same category and class of aircraft.

(2) The takeoffs and landings required by paragraph (d)(1) of this section may

be accomplished in a flight simulator that is—

(i) Qualified and approved by the Administrator for takeoffs and landings, if the visual system is adjusted to represent the time of day described in paragraph (d)(1) of this section; and

(ii) Used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(e) *Instrument currency.* (1) Except as provided by paragraph (f) of this section, no person may act as pilot in command under IFR, or in weather conditions less than the minimums prescribed for VFR, unless, within the preceding 6 calendar months, that person has—

(i) In the case of an aircraft other than a glider—

(A) Logged at least 6 hours of instrument time including at least six instrument approaches under actual or simulated instrument conditions, not more than 3 hours of which may be in approved simulation representing aircraft other than gliders; or

(B) Passed an instrument competency test as described in paragraphs (e)(2) and (e)(3) of this section; or

(ii) In the case of a glider, the person must have logged at least 3 hours of instrument time, at least half of which was in a glider or an airplane, except that the person may not carry a passenger in the glider until that person has completed at least 3 hours of instrument flight time in a glider.

(2) A person who does not meet the recent instrument experience requirements of paragraph (e)(1) of this section during the prescribed time, or within 6 calendar months thereafter, may not serve as pilot in command under IFR, or in weather conditions less than the minimums prescribed for VFR, until that person passes an instrument competency test in the category and class of aircraft involved, given by a person authorized by the Administrator to conduct the test.

(3) The Administrator may authorize the conduct of all or part of the test required by paragraph (e)(2) of this section in a qualified and approved flight simulator or flight training device.

* * * * *

18. Section 61.58 is revised to read as follows:

§ 61.58 Pilot-in-command proficiency check: Operation of aircraft requiring more than one required pilot.

(a) Except as otherwise provided in this section, to serve as pilot in command of an aircraft that is type certificated for more than one required pilot crewmember, a person must—

(1) Within the preceding 12 calendar months, complete a pilot-in-command check in an aircraft that is type certificated for more than one required pilot crewmember; and

(2) Within the preceding 24 calendar months, complete a pilot-in-command check in the particular type of aircraft in which that person will serve as pilot in command.

(b) This section does not apply to persons conducting operations under part 121, part 125, part 127, part 133, part 135, or part 137 of this chapter.

(c) The pilot-in-command check given in accordance with the provisions of part 121, part 125, part 127, or part 135 of this chapter may be used to satisfy the requirements of this section.

(d) The pilot-in-command check required by paragraph (a) of this section may be accomplished by satisfactory completion of one of the following—

(1) A pilot-in-command proficiency check conducted by a person authorized by the Administrator, consisting of the maneuvers and procedures required for a type rating;

(2) The practical test required for a type rating;

(3) The initial or periodic practical test required for the issuance of a pilot examiner or a check airman designation; or

(4) A military flight check required for a pilot in command with instrument privileges, in an aircraft that the military requires to be operated by more than one pilot.

(e) A check or a test described in paragraphs (d)(1) through (d)(4) of this section may be accomplished in a flight simulator qualified and approved under part 142 of this chapter subject to the following:

(1) Except as allowed in paragraphs (e)(2) and (e)(3) of this section, if an otherwise qualified and approved flight simulator used for a pilot-in-command proficiency check is not qualified and approved for a specific required maneuver—

(i) The training center shall annotate, in the applicant's training record, the maneuver or maneuvers omitted; and

(ii) Prior to acting as pilot in command, the pilot shall demonstrate proficiency in each omitted maneuver in an aircraft or flight simulator qualified and approved for each omitted maneuver.

(2) If the flight simulator used pursuant to this paragraph (e) is not qualified and approved for circling approaches—

(i) The applicant's record shall be annotated with the statement, "Proficiency in circling approaches not demonstrated"; and

(ii) The applicant may not perform circling approaches as pilot in command when weather conditions are less than the basic VFR conditions described in § 91.155 of this chapter, until proficiency in circling approaches has been successfully demonstrated in an approved simulator or aircraft to a person authorized by the Administrator to conduct the check required by this section.

(3) If the flight simulator used pursuant to this paragraph (e) is not qualified and approved for landings the applicant must—

(i) Hold a type rating in the airplane represented by the simulator; and

(ii) Have completed, within the preceding 90 days, at least three takeoffs and three landings (one to a full stop) as the sole manipulator of the flight controls in the type airplane for which the pilot-in-command proficiency check is sought.

(f) For the purpose of meeting the check requirements of paragraph (a) of this section, a person may act as pilot in command of a flight under day VFR conditions or day IFR conditions if no person or property is carried, other than as necessary to demonstrate compliance with this part.

(g) If a pilot takes the check required by this section in the calendar month before, or the calendar month after, the month in which it is due, the pilot is considered to have taken it in the month in which it was due for the purpose of computing when the next check is due.

19. Section 61.63 is amended by revising the section heading and paragraph (a) to read as follows:

§ 61.63 Additional aircraft ratings for other than airline transport pilot certificates (for parts 121 and 135 use only).

(a) *General.* To be eligible for an additional aircraft rating to a pilot certificate, an applicant who is a pilot crewmember employee of a part 121 certificate holder or a part 135 certificate holder must meet the requirements of paragraphs (b) through (d) of this section, as applicable to the rating sought.

* * * * *

20. A new section 61.64 is added to read as follows:

§ 61.64 Additional aircraft ratings for other than airline transport pilot certificates (for other than parts 121 and 135 use).

(a) *General.* To be eligible for an additional aircraft rating to a pilot certificate, an applicant who is not a crewmember employee applicant of a part 121 training program or a part 135 training program must meet the requirements of paragraphs (b) through (i) of this section, applicable to the rating sought.

(b) *Category rating.* An applicant who holds a pilot certificate and applies to add a category rating must meet the following requirements:

(1) Present a record of training certified by an authorized instructor showing that the applicant has—

(i) Received ground training on the aeronautical knowledge areas applicable to the pilot certificate and aircraft category and class rating sought;

(ii) Received flight training in the category and class of aircraft on the areas of operation applicable to the pilot certificate and aircraft category and class rating sought;

(iii) Been found competent by the certifying flight instructor in the aeronautical knowledge areas required for the pilot certificate to which the added aircraft category rating would apply; and

(iv) Been found competent by the certifying flight instructor in the areas of operation required for the pilot certificate to which the added aircraft category rating would apply;

(2) Pass the knowledge test applicable to the pilot certificate and aircraft category and class rating sought; and

(3) Pass the practical test required for the pilot certificate held, and category and class rating sought.

(c) *Class rating.* An applicant who holds a pilot certificate and applies to add a class rating must meet the following requirements:

(1) The applicant must present a record certified by an authorized instructor showing that the applicant has—

(i) Received flight instruction in the class of aircraft on the areas of operation applicable to the pilot certificate and aircraft class rating sought;

(ii) Received ground training on the aeronautical knowledge areas applicable to the pilot certificate and aircraft class rating sought;

(iii) Been found competent by the certifying flight instructor in the aeronautical knowledge areas applicable to the pilot certificate to which the category and class rating would apply; and

(iv) Been found competent by the certifying flight instructor in the areas of operation applicable to the pilot certificate to which the aircraft class rating would apply;

(2) Pass a knowledge test applicable to the pilot certificate and aircraft class rating sought; and

(3) Pass a practical test required for the pilot certificate held, and required for the category and class rating sought.

(d) *Type rating.* An applicant who holds a pilot certificate and applies to add a type rating must meet the following requirements—

(1) Present a record of training certified by an authorized instructor that shows that the applicant has—

(i) Received ground training on the aeronautical knowledge areas applicable to the type rating sought;

(ii) Received flight training on the areas of operation applicable to the type rating sought; and

(iii) Been found competent by the certifying flight instructor in the areas of operation required for the issue of the pilot certificate for which the aircraft type rating is sought.

(2) Passed a required practical test on the areas of operation listed in § 61.158 or § 61.163, as applicable, for the aircraft type rating sought.

(3) If the applicant does not hold an instrument rating, in addition to the tasks required by paragraph (d)(2) of this section, the applicant must also demonstrate competency in the operations required by § 61.65(g).

(e) The tasks required by paragraphs (b), (c), and (d) of this section shall be performed as follows:

(1) Except as provided in paragraph (e)(2) of this section, the tasks must be performed in an aircraft of the same category, class, and type, if applicable, as the aircraft for which the added rating is sought.

(2) Subject to the limitations of paragraph (e)(3) through (e)(12) of this section, the tasks may be performed in a flight simulator or a flight training device that represents the aircraft for which the added rating is sought.

(3) The flight simulator or flight training device use permitted by paragraph (e)(2) of this section shall be conducted in accordance with an approved course at a training center certificated under part 142 of this chapter.

(4) To complete all training and testing (except preflight inspection) for an unlimited added rating in a flight simulator—

(i) The flight simulator must be qualified as Level C or Level D; and

(ii) The applicant must meet at least one of the following:

(A) Hold a type rating for a turbojet airplane of the same class as the class of airplane for which the type rating is sought, or have been appointed by a military service as a pilot in command of an airplane of the same class as the class of airplane for which the type rating is sought, if a turbojet type rating is sought.

(B) Hold a type rating for a turbopropeller airplane of the same class as the class of airplane for which the type rating is sought, or have been designated by a military service as a pilot in command of an airplane of the same class as the class of airplane for which the type rating is sought, if a turbopropeller airplane type rating is sought.

(C) Have at least 2,000 hours of actual flight time, of which 500 hours must be in turbine-powered airplanes of the same class as the class of airplane for which the type rating is sought.

(D) Have at least 500 hours of actual flight time in the same type airplane as the airplane for which the rating is sought.

(E) Have at least 1,000 hours of flight time in at least two different airplanes requiring a type rating.

(5) Subject to the limitation of paragraph (e) (6) of this section, an applicant who does not meet the requirements of paragraph (e)(4) of this section may complete all training and testing (except for preflight inspection) for an added rating in a flight simulator if—

(i) The flight simulator is qualified as Level C or Level D; and

(ii) The applicant meets at least one of the following:

(A) Holds a type rating in a propeller-driven airplane if a type rating in a turbojet airplane is sought, or holds a type rating in a turbojet airplane if a type rating in a propeller-driven airplane is sought.

(B) Since the beginning of the 12th calendar month before the month in which the applicant completes the practical test for the added rating, has logged—

(*1*) At least 100 hours of flight time in airplanes in the same class of airplane for which the type rating is sought and which require a type rating; and

(*2*) At least 25 hours of flight time in airplanes in the same type of airplane for which the rating is sought.

(6) An applicant meeting only the requirements of paragraph (e)(5) of this section will be issued an added rating with a limitation.

(7) The limitation on certificates issued under the provisions of paragraph (e)(6) of this section shall state, "This certificate is subject to pilot-in-command limitations for the added rating."

(8) An applicant gaining a certificate with the limitation specified in paragraph (e)(7) of this section—

(i) May not act as PIC of the aircraft for which an added rating was obtained under the provisions of this section until he or she has had the limitation removed from the certificate; and

(ii) May have the limitation removed by serving 15 hours of supervised operating experience as pilot in

command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the pilot in command, in an aircraft of the same type as the airplane to which the limitation applies.

(9) An applicant who does not meet the requirements of paragraph (e)(4) or (e)(5) of this section may be awarded an added rating after successful completion of one of the following requirements:

(i) Compliance with paragraph (e)(2) and (e)(3) of this section and the following tasks, applicable to airplane ratings only, which must be successfully completed on a static airplane or in flight, as appropriate:

(A) Preflight inspection;
(B) Normal takeoff;
(C) Normal ILS approach;
(D) Missed approach; and
(E) Normal landing.

(ii) Compliance with paragraphs (e)(2), (e)(3), and (e)(10) through (e)(12) of this section.

(10) An applicant meeting only the requirements of paragraph (e)(9) of this section will be issued an added rating with a limitation.

(11) The limitation on certificates issued under the provisions of paragraph (e)(10) of this section shall state, "This certificate is subject to pilot-in-command limitations for the added rating."

(12) An applicant gaining a certificate with the limitation specified in paragraph (e)(11) of this section—

(i) May not act as PIC of the aircraft for which an added rating was obtained under the provisions of this section until he or she has had the limitation removed from the certificate; and

(ii) May have the limitation removed by serving 25 hours of supervised operating experience as pilot in command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the PIC, in an aircraft of the same type as the airplane to which the limitation applies.

(f) An applicant for a type rating who provides an aircraft not capable of the instrument maneuvers and procedures required by § 61.158 or § 61.163 for the practical test may—

(1) Obtain a type rating limited to "VFR only"; and

(2) Remove the "VFR only" limitation for each aircraft type in which the applicant demonstrates compliance with the instrument requirements of § 61.158 or § 61.163 or the requirements of § 61.73(e)(2).

(g) An applicant for a type rating may be issued a certificate with the limitation "VFR only" for each aircraft type not equipped for the applicant to show instrument competency.

(h) An applicant for a type rating in a multiengine, single-pilot-station airplane may meet the requirements of this part in another multiengine airplane.

(i) An applicant for a type rating in a single-engine, single-pilot-station airplane may meet the requirements of this part in another single-engine or multiengine airplane if the applicant meets the instrument currency requirements of § 61.57(e).

21. Section 61.65 is amended by removing and reserving paragraphs (d) and (f), revising paragraph (b) introductory text, paragraph (c) introductory text and (c)(1), (c)(3), (c)(4), and (c)(5), paragraph (e) introductory text and (e)(2) and (g); and adding paragraph (c)(6) and (h) to read as follows:

§ 61.65 Instrument rating requirements.

* * * * * *

(b) *Ground instruction and written test.* An applicant for the written test for an instrument rating must have received ground instruction or have logged home study in, and passed a written test on, at least the following areas of aeronautical knowledge applicable to the rating sought:

* * * * * *

(c) *Flight instruction.* Except as otherwise provided in this paragraph, an applicant for the practical test for an instrument rating must present a record certified by an authorized instructor showing instrument flight instruction and competency in an aircraft of the same category for which the instrument rating is sought, in each of the following areas of operations:

(1) Control and accurate maneuvering of the aircraft solely by reference to instruments.

* * * * * *

(3) Instrument approaches to published minimums using two different nonprecision approach systems and one precision approach system.

(4) Cross-country flight in an aircraft in simulated or actual IFR conditions, on Federal airways or as routed by air traffic control, subject to the following:

(i) The flight must be at least 250 nautical miles (100 nautical miles for helicopters) including a minimum of one precision instrument approach and two nonprecision instrument approaches.

(ii) Each instrument approach must be accomplished at a different airport.

(iii) If the departure and final destination airports are the same airport, the destination airport may be considered as the third airport.

(iv) No approach need be done more than once.

(5) Simulated emergencies involving equipment or instrument malfunctions, missed approach procedures, deviations to unplanned alternates, recovery from unusual attitudes, loss of communications, and simulated loss of power on at least one-half of the engines if a multiengine aircraft is used.

(6) Flight instruction required by paragraphs (c)(1), (c)(2), (c)(3), and (c)(5) of this section may be accomplished in a qualified and approved flight simulator or in a qualified and approved flight training device.

(d) [Reserved]

(e) *Flight experience.* Except as provided in paragraph (h) of this section, an applicant for an instrument rating must have at least the following flight time as a pilot:

* * * * * *

(2) 40 hours of simulated or actual instrument time, which may include—

(i) Not more than a combined total of 20 hours of instrument instruction by an authorized instructor in a qualified and approved flight simulator or in a qualified and approved flight training device; or

(ii) Not more than 30 hours of instrument instruction accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

* * * * * *

(f) [Reserved]

(g) *Practical test.* An applicant for an instrument rating must pass a practical test consisting of an oral increment and a flight increment, as follows:

(1) The flight increment required by this paragraph (g) (1) may be accomplished in any category, class, and type aircraft that is certificated for flight in instrument conditions, or in a qualified and approved flight simulator or qualified and approved flight training device.

(2) The practical test required by this paragraph (g) (2) must include instrument flight procedures, selected by the person authorized by the Administrator to conduct the practical test, to determine the applicant's ability to perform competently the IFR operations described in paragraph (c) of this section.

(3) The following requirements of the practical test must be accomplished in an aircraft or in a qualified and approved flight simulator:

(i) At least one published precision, nonprecision, and circling approach.

(ii) At least one landing.

(iii) At least one cross-country flight.

(h) *Training qualifications.* An applicant for the instrument rating who has satisfactorily completed an approved curriculum conducted at a training center certificated under part 142 of this chapter must have—

(1) A total of at least 95 hours of pilot flight time, including at least 35 hours of simulated or actual instrument flight time; or

(2) Satisfactorily completed the requirements of an approved instrument rating course at a part 142 certified training center that has received approval from the Administrator to conduct a curriculum satisfying the requirements of the instrument rating in—

(i)Fewer than 95 hours of pilot flight time; or

(ii) Fewer than 35 hours of simulated instrument time or actual instrument time.

22. Section 61.67 is amended by revising paragraphs (a)(2), (b) introductory text, (b)(1), (b)(2), (c)(2), (d) introductory text, (d)(1) introductory text, and (d)(2), by removing the concluding text at the end of paragraph (c), and by adding paragraphs (c)(3) through (c)(7) to read as follows:

§ 61.67 Category II pilot authorization requirements.

(a) * * *

(2) A type rating for the aircraft for which the authorization is sought if that aircraft requires a type rating.

(b) *Experience requirements.* An applicant for a Category II authorization must have at least—

(1) 50 hours of night flight time as pilot in command;

(2) 75 hours of instrument time under actual or simulated instrument conditions that may include not more than—

(i) A combination of 25 hours of simulated instrument flight time in qualified and approved flight simulators or qualified and approved flight training devices; or

(ii) 40 hours of simulated instrument flight time if accomplished in an approved course conducted by an appropriately rated training center certificated under part 142 of this chapter.

* * * * * *

(c) * * *

(2) To be eligible for the practical test, an applicant must—

(i) Meet the requirements of paragraphs (a) and (b) of this section;

(ii) Hold the appropriate class rating; and

(iii) If the applicant has not passed a practical test for this authorization since the beginning of the twelfth calendar month, meet the following recent experience requirements—

(A) The requirements of § 61.57(e); and

(B) At least six ILS approaches since the beginning of the sixth month before the practical test, subject to the following:

(*1*) The approaches must be conducted under actual or simulated instrument flight conditions.

(*2*) The approaches must be conducted down to the minimum decision height for the ILS approach in the type aircraft in which the practical test is to be conducted.

(3) Except as provided in paragraph (c)(4) of this section, the approaches must be accomplished in an aircraft of the same category and class, and type, as applicable, as the aircraft in which the practical test is to be conducted.

(4) The approaches may be accomplished in a flight simulator that—

(i) Represents an aircraft of the same category and class, and type, as applicable, as the aircraft in which the authorization is sought; and

(ii) Is used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(5) The approaches need not be conducted down to the decision height authorized for Category II operations if conducted in a qualified and approved flight simulator or qualified and approved flight training device.

(6) At least three of the approaches required by paragraph (c)(2)(iii)(B) of this section must be conducted manually, without the use of an approach coupler.

(7) The flight time acquired in meeting the requirements of paragraph (c)(2)(iii)(B) of this section may be used to meet the requirements of paragraph (c)(2)(iii)(A) of this section.

(d) *Practical test procedures.* Oral questioning may be conducted at any time during the practical test. The practical test consists of two increments:

(1) *Oral increment.* The applicant must demonstrate knowledge of the following:

* * * * * *

(2) *Flight increment.* The following requirements apply to the flight increment of a practical test:

(i) The flight increment may be conducted in an aircraft of the same category and class and type, as applicable, as the aircraft in which the authorization is sought or in a flight simulator that—

(A) Represents an aircraft of the same category and class, and type, as applicable, as the aircraft in which the authorization is sought; and

(B) Is used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(ii) At least two ILS approaches to 100 feet AGL including at least one landing and one missed approach.

(iii) All approaches must be made with the approved flight control guidance system, except that if an approved automatic approach coupler is installed, at least one approach must be hand flown using flight director commands.

(iv) If a multiengine airplane with the performance capability to execute a missed approach with one engine inoperative is used, one missed approach must be executed with an engine, which shall be the most critical engine, if applicable, set at idle or zero thrust before reaching the middle marker.

(v) If a flight simulator is used, the missed approach must be executed with an engine, which shall be the most critical engine, if applicable, failed.

(vi) For authorizations for aircraft that require a type rating, the test must be performed in coordination with a second in command who holds a type rating in the aircraft in which the authorization is sought.

23. Section 61.68 is added to read as follows:

§ 61.68 Category III pilot authorization requirements.

(a) *General.* An applicant for a Category III pilot authorization must hold—

(1) A pilot certificate with an instrument rating or airline transport pilot certificate;

(2) A valid medical certificate;

(3) A category and class rating for the aircraft for which the authorization is sought; and

(4) A type rating for the aircraft for which the authorization is sought, if that aircraft requires a type rating.

(b) *Experience requirements.* An applicant for a Category III authorization must have at least—

(1) 50 hours of night flight time as pilot in command;

(2) Except as provided in paragraph (c) of this section, 75 hours of instrument flight time during actual or simulated instrument conditions that may include not more than a combination of 25 hours of simulated instrument flight time in qualified and approved flight simulators or qualified and approved flight training devices; and

(3) 250 hours of cross-country flight time as pilot in command.

(c) *Increasing instrument flight time hours.* The instrument flight time

allowed in flight simulators or flight training devices under paragraph (b)(2) of this section may be increased to not more than 40 hours if accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(d) *Practical test required.* (1) An applicant for the issuance or renewal of a Category III authorization or for the addition of another type aircraft to an authorization must pass a practical test.

(2) If the applicant has not passed a practical test for this authorization since the beginning of the twelfth calendar month, the applicant must meet the following recency of experience requirements:

(i) The requirements of § 61.57(e).

(ii) At least six ILS approaches since the beginning of the sixth month before the practical test, subject to the following:

(A) The approaches must be conducted under actual or simulated instrument flight conditions and flown down to the minimum altitude for the ILS approach.

(B) Except as provided in paragraph (d)(2)(ii)(C) of this section, the approaches must be accomplished in an aircraft of the same category and class, and type, as applicable, as the aircraft in which the practical test is to be conducted.

(C) The approaches may be accomplished in a flight simulator or flight training device that—

(*1*) Represents an aircraft of the same category and class, and type, as applicable, as the aircraft for which the authorization is sought; and

(*2*) Is used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(D) Conducted down to the alert height or decision height, as applicable, authorized for Category III operations only if conducted in a qualified and approved flight simulator or qualified and approved flight training device.

(e) *Practical test procedures.* Oral questioning may be conducted at any time during the practical test. The practical test consists of two increments:

(1) *Oral increment.* The applicant must demonstrate knowledge of the following:

(i) Required landing distance.

(ii) Determination and recognition of the alert height or decision height, as applicable, including use of a radar altimeter.

(iii) Recognition of and proper reaction to significant failures encountered prior to and after reaching the alert height or decision height, as applicable.

(iv) Missed approach procedures and techniques using computed or fixed attitude guidance displays and expected height loss as they relate to manual go-around or automatic go-around and initiation altitude, as applicable.

(v) The use and limitations of RVR, including determination of controlling RVR and required transmissometers.

(vi) The use, availability, or limitations of visual cues and the altitude at which they are normally discernible at reduced RVR readings including—

(A) Unexpected deterioration of conditions to less than minimum RVR during approach, flare, and rollout;

(B) Demonstration of expected visual references with weather at minimum conditions; and

(C) The expected sequence of visual cues during an approach in which visibility is at or above landing minima.

(vii) Procedures and techniques for making a transition from instrument reference flight to visual flight during a final approach under reduced RVR.

(viii) Effects of vertical and horizontal wind shear.

(ix) Characteristics and limitations of the ILS and runway lighting system.

(x) Characteristics and limitations of the flight director system auto approach coupler (including split axis type if so equipped), auto throttle system, if applicable, and other Category III equipment, as applicable.

(xi) Assigned duties of the second in command during Category III operations, unless the aircraft for which authorization is sought does not require a second in command.

(xii) Recognition of the limits of acceptable aircraft position and flight path tracking during approach, flare, and, if applicable, rollout.

(xiii) Recognition of, and reaction to, airborne or ground system faults or abnormalities, particularly after passing alert height or decision height, as applicable.

(2) *Flight increment.* The following requirements apply to the flight increment of the practical test:

(i) The flight increment may be conducted in an aircraft of the same category and class, and type, as applicable, as the aircraft in which the authorization is sought, or in a flight simulator that—

(A) Represents an aircraft of the same category and class, and type, as applicable, as the aircraft in which the authorization is sought; and

(B) Is used in accordance with an approved course conducted by a training center certificated under part 142 of this chapter.

(ii) All approaches must be made with the approved automatic landing system or an equivalent landing system approved by the Administrator and must consist of the following:

(A) At least two ILS approaches to 100 feet AGL, including one landing and one missed approach initiated from a very low altitude that may result in a touchdown during the go-around maneuver.

(B) If a multiengine aircraft with the performance capability to execute a missed approach with one engine inoperative is used, a missed approach shall be executed with an engine, which shall be the most critical engine, if applicable, set at idle or zero thrust before reaching the middle or outer marker.

(C) If a flight simulator or flight training device is used, a missed approach must be executed with an engine, which shall be the most critical engine, if applicable, failed.

(D) Subject to the limitations of paragraph (e)(2)(ii)(E) of this section, for Category IIIb operations predicated on the use of a fail-passive rollout control system, at least one manual rollout using visual reference or a combination of visual and instrument references.

(E) The maneuver required by paragraph (e)(2)(ii)(D) of this section shall be initiated by a fail-passive disconnect of the rollout control system—

(*1*) After main gear touchdown;

(*2*) Prior to nose gear touchdown;

(*3*) In conditions representative of the most adverse lateral touchdown displacement allowing a safe landing on the runway; and

(*4*) In weather conditions anticipated in Category IIIb operations.

(iii) For authorizations for aircraft that require a type rating, the practical test must be performed in coordination with a second in command who holds a type rating in the aircraft in which the authorization is sought.

24. Section 61.109 is revised to read as follows:

§ 61.109 Airplane rating: Aeronautical experience.

(a) Except as provided in paragraph (h) of this section, an applicant for a private pilot certificate with an airplane category rating must have at least the following aeronautical experience:

(1) At least 20 hours of flight instruction from an authorized instructor, including at least—

(i) 3 hours of cross-country flight.

(ii) 3 hours of flight at night, including ten takeoffs and ten landings for applicants seeking night flying privileges.

(iii) 3 hours in airplanes in preparation for the private pilot practical test within 60 calendar days prior to that test.

(2) At least 20 hours of solo flight time, including at least-

(i) 10 hours of flight in airplanes;

(ii) 10 hours of cross-country flight; and

(iii) Three solo takeoffs and landings to a full stop at an airport with an operating control tower.

(b) Each flight required by paragraph (a)(2)(ii) of this section must include—

(1) A landing at a point more than 50 nautical miles from the original departure point; and

(2) One flight of at least 300 nautical miles with landings at a minimum of three points, one of which is at least 100 nautical miles from the original departure point.

(c) An applicant who does not meet the night flying requirement of paragraph (a)(1)(ii) of this section may be issued a private pilot certificate bearing the limitation "night flying prohibited." The limitation may be removed if the holder of the certificate shows that he or she has met the requirements of paragraph (a)(1)(ii) of this section.

(d) Except as provided in paragraph (e) of this section, a maximum of 2.5 hours of instruction in a flight simulator or flight training device representing an airplane from an authorized instructor may be credited toward the total hours required by paragraph (a) of this section.

(e) A maximum of 5 hours of instruction in a flight simulator or flight training device representing an airplane may be credited toward the total hours required by paragraph (a) of this section if the instruction is accomplished in a course conducted by a training center certificated under part 142 of this chapter.

(h) Except where fewer hours are approved by the Administrator, an applicant for a private pilot certificate with an airplane rating who has satisfactorily completed an approved private pilot course conducted by a training center certificated under part 142 of this chapter need have only a total of at least 35 hours of pilot flight time in aircraft, flight simulators, or flight training devices.

25. Section 61.113 is revised to read as follows:

§ 61.113 Rotorcraft rating: Aeronautical experience.

(a) Except as provided in paragraph (g) of this section, an applicant for a private pilot certificate with a rotorcraft category rating must have at least the following aeronautical experience:

(1) For a helicopter class rating, 40 hours of flight instruction and solo flight time including at least—

(i) 20 hours of flight instruction from an authorized flight instructor, 15 hours of which must be in a helicopter, including—

(A) 3 hours of cross-country flying in helicopters; and

(B) 3 hours of night flying in helicopters, including 10 takeoffs and 10 landings, each of which must be separated by an en-route phase of flight;

(ii) 3 hours in helicopters in preparation for the private pilot practical test within 60 calendar days before that test;

(iii) A flight in a helicopter with a landing at a point other than an airport; and

(2) 20 hours of solo flight time, 15 hours of which must be in a helicopter, including at least—

(i) 3 hours of cross-country flying in helicopters, including one flight with a landing at three or more points, each of which must be more than 25 nautical miles from each of the other landing points; and

(ii) Three takeoffs and three landings in helicopters at airports or heliports with operating control towers, each separated by an en-route phase of flight.

(b) Except as provided in paragraph (c) of this section, a maximum of 2.5 hours of instruction in a flight simulator or flight training device representing a helicopter from an authorized instructor may be credited toward the total hour requirement of paragraph (a) of this section.

(c) A maximum of 5 hours of instruction in a flight simulator or flight training device representing a helicopter may be credited toward the total hours required by paragraph (a) of this section if the instruction is accomplished in a course conducted by a training center certificated under part 142 of this chapter.

(d) The applicant for a gyroplane class rating must have a total of at least—

(1) 20 hours of flight instruction from an authorized flight instructor, 15 hours of which must be in a gyroplane, including at least the following—

(i) 3 hours of cross-country flying in gyroplanes;

(ii) 3 hours of night flying in gyroplanes, including ten takeoffs and ten landings; and

(iii) 3 hours in gyroplanes in preparation for the private pilot flight test within 60 calendar days before that test.

(2) 20 hours of solo flight time, 10 hours of which must be in a gyroplane, including—

(i) 3 hours of cross-country flying in gyroplanes, including one flight with a landing at three or more points, each of which must be more than 25 nautical miles from each of the other two points; and

(ii) Three takeoffs and three landings in gyroplanes at an airport with an operating control tower.

(3) Except as provided in paragraph (d)(4) of this section, a maximum of 2.5 hours of instruction in a flight simulator or flight training device representing a gyroplane may be credited toward the total hours required by paragraph (d)(1) of this section.

(4) A maximum of 5 hours of instruction in a flight simulator or flight training device representing a gyroplane may be credited toward the total hours required by paragraph (d)(1) of this section if the instruction is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(e) An applicant who does not meet the night flying requirements of paragraph (a)(1)(i)(B) or paragraph (d)(1)(ii) of this section will be issued a private pilot certificate bearing the limitation "night flying prohibited."

(f) The limitation required by paragraph (e) of this section may be removed if the holder of the certificate demonstrates compliance with the requirements of paragraph (a)(1)(i)(B) or paragraph (d)(1)(ii) of this section, as applicable.

(g) Except where fewer hours are approved by the Administrator, an applicant for a private pilot certificate with a rotorcraft category rating who has satisfactorily completed an approved private pilot course conducted by a training center certificated under part 142 of this chapter need have only a total of at least 35 hours of pilot flight time in aircraft, flight simulators, or flight training devices.

26. Section 61.129 is amended by revising paragraph (b) introductory text and (b)(1) and (b)(2) introductory text, and by adding paragraphs (b)(4) and (c) to read as follows:

§ 61.129 Airplane rating: Aeronautical experience.

* * * * *

(b) *Flight time as pilot.* Except as provided in paragraph (c) of this section, an applicant for a commercial pilot certificate with an airplane rating must have at least the following aeronautical experience:

(1) A total of at least 250 hours of flight time as a pilot that may include not more than—

(i) Except as provided in paragraph (b)(1)(ii) of this section, 50 hours of flight simulator instruction or flight training device instruction from an authorized instructor; or

(ii) 100 hours of flight simulator instruction or flight training device instruction, if the instruction is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(2) The flight time required by paragraph (b)(1) of this section must include—

* * * * *

(4) Flight simulator instruction and flight training device instruction must be accomplished in a qualified and approved flight simulator or in a qualified and approved flight training device representing an airplane.

(c) Except where fewer hours are approved by the Administrator, an applicant for a commercial pilot certificate with an airplane rating who has satisfactorily completed an approved commercial pilot course conducted by a training center certificated under part 142 of this chapter must have a total of at least 190 hours of pilot flight time in aircraft, flight simulators, or flight training devices.

27. Section 61.131 is amended by revising the introductory text, paragraph (b) introductory text and (b)(1) introductory text, and by adding paragraphs (a)(3), (a)(4), (b)(3), (b)(4), and (c) to read as follows:

§ 61.131 Rotorcraft ratings: Aeronautical experience.

Except as provided in paragraph (c) of this section, an applicant for a commercial pilot certificate with a rotorcraft category rating must have at least the following aeronautical experience:

(a) * * *

(3) Except as provided in paragraph (a)(4) of this section, a maximum of 35 hours of flight simulator instruction or flight training device instruction from an authorized instructor may be credited toward the total hour requirement for a pilot certificate.

(4) A maximum of 50 hours of flight simulator instruction or flight training device instruction may be credited toward the total hours required by paragraph (a)(1) of this section if the instruction is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(b) For a gyroplane class rating:

(1) An applicant must have at least 150 hours of flight time in aircraft, including at least 100 hours in powered aircraft, 25 hours of which must be in a gyroplane, including at least—

* * * * *

(3) Except as provided in paragraph (b)(4) of this section, a maximum of 35 hours of flight simulator instruction or flight training device instruction from an authorized instructor may be credited toward the total requirement for a pilot certificate if the instruction is accomplished in a flight simulator or in a flight training device representing a gyroplane.

(4) A maximum of 50 hours of flight simulator instruction or flight training device if instruction may be credited toward the total hours required by paragraph (b)(1) of this section if the instruction is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(c) Except as otherwise approved by the Administrator, an applicant for a commercial pilot certificate with a rotorcraft rating and a helicopter class rating who has satisfactorily completed an approved commercial pilot course conducted by a training center certificated under part 142 of this chapter must have a total of at least 150 hours of pilot flight time in aircraft, flight simulators, or flight training devices.

28. Section 61.155 is revised to read as follows:

§ 61.155 Airplane rating: Aeronautical experience.

(a) Except as provided in paragraph (d) of this section, for an applicant for an airline transport pilot certificate with an airplane category and class rating, the following requirements apply:

(1) The applicant must hold a commercial pilot certificate, a foreign airline transport pilot, or commercial pilot license without limitations issued by a member state of ICAO, or meet the requirements of § 61.73 that would qualify the applicant for a commercial pilot certificate;

(2) The applicant must have at least 1,500 hours of total time as a pilot that includes at least—

(i) 500 hours of cross-country flight time;

(ii) 100 hours of night flight time;

(iii) 75 hours of instrument flight time, in actual or simulated instrument conditions, subject to the following:

(A) Except as provided in paragraph (a)(2)(iii)(B) of this section, an applicant may not receive more than 25 hours of simulated instrument time in flight simulators and flight training devices.

(B) A maximum of 50 hours of instruction in a flight simulator or flight training device may be credited toward the total hours required by paragraph (a)(2) of this section if the instruction is accomplished in a course conducted by a training center certificated under part 142 of this chapter.

(C) Instruction in a flight simulator or flight training device must be accomplished in a qualified and approved flight simulator or in a qualified and approved flight training device, representing an airplane; and

(iv) 250 hours of flight time in an airplane as a pilot in command or as a second in command performing the duties and functions of a pilot in command under the supervision of a pilot in command, or any combination thereof, which includes at least—

(A) 100 hours of cross-country flight time; and

(B) 25 hours of night flight time; and

(3) Not more than 100 hours of total pilot experience may be obtained in a flight simulator or flight training device, provided the pilot experience is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

(b) An applicant who has performed at least 20 night takeoffs and landings to a full stop may substitute each additional night takeoff and landing to a full stop in excess of the minimum 20 takeoffs for 1 hour of night flight time to satisfy the requirements of paragraph (a)(2) of this section, for a total credited time of no more than 25 hours.

(c) If an applicant with less than 150 hours of pilot-in-command time otherwise meets the requirements of paragraph (a)(2)(iv) of this section, the applicant's certificate will be endorsed "Holder does not meet the pilot-in-command flight experience requirement of ICAO", as prescribed by article 39 of the "Convention on International Civil Aviation." Whenever the pilot presents satisfactory written evidence that 150 hours of pilot-in-command time has been accumulated, the applicant is entitled to a new certificate without the endorsement.

(d) A commercial pilot may credit the following second-in-command and flight engineer flight time (or a combination of either crewmember position flight time) toward the 1,500 hours of total time as a pilot required by paragraph (a) of this section:

(1) All second-in-command time acquired in an airplane required to have more than one pilot by the airplane's flight manual or type certificate or by the regulations under which the flight is conducted.

(2) Flight engineer time, provided the time—

(i) Is acquired in an airplane that is required to have a flight engineer by the airplane's flight manual, the type certificate, or the regulations under which the flight is conducted;

(ii) Is acquired while the applicant is participating in a pilot training program approved under part 121 of this chapter; and

(iii) Is credited at a rate of 1 hour of flight time for each 3 hours of flight engineer time, for a total credited time of no more than 500 hours.

(e) If an applicant who credits second-in-command or flight engineer time under paragraph (d) of this section toward the 1,500 hours total flight time requirement of paragraph (a)(2) of this section—

(1) Does not have at least 1,200 hours of flight time as a pilot including not more than 50 percent of the second-in-command time and none of the flight engineer time; but

(2) Otherwise meets the requirements of paragraph (a)(2) of this section, the applicant's certificate will be endorsed "Holder does not meet the pilot flight experience requirements of ICAO," as prescribed by article 39 of the "Convention on International Civil Aviation." Whenever the applicant presents satisfactory evidence of having accumulated 1,200 hours of flight time as a pilot including no more than 50 percent of the second-in-command time and none of the flight engineer time, the applicant is entitled to a new certificate without the endorsement.

29. Section 61.157 is amended by revising the section heading and adding a new paragraph (g) to read as follows:

§ 61.157 Airplane rating: Aeronautical skill (for parts 121 and 135 use only).

* * * * *

(g) Successful completion of a proficiency check under § 121.441 of this chapter or successful completion of both a competency check, under § 135.293 of this chapter, and a pilot-in-command instrument proficiency check, under § 135.297 of this chapter, satisfies the requirements of this section for the appropriate aircraft rating.

30. Section 61.158 is added to read as follows:

§ 61.158 Airplane rating: Aeronautical skill (for other than parts 121 and 135).

(a) An applicant for an airline transport pilot certificate with a single engine or multiengine class rating or type rating, must—

(1) Pass a practical test based on the following areas of operation:

(i) Preflight procedures.

(ii) Ground operations.

(iii) Takeoff and departure maneuvers.

(iv) In-flight maneuvers.

(v) Instrument procedures.

(vi) Landings and approaches to landings.

(vii) Normal and abnormal procedures.

(viii) Emergency procedures.

(ix) Postflight procedures.

(2) If seeking an airplane type rating, present a record of training certified by an authorized instructor showing that the applicant has—

(i) Received ground training on the aeronautical knowledge areas required by this section applicable to the airplane type rating sought; and

(ii) Received flight training on the areas of operation applicable to the airplane type rating sought.

(b) If the applicant does not hold an instrument rating, in addition to the areas specified in paragraph (a)(1) of this section, the applicant must also demonstrate competency in the operations referenced in § 61.65(g).

(c) The demonstrations required by paragraphs (a) and (b) of this section must be performed in—

(1) An airplane of the same class, and, if applicable, an airplane of the same type, for which the class rating or type rating is sought; or

(2) Subject to the requirements of paragraphs (d)(1) through (d)(8) of this section, as applicable, a flight simulator or a flight training device that represents the airplane type for which the type rating is sought, or set of airplanes if the airplane for which the class rating is sought, does not require a type rating.

(d) The following requirements apply to a demonstration of competency under this section in a flight simulator or a flight training device;

(1) The flight simulator or flight training device use permitted by paragraph (c)(2) of this section must be in accordance with an approved course at a training center certificated under part 142 of this chapter;

(2) To complete all training and testing (except preflight inspection) for an unlimited added rating in a flight simulator—

(i) The flight simulator must be qualified as Level C or Level D; and

(ii) The applicant must meet the aeronautical experience requirements of § 61.155 and at least one of the following:

(A) Hold a type rating for a turbojet airplane of the same class as the class of airplane for which the type rating is sought or have been designated by a military service as a pilot in command of an airplane of the same class as the class of airplane for which the type rating is sought, if a turbojet type rating is sought.

(B) Hold a type rating for a turbopropeller airplane of the same class as the class of airplane for which the type rating is sought, or have been appointed by a military service as a pilot in command of an airplane of the same class as the class of airplane for which the type rating is sought, if a turbopropeller airplane type rating is sought.

(C) Have at least 2,000 hours of actual flight time, of which 500 hours must be in turbine-powered airplanes of the same class as the class of airplane for which the type rating is sought.

(D) Have at least 500 hours of actual flight time in the same type airplane as the type of airplane for which the type rating is sought.

(E) Have at least 1,000 hours of flight time in at least two different airplanes requiring a type rating.

(3) Subject to the limitation of paragraph (d)(4) of this section an applicant who does not meet the requirements of paragraph (d)(2) of this section may complete all training and testing (except for preflight inspection) for an added rating if—

(i) The flight simulator is qualified as Level C or Level D; and

(ii) The applicant meets the aeronautical experience requirements of § 61.155 and at least one of the following:

(A) Holds a type rating in a propeller-driven airplane if a type rating in a turbojet airplane is sought, or holds a type rating in a turbojet airplane if a type rating in a propeller-driven airplane is sought.

(B) Since the beginning of the 12th calendar month before the month in which the applicant completes the practical test for the added rating, has logged—

(*1*) At least 100 hours of flight time in airplanes in the same class as the class of airplane for which the type rating is sought and which require a type rating; and

(*2*) At least 25 hours of flight time in airplanes of the same type as the type of airplane for which the type rating is sought.

(4) An applicant meeting only the requirements of paragraph (d)(3)(ii)(A) and (B) of this section will be issued an added rating, or an airline transport pilot certificate with an added rating, as applicable, with a limitation. The limitation shall state: "This certificate is subject to pilot-in-command limitations for the added rating."

(5) An applicant gaining a certificate with the limitation specified in paragraph (d)(4) of this section—

(i) May not act as pilot in command of the aircraft for which an added rating was obtained under the provisions of this section until he or she has had the limitation removed from the certificate; and

(ii) May have the limitation removed by serving 15 hours of supervised operating experience as pilot in command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the pilot in command, in an airplane of the same type as the type of airplane to which the limitation applies.

(6) An applicant who does not meet the requirements of paragraph (d)(2)(ii)(A) through (E) or (d)(3)(ii)(A) and (B) of this section may be awarded an airline transport pilot certificate or an added rating to that certificate after successful completion of one of the following requirements:

(i) An approved course at a training center which includes all training and testing for that certificate or rating followed by training and testing on the following tasks, which must be successfully completed on a static airplane or in flight, as appropriate:

(A) Preflight inspection;
(B) Normal takeoff;
(C) Normal ILS approach;
(D) Missed approach; and
(E) Normal landing.

(ii) An approved course at a training center which includes all training and testing for that certificate or rating and compliance with paragraphs (d)(7) and (d)(8) of this section.

(7) An applicant meeting only the requirements of paragraph (d)(6) of this section will be issued an added rating, or an airline transport pilot certificate with an added rating, as applicable, with a limitation. The limitation shall state: "This certificate is subject to pilot-in-command limitations for the added rating."

(8) An applicant gaining a certificate with the limitation specified in paragraph (d)(7) of this section—

(i) May not act as pilot in command of the aircraft for which an added rating was obtained under the provisions of this section until he or she has had the limitation removed from the certificate; and

(ii) May have the limitation removed by serving 25 hours of supervised operating experience as pilot in command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the pilot in command, in an airplane of the same type as the type of airplane to which the limitation applies.

(e) Unless the Administrator requires certain or all tasks to be performed, the person authorized by the Administrator to conduct the practical test for an airline transport pilot certificate may waive any of the tasks for which the Administrator approves waiver authority.

31. Section 61.161 is amended by revising paragraph (b)(4) and by adding a new paragraph (b)(5) to read as follows:

§ 61.161 Rotorcraft rating: Aeronautical experience.

* * * * *

(b) * * *

(4) 75 hours of actual or simulated instrument time under actual or simulated conditions. At least 50 hours of this time must be completed in flight with at least—

(i) 25 hours in helicopters as pilot in command;

(ii) 25 hours in helicopters as second in command performing the duties of a pilot in command under the supervision of a pilot in command; or

(iii) Any combination of paragraph (b)(4)(i) and (b)(4)(ii) of this section that totals 25 hours in helicopters.

(5) Flight simulator or flight training device instruction may be credited toward the total hour requirement of paragraph (b)(4) of this section subject to the following:

(i) Flight simulator and flight training device instruction must be accomplished in a qualified and approved flight simulator or in a qualified and approved flight training device, representing a rotorcraft.

(ii) Except as provided in paragraph (b)(5)(iii) of this section, an applicant may receive credit for not more than a combined total of 25 hours of simulated instrument time in flight simulators and flight training devices.

(iii) A maximum of 50 hours of flight simulator instruction or flight training device instruction may be credited toward the total hours required by paragraph (b)(4) of this section if the instruction is accomplished in an approved course conducted by a training center certificated under part 142 of this chapter.

32. Section 61.163 is revised to read as follows:

§ 61.163 Rotorcraft rating: Aeronautical skill.

(a) An applicant for an airline transport pilot certificate with a rotorcraft category and helicopter class rating or a type rating must pass a practical test based on the following areas of operation:

(1) Preflight procedures.
(2) Ground operations.
(3) Takeoff and departure procedures.
(4) In-flight maneuvers.
(5) Instrument procedures.
(6) Landings and approaches to landings.
(7) Normal and abnormal procedures.
(8) Emergency procedures.
(9) Postflight procedures.

(b) If the applicant does not hold an instrument rating, in addition to the areas specified in paragraph (a) of this section, the applicant must also demonstrate competency in the operations required by § 61.65(g).

(c) The demonstrations required by paragraphs (a) and (b) of this section must be performed in—

(1) The helicopter for which the class rating or type rating is sought; or

(2) Subject to the requirements of paragraphs (d)(1) through (d)(8) of this section, as applicable, a flight simulator or flight training device that represents the helicopter for which the class rating or type rating is sought.

(d) The following requirements apply to a demonstration of competency under this section in a flight simulator or a flight training device:

(1) The flight simulator or flight training device use permitted by paragraph (c)(2) of this section must be in accordance with an approved course at a training center certificated under part 142 of this chapter.

(2) To complete all training and testing (except preflight inspection) for an unlimited added rating in a flight simulator—

(i) The flight simulator must be qualified as Level C or Level D; and

(ii) The applicant must meet the aeronautical experience requirements of § 61.161 and at least one of the following:

(A) Hold a type rating for a turbine-powered helicopter, or have been designated by a military service as a pilot in command of an a turbine-powered helicopter, if a turbine-powered helicopter type rating is sought.

(B) Have at least 1,200 hours of actual flight time, of which 500 hours must be in turbine-powered helicopters.

(C) Have at least 500 hours of actual flight time in the same type helicopter as the helicopter for which the type rating is sought.

(D) Have at least 1,000 hours of flight time in at least two different helicopters requiring a type rating.

(3) Subject to the limitation of paragraph (d)(4) of this section, an applicant who does not meet the requirements of paragraph (d)(2) of this section may complete all training and testing (except for preflight inspection) for an added rating if—

(i) The flight simulator is qualified as Level C or Level D; and

(ii) The applicant meets the aeronautical experience requirements of § 61.161 and, since the beginning of the 12th calendar month before the month in which the applicant completes the practical test for the added rating, has logged—

(A) At least 100 hours of flight time in helicopters; and

(B) At least 15 hours of flight time in helicopters of the same type as the helicopter for which the type rating is sought.

(4) An applicant meeting only the requirements of paragraph (d)(3)(ii) (A) and (B) of this section will be issued an added rating, or an airline transport pilot certificate with a limitation. The limitation shall state: "This certificate is subject to pilot-in-command limitations for the added rating."

(5) An applicant gaining a certificate with the limitation specified in paragraph (d)(4) of this section—

(i) May not act as pilot in command of the aircraft for which an added rating was obtained under the provisions of this section until he or she has had the limitation removed from the certificate; and

(ii) May have the limitation removed by serving 15 hours of supervised operating experience as pilot in command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the pilot in command, in an aircraft of the same type as the type of aircraft to which the limitation applies.

(6) An applicant who does not meet the requirements of paragraph (d)(2)(ii)(A) through (D) or (d)(3)(ii) (A) and (B) of this section may be awarded an airline transport pilot certificate or an added rating to that certificate after successful completion of the of one of the following requirements:

(i) An approved course at a training center which includes all training and testing for that certificate or rating followed by training and testing on the following tasks, which must be successfully completed on a static aircraft or in flight, as appropriate:

(A) Preflight inspection;
(B) Normal takeoff from a hover;
(C) Manually flown precision approach; and
(D) Steep approach and landing to an off-airport heliport;

(ii) An approved course at a training center which includes all training and testing for that certificate or rating and compliance with paragraphs (d)(7) and (d)(8) of this section.

(7) An applicant meeting only the requirements of paragraph (d)(6) of this section will be issued an added rating or an airline transport pilot certificate with an added rating, as applicable, with a limitation. The limitation shall state: "This certificate is subject to pilot-in-command limitations for the added rating."

(8) An applicant gaining a certificate with the limitation specified in paragraph (d)(7) of this section—

(i) May not act as pilot in command of the aircraft for which an added rating was obtained under the provisions of this section until he or she has had the limitation removed from the certificate; and

(ii) May have the limitation removed by serving 25 hours of supervised operating experience as pilot in command under the supervision of a qualified and current pilot in command, in the seat normally occupied by the pilot in command, in an aircraft of the same type as the type of aircraft to which the limitation applies.

(e) Unless the Administrator requires certain or all tasks to be performed, the person authorized by the Administrator to conduct the practical test for an airline transport pilot certificate may waive any of the tasks for which the Administrator approves waiver authority.

33. Section 61.169 is revised to read as follows:

§ 61.169 Instruction in air transportation service.

(a) An airline transport pilot may instruct—

(1) Other pilots in air transportation service in aircraft of the category, class, and type, as applicable, for which the airline transport pilot is rated;

(2) In flight simulators and flight training devices representing the aircraft referenced in paragraph (a)(1) of this section, when instructing under the provisions of this section;

(3) Only as provided in this section, unless the airline transport pilot also holds a flight instructor certificate, in which case he or she may exercise the instructor privileges of subpart G of part 61 for which he or she is rated; and

(4) When instructing under the provisions of this section in an actual aircraft, only if the aircraft has functioning dual controls, when instructing under the provisions of this section.

(b) Excluding briefings and debriefings, an airline transport pilot may not instruct in aircraft, flight simulators, and flight training devices under this section—

(1) For more than 8 hours in any 24-consecutive-hour period; or

(2) For more than 36 hours in any 7-consecutive-day period.

(c) An airline transport pilot may not instruct in Category II or Category III operations unless he or she has been trained and successfully tested under Category II or Category III operations, as applicable.

34. Section 61.187 is amended by adding a new paragraph (c) to read as follows:

§ 61.187 Flight proficiency.

* * * * *

(c) The flight instruction required by this section may be accomplished—

(1) In an aircraft; or

(2) In a flight simulator or in a flight training device used in accordance with an approved course at a training center certificated under part 142 of this chapter.

35. Section 61.191 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 61.191 Additional flight instructor ratings.

* * * * *

(c) Pass the written and practical test prescribed in this subpart for the rating sought.

(d) If accomplished in accordance with an approved course conducted by a training center certificated under part 142 of this chapter, the practical test may be conducted in a flight simulator, or a flight training device.

36. Section 61.195 is amended by adding paragraph (h) to read as follows:

§ 61.196 Flight instructor limitations.

* * * * *

(h) A flight instructor may not give instruction in Category II or Category III operations unless the flight instructor has been trained and tested in Category II or Category III operations, pursuant to § 61.67 or § 61.68, as applicable.

37. Section 61.197 is revised to read as follows:

§ 61.197 Renewal of flight instructor certificates.

(a) Except as provided in paragraph (b) of this section, the holder of a flight instructor certificate may renew that certificate for an additional period of 24 calendar months if that individual satisfactorily completes a practical test for—

(1) Renewal of the flight instructor certificate and rating sought; or

(2) An additional flight instructor rating.

(b) The holder of a flight instructor certificate may renew that certificate and its ratings without accomplishing a practical test, by presenting to an FAA Flight Standards District Office evidence of one of the following:

(1) A record showing that, during the preceding 24 calendar months, the instructor has served—

(i) As a company check pilot;

(ii) As a chief flight instructor;

(iii) As a company check airman or flight instructor in a part 121 or part 135 operation; or

(iv) In a comparable position involving the regular evaluation of pilots.

(2) A graduation certificate from an approved flight instructor refresher course, provided that—

(i) The course was completed prior to the expiration date of the flight instructor certificate; and

(ii) The course consists of not less than 24 hours of ground training, flight training, or a combination of ground training and flight training.

(c) If an instructor satisfactorily completes the requirements of this section within 90 calendar days prior to the expiration date of the flight instructor certificate, the instructor is considered to have completed the requirements of this section prior to the expiration date, and the certificate will be renewed for an additional 24 calendar months beyond the expiration date.

(d) Except as allowed by paragraph (e) of this section, the practical test required by paragraph (a) of this section must be conducted in an aircraft.

(e) The practical test required by paragraph (a) of this section may be accomplished in a flight simulator or in a flight training device if the test is accomplished pursuant to an approved course conducted by a training center certificated under part 142 of this chapter.

38. Part 61, appendix A is amended by revising the heading to read as follows:

Appendix A to Part 61—Practical Test Requirements for Airplane Airline Transport Pilot Certificates and Associated Class and Type Ratings (For Parts 121 and 135 Use Only)

39. Part 61, appendix B, is removed.

PART 91—GENERAL OPERATING AND FLIGHT RULES

40. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

41. Section 91.191 is revised to read as follows:

§ 91.191 Category II and Category III manual.

(a) Except as provided in paragraph (c) of this section, after August 4, 1997, no person may operate a U.S.-registered civil aircraft in a Category II or a Category III operation unless—

(1) There is available in the aircraft a current and approved Category II or Category III manual, as appropriate, for that aircraft;

(2) The operation is conducted in accordance with the procedures, instructions, and limitations in the appropriate manual; and

(3) The instruments and equipment listed in the manual that are required for a particular Category II or Category III operation have been inspected and maintained in accordance with the maintenance program contained in the manual.

(b) Each operator must keep a current copy of each approved manual at its principal base of operations and must make each manual available for inspection upon request by the Administrator.

(c) This section does not apply to operations conducted by a holder of a certificate issued under part 121 or part 135 of this chapter.

42. Section 91.205 is amended by revising paragraph (f) and adding a new paragraph (g) and (h) to read as follows:

§ 91.205 Powered civil aircraft with standard category U.S. airworthiness certificates: Instrument and equipment requirements.

* * * * *

(f) *Category II operations.* The requirements for Category II operations are the instruments and equipment specified in—

(1) Paragraph (d) of this section; and

(2) Appendix A to this part.

(g) *Category III operations.* The instruments and equipment required for Category III operations are specified in paragraph (d) of this section.

(h) *Exclusions.* Paragraphs (f) and (g) of this section do not apply to operations conducted by a holder of a certificate issued under part 121 or part 135 of this chapter.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

43. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

Special Federal Aviation Regulation No. 58—Advanced Qualification Program

43A. Section 2 of SFAR 58 is amended by revising the definition of "training center" to read as follows:

2. *Definitions.*

* * * * *

Training center means an organization certificated under part 142 of this chapter or an organization approved by the Administrator to operate under the terms of this SFAR to provide training as described in section 1(b) of SFAR 58.

* * * * *

43B. Section 11 of SFAR 58 is amended by adding a new paragraph (d) to read as follows:

11. *Approval of Training, Qualification, or Evaluation by a Person Who Provides Training by Arrangement.*

* * * * *

(d) Approval for the training, qualification, or evaluation by a person who provides training by arrangement authorized by this section expires on August 3, 1998 unless that person meets the eligibility requirements specified under § 121.402 or § 135.324 of this chapter. After August 2, 1998 approval for the training, qualification, or evaluation, by a person who provides training by arrangement authorized by this section, shall be granted only to persons who meet the eligibility requirements specified under § 121.402 or § 135.234 of this chapter.

* * * * *

44. Section 121.400 is amended by adding new paragraphs (c)(7) and (c)(8).

§ 121.400 Applicability and terms used.

* * * * *

(7) *Training center.* An organization governed by the applicable requirements of part 142 of this chapter that provides training, testing, and checking under contract or other arrangement to certificate holders subject to the requirements of this part.

(8) *Requalification training.* The training required for crewmembers previously trained and qualified, but who have become unqualified due to not having met within the required period the recurrent training requirements of § 121.427 or the proficiency check requirements of § 121.441.

45. Section 121.402 is added to read as follows:

§ 121.402 Training program: Special Rules.

(a) Other than the certificate holder, only another certificate holder certificated under this part or a training center certificated under part 142 of this chapter is eligible under this subpart to provide training, testing, and checking under contract or other arrangement to those persons subject to the requirements of this subpart.

(b) A certificate holder may contract with, or otherwise arrange to use the services of, a training center certificated under part 142 of this chapter to provide training, testing, and checking required by this part only if the training center—

(1) Holds applicable training specifications issued under part 142 of this chapter;

(2) Has facilities, training equipment, and courseware meeting the applicable requirements of part 142 of this chapter;

(3) Has approved curriculums, curriculum segments, and portions of curriculum segments applicable for use in training courses required by this subpart; and

(4) Has sufficient instructor and check airmen qualified under the applicable requirements of §§ 121.411 or 121.413 to provide training, testing, and checking to persons subject to the requirements of this subpart.

46. Section 121.431 is amended by revising paragraph (a) to read as follows:

§ 121.431 Applicability.

(a) This subpart:

(1) Prescribes crewmember qualifications for all certificate holders except where otherwise specified. The qualification requirements of this subpart also apply to each certificate holder that conducts commuter operations under part 135 of this chapter with airplanes for which two pilots are required by the aircraft type certification rules of this chapter. The Administrator may authorize any other certificate holder that conducts operations under part 135 of this chapter to comply with the training and qualification requirements of this subpart instead of subparts E, G, and H of part 135 of this chapter, except that these certificate holders may choose to comply with the operating experience requirements of § 135.344 of this chapter, instead of the requirements of § 121.434; and

(2) Permits training center personnel authorized under part 142 of this chapter who meet the requirements of §§ 121.411 and 121.413 to provide training, testing and checking under contract or other arrangement to those persons subject to the requirements of this subpart.

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

47. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

48. Section 125.285 is amended by revising the introductory text of paragraph (a) and the introductory text of paragraph (c) to read as follows:

§ 125.285 Pilot qualifications: Recent experience.

(a) No certificate holder may use any person, nor may any person serve, as a required pilot flight crewmember unless within the preceding 90 calendar days that person has made at least three takeoffs and landings in the type airplane in which that person is to serve. The takeoffs and landings required by this paragraph may be performed in a flight simulator if the flight simulator is qualified and approved by the Administrator for such purpose. * * *

* * * * *

(c) A required pilot flight crewmember who performs the maneuvers required by paragraph (b) of this section in a qualified and approved flight simulator, as prescribed in paragraph (a) of this section, must—

* * * * *

49. Section 125.296 is added to read as follows:

§ 125.296 Training, testing, and checking conducted by training centers: Special rules.

A crewmember who has successfully completed training, testing, or checking in accordance with an approved training program that meets the requirements of this part and that is conducted in accordance with an approved course conducted by a training center certificated under part 142 of this chapter, is considered to meet applicable requirements of this part.

50. Section 125.297 is amended by revising the section heading and paragraph (a) and (b) introductory text to read as follows:

§ 125.297 Approval of flight simulators and flight training devices.

(a) Flight simulators and flight training devices approved by the Administrator may be used in training, testing, and checking required by this subpart.

(b) Each flight simulator and flight training device that is used in training, testing, and checking required under this subpart must be used in accordance with an approved training course conducted by a training center certificated under part 142 of this chapter, or meet the following requirements:

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

51. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

52. Section 135.291 is revised to read as follows:

§ 135.291 Applicability.

Except as provided in § 135.3, this subpart—

(a) Prescribes the tests and checks required for pilot and flight attendant crewmembers and for the approval of check pilots in operations under this part; and

(b) Permits training center personnel authorized under part 142 of this chapter who meet the requirements of § 135.337 and § 135.339 to provide training, testing, and checking under contract or other arrangement to those persons subject to the requirements of this subpart.

53. Section 135.321 is amended by revising paragraph (a) and by adding paragraphs (b)(7) and (b)(8) to read as follows:

§ 135.321 Applicability and terms used.

(a) Except as provided in § 135.3, this subpart prescribes the requirements applicable to—

(1) A certificate holder under this part which contracts with, or otherwise arranges to use the services of a training center certificated under part 142 to perform training, testing, and checking functions;

(2) Each certificate holder for establishing and maintaining an approved training program for crewmembers, check airmen and instructors, and other operations personnel employed or used by that certificate holder; and

(3) Each certificate holder for the qualification, approval, and use of aircraft simulators and flight training devices in the conduct of the program.

(b) * * *

(7) *Training center.* An organization governed by the applicable requirements of part 142 of this chapter that provides training, testing, and checking under contract or other arrangement to certificate holders subject to the requirements of this part.

(8) *Requalification training.* The training required for crewmembers previously trained and qualified, but who have become unqualified due to not having met within the required period the—

(i) Recurrent pilot testing requirements of § 135.293;

(ii) Instrument proficiency check requirements of § 135.297; or

(iii) Line checks required by § 135.299.

54. Section 135.324 is added to read as follows:

§ 135.324 Training program: Special Rules.

(a) Other than the certificate holder, only another certificate holder certificated under this part or a training center certificated under part 142 of this chapter is eligible under this subpart to provide training, testing, and checking under contract or other arrangement to those persons subject to the requirements of this subpart.

(b) A certificate holer may contract with, or otherwise arrange to use the services of, a training center certificated under part 142 of this chapter to provide training, testing, and checking required by this part only if the training center—

(1) Holds applicable training specifications issued under part 142 of this chapter;

(2) Has facilities, training equipment, and courseware meeting the applicable requirements of part 142 of this chapter;

(3) Has approved curriculums, curriculum segments, and portions of curriculum segments applicable for use in training courses required by this subpart; and

(4) Has sufficient instructor and check airmen qualified under the applicable requirements of §§ 135.337 or 135.339 to provide training, testing, and checking to persons subject to the requirements of this subpart.

PART 141—PILOT SCHOLS

55. The authority citation for part 141 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

56. Section 141.26 is added to read as follows:

§ 141.26 Training agreements.

A training center certificated under part 142 of this chapter may provide the training, testing, and checking for pilot schools certificated under part 141 of this chapter and is considered to meet the requirements of part 141 provided—

(a) There is a training agreement between the certificated training center and the pilot school;

(b) The training, testing, and checking provided by the certificated training center is approved and conducted under part 142;

(c) The pilot school certificated under part 141 obtains the Administrator's approval for a training course outline that includes the training, testing, and checking to be conducted under part 141 and the training, testing, and checking to be conducted under part 142 of this chapter; and

(d) Upon completion of the training, testing, and checking conducted under part 142 of this chapter, a copy of each student's training record is forwarded to the part 141 school and becomes part of the student's permanent training record.

57. Part 142 is added to read as follows:

PART 142—TRAINING CENTERS

Subpart A—General

§ 142.1 Applicability.
§ 142.3 Definitions.
§ 142.5 Certificate and training specifications required.
§ 142.7 Duration of a certificate.
§ 142.9 Deviations or waivers.
§ 142.11 Application for issuance or amendment.
§ 142.13 Management and personnel requirements.
§ 142.15 Facilities.
§ 142.17 Satellite training centers.
§ 142.19 Foreign training centers: Special rules.
§ 142.21–142.25 [Reserved]
§ 142.27 Display of certificate.
§ 142.29 Inspections.
§ 142.31 Advertising limitations.
§ 142.33 Training agreements.

Subpart B—Aircrew Curriculum and Syllabus Requirements

§ 142.35 Applicability.
§ 142.37 Approval of flight aircrew training program.
§ 142.39 Training program curriculum requirements.

Subpart C—Personnel and Flight Training Equipment Requirements

§ 142.45 Applicability.
§ 142.47 Training center instructor eligibility requirements.
§ 142.49 Training center instructor and evaluator privileges and limitations.
§ 142.51 [Reserved]
§ 142.53 Training center instructor training and testing requirements.
§ 142.55 Training center evaluator requirements.
§ 142.57 Aircraft requirements.
§ 142.59 Flight simulators and flight training devices.

Subpart D—Operating Rules

§ 142.61 Applicability.
§ 142.63 Privileges.
§ 142.65 Limitations.

Subpart E—Recordkeeping

§ 142.71 Applicability.
§ 142.73 Recordkeeping requirements.

Subpart F—Other Approved Courses

§ 142.81 Conduct of other approved courses.

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44703, 44705, 44707, 44709–44711, 45102–45103, 45301–45302.

Subpart A— General

§ 142.1 Applicability.

(a) This subpart prescribes the requirements governing the certification and operation of aviation training centers. Except as provided in paragraph (b) of this section, this part provides an alternative means to accomplish training required by parts 61, 63, 121, 125, 127, 135, or 137 of this chapter.

(b) Certification under this part is not required for training that is—

(1) Approved under the provisions of parts 63, 121, 125, 127, 135, and 137;

(2) Approved under SFAR 58, Advanced Qualification Programs, for the authorization holder's own employees;

(3) Conducted under part 61 unless that part requires certification under this part;

(4) Conducted by a part 121 certificate holder for another part 121 certificate holder; or

(5) Conducted by a part 135 certificate holder for another part 135 certificate holder.

(c) Except as provided in paragraph (b) of this section, after August 3, 1998, no person may conduct training, testing, or checking in advanced flight training devices or flight simulators without, or in violation of, the certificate and training specifications required by this part.

§ 142.3 Definitions.

As used in this part:

Advanced Flight Training Device as used in this part, means a flight training device as defined in part 61 of this chapter that has a cockpit that accurately replicates a specific make, model, and type aircraft cockpit, and handling characteristics that accurately model the aircraft handling characteristics.

Core Curriculum means a set of courses approved by the Administrator, for use by a training center and its satellite training centers. The core curriculum consists of training which is required for certification. It does not include training for tasks and circumstances unique to a particular user.

Course means—

(1) A program of instruction to obtain pilot certification, qualification, authorization, or currency;

(2) A program of instruction to meet a specified number of requirements of a program for pilot training, certification, qualification, authorization, or currency; or

(3) A curriculum, or curriculum segment, as defined in SFAR 58 of part 121 of this chapter.

Courseware means instructional material developed for each course or curriculum, including lesson plans, flight event descriptions, computer software programs, audiovisual programs, workbooks, and handouts.

Evaluator means a person employed by a training center certificate holder who performs tests for certification, added ratings, authorizations, and proficiency checks that are authorized by the certificate holder's training specification, and who is authorized by the Administrator to administer such checks and tests.

Flight training equipment means flight simulators, as defined in § 61.1(a) of this chapter, flight training devices, as defined in § 61.1(a) of this chapter, and aircraft.

Instructor means a person employed by a training center and designated to provide instruction in accordance with subpart C of this part.

Line-Operational Simulation means simulation conducted using operational-oriented flight scenarios that accurately replicate interaction among flightcrew members and between flightcrew members and dispatch facilities, other crewmembers, air traffic control, and ground operations. Line operational simulation simulations are conducted for training and evaluation purposes and include random, abnormal, and emergency occurrences. Line operational simulation specifically includes line-oriented flight training, special purpose operational training, and line operational evaluation.

Specialty Curriculum means a set of courses that is designed to satisfy a requirement of the Federal Aviation Regulations and that is approved by the Administrator for use by a particular training center or satellite training center. The specialty curriculum includes training requirements unique to one or more training center clients.

Training center means an organization governed by the applicable requirements of this part that provides training, testing, and checking under contract or other arrangement to airmen subject to the requirements of this chapter.

Training program consists of courses, courseware, facilities, flight training equipment, and personnel necessary to accomplish a specific training objective. It may include a core curriculum and a specialty curriculum.

Training specifications means a document issued to a training center certificate holder by the Administrator that prescribes that center's training, checking, and testing authorizations and limitations, and specifies training program requirements.

§ 142.5 Certificate and training specifications required.

(a) No person may operate a certificated training center without, or in violation of, a training center certificate and training specifications issued under this part.

(b) An applicant will be issued a training center certificate and training specifications with appropriate limitations if the applicant shows that it has adequate facilities, equipment, personnel, and courseware required by § 142.11 to conduct training approved under § 142.37.

§ 142.7 Duration of a certificate.

(a) Except as provided in paragraph (b) of this section, a training center certificate issued under this part is effective until the certificate is surrendered or until the Administrator suspends, revokes, or terminates it.

(b) Unless sooner surrendered, suspended, or revoked, a certificate issued under this part for a training center located outside the United States expires at the end of the twelfth month after the month in which it is issued or renewed.

(c) If the Administrator suspends, revokes, or terminates a training center certificate, the holder of that certificate shall return the certificate to the Administrator within 5 working days after being notified that the certificate is suspended, revoked, or terminated.

§ 142.9 Deviations or waivers.

(a) The Administrator may issue deviations or waivers from any of the requirements of this part.

(b) A training center applicant requesting a deviation or waiver under this section must provide the Administrator with information acceptable to the Administrator that shows—

(1) Justification for the deviation or waiver; and

(2) That the deviation or waiver will not adversely affect the quality of instruction or evaluation.

§ 142.11 Application for issuance or amendment.

(a) An application for a training center certificate and training specifications shall—

(1) Be made on a form and in a manner prescribed by the Administrator;

(2) Be filed with the FAA Flight Standards District Office that has jurisdiction over the area in which the applicant's principal business office is located; and

(3) Be made at least 120 calendar days before the beginning of any proposed training or 60 calendar days before effecting an amendment to any approved training, unless a shorter filing period is approved by the Administrator.

(b) Each application for a training center certificate and training specification shall provide—

(1) A statement showing that the minimum qualification requirements for each management position are met or exceeded;

(2) A statement acknowledging that the applicant shall notify the Administrator within 10 working days of any change made in the assignment of persons in the required management positions;

(3) The proposed training authorizations and training specifications requested by the applicant;

(4) The proposed evaluation authorization;

(5) A description of the flight training equipment that the applicant proposes to use;

(6) A description of the applicant's training facilities, equipment, qualifications of personnel to be used, and proposed evaluation plans;

(7) A training program curriculum, including syllabi, outlines, courseware, procedures, and documentation to support the items required in subpart B of this part, upon request by the Administrator;

(8) A description of a recordkeeping system that will identify and document the details of training, qualification, and certification of students, instructors, and evaluators;

(9) A description of quality control measures proposed; and

(10) A method of demonstrating the applicant's qualification and ability to provide training for a certificate or rating in fewer than the minimum hours prescribed in part 61 of this chapter if the applicant proposes to do so.

(c) The facilities and equipment described in paragraph (b)(6) of this section shall—

(1) Be available for inspection and evaluation prior to approval; and

(2) Be in place and operational at the location of the proposed training center prior to issuance of a certificate under this part.

(d) An applicant who meets the requirements of this part and is approved by the Administrator is entitled to—

(1) A training center certificate containing all business names included on the application under which the certificate holder may conduct operations and the address of each business office used by the certificate holder; and

(2) Training specifications, issued by the Administrator to the certificate holder, containing—

(i) The type of training authorized, including approved courses;

(ii) The category, class, and type of aircraft that may be used for training, testing, and checking;

(iii) For each flight simulator or flight training device, the make, model, and series of airplane or the set of airplanes being simulated and the qualification level assigned, or the make, model, and series of rotorcraft, or set of rotorcraft being simulated and the qualification level assigned;

(iv) For each flight simulator and flight training device subject to qualification evaluation by the Administrator, the identification number assigned by the FAA;

(v) The name and address of all satellite training centers, and the approved courses offered at each satellite training center;

(vi) Authorized deviations or waivers from this part; and

(vii) Any other items the Administrator may require or allow.

(e) The Administrator may deny, suspend, revoke, or terminate a certificate under this part if the Administrator finds that the applicant or the certificate holder—

(1) Held a training center certificate that was revoked, suspended, or terminated within the previous 5 years; or

(2) Employs or proposes to employ a person who—

(i) Was previously employed in a management or supervisory position by the holder of a training center certificate that was revoked, suspended, or terminated within the previous 5 years;

(ii) Exercised control over any certificate holder whose certificate has been revoked, suspended, or terminated within the last 5 years; and

(iii) Contributed materially to the revocation, suspension, or termination of that certificate and who will be employed in a management or supervisory position, or who will be in control of or have a substantial ownership interest in the training center.

(3) Has provided incomplete, inaccurate, fraudulent, or false information for a training center certificate;

(4) Has violated any provision of § 142.21; or

(5) Should not be granted a certificate if the grant would not foster aviation safety.

(f) At any time, the Administrator may amend a training center certificate—

(1) On the Administrator's own initiative, under section 609 of the Federal Aviation Act of 1958 (49 U.S.C. 1429), as amended, and part 13 of this chapter; or

(2) Upon timely application by the certificate holder.

(g) The certificate holder must file an application to amend a training center certificate at least 60 calendar days prior to the applicant's proposed effective amendment date unless a different filing period is approved by the Administrator.

§ 142.13 Management and personnel requirements.

An applicant for a training center certificate must show that—

(a) For each proposed curriculum, the training center has, and shall maintain, a sufficient number of instructors who are qualified in accordance with subpart C of this part to perform the duties to which they are assigned;

(b) The training center has designated, and shall maintain, a sufficient number of approved evaluators to provide required checks and tests to graduation candidates within 7 calendar days of training completion for any curriculum leading to airman certificates or ratings, or both;

(c) The training center has, and shall maintain, a sufficient number of management personnel who are qualified and competent to perform required duties; and

(d) A management representative, and all personnel who are designated by the training center to conduct direct student training, are able to understand, read, write, and fluently speak the English language.

§ 142.15 Facilities.

(a) An applicant for, or holder of, a training center certificate shall ensure that—

(1) Each room, training booth, or other space used for instructional purposes is heated, lighted, and ventilated to conform to local building, sanitation, and health codes; and

(2) The facilities used for instruction are not routinely subject to significant distractions caused by flight operations and maintenance operations at the airport.

(b) An applicant for, or holder of, a training center certificate shall establish and maintain a principal business office that is physically located at the address shown on its training center certificate.

(c) The records required to be maintained by this part must be located in facilities adequate for that purpose.

(d) An applicant for, or holder of, a training center certificate must have available exclusively, for adequate periods of time and at a location approved by the Administrator, adequate flight training equipment and courseware, including at least one flight simulator or advanced flight training device.

(e) A training center certificate may be issued to an applicant having a business office or training center located outside the United States.

§ 142.17 Satellite training centers.

(a) The holder of a training center certificate may conduct training in accordance with an approved training program at a satellite training center located in the United States if—

(1) The facilities, equipment, personnel, and course content of the satellite training center meet the applicable requirements of this part;

(2) The instructors and evaluators at the satellite training center are under the direct supervision of management personnel of the principal training center;

(3) The Administrator is notified in writing that a particular satellite is to begin operations at least 60 days prior to proposed commencement of operations at the satellite training center; and

(4) The certificate holder's training specifications reflect the name and address of the satellite training center and the approved courses offered at the satellite training center.

(b) The certificate holder's training specifications shall prescribe the operations required and authorized at each satellite training center.

§ 142.19 Foreign training centers: Special rules.

(a) In the discretion of the Administrator, a training center located outside the United States may be certificated by the Administrator pursuant to this part.

(b) A training center located outside the United States may prepare and recommend U.S. applicants for airman certificates and may prepare and recommend applicants for authorizations, endorsements, and added ratings to FAA-issued certificates, and may issue such certificates, authorizations, endorsements, and added ratings to the extent authorized and approved by the Administrator.

(c) In addition to the authority provided under paragraph (b) of this section, a training center located outside the United States, when authorized by the Administrator, may provide any training, testing, or checking that is required to satisfy a requirement of 14 CFR chapter I.

§ 142.21–142.25 [Reserved]

§ 142.27 Display of certificate.

(a) Each holder of a training center certificate must prominently display that certificate in a place accessible to the public in the principal business office of the training center.

(b) A training center certificate and training specifications must be made available for inspection upon request by—

(1) The Administrator;

(2) An authorized representative of the National Transportation Safety Board; or

(3) Any Federal, State, or local law enforcement agency.

§ 142.29 Inspections.

Each certificate holder must allow the Administrator to inspect training center facilities, equipment, and records at any reasonable time and in any reasonable place in order to determine compliance with or to determine initial or continuing eligibility under 49 U.S.C. 44701, 44707, formerly the Federal Aviation Act of 1958, as amended, and the training center's certificate and training specifications.

§ 142.31 Advertising limitations.

(a) A certificate holder may not conduct, and may not advertise to conduct, any training, testing, and checking that is not approved by the Administrator if that training is designed to satisfy any requirement of this chapter.

(b) A certificate holder whose certificate has been surrendered, suspended, revoked, or terminated must—

(1) Promptly remove all indications, including signs, wherever located, that the training center was certificated by the Administrator; and

(2) Promptly notify all advertising agents, or advertising media, or both, employed by the certificate holder to cease all advertising indicating that the training center is certificated by the Administrator.

§ 142.33 Training agreements.

A pilot school certificated under part 141 of this chapter may provide training, testing, and checking for a training center certificated under this part if—

(a) There is a training, testing, and checking agreement between the certificated training center and the pilot school;

(b) The training, testing, and checking provided by the certificated pilot school is approved and conducted in accordance with this part;

(c) The pilot school certificated under part 141 obtains the Administrator's approval for a training course outline that includes the portion of the training, testing, and checking to be conducted under part 141; and

(d) Upon completion of training, testing, and checking conducted under part 141, a copy of each student's training record is forwarded to the part 142 training center and becomes part of the student's permanent training record.

Subpart B—Aircrew Curriculum and Syllabus Requirements

§ 142.35 Applicability.

This subpart prescribes the curriculum and syllabus requirements for the issuance of a training center certificate and training specifications for training, testing, and checking conducted to meet the requirements of part 61 of this chapter.

§ 142.37 Approval of flight aircrew training program.

(a) Except as provided in paragraph (b) of this section, each applicant for, or holder of, a training center certificate must apply to the Administrator for training program approval.

(b) A curriculum approved under SFAR 58 of part 121 of this chapter is approved under this part without modifications.

(c) Application for training program approval shall be made in a form and in a manner acceptable to the Administrator.

(d) Each application for training program approval must indicate—

(1) Which courses are part of the core curriculum and which courses are part of the specialty curriculum;

(2) Which requirements of part 61 of this chapter would be satisfied by the curriculum or curriculums; and

(3) Which requirements of part 61 of this chapter would not be satisfied by the curriculum or curriculums.

(e) If, after a certificate holder begins operations under an approved training program, the Administrator finds that the certificate holder is not meeting the provisions of its approved training program, the Administrator may require the certificate holder to make revisions to that training program.

(f) If the Administrator requires a certificate holder to make revisions to an approved training program and the certificate holder does not make those required revisions, within 30 calendar days, the Administrator may suspend, revoke, or terminate the training center certificate under the provisions of § 142.11(e).

§ 142.39 Training program curriculum requirements.

Each training program curriculum submitted to the Administrator for approval must meet the applicable requirements of this part and must contain—

(a) A syllabus for each proposed curriculum;

(b) Minimum aircraft and flight training equipment requirements for each proposed curriculum;

(c) Minimum instructor and evaluator qualifications for each proposed curriculum;

(d) A curriculum for initial training and continuing training of each instructor or evaluator employed to instruct in a proposed curriculum; and

(e) For each curriculum that provides for the issuance of a certificate or rating in fewer than the minimum hours prescribed by part 61 of this chapter—

(1) A means of demonstrating the ability to accomplish such training in the reduced number of hours; and

(2) A means of tracking student performance.

Subpart C—Personnel and Flight Training Equipment Requirements

§ 142.45 Applicability.

This subpart prescribes the personnel and flight training equipment requirements for a certificate holder that is training to meet the requirements of part 61 of this chapter.

§ 142.47 Training center instructor eligibility requirements.

(a) A certificate holder may not employ a person as an instructor in a flight training course that is subject to approval by the Administrator unless that person—

(1) Is at least 18 years of age;

(2) Is able to read, write, and speak and understand in the English language;

(3) If instructing in an aircraft in flight, is qualified in accordance with subpart G of part 61 of this chapter;

(4) Satisfies the requirements of paragraph (c) of this section; and

(5) Meets at least one of the following requirements—

(i) Except as allowed by paragraph (a)(5)(ii) of this section, meets the aeronautical experience requirements of § 61.129 or § 61.131 of this chapter, as applicable, excluding the required hours of instruction in preparation for the commercial pilot practical test;

(ii) If instructing in a flight simulator or flight training device that represents an airplane requiring a type rating or if instructing in a curriculum leading to the issuance of an airline transport pilot certificate or an added rating to an

airline transport pilot certificate, meets the aeronautical experience requirements of § 61.155 or § 61.161 of this chapter, as applicable; or

(iii) Is employed as a flight simulator instructor or a flight training device instructor for a training center providing instruction and testing to meet the requirements of part 61 of this chapter on August 1, 1996.

(b) A training center must designate each instructor in writing to instruct in each approved course, prior to that person functioning as an instructor in that course.

(c) Prior to initial designation, each instructor shall:

(1) Complete at least 8 hours of ground training on the following subject matter:

(i) Instruction methods and techniques.

(ii) Training policies and procedures.

(iii) The fundamental principles of the learning process.

(iv) Instructor duties, privileges, responsibilities, and limitations.

(v) Proper operation of simulation controls and systems.

(vi) Proper operation of environmental control and warning or caution panels.

(vii) Limitations of simulation.

(viii) Minimum equipment requirements for each curriculum.

(ix) Revisions to the training courses.

(x) Cockpit resource management and crew coordination.

(2) Satisfactorily complete a written test—

(i) On the subjects specified in paragraph (c)(1) of this section; and

(ii) That is accepted by the Administrator as being of equivalent difficulty, complexity, and scope as the tests provided by the Administrator for the flight instructor airplane and instrument flight instructor knowledge tests.

§ 142.49 Training center instructor and evaluator privileges and limitations.

(a) A certificate holder may allow an instructor to provide:

(1) Instruction for each curriculum for which that instructor is qualified.

(2) Testing and checking for which that instructor is qualified.

(3) Instruction, testing, and checking intended to satisfy the requirements of any part of this chapter.

(b) A training center whose instructor or evaluator is designated in accordance with the requirements of this subpart to conduct training, testing, or checking in qualified and approved flight training equipment, may allow its instructor or evaluator to give endorsements required by part 61 of this chapter if that instructor or evaluator is authorized by the Administrator to instruct or evaluate in a part 142 curriculum that requires such endorsements.

(c) A training center may not allow an instructor to—

(1) Excluding briefings and debriefings, conduct more than 8 hours of instruction in any 24-consecutive-hour period;

(2) Provide flight training equipment instruction unless that instructor meets the requirements of § 142.53 (a)(1) through (a)(4), and § 142.53(b), as applicable; or

(3) Provide flight instruction in an aircraft unless that instructor—

(i) Meets the requirements of § 142.53(a)(1), (a)(2), and (a)(5);

(ii) Is qualified and authorized in accordance with subpart G of part 61 of this chapter;

(iii) Holds certificates and ratings specified by part 61 of this chapter appropriate to the category, class, and type aircraft in which instructing;

(iv) If instructing or evaluating in an aircraft in flight while occupying a required crewmember seat, holds at least a valid second class medical certificate; and

(v) Meets the recency of experience requirements of part 61 of this chapter.

§ 142.51 [Reserved]

§ 142.53 Training center instructor training and testing requirements.

(a) Except as provided in paragraph (c) of this section, prior to designation and every 12 calendar months beginning the first day of the month following an instructor's initial designation, a certificate holder must ensure that each of its instructors meets the following requirements:

(1) Each instructor must satisfactorily demonstrate to an authorized evaluator knowledge of, and proficiency in, instructing in a representative segment of each curriculum for which that instructor is designated to instruct under this part.

(2) Each instructor must satisfactorily complete an approved course of ground instruction in at least—

(i) The fundamental principles of the learning process;

(ii) Elements of effective teaching, instruction methods, and techniques;

(iii) Instructor duties, privileges, responsibilities, and limitations;

(iv) Training policies and procedures;

(v) Cockpit resource management and crew coordination; and

(vi) Evaluation.

(3) Each instructor who instructs in a qualified and approved flight simulator or flight training device must satisfactorily complete an approved course of training in the operation of the flight simulator, and an approved course of ground instruction, applicable to the training courses the instructor is designated to instruct.

(4) The flight simulator training course required by paragraph (a)(3) of this section which must include—

(i) Proper operation of flight simulator and flight training device controls and systems;

(ii) Proper operation of environmental and fault panels;

(iii) Limitations of simulation; and

(iv) Minimum equipment requirements for each curriculum.

(5) Each flight instructor who provides training in an aircraft must satisfactorily complete an approved course of ground instruction and flight training in an aircraft, flight simulator, or flight training device.

(6) The approved course of ground instruction and flight training required by paragraph (a)(5) of this section which must include instruction in—

(i) Performance and analysis of flight training procedures and maneuvers applicable to the training courses that the instructor is designated to instruct;

(ii) Technical subjects covering aircraft subsystems and operating rules applicable to the training courses that the instructor is designated to instruct;

(iii) Emergency operations;

(iv) Emergency situations likely to develop during training; and

(v) Appropriate safety measures.

(7) Each instructor who instructs in qualified and approved flight training equipment must pass a written test and annual proficiency check—

(i) In the flight training equipment in which the instructor will be instructing; and

(ii) On the subject matter and maneuvers which the instructor will be instructing.

(b) In addition to the requirements of paragraphs (a)(1) through (a)(7) of this section, each certificate holder must ensure that each instructor who instructs in a flight simulator that the Administrator has approved for all training and all testing for the airline transport pilot certification test, aircraft type rating test, or both, has met at least one of the following three requirements:

(1) Each instructor must have performed 2 hours in flight, including three takeoffs and three landings as the sole manipulator of the controls of an aircraft of the same category and class, and, if a type rating is required, of the same type replicated by the approved flight simulator in which that instructor is designated to instruct;

(2) Each instructor must have participated in an approved line-oriented flight observation program under part 121 or part 135 of this chapter, and that—

(i) Was accomplished in the same airplane type as the airplane represented by the flight simulator in which that instructor is designated to instruct; and

(ii) Included line-oriented flight training of at least 1 hour of flight during which the instructor was the sole manipulator of the controls in a flight simulator that replicated the same type aircraft for which that instructor is designated to instruct; or

(3) Each instructor must have participated in an approved in-flight observation training course that—

(i) Consisted of at least 2 hours of flight time in an airplane of the same type as the airplane replicated by the flight simulator in which the instructor is designated to instruct; and

(ii) Included line-oriented flight training of at least 1 hour of flight during which the instructor was the sole manipulator of the controls in a flight simulator that replicated the same type aircraft for which that instructor is designated to instruct.

(c) An instructor who satisfactorily completes a curriculum required by paragraph (a) or (b) of this section in the calendar month before or after the month in which it is due is considered to have taken it in the month in which it was due for the purpose of computing when the next training is due.

(d) The Administrator may give credit for the requirements of paragraph (a) or (b) of this section to an instructor who has satisfactorily completed an instructor training course for a part 121 or part 135 certificate holder if the Administrator finds such a course equivalent to the requirements of paragraph (a) or (b) of this section.

§ 142.55 Training center evaluator requirements.

(a) Except as provided by paragraph (d) of this section, a training center must ensure that each person authorized as an evaluator—

(1) Is approved by the Administrator;

(2) Is in compliance with §§ 142.47, 142.49, and 142.53 and applicable sections of part 187 of this chapter; and

(3) Prior to designation, and except as provided in paragraph (b) of this section, every 12-calendar-month period following initial designation, the certificate holder must ensure that the evaluator satisfactorily completes a curriculum that includes the following:

(i) Evaluator duties, functions, and responsibilities;

(ii) Methods, procedures, and techniques for conducting required tests and checks;

(iii) Evaluation of pilot performance; and

(iv) Management of unsatisfactory tests and subsequent corrective action; and

(4) If evaluating in qualified and approved flight training equipment must satisfactorily pass a written test and annual proficiency check in a flight simulator or aircraft in which the evaluator will be evaluating.

(b) An evaluator who satisfactorily completes a curriculum required by paragraph (a) of this section in the calendar month before or the calendar month after the month in which it is due is considered to have taken it in the month is which it was due for the purpose of computing when the next training is due.

(c) The Administrator may give credit for the requirements of paragraph (a)(3) of this section to an evaluator who has satisfactorily completed an evaluator training course for a part 121 or part 135 certificate holder if the Administrator finds such a course equivalent to the requirements of paragraph (a)(3) of this section.

(d) An evaluator who is qualified under SFAR 58 shall be authorized to conduct evaluations under the Advanced Qualification Program without complying with the requirements of this section.

§ 142.57 Aircraft requirements.

(a) An applicant for, or holder of, a training center certificate must ensure that each aircraft used for flight instruction and solo flights meets the following requirements:

(1) Except for flight instruction and solo flights in a curriculum for agricultural aircraft operations, external load operations, and similar aerial work operations, the aircraft must have an FAA standard airworthiness certificate or a foreign equivalent of an FAA standard airworthiness certificate, acceptable to the Administrator.

(2) The aircraft must be maintained and inspected in accordance with—

(i) The requirements of part 91, subpart E, of this chapter; and

(ii) An approved program for maintenance and inspection.

(3) The aircraft must be equipped as provided in the training specifications for the approved course for which it is used.

(b) Except as provided in paragraph (c) of this section, an applicant for, or holder of, a training center certificate must ensure that each aircraft used for flight instruction is at least a two-place aircraft with engine power controls and flight controls that are easily reached and that operate in a conventional manner from both pilot stations.

(c) Airplanes with controls such as nose-wheel steering, switches, fuel selectors, and engine air flow controls that are not easily reached and operated in a conventional manner by both pilots may be used for flight instruction if the certificate holder determines that the flight instruction can be conducted in a safe manner considering the location of controls and their nonconventional operation, or both.

§ 142.59 Flight simulators and flight training devices.

(a) An applicant for, or holder of, a training center certificate must show that each flight simulator and flight training device used for training, testing, and checking (except AQP) will be or is specifically qualified and approved by the Administrator for—

(1) Each maneuver and procedure for the make, model, and series of aircraft, set of aircraft, or aircraft type simulated, as applicable; and

(2) Each curriculum or training course in which the flight simulator or flight training device is used, if that curriculum or course is used to satisfy any requirement of 14 CFR chapter I.

(b) The approval required by paragraph (a)(2) of this section must include—

(1) The set of aircraft, or type aircraft;

(2) If applicable, the particular variation within type, for which the training, testing, or checking is being conducted; and

(3) The particular maneuver, procedure, or crewmember function to be performed.

(c) Each qualified and approved flight simulator or flight training device used by a training center must—

(1) Be maintained to ensure the reliability of the performances, functions, and all other characteristics that were required for qualification;

(2) Be modified to conform with any modification to the aircraft being simulated if the modification results in changes to performance, function, or other characteristics required for qualification;

(3) Be given a functional preflight check each day before being used; and

(4) Have a discrepancy log in which the instructor or evaluator, at the end of each training session, enters each discrepancy.

(d) Unless otherwise authorized by the Administrator, each component on a qualified and approved flight simulator or flight training device used by a training center must be operative if the component is essential to, or involved in, the training, testing, or checking of airmen.

(e) Training centers shall not be restricted to specific—

(1) Route segments during line-oriented flight training scenarios; and

(2) Visual data bases replicating a specific customer's bases of operation.

(f) Training centers may request evaluation, qualification, and continuing evaluation for qualification of flight simulators and flight training devices without—

(1) Holding an air carrier certificate; or

(2) Having a specific relationship to an air carrier certificate holder.

Subpart D—Operating Rules

§ 142.61 Applicability.

This subpart prescribes the operating rules applicable to a training center certificated under this part and operating a course or training program curriculum approved in accordance with subpart B of this part.

§ 142.63 Privileges.

A certificate holder may allow flight simulator instructors and evaluators to meet recency of experience requirements through the use of a qualified and approved flight simulator or qualified and approved flight training device if that flight simulator or flight training device is—

(a) Used in a course approved in accordance with subpart B of this part; or

(b) Approved under the Advanced Qualification Program for meeting recency of experience requirements.

§ 142.65 Limitations.

(a) A certificate holder shall—

(1) Ensure that a flight simulator or flight training device freeze, slow motion, or repositioning feature is not used during testing or checking; and

(2) Ensure that a repositioning feature is used during line operational simulation for evaluation and line-oriented flight training only to advance along a flight route to the point where the descent and approach phase of the flight begins.

(b) When flight testing, flight checking, or line operational simulation is being conducted, the certificate holder must ensure that one of the following occupies each crewmember position:

(1) A crewmember qualified in the aircraft category, class, and type, if a type rating is required, provided that no flight instructor who is giving instruction may occupy a crewmember position.

(2) A student, provided that no student may be used in a crewmember position with any other student not in the same specific course.

(c) The holder of a training center certificate may not recommend a trainee for a certificate or rating, unless the trainee—

(1) Has satisfactorily completed the training specified in the course approved under § 142.37; and

(2) Has passed the final tests required by § 142.37.

(d) The holder of a training center certificate may not graduate a student from a course unless the student has satisfactorily completed the curriculum requirements of that course.

Subpart E—Recordkeeping

§ 142.71 Applicability.

This subpart prescribes the training center recordkeeping requirements for trainees enrolled in a course, and instructors and evaluators designated to instruct a course, approved in accordance with subpart B of this part.

§ 142.73 Recordkeeping requirements.

(a) A certificate holder must maintain a record for each trainee that contains—

(1) The name of the trainee;

(2) A copy of the trainee's pilot certificate, if any, and medical certificate;

(3) The name of the course and the make and model of flight training equipment used;

(4) The trainee's prerequisite experience and course time completed;

(5) The trainee's performance on each lesson and the name of the instructor providing instruction;

(6) The date and result of each end-of-course practical test and the name of the evaluator conducting the test; and

(7) The number of hours of additional training that was accomplished after any unsatisfactory practical test.

(b) A certificate holder shall maintain a record for each instructor or evaluator designated to instruct a course approved in accordance with subpart B of this part that indicates that the instructor or evaluator has complied with the requirements of §§ 142.13, 142.45, 142.47, 142.49, and 142.53, as applicable.

(c) The certificate holder shall—

(1) Maintain the records required by paragraphs (a) of this section for at least 1 year following the completion of training, testing or checking;

(2) Maintain the qualification records required by paragraph (b) of this section while the instructor or evaluator is in the employ of the certificate holder and for 1 year thereafter; and

(3) Maintain the recurrent demonstration of proficiency records required by paragraph (b) of this section for at least 1 year.

(d) The certificate holder must provide the records required by this section to the Administrator, upon request and at a reasonable time, and shall keep the records required by—

(1) Paragraph (a) of this section at the training center, or satellite training center where the training, testing, or checking, if appropriate, occurred; and

(2) Paragraph (b) of this section at the training center or satellite training center where the instructor or evaluator is primarily employed.

(e) The certificate holder shall provide to a trainee, upon request and at a reasonable time, a copy of his or her training records.

Subpart F—Other Approved Courses

§ 142.81 Conduct of other approved courses.

(a) An applicant for, or holder of, a training center certificate may apply for approval to conduct a course for which a curriculum is not prescribed by this part.

(b) The course for which application is made under paragraph (a) of this section may be for flight crewmembers other than pilots, airmen other than flight crewmembers, material handlers, ground servicing personnel, and security personnel, and others approved by the Administrator.

(c) An applicant for course approval under this subpart must comply with the applicable requirements of subpart A through subpart F of this part.

(d) The Administrator approves the course for which the application is made if the training center or training center applicant shows that the course contains a curriculum that will achieve a level of competency equal to, or greater than, that required by the appropriate part of this chapter.

Issued in Washington, DC, on May 23, 1996.

David R. Hinson,

Administrator.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902
50 CFR Part 660, et al.

Fisheries off West Coast States and in the Western Pacific; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 660, 661, 663, 680, 681, 683, and 685

[Docket No. 960614176–6176–01; I.D. 050796A]

RIN 0648–AI18

Fisheries off West Coast States and in the Western Pacific

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is consolidating six CFR parts into one new CFR part. The new part contains regulations implementing management measures for fisheries operating in the exclusive economic zone (EEZ) off West Coast and Western Pacific states. The domestic fisheries for groundfish and ocean salmon off the West Coast and for precious corals, crustaceans, bottomfish and seamount groundfish, and Pelagics of the Western Pacific will be managed under this new part. This final rule does not make substantive changes to the existing regulations; rather, it reorganizes management measures into a more logical and cohesive order, removes duplicative and outdated provisions, and makes editorial changes for readability, clarity, and to achieve uniformity in regulatory language. This final rule also amends references to Paperwork Reduction Act (PRA) information-collection requirements to reflect the consolidation. The purpose of this final rule is to make the regulations more concise, better organized, and thereby easier for the public to use. This action is part of the President's Regulatory Reinvention Initiative.

EFFECTIVE DATE: These regulations are effective on July 1, 1996, with the exception of 50 CFR 660.404 and 660.408, which will become effective when OMB has approved collection-of-information requirements for those sections and that approval has been published in the **Federal Register**, and 50 CFR 600.53 which will become effective August 4, 1996.

FOR FURTHER INFORMATION CONTACT: Bill Robinson, NMFS, 206–526–6140; Rod McInnis, NMFS, 310–980–4030; or Alvin Katekaru, NMFS, 808–973–2985.

SUPPLEMENTARY INFORMATION:

Background

In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. This initiative is part of the National Performance Review and calls for comprehensive regulatory reform. The President directed all agencies to undertake a review of all their regulations, with an emphasis on eliminating or modifying those that are obsolete, duplicative, or otherwise in need of reform. This final rule is intended to carry out the President's directive with respect to those regulations implementing the Fishery Management Plans (FMPs) for fisheries off West Coast and Western Pacific states.

Domestic groundfish fisheries in the EEZ off the West Coast are managed by NMFS under the Fishery Management Plan for the Washington, Oregon, and California Groundfish Fishery (Pacific Coast Groundfish Fishery Management Plan), which is implemented by regulations at 50 CFR part 663. The ocean salmon fisheries are managed under the Fishery Management Plan for Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California, which is implemented by regulations at 50 CFR part 661. The Western Pacific precious corals fisheries are managed under regulations at 50 CFR part 680, which implement the Fishery Management Plan for Precious Coral Fisheries of the Western Pacific Region. The lobster fishery of the Northwestern Hawaiian Islands (NWHI) is managed under the Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region, which is implemented by regulations at 50 CFR part 681. The NWHI fisheries for bottomfish and seamount groundfish are managed by NMFS through regulations at 50 CFR part 683, which implement the Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region. The fisheries for Pacific pelagic species are managed under regulations at 50 CFR part 685, which implement the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region. General regulations that also pertain to these fisheries appear in 50 CFR part 600. The Groundfish and Salmon FMPs were prepared by the Pacific Fishery Management Council, and the Precious Corals, Crustaceans, Bottomfish and Seamount Groundfish, and Pelagics FMPs were prepared by the Western Pacific Fishery Management Council, under the authority of the Magnuson Fishery Conservation and Management Act. Consolidation of Regulations Related to the Domestic Fisheries Operating in the EEZ Off West Coast and Western Pacific States Into One CFR Part (50 CFR part 660)

Currently, regulations implementing the six FMPs described above are contained in six separate parts of title 50 of the CFR, in addition to general provisions for foreign fisheries contained in part 600. NMFS, through this rulemaking, removes the six parts (50 CFR parts 661, 663, 680, 681, 683, and 685) and consolidates the regulations contained therein into one new part (50 CFR part 660). This consolidated regulation provides the public with a single reference source for the Federal fisheries regulations specific to the fisheries operating in the EEZ off the West Coast (California, Oregon, and Washington) or in the Western Pacific (Hawaii, American Samoa, Guam, the Northern Mariana Islands, and U.S. island possessions in the Pacific). The restructuring of the six parts into a single part results in one set of regulations that is more concise, clearer, and easier to use than the six separate parts. Many provisions in part 600 also apply to the fisheries operating in the EEZ off West Coast and Western Pacific States.

Reorganization of Management Measures Within the Consolidated Regulations and Elimination of Obsolete or Duplicative Provisions

In new part 660, NMFS has reorganized the consolidated management measures in a more logical and cohesive order. Because portions of the existing regulations contain identical or nearly identical provisions, similar measures have been combined and restructured. For example, certain definitions, prohibitions, and requirements that were common to the current regulations for all the fisheries, but located in different parts, were placed in a general subpart so they would only appear once. For provisions common to all Western Pacific fisheries, a separate subpart is established. Paragraph headings have been added where appropriate for ease in identifying measures, and regulatory language has been revised to improve clarity and consistency.

As a result of the consolidation effort, NMFS also identified duplicative and obsolete provisions and removed those measures from the regulations. For example, obsolete provisions dealing with initial issuance of permits under limited entry programs for Western Pacific bottomfish, crustacean, and longline fisheries and for West Coast groundfish fisheries were removed. In addition, changes to part 661 (salmon) include correcting the scientific name for steelhead (rainbow trout) to *Oncorhynchus mykiss*, updating escapement goals for consistency with revised management procedures of the Pacific Fishery Management Council, and removing the appendix by incorporation of relevant portions into the numbered sections and deletion of any repetitive or unnecessary information.

Changes to part 663 (Pacific Coast groundfish) include removing the appendix of standards and procedures and, instead, referencing appropriate sections in the Pacific Coast Groundfish Fishery Management Plan, removing obsolete requirements for applications for limited entry permits, consolidating definitions in one section that previously were scattered throughout part 663, removing those definitions and regulations that either appear elsewhere in part 660 or are no longer relevant after the appendix was removed, and making technical and editorial clarifications.

A limited entry program was implemented in the Pacific Coast groundfish fishery in 1994. The window of time for initial permit issuance is over, so the standards and procedures for initial permit issuance have been removed from the regulations because they are no longer necessary. There are still some appeals from permits denials pending before the agency and Federal courts. The regulatory provisions that were in effect at the time of permit denial will still be used in these proceedings, even though they are being removed from codification. There are two extremely limited circumstances in which fishermen may obtain new initial permits, but it is highly unlikely that anyone will qualify for a permit under these provisions. Therefore, the details governing these permits are removed from codification. The standards and procedures covering issuance of these permits, and the privileges accompanying these permits, are described in the FMP, and the relevant sections are cited in these regulations. The provisions governing administration and transfer of existing permits remain in the codified regulations.

No substantive changes were made to the regulations by this reorganization or by the removal of duplicative and obsolete provisions.

Revisions to Paperwork Reduction Act References in 15 CFR 902.1(b)

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, Office of Management and Budget (OMB), for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule codifies many recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to reference correctly the new sections resulting from the consolidation.

This rule also makes a technical correction to the regulations establishing a longline fishing prohibited area around Guam. The final rule technical amendment published September 13, 1994 (59 FR 46933) contained an error, and the correct coordinates have been specified in § 660.26(d).

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

Because this rule makes only nonsubstantive changes to existing regulations originally issued after prior notice and an opportunity for public comment, the Assistant Administrator for Fisheries, NOAA, under 5 U.S.C. 533(b)(B), for good cause finds that providing such procedures for this rulemaking is unnecessary. Because this rule is not substantive, it is not subject to a 30-day delay in effective date under 5 U.S.C. 553(d).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

OMB approval for the West Coast Salmon Fisheries PRA collection-of-information requirements has expired. NMFS is in the process of obtaining OMB approval for these requirements. The collection of information requirements of 50 CFR 660.404 and 660.408 are suspended until such time as OMB approves the collection and notification of the approval is published in the **Federal Register**.

The following collection-of-information requirements have already been approved by OMB for U.S. fishing activities:

a. *Approved under 0648–0204*—(1) Southwest Region Federal Fishing Permits, estimated at 0.55 hours per permit action; (2) experimental fishing permits, estimated at 2 hours per application (§§ 660.13, 660.17, and 660.21(k)).

b. *Approved under 0648–0214*—Southwest Logbook Family of Forms: (1) Catch-and-effort logbooks, estimated at 5 minutes per response; (2) pre-trip notifications, estimated at 5 minutes per notice; (3) post-landing notices, estimated at 5 minutes per response; (4) observer placement meetings, estimated at 1 hour per response; (5) protected species interaction reports, estimated at 3 minutes per response; (6) pre-landing notices, estimated at 5 minutes per response; (7) experimental fishing reports, estimated at 4 hours per report; (8) report on gear left at sea, estimated at 5 minutes per response; (9) sales and transshipment reports, estimated at 5 minutes per response; (10) precious corals sales report, estimated at 15 minutes per response; (11) pelagics transshipment logbooks, estimated at 5 minutes per response; (12) claims for reimbursement for lost fishing time, estimated at 4 hours per response; and (13) request for pelagics area closure exemption, estimated at 1 hour per response (§§ 660.14, 660.23, 660.24, 660.28, 660.43, and 660.48).

c. *Approved under 0648–0203*—Northwest Federal Fisheries Permits: (1) Experimental fishing permits, estimated at 32 minutes per response; (2) limited entry permits, estimated at 20 minutes per response; and (3) at-sea processing permits, estimated at 20 minutes per response (§ 660.333).

d. *Approved under 0648–0243*—Survey of intent and capacity to harvest and process fish and shellfish, estimated at 5 minutes per response (§ 660.323).

e. *Approved under 0648–0271*—Northwest Region Logbook Family of Forms: (1) Weekly production report, estimated at 30 minutes per response; (2) transfer logs, estimated at 15 minutes per response; (3) cumulative production logs, estimated at 13–26 minutes per response, depending on the type of fishing operation; and (4) start/stop reports, estimated at 5 minutes per response (§ 660.305).

f. *Approved under 0648–0305*—Gear identification requirements, estimated at 30 minutes per response (§§ 660.24, 660.48, and 660.322).

g. *Approved under 0648–0306*—Vessel identification requirements, estimated at 35 minutes per response (§§ 660.16 and 660.305).

h. *Approved under 0648–0307*—Arrangements for placing and adjusting vessel monitoring system units,

estimated at 1 hour per response (§ 660.25).

Because this rule makes only nonsubstantive changes to existing regulations, no useful purpose would be served by providing advance notice and opportunity for public comment. Accordingly, the Assistant Administrator for Fisheries, NOAA, under 5 U.S.C. 553(b)(B), for good cause finds that providing notice and opportunity for public comment is unnecessary. Because this rule is not substantive, it is not subject to a 30-day delay in effective date under 5 U.S.C. 553(d).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 680

Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 681

Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 681

Administrative practice and procedure, Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 685

American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: June 20, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b) the table, in the entries for 50 CFR in the left column, in numerical order, the following entries and corresponding OMB Numbers are removed: "680.4", "680.5", "680.6", "680.10", "681.4", "681.5", "681.6", "681.10", "681.24", "681.25", "681.30", "683.4", "683.9", "683.21", "683.25", "683.27", "683.29", "685.4", "685.9", "685.10", "685.11", "685.12", "685.13", "685.14", "685.15", "685.16", and "685.24". The following new entries are added to the table:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
§ 660.13	–0204
§ 660.14	–0214
§ 660.16	–0306
§ 660.17	–0204
§ 660.21(k)	–0204
§ 660.23	–0214
§ 660.24	–0305
§ 660.25	–0307
§ 660.27	–0214
§ 660.28	–0214
§ 660.43	–0214
§ 660.48	[1] –0214
§ 660.303	–0271
§ 660.305	–0306
§ 660.322	–0305
§ 660.323	–0243
§ 660.333	–0203

[1] And –0305.

* * * * *

50 CFR CHAPTER VI

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

3. Part 660 is added to read as follows:

PART 660—FISHERIES OFF WEST COAST AND WESTERN PACIFIC STATES

Subpart A—General

Sec.
660.1 Purpose and scope.
660.2 Relation to other laws.
660.3 Reporting and recordkeeping.

Subpart B—Western Pacific Fisheries—General

660.11 Purpose and scope.
660.12 Definitions.
660.13 Permits and fees.
660.14 Reporting and recordkeeping.
660.15 Prohibitions.
660.16 Vessel identification.
660.17 Experimental fishing.

Subpart C—Western Pacific Pelagic Fisheries

660.21 Permits.
660.22 Prohibitions.
660.23 Notifications.
660.24 Gear identification.
660.25 Vessel monitoring system.
660.26 Longline fishing prohibited area management.
660.27 Exemptions for longline fishing prohibited areas; procedures.
660.28 Conditions for at-sea observer coverage.
660.29 Port privileges and transiting for unpermitted U.S. longline vessels.
660.30 Prohibition of drift gillnetting.
660.31 Framework adjustments to management measures.

Subpart D—Western Pacific Crustacean Fisheries

660.41 Permits.
660.42 Prohibitions.
660.43 Notifications.
660.44 Lobster size and condition restrictions.
660.45 Closed seasons.
660.46 Closed areas.
660.47 Gear identification.
660.48 Gear restrictions.
660.49 At-sea observer coverage.
660.50 Harvest limitation program.
660.51 Monk seal protective measures.
660.52 Monk seal emergency protective measures.
660.53 Framework procedures.
660.54 Five-year review.

Subpart E—Bottomfish And Seamount Groundfish Fisheries

660.61 Permits.
660.62 Prohibitions.
660.63 Notification.
660.64 Gear restrictions.
660.65 At-sea observer coverage.
660.66 Protected species conservation.
660.67 Framework for regulatory adjustments.
660.68 Fishing moratorium on Hancock Seamount.
660.69 Management Subareas.

Subpart F—Precious Corals Fisheries

660.81 Permits.
660.82 Prohibitions.
660.83 Seasons.
660.84 Quotas.
660.85 Closures.
660.86 Size restrictions.
660.87 Area restrictions.
660.88 Gear restrictions.

Subpart G—West Coast Groundfish

660.301 Purpose and scope.
660.302 Definitions.
660.303 Reporting and recordkeeping.
660.304 Management areas.
660.305 Vessel identification.
660.306 Prohibitions.
660.321 Specifications and management measures.
660.322 Gear restrictions.
660.323 Catch restrictions.
660.324 Pacific Coast treaty Indian fisheries.
660.331 Limited entry and open access fisheries—general.
660.332 Allocations.
660.333 Limited entry fishery.
660.334 Limited entry permits—"A" endorsement.
660.335 Limited entry permits—"Provisional A" endorsement.
660.336 Limited entry permits—"B" endorsement.
660.337 Limited entry permits—"designated species B" endorsement.
660.338 Limited entry permits—new permits.
660.339 Limited entry permit fees.
660.340 Limited entry permit appeals.
660.341 Limited entry permit sanctions.

Subpart H—West Coast Salmon Fisheries

660.401 Purpose and scope.
660.402 Definitions.
660.403 Relation to other laws.
660.404 Recordkeeping and reporting.
660.405 Prohibitions.
660.406 Exempted fishing.
660.407 Treaty Indian fishing.
660.408 Annual actions.
660.409 Inseason actions.
660.410 Escapement goals.
660.411 Notification and publication procedures.

Tables—Part 660
Table 1 to Part 660—Quotas for Precious Corals Permit Areas
Table 2 to Part 660—Vessel Capacity Ratings for West Coast Groundfish Limited Entry Permits

Figures—Part 660
Figure 1 to Part 660—Carapace Length of Lobsters
Figure 2 to Part 660—Length of a Longline Vessel
Figure 3 to Part 660—Dressed, Head-off Length of Salmon

Authority: 16 U.S.C. 1801 *et. seq.*

Subpart A—General

§ 660.1 Purpose and scope.

(a) The regulations in this part govern fishing for Western Pacific and West Coast fishery management unit species by vessels of the United States that operate or are based inside the outer boundary of the EEZ off Western Pacific and West Coast States.

(b) General regulations governing fishing by all vessels of the United States and by fishing vessels other than vessels of the United States are contained in part 600 of this chapter.

§ 660.2 Relation to other laws.

NMFS recognizes that any state law pertaining to vessels registered under the laws of that state while operating in the fisheries regulated under this part, and that is consistent with this part and the FMPs implemented by this part, shall continue in effect with respect to fishing activities regulated under this part.

§ 660.3 Reporting and recordkeeping.

Except for fisheries subject to subparts D and F of this part, any person who is required to do so by applicable state law or regulation must make and/or file all reports of management unit species landings containing all data and in the exact manner required by applicable state law or regulation.

Subpart B—Western Pacific Fisheries—General

§ 660.11 Purpose and scope.

(a) This subpart contains regulations that are common to all Western Pacific fisheries managed under fishery management plans prepared by the Western Pacific Fishery Management Council under the Magnuson Act.

(b) Regulations specific to individual fisheries are included in subparts C, D, E, and F of this part.

§ 660.12 Definitions.

In addition to the definitions in the Magnuson Act and in § 600.10 of this chapter, the terms used in subparts B through F of this part have the following meanings:

Bottomfish FMP means the Fishery Management Plan for Bottomfish and Seamount Groundfish of the Western Pacific Region.

Bottomfish management area means the areas designated in § 660.69.

Bottomfish management unit species means the following fish:

Common name	Local name	Scientific name
Snappers:		
Silver jaw jobfish	Lehi (H); palu-gustusilvia (S)	*Aphareus rutilans.*
Gray jobfish	Uku (H); asoama (S)	*Aprion virescens.*
Squirrelfish snapper	Ehu (H); palu-malau (S)	*Etelis carbunculus.*
Longtail snapper	Onaga, ula'T1ula (H); palu-loa (S)	*Etelis coruscans.*
Blue stripe snapper	Ta'ape (H); savane (S); funai (G)	*Lutjanus kasmira.*
Yellowtail snapper	Palu-i' lusama (S); yellowtail kalekale	*Pristipomoides auricilla.*
Pink snapper	Opakapaka (H); palu-'Tlena'lena (S); gadao (G).	*Pristipomoides.*
Yelloweye snapper	Palusina (S); yelloweye opakapaka	*Pristipomoides flavipinnis.*
Snapper	Kalekale (H)	*Pristipomoides sieboldii.*
Snapper	Gindai (H,G); palu-sega (S)	*Pristipomoides zonatus.*
Jacks:		
Giant trevally	White ulua (H); taraklto (G); sapo-anae (S)	*Caranx ignoblis.*
Black jack	Black ulua (H); taraklto (G); tafauli (S)	*Caranx lugubris.*
Thick lipped trevally	Pig ulua (H); butaguchi (H)	*Pseudocaranx dentex.*
Amberjack	Kahala (H)	*Seriola dumerili.*
Groupers:		
Blacktip grouper	Fausi (S); gadau (G)	*Epinephelus fasciatus.*
Sea bass	Hapu' 1upu'u (H)	*Epinephelus quernus.*
Lunartail grouper	Papa (S)	*Variola louti.*
Emperor fishes:		
Ambon emperor	Filoa-gutumumu (S)	*Lethrinus amboinensis.*
Redgill emperor	Filoa-pa'lo'omumu (S); mafuti (G)	*Lethrinus rubrioperculatus.*

NOTES: G—Guam; H—Hawaii; S—American Samoa.

Carapace length means a measurement in a straight line from the ridge between the two largest spines above the eyes, back to the rear edge of the carapace of a spiny lobster (see Figure 1 of this part).

Commercial fishing, as used in subpart D of this part, means fishing with the intent to sell all or part of the catch of lobsters. All lobster fishing in Crustaceans Permit Area 1 is considered commercial fishing.

Council means the Western Pacific Fishery Management Council.

Crustaceans FMP means the Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region.

Crustaceans management area means the combined portions of the EEZ encompassed by Crustaceans Permit Areas 1, 2, and 3.

Crustaceans management unit species means spiny lobster (*Panulirus marginatus* or *Panulirus penicillatus*), slipper lobster (family *Scyllaridae*), and Kona crab (*Ranina ranina*).

Crustaceans Permit Area 1 (Permit Area 1) means the EEZ off the Northwestern Hawaiian Islands.

Crustaceans Permit Area 2 (Permit Area 2) means the EEZ off the main Hawaiian Islands.

Crustaceans Permit Area 3 (Permit Area 3) means the EEZ of the Territory of Guam and the EEZ of the Territory of American Samoa.

Crustaceans receiving vessel means a vessel of the United States to which lobster taken in Permit Area 1 are transferred from another vessel.

Dead coral means any precious coral that contains holes from borers or is discolored or encrusted at the time of removal from the seabed.

EFP means an experimental fishing permit.

First level buyer means:

(1) The first person who purchases, with the intention to resell, management unit species, or portions thereof, that were harvested by a vessel that holds a permit or is otherwise regulated under subpart D of this part; or

(2) A person who provides recordkeeping, purchase, or sales assistance in the first transaction involving management unit species (such as the services provided by a wholesale auction facility).

Fish dealer means any person who:

(1) Obtains, with the intention to resell, Pacific pelagic management unit species, or portions thereof, that were harvested or received by a vessel that holds a permit or is otherwise regulated under subpart E of this part; or

(2) Provides recordkeeping, purchase, or sales assistance in obtaining or selling such management unit species (such as the services provided by a wholesale auction facility).

Fisheries Management Division (FMD) means the Chief, Fisheries Management Division, Southwest Regional Office, NMFS, or a designee. See Table 1 to § 600.502 for the address of the Regional Office.

Fishing gear, as used in subpart D of this part, includes:

(1) *Bottom trawl*, which means a trawl in which the otter boards or the footrope of the net are in contact with the sea bed.

(2) *Gillnet*, (see § 600.10).

(3) *Hook-and-line*, which means one or more hooks attached to one or more lines.

(4) *Set net*, which means a stationary, buoyed, and anchored gill net.

(5) *Trawl*, (see § 600.10).

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel lands fish.

Fishing year means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31.

Harvest guideline means a specified numerical harvest objective.

Hawaii longline limited access permit means the permit required by § 660.21 to use a vessel to fish for Pacific pelagic management unit species with longline gear in the EEZ around Hawaii or to land or transship longline-caught Pacific pelagic management unit species shoreward of the outer boundary of the EEZ around Hawaii.

Incidental catch or *incidental species* means species caught while fishing for the primary purpose of catching a different species.

Interested parties means the State of Hawaii Department of Land and Natural Resources, the Council, holders of permits issued under subpart D of this part, and any person who has notified the Regional Director of his or her interest in the procedures and decisions described in §§ 660.51 and 660.52, and who has specifically requested to be considered an "interested party."

Land or *landing* means offloading fish from a fishing vessel, arriving in port to begin offloading fish, or causing fish to be offloaded from a fishing vessel.

Length overall (LOA) or *length* of a vessel, as used in § 660.21(i), means the horizontal distance, rounded to the nearest foot (with 0.5 ft and above rounded upward), between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments (see Figure 2 of this part). "Stem" is the foremost part of the vessel, consisting of a section of timber or fiberglass, or cast, forged, or rolled metal, to which the sides of the vessel are united at the fore end, with the lower end united to the keel, and with the bowsprit, if one is present, resting on the upper end. "Stern" is the aftermost part of the vessel.

Live coral means any precious coral that is free of holes from borers, and has no discoloration or encrustation on the skeleton at the time of removal from the seabed.

Lobster closed area means an area of the EEZ that is closed to fishing for lobster.

Longline fishing prohibited area means the portions of the EEZ in which longline fishing is prohibited as specified in § 660.26.

Longline fishing vessel means a vessel that has longline gear on board the vessel.

Longline gear means a type of fishing gear consisting of a main line that exceeds 1 nm in length, is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached; except that, within the protected species zone, longline gear means a type of fishing gear consisting of a main line of any length that is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached.

Longline general permit means the permit required by § 660.21 to use a vessel to fish for Pacific pelagic management unit species in the fishery management area, excluding the EEZ around Hawaii, or to land or transship longline-caught fish shoreward of the outer boundary of the fishery management area, excluding the waters shoreward of the EEZ around Hawaii.

Main Hawaiian Islands means the islands of the Hawaiian Islands Archipelago lying to the east of 161° W. long.

Non-precious coral means any species of coral other than those listed under the definition for precious coral in this section.

Non-selective gear means any gear used for harvesting corals that cannot discriminate or differentiate between types, size, quality, or characteristics of living or dead corals.

Northwestern Hawaiian Islands (NWHI) means the islands of the Hawaiian Islands Archipelago lying to the west of 161° W. long.

Offloading means removing management unit species from a vessel.

Owner, as used in subparts C and D of this part, means a person who is identified as the current owner of the vessel as described in the Certificate of Documentation (Form CG–1270) issued by the USCG for a documented vessel, or in a registration certificate issued by a state or territory or the USCG for an undocumented vessel. As used in subpart E and F of this part, owner has the meaning in § 600.10 of this chapter.

Pacific Area Office means the Pacific Area Office, Southwest Region, NMFS, located in Honolulu, HI. The address and phone number may be obtained from the Regional Director whose address is in Table 1 to § 600.502.

Pacific pelagic management unit species means the following fish:

Common name	Scientific name
Mahimahi (dolphin fish).	*Coryphaena* spp.
Marlin and spearfish	*Makaira* spp. *Tetrapturus* spp.
Oceanic sharks	Family Alopiidae. Family Carcharhinidae. Family Lamnidae. Family Sphyrnidae.
Sailfish	*Istiophorus platypterus.*
Swordfish	*Xiphias gladius.*
Tuna and related species.	*Allothunnus* spp., *Auxis* spp. *Euthynnus* spp., *Gymnosarda* spp. *Katsuwonus* spp., *Scomber* spp. *Thunnus* spp.
Wahoo	*Acanthocybium solandri.*

Pelagics FMP means the Fishery Management Plan for Pelagic Species Fisheries of the Western Pacific Region.

Precious coral means any coral of the genus *Corallium* in addition to the following species of corals:

Common name	Scientific name
Pink coral (also known as red coral).	*Corallium secundum.*
Pink coral (also known as red coral).	*Corallium regale.*
Pink coral (also known as red coral).	*Corallium laauense.*
Gold coral	*Gerardia* spp.
Gold coral	*Callogorgia gilberti.*
Gold coral	*Narella* spp.
Gold coral	*Calyptrophora* spp.
Bamboo coral	*Lepidisis olapa.*
Bamboo coral	*Acanella* spp.
Black coral	*Antipathes dichotoma.*
Black coral	*Antipathes grandis.*
Black coral	*Antipathes ulex.*

Precious coral permit area means the area encompassing the precious coral beds in the management area. Each bed is designated by a permit area code and assigned to one of the following four categories:

(1) *Established beds.* Makapuu (Oahu), Permit Area E–B–1, includes the area within a radius of 2.0 nm of a point at 21°18.0′ N. lat., 157°35.5′ W. long.

(2) *Conditional beds.* (i) Keahole Point (Hawaii), Permit Area C–B–1, includes the area within a radius of 0.5 nm of a point at 19°46.0′ N. lat., 156°06.0′ W. long.

(ii) Kaena Point (Oahu), Permit Area C–B–2, includes the area within a radius of 0.5 nm of a point at 21°35.4′ N. lat., 158°22.9′ W. long.

(iii) Brooks Bank, Permit Area C–B–3, includes the area within a radius of 2.0 nm of a point at 24°06.0′ N. lat., 166°48.0′ W. long.

(iv) 180 Fathom Bank, Permit Area C–B–4, N.W. of Kure Atoll, includes the area within a radius of 2.0 nm of a point at 28°50.2′ N. lat., 178°53.4′ W. long.

(3) *Refugia.* Westpac Bed, Permit Area R–1, includes the area within a radius of 2.0 nm of a point at 28°50.2′ N. lat., 162°35.0′ W. long.

(4) *Exploratory areas.* (1) Permit Area X–P–H includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of the State of Hawaii.

(ii) Permit Area X–P–AS includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of American Samoa.

(iii) Permit Area X–P–G includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of Guam.

(iv) Permit Area X–P–PI includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of the U.S. Pacific Island possessions.

Protected species means an animal protected under the MMPA, listed under the ESA, or subject to the Migratory Bird Treaty Act, as amended.

Protected species study zones means the waters within a specified distance, designated by the Regional Director pursuant to § 660.66, around the following islands of the NWHI and as measured from the following coordinates: Nihoa Island 23°05′ N. lat., 161°55′ W. long.; Necker Island 23°35′ N. lat., 164°40′ W. long.; French Frigate Shoals 23°45′ N. lat., 166°15′ W. long.; Gardner Pinnacles 25°00′ N. lat., 168°00′ W. long.; Maro Reef 25°25′ N. lat., 170°35′ W. long.; Laysan Island 25°45′ N. lat., 171°45′ W. long.; Lisianski Island 26°00′ N. lat., 173°55′ W. long.; Pearl and Hermes Reef 27°50′ N. lat., 175°50′ W. long.; Midway Island 28°14′ N. lat., 177°22′ W. long.; and Kure Island 28°25′ N. lat., 178°20′ W. long. The protected species study zones encompasses waters within 50 nm of the geographical coordinates listed above.

Protected species zone means an area, designated under § 660.26, measured from the center geographical positions of certain islands and reefs in the NWHI, as follows: Nihoa Island 23°05′ N. lat., 161°55′ W. long.; Necker Island 23°35′ N. lat., 164°40′ W. long.; French Frigate Shoals 23°45′ N. lat., 166°15′ W. long; Gardner Pinnacles 25°00′ N. lat., 168°00′ W. long.; Maro Reef 25°25′ N. lat., 170°35′ W. long.; Laysan Island 25°45′ N. lat., 171°45′ W. long; Lisianski Island 26°00′ N. lat., 173°55′ W. long.; Pearl and Hermes Reef 27°50′ N. lat., 175°50′ W. long.; Midway Islands 28°14′ N. lat., 177°22′ W. long.; and Kure Island 28°25′ N. lat., 178°20′ W. long. Where the areas are not contiguous, parallel lines drawn tangent to and connecting those semi-circles of the 50-nm areas that lie between Nihoa Island and Necker Island, French Frigate Shoals and Gardner Pinnacles, Gardner Pinnacles and Maro Reef, and Lisianski Island and Pearl and Hermes Reef, shall delimit the remainder of the protected species zone.

Qualifying landing means a landing that meets a standard required for permit eligibility under § 660.61.

(1) *Permit renewal.* A qualifying landing for permit renewal under § 660.61(e) is a landing that contained 2,500 lb (1,134 kg) of bottomfish from the NWHI or a landing of at least 2,500 lb (1,134 kg) of fish from the NWHI, of which at least 50 percent by weight was bottomfish.

(2) *New access eligibility points.* A qualifying landing for eligibility points under § 660.61(g) is any landing of bottomfish from the NWHI, regardless of weight, if made on or before August 7, 1985; or a landing of at least 2,500 lb (1,134 kg) of bottomfish lawfully harvested from the NWHI, or a landing of at least 2,500 lb (1,134 kg) of fish lawfully harvested from the NWHI, of which at least 50 percent by weight was bottomfish, if made after August 7, 1985.

Receiving vessel permit means a permit required by § 660.21(c) for a receiving vessel to transship or land Pacific pelagic management unit species taken by other vessels using longline gear.

Regional Director means the Director, Southwest Region, NMFS (see Table 1 of § 600.502 for address).

Seamount groundfish means the following species:

Common name	Scientific name
Armorhead	Pentaceros richardsoni.
Alfonsin	Beryx splendens.
Raftfish	Hyperoglyphe japonica.

Selective gear means any gear used for harvesting corals that can discriminate or differentiate between type, size, quality, or characteristics of living or dead corals.

Special Agent-In-Charge (SAC) means the Special Agent-In-Charge, NMFS, Office of Enforcement, Southwest Region, or a designee of the Special Agent-In-Charge.

Transship means offloading or otherwise transferring management unit species or products thereof to a receiving vessel.

Trap means a box-like device used for catching and holding lobsters.

U.S. harvested corals means coral caught, taken, or harvested by vessels of the United States within any fishery for which a fishery management plan has been implemented under the Magnuson Act.

Vessel monitoring system unit (VMS unit) means the hardware and software equipment owned by NMFS, installed on vessels by NMFS, and required by subpart C of this part to track and transmit the positions from longline fishing vessels.

§ 660.13 Permits and fees.

(a) *Applicability.* The requirements for permits for specific Western Pacific fisheries are set forth in subparts C through F of this part.

(b) *Validity.* Each permit is valid for fishing only in the specific fishery management areas identified on the permit.

(c) *Application.* (1) A Southwest Region Federal Fisheries application form may be obtained from the Pacific Area Office to apply for a permit to operate in any of the fisheries regulated under subparts C, D, E, and F of this part. In no case shall the Pacific Area Office accept an application that is not on the Southwest Region Federal Fisheries application form. A completed application is one that contains all the necessary information, attachments, certifications, signatures, and fees required.

(2) A minimum of 15 days should be allowed for processing a permit application. If an incomplete or improperly completed application is filed, the applicant will be sent a notice of deficiency. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(d) *Change in application information.* A minimum of 10 days should be given for the Pacific Area Office to record any change in information from the permit application submitted under paragraph (c) of this section. Failure to report such changes may result in invalidation of the permit.

(e) *Issuance.* After receiving a complete application, the FMD will issue a permit to an applicant who is eligible under § 660.21, § 660.41, § 660.61, or § 660.81, as appropriate.

(f) *Fees.* (1) No fee is required for a permit issued under subparts D, E, and F of this part.

(2) A fee is charged for each application for a Hawaii longline limited access permit (including permit transfers and permit renewals). The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Director, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of a Hawaii longline limited access permit.

(g) *Expiration.* Permits issued under this subpart will remain valid for the period specified on the permit unless transferred, revoked, suspended, or modified under 15 CFR part 904.

(h) *Replacement.* Replacement permits may be issued, without charge, to replace lost or mutilated permits. An application for a replacement permit is not considered a new application.

(i) *Transfer.* An application for a permit transfer as allowed under § 660.21(h), § 660.41(e), or § 660.61(c) and (d) must be submitted to the Pacific Area Office as described in paragraph (c) of this section.

(j) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(k) *Display.* Any permit issued under this subpart, or a facsimile of the permit, must be on board the vessel at all times while the vessel is fishing for, taking, retaining, possessing, or landing management unit species shoreward of the outer boundary of the fishery management area. Any permit issued under this section must be displayed for inspection upon request of an authorized officer.

(l) *Sanctions.* Procedures governing sanctions and denials are found at subpart D of 15 CFR part 904.

(m) *Permit appeals.* Procedures for appeals of permit and administrative actions are specified in the relevant subparts of this part.

§ 660.14 Reporting and recordkeeping.

(a) *Fishing record forms.* The operator of any fishing vessel subject to the requirements of §§ 660.21, 660.41, or 660.81 must maintain on board the vessel an accurate and complete record of catch, effort, and other data on report forms provided by the Regional Director. All information specified on the forms must be recorded on the forms within 24 hours after the completion of each fishing day. The original logbook form for each day of the fishing trip must be submitted to the Regional Director within 72 hours of each landing of management unit species. Each form must be signed and dated by the fishing vessel operator.

(b) *Transshipment logbooks.* Any person subject to the requirements of § 660.21(c) must maintain on board the vessel an accurate and complete NMFS transshipment logbook containing report forms provided by the Regional Director. All information specified on the forms must be recorded on the forms within 24 hours of the day of transshipment. The original logbook form for each day of transshipment activity must be submitted to the Regional Director within 72 hours of each landing of management unit species. Each form must be signed and dated by the receiving vessel operator.

(c) *Sales report.* The operator of any fishing vessel subject to the requirements of § 660.41 must submit to the Regional Director, within 72 hours of offloading of crustaceans management unit species, an accurate and complete sales report on a form provided by the Regional Director. The form must be signed and dated by the fishing vessel operator.

(d) *Packing or weigh-out slips.* The operator of any fishing vessel subject to the requirements of § 660.41 must attach packing or weighout slips provided to the operator by the first-level buyer(s), unless the packing or weighout slips have not been provided in time by the buyer(s).

(e) *Modification of reporting and recordkeeping requirements.* The Regional Director may, after consultation with the Council, initiate rulemaking to modify the information to be provided on the fishing record forms, transshipment logbook, and sales report forms and timeliness by which the information is to be provided, including the submission of packing or weighout slips.

(f) *Availability of records for inspection.* (1) *Pacific pelagic management unit species.* Upon request, any fish dealer must immediately provide an authorized officer access for inspecting and copying all records of purchases, sales, or other transactions involving Pacific pelagic management unit species taken or handled by longline vessels that have permits issued under this subpart or that are otherwise subject to subpart C of this part, including, but not limited to, information concerning:

(i) The name of the vessel involved in each transaction and the owner or operator of the vessel.

(ii) The weight, number, and size of each species of fish involved in each transaction.

(iii) Prices paid by the buyer and proceeds to the seller in each transaction.

(2) *Crustaceans management unit species.* Upon request, any first-level buyer must immediately allow an authorized officer and any employee of

NMFS designated by the Regional Director, to access, inspect, and copy all records described in paragraph (a) of this section relating to crustacean management unit species taken by vessels that have permits issued under this subpart or that are otherwise subject to subpart D of this part.

(3) *Bottomfish and seamount groundfish management unit species.* Any person who is required by state laws and regulations to maintain records of landings and sales for vessels regulated by this subpart and subpart E of this part must make those records immediately available for Federal inspection and copying upon request by an authorized officer.

(g) *State reporting.* Any person who has a permit under §§ 660.21 or 660.61 and who is required by state laws and regulations to maintain and submit records of landings and sales for vessels regulated by subparts C and E of this part must maintain and submit those records in the exact manner required by state laws and regulations.

§ 660.15 Prohibitions.

In addition to the prohibitions in § 600.725 of this chapter, it is unlawful for any person to:

(a) Engage in fishing without a valid permit or facsimile of a valid permit on board the vessel and available for inspection by an authorized officer, when a permit is required under § 660.13 or § 660.17, unless the vessel was at sea when the permit was issued under § 660.13, in which case the permit must be on board the vessel before its next trip.

(b) File false information on any application for a fishing permit under § 660.13 or an EFP under § 660.17.

(c) Fail to file reports in the exact manner required by any state law or regulation, as required in § 660.14.

(d) Falsify or fail to make, keep, maintain, or submit any logbook or logbook form or other record or report required under §§ 660.14 and 660.17.

(e) Refuse to make available to an authorized officer or a designee of the Regional Director for inspection or copying, any records that must be made available in accordance with § 660.14.

(f) Fail to affix or maintain vessel or gear markings, as required by §§ 660.16, 660.24, and 660.47.

(g) Violate a term or condition of an EFP issued under § 660.17.

(h) Fail to report any take of or interaction with protected species as required by § 660.17(k).

(i) Fish without an observer on board the vessel after the owner or agent of the owner has been directed by NMFS to make accommodations available for an observer under §§ 660.17, 660.28, 660.49, or 660.65.

(j) Refuse to make accommodations available for an observer when so directed by the Regional Director under § 660.28, § 660.49, or § 660.65, or under any provision in an EFP issued under § 660.17.

(k) Fail to notify officials as required in §§ 660.23, 660.28, 660.43, and 660.63.

§ 660.16 Vessel identification.

(a) Each fishing vessel subject to this subpart must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be visible from enforcement vessels and aircraft.

(b) The official number must be affixed to each vessel subject to this subpart and subparts C, D, E, and F of this part, in block Arabic numerals at least 18 inches (45.7 cm) in height for fishing and receiving vessels of 65 ft (19.8 m) LOA or longer, and at least 10 inches (25.4 cm) in height for all other vessels, except vessels subject to Subpart F and 65 ft (19.8 m) LOA or longer must be marked in block Arabic numerals at least 14 inches (35.6 cm) in height. Marking must be legible and of a color that contrasts with the background.

(c) The vessel operator must ensure that the official number is clearly legible and in good repair.

(d) The vessel operator must ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the official number from an enforcement vessel or aircraft.

§ 660.17 Experimental fishing.

(a) *General.* The Regional Director may authorize, for limited purposes, the direct or incidental harvest of management unit species that would otherwise be prohibited by this subpart and subparts C, D, E, and F of this part. No experimental fishing may be conducted unless authorized by an EFP issued by the Regional Director in accordance with the criteria and procedures specified in this section. EFPs will be issued without charge.

(b) *Observers.* No experimental fishing for crustacean management unit species may be conducted unless an NMFS scientific observer is aboard the vessel.

(c) *Application.* An applicant for an EFP must submit to the Regional Director at least 60 days before the desired date of the EFP a written application including, but not limited to, the following information:

(1) The date of the application.

(2) The applicant's name, mailing address, and telephone number.

(3) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP.

(4) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals.

(5) For each vessel to be covered by the EFP:

(i) Vessel name.

(ii) Name, address, and telephone number of owner and operator.

(iii) USCG documentation, state license, or registration number.

(iv) Home port.

(v) Length of vessel.

(vi) Net tonnage.

(vii) Gross tonnage.

(6) A description of the species (directed and incidental) to be harvested under the EFP and the amount of such harvest necessary to conduct the experiment.

(7) For each vessel covered by the EFP, the approximate times and places fishing will take place, and the type, size, and amount of gear to be used.

(8) The signature of the applicant.

(d) *Incomplete applications.* The Regional Director may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(e) *Issuance.* (1) If an application contains all of the required information, NMFS will publish a notice of receipt of the application in the **Federal Register** with a brief description of the proposal and will give interested persons an opportunity to comment. The Regional Director will also forward copies of the application to the Council, the USCG, and the fishery management agency of the affected state, accompanied by the following information:

(i) The current utilization of domestic annual harvesting and processing capacity (including existing experimental harvesting, if any) of the directed and incidental species for which an EFP is being requested.

(ii) A citation of the regulation or regulations that, without the EFP, would prohibit the proposed activity.

(iii) Biological information relevant to the proposal.

(2) At a Council meeting following receipt of a complete application, the Regional Director will consult with the Council and the Director of the affected

state fishery management agency concerning the permit application. The applicant will be notified in advance of the meeting at which the application will be considered, and invited to appear in support of the application, if the applicant desires.

(3) Within 5 working days after the consultation in paragraph (e)(2) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the EFP and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(i) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish in a significant way.

(iii) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(iv) Activities to be conducted under the EFP would be inconsistent with the intent of this section or the management objectives of the FMP.

(v) The applicant has failed to demonstrate a valid justification for the permit.

(vi) The activity proposed under the EFP would create a significant enforcement problem.

(4) The decision to grant or deny an EFP is final and unappealable. If the permit is granted, NMFS will publish a notice in the **Federal Register** describing the experimental fishing to be conducted under the EFP. The Regional Director may attach terms and conditions to the EFP consistent with the purpose of the experiment including, but not limited to:

(i) The maximum amount of each species that can be harvested and landed during the term of the EFP, including trip limits, where appropriate.

(ii) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the EFP.

(iii) The times and places where experimental fishing may be conducted.

(iv) The type, size, and amount of gear which may be used by each vessel operated under the EFP.

(v) The condition that observers be carried aboard vessels operating under an EFP.

(vi) Data reporting requirements.

(vii) Such other conditions as may be necessary to assure compliance with the purposes of the EFP consistent with the objectives of the FMP.

(f) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than 1 year, unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

(g) *Alteration.* Any EFP that has been altered, erased, or mutilated is invalid.

(h) *Transfer.* EFPs issued under subparts B through F of this part are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(i) *Inspection.* Any EFP issued under subparts B through F of this part must be carried aboard the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(j) *Sanctions.* Failure of the holder of an EFP to comply with the terms and conditions of an EFP, the provisions of subparts A through F of this part, any other applicable provision of this part, the Magnuson Act, or any other regulation promulgated thereunder, is grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP will be governed by 15 CFR part 904 subpart D. Other sanctions available under the statute will be applicable.

(k) *Protected species.* Persons fishing under an EFP must report any incidental take or fisheries interaction with protected species on a form provided for that purpose. Reports must be submitted to the Regional Director within 3 days of arriving in port.

Subpart C—Western Pacific Pelagic Fisheries

§ 660.21 Permits.

(a) A fishing vessel of the United States must be registered for use under a Hawaii longline limited access permit or a longline general permit if that vessel is used:

(1) To fish for Pacific pelagic management unit species using longline gear in the EEZ around American Samoa, Guam, the Northern Mariana Islands, or other U.S. island possessions in the Pacific Ocean; or

(2) To land or transship, shoreward of the outer boundary of the EEZ around American Samoa, Guam, the Northern Mariana Islands, or other U.S. island possessions in the Pacific Ocean, Pacific pelagic management unit species that were harvested with longline gear.

(b) A fishing vessel of the United States must be registered for use under a Hawaii longline limited access permit if that vessel is used:

(1) To fish for Pacific pelagic management unit species using longline gear in the EEZ around Hawaii; or

(2) To land or transship, shoreward of the outer boundary of the EEZ around Hawaii, Pacific pelagic management unit species that were harvested with longline gear.

(c) A receiving vessel must be registered for use with a receiving vessel permit if that vessel is used to land or transship, shoreward of the outer boundary of the fishery management area, Pacific pelagic management unit species that were harvested with longline gear.

(d) Any required permit must be on board the vessel and available for inspection by an authorized agent, except that if the permit was issued while the vessel was at sea, this requirement applies only to any subsequent trip.

(e) A permit is valid only for the vessel for which it is registered. A permit not registered for use with a particular vessel may not be used.

(f) An application for a permit required under this section will be submitted to the Pacific Area Office as described in § 660.13.

(g) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, and sanctions for permits issued under this section, as applicable, are contained in § 660.13.

(h) A limited access permit may be transferred as follows:

(1) The owner of a Hawaii longline limited access permit may apply to transfer the permit:

(i) To a different person for registration for use with the same or another vessel; or

(ii) For registration for use with another U.S. vessel under the same ownership.

(2) An application for a permit transfer will be submitted to the Pacific Area Office as described in § 660.13(c).

(i) A Hawaii longline limited access permit will not be registered for use with a vessel that has a LOA greater than 101 ft (30.8 m).

(j) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) a Hawaii longline limited access permit.

(k) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or any permit owner may appeal to the Regional Director the granting, denial, conditioning, suspension, or transfer of a permit or requested permit under this section. To be considered by the Regional Director, the appeal will be in writing, will state the action(s) appealed, and the reasons therefor, and will be submitted within 30 days of the action(s) by the FMD. The appellant may request an informal hearing on the appeal.

(1) Upon receipt of an appeal authorized by this section, the Regional Director may request additional information. Upon receipt of sufficient information, the Regional Director will decide the appeal in accordance with the criteria set out in this part and in the Fishery Management Plans prepared by the Council, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information available; the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (k)(3) of this section; and such other considerations as deemed appropriate. The Regional Director will notify the appellant of the decision and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(2) If a hearing is requested, or if the Regional Director determines that one is appropriate, the Regional Director may grant an informal hearing before a hearing officer designated for that purpose. Such a hearing normally shall be held no later than 30 days following receipt of the appeal, unless the hearing officer extends the time. The appellant and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend, in writing, a decision to the Regional Director.

(3) The Regional Director may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Director will notify the appellant, and interested persons, if any, of the decision, and the reason(s) therefor, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Director's action shall constitute final Agency action for the purposes of the APA.

(4) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Regional Director for good cause, either upon his/her own motion or upon written request from the appellant stating the reason(s) therefor.

§ 660.22 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for Pacific pelagic management unit species using gear prohibited under § 660.30 or not permitted by an EFP issued under § 660.17.

(b) Falsify or fail to make and/or file all reports of Pacific pelagic management unit species landings, containing all data and in the exact manner, as required by applicable state law or regulation, as specified in § 660.3, provided that the person is required to do so by applicable state law or regulation.

(c) Use a longline vessel without a valid longline general permit or a Hawaii longline limited access permit registered for use with that vessel, to fish for Pacific pelagic management unit species in the EEZ around American Samoa, Guam, the Northern Mariana Islands, or U.S. possessions in the Pacific Ocean area.

(d) Use a longline fishing vessel without a valid Hawaii longline limited access permit registered for use with that vessel to fish for Pacific pelagic management unit species in the EEZ around Hawaii.

(e) Use a receiving vessel without a valid receiving vessel permit registered for use with that vessel to land or transship, shoreward of the outer boundary of the fishery management area, Pacific pelagic management unit species harvested with longline gear.

(f) Transfer a permit in violation of § 660.21(h).

(g) Fish for Pacific pelagic management unit species with longline gear within the protected species zone in the NWHI.

(h) Fail to notify the NMFS Southwest Enforcement Office of intent to enter or depart the protected species zone, as required under § 660.23(b).

(i) Fish with longline gear within a longline fishing prohibited area, except as allowed pursuant to an exemption issued under § 660.17 or § 660.17.

(j) Fail to comply with notification requirements set forth in § 660.23 or in any EFP issued under § 660.17.

(k) Fail to comply with a term or condition governing the observer program established in § 660.28.

(l) Fail to comply with other terms and conditions that the Regional Director imposes by written notice to either the permit holder or the designated agent of the permit holder to facilitate the details of observer placement.

(m) Fish in the fishery after failing to comply with the notification requirements in § 660.23.

(n) Use a U.S. vessel that has longline gear on board and that does not have a valid Hawaii longline limited access permit registered for use with that vessel or a valid longline general permit registered for use with that vessel to land or transship Pacific pelagic management unit species shoreward of the outer boundary of the EEZ around American Samoa, Guam, the Northern Mariana Islands, or U.S. possessions in the Pacific Ocean area.

(o) Use a U.S. vessel that has longline gear on board and that does not have a valid Hawaii longline limited access permit registered for use with that vessel to land or transship Pacific pelagic management unit species shoreward of the outer boundary of the EEZ around Hawaii.

(p) Enter the EEZ around Hawaii with longline gear that is not stowed or secured in accordance with § 660.29, if operating a U.S. vessel without a valid Hawaii longline limited access permit registered for use with that vessel.

(q) Enter the EEZ around American Samoa, Guam, the Northern Mariana Islands, or U.S. possessions in the Pacific Ocean area with longline gear that is not stowed or secured in accordance with § 660.29, if operating a U.S. vessel without a valid Hawaii longline limited access permit registered for use with that vessel or a longline general permit registered for use with that vessel.

(r) Fail to carry a VMS unit as required under § 660.25.

(s) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or to attempt any of the same; or to move or remove a VMS unit without the prior permission of the SAC.

(t) Make a false statement, oral or written, to an authorized officer, regarding the use, operation, or maintenance of a VMS unit.

(u) Fish for, catch, or harvest Pacific pelagic management unit species with longline gear without a VMS unit on board the vessel after installation of the VMS unit by NMFS.

(v) Possess on board a vessel without a VMS unit Pacific pelagic management unit species harvested with longline gear after NMFS has installed the VMS unit on the vessel.

(w) Interfere with, impede, delay, or prevent the installation, maintenance, repair, inspection, or removal of a VMS unit.

(x) Interfere with, impede, delay, or prevent access to a VMS unit by a NMFS observer.

(y) Connect or leave connected additional equipment to a VMS unit without the prior approval of the SAC.

§ 660.23 Notifications.

(a) The permit holder for a fishing vessel subject to the requirements of this subpart, or an agent designated by the permit holder, shall provide a notice to the Regional Director at least 72 hours (not including weekends and Federal holidays) before the vessel leaves port on a fishing trip, any part of which occurs in the EEZ around Hawaii. The vessel operator will be presumed to be an agent designated by the permit holder unless the Regional Director is otherwise notified by the permit holder. The notice must be provided to the office or telephone number designated by the Regional Director. The notice must provide the official number of the vessel, the name of the vessel, the intended departure date, time, and location, the name of the operator of the vessel, and the name and telephone number of the agent designated by the permit holder to be available between 8:00 a.m. to 5 p.m. (Hawaii time) on weekdays for NMFS to contact to arrange observer placement.

(b) The operator of any vessel subject to the requirements of this subpart who does not have on board a VMS unit while transiting the protected species zone as defined in § 660.12, must notify the NMFS Southwest Enforcement Office (see part 600 for address of Regional Director) immediately upon entering and immediately upon departing the protected species zone. The notification must include the name of the vessel, name of the operator, date and time (GMT) of access or exit from the protected species zone, and location by latitude and longitude to the nearest minute.

§ 660.24 Gear identification.

(a) *Identification.* The operator of each permitted vessel in the fishery management area must ensure that the official number of the vessel be affixed to every longline buoy and float, including each buoy and float that is attached to a radar reflector, radio antenna, or flag marker, whether attached to a deployed longline or possessed on board the vessel. Markings must be legible and permanent, and must be of a color that contrasts with the background material.

(b) *Enforcement action.* Longline gear not marked in compliance with paragraph (a) of this section and found deployed in the EEZ will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

§ 660.25 Vessel monitoring system.

(a) *VMS unit.* Only a VMS unit owned by NMFS and installed by NMFS complies with the requirement of this subpart.

(b) *Notification.* After a Hawaii longline limited access permit holder has been notified by the SAC of a specific date for installation of a VMS unit in the permit holder's vessel, the vessel must carry the VMS unit after the date scheduled for installation.

(c) *Fees and charges.* During the experimental VMS program, a Hawaii longline limited access permit holder shall not be assessed any fee or other charges to obtain and use a VMS unit, including the communication charges related directly to requirements under this section. Communication charges related to any additional equipment attached to the VMS unit by the owner or operator shall be the responsibility of the owner or operator and not NMFS.

(d) *Permit holder duties.* The holder of a Hawaii longline limited access permit and the master of the vessel operating under the permit must:

(1) Provide opportunity for the SAC to install and make operational a VMS unit after notification.

(2) Carry the VMS unit on board whenever the vessel is at sea.

(3) Not remove or relocate the VMS unit without prior approval from the SAC.

(e) *Authorization by the SAC.* The SAC has authority over the installation and operation of the VMS unit. The SAC may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by the SAC.

§ 660.26 Longline fishing prohibited area management.

(a) *Prohibited areas.* Longline fishing shall be prohibited in the longline fishing prohibited areas as defined in paragraphs (b), (c), and (d) of this section.

(b) *Longline protected species zone.* The protected species zone is 50 nm from the center geographical positions of Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands, and Kure Island, as defined in § 660.12.

(c) *Main Hawaiian Islands.* (1) From February 1 through September 30 each year, the longline fishing prohibited area around the main Hawaiian Islands is the portion of the EEZ seaward of Hawaii bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	DW. long.
A	18°05′	155°40′
B	18°20′	156°25′
C	20°00′	157°30′
D	20°40′	161°40′
E	21°40′	161°55′
F	23°00′	161°30′
G	23°05′	159°30′
H	22°55′	157°30′
I	21°30′	155°30′
J	19°50′	153°50′
K	19°00′	154°05′
A	18°05′	155°40′

(2) From October 1 through the following January 31 each year, the longline fishing prohibited area around the main Hawaiian Islands is the portion of the EEZ seaward of Hawaii bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
A	18°05′	155°40′
L	18°25′	155°40′
M	19°00′	154°45′
N	19°15′	154°25′
O	19°40′	154°20′
P	20°20′	154°55′
Q	20°35′	155°30′
R	21°00′	155°35′
S	22°30′	157°36′
T	22°40′	159°35′
U	22°25′	160°20′
V	21°55′	160°55′
W	21°40′	161°00′
E	21°40′	161°55′
D	20°40′	161°40′
C	20°00′	157°30′
B	18°20′	156°25′
A	18°05′	155°40′

(d) *Guam.* The longline fishing prohibited area around Guam is the waters seaward of Guam bounded by straight lines connecting the following coordinates in the order listed:

Point	N. lat.	E. long.
A	14°25′	144°00′
B	14°00′	143°38′
C	13°41′	144°33′30″
D	13°00′	143°25′30″
E	12°20′	143°37′
F	11°40′	144°09′
G	12°00′	145°00′
H	13°00′	145°42′
I	13°27′	145°51′

§ 660.27 Exemptions for longline fishing prohibited areas; procedures.

(a) An exemption permitting a person to use longline gear to fish in a portion(s) of the Hawaii longline fishing prohibited area will be issued to a person who can document that he or she:

(1) Currently owns a Hawaii longline limited access permit issued under this part and registered for use with his or her vessel.

(2) Before 1970, was the owner or operator of a vessel when that vessel landed Pacific pelagic management unit species taken on longline gear in an area that is now within the Hawaii longline fishing prohibited area.

(3) Was the owner or operator of a vessel that landed Pacific pelagic management unit species taken on longline gear in an area that is now within the Hawaii longline fishing prohibited area, in at least 5 calendar years after 1969, which need not be consecutive.

(4) In any one of the 5 calendar years, was the owner or operator of a vessel that harvested at least 80 percent of its total landings, by weight, of longline-caught Pacific pelagic management unit species in an area that is now in the Hawaii longline fishing prohibited area.

(b) Each exemption shall specify the portion(s) of the Hawaii longline fishing prohibited area, bounded by longitudinal and latitudinal lines drawn to include each statistical area, as appearing on Hawaii State-Commercial Fisheries Charts, in which the exemption holder made the harvest documented for the exemption application under paragraph (a)(4) of this section.

(c) Each exemption is valid only within the portion(s) of the Hawaii longline fishing prohibited area specified on the exemption.

(d) A person seeking an exemption under this section must submit an application and supporting documentation to the Pacific Area Office at least 15 days before the desired effective date of the exemption.

(e) If the Regional Director determines that a gear conflict has occurred and is likely to occur again in the Hawaii longline fishing prohibited area between a vessel used by a person holding an exemption under this section and a non-longline vessel, the Regional Director may prohibit all longline fishing in the Hawaii longline fishing prohibited area around the island where the conflict occurred, or in portions thereof, upon notice to each holder of an exemption who would be affected by such a prohibition.

(f) The Council will consider information provided by persons with Hawaii longline limited access permits issued under this part who believe they have experienced extreme financial hardship resulting from the Hawaii longline area closure, and will consider recommendations of the Pelagic Advisory Review Board to assess whether exemptions under this section should continue to be allowed, and, if appropriate, revise the qualifying criteria in paragraph (a) of this section to permit additional exemptions.

(1) If additional exemptions are needed, the Council will advise the Regional Director in writing of its recommendation, including criteria by which financial hardships will be mitigated, while retaining the effectiveness of the longline fishing prohibited area.

(2) Following a review of the Council's recommendation and supporting rationale, the Regional Director may:

(i) Reject the Council's recommendation, in which case written reasons will be provided by the Regional Director to the Council for the rejection; or

(ii) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the Pelagics FMP, the national standards, and other applicable law, initiate rulemaking to implement the Council's recommendations.

§ 660.28 Conditions for at-sea observer coverage.

(a) NMFS shall advise the permit holder or the designated agent of any observer requirement at least 24 hours (not including weekends and Federal holidays) before any trip for which NMFS received timely notice in compliance with these regulations.

(b) The "Notice Prior to Fishing Trip" requirements in this subpart commit the permit holder to the representations in the notice. The notice can be modified by the permit holder or designated agent because of changed circumstance, if the Regional Director is promptly provided a modification to the notice that complies with the notice requirements. The notice will also be considered modified if the Regional Director and the permit holder or designated agent agree to placement changes.

(c) When NMFS notifies the permit holder or designated agent of the obligation to carry an observer in response to a notification under this subpart, or as a condition of an EFP issued under § 660.17, the vessel may not engage in the fishery without taking the observer.

(d) A NMFS observer shall arrive at the observer's assigned vessel 30 minutes before the time designated for departure in the notice or the notice as modified, and will wait 1 hour for departure.

(e) A permit holder must accommodate a NMFS observer assigned under these regulations. The Regional Director's office, and not the observer, will address any concerns raised over accommodations.

(f) The permit holder, vessel operator, and crew must cooperate with the observer in the performance of the observer's duties, including:

(1) Allowing for the embarking and debarking of the observer.

(2) Allowing the observer access to all areas of the vessel necessary to conduct observer duties.

(3) Allowing the observer access to communications equipment and navigation equipment as necessary to perform observer duties.

(4) Allowing the observer access to VMS units to verify operation, obtain data, and use the communication capabilities of the units for official purposes.

(5) Providing accurate vessel locations by latitude and longitude or loran coordinates, upon request by the observer.

(6) Providing sea turtle, marine mammal, or sea bird specimens as requested.

(7) Notifying the observer in a timely fashion when commercial fishing operations are to begin and end.

(g) The permit holder, operator, and crew must comply with other terms and conditions to ensure the effective deployment and use of observers that the Regional Director imposes by written notice.

(h) The permit holder must ensure that assigned observers are provided living quarters comparable to crew members and are provided the same meals, snacks, and amenities as are normally provided to other vessel personnel. A mattress or futon on the floor or a cot is not acceptable if a regular bunk is provided to any crew member, unless other arrangements are approved in advance by the Regional Director.

(i) Reimbursement requirements are as follows:

(1) Upon observer verification of vessel accommodations and the number of assigned days on board, NMFS will reimburse vessel owners a reasonable amount for observer subsistence as determined by the Regional Director.

(2) If requested and properly documented, NMFS will reimburse the vessel owner for the following:

(i) Communications charges incurred by the observer.

(ii) Lost fishing time arising from a seriously injured or seriously ill observer, provided that notification of the nature of the emergency is

transmitted to the Fisheries Observer Branch, Southwest Region, NMFS (see address for Southwest Regional Director) at the earliest practical time. NMFS will reimburse the owner only for those days during which the vessel is unable to fish as a direct result of helping the NMFS employee who is seriously injured or seriously ill. Lost fishing time is based on time travelling to and from the fishing grounds and any documented out-of-pocket expenses for medical services. Payment will be based on the current target fish market prices and that vessel's average target fish catch retained per day at sea for the previous 2 years, but shall not exceed $5,000 per day or $20,000 per claim. Detailed billing with receipts and supporting records are required for allowable communication and lost fishing time claims. The claim must be completed in ink, showing the claimant's printed name, address, vessel name, observer name, trip dates, days observer on board, an explanation of the charges, and claimant's dated signature with a statement verifying the claim to be true and correct. Requested reimbursement claims must be submitted to the Fisheries Observer Branch, Southwest Region, NMFS. NMFS will not process reimbursement invoices and documentation submitted more than 120 days after the occurrence.

(j) If a vessel normally has cabins for crew members, female observers on a vessel with an all-male crew must be accommodated either in a single person cabin or, if NMFS concludes that adequate privacy can be ensured by installing a curtain or other temporary divider, in a two-person shared cabin. If the vessel normally does not have cabins for crew members, alternative accommodations must be approved by NMFS. If a cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, or if no cabin is assigned, then arrangements for sharing common facilities must be established and approved in advance by NMFS.

§ 660.29 Port privileges and transiting for unpermitted U.S. longline vessels.

A U.S. longline fishing vessel that does not have a permit under subpart B of this part may enter waters of the fishery management area with Pacific pelagic management unit species on board, but may not land or transship any management unit species on board the vessel. The vessel's longline gear must be stowed or secured so it is rendered unusable during the time the vessel is in those waters.

§ 660.30 Prohibition of drift gillnetting.

Fishing with drift gillnets in the fishery management area is prohibited, except where authorized by an EFP issued under § 660.17.

§ 660.31 Framework adjustments to management measures.

(a) *Introduction.* Adjustments in management measures may be made through rulemaking if new information demonstrates that there are biological, social, or economic concerns in the fishery. The following framework process authorizes the implementation of measures that may affect the operation of the fisheries, gear, harvest guidelines, or changes in catch and/or effort.

(b) *Annual report.* By June 30 of each year, the Council-appointed Pelagics Plan Team will prepare an annual report on the fisheries in the management area. The report shall contain, among other things, recommendations for Council action and an assessment of the urgency and effects of such action(s).

(c) *Procedure for established measures.* (1) Established measures are management measures that, at some time, have been included in regulations implementing the FMP, and for which the impacts have been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 7 to the Pelagics FMP, the Council may recommend to the Regional Director that established measures be modified, removed, or re-instituted. Such recommendation shall include supporting rationale and analysis, and shall be made after advance public notice, public discussion, and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Director.

(d) *Procedure for new measures.* (1) New measures are management measures that have not been included in regulations implementing the FMP, or for which the impacts have not been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 7 to the Pelagics FMP, the Council will publicize, including by **Federal Register** notice, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a **Federal Register** notice summarizing the Council's deliberations, rationale, and analysis for the preferred action, and the time and place for any subsequent Council meeting(s) to consider the new measure. At subsequent public meeting(s), the Council will consider public comments and other information received to make a recommendation to the Regional Director about any new measure. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Director.

Subpart D—Western Pacific Crustacean Fisheries

§ 660.41 Permits.

(a) *Applicability.* (1) The owner of any vessel used to fish for lobster in Permit Area 1 must have a limited access permit issued for such vessel. Only one permit will be assigned to any vessel.

(2) The owner of any vessel used to fish for lobster in Permit Area 2 or Permit Area 3, must have a permit issued for such a vessel.

(3) No vessel owner will have permits for a single vessel to harvest lobsters in Permit Areas 1 and 2 at the same time.

(4) A limited access permit is valid for fishing only in Permit Area 1.

(b) *General requirements.* General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits issued under this section, as applicable, are contained in § 660.13.

(c) *Application.* An application for a permit required under this section will be submitted to the Pacific Area Office as described in § 660.13. If the application for a limited access permit is submitted on behalf of a partnership or corporation, the application must be accompanied by a supplementary information sheet obtained from the Pacific Area Office and contain the names and mailing addresses of all partners or shareholders and their respective percentage of ownership in the partnership or corporation.

(d) *Number of permits.* A maximum of 15 limited access permits can be valid at any time.

(e) *Transfer or sale of limited access permits.* (1) Permits may be transferred or sold, but no one individual, partnership, or corporation will be allowed to hold a whole or partial interest in more than one permit, except that an owner who qualifies initially for more than one permit may maintain those permits, but may not obtain additional permits. Layering of partnerships or corporations shall not insulate a permit holder from this requirement.

(2) If 50 percent or more of the ownership of a limited access permit is passed to persons other than those listed on the permit application, the Pacific Area Office must be notified of the change in writing and provided copies of the appropriate documents confirming the changes within 30 days.

(3) Upon the transfer or sale of a limited access permit, a new application must be submitted by the new permit owner according to the requirements of § 660.13. The transferred permit is not valid until this process is completed.

(f) *Replacement of a vessel covered by a limited access permit.* A limited access permit issued under this section may, without limitation as to frequency, be transferred by the permit holder to a replacement vessel owned by that person.

(g) *Issuance of limited access permits to future applicants.*

(1) The Regional Director may issue limited access permits under this section when fewer than 15 vessel owners hold active permits.

(2) When the Regional Director has determined that limited access permits may be issued to new persons, a notice shall be placed in the **Federal Register**, and other means will be used to notify prospective applicants of the opportunity to obtain permits under the limited access management program.

(3) A period of 90 days will be provided after publication of the **Federal Register** notice for submission of new applications for a limited access permit.

(4) Limited access permits issued under this paragraph (g) will be issued first to applicants qualifying under paragraph (g)(4)(i) of this section. If the number of limited access permits available is greater than the number of applicants that qualify under paragraph (g)(4)(i) of this section, then limited access permits will be issued to applicants under paragraph (g)(4)(ii) of this section.

(i) First priority to receive limited access permits under this paragraph (g) goes to owners of vessels that were used to land lobster from Permit Area 1 during the period 1983 through 1990, and who were excluded from the fishery by implementation of the limited access system. If there are insufficient permits for all such applicants, the new permits shall be issued by the Regional Director through a lottery.

(ii) Second priority to receive limited access permits under paragraph (g) goes to owners with the most points, based upon a point system. If two or more owners have the same number of points and there are insufficient permits for all such owners, the Regional Director shall issue the permits through a lottery. Under the point system, limited access permits will be issued, in descending order, beginning with owners who have the most points and proceeding to owners who have the least points, based on the following:

(A) Three points shall be assigned for each calendar year after August 8, 1985, that the applicant was the operator of a vessel that was used to land lobster from Permit Area 1.

(B) Two points shall be assigned for each calendar year or partial year after August 8, 1985, that the applicant was the owner, operator, or crew member of a vessel engaged in either commercial fishing in Permit Area 2 for lobster, or fishing in Permit Area 1 for fish other than lobster with an intention to sell all or part of the catch.

(C) One point shall be assigned for each calendar year or partial year after August 8, 1985, that the applicant was the owner, operator, or crew member of a vessel engaged in any other commercial fishing in the EEZ surrounding Hawaii.

(5) A holder of a new limited access permit must own at least a 50-percent share in the vessel that the permit would cover.

§ 660.42 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 660.16, it is unlawful for any person to do any of the following:

(a) In Permit Area 1, it is unlawful for any person to—

(1) Fish for, take, or retain lobsters—

(i) Without a limited access permit issued under § 660.41;

(ii) By methods other than lobster traps or by hand for lobsters, as specified in § 660.48;

(iii) From closed areas for lobsters, as specified in § 660.46;

(iv) During a closed season, as specified in § 660.45; or

(v) After the closure date, as specified in § 660.50, and until the fishery opens again in the following calendar year.

(2) Fail to report before landing or offloading as specified in § 660.43.

(3) Fail to comply with any protective measures implemented under § 660.51 or § 660.52.

(4) Possess on a fishing vessel in the crustaceans fishery management area any lobster trap when fishing for lobster is prohibited as specified in §§ 660.45, 660.50, 660.51, or 660.52.

(5) Leave a trap unattended in the Management Area except as provided in § 660.48.

(6) Maintain on board the vessel or in the water more than 1,200 traps per fishing vessel, of which no more than 1,100 can be assembled traps, as specified in § 660.48.

(7) Land lobsters taken in Permit Area 1 after the closure date, as specified in § 660.50, until the fishery opens again the following year.

(8) Refuse to make available to an authorized officer and employee of NMFS designated by the Regional Director for inspection and copying any records that must be made available in accordance with § 660.14(f)(2).

(b) In Permit Area 2, it is unlawful for any person to—

(1) Fish for, take, or retain lobsters—

(i) By methods other than lobster traps or by hand, as specified in § 660.48; or

(ii) During a closed season, as specified in § 660.45(b).

(2) Retain or possess on a fishing vessel any lobster taken in Permit Area 2 that is less than the minimum size specified in § 660.44.

(3) Possess on a fishing vessel any lobster or lobster part taken in Permit Area 2 in a condition where the lobster is not whole and undamaged as specified in § 660.44.

(4) Retain or possess on a fishing vessel, or remove the eggs from, any egg-bearing lobster, as specified in § 660.44.

§ 660.43 Notifications.

(a) The operator of any vessel subject to the requirements of this subpart must:

(1) Report, not less than 24 hours, but not more than 36 hours, before landing, the port, the approximate date and the approximate time at which spiny and slipper lobsters will be landed.

(2) Report, not less than 6 hours and not more than 12 hours before offloading, the location and time that offloading of spiny and slipper lobsters will begin.

(b) The Regional Director will notify permit holders of any change in the reporting method and schedule required in paragraphs (a)(1) and (2) of this section at least 30 days prior to the opening of the fishing season.

§ 660.44 Lobster size and condition restrictions—Permit Area 2.

(a) Only spiny lobsters with a carapace length of 8.26 cm or greater may be retained (see Figure 3 of this subpart).

(b) Any lobster with a punctured or mutilated body, or a separated carapace and tail, may not be retained.

(c) A female lobster of any size may not be retained if it is carrying eggs externally. Eggs may not be removed from female lobsters.

§ 660.45 Closed seasons.

(a) Lobster fishing is prohibited in Permit Area 1 during the months of January through June, inclusive.

(b) Lobster fishing is prohibited in Permit Area 2 during the months of June, July, and August.

§ 660.46 Closed areas.

All lobster fishing is prohibited:

(a) Within 20 nm of Laysan Island.

(b) Within the EEZ landward of the 10-fathom curve as depicted on National Ocean Survey Charts, Numbers 19022, 19019, and 19016.

§ 660.47 Gear identification.

In Permit Area 1, the vessel's official number must be marked legibly on all traps and floats maintained on board the vessel or in the water by that vessel.

§ 660.48 Gear restrictions.

(a) *Permit Area 1.* (1) Lobsters may be taken only with lobster traps or by hand. Lobsters may not be taken by means of poisons, drugs, other chemicals, spears, nets, hook, or explosives.

(2) The smallest opening of an entry way of any lobster trap may not allow any sphere or cylinder greater than 6.5 inches (16.5 cm) in diameter to pass from outside the trap to inside the trap.

(3) Each lobster trap must have a minimum of two escape vent panels that meet the following requirements:

(i) Panels must have at least four unobstructed circular holes no smaller than 67 mm in diameter, with centers at least 82 mm apart.

(ii) The lowest part of any opening in an escape vent panel must not be more than 85 mm above the floor of the trap.

(iii) Panels must be placed opposite one another in each trap.

(4) A vessel fishing for or in possession of lobster in any permit area may not have on board the vessel any trap that does not meet the requirements of paragraphs (a)(1), (2), and (3) of this section.

(5) A maximum of 1,200 traps per vessel may be maintained on board or in the water, provided that no more than 1,100 assembled traps are maintained on board or in the water. If more than 1,100 traps are maintained, the unassembled traps may be carried as spares only, in order to replace assembled traps that may be lost or become unusable.

(6) Traps shall not be left unattended in any permit area, except in the event of an emergency, in which case the vessel operator must notify the NMFS Law Enforcement Office of the emergency that necessitated leaving the traps on the grounds, and the location and number of the traps, within 24 hours after the vessel reaches port.

(b) *Permit Area 2.* Lobsters may be taken only with lobster traps or by hand. Lobsters may not be taken by means of poisons, drugs, other chemicals, spears, nets, hooks, or explosives.

§ 660.49 At-sea observer coverage.

All fishing vessels subject to this subpart and subpart B of this part must carry an observer when requested to do so by the Regional Director.

§ 660.50 Harvest limitation program.

(a) *General.* A harvest guideline for Permit Area 1 will be set annually for the calendar year and shall:

(1) Apply to the total catch of spiny and slipper lobsters.

(2) Be expressed in terms of numbers of lobsters.

(b) *Harvest guideline.* (1) The Regional Director shall use information from daily lobster catch reports and lobster sales reports from previous years, and may use information from research sampling and other sources, to establish the annual harvest guideline in accordance with the FMP.

(2) NMFS shall publish a document indicating the annual harvest guideline in the **Federal Register** by March 31 each year, and shall use other means to notify permit holders of the harvest guideline for the year.

(3) The Regional Director shall determine, on the basis of the information reported to NMFS during the open season by the operator of each vessel fishing, when the harvest guideline will be reached. Notice of this determination, with a specification of the closure date after which fishing for lobster or further landings of lobster taken in Permit Area 1 will be prohibited, will be provided to each permit holder and operator of each permitted vessel or announced in the **Federal Register**. At least 5 days advance notice of the effective date of the prohibition on landings will be given.

(c) *Monitoring and adjustment.* The operator of each vessel fishing during the open season shall report lobster catch (by species) and effort (number of trap hauls) data while at sea to NMFS in Honolulu. The Regional Director shall notify permit holders of the reporting method, schedule, and logistics at least 30 days prior to the opening of the fishing season.

§ 660.51 Monk seal protective measures.

(a) *General.* This section establishes a procedure that will be followed if the Regional Director receives a report of a monk seal death that appears to be related to the lobster fishery in Permit Area 1.

(b) *Notification.* Upon receipt of a report of a monk seal death that appears to be related to the lobster fishery, the Regional Director will notify all interested parties of the facts known about the incident. The Regional Director will also notify them that an investigation is in progress, and that, if the investigation reveals a threat of harm to the monk seal population, protective measures may be implemented.

(c) *Investigation.* (1) The Regional Director will investigate the incident reported and will attempt to:

(i) Verify that the incident occurred.

(ii) Determine the extent of the harm to the monk seal population.

(iii) Determine the probability of a similar incident recurring.

(iv) Determine details of the incident such as:

(A) The number of animals involved.

(B) The cause of the mortality.

(C) The age and sex of the dead animal(s).

(D) The relationship of the incident to the reproductive cycle, for example, breeding season (March-September), non-breeding season (October-February).

(E) The population estimates or counts of animals at the island where the incident occurred.

(F) Any other relevant information.

(v) Discover and evaluate any extenuating circumstances.

(vi) Evaluate any other relevant factors.

(2) The Regional Director will make the results of the investigation available to the interested parties and request their advice and comments.

(d) *Determination of relationship.* The Regional Director will review and evaluate the results of the investigation and any comments received from interested parties. If there is substantial evidence that the death of the monk seal was related to the lobster fishery, the Regional Director will:

(1) Advise the interested parties of his or her conclusion and the facts upon which it is based.

(2) Request from the interested parties their advice on the necessity of protective measures and suggestions for appropriate protective measures.

(e) *Determination of response.* The Regional Director will consider all relevant information discovered during the investigation or submitted by interested parties in deciding on the appropriate response. Protective measures may include, but are not limited to, changes in trap design, changes in gear, closures of specific areas, or closures for specific periods of time.

(f) *Action by the Regional Director.* If the Regional Director decides that protective measures are necessary and appropriate, the Regional Director will prepare a document that describes the incident, the protective measures proposed, and the reasons for the protective measures; provide it to the interested parties; and request their comments.

(g) *Implementation of protective measures.* (1) If, after completing the steps described in paragraph (f) of this section, the Regional Director concludes that protective measures are necessary and appropriate; the Regional Director will recommend the protective measures to the Assistant Administrator and provide notice of this recommendation to the Chairman of the Council and the Director of the Division of Aquatic Resources, Department of Land and Natural Resources, State of Hawaii.

(2) If the Assistant Administrator concurs with the Regional Director's recommendation, NMFS will publish an action in the **Federal Register** that includes a description of the incident that triggered the procedure described in this section, the protective measures, and the reasons for the protective measures.

(h) *Notification of "no action."* If, at any point in the process described in this section, the Regional Director or Assistant Administrator decides that no further action is required, the interested parties will be notified of this decision.

(i) *Effective dates.* (1) The protective measures will take effect 10 days after the date of publication in the **Federal Register**.

(2) The protective measures will remain in effect for the shortest of the following time periods:

(i) Until the Crustaceans FMP and this section are amended to respond to the problem;

(ii) Until other action that will respond to the problem is taken under the ESA;

(iii) Until the Assistant Administrator, following the procedures set forth in paragraph (j) of this section, decides that the protective measures are no longer required and repeals the measures; or

(iv) For the period of time set forth in the **Federal Register** notification, not to exceed 3 months. The measures may be renewed for 3 months after again following procedures in paragraphs (b) through (g) of this section.

(j) *Repeal.* (1) If the Assistant Administrator decides that protective measures may no longer be necessary for the protection of monk seals, the interested parties will be notified of this preliminary decision and the facts upon which it is based. The Assistant Administrator will request advice on the proposed repeal of the protective measures.

(2) The Assistant Administrator will consider all relevant information obtained by the Regional Director or submitted by interested parties in deciding whether to repeal the protective measures.

(3) If the Assistant Administrator decides to repeal the protective measures—

(i) Interested parties will be notified of the decision; and

(ii) Notification of repeal and the reasons for the repeal will be published in the **Federal Register**.

§ 660.52 Monk seal emergency protective measures.

(a) *Determination of emergency.* If, at any time during the process described in § 660.51, the Regional Director determines that an emergency exists involving monk seal mortality related to the lobster fishery and that measures are needed immediately to protect the monk seal population, the Regional Director will—

(1) Notify the interested parties of this determination and request their immediate advice and comments.

(2) Forward a recommendation for emergency action and any advice and comments received from interested parties to the Assistant Administrator.

(b) *Implementation of emergency measures.* If the Assistant Administrator agrees with the recommendation for emergency action—

(1) The Regional Director will determine the appropriate emergency protective measures.

(2) NMFS will publish the emergency protective measures in the **Federal Register**.

(3) The Regional Director will notify the interested parties of the emergency protective measures. Holders of permits to fish in Permit Area I will be notified by certified mail. Permit holders that the Regional Director knows are on the fishing grounds also will be notified by radio.

(c) *Effective dates.* (1) Emergency protective measures are effective against a permit holder at 12:01 a.m., local time, of the day following the day the permit holder receives actual notice of the measures.

(2) Emergency protective measures are effective for 10 days from the day following the day the first permit holder is notified of the protective measures.

(3) Emergency protective measures may be extended for an additional 10 days, if necessary, to allow the completion of the procedures set out in § 660.51.

§ 660.53 Framework procedures.

(a) *Introduction.* New management measures may be added through rulemaking if new information demonstrates that there are biological, social, or economic concerns in Permit Areas 1, 2, or 3. The following framework process authorizes the implementation of measures that may affect the operation of the fisheries, gear, harvest guidelines, or changes in catch and/or effort.

(b) *Annual report.* By June 30 of each year, the Council-appointed Crustaceans Plan Team will prepare an annual report on the fisheries in the management area. The report shall contain, among other things, recommendations for Council action and an assessment of the urgency and effects of such action(s).

(c) *Procedure for established measures.* (1) Established measures are management measures that, at some time, have been included in regulations implementing the FMP, and for which the impacts have been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 9 to the FMP, the Council may recommend to the Regional Director that established measures be modified, removed, or re-instituted. Such recommendation shall include supporting rationale and analysis, and shall be made after advance public notice, public discussion, and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Director.

(d) *Procedure for New Measures.* (1) New measures are management measures that have not been included in regulations implementing the FMP, or for which the impacts have not been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 9 to the FMP, the Council will publicize, including by a **Federal Register** document, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a **Federal Register** document summarizing the Council's deliberations, rationale, and analysis for the preferred action, and the time and place for any subsequent Council meeting(s) to consider the new measure. At subsequent public meeting(s), the Council will consider public comments and other information received to make a recommendation to the Regional Director about any new measure. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Director.

§ 660.54 Five-year review.

The Council, in cooperation with NMFS, will conduct a review of the effectiveness and impacts of the NWHI management program, including biological, economic, and social aspects of the fishery, by July 1, 2001.

Subpart E—Bottomfish and Seamount Groundfish Fisheries

§ 660.61 Permits.

(a) *Applicability.* (1) The owner of any vessel being used to fish for bottomfish or seamount groundfish species in the management area must have a permit issued under this section for that vessel.

(2) No vessel owner may have permits for a single vessel to harvest bottomfish in the Ho'omalu Zone and the Mau Zone at the same time.

(b) *Application.* (1) An application for a permit required under this section will be submitted to the Pacific Area Office as described in § 660.13.

(2) Before the Regional Director issues a Mau Zone or Ho'omalu zone permit to fish for bottomfish under this section, the primary operator and relief operator named on the application form must have completed a protected species workshop conducted by NMFS.

(3) Each applicant for a Ho'omalu zone permit will submit a supplementary information sheet to be provided by the Pacific Area Office. Each application for a Ho'omalu zone permit will be signed by the vessel owner or a designee and include the following information:

(i) The qualification criterion that the applicant believes he or she meets for issuance of a limited access permit; and

(ii) Copies of landings receipts or other documentation, with a certification from a state or Federal agency that this information is accurate, to demonstrate participation in the NWHI bottomfish fishery; or

(iii) If the application is filed by a partnership or corporation, the application must identify the names of the owners and their respective percentage of ownership of the partnership or corporation.

(c) *Sale or transfer of Ho'omalu Zone permits to new vessel owners.* (1) A Ho'omalu zone permit shall not be sold or otherwise transferred to a new owner.

(2) A Ho'omalu zone permit or permits may be held by a partnership or corporation. If 50 percent or more of the ownership of the vessel passes to persons other than those listed in the original application, the permit will lapse and must be surrendered to the Regional Director.

(d) *Transfer of permits to replacement vessels.* (1) An owner of a permitted vessel may, without limitation, transfer his or her permit to another vessel owned by him or her, provided that the replacement vessel does not exceed 60 ft (18.3 m) in length and that the replacement vessel is put into service within 12 months after the owner declares to the Regional Director the intent to make the transfer of the permit.

(2) An owner of a permitted vessel may apply to the Regional Director for approval to use the permit for a replacement vessel greater than 60 ft (18.3 m) in length. The Regional Director may allow this change upon determining, after consultation with the Council and considering the objectives of the limited access program, that the replacement vessel has equal catching power as the original vessel, or that the replacement vessel has catching power that is comparable to the rest of the vessels holding permits for the fishery, and that the change is not inconsistent with the objectives of the program.

(3) The Regional Director shall consider vessel length, range, hold capacity, gear limitations, and other appropriate factors in making determinations of catching power equivalency and comparability of the catching power of vessels in the fishery.

(e) *Supplementary requirements for permit renewal.* (1) A permit will be eligible for renewal if the vessel covered by the permit makes three or more qualifying landings as defined in § 660.12 during the permit year.

(2) The owner of a permitted vessel that did not make three or more qualifying landings of bottomfish in a year may apply to the Regional Director for waiver of the landing requirement. If the Regional Director finds that failure to make three landings was due to circumstances beyond the owner's control, the Regional Director may renew the permit. A waiver may not be granted if the failure to make three landings was due to general economic conditions or market conditions, such that the vessel operations would not be profitable.

(f) *Supplementary requirements for new limited access permits.* The Regional Director may issue new vessel permits under this part when the Regional Director has determined, in consultation with the Council, that bottomfish stocks in the Ho'omalu Zone are able to support additional fishing effort. This shall be established by determining that the total estimated annual revenue to the fleet exceeds the total estimated annual fixed and variable costs to the fleet in the Ho'omalu Zone by an amount at least equal to the average cost of a vessel year. This determination shall be made and published annually in association with the annual report required under § 660.67.

(g) *Eligibility for new limited access permits.* When the Regional Director has determined that new permits may be issued, they shall be issued to applicants based upon eligibility, determined as follows:

(1) *Point system.* (i) Two points shall be assigned for each year in which the applicant was owner or captain of a vessel that made three or more qualifying landings of bottomfish from the NWHI.

(ii) One point shall be assigned for each year in which the applicant was owner or captain of a vessel that landed at least 6,000 lb (2,722 kg) of bottomfish from the main Hawaiian Islands.

(iii) Points will be assigned only under paragraph (g)(1)(i) or (ii) of this section for any 1 year.

(iv) Points will be assigned for every year for which the requisite landings can be documented.

(2) *Restrictions.* An applicant must own at least a 25-percent share in the vessel that the permit would cover, and only one permit will be assigned to any vessel.

(3) *Order of issuance.* New permits shall be awarded to applicants in descending order, starting with the applicant with the largest number of points. If two or more persons have an equal number of points, and there are insufficient new permits for all such applicants, the new permits shall be awarded by the Regional Director through a lottery.

(4) *Notification.* The Regional Director shall place a notice in the **Federal Register** and shall use other means to notify prospective applicants of the opportunity to file applications for new permits under this program.

(h) *Appeals of permit actions.* (1) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Assistant Administrator. In order to be considered by the Assistant Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefor, and must be submitted within 30 days of the action(s) by the Regional Director. The appellant may request an informal hearing on the appeal.

(2) Upon receipt of an appeal authorized by this section, the Assistant Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information and in such form as will allow action upon the appeal.

Upon receipt of sufficient information, the Assistant Administrator will decide the appeal in accordance with the permit eligibility criteria set forth in this section and the amendment to the FMP, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as deemed appropriate. The Assistant Administrator will notify all interested persons of the decision, and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(3) If a hearing is requested, or if the Assistant Administrator determines that one is appropriate, the Assistant Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the **Federal Register**. Such a hearing shall normally be held no later than 30 days following publication of the notice in the **Federal Register**, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Assistant Administrator.

(4) The Assistant Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Assistant Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Assistant Administrator's action shall constitute final action for the agency for the purposes of the APA.

(5) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Assistant Administrator for good cause, either upon his or her own motion or upon written request from the appellant or applicant stating the reason(s) therefore.

§ 660.62 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 660.15, it is unlawful for any person to do any of the following:

(a) Fish for bottomfish or seamount groundfish using gear prohibited under § 660.64.

(b) Fish for bottomfish in the Ho'omalu Zone without a limited access permit issued under §§ 660.13 and 660.61.

(c) Fish for bottomfish in the Mau Zone without a permit issued under §§ 660.13 and 660.61.

(d) Serve as primary operator or relief operator on a vessel with a Mau or Ho'omalu Zone permit without completing a protected species workshop conducted by NMFS, as required by § 660.61.

(e) Fail to notify the USCG at least 24 hours prior to making any landing of bottomfish taken in the Ho'omalu Zone, as required by § 660.63.

(f) Fish within any protected species study zone in the NWHI without notifying the Regional Director of the intent to fish in these zones, as required under § 660.63.

§ 660.63 Notification.

(a) The owner or operator of a fishing vessel subject to this subpart must inform the Pacific Area Office at least 72 hours (not including weekends and holidays) before leaving port, of his or her intent to fish within the protected species study zones defined in § 660.12. The notice must include the name of the vessel, name of the operator, intended departure and return date, and a telephone number at which the owner or operator may be contacted during the business day (8 a.m. to 5 p.m.) to indicate whether an observer will be required on the subject fishing trip.

(b) The operator of a fishing vessel that has taken bottomfish in the Ho'omalu Zone must contact the USCG, by radio or otherwise, at the 14th District, Honolulu, HI; Pacific Area, San Francisco, CA; or 17th District, Juneau, AK, at least 24 hours before landing, and report the port and the approximate date and time at which the bottomfish will be landed.

§ 660.64 Gear restrictions.

(a) *Bottom trawls and bottom set gillnets.* Fishing for bottomfish and seamount groundfish with bottom trawls and bottom set gillnets is prohibited.

(b) *Possession of gear.* Possession of a bottom trawl and bottom set gillnet by any vessel having a permit under § 660.61 or otherwise established to be fishing for bottomfish or seamount groundfish in the management subareas is prohibited.

(c) *Poisons and explosives.* The possession or use of any poisons, explosives, or intoxicating substances for the purpose of harvesting bottomfish and seamount groundfish is prohibited.

§ 660.65 At-sea observer coverage.

(a) All fishing vessels subject to this subpart must carry an observer when directed to do so by the Regional Director.

(b) The Pacific Area Office will advise the vessel owner or operator of any observer requirement within 72 hours (not including weekends or holidays) of receipt of the notice. If an observer is required, the owner or operator will be informed of the terms and conditions of observer coverage, and the time and place of embarkation of the observer.

(c) All observers must be provided with sleeping, toilet, and eating accommodations at least equal to that provided to a full crew member. A mattress of futon on the floor or a cot is not acceptable in place of a regular bunk. Meal and other gallery privileges must be the same for the observer as for other crew members.

(d) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured by installing a curtain or other temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing of common facilities must be established and approved by the Regional Director prior to the vessel's departure from port.

§ 660.66 Protected species conservation.

The Regional Director may change the size of the protected species study zones defined in § 660.12 of this subpart:

(a) If the Regional Director determines that a change in the size of the study zones would not result in fishing for bottomfish in the NWHI that would adversely affect any species listed as threatened or endangered under the ESA.

(b) After consulting with the Council.

(c) Through notification in the **Federal Register** published at least 30 days prior to the effective date or through actual notice to the permit holders.

§ 660.67 Framework for regulatory adjustments.

(a) *Annual reports.* By June 30 of each year, a Council-appointed bottomfish monitoring team will prepare an annual report on the fishery by area covering the following topics:

(1) Fishery performance data.

(2) Summary of recent research and survey results.
(3) Habitat conditions and recent alterations.
(4) Enforcement activities and problems.
(5) Administrative actions (e.g., data collection and reporting, permits).
(6) State and territorial management actions.
(7) Assessment of need for Council action (including biological, economic, social, enforcement, administrative, and state/Federal needs, problems, and trends). Indications of potential problems warranting further investigation may be signaled by the following indicator criteria:
(i) Mean size of the catch of any species in any area is a pre-reproductive size.
(ii) Ratio of fishing mortality to natural mortality for any species.
(iii) Harvest capacity of the existing fleet and/or annual landings exceed best estimate of MSY in any area.
(iv) Significant decline (50 percent or more) in bottomfish catch per unit of effort from baseline levels.
(v) Substantial decline in ex-vessel revenue relative to baseline levels.
(vi) Significant shift in the relative proportions of gear in any one area.
(vii) Significant change in the frozen/fresh components of the bottomfish catch.
(viii) Entry/exit of fishermen in any area.
(ix) Per-trip costs for bottomfishing exceed per-trip revenues for a significant percentage of trips.
(x) Significant decline or increase in total bottomfish landings in any area.
(xi) Change in species composition of the bottomfish catch in any area.
(xii) Research results.
(xiii) Habitat degradation or environmental problems.
(xiv) Reported interactions between bottomfishing operations and protected species in the NWHI.
(8) Recommendations for Council action.
(9) Estimated impacts of recommended action.

(b) *Recommendation of management action.* (1) The team may present management recommendations to the Council at any time. Recommendations may cover actions suggested for Federal regulations, state/territorial action, enforcement or administrative elements, and research and data collection. Recommendations will include an assessment of urgency and the effects of not taking action.

(2) The Council will evaluate the team's reports and recommendations, and the indicators of concern. The Council will assess the need for one or more of the following types of management action: Catch limits, size limits, closures, effort limitations, access limitations, or other measures.

(3) The Council may recommend management action by either the state/territorial governments or by Federal regulation.

(c) *Federal management action.* (1) If the Council believes that management action should be considered, it will make specific recommendations to the Regional Director after requesting and considering the views of its Scientific and Statistical Committee and Bottomfish Advisory Panel and obtaining public comments at a public hearing.

(2) The Regional Director will consider the Council's recommendation and accompanying data, and, if he or she concurs with the Council's recommendation, will propose regulations to carry out the action. If the Regional Director rejects the Council's proposed action, a written explanation for the denial will be provided to the Council within 2 weeks of the decision.

(3) The Council may appeal denial by writing to the Assistant Administrator, who must respond in writing within 30 days.

(4) The Regional Director and the Assistant Administrator will make their decisions in accord with the Magnuson Act, other applicable law, and the Bottomfish FMP.

(5) To minimize conflicts between the Federal and state management systems, the Council will use the procedures in paragraph (b) of this section to respond to state/territorial management actions. Council consideration of action would normally begin with a representative of the state or territorial government bringing a potential or actual management conflict or need to the Council's attention.

(d) *Access limitation procedures.* (1) Access limitation may be adopted under this paragraph (d) only for the NWHI, American Samoa, and Guam.

(2) If access limitation is proposed for adoption or subsequent modification through the process described in this paragraph (d), the following requirements must be met:

(i) The Bottomfish Monitoring Team must consider and report to the Council on present participation in the fishery; historical fishing practices in, and dependence on, the fishery; economics of the fishery; capability of fishing vessels used in the fishery to engage in other fisheries; cultural and social framework relevant to the fishery; and any other relevant considerations.

(ii) Public hearings must be held specifically addressing the limited access proposals.

(iii) A specific advisory subpanel of persons experienced in the fishing industry will be created to advise the Council and the Regional Director on administrative decisions.

(iv) The Council's recommendation to the Regional Director must be approved by a two-thirds majority of the voting members.

(3) If prior participation in the fishery is used as a factor in any access limitation system recommended by the Council, August 7, 1985, is the date selected by the Council as the date to be used for the NWHI and May 30, 1986, for American Samoa and Guam.

§ 660.68 Fishing moratorium on Hancock Seamount.

Fishing for bottomfish and seamount groundfish on the Hancock Seamount is prohibited through August 31, 1998.

§ 660.69 Management subareas.

(a) The bottomfish fishery management area is divided into five subareas for the regulation of bottomfish and seamount groundfish fishing with the following designations and boundaries:

(1) Main Hawaiian Islands means the EEZ of the Hawaiian Islands Archipelago lying to the east of 161°20′ W. long.

(2) Northwestern Hawaiian Islands (NWHI) means the EEZ of the Hawaiian Islands Archipelago lying to the west of 161°20′ W. long. However, for the purposes of regulations issued under this subpart, Midway Island is treated as part of the Northwestern Hawaiian Islands Subarea.

(i) Ho'omalu Zone means that portion of the EEZ around the NWHI west of 165° W. long.

(ii) Mau Zone means that portion of the EEZ around the NWHI between 161°20′ W. long. and 165° W. long.

(3) Hancock Seamount means that portion of the EEZ in the Northwestern Hawaiian Islands west of 180°00′ W. long. and north of 28°00′ N. lat.

(4) Guam means the EEZ seaward of the Territory of Guam.

(5) American Samoa means the EEZ seaward of the Territory of American Samoa.

(b) The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the State of Hawaii, the Territory of American Samoa, and the Territory of Guam (the "3 mile-limit").

(c) The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is

200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries. The outer boundary of the fishery management area north of Guam will extend to those points which are equidistant between Guam and the island of Rota in the Commonwealth of the Northern Mariana Islands.

Subpart F—Precious Corals Fisheries

§ 660.81 Permits.

(a) Any vessel of the United States fishing for, taking, or retaining precious coral in any precious coral permit area must have a permit issued under § 660.13.

(b) Each permit will be valid for fishing only in the permit area specified on the permit. Precious Coral Permit Areas are defined in § 660.12.

(c) No more than one permit will be valid for any one vessel at any one time.

(d) No more than one permit will be valid for any one person at any one time.

(e) The holder of a valid permit to fish one permit area may obtain a permit to fish another permit area only upon surrendering to the Regional Director any current permit for the precious corals fishery issued under § 660.13.

(f) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits for the precious corals fishery are contained in § 660.13.

§ 660.82 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and in § 660.15, it is unlawful for any person to:

(a) Use any vessel to fish for, take, retain, possess or land precious coral in any precious coral permit area, unless a permit has been issued for that vessel and area as specified in § 660.13 and that permit is on board the vessel.

(b) Fish for, take, or retain any species of precious coral in any precious coral permit area:

(1) By means of gear or methods prohibited by § 660.88.

(2) In refugia specified in § 660.12.

(3) In a bed for which the quota specified in § 660.84 has been attained.

(4) In violation of any permit issued under § 660.13 or § 660.17.

(c) Take and retain, possess, or land any pink coral from the Makapuu Bed (Permit Area E–B–1), Keahole Point Bed (Permit Area C–B–1), or Kaena Point Bed (Permit Area C–B–2) that is less than the minimum height specified in § 660.86, unless:

(1) A valid EFP was issued under § 660.17 for the vessel and the vessel was operating under the terms of the permit; or

(2) The coral originated outside coral beds listed in this paragraph, and this can be demonstrated through receipts of purchase, invoices, or other documentation.

§ 660.83 Seasons.

The fishing year for precious coral begins on July 1 and ends on June 30 the following year, except at the Makapuu Bed, which has a 2-year fishing period that begins July 1 and ends June 30, 2 years later.

§ 660.84 Quotas.

(a) *General.* The quotas limiting the amount of precious coral that may be taken in any precious coral permit area during the fishing year are listed in Table 1 of this part. Only live coral is counted toward the quota. The accounting period for all quotas begins July 1, 1983.

(b) *Conditional bed closure.* A conditional bed will be closed to all nonselective coral harvesting after the quota for one species of coral has been taken.

(c) *Reserves and reserve release.* The quotas for exploratory areas will be held in reserve for harvest by vessels of the United States in the following manner:

(1) At the start of the fishing year, the reserve for each of the three exploratory areas will equal the quota minus the estimated domestic annual harvest for that year.

(2) As soon as practicable after December 31 each year, the Regional Director will determine the amount harvested by vessels of the United States between July 1 and December 31 of that year.

(3) NMFS will release to TALFF an amount of precious coral for each exploratory area equal to the quota minus two times the amount harvested by vessels of the United States in that July 1 through December 31 period.

(4) NMFS will publish in the **Federal Register** a notification of the Regional Director's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

§ 660.85 Closures.

(a) If the Regional Director determines that the harvest quota for any coral bed will be reached prior to the end of the fishing year, or the end of the 2-year fishing period at Makapuu Bed, NMFS will issue a field order closing the bed involved by publication of an action in the **Federal Register**, and through appropriate news media. Any such field order must indicate the reason for the closure, the bed being closed, and the effective date of the closure.

(b) A closure is also effective for a permit holder upon the permit holder's actual harvest of the applicable quota.

§ 660.86 Size restrictions.

Pink coral harvested from the Makapuu bed (E–B–1), the Keahole Point Bed (C–B–1), and the Kaena Point Bed (C–B–2), must have attained a minimum height of 10 inches (25.4 cm). There are no size limits for precious coral from other beds or other species.

§ 660.87 Area restrictions.

Fishing for coral on the WestPac Bed is not allowed. The specific area closed to fishing is all waters within a 2-nm radius of the midpoint of 23°18.0′ N. lat., 162°35.0′ W. long.

§ 660.88 Gear restrictions.

(a) *Selective gear.* Only selective gear may be used to harvest coral from the EEZ of the main Hawaiian Islands.

(b) *Selective or non-selective gear.* Either selective or non-selective gear may be used to harvest coral from Brooks Bank, 180 Fathom Bank, and exploratory areas other than the EEZ off the main Hawaiian Islands.

Subpart G—West Coast Groundfish Fisheries

660.301 Purpose and scope.

This subpart implements the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) developed by the Pacific Fishery Management Council. These regulations govern groundfish fishing vessels of the United States in the EEZ off the coasts of Washington, Oregon, and California. All weights are in round weight or round-weight equivalents, unless specified otherwise.

§ 660.302 Definitions.

At-sea processing means processing that takes place on a vessel or other platform that floats and is capable of being moved from one location to another, whether shoreside or on the water.

Closure, when referring to closure of a fishery, means that taking and retaining, possessing, or landing the particular species or species group is prohibited.

Commercial fishing means:

(1) Fishing by a person who possesses a commercial fishing license or is required by law to possess such license issued by one of the states or the Federal Government as a prerequisite to taking, landing and/or sale; or

(2) Fishing that results in or can be reasonably expected to result in sale, barter, trade or other disposition of fish for other than personal consumption.

Commercial harvest guideline or commercial quota means the harvest guideline or quota after subtracting any allocation for the Pacific Coast treaty Indian tribes or for recreational fisheries. Limited entry and open access allocations are based on the commercial harvest guideline or quota.

Council means the Pacific Fishery Management Council, including its Groundfish Management Team, Scientific and Statistical Committee (SSC), Groundfish Advisory Subpanel (GAP), and any other committee established by the Council.

Exempted gear means all types of fishing gear except longline, trap (or pot), and groundfish trawl gear. Exempted gear includes trawl gear used to take pink shrimp, spot and ridgeback prawns, California halibut south of Pt. Arena, CA, and sea cucumber south of Pt. Arena, under the authority of a State of California limited entry permit for the sea cucumber fishery.

Fishery management area means the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nm offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico.

Fisheries Management Division (FMD) means the Chief, Fisheries Management Division, Northwest Regional Office, NMFS, or a designee.

Fishing gear includes the following types of gear and equipment used in the groundfish fishery:

(1) *Bobbin trawl.* The same as a roller trawl, a type of bottom trawl.

(2) *Bottom trawl.* A trawl in which the otter boards or the footrope of the net are in contact with the seabed. It includes roller (or bobbin) trawls, Danish and Scottish seine gear, and pair trawls fished on the bottom. Any trawl not meeting the requirements for a pelagic trawl in § 660.322 is a bottom trawl.

(3) *Chafing gear.* Webbing or other material attached to the codend of a trawl net to protect the codend from wear.

(4) *Codend.* (See § 600.10).

(5) *Commercial vertical hook-and-line.* Commercial fishing with hook-and-line gear that involves a single line anchored at the bottom and buoyed at the surface so as to fish vertically.

(6) *Double-bar mesh.* Two lengths of twine tied into a single knot.

(7) *Double-walled codend.* A codend constructed of two walls of webbing.

(8) *Fixed gear (anchored nontrawl gear).* Longline, trap or pot, set net, and stationary hook-and-line (including commercial vertical hook-and-line) gears.

(9) *Gillnet.* (See § 600.10).

(10) *Hook-and-line.* One or more hooks attached to one or more lines. It may be stationary (commercial vertical hook-and-line) or mobile (troll).

(11) *Longline.* A stationary, buoyed, and anchored groundline with hooks attached, so as to fish along the seabed. It does not include commercial vertical hook-and-line or troll gear.

(12) *Mesh size.* The opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot, regardless of twine size.

(13) *Nontrawl gear.* All legal commercial groundfish gear other than trawl gear.

(14) *Pelagic (midwater or off-bottom) trawl.* A trawl in which the otter boards may be in contact with the seabed but the footrope of the net remains above the seabed. It includes pair trawls if fished in midwater. A pelagic trawl has no rollers or bobbins on the net.

(15) *Pot.* A trap.

(16) *Roller trawl (bobbin trawl).* A trawl with footropes equipped with rollers or bobbins made of wood, steel, rubber, plastic, or other hard material that keep the footrope above the seabed, thereby protecting the net. A roller trawl is a type of bottom trawl.

(17) *Set net.* A stationary, buoyed, and anchored gillnet or trammel net.

(18) *Single-walled codend.* A codend constructed of a single wall of webbing knitted with single or double-bar mesh.

(19) *Spear.* A sharp, pointed, or barbed instrument on a shaft.

(20) *Trammel net.* A gillnet made with two or more walls joined to a common float line.

(21) *Trap (or pot).* A portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats.

(22) *Trawl riblines.* Heavy rope or line that runs down the sides, top, or underside of a trawl net from the mouth of the net to the terminal end of the codend to strengthen the net during fishing.

Fishing trip is a period of time between landings when fishing is conducted.

Fishing year is the year beginning at 0801 GMT (0001 local time) on January 1 and ending at 0800 GMT on January 1 (2400 local time on December 31).

Groundfish means species managed by the PCGFMP, specifically:

Sharks:
- leopard shark, *Triakis semifasciata*
- soupfin shark, *Galeorhinus zyopterus*
- spiny dogfish, *Squalus acanthias*

Skates:
- big skate, *Raja binoculata*
- California skate, *R. inornata*
- longnose skate, *R. rhina*

Ratfish:
- ratfish, *Hydrolagus colliei*

Morids:
- finescale codling, *Antimora microlepis*

Grenadiers:
- Pacific rattail, *Coryphaenoides acrolepis*

Roundfish:
- cabezon, *Scorpaenichthys marmoratus*
- jack mackerel (north of 39° N. lat.), *Trachurus symmetricus*
- kelp greenling, *Hexagrammos decagrammus*
- lingcod, *Ophiodon elongatus*
- Pacific cod, *Gadus macrocephalus*
- Pacific whiting, *Merluccius productus*
- sablefish, *Anoplopoma fimbria*

Rockfish:
- aurora rockfish, *Sebastes aurora*
- bank rockfish, *S. rufus*
- black rockfish, *S. melanops*
- black and yellow rockfish, *S. chrysomelas*
- blackgill rockfish, *S. melanostomus*
- blue rockfish, *S. mystinus*
- bocaccio, *S. paucispinis*
- bronzespotted rockfish, *S. gilli*
- brown rockfish, *S. auriculatus*
- calico rockfish, *S. dalli*
- California scorpionfish, *Scorpaena guttata*
- canary rockfish, *Sebastes pinniger*
- chilipepper, *S. goodei*
- China rockfish, *S. nebulosus*
- copper rockfish, *S. caurinus*
- cowcod, *S. levis*
- darkblotched rockfish, *S. crameri*
- dusty rockfish, *S. ciliatus*
- flag rockfish, *S. rubrivinctus*
- gopher rockfish, *S. carnatus*
- grass rockfish, *S. rastrelliger*
- greenblotched rockfish, *S. rosenblatti*
- greenspotted rockfish, *S. chlorostictus*
- greenstriped rockfish, *S. elongatus*
- harlequin rockfish, *S. variegatus*
- honeycomb rockfish, *S. umbrosus*
- kelp rockfish, *S. atrovirens*
- longspine thornyhead, *Sebastolobus altivelis*
- Mexican rockfish, *Sebastes macdonaldi*
- olive rockfish, *S. serranoides*
- Pacific ocean perch, *S. alutus*
- pink rockfish, *S. eos*
- quillback rockfish, *S. maliger*
- redbanded rockfish, *S. babcocki*
- redstripe rockfish, *S. proriger*
- rosethorn rockfish, *S. helvomaculatus*
- rosy rockfish, *S. rosaceus*
- rougheye rockfish, *S. aleutianus*
- sharpchin rockfish, *S. zacentrus*
- shortbelly rockfish, *S. jordani*
- shortraker rockfish, *S. borealis*
- shortspine thornyhead, *Sebastolobus alascanus*
- silvergray rockfish, *Sebastes brevispinis*
- speckled rockfish, *S. ovalis*
- splitnose rockfish, *S. diploproa*
- squarespot rockfish, *S. hopkinsi*
- starry rockfish, *S. constellatus*
- stripetail rockfish, *S. saxicola*
- tiger rockfish, *S. nigrocinctus*
- treefish, *S. serriceps*
- vermilion rockfish, *S. miniatus*
- widow rockfish, *S. entomelas*
- yelloweye rockfish, *S. ruberrimus*
- yellowmouth rockfish, *S. reedi*
- yellowtail rockfish, *S. flavidus*

All genera and species of the family Scorpaenidae that occur off Washington, Oregon, and California are included, even if not listed above. The Scorpaenidae genera are *Sebastes, Scorpaena, Scorpaenodes,* and *Sebastolobus.*

Flatfish:
- arrowtooth flounder (arrowtooth turbot), *Atheresthes stomias*
- butter sole, *Isopsetta isolepis*
- curlfin sole, *Pleuronichthys decurrens*
- Dover sole, *Microstomus pacificus*
- English sole, *Parophrys vetulus*
- flathead sole, *Hippoglossoides elassodon*
- Pacific sanddab, *Citharichthys sordidus*
- petrale sole, *Eopsetta jordani*
- rex sole, *Glyptocephalus zachirus*
- rock sole, *Lepidopsetta bilineata*
- sand sole, *Psettichthys melanostictus*
- starry flounder, *Platichthys stellatus*

Groundfish trawl means trawl gear that is used under the authority of a valid limited entry permit issued under this subpart endorsed for trawl gear. It does not include any type of trawl gear listed as "exempted gear."

Harvest guideline means a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not require closure of a fishery.

Incidental catch or *incidental species* means groundfish species caught while fishing for the primary purpose of catching a different species.

Land or *landing* means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish aboard the vessel are counted as part of the landing.

Length overall (LOA) (with respect to a vessel) means the length overall set forth in the Certificate of Documentation (CG–1270) issued by the USCG for a documented vessel, or in a registration certificate issued by a state or the USCG for an undocumented vessel; for vessels that do not have the LOA stated in an official document, the LOA is the LOA as determined by the USCG or by a marine surveyor in accordance with the USCG method for measuring LOA.

Limited entry fishery means the fishery composed of vessels using trawl gear, longline, and trap (or pot) gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the limited entry fishery.

Limited entry gear means longline, trap (or pot), or groundfish trawl gear used under the authority of a valid limited entry permit affixed with an endorsement for that gear.

Limited entry permit means the permit required to participate in the limited entry fishery, and includes the gear endorsements affixed to the permit unless specified otherwise.

Open access fishery means the fishery composed of vessels using exempted gear, and longline and trap (or pot) gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the open access fishery.

Open access gear means all types of fishing gear except:

(1) Longline or trap (or pot) gear fished by a vessel that has a limited entry permit affixed with a gear endorsement for that gear.

(2) Trawl gear.

Owner of a vessel or *vessel owner,* as used in this subpart, means a person identified as the current owner in the Certificate of Documentation (CG–1270) issued by the USCG for a documented vessel, or in a registration certificate issued by a state or the USCG for an undocumented vessel.

Pacific Coast Groundfish Fishery Management Plan (PCGFMP) means the Fishery Management Plan for the Washington, Oregon, and California Groundfish Fishery developed by the Pacific Fishery Management Council and approved by the Secretary on January 4, 1982, and as it may be subsequently amended.

Permit holder means a permit owner or a permit lessee.

Permit lessee means a person who has the right to possess and use a limited entry permit for a designated period of time, with reversion to the permit owner.

Permit owner means a person who owns a limited entry permit.

Person, as it applies to limited entry and open access fisheries conducted under this subpart, means any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a).

Processing or *to process* means the preparation or packaging of groundfish to render it suitable for human consumption, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done.

Prohibited species means those species and species groups whose retention is prohibited unless authorized by other applicable law (for example, to allow for examination by an authorized observer or to return tagged fish as specified by the tagging agency).

Quota means a specified numerical harvest objective, the attainment (or expected attainment) of which causes closure of the fishery for that species or species group.

Recreational fishing means fishing with authorized recreational fishing gear for personal use only, and not for sale or barter.

Regional Director means the Director, Northwest Region, NMFS. For fisheries occurring primarily or exclusively in the fishery management area seaward of California, "Regional Director" means the Director, Northwest Region, NMFS, acting upon the recommendation of the Director, Southwest Region, NMFS.

Reserve means a portion of the harvest guideline or quota set aside at the beginning of the year to allow for uncertainties in preseason estimates of DAP and JVP.

Round weight (See § 600.10).

Shoreside processing means processing that takes place in a facility that is fixed permanently to land.

Specification is a numerical or descriptive designation of a management objective, including but not limited to: ABC; harvest guideline; quota; limited entry or open access allocation; a set aside or allocation for a recreational or treaty Indian fishery; an apportionment of the above to an area, gear, season, fishery, or other subdivision; DAP, DAH, JVP, TALFF, or incidental bycatch allowances in foreign or joint venture fisheries.

Target fishing means fishing for the primary purpose of catching a particular species or species group (the target species).

Totally lost means the vessel being replaced no longer exists *in specie,* or is absolutely and irretrievably sunk or otherwise beyond the possible control of the owner, or the costs of repair (including recovery) would exceed the repaired value of the vessel.

Trip limit means the total allowable amount of a groundfish species or species complex by weight, or by percentage of weight of fish on board the vessel, that may be taken and retained, possessed, or landed from a single fishing trip.

§ 660.303 Reporting and recordkeeping.

(a) This subpart recognizes that catch and effort data necessary for implementing the PCGFMP are collected by the States of Washington, Oregon, and California under existing state data collection requirements. Telephone surveys of the domestic

industry will be conducted biannually by NMFS to determine amounts of fish that will be made available to foreign fishing and JVP. No additional Federal reports are required of fishers or processors, so long as the data collection and reporting systems operated by state agencies continue to provide NMFS with statistical information adequate for management.

(b) Any person who is required to do so by the applicable state law must make and/or file, retain, or make available any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law.

§ 660.304 Management areas.

(a) *Vancouver.* (1) The northeastern boundary is that part of a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35′75″ N. lat., 124°4300 W. long.) south of the International Boundary between the U.S. and Canada (at 48°2937.19 N. lat., 124°4333.19 W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(2) The northern and northwestern boundary is a line connecting the following coordinates in the order listed, which is the provisional international boundary of the EEZ as shown on NOAA/NOS Charts #18480 and #18007:

Point	N. lat.	W. long.
1	48°29′37.19″	124°43′33.19″
2	48°30′11″	124°47′13″
3	48°30′22″	124°50′21″
4	48°30′14″	124°54′52″
5	48°29′57″	124°59′14″
6	48°29′44″	125°00′06″
7	48°28′09″	125°05′47″
8	48°27′10″	125°08′25″
9	48°26′47″	125°09′12″
10	48°20′16″	125°22′48″
11	48°18′22″	125°29′58″
12	48°11′05″	125°53′48″
13	47°49′15″	126°40′57″
14	47°36′47″	127°11′58″
15	47°22′00″	127°41′23″
16	46°42′05″	128°51′56″
17	46°31′47″	129°07′39″

(3) The southern limit is 47°30′ N. lat.

(b) *Columbia.* (1) The northern limit is 47°30′ N. lat.

(2) The southern limit is 43°00′ N. lat.

(c) *Eureka.* (1) The northern limit is 43°00′ N. lat.

(2) The southern limit is 40°30′ N. lat.

(d) *Monterey.* (1) The northern limit is 40°30′ N. lat.

(2) The southern limit is 36°00′ N. lat.

(e) *Conception.* (1) The northern limit is 36°00′ N. lat.

(2) The southern limit is the U.S.-Mexico International Boundary, which is a line connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
1	32°35′22″	117°27′49″
2	32°37′37″	117°49′31″
3	31°07′58″	118°36′18″
4	30°32′31″	121°51′58″

(f) *International boundaries.* (1) Any person fishing subject to this subpart is bound by the international boundaries described in this section, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are established or recognized by the United States.

(2) The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the "3-mile limit").

(3) The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is 200 nm from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico.

§ 660.305 Vessel identification.

(a) *Display.* The operator of a vessel that is over 25 ft (7.6 m) in length and is engaged in commercial fishing for groundfish must display the vessel's official number on the port and starboard sides of the deckhouse or hull, and on a weather deck so as to be visible from above. The number must contrast with the background and be in block Arabic numerals at least 18 inches (45.7 cm) high for vessels over 65 ft (19.8 m) long and at least 10 inches (25.4 cm) high for vessels between 25 and 65 ft (7.6 and 19.8 m) in length. The length of a vessel for purposes of this section is the length set forth in USCG records or in state records, if no USCG record exists.

(b) *Maintenance of numbers.* The operator of a vessel engaged in commercial fishing for groundfish must keep the identifying markings required by paragraph (a) of this section clearly legible and in good repair, and must ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the official number from an enforcement vessel or aircraft.

(c) *Commercial passenger vessels.* This section does not apply to vessels carrying fishing parties on a per-capita basis or by charter.

§ 660.306 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to:

(a) Sell, offer to sell, or purchase any groundfish taken in the course of recreational groundfish fishing.

(b) Retain any prohibited species (defined in § 660.302) caught by means of fishing gear authorized under this subpart or unless authorized by part 600 of this chapter. Prohibited species must be returned to the sea as soon as practicable with a minimum of injury when caught and brought on board.

(c) Falsify or fail to affix and maintain vessel and gear markings as required by § 660.305 or § 660.322(c).

(d) Fish for groundfish in violation of any terms or conditions attached to an EFP under part 600.745.

(e) Fish for groundfish using gear not authorized under § 660.322 or in violation of any terms or conditions attached to an EFP under part 600.745.

(f) Take and retain, possess, or land more groundfish than specified under § 660.321, § 660.323, or under an EFP issued under part 600 of this chapter.

(g) Falsify or fail to make and/or file, retain or make available any and all reports of groundfish landings, containing all data, and in the exact manner, required by the applicable State law, as specified in § 660.303, provided that person is required to do so by the applicable state law.

(h) Fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, if the weight of the total delivery exceeds 3,000 lb (1,361 kg) (round weight or round-weight equivalent).

(i) Possess, deploy, haul, or carry onboard a fishing vessel subject to these regulations a set net, trap or pot, longline, or commercial vertical hook-and-line that is not in compliance with the gear restrictions in § 660.322, unless such gear is the gear of another vessel that has been retrieved at sea and made inoperable or stowed in a manner not capable of being fished. The disposal at sea of such gear is prohibited by Annex V of the International Convention for the Prevention of Pollution From Ships, 1973 (Annex V of MARPOL 73/78).

(j) Process Pacific whiting in the fishery management area during times or in areas where at-sea processing is prohibited, unless the fish were received from a member of a Pacific Coast treaty Indian tribe fishing under § 663.324.

(k) Take and retain or receive, except as cargo, Pacific whiting on a vessel in the fishery management area that already possesses processed Pacific whiting on board, during times or in areas where at-sea processing is prohibited, unless the fish were received from a member of a Pacific Coast treaty Indian tribe fishing under § 663.324; when taking and retention is prohibited under § 663.323(a)(4)(iv), fail to keep the trawl doors on board the vessel and attached to the trawls on a vessel used to fish for whiting.

(l) Have onboard a commercial hook-and-line fishing vessel (other than a vessel operated by persons under § 660.323(b)(1)(ii)), more than the amount of the trip limit set for black rockfish by § 660.323 while that vessel is fishing between the U.S.-Canada border and Cape Alava (48°09′30″ N. lat.), or between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.).

(m) Fish with groundfish trawl gear, or carry groundfish trawl gear on board a vessel that also has groundfish on board (unless the vessel is in continuous transit from outside the fishery management area to a port in Washington, Oregon, or California), without having a limited entry permit valid for that vessel affixed with a gear endorsement for trawl gear.

(n) Fail to carry onboard a vessel that vessel's limited entry permit if required.

(o) Make a false statement on an application for issuance, renewal, transfer, vessel registration, or replacement of a limited entry permit.

(p) Take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish.

(q) Carry on board a vessel, or deploy, limited entry gear when the limited entry fishery for that gear is closed.

(r) Refuse to submit fishing gear of fish subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

§ 660.321 Specifications and management measures.

(a) *General.* NMFS will establish and adjust specifications and management measures annually and during the fishing year. Management of the Pacific Coast groundfish fishery will be conducted consistent with the standards and procedures in the PCGFMP and other applicable law. The PCGFMP is available from the Regional Director or the Council.

(b) *Annual actions.* The Pacific Coast groundfish fishery is managed on a calendar year basis. Even though specifications and management measures are announced annually, they may apply for more than 1 year. In general, management measures are designed to achieve, but not exceed, the specifications, particularly harvest guidelines, limited entry and open access allocations, or other approved fishery allocations. Annual specifications and management measures are developed at two Council meetings and published in the **Federal Register** at the beginning of the year, according to the standards and procedures in the PCGFMP and other applicable law.

(c) *Routine management measures.* Management measures designated "routine" at § 660.323(b) may be adjusted during the year after recommendation from the Council, approval by NMFS, and publication in the **Federal Register**.

(d) *Changes to the regulations.* Regulations under this subpart may be promulgated, removed, or revised. Any such action will be made according to the framework standards and procedures in the PCGFMP and other applicable law, and will be published in the **Federal Register**.

§ 660.322 Gear restrictions.

(a) *General.* The following types of fishing gear are authorized, with the restrictions set forth in this section: Trawl (bottom and pelagic), hook-and-line, longline, pot or trap, set net (anchored gillnet or trammel net), and spear.

(b) *Trawl gear*—(1) *Use.* Trawl nets may be used on and off the seabed. Trawl nets may be fished with or without otter boards, and may use warps or cables to herd fish.

(2) *Mesh size.* Trawl nets may be used if they meet the minimum mesh sizes set forth in this paragraph (b)(2). The minimum sizes apply throughout the net. Minimum trawl mesh size requirements are met if a 20-gauge stainless steel wedge, 3.0 or 4.5 inches (7.6 or 11.4 cm) (depending on the gear being measured), less one thickness of the metal wedge, can be passed with only thumb pressure through at least 16 of 20 sets of two meshes each of wet mesh.

MINIMUM TRAWL-MESH SIZE IN INCHES [1]

Trawl conception type	Subarea				
	Vancouver	Columbia	Eureka	Monterey	
Bottom	4.5	4.5	4.5	4.5	4.5
Pelagic	3.0	3.0	3.0	3.0	3.0

[1] Metric conversion: 3.0 inches = 7.6 cm; 4.5 inches = 11.4 cm.

(3) *Chafing gear.* Chafing gear may encircle no more than 50 percent of the net's circumference, except as provided in paragraph (b)(5) of this section. No section of chafing gear may be longer than 50 meshes of the net to which it is attached. Except at the corners, the terminal end of each section of chafing gear must not be connected to the net. (The terminal end is the end farthest from the mouth of the net.) Chafing gear must be attached outside any riblines and restraining straps. There is no limit on the number of sections of chafing gear on a net.

(4) *Codends.* Only single-walled codends may be used in any trawl. Double-walled codends are prohibited.

(5) *Pelagic trawls.* Pelagic trawl nets must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere in the net. Sweeplines, including the bottom leg of the bridle, must be bare. For at least 20 ft (6.15 m) immediately behind the footrope or headrope, bare ropes or mesh of 16-inch (40.6-cm) minimum mesh size must completely encircle the net. A band of mesh (a "skirt") may encircle the net under transfer cables, lifting or splitting straps (chokers), but must be: Over riblines and restraining straps; the same mesh size and coincide knot-to-knot with the net to which it is attached; and no wider than 16 meshes.

(c) *Fixed gear.* (1) Fixed gear (longline, trap or pot, set net and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be:

(i) Marked at the surface, at each terminal end, with a pole, flag, light, radar reflector, and a buoy, except as

provided in paragraph (c)(2) of this section.

(ii) Attended at least once every 7 days.

(2) Commercial vertical hook-and-line gear that is closely tended may be marked only with a single buoy of sufficient size to float the gear. "Closely tended" means that a vessel is within visual sighting distance or within 0.25 nm (463 m) as determined by electronic navigational equipment, of its commercial vertical hook-and-line gear.

(3) A buoy used to mark fixed gear under paragraph (c)(1)(i) or (c)(2) of this section must be marked with a number clearly identifying the owner or operator of the vessel. The number may be either:

(i) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or

(ii) The vessel documentation number issued by the USCG, or, for an undocumented vessel, the vessel registration number issued by the state.

(d) *Set nets.* Fishing for groundfish with set nets is prohibited in the fishery management area north of 38°00′ N. lat.

(e) *Traps or pots.* Traps must have biodegradable escape panels constructed with # 21 or smaller untreated cotton twine in such a manner that an opening at least 8 inches (20.3 cm) in diameter results when the twine deteriorates.

(f) *Recreational fishing.* The only types of fishing gear authorized for recreational fishing are hook-and-line and spear.

(g) *Spears.* Spears may be propelled by hand or by mechanical means.

§ 660.323 Catch restrictions.

(a) Groundfish species harvested in the territorial sea (0–3 nm) will be counted toward the catch limitations in this section.

(1) *Black rockfish.* The trip limit for black rockfish (*Sebastes melanops*) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09′30″ N. lat.), and between Destruction Island (47°40′ N. lat.) and Leadbetter Point (46°38′10″ N. lat.), is 100 lbs (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip.

(2) *Nontrawl sablefish.* This paragraph (a)(2) applies to the limited entry fishery, except for paragraphs (a)(2)(i) and (v), which also apply to the open-access fishery.

(i) *Pre-season closure—open-access and limited entry fisheries.*

(A) Sablefish taken with fixed gear in the limited entry or open access fishery in the EEZ may not be retained or landed from 12 noon August 29 through 12 noon September 1.

(B) All fixed gear used to take and retain groundfish must be out of EEZ waters from 12 noon August 29 through 12 noon September 1, except that pot gear used to take and retain groundfish may be deployed and baited in the EEZ after 12 noon on August 31.

(ii) *Regular season—limited entry fishery.* The regular season for the limited entry nontrawl sablefish fishery begins at 1201 hours on August 6. During the regular season, the limited entry nontrawl sablefish fishery may be subject to trip limits to protect juvenile sablefish. The regular season will end when 70 percent of the limited entry nontrawl allocation has been or is projected to be taken. The end of the regular season may be announced in the **Federal Register** either before or during the regular season.

(iii) *Mop-up season—limited entry fishery.* A mop-up season to take the remainder of the limited entry nontrawl allocation will begin about 3 weeks after the end of the regular season, or as soon as practicable thereafter. During the mop-up fishery, a cumulative trip limit will be imposed. The length of the mop-up season and amount of the cumulative trip limit, including the time period to which it applies, will be determined by the Regional Director in consultation with the Council or its designees, and will be based primarily on the amount of fish remaining in the allocation and the number of participants anticipated. The Regional Director may determine that too little of the nontrawl allocation remains to conduct an orderly or manageable fishery, in which case there will not be a mop-up season.

(iv) *Other announcements.* The dates and times that the regular season ends (and trip limits on sablefish of all sizes are resumed) and the mop-up season begins and ends, and the size of the trip limit for the mop-up fishery, will be announced in the **Federal Register**, and may be modified. Unless otherwise announced, these seasons will begin and end at 12 noon on the specified date. A vessel landing sablefish in Puget Sound that was taken under a limited entry permit with nontrawl gear during a regular season is not subject to trip limits on that trip (except the regular season trip limits to protect juvenile sablefish), provided the landing complies with Washington State regulations governing sablefish landings in Puget Sound after the regular season.

(v) *Trip limits.* Trip and/or frequency limits may be imposed in the limited entry fishery before and after the regular season, and after the mop-up season, under paragraph (b) of this section. Trip and/or size limits to protect juvenile sablefish in the limited entry or open-access fisheries also may be imposed at any time under paragraph (b) of this section. Trip limits may be imposed in the open-access fishery at any time under paragraph (b) of this section.

(3) *Pacific whiting—(i) Season.* The regular season for Pacific whiting begins on May 15 north of 42°00′ N. lat., on March 1 between 42°00′ N. lat. and 40°30′ N. lat., and on April 15 south of 40°30′ N. lat. Before and after the regular season, trip landing or frequency limits may be imposed under paragraph (b) of this section.

(ii) *Closed areas.* Pacific whiting may not be taken and retained in the following portions of the fishery management area:

(A) *Klamath River Salmon Conservation Zone.* The ocean area surrounding the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately 6 nm north of the Klamath River mouth), on the west by 124°23′ W. long. (approximately 12 nm from shore), and on the south by 41°26′48″ N. lat. (approximately 6 nm south of the Klamath River mouth).

(B) *Columbia River Salmon Conservation Zone.* The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nm due west from North Head along 46°18′ N. lat. to 124°13′18″ W. long., then southerly along a line of 167 True to 46°11′06″ N. lat. and 124°11′ W. long. (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty.

(iii) *Eureka area trip limits.* Trip landing or frequency limits may be established, modified, or removed under § 660.321 or § 660.323, specifying the amount of Pacific whiting that may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100-fathom (183-m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka area (from 43°00′ to 40°30′ N. lat.).

(iv) *At-sea processing.* Pacific whiting may not be processed at sea south of 42°00′ N. lat. (Oregon-California border).

(v) *Time of day.* Pacific whiting may not be taken and retained by any vessel in the fishery management area south of 42°00′ N. lat. between 0001 hours to one-half hour after official sunrise (local time). During this time south of 42°00′ N. lat., trawl doors must be on board any vessel used to fish for whiting and the trawl must be attached to the trawl doors. Official sunrise is determined, to the nearest 5° lat., in *The Nautical Almanac* issued annually by the Nautical Almanac Office, U.S. Naval Observatory, and available from the U.S. Government Printing Office.

(4) *Pacific whiting—allocation.* The following provisions apply from 1994 through 1996—

(i) *Shoreside reserve.* When 60 percent of the commercial harvest guideline for Pacific whiting has been or is projected to be taken, further at-sea processing of Pacific whiting will be prohibited pursuant to paragraph (a)(4)(iv) of this section. The remaining 40 percent of the harvest guideline is reserved for harvest by vessels delivering to shoreside processors.

(ii) *Release of reserve.* That portion of the commercial harvest guideline that the Regional Director determines will not be used by shoreside processors by the end of that fishing year shall be made available for harvest by all fishing vessels, regardless of where they deliver, on August 15 or as soon as practicable thereafter. NMFS may again release whiting at a later date if it becomes obvious, after August 15, that shore-based needs have been substantially over-estimated, but only after consultation with the Council and only to insure full utilization of the resource.

(iii) *Estimates.* Estimates of the amount of Pacific whiting harvested will be based on actual amounts harvested, projections of amounts that will be harvested, or a combination of the two. Estimates of the amount of Pacific whiting that will be used by shoreside processors by the end of the fishing year will be based on the best information available to the Regional Director from state catch and landings data, the survey of domestic processing capacity and intent, testimony received at Council meetings, and/or other relevant information.

(iv) *Announcements.* The Assistant Administrator will announce in the **Federal Register** when 60 percent of the commercial harvest guideline for whiting has been, or is about to be, harvested, specifying a time after which further at-sea processing of Pacific whiting in the fishery management area is prohibited. The Assistant Administrator will publish a document in the **Federal Register** to announce any release of the reserve on August 15, or as soon as practicable thereafter. In order to prevent exceeding the limits or underutilizing the resource, adjustments may be made effective immediately by actual notice to fishermen and processors, by phone, fax, Northwest Region computerized bulletin board (contact 206–526–6128), letter, press release, and/or U.S. Coast Guard Notice to Mariners (monitor channel 16 VHF), followed by publication in the **Federal Register**, in which instance public comment will be sought for a reasonable period of time thereafter. If insufficient time exists to consult with the Council, the Regional Director will inform the Council in writing of actions taken.

(b) *Routine management measures.* In addition to the catch restrictions in this section, other catch restrictions that are likely to be adjusted on an annual or more frequent basis may be imposed and announced by a single notification in the **Federal Register** if they first have been designated as "routine" according to the applicable procedures in the PCGFMP. The following catch restrictions are designated as routine for the reasons given in paragraph (b)(1)(ii) of this section:

(1) *Commercial-limited entry and open access fisheries—*

(i) *Species and gear.* (A) Widow rockfish—all gear—trip landing and frequency limits.

(B) *Sebastes* complex—all gear—trip landing and frequency limits.

(C) Yellowtail rockfish—all gear—trip landing and frequency limits.

(D) Pacific ocean perch—all gear—trip landing and frequency limits.

(E) Sablefish—all gear—trip landing, frequency, and size limits.

(F) Dover sole—all gear—trip landing and frequency limits.

(G) Thornyheads (shortspine thornyheads or longspine thornyheads, separately or combined)—all gear—trip landing and frequency limits.

(H) Bocaccio—all gear—trip landing and frequency limits.

(I) Pacific whiting—all gear—trip landing and frequency limits.

(J) Lingcod—all gear—trip landing and frequency limits; size limits.

(K) Canary rockfish—all gear—trip landing and frequency limits.

(L) All groundfish, separately or in any combination—any legal open access gear (including non-groundfish trawl gear used to harvest pink shrimp, spot or ridgeback prawns, California halibut or sea cucumbers in accordance with the regulations in this subpart)—trip landing and frequency limits. (Size limits designated routine in this section continue to apply.)

(ii) *Reasons for "routine" management measures.* All routine management measures on commercial fisheries are intended to keep landings within the harvest levels announced by NMFS. In addition, the following reasons apply:

(A) Trip landing and frequency limits—to extend the fishing season; to minimize disruption of traditional fishing and marketing patterns; to reduce discards; to discourage target fishing while allowing small incidental catches to be landed; to allow small fisheries to operate outside the normal season; and, for the open access fishery only, to maintain landings at the historical proportions during the 1984–88 window period.

(B) Size limits—to protect juvenile fish; to extend the fishing season.

(2) *Recreational—(i) Species and gear.* (A) Lingcod—all gear—bag and size limits.

(B) Rockfish—all gear—bag limits.

(ii) *Reasons for "routine" management measures.* All routine management measures on recreational fisheries are intended to keep landings within the harvest levels announced by NMFS. In addition, the following reasons apply:

(A) Bag limits—to spread the available catch over a large number of anglers; to avoid waste; for consistency with state regulations.

(B) Size limits—to protect juvenile fish; to enhance the quality of the recreational fishing experience; for consistency with state regulations.

(c) *Prohibited species.* Groundfish species or species groups under the PCGFMP for which quotas have been achieved and the fishery closed are prohibited species. In addition, the following are prohibited species:

(1) Any species of salmonid.

(2) Pacific halibut.

(3) Dungeness crab caught seaward of Washington or Oregon.

§ 663.324 Pacific Coast treaty Indian fisheries.

(a) Pacific Coast treaty Indian tribes have treaty rights to harvest groundfish in their usual and accustomed fishing areas in U.S. waters.

(b) For the purposes of this part, Pacific Coast treaty Indian tribes means the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation.

(c) The Pacific Coast treaty Indian tribes' usual and accustomed fishing areas within the fishery management area (FMA) are set out below in paragraphs (c)(1) through (c)(4) of this section. Boundaries of a tribe's fishing area may be revised as ordered by a Federal court.

(1) *Makah*—That portion of the FMA north of 48°02′15″ N. lat. (Norwegian Memorial) and east of 125°44′00″ W. long.

(2) *Quileute*—That portion of the FMA between 48°07′36″ N. lat. (Sand Point) and 47°31′42″ N. lat. (Queets River) and east of 125°44′00″ W. long.

(3) *Hoh*—That portion of the FMA between 47°54′18″ N. lat. (Quillayute River) and 47°21′00″ N. lat. (Quinault River) and east of 125°44′00″ W. long.

(4) *Quinault*—That portion of the FMA between 47°40′06″ N. lat. (Destruction Island) and 46°53′18″ N. lat. (Point Chehalis) and east of 125°44′00″ W. long.

(d) *Procedures.* The rights referred to in paragraph (a) of this section will be implemented by the Secretary, after consideration of the tribal request, the recommendation of the Council, and the comments of the public. The rights will be implemented either through an allocation of fish that will be managed by the tribes, or through regulations in this section that will apply specifically to the tribal fisheries. An allocation or a regulation specific to the tribes shall be initiated by a written request from a Pacific Coast treaty Indian tribe to the Regional Director, prior to the first of the Council's two annual groundfish meetings. The Secretary generally will announce the annual tribal allocation at the same time as the annual specifications. The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

(e) *Identification.* A valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, is *prima facie* evidence that the holder is a member of the Pacific Coast treaty Indian tribe named on the card.

(f) A limited entry permit under subpart C is not required for participation in a tribal fishery described in paragraph (d) of this section.

(g) Fishing under this section by a member of a Pacific Coast treaty Indian tribe within their usual and accustomed fishing area is not subject to the provisions of other sections of this part.

(h) Any member of a Pacific Coast treaty Indian tribe must comply with this section, and with any applicable tribal law and regulation, when participating in a tribal groundfish fishery described in paragraph (d) of this section.

(i) Fishing by a member of a Pacific Coast treaty Indian tribe outside the applicable Indian tribe's usual and accustomed fishing area, or for a species of groundfish not covered by an allocation or regulation under this section, is subject to the regulations in the other sections of this part.

(j) *Black rockfish.* Harvest guidelines for commercial harvests of black rockfish by members of the Pacific Coast Indian tribes using hook and line gear will be established annually for the areas between the U.S.-Canadian border and Cape Alava (48°09′30″ N. lat.) and between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.), in accordance with the procedures for implementing annual specifications. Pacific Coast treaty Indians fishing for black rockfish in these areas under these harvest guidelines are subject to the provisions in this section, and not to the restrictions in other sections of this part.

(k) *Groundfish without a tribal allocation.* Makah tribal members may use midwater trawl gear to take and retain groundfish for which there is no tribal allocation and will be subject to the trip landing and frequency and size limits applicable to the limited entry fishery.

§ 660.331 Limited entry and open access fisheries—general.

All commercial fishing for groundfish must be conducted in accordance with the regulations governing limited entry and open access fisheries, except such fishing by treaty Indian tribes as may be separately provided for.

§ 660.332 Allocations.

(a) *General.* The commercial portion of the Pacific Coast groundfish fishery, excluding the treaty Indian fishery, is divided into limited entry and open access fisheries. Separate allocations for the limited entry and open access fisheries will be established annually for certain species and/or areas using the procedures described in this subpart or the PCGFMP.

(1) *Limited entry allocation.* The allocation for the limited entry fishery is the allowable catch (harvest guideline or quota excluding set asides for recreational or tribal Indian fisheries) minus the allocation to the open access fishery.

(2) *Open access allocation.* The allocation for the open access fishery is derived by applying the open access allocation percentage to the annual harvest guideline or quota after subtracting any set asides for recreational or tribal Indian fisheries. For management areas where quotas or harvest guidelines for a stock are not fully utilized, no separate allocation will be established for the open access fishery until it is projected that the allowable catch for a species will be reached.

(b) *Open access allocation percentage.* For each species with a harvest guideline or quota, the initial open access allocation percentage is calculated by:

(1) Computing the total catch for that species during the window period by any vessel that does not initially receive a limited entry permit.

(2) Dividing that amount by the total catch during the window period by all gear.

(3) The guidelines in this paragraph (b)(3) apply to recalculation of the open access allocation percentage. Any recalculated allocation percentage will be used in calculating the following year's open access allocation. If a gear type is prohibited by a state or the Secretary and a vessel thereby qualifies for a limited entry permit under this subpart, or if a small limited entry fleet is incorporated into the limited entry fishery under § 660.338, the window-period catch of these vessels will be deducted from the open access fishery's historical catch levels and the open access allocation percentage recalculated accordingly.

(c) *Catch accounting between the limited entry and open access fisheries.* Any groundfish caught by a vessel with a limited entry permit will be counted against the limited entry allocation while the limited entry fishery for that vessel's limited entry gear is open. When the fishery for a vessel's limited entry gear has closed, groundfish caught by that vessel with open access gear will be counted against the open access allocation. All groundfish caught by vessels without limited entry permits will be counted against the open access allocation.

(d) *Additional guidelines.* Additional guidelines governing determination of the limited entry and open access allocations are in the PCGFMP.

(e) *Treaty Indian fisheries.* Certain amounts of groundfish may be set aside annually for tribal fisheries prior to dividing the balance of the allowable catch between the limited entry and open access fisheries. Tribal fisheries conducted under a set-aside are not subject to the regulations governing limited entry and open access fisheries.

(f) *Recreational fisheries.* Recreational fishing for groundfish is outside the scope of, and not affected by, the regulations governing limited entry and open access fisheries. Certain amounts of groundfish may be specifically allocated to the recreational fishery, and will be set aside prior to dividing the commercial allocation between the commercial limited entry and open access fisheries.

§ 660.333 Limited entry fishery-general.

(a) *General.* Participation in the limited entry fishery requires that the owner of a vessel have a limited entry permit affixed with a gear endorsement registered for use with that vessel for the gear being fished. There are four types of gear endorsements: "A," "Provisional A," "B," and "Designated species B." More than one type of gear endorsement may be affixed to a limited entry permit. While the limited entry fishery is open, vessels fishing under limited entry permits may also fish with open access gear. All fishing with open access gear is subject to regulations applicable to the open access fishery. Vessels with limited entry permits may also participate in the open access fishery when the limited entry fishery is closed, but only with open access gear.

(b) *Renewal of limited entry permits and gear endorsements.*

(1) Limited entry permits expire at the end of each calendar year, and must be renewed between October 1 and November 30 of each year in order to remain in force the following year.

(2) Notification to renew limited entry permits will be issued by FMD prior to September 1 each year to the most recent address of the permit owner. The permit owner shall provide FMD with notice of any address change within 15 days of the change.

(3) A limited entry permit that is allowed to expire will not be renewed unless the FMD determines that failure to renew was proximately caused by the illness, injury, or death of the permit owner.

(c) *Transfer and registration of limited entry permits and gear endorsements.* (1) Upon transfer of a limited entry permit, the FMD will reissue the permit in the name of the new permit holder with such gear endorsements as are eligible for transfer with the permit. No transfer is effective until the limited entry permit has been reissued and is in the possession of the new permit holder.

(2) A limited entry permit may not be used with a vessel unless it is registered for use with that vessel. Limited entry permits will normally be registered for use with a particular vessel at the time the permit is issued, renewed, transferred, or replaced. A permit not registered for use with a particular vessel may not be used. If the permit will be used with a vessel other than the one registered on the permit, a registration for use with the new vessel must be obtained from the FMD and placed aboard the vessel before it is used under the permit.

(3) Application forms for the transfer and registration of limited entry permits are available from the FMD (see part 600 for address of the Regional Director). Contents of the application, and required supporting documentation, are specified in the application form.

(4) The FMD will maintain records of all limited entry permits that have been issued, renewed, transferred, registered, or replaced.

(d) *Evidence and burden of proof.* A vessel owner (or person holding limited entry rights under the express terms of a written contract) applying for issuance, renewal, transfer, or registration of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. The following evidentiary standards apply:

(1) A certified copy of the current vessel document (USCG or state) is the best evidence of vessel ownership and LOA.

(2) A certified copy of a state fish receiving ticket is the best evidence of a landing, and of the type of gear used.

(3) A copy of a written contract reserving or conveying limited entry rights is the best evidence of reserved or acquired rights.

(4) Such other relevant, credible evidence as the applicant may submit, or the FMD or the Regional Director request or acquire, may also be considered.

(e) *Initial decisions.* Initial decisions regarding issuance, renewal, transfer, and registration of limited entry permits, and endorsement upgrade, will be made by the FMD.

Adverse decisions shall be in writing and shall state the reasons therefor. The FMD may decline to act on an application for issuance, renewal, transfer, or registration of a limited entry permit if the permit sanction provisions of the Magnuson Act at 16 U.S.C. 1858(a) and implementing regulations at 15 CFR part 904, subpart D, apply.

(f) *Transfers.* Limited entry permits are transferable as follows:

(1) The permit owner may transfer (by sale, assignment, lease, bequest, intestate succession, barter, trade, gift, or other form of conveyance) the limited entry permit to a different person. The permit holder may register the permit for use with a different vessel under the same ownership, subject to the conditions set forth in this subpart.

(2) Gear endorsements may not be transferred separately from the limited entry permit.

(3) Except as provided in §§ 660.335(b), 660.336(b), and 660.337(b)(2), only "A" gear endorsements remain valid with the transfer of a limited entry permit.

(g) *Eligibility.* Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) a limited entry permit.

(h) *Vessel size endorsements*—(1) *General.* The limited entry permit will be endorsed with the LOA for the size of the vessel that initially qualified for the permit, except:

(i) If the permit was initially issued under section 14.3.2.3.8 of the FMP [re pre-1991 replacement vessels qualifying for "provisional A" permits] for a replacement vessel that was more than 5 ft (1.52 m) longer than the replaced vessel, the permit will be endorsed for the size of the replacement vessel.

(ii) If the permit was initially issued to a replacement trawl vessel that was more than 5 ft (1.52 m) shorter than the replaced vessel, it will be endorsed for the size of the smaller replacement vessel.

(iii) If the permit is registered for use with a trawl vessel that is more than 5 ft (1.52 m) shorter than the size for which the permit is endorsed, it will be endorsed for the size of the smaller vessel.

(iv) When permits are combined into one permit to be registered for use with a vessel requiring a larger size endorsement, the new permit will be endorsed for the size of the larger vessel.

(2) *Limitations of size endorsements*—(i) A limited entry permit endorsed only for gear other than trawl gear may be registered for use with a vessel up to 5 ft (1.52 m) longer than, the same length as, or any length shorter than, the size endorsed on the existing permit without requiring a combination of permits under paragraph (i) of this section or a change in the size endorsement.

(ii) A limited entry permit endorsed for trawl gear may be registered for use with a vessel between 5 ft (1.52 m) shorter and 5 ft (1.52 m) longer than the size endorsed on the existing permit without requiring a combination of permits under paragraph (i) of this section or a change in the size endorsement under paragraph (h)(1)(iii) of this section.

(iii) *Combining limited entry permits.* Two or more limited entry permits with "A" gear endorsements for the same type of limited entry gear may be combined and reissued as a single permit with a larger size endorsement. The vessel harvest capacity rating for each of the permits being combined is that indicated in Table 2 of this part for the LOA (in feet) endorsed on the respective limited entry permit. Harvest capacity ratings for fractions of a foot in vessel length will be determined by multiplying the fraction of a foot in vessel length by the difference in the two ratings assigned to the nearest integers of vessel length. The length rating for the combined permit is that indicated for the sum of the vessel harvest capacity ratings for each permit being combined. If that sum falls

between the sums for two adjacent

§ 660.337 Limited entry permits—

equal seniority will be ranked equally

between the sums for two adjacent lengths on Table 2 of this part, the length rating shall be the higher length.

(i) *Limited entry permits indivisible.* Limited entry permits may not be divided for use by more than one vessel.

§ 660.334 Limited entry permits—"A" endorsement.

(a) A limited entry permit with an "A" endorsement entitles the holder to participate in the limited entry fishery for all groundfish species with the type(s) of limited entry gear specified in the endorsement.

(b) An "A" endorsement is transferable with the limited entry permit to another person, or a different vessel under the same ownership under § 660.333.

(c) An "A" endorsement expires on failure to renew the limited entry permit to which it is affixed (see § 660.333).

§ 660.335 Limited entry permits—"Provisional A" endorsement.

(a) A "provisional A" endorsement entitles the permit owner to fish for all groundfish species with the types of limited entry gear specified in the endorsement.

(b) A "provisional A" endorsement is not transferrable except as specified in the PCGFMP.

(c) The holder of a "provisional A" endorsement must comply with the requirements set out in the PCGFMP at 14.3.2.4 in order for the permit to be upgraded to an "A" permit.

(d) A "provisional A" endorsement expires at the end of any of the three consecutive 365-day periods (during the 3-year qualifying period) in which a vessel's landings do not meet the applicable landing requirement or upon failure to renew the limited entry permit. A "provisional A" endorsement that expires will not be reissued.

§ 660.336 Limited entry permits—"B" endorsement.

(a) A limited entry permit with a "B" endorsement entitles the permit owner to fish for all groundfish species with the type(s) of limited entry gear specified in the endorsement.

(b) A "B" endorsement is not transferable to another person, and may not be used with another vessel under the same ownership, unless the vessel for which the endorsement was issued is totally lost, and the permit is transferred to a replacement vessel owned by the same owner.

(c) All "B" endorsements expire on December 31, 1996.

(d) A "B" endorsement expires on failure to renew the limited entry permit.

§ 660.337 Limited entry permits—"designated species B" endorsement.

(a) *Issuance criteria*—(1) *General. Designated species* means Pacific whiting, jack mackerel north of 39° N. lat., and shortbelly rockfish. Bycatch allowances in fisheries for these species will be established using the procedures specified for incidental allowances in joint venture and foreign fisheries in the PCGFMP.

(2) *Catch limit.* On or about October 1 of each year, the FMD will determine the commitment of persons with limited entry permits with "A" gear endorsements (the "limited entry fleet") to harvest each designated species for delivery to domestic processors during the coming year. "Commitment" means a permit holder's contract or agreement with a specific domestic processor to deliver an estimated amount of the designated species. The "designated species B" endorsement catch limit is the harvest guideline or quota for the designated species minus the commitment of the limited entry fleet. If the commitment is less than DAP and the harvest guideline or quota for the species, "designated species B" endorsements valid for delivery to domestic processors will be issued in numbers necessary to reach but not exceed the harvest guideline or quota. "Designated species B" endorsements also may be issued for delivery to foreign processors of designated species for which a JVP is established. If, at any time during the fishing year, the FMD determines that any part of the limited entry fleet commitment will not be taken, the Regional Director will make a reapportionment to the "designated species B" endorsement catch limit. The amount of the annual limited entry fleet commitment, "designated species B" endorsement catch limit, and the amounts and timing of any reapportionments to the "designated species B" endorsement catch limit will be announced in the **Federal Register**.

(3) *Procedure for issuance.* Owners of vessels applying for "designated species B" endorsements must apply on or before November 1 of each year for a "designated species B" endorsement for the following year. Applications are available from the FMD. Applicants are required to specify their commitments for delivery of the designated species for the coming year. On or about November 1 of each year, the FMD will establish a prioritized list of applicants based on seniority (number of years the vessel has fished for the designated species). A vessel which replaces a lost vessel, consistent with the standards in the PCGFMP, has the same seniority status as the replaced vessel. Vessels with equal seniority will be ranked equally. "Designated species B" endorsements will be issued first to all vessels with the highest seniority, then to those with the next highest seniority, and so on down the list. No further endorsements will be issued when it is estimated that the commitments of applicants receiving endorsements is sufficient to take the "designated species B" catch limit. If there are insufficient commitments by senior applicants to take the "designated species B" catch limit, additional applications will be ranked by lottery and a number of endorsements sufficient to take the catch limit will be issued.

(b) *Attributes.* (1) A limited entry permit with a "designated species B" endorsement entitles the permit recipient to fish only for the species, and only with the gear, specified in the endorsement.

(2) A "designated species B" endorsement is not transferable to another person, and may not be used with a different vessel under the same ownership, unless the vessel has been totally lost and replaced consistent with the provisions of the PCGFMP, in which case the replacement vessel has the same seniority as the lost vessel for purposes of a "designated species B" endorsement.

(3) A "designated species B" endorsement is valid only for the fishing year for which it is issued.

§ 660.338 Limited entry permits—new permits.

(a) Small limited entry fisheries that are controlled by a local government, are in existence as of July 11, 1991, and have negligible impacts on the groundfish resource, may be certified as consistent with the goals and objectives of the limited entry program and incorporated into the limited entry fishery. Permits issued under this subsection will be issued according to the standards and procedures set out in the PCGFMP and will carry the rights explained therein. Window period is that period from July 11, 1984, through August 1, 1988.

(b) If, after the window period, an exempt gear is prohibited by Washington, Oregon, or California or NMFS, the owners of vessels using such gear, who would not otherwise qualify for an "A" or "provisional A" endorsement, may qualify for a "provisional A" endorsement for only one of the three limited entry gears, if the vessel used the prohibited gear to make sufficient landings of groundfish during the window period to meet the MLR for the limited entry gear. If a vessel would qualify for an endorsement for more than one limited entry gear, the owner must choose the type of gear for which the endorsement will be issued. If an "A" or "provisional A" endorsement was previously issued for the vessel, and the endorsement was subsequently transferred or expired, no "provisional A" endorsement will be issued. Permits issued under this section will be issued according to the procedures and standards set out in the PCGFMP and will carry the rights explained therein.

(c) An owner of a vessel that qualifies under this section must apply to the FMD for a permit within 180 days of incorporation of the limited entry fleet of which the vessel is a part or within 180 days of the effective date of the prohibition of that vessel's gear. Untimely applications will be rejected unless the applicant demonstrates that circumstances beyond the applicant's control prevented submission of the application during the specified period. Illness, injury, or death of the potential applicant are the primary grounds on which untimely applications may be accepted.

§ 660.339 Limited entry permit fees.

The Regional Director will charge fees to cover administrative expenses related to issuance of limited entry permits, including initial issuance, renewal, transfer, vessel registration, replacement, and appeals. The appropriate fee must accompany each application.

§ 660.340 Limited entry permit appeals.

(a) Decisions on appeals of initial decisions regarding issuance, renewal, transfer, and registration of limited entry permits, and endorsement upgrade, will be made by the Regional Director.

(b) Appeals decisions shall be in writing and shall state the reasons therefor.

(c) Within 30 days of an initial decision by the FMD denying issuance, renewal, transfer, or registration of a limited entry permit, or endorsement upgrade, on the terms requested by the applicant, an appeal may be filed with the Regional Director.

(d) The appeal must be in writing, and must allege facts or circumstances to show why the criteria in this subpart have been met, or why an exception should be granted.

(e) At the appellant's discretion, the appeal may be accompanied by a request that the Regional Director seek a recommendation from the Council as to whether the appeal should be granted. Such a request must contain the appellant's acknowledgement that the confidentiality provisions of the Magnuson Act at 16 U.S.C. 1853(d) and part 600 of this chapter are waived with respect to any information supplied by the Regional Director to the Council and its advisory bodies for purposes of receiving the Council's recommendation on the appeal. In responding to a request for a recommendation on appeal, the Council will apply the provisions of the PCGFMP in making its recommendation as to whether the appeal should be granted.

(f) Absent good cause for further delay, the Regional Director will issue a written decision on the appeal within 45 days of receipt of the appeal, or, if a recommendation from the Council is requested, within 45 days of receiving the Council's recommendation. The Regional Director's decision is the final administrative decision of the Department as of the date of the decision.

§ 660.341 Limited entry permit sanctions.

Limited entry permits issued or applied for under this subpart are subject to sanctions pursuant to the Magnuson Act at 16 U.S.C. 1858(g) and 15 CFR part 904, subpart D.

Subpart H—West Coast Salmon Fisheries

§ 660.401 Purpose and scope.

This subpart implements the Fishery Management Plan for Commercial and Recreational Salmon Fisheries Off the Coasts of Washington, Oregon, and California developed by the Pacific Fishery Management Council. These regulations govern the management of West Coast salmon fisheries in the EEZ.

§ 660.402 Definitions.

In addition to the definitions in the Magnuson Act and in § 600.10 of this chapter, the terms used in this subpart have the following meanings:

Barbless hook means a hook with a single shank and point, with no secondary point or barb curving or projecting in any other direction. Where barbless hooks are specified, hooks manufactured with barbs can be made barbless by forcing the point of the barb flat against the main part of the point.

Commercial fishing means fishing with troll fishing gear as defined annually under § 660.408, or fishing for the purpose of sale or barter of the catch.

Council means the Pacific Fishery Management Council.

Dressed, head-off length of salmon means the shortest distance between the midpoint of the clavicle arch (see Figure 3 of this subpart) and the fork of the tail, measured along the lateral line while the fish is lying on its side, without resort to any force or mutilation of the fish other than removal of the head, gills, and entrails (see Figure 3 of this subpart).

Dressed, head-off salmon means salmon that have been beheaded, gilled, and gutted without further separation of vertebrae, and are either being prepared for on-board freezing, or are frozen and will remain frozen until landed.

Fishery management area means the EEZ off the coasts of Washington, Oregon, and California, bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. The northeastern, northern, and northwestern boundaries of the fishery management area are as follows:

(1) Northeastern boundary—that part of a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia, southerly of the International Boundary between the United States and Canada (at 48°29′37″ N. lat., 124°43′33″ W. long.), and northerly of the point where that line intersects with the boundary of the U.S. territorial sea.

(2) Northern and northwestern boundary is a line [1] connecting the following coordinates:

N. lat.	*W. long.*
48°29′37.19″	124°43′33.19″
48°30′11″	124°47′13″
48°30′22″	124°50′21″
48°30′14″	124°52′52″
48°29′57″	124°59′14″
48°29′44″	125°00′06″
48°28′09″	125°05′47″
48°27′10″	125°08′25″
48°26′47″	125°09′12″
48°20′16″	125°22′48″
48°18′22″	125°29′58″
48°11′05″	125°53′48″
47°49′15″	126°40′57″
47°36′47″	127°11′58″
47°22′00″	127°41′23″
46°42′05″	128°51′56″
46°31′47″	129°07′39″

(3) The southern boundary of the fishery management area is the U.S.-Mexico International Boundary, which is a line connecting the following coordinates:

N. lat.	*W. long.*
32°35′22″	117°27′49″
32°37′37″	117°49′31″
31°07′58″	116°36′18″
30°32′31″	121°51′58″

(4) The inner boundaries of the fishery management area are subject to

[1] The line joining these coordinates is the provisional international boundary of the U.S. EEZ as shown on NOAA/NOS Charts #18480 and #18002.

change if the Secretary assumes responsibility for the regulation of the salmon fishery within state waters under section 306(b) of the Magnuson Act.

Freezer trolling vessel means a fishing vessel, equipped with troll fishing gear, that has a present capability for:

(1) On board freezing of the catch.

(2) Storage of the fish in a frozen condition until they are landed.

Land or *landing* means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish onboard the vessel are counted as part of the landing.

Plugs means artificial fishing lures made of wood or hard plastic with one or more hooks attached. Lures commonly known as "spoons," "wobblers," "dodgers," and flexible plastic lures are not considered plugs, and may not be used where "plugs only" are specified.

Recreational fishing means fishing with recreational fishing gear as defined annually under § 660.408 and not for the purpose of sale or barter.

Recreational fishing gear will be defined annually under § 660.408.

Regional Director means the Director, Northwest Region, NMFS, or a designee. For fisheries occurring primarily or exclusively in the fishery management area seaward of California, *Regional Director* means the Director, Northwest Region, NMFS, acting in consultation with the Director, Southwest Region, NMFS.

Salmon means any anadromous species of the family Salmonidae and genus *Oncorhynchus*, commonly known as Pacific salmon, including, but not limited to:

Chinook (king) salmon, *Oncorhynchus tshawytscha*
Coho (silver) salmon, *Oncorhynchus kisutch*
Pink (humpback) salmon, *Oncorhynchus gorbuscha*
Chum (dog) salmon, *Oncorhynchus keta*
Sockeye (red) salmon, *Oncorhynchus nerka*
Steelhead (rainbow trout), *Oncorhynchus mykiss*

Total length of salmon means the shortest distance between the tip of the snout or jaw (whichever extends furthest while the mouth is closed) and the tip of the longest lobe of the tail, without resort to any force or mutilation of the salmon other than fanning or swinging the tail.

Treaty Indian fishing means fishing for salmon and steelhead in the fishery management area by a person authorized by the Makah Tribe to exercise fishing rights under the Treaty with the Makah, or by the Quileute, Hoh, or Quinault Tribes to exercise fishing rights under the Treaty of Olympia.

Troll fishing gear will be defined annually under § 660.408.

Whole bait means a hook or hooks baited with whole natural bait with no device to attract fish other than a flasher.

§ 660.403 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter, § 660.2, and paragraphs (b) and (c) of this section.

(b) Any person fishing subject to this subpart who also engages in fishing for groundfish should consult Federal regulations in subpart G for applicable requirements of that subpart, including the requirement that vessels engaged in commercial fishing for groundfish (except commercial passenger vessels) have vessel identification in accordance with § 660.305.

(c) Any person fishing subject to this subpart is bound by the international boundaries of the fishery management area described in § 660.402, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are published by the United States.

§ 660.404 Recordkeeping and reporting.

(a) This subpart recognizes that catch and effort data necessary for implementation of any applicable fishery management plan are collected by the States and Indian tribes of Washington, Oregon, California, and Idaho under existing data collection requirements. Except as provided in paragraph (b) of this section, no additional catch reports will be required of fishermen or processors so long as the data collection and reporting systems operated by State agencies and Indian tribes continue to provide NMFS with statistical information adequate for management.

(b) Persons engaged in commercial fishing may be required to submit catch reports that are specified annually under § 660.408.

§ 660.405 Prohibitions.

(a) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Take and retain or land salmon caught with a net in the fishery management area, except that a hand-held net may be used to bring hooked salmon on board a vessel.

(2) Fish for, or take and retain, any species of salmon:

(i) During closed seasons or in closed areas;

(ii) While possessing on board any species not allowed to be taken in the area at the time;

(iii) Once any catch limit is attained;

(iv) By means of gear or methods other than recreational fishing gear or troll fishing gear, or gear authorized under § 660.408(k) for treaty Indian fishing;

(v) In violation of any action issued under this subpart; or

(vi) In violation of any applicable area, season, species, zone, gear, daily bag limit, or length restriction.

(3) Fish for salmon in an area when salmon of less than the legal minimum length for that area are on board the fishing vessel, except that this provision does not prohibit transit of an area when salmon of less than the legal minimum length for that area are on board, so long as no fishing is being conducted.

(4) Remove the head of any salmon caught in the fishery management area, or possess a salmon with the head removed, if that salmon has been marked by removal of the adipose fin to indicate that a coded wire tag has been implanted in the head of the fish.

(5) Take and retain or possess on board a fishing vessel any species of salmon that is less than the applicable minimum total length, including the applicable minimum length for dressed, head-off salmon.

(6) Possess on board a fishing vessel a salmon, for which a minimum total length is extended or cannot be determined, except that dressed, head-off salmon may be possessed on board a freezer trolling vessel, unless the adipose fin of such salmon has been removed.

(7) Fail to return to the water immediately and with the least possible injury any salmon the retention of which is prohibited by this subpart.

(8) Engage in recreational fishing while aboard a vessel engaged in commercial fishing. This restriction is not intended to prohibit the use of fishing gear otherwise permitted under the definitions of troll and recreational fishing gear, so long as that gear is legal in the fishery for which it is being used.

(9) Take and retain, possess, or land any steelhead taken in the course of commercial fishing in the fishery management area, unless such take and retention qualifies as treaty Indian fishing.

(10) Sell, barter, offer to sell, offer to barter, or purchase any salmon taken in the course of recreational salmon fishing.

(11) Refuse to submit fishing gear or catch subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

(12) Take and retain Pacific halibut (*Hippoglossus stenolepis*) except in accordance with regulations of the International Pacific Halibut Commission at part 300 of this title. Pacific halibut that cannot be retained lawfully must be returned to the water immediately and with the least possible injury.

(13) Violate any other provision of this subpart.

(b) The fishery management area is closed to salmon fishing except as opened by this subpart or superseding regulations or notices. All open fishing periods begin at 0001 hours and end at 2400 hours local time on the dates specified.

§ 660.406 Exempted fishing.

(a) NMFS may allow such exempted fishing in the fishery management area as may be recommended by the Council, the Federal Government, state government, or treaty Indian tribes having usual and accustomed fishing grounds in the fishery management area.

(b) NMFS will not allow any exempted fishery recommended by the Council unless NMFS determines that the purpose, design, and administration of the exempted fishery are consistent with the goals and objectives of the Council's fishery management plan, the national standards (section 301(a) of the Magnuson Act), and other applicable law.

(c) Each vessel participating in any exempted fishery recommended by the Council and allowed by NMFS is subject to all provisions of this subpart, except those portions which relate to the purpose and nature of the exempted fishery. These exceptions will be specified in a permit issued by the Regional Director to each vessel participating in the exempted fishery and that permit must be carried aboard each participating vessel.

§ 660.407 Treaty Indian fishing.

Except as otherwise provided in this subpart, treaty Indian fishing in any part of the fishery management area is subject to the provisions of this subpart, the Magnuson Act, and any other regulations issued under the Magnuson Act.

§ 660.408 Annual actions.

(a) *General.* NMFS will annually establish or, as necessary, adjust management specifications for the commercial, recreational, and treaty Indian fisheries by publishing the action in the **Federal Register** under § 660.411. Management specifications are set forth in paragraphs (b) through (n) of this section.

(b) *Allowable ocean harvest levels.* The allowable ocean harvest for commercial, recreational, and treaty Indian fishing may be expressed in terms of season regulations expected to achieve a certain optimum harvest level or in terms of a particular number of fish. Procedures for determining allowable ocean harvest vary by species and fishery complexity, and are documented in the fishery management plan and Council documents.

(c) *Allocation of ocean harvest levels*—(1) *Coho and chinook from the U.S.-Canada border to Cape Falcon*—(i) *Overall allocation schedule.* Initial allocation of coho and chinook salmon north of Cape Falcon, OR, will be based on the following schedule:

Allowable non-treaty ocean harvest (thousands of fish)	Percentage [1]	
	Commercial	Recreational
Coho:		
0–300	25	75
>300	60	40
Chinook:		
0–100	50	50
>100–150	60	40
>150	70	30

[1] The percentage allocation is tiered and must be calculated in additive steps when the harvest level exceeds the initial tier. For example, for a total allowable ocean harvest of 150,000 chinook, the recreational allocation would be equal to 50 percent of 100,000 chinook plus 40 percent of 50,000 chinook or 50,000 + 20,000 = 70,000 chinook.

(ii) *Deviations from allocation schedule.* The initial allocation may be modified annually in accordance with paragraphs (c)(1)(iii) through (vii) of this section. These deviations from the allocation schedule provide flexibility to account for the dynamic nature of the fisheries and better achieve the allocation objectives and fishery allocation priorities in paragraphs (c)(1)(viii) and (ix) of this section. Total allowable ocean harvest will be maximized to the extent possible consistent with treaty obligations, state fishery needs, and spawning requirements. Every effort will be made to establish seasons and gear requirements that provide troll and recreational fleets a reasonable opportunity to catch the available harvest. These may include single-species directed fisheries with landing restrictions for other species.

(iii) *Preseason trades.* Preseason species trades (chinook and coho) may be made if they are based upon the recommendation of the commercial and recreational Salmon Advisory Subpanel representatives for the area north of Cape Falcon; simultaneously benefit both the commercial and recreational fisheries or benefit one fishery without harming the other; and are supported by a socio-economic analysis that compares the impacts of the recommendation to those of the standard allocation schedule to determine the allocation that best meets the allocation objectives. This analysis will be made available to the public during the preseason process for establishing annual management measures. Preseason trades will use an exchange ratio of four coho to one chinook as a desirable guideline.

(iv) *Commercial allocation.* The commercial allowable ocean harvest of chinook and coho derived during the preseason allocation process may be varied by major subareas (i.e., north of Leadbetter Point and south of Leadbetter Point) if there is need to do so to decrease impacts on weak stocks. Deviations in each major subarea will generally not exceed 50 percent of the allowable ocean harvest of each species that would have been established without a geographic deviation in the distribution of the allowable ocean harvest. Deviation of more than 50 percent will be based on a conservation need to protect the weak stocks and will provide larger overall harvest for the entire fishery north of Cape Falcon than would have been possible without the deviation.

(v) *Recreational allocation.* The recreational allowable ocean harvest of chinook and coho derived during the preseason allocation process will be distributed among the three major recreational subareas as described in the coho and chinook distribution sections below. Additionally, based upon the recommendation of the recreational Salmon Advisory Subpanel representatives for the area north of Cape Falcon, the Council will include criteria in its preseason salmon management recommendations to guide any inseason transfer of coho among the recreational subareas to meet recreational season duration objectives. The Council may also establish additional subarea quotas with a major subarea to meet recreational season objectives based on agreement of representatives of the affected ports.

(A) *Coho distribution.* The preseason recreational allowable ocean harvest of coho north of Cape Falcon will be distributed to provide 50 percent to the area north of Leadbetter Point and 50 percent to the area south of Leadbetter Point. In years with no fishery in Washington State management area 4B, the distribution of coho north of Leadbetter Point will be divided to

provide 74 percent to the subarea between Leadbetter Point and the Queets River (Westport) and 26 percent to the subarea north of the Queets River (Neah Bay/La Push). In years when there is an area 4B fishery under state management, 25 percent of the numerical value of that fishery shall be added to the recreational allowable ocean harvest north of Leadbetter Point prior to applying the sharing percentages. That same value would then be subtracted from the Neah Bay/La Push share in order to maintain the same total distribution north of Leadbetter Point.

(B) *Chinook distribution.* Subarea distributions of chinook will be managed as guidelines based on calculations of the Salmon Technical Team with the primary objective of achieving all-species fisheries without imposing chinook restrictions (i.e., area closures or bag limit reductions). Chinook in excess of all-species fisheries needs may be utilized by directed chinook fisheries north of Cape Falcon or by negotiating a preseason species trade of chinook and coho between commercial and recreational allocations in accordance with paragraph (c)(1)(iii) of this section.

(vi) *Inseason trades and transfers.* Inseason transfers, including species trades of chinook and coho, may be permitted in either direction between commercial and recreational fishery quotas to allow for uncatchable fish in one fishery to be reallocated to the other. Fish will be deemed uncatchable by a respective commercial or recreational fishery only after considering all possible annual management actions to allow for their harvest that are consistent with the harvest management objectives specific in the fishery management plan including consideration of single species fisheries. Implementation of inseason transfers will require consultation with the pertinent commercial and recreational Salmon Advisory Subpanel representatives from the area involved and the Salmon Technical Team, and a clear establishment of available fish and impacts from the transfer. Inseason trades or transfers may vary from the guideline ratio of four coho to one chinook to meet the allocation objectives in paragraph (c)(1)(viii) of this section.

(vii) *Other inseason provisions.* Any increase or decrease in the recreational or commercial allowable ocean harvest resulting from an inseason restructuring of a fishery or other inseason management action does not require reallocation of the overall non-treaty allowable ocean harvest north of Cape Falcon between the recreational and commercial fisheries. Inseason redistribution of subarea quotas within the recreational fishery or the distribution of allowable coho catch transfers from the commercial fishery among subareas may deviate from the preseason distribution. Inseason management actions may be taken by the Regional Director to assure meeting the primary objective of achieving all-species fisheries without imposing chinook restrictions in each of the recreational subareas north of Cape Falcon. Such actions might include, but are not limited to: Closure from 0 to 3, 0 to 6, 3 to 200, or 5 to 200 nm from shore; closure from a point extending due west from Tatoosh Island for 5 nm, then south to a point due west of Umatilla Reef Buoy, then due east to shore; closure from North Head at the Columbia River mouth north to Leadbetter Point; change in species that may be landed; or other actions as prescribed in the annual management measures.

(viii) *Allocation objectives.* The goal of allocating ocean harvest north of Cape Falcon is to achieve, to the greatest degree possible, the following objectives for the commercial and recreational fisheries. When deviation from the allocation schedule is being considered, these objectives will serve as criteria to help determine whether a user group will benefit from the deviation.

(A) Provide recreational opportunity by maximizing the duration of the fishing season while minimizing daily and area closures and restrictions on gear and daily limits.

(B) Maximize the value of the commercial harvest while providing fisheries of reasonable duration.

(ix) *Fishery allocation priorities.* The following fishery allocation priorities will provide guidance in the preseason process of establishing final harvest allocations and structuring seasons that best achieve the allocation objectives. To the extent fish are provided to each fishery by the allocation schedule, these priorities do not favor one user group over the other and should be met simultaneously for each fishery. Seasons may be structured that deviate from these priorities consistent with the allocation objectives.

(A) At total allowable harvest levels up to 300,000 coho and 100,000 chinook: For the recreational fishery, provide coho for a late June through early September all-species season; provide chinook to allow access to coho and, if possible, a minimal chinook-only fishery prior to the all-species season; and adjust days per week and/or institute area restrictions to stabilize season duration. For the commercial fishery, provide chinook for a May and early June chinook season and provide coho for hooking mortality and/or access to a pink fishery, and ensure that part of the chinook season will occur after June 1.

(B) At total allowable harvest levels above 300,000 coho and above 100,000 chinook: For the recreational fishery, relax any restrictions in the all-species fishery and/or extend the all-species season beyond Labor Day as coho quota allows; provide chinook for a Memorial Day through late June chinook-only fishery; and adjust days per week to ensure continuity with the all-species season. For the commercial fishery, provide coho for an all-species season in late summer and/or access to a pink fishery; and leave adequate chinook from the May through June season to allow access to coho.

(2) *Coho south of Cape Falcon*—(i) *Allocation schedule.* Preseason allocation shares of coho salmon south of Cape Falcon, OR, will be determined by an allocation schedule, which is based on the following formula. The formula will be used to interpolate between allowable harvest levels as shown in the table below.

(A) Up to 350,000 allowable ocean harvest: The first 150,000 fish will be allocated to the recreational fishery. Additional fish will be allocated 66.7 percent to troll and 33.3 percent to recreational. The incidental coho mortality for a commercial all-salmon-except-coho fishery will be deducted from the troll allocation. If the troll allocation is insufficient for this purpose, the remaining number of coho needed for this estimated incidental coho mortality will be deducted from the recreational share.

(B) From 350,000 to 800,000 allowable ocean harvest: The recreational allocation is equal to 14 percent of the allowable harvest above 350,000 fish, plus 217,000 fish. The remainder of the allowable ocean harvest will be allocated to the troll fishery.

(C) Above 800,000 allowable ocean harvest: The recreational allocation is equal to 10 percent of the allowable harvest above 800,000 fish, plus 280,000 fish. The remainder of the allowable ocean harvest will be allocated to the troll fishery.

Allowable ocean harvest (thousands of fish)	Commercial		Recreational	
	Number (thousands)	Percentage	Number (thousands)	Percentage
2,700	2,230	82.6	470	17.4
2,600	2,140	82.3	460	17.7
2,500	2,050	82.0	450	18.0
2,400	1,960	81.7	440	18.3
2,300	1,870	81.3	430	18.7
2,200	1,780	80.9	420	19.1
2,100	1,690	80.5	410	19.5
2,000	1,600	80.0	400	20.0
1,900	1,510	79.5	390	20.5
1,800	1,420	78.9	380	21.1
1,700	1,330	78.2	370	21.8
1,600	1,240	77.5	360	22.5
1,500	1,150	76.7	350	23.3
1,400	1,060	75.7	340	24.3
1,300	970	74.6	330	25.4
1,200	880	73.3	320	26.7
1,100	790	71.8	310	28.2
1,000	700	70.0	300	30.0
900	610	67.8	290	32.2
800	520	65.0	280	35.0
700	434	62.0	266	38.0
600	348	58.0	252	42.0
500	262	52.4	238	47.6
400	176	44.0	224	56.0
350	133	38.0	217	62.0
300	100	33.3	200	66.7
200	[1] 33	[1] 16.5	[1] 167	[1] 83.5
100	(1)	(1)	(1)	(1)

[1] An incidental coho allowance associated with any commercial all-salmon-except-coho fishery will be deducted from the recreational share of coho during periods of low coho abundance when the commercial allocation of coho under the schedule would be insufficient to allow for incidental hooking mortality of coho in the commercial all-salmon-except-coho fishery.

(ii) *Geographic distribution.* Allowable harvest south of Cape Falcon may be divided and portions assigned to subareas based on considerations including, but not limited to, controlling ocean harvest impacts on depressed, viable natural stocks within acceptable maximum allowable levels; stock abundance; allocation considerations; stock specific impacts; relative abundance of the salmon species in the fishery; escapement goals; and maximizing harvest potential.

(iii) *Recreational allocation at 167,000 fish or less.* When the recreational allocation is at 167,000 fish or less, the total recreational allowable ocean harvest of coho will be divided between two major subareas with independent impact quotas. The initial allocation will be 70 percent from Cape Falcon to Humbug Mountain and 30 percent south of Humbug Mountain. Coho transfers between the two impact quotas may be permitted on a one-for-one basis, if chinook constraints preclude access to coho. Horse Mountain to Point Arena will be managed for an impact guideline of 3 percent of the south of Cape Falcon recreational allocation. The recreational coho fishery between Humbug Mountain and Point Arena may be closed when it is projected that the harvest impact between Humbug Mountain and Point Arena, combined with the projected harvest impact that will be taken south of Point Arena to the end of the season, equals the impact quota for south of Humbug Mountain. The recreational fishery for coho salmon south of Point Arena will not close upon attainment of the south of Humbug Mountain impact quota.

(iv) *Oregon coastal natural coho.* At Oregon coastal natural coho spawning escapements of 28 or fewer adults per mile, the allocation provisions of paragraph (c)(2)(i) of this section do not apply. Fisheries will be established that will provide only the minimum incidental harvest of Oregon coastal natural coho necessary to prosecute other fisheries, and that under no circumstances will cause irreparable harm to the Oregon coastal natural coho stock.

(v) *Inseason reallocation.* No later than August 15 each year, the Salmon Technical Team will estimate the number of coho salmon needed to complete the recreational seasons. Any coho salmon allocated to the recreational fishery that are not needed to complete the recreational seasons will be reallocated to the commercial fishery. Once reallocation has taken place, the remaining recreational quota will change to a harvest guideline. If the harvest guideline for the recreational fishery is projected to be reached on or before Labor Day, the Regional Director may allow the recreational fishery to continue through the Labor Day weekend only if there is no significant danger of impacting the allocation of another fishery or of failing to meet an escapement goal.

(d) *Management boundaries and zones.* Management boundaries and zones will be established or adjusted to achieve a conservation purpose. A conservation purpose protects a fish stock, simplifies management of a fishery, or promotes wise use of fishery resources by, for example, separating fish stocks, facilitating enforcement, separating conflicting fishing activities, or facilitating harvest opportunities. Management boundaries and zones will be described by geographical references, coordinates (latitude and longitude), LORAN readings, depth contours, distance from shore, or similar criteria.

(e) *Minimum harvest lengths.* The minimum harvest lengths for commercial, recreational, and treaty Indian fishing may be changed upon demonstration that a useful purpose will be served. For example, an increase in minimum size for commercially caught salmon may be necessary for

conservation or may provide a greater poundage and monetary yield from the fishery while not substantially increasing hooking mortality. The removal of a minimum size for the recreational fishery may prevent wastage of fish and outweigh the detrimental impacts of harvesting immature fish.

(f) *Recreational daily bag limits.* Recreational daily bag limits for each fishing area will be set equal to one, two, or three salmon of some combination of species. The recreational daily bag limits for each fishing area will be set to maximize the length of the fishing season consistent with the allowable level of harvest in the area.

(g) *Fishing gear restrictions.* Gear restrictions for commercial, recreational, and treaty Indian fishing may be established or modified upon demonstration that a useful purpose will be served. For example, gear restrictions may be imposed or modified to facilitate enforcement, reduce hooking mortality, or reduce gear expenses for fishermen.

(h) *Seasons*—(1) *In general.* Seasons for commercial and recreational fishing will be established or modified taking into account allowable ocean harvest levels and quotas, allocations between the commercial and recreational fisheries, and the estimated amount of effort required to catch the available fish based on past seasons.

(2) *Commercial seasons.* Commercial seasons will be established or modified taking into account wastage of fish that cannot legally be retained, size and poundage of fish caught, effort shifts between fishing areas, and protection of depressed stocks present in the fishing areas. All-species seasons will be established to allow the maximum allowable harvest of pink and sockeye salmon without exceeding allowable chinook or coho harvest levels and within conservation and allocation constraints of the pink and sockeye stocks.

(3) *Recreational seasons.* If feasible, recreational seasons will be established or modified to encompass Memorial Day and Labor Day weekends, and to avoid the need for inseason closures.

(i) *Quotas* (by species, including fish caught 0–3 nm seaward of Washington, Oregon, and California). Quotas for commercial, recreational, and treaty Indian fishing may be established or modified to ensure that allowable ocean harvests are not exceeded. Quotas may be fixed or adjustable and used in conjunction with seasons. Any quota established does not represent a guaranteed ocean harvest, but a maximum ceiling on catch.

(j) *Selective fisheries.* In addition to the all-species seasons and the all-species-except-coho seasons established for the commercial and recreational fisheries, selective coho-only, chinook-only, or pink-only fisheries may be established if harvestable fish of the target species are available; harvest of incidental species will not exceed allowable levels; proven, documented selective gear exists; significant wastage of incidental species will not occur; and the selective fishery will occur in an acceptable time and area where wastage can be minimized and target stocks are primarily available.

(k) *Treaty Indian fishing.* (1) NMFS will establish or modify treaty Indian fishing seasons and/or fixed or adjustable quotas, size limits, gear restrictions, and/or area restrictions taking into account recommendations of the Council, proposals from affected tribes, and relevant Federal court proceedings.

(2) The combined treaty Indian fishing seasons will not be longer than necessary to harvest the allowable treaty Indian catch, which is the total treaty harvest that would occur if the tribes chose to take their total entitlement of the weakest stock in the fishery management area, assuming this level of harvest did not create conservation or allocation problems on other stocks.

(3) Any fixed or adjustable quotas established will be consistent with established treaty rights and will not exceed the harvest that would occur if the entire treaty entitlement to the weakest run were taken by treaty Indian fisheries in the fishery management area.

(4) If adjustable quotas are established for treaty Indian fishing, they may be subject to inseason adjustment because of unanticipated coho hooking mortality occurring during the season, catches in treaty Indian fisheries inconsistent with those unanticipated under Federal regulations, or a need to redistribute quotas to ensure attainment of an overall quota.

(l) *Yurok and Hoopa Valley tribal fishing rights.* For purposes of section 303 of the Magnuson Act, the federally reserved fishing rights of the Yurok and Hoopa Valley Indian Tribes as set out in a legal opinion [2] dated October 4, 1993, by the Office of the Solicitor, Department of the Interior, are applicable law. Under section 303 of the Magnuson Act, allowable ocean harvest must be consistent with all applicable laws.

[2] Copies of the Solicitor's Opinion are available from the Director, Southwest Region, NMFS.

(m) *Inseason notice procedures.* Telephone hotlines and USCG broadcasts will provide actual notice of inseason actions for commercial, recreational, and treaty Indian fishing.

(n) *Reporting requirements.* Reporting requirements for commercial fishing may be imposed to ensure timely and accurate assessment of catches in regulatory areas subject to quota management. Such reports are subject to the limitations described herein. Persons engaged in commercial fishing in a regulatory area subject to quota management and landing their catch in another regulatory area open to fishing may be required to transmit a brief radio report prior to leaving the first regulatory area. The regulatory areas subject to these reporting requirements, the contents of the radio reports, and the entities receiving the reports will be specified annually.

§ 660.409 Inseason actions.

(a) *Fixed inseason management provisions.* NMFS is authorized to take the following inseason management actions annually, as appropriate.

(1) *Automatic season closures based on quotas.* When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, NMFS will, by an inseason action issued under § 660.411, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

(2) *Rescission of automatic closure.* If a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, NMFS will reopen that fishery in as timely a manner as possible for all or part of the remaining original season provided NMFS finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours. The season will be reopened by an inseason action issued under § 660.411.

(3) *Adjustment for error in preseason estimates.* NMFS may, by an inseason action issued under § 660.411, make appropriate changes in relevant seasons or quotas if a significant computational error or errors made in calculating preseason estimates of salmon abundance are identified, provided that such correction can be made in a timely manner to affect the involved fishery without disrupting the capacity to meet the objectives of the fishery management plan.

(b) *Flexible inseason management provisions.* (1) The Regional Director will consult with the Chairman of the Council and the appropriate State Directors prior to taking any of the following flexible inseason management provisions, which include, but are not limited to, the following:

(i) Modification of quotas and/or fishing seasons.

(ii) Modification of the species that may be caught and landed during specific seasons and the establishment or modification of limited retention regulations.

(iii) Modification of recreational bag limits and recreational fishing days per calendar week.

(iv) Establishment or modification of gear restrictions.

(v) Modification of boundaries, including landing boundaries, and establishment of closed areas.

(2) Fishery managers must determine that any inseason adjustment in management measures is consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the fishery management plan. All inseason adjustments will be based on consideration of the following factors:

(i) Predicted sizes of salmon runs.

(ii) Harvest quotas and hooking mortality limits for the area and total allowable impact limitations, if applicable.

(iii) Amount of commercial, recreational, and treaty Indian catch for each species in the area to date.

(iv) Amount of commercial, recreational, and treaty Indian fishing effort in the area to date.

(v) Estimated average daily catch per fisherman.

(vi) Predicted fishing effort for the area to the end of the scheduled season.

(vii) Other factors, as appropriate.

§ 660.410 Escapement goals.

(a) *Current escapement goals.* The following specific escapement goals are in effect. Annual management objectives for Washington coastal fall, spring, and summer chinook; Puget Sound chinook; Washington coastal coho; and Puget Sound coho are developed through fixed procedures established in the U.S. District Court.

SUMMARY OF SPECIFIC MANAGEMENT GOALS FOR STOCKS IN THE SALMON MANAGEMENT UNIT

System	Spawning [1] escapement goal
Sacramento River Fall Chinook [2]	122,000 to 180,000 for natural and hatchery
Klamath River Fall Chinook	Between 33 and 34 percent of the potential adult natural spawners, but no fewer than 35,000 naturally spawning adults in any one year.[3] The brood escapement rate will average 33 to 34 percent over the long term. The escapement rate for each brood may vary from the 33 to 34 percent in order to achieve the required tribal/non-tribal annual allocation.
Oregon Coastal Chinook	150,000 to 200,000 natural
Columbia River Chinook:	
Upper River Fall	40,000 bright adults above McNary Dam.
Upper River Summer	80,000 to 90,000 adults above Bonneville Dam.
Upper River Spring	100,000 to 200,000 adults above Bonneville Dam.
Lower River Spring (Willamette River)	30,000 to 45,000 based on run size
Oregon Coastal Coho	Oregon coastal natural (OCN) coho spawning escapement is based on an aggregate density of 42 naturally spawning adults per mile in standard index survey areas [4]
Puget Sound Pink	900,000 natural.
Lake Washington Sockeye [5]	300,000 to Lake Washington.
Columbia River Sockeye [5]	65,000 over Priest Rapids.

[1] Represents adult natural spawning escapement goal for viable natural stocks or adult hatchery return goal for stocks managed for artificial production.
[2] Includes upper and lower river components.
[3] The minimum escapement floor of 35,000 naturally spawning adults may be modified only by amendment to the FMP.
[4] At OCN stock sizes below 125 percent of the annual numerical escapement goal, an exploitation rate of up to 20 percent will be allowed for incidental impacts of the combined ocean troll, sport, and freshwater fisheries. At OCN spawning escapements of 28 or fewer adults per mile, an exploitation rate of up to 20 percent may be allowed to provide only minimum incidental harvest to prosecute other fisheries, provided the rate chosen will cause no irreparable harm to the OCN stock.
[5] These stocks represent a negligible component of the Washington ocean harvest.

(b) *Modification of escapement goals.* NMFS is authorized, through an action issued under § 660.411, to modify an escapement goal if—

(1) A comprehensive technical review of the best scientific information available provides conclusive evidence that, in the view of the Council and the Salmon Technical Team, justifies modification of an escapement goal;

(2) For Oregon coastal chinook, specific goals are developed within the overall goal for north coast and south coast stocks; or

(3) Action by a Federal court indicates that modification of an escapement goal is appropriate.

§ 660.411 Notification and publication procedures.

(a) *Notification and effective dates.* (1) Annual and certain other actions taken under §§ 660.408 and 660.410 will be implemented by an action published in the **Federal Register**, and will be effective upon filing, unless a later time is specified in the action.

(2) Inseason actions taken under § 660.409 will be by actual notice available from telephone hotlines and USCG broadcasts, as specified annually. Inseason actions will also be published in the **Federal Register** as soon as practicable. Inseason actions will be effective from the time specified in the actual notice of the action (telephone hotlines and USCG broadcasts), or at the time the inseason action published in the **Federal Register** is effective, whichever comes first.

(3) Any action issued under this section will remain in effect until the expiration date stated in the action or until rescinded, modified, or

superseded. However, no inseason

comment, public comments on the

normal office hours at the Northwest

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TABLE 2 TO PART 600 - VESSEL CA

superseded. However, no inseason action has any effect beyond the end of the calendar year in which it is issued.

(b) *Public comment.* If time allows, NMFS will invite public comment prior to the effective date of any action published in the **Federal Register**. If NMFS determines, for good cause, that an action must be filed without affording a prior opportunity for public comment, public comments on the action will be received by NMFS for a period of 15 days after filing of the action with the Office of the Federal Register.

(c) *Availability of data.* The Regional Director will compile in aggregate form all data and other information relevant to the action being taken and will make them available for public review during normal office hours at the Northwest Region, NMFS. For actions affecting fisheries occurring primarily or exclusively in the fishery management area seaward of California, information relevant to the action also will be made available for public review during normal office hours at the Southwest Region, NMFS.

TABLE 1 TO PART 660.—QUOTAS FOR PRECIOUS CORALS PERMIT AREAS

Name of coral bed	Type of bed	Harvest quota	Number of years	Gear restriction
Makapuu	E	P—2,000 kg	2	S
		G—600 kg	2	S
		B—600 kg	2	S
Ke-ahole Point	C	P—67 kg	1	
		G—20 kg	1	S
		B—17 kg	1	S
Kaena Point	C	P—67 kg	1	S
		G—20 kg	1	S
		B—17 kg	1	S
Brooks Bank	C	P—17 kg	1	N
		G—133 kg	1	N
		B—111 kg	1	N
180 Fathom Bank	C	P—222 kg	1	N
		G—67 kg	1	N
		B—56 kg	1	N
Westpac Bed	R	Zero (0 kg)		
Hawaii, American Samoa, Guam, U.S. Pacific Island possessions.		X—1,000 kg (all species combined except black corals) per area.	1	N

Notes:
1. Types of corals: P=Pink G=Gold B=Bamboo.
2. There are no restrictions under this part on the harvest of black corals, except the data submission requirements (§660.3). State regulations on black coral harvesting are not superseded by this part.
3. Only 1/5 of the indicated amount is allowed if nonselective gear is used; that is, the nonselective harvest will be multiplied by 5 and counted against the quota. If both selective and nonselective methods are used, the bed will be closed when S+5N=Q, where S=selective harvest amount, N=nonselective harvest amount and Q=total harvest quota, for any single species on that bed.
4. Only selective gear may be used in the EEZ seaward of the main Hawaiian Islands; i.e., south and east of a line midway between Nihoa and Niihau Islands. Nonselective gear or selective gear may be used in all other portions of exploratory areas.
5. S=Selective gear only; N=Nonselective or selective gear.
6. No authorized fishing for coral in refugia.

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS

Vessel length	Capacity rating
<20	1.00
21	1.13
22	1.27
23	1.42
24	1.58
25	1.75
26	1.93
27	2.12
28	2.32
29	2.53
30	2.76
31	2.99
32	3.24
33	3.50
34	3.77
35	4.05
36	4.35
37	4.66
38	4.98
39	5.31
40	5.66

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
41	6.02
42	6.39
43	6.78
44	7.18
45	7.59
46	8.02
47	8.47
48	8.92
49	9.40
50	9.88
51	10.38
52	10.90
53	11.43
54	11.98
55	12.54
56	13.12
57	13.71
58	14.32
59	14.95
60	15.59
61	16.25

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
62	16.92
63	17.61
64	18.32
65	19.04
66	19.78
67	20.54
68	21.32
69	22.11
70	22.92
71	23.74
72	24.59
73	25.45
74	26.33
75	27.23
76	28.15
77	29.08
78	30.04
79	31.01
80	32.00
81	33.01
82	34.04

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
83	35.08
84	36.15
85	37.24
86	38.34
87	39.47
88	40.61
89	41.77
90	42.96
91	44.16
92	45.38
93	46.63
94	47.89
95	49.17
96	50.48
97	51.80
98	53.15
99	54.51
100	55.90
101	57.31
102	58.74
103	60.19
104	61.66
105	63.15
106	64.67
107	66.20
108	67.76
109	69.34
110	70.94
111	72.57
112	74.21
113	75.88
114	77.57
115	79.28
116	81.02
117	82.77
118	84.55
119	86.36
120	88.18
121	90.03
122	91.90
123	93.80
124	95.72
125	97.66
126	99.62
127	101.61
128	103.62
129	105.66
130	107.72
131	109.80
132	111.91
133	114.04
134	116.20
135	118.38
136	120.58
137	122.81
138	125.06
139	127.34
140	129.64
141	131.97
142	134.32
143	136.70
144	139.10
145	141.53
146	143.98
147	146.46
148	148.96
149	151.49

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
150	154.05
151	154.68
152	155.31
153	155.94
154	156.57
155	157.20
156	157.83
157	158.46
158	159.10
159	159.73
160	160.36
161	160.99
162	161.62
163	162.25
164	162.88
165	163.51
166	164.14
167	164.77
168	165.41
169	166.04
170	166.67
171	167.30
172	167.93
173	168.56
174	169.19
175	169.82
176	170.45
177	171.08
178	171.72
179	172.35
180	172.98
181	173.61
182	174.24
183	174.87
184	175.50
185	176.13
186	176.76
187	177.40
188	178.03
189	178.66
190	179.29
191	179.92
192	180.55
193	181.18
194	181.81
195	182.44
196	183.07
197	183.71
198	184.34
199	184.97
200	185.60
201	186.23
202	186.86
203	187.49
204	188.12
205	188.75
206	189.38
207	190.02
208	190.65
209	191.28
210	191.91
211	192.54
212	193.17
213	193.80
214	194.43
215	195.06
216	195.69

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
217	196.33
218	196.96
219	197.59
220	198.22
221	198.85
222	199.48
223	200.11
224	200.74
225	201.37
226	202.01
227	202.64
228	203.27
229	203.90
230	204.53
231	205.16
232	205.79
233	206.42
234	207.05
235	207.68
236	208.32
237	208.95
238	209.58
239	210.21
240	210.84
241	211.47
242	212.10
243	212.73
244	213.36
245	213.99
246	214.63
247	215.26
248	215.89
249	216.52
250	217.15
251	217.78
252	218.41
253	219.04
254	219.67
255	220.30
256	220.94
257	221.57
258	222.20
259	222.83
260	223.46
261	224.09
262	224.72
263	225.35
264	225.98
265	226.61
266	227.25
267	227.88
268	228.51
269	229.14
270	229.77
271	230.40
272	231.03
273	231.66
274	232.29
275	232.93
276	233.56
277	234.19
278	234.82
279	235.45
280	236.08
281	236.71
282	237.34
283	237.97

TABLE 2 TO PART 600.—VESSEL CA- TABLE 2 TO PART 600.—VESSEL CA- TABLE 2 TO PART 600.—VESSEL CA-

Figure 1 to Part 660—Carapace Length of Lobsters

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
284	238.60
285	239.24
286	239.87
287	240.50
288	241.13
289	241.76
290	242.39
291	243.02
292	243.65
293	244.28
294	244.91
295	245.55
296	246.18
297	246.81
298	247.44
299	248.07
300	248.70
301	249.33
302	249.96
303	250.59
304	251.22
305	251.86
306	252.49
307	253.12
308	253.75
309	254.38
310	255.01
311	255.64
312	256.27
313	256.90
314	257.54
315	258.17
316	258.80
317	259.43
318	260.06
319	260.69
320	261.32
321	261.95
322	262.58
323	263.21

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
324	263.85
325	264.48
326	265.11
327	265.74
328	266.37
329	267.00
330	267.63
331	268.26
332	268.89
333	269.52
334	270.16
335	270.79
336	271.42
337	272.05
338	272.68
339	273.31
340	273.94
341	274.57
342	275.20
343	275.83
344	276.47
345	277.10
346	277.73
347	278.36
348	278.99
349	279.62
350	280.25
351	280.88
352	281.51
353	282.14
354	282.78
355	283.41
356	284.04
357	284.67
358	285.30
359	285.93
360	286.56
361	287.19
362	287.82
363	288.46

TABLE 2 TO PART 600.—VESSEL CAPACITY RATINGS FOR WEST COAST GROUNDFISH LIMITED ENTRY PERMITS—Continued

Vessel length	Capacity rating
364	289.09
365	289.72
366	290.35
367	290.98
368	291.61
369	292.24
370	292.87
371	293.50
372	294.13
373	294.77
374	295.40
375	296.03
376	296.66
377	297.29
378	297.92
379	298.55
380	299.18
381	299.81
382	300.44
383	301.08
384	301.71
385	302.34
386	302.97
387	303.60
388	304.23
389	304.86
390	305.49
391	306.12
392	306.75
393	307.39
394	308.02
395	308.65
396	309.28
397	309.91
398	310.54
399	311.17
>400	311.80

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Figure 1 to Part 660—Carapace Length of Lobsters

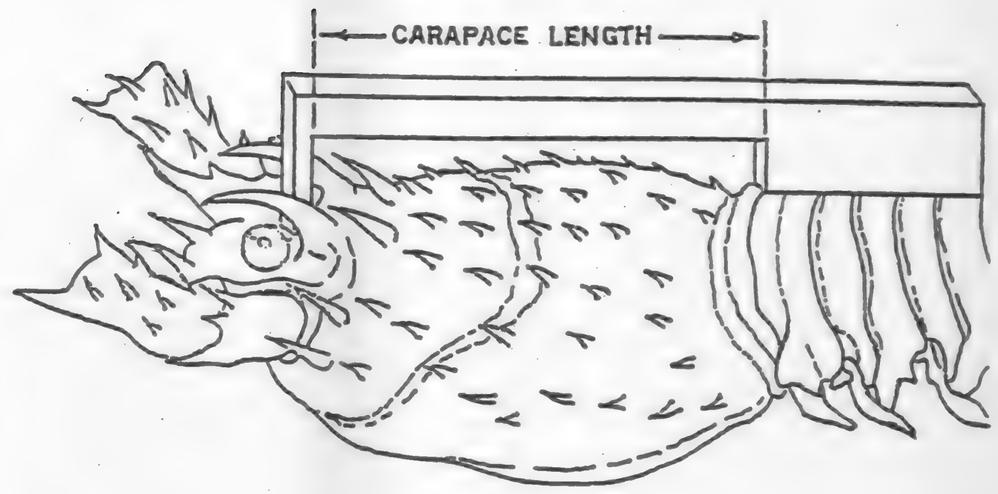

Carapace Length of Lobsters

Figure 2 to Part 660—Length of Longline Vessel

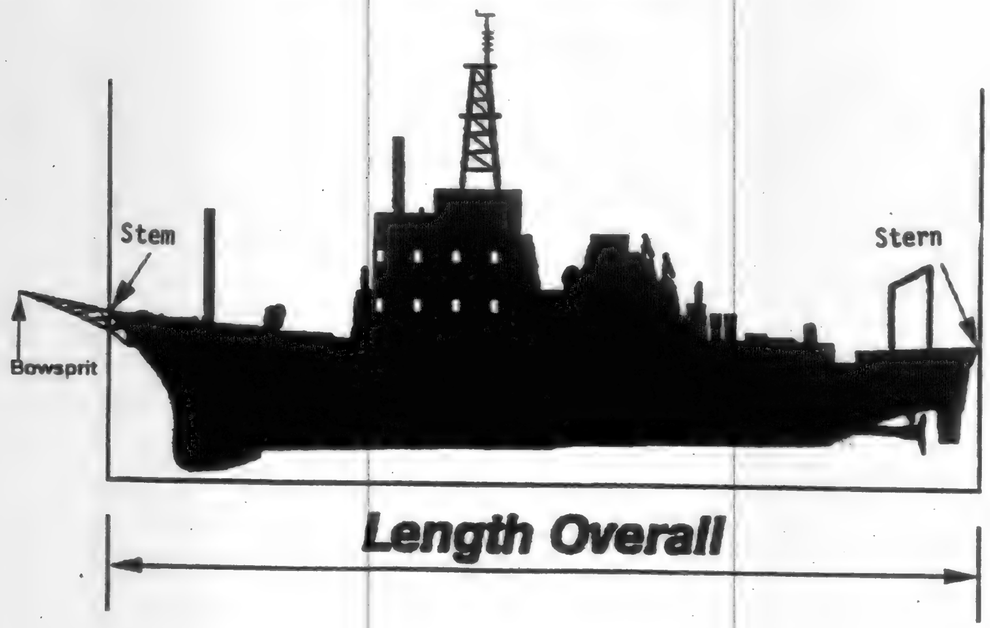

Length of Longline Vessel

Figure 3 to Part 660—Dressed, Head-off Length of Salmon

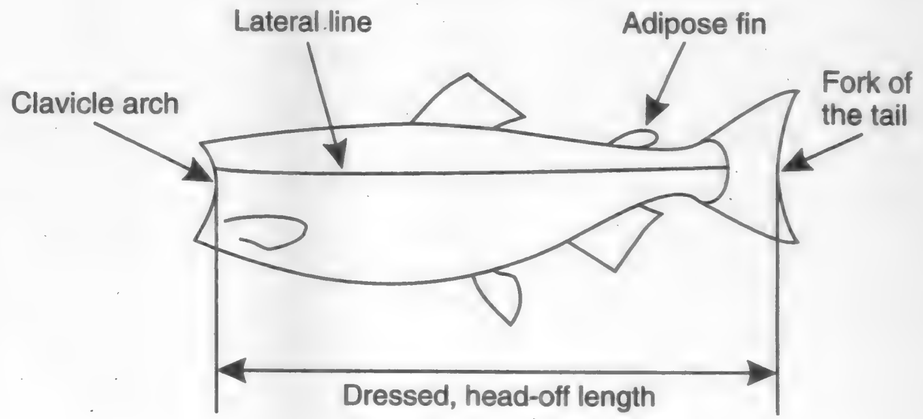

Dressed, Head-off Length of Salmon

PARTS 661, 663, 680, 681, 683, and 685—[REMOVED]

4. Under the authority of 16 U.S.C. 1801 *et seq.*, parts 661, 663, 680, 681, 683, and 685 are removed.

[FR Doc. 96–16234 Filed 7–1–96; 8:45 am]
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Dressed, Head-off Length of Salmon

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federal register

Tuesday
July 2, 1996

Part IV

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 410 and 415

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 1997; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 410, and 415

[BPD–852–P]

RIN 0938–AH40

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 1997

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule discusses several policy changes affecting Medicare payment for physician services including payment for diagnostic services and transportation in connection with furnishing diagnostic tests. The proposed rule also discusses comprehensive locality changes and changes in the procedure status codes for a variety of services.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 3, 1996.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–852–P, P.O. Box 26688, Baltimore, MD 21207–0488.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–852–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of the comments to: Allison Herron Eydt, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 10235, New Executive Office Building, Washington, DC 20530.

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FOR FURTHER INFORMATION CONTACT: Shana Olshan, (410) 786–5714.

SUPPLEMENTARY INFORMATION: To assist readers in referencing sections contained in this preamble, we are providing the following table of contents. Some of the issues discussed in this preamble affect the payment policies but do not require changes to the regulations in the Code of Federal Regulations.

Table of Contents

I. Background
A. Legislative History
B. Published Changes to the Fee Schedule
II. Specific Proposals for Calendar Year 1997
A. Payment Area (Locality) and Corresponding Geographic Practice Cost Index Changes
1. Background
2. Locality Study
3. Nonselected Options
4. Proposal
a. Proposed Variant of Option 1 (Option 1i, 5–Percent Threshold)
b. Proposed Option 1i, 5-Percent Threshold, with Subcounty Payment Area Restructuring
c. Effects of Proposed Option 1i, 5–Percent Threshold, with Subcounty FSA Restructuring
B. Special Rules for the Payment of Diagnostic Tests, Including Diagnostic Radiologic Procedures
1. Background
2. Proposal
3. Chiropractor Exception
4. Non-Physician Practitioners
C. Transportation in Connection with Furnishing Diagnostic Tests
D. Bundled Services
1. Hot or Cold Packs
2. Dermatology Procedures
a. Bundling of Repair Codes into Excision Codes
b. Skin Lesion Destruction Codes
E. Change in Coverage Status for Screening and Obsolete Procedures
1. Vital Capacity Testing
2. Certain Cardiovascular Procedures
F. Payments for Supervising Physicians in Teaching Settings
1. Definition of Approved Graduate Medical Education Programs
2. Evaluation and Management Services Furnished in Certain Settings
G. Change in Global Periods for Four Percutaneous Biliary Procedures
III. Collection of Information Requirements
IV. Response to Comments
V. Regulatory Impact Analysis
A. Regulatory Flexibility Act
B. Payment Area (Locality) and Corresponding Geographic Practice Cost Index Changes
C. Special Rules for the Payment of Diagnostic Tests, Including Diagnostic Radiologic Procedures
D. Transportation in Connection with Furnishing Diagnostic Tests
E. Bundled Services
1. Hot or Cold Packs
2. Dermatology Procedures
a. Bundling of Repair Codes into Excision Codes
b. Skin Lesion Destruction Codes
F. Change in Coverage Status for Screening and Obsolete Procedures
1. Vital Capacity Testing
2. Certain Cardiovascular Procedures
G. Payments for Supervising Physicians in Teaching Settings
H. Change in Global Periods for Four Percutaneous Biliary Procedures
I. Rural Hospital Impact Statement
Addendum A—1996 Geographic Adjustment Factors (GAFs) by Medicare Payment Locality/Locality Part for January 1, 1996 Localities and Proposed Option, Fee Schedule Areas (FSAs), in Descending Order of Difference
Addendum B—Medicare Fee Schedule Areas (Localities) and 1996 Geographic Adjustment Factors (GAFs), Current and Proposed Option by State and County/County Part

In addition, because of the many organizations and terms to which we refer by acronym in this final rule, we are listing these acronyms and their corresponding terms in alphabetical order below:

AMA	American Medical Association
CFR	Code of Federal Regulations
CPT	[Physicians'] Current Procedural Terminology [4th Edition, 1996, copyrighted by the American Medical Association]
CY	Calendar year
EKG	Electrocardiogram
FSA	Fee Schedule Area
FY	Fiscal year
GAF	Geographic adjustment factor
GPCI	Geographic practice cost index
HCFA	Health Care Financing Administration
HCPAC	Health Care Professional Advisory Council
HCPCS	HCFA Common Procedure Coding System
HHS	[Department of] Health and Human Services
MEI	Medicare Economic Index
MSA	Metropolitan Statistical Area
OBRA	Omnibus Budget Reconciliation Act
OMB	Office of Management and Budget
PMSA	Primary Metropolitan Statistical Area
RVU	Relative Value Unit
TC	Technical Component

I. Background

A. Legislative History

The Medicare program was established in 1965 by the addition of title XVIII to the Social Security Act (the Act). Since January 1, 1992, Medicare pays for physician services under section 1848 of the Act, "Payment for Physicians' Services." This section contains three major elements: (1) A fee schedule for the payment of physician services; (2) a Medicare volume performance standard for the rates of increase in Medicare expenditures for physician services; and (3) limits on the amounts that nonparticipating physicians can charge beneficiaries. The Act requires that payments under the fee schedule be based on national uniform relative value units (RVUs) based on the resources used in furnishing a service. Section 1848(c) of the Act requires that national RVUs be established for physician work, practice expense, and malpractice expense.

Section 1848(c)(2)(B)(ii)(II) of the Act provides that adjustments in RVUs because of changes resulting from a review of those RVUs may not cause total physician fee schedule payments to differ by more than $20 million from what they would have been had the adjustments not been made. If this tolerance is exceeded, we must make adjustments to the conversion factors to preserve budget neutrality.

B. Published Changes to the Fee Schedule

We published a final rule on November 25, 1991 (56 FR 59502) to implement section 1848 of the Act by establishing a fee schedule for physician services furnished on or after January 1, 1992. In the November 1991 final rule (56 FR 59511), we stated our intention to update RVUs for new and revised codes in the American Medical Association's (AMA's) Physicians' Current Procedural Terminology (CPT) through an "interim RVU" process every year. The updates to the RVUs and fee schedule policies follow:

- November 25, 1992, as a final notice with comment period on new and revised RVUs only (57 FR 55914).
- December 2, 1993, as a final rule with comment period (58 FR 63626) to revise the refinement process used to establish physician work RVUs and to revise payment policies for specific physician services and supplies. (We solicited comments on new and revised RVUs only.)
- December 8, 1994, as a final rule with comment period (59 FR 63410) to revise the geographic adjustment factor (GAF) values, fee schedule payment areas, and payment policies for specific physician services. The final rule also discussed the process for periodic review and adjustment of RVUs not less frequently than every 5 years as required by section 1848(c)(2)(B)(i) of the Act.
- December 8, 1995, as a final rule with comment period (60 FR 63124) to revise various policies affecting payment for physician services including Medicare payment for physician services in teaching settings, the RVUs for certain existing procedure codes, and to establish interim RVUs for new and revised procedure codes. The rule also included the final revised 1996 geographic practice cost indices.

This proposed rule would affect the regulations set forth at 42 CFR part 405, which encompasses regulations on Federal health insurance for the aged and disabled; part 410, which consists of regulations on supplementary medical insurance benefits and part 415, which contains regulations on services of physicians in provider settings, supervising physicians in teaching settings, and residents in certain settings.

II. Specific Proposals for Calendar Year 1997

A. Payment Area (Locality) and Corresponding Geographic Practice Cost Index Changes

1. Background

From the inception of Medicare in 1966 until 1992, Medicare payments for physicians' services were made under the reasonable charge system. Under the reasonable charge system, Medicare payment localities for physicians' services were set by local Medicare carriers based on their knowledge of local physician charging patterns. As such, payment areas have had no consistent geographic basis. In general, localities tended to be geographic or political subdivisions such as States, counties, or cities, or designations such as urban and rural. Most of the localities changed little between 1966 and 1992. There were about 240 localities, including 16 States with statewide localities, under the reasonable charge system.

Section 1848 of the Act replaced the reasonable charge system of paying for physician services under section 1842(b) of the Act, with the physician fee schedule effective January 1, 1992. Section 1848(j)(2) of the Act defines a physician fee schedule payment area as the locality existing under section 1842(b) of the Act for purposes of computing payment amounts for physician services. Section 1848 did not, however, delete section 1842 of the Act, which gives the Secretary the authority to set localities. We believe the Congress enacted section 1848(j)(2) to allow us to retain existing localities to facilitate the statutory transition to the physician fee schedule, but not to preclude us from making locality changes if warranted. All locality changes are now made by HCFA through the rulemaking process. Medicare carriers are not allowed to set or revise physician fee schedule payment localities.

In the June 5, 1991 proposed rule for the physician fee schedule (56 FR 25832), we acknowledged the lack of consistency among localities and the significant demographic and economic changes that had occurred since localities were originally established. We also stated that we planned no large-scale locality changes until we evaluated the various studies on localities being done within HCFA and by outside groups such as the Physician Payment Review Commission and until after the statutory transition from the reasonable charge system to the fee schedule was completed in 1996. We

stated that until we decide on ultimate large-scale changes, the only locality changes we would consider would be requests for converting individual States with multiple localities to a single statewide locality if "* * * overwhelming support from the physician community for the changes can be demonstrated." This position was repeated in the November 1991 final rule on the physician fee schedule (56 FR 59514). This willingness to consider applications from physicians in a State for conversion to a statewide locality, if overwhelming support on the part of winning and losing physicians has been demonstrated, reflects our belief that statewide localities generally are preferable to the present Medicare localities because they simplify program administration and encourage physicians to practice in rural areas by reducing urban/rural payment differentials.

We received inquiries from a number of State medical societies concerning conversions to a statewide payment area. Under the law, payments vary among physician fee schedule areas only to the extent that resource costs vary as measured by the Geographic Practice Cost Index (GPCI). The GPCI is an index developed to measure resource cost differences among areas in the three components of the physician fee schedule—physician work, practice expenses, and malpractice expenses. Area geographic adjustment factors (GAFs) are weighted composites of the area GPCIs and are useful in comparing overall resource cost and payment level differences among areas. (A comprehensive explanation of the GPCIs and GAFs can be found in the June 24, 1994 proposed rule (59 FR 32756)).

We explained to the States inquiring about conversions to a statewide payment area that these conversions involve taking a weighted average of the existing locality GPCIs to form a new statewide GPCI. This means that there may be "losing" (usually urban) areas, as well as "winning" (usually rural) areas within a State if a conversion is made. We further informed the States that a simple resolution passed by the State medical society is not sufficient proof of overwhelming support among both rural and urban physicians for the change. To assist States in deciding whether to convert to a statewide payment area, we published an informational list of projected statewide GPCIs in the June 1991 proposed rule (56 FR 25972). A slightly revised list of projected statewide GPCIs was published in the December 1993 final rule (58 FR 63638). The revisions were made to ensure that any change to a statewide payment area would be done on a budget-neutral basis. That is, that the same amount of payments would be made within a State after the conversion to a statewide payment area as would have been made had the conversion not been made. A comprehensive revision of all GPCIs was made in 1995. A list of revised projected statewide GPCIs was published at Addendum E of the June 1994 proposed rule (59 FR 32789).

In most cases, States have been unable to generate the support of the losing physicians for the change. However, three States—Minnesota, Nebraska, and Oklahoma—were converted to statewide payment areas in 1992. (These conversions were announced in the November 1991 final rule (56 FR 59514).) Two additional States—North Carolina and Ohio—were converted to statewide payment areas in 1994. (These conversions were announced in the December 1993 final rule (58 FR 63638).) Iowa was converted to a statewide payment area in 1995. (This conversion was announced in the December 1994 final rule (59 FR 63416).) There are currently 210 payment areas under the physician fee schedule: 22 States with single payment areas; the District of Columbia (with surrounding Maryland and Virginia suburbs), Puerto Rico, and the Virgin Islands are 3 more single payment areas; and 28 multiple-locality States containing 185 payment areas. Table 1 summarizes existing physician fee schedule payment areas.

TABLE 1.—1996 MEDICARE PHYSICIAN FEE SCHEDULE PAYMENT LOCALITIES BY STATE AND OTHER

State	Localities
Single locality States:	
Alaska	1
Arkansas	1
Colorado	1
Delaware	1
Hawaii/Guam	1
Iowa	1
Minnesota	1
Montana	1
Nebraska	1
New Hampshire	1
New Mexico	1
North Carolina	1
North Dakota	1
Ohio	1
Oklahoma	1
Rhode Island	1
South Carolina	1
South Dakota	1
Tennessee	1
Utah	1
Vermont	1
Wyoming	1
22 States	22
Other:	
Wash. D.C	1
Puerto Rico	1
Virgin Islands	1
3 Other	3
Multiple locality States:	
Alabama	5
Arizona	6
California	28
Connecticut	4
Florida	4
Georgia	4
Idaho	2
Illinois	16
Indiana	3
Kansas	3
Kentucky	3
Louisiana	6
Maine	3
*Maryland	3
Massachusetts	2
Michigan	2
Mississippi	2
Missouri	7
Nevada	4
New Jersey	3
New York	8
Oregon	5
Pennsylvania	4
Texas	32
*Virginia	4
Washington	3
West Virginia	5
Wisconsin	11
28 States	185

Total 1996 Physician Fee Schedule Payment Localities=210.

*The Maryland and Virginia localities do not include the parts of Maryland (Prince Georges and Montgomery Counties) and Virginia (Fairfax and Arlington Counties and the city of Alexandria) included in the Washington, D.C. locality.

2. Locality Study

There are numerous possibilities for realigning payment localities. After considerable internal discussion, we narrowed the possibilities to four general options. A major goal in selecting these options is to continue to reduce the number of areas, leading to greater simplicity, understandability, ease of administration, reduction in urban/rural payment differences, reduction in payment differences among adjacent areas, and stability of payment updates resulting from the periodic GPCI revisions. Larger payment areas would mean larger data samples thereby leading to less volatile changes in the statutory periodic GPCI revisions. We contracted with Health Economics Research, Inc. to conduct an analysis of these options. The four general fee schedule area (FSA) options are briefly summarized as follows:

- Option 1: Use current localities as building blocks. The 22 States currently with single localities would remain statewide FSAs. Statewide FSAs would be created in the 28 remaining States, except for current localities whose GAF exceeds the State GAF by a specified percentage threshold (for example, 5 percent).
- Option 2: Use metropolitan areas (Metropolitan Statistical Areas (MSAs), Primary Metropolitan Statistical Areas (PMSAs), and New England County Metropolitan Areas) as building blocks. The 22 States currently with single localities would remain statewide FSAs. Statewide FSAs would be created in the 28 remaining States, except for metropolitan areas whose GAF exceeds the State GAF by a specified percentage threshold.
- Option 3: Use metropolitan areas as building blocks. The 22 States currently with single localities would remain statewide FSAs. Each of the 28 remaining States would be divided into 2 to 5 FSAs based on metropolitan area population size: greater than 3 million; 1 to 3 million; .25 to 1 million; less than .25 million; nonmetropolitan.
- Option 4: Use metropolitan areas as building blocks. Designate five nationwide FSAs based on metropolitan area population size: greater than 3 million; 1 to 3 million; .25 to 1 million; less than .25 million; nonmetropolitan.

We also asked Health Economics Research, Inc. for any suggestions for variations on these options that might improve them. We specifically requested that it recommend restructuring FSAs in the 11 States that have subcounty localities. These subcounty configurations, usually cities or zip codes, create unnecessary complexity and administrative burden.

Health Economics Research, Inc. issued its final report to us on November 1, 1995. The report consists of three volumes and can be obtained by requesting the following titles from the National Technical Information Service by calling 1–800–553–NTIS, or (703) 487–4650 in Springfield, Virginia:

- "Assessment and Redesign of Medicare Fee Schedule Areas (Localities)," Volume I: Text, NTIS PB96–118815.
- "Assessment and Redesign of Medicare Fee Schedule Areas (Localities)," Volume II: Appendix Tables, NTIS PB96–118823.
- "Assessment and Redesign of Medicare Fee Schedule Areas (Localities)," Volume III: Maps. NTIS PB96–118187.

3. Nonselected Options

While we began with four basic options, numerous variations are possible merely depending on which threshold GAF difference is selected. For example, Option 1 is based on the difference between the existing FSA GAF and the State GAF. Many variants on this option are available merely depending upon what threshold GAF difference between the FSAs and the State is selected, for example, 1 percent, 3 percent, 5 percent, 10 percent. Likewise, Option 2 produces many variations depending on the selected threshold GAF difference between the metropolitan area GAF and the State GAF. The major goal of revising FSAs is to simplify the payment areas and reduce payment differences among geographic areas while maintaining accuracy in tracking input price differences among areas. All options involve a certain trade-off between simplicity and understandability and accuracy of tracking of input prices. Many of the variations will produce a similar number of FSAs, but some do so at the expense of producing undesirable payment differences at boundaries or inaccuracies in tracking input prices.

After careful examination of all options and their variants, we believe that a variant of Option 1 is clearly the best choice. Before discussing, in depth, our reasons for selecting this option, the following is a brief discussion of why we eliminated Options 2, 3, and 4, in order of the least promising option. A more detailed discussion of these options with tables and maps can be found in the Health Economics Research, Inc. report.

Option 4 is the least promising approach to constructing FSAs. While it has the smallest number of FSAs, five nationwide, it is unacceptably inaccurate in tracking input price differences and creates too many large and inappropriate GAF differences across FSA boundaries. Grouping all metropolitan areas of the same size into a single category, regardless of geographic location, would substantially underpay some areas while overpaying others.

For example, the following large metropolitan areas would be substantially underpaid under Option 4 (Option 4 GAF/actual GAF is indicated in parenthesis): San Francisco (1.024/1.141); New York City (1.102/1.176); Nassau-Suffolk, New York (1.024/1.199); and Miami (1.024/1.116). Conversely, the following large cites would be overpaid under Option 4: Houston (1.102/1.030); Chicago (1.102/1.061); and Philadelphia (1.102/1.066). In addition to these inaccuracies, Option 4 creates some severe boundary problems. For example, the Houston-Galveston, Texas difference under Option 4 is 1.102 versus 0.937, a nearly 20 percentage point difference, versus an actual area GAF cost difference of 1.030 versus 1.001. Other examples may be found in the tables and maps in the Health Economics Research, Inc. report. In short, State-specific and metropolitan-area-specific factors, which Option 4 ignores, appear to be important influences on input prices. These factors are not captured by nationwide average inputs based on population size. While New York and Houston are in the same metropolitan area size classification of greater than 3 million, they have less in common with each other in terms of practice costs than they do with neighboring metropolitan areas of smaller size.

Option 3, we believe, is also unpromising. It creates the largest number of FSAs of any option and is geographically more complex than either Option 1 or Option 2. This option suffers from inadequate tracking of input price variations and inappropriate differences across boundaries, which are caused, as in Option 4, by grouping metropolitan areas by population class. Under this option, within a State, a metropolitan area's costliness is assumed to be dependent only on its population. This is not always an accurate assumption. A small metropolitan area that is a component of a major metropolitan region (for example, a PMSA) may have much higher input prices than a small freestanding metropolitan area surrounded by nonmetropolitan counties. Grouping these types of metropolitan areas together can lead to inaccurate GAFs and inappropriate differences at FSA boundaries. For example, Houston is the only Texas metropolitan area in the highest population category of 3 million or more, and has a GAF under Option 3 of 1.030. The contiguous Galveston PMSA is in the smallest population class of under 250,000. Its actual GAF is 1.001, but under Option 3 it is averaged with other small Texas metropolitan areas and is assigned a GAF of 0.926. Option 3, thus, underpays Galveston and creates a much larger GAF difference at the Houston-Galveston boundary than is warranted by the actual difference in input prices. Expensive Miami and Fort Lauderdale (with GAFs of 1.116 and 1.100) are grouped with lower-price Orlando and Tampa-St. Petersburg (with

GAFs of 1.008 and 0.992) under this option.

Option 2 is more promising than Options 3 and 4, but less promising than Option 1. While producing similar types and numbers of FSAs in some instances, depending on the threshold used, Option 1 has some advantages over Option 2. First, Option 1 is less disruptive because it uses existing localities as building blocks. Second, the urban payment localities in Option 1 tend to be smaller and more focused on high-cost urban counties and track input price variations better than the larger metropolitan area definitions used in Option 2. The metropolitan areas (MSAs, PMSAs, and New England County Metropolitan Statistical Areas) used as building blocks in this option are based on commuting patterns and are generally much larger than the current urban localities used in Option 1. Examples are the Washington, D.C. locality versus the Washington, D.C. PMSA; the Dallas locality versus the Dallas PMSA; the Chicago locality versus the Chicago PMSA; and the Houston locality versus the Houston PMSA. Input prices in the suburban counties in these PMSAs may be significantly lower than in the urban core and more similar to prices in other parts of the State. This may be especially true of some rural counties on the fringes of metropolitan areas that are categorized as part of the metropolitan area based on commuting patterns. For example, the Washington, D.C. PMSA includes portions of rural West Virginia. Under Option 2, this FSA would have a GAF of 1.090, compared to the actual GAF of Washington, D.C. of 1.122, and the actual GAF of the West Virginia counties included in the Washington, D.C. PMSA of 0.950. Input prices in the parts of rural West Virginia included in the Washington, D.C. PMSA have little in common with input prices in the Washington, D.C. urban core. Also, Option 2 presents significant problems in handling metropolitan areas that cross State boundaries.

4. Proposal

a. Proposed Variant of Option 1 (Option 1i, 5–Percent Threshold)

Under standard Option 1, the 22 States with a single FSA would remain statewide FSAs. Option 1 then presumes for the remaining 28 States that FSAs should be statewide for each State unless a sub-State payment locality has sufficiently higher input prices (as measured by its GAF) than the average input prices of its State (as measured by the State GAF) to meet a threshold difference. If the percentage difference between the locality's GAF and the State GAF exceeds a specified threshold, that locality would remain a distinct FSA. Otherwise, the locality would be merged into a residual FSA for that State. If no sub-State locality had sufficiently higher prices than the State average to meet the threshold difference, the State would become a single statewide locality. For example, Alabama currently has six localities. The GAFs range from a high of 0.957 for Locality 05, Birmingham, to a low of 0.902 for Locality 06, rest of Alabama. The State GAF is 0.932. Using a threshold of 5 percent, Alabama becomes a statewide locality as the Birmingham GAF exceeds the State GAF by only 2.68 percent. Using a threshold of 2.5 percent, Birmingham would remain a distinct FSA, while the other five localities would become one residual FSA as none of the other current localities exceed the State GAF by 2.5 percent.

Option 1 has several advantages over Options 2, 3, and 4. By using the current localities as building blocks, it is the most conservative of the options, is likely to be the least disruptive to physicians, and imposes the least administrative burden on HCFA and the Medicare carriers. GAFs for the largest, highest priced cities and metropolitan areas will not change under this option. Neither will the GAFs of current single locality States change. Many smaller cities and rural areas are combined into residual State areas, eliminating GAF differences among these areas and, thereby, increasing payments in rural areas and substantially reducing the number of localities. Since these areas usually have the smallest price input differences, combining them reduces the number of FSAs at the smallest loss in accuracy of input price tracking. In summation, Option 1 tends to divide States with large variation in input prices among localities into multiple FSAs, albeit significantly fewer than now exist in these States, while combining localities in States with little price variation into a single statewide locality.

However, the standard version of Option 1 has two shortcomings. First, some mid-sized metropolitan areas in large States such as California and Texas do not remain distinct FSAs despite their considerably higher input prices than in the rural and small city areas of their States with which they would be combined into a single residual area. Second, some large metropolitan areas in small States, such as Baltimore, Maryland, do not remain distinct FSAs. This is because the State GAF to which all locality GAFs are compared contains the high cost area GAFs. This makes it difficult for the mid-sized areas in large States to exceed the State GAF, even though their own GAFs may substantially exceed the GAF of all other localities in the residual area to which they would be assigned under Option 1. In large States with a wide range of GAFs, the mid-sized cities and metropolitan areas tend to be combined with the residual rest-of-State area. Their GAFs are sharply reduced, lessening the accuracy of input price tracking and creating large boundary differences in GAFs between large and mid-sized cities and at rural State boundaries that are not reflective of true input price differences.

For example, with the current payment localities, the contiguous California counties of Los Angeles and Ventura have 1996 GAFs of 1.103 and 1.079, respectively, a 2.4 percentage point difference. Under Option 1, with a 2.5-percent threshold, Ventura becomes part of the residual State area. Its GAF is reduced to 1.012, while Los Angeles's GAF remains at 1.103, a difference of 9.1 percentage points. Other examples of this large boundary effect, all assuming a 2.5-percent threshold, are: San Francisco versus Marin, California (1.153/1.063 currently versus 1.153/1.012 under Option 1); Dallas versus Fort Worth, Texas (1.006/0.977 currently versus 1.006/0.934 under Option 1). In the case of Baltimore, its GAF of 1.032 is primarily responsible for bringing the State GAF up to 1.016. Under Option 1, with a 2.5-percent threshold, it becomes part of a single statewide locality (excluding Maryland counties in the Washington, D.C. locality) with a GAF of 1.016, when in reality it is much more expensive than the rest of the State, which has a combined GAF excluding Baltimore of 0.964.

These problems are addressed in our proposed option, Option 1i, 5-percent threshold, a variant of Option 1. In this variant, the GAF of a locality is compared to the average GAF of lower-price localities in the State, rather than to the statewide average. (Like standard Option 1, the 22 States currently having single statewide localities remain statewide localities.) If this difference exceeds a percentage threshold, 5 percent in our proposal, the locality remains a distinct FSA. Otherwise, it becomes part of a statewide or rest-of-State residual FSA. Specifically, a State's localities are ranked from the highest to the lowest GAF. The GAF of the highest-price locality is compared to the weighted average GAF of all lower-price localities. If the percentage difference exceeds a specified threshold, the highest-price locality remains a distinct FSA. If not, the State becomes a single statewide locality. If the highest-price locality remains a distinct FSA, the process is repeated (iterated, hence the designation Option 1i) for the second-highest-price locality. Its GAF is compared to the statewide average GAF excluding the two highest-price localities. If this difference exceeds the threshold, the second-highest-price locality remains a distinct FSA. The logic is repeated (iterated), moving down the ranking of localities by costliness, until the highest-price locality does not exceed the threshold and does not remain a distinct FSA. No further comparisons are made, and the remaining localities become a residual rest-of-State FSA. The GAF of a locality always is compared only to the average GAF of all lower-price localities. This ensures that the statewide or residual State FSA has relatively homogeneous input prices.

Option 1i, thus, has all of the advantages of Option 1, while addressing the problems inherent in Option 1: unwarranted boundary differences and large higher-price areas not being separate FSAs in small States. In comparison to Option 1, Option 1i breaks out more payment areas in large States containing a wide range of GAFs by defining more mid-sized cities/areas as distinct FSAs; it more consistently defines homogeneous residual State FSAs; and reduces unwarranted boundary differences.

As with Option 1 and Option 2, numerous variants of Option 1i are possible depending on the GAF threshold difference selected. We are proposing Option 1i with a 5-percent threshold. We believe that this option would attain the goal of simplifying the payment areas and reducing payment differences among areas while maintaining accuracy in tracking input prices.

A summary measure of an FSA option's accuracy in tracking input prices is the average percentage difference between the county GAF and the GAF of the payment locality to which that county is assigned. These differences are weighted by total physician services RVUs in each county so that inaccuracies in areas where more services are provided are emphasized. A summary measure of payment differences among adjacent geographic areas in an FSA option is the average difference of the GAFs between unique pairs of contiguous counties, weighted by the sum of the RVUs of the two counties. Table 2 shows these summary measures of input price accuracy and small area payment differences for proposed Option 1i, 5-percent threshold, compared to the current localities, statewide localities, and the extremes of a national fee schedule (the same payment everywhere for a specific service) and separate FSAs for all 3,223 counties.

TABLE 2.—PAYMENT ACCURACY AND SMALL AREA PAYMENT DIFFERENCE

Fee schedule area	Number of FSAs	Average county/FSA input price difference* (percent)	Average county boundary difference* (percent)
National	1	6.86	0.00
States	**53	4.06	0.73
Option 1i, 5% Threshold	87	2.09	1.78
1996 Localities	210	1.67	2.30
Counties	3223	0.00	3.18

*Weighted by total physician services RVUs.
**Includes Washington D.C., Puerto Rico, and the Virgin Islands.

Note: Input price accuracy is measured by the average absolute difference (weighted by total county RVUs) between the county GAF and the FSA GAF. Boundary differences are measured by the average absolute difference in county GAFs between all unique, contiguous county pairs, weighted by the sum of total RVUs of the contiguous counties.

At one extreme is a single national FSA with no geographic adjustments. Lack of a GAF obviously does not track input prices at all, resulting in an average payment error of 6.86 percent, but also avoids any payment boundary differences. At the other extreme is an FSA for each of the 3,223 counties, which perfectly tracks county input prices, but has the largest number of, and largest average difference across, payment boundaries. These two extremes highlight the tradeoff between tracking input price variations and avoiding differences among nearby areas.

The current payment localities result in an average payment error of 1.67 percent, with an average difference across boundaries of 2.30 percent. Our proposed Option 1i, 5-percent threshold, by itself, without the subcounty payment restructuring discussed below, would significantly reduce the number of payment areas from 210 to 87. It would reduce the average county boundary difference from 2.30 percent to 1.78 percent while increasing the average county input price error by only 0.42 percentage points from 1.67 percent to 2.09 percent.

b. Proposed Option 1i, 5–Percent Threshold, with Subcounty Payment Area Restructuring

We further propose to refine payment areas by combining with proposed Option 1i, 5-percent threshold, an additional restructuring of localities in the 11 States that currently have subcounty localities. Three of these States—California, Mississippi, and Pennsylvania—define subcounty localities by zip code. Eight States—Arizona, Connecticut, Kentucky, Massachusetts, Missouri, Nevada, New York, and Oregon employ city/town limits to define localities. The use of subcounty localities creates unnecessary complexity and administrative burden. One of the most compelling reasons to eliminate subcounty payment areas from payment localities is to reduce the administrative work required to maintain zip-code-to-locality crosswalks. Many States employ a zip-code-to-locality crosswalk when processing claims, but the continuous creation, deactivation, and redefinition of U.S. Postal Codes poses a significant obstacle in the maintenance of accurate locality definitions. Town boundaries can also be ambiguous. Since county boundaries are unambiguous and rarely change, aggregating subcounty parts to the county level would minimize the administrative burden of maintaining crosswalks.

Another reason to eliminate subcounty localities is simplicity. By aggregating subcounty areas to the county level, a uniform fee schedule system with no area smaller than a county can be introduced nationwide. Furthermore, since the input price data for GPCIs, and ultimately GAF values, are not available at a subcounty level, the subcounty areas provide no additional accuracy in measuring practice input price variations. More often, subcounty localities unnecessarily complicate the calculation of GAF values by requiring laborious tracking by zip code of the subcounty parts. The obvious method for eliminating subcounty localities is to expand a current locality's city/town or zip code boundaries to the surrounding county borders. In exploring this option, we defined "County Equivalent Localities" based on the following criteria:

- For a current locality that includes multiple cities/towns in noncontiguous counties, all counties with any areas in the current locality are incorporated into the new County Equivalent Locality definition.
- Counties currently divided between two localities are assigned to the locality where the largest portion of physician fee schedule services (RVUs) are provided.

The County Equivalent Option may be applied to the 11 subcounty locality States independent of our proposed basic Option 1i, indeed independent of any other changes in payment localities. When adopted with our basic Option 1i, 5-percent threshold, changes are made automatically or easily in 8 of the 11 States:

- Five States—Arizona, Connecticut, Kentucky, Mississippi, and Nevada become statewide payment areas.
- California currently has eight subcounty areas, all of which are in Los Angeles County. These areas have the same GAF and payment level and can be aggregated into a single FSA. (These eight localities were kept separate from 1992 to 1995 to facilitate the statutory fee schedule transition period.)
- In New York, existing subcounty areas are included in the residual rest-of-State area.
- In Oregon, the current town-based "Portland" locality, which includes parts of Clackamas, Multnomah, and Washington counties, can be redefined to encompass the boundaries of these three counties.

Because of their unique circumstances, we believe the remaining three subcounty FSA States of Massachusetts, Missouri, and Pennsylvania require simple fundamental payment area reconfigurations.

Massachusetts—Massachusetts currently has two noncontiguous payment areas: "Urban" and "Suburban." Under Option 1i, 5–Percent Threshold, Massachusetts would become a single statewide locality. The shortcoming of both the current localities and Option 1i, 5–Percent Threshold, is that the high cost Boston area, comprised of parts of Suffolk, Norfolk, and Middlesex counties, is not separated from lower-cost central and western Massachusetts. The problem is caused by the composition of the current "Urban Massachusetts" locality, which groups the Worcester, Springfield, and Pittsfield areas with the substantially higher-cost Boston area. We, therefore, propose to change Massachusetts to two new localities: 01—Boston Metropolitan Area (comprised of Suffolk, Norfolk, and Middlesex counties) and 02—rest of Massachusetts.

Missouri—Missouri currently has seven noncontiguous payment areas: Northern Kansas City; Kansas City; St. Louis/large East Cities; St Joseph; Rural Northwest counties; small East Cities; and rest of Missouri. Under our proposed Option 1i, 5–Percent Threshold, Missouri would become a statewide payment area. This result would fail to recognize the significant price differences between the Kansas City and St. Louis metropolitan areas and the rest of the State and would result in significant payment area input price difference tracking inaccuracies. To correct this problem, we propose to change Missouri to three payment areas: 01—Kansas City Metropolitan Area (Platte, Clay, and Jackson counties); 02—St Louis Metropolitan Area (St Louis City, St. Louis, Jefferson, and St Charles counties); and 03—rest of Missouri (all other counties).

Pennsylvania—Pennsylvania currently has four noncontiguous payment localities: 01—Philadelphia/Pittsburgh medical schools; 02—large Pennsylvania Cities; 03—smaller Pennsylvania Cities; and 04—rest of Pennsylvania. Under proposed Option 1i, 5–Percent Threshold, areas 03 and 04 are combined into a residual rest-of-State area. The problem is that the high cost Philadelphia area is split into two areas, parts of 01 and 02, and is not clearly distinguished from the lower-cost Pittsburgh area and the rest of area 02. The five counties comprising the Philadelphia MSA are the most costly in Pennsylvania and clearly belong together in a "Philadelphia Metropolitan Area" locality. Allegheny County, which contains Pittsburgh and, therefore, part of which is grouped with part of Philadelphia in locality 01, is much less expensive than the Philadelphia area and does not belong in the same locality, either cost-wise or geographically. Thus, we propose that Pennsylvania be divided into two localities: 01—Philadelphia Metropolitan Area (Montgomery, Philadelphia, Delaware, Bucks, and Chester counties); and 02—rest of Pennsylvania (all other counties).

c. Effects of Proposed Option 1i, 5–Percent Threshold, with Subcounty FSA Restructuring

We believe that our proposed restructuring of Medicare payment areas meets the major goal of simplifying payment areas and reducing payment differences among adjacent geographic areas while maintaining accuracy in tracking input prices among areas. It significantly reduces the number of FSAs from 210 to 89, and increases the number of statewide payment areas from 22 to 34, thereby simplifying program administration. It also provides a more rational and understandable basis for localities, reduces urban/rural payment differences, and maintains separate payment areas for relatively high-priced large and mid-sized cities in large States. It decreases the number of payment areas by almost 60 percent, while at the same time reducing average county boundary payment differences, yet reduces average county input price accuracy by only 0.42 percent.

The GPCIs, and, therefore, the GAFs, for the proposed new payment areas would be budget neutral within each State. That is, an adjustment would be made to them later in the year (to incorporate the most recent data into the adjustments) to yield the same total physician fee schedule payments within that State that would have been made had the payment areas not been changed. We are anticipating the adjustments to be minor. While some current individual payment areas will experience slight increases in payments and some areas will experience slight decreases in payments under our proposed FSA changes, the effects on the overwhelming majority of areas will be minimal. Of the total current areas in the 28 States currently having multiple FSAs, 82 percent change less than 3 percent, 93 percent change less than 4 percent, and 96 percent change less than 5 percent. Forty-three percent of the areas will experience increases in payments, 33 percent will experience decreases, and 24 percent will experience no change. Addendum A, "1996 Geographic Adjustment Factors (GAFs) by Medicare Payment Locality/

Locality Part for January 1, 1996 Localities and Proposed Option, Fee Schedule Areas (FSAs) in Descending Order of Difference" shows the effects for each of the current localities in multiple FSA States (as previously mentioned, the 22 States currently having a single statewide locality remain statewide localities) of our proposed locality reconfiguration by comparing existing GAFs to the GAFs for the new localities. Because our proposal eliminates subcounty areas, we are also publishing Addendum B, "Medicare Fee Schedule Areas (Localities) and 1996 Geographic Adjustment Factors (GAFs), Current and Proposed Option by State and County/County Part" that shows, alphabetically by State and county, the current locality and GAF and the proposed locality and GAF for each county.

As can be seen from Addendum A, only four areas will lose more than 4 percent under our proposal: Pennsylvania area 01, Philadelphia/Pittsburgh Medical Schools; Pennsylvania area 02, large Pennsylvania Cities; Missouri area 01, St. Louis/large Eastern Cities; and Massachusetts area 01, Urban Massachusetts. These are unique situations and require explanation. As the asterisks on these areas indicate, these losing areas are only part of an existing locality and are in States in which we are recommending fundamental restructuring of FSAs because of existing subcounty FSAs and the current combining of areas with widely different input prices into a single area. In actuality, only part of the existing area will lose. As Addendum A shows, the remaining part of the area will win under our proposal. For example, the largest projected loser, Pennsylvania area 01, is in reality only the part of Pittsburgh that is currently included in area 01. The Philadelphia portion of Pennsylvania area 01 is a projected winner under our proposal. As mentioned earlier, while Pittsburgh is in Allegheny County, which has considerably lower input prices than the Philadelphia area, part of Pittsburgh is included with part of Philadelphia in area 01. This has the effect of overpaying the Pittsburgh part of area 01 and underpaying the Philadelphia part of area 01. Our proposal remedies this situation by grouping Philadelphia with similar priced counties in the Philadelphia MSA, while grouping Pittsburgh with similar priced areas in the rest of Pennsylvania. This also explains why Pennsylvania area 02 shows up as both one of the four largest losers and as the largest winner. Under our proposal, the part of area 02 comprised of larger cities outside of the Philadelphia MSA is no longer included with the higher priced counties in the Philadelphia MSA, but is included in the residual Pennsylvania FSA. This lowers their GAFs, while increasing the GAFs of the higher priced counties in the Philadelphia MSA that now become part of the Philadelphia FSA.

The same logic holds true for Massachusetts and Missouri. The losing parts of current Massachusetts locality 01 are the Worcester, Springfield, and Pittsfield areas which, while having substantially lower costs than Boston, are currently included in the same locality. The winning part of Massachusetts locality 01 is the higher-cost Boston metropolitan area. In Missouri, the losing parts of locality 01, St. Louis/large East Cities, are the lower-cost Columbia, Springfield, and Jefferson City areas that are currently included with higher-cost St. Louis. The winning part of this locality is the St. Louis metropolitan area. These four largest losing areas then result from our correcting the current anomalous situation created by including low-cost and high-cost areas in a single locality by reconfiguring the localities to more accurately reflect input price variations.

We welcome comments on our proposed payment area changes. Our proposal is based on the application of statistical criteria to aggregate localities within a State that are not significantly different as indicated by current GAFs. We would welcome alternative rationale and criteria for exceptions to this statistically based methodology. While we are open to considering exceptions to this statistically based realignment, commenters suggesting variations on our proposal should submit an analysis of why their variation is preferable. For example, commenters suggesting that their particular area, which would become part of a residual rest-of-state area under our proposal, should be retained as a separate payment area should submit data to show that their area costs exceed the costs of the other areas in the residual payment area by the 5-percent threshold.

As mentioned earlier, the great majority of existing FSAs would experience only very minor changes in payment levels under the proposed new payment area configuration. We are concerned, however, about the few areas estimated to experience the largest reductions in payments. To lessen the impact on these areas, we propose phasing in the effect of the proposed new payment areas over a 2-year period in States containing a locality that is estimated to experience a decrease in payments that exceeds a certain threshold. We selected a 2-year period because when we implement the GPCI revisions required by law every 3 years, the law provides for a 2-year transition period. Revising localities requires calculating GPCIs to correspond to the revised localities.

A transition period, however, adds another element to the changes to the physician fee schedule. For example, the law requires that the conversion factor be updated each year. In addition, we annually add new RVUs for new and revised services. In 1997, we will implement the comprehensive changes in work RVUs required by law. In 1998, the law requires us to implement new resource-based practice expense RVUs. In 1998 and 1999, we will implement new GPCIs as required by law. A transition period for our locality changes would add one more payment change to these other changes. Since most payment areas would experience very minor changes, we believe that transitioning these areas would unnecessarily add another change.

Since the purpose of the proposed phase-in is to limit the effect on the areas estimated to experience the largest decrease in payments because of our proposed payment area revisions, we propose that no area be allowed to lose more than 4 percent in the first year. We selected the 4-percent threshold because that is about one-half of the largest estimated area payment decrease. The proposed payment area changes would be fully effective in 1997 in all States not containing an area whose payments are estimated to decrease by more than 4 percent under our proposal. Under this phase-in, only two States, Pennsylvania and Missouri, would be transitioned as they are the only States with areas that would experience a decrease of more than 4 percent. In these States, areas estimated to lose more than 4 percent would be assigned 1997 GPCIs whose values would limit the loss to 4 percent. Since the proposed new payment area changes would be budget-neutral within a State, all areas within a State would be subject to the 2-year phase-in if the State contained an area whose payment level is estimated to decrease by more than 4 percent. This means that areas estimated to receive increases in payments in these States would receive only part of the increase in 1997 as transitional 1997 GPCIs would be calculated to maintain budget neutrality within the State. In 1998, all areas in these transitioned States would be totally incorporated into their new localities and be assigned the fully implemented new locality GPCIs. We have designed this transition approach

to cushion the effect of the change for the localities that would be experiencing the greatest losses. We invite comments on this transition proposal and are open to suggestions about alternative transition approaches.

Our proposal would leave 16 States with multiple payment areas. We believe our proposal justifies multiple areas in these States because of input price differences within these States. However, as stated earlier in the background discussion on this issue, we are generally in favor of statewide payment areas as they simplify program administration and encourage physicians to practice in rural areas by eliminating urban/rural payment differentials within the State. Therefore, to continue to be responsive to the physician community, even if our proposed payment area reconfiguration is adopted, we will continue to consider converting any of the remaining multiple payment area States into a single statewide payment area if overwhelming support among physicians in both winning and losing areas can be demonstrated. This proposed policy change does not require a change to the regulations set forth in § 414.4 ("Fee schedule areas").

B. Special Rules for the Payment of Diagnostic Tests, Including Diagnostic Radiologic Procedures

1. Background

The payment for diagnostic procedures, including diagnostic radiologic procedures, under the Medicare program is made under two statutory benefits. Section 1861(s)(1) of the Act describes physician services as part of the medical and other health services benefit. This paragraph describes the professional component of a diagnostic test, which is the interpretation of the test. Under the physician fee schedule and the Medicare carrier payment systems, these services are coded with the CPT modifier "26."

Payment for taking a test is made under section 1861(s)(3) of the Act. We have termed the taking of a test the technical component of the test, and it is indicated under the physician fee schedule with the "TC" modifier.

Section 2070.1 of the Medicare Carriers Manual provides that for a diagnostic test to be covered, the service must be related to a patient's illness or injury (or symptom or complaint) and ordered by a physician. This instruction was intended to relate a diagnostic test to a patient's illness or injury, symptom, or complaint. The results of the test were to be used to treat the patient or refer him or her for treatment. It has come to our attention from various sources, including carrier medical directors, that, in some cases, the intent of this instruction has been frustrated. We have heard of instances in which a physician is employed for the sole purpose of ordering tests. This physician has no relationship to the beneficiary, and it is highly likely that tests by this physician would not be medically necessary. We believe this practice generates unnecessary diagnostic tests and places Medicare beneficiaries at needless risk both medically and financially. We propose to further clarify this long-standing manual instruction requirement that tests be ordered by a physician by specifying that the physician ordering the test must be the physician treating the patient. This proposed policy would link the ordering of the diagnostic test to the physician who will use the test results to treat the patient.

2. Proposal

We propose that for diagnostic tests, including diagnostic radiologic procedures, to be covered, they must be ordered by the physician who treats the beneficiary. The physician who treats the beneficiary is the physician responsible for the treatment of the patient and who orders the test or radiologic procedure to use the results in the management of the beneficiary's specific medical problem(s). (Physicians can order tests while they are consulting for another physician.) We believe this requirement is fundamental for coverage and payment of diagnostic tests and, therefore, are including it in the regulations at § 410.32 ("Diagnostic X-ray tests, diagnostic laboratory tests, and other diagnostic tests: Conditions").

3. Chiropractor Exception

A physician who orders the x-ray that is used by a chiropractor to demonstrate the subluxation of the spine in a beneficiary who is receiving manual manipulation treatments would be exempted from this rule. Because no payment can be made for a diagnostic test ordered by a chiropractor under § 410.22(b)(2), we propose to allow payment for the x-ray when ordered by a physician who will not be treating the patient for subluxation of the spine. Otherwise, beneficiaries would always have to pay out-of-pocket for these x-rays, which would frustrate their use of the chiropractic benefit.

4. Non-Physician Practitioners

Certain non-physician practitioners who provide services that would be physician services if furnished by a physician under a specific enumerated benefit in the statute would be considered as the physician treating the beneficiary for the purpose of this section. Non-physician practitioners who meet this definition are physician assistants (section 1861(s)(2)(K)(i) of the Act); and nurse practitioners and clinical nurse specialists (sections 1861(s)(2)(K)(ii) and 1861(s)(2)(K)(iii) of the Act), operating within the scope of their State licenses.

C. Transportation in Connection with Furnishing Diagnostic Tests

Section 1861(s)(3) of the Act establishes coverage for diagnostic x-rays furnished in a place of residence used as the patient's home if the performance of the tests meets health and safety conditions established by the Secretary. This provision is the basis for payment of x-ray services furnished by approved portable suppliers to beneficiaries in their homes and in nursing facilities.

Although the Congress did not explicitly so state, we determined that, because of the increased costs in transporting the x-ray equipment to the beneficiary, the Congress intended that we pay an additional amount for transportation expenses. Therefore, we established HCFA Common Procedure Coding System (HCPCS) codes R0070 and R0075 (for single-patient and multiple-patient trips, respectively) to pay approved portable x-ray suppliers a transportation "component" when they furnish the services listed in section 2070.4.C of the Medicare Carriers Manual.

We later added the taking of an electrocardiogram (EKG) tracing to the list of services approved suppliers of portable x-ray services may furnish (section 2070.4.F of the Medicare Carriers Manual) and established HCPCS code R0076 to pay for the transportation of EKG equipment. In the December 1995 final rule (60 FR 63149), we published our revised policy of precluding separate payment for the transportation of diagnostic equipment except under certain circumstances. These circumstances include standard EKG procedures furnished by an approved supplier of portable x-ray services or by an independent physiological laboratory (section 2070.1.C of the Medicare Carriers Manual) under HCPCS code R0076 in connection with the provision of CPT codes 93000 (Electrocardiogram, complete) or 93005 (Electrocardiogram, tracing).

After further review of this policy, we have decided that the exceptions are inconsistent with the law and legislative history regarding the payment for transportation of EKG equipment. Section 1861(s)(3) discusses only the coverage of x-rays furnished in a beneficiary's place of residence. Because there is no mention in the statute about the coverage of EKGs furnished in a beneficiary's place of residence, we are returning to our original interpretation of the law.

We propose allowing separate payment only for the transportation of x-ray equipment furnished by approved suppliers of portable x-ray services. As a result, we would not allow separate payment for the transportation of EKG equipment furnished by any supplier. Therefore, we propose to eliminate HCPCS code R0076. Payment for CPT codes 93000 and 93005 will not change, nor will the coverage of these services change. This proposed policy change is not explicitly addressed in our regulations.

D. Bundled Services

1. Hot or Cold Packs

The application of hot or cold packs to one or more areas is billed using CPT code 97010. These modalities (that is, physical agents applied to produce therapeutic change to biologic tissue) are primarily used in conjunction with therapeutic procedures to provide analgesia, relieve muscle spasm, or reduce inflammation and edema. Generally, hot packs are used for subacute or chronic conditions, while cold packs are used for acute and chronic conditions.

The results of a comprehensive analysis of Medicare claims data indicate that CPT code 97010 is being used extensively with a wide variety of services such as office visits and physical medicine and rehabilitative services. Therefore, we are proposing to bundle payment for CPT code 97010 into the payment for all other services including, but not limited to, those with which it historically has been billed with the greatest frequency (such as office visits and physical therapy).

We believe that our proposal to bundle payment and, thus, to preclude separate payment for the application of hot and cold packs is justified for three reasons:

- As a therapy, hot and cold packs are easily self-administered. Generally, we do not cover procedures that are basically self-administered; hot and cold packs, by their nature, do not require the level of professional involvement as do the other physical medicine and rehabilitation modalities.
- Although we acknowledge that professional judgment is involved in the use of hot and cold packs, much less judgment is demanded for them than for other modalities. These packs are commonly used in the home, and, thus, require a minimal level of professional attention.
- The application of hot and cold packs is usually a precursor to other interventions and, as such, is appropriately used in combination with other procedures. Our data analysis supports this conclusion because the majority of claims for CPT code 97010 occurred in conjunction with claims for other services performed on the same day.

We propose to change the status indicator for CPT code 97010 to "B" to indicate that the service is covered under Medicare but payment for it is bundled into the payment for other services. Separate payment for CPT code 97010 would not be permitted under this proposed change. This change would be implemented in a budget neutral manner across all other procedures. Because the RVUs for this procedure would be redistributed across all physician fee schedule services, there would be no measurable impact. This proposed policy change is not explicitly addressed in our regulations.

2. Dermatology Procedures

a. Bundling of Repair Codes into Excision Codes

Currently, the RVUs for the dermatology excision codes (CPT codes 11400 through 11446 and 11600 through 11646) include services described by the simple repair codes (CPT codes 12001 through 12018). The dermatologist can bill separately for the intermediate or complex repair (closure) codes (CPT codes 12031 through 12057 and 13100 through 13152, respectively) in addition to the excision codes. We do not allow separate billing for closure for any other surgical procedure. The closure is included in the comprehensive procedure. We believe that applying the same standard to dermatologists is appropriate.

Therefore, we propose to cease paying separately for the repair codes when billed in conjunction with the excision codes. We are proposing to bundle the RVUs for the intermediate and complex repair codes (CPT codes 12031 through 12057 and CPT codes 13100 through 13152, respectively) into both the benign and malignant skin lesion excision codes (CPT codes 11400 through 11446 and 11600 through 11646, respectively). Under our proposal, we would redistribute the RVUs for the repair codes across CPT codes 11400 through 11446 and 11600 through 11646. We would base the number of RVUs for redistribution on the frequency with which the repair codes are billed with the excision codes.

We are not proposing to assign these repair codes a "B" status indicator because we acknowledge that these codes are not used exclusively with excision services. Instead, we would implement this proposed policy change through our correct coding initiative. This proposed change would standardize our policy for payment for wound closure. This proposed policy change is not explicitly addressed in our regulations.

b. Skin Lesion Destruction Codes

There are several CPT codes that describe the destruction of various benign or premalignant lesions. Within this group of codes, the reporting methods vary. Sometimes the code describes the destruction of a single lesion but requires reporting multiple codes for the destruction of several lesions; other times it describes destruction of as many as 15 lesions. Thus, it is sometimes not clear how many codes to report. The codes are specific to particular areas of the body or particular types of lesions. Because these categories are not mutually exclusive, the coding system provides the opportunity to report the destruction of a given lesion in more than one way. Finally, this complicated coding structure has produced anomalies in work relative values. We propose to simplify the reporting of and payment for the destruction of benign or premalignant skin lesions.

We propose to assign a "G" status indicator to CPT codes 11050 through 11052, 11200 and 11201, 17000 through 17105, 17110, and 17200 and 17201 to indicate that these CPT codes are not valid for Medicare purposes and that there is another code to use for the reporting of and payment for these services.

To report the destruction of benign and premalignant skin lesions, we propose to create two HCPCS codes. The first code would describe the destruction of up to and including 15 lesions. The second code would describe destruction of each additional 10 lesions. To assign RVUs to these codes, we propose to take a weighted average of the RVUs assigned to CPT codes 11050 through 11052, 11200 and 11201, 17000 through 17105, 17110, and 17200 and 17201 based on the billing frequencies and the code descriptors. This proposed policy change is not explicitly addressed in our regulations.

E. Change in Coverage Status for Screening and Obsolete Procedures

1. Vital Capacity Testing

CPT code 94150 (Vital capacity, total) is a screening measure. It is typically performed on patients who are asymptomatic. Because these tests are performed on patients who do not have symptoms of breathing problems, they represent preventive services that are, by statute, not covered by Medicare. Some Medicare carriers do not cover this code at present. However, we inadvertently failed to identify CPT code 94150 as noncovered by Medicare on a national basis. Therefore, we propose changing the status indicator for CPT code 94150 from "A" to "N" to represent its noncovered status. This policy change is not specifically addressed in our regulations. It would be reflected in the Medicare physician fee schedule database and in Addendum B (Relative Value Units and Related Information) of the physician fee schedule final rule, which will be published later this year.

2. Certain Cardiovascular Procedures

In the absence of a national Medicare policy on the following CPT codes, we currently allow our Medicare carriers discretion in deciding whether to allow coverage for these procedures:

CPT code	Descriptor
93201	Phonocardiogram with or without ECG lead; with supervision during recording with interpretation and report (when equipment is supplied by the physician).
93202	Phonocardiogram * * *; tracing only, without interpretation and report (eg, when equipment is supplied by the hospital, clinic).
93204	Phonocardiogram * * *; interpretation and report.
93205	Phonocardiogram with ECG lead, with indirect carotid artery and/or jugular vein tracing, and/or apex cardiogram; with interpretation and report).
93208	Phonocardiogram * * *; tracing only, without interpretation and report.
93209	Phonocardiogram * * *; interpretation and report only.
93210	Phonocardiogram intracardiac.
93220	Vectorcardiogram (VCG), with or without ECG; with interpretation and report.
93221	Vectorcardiogram * * *; tracing only, without interpretation and report.
93222	Vectorcardiogram * * *; interpretation and report only.

As a result of our request for comments on the 5-year review of physician work RVUs in the December 1994 final rule (59 FR 63453), the American College of Cardiology commented that these 10 phonocardiography and vectorcardiography diagnostic tests are outmoded and of little clinical value. Our review of Medicare claims data for these tests supports this contention because the volume of claims for these tests has declined significantly in recent years. Only 17,925 claims were submitted in calendar year 1994 for all 10 tests.

Based on the American College of Cardiology's recommendation, our review of our recent claims history, and our consultation with other medical specialty groups, we propose to discontinue coverage for these 10 diagnostic tests. The status indicators for these 10 procedures would be changed from "A" to "N" to reflect their noncovered status. This proposed policy change is not explicitly addressed in our regulations.

F. Payments for Supervising Physicians in Teaching Settings

1. Definition of Approved Graduate Medical Education Programs

Since publication of the December 1995 final rule, we have received questions about the difference in the definition of an approved residency program for purposes of the teaching physician rules under § 415.152 ("Definitions") and the definition used in the direct medical education rules under § 413.86(b) ("Direct graduate medical education payments."). To be consistent, we propose to modify § 415.152 to match the definition of an approved graduate medical education program in § 413.86(b). We would add a reference to programs that are recognized as an "approved medical residency program" under § 413.86(b). By making this change, the regulations text would reflect a common definition of approved graduate medical education programs for Medicare Part A and Part B. This is a technical change and would have no effect on the implementation of our revised policy regarding the payment for supervising physicians in teaching settings that is effective July 1, 1996.

2. Evaluation and Management Services Furnished in Certain Settings

In the December 1995 final rule (60 FR 63135), we revised our policy regarding the payment for supervising physicians in teaching settings. We eliminated the attending physician criteria but clarified the physician presence requirement for services billed to the Medicare carrier. As part of our revised policy, we created a limited exception for residency programs that are fundamentally incompatible with a physical presence requirement. The exception to the physician presence requirement is for certain evaluation and management services (CPT codes 99201, 99202, 99203, 99211, 99212, and 99213) furnished in certain ambulatory care centers within the context of certain types of residency training programs. The exception is set forth in § 415.174 ("Exception: Evaluation and management services furnished in certain centers").

As the exception currently reads, one of the criteria is that "The range of services furnished by residents in the center includes * * * Comprehensive care not limited by organ system, diagnosis, or gender." (§ 415.174(a)(4)(iii)). It has come to our attention that many obstetric and gynecological residency programs have been restructured over the years to have a greater primary care focus. Some of these programs that otherwise qualify for an exception might be denied payment if the gender limitation were strictly applied.

Contrary to suggestions in correspondence we received after publication of the final rule, it was not our intention to prevent obstetric and gynecological residency programs or other residency programs focusing on women's health care from qualifying for the exception solely because of the patient's gender. Thus, we propose to make a technical change to the regulations text to delete the reference to gender in § 415.174(a)(4)(iii) and change the text to "Comprehensive care not limited by organ system or diagnosis." Of course, such programs must satisfy the otherwise applicable criteria to qualify for an exception.

G. Change in Global Periods for Four Percutaneous Biliary Procedures

The Society of Cardiovascular and Interventional Radiology advised us that a 90-day global period is inappropriate for four percutaneous biliary procedures. The four procedures are CPT codes 47490 (percutaneous cholecystectomy), 47510 (introduction of percutaneous transhepatic catheter for biliary drainage), 47511 (introduction of percutaneous transhepatic stent for internal and external biliary drainage), and 47630 (biliary duct stone extraction, percutaneous via T-tube tract, basket, or snare (for example, Burhenne technique)). The Society believes that these four procedures should have a "0-day" global period. We agree with the Society's arguments that a 90-day global period is contrary to the widespread practice conventions of percutaneous biliary intervention and is inconsistent with other similar interventions in the biliary tract and urinary tract.

We believe that the global periods for these four codes should be changed. Therefore, we are proposing to change the global periods for these services from 90 days to 0 days. To make this change, we would reduce the work RVUs assigned to these procedures to reflect the lack of postsurgical work in the shortened global period. We propose to reduce the work RVUs for CPT codes 47490, 47510, 47511, and 47630 by 17 percent if we change the global periods. The 17 percent figure was taken from the original data developed by the Harvard School of Public Health Resource-Based Relative Value Study as the measure of the postsurgical work associated with these codes. This proposed policy change is not explicitly addressed in our regulations.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Analysis

A. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless the Secretary certifies that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, all physicians are considered to be small entities.

We anticipate that virtually all of the approximately 500,000 physicians who furnish covered services to Medicare beneficiaries would be affected by one or more provisions of this rule. In addition, physicians who are paid by private insurers for non-Medicare services would be affected to the extent that they are paid by private insurers that choose to use the proposed RVUs.

This proposed rule is expected to have varying effects on the distribution of Medicare physician payments and services. With few exceptions, we expect that the impact would be limited. Although the proposed rule would not have a significant economic impact on a substantial number of small entities, we are preparing a voluntary regulatory flexibility analysis.

Section 1848(c)(2)(B) of the Act requires that adjustments in a year may not cause the amount of expenditures for the year to differ by more than $20 million from the amount of expenditures that would have been made if these adjustments had not been made. If this threshold is exceeded, we would make adjustments to the conversion factors to preserve budget neutrality. The proposals discussed in sections B through H below would have no impact on total Medicare expenditures because the effects of these changes would be neutralized in the calculation of the conversion factors for 1997.

B. Payment Area (Locality) and Corresponding Geographic Practice Cost Index Changes

As mentioned earlier, our proposal would reduce existing urban/rural payment differences. Overall, urban areas would experience an average decrease in payments of –0.14 percent, while rural areas will experience an increase in payments of 1 percent. We analyzed the effects of these changes on physicians by specialty. The changes are quite small and follow the expected pattern. We estimate that overall, physicians in family practice and general practice will experience modest increases of about 0.3 percent in payments, while most medical and surgical specialties will experience negligible decreases of about –0.1 to –0.2 percent. This pattern results from the tendency of specialists to be disproportionately concentrated in urban areas, which are estimated to experience a slight decrease in payments under our proposal.

The impact on beneficiaries is likewise minor. We examined the impact by beneficiary age, gender, race, and income level. Roughly 20 percent of beneficiaries reside in areas in which payments decrease by less than 5 percent, roughly 50 percent live in areas that experience no change in payments, roughly 25 percent live in areas where payments will increase by less than 5 percent, and about 2 percent live in areas where payments would rise by 5 to 10 percent.

The distribution of beneficiaries by age and gender and of Caucasian beneficiaries are nearly identical to this overall distribution. Minority beneficiaries are more heavily concentrated in areas that experience no change in payments; a lower proportion of minority beneficiaries live in both areas experiencing a loss and areas experiencing a gain than do Caucasian beneficiaries. For example, 14.4 percent of minority beneficiaries live in an area experiencing a loss compared to 21 percent of all beneficiaries who live in these areas. Beneficiaries living below poverty level are less likely than all beneficiaries to be living in an area experiencing a payment decrease under our proposal, 16 percent compared to 21 percent. It does not appear that vulnerable Medicare groups—minorities, the very old, or the poor—would suffer decreases in access resulting from our proposal.

C. Special Rules for the Payment of Diagnostic Tests, Including Diagnostic Radiologic Procedures

Our proposal would require that, to be covered under Medicare, diagnostic tests, including diagnostic radiologic procedures, must be ordered by the physician who treats a beneficiary or furnishes a consultation to the physician who treats the beneficiary. We would allow an exception for x-rays that demonstrate subluxation of the spine that are ordered for a chiropractor. Under § 410.22(b)(2), no payment can be made to a chiropractor who orders diagnostic tests. We propose to allow payment for these x-rays when ordered by a physician who will not be treating the patient for subluxation of the spine.

Non-physician practitioners functioning within the specific benefit would be considered the physician treating the beneficiary for the purpose of the proposal. Putting this requirement in regulations (§ 410.31 "Diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests: Conditions") would codify our current manual instruction. This proposed policy may result in some program savings due to the denial of payment for tests that may not be medically necessary because they were ordered by a physician who was not treating the beneficiary. However, we do not have sufficient data to furnish any reliable estimates of savings.

D. Transportation in Connection with Furnishing Diagnostic Tests

We propose to eliminate payment for the transportation of EKG equipment (HCPCS code R0076) by all billers. In 1994, the last year for which we have complete data, we allowed 260,686 services and paid $9,192,434. Therefore, were it not for our budget-neutrality adjustment, we estimate that this proposal would result in approximately a $9.2 million reduction in Medicare payments.

E. Bundled Services

1. Hot or Cold Packs

We propose to change the status indicator for CPT code 97010 (Application of a modality to one or more areas; hot or cold packs) to "B" to indicate that the service is covered under Medicare but payment for it is bundled into payment for other services. Separate payment for CPT code 97010 will not be permitted under this proposed change. The annual expenditures for CPT code 97010 under our current policy are approximately $41.2 million. Because the RVUs for this procedure will be redistributed across all physician fee schedule services in a budget neutral manner, there will be no measurable impact from this proposal.

2. Dermatology Procedures

a. Bundling of Repair Codes into Excision Codes We propose to cease paying separately for CPT codes 12031 through 12057 and 13100 through 13152 (intermediate and complex repair codes, respectively) if these codes are billed in conjunction with CPT codes 11400 through 11446 and 11600 through 11646 (dermatology excision codes for benign and malignant lesions, respectively). Because we would redistribute the RVUs for the repair codes across the excision codes, there would be little budgetary effect from this proposal.

b. Skin Lesion Destruction Codes

We propose to change the way Medicare pays for the destruction of benign or premalignant skin lesions. Currently there are several CPT codes that describe a variety of ways of reporting the destruction of skin lesions. We propose to assign a "G" status code to CPT codes 11050 through 11052, 11200 and 11201, 17000 through 17105, 17110, and 17200 and 17201 and create two HCPCS codes to report the destruction of skin lesions. Because we will use a weighted average of the current RVUs assigned to the CPT codes that describe the destruction of benign or premalignant skin lesions in valuing the two proposed codes, this proposal would have no significant impact on Medicare expenditures.

F. Change of Coverage Status for Screening and Obsolete Procedures

1. Vital Capacity Testing

We propose changing the coverage status for vital capacity tests (CPT code 94150) from "active" to "noncovered." These vital capacity tests are screening services. With limited exceptions, section 1862(a)(1)(A) of the Act precludes Medicare coverage for screening procedures. This code is infrequently billed; in 1994 only 101,150 services were paid for CPT code 94150 for a total Medicare expenditure of $1,077,600. We do not believe that the change in coverage status would have a significant impact on Medicare expenditures. We would also budget neutralize the $1 million across all fee schedule services.

2. Certain Cardiovascular Procedures

We propose changing the coverage status for certain cardiovascular procedures (CPT codes 93201, 93202, 93204, 93205, 93208, 93209, 93210, 93220, 93221, and 93222) to noncovered. Because there has been a decline in the billing of these services in recent years and in 1994, we only allowed a total of 17,925 services with $890,326 in allowed charges for all 10 diagnostic tests, we do not believe that the change in coverage status would have a significant impact on Medicare expenditures.

G. Payments for Supervising Physicians in Teaching Settings

This proposed rule would make a technical change to § 415.152 ("Definitions") to make the definition of an approved graduate medical education program consistent with the definition in § 413.86(b) ("Direct graduate medical education payments"). Because this is only a technical change to standardize almost identical definitions, it would have no budgetary impact on Medicare expenditures.

We propose a technical change to remove the word "gender" from § 415.174(a)(4)(iii) ("Exception: Evaluation and management services furnished in certain centers"). We did not include the reference to gender with the intention of excluding obstetric and gynecological or other women's care residency programs solely because of patient gender. This technical change would make clear that the exception criteria would not be applied in such a manner. Because this technical change merely clarifies our intent with respect to a policy that has not yet been implemented, there would be no budgetary effect.

H. Change in Global Period for Four Percutaneous Biliary Procedures

To implement our proposal to change the global periods for four percutaneous biliary procedures (CPT codes 47490, 47510, 47511, and 47630) from 90 days to 0 days, we are proposing to reduce the work RVUs for these procedures by 17 percent. These work RVUs will be redistributed across all services; therefore, there is no significant impact.

I. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the Regulatory Flexibility Act. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule would have little direct effect on payments to rural hospitals since this rule would change only payments made to physicians and certain other practitioners under Part B of the Medicare program and would make no change in payments to hospitals under Part A. We do not believe the changes would have a major, indirect effect on rural hospitals.

Therefore, we are not preparing an analysis for section 1102(b) of the Act since we have determined, and the Secretary certifies, that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by OMB.

List of Subjects

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 415

Health facilities, Health professions, Medicare, and Reporting and recordkeeping requirements.

42 CFR chapter IV would be amended as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

A. Part 410 is amended as set forth below:

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise indicated.

2. In § 410.32 paragraphs (a) and (b) are redesignated as paragraphs (b) and (c), respectively, and a new paragraph (a) is added to read as follows:

§ 410.32 Diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests: Conditions.

(a) *Ordering diagnostic tests.* All diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests must be ordered by the physician who treats the beneficiary, that is, the physician who is actively furnishing a consultation or treating a beneficiary for a specific medical problem(s) and uses the results in the management of the beneficiary's specific medical problem(s). Physicians who order the x-ray used by a chiropractor to demonstrate the subluxation of the spine in a beneficiary who is receiving manual manipulation treatments are exempted from this requirement. Non-physician practitioners (physician assistants, nurse practitioners, and clinical nurse specialists) who provide services that would be physician services if furnished by a physician and who are operating within the scope of their statutory benefit are considered the physician treating the beneficiary for the purpose of this section.

* * * * *

PART 415—SERVICES FURNISHED BY PHYSICIANS IN PROVIDERS, SUPERVISING PHYSICIANS IN TEACHING SETTINGS, AND RESIDENTS IN CERTAIN SETTINGS

B. Part 415 is amended as set forth below:

1. The authority citation for part 415 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 415.152 the introductory text is republished, and the definition of "approved graduate medical education (GME) program" is revised to read as follows:

§ 415.152 Definitions.

As used in this subpart—

Approved graduate medical education (GME) program means one of the following:

(1) A residency program approved by the Accreditation Council for Graduate Medical Education of the American Medical Association, by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association, by the Council on Dental Education of the American Dental Association, or by the Council on Podiatric Medicine Education of the American Podiatric Medical Association.

(2) A program otherwise recognized as an "approved medical residency program" under § 413.86(b) of this chapter.

* * * * *

§ 415.174 [Amended]

3. In § 415.174, in paragraph (a)(4)(iii), the phrase "system, diagnosis, or gender" is removed, and the phrase "system or diagnosis" is added in its place.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 21, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: June 21, 1996.

Donna E. Shalala,

Secretary.

BILLING CODE 4120-01-P

ADDENDUM A

1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs) BY MEDICARE PAYMENT LOCALITY/LOCALITY PART FOR JANUARY 1, 1996 LOCALITIES AND PROPOSED OPTION, FEE SCHEDULE AREAS (FSAs) IN DESCENDING ORDER OF DIFFERENCE
(Includes only multi-locality states)

Carrier Number	Locality Number	January 1, 1996 Locality (* indicates locality part)	Proposed Option	GAF Proposed Option	GAF Jan 1, 1996 Localities	Percentage Point Difference	Percent Difference
9865	02	* LG PA CITIES	PHILADELPHIA, PA	1.089	1.001	0.088	8.5 %
700	02	* MASS SUBURBS/RURAL CITIES	BOSTON, MA	1.109	1.046	0.060	5.7
1360	99	* REST OF OREGON	PORTLAND, OR	0.991	0.934	0.057	6.2
542	02	NE RURAL, CA	REST OF CALIFORNIA	1.007	0.953	0.055	5.8
542	13	KINGS/TULARE, CA	REST OF CALIFORNIA	1.007	0.955	0.052	5.4
981	13	CENTRAL WI	WISCONSIN	0.968	0.924	0.044	4.8
981	14	SOUTHWEST WI	WISCONSIN	0.968	0.924	0.044	4.8
981	12	NORTHWEST WI	WISCONSIN	0.968	0.925	0.043	4.6
521	13	SOUTHEAST IL	REST OF ILLINOIS	0.924	0.882	0.042	4.8
521	07	QUINCY, IL	REST OF ILLINOIS	0.934	0.896	0.038	4.3
542	11	FRESNO/MADERA, CA	REST OF CALIFORNIA	1.007	0.971	0.036	3.7
981	35	WAUSAU (N CNTRL), WI	WISCONSIN	0.969	0.932	0.036	3.9
521	14	SOUTHERN IL	REST OF ILLINOIS	0.924	0.888	0.035	3.9
10230	04	EASTERN CT	CONNECTICUT	1.106	1.072	0.034	3.2
10490	04	REST OF VA	VIRGINIA	0.944	0.912	0.032	3.5
900	04	WESTERN TX	REST OF TEXAS	0.924	0.893	0.031	3.5
1080	07	PRESCOTT, AZ	ARIZONA	0.995	0.964	0.031	3.2
510	06	REST OF AL	ALABAMA	0.932	0.902	0.030	3.3
1290	06	ELKO & ELY (CITIES), NV	NEVADA	1.010	0.980	0.030	3.1
542	10	MERCED/SURR.CNTYS, CA	REST OF CALIFORNIA	1.007	0.977	0.030	3.1
521	01	NORTHWEST, IL	REST OF ILLINOIS	0.924	0.896	0.028	3.1
960	03	REST OF KENTUCKY	KENTUCKY	0.921	0.896	0.025	2.9
865	01	* PHILLY/PITT MED SCHLS/HOSPS, PA	PHILADELPHIA, PA	1.066	1.041	0.025	2.4
951	16	LA CROSSE (W CNTRL), WI	WISCONSIN	0.968	0.943	0.025	2.7
10490	09	SW TOWN/INDUSTRIAL VA	VIRGINIA	0.944	0.920	0.024	2.6
530	03	REST OF IN	INDIANA	0.926	0.901	0.024	2.7
700	01	* URBAN MASS	BOSTON, MA	1.108	1.084	0.024	2.2
900	30	SAN ANGELO, TX	REST OF TEXAS	0.924	0.900	0.024	2.7
951	04	JANESVILLE (S CNTRL), WI	WISCONSIN	0.968	0.946	0.022	2.3
951	09	OSHKOSH (E CNTRL), WI	WISCONSIN	0.968	0.945	0.023	2.3
1030	06	FLAGSTAFF, AZ	ARIZONA	0.996	0.973	0.023	2.3
10610	20	SOUTHERN VALLEY, WV	WEST VIRGINIA	0.919	0.898	0.021	2.3
865	04	REST OF PA	REST OF PENNSYLVANIA	0.951	0.930	0.021	2.3
900	19	MC ALLEN, TX	REST OF TEXAS	0.924	0.904	0.020	2.2
900	10	BROWNSVILLE, TX	REST OF TEXAS	0.924	0.905	0.019	2.1
1030	08	YUMA, AZ	ARIZONA	0.995	0.976	0.019	1.9
900	34	WICHITA FALLS, TX	REST OF TEXAS	0.924	0.906	0.018	2.0
1040	04	REST OF GA	REST OF GEORGIA	0.996	0.977	0.018	2.0
900	33	LAREDO, TX	REST OF TEXAS	0.924	0.907	0.017	1.9
951	40	GREEN BAY (NORTHEAST), WI	WISCONSIN	0.968	0.951	0.017	1.8
860	05	SOUTHERN NJ	REST OF NEW JERSEY	1.051	1.035	0.016	1.5
10250	01	REST OF MISSISSIPPI	MISSISSIPPI	0.995	0.983	0.016	1.6
11280	01	* ST. LOUIS/JG E. CITIES, MO	ST. LOUIS, MO	0.984	0.966	0.018	1.7
580	01	REST OF FLORIDA	FLORIDA	0.984	0.969	0.015	1.5
900	29	ABILENE, TX	REST OF TEXAS	0.924	0.909	0.015	1.7
1030	02	TUCSON, AZ	ARIZONA	0.995	0.980	0.015	1.5
10230	01	NW AND N. CNTRL CT	CONNECTICUT	1.106	1.092	0.014	1.3
11280	02	SW E. CITIES, MO	REST OF MISSOURI	0.941	0.927	0.014	1.5
530	02	URBAN IN	INDIANA	0.925	0.912	0.013	1.4
960	02	SW CITIES (CITY LIMITS) KY	KENTUCKY	0.921	0.908	0.013	1.4
801	04	REST OF NEW YORK	REST OF NEW YORK	0.973	0.960	0.013	1.4
900	02	NORTHEAST RURAL TX	REST OF TEXAS	0.924	0.911	0.013	1.4
542	14	BAKERSFIELD, CA	REST OF CALIFORNIA	1.007	0.994	0.013	1.3
510	02	NORTH CENTRAL AL	ALABAMA	0.932	0.920	0.012	1.3
521	03	DE KALB, IL	REST OF ILLINOIS	0.924	0.912	0.012	1.3
1290	99	REST OF NEVADA	NEVADA	1.010	0.998	0.012	1.2
11280	03	REST OF MO	REST OF MISSOURI	0.911	0.899	0.012	1.3
526	50	REST OF LA	REST OF LOUISIANA	0.926	0.915	0.011	1.2
510	03	SOUTHEAST AL	ALABAMA	0.932	0.922	0.010	1.1
521	04	ROCK ISLAND, IL	REST OF ILLINOIS	0.924	0.914	0.010	1.1
5130	12	NORTH IDAHO	IDAHO	0.911	0.901	0.010	1.1
526	07	ALEXANDRIA, LA	REST OF LOUISIANA	0.926	0.917	0.008	1.0
900	09	TEXARKANA, TX	REST OF TEXAS	0.924	0.915	0.009	1.0
801	02	WESTERN MD	REST OF MARYLAND	0.964	0.955	0.009	0.9
1360	99	* REST OF OREGON	REST OF OREGON	0.933	0.924	0.009	1.0
10510	19	OHIO RIVER VALLEY, WV	WEST VIRGINIA	0.919	0.910	0.009	1.0
542	05	STOCKTON/SURR. CNTYS , CA	REST OF CALIFORNIA	1.007	0.998	0.009	0.9
660	01	REST OF KANSAS	KANSAS	0.945	0.936	0.009	1.0
526	05	MONROE, LA	REST OF LOUISIANA	0.926	0.918	0.008	0.9
10510	17	WHEELING, WV	WEST VIRGINIA	0.919	0.911	0.008	0.9
510	04	MOBILE, AL	ALABAMA	0.932	0.925	0.007	0.8
865	05	SW PA CITIES	REST OF PENNSYLVANIA	0.951	0.944	0.007	0.7

ADDENDUM A

1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs) BY MEDICARE PAYMENT LOCALITY/LOCALITY PART FOR JANUARY 1, 1996 LOCALITIES AND PROPOSED OPTION, FEE SCHEDULE AREAS (FSAs) IN DESCENDING ORDER OF DIFFERENCE
(Includes only multi-locality states)

Carrier Number	Locality Number	January 1, 1996 Locality (* indicates locality part)	Proposed Option	GAF Proposed Option	GAF Jan 1, 1996 Localities	Percentage Point Difference	Percent Difference
1030	99	REST OF AZ	ARIZONA	0.995	0.988	0.007	0.7
521	11	DECATUR, IL	REST OF ILLINOIS	0.924	0.918	0.006	0.7
801	01	BUFFALO/SURR. CNTYS, NY	REST OF NEW YORK	0.973	0.967	0.006	0.6
900	16	GRAYSON, TX	REST OF TEXAS	0.924	0.918	0.006	0.7
1040	03	SMALL GA CITIES 03	REST OF GEORGIA	0.995	0.989	0.006	0.6
1360	03	E CNTRL & NE WA	REST OF WASHINGTON	0.962	0.956	0.006	0.6
526	06	LAFAYETTE, LA	REST OF LOUISIANA	0.926	0.921	0.005	0.5
900	17	LONGVIEW, TX	REST OF TEXAS	0.924	0.921	0.003	0.3
900	03	SOUTHEAST RURAL TX	REST OF TEXAS	0.924	0.922	0.002	0.2
900	22	WACO, TX	REST OF TEXAS	0.924	0.923	0.001	0.1
01200	01	NORTHERN MAINE	REST OF MAINE	0.937	0.936	0.001	0.1
526	01	NEW ORLEANS, LA	NEW ORLEANS, LA	0.977	0.977	0.000	0.0
542	03	MARIN/NAPA/SOLANO, CA	MARIN/NAPA/SOLANO, CA	1.060	1.060	0.000	0.0
542	05	SAN FRANCISCO, CA	SAN FRANCISCO, CA	1.153	1.153	0.000	0.0
542	06	SAN MATEO, CA	SAN MATEO, CA	1.130	1.130	0.000	0.0
542	07	OAKLAND/BERKLEY, CA	OAKLAND/BERKLEY, CA	1.092	1.092	0.000	0.0
542	09	SANTA CLARA, CA	SANTA CLARA, CA	1.134	1.134	0.000	0.0
580	01	DC + MD/VA SUBURBS	DC + MD/VA SUBURBS	1.105	1.105	0.000	0.0
580	03	FORT LAUDERDALE, FL	FORT LAUDERDALE, FL	1.056	1.056	0.000	0.0
580	04	MIAMI, FL	MIAMI, FL	1.114	1.114	0.000	0.0
521	06	KANKAKEE, IL	REST OF ILLINOIS	0.924	0.924	0.000	0.0
621	12	EAST ST. LOUIS, IL	EAST ST. LOUIS, IL	0.974	0.974	0.000	0.0
621	15	SUBURBAN CHICAGO, IL	SUBURBAN CHICAGO, IL	1.050	1.050	0.000	0.0
621	16	CHICAGO, IL	CHICAGO, IL	1.066	1.066	0.000	0.0
623	01	DETROIT, MI	DETROIT, MI	1.137	1.137	0.000	0.0
740	02	N K.C. (CLAY/PLATTE), MO	METROPOLITAN KANSAS CITY, MO	0.963	0.963	0.000	0.0
740	03	K.C. (JACKSON CNTY), MO	METROPOLITAN KANSAS CITY, MO	0.963	0.963	0.000	0.0
803	01	MANHATTAN, NY	MANHATTAN, NY	1.225	1.225	0.000	0.0
803	02	NYC SUBURBS/LONG ISLAND, NY	NYC SUBURBS/LONG ISLAND, NY	1.170	1.170	0.000	0.0
803	03	POUGHKPSIE/N NYC SUBURBS, NY	POUGHKPSIE/N NYC SUBURBS, NY	1.050	1.050	0.000	0.0
860	01	NORTHERN NJ	NORTHERN NJ	1.109	1.109	0.000	0.0
900	08	BRAZORIA, TX	BRAZORIA, TX	1.003	1.003	0.000	0.0
900	11	DALLAS, TX	DALLAS, TX	1.006	1.006	0.000	0.0
900	15	GALVESTON, TX	GALVESTON, TX	1.001	1.001	0.000	0.0
900	18	HOUSTON, TX	HOUSTON, TX	1.034	1.034	0.000	0.0
900	20	BEAUMONT, TX	BEAUMONT, TX	0.973	0.973	0.000	0.0
900	21	LUBBOCK, TX	REST OF TEXAS	0.924	0.924	0.000	0.0
900	28	FORT WORTH, TX	FORT WORTH, TX	0.977	0.977	0.000	0.0
900	31	AUSTIN, TX	AUSTIN, TX	0.979	0.979	0.000	0.0
901	01	BALTIMORE/SURR. CNTYS, MD	BALTIMORE/SURR. CNTYS. MD	1.032	1.032	0.000	0.0
1040	01	ATLANTA, GA	ATLANTA, GA	1.011	1.011	0.000	0.0
1290	01	LAS VEGAS, ET AL. (CITIES), NV	NEVADA	1.010	1.010	0.000	0.0
1360	01	PORTLAND, ET AL. (CITIES), OR	PORTLAND, ET AL. (CITIES)	0.991	0.991	0.000	0.0
1360	02	SEATTLE (KING CNTY), WA	SEATTLE (KING CNTY), WA	1.023	1.023	0.000	0.0
2050	17	VENTURA, CA	VENTURA, CA	1.079	1.079	0.000	0.0
2050	18	LOS ANGELES (1ST OF 8)	LOS ANGELES, CA	1.103	1.103	0.000	0.0
2050	19	LOS ANGELES (2ND OF 8)	LOS ANGELES, CA	1.103	1.103	0.000	0.0
2050	20	LOS ANGELES (3RD OF 8)	LOS ANGELES, CA	1.103	1.103	0.000	0.0
2050	21	LOS ANGELES (4TH OF 8)	LOS ANGELES, CA	1.103	1.103	0.000	0.0
2050	22	LOS ANGELES (5TH OF 8)	LOS ANGELES, CA	1.103	1.103	0.000	0.0
2050	23	LOS ANGELES (6TH OF 8)	LOS ANGELES, CA	1.103	1.103	0.000	0.0
2050	24	LOS ANGELES (7TH OF 8)	LOS ANGELES, CA	1.103	1.103	0.000	0.0
2050	25	LOS ANGELES (8TH OF 8)	LOS ANGELES, CA	1.103	1.103	0.000	0.0
2050	26	ANAHEIM/SANTA ANA, CA	ANAHEIM/SANTA ANA, CA	1.092	1.092	0.000	0.0
14300	04	QUEENS, NY	QUEENS, NY	1.163	1.163	0.000	0.0
21200	03	SOUTHERN MAINE	SOUTHERN MAINE	0.952	0.952	0.000	0.0
623	02	MICHIGAN, NOT DETROIT	REST OF MICHIGAN	1.012	1.013	-0.001	-0.1
21200	02	CENTRAL MAINE	REST OF MAINE	0.937	0.938	-0.001	-0.1
1360	03	SALEM, ET AL. (CITIES), OR	REST OF OREGON	0.953	0.954	-0.001	-0.1
521	08	NORMAL, IL	REST OF ILLINOIS	0.924	0.926	-0.002	-0.2
740	06	RURAL MW COUNTIES, MO	REST OF MISSOURI	0.911	0.913	-0.002	-0.2
1360	02	EUGENE, ET AL. (CITIES), OR	REST OF OREGON	0.953	0.955	-0.002	-0.2
1290	02	RENO, ET AL. (CITIES), NV	NEVADA	1.010	1.013	-0.003	-0.3
521	10	CHAMPAIGN-URBANA, IL	REST OF ILLINOIS	0.924	0.927	-0.003	-0.3
900	06	TEMPLE, TX	REST OF TEXAS	0.924	0.927	-0.003	-0.3
1360	01	W & SE WA (EXCL SEATTLE)	REST OF WASHINGTON	0.962	0.965	-0.003	-0.3
5130	11	SOUTH IDAHO	IDAHO	0.911	0.914	-0.003	-0.3
580	02	NPNC FL CITIES	REST OF FLORIDA	0.964	0.968	-0.004	-0.4
900	32	VICTORIA, TX	REST OF TEXAS	0.924	0.928	-0.004	-0.4
900	35	AMARILLO, TX	REST OF TEXAS	0.934	0.930	-0.006	-0.6
510	01	NORTHWEST AL	ALABAMA	0.932	0.939	-0.007	-0.7
1030	01	PHOENIX, AZ	ARIZONA	0.995	1.002	-0.007	-0.7

ADDENDUM A

1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs) BY MEDICARE PAYMENT LOCALITY/LOCALITY PART FOR JANUARY 1, 1996 LOCALITIES AND PROPOSED OPTION, FEE SCHEDULE AREAS (FSAs) IN DESCENDING ORDER OF DIFFERENCE
(Includes only multi-locality states)

Carrier Number	Locality Number	January 1, 1996 Locality (* indicates locality part)	Proposed Option	GAF		Percentage Point Difference	Percent Difference
				Proposed Option	Jan 1, 1996 Localities		
542	27	RIVERSIDE, CA	REST OF CALIFORNIA	1.007	1.014	-0.007	-0.7
700	02	* MASS SUBURBS/RURAL CITIES	REST OF MASSACHUSETTS	1.041	1.048	-0.007	-0.7
501	03	N. CENTRAL CITIES, NY	REST OF NEW YORK	0.973	0.981	-0.008	-0.8
528	02	SHREVEPORT, LA	REST OF LOUISIANA	0.926	0.935	-0.009	-1.0
740	01	ST JOSEPH, MO	REST OF MISSOURI	0.911	0.920	-0.009	-1.0
900	27	TYLER, TX	REST OF TEXAS	0.924	0.933	-0.009	-1.0
901	03	SOUTH & E. SHORE MD	REST OF MARYLAND	0.964	0.974	-0.010	-1.0
950	02	MIDDLE NJ	REST OF NEW JERSEY	1.051	1.062	-0.011	-1.0
542	01	N. COASTAL CNTYS, CA	REST OF CALIFORNIA	1.007	1.019	-0.012	-1.2
542	18	SAN BERNADINO/E.CTRL CNTYS CA	REST OF CALIFORNIA	1.007	1.019	-0.012	-1.2
900	14	EL PASO, TX	REST OF TEXAS	0.924	0.936	-0.012	-1.3
630	01	METROPOLITAN IN	INDIANA	0.925	0.936	-0.013	-1.4
1580	12	SW OR CITIES (CITY LIMITS)	REST OF OREGON	0.933	0.946	-0.013	-1.4
542	04	SACRAMENTO/SURR. CNTYS, CA	REST OF CALIFORNIA	1.007	1.020	-0.013	-1.3
10490	02	TIDEWATER & N VA CNTYS	VIRGINIA	0.944	0.958	-0.014	-1.5
621	05	PEORIA, IL	REST OF ILLINOIS	0.924	0.938	-0.014	-1.5
10250	02	URBAN MISSISSIPPI	MISSISSIPPI	0.899	0.913	-0.014	-1.5
528	04	LAKE CHARLES, LA	REST OF LOUISIANA	0.926	0.941	-0.015	-1.6
2050	26	SAN DIEGO/IMPERIAL, CA	REST OF CALIFORNIA	1.007	1.022	-0.015	-1.5
1046	02	SMALL GA CITIES 02	REST OF GEORGIA	0.935	0.951	-0.016	-1.7
900	24	CORPUS CHRISTI, TX	REST OF TEXAS	0.924	0.941	-0.017	-1.8
10230	03	S. CNTRL CT	CONNECTICUT	1.106	1.123	-0.017	-1.5
951	46	MILWAUKEE SUBURBS (SE), WI	WISCONSIN	0.968	0.985	-0.017	-1.7
528	03	BATON ROUGE, LA	REST OF LOUISIANA	0.926	0.944	-0.018	-1.9
16510	18	EASTERN VALLEY, WV	WEST VIRGINIA	0.919	0.937	-0.018	-1.9
900	25	ORANGE, TX	REST OF TEXAS	0.924	0.944	-0.020	-2.1
900	13	ODESSA, TX	REST OF TEXAS	0.924	0.946	-0.022	-2.3
900	23	MIDLAND, TX	REST OF TEXAS	0.924	0.946	-0.022	-2.3
16510	18	CHARLESTON, WV	WEST VIRGINIA	0.919	0.941	-0.022	-2.3
801	02	ROCHESTER/SUBR. CNTYS, NY	REST OF NEW YORK	0.973	0.995	-0.022	-2.2
510	05	BIRMINGHAM, AL	ALABAMA	0.932	0.957	-0.025	-2.6
960	01	LEXINGTON & LOUISVILLE, KY	KENTUCKY	0.921	0.946	-0.025	-2.6
900	07	SAN ANTONIO, TX	REST OF TEXAS	0.924	0.949	-0.025	-2.6
10490	01	RICHMOND & CHARLOTTESVILLE, VA	VIRGINIA	0.944	0.975	-0.031	-3.2
621	02	ROCKFORD, IL	REST OF ILLINOIS	0.924	0.955	-0.031	-3.2
900	12	DENTON, TX	REST OF TEXAS	0.924	0.955	-0.031	-3.2
951	04	MILWAUKEE, WI	WISCONSIN	0.968	0.999	-0.031	-3.1
951	15	MADISON (DANE CNTY), WI	WISCONSIN	0.968	1.002	-0.034	-3.4
2050	16	SANTA BARBARA, CA	REST OF CALIFORNIA	1.007	1.042	-0.035	-3.4
621	09	SPRINGFIELD, IL	REST OF ILLINOIS	0.924	0.961	-0.037	-3.9
10230	02	SW CT	CONNECTICUT	1.106	1.143	-0.037	-3.2
740	04	SUBURBAN KANSAS CITY, KANSAS	KANSAS	0.945	0.982	-0.037	-3.8
740	05	KANSAS CITY, KANSAS	KANSAS	0.945	0.982	-0.037	-3.8
543	12	MONTEREY/SANTA CRUZ, CA	REST OF CALIFORNIA	1.007	1.044	-0.037	-3.5
700	01	* URBAN MASS	REST OF MASSACHUSETTS	1.041	1.084	-0.043	-4.0
965	02	* LG PA CITIES	REST OF PENNSYLVANIA	0.951	1.001	-0.050	-5.0
11260	01	* ST. LOUIS/LG E. CITIES, MO	REST OF MISSOURI	0.911	0.968	-0.057	-5.9
965	01	* PHILLY/PITT MED SHCLS/HOSPS., PA	REST OF PENNSYLVANIA	0.951	1.041	-0.090	-8.6

* Locality part

SOURCE: Health Economics Research, Inc.

ADDENDUM B

MEDICARE FEE SCHEDULE AREAS (LOCALITIES) AND 1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs), CURRENT AND PROPOSED OPTION BY STATE AND COUNTY/COUNTY PART

("99" indicates a statewide or rest of state area under the proposed option. An asterisk indicates a county part.)

State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
ALABAMA	Autauga	REST OF AL	06	99	0.902	0.902
	Baldwin	MOBILE, AL	04	99	0.928	0.900
	Barbour	REST OF AL	06	99	0.902	0.902
	Bibb	REST OF AL	06	99	0.902	0.902
	Blount	REST OF AL	06	99	0.902	0.902
	Bullock	REST OF AL	06	99	0.902	0.902
	Butler	SOUTHEAST AL	03	99	0.922	0.902
	Calhoun	NORTH CENTRAL AL	02	99	0.926	0.900
	Chambers	REST OF AL	06	99	0.902	0.902
	Cherokee	REST OF AL	06	99	0.902	0.902
	Chilton	REST OF AL	06	99	0.902	0.902
	Choctaw	REST OF AL	06	99	0.902	0.902
	Clarke	REST OF AL	06	99	0.902	0.902
	Clay	REST OF AL	06	99	0.902	0.902
	Cleburne	REST OF AL	06	99	0.902	0.902
	Coffee	REST OF AL	06	99	0.902	0.902
	Colbert	NORTHWEST AL	01	99	0.939	0.902
	Conecuh	REST OF AL	06	99	0.902	0.902
	Coosa	REST OF AL	06	99	0.902	0.902
	Covington	SOUTHEAST AL	03	99	0.922	0.902
	Crenshaw	SOUTHEAST AL	03	99	0.922	0.902
	Cullman	REST OF AL	06	99	0.902	0.902
	Dale	REST OF AL	06	99	0.902	0.902
	Dallas	SOUTHEAST AL	03	99	0.922	0.902
	DeKalb	NORTH CENTRAL AL	02	99	0.926	0.902
	Elmore	REST OF AL	06	99	0.902	0.902
	Escambia	REST OF AL	06	99	0.902	0.902
	Etowah	NORTH CENTRAL AL	02	99	0.926	0.902
	Fayette	NORTH CENTRAL AL	02	99	0.926	0.902
	Franklin	NORTHWEST AL	01	99	0.939	0.902
	Geneva	REST OF AL	06	99	0.902	0.902
	Greene	REST OF AL	06	99	0.902	0.902
	Hale	REST OF AL	06	99	0.902	0.902
	Henry	REST OF AL	06	99	0.902	0.902
	Houston	SOUTHEAST AL	03	99	0.922	0.902
	Jackson	REST OF AL	06	99	0.902	0.902
	Jefferson	BIRMINGHAM, AL	05	99	0.957	0.930
	Lamar	REST OF AL	06	99	0.902	0.902
	Lauderdale	NORTHWEST AL	01	99	0.939	0.902
	Lawrence	NORTHWEST AL	01	99	0.939	0.902
	Lee	SOUTHEAST AL	03	99	0.922	0.902
	Limestone	NORTHWEST AL	01	99	0.939	0.902
	Lowndes	REST OF AL	06	99	0.902	0.902
	Macon	REST OF AL	06	99	0.902	0.902
	Madison	NORTHWEST AL	01	99	0.939	0.902
	Marengo	REST OF AL	06	99	0.902	0.902
	Marion	REST OF AL	06	99	0.902	0.902
	Marshall	NORTH CENTRAL AL	02	99	0.926	0.902
	Mobile	MOBILE, AL	04	99	0.928	0.902
	Monroe	REST OF AL	06	99	0.902	0.902
	Montgomery	SOUTHEAST AL	03	99	0.922	0.902
	Morgan	NORTHWEST AL	01	99	0.939	0.902
	Perry	REST OF AL	06	99	0.902	0.902
	Pickens	REST OF AL	06	99	0.902	0.902
	Pike	REST OF AL	06	99	0.902	0.902
	Randolph	REST OF AL	06	99	0.902	0.902
	Russell	SOUTHEAST AL	03	99	0.922	0.902
	Shelby	REST OF AL	06	99	0.902	0.902
	St. Clair	REST OF AL	06	99	0.902	0.902
	Sumter	REST OF AL	06	99	0.902	0.902
	Talladega	REST OF AL	06	99	0.902	0.902
	Tallapoosa	REST OF AL	06	99	0.902	0.902
	Tuscaloosa	NORTH CENTRAL AL	02	99	0.926	0.902
	Walker	REST OF AL	06	99	0.902	0.902
	Washington	REST OF AL	06	99	0.902	0.902
	Wilcox	REST OF AL	06	99	0.902	0.902
	Winston	REST OF AL	06	99	0.902	0.902
ALASKA	STATEWIDE	STATEWIDE	01	01	1.128	1.128

ADDENDUM B

MEDICARE FEE SCHEDULE AREAS (LOCALITIES) AND 1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs), CURRENT AND PROPOSED OPTION BY STATE AND COUNTY/COUNTY PART

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State	County	January 1, 1996 Locality Name	Locality Number 1/1/96	Locality Number Proposed Option	GAF 1/1/96 Localities	GAF Policy Option Basic
ARIZONA	Apache	REST OF AZ	99	99	0.956	0.995
	Cochise	REST OF AZ	99	99	0.[illegible]	0.995
	* Coconino	FLAGSTAFF, AZ	05	99	0.973	0.995
	* Coconino	REST OF AZ	99	99	0.956	0.995
	Gila	REST OF AZ	99	99	0.956	0.995
	Graham	REST OF AZ	99	99	0.956	0.995
	Greenlee	REST OF AZ	99	99	0.956	0.995
	* Maricopa	PHOENIX, AZ	01	99	1.002	0.995
	* Maricopa	REST OF AZ	99	99	0.966	0.995
	Mohave	REST OF AZ	99	99	0.956	0.995
	Navajo	REST OF AZ	99	99	0.956	0.995
	* Pima	TUCSON, AZ	02	99	0.980	0.995
	* Pima	REST OF AZ	99	99	0.956	0.995
	Pinal	REST OF AZ	99	99	0.956	0.995
	Santa Cruz	REST OF AZ	99	99	0.956	0.995
	* Yavapai	PRESCOTT, AZ	07	99	0.994	0.995
	* Yavapai	REST OF AZ	99	99	0.956	0.995
	* Yuma	YUMA, AZ	08	99	0.976	0.995
	* Yuma	REST OF AZ	99	99	0.956	0.995
ARKANSAS	STATEWIDE	STATEWIDE	13	13	0.947	0.947
CALIFORNIA	Alameda	OAKLAND/BERKELEY, CA	07	07	1.092	1.092
	Alpine	STOCKTON/SURR. CNTYS., CA	08	99	0.956	1.007
	Amador	STOCKTON/SURR. CNTYS., CA	08	99	0.956	1.007
	Butte	NE RURAL, CA	02	99	0.952	1.007
	Calaveras	STOCKTON/SURR. CNTYS., CA	08	99	0.956	1.007
	Colusa	NE RURAL, CA	02	99	0.952	1.007
	Contra Costa	OAKLAND/BERKELEY, CA	07	07	1.092	1.092
	Del Norte	N. COASTAL CNTYS, CA	01	99	1.019	1.007
	El Dorado	SACRAMENTO/SURR. CNTYS, CA	04	99	1.020	1.007
	Fresno	FRESNO/MADERA, CA	11	99	0.971	1.007
	Glenn	NE RURAL, CA	02	99	0.952	1.007
	Humboldt	N. COASTAL CNTYS, CA	01	99	1.019	1.007
	Imperial	SAN DIEGO/IMPERIAL, CA	28	99	1.022	1.007
	Inyo	SAN BERNADINO/E.CTRL CNTYS CA	15	99	1.019	1.007
	Kern	BAKERSFIELD, CA	14	99	0.994	1.007
	Kings	KINGS/TULARE, CA	13	99	0.955	1.007
	Lake	N. COASTAL CNTYS, CA	01	99	1.019	1.007
	Lassen	NE RURAL, CA	02	99	0.952	1.007
	Los Angeles	LOS ANGELES	18-25	18	1.103	1.103
	Madera	FRESNO/MADERA, CA	11	99	0.971	1.007
	Marin	MARIN/NAPA/SOLANO, CA	03	03	1.063	1.063
	Mariposa	MERCED/SURR.CNTYS, CA	10	99	0.977	1.007
	Mendocino	N. COASTAL CNTYS, CA	01	99	1.019	1.007
	Merced	MERCED/SURR.CNTYS, CA	10	99	0.977	1.007
	Modoc	NE RURAL, CA	02	99	0.952	1.007
	Mono	SAN BERNADINO/E.CTRL CNTYS CA	15	99	1.019	1.007
	Monterey	MONTEREY/SANTA CRUZ, CA	12	99	1.044	1.007
	Napa	MARIN/NAPA/SOLANO, CA	03	03	1.063	1.063
	Nevada	SACRAMENTO/SURR. CNTYS, CA	04	99	1.020	1.007
	Orange	ANAHEIM/SANTA ANA, CA	26	26	1.092	1.092
	Placer	SACRAMENTO/SURR. CNTYS, CA	04	99	1.020	1.007
	Plumas	NE RURAL, CA	02	99	0.952	1.007
	Riverside	RIVERSIDE, CA	27	99	1.014	1.007
	Sacramento	SACRAMENTO/SURR. CNTYS, CA	04	99	1.020	1.007
	San Benito	MONTEREY/SANTA CRUZ, CA	12	99	1.044	1.007
	San Bernardino	SAN BERNADINO/E.CTRL CNTYS CA	15	99	1.019	1.007
	San Diego	SAN DIEGO/IMPERIAL, CA	28	99	1.022	1.007
	San Francisco	SAN FRANCISCO, CA	05	05	1.153	1.153
	San Joaquin	STOCKTON/SURR. CNTYS., CA	08	99	0.956	1.007
	San Luis Obispo	SANTA BARBARA, CA	16	99	1.042	1.007
	San Mateo	SAN MATEO, CA	06	06	1.130	1.130
	Santa Barbara	SANTA BARBARA, CA	16	99	1.042	1.007
	Santa Clara	SANTA CLARA, CA	09	09	1.134	1.134
	Santa Cruz	MONTEREY/SANTA CRUZ, CA	12	99	1.044	1.007
	Shasta	NE RURAL, CA	02	99	0.952	1.007
	Sierra	NE RURAL, CA	02	99	0.952	1.007
	Siskiyou	NE RURAL, CA	02	99	0.952	1.007
	Solano	MARIN/NAPA/SOLANO, CA	03	03	1.063	1.063

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State	County	January 1, 1996 Locality Name	Locality Number 1/1/96	Locality Number Proposed Option	GAF 1/1/96 Localities	GAF Policy Option Basic
	Sonoma	N. COASTAL CNTYS, CA	01	99	1.019	1.007
	Stanislaus	MERCED/SURR.CNTYS, CA	10	99	0.977	1.007
	Sutter	NE RURAL, CA	02	99	0.952	1.007
	Tehama	NE RURAL, CA	02	99	0.952	1.007
	Trinity	NE RURAL, CA	02	99	0.952	1.007
	Tulare	KINGS/TULARE, CA	13	99	0.955	1.007
	Tuolumne	STOCKTON/SURR. CNTYS., CA	08	99	0.956	1.007
	Ventura	VENTURA, CA	17	17	1.079	1.079
	Yolo	SACRAMENTO/SURR. CNTYS, CA	04	99	1.020	1.007
	Yuba	NE RURAL, CA	02	99	0.952	1.007
COLORADO	STATEWIDE	STATEWIDE	00	00	0.986	0.986
CONNECTICUT	* Fairfield	SW CT	02	99	1.143	1.106
	* Fairfield	S. CNTRL CT	03	99	1.123	1.106
	Hartford	NW AND N. CNTRL CT	01	99	1.092	1.106
	* Litchfield	NW AND N. CNTRL CT	01	99	1.092	1.106
	* Litchfield	SW CT	02	99	1.143	1.106
	Middlesex	EASTERN CT	04	99	1.072	1.106
	* New Haven	NW AND N. CNTRL CT	01	99	1.092	1.106
	* New Haven	S. CNTRL CT	03	99	1.123	1.106
	* New London	NW AND N. CNTRL CT	01	99	1.092	1.106
	* New London	EASTERN CT	04	99	1.072	1.106
	* Tolland	NW AND N. CNTRL CT	01	99	1.092	1.106
	* Tolland	EASTERN CT	04	99	1.072	1.106
	Windham	EASTERN CT	04	99	1.072	1.106
DELAWARE	STATEWIDE	STATEWIDE	01	01	1.015	1.015
DISTRICT OF COLUMBIA	Alexandria City	DC +MD/VA SUBURBS	01	01	1.105	1.105
	Arlington	DC +MD/VA SUBURBS	01	01	1.105	1.105
	District of Columbia	DC +MD/VA SUBURBS	01	01	1.105	1.105
	Fairfax	DC +MD/VA SUBURBS	01	01	1.105	1.105
	Fairfax City	DC +MD/VA SUBURBS	01	01	1.105	1.105
	Falls Church City	DC +MD/VA SUBURBS	01	01	1.105	1.105
	Montgomery	DC +MD/VA SUBURBS	01	01	1.105	1.105
	Prince George's	DC +MD/VA SUBURBS	01	01	1.105	1.105
FLORIDA	Alachua	NNC FL CITIES	02	99	0.980	0.984
	Baker	REST OF FLORIDA	01	99	0.980	0.984
	Bay	REST OF FLORIDA	01	99	0.980	0.984
	Bradford	REST OF FLORIDA	01	99	0.980	0.984
	Brevard	NNC FL CITIES	02	99	0.980	0.984
	Broward	FORT LAUDERDALE, FL	03	03	1.055	1.055
	Calhoun	REST OF FLORIDA	01	99	0.980	0.984
	Charlotte	NNC FL CITIES	02	99	0.980	0.984
	Citrus	REST OF FLORIDA	01	99	0.980	0.984
	Clay	NNC FL CITIES	02	99	0.980	0.984
	Collier	FORT LAUDERDALE, FL	03	03	1.055	1.055
	Columbia	REST OF FLORIDA	01	99	0.980	0.984
	Dade	MIAMI, FL	04	04	1.114	1.114
	DeSoto	REST OF FLORIDA	01	99	0.980	0.984
	Dixie	REST OF FLORIDA	01	99	0.980	0.984
	Duval	NNC FL CITIES	02	99	0.980	0.984
	Escambia	NNC FL CITIES	02	99	0.980	0.984
	Flagler	REST OF FLORIDA	01	99	0.980	0.984
	Franklin	REST OF FLORIDA	01	99	0.980	0.984
	Gadsden	REST OF FLORIDA	01	99	0.980	0.984
	Gilchrist	REST OF FLORIDA	01	99	0.980	0.984
	Glades	REST OF FLORIDA	01	99	0.980	0.984
	Gulf	REST OF FLORIDA	01	99	0.980	0.984
	Hamilton	REST OF FLORIDA	01	99	0.980	0.984
	Hardee	NNC FL CITIES	02	99	0.980	0.984
	Hendry	NNC FL CITIES	02	99	0.980	0.984
	Hernando	REST OF FLORIDA	01	99	0.980	0.984
	Highlands	REST OF FLORIDA	01	99	0.980	0.984
	Hillsborough	NNC FL CITIES	02	99	0.980	0.984
	Holmes	REST OF FLORIDA	01	99	0.980	0.984
	Indian River	FORT LAUDERDALE, FL	03	03	1.055	1.055
	Jackson	REST OF FLORIDA	01	99	0.980	0.984

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State	County	January 1, 1996 Locality Name	Locality Number 1/1/96	Locality Number Proposed Option	GAF 1/1/96 Localities	GAF Policy Option Basic
	Jefferson	REST OF FLORIDA	01	99	0.988	0.984
	Lafayette	REST OF FLORIDA	01	99	0.988	0.984
	Lake	REST OF FLORIDA	01	99	0.988	0.984
	Lee	FORT LAUDERDALE, FL	03	03	1.055	1.055
	Leon	MNC FL CITIES	02	99	0.988	0.984
	Levy	REST OF FLORIDA	01	99	0.988	0.984
	Liberty	REST OF FLORIDA	01	99	0.988	0.984
	Madison	REST OF FLORIDA	01	99	0.988	0.984
	Manatee	MNC FL CITIES	02	99	0.988	0.984
	Marion	REST OF FLORIDA	01	99	0.988	0.984
	Martin	FORT LAUDERDALE, FL	03	03	1.055	1.055
	Monroe	MIAMI, FL	04	04	1.114	1.114
	Nassau	REST OF FLORIDA	01	99	0.988	0.984
	Okaloosa	REST OF FLORIDA	01	99	0.988	0.984
	Okeechobee	MNC FL CITIES	02	99	0.988	0.984
	Orange	MNC FL CITIES	02	99	0.988	0.984
	Osceola	MNC FL CITIES	02	99	0.988	0.984
	Palm Beach	FORT LAUDERDALE, FL	03	03	1.055	1.055
	Pasco	REST OF FLORIDA	01	99	0.988	0.984
	Pinellas	MNC FL CITIES	02	99	0.988	0.984
	Polk	MNC FL CITIES	02	99	0.988	0.984
	Putnam	REST OF FLORIDA	01	99	0.988	0.984
	Santa Rosa	MNC FL CITIES	02	99	0.988	0.984
	Sarasota	MNC FL CITIES	02	99	0.988	0.984
	Seminole	MNC FL CITIES	02	99	0.988	0.984
	St. Johns	MNC FL CITIES	02	99	0.988	0.984
	St. Lucie	FORT LAUDERDALE, FL	03	03	1.055	1.055
	Sumter	REST OF FLORIDA	01	99	0.988	0.984
	Suwannee	REST OF FLORIDA	01	99	0.988	0.984
	Taylor	REST OF FLORIDA	01	99	0.988	0.984
	Union	MNC FL CITIES	02	99	0.988	0.984
	Volusia	MNC FL CITIES	02	99	0.988	0.984
	Wakulla	REST OF FLORIDA	01	99	0.988	0.984
	Walton	REST OF FLORIDA	01	99	0.988	0.984
	Washington	REST OF FLORIDA	01	99	0.988	0.984
GEORGIA	Appling	REST OF GA	04	99	0.917	0.935
	Atkinson	REST OF GA	04	99	0.917	0.935
	Bacon	REST OF GA	04	99	0.917	0.935
	Baker	REST OF GA	04	99	0.917	0.935
	Baldwin	SMALL GA CITIES 03	03	99	0.929	0.935
	Banks	REST OF GA	04	99	0.917	0.935
	Barrow	REST OF GA	04	99	0.917	0.935
	Bartow	REST OF GA	04	99	0.917	0.935
	Ben Hill	REST OF GA	04	99	0.917	0.935
	Berrien	REST OF GA	04	99	0.917	0.935
	Bibb	SMALL GA CITIES 02	02	99	0.951	0.935
	Bleckley	REST OF GA	04	99	0.917	0.935
	Brantley	REST OF GA	04	99	0.917	0.935
	Brooks	REST OF GA	04	99	0.917	0.935
	Bryan	REST OF GA	04	99	0.917	0.935
	Bulloch	SMALL GA CITIES 03	03	99	0.929	0.935
	Burke	REST OF GA	04	99	0.917	0.935
	Butts	ATLANTA, GA	01	01	1.011	1.011
	Calhoun	REST OF GA	04	99	0.917	0.935
	Camden	REST OF GA	04	99	0.917	0.935
	Candler	REST OF GA	04	99	0.917	0.935
	Carroll	REST OF GA	04	99	0.917	0.935
	Catoosa	SMALL GA CITIES 03	03	99	0.929	0.935
	Charlton	REST OF GA	04	99	0.917	0.935
	Chatham	SMALL GA CITIES 02	02	99	0.951	0.935
	Chattahoochee	REST OF GA	04	99	0.917	0.935
	Chattooga	REST OF GA	04	99	0.917	0.935
	Cherokee	ATLANTA, GA	01	01	1.011	1.011
	Clarke	SMALL GA CITIES 03	03	99	0.929	0.935
	Clay	REST OF GA	04	99	0.917	0.935
	Clayton	ATLANTA, GA	01	01	1.011	1.011
	Clinch	REST OF GA	04	99	0.917	0.935

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State	County	January 1, 1996 Locality Name	Locality Number 1/1/96	Locality Number Proposed Option	GAF 1/1/96 Localities	GAF Policy Option Basic
	Colquitt	REST OF GA	04	99	0.917	0.935
	Columbia	REST OF GA	04	99	0.917	0.935
	Cook	REST OF GA	04	99	0.917	0.935
	Coweta	SMALL GA CITIES 03	03	99	0.929	0.935
	Crawford	REST OF GA	04	99	0.917	0.935
	Crisp	REST OF GA	04	99	0.917	0.935
	Dade	REST OF GA	04	99	0.917	0.935
	Dawson	REST OF GA	04	99	0.917	0.935
	DeKalb	ATLANTA, GA	01	01	1.011	1.011
	Decatur	REST OF GA	04	99	0.917	0.935
	Dodge	REST OF GA	04	99	0.917	0.935
	Dooly	REST OF GA	04	99	0.917	0.935
	Dougherty	SMALL GA CITIES 03	03	99	0.929	0.935
	Douglas	ATLANTA, GA	01	01	1.011	1.011
	Early	REST OF GA	04	99	0.917	0.935
	Echols	REST OF GA	04	99	0.917	0.935
	Effingham	REST OF GA	04	99	0.917	0.935
	Elbert	REST OF GA	04	99	0.917	0.935
	Emanuel	REST OF GA	04	99	0.917	0.935
	Evans	REST OF GA	04	99	0.917	0.935
	Fannin	REST OF GA	04	99	0.917	0.935
	Fayette	ATLANTA, GA	01	01	1.011	1.011
	Floyd	SMALL GA CITIES 03	03	99	0.929	0.935
	Forsyth	ATLANTA, GA	01	01	1.011	1.011
	Franklin	REST OF GA	04	99	0.917	0.935
	Fulton	ATLANTA, GA	01	01	1.011	1.011
	Gilmer	REST OF GA	04	99	0.917	0.935
	Glascock	REST OF GA	04	99	0.917	0.935
	Glynn	SMALL GA CITIES 03	03	99	0.929	0.935
	Gordon	REST OF GA	04	99	0.917	0.935
	Grady	REST OF GA	04	99	0.917	0.935
	Greene	REST OF GA	04	99	0.917	0.935
	Gwinnett	ATLANTA, GA	01	01	1.011	1.011
	Habersham	REST OF GA	04	99	0.917	0.935
	Hall	SMALL GA CITIES 03	03	99	0.929	0.935
	Hancock	REST OF GA	04	99	0.917	0.935
	Haralson	REST OF GA	04	99	0.917	0.935
	Harris	REST OF GA	04	99	0.917	0.935
	Hart	REST OF GA	04	99	0.917	0.935
	Heard	REST OF GA	04	99	0.917	0.935
	Henry	ATLANTA, GA	01	01	1.011	1.011
	Houston	SMALL GA CITIES 02	02	99	0.951	0.935
	Irwin	REST OF GA	04	99	0.917	0.935
	Jackson	REST OF GA	04	99	0.917	0.935
	Jasper	REST OF GA	04	99	0.917	0.935
	Jeff Davis	REST OF GA	04	99	0.917	0.935
	Jefferson	REST OF GA	04	99	0.917	0.935
	Jenkins	REST OF GA	04	99	0.917	0.935
	Johnson	REST OF GA	04	99	0.917	0.935
	Jones	REST OF GA	04	99	0.917	0.935
	Lamar	REST OF GA	04	99	0.917	0.935
	Lanier	REST OF GA	04	99	0.917	0.935
	Laurens	SMALL GA CITIES 03	03	99	0.929	0.935
	Lee	REST OF GA	04	99	0.917	0.935
	Liberty	REST OF GA	04	99	0.917	0.935
	Lincoln	REST OF GA	04	99	0.917	0.935
	Long	REST OF GA	04	99	0.917	0.935
	Lowndes	SMALL GA CITIES 03	03	99	0.929	0.935
	Lumpkin	REST OF GA	04	99	0.917	0.935
	Macon	REST OF GA	04	99	0.917	0.935
	Madison	REST OF GA	04	99	0.917	0.935
	Marion	REST OF GA	04	99	0.917	0.935
	McDuffie	REST OF GA	04	99	0.917	0.935
	McIntosh	REST OF GA	04	99	0.917	0.935
	Meriwether	REST OF GA	04	99	0.917	0.935
	Miller	REST OF GA	04	99	0.917	0.935
	Mitchell	REST OF GA	04	99	0.917	0.935
	Monroe	REST OF GA	04	99	0.917	0.935
	Montgomery	REST OF GA	04	99	0.917	0.935

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			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Murray	REST OF GA	04	99	0.917	0.935
	Muscogee	SMALL GA CITIES 02	02	99	0.951	0.935
	Newton	ATLANTA, GA	01	01	1.011	1.011
	Oconee	REST OF GA	04	99	0.917	0.935
	Oglethorpe	REST OF GA	04	99	0.917	0.935
	Paulding	ATLANTA, GA	01	01	1.011	1.011
	Peach	REST OF GA	04	99	0.917	0.935
	Pickens	REST OF GA	04	99	0.917	0.935
	Pierce	REST OF GA	04	99	0.917	0.935
	Pike	REST OF GA	04	99	0.917	0.935
	Polk	REST OF GA	04	99	0.917	0.935
	Pulaski	REST OF GA	04	99	0.917	0.935
	Putnam	REST OF GA	04	99	0.917	0.935
	Quitman	REST OF GA	04	99	0.917	0.935
	Rabun	REST OF GA	04	99	0.917	0.935
	Randolph	REST OF GA	04	99	0.917	0.935
	Richmond	SMALL GA CITIES 02	02	99	0.951	0.935
	Rockdale	ATLANTA, GA	01	01	1.011	1.011
	Schley	REST OF GA	04	99	0.917	0.935
	Screven	REST OF GA	04	99	0.917	0.935
	Seminole	REST OF GA	04	99	0.917	0.935
	Spalding	SMALL GA CITIES 05	03	99	0.929	0.935
	Stephens	REST OF GA	04	99	0.917	0.935
	Stewart	REST OF GA	04	99	0.917	0.935
	Sumter	REST OF GA	04	99	0.917	0.935
	Talbot	REST OF GA	04	99	0.917	0.935
	Taliaferro	REST OF GA	04	99	0.917	0.935
	Tattnall	REST OF GA	04	99	0.917	0.935
	Taylor	REST OF GA	04	99	0.917	0.935
	Telfair	REST OF GA	04	99	0.917	0.935
	Terrell	REST OF GA	04	99	0.917	0.935
	Thomas	SMALL GA CITIES 03	03	99	0.929	0.935
	Tift	REST OF GA	04	99	0.917	0.935
	Toombs	REST OF GA	04	99	0.917	0.935
	Towns	REST OF GA	04	99	0.917	0.935
	Treutlen	REST OF GA	04	99	0.917	0.935
	Troup	SMALL GA CITIES 03	03	99	0.929	0.935
	Turner	REST OF GA	04	99	0.917	0.935
	Twiggs	REST OF GA	04	99	0.917	0.935
	Union	REST OF GA	04	99	0.917	0.935
	Upson	REST OF GA	04	99	0.917	0.935
	Walker	SMALL GA CITIES 03	03	99	0.929	0.935
	Walton	ATLANTA, GA	01	01	1.011	1.011
	Ware	SMALL GA CITIES 03	03	99	0.929	0.935
	Warren	REST OF GA	04	99	0.917	0.935
	Washington	REST OF GA	04	99	0.917	0.935
	Wayne	REST OF GA	04	99	0.917	0.935
	Webster	REST OF GA	04	99	0.917	0.935
	Wheeler	REST OF GA	04	99	0.917	0.935
	White	REST OF GA	04	99	0.917	0.935
	Whitfield	SMALL GA CITIES 03	03	99	0.929	0.935
	Wilcox	REST OF GA	04	99	0.917	0.935
	Wilkes	REST OF GA	04	99	0.917	0.935
	Wilkinson	REST OF GA	04	99	0.917	0.935
	Worth	REST OF GA	04	99	0.917	0.935
HAWAII/GUAM	STATEWIDE	HAWAII/GUAM	01	01	1.086	1.086
IDAHO	Ada	SOUTH IDAHO	11	99	0.914	0.911
	Adams	SOUTH IDAHO	11	99	0.914	0.911
	Bannock	SOUTH IDAHO	11	99	0.914	0.911
	Bear Lake	SOUTH IDAHO	11	99	0.914	0.911
	Benewah	NORTH IDAHO	12	99	0.901	0.911
	Bingham	SOUTH IDAHO	11	99	0.914	0.911
	Blaine	SOUTH IDAHO	11	99	0.914	0.911
	Boise	SOUTH IDAHO	11	99	0.914	0.911
	Bonner	NORTH IDAHO	12	99	0.901	0.911
	Bonneville	SOUTH IDAHO	11	99	0.914	0.911
	Boundary	NORTH IDAHO	12	99	0.901	0.911
	Butte	SOUTH IDAHO	11	99	0.914	0.911

ADDENDUM B

MEDICARE FEE SCHEDULE AREAS (LOCALITIES) AND 1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs), CURRENT AND PROPOSED OPTION BY STATE AND COUNTY/COUNTY PART

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Camas	SOUTH IDAHO	11	99	0.914	0.911
	Canyon	SOUTH IDAHO	11	99	0.914	0.911
	Caribou	SOUTH IDAHO	11	99	0.914	0.911
	Cassia	SOUTH IDAHO	11	99	0.914	0.911
	Clark	SOUTH IDAHO	11	99	0.914	0.911
	Clearwater	NORTH IDAHO	12	99	0.901	0.911
	Custer	SOUTH IDAHO	11	99	0.914	0.911
	Elmore	SOUTH IDAHO	11	99	0.914	0.911
	Franklin	SOUTH IDAHO	11	99	0.914	0.911
	Fremont	SOUTH IDAHO	11	99	0.914	0.911
	Gem	SOUTH IDAHO	11	99	0.914	0.911
	Gooding	SOUTH IDAHO	11	99	0.914	0.911
	Idaho	NORTH IDAHO	12	99	0.901	0.911
	Jefferson	SOUTH IDAHO	11	99	0.914	0.911
	Jerome	SOUTH IDAHO	11	99	0.914	0.911
	Kootenai	NORTH IDAHO	12	99	0.901	0.911
	Latah	NORTH IDAHO	12	99	0.901	0.911
	Lemhi	NORTH IDAHO	12	99	0.901	0.911
	Lewis	NORTH IDAHO	12	99	0.901	0.911
	Lincoln	SOUTH IDAHO	11	99	0.914	0.911
	Madison	SOUTH IDAHO	11	99	0.914	0.911
	Minidoka	SOUTH IDAHO	11	99	0.914	0.911
	Nez Perce	NORTH IDAHO	12	99	0.901	0.911
	Oneida	SOUTH IDAHO	11	99	0.914	0.911
	Owyhee	SOUTH IDAHO	11	99	0.914	0.911
	Payette	SOUTH IDAHO	11	99	0.914	0.911
	Power	SOUTH IDAHO	11	99	0.914	0.911
	Shoshone	NORTH IDAHO	12	99	0.901	0.911
	Teton	SOUTH IDAHO	11	99	0.914	0.911
	Twin Falls	SOUTH IDAHO	11	99	0.914	0.911
	Valley	SOUTH IDAHO	11	99	0.914	0.911
	Washington	SOUTH IDAHO	11	99	0.914	0.911
ILLINOIS	Adams	QUINCY, IL	07	99	0.896	0.924
	Alexander	SOUTHERN IL	14	99	0.869	0.924
	Bond	EAST ST. LOUIS, IL	12	12	0.974	0.974
	Boone	ROCKFORD, IL	02	99	0.953	0.924
	Brown	QUINCY, IL	07	99	0.896	0.924
	Bureau	DE KALB, IL	03	99	0.912	0.924
	Calhoun	EAST ST. LOUIS, IL	12	12	0.974	0.974
	Carroll	NORTHWEST, IL	01	99	0.896	0.924
	Cass	QUINCY, IL	07	99	0.896	0.924
	Champaign	CHAMPAIGN-URBANA, IL	10	99	0.927	0.924
	Christian	SPRINGFIELD, IL	09	99	0.901	0.924
	Clark	DECATUR, IL	11	99	0.918	0.924
	Clay	SOUTHEAST IL	13	99	0.862	0.924
	Clinton	EAST ST. LOUIS, IL	12	12	0.974	0.974
	Coles	DECATUR, IL	11	99	0.918	0.924
	Cook	CHICAGO, IL	15	15	1.066	1.066
	Crawford	SOUTHEAST IL	13	99	0.862	0.924
	Cumberland	DECATUR, IL	11	99	0.918	0.924
	De Witt	NORMAL, IL	08	99	0.926	0.924
	DeKalb	DE KALB, IL	03	99	0.912	0.924
	Douglas	DECATUR, IL	11	99	0.918	0.924
	DuPage	SUBURBAN CHICAGO, IL	15	15	1.050	1.050
	Edgar	DECATUR, IL	11	99	0.918	0.924
	Edwards	SOUTHEAST IL	13	99	0.862	0.924
	Effingham	SOUTHEAST IL	13	99	0.862	0.924
	Fayette	SOUTHEAST IL	13	99	0.862	0.924
	Ford	KANKAKEE, IL	06	99	0.924	0.924
	Franklin	SOUTHERN IL	14	99	0.869	0.924
	Fulton	NORMAL, IL	08	99	0.926	0.924
	Gallatin	SOUTHERN IL	14	99	0.869	0.924
	Greene	QUINCY, IL	07	99	0.896	0.924
	Grundy	DE KALB, IL	03	99	0.912	0.924
	Hamilton	SOUTHEAST IL	13	99	0.862	0.924
	Hancock	QUINCY, IL	07	99	0.896	0.924
	Hardin	SOUTHERN IL	14	99	0.869	0.924
	Henderson	ROCK ISLAND, IL	04	99	0.914	0.924
	Henry	ROCK ISLAND, IL	04	99	0.914	0.924

ADDENDUM B

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State	County	January 1, 1996 Locality Name	Locality Number 1/1/96	Locality Number Proposed Option	GAF 1/1/96 Localities	GAF Policy Option Basic
	Iroquois	KANKAKEE, IL	06	99	0.924	0.924
	Jackson	SOUTHERN IL	14	99	0.869	0.924
	Jasper	SOUTHEAST IL	13	99	0.862	0.924
	Jefferson	SOUTHEAST IL	13	99	0.862	0.924
	Jersey	EAST ST. LOUIS, IL	12	12	0.974	0.974
	Jo Daviess	NORTHWEST, IL	01	99	0.899	0.924
	Johnson	SOUTHERN IL	14	99	0.869	0.924
	Kane	SUBURBAN CHICAGO, IL	15	15	1.050	1.050
	Kankakee	KANKAKEE, IL	06	99	0.924	0.924
	Kendall	DE KALB, IL	03	99	0.912	0.924
	Knox	ROCK ISLAND, IL	04	99	0.914	0.924
	La Salle	DE KALB, IL	03	99	0.912	0.924
	Lake	SUBURBAN CHICAGO, IL	15	15	1.050	1.050
	Lawrence	SOUTHEAST IL	13	99	0.862	0.924
	Lee	DE KALB, IL	03	99	0.912	0.924
	Livingston	KANKAKEE, IL	06	99	0.924	0.924
	Logan	NORMAL, IL	08	99	0.926	0.924
	Macon	DECATUR, IL	11	99	0.916	0.924
	Macoupin	EAST ST. LOUIS, IL	12	12	0.974	0.974
	Madison	EAST ST. LOUIS, IL	12	12	0.974	0.974
	Marion	SOUTHEAST IL	13	99	0.862	0.924
	Marshall	PEORIA, IL	05	99	0.938	0.924
	Mason	NORMAL, IL	08	99	0.926	0.924
	Massac	SOUTHERN IL	14	99	0.869	0.924
	McDonough	QUINCY, IL	07	99	0.898	0.924
	McHenry	ROCKFORD, IL	02	99	0.955	0.924
	McLean	NORMAL, IL	08	99	0.926	0.924
	Menard	SPRINGFIELD, IL	09	99	0.961	0.924
	Mercer	ROCK ISLAND, IL	04	99	0.914	0.924
	Monroe	EAST ST. LOUIS, IL	12	12	0.974	0.974
	Montgomery	EAST ST. LOUIS, IL	12	12	0.974	0.974
	Morgan	QUINCY, IL	07	99	0.866	0.924
	Moultrie	DECATUR, IL	11	99	0.916	0.924
	Ogle	NORTHWEST, IL	01	99	0.899	0.924
	Peoria	PEORIA, IL	05	99	0.938	0.924
	Perry	SOUTHERN IL	14	99	0.869	0.924
	Piatt	CHAMPAIGN-URBANA, IL	10	99	0.927	0.924
	Pike	QUINCY, IL	07	99	0.866	0.924
	Pope	SOUTHERN IL	14	99	0.869	0.924
	Pulaski	SOUTHERN IL	14	99	0.869	0.924
	Putnam	DE KALB, IL	05	99	0.912	0.924
	Randolph	EAST ST. LOUIS, IL	12	12	0.974	0.974
	Richland	SOUTHEAST IL	13	99	0.862	0.924
	Rock Island	ROCK ISLAND, IL	04	99	0.914	0.924
	Saline	SOUTHERN IL	14	99	0.869	0.924
	Sangamon	SPRINGFIELD, IL	09	99	0.961	0.924
	Schuyler	QUINCY, IL	07	99	0.866	0.924
	Scott	QUINCY, IL	07	99	0.866	0.924
	Shelby	DECATUR, IL	11	99	0.916	0.924
	St. Clair	EAST ST. LOUIS, IL	12	12	0.974	0.974
	Stark	ROCK ISLAND, IL	04	99	0.914	0.924
	Stephenson	NORTHWEST, IL	01	99	0.899	0.924
	Tazewell	NORMAL, IL	08	99	0.926	0.924
	Union	SOUTHERN IL	14	99	0.869	0.924
	Vermilion	CHAMPAIGN-URBANA, IL	10	99	0.927	0.924
	Wabash	SOUTHEAST IL	13	99	0.862	0.924
	Warren	ROCK ISLAND, IL	04	99	0.914	0.924
	Washington	EAST ST. LOUIS, IL	12	12	0.974	0.974
	Wayne	SOUTHEAST IL	13	99	0.862	0.924
	White	SOUTHEAST IL	13	99	0.862	0.924
	Whiteside	DE KALB, IL	03	99	0.912	0.924
	Will	SUBURBAN CHICAGO, IL	15	15	1.050	1.050
	Williamson	SOUTHERN IL	14	99	0.869	0.924
	Winnebago	ROCKFORD, IL	02	99	0.955	0.924
	Woodford	PEORIA, IL	05	99	0.938	0.924
INDIANA	Adams	REST OF IN	03	99	0.901	0.925
	Allen	METROPOLITAN IN	01	99	0.938	0.925
	Bartholomew	URBAN IN	02	99	0.912	0.925
	Benton	REST OF IN	03	99	0.901	0.925

ADDENDUM B

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State	County	January 1, 1996 Locality Name	Locality Number 1/1/96	Locality Number Proposed Option	GAF 1/1/96 Localities	GAF Policy Option Basic
	Blackford	REST OF IN	03	99	0.901	0.925
	Boone	REST OF IN	03	99	0.901	0.925
	Brown	REST OF IN	03	99	0.901	0.925
	Carroll	URBAN IN	02	99	0.912	0.925
	Cass	URBAN IN	02	99	0.912	0.925
	Clark	URBAN IN	02	99	0.912	0.925
	Clay	REST OF IN	03	99	0.901	0.925
	Clinton	REST OF IN	03	99	0.901	0.925
	Crawford	REST OF IN	03	99	0.901	0.925
	Daviess	URBAN IN	02	99	0.912	0.925
	De Kalb	REST OF IN	03	99	0.901	0.925
	Dearborn	REST OF IN	03	99	0.901	0.925
	Decatur	REST OF IN	03	99	0.901	0.925
	Delaware	METROPOLITAN IN	01	99	0.938	0.925
	Dubois	REST OF IN	03	99	0.901	0.925
	Elkhart	URBAN IN	02	99	0.912	0.925
	Fayette	REST OF IN	03	99	0.901	0.925
	Floyd	URBAN IN	02	99	0.912	0.925
	Fountain	REST OF IN	03	99	0.901	0.925
	Franklin	REST OF IN	03	99	0.901	0.925
	Fulton	REST OF IN	03	99	0.901	0.925
	Gibson	REST OF IN	03	99	0.901	0.925
	Grant	URBAN IN	02	99	0.912	0.925
	Greene	REST OF IN	03	99	0.901	0.925
	Hamilton	REST OF IN	03	99	0.901	0.925
	Hancock	URBAN IN	02	99	0.912	0.925
	Harrison	REST OF IN	03	99	0.901	0.925
	Hendricks	URBAN IN	02	99	0.912	0.925
	Henry	URBAN IN	02	99	0.912	0.925
	Howard	URBAN IN	02	99	0.912	0.925
	Huntington	REST OF IN	03	99	0.901	0.925
	Jackson	REST OF IN	03	99	0.901	0.925
	Jasper	REST OF IN	03	99	0.901	0.925
	Jay	REST OF IN	03	99	0.901	0.925
	Jefferson	REST OF IN	03	99	0.901	0.925
	Jennings	REST OF IN	03	99	0.901	0.925
	Johnson	URBAN IN	02	99	0.912	0.925
	Knox	URBAN IN	02	99	0.912	0.925
	Kosciusko	URBAN IN	02	99	0.912	0.925
	La Porte	METROPOLITAN IN	01	99	0.938	0.925
	Lagrange	URBAN IN	02	99	0.912	0.925
	Lake	METROPOLITAN IN	01	99	0.938	0.925
	Lawrance	URBAN IN	02	99	0.912	0.925
	Madison	METROPOLITAN IN	01	99	0.938	0.925
	Marion	METROPOLITAN IN	01	99	0.938	0.925
	Marshall	REST OF IN	03	99	0.901	0.925
	Martin	REST OF IN	03	99	0.901	0.925
	Miami	REST OF IN	03	99	0.901	0.925
	Monroe	URBAN IN	02	99	0.912	0.925
	Montgomery	REST OF IN	03	99	0.901	0.925
	Morgan	REST OF IN	03	99	0.901	0.925
	Newton	REST OF IN	03	99	0.901	0.925
	Noble	REST OF IN	03	99	0.901	0.925
	Ohio	REST OF IN	03	99	0.901	0.925
	Orange	REST OF IN	03	99	0.901	0.925
	Owen	REST OF IN	03	99	0.901	0.925
	Parke	REST OF IN	03	99	0.901	0.925
	Perry	REST OF IN	03	99	0.901	0.925
	Pike	REST OF IN	03	99	0.901	0.925
	Porter	METROPOLITAN IN	01	99	0.938	0.925
	Posey	REST OF IN	03	99	0.901	0.925
	Pulaski	REST OF IN	03	99	0.901	0.925
	Putnam	REST OF IN	03	99	0.901	0.925
	Randolph	REST OF IN	03	99	0.901	0.925
	Ripley	REST OF IN	03	99	0.901	0.925
	Rush	REST OF IN	03	99	0.901	0.925
	Scott	REST OF IN	03	99	0.901	0.925
	Shelby	METROPOLITAN IN	01	99	0.938	0.925
	Spencer	REST OF IN	03	99	0.901	0.925
	St. Joseph	URBAN IN	02	99	0.912	0.925

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State	County	January 1, 1996 Locality Name	Locality Number 1/1/96	Locality Number Proposed Option	GAF 1/1/96 Localities	GAF Policy Option Basic
	Starke	REST OF IN	03	99	0.901	0.925
	Steuben	REST OF IN	03	99	0.901	0.925
	Sullivan	REST OF IN	03	99	0.901	0.925
	Switzerland	REST OF IN	03	99	0.901	0.925
	Tippecanoe	URBAN IN	02	99	0.912	0.925
	Tipton	REST OF IN	03	99	0.901	0.925
	Union	REST OF IN	03	99	0.901	0.925
	Vanderburgh	METROPOLITAN IN	01	99	0.908	0.925
	Vermillion	REST OF IN	03	99	0.901	0.925
	Vigo	URBAN IN	02	99	0.912	0.925
	Wabash	REST OF IN	03	99	0.901	0.925
	Warren	REST OF IN	03	99	0.901	0.925
	Warrick	REST OF IN	03	99	0.901	0.925
	Washington	REST OF IN	03	99	0.901	0.925
	Wayne	URBAN IN	02	99	0.912	0.925
	Wells	URBAN IN	02	99	0.912	0.925
	White	REST OF IN	03	99	0.901	0.925
	Whitley	REST OF IN	03	99	0.901	0.925
IOWA	STATEWIDE	STATEWIDE	00	00	0.912	0.912
KANSAS	Allen	REST OF KANSAS	01	99	0.936	0.945
	Anderson	REST OF KANSAS	01	99	0.936	0.945
	Atchison	REST OF KANSAS	01	99	0.936	0.945
	Barber	REST OF KANSAS	01	99	0.936	0.945
	Barton	REST OF KANSAS	01	99	0.936	0.945
	Bourbon	REST OF KANSAS	01	99	0.936	0.945
	Brown	REST OF KANSAS	01	99	0.936	0.945
	Butler	REST OF KANSAS	01	99	0.936	0.945
	Chase	REST OF KANSAS	01	99	0.936	0.945
	Chautauqua	REST OF KANSAS	01	99	0.936	0.945
	Cherokee	REST OF KANSAS	01	99	0.936	0.945
	Cheyenne	REST OF KANSAS	01	99	0.936	0.945
	Clark	REST OF KANSAS	01	99	0.936	0.945
	Clay	REST OF KANSAS	01	99	0.936	0.945
	Cloud	REST OF KANSAS	01	99	0.936	0.945
	Coffey	REST OF KANSAS	01	99	0.936	0.945
	Comanche	REST OF KANSAS	01	99	0.936	0.945
	Cowley	REST OF KANSAS	01	99	0.936	0.945
	Crawford	REST OF KANSAS	01	99	0.936	0.945
	Decatur	REST OF KANSAS	01	99	0.936	0.945
	Dickinson	REST OF KANSAS	01	99	0.936	0.945
	Doniphan	REST OF KANSAS	01	99	0.936	0.945
	Douglas	REST OF KANSAS	01	99	0.936	0.945
	Edwards	REST OF KANSAS	01	99	0.936	0.945
	Elk	REST OF KANSAS	01	99	0.936	0.945
	Ellis	REST OF KANSAS	01	99	0.936	0.945
	Ellsworth	REST OF KANSAS	01	99	0.936	0.945
	Finney	REST OF KANSAS	01	99	0.936	0.945
	Ford	REST OF KANSAS	01	99	0.936	0.945
	Franklin	REST OF KANSAS	01	99	0.936	0.945
	Geary	REST OF KANSAS	01	99	0.936	0.945
	Gove	REST OF KANSAS	01	99	0.936	0.945
	Graham	REST OF KANSAS	01	99	0.936	0.945
	Grant	REST OF KANSAS	01	99	0.936	0.945
	Gray	REST OF KANSAS	01	99	0.936	0.945
	Greeley	REST OF KANSAS	01	99	0.936	0.945
	Greenwood	REST OF KANSAS	01	99	0.936	0.945
	Hamilton	REST OF KANSAS	01	99	0.936	0.945
	Harper	REST OF KANSAS	01	99	0.936	0.945
	Harvey	REST OF KANSAS	01	99	0.936	0.945
	Haskell	REST OF KANSAS	01	99	0.936	0.945
	Hodgeman	REST OF KANSAS	01	99	0.936	0.945
	Jackson	REST OF KANSAS	01	99	0.936	0.945
	Jefferson	REST OF KANSAS	01	99	0.936	0.945
	Jewell	REST OF KANSAS	01	99	0.936	0.945
	Johnson	SUBURBAN KANSAS CITY, KANSAS	04	99	0.982	0.945
	Kearny	REST OF KANSAS	01	99	0.936	0.945
	Kingman	REST OF KANSAS	01	99	0.936	0.945
	Kiowa	REST OF KANSAS	01	99	0.936	0.945

ADDENDUM B

MEDICARE FEE SCHEDULE AREAS (LOCALITIES) AND 1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs), CURRENT AND PROPOSED OPTION BY STATE AND COUNTY/COUNTY PART

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State	County	January 1, 1996 Locality Name	Locality Number 1/1/96	Locality Number Proposed Option	GAF 1/1/96 Localities	GAF Policy Option Basic
	Labette	REST OF KANSAS	01	99	0.936	0.945
	Lane	REST OF KANSAS	01	99	0.936	0.945
	Leavenworth	REST OF KANSAS	01	99	0.936	0.945
	Lincoln	REST OF KANSAS	01	99	0.936	0.945
	Linn	REST OF KANSAS	01	99	0.936	0.945
	Logan	REST OF KANSAS	01	99	0.936	0.945
	Lyon	REST OF KANSAS	01	99	0.936	0.945
	Marion	REST OF KANSAS	01	99	0.936	0.945
	Marshall	REST OF KANSAS	01	99	0.936	0.945
	McPherson	REST OF KANSAS	01	99	0.936	0.945
	Meade	REST OF KANSAS	01	99	0.936	0.945
	Miami	REST OF KANSAS	01	99	0.936	0.945
	Mitchell	REST OF KANSAS	01	99	0.936	0.945
	Montgomery	REST OF KANSAS	01	99	0.936	0.945
	Morris	REST OF KANSAS	01	99	0.936	0.945
	Morton	REST OF KANSAS	01	99	0.936	0.945
	Nemaha	REST OF KANSAS	01	99	0.936	0.945
	Neosho	REST OF KANSAS	01	99	0.936	0.945
	Ness	REST OF KANSAS	01	99	0.936	0.945
	Norton	REST OF KANSAS	01	99	0.936	0.945
	Osage	REST OF KANSAS	01	99	0.936	0.945
	Osborne	REST OF KANSAS	01	99	0.936	0.945
	Ottawa	REST OF KANSAS	01	99	0.936	0.945
	Pawnee	REST OF KANSAS	01	99	0.936	0.945
	Phillips	REST OF KANSAS	01	99	0.936	0.945
	Pottawatomie	REST OF KANSAS	01	99	0.936	0.945
	Pratt	REST OF KANSAS	01	99	0.936	0.945
	Rawlins	REST OF KANSAS	01	99	0.936	0.945
	Reno	REST OF KANSAS	01	99	0.936	0.945
	Republic	REST OF KANSAS	01	99	0.936	0.945
	Rice	REST OF KANSAS	01	99	0.936	0.945
	Riley	REST OF KANSAS	01	99	0.936	0.945
	Rooks	REST OF KANSAS	01	99	0.936	0.945
	Rush	REST OF KANSAS	01	99	0.936	0.945
	Russell	REST OF KANSAS	01	99	0.936	0.945
	Saline	REST OF KANSAS	01	99	0.936	0.945
	Scott	REST OF KANSAS	01	99	0.936	0.945
	Sedgwick	REST OF KANSAS	01	99	0.936	0.945
	Seward	REST OF KANSAS	01	99	0.936	0.945
	Shawnee	REST OF KANSAS	01	99	0.936	0.945
	Sheridan	REST OF KANSAS	01	99	0.936	0.945
	Sherman	REST OF KANSAS	01	99	0.936	0.945
	Smith	REST OF KANSAS	01	99	0.936	0.945
	Stafford	REST OF KANSAS	01	99	0.936	0.945
	Stanton	REST OF KANSAS	01	99	0.936	0.945
	Stevens	REST OF KANSAS	01	99	0.936	0.945
	Sumner	REST OF KANSAS	01	99	0.936	0.945
	Thomas	REST OF KANSAS	01	99	0.936	0.945
	Trego	REST OF KANSAS	01	99	0.936	0.945
	Wabaunsee	REST OF KANSAS	01	99	0.936	0.945
	Wallace	REST OF KANSAS	01	99	0.936	0.945
	Washington	REST OF KANSAS	01	99	0.936	0.945
	Wichita	REST OF KANSAS	01	99	0.936	0.945
	Wilson	REST OF KANSAS	01	99	0.936	0.945
	Woodson	REST OF KANSAS	01	99	0.936	0.945
	Wyandotte	KANSAS CITY, KANSAS	05	99	0.982	0.945
KENTUCKY	Adair	REST OF KENTUCKY	03	99	0.895	0.921
	Allen	REST OF KENTUCKY	03	99	0.895	0.921
*	Anderson	5M CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Anderson	REST OF KENTUCKY	03	99	0.895	0.921
	Ballard	REST OF KENTUCKY	03	99	0.895	0.921
*	Barren	5M CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Barren	REST OF KENTUCKY	03	99	0.895	0.921
	Bath	REST OF KENTUCKY	03	99	0.895	0.921
*	Bell	5M CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Bell	REST OF KENTUCKY	03	99	0.895	0.921
*	Boone	5M CITIES (CITY LIMITS) KY	02	99	0.908	0.921
*	Boone	REST OF KENTUCKY	03	99	0.895	0.921
*	Bourbon	5M CITIES (CITY LIMITS) KY	02	99	0.908	0.921

ADDENDUM B

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	* Bourbon	REST OF KENTUCKY	03	99	0.995	0.921
	* Boyd	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Boyd	REST OF KENTUCKY	03	99	0.995	0.921
	* Boyle	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Boyle	REST OF KENTUCKY	03	99	0.995	0.921
	Bracken	REST OF KENTUCKY	03	99	0.995	0.921
	Breathitt	REST OF KENTUCKY	03	99	0.995	0.921
	Breckinridge	REST OF KENTUCKY	03	99	0.995	0.921
	* Bullitt	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Bullitt	REST OF KENTUCKY	03	99	0.995	0.921
	Butler	REST OF KENTUCKY	03	99	0.995	0.921
	Caldwell	REST OF KENTUCKY	03	99	0.995	0.921
	* Calloway	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Calloway	REST OF KENTUCKY	03	99	0.995	0.921
	* Campbell	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Campbell	REST OF KENTUCKY	03	99	0.995	0.921
	Carlisle	REST OF KENTUCKY	03	99	0.995	0.921
	Carroll	REST OF KENTUCKY	03	99	0.995	0.921
	* Carter	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Carter	REST OF KENTUCKY	03	99	0.995	0.921
	Casey	REST OF KENTUCKY	03	99	0.995	0.921
	* Christian	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Christian	REST OF KENTUCKY	03	99	0.995	0.921
	* Clark	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Clark	REST OF KENTUCKY	03	99	0.995	0.921
	Clay	REST OF KENTUCKY	03	99	0.995	0.921
	Clinton	REST OF KENTUCKY	03	99	0.995	0.921
	Crittenden	REST OF KENTUCKY	03	99	0.995	0.921
	Cumberland	REST OF KENTUCKY	03	99	0.995	0.921
	* Daviess	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Daviess	REST OF KENTUCKY	03	99	0.995	0.921
	Edmonson	REST OF KENTUCKY	03	99	0.995	0.921
	Elliott	REST OF KENTUCKY	03	99	0.995	0.921
	Estill	REST OF KENTUCKY	03	99	0.995	0.921
	Fayette	LEXINGTON & LOUISVILLE, KY	01	99	0.948	0.921
	Fleming	REST OF KENTUCKY	03	99	0.995	0.921
	* Floyd	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Floyd	REST OF KENTUCKY	03	99	0.995	0.921
	* Franklin	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Franklin	REST OF KENTUCKY	03	99	0.995	0.921
	Fulton	REST OF KENTUCKY	03	99	0.995	0.921
	Gallatin	REST OF KENTUCKY	03	99	0.995	0.921
	* Garrard	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Garrard	REST OF KENTUCKY	03	99	0.995	0.921
	Grant	REST OF KENTUCKY	03	99	0.995	0.921
	* Graves	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Graves	REST OF KENTUCKY	03	99	0.995	0.921
	Grayson	REST OF KENTUCKY	03	99	0.995	0.921
	Green	REST OF KENTUCKY	03	99	0.995	0.921
	* Greenup	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Greenup	REST OF KENTUCKY	03	99	0.995	0.921
	Hancock	REST OF KENTUCKY	03	99	0.995	0.921
	* Hardin	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Hardin	REST OF KENTUCKY	03	99	0.995	0.921
	* Harlan	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Harlan	REST OF KENTUCKY	03	99	0.995	0.921
	Harrison	REST OF KENTUCKY	03	99	0.995	0.921
	Hart	REST OF KENTUCKY	03	99	0.995	0.921
	* Henderson	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Henderson	REST OF KENTUCKY	03	99	0.995	0.921
	Henry	REST OF KENTUCKY	03	99	0.995	0.921
	Hickman	REST OF KENTUCKY	03	99	0.995	0.921
	* Hopkins	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Hopkins	REST OF KENTUCKY	03	99	0.995	0.921
	Jackson	REST OF KENTUCKY	03	99	0.995	0.921
	* Jefferson	LEXINGTON & LOUISVILLE, KY	01	99	0.948	0.921
	* Jefferson	REST OF KENTUCKY	03	99	0.995	0.921
	* Jessamine	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Jessamine	REST OF KENTUCKY	03	99	0.995	0.921
	Johnson	REST OF KENTUCKY	03	99	0.995	0.921

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	* Kenton	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Kenton	REST OF KENTUCKY	03	99	0.995	0.921
	Knott	REST OF KENTUCKY	03	99	0.995	0.921
	Knox	REST OF KENTUCKY	03	99	0.995	0.921
	Larue	REST OF KENTUCKY	03	99	0.995	0.921
	Laurel	REST OF KENTUCKY	03	99	0.995	0.921
	* Lawrence	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Lawrence	REST OF KENTUCKY	03	99	0.995	0.921
	Lee	REST OF KENTUCKY	03	99	0.995	0.921
	Leslie	REST OF KENTUCKY	03	99	0.995	0.921
	* Letcher	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Letcher	REST OF KENTUCKY	03	99	0.995	0.921
	Lewis	REST OF KENTUCKY	03	99	0.995	0.921
	* Lincoln	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Lincoln	REST OF KENTUCKY	03	99	0.995	0.921
	Livingston	REST OF KENTUCKY	03	99	0.995	0.921
	Logan	REST OF KENTUCKY	03	99	0.995	0.921
	Lyon	REST OF KENTUCKY	03	99	0.995	0.921
	* Madison	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Madison	REST OF KENTUCKY	03	99	0.995	0.921
	Magoffin	REST OF KENTUCKY	03	99	0.995	0.921
	Marion	REST OF KENTUCKY	03	99	0.995	0.921
	Marshall	REST OF KENTUCKY	03	99	0.995	0.921
	Martin	REST OF KENTUCKY	03	99	0.995	0.921
	Mason	REST OF KENTUCKY	03	99	0.995	0.921
	* McCracken	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* McCracken	REST OF KENTUCKY	03	99	0.995	0.921
	McCreary	REST OF KENTUCKY	03	99	0.995	0.921
	McLean	REST OF KENTUCKY	03	99	0.995	0.921
	Meade	REST OF KENTUCKY	03	99	0.995	0.921
	Menifee	REST OF KENTUCKY	03	99	0.995	0.921
	Mercer	REST OF KENTUCKY	03	99	0.995	0.921
	Metcalfe	REST OF KENTUCKY	03	99	0.995	0.921
	Monroe	REST OF KENTUCKY	03	99	0.995	0.921
	* Montgomery	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Montgomery	REST OF KENTUCKY	03	99	0.995	0.921
	Morgan	REST OF KENTUCKY	03	99	0.995	0.921
	Muhlenberg	REST OF KENTUCKY	03	99	0.995	0.921
	* Nelson	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Nelson	REST OF KENTUCKY	03	99	0.995	0.921
	* Nicholas	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Nicholas	REST OF KENTUCKY	03	99	0.995	0.921
	Ohio	REST OF KENTUCKY	03	99	0.995	0.921
	* Oldham	LEXINGTON & LOUISVILLE, KY	01	99	0.948	0.921
	* Oldham	REST OF KENTUCKY	03	99	0.995	0.921
	Owen	REST OF KENTUCKY	03	99	0.995	0.921
	Owsley	REST OF KENTUCKY	03	99	0.995	0.921
	Pendleton	REST OF KENTUCKY	03	99	0.995	0.921
	* Perry	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Perry	REST OF KENTUCKY	03	99	0.995	0.921
	* Pike	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Pike	REST OF KENTUCKY	03	99	0.995	0.921
	* Powell	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Powell	REST OF KENTUCKY	03	99	0.995	0.921
	Pulaski	REST OF KENTUCKY	03	99	0.995	0.921
	Robertson	REST OF KENTUCKY	03	99	0.995	0.921
	Rockcastle	REST OF KENTUCKY	03	99	0.995	0.921
	* Rowan	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Rowan	REST OF KENTUCKY	03	99	0.995	0.921
	Russell	REST OF KENTUCKY	03	99	0.995	0.921
	* Scott	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Scott	REST OF KENTUCKY	03	99	0.995	0.921
	* Shelby	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Shelby	REST OF KENTUCKY	03	99	0.995	0.921
	Simpson	REST OF KENTUCKY	03	99	0.995	0.921
	Spencer	REST OF KENTUCKY	03	99	0.995	0.921
	Taylor	REST OF KENTUCKY	03	99	0.995	0.921
	* Todd	SM CITIES (CITY LIMITS) KY	02	99	0.908	0.921
	* Todd	REST OF KENTUCKY	03	99	0.995	0.921
	Trigg	REST OF KENTUCKY	03	99	0.995	0.921

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State	County	January 1, 1996 Locality Name	Locality Number 1/1/96	Locality Number Proposed Option	GAF 1/1/96 Localities	GAF Policy Option Basic
	Trimble	REST OF KENTUCKY	03	00	0.925	0.921
	* Union	SM CITIES (CITY LIMITS) KY	02	00	0.926	0.921
	* Union	REST OF KENTUCKY	03	00	0.925	0.921
	* Warren	SM CITIES (CITY LIMITS) KY	02	00	0.926	0.921
	* Warren	REST OF KENTUCKY	03	00	0.925	0.921
	Washington	REST OF KENTUCKY	03	00	0.925	0.921
	Wayne	REST OF KENTUCKY	03	00	0.925	0.921
	Webster	REST OF KENTUCKY	03	00	0.925	0.921
	Whitley	REST OF KENTUCKY	03	00	0.925	0.921
	Wolfe	REST OF KENTUCKY	03	00	0.925	0.921
	* Woodford	SM CITIES (CITY LIMITS) KY	02	00	0.926	0.921
	* Woodford	REST OF KENTUCKY	03	00	0.925	0.921
LOUISIANA	Acadia	REST OF LA	50	00	0.915	0.926
	Allen	REST OF LA	50	00	0.915	0.926
	Ascension	REST OF LA	50	00	0.915	0.926
	Assumption	REST OF LA	50	00	0.915	0.926
	Avoyelles	REST OF LA	50	00	0.915	0.926
	Beauregard	REST OF LA	50	00	0.915	0.926
	Bienville	REST OF LA	50	00	0.915	0.926
	Bossier	SHREVEPORT, LA	02	00	0.936	0.926
	Caddo	SHREVEPORT, LA	02	00	0.936	0.926
	Calcasieu	LAKE CHARLES, LA	04	00	0.941	0.926
	Caldwell	REST OF LA	50	00	0.915	0.926
	Cameron	REST OF LA	50	00	0.915	0.926
	Catahoula	REST OF LA	50	00	0.915	0.926
	Claiborne	REST OF LA	50	00	0.915	0.926
	Concordia	REST OF LA	50	00	0.915	0.926
	De Soto	REST OF LA	50	00	0.915	0.926
	East Baton Rouge	BATON ROUGE, LA	03	00	0.944	0.926
	East Carroll	REST OF LA	50	00	0.915	0.926
	East Feliciana	REST OF LA	50	00	0.915	0.926
	Evangeline	REST OF LA	50	00	0.915	0.926
	Franklin	REST OF LA	50	00	0.915	0.926
	Grant	REST OF LA	50	00	0.915	0.926
	Iberia	LAFAYETTE, LA	06	00	0.921	0.926
	Iberville	REST OF LA	50	00	0.915	0.926
	Jackson	REST OF LA	50	00	0.915	0.926
	Jefferson	NEW ORLEANS, LA	01	01	0.977	0.977
	Jefferson Davis	REST OF LA	50	00	0.915	0.926
	La Salle	REST OF LA	50	00	0.915	0.926
	Lafayette	LAFAYETTE, LA	06	00	0.921	0.926
	Lafourche	REST OF LA	50	00	0.915	0.926
	Lincoln	REST OF LA	50	00	0.915	0.926
	Livingston	REST OF LA	50	00	0.915	0.926
	Madison	REST OF LA	50	00	0.915	0.926
	Morehouse	REST OF LA	50	00	0.915	0.926
	Natchitoches	REST OF LA	50	00	0.915	0.926
	Orleans	NEW ORLEANS, LA	01	01	0.977	0.977
	Ouachita	MONROE, LA	05	00	0.918	0.926
	Plaquemines	NEW ORLEANS, LA	01	01	0.977	0.977
	Pointe Coupee	REST OF LA	50	00	0.915	0.926
	Rapides	ALEXANDRIA, LA	07	00	0.917	0.926
	Red River	REST OF LA	50	00	0.915	0.926
	Richland	REST OF LA	50	00	0.915	0.926
	Sabine	REST OF LA	50	00	0.915	0.926
	St. Bernard	NEW ORLEANS, LA	01	01	0.977	0.977
	St. Charles	REST OF LA	50	00	0.915	0.926
	St. Helena	REST OF LA	50	00	0.915	0.926
	St. James	REST OF LA	50	00	0.915	0.926
	St. John the Baptis	REST OF LA	50	00	0.915	0.926
	St. Landry	REST OF LA	50	00	0.915	0.926
	St. Martin	LAFAYETTE, LA	06	00	0.921	0.926
	St. Mary	REST OF LA	50	00	0.915	0.926
	St. Tammany	REST OF LA	50	00	0.915	0.926
	Tangipahoa	REST OF LA	50	00	0.915	0.926
	Tensas	REST OF LA	50	00	0.915	0.926
	Terrebonne	REST OF LA	50	00	0.915	0.926
	Union	REST OF LA	50	00	0.915	0.926
	Vermilion	REST OF LA	50	00	0.915	0.926

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MEDICARE FEE SCHEDULE AREAS (LOCALITIES) AND 1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs), CURRENT AND PROPOSED OPTION BY STATE AND COUNTY/COUNTY PART

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State	County	January 1, 1996 Locality Name	Locality Number 1/1/96	Locality Number Proposed Option	GAF 1/1/96 Localities	GAF Policy Option Basic
	Vernon	REST OF LA	50	00	0.915	0.926
	Washington	REST OF LA	50	00	0.915	0.926
	Webster	REST OF LA	50	00	0.915	0.926
	West Baton Rouge	BATON ROUGE, LA	03	00	0.944	0.926
	West Carroll	REST OF LA	50	00	0.915	0.926
	West Feliciana	REST OF LA	50	00	0.915	0.926
	Winn	REST OF LA	50	00	0.915	0.926
MAINE	Androscoggin	CENTRAL MAINE	02	00	0.936	0.937
	Aroostook	NORTHERN MAINE	01	00	0.936	0.937
	Cumberland	SOUTHERN MAINE	03	03	0.992	0.992
	Franklin	NORTHERN MAINE	01	00	0.936	0.937
	Hancock	NORTHERN MAINE	01	00	0.936	0.937
	Kennebec	CENTRAL MAINE	02	00	0.936	0.937
	Knox	CENTRAL MAINE	02	00	0.936	0.937
	Lincoln	CENTRAL MAINE	02	00	0.936	0.937
	Oxford	CENTRAL MAINE	02	00	0.936	0.937
	Penobscot	NORTHERN MAINE	01	00	0.936	0.937
	Piscataquis	NORTHERN MAINE	01	00	0.936	0.937
	Sagadahoc	CENTRAL MAINE	02	00	0.936	0.937
	Somerset	NORTHERN MAINE	01	00	0.936	0.937
	Waldo	NORTHERN MAINE	01	00	0.936	0.937
	Washington	NORTHERN MAINE	01	00	0.936	0.937
	York	SOUTHERN MAINE	03	03	0.992	0.992
MARYLAND	Allegany	WESTERN MD	02	00	0.955	0.964
	Anne Arundel	BALTIMORE/SURR. CNTYS, MD	01	01	1.032	1.032
	Baltimore	BALTIMORE/SURR. CNTYS, MD	01	01	1.032	1.032
	Baltimore City	BALTIMORE/SURR. CNTYS, MD	01	01	1.032	1.032
	Calvert	SOUTH & E. SHORE MD	03	00	0.974	0.964
	Caroline	SOUTH & E. SHORE MD	03	00	0.974	0.964
	Carroll	BALTIMORE/SURR. CNTYS, MD	01	01	1.032	1.032
	Cecil	SOUTH & E. SHORE MD	03	00	0.974	0.964
	Charles	SOUTH & E. SHORE MD	03	00	0.974	0.964
	Dorchester	SOUTH & E. SHORE MD	03	00	0.974	0.964
	Frederick	WESTERN MD	02	00	0.955	0.964
	Garrett	WESTERN MD	02	00	0.955	0.964
	Harford	BALTIMORE/SURR. CNTYS, MD	01	01	1.032	1.032
	Howard	BALTIMORE/SURR. CNTYS, MD	01	01	1.032	1.032
	Kent	SOUTH & E. SHORE MD	03	00	0.974	0.964
	Queen Anne's	SOUTH & E. SHORE MD	03	00	0.974	0.964
	Somerset	SOUTH & E. SHORE MD	03	00	0.974	0.964
	St. Mary's	SOUTH & E. SHORE MD	03	00	0.974	0.964
	Talbot	SOUTH & E. SHORE MD	03	00	0.974	0.964
	Washington	WESTERN MD	02	00	0.955	0.964
	Wicomico	SOUTH & E. SHORE MD	03	00	0.974	0.964
	Worcester	SOUTH & E. SHORE MD	03	00	0.974	0.964
MASSACHUSETTS	Barnstable	MASS SUBURBS/RURAL CITIES	02	00	1.048	1.041
	* Berkshire	URBAN MASS	01	00	1.054	1.041
	* Berkshire	MASS SUBURBS/RURAL CITIES	02	00	1.048	1.041
	* Bristol	URBAN MASS	01	00	1.054	1.041
	* Bristol	MASS SUBURBS/RURAL CITIES	02	00	1.048	1.041
	Dukes	MASS SUBURBS/RURAL CITIES	02	00	1.048	1.041
	* Essex	URBAN MASS	01	00	1.054	1.041
	* Essex	MASS SUBURBS/RURAL CITIES	02	00	1.048	1.041
	Franklin	MASS SUBURBS/RURAL CITIES	02	00	1.048	1.041
	* Hampden	URBAN MASS	01	00	1.054	1.041
	* Hampden	MASS SUBURBS/RURAL CITIES	02	00	1.048	1.041
	* Hampshire	URBAN MASS	01	00	1.054	1.041
	* Hampshire	MASS SUBURBS/RURAL CITIES	02	00	1.048	1.041
	* Middlesex	URBAN MASS	01	01	1.054	1.106
	* Middlesex	MASS SUBURBS/RURAL CITIES	02	01	1.048	1.106
	Nantucket	MASS SUBURBS/RURAL CITIES	02	00	1.048	1.041
	* Norfolk	URBAN MASS	01	01	1.054	1.106
	* Norfolk	MASS SUBURBS/RURAL CITIES	02	01	1.048	1.106
	* Plymouth	URBAN MASS	01	00	1.054	1.041
	* Plymouth	MASS SUBURBS/RURAL CITIES	02	00	1.048	1.041
	Suffolk	URBAN MASS	01	01	1.054	1.106
	* Worcester	URBAN MASS	01	00	1.054	1.041
	* Worcester	MASS SUBURBS/RURAL CITIES	02	00	1.048	1.041

ADDENDUM B

MEDICARE FEE SCHEDULE AREAS (LOCALITIES) AND 1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs), CURRENT AND PROPOSED OPTION BY STATE AND COUNTY/COUNTY PART

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
MICHIGAN	Alcona	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Alger	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Allegan	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Alpena	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Antrim	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Arenac	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Baraga	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Barry	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Bay	MICHIGAN, NOT DETROIT	03	99	1.013	1.012
	Benzie	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Berrien	MICHIGAN, NOT DETROIT	03	99	1.013	1.012
	Branch	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Calhoun	MICHIGAN, NOT DETROIT	03	99	1.013	1.012
	Cass	MICHIGAN, NOT DETROIT	03	99	1.013	1.012
	Charlevoix	MICHIGAN, NOT DETROIT	03	99	1.013	1.012
	Cheboygan	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Chippewa	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Clare	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Clinton	MICHIGAN, NOT DETROIT	03	99	1.013	1.012
	Crawford	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Delta	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Dickinson	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Eaton	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Emmet	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Genesee	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Gladwin	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Gogebic	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Grand Traverse	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Gratiot	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Hillsdale	MICHIGAN, NOT DETROIT	03	99	1.013	1.012
	Houghton	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Huron	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Ingham	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Ionia	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Iosco	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Iron	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Isabella	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Jackson	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Kalamazoo	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Kalkaska	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Kent	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Keweenaw	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Lake	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Lapeer	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Leelanau	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Lenawee	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Livingston	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Luce	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Mackinac	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Macomb	DETROIT, MI	01	01	1.137	1.137
	Manistee	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Marquette	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Mason	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Mecosta	MICHIGAN, NOT DETROIT	03	99	1.013	1.012
	Menominee	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Midland	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Missaukee	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Monroe	MICHIGAN, NOT DETROIT	03	99	1.013	1.012
	Montcalm	MICHIGAN, NOT DETROIT	03	99	1.013	1.012
	Montmorency	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Muskegon	MICHIGAN, NOT DETROIT	03	99	1.013	1.012
	Newaygo	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Oakland	DETROIT, MI	01	01	1.137	1.137
	Oceana	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Ogemaw	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Ontonagon	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Oscoda	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Otsego	MICHIGAN, NOT DETROIT	02	99	1.013	1.012

ADDENDUM B

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Ottawa	MICHIGAN, NOT DETROIT	03	99	1.013	1.012
	Presque Isle	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Roscommon	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Saginaw	MICHIGAN, NOT DETROIT	03	99	1.013	1.012
	Sanilac	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Schoolcraft	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Shiawassee	MICHIGAN, NOT DETROIT	03	99	1.013	1.012
	St. Clair	MICHIGAN, NOT DETROIT	03	99	1.013	1.012
	St. Joseph	MICHIGAN, NOT DETROIT	03	99	1.013	1.012
	Tuscola	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
	Van Buren	MICHIGAN, NOT DETROIT	03	99	1.013	1.012
	Washtenaw	DETROIT, MI	01	01	1.137	1.137
	Wayne	DETROIT, MI	01	01	1.137	1.137
	Wexford	MICHIGAN, NOT DETROIT	02	99	1.013	1.012
MINNESOTA	STATEWIDE	STATEWIDE	99	00	0.991	0.991
MISSISSIPPI	Adams	REST OF MISSISSIPPI	01	99	0.863	0.860
	Alcorn	REST OF MISSISSIPPI	01	99	0.863	0.860
	Amite	REST OF MISSISSIPPI	01	99	0.863	0.860
	Attala	REST OF MISSISSIPPI	01	99	0.863	0.860
	Benton	REST OF MISSISSIPPI	01	99	0.863	0.860
	Bolivar	REST OF MISSISSIPPI	01	99	0.863	0.860
	Calhoun	REST OF MISSISSIPPI	01	99	0.863	0.860
	Carroll	REST OF MISSISSIPPI	01	99	0.863	0.860
	Chickasaw	REST OF MISSISSIPPI	01	99	0.863	0.860
	Choctaw	REST OF MISSISSIPPI	01	99	0.863	0.860
	Claiborne	REST OF MISSISSIPPI	01	99	0.863	0.860
	Clarke	REST OF MISSISSIPPI	01	99	0.863	0.860
	Clay	REST OF MISSISSIPPI	01	99	0.863	0.860
	Coahoma	REST OF MISSISSIPPI	01	99	0.863	0.860
	Copiah	REST OF MISSISSIPPI	01	99	0.863	0.860
	Covington	REST OF MISSISSIPPI	01	99	0.863	0.860
	DeSoto	REST OF MISSISSIPPI	01	99	0.863	0.860
*	Forrest	REST OF MISSISSIPPI	01	99	0.863	0.860
*	Forrest	URBAN MISSISSIPPI	02	99	0.915	0.860
	Franklin	REST OF MISSISSIPPI	01	99	0.863	0.860
	George	REST OF MISSISSIPPI	01	99	0.863	0.860
	Greene	REST OF MISSISSIPPI	01	99	0.863	0.860
	Grenada	REST OF MISSISSIPPI	01	99	0.863	0.860
*	Hancock	REST OF MISSISSIPPI	01	99	0.863	0.860
*	Hancock	URBAN MISSISSIPPI	02	99	0.915	0.860
*	Harrison	REST OF MISSISSIPPI	01	99	0.863	0.860
*	Harrison	URBAN MISSISSIPPI	02	99	0.915	0.860
*	Hinds	REST OF MISSISSIPPI	01	99	0.863	0.860
*	Hinds	URBAN MISSISSIPPI	02	99	0.915	0.860
	Holmes	REST OF MISSISSIPPI	01	99	0.863	0.860
	Humphreys	REST OF MISSISSIPPI	01	99	0.863	0.860
	Issaquena	REST OF MISSISSIPPI	01	99	0.863	0.860
	Itawamba	REST OF MISSISSIPPI	01	99	0.863	0.860
*	Jackson	REST OF MISSISSIPPI	01	99	0.863	0.860
*	Jackson	URBAN MISSISSIPPI	02	99	0.915	0.860
	Jasper	REST OF MISSISSIPPI	01	99	0.863	0.860
	Jefferson	REST OF MISSISSIPPI	01	99	0.863	0.860
	Jefferson Davis	REST OF MISSISSIPPI	01	99	0.863	0.860
	Jones	REST OF MISSISSIPPI	01	99	0.863	0.860
	Kemper	REST OF MISSISSIPPI	01	99	0.863	0.860
	Lafayette	REST OF MISSISSIPPI	01	99	0.863	0.860
	Lamar	REST OF MISSISSIPPI	01	99	0.863	0.860
*	Lauderdale	REST OF MISSISSIPPI	01	99	0.863	0.860
*	Lauderdale	URBAN MISSISSIPPI	02	99	0.915	0.860
	Lawrence	REST OF MISSISSIPPI	01	99	0.863	0.860
	Leake	REST OF MISSISSIPPI	01	99	0.863	0.860
*	Lee	REST OF MISSISSIPPI	01	99	0.863	0.860
*	Lee	URBAN MISSISSIPPI	02	99	0.915	0.860
	Leflore	REST OF MISSISSIPPI	01	99	0.863	0.860
	Lincoln	REST OF MISSISSIPPI	01	99	0.863	0.860
	Lowndes	REST OF MISSISSIPPI	01	99	0.863	0.860
	Madison	REST OF MISSISSIPPI	01	99	0.863	0.860
	Marion	REST OF MISSISSIPPI	01	99	0.863	0.860

ADDENDUM B

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Marshall	REST OF MISSISSIPPI	01	99	0.883	0.899
	Monroe	REST OF MISSISSIPPI	01	99	0.883	0.899
	Montgomery	REST OF MISSISSIPPI	01	99	0.883	0.899
	Neshoba	REST OF MISSISSIPPI	01	99	0.883	0.899
	Newton	REST OF MISSISSIPPI	01	99	0.883	0.899
	Noxubee	REST OF MISSISSIPPI	01	99	0.883	0.899
	Oktibbeha	REST OF MISSISSIPPI	01	99	0.883	0.899
	Panola	REST OF MISSISSIPPI	01	99	0.883	0.899
	Pearl River	REST OF MISSISSIPPI	01	99	0.883	0.899
	Perry	REST OF MISSISSIPPI	01	99	0.883	0.899
	Pike	REST OF MISSISSIPPI	01	99	0.883	0.899
	Pontotoc	REST OF MISSISSIPPI	01	99	0.883	0.899
	Prentiss	REST OF MISSISSIPPI	01	99	0.883	0.899
	Quitman	REST OF MISSISSIPPI	01	99	0.883	0.899
	Rankin	REST OF MISSISSIPPI	01	99	0.883	0.899
*	Rankin	URBAN MISSISSIPPI	02	99	0.913	0.899
	Scott	REST OF MISSISSIPPI	01	99	0.883	0.899
	Sharkey	REST OF MISSISSIPPI	01	99	0.883	0.899
	Simpson	REST OF MISSISSIPPI	01	99	0.883	0.899
	Smith	REST OF MISSISSIPPI	01	99	0.883	0.899
	Stone	REST OF MISSISSIPPI	01	99	0.883	0.899
	Sunflower	REST OF MISSISSIPPI	01	99	0.883	0.899
	Tallahatchie	REST OF MISSISSIPPI	01	99	0.883	0.899
	Tate	REST OF MISSISSIPPI	01	99	0.883	0.899
	Tippah	REST OF MISSISSIPPI	01	99	0.883	0.899
	Tishomingo	REST OF MISSISSIPPI	01	99	0.883	0.899
	Tunica	REST OF MISSISSIPPI	01	99	0.883	0.899
	Union	REST OF MISSISSIPPI	01	99	0.883	0.899
	Walthall	REST OF MISSISSIPPI	01	99	0.883	0.899
	Warren	REST OF MISSISSIPPI	01	99	0.883	0.899
	Washington	REST OF MISSISSIPPI	01	99	0.883	0.899
	Wayne	REST OF MISSISSIPPI	01	99	0.883	0.899
	Webster	REST OF MISSISSIPPI	01	99	0.883	0.899
	Wilkinson	REST OF MISSISSIPPI	01	99	0.883	0.899
	Winston	REST OF MISSISSIPPI	01	99	0.883	0.899
	Yalobusha	REST OF MISSISSIPPI	01	99	0.883	0.899
	Yazoo	REST OF MISSISSIPPI	01	99	0.883	0.899
MISSOURI	Adair	SM E. CITIES, MO	02	99	0.897	0.911
*	Adair	REST OF MO	03	99	0.906	0.911
	Andrew	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Atchison	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Audrain	REST OF MO	03	99	0.906	0.911
	Barry	REST OF MO	03	99	0.906	0.911
	Barton	REST OF MO	03	99	0.906	0.911
	Bates	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Benton	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Bollinger	REST OF MO	03	99	0.906	0.911
*	Boone	ST. LOUIS/LG E. CITIES, MO	01	99	0.968	0.911
*	Boone	REST OF MO	03	99	0.906	0.911
	Buchanan	ST JOSEPH, MO	01	99	0.920	0.911
*	Butler	SM E. CITIES, MO	02	99	0.897	0.911
*	Butler	REST OF MO	03	99	0.906	0.911
	Caldwell	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Callaway	REST OF MO	03	99	0.906	0.911
	Camden	REST OF MO	03	99	0.906	0.911
*	Cape Girardeau	SM E. CITIES, MO	02	99	0.897	0.911
*	Cape Girardeau	REST OF MO	03	99	0.906	0.911
	Carroll	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Carter	REST OF MO	03	99	0.906	0.911
	Cass	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Cedar	REST OF MO	03	99	0.906	0.911
	Chariton	REST OF MO	03	99	0.906	0.911
	Christian	REST OF MO	03	99	0.906	0.911
	Clark	REST OF MO	03	99	0.906	0.911
	Clay	N K.C. (CLAY/PLATTE), MO	02	01	0.963	0.963
	Clinton	RURAL NW COUNTIES, MO	06	99	0.913	0.911
*	Cole	ST. LOUIS/LG E. CITIES, MO	01	99	0.968	0.911
*	Cole	REST OF MO	03	99	0.906	0.911
	Cooper	REST OF MO	03	99	0.906	0.911

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Crawford	REST OF MO	03	99	0.906	0.911
	Dade	REST OF MO	03	99	0.906	0.911
	Dallas	REST OF MO	03	99	0.906	0.911
	Daviess	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	DeKalb	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Dent	REST OF MO	03	99	0.906	0.911
	Douglas	REST OF MO	03	99	0.906	0.911
	Dunklin	REST OF MO	03	99	0.906	0.911
	Franklin	REST OF MO	03	99	0.906	0.911
	Gasconade	REST OF MO	03	99	0.906	0.911
	Gentry	RURAL NW COUNTIES, MO	06	99	0.913	0.911
*	Greene	ST. LOUIS/LG E. CITIES, MO	01	99	0.968	0.911
*	Greene	REST OF MO	03	99	0.906	0.911
	Grundy	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Harrison	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Henry	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Hickory	REST OF MO	03	99	0.906	0.911
	Holt	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Howard	REST OF MO	03	99	0.906	0.911
	Howell	REST OF MO	03	99	0.906	0.911
	Iron	REST OF MO	03	99	0.906	0.911
	Jackson	K.C. (JACKSON CNTY), MO	03	01	0.963	0.963
*	Jasper	SM E. CITIES, MO	02	99	0.897	0.911
*	Jasper	REST OF MO	03	99	0.906	0.911
	Jefferson	ST. LOUIS/LG E. CITIES, MO	01	99	0.968	0.984
	Johnson	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Knox	REST OF MO	03	99	0.906	0.911
	Laclede	REST OF MO	03	99	0.906	0.911
	Lafayette	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Lawrence	REST OF MO	03	99	0.906	0.911
	Lewis	REST OF MO	03	99	0.906	0.911
	Lincoln	REST OF MO	03	99	0.906	0.911
	Linn	REST OF MO	03	99	0.906	0.911
	Livingston	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Macon	REST OF MO	03	99	0.906	0.911
	Madison	REST OF MO	03	99	0.906	0.911
	Maries	REST OF MO	03	99	0.906	0.911
*	Marion	SM E. CITIES, MO	02	99	0.897	0.911
*	Marion	REST OF MO	03	99	0.906	0.911
	McDonald	REST OF MO	03	99	0.906	0.911
	Mercer	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Miller	REST OF MO	03	99	0.906	0.911
	Mississippi	REST OF MO	03	99	0.906	0.911
	Moniteau	REST OF MO	03	99	0.906	0.911
	Monroe	REST OF MO	03	99	0.906	0.911
	Montgomery	REST OF MO	03	99	0.906	0.911
	Morgan	REST OF MO	03	99	0.906	0.911
	New Madrid	REST OF MO	03	99	0.906	0.911
	Newton	REST OF MO	03	99	0.906	0.911
	Nodaway	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Oregon	REST OF MO	03	99	0.906	0.911
	Osage	REST OF MO	03	99	0.906	0.911
	Ozark	REST OF MO	03	99	0.906	0.911
	Pemiscot	REST OF MO	03	99	0.906	0.911
	Perry	REST OF MO	03	99	0.906	0.911
	Pettis	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Phelps	REST OF MO	03	99	0.906	0.911
	Pike	REST OF MO	03	99	0.906	0.911
	Platte	N K.C. (CLAY/PLATTE), MO	02	01	0.963	0.963
	Polk	REST OF MO	03	99	0.906	0.911
	Pulaski	REST OF MO	03	99	0.906	0.911
	Putnam	REST OF MO	03	99	0.906	0.911
	Ralls	REST OF MO	03	99	0.906	0.911
	Randolph	REST OF MO	03	99	0.906	0.911
	Ray	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Reynolds	REST OF MO	03	99	0.906	0.911
	Ripley	REST OF MO	03	99	0.906	0.911
	Saline	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Schuyler	REST OF MO	03	99	0.906	0.911
	Scotland	REST OF MO	03	99	0.906	0.911

ADDENDUM B

MEDICARE FEE SCHEDULE AREAS (LOCALITIES) AND 1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs), CURRENT AND PROPOSED OPTION BY STATE AND COUNTY/COUNTY PART

("99"indicates a statewide or rest of state area under the proposed option. An asterisk indicates a county part.)

State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	* Scott	SM E. CITIES, MO	02	99	0.967	0.911
	* Scott	REST OF MO	03	99	0.899	0.911
	Shannon	REST OF MO	00	99	0.895	0.911
	Shelby	REST OF MO	00	99	0.895	0.911
	St. Charles	ST. LOUIS/LG E. CITIES, MO	01	02	0.968	0.984
	St. Clair	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Ste. Francois	REST OF MO	03	99	0.899	0.911
	St. Louis	ST. LOUIS/LG E. CITIES, MO	01	02	0.968	0.984
	St. Louis City	ST. LOUIS/LG E. CITIES, MO	01	02	0.968	0.984
	Ste. Genevieve	REST OF MO	03	99	0.899	0.911
	Stoddard	REST OF MO	03	99	0.899	0.911
	Stone	REST OF MO	03	99	0.899	0.911
	Sullivan	REST OF MO	00	99	0.899	0.911
	Taney	REST OF MO	00	99	0.899	0.911
	Texas	REST OF MO	03	99	0.899	0.911
	Vernon	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Warren	REST OF MO	00	99	0.899	0.911
	Washington	REST OF MO	03	99	0.899	0.911
	Wayne	REST OF MO	00	99	0.899	0.911
	Webster	REST OF MO	03	99	0.899	0.911
	Worth	RURAL NW COUNTIES, MO	06	99	0.913	0.911
	Wright	REST OF MO	03	99	0.899	0.911
MONTANA	STATEWIDE	STATEWIDE	01	01	0.907	0.907
NEBRASKA	STATEWIDE	STATEWIDE	00	00	0.894	0.894
NEVADA	Carson City	RENO, ET AL. (CITIES), NV	02	99	1.013	1.010
	Churchill	REST OF NEVADA	99	99	0.996	1.010
	* Clark	LAS VEGAS, ET AL. (CITIES), NV	01	99	1.010	1.010
	* Clark	REST OF NEVADA	99	99	0.999	1.010
	Douglas	REST OF NEVADA	99	99	0.999	1.010
	* Elko	ELKO & ELY (CITIES), NV	03	99	0.999	1.010
	* Elko	REST OF NEVADA	99	99	0.999	1.010
	Esmeralda	REST OF NEVADA	99	99	0.999	1.010
	Eureka	REST OF NEVADA	99	99	0.999	1.010
	Humboldt	REST OF NEVADA	99	99	0.999	1.010
	Lander	REST OF NEVADA	99	99	0.999	1.010
	Lincoln	REST OF NEVADA	99	99	0.999	1.010
	Lyon	REST OF NEVADA	99	99	0.999	1.010
	Mineral	REST OF NEVADA	99	99	0.999	1.010
	Nye	REST OF NEVADA	99	99	0.999	1.010
	Pershing	REST OF NEVADA	99	99	0.999	1.010
	Storey	REST OF NEVADA	99	99	0.999	1.010
	* Washoe	RENO, ET AL. (CITIES), NV	02	99	1.013	1.010
	* Washoe	REST OF NEVADA	99	99	0.999	1.010
	* White Pine	ELKO & ELY (CITIES), NV	03	99	0.999	1.010
	* White Pine	REST OF NEVADA	99	99	0.999	1.010
NEW HAMPSHIRE	STATEWIDE	STATEWIDE	40	40	1.003	1.003
NEW JERSEY	Atlantic	SOUTHERN NJ	03	99	1.035	1.051
	Bergen	NORTHERN NJ	01	01	1.109	1.109
	Burlington	MIDDLE NJ	02	99	1.052	1.051
	Camden	SOUTHERN NJ	03	99	1.035	1.051
	Cape May	SOUTHERN NJ	03	99	1.035	1.051
	Cumberland	SOUTHERN NJ	03	99	1.035	1.051
	Essex	NORTHERN NJ	01	01	1.109	1.109
	Gloucester	SOUTHERN NJ	03	99	1.035	1.051
	Hudson	NORTHERN NJ	01	01	1.109	1.109
	Hunterdon	NORTHERN NJ	01	01	1.109	1.109
	Mercer	MIDDLE NJ	02	99	1.052	1.051
	Middlesex	NORTHERN NJ	01	01	1.109	1.109
	Monmouth	MIDDLE NJ	02	99	1.052	1.051
	Morris	NORTHERN NJ	01	01	1.109	1.109
	Ocean	MIDDLE NJ	02	99	1.052	1.051
	Passaic	NORTHERN NJ	01	01	1.109	1.109
	Salem	SOUTHERN NJ	03	99	1.035	1.051
	Somerset	NORTHERN NJ	01	01	1.109	1.109
	Sussex	NORTHERN NJ	01	01	1.109	1.109

ADDENDUM B

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Union	NORTHERN NJ	01	01	1.109	1.109
	Warren	NORTHERN NJ	01	01	1.109	1.109
NEW MEXICO	STATEWIDE	STATEWIDE	05	05	0.937	0.937
NEW YORK	* Albany	N. CENTRAL CITIES, NY	03	99	0.991	0.973
	* Albany	REST OF NEW YORK	04	99	0.980	0.973
	Allegany	BUFFALO/SURR. CNTYS, NY	01	99	0.997	0.973
	Bronx	NYC SUBURBS/LONG I., NY	02	02	1.170	1.170
	* Broome	N. CENTRAL CITIES, NY	03	99	0.991	0.973
	* Broome	REST OF NEW YORK	04	99	0.980	0.973
	Cattaraugus	BUFFALO/SURR. CNTYS, NY	01	99	0.997	0.973
	Cayuga	REST OF NEW YORK	04	99	0.980	0.973
	Chautauqua	REST OF NEW YORK	04	99	0.980	0.973
	Chemung	REST OF NEW YORK	04	99	0.980	0.973
	Chenango	REST OF NEW YORK	04	99	0.980	0.973
	Clinton	REST OF NEW YORK	04	99	0.980	0.973
	Columbia	POUGHKPSIE/N NYC SUBURBS, NY	03	03	1.050	1.050
	Cortland	REST OF NEW YORK	04	99	0.980	0.973
	Delaware	POUGHKPSIE/N NYC SUBURBS, NY	03	03	1.050	1.050
	Dutchess	POUGHKPSIE/N NYC SUBURBS, NY	03	03	1.050	1.050
	Erie	BUFFALO/SURR. CNTYS, NY	01	99	0.997	0.973
	Essex	REST OF NEW YORK	04	99	0.980	0.973
	Franklin	REST OF NEW YORK	04	99	0.980	0.973
	Fulton	REST OF NEW YORK	04	99	0.980	0.973
	Genesee	BUFFALO/SURR. CNTYS, NY	01	99	0.997	0.973
	Greene	POUGHKPSIE/N NYC SUBURBS, NY	03	03	1.050	1.050
	Hamilton	REST OF NEW YORK	04	99	0.980	0.973
	Herkimer	REST OF NEW YORK	04	99	0.980	0.973
	Jefferson	REST OF NEW YORK	04	99	0.980	0.973
	Kings	NYC SUBURBS/LONG ISLAND, NY	02	02	1.170	1.170
	Lewis	REST OF NEW YORK	04	99	0.980	0.973
	Livingston	ROCHESTER/SURR. CNTYS, NY	02	99	0.995	0.973
	Madison	REST OF NEW YORK	04	99	0.980	0.973
	Monroe	ROCHESTER/SURR. CNTYS, NY	02	99	0.995	0.973
	Montgomery	REST OF NEW YORK	04	99	0.980	0.973
	Nassau	NYC SUBURBS/LONG ISLAND, NY	02	02	1.170	1.170
	New York	MANHATTAN, NY	01	01	1.225	1.225
	Niagara	BUFFALO/SURR. CNTYS, NY	01	99	0.997	0.973
	* Oneida	N. CENTRAL CITIES, NY	03	99	0.991	0.973
	* Oneida	REST OF NEW YORK	04	99	0.980	0.973
	* Onondaga	N. CENTRAL CITIES, NY	03	99	0.991	0.973
	* Onondaga	REST OF NEW YORK	04	99	0.980	0.973
	Ontario	ROCHESTER/SURR. CNTYS, NY	02	99	0.995	0.973
	Orange	POUGHKPSIE/N NYC SUBURBS, NY	03	03	1.050	1.050
	Orleans	BUFFALO/SURR. CNTYS, NY	01	99	0.997	0.973
	Oswego	REST OF NEW YORK	04	99	0.980	0.973
	* Otsego	N. CENTRAL CITIES, NY	03	99	0.991	0.973
	* Otsego	REST OF NEW YORK	04	99	0.980	0.973
	Putnam	POUGHKPSIE/N NYC SUBURBS, NY	03	03	1.050	1.050
	Queens	QUEENS, NY	04	04	1.163	1.163
	* Rensselaer	N. CENTRAL CITIES, NY	03	99	0.991	0.973
	* Rensselaer	REST OF NEW YORK	04	99	0.980	0.973
	Richmond	NYC SUBURBS/LONG ISLAND, NY	02	02	1.170	1.170
	Rockland	NYC SUBURBS/LONG ISLAND, NY	02	02	1.170	1.170
	* Saratoga	N. CENTRAL CITIES, NY	03	99	0.991	0.973
	* Saratoga	REST OF NEW YORK	04	99	0.980	0.973
	* Schenectady	N. CENTRAL CITIES, NY	03	99	0.991	0.973
	* Schenectady	REST OF NEW YORK	04	99	0.980	0.973
	Schoharie	REST OF NEW YORK	04	99	0.980	0.973
	Schuyler	REST OF NEW YORK	04	99	0.980	0.973
	Seneca	ROCHESTER/SURR. CNTYS, NY	02	99	0.995	0.973
	* St. Lawrence	N. CENTRAL CITIES, NY	03	99	0.991	0.973
	* St. Lawrence	REST OF NEW YORK	04	99	0.980	0.973
	Steuben	REST OF NEW YORK	04	99	0.980	0.973
	Suffolk	NYC SUBURBS/LONG ISLAND, NY	02	02	1.170	1.170
	Sullivan	POUGHKPSIE/N NYC SUBURBS, NY	03	03	1.050	1.050
	Tioga	REST OF NEW YORK	04	99	0.980	0.973
	Tompkins	REST OF NEW YORK	04	99	0.980	0.973
	Ulster	POUGHKPSIE/N NYC SUBURBS, NY	03	03	1.050	1.050

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State	County	January 1, 1996 Locality Name	Locality Number 1/1/96	Locality Number Proposed Option	GAF 1/1/96 Localities	GAF Policy Option Basic
	Warren	REST OF NEW YORK	04	99	0.980	0.973
	Washington	REST OF NEW YORK	04	99	0.980	0.973
	Wayne	ROCHESTER/SURR. CNTYS, NY	02	02	0.995	0.973
	Westchester	NYC SUBURBS/LONG ISLAND, NY	02	02	1.170	1.170
	Wyoming	BUFFALO/SURR. CNTYS, NY	01	99	0.967	0.973
	Yates	ROCHESTER/SURR. CNTYS, NY	02	99	0.995	0.973
NORTH CAROLINA	STATEWIDE	STATEWIDE	00	00	0.934	0.934
NORTH DAKOTA	STATEWIDE	STATEWIDE	01	01	0.998	0.998
OHIO	STATEWIDE	STATEWIDE	00	00	0.973	0.973
OKLAHOMA	STATEWIDE	STATEWIDE	00	00	0.910	0.910
OREGON	Baker	REST OF OREGON	99	99	0.924	0.933
	* Benton	SALEM, ET AL. (CITIES), OR	03	99	0.934	0.933
	* Benton	REST OF OREGON	99	99	0.924	0.933
	* Clackamas	PORTLAND, ET AL. (CITIES), OR	01	01	0.961	0.961
	* Clackamas	REST OF OREGON	99	01	0.924	0.961
	Clatsop	REST OF OREGON	99	99	0.924	0.933
	Columbia	REST OF OREGON	99	99	0.924	0.933
	* Coos	EUGENE, ET AL. (CITIES), OR	02	99	0.935	0.933
	* Coos	REST OF OREGON	99	99	0.924	0.933
	Crook	REST OF OREGON	99	99	0.924	0.933
	Curry	REST OF OREGON	99	99	0.924	0.933
	Deschutes	REST OF OREGON	99	99	0.924	0.933
	* Douglas	EUGENE, ET AL. (CITIES), OR	02	99	0.935	0.933
	* Douglas	REST OF OREGON	99	99	0.924	0.933
	Gilliam	REST OF OREGON	99	99	0.924	0.933
	Grant	REST OF OREGON	99	99	0.924	0.933
	Harney	REST OF OREGON	99	99	0.924	0.933
	Hood River	REST OF OREGON	99	99	0.924	0.933
	* Jackson	SW OR CITIES (CITY LIMITS)	12	99	0.946	0.933
	* Jackson	REST OF OREGON	99	99	0.924	0.933
	Jefferson	REST OF OREGON	99	99	0.924	0.933
	* Josephine	SW OR CITIES (CITY LIMITS)	12	99	0.946	0.933
	* Josephine	REST OF OREGON	99	99	0.924	0.933
	* Klamath	SW OR CITIES (CITY LIMITS)	12	99	0.946	0.933
	* Klamath	REST OF OREGON	99	99	0.924	0.933
	Lake	REST OF OREGON	99	99	0.924	0.933
	* Lane	EUGENE, ET AL. (CITIES), OR	02	99	0.935	0.933
	* Lane	REST OF OREGON	99	99	0.924	0.933
	Lincoln	REST OF OREGON	99	99	0.924	0.933
	* Linn	SALEM, ET AL. (CITIES), OR	03	99	0.934	0.933
	* Linn	REST OF OREGON	99	99	0.924	0.933
	Malheur	REST OF OREGON	99	99	0.924	0.933
	* Marion	SALEM, ET AL. (CITIES), OR	03	99	0.934	0.933
	* Marion	REST OF OREGON	99	99	0.924	0.933
	Morrow	REST OF OREGON	99	99	0.924	0.933
	* Multnomah	PORTLAND, ET AL. (CITIES), OR	01	01	0.961	0.961
	* Multnomah	REST OF OREGON	99	01	0.924	0.961
	Polk	REST OF OREGON	99	99	0.924	0.933
	Sherman	REST OF OREGON	99	99	0.924	0.933
	Tillamook	REST OF OREGON	99	99	0.924	0.933
	Umatilla	REST OF OREGON	99	99	0.924	0.933
	Union	REST OF OREGON	99	99	0.924	0.933
	Wallowa	REST OF OREGON	99	99	0.924	0.933
	Wasco	REST OF OREGON	99	99	0.924	0.933
	* Washington	PORTLAND, ET AL. (CITIES), OR	01	01	0.961	0.961
	* Washington	REST OF OREGON	99	01	0.924	0.961
	Wheeler	REST OF OREGON	99	99	0.924	0.933
	Yamhill	REST OF OREGON	99	99	0.924	0.933
PENNSYLVANIA	Adams	SM PA CITIES	03	99	0.944	0.951
	* Allegheny	PHILLY/PITT MED SCHOOLS/HOSPS	01	99	1.041	0.951
	* Allegheny	LG PA CITIES	02	99	1.001	0.951
	Armstrong	REST OF PA	04	99	0.930	0.951
	Beaver	LG PA CITIES	02	99	1.001	0.951
	Bedford	REST OF PA	04	99	0.930	0.951

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State	County	January 1, 1996 Locality Name	Locality Number 1/1/96	Locality Number Proposed Option	GAF 1/1/96 Localities	GAF Policy Option Basic
	Berks	LG PA CITIES	02	99	1.001	0.951
	Blair	REST OF PA	04	99	0.930	0.951
	Bradford	REST OF PA	04	99	0.930	0.951
	Bucks	LG PA CITIES	02	01	1.001	1.066
	Butler	SM PA CITIES	03	99	0.944	0.951
	* Cambria	SM PA CITIES	03	99	0.944	0.951
	* Cambria	REST OF PA	04	99	0.930	0.951
	Cameron	REST OF PA	04	99	0.930	0.951
	Carbon	SM PA CITIES	03	99	0.944	0.951
	* Centre	SM PA CITIES	03	99	0.944	0.951
	* Centre	REST OF PA	04	99	0.930	0.951
	Chester	LG PA CITIES	02	01	1.001	1.066
	Clarion	REST OF PA	04	99	0.930	0.951
	Clearfield	REST OF PA	04	99	0.930	0.951
	Clinton	REST OF PA	04	99	0.930	0.951
	Columbia	SM PA CITIES	03	99	0.944	0.951
	Crawford	SM PA CITIES	03	99	0.944	0.951
	Cumberland	SM PA CITIES	03	99	0.944	0.951
	Dauphin	SM PA CITIES	03	99	0.944	0.951
	Delaware	LG PA CITIES	02	01	1.001	1.066
	Elk	REST OF PA	04	99	0.930	0.951
	Erie	LG PA CITIES	02	99	1.001	0.951
	Fayette	SM PA CITIES	03	99	0.944	0.951
	Forest	REST OF PA	04	99	0.930	0.951
	Franklin	SM PA CITIES	03	99	0.944	0.951
	Fulton	REST OF PA	04	99	0.930	0.951
	Greene	REST OF PA	04	99	0.930	0.951
	Huntingdon	REST OF PA	04	99	0.930	0.951
	Indiana	REST OF PA	04	99	0.930	0.951
	Jefferson	REST OF PA	04	99	0.930	0.951
	Juniata	REST OF PA	04	99	0.930	0.951
	Lackawanna	LG PA CITIES	02	99	1.001	0.951
	Lancaster	REST OF PA	04	99	0.930	0.951
	Lawrence	SM PA CITIES	03	99	0.944	0.951
	Lebanon	REST OF PA	04	99	0.930	0.951
	Lehigh	LG PA CITIES	02	99	1.001	0.951
	Luzerne	SM PA CITIES	03	99	0.944	0.951
	Lycoming	LG PA CITIES	02	99	1.001	0.951
	Mc Kean	REST OF PA	04	99	0.930	0.951
	Mercer	SM PA CITIES	03	99	0.944	0.951
	Mifflin	REST OF PA	04	99	0.930	0.951
	Monroe	SM PA CITIES	03	99	0.944	0.951
	Montgomery	LG PA CITIES	02	01	1.001	1.066
	Montour	SM PA CITIES	03	99	0.944	0.951
	* Northampton	LG PA CITIES	02	99	1.001	0.951
	* Northampton	SM PA CITIES	03	99	0.944	0.951
	Northumberland	REST OF PA	04	99	0.930	0.951
	* Perry	SM PA CITIES	03	99	0.944	0.951
	* Perry	REST OF PA	04	99	0.930	0.951
	Philadelphia	PHILLY/PITT MED SCHOOLS/HOSPS	01	01	1.041	1.066
	Pike	REST OF PA	04	99	0.930	0.951
	Potter	REST OF PA	04	99	0.930	0.951
	* Schuylkill	SM PA CITIES	03	99	0.944	0.951
	* Schuylkill	REST OF PA	04	99	0.930	0.951
	Snyder	REST OF PA	04	99	0.930	0.951
	* Somerset	SM PA CITIES	03	99	0.944	0.951
	* Somerset	REST OF PA	04	99	0.930	0.951
	Sullivan	REST OF PA	04	99	0.930	0.951
	Susquehanna	REST OF PA	04	99	0.930	0.951
	Tioga	REST OF PA	04	99	0.930	0.951
	Union	REST OF PA	04	99	0.930	0.951
	Venango	SM PA CITIES	03	99	0.944	0.951
	Warren	SM PA CITIES	03	99	0.944	0.951
	Washington	SM PA CITIES	03	99	0.944	0.951
	Wayne	REST OF PA	04	99	0.930	0.951
	Westmoreland	LG PA CITIES	02	99	1.001	0.951
	Wyoming	REST OF PA	04	99	0.930	0.951
	York	SM PA CITIES	03	99	0.944	0.951
PUERTO RICO	STATEWIDE	STATEWIDE	20	20	0.794	0.794

ADDENDUM B

MEDICARE FEE SCHEDULE AREAS (LOCALITIES) AND 1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs), CURRENT AND PROPOSED OPTION BY STATE AND COUNTY/COUNTY PART

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State	County	January 1, 1996 Locality Name	Locality Number 1/1/96	Locality Number Proposed Option	GAF 1/1/96 Localities	GAF Policy Option Basic
RHODE ISLAND	STATEWIDE	STATEWIDE	01	01	1.056	1.056
SOUTH CAROLINA	STATEWIDE	STATEWIDE	01	01	0.915	0.915
SOUTH DAKOTA	STATEWIDE	STATEWIDE	02	02	0.880	0.880
TENNESSEE	STATEWIDE	STATEWIDE	35	35	0.923	0.923
TEXAS	Anderson	NORTHEAST RURAL TX	02	99	0.911	0.924
	Andrews	WESTERN TX	04	99	0.893	0.924
	Angelina	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Aransas	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Archer	WESTERN TX	04	99	0.893	0.924
	Armstrong	WESTERN TX	04	99	0.893	0.924
	Atascosa	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Austin	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Bailey	WESTERN TX	04	99	0.893	0.924
	Bandera	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Bastrop	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Baylor	WESTERN TX	04	99	0.893	0.924
	Bee	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Bell	TEMPLE, TX	06	99	0.927	0.924
	Bexar	SAN ANTONIO, TX	07	99	0.949	0.924
	Blanco	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Borden	WESTERN TX	04	99	0.893	0.924
	Bosque	NORTHEAST RURAL TX	02	99	0.911	0.924
	Bowie	TEXARKANA, TX	06	99	0.915	0.924
	Brazoria	BRAZORIA, TX	09	09	1.003	1.003
	Brazos	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Brewster	WESTERN TX	04	99	0.893	0.924
	Briscoe	WESTERN TX	04	99	0.893	0.924
	Brooks	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Brown	WESTERN TX	04	99	0.893	0.924
	Burleson	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Burnet	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Caldwell	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Calhoun	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Callahan	WESTERN TX	04	99	0.893	0.924
	Cameron	BROWNSVILLE, TX	10	99	0.905	0.924
	Camp	NORTHEAST RURAL TX	02	99	0.911	0.924
	Carson	WESTERN TX	04	99	0.893	0.924
	Cass	NORTHEAST RURAL TX	02	99	0.911	0.924
	Castro	WESTERN TX	04	99	0.893	0.924
	Chambers	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Cherokee	NORTHEAST RURAL TX	02	99	0.911	0.924
	Childress	WESTERN TX	04	99	0.893	0.924
	Clay	WESTERN TX	04	99	0.893	0.924
	Cochran	WESTERN TX	04	99	0.893	0.924
	Coke	WESTERN TX	04	99	0.893	0.924
	Coleman	WESTERN TX	04	99	0.893	0.924
	Collin	NORTHEAST RURAL TX	02	99	0.911	0.924
	Collingsworth	WESTERN TX	04	99	0.893	0.924
	Colorado	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Comal	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Comanche	WESTERN TX	04	99	0.893	0.924
	Concho	WESTERN TX	04	99	0.893	0.924
	Cooke	NORTHEAST RURAL TX	02	99	0.911	0.924
	Coryell	NORTHEAST RURAL TX	02	99	0.911	0.924
	Cottle	WESTERN TX	04	99	0.893	0.924
	Crane	WESTERN TX	04	99	0.893	0.924
	Crockett	WESTERN TX	04	99	0.893	0.924
	Crosby	WESTERN TX	04	99	0.893	0.924
	Culberson	WESTERN TX	04	99	0.893	0.924
	Dallam	WESTERN TX	04	99	0.893	0.924
	Dallas	DALLAS, TX	11	11	1.006	1.006
	Dawson	WESTERN TX	04	99	0.893	0.924
	DeWitt	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Deaf Smith	WESTERN TX	04	99	0.893	0.924
	Delta	NORTHEAST RURAL TX	02	99	0.911	0.924

ADDENDUM B

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State	County	January 1, 1996 Locality Name	Locality Number 1/1/96	Locality Number Proposed Option	GAF 1/1/96 Localities	GAF Policy Option Basic
	Denton	DENTON, TX	12	99	0.965	0.924
	Dickens	WESTERN TX	04	99	0.893	0.924
	Dimmit	WESTERN TX	04	99	0.893	0.924
	Donley	WESTERN TX	04	99	0.893	0.924
	Duval	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Eastland	WESTERN TX	04	99	0.893	0.924
	Ector	ODESSA, TX	13	99	0.946	0.924
	Edwards	WESTERN TX	04	99	0.893	0.924
	El Paso	EL PASO, TX	14	99	0.936	0.924
	Ellis	NORTHEAST RURAL TX	03	99	0.911	0.924
	Erath	WESTERN TX	04	99	0.893	0.924
	Falls	NORTHEAST RURAL TX	03	99	0.911	0.924
	Fannin	NORTHEAST RURAL TX	03	99	0.911	0.924
	Fayette	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Fisher	WESTERN TX	04	99	0.893	0.924
	Floyd	WESTERN TX	04	99	0.893	0.924
	Foard	WESTERN TX	04	99	0.893	0.924
	Fort Bend	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Franklin	NORTHEAST RURAL TX	02	99	0.911	0.924
	Freestone	NORTHEAST RURAL TX	02	99	0.911	0.924
	Frio	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Gaines	WESTERN TX	04	99	0.893	0.924
	Galveston	GALVESTON, TX	10	10	1.001	1.001
	Garza	WESTERN TX	04	99	0.893	0.924
	Gillespie	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Glasscock	WESTERN TX	04	99	0.893	0.924
	Goliad	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Gonzales	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Gray	WESTERN TX	04	99	0.893	0.924
	Grayson	GRAYSON, TX	16	99	0.918	0.924
	Gregg	LONGVIEW, TX	17	99	0.921	0.924
	Grimes	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Guadalupe	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Hale	WESTERN TX	04	99	0.893	0.924
	Hall	WESTERN TX	04	99	0.893	0.924
	Hamilton	NORTHEAST RURAL TX	02	99	0.911	0.924
	Hansford	WESTERN TX	04	99	0.893	0.924
	Hardeman	WESTERN TX	04	99	0.893	0.924
	Hardin	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Harris	HOUSTON, TX	15	15	1.034	1.034
	Harrison	NORTHEAST RURAL TX	02	99	0.911	0.924
	Hartley	WESTERN TX	04	99	0.893	0.924
	Haskell	WESTERN TX	04	99	0.893	0.924
	Hays	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Hemphill	WESTERN TX	04	99	0.893	0.924
	Henderson	NORTHEAST RURAL TX	02	99	0.911	0.924
	Hidalgo	MC ALLEN, TX	19	99	0.904	0.924
	Hill	NORTHEAST RURAL TX	02	99	0.911	0.924
	Hockley	WESTERN TX	04	99	0.893	0.924
	Hood	NORTHEAST RURAL TX	02	99	0.911	0.924
	Hopkins	NORTHEAST RURAL TX	02	99	0.911	0.924
	Houston	NORTHEAST RURAL TX	02	99	0.911	0.924
	Howard	WESTERN TX	04	99	0.893	0.924
	Hudspeth	WESTERN TX	04	99	0.893	0.924
	Hunt	NORTHEAST RURAL TX	02	99	0.911	0.924
	Hutchinson	WESTERN TX	04	99	0.893	0.924
	Irion	WESTERN TX	04	99	0.893	0.924
	Jack	NORTHEAST RURAL TX	02	99	0.911	0.924
	Jackson	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Jasper	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Jeff Davis	WESTERN TX	04	99	0.893	0.924
	Jefferson	BEAUMONT, TX	20	20	0.973	0.973
	Jim Hogg	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Jim Wells	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Johnson	NORTHEAST RURAL TX	02	99	0.911	0.924
	Jones	WESTERN TX	04	99	0.893	0.924
	Karnes	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Kaufman	NORTHEAST RURAL TX	02	99	0.911	0.924
	Kendall	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Kenedy	SOUTHEAST RURAL TX	03	99	0.922	0.924

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State	County	January 1, 1996 Locality Name	Locality Number 1/1/96	Locality Number Proposed Option	GAF 1/1/96 Localities	GAF Policy Option Basic
	Kent	WESTERN TX	04	99	0.893	0.924
	Kerr	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Kimble	WESTERN TX	04	99	0.893	0.924
	King	WESTERN TX	04	99	0.893	0.924
	Kinney	WESTERN TX	04	99	0.893	0.924
	Kleberg	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Knox	WESTERN TX	04	99	0.893	0.924
	La Salle	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Lamar	NORTHEAST RURAL TX	02	99	0.911	0.924
	Lamb	WESTERN TX	04	99	0.893	0.924
	Lampasas	NORTHEAST RURAL TX	02	99	0.911	0.924
	Lavaca	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Lee	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Leon	NORTHEAST RURAL TX	02	99	0.911	0.924
	Liberty	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Limestone	NORTHEAST RURAL TX	02	99	0.911	0.924
	Lipscomb	WESTERN TX	04	99	0.893	0.924
	Live Oak	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Llano	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Loving	WESTERN TX	04	99	0.893	0.924
	Lubbock	LUBBOCK, TX	21	99	0.924	0.924
	Lynn	WESTERN TX	04	99	0.893	0.924
	Madison	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Marion	NORTHEAST RURAL TX	02	99	0.911	0.924
	Martin	WESTERN TX	04	99	0.893	0.924
	Mason	WESTERN TX	04	99	0.893	0.924
	Matagorda	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Maverick	WESTERN TX	04	99	0.893	0.924
	McCulloch	WESTERN TX	04	99	0.893	0.924
	McLennan	WACO, TX	22	99	0.923	0.924
	McMullen	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Medina	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Menard	WESTERN TX	04	99	0.893	0.924
	Midland	MIDLAND, TX	23	99	0.946	0.924
	Milam	NORTHEAST RURAL TX	02	99	0.911	0.924
	Mills	WESTERN TX	04	99	0.893	0.924
	Mitchell	WESTERN TX	04	99	0.893	0.924
	Montague	NORTHEAST RURAL TX	02	99	0.911	0.924
	Montgomery	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Moore	WESTERN TX	04	99	0.893	0.924
	Morris	NORTHEAST RURAL TX	02	99	0.911	0.924
	Motley	WESTERN TX	04	99	0.893	0.924
	Nacogdoches	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Navarro	NORTHEAST RURAL TX	02	99	0.911	0.924
	Newton	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Nolan	WESTERN TX	04	99	0.893	0.924
	Nueces	CORPUS CHRISTI, TX	24	99	0.941	0.924
	Ochiltree	WESTERN TX	04	99	0.893	0.924
	Oldham	WESTERN TX	04	99	0.893	0.924
	Orange	ORANGE, TX	25	99	0.944	0.924
	Palo Pinto	NORTHEAST RURAL TX	02	99	0.911	0.924
	Panola	NORTHEAST RURAL TX	02	99	0.911	0.924
	Parker	NORTHEAST RURAL TX	02	99	0.911	0.924
	Parmer	WESTERN TX	04	99	0.893	0.924
	Pecos	WESTERN TX	04	99	0.893	0.924
	Polk	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Potter	AMARILLO, TX	26	99	0.930	0.924
	Presidio	WESTERN TX	04	99	0.893	0.924
	Rains	NORTHEAST RURAL TX	02	99	0.911	0.924
	Randall	WESTERN TX	04	99	0.893	0.924
	Reagan	WESTERN TX	04	99	0.893	0.924
	Real	WESTERN TX	04	99	0.893	0.924
	Red River	NORTHEAST RURAL TX	02	99	0.911	0.924
	Reeves	WESTERN TX	04	99	0.893	0.924
	Refugio	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Roberts	WESTERN TX	04	99	0.893	0.924
	Robertson	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Rockwall	NORTHEAST RURAL TX	02	99	0.911	0.924
	Runnels	WESTERN TX	04	99	0.893	0.924
	Rusk	NORTHEAST RURAL TX	02	99	0.911	0.924

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State	County	January 1, 1996 Locality Name	Locality Number 1/1/96	Locality Number Proposed Option	GAF 1/1/96 Localities	GAF Policy Option Basic
	Sabine	SOUTHEAST RURAL TX	03	99	0.922	0.924
	San Augustine	SOUTHEAST RURAL TX	03	99	0.922	0.924
	San Jacinto	SOUTHEAST RURAL TX	03	99	0.922	0.924
	San Patricio	SOUTHEAST RURAL TX	03	99	0.922	0.924
	San Saba	WESTERN TX	04	99	0.893	0.924
	Schleicher	WESTERN TX	04	99	0.893	0.924
	Scurry	WESTERN TX	04	99	0.893	0.924
	Shackelford	WESTERN TX	04	99	0.893	0.924
	Shelby	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Sherman	WESTERN TX	04	99	0.893	0.924
	Smith	TYLER, TX	27	99	0.933	0.924
	Somervell	NORTHEAST RURAL TX	02	99	0.911	0.924
	Starr	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Stephens	NORTHEAST RURAL TX	02	99	0.911	0.924
	Sterling	WESTERN TX	04	99	0.893	0.924
	Stonewall	WESTERN TX	04	99	0.893	0.924
	Sutton	WESTERN TX	04	99	0.893	0.924
	Swisher	WESTERN TX	04	99	0.893	0.924
	Tarrant	FORT WORTH, TX	28	99	0.977	0.977
	Taylor	ABILENE, TX	29	99	0.959	0.924
	Terrell	WESTERN TX	04	99	0.893	0.924
	Terry	WESTERN TX	04	99	0.893	0.924
	Throckmorton	NORTHEAST RURAL TX	02	99	0.911	0.924
	Titus	NORTHEAST RURAL TX	02	99	0.911	0.924
	Tom Green	SAN ANGELO, TX	30	99	0.950	0.924
	Travis	AUSTIN, TX	31	31	0.979	0.979
	Trinity	NORTHEAST RURAL TX	02	99	0.911	0.924
	Tyler	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Upshur	NORTHEAST RURAL TX	02	99	0.911	0.924
	Upton	WESTERN TX	04	99	0.893	0.924
	Uvalde	WESTERN TX	04	99	0.893	0.924
	Val Verde	WESTERN TX	04	99	0.893	0.924
	Van Zandt	NORTHEAST RURAL TX	02	99	0.911	0.924
	Victoria	VICTORIA, TX	32	99	0.926	0.924
	Walker	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Waller	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Ward	WESTERN TX	04	99	0.893	0.924
	Washington	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Webb	LAREDO, TX	33	99	0.907	0.924
	Wharton	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Wheeler	WESTERN TX	04	99	0.893	0.924
	Wichita	WICHITA FALLS, TX	34	99	0.908	0.924
	Wilbarger	WESTERN TX	04	99	0.893	0.924
	Willacy	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Williamson	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Wilson	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Winkler	WESTERN TX	04	99	0.893	0.924
	Wise	NORTHEAST RURAL TX	02	99	0.911	0.924
	Wood	NORTHEAST RURAL TX	02	99	0.911	0.924
	Yoakum	WESTERN TX	04	99	0.893	0.924
	Young	NORTHEAST RURAL TX	02	99	0.911	0.924
	Zapata	SOUTHEAST RURAL TX	03	99	0.922	0.924
	Zavala	WESTERN TX	04	99	0.893	0.924
UTAH	STATEWIDE	STATEWIDE	99	99	0.926	0.926
VERMONT	STATEWIDE	STATEWIDE	50	50	0.966	0.966
VIRGIN ISLANDS	STATEWIDE	STATEWIDE	80	80	0.974	0.974
VIRGINIA	Accomack	REST OF VA	04	99	0.912	0.944
	Albemarle	RICHMOND & CHARLOTTESVILLE, VA	01	99	0.975	0.944
	Alleghany	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Alleghany	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Alleghany	SM TOWN/INDSETRIAL VA	03	99	0.920	0.944
	Amelia	REST OF VA	04	99	0.912	0.944
	Amherst	REST OF VA	04	99	0.912	0.944
	Appomattox	REST OF VA	04	99	0.912	0.944
	Augusta	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Augusta	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Augusta	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Bath	REST OF VA	04	99	0.912	0.944
	Bedford	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Bedford City	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Bland	REST OF VA	04	99	0.912	0.944
	Botetourt	REST OF VA	04	99	0.912	0.944
	Bristol City	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Brunswick	REST OF VA	04	99	0.912	0.944
	Buchanan	REST OF VA	04	99	0.912	0.944
	Buckingham	REST OF VA	04	99	0.912	0.944
	Campbell	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Caroline	REST OF VA	04	99	0.912	0.944
	Carroll	REST OF VA	04	99	0.912	0.944
	Charles City	REST OF VA	04	99	0.912	0.944
	Charlotte	REST OF VA	04	99	0.912	0.944
	Charlottesville City	RICHMOND & CHARLOTTESVILLE, VA	01	99	0.975	0.944
	Chesapeake City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Chesterfield	RICHMOND & CHARLOTTESVILLE, VA	01	99	0.975	0.944
	Clarke	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Colonial Heights City	RICHMOND & CHARLOTTESVILLE, VA	01	99	0.975	0.944
	Craig	REST OF VA	04	99	0.912	0.944
	Culpeper	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Cumberland	REST OF VA	04	99	0.912	0.944
	Danville City	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Dickenson	REST OF VA	04	99	0.912	0.944
	Dinwiddie	REST OF VA	04	99	0.912	0.944
	Essex	REST OF VA	04	99	0.912	0.944
	Fauquier	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Floyd	REST OF VA	04	99	0.912	0.944
	Fluvanna	REST OF VA	04	99	0.912	0.944
	Franklin	REST OF VA	04	99	0.912	0.944
	Frederick	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Frederick	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Fredericksburg City	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Giles	REST OF VA	04	99	0.912	0.944
	Gloucester	REST OF VA	04	99	0.912	0.944
	Goochland	REST OF VA	04	99	0.912	0.944
	Grayson	REST OF VA	04	99	0.912	0.944
	Grayson	REST OF VA	04	99	0.912	0.944
	Greene	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Greensville	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Greensville	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Halifax	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Halifax	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Hampton City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Hanover	REST OF VA	04	99	0.912	0.944
	Henrico	RICHMOND & CHARLOTTESVILLE, VA	01	99	0.975	0.944
	Henry	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Henry	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Highland	REST OF VA	04	99	0.912	0.944
	Hopewell City	REST OF VA	04	99	0.912	0.944
	Isle of Wight	REST OF VA	04	99	0.912	0.944
	James City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	King George	REST OF VA	04	99	0.912	0.944
	King William	REST OF VA	04	99	0.912	0.944
	King and Queen	REST OF VA	04	99	0.912	0.944
	Lancaster	REST OF VA	04	99	0.912	0.944
	Lee	REST OF VA	04	99	0.912	0.944
	Loudoun	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Louisa	REST OF VA	04	99	0.912	0.944
	Lunenburg	REST OF VA	04	99	0.912	0.944
	Lynchburg City	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Madison	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Manassas Park City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Manassas City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Mathews	REST OF VA	04	99	0.912	0.944
	Mecklenburg	REST OF VA	04	99	0.912	0.944
	Middlesex	REST OF VA	04	99	0.912	0.944
	Montgomery	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Montgomery	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944

ADDENDUM B

MEDICARE FEE SCHEDULE AREAS (LOCALITIES) AND 1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs), CURRENT AND PROPOSED OPTION BY STATE AND COUNTY/COUNTY PART

("99"indicates a statewide or rest of state area under the proposed option. An asterisk indicates a county part.)

State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Nelson	REST OF VA	04	99	0.912	0.944
	New Kent	REST OF VA	04	99	0.912	0.944
	Newport News City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Norfolk City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Northampton	REST OF VA	04	99	0.912	0.944
	Northumberland	REST OF VA	04	99	0.912	0.944
	Nottoway	REST OF VA	04	99	0.912	0.944
	Orange	REST OF VA	04	99	0.912	0.944
	Page	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Patrick	REST OF VA	04	99	0.912	0.944
	Petersburg City	REST OF VA	04	99	0.912	0.944
	Pittsylvania	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Poquoson City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Portsmouth City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Powhatan	REST OF VA	04	99	0.912	0.944
	Prince Edward	REST OF VA	04	99	0.912	0.944
	Prince George	REST OF VA	04	99	0.912	0.944
	Prince William	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Pulaski	REST OF VA	04	99	0.912	0.944
	Rappahannock	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Richmond	REST OF VA	04	99	0.912	0.944
	Richmond City	RICHMOND & CHARLOTTESVILLE, VA	01	99	0.975	0.944
	Roanoke	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Roanoke City	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Rockbridge	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Rockbridge	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Rockbridge	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Rockingham	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Rockingham	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Russell	REST OF VA	04	99	0.912	0.944
	Salem City	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Scott	REST OF VA	04	99	0.912	0.944
	Shenandoah	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Smyth	REST OF VA	04	99	0.912	0.944
	Southampton	REST OF VA	04	99	0.912	0.944
	Southampton	REST OF VA	04	99	0.912	0.944
	Spotsylvania	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Stafford	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Suffolk City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Surry	REST OF VA	04	99	0.912	0.944
	Sussex	REST OF VA	04	99	0.912	0.944
	Tazewell	REST OF VA	04	99	0.912	0.944
	Virginia Beach City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Warren	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Washington	SM TOWN/INDUSTRIAL VA	03	99	0.920	0.944
	Westmoreland	REST OF VA	04	99	0.912	0.944
	Williamsburg City	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
	Wise	REST OF VA	04	99	0.912	0.944
	Wise	REST OF VA	04	99	0.912	0.944
	Wythe	REST OF VA	04	99	0.912	0.944
	York	TIDEWATER & N VA CNTYS, VA	02	99	0.958	0.944
WASHINGTON	Adams	E CNTRL & NE WA	03	99	0.956	0.952
	Asotin	E CNTRL & NE WA	03	99	0.956	0.952
	Benton	E CNTRL & NE WA	03	99	0.956	0.952
	Chelan	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.952
	Clallam	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.952
	Clark	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.952
	Columbia	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.952
	Cowlitz	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.952
	Douglas	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.952
	Ferry	E CNTRL & NE WA	03	99	0.956	0.952
	Franklin	E CNTRL & NE WA	03	99	0.956	0.952
	Garfield	E CNTRL & NE WA	03	99	0.956	0.952
	Grant	E CNTRL & NE WA	03	99	0.956	0.952
	Grays Harbor	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.952
	Island	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.952
	Jefferson	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.952
	King	SEATTLE (KING CNTY), WA	03	02	1.023	1.023
	Kitsap	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.952

ADDENDUM B

MEDICARE FEE SCHEDULE AREAS (LOCALITIES) AND 1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs), CURRENT AND PROPOSED OPTION BY STATE AND COUNTY/COUNTY PART

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Kittitas	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Klickitat	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Lewis	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Lincoln	E CNTRL & NE WA	03	99	0.958	0.962
	Mason	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Okanogan	E CNTRL & NE WA	03	99	0.958	0.962
	Pacific	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Pend Oreille	E CNTRL & NE WA	03	99	0.958	0.962
	Pierce	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	San Juan	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Skagit	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Skamania	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Snohomish	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Spokane	E CNTRL & NE WA	03	99	0.958	0.962
	Stevens	E CNTRL & NE WA	03	99	0.958	0.962
	Thurston	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Wahkiakum	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Walla Walla	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Whatcom	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
	Whitman	E CNTRL & NE WA	03	99	0.958	0.962
	Yakima	W & SE WA (EXCL SEATTLE)	01	99	0.965	0.962
WEST VIRGINIA	Barbour	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Berkeley	EASTERN VALLEY, WV	18	99	0.937	0.919
	Boone	SOUTHERN VALLEY, WV	20	99	0.896	0.919
	Braxton	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Brooke	WHEELING, WV	17	99	0.911	0.919
	Cabell	CHARLESTON, WV	18	99	0.941	0.919
	Calhoun	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Clay	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Doddridge	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Fayette	SOUTHERN VALLEY, WV	20	99	0.896	0.919
	Gilmer	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Grant	EASTERN VALLEY, WV	18	99	0.937	0.919
	Greenbrier	SOUTHERN VALLEY, WV	20	99	0.896	0.919
	Hampshire	EASTERN VALLEY, WV	18	99	0.937	0.919
	Hancock	WHEELING, WV	17	99	0.911	0.919
	Hardy	EASTERN VALLEY, WV	18	99	0.937	0.919
	Harrison	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Jackson	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Jefferson	EASTERN VALLEY, WV	18	99	0.937	0.919
	Kanawha	CHARLESTON, WV	18	99	0.941	0.919
	Lewis	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Lincoln	CHARLESTON, WV	18	99	0.941	0.919
	Logan	SOUTHERN VALLEY, WV	20	99	0.896	0.919
	Marion	WHEELING, WV	17	99	0.911	0.919
	Marshall	WHEELING, WV	17	99	0.911	0.919
	Mason	CHARLESTON, WV	18	99	0.941	0.919
	McDowell	SOUTHERN VALLEY, WV	20	99	0.896	0.919
	Mercer	SOUTHERN VALLEY, WV	20	99	0.896	0.919
	Mineral	EASTERN VALLEY, WV	18	99	0.937	0.919
	Mingo	SOUTHERN VALLEY, WV	20	99	0.896	0.919
	Monongalia	WHEELING, WV	17	99	0.911	0.919
	Monroe	SOUTHERN VALLEY, WV	20	99	0.896	0.919
	Morgan	EASTERN VALLEY, WV	18	99	0.937	0.919
	Nicholas	SOUTHERN VALLEY, WV	20	99	0.896	0.919
	Ohio	WHEELING, WV	17	99	0.911	0.919
	Pendleton	EASTERN VALLEY, WV	18	99	0.937	0.919
	Pleasants	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Pocahontas	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Preston	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Putnam	CHARLESTON, WV	18	99	0.941	0.919
	Raleigh	SOUTHERN VALLEY, WV	20	99	0.896	0.919
	Randolph	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Ritchie	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Roane	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Summers	SOUTHERN VALLEY, WV	20	99	0.896	0.919
	Taylor	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Tucker	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Tyler	OHIO RIVER VALLEY, WV	19	99	0.910	0.919

ADDENDUM B

MEDICARE FEE SCHEDULE AREAS (LOCALITIES) AND 1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs), CURRENT AND PROPOSED OPTION BY STATE AND COUNTY/COUNTY PART

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Upshur	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Wayne	CHARLESTON, WV	18	99	0.941	0.919
	Webster	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Wetzel	WHEELING, WV	17	99	0.911	0.919
	Wirt	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Wood	OHIO RIVER VALLEY, WV	19	99	0.910	0.919
	Wyoming	SOUTHERN VALLEY, WV	20	99	0.896	0.919
WISCONSIN	Adams	CENTRAL WI	13	99	0.924	0.958
	Ashland	NORTHWEST WI	12	99	0.925	0.958
	Barron	NORTHWEST WI	12	99	0.925	0.958
	Bayfield	NORTHWEST WI	12	99	0.925	0.958
	Brown	GREEN BAY (NORTHEAST), WI	40	99	0.951	0.958
	Buffalo	LA CROSSE (W CNTRL), WI	19	99	0.943	0.958
	Burnett	NORTHWEST WI	12	99	0.925	0.958
	Calumet	OSHKOSH (E CNTRL), WI	60	99	0.948	0.958
	Chippewa	LA CROSSE (W CNTRL), WI	19	99	0.943	0.958
	Clark	NORTHWEST WI	12	99	0.925	0.958
	Columbia	CENTRAL WI	13	99	0.924	0.958
	Crawford	SOUTHWEST WI	14	99	0.924	0.958
	Dane	MADISON (DANE CNTY), WI	15	99	1.022	0.958
	Dodge	JANESVILLE (S CNTRL), WI	54	99	0.946	0.958
	Door	GREEN BAY (NORTHEAST), WI	40	99	0.951	0.958
	Douglas	NORTHWEST WI	12	99	0.925	0.958
	Dunn	LA CROSSE (W CNTRL), WI	19	99	0.943	0.958
	Eau Claire	LA CROSSE (W CNTRL), WI	19	99	0.943	0.958
	Florence	GREEN BAY (NORTHEAST), WI	40	99	0.951	0.958
	Fond du Lac	OSHKOSH (E CNTRL), WI	60	99	0.948	0.958
	Forest	GREEN BAY (NORTHEAST), WI	40	99	0.951	0.958
	Grant	SOUTHWEST WI	14	99	0.924	0.958
	Green	JANESVILLE (S CNTRL), WI	54	99	0.946	0.958
	Green Lake	CENTRAL WI	13	99	0.924	0.958
	Iowa	SOUTHWEST WI	14	99	0.924	0.958
	Iron	NORTHWEST WI	12	99	0.925	0.958
	Jackson	LA CROSSE (W CNTRL), WI	19	99	0.943	0.958
	Jefferson	JANESVILLE (S CNTRL), WI	54	99	0.946	0.958
	Juneau	CENTRAL WI	13	99	0.924	0.958
	Kenosha	MILWAUKEE SUBURBS (SE), WI	48	99	0.965	0.958
	Kewaunee	GREEN BAY (NORTHEAST), WI	40	99	0.951	0.958
	La Crosse	LA CROSSE (W CNTRL), WI	19	99	0.943	0.958
	Lafayette	SOUTHWEST WI	14	99	0.924	0.958
	Langlade	WAUSAU (N CNTRL), WI	36	99	0.932	0.958
	Lincoln	WAUSAU (N CNTRL), WI	36	99	0.932	0.958
	Manitowoc	OSHKOSH (E CNTRL), WI	60	99	0.948	0.958
	Marathon	WAUSAU (N CNTRL), WI	36	99	0.932	0.958
	Marinette	GREEN BAY (NORTHEAST), WI	40	99	0.951	0.958
	Marquette	CENTRAL WI	13	99	0.924	0.958
	Menominee	GREEN BAY (NORTHEAST), WI	40	99	0.951	0.958
	Milwaukee	MILWAUKEE, WI	04	99	0.996	0.958
	Monroe	CENTRAL WI	13	99	0.924	0.958
	Oconto	GREEN BAY (NORTHEAST), WI	40	99	0.951	0.958
	Oneida	WAUSAU (N CNTRL), WI	36	99	0.932	0.958
	Outagamie	GREEN BAY (NORTHEAST), WI	40	99	0.951	0.958
	Ozaukee	MILWAUKEE SUBURBS (SE), WI	48	99	0.965	0.958
	Pepin	LA CROSSE (W CNTRL), WI	19	99	0.943	0.958
	Pierce	LA CROSSE (W CNTRL), WI	19	99	0.943	0.958
	Polk	NORTHWEST WI	12	99	0.925	0.958
	Portage	WAUSAU (N CNTRL), WI	36	99	0.932	0.958
	Price	NORTHWEST WI	12	99	0.925	0.958
	Racine	MILWAUKEE SUBURBS (SE), WI	48	99	0.965	0.958
	Richland	SOUTHWEST WI	14	99	0.924	0.958
	Rock	JANESVILLE (S CNTRL), WI	54	99	0.946	0.958
	Rusk	NORTHWEST WI	12	99	0.925	0.958
	Sauk	SOUTHWEST WI	14	99	0.924	0.958
	Sawyer	NORTHWEST WI	12	99	0.925	0.958
	Shawano	GREEN BAY (NORTHEAST), WI	40	99	0.951	0.958
	Sheboygan	OSHKOSH (E CNTRL), WI	60	99	0.948	0.958
	St. Croix	LA CROSSE (W CNTRL), WI	19	99	0.943	0.958
	Taylor	NORTHWEST WI	12	99	0.925	0.958
	Trempealeau	LA CROSSE (W CNTRL), WI	19	99	0.943	0.958

ADDENDUM II

MEDICARE FEE SCHEDULE AREAS (LOCALITIES) AND 1996 GEOGRAPHIC ADJUSTMENT FACTORS (GAFs), CURRENT AND PROPOSED OPTION BY STATE AND COUNTY/COUNTY PART

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State	County	January 1, 1996 Locality Name	Locality Number		GAF	
			1/1/96	Proposed Option	1/1/96 Localities	Policy Option Basic
	Vernon	SOUTHWEST WI	14	99	0.924	0.968
	Vilas	WAUSAU (N CNTRL), WI	36	99	0.932	0.968
	Walworth	JANESVILLE (S CNTRL), WI	54	99	0.946	0.968
	Washburn	NORTHWEST WI	12	99	0.925	0.968
	Washington	MILWAUKEE SUBURBS (SE), WI	46	99	0.985	0.968
	Waukesha	MILWAUKEE SUBURBS (SE), WI	46	99	0.985	0.968
	Waupaca	GREEN BAY (NORTHEAST), WI	40	99	0.951	0.968
	Waushara	CENTRAL WI	13	99	0.924	0.968
	Winnebago	OSHKOSH (E CNTRL), WI	60	99	0.948	0.968
	Wood	WAUSAU (N CNTRL), WI	36	99	0.932	0.968
WYOMING	STATEWIDE	STATEWIDE	21	21	0.925	0.925

† Michigan FSAs are the same under Policy Options Basic and Extended as under the 1/1/96 localities. The GAFs differ slightly because of rounding error.

SOURCE: Health Economics Research file of county input prices.

[FR Doc. 96–16744 Filed 6–27–96; 9:43 am]
BILLING CODE 4120–01–C

federal register

Tuesday
July 2, 1996

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Mark-to-Market/Portfolio Reengineering Demonstration: Notice of Demonstration and Initial Program Guidelines; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4099–N–01]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Mark-to-Market/Portfolio Reengineering Demonstration: Notice of Demonstration and Initial Program Guidelines

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of demonstration program and initial guidance.

SUMMARY: This notice announces a demonstration program that is designed to restructure the financing of projects that have FHA-insured mortgages and that receive Section 8 rental assistance. The purpose of this Congressionally authorized demonstration is to test the feasibility and desirability of multifamily projects meeting their financial and other obligations with or without FHA insurance and with or without above market Section 8 assistance and utilizing project-based assistance or, with the consent of the project owner, tenant-based assistance. In negotiating agreements with eligible project owners, HUD must act to, among other things, take into account the need for assistance of low- and very low-income tenants; address structural problems of projects; and protect the financial interests of the Federal Government. This notice also provides initial guidance on how the Department plans to operate the demonstration program. HUD anticipates that, over time, it will publish additional guidance that reflects in more detail how the program will operate as well as the experience derived through the execution of successful agreements with project owners.

DATES: This demonstration program guidance is effective July 2, 1996. In a separate notice, HUD will publish information requirements that demonstration participants will need to comply with.

FOR FURTHER INFORMATION CONTACT: George Dipman, Office of Multifamily Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC. 20410–4000; Room 6174; telephone (202) 708–3321. (This is not a toll-free number.) Hearing or speech-impaired individuals may call 1–800–877–8399 (Federal Information Relay Service TTY).

SUPPLEMENTARY INFORMATION:

I. Background:

This demonstration, titled FHA Multifamily Demonstration Authority, is authorized by section 210 of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act (Pub. L. No. 104–134, 110 Stat. 1321, April 26, 1996). It reflects concern of both the Congress and the Administration about social issues and budgetary costs associated with the renewal of Section 8 project-based assistance contracts on multifamily properties having FHA-insured mortgages. As of August 1995, the HUD portfolio contained 8,563 projects, with a total of over 850,000 units, that have HUD insured loans supported by Section 8 rental assistance contracts. Under existing contracts, most of which are due to expire over the next few years, many projects receive project-based Section 8 rental assistance for rents that exceed those charged on comparable, unassisted units within the local market. At the same time, these projects often have substantial unmet capital needs. The Federal assistance, in the aggregate, is costly. If assistance contracts were to be renewed on a long term basis, based on current contract rent levels, the annual cost to the Federal Government would increase dramatically by the year 2000. Consequently, Congress has opted not to renew Section 8 contracts on these projects for more than one year, while the Department seeks alternative solutions to the housing and budget issues.

For many project owners, if their level of Section 8 assistance is reduced or eliminated, and all else remains constant, the likelihood is that they will be unable to continue to meet project financial obligations, including mortgage debt service payments, current and future capital needs, and operating expenses such as project reserve and repair costs. This could lead to mortgage defaults, deterioration of this important housing stock, and the possible displacement of thousands of low-income families and seniors nationwide.

Over the past year, Congress, owners, lenders, tenants, and other interested parties have proposed various alternative solutions to this long term and serious problem. Congress has authorized this demonstration, enabling HUD to test various methods of restructuring the financing of these projects. One goal of the demonstration program is to test alternative creative solutions that will provide long-term viability of the properties as affordable housing, which will benefit local communities and their tenants.

The remaining sections of this notice provide the following information:

Section II. Summarizes provisions of Section 210, including project owner eligibility requirements, and tools that HUD can employ to carry out the demonstration.

Section III. Describes HUD's primary objectives in implementing the demonstration, and how HUD anticipates working with owners in reaching agreements.

Section IV. Employs a Question and Answer format to address a variety of specific issues, and is intended to further clarify HUD's approach to implementing the demonstration program.

Section V. Describes certain certifications that HUD makes in connection with publication of this notice of demonstration program.

II. Section 210—Goals, Mandates and Tools

A. Eligible Program Participants

Eligible projects, defined in the legislation, include those multifamily properties

1. Whose owners agree to participate; and

2. Whose mortgages are FHA insured and which receive project-based assistance under Section 8 of the United States Housing Act of 1937; and

3. Whose present Section 8 rents are, in the aggregate, in excess of the Fair Market Rent (FMR) for the area in which the project is located.

B. Goals

Consistent with the legislative objectives, HUD's goal will be to carry out this demonstration program in a manner that will:

1. Result in significant discretionary cost savings through the reduction of above-market Section 8 assistance through early terminations and restructuring of long-term project-based assistance contracts.

2. In the least costly fashion—

a. Maintain existing housing stock in a decent, safe, and sanitary condition;

b. Minimize the involuntary displacement of tenants;

c. Restructure mortgages in a manner that is consistent with local housing market conditions;

d. Support fair housing strategies;

e. Minimize any adverse income tax impact on property owners; and

f. Minimize any adverse impact on residential neighborhoods; and

3. Protect the financial interests of the Federal Government.

Congress provided, in addition, that in determining the manner in which a mortgage is to be restructured or the subsidy reduced, the Secretary may balance competing goals relating to individual projects in a manner that will further the purposes of this demonstration.

C. Mandates

Section 210 provides that, under the demonstration, HUD can pursue these goals with respect to project mortgages securing up to 15,000 units. Moreover, Congress has appropriated $30,000,000 for the cost of modifying mortgage loans, as such costs are defined in section 502 of the Congressional Budget Act of 1974, as amended. Also, the legislation authorizes HUD to directly enter into joint venture arrangements with third parties, under which the Secretary may assign some or all of the functions, obligations and benefits of the Secretary, and to purchase reinsurance, enter into participations, or otherwise transfer the economic interest in contracts of insurance or mortgage insurance premiums on such contracts of insurance. (This notice, however, does not address the implementation of the third party joint venture component of the demonstration. Guidelines for joint venture partners shall be released at a later date.)

D. Tools

The demonstration program will use a variety of tools and authorities to restructure the financing of assisted FHA-insured projects. The basic approach will work through the voluntary participation of the project owners and lenders to move rents and operating costs toward market levels immediately or over time, and to reduce the outstanding principal balance to reflect any decline in net operating income that may result. The restructuring process attempts to put the projects on a sound financial and physical footing with market rents, sufficient to service the remaining debt and operating costs, including replacement reserves.

Reasonable rehabilitation costs may be supported first through the release of reserves and residual receipts accounts, and then by further reduction of the principal balance. Extraordinary rehabilitation needs may require capital infusions from partners and state and local government assistance.

Existing tenants will continue to be assisted with tenant based Section 8 assistance or by project based Section 8 assistance. Section 8 assistance for projects with contracts expiring in 1997 shall be renewed only after annual budget authorizations by Congress. To support mixed-income developments, some tenants who receive tenant-based assistance and vacate the project may be replaced with families that are not eligible for Section 8 assistance.

Post workout refinancing methods may include leaving the existing FHA-insured loan in place, refinancing the mortgage with an FHA-insured mortgage under an FHA refinancing program, obtaining a new loan and FHA insurance, and financing through conventional sources.

Existing tax law will apply to reengineered, assisted FHA projects. Mitigating any tax consequences resulting from debt cancellation will be the responsibility of the owner. HUD will consider any approach that is revenue neutral to the property owners and investors.

Depending on the particular characteristics of a project, HUD and an owner and, where applicable, with the consent of affected third parties, could enter into a restructuring agreement that includes, but is not limited to, one or more of the following actions:

1. Restructuring rents at or above market where, in the latter instance, market rents are insufficient to cover operating costs irrespective of debt service;

2. Forgiving and cancelling any FHA-insured mortgage debt that a demonstration project cannot carry at market rents while bearing reasonable operating costs;

3. Paying all or a portion of a project's debt service, including monthly payments from the appropriate Insurance Fund for the full remaining term of the insured mortgage;

4. Replacing FHA mortgage insurance with uninsured debt or continuing FHA mortgage insurance, if warranted;

5. Not renewing expiring existing project-based assistance contracts with the provision of tenant-based assistance to previously assisted households;

6. Providing project-based assistance with rents at or below fair market rents for the locality and negotiating other terms acceptable to HUD and the owner;

7. Deciding to remove, relinquish, extinguish, modify, or agree to the removal of any mortgage, regulatory agreement, project-based assistance contract, use agreement, or any restriction that had been imposed by the Secretary, including the restriction on distribution of income; and

8. Requiring the owner of an assisted property to apply any accumulated residual receipts toward effecting the purposes of the reengineering initiative.

III. HUD's Portfolio Reengineering Program—Overview

HUD's Portfolio Reengineering program, which will implement the Demonstration, is designed to soften the impact of Section 8 budget reductions. Under its Portfolio Reengineering program, HUD seeks to reduce Federal assistance payments while stabilizing projects physically and financially and reducing reliance on Federal insurance, and to do so with the least possible disruption to tenants and neighborhoods.

These objectives will be accomplished by, among other things, (1) reducing rents and operating costs to market levels; (2) making corresponding reductions in the principal balances of outstanding mortgages; and (3) improving the ability of the current assisted residents to pay market rent levels. Reengineering may also provide tenants with tenant-based rental assistance or continued project-based rental subsidies at lower rent levels.

HUD will implement the demonstration through a combination of HUD field and headquarters staff, private consultants and third parties or joint venture partners. As previously noted, these guidelines do not address guidelines for the involvement of joint venture partners. Guidelines for joint venture partners will be released at a later date.

Project readiness will be a significant criterion for allocating demonstration resources. HUD seeks reengineering projects with very real prospects for support from the existing mortgagee, owners, new lenders, and the community, including tenants.

Under the demonstration, HUD intends to ensure that affected tenants and representatives of the local community and government have a meaningful opportunity to review and react to a proposed agreement before any agreement is finalized.

Reviews of proposals made under the demonstration will be conducted on an "open window" batched basis with monthly reviews by a loan workout committee that will consider various workout approaches as described in section II. D. Proposals that contain a number of the following characteristics will be given priority if demand for the demonstration exceeds authority and resources. HUD may add additional priority criteria, in future notices that provide additional guidance under the demonstration. HUD prefers projects and proposals that meet the following criteria:

1. Have Section 8 contracts that extend beyond 1997, and which reduce

rental assistance over the remaining life of the contract, or use rental assistance to prepare the project for market rents;

2. Reduce rents to market rents, rather than to an above-market level;

3. Minimize the impact of credit subsidy requirements resulting from the modification of the existing mortgage debt or the provision of new FHA insurance;

4. Maximize reduction of Federal expenditures through—

a. Low principal reduction (i.e. minimum partial payment of claim);

b. Section 8 savings; or

c. Reduced operating costs;

5. Eliminate project-based rental assistance in favor of tenant-based rental assistance;

6. Eliminate or reduce the existing FHA mortgage insurance;

7. Achieve restructuring through the use of non-HUD personnel;

8. Preserve some long-term affordability;

9. Serve housing needs of low- and very low-income tenants; and

10. Illustrate efforts to raise the economic value of property by increasing the earning power of the existing tenant population through initiatives such as education, job training and entrepreneurship.

IV. Ongoing Clarification of Demonstration Guidelines

The primary goal of the Portfolio Reengineering Demonstration is to provide HUD, Congress, and assisted FHA project owners and tenants a testing ground for wide-scale restructuring and stabilizing of this endangered housing resource. As the demonstration evolves, questions that arise through field testing approaches to reengineering will be answered through periodic published question and answer bulletins. The following "Qs and As" address some issues already communicated to HUD.

Q. One goal of the demonstration is to test alternative creative solutions that will provide long term viability to the properties and their tenants. What kind of alternative creative solutions would be considered?

A. HUD will give highest priority in restructuring to owners who can demonstrate a decreasing need for Section 8 assistance because of the implementation of programs which enhance the ability of assisted residents to pay an increasingly greater portion of the market rent. The additional effects of [illegible] alternative solutions, in addition to reliance on the financing and rehabilitation tools specified above, include investment of owner and/or project resources targeted at resident job training and placement, education, self-sufficiency, enterprise development, entrepreneurship and social services; and commitments from community related organizations to assist in similar endeavors. Owners whose proposals include such initiatives should outline specifically the goals they plan to achieve and how the implementation of such programs will result in enhanced financial capacity for the real estate and the tenants.

Q. What is the definition of market rents?

A. Market rents refers to the rent achievable by the project without rent subsidy when competing in the market place for new tenants. Two or more market rent projections for a given project may be considered in reengineering negotiations. For example, there may be a market rent for a project in "as-is" condition, another rent for a rehabilitated project, another rent for a project to which amenities have been added, and still another rent that is achievable two or three years after restructuring is completed and income mixing has occurred.

Q. How will operating expenses be determined for the purposes of calculating the mortgage supportable after rents are moved to market?

A. HUD's due diligence contractor will evaluate project operating statements, will reduce costs that are a product of HUD requirements and processes that can be eliminated, and HUD will negotiate the balance of any operating expenses that appear to exceed market levels with the owner in light of industry standards for market rate developments.

Q. Will HUD keep existing FHA insurance in place after restructuring?

A. It is HUD's preference to extinguish existing insurance immediately or over time and transition reengineered projects to freshly underwritten permanent financing. This preference is driven by both HUD budget considerations, and well established banking principles regarding the restructuring of troubled assets. However, HUD will consider extenuating circumstances that may justify leaving existing insurance in place.

Q. What rehabilitation levels and capital improvements will be supported by the demonstration?

A. Restructuring must be designed to ensure the long term physical integrity of the project. HUD will consider rehabilitation necessary to achieve that objective. In addition, HUD will consider the addition of amenities when the owner can demonstrate they will support higher market rents that will reduce net long term costs to the Federal Government. This could include, for example, improvements that promote the economic self-sufficiency of the tenants. Any project rehabilitation or capital improvements supported by HUD will comply with 24 CFR part 50.

Q. What owner administrative costs will HUD allow to be offset in the workout process?

A. Non-profit owners may include reasonable transaction costs and administrative fees as eligible uses of funds in loan workouts.

Q. How will the demonstration approach projects in which market rents are insufficient to support operating costs?

A. These projects are not included in the initial focus of the demonstration, but will be addressed in future guidelines.

Q. Will the demonstration include projects in which restructuring occurs in conjunction with a sale or transfer to a new owner?

A. Yes.

V. Other matters

Executive Order 12612, Federalism

The General Counsel, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions in this NOFA are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. This notice does not affect the relationship between the Federal Government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice does not

authorized demonstration program and is intended to find ways of reducing the impact on families that might otherwise not be caused by the nonrenewal of Section 8 project-based rental assistance.

Dated: June 26, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–16790 Filed 6–27–96; 4:03 pm]

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Federal Register

Tuesday
July 2, 1996

Part VI

Department of Education

Safe and Drug-Free Schools and Communities Federal Activities Grants Program (Hate Crimes Prevention); Final Priority and Inviting Applications for New Awards for Fiscal Year 1996; Notice

DEPARTMENT OF EDUCATION

Safe and Drug-Free Schools and Communities Federal Activities Grants Program (Hate Crimes Prevention)

AGENCY: Department of Education.

ACTION: Notice of Final Priority for Fiscal Year 1996.

SUMMARY: The Secretary announces a final priority for fiscal year (FY) 1996 under the Safe and Drug-Free Schools and Communities Federal Activities Grants Program. The Secretary takes this action to focus Federal financial assistance on unmet national needs. Under this priority, the Department will fund the development and implementation of innovative, effective strategies for preventing and reducing the incidence of crimes and conflicts motivated by hate in localities directly affected by hate crimes. Strategies may include, but need not be limited to: (1) Developing and disseminating curricula or other instructional materials on the causes and consequences of hate-motivated behavior and effective measures of intervening with youth to prevent such behaviors; (2) school-community partnerships that provide opportunities for youth to engage in service learning activities designed to reduce the incidence of crimes and conflicts motivated by hate; and (3) training of school personnel, parents, and community members on issues related to crimes and conflicts motivated by hate.

EFFECTIVE DATE: This priority takes effect August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Charlotte Gillespie, U.S. Department of Education, 600 Independence Ave., SW., Room 604 Portals, Washington, DC 20202–6123. Telephone: (202) 260–3954. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The seventh National Education Goal provides that, by the year 2000, all schools in America will be free of drugs and violence and the unauthorized presence of firearms and alcohol and will offer a disciplined environment that is conducive to learning. The State grant portion of the Safe and Drug-Free Schools and Communities Act (SDFSCA) provides funding to 97 percent of school districts in the Nation to assist them in preventing violence in and around schools, promoting safety and discipline for students, and preventing the illegal use of alcohol, tobacco, and other drugs. The SDFSCA Federal Activities Grants Program reinforces that effort by supporting the development of innovative programs that (1) Demonstrate effective new methods of ensuring safe and drug-free schools and communities, and (2) ultimately will provide models of proven effective practice that will assist schools and communities around the Nation to improve their programs under the SDFSCA.

This notice contains one absolute priority to be applied to this competition under the Safe and Drug-Free Schools and Communities Federal Activities Grants Program.

The Secretary will award approximately 10 grants in fiscal year 1996 to public and private nonprofit organizations and individuals, including local educational agencies, for applications that address the absolute priority in a particularly innovative and effective manner. Grants will be for a period of one year; however, because of the urgent national need for effective programs to address violent behavior motivated by hate, applications must clearly demonstrate an ability to begin service delivery to the target audience within four months of the grant award.

In making awards under this grant program, the Secretary may take into consideration the geographic distribution and diversity of activities addressed by the projects, in addition to the rank order of applicants.

Contingent upon the availability of funds, the Secretary may make additional awards in fiscal year 1997 from the rank-ordered list of unfunded applicants from this competition.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Applications for this competition must be received at the address specified in the notice inviting applications for this competition no later than 4:30 p.m. on August 2, 1996. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

Priorities

Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Absolute Priority—Developing and implementing innovative, effective strategies for preventing and reducing the incidence of crimes and conflicts motivated by hate in localities directly affected by hate crimes.

Applicants proposing a project under this priority must—

(1) Describe the problem that will be addressed, including an assessment of the number of persons who will benefit from the project;

(2) Demonstrate that the community to be served by the project has a significant level of crime or conflict motivated by hate;

(3) Describe the activities to be implemented and explain how they are based on research and best practices, how they will lead to sustained improvements in the school and community environment, and how they will be cost-effective and replicable;

(4) Provide evidence of collaboration with the following groups in the planning and implementation of the program—

(i) Students and families,

(ii) Local school officials and teachers,

(iii) Community leaders and representatives from groups such as religious, business, and civic organizations, and

(iv) Juvenile justice, law enforcement, and community policing representatives;

(5) Identify the roles and responsibilities of each participating group;

(6) Describe the behavioral, developmental, or theoretical basis for the proposed project and provide evidence for its effectiveness in preventing and reducing the incidence of crimes and conflicts motivated by hate;

(7) Identify the intended audience to be served and describe how the proposed activities are appropriate for the target population;

(8) Provide a detailed plan of implementation, including evidence of ability to begin service delivery within four months of the grant award;

(9) Identify performance goals for the project and provide a description of how progress toward achieving goals will be measured; and

(10) Provide evidence of the proposed strategy's potential to provide a replicable model of effective practice for other schools and communities facing similar problems.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department to offer interested parties the opportunity to comment on proposed rules. Ordinarily, this practice would have applied to the rules in this notice. However, the Secretary waives rulemaking under section 553(b)(B) of the Administrative Procedures Act. This section provides that rulemaking is not required when the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. The Secretary believes that, in order to make timely grant awards using Fiscal Year (FY) 1996 funds, public comment on those rules is impracticable. Congress did not appropriate FY 1996 funds for this program until April 26, 1996. The Secretary must make new awards no later than September 30, 1996. Moreover, the Safe and Drug-Free Schools and Communities National Programs statute is designed to address emergency needs in drug and violence prevention. Programs need to be implemented as early as possible in the 1996–97 school year. Due to the delay in the appropriation of FY 1996 funds, it is now impracticable to receive public comments and still allow FY 1996 awards to be made by September 30, 1996.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 7131.

(Catalog of Federal Domestic Assistance Program Number 84.184E Safe and Drug-Free Schools and Communities Act Federal Activities Grants Program)

Dated: June 26, 1996.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 96–16835 Filed 6–28–96; 9:01 am]

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.184E]

Safe and Drug-Free Schools and Communities Federal Activities Grants Program (Hate Crimes Prevention)

Notice inviting applications for new awards for fiscal year (FY) 1996.

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To fund the development and implementation of innovative, effective strategies for preventing and reducing the incidence of crimes and conflicts motivated by hate in localities directly affected by hate crimes.

Eligible Applicants: Public and private nonprofit organizations and individuals, including local educational agencies.

Deadline for Receipt of Applications: August 2, 1996.

Deadline for Intergovernmental Review: September 2, 1996.

Available Funds: $2,000,000.

Estimated Range of Awards: $100,000–$300,000.

Estimated Average Size of Awards: $200,000.

Estimate Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR Part 82 (New Restrictions on Lobbying).

(8) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR Part 86 (Drug-Free Schools and Campuses).

Note: As of July 1, 1995, Part 86 of EDGAR no longer applies to SEAs and LEAs. It continues to apply to IHEs. This change results from the Improving America's Schools Act of 1994, Pub.L. 103–382.

Description of Program: The seventh National Education Goal provides that, by the year 2000, all schools in America will be free of drugs and violence and the unauthorized presence of firearms and alcohol and offer a disciplined environment that is conducive to learning. The State grant portion of the Safe and Drug-Free Schools and Communities Act (SDFSCA) provides funding to 97 percent of school districts in the nation to assist them in preventing violence in and around schools, promoting safety and discipline for students, and preventing the illegal use of alcohol, tobacco, and other drugs. The Safe and Drug-Free Schools Federal Activities Grants Program reinforces that effort by supporting the development of innovative programs that (1) demonstrate effective new methods of ensuring safe and drug-free schools and communities, and (2) ultimately will provide models of proven effective practice that will assist schools and communities around the nation to improve their programs under the SDFSCA.

Public and private nonprofit organizations and individuals receiving funds under this program may not use funds for construction (except for minor remodeling needed to carry out the activities described in the application) and medical services, drug treatment or rehabilitation, except for pupil services or referral to treatment for students who are victims of or witnesses to crime or who use alcohol, tobacco, or drugs.

The term 'nonprofit', as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

In making awards under this grant program, the Secretary may take into consideration the geographic distribution and diversity of activities addressed by the projects, in addition to the rank order of applications.

Background

Consistent with the definition used by the Department of Justice, a hate crime

is a criminal offense committed against a person or property that is motivated, in whole or in part, by the offender's bias against a race, religion, ethnic/national origin, or sexual orientation group.

National attention has focused on the recent wave of church burnings and the need to intervene forcefully to prevent these criminal acts and to promote tolerance among races, cultures, and religions. A recent report in *The Washington Post* (Wednesday, June 19, 1996, page A1) notes: "The people burning down black churches in the South are generally white, male and young, usually economically marginalized or poorly educated, frequently drunk or high on drugs, rarely affiliated with hate groups, but often deeply driven by racism. * * *" In the last 18 months, according to the Bureau of Alcohol, Tobacco and Firearms, there have been 37 suspicious fires at predominantly African American churches and 23 suspicious fires at predominantly white churches.

Data collected from six States as part of the Department of Justice study on juvenile hate crime suggest that an estimated 17 percent to 26 percent of all hate crimes recorded by law enforcement can be attributed to persons under the age of 18. The study also identified a correlation between involvement in hate crime offenses and gang-related crime.

Priority: The priority in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register** and repeated below, applies to this competition.

Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act of 1994, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet the absolute priority.

Absolute Priority—Developing and implementing innovative, effective strategies for preventing and reducing the incidence of crimes and conflicts motivated by hate in localities directly affected by hate crimes.

Applicants proposing a project under this priority must—

(1) Describe the problem that will be addressed, including an assessment of the number of persons who will benefit from the project;

(2) Demonstrate that the community to be served by the project has a significant level of crime or conflict motivated by hate;

(3) Describe the activities to be implemented and explain how they are based on research and best practices, how they will lead to sustained improvements in the school and community environment, and how they will be cost-effective and replicable;

(4) Provide evidence of collaboration with the following groups in the planning and implementation of the program—

(i) Students and families,

(ii) Local school officials and teachers,

(iii) Community leaders and representatives from groups such as religious, business, and civic organizations, and

(iv) Juvenile justice, law enforcement, and community policing representatives;

(5) Identify the roles and responsibilities of each participating group;

(6) Describe the behavioral, developmental, or theoretical basis for the proposed project and provide evidence for its effectiveness in preventing and reducing the incidence of crimes and conflicts motivated by hate;

(7) Identify the intended audience to be served and describe how the proposed activities are appropriate for the target population;

(8) Provide a detailed plan of implementation, including evidence of ability to begin service delivery within four months of the grant award;

(9) Identify performance goals for the project and provide a description of how progress toward achieving goals will be measured; and

(10) Provide evidence of the proposed strategy's potential to provide a replicable model of effective practice for other schools and communities facing similar problems.

Selection Criteria: (a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (30 Points) the Secretary reviews each application to determine how well the project will meet the purpose of the Safe and Drug-Free Schools and Communities Act of 1994 including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the Safe and Drug-Free Schools and Communities Act of 1994.

(2) *Extent of need for the project.* (30 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the Safe and Drug-Free Schools and Communities Act of 1994, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of Operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on August 10, 1995 (60 FR 40980 and 40981).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be received by the date indicated in this notice at the following address: The Secretary, E.O.12372—CFDA # 84.184E, U.S. Department of Education, Room 6213, 600 Independence Ave., SW, Washington, D.C. 20202–0125.

Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for transmittal and receipt of applications.

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.184E), Washington, D.C. 20202–4725.

Note: All applications must be received by August 2, 1996. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.184E), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

Notes:

(1) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(2) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms: The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

PART I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

PART II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

PART III: Application Narrative.

ADDITIONAL MATERIALS:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget at 61 FR 1413 (January 19, 1996).

Notice to All Applicants.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Charlotte D. Gillespie, U.S. Department of Education, 600 Independence Ave., SW, Room 604 Portals, Washington, D.C. 20202–6123. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases); or on the World Wide Web at (http://www/ed/gov/money.html). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 7131

Dated: June 26, 1996.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY: U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 1 8 4E

TITLE: Federal Activities Grants Program (Hate Crimes Prevention)

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____
b. Applicant	$ .00	b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
c. State	$ .00	
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000-01-C

Part III—Application Narrative

Instructions for Part III—Application Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being required and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 25 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1810–0551, Exp. Date: 9/11/96. The time required to complete this information collection is estimated to average 28 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, DC 20202–4651. *If you have comments or concerns regarding the status of your individual submission of this form, write directly to:* Charlotte D. Gillespie, Safe and Drug-Free Schools Program, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW., Washington, DC 20202–6123.

BILLING CODE 4000-01-P

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 --

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*
11. Amount of Payment *(check all that apply):* $ _____ ☐ actual ☐ planned	13. Type of Payment *(check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:	
15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No	
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only.	Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

BILLING CODE 4000-01-C

Notice to All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. *ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.*

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information my be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it tends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

[FR Doc. 96–16836 Filed 6–28–96; 9:01 am]
BILLING CODE 4000–01–M

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Tuesday
July 2, 1996

Part VII

Department of Education

Safe and Drug-Free Schools and Communities Federal Activities Grants Program (Drug and Violence Prevention); Final Priorities and New Awards Applications for FY 1996; Notices

DEPARTMENT OF EDUCATION

Safe and Drug-Free Schools and Communities Federal Activities Grants Program (Drug and Violence Prevention)

AGENCY: Department of Education.

ACTION: Notice of final priorities for fiscal year 1996.

SUMMARY: The Secretary announces priorities for fiscal year (FY) 1996 under the Safe and Drug-Free Schools and Communities Federal Activities Grants Program. The Secretary takes this action to focus Federal financial assistance on national needs. Under these priorities, the Department will fund projects that develop and implement, expand, or enhance innovative programs designed to accomplish one or more of the following: (1) infusing research-based knowledge about "what works" into the design, development, and implementation of school-based strategies to prevent drug use among youth; (2) removing firearms and other weapons from schools; (3) preventing truancy and addressing the needs of youth who are out of the education mainstream; or (4) preventing violent, aggressive, intimidating, or other disruptive behavior arising out of bullying, sexual harassment, or other cause.

EFFECTIVE DATE: These priorities take effect August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Charlotte Gillespie, U.S. Department of Education, 600 Independence Avenue, SW., Room 604 Portals, Washington, DC 20202–6123. Telephone: (202) 260–3954. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The seventh National Education Goal provides that, by the year 2000, all schools in America will be free of drugs and violence and the unauthorized presence of firearms and alcohol and will offer a disciplined environment that is conducive to learning. The State grant portion of the Safe and Drug-Free Schools and Communities Act (SDFSCA) provides funding to 97 percent of school districts in the Nation to assist them in preventing violence in and around schools, promoting safety and discipline for students, and preventing the illegal use of alcohol, tobacco, and other drugs. The SDFSCA Federal Activities Grants Program supports the development of innovative programs that (1) Demonstrate effective new methods of ensuring safe and drug-free schools and communities, and (2) ultimately will provide models of proven effective practice that will assist schools and communities around the nation to improve their programs under the SDFSCA.

This notice contains four absolute priorities and one competitive preference priority to be applied to this competition under the Safe and Drug-Free Schools and Communities Federal Activities Grants Program.

Under priority 1, the Department will fund innovative projects that infuse research-based knowledge about "what works" into the design, development, and implementation of school-based strategies to prevent drug use among youth.

Under priority 2, the Department will fund innovative strategies to remove firearms and other weapons from schools. For this competition, a weapon means a knife, club, or other device used to inflict intentional injury.

Under priority 3, the Department will fund innovative, research-based programs to prevent truancy and address the needs of youth who are out of the education mainstream. For this competition, youth who are out of the education mainstream means truants, dropouts, children who are afraid to go to school, children who have been suspended or expelled, and children in the juvenile justice system who need to maintain or enhance their educational status and be reintegrated into the school system upon their release from residential placement.

Under priority 4, the Department will fund innovative, research-based strategies to prevent violent, aggressive, intimidating, or other disruptive behavior arising from bullying, sexual harassment, or other cause.

Under the competitive priority, the Secretary will award five (5) extra points to applications from Empowerment Zones and Enterprise Communities (EZ/EC). The Empowerment Zone and Enterprise Community program is a critical element of the Administration's community revitalization strategy. The program is the first step in rebuilding communities in America's poverty-stricken inner cities and rural heartlands. It is designed to empower people and communities by inspiring Americans to work together to create jobs and opportunity.

The Departments of Agriculture (USDA) and Housing and Urban Development (HUD) have designated empowerment zones and enterprise communities, which are communities located within the cities and counties listed in the appendix.

The Empowerment Zones and Enterprise Communities were designated based on locally-developed strategic plans that comprehensively address how the community will link economic development with education and training, as well as how community development, public safety, human services, and environmental initiatives together will support sustainable communities. Designated areas receive Federal grant funds and substantial tax benefits and have access to other Federal programs. (For additional information on the Urban EZ/EC program, contact HUD at 1–800–998–9999 and for the rural EZ/EC program, contact USDA at 1–800–645–4712.)

The Secretary will award approximately 25 grants in FY 1996, for a period not to exceed two years, to public and private nonprofit organizations and individuals to develop and implement, expand, or enhance innovative, research-based programs that address these priorities.

In making awards under this grant program, the Secretary may take into consideration the geographic distribution and diversity of activities addressed by the projects, in addition to the rank order of applicants.

Contingent upon the availability of funds, the Secretary may make additional awards in fiscal year 1997 from the rank-ordered list of unfunded applicants from this competition.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Applications for this competition must be received at the address specified in the notice inviting applications for this competition no later than 4:30 p.m. on August 2, 1996. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

Priorities

Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act, the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under this competition only applications that meet one or more of these absolute priorities.

Absolute Priority 1—Infusing Research-Based Knowledge About "What Works" Into the Design, Development and Implementation of School-Based Strategies to Prevent Drug Use Among Youth.

Applicants proposing a project under this priority must—

(1) Describe the activities that will be implemented and explain how they are based on research and best practices, how they will lead to sustained improvements in student results and the school environment, and how they will be cost-effective and replicable;

(2) Identify the age groups to be served and describe how the proposed activities are appropriate for the target population;

(3) Provide evidence of collaboration between a local educational agency (LEA) and a research institution in the design and implementation of activities, including a description of the roles and responsibilities of each; and

(4) Identify performance goals for the project and provide a description of how progress toward achieving goals will be measured.

Absolute Priority 2—Removing Firearms and other Weapons from School

Applicants proposing a project under this priority must—

(1) Describe the activities that will be implemented and explain how they are based on research and best practices, how they will lead to sustained improvements in student results and the school environment, and how they will be cost-effective and replicable;

(2) Describe techniques the applicant will use to identify and remove firearms and other weapons that are brought into school;

(3) Provide information that demonstrates the extent to which the applicant has involved local, State, and/or Federal law enforcement agencies, as appropriate, in the development and implementation of innovative strategies to prevent firearms and other weapons from coming into school;

(4) Describe how the applicant will provide for referrals to the juvenile justice system of youths who are found to possess a firearm, consistent with the provisions of the Gun-Free Schools Act; and

(5) Identify performance goals for the project and provide a description of how progress toward achieving goals will be measured.

Absolute Priority 3—Preventing Truancy and Addressing the Needs of Youth Who are Out of the Education Mainstream

Applicants proposing a project under this priority must—

(1) Describe the activities that will be implemented and explain how they are based on research and best practices, how they will lead to sustained improvements in student results and the school environment, and how they will be cost-effective and replicable;

(2) Describe the problem that will be addressed including an assessment of the number of students who will benefit from the project;

(3) Indicate how the activities are appropriate for returning truant and other youth who are out of the education mainstream to the classroom and ensuring their educational progress;

(4) Provide information on the extent to which the following will be involved in the development and implementation of activities funded by this grant: parents, students, local law enforcement officials, including, as appropriate, juvenile justice authorities, and other youth-serving organizations in the community; and

(5) Identify performance goals for the project and provide a description of how progress toward achieving goals will be measured.

Absolute Priority 4: Preventing Violent, Aggressive, Intimidating or Other Disruptive Behavior Arising From Bullying, Sexual Harassment or Other Cause

Applicants proposing a project under this priority must—

(1) Describe the activities that will be implemented and explain how they are based on research and best practices, how they will lead to sustained improvements in student results and the school environment, and how they will be cost-effective and replicable;

(2) Describe the behaviors that the program seeks to correct, including an assessment of the types and frequency of violent, aggressive, intimidating, or other disruptive behavior among youth to be served;

(3) Identify the child development framework used to identify appropriate strategies for intervening in violent, aggressive, intimidating, or other disruptive behavior;

(4) Provide information on the extent to which educators, law enforcement officials, parents, and students have been involved in the development and implementation of interventions for youths who engage in violent, aggressive, intimidating, or other disruptive behaviors and for youths who are victims of such behaviors; and

(5) Identify performance goals for the project and provide a description of how progress toward achieving goals will be measured.

Competitive Preference Priority—Empowerment Zone or Enterprise Community

Within the absolute priorities specified in this notice, the Secretary, under 34 CFR 75.105(c)(2)(i) and the Safe and Drug-Free Schools and Communities Act, gives preference to applications that meet the following competitive priority. The Secretary awards five (5) points to an application that meets this competitive priority. These points would be in addition to any points the application earns under the evaluation criteria for the program.

Note: The total number of points an application may earn is 105.

Projects in an Empowerment Zone or Enterprise Community

In order to meet the competitive preference priority, applicants must—

(1) Propose projects that meet one or more of the four absolute priorities for this competition;

(2) Demonstrate that the project will be carried out in an Empowerment Zone (EZ) or Enterprise Community (EC) designated in accordance with Section 1391 of the Internal Revenue Code (IRC), as amended by Title XIII of the Omnibus Budget Reconciliation Act (OBRA) of 1993 or that it will primarily serve students who reside in an EZ or EC; and

(3) Describe how the proposed project is linked to the EZ/EC strategic plan and will be an integral part of the Empowerment Zone or Enterprise Community Program.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department to offer interested parties the opportunity to comment on proposed rules. Ordinarily, this practice would have applied to the rules in this notice. However, the Secretary waives rulemaking under section 553(b)(B) of the Administrative Procedures Act. This section provides that rulemaking is not required when the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. The Secretary believes that, in order to make timely grant awards using Fiscal Year (FY) 1996 funds, public comment on those rules is impracticable. Congress did not

appropriate FY 1996 funds for this program until April 26, 1996. The Secretary must make new awards no later than September 30, 1996. Moreover, the Safe and Drug-Free Schools and Communities National Programs statute is designed to address emergency needs in drug and violence prevention. Programs need to be implemented as early as possible in the 1996–97 school year. Due to the delay in the appropriation of FY 1996 funds, it is now impracticable to receive public comments and still allow FY 1996 awards to be made by September 30, 1996.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 7131.

Dated: June 26, 1996.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

(Catalog of Federal Domestic Assistance Program Number 84.184D Safe and Drug-Free Schools and Communities Act Federal Activities Grants Program)

Appendix—Empowerment Zones and Enterprise Communities

Empowerment Zones (EZ)

Georgia: Atlanta
Illinois: Chicago
Kentucky: Kentucky Highlands*
Maryland: Baltimore
Michigan: Detroit
Mississippi: Mid Delta*
New York: Harlem, Bronx
Pennsylvania/New Jersey: Philadelphia, Camden
Texas: Rio Grande Valley*

Supplemental Empowerment Zones (SEZ)

California: Los Angeles
Ohio: Cleveland

Enterprise Communities (EC)

Alabama: Birmingham
Alabama: Chambers County*
Alabama: Greene, Sumter Counties*
Arizona: Phoenix
Arizona: Arizona Border*
Arkansas: East Central*
Arkansas: Mississippi County*
Arkansas: Pulaski County
California: Imperial County*
California: Los Angeles, Huntington Park
California: San Diego
California: San Francisco, Bayview, Hunter's Point
California: Watsonville*
Colorado: Denver
Connecticut: Bridgeport
Connecticut: New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County*
Florida: Tampa
Florida: Miami, Dade County
Georgia: Albany
Georgia: Central Savannah*
Georgia: Crisp, Dooley Counties*
Illinois: East St. Louis
Illinois: Springfield
Indiana: Indianapolis
Iowa: Des Moines
Kentucky: Louisville
Louisiana: Northeast Delta*
Louisiana: Macon Ridge*
Louisiana: New Orleans
Louisiana: Ouachita Parish
Massachusetts: Lowell
Massachusetts: Springfield
Michigan: Five Cap*
Michigan: Flint
Michigan: Muskegon
Minnesota: Minneapolis
Minnesota: St. Paul
Mississippi: Jackson
Mississippi: North Delta*
Missouri: East Prairie*
Missouri: St. Louis
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque
New Mexico: Moro, Rico Arriba, Taos Counties*
New York: Albany, Schenectady, Troy
New York: Buffalo
New York: Newburgh, Kingston
New York: Rochester
North Carolina: Charlotte
North Carolina: Halifax, Edgecombe, Wilson Counties*
North Carolina: Robeson County*
Ohio: Akron
Ohio: Columbus
Ohio: Greater Portsmouth*
Oklahoma: Choctaw, McCurtain Counties*
Oklahoma: Oklahoma City
Oregon: Josephine*
Oregon: Portland
Pennsylvania: Harrisburg
Pennsylvania: Lock Haven*
Pennsylvania: Pittsburg
Rhode Island: Providence
South Carolina: Charleston
South Carolina: Williamsburg County*
South Dakota: Beadle, Spink Counties*
Tennessee: Fayette, Haywood Counties*
Tennessee: Memphis
Tennessee: Nashville
Tennessee/Kentucky: Scott, McCreary Counties*
Texas: Dallas
Texas: El Paso
Texas: San Antonio
Texas: Watch
Utah: Ogden
Vermont: Burlington
Virginia: Accomack*
Virginia: Norfolk
Washington: Lower Yakima*
Washington: Seattle
Washington: Tacoma
West Virginia: West Central*
West Virginia: Huntington
West Virginia: McDowell*
Wisconsin: Milwaukee

*Denotes rural designee.

Enhanced Enterprise Communities (EEC)

California: Oakland
Massachusetts: Boston
Missouri/Kansas: Kansas City, Kansas City
Texas: Houston

[FR Doc. 96–16837 Filed 6–28–96; 9:01 am]
BILLING CODE 4000–01–P

[CFDA No.: 84.184D]

Safe and Drug-Free Schools and Communities Federal Activities Grants Program (Drug and Violence Prevention); Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996

Note to Applicants

This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program

To fund projects that develop and implement, expand, or enhance innovative programs designed to accomplish one or more of the following: (1) infuse research-based knowledge about "what works" into the design, development, and implementation of school-based strategies to prevent drug use among youth; (2) remove firearms and other weapons from schools; (3) prevent truancy and address the needs of youth who are out of the education mainstream, or (4) prevent violent, aggressive, intimidating, or other disruptive behavior arising out of bullying, sexual harassment, or other cause.

Eligible Applicants: Public and private nonprofit organizations and individuals.

Deadline for Transmittal of Applications: August 2, 1996.

Deadline for Intergovernmental Review: September 2, 1996.

Available Funds: $10,000,000.

Estimated Range of Awards: $300,000–$500,000.

Estimated Average Size of Awards: $400,000.

Estimated Number of Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR Part 82 (New Restrictions on Lobbying).

(8) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(Note: As of July 1, 1995, Part 86 of EDGAR no longer applies to SEAs and LEAs. It continues to apply to IHEs. This change results from the Improving America's Schools Act of 1994, Pub.L. 103–382.)

Description of Program

The seventh National Education Goal provides that, by the year 2000, all schools in America will be free of drugs and violence and the unauthorized presence of firearms and alcohol and offer a disciplined environment that is conducive to learning. The State grant portion of the Safe and Drug-Free Schools and Communities Act (SDFSCA) provides funding to 97 percent of school districts in the nation to assist them in preventing violence in and around schools, promoting safety and discipline for students, and preventing the illegal use of alcohol, tobacco, and other drugs. The Safe and Drug Free Schools Federal Activities Grants Program reinforces that effort by supporting the development of innovative programs that (1) demonstrate effective new methods of ensuring safe and drug-free schools and communities, and (2) ultimately will provide models of proven effective practice that will assist schools and communities around the nation to improve their programs under the SDFSCA.

Public and private nonprofit organizations and individuals receiving funds under this program may not use funds for construction (except for minor remodeling needed to carry out the activities described in the application) and medical services, drug treatment or rehabilitation, except for pupil services or referral to treatment for students who are victims of or witnesses to crime or who use alcohol, tobacco, or drugs.

The term 'nonprofit', as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

In making awards under this grant program, the Secretary may take into consideration the geographic distribution and diversity of activities addressed by the projects, in addition to the rank order of applications.

Background

Creating safe, disciplined, and drug-free learning environments for all students is essential to those students achieving to high academic standards and schools promoting educational excellence. It is clear, however, that in too many of our schools, students, teachers, and staff feel threatened, are abused, or are victims of violent acts. In addition, drug use among young people threatens their health and their ability to master new information. This announcement addresses four priorities designed to create safe, disciplined, and drug-free learning environments for all students.

Priority 1 seeks to infuse research-based knowledge about "what works" into the design, development and implementation of school-based strategies to prevent drug use among youth. This priority supports collaboration between local educational agencies and research institutions, including institutions of higher education, to develop and implement effective research-based programs and strategies to prevent youth drug use.

Drug use by adolescents has increased significantly in each of the last several years, reversing downward trends noted between 1979 and 1991. The 1995 "Monitoring the Future" study conducted by the Institute for Social Research at the University of Michigan documented the fourth consecutive year of increases in drug use among 8th graders and the third consecutive year of increases among 10th and 12th graders.

Equally alarming, two important determinants of drug use, perceived harmfulness of drugs and peer disapproval of drug use, are moving in the wrong direction. The proportion of students seeing drugs as dangerous continued to decline in 1995, while the norms against using illicit drugs generally have been softening in recent years. These trends have lead Dr. Lloyd Johnston, principal investigator for the Monitoring the Future survey, to suggest that we are in a "relapse" phase in the longer-term epidemic of youth drug use. Among the reasons that may account for this relapse are (1) decreased national attention to drug use among youth, and (2) failure to design and implement drug prevention programs of demonstrated effectiveness based on findings from research.

This priority directs funds to the development and implementation of innovative, research-based drug prevention strategies for effectively dealing with alcohol and other drug problems identified by schools and school districts. Strategies to be employed by applicants could vary from implementing or enhancing prevention curricula to integrating drug and alcohol prevention activities into the overall operation of the school and redesigning professional development, but should be based upon current, up-to-date research.

Examples of prevention approaches that research has demonstrated as effective, and that applicants might propose to develop and implement, are social influence approaches that include resistance skills training, and approaches that focus on personal and social skills training. Gilbert Botvin, Director of the Institute for Prevention Research at the New York Hospital-Cornell Medical Center, in a 1992 article entitled "School-Based and Community-Based Prevention Approaches," notes that resistance skills approaches "generally teach students how to recognize situations in which they will have a high likelihood of experiencing peer pressure to smoke, drink, or use drugs so that these high-risk situations can be avoided. In addition, students are taught how to handle situations in which they might experience peer pressure to engage in substance use."

Personal and Social Skills training models tend to be more comprehensive than other approaches. According to Botvin, they are based on "social learning" theory and "problem

behavior" theory. "Substance abuse is conceptualized as a socially learned and functional behavior, resulting from the interplay of social and personal factors. Substance use behavior is learned through modeling and reinforcement and is influenced by cognitions, attitudes, and beliefs * * *. The intent of these programs is to teach the kind of generic skills for coping with life that will have a relatively broad application * * * in contrast to the resistance skills training approaches which are designed to teach skills with a problem-specific focus."

Priority 2 invites applications for innovative, research-based strategies to remove firearms and other weapons from schools. A small but growing number of students find bringing a weapon to school acceptable. A Centers for Disease Control study reports that, in 1990, 1 in 24 students carried a gun to school in the 30 days before the study, and by 1993 the incidence had risen to 1 in 12 students. A 1993 Louis Harris poll showed that 35 percent of children aged 6 to 12 fear their lives will be cut short by gun violence. Knives or other devices used to inflict intentional injury also are increasingly evident in schools.

The Gun-Free Schools Act of 1994 requires States that receive funds under the Elementary and Secondary Education Act of 1965 (ESEA) to have in effect a law requiring local educational agencies to expel from school for a period of not less than one year students who are determined to have brought a weapon to school. Local educational agencies that receive ESEA funds are required to refer to the criminal justice or juvenile delinquency system any student who brings a firearm or weapon to school. Under the Gun-Free Schools Act, "weapon" means a firearm. For purposes of this grant program, however, a weapon may also be a knife, club, or other device used to inflict intentional injury.

Priority 3 encourages innovative, research-based programs to prevent truancy and address the needs of youth who are out of the education mainstream. For too many of our young people, regular school attendance and high school graduation are no longer the norm. In addition to truants, youth out of the education mainstream include dropouts, children who are afraid to go to school, children who have been suspended or expelled, and children in the juvenile justice system who need to maintain or enhance their educational status and be reintegrated into the school system upon their release from residential placement. Among the reasons for truancy that have been identified are student drug use, violence in or near the school, association with friends who are truant or absent, lack of family support for regular school attendance, and inability to keep pace with academic requirements.

The social and personal costs of failure to attend school are clear. Truancy and dropping out of school are significant risk factors for delinquency and eventual adult criminality. In 1992, on a national basis, juveniles accounted for 18 percent of all violent crime arrests and 33 percent of all serious property crime reports. Many of the arrests occur between 10 a.m. and 4 p.m. Monday through Friday when these juveniles should be in school.

Priority 4 addresses innovative, research-based approaches to preventing violent, aggressive, intimidating, or other disruptive behavior arising from bullying, sexual harassment, or other cause. Creating a safe and disciplined school environment that is conducive to learning is critical to achieving high standards for all students and developing a highly skilled and motivated workforce able to compete in a global economy.

When violent, aggressive, intimidating, or other disruptive behavior occurs in classrooms, on school grounds, or in the community, teachers are diverted from their primary task of teaching, students are unable to achieve to their full potential, and parents may fear to send their children to school. Bullying behavior, which may manifest itself at an early age, presents an important challenge for educators and other youth-serving professionals. Evidence suggests that schoolyard bullies who are not taught how to behave and cope with frustration are very likely headed for a lifetime of failure and involvement in the justice system. Research shows that a disproportionately high number of these children underachieve in school or drop out, perform below potential throughout their careers, land in prison for committing adult crimes, and become abusive spouses and parents. The earlier young people begin to exhibit problem behaviors, the greater the risk that they will become serious chronic delinquents and substance-abusing or alcoholic individuals. Victimization also is a serious problem because it can be a major distraction from the whole educational process. Bullying affects school attendance and the overall campus climate and safety. Victims understandably fear school itself and the abuse they know awaits them there.

Violent, aggressive, intimidating, or other disruptive behavior arising out of sexual harassment undermines the ability of schools to provide a safe and equitable learning or workplace environment. According to a 1993 survey by the American Association of University Women ("Hostile Hallways"), 85 percent of girls and 76 percent of boys surveyed say they have experienced unwanted and unwelcome sexual behavior that interferes with their lives. Among the outcomes of sexual harassment are not wanting to attend school, decreased class participation, greater difficulty paying attention in school, lower grades, and feeling afraid or scared.

Priorities

The priorities in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register** and repeated below, apply to this competition.

Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act of 1994, the Secretary gives an absolute preference to applications that meet one or more of the following priorities. The Secretary funds under this competition only applications that meet one or more of these absolute priorities.

Note: The purpose of these priorities is to give applicants flexibility to develop and implement programs that are most responsive to local school districts' identified needs for drug and violence prevention activities. Applicants must address at least one of the following priorities and may address more than one.

Absolute Priority 1—Infusing research-based knowledge about "what works" into the design, development and implementation of school-based strategies to prevent drug use among youth.

Applicants proposing a project under this priority must—

(1) Describe the activities that will be implemented and explain how they are based on research and best practices, how they will lead to sustained improvements in student results and the school environment, and how they will be cost-effective and replicable;

(2) Identify the age groups to be served and describe how the proposed activities are appropriate for the target population;

(3) Provide evidence of collaboration between a local educational agency (LEA) and a research institution in the design and implementation of activities, including a description of the roles and responsibilities of each; and

(4) Identify performance goals for the project and provide a description of how progress toward achieving goals will be measured.

Absolute Priority 2—Removing Firearms and other Weapons from School.

Applicants proposing a project under this priority must—

(1) Describe the activities that will be implemented and explain how they are based on research and best practices, how they will lead to sustained improvements in student results and the school environment, and how they will be cost-effective and replicable;

(2) Describe techniques the applicant will use to identify and remove firearms and other weapons that are brought into school;

(3) Provide information that demonstrates the extent to which the applicant has involved local, State, and/or Federal law enforcement agencies, as appropriate, in the development and implementation of innovative strategies to prevent firearms and other weapons from coming into school;

(4) Describe how the applicant will provide for referrals to the juvenile justice system of youths who are found to possess a firearm, consistent with the provisions of the Gun-Free Schools Act; and

(5) Identify performance goals for the project and provide a description of how progress toward achieving goals will be measured.

Absolute Priority 3—Preventing Truancy and Addressing the Needs of Youth Who are Out of the Education Mainstream.

Applicants proposing a project under this priority must—

(1) Describe the activities that will be implemented and explain how they are based on research and best practices, how they will lead to sustained improvements in student results and the school environment, and how they will be cost-effective and replicable;

(2) Describe the problem that will be addressed including an assessment of the number of students who will benefit from the project;

(3) Indicate how the activities are appropriate for returning truant and other youth who are out of the education mainstream to the classroom and ensuring their educational progress;

(4) Provide information on the extent to which the following will be involved in the development and implementation of activities funded by this grant: parents, students, local law enforcement officials, including, as appropriate, juvenile justice authorities, and other youth-serving organizations in the community; and

(5) Identify performance goals for the project and provide a description of how progress toward achieving goals will be measured.

Absolute Priority 4: Preventing Violent, Aggressive, Intimidating or Other Disruptive Behavior Arising from Bullying, Sexual Harassment or Other Cause.

Applicants proposing a project under this priority must—

(1) Describe the activities that will be implemented and explain how they are based on research and best practices, how they will lead to sustained improvements in student results and the school environment, and how they will be cost-effective and replicable;

(2) Describe the behaviors that the program seeks to correct, including an assessment of the types and frequency of violent, aggressive, intimidating, or other disruptive behavior among youth to be served;

(3) Identify the child development framework used to identify appropriate strategies for intervening in violent, aggressive, intimidating, or other disruptive behavior;

(4) Provide information on the extent to which educators, law enforcement officials, parents, and students have been involved in the development and implementation of interventions for youths who engage in violent, aggressive, intimidating, or other disruptive behaviors and for youths who are victims of such behaviors; and

(5) Identify performance goals for the project and provide a description of how progress toward achieving goals will be measured.

Competitive Preference Priority

Within the absolute priorities specified in this notice, the Secretary, under 34 CFR 75.105(c)(2)(i) and the Safe and Drug-Free Schools and Communities Act, gives preference to applications that meet the following competitive priority. The Secretary awards five (5) points to an application that meets this competitive priority. These points are in addition to any points the application earns under the evaluation criteria for the program.

(**Note:** The total number of points an application may earn is 105):

Projects in an Empowerment Zone or Enterprise Community

In order to meet the competitive preference priority, applicants must—

(1) Propose projects that meet one or more of the four absolute priorities for this competition;

(2) Demonstrate that the project will be carried out in an Empowerment Zone (EZ) or Enterprise Community (EC) designated in accordance with Section 1391 of the Internal Revenue Code (IRC), as amended by Title XIII of the Omnibus Budget Reconciliation Act (OBRA) of 1993 or that it will primarily serve students who reside in an EZ or EC; and

(3) Describe how the proposed project is linked to the EZ/EC strategic plan and will be an integral part of the Empowerment Zone or Enterprise Community Program.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*— (1) *Meeting the purposes of the authorizing statute.* (30 Points) the Secretary reviews each application to determine how well the project will meet the purpose of the Safe and Drug-Free Schools and Communities Act of 1994 including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the Safe and Drug-Free Schools and Communities Act of 1994.

(2) *Extent of need for the project.* (30 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the Safe and Drug-Free Schools and Communities Act of 1994, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of Operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on August 10, 1995 (60 FR 40980 and 40981).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be received by the date indicated in this notice at the following address: The Secretary, E.O.12372—CFDA # 84.184D, U.S. Department of Education, Room 6213, 600 Independence Ave., SW, Washington, D.C. 20202–0125.

Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for transmittal and receipt of applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.184D), Washington, D.C. 20202–4725.

Note: All applications must be received by August 2, 1996. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.184D), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

Notes

(1) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(2) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

Additional Materials:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget at 61 FR 1413 (January 19, 1996).

Notice to All Applicants.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Charlotte D. Gillespie, U.S. Department of Education, 600 Independence Ave., SW, Room 604 Portals, Washington, D.C. 20202–6123. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases); or on the World Wide Web at (http://www/ed/gov/money.html). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 7131.

Dated: June 26, 1996.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

BILLING CODE 4000-01-P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐	7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐ A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify): _____
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es): ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____	9. NAME OF FEDERAL AGENCY: U.S. Department of Education
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 1 8 4D TITLE: Federal Activities Grants Program (Drug and Violence Prevention)	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):	

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____
b. Applicant	$ .00	b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
c. State	$ .00	
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

BILLING CODE 4000-01-C

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

Part III—Application Narrative

Instructions for Part III—Application Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being required and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 25 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1810–0551, Exp. Date: 9/11/96. The time required to complete this information collection is estimated to average 28 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651. *If you have comments or concerns regarding the status of your individual submission of this form, write directly to:* Charlotte D. Gillespie, Safe and Drug-Free Schools Program, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Ave., S.W., Washington, D.C. 20202–6123.

BILLING CODE 4000–01–M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant; I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces CCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*
11. Amount of Payment *(check all that apply):* $ _____ ☐ actual ☐ planned	13. Type of Payment *(check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:	
15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No	
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C.1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

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Notice to All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. *ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.*

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it tends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

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[FR Doc. 96–16838 Filed 6–28–96; 9:01 am]

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Federal Register

Vol. 61, No. 128

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FEDERAL REGISTER PAGES AND DATES, JULY

33825–34366 1
34367–34712 2

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

7 CFR
400 34367
1493 33825
Proposed Rules:
300 34379
319 34379
1240 34385

9 CFR
112 33840
113 33840
Proposed Rules:
1 34386
3(2 documents) ... 34386, 34389

12 CFR
324 33842
Proposed Rules:
207 33874
220 33874
221 33874

14 CFR
1 34508
29 33963
39 ..... 33874, 34368
61 34508
71 ..... 33843, 33844, 33845
91 34508
121 34508
125 34508
135 34508
141 34508
142 34508
Proposed Rules:
71 (7 documents) 34391, 34393, 34394, 34395, 34396, 34397, 34398

15 CFR
902 34570
Proposed Rules:
922 33876

19 CFR
10 33845
12 33845
102 33845
134 33845

21 CFR
177 34370
178 33846

25 CFR
10 34371
Proposed Rules:
21 33876
45 34399
152 34400

29 CFR
Ch. XXVI 34002
Ch. XL 34002
2509 33847
2520 33847
2550 33847
Proposed Rules:
Ch. XIV 34405

38 CFR
1 33850
Proposed Rules:
1 33878

40 CFR
9 ..... 33851, 34202
55 34202
63 34140
71 34202
257 34253
261 34252
271 34252
Proposed Rules:
81 33879
260 33881
261 33881
262 33881
264 33881
268 33881
269 33881
271 33881

42 CFR
Proposed Rules:
410 34614
415 34614

44 CFR
65 ..... 33852, 33854
67 33856
Proposed Rules:
67 33882

47 CFR
20 33859
22 34375
24 33850
36 34375
73 34368
90 34375
Proposed Rules:
Ch. I 34405
73 (4 documents) 34406, 34407
76 (2 documents) 34408, 34409

49 CFR
233 33871
235 33871
236 33871
571 891

Proposed Rules:
1.....33886
8.....33886
192 (4 documents).....34410, 34413
195 (2 documents).....34410, 34413

50 CFR
660.....34570
661.....34570
663.....34570
679.....34377
680.....34570
681.....34570
683.....34570
685.....34570

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Tebuthiuron; published 5-3-96

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Common and private carrier paging, geographic licensing procedures; competitive bidding
Site expansion; published 7-2-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food additives:
Polymers--
Nylon 46 resins; published 7-2-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Jetstream; published 5-17-96
Robinson Helicopter Co.; published 5-28-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Agricultural commodities; U.S. grade standards and other selected regulations; removal from CFR; Federal regulatory reform; comment period extension; comments due by 7-9-96; published 3-11-96
Limes grown in Florida and imported; comments due by 7-8-96; published 6-26-96

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Horses; importation permit applications and health certificate requirements; comments due by 7-9-96; published 5-10-96

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
Texas citrus fruit crop; comments due by 7-8-96; published 6-5-96

ARMS CONTROL AND DISARMAMENT AGENCY
Freedom of Information Act; implementation; comments due by 7-8-96; published 5-30-96

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish; comments due by 7-8-96; published 6-12-96
Gulf of Mexico reef fish; comments due by 7-8-96; published 5-14-96
National Weather Service; modernization criteria; comments due by 7-8-96; published 6-6-96

COMMODITY FUTURES TRADING COMMISSION
Contract markets:
Trading cards and trading records; correction of erroneous information; procedures; comments due by 7-8-96; published 6-6-96

CONSUMER PRODUCT SAFETY COMMISSION
Consumer Product Safety Act:
Multi-purpose lighters; child-resistance standard; rulemaking petition; comments due by 7-8-96; published 5-7-96

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric utilities (Federal Power Act):
Open access same-time information system (formerly real-time information networks) and standards of conduct for public utilities
Conference cancellation, etc.; comments due by 7-8-96; published 6-18-96

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Radon emissions from phosphogypsum stacks; comments due by 7-8-96; published 5-8-96
Air quality implementation plans; √Aapproval and promulgation; various States; air quality planning purposes; designation of areas:
Washington; comments due by 7-8-96; published 6-11-96
Wisconsin; comments due by 7-11-96; published 6-11-96
Clean Air Act:
Acid rain provisions--
Direct sale elimination and independent power producers written guarantee program; comments due by 7-8-96; published 6-6-96
Direct sale elimination and independent power producers written guarantee program; comments due by 7-8-96; published 6-6-96
Drinking water:
National primary drinking water regulations--
Lead and copper; comments due by 7-11-96; published 4-12-96

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Telecommunications Act of 1996; implementation--
Local competition provisions; comments due by 7-8-96; published 7-2-96
Radio stations; table of assignments:
Texas; comments due by 7-8-96; published 5-23-96
Television broadcasting:
Digital broadcast television licensees; digital television standard requirement; comments due by 7-11-96; published 5-29-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Public Health Service
Interstate shipment of etiologic agents:
Facilities transferring or receiving select infectious agents; additional requirements; comments due by 7-10-96; published 6-10-96

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Mortgage and loan insurance programs:
Home equity conversion mortgage insurance demonstration; use of direct endorsement program; comments due by 7-9-96; published 5-10-96

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Federal regulatory review:
Permanent program and abandoned mine land reclamation plan submissions; comments due by 7-8-96; published 5-8-96
Permanent program and abandoned mine land reclamation plan submissions:
Ohio; comments due by 7-11-96; published 6-11-96
Virginia; comments due by 7-11-96; published 6-11-96

JUSTICE DEPARTMENT
Federal Bureau of Investigation
Communications Assistance for Law Enforcement Act of 1994; cost recovery regulations; comments due by 7-9-96; published 5-10-96

LABOR DEPARTMENT
Occupational Safety and Health Administration
Shipyard employment safety and health standards:
Fire Protection in Shipyard Employment Negotiated Rulemaking Advisory Committee; meeting; comments due by 7-8-96; published 6-6-96

SECURITIES AND EXCHANGE COMMISSION
Securities, etc.:
Independent Offices Appropriations Act fees; elimination; comments due by 7-8-96; published 5-22-96

TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
San Diego Bay, CA; security zone; comments due by 7-8-96; published 5-23-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operations:
Omnibus Transportation Employee Testing Act of 1991--

Preemployment alcohol testing requirements; comments due by 7-8-96; published 5-9-96

Airworthiness directives:
Beech; comments due by 7-8-96; published 5-30-96
Boeing; comments due by 7-8-96; published 5-9-96
Learjet; comments due by 7-8-96; published 5-30-96
McDonnell Douglas; comments due by 7-8-96; published 5-9-96
New Piper Aircraft, Inc.; comments due by 7-8-96; published 5-3-96

Airworthiness Directives:
New Piper Aircraft, Inc.; comments due by 7-8-96; published 5-3-96

Class E airspace; comments due by 7-8-96; published 5-22-96

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Motor carrier safety standards:
Omnibus Transportation Employee Testing Act of 1991--
Preemployment alcohol testing requirements; comments due by 7-8-96; published 5-9-96

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Omnibus Transportation Employee Testing Act of 1991:
Preemployment alcohol testing requirements; comments due by 7-8-96; published 5-9-96

Rail passenger equipment safety standards; comments due by 7-9-96; published 6-17-96

TRANSPORTATION DEPARTMENT

Federal Transit Administration

Omnibus Transportation Employee Testing Act of 1991:
Preemployment alcohol testing requirements; comments due by 7-8-96; published 5-9-96

VETERANS AFFAIRS DEPARTMENT

Disabilities rating schedule:
Fibromyalgia; comments due by 7-8-96; published 5-7-96

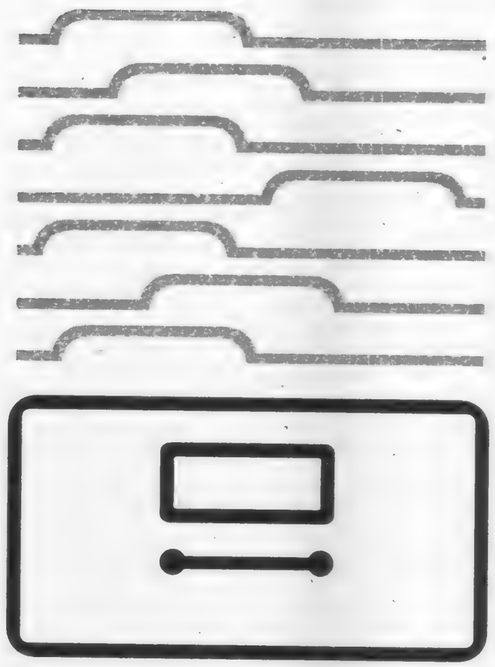

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7-3-96
Vol. 61 No. 129
Pages 34713–35082

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Wednesday
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Contents

Federal Register
Vol. 61, No. 129
Wednesday, July 3, 1996

Agency for International Development
NOTICES
Grants and cooperative agreements; availability, etc.:
American schools and hospitals abroad, 34860

Agriculture Department
See Animal and Plant Health Inspection Service
See Cooperative State Research, Education, and Extension Service
See Food Safety and Inspection Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See Rural Utilities Service

Animal and Plant Health Inspection Service
PROPOSED RULES
Animal welfare:
Horse protection regulations—
Horse Protection Act; enforcement changes; public meetings, 34747

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
American National Can Co. et al., 34860
AnchorShade, Inc., 34860

Army Department
See Engineers Corps

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 34841–34843
Grants and cooperative agreements; availability, etc.:
State and community nutrition and physical activity intervention programs; evaluation, 34843–34846

Children and Families Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 34846

Coast Guard
RULES
Electrical engineering:
Merchant vessels; electrical engineering requirements Correction, 34927
Ports and waterways safety:
Towing vessels; navigation safety equipment requirements, 35064–35076
PROPOSED RULES
Pollution:
Tank vessel or marine transportation related facility response plans; hazardous substances response equipment
Public meetings, 34775
NOTICES
Agency information collection activities:
Proposed collection; comment request, 34860

Commerce Department
See Economic Development Administration
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 34790–34791

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 34860

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Coffee, Sugar & Cocoa Exchange—
Membership lessees; affiliation with member firms, 34802

Cooperative State Research, Education, and Extension Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Agriculture telecommunications program; correction, 34927

Defense Department
See Engineers Corps
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 34802–34803

Economic Development Administration
NOTICES
Trade adjustment assistance eligibility determination petitions:
Brahmin Leather Works, Inc., et al., 34791

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 34803–34804

Employment and Training Administration
NOTICES
Adjustment assistance:
Boise Cascade Corp., 34860
Leslie Corp. et al., 34860
OshKosh B'Gosh, 34860, 34860
Pioneer Balloon et al., 34877–34878
Adjustment assistance and NAFTA transitional adjustment assistance:
Clear Pine Moulding et al., 34860

NAFTA transitional adjustment assistance:
Sara Lee Knit Products, 34860
Stone Ridge Farm, 34860
Weyerhaeuser Co., 34860

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department

Engineers Corps
RULES
Danger zones and restricted areas:
Chesapeake Bay off Fort Monroe, VA, and Canaveral Harbor adjacent to Navy Pier at Fort Canaveral, FL, 34732–34733

Environmental Protection Agency
RULES
Clean Air Act:
State operating permits programs—
Maryland, 34733–34739
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Pentaerythritol stearates, 34741–34743
Potassium citrate, 34739–34741
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Nonhandheld new nonroad phase I small spark-ignition engines, class I and II; carbon monoxide standard, 34778–34784
Air programs; fuels and fuel additives:
Reformulated gasoline program; alternative analytical test methods use, 34775–34778
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 34809–34811
Clean Water Act:
Effluent guidelines plan (biennial), 35042–35054
Pesticide, food, and feed additive petitions:
Griffin Corp. et al., 34811–34812
Reporting and recordkeeping requirements, 34812
Reports; availability, etc.:
Acute toxicity studies conduct; comment request, 34812–34814

Executive Office of the President
See Management and Budget Office

Federal Aviation Administration
RULES
Air carrier certification and operations:
Check airmen and flight instructors in simulators; separate training and qualification requirements Correction, 34927
Airworthiness directives:
Fokker, 34718–34719
Airworthiness standards:
Special conditions—
Cessna 500, 550, and S550 airplanes, 34716–34718
Class D and Class E airspace, 34720
Jet routes, 34720–34722
VOR Federal airways, 34722–34724
PROPOSED RULES
Airworthiness directives:
de Havilland, 34767–34769
Airworthiness standards:
Transport category airplanes—
Hydraulic systems standards revision to harmonize with European standards, 35056–35061
Class E airspace, 34769–34770
NOTICES
Advisory circulars; availability, etc.:
Aircraft—
Hydraulic system certification tests and analysis, 35062
Agency information collection activities:
Proposed collection; comment request, 34860
Committees; establishment, renewal, termination, etc.:
Aviation Rulemaking Advisory Committee, 34860
Environmental statements; availability, etc.:
Blue Grass Airport, KY; parallel runway; correction, 34860
Meetings:
Aviation Rulemaking Advisory Committee, 34860
Aviation Security Advisory Committee, 34860

Federal Communications Commission
RULES
Radio stations; table of assignments:
North Carolina, 34744
South Carolina, 34743–34744
Virginia, 34744
Washington, 34743
Television stations; table of assignments:
Wisconsin, 34744–34745
PROPOSED RULES
Radio stations; table of assignments:
Michigan, 34784–34785
Texas, 34785
NOTICES
Meetings:
Public Safety Wireless Advisory Committee, 34814

Federal Deposit Insurance Corporation
PROPOSED RULES
Assessments:
Oakar institutions; interpretive rules, 34751–34767
NOTICES
Operating insured depository institutions; assistance; policy statement, 34814–34817

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Ruger, William B., Jr., 34807
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 34804
Columbia Gas Transmission Corp., 34805
KO Transmission Co., 34805
Northern Natural Gas Co., 34805
Plant Owners, 34805–34807
Texas Eastern Transmission Corp., 34807
Viking Gas Transmission Co., 34807

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Howell, Livingston County, MI, 34860
St. Paul, MN, 34860

Federal Housing Finance Board
NOTICES
Federal home loan bank system:
Items processing and settlement and other services; prices, 34818–34837

Federal Mediation and Conciliation Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 34837–34839

Federal Reserve System
PROPOSED RULES
Securities:
Relations with dealers in securities under section 32, 1933 Banking Act (Regulation R); and miscellaneous interpretations, 34749–34751

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 34857–34858
Marine mammals permit applications, 34858

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
New drug applications—
Diethylcarbamazine tablets, etc., 34727–34729
Human drugs:
Antibiotic drugs—
Clarithromycin granules for oral suspension, 34726–34727
NOTICES
Agency information collection activities:
Proposed collection; comment request, 34846–34848
Animal drugs, feeds, and related products:
Bayer Corp. et al.; approval withdrawn, 34848–34849
Compounding of drugs for use in animals; compliance policy guide; availability, 34849–34852
Food additive petitions:
Life Technologies, Inc., 34852
Sumitomo Chemical America, Inc., 34853
Medical devices; premarket approval:
Ciba Corning Diagnostics Corp.; ACS AFP (two-site chemiluminescence immunoassay), 34853–34854
Technicon Immuno 1 CEA Assay, 34854
Meetings:
Center for Biologics Evaluation and Research; standing oversight committee to review use of refusal to file practices, 34854–34855

Food Safety and Inspection Service
PROPOSED RULES
Meat and poultry inspection:
Fee increases, 34747–34749

Forest Service
NOTICES
Environmental statements; availability, etc.:
Mt. Baker-Snoqualmie National Forest, WA, 34789
Meetings:
Oregon Coast Provincial Advisory Committee, 34789

Geological Survey
NOTICES
Meetings:
Federal Geographic Data Committee—
Vegetation classification and information standards, 34858

Grain Inspection, Packers and Stockyards Administration
RULES
Fees:
Federal rice inspection services, 34714–34716

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Objectivity in research and investigator financial disclosure policy; responses to questions, 34839–34841

Health Care Financing Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 34855

Health Resources and Services Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Graduate Medical Education Council, 34855–34856

Hearings and Appeals Office, Energy Department
NOTICES
Cases filed, 34808–34809

Housing and Urban Development Department
RULES
Mortgage and loan insurance program:
Single family mortgage insurance; loss mitigation procedures, 35014–35020
NOTICES
Grants and cooperative agreements; availability, etc.:
Public and Indian housing—
Tenant opportunities program, 35022–35040

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 34871–34873
Temporary protected status program designations:
Rwanda; correction, 34927

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See Minerals Management Service

Internal Revenue Service
NOTICES
Bulletin index-digest system; elimination; comment request, 34860

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Antidumping:
High-tenacity rayon filament yarn from—
Germany, 34792–34794
Countervailing duties:
Ball bearings and parts from—
Thailand, 34794–34798

International Trade Commission
NOTICES
Import investigations:
Clad steel plate from—
Japan, 34860
Meetings; Sunshine Act, 34860

Justice Department
See Antitrust Division
See Immigration and Naturalization Service
RULES
Equal employment opportunity, 34729–34730
PROPOSED RULES
Grants:
Juvenile Justice and Delinquency Prevention Office formula grants, 34770–34775

Labor Department
See Employment and Training Administration
See Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 34860, 34860

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Santa Fe Pacific Gold Corp., Twin Creeks Mine Consolidation and Expansion Project, NV, 34859
Ward Valley, CA; land transfer to California for low-level radioactive waste disposal facility development, 34859
Meetings:
Green River Basin Advisory Committee, 34859
Southeastern Oregon Resource Advisory Council, 34859–34860
Public land orders:
Idaho, 34860
Realty actions; sales, leases, etc.:
Nevada, 34860
Recreation management restrictions, etc.:
Barstow Resource Area, CA; recreational shooting restrictions; supplemental rule, 34860
Withdrawal and reservation of lands:
Arizona, 34860

Management and Budget Office
NOTICES
Budget rescissions and deferrals, 34860

Maritime Administration
NOTICES
Mortgagees and trustees; applicants approval, disapproval, etc.:
Fifth Third Bank, 34860
Seattle-First National Bank, 34860

Minerals Management Service
RULES
Outer Continental Shelf; oil, gas, and sulphur operations:
Tracts offered for sale; high bids, acceptance or rejection; time period extension, 34730–34732

National Bankruptcy Review Commission
NOTICES
Meetings, 34860

National Foundation on the Arts and the Humanities
NOTICES
Grants and cooperative agreements; availability, etc.:
National Trust for Historic Preservation; Your Town: Designing its Future, 34789–34790
Meetings:
Humanities Panel, 34790

National Institute of Standards and Technology
NOTICES
Voluntary product standards:
American softwood lumber, 34798

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 34856
National Institute of Mental Health, 34856–34857
National Institute on Aging, 34857
National Library of Medicine, 34857

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic Coast weakfish, 34746
Atlantic swordfish; correction, 34745–34746
Caribbean, Gulf of Mexico, and South Atlantic fisheries, 34930–34964
Northeastern United States fisheries, 34966–35011
PROPOSED RULES
Fishery conservation and management:
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 34785–34788
NOTICES
Grants and cooperative agreements; availability, etc.:
Fishing vessel and gear damage compensation fund program, 34798–34799
Meetings:
Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council, 34799
Western Pacific Fishery Management Council, 34799–34800
Permits:
Endangered and threatened species, 34800–34801
Marine mammals, 34801

National Science Foundation
NOTICES
Objectivity in research and investigator financial disclosure policy; responses to questions, 34839–34841

Nuclear Regulatory Commission
NOTICES
Generic letters:
Boraflex degradation in spent fuel pool storage racks, 34860
Meetings:
Reactor Safeguards Advisory Committee, 34860
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 34860
Applications, hearings, determinations, etc.:
Southern Nuclear Operating Co., Inc., 34860

Office of Management and Budget
See Management and Budget Office

Office of the United States Trade Representative
NOTICES
Determination under section 305 of the Trade Agreements Act of 1979, 35082

Patent and Trademark Office
NOTICES
Committees; establishment, renewal, termination, etc.:
Trademark Affairs Public Advisory Committee, 34801–34802

Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 34860
Meetings:
Employee Welfare and Pension Benefit Plans Advisory Council, 34860

Personnel Management Office
RULES
Pay under General Schedule:
Locality-based comparability payments—
Interim geographic adjustments; termination, 34713–34714
NOTICES
Meetings:
Federal Salary Council, 34860

Presidential Documents
ADMINISTRATIVE ORDERS
Germany; delegation of authority to identify Germany under title VII and modify or restrict title VII trade action taken against, 35075

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Rural Utilities Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Distance learning and telemedicine program; correction, 34927

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 34860
Government Securities Clearing Corp., 34860
National Association of Securities Dealers, Inc., 34860
Pacific Stock Exchange, Inc., 34860, 34860

Small Business Administration
NOTICES
Disaster loan areas:
Indiana, 34860

Surface Transportation Board
NOTICES
Railroad services abandonment:
Burlington Northern Railroad Co., 34860

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Maritime Administration
See Surface Transportation Board
RULES
Aviation economic regulations:
Technical amendments, 34724–34726
Organization, functions, and authority delegations:
Commandant, Coast Guard, 34745

Treasury Department
See Internal Revenue Service

Separate Parts in This Issue

Part II
Commerce Department, National Oceanic and Atmospheric Administration, 34930–34964

Part III
Commerce Department, National Oceanic and Atmospheric Administration, 34966–35011

Part IV
Housing and Urban Development Department, 35014

Part V
Housing and Urban Development Department, 35022–35040

Part VI
Environmental Protection Agency, 35042–35054

Part VII
Transportation Department, Federal Aviation Administration, 35056–35062

Part VIII
Transportation Department, Coast Guard, 35064–35076

Part IX
The President, 35079

Part X
Office of the United States Trade Representative, 35082

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Presidential Determinations:
No. 96–36 of June 28, 1996 35079

5 CFR
530 34713
531 34713
534 34713
550 34713
575 34713
581 34713
582 34713
630 34713

7 CFR
868 34714

9 CFR
Proposed Rules:
11 34747
391 34747

12 CFR
Proposed Rules:
218 34749
250 34749
327 34751

14 CFR
25 34716
39 34718
71 (5 documents) 34720, 34721, 34722, 34723
121 34927
135 34927
211 34724
213 34724
Proposed Rules:
25 35056
39 34767
71 34769

15 CFR
902 (2 documents) 34930, 34966

21 CFR
452 34726
520 34727
522 34727
529 34727
558 34727

24 CFR
203 35014
206 35014

28 CFR
42 34729
Proposed Rules:
31 34770

30 CFR
256 34730

33 CFR
164 35064
334 34732
Proposed Rules:
154 34775
155 34775

40 CFR
70 34733
180 (2 documents) 34739, 34741
Proposed Rules:
80 34775
90 34778

46 CFR
111 34927

47 CFR
73 (5 documents) 34743, 34744
Proposed Rules:
73 (2 documents) 34784, 34785

49 CFR
1 34745

50 CFR
622 34930
625 34966
630 34746
638 34930
641 34930
642 34785
645 34930
646 34930
647 34930
650 34966
651 34966
652 34966
653 34930
655 34966
657 34966
658 34930
659 34930
669 34930
670 34930
697 34748
Proposed Rules:
642 34785

Rules and Regulations

Federal Register
Vol. 61, No. 129
Wednesday, July 3, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 530, 531, 534, 550, 575, 581, 582, and 630

RIN 3206–AH09

Pay Under the General Schedule; Termination of Interim Geographic Adjustments

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to implement the termination of interim geographic adjustments (IGA's) payable to certain Federal employees. The IGA's were terminated because the locality-based comparability payments the President authorized for January 1996 exceeded 8 percent in both of the two remaining IGA areas (New York-Northern New Jersey-Long Island, NY–NJ–CT–PA, and Los Angeles-Riverside-Orange County, CA).

EFFECTIVE DATE: August 2, 1996.

FOR FURTHER INFORMATION CONTACT: Jeanne D. Jacobson, (202) 606–2858 or FAX: (202) 606–0824.

SUPPLEMENTARY INFORMATION: On February 1, 1996, the Office of Personnel Management (OPM) published interim regulations (61 FR 3539) to implement the termination of IGA's. IGA's were terminated because the locality-based comparability payments the President authorized for January 1996 exceeded 8 percent in both of the two remaining IGA areas (New York-Northern New Jersey-Long Island, NY–NJ–CT–PA, and Los Angeles-Riverside-Orange County, CA).

The President's alternative pay plan of August 31, 1995, provided an 8.05-percent comparability payment for the New York-Northern New Jersey-Long Island, NY–NJ–CT–PA, locality pay area and an 8.15-percent comparability payment for the Los Angeles-Riverside-Orange County, CA, locality pay area for 1996. Since the comparability payments exceeded the 8-percent IGA previously established for these areas, the President's Executive Order 12984 of December 28, 1995, included no IGA pay schedules. This had the effect of terminating the IGA's for the New York and Los Angeles IGA areas. (Executive Order 12944 of December 29, 1994, previously terminated IGA's for the San Francisco-Oakland-San Jose, CA IGA area because the comparability payment for that area exceeded 8 percent in January 1995.)

As a result of the termination of IGA's, the interim rule removed 5 CFR part 531, subpart A, "Interim Geographic Adjustments." However, because some employees in the former IGA areas will continue to receive "continued rates of pay" (a form of saved pay established in January 1994 for employees who previously received an IGA on top of a worldwide or nationwide special rate), the provisions previously found in subpart A concerning the administration of continued rates of pay were retained in a new subpart G of part 531. The interim regulations also made conforming changes in other parts of the regulations to reflect the termination of IGA's.

The 60-day comment period for the interim regulations ended on April 1, 1996. OPM received comments by telephone from one agency asking for clarification of 5 CFR 531.703(i). Section 531.703(i) provides that an employee's entitlement to a continued rate of pay is not affected by a temporary promotion or temporary reassignment. The agency felt this provision could be interpreted incorrectly to provide entitlement to continued pay during temporary promotions or reassignments when such assignments involve one of the actions that ordinarily terminate continued pay, such as when an employee's official duty station is no longer located in one of the IGA areas. OPM agrees.

We have revised 5 CFR 531.703(i) in the final regulations to provide that an employee's entitlement to a continued rate of pay is not affected by a temporary promotion or temporary reassignment, unless such assignments cause one of the conditions in 5 CFR 531.703(g) to be satisfied. In such situations, the continued rate is suspended during the temporary promotion or reassignment. The employee's entitlement to the continued rate resumes as if never interrupted upon return to his or her permanent position, as long as the employee is otherwise eligible to receive that rate. A continued rate that is resumed must include any pay adjustments authorized for the permanent position during the period of the temporary promotion or reassignment, as provided in 5 CFR 531.703(e).

This revision is the only change being made in the interim regulations. All other provisions of the interim regulations are adopted as final.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Parts 530, 531, 534, 550, 575, 581, 582, and 630

Administrative practice and procedure, Alimony, Child support, Claims, Government employees, Hospitals, Law enforcement officers, Reporting and recordkeeping requirements, Students, and Wages.

Office of Personnel Management.

James B. King,

Director.

Accordingly, the interim rule amending parts 530, 531, 534, 550, 575, 581, 582, and 630 of title 5, Code of Federal Regulations, which was published at 61 FR 3539 on February 1, 1996, is adopted as final with the following change:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981 and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; and E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682;

Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

Subpart G—Continued Rates of Pay

2. In § 531.703, paragraph (i) is revised to read as follows:

§ 531.703 Administration of continued rates of pay.

* * * * *

(i) An employee's entitlement to a continued rate of pay is not affected by a temporary promotion or temporary reassignment, except that a continued rate shall be suspended when a temporary promotion or reassignment causes one of the conditions in paragraph (g) of this section to be satisfied. In such situations, an employee's entitlement to continued pay will resume as if never interrupted upon return to the permanent position, subject to the requirements of this subpart. A continued rate that is resumed shall include any pay adjustments that were authorized for the permanent position under paragraph (e) of this section during the period of the temporary promotion or reassignment.

[FR Doc. 96–16942 Filed 7–2–96; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN 0580–AA47

Fees for Rice Inspection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS), of the Grain Inspection, Packers and Stockyards Administration (GIPSA) is increasing the fees for Federal Rice Inspection Services, as performed under the Agricultural Marketing Act (AMA) of 1946. This fee increase is intended to cover, as nearly as practicable, the projected operating costs, including related supervisory and administrative costs, for Federal Rice Inspection Services rendered and to generate sufficient revenues to cover costs and maintain an appropriate operating reserve.

EFFECTIVE DATE: August 2, 1996.

FOR FURTHER INFORMATION CONTACT: George Wollam, USDA–GIPSA, Room 0623—South Building, 1400 Independence Avenue, SW, Washington, D.C., 20090–6454, telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. This increase in the service fees is necessary to recover operating losses in the Federal Rice Inspection Services. These fees were last increased on January 1, 1995 56 FR 15483), but revenue is still not covering operating costs. The overall cost of operating the Federal Rice Inspection Service program increased between fiscal years (FY) 1994 and 1995 by more than 6 percent. In FY 1955, the program generated revenue of $3,982,744 with operating costs of $4,274,733, resulting in a 1-year operating loss of $291,990.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to provisions of this rule.

Effect on Small Entities

James R. Baker, Administrator, GIPSA, has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the rice inspection services do not meet the requirements for small entities. In addition, GIPSA is required by statute to recover the costs of providing rice inspection services.

Information Collection and Record Keeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements concerning applications for official inspection services, including rice inspections, have been approved by the Office of Management and Budget under control number 0580–0013.

Background

On January 11, 1996, FGIS proposed in the **Federal Register** (61 FR 1013) to increase fees charged for Federal Rice Inspection Services. The rice inspection fees were last amended on January 1, 1995 (56 FR 15483). They presently appear in § 868.91 in Tables 1 and 2 of the regulations (7 CFR 868.91 (Tables 1 and 2)). Since publication of the proposed rule, FY 96 cost and revenue information has become available and has been included in the discussion herein.

FGIS continually monitors its cost, revenue, and operating reserve levels to ensure that there are sufficient resources for operations. During FYs 1993, 1994, and 1995, respectively, FGIS implemented cost-saving measures in an effort to provide more cost effective services. However, while the quantity of rice inspections may fluctuate, certain FGIS costs remain constant. Consequently, revenues ($3,758,893; $3,500,597; $3,982,744) did not cover operating costs ($3,847,762; $4,022,194; and $4,274,733) for FYs 1993, 1994, and 1995, respectively. This reflects a reduction in operating reserves for all three fiscal years.

At the time of the publication of the proposed rule, FY 94 offered the most current 1-year figures available to compare FGIS' rice inspection operating costs with revenue. The figures for this year were used to project the budgeted FY 95 rice inspection operating costs and establish revenue levels necessary to cover projected operating costs. During the period of October 1, 1994, to July 31, 1995, the actual operating cost was $3,760,305 and revenue was $3,438,683, resulting in a reduction in operating reserves of $321,667.

Since the publication of the proposed rule, FY 95 offers the most current 1-year figures available to compare FGIS' rice inspection operating costs with revenue. The figures for FY 95 used to project the budgeted FY 96 rice inspection operating costs and establish revenue levels necessary to cover those projected costs confirms the trend toward reducing operating reserves. From October 1, 1994, to September 30, 1995, the actual operating cost was $4,274,733 and revenue was $3,982,744, resulting in a reduction in operating reserves of $291,990.

The trend, as reflected in FY 94 to FY 95 data, is expected to continue. This overall trend necessitates an increase in fees and an increase to the per-hundredweight volume charge for services performed at export port locations on lots at rest in order to recover the projected operating costs and maintain a 3-month operating reserve. As of September 30, 1995, the reserve was at a level of negative $1,089,741.

In fiscal year 1995, FGIS reduced costs to the rice program by closing and/or reducing field offices to suboffices. Two field offices were reduced to suboffices and one field office was closed entirely. The estimated savings from these measures is $220,000 over two years. FGIS believes that actions taken to this point represent an appropriate balance between running an efficient operation and providing a high level of service to our customers. However, we will continue to seek out further cost savings that do not compromise our service. In addition, numerous talks were held with rice industry trade groups outlining FGIS' intention of increasing fees. Industry realized the need for the increase.

Alternatives Considered

FGIS considered several options to the final fees. It considered: (1) a straight 14 percent increase in fees and (2) reforming the current system of fees to gather revenue in a manner less dependent upon seasonal shifts, and (3) incremental increases of fees. The third alternative was selected. It was decided to propose three incremental six percent fee increases, the first increase to be implemented May 1, 1996, second on January 1, 1997, and third on January 1, 1998. This alternative was selected for several reasons: the negative balance in retained earnings requires the increases be implemented in a more timely manner; the trade is familiar with incremental increases and incremental increases allows the rice industry time to adjust their operations to the increased fees. We will propose the second option at a later date when we have had a chance to evaluate the operation of a current proposal to reform the Grain Inspection and Weighing. That proposal, under the United States Grain Standards Act will change the methodology in fee collection from the current system, an hourly rate basis, to a combination of reduced hourly rates, more contract options, and per metric ton administrative charge to recover obligations.

Comment Review

FGIS received no comments during the 30-day comment period.

Final Action

Section 203 of the AMA (7 U.S.C. 1622) provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered. These fees cover the FGIS administrative and supervisory costs for the performance of official services, including personnel compensation, personnel benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment.

Section 868.91, Tables 1 and 2 (as currently shown in section 868.91, Tables 1 and 2 of the regulations), are revised to provide for the increase in rice inspection fees. A 3-stage increase plan to raise hourly rates and unit fees by approximately 6 percent per year for calendar years 1996, 1997, and 1998 is implemented. These incremental increases will lessen the impact of the amount of increase required to replenish retained earnings to appropriate levels.

FGIS will review its costs, revenue, and operating reserve levels to ensure that the fee increases scheduled for calendar years 1997 and 1998 are required at the levels specified. FGIS, as the fee increases are implemented, will review the level of the operational reserve and if available funds exceed what is needed to maintain a reasonable reserve, we will consider proposing a reduction in fees. In the event that a change in the fees appears necessary, FGIS will engage in rulemaking before making any changes.

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agricultural commodities.

For reasons set out in the preamble, 7 CFR Part 868 is amended as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

1. The authority citation for Part 868 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 et. seq.)

2. Section 868.91 is revised to read as follows:

§ 868.91 Fees for Certain Federal Rice Inspection Services.

The fees shown in Tables 1 and 2 apply to Federal Rice Inspection Services.

TABLE 1.—HOURLY RATES/UNIT RATE PER CWT

[Fees for Federal Rice Inspection Services]

Service [1]	Regular Workday (Monday–Saturday)	Nonregular Workday (Sunday–Holiday)
Effective August 2, 1996		
Contract (per hour per Service representative)	$35.80	$49.80
Noncontract (per hour per Service representative)	43.50	60.50
Export Port Services [2]	.042/CWT	.042/CWT
Effective January 1, 1997		
Contract (per hour per Service representative)	37.90	52.80
Noncontract (per hour per Service representative)	46.10	64.10
Export Port Services [2]	.045/CWT	.045/CWT
Effective January 1, 1998		
Contract (per hour per Service representative)	40.20	56.00
Noncontract (per hour per Service representative)	48.90	67.90
Export Port Services [2]	.048/CWT	.048/CWT

[1] Original and appeal inspection services include: Sampling, grading, weighing, and other services requested by the applicant when performed at the applicant's facility.

[2] Services performed at export port locations on lots at rest.

TABLE 2.—UNIT RATES

Service [1,3]	Rough rice	Brown rice for processing	Milled rice
Effective August 2, 1996			
Inspection for quality (per lot, sublot, or sample inspection)	$29.20	$25.30	$18.00
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	22.70	22.70	.....
(b) All other factors (per factor)	10.80	10.80	10.80
Total oil and free fatty acid	.....	35.40	35.40
Interpretive line samples:[2]	.....	.....	.....
(a) Milling degree (per set)	.....	.....	75.80
(b) Parboiled light (per sample)	.....	.....	19.00
Extra copies of certificates (per copy)	3.00	3.00	3.00
Effective January 1, 1997			
Inspection for quality (per lot, sublot, or sample inspection)	31.00	26.80	19.10
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	24.10	24.10	.....
(b) All other factors (per factor)	17.40	11.40	11.40
Total oil and free fatty acid	.....	37.50	37.50
Interpretive line samples:[2]	.....	.....	.....
(a) Milling degree (per set)	.....	.....	80.30
(b) Parboiled light (per sample)	.....	.....	20.10
Extra copies of certificates (per copy)	3.00	3.00	3.00
Effective January 1, 1998			
Inspection for quality (per lot, sublot, or sample inspection)	32.90	28.40	20.20
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	25.50	25.50	.....
(b) All other factors per factor):	12.10	12.10	12.10
Total oil and free fatty acid	.....	39.80	39.80
Interpretive line samples:[2]			
(a) Milling degree (per set)	.....	.....	85.10
(b) Parboiled light (per sample)	.....	.....	21.30
Extra copies of certificates (per copy)	3.00	3.00	3.00

[1] Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or in combination at other than at the applicant's facility.

[2] Interpretive line samples may be purchased from the U.S. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration; Technical Services Division; Board of Appeals and Review; FGIS Technical Center, 10383 North Executive Hills Boulevard, Kansas City, MO 64153–1394. Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Deputy Director, Field Management Division, USDA, GIPSA, FGIS, P.O. Box 96454, Washington, DC 20090–6454. The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor "Parboiled Light" rice.

[3] Fees for other services not referenced in Table 2 will be based on the noncontract hourly rate listed in Section 868.90, Table 1.

Dated: June 27, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–16993 Filed 7–2–96; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–127; Special Conditions No. 25–ANM–117]

Special Conditions: Cessna Model 500, 550, and S550 Airplanes; High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Cessna Model 500, 550, and S550 airplanes. These airplanes, as modified by Columbia Avionics, Inc., utilize new avionics/electronic systems, such as an electronic flight information system (EFIS), which perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is June 20, 1996. Comments must be received on or before August 2, 1996.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–127, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–127. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (206) 227–2145; facsimile (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–127." The postcard will be date stamped and returned to the commenter.

Background

On April 8, 1996, Columbia Avionics, 11200 Airport Road, Columbia, MO 65201, applied for a Supplemental Type Certificate (STC) to modify Cessna 500, 550, and S550 airplanes to incorporate the installation of an electronic flight instrument system (EFIS). The airplanes are pressurized, executive transport airplanes powered by two fuselage-mounted turbofan engines.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of 14 CFR part 21, Columbia Avionics must show that the modified Cessna 500, 550, and S550 airplanes continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate A22CE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in TC A22CE include the following for the Cessna 500, 550 and S550 series: 14 CFR part 25, dated February 1, 1965, as amended by Amendments 25–1 through 25–17, and §§ 25.934 and 25.1091(d)(2), as amended through Amendment 25–23. In addition, under § 21.101(b)(1), the following regulations apply to the EFIS installation: §§ 25.1303, 25.1305, and 25.1322, as amended by Amendment 25–38; §§ 25.1309, 25.1321 (a), (b), (d), and (e), 25.1331, 25.1333, and 25.1335, as amended by Amendment 25–41; and § 25.1316, as amended by Amendment 25–80. These special conditions form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Cessna Model 500, 550, and S550 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with 14 CFR § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Cessna Model 500, 550, and S550 airplanes incorporate new avionics/electronic systems, such as the electronic flight instrument system (EFIS), that perform critical functions. These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, a special condition is needed for the Cessna Model 500, 550, and S550, as modified by Columbia Avionics, which requires that new electrical and electronic systems, such as the EFIS, that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 OR 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2 MHz	70	70
2 MHz–30 MHz	200	200
30 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1 GHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

As discussed above, these special conditions are applicable to the Cessna Model 500, 550, and S550 airplanes, as modified by Columbia Avionics, Inc. Should Columbia Avionics apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A22CE to incorporate the same novel or unusual design feature, this special condition would apply to that model as well, under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the Cessna Model 500, 550, and S550 airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA

for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subject to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Cessna Model 500, 550, and S550 airplanes, as modified by Columbia Avionics, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of this special condition, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, in June 20, 1996.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 96–16959 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 95–NM–253–AD; Amendment 39–9675; AD 96–13–07]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, that currently requires supplemental structural inspections to detect fatigue cracks, and repair or replacement, as necessary, to ensure the continued airworthiness of these airplanes. This amendment adds and revises certain significant structural items for which inspection and repair or replacement is necessary. This amendment is prompted by a structural re-evaluation conducted by the manufacturer, which identified additional structural elements where fatigue damage is likely to occur. The actions specified by this AD are intended to prevent reduced structural integrity of these airplanes.

DATES: Effective August 6, 1996.

The incorporation by reference of Fokker SIP Product Support Document 27438, Part 1, including revisions up through August 1, 1995, as listed in the regulations is approved by the Director of the Federal Register as of August 6, 1996.

The incorporation by reference of Fokker SIP Document 27438, Part 1, including revisions up through November 1, 1991, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 21, 1992 (57 FR 42693).

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth E. Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 92–19–07, amendment 39–8365 (57 FR 42693, September 16, 1992), which is applicable to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, was published in the **Federal Register** on April 10, 1996 (61 FR 15906). The action proposed to supersede AD 92–19–07 to continue to require a program of supplemental structural inspections (SIP) to detect fatigue cracks, and repair or replacement, as necessary. The action also proposed to add and revise certain significant structural items (SSI) for which inspection and repair or replacement is necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Support for the Proposal

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with as proposed.

Cost Impact

There are approximately 34 Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 92–19–07 take approximately 295 work hours per airplane per year to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators relative to the requirements of the previously-issued AD that are retained in this new AD action is estimated to be $601,800, or $17,700 per airplane, annually.

The new actions that are required by this new AD action will take approximately 179 additional work hours per airplane per year to accomplish, at an average labor rate of $60 per work hour. These actions include the implementation of the inspections, repairs, or replacements specified in the revisions to the SIP Document into an operator's maintenance program; as well as removal, inspection, and installation of structure. Based on these figures, the cost impact on U.S. operators relative to the new requirements of this AD is estimated to be $365,160, or $10,740 per airplane, the first year and annually thereafter.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8365 (57 FR 42693, September 16, 1992), and by adding a new airworthiness directive (AD), amendment 39–9675, to read as follows:

96–13–07 Fokker: Amendment 39–9675. Docket 95–NM–253–AD. Supersedes AD 92–19–07, Amendment 39–8365.

Applicability: All Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of these airplanes, accomplish the following:

Note 2: Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120–0056.

(a) Within 6 months after October 21, 1992 (the effective date of AD 92–19–07, amendment 39–8365), incorporate into the FAA-approved maintenance program the inspections, inspection intervals, repairs, or replacements defined in Fokker Structural Integrity Program (SIP) Document 27438, Part 1, including revisions up through November 1, 1991; and inspect, repair, and replace, as applicable. The non-destructive inspection techniques referenced in the SIP Document provide acceptable methods for accomplishing the inspections required by this AD. If any cracking is detected, inspection results must be reported to Fokker in accordance with the instructions of the SIP Document.

(b) Within 6 months after the effective date of this AD, incorporate into the FAA-approved maintenance program the inspections, inspection intervals, repairs, or replacements defined in Fokker SIP Product Support Document 27438, Part 1, including revisions up through August 1, 1995; and inspect, repair, and replace, as applicable. The non-destructive inspection techniques referenced in the SIP Document provide acceptable methods for accomplishing the inspections required by this AD. If any cracking is detected, inspection results must be reported to Fokker in accordance with the instructions of the SIP Document.

(c) Cracked structure detected during the inspections required by paragraph (a) or (b) of this AD must be repaired or replaced, prior to further flight, in accordance with the instructions in Fokker SIP Document 27438, Part 1, including revisions up through November 1, 1991; or Fokker SIP Product Support Document 27438, Part 1, including revisions up through August 1, 1995; respectively; or in accordance with other data meeting the certification basis of the airplane which is approved by the FAA or by the Rijksluchtvaartdienst (RLD).

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) Certain of the actions shall be done in accordance with Fokker SIP Document 27438, Part 1, including revisions up through November 1, 1991. The incorporation by reference of that document was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of October 21, 1992 (57 FR 42693). Certain other actions shall be done in accordance with Fokker SIP Product Support Document 27438, Part 1, including revisions up through August 1, 1995. The incorporation by reference of this document was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of either document may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 6, 1996.

Issued in Renton, Washington, on June 13, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–15600 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–AWP–38]

Establishment of Class D and E Airspace Areas; Saipan Island, CQ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes Class D and Class E airspace areas at the Saipan International Airport, Saipan Island, CQ (Northern Mariana Islands). Due to the commissioning of an air traffic control tower (ATCT) at the airport, Class D airspace is necessary to require pilots to establish two-way radio communication prior to entering the airspace. This action establishes a Class E airspace area at Saipan Island, CQ, to provide adequate controlled airspace for aircraft executing instrument approach operations at Saipan International Airport.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On December 22, 1995, the FAA proposed to amend Title 14 of the Code of Federal Regulations part 71 (14 CFR part 71) to establish Class D and E airspace areas at Saipan Island, CQ (60 FR 66529). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Class D and E airspace designations are published in paragraphs 5000 and 6004, respectively, of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to 14 CFR part 71 establishes Class D and E airspace areas at Saipan Island, CQ. Due to the commissioning of an ATCT at the airport, Class D airspace is necessary to require pilots to establish two-way radio communication prior to entering the airspace. The FAA is establishing a Class E airspace area to provide adequate controlled airspace for aircraft executing instrument approach operations at Saipan International Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Because these amendments involve, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AWP CQ D Saipan Island, CQ [New]

Saipan International Airport, CQ
(Lat. 15°07'08"N, long. 145°43'46"E)
Saipan RBN
(Lat. 15°06'41"N, long. 145°42'37"E)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.3-mile radius of Saipan International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory, Pacific Chart Supplement.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AWP CQ E4 Saipan Island, CQ [New]

Saipan International Airport, CQ
(Lat. 15°07'08"N, long. 145°43'46"E)
Saipan RBN
(Lat. 15°06'41"N, long. 145°42'37"E)

That airspace extending upward from the surface within a 4.3-mile radius of Saipan International Airport and within 2.6 miles each side of the Saipan RBN 264° bearing, extending from the 4.3-mile radius to 7.4 miles west of the Saipan RBN and within 1.8 miles each side of the Saipan RBN 248° radial, extending from the 4.3-mile radius to 7.4 miles west of the Saipan RBN and within 1.8 miles each side of the Saipan RBN 068° radial, extending from the 4.3-mile radius to 6.5 miles east of the Saipan International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory, Pacific Chart Supplement.

* * * * *

Issued in Washington, DC, on June 25, 1996.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 96–17037 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 94–ASW–10]

Alteration of Jet Route J–66

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters Jet Route J–66 from the Dallas-Fort Worth, TX, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC), via the Bonham, TX, VORTAC, to the Little Rock, AR, VORTAC. Altering J–66 enhances the flow of air traffic, simplifies routings in the northeast vicinity of the Dallas-Fort Worth metroplex area, and reduces controller and pilot workload.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On March 28, 1995, the FAA proposed to amend Title 14 of the Code of Federal Regulations part 71 (14 CFR part 71) to alter J–66 from the Dallas-Fort Worth, TX, VORTAC, to the Little Rock, AR, VORTAC (60 FR 15887). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet Routes are published in paragraph 2004 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 alters J–66 from the Dallas-Fort Worth, TX, VORTAC, to the Little Rock, AR, VORTAC. This rule will alter that portion of J–66 within the state of Texas from the Dallas-Fort Worth VORTAC, via the Bonham VORTAC, to the Little Rock VORTAC. Additionally, the Glove intersection will be established at the Texarkana 279°T(286°M) and the Bonham 056°T(064°M) radials to assist navigation along J–66. Altering J–66 enhances the flow of air traffic, simplifies routings in the northeast vicinity of the Dallas-Fort Worth metroplex area, and reduces controller and pilot workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–66 [Revised]

From Newman, TX; Abilene, TX; Dallas-Forth Worth, TX; Bonham, TX; Little Rock, AR; Memphis, TN; to Rome, GA.

* * * * *

Issued in Washington, DC, on June 25, 1996.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 96–17036 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 93–ASW–3]

Establishment of Jet Route J–181

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes Jet Route 181 (J–181) between the Dallas-Fort Worth, TX, metroplex area and the Chicago O'Hare, IL, terminal area. This route provides improved en route and arrival traffic flow into the Chicago O'Hare area. This action enhances the movement of traffic, minimizes air traffic delays, and reduces the controller workload.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On November 9, 1993, the FAA proposed to amend Title 14 of the Code of Federal Regulations part 71 (14 CFR part 71) to establish J–181 located in the vicinity of Dallas-Fort Worth, TX (58 FR 59422). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet routes are published in paragraph 2004 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes J–181 between the Dallas-Fort Worth, TX, metroplex area and the Chicago O'Hare, IL, terminal area. This route provides improved en route and arrival traffic flow into the Chicago area. This action enhances the movement of traffic, minimizes air traffic delays, and reduces the controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 2004 Jet Routes

* * * * *

J–181 [New]

From Dallas-Fort Worth, TX; Okmulgee, OK; Neosho, MO; INT Neosho 049° and Bradford, IL, 219° radials; to Bradford.

* * * * *

Issued in Washington, DC, on June 26, 1996.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 96–17039 Filed 7–2–96; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 71

[Airspace Docket No. 93–ASW–4]

Alteration of VOR Federal Airways; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters twelve Federal airways located in the vicinity of Dallas, TX. This action, which supports the Dallas/Fort Worth Metroplex Plan, is necessary due to the decommissioning of four Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facilities and the commissioning of four new VORTAC's. In addition, this action enhances the flow of air traffic, simplifies routings, increases safety and reduces pilot/controller workload.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On June 27, 1995, the FAA proposed to amend Title 14 of the Code of Federal Regulations part 71 (14 CFR part 71) to alter twelve Federal airways located in the vicinity of Dallas, TX (60 FR 33159). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The airways listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 alters twelve Federal airways located in the vicinity of Dallas, TX. The alterations to the airways surrounding the Dallas/Fort Worth (DFW) International Airport, which are essential to support the Dallas/Fort Worth Metroplex Plan, are necessary because of the decommissioning of the existing Bridgeport, Blue Ridge, Scurry and Action VORTAC's and the commissioning of the Bowie, Bonham, Cedar Creek and Glen Rose VORTAC's. This action enhances the flow of the air traffic, simplifies routings, increases safety, and reduces pilot/controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–15 [Revised]

From Hobby, TX, via Navasota, TX; College Station, TX; Waco, TX; Cedar Creek, TX; Bonham, TX; Ardmore, OK; Okmulgee, OK, to Neosho, MO. From Sioux City, IA; INT Sioux City 340° and Sioux Falls, SD, 169° radials; Sioux Falls; Huron, SD; Aberdeen, SD; Bismarck, ND; to Minot, ND.

V–16 [Revised]

From Los Angeles, CA; Paradise, CA; Palm Springs, CA; Blythe, CA; Buckeye, AZ; Phoenix, AZ; INT Phoenix 155° and Stanfield, AZ, 105° radials; Tucson, AZ; Cochise, AZ; Columbus, NM; El Paso, TX; Salt Flat, TX; Wink, TX; Wink 066° and Big Spring, TX, 260° radials; Big Spring; Abilene, TX; Millsap, TX; Glen Rose, TX; Cedar Creek, TX; Quitman, TX; Texarkana, AR; Pine Bluff, AR; Holly Springs, MS; Jacks Creek, TN; Shelbyville, TN; Hinch Mountain, TN; Volunteer, TN; Holston Mountain, TN; Pulaski, VA; Roanoke, VA; Lynchburg, VA; Flat Rock, VA; Richmond, VA; INT Richmond 039° and Patuxent, MD, 228° radials; Patuxent; Smyrna, DE; Cedar Lake, NJ; Coyle, NJ; INT Coyle 036° and Kennedy, NY, 209° radials; Kennedy; Deer Park, NY; Calverton, NY; Norwich, CT; Boston, MA. The airspace within Mexico and the airspace below 2,000 feet MSL outside the United States is excluded. The airspace within Restricted Areas R–5002A, R–5002C, and R–5002D is excluded during their times of use. The airspace within Restricted Areas R–4005 and R–4006 is excluded.

V–17 [Revised]

From Brownsville, TX, via Harlingen, TX; McAllen, TX; 29 miles 12 AGL, 34 miles 25 MSL, 37 miles 12 AGL; Laredo, TX; Cotulla, TX; INT Cotulla 046° and San Antonio, TX, 198° radials; San Antonio; INT San Antonio 042° and Austin, TX, 229° radials; Austin; Waco, TX; Glen Rose, TX; Milsap, TX; Bowie, TX; Duncan, OK; Will Rogers, OK; Gage, OK; Garden City, KS; to Goodland, KS.

V–18 [Revised]

From Guthrie, TX, via INT Guthrie 156° and Millsap, TX, 274° radials; Millsap; Glen Rose, TX; Cedar Creek, TX; Quitman, TX; Belcher, LA; Monroe, LA; Jackson, MS; Meridian, MS; Tuscaloosa, AL; Vulcan, AL; Talladega, AL; Atlanta, GA; Colliers, SC; Charleston, SC.

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V–54 [Revised]

From Waco, TX; Cedar Creek, TX; Quitman, TX; Texarkana, AR; INT Texarkana 052° and Little Rock, AR, 235° radials; Little Rock; Holly Springs, MS; Muscle Shoals, AL; Rocket, AL; Choo Choo, GA; Harris, GA; Spartanburg, SC; Charlotte, NC; Sandhills, NC; INT Sandhills 146° and Fayetteville, NC, 267° radials; Fayetteville; to Kinston, NC.

* * * * *

V–62 [Revised]

From Gallup, NM; INT Gallup 089° and Santa Fe, NM, 268° radials; Santa Fe; Anton Chico, NM; Texico, NM; Lubbock, TX; Abilene, TX; INT Abilene 109° and Glen Rose, TX, 273° radials; Glen Rose.

V–63 [Revised]

From Bonham, TX, via McAlester, OK; Razorback, AR; Springfield, MO; Hallsville, MO; Quincy, IL; Burlington, IA; Moline, IL; Davenport, IA; Rockford, IL; Janesville, WI; Badger, WI; Oshkosh, WI; Stevens Point, WI; Wausau, WI; Rhinelander, WI, to Houghton, MI. The airspace at and above 10,000 feet MSL from Quincy to 32 miles north, is excluded during the time that the Allen MOA is activated by NOTAM.

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V–66 [Revised]

From Mission Bay, CA, Imperial, CA; 13 miles, 24 miles, 25 MSL, Bard, AZ; 12 miles 35 MSL INT Bard 089° and Gila Bend, AZ, 261° radials; 46 miles, 35 MSL, Gila Bend; Tucson, AZ, 7 miles wide (3 miles south and 4 miles north of centerline); Douglas, AZ; INT Douglas 064° and Columbus, NM, 277° radials; Columbus; El Paso, TX; 6 miles wide, INT El Paso 109° and Hudspeth 287° radials; 6 miles wide, Hudspeth; Pecos, TX; Midland, TX; INT Midland 083° and Abilene, TX, 252° radials; Abilene; Bowie, TX; Bonham, TX; Sulphur Springs, TX; Texarkana, AR. From Tuscaloosa, AL, Brookwood, AL; LaGrange, GA; INT LaGrange 120° and Columbus, GA, 068° radials; INT Columbus 068° and Athens, GA, 195° radials; Athens; Greenwood, SC; Sandhills, NC; Raleigh-Durham, NC; Franklin, VA, excluding the airspace above 13,000 feet MSL from the INT of Tucson, AZ, 122° and Cochise, AZ, 257° radials to the INT of Douglas, AZ, 064° and Columbus, NM, 277° radials.

* * * * *

V–94 [Revised]

From Blythe, CA, INT Blythe 094° and Gila Bend, AZ, 299° radials; Gila Bend; Stanfield, AZ; 55 miles, 74 miles, 95 MSL, San Simon, AZ; Deming, NM; Newman, TX; Salt Flat, TX; Wink, TX; Midland, TX; Tuscola, TX; Glen Rose, TX; Cedar Creek, TX: Gregg County, TX; Elm Grove, LA; Monroe, LA; Greenville, MS; Holly Springs, MS; Jacks Creek, TN; Bowling Green, KY. The airspace within R–5103A is excluded.

* * * * *

V–114 [Revised]

From Amarillo, TX, via Childress, TX; Wichita Falls, TX; Bonham, TX; Quitman, TX; Gregg County, TX; Alexandria, LA; INT Baton Rouge, LA, 307° and Lafayette, LA, 042° radials; 7 miles wide (3 miles north and 4 miles south of centerline); Baton Rouge; New Orleans, LA; INT New Orleans 070° and Gulfport, MS, 247° radials; Gulfport; INT Gulfport 344° and Eaton, MS, 171° radials; to Eaton, excluding the portion within R–3801B and R–3801C.

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V–124 [Revised]

From Bonham, TX, via Paris, TX; Hot Springs, AR; Little Rock, AR; Gilmore, AR; Jacks Creek, TN; to Graham, TN.

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V–161 [Revised]

From Three Rivers, TX, via Center Point, TX; Llano, TX; INT Llano 026° and Millsap, TX, 193° radials; Millsap; Bowie, TX; Ardmore, OK; Okmulgee, OK; Tulsa, OK; Oswego, KS; Butler, MO; Napoleon, MO; Lamoni, IA; Des Moines, IA; Mason City, IA; Rochester, MN; Farmington, MN; Gopher, MN; Brainerd, MN; Grand Rapids, MN; International Falls MN; to Winnipeg, MB, Canada, excluding the portion within Canada.

* * * * *

Issued in Washington, DC, on June 25, 1996.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 96–17038 Filed 7–2–96; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 71

[Airspace Docket No. 93–ASW–5]

Alteration of VOR Federal Airways; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters eleven Federal airways located in the vicinity of Dallas, TX. This action, which supports the Dallas/Fort Worth Metroplex Plan, is necessary due to the decommissioning of four Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facilities and the commissioning of four new VORTAC's. In addition, this action enhances the flow of air traffic, simplifies routings, increases safety and reduces pilot/controller workload.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On June 27, 1995, the FAA proposed to amend Title 14 of the Code of Federal Regulations part 71 (14 CFR part 71) to alter eleven Federal airways located in the vicinity of Dallas, TX (60 FR 33158). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The airways listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 alters eleven Federal airways located in the vicinity of Dallas, TX. The alterations to the airways surrounding the Dallas/Fort Worth (DFW) International Airport, which are essential to support the Dallas/Fort Worth Metroplex Plan, are necessary because of the decommissioning of the existing Bridgeport, Blue Ridge, Scurry and Action VORTAC's and the commissioning of the Bowie, Bonham, Cedar Creek and Glen Rose VORTAC's. This action enhances the flow of the air traffic, simplifies routings, increases safety, and reduces pilot/controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–163 [Revised]

From Matamoros, Mexico; via Brownsville, TX; 27 miles standard width, 37 miles 7 miles wide (3 miles E and 4 miles W of centerline); Corpus Christi, TX; Three Rivers, TX; INT Three Rivers 345° and San Antonio, TX, 168° radials; San Antonio; Lampasas, TX; Glen Rose, TX; Millsap, TX; Bowie, TX; Ardmore, OK; to Will Rogers, OK. The airspace within Mexico is excluded.

* * * * *

V–194 [Revised]

From Cedar Creek, TX; College Station, TX; INT College Station 151° and Hobby, TX, 290° radials; Hobby; Sabine Pass, TX; Lafayette, LA; Baton Rouge, LA; McComb, MS; INT McComb 055° and Meridian, MS; 221° radials; Meridian. From Liberty, NC, via Raleigh-Durham, NC; Tar River, NC, Cofield, NC; to INT Cofield 077° and Norfolk, VA, 209° radials.

* * * * *

V–278 [Revised]

From Texico, NM, via Plainview, TX; Guthrie, TX; Bowie, TX; Bonham, TX; Paris, TX; Texarkana, AR; Monticello, AR; Greenville, MS; Sidon, MS; Bigbee, MS; to Vulcan, AL.

* * * * *

V–355 [Revised]

From Bowie, TX; to Wichita Falls, TX.

* * * * *

V–358 [Revised]

From San Antonio, TX, via Stonewall, TX; Lampasas, TX; INT Lampasas 041° and Waco, TX, 249° radials; Waco; Glen Rose, TX; Millsap, TX; Bowie, TX; Ardmore, OK; INT Ardmore 327° and Will Rogers, OK, 195° radials; to Will Rogers.

* * * * *

V–369 [Revised]

From Dallas-Fort Worth, TX; to Navasota, TX.

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V–477 [Revised]

From Leona, TX; to Cedar Creek, TX.

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V–568 [Revised]

From Corpus Christi, TX, via INT Corpus Christi 296° and Three Rivers, TX, 165° radials; Three Rivers; INT Three Rivers 327° and San Antonio, TX, 183° radials; San Antonio; Stonewall, TX; Llano, TX; INT Llano 026° and Glen Rose, TX, 216° radials; Glen Rose; Millsap, TX; to Wichita Falls, TX.

V–569 [Revised]

From Beaumont, TX, via INT Beaumont 338° and Lufkin, TX, 146° radials; Lufkin; Frankston, TX; to Cedar Creek, TX.

* * * * *

V–571 [Revised]

From Humble, TX, via Navasota, TX; Leona, TX; INT Leona 331° and Cedar Creek, TX, 166° radials; to Cedar Creek.

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V–583 [Revised]

From Austin, TX; INT Austin 062° and College Station, TX, 270° radials; College Station; Leona, TX; Frankston, TX; Quitman, TX; Paris, TX; to McAlester, OK.

* * * * *

Issued in Washington, DC, on June 25, 1996.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 96–17040 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–P

Office of the Secretary

14 CFR Parts 211 and 213

RIN 2105–AC53

Aviation Economic Regulations: Updates and Corrections

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department is amending 14 CFR Parts 211 and 213 to eliminate obsolete provisions and references, to conform citations to the recodification by Pub. L. 103–272 of the Federal Aviation Act and other transportation statutes, and to update organizational titles.

EFFECTIVE DATE: The rule shall become effective on August 2, 1996.

FOR FURTHER INFORMATION CONTACT: George L. Wellington, Chief, Foreign Air Carrier Licensing Division (X–45), Office of International Aviation, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2388.

SUPPLEMENTARY INFORMATION: In his Regulatory Reinvention Initiative Memorandum of March 4, 1995, President Clinton directed Federal agencies to conduct a page-by-page review of all of their regulations and to "eliminate or revise those that are outdated or otherwise in need of reform." In response to that directive, the Department has undertaken a review of its aviation economic regulations as contained in 14 CFR Chapter II. This rule is one result of those efforts.

This rule eliminates obsolete provisions and references, conforms citations to the recodification by Pub. L. 103–272 of the Federal Aviation Act and other transportation statutes, and updates organizational titles. The Department finds that notice and comment are unnecessary and contrary to the public interest because of the editorial nature of these changes.

Executive Order 12866 (Regulatory Planning and Review)

The Department has analyzed the economic and other effects of the final rule and has determined that they are not "significant" within the meaning of Executive Order 12866. The rule has not, therefore, been reviewed by the Office of Management and Budget.

DOT Regulatory Policies and Procedures

The final rule is not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it does not involve important Departmental policies; rather, the changes are being made solely for the purposes of eliminating obsolete requirements, correcting out-of-date references, and enhancing the organization of the regulations used by the Department to administer its aviation economic regulatory functions. The Department has also determined that there will be no economic impact as a result of these changes.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, I certify that the amendments will not have a significant economic impact on a substantial number of small entities. The changes are editorial in nature and will have no substantive impact.

Executive Order 12612 (Federalism)

The final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The Department has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The amendments will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

National Environmental Policy Act

The Department has also analyzed the rule for the purpose of the National Environmental Policy Act. The rule will not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

There are no reporting or recordkeeping requirements associated with the final rule.

Lists of Subjects

14 CFR Part 211

Foreign air carriers, Economic authority, Transportation Department.

14 CFR Part 213

Foreign air carriers, Economic authority, Transportation Department.

Final Rule

For the reasons set out in the preamble, Title 14, Chapter II of the Code of Federal Regulations is amended as follows:

PART 211—[AMENDED]

1. The authority citation for part 211 is revised to read as follows:

Authority: 49 U.S.C. Chapters 401, 411, 413, 415, 417.

2. Throughout the part, remove the words "Board" and "Board's" wherever they appear, and add, in their place, the words "Department" and "Department's." Remove the words "Docket Section," and add, in their place, the words "Docket Facility."

§ 211.1 [Amended]

3. In § 211.1, remove the words "section 402 of the Federal Aviation Act" and add, in their place, the words "section 41301 of Title 49 of the United States Code (Transportation)."

§ 211.10 [Amended]

4. In § 211.10(b), remove the words "Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board, Washington, DC 20428," and add, in their place, the words "Foreign Air Carrier Licensing Division, Office of International Aviation, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590."

§ 211.20 [Amended]

5. In § 211.20(t), remove the words "CAB form 263," and add, in their place, the words "OST Form 4523."

Subpart D—[Amended]

6. Throughout subpart D of part 211, remove the words "overseas," "overseas and interstate," "overseas or interstate," "interstate and overseas", and "interstate or overseas," wherever they appear, and add, in their place, the word "interstate."

§ 211.33 [Amended]

7. In § 211.33(c), remove the words "section 801(a)" and add in their place the words "section 41307."

PART 213—[AMENDED]

8. The authority citation for part 213 is revised to read as follows:

Authority: 49 U.S.C. Chapters 401, 411, 413, 415, 417.

9. Throughout the part, remove the words "Board" and "Board's" wherever they appear, and add, in their place, the words "Department" and "Department's." Remove the words "Docket Section," and add, in their place, the words "Docket Facility."

§ 213.1 [Amended]

10. In § 213.1, remove the words "section 402 permits authorizing foreign direct air carriers to engage in" and add, in their place, the words "foreign air carrier permits issued under section 41302 of Title 49 of the United States Code (Transportation) authorizing." Remove the entire sentence that begins with "Notwithstanding."

§ 213.3 [Amended]

11. In § 213.3(f), remove the words "section 1005(b) of the Act," and add, in their place, the words "49 U.S.C. 46103."

§ 213.5 [Amended]

12. The heading of § 213.5 is revised to read as follows:

§ 213.5 Filing and service of schedules and applications for approval of schedules; procedure thereon.

* * * * *

13. In § 213.5(a), remove the words "each airport notice or," and "each application for permission to use an airport (§ 213.4(b)) or." Remove the words "19 copies," and add, in their place, the words "seven (7) copies." Remove the entire sentence that begins with "Each airport notice or application . . ."

14. Section 213.5(b) is revised to read as follows:

* * * * *

(b) *Pleadings by interested persons.* Any interested person may file and serve upon the foreign air carrier a memorandum in opposition to, or in support of, schedules or an application for approval of schedules within 10 days of the filing opposed or supported. All memoranda shall set forth in detail the reasons for the position taken together with a statement of economic data and other matters which it is desired that the Department officially notice, and affidavits stating other facts relied upon. Memoranda shall contain a certificate of service as prescribed in paragraph (a) of this section. An executed original and seven (7) true copies shall be filed with the Department's Docket Facility. Unless otherwise provided by the Department, further pleadings will not be entertained.

* * * * *

15. In § 213.5(c), remove the words "for permission to use an airport or." Remove the entire sentence beginning with "Petitions for reconsideration of the Board" determination on an application for permission to use an airport . . ."

§ 213.6 [Amended]

16. In § 213.6, remove the words "Title IV of the Act" and add in their place the words "Subtitle VII of Title 49 of the U.S. Code."

§ 213.7 [Amended]

17. In § 213.7, remove the abbreviation "CAB" before the word "Agreement." Remove the words "CAB form 263," and add, in their place, the words "OST Form 4523", and remove

the words "Publications Services Division, Civil Aeronautics Board, Washington, DC 20428," and add in their place the words "Foreign Air Carrier Licensing Division (X–45), Office of International Aviation, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on May 31, 1996.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 96–16808 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 452

[Docket No. 96N–0117]

Antibiotic Drugs; Clarithromycin Granules for Oral Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to include accepted standards for clarithromycin for its use in a new dosage form of clarithromycin, clarithromycin granules for oral suspension. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective August 2, 1996; comments, notice of participation, and a request for hearing by August 2, 1996; data, information, and analyses to justify a hearing by September 3, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James M. Timper, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2193.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations issued under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of clarithromycin, clarithromycin granules for oral suspension. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic dosage form are adequate to establish the safety and efficacy when used as directed in the labeling and that the regulations should be amended in part 452 (21 CFR part 452) to include accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because, when effective, it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, is effective August 2, 1996. However, interested persons may, on or before August 2, 1996, submit comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before August 2, 1996, a written notice of participation and request for a hearing, and (2) on or before September 3, 1996, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 452

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 452 is amended as follows:

PART 452—MACROLIDE ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 452 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

§ 452.150a [Redesignated from § 452.150]

2. Section 452.150 is redesignated as § 452.150a and new §§ 452.150 and 452.150b are added to subpart B to read as follows:

§ 452.150 Clarithromycin oral dosage forms.

§ 452.150b Clarithromycin granules for oral suspension.

(a) *Requirements for certification—(1) Standards of identity, strength, quality, and purity.* Clarithromycin granules for oral suspension is a dry mixture containing clarithromycin-coated particles, suitable and harmless dispersing agents, diluents, preservatives, and flavorings. It contains the equivalent of 25 or 50 milligrams of clarithromycin activity per milliliter of the reconstituted suspension. Its potency is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of clarithromycin that it is represented to contain. Its loss on drying is not more than 2.0 percent. When constituted as directed in the labeling, its pH is not less than 4.0 nor more than 5.4. The clarithromycin used conforms to the standards prescribed by § 452.50(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The clarithromycin used in making the batch for potency, moisture, pH, residue on ignition, heavy metals, specific rotation, identity, and crystallinity.

(B) The batch for content, loss on drying, pH, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research:

(A) The clarithromycin used in making the batch: 10 packages, each containing approximately 500 milligrams.

(B) The batch: A minimum of six immediate containers.

(b) *Tests and methods of assay—(1) Clarithromycin content.* Proceed as directed in § 452.50(b)(1), except use a known injection volume between 10 and 60 microliters. Also, prepare the mobile phase, working standard solution, and sample solution, and use system suitability requirements and calculation as follows:

(i) *Mobile phase.* Add 600 milliliters of methanol and 400 milliliters of 0.067M potassium phosphate, monobasic, to a suitable container, mix well, and adjust the pH to 3.5 with phosphoric acid. Filter through a suitable filter capable of removing particulate matter to 0.5 micron in diameter. Degas the mobile phase just before its introduction into the chromatographic system.

(ii) *Preparation of standard solution.* Dissolve an accurately weighed portion of the clarithromycin working standard in sufficient methanol to obtain a solution having a known concentration of approximately 2.1 milligrams per milliliter of clarithromycin. Quantitatively transfer and dilute an aliquot of this solution with mobile phase and mix to obtain a solution of known concentration of approximately 415 micrograms of clarithromycin per milliliter.

(iii) *Preparation of sample solution.* Constitute as directed in the labeling. Accurately measure a representative portion of the suspension that contains about 1 to 2 grams of clarithromycin activity and, using approximately 330 milliliters of 0.067M potassium phosphate, dibasic, quantitatively transfer into a 1,000 milliliter volumetric flask containing approximately 50 milliliters of 0.067M potassium phosphate, dibasic. Shake for 30 minutes. Dilute to volume with methanol. Mix well and place in an ultrasonic bath for 30 minutes. Cool to room temperature and adjust to volume with methanol. Add a magnetic stirring bar and stir for 60 minutes. Allow excipients to settle and dilute an appropriate aliquot of the solution with mobile phase to obtain a solution containing 500 micrograms of clarithromycin activity per milliliter and mix well. Filter through a suitable filter capable of removing particulate matter 0.5 micron in diameter.

(iv) *System suitability requirements—*(A) *Tailing factor.* The tailing factor (T) is satisfactory if it is not less than 1.0 and not greater than 1.7 for the clarithromycin peak.

(B) *Efficiency of the column.* The efficiency (n) is satisfactory if it is greater than 2,100 theoretical plates for the clarithromycin peak.

(C) *Capacity factor.* The capacity factor (k') is satisfactory if it is between 2.5 and 6 for the clarithromycin peak.

(D) *Coefficient of variation (relative standard deviation).* The coefficient of variation (S_R in percent of three replicate injections) is satisfactory if it is not more than 2.0 percent.

(v) *Calculations.* Calculate the clarithromycin content as follows:

$$\text{Milligrams of clarithromycin per milliliter} = \frac{A_U \times P_S \times D}{A_S \times V}$$

where:

A_U = Area of the clarithromycin peak in the chromatogram of the sample;

A_S = Area of the clarithromycin peak in the chromatogram of the clarithromycin working standard;

P_S = Clarithromycin activity in the clarithromycin working standard solution in micrograms per milliliter;

D = Dilution factor of the sample test solution; and

V = Volume, in milliliters, of the portion of suspension taken.

(2) *Loss on drying.* Proceed as directed in § 436.200(a) of this chapter, using a sample weight of approximately 1 gram, weighing in a normal laboratory atmosphere.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using the suspension prepared as directed in the labeling. Stir the suspension for 10 minutes with the electrode immersed and record the pH.

(4) *Identity.* Using the high-performance liquid chromatographic procedure described in paragraph (b)(1) of this section, the retention times for the clarithromycin peak must be within 2 percent of the retention time for the peak of the reference standard.

Dated: June 20, 1996.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 96–16977 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 520, 522, 529, and 558

Animal Drugs, Feeds, and Related Products; 29 Various New Animal Drug Products and Type A Medicated Articles

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions reflecting approval of 29 new animal drug applications (NADA's) held by Bayer Corp., Agriculture Division, Animal Health (formerly Miles, Inc., Agriculture Division, Animal Health Products), Hubbard Milling Co., Hoffmann-LaRoche, Inc., and Ohmeda, Inc. The NADA's provide for the use of 29 various new animal drug products and Type A medicated articles used to manufacture finished medicated animal feeds. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0159.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the following NADA's:

NADA No.	Drug name	Sponsor name and address
6–462	Diethylcarbamazine tablets	Bayer Corp., Agriculture Division, Animal Health, P.O. Box 390, Shawnee Mission, KS 66201.
10–540	Calcium disodium edetate injection	Do.
11–380	Diethylcarbamazine powder	Do.
12–054	Protokylol hydrochloride tablets and injection	Do.
12–103	Triamcinolone tablets	Do.
12–392	Triamcinolone injection	Do.
12–598	Disophenol sodium injection	Do.
15–161	Trichlorfon powder	Do.
15–965	Coumaphos Type A medicated article	Do.
30–045	Triamcinolone/neomycin sulfate ointment	Do.
34–394	Niclosamide tablets	Do.
35–263	Styrylpyridinium chloride, diethylcarbamazine (as base) oral liquid.	Do.
45–287	Coumaphos crumbles	Do.
48–645	Tylosin Type A medicated articles (5, 10, 20, and 40 grams per pound).	Hubbard Milling Co., 424 North Riverfront Dr., P.O. Box 8500, Mankato, MN 56002–8500.
49–556	Styrylpyridinium chloride, diethylcarbamazine control diet HRH/MSD.	Bayer Corp.
91–628	Diethylcarbamazine citrate syrup	Do.
93–372	Chlortetracycline calcium complex Type A medicated articles.	Hoffmann-LaRoche, Inc., Nutley, NJ 07110.
94–402	Tylosin and sulfamethazine Type A medicated articles	Hubbard Milling Co.
95–078	Trichlorfon oral liquid	Bayer Corp.
96–031	Styrylpyridinium chloride, diethylcarbamazine citrate tablets.	Do.
100–201	Trichlorfon paste	Do.
100–356	Styrylpyridinium chloride, diethylcarbamazine control diet HRH.	Do.
100–670	Niclosamide Type A medicated article	Do.
101–078	Dichlorophene and toluene capsules	Do.
120–327	Diethylcarbamazine chewable tablets	Do.
120–670	Styrylpyridinium, diethylcarbamazine edible tablets	Do.
121–291	Enflurane liquid (anesthetic)	Ohmeda, Inc., Pharmaceutical Products Division, P.O. Box 804, Liberty Corner, NJ 07938–0804.
121–813	Styrylpyridinium, diethylcarbamazine film-coated tablets	Bayer Corp.
133–509	Pyrantel tartrate Type A medicated articles	Hubbard Milling Co.

The sponsors requested withdrawal of approval of the NADA's. This final rule removes 21 CFR 520.500, 520.620a, 520.620b, 520.1520, 520.2022, 520.2160a, 520.2160b, 520.2160c, 520.2160d, 520.2480, 520.2520c, 520.2520d, 522.281, 522.740, 522.2022, 522.2480, 529.810, 558.367, and 558.565, and amends 21 CFR 520.580, 520.622a, 520.622b, 520.2520a, 558.185, 558.485, 558.625, and 558.630.

List of Subjects

21 CFR Parts 520, 522, and 529

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520, 522, 529, and 558 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.500 [Removed]

2. Section 520.500 *Coumaphos crumbles* is removed.

§ 520.580 [Amended]

3. Section 520.580 *Dichlorophene and toluene capsules* is amended in paragraph (b)(2) by removing "000859,".

§ 520.620a [Removed]

4. Section 520.620a *Diethylcarbamazine* is removed.

§ 520.620b [Removed]

5. Section 520.620b *Diethylcarbamazine chewable tablets* is removed.

§ 520.622a [Amended]

6. Section 520.622a *Diethylcarbamazine citrate tablets* is amended in paragraph (a) by removing "000859 and".

7. Section 520.622b is amended by revising paragraph (b)(2) to read as follows:

§ 520.622b Diethylcarbamazine citrate syrup.

* * * * *

(b)(1) * * *

(2) *Sponsors.* See No. 017030 for use as in paragraphs (b)(3)(ii)(*a*) and (b)(3)(ii)(*c*) of this section.

* * * * *

§ 520.1520 [Removed]

8. Section 520.1520 *Niclosamide tablets* is removed.

§ 520.2022 [Removed]

9. Section 520.2022 *Protokylol hydrochloride tablets* is removed.

§ 520.2160a [Removed]

10. Section 520.2160a *Styrylpyridinium, diethylcarbamazine tablets* is removed.

§ 520.2160b [Removed]

11. Section 520.2160b *Styrylpyridinium chloride, diethylcarbamazine (as base)* is removed.

§ 520.2160c [Removed]

12. Section 520.2160c *Styrylpyridinium, diethylcarbamazine edible tablets* is removed.

§ 520.2160d [Removed]

13. Section 520.2160d *Styrylpyridinium, diethylcarbamazine film-coated tablets* is removed.

§ 520.2480 [Removed]

14. Section 520.2480 *Triamcinolone tablets* is removed.

§ 520.2520a [Amended]

15. Section 520.2520a *Trichlorfon oral* is amended in paragraph (b) by removing the phrase "Nos. 017800 and 000859" and adding in its place "No. 017800".

§ 520.2520c [Removed]

16. Section 520.2520c *Trichlorfon oral liquid* is removed.

§ 520.2520d [Removed]

17. Section 520.2520d *Trichlorfon paste* is removed.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

18. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.281 [Removed]

19. Section 522.281 *Calcium disodium edetate injection* is removed.

§ 522.740 [Removed]

20. Section 522.740 *Disophenol sodium injection* is removed.

§ 522.2022 [Removed]

21. Section 522.2022 *Protokylol hydrochloride injection* is removed.

§ 522.2480 [Removed]

22. Section 522.2480 *Triamcinolone injection* is removed.

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

23. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 529.810 [Removed]

24. Section 529.810 *Enflurane* is removed.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

25. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.185 [Amended]

26. Section 558.185 *Coumaphos* is amended by removing and reserving paragraph (a)(1).

§ 558.367 [Removed]

27. Section 558.367 *Niclosamide* is removed.

§ 558.485 [Amended]

28. Section 558.485 *Pyrantel tartrate* is amended by removing and reserving paragraph (a)(16).

§ 558.565 [Removed]

29. Section 558.565 *Styrylpyridinium chloride, diethylcarbamazine* is removed.

§ 558.625 [Amended]

30. Section 558.625 *Tylosin* is amended by removing and reserving paragraph (b)(72).

§ 558.630 [Amended]

31. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (b)(10) by removing "012190,".

Dated: June 3, 1996.

Michael J. Blackwell,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 96–16886 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

28 CFR Part 42

[A.G. Order No. 2037–96]

Equal Employment Opportunity

AGENCY: Department of Justice

ACTION: Final Rule

SUMMARY: This document revises the Department of Justice policy with regard to the nondiscrimination in employment to include sexual orientation as a prohibited basis for discrimination. This revised rule also makes clear that retaliation for opposing a prohibited practice or participating in a related proceeding is prohibited. This action promotes the equitable treatment of employees and applicants for employment

EFFECTIVE DATE: June 26, 1996.

FOR FURTHER INFORMATION CONTACT: Ted McBurrows, Director, Equal Employment Opportunity Staff, Room 1246, 10th & Pennsylvania Ave., NW, Washington, DC 20530, (202) 616–4800.

SUPPLEMENTARY INFORMATION: In 1994, pursuant to 5 U.S.C. 301, the Attorney General issued several policy statements prohibiting discrimination on the basis of sexual orientation and affirmatively promoting the principles of equal employment opportunity. The Attorney General is revising 28 CFR 42.1 to reflect this policy. This policy affects agency operation and procedures, and therefore is exempt from the notice requirement of 5 U.S.C. 553(b) and is effective upon issuance.

This rule has been drafted and reviewed in accordance with section 1(b) of Executive Order 12866. This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget. In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will not have a substantial direct impact upon the states, on the relationships between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment in accordance with Executive order 12612.

List of Subjects in 28 CFR Part 42

Administrative practice and procedure, Aged, Civil rights, Equal employment opportunity, Grant programs, Individuals with disabilities, Reporting and recordkeeping, Sex discrimination.

Accordingly, for reasons set out in the preamble, 28 CFR Part 42 is amended as set forth below.

PART 42—EQUAL EMPLOYMENT OPPORTUNITY WITHIN THE DEPARTMENT OF JUSTICE

1. The authority citation for Part 42 Subpart A is revised to read as follows:

Authority: 5 U.S.C. 301, 28 U.S.C. 509, 510; E.O. 11246, 3 CFR 1964–1965 Comp., p. 339; E.O. 11478, 3 CFR 1966–1970 Comp., p. 803.

2. Section 42.1 is revised to read as follows:

§ 42.1 Policy.

(a) It is the policy of the Department of Justice to seek to eliminate discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, political affiliation, age, or physical or mental handicap in employment within the Department and to assure equal employment opportunity for all employees and applicants for employment.

(b) No person shall be subject to retaliation for opposing any practical prohibited by the above policy or for participating in any stage of administrative or judicial proceedings related to this policy.

Dated: June 26, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–16886 Filed 7–2–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 256

RIN 1010–AC18

Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This rule amends the regulations of MMS to allow the authorized officer to extend the 90-day time period within which we must accept or reject the high bids received on Outer Continental Shelf (OCS) tracts offered for sale. Unforeseen circumstances including a flood, a furlough, and an extremely high bid response may create a need for more time to evaluate bids. The rule gives the authorized officer authority to extend the time period for 15 working days or longer, beyond 90 days after the date on which the bids are opened, when circumstances warrant.

EFFECTIVE DATE: This rule is effective July 18, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Marshall Rose, Chief, Economic Evaluation Branch, telephone (703) 787–1536.

SUPPLEMENTARY INFORMATION: The time to accept or reject bids is established under the regulations at 30 CFR 256.47. The authorized officer must accept or reject the high bids within 90 days after the bid opening, except for tracts or blocks identified by the Secretary of the Interior as subject to:

(1) Another nations's claims of jurisdiction and control which conflict with the claims of the United States, or

(2) Defense-related activities that may be incompatible with mineral exploration/development activities. Any bid not accepted within that period is deemed rejected.

In the Central Gulf of Mexico Sale 157, held April 24, 1996, we received 1,381 bids on 924 tracts, 632 of which passed to Phase 2 for detailed reviews. This unprecedented response by industry in Sale 157 resulted from the enactment of the Outer Continental Shelf Deep Water Royalty Relief Act (Pub. L. 104–58, DWRRA) and other factors, such as higher natural gas and oil prices. Consequently, MMS is unable to conduct and complete the entire bid review process within the 90 days, i.e., by July 22, 1996. If we do not modify the timing restriction before the 90 days expire for Sale 157, dozens of high bids received on tracts offered in that sale may be rejected because of our inability to complete the statutorily mandated review for fair market value. Therefore, in accordance with 5 U.S.C. 553(b)(3)(B), this rule is effective July 18, 1996. It is in the public interest to ensure that adequate time is available to give all high bids a full and appropriate review and to ensure the receipt of fair market value.

The 90-day period was established in 1982 because of the change from nomination to areawide sales and from presale to postsale evaluations. Since then, MMS has held mainly areawide sales. The DWRRA amended the Outer Continental Shelf Lands Act and defined a new bidding system which provides for royalty suspensions. The deep water incentive law did not amend the requirement that we receive fair market value for tracts leased. Any lease sale held before November 28, 2000, must use the new bidding system for all tracts located in water depths of 200 meters or more in the Gulf of Mexico west of 87 degrees, 30 minutes west longitude. The large number of bids received in response to the new statutory requirements resulted in an increased workload which we expect will exceed our ability to complete the bid review process within 90 days as required by 30 CFR 256.47(e)(2).

This rule allows the authorized officer authority to extend the time period for 15 working days or longer when circumstances warrant. Recent examples include floods and furloughs; however, other circumstances such as an excessive unanticipated workload may arise which could warrant the need for a longer time for bid evaluation.

This rule addresses a housekeeping issue and will enable us to adjust the bid acceptance/rejection time period to meet changing conditions. It recognizes that 90 days may not be enough time to complete the review process, which would result in the rejection of the high bids which we fail to evaluate within 90 days. This would result in fewer leases being issued because of failure to complete the bid review process within time and resource constraints. The Government may receive less bonus and rental monies.

Today, without authority to extend the bid review period, the 1982 90-day rule is arbitrarily too rigid and may not allow sufficient time given the current complexities inherent in evaluating certain tracts. It is in the public interest to ensure that adequate time is available to give all high bids a full and appropriate review, to ensure the receipt of fair market value, and ultimately to increase natural gas and oil supplies.

This rulemaking finalizes the rule, with one substantive modification, as originally proposed and published in the **Federal Register** (61 FR 24466, May 15, 1996). Seven respondents—a trade organization and six companies—submitted comments on the proposed rule during the public comment period. The MMS reviewed and analyzed the comments. The following is a discussion of the comments received and our response.

Narrative Responses to Comments

Comment: Although MMS now pays interest on the one-fifth bonus held during the evaluation period, industry must set aside the four-fifths of the bonus and first year rental to pay for the lease when and if awarded. Delays in rejecting a lease may cause a company to miss participating in a significant opportunity elsewhere. Delays in awarding leases can cause delays in planning further seismic evaluation, hazard surveys, rig commitment, and budgeting of wells. On the other hand, industry does not want the retention of the 90-day period to result in the rejection of the high bids because MMS does not have sufficient time to evaluate them.

Response: We realize that any extension beyond the 90 days could result in some missed opportunities and impact exploration and development activities, but MMS must fulfill its duty to obtain fair market value for offshore leased tracts. Because we accept tracts sequentially during the bid review period, on only a small portion of tracts will MMS require more than 90 days to complete the evaluation. We plan to extend the bid review period only when circumstances beyond our control arise, such as weather conditions, furloughs, or an unusually large number of unanticipated tracts receiving bids causing disruptions in our workload. We would rather ensure that adequate time is available to give all high bids a full and appropriate review, than have to reject high bids for insufficient time to evaluate, which could be the case without this rule. To accommodate the concern to keep the review time extension as short as possible, MMS has reduced the minimum extension time from 30 days as proposed to 15 working days in the final rule.

Comment: The "authorized officer" should not be allowed authority to extend the time period for more than 30 days. This extension of time should only apply to the evaluation of Sale 157 bids and should not be for additional time caused by a change in the bid adequacy procedures, for example, elimination of the 3-bid rule.

Response: Our recent experience with floods and furloughs, which resulted in extensions of the bid review period for 14 and 9 days each, would indicate that it is unlikely that the authorized officer will extend the time period for more than 15 working days. As a result, we have modified the proposed 30 days to 15 working days. However, in those rare circumstances that may arise which could warrant a longer time for bid evaluation, this rule gives the authorized officer the flexibility to respond appropriately and in the public interest. With respect to Sale 157, more than three times the normal number of tracts went to Phase 2 for further evaluation, only a small percentage of which was attributable to the elimination of the 3-bid rule. The excessive workload burden is a result primarily of industry competition and bidding in Sale 157 and not a change in the bid adequacy procedures.

Comment: The fact that a tract is covered by the DWRRA should not be a factor in evaluating the high bid on that tract.

Response: The MMS must fulfill its duty to obtain fair market value for offshore leased tracts. The fact that a tract may benefit from the DWRRA will normally cause the bidders to adjust their bids accordingly. Therefore, any bid review procedure should take this effect into consideration as well.

Comment: The regulation and the notice granting the extension should make clear the event or circumstances which require the extension.

Response: Based on past experience, the rule does not list all possible reasons, or combination of reasons, that could trigger an extension. Examples of circumstances that might apply are: Inclement weather that results in closing the office; damage to the building (e.g., explosion, fire, or water); lack of electrical power; etc. Any announcement of an extension beyond the 90-day period will include the reasons warranting the extension.

Comment: An extension to accept or reject the high bids is acceptable provided the additional time is warranted, and the sale schedule in the Central and Western Gulf of Mexico is not seriously affected. The alternative of rejecting high bids not evaluated because of insufficient time does not serve the best interest of the companies or the Government.

Response: We, like the companies, do not want to extend the bid review period any more than absolutely necessary because MMS wants to continue to meet our sales schedule. We also realize that companies might delay exploration and development decisions because considerable amounts of financial resources, which could be better employed elsewhere, are tied up during this period. Any extensions should be for the minimum time warranted and affect a small number of tracts.

Comment: The 90-day period would be sufficient if MMS limited its evaluation efforts in Phase 2 to those tracts where there is current activity or new production offsetting a tract receiving bids.

Response: Because we are required to receive fair value for all tracts leased, the existing bid adequacy procedures do not limit Phase 2 evaluation efforts only to those tracts where there is current activity or new production offsetting a tract receiving bids. The rule recognizes that more than 90 days may be needed to complete the process. We will continue to review our procedures and, based on knowledge gained from experience in lease sales, may identify modifications which might reduce the length of the bid review period.

Author: This document was prepared by Mary Vavrina, Offshore Resource Evaluation Division, MMS.

Executive Order (E.O.) 12866

This rule does not meet the criteria for a significant rule requiring review by the Office of Management and Budget (OMB) under E.O. 12866.

Regulatory Flexibility Act

The Department of the Interior (DOI) has determined that this rule will not have a significant economic effect on a substantial number of small entities. Any direct effects of this rulemaking will primarily affect the lessees and operators—entities that are not, by definition, small due to the technical complexities and financial resources necessary to conduct OCS activities. Small entities are more likely to operate onshore or in State waters—areas not covered by this rule. The indirect effect of this rulemaking on small entities that provide support for offshore activities has also been determined to be small. When small entities work on the OCS, they are more likely to be contractors rather than lessees. While these contractors must follow the rules governing OCS operations, we are not changing the rules that govern actual operations on a lease. We are only modifying the rules governing the actual acceptance or rejection of a high bid for a lease.

Paperwork Reduction Act

The rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no new reporting and information collection requirements.

Takings Implication Assessment

The DOI certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment prepared under E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights, is not required.

E.O. 12988

The DOI has certified to OMB that the rule meets the applicable reform standards provided in Section 3(b)(2) of E.O. 12988.

National Environmental Policy Act

The DOI has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, an environmental impact statement is not required.

Unfunded Mandate Reform Act of 1995

The DOI has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that this rule will not impose a cost of $100 million or more in any given year on local, tribal, or State governments or the private sector.

List of Subjects in 30 CFR Part 256

Administrative practices and procedures, Continental shelf, Government contracts, Incorporation by reference, Oil and gas exploration,

Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Dated: June 27, 1996.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble, we amend 30 CFR part 256 as follows:

PART 256—LEASING OF SULPHUR OR OIL AND GAS IN THE OUTER CONTINENTAL SHELF

1. The Authority citation for part 256 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

2. Section 256.47(e)(2) is revised to read as follows:

§ 256.47 Award of leases.

* * * * *

(e) * * *

(2) The authorized officer must accept or reject the bid within 90 days. The authorized officer may extend the time period for acceptance or rejection of a bid for 15 working days or longer, if circumstances warrant. Any bid not accepted within the prescribed time period, including any extension thereof, is deemed rejected.

* * * * *

[FR Doc. 96–17013 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

33 CFR Part 334

Chesapeake Bay Off Fort Monroe, VA, and Canaveral Harbor Adjacent to the Navy Pier at Port Canaveral, FL; Restricted Areas, and Pacific Ocean, Hawaii, Danger Zones

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: The Corps is amending the regulations which establish a restricted area in the waters off of Fort Monroe, Virginia, which is located at Hampton Roads in the Chesapeake Bay. The purpose of the amendment is to increase the size of the restricted area to protect sensitive test equipment operated by the Navy in that area. The equipment is susceptible to damage by commercial fishing vessels, anchoring and dragging. The Corps is amending the regulations which establish a restricted area in Canaveral Harbor in the waters adjacent to the Navy pier at Port Canaveral, Florida. This amendment concerns the replacement of a warning light system in the Canaveral area. The change is necessary because the existing rules refer to the display of a nonexistent red ball and the Port Canaveral water tower which has been dismantled. The marker light has been relocated. The Corps is also making several editorial changes to the regulations which establish danger zones in the waters offshore of Hawaii. The amendments reflect a change in the use of a danger zone and the identity of the Agency responsible for enforcement of the regulations. The changes are being made as a result of an ongoing review of the regulations.

EFFECTIVE DATE: August 2, 1996.

ADDRESSES: HQUSACE, CECW–OR, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard, Regulatory Branch, CECW–OR at (202) 761–1783, or questions concerning the Fort Monroe restricted area may be directed to Ms. Alice G. Riley of the Norfolk District at (804) 441–7389, and questions concerning the Port Canaveral restricted area may be directed to Ms. Shirley Stokes of the Jacksonville District at (904) 232–1668.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the regulations in 33 CFR Part 334.360, 334.530 and 334.1340.

The Commanding Officer, Naval Surface Warfare Center, Dahlgren Detachment, Fort Monroe, Virginia has requested an amendment to the regulations in 33 CFR 334.360, which establish a restricted area in the Chesapeake Bay off Fort Monroe, Virginia. In addition, the Commanding Officer, Naval Ordnance Test Unit, Cape Canaveral, Florida, has requested an amendment to the restricted area regulations in 33 CFR 334.530 to delete a reference to a red warning light on a water tower and refer in its place to a new warning light system. We published these proposed amendments to the regulations in the notice of proposed rulemaking section of the **Federal Register** on February 27, 1996, with the comment period expiring on April 12, 1996 (61 FR 7231–7132). We received no comments in response to the proposed rule. The Commander, Naval Base, Pearl Harbor has requested that minor editorial changes be made to the regulations which establish several danger zones in the waters offshore of Hawaii to remove obsolete material. The title of the danger zone in 33 CFR 1340(a)(4) is changed from "*Aerial bombing and naval shore bombardment area, Kahoolawe Island Hawaii*" to "*Submerged unexploded ordnance danger zone, Kahoolawe Island, Hawaii*" and the enforcing authority in paragraph (c) is changed from "Commander, Third Fleet, Pearl Harbor" to "Commander, Naval Base, Pearl Harbor, Hawaii 96860–5020." These amendments to the danger zones in 33 CFR 334.1340 are being promulgated without being published as proposed rules with opportunity for public comment because the changes are editorial in nature and since the revisions do not change the boundaries or increase or decrease the restrictions on the public's use or entry into the designated danger zones, the changes will have practically no effect on the public, and accordingly, public comment is unnecessary and impractical.

Economic Assessment and Certification

This final rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply. This final rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps expects that the economic impact of the changes to the restricted areas will have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this final rule will have no significant economic impact on small entities.

National Environmental Policy Act Certification

An environmental assessment has been prepared for each of these actions. We have concluded, based on the minor nature of these amendments, that these amendments to danger zones and restricted areas will not have a significant impact to the human environment, and preparation of an environmental impact statement is not required. Copies of the environmental assessment may be reviewed at the District Offices listed at the end of **SUPPLEMENTARY INFORMATION,** above.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger Zones.

For the reasons set out in the preamble, 33 CFR Part 334 is amended as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.360 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 334.360 Chesapeake Bay off Fort Monroe, Virginia; restricted area, U.S. Naval Base and Naval Surface Weapons Center.

(a) *The area.* Beginning at latitude 37°01′03″, longitude 076°17′52″; thence to latitude 37°01′00″, longitude 076°16′11″; thence to latitude 36°59′43″, longitude 076°16′11″; thence to latitude 36°59′18″, longitude 076°17′52″; thence to latitude 37°00′05″, longitude 076°18′18″; thence north along the seawall to the point of beginning.

(b) *The regulations.* (1) Anchoring, trawling, fishing and dragging are prohibited in the restricted area, and no object, either attached to a vessel or otherwise, shall be placed on or near the bottom unless authorized by the Facility Manager, Naval Surface Warfare Center, Dahlgren Division Coastal Systems Station Detachment, Fort Monroe, Virginia.

* * * * *

3. Section 334.530 is amended by revising paragraph (b)(2) to read as follows:

§ 334.530 Canaveral Harbor adjacent to the Navy Pier at Port Canaveral, Fla.; restricted area.

* * * * *

(b) * * *

(2) The area will be closed when a red square flag (bravo), and depending on the status of the hazardous operation, either an amber or red beacon, steady burning or rotating, day or night, when displayed from any of the three berths along the wharf.

* * * * *

4. Section 334.1340 is amended by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(1) and (a)(2), respectively, revising the heading of newly designated paragraph (a)(2), and revising paragraph (c) to read as follows:

§ 334.1340 Pacific Ocean, Hawaii; danger zones.

(a) *Danger zones.* (1) * * *

(2) *Submerged unexploded ordnance danger zone, Kahoolawe Island, Hawaii.* * * *

* * * * *

(c) *Enforcing agency.* The regulations in this section shall be enforced by Commander, Naval Base, Pearl Harbor, Hawaii 96860–5020, and such agencies as he/she may designated.

Dated: June 19, 1996.

Stanley G. Genega,

Major General, U.S. Army, Director of Civil Works.

[FR Doc. 96–16850 Filed 7–2–96; 8:45 am]

BILLING CODE 3710–92–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD-FRL–5530–4]

Title V Clean Air Act Final Interim Approval of Operating Permits Program; Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Interim Approval.

SUMMARY: EPA is promulgating interim approval of the operating permits program submitted by Maryland for the purpose of complying with federal requirements for an approvable program to issue operating permits to all major stationary sources, and to certain other sources. Maryland has substantially, but not fully, met the requirements for an operating permits program set out in title V of the Clean Air Act (CAA) and 40 CFR part 70. Upon the effective date of this program approval, those sources must comply with Maryland's regulatory requirements to submit an application for an operating permit pursuant to the state's submittal schedule.

EFFECTIVE DATE: August 2, 1996.

ADDRESSES: Copies of Maryland's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Lisa M. Donahue, (3AT23), Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 566–2062, donahue.lisa@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Title V of the 1990 CAA Amendments (sections 501–507 of CAA), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that states seeking to administer a title V operating permits program develop and submit a program to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval of an operating permits program submittal. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by November 15, 1995, or by the expiration of the interim approval period, it must establish and implement a federal program.

EPA compiled a technical support document (TSD), associated with the proposal, which contains a detailed analysis of the operating permits program. On October 30, 1995, EPA proposed interim approval of the operating permits program for Maryland, and requested comments on that proposal. (See 60 FR 55231). In this document EPA is taking final action to promulgate interim approval of the operating permits program for Maryland.

II. Analysis of State Submission

On May 9, 1995, Maryland submitted an operating permits program to satisfy the requirements of the CAA and 40 CFR part 70 and the submittal was found to be administratively complete pursuant to 40 CFR 70.4(e)(1). The submittal was supplemented by additional material on June 9, 1995. EPA reviewed the program against the criteria for approval in section 502 of the CAA and the part 70 regulations. EPA determined, as fully described in the notice of proposed interim approval of the state's operating permits program (see 60 FR 55231 (October 30, 1995)) and the TSD for this action, that Maryland's operating permits program substantially meets the requirements of the CAA and part 70.

III. Response to Public Comments

EPA received several comments during the public comment period. Additional comments to clarify comments submitted during the comment period were submitted after the expiration of the public comment period. These comments and EPA's responses are grouped into four categories. All comments are contained

in the docket at the address noted in the ADDRESSES section above.

A. Judicial Standing

Comment 1: One commenter expressed the belief that EPA was overstepping its authority in proposing that Maryland amend the Maryland Environmental Standing Act (MESA) to afford non-state residents and organizations the same standing rights as other "persons" as defined in MESA. Citing the 10th amendment to the U.S. Constitution, the commenter argues that the regulation of state courts is clearly a right reserved to the states and that the Maryland common law "specific interest or property right" test of harm is a reasonable criteria for determining standing in a state court that EPA should not seek to alter.

EPA Response to comment 1: EPA does not agree that Maryland's common law standing requirements fully meet the standards of title V. Moreover, EPA does not believe that section 502(b)(6) of the CAA, and the requirements of 40 CFR 70.4(b)(3)(x) regarding the necessary opportunity for judicial review of permit actions represent an unconstitutional invasion of state sovereignty or a coercion of state legislative or regulatory action since, under title V, states are required to amend their standing laws only if they wish to obtain EPA approval under the CAA. If a state elects not to participate in implementing title V, it is free to make that choice. EPA's position has been upheld recently at both the Federal District Court and Appellate Court levels. See, State of Missouri and Mel Carnahan v. U.S., et al, No. 4:94CV01288 ELF, 1996 U.S. Dist. Lexis 3215 (E.D. Mo. Feb. 5, 1996). See also, Commonwealth of Virginia v. Carol Browner, et al., No. 95–1052, 1996 U.S. App. Lexis 5334 (4th Cir. Mar. 26, 1996).

Comment 2: Two commenters, including the Maryland Department of the Environment (MDE), expressed disagreement with EPA's evaluation that title V standing criteria must meet the minimum requirements of Article III of the U.S. Constitution. One of these commenters disagreed with EPA's conclusion that MESA consequently provides an inadequate opportunity for judicial review of part 70 permits.

EPA Response to comment 2: Section 502(b)(6) states that every approvable permit program must provide the applicant and "any person who participated in the public comment process" with the opportunity for judicial review of the final permit action in state court. The same opportunity must also be afforded to any other person who could obtain judicial review of the action under any applicable state law. EPA believes that for a state title V operating permits program to be approved by EPA, that program must provide access to judicial review to any party who participated in the public comment process and who at a minimum meets the threshold standing requirements of Article III of the U.S. Constitution.

EPA's interpretation is consistent with the language, structure, and legislative history of the Act, under which it is clear that affected members of the public must have an opportunity for judicial review of permit actions to ensure an adequate and meaningful opportunity for public participation in the permit process. See, Chafee-Baucus Statement of Senate Managers, S. 1630, the Clean Air Act Amendments of 1990, reprinted in 136 Cong. Rec. S169941 (daily ed. October 27, 1990). The legislative history, together with the expansive language of section 502(b)(6), demonstrates the clear intent of the Congress to provide citizens a broad opportunity for judicial review.

EPA's position regarding the Article III standard recently was affirmed by the U.S. Court of Appeals for the Fourth Circuit in Commonwealth of Virginia v. Carol M. Browner, et al., No. 95–1052, 1996 U.S. App. Lexis 5334 (4th Cir. Mar. 26, 1996). The Fourth Circuit Court of Appeals therein held that:

> Here, EPA resolved the slight tension within § 502(b)(6) by interpreting the section to require that states, at a minimum, extend judicial review rights to participants in the state public comment process who satisfy the standard for Article III standing. This resolution is both authorized by Congress and reasonable, and therefore we must reject Virginia's alternative interpretation.

Commonwealth v. Browner, 1996 U.S. App. Lexis 5334 at 25–26.

Certain parties, including non-state residents and organizations not doing business in Maryland, do not fall within MESA's definition of "person" and cannot take advantage of the standing provisions of MESA. These parties are required to establish standing for judicial review under the Maryland common law of standing. While Maryland's program submittal provides adequate standing for state residents and organizations doing business in Maryland and thus substantially meets the standing requirements of title V of the CAA and 40 CFR part 70, EPA has concluded that Maryland standing requirements are somewhat less favorable than the standing requirements of Article III with respect to non-state residents and organizations not doing business in Maryland. In order to fully meet the standing requirements for judicial review required by CAA section 502(b)(6) and 40 CFR 70.4(b)(3)(x), MESA must be amended to accord such non-state residents and organizations the same standing to challenge part 70 permit decisions as other "persons" defined in MESA, or, in the alternative, other appropriate legislative action must be taken to ensure that standing requirements for such organizations are not more restrictive than the minimum requirements of Article III of the U.S. Constitution as they apply to federal courts.

Comment 3: One commenter argues that judicial review under the Maryland Administrative Processes Act (APA) is unavailable in Maryland for a part 70 permit and the scope of review under MESA is much narrower than that afforded under the APA. The commenter further asserts that MESA does not abrogate the existing requirement of exhaustion of remedies, expresses due process concerns inherent under Maryland APA standing principles and questions whether MESA can serve as the "primary avenue" for third parties to obtain judicial review of part 70 permits issued by MDE. A second commenter generally asserted the belief that Maryland's permit program effectively precludes citizen suits under all circumstances and is deficient in its citizen suit "standing" provisions.

EPA Response to comment 3: The Maryland Attorney General acknowledges that in order to obtain judicial review under the APA, a party must show that the party has been "aggrieved". The Maryland Attorney General recognizes that MESA cannot be used for this purpose and that MESA does not provide standing for a direct judicial review of permit actions under Maryland's APA. See, Medical Waste Associates, Inc. v. Maryland Waste Coalition, Inc., 327 Md. 596, 612 A.2d 241 (1992). Citing Medical Waste, the Maryland Attorney General concludes that MESA cannot be used by a plaintiff organization to create standing rights that the organization otherwise would not have to obtain judicial review of a contested case decision under the APA. However, the Maryland Attorney General concludes that the decision in Medical Waste has relevance to the scope of review available under MESA only with respect to MDE permits that are subject to contested case hearings. The Maryland Attorney General states that part 70 operating permits will not be subject to contested case proceedings and that Medical Waste should not be seen as controlling with respect to part 70 permits, especially where MDE has specified that MESA is the appropriate mechanism for obtaining judicial review of such permits.

The Maryland Attorney General acknowledges that the nature and scope of review that is available with respect to part 70 operating permits will depend on the issues raised by the petitioner and on the type of action brought. However, the Maryland Attorney General notes that the Maryland Court of Appeals, in discussing the type of review available in an adjudicative type of permit review proceeding, has stated that:

> Consequently, such an administrative proceeding, even if not subject to judicial review under the APA, would be subject to judicial review, of essentially the same scope, in an action for mandamus, certiorari, injunction, or declaratory judgment.

Medical Waste, 327 Md. at 610.

The Maryland Attorney General further asserts that, in the absence of an express provision for review, actions for declaratory or injunctive relief, as well as mandamus, are available to persons challenging state permit issuance. The Maryland Attorney General notes that a reviewing court essentially may provide the same remedies that a person could obtain from judicial review under the APA and that MESA, therefore, should provide the basis for judicial review of any part 70 permit in which MDE fails correctly to apply applicable CAA requirements that pertain to the source covered under the permit. As to the issue of exhaustion of remedies, neither title V nor 40 CFR part 70 prohibit an administrative remedy exhaustion requirement.

On the basis of the Maryland Attorney General's Opinion, it appears that review of essentially equivalent scope as direct judicial review is available in administrative proceedings such as permit issuances or denials, even if not subject to direct review under the Maryland APA. Nevertheless, Maryland could avoid the risk of any future Maryland judicial decision interpreting MESA or Maryland's common law of standing in such a manner as potentially to compromise Maryland's part 70 approval status if Maryland were to amend its state APA to provide directly for the opportunity for judicial review of permit actions in state court, consistent with CAA section 502(b)(6) and 40 CFR 70.4(b)(3)(x).

Comment 4: One commenter opines that Maryland part 70 regulations should be able to provide expressly for standing consistent with existing Federal law through an adoption of the Federal definition of standing, as Maryland has done with state regulations promulgated under the Federal Surface Mining Control and Reclamation Act.

EPA Response to comment 4: EPA believes that the commenter may have identified one of several potential alternatives available to Maryland to meet fully the requirements of CAA section 502(b)(6) and 40 CFR 70.4(b)(3)(x). However, EPA does not believe that Maryland must select this particular alternative in order to maintain part 70 approval status.

Comment 5: One commenter notes that the Maryland APA requirement that a party be "aggrieved" mirrors general common law standing principles applicable to judicial review of administrative decisions, but asserts that Maryland imposes a "special interest" requirement whereby a party "ordinarily must" show that his personal property rights are specially affected in a way different from the general public in order to have common law standing. The commenter states that Maryland's "special interest" requirement differs significantly from the "general interest" requirement under the Federal rule and that the Court of Special Appeals of Maryland has virtually excluded anyone but an adjoining property holder from meeting the "special harm" requirement of standing.

EPA Response to comment 5: No Maryland appellate decision has articulated those "interests" which are sufficient to establish standing on the part of an individual in an environmental permit case. In the event that a Maryland judicial decision having precedential effect is issued in the future which makes Maryland common law standing requirements more stringent than Article III standing requirements, EPA will take appropriate action under 40 CFR 70.10(c) ("Criteria for Withdrawal of State Programs").

Comment 6: One commenter asserts that MESA places major limitations upon when and where a private citizen may initiate an action and that judicial application of MESA renders nugatory MESA's supposedly broad standing requirements.

EPA Response to comment 6: While it is clear that MESA confers standing on any individual citizen residing "in the county or Baltimore City where the action is brought", no reported Maryland appellate decision has interpreted the additional standard set forth in MESA which confers standing on any individual citizen able to "demonstrate that the alleged condition, activity, or failure complained of affects the environment where he resides." In the event that a Maryland judicial decision having precedential effect is issued in the future which makes MESA's standing requirements more stringent than Article III standing requirements, EPA will take appropriate action under 40 CFR 70.10(c).

Comment 7: One commenter notes that organizational standing under Maryland common law is significantly more restrictive than under Federal law in that the organization's members must meet the "special harm" test and the organization itself must have its own "property" interest, separate and distinct from that of its members and the public at large.

EPA Response to comment 7: EPA has identified the commenter's concerns as an interim approval issue and agrees that Maryland standing requirements are somewhat less favorable than the standing requirements of Article III with respect to organizations not doing business in Maryland. See, 60 FR 55231, 55233. The federal courts interpret Article III to provide standing for organizations in actions brought to protect the interests of their members, provided certain conditions are met. See, Chesapeake Bay Foundation v. Bethlehem Steel Corp., 608 F.Supp. 440 (D. Md. 1985). Under the Maryland common law of standing, an organization must have an interest of its own, separate and distinct from that of its individual members, in order to establish standing. Medical Waste Associates, Inc. v. Maryland Waste Coalition, 327 Md. 596 (1992). However, the Maryland Attorney General notes that if at least one plaintiff in an action for review of a permit establishes standing, the Maryland courts will not ordinarily inquire as to whether other plaintiffs have standing. Therefore, an organization doing business outside of Maryland may be able to participate in a permit challenge on behalf of its individual members if other parties having the requisite standing also join as plaintiffs in the action.

Maryland's program submittal substantially meets the standing requirements of title V of the CAA and 40 CFR part 70. However, in order to meet fully the requirements of section 502(b)(6) of the CAA and 40 CFR 70.4(b)(3)(x), MESA must be amended to accord non-state residents and organizations not doing business in Maryland the same standing to challenge part 70 permit decisions as other "persons" as defined in MESA, or, in the alternative, other appropriate legislative action must be taken to ensure that standing requirements for such organizations are not more restrictive than the minimum

requirements of Article III of the U.S. Constitution as they apply to federal courts.

Comment 8: One commenter questions where the Maryland Attorney General finds support for the proposition that Maryland would recognize a non-economic interest as sufficient for standing purposes. The commenter considers it clear that Maryland recognizes only an individual's "health or property" interest and that not one single case allows recreational, environmental or aesthetic interests as being sufficient to constitute the type of special interest needed to establish standing under Maryland common law (i.e., non-MESA) standing.

EPA Response to comment 8: There are no reported cases in Maryland that would preclude a non-economic interest (such as a recreational, conservational or aesthetic interest) from constituting the type of specific interest needed to establish standing under Maryland common law. If a Maryland judicial decision having precedential effect is issued in the future limiting the special interest required for standing to economic interests, then the Maryland standing requirement would become more stringent than Article III standing requirements. See e.g., Commonwealth of Virginia v. Carol M. Browner, et al., No. 95–1052, 1996 U.S. App. Lexis 5334 (plaintiff need not show "pecuniary" harm to have Article III standing; injury to health or to aesthetic, environmental, or recreational interests will suffice). See, also, United States v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669, 686–87 (1973); Sierra Club v. Morton, 405 U.S. 727, 734 (1972). EPA would then take appropriate action under 40 CFR 70.10(c).

Comment 9: One commenter asked that EPA disapprove the Maryland part 70 Permit Program and take the first steps to institute discretionary sanctions.

EPA Response to comment 9: Maryland's part 70 Permit Program submittal does not meet fully the requirements of title V of the CAA and 40 CFR part 70 and full approval by EPA is inappropriate. However, Maryland's part 70 Permit Program submittal substantially meets the requirements of title V of the CAA and 40 CFR part 70 and interim approval is appropriate. During the interim approval period, which may extend for up to 2 years, Maryland is protected from sanctions for failure to have a fully approved title V, part 70 program. EPA may apply discretionary sanctions, where warranted, any time after the end of an interim approval period if Maryland has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program.

B. Programmatic Issues

Comment 10: A commenter disagreed with EPA's statement that any relaxation of a compliance plan or schedule must be processed as a significant permit modification. The commenter believes that Maryland should be allowed discretion to process insubstantial changes to a compliance plan or schedule as either administrative or minor permit revisions, and cites an example. The commenter believes that it is inappropriate to require a significant permit modification for a one month delay in meeting a compliance milestone, when the state can assure that the source is acting in good faith and that the delay is beyond the source's control. The commenter believes that this provision of the regulation (Code of Maryland Regulations (COMAR) 26.11.03.14.C) should be approved as currently written.

EPA Response to Comment 10: EPA agrees with the comment and revises its position, removing the requirement to revise COMAR 26.11.03.14C as set out in the proposed interim approval notice. COMAR 26.11.03.14C does not prohibit MDE from considering a change to a compliance plan as a significant permit modification. Rather, it provides an additional requirement for changes to compliance plans. Whereas sources may make changes addressed in administrative permit amendments (see COMAR 26.11.03.15F) or minor permit modifications (with some exceptions, see COMAR 26.11.03.16G) before MDE completes its amendment or modification, changes to compliance plans may not be made until they have been approved in writing. The criteria for determining the type of permit modification that is required in any particular instance are set out at COMAR 26.11.03.14–19. In keeping with these criteria, Maryland has the discretion to treat "insubstantial" changes as administrative or minor permit modifications, as appropriate.

Comment 11: A commenter expressed support for MDE's plan to place fee revenues from the title V program into a segregated portion of the Air and Radiation Management and Administration's budget. Maryland's title V program allows surplus funds from previous years to be carried over to the following year and used solely for the part 70 permit program. The commenter recommended that the funds be placed in an interest bearing account, and credited to sources, according to the proportion of the total of all emission fees which were paid by the source in a timely manner.

EPA Response to Comment 11: Part 70 requires that states establish a fee schedule that results in revenues sufficient to cover the permit program costs. Part 70 does not specify how surplus funds from one year should be carried over to fund the next year, and does not require that funds be placed in an interest bearing account and credited to sources. Maryland has discretion to manage surplus funds as the state determines is appropriate, provided that the funds are used solely for title V purposes and in accordance with the provisions of part 70. The state is also required under part 70.9(d) to provide periodic accounting updates demonstrating how fee revenues are used solely to cover the costs of implementing the title V program.

Comment 12: A commenter requested that EPA encourage Maryland to adopt a "trivial activities" list and set up a process for approving trivial activities on a case by case basis, as provided for in the EPA's "White Paper for Streamlined Development of Part 70 Permit Applications."

EPA Response to Comment 12: As discussed in the "White Paper for Streamlined Development Part 70 Permit Applications", dated July 10, 1995, EPA believes that, in addition to the insignificant activity provisions of part 70.5(c), part 70.5 allows permitting authorities to recognize certain activities as being clearly trivial (i.e., emissions units and activities which do not in any way implicate applicable requirements) and that such trivial activities can be omitted from the permit application even if not included on a list of insignificant activities approved in a state's part 70 program. Permitting authorities may, on a case-by-case basis and without EPA approval, exempt additional activities which are clearly trivial. However, additional exemptions, to the extent that the activities they cover are not clearly trivial, still need to be approved by EPA before being added to state lists of insignificant activities. While part 70.5 has been interpreted to allow flexibility for the determination of trivial activities, EPA will defer to Maryland to determine whether similar flexibility exists under its own permit application provisions. EPA believes that it is appropriate to have such determinations made in the first instance at the state level as the decision of whether any particular item should be on a state's trivial list may depend on state-specific factors, such as whether the activity is subject to state-only requirements or specific requirements of the SIP.

Comment 13: A commenter urged EPA to allow the state to provide more time for facilities to submit permit applications. Maryland requires facilities to submit permit applications on a staggered basis within 4, 6 or 8 months after the effective date of EPA's approval of the title V program. The commenter is concerned that pending rulemakings for the title V program and monitoring requirements are needed to determine what will be required in a title V permit application and permit. Further, the commenter requested EPA to develop a national standard for permit application forms, so that no one company or state would have a greater or lesser burden in completing its permit application.

EPA Response to Comment 13: Section 503(c) of the CAA requires that any person required to have a permit shall submit to the permitting authority a permit application and compliance plan not later than 12 months after the date on which the source becomes subject to the program, or such earlier date as the permitting authority may establish. This requirement is established by regulation at 40 CFR part 70.5(a)(1). EPA has no authority to allow states to extend the time frame for sources to submit permit applications beyond the required 12 months. The CAA and part 70 provide states discretion to establish earlier due dates for sources to submit permit applications. Many states, including Maryland, have done so, particularly so that they will be able to meet the requirement for issuing one-third of permits within the first year of title V program approval. EPA supports states' decisions to establish earlier due dates for permit applications and believes that Maryland's approach is reasonable.

EPA's pending rulemakings pertaining to the title V program and monitoring requirements do not have an impact on the information that sources must include in permit applications. Sources subject to Maryland's title V program, once approved, will be subject to the requirements for permit applications found in Maryland's regulations (primarily COMAR 26.11.03.02, 26.11.03.03, and 26.11.03.04).

EPA does not agree that a national standardized permit application form should be established. Part 70.5(c) requires the state to provide a standard application form(s) and provides that the permitting authority may use its discretion in developing application forms that best meet program needs and administrative efficiency. Part 70.5(c) specifies the minimum types of information that must be included in permit applications.

C. Decision for "Interim" Approval

Comment 14: One general comment raised with respect to several of the proposed interim approval issues questions why such program deficiencies warrant interim approval status. Although this same comment was submitted with respect to several of the proposed interim approval issues, EPA will respond to this comment generally in this rulemaking action.

EPA Response to comment 14: The part 70 regulations define the minimum elements required by the CAA for approval of state operating permit programs. Section 70.4(d) authorizes EPA to grant interim approval in situations where a state's program substantially meets the requirements of part 70, but is not fully approvable. In reviewing Maryland's operating permit regulations, several instances in which the impact of seemingly "small" deficiencies such as vague or awkward language, misplaced, misreferenced or mislabeled provisions prevents EPA from being able to determine that the requirements of part 70 are fully met. EPA identified such deficiencies as "interim approval issues" which Maryland must revise, modify or otherwise clarify to fully meet part 70's requirements. To the extent that EPA's concerns can be satisfied through other mechanisms, regulatory revision may not be necessary.

Comment 15: Commenters also have questioned the propriety of EPA's proposal to grant interim approval status to Maryland's title V Program in light of recognized deficiencies in the Program's standing requirements for judicial review and have previously suggested that EPA may be applying inconsistent approval standards and an inconsistent level of review and comment among the various state and local jurisdictions seeking operating permit program approvals under title V of the CAA.

EPA Response to comment 15: EPA believes that MESA provides adequate standing for judicial review to Maryland residents and corporations, and any partnership, organization, association or legal entity doing business in the state, all of whom are defined as "persons" therein. EPA further believes that the substantial majority of challenges to state permit actions will be brought by resident individuals and organizations doing business within the state and who will have standing for judicial review pursuant to MESA. EPA recognizes that non-state residents must establish standing pursuant to Maryland common law, which requires a "specific interest or property right" such that the party will suffer harm that is different in kind from that suffered from the general public. However, there are no reported cases in Maryland that would preclude non-economic interests such as recreational, conservational or aesthetic interests from constituting the type of specific interest needed for standing. In the event that a Maryland decision having precedential effect subsequently limits the special interest required for standing to economic interests, or otherwise makes the Maryland standing requirements more stringent that Article III standing requirements, EPA has previously stated its intent to take appropriate action under 40 CFR 70.10(c). EPA also acknowledges, as an interim approval issue, that Maryland standing requirements are somewhat less favorable than the standing requirements of Article III with respect to organizations not doing business in Maryland and that Maryland must accord non-state residents and organizations not doing business in the state the same standing rights to challenge part 70 permit decisions as other "persons" as defined in MESA. In the interim, an organization doing business outside Maryland still may be able to participate in a permit challenge on behalf of its individual members if it joins other plaintiffs who already have the requisite standing in the action, as Maryland courts will not ordinarily inquire as to whether other plaintiffs have standing.

For these reasons, EPA believes that Maryland's program currently provides the requisite standing for judicial review to the broad majority of prospective plaintiffs in part 70 state permit actions and substantially meets the requirements of part 70. EPA further believes that Maryland's program meets each of the minimum requirements of 40 CFR 70.4(d)(3), such that interim approval should be granted to Maryland's title V Program.

EPA has applied consistent review, comment and approval standards among the various jurisdictions seeking approval of operating permit programs under title V of the CAA. EPA evaluates each program separately to determine if it meets the requirements of 40 CFR part 70 and has not proposed approval for any state operating permits program that does not substantially meet the requirements for standing for judicial review as required by section 502(b)(6) of the Act and 40 CFR 70.4(b)(3)(x).

Some commenters have questioned the consistency of EPA's review, comment and approval standards with respect to the issue of standing for judicial review because EPA proposes to grant interim approval status to Maryland's title V Program after acknowledging certain deficiencies in Maryland's program submittal. These commenters note that EPA previously denied approval of the Commonwealth of Virginia's Program upon finding that limitations on judicial review in Virginia did not meet the minimum threshold standing requirements of Article III.

On the basis of five disapproval issues, including the issue of standing for judicial review, EPA determined that Virginia's operating program submittal did not substantially meet the requirements of part 70 and, therefore, was not eligible for interim approval. (See 59 FR 62324 (December 5, 1994)). On the issue of standing for judicial review, EPA took particular note that section 10.1–1318(B) of the Code of Virginia extends the right to seek judicial review only to persons who have suffered "actual, threatened, or imminent injury * * *" where "such injury is an invasion of an immediate, legally protected, pecuniary and substantial interest which is concrete and particularized * * *" and found that the limitations on judicial review in Virginia did not meet the minimum threshold standing requirements of Article II of the U.S. Constitution and did not meet the minimum program approval criteria under title V. (See 59 FR 31183, 31184 (June 17, 1994)).

The strict limitations on judicial review which are contained in Virginia's program submittal are in sharp contrast to the comparatively minor limitations on judicial review contained in Maryland's operating program submittal (as described above). Because Maryland's program submittal confers general standing privileges on all state residents and organizations doing business in the state (i.e., the broad majority of potential plaintiffs), and for the additional reasons explained above, EPA believes that Maryland's program submittal substantially meets the standing requirements of title V of the CAA and 40 CFR part 70. EPA further believes that such a finding is factually appropriate and is consistent with applicable approval standards and prior EPA program evaluations.

D. Part 70 Supplemental Rule

Comment 16: A commenter expressed support for EPA's supplemental proposed rule for the title V program (See 60 FR 45530, August 31, 1995) which would provide states the flexibility to match the level of review of permit revisions to the environmental significance of the operational change.

EPA Response to Comment 16: This comment does not pertain to EPA's proposed interim approval action for Maryland's title V program. EPA's approval action for Maryland is based on 40 CFR part 70 as promulgated on July 21, 1992. Once EPA promulgates final revisions to the part 70 program, the state will be required to amend its title V program to reflect the changes.

FINAL ACTION: EPA is promulgating interim approval of the operating permits program submitted by Maryland on May 9, 1995, and supplemented on June 9, 1995. Maryland must make the changes identified in the notice of proposed rulemaking, with the exception noted in Comment 10 above, in order to fully meet the requirements of the July 21, 1992 version of part 70 (See 60 FR 55231, October 30, 1995).

The scope of Maryland's part 70 program approved in this action applies to all part 70 sources (as defined in the approved program) within Maryland, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval extends until August 3, 1998. During this interim approval period, Maryland is protected from sanctions for failure to have a fully approved title V, part 70 program, and EPA is not obligated to promulgate, administer and enforce a federal operating permits program in Maryland. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If Maryland fails to submit a complete corrective program for full approval by February 3, 1998, EPA will start an 18-month clock for mandatory sanctions. If Maryland then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that Maryland has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of Maryland, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determined that Maryland had come into compliance. In any case, if, six months after application of the first sanction, Maryland still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves Maryland's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to the date on which the sanction would be applied Maryland has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of Maryland, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that Maryland has come into compliance. In all cases, if, six months after EPA applies the first sanction, Maryland has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if Maryland has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to Maryland's program by the expiration of the interim approval period, EPA must promulgate, administer and enforce a federal permits program for Maryland upon the date the interim approval period expires.

Requirements for approval, specified in 40 CFR 70.4(b), encompass the CAA's section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the state's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of Maryland's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

Additionally, EPA is promulgating approval of Maryland's operating permits program, under the authority of title V and part 70 for the purpose of implementing section 112(g) to the extent necessary during the transition period between promulgation of the federal section 112(g) rule and adoption of any necessary state rules to implement EPA's section 112(g) regulations. However, since this approval is for the purpose of providing a mechanism to implement section 112(g) during the transition period, the approval of the operating permits program for this purpose will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until state regulations are adopted. Although section 112(l) generally provides the authority for approval of state air toxics programs, title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and title V. Unless the federal section 112(g) rule establishes a specific time frame for the adoption of state rules, the duration of this approval is limited to 18 months following promulgation by EPA of section 112(g) regulations, to provide the state with adequate time to adopt regulations consistent with federal requirements.

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action to grant interim approval of Maryland's operating permits program pursuant to title V of the CAA and 40 CFR part 70 does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

EPA has determined that this action, promulgating interim approval of Maryland's operating permits program, does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector result from this action.

List of Subjects in 40 CFR Part 70

Environmental Protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Dated: June 19, 1996.

W. Michael McCabe,

Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding the entry for Maryland in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Maryland

(a) Maryland Department of the Environment: submitted on May 9, 1995; interim approval effective on August 2, 1996; interim approval expires August 3, 1998.

(b) Reserved

* * * * *

[FR Doc. 96–17020 Filed 7–3–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300420A; FRL–5381–5]

RIN 2070–AB78

Potassium Citrate; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of potassium citrate (CAS Reg. No. 866–84–2), when used as an inert ingredient (chelating agent and pH control) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest and animals. This regulation was requested by Monsanto Company and Zeneca Ag Products, pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective July 3, 1996.

ADDRESSES: Written objections, identified by the document control number, [OPP–300420A] may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300420A]. No "Confidential Business Information" (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Amelia M. Acierto, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th Fl., 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8375; e-mail: acierto.amelia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 10, 1996 (61 FR 15915), EPA issued a proposed rule (FRL–5361–2) gave notice that Monsanto Company, 700 14th Street, NW., Washington, DC 20005 had submitted pesticide petition (PP) 6E4607 and Zeneca Ag Products, 1800 Concord Pike, Wilmington, DE 19850–5458 had submitted pesticide petition (PP) 6E4637 to EPA requesting that the

Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) and (e) by establishing an exemption from the requirement of a tolerance for residues of potassium citrate (CAS Reg. No. 866–84–2) when used as an inert ingredient (chelating agent and pH control) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest and animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted relevant to the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [OPP–300420A] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for public inspection from 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall 1B2, 1921 Jefferson Davis Highway, Arlington, VA.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

This action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is (is not) a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 24, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1001 the table to paragraph (c) and (e) is amended by adding alphabetically the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
Potassium citrate (CAS Reg. No. 866–84–2)		Chelating agent, pH control

(e) * * *

Inert ingredients	Limits	Uses
Potassium citrate (CAS Reg. No. 866–84–2)		Chelating agent, pH control

[FR Doc. 96–16859 Filed 7–2–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300419A; FRL–5381–2]

RIN 2070–AB78

Pentaerythritol Stearates; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of a mixture of chemicals known as pentaerythritol stearates (CAS Reg. No. 85116–93–4), which include pentaerythritol monostearate (CAS Reg. No. 78–23–9), pentaerythritol distearate (CAS Reg. No. 13081–97–5), pentaerythritol tristearate (CAS Reg. No. 28188–24–1), and pentaerythritol tetrastearate (CAS Reg. No. 115–83–3) when used as an inert ingredient (emulsifier) at a concentration of no more than 25 ppm in pesticide formulations applied to growing crops and to raw agricultural commodities after harvest. This regulation was requested by Wacker Silicones Corporation, pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective July 3, 1996.

ADDRESSES: Written objections, identified by the docket number, [OPP–300419A] may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number (OPP–300419A). No "Confidential Business Information" (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Amelia M. Acierto, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th Fl., 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8375; e-mail: acierto.amelia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 17, 1996 (61 FR 16747), EPA issued a proposed rule (FRL–5355–7), gave notice that Wacker Silicones Corporation, 3301 Sutton Road, Adrian, Michigan 49221–9397 had submitted pesticide petition (PP) 4E4378 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for residues of a mixture of chemicals known as pentaerythritol stearates (pentaerythritol monostearate (CAS Reg. No. 78–23–9), pentaerythritol distearate (CAS Reg. No. 13081–97–5), pentaerythritol tristearate (CAS Reg. No. 28188–24–1) and pentaerythritol tetrastearate (CAS Reg. No. 115–83–3) when used as an inert ingredient (emulsifier) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted relevant to the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number (OPP–300419A) (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for public inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

This action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 24, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. The table in § 180.1001(c) is amended by adding alphabetically the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

(c) * * *

* * * * *

Inert ingredients	Limits	Uses
. . .	. . .	. . .
Pentaerythritol stearates mixture (CAS Reg. No. 85116–93–4) which include pentaerythritol monostearate (CAS Reg. No. 78–23–9), pentaerythritol distearate (CAS Reg. No. 13081–97–5), pentaerythritol tristearate (CAS Reg. No. 28188–24–1) and pentaerythritol tetrastearate (CAS Reg. No. 115–83–3).	No more than 25 ppm in pesticide formulations.	Emulsifier
. . .	. . .	. . .

* * * * *

[FR Doc. 96–16857 Filed 7–2–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–27; RM–8750]

Radio Broadcasting Services; Pullman, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Keith E. Lamonica, allots Channel 249A at Pullman, Washington, as the community's third local commercial FM transmission service *See* 61 FR 9410, March 8, 1996. Channel 249A can be allotted to Pullman in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.8 kilometers (5.5 miles) east to avoid a short-spacing to the construction permit site of Station WLKY(FM), Channel 250C1, Milton-Freewater, Oregon, and to the licensed site of Station KISC(FM), Channel 251C, Spokane, Washington. The coordinates for Channel 249A at Pullman are North Latitude 46–44–37 and West Longitude 117–03–34. Since Pullman is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

DATES: Effective August 12, 1996. The window period for filing applications will open on August 12, 1996, and close on September 12, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–27, adopted June 21, 1996, and released June 28, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 973.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Channel 249A at Pullman.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–16954 Filed 7–2–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–25; RM–8752]

Radio Broadcasting Services; Forest Acres, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Kuhel Communications, allots Channel 232A at Forest Acres, South Carolina, as the community's first local aural transmission service. *See* 61 FR 9411, March 8, 1996. Channel 232A can be allotted to Forest Acres in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 232A at Forest Acres are North Latitude 34–01–09 and West Longitude 80–59–24. With this action, this proceeding is terminated.

DATES: Effective August 12 1996. The window period for filing applications will open on August 12, 1996 and close on September 12, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 96–25, adopted June 21, 1996, and released June 28, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by adding Forest Acres, Channel 232A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–16955 Filed 7–2–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–46; RM–8594]

Radio Broadcasting Services; Edenton, Columbia and Pine Knoll Shores, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Lawrence F. and Margaret A. Leesch, substitutes Channel 273C1 for Channel 273C2 at Edenton, NC, reallots Channel 273C1 from Edenton to Columbia, NC, and modifies the license of Station WERX-FM to specify operation on the higher class channel and Columbia as its community of license. *See* 60 FR 19878, April 21, 1995. The proposal to substitute Channel 290A for vacant but applied-for Channel 272A at Pine Knoll Shores, NC, is moot since the Commission deleted the channel, without replacement, and dismissed the sole application for the channel. *See* 10 FCC Rcd 13159 (1995). Channel 273C1 can be allotted to Columbia in compliance with the Commission's minimum distance separation requirements with a site restriction of 24.7 kilometers (15.3 miles) south-southeast, at coordinates 35–42–48 NL; 76–08–34 WL, to avoid short-spacings to Stations WOLC, Channel 273B, Princess, MD, and WHLQ, Channel 273A, Louisburg, NC. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 12, 1996.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–46, adopted June 21, 1996, and released June 28, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW. Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 273C2 at Edenton and adding Channel 273C1 at Columbia.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–16956 Filed 7–2–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–29; RM–8731]

Radio Broadcasting Services; Chester and Richmond, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Hoffman Communications, Inc., substitutes Channel 266A for Channel 289A for Station WDYL(FM) at Chester, Virginia; and substitutes Channel 289A for Channel 266A for Station WSMJ(FM) at Richmond, Virginia; and modifies the authorizations of Station WDYL(FM) and WSMJ(FM), respectively, Channel 266A can be allotted to Chester and Channel 289A can be allotted to Richmond in compliance with the Commission's minimum distance separation requirements and can be used at the transmitter sites specified in Stations WDYL(FM)'s and WSMJ(FM)'s authorizations, respectively. The coordinates for Channel 266A at Chester, Virginia, are 37–22–58 and 77–25–41. The coordinates for Channel 289A at Richmond, Virginia, are 37–30–52 and 77–30–28. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 12, 1996.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No.96–29, adopted June 21, 1996, and released June 28, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by removing Channel 289A and adding Channel 266A at Chester; and by removing Channel 266A and adding Channel 289A at Richmond.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–16957 Filed 7–2–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–30; RM–8762]

Television Broadcasting Services; Antigo, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this proceeding allots UHF Television Channel 46 to Antigo, Wisconsin, in response to a petition filed by Robert J. Cox d/b/a Native American Television. The coordinates for Channel 46 at Antigo are 45–08–54 and 89–09–00. Canadian concurrence has been obtained for this allotment.

EFFECTIVE DATE: August 12, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 96–30, adopted June 21, 1996, and released June 28, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under Wisconsin, is amended by adding Antigo, Channel 46.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–16953 Filed 7–2–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–277]

Organization and Delegation of Powers and Duties; Delegation to the Commandant, United States Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation has delegated to the Commandant, United States Coast Guard, the authority contained in 14 U.S.C. 326 to remove an officer from active duty, and the authority in 14 U.S.C. 256(b), to establish the promotion zone for rear admiral (lower half). The *Code of Federal Regulations* does not reflect these delegations; therefore, a change is necessary.

EFFECTIVE DATE: July 3, 1996.

FOR FURTHER INFORMATION CONTACT: LCDR Michael Lehocky, Human Resources Directorate, (202) 267–1664, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593; LCDR Vincent DeLaurentis, Coast Guard Personnel Command, (202) 267–2883, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593; or Ronald Gordon, Executive Secretariat, (202) 366–9761, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Section 256(b) of Title 14, U.S. Code contains the Secretary's authority to establish the promotion zone for rear admirals. On September 16, 1986, then Secretary Elizabeth Dole delegated to the Commandant, United States Coast Guard, the Secretary's authority under 14 U.S.C. 256(b) to establish the promotion zone for rear admiral (lower half) provided that all captains eligible for consideration under the provisions of section 257(a)(5), Title 14, U.S. Code are placed in the zone. The necessary changes to the Code of Federal Regulations were never completed, however, and the current CFR sections relating to delegations still show this authority reserved to the Secretary of Transportation. (See 49 CFR 1.44(m)(3)).

Title 14, U.S. Code, sections 321, 322, and 323 provide a three-board (Determination Board, Board of Inquiry, and Board of Review) process to consider the record of a Coast Guard officer whose performance is substandard or whose record shows moral or professional dereliction. If the third board, the Board of Review, recommends separation of the officer, 14 U.S.C. 326 requires that recommendation to be forwarded to the Secretary for final action. On January 6, 1987, then Secretary Elizabeth Dole delegated the Secretary's authority under 14 U.S.C. 326 to the Commandant of the Coast Guard. The necessary changes to the Code of Federal Regulations were never completed, however, and the current CFR sections relating to delegations still show this authority reserved to the Secretary of Transportation. (See 49 CFR 1.44(m)(4)).

This rule removes the reservations of authority in section 1.44 and adds specific delegations of authority to 49 CFR 1.46, thus amending the codification to correctly reflect secretarial delegations of authority to the Commandant of the Coast Guard.

Since this amendment relates to departmental management, organization, procedure, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than 30 days after publication in the **Federal Register**. Therefore, this final rule is effective upon publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Pub.L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

§ 1.44 [Amended]

2. Sections 1.44(m)(3) and 1.44(m)(4) are removed and reserved.

§ 1.46 [Amended]

3. Section 1.46 is amended by adding new paragraphs (aaa) and (bbb) to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(aaa) Establish the promotion zone for rear admiral (lower half), provided all captains eligible for consideration under the provisions of section 257(a)(5), Title 14, U.S. Code, are placed in the zone.

(bbb) Remove an officer from active duty under section 326, Title 14, U.S. Code.

Issued at Washington, DC, this 21st day of June 1996.

Federico F. Peña,

Secretary of Transportation.

[FR Doc. 96–16935 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 960314073–6145–02; I.D. 030896E]

RIN 0648–AI23

Atlantic Swordfish Fishery; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to final regulation.

SUMMARY: This document contains a correction to the final regulation (I.D. 030896E) that was published Friday, May 31, 1996, (61 FR 27304). The final rule amended the regulations governing the Atlantic swordfish fishery by setting the 1996 quotas, and adjusting the minimum size.

EFFECTIVE DATE: July 3, 1996.

FOR FURTHER INFORMATION CONTACT: Ronald G. Rinaldo or Rebecca Lent, 301–713–2347; fax: 301–713–0596.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction establishes, within the 1996 quota, the amount of set aside for the harpoon segment of the fishery. In § 630.25, the first sentence of paragraph (b) was revised to establish a 21,500 lb (9,752 kg) dressed weight set aside for the harpoon segment of the fishery during the June 1 through November 30 semiannual period.

Need for Correction

As published, the final regulation contains an error. In § 630.25, the second sentence of paragraph (b) is referenced instead of the first sentence of paragraph (b).

Correction of Publication

Accordingly, the publication on May 31, 1996, of the final regulation (I.D. 030896E) that is the subject of FR Doc. 96–13690 is corrected as follows:

§ 630.25 [Corrected]

On page 27308, in the first column, in amendatory instruction seven, "second" is corrected to read "first".

Dated: June 25, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–17053 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 697

[Docket No. 950605148–6180–03; I.D. 061296A]

RIN 0648–AH58

Atlantic Weakfish Fisheries; Exclusive Economic Zone (EEZ) Moratorium Rule Suspension

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: On February 16, 1996, the U.S. District Court for the Eastern District of Virginia, Norfolk Division, vacated the Federal regulations for Atlantic Coast weakfish in the EEZ. NMFS has not enforced the regulations since the court issued its order. In accordance with the court's order, NMFS is suspending the regulations on fishing for weakfish in the EEZ. The suspension will remain in effect until other regulations for weakfish are implemented.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, NMFS, 301–713–2334.

SUPPLEMENTARY INFORMATION: NMFS implemented a final rule to impose a moratorium on fishing for weakfish in the EEZ (60 FR 58246, November 27, 1995). The regulations were subsequently revised (61 FR 29321, June 10, 1996) although they are not currently enforced. The rule was implemented to support conservation efforts developed through the Atlantic States Marine Fisheries Commission's (Commission) Fishery Management Plan for Weakfish (FMP).

On February 16, 1996, the U.S. District Court for the Eastern District of Virginia, Norfolk Division, ordered that the final rule "is vacated and the Secretary of Commerce and his designees are hereby enjoined from enforcing the Atlantic Coast Weakfish Moratorium in the Exclusive Economic Zone, promulgated at 60 FR 58245 (Nov. 27, 1995)."

Upon the court's ruling, fishermen were immediately allowed to fish for weakfish in the EEZ. Accordingly, NMFS is suspending the Federal regulations that imposed the moratorium. The suspension will remain in effect until replaced by other regulations. NMFS is currently assessing recent actions by the Commission and will proceed with rulemaking if appropriate.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

Because this rule implements a February 16, 1996, court order to vacate Federal regulations (60 FR 58246, November 27, 1995) that imposed a moratorium on fishing for Atlantic Coast weakfish in the EEZ, the Assistant Administrator for Fisheries (AA/F) for good cause, under 5 U.S.C.(b)(B), waives the requirement to provide prior notice and an opportunity for public comment, as such procedures are unnecessary. Similarly, the AA/F, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in the effective date.

List of Subjects in 50 CFR Part 697

Fisheries, Fishing.

Dated: June 27, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 697 is amended as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

1. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

2. In § 697.6, paragraph (a) is suspended.

[FR Doc. 96–17050 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 61, No. 129

Wednesday, July 3, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. 96–037–1]

Horse Protection; Public Meetings

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meetings.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) is hosting a series of public meetings to discuss proposed enforcement changes to the current Horse Protection Act. These proposals have been developed and are outlined in the APHIS "Strategic Plan" for Horse Protection. The development of the strategic plan is in line with our commitment to ensure appropriate care for horses regulated under the Horse Protection Act. We are reviewing the current regulations and standards promulgated under the Horse Protection Act, and are seeking recommendations and opinions from affected industries and other concerned members of the public to determine which revisions are necessary and appropriate in order to further reduce the incidence of soring and improve enforcement.

DATES: The first meeting will be held in Murfreesboro, TN, on July 26, 1996. The second meeting will be held in St. Louis, MO, on August 2, 1996. The third meeting will be held in Sacramento, CA, on August 16, 1996. Each meeting will be held from 7:30 a.m. until 6 p.m.

ADDRESSES: The public meetings will be held at the following locations:

1. Murfreesboro, TN: Middle Tennessee State University, Loop Drive, James Union Building, Tennessee Room, Murfreesboro, TN, (615) 898–2797. If traveling from Nashville, take I–24 to exit 78, then head east on Highway 96 (Old Fort Parkway) to Memorial Boulevard (Highway 231). Turn right on Clark Boulevard, then left onto Greenland Drive. Park in the Greenland Drive parking lot and take the shuttle bus to the James Union Building.
2. St. Louis, MO: The Adams Mark Hotel, Fourth and Chestnut, St. Louis, MO, (314) 241–7400. If traveling from Lambert International Airport, take I–70 east to the Gateway Arch exit. The Adams Mark Hotel is located at the corner of Fourth and Chestnut.
3. Sacramento, CA: Red Lion Hotel, Red Lion Ballroom, Sierra and Cascade Sections, 2001 Point West Way, Sacramento, CA, (916) 929–8855. The Red Lion Hotel is at the corner of Point West Way and Arden Way.

FOR FURTHER INFORMATION CONTACT: Dr. John V. Zisk, Director, Horse Protection, Animal Care Staff, REAC, APHIS, USDA, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–7833. Copies of the "Strategic Plan" are available through this office.

SUPPLEMENTARY INFORMATION: The practice known as "soring" is the causing of suffering in show horses to affect their performance in the show ring. Under the Horse Protection Act (HPA) (11 U.S.C. *et seq.*), the Animal and Plant Health Inspection Service (APHIS) is responsible for eliminating the practice of soring, by prohibiting the showing or selling of sored horses.

APHIS believes the regulations and standards established in accordance with the HPA may need to be updated, and APHIS officials have proposed program changes through a "Strategic Plan." In this plan, we have reviewed which areas of enforcement may require a change in regulations and standards based on our experience and knowledge of the program. In developing these proposed changes and conducting this review, APHIS is seeking recommendations and opinions regarding the following: The enforcement of the HPA by USDA-certified horse industry organizations; the certification status of horse industry organizations; uniform systems of rules, regulations, and penalties; training and research. As a forum for such recommendations and opinions, APHIS will hold three meetings to gather input from the public, including equine protection organizations and members of affected industries, such as the walking horse industry and related equine organizations. The meetings will include four workshops facilitated by trained APHIS facilitators, as follows:

(1) Self-regulatory enforcement of the HPA by USDA-certified horse industry organizations;

(2) USDA certifications of horse industry organizations;

(3) Uniform rules, regulations, and penalty systems; and

(4) Training and research under the HPA.

In these workshops, group participation will be used to develop recommendations within specific topic areas. After the workshops have concluded, each workshop group will report its recommendations to the entire meeting.

APHIS will consider the recommendations received in developing any revisions to the current HPA regulations and standards. The Agency will initiate rulemaking for any changes deemed appropriate.

Each of the workshops will be conducted twice at each meeting, once in the morning and once in the afternoon. Participants who intend to attend a full 1-day meeting are asked to register for only one workshop for the morning and a different workshop for the afternoon. Attendance may be limited for some workshops because of space availability.

Registration will be held the day of each meeting between 7:30 a.m. and 8:30 a.m. at the entrance of the general assembly meeting rooms. The general sessions will begin at 8:30 a.m. Any person who is unable to attend the meetings, but who wishes to comment on any of the topics covered by the four workshops, may send written comments to the person listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 27th day of June 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–16997 Filed 7–2–96; 8:45 am]

BILLING CODE 3410–34–P

Food Safety and Inspection Service

9 CFR Part 391

[Docket No. 96–013P]

Fee Increase for Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to increase the fees FSIS charges meat and poultry establishments, importers, and exporters for providing voluntary inspection, identification, and certification services and overtime and holiday services. These fee increases are based upon the Agency's analysis of projected costs for fiscal year 1996, which identifies increased costs resulting from the January 1996 FSIS national and locality pay raise average of 2.4 percent for Federal employees and increased health insurance costs.

FSIS also is proposing to reduce the fees charged for providing laboratory services to meat and poultry establishments. The Agency's analysis of projected costs for fiscal year 1996 identified decreased costs resulting from the use of automated equipment for testing laboratory samples and for other inspection related services not covered under the base time, overtime, and holiday costs.

DATES: Comments must be received on or before: August 2, 1996.

ADDRESSES: Submit an original and two copies of written comments concerning this proposed rule to: FSIS Docket Clerk, Docket #96–013P, Room 4352, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700. Persons preferring to present oral comments should contact William L. West at (202) 720–3367. FSIS's cost analysis and comments will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 1 p.m. and from 2 p.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. William L. West, Director, Budget and Finance Division, Administrative Management, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700, (202) 720–3367.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) provide for mandatory inspection by Federal inspectors of meat and poultry slaughtered and/or processed at official establishments. Such inspection is required to ensure the safety, wholesomeness, and proper labeling of meat and poultry products. The costs of mandatory inspection (excluding such services performed on holidays or on an overtime basis) are borne by FSIS.

In addition to mandatory inspection, FSIS provides a range of voluntary inspection services. Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), FSIS provides these services to assist in the orderly marketing of various animal products and byproducts not subject to the FMIA or the PPIA. The costs of voluntary inspection are totally recoverable by the Federal Government.

Each year, FSIS reviews the fees it charges meat and poultry establishments, importers, and exporters for providing voluntary inspection, identification, and certification services, as well as overtime and holiday services, and performs a cost analysis to determine whether such fees are adequate to recover the costs FSIS incurs in providing the services. In its analysis of projected costs for fiscal year 1996, FSIS has identified increases in the costs of providing voluntary inspection, identification, and certification services, as well as overtime and holiday services. These increases are attributable to the average FSIS national and locality pay raise of 2.4 percent for Federal employees effective January 1996 and increased health insurance costs.

Accordingly, FSIS is proposing to amend § 391.2 to increase the base time rate for providing voluntary inspection, identification, and certification services from $31.92 per hour, per program employee, to $32.88 per hour, per program employee. FSIS is proposing to amend § 391.3 to increase the rate for providing overtime and holiday services from $32.96 per hour, per program employee, to $33.76 per hour, per program employee.

In its analysis of projected costs for fiscal year 1996, FSIS also has identified a decrease in the cost of providing laboratory services to meat and poultry establishments resulting from the use of automated equipment for testing laboratory samples and for other inspection services not covered under the base time, overtime, and holiday costs, such as travel expenses. Therefore, FSIS proposes to amend § 391.4 of the regulations to reduce the fee charged for providing laboratory services from $52.92 per hour, per program employee, to $48.56 per hour, per program employee.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. The proposed fee increases for voluntary inspection, identification, and certification services, overtime, and holiday inspection services primarily reflect the 1996 increase in salaries of Federal employees allocated by Congress under the Federal Employees Pay Comparability Act of 1990. The proposed fee decrease for laboratory services reflects the use of automated equipment for testing laboratory samples and other inspection related services not covered under the base time, overtime, and holiday costs such as travel expenses.

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The fee increases provided for in this document will reflect a minimal increase in the costs currently borne by those entities which elect to utilize certain inspection services and a decrease in program support costs.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted by the FMIA and the PPIA from proposing any regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This proposed rule is not intended to have retroactive effect. There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rule. However, the administrative procedures are set forth in 7 CFR part 1.

List of Subjects in 9 CFR Part 391

Fees and charges, Meat inspection, Poultry products inspection.

For the reasons set out in the preamble, 9 CFR part 391 is proposed to be amended as set forth below.

PART 391—FEES AND CHARGES FOR INSPECTION SERVICES

1. The authority citation for part 391 is revised to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 394, 1622, and 1624; 21 U.S.C. 451 *et seq.* 21 U.S.C. 601–695; 7 CFR 2.18 and 2.53.

2. Sections 391.2, 391.3, and 391.4 would be revised to read as follows:

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $32.88 per hour, per program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5, and 381.38 shall be $33.76 per hour, per program employee.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $48.56 per hour, per program employee.

Done at Washington, DC, on June 27, 1996.

Michael R. Taylor,

Administrator, Food Safety and Inspection Service.

[FR Doc. 96–17000 Filed 7–2–96; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL RESERVE SYSTEM

12 CFR Parts 218 and 250

[Regulation R; Docket No. R–0931]

Relations With Dealers in Securities Under Section 32, Banking Act of 1933; Miscellaneous Interpretations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board is proposing to amend its regulations to remove Regulation R concerning relations with dealers in securities under section 32 of the Banking Act of 1933, which the Board believes is no longer necessary. The Board also is proposing to amend its regulations to remove an interpretation of section 32 of the Glass-Steagall Act, which the Board believes is no longer necessary. This interpretation explains the position of the Board regarding the application of the prohibitions of section 32 to bank holding companies.

DATES: Comments must be received by August 2, 1996.

ADDRESSES: Comments should refer to Docket No. R–0931 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Docket No. R–0931, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Richard M. Ashton, Associate General Counsel (202/452–3750), or Thomas M. Corsi, Senior Attorney (202/452–3275), Legal Division. For the hearing impaired *only,* Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act)

Section 303(a) of the CDRI Act (12 U.S.C. 4803(a)) requires the Board, as well as the other federal banking agencies, to review its regulations and written policies in order to streamline and modify these regulations and policies to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. The Board has reviewed its interpretations of section 32 of the Glass-Steagall Act (12 U.S.C. 78) with this purpose in mind, and, as is explained in greater detail in the text that follows, proposes to amend these interpretations in a way designed to meet the goals of section 303(a).

Substantive Provisions of Regulation R

The Board's Regulation R (12 CFR Part 218) implements section 32 of the Glass-Steagall Act. Section 32 prohibits officer, director and employee interlocks between member banks and firms "primarily engaged" in underwriting and dealing in securities, and authorizes the Board to exempt from this prohibition, under limited circumstances, certain interlocks by regulation. Currently, Regulation R restates the statutory language of section 32, and sets forth the only exemption adopted by the Board since passage of the Glass-Steagall Act. The Board also has codified in the CFR 14 interpretations of the substantive provisions of section 32 and the regulation.[1] The Board also has issued other interpretations of section 32 that are contained in the Federal Reserve Regulatory Service (FRRS).

The exemption in Regulation R, adopted by the Board in 1969, permits interlocks between member banks and securities firms whose securities underwriting and dealing activities are limited to underwriting and dealing in only securities that a national bank would be authorized to underwrite and deal in. The adoption of the express exemption was apparently based on the assumption that the literal language of the section 32 prohibition could at least arguably cover bank-eligible securities activities.

Subsequently, in orders approving applications under the Bank Holding Company Act (12 U.S.C. 1841 et seq.), the Board interpreted the prohibitions of section 20 of the Glass-Steagall Act, which prohibits a member bank from being affiliated with a firm engaged principally in underwriting and dealing in securities, as not applying on their face to underwriting and dealing in securities that may be underwritten and dealt in directly by a state member bank. In these decisions, the Board also expressed the view that section 32 similarly did not cover an interlock between a member bank and a firm that was not engaged in securities activities covered by section 20.[2] Accordingly, in light of the Board's more recent view of the scope of section 32, the express exemption from the provisions of section 32 for bank-eligible securities activities is no longer necessary.[3] Moreover, the Board has never adopted any other exemption to the interlocks provision and historically, requests that the Board create new exemptions have been infrequent and have been uniformly denied.[4]

Since the exemption in Regulation R is no longer necessary, and it is not necessary to have a substantive regulation solely to restate a statutory provision, the Board is proposing to rescind Regulation R.

Bank Holding Company Interpretation of Section 32 of the Glass-Steagall Act

With one exception, the 14 interpretations of section 32 now contained in the CFR, would be retained and transferred to 12 CFR Part 250,

[1] 12 CFR 218.101–218.114.

[2] This interpretation has been upheld by the courts. *Securities Industry Association* v. *Board of Governors of the Federal Reserve System,* 839 F.2d 47, 62 (2d Cir. 1988), *cert. denied,* 486 U.S. 1059 (1988).

[3] The Board is proposing to adopt a new interpretation of section 32 to clarify this point.

[4] A footnote to Regulation R that dates to 1936 makes it clear that a broker who is engaged solely in executing orders for the purchase and sale of securities on behalf of others in the open market is not engaged in the business referred to in section 32. The Board has since authorized bank holding companies to engage in this activity directly, reiterating that securities brokerage is not a proscribed activity under either sections 32 or 20 of the Glass-Steagall Act. *BankAmerica Corporation,* 69 Federal Reserve Bulletin 105 (1983). The courts upheld the Board's interpretation. *Securities Industry Assn.* v. *Board of Governors,* 468 U.S. 207 (1984). The removal of Regulation R does not affect this interpretation.

which contains miscellaneous Board interpretations.

By their terms, the prohibitions of section 32 apply only to member banks. In 1969, the Board issued an interpretation that extended the prohibitions of section 32 to a bank holding company where the principal activity of the bank holding company is the ownership and control of member banks.[5] The Board is now seeking public comment on rescinding this interpretation.

The Board based its 1969 interpretation not so much on the literal language of section 32, but on its belief that where the ownership and control of member banks is the principal activity of a bank holding company, the same possibilities of abuse that section 32 was designed to prevent would be present in the case of a director of the holding company as in the case of the member bank.[6] The Board believed that giving cognizance to the separate corporate entities in such a situation would partially frustrate Congressional purpose in enacting section 32.

The Board now believes that it could rescind this interpretation and give some measure of regulatory burden relief to bank holding companies in a manner consistent with section 32, and without frustrating the Congressional purpose underlying the section. The Board is not barred by the literal terms of the Glass-Steagall Act from rescinding the interpretation. As noted above, section 32 specifically restricts only those interlocks involving member banks. While the bank holding company structure was not in widespread use when section 32 was adopted, Congress has amended section 32 since the section was adopted and since bank holding companies have become commonplace, but never has extended the prohibitions in the section to bank holding companies. Notably, in 1987, Congress extended the prohibitions of section 32 to cover interlocks involving nonmember banks and thrift institutions but not interlocks involving bank holding companies.[7]

The potential that removal of the interpretation could frustrate Congressional purpose in enacting section 32 is mitigated by the fact that the prohibitions of section 32 would continue to apply to member banks. Accordingly, the directors, officers and employees of these banks, none of whom may be interlocked with a securities firm, could serve as a check against the possibilities of abuse that section 32 is intended to prohibit. In addition, the Board believes that by rescinding this interpretation, it would be granting some measure of regulatory relief to bank holding companies by giving them access to a larger pool of persons from which to choose their officers, directors, and employees.[8]

Other Interpretations of Section 32

The Board also seeks comment on whether any of the other interpretations of section 32 previously adopted by the Board could be amended.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 95–354, 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that adoption of this proposed rule will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

This amendment will remove a regulation and an interpretation that the Board believes are no longer necessary. The amendment does not impose more burdensome requirements on bank holding companies than are currently applicable.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule.

List of Subjects

12 CFR Part 218

Antitrust, Federal Reserve System, Securities.

12 CFR Part 250

Federal Reserve System.

For the reasons set forth in the preamble and under the authority of 12 U.S.C. 248, the Board proposes to amend Chapter II of the Code of Federal Regulations as set forth below:

PART 218—[AMENDED]

§§ 218.101 through 218.113 [Redesignated as §§ 250.400 through 250.412]

1. Sections 218.101 through 218.113 are redesignated as set forth in the following table:

Old Section	New section
218.101	250.400
218.102	250.401
218.103	250.402
218.104	250.403
218.105	250.404
218.106	250.405
218.107	250.406
218.108	250.407
218.109	250.408
218.110	250.409
218.111	250.410
218.112	250.411
218.113	250.412

PART 218—[REMOVED]

2. Part 218 is removed.

PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 is revised to read as follows:

Authority: 12 U.S.C. 78, 248(i) and 371c(e).

2. A new center heading is added immediately preceding newly designated § 250.400 to read as follows:

Interpretations of Section 32 of the Glass-Steagall Act

3. Section 250.413 is added to read as follows:

§ 250.413 "Bank-eligible" securities activities.

Section 32 of the Glass-Steagall Act (12 U.S.C. 78) prohibits any officer, director, or employee of any corporation or unincorporated association, any partner or employee of any partnership, and any individual, primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, from serving at the same time as an officer, director, or employee of any member bank of the Federal Reserve System. The Board is of the opinion that to the extent that a company, other entity or person is engaged in securities activities that are expressly authorized for a state member bank under section 16 of the Glass-Steagall Act (12 U.S.C. 24(7), 335), the company, other entity or individual is not engaged in the types of activities described in section 32. In addition, a securities broker who is engaged solely in executing orders for the purchase and sale of securities on behalf of others in the open market is not engaged in the business referred to in section 32.

By order of the Board of Governors of the Federal Reserve System.

Date: June 26, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–16841 Filed 7–02–96; 8:45am]

Billing Code 6210–01–P

[5] 12 CFR 218.114.

[6] As noted in the Board's interpretation, section 32 is directed to the probability or likelihood that a bank director interested in the underwriting business may use his or her influence in the bank to involve it or its customers in securities sold by his or her underwriting house.

[7] The provisions extending the prohibitions of section 32 to nonmember banks and thrifts expired in 1988.

[8] Should the Board determine to rescind this interpretation, this action would not affect other Board decisions or determinations that restrict interlocks to ensure compliance with section 20 of the Glass-Steagall Act (12 U.S.C. 377). *See, e.g., Mellon Bank Corporation*, 79 Federal Reserve Bulletin 626 (1993).

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AB59

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed Rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is proposing to amend its assessment regulations by adopting interpretive rules regarding certain provisions therein that pertain to so-called Oakar institutions: institutions that belong to one insurance fund (primary fund) but hold deposits that are treated as insured by the other insurance fund (secondary fund). Recent merger transactions and branch-sale cases have revealed weaknesses in the FDIC's procedures for attributing deposits to the two insurance funds and for computing the growth of the amounts so attributed. The interpretive rules would repair those weaknesses.

In addition, the FDIC is proposing to simplify and clarify the existing rule by making changes in nomenclature.

DATES: Comments must be received by the FDIC on or before September 3, 1996.

ADDRESSES: Send comments to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to Room F–400, 1776 F Street, N.W., Washington, D.C., on business days between 8:30 a.m. and 5:00 p.m. (FAX number: 202/898–3838. Internet address: comments@fdic.gov). Comments will be available for inspection in the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, D.C. between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Allan K. Long, Assistant Director, Division of Finance, (703) 516–5559; Stephen Ledbetter, Chief, Assessments Evaluation Section, Division of Insurance (202) 898–8658; Jules Bernard, Counsel, Legal Division, (202) 898–3731, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: This proposed interpretive regulation would alter the method for determining the assessments that Oakar institutions pay to the two insurance funds. Accordingly, the proposed regulation would directly affect all Oakar institutions. The proposed regulation would also indirectly affect non-Oakar institutions, however, by altering the business considerations that non-Oakar institutions must take into account when they transfer deposits to or from an Oakar institution (including an institution that becomes an Oakar institution as a result of the transfer).

I. Background

Section 5(d)(2) of the FDI Act, 12 U.S.C. 1815(d)(2), places a moratorium on inter-fund deposit-transfer transactions: mergers, acquisitions, and other transactions in which an institution that is a member of one insurance fund (primary fund) assumes the obligation to pay deposits owed by an institution that is a member of the other insurance fund (secondary fund). The moratorium is to remain in place until the reserve ratio of the Savings Association Insurance Fund (SAIF) reaches the level prescribed by statute. *Id.* 1815(d)(2)(A)(ii); see *id.* 1817(b)(2)(A)(iv) (setting the target ratio at 1.25 percentum).

The next paragraph of section 5(d)—section 5(d)(3) of the FDI Act—is known as the Oakar Amendment. *See* Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73 section 206(a)(7), 103 Stat. 183, 199–201 (Aug. 9, 1989); 12 U.S.C. 1815(d)(3). The Amendment permits certain deposit-transfer transactions that would otherwise be prohibited by section 5(d)(2) (Oakar transactions).

The Oakar Amendment introduces the concept of the "adjusted attributable deposit amount" (AADA). An AADA is an artificial construct: a number, expressed in dollars, that is generated in the course of an Oakar transaction, and that pertains to the buyer. The initial value of a buyer's AADA is equal to the amount of the secondary-fund deposits that the buyer acquires from the seller. The Oakar Amendment specifies that the AADA then increases at the same underlying rate as the buyer's overall deposit base—that is, at the rate of growth due to the buyer's ordinary business operations, not counting growth due to the acquisition of deposits from another institution (*e.g.*, in a merger or a branch purchase). *Id.* 1815(d)(3)(C)(iii). The FDIC has adopted the view that "growth" and "increases" can refer to "negative growth" under the FDIC's interpretation of the Amendment, an AADA decreases when the institution's deposit base shrinks.

An AADA is used for the following purposes:

—*Assessments.* An Oakar institution pays two assessments to the FDIC—one for deposit in the institution's secondary fund, and the other for deposit in its primary fund. The secondary-fund assessment is based on the portion of the institution's assessment base that is equal to its AADA. The primary-fund assessment is based on the remaining portion of the assessment base.

—*Insurance.* The AADA measures the volume of deposits that are "treated as" insured by the institution's secondary fund. The remaining deposits are insured by the primary fund. If an Oakar institution fails, and the failure causes a loss to the FDIC, the two insurance funds share the loss in proportion to the amounts of deposits that they insure.

For assessment purposes, the AADA is applied prospectively, as is the assessment base. An Oakar institution has an AADA for a current semiannual period, which is used to determine the institution's assessment for that period.[1] The current-period AADA is calculated using deposit-growth and other information from the prior period.

II. The proposed rule

A. Attribution of transferred deposits

1. The FDIC's Current Interpretation: The "Rankin" Rule

The FDIC has developed a methodology for attributing deposits to the Bank Insurance Fund (BIF) on one hand and to the SAIF on the other when the seller is an Oakar institution. *See* FDIC Advisory Op. 90–22, 2 FED. DEPOSIT INS. CORP., LAW, REGULATIONS, RELATED ACTS 4452 (1990) (Rankin letter). The Rankin letter adopts the following rule: an Oakar institution transfers its primary-fund deposits first, and only begins to

[1] Technically, each Oakar transaction generates its own AADA. Oakar institutions typically participate in several Oakar transactions. Accordingly, and Oakar institution generally has an overall or composite AADA that consists of all the individual AADAs generated in the various Oakar transactions, plus the growth attributable to each individual AADA. The composite AADA can generally be treated as a unit as a practical matter, because all the constituent AADAs (except initial AADAs) grow at the same rate.

transfer its secondary-fund deposits after its primary-fund deposits have been exhausted.

The chief virtue of this approach is that of simplicity. Sellers rarely transfer all their primary-fund deposits. A seller ordinarily has the same AADA after the transaction as before, and a buyer does not ordinarily become an Oakar institution. The Rankin letter's approach also has the virtue of being a well-established and well-understood interpretation.

Nevertheless, the Rankin letter's approach has certain weaknesses. For example, if a seller transfers a large enough volume of deposits, the seller becomes insured and assessed entirely by its secondary fund—even though it remains a member of its primary fund in name, and even though its business has not changed in character.

The Rankin letter's approach may also lend itself to "gaming" by Oakar institutions. Oakar banks—and their owners—have an incentive to eliminate their AADAs, because the SAIF assessment rates are currently much higher than the BIF rates. If an Oakar bank belonged to a holding company system, the holding company could purge the AADA from the system as a whole by having the Oakar bank transfer all its BIF-insured deposits to an affiliate, and then allowing the remnant of the Oakar bank to wither away.

2. "Blended" deposits

An alternative approach would be to adopt the view that an Oakar institution transfers a blend of deposits to the assuming institution. The transferred deposits would be attributed to the two insurance funds in the same ratio as the Oakar institution's overall deposits were so attributed immediately prior to the transfer. This "blended deposits" approach would have the virtue of maintaining the relative proportions of the seller's primary-fund deposit-base and the secondary-fund deposit base, just as they are preserved in the ordinary course of business.

As a general rule, the ratio would be fixed at the start of the quarter in which the transfer takes place. If the institution were to acquire deposits after the start of the quarter but prior to the transfer, the acquired deposits would be added to the institution's store of primary-fund and secondary-fund deposits as appropriate, and the resulting amounts would be used to determine the ratio.

This procedure would be designed to exclude intra-quarter growth from the calculation of the ratio. The FDIC considers that it would be desirable to do so for two main reasons: it would keep the methodology simple; and (in the ordinary case) it would make use of numbers that are readily available to the parties.

At the same time, the "blended deposits" approach would create a new Oakar institution each time a non-Oakar institution acquired deposits from an Oakar institution. Accordingly, this approach would generally subject buyers to more complex reporting and tracking requirements. This approach would also require more disclosure on the part of sellers, because buyers would have to be made aware that they were acquiring high-cost SAIF deposits. But the "blended deposits" approach could remove some uncertainty because the buyer would know that it was acquiring such deposits whenever the seller was an Oakar institution.

In cases where the seller has acquired deposits prior to the sale but during the same semiannual period as the sale, the blended-deposit approach could be more complex. The acquisition of deposits would change the seller's AADA-to-deposits ratio, which would need to be calculated and made available in conjunction with the sale. At first, the FDIC considered that this problem could be addressed by using the ratio at the beginning of the quarter for all transactions during that quarter. But the FDIC later came to the view that this technique could open up the blended-deposit approach to gaming strategies that institutions could use to decrease their AADAs.

Finally, under the blended-deposit approach, Oakar banks—which are BIF members—could find it difficult (or expensive) to transfer deposits to other institutions, due to market uncertainty regarding the prospect of a special assessment to capitalize SAIF and the alternative prospect of a continued premium differential between BIF and SAIF.

Any change to a blended-deposit approach would only apply to transfers that take place on and after January 1, 1997. Accordingly, the change would not affect any assessments that Oakar institutions have paid in prior years. Nor would it affect the business aspects of transactions that have already occurred, or that may occur during the remainder of 1996.

B. FDIC Computation of the AADA; Reporting Requirements

The FDIC currently requires all institutions that assume secondary-fund deposits in an Oakar transaction to submit an Oakar transaction worksheet for the transaction. The FDIC provides the worksheet. The FDIC provides the name of the buyer and the seller, and the consummation date of the transaction. The buyer provides the total deposits acquired, and the value of the AADA thereby generated. In addition, Oakar institutions must complete a growth adjustment worksheet to re-calculate their AADA as of December 31 of each year. Finally, Oakar banks report the value of their AADA, on a quarterly basis, in their quarterly reports of condition (call reports).

To implement the proposal to adjust AADAs on a quarterly basis, and to ensure compliance with the statutory requirement that an AADA does not grow during the semiannual period in which it is acquired, *see* 12 U.S.C. 1815(d)(3)(C)(iii), the FDIC initially considered replacing the current annual growth adjustment worksheet with a slightly more detailed quarterly worksheet. The FDIC was concerned that this approach might impose a burden on Oakar institutions, however. The FDIC was further concerned that this approach could result in an increase in the frequency of errors associated with these calculations. Accordingly, the FDIC now believes it might be more appropriate to relieve Oakar institutions of this burden by assuming the responsibility for calculating each Oakar institution's AADA, and eliminating the growth adjustment worksheet entirely. The FDIC would calculate the AADA as part of the current quarterly payment process. The calculation, with supporting documentation, would accompany each institution's quarterly assessment invoice.

If the FDIC assumes the responsibility for calculating the AADA, Oakar institutions would no longer have to report their AADAs in their call reports. But they would have to report three items on a quarterly basis. Oakar institutions already report two of the items as part of their annual growth adjustment worksheets: total deposits acquired in the quarter, and secondary-fund deposits acquired in the quarter. Oakar institutions would therefore have to supply one other item: total deposits sold in the quarter.

These items will be zero in most quarters. Even in quarters in which some transactions have occurred, the FDIC considers that the items should be readily available and easy to calculate.

While for operational purposes, the FDIC would prefer to add these three items to the call report, an alternative approach would be simply to replace the current growth adjustment worksheet with a very simple quarterly worksheet essentially consisting only of these items. The FDIC expects this specific issue to be addressed in a Request for Comment on Call Report Revisions for 1997 currently expected to be issued jointly by the three banking agencies in July.

In addition, if the FDIC adopts the blended-deposit approach for attributing transferred deposits, the FDIC would need an additional quarterly worksheet from Oakar institutions in order to calculate AADAs accurately. The additional worksheet would report the date and amount of deposits involved in each transaction in which the Oakar institution transferred deposits to another institution during the quarter. This information is not currently collected.

C. Treatment of AADAs on a Quarterly Basis

The FDIC is proposing to adopt the view that—under its existing regulation—an AADA for a semiannual period may be considered to have two quarterly components. The increment by which an AADA grows during a semiannual period may be considered to be the result of the growth of each quarterly component.

1. Quarterly Components

a. Propriety of quarterly components. The FDIC's assessment regulation speaks of an institution's AADA "for any semiannual period". 12 CFR 327.32(a)(3). The FDIC currently interprets this phrase to mean that an AADA has a constant value throughout a semiannual period. The FDIC has taken this view largely for historical reasons. Recent changes in the Oakar Amendment give the FDIC room to alter its view.

The FDIC's "constant value" view derives from the 1989 version of the Oakar Amendment. *See* 12 U.S.C. 1815(d)(3) (Supp. I 1989). That version of the Amendment said that an Oakar bank's AADA measured the "portion of the average assessment base" that the SAIF could assess. *Id.* 1815(d)(3)(B). The FDI Act (as then in effect) defined the "average assessment base" as the average of the institution's assessment bases on the two dates for which the institution was required to file a call report. *Id.* 1817(b)(3). As a result, an AADA—even a newly created one, and even one that was generated in a transaction during the latter quarter of the prior semiannual period—served to allocate an Oakar bank's entire assessment base for the entire current semiannual period. The FDIC issued rules in keeping with this view. 54 FR 51372 (Dec. 15, 1989).

Congress decoupled the AADA from the assessment base at the beginning of 1994, as part of the FDIC's changeover to a risk-based assessment system. *See* Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Pub. L. 102–242, section 302(e) & (g), 105 Stat. 2236, 2349 (Dec. 19, 1991); *see also* Defense Production Act Amendments of 1992, Pub L. 102–558, section 303(b)(6)(B), 106 Stat. 4198, 4225 (Oct. 28, 1992) (amending the FDICIA in relevant part); *cf.* 58 FR 34357 (June 23, 1993). The Oakar Amendment no longer links the AADA directly to the assessment base. The Amendment merely declares, "[T]hat portion of the deposits of [an Oakar institution] for any semiannual period which is equal to [the Oakar institution's AADA] * * * shall be treated as deposits which are insured by [the Oakar institution's secondary fund]". *See* 12 U.S.C. 1815(d)(3).

The FDIC has not changed its rules for assessing Oakar institutions, and has continued to interpret the rules in the same manner as before. Accordingly, the "constant value" concept of the AADA has continued to be the view of the FDIC.

But the FDIC is no longer compelled to retain this view. Furthermore, as discussed below, the FDIC has found that this approach has certain disadvantages. The FDIC is therefore proposing to re-interpret the phrase "for any semiannual period" as it appears in § 327.32(a)(3) in the light of the FDIC's quarterly assessment program. The FDIC would take the position that an Oakar institution's AADA for a semiannual period may be determined on a quarter-by-quarter basis—just as the assessment base for a semiannual period is so determined—and may be used to measure the portion of each quarterly assessment base that is to be assessed by the institution's secondary fund. The FDIC would also take the view that, if an AADA is generated in a transaction that takes place during the second calendar quarter of a semiannual period, the first quarterly component of the AADA for the current (following) semiannual period is zero; only the second quarterly component is equal to the volume of the secondary-fund deposits that the buyer so acquired.

The FDIC considers that this view of the phrase "for any semiannual period" is appropriate because the phrase is the counterpart of, and is meant to interpret, the following language in the Oakar Amendment:

(C) DETERMINATION OF ADJUSTED ATTRIBUTABLE DEPOSIT AMOUNT.—The adjusted attributable deposit amount which shall be taken into account for purposes of determining the amount of the assessment under subparagraph (B) for any semiannual period * * *

12 U.S.C. 1815(d)(3)(C).

This passage speaks of the assessment—not the AADA—"for any semiannual period". Insofar as the AADA is concerned, the statutory language merely specifies the semiannual period for which the AADA is to be computed: the period for which the assessment is due. The FDIC believes that the phrase "for a semiannual period" may properly be read to have the same meaning.

Moreover, while the Amendment says the AADA must "be taken into account" in determining a semiannual assessment, the Amendment does not prescribe any particular method for doing so. The FDIC considers that this language provides enough latitude for the FDIC to apply the AADA in a manner that is appropriate to the quarterly payment program.

The FDIC's existing regulation is compatible with this interpretation. The regulation speaks of an assessment base for each quarter, not of an average of such bases. The regulation further says that an Oakar institution's AADA fixes a portion of its "assessment base". *See* 12 CFR 327.32(a)(2) (i) & (ii). Accordingly, the FDIC is not proposing to modify the text that specifies the method for computing AADAs.

b. Need for the re-interpretation. Under certain conditions, the FDIC's "constant value" view of the AADA appears to be tantamount to double-counting transferred deposits for a calendar quarter.

The appearance of "double-counting" occurs when an Oakar institution acquires secondary-fund deposits in the latter half of a semiannual period—*i.e.*, in the second or fourth calendar quarter. The seller has the deposits at the end of the first (or third) quarter; its first payment for the upcoming semiannual period is based on them. At the same time, the buyer's secondary-fund assessment is approximately equal to an assessment on the transferred deposits for both quarters in the semiannual period.[2]

[2] The correlation is not so close as it first appears. Various factors distort the relation between an Oakar institution's deposit base on one hand and its primary-fund and secondary-fund assessment bases on the other.

The chief factor is the so-called float deduction, which is equal to the sum of one-sixth of an institution's demand deposits plus one percentum of its time and savings deposits. *See* 12 CFR 327.5(a)(2). An Oakar institution's secondary-fund assessment base is equal to the full value of its AADA, however. *See id.* 327.32(a)(2). The impact of the float deduction falls entirely on the primary-fund assessment base.

Accordingly, neither the primary-fund assessment base nor the secondary-fund assessment base is directly proportional to the institutional's total deposits. Nor does the split between the

Continued

The source of this apparent effect is that, under the FDIC's current interpretation of its rule, an AADA—even a newly generated one—applies to an Oakar institution's entire assessment base for the entire semiannual period. The following example illustrates the point. The example focuses on the average assessment base, in order to show the relationship between the AADA and the assessment base up to the time the FDIC adopted the quarterly-payment procedure:

	Seller (SAIF)	Buyer (BIF)		Industry total
Before the transaction:				
Starting assessment bases (ignoring float, &c.):				
SAIF	$200	$0		$200.
BIF	0	100		100.
	200	100		300.
The transaction:				
March call report	200	100		300.
Deposits sold	(100)	+100	(AADA)	Neutral.
June call report	100	200		300.
After the transaction:				
Ending assessment bases (ignoring float, &c.):				
SAIF	100	100	(AADA)	200.
BIF	0	100		100.
	100	200		300.
Average assessment bases:				
(Ignoring float, &c.):				
SAIF	150	100	(AADA)	250.
BIF	0	50		50.
	150	150		300.

The SAIF-assessable portion of the buyer's average assessment base is $100. If the SAIF-assessable portion were based directly on the average of the buyer's SAIF-insured deposits for the prior two quarters—rather than on the buyer's AADA—that portion would only be $50. The difference is equivalent to attributing the transferred $100 to the buyer for an extra one-half of the semiannual period: by implication, for the first (or third) quarter as well as for the second (or fourth) quarter.

The anomaly is most apparent from the standpoint of the industry as a whole. The aggregate amount of the SAIF-assessable deposits temporarily balloons to $250, while the aggregate amount of the BIF-assessable deposits shrinks to $50. The anomaly only lasts for one semiannual period, however. In the following period, the seller's assessment base is $100 for both quarters, making its average assessment base $100. The buyer's AADA remains $100. Accordingly, the aggregate amount of SAIF-assessable deposits retreats to $200 once more; and the aggregate amount of BIF-assessable deposits is back to the full $100.

Broadening the focus to include both funds also brings out a more subtle point: the anomaly is not tantamount to double-counting the transferred deposits for a quarter, but rather to re-allocating the buyer's assessment base from the BIF to the SAIF. The BIF-assessable portion of the buyer's average assessment base is $50, not $100. The difference is equivalent to cutting the buyer's BIF assessment base by $100 for half the semiannual period.

The FDIC's quarterly-payment procedure has brought attention to these anomalous effects. The quarterly-payment schedule is merely a new collections schedule, not a new method for determining the amount due. *See* 59 FR 67153 (Dec. 29, 1994). Accordingly, under current procedures, the buyer and the seller in the illustration would pay the amounts specified therein even under the quarterly-payment schedule.

When an Oakar transaction occurs in the latter half of a semiannual period, however, the buyer's call report for the prior quarter does not show an AADA. The buyer's first payment for the current semiannual period is therefore based on its assessment base for that quarter, not on its AADA. Moreover, the entire payment is computed using the assessment rate for the institution's primary fund. The FDIC therefore adjusts (and usually increases) the amount to be collected in the second quarterly payment in order to correct these defects.

Interpreting the semiannual AADA to consist of two quarterly components would eliminate this anomaly.

2. Quarterly Growth

The Oakar Amendment says that the growth rate for an AADA during a semiannual period is equal to the "annual rate of growth of deposits" of the Oakar institution. The FDIC currently interprets the phrase "annual rate" to mean a rate determined over the interval of a full year. An Oakar institution computes its "annual rate of growth" at the end of each calendar year, and uses this figure to calculate the AADA for use during the following year.

This procedure has a weakness. An Oakar institution's AADA tends to drift out of alignment with the deposit base, because the AADA remains constant while the deposit base changes. At the end of the year, when the institution computes its AADA for the next year, the AADA suddenly—but only temporarily—snaps back into its proper proportion.

The FDIC does not believe that Congress intended to cause such a fluctuation in the relation between an institution's AADA and its deposit base.

institutions two assessment base match the split between the institution's primary-fund and secondary-fund deposits.

Moreover, from the FDIC's standpoint as insurer, it would be appropriate to maintain a relatively steady correlation between the AADA and the total deposit base. The FDIC is therefore proposing to revise its view, and take the position that—after the end of the semiannual period in which an institution's AADA has been established—the AADA grows and shrinks at the same basic rate as the institution's domestic deposit base (that is, excluding acquisitions and deposit sales), measured contemporaneously on a quarter-by-quarter basis. Over a full semiannual period, any increase or decrease in the AADA would automatically occur at a rate equal to the "rate of growth of deposits" during the semiannual period, thereby satisfying the statutory requirement.

The FDIC considers that the statutory reference to an "annual rate" does not foreclose this approach. In ordinary usage, "annual rate" can refer to a rate that is expressed as an annual rate, even though the interval during which the rate applies, and over which it is determined, is a shorter interval such as a semiannual period (*e.g.*, in the case of six-month time deposits). For example, until recently, the FDIC's rules regarding the payment of interest on deposits spoke of "the annual rate of simple interest"—a phrase that pertained to rates payable on time deposits having maturities as short as seven days. See 12 CFR 329.3 (1993).

Comparison of Annual and Quarterly AADA Growth Adjustment Methods

Consider an Oakar institution that has total deposits of $15 as of 12/31/93, with an AADA of $6.5. Further assume that the institution's total deposits grow by $1 every quarter, and that it does not participate in any additional acquisitions or deposit sales. The following graphs show the effects of making growth adjustments to its AADA on an annual basis versus a quarterly basis.

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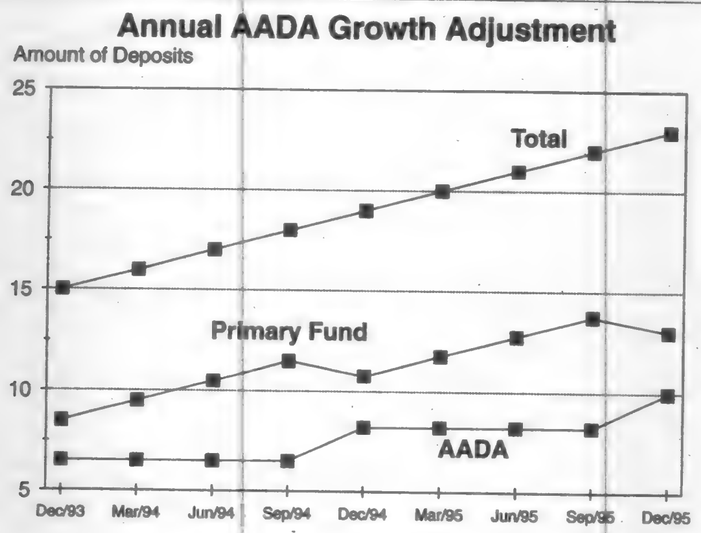

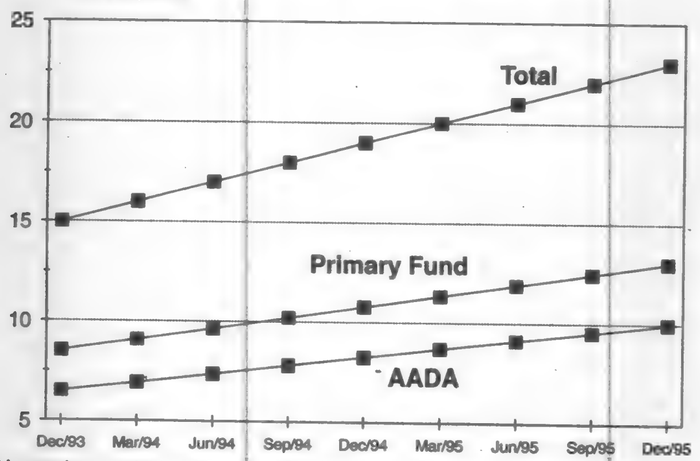

Since an AADA remains constant until a growth adjustment is applied, any change in total deposits is reflected in the institution's primary-fund deposits in the annual-adjustment method, while primary-fund deposits and the AADA vary together with total deposits in the quarterly-adjustment method.

The following graphs express this difference in terms of percents of total deposits.

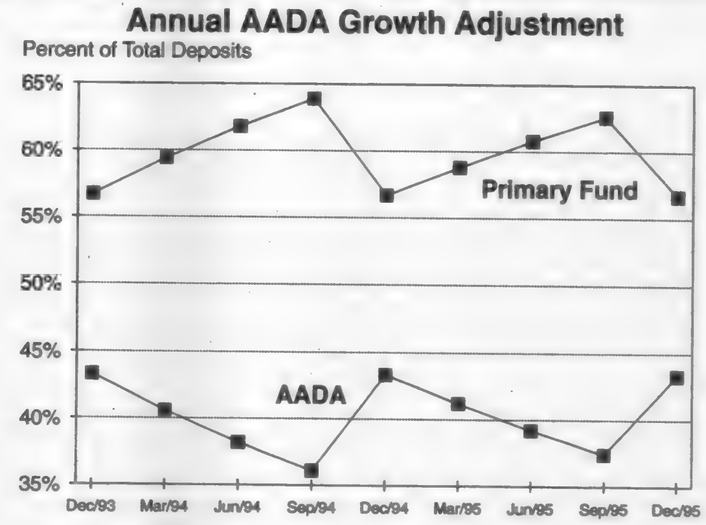

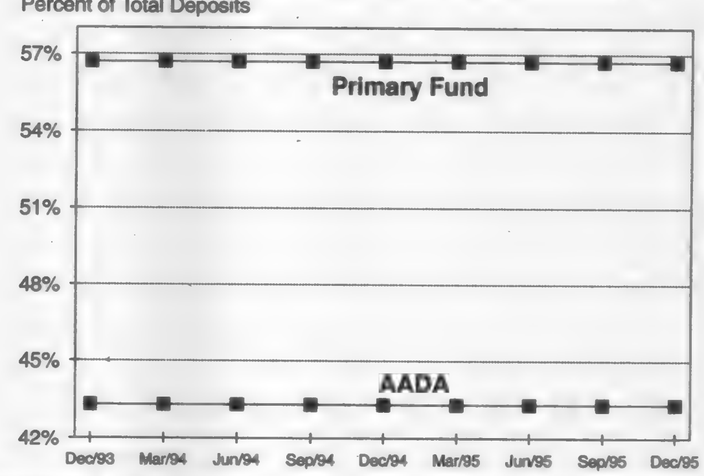

In the annual-adjustment method, the AADA becomes a smaller percent of total deposits as the total grows. In the quarterly-adjustment method, the AADA and the primary-fund deposits remain constant percents of total deposits.

The FDIC considered an alternative approach: using the rate of growth in the institution's deposit base for the prior four quarters, measured from the current quarter. This technique would be as consistent with the letter of the statute as the current method. But the four-prior-quarters method would preserve the lag between the AADA and the deposit base.

Comparison of Quarterly AADA Adjustments Using Different Growth Rate Bases

Consider the same Oakar institution with beginning total deposits of $15 and constant growth of $1 per quarter. The following graphs illustrate the effects on deposits of using total-deposit growth rates on two different bases: rolling one-year growth rates, and quarter-to-quarter growth rates.

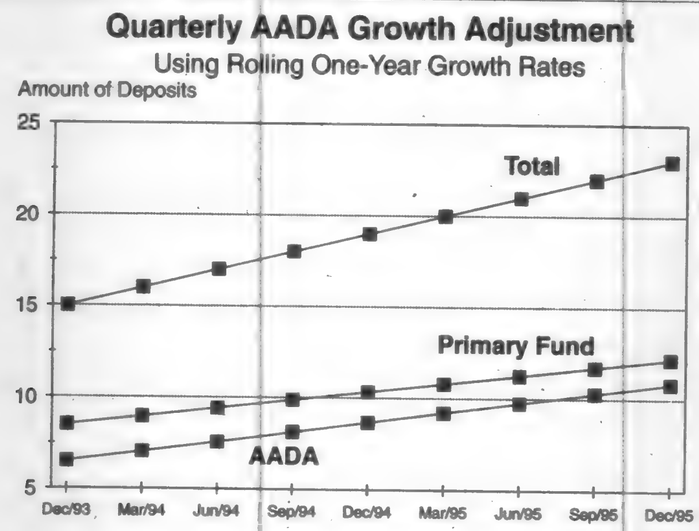

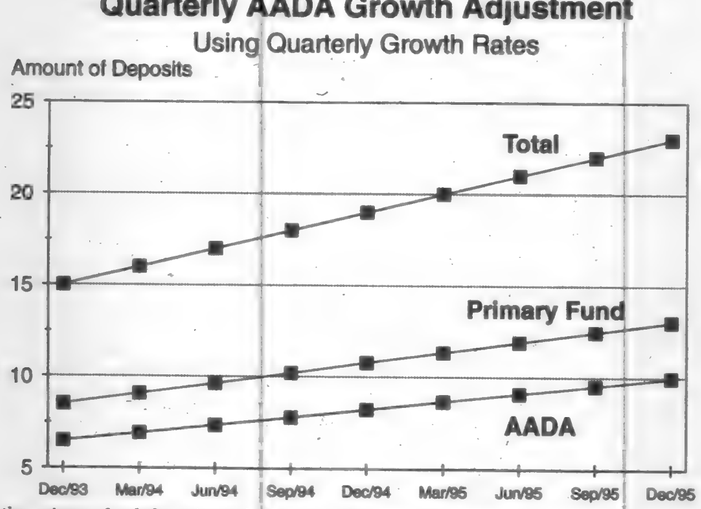

In both cases, the primary-fund deposits and the AADA appear to vary together with total deposits, but it is difficult to discern their precise relationship. Graphs of the same effects in terms of percents of total deposits are more illustrative:

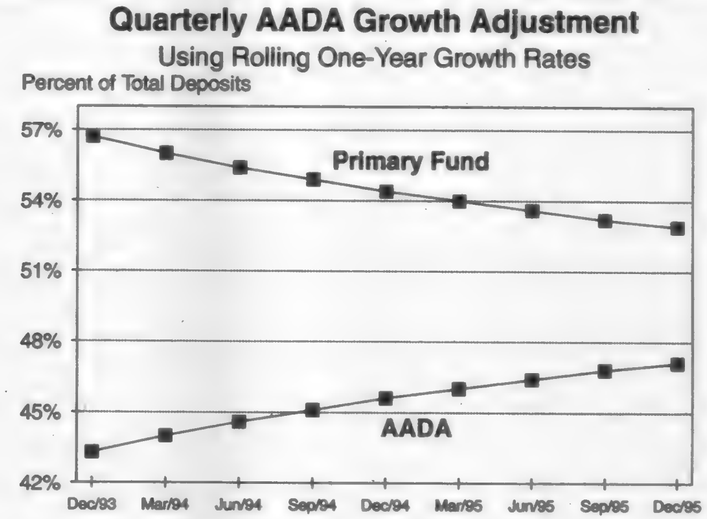

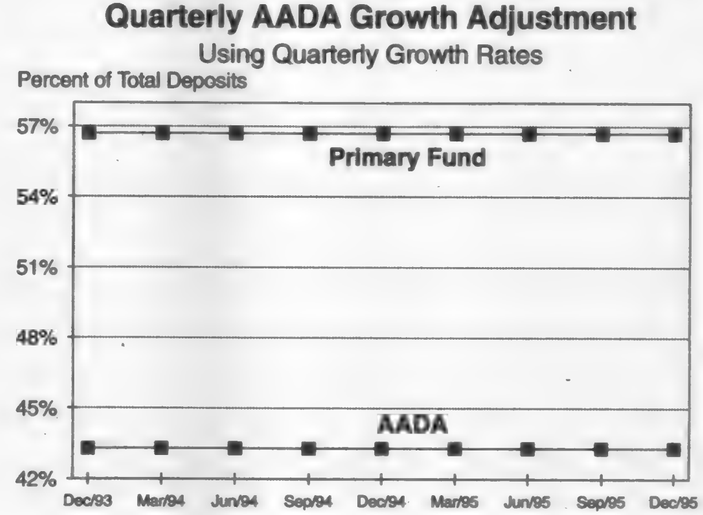

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In the percent-of-deposits graphs, the AADA and the primary-fund deposits are shown to converge when the AADA growth adjustment is based on rolling one-year growth rates. In this particular example, the effect occurs because the institution's constant growth of $1 per quarter results in a steadily decreasing rate of growth of total deposits. Therefore, a rolling one-year growth rate of those total deposits at any point in time will be more than the actual rate of growth over the quarter to which the rolling rate is being applied. While different growth characteristics for total deposits would yield different relationships between the AADA and the primary fund over time, the general point is that the relationships of the AADA and the primary-fund deposits can vary when the AADA is adjusted, unless the total-deposit rate of growth used for the adjustment is drawn from the same period for which the rate is applied to the AADA.

As shown in the right-hand graph, applying the actual quarterly growth rate for total deposits to the AADA results in stable percents of total deposits for the AADA and primary fund deposits.

In sum, the FDIC considers that the quarterly approach is permissible under the statute, and is preferable to any approach that relies on a yearly interval to determine growth in the AADA.

D. Negative Growth of the AADA

One element of an Oakar institution's AADA for a current semiannual period is "the amount by which [the AADA for the preceding semiannual period][3] would have increased during the preceding semiannual period if such increase occurred at a rate equal to the annual rate of growth of [the Oakar institution's] deposits". 12 U.S.C. 1815(d)(3)(C)(iii). The FDIC is proposing to codify its view that the terms "growth" and "increase" encompass negative growth (shrinkage). But the FDIC is proposing to change its interpretation by excluding shrinkage due to deposit sales.

1. Negative Growth in General

The 1989 version of the Oakar Amendment focused on an Oakar bank's underlying rate of growth for the purpose of determining the Oakar bank's AADA. The 1989 version of the Amendment set a minimum growth rate for an AADA of 7 percent. The Amendment then specified that, if an Oakar bank's deposit base grew at a higher rate, the AADA would grow at the higher rate too. But the Amendment excluded growth attributable to mergers, branch purchases, and other acquisitions of deposits from other BIF members: the deposits so acquired were to be subtracted from the Oakar bank's total deposits for the purpose of determining the growth in the Oakar bank's deposit base (and therefore the rate of growth of the AADA). *See* 12 U.S.C. 1813(d)(3)(C)(3)(iii) (Supp. I 1989).

The 1989 version of the Oakar Amendment spoke only of "growth" and "increases" in the AADA. *Id.* The statute was internally consistent in this regard, because AADAs could never decrease.

Congress eliminated the minimum growth rate as of the start of 1992. FDICIA section 501 (a) & (b), 105 Stat. 2389 & 2391. As a result, the Oakar Amendment now specifies that an Oakar institution's AADA grows at the same rate as its domestic deposits (excluding mergers, branch acquisitions, and other acquisitions of deposits). 12 U.S.C. 1813(d)(3)(C).

The modern version of the Oakar Amendment continues to speak only of "growth" and "increases," however. Congress has not—at least not explicitly—modified it to address the case of an institution that has a shrinking deposit base. Nor has Congress addressed the case of an institution that transfers deposits in bulk to another insured institution.

The FDIC regards this omission as a gap in the statute that requires interpretation. The FDIC does so because, if the statute were read to allow only increases in AADAs, the statute would generate a continuing shift in the relative insurance burden toward the SAIF. Most Oakar institutions—and nearly all large Oakar institutions—are BIF-member Oakar banks. If an Oakar bank's deposit base were to shrink through ordinary business operations, but its AADA could not decline in proportion to that shrinkage, the SAIF's share of the risk presented by the Oakar bank would increase. But the reverse would not be true: if an Oakar bank's deposit base increased, its AADA would rise as well, and the SAIF would continue to bear the same share of the risk. The result would be a tendency to displace the insurance burden from the BIF to the SAIF.[4]

The FDIC further considers that the main themes of the changes that Congress made to the Oakar Amendment in 1991 are those of simplification, liberalization, and symmetry. Congress allowed savings associations to acquire banks, as well as the other way around. Congress allowed institutions to deal with one another directly, eliminating the requirement that the institutions must belong to the same holding company (and the need for approval by an extra federal supervisor). Congress established a mirror-image set of rules for assessing Oakar banks and Oakar thrifts. As noted above, Congress repealed the 7 percentum floor on AADA growth, thereby eliminating the most prominent cause of divergence between an Oakar institution's assessment base and its deposit base. Congress expanded the scope of the Oakar Amendment and made it congruent with the relevant provisions of section 5(d)(2). See FDICIA section 501(a), 105 Stat. 2388–91 (Dec. 19, 1991).

In keeping with this view of the 1991 amendments, the FDIC interprets the growth provisions of the Oakar Amendment symmetrically: that is, to encompass negative growth rates as well as positive ones. The FDIC takes the position that an Oakar institution's AADA grows and shrinks at the same underlying rate of growth as the institution's domestic deposits.

The FDIC considers that this interpretation is appropriate because it accords with customary usage in the banking industry, and because it is consistent with the purposes and the structure of the statute. Under the FDIC's interpretation, each fund continues to bear a constant share of the risk posed by the institution, and continues to draw assessments from a constant proportion of the institution's deposit base.

Moreover, the FDIC's interpretation encourages banks to make the investment that Congress wished to promote. If "negative increases" were disallowed, Oakar banks would see their SAIF assessments (which currently carry a much higher rate) grow disproportionately when their deposits shrank through ordinary business operations.

Finally, the interpretation is designed to avoid—and has generally avoided—the anomaly of an institution having an AADA that is larger than its total deposit base.

2. Negative Growth Due to Deposit-Transfers

As noted above, for the purpose of analyzing deposit sales, the FDIC follows the deposit-attribution principles set forth in the Rankin letter: the Oakar institution transfers its primary-fund deposits until they have been exhausted, and only then transfers its secondary-fund deposits. The FDIC further considers that—consistent with the moratorium imposed by section 5(d)(2)—the deposits continue to have the same status for insurance purposes after the deposit sale as before. The industry-wide stock of BIF-insured and SAIF-insured deposits should remain the same.

The FDIC's procedure for calculating the growth of the AADA upsets that balance, however. The deposit sale reduces the Oakar bank's total deposit base by a certain percentage: accordingly, the Oakar bank's AADA—and therefore its volume of SAIF-insured deposits—is reduced by the same percentage. Its BIF-insured deposits increase correspondingly. In effect, SAIF deposits are converted into BIF deposits, in violation of the moratorium.

This effect occurs without regard for whether the transferred deposits are primary-fund or secondary-fund deposits. Even when a BIF-member Oakar bank transfers deposits to another BIF-member bank—a transfer that, under the Rankin letter, would only involve BIF-insured deposits—the deposit sale serves to shrink the transferring bank's AADA.

The FDIC is proposing to cure this defect by excluding deposit sales from the growth computation. The FDIC continues to believe that the terms "growth" and "increase" as used in the statute are broad enough to refer to a negative rate as well as a positive one. But the FDIC does not consider that it is required to extend these terms beyond reasonable limits. In particular, the FDIC does not believe that it must necessarily interpret these terms to include a decrease that is attributable to a bulk transfer of deposits. The statute itself excludes the effect of an acquisition or other deposit-assumption from the computation of growth. The FDIC considers that it has ample authority to make an equivalent exclusion for deposit sales.

The FDIC believes its proposed interpretation is sound because deposit sales do not—in and of themselves—represent any change in the industry-wide deposit base of each fund. It is inappropriate for the FDIC to generate such a change on its own as a collateral effect of its assessment procedures. Moreover, the proposed interpretation is in accord with the tenor of the amendments made by the FDICIA, because it treats deposit sales symmetrically with deposit-acquisitions.

E. Value of an Initial AADA

The Oakar Amendment says that an Oakar institution's initial AADA is equal to "the amount of any deposits acquired by the institution in connection with the transaction (as determined at the time of such transaction)". *Id.* 1815(d)(3)(C). The FDIC has by regulation interpreted the phrase "deposits acquired by the institution". 12 CFR 327.32(a)(4). The regulation distinguishes between cases in which a buyer assumes deposits from a healthy seller (healthy-seller cases), and cases in which the FDIC is serving as conservator or receiver for the seller at the time of the transaction (troubled-seller cases).[5]

The FDIC proposes to retain but refine its interpretation with respect to healthy-seller cases. The FDIC also proposes to codify its "conduit" rule for certain deposits that a buyer promptly retransfers to a third party. The FDIC proposes to eliminate the special provisions for troubled-seller cases.

1. The "Nominal Amount" Rule

The general rule is that a buyer's initial AADA equals the full nominal amount of the assumed deposits. 12 CFR 327.32(a)(3)(4).

The FDIC is proposing to retain the substance of this provision. The proposed rule would continue to emphasize the point that the amount of the transferred deposits is to be measured by focusing on the volume divested by the seller. The purpose of the rule is to make it clear that post-transaction events—such as deposit run-off—have no bearing on the calculation of the buyer's AADA.

The FDIC considers that the nominal-value rule is appropriate for two chief reasons. Most importantly, it reflects the manifest intent of the statute, which says that the volume of the acquired deposits are to be "determined at the time" of the transaction. Second, the nominal-value rule has the virtues of clarity and precision. A buyer and a seller will both know precisely the value of an AADA that is generated in an Oakar transaction. The buyer's expected secondary-fund assessments can be an important cost for the parties to consider when deciding on an acceptable price. The FDIC considers that the nominal-value rule reduces uncertainty on this point.

The proposed rule would update this aspect of the regulation in two minor ways. The existing rule is somewhat obsolete: it presumes that the buyer assumes all the seller's deposits, and that all such deposits are insured by the buyer's secondary fund. The reason for these presumptions is purely historical. At the time the regulation was adopted, the Oakar Amendment only spoke of cases in which the seller merged into or consolidated with the buyer, or in which the buyer acquired all the seller's assets and liabilities. *See* 12 U.S.C. 1815(d)(3)(A) (Supp. I 1989). The Amendment did not allow for less comprehensive Oakar transactions (*e.g.*, branch sales). Nor did it contemplate a transaction in which the seller was an Oakar institution in its own right.

The proposed rule would make it clear that the nominal-amount rule applies to all Oakar transactions. The proposed rule would also specify that the AADA is only equal to the nominal amount of the transferred deposits that are insured by the secondary fund of the buyer, not necessarily all the transferred deposits. Both these points represent the current view of the FDIC.

2. Deposits Acquired From Troubled Institutions

The FDIC's current regulation provides various discounts that serve to reduce the buyer's AADA when the seller is in conservatorship or receivership at the time of the sale. *See* 12 CFR 327.32(a)(3)(4). The FDIC is proposing to eliminate the discounts, on the ground that they are no longer needed.

In adopting the rule, the FDIC observed that the deposits that a buyer assumes from a troubled seller are quite volatile: the buyer generally loses a certain percentage of the deposits almost immediately. The FDIC characterized the lost deposits as "phantom deposits", and said it would make no sense to require the bank to continue to pay assessments on them. The FDIC further said that such a requirement would impair its ability to transfer the business of such thrifts to healthy enterprises, to the detriment of the communities the thrifts were serving. *See* 54 FR at 51373. The FDIC accordingly adopted an interpretive rule stating that the nominal amount of the deposits transferred in such cases were to be discounted for the purpose of computing the AADA generated in the transaction, as follows:

—*Brokered deposits:* All brokered deposits are subtracted from the nominal volume of the transferred deposits.

—*The "80/80" rule:* Each remaining deposit is capped at $80,000. The

[3] Theoretically, the growth rate is not applied directly to the prior AADA, but rather to an amount that is computed afresh each time—which amount is the sum of the various elements of the prior AADA.

[4] A shrinking Oakar thrift would have the opposite effect: The BIF's exposure would increase, and the SAIF's exposure would decrease. The Oakar thrifts are comparatively rare, however. The net bias would run against the SAIF.

[5] The regulation also refers to the Resolution Trust Corporation (RTC). The reference is obsolete, as the RTC no longer exists.

AADA is equal to 80% of the aggregate of the deposits as so capped.

The FDIC explained that these discounts reflected its actual experience—that is, its experience with arranging purchase-and-assumption transactions for institutions in receivership. *Id.* But the discounts were not intended to represent the actual run-off that an individual Oakar institution would sustain in a particular case. Rather, they were an approximation or estimate of the run-off that Oakar institutions ordinarily sustain in troubled-seller cases.

As an historical matter, the FDIC determined that it was appropriate to provide the discounts because the funding decisions for troubled thrift institutions were subject to constraints and considerations that fell outside the normal range of factors influencing such decisions in the market place for healthy thrifts. The sellers had often been held in conservatorship for some time. In order to maintain the assets in such institutions, it often was necessary for the conservator to obtain large and other high-yielding deposits for funding purposes. Both the size of the discounts, and the fact that the discounts were restricted to troubled-seller cases, were known publicly in 1989 and were relevant to every potential buyer's decision to acquire and price a thrift institution.

Although healthy sellers in unassisted transactions also sometimes relied upon volatile deposits for funding, these funding decisions were part of a strategy to maximize the profits of a going concern, and the management of the purchasing institutions were accountable to shareholders. The comparable decisions for troubled sellers in assisted transactions were made by managers of government conservatorships that were subject to funding constraints, relatively inflexible operating rules (necessary to control a massive government effort to sell failed thrifts), and other considerations outside the scope of the typical private transaction.

While the FDIC recognized that it was incumbent upon any would-be buyer to evaluate and price all aspects of a transaction, the FDIC determined that it would be counterproductive to require bidders to price the contingencies related to volatile deposits in assisted transactions, given that these deposits primarily were artifacts of government conservatorships. Considering the objective of attracting private capital in order to avoid additional costs to the taxpayer, the FDIC sought to avoid the potential deterrent effect of including these artificial elements in the pricing equation. In order to reflect the volatile deposits acquired in assisted transactions, the FDIC determined to provide the above-described discounts.

The FDIC adopted this interpretive rule at a time when troubled and failed thrifts were prevalent, and the stress on the safety net for such institutions was relatively severe. The stress has been considerably relieved, however. The FDIC considers that, under current conditions, there is no longer any need to maintain a special set of rules for troubled-seller cases.

Moreover, the discounts are, at bottom, simply another factor that helps to determine the price that a buyer will pay for a troubled institution. The FDIC ordinarily must contribute its own resources to induce buyers to acquire such institutions. Any reduction in future assessments that the FDIC offers as an incentive merely reduces the amount of money the FDIC must contribute at the time of the transaction. The simpler and more straightforward approach is to reflect all such considerations in the net price that buyers pay for such institutions at the time of the transaction.

3. Conduit Deposits

The FDIC staff has taken the position that, under certain circumstances, when an Oakar institution re-transfers some of the secondary-fund deposits it has assumed in the course of an Oakar transaction, the re-transferred deposits will not be counted as "acquired" deposits for purposes of computing the Oakar institution's AADA. The Oakar institution is regarded as a mere conduit for the re-transferred deposits. The deposits themselves retain their original status as BIF-insured or SAIF-insured after the re-transfer: whatever their status in the hands of the original transferor, the deposits have that status in the hands of the ultimate transferee.

The FDIC has applied its "conduit" principle only in very narrow circumstances. The FDIC has done so only when the Oakar institution has been required to commit to re-transfer specified branches as a condition of approval of the acquisition of the seller; the commitment has been enforceable; and the re-transfer has been required to occur within six months after consummation of the initial Oakar transaction. *See, e.g.*, FDIC Advisory Op. 94–48, 2 FED. DEPOSIT INS. CORP., LAW, REGULATIONS, RELATED ACTS 4901–02 (1994).

The FDIC is proposing to codify and refine this view. As codified, secondary-fund deposits would have the status of "conduit" deposits in the hands of an Oakar institution only if a Federal banking supervisory agency or the United States Department of Justice explicitly ordered the Oakar institution to re-transfer the deposits within six months, if the institution's obligation to make the re-transfer was enforceable, and if the re-transfer had to be completed in the six-month grace period.

Conduit deposits would be included in the Oakar institution's AADA only on a temporary basis: for one semiannual period, or in some cases two periods, but no more. The deposits would be counted in the "amount of deposits acquired" by the Oakar institution—and therefore in its AADA—during the semiannual period in which the transaction occurs. The AADA so computed would be used to determine the assessment due for the following semiannual period. In addition, if the Oakar institution retained the deposits during part of that following period, the deposits would again be included in the "amount of deposits acquired"—and would again be part of the institution's AADA—for the purpose of computing the assessment for the semiannual period after that. But thereafter the deposits would be excluded from the "amount of deposits acquired" by the Oakar institution.

If the conditions were not satisfied, the conduit principle would not come into play, and the deposits would be regarded as having been assumed by the Oakar institution at the time of the original Oakar transaction. Any subsequent transfer of the deposits would be treated as a separate transaction, and analyzed independently of the Oakar transaction.

The FDIC is currently considering alternative methodologies for attributing any deposits that an Oakar institution might transfer to another institution. The conduit principle's economic impact is somewhat greater in the context of one such methodology than in that of the other.

The FDIC currently takes the view that, when an Oakar institution transfers deposits to another institution, the seller transfers its primary-fund deposits until they have been exhausted, and only then transfers its secondary-fund deposits. A BIF-member Oakar bank has a comparatively strong incentive to invoke the conduit principle under this methodology. If an Oakar bank can succeed in characterizing re-transferred deposits as conduit deposits, the bank will escape the full impact of the SAIF assessment on those deposits, which is comparatively high at the present time.

The FDIC is also considering a "blended" approach, however. Under this methodology, whenever an Oakar institution transferred any deposits to another institution, the transferred deposits would be regarded as consisting of a blend of primary-fund and secondary-fund deposits. The ratio of the blend would be the same as that of the institution as a whole. This methodology would reduce the incentive for Oakar banks to invoke the conduit principle to some extent, particularly in the case of Oakar banks having large AADAs. An Oakar bank's AADA would shrink as a result of any transfer of deposits, even one that did not involve conduit deposits. The comparative benefit of invoking the conduit rule would be correspondingly reduced.

F. Transitional Considerations

1. Freezing Prior AADAs

In theory, an Oakar institution's AADA is computed anew for each semiannual period. An AADA for a current semiannual period is equal to the sum of three elements:

—*Element 1:* The volume of secondary-fund deposits that the institution originally acquired in the Oakar transaction;

—*Element 2:* The aggregate of the growth increments for all semiannual periods prior to the one for which Element 3 is being determined; and

—*Element 3:* The growth increment for the period just prior to the current period (i.e., just prior to the one for which the assessment is due).

Element 3 is calculated on a base that equals the sum of elements 1 and 2.

The FDIC has consistently interpreted its existing rules to mean that, when a growth increment has already been determined for an AADA for a semiannual period, the growth increment continues to have the same value thereafter. *See, e.g.*, FDIC Advisory Op. 92- 19, 2 FED. DEPOSIT INS. CORP., LAW, REGULATIONS, RELATED ACTS 4619, 4620–21 (1992). The net effect has been to "freeze" AADAs— and their elements—for prior semiannual periods. The proposed rule would codify this principle.

Accordingly, the new interpretations set forth in the proposed rule would apply on a purely prospective basis. They would come into play only for the purpose of computing future elements of future AADAs. The new interpretations would not affect AADAs already computed for prior semiannual periods (or the assessments that Oakar institutions have already paid on them). Nor would they affect the prior-period elements of AADAs that are to be determined for future semiannual periods. In short, the proposed rule would "leave prior AADAs alone".

2. 1st-Half 1997 Assessments: Excluding Deposit Sales From the Growth Calculation

The FDIC proposes to follow its existing procedures in computing AADAs for the first semiannual period of 1997, with one exception. In particular, an institution's AADA for the first semiannual period of 1997 would be based on the growth of the institution's deposits as measured over the entire calendar year 1996. The AADA so determined would be used to compute both quarterly payments for the first semiannual period of 1997.

The exception is that, when computing the growth rate for deposits during the second semiannual period of 1996, the FDIC would apply its new interpretation of "negative" growth, and would decline to consider shrinkage attributable to transactions that occurred during July–December 1996.

The FDIC acknowledges that its proposed new interpretation would make a significant break with the past. The FDIC further recognizes that the new interpretation could affect the business considerations that the parties must evaluate when they enter into deposit-transfer transactions. The FDIC considers that the industry has ample notice of the proposed exclusion, however, and that the parties to any such transaction can factor in any costs that the exclusion might produce.

At the same time, the FDIC agrees that it would be inappropriate to apply its new interpretation retroactively to transactions that have been completed earlier in 1996. The parties to these transactions did not have notice of the FDIC's proposal. The FDIC would therefore include shrinkage attributable to deposit sales that occurred during the first semiannual period of 1996 when determining the annual growth rate to be used in computing Oakar institutions' AADAs for the first semiannual period of 1997.

3. 2nd-Half 1997 Assessments: Use of Quarterly AADAs

The FDIC proposes to begin measuring AADAs on a quarterly basis during the first semiannual period of 1997. The first payment that would be computed using a quarterly component of an AADA would be the initial payment for the next semiannual period—the payment due at the end of June.

The first time the FDIC would identify and measure a quarterly component of a semiannual AADA would be as of March 31, 1997. The quarterly component with respect to that date would reflect the basic rate of growth of the institution's deposits during the first calendar quarter of 1997 (January–March). The quarterly AADA component so measured would be used to determine the institution's first quarterly payment for the second semiannual period in 1997 (the June payment).

The second quarterly AADA component would reflect the basic rate of growth of the institution's deposits during the second calendar quarter of 1997 (April–June). The quarterly AADA component so measured would be used to determine the institution's second quarterly payment for the second semiannual period in 1997 (the September payment).

G. Simplification and Clarification of the Regulation

In some respects, the proposed rule would simplify and clarify the current regulation without changing its meaning. The FDIC is doing so in response to two initiatives. Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160 (Sept. 23, 1994), requires federal agencies to streamline and modify their regulations. In addition, the FDIC has voluntarily committed itself to review its regulations on a 5-year cycle. *See* Development and Review of FDIC Rules and Regulations, 2 FED. DEPOSIT INS. CORP., LAW, REGULATIONS, RELATED ACTS 5057 (1984). The FDIC considers that subpart B of part 327 is a fit candidate for review under each of these initiatives.

The proposed rule would clarify subpart B by defining and using the terms "primary fund" and "secondary fund". An Oakar institution's primary fund would be the fund to which it belongs; it would be the other insurance fund. Using these terms, the FDIC is proposing to simplify paragraphs (1) and (2) of § 327.32(a) by eliminating redundant language; the changes would not alter the meaning of these provisions.

In addition, the FDIC would clarify § 327.6(a) by changing the nomenclature used therein. "Deposit-transfer transaction" would be replaced by "terminating transaction;" "acquiring institution" would be replaced by "surviving institution;" and "transferring institution" would be replaced by "terminating institution". The terms now found in § 327.6(a) are also used in other provisions of part 327, where they have different and less specialized meaning. The change in nomenclature in § 327.6(a) is intended

to avoid any confusion that the current terminology might cause.

III. Proposed Effective Date

Section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160, 2214–15 (1994), requires that new and amended regulations imposing additional reporting, disclosure, or other new requirements on insured depository institutions must generally take effect on the first day of a calendar quarter. In keeping with this requirement, the FDIC is proposing that the rule, if adopted, would take effect on January 1, 1997.

IV. Request for Public Comment

The FDIC hereby solicits comment on all aspects of the proposed rule. In particular, the FDIC solicits comment on the following points: attributing deposits that an Oakar institution transfers to another institution according to principles articulated in the Rankin letter, or treating the transferred deposits as a blend of deposits insured by both funds; having the FDIC, rather than individual institutions, compute AADAs using information provided by the institutions; interpreting AADAs as consisting of quarterly components, and computing the growth of AADAs on a quarterly cycle rather than an annual one; retaining the concept of negative growth for the purpose of computing AADAs; excluding deposit sales from the computation of growth; applying the nominal-amount principle for determining initial AADAs in all cases, including troubled-seller cases; and preserving the conduit-deposit concept.

In addition, in accordance with section 3506(c)(2)(B) of the Paperwork Reduction Act, 44 U.S.C. 3506(c)(2)(B), the FDIC solicits comment for the following purposes on the collection of information proposed herein:

—to evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the FDIC, including whether the information has practical utility;

—to evaluate the accuracy of the FDIC's estimate of the burden of the proposed collection of information;

—to enhance the quality, utility, and clarity of the information to be collected; and

—to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The FDIC also solicits comment on all other points raised or options described herein, and on their merits relative to the proposed rule.

V. Paperwork Reduction Act

Under the FDIC's existing procedures, each Oakar institution must compute its AADA at the end of each year, using a worksheet provided by the FDIC (annual growth worksheet). The annual growth worksheet shows the computation of the institution's AADA for the first semiannual period of the current year—that is, the AADA that is used to compute the assessment due for the first semiannual period of the current year—which is based on the institution's growth during the prior year. The institution must provide the annual growth worksheet to the FDIC as a part of the institution's certified statement.

In addition, whenever an institution is the buyer in an Oakar transaction, it must submit a transaction worksheet showing the total deposits acquired on the transaction date. If the seller is an Oakar institution, and if the buyer acquires the entire institution, the buyer must also report the seller's last AADA (as shown in the seller's last call report). The buyer must then subtract this number from the total deposits acquired in order to determine its new AADA.

The proposed rule would change this procedure for the annual growth worksheets for the first semiannual period of 1997 (*i.e.*, for the worksheets that show the growth of deposits during 1996). The change would only affect Oakar institutions that transferred deposits to other institutions during 1996. Such an institution would have to report the total amount of deposits that it transferred in transactions from July 1–December 31, 1996.

Thereafter the FDIC would compute the AADAs for all Oakar institutions, using information taken from their quarterly call reports. Institutions would not have to report additional information in most cases. An Oakar institution that neither acquired nor transferred deposits in the prior quarter would not have to provide any additional information at all. An Oakar institution that acquired deposits would have to provide the same information at the end of the quarter that it now provides at the end of the year; there would be a change in the timing, but no change in burden.

Only an Oakar institution that transferred deposits would have to provide additional information. The items of information needed, and the number of institutions affected, would depend on the deposit-attribution methodology chosen by the FDIC. Under the Rankin letter's approach, the FDIC presently anticipates that approximately 100 institutions per year would report deposit sales. Sellers would have to report the volume of deposits they transferred in the transaction. Under the "blended deposits" approach, the FDIC estimates that approximately 250 Oakar institutions per year would report deposit sales. Sellers would have to report both the volume of deposits transferred, and the date of the transaction. In either case, the information would be readily available: the extra reporting burden would be small.

The FDIC expects that the net effect would be to reduce the overall reporting burden on Oakar institutions. The burden of submitting extra information in deposit-sale cases would be more than offset by the elimination of the growth worksheet and by the FDIC's assumption of the burden of computing AADAs.

Accordingly, the FDIC is proposing to revise an existing collection of information. The revision has been submitted to the Office of Management and Budget for review and approval pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments on the accuracy of the burden estimate, and suggestions for reducing the burden, should be addressed to the Office of Management and Budget, Paperwork Reduction Project (3064–0057), Washington, D.C. 20503, with copies of such comments sent to Steven F. Hanft, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Room F–400, 550 17th St., N.W., Washington, D.C. 20429. The impact of this proposal on paperwork burden would be to require a one-time *de minimis* report from approximately 100 Oakar institutions for the first semiannual period in 1997, and thereafter to eliminate the annual growth worksheet for all 900 Oakar institutions, which takes an estimated two hours to prepare. The FDIC would then compute each Oakar institution's AADA from the deposit data in the institution's quarterly call report. The effect of this proposal on the estimated annual reporting burden for this collection of information is a reduction of 1,800 hours:

Approximate Number of Respondents: 900.

Number of Responses per Respondent: −1.

Total Annual Responses: 900.

Average Time per Response: 2 hours.

Total Average Annual Burden Hours: −1800 hours.

The FDIC expects the Federal Financial Institutions Examination Council to require (as needed) the information in the quarterly call reports, starting with the report for March 31, 1997. If the Council does recommend these changes, they will be submitted to the Office of Management and Budget for review and approval as part of the call report submission.

VI. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply to the proposed rule. Although the FDIC has chosen to publish general notice of the proposed rule, and to ask for public comment on it, the FDIC is not obliged to do so, as the proposed rule is interpretive in nature. *See id.* 553(b) and 603(a).

Moreover, the FDIC considers that the proposed rule would amount to a net reduction in burden for all Oakar institutions, as they would no longer have to prepare or file regular annual growth worksheets after the worksheet with respect to 1996. Instead, a limited number of Oakar institutions would have to submit one new piece of information, and would have to do so only for quarters in which they transferred deposits.

In addition, although the Regulatory Flexibility Act requires a regulatory flexibility analysis when an agency publishes a rule, the term "rule" (as defined in the Regulatory Flexibility Act) excludes "a rule of particular applicability relating to rates". *Id.* 601(2). The proposed rule relates to the rates that Oakar institutions must pay, because it addresses various aspects of the method for determining the base on which assessments are computed. The Regulatory Flexibility Act is therefore inapplicable to this aspect of the proposed rule.

Finally, the legislative history of the Regulatory Flexibility Act indicates that its requirements are inappropriate to this aspect of the proposed rule. The Regulatory Flexibility Act is intended to assure that agencies' rules do not impose disproportionate burdens on small businesses:

> Uniform regulations applicable to all entities without regard to size or capability of compliance have often had a disproportionate adverse effect on small concerns. The bill, therefore, is designed to encourage agencies to tailor their rules to the size and nature of those to be regulated whenever this is consistent with the underlying statute authorizing the rule.

126 Cong. Rec. 21453 (1980) ("Description of Major Issues and Section-by-Section Analysis of Substitute for S. 299").

The proposed rule would not impose a uniform cost or requirement on all Oakar institutions regardless of size: to the extent that it imposes any costs at all, the costs have to do with the effects that the proposed rule would have on Oakar institutions' assessments. Assessments are proportional to an institution's size. Moreover, while the FDIC has authority to establish a separate risk-based assessment system for large and small members of each insurance fund, *see* 12 U.S.C. 1817(b)(1)(D), the FDIC has not done so. Within the current assessment scheme, the FDIC cannot "tailor" assessment rates to reflect the "size and nature" of institutions.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Banks, banking, Financing Corporation, Reporting and recordkeeping requirements, Savings associations.

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend 12 CFR part 327 as follows:

PART 327—ASSESSMENTS

1–2. The authority citation for part 327 is revised to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1815, 1817–1819.

3. In § 327.6 the section heading and paragraph (a) are revised to read as follows:

§ 327.6 Terminating transfers; other terminations of insurance.

(a) *Terminating transfer*—(1) *Assessment base computation.* If a terminating transfer occurs at any time in the second half of a semiannual period, each surviving institution's assessment base (as computed pursuant to § 327.5) for the first half of that semiannual period shall be increased by an amount equal to such institution's pro rata share of the terminating institution's assessment base for such first half.

(2) *Pro rata share.* For purposes of paragraph (a)(1) of this section, the phrase "pro rata share" means a fraction the numerator of which is the deposits assumed by the surviving institution from the terminating institution during the second half of the semiannual period during which the terminating transfer occurs, and the denominator of which is the total deposits of the terminating institution as required to be reported in the quarterly report of condition for the first half of that semiannual period.

(3) *Other assessment-base adjustments.* The Corporation may in its discretion make such adjustments to the assessment base of an institution participating in a terminating transfer, or in a related transaction, as may be necessary properly to reflect the likely amount of the loss presented by the institution to its insurance fund.

(4) *Limitation on aggregate adjustments.* The total amount by which the Corporation may increase the assessment bases of surviving or other institutions under this paragraph (a) shall not exceed, in the aggregate, the terminating institution's assessment base as reported in its quarterly report of condition for the first half of the semiannual period during which the terminating transfer occurs.

* * * * *

4. Section 327.8 is amended by revising paragraph (h) and adding paragraphs (j) and (k) to read as follows:

§ 327.8 Definitions.

* * * * *

(h) As used in § 327.6(a), the following terms are given the following meanings:

(1) *Surviving institution.* The term *surviving institution* means an insured depository institution that assumes some or all of the deposits of another insured depository institution in a terminating transfer.

(2) *Terminating institution.* The term *terminating institution* means an insured depository institution some or all of the deposits of which are assumed by another insured depository institution in a terminating transfer.

(3) *Terminating transfer.* The term *terminating transfer* means the assumption by one insured depository institution of another insured depository institution's liability for deposits, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract, when the terminating institution goes out of business or transfers all or substantially all its assets and liabilities to other institutions or otherwise ceases to be obliged to pay subsequent assessments by or at the end of the semiannual period during which such assumption of liability for deposits occurs. The term *terminating transfer* does not refer to the assumption of liability for deposits from the estate of a failed institution, or to a transaction in which the FDIC contributes its own resources in order to induce a surviving institution to assume liabilities of a terminating institution.

* * * * *

(j) *Primary fund.* The *primary fund* of an insured depository institution is the

insurance fund of which the institution is a member.

(k) *Secondary fund.* The *secondary fund* of an insured depository institution is the insurance fund that is not the primary fund of the institution.

5. In § 327.32, paragraph (a) is amended by revising paragraphs (a)(1) and (a)(2), and by removing paragraphs (a)(4) and (a)(5), to read as follows:

§ 327.32 Computation and payment of assessment.

(a) *Rate of assessment*—(1) *BIF and SAIF member rates.* (i) Except as provided in paragraph (a)(2) of this section, and consistent with the provisions of § 327.4, the assessment to be paid by an institution that is subject to this subpart B shall be computed at the rate applicable to institutions that are members of the primary fund of such institution.

(ii) Such applicable rate shall be applied to the institution's assessment base less that portion of the assessment base which is equal to the institution's adjusted attributable deposit amount.

(2) *Rate applicable to the adjusted attributable deposit amount.* Notwithstanding paragraph (a)(1)(i) of this section, that portion of the assessment base of any acquiring, assuming, or resulting institution which is equal to the adjusted attributable deposit amount of such institution shall:

(i) Be subject to assessment at the assessment rate applicable to members of the secondary fund of such institution pursuant to subpart A of this part; and

(ii) Not be taken into account in computing the amount of any assessment to be allocated to the primary fund of such institution.

* * * * *

6. New §§ 327.33 through 327.36 are added to read as follows:

§ 327.33 "Acquired" deposits.

This section interprets the phrase "deposits acquired by the institution" as used in § 327.32(a)(3)(i).

(a) *In general.* (1) *Secondary-fund deposits.* The phrase "deposits acquired by the institution" refers to deposits that are insured by the secondary fund of the acquiring institution, and does not include deposits that are insured by the acquiring institution's primary fund.

(2) *Nominal dollar amount.* Except as provided in paragraph (b) of this section, an acquiring institution is deemed to acquire the entire nominal dollar amount of any deposits that the transferring institution holds on the date of the transaction and transfers to the acquiring institution.

(b) *Conduit deposits.*—(1) *Defined.* As used in this paragraph (b), the term "conduit deposits" refers to deposits that an acquiring institution has assumed from another institution in the course of a transaction described in § 327.31(a), and that are treated as insured by the secondary fund of the acquiring institution, but which the acquiring institution has been explicitly and specifically ordered by the Corporation, or by the appropriate federal banking agency for the institution, or by the Department of Justice to commit to re-transfer to another insured depository institution as a condition of approval of the transaction. The commitment must be enforceable, and the divestiture must be required to occur and must occur within 6 months after the date of the initial transaction.

(2) *Exclusion from AADA computation.* Conduit deposits are not considered to be acquired by the acquiring institution within the meaning of § 327.32(a)(3)(i) for the purpose of computing the acquiring institution's adjusted attributable deposit amount for a current semiannual period that begins after the end of the semiannual period following the semiannual period in which the acquiring institution re-transfers the deposits.

§ 327.34 Application of AADAs.

This section interprets the meaning of the phrase "an insured depository institution's 'adjusted attributable deposit amount' for any semiannual period" as used in the opening clause of § 327.32(a)(3).

(a) *In general.* The phrase "for any semiannual period" refers to the current semiannual period: that is, the period for which the assessment is due, and for which an institution's adjusted attributable deposit amount (AADA) is computed.

(b) *Quarterly components of AADAs.* An AADA for a current semiannual period consists of two quarterly AADA components. The first quarterly AADA component for the current period is determined with respect to the first quarter of the prior semiannual period, and the second quarterly AADA component for the current period is determined with respect to the second quarter of the prior period.

(c) *Application of AADAs.* The value of an AADA that is to be applied to a quarterly assessment base in accordance with § 327.32(a)(2) is the value of the quarterly AADA component for the corresponding quarter.

(d) *Initial AADAs.* If an AADA for a current semiannual period has been generated in a transaction that has occurred in the second calendar quarter of the prior semiannual period, the first quarterly AADA component for the current period is deemed to have a value of zero.

(e) *Transition rule.* Paragraphs (b), (c) and (d) of this section shall apply to any AADA for any semiannual period beginning on or after July 1, 1997.

§ 327.35 Grandfathered AADA elements.

This section explains the meaning of the phrase "total of the amounts determined under paragraph (a)(3)(iii)" in § 327.32(a)(3)(ii). The phrase "total of the amounts determined under paragraph (a)(3)(iii)" refers to the aggregate of the increments of growth determined in accordance with § 327.32(a)(3)(iii). Each such increment is deemed to be computed in accordance with the contemporaneous provisions and interpretations of such section. Accordingly, any increment of growth that is computed with respect to a semiannual period has the value appropriate to the proper calculation of the institution's assessment for the semiannual period immediately following such semiannual period.

§ 327.36 Growth computation.

This section interprets various phrases used in the computation of growth as prescribed in § 327.32(a)(3)(iii).

(a) *Annual rate.* The annual rate of growth of deposits refers to the rate, which may be expressed as an annual percentage rate, of growth of an institution's deposits over any relevant interval. A relevant interval may be less than a year.

(b) *Growth; increase; increases.* Except as provided in paragraph (c) of this section, references to "growth," "increase," and "increases" may generally include negative values as well as positive ones.

(c) *Growth of deposits.* "Growth of deposits" does not include any decrease in an institution's deposits representing deposits transferred to another insured depository institution, if the transfer occurs on or after July 1, 1996.

(d) *Quarterly determination of growth.* For the purpose of computing assessments for semiannual periods beginning on July 1, 1997, and thereafter, the rate of growth of deposits for a semiannual period, and the amount by which the sum of the amounts specified in § 327.32(a)(3) (i) and (ii) would have grown during a semiannual period, is to be determined by computing such rate of growth and such sum of amounts for each calendar quarter within the semiannual period.

7. Section 327.37 is added to read as follows:

ALTERNATIVE ONE

§ 327.37 Attribution of transferred deposits.

This section explains the attribution of deposits to the BIF and the SAIF when one insured depository institution (acquiring institution) acquires deposits from another insured depository institution (transferring institution). For the purpose of determining whether the assumption of deposits (assumption transaction) constitutes a transaction undertaken pursuant to section 5(d)(3) of the Federal Deposit Insurance Act, and for the purpose of computing the adjusted attributable deposit amounts, if any, of the acquiring and the transferring institutions after the transaction:

(a) *Transferring institution*—(1) *Transfer of primary-fund deposits.* To the extent that the aggregate volume of deposits that is transferred by a transferring institution in a transaction, or in a related series of transactions, does not exceed the volume of deposits that is insured by its primary fund (primary-fund deposits) immediately prior to the transaction (or, in the case of a related series of transactions, immediately prior to the initial transaction in the series), the transferred deposits shall be deemed to be insured by the institution's primary fund. The primary institution's volume of primary-fund deposits shall be reduced by the aggregate amount so transferred.

(2) *Transfer of secondary-fund deposits.* To the extent that the aggregate volume of deposits that is transferred by the transferring institution in a transaction, or in a related series of transactions, exceeds the volume of deposits that is insured by its primary fund immediately prior to the transaction (or, in the case of a related series of transactions, immediately prior to the initial transaction in the series), the following volume of the deposits so transferred shall be deemed to be insured by the institution's secondary fund (secondary-fund deposits): the aggregate amount of the transferred deposits minus that portion thereof that is equal to the institution's primary-fund deposits. The transferring institution's volume of secondary-fund deposits shall be reduced by the volume of the secondary-fund deposits so transferred.

(b) *Acquiring institution.* The deposits shall be deemed, upon assumption by the acquiring institution, to be insured by the same fund or funds in the same amount or amounts as the deposits were so insured immediately prior to the transaction.

ALTERNATIVE TWO

§ 327.37 Attribution of transferred deposits.

This section explains the attribution of deposits to the BIF and the SAIF when one insured depository institution (acquiring institution) assumes the deposits from another insured depository institution (transferring institution). On and after January 1, 1997, for the purpose of determining whether the assumption of deposits constitutes a transaction undertaken pursuant to section 5(d)(3) of the Federal Deposit Insurance Act, and for the purpose of computing the adjusted attributable deposit amounts, if any, of the acquiring and the transferring institutions after the transaction:

(a) *Attribution of the deposits as to the transferring institution.* The deposits shall be attributed to the primary and secondary funds of the transferring institution in the same ratio as the transferring institution's total deposits were so attributed immediately prior to the deposit-transfer transaction. The transferring institution's stock of BIF-insured deposits and of SAIF-insured deposits shall each be reduced in the appropriate amounts.

(b) *Attribution of deposits as to the acquiring institution.* Upon assumption by the acquiring institution, the deposits shall be attributed to the same insurance funds in the same amounts as the deposits were so attributed immediately prior to the transaction. The acquiring institution's stock of BIF-insured deposits and of SAIF-insured deposits shall each be increased in the appropriate amounts.

(c) *Ratio fixed at start of quarter.* For the purpose of determining the ratio specified in paragraph (a) of this paragraph for any transaction:

(1) *In general.* The ratio shall be determined at the beginning of the quarter in which the transaction occurs. Except as provided in paragraph (c)(2) of this section, the ratio shall not be affected by changes in the transferring institution's deposit base.

(2) *Prior acquisitions by a transferring institution.* If the transferring institution acquires deposits after the start of the quarter but prior to the transaction, the deposits so acquired shall be added to the transferring institution's deposit base, and shall be attributed to the transferring institution's primary and secondary funds in accordance with this section.

By order of the Board of Directors.
Dated at Washington, DC, this 17th day of June 1996.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 96–16349 Filed 7–2–96; 8:45 am]
BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–266–AD]

RIN 2120–AA64

Airworthiness Directives; De Havilland Model DHC–8–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to certain de Havilland Model DHC–8 series airplanes, that currently requires clearly marking the location and means of entering the lavatory. That AD was prompted by reports of passengers mistaking the airstair door operating handle for the means of gaining access to the lavatory. The actions specified by that AD are intended to prevent inadvertent opening of the airstair door and consequent depressurization of the airplane. This action would limit the applicability of the rule to fewer airplanes.

DATES: Comments must be received by July 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–266–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Marc Goldstein, Aerospace Engineer, Systems and Equipment Branch, ANE–172, FAA, New York Aircraft Certification Office, Engine and

Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7513; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–266–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–266–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 22, 1988, the FAA issued AD 88–09–05, amendment 39–5908 (53 FR 15363, April 29, 1988), applicable to certain de Havilland Model DHC–8–100 series airplanes, to require clearly marking the location and means of entering the lavatory. That action was prompted by reports of passengers mistaking the airstair door operating handle for the means of gaining access to the lavatory. The requirements of that AD are intended to prevent inadvertent opening of the airstair door and consequent depressurization of the airplane.

Explanation of Relevant Service Information

Since the issuance of that AD, de Havilland has issued Revision 'B', dated July 1, 1988, and Revision 'C', dated September 29, 1995, of Service Bulletin S.B. 8–11–14. The modification procedures (Modification 8/0757) specified in these revisions are essentially identical to Revision 'A' of the service bulletin, which was referenced in AD 88–09–05 as the appropriate source of service information. However, the effectivity listing in Revisions 'B' and 'C' has been revised to eliminate certain airplanes on which Modification 8/0757 was installed during production; therefore, these airplanes are not affected by the addressed unsafe condition. The modification clearly marks the location and means of entering the lavatory.

Transport Canada Aviation, which is the airworthiness authority for Canada, classified these service bulletins as mandatory and issued Canadian airworthiness directive CF–87–07R1, dated June 30, 1995, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of the Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would revise AD 88–09–05 to continue to require clearly marking the location and means of entering the lavatory. This action would limit the applicability of the existing AD to fewer airplanes.

Cost Impact

There are approximately 30 de Havilland Model DHC–8–100 series airplanes of U.S. registry that would be affected by this proposed AD.

Since this proposed AD merely deletes airplanes from the applicability of the rule, it would add no additional costs, and would require no additional work to be performed by affected operators. The current costs associated with this proposed rule are reiterated below for the convenience of affected operators:

The actions that are currently required by AD 88–09–05, and retained in this proposal, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts are supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $1,800, or $60 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–5908 (53 FR 15363, April 29, 1988), and by adding a new airworthiness directive (AD), to read as follows:

De Havilland, Inc.: Docket 95–NM–266–AD. Revises AD 88–09–05, Amendment 39–5908.

Applicability: Model DHC–8 series airplanes, serial numbers 3 through 79, inclusive; on which Modification 8/0757 has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent opening of the airstair door and consequent depressurization of the airplane, accomplish the following:

(a) Within 60 days after June 10, 1988 (the effective date of AD 88–09–05, amendment 39–5908), replace the labels marking the location and means of opening the lavatory, in accordance with the Accomplishment Instructions of de Havilland Service Bulletin 8–11–14, Revision 'A', dated July 31, 1987.

Note 2: Replacement accomplished in accordance with de Havilland Service Bulletin 8–11–14, Revision 'B', dated July 1, 1988, or Revision 'C', dated September 29, 1995, is considered acceptable for compliance with this paragraph.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 27, 1996.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–16952 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 96–AGL–11]

Establishment of Class E Airspace; Miller, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Miller Municipal Airport, Miller, SD, to accommodate a Nondirectional Radio Beacon (NDB) to serve Runway 15. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before August 5, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 96–AGL–11, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AGL–11." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Miller Municipal Airport, Miller, SD to accommodate a Nondirectional Radio Beacon to serve Runway 15. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other

aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 The Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL SD E5 Miller, SD [New]

Miller Municipal Airport, SD
(Lat. 44°31'31"N, long. 98°57'29")

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Miller Municipal Airport and that airspace extending upward from 1,200 feet above the surface bounded on the west and northwest by V–263, on the south by V–120, and on the east by V–15 excluding the Aberdeen, SD; the Pierre, SD; the Mitchell, SD; and the Huron, SD, 1,200 foot Class E airspace areas and all federal airways.

* * * * *

Issued in Des Plaines, Illinois on June 17, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96–17041 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

[OJP No. 1091]

RIN 1121–AA39

OJJDP Formula Grants Regulation

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Proposed rule and request for public comment.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing for public comment proposed amendments to its Formula Grants Regulation, 28 CFR Part 31. The Formula Grants Regulation implements Part B of Title II of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1992. The proposed amendments to the existing Regulation provide further clarification and guidance to States in the formulation, submission and implementation of State Formula Grant plans and determinations of State compliance with plan requirements. They are intended to provide additional flexibility and greater clarity to participating States with respect to key provisions related to the core requirements of the JJDP Act.

DATES: Interested persons are invited to submit written comments which must be received on or before August 19, 1996.

ADDRESSES: Address all comments to Mr. Shay Bilchik, Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Room 742, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Ms. Roberta Dorn, Director, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Room 543, Washington, DC 20531; (202) 307–5924.

SUPPLEMENTARY INFORMATION: The Office of Juvenile Justice and Delinquency Prevention is proposing revisions to the existing Regulation, codified at 28 CFR Part 31, and inviting public comment on the proposed changes. The proposed changes in the regulatory text accomplish the following:

(1) Revise § 31.303(d)(1)(i) to clarify the level of contact that is prohibited between juveniles in a secure custody status within an institution and incarcerated adults;

(2) Revise § 31.303(d)(1)(i) by providing an exception to the core requirement of separation with respect to brief, and inadvertent contact between juveniles in a secure custody status within an institution and incarcerated adults in nonresidential areas;

(3) Revise § 31.303(d)(1)(v) to permit the placement of an adjudicated delinquent in an institution with adults once the adjudicated delinquent reaches the State's age of full criminal responsibility, when authorized by State law;

(4) Revise § 31.303(e)(2) to permit the placement of an accused or adjudicated delinquent juvenile in an adult jail or lockup for up to six hours immediately before or after a court appearance for processing and transportation purposes;

(5) Revise § 31.303(e)(3) by eliminating the requirement for OJJDP concurrence in State approved collocated juvenile facilities, the requirement that a needs-based analysis precede a jurisdiction's request for State approval, and to permit time-phased use of nonresidential areas of collocated facilities;

(6) Revise § 31.303(f)(2) to expressly provide that accused status offenders can be placed in a secure juvenile detention facility for up to twenty-four hours, exclusive of weekends and holidays, prior to an initial court appearance and up to twenty-four hours, exclusive of weekends and holidays, following an initial court appearance;

(7) Revise § 31.303(f)(3)(vi) to eliminate the regulatory recommendation that a multi disciplinary team may be used to satisfy the "public agency" requirement, under the valid court order exception even if some members represent court or law enforcement agencies;

(8) Revise § 31.303(f)(4)(vi) to eliminate the requirement that States document and describe in their annual monitoring report to OJJDP the specific circumstances surrounding each use of distance/ground transportation and weather exceptions to the jail and lockup removal requirement;

(9) Revise § 31.303(f)(5)(i)(C) to define and clarify the scope of the exception to the deinstitutionalization of status offenders requirement for offenses under "§ 922(x) of Title 18 or other similar State law" (relating to possession of handguns by juveniles);

(10) Revise § 31.303(f)(6)(i) to eliminate portions of the section related to funding eligibility for fiscal year 1993 and prior years that are no longer applicable;

(11) Revise § 31.303(f)(6)(ii) to permit States that do not have a law, regulation, or court rule prohibiting the incarceration of all juvenile offenders in circumstances that would be in violation of the separation requirement to be eligible for a finding of compliance if reported violations do not constitute a pattern or practice and mechanisms are in place to prevent such violations from recurring in the future; and

(12) Revise § 31.303(j) to clarify the purpose of the Disproportionate Minority Confinement core requirement.

Contact With Incarcerated Adults

OJJDP recognizes that there has been a lack of clarity surrounding the issue of contact between juveniles and incarcerated adults in secure facilities. OJJDP finds that the term "sight and sound contact" needs to be clarified. In the 1992 amendments to the JJDP Act, Congress amended the existing "regular" contact standard that defined the level of permissible contact between juveniles and incarcerated adults by deleting the word "regular". OJJDP interpreted Congress' intent to be that "haphazard and accidental contact" between juveniles and incarcerated adults should be prohibited because this was the level of contact permitted under the regulation implementing the no "regular contact" prohibition in effect prior to the 1992 amendments. After further review, OJJDP believes that the no contact prohibition should be interpreted to preclude the systematic, procedural, and condoned contact between juveniles and incarcerated adults in secure areas of facilities. Consequently, OJJDP would not consider brief and inadvertent or accidental contact between juveniles and incarcerated adults in nonresidential areas of a secure facility to be a violation of the separation requirement. Specifically, OJJDP proposes to amend the regulation to provide that brief and inadvertent contact between juveniles and incarcerated adults in secure nonresidential areas of a facility such as dining, recreational, educational, vocational, health care, sallyports and passageways (hallways) should not be considered a violation of the JJDP Act separation requirement. However, in any secure residential area of a facility, any contact between juvenile offenders and adult inmates is prohibited.

Further, the regulation would provide definitions for sight and sound contact to assist in understanding what is permitted under § 223(a)(13). Sight contact is defined as clear visual contact between incarcerated adults and juveniles in close proximity of each other. For example, a detained juvenile who sees an adult inmate who is several hundred feet away is not in close proximity to the incarcerated adult. In this scenario, the juvenile is not exposed to any conceivable harm as a consequence of seeing an adult inmate several hundred feet away. A rule of reason should be exercised by jurisdictions in assessing whether a juvenile who is exposed visually to an incarcerated adult is in close proximity to that adult.

With respect to sound contact, the regulation would state that "direct" oral communication between incarcerated adults and juveniles is prohibited. This addition is intended to alleviate concerns over misinterpretation of this provision. The purpose of the provision is to prevent incarcerated adults from having direct oral communication with juveniles, thereby reducing the likelihood of intimidation and harassment. A rule of reason should also be exercised with sound contact. Direct oral communication such as conversations and yelling in close proximity is clearly prohibited. However, an incarcerated adult yelling at a juvenile who is several hundred feet away may not be engaged in direct oral communication with the juvenile.

Placement of Juveniles in Adult Facilities

Under the current regulation, States are prohibited from administratively reclassifying and transferring adjudicated delinquents to adult (criminal) correctional institutions. OJJDP recognizes that State laws are increasingly providing for the mandatory or permissible transfer of adjudicated delinquents to adult facilities once the delinquent has attained the age of full criminal responsibility under State law. Consequently, OJJDP proposes to amend the regulation to provide that it is not a violation of the separation requirement to transfer an adjudicated delinquent to an adult correctional institution once the adjudicated delinquent has reached the age of full criminal responsibility established by State law. The proposed regulation would permit the placement of an adjudicated delinquent who reaches the age of full criminal responsibility in an adult correctional facility only when such transfers are required or authorized by State law.

OJJDP also proposes to amend the regulation to permit the placement of an alleged or adjudicated delinquent in an adult jail or lockup for up to six hours immediately before or after a court appearance. Several States have advised OJJDP that the detention of a juvenile prior to a court appearance and the immediate transport of a juvenile after a court appearance creates a difficulty if there is more than one juvenile before the court on a given day or where separate facilities are not available. The secure detention of an alleged or adjudicated delinquent in a jail or lockup for up to six hours immediately before or after a court appearance would be permissible when circumstances warrant such a detention, and provided that such juveniles are separated from adult offenders.

Collocated Facilities

OJJDP currently requires that a needs-based analysis precede a jurisdiction's request for State approval and OJJDP's concurrence in order for a juvenile detention facility that is collocated with an adult jail or lockup to qualify as a separate juvenile detention facility. OJJDP finds that this requirement is best left to the State to determine whether a needs-based analysis should be required. In addition, OJJDP's concurrence with a State agency's decision to approve a collocated facility would no longer be required. The elimination of the needs-based analysis and OJJDP's concurrence does not negate the separation criteria set forth in § 31.303(e)(3)(D). The regularly scheduled review of State monitoring systems would insure that the facility continues to meet the separate juvenile detention facility criteria. Consequently, OJJDP proposes to modify § 31.303(e)(3) to reflect the elimination of the needs-based analysis and OJJDP's concurrence.

Under the current regulation, collocated facilities are prohibited from sharing common use nonresidential areas. Based on State and local input, OJJDP finds that common use nonresidential areas should be permissible in collocated facilities. This would require the utilization of time-phasing in order to allow both juveniles and adults access to available educational, vocational, and recreational areas of collocated facilities. The allowance of time-phased use would apply only to nonresidential areas in collocated facilities.

Deinstitutionalization of Status Offenders

OJJDP has found that confusion exists over the secure detention of accused status offenders and non-offenders. For purposes of clarification, OJJDP is adding a paragraph at the end of § 31.303(f)(2) to state clearly that it is permissible to hold an accused status

offender or a nonoffender in a secure juvenile detention facility for up to twenty-four hours, exclusive of weekends and holidays, prior to an initial appearance and up to twenty-four hours, exclusive of weekends and holidays, after an initial court appearance.

Valid Court Order

Under the current statute and regulation, an independent public agency (other than a court or law enforcement agency) is required to prepare and submit a written report to a court that is considering an order that directs or authorizes the placement of a status offender in a secure facility for the violation of a valid court order. A multi disciplinary review team that operates independently of a court is described in the regulation as one option for meeting the requirement, even where some members of the team may be law enforcement or court agency staff. Pretrial Service agencies are another option for jurisdictions to consider to meet the criteria of "other than a court or law enforcement agency." These offices operate in various jurisdictions to assess and evaluate individuals who are before the court for a determination on pretrial release or custody. The intent of this multi disciplinary provision was to provide States with an example of a public agency that would meet the criteria where some members of a team were employed by the courts and/or law enforcement. Because the wording of this provision had led some States to the conclusion that multi disciplinary teams are required, the provision would be deleted from the regulation.

Removal Exception

States are required to document and describe, in their annual monitoring report to OJJDP, the specific circumstances surrounding each individual use of the distance/ground transportation and weather exceptions to the jail and lockup removal requirement. OJJDP finds this requirement to be overly burdensome on the States and therefore proposes that it be deleted from the regulation.

Reporting Requirement

The JJDP Act provides that juveniles may be securely detained or confined pursuant to 18 U.S.C. 922(x) or a similar State law. Section 922(x) was added to the Federal Criminal Code by the Youth Handgun Safety Act that was passed as a part of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103–322, 108 Stat. 1796 (1994), codified as amended at 42 U.S.C. 13701 et seq. Specifically, § 922(x) makes it a Federal delinquent offense for a juvenile to possess a handgun. The possession of a handgun by a juvenile is, however, a status offense in those States where possession of a handgun by an adult is permitted. Consequently, the Youth Handgun Safety Act specifically amended the JJDP Act to exclude from the deinstitutionalization of status offenders requirement a juvenile who has violated § 922(x) or a similar State law. For the purpose of clarification, where § 922(x) initially appears in the regulation, it is described as a federal law prohibiting the possession of a handgun by a juvenile and specifically excluding such a violation, or the violation of a similar State law, from the coverage of the deinstitutionalization of status offenders requirement.

Compliance

OJJDP would delete the first two sentences of § 31.303(f)(6)(i) because it pertains to States substantially complying with the deinstitutionalization of status offenders core requirement in fiscal year 1993 and prior years. The substantial compliance criteria allowed States to be eligible for formula grant funding during these years if the State had achieve a seventy five percent reduction in the aggregate number of status offenders and nonoffenders held in secure detention or correctional facilities and had made an unequivocal commitment to achieving full compliance. Because this standard does not apply to fiscal years beyond 1994, OJJDP would remove it from the regulation. However, the portion of the section that defines full compliance would remain.

Under the current regulation, compliance with the separation requirement is considered to be achieved when a State can demonstrate that in the last monitoring report, covering a full 12 months of data, no juveniles were incarcerated in circumstances in violation of the separation requirement. Also, compliance can be achieved where a State has a law, regulation, court rule, or other established executive or judicial policy clearly prohibiting the incarceration of juvenile offenders in circumstances that would be in violation of the separation requirement, and violations reported do not constitute a pattern or practice in the State. However, a State that has no law or policy that mirrors the JJDP Act separation requirement could not be in compliance if any juvenile was held in violation of the separation requirement. OJJDP proposes to modify this policy in order not to unfairly penalize States that have not enacted laws, rules, regulations or policies prohibiting the incarceration of all juvenile offenders under circumstances that would be in violation of the separation requirement. OJJDP proposes a single standard applicable to all States regardless of whether a law, regulation, rule or policy exists that prohibits the detention of juveniles with incarcerated adults. Specifically, compliance can be established under circumstances in which the instances do not indicate a pattern or practice and mechanisms or plans to address exist within the State to ensure that such instances are unlikely to recur in the future.

Minority Detention and Confinement

Several States have expressed concern over the Disproportionate Minority Confinement (§ 223(a)(23)) core requirement of the JJDP Act. Specifically, this core requirement has been criticized as requiring the establishment of numerical standards or quotas in order for a State to achieve or maintain compliance. This is not the purpose of the statute or its implementing regulation. In order to respond to this concern, twe sentences have been added to § 31.303(j) of the regulation to state specifically that the purpose of the statute and regulation is to encourage States to address, programmatically, any features of its justice system that may account for the disproportionate detention or confinement of minority juveniles. The section states clearly that the Disproportionate Minority Confinement core requirement neither requires nor establishes numerical standards or quotas in order for a State to achieve or maintain compliance.

Executive Order 12866

This proposed rule is not a "significant regulatory action" for purposes of Executive Order 12866 because it does not result in: (1) An annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and (4) does not raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles of Executive Order No. 12866. The Office of Management and Budget has waived its review process for this rule under Executive Order 12866.

Regulatory Flexibility Act

This proposed rule, if promulgated, will not have a "significant" economic impact on a substantial number of small "entities" as defined by the Regulatory Flexibility Act. This action is intended to relieve existing requirements in the Formula Grants program and to clarify other provisions so as to promote compliance with its provisions by States participating in the program.

Paperwork Reduction Act

No collections of information requirements are contained in or affected by this regulation pursuant to the Paperwork Reduction Act, codified at 44 U.S.C. 3504(H).

Intergovernmental Review of Federal Programs

In accordance with Executive Order 12372 and the Department of Justice's implementing regulation 28 CFR Part 30, States must submit Formula Grant Program applications to the State "Single Point of Contact," if one exists. The State may take up to 60 days from the application date to comment on the application.

List of Subjects in 28 CFR Part 31

Grant programs—law, Juvenile delinquency, Grant programs.

For the reasons set forth in the preamble, it is proposed to amend the OJJDP Formula Grants Regulation, 28 CFR Part 31, as follows:

PART 31—[AMENDED]

1. The authority citation for Part 31 would continue to read as follows:

Authority: 42 U.S.C. 5601 et seq.

2. Section 31.303 is amended by revising paragraphs (d)(1)(i) and (v) to read as follows:

§ 31.303 Substantive requirements.

* * * * *

(d)(1) * * *

(i) Separation. Describe its plan and procedure, covering the three-year planning cycle, for assuring that the requirements of this section are met. The term "contact" includes any physical or sustained sight or sound contact between juveniles in a secure custody status and incarcerated adults, including inmate trustees. A juvenile in a secure custody status is one who is physically detained or confined in a locked room or other area set aside or used for the specific purpose of securely detaining persons who are in law enforcement custody. Secure detention or confinement may result either from being placed in such a room or area and/or from being physically secured to a cuffing rail or other stationary object. Sight contact is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between incarcerated adults and juveniles. Separation must be accomplished in all secure areas of the facility which include, but are not limited to, admissions, sleeping, toilet and shower, and other areas, as appropriate. Brief and inadvertent or accidental contact between juveniles in a secure custody status and incarcerated adults, in secure nonresidential areas of a facility such as dining, recreational, educational, vocational, health care, sally ports or other entry areas, and passageways (hallways) would not require a State to document or report such contact as a violation. However, any contact in a residential area of a secure facility between juveniles and incarcerated adults would be a reportable violation.

* * * * *

(v) Assure that adjudicated delinquents are not reclassified administratively and transferred to an adult (criminal) correctional authority to avoid the intent of separating juveniles from adult criminals in jails or correctional facilities. A State is not prohibited from placing or transferring an alleged or adjudicated delinquent who reaches the State's age of full criminal responsibility to an adult facility when required or authorized by State law. However, the administrative transfer, without statutory direction or authorization, of a juvenile offender to an adult correctional authority, or a transfer within a mixed juvenile and adult facility for placement with adult criminals, either before or after a juvenile reaches the age of full criminal responsibility, is prohibited. A State is also precluded from transferring adult offenders to a juvenile correctional authority for placement in a juvenile facility. This neither prohibits nor restricts the waiver or transfer of a juvenile to criminal court for prosecution, in accordance with State law, for a criminal felony violation, nor the detention or confinement of a waived or transferred criminal felony violator in an adult facility.

* * * * *

3. Section 31.303(e) is amended by revising paragraphs (e)(2), (e)(3) introductory text and (e)(3)(i) to read as follows:

§ 31.303 Substantive requirements.

* * * * *

(e) * * *

(2) Describe the barriers that a State faces in removing all juveniles from adult jails and lockups. This requirement excepts only those alleged or adjudicated juvenile delinquents placed in a jail or a lockup for up to six hours from the time they enter a secure custody status or immediately before or after a court appearance, those juveniles formally waived or transferred to criminal court and against whom criminal felony charges have been filed, or juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been invoked through the filing of criminal felony charges.

(3) Collocated facilities. (i) Determine whether or not a facility in which juveniles are detained or confined is an adult jail or lockup. The JJDP Act prohibits the secure custody of juveniles in adult jails and lockups, except as otherwise provided under the Act and implementing OJJDP regulations. Juvenile facilities collocated with adult facilities are considered adult jails or lockups unless paragraphs (e)(3)(i)(C)(*1*) through (*4*) criteria established in this section are complied with.

(A) A collocated facility is a juvenile facility located in the same building as an adult jail or lockup, or is part of a related complex of buildings located on the same grounds as an adult jail or lockup. A complex of buildings is considered "related" when it shares physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer), or the specialized services that are allowable under paragraph (e)(3)(i)(C)(*3*) of this section.

(B) The State must determine whether a collocated facility qualifies as a separate juvenile detention facility under the four criteria set forth in paragraphs (e)(3)(i)(C)(*1*) through (*4*) of this section for the purpose of monitoring compliance with § 223(a)(12)(A), (13) and (14) of the JJDP Act.

(C) Each of the following four criteria must be met in order to ensure the requisite separateness of a juvenile detention facility that is collocated with an adult jail or lockup:

(*1*) Separation between juveniles and adults such that there could be no sight or sound contact between juveniles and incarcerated adults in the facility. Separation can be achieved architecturally or through time-phasing of common use nonresidential areas; and

(2) Separate juvenile and adult programs, including recreation, education, vocation, counseling, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention facility which provides for a full range of separate program services. No program activities may be shared by juveniles and incarcerated adults. Time-phasing of common use nonresidential areas is permissible to conduct program activities. Equipment and other resources may be used by both populations subject to security concerns; and

(3) Separate staff for the juvenile and adult populations, including management, security, and direct care staff. Staff providing specialized services (medical care, food service, laundry, maintenance and engineering, etc.) who are not normally in contact with detainees, or whose infrequent contacts occur under conditions of separation of juveniles and adults, can serve both populations (subject to State standards or licensing requirements). The day to day management, security and direct care functions of the juvenile detention center must be vested in a totally separate staff, dedicated solely to the juvenile population within the collocated facilities; and

(4) In States that have established standards or licensing requirements for juvenile detention facilities, the juvenile facility must meet the standards (on the same basis as a free-standing juvenile detention center) and be licensed as appropriate. If there are no State standards or licensing requirements, OJJDP encourages States to establish administrative requirements that authorize the State to review the facility's physical plant, staffing patterns, and programs in order to approve the collocated facility based on prevailing national juvenile detention standards.

* * * * *

4. Section 31.303 is amended by revising paragraphs (f)(2), (3)(vi), and (4)(vi) to read as follows:

§ 31.303 Substantive requirements.

* * * * *

(f) * * *

(2) For the purpose of monitoring for compliance with section 223(a)(12)(A) of the Act, a secure detention or correctional facility is any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or non-offenders, or used for the lawful custody of accused or convicted adult criminal offenders. Accused status offenders or non offenders in lawful custody can be held in a secure juvenile detention facility for up to twenty-four hours, exclusive of weekends and holidays, prior to an initial court appearance and for an additional twenty-four hours, exclusive of weekends and holidays, following a court appearance.

(3) * * *

(vi) In entering any order that directs or authorizes the placement of a status offender in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order (paragraphs (f)(3)(i), (ii) and (iii) of this section) and the applicable due process rights (paragraph (f)(3)(v) of this section) were afforded the juvenile and, in the case of a violation hearing, the judge must obtain and review a written report that: reviews the behavior of the juvenile and the circumstances under which the juvenile was brought before the court and made subject to such order; determines the reasons for the juvenile's behavior and determines whether all dispositions other than secure confinement have been exhausted or are clearly inappropriate. This report must be prepared and submitted by an appropriate public agency (other than a court or law enforcement agency).

* * * * *

(4) * * *

(vi) Pursuant to section 223(a)(14) of the JJDP Act, the non-MSA (low population density) exception to the jail and lockup removal requirement as described in paragraphs (f)(4)(i) through (v) of this section will remain in effect through 1997, and will allow for secure custody beyond the twenty-four-hour period described in paragraph (f)(4)(i) of this section when the facility is located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for court appearances within twenty-four hours, so that a brief (not to exceed an additional forty-eight hours) delay is excusable; or the facility is located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until twenty-four hours after the time that such conditions allow for reasonably safe travel. States may use these additional statutory allowances only where the precedent requirements set forth in paragraphs (f)(4)(i) through (v) of this section have been complied with. This may necessitate statutory or judicial (court rule or opinion) relief within the State from the twenty-four hours initial court appearance standard required by paragraph (f)(4)(i) of this section.

* * * * *

5. Section 31.303(f)(5)(i)(C) is revised to read as follows:

§ 31.303 Substantive requirements.

* * * * *

(f) * * *

(5) * * *

(i) * * *

(C) The total number of accused status offenders and nonoffenders, including out-of-State runaways and Federal wards, held in any secure detention or correctional facility for longer than twenty-four hours (not including weekends or holidays), excluding those held pursuant to the valid court order provision as set forth in paragraph (f)(3) of this section or pursuant to section 922(x) of Title 18, United States Code (which prohibits the possession of a handgun by a juvenile), or a similar State law. A juvenile who violates this statute, or a similar state law, is excepted from the deinstitutionalization of status offenders requirement;

* * * * *

6. Section 31.303 is amended by revising paragraphs (f)(6)(i) and (ii) to read as follows:

§ 31.303 Substantive requirements.

* * * * *

(f) * * *

(6) * * *

(i) Full compliance with section 223(a)(12)(A) is achieved when a State has removed 100 percent of status offenders and nonoffenders from secure detention and correctional facilities or can demonstrate full compliance with de minimis exceptions pursuant to the policy criteria contained in the **Federal Register** of January 9, 1981 (46 FR 2566–2569).

(ii) Compliance with section 223(a)(13) has been achieved when a State can demonstrate that:

(A) The last submitted monitoring report, covering a full 12 months of data, demonstrates that no juveniles were incarcerated in circumstances that were in violation of section 223(a)(13); or

(B)(*1*) The instances reported under paragraph (f)(6)(ii)(A) of this section do not indicate a pattern or practice but rather constitute isolated instances; and

(*2*) Existing mechanisms or plans to address these incidences are such that they are unlikely to recur in the future.

* * * * *

7. Section 31.303 is amended by inserting the following sentences after the 2nd sentence of paragraph (j) introductory text:

§ 31.303 Substantive requirements.

* * * * *

(j) * * * The purpose of the statute and regulation is to encourage States to address, programmatically, any features of its justice system, and related laws and policies, which may account for the disproportionate detention or confinement of minority juveniles in secure detention facilities, secure correctional facilities, jails and lockups. The Disproportionate Minority Confinement core requirement neither establishes nor requires numerical standards or quotas in order for a State to achieve or maintain compliance.

* * *

* * * * *

Dated: June 26, 1996.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 96–16842 Filed 7–2–96; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 154 and 155

[CGD 94–032 and 94–048]

RIN 2115–AE87 and 2115–AE88

Tank Vessel and Facility Response Plans, and Response Equipment for Hazardous Substances

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearings.

SUMMARY: The Coast Guard is holding two public meetings on its proposed regulations under the Oil Pollution Act of 1990 (OPA 90) relating to the preparation of hazardous substance response plans to minimize the impact of a discharge or release of hazardous substances into the navigable waters of the United States. There is substantial public interest in the rulemaking. The Coast Guard is conducting the public meetings to receive view on what should be regulated and what appropriate regulations should be.

DATES: The meetings will be held on July 30, 1996, and August 5, 1996. The meetings will begin at 9:00 a.m. Comments must be received on or before September 3, 1996.

ADDRESSES: The July 30, 1996, meeting will be held in room 6200, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. The August 5, 1996, meeting will be held in the lecture hall of the Center for Advanced Space Studies, 3600 Bay Area Boulevard, Clear Lake, TX 77058. Written comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–032 and 94–048), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number if (202) 267–1477

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: LT Cliff Thomas, Project Manager, Office of Standards Evaluation and Development, at (202) 267–1099. This number is equipped to record messages on a 24-hour basis. Copies of the advanced notice of proposed rulemaking (ANPRM) may be obtained by submitting a request by facsimile at (202) 267–4547.

SUPPLEMENTARY INFORMATION:

Background Information

Response Plans for Hazardous Substances

The advanced noticed of proposed rulemaking (ANPRM) (61 FR 20084), published on May 3, 1996, solicited comments on 96 questions to assist in the development of a notice of proposed rulemaking for vessels and a notice of proposed rulemaking for marine transportation-related facilities (MTR).

Section 311(j)(5) of the Federal Water Pollution Control Act (FWPCA) [33 U.S.C. 1321(j)(5)], as amended by section 4202(a) of OPA 90, requires owners and operators of tank vessels, offshore facilities, and onshore facilities that could reasonably be expected to cause harm to the environment to prepare and submit plans for responding, to the maximum extent practicable, to a worst case discharge, or a substantial threat of such a discharge, of oil or hazardous substance. Section 4202(b)(4) of OPA 90 establishes an implementation schedule for these requirements with regard to oil. However, section 4202(b)(4) did not establish a compliance date requiring response plans for hazardous substances.

The Coast Guard issued two separate final rules: one requiring response plans for tank vessels carrying oil in bulk and another requiring response plans for marine transportation-related facilities (MTR) that handle, store, or transport oil in bulk. These final rules define many concepts such as "marine transportation-related facility," "maximum extent practicable," and "worst case discharge." The rules also provide a specific format for these response plans; however, they allow for deviations from this format as long as the required information is included and there is a cross reference sheet identifying its location. The Coast Guard is considering using these concepts or modifying them as necessary in the regulations for response plans for hazardous substances.

Public Meeting

The Coast Guard will hold two public meetings, the first on July 30, 1996, and the second on August 5, 1996. The public is invited to comment on the issues discussed in the 96 questions listed in the ANPRM. The general areas in which the Coast Guard seeks public comment are response plan contents and format, carriage of response equipment, training requirements, and economic impacts.

Attendance is open to the public. Persons who are hearing impaired may request sign translation by contacting the person under **FOR FURTHER INFORMATION CONTACT** at least one week before the meeting. With advance notice, and as time permits, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the person listed above under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted prior to, during, or after the meeting. Persons unable to attend the public meetings are encouraged to submit written comments as outlined in the ANPRM prior to September 3, 1996.

Dated: June 27, 1996.

Joseph J. Angelo,

Director, of Standards, Marine Safety and Environmental Protection.

[FR Doc. 96–17002 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5531–1]

Use of Alternative Analytical Test Methods in the Reformulated Gasoline Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the deadline for the use of certain alternative analytical test methods in the reformulated gasoline (RFG) program. Currently, the deadline for the use of these alternative test methods expires on January 1, 1997. This proposed amendment would extend the deadline for the use of alternative test methods in the reformulated gasoline program to September 1, 1998.

EPA is considering expanding the ability of industry to use various alternative analytical test methods. Extension of this deadline will allow refiners and others to continue using the currently approved alternative analytical test methods pending a final decision by EPA on additional alternatives. This proposed extension would result in greater flexibility for the regulated industry and reduce costs to all interested parties.

The RFG program reduces motor vehicle emissions of volatile organic compounds (VOC), oxides of nitrogen (NOx) and certain toxic pollutants. This proposed change in the deadline for the use of certain alternative test methods under § 80.46 preserves the status quo of the RFG program and will have no change in the emission benefits that result from the RFG program.

DATES: Comments on this proposed rule must be received by August 2, 1996.

ADDRESSES: Written comments on this proposed action should be addressed to Public Docket No. A–96–29, Waterside Mall (Room M–1500), Environmental Protection Agency, Air Docket Section, 401 M Street, S.W., Washington, D.C. 20460. Materials relevant to this rulemaking have been placed in Docket A–96–29. Documents may be inspected between the hours of 8:00 a.m. to 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Joseph R. Sopata, Chemist, U.S. Environmental Protection Agency, Office of Air and Radiation, (202) 233–9034.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities potentially regulated by this action are those that use analytical test methods to comply with the Reformulated Gasoline Program. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Oil refiners, gasoline importers, oxygenate blenders, analytical testing laboratories.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware that could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your business is regulated by this action, you should carefully examine the applicability criteria in § 80 of title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Introduction

A. RFG Standards

Section 211(k) of the Clean Air Act (the Act) requires that EPA establish standards for RFG to be used in specified ozone nonattainment areas (covered areas), as well as standards for non-reformulated, or conventional, gasoline used in the rest of the country, beginning in January, 1995. The Act requires that RFG reduce VOC and toxics emissions from motor vehicles, not increase NOx emissions, and meet certain content standards for oxygen, benzene and heavy metals. EPA promulgated the final RFG regulations on December 15, 1993.[1] See 40 CFR part 80, subpart D.

B. Test Methods Utilized at § 80.46

Refiners, importers and oxygenate blenders are required, among other things, to test RFG for various gasoline parameters or qualities, such as sulfur levels, aromatics, benzene, and so on. During the federal RFG rulemaking, and in response to comments by the regulated industry, EPA concluded that it would be appropriate to temporarily allow the use of alternative analytical test methods for measuring the parameters of aromatics and oxygenates. See 40 CFR 80.46. EPA adopted this provision because the designated analytical test methods for each of these parameters were costly and relatively new, leaving the industry little time to fully implement the designated analytical test methods. EPA therefore provided flexibility to the regulated industry by allowing the use of alternative analytical test methods for the two above mentioned parameters until January 1, 1997. After that date, use of the designated analytical test methods was required. Table 1 lists the designated analytical test method for each parameter measured under the RFG program.

TABLE 1.—DESIGNATED ANALYTICAL TEST METHOD UNDER THE RFG PROGRAM

RFG gasoline parameter	Designated analytical test method
Sulfur	ASTM D–2622–92, entitled "Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry".
Olefins	ASTM D–1319–93, entitled "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Absorption".
Reid Vapor Pressure	Method 3, as described in 40 CFR part 80, appendix E.
Distillation	ASTM D–86–90, entitled "Standard Test Method for Distillation of Petroleum Products".[1]
Benzene	ASTM D–3606–92, entitled "Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography".[2]
Aromatics	Gas Chromatography as described in 40 CFR part 80.46(f).[3]
Oxygen and Oxygenate content analysis.	Gas Chromatography as described in 40 CFR part 80.46(g).[4]

[1] Except that the figures for repeatability and reproducibility given in degrees Fahrenheit in Table 9 in the ASTM method are incorrect, and shall not be used.

[2] Except that Instrument parameters must be adjusted to ensure complete resolution of the benzene, ethanol and methanol peaks because ethanol and methanol may cause interference with ASTM standard method D–3606–92 when present.

[3] Prior to January 1, 1997, any refiner or importer may determine aromatics content using ASTM standard test method D–1319–93 entitled "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Absorption" for the purpose of meeting any testing requirement involving aromatics content. *Note:* The January 1, 1997 deadline is the subject of today's notice.

[4] Prior to January 1, 1997, and when oxygenates present are limited to MTBE, ETBE, TAME, DIPE, tertiary-amyl alcohol, and C_1 and C_4 alcohols, any refiner, importer, or oxygenate blender may determine oxygen and oxygenated content using ASTM standard method D–4815–93, entitled "Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C_1 and C_4 Alcohols in Gasoline by Gas Chromatography. *Note:* The January 1, 1997 deadline is the subject of today's notice.

[1] 59 FR 7812, February 16, 1994.

C. NPRA, API and Mobil Request To Extend the Deadline for the Use of Alternative Analytical Test Methods at § 80.46 Beyond January 1, 1997

Mobil Oil Corporation, the American Petroleum Institute (API) and the National Petroleum Refiners Association (NPRA) have requested that EPA extend the deadline for the use of alternative analytical test methods for the measurement of aromatics and oxygenates as specified in § 80.46. Currently, the ability to use alternative analytical test methods under § 80.46 expires on January 1, 1997. In a September 25, 1995 letter to EPA, API and NPRA jointly urged extension of the deadline for the use of alternative analytical test methods at § 80.46 beyond January 1, 1997. They argued an extension would allow industry to avoid the burden of ordering costly equipment that would be more difficult to operate and maintain, in order to comply with the designated analytical test method. They also contended that the designated analytical test method will not necessarily improve test results.

EPA intends to undertake a rulemaking to consider establishing a performance based analytical test method approach for the measurement of the reformulated gasoline (RFG) parameters at § 80.46. Under this approach, quality assurance specifications would be developed under which the performance of alternate analytical test methods would be deemed acceptable for compliance. The Agency envisions that this approach would provide additional flexibility to the regulated industry in their choice of analytical test methods to be utilized for compliance under the RFG and conventional gasoline programs for analytical test methods that differ from the designated analytical test method. EPA expects to finalize action on such a rulemaking by September 1, 1998.

In the meantime, EPA today is proposing to extend the deadline for the use of the alternative analytical test procedures for aromatics and oxygenates under § 80.46(f)(3) and § 80.46(g)(9) until September 1, 1998. The Agency believes that it would be more appropriate to allow parties to continue using these alternative analytical test methods until a final decision is made on the performance based analytical test method approach in order that parties may make long-term purchase decisions based on all the testing options that could be available at the conclusion of this rulemaking.

II. Environmental Impact

The RFG program, as required by the Act, obtains emission reductions for VOC, NO_X and toxic emissions from motor vehicles. This proposed change in the deadline for the use of certain alternative test methods under § 80.46 preserves the status quo of the RFG program and will result in no change in the emission benefits of the RFG program.

III. Economic Impact

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that Federal Agencies examine the impacts of their regulations on small entities. The act requires an Agency to prepare a regulatory flexibility analysis in conjunction with notice and comment rulemaking, unless the Agency head certifies that the rule will not have a significant impact on a substantial number of small entities. 5 U.S.C. 605(b). This proposed rule provides for flexibility in allowing the regulated industry to use certain alternative analytical test methods at § 80.46 for eighteen additional months. This proposed rule is not expected to result in any additional compliance cost to regulated parties and may be expected to reduce compliance cost for regulated parties because it continues to provide a choice for the procurement of test methods for aromatics and oxygenates under the RFG program. This analysis applies to regulated parties that are small entities, as well as other regulated parties. Based on this, the Administrator certifies that this proposed rule will not have a significant impact on a substantial number of small entities.

IV. Executive Order 12866

Under Executive Order 12866,[2] the Agency must determine whether a regulation is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[3]

It has been determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

V. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("UMRA"), P.L. 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, for any rule subject to Section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that this proposed rule does not include a federal mandate as defined in UMRA. This proposed rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and it does not establish regulatory requirements that may

[2] 58 FR 51735, October 4, 1993.

[3] *Id.* at section 3(f)(1)–(4).

significantly or uniquely affect small governments.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Gasoline, Reformulated gasoline, Conventional gasoline, Motor vehicle pollution.

Dated: June 26, 1996.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 80 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

Section 80.46 is amended by revising the paragraphs under (f)(F)(3)(i) and (g)(G)(9)(i) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

* * * * *

(f) * * *

(3) Alternative Test Method. (i) Prior to September 1, 1998, any refiner or importer may determine aromatics content using ASTM standard method D–1319–93, entitled "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption." For purposes of meeting any testing requirement involving aromatic content, provided that

* * * * *

(g) * * *

(9)(i) Prior to September 1, 1998, and when the oxygenates present are limited to MTBE, ETBE, TAME, DIPE, tertiary-amyl alcohol, and C1 to C4 alcohols, any refiner, importer, or oxygenate blender may determine oxygen and oxygenate content using ASTM standard method D–4815–93, entitled "Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C1 to C4 Alcohols in Gasoline by Gas Chromatography," for purposes of meeting any testing requirement; provided that

* * * * *

[FR Doc. 96–17027 Filed 7–2–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 90

[FRL–5530–8]

Revised Carbon Monoxide (CO) Standard for Class I and II Nonhandheld New Nonroad Phase 1 Small Spark-Ignition Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Today EPA is proposing a revision of the Phase 1 carbon monoxide (CO) emission standard for Class I and II new nonroad spark-ignition (SI) engines at or below 19 kilowatts. Today's action would increase the standard from 469 grams per kilowatt-hour (g/kW-hr) to 519 g/kW-hr. This proposed action is necessary to address the CO emission difference between oxygenated and nonoxygenated fuels that was not reflected when the Agency previously set the CO standard for these nonhandheld engines in a final rule published July 3, 1995. This correction of the nonhandheld engine CO standard would ensure that the CO standard for manufacturers of Class I and II small SI engines used to power equipment such as lawnmowers is achievable and otherwise appropriate under the Clean Air Act and that it is technically feasible for manufacturers to certify their engine models to the Phase 1 emission standards and make them commercially available for the 1997 model year.

In addition, today's action proposes to give the Administrator the option to permit the use of open crankcases in engines used exclusively to power snowthrowers. This proposed change will give EPA the flexibility to allow certain engine manufacturers to certify engines to be used in snowthrowers without making technological changes that would severely impair the ability of the engine to function or that would be economically prohibitive.

DATES: Written comments on this NPRM must be submitted by August 2, 1996. EPA will hold a public hearing on this NPRM sometime between [Insert date 15 days from date of publication] and August 2, 1996. If one is requested by July 15, 1996.

ADDRESSES: Written comments should be submitted (in duplicate, if possible) to: EPA Air and Radiation Docket, Attention Docket No. A–96–02, room M–1500 (mail code 6102), 401 M St., SW, Washington, D.C. 20460. Materials relevant to this rulemaking are contained in docket no. A–93–25 and docket no. A–96–02, and may be viewed from 8:00 a.m. until 5:30 p.m. weekdays. The docket may also be reached by telephone at (202) 260–7548. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying. Members of the public may call the contact person indicated below to find out whether a hearing will be held and if so, the exact location. Requests for a public hearing should be directed to the person indicated below. The hearing, if requested, will be held in Michigan.

FOR FURTHER INFORMATION CONTACT: Laurel Horne, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 741–7803. FAX: (313) 741–7816. Electronic mail: horne.laurel@epamail.epa.gov

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those which manufacture engines used in nonhandheld applications, such as lawnmowers, and those which manufacture engines used exclusively to power snowthrowers. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers of small (at or below 19 kW) nonroad engines used in nonhandheld applications such as lawnmowers.
Do	Manufacturers of small nonroad engines used exclusively to power snowthrowers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria in section 90.1 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding "FOR FURTHER INFORMATION CONTACT" section.

II. Obtaining Electronic Copies of Documents

Electronic copies of the preamble and the regulatory text of this notice of proposed rulemaking are available electronically from the EPA Internet site and via dial-up modem on the Technology Transfer Network (TTN), which is an electronic bulletin board system (BBS) operated by EPA's Office of Air Quality Planning and Standards. Both services are free of charge, except for your existing cost of Internet connectivity or the cost of the phone call to TTN. Users are able to access and download files on their first call using a personal computer and modem per the following information.

Internet:

World Wide Web:
http://www.epa.gov/OMSWWW

Gopher:
gopher://gopher.epa.gov/ Follow menus for: Offices/Air/OMS

FTP:
ftp://ftp.epa.gov/ Change Directory to pub/gopher/OMS TTN BBS: 919–541–5742
(1200–14400 bps, no parity, 8 data bits, 1 stop bit) Voice Help line: 919–541–5384.
Off-line: Mondays from 8:00 AM to 12:00 noon EST.

A user who has not called TTN previously first will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following menu choices from the Top Menu to access information on this rulemaking.

<T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
<M> OMS—Mobile Sources Information
<K> Rulemaking and Reporting
<6> Non-Road
<2> Non-road Engines

At this point, the system will list all available files in the chosen category in reverse chronological order with brief descriptions. To download a file, select a transfer protocol that is supported by the terminal software on your own computer, then set your own software to receive the file using that same protocol.

If unfamiliar with handling compressed (i.e. ZIP'ed) files, go to the TTN top menu, System Utilities (Command: 1) for information and the necessary program to download in order to unZIP the files of interest after downloading to your computer. After getting the files you want onto your computer, you can quit the TTN BBS with the <G>oodbye command.

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

III. Legal Authority

Authority for the actions set forth in this rule is granted to EPA by sections 213 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7547 and 7601(a)).

IV. The Carbon Monoxide Standard and Fuel Specification Issue

On March 4, 1996, Briggs and Stratton Corporation submitted to EPA a petition requesting reconsideration and revision of the certification fuel requirements and carbon monoxide (CO) emission standard for nonhandheld engines. The petition asks the Agency to amend its July 3, 1995 final rule, Emission Standards for New Nonroad Spark-ignition (SI) Engines At or Below 19 Kilowatts, hereafter referred to as the Phase 1 small SI engine regulations.[1] Specifically, the petition requests that the Agency amend the Phase 1 small SI engine rule to either: (1) permit the use of appropriate oxygenated gasolines for emissions certification testing as a direct alternative to Indolene[2] under the current CO standard, or (2) revise the CO standard for nonhandheld small engines from 469 grams per kilowatt-hour (g/kW-hr) to 536 g/kW-hr, in order to reflect the emission characteristics of these engines when tested on nonoxygenated gasolines. Nonhandheld engines are intended for use in nonhandheld applications and fall under one of two classes based on engine displacement.[3] Class I engines are less than 225 cubic centimeters (cc) displacement, and Class II engines are greater than or equal to 225 cc displacement.[4] In response to the Briggs and Stratton petition, EPA is revising the Phase 1 small SI engine regulation by increasing the CO standard for Class I and II nonhandheld small SI engines from 469 g/kW-hr to 519 g/kW-hr.

To help the reader understand EPA's response to the petitioner's request, the following text provides background on prior actions taken by the State of California's Air Resources Board (CARB), EPA, and industry relating to the fuel requirements and the CO standard for nonhandheld small SI engines.

Both EPA and CARB have regulations that pertain to nonhandheld small SI engines. Nonhandheld small SI engines manufactured for sale in the United States must meet EPA emission regulations starting with the 1997 model year. Engines produced for sale in California must also meet regulatory requirements specified by CARB. The small engine industry and other stakeholders have been actively involved in the development of EPA and CARB nonroad engine regulations.

CARB's CO Standard and Fuel Specifications

CARB began the process of developing emission regulations for small nonroad engines under the authority of the California Clean Air Act of 1988. In December 1990, the California Regulations for 1995 and Later Utility and Lawn and Garden Equipment Engines (hereafter referred to as the utility engine regulations) were initially approved. Among other requirements, CARB's Tier 1 utility engine regulations, as formally adopted in March 1992, specified that Class I and Class II engines produced from January 1, 1995, through December 31, 1998, must certify to a 300 gram per brake horsepower-hour (g/bhp-hr)carbon monoxide exhaust emission standard.[5]

In regard to certification fuel specifications, CARB's utility engine regulations referenced CARB on-road vehicle certification fuel specifications, which were adopted in 1987 and amended in July 1991. Consequently, engine manufacturers could select to certify their engines using either Indolene Clear or California Phase 1 Reformulated Gasoline. A later amendment to the utility engine regulations revised the certification fuel specifications to incorporate the most recent on-road motor vehicle fuel specification, California Phase II Reformulated gasoline. In a related mail-out, CARB stated that it had intended for engine test fuel specifications to be consistent with the on-road motor vehicle fuel specifications[6]; in the future, approved amendments to the CARB on-road vehicle fuel specifications will be immediately

[1] 60 FR 34582, July 3, 1995, codified at 40 C.F.R. part 90. The docket for the Phase 1 small SI engine rulemaking, EPA Air Docket #A–93–25, is incorporated by reference.

[2] See section 90.308(b) and page 34589 of the preamble for the certification fuel specification for the Phase 1 small SI engine rulemaking. Indolene is one possible federal certification fuel. Indolene is not the only eligible fuel, but it is within the eligible range specified in part 86 (section 86.1313–94(a)) to which the Phase 1 small SI engine rule refers. The Phase 1 small SI engine rulemaking provides for a range and based on experience with the on-highway program, EPA expects that engine manufacturers will use Indolene. California Phase II Reformulated Gasoline and other oxygenated fuels are not within the range specified in the Phase 1 small SI engine rule.

[3] For additional discussion of engine classes and handheld engine qualifications, see 60 FR 34585, July 3, 1995.

[4] Class I engines are predominantly found in lawnmowers. Class II engines primarily include engines used in generator sets, garden tractors, and commercial lawn and garden equipment.

[5] Throughout its utility engine regulations, CARB uses horsepower (hp) measurements, while in its small SI engine regulations, EPA refers to kilowatts (kW). To convert kilowatts to horsepower multiply kW by 1.34 and round to the same number of significant digits. In this case, 300 g/bhp-hr = 402 g/kW-hr.

[6] See CARB Mail-out #94–20, May 4, 1994, Utility and Lawn and Garden Equipment Engine Test Fuel Specifications.

applicable to engine certification test fuels.

In July, 1995, Briggs and Stratton Corporation petitioned CARB to amend its 300 g/bhp-hr CO standard for Class I and II engines to 350 g/bhp-hr. The company argued that it was not technically feasible to meet the 300 g/bhp-hr CO standard. After consideration of Briggs and Stratton's petition, CARB prepared a notice of public hearing and an accompanying staff report.[7] While expressing several concerns about the petition in the staff report, CARB staff recommended that the Board approve Briggs and Stratton's request. At a public hearing on January 25, 1996, the Board granted Briggs and Stratton's request, and adopted the recommended amendment to raise the Class I and II CO exhaust emission standard to 350 g/bhp-hr (equivalent to 469 g/kw-hr).[8]

EPA's CO Standard and Fuel Specifications

Not long after CARB began developing its utility engine regulations, EPA decided to adopt a phased approach for regulating emissions from small SI engines under the authority of section 213(a) of the Clean Air Act. For the first phase, EPA determined that the regulations would be similar to the CARB's Regulation for 1995 and Later Utility and Lawn and Garden Equipment Engines. EPA published its proposed rules on May 16, 1994. One provision of the proposal was that nonhandheld engines would be required to certify to a CO standard set at 402 g/kW-hr—equivalent to CARB's original CO standard of 300 g/bhp-hr. However, the certification test fuel specified in the Phase 1 proposal was different from CARB's. In its notice of proposed rulemaking (NPRM), EPA specified a fuel referred to as Clean Air Act Baseline (CAAB).[9] EPA noted in its preamble that although oxygenated and reformulated gasoline fuel was available in different areas around the United States, the availability varied widely.[10] Reformulated or oxygenated gasoline was therefore not specified as a certification test fuel for the Phase 1 NPRM.

Following publication of the Phase 1 NPRM, Briggs and Stratton submitted proprietary engine development data and analysis to EPA. The company argued that the data established a need for an increase to the nonhandheld CO standard from the proposed level of 402 g/kW-hr. The Engine Manufacturers Association (EMA) also provided comments in support of increasing the CO emission standard for Class I and II nonhandheld engines from the proposed 402 g/kw-hr to 469 g/kw-hr. EMA argued that it is not technically feasible for a significant percentage of the market to meet the more stringent proposed standard.

On July 3, 1995, EPA published its Phase 1 small SI engine final rulemaking.[11] The final provisions for both the nonhandheld CO emission standard and the certification fuel specifications differed from the proposed provisions. Based on its own review and analysis of the data submitted by Briggs and Stratton following publication of the NPRM, EPA decided to raise the CO standard for nonhandheld engines from the proposed level of 402 g/kw-hr to 469 g/kw-hr. The rationale for the increase of the nonhandheld CO standard is discussed in further detail in the final rule response to comments document.[12]

In the preamble to its final Phase 1 small SI engine rule, EPA discussed the provisions for the type of fuel to be used for certification and confirmatory testing. In response to comments received on the NPRM, the Agency decided to expand the range of specifications for certification fuels such that the fuel commonly referred to as Indolene Clear, in addition to the Clean Air Act Baseline (CAAB) fuel that was discussed in the proposal, would be allowed.[13] Indolene is the trade name for the gasoline fuel specified at 40 CFR 86.113 and 40 CFR 86.1313 for most on-highway federal compliance test procedures. Since the CARB regulation allows the use of either Indolene or Phase 2 fuel, a test performed using Indolene could be used to satisfy both federal and CARB requirements for small SI engines. Unknown by the Agency at the time EPA finalized the rule, Briggs and Stratton's data supporting the increased standard was based on testing conducted with oxygenated fuels, rather than the federal fuel specified in the NPRM.

In sum, while EPA had hoped its allowance of Indolene as a test fuel would facilitate consistency with CARB's program and allow manufacturers to conduct a single test for both the federal and CARB program, the Agency in fact set a standard that only engines tested on oxygenated fuel had been demonstrated to meet. In conjunction with a test fuel like Indolene the 469 g/kW-hr nonhandheld CO emission standard set in the Phase 1 small SI engine regulations is more stringent than the Agency intended because it did not take into account the effect of the oxygenated fuel used in the test data on which EPA based the standard.

Again, at the time EPA set the standard, the Agency did not know Briggs and Stratton's data had been generated through testing with oxygenated fuels. In addition, when CARB decided to relax its CO standard to 350 g/bhp-hr (469 g/kW-hr) in January 1996, it noted that the standard would be less stringent than federal regulations due to CARB's allowance of oxygenated, reformulated gasoline for certification. Although the CARB 350 g/bhp-hr CO standard and the federal 469 g/kW-hr CO standard are numerically equivalent, the latter does not allow for the use of oxygenated fuels such as Phase II reformulated gasoline, and is therefore more stringent than EPA believes is appropriate in light of the factors EPA is directed to consider in CAA section 213(a)(3). The Agency believes it is important to correct its nonhandheld CO emission standard to align with CARB's new standard, and more importantly, to ensure that the federal standard is technologically achievable and otherwise appropriate under section 213(a) by accounting for the CO emission offset between nonoxygenated and oxygenated fuels.

Following publication of the Phase 1 small SI engine final rule, Briggs and Stratton raised concerns in meetings with EPA that the Class I and II 469 g/kW-hr CO emission standard was not technologically feasible given the finalized certification fuel provisions. The Agency indicated in a letter to the EMA on November 3, 1995, that any change to the CO standard necessary to reflect differences in fuel effects would require that the Agency initiate a notice and comment rulemaking process.[14] Additionally, EPA stated in correspondence on January 24, 1996, that if Briggs and Stratton submitted an adequately supported petition to reconsider the final rule on this issue, EPA would initiate a rulemaking to raise the Phase 1 CO standard for nonhandheld engines by the amount of the emission offset.[15] On March 4, 1996, Briggs and Stratton formally petitioned

[7] See CARB Mail-out #95–43, Notice of January 25, 1996 Public Hearing.

[8] CARB Resolution 96–1, January 25, 1996.

[9] See Table 3 in Appendix A to Subpart D of Part 90 of the proposed Phase 1 regulations, available in EPA Air Docket #A–93–25, item III–A–2.

[10] 59 FR 25419, May 16, 1994.

[11] 60 FR 34584, July 3, 1995.

[12] See Response to Comments on the NPRM, in EPA Air Docket #A–93–25, Item V–C–01.

[13] See 40 CFR 90.306(b)(1).

[14] Letter from Chester France, EPA to Jed Mandel, EMA, November 3, 1995. A copy of this letter is included in the docket for this rulemaking.

[15] Letter from Paul Machiele, EPA to Addresses, January 24, 1996. A copy of this letter is included in the docket for this rulemaking.

the Agency to amend the Phase 1 small SI engine regulations in one of two ways: To permit the use of oxygenated fuels for certification while maintaining the 469 g/kW-hr CO standard, or to raise the CO standard for nonhandheld engines to 536 g/kW-hr.

Basis for the Briggs and Stratton Petition

In its petition, Briggs and Stratton describes the grounds on which it believes the Agency should grant its petition. The company argues that the Clean Air Act requires EPA to grant the petition and that granting the petition will further the primary purposes of the Phase 1 small SI engine regulations by enhancing the in-use control of NO_X emissions in small engine exhaust.

Briggs and Stratton states in its petition that the Agency is compelled by statute and by its prior findings to grant the petition. The company points out that the Clean Air Act specifies that the emission standards must be achievable giving appropriate consideration to the cost of applying available technology within the period of time available to manufacturers. EPA decided in its Phase 1 small SI engine final rule, states Briggs and Stratton, that the 469 g/kW-hr CO standard was the most stringent achievable CO standard for Class I and II nonhandheld engines when taking into account cost and leadtime concerns. Briggs and Stratton additionally argues that the law requires that the feasibility and stringency of federal emission standards depend upon the test procedures used to measure compliance. Because the data supplied by Briggs and Stratton and used by EPA to set the 469 g/kW-hr CO standard for nonhandheld engines was data collected using oxygenated fuels, while EPA's final rule does not allow for the use of an oxygenated certification test fuel, Briggs and Stratton argues that the rule must be revised to allow for the effect of the fuel difference.

In general, EPA agrees with Briggs and Stratton's argument that a change to the nonhandheld Phase 1 CO emission standard is necessary based on the Clean Air Act's requirement that the standard reflect the greatest degree of emission reduction achievable through the application of technology which EPA determines will be available for the regulated engines, giving appropriate consideration to the cost of applying such technology and other factors.[16] The Agency did determine that the 469 g/kW-hr CO standard for nonhandheld engines was appropriate based in part on test data supplied by Briggs and Stratton. Prior to publication of the final rule it was never indicated to EPA that the fuel these tests were conducted on was something other than what EPA had proposed in its NPRM. Absent any indication to the contrary, EPA had assumed that Briggs and Stratton had used a nonoxygenated fuel such as Clean Air Act Baseline when conducting the tests that generated the data the Agency used to set its nonhandheld CO emission standard. Had EPA been made aware of the fact that Briggs and Stratton had in fact used oxygenated fuel as the test fuel, the Agency would have taken the difference in the effect of the fuel into account when setting its final CO standard for nonhandheld engines. Analysis of data recently supplied by Briggs and Stratton of comparison testing using oxygenated and nonoxygenated fuels substantiates the company's claim that the fuel type affects CO emissions. EPA's analysis of Briggs and Stratton's data and of data collected in testing conducted by the Agency after publication of the Phase 1 small SI engine final rule indicates that nonhandheld engine CO emissions are indeed lower when run on oxygenated fuels than they are when run on nonoxygenated fuels.

Briggs and Stratton also argues, as grounds for EPA granting its petition, that allowing the use of oxygenated fuel would improve in-use control of NO_X in small engine exhaust. However, Briggs and Stratton's argument is theoretical, and not supported by any data analysis. As shown in the Regulatory Support Document (RSD) for this rule, the Agency's analysis of the test data recently supplied by Briggs and Stratton and of EPA's own test data indicate that the differences of changes in NO_X and HC depending on the use of oxygenated or nonoxygenated fuels are minimal.

V. Snowthrower Open Crankcase Issue

Specific engine manufacturers and the Engine Manufacturers Association (EMA) have raised concerns about the closed crankcase certification requirement specified in the Phase 1 small SI engine final rule at section 90.109. The Agency specified in its Phase 1 small SI proposal that crankcases must be closed as a requirement of certification in order to eliminate emissions that would otherwise occur when a crankcase is vented to the atmosphere. It was EPA's understanding that since most currently produced engines do have closed crankcases, this requirement would impact relatively few manufacturers. No comments were submitted in response to EPA's NPRM on this issue, and EPA finalized the provision requiring closed crankcases. Subsequent to publication of the Phase 1 small SI engine final rule, however, the Agency has been made aware of concerns specific to manufacturers of engines used exclusively in snowthrowers. These manufacturers have indicated that it is necessary to maintain an open crankcase in order to prevent the freeze up of the intake which would likely occur if a crankcase breather hose was required. Additionally, these manufacturers have provided evidence that the cost to close these crankcases and prevent freeze up would be prohibitively expensive—possibly in excess of the cost of the engine. Furthermore, they have argued that the emissions benefit does not justify the cost. HC + NO_X emissions resulting from having the crankcase open for snowthrower equipment will have no impact on summer ozone concentrations. Manufacturers claim that the CO emission impact on CO nonattainment will also be minor due to the limited numbers of these pieces of equipment and the small impact opening the crankcase has on overall CO emissions from this small number of engines. The Agency seeks additional and more detailed comment on the cost and emission impacts of open crankcases on engines used exclusively to power snowthrowers.

At this time the Agency has not received notification from any other parties regarding similar difficulties. The Agency seeks comment on whether there are engines used in other equipment types that face similar difficulties in meeting the closed crankcase requirement. The Agency requests that if such situations are identified, commenters submit documentation regarding the technical and economic need for utilizing an open crankcase.

The Agency is convinced by the arguments presented by the manufacturers of engines used exclusively in snowthrowers that a change to the closed crankcase requirement is appropriate. Therefore, EPA proposes that the Administrator be given the flexibility to allow open crankcases in certain circumstances for engines used exclusively in snowthrowers. The Administrator would consider allowing open crankcases for these engines if adequate demonstrations are made by the manufacturers that the applicable emission standards would be met and that the cost of abating emissions from an open crankcase would be prohibitive. The Agency seeks comment on this proposed provision and on what criteria the Administrator might apply in

[16] See 42 U.S.C. 7547(a)(3).

applicable to engine certification test fuels.

In July, 1995, Briggs and Stratton Corporation petitioned CARB to amend its 300 g/bhp-hr CO standard for Class I and II engines to 350 g/bhp-hr. The company argued that it was not technically feasible to meet the 300 g/bhp-hr CO standard. After consideration of Briggs and Stratton's petition, CARB prepared a notice of public hearing and an accompanying staff report.[7] While expressing several concerns about the petition in the staff report, CARB staff recommended that the Board approve Briggs and Stratton's request. At a public hearing on January 25, 1996, the Board granted Briggs and Stratton's request, and adopted the recommended amendment to raise the Class I and II CO exhaust emission standard to 350 g/bhp-hr (equivalent to 469 g/kw-hr).[8]

EPA's CO Standard and Fuel Specifications

Not long after CARB began developing its utility engine regulations, EPA decided to adopt a phased approach for regulating emissions from small SI engines under the authority of section 213(a) of the Clean Air Act. For the first phase, EPA determined that the regulations would be similar to the CARB's Regulation for 1995 and Later Utility and Lawn and Garden Equipment Engines. EPA published its proposed rules on May 16, 1994. One provision of the proposal was that nonhandheld engines would be required to certify to a CO standard set at 402 g/kW-hr—equivalent to CARB's original CO standard of 300 g/bhp-hr. However, the certification test fuel specified in the Phase 1 proposal was different from CARB's. In its notice of proposed rulemaking (NPRM), EPA specified a fuel referred to as Clean Air Act Baseline (CAAB).[9] EPA noted in its preamble that although oxygenated and reformulated gasoline fuel was available in different areas around the United States, the availability varied widely.[10] Reformulated or oxygenated gasoline was therefore not specified as a certification test fuel for the Phase 1 NPRM.

Following publication of the Phase 1 NPRM, Briggs and Stratton submitted proprietary engine development data and analysis to EPA. The company argued that the data established a need for an increase to the nonhandheld CO standard from the proposed level of 402 g/kW-hr. The Engine Manufacturers Association (EMA) also provided comments in support of increasing the CO emission standard for Class I and II nonhandheld engines from the proposed 402 g/kw-hr to 469 g/kw-hr. EMA argued that it is not technically feasible for a significant percentage of the market to meet the more stringent proposed standard.

On July 3, 1995, EPA published its Phase 1 small SI engine final rulemaking.[11] The final provisions for both the nonhandheld CO emission standard and the certification fuel specifications differed from the proposed provisions. Based on its own review and analysis of the data submitted by Briggs and Stratton following publication of the NPRM, EPA decided to raise the CO standard for nonhandheld engines from the proposed level of 402 g/kw-hr to 469 g/kw-hr. The rationale for the increase of the nonhandheld CO standard is discussed in further detail in the final rule response to comments document.[12]

In the preamble to its final Phase 1 small SI engine rule, EPA discussed the provisions for the type of fuel to be used for certification and confirmatory testing. In response to comments received on the NPRM, the Agency decided to expand the range of specifications for certification fuels such that the fuel commonly referred to as Indolene Clear, in addition to the Clean Air Act Baseline (CAAB) fuel that was discussed in the proposal, would be allowed.[13] Indolene is the trade name for the gasoline fuel specified at 40 CFR 86.113 and 40 CFR 86.1313 for most on-highway federal compliance test procedures. Since the CARB regulation allows the use of either Indolene or Phase 2 fuel, a test performed using Indolene could be used to satisfy both federal and CARB requirements for small SI engines. Unknown by the Agency at the time EPA finalized the rule, Briggs and Stratton's data supporting the increased standard was based on testing conducted with oxygenated fuels, rather than the federal fuel specified in the NPRM.

In sum, while EPA had hoped its allowance of Indolene as a test fuel would facilitate consistency with CARB's program and allow manufacturers to conduct a single test for both the federal and CARB program, the Agency in fact set a standard that only engines tested on oxygenated fuel had been demonstrated to meet. In conjunction with a test fuel like Indolene the 469 g/kW-hr nonhandheld CO emission standard set in the Phase 1 small SI engine regulations is more stringent than the Agency intended because it did not take into account the effect of the oxygenated fuel used in the test data on which EPA based the standard.

Again, at the time EPA set the standard, the Agency did not know Briggs and Stratton's data had been generated through testing with oxygenated fuels. In addition, when CARB decided to relax its CO standard to 350 g/bhp-hr (469 g/kW-hr) in January 1996, it noted that the standard would be less stringent than federal regulations due to CARB's allowance of oxygenated, reformulated gasoline for certification. Although the CARB 350 g/bhp-hr CO standard and the federal 469 g/kW-hr CO standard are numerically equivalent, the latter does not allow for the use of oxygenated fuels such as Phase II reformulated gasoline, and is therefore more stringent than EPA believes is appropriate in light of the factors EPA is directed to consider in CAA section 213(a)(3). The Agency believes it is important to correct its nonhandheld CO emission standard to align with CARB's new standard, and more importantly, to ensure that the federal standard is technologically achievable and otherwise appropriate under section 213(a) by accounting for the CO emission offset between nonoxygenated and oxygenated fuels.

Following publication of the Phase 1 small SI engine final rule, Briggs and Stratton raised concerns in meetings with EPA that the Class I and II 469 g/kW-hr CO emission standard was not technologically feasible given the finalized certification fuel provisions. The Agency indicated in a letter to the EMA on November 3, 1995, that any change to the CO standard necessary to reflect differences in fuel effects would require that the Agency initiate a notice and comment rulemaking process.[14] Additionally, EPA stated in correspondence on January 24, 1996, that if Briggs and Stratton submitted an adequately supported petition to reconsider the final rule on this issue, EPA would initiate a rulemaking to raise the Phase 1 CO standard for nonhandheld engines by the amount of the emission offset.[15] On March 4, 1996, Briggs and Stratton formally petitioned

[7] See CARB Mail-out #95–43, Notice of January 25, 1996 Public Hearing.

[8] CARB Resolution 96–1, January 25, 1996.

[9] See Table 3 in Appendix A to Subpart D of Part 90 of the proposed Phase 1 regulations, available in EPA Air Docket #A–93–25, item III–A–2.

[10] 59 FR 25419, May 16, 1994.

[11] 60 FR 34584, July 3, 1995.

[12] See Response to Comments on the NPRM, in EPA Air Docket #A–93–25, item V–C–01.

[13] See 40 CFR 90.308(b)(1).

[14] Letter from Chester France, EPA to Jed Mandel, EMA, November 3, 1995. A copy of this letter is included in the docket for this rulemaking.

[15] Letter from Paul Machiele, EPA to Addresses, January 24, 1996. A copy of this letter is included in the docket for this rulemaking.

the Agency to amend the Phase 1 small SI engine regulations in one of two ways: To permit the use of oxygenated fuels for certification while maintaining the 469 g/kW-hr CO standard, or to raise the CO standard for nonhandheld engines to 536 g/kW-hr.

Basis for the Briggs and Stratton Petition

In its petition, Briggs and Stratton describes the grounds on which it believes the Agency should grant its petition. The company argues that the Clean Air Act requires EPA to grant the petition and that granting the petition will further the primary purposes of the Phase 1 small SI engine regulations by enhancing the in-use control of NO_x emissions in small engine exhaust.

Briggs and Stratton states in its petition that the Agency is compelled by statute and by its prior findings to grant the petition. The company points out that the Clean Air Act specifies that the emission standards must be achievable giving appropriate consideration to the cost of applying available technology within the period of time available to manufacturers. EPA decided in its Phase 1 small SI engine final rule, states Briggs and Stratton, that the 469 g/kW-hr CO standard was the most stringent achievable CO standard for Class I and II nonhandheld engines when taking into account cost and leadtime concerns. Briggs and Stratton additionally argues that the law requires that the feasibility and stringency of federal emission standards depend upon the test procedures used to measure compliance. Because the data supplied by Briggs and Stratton and used by EPA to set the 469 g/kW-hr CO standard for nonhandheld engines was data collected using oxygenated fuels, while EPA's final rule does not allow for the use of an oxygenated certification test fuel, Briggs and Stratton argues that the rule must be revised to allow for the effect of the fuel difference.

In general, EPA agrees with Briggs and Stratton's argument that a change to the nonhandheld Phase 1 CO emission standard is necessary based on the Clean Air Act's requirement that the standard reflect the greatest degree of emission reduction achievable through the application of technology which EPA determines will be available for the regulated engines, giving appropriate consideration to the cost of applying such technology and other factors.[16] The Agency did determine that the 469 g/kW-hr CO standard for nonhandheld engines was appropriate based in part on test data supplied by Briggs and Stratton. Prior to publication of the final rule it was never indicated to EPA that the fuel these tests were conducted on was something other than what EPA had proposed in its NPRM. Absent any indication to the contrary, EPA had assumed that Briggs and Stratton had used a nonoxygenated fuel such as Clean Air Act Baseline when conducting the tests that generated the data the Agency used to set its nonhandheld CO emission standard. Had EPA been made aware of the fact that Briggs and Stratton had in fact used oxygenated fuel as the test fuel, the Agency would have taken the difference in the effect of the fuel into account when setting its final CO standard for nonhandheld engines. Analysis of data recently supplied by Briggs and Stratton of comparison testing using oxygenated and nonoxygenated fuels substantiates the company's claim that the fuel type affects CO emissions. EPA's analysis of Briggs and Stratton's data and of data collected in testing conducted by the Agency after publication of the Phase 1 small SI engine final rule indicates that nonhandheld engine CO emissions are indeed lower when run on oxygenated fuels than they are when run on nonoxygenated fuels.

Briggs and Stratton also argues, as grounds for EPA granting its petition, that allowing the use of oxygenated fuel would improve in-use control of NO_x in small engine exhaust. However, Briggs and Stratton's argument is theoretical, and not supported by any data analysis. As shown in the Regulatory Support Document (RSD) for this rule, the Agency's analysis of the test data recently supplied by Briggs and Stratton and of EPA's own test data indicate that the differences of changes in NO_x and HC depending on the use of oxygenated or nonoxygenated fuels are minimal.

V. Snowthrower Open Crankcase Issue

Specific engine manufacturers and the Engine Manufacturers Association (EMA) have raised concerns about the closed crankcase certification requirement specified in the Phase 1 small SI engine final rule at section 90.109. The Agency specified in its Phase 1 small SI proposal that crankcases must be closed as a requirement of certification in order to eliminate emissions that would otherwise occur when a crankcase is vented to the atmosphere. It was EPA's understanding that since most currently produced engines do have closed crankcases, this requirement would impact relatively few manufacturers. No comments were submitted in response to EPA's NPRM on this issue, and EPA finalized the provision requiring closed crankcases. Subsequent to publication of the Phase 1 small SI engine final rule, however, the Agency has been made aware of concerns specific to manufacturers of engines used exclusively in snowthrowers. These manufacturers have indicated that it is necessary to maintain an open crankcase in order to prevent the freeze up of the intake which would likely occur if a crankcase breather hose was required. Additionally, these manufacturers have provided evidence that the cost to close these crankcases and prevent freeze up would be prohibitively expensive—possibly in excess of the cost of the engine. Furthermore, they have argued that the emissions benefit does not justify the cost. HC + NO_x emissions resulting from having the crankcase open for snowthrower equipment will have no impact on summer ozone concentrations. Manufacturers claim that the CO emission impact on CO nonattainment will also be minor due to the limited numbers of these pieces of equipment and the small impact opening the crankcase has on overall CO emissions from this small number of engines. The Agency seeks additional and more detailed comment on the cost and emission impacts of open crankcases on engines used exclusively to power snowthrowers.

At this time the Agency has not received notification from any other parties regarding similar difficulties. The Agency seeks comment on whether there are engines used in other equipment types that face similar difficulties in meeting the closed crankcase requirement. The Agency requests that if such situations are identified, commenters submit documentation regarding the technical and economic need for utilizing an open crankcase.

The Agency is convinced by the arguments presented by the manufacturers of engines used exclusively in snowthrowers that a change to the closed crankcase requirement is appropriate. Therefore, EPA proposes that the Administrator be given the flexibility to allow open crankcases in certain circumstances for engines used exclusively in snowthrowers. The Administrator would consider allowing open crankcases for these engines if adequate demonstrations are made by the manufacturers that the applicable emission standards would be met and that the cost of abating emissions from an open crankcase would be prohibitive. The Agency seeks comment on this proposed provision and on what criteria the Administrator might apply in

[16] See 42 U.S.C. 7547(a)(3).

determining whether costs are prohibitive.

VI. Provisions of This Rulemaking

In response to the petition submitted by Briggs and Stratton Corporation, EPA has decided to propose revising the CO emission standard for Class I and II nonhandheld small SI engines from 469 g/kW-hr to 519 g/kW-hr. The underlying technical analysis and a description of the data on which it is based is presented in the Regulatory Support Document, a copy of which is in the public docket for this rulemaking.

Given that the Agency, had it known that Briggs and Stratton had used an oxygenated test fuel to generate the test data which EPA used to set the Class I and II nonhandheld standard, would have taken fuel effects into account when determining the CO standard, the Agency believes that it is appropriate, now knowing about the fuel differences, to revise the Phase 1 final rule to reflect the fuel effect on CO emissions.

Briggs and Stratton suggested two options that the Agency might take to revise the Phase 1 rule in a way that would address the company's concerns. The first suggested option was for the Agency to permit the use of appropriate oxygenated gasolines for emissions certification testing as a direct alternative to Indolene under the current CO standard. The Agency has decided not to take this approach for several reasons. While the Agency based its nonhandheld Class I and II emission standards on Briggs and Stratton test data, which it now knows was run on oxygenated fuels, the same cannot be said for the data EPA used to set its standards for Classes III, IV, and V engines. The Agency's greatest concern regarding the allowance of oxygenated fuels generally is the effect on the stringency of the emission standards. If the Agency were to allow certification testing on oxygenated fuels but maintain its current standards, it would not be certain of the benefits of HC and NO_x emission reductions described in the final rule when the engines are run on nonoxygenated fuels in the field. In addition, the Agency has concerns about the nationwide availability of oxygenated fuel. While it is required in certain nonattainment areas, those areas of the country that are in attainment may not have reformulated or oxygenated fuels commercially available. Correcting the CO standard is also the simplest and least complicated solution to address the problem presented by Briggs and Stratton's petition in a timely manner, which is critical so that engine manufacturers will be able to certify their model year 1997 production engines. Therefore, the Agency has decided to address the issue of the appropriateness of the nonhandheld CO emission standard by proposing to revise the CO standard for Class I and II engines while retaining the specified certification test fuel.

To determine the amount by which to propose a revision to the standard, EPA analyzed the comparative test data recently supplied by Briggs and Stratton. When Briggs and Stratton submitted the data, the company noted in a cover letter that the use of oxygenated fuels reduced CO emissions by up to 47 g/kW-hr. However, Briggs and Stratton requested in its petition that the Agency revise its CO standard upward by 67 g/kW-hr, which would mean a new standard of 536 g/kW-hr. No additional data was supplied to the Agency to support such an increase. The rationale given by Briggs and Stratton for requesting an additional 20 g/kW-hr is that the test data supplied represents a limited number of engine tests, and does not account for production variability. EPA's response to the petitioner's argument is that the Agency took production variability into account when setting the original 469 g/kW-hr standard for the Phase 1 final rule. Any change to the CO emission standard should thus be based solely on differences in fuel type.

Analysis of Briggs and Stratton data and of EPA test data indicates that indeed there are cases where the effects of fuel differences on the CO standard may be as much as 50 g/kW-hr. Given the limited quantity of data, EPA considered quantifying the difference in fuel types and the resultant change in CO emission standard by comparing the two means from sample data using the two fuel types. As explained in the RSD, statistical tests comparing the means of the two populations (oxygenated fuel and nonoxygenated fuel) indicate an average difference of 30.6 g/kW-hr for Class I engines, and 26.6 g/kW-hr for Class II engines. However, EPA determined that it is most appropriate, and in keeping with its approach for establishing the 469 g/kW-hr standard in the final rule,[17] to adjust the standard to take into account the largest offsets observed in the Briggs and Stratton and EPA data, and to ensure harmonization with CARB. The Agency thus concludes that in order for engine manufacturers to achieve the greatest CO emission reduction with the technology available within the given time limits of the Phase 1 small SI engine regulation that it is appropriate to increase the nonhandheld CO standard by 50 g/kW-hr to 519 g/kW-hr. In reaching this conclusion, EPA has attempted to determine an appropriate offset attributable to the effect of oxygenated fuel, while preserving to the greatest extent possible the balance made by the final Phase 1 rule of various factors such as technical feasibility, cost, lead time, and harmonization with CARB.

This proposed action will further harmonize the Class I and II CO standard with California's analogous standard, considering CARB's recent action to increase its CO standard to 350 g/bhp-hr (469 g/kW-hr). The Agency considers a nonhandheld CO emission standard of 519 g/kW-hr with the use of a nonoxygenated fuel such as Indolene to be roughly equivalent to CARB's Class I and II CO standard of 350 g/bhp-hr with the use of an oxygenated fuel such as California Phase II.

As indicated in EPA's November 3, 1995, letter to EMA, the Agency already provides a mechanism for those manufacturers who certify in California using oxygenated fuel and wish to use those test results for certification with EPA. Manufacturers may apply to EPA under the alternative test procedures provision contained in the Phase 1 small SI engine final rule (section 90.120(b)). If a manufacturer's submitted data indicates that its test engine would comply with the applicable federal emission standard using federal fuel, EPA would determine that the engine family meets the requirements of Phase 1 and issue a certificate of conformity. EPA has stated [18] that it will work with manufacturers to assist them in making the required technical demonstrations under the alternative certification procedures.

This proposed action would also provide the Administrator with the option of permitting open crankcases on engines used exclusively to power snowthrowers, provided that the affected engine complies with applicable standards and the manufacturer demonstrates that the cost of closing the crankcase is prohibitive.

VII. Environmental Benefit Assessment

Although the change in the nonhandheld CO standard results in a change from the 7% reduction in CO estimated in the final rule to a 2% reduction in the CO inventory, the Agency has concluded that this rule has no effect on the HC + NO_x inventory and minimal effect on the CO inventory in nonattainment areas. The majority of equipment powered by the Class I and II nonhandheld engines subject to this rule is used during the summer months, when CO nonattainment is generally not a concern. Many nonhandheld engine models are expected to have CO emission levels well below the standard since CO levels are controlled in meeting the HC + NO_x emission standards which are not affected by this action.

The provision to provide the Administrator with the option of permitting open crankcases in engines used exclusively to power snowthrowers will require manufacturers seeking to demonstrate the need for open crankcases to show compliance with applicable standards. The Agency expects, therefore, that the proposed open crankcase option will not affect the emission inventory or the emission reductions to be achieved by the Phase 1 small SI engine final rule.

VIII. Economic Effects

The Agency anticipates that this rule will have minimal, if any, affect on the costs or benefits of the Phase 1 small SI engine final rule. Industry costs are unlikely to change because engine manufacturers will not need to make additional modifications to meet the relaxed CO standard. As there will be no additional cost for industry to pass on to the consumer as a result of this rulemaking, EPA is convinced that consumer cost impacts will remain unchanged. The Agency therefore concludes that the economic effects of this rulemaking are negligible.

IX. Effective Date

EPA is proposing to make these regulations effective upon signature of the final rule because these regulations will not require any lead time for compliance.

X. Public Participation

A. Comments and the Public Docket

The Agency welcomes comments on all aspects of this proposed rulemaking. All comments (preferably in duplicate), with the exception of proprietary information, should be directed to the EPA Air Docket Section, Docket No. A–96–02 (see **ADDRESSES**). Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by:

- labeling proprietary information "Confidential Business Information" and
- sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket.

This will help ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission labeled as confidential business information as part of the basis for the final rule, then a nonconfidential version of the document, which summarizes the key data or information, should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, the submission may be made available to the public without notifying the commenters.

B. Public Hearing

Anyone wishing to present testimony about this proposal at the public hearing, should one be requested, (see DATES) should, if possible, notify the contact person (see **FOR FURTHER INFORMATION CONTACT**) at least two business days prior to the day of the hearing. The contact person should be given an estimate of the time required for the presentation of testimony and notification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the contact earlier. This testimony will be scheduled on a first-come, first-served basis, and will follow the testimony that is arranged in advance.

The Agency recommends that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing at least two business days before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Such advance copies should be submitted to the contact person listed.

XI. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), EPA must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the executive order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the order.

EPA has determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This rule does not contain any new information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., nor does it change the information collection requirements the Office of Management and Budget (OMB) has previously approved. OMB has previously assigned OMB control number 2060–0338 to the requirements associated with the nonroad small SI engine certification information collection request (ICR); this action does not change those requirements in any way.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (signed into law on March 22, 1995) requires that EPA prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 of the Unfunded Mandates Reform Act requires EPA to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, EPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. EPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless EPA explains why this alternative is not selected or the

[17] See the Response to Comments document in EPA Air Docket # A–93–25.

[18] Letter from Chester France, EPA to Jed Mandel, EMA, November 3, 1995.

selection of this alternative is inconsistent with law.

Because the rule proposed here is expected to result in the expenditure by state, local, and tribal governments or the private sector of less than $100 million in any one year, EPA has not prepared a budgetary impact statement or specifically addressed selection of the least costly, most cost-effective or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, EPA is not required to develop a plan with regard to small governments.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601) requires EPA to consider potential impacts of proposed regulations on small business. If a preliminary analysis indicates that a proposed regulation would have a significant adverse economic impact on a substantial number of small business entities, a regulatory flexibility analysis must be prepared.

This rule decreases the stringency of the CO exhaust emission standard for Class I and II nonhandheld engines, thereby potentially creating beneficial effects on small businesses by easing one provision required of small engine manufacturers by the Phase 1 small SI engine regulations. As a result, EPA certifies that this rulemaking will not have a significant adverse effect on a substantial number of small entities. Consequently, EPA has not prepared a regulatory flexibility analysis for this rule.

List of Subjects in 40 CFR Part 90

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Environmental protection, Imports, Incorporation by reference, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements.

Dated: June 26, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 90 of title 40 of the Code of Federal Regulations is amended as follows:

PART 90—CONTROL OF EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

Subpart B—[Amended]

2. Section 90.103 is amended by revising the table in paragraph (a) introductory text to read as follows:

§ 90.103 Exhaust emission standards.

(a) * * *

EXHAUST EMISSION STANDARDS

[Grams per kilowatt-hour]

Engine displacement class	Hydrocarbon plus oxides of nitrogen	Hydrocarbon	Carbon monoxide	Oxides of nitrogen
I	16.1	.....	519	.....
II	13.4	.....	519	.....
III	.....	295	805	5.36
IV	.....	241	805	5.36
V	.....	161	603	5.36

* * * * *

3. Section 90.109 is amended by adding new paragraph (c) to read as follows:

§ 90.109 Requirement of certification—closed crankcase.

* * * * *

(c) Notwithstanding paragraph (a) of this section, the Administrator may exercise the option to permit open crankcases for engines used exclusively to power snowthrowers based upon a manufacturer's demonstration, approved in advance by the Administrator, that all applicable emission standards will be met by the engine and that the cost of closing the crankcase is prohibitive.

[FR Doc. 96–16856 Filed 7–02–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–119; RM–8667]

Radio Broadcasting Services; Dafter, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a petition filed by Dafter Community Broadcasters proposing the allotment of Channel 293A to Dafter, Michigan. *See* FR 38539, July 27, 1995. Petitioner failed to provide sufficient information to establish community status for Dafter. Therefore, in keeping with Commission policy to refrain from allotting channels to communities lacking community status, we have dismissed the petiton for Dafter. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 95–119, adopted May 8, 1996, and released June 21, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–16767 Filed 7–2–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–140, RM–8824]

Radio Broadcasting Services; Hemphill, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Phillip Burr proposing the allotment of Channel 280A at Hemphill, Texas, as the community first local FM service. Channel 280A can be allotted to Hemphill in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.2 kilometers (1.4 miles) north in order to avoid a short-spacing conflict with the licensed site of Station KBIU(FM), Channel 279C1, Lake Charles, Louisiana. The coordinates for Channel 280A at Hemphill are 31–21–30 and 93–51–24.

DATES: Comments must be filed on or before August 19, 1996, and reply comments on or before September 3, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Cary S. Tepper, Booth, Freret & Imlay, P.C., 1233 20th Street, NW., Suite 204, Washington, DC 20554 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96–140, adopted June 21, 1996, and released June 28, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–16958 Filed 7–2–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 950725189–6182–03; I.D. 060696A]

RIN 0648–AI92

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Changes in Catch Limits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS proposes commercial vessel trip limits for the Atlantic migratory group of king mackerel. The intended effects of this rule are to preclude an early closure of the commercial fishery, protect king mackerel from overfishing, and maintain healthy stocks while still allowing catches by important commercial fisheries.

DATES: Written comments must be received on or before July 18, 1996.

ADDRESSES: Comments must be mailed to Mark F. Godcharles, Southeast Region, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Send requests for copies of the regulatory amendment document (dated June 1995) and its supplement (dated February 1996), which include the environmental assessment and regulatory impact review for this action, to the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are regulated under the FMP. The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented by regulations at 50 CFR part 642.

In accordance with the framework procedures of the FMP, the South Atlantic Council (Council) recommended to the Director, Southeast Region, NMFS (Regional Director), a regulatory amendment, which, among other changes, included establishment of commercial vessel trip limits for the Atlantic migratory group of king mackerel. These vessel trip limits were included in a proposed rule published on August 3, 1995 (60 FR 39698). A final decision by NMFS on whether the trip limits were consistent with the National Standards of the Magnuson Fishery Conservation and Management Act (Magnuson Act) was deferred, and the reasons for the deferral were published in the final rule implementing the approved measures of the regulatory amendment (60 FR 5768, November 17, 1995). The Council revised the proposed trip limits to address cited deficiencies, took additional public comment, and resubmitted a supplemented regulatory amendment for NMFS' review and approval.

The Council proposes daily trip limits for vessels harvesting under the commercial allocation for Atlantic group king mackerel. This segment of the fishery has not been subject to trip limits. As revised, the daily possession/landing limit for a vessel using non-prohibited gear and having a Federal commercial mackerel permit would be 3,500 lb (1,588 kg) of king mackerel in or from the exclusive economic zone (EEZ) year-round in the northern area (i.e., between the New York/Connecticut and Flagler/Volusia County, FL boundaries). Off Volusia County, FL, the daily trip limit would be 3,500 lb (1,588 kg) of king mackerel in or from the EEZ from April 1 through October 31. South of there, between the Volusia/Brevard and Dade/Monroe County boundaries, the daily trip limit would be 500 lb (227

kg) of king mackerel in or from the EEZ from April 1 through October 31. In the southernmost area, off Monroe County (Florida Keys), the daily trip limit would be 1250 lb (567 kg) of king mackerel in or from the EEZ from April 1 through October 31. All trip limits proposed for the Atlantic group king mackerel are daily landing/possession limits that would be reduced to zero for that group when the annual commercial allocation is reached.

The Council desires implementation as soon as possible in the fishing year that began April 1, 1996, to preclude excessive early season harvest of king mackerel, early closure, disproportionate harvest of the allocation by regional fisheries, subsequent negative socioeconomic impacts, recruitment overfishing, and waste.

In its resubmitted proposal, the Council revised the original trip limit proposals by converting limits on the number of fish that may be possessed or landed to equivalent pounds of fish. The Council determined that this change was necessary to prevent waste caused by high-grading (i.e., the act of discarding smaller fish and replacing them with larger ones to maximize aggregate poundage landed while complying with the daily trip limit on the number of fish landed). Such waste causes estimates of release and fishing mortality to be lower than the actual mortality and results in an inaccurate evaluation of the status of the stocks and of the fishery impacts on the resource.

Trip limits were first proposed in conjunction with a proposed decrease in total allowable catch (TAC) from 10.0 million lb (4,536 metric tons (mt)) to 7.3 million lb (3,311 mt) for the Atlantic group king mackerel for the 1995/96 fishing year (August 3, 1995, 60 FR 39698). The reduced TAC was approved by NMFS and implemented through a final rule (November 17, 1995, 60 FR 57686). Further decreases were expected for the 1996/97 fishing year . The 7.3–million lb TAC decreased the commercial allocation for the 1995–96 fishing year from the previous level of 3.71 million lb (1,683 mt) to 2.70 million lb (1,225 mt). The Council reduced TAC to the lower range of the acceptable biological catch (ABC) in anticipation of a lower ABC for the 1996/97 fishing year, and expressed concerns about the status of both the Atlantic and Gulf groups of king mackerel and recent low catches.

As the Council expected and the 1995 Mackerel Stock Assessment Panel Report projected, the 1996 Report of the Mackerel Stock Assessment Panel presented lower estimates of the spawning potential ratio (SPR) and the ABC for Atlantic group king mackerel. Although some of the decreases in these parameters may be attributed to new analytical methods, most are attributable to the inclusion of more accurate estimates for the mortality of juvenile and subadult mackerels taken as incidental bycatch in the Atlantic shrimp trawl fishery off southeastern states. The 1996 modal SPR estimate of 32 percent is down by about 36 percent from the approximate 50 percent level estimated for previous years, and the 1996 ABC is about half of 1995 estimates. The 1996 ABC range estimate is 4.1 - 6.8 million lb (mode: 5.5 million lb) (1,860 - 3,084 mt, mode: 2,495 mt) compared to the 1995 estimate of 7.3 - 15.5 million lb (mode: 10.9 million lb) (3,311 - 7,031 mt, mode: 4,944 mt). The Council sets TAC within the ABC range usually at or below the modal value suggesting that the 1996/97 TAC will be even lower than last year's 7.3 million lb (3,311 mt) that yielded commercial and recreational allocations of 2.70 (1.225 mt) and 4.60 M (2.087 mt), respectively.

Although the 1996 estimate of SPR indicates that the Atlantic group king mackerel is not overfished, the lower SPR value suggests, as the Council previously suspected, that stock size may not be as large as previous estimates indicated. The modal 1996 SPR estimate is reduced to 32 percent, well below the 1995 estimate of 55 percent and just above the 30 percent overfished level currently defined in the FMP. Even though the estimated 32 percent SPR level is well above the overfishing level of 20 percent SPR proposed in FMP Amendment 8, it is below the Council's proposed target SPR of 40 percent for achieving maximum sustainable yield or long-term optimum yield (OY). Moreover, the actual total catch (commercial and recreational combined) may have reached its lowest level (5.92 million lb; 2,685 mt) in 15 years during the 1994/95 season; preliminary estimates indicate that the 1995/96 catch will remain at this same low level. In the past nine years, total catch has exceeded 7.30 million lb (3,311 mt) four times.

The Council also proposed the trip limits, in anticipation of increased effort in the fishery, to prevent excessive harvest of pre-spawning and spawning fish and recruitment overfishing. The Council is concerned that a number of new entrants may join the fishery as a result of the recent prohibition on gillnet use in Florida waters (July 1, 1995) and New England fishery closures.

The Council recommended the trip limits not only to provide increased protection for Atlantic group king mackerel but also for the Gulf group. The trip limits would prevent the detrimental effects of excessive catches of the Atlantic group throughout the spring/summer spawning season and of the Gulf group during April. King mackerel harvest in April, unrestricted by daily vessel trip limits, could result in the unintentional taking of large quantities of Gulf group king mackerel when such fish are still located within the boundaries of the Atlantic group. Tag and recapture information indicate that king mackerel off south Florida from late fall through early spring, particularly off the Florida Keys, mostly belong to the Gulf migratory group.

The fishing season for Atlantic group king mackerel fishery opens annually on April 1, and vessels targeting fish with hook-and-line, run-around gillnet, and purse seine gear are not restricted by trip limits. Consequently, excessive capture of Gulf group king mackerel could occur off south Florida in April if conditions delay emigration to spring/summer spawning grounds.

The Council considers such catches "double-dipping" (i.e., overrunning of quotas that have already been harvested). In the past two years, hook-and-line and run-around gillnet quotas for Gulf group king mackerel were reached or exceeded, and respective fisheries were closed, after large February catches off the Florida Keys. The Gulf group king mackerel stock is still considered overfished; preliminary calculations for the 1996/97 fishing year suggest that this group would remain in the overfished status even under the less restrictive overfished/overfishing definitions proposed in Amendment 8.

Excessive capture of king mackerel, unrestrained by trip limits and under a reduced commercial allocation, could result in a disproportionately large harvest off south Florida and an early closure of the commercial fishery for the Atlantic group. Fishery participants in the northern area might then lose the opportunity to harvest their traditional and equitable share of the allocation. Atlantic group king mackerel support an important fall fishery off North Carolina. An early fishery closure would adversely affect these traditional fisheries and could lead to severe socioeconomic impacts and subsequent requests for relief through emergency action.

To keep the recreational catch within the reduced allocation of 4.6 million lb (2,087 mt), the recreational bag limit for the EEZ from New York through Georgia was reduced on January 1, 1996, from

five to three fish per person. The Council determined that this reduction would be sufficient to maintain catch within the decreased allocation without changing the two-fish bag limit off Florida. Recreational catch estimates indicated that the bag limit reduction in the northern area (Georgia through New York) would provide about a 10 percent reduction in catch. In addition, 1995 catch estimates for the 1988/89 through 1990/91 fishing years, when the bag limit was three fish in the northern area and two fish off Florida, were below 4.6 million lb (2,087 mt).

Although a recreational bag limit reduction was approved to reduce catch in alignment with the decreased 1995/96 recreational allocation, NMFS deferred the decision to approve or disapprove the collateral commercial vessel trip limits until certain analytical and procedural deficiencies were corrected. The Council has addressed the deficiencies and revised and resubmitted the trip limit proposals. In conjunction with the public review of Amendment 8 to the FMP, additional public hearings were conducted to review the proposed trip limits. Thereafter, the Council revised its proposal to convert the units for the trip limits from numbers of fish to pounds of fish to reduce waste from the practice of high-grading and to allow vessels operating in the commercial fishery off Monroe County (Florida Keys) from April 1 though October 31 to possess or land up to 1250–lb (567–kg) per trip, thus reducing socioeconomic impacts on that sector. Preliminary review of the revised supporting documents indicates that the Council has addressed the deficiencies previously noted in the initial analyses. As discussed below, NMFS' preliminary review of the Council's re-submission did not reveal any inconsistencies with the national standards.

Consistency with the National Standards

In regard to the original trip limit proposals, as discussed in the preamble to the final rule implementing the approved measures of the Council's regulatory amendment (60 FR 57686; November 17, 1995), inaccuracies and inconsistencies in the analyses of impacts and inadequate opportunity for public comment prevented NMFS from determining if the proposals were consistent with the National Standards (N.S.). Some letters received during the comment period, which was announced in the proposed rule (60 FR 39698; August 3, 1995), contended that the trip limit proposals would preclude achievement of OY (N.S. 1), were not based on the best available information (N.S. 2), would be unfair and inequitable to fishery participants throughout the management area (N.S. 4), would unnecessarily promote harvest inefficiency (N.S. 5), and would constitute unjustifiable administrative costs and burdens (N.S. 7).

After reviewing the revised impact analyses, findings of the 1996 mackerel stock assessment concerning the status of the Atlantic group king mackerel, and results from additional public hearings, NMFS has made a preliminary determination that the proposed commercial vessel trip limits are consistent with the N.S. as discussed below. Previous problems related to the Council's analyses of the potential impacts of the 50–fish trip limit on the Florida Keys fishery and not providing sufficient notice to impacted fishermen appear to have been corrected. Impact analyses were revised and the Council held additional public hearings. In response to the comments received at those hearings, the Council increased the proposed trip limit for the Florida Keys area from 500 to 1250 pounds (initially proposed as 50 to 125 fish) per vessel per day.

National Standard 1

Newly available information contained in the 1996 Report of the Mackerel Stock Assessment Panel probably will compel the Council to recommend further reductions in TAC for Atlantic group king mackerel. The forthcoming TAC recommendation for the 1996/97 fishing year probably would reduce both commercial and recreational allocations to levels that have been harvested during the past two years. Consequently, NMFS expects that TAC will be taken and OY achieved for the 1996/97 fishing year even with the imposition of trip limits. To provide the socioeconomic benefits that the Council intends while preventing overfishing, the proposed trip limits appear necessary.

National Standard 2

Recent review of the proposed trip limits and supporting documents, increased effort and king mackerel landings off southwest Florida this April (1996), and findings of the 1996 stock assessment indicate that the proposed trip limits are based on the best available scientific information. In a recent review, NMFS Southeast Fisheries Science Center (Center) advised that the revised proposed trip limits appear to be based on the best available scientific information. Further, the Center advised that the proposals clearly are risk averse in that they would maintain stock levels that would not be at risk of recruitment overfishing.

Although the 1996 SPR estimate indicates that the Atlantic group king mackerel is not overfished, the lower estimated value suggests, as the Council previously suspected, that stock size may not be as large as previous estimates indicated. The 1996 SPR estimate is reduced to 32 percent, near the 30 percent SPR overfished level currently defined in the FMP and above the 20 percent level in proposed Amendment 8. Nevertheless, the current 32 percent SPR estimate is below the proposed SPR target of 40 percent for achieving maximum sustainable yield (MSY) or long-term OY. Therefore, the best available scientific information is not inconsistent with the Council's recommendations for more conservative management measures that reduce fishing mortality and, thus, prevent early closure and quota overruns, and decrease the risk of recruitment overfishing.

National Standard 4

NMFS believes the revised proposed trip limits have the potential to maintain traditional harvest and quota distribution among user groups. Initially, the proposed trip limit for the Florida Keys fishery was 50 fish throughout the Florida east and southwest coast areas. The 50–fish limit was requested and was strongly supported by many southeast Florida king mackerel fishermen.

In response to comments received at public hearings, the Council increased the proposed trip limit for the Florida Keys to 1250–lb (567–kg) to provide sufficient revenue to operate in the April fishery near the Dry Tortugas. This proposal is equivalent to the 125–fish trip limit for the Gulf group king mackerel hook-and-line fishery that begins in that area on November 1. Consequently, the proposed 1250–lb (567 kg) trip limit would appear to provide fair access while preventing excessive catches, early closures, and quota overruns, and thus satisfies the requirements of N.S. 4 regarding fairness and equity to all fishery participants throughout the management area.

For the fishery from northeast Florida through New York, the Council proposed the 3500–lb (1588–kg) trip limit. Available landings information reviewed by the Council indicates that proposal would have essentially no effect on harvest. Moreover, the Council does not expect the proposed increased trip limit for this area to alter the status quo or provide increased harvesting advantage. If inordinate large northern

landings do occur in the future, the Council will reconsider and revise the 3500–lb (1588–kg) trip limit to prevent inequitable quota distribution and recruitment overfishing.

National Standard 5

The Council's impact analyses indicate that the proposed trip limits would have restricted less than 6 percent of the trips in any given area. However, the 500–lb (227–kg) and 1250–lb (567–kg) trip limits proposed for south Florida would have substantially reduced some individual vessel landings and total catch for those areas for some years. Data examined by the Council indicated that the 3500–lb (1,588 kg) trip limit would have impacted no trips off Volusia County (Florida) and would have only minimally impacted trips between the Volusia/Flagler County (Florida) and New York/Connecticut boundaries. Such impacted trips landed at North Carolina ports would have exceeded that state's landing limit (i.e., 3500 lb). The Council's analyses were based on landings estimates for Florida (1991/92 through 1994/95 seasons) and North Carolina.

National Standard 7

The revised proposed trip limits appear consistent with a management strategy to balance costs and benefits; the Council's impact analyses indicate that the trip limits will not inordinately affect costs or place an undue economic and regulatory burden on fishermen or fisheries.

The Regional Director initially concurs that the Council's recommendations are necessary to protect king mackerel stocks and prevent overfishing and that they are consistent with the objectives of the FMP, the N.S., and other applicable law. Accordingly, the Council's proposed revised trip limits are published for comment.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Historical landings data for the last four fishing seasons indicate that the percentage of fishing trips that would have been affected by the proposed trip limits ranged from 0 to 5.4 percent. Although it is not possible to directly translate number of fishing trips into number of fishing firms impacted, it appears that less than 20 percent of the small business entities involved in harvest of Atlantic king mackerel would be affected. The proposed trip limits are estimated to reduce the harvest of Atlantic king mackerel and the associated net revenue by about five percent. Compliance costs will not be affected by this action. There are no differential small and large business impacts because all affected entities are small entities. No capital costs of compliance are expected, and there is no information indicating that two or more percent of the existing harvesting firms will cease business operations as a result of this rule. The proposed trip limits are designed, in part, to moderate the rate of harvest, thereby minimizing the probability of early closures and the associated adverse socioeconomic impacts. Therefore, the trip limits are expected to provide small increases in long-term benefits to the industry. For these reasons, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 27, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 642.7, paragraphs (q) and (r) are revised to read as follows:

§ 642.7 Prohibitions.

* * * * *

(q) Exceed a commercial trip limit for Atlantic group king or Spanish mackerel, as specified in § 642.27(a) or (b).

(r) Transfer at sea from one vessel to another an Atlantic group king or Spanish mackerel subject to a commercial trip limit, as specified in § 642.27(f).

* * * * *

3. In § 642.27, paragraphs (a) through (e) are redesignated as paragraphs (b) through (f), respectively; in newly redesignated paragraph (b), the introductory text is removed; in newly redesignated paragraphs (c) and (d), the references to "paragraph (a)(2) of this section" are removed and "paragraph (b)(2) of this section" is added in their places; in newly redesignated paragraph (f) introductory text and in newly redesignated paragraph (f)(2) the term "Spanish mackerel" is removed and "king or Spanish mackerel" is added in its place; the section heading is revised; and paragraph (a) and newly redesignated paragraph (b) heading are added to read as follows:

§ 642.27 Commercial trip limits for Atlantic group king and Spanish mackerel.

(a) *Atlantic group king mackerel.* (1) North of a line extending directly east from the Volusia/Flagler County, Florida boundary (29°25' N. lat.) to the outer limit of the EEZ, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 3,500 lb (1,588 kg).

(2) In the area between lines extending directly east from the northern and southern boundaries of Volusia County, Florida (29°25' N. lat. and 28°47.8' N. lat., respectively) to the outer limit of the EEZ, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 3,500 lb (1,588 kg) from April 1 through October 31.

(3) In the area between lines extending directly east from the Volusia/Brevard County, Florida boundary (28°47.8' N. lat.) to the outer limit of the EEZ and directly east from the Dade/Monroe County, Florida boundary (25°20.4' N. lat.) to the outer boundary of the EEZ, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 500 lb (227 kg) from April 1 through October 31.

(4) In the area between lines extending directly east from the Dade/Monroe County, Florida boundary (25°20.4' N. lat.) to the outer boundary of the EEZ and directly west from the Monroe/Collier County, Florida boundary (28°48' N. lat.) to the outer boundary of the EEZ, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 1250 lb (567 kg) from April 1 through October 31.

(b) *Atlantic group Spanish mackerel.*

* * * * *

[FR Doc. 96–16880 Filed 6–28–96; 9:44 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 61, No. 129

Wednesday, July 3, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Huckleberry Land Exchange With Weyerhaeuser Company, Mt. Baker-Snoqualmie National Forest, Skagit, Snohomish, King, Pierce, Lewis, Kittitas and Cowlitz Counties, WA

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: This is a revision to the notice which appeared in the **Federal Register** on July 14, 1995 (60 FR 36257), for the Huckleberry Land Exchange with Weyerhaeuser Company. The revision is needed to identify a change to the proposed action and responsible official. The proposed action has been modified to include exchange of about 6,770 acres of Federally owned subsurface mineral estate to Weyerhaeuser Company. Weyerhaeuser Company or another private entity currently owns the surface lands. Approximately 5,210 acres of the severed minerals are administered by the Bureau of Land Management (BLM) in King and Cowlitz Counties, Washington. About 1,560 acres are administered by the Gifford Pinchot and the Mt. Baker-Snoqualmie National Forests in Lewis County, Washington.

This revised notice serves BLM requirements for land exchanges under Title 43 Code of Federal Regulations (CFR) Part 2200 that lands or interest in lands are being considered for exchange. This notice and the environmental analysis for this exchange will constitute a planning analysis for BLM lands under 43 CFR 1610.8(b)(2).

The lead agency is the Forest Service. Wendy M. Herrett, Director of Recreation, Lands, and Mineral Resources, Pacific Northwest Region, is the responsible official for the Forest Service. Elaine Zielinski, State Director Oregon and Washington BLM, is the responsible official for the BLM. The Forest Service will prepare a Record of Decision for lands under its jurisdiction and the BLM will prepare a Record of Decision for lands or interest in lands under its jurisdiction upon completion of the final environmental impact statement (EIS) and selection of the preferred alternative by the responsible official.

The draft EIS is expected to be filed in July 1996. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.** The final EIS is scheduled to be completed in September 1996.

FOR FURTHER INFORMATION CONTACT: Doug Schrenk, NEPA Coordiantor, North Bend Ranger District, 42404 S.E. North Bend Way, North Bend, Washington 98045, telephone (206) 888–1421.

Dated: June 25, 1996.

Wendy M. Herrett,

Director, Recreation, Lands, and Mineral Resources.

[FR Doc. 96–16944 Filed 7–2–96; 8:45 am]

BILLING CODE 3410–11–M

Oregon Coast Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Provincial Advisory Committee (PAC) will meet on July 19, 1996, in Tillamook, Oregon, at the Shilo Inn (Wilson River Room), 2515 Main Street. The meeting will begin at 9 a.m. and continue until 3:30 p.m. Agenda items to be covered include: (1) Updates on current events, (2) northern Coast Range Area Adaptive Management Area activities, (3) overview of recreation in the Coast Range Province, (4) recreation user initiatives and stewardship/co-management, (5) recreation user fees, and (6) open public forums. All Oregon Coast Provincial Advisory Committee meetings are open to the public. Two "open forums" are scheduled; one at 10:30 a.m. and another near the conclusion of the meeting. Interested citizens are encouraged to attend. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Rick Alexander, Public Affairs Officer, at (541) 750–7075, or write to Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon 97339.

Dated: June 26, 1996.

James R. Furnish,

Forest Supervisor.

[FR Doc. 96–16980 Filed 7–2–96; 8:45 am]

BILLING CODE 3410–11–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for the Continuation of a Project Titled: "Your Town: Designing its Future"

AGENCY: National Endowment for the Arts.

ACTION: Notificaton of availability.

SUMMARY: The National Endowment for the Arts requests proposals leading to the award of a Cooperative Agreement for the continuation of the workshops successfully carried out from 1991 to 1995 by the National Trust for Historic Preservation under the project "Your Town: Designing its Future." The purpose of "Your Town" is to address the needs of rural communities, and to help rural Americans to learn how to identify, protect, and enhance their towns and landscapes by promoting the benefits of good design, encouraging the sharing of successful techniques, and providing a support system for those who are working on community design problems. Responsibilities under the Cooperative Agreement will include operating a national center to coordinate the "Your Town" activities, including three workshops, publishing a biannual newsletter, and producing a publication focusing on three or four case study communities. Those interested in receiving the Solicitation should reference Program Solicitation PS 96–04 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 96–04 is scheduled for release approximately July 19, 1996 with proposals due on August 19, 1996.

ADDRESS: Requests for the Solicitation should be addressed to National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Grants and Contracts Office, National Endowment for the Arts, 1100 Pennsylvania Ave., NW., Washington, DC 20506 (202/682–5482).

William I. Hummel,

Coordinator, Cooperative Agreements and Contracts.

[FR Doc. 96–16902 Filed 7–2–96; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Sharon I. Block, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. DATE: July 12, 1996.
TIME: 8:30 a.m. to 6:00 p.m.
ROOM: 415.
PROGRAM: This meeting will review applications for Challenge Grants submitted to the Division of Challenge Grants for projects at the May 1, 1996 deadline.

2. DATE: July 22, 1996.
TIME: 8:30 a.m. to 6:00 p.m.
ROOM: 415.
PROGRAM: This meeting will review applications for Challenge Grants submitted to the Division of Challenge Grants for projects at the May 1, 1996 deadline.

3. DATE: July 23, 1996.
TIME: 8:30 a.m. to 5:30 p.m.
ROOM: 415.
PROGRAM: This meeting will review applications for Fellowships for University Teachers in American History and Studies, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

4. DATE: July 23, 1996.
TIME: 8:30 a.m. to 5:30 p.m.
ROOM: 317.
PROGRAM: This meeting will review applications for Fellowships for University Teachers and Fellowships for College Teachers and Independent Scholars in European History, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

5. DATE: July 24, 1996.
TIME: 8:30 a.m. to 5:30 p.m.
ROOM: 415.
PROGRAM: This meeting will review applications for Fellowships for University Teachers and Fellowships for College Teachers and Independent Scholars in Art History I, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

6. DATE: July 24, 1996.
TIME: 8:30 a.m. to 5:30 p.m.
ROOM: 317.
PROGRAM: This meeting will review applications for Fellowships for University Teachers and Fellowships for College Teachers and Independent Scholars in Art History II, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

7. DATE: July 28, 1996.
TIME: 8:30 a.m. to 6:00 p.m.
ROOM: 415.
PROGRAM: This meeting will review applications for Challenge Grants submitted to the Division of Challenge Grants for projects at the May 1, 1996 deadline.

8. DATE: July 29, 1996.
TIME: 8:30 a.m. to 5:30 p.m.
ROOM: 317.
PROGRAM: This meeting will review applications for Fellowships for College Teachers and Independent Scholars in British Literature, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

9. DATE: July 29, 1996.
TIME: 8:30 a.m. to 6:00 p.m.
ROOM: 415.
PROGRAM: This meeting will review applications for Challenge Grants submitted to the Division of Challenge Grants for projects at the May 1, 1996 deadline.

10. DATE: July 30, 1996.
TIME: 8:30 a.m. to 5:30 p.m.
ROOM: 317.
PROGRAM: This meeting will review applications for Fellowships for University Teachers and Fellowships for College Teachers and Independent Scholars in Anthropology, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

11. DATE: July 31, 1996.
TIME: 8:30 a.m. to 5:30 p.m.
ROOM: 415.
PROGRAM: This meeting will review applications for Fellowships for University Teachers and Fellowships for College Teachers and Independent Scholars in Religious Studies, submitted to the Division of Research and Education Programs, for projects at the May 1, 1996 deadline.

Michael S. Shapiro,

Acting Advisory Committee Management Officer.

[FR Doc. 96–16985 Filed 7–2–96; 8:45 am]

BILLING CODE 7536–01–M

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1996 Community Census – Special Place Facility Questionnaire.

Form Number(s): DT–351.

Agency Approval Number: 0607–0786.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Burden: 10 hours.

Number of Respondents: 40.

Avg Hours Per Response: 15 minutes.

Needs and Uses: Planning is currently underway for the 1996 Community Census, which is an integral part of the overall planning process for the 2000 decennial census. The Census Bureau must provide everyone in our test sites the opportunity to be counted, including individuals living in group quarters (GQs) (student dorms, shelters, group homes, etc.) and in housing units (HUs) that are part of/or associated with special places (SPs). We are conducting this operation by phoning each SP and conducting interviews to identify and collect updated information about the GQs and HUs at each SP. This operation replaces the Special Place Prelist field operation conducted in previous censuses. The goal of this operation is to make improvements over the 1990 Special Place Prelist operation. We expect to improve the quality/accuracy of assigning the correct GQ type code and the associated geographic coding compared to the 1990 census Special Place Prelist operation. We also expect to apply some new/improved GQ type codes. We plan to make additional modifications to our questionnaire, instructions, and letters based on results of using these forms in the 1996 Community Census.

Affected Public: Businesses or other for profit, Individuals or households, Not–for–profit institutions.

Frequency: One time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 27, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–16941 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–07–F

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE

[For period 5/21/96–06/19/96]

Firm name	Address	Date petition accepted	Product
Brahmin Leather Works, Inc	77 Alden Road, Fairhaven, MA 02719	06/18/96	Leather Handbags, belts and accessories.
Foundation Steel & Wire Mf., Inc	3050 West 26th St., Houston, TX 77008.	06/10/96	Wire mesh for concrete.
Health-Pak, Inc	2005 Beechgrove Place, Utica, NY 13501.	06/10/96	Lab coats and jackets; nonwoven disposable apparel for use in hospitals, clinics and labs.
Hoy Shoe Co	4970 Kemper Ave., St. Louis, MO 63139.	5/29/96	Sandals for girls.
Mainelli Tool & Die, Inc	30 Houghton St., Providence, RI 02904	06/18/96	Jewelry findings.
Maynard Steel Casting Co	2856 South 27th Street, Milwaukee, WI 53215.	06/18/96	Cast steel mining equipment components, construction equipment components and railroad components.
Mid-States Uniform & Lettering, Inc	715 South Minnesota Ave., P.O. Box 519, SD 57101.	06/18/96	T-shirts.
Raintree Buckles & Jewelry, Inc	7115 Laurel Canyon Blvd., North Hollywood, CA 91605.	05/29/96	Belt buckles and insignia.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: June 21, 1996.

Lewis R. Podolske,

Director, Trade Adjustment Assistance Division.

[FR Doc. 96–17054 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

[A–428–810]

High-Tenacity Rayon Filament Yarn From Germany; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review

SUMMARY: In response to a request from the North American Rayon Corporation (petitioner), and from Akzo Nobel Faser A.G., Akzo Nobel Industrial Fibers Inc., and Akzo Nobel Fibers Inc. (collectively, Akzo; respondent), the Department of Commerce (the Department) is conducting an administrative review of the antidumping order on high-tenacity rayon filament yarn from Germany. This review covers one manufacturer of the subject merchandise to the United States during the June 1, 1994 through May 31, 1995 period of review (POR).

We have preliminarily determined that U.S. sales have been made below normal value (NV) during the POR. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties equal to the difference between the United States price (USP) and the NV. In accordance with section 353.25(a)(2)(i) of the Department's regulations, we do not intend to revoke the antidumping duty order with respect to Akzo, as requested, because even if we find a *de minimis* margin in the final results of this review, it would mark only the second consecutive year in which Akzo sold the subject merchandise at not less than NV, and therefore, the conditions for revocation have not been satisfied. Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: July 3, 1996.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–5253.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 225130).

Background

The Department published an antidumping duty order on high-tenacity rayon filament yarn from Germany on June 30, 1992 (57 FR 29062). The Department published a notice of "Opportunity to Request an Administrative Review" of the antidumping order for the 1994–95 review period on June 6, 1995 (60 FR 29821). On June 30, 1995, both petitioner and respondent requested that the Department conduct an administrative review of the antidumping duty order on high-tenacity rayon filament yarn from Germany. In its June 30, 1995 letter, Akzo requested revocation of the order pursuant to section 353.25(b) of the Department's regulations. We initiated the review on July 14, 1995 (60 FR 36260).

The Department fully extended the time limits for the deadlines for the preliminary and final results of review, because of the scheduling difficulties in arranging the mandatory verification for this review. See Antidumping Duty Administrative Reviews; Time Limits, 60 FR 11613 (March 21, 1996). See also, Memorandum from Joseph A. Spetrini to Susan G. Esserman (March 14, 1996). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

The product covered by this administrative review is high-tenacity rayon filament yarn from Germany. During the review period, such merchandise was classifiable under Harmonized Tariff Schedule (HTS) item number 5403.10.30.40. High-tenacity rayon filament yarn is a multifilament single yarn of viscose rayon with a twist of five turns or more per meter, having a denier of 1100 or greater, and a tenacity greater than 35 centinewtons per tex. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage. This review covers Akzo and the period June 1, 1994, through May 31, 1995.

Verification

In accordance with section 353.25(d)(2)(ii) of the Department's regulations, we verified information provided by Akzo using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification reports.

United States Price

We based our margin calculations on export price (EP), as defined in section 772(a) of the Act, because the merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation. EP sales were based on packed, f.o.b. prices to unaffiliated purchasers in the United States. We made adjustments, where applicable, for U.S. and foreign inland freight, brokerage and handling, U.S. duty, foreign insurance, and international freight, in accordance with section 772(c) of the Act, because these expenses were incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States. We made an additional adjustment to certain EP sales to account for post-sale price adjustments reported on a transaction-specific basis and granted by Akzo in connection with having obtained the services of a new U.S. sales agent. No other adjustments to EP were claimed or allowed.

Normal Value

A. Viability

In order to determine whether there was sufficient volume of sales in the home market (HM) to serve as a viable basis for calculating NV, we compared Akzo's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because Akzo's aggregate volume of HM sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the HM provides a viable basis for calculating NV for Akzo, pursuant to section 773(a)(1)(C) of the Act.

B. Cost of Production Analysis

In the last review, we disregarded Akzo's sales found to be below the cost of production (COP). Therefore, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department has reasonable grounds to believe or suspect that sales below the COP may have occurred during this review period. Thus, pursuant to section 773(b) of the Act, we initiated a COP investigation of Akzo in this review. Before making any fair value comparisons, we conducted the COP analysis described below.

1. Calculation of COP

We calculated the COP based on the sum of Akzo's cost of materials and fabrication employed in producing the foreign like product, plus amounts for home market selling, general, and administrative expenses (SG&A) and packing costs in accordance with section 773(b)(3) of the Act. We relied on the home market sales and COP information provided by Akzo in its original and supplemental questionnaire responses.

2. Test of Home Market Prices

After calculating COP, we tested whether within an extended period of time home market sales of high-tenacity rayon filament yarn were made at prices below COP in substantial quantities, and whether such prices permit recovery of all costs within a reasonable period of time. We compared model-specific COP to the reported home market prices less any applicable movement charges, discounts, rebates, and direct and indirect selling expenses.

3. Results of COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of Akzo's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. We found that, for certain models of high-tenacity rayon filament yarn, 20 percent or more of the home market sales were sold at below-cost prices. Where 20 percent or more of home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because such sales were found to be made in substantial quantities during the POR (*i.e.*, within an extended period of time) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act (*i.e.*, the sales were made at prices below the weighted average per unit COP for the POR). We used the remaining above-cost sales as the basis of determining NV if such sales existed, in accordance with section 773(b)(1). For those models of the subject merchandise for which there were no above-cost sales available for matching purposes, we compared EP to constructed value (CV).

C. Price-to-Price Comparisons

Pursuant to section 777(A)(d)(2), we compared the EP of individual transactions to the monthly weighted-average price of sales of the foreign like product where there were sales at prices above COP, as discussed above. We based NV on the f.o.b. price to unaffiliated purchasers in the HM. We made adjustments, where applicable, in accordance with section 773(a)(6) of the Act. Where applicable, we made adjustments to HM price for early payment discounts, other discounts, handling charges, rebates, inland freight (post-sale), inland insurance, interest revenue, and third party payments. To adjust for differences in circumstances of sale between the HM and the U.S., we deducted HM credit expenses from HM price, and increased HM price by an amount for technical services and credit expenses incurred in the U.S. In order to adjust for differences in packing between the two markets, we increased HM price by U.S. packing cost and reduced it by HM packing costs. Prices were reported net of value added taxes (VAT) and, therefore, no deduction for VAT was necessary.

Akzo reported that its sales in the home and U.S. markets were made at the same level of trade and channel of distribution (direct to end users/converters). Therefore, Akzo did not request a level of trade adjustment. Our analysis and verification of Akzo's response confirmed that the selling functions performed for EP sales are not sufficiently different than for home market sales to consider EP sales and home market sales to be at different level of trade. Therefore, in accordance with section 773(a)(7)(A) of the Act, we did not make a level of trade adjustment to NV for these preliminary results.

D. Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Akzo's cost of materials and fabrication employed in producing the subject merchandise, SG&A and profit incurred and realized in connection with production and sale of the foreign like product, and U.S. packing costs. In accordance with section 773(e)(2)(A), we based SG&A and profit on the amounts incurred and realized by Akzo in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. We used the costs of materials, fabrication, and G&A as reported in the CV portion of Akzo's questionnaire response. We used the U.S. packing costs as reported in the U.S. sales portion of Akzo's response. We based selling expenses and profit on the information reported in the home market sales portion of Akzo's responses. See Certain Pasta from Italy; Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 61 FR 1344, 1349 (January 19, 1996). For selling expenses, we used the average of above-cost per-unit home market selling expenses weighted by the total quantity sold. For actual profit, we first calculated the difference between the home market sales value and home market COP for all above-cost home market sales, and divided the sum of these differences by the total HM COP for these sales. We then multiplied this percentage by the COP for each U.S. model to derive an actual profit.

We adjusted CV for technical services, credit expenses, and packing as reported in the U.S. sales portion of Akzo's original and supplemental questionnaire responses.

Preliminary Results

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/exporter	Margin (percent)
Akzo Nobel Faser A.G., Akzo Nobel Industrial Fibers, Inc., Akzo Nobel Fibers, Inc. (Akzo)	0.54

Parties to this proceeding may request disclosure within five days of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. The Department will publish a notice of the final results of the administrative review, which will include the results of its analysis of issues raised in any such written comments or at the hearing, within 90

days from the issuance of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Individual differences between USP and NV may vary from the percentage stated above. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties.

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of high-tenacity rayon filament yarn from Germany entered, or withdrawn from warehouse, for consumption on or after publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Akzo will be that established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be the "all others rate" of 24.58 percent established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act.

Dated: June 24, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–17014 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–549–502]

Ball Bearings and Parts Thereof From Thailand; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The countervailing duty order on Ball Bearings and Parts Thereof from Thailand was revoked effective January 1, 1995, as a result of a changed circumstances review and pursuant to section 782(h)(2) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (60 FR 40568). The Department is conducting an administrative review of this order to determine the appropriate assessment rate for entries made during the last review period prior to the revocation of the order (January 1, 1994, through December 31, 1994). For information on the net subsidy for reviewed companies and non-reviewed companies, please see the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results. Because this order has been revoked, the Department will not issue further instructions with respect to cash deposits of estimated countervailing duties.

EFFECTIVE DATE: July 3, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2209 and (202) 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 1989, the Department published in the **Federal Register** (54 FR 19130) the countervailing duty order on Ball Bearings and Parts Thereof from Thailand. On May 10, 1995, the Department published a notice of "Opportunity to Request an Administrative Review" (60 FR 24831) of this countervailing duty order. We received a timely request for review, and we initiated the review, covering the period January 1 through December 31, 1994, on June 15, 1995 (60 FR 31447).

In accordance with section 355.22(a) of the Department's *Interim Regulations*, this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested (*see Antidumping and Countervailing Duties: Interim Regulations; Request for Comments*, 60 FR 25130 (May 11, 1995)) (*Interim Regulations*). This review was requested for the Minebea Group of Companies in Thailand, NMB Thai, Pelmec, and NMB Hi-Tech, which manufacture and export the subject merchandise. During this review, the Department learned of another Minebea company, NMB Precision Ball, Ltd., which manufactures balls. The company does not export to the United States but it does sell balls to the other three companies which in turn export finished ball bearings to the United States and elsewhere. This company, like the other three Minebea producers in Thailand, is a wholly-owned subsidiary of Minebea Japan, and because NMB Precision Ball, Ltd. received export subsidies during the period of review (see, "Programs Conferring Subsidies" section below) for its sales of balls to the related Thai ball bearing producers, we preliminarily determine that it is appropriate to include the subsidies to NMB Precision Ball, Ltd. in our calculations of the net subsidy.

On November 2, 1995, we extended the period for completion of the preliminary and final results pursuant to section 751(a)(3) of the Act (*see Extension of the Time Limit for Certain Countervailing Duty Administrative Reviews*, 60 FR 55699). As explained in the memoranda from the Assistant Secretary for Import Administration dated November 22, 1995, and January 11, 1996 (on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce), all deadlines were further extended to take into account the partial shutdowns of the Federal Government from November 15 through November 21, 1995, and December 15, 1995, through January 6, 1996. As a result of these extensions, the deadline for these preliminary results is no later than June 27, 1996, and the deadline for the final results of this review is no later than 180 days from the date on which these preliminary results are published in the **Federal Register**.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act.

Calculation Methodology

In the first administrative review, respondents claimed that the F.O.B. value of the subject merchandise entering the United States is greater than the F.O.B. price charged by the companies in Thailand (57 FR 26646 (June 15, 1992)). They explained that this discrepancy is due to a mark-up charged by the parent company, located in a third country, through which the merchandise is invoiced. However, the subject merchandise is shipped directly from Thailand to the United States and is not transshipped, combined with other merchandise, or repackaged with other merchandise. In other words, for each shipment of subject merchandise, there are two invoices and two corresponding F.O.B. export prices: (1) The F.O.B. export price at which the subject merchandise leaves Thailand, and on which subsidies from the Royal Thai Government (RTG) are earned by the companies, and upon which the subsidy rate is calculated; and (2) the F.O.B. export price which includes the parent company mark-up, and which is listed on the invoice accompanying the subject merchandise as it enters the United States, and upon which the cash deposits are collected and the countervailing duty is assessed. In prior reviews, we verified on a transaction-specific basis the direct correlation between the invoice which reflects the F.O.B. price on which the subsidies are earned and the invoice which reflects the marked-up price that accompanies each shipment as it enters the United States.

Respondents argued that the calculated *ad valorem* rate should be adjusted by the ratio of the export value from Thailand to the export value charged by the parent company to the U.S. customer so that the amount of countervailing duties collected would reflect the amount of subsidies bestowed. The Department agreed and made this adjustment in prior administrative reviews (57 FR 26646, (June 15, 1992); and 58 FR 36392 (July 7, 1993)). Since the mark-up is not part of the export value upon which the respondents earn subsidies, the Department has followed the methodology adopted in prior administrative reviews, and calculated the *ad valorem* rate as a percentage of the original export value from Thailand and then multiplied this rate by the adjustment ratio—the original export value from Thailand divided by the marked-up value of the goods entering the United States.

NMB Thai, Pelmec, NMB Hi-Tech, and NMB Precision Ball, Ltd. are wholly-owned by one parent company, and are therefore affiliated companies within the meaning of section 771(33) of the Act. See Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") from Italy, 60 FR 30288, 30290 (June 14, 1996). Furthermore, all four sister companies produce the subject merchandise. As a result, these four companies warrant treatment as a single company with a combined rate. This is consistent with our approach in the investigation and all prior reviews of this order. See Ball Bearings and Parts Thereof from Thailand; Preliminary Results of Countervailing Duty Administrative Review, 60 FR 22563 (May 8, 1995); see also Ball Bearings and Parts Thereof from Thailand; Preliminary Results of Countervailing Duty Administrative Review, 60 FR 42532 (August 16, 1995). To avoid double counting, the sales value was adjusted to account for intercompany sales of subject merchandise. We calculated the countervailing duty rate by first totaling the benefits received by the four companies for each program used. Dividing these sums by the total Thai export value for the four companies, we calculated the unadjusted subsidy rate for each program used. As described above, we adjusted these rates by multiplying them by the ratio of the original export price from Thailand to the marked-up price of the goods entering the United States. Finally, we summed the adjusted subsidy rate for each program, to arrive at the total countervailing duty rate.

Scope of the Review

Imports covered by this review are ball bearings and parts thereof. Such merchandise is described in detail in the Appendix to this notice. The Harmonized Tariff Schedule (HTS) item numbers listed in the Appendix are provided for convenience and Customs purposes. The written description remains dispositive.

Verification

As provided in section 782(i) of the Act, we verified information submitted by the Royal Thai Government and the Minebea Group of companies. We followed standard verification procedures, including meeting with government and company officials and examination of relevant accounting and financial records and other original source documents. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Analysis of Programs

I. Program Conferring Subsidies

Investment Promotion Act of 1977—Sections 28, 31, 36(1), and 36(4)

The Investment Promotion Act of 1977 (IPA) is administered by the Board of Investment (BOI) and is designed to provide incentives to invest in Thailand. In order to receive IPA benefits, each company must apply to the BOI for a Certificate of Promotion (license), which specifies goods to be produced, production and export requirements, and benefits approved. These licenses are granted at the discretion of the BOI and are periodically amended or reissued to change benefits or requirements. Each IPA benefit for which a company is eligible must be specifically stated in the license.

We have previously determined that the BOI licenses of Pelmec, NMB Thai, and NMB Hi-Tech constitute export subsidies (58 FR 36392, July 7, 1993 and 60 FR 52374, October 6, 1995). No new information or evidence of changed circumstances has been provided to warrant reconsideration of this finding. NMB Precision Ball, Ltd. held one license during the period of review, and this license was tied to export performance and is, therefore, countervailable like the others.

In past reviews, the Minebea Group received benefits under sections 28, 31, and 36(1) of the IPA. In this review, they received benefits under these sections, as well as under section 36(4).

Section 28: Prior to the review period, IPA Section 28 allowed companies to import machinery free of import duties, the business tax and the local tax. However, effective January 1, 1992, the RTG eliminated both the business and the local tax and instituted a value added tax (VAT) system.

According to Section 21(4) of the VAT Act, if Section 28 benefits were granted by BOI to a company before January 1,

1992, that company, when importing fixed assets under Section 28, would continue to be subject to the business tax provisions under Chapter IV, Title II, of the Revenue Code before being amended by the VAT Act. In accordance with Section 21(4), the company would be required to pay the business and local taxes only if its BOI license requirements were violated. Section 21(4) of the VAT Act applies to Pelmec, NMB Thai, NMB Hi-Tech, and NMB Precision Ball, Ltd. because all of their licenses were granted before January 1, 1992, and contain Section 28 benefits.

The respondents have argued that given the provisions of the VAT Act and, specifically Section 21(4), their exemption from the business and local taxes no longer constitutes a benefit to the companies because: (1) no other companies are required to pay the business and local taxes; and (2) under Section 21(4), payment of the business and local taxes serves only as a penalty for noncompliance with BOI license requirements. We verified that under the new VAT law, companies are no longer required to pay business and local taxes with the exception of the noncompliance penalty noted above. For these reasons, we preliminarily determine that the business and local tax exemptions under Section 28 no longer constitute a countervailable benefit for companies subject to Section 21(4) of the VAT Act.

However, under provisions of Section 21(4) of the VAT Act, companies that were granted Section 28 benefits under the IPA before January 1, 1992, are not required to pay VAT on imports of fixed assets. The respondents have argued that this exemption from VAT on imports of fixed assets did not constitute a benefit to the companies because all companies, promoted and non-promoted alike, are effectively exempted from VAT on their imports of fixed assets. According to the Section 82 of the VAT Act, the VAT liability is computed by subtracting the "input tax" (the VAT paid) from the "output tax" (the VAT collected). Consequently, companies that pay VAT on imports of fixed assets are effectively exempted from this VAT payment as they receive a credit for the VAT they paid on purchases of inputs, including imports of fixed assets, when their monthly VAT liability is computed. We examined this issue through questionnaires and at verification. We confirmed that under the VAT system, companies receive credit for the VAT paid on the purchases of inputs and, as a result, no VAT is effectively paid by companies on these purchases. Since VAT liability is computed on a monthly basis, any possible time-value-of-money benefit under Section 21(4) of the VAT Act in the review would be insignificant. On this basis, we preliminarily determine that the exemption of the VAT on imports of fixed assets under Section 21(4) of the VAT Act does not constitute a countervailable benefit to the companies specified in Section 21(4).

Since the business and local tax exemptions under Section 28 of the IPA and the VAT exemption under Section 21(4) of the VAT Act do not confer countervailable benefits to companies subject to Section 21(4) of the VAT Act, we preliminarily determine that only the exemptions of import duties on fixed assets under Section 28 of IPA continue to provide countervailable benefits to the respondent companies.

Section 31: IPA Section 31 allows companies an exemption from payment of corporate income tax on profits derived from promoted exports. The corporate income tax rate in Thailand is 30 percent. NMB Thai and NMB Hi-Tech claimed an income tax exemption under Section 31 on the income tax returns filed during the review period. The income tax exemption continues to provide countervailable benefits to the respondent companies.

Section 36(1): IPA Section 36(1) allows companies to import raw and "essential" materials free of import duties. As Pelmec, NMB Thai, NMB Hi-Tech and Precision Ball Ltd. have bonded warehouses for the purchase of raw materials, they have only claimed Section 36(1) duty exemptions on their imports of essential materials. Respondents' questionnaire response included a range of items that were categorized by the BOI as essential materials (*e.g.*, grinding wheels, blades, lubricating cleaning solutions, gloves, and packing materials) for which they received duty exemptions. Energy and fuel were not included as they are not eligible for section 36(1) duty exemption.

Prior to the Uruguay Round Agreement, only duty exemptions on inputs that were physically incorporated into the product being exported (e.g., raw material inputs and packing materials) were considered non-countervailable. Under the Agreement on Subsidies and Countervailing Measures (the Agreement), this has been broadened to include duty exemptions on products that are "consumed in production." Respondents claim that the essential materials for which BOI grants duty exemptions meet the "consumed in production" standard, and, therefore, any duty exemptions on these materials should be found not countervailable. However, Annex II of the Agreement contains a footnote (fn 61) which defines inputs consumed in the production process as: "[i]nputs consumed in the production process are inputs physically incorporated, energy, fuels and oils used in the production process and catalysts which are consumed in the course of their use to obtain the exported product."

At verification, we requested respondents to break out the "essential materials" according to the definition in the Annex II footnote, and provide that break-out in a supplemental response. Their break-out continued to include a number of BOI essential materials that fall outside the definition in footnote 61. Respondents argue that the term "consumed in production" should include all items that are worn out during the production process and that physically touch the product (*e.g.*, grinding wheels, drill bits, lubricating cleaning solutions) as well as items such as packing materials. However, it is the Department's position that the definition in Annex II is clear, and therefore, the only duty exemptions that we find not countervailable are those on oils, lubricating cleaning solutions, packing materials, and materials which are physically incorporated into the exported product. The remaining duty exemptions, received by the respondent companies, continue to be countervailable. Because energy and fuels were not eligible for Section 36(1) duty exemptions, we have not addressed whether duty exemptions on those products would be countervailable under the URAA.

Section 36(4): While the Minebea Group had not, prior to the period of review, claimed any benefits under Section 36(4) of the IPA, its BOI licenses, discussed in greater detail above, always included eligibility to claim them. Thus, the general discussion of the IPA above applies to Section 36(4) as well. In this review period, NMB Hi-Tech claimed benefits under Section 36(4) of the IPA for the first time. Under Section 36(4) of the IPA, promoted persons can deduct from their assessable income for payment of income tax an amount equal to five percent of the increased income over the previous year, derived from the export of products produced by the promoted persons. This benefit is calculated across the first ten years of a license, and it can be used as a loss carried forward in any year the promoted person wishes to use it, either during or after the promoted period. As Section 36(4) is conditioned upon exports, we preliminarily find this program to be countervailable.

Calculation of Benefit from IPA Sections 28, 31, 36(1) and 36(4)

To calculate the benefit from Sections 31, 28, and 36(1), of the IPA, we followed the same methodology that has been used in past administrative reviews (*see, e.g.*, 58 FR 16174, March 25, 1993; 57 FR 9413, March 18, 1992). For Section 31, we calculated the benefit by calculating the difference between what each company paid in corporate income tax during the review period and what it would have paid absent the exemption. We did this by multiplying the corporate income tax rate in effect during the review period by the amount of each company's income that was exempted from income tax. For Sections 28 and 36(1), we calculated the benefit by obtaining the amount of import duties that would have been paid on the imports absent the exemption.

Prior to this review, none of the Minebea group had ever claimed benefits under Section 36(4). During the period of review, NMB Hi-Tech claimed benefits under Section 36(4) for the first time. We calculated the Section 36(4) benefit by determining the amount of tax which would have been paid absent this deduction.

We then added all duty and tax savings under all the IPA programs and divided this aggregate benefit by the total export value of the subject merchandise. We then made the adjustment for the parent company mark-up discussed in the "Calculation Methodology" section above. On this basis, we preliminarily determine the countervailing duty rate from IPA Sections 31, 28, 36(1), and 36(4) to be 5.25 percent *ad valorem* during the review period.

II. Programs Preliminarily Determined to be Not Used

We examined the following programs and preliminarily determine that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under these programs during the period of review:

A. Tax Certificates for Exporters
B. Electricity Discounts for Exporters
C. Export Packing Credits
D. Rediscount of Industrial Bills
E. IPA Section 33
F. Export Processing Zones
G. Reduced Business Taxes for Producers of Intermediate Goods for Export Industries
H. International Trade Promotion Fund

Preliminary Results of Review

In accordance with section 355.22(c)(4)(ii) of the Department's *Interim Regulations*, we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. As stated in the *Calculation Methodology* section above, since the Minebea companies are affiliated, we are treating them as one company, and calculating one countervailing duty rate for the group. Thus, for the period January 1, 1994, through December 31, 1994, we preliminarily determine the net subsidy for NMB Thai, Pelmec, NMB Hi-Tech, and NMB Precision Ball, Ltd. to be 5.25 percent *ad valorem*.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess countervailing duties as indicated above.

As stated in the "Summary" section above, the Department revoked this countervailing duty order, effective January 1, 1995, pursuant to section 782(h)(2) of the Act. Ball Bearings and Parts Thereof from Thailand; Final results of Changed Circumstances Countervailing Duty Review and Revocation of Countervailing Duty Order, 61 FR 20799 (May 8, 1996). Accordingly, suspension of liquidation was terminated effective January 1, 1995; thus, the Department will not issue further instructions with respect to cash deposits of estimated countervailing duties.

The URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies. The procedures for countervailing duty cases are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. Requests for administrative reviews must now specify the companies to be reviewed. See section 355.22(a) of the *Interim Regulations*. The requested review will normally cover only those companies specifically named. Pursuant to 19 C.F.R. § 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate previously ordered. Accordingly, for the period January 1 through December 31, 1994, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue; and, (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 C.F.R. § 355.38.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 C.F.R. § 355.38, are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: June 27, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

Appendix

Scope of Review

Ball Bearings, Mounted or Unmounted, and Parts Thereof

The products covered by this review, ball bearings, mounted or unmounted, and parts thereof, include all antifriction bearings which employ balls as the rolling element. During the review period, imports of these products were classifiable under the following categories: antifriction balls; ball bearings with integral shafts; ball bearings (including radial ball bearings) and parts thereof; ball bearing type pillow blocks and parts thereof; ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof; and other bearings (except tapered roller bearings) and parts thereof. Wheel hub units which employ balls as the rolling element are subject to the review. Finished but unground or semiground balls are not included in the scope of this review.

Imports of these products are currently classifiable under the

following HTS item numbers: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50. This review covers all of the subject bearings and parts thereof outlined above with certain limitations. With regard to finished parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts are included in the scope of this review. For unfinished parts (inner race, outer race, rollers, balls, etc.), such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by this review are those parts which will be subject to heat treatment after importation.

[FR Doc. 96–17015 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

[Docket No. 960516133–6133–01]

RIN 0693–XX19

Announcement of Amendments to Voluntary Product Standard PS 20–94 American Softwood Lumber Standard

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice, announcement of amendments to Voluntary Product Standard PS 20–94.

SUMMARY: The American Lumber Standard Committee (ALSC), acting as the Standing Committee for Voluntary Product Standard PS 20–94 American Softwood Lumber Standard, approved two amendments to the standard on November 17, 1995 at its annual meeting in Corpus Christi, TX: Amendment 1 pertains to the certification functions of the Board of Review with regard to grading rules and revises § 10.2.3 as follows:

The originating agency shall make the rules fully and fairly available to all manufacturers, distributors, users, and consumers of lumber on equal terms and conditions and without discrimination.

Amendment 2 pertains to the membership of the American Lumber Standard Committee and revises § 9.3.7 as follows:

Balance of representation—Upon request, the Secretary of Commerce may consider making changes in the constitution of the Committee or making additional appointments to ensure that the Committee has a balance of interest and is not dominated by a single interest category. In such considerations, the Secretary of Commerce shall consult the Committee for advice regarding balance and the criteria by which it may be determined.

Until the standard is republished, the amendments shall be listed as an addendum to the standard.

ADDRESSES: Standards Management Program, Office of Standards Services, National Institute of Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Barbara M. Meigs, Office of Standards Services, National Institute of Standards and Technology, telephone: (301) 975–4025, fax: (301) 926–1559.

SUPPLEMENTARY INFORMATION: NIST announced on October 23, 1995, at 60 FR 54338–54339, that the ALSC would consider three proposed amendments to Voluntary Product Standard PS 20–94 at its annual meeting on November 17, 1995. Proposed Amendments 1 and 2 were approved by the Committee; proposed Amendment 3 pertaining to Canadian representation was rejected.

Voluntary Product Standard PS 20–94 American Softwood Lumber Standard was developed under procedures published by the Department of Commerce in part 10, title 15, of the Code of Federal Regulations. In accord with the provisions of the procedures, this announcement is to provide public notice of these amendments to PS 20–94 and to indicate that the amendments shall be listed an addendum to the standard until the standard is republished.

Authority: 15 U.S.C. 272 and 15 CFR part 10.

Dated: June 27, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–17032 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 061196A]

RIN 0648–AC73

Fishing Vessel and Gear Damage Compensation Fund Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: NMFS announces that the Fishing Vessel and Gear Damage Compensation Fund's (Fund) capital will be depleted before the end of this fiscal year. There are no alternative sources of capital, and the Fund will cease to do business.

EFFECTIVE DATE: July 3, 1996.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, Chief, Financial Services Division (301–713–2390).

SUPPLEMENTARY INFORMATION: Section 10 of the Fishermen's Protective Act established this fund. This fund has since 1979 paid fishermen's claims for damage to their vessels and gear caused by the actions of other vessels. Claims have typically involved the unobserved loss of fixed fishing gear presumptively caused by other vessels transiting through fixed-gear deployment areas.

The Fund's only significant source of capital has been the statutory ability to levy a surcharge of up to 20 percent on fees imposed on foreign fishing vessels formerly fishing in the U.S. exclusive economic zone (EEZ). The last levy occurred in 1984, and foreign fishing in the EEZ has since virtually ceased. The Fund has, since 1984, been husbanding capital reserved from earlier surcharges. There are now enough claims on hand to potentially deplete the Fund's remaining capital.

Although the Fund has statutory authority to borrow up to $5,000,000 from the U.S. Treasury with which to pay claims, it cannot do so, because it has no source of funds with which to repay the borrowing.

NMFS will, consequently:

1. Accept no further claim applications against the Fund (NMFS will return to claimants all claim applications submitted after the date of this notice).

2. Pay claims already submitted, provided sufficient Fund capital is available, in the chronological order in which claimants' applications are determined by NMFS to be complete for processing and are approved by NMFS (NMFS may return claim applications when NMFS determines there is insufficient Fund capital available).

3. Refund claim application fees to applicants whose claims NMFS cannot process due to insufficient Fund capital.

4. Maintain a list of returned claims, and advise claimants, in chronological order of claim submission, to resubmit them if unobligated Fund capital proves sufficient to pay additional claims.

Catalog of Federal Domestic Assistance

The Fishing Vessel and Gear Damage Compensation Fund Program is listed in the Catalog of Federal Domestic Assistance under number 11.409.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

Authority: Public Law 95–396 and 95–561 (22 U.S.C. 1980 *et seq.*)

Dated: June 27, 1996.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–17052 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–22–F

Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council; Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council Open Meeting.

SUMMARY: NOAA will conduct a meeting of the Sanctuary Advisory Council (SAC) for the Hawaiian islands Humpback Whale National Marine Sanctuary on Friday, July 12, 1996, in Wailea, Maui, Hawaii. The SAC was established to advise NOAA's Sanctuaries and Reserves Division regarding the development and management of the Hawaii Islands Humpback Whale National Marine Sanctuary. The Advisory Council was established under the National Marine Sanctuaries Act.

TIME AND PLACE: The meeting will be held on Friday, July 12, 1996, from 9:30 AM until 3:00 PM, at the Kea Lani Hotel, Wailea Maui, Hawaii.

AGENDA: General issues related to the Hawaiian Islands Humpback Whale National Marine Sanctuary are expected to be discussed, including a discussion on communication protocols and strategies, community outreach, and reports from the SAC subcommittees (boundary, regulatory and management).

PUBLIC PARTICIPATION: The meeting will be open to the public, and interested persons will be permitted to present oral or written statements on agenda items. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Allen Tom (808) 879–2818 or Brady Phillips at (301) 713–3141, ext. 169.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary program

Dated: June 26, 1996.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 96–16881 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 062696E]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold its 63rd meeting.

DATES: The meeting will be held August 5–6, 1996, from 8:30 a.m. to 5:00 p.m. each day.

ADDRESSES: The meeting will be held at the Kaluakoi Hotel, Hoaloha Room, Molokai, HI; telephone: (808) 552–2555.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The SSC will discuss and may make recommendations to the Council on the following agenda items:

1. Pelagic fishery issues, including:

(a) an update on the Pelagic Fisheries Research Program,

(b) Status of NMFS Pelagic Research,

(c) 1995 annual report,

(d) Longline bycatch issues,

(e) Status of Albatross Workshop, and

(f) Program planning;

2. Hawaii bottomfish issues, including:

(a) Status of Hawaii Department of Land and Natural Resources management plan for Main Hawaiian Islands onaga and ehu,

(b) Council preliminary (backup) management plan for Main Hawaiian Island onaga and ehu,

(c) Limited entry alternatives for the Mau Zone,

(d) Status of moratorium on new entry to the Mau Zone,

(e) 1995 annual report,

(f) Consideration of additional Hoomalu Zone participation, and

(g) Program planning;

3. Crustaceans Milestones 1997–1997; and

4. Other business as required.

Richard W. Surdi, Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

Special Accommodations

Gary Matlock, Program Management Officer, National Marine Fisheries Service. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: June 27, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–17047 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 062696D]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council will hold a meeting of its Bottomfish Task Force.

DATES: The meeting will be held on July 23, 1996, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Executive Center, 1088 Bishop St., Room 4003, Honolulu, HI; telephone: (808) 539–3000.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The task force will hold its second meeting to discuss and formulate limited entry alternatives for the Mau Zone bottomfish fishery in the Northwestern Hawaiian Islands and consider other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: June 27, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–17048 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 062896C]

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 90th meeting.

DATES: The meeting will be held on August 7–9, 1996. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Kaluakoi Hotel, Hoaloha Room, Molokai, HI; telephone: (808) 552–2555.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone 808–522–8220.

SUPPLEMENTARY INFORMATION: The Council's Standing Committees will meet from 8:00 a.m. to 5:00 p.m. on August 7. The full Council will meet from 8:30 a.m. to 4:00 p.m. on August 8–9. There will be a Community Meeting at the Mitchell Pauole Center from 5:30 p.m. to 7:00 p.m. on August 8.

The Council will discuss and may take action on the following agenda items:

1. Reports from the islands;
2. Reports from fishery agencies and organizations;
3. Ecosystems and Habitat, including:
   (a) Summary of recent issues and activities, and
   (b) Project update on large scale transplant of live corals in Hawaii;
4. Pelagic fishery issues, including:
   (a) 1995 annual report island-area summaries,
   (b) Status of NMFS Pelagic Research,
   (c) Bycatch issues,
   (d) Status of request for single-Council designation for management of domestic pelagic fisheries in the Pacific,
   (e) Status of Albatross Workshop,
   (f) Pelagics data amendment, and
   (g) Status of shark, turtle and albatross assessment;
5. Crustaceans Milestones 1997–1999;
6. Bottomfish issues, including:
   (a) 1995 annual report island-area summaries,
   (b) Status of Department of Land and Natural Resources management plan for Main Hawaiian Island onaga and ehu,
   (c) Council's preliminary management plan for Main Hawaiian Island Onaga and Ehu stocks,
   (d) Limited entry alternatives for the Mau Zone, and
   (e) Milestones 1997–1999;
7. Enforcement issues, including:
   (a) NMFS activities and Vessel Monitoring System (VMS) update,
   (b) Status of violations, and
   (c) Amendment to require VMS on all foreign vessels;
8. Native rights and indigenous fishing issues, including;
   (a) Status of relevant Magnuson Fisheries Conservation and Management Act (Magnuson Act) amendments, and
   (b) Molokai subsistence demonstration project;
9. Program planning, including;
   (a) Status of Magnuson Act re-authorization,
   (b) Status of Western Pacific Fisheries Information Network (WPacFIN), and
   (c) Milestones;
10. Administrative matters; and
11. Other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: June 27, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–17049 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 062796A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for modification 7 to scientific research permit 825 (P513).

SUMMARY: Notice is hereby given that the Columbia River Inter-tribal Fish Commission at Portland, OR (CRITFC) has applied in due form for a modification to a permit to take endangered and threatened species for the purpose of scientific research.

DATES: Written comments or requests for a public hearing on this application must be received on or before August 2, 1996.

ADDRESSES: The application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: CRITFC requests a modification to a permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217-227).

CRITFC (P513) requests modification 7 to permit 825 for authorization to take juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) annually associated with a study designed to monitor the extent of dissolved nitrogen gas supersaturation effects on outmigrating juvenile anadromous fish in the Snake and Columbia Rivers in the Pacific Northwest. Permit 825 authorizes an annual take of adult and juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) associated with several scientific research studies including the dissolved nitrogen gas supersaturation study. Juvenile fall chinook salmon are proposed to be captured, anesthetized, examined, allowed to recover from the anesthetic, and released. The probability of a juvenile, ESA-listed, Snake River fall chinook salmon indirect mortality associated with the study is negligible. Modification 7 is requested for the duration of the permit. Permit 825 expires on December 31, 1997.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on this application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: June 27, 1996.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–17051 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 062096A]

Marine Mammals; Permit No. 987 (P598)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Scientific research permit amendment.

SUMMARY: Notice is hereby given that a request for amendment of scientific research permit no. 987 submitted by Dr. Jim Darling, P.O. Box 384, Tofino, British Columbia, Canada VOR 2Z0, has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001); and

Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2987).

SUPPLEMENTARY INFORMATION: On May 20, 1996, notice was published in the **Federal Register** (61 FR 25209) that an amendment of permit No. 987, issued March 1, 1996 (61 FR 9438), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of paragraphs (d) and (e) of § 216.33 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 222).

Permit No. 987 authorizes the taking (i.e., harassment) of up to 200 humpback whales (*Megaptera novaeangliae*) in the course of behavioral and photo-identification studies and biopsy sampling, in the waters around the main Hawaiian Islands, primarily off of Maui, Hawaii, over a period of 2 years. Amendment No. 1 to Permit No. 987, authorizes: 1) An increase in the total number of harassment takes authorized from 200 to up to 1000 animals annually, in Hawaii waters, up to 100 of which may be biopsy sampled annually; 2) an increase in the duration of the permit from two to three years; 3) the biopsy of 10 cows with calves or yearlings (biopsy of calves/yearlings is not requested); 4) the opportunistic collection of biopsy samples from dead stranded whales and retrieve humpback whale carcasses for necropsy; 5) the inclusion of Southeast Alaska, specifically Frederick Sound and Stephens Passage as research locations; and 6) in the requested Alaska locations, the take by harassment of up to 500 humpback whales annually, up to 100 of which may be biopsy sampled annually.

Issuance of this Permit as required by the ESA of 1973 was based on a finding that the permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in Section 2 of the ESA.

Dated: June 20, 1996.

William Windom,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–16945 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–22–F

Patent and Trademark Office

Renewal and Amendment of the Charter of the Public Advisory Committee for Trademark Affairs

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), and after consultation with GSA, it has been determined that the renewal and amendment of the charter of the Public Advisory Committee for Trademark Affairs is in the public interest in connection with the performance of duties imposed on the Department by law. The charter was renewed on May 23, 1996. Charter amendments will allow the Assistant Secretary of Commerce and Commissioner of Patents and Trademarks (Assistant Secretary) to select organizations which are representative of the Intellectual Property community. Each selected organization will, in turn, be able to appoint a designated number of members to the Committee. Committee membership will be limited to no more than 15 members. These members will serve staggered 3-year terms.

SUPPLEMENTARY INFORMATION: The Committee was first chartered in January 1973 and is now being renewed and its charter amended. The Committee's purpose is to advise the Patent and Trademark Office (Office) on ways to increase the Office's efficiency and effectiveness and to provide a continuing flow of knowledge from the private sector or the Office in the area of international and domestic trademark law.

The Office is amending the charter of the Committee to make the Committee more diverse and more representative of trademark owners, trademark practitioners and the Intellectual Property community as a whole. The Assistant Secretary will select representative organizations from among intellectual property organizations, bar groups, business-related organizations and academia, and determine the number of Committee members each organization can choose.

Allowing each representative organization to select its own Committee member(s) will ensure that the Committee represents the concerns of each member organization. Members will serve staggered three-year terms. No member may serve more than two consecutive terms.

The size of the Committee is being reduced from its former level of 18 members to 15 members. After experience with both an 18-member and a 15-member Committee, the smaller number seems to work better.

The Committee Chair will be selected by the Assistant Secretary and will serve a one-year term. No individual may be the Chair for more than two consecutive terms.

FOR FURTHER INFORMATION CONTACT: Lynne G. Beresford at (703) 308–8900, by fax at (703) 308–7220, or by mail marked to her attention and addressed to:

Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513. Any organization which has an interest in the Committee should contact Ms. Beresford. A list of interested

organizations will be maintained in the Office of the Assistant Commissioner for Trademarks.

Dated: June 26, 1996.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 96–16938 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–16–M

COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar & Cocoa Exchange, Inc., Proposed Rule Amendments to Require that Membership Lessees Soliciting or Executing Customer Orders Affiliate with Member Firms

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rule amendments of the Coffee, Sugar & Cocoa Exchange, Inc., to require that membership lessees soliciting or executing customer orders affiliate with member firms.[1]

SUMMARY: The Coffee, Sugar & Cocoa Exchange, Inc., ("CSC" or "Exchange") has submitted proposed rule amendments and other materials to require that lessees soliciting or executing customer orders affiliate with member firms.[2] Acting pursuant to the authority delegated by Commission Regulation 140.96, the Division of Trading and Markets has determined to publish the CSC proposal for public comment. The Division believes that publication of the CSC proposal is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before August 2, 1996.

FOR FURTHER INFORMATION CONTACT: Clarence Sanders, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Telephone: (202) 418–5484.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Rule Amendments

By a letter dated April 18, 1996, the CSC submitted proposed rule amendments pursuant to Section 5a(a)(12)(A) of the Commodity Exchange Act ("Act") and Commission Regulation 1.41(b). The proposed amendments would require that lessees soliciting or executing customer orders affiliate as employees or principals of member firms.[3] Thus, the proposed affiliation requirement would prohibit a lessee from soliciting or executing customer orders unless the lessee serves as an employee or principal of a member firm.

The Exchange states that the purpose of the proposed affiliation requirement is "to [establish] a regulatory structure in which a member firm is specifically responsible for the lessee's day to day activities on the Exchange." The Exchange asserts that, as mandated by the proposal, "the [member] firm with which a lessee is affiliated is in the best position to effectively supervise [the lessee]."

In further support of the proposal, the Exchange states that a lessor typically does not employ or have any other relationship with the individual to whom a membership is leased and, for that reason, is not in a position to effectively oversee a lessee's trading activities or practices. The Exchange also notes that a clearing member guarantor of a lessee is not well situated to carry out supervisory responsibilities over lessees because the guarantor is functionally capable of monitoring a lessee's trading activity only after the fact.[4]

The Exchange states that it proposes to defer implementation of the proposal "in order to give the affected lessees and floor brokerage firms sufficient time to make appropriate arrangements and to become member firms." Thus, the Exchange proposes to implement the proposal on September 20, 1996.

II. Request for Comments

The Commission requests comments on any aspect of the CSC's proposed rule amendments that members of the public believe may raise issues under the Act or Commission regulations. In particular, the Commission requests comments regarding the proposal's competitive effects, impact on supervisory oversight of lessees, and implementation schedule.

Copies of the proposed rule amendments and related materials are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 418–5100. Some materials may be subject to confidential treatment pursuant to 17 CFR 145.5 or 145.9.

Any person interested in submitting written data, views, or arguments on the proposed rule amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, by the specified date.

Issued in Washington, DC, on June 27, 1996.

Alan L. Seifert,

Deputy Director.

[FR Doc. 96–16979 Filed 7–2–96; 8:45 am]

BILLING CODE 6351–01–P

[1] Rule 1.47 of the Coffee, Sugar & Cocoa Exchange, Inc., permits a full or associate member to lease his membership to another individual. Rule 1.47 states, among other things, that "a Full Membership so leased shall be utilized for the limited purpose of trading in commodity contracts and an Associate Membership so leased shall be utilized for the limited purpose of trading in options on or subject to the Rules of the [Coffee, Sugar & Cocoa Exchange, Inc.,] and in such other contracts as may be specified by the Board from time to time."

[2] The CSC proposal includes amended and newly proposed definitions and amendments to existing Rule 1.47.

[3] Under Exchange Rule 1.21, a partnership, corporation, limited liability company, or other entity is eligible to apply for member firm privileges. Applicants for member firm privileges must meet certain qualifying criteria and are subject to approval by the Board of the Exchange.

[4] Under CSC Rule 1.14, a clearing member guarantor is obligated to the Exchange and its members for the performance, payment, and discharge of all contracts, obligations, and liabilities of the guaranteed member.

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: Plebe-Parent Weekend Questionnaire.

Type of Request: New collection.

Number of Respondents: 1,203.

Responses Per Respondent: 1.

Annual Responses: 1,203.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 301.

Needs and Uses: The information collected by this questionnaire is utilized by the U.S. Military Academy to improve the support provided parents of cadets who attend this weekend activity. Questions relate to parent experiences during the event and their insights into necessary improvements. The answers are used to evaluate activities and services provided to parents and to make changes deemed advisable.

Affected Public: Individuals and households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 28, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–16994 Filed 7–2–96; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: Reception Day Questionnaire.

Type of Request: New collection.

Number of Respondents: 1,343.

Responses per Respondent: 1.

Annual Responses: 1,343.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 336.

Needs and Uses: The information collected by this questionnaire is utilized by the U.S. Military Academy to improve the support provided parents of cadets who attend this activity. Questions relate to parent experiences during the event and their insights into necessary improvements. The answers are used to evaluate activities and services provided to parents and to make changes deemed advisable.

Affected Public: Individuals and households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 28, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–16995 Filed 7–2–96; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: Application for Uniformed Services Identification Card—DEERS Enrollment; DD Form 1172; OMB Number 0704–0020

Type of Request: Revision.

Number of Respondents: 2,459,785.

Responses Per Respondent: 1.

Annual Responses: 2,459,785.

Average Burden Per Response: 10 minutes.

Annual Burden Hours: 410,784.

Needs and Uses: The information collected hereby, is used to verify the entitlement of members of the Uniformed Services, their spouses and dependents, and other authorized individuals to certain benefits and privileges. These privileges include health care; use of commissary; base exchange; and morale, welfare and recreation facilities. The information provides the necessary data to determine eligibility to these benefits and privileges, and to provide eligible individuals with an authorization/identification card therefor. As well as to maintain a centralized database of eligible individuals. The information may also be used by the Uniformed Services, military departments, and Defense Agencies to issue their respective non-benefit identification cards.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 28, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–16996 Filed 7–2–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 3, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or

waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 27, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: Early Childhood Longitudinal Survey.
Frequency: One or two times.
Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Government, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 8,170
Burden Hours: 7,500.
Abstract: The National Center for Education Statistics requests a 3-year generic clearance from the Office of Management and Budget to conduct developmental and design activities (i.e., field test) that will culminate in instruments that measure cognitive outcomes as well as the factors that affect learning outcomes in young children and to conduct the base year survey and assessment activities. Kindergarten enrollee cohorts are involved.

Office of Postsecondary Education

Type of Review: Revision.
Title: Student Aid Report (SAR).
Frequency: Annually.
Affected Public: Individuals or households.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 9,506,891
Burden Hours: 4,663,316
Abstract: Used to notify applicants of their eligibility to receive Federal financial aid. The form is submitted by the applicant to the institution of their choice.

Office of Management

Type of Review: New.
Title: Education Department General Administrative Regulations for Grants, 34 CFR Parts 74, 75, 76 and 80.
Frequency: On Occasion.
Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, local or Tribal Government, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden
Responses: 30,000
Burden Hours: 690,000
Abstract: These collections are necessary for the award and administration of discretionary and formula grants. The collections specific to ED forms are part of the reinvented process ED uses for awarding multi-year discretionary grants. The new process substantially increases flexibility of the grant process by enabling all years of multi-year budgets to be negotiated on at the time of initial award, and to submit only a performance report instead of an entire noncompeting continuation (NCC) package to receive funding.

[FR Doc. 96–16939 Filed 7–2–96; 8:45 am]
BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–591–000]

Algonquin Gas Transmission; Notice of Request Under Blanket Authorization

June 27, 1996.

Take notice that on June 21, 1996, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP96–591–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the National Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a tap valve interconnecting its existing T-system in Milford, Massachusetts with facilities constructed by Ball-Foster Glass Container Co., L.L.C. (Ball-Foster), under the blanket certificate issued in Docket No. CP87–317–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Algonquin states that the proposed delivery facilities will consist of a tap, meter and related data acquisition system facilities which will be installed by Algonquin within the existing right-of-way. Algonquin notes that Ball-Foster will construct a regulator station and miscellaneous piping on land it owns in Milford, which is adjacent to Algonquin's right-of-way. Algonquin asserts that the proposed addition of the proposed facilities will have no impact on its system-wide peak day deliveries because the deliveries to Ball-Foster will be interruptible, pursuant to Algonquin's Rate Schedule AIT–1. Algonquin estimates the cost of facilities to be constructed by Algonquin will be $81.450. Ball-Foster has agreed to reimburse Algonquin for constructing these facilities. Algonquin notes that Ball-Foster will pay for facilities it will construct.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16927 Filed 7–2–96; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP96–593–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

June 27, 1996.

Take notice that on June 24, 1996, Columbia Gas Transmission (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed a request with the Commission in Docket No. CP96–593–000, pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to establish an additional point of delivery for transportation service to Pennzoil Products Company (Pennzoil) authorized in blanket certificate issued in Docket No. CP83–76–000), all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia proposes to construct and operate an addition point of delivery for interruptible transportation service to Pennzoil in Boone County, West Virginia. Columbia states that the additional point of delivery has been requested by Pennzoil for transportation service for residential service. The cost to establish the additional point of delivery is estimated at $11,452. Columbia reports that Pennzoil has agreed to reimburse Columbia for the total cost of the delivery point.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16928 Filed 7–2–96; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. GT96–69–000]

KO Transmission Company; Notice of Compliance Filing

June 27, 1996.

Take notice that on June 21, 1996, KO Transmission Company (KO Transmission) filed its FERC Gas Tariff, Original Volume No. 1, on electronic media.

KO Transmission states that the purpose of the filing is to comply with the Letter Order issued by the Director of the Office of Pipeline Regulation on May 21, 1996, in the above-captioned docket.

Any person desiring to protest with said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protest must be filed as provided in Section 154.210 of the Commission's Regulations. All protests filed with Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16929 Filed 7–2–96; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP96–590–000]

Northern Natural Gas Company; Notice of Application

June 27, 1996.

Take notice that on June 21, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP96–590–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain pipeline facilities to West Texas Gas, Inc. (WTG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to abandon, by sale to WTG, approximately 14 miles of 6-inch pipeline and appurtenant facilities located in Hansford and Hutchinson Counties, Texas, to be used by WTG as non-jurisdictional gathering facilities.

Northern states that in instances where the primary term of any transportation service agreement using the subject facilities has not expired, to the extent necessary, WTG would perform a comparable, but non-jurisdictional, service on terms and conditions to be mutually agreed upon by WTG and the respective party for the remainder of the primary term.

Any person desiring to be heard or any person desiring to make any protest with reference to said application should on or before July 18, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16930 Filed 7–2–96; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP96–577–000]

Plant Owners v. Continental Natural Gas, Inc.; Notice of Complaint and Motion for Show Cause Order

June 27, 1996.

Take notice that on June 17, 1996, Plant Owners, identified in the attached appendix, filed in Docket No. CP96–577–000, pursuant to Rules 206 and 212 of the Commission's Rules of Practice and Procedure (18 CFR 385.206, 385.212), a complaint and motion for an order to show cause against Continental Natural Gas, Inc. (CNG), alleging that CNG has constructed and is operating certain facilities that are subject to the

Natural Gas Act (NGA) without first obtaining authorization for these facilities pursuant to the certification procedures of NGA § 7(c). Plant owners own the Laverne processing plant that is operated by Conoco Inc. The attorney for Plant Owners is Bruce A. Connell, Esq., 600 N. Dairy Ashford, ML–1034, Houston, Texas 77079. Plant Owners' complaint is on file with the Commission and open for public inspection.

Plant Owners state that the facilities at issue consist of approximately ten miles of 8-inch pipeline through which high pressure natural gas flows between the tailgate of CNG's Beaver processing plant and the mainline transmission facilities of ANR Pipeline Company (ANR) in Beaver County, Oklahoma. Plant Owners assert that these facilities transport pipeline quality, processed, residue gas from the processing plant into interstate markets. The line is described as having no apparent well connects or gathering line interconnects.

It is stated that some Plant Owners produce natural gas behind CNG's Beaver Plant that is gathered by Colorado Interstate Gas Company, not ANR. Moreover, CNG has proposed to build connecting lines into the Laverne gathering area, where Plant Owners both produce and purchase natural gas. Plant Owners state that ANR has filed for authorization at Docket No. CP96–372–000 to construct and operate an interconnect between ANR's facilities appurtenant to Plant Owners' facilities and CNG's Beaver plant facilities. Plant Owners are concerned that the continuation of CNG's operation of jurisdictional facilities, without the protections provided by the NGA, will adversely affect their rights and opportunities to gain non-discriminatory, open access to interstate markets through the interstate pipeline grid. Plant Owners believe that, based on recent Commission precedent, the facilities at issue clearly perform a transmission function, as opposed to a gathering or production function.

Plant Owners allege that CNG's control of the line as an unregulated operator would be anti-competitive since Plant Owners compete with CNG for purchasing, processing and interstate marketing of natural gas. It is stated that denial of Plant Owners' request would place Plant Owners in an untenable competitive position because CNG would control Plant Owners' access to interstate gas markets and would be able to charge an unregulated rate for the same service currently provided, *i.e.*, access to ANR's mainline system.

Further, Plant Owners state that GPM Gas Corporation (GPM) filed a complaint against CNG at Docket No. CP96–495–000 on the basis that certain proposed pipeline facilities *upstream* of CNG's Beaver plant should be properly functionalized as transmission facilities subject to the NGA. Plant Owners have intervened and filed in support of GPM's complaint. Plant Owners assert that, should GPM's position be sustained by the Commission in that proceeding, Plant Owners' position in the instant filing should be affirmed *a fortiori*. Plant Owners believe it would be inconsistent with any previous application of the modified primary function test to have gathering facilities *downstream* of mainline transmission facilities.

Plant Owners ask that CNG be required to show cause as to why the subject line should not be considered to be performing a jurisdictional transmission activity for which a certificate under NGA § 7(c) should have been obtained, and pending satisfaction of the Show Cause order, CNG be precluded from connecting Plant Owners' gas from the Laverne gathering system to CNG's Beaver plant.

Any person desiring to be heard or to make any protest with reference to the complaint should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions or protests, and a fully responsive answer of CNG to the complaint, should be filed on or before July 29, 1996. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

Plant owners

Robert W. Jones Jr., Resources Ventures '73, 3501 Barclay, Amarillo, TX 79109, (806) 352–4374.
Joanne H. Nor, 6323¼ North Doheny Drive, Los Angeles, CA 90069, (310) 278–9025.
AnSon Company, P.O. 24060, Oklahoma City, OK 73124, (405) 528–0525, Contact: Daniel W. Fischer.
Guest Petroleum, Incorporated, P.O. Box 805, 1600 SE 19th, Suite #204, Edmond, OK 73083–0805, (405) 341–8698, Contact: David A. Guest.
Bond Operating Company, Agent, Bond Estate Properties, 325 North St. Paul, Suite 2810, Tower II, Dallas, TX 75201, 0 (214) 965–8766, Contact: James H. Bond.
Bond Operating Company, 325 North St. Paul, Suite 2810, Tower II, Dallas, TX 75201, (214) 965–8766, Contact: James H. Bond.
George M. Close, Trustee, Liberty Tower, 100 North Broadway, Suite 3113, Oklahoma City, OK 73102–8606, (405) 236–4388.
Van Oil Co. 1730 Commerce Building, Ft. Worth, TX 76102, (817) 332–3757, Contact: J.H. Van Zant.
Madelon L. Bradshaw, 2120 Ridgmar Boulevard, Suite 12, Fort Worth, TX 76116, (817) 732–4252, Contact: Larry O. Hulsey.
American Innovative Royalty Systems, P.O. Box 717, Pointblank, TX 77364, (409) 377–2833, Contact: Bennett Watts, Owner.
Thomas D. Cabot, Deceased, Thomas D. Cabot, Jr., Executor, Cabot Corporation, 75 State Street, Boston, MA 02109, (617) 342–6006, Contact: Joan Whelton.
Chevron U.S.A. Inc., (Warren Petroleum Company is a division of Chevron U.S.A. Inc.), Room 2260, 1301 McKinney Street, Houston, TX 77010, (713) 754–3415, Contact: Thomas D. Oliver, Senior Counsel.
Warren Petroleum Company, 1350 South Boulder, Tulsa, OK 74119, (918) 560–4405, Contact: G.M. Spies.
Lyons Petroleum Reserves, Incorporated, 14340 Torrey Chase Boulevard, Suite 270, Houston, TX 77014–1021, (713) 893–8540, Contact: Michael J. Nicol.
Eagle Ridge Oil & Gas, Incorporated, 8517 South 77th East Place, Tulsa, OK 74133–6622, (918) 494–8928, Contact: Mark P. Godsey, President.
Gallaspy Oil Properties, Ltd., P.O. Box 20472, Oklahoma City, OK 73156, (405) 842–5037, Contact: William C. Gallaspy.
Kennedy & Mitchell, Incorporated, P.O. Box 612007, Dallas, TX 75261–2007, (214) 753–6900, Contact: Michael R. Childers, Vice President.
Kenneth W. Cory, Ltd., 6565 West Loop South, Suite 780, Bellaire, TX 77401–3518, (713) 661–5911, Contact: Pat Chesnut.
*Locin Oil Corporation, 14340 Torrey Chase Boulevard, Suite 270, Houston, TX 77014–1021, (713) 893–8540, Contact: Michael J. Nicol.
Southwest Oil Industries, 7557 Rambler Road, Suite 1100, Dallas, TX 75231, (214) 696–7705, Contact: Bobby R. McAlpin.
Trident, NGL, 13430 Northwest Freeway, Suite 1200, Houston, TX 77040, Contact: Glenn Etienne, (713) 507–6830.
Pine Crest Preparatory School Incorporated, 1501 Northeast 62nd Street, Fort Lauderdale, FL 3334, (954) 492–4116, Contact: Kenneth Kone.
Statex Petroleum Incorporated, 1801 Royal Lane, Suite 110, Dallas, TX 75229, (214) 869–2800, Contact: Dhar Carman.
Bernadette G. Wolfswinkel, 5861 South Kyrene Road #1, Tempe, AZ 85283, (602) 831–2000, Contact: Jim Gillespie.
Earthtime, Incorporated, P.O. Box 164291, Austin, TX 78716–4291, (512) 306–9039, Contact: Steven R. Lockwood.
Alan L. Lamb, 11900 North Penn, Suite C–1, Oklahoma City, OK 73120, (405) 755–2233, Contact: Alan L. Lamb.
C&L Processors Partnership, c/o Conoco Inc., 600 North Dairy Ashford, Houston, TX 77079–2197, Contact: Patrick L. Meyer.

*Locin Oil Corporation is an affiliated company to Lyons Petroleum Reserves, Inc., but is not an owner in the Laverne Plant.

[FR Doc. 96–16931 Filed 7–2–96; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP96–218–002]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 27, 1996.

Take notice that on June 25, 1996, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheet, to become effective July 26, 1996:

First Revised Sheet No. 741

Texas Eastern states that the purpose of this filing is to insert the words, "Unless prohibited by law," at the beginning of the last sentence of the CRP election form for Rate Schedule SCT contained in Texas Eastern's FERC Gas Tariff. On June 13, 1996, Texas Eastern made a filing (June 13 Compliance Filing) in compliance with the Commission's Order issued May 29, 1996, in Docket No. RP96–218–000 (May 29 Order). Texas Eastern agreed in the June 13 Compliance Filing to make a revision to the CRP Election form, Exhibit D, to Rate Schedule SCT. The agreement was in response to Ordering Paragraph (E) of the May 29 Order.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to protect this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16932 Filed 7–2–96; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP96–284–000]

Viking Gas Transmission Company; Notice of Request for Waiver

June 27, 1996.

Take notice that on June 21, 1996, Viking Gas Transmission Company (Viking) tendered for filing a request for a waiver of the Commission's Order No. 563 requirement to provide electronic file downloading according to standards for Electronic Data Interchange.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be head or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 8, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16933 Filed 7–2–96; 8:45 am]
BILLING CODE 6717–01–M

[Project No. 10934–003; New Hampshire]

William B. Ruger, Jr.; Notice of Availability of Final Environmental Assessment

June 27, 1996.

A final environmental assessment (FEA) is available for public review. The FEA reviewed the application for amendment for the Sugar River II Project (FERC No. 10934). The application proposes to shorten the bypass reach of the Sugar River by 650 feet by relocating the proposed dam in a downstream direction and replacing an open canal with a seven-foot-diameter buried steel penstock. The FEA finds that approval of the amendment application would not constitute a major federal action significantly affecting the quality of the human environment. The Sugar River II Project is located on the Sugar River, in Sullivan County, in Newport, New Hampshire.

The FEA was prepared by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA can be viewed at the Commission's Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, D.C. 20426. Copies can also be obtained by calling the project manager, Mr. Joseph C. Adamson at (202) 219–1040.

Lois D. Cashell,

Secretary.

[FR Doc. 96–16926 Filed 7–2–96; 8:45 am]
BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Cases Filed; Week of March 11 Through March 15, 1996

During the Week of March 11 through March 15, 1996, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: June 24, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS
[Week of March 11 through March 15, 1996]

Date	Name and location of applicant	Case No.	Type of submission
3/12/96	Lakes Gas Company, Forest Lake, Minnesota.	VEE–0018	Exception to the Reporting Requirements. If granted: Lakes Gas Company would not be required to file Form EIA–782B, Reseller's/Retailer's Monthly Petroleum Product Sales Report.
3/13/96	A. Victorian, Nottingham, England.	VFA–0142	Appeal of an Information Request Denial. If granted: The November 18, 1991, Freedom of Information Request Denial issued by the Office of Declassification would be rescinded, and A. Victorian would receive access to certain Department of Energy information.
3/13/96	Yates Gulf #1 and #2, Alexandria, Virginia.	RR300–276	Request for Modification/Rescission in the Gulf Oil Refund Proceeding. If granted: The Dismissal of Case Nos. RF300-17883 and RF300-17884 issued to Yates Gulf #1 and #2 would be modified regarding the firm's application for refund submitted in the Gulf Oil Refund Proceeding.
3/14/96	Petrucelly & Nadler, P.C., Boston, Massachusetts.	VFA–0143	Appeal of an Information Request Denial. If granted: The February 8, 1996 Freedom of Information Request Denial issued by Oak Ridge Operations Office would be rescinded, and Petrucelly & Nadler, P.C. would receive access to certain DOE information.
3/15/96	Hiram Castilleja Service Station, San Diego, California.	RF300–278	Request for Modification/Rescission in the Gulf Oil Refund Proceeding. If granted: The March 7, 1996 Dismissal of Case No. RF300–15283 issued to Hiram Castilleja Service Station would be modified regarding the firm's application for refund submitted in the Gulf Oil Refund Proceeding.

[FR Doc. 96–16982 Filed 7–02–96; 8:45 am]
BILLING CODE 6450–01–P

Office of Hearings and Appeals

Notice of Cases Files; Week of March 18 through March 22, 1996

During the Week of March 18 through March 22, 1996, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: June 24, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS
[Week of March 18 through March 22, 1996]

Date	Name and location of applicant	Case no.	Type of submission
Mar. 18, 1996	Ron's Gulf, New Carlisle, OH	RR300–280	Request for Modification/Rescission in the Gulf Oil Refund Proceeding. If granted: The July 30, 1991 Dismissal of Case No. RF300–16743 issued to Ron's Gulf would be modified regarding the firm's application for refund submitted in the Gulf Oil Refund Proceeding.
Mar. 19, 1996	Hill Service Station Savannah, GA	RR300–281	Request for Modification/Rescission in the Gulf Oil Refund Proceeding If granted: The June 9, 1992 Dismissal of Case No. RF300–16739 issued to Hill Service Station would be modified regarding the firm's application for refund submitted in the Gulf Oil Refund Proceeding.
Mar. 19, 1996	Radiant Oil Co., Miami, FL	RR300–279	Request for Modification/Rescission in the Gulf Oil Refund Proceeding. If granted: The February 5, 1996 Dismissal of Case No. RF300–19988 issued to Radiant Oil Company would be modified regarding the firm's application for refund submitted in the Gulf Oil Refund Proceeding.
Mar. 20, 1996	R&R Distributing Co., Inc. Columbia, TN	VEE–0019	Exception to the Reporting Requirements. If granted: R&R Distributing Co., Inc. would not be required to file Form EIA–782A, Refiner's/Gas Plant Operator's Monthly Petroleum Product Sales Report.
Mar. 21, 1996	Albuquerque Operations Office Albuquerque, NM.	VSA–0061	Request for Review of Opinion under 10 C.F.R. Part 710. If granted: The February 13, 1996 Opinion of the Office of Hearings and Appeals, Case No. VSO–0061, would be reviewed at the request of an individual employed at Albuquerque Operations Office.

[FR Doc. 96–16983 Filed 7–02–96; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5531–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Auto Refinishing Industry Solvent-Use Survey (ARSUS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Auto Refinishing Industry Solvent-Use Survey (ARSUS) EPA ICR No. 1786.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 2, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1786.01.

SUPPLEMENTARY INFORMATION:

Title: Auto Refinishing Industry Solvent-Use Survey EPA ICR No. 1786.01. This is a new collection.

Abstract: This information collection is a voluntary one-time survey of automobile refinishers requested by the Emissions Characterization and Prevention Branch (ECPB) of the Environmental Protection Agency's (EPA) Air Pollution and Prevention Control Division (APPCD) to support the overall EPA program to investigate the emissions of ozone precursors both nationally and at the metropolitan level. Data collected are used to validate existing and proposed model-based estimates of emissions, develop statistically valid estimates of precursors usage in the auto refinishing industry, and investigate functional relationships between emissions and factors that may be useful predictors of emissions.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 02/09/96 (61 FR 4992–4993); three (3) sets of comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 47 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are those which are the owners and operators of the facilities that are classified in the following standard industrial classification (SIC) code:

SIC 7532—Top, Body, and Upholstery Repair Shops and Paint Shops, as well as the owners and operators of the facilities that are classified with the SICs listed below, and that use SIC 7532 (Top, Body, and Upholstery Repair Shops and Paint Shops) as an auxiliary classifier:

5012—Wholesale: Automobiles and Other Motor Vehicles
5511—Motor Vehicle Dealers (New and Used)
5521—Motor Vehicle Dealers (Used Only)
7538—General Automotive Repair Shops
7539—Automotive Repair Shops, Not Elsewhere Classified

Estimated Number of Respondents: 6,000.

Frequency of Response: once.

Estimated Total Annual Hour Burden: 3,525 hours.

Estimated Total Annualized Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1786.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: June 27, 1996.

Richard Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 96–17025 Filed 7–2–96; 8:45 am]
BILLING CODE 6560–50–P

[FRL–5531–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; the 1997 Hazardous Waste Report (Biennial Report) Under the Resource Conservation and Recovery Act (RCRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: 1997 Hazardous Waste Report, OMB No. 2050–0024, expiring August 31, 1996. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 2, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0976.08.

SUPPLEMENTARY INFORMATION:

Title: 1997 Hazardous Waste Report (Biennial Report) Under the Resource Conservation and Recovery Act, OMB Control No. 2050–0024; EPA ICR No. 0976.08. This is a request for extension of a currently approved collection.

Abstract: Generators and owners/operators of hazardous waste management facilities must compile, under RCRA sections 3002 and 3004, a biennial report of information on location, amount, and description of hazardous waste handled. EPA uses the information to define the population of

the regulated community and to expand its database of information for rulemaking and compliance with statutory requirements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Ch. 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 15, 1996 (61 FR 1074); 32 comments were received.

Based on internal Agency analyses, comments received, and to progress towards the Agency's goal of achieving 25% burden reduction, the Agency is today suggesting the following changes to the 1997 Biennial Report:

(1) Generators and RCRA permitted Treatment, Storage and Disposal Facilities (TSDFs) will no longer be required to report any RCRA hazardous wastes managed in exempt units, defined as those units that are not under RCRA hazardous waste permitting requirements;

(2) The Waste Treatment, Disposal, or Recycling Process Systems (PS) form will be eliminated; and

(3)The Waste Minimization questions from the Identification and Certification (IC) and Waste Generation and Management (GM) forms will be eliminated.

Implementing these changes will result in a substantially streamlined 1997 Biennial Report without sacrificing the information needed to meet the Agency's statutory requirements or to conduct its analyses. The Agency recognizes that the information suggested today as being dropped from the 1997 Biennial Report is still important. The Agency may decide, after it conducts a comprehensive evaluation of the information needs for the RCRA community, that some or all of these types of information are in fact best collected through the Biennial Report, albeit in a different format. At the present time, however, the Agency will collect this information through mechanisms and sources other than the 1997 Biennial Report.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average of 18.7 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Generators and Handlers of Hazardous Waste.

Total estimated Number of Respondents: 24,530.

Frequency of Response: Biennial.

Estimated Total Annual Hour Burden: 229,049 hours.

Estimated Total Annualized Cost Burden: $9,456,804.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the following addresses. Please refer to EPA ICR No. 0976.08 and OMB Control No. 2050–0024 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: June 27, 1996.

Richard Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 96–17026 Filed 7–2–96; 8:45 am]

BILLING CODE 6560–50–P

[OMB#2060–0063, EPA# 1167.05]; [FRL–5531–6]

Agency Information Collection Activities Under OMB Review; Standards of Performance for New Stationary Sources Lime Manufacturing Plants (Subpart HH)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507(a)(1)(D), this notice announces that the Information Collection Request (ICR) for Standards of Performance for New Stationary Sources—Lime Manufacturing Plants—NSPS Subpart HH) described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 2, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1167.05.

SUPPLEMENTARY INFORMATION:

Title: Standards of Performance for Lime Manufacturing Plants (OMB Control No. 2060–0063; EPA ICR No. 1167.05). This is a request for extension of a currently approved collection.

Abstract: The Administrator has judged that PM emissions from lime manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of lime manufacturing plants must notify EPA of construction, modification, startups, shut downs, date and results of initial performance test and excess emissions. The only type of industry costs associated with the information collection activity in the standards are labor costs.

In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 26, 1996.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 44.2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: owners or operators of lime manufacturing plants.

Estimated Number of Respondents: 38.

Frequency of Response. 2.

Estimated Number of Responses. 76.

Estimated Total Annual Hour Burden: 3,363.6 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods of minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1167.05 and OMB Control No. 2060–0063 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: June 27, 1996.

Richard Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 96–17029 Filed 7–2–96; 8:45 am]

BILLING CODE 6560–50–M

[PF–658; FRL–5378–5]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

DATES: Comments, identified by the docket number PF–658, must be received on or before August 2, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–658]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Product Manager (PM) 21, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 2801 Jefferson Davis Highway, Arlington, VA 22202, 703–305–6226; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received the following pesticide petitions from Rohm and Haas Company, AgroEvo USA Company and Griffin Corporation proposing the establishment of regulations for residues of certain pesticide chemicals in or on various raw agricultaral commodities.

PP 5F4582. Griffin Corporation, P.O. Box 1847, Rocky Ford Road, Valdosta, GA. 31603-1847 proposes to amend 40 CFR part 180 by establishing a tolerance for the residues of ethylene bisdithiocarbamate from the fungicides maneb and mancozeb calculated as zinc ethylene bisdithiocarbamate and their common metabolite ethylenethiourea in or on the raw agricultural commodity walnuts at 0.1 parts per million (ppm).

2. *PP 6F4693.* AgrEvo USA Company, Little Falls Center One, 2711 Centerville Road, Wilmington, DE 19808, proposes to amend 40 CFR part 180 by establishing a regulation to permit the combined residues of flutolanil (*N*-(3-(1-methylethoxy)phenyl)-2-(trifluoromethyl)benzamide)) and its metabolites converted to 2-trifluoromethyl benzoic acid and calculated as flutolanil, in or on the raw agricultural commodity potato tubers at 0.20 parts per million (ppm).

3. *PP 9F3812.* Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19105 proposes to amend 40 CFR 180.443 by establishing a tolerance for the combined residues of the fungicide myclobutanil [alpha-butyl-alpha-(4-chlorphenyl)-1*H*-1,2,4-triazole-1-propanenitrile] and its metabolite alpha-(3-hydroxbutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free and bound) in or on the raw agricultural commodity pome fruit at 0.5 ppm.

4. *FAP 6H5749.* AgrEvo USA Company, Little Falls Center One, 2711 Centerville Road, Wilmington, DE 19808, proposes to amend 40 CFR part 185 by establishing a food additive regulation to permit the combined residues of flutolanil (*N*-(3-(1-methylethoxy)phenyl)-2-(trifluoromethyl)benzamide)) and its metabolites converted to 2-trifluoromethyl benzoic acid and calculated as flutolanil, in or on the processed food commodity potato, dry peel at 3.0 ppm.

A record has been established for this document under docket number [PF–658] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this document, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 136a.

Dated: June 24, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–16858; Filed 7–02–96; 8:45 am]

BILLING CODE [illegible]-50-F

[FRL–5532–1]

Agency Information Collection Activities Under OBM Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740, Please refer to the appropriate EPA ICR Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 0270.36; Proposed Modifications to the National Primary Drinking Water Regulations for Lead and Copper; was approved 06/03/96; OMB No. 2040–0090; expires 03/31/97.

EPA ICR No. 0664.05; NSPS Subpart XXX, Bulk Gasoline Terminals; was approved 06/07/96; OMB No. 2060–0006; expires 06/03/99.

EPA ICR No. 0222.04; Investigations into Possible Noncompliance of Motor Vehicles with Federal Emission Standards; was approved 05/09/96; OMB No. 2060–0086; expires 05/31/99.

EPA ICR No. 1057.07; Standards of Performance for New Stationary Sources; Sulfuric Acid Plants—NSPS Subpart H; was approved 06/09/96; OMB No. 2060–0041; expires 06/30/99.

EPA ICR No. 1712.02; National Emission Standard for Hazardous Air Pollutants for Shipbuilding and Ship Repair Facilities (Surface Coating); was approved 05/11/96; OMB No. 2060–0330; expires 05/31/99.

EPA ICR No. 0597.06; Maximum Residue Limit (MR) Petitions on Food/Feed Corps and New Inert Ingredients; was approved 06/10/96; OMB No. 2070–0024; expires 06/30/99.

EPA ICR No. 0601.05; FIFRA Section 29 Annual Reports on Conditional Registrations; was approved 06/14/96; OMB No. 2070–0026; expires 06/30/99.

EPA ICR No. 1506.07; NSPS for Municipal Waste Combustors (MWC)—Subpart Ea; was approved 06.17/96; expires 01/31/99.

OMB Short Term Extensions

EPA ICR No. 0282.06; OMB No. 2060–0048; Motor Vehicle Emissions Defect Information Report and Records; expiration date was extended to 09/30/96.

EPA ICR No. 1626.04; OMB No. 2060–0256; National Emissions Reduction Program, Amendment; expiration date was extended to 08/31/96.

OMB Corrections

EPA ICR No. 0783.32; OMB No. 2060–0288; Refueling Emission Regulations for Light-Duty Vehicles and Light-Duty Trucks; expiration date has been changed from 07/31/97 to 06/30/96.

Dated: June 27, 1996.

Richard Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 96–17028 Filed 7–2–96; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00440; FRL–5378–6]

Conduct of Acute Toxicity Studies; Notice of Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting comments on a draft guidance document entitled "Conduct of Acute Toxicity Studies." Interested parties may request this document as described in the ADDRESSES unit of this notice.

DATES: Written comments, identified by the docket number "OPP–00440" must be received on or before September 3, 1996.

ADDRESSES: The guidance document is available from Tina Levine: By mail: Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 6th Floor, CS-1, 2800 Crystal Drive North, Arlington, VA, (703) 308–8393, e-mail: levine.tina@epamail.epa.gov.

Submit written comments to: By mail: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number "OPP–00440." No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under the SUPPLEMENTARY INFORMATION unit of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Tina Levine at the telephone number, office location, or e-mail address listed under the ADDRESSES unit of this document.

SUPPLEMENTARY INFORMATION: EPA is soliciting comments on a proposed guidance document entitled "Conduct of Acute Toxicity Studies." It is the goal of this document to compile additional guidance for the conduct of acute toxicity studies into a supplement to the Subdivision F Guidelines. It is expected that such guidance, which currently often must be pieced together from several different sources, will reduce the number of studies that are rejected or flawed due to incorrect procedures or insufficient reporting. While this should help all registrants, it is being finalized at this time because of the importance of clear guidance for the success of the self-certification program undergoing comment at this time. This **Federal Register** notice announces the availability of the draft document and solicits comment on it. In particular, EPA is interested in comments on those sections of the document where there has been some disagreement or uncertaintly between the various contributors to the document. These areas are highlighted in bold in the document. After reviewing the public comments received, EPA may make changes to the guidance document.

A record has been established for this action under docket number "OPP–00440" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: June 11, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–16590 Filed 7–2–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Safety Wireless Advisory Committee; Steering and Subcommittee Meetings

AGENCIES: The National Telecommunications and Information Administration (NTIA), Larry Irving, Assistant Secretary for Communications and Information, and the Federal Communications Commission (FCC), Reed E. Hundt, Chairman.

ACTION: Notice of the Next Meetings of the Spectrum Requirements and Interoperability Subcommittees.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the next meetings of two of the five Subcommittees of the Public Safety Wireless Advisory Committee. The NTIA and the FCC established a Public Safety Wireless Advisory Committee, Subcommittees, and Steering Committee to prepare a final report to advise the NTIA and the FCC on operational, technical and spectrum requirements of Federal, state and local Public Safety entities through the year 2010. All interested parties are invited to attend and to participate in the next round of meetings of the Subcommittees.

DATES: July 18, 19 1996 (Thursday, Friday).

ADDRESSES: Federal Communications Commission, 2000 M St., NW, Rooms 110 A,B, & C (Rooms subject to change), Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: For information regarding the Subcommittees, contact: Interoperability Subcommittee: James E. Downes at 202–622–1582; Spectrum Requirements Subcommittee: Richard N. Allen at 703–630–6617.

For information regarding accommodations and transportation, contact: Deborah Behlin at 202–418–0650 (phone), 202–418–2643 (fax), or dbehlin@fcc.gov (email). You may also contact Ms. Behlin for general information concerning the Public Safety Wireless Advisory Committee. Information is also available from the Internet at the Public Safety Wireless Advisory Committee homepage (http://pswac.ntia.doc.gov).

SUPPLEMENTARY INFORMATION: Two Subcommittees of the Public Safety Wireless Advisory Committee will hold consecutive meetings on Thursday, July 18, 1996 and Friday, July 19, 1996. The expected arrangement of the meetings, which is subject to change at the time of the meetings, is as follows:

July 18 & July 19: The Interoperability Subcommittee and then the Spectrum Requirements Subcommittee will meet consecutively starting at 8:00 a.m.

For further information contact Don Speights, NTIA, directly at 202–482–1652 or by email at wspeights@ntia.doc.gov.

The tentative agenda for each subcommittee meeting is as follows:

1. Welcoming Remarks.
2. Approval of Agenda.
3. Administrative Matters.
4. Work Program/Organization of Work.
5. Meeting Schedule.
6. Agenda for Next Meeting.
7. Other Business.
8. Closing Remarks.

The tentative schedule and general location of the next full meeting of the Public Safety Wireless Advisory Committee is: September 1996, in Washington, D.C.

The Co-Designated Federal Officials of the Public Safety Wireless Advisory Committee are William Donald Speights, NTIA, and John J. Borkowski, FCC. For public inspection, a file designated WTB–1 is maintained in the Private Wireless Division of the Wireless Telecommunications Bureau, Federal Communications Commission, Room 8010, 2025 M Street, N.W., Washington, D.C. 20554.

Federal Communications Commission

Robert H. McNamara,

Chief, Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 96–17096 Filed 7–2–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy on Assistance to Operating Insured Depository Institutions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Policy statement; Notice of opportunity for comment.

SUMMARY: The statement of policy would revise the FDIC's Statement of Policy on Assistance to Operating Insured Depository Institutions, which was published in the **Federal Register** on December 18, 1992 (the 1992 Policy Statement) (see, 57 FR 60203 (December 18, 1992)). As required by section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (the RCDRIA), the FDIC is conducting a systematic review of its regulations and statements of policy to identify and revise regulations and statements of policy that might be inefficient, cause unnecessary burden, or contain outmoded, duplicative, or inconsistent provisions (see, 60 FR 62345 (December 6, 1995)). The FDIC has reviewed the 1992 Policy Statement and has concluded that it should be revised. This revised statement of policy would replace the 1992 Policy Statement.

The statement of policy would (i) reflect the statutory "sunset" of the Resolution Trust Corporation on December 31, 1995, by deleting references to the Resolution Trust Corporation's statutory authority; (ii) incorporate the requirements of section 11 of the Resolution Trust Corporation Completion Act, P.L. 103–204, section 11 (1993), which revised section 11(a)(4) of the Federal Deposit Insurance Act, as amended (the FDI Act), 12 U.S.C. 1821(a)(4), to prohibit, with certain exceptions, the use of funds from the Bank Insurance Fund or the Savings Association Insurance Fund to benefit shareholders of a failed or failing insured depository institution; thus, the statement of policy would impact the treatment of shareholders with regard to FDIC assistance under section 13(c) of the FDI Act to an operating insured depository institution prior to the appointment of a conservator or receiver for that institution; (iii) provide that any depository institution subsidiary of a holding company may be included when considering what entities may contribute resources in connection with a proposal for FDIC assistance; and (iv) generally streamline the retained provisions of the 1992 Policy Statement, in pertinent part by removing certain detailed discussions of section 13(k)(5) of the FDI Act and various provisions added to the FDI Act by the Federal Deposit Insurance Corporation Improvement Act of 1991.

DATES: Written comments must be received on or before August 2, 1996.

ADDRESSES: Written comments should be addressed to the Office of the Executive Secretary, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

Comments may be hand delivered to Room F–402, 1776 F Street, N.W., Washington, D.C. 20439, on business days between 8:30 a.m. and 5:00 p.m. Comments may be sent through facsimile to: (202) 898–3838 or by the Internet to: comments@fdic.gov. Comments will be available for inspection at the FDIC Public Information Center, room 100, 801 17th Street, N.W., Washington, D.C. between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Gail L. Patelunas, Acting Director, Division of Resolutions, (202) 898–6779; Sean C. Forbush, Resolutions Specialist, Division of Resolutions, (202) 898–8506; Barbara I. Taft, Assistant General Counsel, Legal Division, (202) 736–0183; Michael B. Phillips, Counsel, Legal Division, (202) 736–0186, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The statement of policy does not require any collections of paperwork pursuant to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Accordingly, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that the statement of policy will not have a significant economic impact on a substantial number of small entities. In addition, the statement of policy will not impose regulatory compliance requirements on depository institutions of any size.

The text of the statement of policy follows:

FDIC Statement Of Policy on Assistance to Operating Insured Depository Institutions

I. Introduction

A. General Statutory Requirements

Section 13(c) of the Federal Deposit Insurance Act, as amended (the FDI Act), authorizes the Federal Deposit Insurance Corporation (the FDIC) to provide assistance to operating insured institutions (open assistance) (1) to prevent the "default" of insured institutions or to assist acquisitions of insured institutions that are "in danger of default," [1] or (2) if severe financial conditions exist that threaten the stability of a significant number of insured institutions or of insured institutions possessing significant financial resources, to lessen the risk to the FDIC posed by such insured institutions under such threat of instability.

In order for the FDIC to provide assistance to an operating insured institution, the FDIC must determine that the assistance meets the least-cost test set forth in section 13(c) of the FDI Act. That section provides that the assistance (1) must be necessary to meet the obligation of the FDIC to provide insurance coverage for the insured deposits in such institution, and (2) must be the least costly to the deposit insurance fund of all possible methods for meeting that obligation.[2]

The FDIC has the authority to provide to an operating insured institution assistance that does not meet the least-cost test only if the Secretary of the Treasury (in consultation with the President and upon the written recommendations of two-thirds of the Board of Directors of the FDIC and two-thirds of the Board of Governors of the Federal Reserve System) determines that the FDIC's compliance with the least-cost test would have adverse effects on economic conditions or financial stability and the assistance to the operating insured institution would avoid or mitigate such adverse effects (the "Systemic Risk Exception").[3]

The FDIC may consider providing financial assistance under section 13(c) to an operating insured institution before the appointment of a conservator or receiver only if the FDIC determines that (1) grounds for the appointment of a conservator or receiver exist or likely will exist in the future unless the institution's capital levels are increased,[4] and (2) it is unlikely that the institution can meet all currently applicable capital standards without assistance.[5] In addition, before the FDIC may provide assistance to an operating insured institution, (1) the appropriate Federal banking agency [6] and the FDIC must determine that, for such period of time as the agency or the FDIC considers to be relevant, the institution's management has been competent and has complied with applicable laws, rules, and supervisory directives and orders,[7] and (2) the FDIC must determine that the institution's management did not engage in any insider dealing, speculative practice, or other abusive activity.[8] Any determination made by the FDIC to provide assistance to an operating insured institution under section 13(c) must be made in writing and published in the **Federal Register**.[9]

SAIF-insured institutions submitting proposals for assistance under section 13(k)(5) of the FDI Act also must meet the criteria contained in that statutory provision.[10]

B. Timing Considerations

As section 13(c)(4) of the FDI Act requires the FDIC to select the resolution alternative that involves the least cost to the relevant deposit insurance fund, any open assistance proposal must be evaluated on a competitive basis with other available resolution alternatives. Because of the cost savings inherent in FDIC-assisted transactions involving the appointment of a receiver for an institution, it may be difficult for an open assistance proposal to be more cost effective than an available closed institution resolution.[11] Therefore, an open assistance proposal, to be acceptable, generally must be submitted substantially before grounds exist for the appointment of a receiver for the institution. Moreover, because of the complexity of many transactional

[1] The terms "default" and "in danger of default" are defined in section 3(x) of the FDI Act, 12 U.S.C. 1813(x).

[2] *See* section 13(c)(4)(A)(ii) of the FDI Act, 12 U.S.C. 1823(c)(4)(A)(ii).

[3] *See* section 13(c)(4)(G) of the FDI Act, 12 U.S.C. 1823(c)(4)(G).

[4] *See* section 13(c)(8)(A)(i)(I) of the FDI Act, 12 U.S.C. 1823(c)(8)(A)(i)(I).

[5] *See* section 13(c)(8)(A)(i)(II) of the FDI Act, 12 U.S.C. 1823(c)(8)(A)(i)(II).

[6] "Appropriate Federal banking agency" is defined at 12 U.S.C. 1813(q), in part, to mean: (1) the Comptroller of the Currency, in the case of a national bank; (2) the Board of Governors of the Federal Reserve System, in the case of a state member insured bank; (3) the FDIC, in the case of a state nonmember insured bank; and (4) the Director of the Office of Thrift Supervision, in the case of any savings association.

[7] *See* section 13(c)(8)(A)(i)(I) of the FDI Act, 12 U.S.C. 1823(c)(8)(A)(i)(I).

[8] *See* section 13(c)(8)(A)(ii)(II) of the FDI Act, 12 U.S.C. 1823(c)(8)(A)(ii)(II).

[9] *See* section 13(c)(8)(B) of the FDI Act, 12 U.S.C. 1823(c)(8)(B).

[10] Assistance proposals with respect to SAIF-insured institutions under section 13(k)(5) that do not meet all nine of the criteria in that statutory provision may be submitted to the FDIC for consideration under section 13(c) of the FDI Act. Section 13(k)(5) applies only to SAIF-insured institutions located in "economically depressed regions," and only if those institutions have certain types of problems pre-dating the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. The nine criteria for proposals submitted under section 13(k)(5) of the FDI Act are listed in subsections (k)(5)(A)(i) (I)–(III) and (A)(ii) (I)–(VI) of section 13 of the FDI Act, 12 U.S.C. 1823(k)(5)(A)(i) (I)–(III) and (A)(ii) (I)–(VI).

[11] Among the cost advantages favoring a resolution transaction following the appointment of a receiver for an institution are the effect of the receivership on the contingent liabilities of the failed institution, the potential for uninsured depositors and other unsecured creditors to share in the loss incurred on the institution and the ability of the FDIC as receiver to repudiate burdensome contracts.

structures involving open assistance, the time required to negotiate terms acceptable to all parties and to obtain necessary regulatory and shareholder approvals, and the "prompt corrective action" mandates of Section 38 of the FDI Act,[12] the FDIC encourages submission of proposals for open assistance well before grounds exist for the institution's closure. In general, this timing consideration will require the board of directors of the insured institution to make the difficult business judgment that the institution is likely to fail and that the balance of their responsibilities, including those to depositors as well as shareholders, compels the board to seek FDIC assistance, and to make that judgment before it is certain that the institution will fail.

II. Treatment of Shareholders Under Section 11(a)(4) of the FDI Act

Section 11(a)(4) of the FDI Act states, in pertinent part:

Notwithstanding any provision of law other than section 13(c)(4)(G) [of the FDI Act], the Bank Insurance Fund and the Savings Association Insurance Fund shall not be used in any manner to benefit any shareholder of—

(i) Any insured depository institution for which the [FDIC] or the [RTC] has been appointed conservator or receiver, in connection with any type of resolution by the [FDIC] or the [RTC];

(ii) Any other insured depository institution in default or in danger of default, in connection with any type of resolution by the [FDIC] or the [RTC]; or

(iii) Any insured depository institution, in connection with the provision of assistance under this section or section 13 with respect to such institution, except that this clause shall not prohibit any assistance to any insured depository institution that is not in default, or that is not in danger of default, that is acquiring (as defined in section 13(f)(8)(B) [of the FDI Act]) another insured depository institution.[13]

As the scope of the language of section 11(a)(4) and related legislative history with respect to the limitation on the use of the relevant deposit insurance fund for assistance under section 13(c) of the FDI Act is not clearly delineated,[14] the FDIC will determine, on a case-by-case basis, the application of section 11(a)(4) to any proposal for assistance.

III. Criteria for the FDIC's Consideration of Proposals for Assistance to an Operating Insured Institution

A proposal for assistance to an operating insured institution will be evaluated pursuant to the following criteria:

A. Prerequisites for Open Assistance

Criterion 1. The FDIC must determine that grounds for the appointment of a conservator or receiver exist or likely will exist in the future unless the insured institution's capital levels are increased.[15]

Criterion 2. The FDIC must determine that it is unlikely that the insured institution can meet all currently applicable capital standards without assistance.[16]

B. Financial Criteria for Open Assistance

Criterion 3. The cost of the proposal for open assistance to the FDIC must be determined to be the least-costly alternative available.[17] In order to ensure that the proposal is the least costly alternative, the FDIC will, in many cases, also seek proposals for resolving the insured institution on a closed basis.

Criterion 4. The proposal must provide for sufficient tangible capitalization, including capital infusions from outside private investment sources, to meet the regulatory capital standards of the appropriate Federal banking agency.[18]

Criterion 5. The amount of the assistance and the new capital injected from outside sources must provide for a reasonable assurance of the future viability of the insured institution.[19]

Criterion 6. Applicants must establish quantitative limits on all financial items in the proposal. For example, if applicants request indemnification from the FDIC for certain contingent liabilities, the proposal must include ceilings on the FDIC's financial exposure.

C. Competition

Criterion 7. The FDIC will consider the proposal within a competitive context which provides for the solicitation by the FDIC of interest from qualified entities.[20]

D. FDIC Financial Contribution and Repayment and Repayment

Criterion 8. The FDIC will consider, on a case-by-case basis, whether the proposal shall provide the FDIC with an equity or other financial interest in the resulting institution.[21]

Criterion 9. It is preferable that the proposal for FDIC assistance provide for repayment of such assistance in whole or in part.

E. Impact on Shareholders and Creditors

Criterion 10. Unless the Systemic Risk Exception in section 13(c)(4)(G) of the FDI Act is applicable, FDIC assistance may not be used in any manner to benefit any preexisting shareholder of the insured institution, as determined by the FDIC on a case-by-case basis. In any event, any remaining ownership interest of such shareholders shall be subordinate to the FDIC's right to receive reimbursement for any assistance provided. Preexisting debtholders of the insured institution shall make substantial concessions.

F. Due Diligence

Criterion 11. Applicants must consent to unrestricted on-site due diligence reviews by the FDIC (or its agents) and FDIC-monitored, on-site due diligence reviews by all potential qualified acquirers as determined by the FDIC (after consultation with the appropriate Federal banking agency).

G. Acquisition Within a Holding Company Structure

Criterion 12. The proposal must ensure that the assistance will benefit the insured institution and the FDIC and not be diverted to other purposes. If the insured institution is a subsidiary of a holding company, the proposal should be structured so that FDIC assistance is not provided to the holding company, except where compelling reasons require it, and then only when the holding company acts as a conduit to immediately provide the entire amount of assistance to the insured institution.[22]

Criterion 13. If the insured institution is a subsidiary of a holding company, the proposal should be structured so that available resources from the holding company and its other depository institution subsidiaries and/or nondepository subsidiaries are used to make a significant contribution toward minimizing the financial exposure of the FDIC.

H. Assets

Criterion 14. The FDIC may consider, in appropriate circumstances, the acquisition of, or loss-sharing, gain-sharing and other incentive arrangements with respect to, distressed assets.

I. Supervisory Concerns With Respect to Management

Criterion 15. The appropriate Federal banking agency and the FDIC must determine that, during such period of time preceding the date of such determination as the agency or the FDIC considers to be relevant, management of the insured institution was competent and complied with applicable laws, rules, and supervisory directives and orders. In no event will such determination, for assistance transaction purposes, estop or impair the FDIC or the appropriate Federal banking agency from pursuing any enforcement, civil or criminal remedies or redress against any person.[23]

Criterion 16. The FDIC must determine that the management of the resulting institution did not engage in any insider dealing, speculative practice, or other abusive activity.[24]

Criterion 17. The proposal must provide for adequate managerial resources. Continued service of any directors or senior ranking officers who served in a policy-making role at the insured institution, as may be determined by the FDIC, will be subject to approval by the FDIC.

Criterion 18. Any renegotiation or termination of management contracts is to be completed prior to the granting of assistance. Further, the FDIC may review and object to any or all parts of any compensation arrangements (including termination clauses) covering these individuals during the period assistance is outstanding.[25] In general, the failure to terminate a particular management contract prior to the granting of assistance will not stop the FDIC or the appropriate Federal banking agency from subsequently pursuing any enforcement, civil, or criminal remedies or redress against any person by reason of such contract, unless there is a written statement explicitly waiving such rights that is signed by an authorized official of the FDIC and the appropriate Federal banking agency. Notwithstanding the foregoing, any such waiver must take into consideration the requirements of 12 CFR part 359.

J. Fee Arrangements

Criterion 19. All fee arrangements with attorneys, investment bankers, accountants, consultants, and other advisors and agents incident to an open assistance proposal must be disclosed to the FDIC and will be evaluated in determining the cost of the assistance. Excessive fees must be avoided.

IV. Other Information

Any proposal requesting assistance to prevent the closing of an insured institution should be addressed to the appropriate FDIC regional offices of the Division of Supervision and the Division of Resolutions and should provide the amount, terms, and conditions of the assistance requested, as well as the details of the financial support to be provided. This information must be presented in sufficient detail to permit the FDIC to estimate the maximum cost that will be incurred as a result of the proposal and to determine the extent to which the proposal satisfies the criteria of this policy statement.

The proposal must include, with respect to the management determinations set forth in Criteria 15, 16, 17 and 18 in Part III, information about proposed management of the insured institution or the resulting institution, as applicable. Specifically, the proposal must identify all individuals who would exercise significant influence over, or participate in, major policy-making decisions of the insured institution or the resulting institution, without regard to title, salary or compensation. This list would include, without limitation, all directors, the chief executive officer, chief managing official (in an insured state branch of a foreign bank), chief operating officer, chief financial officer, chief lending officer and chief investment officer.

Copies of the proposal also should be provided to (1) the Director of the Division of Supervision, FDIC, 550 17th Street, N.W., Washington, D.C. 20429, (2) the Director of the Division of Resolutions, FDIC, 550 17th Street, N.W., Washington, D.C. 20429, (3) the insured institution's chartering authority, and, (4) if approvals under the Bank Holding Company Act are required, the appropriate Federal Reserve Bank.

By Order of the Board of Directors. Dated at Washington, D.C., this 17th day of June, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96–16904 Filed 7–2–96; 8:45 am]

BILLING CODE 6714–01–P

[12] *See* section 38(h)(3) of the FDI Act, 12 U.S.C. 1831o(h)(3).

[13] *See* 12 U.S.C. 1821(a)(4).

[14] *See* the Report of the House Committee on Banking, Finance and Urban Affairs, H.R. Rep. No. 103, 103d Cong., 1st Sess., Part 1, at 32 (1993) and the Conference Report accompanying the RTC Completion Act, H.R. Rep. No. 380, 103d Cong., 1st Sess. at 55 (1993).

[15] This criterion is mandatory. *See* section 13(c)(8)(A) of the FDI Act, 12 U.S.C. 1823(c)(8)(A).

[16] This criterion is mandatory. *See* section 13(c)(8)(A) of the FDI Act, 12 U.S.C. 1823(c)(8)(A).

[17] This criterion is mandatory unless the Secretary of the Treasury makes a systemic risk determination. *See* section 13(c)(4) (A) and (G) of the FDI Act, 12 U.S.C. 1823(c)(4) (A) and (G). Resolution alternatives must be evaluated on a present-value basis, using a realistic discount rate. *See* section 13(c)(4)(B) of the FDI Act, 12 U.S.C. 1823(c)(4)(B). This cost determination is premised on evaluating all possible resolution alternatives and must be made as of the date the FDIC determines to provide section 13(c) assistance. *See* section 13(c)(4)(C) of the FDI Act, 12 U.S.C. 1823(c)(4)(C). In calculating the cost of such assistance, the FDIC must treat any tax revenues that the U.S. Treasury would forego as a result of an assistance transaction, to the extent they are reasonably determinable, as revenues foregone by the applicable deposit insurance fund.

[18] The regulatory capital requirements of the respective Federal banking agencies are stated in: (1) For the Office of the Comptroller of the Currency, 12 CFR Part 3; (2) for the Board of Governors of the Federal Reserve System, 12 CFR Part 225; (3) for the FDIC, 12 CFR Part 325; and (4) for the Office of Thrift Supervision, 12 CFR Part 567.

[19] Viability may be demonstrated by pro forma projections based on reasonable assumptions regarding the use of the assistance, earnings, reserve levels, asset quality trends, anticipated dividends, and capital levels and needs. The viability projections will be reviewed closely by the FDIC for the reasonableness of assumptions. In addition, under normal circumstances, enough new capital should come from outside private sources to represent a vote of confidence in the viability of the assisted institution. By contrast, as an example, a *de minimus* investment which gave the investor an option on the whole institution would not represent a market validation of the assurance of viability.

[20] The FDIC has determined that under 12 U.S.C. 1823(c)(4), in order to demonstrate that the least costly resolution was selected, an assistance transaction generally cannot be the result of a single party negotiation, but rather must be the result of a competitive process.

[21] Under 12 U.S.C. 1823(c)(5), the FDIC is prohibited from purchasing the voting or common stock of an insured institution. However, this restriction does not preclude the acceptance by the FDIC of non-voting preferred stock, warrants, or other forms of equity or equity-equivalent arrangements.

[22] *See* section 13(c)(3) of the FDI Act, 12 U.S.C. 1823(c)(3).

[23] This criterion is mandatory. *See* section 13(c)(8)(A) of the FDI Act, 12 U.S.C. 1823(c)(8)(A). The FDIC interprets section 13(c)(8)(A)(ii) of the FDI Act that the management critrion applies to the management of the resulting institution, including any management retained from the predecessor institution, but *not* including predecessor management that is not retained. This interpretation is based on the relevant statutory provisions and their legislative history and reconciles the management criteria of section 13(c)(8)(A)(ii) with the statutory mandate of minimizing the cost of resolutions and with Congress' desire to encourage early resolutions.

[24] This criterion is mandatory. *See* section 13(c)(8)(A) of the FDI Act, 12 U.S.C. 1823(c)(8)(A).

[25] In addition, under section 18(k)(1) of the FDI Act, the FDIC may "prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment." *See* 12 U.S.C. 1828(k)(1). The terms "golden parachute payment" and "indemnification payment" are defined in 12 U.S.C. 1828(k)(4) and (5)(A), respectively. *See also* the FDIC's regulations at 12 CFR part 359, which implement section 18(k)(1).

FEDERAL HOUSING FINANCE BOARD

[No. 96-N-4]

Prices for Federal Home Loan Bank Services

AGENCY: Federal Housing Finance Board.

ACTION: Notice of prices for Federal Home Loan Bank services.

SUMMARY: The Federal Housing Finance Board (Board) is publishing the prices charged by the Federal Home Loan Banks (Banks) for processing and settlement of items (negotiable order of withdrawal or NOW), and demand deposit accounting (DDA) and other services offered to members and other eligible institutions.

EFFECTIVE DATE: July 3, 1996.

FOR FURTHER INFORMATION CONTACT: Edward J. Reedy, Associate Director, Regulatory Oversight Division, (202) 408–2959; or Edwin J. Avila, Financial Analyst, (202) 408–2871; Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION: Section 11(e) of the Federal Home Loan Bank Act (Bank Act) (12 U.S.C. 1431(e)) authorizes the Banks (1) to accept demand deposits from member institutions, (2) to be drawees of payment instruments, (3) to engage in collection and settlement of payment instruments drawn on or issued by members and other eligible institutions, and (4) to engage in such incidental activities as are necessary to the exercise of such authority. Section 11(e)(2)(B) of the Bank Act (12 U.S.C. 1431(e)(2)(B)) requires the Banks to make charges for services authorized in that section, which charges are to be determined and regulated by the Board.

Section 943.6(c) of the Board's regulations provides for the annual publication in the **Federal Register** of all prices for Bank services. The following fee schedules are for the four Banks which offer item processing services to their members and other qualified financial institutions. Most of the remaining Banks provide other Correspondent Services which may include securities safekeeping, disbursements, coin and currency, settlement, electronic funds transfer, etc. However, these Banks do not provide services related to processing of items drawn against or deposited into third party accounts held by their members or other qualified financial institutions.

District 1.—Federal Home Loan Bank of Boston (1996 NOW/DDA Services)

(Services not provided)

District 2.—Federal Home Loan Bank of New York (1996 NOW/DDA Services)

(Does not provide item processing services for third party accounts)

District 3.—Federal Home Loan Bank of Pittsburgh (1996 NOW/DDA Services) Deposit Processing Service (DPS)

DPS Deposit Tickets—$0.5700 Per Deposit, Printing of Deposit Tickets

Deposit items processed for volumes of:	Pass-through pricing varies—tiered by monthly volume:
1–25,000	0.0365 per item (transit)
25,001–58,500	0.0359 per item.
58,501–91,500	0.0354 per item.
91,501–125,000	0.0348 per item.
125,001–158,500	0.0343 per item.
158,501–191,500	0.0337 per item.
191,501–over	0.0332 per item.
Deposit items encoded (west) for volumes of:	Pricing varies—tiered by monthly volume:
1–25,000	$0.0302 per item.
25,001–58,500	0.0297 per item.
58,501–91,500	0.0292 per item.
91,501–125,000	0.0287 per item.
125,001–158,500	0.0282 per item.
158,501–191,500	0.0277 per item.
191,501–over	0.0272 per item.
Deposit items encoded (east) for volumes of:	Pricing varies—tiered by monthly volume:
1–25,000	$0.0323 per item.
25,001–58,500	0.0318 per item.
58,501–91,500	0.0313 per item.
91,501–125,000	0.0308 per item.
125,001–158,500	0.0303 per item.
158,501–191,500	0.0298 per item.
191,501–over	0.0293 per item.
Deposit Items Returned	1.8500 per item.
Deposit Items Photocopied	3.6500 per photocopy.
DPS Photocopies—Subpoena	18.0000 per hour of processing time.
plus	0.2500 per photocopy.
Deposit Items Rejected	0.2300 per rejected item.

(applicable to pre-encoded deposits only)

DPS Transportation (West)	8.5000 per pickup.
DPS Transportation (East)	8.5000 per pickup.
Return Check Courier Service	125.0000 per month.

DEPOSITORY ACCOUNT SERVICES

Mail Deposits	$5.4000 per deposit.
"On-Us" Returns Deposited:	
Qualified Returns	0.5000 per item.
Raw Returns	2.0000 per item.

Bond Coupon Collection	6.0000 per envelope.
Bond Coupon Returns	15.0000 per coupon.
Bond Collection:	
Bearer	23.0000 per bond.
Registered	31.0000 per bond.
Deposit Transfer Vouchers	5.4000 per item.
Foreign Item Collection	Pass-through.

Electronic Funds Transfer

Incoming Wire Transfers	$6.0000 per transfer.
Outgoing Wire Transfers (Automated/Link)	7.0000 per transfer.
Outgoing Wire Transfers (Manual)	10.0000 per transfer.
Fax of Wire Transfer Advice	To be Announced.
Internal Book Transfer Advice (Automated/Link)	No Charge.
Internal Book Transfers (Manual)	1.0000 No Charge.
Foreign Wire Surcharge	30.0000 No charge.*
Expected Wires Not Received	Penalty Assessed.**
Automated Clearing House (ACH)	
ACH Transaction Settlement (CR)	0.2550 per transaction.
ACH Transaction Settlement (DR)	0.2550 per transaction.
ACH Origination Items (CR)	0.2000 per item.
ACH Origination Items (DR)	0.2000 per item.
ACH Origination Record Set-Up	1.5500 per record.
ACH Origination Items Returned	5.0000 per returned item.
ACH Returns/Notification of Change (NOCs)—Facsimile	2.0600 per transaction.
ACH Returns/NOC's—Telephone	3.3500 per transaction.
ACH/Federal Reserve Board (FRB) Priced Service Charges	0.2700 per transaction.

* **Note:** This surcharge will be added to the amount of the outgoing funds transfer to produce a single total debit to be charged to the customer's account on the date of transfer.

** **Note:** Standard penalty is equivalent to the amount of the wire(s) times the daily Interest on Demand (IOD) rate, divided by 360. If the wire not received causes the Bank to suffer any penalty, deficiency, or monetary loss, any and all related costs will also be assessed.

FEDERAL RESERVE SETTLEMENT

FRB Statement Transaction (CR)	$0.5500 per transaction.
FRB Statement Transaction (DR)	0.5500 per transaction.
Reserve Requirement Pass-Thru	25.0000 per month (active).
Correspondent Transaction (DR)	0.5500 per transaction.
Direct Send Settlement	140.0000 per month.
FRB Inclearing Settlement	140.0000 per month.

DEMAND DEPOSIT SERVICES

Clearing Items Processed	$0.1450 per item.
Clearing Items Fine Sorted (for return with Bank statements)	0.0730 per item.
Reconcilement Copies—Manual	0.0870 per copy.
Reconcilement Copies—MagTape	0.0490 per copy.
Reconcilement MagTape Processing	Pass-through.
Reconcilement Copies—Voided	0.0400 per copy.
Check Photocopies—Mail	3.7500 per photocopy.
Check Photocopies—Telephone/Fax	4.5000 per photocopy.
Check Photocopies—Subpoena	0.6520 per photocopy.
Stop Payment Orders	16.2500 per item.
FRB Return Items	0.5000 per item.
FRB Return Items Over $2,500	6.0000 per item.
Collections & Forgeries	15.0000 per item.
Imprinting of Standard Checks	0.1100 per item.
Non-Standard Imprinting	Pass-through.
Microfiche Copies	5.0000 per copy.
Request for Fax/Photocopy	3.0000 per document.

IMAGE STATEMENT SERVICE PROOF OF DEPOSIT (POD) SERVICE

Pricing for each of these premium services is customer-specific, based upon individual service requirements; please call your Marketing representative at (800) 288–3400 for further information.

COIN & CURRENCY SERVICE: WESTERN SERVICE AREA

Currency Orders	$0.3550 per $1,000.*
Coin Orders	2.3500 per box.
Currency Deposits	1.2400 per $1,000.*
Coin Deposits	1.8000 per standard bag.
Coin Deposits (Non-Standard)	2.7500 per non-standard bag.
Coin Deposits (Unsorted)	8.5000 per mixed bag.
Food Stamp Deposits	1.8000 per $1,000.*
Coin Shipment Surcharge	0.2500 per excess bag.**
C&C Transportation (Zone W1)	16.1000 per stop.
C&C Transportation (Zone W2)	27.6000 per stop.
C&C Transportation (Zone W3)	36.8500 per stop.
C&C Transportation (Zone W4)	Negotiable.***

COIN & CURRENCY SERVICE: EASTERN SERVICE AREA

Currency Orders	$0.3100 per $1,000.*

Coin Orders	2.7500 per box.
Currency Deposits	1.2400 per $1,000.*
Coin Deposits	1.8000 per standard bag.
Coin Deposits (Non-Standard)	2.7500 per non-standard bag.
Coin Deposits (Unsorted)	8.5000 per mixed bag.
Food Stamp Deposits	1.8000 per $1,000.*
Coin Shipment Surcharge	0.2500 per excess bag.**
C&C Transportation (Zone E1)	24.6000 per stop.
C&C Transportation (Zone E2)	34.3500 per stop.
C&C Transportation (Zone E3)	52.8500 per stop.
C&C Transportation (Zone E4)	Negotiable.***

* **Note:** Charges will be applied to each $1,000 ordered or deposited, and to any portion of a shipment not divisible by that standard unit.
** **Note:** A surcharge will apply to each container (box/bag) of coin in an order/delivery after the first 20 containers.
*** **Note:** Reserved for remote locations: delivery charges will be negotiated with the courier service on an individual basis.

CHECK PROCESSING (INCLEARING)

Checks Processed for volumes of:	Pricing varies—tiered by monthly volume:
1–25,000	$0.0435 per item.
25,001–58,500	0.0409 per item.
58,501–91,500	0.0383 per item.
91,501–125,000	0.0357 per item.
125,001–158,500	0.0332 per item.
158,501–191,500	0.0306 per item.
191,501–350,000	0.0280 per item.
350,001–500,000	0.0254 per item.
500,001–over	0.0229 per item.

FULL BACKROOM SERVICE (ITEM PROCESSING CHARGES)

Non-Truncated Checks for volumes of:	Pricing varies—tiered by monthly volume:
1–25,000	$0.0570 per item.
25,001–58,500	0.0555 per item.
58,501–91,500	0.0540 per item.
91,501–125,000	0.0525 per item.
125,001–158,500	0.0510 per item.
158,501–191,500	0.0495 per item.
191,501–350,000	0.0480 per item.
350,001–500,000	0.0450 per item.
500,001–over	0.0420 per item.
Truncated Checks for volumes of:	Pricing varies—tiered by monthly volume:
1–25,000	$0.0470 per item
25,001–58,500	0.0455 per item.
58,501–91,500	0.0440 per item.
91,501–125,000	0.0425 per item.
125,001–158,500	0.0410 per item.
158,501–191,500	0.0395 per item.
191,501–350,000	0.0380 per item.
350,001–500,000	0.0350 per item.
500,001–over	0.0320 per item.

MODIFIED BACKROOM SERVICE (ITEM PROCESSING CHARGES)

Non-Truncated Checks for volumes of:	Pricing varies—tiered by monthly volume:
1–25,000	$0.0470 per item.
25,001–58,500	0.0455 per item.
58,501–91,500	0.0440 per item.
91,501–125,000	0.0425 per item.
125,001–158,500	0.0410 per item.
158,501–191,500	0.0395 per item.
191,501–350,000	0.0380 per item.
350,001–500,000	0.0350 per item.
500,001–over	0.0320 per item.
Truncated Checks for volumes of:	Pricing varies—tiered by monthly volume:
1–25,000	$0.0370 per item.
25,001–58,500	0.0355 per item.
58,501–91,500	0.0340 per item.
91,501–125,000	0.0325 per item.
125,001–158,500	0.0310 per item.
158,501–191,500	0.0295 per item.
191,501–350,000	0.0280 per item.
350,001–500,000	0.0250 per item.
500,001–over	0.0220 per item.

CHECK PROCESSING (ASSOCIATED SERVICES)

Over-The-Counter Items	$0.1800 per item.
OTC Item Transportation	10.0000 per month.
Special Cycle Sorting	0.0210 per item.
Mid-Cycle Statement (Purged)	0.5200 per item (Min $2.60).
Mid-Cycle Statement (Non-Purged)	2.6000 per statement.
Check (NOW) Statement Processing:	
Statements using Generic Envelopes	0.0591 per envelope.
Statements using Custom Envelopes	0.0965 per envelope.
Statements using Large Envelopes	0.5582 per envelope.
Additional Stuffer Processing	0.0250 per stuffer.
(One stuffer per statement free—applicable to all additional stuffers	
Selective Stuffer Processing	0.0680 per statement.
Daily Report Postage	Pass-through.
Statement Postage	Pass-through.
Standard Return Calls	1.1300 per item.
Automated Return Calls	0.2626 per item.
Return Calls via Link	0.8000 per item.
Late Return Calls	2.2500 per item.
FRB Return Items	0.5000 per item.
FRB Return Items Over $2,500	6.0000 per item.
Check Photocopies—Mail	3.7500 per photocopy.
Check Photocopies—Telephone/Fax	4.5000 per photocopy.
Check Photocopies—Subpoena	0.6500 per photocopy.
Signature Verification Copies	0.7500 per copy.
Check Retrieval	1.5000 per item.
Magnetic Ink Character Recognition (MICR) Sort Option (Fixed Fee)	26.0000 per month.
MICRSort Option (per item)	0.0300 per item.
Check Reconcilement Service	(See Separate Section).
Collections & Forgeries	15.0000 per item.
Monthly Checks Processed Journal (MCPJ) Microfiche Service	0.0020 per item. (Min. $15.00, Max. $75.00).
Microfiche Copies	5.0000 per copy.
Microfilm Processing	5.2500 per roll.
Microfilm Duplication	10.7500 per roll.
Transportation	Pass-through.

STATEMENT SAVINGS PROCESSING

Statements using Small Envelopes	$0.0991 per envelope.
Statements using Custom Envelopes	0.1265 per envelope.
Statements using Large Envelopes	0.5682 per envelope.

CHECK RECONCILEMENT SERVICE

Reconcilement Items Processed	$0.2250 per item.
Stop Payment Orders	10.0000 per item.
Microfiche Copies	3.0000 per copy.
Account Reconcilement	15.0000 per account.

* **Note:** Individual service charges are detailed in a monthly statement provided specifically for this service. The net of these charges is posted to Check Processing and appears as a single line item on the monthly billing statement.

ACCOUNT MAINTENANCE

Demand Deposit Accounts	$21.5000 per month, per account.
Telephone Balance Inquiry	2.0000 per telephone call.
Cut-Off Statements	10.0000 per statement.
Paper Advice of Transactions (Daily Transaction Statement)	1.0000 per statement.
Daily Transaction Data via Link	No Charge.

ACCOUNT OVERDRAFT PENALTY

Greater of $75.00 and interest on the amount of the overdraft
(Rate used for calculation equal to the highest posted advance rate plus 3.0%)

ATTENTION: CUSTOMERS RECEIVING TRANSPORTATION CHARGES UNDER ANY SERVICE

Rates and charges relative to transportation vary depending on the location of the office(s) serviced. Details regarding the pricing for the transportation to/from specific institutions or individual locations will be provided upon their subscription to that service. Surcharges may be applicable and will be applied to the customer as effective and without prior notice.

District 4.—Federal Home Loan Bank of Atlanta (1996 NOW/DDA Services)

(Does not provide item processing services for third party accounts.)

District 5.—Federal Home Loan Bank of Cincinnati (1996 NOW/DDA Services)

(Does not provide item processing services for third party accounts.)

District 6.—Federal Home Loan Bank of Indianapolis (1996 NOW/DDA Services)

Cash Management Services (CMS)

Transaction Charges

Paid Check charge	$0.16 per item.
Paper Advice	.065 per item.
Tape Advice	.040 per item.
Stop Payments	6.00 per stop.
Photo copies	2.50 per copy.
Fine Sort Numeric Sequence	.025 per item.
Collection/Return/Exception	5.00.
Daily Statement	2.00.

Transaction Charges

Maintenance	30.00 per month.
Debit Entries	no charge.
Credit Entries	no charge.
Checks (Administration Fee)	.02 per item.
Special Cutoff	no charge.
Infoline	50.00 per month.
VRU (Voice Response Unit)	1.00 per inquiry.

Collected Balances Will Earn Interest at the CMS daily posted rate.

Now Account Services

Transaction Charges

Monthly volume	Safekeeping		Turnaround (daily or cycled)		Complete		Image*	
	Per item	Cost	Per item	Cost	Per item	Cost	Per item	Per stmt
0–5,000	$.048	$240.	$.056	$280.	$.080	$400.	$.06	$.40
5–10,000	$.040	$200.	$.051	$255.	$.078	$390.	$.06	$.40
10–15,000	$.039	$195.	$.047	$235.	$.076	$380.	$.06	$.40
15–25,000	$.034	$340.	$.040	$400.	$.075	$750.	$.06	$.40
25–50,000	$.033	$825.	$.036	$900.	$.073	$1,825.	$.06	$.40
50–75,000	$.029	$725.	$.033	$825.	$.069	$1,725.	$.06	$.40
75–100,000	$.026	$650.	$.030	$750.	$.068	$1,700.	$.06	$.40
100–and up	$.024	.....	$.027	.....	$.067	.....	$.06	$.40

Ancillary Service Fees:

Large Dollar Signature Verification	$0.50.
Over-the-Counters and Microfilm	0.035.
Return Items	2.15.
Photocopies ** and Facsimiles	2.50.
Certified Checks	1.00.
Invalid Accounts	0.50.
Invalid Returns	0.50.
Late Returns	0.50.
No Magnetic Ink Character Recognition/ Over the Counter (MICR/OTC)	0.50.
Settlement Only	100.00 per month.
+ Journal Entries	3.00 each.
Encoding Errors	2.75.
Fine Sort Numeric Sequence	0.02.
Access to Infoline	50.00 per month.
High Dollar Return Notification	no charge.
Debit Entries	no charge.
Credit Entries	no charge.
Standard Stmt. Stuffers (up to 2)***	no charge.

Minimum processing fee of $40.00 per month will apply for total NOW services.

Also included in the above fees—at *no* additional cost are Federal Reserve fees, incoming courier fees, software changes, disaster recovery, envelope discount and inventory.

* Image Monthly Maintenance Fee of $500.00 for 0–32% of accounts; $300.00 for 33–49% of accounts; and $200.00 for 50%+ will be assessed for Image Statements.

** Photocopy request of 50 or more are charged at an hourly rate of $15.00.

*** Each additional (over 2) will be charged at $.02 per statement.

	Fee
Wire Transfer Services:	
In (Per transfer) Domestic	$4.00.
Out (Per transfer) Domestic	7.50.
International Wires	25.00.
Depository Transfer Checks: Per Check	$2.00.
Treasury Tax and Loan Settlement Service: Per Transaction	$2.00.
Charge Card Transaction: Per Transaction	$1.50.
Automated Clearing House (ACH) Service:	
Tape Transmission	$8.50.
or Origination	.045 per item.
Michigan Clearing House, Indiana Clearing House (MACHA, INDEX)	Actual Federal Reserve Charges.
ACH Entries Clearing through our R&T Number	$.25 per item.
Settlement Only	$65.00 per month.
ACH Returns/NOC	$2.50 per item.

	Fee
Coin and Currency:	
Deliveries—Indiana and Michigan:	
Prices based on delivery location, excess bag fee (courier) and order preparation. Cost will vary per institution.	
Returns	$12.50.
Non-Transit Customer	$10.00.
Orders (Member uses own courier)	$15.00.
Special Order*	$15.00.

*Any order placed after normal order has been received and processed by Federal Home Loan Bank.

Proof and Transit Processing:	
Pre-encoded Items:	
City	$0.04 per item.
Remote Check Processing Center (RCPC)	$0.05 per item.
Other Districts	$0.085 per item.
Unencoded	$0.165 per item.
Food Stamp	$0.14 per item.
Photocopies*	$2.50 per copy.
Adjustments on pre-encoded work	$2.75 per error.
E Z Clear	$0.14 per item.
Coupons	$8.25 per envelope.
Collections	$6.00 per item.
Cash Letter	$2.00 per cash letter.
Deposit Adjustments	$0.30 per adjustment.
Debit Entries	no charge.
Credit Entries	no charge.
Microfilming	no charge.
Mortgage Remittance (Basic Service)	$0.35.
Settlement Only	$100.00 per month.
+ Journal Entries	$3.00 each.
Third Party Fedline	$.50 each.
Courier**	
Marion County	$8.25 per location, per day, per pick-up.
Other	Prices vary per location.

*Multiple Photocopies (more than 50 per request) $15.00 per hour.

**Includes branch work transfer and correspondence to and from Federal Home Loan Bank.

All Fees Subject to Change.

District 7.—Federal Home Loan Bank of Chicago (1996 NOW/DDA Services)

(Does not provide item processing services for third party accounts)

District 8.—Federal Home Loan Bank of Des Moines (1996 NOW/DDA Services)

Demand Account Analysis Fee Schedule:	
Account Maintenance	$12.00.
Account Reconciliation	35.00.
Electronic Cash Manager	25.00 (plus connect charge).
Non-ECM Distribution of Reports	75.00.
Drafts Paid:.	
Truncated	0.045.
Non-Truncated	0.055.
Stop Payments	7.00.
Ledger Entries—Credits	0.35.
Ledger Entries—Debits	0.15.
Bank Wires In	3.00.
Bank Wires Out	4.00.
ACH Settlement Charges	1.00.
Special Cut-Off Statements	10.00.
Account Reconciliation Tape Issues	0.015.
Issue Encoding	0.0225.
Pre-Encoded Issues	0.015.
Collections:	
Bonds/Coupons Per Envelope Local/Government	5.00.
Out-of-Town	7.00.
Domestic/Checks	15.00 (Plus Actual).
Foreign	25.00 (Plus Actual).
Miscellaneous	Actual.
ACH Fee Schedule:	
FRB/ACH Pass Thru	Actual.
FRB/ACH Settlement	$1.00.
Origination Service:	
Set Up New Account (One Time Charge)	50.00.
Formatted Tape	10.00.
Reformat Tape	10.00.
Per Item On Tape*	.05.

Paper Input: Monthly Maintenance	20.00.
Data Entry Per Item*	.25.
Day Cycle Deposit Charge:	
Local DB/CR	.0550.
Out-of-State DB/CR	.0550.
Prenotes	.0550.
Addendas	.0550.
Night Cycle Deposit Charge Premium:	
Local DB/CR	.07.
Out-of-State DB/CR	.07.
Prenotes	.07.
Addendas	.07.
Warehousing Per Item	.0050.
Originator Volume Discount—Monthly:	
5,000 to 20,000	—.005.
Over 20,000	—.01.
Return Items	1.50.
Transportation Charges	Negotiable.
Special Service/Handling	Negotiable.
Telephone Advice:	
Per Call	2.00.
Miscellaneous	Actual.
Minimum Monthly Billing	$0.00.

*Plus ACH Origination Fee.

Des Moines Regional Center—Deposit Processing Fee Schedule

Description	Below 50,000	50,000–100,000	100,000–300,000	Over 300,000
Deposited Item Charges:				
Local	.02	.015	.014	.011
RCPC	.030	.025	.022	.020
RCPC-Premium	.045	.045	.045	.045
Transit	.0525	.051	.05	.049

Other Fees

Encoding	$.0225.
Return Items: Return Items	.75/item.
Special Handling:	
Subtotal by Office	1.50/office total.
Individual Entries	.50/entry.
Telephone Notification less than $2,500	.60/item.
Large Dollar Notification (Reg. J.)	3.00/item.
Collection/Settlement Services:	
Bonds/Coupons Per Envelope:	
Local/Government	5.00.
Out-of-Town	7.00.
Domestic/Checks	15.00 (Plus Actual).
Canadian Items	.25/item.
Foreign	25.00 (Plus Actual).
Miscellaneous	Actual.
Federal Reserve Settlement Entries	1.00/entry.
Food Coupons	.02.
Non-Processable Items	15/item.
Cash Services:	
Currency/Coin Orders	2.00/order.
Special Orders	Standard order fee plus actual charges.
Foreign Currency Orders	2.50/order.
Coin—per roll	.0385/roll.
Currency/Coin Deposits:	
Standard Packaging	.50.
Non-Standard Packaging	10.00.
Foreign Currency Deposits	5.00/deposit.
Currency Per Strap	.25.
Delivery Charge (includes return delivery to FRB Chicago)	53.00/stop.
Balance/Availability Reporting	30.00/month.
Endpoint Analysis	20.00/day.
Photocopies	2.75/copy.
Research	20.00/hour.

Kansas City Regional Center—Deposit Processing Fee Schedule

Description	Below 25,000	25,000–50,000	50,000–250,000	Over 250,000
Deposited Item Charges:				
Local	0.0170	0.0160	0.0150	0.0075–0.0140
Regional	0.0280	0.0250	0.0220	0.0150–0.021
Country	0.0280	0.0250	0.0220	0.0150–0.021
Transit	0.0540	0.0530	0.0510	0.0435–0.050

Other Services

Encoding:	
Below 25,000	$0.0300.
25,000–50,000	0.0250.
50,000–250,000	0.0225.
Over 250,000	0.0200.
Return Items:	
0–999	0.75.
1,000 & Over	0.65.
Special Handling:	
Subtotal by Office	1.50/office total.
Selected Account Chargeback	.025/item.
Individual Entries.	50/entry.
Telephone Notification less than $2,500	.60/item.
Large Dollar Notification (Reg. J.)	3.00/item.
Collection/Settlement Services:	
Bonds/Coupons Per Envelope:	
Local/Government	5.00.
Out-of-Town	7.00.
Domestic/Checks	15.00 (Plus Actual).
Canadian Items	.25/item.
Foreign	25.00 (Plus Actual).
Miscellaneous	Actual.
Federal Reserve Settlement Entries	1.00/entry.
Food Coupons	.02.
Non-Processable Items	0.15.
Cash Services:	
Currency/Coin Orders	3.00/order.
Special Orders	3.00/order, plus actual charges.
Foreign Currency Orders	5.50/order.
Currency/Coin Deposits:	
Standard Packaging	.50/deposit.
Non-Standard Packaging	10.00/deposit.
Foreign Currency Deposits	5.00/deposit.
Balance/Availability Reporting	30.00/month.
Endpoint Analysis	30.00/each, over two per year.
Photocopies/Microfilm Copies	2.75/copy.
Audit	2.75/copy or 20.00/hour + .50 copy, whichever is less.
Research	20.00/hour.

Minneapolis Regional Center

Deposit Processing Fee Schedule

Description	Below 25,000	25,000–150,000	Over 150,000
Deposited Item Charges:			
Local	.02	.016	.014
RCPC	.032	.025	.020
RCPC-Premium	.045	.04	.032
Country	.04	.038	.036
Transit	.063	.058	.052

Other Services

Encoding	.0225.
Return Items	.75/item.
Special Handling:	
Subtotal by Office	1.50/office total.
Individual Entries	.50/entry.

Telephone Notification less than $2,500	.60/item.
Large Dollar Notification (Reg. J.)	3.00/item.
Collection/Settlement Services:	
Bonds/Coupons Per Envelope:	
Local/Government	5.00.
Out-of-Town	7.00.
Domestic/Checks	15.00 (Plus Actual).
Canadian Items	.25/item.
Foreign	25.00 (Plus Actual).
Miscellaneous	Actual.
Federal Reserve Settlement Entries	1.00/entry.
Food Coupons	.04.
Non-Processable Items	.15/item.
Cash Services:	
Currency/Coin Orders	2.00/order.
Special Orders	Standard order fee plus actual charges.
Foreign Currency Orders	2.50/order.
Currency/Coin Deposits	2.00/order.
Standard Packaging	.50.
Non-Standard Packaging	10.00.
Foreign Currency Deposits	5.00/deposit.
Balance/Availability Reporting	30.00/month.
Endpoint Analysis	20.00/day.
Photocopies	2.75/copy.
Research	20.00/hour.

Minneapolis—Out-of-District Customers

Description	Below 25,000	25,000–100,000	Over 100,000
Deposited Item Charges:			
Local	.0250	.0210	.0160
RCPC	.0370	.0300	.0200
RCPC-Premium	.0500	.0450	.0400
Country	.0450	.0430	.0380
Transit	.0730	.0680	.0580

Other Services

Encoding	.0250.
Return Items	.75/item.
Special Handling:	
Subtotal by Office	1.50/office total.
Individual Entries	.50/entry.
Telephone Notification less than $2,500	.60/item.
Large Dollar Notification (Reg. J.)	3.00/item.
Collection/Settlement Services:	
Bonds/Coupons Per Envelope:	
Local/Government	5.00
Out-of-Town	7.00
Domestic/Checks	15.00 (Plus Actual).
Canadian Items	.25/item.
Foreign	25.00 (Plus Actual).
Miscellaneous	Actual.
Federal Reserve Settlement Entries	1.00/entry.
Food Coupons	.04.
Non-Processable Items	.15/item.
Cash Services:	
Currency/Coin Orders	2.00/order,
Special Orders	Standard order fee plus actual charges.
Currency/Coin Deposits:	
Standard Packaging	.50.
Non-Standard Packaging	2.00.
Foreign Currency Deposit	5.00/month.
Endpoint Analysis	20.00/day.
Photocopies	2.75/copy.
Research	20.00/hour.

St. Louis Regional Center—Deposit Processing Fee Schedule

Deposit Item Charges:	
Local	.013.
RCPC	.017.
Country	.017.
Transit	.052.
Package Sort:	
Local	.009.
RCPC	.009.
Country	.016.
Transit	.048.

Note: Package Sort prices are available to customers who present deposits separated by item type.

Out-of-District Customers

Deposit Item Charges:	
Local	.017.
RCPC	.020.
Country	.020.
Transit	.055.
Package Sort:	
Local	.013.
RCPC	.019.
Country	.019.
Transit	.053.

Note: Package Sort prices are available to customers who present deposit separated by item type.

In and Out-of-District Customers
Other Services

Encoding	.0225.
Return Items:	
Return Items	.75/item.
Special Handling:	
Subtotal by Office	1.50/office total.
Individual Entries	.50/entry.
Telephone Notification less than $2,500	.60/item.
Large Dollar Notification (Reg. J.)	3.00/item.
Collection/Settlement Services:	
Bonds/Coupons Per Envelope:	
Local/Government	5.00.
Out-of-Town	7.00.
Domestic/Checks	15.00 (Plus Actual).
Canadian Items	.25/item.
Foreign	25.00 (Plus Actual).
Miscellaneous	Actual.
Federal Reserve Settlement Entries	1.00/entry.
Food Coupons	.02.
Non-Processable Items	.15/item.
Cash Services:	
Currency/Coin Orders	4.00/order.
Special Orders	Standard order fee plus actual charges.
Currency/Coin Deposits:	
Standard Packaging	.50.
Non-Standard Packaging	20.00.
Balance/Availability Reporting	30.00/month.
Endpoint Analysis	20.00/day.
Photocopies	2.75/copy.
Research	20.00/hour.

Des Moines Regional Center—Inclearing Processing Fee Schedule

Monthly capture volume	Basic Fee (Capture)	Daily sort [1] [2]	Cycle/Monthly Sort [2]
1–25,000	.020	.017	.020
25,001–50,000	.016	.013	.016
50,001–75,000	.014	.011	.014
75,001–175,000	.012	.009	.012
175,001–400,000	.010	.007	.010
400,001–750,000	.009	.006	.009
750,001–Over	.007	.004	.007
Reject Reentry	.04/item		
Posting File	.0005/item		

[1] Surcharge for same-day return: 15%.
[2] Fees for daily and cycle/monthly return are in addition to the basic fee.

Return Items

Basic Service	.75–2.65

Telephone Request	3.50
Forward Collection Only:	
Local	.20
RCPC	.20
Transit	.50
Regulation J Notification	3.00/item.

Other Services

Support Services:	
Facsimile Transmission	1.50/transmission.
Microfiche Monthly Reports	25.00/month.
Microfilm of Checks Captured	.01/item.
Original Item Return2	2.75/item.
Research	20.00/hour.
Telephone Check Inquiry	1.00/inquiry.
Signature Verification	.35/item.
Counter Items: With MICR Encoding	.04/item.
Photocopies/Microfilm Copies	2.75/item.
Audit	2.75/item or 20.00/hour + .50/ copy, whichever is less.
Settlement:	
Daily Reporting	25.00/month.
Settlement Only (Inclearings or returns)	100.00/month.
Third Party Settlement	350.00/month.
Special Sorting Options:	
Account Separators	.003/item ($175.00 minimum).
Truncated Items Returned Unsorted	.002/item.
Truncated Items Returned Sorted	.012/item ($250.00 minimum).
Sequence Number Order	.005/item.
Other Miscellaneous Fine Sorting	.005/item.

Special Services

Backup Service:	
Set-Up Charge	500.00–1,500.00 one time.
Monthly Maintenance	Negotiable plus actual monthly usage.
File Maintenance:	
Mergers/Acquisitions	500.00/each.
Multiple R/T Numbers	50.00/number/month.
Parameter File Maintenance	25.00/change.
Multiple Sorter Pockets	300.00/pocket/month.
Data Servicer Conversion	500.00/conversion.
Minimum Monthly Charge (Excluding Actual Charges)	250.00

Kansas City Regional Center

Inclearing Processing Fee Schedule

Monthly capture volume	Basic fee (capture)	Daily sort [1] [2]	Cycle/monthly sort [2]
1–50,000	0.16	.013	.016
50,001–100,000	.014	.011	.014
100,001–175,000	.012	.009	.012
175,001–400,000	.010	.007	.010
400,001–750,000.	009	.006	.009
750,001–Over	.007	.004	.007
Reject Reentry	.04/item		
Posting File	.0005/item		

Outgoing Return Items

Volume levels	Basic service [3]	Telephone request [3]	Forward Collection Only [4]	
			Unqualified	Qualified [5]
1–750	$1.60–2.75	$3.50	$.80	$.40
751–2,5000	.95–1.95	NA	.73	.33
2,501–Over	0.65–1.65	NA	.65	.26
Regulation J Notification	3.00/item			

[1] Surcharge for same-day daily return: 15%
[2] Fees for daily and cycle/monthly return are in addition to the basic fee.

Other Services

Support Services:	
Facsimile Transmission	1.50/transmission.
Microfiche Monthly Reports	25.00/month.
Microfilm of Checks Captured	Negotiated.
Original Item Return	2.75/item.
Research	20.00/hour.
Telephone Check Inquiry	1.00/inquiry.
Signature Verification	.35/item.
Counter Items: With MICR Encoding	.04/item.
Photocopies/Microfilm Copies:	
Mail or Courier	2.75/item.
Fax	3.25/item.
Audit	2.75/item or 20.00/hour + .50/ copy, whichever is less.
Settlement:	
Daily Reporting	25.00/month.
Settlement Only (Inclearings or Returns)	100.00/month.
Third Party Settlement	350.00/month.
Special Sorting Options:	
Account Separators	.003/item ($175.00 minimum).
Truncated Items Returned Unsorted	.002/item.
Truncated Items Returned Sorted	.012/item ($250.00 minimum).
Sequence Number Order	.005/item.
Other Miscellaneous Fine Sorting	.005/item.

Special Services

Backup Service:	
Set-Up Charge	500.00–1,500.00 one time.
Monthly Maintenance	Negotiable plus actual monthly usage.
File Maintenance:	
Mergers/Acquisitions	500.00/each.
Multiple R/T Numbers	50.00/number/month.
Parameter File Maintenance	25.00/change.
Multiple Sorter Pockets	300.00/pocket/month.
Data Servicer Conversion	500.00/conversion.
Minimum Monthly Charge (Excluding Actual Charges) 250.00.	

Minneapolis Regional Center—Inclearing Processing Fee Schedule

Monthly capture volume	Basic fee (capture)	Daily sort [1] [2]	Cycle/monthly sort [2]
1–25,000	.020	.017	.020
25,001–50,000	.016	.013	.016
50,001–75,000	.014	.011	.014
75,001–175,000	.012	.009	.012
175,001–400,000	.010	.007	.010
400,001–750,000	.009	.006	.009
750,001–Over	.007	.004	.007
Reject Reentry	.04/item		
Posting File	.0005/item		

[1] Surcharge for same-day return: 15%.
[2] Fees for daily and cycle/monthly return are in addition to the basic fee.

Return Items:	
Basic Service	1.30–2.75
Telephone Request	3.50
Forward Collection Only:	
Qualified	.50
Raw	1.40
Regulation J Notification	3.00/item.

Other Services

Support Services:	
Facsimile Transmission	1.50/transmission.
Microfiche Monthly Reports	25.00/month.
Microfilm of Checks Captured	Negotiated.
Original Item Return	2.75/item.
Research	20.00/hour.
Telephone Check Inquiry	1.00/inquiry.
Signature Verification	.35/item.

Counter Items: With MICR Encoding	.04/item.
Photocopies/Microfilm Copies	2.75/item.
Audit	2.75/item or .20.00/hour + .50/copy, whichever is less.
Settlement:	
Daily Reporting	25.00/month.
Settlement Only (Inclearings or Returns)	100.00/month.
Third Party Settlement	350.00/month.
Special Sorting Options:	
Account Separators	.003/item ($175.00 minimum).
Truncated Items Returned Unsorted	.002/item.
Truncated Items Returned Sorted	.012/item ($250.00 minimum).
Sequence Number Order	.005/item.
Other Miscellaneous Fine Sorting	.005/item.

Special Services

Backup Service:	
Set-Up Charge	500.00–1,500.00 one time.
Monthly Maintenance	Negotiable plus actual monthly usage.
File Maintenance	
Mergers/Acquisitions	500.00/each.
Multiple R/T Numbers	50.00/number/month.
Parameter File Maintenance	25.00/change.
Multiple Sorter Pockets	300.00/pocket/month.
Data Servicer Conversion	500.00/conversion.
Minimum Monthly Charge (Excluding Actual Charges)	250.00.

St. Louis Regional Center—Inclearing Processing Fee Schedule

Monthly capture volume	Basic fee (capture)	Daily sort [1] [2]	Cycle/month sort [2]
1–25,000	.020	.017	.020
25,001–50,000	.016	.013	.016
50,001–75,000	.014	.011	.014
75,001–175,000	.012	.009	.012
175,001–400,000	.010	.007	.010
400,001–750,000	.009	.006	.009
750,001–Over	.007	.004	.007

[1] Surcharge for same-day daily return: 15%.
[2] Fees for daily and cycle/monthly return are in addition to the basic fee.

Reject Reentry	.04/item.	
Posting File	.0005/item.	
Return Items:		
Basic Service	1.25–2.25	1.25–2.25
Forward Collection Only	Qualified	Non-Qualified
Local (8th District)	.35	.60
Transit	.60	.85
Regulation J Notification	3.00/item.	

Other Services

Support Services:	
Facsimile Transmission	1.50/transmission.
Microfiche Monthly Reports	25.00/month.
Microfilm of Checks Captured	Negotiated.
Original Item Return	2.75/item.
Research	20.00/hour.
Telephone Check Inquiry	1.00/inquiry.
Signature Verification	.35/item.
Counter Items: With MICR Encoding	.04/item.
Photocopies/Microfilm Copies	2.75/item.
Audit	2.75/item or 20.00/hour + .50/copy, whichever is less.
Settlement:	
Daily Reporting	25.00/month.
Settlement Only (Inclearings or Returns)	100.00/month.
Third Party Settlement	350.00/month.
Special Sorting Options:	
Account Separators	.003/item ($175.00 minimum).
Truncated Items Returned Unsorted	.002/item.
Truncated Items Returned Sorted	.012/item ($250.00 minimum).
Sequence Number Order	.005/item.

Other Miscellaneous Fine Sorting	.005/item.

Special Services

Backup Service:	
Set-Up Charge	500.00–1,500.00 one time
Monthly Maintenance	Negotiable plus actual monthly usage.
File Maintenance:	
Mergers/Acquisitions	500.00/each.
Multiple R/T Numbers	50.00/number/month.
Parameter File Maintenance	25.00/change.
Multiple Sorter Pockets	300.00/pocket/month.
Data Servicer Conversion	500.00/conversion.
Minimum Monthly Charge (Excluding Actual Charges)	250.00.

Minneapolis Regional Center Out-of-District Customers—Inclearing Processing Fee Schedule

Monthly capture volume	Basic fee (capture)	Daily sort [1,2]	Cycle/monthly sort [2]
1–25,000	.021	.018	.021
25,001–50,000	.017	.014	.017
50,001–75,000	.015	.012	.015
75,001–175,000	.013	.010	.013
175,001–400,000	.011	.005	.011
400,001–750,000	.010	.007	.010
750,001–Over	.009	.005	.009

[1] Surcharge for same day daily return: 15%.
[2] Fees for daily and cycle/monthly return are in addition to the basic fee.

Reject Reentry	.04/item.
Posting	.0005/item.
Return Items:	
Basic Service	1.30–2.75.
Telephone Request	3.50.
Forward Collection Only:	
Qualified	0.50.
Raw	1.40.
Regulation J Notification	3.00/item.
Other Services:	
Support Services:	
Facsimile Transmission	1.50/transmission.
Microfiche Monthly Reports	25.00/month.
Microfilm of Checks Captured	Negotiated.
Original Item Return	2.75/item.
Research	20.00/hour.
Telephone Check Inquiry	1.00/inquiry.
Signature Verification	.35/item.
Counter Items:	
With MICR Encoding	.04/item.
Photocopies/Microfilm Copies	2.75/item.
Audit	2.75/item or 20.00/hour + .50/copy whichever is less.
Settlement:	
Daily Reporting	25.00/month.
Settlement Only (Inclearings or Returns)	100.00/month.
Third Party Settlement	350.00/month.
Special Sorting Options:	
Account Separators	.003/item ($175.00 minimum).
Truncated Items Returned Unsorted	.002/item.
Truncated Items Returned Sorted	.012/item ($250.00 minimum).
Sequence Number Order	.005/item.
Other Miscellaneous Fine Sorting	.005/item.
Special Services:	
Backup Services:	
Set-Up Charge	500.00–1,500 one time.
Monthly Maintenance	Negiotiable plus actual monthly usage.
File Maintenance:	
Mergers/Acquisitions	500.00/each.
Multiple R/T Numbers	50.00/number/month.
Parameter File Maintenance	25.00/change.
Multiple Sorter Pockets	300.00/pocket/month.
Data Servicer Conversion	500.00/conversion.
Minimum Monthly Charge (Excluding Actual Charges)	250.00.

St. Louis Regional Center, Out-of-District Customers—Inclearing Processing Fee Schedule

Monthly capture volume	Basic fee (capture)	Daily sort [1] [2]	Cycle/ monthly sort [2]
1–25,000	.021	.018	.021
25,001–50,000	.017	.014	.017
50,001–75,000	.015	.012	.015
75,001–175,000	.013	.010	.013
175,001–400,000	.011	.009	.011
400,001–750,000	.010	.007	.010
750,001–Over	.005	.005	.008

[1] Surcharge for same day daily return: 15 percent.
[2] Fees for daily and cycle/monthly return are in addition to the basic fee.

Reject Reentry	.04/item.	
Posting	.0005/item.	
Basic Service [3]	1.25–225	1.25–2.25
Forward Collection Only	Qualified	Non-Qualified
Local (8th District)	.35	.60
Transit	.60	.85

Regulation J Notification: 3.00/item.
[3] Full service processing. Excludes Large Dollar notification required under Regulations CC and J.

Other Services

Support Services:	
Facsimile Transmission	1.50/transmission.
Microfiche Monthly Reports	25.00/month.
Microfilm of Checks Captured	Negotiated.
Original Item Return	2.75/item.
Research	20.00/hour.
Telephone Check Inquiry	1.00/inquiry.
Signature Verification	.35/item.
Counter Items:	
With MICR Encoding	.04/item.
Photocopies/Microfilm Copies	2.75/item.
Audit	2.75/item or 20.00/hour+.50/copy whichever is less.
Settlement:	
Daily Reporting	25.00/month.
Settlement Only (Inclearings or Returns)	100.00/month.
Third Party Settlement	350.00/month.
Special Sorting Options:	
Account Separators	.003/item ($175.00 minimum).
Truncated Items Returned Unsorted	.002/item.
Truncated Items Returned Sorted	.012/item ($250.00 minimum).
Sequence Number Order	.005/item.
Other Miscellaneous Fine Sorting	.005/item.

Special Services

Backup Services:	
Set-Up Charge	500.00–1,500 one time.
Monthly Maintenance	Negiotiable plus actual monthly usage.
File Maintenance:	
Mergers/Acquisitions	500.00/each.
Multiple R/T Numbers	50.00/number/month.
Parameter File Maintenance	25.00/change.
Multiple Sorter Pockets	300.00/pocket/month.
Data Servicer Conversion	500.00/conversion.
Minimum Monthly Charge (Excluding Actual Charges)	250.00

Des Moines Regional Center—Proof-of-Deposit (POD) Fee Schedule

Processing Fees

Encoding	.0225.
Capture	.009.
Fine Sorting:	
Exception Cycle Sort	.003.
Account Sequence Sort	.003.
Serial Sort	.005.
Reject	.04.

Ancillary Services

Return Items:	
Basic Service	.75–2.65.
Telephone Request	3.50.
Large Item Notification	3.00.
Signature Verification/Review	.35.
Deposit/Customer Corrections	.25.
Fax Transmissions	1.50.
Microfiche Monthly Reports	25.00.
Research	20.00/hour.
Telephone Check Inquiry	1.00/inquiry.
Microfilm	Negotiated.
Deposit Returns (incoming)	.75.

Clearing Fees

Deposit Items:	
Local	.01.
RCPC	.018.
RCPC Premium	.043.
Transit	.049.
Forward Collection Returns:	
Local	.20.
RCPC	.20.
Transit	.50.

Terms of Account

Payment of Processing Fees and Clearing Fees are made by a direct charge to the account or by payment of our invoice or by balance compensation. Payment of Relationship Fees are made only by balance compensation. The earnings credit rate is indexed to the Bank's yield on overnight Fed Funds for the current month. Interest that approximates the Fed Funds rate will be paid to the account for excess balances, and deficient balances will be charged at the average Fed Funds rate of the current month.

Kansas City Regional Center—Proof-of-Deposit (POD) Fee Schedule

Processing Fees

Encoding	.0225.
Capture	.009.
Fine Sorting:	
Exception Cycle Sort	.003.
Account Sequence Sort	.003.
Serial Sort	.005.
Rejects	.04.

Ancillary Services

Return Items:	
Basic Service :	
1–750	1.60–2.75.
751–2,500	.95–1.95.
2,501–Over	.65–1.65.
Telephone Request	3.50.
Large Item Notification	3.00.
Signature Verification/Review	.35.
Deposit/Customer Corrections	.25.
Fax Transmissions	1.50.
Microfiche Monthly Reports	25.00.
Research	20.00/hour.
Telephone Check Inquiry	1.00/inquiry.
Microfilm	Negotiated.
Deposit Returns (incoming):	
0–999	.75.
1,000–Over	.65.

Clearing Fees

Deposit Items:	
Local	.01.
Country	.021.
Transit	.045.

Forward collection returns (Outgoing)	Qualified	Nonqualified
1–750	0.40	0.80

Forward collection returns (Outgoing)	Qualified	Nonqualified
751–2,500	0.33	0.73
2,501–Over	0.26	0.65

Terms of Account

Payment of Processing Fees and Clearing Fees are made by a direct charge to the account or by payment of our invoice or by balance compensation. Payment of Relationship Fees are made only by balance compensation. The earnings credit rate is indexed to the Bank's yield on overnight Fed Funds for the current month. Interest that approximates the Fed Funds rate will be paid to the account for excess balances, and deficient balances will be charged at the average Fed Funds rate of the current month.

Minneapolis Regional Center—Proof-of-Deposit (POD) Fee Schedule Processing Fees

Encoding	.0225.
Capture	.009.
Fine Sorting:	
Exception Cycle Sort	.003.
Account Sequence Sort	.003.
Serial Sort	.005.
Rejects	.04.

Ancillary Services

Return Items:	
Basic Service	1.30–2.75.
Telephone Request	3.50.
Large Item Notification	3.00.
Signature Verification/Review	.35.
Deposit/Customer Corrections	.25.
Fax Transmissions	1.50.
Microfiche Monthly Reports	25.00.
Research	20.00/hour.
Telephone Check Inquiry	1.00/inquiry.
Microfilm	Negotiated.
Deposit Returns (incoming)	.75.

Clearing Fees

Deposit Items:	
Local	.014.
RCPC	.020.
RCPC Premium	.032.
Transit	.036.
Forward Collection Returns:	
Qualified	.50.
Non-Qualified (Raw)	1.40.

Terms of Account

Payment of Processing Fees and Clearing Fees are made by a direct charge to the account or by payment of our invoice or by balance compensation. Payment of Relationship Fees are made only by balance compensation. The earnings credit rate is indexed to the Bank's yield on overnight Fed Funds for the current month. Interest that approximates the Fed Funds rate will be paid to the account for excess balances, and deficient balances will be charged at the average Fed Funds rate of the current month.

St. Louis Regional Center—Proof-of-Deposit (POD) Fee Schedule

Processing Fees

Encoding	.0225.
Capture	.009.
Fine Sorting:	
Exception Cycle Sort	.003.
Account Sequence Sort	.003.
Serial Sort	.005.
Rejects	.04.

Ancillary Services

Return Items:	
Basic Service	1.25–2.25.
Large Item Notification	3.00.
Signature Verification/Review	.35.
Deposit/Customer Corrections	.25.
Fax Transmissions	1.50.
Microfiche Monthly Reports	25.00.

Research	20.00/hour.
Telephone Check Inquiry	1.00/inquiry.
Microfilm	Negotiated.
Deposit Returns (incoming)	.75.

Clearing Fees

Deposit Items:	
Local	.009.
RCPC	.016.
RCPC Premium	.016.
Transit	.048.
Forward Collection Returns:	
Local (8th District)	.35–.60.
Transit	.60–.85

Terms of Account

Payment of Processing Fees and Clearing Fees are made by a direct charge to the account or by payment of our invoice or by balance compensation. Payment of Relationship Fees are made only by balance compensation. The earnings credit rate is indexed to the Bank's yield on overnight Fed Funds for the current month. Interest that approximates the Fed Funds rate will be paid to the account for excess balances, and deficient balances will be charged at the average Fed Funds rate of the current month.

Des Moines, Minneapolis, Kansas City and St. Louis Regional Centers

Lockbox Fee Schedule

Basic Service

Open envelope; screen per instructions; verify payee, signature and amount. Record data on check, remittance, envelope, or correspondence as requested. Balance checks to remittances and post credits to account specified.

Mortgage	$.12–.25.
Consumer	.09–.15.
Retail-Commercial	.07–.15.
Wholesale-Commercial	.15–.55.
Credit Card	.07–.15.
Data Capture and Transmit: Includes use of derogatory file as required. Rejects pulled, balanced and returned per instructions.	.015–.030.
Item Preparation Charge; Data Entry as required. Includes preparation of new or substitute machine-readable documents.	.05/item.
Microfilm Remittances or Checks	.01/item.
Credit/Posting Advice	.25/advice.
Photocopies:	
Recurring	.05/copy.
On Request	.25/copy.
Facsimile Transmissions:	
Recurring	.85/page.
On Request	1.50/page.
Microfilm Copies	2.75/copy.
Payment Discounts Calculated	.25/discount.
Telephone Inquiry or Notification	1.00/call.
Foreign Item Processing:	
U.S. Dollars	.75/check.
Foreign Currency	3.50/check.
Process Cash Payment	5.00/each.
Daily Reporting	50.00/month.
Courier/Postage	Actual.
Storage: Envelopes and remittance material retained unsorted for 14 days and destroyed Safekeeping beyond 14 days	Negotiated.
Minimum Monthly Billing (Excludes Actual Charges)	175.00.
New Account Set-Up	50.00–500.00.
Special Services	Negotiated.

Des Moines, Minneapolis, Kansas City and St. Louis Regional Centers—Statement Rendering Fee Schedule

Statements Per Month, Non-Truncated:	
First 5,000	$.18.
Next 5,000	.165.
Over 10,000	.15.
Statements Per Month, Truncated	.05.
Statement Inserts	.0.
Other Mailings	.05.
Surcharge for One Cycle Per Month	10%.
Fine Sort Counter Items for Statement Insertion	005.
Sort Counter Items Without MICR	.02.
Courier, Postage and Envelopes	Actual.
Pre-Sort Only	.02/item.
Statement Printing (Laser Printer) Customer Provided Paper	.03/page.

FHLB Provided Paper	.04/page.
Custom Forms/Logos	Actual cost.

Note: Members that have changed Data Processors or have more than one MICR account number corresponding to one statement account number are subject to additional fees.

Pricing to Forward Cycle Items to Data Processor for Statement Handling

Insertion of Trigger/Separator Tickets:	
Sorting	$.003/item.
Trigger Ticket Expense	.012/account.
Insertion of Rejects	.040/reject.
Photocopies of Missing Items	2.75/copy.
Courier, Postage and Boxes	Actual.
Monthly Fee for Special Handling	25.00/cycle ($75.00 minimum).

District. 9.—Federal Home Loan Bank of Dallas (1996 NOW/DDA Services)

(Does not provide item processing services for third party accounts)

District. 10.—Federal Home Loan Bank of Topeka (1996 NOW/DDA Services)

Deposit Processing Fees: (all fees per item unless other indicated)

Processing Center	Local item	Other local	Transit	Other transit
Colorado	$0.015	$0.029	$0.040	$.067
Kansas	0.015	0.039	0.040	.067
Nebraska	0.015	0.038	0.040	.067
Oklahoma	0.015	0.038	0.040	.067

Encoding Fee	0.023 per item.
Rejects on Encoded Items	0.15 per item.
Returns/Redeposits	0.80 per item.
Collections	6.50 per item.
Coin and Currency	2.50 per phone call.
Courier/Armored Car Cost	At Cost.
Research	0.15 per item plus $12/hour.
ACH Settlement	.50 per trans.
Photocopy	2.25 per item.
Facsimile	1.75 per page.
Postage	At Cost.

Proof of Deposit Processing Fees: (all fees per item unless otherwise indicated).

Items Per Month	Data Capture	Archival	Cycle	Account Sort
1–50,000	$0.011	$0.012	$0.009	$0.008.
50,001–100,000	0.008	0.012	0.006	0.008.
100,001–150,000	0.006	0.010	0.004	0.006.
150,001–250,000	0.005	0.010	0.003	0.006.
250,001–500,000	0.004	0.010	0.002	0.006.
500,001–Above	0.004	0.009	0.002	0.006.

Inclearing Processing Fees: (all fees per item unless otherwise indicated).

Items Per Month	Data Capture	Archival	Cycle	Account Sort
1–50,000	$0.009	$0.012	$0.009	$0.008.
50,001–100,000	0.006	0.012	0.006	0.008.
100,001–150,000	0.004	0.010	0.004	0.006.
150,001–250,000	0.003	0.010	0.003	0.006.
250,001–500,000	0.002	0.010	0.002	0.006.
500,001–Above	0.002	0.009	0.002	0.006.

Inclearing Return Items	City	RCPC	Country	Transit
Colorado	$0.19	$0.29	$0.35	$0.73.
Kansas	0.15	0.15	0.30	0.73.
Nebraska	0.25	0.31	0.37	0.73.
Oklahoma	0.16	0.20	0.22	0.73.

Return Item Pull	$0.86.
Return Item Qualification	0.25.
Large Item Return Notification	3.00.

Settlement Only	100.00 per month.
Facsimile	1.75.
Postage	At cost.
Photocopy	2.25.
Research	0.15 plus $12 per hour.
Over the Counter Items	0.03.

Statement Processing Fees: (all fees per item unless otherwise indicated)

Truncated Statement	$0.08 per statement.
Imaged Statement	0.12 per statement.
Cycled Statement	0.20 per statement.
Per Insert	0.01 per insert.
Postage	At Cost.
Imaged Check Printing	0.07 per page.
Statement Data Printing	0.07 per page.
Maintenance Fee	250.0 per month.

DDA Processing Fees: (all fees per item unless otherwise indicated)

Full Cycled	$0.15.
Full Truncated	0.12.
Basic Cycled	0.11.
Basic Truncated	0.08.
Maintenance Fee	25.00 per month.
Debit	0.15.
Credit	0.15.
Large Item Return Notification	3.00.
Research	0.15 plus $12 per hour.
Additional Statements	2.00.
Photocopy	2.25.
Facsimile	1.75.
Postage	At Cost.

Lockbox Processing Fees: (all fees per item unless otherwise indicated)

1–50,000 items per month	$0.110.
50,001–80,000 items per month	0.105.
80,001–120,000 items per month	0.100.
120,001–160,000 items per month	0.095.
160,001–above items per month	0.090.
Processing Fee	100.00 per month.
Exception Items	0.07.
Photocopy	2.25.
Facsimile	1.75.
Postage	At Cost.

District 11.—Federal Home Loan Bank of San Francisco (1996 NOW/DDA Services)

(Does not provide item processing services for third party accounts)

District 12.—Federal Home Loan Bank of Seattle (1996 NOW/DDA Services)

(Does not provide item processing services for third party accounts)

By the Federal Housing Finance Board.

Rita I. Fair,

Managing Director.

[FR Doc. 96–16965 Filed 7–2–96; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS)

Office of the Deputy Director; Submission for OMB Review; Comment Request

June 27, 1996.

The Federal Mediation and Conciliation Service (FMCS) has submitted four information collection requests to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). These forms are: FMCS' Arbitrator's Personal Data Questionnaire (FMCS For R–22), FMCS' Request for Arbitration Panel (FMCS Form R–43), FMCS' Arbitrator's Report and Fee Statement (FMCS Form R–19), and FMCS' Notice to Mediation Agencies (FMCS Form F–7). Copies of these individual collection requests, with the appropriate agency form number, may be obtained by calling Tammi E. Strozier, Office Manager, Office of the General Counsel at (202) 606–5442, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

Comments Received

In response to the 60-day notice, no comments were received for FMCS Forms R–22, R–43, and R–19. For the FMCS Form F–7, there were nine non-opposing comments received basically dealing with the agency's suggested change from a quadruplicate form to a single copy which would require the filing party to provide photocopies to the appropriate state agencies and other parties. Donald G. Russell, Director of Conciliation of the Indian Education Employment Relations Board, wrote that the form looks fine; Melissa McIntosh, Director, Wage and Hour Division of the

Department of Labor of the State of Indiana, commented that the cost-cutting change seems to be a reasonable and efficient idea; Jan Hart DeYoung, Hearing Examiner of the Alaska Labor Relations Agency, Supported FMCS's efforts at cost-cutting and said her agency would not be affected by a change from a quadruplicate form to a single form; Patrick A. Fridell, Assistant Chief UI Legal Section of the Georgia Department of Labor, stated that a photocopy is usually what the agency receives and is adequate; the New Jersey State Board of Mediation has no comments; and Catherine J. Serino, Director of the Connecticut Department of Labor, had no objections to the proposed change but note that, "only experience will tell if parties notice the proper agencies, like our Board, without the multiple copies."

Mark A. Lamont, Director of the Pennsylvania Bureau of Mediation, Department of Labor and Industry, suggested the insertion of "Copies to: Appropriate State or Territorial Agency, Opposite Party, and copy to be Retained by Party Filing Notice should be in BOLD print as found in the current format." He also noted that in Pennsylvania, at least, 85 percent of the notices were from the quadruplicate form. Bethanie Jensen, Administrative Assistant, North Dakota Department of Labor, suggested that the form contain more information, e.g. "actual active union members covered by the contract, percent of union members at a site location, and actual total active union members at the location affected." FMCS believes that since the Taft-Hartley Act only requires notification of contract expiration or modification by the filing party, this additional information collection request may prove too burdensome for the filer, whether it be the union or employer, to complete in a timely fashion.

Parker Denaco of the New Hampshire Public Employee Relations Board, saw no problems with his agency receiving photocopies that though that, "from a recipient agency standpoint," the receipt of photocopies instead of pressure-sensitive copies would assure clearer copies" and "that it might cause users to give more consideration as to when it is actually necessary to send the state a copy in the first place." Also, he suggested, "from an efficiency standpoint, could you offer an even more technologically advanced solution, namely to scan the new and improved Form 7 into your computer and offer any entity using the form to send a blank disc on which you would transfer the form in one of the common formats." This "would allow users/filers to upload the form into their computer, fill in the blanks on the screen and then print the completed form." The user could have the "opportunity to fill out, proof, and print a form all in one process." FMCS will look into the feasibility and cost of that approach.

Submission of Comments

Comments about this request should be submitted to the Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for (FMCS), Office of Management and Budget, Room 10235, Washington, DC 20503. For more information call (202) 395–7316, within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Federal Mediation and Conciliation Service.

Title: Arbitrator's Personal Data Questionnaire.

OMB Number: 3076–0001.

Agency Number: Form R–22.

Frequency: Once per application and once per year for updating the biographical sketch.

Affected Entities: The individuals who apply for admission to the FMCS Roster of Arbitrators.

Number of Respondents: 250.

Estimated Time Per Respondent: 1½ hour.

Total Burden Hours: 375.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Form R–22 is used to select highly qualified candidates for the arbitrator roster. The respondents are private citizens who make application for appointment to the FMCS roster.

Agency: Federal Mediation and Conciliation Service.

Title: Request for Arbitration Panel.

OMB Number: 3076–0002.

Agency Number: Form R–43.

Frequency: On occasion.

Affected Entities: Employers and their representatives, employees, labor unions and their representatives who request arbitration services.

Number of Respondents: 27,000.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 4,500.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Form R–43 is used for FMCS to offer panels of arbitrators for selection by labor and management to resolve grievances and disagreements arising under their collective bargaining agreements (CBAs) and to deal with fact-finding and interest arbitration issues as well. The need for this form is to obtain information, such as name, address, type of assistance desired, so that FMCS can provide various arbitration services effectively and efficiently (e.g., furnishing a standard list of seven arbitrators to both labor and management). This information collection facilitates the processing of the parties request for arbitration assistance.

Agency: Federal Mediation and Conciliation Service.

Title: Arbitrator's Report and Fee Statement.

OMB Number: 3076–0003.

Agency Number: Form R–19.

Frequency: On occasion.

Affected Entities: Individual arbitrators who render awards under appointment by the FMCS procedures.

Number of Respondents: 5,000.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 417 hours.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Form R–19 is used by FMCS to monitor the work of the arbitrators who serve on its roster. This is satisfied through the required completion of a report and fee statement which indicates when the arbitration award was rendered, the file number, the company and union, the issues, whether briefs were filed and transcripts taken, and fees charged to the parties for days the arbitrators' services were utilized. This information is then contained in the agency's annual report to indicate the types of arbitration issues, the average or median arbitration fees and days spent on cases, and the timeliness of the awards rendered.

Agency: Federal Mediation and Conciliation Service.

Title: Notice to Mediation Agencies.

OMB Number: 3076–0004.

Agency Number: Form F–7.

Frequency: Once per collective bargaining contract.

Affected Entities: Private sector employers and labor unions involved in interstate commerce who file notices for mediation services to the FMCS and state, local, and territorial agencies, who receive copies of these notices filed.

Number of Respondents: 70,000.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 4,167

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The F–7 form was created to establish conformity throughout interstate commerce and to allow FMCS to gather desired information in a uniform manner. The collection of such information, including the name of employer or employer association, address and phone number, official contact, bargaining unit and establishment size, location of affected establishment and negotiations, industry or type of business, principal product or service, union address, phone number, and official contact, contract expiration date or renewal date, whether the notice is filed on behalf of the union or employer, and whether this is health car industry notice for initial contracts or existing contracts, is critical for reporting and mediation purposes.

Dated: June 27, 1996.

Wilma B. Liebman,

Deputy Director.

[FR Doc. 96–16984 Filed 7–2–96; 8:45 am]

BILLING CODE 6372–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Science Foundation

Frequently Asked Questions Concerning the Department of Health and Human Services Objectivity in Research Regulations and the National Science Foundation Investigator Financial Disclosure Policy

AGENCIES: Public Health Service, and Office of the Secretary, HHS; National Science Foundation.

ACTION: Responses to questions.

SUMMARY: This document responds to frequently asked questions regarding PHS' and NSF's recently-issued rules on investigator conflicts of interest. This guidance document is intended to help institutions implement conflict of interest policies that comply with both PHS and NSF requirements.

FOR FURTHER INFORMATION CONTACT: *For PHS:* Geoffrey Grant, Acting Director, Office of Policy for Extramural Research Administration, National Institutes of Health, Room 2192, 6701 Rockledge Drive, MSC 7730, Bethesda MD 20817, (301) 435–0949. *For NSF:* Christopher L. Ashley, Assistant General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, VA 22230, (703) 306–1060.

SUPPLEMENTARY INFORMATION: On July 11, 1995, the Public Health Service (PHS) and the Office of the Secretary of the Department of Health and Human Services (HHS) and the National Science Foundation (NSF) issued rules regarding investigator conflict of interest. As explained in the preambles to those rules, PHS and NSF have been working together to ensure that the rules impose consistent obligations on institutions receiving PHS and NSF funding. To that end, PHS and NSF announced that the agencies would be developing a set of questions and answers (Q&As) to help institutions implement conflict of interest policies that comply with both PHS and NSF requirements. This set of Q&As provides answers to frequently asked questions received by both agencies. Where there are minor differences between the PHS and NSF rules, they are clearly noted.

Q1: Does NSF or PHS have a suggested format for investigator disclosures?

A1: No. The rules are designed to defer to the expertise of grantee institutions in developing policies and supporting documentation.

Q2: May an institution have different conflict of interest policies that vary among departments or professional schools?

A2: Yes, as long as all policies meet the minimum requirements of the NSF and PHS rules.

Q3: Which offices within an institution should be involved in administering the conflict of interest rules?

A3: An institution is free to administer its policy through whatever office or structure it wishes, as long as the policy reaches all investigators on NSF- and PHS-funded projects and the requirements of the PHS and NSF rules are met.

Q4: Must institutions routinely require financial disclosures from graduate students working on NSF- or PHS-sponsored research?

A4: The term "investigator" is defined to encompass individuals "responsible for the design, conduct or reporting" of NSF- or PHS-funded research. It is up to the institution to decide whether graduate student co-authors are "responsible for reporting" the research.

Q5: Will a proposal be processed if it does not contain the new certification required by the NSF and PHS rules?

A5: NSF will not process a proposal in the absence of the new certification, but in most cases the institution will not be required to re-submit the entire proposal. An addendum page to the *Cover Sheet to the National Science Foundation* (NSF Form 1207) has been developed that contains the required certification. The NSF administrative officer typically will forward a new certification page to the institution, and will process the proposal upon receipt of a completed and executed new page. The PHS would process the application without the proper certification but no award would be made until the awarding component received the certification in the form of a signed, revised application face page.

Q6: Do the PHS and NSF conflict of interest rules apply to all researchers and faculty members at institutions that receive NSF or PHS support?

A6. No. The NSF policy applies only to grantee institutions that employ more than fifty persons and the PHS rule exempts Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Phase I applications. In those institutions subject to the NSF policy and/or the PHS rule, only persons involved in PHS- or NSF-funded research are subject to the rules. However, institutions may choose to cover other researchers or faculty members under their policies for institution-specific reasons.

Q7: Do the PHS or NSF rules apply to subgrantees of PHS or NSF grantees?

A7: Consistent with current regulations and policies, the PHS rule applies to subgrants; the NSF Policy does not. Accordingly, institutions conducting PHS-funded research through subgrantees, contractors, or collaborators must take reasonable steps to ensure that investigators working for such entities comply with the regulations (42 C.F.R. § 50.604(a)) either by requiring the investigators to comply with the grantee institution's policy or by requiring the entities to provide appropriate assurances to the grantee institution. An institution conducting NSF-funded research through subgrantees must certify that the institution itself has in place a written, enforced policy on investigator conflicts of interest, but is not required to ensure that subgrantees comply with the NSF Policy. However, the Policy may apply to a subgrantee employing investigators who collaborate on NSF-sponsored research (see Q&A 14).

Q8: Do the NSF or PHS rules apply to post-doctoral fellowships?

A8: Not in most cases. The NSF policy applies only to grantee institutions that employ more than 50 persons and therefore would not apply to post-doctoral fellowships awarded to individuals. The PHS rule applies to PHS-funded research and to any person who is responsible for the design, conduct or reporting of research funded by the PHS. Thus, if a post-doctoral fellow served in such a capacity in PHS-funded research he or she would be subject to the rule. The PHS rule would apply to a postdoctoral fellowship application to the PHS only if the funding would be used for research and the fellow served in one of the research capacities described above.

Q9: Are investigators required to disclose interests in mutual funds?

A9: An interest in a pooled fund such as a diversified mutual fund may be sufficiently remote that it would not reasonably be expected to create a conflict of interest for a NSF- or PHS-funded investigator. For example, an investigator may own an interest in a diversified mutual fund which has assets placed in many securities. It is possible that certain of the securities held by the mutual fund were issued by an entity whose interests would reasonably appear to be affected by activities proposed for funding by NSF or PHS. However, because it is likely that an investigator's interest in a mutual fund is only a small portion of the fund's total assets and because only a limited portion of the fund's assets are placed in the securities of a single issuer, it is unlikely that an investigator's activities on an NSF or PHS award would affect his or her interest in the mutual fund. Institutions therefore may determine that certain interests in a diversified mutual fund could never directly and significantly affect the design, conduct or reporting of PHS- or NSF-funded research and exempt such interests from disclosure by the investigator on that basis.

The federal government's Office of Government Ethics has detailed regulations regarding the treatment of diversified mutual funds under the government's conflict of interest rules. 5 C.F.R. § 2634.310(c); *see also* 60 Fed. Reg. 47,208 (Sept. 11, 1995) (proposed rule). Institutions may consult these regulations for guidance on how they might wish to treat interests in mutual funds under their policies.

Q10: Are investigators required to disclose interests in "blind trusts"?

A10: Institutions may determine that the research will not be affected by qualified blind trust assets not known to the investigator that are managed by an independent fiduciary. Because such assets would not be known to an investigator, they could not directly and significantly affect the design, conduct or reporting of the research. Of course, an investigator is aware of the assets originally placed in the trust at the time of its formation and would be required to disclose any such assets that would reasonably appear to be affected by NSF- or PHS-funded research. Only new assets purchased with the proceeds from the original assets would be unknown to the investigator.

As with diversified mutual funds, the Office of Government Ethics has detailed regulations describing the type of trusts that qualify for the "blind trust" exception to the government's conflict of interest rules. 5 C.F.R. Part 2634 Subpart D. Institutions may consult these guidelines in determining how they wish to treat certain trusts under their policies.

Q11: Are foreign investments (e.g., shares in a foreign corporation) covered by the financial disclosure requirement.

A11: Yes, if they would reasonably appear to be affected by NSF- or PHS-funded research and do not fall within one of the exceptions to the definition of "significant financial interest."

Q12: Which conflicts of interest must be reported to the federal government?

A12: Neither the PHS nor NSF rules require any institution to report to the federal government the details of any conflict of interest that has been resolved pursuant to the institution's Policy. Consistent with the statute authorizing its conflict of interest rule, the PHS requires institutions, prior to the institution's expenditure of any funds under an award, to report to the PHS Awarding Component the existence of any conflicting interests and assure that the interest has been managed, reduced or eliminated in accordance with PHS regulations. NSF requires that only conflicts that have not been managed, reduced or eliminated prior to the expenditure of funds under an award be reported to NSF.

Q13: Will investigator financial records be subject to public disclosure?

A13: No. Normally, neither PHS nor NSF would possess records of the financial interests of investigators, because institutions are not required to submit those records. However, in the event NSF or PHS had such information either as a result of an audit or compliance review or in connection with a conflict of interest that cannot be managed satisfactorily under the institution's policy, it would not be disclosed to the public. Where a member of the public submits a request under the federal Freedom of Information Act (FOIA) for financial information in the possession of NSF or PHS, the agencies would assert all applicable FOIA exemptions in response to such a request.

Q14: Is the applicant institution required to obtain financial disclosures from investigators who are not employed by the applicant institution?

A14: The PHS rule provides that if the institution carries out the PHS-funded research through a collaborator, the institution must take reasonable steps to ensure that investigators working for the collaborator comply with the rule, either by requiring those investigators to comply with the applicant institution's policy or by requiring an assurance from the collaborating institution which will enable the applicant institution to comply with the rule. NSF would expect that where an investigator does not work for the applicant institution, the applicant institution would obtain an assurance from the institution employing the investigator indicating that the investigator has complied with the requirements of the policy at that institution.

Q15: Are all "senior personnel" listed in NSF proposals and "key personnel" listed in PHS proposals subject to the financial disclosure requirements of the conflict of interest rules?

A15: As explained in Q&A 4, the term "investigator" is defined functionally rather than categorically. Although the agencies believe that senior and key personnel will be "responsible for the design, conduct or reporting of research" under the rules in almost all cases, it is possible to conceive situations in which senior or key personnel might not meet the definition of "investigator." Institutions are also responsible for obtaining financial disclosures from persons other than senior or key personnel who meet the definition of "investigator."

Q16: How should institutions with fewer than 50 employees complete the certification page for NSF proposals?

A16: Such institutions should annotate NSF Form 1207 or the addendum page (See Q&A1 above) to indicate that they have fewer than 50 employees and are therefore exempt from the Investigator Financial Disclosure Policy. These institutions are not exempt from the PHS regulations.

Q17: Salary, royalties and other payments that "are not expected to exceed $10,000 over the next twelve month period" are excluded from the definition of "significant financial interest." How should an investigator estimate expected income over the next twelve months?

A17: The agencies have no preferred estimation method. Investigators must make their best reasonable estimates of expected income in determining whether salary, royalties or other payments constitute "significant financial interests." This issue is separate from an investigator's ongoing duty to update financial disclosures either annually or as new significant financial interests are obtained throughout the period of the award.

Q18: How can an institution determine that all required disclosures have been made before submitting a proposal to NSF or PHS?

A18: As part of the institution's routine proposal preparation procedures institutions should require investigators to ensure that they have made all required financial disclosures in accord with the regulations prior to the time the organizational representative makes the certification in an NSF or PHS proposal. NSF and PHS staff, auditors and others concerned with the proper implementation of these regulations would expect such an arrangement at any institution that certifies to the maintenance of an appropriate written, enforced policy on conflict of interest.

Q19: Must an investigator report to the institution a single share of stock?

A19: A single share of stock would have to be reported only if (i) it is valued at more than $10,000 *or* represents more than a five percent ownership interest in the corporation; *and* (ii) it would reasonably appear that the value of the stock could be affected by the research for which funding is sought or that the financial interest of the corporation would be so affected.

The rules define a significant financial interest as anything of monetary value including equity interests (*e.g.*, stocks, stock options, or other ownership interests) but the definition excludes an equity interest that does not exceed $10,000 in value *and* represents no more than a 5% ownership interest in any single entity. This means that, under the rules, an investigator would never have to report an equity interest of $10,000 or less which represents 5% or less ownership interest in any single entity because that combination of value and ownership is excluded by definition from the term "significant financial interest." On the other hand, under the rules, an investigator would always have to report an equity interest exceeding $10,000 or an ownership interest exceeding 5% in any single entity, regardless of value, if that equity interest or ownership interest was held in an entity whose financial interests would reasonably appear to be affected by the specified activities for which funding is sought.

Q20: When and how will the NSF and PHS rules be reviewed and revised?

A20: The agencies anticipate that after two or three years of experience with the rules, they will solicit public comments regarding whether changes are necessary or appropriate.

Dated: June 13, 1996.

Dr. Harold Varmus, M.D.,

Director, National Institutes of Health.

Lawrence Rudolph,

General Counsel, National Science Foundation.

[FR Doc. 96–16974 Filed 7–2–96; 8:45 am]

BILLING CODE 7555–01–P, 4140–01–P

Centers for Disease Control and Prevention

[INFO–96–18]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Survey of State-Based Diabetes Control Cooperative Agreement Programs—New—Diabetes mellitus and related complications are the seventh leading cause of death in the United States, and accounts for $105 billion in direct medical costs and lost productivity each year. Approximately 14 million Americans have been diagnosed with diabetes, a leading cause of new blindness and end-stage renal failure in the United States and a major co-morbid factor in lower extremity amputation, cardiovascular disease and related death, and neonatal morbidity and mortality.

Through the support of the Centers for Disease Control and Prevention's (CDC) "State-Based Program to Reduce the Burden of Diabetes: A Health Systems Approach," public health departments in 42 states and four U.S. territorial affiliated jurisdictions have been charged with providing leadership in reducing the gap between what should be and what is the current standard of diabetes care.

CDC will collect information from diabetes State Program Coordinators regarding the four key areas of program implementation. They are (1) capacity building and infrastructure development, (2) surveillance and data collection, (3) health systems change, and (4) working with local programs.

The survey has three main objectives:

1. Document the progress made by Diabetes Control Programs in the four main areas of program implementation.

2. Assess the relationship between the level of infrastructure development, and a program's efforts to carry out surveillance activities, health systems change activities, and work with local programs. Information will help improve technical assistance (TA) and guidance offered to states by CDC.

3. Lay the groundwork for an evaluation instrument that can be used to collect data from Diabetes Control Programs at the end of the funding cycle in order to assess whether progress in program implementation and development is linked to reduced diabetes morbidity and mortality.

The data will result from self-administered mailed surveys sent to the Program Coordinator in each state. Most questions will be in the form of checklists although each of the four sections contain a number of open-ended questions for explanation of unique features of programs. It is expected that the burden in time to each respondent will be about two (2) hours per Program Coordinator or Designee, resulting in a total burden of 92 hours. Results will also be made available to participants upon request. The total cost to respondents is estimated at $1,840.

Respondents	No. of Respondents	No. of responses/respondent	Avg. burden response (in hrs.)	Total burden (in hrs.)
Diabetes program coordinators	46	1	2	92
Total				92

2. List of Ingredients Added to Tobacco in the Manufacture of Cigarette Products—(0920–0210)—Extension without change - Cigarette smoking is the leading preventable cause of premature death and disability in our nation. Each year more than 400,000 premature deaths occur as the result of cigarette smoking related diseases. The Centers for Disease Control and Prevention (CDC), Office on Smoking and Health has primary responsibility for the Department of Health and Human Services' (HHS) smoking and health program. HHS's overall goal is to reduce death and disability resulting from cigarette smoking and other forms of tobacco use through programs of information, education and research.

The Comprehensive Smoking Education Act of 1984 (15 USC 1336 Pub.L. 98–474) requires each person who manufactures, packages, or imports cigarettes to provide the Secretary of HHS with a list of ingredients added to tobacco in the manufacture of cigarettes. This legislation also authorizes HHS to undertake research, and to report to the Congress (as deemed appropriate), on the health effects of the ingredients.

In 1993, OMB reinstated approval for collection of ingredients information (0920–0210) after the expiration of the previous approval; this current approval expires on December 31, 1996. The total cost to the respondent is estimated at $189,000.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Tobacco manufacturers	14	1	190	2,660

3. The Fourth National Health and Nutrition Examination Survey (NHANES IV) Pretests—New—The National Health and Nutrition Examination Survey (NHANES) has been conducted periodically since 1970 by the National Center for Health Statistics, CDC. NHANES IV is planned for 1998–2004 and two pretests are proposed to include 400 sample persons in each. They will receive an interview and a physical examination. The first pretest is needed to test the sampling process, data collection procedures, computer-assisted personal interviews (including translations into Spanish), examination protocols, and automated computer systems. The second pretest will test the revised survey questionnaires and examination procedures, quality control procedures and response rates. Participation in the pretests and the full survey will be completely voluntary and confidential.

NHANES programs produce descriptive statistics which measure the health and nutrition status of the general population. Through the use of questionnaires, physical examinations, and laboratory tests, NHANES studies the relationship between diet, nutrition and health in a representative sample of the United States. NHANES monitors the prevalence of chronic conditions and risk factors related to health such as coronary heart disease, arthritis, osteoporosis, pulmonary and infectious diseases, diabetes, high blood pressure, high cholesterol, obesity, smoking, drug and alcohol use, environmental exposures, and diet. NHANES data are used to establish the norms for the general population against which health care providers can compare such patient characteristics as height, weight, and nutrient levels in the blood. Data from future NHANES can be compared to those from previous NHANES to monitor changes in the health of the U.S. population. NHANES IV will also establish a national probability sample of genetic material for future genetic testing for susceptibility to disease.

Users of NHANES data include Congress; the World Health Organization; Federal agencies such as NIH, EPA, and USDA; private groups such as the American Heart Association; schools of public health; private businesses; individual practitioners; and administrators. NHANES data are used to establish, monitor, and evaluate recommended dietary allowances, food fortification policies, programs to limit environmental exposures, immunization guidelines and health education and disease prevention programs. The total cost to respondents for the two pretests is estimated at $54,600.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Children	80	1	2.75	220

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Adolescents and Adults	720	1	4.75	3420
Total				3540

4. The Second Longitudinal Study of Aging (LSOA II)—(0920–0219)—Revision—The Second Longitudinal Study of Aging is a second generation, longitudinal survey of a nationally representative sample of civilian, non-institutionalized persons 70 years of age and older. Participation is voluntary, and individually identified data are confidential. It will replicate portions of the first Longitudinal Study of Aging (LSOA), particularly the causes and consequences of changes in functional status. LSOA II is also designed to monitor the impact of changes in Medicare, Medicaid, and managed care on the health status of the elderly and their patterns of health care utilization. Both LSOAs are joint projects of the National Center for Health Statistics (NCHS) and the National Institute on Aging (NIA).

The Supplement on Aging (SOA), part of the 1984 National Health Interview Survey (NHIS), established a baseline on 7,527 persons who were then aged 70 and older. The first LSOA reinterviewed them in 1986, 1988 and 1990. Data from the SOA and LSOA have been widely used for research and policy analysis relevant to the older population.

Approximately 10,000 persons aged 70 and over were interviewed for the 1994 National Health Interview Survey's second Supplement on Aging (SOA II) between October of 1994 and March of 1996. LSOA II will reinterview the SOA II sample three times: in 1997, 1999, and 2001. As in the first LSOA, these reinterviews will be conducted using computer assisted telephone interviewing (CATI). Beyond that, LSOA II will use methodological and conceptual developments of the past decade.

LSOA II will contain modules on scientifically important and policy-relevant domains, including: (1) assistance with activities of daily living, (2) chronic conditions and impairments, (3) family structure, relationships, and living arrangements, (4) health opinions and behaviors, (5) use of health, personal care and social services, (6) use of assistive devices and technologies, (7) health insurance, (8) housing and long-term care, (9) social activity, (10) employment history, (11) transportation, and (12) cognition. This new data will result in publication of new national health statistics on the elderly and the release of public use micro data files. The total cost to the respondents is estimated at $112,500.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Sample adult	10,000	1	.75	7,500
Total				7,500

Dated: June 27, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–16947 Filed 7–2–96; 8:45 am]

BILLING CODE 4163–18–P

[Announcement 658]

State Grants to Support the Evaluation of 5 A Day Nutrition Programs and Physical Activity Programs

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1996 funds for grants to support the evaluation of State and community nutrition and physical activity intervention programs.

This announcement addresses one required component and one optional component:

I. "5 A Day Evaluation" for supporting the evaluation of 5 A Day for Better Health nutrition intervention programs. Applicants must apply for the 5 A Day Evaluation component.

II. "Physical Activity Evaluation" for supporting the evaluation of a physical activity intervention. Application for the Physical Activity Evaluation component is optional.

The CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000" a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related specifically to the priority area of Nutrition with a secondary emphasis on Physical Activity and Fitness. (For ordering a copy of "Healthy People 2000" see the Section, "Where to Obtain Additional Information.")

Authority

This program is authorized under section 317(k)(2) [42 U.S.C. 247b(k)(2)] of the Public Health Service Act, as amended.

Smoke-Free Workplace

CDC encourages all grant recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are the official public health agencies of States or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments, that have established,

clearly defined, evaluable, long-range 5 A Day for Better Health projects in a specific community channel.

Availability of Funds

Approximately $600,000 is available in FY 1996 to fund approximately 9 awards.

A. 5 A Day Evaluation:

Approximately $450,000 is available to fund approximately 6 awards. It is expected that the average award will be $75,000 ranging from $60,000 to $90,000 for a 5 A Day for Better Health project in a specific community channel (e.g., youth and civic clubs, after school care programs, schools or preschools, churches, service groups, food assistance programs, worksites, supermarkets, health clinics, media, etc.).

B. Physical Activity Evaluation:

Approximately $150,000 is available to fund approximately 3 awards to evaluate physical activity interventions. It is expected that the average award will be $50,000 ranging from $35,000 to $60,000. In order to be eligible for Part B, applicants must apply for Part A.

It is expected that the awards will begin on or about September 30, 1996, and will be made for a 12-month budget period within a project period of one year. Funding estimates may vary and are subject to change.

Awards under this announcement will not be sufficient to fully support an applicant's proposed activities, but are meant to be used in conjunction with other resources—whether direct funding or in-kind contributions—that the applicant may have available.

Purpose

These awards will support State efforts to evaluate nutrition and physical activity intervention programs. Emphasis will be placed on evaluations of community interventions, preferably through environmental approaches, such as policy or administrative changes, or testing the effects of multiple strategies designed to increase the consumption of fruits and vegetables and to increase moderate-intensity (i.e., the equivalent of a brisk walk at 3 to 4 mph) physical activity.

Program Requirements

Program areas that will be supported under this grant are:

A. 5 A Day Evaluation (required):

Evaluation of a 5 A Day intervention in one or more specific community channels.

B. Physical Activity Evaluation (optional):

Evaluation of a physical activity intervention in one or more specific community channels.

Note: Use of the same or complementary targeted populations for both the 5 A Day and the Physical Activity evaluations is encouraged.

Applicants should propose an evaluation plan for a clearly defined, established, long-range effort in a specific community channel in accordance with the following definitions:

A. Clearly Defined:

Intervention objectives are clearly stated; activities necessary to accomplish objectives are described, to include who is responsible for each activity and when they will be accomplished; and work is done within a specific channel with a defined targeted audience.

B. Established:

For the 5 A Day evaluation component, the applicant is licensed with the National Cancer Institute (NCI) and has developed an ongoing 5 A Day Program. For both evaluation components, evaluating pretested or piloted interventions is desirable.

C. Evaluation Plan:

Clear, measurable evaluation objectives and expected outcomes are defined with appropriate statistical power. Use of current theoretical frameworks to guide the evaluation study is desirable. A combination of process and impact objectives are also desirable, with outcome objectives where feasible. In designing the study, consideration should be given to the number of individuals or groups needed to detect realistic changes in post intervention outcome measures when compared with pre-intervention measures. Sample sizes should give adequate power (80%) to detect these changes. If the appropriate design expertise does not exist within the State health department, inclusion of a university affiliate on the project team is desirable.

D. Long Range:

The program is not just a single activity at one point in time, but a sustained effort involving appropriate behavior change strategies. Programs including environmental approaches, such as administrative or policy changes, are encouraged.

Evaluation Criteria

5 A Day Evaluation and Physical Activity applications will be allocated 100 points each. Applications will be reviewed and evaluated according to the following criteria:

A. Background: (25 Points)

The degree to which the applicant clearly describes a long range, clearly defined, evaluable project, including a description of the intervention targeted population, method, and community channel(s).

B. Program Plan: (45 Points)

The adequacy of the applicant's plan to carry out the evaluation within the 12-month time period, including the specific objectives, methods, and measures to be used in the evaluation.

C. Capacity: (30 Points)

The capabilities of the personnel (including consultants where appropriate) to carry out the evaluation.

D. Budget: (Not Weighted)

The extent to which the applicant provides a detailed budget and line-item justification that is consistent with the evaluation plan.

E. Human Subjects: (Not Scored)

Whether or not exempt from the Department of Health and Human Services (HHS) regulations, are procedures adequate for the protection of human subjects? Recommendations on the adequacy of protections include: (1) Protections appear adequate and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the ORG has concerns related to human subjects; or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal Governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, no later than 30 days after the application deadline. The appropriation for this financial assistance program was received late in the fiscal year and would not allow for an application date which would accommodate the 60-day State recommendation process period. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305. This should be done no later than 30 days after the application deadline. The granting agency does not guarantee to "accommodate or explain" for tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit. Should human subjects review be required, the proposed workplan should incorporate timelines for such development and review activities.

Women, Racial and Ethnic Minorities

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR- supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, Friday, September 15, 1995.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers For Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, on or before August 2, 1996.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

2. Late Applications: Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Albertha Carey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers For Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, telephone (404) 842–6508, fax (404) 842–6513, or Internet or CDC WONDER electronic mail at <ayc1@opspgo1.em.cdc.gov>.

Programmatic technical assistance may be obtained from Sarah Kuester, MS, RD, Division of Nutrition and Physical Activity, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–26, Atlanta, GA 30341–3724, telephone (770) 488–4281, fax (770) 488–4479, or Internet or CDC WONDER electronic mail at <sak2@ccddn1.em.cdc.gov>.

Please refer to Announcement Number 658 when requesting information and submitting an application. Potential applicants may obtain a copy of "Healthy People 2000" (Full Report; Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report; Stock No. 017–001–00473–1) referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

There may be delays in mail delivery and difficulty in reaching the CDC Atlanta offices during the 1996 Summer Olympics. Therefore, CDC suggests applicants use Internet, follow all instructions in this announcement, and leave messages on the contact person's voice mail for more timely responses to any questions.

Dated: June 27, 1996.

Joseph R. Carter

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–16946 Filed 7–02–96; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Annual Survey of Refugees (ORR–9).

OMB No.: 0970–0033.

Description: The Annual Survey of Refugees collects information on the economic circumstances of a random sample of refugees, Amerasians, and entrants who arrived in the U.S. during the previous five years. The survey focuses on their training, labor force participation, and welfare utilization rates. Data are segmented by region of origin, State of resettlement, and number of months since arrival. From their responses, ORR reports on the economic adjustment of refugees annual deliberations of refugee admissions and funding and by program managers in formulating policies for the direction of the Refugee Resettlement Program.

Respondents: State governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–9	1,800	1	.75	1,350

Estimated Total Annual Burden Hours: 1,350.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: June 26, 1996.

Larry Guerrero,

Director, Office of Information Management Services.

[FR Doc. 96–16969 Filed 7–2–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 96N–0158]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish a notice in the **Federal Register** concerning each collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a survey of hormone replacement therapy (HRT) among women with a previous diagnosis of endometrial cancer.

DATES: Submit written comments on the collection of information by September 3, 1996.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Charity B. Smith, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1686.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c). To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Survey of HRT Among Women With A Previous Diagnosis of Endometrial Cancer

Under FDA's statutory authority to conduct and sponsor research (21 U.S.C. 393(b)(2)(C) and 42 U.S.C. 300u–1), FDA and the Fred Hutchinson Cancer Research Center in Seattle, WA, have jointly designed a study involving a written survey to be completed by women with a previous diagnosis of endometrial cancer. The study will evaluate the occurrence of menopausal vasomotor symptoms ("hot flashes") among these women, and the extent to which they have used HRT, either as therapy for menopausal symptoms or for other reasons. ("Hormone replacement therapy" means treatment with estrogen alone or with a combination of estrogen and progestogen.)

FDA estimates the burden of this survey as follows:

ESTIMATED ANNUAL REPORTING BURDEN

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
575	1	575	.5	288

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: June 26, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–16884 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0186]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a proposed survey of mammography facilities to assess the impact of proposed regulations required by the Mammography Quality Standards Act of 1992 (the MQSA).

DATES: Submit written comments on the collection of information by September 3, 1996.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Charity B. Smith, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1686.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c). To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

FDA Survey of Mammography Facilities

The MQSA of 1992 (Pub. L. 102–539) has resulted in regulatory efforts by FDA to ensure high quality standards for mammography in the United States. In the **Federal Register** of April 3, 1996 (61 FR 14856), FDA proposed final regulations to implement these standards. Interim regulations are codified at 21 CFR 900. In connection with this rulemaking, FDA proposes to conduct a survey of facilities to determine current operating costs and procedures. The information to be collected from the proposed survey includes general provider characteristics, equipment characteristics, facility operating procedures, personnel qualifications, and costs of compliance with current quality standards. This information is necessary in order to ensure that costs to affected facilities are minimized to the extent consistent with maintenance of high quality mammography services, and that patient access to mammography services is not diminished as a result of agency action.

The proposed survey will be a one-time data collection effort. Surveys will be mailed to 1,000 randomly selected facilities. Facilities will be contacted by telephone in order to respond to any specific issues, or questions that may arise. Responses will not be mandatory, and no facility will be required to respond. All responses will be kept confidential, although a compilation of data that does not reveal facility-specific information will be made available upon request to participants and to the public. A toll-free telephone number will be installed to allow respondents the opportunity to call if specific issues arise.

FDA estimates the burden of this one-time survey as follows:

ESTIMATED ANNUAL REPORTING BURDEN

Burden Element	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Costs
Initial Contact by Telephone	1,000	1	1,000	0.083	83	$1,385
Compile Requested Information	702	1	702	1.0	702	$11,716

ESTIMATED ANNUAL REPORTING BURDEN—Continued

Burden Element	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Costs
Mail-in Response	200	1	200	0	N/A	N/A
Telephone Followup	800	1	800	0.083	67	$1,118
Responses by Telephone Interview	480	1	480	0.5	240	$4,006
Mail-In Response After Receiving Followup	22	1	22	0	N/A	N/A
Total Burden					1,092	$18,225

There are no capital costs or continuing operating and maintenance costs associated with this survey. These burden estimates include the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. The hour and cost burden estimates were derived from a pretest of nine randomly selected facilities.

Dated: June 26, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–16970 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0121]

Bayer Corp., et al.; Withdrawal of Approval of 29 NADA's

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 29 new animal drug applications (NADA's). Twenty-four NADA's are held by Bayer Corp., Agriculture Division, Animal Health (formerly Miles, Inc., Agriculture Division, Animal Health Products), three are held by Hubbard Milling Co., and one each is held by Hoffmann-LaRoche, Inc., and Ohmeda, Inc. The firms notified the agency in writing that the animal drug products are not being manufactured or marketed and requested that approval of the applications be withdrawn. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations by removing the entries which reflect approval of the NADA's.

EFFECTIVE DATE: July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0159.

SUPPLEMENTARY INFORMATION: The sponsors of the applications listed in the table in this document have informed FDA that these animal drug products are not being manufactured or marketed and have requested that FDA withdraw approval of the applications.

NADA no.	Drug name	Sponsor name and address
6–462	Diethylcarbamazine tablets	Bayer Corp., Agriculture Division, Animal Health, P.O. Box 390, Shawnee Mission, KS 66201.
10–540	Calcium disodium edetate injection	Do.
11–380	Diethylcarbamazine powder	Do.
12–054	Protokylol hydrochloride tablets and injection	Do.
12–103	Triamcinolone tablets	Do.
12–392	Triamcinolone injection	Do.
12–598	Disophenol sodium injection	Do.
15–161	Trichlorfon powder	Do.
15–965	Coumaphos Type A medicated article	Do.
30–045	Triamcinolone/neomycin sulfate ointment	Do.
34–394	Niclosamide tablets	Do.
35–263	Styrylpyridinium chloride/diethylcarbamazine (as base) oral liquid.	Do.
45–287	Coumaphos crumbles	Do.
48–645	Tylosin Type A medicated articles (5, 10, 20, and 40 grams per pound).	Hubbard Milling Co., 424 North Riverfront Dr., P.O. Box 8500, Mankato, MN 56002–8500.
49–555	Styrylpyridinium chloride/diethylcarbamazine control diet HRH/MSD.	Bayer Corp.
91–628	Diethylcarbamazine citrate syrup	Do.
93–372	Chlortetracycline calcium complex Type A medicated articles.	Hoffmann-LaRoche, Inc., Nutley, NJ 07110.
94–402	Tylosin and sulfamethazine Type A medicated articles	Hubbard Milling Co.
95–078	Trichlorfon oral liquid	Bayer Corp.
96–031	Styrylpyridinium chloride/diethylcarbamazine citrate tablets.	Do.
100–201	Trichlorfon paste	Do.
100–356	Styrylpyridinium chloride/diethylcarbamazine control diet HRH.	Do.
100–670	Niclosamide Type A medicated article	Do.
101–078	Dichlorophene and toluene capsules	Do.
120–327	Diethylcarbamazine chewable tablets	Do.
120–670	Styrylpyridinium, diethylcarbamazine edible tablets	Do.

NADA no.	Drug name	Sponsor name and address
121–291	Enflurane liquid (anesthetic)	Ohmeda, Inc., Pharmaceutical Products Division, P.O. Box 804, Liberty Corner, NJ 07938–0804.
121–813	Styrylpyridinium, diethylcarbamazine film-coated tablets	Bayer Corp.
133–509	Pyrantel tartrate Type A medicated articles	Hubbard Milling Co.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 6–462, 10–540, 11–380, 12–054, 12–103, 12–392, 12–598, 15–161, 15–965, 30–045, 34–394, 35–263, 45–287, 48–645, 49–555, 91–628, 93–372, 94–402, 95–078, 96–031, 100–201, 100–356, 100–670, 101–078, 120–327, 120–670, 121–291, 121–813, and 133–509, and all supplements and amendments thereto is hereby withdrawn, effective July 15, 1996.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing 21 CFR 520.500, 520.620a, 520.620b, 520.1520, 520.2022, 520.2160a, 520.2160b, 520.2160c, 520.2160d, 520.2480, 520.2520c, 520.2520d, 522.281, 522.740, 522.2022, 522.2480, 529.810, 558.367, and 558.565, and amending 21 CFR 520.580, 520.622a, 520.622b, 520.2520a, 558.185, 558.485, 558.625, and 558.630 to reflect the withdrawal of approval of the above mentioned NADA's.

Dated: June 3,1996.

Michael J. Blackwell,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 96–16887 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96D–0159]

Compounding of Drugs for Use in Animals; Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a Compliance Policy Guide (CPG) section 608.400 entitled "Compounding of Drugs for Use in Animals." The purpose of this CPG is to provide guidance to FDA's field and headquarters staff with regard to the compounding of animal drugs by veterinarians and pharmacists for use in animals. The CPG contains information that may be useful to industry and the public. The text of the CPG is included in this notice. This CPG does not bind FDA, nor does it create or confer any rights, privileges, benefits, or immunities on or for any person.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of CPG section 608.400 entitled "Compounding of Drugs for Use in Animals" to the Industry Information Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on CPG section 608.400 entitled "Compounding of Drugs for Use in Animals" to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of CPG section 608.400 and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard E. Geyer, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1764.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of CPG section 608.400 entitled "Compounding of Drugs for Use in Animals." The purpose of this CPG is to provide clear policy and regulatory guidelines to FDA's field and headquarters staff with regard to the compounding of animal drugs by veterinarians and pharmacists for use in animals. It also contains information that may be useful to industry and to the public.

The Federal Food, Drug, and Cosmetic Act (the act) does not distinguish compounding from manufacturing or other processing of drugs for use in animals. However, veterinarians and pharmacists do manipulate drugs (e.g., combine or dilute finished dosage forms, prepare finished dosage forms from bulk drug substances, or prepare injectables from powdered oral dosage forms) to obtain products that differ from the starting materials.

FDA acknowledges the use of compounding within certain areas of veterinary practice. The current state of veterinary medicine requires products to treat many conditions in a number of different species, some of which are known to have unique physiological characteristics. While the agency acknowledges the need for compounding under certain circumstances, it is also aware of recent adverse reactions and animal deaths caused by compounded drug products and is concerned about the risks associated with compounding practices in veterinary medicine. In addition, the agency is greatly concerned about pharmacies that produce large quantities of unapproved new animal drugs that are essentially copies of FDA-approved products. These pharmacy products are actively advertised and promoted, and sometimes are priced lower than the approved product. The firms claim that they are practicing within the scope of their State licenses. However, it is apparent that some of these firms use their pharmacy licenses to circumvent the entire drug approval process, and are mass marketing products that have been produced under little or no quality control, manufacturing standards to ensure purity, potency, and stability.

When the Animal Medicinal Drug Use Clarification Act of 1994 (AMDUCA) is implemented and becomes effective, it will allow compounding from approved drugs because it will permit the extralabel use of approved animal and human drugs. Extralabel use, including compounding, under AMDUCA will be subject to conditions specified by the implementing regulations. The scope of compounding made legal upon the effective date of AMDUCA will be addressed by those regulations.

CPG section 608.400 represents FDA's current position and interpretation of the act. The CPG is intended to provide clear guidance to FDA field and headquarters staff and also could

provide information to the animal health industry. However, this document, which is intended merely for internal FDA guidance, does not bind FDA, nor does it create or confer any rights, privileges, benefits, or immunities on or for any persons. FDA may reconsider its position at a later date in light of comments received or other data or information which comes to the attention of the agency.

COMPLIANCE POLICY GUIDE[1]

CHAPTER - 6

SUB CHAPTER - 600

Sec. 608.400 Compounding of Drugs for Use in Animals

Background:

The Federal Food, Drug, and Cosmetic Act (the Act) does not distinguish compounding from manufacturing or other processing of drugs for use in animals. However, veterinarians and pharmacists do manipulate drugs (e.g., combine or dilute finished dosage forms, prepare finished dosage forms from bulk drug substances, or prepare injectables from powdered oral dosage forms) to obtain products that differ from the starting materials.

There is a potential for causing harm to public health and to animals when drug products are compounded, distributed, and used in the absence of adequate and well-controlled safety and efficacy data, adherence to the principles of contemporary pharmaceutical chemistry and current good manufacturing practices.

The Agency acknowledges the use of compounding within certain areas of veterinary practice. The practice of veterinary medicine requires products to treat many conditions in a number of different species, some of which have unique physiological characteristics. FDA, other federal, state agencies, and producer groups encourage drug sponsors to obtain approvals for all new animal drugs.

While the Agency acknowledges the use of compounding under certain circumstances, it is also aware of adverse reactions and animal deaths caused by compounded drug products and is concerned about the risks associated with compounding practices in veterinary medicine. An example is the recent death of cattle due to the presence of endotoxin in a parenteral product prepared from spectinomycin approved for oral use. In addition, the Agency is greatly concerned about pharmacies that produce large quantities of unapproved new animal drugs that are essentially copies of FDA-approved products. These pharmacy products are actively advertised and promoted, and sometimes are priced lower than the approved product. The firms claim that they are practicing within the scope of their state licenses. However, it is apparent that some of these firms use their pharmacy licenses to circumvent the entire drug approval process, and are mass marketing products which have been produced with little or no quality control, manufacturing standards to ensure purity, potency and stability.

The pharmacokinetics and depletion times for residues from compounded products are not known and the assigning of extemporaneous withdrawal times may result in potentially harmful residues in food. Excipients and vehicles from unapproved or unknown origins may pose additional risks.

Section 510(g)(1) of the Act exempts from the registration requirements licensed pharmacies which do not compound drugs except exclusively within the regular course of their business of dispensing or selling drugs at retail. Section 510(g)(2) exempts from the registration requirements licensed practitioners who manufacture, prepare, propagate, compound, or process drugs during the regular course of business of dispensing drugs at retail. The Act and regulations do not, however, exempt such practitioners or pharmacists from the approval requirements in the new animal drug provisions of Sections 501(a)(5) and 512. Therefore, compounding allowed under the Act is limited to the preparation of drug products which do not meet the definition of new animal drugs. In the absence of an approved new animal drug application (NADA), the compounding of a new animal drug from any article, including an approved or unapproved finished human or animal drug, or a bulk drug, results in an adulterated new animal drug in violation of section 501(a)(5).

Compounding from Approved Dosage Form Drugs: When the Animal Medicinal Drug Use Clarification Act of 1994 (AMDUCA) goes into effect, it will allow the "extra-label" use of approved animal and human drugs. It will also allow compounding from those approved drugs. Under AMDUCA "extra-label" use, including compounding, will be subject to conditions specified by regulation. AMDUCA will become effective upon promulgation of the regulations. The scope of compounding made legal upon the effective date of AMDUCA will also be addressed by the regulations. The proposed regulations were published in the Federal Register on May 17, 1996. They have no effect until finalized.

Compounding from Bulk Drugs: Two Federal Appeals Court decisions, *United States v. Algon Chemical Inc.*, 879 F.2d 1154 (3d Cir. 1989), *United States v. 9/1 Kg. Containers*, 854 F.2d 173 (7th Cir. 1988), affirmed the FDA position that the Act does not permit veterinarians to compound unapproved finished drug products from bulk drugs, *unless the finished drug is not a new animal drug.* The principle established by the court applies equally to compounding by pharmacists. However, one of the courts acknowledged the Agency's policy that, *if the need is great and the risk small*, the Agency may exercise regulatory discretion with respect to veterinarians compounding from approved drugs under Compliance Policy Guide (CPG) 615.100, *Extra-label Use of New Animal Drugs in Food-Producing Animals.*

Definitions:

The Act and accompanying regulations do not define compounding as different from other processing of drug compounds.

Bulk drug is an active ingredient (in unfinished form) intended for manufacture into finished dosage form drug products (from *United States v. Algon Chemical Inc.*, 879 F.2d 1154 (3d Cir. 1989)). See also 21 CFR 207.3(a)(4). Bulk drugs (or "bulk drug substances") may be supplied in various size containers and may or may not meet USP standards.

Compounding is defined, for the purposes of this CPG, as any manipulation to produce a dosage form drug other than that manipulation that is provided for in the directions for use on the labeling of the approved drug product, for example, the reconstitution of a sterile powder with sterile water for injection.

Compounding ordinarily not subject to regulatory action, is defined as compounding by a licensed pharmacist or veterinary practitioner, when the criteria described in this document are met, within the confines of a legitimate practice. However, this document shall not be construed to bind the FDA or otherwise constrain its enforcement discretion. In addition, this document imposes no new obligations.

Compounding subject to regulatory action, is defined as compounding by a licensed pharmacist or other practitioner, when the criteria described in this document are not met, even if it is otherwise within the confines of a legitimate practice. Compounding outside the confines of a legitimate pharmacy or veterinary practice, whether by a pharmacist, veterinarian or other party, is subject to regulatory action.

"*Legitimate practice*" is defined as follows:

(a) Pharmacist: A person licensed and operating in conformity with state law, and dispensing in response to a valid prescription.

(b) Veterinarian: A person licensed and operating in conformity with state law, and prescribing or dispensing in response to a valid Veterinarian-Client-Patient Relationship (VCPR.)

Valid Veterinarian-Client-Patient Relationship (VCPR)

A valid VCPR exists when: (1) the veterinarian assumes the responsibility for making medical judgments regarding the health of the animal(s) and the need for medical treatment, and the client (owner or other caretaker) agrees to follow the instructions of the veterinarian; and (2) the veterinarian has sufficient knowledge of the circumstances to initiate at least a general or preliminary diagnosis of the medical condition of the animal(s), i.e., the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by virtue of an examination of the animal(s), and/or by medically appropriate and timely visits to the premises where the animal(s) are kept; and (3) the practicing veterinarian is readily available for follow-up in case of adverse reactions or failure of the regimen of therapy. Source: American Veterinary Medical Association.

[1] This Update to the Compliance Policy Guides Manual (March 1995 edition) is a new CPG. This update will be included in the next printing of the Compliance Policy Guides Manual. The statements made in the CPG are not intended to create or confer any rights, privileges, or benefits on or any private person, but are intended for internal guidance.

Policy:

Circumstances exist when it may be necessary for a veterinarian to compound, or direct for a pharmacist to compound, an article that will result in an unapproved new animal drug. There is occasionally a need to utilize drugs labeled for human use, and much less commonly, bulk drug substances, for compounding into an appropriate dosage form. Some examples of these situations include: combinations of anesthetic drugs for titrated administration; preparation of dilute dosage forms for small, young, or exotic species patients; and usage of some antidote preparations. The Agency will exercise regulatory discretion and ordinarily would not take regulatory action against violations of the Act resulting from compounding an unapproved new animal drug if a determination is made that, in order to provide appropriate medical therapy, it is necessary to compound a new animal drug when the following conditions are met:

(1) A legitimate medical need is identified (the health of animals is threatened and suffering or death would result from failure to treat the affected animals),

(2) There is a need for an appropriate dosage regimen for the species, age, size, or medical condition of the patient, and

(3) There is no marketed approved animal drug which, when used as labeled or in an "extra-label" manner in conformity with criteria listed in CPG 615.100, or human-label drug, when used in conformity with criteria listed in CPG 608.100, may treat the condition diagnosed in the available dosage form, or there is some other rare extenuating circumstance. (For example, the approved drug cannot be obtained in time to treat the animal(s) in a timely manner, or there is a medical need for different excipients.)

After making the above determinations, the following criteria should be met and precautions observed:

(1) Dispensing by a licensed veterinarian; or the receipt of a valid prescription of a licensed veterinarian by a pharmacist. Dispensing should be within the confines of a valid veterinarian-client-patient relationship. Veterinarians should exercise professional judgment to determine when compounding requires the services of a pharmacist. Professional assistance is appropriate when the complexity of compounding exceeds the veterinarian's knowledge, skill, facilities, or available equipment.

(2) The veterinarian takes measures to ensure that:

(a) When used in food-producing animals: no illegal residues occur; a significantly extended time period is assigned for drug withdrawal; and steps are taken to assure that the assigned time frames are observed;

(b) The safety and efficacy of the compounded new animal drug is consistent with current standards of pharmaceutical and pharmacological practices, e.g., known incompatibilities are avoided;

(c) Appropriate steps are taken to minimize risk of personnel exposure to potentially harmful ingredients in the preparation process; and

(d) Procedures are instituted to assure that appropriate patient records for the treated animals are maintained.

(3) All drugs dispensed to the animal owner by the veterinarian or a pharmacist, bear labeling information which is adequate to assure proper use of the product. The following label information should be included:

(a) Name and address of the veterinary practitioner;

(b) the active ingredient or ingredients;

(c) the date dispensed and the expiration date, which should not exceed the length of the prescribed treatment except in cases where the veterinarian can establish a rationale for a later expiration date;

(d) directions for use specified by the practitioner, including the class/species or identification of the animals; and the dosage, frequency, route of administration, and duration of therapy;

(e) cautionary statements specified by the veterinarian and/or pharmacist (this would include all appropriate warnings necessary to ensure safety of human operators handling the finished drug, especially if there are potential hazards of exposure to any components);

(f) the veterinarian's specified withdrawal/discard time(s) for meat, milk, eggs, or any food which might be derived from the treated animal(s) (while the veterinarian must set the withdrawal time, the veterinarian in doing so may use relevant information provided by a dispensing pharmacist although the veterinarian retains ultimate responsibility);

(g) if dispensed by a licensed pharmacist, the name and address of the dispenser, serial number and date of order or its filing;

(h) if dispensed by a veterinarian, the serial number; and

(i) any other applicable requirements of state or federal law.

(4) The pharmacist adheres to the National Association of Boards of Pharmacy Good Compounding Practices (GCP), or to equivalent state good compounding practice regulations, except where provisions conflict with this CPG. Among other practices, pharmacists should keep records of compounding formulas, logs of compounded items and specific ingredients, record of assurance of quality of raw materials; and information on adverse effects and product failures. Pharmacists should label compounded products with expiration dates that do not exceed the prescribed period of treatment, and with withdrawal times furnished by the prescribing veterinarian.

Veterinarians and pharmacists who compound or prescribe compounded medicaments and pharmacists who compound medicaments according to these guidelines criteria set out above would be considered to be engaged in extemporaneous compounding not ordinarily subject to regulatory action.

Regulatory Action Guidance:

Investigations will be conducted in coordination with state officials as specified in the October 26, 1995 letter from Associate Commissioner for Regulatory Affairs (FDA) and Executive Director, National Boards of Pharmacy, to state pharmacy and drug regulatory officials, and FDA officials.

FDA actions based on violative conditions will be consistent with state laws and regulations to the extent possible. Deviations from GCP may be deferred to state authorities for action.

In general, the agency will place its highest regulatory priority on compounding products for use in food animals.

A. The following situations would likely indicate compounding subject to regulatory action and the existence of one or more would ordinarily be of high regulatory priority.

-Preparation for sale of *large* quantities of unapproved new animal drugs on an *ongoing* basis and where no valid *medical need* or VCPR exists. Compounding very limited quantities in anticipation of future need is acceptable provided that a history of past need can be documented;

-Compounding of medicaments that are essentially similar to FDA-approved products except in rare instances where a legitimate need can be established, for example, to treat animals on a timely basis or to avoid problems caused by certain excipients.

-Substitution or recommendation by a pharmacist of a compounded medicament for a prescription instead of using an FDA-approved product;

-Compounding from bulk drugs for use in food animals, with the rare exception of those medicaments that are permitted to be compounded by the Center for Veterinary Medicine (CVM) through compassionate regulatory discretion or other means (such as certain antidotes, large volume electrolyte products and other substances). Because these items may be revised, an official contact office at CVM has been designated to provide current information. That contact office is HFV–236, Case Guidance Branch, Division of Compliance, (301) 594–1785.

-Preparation for sale of unapproved new animal drugs on any scale which employ fanciful or trade names, colorings or other additives, or in any way imply that the products have some unique effectiveness or composition;

-Advertising, promotion, display, sale, or other means of marketing, prepared unapproved new animal drugs; and soliciting business to compound specific drug products, product classes or therapeutic classes of drug products;

-Offering compounded medicaments at wholesale to other state licensed veterinarians or pharmacists or other commercial entities for resale;

-Offering financial incentives such as rebates and consulting fees; and

-Dispensing of large quantities of compounded medicaments, where questions of stability of the finished product would arise;

-Failing to follow good compounding practices, including current standards of pharmaceutical and pharmacological practices, as described above;

-Labeling a product with an expiration date that exceeds the prescribed treatment period;

-Labeling a product with a withdrawal time established by the pharmacist instead of the veterinarian;

-Dispensing a disproportionate amount of compounded products out of state. The primary concern is the difficulty of maintaining proper relationships, for

example, pharmacist/veterinarian/client and VCPR. Rare instances of specialized compounding to meet emergency needs would not be considered disproportionate.

B. The following situations would indicate excessive risk to public health or to animals, or an otherwise adverse risk/benefit ratio, of high regulatory priority:

-Instances where illegal residues occur in meat, milk, eggs, honey, or aquaculture products and the residues were caused by the use of a compounded drug in association with the violation being investigated;

-Compounding of medicaments for food-producing animals, especially those used in lactating dairy animals, which cause a significant risk of illegal residues because, for example, withholding times have not been established by the veterinarian using adequate scientific information; and

-Preparation of drug products that are essentially similar to products that have been removed from the market due to regulatory concerns, for example, chloramphenicol, dimetridazole, DES in food animals.

C. The following activities would indicate compounding subject to regulatory action, and possibly of high regulatory priority. However, guidance from CVM should be solicited to assess the potential public health threat and/or animal safety (i. e., risk vs benefits).

-Instances where animals have been harmed or their safety unnecessarily compromised, such as compounding a nonsterile product for parenteral or ophthalmic administration where a sterile product is indicated, or other instances of not adhering to good compounding practices.

-Compounded substances that do not bear the required label information, including the name of the authorizing veterinarian, the active ingredients, directions for use, cautionary statements, and withdrawal times.

D. The following compounding situations would not ordinarily be considered for regulatory action. Appropriate state and local practice and pharmacy laws must be adhered to, however.

-Compounding for non-food animals and minor food animal uses where public health and animal safety have not been threatened, and are of great need and small risk. This would include such common practices as: veterinarians' combining agents for anesthesia, large volume parenterals, preparing appropriate dosage-forms for the size of the patient in question, "animal-side" compounding, and other similar common practices that are widely accepted in the day to day treatment of animal patients.

-Compounding from bulk drug substances for use in nonfood animals, including animals in public and private aquaria, when animal health is not threatened, and there is not a significant risk of diversion of the bulk drugs or compounded drugs for use in food animals. Bulk drug substances would ordinarily be expected to be in small packages that meet or exceed USP standards; see definition of "bulk drugs" above. Compounding should be performed in accordance with current standards of pharmaceutical practice (including referral to compendial monographs or established pharmacy textbooks).

If circumstances exist on a case-by-case basis that indicate otherwise, the Field should request guidance from CVM before considering regulatory action. The preceding is not intended to be a complete list of activities relating to compounding; there may be other factors which are appropriate when assessing an individual case.

Guidance for Charging Violations:

A warning letter is ordinarily the first choice of action, when referral to state authorities is not appropriate. Injunction would be the usual choice of court action, although seizure should be considered in the case of high priority drugs such as chloramphenicol or DES intended for use in food animals. Criminal action can be considered in egregious situations.

Compounded drugs subject to regulatory action under this policy will ordinarily be charged as unapproved new animal drugs, violative under Section 501(a)(5). Deviations from GCP, if not subject of state action will ordinarily be charged under Section 501(a)(2)(b). The tissue residue violations are covered under Section 402(a)(2)(D).

Dated: June 26, 1996.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 96–16973 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96F–0184]

Life Technologies, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Life Technologies, Inc., has filed a petition proposing that the food additive regulations be amended to provide for a change in the level of reactants for sulphopropyl cellulose ion-exchange resin for the recovery and purification of proteins for food use.

DATES: Written comments on the petitioner's environmental assessment by August 2, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3071.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6A4500) has been filed by Life Technologies, Inc., 8400 Helgerman Ct., Gaithersburg, MD 20874. The petition proposes to amend the food additive regulations in § 173.25 *Ion-exchange resins* (21 CFR 173.25) to provide for a change in the level of the reactants for sulphopropyl cellulose ion-exchange resin for the recovery and purification of proteins for food use. The amendment proposes that the amount of epichlorohydrin plus propylene oxide employed does not exceed 250 percent by weight of the starting quantity of cellulose. The current regulation provides that the amount of epichlorohydrin plus propylene oxide employed does not exceed 61 percent by weight of the starting quantity of cellulose.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before August 2, 1996, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 31, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–16975 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96F–0205]

Sumitomo Chemical America, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sumitomo Chemical America, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the additional safe use of 3,9-bis{2-[3-(3-tert-butyl-4-hydroxy-5-methylphenyl)propionyloxy]-1,1-dimethylethyl}-2,4,8,10-tetraoxaspiro[5.5]-undecane as an antioxidant and/or stabilizer in propylene homopolymer and high-propylene olefin copolymer articles intended for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by August 2, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6B4510) has been filed by Sumitomo Chemical America, Inc., c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the additional safe use of 3,9-bis{2-[3-(3-tert-butyl-4-hydroxy-5-methylphenyl)propionyloxy]-1,1-dimethylethyl}-2,4,8,10-tetraoxaspiro[5.5]-undecane as an antioxidant and/or stabilizer in propylene homopolymer and high-propylene olefin copolymer articles intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before August 2, 1996, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 17, 1996.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–16976 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95M–0195]

Ciba Corning Diagnostics Corp.; Premarket Approval of ACS™ AFP

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Ciba Corning Diagnostics Corp., Medfield, MA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of ACS™ AFP. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of September 29, 1995, of the approval of the application.

DATES: Petitions for administrative review by August 2, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1293.

SUPPLEMENTARY INFORMATION: On October 18, 1993, Ciba Corning Diagnostics Corp., Medfield, MA 02052–1688, submitted to CDRH an application for premarket approval of ACS™ AFP. The device is a two-site chemiluminescence immunoassay and is indicated for the quantitative determination of alpha-fetoprotein (AFP) in human serum and in amniotic fluid from specimens obtained at 15 to 20 weeks gestation as an aid in detecting open neural tube defects (NTD's) when used in conjunction with ultrasonography and amniography; and in human serum, as an aid in managing nonseminomatous testicular cancer, when used in conjunction with physical examination, histology/pathology, and other clinical evaluation procedures, using the Ciba Corning ACS:180 automated chemiluminescence system.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Immunology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On September 29, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or

independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 2, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 13, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–16885 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96M-0199]

Bayer Corp.; Premarket Approval of Technicon Immuno 1® CEA Assay

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Bayer Corp., 511 Benedict Ave., Tarrytown, NY, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Immuno 1 CEA Assay. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of January 30, 1996, of the approval of the application.

DATES: Petitions for administrative review by August 2, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1293.

SUPPLEMENTARY INFORMATION: On September 29, 1994, Miles, Inc., Tarrytown, NY 10591, submitted to CDRH an application for premarket approval of Immuno 1® CEA Assay. The device is an in vitro diagnostic device intended to quantitatively measure carcinoembryonic antigen (CEA) in human serum on the Technicon Immuno 1® system. Measurements of CEA aid in the management of cancer patients by monitoring CEA concentrations. This diagnostic method is not intended for use on any other system.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Immunology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this committee.

On January 30, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 2, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 9, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–16972 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–01–F

Product and Establishment License Applications, Refusal to File; Meeting of Oversight Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a meeting of its standing oversight committee in the Center for Biologics Evaluation and Research (CBER) that conducts a periodic review of CBER's use of its refusal to file (RTF) practices on product license applications (PLA's) and establishment license applications (ELA's). CBER's RTF oversight committee examines all RTF decisions that occurred during the previous quarter to assess consistency across CBER offices and divisions in RTF decisions.

DATES: The meeting will be held in July 1996.

FOR FURTHER INFORMATION CONTACT: Joy A. Cavagnaro, Center for Biologics Evaluation and Research (HFM–5), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0379.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 15, 1995 (60 FR 25920), FDA announced the establishment and first meeting of CBER's standing oversight committee. As explained in the notice, the importance to the public health of getting new biological products on the market as efficiently as possible has made improving the biological product evaluation process an FDA priority. CBER's managed review process focuses on specific milestones or intermediate goals to ensure that a quality review is conducted within a specified time period. CBER's RTF oversight committee meetings continue CBER's effort to promote the timely, efficient, and consistent review of PLA's and ELA's.

FDA regulations on filing PLA's and ELA's are found in 21 CFR 601.2(a) and 601.3. A sponsor who receives an RTF notification may request an informal conference with CBER, and thereafter may ask that the application be filed over protest, similar to the procedure for drugs described under 21 CFR 314.101(a)(3) (see 57 FR 17950, April 28, 1992).

CBER's standing RTF oversight committee consists of senior CBER officials, a senior official from FDA's Center for Drug Evaluation and Research, and FDA's Chief Mediator and Ombudsman. Meetings, ordinarily, will be held once a quarter to review all of the RTF decisions. The purpose of such a review is to assess the consistency within CBER in rendering RTF decisions.

Because the committee's deliberations will deal with confidential commercial information, all meetings will be closed to the public. The committee's deliberations will be reported in the minutes of the meeting. Although those minutes will not be publicly available because they will contain confidential commercial information, summaries of the committee's deliberations, with all confidential commercial information omitted, may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. If, following the committee's review, an RTF decision changes, the appropriate division will notify the sponsor.

Dated: June 26, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–16971 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[R–48]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Hospital Conditions of Participation—42 CFR Part 482; *Form No.:* HCFA–R–48; *Use:* Hospitals seeking to participate in the Medicare and Medicaid programs must meet the Conditions of Participation (COP) for Hospitals, 42 CFR Part 482. The information collection requirements contained in this package are needed to implement the Medicare and Medicaid COP for hospitals. *Frequency:* Annually; *Affected Public:* Not-for-profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 1,500; *Total Annual Responses:* 1,500; *Total Annual Hours Requested:* 53,522.

To request copies of the proposed paperwork collections referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address:

OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503

Date: June 26, 1996

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–16897 Filed 7–2–96; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Request for Nominations to the Council on Graduate Medical Education

AGENCY: Health Resources and Services Administration, DHHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill retiring members vacancies of the Council on Graduate Medical Education (COGME).

DATES: Nominations must be received by close-of-business on Friday, July 26, 1996.

ADDRESSES: Nominations and the curricula vitae of nominees should be sent to Enrique S. Fernandez, M.D., M.S. Ed., Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, Room 9A–27, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Enrique S. Fernandez, M.D., M.S.Ed., at the above address, or phone (301) 443–6190.

SUPPLEMENTARY INFORMATION: HRSA is requesting nominations under the authorities that established the Council on Graduate Medical Education, September 30, 1986, in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

COGME was authorized by Congress in 1986 to provide an ongoing assessment of physician workforce trends and to recommend appropriate Federal and private sector efforts to address identified needs. Legislation calls for COGME to serve in an advisory capacity to the Secretary of the Department of Health and Human Services (DHHS), the Senate Committee on Labor and Human Resources, and the

House of Representatives Committee on Commerce.

The legislation specifies that the Council is to comprise 17 members. Appointed individuals are to include representatives of practicing primary care physicians, national and specialty physician organizations, international medical graduates, medical student and house staff associations, schools of medicine and osteopathy, public and private teaching hospitals, health insurers, business, and labor. Federal representation includes the Assistant Secretary for Health, DHHS; the Administrator of the Health Care Financing Administration, DHHS; and the Chief Medical Director of the Veterans Administration. Staff, logistical, and management support for the Council resides within the Department of Health and Human Services' Health Resources and Services Administration.

Each member serves up to a four-year term and is a voting member of the Council. Several positions in the Council are being vacated later this year by retiring members, and represent the following areas of expertise: practicing primary care physicians, national physician organizations, specialty physician organizations, medical and house staff associations, osteopathic and allopathic schools of medicine, public and private teaching hospitals, business, labor, and health insurers.

Nominations Procedure

In late May 1996, letters requesting nominees to the Council were sent to a variety of organizations representing the statutorily required composition of the retiring members of the Council. Because of the importance of the work of the Council, this notice expands the call for nominees from the public as well. Any other interested organization or person may nominate for consideration one or more qualified individuals for membership on the Council. Nominators shall note that the nominee is willing to serve as a member of the Council for the full four-year term, and that such person appears to have no conflict of interest that would preclude this service. For each nominee, include a complete curriculum vitae, a current business address, and a daytime telephone number. Your letter should include the name of the person(s) you recommend and your assessment of their special abilities for meeting the objectives of the Council. Individuals who are recommended should have relevant background and experience.

The Department has a special interest in assuring that appropriately qualified citizens who are women, member of racial and ethnic minority populations, or persons who have a physical disability are adequately represented on advisory bodies. It therefore encourages the nomination of such candidates to the Council on Graduate Medical Education. The department will also give close consideration to an equitable geographic representation.

Appointments shall be made without discrimination on the basis of age, race, ethnicity, sex, culture, religion, or socioeconomic status.

Please note that as a result of this notice, we are extending the date by which nominations to the Council must be received to July 26, 1996 for those organizations that received letters directly requesting nominees to the Council.

Dated: June 27, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–16978 Filed 7–2–96; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be open to the public as indicated below, with attendance by the public limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation of other reasonable accommodations, should notify the contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. The closed session will be devoted to the review, discussion and evaluation of individual programs and projects. This will include consideration of personnel qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Committee Name: Board of Scientific Counselors, National Cancer Institute—Basic Sciences Subcommittee.

Dates: July 22–23, 1996.

Place: National Institutes of Health, 9000 Rockville Pike, Bldg. 31, C Wing, 6th floor, Conference Rooms 10, Bethesda, MD 20892.

Open: July 22, 1996–8:30 a.m. to 9:30 a.m.

Agenda: Introductions and presentations regarding the NCI's current and future activities.

Closed: July 22, 1996–9:30 a.m. to 5 p.m.; July 23, 1996–8:30 a.m. to adjournment.

Agenda: To discuss administrative confidential site visit reports pertaining to laboratories in the Division of Basic Sciences.

Contact Person: Edward Harlow, Ph.D., Bldg. 31, Rm. 3A11, 9000 Rockville Pike, Bethesda, MD 20892, Telephone: 301–435–2277.

(Catalog of Federal Domestic Assistance Program numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Center Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: June 26, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–16905 Filed 7–2–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications

Committee Name: National Institute of Mental Health Special Emphasis Panel

Date: July 3, 1996.

Time: 3:30 p.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Rehana A. Chowdhury, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

The meeting will be closed in accordance with the provisions set forth in secs. 552(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: June 26, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–16906 Filed 7–2–96; 8:45 am]

BILLING CODE 4140–01–M

National Institutes on Aging; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of Panel: Oldest-old Mortality—Demographic Models and Analysis (Teleconference Call).

Date of Meeting: July 10, 1996.

Time of meeting: 1:00 p.m. EST until adjournment.

Place of Meeting: National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, Maryland 20891.

Purpose/Agenda: To review a grant application.

Contact Person: Paul Lenz, Ph.D., Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Name of Panel: National Institute on Aging Special Emphasis Panel, (Teleconference Call).

Date of Meeting: July 11, 1996.

Time of meeting: 11:00 a.m. to 12:30 p.m. EST,

Place of Meeting: National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, Maryland 20891.

Purpose/Agenda: To review a grant application.

Contact Person: Maria Mannarino, M.D., Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of Panel: National Institute on Aging Special Emphasis Panel.

Date of Meeting: July 29–30, 1996.

Time of meeting: July 29—7:00 p.m. to recess; July 30—8:00 a.m. to adjournment.

Place of Meeting: Hyatt Dulles Hotel, Washington Dulles Airport, Herndon, Virginia.

Purpose/Agenda: To review grant applications.

Contact Person: James P. Harwood, Ph.D., Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institute of Health.)

Dated: June 26, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–16907 Filed 7–2–96; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Biomedical Library Review Committee.

Date: July 31, 1996.

Time: 8:30 a.m. to approximately 5:00 p.m.

Place: Lister Hill Center, Fifth-floor Conference Room, Building 38A, 8600 Rockville Pike, Bethesda, MD 20894.

Contact person: Dr. Roger W. Dahlen, Scientific Review Administrator and Chief, Biomedical Information Support Branch, EP, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301/496–4221.

Purpose/agenda: To review and evaluate Internet Connections for Medical Institutions grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b (c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93–879—Medical Library Assistance, National Institutes of Health.)

Dated: June 26, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–16908 Filed 7–2–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: David Rostal, Georgia Southern University, Statesboro, GA, PRT–816535

The applicant request a permit to import samples from Eastern Pacific green sea turtles (*Chelonia mydas*) on nesting beaches on the coast of Mexico for the purpose of scientific research that will benefit the species in the wild. This notice covers activities conducted by the applicant over a five year period.

Applicant: Laurel Croft, Temecula, CA, PRT–816403

The applicant requests a permit to export five nene geese (*Branta sandvicensis*) and three Palawan peacock pheasants (*Polyplectron emphanum*) to the Hancock Wildlife Research Center, Surrey, British Columbia, Canada, for the purpose of enhancement of the survival of the species through captive propagation.

Applicant: Zoological Society of Milwaukee, Milwaukee, WI, PRT–816714

The applicant requests a permit to import blood, saliva, gastric fluid, and hair samples from two captive-held Chimpanzees (*Pan troglodytes*) and one captive-held bonobo (*Pan troglodytes*) from Zoofari, Cuernavaca, Mexico, for diagnostic testing and scientific research to enhance the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the

date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 28, 1996.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–17019 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–55–P

Issuance of Permit for Marine Mammals

On May 15, 1996, a notice was published in the **Federal Register**, Vol. 61, No. 95, Page 24506, that an application had been filed with the Fish and Wildlife Service by the Center for Coastal Physical Oceanography for a permit (PRT–814695) for the import of tissue samples from one walrus (Odobenus rosmarus) and one polar bear (Ursus maritimus) in support of research on environmental contamination.

Notice is hereby given that on June 20, 1996, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 430, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: June 28, 1996.

Caroline Anderson

Acting Chief, Branch of Permits Office of Management Authority.

[FR Doc. 96–17018 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–55–P

Geological Survey

Federal Geographic Data Committee (FGDC); Public Review of Vegetation Classification and Information Standards

ACTION: Notice; Request for comments.

SUMMARY: The FGDC is sponsoring a public review of the draft "FGDC Vegetation Classification and Information Standards" to be considered for adoption as an FGDC standard. If adopted, the standard must be followed by all Federal agencies for data collected directly or indirectly (through grants, partnerships, or contracts).

In its assigned leadership role for developing the National Spatial Data Infrastructure (NSDI), the FGDC recognizes that the standards must also meet the needs and recognize the views of State and local governments, academia, industry, and the public. The purpose of this notice is to solicit such views. The FGDC invites the community to review, test, and evaluate the proposed classification system and information standards. Comments are encouraged about the content, completeness, and usability of the proposed standard. The FGDC anticipates that the proposed vegetation classification and information standard, after updating or revision, will be adopted as a Federal Geographic Data Committee standard. The standard may be forwarded to other standards organizations for adoption if interest warrants such action.

DATES: Comments must be received on or before October 1, 1996.

CONTACT AND ADDRESSES: Requests for written copies of the classification system and information standards being proposed as a standard should be sent to Vegetation Standards Review, FGDC Secretariat (attn: Jennifer Fox), U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192; telephone 703–648–5514; facsimile 703–648–5755; or Internet "gdc@usgs.gov". The proposed standard is available for viewing through Internet on the Vegetation Subcommittee Home Page; the URL is: http://www.nbs.gov/~mikez/fgdc-sub.htm. The standard may also be downloaded from the FGDC Home Page at the following URL: www.fgdc.gov (select Public Documents) or directly from the FGDC anonymous ftp site by using the address: www.fgdc.gov/pub/standards/veg.

SUPPLEMENTARY INFORMATION: The overall objective of the Vegetation Classification and Information Standards is to support the production of uniform statistics on vegetation resources at the national level. It is important that, as agencies map or inventory Earth cover that is vegetated, they collect enough data to accurately and precisely translate it for national reporting, aggregation, and comparisons. This will eventually support the detailed, quantitative, geo-referenced basis for vegetation cover modeling, mapping and analysis at the field level. This document proposes a vegetation classification system and set of information standards to be used by Federal agencies and others in their activities for inventory, mapping, and reporting on the vegetation resources of the United States. It includes a description of the proposed Vegetation Classification and Information Standards, general policy regarding Federal agencies' use, suggested applications, the principles (basic ideas, requirements) that guided the development of this system, and a list of definitions used in the system and its development. This document does not detail the floristically defined units of the classification standard, the field methods, or the data management and analysis standards that will be required to develop and maintain this Vegetation Classification and Information Standard. This information will be presented in subsequent documents by the Subcommittee. Vegetation Cover is defined as vegetation that covers or is visible at or above the land or water surface. Vegetation data are the attributes of the vegetation that are used to classify and characterize the vegetation type and to map a vegetation stand. These data come from the interpretation; of remotely sensed imagery, field work, and other thematic data sources.

Input sought on the draft standards includes how well it meets user needs. Specific issues on which response is requested include: the threshold for separating vegetated from non-vegetated areas; the threshold for defining dominance; the criteria for separating tree from shrub; and the need for parallelism between tree-dominated cover classes and other life form cover classes. For examples, tree-dominated land is divided into open and closed canopy. Are similar divisions needed within the shrub and herbaceous life forms? Shrub classes are divided based upon shrub height; are height classes needed for other life forms?

Reviewer comments should be sent to the FGDC Secretariat at the above address. Please send comments in both hardcopy and softcopy, preferably on a 3.5-inch diskette.

Dated: June 25, 1996.

Richard E. Witmer,

Acting Chief, National Mapping Division.

[FR Doc. 96–16898 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[NV–020–1900–01]

Twin Creeks Mine Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is given that the Winnemucca District of the Bureau of Land Management (BLM) has prepared, by third party contractor, a Draft Environmental Impact Statement on Santa Fe Pacific Gold Corporation's Twin Creeks Mine Consolidation and Expansion Project. This document is available for public review for a 45 day period.

DATES AND ADDRESSES: Written comments on the Draft Environmental Impact Statement must be postmarked by September 3, 1996.

A public meeting to receive oral and written comments has been scheduled for the date and place listed below. The meeting will begin at 7:00 p.m., August 15, 1996, at the Winnemucca District Office, Winnemucca, Nevada.

A copy of the Draft Environmental Impact Statement can be obtained from: Bureau of Land Management, Winnemucca District Office, ATTN: Gerald Moritz, Project Manager, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445.

The Draft Environmental Impact Statement is available for inspection at the following additional locations: Bureau of Land Management, Nevada State Office, 850 Harvard Way, Reno, Nevada; Humboldt County Library, Winnemucca, Nevada; Lander County Library, Battle Mountain, Nevada; and the University of Nevada Library in Reno, Nevada.

FOR FURTHER INFORMATION CONTACT: Gerald Moritz, Project Manager at the above Winnemucca District address or telephone (702) 623–1500.

SUPPLEMENTARY INFORMATION: The Draft Environmental Impact Statement analyzes the potential environmental impacts that could result from the consolidation and expansion of the current gold mining operation at the Twin Creeks Mine. Alternatives analyzed include the Proposed Action, No Action, the Partial Vista Pit Backfill Alternative, the Selective Handling of Overburden and Interburden Storage Area Alternatives. The project involves the consolidation of the Rabbit Creek and Chimney Creek Mines, expansion of the South Pit, overburden and interburden storage area, ore processing facilities, expanded dewatering system and water disposal facilities, and diversion of Rabbit Creek and tributaries.

Dated June 21, 1996.

Ron Wenker,

District Manager.

[FR Doc. 96–16882 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–HC–P

[CA–930–06–2700 WARD]

Extension of Scoping Period for Ward Valley Supplemental Environmental Impact Statement (SEIS) Until July 15, 1996

SUMMARY: The Bureau of Land Management (BLM) in California announces an extension of the scoping period for the Ward Valley SEIS until July 15, 1996. Three public scoping workshops were held in Sacramento, San Bernardino and Needles, California. This extension is to allow the public more time to provide written comments on the scope of the SEIS.

FOR FURTHER INFORMATION CONTACT: Richard F. Johnson or John S. Miles at (916) 979–2800.

Philip L. Damon,

Acting Area manager.

[FR Doc. 96–17122 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–40–P

[WO–300–1310–00]

Green River Basin Advisory Committee, Colorado and Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Green River Basin Advisory Committee.

SUMMARY: This notice announces the dates, time, and schedule and initial agenda for a meeting of the Green River Basin Advisory Committee (GRBAC).

DATES: July 17, 1996, from 8:00 a.m. until 6:00 p.m. and July 18, 1996, from 8:00 a.m. until 3:15 p.m.

ADDRESSES: Jeffrey Center, 3rd and Spruce Streets, Rawlins, WY 82301.

FOR FURTHER INFORMATION CONTACT: Terri Trevino, GRBAC Coordinator, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003, telephone (307) 775–6020.

SUPPLEMENTARY INFORMATION: The topics for the meeting will include:

(1) Road standards, alternative funding, and the NEPA process.

(2) Public comment.

This meeting is open to the public. Persons interested in making oral comments or submitting written statements for the GRBAC's consideration should notify the GRBAC Coordinator at the above address by July 10. The GRBAC will hear oral comments from 4:00 p.m. to 6:00 p.m. on July 17. The GRBAC may establish a time limit for oral statements.

Date Signed: June 28, 1996.

Mat Millenbach,

Acting Director, Bureau of Land Management.

[FR Doc. 96–17121 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–84–M

[OR–030–06–1220–00: GP6–0196]

Notice of Meetings of Southeastern Oregon Resource Advisory Council

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meetings.

SUMMARY: Notice is given that a meeting of the Southeastern Oregon Resource Advisory Council will be held August 5, 1996 from 8:00 a.m. to 9:00 p.m. and August 6 from 8:00 a.m. to 12:00 noon at the Jordan Valley Lions Club Room, 902 Bassett Street, Jordan Valley, Oregon.

At an appropriate time, the Council will recess for approximately one hour for lunch and one and one-half hours for dinner. Public comments will be received from 7:00 p.m. to 7:30 p.m., August 6, 1996. Topics to be discussed during the meeting are administrative activities of the Council, the Southeastern Oregon Resource Management Plan, and the Interior Columbia Basin Ecosystem Management Project.

Notice is given that a meeting of the Southeastern Oregon Resource Advisory Council will be held September 19, 1996 from 1:00 p.m. to 9:00 p.m. and September 20 from 8:00 a.m. to 12:00 noon at the Harney County Museum Club Room, 18 West "D" Street, Burns, Oregon.

At an appropriate time, the Council will recess for approximately one and one-half hours for dinner. Public comments will be received from 7:00 p.m. to 7:30 p.m., September 19, 1996. Topics to be discussed during the meeting are administrative activities of the Council, the Southeastern Oregon Resource Management Plan, and the Interior Columbia Basin Ecosystem Management Plan.

DATES: The Southeastern Oregon Resource Advisory Council meeting will begin at 8:00 a.m. and continue to 9:00 p.m., August 5 and, 8:00 a.m. to 12:00 noon on August 6, 1996.

The Southeastern Oregon Resource Advisory Council meeting will begin at 1:00 p.m. and continue to 9:00 p.m., September 19, and 8:00 a.m. to 12:00 noon on September 20, 1996.

ADDRESSES: The Southeastern Oregon Resource Advisory Council meeting will take place in the Jordan Valley Lions Club Room, 902 Bassett Street, Jordan Valley, Oregon.

The Southeastern Oregon Resource Advisory Council meeting will take place in the Harney County Museum Club Room, 18 West "D" Street, Burns, Oregon.

FOR FURTHER INFORMATION CONTACT: Jonne Hower, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97918 (Telephone 541–473–3144).

Geoffrey B. Middaugh,

Associate District Manager.

[FR Doc. 96–16899 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–33–M

[ID–933–1430–01; IDI–15693 01]

Public Land Order No. 7203; Partial Revocation of Geological Survey Order Dated October 17, 1951; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Geological Survey order insofar as it affects 40 acres of public land withdrawn by the Bureau of Land Management for Powersite Classification No. 420. The land is no longer needed for this purpose and the revocation is needed to transfer the land by exchange. This action will open the land to surface entry. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: October 2, 1996.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Geological Survey Order dated October 17, 1951, which established Powersite Classification No. 420, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 29 N., R. 3 W.,
Sec. 21, NE¼SW¼.

The area described contains 40 acres in Idaho County.

2. The State of Idaho has a preference right for public highway rights-of-way or material sites for a period of 90 days from the date of publication of this order and any location, entry, selection, or subsequent patent shall be subject to any rights granted the State as provided by Section 24 of the Act of June 10, 1920, as amended 43 U.S.C. 818 (1988).

3. At 9 a.m. on October 2, 1996, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on October 2, 1996, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: June 24, 1996.

Bob Armstrong

Assistant Secretary of the Interior.

[FR Doc. 96–16900 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–GG–P

[NV–930–4210–05; N–37127–01]

Notice of Realty Action: Lease/conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The City of Las Vegas proposes to use the land for a public park facility. The below described land was previously classified under the Recreation and Public Purposes Act for use as a church facility. The Oakey Baptist Church has relinquished their Recreation and Public Purposes Application for the below described land:

Mount Diablo Meridian

Nevada T. 21 S., R. 60 E., sec. 3: lots 88, 89, 90.

Containing 16.050 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe; and will be subject to:

1. An easement in favor of the City of Las Vegas for roads, public utilities and flood control purposes as follows: 30 feet wide on the south boundaries of Lots 88, 89 and 90, 30 feet wide along the east boundary of Lot 90 together with 15 foot radius corners of the NE and SE corners of Lot 90.

2. Those rights for roadway purposes which have been granted to the City of Las Vegas by Permit No. N–51520 under the Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for a well site which have been granted to the Las Vegas Valley Water District by Permit No. N–53360 under the Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for the review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada. Upon publication of this notice is the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except lease/purchase under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral disposal laws. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas

District, 4765 W. Vegas Dr, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the Land for a public park facility. Comments on the classification are restricted to weather the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a church facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: June 2, 1996.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 96–16901 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–HC–M

[CA–068–06–1220–00]

Notice for Public Comment, Proposed Supplementary Rule Affecting Public Lands Within the Barstow Resource Area; California

AGENCY: Bureau of Land Management, United States Department of the Interior.

ACTION: This notice proposes to establish a supplementary rule regarding recreational shooting within the Barstow Resource Area, Bureau of Land Management. This proposed supplementary rule requires that, on Public Lands within the Barstow Resource Area, in areas permitted by San Bernardino County Ordinance 22.011 for legal recreational target shooting of rifles, handguns and shotgun slugs, no person shall fire, shoot or discharge a firearm at any object other than a retrievable paper silhouette or bulls-eye target or a firearm target constructed of plate iron or plate steel such as an iron silhouette, knock-down or spinner target.

SUMMARY: In accordance with title 43, Code of Federal Regulations § 8365.1–6, the State Director may establish supplementary rules in order to provide for the protection of persons, property, and public lands and resources. This authority was delegated to the District and Area managers pursuant to BLM Manual 1203, California Supplement.

Copies of the final supplementary rule would be made available at the local BLM office, the supplementary rule would be published in local newspapers upon the effective date, and affected lands within the Barstow Resource Area would be posted.

PENALTIES: Failure to comply with this supplementaty rule would be punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

SUPPLEMENTARY INFORMATION: This supplementary rule was proposed to deter and prevent the accumulation of household refuse and trash which is being deposited on these Public Lands by a significant portion of recreational shooters. Shooters on public lands have used as targets and then discarded old television sets, glass bottles, propane gas cylinders, and other similiar items and, as a result, have adversely impacted the quality of these public lands. These types of discarded targets pose a significant public safety threat and cause unsightly litter. This supplementary rule will not infringe upon Constitutional rights of an individual to own or possess lawful firearms. This supplementary rule does not impact or effect lawful hunting of wild birds or game. All shooters will be responsible to retrieve and properly dispose of their targets and spent shells upon leaving Public Lands.

DATES FOR COMMENTS: Comments will be accepted by the Barstow Resource Area for thirty (30) days following this publication. A final rule which replies to comments and/or amends the rule will be published within thirty (30) days after the comment period has expired.

ADDRESSES: Comments should be sent to: United States Department of the Interior, Bureau of Land Management, Barstow Resource Area, 150 Coolwater Lane, Barstow, CA 92311, Attention: Tim Read, Area Manager.

FOR MORE INFORMATION CONTACT: Maps depicting areas affected by this proposed supplementary rule and other pertinent information may be obtained at the BLM Barstow Resource Area office (619–255–8700) or the California Desert Information Center (619–255–8760), both located in Barstow, California.

Tim Read,

Area Manager.

[FR Doc. 96–16501 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–40–P

[AZ–025–06–1150–04; AZA 29318]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 1,119.24 acres of public land in Mohave County to protect endangered plant habitat. This notice closes the land for up to two years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by October 1, 1996.

ADDRESS: Comments and meeting requests should be sent to the Kingman Area Manager, BLM, 2475 Beverly Avenue, Kingman, AZ 86401.

FOR FURTHER INFORMATION CONTACT: Bob Hall, BLM Kingman Area Office, (520) 757–3161.

SUPPLEMENTARY INFORMATION: On April 30, 1996, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws subject to valid existing rights:

Gila and Salt River Meridian

T. 14 N., R. 11 W.,

Sec. 1, Lots 1 to 4, inclusive, S½N½ and S½;
Sec. 2, SE¼;
Sec. 11, NE¼;
Sec. 12, N½N½.

The area described contains 1,119.24 acres, in Mohave County.

The purpose of the proposed withdrawal is to protect, enhance and conserve habitat for the endangered Arizona Cliffrose.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Kingman Area Manager, Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is

afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Kingman Area Manager within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accodance with the regulations set forth in 43 CFR 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, and discretionary land use authorizations of a temporary nature, but only with the approval of an authorized officer of the Bureau of Land Management.

Dated: June 25, 1996.

David J. Miller,

Associate District Manager.

[FR Doc. 96–16948 Filed 7–2–96; 8:45 am]

BILLING CODE 4310–32–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Cancellation of Acceptance of the American Schools and Hospitals Abroad Application for Assistance

SUMMARY: This applicant notice is for private U.S. organizations requesting grant assistance for overseas institutions under Section 214 of the Foreign Assistance Act. "Applicant" refers to the United States founder or sponsor of the overseas institution. Due to budget cuts, The Office of American Schools and Hospitals Abroad (ASHA) will not accept applications for assistance on August 31, 1996 for consideration in FY 1997 and for future years.

FOR FURTHER INFORMATION CONTACT: The Office of American Schools and Hospitals Abroad (ASHA), (703) 351–0232.

SUPPLEMENTARY INFORMATION:

Title: American Schools and Hospitals Abroad.

Form No.: A.I.D. 1010–2.

OMB No.: 0512–0011.

Type of submission: Cancellation of Acceptance of Application.

Abstract: The application was used by U.S. founders or sponsors in applying for grant assistance from ASHA on behalf of their institutions overseas. ASHA is a competitive grant program. Decisions are based on an annual comparative review of all applications requesting assistance in that fiscal year, pursuant to Section 214 of the Foreign Assistance Act, as amended.

Annual Reporting Burden

Respondents: Not-for-profit organizations.

Number of respondents: 85.

Estimated total annual hour burden on respondents: 12.

Dated: June 27, 1996.

Howard B. Helman,

Director, Office of American Schools and Hospitals Abroad, Bureau for Humanitarian Response.

[FR Doc. 96–16988 Filed 7–2–96; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–739 (Final)]

Clad Steel Plate From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Japan of clad steel plate, provided for in subheading 7210.90.10 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective February 27, 1996, following a preliminary determination by the Department of Commerce that imports of clad steel plate from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 13, 1996 (61 FR 10380). The hearing was held in Washington, DC, on May 7, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 25, 1996. The views of the Commission are contained in USITC Publication 2972 (June 1996), entitled "Clad Steel Plate from Japan: Investigation No. 731–TA–739 (Final)."

By order of the Commission.

Donna R. Koehnke,

Secretary

Issued: June 25, 1996

[FR Doc. 96–16987 Filed 7–2–96; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 9, 1996 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–365–366 (Final) and 731–TA–734–735 (Final) (Certain Pasta from Italy and Turkey)—briefing and vote.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 1, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary

[FR Doc. 96–17182 Filed 7–01–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. American National Can Co. & KMK Maschinen AG; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *American National Can Co. and KMK Maschinen AG*, Civil No. 96–01458.

The Complaint alleges that the defendants violated section 1 of the Sherman Act by entering a series of agreements, the purpose and effect of which was to eliminate competition between them in the North American markets for laminated tubes and laminated tube-making equipment and technology. The Complaint further alleges that pursuant to those agreements, KMK Maschinen AG ("KMK") sold its U.S. tube-making affiliate to American National Can Co. ("ANC") and agreed to sell its laminated tube-making equipment and to license its related technology exclusively to ANC, and ANC agreed to buy all its laminated tube-making equipment for use in North America from KMK and not to acquire or use anyone else's equipment or technology there while at the same time discontinuing its own manufacture of such equipment.

The proposed Final Judgment would end the extant exclusive, laminated tube-making equipment and technology arrangement between the defendants, and would bar them from collecting any payment from each other under that agreement. It also would enjoin defendants from entering agreements that restrict certain rights of any party relating to laminated tubes or laminated tube-making equipment or technology, where the parties compete directly against each other in the same segment of the laminated tube market (tubes, equipment, or technology) to which the restraint applies.

Laminated tubes are collapsible tubular containers of multiple, laminated plastic layers used to package virtually all toothpaste and many pharmaceutical products.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Mary Jean Moltenbrey, Chief, Civil Task Force, U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Suite 300, Washington, DC 20530 (202/616–5935).

Rebecca P. Dick,

Deputy Director of Operations.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

In the matter of; UNITED STATES OF AMERICA, Plaintiff, v. AMERICAN NATIONAL CAN CO., and KMK MASCHINEN AG, Defendant; Civil Action No. 96–01458, Filed June 25, 1996, Judge Thomas Pennfield Jackson.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto for purposes of this action, and venue of this action is proper in the District of Columbia;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)–(h)), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court;

3. Each defendant agrees to be bound by the provisions of the proposed Final Judgment pending its approval by the Court; and

4. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: June 24, 1996.

For Plaintiff:

Anne K. Bingaman,

Assistant Attorney General.

Joel I. Klein,

Deputy Assistant Attorney General.

Rebecca P. Dick,

Deputy Director of Operations.

Mary Jean Moltenbrey,

Chief, Civil Task Force.

Robert J. Zastrow,

Assistant Chief, Civil Task Force.

Thomas H. Liddle.

Scott A. Scheele,

DC Bar No. 429061, Attorneys, Antitrust Division, U.S. Department of Justice, Suite 300, Liberty Place Building, 325 7th Street, N.W., Washington, DC 20530.

For Defendant American National Can Co.:

McDermott, Will & Emery

David Marx, Jr.,

A Member of the Firm.

For Defendant KMK Maschinen Ag:

Wilmer, Cutler & Pickering

Rajiv P. Santwan,

Chief Executive, KMK Maschinen AG.

C. Loring Jetton, Jr.,

A Member of the Firm, D.C. Bar No. 83766.

Final Judgment

Plaintiff, United States of America, filed its Complaint on June 25, 1996; plaintiff and defendants, by their respective attorneys, have consented to entry of this Final Judgment without trial or adjudication of any issue of fact or law, and defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court. This Final Judgment shall not be evidence against or an admission by any party with respect to any issue of fact or law herein.

Now, therefore, before the taking of any testimony and upon consent of the parties, it is hereby Ordered, Adjudged, and Decreed as follows:

I

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against defendants under Section 1 of the Sherman Act, 15 U.S.C. 1.

II

Definitions

As used in this Final Judgment:

A. "Agreement" means any contract, arrangement, or understanding, whether oral or written, or any term or provision thereof, together with any modification or amendment thereto;

B. "Laminated tube" means a collapsible, squeeze-to-use tubular package with a sideseam that consists of a body of multiple laminated plastic layers separated by a layer of either plastic or aluminum foil that serves as a barrier to moisture, light, gases, or other agents; a tube head attached to the body; and may include a cap;

C. "Laminated tube-making equipment" means machinery, apparatus, or devices for making and/or assembling laminated tubes, including forming a tube head, sealing or otherwise connecting it to a laminated tube body, or capping the laminated tube;

D. "Laminated tube-making technology" means any form of intellectual property relating to (i) the design, development, construction, or operation of laminated tube-making equipment or any component, feature, or use thereof; (ii) the fabrication of laminated tubes or any component

thereof; or (iii) the material used in making laminated tubes; but only to the extent such component, feature, use, or material relates to laminated tubes and not to other types of packaging;

E. "North America" means the United States of America, Canada, and the United Mexican States.

III

Applicability

This Final Judgment applies to each defendant; to each of its officers, directors, agents, employees, successors, assigns, subsidiaries, divisions, and any other organizational unit controlled by either defendant; and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Injunctive Relief

Each defendant is enjoined and prohibited from:

A. Maintaining, enforcing, carrying out, or claiming any right or operating under the 1987 License and Technical Assistance Agreement (LTAA) between American National Can Co. and KMK Karl Maegerle Lizenz AG;

B. Collecting or attempting to collect any royalties, fees, or other payments under the LTAA for (i) the manufacture, sale, or use in North America of laminated tubes or laminated tube-making equipment or (ii) the license, sale, or use in North America of laminated tube-making technology;

C. Entering into, maintaining, enforcing, carrying out, or claiming any right under any agreement with any person who

(1) Owns or has the right to use, license, and transfer laminated tube-making technology that restricts the right of any party to the agreement to use, license, or transfer in North America laminated tube-making technology that it owns or has the right to use at the time of the agreement,

(2) Manufactures or sells laminated tube-making equipment that restricts the right of any party to the agreement to manufacture or sell such equipment in North America using or incorporating only laminated tube-making technology that it owns or has the right to use at the time of the agreement, or

(3) Manufactures or sells laminated tubes in North America that restricts the right of any party to the agreement to manufacture or sell, but not use, laminated tubes in North America.

The prohibitions of this Section IV.C shall not apply to either defendant's acquisition of substantially all of any person's assets or voting securities relating to laminated tube-making equipment or technology, provided that (1) the defendant gives the Antitrust Division of the United States Department of Justice written notice of the proposed acquisition at least 30 days prior to its consummation, and (2) if within that 30-day period the Antitrust Division requests additional information and/or documentary material relevant to the proposed acquisition, the defendant extends the consummation thereof for at least an additional 20 days after the date on which the Antitrust Division receives all the information and documentary material requested from the defendant.

V

Notification

Within 60 days of entry, each defendant shall provide a copy of this Final Judgment by mail or personal service to its officers, directors, and managerial employees responsible for defendant's laminated tubes and/or laminated tube-making equipment or technology businesses, and to its current laminated tube-making technology licenses in North America. Thereafter, each defendant shall distribute a copy of this Final Judgment to any new such officer, director, or managerial employee within 60 days of a person's assumption of duties as an officer, director, or manager of that defendant.

VI

Compliance Information

A. To determine or secure compliance with this Final Judgment, from time to time, duly authorized representatives of plaintiff, upon written request of the Assistant Attorney General in charge of the Antitrust Division, or reasonable notice to a defendant at its principal office and subject to any lawful privilege, shall be permitted:

1. Access during normal office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the defendant's possession, custody, and control relating to any matters contained in this Final Judgment; and

2. To interview the defendant's officers, employees, or agents regarding such matters, who may have counsel present, subject to the defendant's reasonable convenience but without its restraint or interference.

B. Upon written request of the Assistant Attorney General in charge of the Antitrust Division to a defendant's principal office, and subject to any lawful privilege, the defendant shall submit such written reports, under oath if requested, relating to any matters contained in this Final Judgment, as may be requested.

C. No information or documents obtained pursuant to this section shall be divulged by plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give 10 days' notice to the defendant before divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

VII

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any party to this Final Judgment to apply to this Court at any time for further orders or directions as may be necessary or appropriate to implement or construe this Final Judgment, to modify or terminate any provision thereof, to enforce compliance therewith, and to punish violations thereof.

VIII

Term

This Final Judgment shall expire ten years from the date of its entry.

IX

Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

Certificate of Service

I hereby certify that copies of the foregoing Complaint, Stipulation (to which is attached a copy of a proposed Final Judgment), and Competitive Impact Statement were served this 25th day of June 1996, by first class mail, postage prepaid, upon:

David Marx, Jr., Esq., McDermott, Will & Emory, 31st Floor, 227 West Monroe Street, Chicago, IL 60606–5096

Counsel for Defendant, American National Can Co.

C. Loring Jetton, Jr., Esq., Wilmer, Cutler & Pickering, 2445 M Street, N.W., Washington, D.C. 20037–1420

Counsel for Defendant KMK Maschinen AG.

Thomas H. Liddle,

Attorney, Antitrust Division, U.S. Department of Justice, 325 7th Street, N.W., Washington, D.C. 20530.

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b), the United States of America hereby files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust action against American National Can Co. ("ANC") and KMK Maschinen AG ("KMK").

I

Nature and Purpose of the Proceeding

The government filed this civil antitrust suit on June 25, 1996, alleging that defendants violated Section 1 of the Sherman Act by engaging in a combination and conspiracy that unreasonably restrains interstate trade and commerce in the manufacture of laminated tubes and laminated tube-making equipment, and in the license and transfer of related laminated tube-making technology. The Complaint alleges that this combination and conspiracy consisted of a series of continuing agreements between defendants, the purpose and effect of which was to eliminate competition between them in the North American markets for laminated tubes and laminated tube-making equipment and technology. Specifically, KMK agreed to sell its laminated tube-making equipment and license its related technology exclusively to ANC, and ANC purchased KMK's U.S. laminated tube-making facility. These agreements harmed competition in several ways:

(a) They eliminated KMK as a competitor in the laminated tubes market, thereby reducing competition among tube manufacturers in the United States;

(b) They precluded KMK from selling laminated tube-making equipment or from licensing laminated tube-making technology to persons other than ANC for 15 years, and gave ANC effective control over KMK's existing laminated tube-making equipment in North America, thereby reducing competition among equipment manufacturers in the United States; and

(c) They gave ANC effective control over KMK's laminated tube-making technology in North America, thereby reducing competition generally in the United States laminated tube, laminated tube-making equipment, and related technology markets.

The complaint seeks: (1) A declaration that these agreements violate section 1 of the Sherman Act; and (2) an injunction preventing defendants from enforcing, maintaining, or renewing any such agreement or entering into or engaging in any other agreement having a similar purpose or effect.

The United States and the defendants have stipulated that the Court may enter the proposed Final Judgment at any time after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h). Under the provisions of section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e), the proposed Final Judgment may not be entered unless the Court finds that its entry is in the public interest.

II

The Practices and Events Giving Rise to the Alleged Sherman Act Violations

A. The Markets Involved

1. Laminated Tubes

Laminated tubes are collapsible tubular containers of multiple, laminated plastic layers used to package virtually all toothpaste and many pharmaceutical products sold in the United States. These tubes preserve the product within a flexible tube without permitting air or moisture to enter the tube. Other packaging materials either cost more than or lack the barrier characteristics of laminated tubes. Thus, there are no viable economic substitutes for laminated tubes. Annual retail sales of such tubes in North America are about $110 million, or 1.1 billion tubes, of which approximately 800 million are sold to toothpaste manufacturers; approximately 300 million are sold to pharmaceutical manufacturers and others.

The market for laminated tubes is highly concentrated. Three companies manufacture over 95% of such tubes sold in the United States. ANC is the largest competitor with total sales comprising over 60% of the United States toothpaste tube market. There are only two other competitors in the United States that have 5% or more of the laminated tubes market. It is not economically feasible to ship laminated tubes into North America.

Successful new entry into, or expansion within, the laminated tube market is difficult. To be successful, a new entrant must acquire expensive laminated tube-making equipment and essential, related patented and unpatented laminated tube-making technology. The up-front investment in plant, machinery, research, technology, and sales is substantial relative to the profit opportunity available in a commodity market like this one.

2. Laminated Tube-Making Equipment

Laminated tube-making equipment consists of machinery used to manufacture laminated tubes. This equipment cannot efficiently be used for any other purpose, nor can other machines easily or efficiently be converted or adapted to make laminated tubes. Thus, there are no viable economic substitutes for this equipment.

The market for laminated tube-making equipment is highly concentrated. Besides KMK, only two companies worldwide currently manufacture such equipment.

KMK is, therefore, one of only a very few firms in the world that can provide laminated tube-making equipment for sale in the United States. KMK has sold such equipment worldwide, and its equipment enjoys a good reputation in the industry. KMK has numerous patents in countries around the world, including the United States.

Successful new entry into, or expansion within, the market for laminated tube-making equipment is difficult. To be successful, a new entrant must acquire or develop essential patented and unpatented laminated tube-making technology. Such technology is expensive to acquire or develop relative to the sales opportunity for the equipment.

3. Laminated Tube-Making Technology

The use of both patented and unpatented tube-making technology is essential to the profitable manufacture of laminated tubes and laminated tube-making equipment. There are only a few competing forms of such technology today, and KMK, ANC, and an affiliate of ANC's parent hold the rights to three of the four leading types of the technology worldwide.

Development of new competitive technology would require substantial investment with highly uncertain returns. New entry into the laminated tube-making technology market cannot reasonably be expected in the foreseeable future.

B. Illegal Agreements

In 1987, before entering into the agreements discussed below, both ANC and KMK were vertically integrated companies that owned rights to laminated tube-making technology, manufactured laminated tube-making equipment for use in the United States, and manufactured and sold laminated tubes in the United States.

In late 1987, KMK and ANC entered into several agreements, the purpose and effect of which was to eliminate competition between them in the North American laminated tube and tube-making equipment markets.

Pursuant to one of these agreements ANC purchased Swisspack Corporation, KMK's U.S. affiliate, for just under $15 million, although the laminated tube-making equipment covered by the transaction was valued at less than $5 million. As a result of its selling Swisspack to ANC, KMK exited the North American laminated tube market.

On the same day ANC acquired Swisspack, ANC and KMK entered into a License and Technology Assistance Agreement ("LTAA"). Pursuant to that agreement, KMK gave ANC an exclusive license to use KMK's laminated tube-making technology, and an exclusive right to but its tube-making equipment, in North America ("exclusivity provision"). In exchange, ANC agreed to license any laminated tube-making technology and buy all laminated tube-making equipment for use in North America only from KMK, and not to acquire or use any third party's laminated tube-making equipment or technology there. At or about the time of these agreements, ANC discontinued the manufacture of laminated tube-making equipment. By precluding KMK from selling laminated tube-making equipment or licensing laminated tube-making technology to others in North America, these agreements reduced competition in the North American laminated tube, laminated tube-making equipment, and laminated tube-making technology markets.

Several yeas after entering into these agreements, ANC was acquired by Pechiney SA, a French company, one of whose existing subsidiaries, Cotuplas SA, manufactures laminated tube-making equipment. Since being acquired by Pechiney SA, ANC has obtained substantially all its laminated tube-making equipment from the Pechiney SA subsidiary. Until very recently, however, ANC has enforced the exclusivity provisions of the LTAA against KMK, preventing KMK, its equipment, and its technology from competing with ANC in North America. KMK brought these agreements to the attention of the United States and cooperated in its investigation; after learning that the United States had commenced its investigation into these agreements, ANC agreed with KMK not to interfere with KMK's right to sell its laminated tube-making equipment or to license its tube-making technology in North America.

III

Explanation of the Proposed Final Judgment and Its Anticipated Effect on Competition

A. Terms

The proposed Final Judgment provides for injunctive relief that is intended to eliminate any residual anticompetitive effects of the restrictive agreements and other conduct challenged by the Complaint, and to prevent defendants from entering into similar agreements that would have the same effect. Section IV.A of the Final Judgment would terminate the defendants' 1987 LTAA and its exclusivity provisions, thus freeing KMK to sell or license its own laminated tube-making equipment and technology to anyone in North America. Section IV.B would bar defendants from collecting any payment from each other pursuant to the LTAA for the manufacture, sale, license, or use in North America of laminated tube-making equipment or technology.

Section IV.C of the Judgment would enjoin each defendant from entering certain agreements that restrict the right of any party (i) to use, license, or transfer in North America laminated plastic tube-making technology that the party owns or has the right to use at the time of the agreement, or (ii) to manufacture or sell laminated plastic tubes or tube-making equipment in North America, where such agreements likely would lessen competition among the parties. Such agreements would be barred if (i) at the time of the agreement both parties compete directly against each other in any of the three vertically related laminated plastic tube markets—*i.e.*, technology, equipment, or tubes, and (ii) the restraint involved applies to that common market.

For example, Section IV.C would prohibit either defendant from entering into an agreement with a tube-making equipment manufacturer that restricted any party from manufacturing or selling tube-making equipment in North America because both parties to such an agreement would be competitors in the tube-making equipment market. Section IV.C would not bar agreements that are essentially vertical in nature. For example, KMK and a company that does not manufacture tube-making equipment could enter into an agreement with KMK granting that company an exclusive right to use KMK's equipment in North America.

Finally, Section IV.C would require that defendants give the Department of Justice notice of, and provide certain discovery rights concerning, any acquisition of a laminated plastic tube competitor that included an agreement not to compete. This notification will enable the Department to investigate and prevent any anticompetitive acquisition, including any transaction that does not require notification under the Hart-Scott-Rodino Act, before it takes place, and thus would prevent these parties from engaging in anticompetitive non-reportable transfers such as their 1987 transaction.

B. Effect on Competition

The proposed Final Judgment will ensure that KMK will be able to compete in all three North American laminated plastic tube markets. KMK will be able to sell laminated plastic tubes, sell or lease tube-making equipment, and license or transfer laminate tube technology. Existing tube manufacturers will benefit from increased competition in the sale of laminate tube-making equipment and technology. New entrants into the North American laminated tube market now will have access to the requisite equipment and technology, which may lead to greater competition in the manufacture and sale of laminated tubes.

To preserve incentives to enter for those firms who may be reluctant to make the requisite investment without exclusive rights to technology or equipment, the injunction against exclusive licenses or otherwise restrictive agreements would apply only to those with persons already competing in the same level of the laminated tube market (technology, equipment, or tubes) as the defendant.

Similarly, to preserve important incentives to innovate, especially where a defendant is likely to be the primary source of the investment, the injunction would not bar that defendant from acquiring exclusive rights in laminated tube-making technology or equipment that is developed or marketed jointly with customers or suppliers, provided they are not also competitors in the same market level as that defendant.

The injunctive provisions also would exempt restrictions on sale to third parties of equipment made for a particular customer incorporating that customer's own technology.

Finally, prior notice to the Department of any acquisition by a defendant of a laminated tube competitor imposing non-compete obligations would ensure that the Department has an opportunity to get discovery and challenge any such arrangement deemed anticompetitive.

IV

Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against the defendants in the matter.

V

Procedures Available for Modification of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Mary Jean Moltenbrey, Chief, Civil Task Force, U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Suite 300, Washington, DC 20530, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free, pursuant to a stipulation signed by the United States and defendants, to withdraw its consent to the proposed Judgment at any time prior to entry. Section VII of the proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for modification, interpretation, or enforcement of the Final Judgment.

VI

Determinative Materials/Documents

No materials or documents of the type described in section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were considered by the United States in formulating the proposed Final Judgment. However, a letter, dated June 21, 1996, from plaintiff's counsel to counsel for defendant KMK, acknowledging KMK's right under current law to seek relief from the compliance provisions of Section VI in the event it believes a conflict has arisen between any request for information or documents under those provisions and foreign law, was considered determinative by KMK in agreeing to the proposed Judgment and is attached hereto as Exhibit A.

VII

Alternative to the Proposed Final Judgment

The alternative to the proposed Final Judgment is a full trial on the merits. While the Department is confident it would succeed in such a trial, this case involves difficult issues of law and fact, as well as obvious risks and costs to the United States, and success is not certain. The Final Judgment to which the parties have agreed provides virtually all the relief the Government sought in its complaint, and that relief will fully and effectively open the markets involved to competition.

Dated: June 25, 1996.

Respectfully submitted,

Thomas H. Liddle,

Scott A. Scheele,

DC Bar No. 429061, Attorneys, U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Washington, DC 20530.

U.S. Department of Justice

Antitrust Division

Liberty Place Building, Washington, DC 20530

June 21, 1996.

MJM:RJZ

60–3083–0001

C. Loring Jetton, Jr., Esq.,

Wilmer, Cutler & Pickering, 2445 M Street, N.W., Washington, D.C. 20037–1420, Fax (202) 663–6463.

Re: *KMK Maschinen AG/Laminated Tubes*

Dear Mr. Jetton: During our negotiations of a consent decree in this case, you suggested the possibility that a conflict could arise between the compliance provisions in Section VI of the proposed decree, which authorize the Assistant Attorney General to inspect documents or conduct interviews and to request written reports, and laws or orders of foreign governments, which appear to prohibit compliance with such provisions. Of course, we would attempt to work with KMK to avoid any such conflict in exercising our rights under Section VI. In the event that we could not reach agreement with you, however, KMK would be free to seek relief from the decree court from its obligations to comply with any Section VI request. Under the principles set forth in *Societe Internationale* v. *Rogers*, 357 U.S. 197 (1958) and its progeny, KMK would have the burden of showing that (1) compliance with the request is prohibited by foreign law, (2) KMK was not in any way responsible for creating the conflict between the judgment and foreign law, and (3) KMK has exercised its best efforts to obtain any waiver or permission from the foreign government and other relevant person(s) that would enable it to comply with the request.

Sincerely yours,

Robert J. Zastrow,

Assistant Chief, Civil Task Force.

[FR Doc. 96–16889 Filed 7–2–96; 8:45 am]

BILLING CODE 4410–01–M

United States v. AnchorShade, Inc., No. 96–08426, S.D. Fla., filed June 20, 1996

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Southern District of Florida in the above-captioned case.

On June 20, 1996, the United States filed a complaint to prevent and restrain the defendant from violating Section 1 of the Sherman Act. The complaint alleges that the defendant conspired to fix the price of outdoor umbrellas sold by the defendant to dealers throughout the United States by obtaining agreements from dealers to maintain the minimum resale price as a condition of receiving outdoor umbrellas from the defendant, and permitting dealers to discount in order to meet competition, but only if they obtained written approval in advance from AnchorShade, Inc. As a result of the conspiracy, the resale price of outdoor umbrellas was fixed and competition among dealers of outdoor umbrellas was restrained.

The proposed Final Judgment prohibits the defendant from entering into or maintaining any unlawful agreement with any dealer that fixes the price at which the dealer may sell the defendant's outdoor umbrellas to consumers; adopting any resale pricing policy wherein the defendant (1) Will sell only to a dealer that prices the defendant's outdoor umbrellas at or above the defendant's suggested resale price, and/or (2) will terminate any dealer for pricing below such suggested resale price; and threatening any dealer with termination or terminating any dealer from pricing below the defendant's suggested resale price, and discussing with any dealer any decision regarding termination of any other dealer for any reason related to pricing below the defendant's suggested resale price.

Public comment is invited within the statutory 60-day period. Such comments

will be published in the **Federal Register** and filed with the Court. Comments should be addressed to Ralph T. Giordano, Chief, New York Office, U.S. Department of Justice, Antitrust Division, 26 Federal Plaza, Room 3630, New York, New York 10278 (telephone: (212) 264–0390).

Rebecca P. Dick,

Deputy Director of Operations.

United States District Court Southern District of Florida

In the matter of; UNITED STATES OF AMERICA, Plaintiff, v. ANCHORSHADE, INC., Defendant; Civil Action No. 96–08426, Judge Daniel T. K. Hurley.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties to this Stipulation consent that a Final Judgment in the form attached may be filed and entered by the Court, upon any party's or the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice on the defendant and by filing that notice with the Court.

2. If plaintiff withdraws its consent or the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and its making shall be without prejudice to any party in this or any other proceeding.

Dated: June 20, 1996.

For the Plaintiff:

Anne K. Bingaman,

Assistant Attorney General.

Joel I. Klein,

Deputy Assistant Attorney General.

Rebecca P. Dick,

Deputy Director of Operations.

Ralph T. Giordano,

Chief, New York Office.

For the Defendant:

Barry L. Haley,

Counsel for AnchorShade, Inc., Malin, Haley, DiMaggio and Crosby, P.A., Suite 1609, 1 East Broward Boulevard, Fort Lauderdale, Florida 33301.

Patricia L. Jannaco,

Attorney, Antitrust Division, United States Department of Justice, 26 Federal Plaza, Room 3630, New York, New York 10278, (212) 264–0660.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on , and plaintiff and defendant, AnchorShade, Inc., having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And whereas defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of the party consenting hereto. The complaint states a claim upon which relief may be granted against defendant under Section 1 of the Sherman Act (15 U.S.C. 1).

II

Definitions

As used in this Final Judgment:

A. "Person" means any individual, corporation, partnership, company, sole proprietorship, firm or other legal entity.

B. "Dealer" means any person, not wholly owned by AnchorShade, Inc., who purchases or acquires outdoor umbrellas manufactured or sold by AnchorShade, Inc. for resale.

C. "Outdoor umbrellas" means collapsible devices that provide shade for protection against sun or weather.

D. "Resale price" means any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit relating to outdoor umbrellas sold by dealers.

III

Applicability

A. This Final Judgment applies to defendant and to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendant shall require, as a condition of the sale of all or substantially all of its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV

Prohibited Conduct

A. Defendant is hereby enjoined and restrained from directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any dealer to fix, stabilize or maintain the resale prices at which outdoor umbrellas sold or distributed by the defendant may be sold or offered for sale in the United States by any dealer.

B. Defendant is further enjoined and restrained for a period of five years from the date of entry of this Final Judgment from directly or indirectly announcing to the public or to any present or potential dealer of its outdoor umbrellas that defendant has or is adopting, promulgating, suggesting, announcing or establishing any resale pricing policy for outdoor umbrellas that provides that: (1) Defendant will sell only to a dealer that prices at or above defendant's suggested resale price, and/or (2) defendant will terminate any dealer for pricing below defendant's suggested resale price.

C. Defendant is further enjoined and restrained for a period of five years from the date of entry of this Final Judgment from (1) threatening any dealer with termination or terminating any dealer for pricing below the defendant's suggested resale price, and (2) discussing with any present or potential dealer any decision regarding termination of any other dealer for any reason directly or indirectly related to the latter dealer's pricing below defendant's suggested resale price; provided, however, that nothing herein shall prohibit the defendant during this five-year period from terminating a dealer for using any of defendant's products to promote the sale of products manufactured by other companies, or any other reasons other than pricing below defendant's suggested resale price. Furthermore, nothing in this paragraph shall be deemed to prohibit the defendant from adopting suggested resale prices and communicating such resale prices to dealers.

V.

Notification Provisions

Defendant is hereby ordered and directed:

A. To send a written notice, and in the form attached as Appendix A to this Final Judgment, a copy of this Final Judgment, within sixty days of the entry of this Final Judgment, to each dealer who purchased outdoor umbrellas from defendant from January 1, 1992 to the date of entry of this Final Judgment.

B. To send a written notice, in the form attached as Appendix A to this Final Judgment, and a copy of this Final Judgment, to each dealer who purchases outdoor umbrellas from defendant within ten years of entry of this Final Judgment and who was not previously given such notice. Such notice shall be sent within thirty days after the shipment of outdoor umbrellas is made to such dealer by defendant.

VI

Compliance Program

Defendant is ordered to establish and maintain an antitrust compliance program which shall include designating, within thirty days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of his or her company to assure that it complies with this Final Judgment. The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

A. Furnishing a copy of this Final Judgment within thirty days of entry of this Final Judgment to each of AnchorShade, Inc.'s officers and directors and each of its employees, representatives or agents whose duties include supervisory or direct responsibility for the sale or advertising of outdoor umbrellas in the United States, except those employees whose functions are purely clerical or manual.

B. Distributing in a timely manner a copy of this Final Judgment to any owner, officer or employee who succeeds to a position described in Section VI A.

C. Briefing annually those persons designated in Sections VA A and B on the meaning and requirements of this Final Judgment and the antitrust laws.

C. Obtaining from each owner, officer or employee designated in Section VI A and B certification that he or she (1) has read, understands and agrees to abide by the terms of this Final Judgment; (2) understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and (3) is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer.

E. Maintaining a record of recipients from whom the certification in Section VI D has been obtained.

VII

Certification

A. Within seventy-five days of this Final Judgment, defendant shall certify to plaintiff whether the defendant has designated an Antitrust Compliance Officer and has distributed the Final Judgment in accordance with Section VI A above.

B. For ten years after the entry of this Final Judgment, on or before its anniversary date, the defendant shall file with the plaintiffs an annual statement as to the fact of its compliance with the provisions of Sections V and VI.

C. If defendant's Antitrust Compliance Officer learns of any violations of any of the terms and conditions contained in this Final Judgment, defendant shall immediately notify the plaintiff and forthwith take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

VIII

Plaintiff Access

A. For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of plaintiff shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant, be permitted, subject to any legally recognized privilege:

1. Access during defendant's office hours to inspect and copy all records and documents in the possession or under the control of defendant, which may have counsel present, relating to any matters contained in this Final Judgment.

2. To interview defendant's officers, employees and agents, who may have counsel present, regarding any such matters. The interviews shall be subject to the defendant's reasonable convenience.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to defendant at its principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested, subject to any legally recognized privilege.

C. No information or documents obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such materials, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding), so that defendant shall have an opportunity to apply to this Court for protection pursuant to Rule 26(c)(7) of the Federal Rules of Civil Procedure.

E. Within ten days after receiving any request under Sections VIII A or VII B, defendant may apply to this Court for an order to quash or limit the scope of the request, and after providing plaintiff with an opportunity to respond to such application, this Court shall enter such order or directions as may be necessary or appropriate for carrying out and ensuring compliance with this Final Judgment.

IX

Duration of Final Judgment

Except as otherwise provided hereinabove, this Final Judgment shall

remain in effect until ten (10) years from the date of entry.

X

Construction, Enforcement, Modification and Compliance

Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for its enforcement or compliance, and for the punishment of any violation of its provisions.

XI

Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

United States District Court Judge

Appendix A

Dear AnchorShade Dealer. The Antitrust Division of the United States Department of Justice filed a civil suit alleging that from at least as early as December 1992 through at least February 1995, AnchorShade, Inc. (AnchorShade) entered into and maintained agreements with certain dealers to fix and maintain the resale prices of AnchorShade products. AnchorShade has agreed, without admitting any violation of the law and without being subject to any monetary penalties, to the entry of a civil Consent Order prohibiting certain pricing practices in the United States, including for a period of five years prohibiting AnchorShade from announcing to the public or to any dealer that AnchorShade has a resale pricing policy that contains any provision that provides that (a) AnchorShade will sell only to a dealer that prices at or above AnchorShade's suggested resale price, and/or (b) AnchorShade will terminate any dealer for pricing below AnchorShade's suggested resale price. A copy of the Order is enclosed.

Should you have any questions concerning this letter, please feel free to contact me.

Sincerely,

Certificate of Service

I, Patricia L. Jannaco, hereby certify that on the 20th day of June, 1996, I served the foregoing Stipulation and

1 East Broward Boulevard, Fort Lauderdale, Florida 33301.

Patricia L. Jannaco,

Attorney, Antitrust Division, United States Department of Justice, 26 Federal Plaza, Room 3630, New York, New York, 10278, (212) 264–0660.

United States District Court Southern District of Florida

In the matter of; United States of America, Plaintiff, v. Anchorshade, Inc., Defendant; Civil Action No. 96–08426, Filed: 6/20/96; 15 U.S.C. 1; 15 U.S.C. 4; Judge Daniel T.K. Hurley.

Competitive Impact Statement

The United States of America, pursuant to section 2 of the Antitrust Procedures and Penalties Act (APPA), 15 U.S.C. 16(b), submits this Competitive Impact Statement in connection with the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On June 20, 1996, the United States filed a civil antitrust complaint under Section 4 of the Sherman Act, as amended, 15 U.S.C. 4, alleging that the defendant AnchorShade, Inc. engaged in a combination and conspiracy, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, to fix the price of outdoor umbrellas sold by AnchorShade, Inc. to dealers throughout the United States. The complaint alleges that, in furtherance of this conspiracy, AnchorShade, Inc.:

(a) obtained agreements from dealers to maintain the minimum resale price as a condition of receiving outdoor umbrellas from AnchorShade, Inc.;

(b) permitted dealers to discount in order to meet competition, but only if the obtained written approval in advance from AnchorShade, Inc.

The complaint also alleges that the combination and conspiracy is illegal, and seeks to enjoin AnchorShade, Inc. from continuing or renewing the alleged combination or conspiracy and from engaging in any combination or conspiracy or adopting any practice or plan having a similar purpose or effect.

The United States and AnchorShade, Inc. have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent.

The Court's entry of the proposed

punish violations of any of its provisions.

II

Description of Practices Giving Rise to the Alleged Violation of the Antitrust Laws

AnchorShade, Inc., a Florida corporation, is a seller in the United States of outdoor umbrellas that are used on boats to provide shade for protection against sun or weather. AnchorShade, Inc. sells outdoor umbrellas to dealers, who sell them to consumers. AnchorShade, Inc. further stipulated that AnchorShade, Inc. would terminate its relationship with any dealer who sold its outdoor umbrellas below the stated resale price.

In December 1992, AnchorShade, Inc. entered into outright, written agreements with certain dealers which required them to sell its outdoor umbrellas to consumers at a resale price not lower than $169. The agreements further required a dealer that wanted to discount, in order to meet competition, to obtain advance written permission from AnchorShade, Inc. These agreements went well over the line established in the case law (*see, Business Electronics Corp.* v. *Sharp Electronics Corp.*, 485 U.S. 717 (1988), *Monsanto Co.* v. *Spray-Rite Service Corp.*, 465 U.S.752 (1984), *United States* v. *Colgate & Co.*, 250 U.S. 300 (1919)), and served to keep prices artificially high.

III

Explanation of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the APPA. The proposed Final Judgment states that it shall not constitute an admission by either party with respect to any issue of fact or law.

The proposed Final Judgment enjoins any direct or indirect continuation or renewal of the type of conspiracy alleged in the complaint. Specifically, Section IV enjoins and restrains the defendant from entering into, adhering to, maintaining, furthering, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any dealer to fix, stabilize, or maintain the resale prices at which outdoor umbrellas sold or distributed by

Section IV provides that the defendant is prohibited for five years from announcing to the public or to any present or potential dealer of its outdoor umbrellas that defendant has or is adopting, promulgating, suggesting, announcing or establishing any resale pricing policy for outdoor umbrellas that provides that: (1) defendant will sell only to a dealer that prices its outdoor umbrellas at or above defendant's suggested resale price, and/or (2) defendant will terminate any dealer for pricing below defendant's suggested resale price.

Additionally, the defendant is prohibited for a period of five years from the date of entry of the Final Judgment from (1) threatening any dealer with termination or terminating any dealer for pricing below the defendant's suggested resale price, and (2) discussing with any present or potential dealer any decision regarding termination of any other dealer for any reason directly or indirectly related to the latter dealer's pricing below defendant's suggested resale price.

Section V of the proposed Final Judgment is designed to ensure that AnchorShade, Inc.'s dealers are aware of the limitations imposed on it by the Final Judgment. Section V requires the defendant to send notice and copies of the Final Judgment to each dealer who purchased outdoor umbrellas from the defendant from January 1, 1992 to the date of entry of the Final Judgment. In addition, the defendant is required to send notices and copies of the Final Judgment to every other dealer who purchases outdoor umbrellas from AnchorShade, Inc. within ten years of the date of entry of the proposed Final Judgment.

Section VI requires the defendant to set up an antitrust compliance program. The defendant is also required to furnish a copy of the Final Judgment to each of its officers and directors and each of its nonclerical employees, representatives or agents with supervisory or direct responsibility for the sale or advertising of outdoor umbrellas in the United States.

In addition, the proposed Final Judgment provides a method of determining and securing the defendant's compliance with its terms. Section VIII provides that, upon request of the Department of Justice, the defendant shall submit written reports, under oath, with respect to any of the matters contained in the Final

Section IX makes the Final Judgment effective for ten years from the date of its entry.

Section XI of the proposed Final Judgment states that entry of the Final Judgment is in the public interest. Under the provisions of the APPA, entry of the proposed Final Judgment is conditional upon a determination by the Court that the proposed Final Judgment is in the public interest.

The United States believes that the proposed Final Judgment is fully adequate to prevent the continuation or recurrence of the violation of section 1 of the Sherman Act alleged in the Complaint, and that the disposition of this proceeding without further litigation is appropriate and in the public interest.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15, provides that any person who had been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendant.

V

Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in **Federal Register**. The United States will evaluate the

Written comments should be submitted to: Ralph T. Giordano, Chief, New York Office, Antitrust Division, United States Department of Justice, 26 Federal Plaza, Room 3630, New York, New York 10278.

Under Section X of the proposed Final Judgment, the Court will retain jurisdiction over this matter for the purpose of enabling any of the parties to apply to the Court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification or enforcement of the Final Judgment, or for the punishment of any violations of the Final Judgment.

VI

Alternatives to the Proposed Final Judgment

The only alternative to the proposed Final Judgment considered by the United States will a full trial on the merits and on relief. Such litigation would involve substantial costs to the United States and is not warranted because the proposed Final Judgment provides appropriate relief against the violations alleged in the Complaint.

VII

Determinative Materials and Documents

No materials or documents were determinative in formulating the proposed Final Judgment. Consequently, the United States has not attached any such materials or documents to the proposed Final Judgment.

Dated: June 20, 1996.

Respectfully submitted,

Patricia L. Jannaco,

Attorney, Antitrust Division, United States Department of Justice, 26 Federal Plaza, Room 3630, New York, New York 10278, (212) 264–0660.

[FR Doc. 96–16890 Filed 7–2–96; 8:45 am]

BILLING CODE 4410–21–M

Immigration and Naturalization Service

Agency Information Collection Activities: Revision of Existing Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Affidavit of support.

The proposed information collection

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Overview of this information collection:

(1) Type of Information Collection: *Revision of a currently approved collection.*

(2) Title of the Form/Collection: Affidavit of support.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–134. Office of Examinations, Adjudications, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. The information collection is used to determine whether the applicant for benefit will become a public charge if admitted to the United States.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 44,000 responses at 20 minutes (.333) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 14,652 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: June 26, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–16966 Filed 7–2–96; 8:45 am]

BILLING CODE 4410–18–M

Agency Information Collection Activities: Revision of existing collection; comment request

ACTION: Notice of Information Collection Under Review; Monthly Report Naturalization Papers.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" from the date listed at the top of this page in the **Federal Register**.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Overview of this information collection:

(1) Type of Information Collection: *Revision of a currently approved collection.*

(2) Title of the Form/Collection: Monthly Report Naturalization Papers.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form N–4. Office of Examinations, Adjudications, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Federal and State Governments. This form is used by the clerk of courts that administer the oath of allegiance for naturalization to notify the Immigration and Naturalization Service of all persons to whom the oath was administered.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 1,920 responses at 30 minutes (.50) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 960 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: June 27, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–16937 Filed 7–2–96; 8:45 am]

BILLING CODE 4410–18–M

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Application to Replace Alien Registration Card.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 22, 1996, at 61 FR 17728–17729, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with 5 CFR Part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. The proposed collection is listed below:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection.* Application to Replace Alien Registration Card.

(3) *Agency for number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–90. Office of Examinations, Adjudications, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected will be used by the INS to determine eligibility for an initial Alien Registration Card, or to Replace a previously issued card.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,300,000 responses at 55 minutes (.90) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,170,000 annual burden hours..

Public comment on this proposed information collection is strongly encouraged.

Dated: June 26, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–16968 Filed 7–2–96; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 27, 1996.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5095). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316, by August 2, 1996.

The OMB is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: Process Safety Management of Highly Hazardous Chemicals.

OMB Number: 1218–0200.

Frequency: On-going.

Affected Public: Business or other for-profit.

Number of Respondents: 24,939.

Estimated Time Per Respondent: 5,007.

Total Burden Hours: 126,505,297.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: These requirements/records are directed toward assuring that the hazards associated with processes using highly hazardous chemicals are managed. They established procedures for process safety management that will protect employees by preventing or minimizing the consequences of chemical accidents involving highly hazardous chemicals that could lead to a catastrophe.

Agency: Occupational Safety and Health Administration.

Title: Hazardous Waste Operations and Emergency Response (29 CFR 1910.120).

OMB Number: 1218–0202.

Frequency: On occasion; Annually.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 35,753.

Estimated Time Per Respondent: 62.35 hours.

Total Burden Hours: 2,229,062.
Total Annualized capital/startup costs: 0.
Total annual costs (operating/maintaining systems or purchasing services: 0.
Description: 29 CFR 1910.120 regulates the safety and health of employees engaged in hazardous waste site operations and emergency response to the release of hazardous substances from their containers. It was mandated by Congress under section 126 of the Superfund Amendments and Reauthorization Act of 1986. Worker populations covered by the rule include workers at Superfund clean-sites and similar operations, workers at EPA permitted disposal sites, and emergency response workers at those sites, firefighters, emergency medical service personnel, police, and others involved in hazardous substance emergency response.

Theresa M. O'Malley,
Acting Departmental Clearance Officer.
[FR Doc. 96–16909 Filed 7–2–96; 8:45 am]
BILLING CODE 4510–23–M

Submission for OMB Emergency Review; Comment Request

June 24, 1996.

The Department of Labor has submitted the following (see below) information request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by July 12, 1996. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5095).

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316).

The Office of Management and Budget is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evalaute the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Bureau of Labor Statistics.
Title: Manual for Developing Local Area Unemployment Statistics.
OMB Number: 1220–0017.
Affected Public: State government.
Number of Respondents. 52.
Estimated Time Per Respondent: 1.73 hours.
Total Burden Hours: 130,755 Hours.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.
Description: The Department of Labor, through the Bureau of Labor Statistics, is responsible for the development and publication of local area labor force statistics. Data are gathered by State Employment Security Agencies and transmitted to the Bureau of Labor Statistics. This program includes the issuance of monthly estimates of the labor force, employment, unemployment, and the unemployment rate for each State and labor market area in the Nation.

The labor force estimates developed and issued in this program are used for economic analysis and as a tool in the implementation of Federal economic policy in such areas as employment and economic development under the Job Training and Partnership Act, the Public Works and Economic Development Act, among other.

The estimates are also used in economic analysis by public agencies and private industry, and for State and area allocations and eligibility determinations according to legal and administrative requirements. Implementation of policy and legislative prerogatives could not be accomplished as now written without collection of these data.

Theresa M. O'Malley,
Acting Departmental Clearance Officer.
[FR Doc. 96–16910 Filed 7–2–96; 8:45 am]
BILLING CODE 4510–24–M

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of June, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,350; Clear Pine Moulding, Prineville, OR
TA–W–32,205; Progressive Knitting Mills of Pennsylvania, Philadelphia, PA
TA–W–32,157; Fasco Industries, Inc., Motors Div., Tipton, MO

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified:

TA–W–32,193; GPM—Phillips Petroleum Co., Houston, TX
TA–W–32,206; General Cable Corp., Newport, AR
TA–W–32,306; Braun Medical, Inc., Cardiovascular Div., Plymouth, MN
TA–W–32,216; Barrett Refining Corp., Thomas, OK

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,208; El Paso Natural Gas Co., El Paso, TX
TA–W–32,153; Zenith Electronics Corp of Texas, McAllen, TX
TA–W–32,347; Fasco Consumer Products, Fayetteville, NC

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–32,158; Redco Foods, Inc., Little Falls, NY
TA–W–32,095; Caraway Manufacturing Corp., Caraway, KS

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–32,410; Fourty Four West Mfg., New York, NY: May 22, 1995.
TA–W–32,170; A–1 Manufacturingl Louisville, AL: March 26, 1995.
TA–W–32,366; Badger Paper Mills, Inc., Peshtigo, WI: May 11, 1995.
TA–W–32,155; Chel-Mar Manufacturing, Tremont, PA: March 25, 1995.
TA–W–32,289; Red Kap Industries, Vienna, GA: April 7, 1995.
TA–W–32,188; Kalkstein Silk Mills, Inc., Paterson, NJ: April 12, 1995.
TA–W–32,438; Hilton Davis Co., Newark, NJ: May 30, 1995.
TA–W–32,431; Shaneco Manufacturing Co., El Paso, TX: May 23, 1995.
TA–W–32,159; Olympus America, Inc., Rio Rancho, NM: March 22, 1995.
TA–W–32,328; Thomas & Betts Electrical Components, Strongsville, OH: May 2, 1995.
TA–W–32,349; Border Apparel Laundry, Inc., El Paso, TX: May 2, 1995.
TA–W–32,232; The Timken Co., Columbus, OH: March 30, 1995.
TA–W–32,246; PAM Coat, Inc., West New York, NJ: April 22, 1995.
TA–W–32,331; Kenting Apollo Drilling, Inc., Headquartered in Denver, Co & Operating in the Following States: A; CO, B; ND, C; WY, D; UT: April 30, 1995.
TA–W–32,210; Blue Mountain Forest Product, Pendleton, OR: April 15, 1995.
TA–W–32,355; AVX Corp., Myrtle Beach, SC: May 7, 1995.
TA–W–32,355; AVX Corp., Myrtle Beach, SC: May 7, 1995.
TA–W–32,301; Hart Schaffner & Marx, Hartmarx Corp., Chaffee, MO: April 24, 1995.
TA–W–32,353; Johnson Controls, Inc., Systems Products Worldwide, Milwaukee, WI: May 7, 1995.
TA–W–32,336; Horvath Knitting Mills, Inc., Coopersburg, PA: April 30, 1995.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of June, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements for Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–00924; Bugle Boy Industries, North Little Rock AR
NAFTA–TAA–00954; Progressive Knitting Mills of Pennsylvania, Philadelphia, PA
NAFTA–TAA–01009; Shaw Industries, Inc., Yarn Div., Trenton, NJ
SCNAFTA–TAA–00868; Stone Ridge Farm, Livingston Manor, NY
NAFTA–TAA–01029; Snapp Tool & Die, Inc., El Paso, TX
NAFTA–TAA–00925; Caraway Manufacturing Corp., Caraway, AR
NAFTA–TAA–01008; Big J Apparel, Waco, TX
NAFTA–TAA–01030; Greenfield Research, Inc., Hermann, MO
NAFTA–TAA–01031; Hart Schaffner & Marx, Chaffee, MO

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–01017; PBB USA, Inc., Computer Services, Buffalo, NY
NAFTA–TAA–01035; Kendall Professional Medical Products, Inc., El Paso, TX

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–01003; Asarco, Inc., Omaha, NE: May 1, 1995.
NAFTA–TAA–01025; Mullen Lumber, Inc., Molalla, OR: May 8, 1995.
NAFTA–TAA–01040; Kaufman Footwear Corp., Batavia, NY: May 17, 1995.
NAFTA–TAA–01015: AVX Corp., Myrtle Beach, SC: May 7, 1995.
NAFTA–TAA–01006; Kenting Apollo Drilling, Inc., Headquartered in Denver, CO & Operating in Various Locations in the Following States A; CO, B: ND, C; WY, D; UT: April 30, 1995.
NAFTA–TAA–00986; Border Apparel Laundry, Inc., El Paso, TX: April 24, 1995.
NAFTA–TAA–01018; Johnson Controls, Inc., Systems Products Worldwide, Milwaukee, WI: May 7, 1995.
NAFTA–TAA–01020; Oz's Apparel, Inc., Pacoima, CA: April 30, 1995.
NAFTA–TAA–01028; Badger Paper Mills, Peshtigo, WI: May 14, 1995.
NAFTA–TAA–1023; Alcan Aluminum Co., Alcan Foil Products Div., LaGrange, GA: May 1, 1995.
NAFTA–TAA–1036; James Hardie Irrigation, El Paso Manufacturing, El Paso, TX: May 9, 1995.
NAFTA–TAA–1043; Harvard Sports, Inc., Compton, CA: May 20, 1995.

NAFTA–TAA–1054; Frank H. Fleer Corp., Philadelphia, PA: May 24, 1995.

I hereby certify that the aforementioned determinations were issued during the month of June 1996. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 21, 1996.

Russell T. Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–16917 Filed 7–2–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31, 936]

Boise Cascade Corporation, Vancouver, WA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of June 13, 1996, the petitioners, Paper manufacturers of Local Union 293, Association of Western Pulp and Paper Workers, requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Transitional Adjustment Assistance under the trade act of 1974. The denial notice was signed on April 19, 1996, and published in the **Federal Register** on May 16, 1996 (61 FR 24814).

The petitioner presents evidence that the Department's analysis of U.S. imports of pulp, and all paper products produced at the subject firm, was incomplete.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 17th day of June 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–16912 Filed 7–2–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Leslie Corp. et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than July 15, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than July 15, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, D.C. this 3rd day of June, 1996.

Linda G. Poole,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 06/03/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,394	Leslie Corp (Comp)	Anniston, AL	05/22/96	Orthpedic Supports.
32,395	Cambridge Industries, Inc. (Comp)	Ionia, MI	05/24/96	Automotive Plastic Parts.
32,396	Bill-Co Mfg, Inc. (Wkrs)	Albany, KY	05/20/96	Ladies' Blouses, Pants.
32,397	Buster Brown Apparel (Wkrs)	Chilhowie, VA	05/20/96	Children's Clothes.
32,398	H & E Apparel, Inc. (Comp)	Princeton, KY	05/16/96	Ladies' & Men's Jeans & Casual Pants.
32,399	Kerr Manufacturing Co. (Wkrs)	Messena, NY	05/10/96	Dental Drills.
32,400	Sunbeam Outdoor Products (Wkrs)	Linton, IN	05/15/96	Wrought Iron Furniture.
32,401	SMK Manufacturing, Inc. (Comp)	Placentia, CA	05/16/96	Electro-Mechanical Parts.
32,402	Fluid Pack Pump (Wkrs)	Woodward, OK	02/13/96	Oil Pump Products.
32,403	Huntsman Chemical Corp. (Wkrs)	Rome, GA	05/16/96	Chemicals.
32,404	Brasher Garment Cutting (Comp)	Parsons, TN	05/17/96	Garment Cutting.
32,405	Quaker-Maid Kitchens (Wkrs)	Leesport, PA	05/17/96	Kitchen Cabinets.
32,406	Unifi, Inc. (Comp)	Staunton, VA	04/25/96	Texturized Polyester Yarn & Thread.
32,407	Nolin Sportswear (Wkrs)	Brownsville, KY	05/04/96	Ladies' Jackets and Blazers.
32,408	Heritage Sportswear (Wkrs)	Marion, SC	05/15/96	Sportswear.
32,409	Farberware, Inc. (Wkrs)	Bronx, NY	05/24/96	Stainless Steel Cookware.
32,410	Fourty Four West Mfg (UFCW)	New York, NY	05/22/96	Leather Handbags.
32,411	Charter Fabrics, Inc (Wkrs)	Belville, NY	05/13/96	Domestic Textile Goods.
32,412	Bari Fashions, Inc. (Wkrs)	Hoboken, NJ	05/21/96	Ladies' Coats.
32,413	Carolina Dress Corp. (Comp)	Hayesville, NC	05/23/96	Ladies' Dresses & Sportswear.
32,414	R. Collard & Co. Inc. (Comp)	New York, NY	05/22/96	Design Studio for Apparel.
32,415	Medly Company Cedars Inc. (Wkrs)	Santa, ID	05/24/96	Cedar Posts & Railings.
32,416	Sulphur City Manufacture (Comp)	Red Boiling Spg, TN	05/24/96	Men's & Boy's Jeans.
32,417	Mabex Universal Corp. (Comp)	San Diego, CA	05/20/96	Plastic Packaging.

APPENDIX—Continued

[Petitions instituted on 06/03/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,418	Eaton Corp. (Wkrs)	Marshall, MI	05/20/96	Valves.

[FR Doc. 96–16915 Filed 7–2–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32, 383]

OshKosh B'Gosh, Red Boiling Springs, Tennessee; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 27, 1995 in response to a worker petition which was filed on behalf of workers at OshKosh B'Gosh, Red Boiling Springs, Tennessee.

All workers of the subject firm are covered under amended certification (TA–W–31, 543A). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 13th day of June, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–16913 Filed 7–2–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,542; TA–W–31,543; TA–W–31,543A]

OshKosh B'Gosh, McEwen, TN, Hermitage Springs, TN, and Red Boiling Springs, TN, Respectively; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 3, 1995, applicable to all workers of OshKosh B'Gosh, McEwen, Tennessee and OshKosh B'Gosh, Hermitage Springs, Tennessee. The notice was published in the **Federal Register** on November 24, 1995 (60 FR 58104).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations have occurred at the subject firms' Red Boiling Springs, Tennessee location. The workers are engaged in the production of children's and men's bib overalls.

The intent of the Department's certification is to include all workers of the subject firm who are adversely affected by increased imports of children's and men's bib overalls. Accordingly, the Department is amending the certification to cover the workers of OshKosh B'Gosh, Red Boiling Springs, Tennessee.

The amended notice applicable to TA–W–31,542 and TA–W–31,543 is hereby issued as follows:

All workers of OshKosh B'Gosh, McEwen, Tennessee (TA–W–31,542), OshKosh B'Gosh, Hermitage Springs, Tennessee (TA–W–31,543), and OshKosh B'Gosh, Red Boiling Springs, Tennessee (TA–W–31,543A) who became totally or partially separated from employment on or after October 3, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 13th day of June 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–16914 Filed 7–2–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Pioneer Balloon et al.

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than July 15, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than July 15, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 10th day of June, 1996.

Russell T. Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 06/10/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,419	Pioneer Balloon (USWA)	Willard, OH	05/02/96	Ballons.
32,420	E.D. Smith (Wkrs)	Byhalia, MS	05/30/96	Jams, Jellies, Pasta Sauce.
32,421	Mould Services, Inc. (Wkrs)	Malden, MA	05/28/96	Injection Molds for Shoe Manufactures.

APPENDIX—Continued
[Petitions instituted on 06/10/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,422	IBM Storage Systems Div. (Wkrs)	San Jose, CA	05/29/96	Hard Drive Storage Devices.
32,423	Best Form Foundations (Wkrs)	Johnstown, PA	05/21/96	Ladies' Undergarments.
32,424	Screen Pac (Wkrs)	Roseto, PA	05/30/96	Ladies' Blouses & Pants.
32,425	Jama Southside Apparel (Wkrs)	Petersburg, TN	05/24/96	Ladies' Apparel.
32,426	Ochoco Lumber Co. (Wkrs)	Princeton, ID	05/23/96	Dimensional Lumber.
32,427	McLouth Steel (USWA)	Trenton, MI	05/28/96	Flatt Rolled & Cold Rolled Steel.
32,428	NCC Industries, Inc. (UNITE)	Cortland, NY	05/24/96	Bras.
32,429	Cone Mills Corp. (Wkrs)	Greensboro, NC	05/22/96	Printed Textiles.
32,430	Pictsweet Mushroom Farm (Co.)	Salem, OR	05/30/96	Mushrooms.
32,431	Shaneco Manufacturing Co (Co.)	El Paso, TX	05/23/96	Sewing of Baby Products.
32,432	Amtrol, Inc. (Wkrs)	Plano, TX	05/15/96	Refrigerant Containers.
32,433	Paramount Headwear (Wkrs)	Bernie, MO	05/22/96	Straw Hats & Baseball Caps.
32,434	Todd's Sportswear, Inc. (Co.)	Smithville, TN	05/25/96	Ladies' Apparel.
32,435	Frank H. Fleer Corp. (Wkrs)	Philadelphia, PA	06/25/96	Gum Manufacturing Machines.
32,436	Elcom, Inc. (Co.)	St. Marys, PA	05/08/96	Package Finished Lamp Products.
32,437	Petro Corporation (Wkrs)	Oklahoma City, OK	05/23/96	Crude Oil, Natural Gas.
32,438	Hilton Davis Company (Wkrs)	Newark, NJ	03/04/96	Transoxide-Iron Pigments.
32,439	Moderne Gloves (UNITE)	Gloversville, NY	05/30/96	Men's & Ladies' Dress Gloves.
32,440	Valhall, Inc (Wkrs)	Eugene, OR	05/27/96	Wood Panels.
32,441	Plymouth Resources, Inc (Comp)	Tulsa, OK	05/30/96	Oil and Gas.
32,442	Oneita Industries (Wkrs)	Fingerville, SC	05/27/96	T Shirts.
32,443	Simpson Paper Co. (AWPPW)	Pomona, CA	05/30/96	Hardwood, Softwood Pulp.
32,444	Triangle Auto Spring (Comp)	Columbia, TN	05/29/96	Leaf Springs for Trucks.
32,445	Rubin Gloves, Inc. (UNITE)	Gloversville, NY	05/30/96	Gloves.
32,446	Sunbeam Household Prod (Wkrs)	Cookeville, TN	05/30/96	Motor Winding Parts.

[FR Doc. 96–19616 Filed 7–2–96; 8:45 am]
BILLING CODE 4510–30–M

[NAFTA–00972 and NAFTA–00972A]

Sara Lee Knit Products, Lumberton Sewing; Lumberton, NC, and Jefferson Sewing, Jefferson, NC, Respectively; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on June 6, 1996, applicable to all workers of Sara Lee Knit Products, Lumberton Sewing, located in Lumberton, North Carolina. The certification will soon be published in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. The findings show that worker separations have occurred at Sara Lee's Jefferson Sewing plant in Jefferson, North Carolina. The workers produce t-shirts.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports. Accordingly, the Department is amending the certification to include workers at the Jefferson Sewing production facility.

The amended notice applicable to NAFTA–00972 is hereby issued as follows:

All workers of Sara Lee Knit Products, Lumberton Sewing, Lumberton, North Carolina (NAFTA–00972) and Jefferson Sewing, Jefferson, North Carolina (NAFTA–00972A) who became totally or partially separated from employment on or after March 19, 1995, are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C., this 11th day of June 1996.

Russell T. Kile,

Acting Program Manger, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–16918 Filed 7–2–96; 8:45 am]
BILLING CODE 4510–30–M

[NAFTA–00868]

Stone Ridge Farm, Livingston Manor, New York; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of April 30, 1996, the petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance for workers of the subject firm. The denial notice was signed on April 8, 1996.

The petitioner presents evidence that the Department's analysis of U.S. imports of cattle was incomplete.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 13th day of June 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–16919 Filed 7–2–96; 8:45 am]
BILLING CODE 4510–30–M

[NAFTA–00923]

Weyerhaeuser Company Western Lumber, Kamiah, Idaho; Notice of Revised Determination on Reopening

On May 24, 1996, the Department issued a Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance, applicable to all workers of Weyerhaeuser Company, Western Lumber, located in Kamiah, Idaho. The notice was published in the **Federal Register** on June 6, 1996 (61 FR 28900).

Based on new information received from a customer of the subject firm, the Department, on its own motion, reviewed the findings of the investigation. New findings show that the customer increased import purchases of lumber from Mexico and Canada in 1995 compared to 1994. Sales, production and employment declined during the relevant period.

Conclusion

After careful review of the additional facts obtained on reopening, I conclude that increased imports of articles like or directly competitive with lumber contributed importantly to the declines in sales or production and to the total or partial separation of workers of Weyerhaeuser Company, Western Lumber, Kamiah, Idaho. In accordance with the provisions of the Act, I make the following certification:

All workers of Weyerhaeuser Company, Western Lumber, Kamiah, Idaho who became totally or partially separated from employment on or after March 19, 1995 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 17th day of June 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–16920 Filed 7–2–96; 8:45 am]
BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

Proposed Information Collection Request; Submitted for Public Comment and Recommendations; ERISA Procedure 76–1, Advisory Opinion Procedure

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, ERISA Procedure 76–1 (Advisory Opinion Procedure). A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before September 3, 1996. The Department of Labor is particularly interested in comments which:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility, and clarify the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Washington, DC 20210, (202) 219–7933, FAX (202) 219–4745.

SUPPLEMENTARY INFORMATION:

I. Background

ERISA Procedure 76–1, Advisory Opinion Procedure is used by plan administrators and other individuals when requesting a legal interpretation from the Department regarding specific facts and circumstances (an advisory opinion). The Procedure informs individuals, organizations, and their authorized representatives of the procedures to be followed when requesting an advisory opinion. The procedures promote efficient handling of these requests. The information is used by the Department to determine the substance of the response and to determine whether the Department's response should be in the form of an advisory opinion or information letter. Advisory opinions and information letters issued under this procedure help fiduciaries, employers and other interested parties understand a particular provision of the law and promote compliance with ERISA. Advisory opinions are also useful to the Department as a means of clarifying Departmental policy on certain issues.

II. Current Actions

This existing collection of information should be continued because individuals or organizations affected directly or indirectly by ERISA need legal interpretations from the Department as to their status under the Act and as to the effect of certain actions and transactions. Requests for advisory opinions are voluntary. The information is used by the Department to determine the substance of the response and to determine whether the Department's response should be in the form of an advisory opinion or information letter.

Type of Review: Extension.

Agency: Pension and Welfare Benefits Administration.

Title: ERISA Procedure 76–1, Advisory Opinion Procedure.

OMB Number: 1210–0066.

Affected Public: Business or other for-profit, Not-for-profit institutions, individuals.

Total Respondents: 88.

Frequency: On occasion.

Total Responses: 88.

Average Time per Response: 10 hours.

Estimated Total Burden Hours: 90.

Respondents, proposed frequency of response, and annual hour burden: The Department staff estimates that 88 applicants will submit requests for advisory opinions in any given year. The respondents will be plans and parties in interest to plans. This burden is not normally incurred annually by any one plan. Based on past experience, the staff believes that approximately 10% of the materials required to be submitted under this procedure will be prepared by the respondents. Respondents are expected, in 90% of cases, to contract with service providers such as attorneys, accountants, and third-party administrators to prepare the materials, which is considered a burden cost and not an annual hour burden. Therefore, the Department will recommend that 90 hours be approved as the estimated burden, in light of the current requirements that time spent by service providers not be included in the hourly burden estimate.

Total Burden Cost (capital/start-up): $0.00.

Total Burden Cost (operating/maintenance): $64,780.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 27, 1996.

Gerald B. Lindrew,

Director, Pension and Welfare Benefits Administration, Office of Policy and Legislative Analysis.

[FR Doc. 96–17045 Filed 7–2–96; 8:45 am]

BILLING CODE 4510–29–M

Working Group on Guidance for Selecting and Monitoring Service Providers Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Guidance for Selecting and Monitoring Service Providers of the Advisory Council on Employee Welfare and Pension Benefits Plans will be held on July 16, 1996, in Room S3215 A & B, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the meeting, which will run from 9:30 a.m. to noon and from 1 to 3:30 p.m., is for the group to determine whether its focus will be on what type of general guidance would be useful to fiduciaries who must select and monitor service providers for plans or whether its focus should be narrowed to specific service providers such as investment consultants and investment managers.

The group also plans to conduct an informal survey on codes of conduct in the plan community to establish current industry practices.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before July 5, 1996, to Sharon Morrissey, acting executive secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group on Guidance for Selecting and Monitoring Service Providers should forward their request to the acting executive secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by July 10, 1996, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Acting Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 5.

Signed at Washington, DC, this 27th day of June 1996.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 96–17046 Filed 7–2–96; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL BANKRUPTCY REVIEW COMMISSION

Meeting

AGENCY: National Bankruptcy Review Commission

ACTION: Notice of Public Meeting

TIME AND DATES: Thursday, July 18, 1996; 9 A.M. to 4:45 P.M. and Friday, July 19, 1996; 8:30 A.M. to 2:30 P.M.

PLACE: Thurgood Marshall Federal Judiciary Building, Federal Judicial Center/Education Center, One Columbus Circle, NE., Washington, DC 20544. The public should enter through the South Lobby entrance of the Thurgood Marshall Federal Judiciary Building.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: General administrative matters for the Commission, including substantive agenda; Commission working groups will consider the following substantive matters: improving jurisdiction and procedure; consumer bankruptcy; Chapter 11: uses and consequences; small businesses and partnerships: a special case?; government as creditor or debtor; mass torts, future claims, and bankruptcy; service to the estate: ethical and economic choices; the global economy: preparing for transnational insolvencies. An open forum for public participation will be held on July 18, 1996 from 11:15 a.m. to 12 p.m.

CONTACT PERSONS FOR FURTHER INFORMATION: Contact Susan Jensen-Conklin or Carmelita Pratt at the National Bankruptcy Review Commission, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE., Suite G–350, Washington, DC 20544; Telephone Number: (202) 273–1813.

Susan Jensen-Conklin,

Deputy Counsel.

[FR Doc. 96–17017 Filed 7–2–96; 8:45 am]

BILLING CODE 6820–36–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Southern Nuclear Operating Company, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–2 and NPF–8, issued to Southern Nuclear Operating Company, Inc. (the licensee), for operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2 located in Houston County, Alabama.

The proposed amendments would revise Technical Specification (TS) Table 4.3–1 to delete the requirement for surveillance of the manual safety injection to the reactor trip circuitry until the next unit shutdown, following which, this testing will be performed prior to Mode 2 entry. This change is applicable only during Unit 1, cycle 14 and Unit 2, cycle 11.

This requested TS change is a followup to a Notice of Enforcement Discretion (NOED) granted to the licensee that is in effect from the time of issuance on June 21, 1996, until approval of this exigent TS. NRC Inspection Manual, Part 9900, "Operations—Notice of Enforcement Discretion," requires that a followup TS amendment be issued within 4 weeks from the issuance of the NOED.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the Farley Nuclear Plant Units 1 and 2 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Since the SI [safety injection] manual actuation handswitch is not taken credit for in any transient or accident analyses, including LOCA [loss-of-coolant accident], non-LOCA, and steam generator tube rupture for either safety injection and/or reactor trip, failure to test the reactor trip function of the manually initiated SI signal for the remainder of operating cycle or following each units shutdown, prior to Mode 2 entry, would not increase the probability or consequences of an accident previously evaluated. In addition, operator action required by procedures will ensure that a reactor trip is verified to have occurred anytime SI is automatically actuated and prior to manual SI actuation.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed amendment does not introduce any change to the plant design basis. Any hypothetical failure of the handswitch contacts to cause a failure to manually trip the reactor is compensated for by the redundant trip features associated with the reactor trip system. Examples are the reactor manual trip handswitch, reactor trip setpoints set to actuate prior to reaching SI setpoints, and the redundant train manual SI handswitch. Therefore, SNC [Southern Nuclear Operating Company] concludes that the proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendment does not involve a significant reduction in a margin of safety.

Changing the surveillance frequency to allow for continued operation with the SI manual input to reactor trip system not tested does not involve a reduction in the margin of safety because of the redundant features associated with the reactor trip system and because of operator actions required by emergency response procedures (ERPs). In addition, for power levels above 35% RTP [rated thermal power], the SI handswitch has been shown to result in the intended function by tripping the reactor through the turbine trip logic. Therefore, SNC concludes based on the above, that the proposed change does not result in a significant reduction of margin with respect to plant safety as defined in the Final Safety Analysis Report or the bases of the FNP [Farley Nuclear Plant] technical specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 2, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, P.O. Box 1369, Dothan, Alabama. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with

the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 248–5100 (in Missouri 1 (800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to M. Stanford Blanton, Esq., Balch and Bingham, P.O. Box 306, 1710 Sixth Avenue, Birmingham, Alabama, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 24, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, P.O. Box 1369, Dothan, Alabama.

Dated at Rockville, Maryland, this 27th day of June 1996.

For the Nuclear Regulatory Commission.

Byron L. Siegel,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–16964 Filed 7–2–96; 8:45 am]

BILLING CODE 7590–01–P

Boraflex Degradation in Spent Fuel Pool Storage Racks; Issued

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter 96–04 to notify all licensees of nuclear power reactors about problems that have been encountered with using Boraflex in spent fuel storage racks for the nonproductive absorption of neutrons, and for licensees that use Boraflex, to request implementation of certain actions and require the submittal of a written response. This generic letter is available in the NRC Public Document Room under accession number 9606240132.

DATES: The generic letter was issued on June 26, 1996.

ADDRESSEES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Laurence I. Kopp at (301) 415–2879.

SUPPLEMENTARY INFORMATION: The information that is being requested will enable the NRC staff to determine whether licensees are complying with the current licensing basis for the facility with respect to GDC 62 for the prevention of criticality in fuel storage and handling, and 5-percent subcriticality margins that are either contained in the technical specifications, or committed to in the updated FSARs, of plants containing Boraflex in the spent fuel storage racks. The staff is not establishing a new position for such compliance in this generic letter.

Dated at Rockville, Maryland, this 26th day of June, 1996.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Deputy Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 96–16963 Filed 7–2–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Rector Safeguards will hold a meeting on August 8–10, 1996, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 27, 1995 (60 FR 58393).

Thursday, August 8, 1996

8:30 A.M.–8:45 A.M.: Opening Remarks by the ACRS Chairman

(Open)—The ACRS Chairman will make opening remarks regarding conduct on the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 A.M.–10:45 A.M.: Supplemental Safety Evaluation Report for Evolutionary Plant Designs

(Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff, General Electric Nuclear Energy (GENE), and ABB-Combustion Engineering (ABB–CE) regarding the proposed changes to the GENE Advanced Boiling Water Reactor (ABWR) and ABB–CE System 80+ evolutionary plant designs and the associated NRC staff Safety Evaluation Report. Other interested parties will participate, as appropriate.

A portion of this session may be closed to discuss GENE and ABB–CE proprietary information applicable to this matter.

11:00 A.M.–1:00 P.M.: SECY–96–128, "Policy and Key Technical Issues Pertaining to the Westinghouse AP600 Standardized Passive Reactor Design"

(Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Westinghouse Electric Corporation regarding SECY–96–128, which includes proposed staff positions on three policy issues concerning Prevention and Mitigation of Severe Accidents, Post-72-Hour Actions, and External Reactor Vessel Cooling, as well as status of resolution of seven key technical issues, pertaining to the AP600 passive plant design. Other interested parties will participate, as appropriate.

A portion of this session may be closed to discuss Westinghouse proprietary information applicable to this matter.

2:00 P.M.–4:30 P.M.: Risk-Informed and Performance-Based Regulations and Related Matters

(Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding several issues raised in the Staff Requirements Memoranda dated May 15 and June 11, 1996, including:

- Role of performance-based regulation in the PRA Implementation Plan
- Plant-specific application of safety goals
- Requirement for risk neutrality versus the allowance for an acceptable increase in risk
- Risk-informed inservice testing and inservice inspection requirements
- Pilot applications for risk-informed and performance-based regulations

Representatives of the nuclear industry will participate, as appropriate.

4:45 P.M.–5:00 P.M.: Subcommittee Report

(Open)—The Committee will hear a report by and hold discussions with the Chairman of the ACRS Subcommittee on Instrumentation and Control Systems and Computers regarding the matters discussed at the August 7, 1996 Subcommittee meeting.

5:00 P.M.–7:00 P.M.: Preparation of ACRS Reports

(Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting as well as a proposed ACRS report on Steam Generator Tube issues.

Friday, August 9, 1996

8:30 A.M.–8:35 A.M.: Open Remarks by the ACRS Chairman

(Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 A.M.–9:30 A.M.: Risk-Based Analysis of Reactor Operating Experience

(Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding risk-based analysis of reactor operating experience.

Representatives of the nuclear industry will participate, as appropriate.

9:30 A.M.–11:00 A.M.: Spent Fuel Pool Cooling Issues

(Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the staff review of the safety issues associated with spent fuel pool cooling systems.

Representatives of the nuclear industry and other interested persons will participate, as appropriate.

11:15 A.M.–12:00 Noon: Report of the Planning and Procedures Subcommittee

(Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS staff.

A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

1:15 P.M.–1:45 P.M.: Future ACRS Activities

(Open)—The Committee will discuss recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

1:45 P.M.–2:00 P.M.: Reconciliation of ACRS Comments and Recommendations

(Open)—The Committee will discuss responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports, including the EDO response related to the June 6, 1996 ACRS report on Regulatory Guidance Documents Related to Digital Instrumentation and Control Systems.

2:00 P.M.–7:00 P.M.: Preparation of ACRS Reports

(Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting as well as a proposed ACRS report on Steam Generator Tube issues.

Saturday, August 10, 1996

8:30 A.M.–12:30 P.M.: Preparation of ACRS Reports

(Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting as well as a proposed report on Steam Generator Tube issues.

12:30 P.M.–1:00 P.M.: Strategic Planning

(Open)—The Committee will continue its discussion of items that are of significant importance to NRC, including rebaselining of the Committee activities for FY 96–97.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 27, 1995 (60 FR 49925). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Public Law 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2); to discuss GENE, ABB–CE, and Westinghouse proprietary information per 5 U.S.C. 552b(c)(4); and

to discuss matters the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 A.M. and 4:15 P.M. EDT.

ACRS meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the "NRC MAIN MENU." Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: June 27, 1996.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 96–16962 Filed 7–2–96; 8:45 am]

BILLING CODE 7590–01–M

UNITED STATES NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 8, 1996, through June 21, 1996. The last biweekly notice was published on June 19, 1996 (61 FR 31171).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By August 2, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: May 1, 1996

Description of amendment request: The proposed amendment would modify Table 3.1.1, "Reactor Protection System (SCRAM) Instrumentation Requirement," Table 3.2.C.1, "Instrumentation that Initiates Rod Blocks," and Technical Specification 3/4.4, "Standby Liquid Control."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Note 7 to Table 3.1.1 and Note 6 to Table 3.2.C.1

The changes to Note 7 to Table 3.1.1 and the addition of Note 6 to Table 3.2.C.1 are proposed to clarify their requirements, the appropriate action to take, and their relationship to plant modes. This revised scram and rod block applicability is acceptable because control rods withdrawn from a core cell containing no fuel assemblies have a negligible impact on the reactivity of the core, and, therefore, these features are not required to be operable (i.e. provide the capability to scram). Provided all rods otherwise remain inserted, the RPS [Reactor Protection System] functions serve no purpose and are not required. In this condition, the required shutdown margin (Specification 3.3.A.1) and the required one-rod-out interlock (Specification 3.10.A) ensure that no event requiring the RPS or Rod Block will occur.

The Actions of Table 3.1.1 for inoperable equipment were previously revised in Amendment 147 to be consistent with the improved STS [Standard Technical Specifications]. Action (A) requires fully inserting all insertable control rods in core cells containing one or more fuel assemblies. Since Specification 3.10.A requires all control rods to be fully inserted during fuel movement, the proposed applicable conditions cannot be entered while moving fuel. In addition, Specification 3.10.D used for controlling multiple control rod removal, requires all control rods in a 3X3 array centered on the CRDs [Control Rod Drive] being removed to be fully inserted and electrically disarmed and all other control rods fully inserted. The only possible action is control rod withdrawal, which is addressed by Action A.

Hence operating Pilgrim in accordance with the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Section 3/4.4

The proposed change involves reformatting, renumbering, and rewording of the existing Technical Specifications and Bases along with other changes to the Technical Specifications discussed above. The reformatting, renumbering, and rewording along with the other changes listed involves no technical changes to existing Technical Specifications, and does not impact initiators of analyzed events. It also does not impact the assumed mitigation of accidents or transient events. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change relocates requirements to other sections of the Technical Specifications, to plant procedures, or to the Technical Specifications BASES. The procedure change and BASES change processes require any changes that reflect plant design as described in the FSAR [Final Safety Analysis Report] be evaluated in accordance with 10 CFR 50.59. Since any changes will be evaluated per 10 CFR 50.59, no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change provides more stringent requirements than previously existed in the Technical Specifications. The more stringent requirements will not result in operation that will increase the probability of initiating an analyzed event. If anything the new requirements may decrease the probability or consequences of an analyzed event by incorporating the more restrictive changes discussed above. The change will not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, or components as described in the safety analyses. Therefore, the change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change deletes the requirements for Standby Liquid Control (SLC) System operability during Hot Shutdown, Cold Shutdown, and Refueling. The SLC System is not assumed in the initiation of any previously evaluated events and therefore the proposed change will not increase the probability or consequence of a previously analyzed accident. The SLC System is not assumed to operate in the mitigation of any previously analyzed accidents which are assumed to occur during Hot Shutdown, Cold Shutdown or Refueling. This change will not result in operation that will increase the probability of initiating an analyzed event. This change will not alter assumptions relative to mitigation of an accident or alter the operation of process variables, structures, systems, or components as described in the safety analyses. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change adds an action for both SLC subsystems inoperable that delays the requirement to initiate plant shutdown immediately and allows time to recover at least one subsystem before subjecting the plant to a potentially unnecessary transient. Allowing a short period of time to recover one subsystem is acceptable because of the large number of independent control rods available to shut down the reactor and the diversity of means available to cause control rod insertion. This change will not alter assumptions relative to mitigation of an accident or alter the operation of process variables, structures, systems, or components as described in the safety analyses. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change deletes requirements for demonstrating operability of the redundant subsystems which eliminates excessive and unnecessary testing of safety significant equipment. This is consistent with guidance 10.1 of Generic Letter 93-05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirement for Testing During Power Operations". The change does not affect the ability of the SLC system to perform on demand, and by actually lowering the number of demands to demonstrate operability, reduces the probability of equipment failure. Since the change will not alter assumptions relative to mitigation of an accident or alter the operation of process variables, structures, systems, or components as described in the safety analyses, the change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change replaces the requirement to verify B-10 enrichment concentration by test anytime boron is added to the solution and each refueling outage with verifying the enrichment prior to addition. Since enrichment of the solution in the tank cannot change by any other means but chemical addition, ensuring that only properly enriched material is available for addition is adequate to maintain enrichment at the required level. This change will not alter assumptions relative to mitigation of an accident or alter the operation of process variables, structures, systems, or components as described in the safety analyses. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Note 7 to Table 3.1.1 and Note 6 to Table 3.2.C.1

The changes to Note 7 to Table 3.1.1, and the addition of Note 6 to Table 3.2.C.1 are proposed to clarify their requirements, the appropriate action to take, and their relationship to plant modes. This revised scram and rod block applicability is acceptable because control rods withdrawn from a core cell containing no fuel assemblies have a negligible impact on the reactivity of the core, and, therefore, are not required to be operable. Provided all rods otherwise remain inserted, the RPS functions serve no purpose and are not required. In this condition, the required shutdown margin (Specification 3.3.A.1) and the required one-rod-out interlock (Specification 3.10.A) ensure that no event requiring the RPS or Rod Block will occur.

The Actions of Table 3.1.1 for inoperable equipment were previously revised in Amendment 147 to be consistent with the improved STS. Action (A) requires fully inserting all insertable control rods in core cells containing one or more fuel assemblies. Since Specification 3.10.A requires all control rods to be fully inserted during fuel movement, the proposed applicable conditions cannot be entered while moving fuel. In addition, Specification 3.10.D, used for controlling multiple control rod removal, requires all control rods in a 3X3 array centered on the CRDs being removed to be fully inserted and electrically disarmed and all other control rods fully inserted. The only possible action is control rod withdrawal, which is addressed by Action A. Hence, operating Pilgrim in accordance with the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Section 3/4.4

The proposed change involves reformatting, renumbering, and rewording of the existing Technical Specifications and Bases along with other changes to the Technical Specifications discussed above. The reformatting, renumbering, and rewording along with the other changes listed involves no technical changes to existing Technical Specifications. These changes are administrative and do not impact the assumed mitigation of accidents or transient events. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change relocates requirements to other Technical Specification sections, to plant procedures, or to the Technical Specification BASES. Relocating requirements will not alter the plant configuration (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. Relocating requirements will not impose different requirements and adequate control of information will be maintained. Relocating requirements will not alter assumptions made in the safety analysis and licensing basis. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes make some existing requirements more restrictive and add additional requirements to the Technical Specifications but will not alter the plant configuration (no new or different type of equipment will be installed) or change methods governing normal plant operation. These changes do impose different requirements, however, they are consistent with assumptions made in the safety analyses. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change relaxes the modes of applicability for the SLC. Relaxing the applicability will not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

Note 7 to Table 3.1.1 and Note 6 to Table 3.2.C.1

This revised scram and rod block applicability is acceptable because control rods withdrawn from a core cell containing no fuel assemblies have a negligible impact on the reactivity of the core, and, therefore, are not required to be operable (provide a scram). Provided all rods otherwise remain inserted, the RPS functions serve no purpose and are not required. In this condition, the required shutdown margin (Specification 3.3.A.1) and the required one-rod-out interlock (Specification 3.10.A) ensure that no event requiring the RPS or Rod Block will occur.

The Actions of Table 3.1.1 for inoperable equipment were previously revised in Amendment 147 to be consistent with the improved STS. Action (A) requires fully inserting all insertable control rods in core cells containing one or more fuel assemblies. Since Specification 3.10.A requires all control rods to be fully inserted during fuel movement, the proposed applicable conditions cannot be entered while moving fuel. In addition, Specification 3.10.D, used for controlling multiple control rod removal, requires all control rods in a 3X3 array centered on the CRDs being removed to be fully inserted and electrically disarmed and all other control rods fully inserted. The only possible action is control rod withdrawal, which is addressed by Action A. Therefore, operating Pilgrim in accordance with the proposed changes will not involve a significant reduction in a margin of safety.

Section 3/4.4

The administrative changes involve no technical changes. These proposed changes will not reduce a margin of safety because there is no impact on any safety analysis assumptions. Also, because the change is administrative in nature, no question of safety is involved. Therefore, these changes do not involve a significant reduction in a margin of safety. The change relocates requirements to other Technical Specification sections, to plant procedures, or to the Technical Specification BASES. These changes will not reduce a margin of safety since there is no impact on any safety analysis assumptions. In addition, the requirements to be transposed are the same as the existing Technical Specifications. Since any changes to plant procedures and Technical Specification BASES are required to be evaluated per 10 CFR 50.59, no reduction (significant or insignificant) in a margin of safety will be allowed. Therefore, these changes will not involve a significant reduction in a margin of safety.

The addition of new requirements and making existing ones more restrictive either increases or does not affect the margin of safety. These changes do not impact any safety analysis assumptions. As such, no question of safety is involved. Therefore, these changes will not involve a significant reduction in a margin of safety.

The proposed change would remove a backup (in the Hot Shutdown, Cold Shutdown, and Refueling Modes) to the available systems for reactivity control; however, this backup is not considered in the margin of safety when determining the required reactivity for shutdown and refueling events. This change will have no impact on any safety analysis assumptions. As such, no question of safety is involved. Therefore, this change does not involve a significant reduction in a margin of safety.

The SLC system is not assumed to function in any DBA or transient and is not the primary success path of a safety sequence analysis. It is a backup to the CRD scram function, therefore, allowing a short period of time to recover one subsystem will have no impact on any safety analysis assumptions. As such, no question of safety is involved. Therefore, this change does not involve a significant reduction in a margin of safety.

The change does not alter the requirements for enrichment/ concentration of the boron solution necessary to satisfy 10 CFR 50.62. Since enrichment of the solution in the tank cannot change by any other means but chemical addition, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199

NRC Project Director: Jocelyn A. Mitchell, Acting Director

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: November 15, 1995

Description of amendments request: The proposed amendments would revise the Technical Specifications (TS) to alter the wording of TS 4.8.2.5.a in accordance with the guidance of Generic Letter (GL) 91-09, "Modification of Surveillance Interval For The Electrical Protection Assemblies In Power Supplies For The Reactor Protection System."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change does not alter the design, function, or operation of the EPAs [Electrical Protective Assemblies]. The proposed amendments modify the surveillance requirement for an electrical protective device on the Reactor Protection System [RPS]. The RPS-EPA units are designed to protect RPS equipment from abnormal operating voltage or frequency. The proposed change will preclude the need to test the RPS-EPA units during power operation. This will eliminate the potential for reactor scrams and Group isolations during performance of the surveillance, thus, preventing unwarranted challenges to safety systems. The proposed change does not affect any accident precursor or initiator. Therefore, the probability of an accident is not affected by the proposed change. The proposed amendments do not affect the operability of the RPS-EPA units. The proposed change does not affect the ability of the Reactor Protection System to maintain the integrity of the fuel cladding, protect the reactor coolant pressure boundary, or limit the amount of energy released to primary containment. Therefore, the consequences of an accident is not affected by the proposed change.

2. The proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, these proposed amendments do not alter the design, functions, or operation of the EPAs. The RPS relay trip logic remains protected from power supplies operating with abnormal voltage or frequency. Additionally, the redundancy of this protection is not changed.

Thus, the proposed amendments do not create the possibility of a new or different kind of accident.

3. The proposed amendments do not involve a significant reduction in a margin of safety because the benefit to safety by reducing the frequency of testing during power operation and attendant possible challenges to safety systems more than offsets any risk to safety from relaxing the surveillance requirement to test the EPAs during power operation. The testing of each EPA channel involves a dead-bus transfer and the momentary interruption of power results in a half scram and half isolation. Generic Letter 91-09 notes that many plants have encountered problems with the reset of the half trip resulting in inadvertent scrams and group isolations that challenge safety systems during power operation. Eliminating EPA testing at power operation increases the margin of safety by eliminating the potential for trips due to testing that challenge safety systems. An insignificant reduction in the margin of safety is introduced by increasing the test interval up to a maximum of a refuel cycle which will produce a small increase in risk that an inoperable EPA would not be detected. The elimination of potential challenges to safety systems provides a safety benefit that offsets the increased risks of component failure.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Eugene V. Imbro

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: June 6, 1996

Description of amendment request: The proposed change would revise technical specifications (TS) Section 4.2.3 to allow the licensee to defer the ultrasonic inspection of the reactor coolant pump flywheel for one operating cycle.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The safety function of the Reactor Coolant Pump (RCP) flywheel is to provide a coastdown period during which the RCPs would continue to provide reactor coolant flow to the core after a loss of power to the RCPs. The maximum loading on the RCP motor flywheel results from overspeed following a large break Loss of Coolant Accident (LOCA). The estimated maximum obtainable speed in the event of a Reactor Coolant System (RCS) piping break was established conservatively, and the proposed one-time change does not affect that analysis.

The RCP flywheels have been carefully designed and manufactured from high quality steel. Twenty-two inspections have been performed at HBRSEP, Unit No. 2 over the past 25 years and no indications have been discovered that would affect the integrity of the flywheel. The Westinghouse Owners Group (WOG) has performed an extensive study documented in WCAP-14535, "Topical Report on Reactor Coolant Pump Flywheel Inspection Elimination," that includes an evaluation of industry experience, a stress and fracture evaluation, and a risk assessment, and has concluded that RCP flywheel inspections may be safely eliminated.

Reduced coastdown times due to a single failed flywheel would not place the plant in an unanalyzed condition since a locked rotor (i.e., an instantaneous coastdown) is analyzed in the Updated Final Safety Analysis Report (UFSAR). The proposed change also does not increase the amount of radioactive material available for release or modify any systems used for mitigation of releases during an accident. Therefore, the proposed change does not involve an increase in the probability of consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not change the design, configuration, or method of operation of the plant. Therefore, the proposed change will not create the possibility of a new kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The RCP flywheels have been carefully designed and manufactured from high quality steel. Twenty-two inspections have been performed at HBRSEP, Unit No. 2 over the past 25 years and no indications have been discovered that would affect the integrity of the flywheel. The Westinghouse Owners Group (WOG) has performed an extensive study documented in WCAP-14535, "Topical Report on Reactor Coolant Pump Flywheel Inspection Elimination," that includes an evaluation of industry experience, a stress and fracture evaluation, and a risk assessment, and has concluded that RCP flywheel inspections may be safety eliminated. The proposed change would only result in a one-time deferral of the scheduled inspection for one operating cycle. In consideration of the historical integrity of the HBRSEP, Unit No. 2 RCP flywheels, the industry experience, the results of the WOG study, and the deferral of the risk of RCP flywheel damage during disassembly and inspection, we conclude that a one operating cycle deferral of the scheduled RCP flywheel inspection will not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Eugene V. Imbro

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: May 31, 1996

Description of amendment request: The proposed amendment would change the plant Technical Specifications (TS) Table 3.3-7, Seismic Monitoring Instrumentation, and TS Table 4.3-4, Seismic Monitoring Instrumentation Surveillance Requirements, to correct the location described for one of the three Triaxial Peak Accelerograph Recorders.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

These recorders are passive components which serve only a recording function. They can neither initiate an accident nor serve to mitigate accident consequences. The proposed change serves only to correct the location, commensurate with design documents, for one of the three recorders described in the Technical Specifications. Accordingly, this change is administrative in nature. Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed correction is an administrative change to correct the location of a recorder currently described in the Technical Specifications. No physical alterations to plant equipment are being made, and there will be no changes that alter how any safety-related system performs its function. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

Technical Specification Bases 3/4.3.3.3 specify the acceptance level for seismic instrumentation as "consistency" with the recommendations of Regulatory Guide 1.12. Since the regulatory guide states only that one recorder should be provided at a "selected location on the reactor piping," it is not material whether it is installed on Loop 1 versus Loop 2. Therefore, the proposed change does not affect a margin of safety as defined in the Bases to the Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Eugene V. Imbro

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Dates of amendment request: December 18, 1995, May 3 and June 11, 1996

Description of amendment request: The licensee proposed to change the Turkey Point Units 3 and 4 Technical Specifications (TS) to uprate the core thermal output of Turkey Point Units 3 and 4 from 2200 MWt to 2300 MWt. The proposed TS changes were divided into eight groups. The submittal included a "No Significant Hazards" evaluation for each of the eight groups. The groupings are as follows:

TS changes associated with the uprated power level, the revised core safety limits, revised DNB [departure from nucleate boiling] parameters, Engineered Safety Features Actuation System (ESFAS) and reactor trip setpoint changes, and Reactor Coolant Pump (RCP) Breaker Position Trip, were evaluated together. The safety of these proposed changes were verified by the accident analyses that were completed in support of the uprated power.

TS changes associated with reducing the SI [safety injection] pump discharge head requirement and increasing usable volume requirements for the Demineralized Water Storage Tank (DWST) and the Condensate Storage Tank (CST) were addressed together.

TS changes associated with pressurizer and main steam safety valve (MSSV) setpoint tolerance increases were assessed together.

TS changes associated with operation at reduced power with inoperable MSSVs were assessed separately.

TS changes associated with the service period for heatup and cooldown pressure-temperature limit curves were assessed together.

The Surveillance Requirement change for the emergency containment cooling [ECC] unit operability was handled separately since this was a design change that required extensive evaluations.

TS change associated with the methyl iodide removal efficiency in the Control Room Emergency Ventilation System was assessed separately.

All LOCA [loss-of-coolant accident] related changes dealing with the peaking factor increase, COLR [core operating limit report] changes, Evaluation Model references, and relocation of peaking factors from the TS and subsequent inclusion in the COLR were included in one "No Significant Hazards" evaluation. All of the items are closely related since the LOCA analysis is performed to ensure peaking factor acceptability.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

LICENSE CONDITION, RATED THERMAL POWER, CORE SAFETY LIMITS, REACTOR TRIP SYSTEM INSTRUMENTATION TRIP SETPOINTS, ESFAS INSTRUMENTATION TRIP SETPOINTS, DNB PARAMETERS AND RCP BREAKER POSITION TRIP

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated because operation with these revised values will not cause any design or analysis acceptance criteria to be exceeded. The structural and functional integrity of all plant systems are unaffected. The overtemperature Delta T and overpower Delta T reactor trip functions as well as ESFAS functions are part of the accident mitigation response and are not accident initiators. All proposed changes have been assessed and no design and analysis acceptance criteria have been exceeded. Therefore the probability of occurrence previously evaluated is not affected.

The proposed changes do not affect the integrity of the fission product barriers utilized for mitigation of dose consequences as a result of an accident. Dose consequences were reviewed and reanalyzed (as needed) and found acceptable. Therefore, the probability or consequences of an accident previously evaluated are not significantly increased.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because their effects do not affect accident initiation sequences. All new operating configurations have been evaluated and no new limiting single failures have been identified. In addition, no new failure modes have been identified. Therefore, it is concluded that no new or different kind of accident from any accident previously evaluated has been created as a result of these revisions.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed changes do not involve a reduction in a margin of safety because the margin of safety associated with these parameters as verified by the results of the accident analyses, are within acceptable limits. All transients impacted have been analyzed and have met the applicable accident analyses acceptance criteria (e.g., DNBR [departure from nucleate boiling ratio], RCS [reactor coolant system] pressure, secondary side pressure, etc.). The margin of safety required for each affected safety analysis is maintained. The adequacy of the revised Technical Specifications values has been confirmed such that there is no reduction in the margin of safety. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

AVAILABLE VOLUME CHANGE FOR CONDENSATE STORAGE TANK (CST) AND DEMINERALIZED WATER STORAGE TANK (DWST), AND REDUCED SAFETY INJECTION (SI) PUMP DISCHARGE HEAD REQUIREMENT.

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The revised tank volumes and SI head requirements have been evaluated with respect to system performance and analysis impacts. All accident analysis acceptance criteria continue to be met. The design function of all affected systems have been reviewed and all system design criteria continue to be met. The structural and functional integrity of the affected systems are unaffected. These changes are not initiators for any accident and therefore the probability of occurrence of an accident previously evaluated has not increased.

The proposed changes do not affect the integrity of the fission product barriers for mitigation of dose consequences. All dose consequences remain well within the 10 CFR 100 limits. Therefore there is no increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The revised tank volumes and SI head requirements do not create the possibility of a new or different kind of accident from any accident previously evaluated because these modifications do not affect accident initiation sequences. No new operating configuration is being imposed by the adjustments that would create a new failure scenario. In addition, no new failure modes or limiting single failures have been identified. Therefore, it is concluded that no new or different kind of accident from any accident previously evaluated have been created as a result of these revisions.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed changes do not involve a reduction in a margin of safety because the margin of safety associated with these parameters, as verified by the results of the accident analyses and system evaluations, are within acceptance limits. The margin of safety required for each affected safety analysis is maintained. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

PRESSURIZER AND MAIN STEAM SAFETY VALVE SETPOINT TOLERANCES

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The revised tolerances for main steam safety valves and pressurizer safety valves do not involve an increase in the probability or consequences of an accident previously evaluated because operation with these revised values will not cause any design or analytical acceptance criteria, such as those applicable to primary and secondary side pressures to be exceeded. The structural and functional integrity of the valves are unaffected by this proposed change. The tolerance changes do not initiate or cause initiation of any transient. Therefore, the probability of occurrence previously evaluated is not affected.

The changes do not affect the integrity of the fission product barriers utilized for dose consequence mitigation. Therefore, the probability or consequences of an accident previously evaluated is not increased.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The revised valve tolerances do not create the possibility of a new or different kind of accident from any accident previously evaluated, because the tolerances do not affect accident initiation sequences. No new operating configuration is being imposed by the tolerances that would create a new failure scenario. In addition, no new failure modes or limiting single failures have been identified. Therefore, it is concluded that no new or different kind of accident from any accident previously evaluated have been created as a result of these revisions.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The changes to valve tolerances do not involve a reduction in a margin of safety because the margin of safety associated with the MSSVs and the pressurizer safety valves, as verified by the results of the accident analyses and valve evaluations, are within acceptable limits. Transients impacted by this change have been analyzed and have met the applicable accident analyses acceptance criteria, such as those applicable to primary and secondary side pressure. The margin of safety required for each affected safety analysis is maintained. This conclusion is not changed by the valve tolerances for the main steam safety valves and the pressurizer safety valves. Therefore, the changes do not involve a significant reduction in the margin of safety.

OPERATION AT REDUCED POWER WITH INOPERABLE MAIN STEAM SAFETY VALVES

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed maximum allowable power level values will ensure that the secondary side steam pressure will not exceed 110 percent of the design pressure following a Loss of Load/Turbine Trip event, when one or more main steam safety valves (MSSVs) are declared inoperable. The proposed change will not impact the classification of the Loss of Load/Turbine Trip event as a Condition II probability event (faults of moderate frequency) per ANSI - N18.2, 1973. Accordingly, since the proposed maximum allowable power level will maintain the capability of the MSSVs to perform their pressure relief function associated with a Loss of Load/Turbine Trip event, there will be no effect on the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve any change to the configuration of any plant equipment, and no new failure modes have been defined for any plant system or component. The proposed maximum allowable power level as specified in TS Table 3.7-1 will improve the capability of the MSSVs to perform their pressure relief function to ensure the secondary side steam pressure does not exceed 110 percent of design pressure following a Loss of Load/ Turbine Trip event. Therefore, since the function of the MSSVs is improved by the proposed changes, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed changes to the Technical Specifications do not involve a significant reduction in a margin of safety. The algorithm methodology used to calculate the maximum allowable power level is conservative and bounding since it is based on a number of inoperable MSSVs per loop; i.e., if only one MSSV in one loop is out of service, the required action to reduce power to the maximum allowable power level would be the same as if one MSSV in each loop were out of service. Another conservatism with the algorithm methodology is with the assumed minimum total steam flow rate capability of the operable MSSVs. The assumption is that if one or more MSSVs are inoperable per loop, the inoperable MSSVs are the largest capacity MSSVs, regardless of which capacity MSSVs are actually inoperable.

Therefore, since the maximum allowable power level calculated for the proposed changes using the algorithm methodology are more conservative and ensure that 110 percent of secondary side steam pressure is not exceeded following a Loss of Load/ Turbine Trip event, this proposed license amendment will not involve a significant reduction in a margin of safety.

SERVICE PERIOD FOR HEATUP AND COOLDOWN PRESSURE-TEMPERATURE LIMIT CURVES

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Calculation of the service period for the heatup and cooldown curves does not involve an increase in the probability or consequences of an accident previously evaluated because the calculations were completed to verify the adequacy of the existing curves and to determine an appropriate service period. The use of approved methods and the acceptable results have shown that no design or analysis criteria are changed. The structural and functional integrity of the reactor vessel has been verified.

No fission product barriers or inputs to dose analyses are adversely affected by these calculations and reverification of the existing heatup/cooldown curves. Therefore, the probability or consequences of an accident previously evaluated are not increased.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The revised service period does not create the possibility of a new or different kind of accident from any accident previously evaluated because the recalculation of an acceptable service period does not affect accident initiation sequences. No new operating configuration is being imposed by the calculations that would create a new failure scenario. In addition, no new failure modes or limiting single failures have been identified. Therefore, the types of accidents defined in the UFSAR continue to represent the credible spectrum of events to be analyzed which determine safe plant operation. Therefore, it is concluded that no new or different kind of accident from any accident previously evaluated have been created as a result of these revisions.

(3) Operation of the facility in accordance with the proposed license amendments would not involve a significant reduction in a margin of safety.

Calculations were performed to determine the service period appropriate for the existing curves. The changes to service period do not involve a reduction in a margin of safety because the margin of safety associated with the heatup/cooldown curves, as verified by the results of the analyses, are unchanged. Therefore, the proposed change to the service period does not involve a significant reduction in the margin of safety.

MODIFICATION TO SURVEILLANCE REQUIREMENT FOR EMERGENCY CONTAINMENT COOLING SYSTEM

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The purpose of the ECC units is to help mitigate the consequences of an accident (i.e., to help maintain the containment pressure and temperature within their design values following a design basis accident). The ECC units do not operate during normal operation of the plant. Failure of the ECC units would not initiate a plant transient or accident. Therefore, the proposed change involving the ECC units would not affect the probability of occurrence of an accident previously evaluated.

Evaluations demonstrate that, with two ECC units operating during a LOCA or MSLB [main steamline break], the containment pressure and temperature will be maintained within their design values. These evaluations also demonstrate that, with two ECC units operating during a LOCA or MSLB, the temperature of the CCWS [component cooling water system] will be maintained within its design temperature. Therefore, the proposed change involving the ECC units would not affect the consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The purpose of the ECC units is to mitigate design basis accidents, and failure of the ECC units would not cause a plant transient or accident. Furthermore, a single failure of an ECC unit during a LOCA or MSLB would not lead to a new or different kind of accident. Although the revised Technical Specifications require two ECC units to start automatically on a LOCA signal, they would also require that all three ECC units be operable. On a single failure of an operating ECC unit, there would be sufficient time to start the standby ECC unit to accomplish the design function of the ECC system. Therefore, the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed change in the actuation logic of the ECC units would not cause either the containment pressure and temperature or the CCWS temperature to exceed their design values. While the energy released into containment and subsequently transferred to the CCWS will increase as a result of the thermal uprate, this increase is insignificant and will not result in either the containment or CCWS exceeding a design limit. Therefore, the proposed change would not affect the margin of safety.

CONTROL ROOM EMERGENCY VENTILATION SYSTEM

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not affect the integrity of the fission product barriers utilized for mitigation of dose consequences as a result of an accident. Only the iodide removal efficiency of the control room emergency ventilation system is increased, and this change is in the conservative direction.

To assure consistency between testing efficiency and analysis assumptions for post-accident control room doses, the methyl iodide removal efficiency required to be demonstrated by laboratory test, is being increased from 90% to 99%. This increase in testing efficiency is consistent with the recommendations set by the NRC staff in Regulatory Guide 1.52 to support analysis efficiencies for elemental iodine and methyl iodide removal of 95%, respectively. Testing performed to verify methyl iodide removal efficiency will be performed under conditions representative of the control room environment.

Since this change in removal efficiency is in the conservative direction, plant safety will not be adversely impacted.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the control room emergency ventilation system iodide removal efficiency does not create the possibility of a new or different kind of accident from any accident previously evaluated because operation of the control room emergency ventilation system is not identified in any accident initiation sequence. The system is provided to minimize operator exposure to airborne radioactivity released as a result of an accident. The new operating configuration has been evaluated and no new limiting single failures have been identified as a result of the proposed modification. Therefore, it is concluded that no new or different kind of accidents from any accident previously evaluated have been created as a result of these revisions.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed changes do not involve a reduction in the margin of safety because the margin of safety associated with this change is in the conservative direction. Thus, plant safety will not be adversely impacted and the margin of safety required for the affected safety analysis is maintained. The adequacy of the revised Technical Specification values to maintain the plant in a safe operating condition has been confirmed, since the testing will be done to a more conservative criteria (i.e., 99% efficiency). Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

RELOCATION OF $F_Q(Z)$ [HEAT FLUX HOT CHANNEL FACTOR] AND F Delta H [NUCLEAR ENTHALPY RISE HOT CHANNEL FACTOR] LIMITS FROM TECHNICAL SPECIFICATIONS TO CORE OPERATING LIMITS REPORT AND EDITORIAL CORRECTIONS

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The relocation of the values for F_Q and F Delta H from the Technical Specifications to the Core Operating Limits Report is administrative in nature and has no impact on the probability or consequences of any Design Bases Event (DBE) occurrence which was previously evaluated. The determination of the F_Q and F Delta H limits will be performed using methodology approved by the NRC and poses no significant increase in the probability or consequences of any accident previously evaluated.

The changes being proposed as editorial in nature do not affect assumptions contained in the safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, these proposed changes do not affect the probability or consequences of accidents previously analyzed.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The relocation of the F_Q and F Delta H limits from the Technical Specifications to the Core Operating Limits Report is administrative in nature and has no impact, nor does it contribute in any way to the possibility of a new or different kind of accident from any accident previously evaluated.

The determination of the F_Q and F Delta H limits will be performed using NRC-approved methodology and are submitted to the NRC as a revision to the COLR to allow the NRC staff to trend peaking factors. The Technical Specifications will continue to require operation within the required core operating limits and appropriate actions will be taken if the F_Q and F Delta H limits are exceeded. Therefore, the proposed amendments does not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

The editorial changes proposed are administrative in nature and do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the facility, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, these changes do not create the possibility of a new or different kind of accident.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The relocation of the F_Q and F Delta H limits from the Technical Specifications to the Core Operating Limits Report is administrative in nature and has no impact on the margin of safety. The determination of the F_Q and F Delta H limits will be performed using methodology approved by the NRC and does not constitute a significant reduction in the margin of safety.

The supporting Technical Specification values are defined by the accident analyses which are performed to conservatively bound the operating conditions defined by the Technical Specifications. Performance of analysis and evaluation have confirmed that the operating envelope defined by the Technical Specifications continues to be bounded by the analytical basis, which in no case exceeds the acceptance limits. Therefore, the margin of safety provided in the analyses in accordance with the acceptance limits is maintained and not significantly reduced.

The changes being proposed as editorial in nature do not relate to or modify the safety margins defined in, and maintained by the Technical Specifications. Therefore, the proposed changes which correct administrative errors and clarify existing Technical Specification requirements do not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Attorney for licensee: J. R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036

NRC Project Director: Frederick J. Hebdon

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Dates of amendment request: April 19, 1996, May 10, 1996, and May 28, 1996

Description of amendment request: The licensee proposed to change the Turkey Point Units 3 and 4 Technical Specifications (TS) to address frequency extension for actions required on a periodic basis, delete the separate notification requirement for an inoperable startup transformer, and allow the operating RHR loop to be removed from operation during refueling operations under certain conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed amendments are purely administrative in nature. These amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated because they do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of the modified specifications can not create the possibility of a new or different kind of accident from any previously evaluated since the proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to the administrative changes and clarifications, since the proposed changes do not involve the addition or modification of equipment nor do they alter the design or operation of affected plant systems, structures, or components.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The operating limits and functional capabilities of the affected systems, structures, and components are unchanged by the proposed amendments. The modified specifications which correct administrative errors and clarify existing Technical Specification requirements do not significantly reduce any of the margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

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NRC Project Director: Frederick J. Hebdon

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 30, 1996

Description of amendment request: The proposed amendment would revise the technical specifications surveillance requirement (SR) 3.8.3.4 to specify a 5-start pressure for the air receivers associated with the Division III, High Pressure Core Spray emergency diesel generator.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequence of an accident previously evaluated?

The purpose of the proposed Technical Specification change is to establish consistency between the basis for the air start pressure required for the Division I and II diesels and the value required for the Division III diesel. The value of 160 psig currently specified in SR 3.8.3.4 is representative of a 5-start value for the Division I and II diesels, however, this value is not representative of a 5-start for the Division III diesel. While the 160 psig value does serve to satisfy the requirements of 10 CFR 50.36 with regard to maintaining the lowest functional level required for the Division III diesel to perform its design safety function, the current value does not serve to maintain the design margin utilized when sizing the air receivers for the purpose of satisfying the Standard Review Plan guidance contained in section 9.5.6 (NUREG-0800 Revision 2).

The proposed value fully complies with the guidance provided in NUREG-0800 and is more conservative than the value currently included in the Technical Specifications. The proposed value is well within the capability of the air system's design and will not subject the air system to excessive pressures or undue cycling of the system's compressors. The proposed change has no effect on the probability of an accident as diesel generators have no bearing on the initiation of any analyzed event. In addition, the capability of the Division III diesel to perform its design basis function (i.e., starting, accelerating to rated speed and voltage, and connecting to its respective bus within 13 seconds) is not affected by this change. The ability of the diesel to support the mitigation of analyzed accidents is not affected and hence the consequences of any analyzed event are not affected. Therefore, the proposed change does not increase the probability or the consequences of previously analyzed accidents.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not introduce any new failure modes. All of the affected components remain within their applicable design limits. In addition, the environmental qualification of any plant equipment is not adversely affected by the proposed change. Since the performance of this system is not adversely affected by this change and the design margins of this system are not challenged in a manner differently than previously analyzed, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change raises the required starting air pressure for the Division III above that currently required by the Technical Specifications to establish consistency between the basis of the Division III value with the value used for the Division I and II diesels. Issuance of the proposed change will establish a 5 start air receiver pressure for each of the three safety-related diesels at River Bend. While the proposed value is slightly less than the 5 start value discussed in River Bend's SER, the proposed value is supported by the River Bend site-specific test data and does not adversely affect existing analyses or system performance. Therefore, the proposed change does not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005

NRC Project Director: William D. Beckner

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 6, 1996, as supplemented by letters dated June 7 and 9, 1996

Description of amendment request: The proposed amendment would revise the technical specification Limited Safety System Setting for the MINIMUM CRITICAL POWER RATIO (MCPR) for dual recirculation loop operation and for single recirculation loop operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The purpose of the Safety Limit Minimum Critical Power Ratio (SLMCPR) is to provide statistical confidence that less than 0.1% of the fuel rods in a core would experience transition boiling during the most limiting analyzed Anticipated Operational Occurrence (transient). While transition boiling in a BWR does not in and of itself signal the onset of fuel cladding failure, this criterion has been selected as a conservative and convenient parameter for the evaluation of fuel designs. Therefore, while this safety limit does not provide any control over either the probability or consequences of any accident previously evaluated, it does ensure that evaluated transients remain within NRC-approved criteria. Revision of the SLMCPR will establish in the CNS Technical Specifications a valid limit, based on the NRC approved GESTAR II methodology using cycle-specific inputs. This change will result in the input of more restrictive core operating limits into the plant process computer, ensuring that CNS will be operated within the constraints of the new SLMCPR limits of 1.07 for dual recirculation loop operation, and 1.08 for single recirculation loop operation. No plant hardware modifications are associated with this change. Therefore, since this proposed change will not change the physical configuration of the plant, nor result in operational changes which invalidate assumptions used in any CNS accident analysis, this change does not involve an increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed License Amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

This change revises the SLMCPR values in the CNS Technical Specifications in accordance with a cycle specific analysis performed for the remainder of the current cycle. The SLMCPR ensures that less than 0.1% of the fuel rods in a core would experience transition boiling during the most limiting Anticipated Operational Occurrence. Increasing the SLMCPR from 1.06 to 1.07 for dual recirculation loop operation and from 1.07 to 1.08 for single recirculation loop operation will ensure that the specified statistical confidence will be met for all analyzed transients. This change does not involve any plant hardware changes. The only operational changes will be the institution of appropriate thermal restrictions on reactor core operation in accordance with the SLMCPR changes. Therefore, this proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change create a significant reduction in the margin of safety?

This change will establish in the CNS Technical Specifications, SLMCPR values that ensure the margin of safety to the NRC approved Anticipated Operational Occurrence evaluation acceptance criteria will be met. Increasing the SLMCPR institutes more restrictive thermal limitations on core operation. The change of the SLMCPR from 1.06 to 1.07 for dual recirculation loop operation, and from 1.07 to 1.08 for single loop operation will ensure that the acceptance criteria for evaluated transients will continue to be met, and that the appropriate limit is reflected in the CNS Technical Specifications. Therefore, this proposed change does not create a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, NE 68305

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602-0499

NRC Project Director: William D. Beckner

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: May 15, 1996

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3/4.3.2, "Isolation Actuation Instrumentation," to establish a range of allowable and trip setpoints for high temperature (varying as a function of ambient temperature) in the Main Steam Line Tunnel Lead Enclosure Area. Specifically, a new TS Figure 3.3.2-1 would be added to provide a curve of allowable temperature values and a curve of trip temperature setpoints, both plotted over a range of ambient temperatures. The new Figure would be referenced by Table 3.3.2-2 at item 1.d.3 (High Temperature Main Steam Line Tunnel Lead Enclosure Trip Function) by a new footnote stating:

The trip setpoint and allowable value for a channel may be established based on Figure 3.3.2-1, if:

a. The actual ambient temperature readings for all operable channels in the Lead Enclosure Area are equal to or greater than the ambient temperature used as the basis for the setpoint, and

b. The absence of steam leaks in the Main Steam Line Tunnel Lead Enclosure Area is verified by visual inspection prior to increasing a channel setpoint, and

c. A surveillance is implemented in accordance with Note (d) of Table 4.3.2.1-1.

Similarly, TS Surveillance Table 4.3.2.1-1 would be supplemented at item 1.d.3 (High Temperature Main Steam Line Tunnel Lead Enclosure) with a new footnote stating:

(d) In addition to the normal shift channel check, if a channel setpoint has been established using Figure 3.3.2-1, then once per shift, the actual ambient temperature reading for all operable channels in the Lead Enclosure Area shall be verified to be equal to or greater than the ambient temperature used as the basis for the setpoint.

Basis for proposed no significant hazards consideration determination: The main steam tunnel high temperature isolation actuation instrumentation is part of the Leak Detection System (LDS). It is used to detect leakage early at 25 gallons per minute (gpm) and initiate signals to automatically close the Main Steam Isolation Valves before a pipe break could occur. The existing temperature setpoints for the tunnel lead enclosure are based upon transient analyses for steam leaks in the steam tunnel utilizing

winter temperatures as an initial condition. The licensee finds that a change is needed because actual temperatures in the tunnel, especially during the summer, are approaching the setpoints when steam leakage is not occurring. Under the present conditions, a minor disturbance in the turbine building ventilation system could cause an unwarranted isolation actuation at full power with resulting Main Steam Isolation Valve closure and reactor scram.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of NMP2 [Nine Mile Point Unit 2] in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The LDS instrumentation in the main steam line tunnel isolates the Main Steam Isolation Valves upon sensing a steam leak of 25 gpm. For an elevated ambient temperature in the Lead Enclosure area, a setpoint established using the proposed Figure 3.3.2-1 ensures that the Main Steam Isolation Valves continue to receive an isolation signal upon sensing a steam leak of 25 gpm. Verifying the absence of any steam leak in the area prior to raising any temperature instrument setpoint ensures that the ability to sense a 25 gpm leak is not compromised by an increased ambient temperature resulting from a smaller steam leak. The periodic surveillance to verify the actual ambient temperature ensures the continued validity of the ambient temperature used for the setpoint basis, and provides sufficient advance indication to take appropriate compensatory action. Accordingly, this change will not involve a significant increase in the consequences of any accident previously evaluated.

Furthermore, the LDS function provides a mitigation action for a postulated main steam line pipe leak which could lead to a pipe break. This function does not affect any accident precursors, and the proposed change does not affect the function of the LDS system. Accordingly, this change will not involve a significant increase in the probability of any accident previously evaluated.

2. The operation of NMP2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

The qualification of safety-related equipment in the main steam lead enclosure is evaluated using actual temperatures and component qualified life is adjusted accordingly. The temperature elements are the only safety-related equipment affected by this change, therefore, the instrumentation response to previously evaluated accidents will not be adversely affected. This change will not affect the performance of safety related structures. Accordingly, the design capabilities of those structures, systems and components affected by the proposed change are not challenged in a manner not previously evaluated so as to create the possibility of a new or different kind of accident from any previously evaluated.

3. The operation of NMP2 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed change provides a range of setpoints and allowable values for the Main Steam Line Tunnel Lead Enclosure temperatures. The calculation of the allowable values and trip setpoints was performed using the same methodologies as previously employed. For an elevated ambient temperature in the Lead Enclosure area, a setpoint established using the proposed Figure 3.3.2-1 ensures that the Main Steam Isolation Valves receive an isolation signal upon sensing a steam leak of 25 gpm, resulting in a main steam line isolation prior to a pipe break. Therefore, the proposed change provides the same level of protection against a main steam line break as the existing setpoint values. The proposed setpoints will provide increased scram avoidance, and thereby reduce unnecessary challenges to the plant shutdown systems. Accordingly, the proposed change does not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Jocelyn A. Mitchell, Acting Director

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: March 25, 1996

Description of amendment request: These amendments revise the safety limit minimum critcal power ratios (SLMCPRs) to support use of GE-13 fuel at Peach Bottom Atomic Power Station.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1)The proposed TS [technical specification] changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the revised GE13 SLMCPRs for incorporation into the TS, and its use to determine cycle-specific thermal limits, have been performed using USNRC [U.S. Nuclear Regulatory Commission]-approved methods within the existing fuel licensing criteria as discussed in NEDE-32198P, "GE13 Compliance With Amendment 22 of NEDE-24011-P-A (GESTAR II)," and cannot increase the probability or severity of an accident.

The basis of the SLMCPRs calculation is to ensure that greater than 99.9% of all fuel rods in the core avoid boiling transition if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling and fuel damage in the event of a postulated accident. The fuel licensing acceptance criteria for the SLMCPRs calculation apply to the GE13 fuel in the same manner that they have applied to previous fuel designs. The probability of fuel damage is not increased. Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2) The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The SLMCPR for the GE13 fuel design is a Technical Specification numerical value, designed to ensure that transition boiling does not occur in 99.9% of all fuel rods in the core during the limiting postulated accident. It cannot create the possibility of any new type of accident. The new SLMCPRs are calculated using USNRC-approved methods and have the same calculational basis as the SLMCPR for other GE fuel designs previously used at PBAPS, Units 2 and 3. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident, from any accident previously evaluated.

3) The proposed TS changes do not involve a significant reduction in a margin of safety.

The margin of safety as defined in the TS Bases will remain the same. The new SLMCPRs are calculated using USNRC-approved methods which are in accordance with the current fuel licensing criteria. The SLMCPRs for the GE13 fuel remain high enough to ensure that greater than 99.9% of all fuel rods in the core will avoid boiling transition if the limit is not violated, thereby preserving the fuel cladding integrity. Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: John F. Stolz

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-277, Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania

Date of application for amendment: June 13, 1996

Description of amendment request: The proposed amendment to the Technical Specifications (TS) will permit a one time performance of Surveillance Requirement 3.3.1.1.12, for the Average Power Range Monitor Flow Biased High Scram function, with a delayed entry into its associated TS Conditions and Required Actions for up to 6 hours provided core flow is maintained at or above 82 percent. This change would be in effect until the end of refueling outage 2R11, currently scheduled for early October 1996.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

i) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The APRM system provides monitoring and accident mitigation functions to limit peak flux in the core during startup and run modes. This proposed TS change for delaying entry into Conditions and Required Actions associated with SR 3.3.1.1.12 for the APRM flow bias function will have no impact on the APRM system or any system that interfaces with it. No pressure boundary interfaces or process control parameters will be challenged.

This change does not affect the operation of any equipment. Delaying entry into Conditions and Required Actions associated with SR 3.3.1.1.12 does not affect either the initiator of any accident previously evaluated or any equipment required to mitigate the consequences of an accident, or the isotopic inventory in the fuel. Thus, the change does not increase either the probability or the consequences of accidents previously evaluated.

ii) The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Because there is no direct pressure boundary interface or process control function associated with the APRM system or its interfacing electronics, the possibility of a new or different type of accident than any previously evaluated will not be created. Although the flow bias instrument loop does employ flow transmitters to measure recirculation drive flow, delaying entry into Conditions and Required Actions associated with SR 3.3.1.1.12 will have no impact on their pressure boundary function. Also, failure of the sensing line associated with these transmitters has already been accounted for in the initial plant design by including excess flow check valves for sensing line break isolation.

The proposed change does not introduce a new mode of plant operation and does not involve the installation of any new equipment or modifications to the plant. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

iii)The proposed change does not involve a significant reduction in a margin of safety.

The APRM flow biased high scram function is not specifically credited in the safety analysis. However, it is intended to provide an additional margin of protection from transient induced fuel damage during operation where recirculation flow is reduced to below the minimum required for rated power operation.

The margin of safety associated with this change refers to the margin inherent in the accident analyses that takes credit for the clamped high flux scram only (i.e., margin between scramming at 120% peak flux and the peak flux necessary for fuel damage). The current reactor operating state (end of cycle coast down extended core flow) dictates that only the 120% flux trip be enforced. This trip remains functional during the APRM flow biased high scram calibration.

Currently, the Conditions and Required Actions associated with SR 3.3.1.1.12 permit a one hour delay prior to entry because it minimizes risk while allowing time for restoration or tripping of channels by operations personnel. Because the APRM flow biased function is not enforced during end of cycle, coast down, extended core flow conditions, extending entry in associated Conditions and Required Actions from one to six hours has no impact on the margin associated with the clamped high flux scram. In the event core flow drops below 82%, the flow point below which APRM setpoints automatically become flow biased, the associated Conditions and Required Actions will be entered.

Therefore, extending entry into associated Conditions and Required Actions associated with SR 3.3.1.1.12, provided core flow remains at or above 82%, from one to six hours does not reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101

NRC Project Director: John F. Stolz

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: May 16, 1996

Description of amendment request: The proposed amendment to the James A. FitzPatrick Technical Specifications (TSs) proposes to delete the requirement for the Plant Operating Review Committee (PORC) to review the fire protection program and implementing procedures. This proposal will reduce the administrative burden on the committee while making PORC's responsibilities more consistent with the other responsibilities described in Section 6.1.5.6 of the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes delete the Plant Operating Review Committee (PORC) review of the fire protection program and implementing procedures, and deleted fire protection inspection and audit requirements that are redundant to those performed under the cognizance of the Safety Review Committee (SRC). The changes do not introduce any new modes of plant operation, make any physical changes, or alter any operational setpoints. Therefore, the changes do not degrade the performance of any safety system assumed to function in the accident analysis. Consequently, there is no effect on the probability or consequences of an accident.

2. Create the possibility of a new or different kind of accident from those previously evaluated.

No physical changes to the plant or changes to equipment operating procedures are proposed. The changes are administrative and will not have any direct affect on equipment important to safety. Therefore the changes cannot create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

Adequacy of the fire protection program and implementing procedures is assured by the fire protection license condition, the procedure review and approval process implemented by Amendment 222, the provisions of 10 CFR 50.59, and inspections and audits performed under the cognizance of the SRC. Consequently, deleting PORC's responsibility for review of the fire protection program and implementing procedures, and deleting the inspection and audit requirements contained in Specification 6.14.A and 6.14.B will not degrade the fire protection program. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019

NRC Project Director: Jocelyn A. Mitchell, Acting Director

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: May 30, 1996

Description of amendment request: The proposed amendment would revise Minimum Critical Power Ratio Safety Limit and associated basis. The changes are required to support introduction of General Electric Company supplied, GE12, 10x10 fuel into the Cycle 13 reactor core.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because:

A change in the SLMCPR [Safety Limit Minimum Critical Power Ratio] does not affect initiation of any accident. Operation in accordance with the revised SLMCPR ensures the consequences of previously analyzed accidents are not changed.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The SLMCPR establishes a performance limit for the fuel. Therefore changing the limit will not initiate any accident.

3. Involve a significant margin of safety because:

The analyses performed to determine the revised SLMCPR assure maintenance of the same margin of safety as presently exists for the prevention of onset of transition boiling.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019

NRC Project Director: Jocelyn A. Mitchell, Acting Director

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: May 30, 1996

Description of amendment request: The proposed amendment would revise Anticipated Transient Without Scram (ATWS) Recirculation Pump Trip Reactor Pressure - High setpoint when either zero or one Safety Relief Valves are out-of service.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because:

A change in the ATWS Recirculation Pump Trip Reactor Pressure - High setpoint does not affect initiation of any accident. Operation in accordance with the revised setpoints ensures the consequences of previously analyzed accidents are not changed.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because:

RPV [reactor pressure vessel] pressure following an ATWS with MSIV [main steam isolation valve] closure event (worst case transient for RPV pressurization) remains within acceptable limits with the revised setpoint. Therefore changing the setpoint will not lead to a new type of accident.

3. Involve a significant reduction in a margin of safety because:

The analyses performed to determine the revised ATWS Recirculation Pump Trip - Reactor Pressure - High setpoint assure maintenance of the same margin of safety as presently exists for limiting RPV pressure following an ATWS with MSIV closure (limiting transient).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019

NRC Project Director: Jocelyn A. Mitchell, Acting Director

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: May 30, 1996

Description of amendment request: The proposed amendment would eliminate selected response time testing requirements. The affected Technical Specifications (TS) are TS 4.1.A, "Surveillance Requirements, Reactor Protection System," and TS 4.2.A, "Surveillance Requirements, Instrumentation, Primary Containment Isolation Functions."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The purpose of the proposed TS change is to eliminate response time testing requirements for selected sensors in the RPS [reactor protection system] and Primary Containment Isolation System. The BWROG [Boiling Water Reactor Owners Group] has completed an evaluation which demonstrates that response time testing is redundant to the other TS required testing. These other tests

in conjunction with actions taken in response to NRC Bulletin 90-01, "Loss of Fill-Oil in Transmitters

Manufactured by Rosemount," and Supplement 1 to Bulletin 90-01, are sufficient to identify failure modes or degradation in instrument response time and ensure operation of the associated systems within acceptable limits. Furthermore, failure modes detected by response time testing are detectable by other TS required testing. This evaluation was documented in Reference 1 [See application dated May 30, 1996]. NYPA [New York Power Authority] has confirmed the applicability of this evaluation to the FitzPatrick Plant. In addition, NYPA will complete the actions identified in the NRC staff's safety evaluation of NEDO-32291-A.

Because of the continued application of other existing TS required tests such as channel calibrations, channel checks, channel functional tests, and logic system functional tests, the response time of these systems will be maintained within the acceptance limits assumed in plant safety analyses and required for successful mitigation of an initiating event. The proposed changes do not affect the capability of the associated systems to perform their intended function within their required response time, nor do the proposed changes themselves affect the operation of any equipment. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from those previously evaluated because:

The proposed changes do not affect the ability of the systems to perform their intended function within the acceptance limits assumed in plant safety analyses and required for successful mitigation of an initiating event. No new failure modes are introduced by the changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in the margin of safety.

The current TS required response time test limits are based on the maximum allowable values assumed in the plant safety analyses. These analyses conservatively establish the margin of safety. As described above, the proposed changes do not affect the capability of the associated systems to perform their intended function within the allowed response time used as the basis for the plant safety analysis. Plant and system response to an initiating event will remain in compliance within the assumptions of the safety analyses, and therefore the margin of safety is not affected.

Further, although not explicitly evaluated, the proposed changes will provide an improvement to plant safety and operation by reducing the time safety systems are unavailable, reducing safety systems actuations, reducing plant shutdown risk, limiting radiation exposure to plant personnel, and eliminating the diversion of key personnel to conduct unnecessary testing. Therefore, the overall effect of the changes should increase the margin the safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019

NRC Project Director: Jocelyn A. Mitchell, Acting Director

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: March 6, 1996, as supplemented by letter dated May 30, 1996

Description of amendment request: The proposed change to Hope Creek Technical Specification (TS) 3.8.1, "A.C. Sources - Operating", would decrease the minimum fuel oil storage capacity of the Emergency Diesel Generator Fuel Oil Storage Tanks, from 48,800 to 44,800 gallons. In addition, footnote ** is deleted from TS 3.8.1.1.b.2. The proposed change would also add an Action Statement to address remedial action when a fuel oil transfer pump becomes inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

TANK LEVEL

Amendment 59 provides an allowance for transferring fuel oil from a pair of storage tanks associated with an inoperable [Emergency Diesel Generator] EDG to another pair of storage tanks in order to demonstrate compliance with PSE&G's commitment to Regulatory Guide 1.137. The proposed change is consistent with that transfer strategy and extends this allowance to include using fuel oil in operable EDG storage tanks in order to reduce the amount of stored fuel oil. Transfer from operable EDG storage tanks is, actually, less complex than transferring from an inoperable EDG storage tank since power to the transfer pumps would be available.

The low level alarm setpoint is the only physical change to be made. No change is being made to the EDGs, to the fuel oil storage tanks, or to the fuel oil transfer system and since EDG fuel oil supply is associated with mitigating the consequences of an accident, there is no change in the probability of any accident analyzed in the [Updated Final Safety Analysis Report] UFSAR.

Since the proposed change still ensures the minimum fuel oil storage capacity meets the existing licensing basis and since off-site replacement oil is expected to be available within 60 hours there is no change in the consequences of an accident previously evaluated.

TRANSFER PUMP ACTION STATEMENT

Since no change is being made to the EDGs, to the fuel oil storage tanks or to the fuel oil transfer system, and since EDG fuel oil supply is associated with mitigating the consequences of an accident, there is no change in the probability of any accident analyzed in the UFSAR.

The proposed change provides compensatory action in the event a single fuel oil transfer pump is inoperable without having to immediately declare the EDG inoperable. The change ensures the affected EDG remains fully capable of functioning as assumed in the safety analyses, therefore, there is no significant impact on the consequences of an accident previously evaluated.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

TANK LEVEL AND TRANSFER PUMP ACTION STATEMENT

The proposed changes will result in a setpoint change to the low level alarm. No other physical changes to the EDGs, to the fuel oil storage tanks, or to the fuel oil transfer system will result from the proposed changes. Operation including the proposed changes will not impair the diesel generators from performing as provided in the design basis. In addition, EDG fuel oil supply is associated with mitigating accident consequences, not accident prevention. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will not involve significant reduction in a margin of safety.

TANK LEVEL

The margin of safety is provided by the on-site storage of an adequate supply of diesel fuel oil to ensure uninterrupted EDG operation for seven days. Although the proposed change may result in a reduction of stored fuel oil, the new minimum continues to provide for an on-site seven day supply of diesel fuel oil.

TRANSFER PUMP ACTION STATEMENT

The margin of safety is provided by the ability of the fuel oil transfer pumps to supply an adequate flow of the stored fuel to each EDG day tank. The proposed change continues to provide 100% capacity to the EDG day tank for a minimum of three days with no operator action. With the proposed action, adequate transfer capability is

provided for a minimum of seven days fuel oil supply at which time refilling of the tanks would provide an indefinite supply. With both transfer pumps on a single EDG inoperable, the remaining three EDGs would provide adequate power for safe shutdown. Transfer of fuel oil from the storage tanks with inoperable transfer pumps can still be effected using temporary hoses.

Since the proposed changes do not involve the addition of plant equipment, are consistent with the intent of the existing Technical Specifications, are consistent with allowances for fuel oil transfers approved in Amendment 59, meets the intent of Regulatory Guide 1.137, and are consistent with the design basis of the diesel generators and the accident analysis, no action proposed by this request will occur that will involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: May 10, 1996

Description of amendment request: The proposed amendments would change Technical Specification Sections, 1.0, 2.0, 3/4 1.0, 3/4 2.0, 5.0 and 6.0. These changes support the Margin Recovery Program (MRP) and support increased steam generator tube plugging, improved fuel reliability, reduced fuel costs, longer fuel cycles, reduced spent fuel storage, and enhanced reactor safety. These changes incorporate the results of the revised safety analyses (margin recovery) and the establishment of a Core Operating Limits Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The accidents potentially affected by the parameters and assumptions associated with the MRP have been evaluated/ analyzed and all design standards and applicable safety criteria are met. The consideration of these changes does not result in a situation where the design, material, or construction standards that were applicable prior to the change have been altered. Therefore, the changes occurring with the MRP will not result in any additional challenges to plant equipment that could increase the probability of any previously evaluated accident.

The changes associated with the MRP do not affect plant systems such that their function in the control of radiological consequences is adversely affected. The safety evaluation documents that the design standards and applicable safety criteria limits continue to be met and therefore fission barrier integrity is not challenged. The MRP changes have been shown not to adversely affect the response of the plant to postulated accident scenarios. In all cases, the calculated doses are within the regulatory criteria and therefore do not constitute an increase in consequences. These changes will, therefore, not affect the mitigation of the radiological consequences of any accident described in the Updated Final Safety Analysis Report (UFSAR).

Based on the above, it is concluded that the probability or consequences of an accident previously evaluated is not significantly increased by the proposed changes.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The possibility for a new or difference[t] type of accident from any accident previously evaluated is not created since the changes associated with the MRP do not result in a change to the design basis of any plant component or system. The evaluation of the effects of the MRP changes shows that all design standards and applicable safety criteria limits are met. These changes therefore do not cause the initiation of a new accident nor create any new failure mechanisms. Component integrity is not challenged. The changes do not result in any event previously deemed incredible being made credible. The MRP changes will not result in more adverse conditions and will not result in any increase in the challenges to safety systems.

Therefore, the consideration of the MRP as described in the safety evaluation does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety is maintained by assuring compliance with acceptance limits reviewed and approved by the NRC. Since all of the appropriate acceptance criteria for the various analyses and evaluations have been met, by definition there has not been a reduction in any margin of safety.

Therefore, the margin of safety as defined in the Bases to the Salem Unit 1 and 2 Technical Specifications has not been significantly reduced.

Based on the above, PSE&G has determined that the proposed changes do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005-3502

NRC Project Director: John F. Stolz

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: April 16, 1996

Description of amendment request: The proposed amendment would revise the Virgil C. Summer Nuclear Station, Unit 1 (VCSNS), Technical Specifications (TS) to implement the amended regulation to 10 CFR Part 50, Appendix J, Option B (new rule), to provide a performance-based option for leakage-rate testing of containment. The proposed amendment will revise the VCSNS TS 3/4.6 "Containment Systems," TS Bases 3/4.6, and TS 6.8 "Administrative Controls - Programs and Procedures," to adopt the implementation requirements of 10 CFR Part 50, Appendix J, Option B. The proposed amendment utilizes the guidelines (guidelines) provided in "Option B" of Regulatory Guide (RG) 1.163 "Performance-Based Containment Leak-Test Program, September 1995," and NEI 94-01, "Industry Guideline for Implementing Performance-Based Option of 10 CFR 50, Appendix J, July 26, 1995." The licensee has stated that the proposed amendment is within these prescribed guidelines and does not propose any deviations to the established methods which would impact already approved analyses/ justifications and established review process.

The proposed change will remove the prescriptive TS requirements for the performance of containment leakage testing and allow leakage testing to be conducted as determined appropriate through the performance-based or risk-based alternatives described in the VCSNS Containment Leakage Rate Testing Program developed in accordance with RG 1.163 and NEI 94-01. Since the requirements of Appendix J to 10 CFR Part 50 will continue to apply, the type of testing will not change. The proposed request does not modify any plant equipment or systems.

The requirements of Appendix J will continue to govern the type of test, testing methodology, and acceptance criteria for Type A, B, and C testing. The performance-based testing of Option B eliminates or modifies prescriptive regulatory requirements for which the burden is marginal to safety for which the reviews and analyses have been presented in NUREG-1493, "Performance-Based Containment Leak-Test Program, Final Report, September 1995."

Earlier leakage testing performed at VCSNS has demonstrated low overall containment leakage and supports the implementation of Option B.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The probability or consequences of an accident previously evaluated is not significantly increased.

There is no increase in the probability of an accident since there is no work that would affect containment integrity. The testing of containment isolation valves (CIVs) and other containment penetration sealing devices is not postulated as an accident precursor or initiating event.

Type A testing is capable of determining the total leakage from both local leakage paths and gross containment leakage paths. Our Type B and C testing has consistently provided accurate leakage rates for valves and penetrations.

Administrative controls govern maintenance and testing such that there is very low probability that unacceptable maintenance or alignments can occur. Prior to and following maintenance on CIVs and penetrations, a local leak rate test (LLRT) is required to be performed. As a result, Type A testing is not required to accurately quantify the leakage through containment penetrations.

Any specific exemptions to the requirements of Appendix J will require approval by the NRC before implementation.

Therefore, this proposed change does not involve a significant increase in the possibility or consequences of an accident previously evaluated.

2. The possibility of an accident or a malfunction of a different type than any previously evaluated is not created.

The proposed request does not involve any physical changes to the plant, affect the operation of the plant, or change testing methods or acceptance criteria. The history of containment testing verifies that containment integrity has been maintained.

The frequency changes allowed by implementation of Option B will not significantly decrease the level of confidence in the ability of the reactor building to limit offsite doses to allowable values. No accident or malfunction can be the result of the allowed changes to test schedule or frequency.

Since the proposed request will not directly impact equipment, procedures or operations, the changes will not create the possibility of any new or different kind of accident from any previously evaluated.

3. The margin of safety has not been significantly reduced.

The reason for performing containment leakage rate testing is to assure that the leakage paths are identified, and that any accident release will be restricted to those paths assumed in the safety analysis. The purpose for the schedule is to assure that containment integrity is verified on a periodic basis.

Implementation of Option B to provide flexibility in the scheduled requirements does not mean that containment integrity will be compromised. The historical leakage rate test results for VCSNS and for the nuclear industry support extension of testing frequencies and demonstrate that structural integrity has been maintained.

Therefore, the margin of safety has not been significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, SC 29218

NRC Project Director: Eugene V. Imbro

Southern Nuclear Operating Company, Inc., Docket No. 50-364, Joseph M. Farley Nuclear Plant, Unit 2, Houston County, Alabama

Date of amendment request: April 22, 1996

Description of amendment request: The amendment would revise the Technical Specifications to implement the L* Tubesheet Region Plugging Criterion, which would allow a steam generator tube to remain in service with bands of axial degradation in the tubesheet region provided sufficient non-degraded tubing remains to satisfy regulatory guidance concerning structural and leakage integrity.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the Farley Nuclear Plant Unit 2 steam generators in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The supporting technical evaluations of the subject criteria demonstrate that the presence of the tubesheet enhances the tube integrity in the region of the hardroll by precluding tube deformation beyond its initial expanded outside diameter. The resistance to both tube rupture and tube collapse is strengthened by the presence of the tubesheet in that region. The result of the hardroll of the tube into the tubesheet is an interference fit between the tube and the tubesheet. Tube rupture [cannot] occur because the contact between the tube and tubesheet does not permit sufficient movement of tube material. In a similar manner, the tubesheet does not permit sufficient movement of tube material to permit buckling collapse of the tube during postulated LOCA [loss-of-coolant accident] loadings.

The type of degradation for which the L* criterion has been developed (cracking with an axial or near axial orientation) has been found not to significantly reduce the axial strength of a tube. An evaluation including analysis and testing has been done to determine the strength reduction for axial loads with simulated axial and near axial cracks. This evaluation provides the basis for the acceptance criteria for tube degradation subject to the L* criterion.

The SRE [sound roll expansion] L* length is sufficient to preclude significant leakage from tube degradation located below the L* length. The existing Technical Specification leak rate requirements and accident analysis assumptions remain unchanged in the unlikely event that significant leakage from this region does occur. Any leakage from the tube within the tubesheet at any elevation in the tubesheet is fully bounded by the existing steam generator tube rupture analysis included in the Farley Nuclear Plant Final Safety Analysis Report. A conservative leakage allowance for each L* tube is provided to determine the impact of L* criterion upon offsite doses in the event of a postulated double ended guillotine break of the main steam line outside of containment, but upstream of the main steam line isolation valves. Since Farley Unit 2 has implemented the Interim Plugging Criteria (IPC) for ODSCC at the tube support plates, projected steam line break (SLB) leakage at the end of the next successive operating cycle must be evaluated. Per Generic Letter 95-05, plants implementing the IPC can utilize SLB leakage limits higher than the originally assumed 1.0 gpm primary to secondary leakage value provided an analysis of offsite doses consistent with the Standard Review Plan methodology is performed. This analysis performed for the Farley Unit 2 plant indicates that primary to secondary leakage of 11.2 gpm in the faulted loop (0.1 gpm in the intact loops) will result in offsite doses at the site boundary of less than 10% of the 10 CFR [Part] 100 guidelines. The total projected SLB leakage from all leakage sources must remain below this value. Per attachment 4 addressing the L* methodology,

the number of tube ends to which L* criterion can be applied is limited to 600 per steam generator. Using a bounding SLB leakage allowance per L* tube, the SLB leakage component from 600 L* tube ends will be less than 0.33 gpm in the faulted loop. The proposed alternate plugging criterion does not adversely impact any other previously evaluated design basis accident. As the current Unit 2 IPC SLB leakage has been calculated to be less than 2 gpm in the faulted loop, [an] SLB leakage margin of over 9 gpm is provided for this cycle.

As noted above, tube rupture and pullout is not expected for tubes using the L* criterion. In addition to the L* length, a minimum length of SRE below the identified degradation must be established. The aggregate L* distance of SRE provides the structural integrity to prevent tube pullout. Conservatively, it is assumed that the degraded bend length does not provide any support in resisting tube pullout.

Therefore SNC [Southern Nuclear Operating Company, Inc.] concludes that Operation of the Farley Nuclear Plant Unit 2 steam generators in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed L* criterion does not introduce any significant changes to the plant design basis. Use of the criterion does not provide a mechanism to result in an accident initiated outside of the region of the tubesheet expansion. The structural integrity of L* tubes will be maintained during all plant conditions. Any hypothetical accident as a result of any tube degradation in the expanded portion of the tube would be bounded by the existing tube rupture accident analysis. If it is postulated that a circumferential separation of an L* tube were to occur below the PLRL [pullout load reaction length], tube structural and leakage integrity will be maintained during all plant conditions. Verification of the L* distance of non-degraded tube roll expansion prevents the postulated separated tube from lifting out of the tubesheet during all plant conditions. Verification of the L* criterion prevents tube displacement of any magnitude, and therefore, postulated axial cracks existing a minimum of 0.5 inch from either the bottom of the roll transition or top of tubesheet, whichever is lower, from migrating out of the tubesheet.

Therefore, SNC concludes that the proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendment does not involve a significant reduction in a margin of safety.

The use of the L* criterion has been concluded to maintain the integrity of the tube bundle commensurate with the requirements of draft Regulatory Guide 1.121 under normal and postulated accident conditions. The safety factors used in the verification of the strength of the degraded tube are consistent with the safety factors in the ASME [American Society of Mechanical Engineers] Boiler and Pressure Vessel Code used in steam generator design. The L* length has been verified by testing to be greater than the length of roll expansion required to preclude significant leakage during normal and postulated accident conditions. The leak testing acceptance criteria are based on the primary to secondary leakage limit in the Technical Specifications and the leakage assumptions used in the FSAR accident analyses. The L* distance provides for structural integrity during all plant conditions.

Implementation of the L* criterion will decrease the number of tubes which must be taken out of service with tube plugs or repaired with sleeves. Both plugs and sleeves reduce the RCS [reactor coolant system] flow margin, thus implementation of the L* criterion will maintain the margin of flow that would otherwise be reduced in the event of increased plugging or sleeving.

Therefore, SNC, concludes based on the above, it is concluded that the proposed change does not result in a significant reduction in a loss of margin with respect to plant safety as defined in the Final Safety Analysis Report [FSAR] or the bases of the FNP [Farley Nuclear Plant] technical specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: Herbert N. Berkow

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: May 29, 1996

Description of amendment request: The application requests staff review and approval of a modification to the facility, as described in the safety analysis report, that involves an unreviewed safety question. The modification will reduce the single failure trip potential for the main feedwater control and bypass valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Callaway safety analysis assumes the MFC&BVs [main feedwater control and bypass valves] close during certain events in order to terminate fluid inventory addition to faulted steam generators and thereby preclude the diversion of auxiliary feedwater to the main feedwater system. This feature is necessary because each feedwater line at Callaway is equipped with only one MFIV [main feedwater isolation valve]. It should be noted that the safety analysis simply requires the valves to close and does not prescribe a mechanism for accomplishing that action.

The following are accidents that credit feedwater isolation or AFW [auxiliary feedwater] addition. There is no impact by the proposed modification on the consequences of each accident.

•Feedwater System Malfunctions That Result In An Increase In Feedwater Flow

•Inadvertent Opening Of A Steam Generator Relief or Safety Valve

•Steam System Piping Failure

•Loss of Nonemergency AC Power to the Station Auxiliaries

•Loss of Normal Feedwater Flow

•Feedwater System Pipe Break

•Decrease in Reactor Coolant Inventory

The modification will not change the radiological consequences of FSAR [final safety analysis report] Chapter 15 accidents because the feedwater isolation function (and NSSS [nuclear steam supply system] break response) has not changed. Therefore, there will be no increase in the consequences of an accident evaluated previously in the FSAR.

An analysis was performed to quantify the impact of the proposed modification on the probability of MFCV [main feedwater control valve] failure (closure) during normal plant operation. Comparison of this failure probability for the existing design (1.20E-1 per year) versus the proposed design (6.99E-2 per year) indicates that the percentage reduction in the system failure probability at power is 41.75%. Thus, the proposed design results in a reduction in the probability of inadvertent MFCV failures at power and hence, a reduction in the probability of a reactor trip and subsequent challenges to other safety systems.

While this modification reduces the probability of a reactor trip, it slightly increases the unavailability of the feedwater isolation function. This is because the original design required actuation of only one FWIS [feedwater isolation system] train to close the MFC&BVs, whereas the new design requires actuation of both trains. The impact of the modification on the probability of incurring a feedwater isolation failure was therefore quantified, utilizing PRA [probabilistic risk assessment] techniques. Fault trees were developed for both the new and existing designs. Failure probabilities for each event were then obtained from the IPE [individual plant examination] and utilized to calculate failure probabilities for the feedwater isolation safety function. This calculation considered hardware failures only, i.e., failure of an MFIV to close after receiving an actuation signal. The failure probability of feedwater isolation, based on the proposed design, was determined to be 6.1E-5 per demand (1 event every 16,400 demands). The existing design was found to have a failure probability of 2.8E-5 per demand (1 event every 35,700 demands). Therefore, this modification will not significantly increase the probability or consequences of an accident evaluated previously in the FSAR.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The modification maintains the present de-energize-to-actuate configuration of the MFC&BV trip solenoid valves.

Thus, the proposed modification does not create the possibility of an accident of a different type than any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Credit is taken in the accident analyses for the MFIVs to close on demand for feedwater isolation. Because of this, the MFIVs have been incorporated into the Callaway Technical Specifications. Action Statements and surveillance requirements have been developed to assure the availability of the valves when needed.

The MFC&BVs are not addressed by any of the Callaway Technical Specifications or their bases. Therefore, this modification will not involve a significant reduction in the margin of safety as defined in the basis for any technical specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: William H. Bateman

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: May 29, 1996

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 15.4.4, "Containment Tests," to incorporate the provisions of 10 CFR Part 50, Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors," Option B. Revisions would also be made to TS Sections 15.1, "Definitions," 15.3.6, "Containment System," and 15.6, "Administrative Controls," to support the proposed changes to Section 15.4.4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of this facility under the proposed Technical Specifications will not create a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a change to structures, systems, or components which would affect the probability or consequences of an accident previously evaluated in the PBNP [Point Beach Nuclear Plant] Final Safety Analyses Report (FSAR). Furthermore, containment leakage rate testing is not an initiator of any accident. The proposed change simply provides a mechanism within the Technical Specifications for implementing a performance-based method of determining the frequency for leakage rate testing which has been approved by the NRC. The proposed change does not affect reactor operations or accident analysis and has no significant radiological consequences. Therefore, this change will not create a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of this facility under the proposed Technical Specifications change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any of the parameters or conditions that contribute to initiation of any accidents. This change involves a potential reduction of Type A, B, and C test frequency. Except for the method of defining the test frequency, the methods for performing the actual tests are not changed. No new accident modes are created by extending the testing intervals. No safety-related equipment or safety functions are altered as a result of this change. Extending the test frequency has no influence on, nor does it contribute to, the possibility of a new or different kind of accident or malfunction from those previously analyzed. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of this facility under the proposed Technical Specifications change will not create a significant reduction in a margin of safety.

The proposed change potentially affects only the frequency of Type A, B, and C testing. Except for the method of defining test frequency, the methods for performing the actual tests are not changed. The proposed change is based on NRC accepted provisions and maintains necessary levels of system and component reliability affecting containment integrity. Evaluation of the performance-based approach to leakage rate testing, as documented in NUREG-1493, concludes that the impact on public health and safety due to revised testing intervals is negligible. Furthermore, the proposed change will not reduce the availability of systems associated with containment integrity when they are required to mitigate accident conditions. Therefore, the proposed change will not create a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: June 4, 1996

Description of amendment request: The proposed amendment would revise the Kewaunee Nuclear Power Plant Technical Specifications (TS) by reducing the surveillance test frequencies for the radiation monitoring system (Table TS 4.1-1) and the control rods (Table TS 4.1-3) in accordance with the guidance of Generic Letter 93-05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation," dated September 27, 1993.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Table TS 4.1-1, "Minimum Frequencies for Checks, Calibrations and Test of Instrument Channels," Item 19

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 to determine that no significant hazards exist. The proposed changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The radiation monitors are not accident initiators; therefore, they cannot increase the probability of an accident occurring. The reliability of the radiation monitors is not expected to decrease due to the decreased surveillance frequency; therefore, this change does not increase the consequences of an accident.

The addition of comment (a) to the Check, Calibrate, and Test columns is merely a clarification of the existing information in the table and does not change the intent of the Technical Specifications.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change revises only the testing frequency and does not revise the test method or operational performance of the radiation monitors. The radiation monitors are not accident initiators; therefore, they cannot create a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

Quarterly testing of the radiation monitoring system channels will continue to verify operability of the monitors. Decreasing the test surveillance frequency is not expected to decrease the reliability of the radiation monitors. This change is acceptable in accordance with Generic Letter 93-05 and NUREG-1366, "Improvements to Technical Specifications Surveillance Requirements."

Table TS 4.1-3, "Minimum Frequencies for Equipment Tests," Item 1

The proposed change in test frequency for control rod exercising was reviewed in accordance with the provisions of 10 CFR 50.92 to determine that no significant hazards exist. It has been determined that the proposed change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises only the testing frequency for control rod exercising. The control rod exercise surveillance procedure will continue to be conducted, on a quarterly basis, to ensure that the equipment remains operable. The reduced frequency of control rod exercising reduces the probability of an inadvertent reactor trip occurring during testing due to a dropped control rod. Surveillance procedure SP 49-075 is conducted to verify rod movement. In accordance with NUREG-1366, the frequency of a stuck control rod occurring is very low. This condition is most often discovered during reactor startup or during low power physics testing. The reduction in control rod exercising is, therefore, considered acceptable and is not expected to affect the probability of a stuck control rod occurring.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change revises only the testing frequency and does not revise the test method or the design of the control rod system. Therefore, a new or different kind of accident will not be created by this change.

3. Involve a significant reduction in the margin of safety.

Quarterly control rod exercising will continue to verify movement of the control rods. No adverse consequences are expected to occur due to decreasing the test frequency. This change is acceptable in accordance with Generic Letter 93-05 and NUREG-1366.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497

NRC Project Director: Gail H. Marcus

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: June 10, 1996

Description of amendment request: The proposed amendment would revise Technical Specification 4.2.b, "Steam Generator Tubes," and its associated basis, by allowing the use of Westinghouse laser-welded sleeves to repair defective steam generator tubes. A description of the sleeving repair process and supporting technical justification are contained in WCAP-13088, Revision 3, "Westinghouse Series 44 and 51 Steam Generator Generic Sleeving Report." WCAP-13088, and a non-proprietary version (WCAP-13089), were submitted to the Nuclear Regulatory Commission on April 13, 1995, to support a similar TS amendment request for the DC Cook Nuclear Power Plant, Unit 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the KNPP [Kewaunee Nuclear Power Plant] in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The LWS [laser-welded sleeve] configuration has been designed and analyzed in accordance with the requirements of the ASME [American Society of Mechanical Engineers] Code. Fatigue and stress analyses of the sleevod tube assemblies produced acceptable results; i.e., the applied stresses and fatigue usage for the sleeve and weld are bounded by the limits established in the ASME Code. ASME Code minimum material property values are used for the structural and plugging limit analysis. Ultrasonic inspection is used to verify that minimum weld fusion zone thicknesses are produced. Mechanical testing of 7/8" tubesheet sleeves installed in roll expanded tubes has shown that the individual joint structural strength of Alloy 690 LWSs provides margin to acceptance limits. These acceptance limits bound the most limiting loadings (3 times normal operating pressure differential) recommended by RG [Regulatory Guide] 1.121. Therefore, each individual joint provides for structural integrity exceeding RG recommendations. A hypothetical loss of integrity of one of the joints will not result in a loss of structural integrity for the sleeve. Leakage testing for 3/4" and 7/8" full length tubesheet sleeves has demonstrated that unacceptable levels of primary-to-secondary leakage are not expected during all plant conditions for non-welded tubesheet sleeve lower joints. The welded joint produces a hermetic seal, and therefore will not leak under any plant conditions. Laser welded sleeves will not contribute to the current SLB [steam-line break] primary-to-secondary leakage limit of 34 gpm in the faulted loop. The 34 gpm leakage limit was calculated in accordance with the standard review plan methodology to support implementation of the voltage-based repair criteria for tube support plate intersections.

The sleeve minimum acceptable wall thickness (used for developing the depth based plugging limit for the sleeve) is determined using the guidance of RG 1.121 and the pressure stress equation of Section III of the ASME Code. With respect to the design of the sleeve for KNPP, the limiting requirement of the RG which applies to part throughwall degradation is that the minimum acceptable wall must maintain a factor of safety consistent with the analysis conditions as defined by the ASME Code. A bounding set of design and transient loading input conditions was used for the minimum wall thickness evaluation in the generic evaluation. Evaluation of the minimum acceptable wall thickness for normal, upset and postulated accident condition loading per the ASME Code indicates the limiting condition is established for the normal operating conditions, and the minimum acceptable wall thickness for this case bounds the upset and faulted condition values.

According to RG recommendations, an allowance for non-destructive evaluation (NDE) uncertainty and operational growth of existing tube wall degradation indications within the sleeve must be accounted for when determining the sleeve plugging limit. A conservative tube wall degradation growth rate per cycle and an NDE uncertainty has been assumed for determining the sleeve TS plugging limit. The sleeve wall degradation extent determined by NDE, which would require plugging sleeved tubes, is developed using the guidance of RG 1.121 and is defined in WCAP-13088 [non-proprietary WCAP-13089] to be 25% throughwall (plugging limit = 100% - structural limit + NDE uncertainty + growth) for KNPP.

The hypothetical consequences of failure of the sleeve joint would be bounded by the current SG [steam generator] tube rupture analysis included in the KNPP Updated Safety Analysis Report. Due to the slight reduction in diameter caused by the sleeve wall thickness, primary coolant release rates would be slightly less than assumed for the SG tube rupture analysis (depending on break location), and therefore, would result in lower total primary fluid mass release to the secondary system.

The proposed TS change to use Alloy 690 LWSs does not adversely impact any other previously evaluated design basis accidents or the results of LOCA [loss of coolant accident] and non-LOCA accident analyses for the current TS minimum reactor coolant system flow rate. The results of the analyses and testing, as well as plant operating experience, demonstrates that the sleeve assembly is an acceptable means of maintaining tube integrity. Plugging limit criteria are established using the guidance of RG 1.121. Furthermore, per RG 1.83 recommendations, the sleeved tube will be monitored through periodic inspections with present NDE techniques. These measures demonstrate that installation of sleeves spanning degraded areas of the tube will restore the tube to a condition consistent with its original design basis.

Corrosion testing of free span LWS joint has indicated that the corrosion resistance (relative to roll transitions) can be increased by greater than a factor of ten with the application of a PWHT [post weld heat treatment] step. Estimations of joint susceptibility based on expected far field stresses after heat treatment using the expected original tube-to-tubesheet hydraulic expansion transition residual stresses and actual time to crack in these transitions at KNPP indicate that LWS joint lifetime should exceed the current plant license. Consistent with other license amendments addressing LWS, all free span laser welds will receive a PWHT; therefore, rapid corrosion degradation of the free span joint is not expected. Recently performed corrosion testing of LWS joints in locked tube conditions indicates that with PWHT the stress corrosion cracking resistance and initiation potential in the parent tube weld region is greatly enhanced. Similar test results and conclusions would be expected for KNPP. The Model 51 SG tube span between the top of the tubesheet and the first support plate is such that even lower PWHT residual stresses would be expected. Also, the weld placement within the hydraulically expanded area and sleeve installation sequence have been optimized to provide for some level of heat treatment at the upper transition above the weld and lower far field residual stress levels. While no parent tube degradation has been detected at this elevation, or any other elevation in a laser welded sleeve assembly, the relocation of the weld serves to provide further resistance to PWSCC [primary water stress corrosion cracking] at this elevation. The suggested target PWHT temperature has also been optimized in that this temperature provides for adequate PWHT while maintaining the parent tube far field stresses.

Approximately 19,500 LWSs have been installed in the U.S. Of this number, over 300 which have up to 3 cycles of operation were inspected in 1995 using the CECCO-5 probe. No degradation of the sleeves or the parent tube was detected. Operating experience in Europe has shown good performance of the LWS joint for up to 5 cycles of operation. In 1994, approximately 11,200 LWSs were installed in the Doel-4 Plant. After one year of operation, all in-service sleeves were inspected using the +point probe. No service induced corrosion was detected. In 1995, approximately 18,600 LWSs were installed in two different U.S. plants. Due to their limited operational time, these sleeves have not been inspected.

Conformance of sleeve design with the applicable sections of the ASME Code and results of the leakage and mechanical tests support the conclusion that installation of LWSs will not increase the probability or consequences of an accident previously evaluated.

2. The proposed license amendment request does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Installation of LWSs will not introduce significant or adverse changes to the plant design basis and does not represent a potential to affect any other plant component. Stress and fatigue analysis of the repair has shown that the ASME Code and RG 1.121 criteria are not exceeded. Installation of LWSs maintains overall tube bundle structural and leakage integrity at a level consistent to that of the originally supplied tubing during all plant conditions; stresses are bounded by the Code and the tubing is leaktight. Sleeving of tubes does not provide a mechanism resulting in an accident outside of the area affected by the sleeves. Any hypothetical accident as a result of potential tube or sleeve degradation in the repaired portion of the tube is bounded by the existing tube rupture accident analysis. Since the sleeve design does not affect any component or location of the tube outside of the immediate area repaired, in addition to the fact that the installation of sleeves and the impact on current plugging level analyses is accounted for, the possibility that laser welded sleeving creates a new or different type of accident is not supported.

Installation of LWSs will reduce the potential for primary-to-secondary leakage during postulated steam line break while not significantly impacting primary coolant flow area in the event of a LOCA. By effectively isolating degraded areas of the tube through repair, the potential for steam line break leakage is reduced.

3. The proposed license amendment does not involve a significant reduction in the margin of safety.

The LWS repair of degraded SG tubes as identified in WCAP-13088 [non-proprietary WCAP-13089] has been shown by analysis to restore the integrity of the tube bundle consistent with its original design basis conditions; i.e., tube/sleeve operational and faulted conditions stresses and cumulative fatigue usage are bounded by the ASME Code requirements and the repaired tubes are leaktight. The safety factors used in the design of sleeves for the repair of degraded tubes are consistent with the safety factors in the ASME Code used in SG design. The design of the LWS lower joint for 7/8" tube sleeves has been verified by testing to sufficiently preclude leakage during normal and postulated accident conditions. The portions of the installed sleeve assembly which represents the reactor coolant pressure boundary will be monitored for the initiation and progression of sleeve/tube wall degradation, thus satisfying the requirements of RG 1.83. The portion of the tube bridged by the sleeve joints is effectively removed from the pressure boundary, and the sleeve then forms the new pressure boundary. The areas of the sleeved tube assembly which require inspection are defined in WCAP-13088 [non-proprietary WCAP-13089]. Since the installed sleeves represent a portion of the pressure boundary, a baseline inspection of these areas is required prior to operation with sleeves installed.

The effect of sleeving on the design transients and accident analyses has been reviewed based on the installation of sleeves up to the level of SG tube plugging coincident with the minimum reactor coolant flow rate. The installation of sleeves is evaluated as the equivalent of some level of SG tube plugging. This is based on determining the minimum reactor coolant flow for the LOCA evaluation. Information provided in WCAP-13088 [non-proprietary WCAP-13089] describes the method to determine the flow equivalent for all combinations of tubesheet and tube support plate sleeves. Therefore, installation of LWSs will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497

NRC Project Director: Gail H. Marcus

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: June 4, 1996 (VPNPD-96-035)

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 15.2.3, "Limiting Safety System Settings and Protective Instrumentation," and Section 15.5.3, "Design Features - Reactor," to incorporate changes associated with the operation of Point Beach Nuclear Plant (PBNP), Unit 2, with replacement steam generators.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of this facility under the proposed Technical Specifications will not

create a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a change to structures, systems, or components which would affect the probability or consequences of an accident previously evaluated in the PBNP Final Safety Analyses Report (FSAR). The proposed setpoints maintain the margin to safe operation of Unit 2 with the replacement steam generators. In order to maintain one set of safety analyses for both units, the analyses for operation of Unit 2 with the replacement steam generators were performed to encompass the operation of Unit 1. Therefore, the proposed changes apply to the operation of both units and maintain the margin of safety for each. The proposed change to the description of nominal RCS [reactor coolant system] volume is an administrative change and has no effect on plant operation. Therefore, the probability or consequences of a previously evaluated accident are not significantly increased as a result of these changes.

2. Operation of this facility under the proposed Technical Specifications change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a change to the plant design. The proposed setpoints maintain the margin to safe operation of Unit 2 with the replacement steam generators. In order to maintain one set of safety analyses for both units, the analyses for operation of Unit 2 with the replacement steam generators were performed to encompass the operation of Unit 1. Therefore, the proposed changes apply to the operation of both units and maintain the margin of safety for each. These changes do not affect any of the parameters or conditions that contribute to initiation of any accidents. The proposed change to the description of nominal RCS volume is an administrative change and has no effect on plant operation or initiation of any accidents. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of this facility under the proposed Technical Specifications change will not create a significant reduction in a margin of safety.

The proposed setpoints maintain the margin to safe operation of Unit 2 with the replacement steam generators. In order to maintain one set of safety analyses for both units, the analyses for operation of Unit 2 with replacement steam generators were performed to encompass the operation of Unit 1. Therefore, the proposed changes apply to the operation of both units and maintain the margin of safety for each. The proposed change to the description of nominal RCS volume is an administrative change and has no effect on plant operation. Therefore, the proposed changes will not create a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: June 4, 1996 (VPNPD-96-036)

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 15.2.1, "Safety Limit, Reactor Core," 15.2.3, "Limiting Safety System Settings, Protective Instrumentation," and Section 15.3.1.G, "Operational Limitations," to maintain safety margin for Unit 2 with replacement steam generators.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of this facility under the proposed Technical Specifications will not create a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a change to structures, systems, or components which would affect the probability or consequences of an accident previously evaluated in the PBNP [Point Beach Nuclear Plant] Final Safety Analyses Report (FSAR). The proposed changes maintain the margin to safe operation for Unit 2 with the replacement steam generators. In order to maintain one set of safety analyses for both units, the analyses for operation of Unit 2 with the replacement steam generators were performed to encompass the operation of Unit 1. Therefore, the proposed changes apply to the operation of both units and maintain the margin of safety for each. The proposed changes do not change, degrade, or preclude the prevention or mitigation of the consequences of any accident described in the FSAR. Therefore, the probability or consequences of a previously evaluated accident are not significantly increased as a result of these changes.

2. Operation of this facility under the proposed Technical Specifications change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a change to the plant design. The proposed changes maintain the margin to safe operation for Unit 2 with the replacement steam generators. In order to maintain one set of safety analyses for both units, the analyses for operation of Unit 2 with the replacement steam generators were performed to encompass the operation of Unit 1. Therefore, the proposed changes apply to the operation of both units and maintain the margin of safety for each. These changes do not affect any of the parameters or conditions that contribute to initiation of any accidents. In addition, the safety functions of safety-related systems and components, which are related to accident mitigation, have not been altered. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of this facility under the proposed Technical Specifications change will not create a significant reduction in a margin of safety.

The proposed changes maintain the margin to safe operation for Unit 2 with the replacement steam generators. In order to maintain one set of safety analyses for both units, the analyses for operation of Unit 2 with replacement steam generators were performed to encompass the operation of Unit 1. Therefore, the proposed changes apply to the operation of both units and maintain the margin of safety for each. The proposed changes have no affect on the availability, operability, or performance of the safety-related systems and components described in the Technical Specifications. Therefore, the proposed changes will not create a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Florida Power and Light Company, et al., Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: June 1, 1996

Description of amendment request: Revise Technical Specifications to reflect reduced reactor coolant system flows resulting from increased percentage of plugged steam generator tubes.

Date of publication of individual notice in the **Federal Register:** June 7, 1996 (61 FR 29140)

Expiration date of individual notice: June 24, 1996

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: May 31, 1996

Brief description of amendment request: The amendments (1) revise the Reactor Vessel Level Indication System (RVLIS) Action Statements to facilitate actions necessary for channel testing to be performed in Mode 3, (2) revise the Channel Calibration definition to better account for temperature detector channel calibration methodology, and (3) delete a requirement to install a jumper in the Auxiliary Feedwater actuation logic since a design change will result in the jumper function being performed by a relay.

Date of publication of individual notice in **Federal Register:** June 17, 1996 (61 FR 30641)

Expiration date of individual notice: July 17, 1996

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: May 28, 1996, as supplemented by letters dated May 31 and June 5, 1996

Brief description of amendments: These amendments authorize the licensee to revise applicable Updated Final Safety Analysis Report sections to reflect the installation of a variable flow controller for the service water inlet control valves for the containment air coolers that is not within the current licensing basis of Calvert Cliffs Nuclear Power Plant Units No. 1 and No. 2. These amendments are being issued pursuant to the requirements of 10 CFR 50.59(c) because the review by Baltimore Gas and Electric Company identified the changes as an unreviewed safety question. No changes to the Technical Specifications are required by these amendments.

Date of issuance: June 17, 1996

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 215 and 192

Facility Operating License Nos. DPR-53 and DPR-69: The amendments revised the Updated Final Safety Analysis Report. Public comments requested as to proposed no significant hazards consideration: Yes (61 FR 27371 dated May 31, 1996). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by July 1, 1996, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendments. The May 31 and June 5, 1996, letters provided additional information that did not change the scope of the May 28, 1996, application.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and a final no significant hazards consideration determination are contained in a Safety Evaluation dated June 17, 1996.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: October 24, 1994, as supplemented August 31, 1995 and February 8, 1996. The August 31, 1995 and February 8, 1996, letters provide clarification information. The new information changed the scope of the October 24, 1994, letter and was re-noticed on May 8, 1996, but did not change the initial no significant hazards consideration determination.

Brief description of amendment: The proposed amendment would revise the TS to allow the relocation of TS 3/4.11.2.6, Gas Storage Tanks; and the associated Bases in the TS to licensee-controlled documents.

Date of issuance: June 12, 1996

Effective date: June 12, 1996

Amendment No.: 64

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications

Date of initial notice in **Federal Register:** November 23, 1994 (59 FR 60379). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated

June 12, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: December 21, 1995

Brief description of amendments: The amendments delete the requirement to place the reactor mode switch in the Shutdown position if a stuck open safety/relief valve can not be closed within 2 minutes. The operator will still be required to scram the reactor if suppression pool average water temperature reaches 110 degrees Fahrenheit or greater. The amendment also includes editorial changes to the index pages.

Date of issuance: June 18, 1996

Effective date: Immediately, to be implemented within 60 days

Amendment Nos.: 113 and 98

Facility Operating License Nos. NPF-11 and NPF-18: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 8, 1996 (61 FR 20844) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 18, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: July 18, 1994, as supplemented by letter dated October 9, 1994

Brief description of amendments: The amendments revise the current combined Technical Specifications (TS) for Units 1 and 2 by separating them into individual volumes for Unit 1 and Unit 2. In addition to the changes required by the TS split, some administrative and editorial changes were made, such as the correction of typographical errors and the deletion of unnecessary blank pages.

Date of issuance: June 12, 1996

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 148 and 142

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 14, 1994 (59 FR 47166) The October 9, 1995 and June 6, 1996, letters provided clarifying information that did not change the scope of the July 18, 1994, application and the initial proposed no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 12, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: February 22, 1996

Brief description of amendment: The amendment increased the safety function lift setpoint tolerances for the safety and relief valves that are listed in Surveillance Requirement 3.4.4.1 (Page 3.4-10) of the Technical Specifications (TSs) for the Grand Gulf Nuclear Station, Unit 1. The tolerances were increased from the current plus or minus 1 percent of the safety function (i.e., safety relief valve) lift setpoint to plus or minus 3 percent.

Date of issuance: June 12, 1996

Effective date: June 12, 1996

Amendment No: 123

Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 27, 1996 (61 FR 13524) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 12, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: May 1, 1996

Brief description of amendment: The amendment revises the Operating License and Technical Specifications (TS) to implement 10 CFR Part 50, Appendix J - Option B, by referring to Regulatory Guide 1.163, "Performance-Based Containment Leak-Test Program." Specifically, changes have been made to paragraph 2.D of the Operating License; TS Section 1.1, "Definitions;" TS 3.6.1.1, "Primary Containment;" TS 3.6.1.1, "Primary Containment Air Locks;" TS 3.6.1.3, "Primary Containment Isolation Valves (PCIVs);" and TS Section 5.5, "Programs and Manuals."

Date of issuance: June 21, 1996

Effective date: June 21, 1996

Amendment No.: 105

Facility Operating License No. NPF-62: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1996 (61 FR 25708) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 21, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: January 25, 1996

Brief description of amendment: The amendment revises Technical Specification 3/4.3.3, Emergency Core Cooling System Actuation Instrumentation, to more clearly define when, during shutdown and refueling, the Loss of Voltage and Degraded Voltage relays for the Loss of Power actuation trip functions are required to be operable.

Date of issuance: June 10, 1996

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 72

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 8, 1996 (61 FR 20851) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 10, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: January 5, 1996, as supplemented on May 31, 1996

Brief description of amendment: The amendment implements the guidance of Generic Letter 93-08 by relocating Tables 3.3-2, "Reactor Protective Instrumentation Response Times" and 3.3-5, "Engineered Safety Features Response Times" from the Technical Specifications to the Millstone Unit No. 2 Technical Requirements Manual (TRM). In accordance with Generic Letter 93-08, the Limiting Conditions for Operations for Technical Specifications 3.3.1.1, 3.3.2.1, and 3.7.1.6 are revised to eliminate their references to the aforementioned tables. The amendment also revises Bases 3/4.3.1 and 3/4.3.2 to reference that the instrument response times are located in the TRM and that these tables in the TRM are now controlled under 10 CFR 50.59. The amendment also removes a cycle-specific note from Tables 3.3-3 and 3.3-4.

Date of issuance: June 10, 1996

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 198

Facility Operating License No. DPR-65: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 14, 1996 (61 FR 5816) The May 31, 1996, letter provided additional information that did not change the scope of the January 5, 1996, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 10, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360 and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut 06385

PECO Energy Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 15, 1996

Brief description of amendments: The amendments change the Technical Specifications to implement 10 CFR Part 50, Appendix J, Option B, by creating Technical Specification Section 5.5.12, "Primary Containment Leakage Rate Testing Program," which refers to Regulatory Guide 1.163, "Performance-Based Containment Leakage-Test Program."

Date of issuance: June 18, 1996

Effective date: Both units, as of date of issuance, to be implemented by June 28, 1996.

Amendments Nos.: 214 and 219

Facility Operating License Nos. DPR-44 and DPR-56: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 27, 1996 (61 FR 13531) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 18, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: April 25, 1996

Brief description of amendments: The amendments relocate Technical Specification Traversing In-Core Probe System Limiting Condition for Operation 3/4.3.7.7 and its Bases 3/4.3.7.7, to the Limerick Generating Station Technical Requirements Manual, and modify Note (f) of TS Table 4.3.1.1-1.

Date of issuance: June 11, 1996

Effective date: As of date of issuance, to be implemented within 30 days.

Amendment Nos.: 117 and 79

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 8, 1996 (61 FR 20840) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 11, 1996 No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: March 14, 1996

Brief description of amendment: The proposed changes would allow a one-time extension of the intervals for the steam generator tube inspection that is due in July 1996.

Date of issuance: June 19, 1996

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 166

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 8, 1996 (61 FR 20854) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610

Tennessee Valley Authority, Docket Nos. 50-390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: February 28, as supplemented April 15, and June 3, 1996.

Brief description of amendment: The proposed amendment would revise the Technical Specifications (TS) to increase the surveillance intervals for ice bed weight sampling and flow passage inspection from 9 months to 18 months. The TS would also be changed to provide an increased ice sublimation allowance, associated with the increased surveillance interval, by increasing the minimum total ice weight from 2,360,875 pounds to 2,403,800 pounds (1214 pounds/basket to 1236 pounds/basket).

Date of issuance: June 13, 1996

Effective date: June 13, 1996

Amendment No.: 2

Facility Operating License No. NPF-90: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 10, 1996 (61 FR 15998) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 13, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440 Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: April 26, 1996

Brief description of amendment: The amendment corrected minor technical and administrative errors in the Improved Technical Specifications prior to its implementation.

Date of issuance: June 18, 1996

Effective date: June 18, 1996

Amendment No.: 85

Facility Operating License No. NPF-58: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 9, 1996 (61 FR 21213) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 18, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment requests: April 25 (TXX-94119) and August 12, 1994 (TXX-94216), as supplemented by letters dated February 15 (TXX-96055), March 7 (TXX-96078), and April 11, 1996 (TXX-96111).

Brief description of amendments: These amendments modified the Administrative Controls specifications, relocate/remove requirements that are adequately controlled by existing regulations other than 10 CFR 50.36 and the technical specifications. Guidance on the proposed changes was developed by NRC and provided in the Standard Technical Specifications for Westinghouse Plants, NUREG-1431. The changes also update unit staff qualification requirements to Regulatory Guide 1.8, Revision 2.

Date of issuance: June 12, 1996

Effective date: June 12, 1996, to be implemented witnin 60 days.

Amendment Nos.: Unit 1 - Amendment No. 50; Unit 2 - Amendment No. 36

Facility Operating License Nos. NPF-87 and NPF-89. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 3, 1994 (59 FR 39599) and September 28, 1994 (59 FR 49439). The additional information contained in the supplemental letters dated February 15, March 7, and April 11, 1996, were clarifying in nature and thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 12, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: March 12, 1996 (TXX-96008)

Brief description of amendments: The amendments revised the Technical Specifications to reflect the approval for the licensee to use of the new Containment Leakage Rate Testing Program as required by 10 CFR Part 50, Appendix J, Option B for Comanche Peak Steam Electric Station, Units 1 and 2. Implementation of the new performance based leakage rate testing program will be based on the guidance provided by Regulatory Guide 1.163, September 1995.

Date of issuance: June 13, 1996

Effective date: June 13, 1996, to be implemented within 60 days

Amendment Nos.: 51 and 37

Facility Operating License Nos. NPF-87 and NPF-89. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 10, 1996 (61 FR 15999) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 13, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: September 9, 1994, as superseded by letter dated July 25, 1995, and subsequently supplemented by letters dated February 28, 1996, and April 9, 1996.

Brief description of amendment: The amendment would revise TS 3/4.8.1 and its associated Bases to improve the overall emergency diesel generator reliability and availability.

Date of issuance: June 17, 1996

Effective date: June 17, 1996, to be implemented within 30 days of the date of issuance.

Amendment No.: 112

Facility Operating License No. NPF-30: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 30, 1995 (60 FR 45188) The February 28, 1996, and April 9, 1996 supplemental letters provided additional clarifying information and did not change the staff's original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 17, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: April 15, 1996

Brief description of amendments: These amendments would revise the Technical Specifications to indicate that the quadrant power tilt ratio requirements are applicable only at power levels greater than 50% of rated core power.

Date of issuance: June 7, 1996

Effective date: June 7, 1996

Amendment Nos.: 210 and 210

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 8, 1996 (61 FR 20860) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 7, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Dated at Rockville, Maryland, this 26th day of June 1996.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 96–16879 Filed 7–2–96; 8:45 am]

BILLING CODE 7590–01–F

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescission and Deferrals

To the Congress of the United States:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report one revised deferral of budgetary resources, totaling $7.4 million. The deferral affects the Social Security Administration.

William J. Clinton.

The White House,
June 24, 1996.

BILLING CODE 3110–01–M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Deferral No.	ITEM	Budgetary Resources
	Social Security Administration	
D96-2A	Limitation on administrative expenses	7,365
	Total, deferral	7,365

D96-2A

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D96-2, which was transmitted to Congress on October 19, 1995.

This revision increases by $44,285 the previous deferral of $7,320,543 in the Limitation on administrative expenses, Social Security Administration, resulting in a total deferral of $7,364,828. This increase results from the deferral of additional carryover of funds from FY 1995 that cannot be used in FY 1996.

Deferral No. 96-2A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Services	**New budget authority**	$* 167,000,000
BUREAU: Social Security Administration	**Other budgetary resources**	$* 261,623,563
Appropriation title and symbol: Limitation on administrative expenses 1/ 75X8704	**Total budgetary resources**	$* 428,623,563
	Amount to be deferred: Part of year	$ ____
	Entire year	$* 7,364,828
OMB identification code: 20-6007-0-7-651	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act	
Grant program: [ ] Yes [X] No	[ ] Other ____	
Type of account or fund: [ ] Annual	**Type of budget authority:** [X] Appropriation	
[ ] Multi-year: ____ (expiration date)	[ ] Contract authority	
[X] No-Year	[ ] Other ____	

JUSTIFICATION: This account includes funding for construction, renovation, and expansion of Social Security Trust Fund-owned headquarters and field office buildings. In addition, funds remain available for costs associated with acquisition of land in Colonial Park Estates adjacent to the Social Security Administration complex in Baltimore, Maryland. The Social Security Administration has received an approved FY 1996 apportionment for $50,000 to cover potential upward adjustments of prior-year costs related to field office roof repair and replacement projects. The remaining funds will not be needed for obligation in FY 1996. This deferral reflects the actual amount available for construction in FY 1996, less the $50,000 apportioned for potentia upward adjustments in FY 1996. This action is taken pursuant to the Antideficiency Act (31 U.S..C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1995 (D95-6A).
* Revised from previous report.

[FR Doc. 96–17033 Filed 7–2–96; 8:45 am]
BILLING CODE 3110–01–C

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council

AGENCY: Office of Personnel Management.
ACTION: Notice of meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (P.L. 92–463), notice is hereby given that the forty-ninth meeting of the Federal Salary Council will be held at the time and place shown below. At the meeting the Council will continue discussing issues relating to locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meeting is open to the public.

DATES: July 25, 1996, at 10:00 a.m.
ADDRESSES: Office of Personnel Management, 1900 E Street NW., Room 7B09, Washington, DC.
FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street NW., Room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent:
Lorraine A. Green,
Deputy Director.

[FR Doc. 96–16943 Filed 7–2–96; 8:45 am]
BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–37364; File No. SR–CBOE–95–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Interruption of RAES Due to Unusual Market Activity

June 25, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 12, 1996, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 6.6, Unusual Market Conditions, to give the Order Book Official ("OBO") or the Post Director authority to turn off the Exchange's Retail Automatic Execution System ("RAES") for a class or classes of options and for a short period of time when, in the judgement of that OBO or Post Director, there is unusual market activity in such options or their underlying securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to add a new paragraph (e) to CBOE Rule 6.6 that will authorize OBOs, and, in the case of options traded at Designated Primary Market-Maker ("DPM") stations, Post Directors temporarily to deactivate RAES in specified classes of options traded at the posts where such persons are stationed when in their judgement such action is warranted by an influx of orders or other unusual market conditions in such options or their underlying securities and the OBO or Post Director determines that such action is appropriate in the interests of maintaining a fair and orderly market. Whenever such action is taken, notice thereof shall immediately be given to two Floor Officials who may continue the deactivation of RAES for more than five minutes or take such actions as they deem necessary pursuant to their authority under Rule 6.6.

This rule change is being proposed to permit a more immediate response to events, such as significant news announcements, that can cause temporary order imbalances and otherwise disrupt the market for stocks that underlie options traded on CBOE. In these situations stock prices may move sharply, and Exchange market-makers may not have time to adjust their options quotes in the numerous series of options that overlie these stocks. This may result in published options quotes that do not reflect current stock prices. Because orders sent to RAES are executed automatically at published quotations, customers may receive executions at unrealistic prices, some at a price more favorable than fair market prices and some less favorable than fair market prices.

Exchange Rule 6.6 currently authorizes two Floor Officials to respond to this situation by declaring the market in particular classes of options to be "fast," and then turning off RAES (and taking other action) until there has been time for prices to be adjusted. Because of the speed with which computerized order routing systems can direct orders to RAES, and because RAES itself provides for instantaneous automatic executions, there can be a significant number of executions at stale prices during the several minutes that it might take for two Floor Officials to declare a fast market. By authorizing OBOs and Post Directors to turn off RAES for up to five minutes, the response time to such a situation will be considerably shortened, and the number of executions at stale prices should be reduced accordingly. In this respect, the proposed rule change is not unlike the recently approved rule change that authorized Post Directors or OBOs to suspend trading in specified classes of options for up to five minutes when there is a trading halt or suspension of trading in the underlying security in the primary market.[2] There, as is proposed here, authority is given to the OBO or Post Director to deal quickly and on an interim basis with a situation where immediate response is called for, pending further consideration of the matter by two Floor Officials.

It is anticipated that in most instances where RAES is deactivated by an OBO or Post Director, the period of time when RAES is unavailable should be very brief, lasting less than five minutes. Even then, orders will continue to be delivered to the trading crowd via the Exchange's electronic order routing system ("ORS") and the trading crowd will remain obligated to fill customer

[2] File No. SR–CBOE–95–44 approved in Exchange Act Release No. 36135 (August 22, 1995), 60 FR 44921.

orders in accordance with Exchange rules, including the firm quote rule.[3]

Members will be notified of any deactivation of RAES in particular classes of options by an OBO or a Post Director pursuant to proposed Rule 6.6(e) by means of a message that is printed at each trading post on the floor and is transmitted to terminals throughout the floor over the Exchange's TextNet system.

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act in that, by permitting the Exchange to act expeditiously to prevent automatic executions of options transactions at stale prices in the event of significant news announcements or other potentially disruptive situations, it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

[3] The firm quote rule, which obligates the trading crowd to fill public orders for up to 10 contracts at published quotes, remains in effect unless suspended by two Floor Officials acting under Rule 6.6(b) in the event of a fast market. The proposed rule change would not authorize an OBO or DPM to declare a fast market or suspend the firm quote rule.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–CBOE–96–36 and should be submitted by July 24, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–16921 Filed 7–2–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37368; File No. SR–GSCC–96–01]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Enhancement of Risk Management Processes

June 25, 1996.

On January 5, 1996, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–GSCC–96–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on March 13, 1995.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

As part of GSCC's continuous process of reviewing its risk management mechanism, GSCC has made various enhancements and revisions to that mechanism. The design of the risk management process for GSCC's newly implemented netting service for repurchase agreements ("repos") and recommendations made by Commission staff during their inspection of GSCC last year provided the impetus for certain of the enhancements and revisions. Each of the changes to GSCC's risk management process is described in detail below.

A. Change in the Clearing Fund Formula

1. Funds Adjustment Component

There are three components to a netting member's clearing fund deposit requirement: (1) the funds adjustment component, (2) the receive/deliver settlement component, and (3) the repo volatility component. The sum of the three components is a member's total clearing fund deposit requirement. The first component of the clearing fund, the funds adjustment component, addresses the potential risk that a member might not pay a funds-only settlement amount due to GSCC.[3]

Prior to this amendment, the funds adjustment component was 125% of the average of a member's ten largest funds-only settlement amounts measured on an absolute basis during the most recent seventy-five business days.[4] Under the proposed rule change, the funds adjustment component is now 100% of the average of the member's twenty largest funds-only settlement amounts during the most recent seventy-five business days.[5] However, GSCC retains the right to reinstitute at its discretion all or a part of the twenty-five percent cushion for a temporary period. For example, GSCC might reinstitute this cushion during volatile market conditions.

2. Receive/Deliver Settlement Component

The second component of the clearing fund requirement is the receive/deliver settlement component, which is based on the size and nature of a member's net settlement positions. The receive/deliver component for GSCC netting members other than Category 2 dealer or Category 2 future commission merchant members[6] is the largest of the following four calculations based on a member's gross margin:[7]

(1) *Post-Offset Margin Amount ("POMA"):* The POMA essentially is a member's total gross margin taking into account allowable offset percentages.[8]

(2) *Average POMA:* Prior to this amendment, the average POMA typically was based on a member's ten highest POMA amounts occurring in the most recent seventy-five business days, including the current day's POMA amount. Under the proposed rule change, GSCC will now use an average of the twenty largest POMA amounts during the most recent seventy-five business days.

(3) *Adjusted POMA:* The adjusted POMA is calculated the same way as the POMA with the exception of excluding all trades that are scheduled to settle on the current day.[9]

(4) *Liquidation Amount:* This is a floor amount which previously equalled fifty percent of the total gross margin on all long and short positions without offsets. The proposed rule change lowers this amount to twenty-five percent.

The proposed rule change also deletes sections (2)(g)(i) and (2)(g)(ii) of Rule 4 regarding alternative formulas for the receive/deliver settlement component of the required clearing fund deposit. GSCC rarely used the alternative calculation under subsection (g)(i), which disregards when-issued trades that have been issued. Subsection (g)(ii) has been made obsolete by the changes approved in GSCC's filing pertaining to its repo netting service.[10]

With respect to Category 2 dealer or Category 2 futures commission merchant members, the receive/deliver settlement component was the largest of (1) the member's total gross margin without offsets, (2) the member's total gross margin without offsets and excluding positions due to settle that day, or (3) the average of the member's largest ten gross margin amounts over the most recent seventy-five business days. GSCC has revised the third calculation to use the average of the largest twenty gross margin amounts over the most recent seventy-five business days.

3. Repo Volatility Component

The third component of the clearing fund requirement is the repo volatility component. This component was recently added to GSCC's clearing fund formula to cover securities' settlement exposure posed by repo activity. The repo volatility component was the greater of (1) the product of the repo volatility factor and the market value of the member's repo transactions taking into account allowable offset percentages ("repo offset amount") or (2) the average of a member's ten highest repo offset amounts over the most recent seventy-five business days. GSCC has revised the second element of this calculation to take the average of a member's twenty highest repo offset amounts over the most recent seventy-five business days.

B. Providing GSCC With Discretion, Within Parameters, To Lower Margin Factors

GSCC's Membership and Standards Committee ("Committee") reviews on an ongoing basis the appropriateness of its margin factors [11] by examining third-party price volatility data and GSCC's own short-term and long-term data covering ninety-five and ninety-nine percent of all price movements. However, prior to this amendment, GSCC was not allowed to lower any of its margin factors without first obtaining Commission approval through a formal rule filing process.

GSCC has revised its rules to permit the Committee to lower a margin factor subject to a predefined limitation if the Committee determines it appropriate based on its review of historical price volatility data and if the GSCC Board of Directors approves such a lower margin factor. With respect to GSCC netting members other than Category 2 dealer members and futures commission merchant members, the predefined limitation permits GSCC to reduce a margin factor to a level that is no lower than the higher of (1) the price volatility for that remaining maturity category taking into account ninety-five percent of all movements during the last calendar quarter or (2) the price volatility for that remaining maturity category taking into account ninety-five percent of all movements during the last calendar year. With respect to the margin factors for Category 2 dealer members and futures commission merchant members, the limitation provides that GSCC can reduce a margin factor to a level that is no lower than the higher of (1) the price volatility for that remaining maturity category taking into account ninety-nine percent of all movements during the last calendar quarter or (2) the price volatility for that remaining maturity category taking into account ninety-nine percent of all movements during the last calendar year.

C. Revision of Certain Margin Factors for Zero-Coupon Government Securities Other Than Treasury Bills ("Zeros")

As noted above, GSCC's margin factors are based on an assessment of historical daily price volatility data. Zeros require different margin factors than other Treasury securities because zeros generally are subject to greater price volatility than are other Treasury securities with the same maturity.[12] The applicable margin percentages for zeros range from percentages that are the same as those for other Treasury securities with respect to shorter-term maturities to percentages that are two-and-a-half times the percentages applicable to other Treasury securities with respect to long-term maturities.[13]

[4] 17 CFR 200.30–3(a) (12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 36933 (March 6, 1996), 61 FR 10045.

[3] Historically, this component has represented about ten percent of the total clearing fund requirement.

[4] Prior to the implementation of GSCC's netting service for repos, GSCC's rules required computation of the average of a member's absolute funds amounts over the prior twenty business days. Securities Exchange Act Release No. 36491 (November 17, 1995), 60 FR 61577 (order approving proposed rule change).

[5] This change has been made to both paragraphs (b) and (d) of Rule 4, Section 2 of GSCC's rules. Paragraph (b) applies to bank netting members, Category 1 dealer netting members, Category 1 futures commission merchant netting members, Category 2 inter-dealer broker netting members, government securities issuer netting members, insurance company netting members, and registered investment company netting members. Paragraph (d) applies to Category 2 dealer netting members and Category 2 futures commission merchant netting members.

[6] GSCC's method of calculating the receive/deliver/settlement component for Category 2 dealer and Category 2 futures commission merchant members is set forth below.

[7] Gross margin is the product of GSCC's margin factors multiplied by the dollar value of a member's current outstanding net settlement position. GSCC's margin factors are designed to estimate daily security price movements, are expressed as percentages, and are determined by historical daily price volatility. See Section 4 below for a discussion of GSCC's margin factors.

[8] Margin amounts on receive (long) and deliver (short) positions are allowed to offset each other. The extent to which an offset is allowed is determined by product and the degree of similarity in time remaining to maturity.

[9] This is done based on the assumption that those trades will settle on the current day; thus, calculating POMA in this manner will more accurately reflect GSCC's settlement exposure during the current day.

[10] *Supra* note 4.

[11] As defined in GSCC's rules, margin factors and Category 2 margin factors are percentage, which GSCC publishes from time to time, representing variations weighted by maturity and product type. These margin factors are used in GSCC Rule 4, Section 2 to calculate the receive/deliver settlement component of the required fund deposit for GSCC's members described above in Section 2.

[12] GSCC's margin factor schedule for zeros is contained in GSCC's filing. A copy of the filing is available for copying and inspection in the Commission's Public Reference Room.

[13] These differences initially were based on the differences in the amount of haircut factors between zeros and other Treasury securities found in the United States Treasury Department's liquid capital requirements for government securities brokers and dealers.

Prior to this filing, the margin factors for zeros in several categories were well above the price volatility that GSCC's internal data show for such categories under any measure. GSCC has lowered the applicable margin factor for zeros in the seven to ten years remaining maturity category from 1.870 percent to 1.50 percent. GSCC has lowered the applicable margin factor for the ten to fifteen years remaining maturity category from 2.813 percent to 1.813 percent. GSCC has lowered the applicable margin factor for the fifteen years and higher remaining maturity category from 3.625 percent to 2.625 percent.

D. Introduction of a Tiered Surveillance Status Mechanism

GSCC is placing members that pose a heightened level of potential risk to GSCC in various classes of surveillance status instead of in one surveillance status.[14] GSCC's rules required that a member be placed on surveillance status if one or more of a number of circumstances is present. These circumstances include, but are not limited to, a significant reorganization or change in control or management of the member. In addition, GSCC could place a member on surveillance status if one or more of a number of factors, such as a member experiencing a condition that could materially affect its financial or operational capability so as to potentially increase GSCC's exposure to loss or liability, was present.

The proposed rule change establishes three surveillance categories. A member will be placed on Class 1 surveillance status if one or more of a number of factors pertaining to its financial condition is present,[15] if it has been placed on surveillance status by another self-regulatory organization, or if it has been upgraded from Class 2 surveillance status within the past three calendar months. Class 1 surveillance status will result in GSCC more thoroughly monitoring a member's financial condition and activities and will provide GSCC with discretion to require a member to make more frequent financial disclosures, including interim and/or pro forma reports.

GSCC will place a netting member on Class 2 surveillance status if one or more of a number of factors is present. These factors include but are not limited to (1) any element of a member's capital position falls below the minimum requirements, (2) a member has been upgraded from Class 3 surveillance status within the last three calendar months, (3) a member temporarily experiences an inability to meet its securities settlement obligations to GSCC in a timely fashion, and (4) a member's designated examining authority or appropriate regulatory agency has a pending action against or investigation of the member that could call into question the member's ability to meet its obligations to GSCC. In addition to the consequences resulting from placement on Class 1 surveillance status, a member placed on Class 2 surveillance status will be required to maintain a required fund deposit in excess of the amount ordinarily required, as permitted under GSCC's rules.

A GSCC netting member will be placed on Class 3 surveillance status if GSCC is considering taking action under GSCC Rule 18 (Ceasing to Act for a Member) or GSCC Rule 20 (Insolvency of a Member).[16] A GSCC netting member on Class 3 surveillance status will be placed on a final notification list. A netting member will remain on such final notification list until the condition(s) that resulted in its assignment to Class 3 surveillance status have improved to an extent that GSCC deems appropriate to support reassignment of the member to Class 2 surveillance status.

E. Simplification of the Clearing Fund Deficiency Call Mechanism

GSCC's rules permit GSCC to make clearing fund deficiency calls on a same day basis under the following four circumstances: (1) a member's current day's required clearing fund deposit exceeds by twenty-five percent the value of its clearing fund collateral, (2) a member's current day's required clearing fund deposit level exceeds by more than $250,000 the value of its clearing fund collateral, (3) a member is on surveillance status and its required clearing fund deposit as of the current day exceeds the value of its clearing fund collateral, or (4) a member's "clearing fund funds-only settlement amount," which excludes clearance difference, invoice amount, and other miscellaneous amounts, for the current day exceeds by more than twenty-five percent its average daily clearing fund funds-only settlement amount over the most recent twenty business days.[17]

The fourth circumstance, a twenty-five percent jump in the member's clearing fund funds-only settlement amount, has rarely been used and is now eliminated.[18] A clearing fund deficiency call that is based on a member being on surveillance status can now be invoked only if a member is on Class 2 or Class 3 surveillance status. Finally, because GSCC has the authority to make clearing fund deficiency calls on a same day basis, GSCC's rule permitting GSCC automatically to make a clearing fund deficiency call at the beginning of each month has been deleted.

F. Elimination of the Noon Deadline for Satisfaction of Clearing Fund Deficiency Calls

By 9:00 a.m., GSCC issues by telephone calls followed by telefax notices calls for additional clearing fund deposits by 9:00 a.m. The exact time that each telephone call is made is recorded. Prior to this filing, a member had until the later of two hours after the receipt of a clearing fund deficiency call or noon to satisfy the call.

GSCC's long term goal is to develop an automated mechanism pursuant to which it will be in receipt of clearing fund collateral by the time that the securities Fedwire opens in the morning, which is currently at 8:30 a.m. As an interim step toward achieving this goal, GSCC is eliminating the noon alternative deadline for satisfaction of clearing fund deficiency call and is requiring a member to satisfy a deficiency call within two hours after it is received. The practical effect of this change is that, in the ordinary course, a member will have to satisfy a deficiency call by approximately 11:00 a.m. However, a clearing fund deficiency call does not need to be satisfied before 10:00 a.m. regardless of when the call actually is made.

[14] At the conclusion of their recent inspection of GSCC, Commission staff suggested that, in line with what many other clearing agencies have in place, GSCC should establish different classes of surveillance for its members.

[15] The financial condition factors that will result in Class 1 surveillance status include but are not limited to (1) a member incurring recent significant net losses, (2) a member's required fund deposit obligation representing a significant portion of its net worth or net capital, and (3) a member experiencing any condition that could materially affect its financial or operational capacity.

[16] Under Rule 18 (Ceasing to Act for a Member), GSCC may cease to act for a member upon notice to such member for such reasons as: (1) the member has failed to perform its obligations to GSCC or materially violated any GSCC rule, procedure, or agreement, (2) the member has failed to pay GSCC any payment required, (3) the member no longer meets its admissions or continuance standards, or (4) the member has been responsible for fraudulent or dishonest conduct. Under Rule 20 (Insolvency of a Member), GSCC will cease to act for a member if such member meets one of several tests of insolvency (e.g., such member files a petition seeking relief under the Bankruptcy Code).

[17] The clearance difference is the dollar difference between GSCC's system price for a settlement obligation and the actual value at which the settlement obligation was settled. The invoice amount means all fees that a member owes GSCC.

[18] At the conclusion of their recent inspection of GSCC, Commission staff suggested that GSCC should either monitor the funds-only deficiency call requirements or file with the Commission a proposed rule change eliminating it.

II. Discussion

Section 17A(b)(3)(F)[19] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes GSCC's proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) because the proposal, by enhancing and revising GSCC's risk management mechanism, should help ensure that the mechanism accurately reflects GSCC's risk and provides CSCC appropriate risk protection while increasing members' liquidity and minimizing the operational burdens on GSCC netting members.

Specifically, based upon its assessment of historical data, GSCC has found that certain components of its clearing fund formula are overly conservative. Therefore, GSCC is revising the Average POMA calculation of the receive/deliver component, the funds adjustment component, and the repo volatility component of its clearing fund formula to utilize the twenty largest, rather than the ten largest, POMA amounts, funds-only settlement amounts, and repo offset amounts during the most recent seventy-five business days. GSCC also is modifying the funds adjustment component of its clearing fund formula to eliminate the twenty-five percent cushion in the component's calculation. Because GSCC will retain the right to reinstitute at its discretion all or part of the twenty-five percent cushion for a temporary period, GSCC will be able to react quickly to changing market conditions. GSCC also is lowering the liquidation amount of the receive/deliver component of its clearing fund requirement from fifty percent to twenty-five percent of the total gross margin on all long and short positions without offsets. GSCC believes that, based on historical performance, the twenty-five percent floor should provide sufficient protection to GSCC from the risk that its margin offsets will not reflect actual market conditions during a liquidation period while enabling members that engage in activity on a fully hedged basis to receive the benefits afforded by being fully hedged. Because these modifications are based upon GSCC's assessment of historical data, the changes should ensure appropriate risk protection for GSCC, while providing members with increased liquidity.

GSCC also is revising its rules to permit its Membership and Standards Committee to lower a margin factor subject to a predefined limitation if the Committee determines it appropriate based on its review of historical price volatility and if GSCC's Board of Directors approves such a lower margin factor. The Committee reviews the appropriateness of its margin factors on an ongoing basis. Thus, the proposed rule change should provide GSCC with the flexibility to lower margin factors more readily for the benefit of its members without compromising GSCC's risk protection. The limitation on the Committee's ability to lower margins (95% of all movements during the last quarter or year) should ensure that GSCC will always have a sufficient level of protection. GSCC also is lowering certain margin factors for zeros to reflect more accurately GSCC's needs based upon GSCC's data at the ninety-nine percent level over the past two years. Accordingly, members will not be subject to margin requirements that exceed GSCC's current needs.

In addition, GSCC is introducing a tiered surveillance status mechanism. The new surveillance mechanism should enable GSCC to monitor more effectively the potential risk posed by its members and to react more swiftly to changes in a member's condition. Finally, as a step toward GSCC's goal to develop an automated mechanism by which GSCC will receive clearing fund collateral by the time that the securities Fedwire opens, GSCC is eliminating the noon alternative deadline for satisfaction of a clearing fund deficiency call and to require a member to satisfy a deficiency call within two hours after it is received. By increasing the efficiency of GSCC risk management processes, the tiered surveillance mechanism and the modifications to GSCC's clearing fund deficiency call rules should help GSCC fulfill its obligation to safeguard securities and funds which are in its custody or control or for which it is responsible.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is Therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–96–01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–16922 Filed 7–2–96; 8:45 am]

BILLING CODE 8010–01–M

[19] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[20] 17 CFR 200.30–3(a)(12)(1995).

[Release No. 34–37370; File No. SR–NASD–96–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Small Order Execution System Tier Size Classifications

June 26, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 17, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is submitting this filing to effectuate The Nasdaq Stock Market, Inc.'s ("Nasdaq") periodic reclassification of Nasdaq National Market ("NNM") securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through Nasdaq's Small Order Execution System ("SOES") and the minimum quote size requirements for Nasdaq market makers in NNM securities. Specifically, under the proposal, 728 NNM securities will be reclassified into a different SOES tier size effective July 1, 1996. Since the NASD's proposal is an interpretation of existing NASD rules, there are no language changes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements

may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the rule change is to effectuate Nasdaq's periodic reclassification of NNM securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through SOES and the minimum quote size requirements for Nasdaq market makers in NNM securities. Nasdaq periodically reviews the SOES tier size applicable to each NNM security to determine if the trading characteristics of the issue have changed so as to warrant a tier size adjustment. Such a review was conducted using data as of March 31, 1996, pursuant to the following established criteria:[1]

NNM securities with an average daily non-block volume of 3,000 shares or more a day, a bid price less than or equal to $100, and three or more market makers are subject to a minimum quotation size requirement of 1,000 shares and a maximum SOES order size of 1,000 shares;

NNM securities with an average daily non-block volume of 1,000 shares or more a day, a bid price less than or equal to $150, and two or more market makers are subject to a minimum quotation size requirement of 500 shares and a maximum SOES order size of 500 shares; and

NNM securities with an average daily non-block volume of less than 1,000 shares a day, a bid price less than or equal to $250, and less than two market makers are subject to a minimum quotation size requirement of 200 shares and a maximum SOES order size of 200 shares.

Pursuant to the application of this classification criteria, 728 NNM securities will be reclassified effective July 1, 1996. These 728 NNM securities are set out in the NASD's *Notice To Members 96–40* (June 1996).[2]

In ranking NNM securities pursuant to the established classification criteria, Nasdaq followed the changes dictated by the criteria with two exceptions. First, an issue was not moved more than one tier size level. For example, if an issue was previously categorized in the 1,000-share tier size, it would not be permitted to move to the 200-share tier even if the reclassification criteria showed that such a move was warranted.

In adopting this policy, Nasdaq was attempting to maintain adequate public investor access to the market for issues in which the tier size level decreased and to help ensure the ongoing participation of market makers in SOES for issues in which the tier size level increased. Second, for securities priced below $1 where the reranking called for a reduction in tier size, the tier size was not reduced.

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires, among other things, that the rules of the NASD governing the operation of The Nasdaq Stock Market be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. The NASD believes that the reclassification of NNM securities within SOES tier size levels and minimum quotation size levels will further these objectives by providing an efficient mechanism for small, retail investors to execute their orders on Nasdaq and by providing investors with the assurance that they can effect trades up to a certain size at the best prices quoted on Nasdaq.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective immediately pursuant to Section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Rule 19b–4 thereunder in that the reranking of NNM securities into appropriate SOES tier sizes was done pursuant to the NASD's stated policy and practice with respect to the administration and enforcement of two existing NASD rules. Further, in the SOES Tier Size Order, the Commission requested that the NASD provide this information as an interpretation of an existing NASD rule under Section 19(b)(3)(A) of the Act.

At any time within sixty (60) days of the filing of a proposed rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 24, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–16923 Filed 7–2–96; 8:45 am]

BILLING CODE 8010–01–M

[1] The classification criteria is set forth in NASD Rule 4613(a)(2) and the footnote to NASD Rule 4710(g).

[2] Notwithstanding the NASD's announcement in *NTM* 96–40 that Microsoft and U.S. Robotics are scheduled to be moved to the 500-share SOES tier size level, the NASD has determined that The Nasdaq Stock Market will keep these stocks in the 1,000-share tier level. Even though these stocks fall within the 500-share tier level, pursuant to the criteria for determining tier levels, the NASD has determined to keep these stocks at the 1,000-share level because of their large market capitalization and high trading volume. *See*, letter to Howard L. Kramer, Associate Director, Office of Market Supervision, Division of Market Regulation, SEC, from Thomas R. Gira, Associate General Counsel, The Nasdaq Stock Market, Inc., dated June 25, 1996.

[3] 17 CFR 200.30–3(a)(12) (1989).

[Release No. 34–37365; File No. SR–PSE–96–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Joint Accounts

June 25, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 11, 1996, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend its rules to eliminate a provision that prohibits members who are registered to trade for the same joint account from having overlapping primary appointment zones on the Options Floor.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PSE Rule 6.35 currently provides that each market maker shall be assigned a Primary Appointment Zone comprising a minimum of one trading post up to a maximum of six contiguous trading posts.[2] Under Commentary .03 to PSE Rule 6.35, at least 75% of the trading activity of a market maker (measured in terms of contract volume per quarter) shall be in classes of option contracts to which his or her primary appointment extends.[3]

With regard to joint accounts, PSE Rule 6.84, Commentary .05 currently provides that the primary appointment of a market maker may not include trading posts which constitute the primary appointment of any market maker with whom he or she has a joint account. The rule further provides that, for the purposes of evaluating market maker performance in accordance with PSE Rule 6.37, Commentary .04, contract volume in the joint account will be assigned to the participants who effected the transactions for the joint account, under the same guidelines as if they effected the transactions for their own account.

The Exchange proposes to eliminate the provision in Commentary .05 to Rule 6.84 that prohibits joint account participants from having overlapping primary appointment zones. The Exchange believes that this rule places an unnecessary burden on member firms with joint accounts that may desire to have overlapping primary zones for their market makers in order to allow for continuous coverage when participant market makers are temporarily absent from the floor due to illness or vacation. The Exchange also believes that the current procedure of requiring substitute market makers to seek an exemption from Rule 6.35 (or alternatively to assure that the volume of their trading outside their primary zone does not exceed 25% of their total volume), is not efficient. Moreover, the Exchange believes that Rule 6.40, Financial Arrangements of Market Makers, which prohibits participants in the same joint account from trading in the same trading crowd at the same time, will address any concerns that joint account participants may attempt to dominate unfairly the market in a particular option issue or option series.[4]

Finally, the Exchange proposes, for purposes of greater clarity, to eliminate the cross-reference to Rule 6.37, Commentary .04 that is contained in Rule 6.84, Commentary .05 and to replace it with a cross reference to Rule 6.35, Commentary .03.

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5), in particular, in that it is designed to facilitate transactions in securities, to remove impediments to a free and open market, and to promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Previously, market makers were restricted to Primary Appointment Zones comprising one trading post or two contiguous trading posts. *See* Securities Exchange Act Release No. 36370 (October 13, 1995), 60 FR 54273 (approving increase from two to six in the maximum number of trading posts that may be included in each market maker's Primary Appointment Zone).

[3] PSE Rule 6.35, Commentary .03 provides an exception for unusual circumstances.

[4] *See also* File No. SR–PSE–96–12 (proposal to amend Rule 6.40).

refer to File No. SR–PSE–96–17 and should be submitted by July 24, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–16924 Filed 7–2–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37373; File No. SR–PSE–96–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Establishment of a $50 Fee for One-Day Transfers of Membership

June 26, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 21, 1996, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, the PSE's Schedule of Rates for Exchange Services ("Schedule of Rates") provides a fee of $100 for temporary intrafirm or interfirm transfers of membership.[1] The PSE proposes to amend the Schedule of Rates to: (1) establish a fee of $50 for one-day intrafirm transfers of membership; (2) specify that a "temporary" transfer of membership is for a period of less than 30 days; [2] and (3) eliminate a reference to "interfirm" temporary transfers of membership, so that the $100 fee for temporary membership transfers will apply solely to temporary intrafirm transfers of membership.[3]

The text of the proposed rule change is available at the Office of the Secretary, PSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the prices specified in Item IV below. The Exchange has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Purpose

The PSE proposes to adopt a $50 fee for members who transfer their membership rights, on a one-day basis, to other members of the same firm. This change is intended to address situations where floor members are unable to be present on the trading floor for one day and need to have substitute coverage on the floor for that day. Under the proposal, members who expect to be away from the floor for one day will notify the Exchange of the proposed transfer and the Exchange will bill them $50.

The Schedule of Rates currently provides for a fee of $100 for "temporary" transfers of membership.[4] That fee is intended to cover transfers of membership that last longer than one day (but less than 30 days), such as when a floor member takes a vacation. The Exchange believes that the proposed one-day intrafirm transfer fee will provide an equitable alternative to the $100 temporay transfer fee for members who are away from the floor for just one day. In addition, the PSE notes that the proposal will address more directly situations in which a member transfers his or her membership to another person, one a one-day basis, on more than two separate occasions during a 30-day period. In such situations, the member would be charged $50 for each one-day transfer of membership. In addition, if a member notifies the PSE of a one-day transfer, and that member is later unable to return to the floor for a consecutive period of from two to 30 days, that member would be charged a maximum fee of $100.

The Exchange also proposes to amend its Schedule of Rates with regard to "temporary" transfers of membership by specifying that such transfers are for a period of less than 30 days.[5] In addition, the PSE proposes to eliminate a reference in the provision governing temporary transfers to "interfirm" transfers of membership, so that the $100 fee will apply solely to temporary "intrafirm" transfers of membership.[6]

Statutory Basis

The PSE believes that the proposal is consistent with Section 6(b) of the Act, in general, and with Section 6(b)(4), in particular, in that it provides for the equitable allocation of reasonable charges among its members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears

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[5] 17 CFR 200.30–3(a)(12).

[1] Currently, PSE Rule 1.10(a), "Initial, Transfer and Processing Fees," also provides for interfirm and intrafirm transfer fees. In a separate rule filing, the PSE has proposed to delete the transfer fees from PSE Rule 1.10(a). Under that proposal, PSE Rule 1.23, "Transfer of Membership," will govern membership transfers but will not contain a fee schedule. *See* Securities Exchange Act Release No. 37076 (April 5, 1996), 61 FR 16152 (April 11, 1996) (notice of filing of proposed rule change for File No. SR–PSE–96–07).

[2] The $100 fee for temporary membership transfers applies to transfers lasting for a consecutive period lasting from two days to less than 30 days.

[3] According to the PSE, temporary transfers of membership occur only between members of the same firm, not between firms. Thus, the proposal eliminates an inaccurate reference to temporary "interfirm" transfers of membership. Telephone conversation between Michael Pierson, Senior Attorney, Market Regulation, PSE, and Yvonne Fraticelli, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on June 24, 1996.

[4] In addition, the Schedule of Rates provides a $250 fee for permanent intrafirm or interfirm transfers of membership.

[5] The $100 fee for a temporary transfer of membership was implemented in 1995. *See* Securities Exchange Act Release No. 35817 (September 5, 1995), 60 FR 47417 (September 12, 1995) (Notice of filing and immediate effectiveness for File No. SR–PSE–95–19).

[6] *See* note 3, *supra*.

to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the file number in the caption above and should be submitted by July 24, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–16925 Filed 7–2–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2868]

Indiana; Declaration of Disaster Loan Area

St. Joseph County and the contiguous counties of Elkhart, LaPorte, Marshall, and Starke in the State of Indiana, and Berrien and Cass Counties in the State of Michigan constitute a disaster area as a result of damages caused by severe storms and flooding which occurred on June 9 and 10, 1996. Applications for loans for physical damage may be filed until the close of business on August 23, 1996 and for economic injury until the close of business on March 24, 1997 at the address listed below:

U.S. Small Business Administration,
Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere—*7.625%*.
Homeowners Without Credit Available Elsewhere—*3.875%*.
Businesses With Credit Available Elsewhere—*8.000%*.
Businesses and Non-Profit Organizations Without Credit Available Elsewhere—*4.000%*.
Others (Including Non-Profit Organizations) With Credit Available Elsewhere—*7.125%*.

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere—*4.000%*.

The numbers assigned to this disaster for physical damage are 286806 for Indiana and 286906 for Michigan.

For economic injury the numbers are 894900 for Indiana and 895000 for Michigan.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 24, 1996.

John T. Spotila,

Acting Administrator.

[FR Doc. 96–16981 Filed 7–2–96; 8:45 am]

BILLING CODE 8025–01–M

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[7] 17 CFR 200.30–3(a)(12) (1995).

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment to Earlier Directives to Reflect Cancellation of Staged Entry Periods for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products and Silk Apparel Products Produced or Manufactured in the People's Republic of China

June 26, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending earlier directives with respect to textile products from China.

EFFECTIVE DATE: June 26, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

At the request of the Office of the U.S. Trade Representative (USTR), directives from CITA to the Commissioner of Customs, issued on May 15, 1996 (61 FR 24919) and June 12, 1996 (61 FR 30597) amended previous directives from CITA to the Commissioner of Customs, issued November 30, 1995 (60 FR 62413) and December 13, 1995 (60 FR 65292), to facilitate the establishment of staged entry periods for certain goods produced or manufactured in the People's Republic of China and exported from China for the 30-day periods beginning on May 15, 1996 through June 13, 1996 and June 14, 1996 through July 13, 1996.

Based on the measures that China has and will take in the future to implement key elements of the 1995 Agreement on Enforcement of Intellectual Property Rights and Market Access, USTR on June 21, 1996 requested the Commissioner of Customs to terminate the above-referenced staged entry periods in accordance with section 301 of the Trade Act of 1974, as amended (see 61 FR 33147, published on June 26, 1996).

The action taken in the letter below will facilitate implementation of USTR's directive to the Commissioner of Customs dated June 21, 1996.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 26, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on November 30, 1995 and December 13, 1995, by the Chairman, Committee for the Implementation of Textile Agreements (CITA). Those directives concern imports of certain silk apparel and certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported from China during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996.

The above directives are hereby amended to the extent necessary to facilitate implementation of the directive of the Office of the U.S. Trade Representative to the Commissioner of Customs dated June 21, 1996 regarding textile products from China, issued pursuant to section 301 of the Trade Act of 1974, as amended. For your information, the above directives are amended to reflect that entry of certain textile products, produced or manufactured in the People's Republic of China, shall no longer be subject to limitation for the 30-day

periods beginning on May 15, 1996 through June 13, 1996 and June 14, 1996 through July 13, 1996.

The Committee for the implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–16934 Filed 7–2–96; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 96–031]

Agency Information Collection Activities Under OMB Review

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act the Coast Guard announces seven Information Collection Requests (ICR) coming up for renewal. These ICRs include: 1. Application for Vessel Inspection and Waiver; 2. Bridge Permit Application Guide; 3. Letter of Intent; 4. Application for Tonnage Measurement of Vessels; 5. Oil and Hazardous Material Pollution Prevention and Safety Records, Equivalent/Alternatives and Exemptions; 6. Records Relating to Citizenship of Personnel on Units Engaged in Outer Continental Shelf (OCS) Activities; and 7. Ballast Water Management for Vessels Entering the Great Lakes. Before submitting the renewal packages to the Office of Management and Budget (OMB), the Coast Guard is soliciting comments on specific aspects of the collections as described below.

DATES: Comments must be received on or before September 3, 1996.

ADDRESSES: Comments may be mailed to Commandant (G–SII–2), U.S. Coast Guard Headquarters, Room 6106 (Attn: Barbara Davis), 2100 2nd St, SW, Washington, DC 20593–0001, or may be hand delivered to the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–2326. The comments will become part of this docket and will be available for inspection and copying by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267–2326.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this Notice, the specific ICR to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format no larger than 8½" by 11", suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed post card or envelope.

Interested persons can receive copies of the complete ICR by contacting Ms. Davis where indicated under **ADDRESSES.**

Information Collection Requests

1. Title: Application for Vessel Inspection and Waiver.

OMB No. 2115–0007

Summary: The collection of information requires the owner, agent or master of a vessel to apply in writing to the Coast Guard before the commencement of the inspection for certification or when, in the interest of national defense, a waiver is desired from the requirements of navigation and vessel inspection.

Need: The reporting requirements of the Application for Inspection of U.S. Vessels and the Application for Waiver and Waiver Order are part of the Coast Guard's Marine Inspection Program authorized by 46 U.S.C. 3306 and 3309.

Respondents: Vessel owner, operator, agent, masters or interested U.S. Government agency.

Frequency: On occasion, biennially and triennially.

Burden: The estimated burden is 1,707 hours annually.

2. Title: Bridge Permit Application Guide.

OMB No. 2115–0050

Summary: The collection of information is a bridge permit request submitted as application for Coast Guard approval of proposed bridge projects. Applicants will submit to the Coast Guard a letter of application along with letter size drawings (plans) and maps showing the proposed bridge project and its location.

Need: Title 33 U.S.C. 401, 491, 525, and 535, authorize the Coast Guard to approve plans and locations for all bridges or causeways that are to be constructed over navigable waters of the United States.

Respondents: Public and private owners of bridges over navigable waters of the United States.

Frequency: On occasion.

Burden: The estimated burden is 2,600 hours annually.

3. Title: Letter of Intent.

OMB No. 2115–007

Summary: The collection of information is a Letter of Intent which serves as a notice by a facility owner and operator to the Coast Guard that they intend to transfer oil or hazardous materials from their facility.

Need: Under the Federal Water Pollution Control Act and Executive Order 12777, the Coast Guard has the authority to issue regulations to prevent the discharge of oil or hazardous materials from waterfront facilities.

Respondents: Owners and operators of waterfront facilities.

Frequency: On occasion.

Burden: The estimated burden is 460 hours annually.

4. Title: Application for Tonnage Measurement of Vessels.

OMB No. 2115–0086

Summary: The collection of information requires vessel owners to submit application for tonnage measurement to the Coast Guard or an organization delegated by the Coast Guard. Additional information may be required if an owner requests certain tonnage treatment.

Need: 46. U.S.C. 14104 requires that before a vessel is documented or recorded under laws of the United States, or where the application of law of the United States to a vessel is determined by its tonnage, the vessel must be measured for tonnage.

Respondent: Vessel owners.

Frequency: Once per vessel.

Burden Estimate: The estimated burden is 44,000 hours annually

5. Title: Oil and Hazardous Material Pollution Prevention and Safety Records, Equivalent/Alternatives and Exemptions

OMB No. 2115–0096

Summary: The collection of information requires the inspection of discharge removal equipment on vessels and requires monitoring, reporting and recordkeeping regarding discharges of oil or hazardous materials by facilities and vessels. The regulated industry has the option of requesting, in writing, either equivalent or alternative procedures, methods or equipment standards in lieu of any requirement or a full or partial exemption of any requirement.

Need: Under the Federal Water Pollution Control Act and Executive Order 12777, Coast Guard has the authority to issue regulations to prevent the discharge of oil or hazardous materials from waterfront facilities and vessels.

Respondent: Operators of vessels and owners of waterfront facilities.

Frequency: On occasion.

Burden Estimate: The estimated burden in 1,840 hours annually.

6. Title: Records Relation to Citizenship of Personnel on Units Engaged in Outer Continental Shelf (OCS) Activities.

OMB No. 2115–0143

Summary: The collection of information requires employers of vessels and units engaged in exploration and exploitation of offshore resources on the OCS such as gas and oil to ascertain the citizenship of their employees and to maintain records of same.

Need: 43 U.S.C. 1356 authorizes the Coast Guard to issue regulations to man or crew outer continental shelf (OCS) facilities with U.S. citizens or permanent resident aliens.

Respondent: Employers of persons engaged in Outer Continental Shelf activities.

Frequency: On occasion.

Burden Estimate: The estimated burden is 1,510 hours annually.

7. Title: Ballast Water Management for Vessels Entering the Great Lakes.

OMB No. 2115–0598

Summary: The collection of information requires vessels entering the Great Lakes through the Saint Lawrence Seaway after operating outside the Exclusive Economic Zone of the United States to keep records of their ballast water management.

Need: Under Title 33 U.S.C. 4711 the Coast Guard has the authority to check and monitor vessels entering the Great Lakes regarding their management of ballast water.

Respondent: Owners/operators of vessels who enter the Great Lakes.

Frequency: On occasion.

Burden Estimate: The estimated burden is 228 hours annually.

Dated: June 20, 1996.

D.A. Potter,

Captain, U.S. Coast Guard, Director of Command, Control, Communications and Computers.

[FR Doc. 96–16895 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Notice of Intent To Request Renewal from the Office of Management and Budget (OMB) of Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Renew 13 Currently Approved Public Information Collection Activities.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995, and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the FAA invites public comment on 13 currently approved public information collections being submitted to OMB for renewal.

DATES: Comments must be received on or before September 3, 1996.

ADDRESSES: Comments on any of these collections may be mailed or delivered in duplicate to the FAA at the following address: Ms. Judith Street, Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: The FAA solicits comments on any of the current collections of information in order to: Evaluate the necessity of the collection; the accuracy of the agency's estimate of the burden; the quality, utility, and clarity of the information to be collected; and possible ways to minimize the burden of the collection.

Following are short synopses of the 13 currently approved public information collection activities which will be submitted to OMB for review and approval.

1. 2120–0007, Flight Engineers and Flight Navigators—FAR 63. The respondents are 2,881 airmen. The estimated total annual burden is 25,420 hours. Abstract: FAA Act of 1958, Section 602 and 607 authorize issuance of airmen certificates and provide for examination and rating of flying schools. FAR 63 prescribes requirements for flight navigator certification and training course requirements for these airmen. Information collected is used to determine certification eligibility.

2. 2120–0014, Procedures for Non-Federal Navigation Facilities—FAR 171. The respondents are 2,398 facilities sponsors. The estimated total annual burden is 20,792 hours. Abstract: The non-Federal navigation facilities are aids to air navigation which are purchased, installed operated and maintained by a public entity other than the FAA and are available for use by the flying public. Navigation aids may be located at unattended remote enrollee sites or at manned airport terminal locations.

3. 2120–0015, FAA Airport Master Record. The respondents are 14,000 civil airports. The estimated total annual burden is 4,375 hours. Abstract: The FAA Act of 1958 directs the FAA to collect and disseminate information about civil aeronautics. The information is required to carry out FAA missions related to safety, forecasting, and airport engineering. The data is the basic source of data for private, state, Federal and governmental aeronautical charts and publications.

4. 2120–0025, Crewmember Certificate Application. The respondents are aircrew members that need to be cleared to enter foreign countries. There are 1,401 aircrew members in this category. The estimated total annual burden is 165 hours. Abstract: FAA Act of 1958, Section 602 authorizes the issuance of airmen certificates. 14 CFR parts 121 and 135 prescribes requirements for crewmember certification. Information collected is used to determine applicant eligibility.

5. 2120–0026, Flight Plans (Domestic/International). The respondents are 682,959 flight plans. The estimated total annual burden is 268,408 hours. Abstract: Federal Aviation Act of 1958, Section 307 (49 U.S.C. 1348) authorized regulations governing the flight of aircraft. 14 CFR 91 prescribes requirements for filing domestic and international flight plans. Information is collected to provide protection to aircraft in flight and persons/property on the ground.

6. 2120–0039, Air Carriers/Commercial Operators—FAR 135. The respondents are an estimated 3,760 air carriers and commercial operators. The estimated total annual burden is 347,772 hours. Abstract: The FAA Act of 1958, Section 604 (49 U.S.C. 1424), authorizes the issuance of air carriers operating certificates. 14 CFR part 135 prescribes requirement for air carriers/commercial operators. Information collected shows compliance and applicant eligibility.

7. 2120–0044, Rotorcraft External Load Operator Certificate Application—FAR 133. The respondents are an estimated 400 Rotorcraft External Load Operators. The estimated total annual burden is 3,268 hours. Abstract: 14 CFR prescribes certification requirements for rotorcraft external load operations. Information is collected from applicants

for initial and renewal certification as a Rotorcraft External Load Operator, or from currently certified operators adding additional aircraft or equipment.

8. 2120–0060, General Aviation and Air Taxi Activity and Avionics Survey. The respondents are 19,000 commuter air carriers. The estimated total annual burden is 4,750 hours. Abstract: The survey is to collect information on the use and the characteristics of general aviation and air taxi aircraft. The data is used by the FAA in safety study, regulatory changes and formulating long-term programs and policies.

9. 2120–0535, Anti-Drug Program for Personnel Engaged in Specified Aviation Activities. The respondents are 6,076 specified aviation employers. The estimated total annual burden is 100,276 hours. Abstract: Federal Aviation Regulations require specified aviation employers to implement and conduct FAA-Approved anti-drug plans. They monitor program compliance, institute program improvements, and anticipate program problem areas. The FAA receives drug test reports from the aviation industry. More detailed and specific information is necessary to effectively manage the anti-drug program.

10. 2120–0543, Pilots Convicted of Alcohol or Drug Related Motor Vehicle Offenses or Subject to State Motor Vehicle Administrative Procedures. The respondents are 2184 pilots who have been/will be convicted of a drug- or alcohol-related traffic violation. The estimated annual burden is 364 hours. Abstract: The requested information (1) is needed to mitigate potential hazards presented by airmen using alcohol or drugs in flight, (2) is used to identify persons possibly unsuitable for pilot certification, and (3) affects those pilots who will be convicted of a drug- or alcohol related traffic violation.

11. 2120–0575, Airworthiness Standards, Occupant Protection Standards for Commuter Category Airplanes. The respondents are 5 manufacturers of seat cushions. The estimated total annual burden is 3 hours. Abstract: The information collected will be a record of the test results on seat cushion flammability. The tests will be performed by manufacturers of seat cushions and will become a part of the type certification basis for the airplane.

12. 2120–0577, Explosives Detection Systems Certification Testing. The respondent is the manufacturer of explosive detection systems. The estimated total annual burden is 1,502 hours. Abstract: Pub. L. 101–604 requires the Administrator of the Federal Aviation Administration to certify explosives detection systems, pursuant to protocols developed outside the agency, prior to mandating their use. The information required is necessary for the FAA to perform the certification testing on systems submitted by manufacturers.

13. 2120–0578, Training and Checking in Ground Icing Conditions. The respondents are 2175 air carriers. The estimated total annual burden is 87,000 hours. Abstract: The required collection that respondents must prepare and submit to the FAA contains those airplane ground deicing/anti-icing policies and procedures that ensure the highest level of safety during icing conditions. All Part 125 and 135 air carriers are effected.

Issued in Washington, DC., on June 26, 1996.

Steve Hopkins,

Manager, Corporate Information Division, ABC–100.

[FR Doc. 96–17042 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of a new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Stewart R. Miller, Manager, Transport Standards Staff, ANM–110, FAA, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave. SW., Renton, WA 98055–4056, telephone (206) 227–2190, fax (206) 226–1320.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area ARAC deals with is Transport Airplane and Engine issues. These issues involve the airworthiness standards for transport category airplanes in 14 CFR parts 25, 33, and 35 of the FAR and parallel provisions in 14 CFR parts 121 and 135 of the FAR. The corresponding European airworthiness standards for transport category airplanes are contained in Joint Aviation Requirements (JAR)–25, JAR–E and JAR–P, respectively. The corresponding Canadian Standards are contained in Chapters 525, 533 and 535 respectively.

The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization task:

Engine Windmilling Imbalance Loads. Define criteria for establishing the maximum level of engine imbalance that should be considered, taking into account fan blade failures and other likely causes of engine imbalance. Develop an acceptable methodology for determining the dynamic airframe loads and accelerations resulting from an imbalanced windmilling engine. Validate the proposed methodology with a demonstrative ground or flight test program (as deemed appropriate by ARAC) that has the objective of establishing confidence in the proposed methodology. The validation process should answer the following questions: (1) What are the parameters to consider in determining the minimum degree of dynamic structural modeling needed to properly represent the imbalanced condition; (2) Is the proposed analytical methodology taken in conjunction with the traditional ground vibration tests, flight flutter tests, and tests performed under § 33.94 of 14 CFR sufficient, or are there additional tests and measurements that need to be made to address this condition?

Within 12 months from the date of the published notice of new task in the **Federal Register**, complete the above tasks and submit a report to the FAA with recommendations detailing the criteria and methodology.

ARAC Acceptance of Task

ARAC has accepted this task and has chosen to assign it to the existing Loads and Dynamics Harmonization Working Group. The working group will serve as staff to ARAC to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it forwards them to the FAA as ARAC recommendations.

Working Group Activity

The Loads and Dynamics harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the tasks, including the rational supporting such a plan, for consideration at the meeting of ARAC to consider Transport Airplane and Engine Issues held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.

3. For each task, draft appropriate documents with supporting analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate.

4. Provide a status report at each meeting of ARAC held to consider Transport Airplane and Engine Issues.

Participation in the Working Goup

The Loads and Dynamics Harmonization Working Group is composed of experts having an interest in the assigned task. A working group member need not be a representative of a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the tasks, and stating the expertise he or she would bring to the working group. The request will be reviewed by the assistant chair, the assistant executive director, and the working group chair, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Loads and Dynamics harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on June 26, 1996.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 96–16960 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–M

Time for Public Scoping Meeting To Be Held in Lexington, KY on Environmental Impact Statement; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of correction of time.

SUMMARY: This notice corrects the time previously published in the **Federal Register** June 25, 1996, (FR 96–16109, page 32883 in the third column over to page 32884) for a public scoping meeting to be held in Lexington, Kentucky, on July 31, 1996, to obtain input from the public on the planned Environmental Impact Statement. The corrected ending time for the meeting is 8 p.m.

The date, starting time, and address for the meeting remains unchanged: July 31, 1996, Wednesday, 6 p.m. at Paul Laurence Dunbar High School cafeteria located on the lower level, 1600 Man O' War Blvd., Lexington, Kentucky.

Issued in Memphis, Tennessee, June 26, 1996.

LaVerne F. Reid,

Manager, Memphis Airports District Office.

[FR Doc. 96–17044 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on General Aviation and Business Airplane and Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss harmonization priorities and issues related to certification and validation of foreign products.

DATES: The meeting will be held July 29, 1996 for General Aviation and Business Airplane (GABA) Issues, starting at 9 a.m. and July 31 through August 1, 1996 for Transport Airplane and Engine (TAEI) Issues, starting at 8:30 a.m. Arrange for oral presentations by July 19, 1996.

ADDRESSES: The meeting will be held at The Boeing Company Renton Facility, 10–16 Building, Room 11D5, 535 Garden Avenue North, Renton WA.

FOR FURTHER INFORMATION CONTACT: Brenda Courtney, Office of Rulemaking, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3327.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on July 29 (GABA) and July 31 through August 1, 1996 (TAEI), at The Boeing Company Renton Facility, 10–16 Building, Room 11D5, 535 Garden Avenue North, Renton WA. The agenda for the meeting will include:

- Opening Remarks
- Review of Action Items
- Discussion of 13th Annual International Harmonization Conference, June 3–7, San Diego, CA
- Discussion of harmonization priorities
- Discussion of certification/validation of foreign products
- Reports of Working Groups (Time permitting)
- Schedule future meetings

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by July 19, 1996, to present oral statements at the meeting. The public may present written statements to the committee, at any time, by providing 40 copies to the Assistance Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on June 26, 1996.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 96–17043 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–M

Aviation Security Advisory Committee; Meeting

AGENCY: Federal Aviation Administration, DOT.

SUMMARY: Notice is hereby given of a meeting of the Aviation Security Advisory Committee.

DATES: The meeting will be held July 17, 1996 from 9 a.m. to 12 p.m.

ADDRESS: The meeting will be held in the MacCracken Room, tenth floor, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone 202–267–7451.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 11), notice is hereby given of a meeting of the aviation Security Advisory Committee to be held July 17, 1996, in the MacCracken Room, tenth floor, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. The agenda for the meeting will include reports on the Universal Access System, Rewrites of FAR 107 and 108, the status of RTCA Access Control Standards, and the domestic security baseline.

Attendance at the July 17, 1996, meeting is open to the public but is limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person.

Members of the public are welcome to present written material to the committee at anytime. Persons wishing to present statements or obtain information should contact the Office of the Associate Administrator for Civil Aviation Security, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone 202–267–7451.

Issued in Washington, D.C. on June 25, 1996.

Quinten T. Johnson,

Acting Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 96–16961 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Howell, MI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the proposed construction of the East Howell Area I–96 Interchange in Genoa Township, Livingston County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. James Kirschensteiner, Programs and Environmental Engineer, Federal Highway Administration, 315 W. Allegan Street, Lansing, Michigan 48933, Telephone (517) 377–1880 or Mr. Ron Kinney, Manager, Environmental Section, Bureau of Transportation Planning, Michigan Department of Transportation, P.O. Box 30050, Lansing, Michigan 48909, Telephone (517) 335–2621.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Michigan Department of Transportation (MDOT), the Southeast Michigan Council of Governments (SEMCOG), and the Livingston County Road Commission (LCRC), is preparing an Environmental Impact Statement (EIS) for the proposed construction of a new Interchange along I–96 between Chilson Road and Dorr Road in Livingston County. The proposed project would require a new interchange which is needed to improve access to the East Howell Area. Traffic operations at the Lake Chemung/I–96 Interchange, which is a partial interchange, are not able to accommodate current and future traffic volumes.

A Major Investment Study is underway to narrow the range of alternative investment strategies. The alternatives under consideration include (1) No Build, (2) the construction of a new I–96 Interchange at a new location, and (3) the reconstruction of the Lake Chemung/I–96 Interchange.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies, and had a Scoping Document attached. Letters requesting comments have also been sent to organizations and citizens who have previously expressed, or are known to have interest in this proposal. Two public information meetings were held to date under the Major Investment Study on April 17, 1996 and June 19, 1996, to provide the public an opportunity to discuss the proposed action. A public hearing will also be held on the Draft Environmental Impact Statement. Public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing. A Scoping Meeting is scheduled for Thursday, July 25, 1996, and will be held at 9:30 a.m. at the Livingston County Road Commission Building, 3535 Grand Oaks Drive, Howell, Michigan.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 24, 1996.

James J. Steele,

Division Administrator, Lansing, Michigan.

[FR Doc. 96–16903 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement, St. Paul, MN

AGENCY: Federal Highway Administration.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the possible reconstruction of Ayd Mill Road, in St. Paul, Minnesota.

FOR FURTHER INFORMATION CONTACT: William Lohr, Federal Highway Administration, Suite 490 Metro Square Building, 121 East Seventh Place, St. Paul, Minnesota, 55101, Telephone (612) 290–3241; or Michael C. Klassen, Project Manager, St. Paul Department of Public Works, 800 City Hall Annex, 25 West 4th Street, St. Paul, MN 55101, Telephone (612) 266–6209.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation and the City of St. Paul, will prepare an EIS on a proposal for the improvement of Ayd Mill Road. Ayd Mill Road is located in the southwestern portion of the City of St. Paul and runs in a northwesterly direction from I–35E near Jefferson Avenue to the intersection of Selby Avenue and Pascal Street. The total length of the project is approximately 1.8 miles.

A direct connection between I–35E and the south end of Ayd Mill Road was postponed in the early 1980's until a connection to I–94 on the north had been studied. An Ayd Mill Road Task Force, comprised of neighborhood representatives and the City Planning Commission, concluded in 1988 that issues in the Ayd Mill Road corridor were serious enough to warrant further study in an EIS.

An EIS Scoping Process was initiated in 1993. Working with the organizations they represent, Task Force members developed and evaluated ten major alternatives, each with sub-alternatives. In May 1996, the St. Paul City Council determined that seven alternatives will be carried forward in the Draft EIS. The alternatives to be studied in the Draft EIS include:

- No Build
- Transportation Systems Management Plan and Travel Demand Management (TSM/TDM)
- Replace Ayd Mill Road with a Linear Park
- Two-lane City Street (35 mph) on the Hybrid alignment with a direct connection to I–35E on the south and a split diamond interchange with I–94
- Four-lane roadway (40 mph) on the Hybrid alignment with a direct connection to I–35E on the south and a split diamond interchange with I–94
- Four-lane expressway (45 mph) on the Railroad Spur alignment with a direct connection to I–35E on the south and a freeway-to-freeway interchange with I–94
- Limited access freeway (45 mph) on the Railroad Spur alignment with a direct connection to I–35E on the south and a freeway-to-freeway interchange with I–94
- High Occupancy Vehicle (HOV) lanes as sub-alternatives for the last four alternatives

The Ayd Mill Road Scoping Document and Draft Scoping Decision Document was published February 6, 1995. A Public Scoping meeting was held March 2, 1995 to receive comments. After a delay due to administrative matters, the Ayd Mill Road Scoping Decision Document was published May 13, 1996. Copies of both documents were distributed to agencies, interested persons, elected and appointed officials and libraries. A press release was published to inform citizens of the documents' availability.

Coordination has been initiated and will continue with appropriate Federal, State and local agencies, and private organizations and citizens who have previously expressed or are known to have an interest in this project. A formal public hearing will be held in the project area following release of the Draft EIS. Public notice will be given for the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that all significant issues relating to this proposed action are addressed, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed project and the EIS should be directed to the City of St. Paul at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 10.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 13, 1996.

Alan J. Friesen,

Engineering and Operations Engineer, Federal Highway Administration.

[FR Doc. 96–16752 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–22–M

Maritime Administration

Approval of Request for Removal Without Disapproval From the Roster of Approved Trustees

Notice is hereby given, pursuant to Public Law 100–710 and 46 CFR Part 221, that Fifth Third Bank, with offices at Fifth Third Center, Cincinnati, Ohio 45263, has requested removal, without disapproval, from the Roster of Approved Trustees. In its request for removal, Fifth Third Bank, stated it is no longer necessary for the Bank to maintain its status as a Maritime Administration Trustee.

Therefore, pursuant to Public Law 100–710 and 46 CFR Part 221, Fifth Third Bank, Cincinnati, Ohio, is removed from the Roster of Approved Trustees.

This notice shall become effective on date of publication.

Dated: June 27, 1996.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 96–16936 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–81–P

Approval of Request for Removal Without Disapproval From the Roster of Approved Trustees

Notice is hereby given, pursuant to Public Law 100–710 and 46 CFR Part 221, that Seattle-First National Bank, with offices at 701 Fifth Avenue, 11th Floor, Seattle, Washington 98124, has requested removal, without disapproval, from the Roster of Approved Trustees. In its request for removal, Seattle-First National Bank, stated it is no longer necessary for the Bank to maintain its status as a Maritime Administration Trustee.

Therefore, pursuant to Public Law 100–710 and 46 CFR Part 221, Seattle-First National Bank, Seattle, Washington, is removed from the Roster of Approved Trustees.

This notice shall become effective on date of publication.

Dated: June 27, 1996.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 96–16937 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–81–P

Surface Transportation Board [1]

[Docket No. AB–6 (Sub-No. 374)]

Burlington Northern Railroad Company—Adverse Discontinuance—In Denver, CO

[Docket No. AB–33 (Sub-No. 92)]

Union Pacific Railroad Company—Adverse Discontinuance—In Denver, CO

AGENCY: Surface Transportation Board.

ACTION: Notice of findings.

SUMMARY: The Board has found that the public convenience and necessity permit: (1) Burlington Northern Railroad Company to discontinue trackage rights and service over a section of rail line generally running along National Western Drive (in the "National Western Drive Corridor"), from the intersection of the track, on the south, with the rail line that runs generally along the east bank of the South Platte River (in the "River Corridor"), to the inactive connection with the line of track of the Denver and Rio Grande Western Railroad Company along Franklin Street, on the north, and to, but not across, the right-of-way for Race Court, on the northeast, in the Denver Stockyards, Denver, CO, a total distance of approximately 0.8 miles; and (2) Union Pacific Railroad Company to discontinue trackage rights and service over two sections of rail line, totaling approximately 1.2 miles in distance, in the Denver Stockyards, Denver, CO, consisting of: (a) in the "River Corridor," the section of line adjacent to the east bank of the South Platte River, from a point 600 feet north of the intersection of the River Corridor track with the northwestern right-of-way line of National Western Drive to the west right-of-way line of Franklin Street; and (b) in the "National Western Drive Corridor," the section of line adjacent to National Western Drive, from the intersection of the line with the south right-of-way line of East 45th Street to the intersection of the line with the east

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903 and 10904.

right-of-way line of Franklin Street. The Board's decision will be effective 30 days after publication of this notice and a certificate will be issued unless the Board also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to continue; and (2) it is likely that the assistance would fully compensate the railroad.

DATES: Any financial assistance offer must be filed with the Board and the railroad no later than July 12, 1996. Any offer previously made must be remade by the due date.

ADDRESSES: Send offers referring to Docket No. AB–6 (Sub-No. 374) or Docket No. AB–33 (Sub-No. 92) to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) in the former proceeding, Burlington Northern's representative: Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102, or, in the latter proceeding, Union Pacific's representative: Joe Anthofer, Union Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 68179. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer mailed to the Board: "Office of Proceedings, AB-OFA."

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: These proceedings are consolidated with Docket Nos. AB–452 (Sub-No. 1X), *The Western Stock Show Association—Abandonment Exemption—in Denver, CO;* and AB–446 (Sub-No. 2), *Denver Terminal Railroad Company—Adverse Discontinuance—in Denver, CO.*

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: June 12, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–16991 Filed 7–2–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Elimination of the Bulletin Index-Digest System; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The IRS provides a method for researching tax laws, regulations, and other tax matters published in the Internal Revenue Bulletin called the "Bulletin Index-Digest System." Due to budgetary restraints, the IRS proposes to eliminate the Bulletin Index-Digest System. The IRS invites the general public and other Federal agencies to take this opportunity to comment on the proposed elimination of the Bulletin Index-Digest System.

DATES: Written comments should be received on or before August 3, 1996 to be assured consideration.

ADDRESSES: Direct all written comments to Michael Siegerist, Internal Revenue Service, T:FP:F:CD, Room 5560, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: In accordance with OMB Circular A–130 and Section 2 of the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(d)), the IRS is soliciting comments from the public on the elimination of the Bulletin Index-Digest System.

Bulletin Index-Digest System

The Bulletin Index-Digest System provides a method for researching matters published since 1953 in the Internal Revenue Bulletin (which is the authoritative instrument of the Commissioner for announcing official rulings and procedures of the Internal Revenue Service and for publishing Public Laws, Treasury Decisions, and other items of general interest). It is divided into four Services as follows:

Service No. 1—*Income Tax,* Publication 641

Service No. 2—*Estate and Gift Taxes,* Publication 642

Service No. 3—*Employment Taxes,* Publication 643

Service No. 4—*Excise Taxes,* Publication 644

Each Service consists of a basic volume and the latest cumulative supplement. The cumulative supplements are issued quarterly for the Income Tax Service, and semi-annually for the other three Services.

The major portion of the Bulletin Index-Digest System consists of digests (brief summaries) of revenue rulings and revenue procedures alphabetically arranged under topical headings and subheadings. Also included are digests of Supreme Court decisions, adverse Tax Court decisions on cases involving tax issues in which the Commissioner has announced acquiescence or nonacquiescence, Executive Orders, Treasury Department Orders, Delegation Orders, and other miscellaneous items published in the Bulletin.

The digests are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

The IRS proposes to eliminate the Bulletin Index-Digest System because of the excessive costs incurred to produce this product.

Approved: June 27, 1996.

Garrick R. Shear,

Acting National Director, Tax Forms and Publications Division.

[FR Doc. 96–17005 Filed 7–2–96; 8:45 am]

BILLING CODE 4830–01–M

Corrections

Federal Register

Vol. 61, No. 129

Wednesday, July 3, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Agricultural Telecommunications Program; Fiscal Year 1996; Solicitation of Proposals

Correction

In notice document 96–15851 beginning on page 32282 in the issue of Friday, June 21, 1996, make the following correction:

On page 32283, in the third column, under (B) Proposal Narrative, in the fourth line, "14" should read "15".

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Distance Learning and Telemedicine Grant Program

Correction

In notice document 96–16321 appearing on page 33639 in the issue of Thursday, June 27, 1996, make the following corrections:

On page 33639, in the third column, in the sixth line, between "Virginia," and "Puerto Rico" insert "West Virginia".

On the same page, in the same column, in the first full paragraph, in the fourth line, "(202) 205-3934" should read "(202) 205-2924".

On the same page, in the same column, in the second paragraph, in the fourth line, "(292(205-2921" should read "(202) 205-2921".

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1770–96; AG Order No. 2032–96]
RIN 1115–AE26

Extension of Designation of Rwanda Under Temporary Protected Status Program

Correction

In notice document 96–14719 beginning on page 29428 in the issue of Monday, June 10, 1996, make the following corrections:

1. On page 29428, in the third column, under **SUPPLEMENTARY INFORMATION:**, in the ninth line, "designed" should read "designated".

2. On the same page, in the same column, in the last paragraph, in the seventh line, "registration" should read "registrants".

3. On page 29429, in the first column, in the sixth line from the top, "required" should read "requires".

4. On the same page, in the same column, in the fourth line from the bottom, "July 10, 1996" should read "June 10, 1996".

5. On the same page, in the second column, in paragraph (5), in the seventh line, "povisions" should read "provisions".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 111

Electrical Engineering Requirements for Merchant Vessels

Correction

In rule document 96–16318 appearing on page 33045 in the issue of Wednesday, June 26, 1996, make the following correction:

§ 111.53–1 [Corrected]

On page 33045, in the second column, the section heading "**§ 111.53 [Corrected]**" should read "**§ 111.53–1 [Corrected]**".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 28471; Amendment No. 121-257, 135-64]

RIN 2120-AF09

Training and Qualification Requirements for Check Airmen and Flight Instructors

Correction

In rule document 96–14084 beginning on page 30734 in the issue of Monday, June 17, 1996, make the following corrections:

§121.412 [Corrected]

1. On page 30742, in the second column, in §121.412(a), in the second line, "§121.412" should read "§121.414".

2. On the same page, in the third column, in §121.412(c), in the second line, "service" should read "serve".

§135.340 [Corrected]

3. On page 30745, in the third column, in §135.340(a)(2), in the fourth line, "as" should read "an".

BILLING CODE 1505–01–D

VOL
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federal register

Wednesday
July 3, 1996

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902
50 CFR Parts 622, et al.
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Interim Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 622, 638, 641, 642, 645, 646, 647, 653, 658, 659, 669, and 670

[Docket No. 960313071–6169–02; I.D. 050996D]

RIN 0648–AI20

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS is consolidating eleven CFR parts into one new CFR part. The new part contains regulations implementing management measures contained in the fishery management plans (FMPs) for the following domestic fisheries in the Caribbean, Gulf of Mexico, and South Atlantic: Caribbean coral, Caribbean reef fish, Caribbean spiny lobster, Gulf red drum, Gulf reef fish, Gulf shrimp, Gulf and South Atlantic coastal migratory pelagics, Gulf and South Atlantic corals, South Atlantic red drum, South Atlantic snapper-grouper, and South Atlantic shrimp. This interim final rule reorganizes management measures into a logical and cohesive order, removes duplicative and outdated provisions, and makes changes to improve readability and clarity and to achieve uniformity in regulatory language. This interim final rule also amends references to Paperwork Reduction Act (PRA) information-collection requirements to reflect the consolidation; revises the existing, approved collections of information related to submissions of permit applications to make them less burdensome; and makes revisions to existing approved collections of information related to reporting requirements to improve uniformity of regulatory language. The intended effect of this interim final rule is to make the regulations more concise, better organized, more uniform among fisheries, and thereby easier for the public to use. This action is part of the President's Regulatory Reinvention Initiative.

DATES: Interim final rule effective July 1, 1996. Written comments on the interim final rule must be received on or before August 2, 1996.

ADDRESSES: Requests for and comments on the interim final rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments regarding burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Perry Allen or Rod Dalton, NMFS, 813–570–5326.

SUPPLEMENTARY INFORMATION:

Background

In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. This initiative is part of the National Performance Review and calls for comprehensive regulatory reform. The President directed all agencies to undertake a review of all their regulations, with an emphasis on eliminating or modifying those that are obsolete, duplicative, or otherwise in need of reform. This interim final rule is intended to carry out the President's directive with respect to those regulations implementing the following FMPs for domestic fisheries in the Caribbean, Gulf of Mexico, and South Atlantic. These FMPs were prepared under the Magnuson Act by the Caribbean, Gulf of Mexico, and/or South Atlantic Fishery Management Councils (CFMC, GMFMC, SAFMC, respectively).

FMP title	Responsible council(s)	Geographical area
Atlantic Coast Red Drum FMP	SAFMC	Mid-Atlantic and South Atlantic.
FMP for Coastal Migratory Pelagic Resources	GMFMC/SAFMC	Gulf,[1] Mid-Atlantic[1 2] and South Atlantic.[1 3]
FMP for Coral and Coral Reefs of the Gulf of Mexico	GMFMC	Gulf.
FMP for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region.	SAFMC	South Atlantic.
FMP for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.
FMP for the Red Drum Fishery of the Gulf of Mexico	GMFMC	Gulf.[1]
FMP for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.
FMP for the Reef Fish Resources of the Gulf of Mexico	GMFMC	Gulf.[1]
FMP for the Shrimp Fishery of the Gulf of Mexico	GMFMC	Gulf.[1]
FMP for the Shrimp Fishery of the South Atlantic Region	SAFMC	South Atlantic.
FMP for the Snapper-Grouper Fishery of the South Atlantic Region..	SAFMC	South Atlantic.[1 4]
FMP for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.

[1] Regulated area includes adjoining state waters for purposes of data collection and quota monitoring.
[2] Only king and Spanish mackerel are managed under the FMP in the Mid-Atlantic.
[3] Bluefish are not managed under the FMP in the South Atlantic.
[4] Bank, rock, and black sea bass and scup are not managed by the FMP north of 35°15.3' N. lat., the latitude of Cape Hatteras Light, NC.

Consolidation of Regulations Into One CFR Part (50 CFR Part 622)

Currently, regulations implementing the FMPs for Caribbean coral, Caribbean reef fish, Caribbean spiny lobster, Gulf red drum, Gulf reef fish, Gulf shrimp, Gulf and South Atlantic coastal migratory pelagics, Gulf and South Atlantic corals, South Atlantic red drum, South Atlantic snapper-grouper, and South Atlantic shrimp appear in eleven separate parts of title 50 of the CFR. NMFS, through this rulemaking, removes the eleven parts (50 CFR parts 638, 641, 642, 645, 646, 647, 653, 658, 659, 669, and 670) and consolidates the regulations contained therein into one new part (50 CFR part 622). This consolidated regulation provides the public with a single reference source for the Federal marine fisheries regulations specific to the Caribbean, Gulf of Mexico, and South Atlantic. The restructuring of the eleven parts into a single part results in one set of regulations that is more concise, clearer, and easier to use than the eleven separate parts. General regulations pertaining to all fisheries, formerly at 50 CFR part 620, have also been restructured and consolidated and now appear in 50 CFR part 600. Many provisions in these general fisheries regulations apply to the fisheries in the EEZ in the Caribbean, Gulf of Mexico, and South Atlantic.

Reorganization and Elimination of Regulations

In new part 622, NMFS has reorganized the consolidated management measures in a more logical and cohesive order. Because portions of the existing regulations contain identical or nearly identical provisions, similar measures have been combined and restructured. Sections relating to purpose and scope, definitions, relation to other laws, vessel identification, prohibitions, facilitation of enforcement, penalties, and specifically authorized activities, in each of the eleven existing parts have been combined into single, respective sections in part 622. For example, whereas the existing regulations contain eleven, nearly identical purpose and scope sections, part 622 contains a single purpose and scope section that addresses all applicable fisheries. As a result of this consolidation effort, NMFS removed numerous duplicative provisions from the regulations.

Throughout part 622, types of management measures and provisions common to multiple fisheries are grouped together under a single section heading, e.g., minimum sizes for all fisheries are located in a single section. Within sections, information or requirements of general applicability are stated in an introductory paragraph to minimize duplication; any aspects unique to a particular fishery are addressed in subsequent paragraphs within the section. Paragraph headings have been added for ease in identifying measures, and regulatory language has been revised to improve clarity and consistency. No substantive changes were made to the regulations by this reorganization, or by the removal of duplicative provisions.

Changes To Improve Uniformity Among Regulations

In the Southeast Region, many fishermen and dealers participate in multiple fisheries. Making regulatory requirements among fisheries more consistent simplifies the overall management regime, enhances the ability of all parties, including NMFS personnel, to understand and remember regulations, and improves compliance. As part of this regulatory consolidation process, NMFS has standardized regulatory provisions among fisheries where it was possible to do so without significant change in regulatory impact or adverse impact on effective management. The changes involved and the rationale and expected impacts are discussed below. NMFS invites comment on these changes.

Permits and Fees

A person applying for a permit for a fishery in which a fish trap or sea bass pot will be used is required, under existing regulations, to indicate the desired color code for identifying buoys that are attached to traps/pots. The current regulations for the Gulf reef fish fishery explicitly state that white is not an acceptable color code, and white has not been accepted as a color code in other trap/pot fisheries. White is not acceptable because buoys are white. Therefore, a white color code would be indistinguishable from a buoy that has no color code and would frustrate enforcement. This rule makes the explicit statement in the reef fish regulations applicable to all trap/pot fisheries and merely provides advance notification to the permit applicant, of the existing policy—there is no additional regulatory effect.

Existing regulations require that the Director, Southeast Region, NMFS (Regional Director) be notified within 15 days of any change in pertinent information provided with a permit application. This rule extends the time period to 30 days and is, therefore, less restrictive.

The option for a vessel permit for king or Spanish mackerel to be transferred upon sale of the vessel and for the new owner to fish under the preceding owner's permit for up to 60 days is deleted in this rule. This complies with the intent of the Gulf of Mexico and South Atlantic Fishery Management Councils that only owners who have documented their permit eligibility be allowed to participate in the fishery. The change is necessary to achieve consistent transfer provisions among fisheries. This does not alter the existing requirement that all new owners apply for a permit.

Recordkeeping and Reporting

Changes have been made to achieve consistency regarding deadlines for submission of required reports by commercial vessel owners or operators. This rule requires that all such reports be postmarked not later than 7 days after the end of each trip. Deadlines for submission in the current regulations are couched in various terms, such as "transmitted" and "received," and, for Gulf reef fish, in terms of "on a monthly basis (or more frequently, if requested by the Science and Research Director)." The Science and Research Director currently requires submission of required reports by commercial vessel owners and operators on a trip basis in all fisheries where such reports are required. Regulations for the snapper-grouper fishery specify a deadline of postmarked not later than the third day after sale of fish, and the king and Spanish mackerel regulations contain no submission deadline. This added deadline clarifies an implied but unspecified deadline for king and Spanish mackerel, but has no immediate impact on fishermen because no vessels are currently selected to submit reports in the king and Spanish mackerel fishery. For snapper-grouper, the new deadline is expected to be less restrictive on average.

This rule standardizes requirements for submission of required reports for charter vessel and headboat owners or operators to achieve consistency with the Gulf reef fish requirements. The reporting deadline for charter vessels established by this rule is not later than 7 days after the end of the reporting period. Current regulations for snapper-grouper charter vessels and headboats require submission on a periodic basis, as specified by the Science and Research Director; for coastal migratory pelagic charter vessels and headboats, weekly submission is required but no deadline is specified. The new deadlines make the requirements consistent among fisheries and provide needed specificity. The new requirements are generally less burdensome than existing requirements.

This rule clarifies that the deadline for submission of Gulf reef fish and snapper-grouper dealer reports is 5 days after the end of the month, unless modified by the Science and Research Director. Current regulations are less specific, requiring submission as specified by the Science and Research Director for Gulf reef fish dealers and at monthly intervals, or more frequently, if requested, for snapper-grouper dealers.

This rule requires submission of negative reports (no fish received) for snapper-grouper and coastal migratory pelagics dealers, if selected to report. This is a minimal reporting burden expected to occur infrequently, but enhances enforceability of reporting requirements. This requirement has been approved by OMB under OMB control number 0648–0016.

This rule adds a provision allowing a dealer reporting South Atlantic snapper-grouper, other than wreckfish, to report via facsimile (fax). This is a less restrictive alternative provided for the convenience of dealers.

The requirement to make fish available for inspection by the Science and Research Director or an authorized officer is applied to participants in the Caribbean reef fish and Caribbean spiny lobster fisheries. This standardizes the requirement among all fisheries regulated by this part and will improve enforceability. Additional burden associated with this change is minimal since access to fish is all that is required.

This rule provides a requirement for a charter vessel owner or operator in the coastal migratory pelagics fishery, who has not been selected to submit logbooks, to provide verbal responses to seven, simple questions, if selected for an interview. This standardizes the requirement among all fisheries regulated by this part that have a charter vessel sector. This is a less burdensome alternative for obtaining information on an as-needed basis compared to selecting the entity to report on a continuing basis under authority in the current regulations.

This rule authorizes the Science and Research Director to select for reporting a snapper-grouper vessel that operates in state waters adjoining the EEZ without a Federal permit. This standardizes the requirement among fisheries and is necessary to ensure comprehensive data collection essential for fisheries management. The purpose and scope section of the existing snapper-grouper regulations states that recordkeeping and reporting requirements apply in the EEZ and adjoining state waters. The existing snapper-grouper regulations require the owner or operator of a permitted vessel, charter vessel, or headboat operating in adjoining state waters to report, if selected. The change imposed by this interim final rule applies that same requirement to an owner or operator of an unpermitted vessel operating in adjoining state waters. This is necessary to ensure that all sources of fishing effort and fishing mortality affecting the managed stock are properly accounted for in the Federal management regime. NMFS is unaware of any snapper-grouper vessels that operate exclusively in state waters, and, therefore, are not permitted. Accordingly, this authorization should have no immediate effect on fishermen and would not impose an additional reporting burden.

Vessel and Gear Identification

This rule standardizes most vessel and gear identification requirements among fisheries; provides less restrictive marking requirements for vessels 25 ft (7.6 m) or less in length in all fisheries; and makes changes in marking requirements to achieve consistency, e.g., simply requires numbers and color codes on buoys to be easily distinguished, located, and identified, versus the current differing requirements regarding size of such markings in various fisheries. These changes: (1) Enhance consistency; (2) address prior complaints from small vessel owners regarding difficulty of complying with marking requirements; (3) relieve restrictions; and (4) will not impair enforcement.

The rule also requires that, in the South Atlantic snapper-grouper fishery, a valid identification tag issued by the Regional Director be attached to each sea bass pot on board a vessel with a Federal permit. Current regulations require this only for pots used or possessed in the EEZ; the revised language requires pots on board a vessel with a Federal permit to have the tag attached while in state waters also. This change makes this aspect of trap marking requirements consistent in the Gulf and South Atlantic and will enhance enforceability. NMFS is not aware of any vessels with Federal snapper-grouper permits that fish exclusively in state waters; therefore, this change is not expected to impose an additional burden. That is, if such vessels fish in Federal waters, the pots would have to be tagged while in Federal waters under current regulations. The change would simply require that tags remain on the trap while in state waters.

Prohibited Gear and Methods

Use of explosives is prohibited currently for most fisheries because of the obvious detrimental impacts on nontarget fishery resources and habitat. To achieve consistency, this rule prohibits the use of explosives in the Gulf shrimp fishery and makes explicit the implied prohibition in the current coral regulations. NMFS is unaware of any use of explosives in these fisheries; therefore, this change is preventative and results in no additional regulatory burden on current fishery participants.

Landing Fish Intact

For all fisheries for which fish must be landed intact, this rule allows such fish to be gilled and scaled, in addition to being eviscerated as allowed under current regulations. Currently only the Gulf reef fish regulations allow such fish to be gilled and scaled. This change would achieve consistency among fisheries, lessen existing restrictions, and not impair the effectiveness of other management measures for which the intact requirement was established.

Limitations on Fish Traps, Sea Bass Pots, and Spiny Lobster Traps

Current regulations require that, in the Caribbean reef fish fishery, a trap owner's written authorization for another person to pull or tend his traps must specify the time period for such authorization. To achieve consistency, provide for effective management and enforcement, and protect the owner's interests, this rule adds the same requirement to the Caribbean spiny lobster fishery.

Specifically Authorized Activities

Current regulations for all fisheries being consolidated by this rule provide for the appropriate authority to authorize, for the acquisition of information and data, activities that are otherwise prohibited. In addition, under the Gulf and South Atlantic coral regulations, the Regional Director may issue a permit for an individual to take or possess prohibited coral when such prohibited coral will be used for a scientific, educational, or restoration purpose. New regulations at 50 CFR 600.745, entitled "Scientific research activity, exempted fishing, and exempted educational activity," cover activities that are otherwise prohibited and the take of prohibited coral for a scientific, educational, or restoration purpose. Accordingly, 50 CFR 600.745 is referred to in the consolidated regulations in lieu of including these provisions.

Delegation of Authority

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA (AA), the authority to sign material for publication in the **Federal Register**.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

This rule contains collection-of-information requirements subject to the PRA.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Approved Collection-of-Information Requirements

The following collection-of-information requirements have already been approved by OMB under the following control numbers:

a. *0648–0013*—Dealer reports estimated at 0.085 hours per response. Dealer recordkeeping estimated at 0.667 hours per response. Trip interviews estimated at 0.167 hours per response.

b. *0648–0016*—Vessel reports: (1) Commercial vessel logbook reports estimated at 0.18 hours per response, (2) charter vessel logbook reports estimated at 0.20 hours per response, and (3) headboat logbook reports estimated at 0.20 hours per response. Coral reports: (1) Reports for individuals permitted to harvest prohibited coral, allowable octocoral, or live rock or deposit live rock estimated at 0.25 hours per response, and (2) advance notification of aquacultured live rock harvest estimated at 0.033 hours per response. Negative reports for fishermen and dealers are estimated at 0.033 and 0.050 hours per response, respectively.

c. *0648–0205*—Vessel permits estimated at 0.33 hours per response. Dealer permits estimated at 0.83 hours per response. Coral permits estimated at 0.25 hours per response.

d. *0648–0262*—Wreckfish share transfers estimated at 0.25 hours per response.

e. *0648–0305*—Gear identification requirements estimated at 0.33 hours per response.

f. *0648–0306*—Vessel identification requirements estimated at 0.75 hours per response.

The estimated response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

Revision of Approved Collection-of-Information Requirements

This rule revises existing collection-of-information requirements regarding submissions of applications for coral permits, vessel permits, and dealer permits. The collections of information associated with such applications are currently approved under OMB Control No. 0648–0205. In accordance with the President's Reporting Frequency Reduction Project, this rule reduces the frequency with which an applicant must apply for renewal of a coral, vessel, or dealer permit. Specifically, an applicant must apply only every other year in lieu of annually. A permit will continue to be issued for a 1-year period but will be automatically renewed for a second year, provided a vessel owner/operator or dealer has met the specific requirements for the permit, all required reports have been submitted, and the permit is not subject to sanction or denial. An applicant will be given a timely opportunity to correct any deficiency before a permit expires. This revision relieves a restriction regarding the frequency of responses required. The public reporting burdens for the approved collections, in terms of estimated time required per response, are unchanged by this revision. Send comments regarding burden estimates, or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

The changes necessary to achieve more uniform reporting requirements, discussed above under "Recordkeeping and reporting", have been approved by OMB under the approved collections of information listed above.

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this interim final rule codifies many recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to reference correctly the new sections resulting from the consolidation.

Administrative Procedure Act

This interim final rule consolidates 11 sets of regulations for the fisheries of the Caribbean, Gulf of Mexico, and South Atlantic into one comprehensive rule; reorganizes management measures in logical order; eliminates language that was duplicated among the various existing rules; and makes minor changes in certain regulatory provisions to provide a regulatory regime that is more consistent among all fisheries and less complex. While some of these minor changes may be of the type for which 5 U.S.C. 553 requires notice and opportunity for comment, to do so in this instance would be impractical and contrary to the public interest. The consolidation for the fisheries of the Caribbean, Gulf of Mexico, and South Atlantic is just one component of a comprehensive consolidation and restructuring of all of NMFS' fisheries regulations. That consolidation will be effective on July 1, 1996, and the Caribbean, Gulf of Mexico, and South Atlantic consolidation must be effective on that date as well or regulatory gaps and public confusion will result. The majority of changes in the Caribbean, Gulf of Mexico, and South Atlantic consolidation, including most of those that change existing rights or obligations, have neutral or less restrictive regulatory effects. Those few changes that result in greater restrictions or obligations are not likely to have any immediate effect for the reasons stated in the preamble. None of the changes are expected to increase regulatory burden significantly. Accordingly, the AA, under 5 U.S.C. 553(b)(3)(B), for good cause finds that providing advance notice and opportunity for public comment is impractical and contrary to the public interest. Public comment is invited for 30 days. If any significant, unforeseen regulatory effects are identified during public comment, appropriate changes will be made in the final rule. For the same reasons, the AA, under 5 U.S.C. 553(d)(3), for good cause waives the requirement to delay for 30 days the effectiveness of this rule.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

50 CFR Parts 638, 641, 642, 645, 646, 653, and 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Parts 647 and 659

Fisheries, Fishing.

50 CFR Parts 669 and 670

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 20, 1996.

Henry R. Beasley,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b) table, in the entries for 50 CFR in the left column, in numerical order, the entries "638.4", "638.5", "638.6", "638.27", "641.5", "641.6", "641.10", "642.4", "642.5", "642.6", "645.4", "645.6", "646.4", "646.5", "646.6", "646.10", "653.5", "658.5", "658.6", "669.6", "670.6", and "670.23" and their corresponding OMB control numbers in the right column are removed, and new entries "622.4", "622.5", "622.6", 622.15", "622.41(a)", and "622.45(a)" and their corresponding OMB control numbers are added in numerical order to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
. . . . .	
50 CFR	
. . . . .	
622.4	–0205.
622.5	–0013, and –0016.
622.6	–0305, and –0306.
622.15	–0262.
622.41(a)	–0016 and –0305.
622.45(a)	–0013.
. . . . .	

50 CFR CHAPTER VI

3. Part 622 is added to read as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

Subpart A—General Provisions

Sec.

622.1 Purpose and scope.
622.2 Definitions and acronyms.
622.3 Relation to other laws and regulations.
622.4 Permits and fees.
622.5 Recordkeeping and reporting.
622.6 Vessel and gear identification.
622.7 Prohibitions.

Subpart B—Effort Limitations

622.15 Wreckfish individual transferable quota (ITQ) system.
622.16 Red snapper individual transferable quota (ITQ) system.

Subpart C—Management Measures

622.30 Fishing years.
622.31 Prohibited gear and methods.
622.32 Prohibited and limited-harvest species.
622.33 Caribbean EEZ seasonal and/or area closures.
622.34 Gulf EEZ seasonal and/or area closures.
622.35 South Atlantic EEZ seasonal and/or area closures.
622.36 Seasonal harvest limitations.
622.37 Minimum sizes.
622.38 Landing fish intact.
622.39 Bag and possession limits.
622.40 Limitations on traps and pots.
622.41 Species specific limitations.
622.42 Quotas.
622.43 Closures.
622.44 Commercial trip limits.
622.45 Restrictions on sale/purchase.
622.46 Prevention of gear conflicts.
622.47 Gulf groundfish trawl fishery.
622.48 Adjustment of management measures.

Appendix A to Part 622—Species Tables
Appendix B to Part 622—Gulf Areas
Appendix C to Part 622—Fish Length Measurements

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 622.1 Purpose and scope.

(a) The purpose of this part is to implement the FMPs prepared under the Magnuson Act by the CFMC, GMFMC, and/or SAFMC listed in Table 1 of this section.

(b) This part governs conservation and management of species included in the FMPs in or from the Caribbean, Gulf, Mid-Atlantic, or South Atlantic EEZ, as indicated in Table 1 of this section. For the FMPs noted in the following table, conservation and management extends to adjoining state waters for the purposes of data collection and monitoring.

TABLE 1.—FMPS IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
Atlantic Coast Red Drum FMP	SAFMC	Mid-Atlantic and South Atlantic.
FMP for Coastal Migratory Pelagic Resources	GMFMC/SAFMC	Gulf,[1] Mid-Atlantic[1,2] and South Atlantic.[1,3]
FMP for Coral and Coral Reefs of the Gulf of Mexico	GMFMC	Gulf.
FMP for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region.	SAFMC	South Atlantic.
FMP for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.
FMP for the Red Drum Fishery of the Gulf of Mexico	GMFMC	Gulf.[1]
FMP for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.
FMP for the Reef Fish Resources of the Gulf of Mexico	GMFMC	Gulf.[1]
FMP for the Shrimp Fishery of the Gulf of Mexico	GMFMC	Gulf.[1]
FMP for the Shrimp Fishery of the South Atlantic Region	SAFMC	South Atlantic.
FMP for the Snapper-Grouper Fishery of the South Atlantic Region.	SAFMC	South Atlantic.[1,4]
FMP for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands.	CFMC	Caribbean.

[1] Regulated area includes adjoining state waters for purposes of data collection and quota monitoring.
[2] Only king and Spanish mackerel are managed under the FMP in the Mid-Atlantic.
[3] Bluefish are not managed under the FMP in the South Atlantic.
[4] Bank, rock, and black sea bass and scup are not managed by the FMP or regulated by this part north of 35°15.3′ N. lat., the latitude of Cape Hatteras Light, NC.

§ 622.2 Definitions and acronyms.

In addition to the definitions in the Magnuson Act and in § 600.10 of this chapter, and the acronyms in § 600.15 of this chapter, the terms and acronyms used in this part have the following meanings:

Allowable chemical means a substance, generally used to immobilize marine life so that it can be captured alive, that, when introduced into the water, does not take Gulf and South Atlantic prohibited coral and is allowed by Florida for the harvest of tropical fish (e.g., quinaldine, quinaldine compounds, or similar substances).

Allowable octocoral means an erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina*, plus the attached substrate within 1 inch (2.54 cm) of an allowable octocoral.

Note: An erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina*, with attached substrate exceeding 1 inch (2.54 cm) is considered to be live rock and not allowable octocoral.

Aquacultured live rock means live rock that is harvested under a Federal aquacultured live rock permit, as required under § 622.4(a)(3)(iii).

Authorized statistical reporting agent means:

(1) Any person so designated by the SRD; or

(2) Any person so designated by the head of any Federal or State agency that has entered into an agreement with the Assistant Administrator to collect fishery data.

Buoy gear means fishing gear consisting of a float and one or more weighted lines suspended therefrom, generally long enough to reach the bottom. A hook or hooks (usually 6 to 10) are on the lines at or near the end. The float and line(s) drift freely and are retrieved periodically to remove catch and rebait hooks.

Carapace length means the straight-line distance from the orbital notch inside the orbital spine, in a line parallel to the lateral rostral sulcus, to the posterior margin of the cephalothorax. (See Figure 1 in Appendix C of this part.)

Caribbean means the Caribbean Sea around Puerto Rico and the U.S. Virgin Islands.

Caribbean coral reef resource means one or more of the species, or a part thereof, listed in Table 1 in Appendix A of this part, whether living or dead.

Caribbean prohibited coral means, in the Caribbean; a gorgonian, that is, a Caribbean coral reef resource of the Class Anthozoa, Subclass Octocorallia, Order Gorgonacea; a live rock; or a stony coral, that is, a Caribbean coral reef resource of the Class Hydrozoa (fire corals and hydrocorals) or of the Class Anthozoa, Subclass Hexacorallia, Orders Scleractinia (stony corals) and Antipatharia (black corals); or a part thereof.

Caribbean reef fish means one or more of the species, or a part thereof, listed in Table 2 in Appendix A of this part.

Caribbean spiny lobster means the species *Panulirus argus*, or a part thereof.

CFMC means the Caribbean Fishery Management Council.

Charter vessel means a vessel less than 100 gross tons (90.8 mt) that meets the requirements of the USCG to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year. A charter vessel with a commercial permit, as required under § 622.4(a)(2), is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

Coastal migratory pelagic fish means one or more of the following species, or a part thereof:

(1) Bluefish, *Pomatomus saltatrix* (Gulf of Mexico only).

(2) Cero, *Scomberomorus regalis*.

(3) Cobia, *Rachycentron canadum*.

(4) Dolphin, *Coryphaena hippurus*

(5) King mackerel, *Scomberomorus cavalla*.

(6) Little tunny, *Euthynnus alletteratus*.

(7) Spanish mackerel, *Scomberomorus maculatus*.

Coral area means marine habitat in the Gulf or South Atlantic EEZ where coral growth abounds, including patch reefs, outer bank reefs, deep water banks, and hard bottoms.

Drift gillnet, for the purposes of this part, means a gillnet, other than a run-around gillnet, that is unattached to the ocean bottom, whether or not attached to a vessel.

Fish trap means—

(1) In the Caribbean EEZ, a trap and its component parts (including the lines and buoys), regardless of the construction material, used for or capable of taking finfish.

(2) In the Gulf EEZ, a trap and its component parts (including the lines and buoys), regardless of the construction material, used for or capable of taking finfish, except a trap historically used in the directed fishery for crustaceans (that is, blue crab, stone crab, and spiny lobster).

(3) In the South Atlantic EEZ, a trap and its component parts (including the lines and buoys), regardless of the construction material, used for or capable of taking fish, except a sea bass pot or a crustacean trap (that is, a type of trap historically used in the directed fishery for blue crab, stone crab, or spiny lobster and that contains at any time not more than 25 percent, by number, of fish other than blue crab, stone crab, and spiny lobster).

Fork length means the straight-line distance from the tip of the head (snout) to the rear center edge of the tail (caudal fin). (See Figure 2 in Appendix C of this part.)

GMFMC means the Gulf of Mexico Fishery Management Council.

Gulf means the Gulf of Mexico. The line of demarcation between the Atlantic Ocean and the Gulf of Mexico is specified in § 600.105(c) of this chapter.

Gulf reef fish means one or more of the species, or a part thereof, listed in Table 3 in Appendix A of this part.

Gulf and South Atlantic prohibited coral means, in the Gulf and South Atlantic, one or more of the following, or a part thereof:

(1) Coral belonging to the Class Hydrozoa (fire corals and hydrocorals).

(2) Coral belonging to the Class Anthozoa, Subclass Hexacorallia, Orders Scleractinia (stony corals) and Antipatharia (black corals).

(3) A seafan, *Gorgonia flabellum* or *G. ventalina*.

(4) Coral in a coral reef, except for allowable octocoral.

(5) Coral in an HAPC, including allowable octocoral.

HAPC means habitat area of particular concern.

Headboat means a vessel that holds a valid Certificate of Inspection issued by the USCG to carry passengers for hire. A headboat with a commercial vessel permit, as required under § 622.4(a)(2), is considered to be operating as a headboat when it carries a passenger who pays a fee or—

(1) In the case of persons aboard fishing for or possessing South Atlantic snapper-grouper, when there are more persons aboard than the number of crew specified in the vessel's Certificate of Inspection; or

(2) In the case of persons aboard fishing for or possessing coastal migratory pelagic fish or Gulf reef fish, when there are more than three persons aboard, including operator and crew.

Live rock means living marine organisms, or an assemblage thereof, attached to a hard substrate, including dead coral or rock (excluding individual mollusk shells).

MAFMC means the Mid-Atlantic Fishery Management Council.

Mid-Atlantic means the Atlantic Ocean off the Atlantic coastal states from the boundary between the New England Fishery Management Council and the MAFMC, as specified in § 600.105(a) of this chapter, to the boundary between the MAFMC and the SAFMC, as specified in § 600.105(b) of this chapter.

Migratory group, for king and Spanish mackerel, means a group of fish that may or may not be a separate genetic stock, but that is treated as a separate stock for management purposes. King and Spanish mackerel are divided into migratory groups—the Atlantic migratory group and the Gulf migratory group. The boundaries between these groups are as follows:

(1) *King mackerel*—(i) *Summer separation.* From April 1 through October 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is 25°48′ N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary to the outer limit of the EEZ.

(ii) *Winter separation.* From November 1 through March 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is 29°25′ N. lat., which is a line directly east from the Volusia/Flagler County, FL boundary to the outer limit of the EEZ.

(2) *Spanish mackerel.* The boundary separating the Gulf and Atlantic migratory groups of Spanish mackerel is 25°20.4′ N. lat., which is a line directly east from the Dade/Monroe County, FL, boundary to the outer limit of the EEZ.

Off Florida means the waters in the Gulf and South Atlantic from 30°42′45.6″ N. lat., which is a line directly east from the seaward terminus of the Georgia/Florida boundary, to 87°31′06″ W. long., which is a line directly south from the Alabama/Florida boundary.

Off Georgia means the waters in the South Atlantic from a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary to 30°42′45.6″ N. lat., which is a line directly east from the seaward terminus of the Georgia/Florida boundary.

Off Louisiana, Mississippi, and Alabama means the waters in the Gulf other than off Florida and off Texas.

Off North Carolina means the waters in the South Atlantic from 36°34′55″ N. lat., which is a line directly east from the Virginia/North Carolina boundary, to a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33° 51′07.9″ N. lat., 78°32′32.6″ W. long.

Off South Carolina means the waters in the South Atlantic from a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51′07.9″ N. lat., 78′32′32.6″ W. long., to a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary.

Off Texas means the waters in the Gulf west of a rhumb line from 29°32.1′ N. lat., 93°47.7′ W. long. to 26°11.4′ N. lat., 92°53′ W. long., which line is an extension of the boundary between Louisiana and Texas.

Powerhead means any device with an explosive charge, usually attached to a speargun, spear, pole, or stick, that fires a projectile upon contact.

Processor means a person who processes fish or fish products, or parts thereof, for commercial use or consumption.

Purchase means the act or activity of buying, trading, or bartering, or attempting to buy, trade, or barter.

Red drum, also called redfish, means *Sciaenops ocellatus*, or a part thereof.

Red snapper means *Lutjanus campechanus*, or a part thereof, one of the Gulf reef fish species.

Regional Director (RD), for the purposes of this part, means the Director, Southeast Region, NMFS (see Table 1 of § 600.502 of this chapter).

Run-around gillnet means a gillnet with a float line 1,000 yd (914 m) or less in length that, when used, encloses an area of water.

SAFMC means the South Atlantic Fishery Management Council.

Sale or *sell* means the act or activity of transferring property for money or credit, trading, or bartering, or attempting to so transfer, trade, or barter.

Science and Research Director (SRD), for the purposes of this part, means the Science and Research Director, Southeast Fisheries Science Center, NMFS (see Table 1 of § 600.502 of this chapter).

Sea bass pot means a trap has six rectangular sides and does not exceed 25 inches (63.5 cm) in height, width, or depth.

Shrimp means one or more of the following species, or a part thereof:

(1) Brown shrimp, *Penaeus aztecus.*

(2) Pink shrimp, *Penaeus duorarum.*

(3) Rock shrimp, *Sicyonia brevirostris.*

(4) Royal red shrimp, *Pleoticus robustus.*

(5) Seabob shrimp, *Xiphopenaeus kroyeri.*

(6) White shrimp, *Penaeus setiferus.*

SMZ means special management zone.

South Atlantic means the Atlantic Ocean off the Atlantic coastal states from the boundary between the MAFMC and the SAFMC, as specified in § 600.105(b) of this chapter, to the line of demarcation between the Atlantic Ocean and the Gulf of Mexico, as specified in § 600.105(c) of this chapter.

South Atlantic snapper-grouper means one or more of the species, or a part thereof, listed in Table 4 in Appendix A of this part.

Total length (TL), for the purposes of this part, means the straight-line distance from the tip of the snout to the tip of the tail (caudal fin), excluding any caudal filament, while the fish is lying on its side. The mouth of the fish may be closed and/or the tail may be squeezed together to give the greatest overall measurement. (See Figure 2 in Appendix C of this part.)

Toxic chemical means any substance, other than an allowable chemical, that, when introduced into the water, can stun, immobilize, or take marine life.

Trip means a fishing trip, regardless of number of days duration, that begins with departure from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

Wild live rock means live rock other than aquacultured live rock.

Wreckfish means the species *Polyprion americanus*, or a part thereof, one of the South Atlantic snapper-grouper species.

§ 622.3 Relation to other laws and regulations.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter and paragraphs (b) and (c) of this section.

(b) Except for regulations on allowable octocoral, Gulf and South Atlantic prohibited coral, and live rock, this part is intended to apply within the EEZ portions of applicable National Marine Sanctuaries and National Parks, unless the regulations governing such Sanctuaries or Parks prohibit their application. Regulations on allowable octocoral, Gulf and South Atlantic prohibited coral, and live rock do not apply within the EEZ portions of the following National Marine Sanctuaries and National Parks:

(1) Everglades National Park (36 CFR 7.45).

(2) Looe Key National Marine Sanctuary (15 CFR part 937).

(3) Fort Jefferson National Monument (36 CFR 7.27).

(4) Key Largo Coral Reef National Marine Sanctuary (15 CFR part 929).

(5) Biscayne National Park (16 U.S.C. 410gg).

(6) Gray's Reef National Marine Sanctuary (15 CFR Part 938).

(7) Monitor Marine Sanctuary (15 CFR part 924).

(c) For allowable octocoral, if a state has a catch, landing, or gear regulation that is more restrictive than a catch, landing, or gear regulation in this part, a person landing in such state allowable octocoral taken from the Gulf or South Atlantic EEZ must comply with the more restrictive state regulation.

(d) General provisions on facilitation of enforcement, penalties, and enforcement policy applicable to all domestic fisheries are set forth in §§ 600.730, 600.735, and 600.740 of this chapter, respectively.

(e) An activity that is otherwise prohibited by this part may be conducted if authorized as scientific research activity, exempted fishing, or exempted educational activity, as specified in § 600.745 of this chapter.

§ 622.4 Permits and fees.

(a) *Permits required.* To conduct activities in fisheries governed in this part, valid Federal permits are required as follows:

(1) *Charter vessel/headboat permits.* For a person aboard a vessel that is operating as a charter vessel or headboat to fish for or possess coastal migratory pelagic fish, Gulf reef fish, or South Atlantic snapper-grouper in or from the EEZ, a charter vessel/headboat permit for coastal migratory pelagic fish, Gulf reef fish, or South Atlantic snapper-grouper, respectively, must have been issued to the vessel and must be on board. A charter vessel or headboat may have both a charter vessel/headboat permit and a commercial vessel permit. However, when a vessel is operating as a charter vessel or headboat, a person aboard must adhere to the bag limits.

(2) *Commercial vessel permits and endorsements*—(i) *Fish traps in the Gulf.* For a person to possess or use a fish trap in the EEZ in the Gulf of Mexico, a commercial vessel permit for Gulf reef fish with a fish trap endorsement must have been issued to the vessel and must be on board. See paragraph (n) of this section regarding a moratorium on fish trap endorsements.

(ii) *Gillnets for king mackerel in the Florida west coast subzone.* For a person aboard a vessel to use a run-around gillnet for king mackerel in the Florida west coast subzone (see § 622.42(c)(1)(i)(A)(3)), a commercial vessel permit for king and Spanish mackerel with a gillnet endorsement must have been issued to the vessel and must be on board. See paragraph (o) of this section for restrictions on addition or deletion of a gillnet endorsement.

(iii) [Reserved]

(iv) *King and Spanish mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits and to fish under a quota for king or Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel permit for king and Spanish mackerel must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for king and Spanish mackerel, at least 10 percent of the applicant's earned income must have been derived from commercial fishing, that is, sale of fish harvested from the applicant's vessels, during one of the 3 calendar years preceding the application.

(v) *Gulf reef fish.* For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, or to sell Gulf reef fish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for Gulf reef fish, more than 50 percent of the applicant's earned income must have been derived from commercial fishing, that is, sale of fish harvested from the applicant's vessels, or from charter or headboat operations during either of the 2 calendar years preceding the application. See paragraph (m) of this section regarding a moratorium on commercial vessel permits for Gulf reef fish and paragraph (m)(3) of this section for a limited exception to the earned income requirement for a permit.

(vi) *South Atlantic snapper-grouper.* For a person aboard a vessel to be eligible for exemption from the bag limits for South Atlantic snapper-grouper in or from the South Atlantic EEZ, to engage in the directed fishery for tilefish in the South Atlantic EEZ, to use a longline to fish for South Atlantic snapper-grouper in the South Atlantic EEZ, or to use a sea bass pot in the South Atlantic EEZ north of 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL), a commercial vessel permit for South Atlantic snapper-grouper must have been issued to the vessel and must be on board. A vessel with longline gear and more than 200 lb (90.7 kilograms) of tilefish aboard is considered to be in the directed fishery for tilefish. It is a rebuttable presumption that a fishing vessel with more than 200 lb of tilefish aboard harvested such tilefish in the EEZ. To obtain or renew a commercial vessel permit for South Atlantic snapper-grouper, more than 50 percent of the applicant's earned income must have been derived from commercial fishing, that is, sale of fish harvested from the applicant's vessels, or from charter or headboat operations; or gross sales of fish harvested from the owner's, operator's, corporation's, or partnership's vessels must have been greater than $20,000, during one of the 3 calendar years preceding the application.

(vii) *Wreckfish.* For a person aboard a vessel to fish for wreckfish in the South Atlantic EEZ, possess wreckfish in or from the South Atlantic EEZ, offload wreckfish from the South Atlantic EEZ, or sell wreckfish in or from the South Atlantic EEZ, a commercial vessel permit for wreckfish must have been issued to the vessel and must be on board. To obtain a commercial vessel permit for wreckfish, the applicant must be a wreckfish shareholder; and either the shareholder must be the vessel owner or the owner or operator must be an employee, contractor, or agent of the shareholder. (See § 622.15 for information on wreckfish shareholders.)

(3) *Coral permits*—(i) *Allowable chemical.* For an individual to take or possess fish or other marine organisms with an allowable chemical in a coral area, other than fish or other marine organisms that are landed in Florida, a Federal allowable chemical permit must have been issued to the individual. Such permit must be available when the permitted activity is being conducted and when such fish or other marine organisms are possessed, through landing ashore.

(ii) *Allowable octocoral.* For an individual to take or possess allowable octocoral in the Gulf or South Atlantic EEZ, other than allowable octocoral that is landed in Florida, a Federal allowable octocoral permit must have been issued to the individual. Such permit must be available for inspection when the permitted activity is being conducted and when allowable octocoral is possessed, through landing ashore.

(iii) *Aquacultured live rock.* For a person to take or possess aquacultured live rock in the Gulf or South Atlantic EEZ, a Federal aquacultured live rock permit must have been issued for the specific harvest site. Such permit, or a copy, must be on board a vessel depositing or possessing material on an aquacultured live rock site or harvesting or possessing live rock from an aquacultured live rock site.

(iv) *Prohibited coral.* A Federal permit may be issued to take or possess Gulf and South Atlantic prohibited coral or Caribbean prohibited coral only as scientific research activity, exempted fishing, or exempted educational

activity. See § 600.745 of this chapter for the procedures and limitations for such activities and fishing.

(v) *Florida permits.* Appropriate Florida permits and endorsements are required for the following activities, without regard to whether they involve activities in the EEZ or Florida's waters:

(A) Landing in Florida fish or other marine organisms taken with an allowable chemical in a coral area.

(B) Landing allowable octocoral in Florida.

(C) Landing live rock in Florida.

(vi) *Wild live rock permits.* A Federal permit is required for a vessel to take or possess wild live rock in or from the Gulf EEZ. To be eligible for a wild live rock vessel permit, the current owner of the vessel for which the permit is requested must have had the required Florida permit and endorsements for live rock on or before February 3, 1994, and a record of landings of live rock on or before February 3, 1994, as documented on trip tickets received by the Florida Department of Environmental Protection before March 15, 1994. For landings other than in Florida, equivalent state permits/endorsements, if required, and landing records may be substituted for the Florida permits/endorsements and trip tickets. An owner will not be issued permits in numbers exceeding the number of vessels for which the owning entity had the requisite reported landings. An owner of a permitted vessel may transfer the vessel permit to another vessel owned by the same person by returning the existing permit with an application for a vessel permit for the replacement vessel. No wild live rock vessel permits will be issued after the quota for wild live rock in the Gulf, as specified in § 622.42(b)(2), is reached or after December 31, 1996.

(4) *Dealer permits.* For a dealer to receive Gulf reef fish, South Atlantic snapper-grouper, or wreckfish harvested from the Gulf or South Atlantic EEZ, a dealer permit for Gulf reef fish, South Atlantic snapper-grouper, or wreckfish, respectively, must have been issued to the dealer. To obtain a dealer permit, the applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

(b) *Applications for permits.* Application forms for all permits are available from the RD. Completed application forms and all required supporting documents must be submitted to the RD at least 30 days prior to the date on which the applicant desires to have the permit made effective. All vessel permits are mailed to owners, whether the applicant is an owner or an operator.

(1) *Coral permits.* (i) The applicant for a coral permit must be the individual who will be conducting the activity that requires the permit. In the case of a corporation or partnership that will be conducting live rock aquaculture activity, the applicant must be the principal shareholder or a general partner.

(ii) An applicant must provide the following:

(A) Name, address, telephone number, and other identifying information of the applicant.

(B) Name and address of any affiliated company, institution, or organization.

(C) Information concerning vessels, harvesting gear/methods, or fishing areas, as specified on the application form.

(D) Any other information that may be necessary for the issuance or administration of the permit.

(E) If applying for an aquacultured live rock permit, identification of each vessel that will be depositing material on or harvesting aquacultured live rock from the proposed aquacultured live rock site, specification of the port of landing of aquacultured live rock, and a site evaluation report prepared pursuant to generally accepted industry standards that—

(*1*) Provides accurate coordinates of the proposed harvesting site so that it can be located using LORAN or Global Positioning System equipment;

(*2*) Shows the site on a chart in sufficient detail to determine its size and allow for site inspection;

(*3*) Discusses possible hazards to safe navigation or hindrance to vessel traffic, traditional fishing operations, or other public access that may result from aquacultured live rock at the site;

(*4*) Describes the naturally occurring bottom habitat at the site; and

(*5*) Specifies the type and origin of material to be deposited on the site and how it will be distinguishable from the naturally occurring substrate.

(2) *Dealer permits.* (i) The application for a dealer permit must be submitted by the owner (in the case of a corporation, an officer or shareholder; in the case of a partnership, a general partner).

(ii) An applicant must provide the following:

(A) A copy of each state wholesaler's license held by the dealer.

(B) Name, address, telephone number, date the business was formed, and other identifying information of the business.

(C) The address of each physical facility at a fixed location where the business receives fish.

(D) Name, address, telephone number, other identifying information, and official capacity in the business of the applicant.

(E) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(3) *Vessel permits.* (i) The application for a commercial vessel permit, other than for wreckfish, or for a charter vessel/headboat permit must be submitted by the owner (in the case of a corporation, an officer or shareholder; in the case of a partnership, a general partner) or operator of the vessel. A commercial vessel permit that is issued based on the earned income qualification of an operator is valid only when that person is the operator of the vessel. The applicant for a commercial vessel permit for wreckfish must be a wreckfish shareholder.

(ii) An applicant must provide the following:

(A) A copy of the vessel's valid USCG certificate of documentation or, if not documented, a copy of its valid state registration certificate.

(B) Vessel name and official number.

(C) Name, address, telephone number, and other identifying information of the vessel owner and of the applicant, if other than the owner.

(D) Any other information concerning the vessel, gear characteristics, principal fisheries engaged in, or fishing areas, as specified on the application form.

(E) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(F) If applying for a commercial vessel permit, documentation, as specified in the instructions accompanying each application form, showing that applicable eligibility requirements of paragraph (a)(2) of this section have been met.

(G) If a fish trap or sea bass pot will be used, the number, dimensions, and estimated cubic volume of the traps/pots that will be used and the applicant's desired color code for use in identifying his or her vessel and buoys (white is not an acceptable color code).

(c) *Change in application information.* The owner or operator of a vessel with a permit or a dealer with a permit must notify the RD within 30 days after any change in the application information specified in paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

(d) *Fees.* A fee is charged for each permit application submitted under paragraph (b) of this section and for each fish trap or sea bass pot identification tag required under § 622.6(b)(1)(i). The amount of each fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RD, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application or request for fish trap/sea bass pot identification tags.

(e) *Initial issuance.* (1) The RD will issue an initial permit at any time to an applicant if the application is complete and the specific requirements for the requested permit have been met. An application is complete when all requested forms, information, and documentation have been received.

(2) Upon receipt of an incomplete application, the RD will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RD's letter of notification, the application will be considered abandoned.

(f) *Duration.* A permit remains valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 or the vessel or dealership is sold.

(g) *Transfer.* A vessel permit or endorsement or dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish or as provided in paragraph (n) of this section for a fish trap endorsement. A person who acquires a vessel or dealership who desires to conduct activities for which a permit or endorsement is required must apply for a permit or endorsement in accordance with the provisions of this section. If the acquired vessel or dealership is currently permitted, the application must be accompanied by the original permit and a copy of a signed bill of sale or equivalent acquisition papers.

(h) *Renewal.* Although a permit required by this section is issued on an annual basis, an application for permit renewal is required only every 2 years. In the interim years, a permit is renewed automatically (without application) for a vessel owner or dealer who has met the specific requirements for the requested permit, who has submitted all reports required under the Magnuson Act, and who is not subject to a permit sanction or denial under paragraph (j) of this section. An owner or dealer whose permit is expiring will be mailed a notification by the RD approximately 2 months prior to expiration of the current permit. That notification will advise the status of the renewal of the permit. That is, the notification will advise that the renewed permit will be issued without further action by the owner or dealer, that the permit is not eligible for automatic renewal, or that a new application is required. A notification that a permit is not eligible for automatic renewal will specify the reasons and will provide an opportunity for correction of any deficiencies. A notification that a new application is required will include a preprinted renewal application. An automatically renewed permit will be mailed by the RD approximately 1 month prior to expiration of the old permit. A vessel owner or dealer who does not receive a notification of status of renewal of a permit by 45 days prior to expiration of the current permit must contact the RD.

(i) *Display.* A vessel permit or endorsement issued under this section must be carried on board the vessel. A dealer permit issued under this section, or a copy thereof, must be available on the dealer's premises. In addition, a copy of the dealer's permit must accompany each vehicle that is used to pick up from a fishing vessel reef fish harvested from the Gulf EEZ. The operator of a vessel must present the permit or endorsement for inspection upon the request of an authorized officer. A dealer or a vehicle operator must present the permit or a copy for inspection upon the request of an authorized officer.

(j) *Sanctions and denials.* A permit or endorsement issued pursuant to this section may be revoked, suspended, or modified, and a permit or endorsement application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(k) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(l) *Replacement.* A replacement permit or endorsement may be issued. An application for a replacement permit or endorsement will not be considered a new application. A fee, the amount of which is stated with the application form, must accompany each request for a replacement.

(m) *Moratorium on commercial vessel permits for Gulf reef fish.* This paragraph (m) is effective through December 31, 2000.

(1) Except for an application for renewal of an existing commercial vessel permit for Gulf reef fish, or as provided in paragraphs (m)(2) and (3) of this section, no applications for such commercial vessel permits will be accepted.

(2) An owner of a permitted vessel may transfer the commercial vessel permit for Gulf reef fish to another vessel owned by the same entity by returning the existing permit to the RD with an application for a commercial vessel permit for the replacement vessel.

(3) An owner whose earned income qualified for the commercial vessel permit for Gulf reef fish may transfer that permit to the owner of another vessel or to the new owner when he or she sells the permitted vessel. The owner of a vessel that is to receive the transferred permit must return the existing permit to the RD with an application for a commercial vessel permit for Gulf reef fish for his or her vessel. Such new owner may receive a commercial vessel permit for Gulf reef fish for that vessel, and renew it for the first calendar year after obtaining it, without meeting the earned income requirement of paragraph (e)(2)(v) of this section. However, to renew the commercial vessel permit for the second calendar year after the transfer, the new owner must meet that earned income requirement not later than the first calendar year after the permit transfer takes place.

(4) A commercial vessel permit for Gulf reef fish that is not renewed or that is revoked will not be reissued. A permit is considered to be not renewed when an application for renewal is not received by the RD within 1 year of the expiration date of the permit.

(n) *Moratorium on endorsements for fish traps in the Gulf.* The provisions of this paragraph (n) are effective through February 7, 1997.

(1) A fish trap endorsement will not be issued or renewed unless the current owner of the commercially permitted vessel for which the endorsement is requested has a record of landings of Gulf reef fish from fish traps in the Gulf EEZ during 1991 or 1992, as reported on fishing vessel logbooks received by the SRD on or before November 19, 1992. An owner will not be issued fish trap endorsements for vessels in numbers exceeding the number of vessels for which the owning entity had the requisite reported landings in 1991 or 1992.

(2) An owner of a vessel with a fish trap endorsement may transfer the endorsement to another vessel owned by the same entity by returning the existing endorsement with an application for an endorsement for the replacement vessel.

(3) A fish trap endorsement is not transferable upon change of ownership of a vessel with such endorsement, except as follows:

(i) Such endorsement is transferable when the change of ownership of the permitted vessel is from one to another

of the following: Husband, wife, son, daughter, brother, sister, mother, or father.

(ii) In the event that a vessel with a fish trap endorsement has a change of ownership that is directly related to the disability or death of the owner, the RD may issue such endorsement, temporarily or permanently, with the commercial vessel permit for Gulf reef fish that is issued for the vessel under the new owner. Such new owner will be the person specified by the owner or his/her legal guardian, in the case of a disabled owner, or by the will or executor/administrator of the estate, in the case of a deceased owner. (Change of ownership of a vessel with a commercial vessel permit for Gulf reef fish upon disability or death of an owner is considered a purchase of a permitted vessel and paragraph (m)(3) of this section applies regarding a commercial vessel permit for Gulf reef fish for the vessel under the new owner.)

(4) A fish trap endorsement in effect on September 12, 1995, may be transferred to a vessel with a commercial vessel permit for Gulf reef fish whose owner has a record of landings of reef fish from fish traps in the Gulf EEZ, as reported on fishing vessel logbooks received by the SRD from November 20, 1992, through February 6, 1994, and who was unable to obtain a fish trap endorsement for such vessel under paragraph (n)(1) of this section. The owner of a vessel that is to receive the transferred endorsement must return the currently endorsed commercial vessel permit for Gulf reef fish and the unendorsed permit to the RD with an application for a fish trap endorsement for his or her vessel. Revised commercial vessel permits will be returned to each owner.

(5) If a fish trap endorsement is transferred under paragraph (n)(3) or (4) of this section, the owner of the vessel to which the endorsement is transferred may renew the endorsement without regard to the requirement of paragraph (n)(1) of this section regarding a record of landing of Gulf reef fish from fish traps.

(6) A fish trap endorsement that is not renewed or that is revoked will not be reissued. Such endorsement is considered to be not renewed when an application for renewal is not received by the RD within 1 year of the expiration date of the permit.

(o) *Endorsements for the use of gillnets for king and Spanish mackerel in the Florida west coast subzone.* Other paragraphs of this section notwithstanding—

(1) An owner of a vessel that has a commercial vessel permit for king and Spanish mackerel may add or delete a gillnet endorsement on a permit by returning to the RD the vessel's existing permit with a written request for addition or deletion of the gillnet endorsement. Such request must be postmarked or hand delivered during June, each year.

(2) A gillnet endorsement may not be added or deleted from July 1 through May 31 each year, any renewal of the permit during that period notwithstanding. From July 1 through May 31, a permitted vessel that is sold, if permitted by the new owner for king and Spanish mackerel, will receive a permit with or without the gillnet endorsement as was the case for the vessel under the previous owner. From July 1 through May 31, the initial commercial vessel permit for king and Spanish mackerel issued for a vessel new to the fishery will be issued without a gillnet endorsement.

§ 622.5 Recordkeeping and reporting.

Participants in fisheries governed in this part are required to keep records and report as follows.

(a) *Commercial vessel owners and operators*—(1) *Requirements by species*—(i) *Coastal migratory pelagic fish.* The owner or operator of a vessel that fishes for or lands coastal migratory pelagic fish for sale in or from the Gulf or South Atlantic EEZ or adjoining state waters, or whose vessel is issued a commercial permit for king and Spanish mackerel, as required under § 622.4(a)(2)(iv), who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(ii) *Gulf reef fish.* The owner or operator of a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), or whose vessel fishes for or lands reef fish in or from state waters adjoining the Gulf EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(iii) *Gulf shrimp.* The owner or operator of a vessel that fishes for shrimp in the Gulf EEZ or in adjoining state waters, or that lands shrimp in an adjoining state, must provide information for any fishing trip, as requested by the SRD, including, but not limited to, vessel identification, gear, effort, amount of shrimp caught by species, shrimp condition (heads on/heads off), fishing areas and depths, and person to whom sold.

(iv) *South Atlantic snapper-grouper.* (A) The owner or operator of a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued, as required under § 622.4(a)(2)(vi), or whose vessel fishes for or lands South Atlantic snapper-grouper in or from state waters adjoining the South Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(B) The wreckfish shareholder under § 622.15, or operator of a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.4(a)(2)(vii), must maintain a fishing record on a form available from the SRD and must submit such record as specified in paragraph (a)(2) of this section.

(C) The wreckfish shareholder under § 622.15, or operator of a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.4(a)(2)(vii), must make available to an authorized officer upon request all records of offloadings, purchases, or sales of wreckfish.

(2) *Reporting deadline.* Completed fishing records required by paragraphs (a)(1)(i), (ii), and (iv) of this section must be submitted to the SRD postmarked not later than 7 days after the end of each fishing trip. If no fishing occurred during a calendar month, a report so stating must be submitted on one of the forms postmarked not later than 7 days after the end of that month. Information to be reported is indicated on the form and its accompanying instructions.

(b) *Charter vessel/headboat owners and operators*—(1) *Coastal migratory pelagic fish, reef fish, and snapper-grouper.* The owner or operator of a vessel for which a charter vessel/headboat permit for coastal migratory pelagic fish, Gulf reef fish, or South Atlantic snapper-grouper has been issued, as required under § 622.4(a)(1), or whose vessel fishes for or lands such coastal migratory pelagic fish, reef fish, or snapper-grouper in or from state waters adjoining the Gulf or South Atlantic EEZ, who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2) of this section.

(2) *Reporting deadlines*—(i) *Charter vessels.* Completed fishing records required by paragraph (b)(1) of this section for charter vessels must be submitted to the SRD weekly, postmarked not later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

(ii) *Headboats.* Completed fishing records required by paragraph (b)(1) of this section for headboats must be submitted to the SRD monthly and must either be made available to an authorized statistical reporting agent or be postmarked not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

(c) *Dealers*—(1) *Coastal migratory pelagic fish.* (i) A person who purchases coastal migratory pelagic fish from a fishing vessel, or person, that fishes for or lands such fish in or from the EEZ or adjoining state waters who is selected to report by the SRD must submit information on forms provided by the SRD. This information must be submitted to the SRD at monthly intervals, postmarked not later than 5 days after the end of each month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD. If no coastal migratory pelagic fish were received during a calendar month, a report so stating must be submitted on one of the forms, in accordance with the instructions on the form, and must be postmarked not later than 5 days after the end of the month. The information to be reported is as follows:

(A) Dealer's or processor's name and address.

(B) County where fish were landed.

(C) Total poundage of each species received during that month, or other requested interval.

(D) Average monthly price paid for each species.

(E) Proportion of total poundage landed by each gear type.

(ii) *Alternate SRD.* For the purposes of paragraph (c)(1)(i) of this section, in the states from New York through Virginia, or in the waters off those states, "SRD" means the Science and Research Director, Northeast Fisheries Science Center, NMFS (see Table 1 of § 600.502 of this chapter), or a designee.

(2) *Gulf red drum.* A dealers or processor who purchases red drum harvested from the Gulf who is selected to report by the SRD must report to the SRD such information as the SRD may request and in the form and manner as the SRD may require. The information required to be submitted must include, but is not limited to, the following:

(i) Dealer's or processor's name and address.

(ii) State and county where red drum were landed.

(iii) Total poundage of red drum received during the reporting period, by each type of gear used for harvest.

(3) *Gulf reef fish.* A person who purchases Gulf reef fish from a fishing vessel, or person, that fishes for or lands such fish in or from the EEZ or adjoining state waters must maintain records and submit information as follows:

(i) A dealer must maintain at his/her principal place of business a record of Gulf reef fish that he/she receives. The record must contain the name of each fishing vessel from which reef fish were received and the date, species, and quantity of each receipt. A dealer must retain such record for at least 1 year after receipt date and must provide such record for inspection upon the request of an authorized officer or the SRD.

(ii) When requested by the SRD, a dealer must provide information from his/her record of Gulf reef fish received the total poundage of each species received during the month, average monthly price paid for each species by market size, and proportion of total poundage landed by each gear type. This information must be provided on forms available from the SRD and must be submitted to the SRD at monthly intervals, postmarked not later than 5 days after the end of the month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD. If no reef fish were received during a calendar month, a report so stating must be submitted on one of the forms, postmarked not later than 5 days after the end of the month.

(iii) The operator of a car or truck that is used to pick up from a fishing vessel reef fish harvested from the Gulf must maintain a record containing the name of each fishing vessel from which reef fish on the car or truck have been received. The vehicle operator must provide such record for inspection upon the request of an authorized officer.

(4) *Gulf shrimp.* A person who purchases shrimp from a vessel, or person, that fishes for shrimp in the Gulf EEZ or in adjoining state waters, or that lands shrimp in an adjoining state, must provide the following information when requested by the SRD:

(i) Name and official number of the vessel from which shrimp were received or the name of the person from whom shrimp were received, if received from other than a vessel.

(ii) Amount of shrimp received by species and size category for each receipt.

(iii) Exvessel value, by species and size category, for each receipt.

(5) *South Atlantic snapper-grouper.* (i) A person who purchases South Atlantic snapper-grouper that were harvested from the EEZ or from adjoining state waters and who is selected to report by the SRD and a dealer who has been issued a dealer permit for wreckfish, as required under § 622.4(a)(4), must provide information on receipts of South Atlantic snapper-grouper and prices paid, by species, on forms available from the SRD. The required information must be submitted to the SRD at monthly intervals, postmarked not later than 5 days after the end of the month. Reporting frequency and reporting deadlines may be modified upon notification by the SRD. If no South Atlantic snapper-grouper were received during a calendar month, a report so stating must be submitted on one of the forms, postmarked not later than 5 days after the end of the month. However, during complete months encompassed by the wreckfish spawning-season closure (that is, February and March), a wreckfish dealer is not required to submit a report stating that no wreckfish were received.

(ii) A dealer reporting South Atlantic snapper-grouper other than wreckfish may submit the information required in paragraph (c)(5)(i) of this section via facsimile (fax).

(iii) A dealer who has been issued a dealer permit for wreckfish, as required under § 622.4(a)(4), must make available to an authorized officer upon request all records of offloadings, purchases, or sales of wreckfish.

(d) *Individuals with coral or live rock permits.* (1) An individual with a Federal allowable octocoral permit must submit a report of harvest to the SRD. Specific reporting requirements will be provided with the permit.

(2) A person with a Federal aquacultured live rock permit must report to the RD each deposition of material on a site. Such reports must be postmarked not later than 7 days after deposition and must contain the following information:

(i) Permit number of site and date of deposit.

(ii) Geological origin of material deposited.

(iii) Amount of material deposited.

(iv) Source of material deposited, that is, where obtained, if removed from another habitat, or from whom purchased.

(3) A person who takes aquacultured live rock must submit a report of harvest to the RD. Specific reporting requirements will be provided with the permit. This reporting requirement is waived for aquacultured live rock that is landed in Florida.

(e) *Additional data and inspection.* Additional data will be collected by authorized statistical reporting agents and by authorized officers. A person who fishes for or possesses species in or from the EEZ governed in this part is required to make the applicable fish or parts thereof available for inspection by the SRD or an authorized officer upon request.

(f) *Commercial vessel, charter vessel, and headboat inventory.* The owner or operator of a commercial vessel, charter vessel, or headboat operating in a fishery governed in this part who is not selected to report by the SRD under paragraph (a) or (b) of this section must provide the following information when interviewed by the SRD:

(1) Name and official number of vessel and permit number, if applicable.

(2) Length and tonnage.

(3) Current home port.

(4) Fishing areas.

(5) Ports where fish were offloaded during the last year.

(6) Type and quantity of gear.

(7) Number of full- and part-time fishermen or crew members.

§ 622.6 Vessel and gear identification.

(a) *Vessel identification*—(1) *Applicability*—(i) *Official number.* A vessel for which a permit has been issued under § 622.4, and a vessel that fishes for or possesses shrimp in the Gulf EEZ, must display its official number—

(A) On the port and starboard sides of the deckhouse or hull and, for vessels over 25 ft (7.6 m) long, on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(B) In block arabic numerals permanently affixed to or painted on the vessel in contrasting color to the background.

(C) At least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) long; at least 10 inches (25.4 cm) in height for vessels over 25 ft (7.6 m) long; and at least 3 inches (7.6 cm) in height for vessels 25 ft (7.6 m) long or less.

(ii) *Official number and color code.* The following vessels must display their official number as specified in paragraph (a)(1)(i) of this section and, in addition, must display their assigned color code: A vessel for which a fish trap endorsement has been issued, as required under § 622.4(a)(2)(i); a vessel for which a permit has been issued to fish with a sea bass pot, as required under § 622.4(a)(2)(vi); a vessel in the commercial Caribbean reef fish fishery fishing with traps; and a vessel in the Caribbean spiny lobster fishery. Color codes required for the Caribbean reef fish fishery and Caribbean spiny lobster fishery are assigned by Puerto Rico or the U.S. Virgin Islands, whichever is applicable; color codes required in all other fisheries are assigned by the RD. The color code must be displayed—

(A) On the port and starboard sides of the deckhouse or hull and, for vessels over 25 ft (7.6 m) long, on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft.

(B) In the form of a circle permanently affixed to or painted on the vessel.

(C) At least 18 inches (45.7 cm) in diameter for vessels over 65 ft (19.8 m) long; at least 10 inches (25.4 cm) in diameter for vessels over 25 ft (7.6 m) long; and at least 3 inches (7.6 cm) in diameter for vessels 25 ft (7.6 m) long or less.

(2) *Duties of operator.* The operator of a vessel specified in paragraph (a)(1) of this section must keep the official number and the color code, if applicable, clearly legible and in good repair and must ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material on board obstructs the view of the official number or the color code, if applicable, from an enforcement vessel or aircraft.

(b) *Gear identification*—(1) *Traps or pots*—(i) *Caribbean EEZ.* A fish trap or spiny lobster trap used or possessed in the Caribbean EEZ must display the official number specified for the vessel by Puerto Rico or the U.S. Virgin Islands so as to be easily identified.

(ii) *Gulf and South Atlantic EEZ.* A fish trap used or possessed in the Gulf EEZ and a sea bass pot used or possessed in the South Atlantic EEZ, or a fish trap or sea bass pot on board a vessel with a commercial permit for Gulf reef fish or South Atlantic snapper-grouper, must have a valid identification tag issued by the RD attached.

(2) *Buoys.* A buoy must display the assigned number and color code so as to be easily distinguished, located, and identified as follows—

(i) *Caribbean EEZ.* Each buoy must display the official number and color code specified for the vessel by Puerto Rico or the U.S. Virgin Islands, whichever is applicable.

(ii) *Gulf and South Atlantic EEZ.* Each buoy must display the number and color code assigned by the RD. In the Gulf EEZ, a buoy must be attached to each trap, or each end trap if traps are connected by a line. In the South Atlantic EEZ, buoys are not required to be used, but, if used, each buoy must display the number and color code.

(c) *Presumption of ownership.* A Caribbean spiny lobster trap, a fish trap, or a sea bass pot in the EEZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to such traps and pots that are lost or sold if the owner reports the loss or sale within 15 days to the RD.

(d) *Unmarked traps, pots, or buoys.* An unmarked Caribbean spiny lobster trap, a fish trap, a sea bass pot, or a buoy deployed in the EEZ is illegal and may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

§ 622.7 Prohibitions.

In addition to the general prohibitions in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) Engage in an activity for which a valid Federal permit is required under § 622.4 without such permit.

(b) Falsify information on a permit application or submitted with such application, as specified in § 622.4(b).

(c) Fail to display a permit or endorsement, as specified in § 622.4(i).

(d) Falsify or fail to maintain, submit, or provide information required to be maintained, submitted, or provided, as specified in § 622.5 (a) through (f).

(e) Fail to make a fish, or parts thereof, available for inspection, as specified in § 622.5(e).

(f) Falsify or fail to display and maintain vessel and gear identification, as specified in § 622.6 (a) and (b).

(g) Fail to comply with any requirement or restriction regarding ITQ coupons, as specified in § 622.15(c)(3), (c)(5), (c)(6), or (c)(7).

(h) Possess wreckfish as specified in § 622.15(c)(4), receive wreckfish except as specified in § 622.15(c)(7), or offload a wreckfish except as specified in § 622.15 (d)(3) and (d)(4).

(i) Transfer—

(1) A wreckfish, as specified in § 622.15(d)(1);

(2) A limited-harvest species, as specified in § 622.32(c) introductory text;

(3) A species/species group subject to a bag limit, as specified § 622.39(a)(1);

(4) South Atlantic snapper-grouper from a vessel with unauthorized gear on board, as specified in § 622.41(d)(2)(iii); or

(5) A species subject to a commercial trip limit, as specified in § 622.44 introductory text.

(j) Use or possess prohibited gear or methods or possess fish in association with possession or use of prohibited gear, as specified in § 622.31.

(k) Fish for, harvest, or possess a prohibited species, or a limited-harvest species in excess of its limitation, sell or purchase such species, fail to comply with release requirements, or molest or strip eggs from a Caribbean spiny lobster, as specified in § 622.32.

(l) Fish in violation of the prohibitions, restrictions, and requirements applicable to seasonal and/or area closures, including but not limited to: Prohibition of all fishing, gear restrictions, restrictions on take or retention of fish, fish release requirements, and restrictions on use of an anchor or grapple, as specified in § 622.33, § 622.34, or § 622.35, or as may be specified under § 622.46 (b) or (c).

(m) Harvest, possess, offload, sell, or purchase fish in excess of the seasonal harvest limitations, as specified in § 622.36.

(n) Except as allowed under § 622.37(c) (2) and (3) for king and Spanish mackerel, possess undersized fish, fail to release undersized fish, or sell or purchase undersized fish, as specified in § 622.37.

(o) Fail to maintain a fish intact through offloading ashore, as specified in § 622.38.

(p) Exceed a bag or possession limit, as specified in § 622.39.

(q) Fail to comply with the limitations on traps and pots, including but not limited to: Tending requirements, constructions requirements, and area specific restrictions, as specified in § 622.40.

(r) Fail to comply with the species-specific limitations, as specified in § 622.41.

(s) Fail to comply with the restrictions that apply after closure of a fishery, as specified in § 622.43.

(t) Possess on board a vessel or land, purchase, or sell fish in excess of the commercial trip limits, as specified in § 622.44.

(u) Fail to comply with the restrictions on sale/purchase, as specified in § 622.45.

(v) Interfere with fishing or obstruct or damage fishing gear or the fishing vessel of another, as specified in § 622.46(a).

Subpart B—Effort Limitations

§ 622.15 Wreckfish individual transferable quota (ITQ) system.

The provisions of this section apply to wreckfish in or from the South Atlantic EEZ.

(a) *Percentage shares.* (1) In accordance with the procedure specified in the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region, percentage shares of the quota for wreckfish have been assigned. Each person has been notified by the RD of his or her percentage share and shareholder certificate number.

(2) All or a portion of a person's percentage shares may be transferred to another person. Transfer of shares must be reported on a form available from the RD. The RD will confirm, in writing, each transfer of shares. The effective date of each transfer is the confirmation date provided by the RD. The confirmation date will normally be not later than 3 working days after receipt of a properly completed transfer form. A fee is charged for each transfer of shares. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RD, for determining the administrative costs of each special product or service provided by NOAA to non-Federal recipients. The fee may not exceed such costs and is specified with each transfer form. The appropriate fee must accompany each transfer form.

(b) *Lists of wreckfish shareholders and permitted vessels.* Annually, on or about March 1, the RD will provide each wreckfish shareholder with a list of all wreckfish shareholders and their percentage shares, reflecting share transactions on forms received through February 15. Annually by April 15, the RD will provide each dealer who holds a dealer permit for wreckfish, as required under § 622.4(a)(4), with a list of vessels for which wreckfish permits have been issued, as required under § 622.4(a)(2)(vii). Annually, by April 15, the RD will provide each wreckfish shareholder with a list of dealers who have been issued dealer permits for wreckfish. From April 16 through January 14, updated lists will be provided when required. Updated lists may be obtained at other times or by a person who is not a wreckfish shareholder or wreckfish dealer permit holder by written request to the RD.

(c) *ITQs.* (1) Annually, as soon after March 1 as the TAC for wreckfish for the fishing year that commences April 16 is known, the RD will calculate each wreckfish shareholder's ITQ. Each ITQ is the product of the wreckfish TAC, in round weight, for the ensuing fishing year, the factor for converting round weight to eviscerated weight, and each wreckfish shareholder's percentage share, reflecting share transactions reported on forms received by the RD through February 15. Thus, the ITQs will be in terms of eviscerated weight of wreckfish.

(2) The RD will provide each wreckfish shareholder with ITQ coupons in various denominations, the total of which equals his or her ITQ, and a copy of the calculations used in determining his or her ITQ. Each coupon will be coded to indicate the initial recipient.

(3) An ITQ coupon may be transferred from one wreckfish shareholder to another by completing the sale endorsement thereon (that is, the signature and shareholder certificate number of the buyer). An ITQ coupon may be possessed only by the shareholder to whom it has been issued, or by the shareholder's employee, contractor, or agent, unless the ITQ coupon has been transferred to another shareholder. An ITQ coupon that has been transferred to another shareholder may be possessed only by the shareholder whose signature appears on the coupon as the buyer, or by the shareholder's employee, contractor, or agent, and with all required sale endorsements properly completed.

(4) Wreckfish may not be possessed on board a fishing vessel—

(i) In an amount exceeding the total of the ITQ coupons on board the vessel;

(ii) That does not have on board a commercial vessel permit for wreckfish, as required under § 622.4(a)(2)(vii); or

(iii) That does not have on board logbook forms for that fishing trip, as required under § 622.5(a)(1)(iv)(B).

(5) Prior to termination of a trip, a signature and date signed must be affixed in ink to the "Fisherman" part of ITQ coupons in denominations equal to the eviscerated weight of the wreckfish on board. The "Fisherman" part of each such coupon must be separated from the coupon and submitted with the logbook forms required by § 622.5(a)(1)(iv)(B) for that fishing trip.

(6) The "Fish House" part of each such coupon must be given to the dealer to whom the wreckfish are transferred in amounts totaling the eviscerated weight of the wreckfish transferred to that dealer. A wreckfish may be transferred only to a dealer who holds a dealer permit for wreckfish, as required under § 622.4(a)(4).

(7) A dealer may receive a wreckfish only from a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.4(a)(2)(vii). A dealer must receive the "Fish House" part of ITQ coupons in amounts totaling the eviscerated weight of the wreckfish received; enter the permit number of the vessel from which the wreckfish were received, enter the date the wreckfish were received, enter the dealer's permit number, and sign each such "Fish House" part; and submit all such parts with the dealer reports required by § 622.5(c)(5)(i).

(8) An owner or operator of a vessel and a dealer must make available to an authorized officer all ITQ coupons in his or her possession upon request.

(d) *Wreckfish limitations.* (1) A wreckfish taken in the South Atlantic EEZ may not be transferred at sea, regardless of where the transfer takes place; and a wreckfish may not be transferred in the South Atlantic EEZ.

(2) A wreckfish possessed by a fisherman or dealer shoreward of the outer boundary of the South Atlantic EEZ or in a South Atlantic coastal state will be presumed to have been harvested from the South Atlantic EEZ unless accompanied by documentation that it was harvested from other than the South Atlantic EEZ.

(3) A wreckfish may be offloaded from a fishing vessel only between 8 a.m. and 5 p.m., local time.

(4) If a wreckfish is to be offloaded at a location other than a fixed facility of a dealer who holds a dealer permit for wreckfish, as required under § 622.4(a)(4), the wreckfish shareholder or the vessel operator must advise the NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL, by telephone (1–800–853–1964), of the location not less than 24 hours prior to offloading.

§ 622.16 Red snapper individual transferable quota (ITQ) system.

The ITQ system established by this section will remain in effect through March 31, 2000, during which time NMFS and the GMFMC will evaluate the effectiveness of the system. Based on the evaluation, the system may be modified, extended, or terminated.

(a) *Percentage shares.* (1) Initial percentage shares of the annual quota of red snapper are assigned to persons in accordance with the procedure specified in Amendment 8 to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico (FMP) and in paragraphs (c)(1) through (c)(4) of this section. Each person is notified by the RD of his or her initial percentage shares. If additional shares become available to NMFS, such as by forfeiture pursuant to subpart F of 15 CFR part 904 for rule violations, such shares will be proportionately reissued to shareholders based on their shares as of November 1, after the additional shares become available. If NMFS is required to issue additional shares, such as may be required in the resolution of disputes, existing shares will be proportionately reduced. This reduction of shares will be based on shares as of November 1 after the required addition of shares.

(2) All or a portion of a person's percentage shares may be transferred to another person who is a U.S. citizen or permanent resident alien. (See paragraph (c)(5) of this section for restrictions on the transfer of shares in the initial months under the ITQ system.) Transfer of shares must be reported on a form available from the RD. The RD will confirm, in writing, the registration of each transfer. The effective date of each transfer is the confirmation date provided by the RD. The confirmation of registration date will normally be not later than 3 working days after receipt of a properly completed transfer form. However, reports of share transfers received by the RD from November 1 through December 31 will not be recorded or confirmed until after January 1. A fee is charged for each transfer of percentage shares. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service provided by NOAA to non-Federal recipients. The fee may not exceed such costs and is specified with each transfer form. The appropriate fee must accompany each transfer form.

(3) On or about January 1 each year, the RD will provide each red snapper shareholder with a list of all red snapper shareholders and their percentage shares, reflecting share transfers as indicated on properly completed transfer forms received through October 31. Updated lists may be obtained at other times, and by persons who are not red snapper shareholders, by written request to the RD.

(b) *ITQs.* (1) Annually, as soon after November 15 as the following year's red snapper quota is established, the RD will calculate each red snapper shareholder's ITQ in terms of eviscerated weight. Each ITQ is the product of the red snapper quota, in round weight, for the ensuing fishing year, the factor for converting round weight to eviscerated weight, and each red snapper shareholder's percentage share, reflecting share transfers reported on forms received by the RD through October 31.

(2) The RD will provide each red snapper shareholder with ITQ coupons in various denominations, the total of which equals his or her ITQ, and a copy of the calculations used in determining his or her ITQ. Each coupon will be coded to indicate the initial recipient.

(3) An ITQ coupon may be transferred. If the transfer is by sale, the seller must enter the sale price on the coupon.

(4) Except when the red snapper bag limit applies, red snapper in or from the EEZ or on board a vessel that has been issued a commercial permit for Gulf reef fish, as required under § 622.4(a)(2)(v), may not be possessed in an amount, in eviscerated weight, exceeding the total of ITQ coupons on board. (See § 622.39(a) for applicability of the bag limit.)

(5) Prior to termination of a trip, the operator's signature and the date signed must be written in ink on the "Vessel" part of ITQ coupons totaling at least the eviscerated weight of the red snapper on board. An owner or operator of a vessel must separate the "Vessel" part of each such coupon, enter thereon the permit number of the dealer to whom the red snapper are transferred, and submit the "Vessel" parts with the logbook forms for that fishing trip. An owner or operator of a vessel must make available to an authorized officer all ITQ coupons in his or her possession upon request.

(6) Red snapper harvested from the EEZ or possessed by a vessel with a commercial permit for Gulf reef fish, as required under § 622.4(a)(2)(v), may be transferred only to a dealer with a Gulf reef fish permit, as required under § 622.4(a)(4). The "Fish House" part of each ITQ coupon must be given to such dealer, or the agent or employee of such dealer, in amounts totaling at least the eviscerated weight of the red snapper transferred to that dealer.

(7) A dealer with a Gulf reef fish permit may receive red snapper only from a vessel that has on board a commercial permit for Gulf reef fish. A dealer, or the agent or employee of a dealer, must receive the "Fish House" part of ITQ coupons totaling at least the eviscerated weight of the red snapper received. Immediately upon receipt of red snapper, the dealer, or the agent or employee of the dealer, must enter the permit number of the vessel received from and date and sign each such "Fish House" part. The dealer must submit all such parts as required by paragraph (d)(6) of this section. A dealer, agent, or employee must make available to an authorized officer all ITQ coupons in his or her possession upon request.

(c) *Procedures for implementation*—(1) *Initial shareholders.* The following persons are initial shareholders in the red snapper ITQ system:

(i) Either the owner or operator of a vessel with a valid permit on August 29, 1995, provided such owner or operator had a landing of red snapper during the period 1990 through 1992. If the earned income of an operator was used to qualify for the permit that is valid on August 29, 1995, such operator is the initial shareholder rather than the owner. In the case of an owner, the term "person" includes a corporation or other legal entity; and

(ii) A historical captain. A historical captain means an operator who meets all of the following qualifications:

(A) From November 6, 1989, through 1993, fished solely under verbal or written share agreements with an owner, and such agreements provided for the operator to be responsible for hiring the crew, who was paid from the share under his or her control.

(B) Landed from that vessel at least 5,000 lb (2,268 kg) of red snapper per year in 2 of the 3 years 1990, 1991, and 1992.

(C) Derived more than 50 percent of his or her earned income from commercial fishing, that is, sale of the catch, in each of the years 1989 through 1993.

(D) Landed red snapper prior to November 7, 1989.

(2) *Initial shares.* (i) Initial shares are apportioned to initial shareholders based on each shareholder's average of the top 2 years' landings in 1990, 1991, and 1992. However, no person who is an initial shareholder under paragraph (c)(1) of this section will receive an initial percentage share that will amount to less than 100 lb (45.36 kg), round weight, of red snapper (90 lb (41 kg), eviscerated weight).

(ii) The percentage shares remaining after the minimum shares have been calculated under paragraph (c)(2)(i) of this section are apportioned based on each remaining shareholder's average of the top 2 years' landings in 1990, 1991, and 1992. In a case where a landing is associated with an owner and a historical captain, such landing is apportioned between the owner and historical captain in accordance with the share agreement in effect at the time of the landing.

(iii) The determinations of landings of red snapper during the period 1990 through 1992 and historical captain status are made in accordance with the data collected under Amendment 9 to the FMP. Those data identify each red snapper landing during the period 1990 through 1992. Each landing is associated with an owner and, when an operator's earned income was used to qualify for the vessel permit at the time of the landing, with such operator. Where appropriate, a landing is also associated with a historical captain. However, a red snapper landings record during that period that is associated solely with an owner may be retained by that owner or transferred as follows:

(A) An owner of a vessel with a valid commercial permit for Gulf reef fish on August 29, 1995, who transferred a vessel permit to another vessel owned by him or her will retain the red snapper landings record for the previous vessel.

(B) An owner of a vessel with a valid commercial permit for Gulf reef fish on August 29, 1995, will retain the landings record of a permitted vessel if the vessel had a change of ownership to another entity without a substantive change in control of the vessel. It will be presumed that there was no substantive change in control of a vessel if a successor in interest received at least a 50 percent interest in the vessel as a result of the change of ownership whether the change of ownership was—

(*1*) From a closely held corporation to its majority shareholder;

(*2*) From an individual who became the majority shareholder of a closely held corporation receiving the vessel;

(*3*) Between closely held corporations with a common majority shareholder; or

(*4*) From one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father.

(C) In other cases of transfer of a permit through change of ownership of a vessel, an owner of a vessel with a valid commercial permit for Gulf reef fish on August 29, 1995, will receive credit for the landings record of the vessel before his or her ownership only if there is a legally binding agreement for transfer of the landings record.

(iv) Requests for transfers of landings records must be submitted to the RD and must be postmarked not later than December 14, 1995. The RD may require documentation supporting such request. After considering requests for transfers of landings records, the RD will advise each initial shareholder or applicant of his or her tentative allocation of shares.

(3) *Notification of status.* The RD will advise each owner, operator, and historical captain for whom NMFS has a record of a red snapper landing during the period 1990 through 1992, including those who submitted such record under Amendment 9 to the FMP, of his or her tentative status as an initial shareholder and the tentative landings record that will be used to calculate his or her initial share.

(4) *Appeals.* (i) A special advisory panel, appointed by the GMFMC to function as an appeals board, will consider written requests from persons who contest their tentative status as an initial shareholder, including historical captain status, or tentative landings record. In addition to considering written requests, the board may allow personal appearances by such persons before the board.

(ii) The panel is only empowered to consider disputed calculations or determinations based on documentation submitted under Amendment 9 to the FMP regarding landings of red snapper during the period 1990 through 1992, including transfers of such landings records, or regarding historical captain status. In addition, the panel may consider applications and documentation of landings not submitted under Amendment 9 if, in the board's opinion, there is justification for the late application and documentation. The board is not empowered to consider an application from a person who believes he or she should be eligible because of hardship or other factors.

(iii) A written request for consideration by the board must be submitted to the RD, postmarked not later than December 27, 1995, and must contain documentation supporting the allegations that form the basis for the request.

(iv) The board will meet as necessary to consider each request that is submitted in a timely manner. Members of the appeals board will provide their individual recommendations for each appeal to the GMFMC, which will in turn submit its recommendation to the RD. The board and the GMFMC will recommend whether the eligibility criteria, specified in Amendment 8 to the FMP and paragraphs (c)(1) and (c)(2) of this section, were correctly applied in each case, based solely on the available record including documentation submitted by the applicant. The GMFMC will also base its recommendation on the recommendations of the board. The RD will decide the appeal based on the above criteria and the available record, including documentation submitted by the applicant and the recommendation of the GMFMC. The RD will notify the appellant of his decision and the reason therefor, in writing, normally within 45 days of receiving the GMFMC's recommendation. The RD's decision will constitute the final administrative action by NMFS on an appeal.

(v) Upon completion of the appeal process, the RD will issue share certificates to initial shareholders.

(5) *Transfers of shares.* The following restrictions apply to the transfer of shares:

(i) The transfer of shares is prohibited through September 30, 1996.

(ii) From October 1, 1996, through September 30, 1997, shares may be transferred only to other persons who are initial shareholders and are U.S. citizens or permanent resident aliens.

(d) *Exceptions/additions to general measures.* Other provisions of this part notwithstanding—

(1) Management of the red snapper ITQ system extends to adjoining state waters in the manner stated in paragraphs (d)(2) and (d)(3) of this section.

(2) For a dealer to receive red snapper harvested from state waters adjoining

the Gulf EEZ by or possessed on board a vessel with a commercial permit for Gulf reef fish, the dealer permit for Gulf reef fish specified in § 622.4(a)(4) must have been issued to the dealer.

(3) A copy of the dealer's permit must accompany each vehicle that is used to pick up from a fishing vessel red snapper from adjoining state waters harvested by or possessed on board a vessel with a commercial permit for Gulf reef fish.

(4) As a condition of a commercial vessel permit for Gulf reef fish, without regard to where red snapper are harvested or possessed, a vessel with such permit must comply with the red snapper ITQ requirements of paragraph (b) of this section; may not transfer or receive red snapper at sea; and must maintain red snapper with head and fins intact through landing, and the exceptions to that requirement contained in § 622.38(d) do not apply to red snapper. Red snapper may be eviscerated, gilled, and scaled but must otherwise be maintained in a whole condition.

(5) As a condition of a dealer permit for Gulf reef fish, as required under § 622.4(a)(4) or under paragraph (d)(2) of this section, without regard to where red snapper are harvested or possessed, a permitted dealer must comply with the red snapper ITQ requirements of paragraph (b) of this section.

(6) In any month that a red snapper is received, a dealer must submit the report required under § 622.5(c)(3)(ii). The "Fish House" parts of red snapper individual transferable coupons, received during the month in accordance with paragraph (b) of this section, must be submitted to the SRD with the report.

(7) It is unlawful for a person to do any of the following:

(i) Receive red snapper from a fishing vessel without a dealer permit for Gulf reef fish.

(ii) Fail to carry a copy of the dealer's permit, as specified in paragraph (d)(3) of this section.

(iii) Fail to comply with a condition of a permit, as specified in paragraph (d)(4) or (d)(5) of this section.

(iv) Fail to report red snapper received, as specified in paragraph (d)(6) of this section.

Subpart C—Management Measures

§ 622.30 Fishing years.

The fishing year for species or species groups governed in this part is January 1 through December 31 except for the following:

(a) *Allowable octocoral*—October 1 through September 30.

(b) *King and Spanish mackerel.* The fishing year for the king and Spanish mackerel bag limits specified in § 622.39(d)(1) is January 1 through December 31. The following fishing years apply only for the king and Spanish mackerel quotas specified in § 622.42(c):

(1) *Gulf migratory group king mackerel*—July 1 through June 30.

(2) *All other migratory groups of king and Spanish mackerel*—April 1 through March 31.

(c) *Wreckfish*—April 16 through April 15.

§ 622.31 Prohibited gear and methods.

In addition to the prohibited gear/methods specified in this section, see §§ 622.33, 622.34, and 622.35 for seasonal/area prohibited gear/methods and § 622.41 for species specific authorized and unauthorized gear/methods.

(a) *Explosives.* An explosive (except an explosive in a powerhead) may not be used to fish in the Caribbean, Gulf, or South Atlantic EEZ. A vessel fishing in the EEZ for a species governed in this part, or a vessel for which a permit has been issued under § 622.4, may not have on board any dynamite or similar explosive substance.

(b) *Chemicals and plants.* A toxic chemical may not be used or possessed in a coral area, and a chemical, plant, or plant-derived toxin may not be used to harvest a Caribbean coral reef resource in the Caribbean EEZ.

(c) *Fish traps.* A fish trap may not be used in the South Atlantic EEZ. A fish trap deployed in the South Atlantic EEZ may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(d) *Gillnets.* A gillnet that has a float line that is more than 1,000 yd (914 m) in length or a drift gillnet may not be used in the Gulf, Mid-Atlantic, or South Atlantic EEZ to fish for king or Spanish mackerel; in the Gulf or South Atlantic EEZ to fish for coastal migratory pelagic fish, other than bluefish; or in the Gulf EEZ to fish for bluefish. A vessel in, or having fished on a trip in, the Gulf, Mid-Atlantic, or South Atlantic EEZ with such a gillnet or a drift gillnet on board may not have on board on that trip any of the indicated fish.

(e) *Longlines for wreckfish.* A bottom longline may not be used to fish for wreckfish in the South Atlantic EEZ. A person aboard a vessel that has a longline on board may not retain a wreckfish in or from the South Atlantic EEZ. For the purposes of this paragraph, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter suitable for use in the longline fishery longer than 1.5 mi (2.4 km) on any reel, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

(f) *Poisons.* (1) A poison, drug, or other chemical may not be used to fish for Caribbean reef fish in the Caribbean EEZ.

(2) A poison may not be used to take Gulf reef fish in the Gulf EEZ.

(3) A poison may not be used to fish for South Atlantic snapper-grouper in the South Atlantic EEZ.

(g) *Power-assisted tools.* A power-assisted tool may not be used in the Caribbean EEZ to take a Caribbean coral reef resource or in the Gulf or South Atlantic EEZ to take allowable octocoral, prohibited coral, or live rock.

(h) *Powerheads.* A powerhead may not be used in the Caribbean EEZ to harvest Caribbean reef fish or in the EEZ off South Carolina to harvest South Atlantic snapper-grouper. The possession of a mutilated Caribbean reef fish in or from the Caribbean EEZ, or a mutilated South Atlantic snapper-grouper in or from the EEZ off South Carolina, and a powerhead is *prima facie* evidence that such fish was harvested by a powerhead.

(i) *Rebreathers and spearfishing gear.* In the South Atlantic EEZ, a person using a rebreather may not harvest South Atlantic snapper-grouper with spearfishing gear. The possession of such snapper-grouper while in the water with a rebreather is *prima facie* evidence that such fish was harvested with spearfishing gear while using a rebreather.

(j) *Sea bass pots.* A sea bass pot may not be used in the South Atlantic EEZ south of 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL). A sea bass pot deployed in the EEZ south of 28°35.1′ N. lat. may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer.

(k) *Spears and hooks.* A spear, hook, or similar device may not be used in the Caribbean EEZ to harvest a Caribbean spiny lobster. The possession of a speared, pierced, or punctured Caribbean spiny lobster in or from the Caribbean EEZ is *prima facie* evidence of violation of this section.

§ 622.32 Prohibited and limited-harvest species.

(a) *General.* The harvest and possession restrictions of this section apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit. The operator of a vessel that

fishes in the EEZ is responsible for the limit applicable to that vessel.

(b) *Prohibited species.* Prohibited species, by geographical area, are as follows:

(1) *Caribbean.* (i) Caribbean prohibited coral may not be fished for or possessed in or from the Caribbean EEZ. The taking of Caribbean prohibited coral in the Caribbean EEZ is not considered unlawful possession provided it is returned immediately to the sea in the general area of fishing.

(ii) Foureye, banded, and longsnout butterflyfish; jewfish; Nassau grouper; and seahorses may not be harvested or possessed in or from the Caribbean EEZ. Such fish caught in the Caribbean EEZ must be released immediately with a minimum of harm.

(iii) Egg-bearing spiny lobster in the Caribbean EEZ must be returned to the water unharmed. An egg-bearing spiny lobster may be retained in a trap, provided the trap is returned immediately to the water. An egg-bearing spiny lobster may not be stripped, scraped, shaved, clipped, or in any other manner molested, in order to remove the eggs.

(2) *Gulf.* (i) Gulf and South Atlantic prohibited coral taken as incidental catch in the Gulf EEZ must be returned immediately to the sea in the general area of fishing. In fisheries where the entire catch is landed unsorted, such as the scallop and groundfish fisheries, unsorted prohibited coral may be landed ashore; however, no person may sell or purchase such prohibited coral.

(ii) Jewfish may not be harvested or possessed in or from the Gulf EEZ.

(iii) Red drum may not be harvested or possessed in or from the Gulf EEZ. Red drum caught in the Gulf EEZ must be released immediately with a minimum of harm.

(3) *Mid-Atlantic.* Red drum may not be harvested or possessed in or from the Mid-Atlantic EEZ south of a line extending in a direction of 115° from true north commencing at a point at 40°29.6′ N. lat., 73°54.1′ W. long., such point being the intersection of the New Jersey/New York boundary with the 3-nm line denoting the seaward limit of state waters. Red drum caught in such portion of the Mid-Atlantic EEZ must be released immediately with a minimum of harm.

(4) *South Atlantic.* (i) Gulf and South Atlantic prohibited coral taken as incidental catch in the South Atlantic EEZ must be returned immediately to the sea in the general area of fishing. In fisheries where the entire catch is landed unsorted, such as the scallop and groundfish fisheries, unsorted prohibited coral may be landed ashore; however, no person may sell or purchase such prohibited coral.

(ii) Jewfish and Nassau grouper may not be harvested or possessed in or from the South Atlantic EEZ. Jewfish and Nassau grouper taken in the South Atlantic EEZ incidentally by hook-and-line must be released immediately by cutting the line without removing the fish from the water.

(iii) Red drum may not be harvested or possessed in or from the South Atlantic EEZ. Red drum caught in the South Atlantic EEZ must be released immediately with a minimum of harm.

(iv) Wild live rock may not be harvested or possessed in the South Atlantic EEZ.

(c) *Limited-harvest species.* A person who fishes in the EEZ may not combine a harvest limitation specified in this paragraph (c) with a harvest limitation applicable to state waters. A species subject to a harvest limitation specified in this paragraph (c) taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ.

(1) *Cobia.* No person may possess more than two cobia per day in or from the Gulf or South Atlantic EEZ, regardless of the number of trips or duration of a trip.

(2) *Cubera snapper.* No person may harvest more than two cubera snapper measuring 30 inches (76.2 cm), TL, or larger, per day in the South Atlantic EEZ off Florida and no more than two such cubera snapper in or from the South Atlantic EEZ off Florida may be possessed on board a vessel at any time.

(3) *Speckled hind and warsaw grouper.* The possession of speckled hind and warsaw grouper in or from the South Atlantic EEZ is limited to one of each per vessel per trip.

§ 622.33 Caribbean EEZ seasonal and/or area closures.

(a) *Mutton snapper spawning aggregation area.* From March 1 through June 30, each year, fishing is prohibited in the area bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	17°37.9′	64°52.6′
B	17°38.2′	64°52.1′
C	17°38.3′	64°51.8′
D	17°38.1′	64°51.4′
A	17°37.9′	64°52.6′

(b) *Red hind spawning aggregation areas.* From December 1 through February 28, each year, fishing is prohibited in the following three areas. Each area is bounded by rhumb lines connecting, in order, the points listed.

(1) *East of St. Croix.*

Point	North lat.	West long.
A	17°50.2′	64°27.9′
B	17°50.1′	64°26.1′
C	17°49.2′	64°25.8′
D	17°48.6′	64°25.8′
E	17°48.1′	64°26.1′
F	17°47.5′	64°26.9′
A	17°50.2′	64°27.9′

(2) *South of St. Thomas.*

Point	North lat.	West long.
A	18°13.2′	65°06.0′
B	18°13.2′	64°59.0′
C	18°11.8′	64°59.0′
D	18°10.7′	65°06.0′
A	18°13.2′	65°06.0′

(3) *West of Puerto Rico.*

Point	North lat.	West long.
A	18°11.0′	67°25.5′
B	18°11.0′	67°20.4′
C	18°08.0′	67°20.4′
D	18°08.0′	67°25.5′
A	18°11.0′	67°25.5′

§ 622.34 Gulf EEZ seasonal and/or area closures.

(a) *Alabama SMZ.* The Alabama SMZ consists of artificial reefs and surrounding areas. In the Alabama SMZ, fishing by a vessel that is operating as a charter vessel or headboat, a vessel that does not have a commercial permit for Gulf reef fish, as required under § 622.4(a)(2), or a vessel with such a permit fishing for Gulf reef fish is limited to hook-and-line gear with three or fewer hooks per line and spearfishing gear. A person aboard a vessel that uses on any trip gear other than hook-and-line gear with three or fewer hooks per line and spearfishing gear in the Alabama SMZ is limited on that trip to the bag limits for Gulf reef fish specified in § 622.39(b) and, for Gulf reef fish for which no bag limit is specified in § 622.39(b), the vessel is limited to 5 percent, by weight, of all fish on board or landed. The Alabama SMZ is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	30°02.5′	88°07.7′
B	30°02.6′	87°59.3′
C	29°55.0′	87°55.5′
D	29°54.5′	88°07.5′
A	30°02.5′	88°07.7′

(b) *Florida middle grounds HAPC.* Fishing with a bottom longline, bottom trawl, dredge, pot, or trap is prohibited

year round in the area bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°42.5′	84°24.8′
B	28°42.5′	84°16.3′
C	28°11.0′	84°00.0′
D	28°11.0′	84°07.0′
E	28°26.6′	84°24.8′
A	28°42.5′	84°24.8′

(c) *Reef fish longline and buoy gear restricted area.* A person aboard a vessel that uses, on any trip, longline or buoy gear in the longline and buoy gear restricted area is limited on that trip to the bag limits for Gulf reef fish specified in § 622.39(b)(1) and, for Gulf reef fish for which no bag limit is specified in § 622.39(b)(1), the vessel is limited to 5 percent, by weight, of all fish on board or landed. The longline and buoy gear restricted area is that part of the Gulf EEZ shoreward of rhumb lines connecting, in order, the points listed in Table 1, and shown in Figures 1 and 2, in Appendix B of this part.

(d) *Riley's Hump seasonal closure.* From May 1 through June 30, each year, fishing is prohibited in the following area bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	24°32.2′	83°08.7′
B	24°32.2′	83°05.2′
C	24°28.7′	83°05.2′
D	24°28.7′	83°08.7′
A	24°32.2′	83°08.7′

(e) *Shrimp/stone crab separation zones.* Five zones are established in the Gulf EEZ and Florida's waters off Citrus and Hernando Counties for the separation of shrimp trawling and stone crab trapping. Although Zone II is entirely within Florida's waters, it is included in this paragraph (e) for the convenience of fishermen. Restrictions that apply to Zone II and those parts of the other zones that are in Florida's waters are contained in Rule 46–38.001, Florida Administrative Code. Geographical coordinates of the points referred to in this paragraph (e) are as follows:

Point	North lat.	West long.
A	28°59′30″	82°45′36″
B	28°59′30″	83°00′10″
C	28°26′01″	82°59′47″
D	28°26′01″	82°56′54″
E	28°41′39″	82°55′25″
F	28°41′39″	82°56′09″
G	28°48′56″	82°56′19″
H	28°53′51″	82°51′19″
I[1]	28°54′43″	82°44′52″
J[2]	28°51′09″	82°44′00″
K	28°50′59″	82°54′16″
L	28°41′39″	82°53′56″
M[3]	28°41′39″	82°38′48″
N	28°41′39″	82°53′12″
O	28°30′51″	82°55′11″
P	28°40′00″	82°53′08″
Q	28°40′00″	82°47′58″
R	28°35′14″	82°47′47″
S	28°30′51″	82°52′55″
T	28°27′46″	82°55′09″
U	28°30′51″	82°52′09″

[1] Crystal River Entrance Light 1A.
[2] Long Pt. (southwest tip).
[3] Shoreline.

(1) *Zone I* is enclosed by rhumb lines connecting, in order, points A, B, C, D, T, E, F, G, H, I, and J, plus the shoreline between points A and J. It is unlawful to trawl in that part of Zone I that is in the EEZ from October 5 through May 20, each year.

(2) *Zone II* is enclosed by rhumb lines connecting, in order, points J, I, H, K, L, and M, plus the shoreline between points J and M.

(3) *Zone III* is enclosed by rhumb lines connecting, in order, points P, Q, R, U, S, and P. It is unlawful to trawl in that part of Zone III that is in the EEZ from October 5 through May 20, each year.

(4) *Zone IV* is enclosed by rhumb lines connecting, in order, points E, N, S, O, and E.

(i) It is unlawful to place a stone crab trap in that part of Zone IV that is in the EEZ from October 5 through December 1 and from April 2 through May 20, each year.

(ii) It is unlawful to trawl in that part of Zone IV that is in the EEZ from December 2 through April 1, each year.

(5) *Zone V* is enclosed by rhumb lines connecting, in order, points F, G, K, L, and F.

(i) It is unlawful to place a stone crab trap in that part of Zone V that is in the EEZ from October 5 through November 30 and from March 16 through May 20, each year.

(ii) It is unlawful to trawl in that part of Zone V that is in the EEZ from December 1 through March 15, each year.

(f) *Southwest Florida seasonal trawl closure.* From January 1 to 1 hour after sunset on May 20, each year, trawling, including trawling for live bait, is prohibited in that part of the Gulf EEZ shoreward of rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
B[1]	26°16.0′	81°58.5′
C	26°00.0′	82°04.0′
D	25°09.0′	81°47.8′
E	24°54.5′	81°50.5′
M[1]	24°49.3′	81°46.4′

[1] On the seaward limit of Florida's waters.

(g) *Reef fish stressed area.* The stressed area is that part of the Gulf EEZ shoreward of rhumb lines connecting, in order, the points listed in Table 2, and shown in Figures 3 and 4, in Appendix B of this part.

(1) A powerhead may not be used in the stressed area to take Gulf reef fish. Possession of a powerhead and a mutilated Gulf reef fish in the stressed area or after having fished in the stressed area constitutes *prima facie* evidence that such reef fish was taken with a powerhead in the stressed area.

(2) A roller trawl may not be used in the stressed area. Roller trawl means a trawl net equipped with a series of large, solid rollers separated by several smaller spacer rollers on a separate cable or line (sweep) connected to the footrope, which makes it possible to fish the gear over rough bottom, that is, in areas unsuitable for fishing conventional shrimp trawls. Rigid framed trawls adapted for shrimping over uneven bottom, in wide use along the west coast of Florida, and shrimp trawls with hollow plastic rollers for fishing on soft bottoms, are not considered roller trawls.

(3) A fish trap may not be used in the stressed area. A fish trap used in the stressed area will be considered unclaimed or abandoned property and may be disposed of in any appropriate manner by the Assistant Administrator (including an authorized officer).

(h) *Texas closure.* (1) From 30 minutes after sunset on May 15 to 30 minutes after sunset on July 15, trawling, except trawling for royal red shrimp beyond the 100-fathom (183-m) depth contour, is prohibited in the Gulf EEZ off Texas.

(2) In accordance with the procedures and restrictions of the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, the RD may adjust the closing and/or opening date of the Texas closure to provide an earlier, later, shorter, or longer closure, but the duration of the closure may not exceed 90 days or be less than 45 days. Notification of the adjustment of the closing or opening date will be published in the **Federal Register**.

(i) *Tortugas shrimp sanctuary.* (1) The Tortugas shrimp sanctuary is closed to trawling. The Tortugas shrimp sanctuary is that part of the EEZ off Florida shoreward of rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
N[1]	25°52.9′	81°37.9′
F	25°50.7′	81°51.3′
G[2]	24°40.1′	82°26.7′
H[3]	24°34.7′	82°35.2′
P[4]	24°35.0′	81°08.0′

[1] Coon Key Light.
[2] New Ground Rocks Light.
[3] Rebecca Shoal Light.
[4] Marquessas Keys.

(2) The provisions of paragraph (i)(1) of this section notwithstanding—

(i) Effective from April 11 through September 30, each year, that part of the Tortugas shrimp sanctuary seaward of rhumb lines connecting the following points is open to trawling: From point T at 24°47.8′ N. lat., 82°01.0′ W. long. to point U at 24°43.83′ N. lat., 82°01.0′ W. long. (on the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point V at 24°42.55′ N. lat., 82°15.0′ W. long.; thence north to point W at 24°43.6′ N. lat., 82°15.0′ W. long.

(ii) Effective from April 11 through July 31, each year, that part of the Tortugas shrimp sanctuary seaward of rhumb lines connecting the following points is open to trawling: From point W to point V, both points as specified in paragraph (i)(2)(i) of this section, to point G, as specified in paragraph (i)(1) of this section.

(3) Effective from May 26 through July 31, each year, that part of the Tortugas shrimp sanctuary seaward of rhumb lines connecting the following points is open to trawling: From point F, as specified in paragraph (i)(1) of this section, to point Q at 24°46.7′ N. lat., 81°52.2′ W. long. (on the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point U and north to point T, both points as specified in paragraph (i)(2)(i) of this section.

(j) *West and East Flower Garden Banks HAPC.* Fishing with a bottom longline, bottom trawl, dredge, pot, or trap is prohibited in the HAPC. The West and East Flower Garden Banks are geographically centered at 27°52′14.21″ N. lat., 93°48′54.79″ W. long. and 27°55′07.44″ N. lat., 93°36′08.49″ W. long., respectively. The HAPC extends from these centers to the 50-fathom (300-ft) (91.4-m) isobath.

(k) *Wild live rock area closures.* No person may harvest or possess wild live rock in the Gulf EEZ—

(1) North and west of a line extending in a direction of 235° from true north from a point at the mouth of the Suwannee River at 29°17.25′ N. lat., 83°09.9′ W. long. (the Levy/Dixie County, FL boundary); or

(2) South of 25°20.4′ N. lat. (due west from the Monroe/Collier County, FL boundary).

§ 622.35 South Atlantic EEZ seasonal and/or area closures.

(a) *Allowable octocoral closed area.* No person may harvest or possess allowable octocoral in the South Atlantic EEZ north of 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL).

(b) *Longline closed areas.* A longline may not be used to fish in the EEZ for South Atlantic snapper-grouper south of 27°10′ N. lat. (due east of the entrance to St. Lucie Inlet, FL); or north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), as shown on the latest edition of the largest scale NOAA chart of the location. A person aboard a vessel with a longline on board that fishes on a trip in the South Atlantic EEZ south of 27°10′ N. lat., or north of 27°10′ N. lat. where the charted depth is less than 50 fathoms (91.4 m), is limited on that trip to the bag limit for South Atlantic snapper-grouper for which a bag limit is specified in § 622.39(d)(1), and to zero for all other South Atlantic snapper-grouper. For the purpose of this paragraph, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable or monofilament of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

(c) *Oculina Bank HAPC.* The Oculina Bank HAPC is bounded on the north by 27°53′ N. lat., on the south by 27°30′ N. lat., on the east by 79°56′ W. long., and on the west by 80°00′ W. long. In the Oculina Bank HAPC:

(1) Fishing with a bottom longline, bottom trawl, dredge, pot, or trap is prohibited.

(2) A fishing vessel may not anchor, use an anchor and chain, or use a grapple and chain.

(3) No fishing for South Atlantic snapper-grouper is allowed, and South Atlantic snapper-grouper may not be retained, in or from the HAPC. South Atlantic snapper-grouper taken incidentally in the HAPC by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water.

(d) *South Atlantic shrimp cold weather closure.* (1) Pursuant to the procedures and criteria established in the FMP for the Shrimp Fishery of the South Atlantic Region, when Florida, Georgia, North Carolina, or South Carolina closes all or a portion of its waters of the South Atlantic to the harvest of brown, pink, and white shrimp, the Assistant Administrator may concurrently close the South Atlantic EEZ adjacent to the closed state waters by filing a notification of closure with the Office of the Federal Register. Closure of the adjacent EEZ will be effective until the ending date of the closure in state waters, but may be ended earlier based on the state's request. In the latter case, the Assistant Administrator will terminate a closure of the EEZ by filing a notification to that effect with the Office of the Federal Register.

(2) During a closure, as specified in paragraph (d)(1) of this section—

(i) No person may trawl for brown shrimp, pink shrimp, or white shrimp in the closed portion of the EEZ (closed area); and no person may possess on board a fishing vessel brown shrimp, pink shrimp, or white shrimp in or from a closed area, except as authorized in paragraph (d)(2)(iii) of this section.

(ii) No person aboard a vessel trawling in that part of a closed area that is within 25 nm of the baseline from which the territorial sea is measured may use or have on board a trawl net with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut.

(iii) Brown shrimp, pink shrimp, or white shrimp may be possessed on board a fishing vessel in a closed area, provided the vessel is in transit and all trawl nets with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut, are stowed below deck while transiting the closed area. For the purpose of this paragraph, a vessel is in transit when it is on a direct and continuous course through a closed area.

(e) *SMZs.* (1) The SMZs consist of artificial reefs and surrounding areas as follows:

(i) *Paradise Reef* is bounded on the north by 33°31.59′ N. lat.; on the south by 33°30.51′ N. lat.; on the east by 78°57.55′ W. long.; and on the west by 78°58.85′ W. long.

(ii) *Ten Mile Reef* is bounded on the north by 33°26.65′ N. lat.; on the south by 33°24.80′ N. lat.; on the east by 78°51.08′ W. long.; and on the west by 78°52.97′ W. long.

(iii) *Pawleys Island Reef* is bounded on the north by 33°26.58′ N. lat.; on the south by 33°25.76′ N. lat.; on the east by 79°00.29′ W. long.; and on the west by 79°01.24′ W. long.

(iv) *Georgetown Reef* is bounded on the north by 33°14.90′ N. lat.; on the south by 33°13.85′ N. lat.; on the east by 78°59.45′ W. long.; and on the west by 79°00.65′ W. long.

(v) *Capers Reef* is bounded on the north by 32°45.45′ N. lat.; on the south by 32°43.91′ N. lat.; on the east by 79°33.81′ W. long.; and on the west by 79°35.10′ W. long.

(vi) *Kiawah Reef* is bounded on the north by 32°29.78′ N. lat.; on the south by 32°28.25′ N. lat.; on the east by 79°59.00′ W. long.; and on the west by 80°00.95′ W. long.

(vii) *Edisto Offshore Reef* is bounded on the north by 32°15.30′ N. lat.; on the south by 32°13.90′ N. lat.; on the east by 79°50.25′ W. long.; and on the west by 79°51.45′ W. long.

(viii) *Hunting Island Reef* is bounded on the north by 32°13.72′ N. lat.; on the south by 32°12.30′ N. lat.; on the east by 80°19.23′ W. long.; and on the west by 80°21.00′ W. long.

(ix) *Fripp Island Reef* is bounded on the north by 32°15.92′ N. lat.; on the south by 32°14.75′ N. lat.; on the east by 80°21.62′ W. long.; and on the west by 80°22.90′ W. long.

(x) *Betsy Ross Reef* is bounded on the north by 32°03.60′ N. lat.; on the south by 32°02.88′ N. lat.; on the east by 80°24.57′ W. long.; and on the west by 80°25.50′ W. long.

(xi) *Hilton Head Reef/Artificial Reef—T* is bounded on the north by 32°00.71′ N. lat.; on the south by 31°59.42′ N. lat.; on the east by 80°35.23′ W. long.; and on the west by 80°36.37′ W. long.

(xii) *Artificial Reef—A* is bounded on the north by 30°56.4′ N. lat.; on the south by 30°55.2′ N. lat.; on the east by 81°15.4′ W. long.; and on the west by 81°16.5′ W. long.

(xiii) *Artificial Reef—C* is bounded on the north by 30°51.4′ N. lat.; on the south by 30°50.1′ N. lat.; on the east by 81°09.1′ W. long.; and on the west by 81°10.4′ W. long.

(xiv) *Artificial Reef—G* is bounded on the north by 30°59.1′ N. lat.; on the south by 30°57.8′ N. lat.; on the east by 80°57.7′ W. long.; and on the west by 80°59.2′ W. long.

(xv) *Artificial Reef—F* is bounded on the north by 31°06.6′ N. lat.; on the south by 31°05.8′ N. lat.; on the east by 81°11.4′ W. long.; and on the west by 81°13.3′ W. long.

(xvi) *Artificial Reef—J* is bounded on the north by 31°36.7′ N. lat.; on the south by 31°35.7′ N. lat.; on the east by 80°47.0′ W. long.; and on the west by 80°48.1′ W. long.

(xvii) *Artificial Reef—L* is bounded on the north by 31°46.2′ N. lat.; on the south by 31°45.1′ N. lat.; on the east by 80°35.8′ W. long.; and on the west by 80°37.1′ W. long.

(xviii) *Artificial Reef—KC* is bounded on the north by 31°51.2′ N. lat.; on the south by 31°50.3′ N. lat.; on the east by 80°46.0′ W. long.; and on the west by 80°47.2′ W. long.

(xix) *Ft. Pierce Inshore Reef* is bounded on the north by 27°26.8′ N. lat.; on the south by 27°25.8′ N. lat.; on the east by 80°09.24′ W. long.; and on the west by 80°10.36′ W. long.

(xx) *Ft. Pierce Offshore Reef* is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	27°23.68′	80°03.95′
B	27°22.80′	80°03.60′
C	27°23.94′	80°00.02′
D	27°24.85′	80°00.33′
A	27°23.68′	80°03.95′

(xxi) *Key Biscayne/Artificial Reef—H* is bounded on the north by 25°42.82′ N. lat.; on the south by 25°41.32′ N. lat.; on the east by 80°04.22′ W. long.; and on the west by 80°05.53′ W. long.

(xxii) *Little River Offshore Reef* is bounded on the north by 33°42.10′ N. lat.; on the south by 33°41.10′ N. lat.; on the east by 78°26.40′ W. long.; and on the west by 78°27.10′ W. long.

(xxiii) *BP–25 Reef* is bounded on the north by 33°21.70′ N. lat.; on the south by 33°20.70′ N. lat.; on the east by 78°24.80′ W. long.; and on the west by 78°25.60′ W. long.

(xxiv) *Vermilion Reef* is bounded on the north by 32°57.80′ N. lat.; on the south by 32°57.30′ N. lat.; on the east by 78°39.30′ W. long.; and on the west by 78°40.10′ W. long.

(xxv) *Cape Romaine Reef* is bounded on the north by 33°00.00′ N. lat.; on the south by 32°59.50′ N. lat.; on the east by 79°02.01′ W. long.; and on the west by 79°02.62′ W. long.

(xxvi) *Y–73 Reef* is bounded on the north by 32°33.20′ N. lat.; on the south by 32°32.70′ N. lat.; on the east by 79°19.10′ W. long.; and on the west by 79°19.70′ W. long.

(xxvii) *Eagles Nest Reef* is bounded on the north by 32°01.48′ N. lat.; on the south by 32°00.98′ N. lat.; on the east by 80°30.00′ W. long.; and on the west by 80°30.65′ W. long.

(xxviii) *Bill Perry Jr. Reef* is bounded on the north by 33°26.20′ N. lat.; on the south by 33°25.20′ N. lat.; on the east by 78°32.70′ W. long.; and on the west by 78°33.80′ W. long.

(xxix) *Comanche Reef* is bounded on the north by 32°27.40′ N. lat.; on the south by 32°26.90′ N. lat.; on the east by 79°18.80′ W. long.; and on the west by 79°19.60′ W. long.

(2) The use of a sea bass pot or a bottom longline is prohibited in each of the SMZs. The following additional restrictions apply in the indicated SMZs:

(i) In SMZs specified in paragraphs (e)(1) (i) through (xviii) and (e)(1) (xxii) through (xxix) of this section, the use of a gillnet or a trawl is prohibited; and fishing may be conducted only with hand-held hook-and-line gear (including a manual, electric, or hydraulic rod and reel) and spearfishing gear.

(ii) In SMZs specified in paragraphs (e)(1) (xix) and (xx) of this section, a hydraulic or electric reel that is permanently affixed to the vessel is prohibited when fishing for South Atlantic snapper-grouper.

(iii) In the SMZs specified in paragraphs (e)(1) (xix) and (xxi) of this section, the use of spearfishing gear is prohibited.

(iv) In the SMZs specified in paragraphs (e)(1)(i) through (x) and (e)(1) (xxii) through (xxix) of this section, a powerhead may not be used to take South Atlantic snapper-grouper. Possession of a powerhead and a mutilated South Atlantic snapper-grouper in one of the specified SMZs, or after having fished in one of the SMZs, constitutes *prima facie* evidence that such fish was taken with a powerhead in the SMZ.

§ 622.36 Seasonal harvest limitations.

The following limitations apply in the South Atlantic EEZ:

(a) *Greater amberjack spawning season.* During April, each year, south of 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL), the possession of greater amberjack in or from the EEZ on board a vessel that has a commercial permit for South Atlantic snapper-grouper is limited to three per person during a single day, regardless of the number of trips or the duration of a trip.

(b) *Mutton snapper spawning season.* During May and June, each year, the possession of mutton snapper in or from the EEZ on board a vessel that has a commercial permit for South Atlantic snapper-grouper is limited to 10 per person during a single day, regardless of the number of trips or the duration of a trip.

(c) *Wreckfish spawning-season closure.* From January 15 through April 15, each year, no person may harvest or possess on a fishing vessel wreckfish in or from the EEZ; offload wreckfish from the EEZ; or sell or purchase wreckfish in or from the EEZ. The prohibition on sale or purchase of wreckfish does not apply to trade in wreckfish that were harvested, offloaded, and sold or purchased prior to January 15 and were held in cold storage by a dealer or processor.

§ 622.37 Minimum sizes.

Except for undersized king and Spanish mackerel allowed in paragraphs (c)(2) and (3) of this section, a fish smaller than its minimum size, as specified in this section, in or from the Caribbean, Gulf, South Atlantic, and/or Mid-Atlantic EEZ, as appropriate, may not be possessed, sold, or purchased. An undersized fish must be released immediately with a minimum of harm. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on board are no smaller than the minimum size limits specified in this section.

(a) *Caribbean reef fish:* Yellowtail snapper—12 inches (30.5 cm), TL.

(b) *Caribbean spiny lobster*—3.5 inches (8.9 cm), carapace length.

(c) *Coastal migratory pelagic fish.* (1) Cobia in the Gulf or South Atlantic—33 inches (83.8 cm), fork length.

(2) King mackerel in the Gulf, South Atlantic, or Mid-Atlantic—20 inches (30.5 cm), fork length, except that a vessel fishing under a quota for king mackerel specified in § 622.42(c)(1) may possess undersized king mackerel in quantities not exceeding 5 percent, by weight, of the king mackerel on board.

(3) Spanish mackerel in the Gulf, South Atlantic, or Mid-Atlantic—12 inches (30.5 cm), fork length, except that a vessel fishing under a quota for Spanish mackerel specified in § 622.42(c)(2) may possess undersized Spanish mackerel in quantities not exceeding 5 percent, by weight, of the Spanish mackerel on board.

(d) *Gulf reef fish.* (1) Black sea bass and lane and vermilion snappers—8 inches (20.3 cm), TL.

(2) Gray, mutton, and yellowtail snappers—12 inches (30.5 cm), TL.

(3) Red snapper—

(i) Effective through December 31, 1997—15 inches (38.1 cm), TL;

(ii) Effective January 1, 1998—16 inches (40.6 cm), TL.

(4) Black, red, Nassau, and yellowfin groupers and gag—20 inches, (50.8 cm), TL.

(5) Greater amberjack—28 inches (71.1 cm), fork length, for a fish taken by a person subject to the bag limit specified in § 622.39(b)(1)(i) and 36 inches (91.4 cm), fork length, for a fish taken by a person not subject to the bag limit.

(e) *South Atlantic snapper-grouper.* (1) Black sea bass and lane snapper—8 inches (20.3 cm), TL.

(2) Vermilion snapper—10 inches (25.4 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.39(d)(1)(v) and 12 inches (30.5 cm), TL, for a fish taken by a person not subject to the bag limit.

(3) Blackfin, cubera, dog, gray, mahogany, queen, silk, and yellowtail snappers; schoolmaster; and red porgy—12 inches (30.5 cm), TL.

(4) Gray triggerfish in the South Atlantic EEZ off Florida—12 inches (30.5 cm), TL.

(5) Hogfish—12 inches (30.5 cm), fork length.

(6) Mutton snapper—16 inches (40.6 cm), TL.

(7) Black, red, yellowfin, and yellowmouth grouper; scamp; gag; and red snapper—20 inches (50.8 cm), TL.

(8) Greater amberjack—28 inches (71.1 cm), fork length, for a fish taken by a person subject to the bag limit specified in § 622.39(d)(1)(i) and 36 inches (91.4 cm), fork length, or, if the head is removed, 28 inches (71.1 cm), measured from the center edge at the deheaded end to the fork of the tail, for a fish taken by a person not subject to the bag limit. (See Figure 2 in Appendix C of this part for deheaded fish length measurement.)

(f) *Gulf shrimp.* White shrimp harvested in the EEZ are subject to the minimum-size landing and possession limits of Louisiana when possessed within the jurisdiction of that State.

§ 622.38 Landing fish intact.

The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on that vessel in the EEZ are maintained intact and, if taken from the EEZ, are maintained intact through offloading ashore, as specified in this section.

(a) The following must be maintained with head and fins intact: A cobia in or from the Gulf or South Atlantic EEZ; a king mackerel or Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ; a South Atlantic snapper-grouper in or from the South Atlantic EEZ; a yellowtail snapper in or from the Caribbean EEZ; and, except as specified in paragraphs (c), (d), and (e) of this section, a finfish in or from the Gulf EEZ. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition.

(b) A Caribbean spiny lobster in or from the Caribbean EEZ must be maintained with head and carapace intact.

(c) Shark, swordfish, and tuna species are exempt from the requirements of paragraph (a) of this section.

(d) In the Gulf EEZ:

(1) Bait is exempt from the requirement to be maintained with head and fins intact.

(i) For the purpose of this paragraph (d)(1), bait means—

(A) Packaged, headless fish fillets that have the skin attached and are frozen or refrigerated;

(B) Headless fish fillets that have the skin attached and are held in brine; or

(C) Small pieces no larger than 3 in^3 (7.6 cm^3) or strips no larger than 3 inches by 9 inches (7.6 cm by 22.9 cm) that have the skin attached and are frozen, refrigerated, or held in brine.

(ii) Paragraph (d)(1)(i) of this section notwithstanding, a finfish or part thereof possessed in or landed from the Gulf EEZ that is subsequently sold or purchased as a finfish species, rather than as bait, is not bait.

(2) Legal-sized finfish possessed for consumption at sea on the harvesting vessel are exempt from the requirement to have head and fins intact, provided—

(i) Such finfish do not exceed any applicable bag limit;

(ii) Such finfish do not exceed 1.5 lb (680 g) of finfish parts per person aboard; and

(iii) The vessel is equipped to cook such finfish on board.

(e) In the South Atlantic EEZ, a greater amberjack on or offloaded ashore from a vessel that has a permit specified in § 622.4(a)(2)(vi) may be deheaded and eviscerated, but must otherwise be maintained in a whole condition through offloading ashore.

§ 622.39 Bag and possession limits.

(a) *Applicability.* (1) The bag and possession limits apply for species/species groups listed in this section in or from the EEZ. Bag limits apply to a person on a daily basis, regardless of the number of trips in a day. Possession limits apply to a person on a trip after the first 24 hours of that trip. The bag and possession limits apply to a person who fishes in the EEZ in any manner, except a person aboard a vessel in the EEZ that has on board the commercial vessel permit required under § 622.4(a)(2) for the appropriate species/species group. However, see § 622.32 for limitations on taking prohibited and limited-harvest species. The limitations in § 622.32 apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit or by a person subject to the bag limits. The possession of a commercial vessel permit notwithstanding, the bag and possession

limits apply when the vessel is operating as a charter vessel or headboat. A person who fishes in the EEZ may not combine a bag limit specified in this section with a bag or possession limit applicable to state waters. A species/species group subject to a bag limit specified in this section taken in the EEZ by a person subject to the bag limits may not be transferred at sea, regardless of where such transfer takes place, and such fish may not be transferred in the EEZ.

(2) Paragraph (a)(1) of this section notwithstanding, bag and possession limits also apply for Gulf reef fish in or from the EEZ to a person aboard a vessel that has on board a commercial permit for Gulf reef fish—

(i) When trawl gear or entangling net gear is on board. A vessel is considered to have trawl gear on board when trawl doors and a net are on board. Removal from the vessel of all trawl doors or all nets constitutes removal of trawl gear.

(ii) When a longline or buoy gear is on board and the vessel is fishing or has fished on a trip in the reef fish longline and buoy gear restricted area specified in § 622.34(c). A vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements, in its entirety, constitutes removal of a longline.

(iii) For a species/species group when its quota has been reached and closure has been effected.

(b) *Gulf reef fish*—(1) *Bag limits.* (i) Greater amberjack—3.

(ii) Groupers, combined, excluding jewfish—5.

(iii) Red snapper—5.

(iv) Snappers, combined, excluding red, lane, and vermilion snapper—10.

(2) *Possession limits.* A person who is on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is on a vessel that is operating as a charter vessel or headboat, the vessel has two licensed operators aboard, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(c) *King and Spanish mackerel*—(1) *Bag limits.* (i) Atlantic migratory group king mackerel—

(A) Mid-Atlantic and South Atlantic, other than off Florida—3.

(B) Off Florida—2, which is the daily bag limit specified by Florida for its waters (Rule 46–12.004(1), Florida Administrative Code). If Florida changes its limit, the bag limit specified in this paragraph (c)(1)(i)(B) will be changed to conform to Florida's limit, provided such limit does not exceed 5.

(ii) Gulf migratory group king mackerel—2.

(iii) Atlantic migratory group Spanish mackerel—10.

(iv) Gulf migratory group Spanish mackerel—

(A) Off Louisiana, Mississippi, and Alabama—10.

(B) Off Florida—10, which is the daily bag limit specified by Florida for its waters (Rule 46–23.005(1), Florida Administrative Code). If Florida changes its limit, the bag limit specified in this paragraph (c)(1)(iv)(B) will be changed to conform to Florida's limit, provided such limit does not exceed 10.

(C) Off Texas—7, which is the daily bag limit specified by Texas for its waters (Rule 31–65.72(c)(4)(A), Texas Administrative Code). If Texas changes its limit, the bag limit specified in this paragraph (c)(1)(iv)(C) will be changed to conform to Texas' limit, provided such limit does not exceed 10.

(2) *Possession limits.* A person who is on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is on a vessel that is operating as a charter vessel or headboat, the vessel has two licensed operators aboard, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(d) *South Atlantic snapper-grouper*—(1) *Bag limits.* (i) Greater amberjack—3.

(ii) Groupers, combined, excluding jewfish and Nassau grouper, and tilefishes—5.

(iii) Hogfish in the South Atlantic off Florida—5.

(iv) Snappers, combined, excluding cubera snapper measuring 30 inches (76.2 cm), TL, or larger, in the South Atlantic off Florida, and excluding vermilion snapper—10, of which no more than 2 may be red snapper. (See § 622.32(c)(2) for limitations on cubera snapper measuring 30 inches (76.2 cm), TL, or larger, in or from the South Atlantic EEZ off Florida.)

(v) Vermilion snapper—10.

(2) *Possession limits.* Provided each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the duration of the trip—

(i) A person aboard a charter vessel or headboat on a trip that spans more than 24 hours may possess no more than two daily bag limits.

(ii) A person aboard a headboat on a trip that spans more than 48 hours and who can document that fishing was conducted on at least 3 days may possess no more than three daily bag limits.

(3) *Longline bag limits.* Other provisions of this paragraph (d) notwithstanding, a person on a trip aboard a vessel for which the bag limits apply that has a longline on board is limited on that trip to the bag limit for South Atlantic snapper-grouper for which a bag limit is specified in paragraph (d)(1) of this section, and to zero for all other South Atlantic snapper-grouper. For the purpose of this paragraph (d)(3), a vessel is considered to have a longline on board when a power-operated longline hauler, a cable or monofilament of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

§ 622.40 Limitations on traps and pots.

(a) *Tending*—(1) *Caribbean EEZ.* A fish trap or Caribbean spiny lobster trap in the Caribbean EEZ may be pulled or tended only by a person (other than an authorized officer) aboard the fish trap or spiny lobster trap owner's vessel, or aboard another vessel if such vessel has on board written consent of the trap owner, or if the trap owner is aboard and has documentation verifying his identification number and color code. An owner's written consent must specify the time period such consent is effective and the trap owner's gear identification number and color code.

(2) *Gulf EEZ.* A fish trap in the Gulf EEZ may be pulled or tended only by a person (other than an authorized officer) aboard the vessel with the fish trap endorsement to fish such trap or aboard another vessel if such vessel has on board written consent of the owner or operator of the vessel so endorsed. Such written consent is valid solely for the removal of fish traps from the EEZ, and harvest of fish incidental to such removal, when vessel or equipment breakdown prevents the vessel with the fish trap endorsement from retrieving its traps.

(3) *South Atlantic EEZ.* A sea bass pot in the South Atlantic EEZ may be pulled or tended only by a person (other than an authorized officer) aboard the vessel permitted to fish such pot or aboard another vessel if such vessel has on board written consent of the owner or operator of the vessel so permitted.

(b) *Escape mechanisms*—(1) *Caribbean EEZ.* (i) A fish trap used or possessed in the Caribbean EEZ must have a panel located on each of two sides of the trap, excluding the top, bottom, and side containing the trap entrance. The opening covered by a panel must measure not less than 8 by 8 inches (20.3 by 20.3 cm). The mesh size of a panel may not be smaller than the mesh size of the trap. A panel must be attached to the trap with untreated jute twine with a diameter not exceeding ⅛ inch (3.2 mm). An access door may serve as one of the panels, provided it is on an appropriate side, it is hinged only at its bottom, its only other fastening is untreated jute twine with a diameter not exceeding ⅛ inch (3.2 mm), and such fastening is at the top of the door so that the door will fall open when such twine degrades. Jute twine used to secure a panel may not be wrapped or overlapped.

(ii) A spiny lobster trap used or possessed in the Caribbean EEZ must contain on any vertical side or on the top a panel no smaller in diameter than the throat or entrance of the trap. The panel must be made of or attached to the trap by one of the following degradable materials:

(A) Untreated fiber of biological origin with a diameter not exceeding ⅛ inch (3.2 mm). This includes, but is not limited to tyre, palm, hemp, jute, cotton, wool, or silk.

(B) Ungalvanized or uncoated iron wire with a diameter not exceeding 1/16 inch (1.6 mm), that is, 16 gauge wire.

(2) *Gulf EEZ.* A fish trap used or possessed in the Gulf EEZ must have at least two escape windows on each of two sides, excluding the bottom (a total of four escape windows), that are 2 by 2 inches (5.1 by 5.1 cm) or larger. In addition, a fish trap must have a panel or access door located opposite each side of the trap that has a funnel. The opening covered by each panel or access door must be 144 in^2 (929 cm^2) or larger, with one dimension of the area equal to or larger than the largest interior axis of the trap's throat (funnel) with no other dimension less than 6 inches (15.2 cm). The hinges and fasteners of each panel or access door must be constructed of one of the following degradable materials:

(i) Untreated jute string with a diameter not exceeding 3/16 inch (4.8 mm) that is not wrapped or overlapped.

(ii) Magnesium alloy, time float releases (pop-up devices) or similar magnesium alloy fasteners.

(3) *South Atlantic EEZ.* (i) A sea bass pot that is used or possessed in the South Atlantic EEZ north of 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL) is required to have on at least one side, excluding top and bottom, a panel or door with an opening equal to or larger than the interior end of the trap's throat (funnel). The hinges and fasteners of each panel or door must be made of one of the following degradable materials:

(A) Untreated hemp, jute, or cotton string with a diameter not exceeding 3/16 inch (4.8 mm).

(B) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners.

(C) Ungalvanized or uncoated iron wire with a diameter not exceeding 1/16 inch (1.6 mm), that is, 16 gauge wire.

(ii) [Reserved]

(c) *Construction requirements and mesh sizes*—(1) *Caribbean EEZ.* A bare-wire fish trap used or possessed in the EEZ that has hexagonal mesh openings must have a minimum mesh size of 1.5 inches (3.8 cm) in the smallest dimension measured between centers of opposite strands. A bare-wire fish trap used or possessed in the EEZ that has other than hexagonal mesh openings or a fish trap of other than bare wire, such as coated wire or plastic, used or possessed in the EEZ, must have a minimum mesh size of 2.0 inches (5.1 cm) in the smallest dimension measured between centers of opposite strands.

(2) *Gulf EEZ.* A fish trap used or possessed in the Gulf EEZ must meet all of the following mesh size requirements (based on centerline measurements between opposite wires or netting strands):

(i) A minimum of 2 in^2 (12.9 cm^2) opening for each mesh.

(ii) One-inch (2.5-cm) minimum length for the shortest side.

(iii) Minimum distance of 1 inch (2.5 cm) between parallel sides of rectangular openings, and 1.5 inches (3.8 cm) between parallel sides of square openings and of mesh openings with more than four sides.

(iv) One and nine-tenths inches (4.8 cm) minimum distance for diagonal measures of mesh.

(3) *South Atlantic EEZ.* (i) A sea bass pot used or possessed in the South Atlantic EEZ must have mesh sizes as follows (based on centerline measurements between opposite, parallel wires or netting strands):

(A) Hexagonal mesh (chicken wire)—at least 1.5 inches (3.8 cm) between the wrapped sides;

(B) Square mesh—at least 1.5 inches (3.8 cm) between sides; or

(C) Rectangular mesh—at least 1 inch (2.5 cm) between the longer sides and 2 inches (5.1 cm) between the shorter sides.

(ii) [Reserved]

(d) *Area-specific restrictions*—(1) *Gulf EEZ.* In the Gulf EEZ, a fish trap may be pulled or tended only from official sunrise to official sunset. The operator of a vessel from which a fish trap is deployed in the Gulf EEZ must retrieve all the vessel's fish traps and return them to port on each trip. A fish trap that is not returned to port on a trip, and its attached line and buoy, may be disposed of in any appropriate manner by the Assistant Administrator or an authorized officer. The owner of such trap and/or the operator of the responsible vessel is subject to appropriate civil penalties. A buoy that floats on the surface must be attached to each fish trap, or to each end trap of traps that are connected by a line, used in the Gulf EEZ. The maximum allowable size for a fish trap fished in the Gulf EEZ shoreward of the 50-fathom (91.4-m) isobath is 33 ft^3 (0.9 m^3) in volume. Fish trap volume is determined by measuring the external dimensions of the trap, and includes both the enclosed holding capacity of the trap and the volume of the funnel(s) within those dimensions. There is no size limitation for fish traps fished seaward of the 50-fathom (91.4-m) isobath. The maximum number of traps that may be assigned to, possessed, or fished in the Gulf EEZ by a vessel is 100.

(2) *South Atlantic EEZ.* In the South Atlantic EEZ, sea bass pots may not be used or possessed in multiple configurations, that is, two or more pots may not be attached one to another so that their overall dimensions exceed those allowed for an individual sea bass pot. This does not preclude connecting individual pots to a line, such as a "trawl" or trot line.

§ 622.41 Species specific limitations.

(a) *Aquacultured live rock.* In the Gulf or South Atlantic EEZ:

(1) Aquacultured live rock may be harvested only under a permit, as required under § 622.4(a)(3)(iii), and aquacultured live rock on a site may be harvested only by the person, or his or her employee, contractor, or agent, who has been issued the aquacultured live rock permit for the site. A person harvesting aquacultured live rock is exempt from the prohibition on taking prohibited coral for such prohibited coral as attaches to aquacultured live rock.

(2) The following restrictions apply to individual aquaculture activities:

(i) No aquaculture site may exceed 1 acre (0.4 ha) in size.

(ii) Material deposited on the aquaculture site—

(A) May not be placed over naturally occurring reef outcrops, limestone ledges, coral reefs, or vegetated areas.

(B) Must be free of contaminants.

(C) Must be nontoxic.

(D) Must be placed on the site by hand or lowered completely to the bottom under restraint, that is, not allowed to fall freely.

(E) Must be placed from a vessel that is anchored.

(F) In the Gulf EEZ, must be distinguishable, geologically or otherwise (for example, be indelibly marked or tagged), from the naturally occurring substrate.

(G) In the South Atlantic EEZ, must be geologically distinguishable from the naturally occurring substrate and, in addition, may be indelibly marked or tagged.

(iii) A minimum setback of at least 50 ft (15.2 m) must be maintained from natural vegetated or hard bottom habitats.

(3) Mechanically dredging or drilling, or otherwise disturbing, aquacultured live rock is prohibited, and aquacultured live rock may be harvested only by hand. In addition, the following activities are prohibited in the South Atlantic: Chipping of aquacultured live rock in the EEZ, possession of chipped aquacultured live rock in or from the EEZ, removal of allowable octocoral or prohibited coral from aquacultured live rock in or from the EEZ, and possession of prohibited coral not attached to aquacultured live rock or allowable octocoral, while aquacultured live rock is in possession. See the definition of "Allowable octocoral" for clarification of the distinction between allowable octocoral and live rock. For the purposes of this paragraph (a)(3), chipping means breaking up reefs, ledges, or rocks into fragments, usually by means of a chisel and hammer.

(4) Not less than 24 hours prior to harvest of aquacultured live rock, the owner or operator of the harvesting vessel must provide the following information to the NMFS Law Enforcement Office, Southeast Area, St. Petersburg, FL, telephone (813) 570–5344:

(i) Permit number of site to be harvested and date of harvest.

(ii) Name and official number of the vessel to be used in harvesting.

(iii) Date, port, and facility at which aquacultured live rock will be landed.

(b) *Caribbean reef fish.* A marine aquarium fish may be harvested in the Caribbean EEZ only by a hand-held dip net or by a hand-held slurp gun. For the purposes of this paragraph, a hand-held slurp gun is a device that rapidly draws seawater containing fish into a self-contained chamber, and a marine aquarium fish is a Caribbean reef fish that is smaller than 5.5 inches (14.0 cm), TL.

(c) *King and Spanish mackerel*—(1) *Prohibited gear.* (i) In addition to the gear restrictions specified in § 622.31, fishing gear is prohibited for use in the Gulf, Mid-Atlantic, and South Atlantic EEZ for migratory groups of king and Spanish mackerel as follows:

(A) King mackerel, Gulf migratory group—all gear other than hook and line and run-around gillnet.

(B) Spanish mackerel, Gulf and Atlantic migratory groups—purse seines.

(ii) Except for the purse seine incidental catch allowance specified in paragraph (c)(3) of this section, a vessel in the EEZ in the area of a migratory group or having fished in the EEZ in such area with prohibited gear on board may not possess any of the species for which that gear is prohibited.

(2) *Gillnets*—(i) *King mackerel.* The minimum allowable mesh size for a gillnet used to fish in the Gulf, Mid-Atlantic, or South Atlantic EEZ for king mackerel is 4.75 inches (12.1 cm), stretched mesh. A vessel in the EEZ, or having fished on a trip in the EEZ, with a gillnet on board that has a mesh size less than 4.75 inches (12.1 cm), stretched mesh, may possess on that trip an incidental catch of king mackerel that does not exceed 10 percent, by number, of the total lawfully possessed Spanish mackerel on board.

(ii) *Spanish mackerel.* The minimum allowable mesh size for a gillnet used to fish in the Gulf, Mid-Atlantic, or South Atlantic EEZ for Spanish mackerel is 3.5 inches (8.9 cm), stretched mesh. A vessel in the EEZ, or having fished on a trip in the EEZ, with a gillnet on board that has a mesh size less than 3.5 inches (8.9 cm), stretched mesh, may not possess on that trip any Spanish mackerel.

(3) *Purse seine incidental catch allowance.* A vessel in the EEZ, or having fished in the EEZ, with a purse seine on board will not be considered as fishing, or having fished, for king or Spanish mackerel in violation of a prohibition of purse seines under paragraph (c)(1)(i)(B) of this section, or, in the case of king mackerel from the Atlantic migratory group, in violation of a closure effected in accordance with § 622.43(a), provided the king mackerel on board does not exceed 1 percent, or the Spanish mackerel on board does not exceed 10 percent, of all fish on board the vessel. Incidental catch will be calculated by number and/or weight of fish. Neither calculation may exceed the allowable percentage. Incidentally caught king or Spanish mackerel are counted toward the quotas provided for under § 622.42(c) and are subject to the prohibition of sale under § 622.43(a)(3)(iii).

(d) *South Atlantic snapper-grouper*—(1) *Authorized gear.* Subject to the gear restrictions specified in § 622.31, the following are the only gear types authorized in directed fishing for snapper-grouper in the South Atlantic EEZ:

(i) Vertical hook-and-line gear, including a hand-held rod or a rod attached to a vessel ("bandit" gear), in either case, with a manual, electric, or hydraulic reel.

(ii) Spearfishing gear.

(iii) Bottom longline.

(iv) Sea bass pot.

(2) *Unauthorized gear.* All gear types other than those specified in paragraph (d)(1) of this section are unauthorized gear and the following possession and transfer limitations apply.

(i) A vessel with trawl gear on board that fishes in the EEZ on a trip may possess no more than 200 lb (90.7 kg) of South Atlantic snapper-grouper, excluding wreckfish, in or from the EEZ on that trip. It is a rebuttable presumption that a vessel with more than 200 lb (90.7 kg) of South Atlantic snapper-grouper, excluding wreckfish, on board harvested such fish in the EEZ.

(ii) Except as specified in paragraph (d)(3) of this section, a person aboard a vessel with unauthorized gear on board, other than trawl gear, that fishes in the EEZ on a trip is limited on that trip to:

(A) South Atlantic snapper-grouper species for which a bag limit is specified in § 622.39(d)(1)—the bag limit.

(B) All other South Atlantic snapper-grouper—zero.

(iii) South Atlantic snapper-grouper on board a vessel with unauthorized gear on board may not be transferred at sea, regardless of where such transfer takes place, and such snapper-grouper may not be transferred in the EEZ.

(iv) No vessel may receive at sea any South Atlantic snapper-grouper from a vessel with unauthorized gear on board, as specified in paragraph (d)(2)(iii) of this section.

(3) *Use of sink nets off North Carolina.* A vessel that has on board a commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the EEZ off North Carolina on a trip with a sink net on board, may retain otherwise legal South Atlantic snapper-grouper taken on that trip with vertical hook-and-line gear or a sea bass pot. For the purpose of this paragraph (d)(3), a sink net is a gillnet with stretched mesh measurements of 3 to 4.75 inches (7.6 to 12.1 cm) that is attached to the vessel when deployed.

§ 622.42 Quotas.

Quotas apply for the fishing year for each species or species group. Except for the quotas for Gulf and South Atlantic coral, the quotas include species harvested from state waters adjoining the EEZ. Quotas for species managed under this part are as follows. (See § 622.32 for limitations on taking prohibited and limited-harvest species. The limitations in § 622.32 apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit or by a person subject to the bag limits.)

(a) *Gulf reef fish.* Quotas apply to persons who fish under commercial vessel permits for Gulf reef fish, as required under § 622.4(a)(2)(v).

(1) Red snapper—3.06 million lb (1.39 million kg), round weight.

(2) Deep-water groupers, that is, yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, speckled hind, and, after the quota for shallow-water grouper is reached, scamp, combined—1.6 million lb (0.7 million kg), round weight.

(3) Shallow-water groupers, that is, all groupers other than deep-water groupers and jewfish, including scamp before the quota for shallow-water groupers is reached, combined—9.8 million lb (4.4 million kg), round weight.

(b) *Gulf and South Atlantic coral*—(1) *Allowable octocoral.* The quota for all persons who harvest allowable octocoral in the Gulf and South Atlantic EEZ is 50,000 colonies. A colony is a continuous group of coral polyps forming a single unit.

(2) *Wild live rock in the Gulf.* The quota for all persons who harvest wild live rock in the Gulf EEZ is 500,000 lb (226,796 kg). Commencing with the fishing year that begins January 1, 1997, the quota is zero.

(c) *King and Spanish mackerel.* King and Spanish mackerel quotas apply to persons who fish under commercial vessel permits for king and Spanish mackerel, as required under § 622.4(a)(2)(iv). A fish is counted against the quota for the area where it is caught when it is first sold.

(1) *Migratory groups of king mackerel*—(i) *Gulf migratory group.* The quota for the Gulf migratory group of king mackerel is 2.50 million lb (1.13 million kg). The Gulf migratory group is divided into eastern and western zones separated by 87°31′06″ W. long., which is a line directly south from the Alabama/Florida boundary. Quotas for the eastern and western zones are as follows:

(A) *Eastern zone*—1.73 million lb (0.78 million kg), which is further divided into quotas as follows:

(*1*) *Florida east coast subzone*—865,000 lb (392,357 kg).

(*2*) *Florida west coast subzone*—865,000 lb (392,357 kg), which is further divided into quotas by gear types as follows:

(*i*) 432,500 lb (196,179 kg) for vessels fishing with hook-and-line gear.

(*ii*) 432,500 lb (196,179 kg) for vessels fishing with run-around gillnets.

(*3*) The Florida east coast subzone is that part of the eastern zone north of 25°20.4′ N. lat.; which is a line directly east from the Dade/Monroe County, FL, boundary, and the Florida west coast subzone is that part of the eastern zone south and west of 25°20.4′ N. lat.

(B) *Western zone*—0.77 million lb (0.35 million kg).

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of king mackerel is 2.70 million lb (1.22 million kg). No more than 0.4 million lb (0.18 million kg) may be harvested by purse seines.

(2) *Migratory groups of Spanish mackerel*—(i) *Gulf migratory group.* The quota for the Gulf migratory group of Spanish mackerel is 4.90 million lb (2.22 million kg).

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of Spanish mackerel is 4.70 million lb (2.13 million kg).

(d) *Royal red shrimp in the Gulf.* The quota for all persons who harvest royal red shrimp in the Gulf is 392,000 lb (177.8 mt), tail weight.

(e) *South Atlantic snapper-grouper, excluding wreckfish.* The quotas apply to persons who are not subject to the bag limits. (See § 622.39(a)(1) for applicability of the bag limits.)

(1) *Snowy grouper*—344,508 lb (156,266 kg), gutted weight, that is, eviscerated but otherwise whole.

(2) *Golden tilefish*—1,001,663 lb (454,347 kg), gutted weight, that is, eviscerated but otherwise whole.

(f) *Wreckfish.* The quota for wreckfish applies to wreckfish shareholders, or their employees, contractors, or agents, and is 2 million lb (907,185 kg), round weight. See § 622.15 for information on the wreckfish shareholder under the ITQ system.

§ 622.43 Closures.

(a) *General.* When a quota specified in § 622.42 is reached, or is projected to be reached, the Assistant Administrator will file a notification to that effect with the Office of the Federal Register. On and after the effective date of such notification, for the remainder of the fishing year, the following closure restrictions apply:

(1) *Gulf reef fish.* The bag and possession limits specified in § 622.39(b) apply to all harvest in the Gulf EEZ of the indicated species, and the sale or purchase of the indicated species taken from the Gulf EEZ is prohibited.

(2) *Gulf and South Atlantic coral*—(i) *Allowable octocoral.* Allowable octocoral may not be harvested or possessed in the Gulf or South Atlantic EEZ and the sale or purchase of allowable octocoral in or from the Gulf or South Atlantic EEZ is prohibited.

(ii) *Wild live rock in the Gulf.* Wild live rock may not be harvested or possessed in the Gulf EEZ and the sale or purchase of wild live rock in or from the Gulf EEZ is prohibited.

(3) *King and Spanish mackerel.* The closure provisions of this paragraph (a)(3) do not apply to Atlantic migratory group Spanish mackerel, which are managed under the commercial trip limits specified in § 622.44(b) in lieu of the closure provisions of this section.

(i) A person aboard a vessel for which a commercial permit for king and Spanish mackerel has been issued, as required under § 622.4(a)(2)(iv), may not fish for king or Spanish mackerel in the EEZ or retain fish in or from the EEZ under a bag or possession limit specified in § 622.39(c) for the closed species, migratory group, zone, subzone, or gear type, except as provided for under paragraph (a)(3)(ii) of this section.

(ii) A person aboard a vessel for which the permit indicates both commercial king and Spanish mackerel and charter vessel/headboat for coastal migratory pelagic fish may continue to retain fish under a bag and possession limit specified in § 622.39(c), provided the vessel is operating as a charter vessel or headboat.

(iii) The sale or purchase of king or Spanish mackerel of the closed species, migratory group, zone, subzone, or gear type is prohibited, including such king or Spanish mackerel taken under the bag limits.

(4) *Royal red shrimp in the Gulf.* Royal red shrimp in or from the Gulf EEZ may not be retained, and the sale or purchase of royal red shrimp taken from the Gulf EEZ is prohibited.

(5) *South Atlantic snapper-grouper, excluding wreckfish.* There are no closure provisions for South Atlantic snapper grouper, other than for wreckfish. Golden tilefish and snowy grouper, for which there are quotas, are managed under the commercial trip limits specified in § 622.44(a) in lieu of the closure provisions of this section.

(6) *Wreckfish.* Wreckfish in or from the South Atlantic EEZ may not be retained, and the sale or purchase of wreckfish taken from the South Atlantic EEZ is prohibited.

(b) *Exception to prohibition on sale/purchase.* (1) The prohibition on sale/purchase during a closure for Gulf reef fish, king and Spanish mackerel, royal red shrimp, or wreckfish in paragraph (a)(1), (a)(3)(iii), (a)(4), or (a)(6) of this section does not apply to the indicated

species that were harvested, landed ashore, and bartered, traded, or sold prior to the effective date of the closure and were held in cold storage by a dealer or processor.

(2) The prohibition on sale/purchase during a closure for allowable octocoral or wild live rock in paragraph (a)(2)(i) or (a)(2)(ii) of this section does not apply to allowable octocoral or wild live rock that was harvested and landed ashore prior to the effective date of the closure.

§ 622.44 Commercial trip limits.

Commercial trip limits are limits on the amount of the applicable species that may be possessed on board or landed, purchased, or sold from a vessel per day. A person who fishes in the EEZ may not combine a trip limit specified in this section with any trip or possession limit applicable to state waters. A species subject to a trip limit specified in this section taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ. For fisheries governed by this part, commercial trip limits apply as follows:

(a) *King mackerel.* Commercial trip limits are established for Gulf migratory group king mackerel in the eastern zone as follows. (See § 622.42(c)(1)(i) for specification of the eastern zone and § 622.42(c)(1)(i)(A)(*3*) for specifications of the subzones in the eastern zone.)

(1) *Florida east coast subzone.* In the Florida east coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king and Spanish mackerel has been issued, as required under § 622.4(a)(2)(iv)—

(i) From November 1, each fishing year, until 75 percent of the subzone's fishing year quota of king mackerel has been harvested—in amounts not exceeding 50 king mackerel per day.

(ii) From the date that 75 percent of the subzone's fishing year quota of king mackerel has been harvested until a closure of the Florida east coast subzone has been effected under § 622.43(a)—in amounts not exceeding 25 king mackerel per day. However, if 75 percent of the subzone's quota has not been harvested by March 1, the vessel limit remains at 50 king mackerel per day until the subzone's quota is filled or until March 31, whichever occurs first.

(2) *Florida west coast subzone*—(i) *Gillnet gear.* (A) In the Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit with a gillnet endorsement has been issued, as required under § 622.4(a)(2)(ii), from July 1, each fishing year, until a closure of the Florida west coast subzone's fishery for vessels fishing with run-around gillnets has been effected under § 622.43(a)—in amounts not exceeding 25,000 lb (11,340 kg) per day.

(B) In the Florida west coast subzone: (*1*) King mackerel in or from the EEZ may be possessed on board or landed from a vessel that uses or has on board a run-around gillnet on a trip only when such vessel has on board a commercial permit for king and Spanish mackerel with a gillnet endorsement.

(*2*) King mackerel from the west coast subzone landed by a vessel for which such commercial permit with endorsement has been issued will be counted against the run-around gillnet quota of § 622.42(c)(1)(i)(A)(*2*)(*ii*).

(*3*) King mackerel in or from the EEZ harvested with gear other than run-around gillnet may not be retained on board a vessel for which such commercial permit with endorsement has been issued.

(ii) *Hook-and-line gear.* In the Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel with a commercial permit for king and Spanish mackerel, as required by § 622.4(a)(2)(iv), and operating under the hook-and-line gear quota in § 622.42(c)(1)(i)(A)(*2*)(*i*):

(A) From July 1, each fishing year, until 75 percent of the subzone's hook-and-line gear quota has been harvested—in amounts not exceeding 125 king mackerel per day.

(B) From the date that 75 percent of the subzone's hook-and-line gear quota has been harvested until a closure of the west coast subzone's hook-and-line fishery has been effected under § 622.43(a)—in amounts not exceeding 50 king mackerel per day.

(3) *Notice of trip limit changes.* The Assistant Administrator, by filing a notification of trip limit change with the Office of the Federal Register, will effect the trip limit changes specified in paragraphs (a)(1) and (a)(2)(ii) of this section when the requisite harvest level has been reached or is projected to be reached.

(b) *Spanish mackerel.* (1) Commercial trip limits are established for Atlantic migratory group Spanish mackerel as follows:

(i) North of 30°42′45.6″ N. lat., which is a line directly east from the Georgia/Florida boundary, Spanish mackerel in or from the EEZ may not be possessed on board or landed in a day from a vessel for which a permit for king and Spanish mackerel has been issued, as required under § 622.4(a)(2)(iv), in amounts exceeding 3,500 lb (1,588 kg).

(ii) South of 30°42′45.6″ N. lat., Spanish mackerel in or from the EEZ may not be possessed on board or landed in a day from a vessel for which a permit for king and Spanish mackerel has been issued, as required under § 622.4(a)(2)(iv)—

(A) From April 1 through November 30, in amounts exceeding 1,500 lb (680 kg).

(B) From December 1 until 75 percent of the adjusted quota is taken, in amounts as follows:

(*1*) Mondays, Wednesdays, and Fridays—unlimited.

(*2*) Tuesdays and Thursdays—not exceeding 1,500 lb (680 kg).

(*3*) Saturdays and Sundays—not exceeding 500 lb (227 kg).

(C) After 75 percent of the adjusted quota is taken until 100 percent of the adjusted quota is taken, in amounts not exceeding 1,000 lb (454 kg).

(D) After 100 percent of the adjusted quota is taken through the end of the fishing year, in amounts not exceeding 500 lb (227 kg).

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 4.45 million lb (2.02 million kg). The adjusted quota is the quota for Atlantic migratory group Spanish mackerel reduced by an amount calculated to allow continued harvests of Atlantic migratory group Spanish mackerel at the rate of 500 lb (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached. By filing a notification with the Office of the Federal Register, the Assistant Administrator will announce when 75 percent and 100 percent of the adjusted quota is reached or is projected to be reached.

(3) For the purpose of paragraph (b)(1)(ii) of this section, a day starts at 6 a.m., local time, and extends for 24 hours. If a vessel terminates a trip prior to 6 a.m., but retains Spanish mackerel on board after that time, the Spanish mackerel retained on board will not be considered in possession during the succeeding day, provided the vessel is not underway between 6 a.m. and the time such Spanish mackerel are unloaded, and provided such Spanish mackerel are unloaded prior to 6 p.m.

(c) *Golden tilefish and snowy grouper.* A person who fishes in the South Atlantic EEZ on a trip and who is not subject to the bag limits may not exceed the following trip limits. (See § 622.39(a) for applicability of the bag limits.)

(1) Golden tilefish (round weight or gutted weight, that is, eviscerated but otherwise whole):

(i) Until the fishing year quota specified in § 622.42(e)(2) is reached, 5,000 lb (2,268 kg).

(ii) After the fishing year quota specified in § 622.42(e)(2) is reached, 300 lb (136 kg).

(2) Snowy grouper (round weight or gutted weight, that is, eviscerated but otherwise whole):

(i) Until the fishing year quota specified in § 622.42(e)(1) is reached, 2,500 lb (1,134 kg).

(ii) After the fishing year quota specified in § 622.42(e)(1) is reached, 300 lb (136 kg).

(d) *Gulf wild live rock.* Until the quota for wild live rock from the Gulf EEZ is reached in 1996, a daily vessel limit of twenty-five 5-gallon (19–L) buckets, or volume equivalent (16.88 ft³ (478.0 L)), applies to the harvest or possession of wild live rock in or from the Gulf EEZ, regardless of the number or duration of trips.

§ 622.45 Restrictions on sale/purchase.

In addition to restrictions on sale/purchase related to closures, as specified in § 622.43 (a) and (b), restrictions on sale and/or purchase apply as follows.

(a) *Caribbean coral reef resource.* (1) No person may sell or purchase a Caribbean prohibited coral harvested in the Caribbean EEZ.

(2) A Caribbean prohibited coral that is sold in Puerto Rico or the U.S. Virgin Islands will be presumed to have been harvested in the Caribbean EEZ, unless it is accompanied by documentation showing that it was harvested elsewhere. Such documentation must contain:

(i) The information specified in subpart K of part 300 of this title for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce.

(ii) The name and home port of the vessel, or the name and address of the individual, harvesting the Caribbean prohibited coral.

(iii) The port and date of landing the Caribbean prohibited coral.

(iv) A statement signed by the person selling the Caribbean prohibited coral attesting that, to the best of his or her knowledge, information, and belief, such Caribbean prohibited coral was harvested other than in the Caribbean EEZ or the waters of Puerto Rico or the U.S. Virgin Islands.

(b) *Caribbean reef fish.* A live red hind or live mutton snapper in or from the Caribbean EEZ may not be sold or purchased and used in the marine aquarium trade.

(c) *Gulf reef fish.* (1) A Gulf reef fish harvested in the EEZ on board a vessel that does not have a valid commercial permit for Gulf reef fish, as required under § 622.4(a)(2)(v), or a Gulf reef fish possessed under the bag limits specified in § 622.39(b), may not be sold or purchased.

(2) A Gulf reef fish harvested on board a vessel that has a valid commercial permit for Gulf reef fish may be sold only to a dealer who has a valid permit for Gulf reef fish, as required under § 622.4(a)(4).

(3) A Gulf reef fish harvested in the EEZ may be purchased by a dealer who has a valid permit for Gulf reef fish, as required under § 622.4(a)(4), only from a vessel that has a valid commercial permit for Gulf reef fish.

(d) *South Atlantic snapper-grouper.* (1) A person may sell South Atlantic snapper-grouper harvested in the EEZ only to a dealer who has a valid permit for South Atlantic snapper-grouper, as required under § 622.4(a)(4).

(2) A person may purchase South Atlantic snapper-grouper harvested in the EEZ only from a vessel that has a valid commercial permit for South Atlantic snapper-grouper, as required under § 622.4(a)(2)(iv), or from a person who has a valid commercial license to sell fish in the state where the purchase occurs.

(3) Except for the sale or purchase of South Atlantic snapper-grouper harvested by a vessel that has a valid commercial permit for South Atlantic snapper-grouper, the sale or purchase of such fish is limited to the bag limits specified in § 622.39(d)(1).

(4) A warsaw grouper or speckled hind in or from the South Atlantic EEZ may not be sold or purchased.

(e) *South Atlantic wild live rock.* Wild live rock in or from the South Atlantic EEZ may not be sold or purchased. The prohibition on sale or purchase does not apply to wild live rock that was harvested and landed prior to January 1, 1996.

§ 622.46 Prevention of gear conflicts.

(a) No person may knowingly place in the Gulf EEZ any article, including fishing gear, that interferes with fishing or obstructs or damages fishing gear or the fishing vessel of another; or knowingly use fishing gear in such a fashion that it obstructs or damages the fishing gear or fishing vessel of another.

(b) In accordance with the procedures and restrictions of the FMP for the Shrimp Fishery of the Gulf of Mexico, the RD may modify or establish separation zones for shrimp trawling and the use of fixed gear to prevent gear conflicts. Necessary prohibitions or restrictions will be published in the **Federal Register**.

(c) In accordance with the procedures and restrictions of the FMP for Coastal Migratory Pelagic Resources, when the RD determines that a conflict exists in the king mackerel fishery between hook-and-line and gillnet fishermen in the South Atlantic EEZ off the east coast of Florida between 27°00.6′ N. lat. and 27°50.0′ N. lat., the RD may prohibit or restrict the use of hook-and-line and/or gillnets in all or a portion of that area. Necessary prohibitions or restrictions will be published in the **Federal Register**.

§ 622.47 Gulf groundfish trawl fishery.

Gulf groundfish trawl fishery means fishing in the Gulf EEZ by a vessel that uses a bottom trawl, the unsorted catch of which is ground up for animal feed or industrial products.

(a) Other provisions of this part notwithstanding, the owner or operator of a vessel in the Gulf groundfish trawl fishery is exempt from the following requirements and limitations for the vessel's unsorted catch of Gulf reef fish:

(1) The requirement for a valid commercial vessel permit for Gulf reef fish in order to sell Gulf reef fish.

(2) Minimum size limits for Gulf reef fish.

(3) Bag limits for Gulf reef fish.

(4) The prohibition on sale of Gulf reef fish after a quota closure.

(b) Other provisions of this part notwithstanding, a dealer in a Gulf state is exempt from the requirement for a dealer permit for Gulf reef fish to receive Gulf reef fish harvested from the Gulf EEZ by a vessel in the Gulf groundfish trawl fishery.

§ 622.48 Adjustment of management measures.

In accordance with the framework procedures of the applicable FMPs, the RD may establish or modify the following management measures:

(a) *Caribbean coral reef resources.* Species for which management measures may be specified; prohibited species; harvest limitations, including quotas, trip, or daily landing limits; gear restrictions; closed seasons or areas; and marine conservation districts.

(b) *Caribbean reef fish.* Size limits, closed seasons or areas, fish trap mesh size, and the threshold level for overfishing.

(c) *Coastal migratory pelagic fish.* For cobia or for migratory groups of king or Spanish mackerel: MSY, TAC, quotas, bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, and initial permit requirements.

(d) *Gulf reef fish.* (1) For species or species groups: Target dates for

rebuilding overfished species, TAC, bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, and quotas.

(2) SMZs and the gear restrictions applicable in each.

(e) *Gulf royal red shrimp.* MSY, OY, and TAC.

(f) *South Atlantic snapper-grouper and wreckfish.* For species or species groups: Target dates for rebuilding overfished species, MSY, ABC, TAC, quotas, trip limits, bag limits, minimum sizes, gear restrictions (ranging from regulation to complete prohibition), and seasonal or area closures.

Appendix A to Part 622—Species Tables

Table 1 of Appendix A to Part 622—Caribbean Coral Reef Resources

I. Sponges—Phylum Porifera
- A. Demosponges—Class Demospongiae
- *Aphimedon compressa*, Erect rope sponge
- *Chondrilla nucula*, Chicken liver sponge
- *Cynachirella alloclada*
- *Geodia neptuni*, Potato sponge
- *Haliclona* sp., Finger sponge
- *Myriastra* sp.
- *Niphates digitalis*, Pink vase sponge
- *N. erecta*, Lavender rope sponge
- *Spinosella policifera*
- *S. vaginalis*
- *Tethya crypta*

II. Coelenterates—Phylum Coelenterata
- A. Hydrocorals—Class Hydrozoa
- 1. Hydroids—Order Athecatae
- Family Milleporidae
- *Millepora* spp., Fire corals
- Family Stylasteridae
- *Stylaster roseus*, Rose lace corals
- B. Anthozoans—Class Anthozoa
- 1. Soft corals—Order Alcyonacea
- Family Anthothelidae
- *Erythropodium caribaeorum*, Encrusting gorgonian
- *Iciligorgia schrammi*, Deepwater sea fan
- Family Briaridae
- *Briareum asbestinum*, Corky sea finger
- Family Clavulariidae
- *Carijoa riisei*
- *Telesto* spp.
- 2. Gorgonian corals—Order Gorgonacea
- Family Ellisellidae
- *Ellisella* spp., Sea whips
- Family Gorgoniidae
- *Gorgonia flabellum*, Venus sea fan
- *G. mariae*, Wide-mesh sea fan
- *G. ventalina*, Common sea fan
- *Pseudopterogorgia acerosa*, Sea plume
- *P. albatrossae*
- *P. americana*, Slimy sea plume
- *P. bipinnata*, Bipinnate plume
- *P. rigida*
- *Pterogorgia anceps*, Angular sea whip
- *P. citrina*, Yellow sea whip
- Family Plexauridae
- *Eunicea calyculata*, Warty sea rod
- *E. clavigera*
- *E. fusca*, Doughnut sea rod
- *E. knighti*
- *E. laciniata*
- *E. laxispica*
- *E. mammosa*, Swollen-knob
- *E. succinea*, Shelf-knob sea rod
- *E. tourneforti*
- *Muricea atlantica*
- *M. elongata*, Orange spiny rod
- *M. laxa*, Delicate spiny rod
- *M. muricata*, Spiny sea fan
- *M. pinnata*, Long spine sea fan
- *Muriceopsis* sp.
- *M. flavida*, Rough sea plume
- *M. sulphurea*
- *Plexaura flexuosa*, Bent sea rod
- *P. homomalla*, Black sea rod
- *Plexaurella dichotoma*, Slit-pore sea rod
- *P. fusifera*
- *P. grandiflora*
- *P. grisea*
- *P. nutans*, Giant slit-pore
- *Pseudoplexaura crucis*
- *P. flagellosa*
- *P. porosa*, Porous sea rod
- *P. wagenaari*
- 3. Hard Corals—Order Scleractinia
- Family Acroporidae
- *Acropora cervicornis*, Staghorn coral
- *A. palmata*, Elkhorn coral
- *A. prolifera*, Fused staghorn
- Family Agaricidae
- *Agaricia agaricities*, Lettuce leaf coral
- *A. fragilis*, Fragile saucer
- *A. lamarcki*, Lamarck's sheet
- *A. tenuifolia*, Thin leaf lettuce
- *Leptoseris cucullata*, Sunray lettuce
- Family Astrocoeniidae
- *Stephanocoenia michelinii*, Blushing star
- Family Caryophyllidae
- *Eusmilia fastigiata*, Flower coral
- *Tubastrea aurea*, Cup coral
- Family Faviidae
- *Cladocora arbuscula*, Tube coral
- *Colpophyllia natans*, Boulder coral
- *Diploria clivosa*, Knobby brain coral
- *D. labyrinthiformis*, Grooved brain
- *D. strigosa*, Symmetrical brain
- *Favia fragum*, Golfball coral
- *Manicina areolata*, Rose coral
- *M. mayori*, Tortugas rose coral
- *Montastrea annularis*, Boulder star coral
- *M. cavernosa*, Great star coral
- *Solenastrea bournoni*, Smooth star coral
- Family Meandrinidae
- *Dendrogyra cylindrus*, Pillar coral
- *Dichocoenia stellaris*, Pancake star
- *D. stokesi*, Elliptical star
- *Meandrina meandrites*, Maze coral
- Family Mussidae
- *Isophyllastrea rigida*, Rough star coral
- *Isophyllia sinuosa*, Sinuous cactus
- *Mussa angulosa*, Large flower coral
- *Mycetophyllia aliciae*, Thin fungus coral
- *M. danae*, Fat fungus coral
- *M. ferox*, Grooved fungus
- *M. lamarckiana*, Fungus coral
- *Scolymia cubensis*, Artichoke coral
- *S. lacera*, Solitary disk
- Family Oculinidae
- *Oculina diffusa*, Ivory bush coral
- Family Pocilloporidae
- *Madracis decactis*, Ten-ray star coral
- *M. mirabilis*, Yellow pencil
- Family Poritidae
- *Porites astreoides*, Mustard hill coral
- *P. branneri*, Blue crust coral
- *P. divaricata*, Small finger coral
- *P. porites*, Finger coral
- Family Rhizangiidae
- *Astrangia solitaria*, Dwarf cup coral
- *Phyllangia americana*, Hidden cup coral
- Family Siderastreidae
- *Siderastrea radians*, Lesser starlet
- *S. siderea*, Massive starlet
- 4. Black Corals—Order Antipatharia
- *Antipathes* spp., Bushy black coral
- *Stichopathes* spp., Wire coral
- 5. Anemones—Order Actiniaria
- *Aiptasia tagetes*, Pale anemone
- *Bartholomea annulata*, Corkscrew anemone
- *Condylactis gigantea*, Giant pink-tipped anemone
- *Hereractis lucida*, Knobby anemone
- *Lebrunia* spp., Staghorn anemone
- *Stichodactyla helianthus*, Sun anemone
- 6. Colonial Anemones—Order Zoanthidea
- *Zoanthus* spp., Sea mat
- 7. False Corals—Order Corallimorpharia
- *Discosoma* spp. (formerly *Rhodactis*), False coral
- *Ricordia florida*, Florida false coral

III. Annelid Worms—Phylum Annelida
- A. Polychaetes—Class Polychaeta
- Family Sabellidae, Feather duster worms
- *Sabellastarte spp.*, Tube worms
- *S. magnifica*, Magnificent duster
- Family Serpulidae
- *Spirobranchus giganteus*, Christmas tree worm

IV. Mollusks—Phylum Mollusca
- A. Gastropods—Class Gastropoda
- Family Elysiidae
- *Tridachia crispata*, Lettuce sea slug
- Family Olividae
- *Oliva reticularis*, Netted olive
- Family Ovulidae
- *Cyphoma gibbosum*, Flamingo tongue
- Family Ranellidae
- *Charonia tritonis*, Atlantic triton trumpet
- Family Strombidae, Winged conchs
- *Strombus* spp. (except Queen conch, *S. gigas*)
- B. Bivalves—Class Bivalvia
- Family Limidae
- *Lima* spp., Fileclams
- *L. scabra*, Rough fileclam
- Family Spondylidae
- *Spondylus americanus*, Atlantic thorny oyster
- C. Cephalopods—Class Cephalopoda
- 1. Octopuses—Order Octopoda
- Family Octopodidae
- *Octopus* spp. (except the Common octopus, *O. vulgaris*)

V. Arthropods—Phylum Arthropoda
- A. Crustaceans—Subphylum Crustacea
- 1. Decapods—Order Decapoda
- Family Alpheidae
- *Alpheaus armatus*, Snapping shrimp
- Family Diogenidae
- *Paguristes* spp., Hermit crabs
- *P. cadenati*, Red reef hermit
- Family Grapsidae
- *Percnon gibbesi*, Nimble spray crab
- Family Hippolytidae
- *Lysmata* spp., Peppermint shrimp
- *Thor amboinensis*, Anemone shrimp
- Family Majidae, Coral crabs
- *Mithrax* spp., Clinging crabs
- *M. cinctimanus*, Banded clinging
- *M. sculptus*, Green clinging
- *Stenorhynchus seticornis*, Yellowline arrow
- Family Palaemonida
- *Periclimenes* spp., Cleaner shrimp

- Family Squillidae, Mantis crabs
- *Gonodactylus* spp.
- *Lysiosquilla* spp.
- Family Stenopodidae, Coral shrimp
- *Stenopus hispidus*, Banded shrimp
- *S. scutellatus*, Golden shrimp

VI. Bryozoans—Phylum Bryozoa

VII. Echinoderms—Phylum Echinodermata
- A. Feather stars—Class Crinoidea
- *Analcidometra armata*, Swimming crinoid
- *Davidaster* spp., Crinoids
- *Nemaster* spp., Crinoids
- B. Sea stars—Class Asteroidea
- *Astropecten* spp., Sand stars
- *Linckia guildingii*, Common comet star
- *Ophidiaster guildingii*, Comet star
- *Oreaster reticulatus*, Cushion sea star
- C. Brittle and basket stars—Class Ophiuroidea
- *Astrophyton muricatum*, Giant basket star
- *Ophiocoma* spp., Brittlestars
- *Ophioderma* spp., Brittlestars
- *O. rubicundum*, Ruby brittlestar
- D. Sea Urchins—Class Echinoidea
- *Diadema antillarum*, Long-spined urchin
- *Echinometra* spp., Purple urchin
- *Eucidaris tribuloides*, Pencil urchin
- *Lytechinus* spp., Pin cushion urchin
- *Tripneustes ventricosus*, Sea egg
- E. Sea Cucumbers—Class Holothuroidea
- *Holothuria* spp., Sea cucumbers

VIII. Chordates—Phylum Chordata
- A. Tunicates—Subphylum Urochordata

IX. Green Algae—Phylum Chlorophyta
- *Caulerpa* spp., Green grape algae
- *Halimeda* spp., Watercress algae
- *Penicillus* spp., Neptune's brush
- *Udotea* spp., Mermaid's fan
- *Ventricaria ventricosa*, Sea pearls

X. Red Algae—Phylum Rhodophyta

XI. Sea grasses—Phylum Angiospermae
- *Halodule wrightii*, Shoal grass
- *Halophila* spp., Sea vines
- *Ruppia maritima*, Widgeon grass
- *Syringodium filiforme*, Manatee grass
- *Thalassia testudium*, Turtle grass

Table 2 of Appendix A to Part 622—Caribbean Reef Fish

Acanthuridae—Surgeonfishes
- Ocean surgeonfish, *Acanthurus bahianus*
- Doctorfish, *Acanthurus chirurgus*
- Blue tang, *Acanthurus coeruleus*

Antennariidae—Frogfishes
- Frogfish, *Antennarius* spp.

Apogonidae—Cardinalfishes
- Flamefish, *Apogon maculatus*
- Conchfish, *Astrapogen stellatus*

Aulostomidae—Trumpetfishes
- Trumpetfish, *Aulostomus maculatus*

Balistidae—Leatherjackets
- Scrawled filefish, *Aluterus scriptus*
- Queen triggerfish, *Balistes vetula*
- Whitespotted filefish, *Cantherhines macrocerus*
- Ocean triggerfish, *Canthidermis sufflamen*
- Black durgon, *Melichthys niger*
- Sargassum triggerfish, *Xanthichthys rigens*

Blenniidae—Combtooth blennies
- Redlip blenny, *Ophioblennius atlanticus*

Bothidae—*Lefteye flounders*
- Peacock flounder, *Bothus lunatus*

Carangidae—Jacks
- Yellow jack, *Caranx bartholomaei*
- Blue runner, *Caranx crysos*
- Horse-eye jack, *Caranx latus*
- Black jack, *Caranx lugubris*
- Bar jack, *Caranx ruber*
- Greater amberjack, *Seriola dumerili*
- Almaco jack, *Seriola rivoliana*

Chaetodontidae—Butterflyfishes
- Longsnout butterflyfish, *Chaetodon aculeatus*
- Foureye butterflyfish, *Chaetodon capistratus*
- Spotfin butterflyfish, *Chaetodon ocellatus*
- Banded butterflyfish, *Chaetodon striatus*

Cirrhitidae—Hawkfishes
- Redspotted hawkfish, *Amblycirrhitus pinos*

Dactylopteridae—Flying gurnards
- Flying gurnard, *Dactylopterus volitans*

Ephippidae—Spadefishes
- Atlantic spadefish, *Chaetodipterus faber*

Gobiidae—Gobies
- Neon goby, *Gobiosoma oceanops*
- Rusty goby, *Priolepis hipoliti*

Grammatidae—Basslets
- Royal gramma, *Gramma loreto*

Haemulidae—Grunts
- Porkfish, *Anisotremus virginicus*
- Margate, *Haemulon album*
- Tomtate, *Haemulon aurolineatum*
- French grunt, *Haemulon flavolineatum*
- White grunt, *Haemulon plumieri*
- Bluestriped grunt, *Haemulon sciurus*

Holocentridae—Squirrelfishes
- Squirrelfish, *Holocentrus adscensionis*
- Longspine squirrelfish, *Holocentrus rufus*
- Blackbar soldierfish, *Myripristis jacobus*
- Cardinal soldierfish, *Plectrypops retrospinis*

Labridae—Wrasses
- Spanish hogfish, *Bodianus rufus*
- Creole wrasse, *Clepticus parrae*
- Yellowcheek wrasse, *Halichoeres cyanocephalus*
- Yellowhead wrasse, *Halichoeres garnoti*
- Clown wrasse, *Halichoeres maculipinna*
- Puddingwife, *Halichoeres radiatus*
- Pearly razorfish, *Hemipteronotus novacula*
- Green razorfish, *Hemipteronotus splendens*
- Hogfish, *Lachnolaimus maximus*
- Bluehead wrasse, *Thalassoma bifasciatum*

Lutjanidae—Snappers
- Black snapper, *Apsilus dentatus*
- Queen snapper, *Etelis oculatus*
- Mutton snapper, *Lutjanus analis*
- Schoolmaster, *Lutjanus apodus*
- Blackfin snapper, *Lutjanus buccanella*
- Gray snapper, *Lutjanus griseus*
- Dog snapper, *Lutjanus jocu*
- Mahogany snapper, *Lutjanus mahogani*
- Lane snapper, *Lutjanus synagris*
- Silk snapper, *Lutjanus vivanus*
- Yellowtail snapper, *Ocyurus chrysurus*
- Wenchman, *Pristipomoides aquilonaris*
- Vermilion snapper, *Rhomboplites aurorubens*

Malacanthidae—Tilefishes
- Blackline tilefish, *Caulolatilus cyanops*
- Sand tilefish, *Malacanthus plumieri*

Mullidae—Goatfishes
- Yellow goatfish, *Mulloidichthys martinicus*
- Spotted goatfish, *Pseudupeneus maculatus*

Muraenidae—Morays
- Chain moray, *Echidna catenata*
- Green moray, *Gymnothorax funebris*
- Goldentail moray, *Gymnothorax miliaris*

Ogcocephalidae—Batfishes
- Batfish, *Ogcocephalus* spp.

Ophichthidae—Snake eels
- Goldspotted eel, *Myrichthys ocellatus*

Opistognathidae—Jawfishes
- Yellowhead jawfish, *Opistognathus aurifrons*
- Dusky jawfish, *Opistognathus whitehursti*

Ostraciidae—Boxfishes
- Spotted trunkfish, *Lactophrys bicaudalis*
- Honeycomb cowfish, *Lactophrys polygonia*
- Scrawled cowfish, *Lactophrys quadricornis*
- Trunkfish, *Lactophrys trigonus*
- Smooth trunkfish, *Lactophrys triqueter*

Pomacanthidae—Angelfishes
- Cherubfish, *Centropyge argi*
- Queen angelfish, *Holacanthus ciliaris*
- Rock beauty, *Holacanthus tricolor*
- Gray angelfish, *Pomacanthus arcuatus*
- French angelfish, *Pomacanthus paru*

Pomacentridae—Damselfishes
- Sergeant major, *Abudefduf saxatilis*
- Blue chromis, *Chromis cyanea*
- Sunshinefish, *Chromis insolata*
- Yellowtail damselfish, *Microspathodon chrysurus*
- Dusky damselfish, *Pomacentrus fuscus*
- Beaugregory, *Pomacentrus leucostictus*
- Bicolor damselfish, *Pomacentrus partitus*
- Threespot damselfish, *Pomacentrus planifrons*

Priacanthidae—Bigeyes
- Bigeye, *Priacanthus arenatus*
- Glasseye snapper, *Priacanthus cruentatus*

Scaridae—Parrotfishes
- Midnight parrotfish, *Scarus coelestinus*
- Blue parrotfish, *Scarus coeruleus*
- Striped parrotfish, *Scarus croicensis*
- Rainbow parrotfish, *Scarus guacamaia*
- Princess parrotfish, *Scarus taeniopterus*
- Queen parrotfish, *Scarus vetula*
- Redband parrotfish, *Sparisoma aurofrenatum*
- Redtail parrotfish, *Sparisoma chrysopterum*
- Redfin parrotfish, *Sparisoma rubripinne*
- Stoplight parrotfish, *Sparisoma viride*

Sciaenidae—Drums
- High-hat, *Equetus acuminatus*
- Jackknife-fish, *Equetus lanceolatus*
- Spotted drum, *Equetus punctatus*

Scorpaenidae—Scorpionfishes

Serranidae—Sea basses
- Rock hind, *Epinephelus adscensionis*
- Graysby, *Epinephelus cruentatus*
- Yellowedge grouper, *Epinephelus flavolimbatus*
- Coney, *Epinephelus fulvus*
- Red hind, *Epinephelus guttatus*
- Jewfish, *Epinephelus itajara*
- Red grouper, *Epinephelus morio*
- Misty grouper, *Epinephelus mystacinus*
- Nassau Grouper, *Epinephelus striatus*
- Butter hamlet, *Hypoplectrus unicolor*
- Swissguard basslet, *Liopropoma rubre*
- Yellowfin grouper, *Mycteroperca venenosa*
- Tiger grouper, *Mycteroperca tigris*
- Creole-fish, *Paranthias furcifer*
- Greater soapfish, *Rypticus saponaceus*
- Orangeback bass, *Serranus annularis*
- Lantern bass, *Serranus baldwini*
- Tobaccofish, *Serranus tabacarius*
- Harlequin bass, *Serranus tigrinus*
- Chalk bass, *Serranus tortugarum*

Soleidae—Soles
- Caribbean tonguefish, *Symphurus arawak*

Sparidae—Porgies
- Sea bream, *Archosargus rhomboidalis*
- Jolthead porgy, *Calamus bajonado*
- Sheepshead porgy, *Calamus penna*
- Pluma, *Calamus pennatula*

Syngnathidae—Pipefishes

Seahorses, *Hippocampus spp.*
Pipefishes, *Syngnathus spp.*
Synodontidae—Lizardfishes
Sand diver, *Synodus intermedius*
Tetraodontidae—Puffers
Sharpnose puffer, *Canthigaster rostrata*
Porcupinefish, *Diodon hystrix*

Table 3 of Appendix A to Part 622—Gulf Reef Fish

Balistidae—Triggerfishes
Gray triggerfish, *Balistes capriscus*
Queen triggerfish, *Balistes vetula*
Carangidae—Jacks
Greater amberjack, *Seriola dumerili*
Lesser amberjack, *Seriola fasciata*
Almaco jack, *Seriola rivoliana*
Banded rudderfish, *Seriola zonata*
Haemulidae—Grunts
Tomtate, *Haemulon aurolineatum*
White grunt, *Haemulon plumieri*
Pigfish, *Orthopristis chrysoptera*
Labridae—Wrasses
Hogfish, *Lachnolaimus maximus*
Lutjanidae—Snappers
Queen snapper, *Etelis oculatus*
Mutton snapper, *Lutjanus analis*
Schoolmaster, *Lutjanus apodus*
Blackfin snapper, *Lutjanus buccanella*
Red snapper, *Lutjanus campechanus*
Cubera snapper, *Lutjanus cyanopterus*
Gray (mangrove) snapper, *Lutjanus griseus*
Dog snapper, *Lutjanus jocu*
Mahogany snapper, *Lutjanus mahogoni*
Lane snapper, *Lutjanus synagris*
Silk snapper, *Lutjanus vivanus*
Yellowtail snapper, *Ocyurus chrysurus*
Wenchman, *Pristipomoides aquilonaris*
Vermilion snapper, *Rhomboplites aurorubens*
Malacanthidae—Tilefishes
Goldface tilefish, *Caulolatilus chrysops*
Blackline tilefish, *Caulolatilus cyanops*
Anchor tilefish, *Caulolatilus intermedius*
Blueline tilefish, *Caulolatilus microps*
Tilefish, *Lopholatilus chamaeleonticeps*
Serranidae—Sea Basses and Groupers
Bank sea bass, *Centropristis ocyurus*
Rock sea bass, *Centropristis philadelphica*
Black sea bass, *Centropristis striata*
Dwarf sand perch, *Diplectrum bivittatum*
Sand perch, *Diplectrum formosum*
Rock hind, *Epinephelus adscensionis*
Speckled hind, *Epinephelus drummondhayi*
Yellowedge grouper, *Epinephelus flavolimbatus*
Red hind, *Epinephelus guttatus*
Jewfish, *Epinephelus itajara*
Red grouper, *Epinephelus morio*
Misty grouper, *Epinephelus mystacinus*
Warsaw grouper, *Epinephelus nigritus*
Snowy grouper, *Epinephelus niveatus*
Nassau grouper, *Epinephelus striatus*
Black grouper, *Mycteroperca bonaci*
Yellowmouth grouper, *Mycteroperca interstitialis*
Gag, *Mycteroperca microlepis*
Scamp, *Mycteroperca phenax*
Yellowfin grouper, *Mycteroperca venenosa*
Sparidae—Porgies
Grass porgy, *Calamus arctifrons*
Jolthead porgy, *Calamus bajonado*
Knobbed porgy, *Calamus nodosus*
Littlehead porgy, *Calamus proridens*
Pinfish, *Lagodon rhomboides*
Red porgy, *Pagrus*

Table 4 of Appendix A to Part 622—South Atlantic Snapper-Grouper

Balistidae—Triggerfishes
Gray triggerfish, *Balistes capriscus*
Queen triggerfish, *Balistes vetula*
Ocean triggerfish, *Canthidermis sufflamen*
Carangidae—Jacks
Yellow jack, *Caranx bartholomaei*
Blue runner, *Caranx crysos*
Crevalle jack, *Caranx hippos*
Bar jack, *Caranx ruber*
Greater amberjack, *Seriola dumerili*
Lesser amberjack, *Seriola fasciata*
Almaco jack, *Seriola rivoliana*
Banded rudderfish, *Seriola zonata*
Ephippidae—Spadefishes
Spadefish, *Chaetodipterus faber*
Haemulidae—Grunts
Black margate, *Anisotremus surinamensis*
Porkfish, *Anisotremus virginicus*
Margate, *Haemulon album*
Tomtate, *Haemulon aurolineatum*
Smallmouth grunt, *Haemulon chrysargyreum*
French grunt, *Haemulon flavolineatum*
Spanish grunt, *Haemulon macrostomum*
Cottonwick, *Haemulon melanurum*
Sailors choice, *Haemulon parrai*
White grunt, *Haemulon plumieri*
Blue stripe grunt, *Haemulon sciurus*
Labridae—Wrasses
Hogfish, *Lachnolaimus maximus*
Puddingwife, *Halichoeres radiatus*
Lutjanidae—Snappers
Black snapper, *Apsilus dentatus*
Queen snapper, *Etelis oculatus*
Mutton snapper, *Lutjanus analis*
Schoolmaster, *Lutjanus apodus*
Blackfin snapper, *Lutjanus buccanella*
Red snapper, *Lutjanus campechanus*
Cubera snapper, *Lutjanus cyanopterus*
Gray snapper, *Lutjanus griseus*
Mahogany snapper, *Lutjanus mahogoni*
Dog snapper, *Lutjanus jocu*
Lane snapper, *Lutjanus synagris*
Silk snapper, *Lutjanus vivanus*
Yellowtail snapper, *Ocyurus chrysurus*
Vermilion snapper, *Rhomboplites aurorubens*
Malacanthidae—Tilefishes
Blueline tilefish, *Caulolatilus microps*
Golden tilefish, *Lopholatilus chamaeleonticeps*
Sand tilefish, *Malacanthus plumieri*
Percichthyidae—Temperate basses
Wreckfish, *Polyprion americanus*
Serranidae—Sea Basses and Groupers
Bank sea bass, *Centropristis ocyurus*
Rock sea bass, *Centropristis philadelphica*
Black sea bass, *Centropristis striata*
Rock hind, *Epinephelus adscensionis*
Graysby, *Epinephelus cruentatus*
Speckled hind, *Epinephelus drummondhayi*
Yellowedge grouper, *Epinephelus flavolimbatus*
Coney, *Epinephelus fulvus*
Red hind, *Epinephelus guttatus*
Jewfish, *Epinephelus itajara*
Red grouper, *Epinephelus morio*
Misty grouper, *Epinephelus mystacinus*
Warsaw grouper, *Epinephelus nigritus*
Snowy grouper, *Epinephelus niveatus*
Nassau grouper, *Epinephelus striatus*
Black grouper, *Mycteroperca bonaci*
Yellowmouth grouper, *Mycteroperca interstitialis*
Gag, *Mycteroperca microlepis*
Scamp, *Mycteroperca phenax*
Tiger grouper, *Mycteroperca tigris*
Yellowfin grouper, *Mycteroperca venenosa*
Sparidae—Porgies
Sheepshead, *Archosargus probatocephalus*
Grass porgy, *Calamus arctifrons*
Jolthead porgy, *Calamus bajonado*
Saucereye porgy, *Calamus*
Whitebone porgy, *Calamus leucosteus*
Knobbed porgy, *Calamus nodosus*
Red porgy, *Pagrus*
Longspine porgy, *Stenotomus caprinus*
Scup, *Stenotomus chrysops*

Appendix B to Part 622—Gulf Areas

TABLE 1 OF APPENDIX B TO PART 622.—SEAWARD COORDINATES OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA

Point No. and reference location [1]	North lat.	West long.
1 Seaward limit of Florida's waters north of Dry Tortugas	24°48.0′	82°48.0′
2 North of Rebecca Shoal	25°07.5′	82°34.0′
3 Off Sanibel Island—Offshore	26°26.0′	82°59.0′
4 West of Egmont Key	27°30.0′	83°21.5′
5 Off Anclote Keys—Offshore	28°10.0′	83°45.0′
6 Southeast corner of Florida Middle Ground	28°11.0′	84°00.0′
7 Southwest corner of Florida Middle Ground	28°11.0′	84°07.0′
8 West corner of Florida Middle Ground	28°26.6′	84°24.8′
9 Northwest corner of Florida Middle Ground	28°42.5′	84°24.8′
10 South of Cawabelle	29°05.0′	84°47.0′
11 South of Cape St. George	29°02.5′	85°09.0′
12 South of Cape San Blas lighted bell buoy—20 fathoms	29°21.0′	85°30.0′

TABLE 1 OF APPENDIX B TO PART 622.—SEAWARD COORDINATES OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA—Continued

Point No. and reference location [1]	North lat.	West long.
13 South of Cape San Blas lighted bell buoy—50 fathoms	28°58.7′	85°30.0′
14 De Soto Canyon	30°06.0′	86°55.0′
15 South of Pensacola	29°46.0′	87°19.0′
16 South of Perdido Bay	29°29.0′	87°27.5′
17 East of North Pass of the Mississippi River	29°14.5′	89°28.0′
18 South of Southwest Pass of the Mississippi River	28°46.5′	89°26.0′
19 Northwest tip of Mississippi Canyon	28°38.5′	90°08.5′
20 West side of Mississippi Canyon	28°34.5′	89°59.5′
21 South of Timbalier Bay	28°22.5′	90°02.5′
22 South of Terrebonne Bay	28°10.5′	90°31.5′
23 South of Freeport	27°58.0′	95°00.0′
24 Off Matagorda Island	27°43.0′	96°02.0′
25 Off Aransas Pass	27°30.0′	96°23.5′
26 Northeast of Port Mansfield	27°00.0′	96°39.0′
27 East of Port Mansfield	26°44.0′	96°37.5′
28 Northeast of Port Isabel	26°22.0′	96°21.0′
29 U.S./Mexico EEZ boundary	26°00.5′	96°24.5′
Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of Texas' waters.		

[1] Nearest identifiable landfall, boundary, navigational aid, or submarine area.

TABLE 2 OF APPENDIX B TO PART 622.—SEAWARD COORDINATES OF THE STRESSED AREA

Point No. and reference location [1]	North lat.	West long.
1 Seaward limit of Florida's waters northeast of Dry Tortugas	24°45.5′	82°41.5′
2 North of Marquesas Keys	24°48.0′	82°06.5′
3 Off Cape Sable	25°15.0′	82°02.0′
4 Off Sanibel Island—Inshore	26°26.0′	82°29.0′
5 Off Sanibel Island—Offshore	26°26.0′	82°59.0′
6 West of Egmont Key	27°30.0′	83°21.5′
7 Off Anclote Keys—Offshore	28°10.0′	83°45.0′
8 Off Anclote Keys—Inshore	28°10.0′	83°14.0′
9 Off Deadman Bay	29°38.0′	84°00.0′
10 Seaward limit of Florida's waters east of Cape St. George	29°35.5′	84°38.6′
Thence westerly along the seaward limit of Florida's waters to:		
11 Seaward limit of Florida's waters south of Cape San Blas	29°32.2′	85°27.1′
12 Southwest of Cape San Blas	29°30.5′	85°52.0′
13 Off St. Andrew Bay	29°53.0′	86°10.0′
14 De Soto Canyon	30°06.0′	86°55.0′
15 South of Florida/Alabama border	29°34.5′	87°38.0′
16 Off Mobile Bay	29°41.0′	88°00.0′
17 South of Alabama/Mississippi border	30°01.5′	88°23.7′
18 Horn/Chandeleur Islands	30°01.5′	88°40.5′
19 Chandeleur Islands	29°35.5′	88°37.0′
20 Seaward limit of Louisiana's waters off North Pass of the Mississippi River	29°16.3′	89°00.0′
Thence southerly and westerly along the seaward limit of Louisiana's waters to:		
21 Seaward limit of Louisiana's waters off Southwest Pass of the Mississippi River	28°57.3′	89°28.2′
22 Southeast of Grand Isle	29°09.0′	89°47.0′
23 Quick flashing horn buoy south of Isles Dernieres	28°32.5′	90°42.0′
24 Southeast of Calcasieu Pass	29°10.0′	92°37.0′
25 South of Sabine Pass—10 fathoms	29°09.0′	93°41.0′
26 South of Sabine Pass—30 fathoms	28°21.5′	93°28.0′
27 East of Aransas Pass	27°49.0′	96°19.5′
28 East of Baffin Bay	27°12.0′	96°51.0′
29 Northeast of Port Mansfield	26°46.5′	96°52.0′
30 Northeast of Port Isabel	26°21.5′	96°35.0′
31 U.S./Mexico EEZ boundary	26°00.5′	96°36.0′
Thence westerly along U.S./Mexico EEZ boundary to the seaward limit of Texas' waters.		

[1] Nearest identifiable landfall, boundary, navigational aid, or submarine area.

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Appendix C to Part 622—Fish Length Measurements

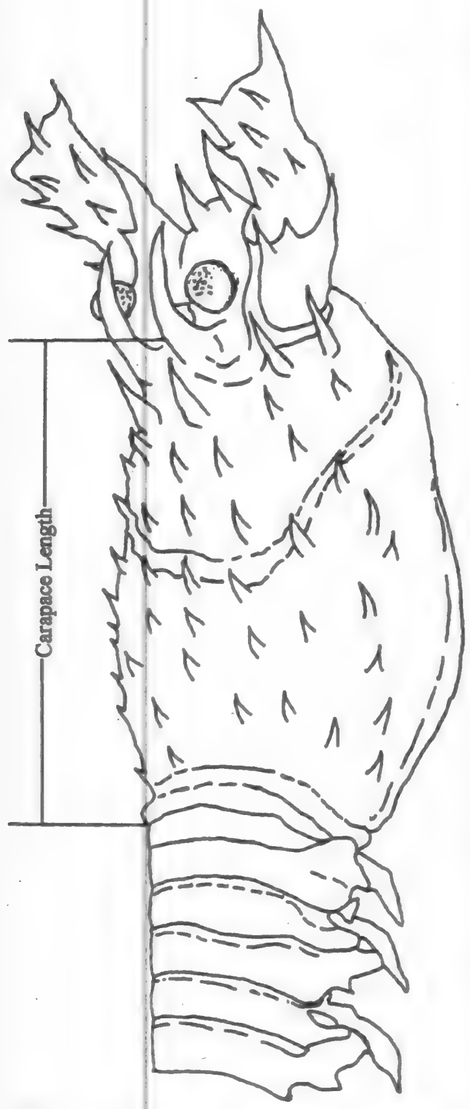

Figure 1 of Appendix C to Part 622—Carapace Length

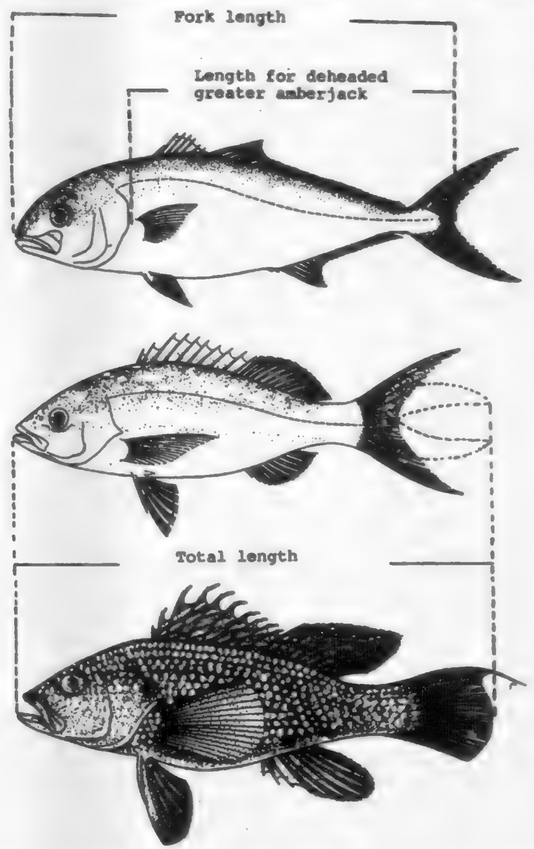

Figure 2 of Appendix C to Part 622.—Fork Length, Total Length, and Length for Deheaded Greater Amberjack

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PARTS 638, 641, 642, 645, 646, 647, 653, 658, 659, 669, AND 670— [REMOVED]

4. Under the authority of 16 U.S.C. 1801 *et seq.*, parts 638, 641, 642, 645, 646, 647, 653, 658, 659, 669, and 670 are removed.

[FR Doc. 96–16254 Filed 7–1–96; 8:45 am]
BILLING CODE 3510–22–M

federal register

Wednesday
July 3, 1996

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902
50 CFR Part 625, et al.
Fisheries of the Northeastern United States; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 625, 648, 650, 651, 652, 655, and 657

[Docket No. 960612172–6172–01; I.D. 051096C]

RIN 0648–AI21

Fisheries of the Northeastern United States

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is consolidating six CFR parts governing the marine fisheries of the Northeast region into one new CFR part. The new part contains regulations implementing the fishery management plans (FMPs) for: summer flounder; Atlantic sea scallops; Northeast multispecies; Atlantic surf clams and ocean quahogs; Atlantic mackerel, squid, and butterfish; and Atlantic salmon and implementing management measures for scup. This final rule reorganizes the FMPs' and scup management measures into a more logical and cohesive order, removes duplicative and outdated provisions, and makes technical and editorial changes to improve readability and clarity, to achieve uniformity in regulatory language, and to correct errors in the existing regulations. This final rule also amends references to Paperwork Reduction Act (PRA) information collection requirements to reflect the consolidation. The purpose of this final rule is to make the regulations more concise, better organized, and thereby easier for the public to use. This action is part of the President's Regulatory Reinvention Initiative.

EFFECTIVE DATE: July 1, 1996, except for paragraphs (a)(78), (k), and (l) of § 648.14, and subpart H of part 648 (§§ 648.124—648.125), which are effective from July 1, through September 29, 1996.

ADDRESSES: Comments regarding burden-hour estimates for collection-of-information requirements contained in this rule should be sent to Dr. Andrew A. Rosenberg, Regional Director, 1 Blackburn Drive, Gloucester, MA 01930 and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Patricia A. Kurkul, NMFS, 508–281–9331.

SUPPLEMENTARY INFORMATION:

Background

In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. This initiative is part of the National Performance Review and calls for comprehensive regulatory reform. The President directed all agencies to undertake a review of all their regulations, with an emphasis on eliminating or modifying those that are obsolete, duplicative, or otherwise in need of reform. This final rule is intended to carry out the President's directive with respect to those regulations implementing Northeast region FMPs and management measures for scup.

Currently, regulations implementing the FMPs for the Northeast fisheries are contained in six separate CFR parts (50 CFR parts 625, 650, 651, 652, 655, and 657). NMFS, through this rulemaking, removes those six parts and consolidates the regulations contained therein into one new part (50 CFR part 648). This consolidated regulation provides the public with a single reference source for Federal fisheries regulations specific to the Northeast region. The restructuring of six parts into a single part results in one set of regulations that is more concise, clearer, and easier to use than six separate parts. General regulations pertaining to all fisheries and regulations pertaining to foreign fisheries have been consolidated and restructured in new 50 CFR part 600 by earlier rulemaking.

The summer flounder fishery in the Northwest Atlantic is managed jointly by NMFS and the Atlantic States Marine Fisheries Commission (Commission) under the FMP for the summer flounder fishery, which is implemented by regulations formerly at 50 CFR part 625. This FMP was prepared by the Mid-Atlantic Fishery Management Council (MAFMC) in cooperation with Commission and the New England Fishery Management Council (NEFMC) and the South Atlantic Fishery Management Council (SAFMC). NMFS manages the harvest of sea scallops under the FMP for the Atlantic sea scallop fishery, which is implemented through regulations formerly at 50 CFR part 650. The Northeast multispecies fishery is managed by NMFS under regulations implementing the FMP for the Northeast multispecies fishery formerly at 50 CFR part 651. The FMPs for the Atlantic sea scallop fishery and the Northeast multispecies fisheries were prepared by the NEFMC, in consultation with the MAFMC (multispecies and scallops) and the SAFMC (scallops). Atlantic surf clam and ocean quahog fisheries are managed by NMFS under regulations implementing the FMP for the Atlantic surf clam and ocean quahog fisheries formerly at 50 CFR part 652. This FMP was prepared by the MAFMC in consultation with the NEFMC. Atlantic mackerel, squid, and butterfish fisheries are managed by NMFS under the FMP for the Atlantic mackerel, squid, and butterfish fisheries of the Northwest Atlantic Ocean, which is implemented by regulations formerly at 50 CFR part 655. The regulations governing fishing for Atlantic mackerel, squid, and butterfish by vessels other than vessels of the United States are contained in 50 CFR part 600. This FMP was prepared by the MAFMC. The Atlantic salmon fishery is managed by NMFS under the FMP for Atlantic salmon, which is implemented by regulations formerly at 50 CFR part 657. This FMP was prepared by the NEFMC.

All of these FMPs were prepared under the authority of the Magnuson Fishery Conservation and Management Act.

The MAFMC recently submitted to NMFS Amendment 8 to the FMP for the summer flounder fishery. That amendment would include scup in the management unit of the FMP. The MAFMC requested NMFS to impose management measures for scup on an emergency interim basis pending its requested approval and implementation of Amendment 8. The emergency measures imposed by NMFS formerly appeared at 50 CFR part 625.

In new part 648, portions of the existing regulations that contain identical or nearly identical provisions have been combined and restructured into similar measures. Paragraph headings have been added for ease in identifying measures, and regulatory language has been revised to make needed technical changes and corrections and to improve clarity and consistency.

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection. Section 902.1(b) of 15 CFR identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule recodifies many recordkeeping and reporting requirements, it also revises section 902.1(b) to reference correctly the new sections resulting from the consolidation.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

Because this rule makes only nonsubstantive and technical changes to existing regulations, no useful purpose would be served by providing advance notice and opportunity for public comment. Accordingly, the Assistant Administrator for Fisheries, NOAA, under 5 U.S.C. 553(b)(B), for good cause finds that providing notice and opportunity for public comment is unnecessary. To the extent that the technical changes made by this rule are nonsubstantive, they are not subject to a 30-day delay in effective date under 5 U.S.C. 553(d). To the extent that the technical changes made by this rule are substantive, the Assistant Administrator, under 5 U.S.C. 553(d)(3), for good cause finds that it is impracticable, unnecessary, and contrary to the public interest to delay their effective date for 30 days. The technical changes do not require any changes in the conduct of fishery participants and thus a 30-day delay in effective date is unnecessary. Further to delay their effectiveness would make it extremely difficult for the affected public to use and understand the regulations and, thus, such a delay would be impracticable and contrary to the public interest.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

The following collection-of-information requirements for Northeast fisheries have been approved by OMB:

(a) *Approved under 0648–0018*—Processed Products Family of Forms—(1) Fishery products: Fish meal oil = 9.6 min/response; (2) fishery products U.S Processors and wholesalers: 3.5 min/response; (3) small processors = 6.6 min/response; (4) large processors = 3.85 min/response; and (5) additional responses in mandatory fisheries = 6.6 min/response.

(b) *Approved under 0648–0202*—Northeast Permit Family of Forms—(1) Vessel permit (initial) = 30 min/response; (2) vessel permit (renewal) 5 min/response; (3) appeal permit denial = 30 min/response; (4) operator permit = 1 hr/response; (5) dealer permit = 5 min/response; (6) observer deployments 2 min/response; (7) experimental fishing exemption = 1.9 hr/response; and (8) vessel identification = 45 min/response.

(c) *Approved under 0648–0212*—Vessel Logbooks—(1) Vessel log = 5 min/response; (2) shellfish log = 12.5 min/response; and (3) pound net log = 15 min/response.

(d) *Approved under 0648–0229*—Dealer Purchase Reports = 2 min/response.

(e) *Approved under 0648–0235*—Survey of Intent and Capacity—Written response = 15 min/response; phone = 5 min/response.

(f) *Approved under 0648–0238*—ITQ Allocation Transfer Request = 5 min/response.

(g) *Approved under 0648–0240*—Application to Shuck at Sea = 5 min/response.

(h) *Approved under 0648–0305*—Gear Identification Requirements = 1 min/response.

(i) *Approved under 0648–0306*—Vessel Identification Requirements = 45 min/response.

(j) *Approved under 0648–0307*—Vessel Monitoring and Communications Requirements (VTS) = 5 sec/response.

The estimated response times include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding burden estimates, or any other aspect of these data collections, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Parts 625, 648, and 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Parts 650, 652, and 655

Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 657

Fisheries, Fishing.

Dated: June 24, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and, under the authority of 16 U.S.C. 1801 *et seq.*, 50 CFR chapter VI are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b) the table is amended by removing in the left column under 50 CFR, the entries "625.4", "625.5", "625.6", "625.7", "625.20", "625.27", "650.4", "650.5", "650.6", "650.7", "650.8", "650.24", "650.25", "650.26", "650.28", "651.4", "651.5", "651.6", "651.7", "651.8", "651.20", "651.21", "651.22", "651.25", "651.28", "651.29", "652.4", "652.5", "652.6", "652.7", "652.9", "652.20", "652.24", "655.4" and 655.6", and in the right column, in corresponding positions, the control numbers; and by adding, in numerical order, the following entries to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
. . . . .	
50 CFR	
. . . . .	
648.4	–0202, –0212
648.5	–0202
648.6	–0202
648.7	–0018, –0212 and –0229
648.8	–0306, –0229
648.9	–0202 and –0307
648.10	–0202
648.11	–0202
648.15	–0202
648.53	–0202
648.70	–0238
648.74	–0240
648.80	–0202
648.81	–0202
648.82	–0202
648.84	–0305
648.100	–0202
648.106	–0202

* * * * *

3. Part 648 is added effective July 1, 1996, except for paragraphs (a)(78), (k), and (l) of § 648.14 and subpart H (§§ 648.124—648.125), which are effective from July 1, through September 29, 1996, to read as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

Subpart A—General Provisions

Sec.
648.1 Purpose and scope.
648.2 Definitions.
648.3 Relation to other laws.
648.4 Vessel permits.
648.5 Operator permits.
648.6 Dealer/processor permits.
648.7 Recordkeeping and reporting requirements.
648.8 Vessel identification.
648.9 VTS requirements.
648.10 DAS notification requirements.
648.11 At-sea sea sampler/observer coverage.
648.12 Experimental fishing.
648.13 Transfers at sea.
648.14 Prohibitions.
648.15 Facilitation of enforcement.
648.16 Penalties.

Subpart B—Management Measures for the Atlantic Mackerel, Squid, and Butterfish Fisheries

648.20 Maximum OYs.
648.21 Procedures for determining initial annual amounts.
648.22 Closure of the fishery.
648.23 Gear restrictions.

Subpart C—Management Measures for Atlantic Salmon

648.40 Prohibition on possession.

Subpart D— Management Measures for the Atlantic Sea Scallop Fishery

648.50 Shell-height standard.
648.51 Gear and crew restrictions.
648.52 Possession restrictions.
648.53 DAS allocations.
648.54 State waters exemption.
648.55 Framework adjustments to management measures.

Subpart E—Management Measures for the Atlantic Surf Clam and Ocean Quahog Fisheries

648.70 Annual individual allocations.
648.71 Catch quotas.
648.72 Minimum surf clam size.
648.73 Closed areas.
648.74 Shucking at sea.
648.75 Cage identification.

Subpart F—Management Measures for the NE Multispecies Fishery

648.80 Regulated mesh areas and restrictions on gear and methods of fishing.
648.81 Closed areas.
648.82 Effort-control program for limited access vessels.
648.83 Minimum fish sizes.
648.84 Gear-marking requirements and gear restrictions.
648.85 Flexible Area Action System.
648.86 Possession restrictions.
648.87 Sink gillnet requirements to reduce harbor porpoise takes.
648.88 Open access permit restrictions.
648.89 Recreational and charter/party restrictions.
648.90 Framework specifications.

Subpart G—Management Measures for the Summer Flounder Fishery

648.100 Catch quotas and other restrictions.
648.101 Closures.
648.102 Time restrictions.
648.103 Minimum fish sizes.
648.104 Gear restrictions.
648.105 Possession restrictions.
648.106 Sea turtle conservation.

Subpart H—Management Measures for the Scup Fishery

648.124 Gear restrictions.
648.125 Minimum fish sizes.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Atlantic Sea Scallop FMP (Scallop FMP)); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the Northeast multispecies fishery (NE Multispecies FMP); and the summer flounder fishery (Summer Flounder FMP). These FMPs and the regulations in this part govern the conservation and management of fisheries of the northeastern United States.

(b) This part governs domestic fishing only. Foreign fishing is governed under subpart F of part 600 of this chapter.

§ 648.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 600.10 of this chapter, the terms used in this part have the following meanings:

Alewife means *Alosa pseudoharengus.*

American lobster or *lobster* means *Homarus americanus.*

American shad means *Alosa sapidissima.*

Atlantic butterfish or *butterfish* means *Peprilus triacanthus.*

Atlantic croaker means *Micropogonias undulatus.*

Atlantic mackerel or *mackerel* means *Scomber scombrus.*

Atlantic Mackerel, Squid, and Butterfish Monitoring Committee means the committee made up of staff representatives of the MAFMC and the NEFMC, and the Northeast Regional Office and NEFSC of NMFS. The MAFMC Executive Director or a designee chairs the Committee.

Atlantic salmon means *Salmo salar.*

Atlantic sea scallop or *scallop* means *Placopecten magellanicus,* throughout its range.

Black sea bass means *Centropristis striata.*

Blowfish (puffer) means any species in the family Tetraodontidae.

Bluefish means *Pomotomus saltatrix.*

Bushel (bu) means a standard unit of volumetric measurement deemed to hold 1.88 ft^3 (53.24 L) of surf clams or ocean quahogs in the shell.

Cage means a container with a standard unit of volumetric measurement containing 60 ft^3 (1,700 L). The outside dimensions of a standard cage generally are 3 ft (91 cm) wide, 4 ft (122 cm) long, and 5 ft (152 cm) high.

Chafing gear or *cookies,* with respect to the scallop fishery, means steel, rubberized or other types of donut rings, disks, washers, twine, or other material attached to or between the steel rings of a sea scallop dredge.

Charter or *party boat* means any vessel that carries passengers for hire to engage in recreational fishing and, with respect to multispecies, that is not fishing under a DAS.

Combination vessel means a vessel that has fished in any one calendar year with scallop dredge gear and otter trawl gear during the period 1988 through 1990, and that is eligible for an allocation of individual DAS under the NE Multispecies FMP and has applied for or been issued a limited access scallop permit.

Commercial fishing or *fishing commercially* means fishing that is intended to, or results in, the barter, trade, transfer, or sale of fish.

Commission means the Atlantic States Marine Fisheries Commission.

Conger eel means *Conger oceanicus.*

Cunner means *Tautogolabrus adspersus.*

Council means the New England Fishery Management Council (NEFMC) for the Atlantic sea scallop and the NE multispecies fisheries or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; the Atlantic surf clam and ocean quahog; and the summer flounder fisheries.

Day(s)-at-sea (DAS), with respect to the NE multispecies and scallop fisheries, means the 24-hour periods of time during which a fishing vessel is absent from port in which the vessel intends to fish for, possess or land; or fishes for, possesses, or lands regulated species or scallops.

Dealer means any person who receives, for a commercial purpose (other than solely for transport on land), from the owner or operator of a vessel issued a valid permit under this part, any species of fish, the harvest of which is managed by this part.

Dredge or *dredge gear,* with respect to the scallop fishery, means gear consisting of a mouth frame attached to a holding bag constructed of metal rings, or any other modification to this design, that can be or is used in the harvest of scallops.

Dredge bottom, with respect to scallops, means the rings and links found between the bail of the dredge and the club stick, which, when fishing, would be in contact with the sea bed. This includes the triangular shaped portions of the ring bag commonly known as "diamonds."

Dredge top, with respect to the scallop fishery, means the mesh panel in the top of a dredge and immediately adjacent rings and links found between the bail of the dredge, the club stick, and the two side panels. The bail of the dredge is the rigid structure of the forward portion of the dredge that connects to the warp and holds the dredge open. The club stick is the rigid bar at the tail of the dredge bag that is attached to the rings.

Dredge vessel, with respect to the scallop fishery, means any fishing vessel that is equipped for fishing using dredge gear and that is capable of catching scallops.

Exempted gear, with respect to the NE multispecies fishery, means gear that is deemed to be not capable of catching NE multispecies and includes: Pelagic hook and line, pelagic longline, spears, rakes, diving gear, cast nets, tongs, harpoons, weirs, dipnets, stop nets, pound nets, pelagic gillnets, pots and traps, purse seines, shrimp trawls (with a properly configured grate as defined under this part), and midwater trawls.

Fishing trip or *trip* means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

Fishing year means:

(1) For the scallop fishery, from March 1 through the last day of February of the following year.

(2) For the NE multispecies fishery, from May 1 through April 30 of the following year.

(3) For all other fisheries in this part, from January 1 through December 31.

FMP means fishery management plan.

Fourspot flounder means *Paralichthys oblongus.*

Gross registered tonnage (GRT) means the gross registered tonnage specified on the USCG documentation for a vessel.

Hagfish means *Myxine glutinosa.*

Handline or *handline gear* means fishing gear that is released by hand and consists of one main line to which is attached no more than two leaders for a total of no more than three hooks. Handlines are retrieved only by hand, not by mechanical means.

Harbor porpoise means *Phocoena phocoena.*

Harbor Porpoise Review Team (HPRT) means a team of scientific and technical experts appointed by the NEFMC to review, analyze, and propose harbor porpoise take mitigation alternatives.

Herring means Atlantic herring, *Clupea harengus,* or blueback herring, *Alosa aestivalis.*

Hickory shad means *Alosa mediocris.*

Hook gear means fishing gear that is comprised of a hook or hooks attached to a line and includes, but is not limited to, longline, setline, jigs, troll line, rod and reel, and line trawl.

Illex means *Illex illecebrosus* (short-finned or summer squid).

John Dory means *Zenopsis conchifera.*

Land means to begin offloading fish, to offload fish, or to enter port with fish.

Liner means a piece of mesh or any other material rigged inside or outside the main or outer net or dredge that restricts the mesh or ring size or otherwise reduces escapement.

Link, with respect to the sea scallop fishery, means the material, usually made of a 3/8-inch (10-mm) or 7/16-inch (11-mm) diameter metal rod, that joins two adjacent rings within the ring bag of a dredge.

Loligo means *Loligo pealei* (long-finned or bone squid).

Longhorn sculpin means *Myoxocephalus octodecimspinosus.*

Longline gear means fishing gear that is or is designed to be set horizontally, either anchored, floating, or attached to a vessel, and that consists of a main or ground line with three or more gangions and hooks.

Menhaden means Atlantic menhaden, *Brevoortia tyrannus.*

Midwater trawl gear means trawl gear that is designed to fish for, is capable of fishing for, or is being used to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time.

Monkfish or *anglerfish* means *Lophius americanus.*

Mullet means any species in the family Mugilidae.

Multispecies Monitoring Committee means a team of scientific and technical staff appointed by the NEFMC to review, analyze, and recommend adjustments to the management measures. The team consists of staff from the NEFMC and the MAFMC, NMFS' Northeast Regional Office, the NEFSC, the USCG, an industry representative, and no more than two representatives from each affected coastal state appointed by the Commission.

NEFSC means the Northeast Fisheries Science Center, NMFS.

Net tonnage (NT) means the net tonnage specified on the USCG documentation for a vessel.

Northeast (NE) multispecies or *multispecies* means the following species:

American plaice—*Hippoglossoides platessoides.*
Atlantic cod—*Gadus morhua.*
Haddock—*Melanogrammus aeglefinus.*
Ocean pout—*Macrozoarces americanus.*
Pollock—*Pollachius virens.*
Redfish—*Sebastes marinus.*
Red hake—*Urophycis chuss.*
Silver hake (whiting)—*Merluccius bilinearis.*
White hake—*Urophycis tenuis.*
Windowpane flounder—*Scophthalmus aquosus.*
Winter flounder—*Pleuronectes americanus.*
Witch flounder—*Glyptocephalus cynoglossus.*
Yellowtail flounder—*Pleuronectes ferrugineus.*

Northern shrimp means *Pandalus borealis.*

Ocean quahog means the species *Arctica islandica.*

Offload or *offloading* means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel. For purposes of the surf clam and ocean quahog fishery, it means to separate physically a cage from a vessel, such as by removing the sling or wire used to remove the cage from the harvesting vessel.

Operator means the master, captain, or other individual on board a fishing vessel, who is in charge of that vessel's operations.

Out of the multispecies fishery or DAS program means the period of time during which a vessel is absent from port and is not fishing for regulated species under the NE multispecies DAS program.

Pair trawl or *pair trawling* means to tow a single net between two vessels for the purpose of, or that is capable of, catching NE multispecies.

Pelagic hook or longline gear means fishing gear that is not fixed, nor designed to be fixed, nor anchored to the bottom and that consists of monofilament main line (as opposed to a cable main line) to which gangions are attached.

Personal use, with respect to the surf clam or ocean quahog fishery, means harvest of surf clams or ocean quahogs for use as bait, for human consumption,

or for other purposes (not including sale or barter) in amounts not to exceed 2 bu (106.48 L) per person per fishing trip.

Postmark means independently verifiable evidence of date of mailing, such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt, or receipt received upon hand delivery to an authorized representative of NMFS.

Prior to leaving port, with respect to the call-in notification system for NE multispecies, means prior to the last dock or mooring in port from which a vessel departs to engage in fishing, including the transport of fish to another port.

Processor means a person who receives surf clams or ocean quahogs for a commercial purpose and removes them from a cage.

Purse seine gear means an encircling net with floats on the top edge, weights and a purse line on the bottom edge, and associated gear, or any net designed to be, or capable of being, used in such fashion.

Recreational fishing means fishing that is not intended to, nor results in the barter, trade, or sale of fish.

Recreational fishing vessel, with respect to the scup fishery, means any vessel from which no fishing other than recreational fishing is conducted. Charter and party boats are considered recreational fishing vessels for purposes of the scup minimum size requirement.

Regional Director means the Director, Northeast Region, NMFS, or a designee.

Regulated species means the subset of NE multispecies that includes Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish, and white hake.

Reporting month means the period of time beginning at 0001 hours local time on the first day of each calendar month and ending at 2400 hours local time on the last day of each calendar month.

Reporting week means the period of time beginning at 0001 local time on Sunday and ending at 2400 hours local time the following Saturday.

Re-rig or *re-rigged* means physical alteration of the vessel or its gear in order to transform the vessel into one capable of fishing commercially for a species in the applicable fishery.

Rigged hooks means hooks that are baited, or only need to be baited, in order to be fished. Unsecured, unbaited hooks and gangions are not considered to be rigged.

Rod and reel means a hand-held (including rod holder) fishing rod with a manually operated reel attached.

Scallop dredge vessel means any fishing vessel, other than a combination vessel, that uses or is equipped to use scallop dredge gear.

Scup means *Stenotomus chrysops*.

Sea Scallop Plan Development Team (PDT) means a team of technical experts appointed by the NEFMC.

Sea raven means *Hemitripterus americanus*.

Searobin means any species of the family Triglidae.

Shucking or *to shuck* means opening or to open a scallop, surf clam, or ocean quahog and removing the meat or the adductor muscle from the shell.

Shucking machine means any mechanical device that automatically removes the meat or the adductor muscle from a scallop, surf clam, or ocean quahog shell.

Sink gillnet or bottom-tending gillnet means with respect to the NE multispecies fishery, any gillnet, anchored or otherwise, that is designed to be, or is fished on or near the bottom in the lower third of the water column.

Skate means any species of the family Rajidae.

Smooth dogfish means *Mustelis canis*.

Sorting machine means any mechanical device that automatically sorts whole scallops by shell height, size, or other physical characteristics.

Spiny dogfish means *Squalus acanthias*.

Spot means *Leiostomus xanthurus*.

Square mesh, with respect to the NE multispecies fishery, means mesh in which the horizontal bars of the mesh run perpendicular to the long axis of the net so when the net is placed under a strain the mesh remains open to a square-like shape. Square mesh can be formed by hanging diamond mesh "on the square," if the resulting mesh conforms with the above description of square mesh.

Squid means *Loligo pealei* or *Illex illecebrosus*.

Standard tote means a box typically constructed of plastic, designed to hold 100 lb (45.3 kg) of fish plus ice, and that has a liquid capacity of 70 L, or a volume of not more than 4,320 cubic in (2.5 cubic ft or 70.79 cubic cm).

Substantially similar harvesting capacity means the same or less GRT and vessel length.

Summer flounder means *Paralichthys dentatus*.

Summer Flounder Monitoring Committee means a committee made up of staff representatives of the MAFMC, NEFMC, and SAFMC, the NMFS Northeast Regional Office, the NEFSC, the Southeast Science Center, and the Commission. The MAFMC Executive Director or a designee chairs the committee.

Surf clams means Atlantic surf clams of the species *Spisula solidissima*.

Swordfish means *Xiphias gladius*.

Tautog (blackfish) means *Tautoga onitas*.

Tied up to the dock, with respect to NE multispecies, means to tie-up at a dock, on a mooring, or in a harbor.

Tilefish means *Lopholatilus chamaeleonticeps*.

Target total allowable catch (TAC) means the annual domestic harvest targets for regulated species.

Transfer means to begin to remove, to remove, to pass over the rail, or to otherwise take away fish from any vessel and move them to another vessel.

Trawl sweep means the total length of the footrope on a trawl net that is directly attached to the webbing of a net.

Upon returning to port, for purposes of the call-in notification system for the NE multispecies fishery, means the first point when a vessel ties up at a dock or mooring in a port at the end of a fishing trip.

Vessel length means the length specified on the USCG documentation for a vessel or on the state registration for a vessel not required to be documented under title 46 U.S.C., if the state length is verified by an authorized officer or NMFS official.

Vessel Tracking System (VTS) means a vessel tracking system as set forth in § 648.9 and approved by NMFS for use by scallop and NE multispecies vessels, as required by this part.

VTS unit means a device installed on board a vessel used for vessel tracking and transmitting the vessel's position as required by this part.

Weakfish means *Cynoscion regalis*.

Whiting means *Merluccius bilinearis*.

§ 648.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 600.705.

(b) Nothing in these regulations supersedes more restrictive state management measures for any of the species referenced in § 648.1 and, for Atlantic salmon, more restrictive local management measures.

§ 648.4 Vessel permits.

(a) *Fishery specific vessel permit information.* (1) *NE multispecies vessels.* Any vessel of the United States, including a charter or party boat, must have been issued and have on board a valid multispecies permit to fish for, possess or land multispecies in or from the EEZ. Recreational vessels and vessels fishing for NE multispecies exclusively in state waters are exempt from this requirement.

(i) *Limited access multispecies permits*—(A) *Eligibility.* To be eligible to apply for a limited access multispecies permit, as specified in § 648.82, in 1996 and thereafter, a vessel must have been issued a limited access multispecies permit for the preceding year, must be replacing a vessel that was issued a limited access multispecies permit for the preceding year, or must qualify for a 1996 limited access multispecies hook-gear permit under this paragraph (a)(1)(i). Vessels qualifying for 1996 limited access multispecies hook-gear permits are qualified only for that limited access permit category. A vessel is eligible for a 1996 limited access multispecies hook-gear permit, provided:

(*1*) The vessel was issued a 1995 open access multispecies hook-gear permit and the owner or operator of the vessel submitted to the Regional Director, no later than January 26, 1996, fishing log reports dated between June 1, 1994, and June 1, 1995, when fishing with hook gear under the open access hook-gear permit, documenting landings of at least 500 lb (226.8 kg) of NE multispecies finfish, or its equivalent in numbers of fish; or

(*2*) The vessel is replacing such a vessel.

(B) *Application/renewal restrictions.* Owners of vessels must apply for a limited access multispecies hook-gear permit before September 1, 1996, to receive an automatic mailing of an application to renew their permit in 1997 and to be assured that their permit application will be processed within 30 days. Vessel owners applying after December 31, 1996, will be ineligible to apply for an initial limited access multispecies hook-gear permit. To renew or apply for a limited access multispecies permit, a completed application must be received by the Regional Director by the first day of the fishing year for which the permit is required. Failure to renew a limited access multispecies permit in any year bars the renewal of the permit in subsequent years.

(C) *Qualification restriction.* Unless the Regional Director determines to the contrary, no more than one vessel may qualify, at any one time, for a limited access permit based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a limited access permit, based on one vessel's fishing and permit history, the Regional Director will determine who is entitled to qualify for the permit and the DAS allocation according to paragraph (a)(1)(i)(D) of this section.

(D) *Change in ownership.* The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

(E) *Replacement vessels.* To be eligible for a limited access permit under this section, the replacement vessel must meet the following criteria and any applicable criteria under paragraph (a)(1)(i)(F) of this section:

(*1*) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel that was initially issued a limited access permit as of the date the initial vessel applied for such permit.

(*2*) The replacement vessel's length, GRT, and NT may not exceed by more than 10 percent the length, GRT, and NT of the vessel that was initially issued a limited access permit as of the date the initial vessel applied for such permit. For purposes of this paragraph (a)(1)(i)(E)(*2*), a vessel not required to be documented under title 46 U.S.C. will be considered to be 5 NT. For undocumented vessels, GRT does not apply.

(F) *Upgraded vessel.* A vessel may be upgraded, whether through refitting or replacement, and still be eligible for or be eligible to retain or renew a limited access permit, only if the upgrade complies with the following:

(*1*) The vessel's horsepower may be increased, whether through refitting or replacement, only once. Such an increase may not exceed 20 percent of the horsepower of the vessel initially issued a limited access permit as of the date the initial vessel applied for such permit.

(*2*) The vessel's length, GRT, and NT may be increased, whether through refitting or replacement, only once. Any increase in any of these three specifications of vessel size may not exceed 10 percent of the respective specification of the vessel initially issued a limited access permit as of the date the initial vessel applied for such permit. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade.

(G) *Consolidation restriction.* Limited access permits and DAS allocations may not be combined or consolidated.

(H) *Appeal of denial of permit.* (*1*) *Eligibility.* Any applicant eligible to apply for an initial limited access multispecies hook-gear permit who is denied such permit may appeal the denial to the Regional Director within 30 days of the notice of denial. Any such appeal must be based on one or more of the following grounds, must be in writing, and must state the grounds for the appeal:

(*i*) The information used by the Regional Director was based on mistaken or incorrect data.

(*ii*) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria.

(*iii*) The applicant has new or additional information.

(*2*) *Appeal review.* The Regional Director will appoint a designee who will make the initial decision on the appeal. The appellant may request a review of the initial decision by the Regional Director by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision shall become the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Director. The hearing officer shall make findings and a recommendation to the Regional Director which shall be advisory only. Upon receiving the findings and a recommendation, the Regional Director will issue a final decision on the appeal. The Regional Director's decision is the final administrative action of the Department of Commerce.

(*3*) *Status of vessels pending appeal.* A vessel denied a limited access multispecies hook-gear permit may fish under the limited access multispecies hook-gear category, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Director authorizing the vessel to fish under the limited access hook-gear category. The Regional Director will issue such a letter for the pendency of any appeal. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity, pending a final decision on the appeal. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Director shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

(I) *Limited access permit restrictions.* (*1*) A vessel may be issued a limited access multispecies permit in only one category during a fishing year. Vessels may not change limited access multispecies permit categories during the fishing year, except as provided in

paragraph (a)(1)(i)(I)(*2*) of this section. A vessel issued a limited access multispecies hook-gear permit may not change its limited access permit category at any time.

(*2*) The owner of a vessel issued a limited access multispecies permit may request a change in permit category, unless otherwise restricted by paragraph (a)(1)(i)(I)(*1*) of this section. In 1996, a vessel owner has one opportunity to request a change in permit category by submitting an application to the Regional Director by August 14, 1996. If a complete application is not submitted by that date, the vessel must fish only in the DAS program assigned for the remainder of the 1996 fishing year. Any DAS that a vessel uses prior to a change in permit category will be counted against its allocation received under any subsequent permit category. For 1997 and beyond, the owner of a limited access multispecies vessel eligible to request a change in permit category must elect a category prior to the start of each fishing year and will have one opportunity to request a change in permit category by submitting an application to the Regional Director within 45 days of issuance of the vessel's permit. After that date, the vessel must remain in that permit category for the duration of the fishing year.

(*3*) With the exception of combination vessels, sea scallop dredge vessels are not eligible for limited access multispecies permits.

(J) *Confirmation of Permit History.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, may apply for and receive a Confirmation of Permit History (CPH) if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid and current CPH preserves the eligibility of the applicant to apply for or renew a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. A CPH must be applied for and received on an annual basis in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH also preserves such fishing privileges. Any decision regarding the issuance of a CPH for a qualifying vessel that has applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. An application for a CPH must be received by the Regional Director by the beginning of the fishing year for which it is required. Information requirements for the CPH application are the same as those for a limited access permit with any request for information about the vessel being applicable to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to this paragraph (a)(1)(i)(J).

(K) *Abandonment or voluntary relinquishment of permits.* If a vessel's limited access permit for a particular fishery is voluntarily relinquished to the Regional Director, or abandoned through failure to renew or otherwise, no limited access permit for that fishery may be re-issued or renewed based on that vessel's history or to any vessel relying on that vessel's history.

(L) *Restriction on permit splitting.* A limited access multispecies permit may not be issued to a vessel or its replacement, or remain valid, if the vessel's permit or fishing history has been used to qualify another vessel for another Federal fishery.

(ii) *Open access permits.* Subject to the restrictions in § 648.88, a U.S. vessel that has not been issued a limited access multispecies permit is eligible for an open access multispecies handgear or charter/party permit. A U.S. vessel that has been issued a valid limited access scallop permit, but that has not been issued a limited access multispecies permit, is eligible for an open access scallop multispecies possession limit permit. The owner of a vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Director at any time.

(2) *Atlantic sea scallop vessels*—Any vessel of the United States that fishes for, possesses, or lands Atlantic sea scallops in quantities greater than 40 lb (18.14 kg) shucked, or 5 bu (176.2 L) of in-shell scallops per trip, except vessels that fish exclusively in state waters for scallops, must have been issued and carry on board a valid scallop permit.

(i) *Limited access scallop permits.* Any vessel of the United States that possesses or lands more than 400 lb (181.44 kg) of shucked, or the equivalent amount of in-shell scallops (50 bu (176.2 L)) per trip, except vessels that fish exclusively in state waters for scallops, must have been issued and carry on board a valid limited access scallop permit.

(A) *Eligibility.* To be eligible to apply for a limited access scallop permit, a vessel must have been issued a limited access scallop permit for the preceding year, or the vessel must be replacing a vessel that has been issued a limited access scallop permit for the preceding year.

(B) *Application/renewal restrictions.* To renew or apply for a limited access scallop permit, a completed application must be received by the Regional Director by the first day of the fishing year for which the permit is required. Failure to renew a limited access scallop permit in any year bars the renewal of the permit in subsequent years.

(C) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Percentage ownership restrictions.* (*1*) For any vessel acquired after March 1, 1994, a vessel owner is not eligible to be issued a limited access scallop permit for the vessel if the issuance of the permit will result in the vessel owner, or any person who is a shareholder or partner of the vessel owner, having an ownership interest in limited access scallop vessels in excess of 5 percent of the number of all limited access scallop vessels at the time of permit application.

(*2*) Vessel owners who were initially issued a 1994 limited access scallop permit, or were issued or renewed a limited access scallop permit for a vessel in 1995 and thereafter in compliance with the ownership restrictions in paragraph (a)(2)(i)(H)(*1*) of this section, are eligible to renew such permit(s), regardless of whether the renewal of the permits will result in the 5 percent ownership restriction being exceeded.

(*3*) Having an ownership interest includes, but is not limited to, persons who are shareholders in a vessel owned by a corporation, who are partners (general or limited) to a vessel owner, or who, in any way, partly own a vessel.

(I) *Limited access permit restrictions.* A vessel may be issued a limited access scallop permit in only one category during a fishing year. The owner of a vessel issued a limited access scallop permit must elect a permit category for that vessel prior to the start of each fishing year and will have one opportunity to request a change in permit category by submitting an application to the Regional Director within 45 days of issuance of the vessel's permit. After this date, the vessel must remain in that permit category for the duration of the fishing year. Any DAS that a vessel uses prior to a change in permit category will be counted against its allocation received under any subsequent permit category.

(J) *Confirmation of Permit History.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(ii) *General scallop permit.* Any vessel of the United States that is not in possession of a limited access scallop permit, and that possesses, or lands per trip, more than 40 lb (18.14 kg) and less than or including 400 lb (181.44 kg) of shucked meats, or the equivalent amount of in-shell scallops (5 and 50 bu (176.2 L and 176.2 L), respectively), except vessels that fish exclusively in state waters for scallops, must carry on board a valid general scallop permit.

(3) *Summer flounder vessels.* Any vessel of the United States that fishes for or retains summer flounder in the EEZ must have been issued and carry on board a valid summer flounder permit, except for vessels other than party or charter vessels that observe the possession limit set forth in § 648.105.

(i) *Moratorium permits (applicable through 1997).* (A) *Eligibility.* To be eligible to apply for a moratorium permit to fish for and retain summer flounder in excess of the possession limit in § 648.105 in the EEZ, a vessel must have been issued a summer flounder moratorium permit in a previous year or be replacing a vessel that was issued a moratorium permit for a previous year.

(B) *Application/renewal restriction.* No one may apply for a summer flounder moratorium permit for a vessel after:

(*1*) The owner retires the vessel from the fishery.

(*2*) The vessel fails to land any summer flounder at least once within any 52-consecutive-week period.

(C) *Replacement vessels.* To be eligible for a moratorium permit, the replacement vessel must be replacing a vessel of substantially similar harvesting capacity that is judged unseaworthy by the USCG, for reasons other than lack of maintenance, or that involuntarily left the fishery during the moratorium. Both the entering and replaced vessels must be owned by the same person. Vessel permits issued to vessels that involuntarily leave the fishery may not be combined to create larger replacement vessels.

(ii) *Party and charter boat permits.* Any party or charter boat is eligible for a permit to fish for summer flounder, other than a summer flounder moratorium permit, if it is carrying passengers for hire. Such vessel must observe the possession limits specified in § 648.105.

(iii) *Exemption permits.* Owners of summer flounder vessels seeking an exemption from the minimum mesh requirement under the provisions of § 648.104(b)(1) must apply to the Regional Director under paragraph (c) of this section at least 7 days prior to the date they wish the permit to become effective. The applicant must mark "Exemption Permit Request" on the permit application at the top. A permit issued under this paragraph (a)(3)(iii) does not meet the requirements of paragraph (a)(3)(i) of this section, but is subject to the other provisions of this section. Persons issued an exemption permit must surrender it to the Regional Director at least 1 day prior to the date they wish to fish not subject to the exemption. The Regional Director may impose temporary additional procedural requirements by publishing a notification in the **Federal Register**.

(4) *Surf clam and ocean quahog vessels.*—Any vessel of the United States that fishes for surf clams or ocean quahogs, except vessels taking surf clams and ocean quahogs for personal use or fishing exclusively within state waters, must have been issued and carry on board a valid surf clam or ocean quahog permit, respectively.

(5) *Mackerel, squid, and butterfish vessels*—Beginning on January 1, 1997, any vessel of the United States, including party or charter vessels, that fishes for, possesses, or lands mackerel, squid, or butterfish in or from the EEZ, must have been issued and carry on board a valid *Loligo* and butterfish moratorium permit, incidental catch permit, mackerel and *Illex* permit or party/charter permit. This requirement does not apply to recreational fishing vessels. Until January 1, 1997, vessels that have been issued 1995 Federal mackerel, squid, and butterfish permits and are not otherwise subject to permit sanctions due to enforcement proceedings, may fish for, possess, or land mackerel, squid, or butterfish in or from the EEZ.

(i) *Loligo squid and butterfish moratorium permits.* (A) *Eligibility.* A vessel is eligible for a moratorium permit to fish for and retain *Loligo* squid or butterfish in excess of the incidental catch allowance specified in paragraph (a)(5)(i) of this section, if it meets any of the following criteria:

(*1*) The vessel landed and sold at least 20,000 lb (9.07 mt) of *Loligo* squid or butterfish in any 30 consecutive day period between August 13, 1981, and August 13, 1993.

(*2*) The vessel is replacing such a vessel and meets the requirements of paragraph (a)(3)(i)(C) of this section.

(B) *Application/renewal restrictions.* No one may apply for an initial *Loligo* squid and butterfish moratorium permit for a vessel after:

(*1*) May 2, 1997.

(*2*) The owner retires the vessel from the fishery.

(C) *Replacement vessels.* See paragraph (a)(3)(i)(C) of this section.

(D) *Appeal of denial of permit.* (*1*) Any applicant denied a moratorium permit may appeal to the Regional Director within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Director erred in concluding that the vessel did not meet the criteria in paragraph (a)(5)(i)(A)(*1*) of this section. The appeal shall set forth the basis for the applicant's belief that the Regional Director's decision was made in error.

(*2*) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Director.

(*3*) The hearing officer shall make a recommendation to the Regional Director.

(*4*) The decision on the appeal by the Regional Director is the final decision of the Department of Commerce.

(ii) *Incidental catch permits.* Any vessel of the United States may obtain a permit to fish for or retain up to 2,500 lb (1.13 mt) of *Loligo squid* or butterfish as an incidental catch in another directed fishery. The incidental catch allowance may be revised by the Regional Director, based upon a recommendation by the Council, following the procedure set forth in § 648.21.

(iii) *Mackerel and Illex squid permits.* Any vessel of the United States may obtain a permit under this section to fish for or retain Atlantic mackerel or Illex squid in or from the EEZ.

(iv) *Party and charter boat permits.* The owner of any party or charter boat must obtain a permit to fish for or retain in or from the EEZ mackerel, squid, or butterfish while carrying passengers for hire.

(b) *Permit conditions.* Vessel owners who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel

and vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and pertinent gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium permit must also agree, as a condition of the permit, not to land summer flounder in any state that the Regional Director has determined no longer has commercial quota available. A state not receiving an allocation of summer flounder shall be deemed to have no commercial quota available. Owners or operators fishing for surf clams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surf clam and ocean quahog requirement of this part differs from a surf clam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owner or operator permitted to fish in the EEZ for surf clams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surf clam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Director allows an individual to comply with the less restrictive state minimum size requirement, so long as fishing is conducted exclusively within state waters.

(c) *Vessel permit applications*—(1) *General.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Director. The application must be signed by the owner of the vessel, or the owner's authorized representative, and be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section. Vessel owners who are eligible to apply for limited access or moratorium permits under this part shall provide information with the application sufficient for the Regional Director to determine whether the vessel meets the applicable eligibility requirements specified in this section.

(2) *Information requirements.* (i) An application for a permit issued under this section, in addition to the information specified in paragraph (c)(1) of this section, also must contain at least the following information, and any other information required by the Regional Director: Vessel name; owner name, mailing address, and telephone number; USCG documentation number and a copy of the vessel's current USCG documentation or, for a vessel not required to be documented under title 46 U.S.C., the vessel's state registration number and a copy of the current state registration; a copy of the vessel's current party/charter boat license (if applicable); home port and principal port of landing; length overall; GRT; NT; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish hold capacity; type of fishing gear used by the vessel; number of crew; number of party or charter passengers licensed to carry (if applicable); permit category; if the owner is a corporation, a copy of the current Certificate of Incorporation or other corporate papers showing the date of incorporation and the names of the current officers of the corporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the current Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners having a 25-percent interest or more; the name and signature of the owner or the owner's authorized representative; and permit number of any current or, if expired, previous Federal fishery permit issued to the vessel.

(ii) An application for an initial limited access multispecies hook-gear permit must also contain the following information:

(A) If the engine horsepower was changed or a contract to change the engine horsepower had been entered into prior to May 1, 1996, such that it is different from that stated in the vessel's most recent application for a Federal fisheries permit before May 1, 1996, sufficient documentation to ascertain the different engine horsepower. However, the engine replacement must be completed within 1 year of the date of when the contract for the replacement engine was signed.

(B) If the length, GRT, or NT was changed or a contract to change the length, GRT, or NT been entered into prior to May 1, 1996, such that it is different from that stated in the vessel's most recent application for a Federal fisheries permit, sufficient documentation to ascertain the different length, GRT, or NT. However, the upgrade must be completed within 1 year from the date when the contract for the upgrade was signed.

(iii) An application for a multispecies permit must also contain a copy of the vendor installation receipt from a NMFS certified VTS vendor as described in § 648.9, if the vessel has been issued a limited access multispecies Combination Vessel permit or individual DAS category permit, or if the applicant elects to use a VTS unit, although not required.

(iv) An application for a limited access scallop permit must also contain the following information:

(A) For every person named by applicants for limited access scallop permits pursuant to paragraph (c)(2)(i) of this section, the names of all other vessels in which that person has an ownership interest and for which a limited access scallop permit has been issued or applied for.

(B) If applying for full-time or part-time limited access scallop permit, or if opting to use a VTS unit, though not required, a copy of the vendor installation receipt from a NMFS-approved VTS vendor as described in § 648.9.

(C) If applying to fish under the small dredge program set forth under § 648.51(e), an annual declaration into the program.

(v) An application for a surf clam and ocean quahog permit must also contain the pump horsepower.

(d) *Fees.* The Regional Director may charge a fee to recover administrative expenses of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Director, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

(e) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director shall issue a permit within 30 days of receipt of the application, unless the application is deemed incomplete for the following reasons:

(i) The applicant has failed to submit a complete application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received and the applicant has submitted all applicable reports specified in § 648.7;

(ii) The application was not received by the Regional Director by the applicable deadline set forth in this section;

(iii) The applicant and applicant's vessel failed to meet all applicable eligibility requirements set forth in this section;

(iv) The applicant applying for a limited access multispecies combination vessel or individual DAS permit, a full-time or part-time limited access scallop permit, or electing to use a VTS, has failed to meet all of the VTS requirements specified in §§ 648.9 and 648.10; or

(v) The applicant has failed to meet any other application requirements stated in this part.

(2) *Incomplete applications.* Upon receipt of an incomplete or improperly executed application for any permit under this part, the Regional Director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Change in permit information.* Any change in the information specified in paragraph (c)(2) of this section must be submitted by the applicant in writing to the Regional Director within 15 days of the change, or the permit is void.

(g) *Expiration.* A permit expires upon the renewal date specified in the permit.

(h) *Duration.* A permit will continue in effect unless it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as specified in paragraph (f) of this section. However, the Regional Director may authorize the continuation of a permit if the new owner so requests. Applications for permit continuations must be addressed to the Regional Director.

(i) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(j) *Reissuance.* Permits may be issued by the Regional Director when requested in writing by the owner, stating the need for reissuance, the name of the vessel, and the fishing permit number assigned. An application for a reissued permit will not be considered a new application. The fee for a reissued permit shall be the same as for an initial permit.

(k) *Transfer.* Permits issued under this part are not transferable or assignable. A permit will be valid only for the fishing vessel and owner for which it is issued.

(l) *Display.* The permit must be carried, at all times, on board the vessel for which it is issued, and must be maintained in legible condition. The permit shall be subject to inspection upon request by any authorized official.

(m) *Sanctions.* The Assistant Administrator may suspend, revoke, or modify, any permit issued or sought under this section. Procedures governing enforcement-related permit sanctions or denials are found at subpart D of 15 CFR part 904.

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing sea scallops in excess of 40 lb (18.1 kg), NE multispecies, Atlantic mackerel, squid or butterfish harvested in or from the EEZ, or issued a permit for these species under this part, must have and carry on board a valid operator permit issued under this section. An operator permit issued pursuant to part 649 shall satisfy the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

(b) *Operator permit application.* Applicants for a permit under this section must submit a completed application on an appropriate form provided by the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application, pursuant to this section.

(c) *Condition.* Vessel operators who apply for an operator's permit under this section must agree as a condition of this permit that the operator and vessel's fishing, catch, crew size, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed) are subject to all requirements of this part while fishing in the EEZ or on board a vessel for which a permit is issued under § 648.4, unless exempted from such requirements under § 648.12. The vessel and all such fishing, catch, and gear will remain subject to all applicable state or local requirements. Further, such operators must agree, as a condition of this permit, that, if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be aboard any fishing vessel issued a Federal fisheries permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in offloading. If a requirement of this part and a management measure required by state or local law differ, any operator issued a permit under this part must comply with the more restrictive requirement.

(d) *Information requirements.* An applicant must provide at least all the following information and any other information required by the Regional Director: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; social security number (optional); and signature of the applicant. The applicant must also provide two recent (no more than 1 year old), color, passport-size photographs.

(e) *Fees.* Same as § 648.4(d).

(f) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director shall issue an operator's permit within 30 days of receipt of a completed application, if the criteria specified herein are met. Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(g) *Expiration.* Same as § 648.4(g).

(h) *Duration.* A permit is valid until it is revoked, suspended or modified under 15 CFR part 904, or otherwise expires, or the applicant has failed to report a change in the information on the permit application to the Regional Director as specified in paragraph (k) of this section.

(i) *Reissuance.* Reissued permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for reissuance and the Federal operator permit number assigned. An applicant for a reissued permit must also provide two recent, color, passport-size photos of the applicant. An application for a reissued permit will not be considered a new application. An appropriate fee may be charged.

(j) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom it is issued.

(k) *Change in permit application information.* Notice of a change in the permit holder's name, address, or telephone number must be submitted in writing to, and received by, the Regional Director within 15 days of the change in information. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(l) *Alteration.* Same as § 648.4(i).

(m) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer or NMFS official.

(n) *Sanctions.* Vessel operators with suspended or revoked permits may not be aboard a federally permitted fishing vessel in any capacity while the vessel is at sea or engaged in offloading. Procedures governing enforcement related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(o) *Vessel owner responsibility.* Vessel owners are responsible for ensuring that their vessels are operated by an individual with a valid operator's permit issued under this section.

§ 648.6 Dealer/processor permits.

(a) *General.* All NE multispecies, scallop, summer flounder, surf clam and ocean quahog dealers, and surf clam and ocean quahog processors must have been issued and have in their possession a permit for such species issued under this section. As of January 1, 1997, all mackerel, squid, and butterfish dealers must have been issued and have in their possession a valid dealers permit for those species.

(b) *Dealer/processor permit applications.* Same as § 648.5(b).

(c) *Information requirements.* Applications must contain at least the following information, and any other information required by the Regional Director: Company name, place(s) of business (principal place of business if applying for a surf clam and ocean quahog permit), mailing address(es) and telephone number(s), owner's name, dealer permit number (if a renewal), name and signature of the person responsible for the truth and accuracy of the application, a copy of the certificate of incorporation if the business is a corporation, and a copy of the Partnership Agreement and the names and addresses of all partners if the business is a partnership.

(d) *Fees.* Same as § 648.4(d).

(e) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to an applicant, unless the applicant fails to submit a completed application. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified in § 648.7 during the 12 months immediately preceding the application. Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* Same as § 648.4(g).

(g) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as required by paragraph (j) of this section.

(h) *Reissuance.* Reissued permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for reissuance and the Federal dealer permit number assigned. An application for a reissued permit will not be considered a new application. An appropriate fee may be charged.

(i) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom, or other business entity to which, it is issued.

(j) *Change in application information.* Same as § 648.5(k).

(k) *Alteration.* Same as § 648.4(i).

(l) *Display.* Same as § 648.5(m).

(m) *Federal versus state requirements.* If a requirement of this part differs from a fisheries management measure required by state law, any dealer issued a Federal dealer permit must comply with the more restrictive requirement.

(n) *Sanctions.* Same as § 648.4(m).

§ 648.7 Recordkeeping and reporting requirements.

(a) *Dealers*—(1) *Weekly report.* Federally-permitted dealers must send by mail to the Regional Director, or official designee, on a weekly basis on forms supplied by or approved by the Regional Director a report of fish purchases, except that surf clam and ocean quahog dealers or processors are required only to report surf clam and ocean quahog purchases. If authorized in writing by the Regional Director, dealers may submit reports electronically or through other media. The following information, and any other information required by the Regional Director, must be provided in the report:

(i) Summer flounder, scallop, NE multispecies and squid, mackerel and butterfish dealers must provide: Name and mailing address of dealer, dealer number, name and permit number of the vessels from which fish are landed or received, dates of purchases, pounds by species, price by species, and port landed. If no fish are purchased during the week, a report so stating must be submitted. All report forms must be signed by the dealer or other authorized individual.

(ii) Surf clam and ocean quahog processors and dealers must provide: Date of purchase or receipt; name, permit number and mailing address; number of bushels by species; cage tag numbers; allocation permit number; vessel name and permit number; price per bushel by species. Dealers must also report disposition of surf clams or ocean quahogs, including name and permit number of recipients. Processors must also report size distribution and meat yield per bushel by species.

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section are required to submit the following information on an annual basis, on forms supplied by the Regional Director:

(i) Summer flounder, scallop, NE multispecies, and squid, mackerel and butterfish dealers must complete the "Employment Data" section of the Annual Processed Products Reports; completion of the other sections of that form is voluntary. Reports must be submitted to the address supplied by the Regional Director.

(ii) Surf clam and ocean quahog processors and dealers must provide the average number of processing plant employees during each month of the year just ended; average number of employees engaged in production of processed surf clam and ocean quahog products, by species, during each month of the year just ended; plant capacity to process surf clam and ocean quahog shellstock, or to process surf clam and ocean quahog meats into finished products, by species; an estimate, for the next year, of such processing capacities; and total payroll for surf clam and ocean quahog processing, by month. If the plant processing capacities described in this paragraph (a)(2)(ii) change more than 10 percent during any year, the processor shall promptly notify the Regional Director.

(b) *Vessel owners*—(1) *Fishing Vessel Log Reports*—(i) *Owners of vessels issued summer flounder moratorium, scallop, multispecies, or mackerel, squid, and butterfish permits.* The owner or operator of any vessel issued a vessel permit for summer flounder moratorium, scallops, NE multispecies, or, as of January 1, 1997, a mackerel, squid, or butterfish vessel permit, must maintain on board the vessel, and submit, an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Director. If authorized in writing by the Regional Director, vessel owners or operators may submit reports electronically, for example by using a VTS or other media. At least the following information, and any other information required by the Regional Director, must be provided: Vessel name; USGC documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; pounds, by species, of all species landed or discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator permit number (if applicable).

(ii) *Surf clam and ocean quahog vessel owners and operators.* The owner or operator of any vessel conducting any surf clam and ocean quahog fishing operations, except those conducted exclusively in waters of a state that requires cage tags or when he/she has surrendered the surf clam and ocean quahog fishing vessel permit, shall maintain, on board the vessel, an accurate daily fishing log for each fishing trip, on forms supplied by the Regional Director, showing at least: Name and permit number of the vessel, total amount in bushels of each species taken, date(s) caught, time at sea, duration of fishing time, locality fished, crew size, crew share by percentage, landing port, date sold, price per bushel, buyer, tag numbers from cages used, quantity of surf clams and ocean quahogs discarded, and allocation permit number.

(iii) *Owners of party and charter boats.* The owner of any party or charter boat issued a summer flounder permit other than a moratorium permit and carrying passengers for hire shall maintain on board the vessel, and submit, an accurate daily fishing log report for each charter or party fishing trip that lands summer flounder, unless such a vessel is also issued a summer flounder moratorium permit, a sea scallop permit, a multispecies permit, or, as of January 1, 1997, a mackerel, squid or butterfish permit, in which case a fishing log report is required for each trip regardless of species retained. If authorized in writing by the Regional Director, vessel owners may submit reports electronically, for example, by using a VTS or other media. At least the following information, and any other information required by the Regional Director, must be provided: Vessel name; USGC documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers; gear fished; quantity and size of gear; chart area fished; average depth; latitude/longitude (or loran station and bearings); average tow time duration; count, by species, of all species landed or discarded; port and state landed; and vessel operator's name, signature, and operator permit number (if applicable).

(c) *When to fill out a log report.* Log reports required by paragraph (b)(1)(i) of this section must be filled out, except for information required but not yet ascertainable, before offloading or landing has begun. All information must be filled out before starting the next fishing trip. Log reports required by paragraph (b)(1)(ii) of this section must be filled out before landing any surf clams or ocean quahogs. Log reports required by paragraph (b)(1)(iii) of this section must be filled out, except for information required but not yet ascertainable, before offloading or landing has begun. All information required in paragraph (b)(1)(iii) of this section must be filled out for each fishing trip by the end of each fishing trip.

(d) *Inspection.* All persons required to submit reports under this section, upon the request of an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections, must make immediately available for inspection copies of the required reports that have been submitted, or should have been submitted, and the records upon which the reports were based. At any time during or after a trip, owners and operators must make immediately available for inspection the fishing log reports currently in use, or to be submitted.

(e) *Record retention.* Copies of reports, and records upon which the reports were based, must be retained and be available for review for 1 year after the date of the last entry on the report. Copies of fishing log reports must be retained and available for review for 1 year after the date of the last entry on the log. Dealers must retain required reports and records at their principal place of business.

(f) *Submitting reports*—(1) *Dealer or processor reports.* Weekly dealer or processor reports must be received or postmarked, if mailed, within 3 days after the end of each reporting week. Each dealer will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a dealer permit. If no fish or fish product was purchased during a week, a report so stating must be submitted. Annual reports for a calendar year must be submitted to NMFS Statistics, and must be postmarked by February 10 of the following year. Contact the Regional Director for the address of NMFS Statistics.

(2) *Fishing vessel log reports.* Fishing log reports must be received or postmarked, if mailed, within 15 days after the end of the reporting month. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a Federal fisheries permit. If no fishing trip is made during a month, a report so stating must be submitted. Annual reports must be submitted to NMFS Statistics and must be postmarked by February 10 of the following year.

(3) *At-sea purchasers, receivers, or processors.* All persons purchasing, receiving, or processing any summer flounder or mackerel, squid, and butterfish at sea for landing at any port of the United States must submit information identical to that required by paragraph (a)(1) or (a)(2) of this section, as applicable, and provide those reports to the Regional Director or designee on the same frequency basis.

§ 648.8 Vessel identification.

(a) *Vessel name and official number.* Each fishing vessel subject to this part and over 25 ft (7.6 m) in registered length must:

(1) Affix permanently its name on the port and starboard sides of the bow and, if possible, on its stern.

(2) Display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The official number is the USCG documentation number or the vessel's state registration number for vessels not required to be documented under title 46 U.S.C.

(b) *Numerals.* Except as provided in paragraph (d) of this section, the official number must be displayed in block arabic numerals in contrasting color at least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in

registered length, and at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in registered length. The registered length of a vessel, for purposes of this section, is that registered length set forth in USCG or state records.

(c) *Duties of owner.* The owner of each vessel subject to this part shall ensure that—

(1) The vessel's name and official number are kept clearly legible and in good repair.

(2) No part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from any enforcement vessel or aircraft.

(d) *Non-permanent marking.* Vessels carrying recreational fishing parties on a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The non-permanent markings must be displayed in conformity with the above requirements.

(e) *New Jersey surf clam or ocean quahog vessels.* Instead of complying with paragraph (a) of this section, surf clam or ocean quahog vessels licensed under New Jersey law may use the appropriate vessel identification markings established by that state.

§ 648.9 VTS requirements.

(a) *Approval.* The Regional Director will annually approve VTSs that meet the minimum performance criteria specified in paragraph (b) of this section. Any changes to the performance criteria will be published annually in the **Federal Register** and a list of approved VTSs will be published in the **Federal Register** upon addition or deletion of a VTS from the list. In the event that a VTS is deleted from the list, vessel owners that purchased a VTS unit that is part of that VTS prior to publication of the revised list will be considered to be in compliance with the requirement to have an approved unit, unless otherwise notified by the Regional Director.

(b) *Minimum VTS performance criteria.* The basic required features of the VTS are as follows:

(1) The VTS shall be tamper proof, i.e., shall not permit the input of false positions; furthermore, if a system uses satellites to determine position, satellite selection should be automatic to provide an optimal fix and should not be capable of being manually overridden by any person aboard a fishing vessel or by the vessel owner.

(2) The VTS shall be fully automatic and operational at all times, regardless of weather and environmental conditions.

(3) The VTS shall be capable of tracking vessels in all U.S. waters in the Atlantic Ocean from the shoreline of each coastal state to a line 215 nm offshore and shall provide position accuracy to within 400 m (1,300 ft).

(4) The VTS shall be capable of transmitting and storing information including vessel identification, date, time, and latitude/longitude.

(5) The VTS shall provide accurate hourly position transmissions every day of the year. In addition, the VTS shall allow polling of individual vessels or any set of vessels at any time and receive position reports in real time. For the purposes of this specification, "real time" shall constitute data that reflect a delay of 15 minutes or less between the displayed information and the vessel's actual position.

(6) The VTS shall be capable of providing network message communications between the vessel and shore. The VTS shall allow NMFS to initiate communications or data transfer at any time.

(7) The VTS vendor shall be capable of transmitting position data to a NMFS-designated computer system via a modem at a minimum speed of 9600 baud. Transmission shall be in ASCII text in a file format acceptable to NMFS.

(8) The VTS shall be capable of providing vessel locations relative to international boundaries and fishery management areas.

(9) The VTS vendor shall be capable of archiving vessel position histories for a minimum of 1 year and providing transmission to NMFS of specified portions of archived data in response to NMFS requests and in a variety of media (tape, floppy, etc.).

(c) *Operating requirements.* All required VTS units must transmit a signal indicating the vessel's accurate position at least every hour, 24 hours a day, throughout the year.

(d) *Presumption.* If a VTS unit fails to transmit an hourly signal of a vessel's position, the vessel shall be deemed to have incurred a DAS, or fraction thereof, for as long as the unit fails to transmit a signal, unless a preponderance of evidence shows that the failure to transmit was due to an unavoidable malfunction or disruption of the transmission that occurred while the vessel was declared out of the scallop fishery or NE multispecies fishery, as applicable, or was not at sea.

(e) *Replacement.* Should a VTS unit require replacement, a vessel owner must submit documentation to the Regional Director, within 3 days of installation and prior to the vessel's next trip, verifying that the new VTS unit is an operational approved system as described under paragraph (a)(1) of this section.

(f) *Access.* As a condition to obtaining a limited access scallop or multispecies permit, all vessel owners must allow NMFS, the USCG, and their authorized officers or designees access to the vessel's DAS and location data obtained from its VTS at the time of or after its transmission to the vendor or receiver, as the case may be.

(g) *Tampering.* Tampering with a VTS, a VTS unit, or a VTS signal, is prohibited. Tampering includes any activity that is likely to affect the unit's ability to operate properly, signal, or accuracy of computing the vessel's position fix.

§ 648.10 DAS notification requirements.

(a) *VTS Demarcation Line.* The VTS Demarcation Line is defined by straight lines connecting the following coordinates in the order stated (a copy of a map showing the line is available from the Regional Director upon request):

VTS DEMARCATION LINE

Description	N. Long.	W. Lat.
1. Northern terminus point (Canada landmass)	45°03′	66°47′
2. A point east of West Quoddy Head Light	44°48.9′	66°56.1′
3. A point east of Little River Light	44°39.0′	67°10.5′
4. Whistle Buoy "8BI" (SSE of Baker Island)	44°13.6′	68°10.8′
5. Isle au Haut Light	44°03.9′	68°39.1′
6. Pemaquid Point Light	43°50.2′	69°30.4′
7. A point west of Halfway Rock	43°38.0′	70°05.0′
8. A point east of Cape Neddick Light	43°09.9′	70°34.5′

VTS DEMARCATION LINE—Continued

Description	N. Long.	W. Lat.
9. Merrimack River Entrance "MR" Whistle Buoy	42°48.6′	70°47.1′
10. Halibut Point Gong Buoy "1AHP"	42°42.0′	70°37.5′
11. Connecting reference point	42°40′	70°30′
12. Whistle Buoy "2" off Eastern Point	42°34.3′	70°39.8′
13. The Graves Light (Boston)	42°21.9′	70°52.2′
14. Minots Ledge Light	42°16.2′	70°45.6′
15. Farnham Rock Lighted Bell Buoy	42°05.6′	70°36.5′
16. Cape Cod Canal Bell Buoy "CC"	41°48.9′	70°27.7′
17. A point inside Cape Cod Bay	41°48.9′	70°05′
18. Race Point Lighted Bell Buoy "RP"	42°04.9′	70°16.8′
19. Peaked Hill Bar Whistle Buoy "2PH"	42°07.0′	70°06.2′
20. Connecting point, off Nauset Light	41°50′	69°53′
21. A point south of Chatham "C" Whistle Buoy	41°38′	69°55.2′
22. A point in eastern Vineyard Sound	41°30′	70°33′
23. A point east of Martha's Vineyard	41°22.2′	70°24.6′
24. A point east of Great Pt. Light, Nantucket	41°23.4′	69°57′
25. A point SE of Sankaty Head, Nantucket	41°13′	69°57′
26. A point west of Nantucket	41°15.6′	70°25.2′
27. Squibnocket Lighted Bell Buoy "I"	41°15.7′	70°46.3′
28. Wilbur Point (on Sconticut Neck)	41°35.2′	70°51.2′
29. Mishaum Point (on Smith Neck)	41°31.0′	70°57.2′
30. Sakonnet Entrance Lighted Whistle Buoy "SR"	41°25.7′	71°13.4′
31. Point Judith Lighted Whistle Buoy "2"	41°19.3′	71°28.6′
32. A point off Block Island Southeast Light	41°08.2′	71°32.1′
33. Shinnecock Inlet Lighted Whistle Buoy "SH"	40°49.0′	72°28.6′
34. Scotland Horn Buoy "S", off Sandy Hook (NJ)	40°26.5′	73°55.0′
35. Barnegat Lighted Gong Buoy "2"	39°45.5′	73°59.5′
36. A point east of Atlantic City Light	39°21.9′	74°22.7′
37. A point east of Hereford Inlet Light	39°00.4′	74°46′
38. A point east of Cape Henlopen Light	38°47′	75°04′
39. A point east of Fenwick Island Light	38°27.1′	75°02′
40. A point NE of Assateague Island (VA)	38°00′	75°13′
41. Wachapreague Inlet Lighted Whistle Buoy "A"	37°35.0′	75°33.7′
42. A point NE of Cape Henry	36°55.6′	75°58.5′
43. A point east of Currituck Beach Light	36°22.6′	75°48′
44. Oregon Inlet (NC) Whistle Buoy	35°48.5′	75°30′
45. Wimble Shoals, east of Chicamacomico	35°36′	75°26′
46. A point SE of Cape Hatteras Light	35°12.5′	75°30′
47. Hatteras Inlet Entrance Buoy "HI"	35°10′	75°46′
48. Ocracoke Inlet Whistle Buoy "OC"	35°01.5′	76°00.5′
49. A point east of Cape Lookout Light	34°36.5′	76°30′
50. Southern terminus point	34°35′	76°41′

(b) *VTS notification.* Multispecies vessels issued an individual DAS or combination permit, scallop vessels issued a full-time or part-time limited access scallop permit, or scallop vessels fishing under the small dredge program specified in § 648.51(e), or vessels issued a limited access multispecies or scallop permit and whose owners elect to fish under the VTS notification of this paragraph (b), unless otherwise authorized or required by the Regional Director under § 648.9(a), must have installed on board an operational VTS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as specified in § 648.9(a). Owners of such vessels must provide documentation to the Regional Director at the time of application for a limited access permit that the vessel has an operational VTS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as specified in § 648.9(a). If a vessel has already been issued a limited access permit without providing such documentation, the Regional Director shall allow at least 30 days for the vessel to instal an operational VTS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as specified in § 648.9(a), and to provide documentation of such installation to the Regional Director. The VTS unit shall be subject to the following requirements and presumption:

(1) Multispecies vessels issued an individual DAS or combination permit, scallop vessels issued a full-time or part-time limited access scallop permit, or vessels issued a limited access multispecies or scallop permit and whose owners elect to fish under the VTS notification of this paragraph (b), that have crossed the VTS Demarcation Line specified under paragraph (a) of this section, are deemed to be fishing under the DAS program, unless the vessel's owner or authorized representative declares the vessel out of the scallop or NE multispecies fishery, as applicable, for a specific time period by notifying the Regional Director through the VTS prior to the vessel leaving port.

(2) Part-time scallop vessels may not fish in the DAS allocation program unless they declare into the scallop fishery for a specific time period by notifying the Regional Director through the VTS.

(3) Notification that the vessel is not under the DAS program must be received prior to the vessel leaving port. A change in status of a vessel cannot be made after the vessel leaves port or before it returns to port on any fishing trip.

(4) DAS for vessels that are under the VTS notification requirements of this paragraph (b) are counted beginning

with the first hourly location signal received showing that the vessel crossed the VTS Demarcation Line leaving port. A trip concludes and accrual of DAS ends with the first hourly location signal received showing that the vessel crossed the VTS Demarcation Line upon its return to port.

(5) If the VTS is not available or not functional, and if authorized by the Regional Director, a vessel owner must provide the notifications required by paragraphs (b)(1), (2), and (3) of this section by using the call-in notification system described under paragraph (c) of this section, instead of using the VTS system.

(c) *Call-in notification.* Owners of vessels issued limited access multispecies permits who are participating in a DAS program and who are not required to provide notification using a VTS, owners of scallop vessels qualifying for a DAS allocation under the occasional category and who have not elected to fish under the VTS notification requirements of paragraph (b) of this section, and vessels fishing pending an appeal as specified in § 648.4(a)(1)(i)(H)(*3*) are subject to the following requirements:

(1) Prior to the vessel leaving port, the vessel owner or authorized representative must notify the Regional Director that the vessel will be participating in the DAS program or the charter/party fishery by calling the Regional Director and providing the following information: Owner and caller name and phone number, vessel's name and permit number, type of trip to be taken, and that the vessel is beginning a trip. For NE multispecies vessels, the port of departure also must be specified. A DAS or a vessel's participation in the charter/party fishery begins once the call has been received and a confirmation number is given by the Regional Director.

(2) The confirmation number given by the Regional Director must be kept on board for the duration of the trip and must be provided to an authorized officer upon request.

(3) Upon the vessel's return to port, the vessel owner or owner's representative must call the Regional Director and notify him/her that the trip has ended by providing the following information: Owner and caller name and phone number, vessel's name and permit number, and that the vessel has ended a trip. For NE multispecies

continue to accrue as long as the vessel's gillnet gear remains in the water. A trip concludes and accrual of DAS ends for a gillnet vessel when the vessel returns to port with all of its gillnet gear that was in the water on board, the phone call has been received, and confirmation has been given by the Regional Director.

(4) The Regional Director will furnish a phone number for DAS notification call-ins upon request.

(5) Any vessel that possesses or lands per trip more than 400 lb (181.44 kg) of scallops, and any vessel issued a limited access multispecies permit subject to the DAS program and call-in requirement, that possesses or lands regulated species, except as provided in § 648.83, shall be deemed in the DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provided adequate notification as required by paragraph (b) of this section.

(d) *Temporary authorization for use of the call-in system.* The Regional Director may authorize or require, on a temporary basis, the use of the call-in system of notification specified in paragraph (c) of this section. If use of the call-in system is authorized or required, the Regional Director shall notify affected permit holders through a letter, notification in the **Federal Register**, or other appropriate means.

(e) *Charter/party multispecies vessels.* Charter/party multispecies vessels that are not fishing under a multispecies DAS must declare into and out of the charter/party fishery, providing notification under paragraph (b) of this section, must remain in the charter/party fishery for a minimum of 24 hours after declaring into the fishery, and are subject to the restrictions in § 648.89.

(f) *Scallop vessels fishing under exemptions.* Vessels fishing under the exemptions provided by § 648.54 (a) and/or (b) must notify the Regional Director by VTS notification or through call-in notification as follows:

(1) *VTS notification.* (i) Notify the Regional Director, via their VTS, prior to the vessel's first trip under the state waters exemption program, that the vessel will be fishing exclusively in state waters; and

(ii) Notify the Regional Director, via their VTS, prior to the vessel's first planned trip in the EEZ, that the vessel is to resume fishing under the vessel's DAS allocation

vessel name and permit number, and beginning and ending dates of the exemption period.

(ii) Remain under the exemption for a minimum of 7 days.

(iii) If, under the exemption for a minimum of 7 days and wishing to withdraw earlier than the designated end of the exemption period, notify the Regional Director of early withdrawal from the program by calling the Regional Director, providing the vessel's name and permit number and the name and phone number of the caller, and stating that the vessel is withdrawing from the exemption. The vessel may not leave port to fish in the EEZ until 48 hours after notification of early withdrawal is received by the Regional Director.

(iv) The Regional Director will furnish a phone number for call-ins upon request.

§ 648.11 At-sea sea sampler/observer coverage.

(a) The Regional Director may request any vessel holding a mackerel, squid, and butterfish; scallop; NE multispecies; or summer flounder permit to carry a NMFS-approved sea sampler/observer. If requested by the Regional Director to carry an observer or sea sampler, a vessel may not engage in any fishing operations in the respective fishery unless an observer or sea sampler is on board, or unless the requirement is waived.

(b) If requested by the Regional Director to carry an observer or sea sampler, it is the responsibility of the vessel owner to arrange for and facilitate observer or sea sampler placement. Owners of vessels selected for sea sampler/observer coverage must notify the appropriate Regional or Science and Research Director, as specified by the Regional Director, before commencing any fishing trip that may result in the harvest of resources of the respective fishery. Notification procedures will be specified in selection letters to vessel owners.

(c) The Regional Director may waive the requirement to carry a sea sampler or observer if the facilities on a vessel for housing the observer or sea sampler, or for carrying out observer or sea sampler functions, are so inadequate or unsafe that the health or safety of the observer or sea sampler, or the safe operation of the vessel, would be

(2) Allow the sea sampler/observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the sea sampler's/observer's duties.

(3) Provide true vessel locations, by latitude and longitude or loran coordinates, as requested by the observer/sea sampler, and allow the sea sampler/observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Notify the sea sampler/observer in a timely fashion of when fishing operations are to begin and end.

(5) Allow for the embarking and debarking of the sea sampler/observer, as specified by the Regional Director, ensuring that transfers of observers/sea samplers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours as weather and sea conditions allow, and with the agreement of the sea samplers/observers involved.

(6) Allow the sea sampler/observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(7) Allow the sea sampler/observer to inspect and copy any the vessel's log, communications log, and records associated with the catch and distribution of fish for that trip.

(e) The owner or operator of a summer flounder vessel, if requested by the sea sampler/observer also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, or other specimens taken by the vessel.

(3) Provide storage for biological specimens, including cold storage if available, and retain such specimens on board the vessel as instructed by the sea sampler/observer, until retrieved by authorized NMFS personnel.

(f) NMFS may accept observer coverage funded by outside sources if:

(1) All coverage conducted by such observers is determined by NMFS to be in compliance with NMFS' observer

§ 648.12 Experimental fishing.

The Regional Director may exempt any person or vessel from the requirements of subparts B (Atlantic mackerel, squid, and butterfish), D (sea scallops), E (surf clams and ocean quahogs), F (NE multispecies) or G (summer flounder) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Director shall consult with the Executive Director of the MAFMC regarding such exemptions for the Atlantic mackerel, squid, and butterfish and the summer flounder fisheries.

(a) The Regional Director may not grant such an exemption unless he/she determines that the purpose, design, and administration of the exemption is consistent with the objectives of the respective FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the respective resources and fishery;

(2) Cause any quota to be exceeded; or

(3) Create significant enforcement problems.

(b) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of the respective FMP, except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried on board the vessel seeking the benefit of such exemption.

(c) Experimental fishing for surf clams or ocean quahogs will not require an allocation permit.

§ 648.13 Transfers at sea.

(a) Only vessels issued a *Loligo* and butterfish moratorium permit under § 648.4(a)(5) and vessels issued a mackerel, squid, and butterfish incidental catch permit and authorized in writing by the Regional Director to do so, may transfer or attempt to transfer *Loligo* or butterfish from one vessel to another vessel.

(b) Vessels issued a multispecies permit under § 648.4(a)(1) or a scallop permit under § 648.4(a)(2) are prohibited from transferring or attempting to transfer any fish from one

(c) All persons are prohibited from transferring or attempting to transfer NE multispecies or scallops from one vessel to another vessel, except in accordance with paragraph (b) of this section.

§ 648.14 Prohibitions.

(a) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Fail to report to the Regional Director within 15 days any change in the information contained in an applicable vessel, operator, or dealer/processor permit application.

(2) Falsify or fail to affix and maintain vessel markings as required by § 648.8.

(3) Make any false statement in connection with an application, declaration, or report under this part.

(4) Fail to comply in an accurate and timely fashion with the log report, reporting, record retention, inspection, and other requirements of § 648.7, or submit or maintain false information in records and reports required to be kept or filed under § 648.7.

(5) Alter, erase, or mutilate any permit issued under this part.

(6) Alter, erase, mutilate, duplicate or cause to be duplicated, or steal any cage tag issued under this part.

(7) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VTS, VTS unit, or VTS signal required to be installed on or transmitted by vessel owners or operators required to use a VTS by this part.

(8) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion either a NMFS-approved observer or sea sampler aboard a vessel conducting his or her duties aboard a vessel, or an authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part.

(9) Refuse to carry an observer or sea sampler if requested to do so by the Regional Director.

(10) To refuse reasonable assistance to either a NMFS-approved observer or sea sampler conducting his or her duties aboard a vessel.

(11) Fish for surf clams or ocean quahogs in any area closed to surf clam or ocean quahog fishing.

(12) Fish for, take, catch, harvest or

(13) Purchase, possess or receive for a commercial purpose or attempt to purchase possess or receive for a commercial purpose any species regulated under this part unless in possession of a valid dealer permit issued under this part, except that this prohibition does not apply to species that are purchased or received from a vessel not issued a permit under this part and fishing exclusively in state waters.

(14) Produce, or cause to be produced, cage tags required under this part without written authorization from the Regional Director.

(15) Tag a cage with a tag that has been rendered null and void or with a tag that has been previously used.

(16) Tag a cage of surf clams with an ocean quahog cage tag or tag a cage of ocean quahogs with a surf clam cage tag.

(17) Possess, import, export, transfer, land, have custody or control of any species of fish regulated pursuant to this part that do not meet the minimum size provisions in this part, unless such species were harvested exclusively within state waters by a vessel not issued a permit under this part or whose permit has been surrendered in accordance with applicable regulations.

(18) Possess an empty cage to which a cage tag required by § 648.75 is affixed or possess any cage that does not contain surf clams or ocean quahogs and to which a cage tag required by § 648.75 is affixed.

(19) Land or possess, after offloading, any cage holding surf clams or ocean quahogs without a cage tag or tags required by § 648.75, unless the person can demonstrate the inapplicability of the presumption set forth in § 648.75(t)(1)(iii).

(20) Sell null and void tags.

(21) Shuck surf clams or ocean quahogs harvested in or from the EEZ at sea, unless permitted by the Regional Director under the terms of § 648.74.

(22) Receive for a commercial purpose other than transport, surf clams or ocean quahogs harvested in or from the EEZ, whether or not they are landed under an allocation under § 648.70, unless issued a dealer/processor permit under this part.

(23) Land unshucked surf clams or ocean quahogs harvested in or from the EEZ in containers other than cages from vessels capable of carrying cages.

(24) Offload unshucked surf clams or ocean quahogs harvested in or from the EEZ from vessels not capable of carrying cages other than directly into cages.

(25) Fish for surf clams or ocean quahogs in the EEZ without giving prior notification, or fail to comply with any of the notification requirements specified in § 648.15(b).

(26) Fish for, retain, or land both surf clams and ocean quahogs in or from the EEZ on the same trip.

(27) Fish for, retain, or land ocean quahogs in or from the EEZ on a trip designated as a surf clam fishing trip under § 648.15(b), or fish for, retain, or land surf clams in or from the EEZ on a trip designated as an ocean quahog fishing trip under § 648.15(b).

(28) Fail to offload any surf clams or ocean quahogs harvested in the EEZ from a trip discontinued pursuant to § 648.15(b) prior to commencing fishing operations in waters under the jurisdiction of any state.

(29) Land or possess any surf clams or ocean quahogs harvested in or from the EEZ in excess of, or without, an individual allocation.

(30) Transfer any surf clams or ocean quahogs harvested in or from the EEZ to any person for a commercial purpose, other than transport, without a surf clam or ocean quahog processor or dealer permit.

(31) Fish for, possess, or land NE multispecies, unless:

(i) The NE multispecies are being fished for or were harvested in or from the EEZ by a vessel holding a valid multispecies permit under this part, or a letter under § 648.4(a)(1), and the operator on board such vessel has been issued an operator's permit and has a valid permit on board the vessel;

(ii) The NE multispecies were harvested by a vessel not issued a multispecies permit that fishes for NE multispecies exclusively in state waters; or

(iii) The NE multispecies were harvested in or from the EEZ by a recreational fishing vessel.

(32) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer multispecies from one vessel to another vessel, unless both vessels have not been issued multispecies permits and both fish exclusively in state waters, or unless authorized in writing by the Regional Director.

(33) Sell, barter, trade, or otherwise transfer; or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose any NE multispecies from a trip, unless the vessel is holding a multispecies permit, or a letter under § 648.4(a)(1), and is not fishing under the charter/party vessel restrictions specified in § 648.89, or unless the NE multispecies were harvested by a vessel without a multispecies permit that fishes for NE multispecies exclusively in state waters.

(34) Operate or act as an operator of a vessel fishing for or possessing NE multispecies in or from the EEZ, or holding a multispecies permit without having been issued and possessing a valid operator's permit.

(35) Fish with, use, or have on board within the area described in § 648.80(a)(1), nets of mesh whose size is smaller than the minimum mesh size specified in § 648.80(a)(2), except as provided in § 648.80(a) (3) through (6), (a)(8), (a)(9), (d), (e) and (i), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(36) Fish with, use, or have available for immediate use within the area described in § 648.80(b)(1), nets of mesh size smaller than the minimum size specified in § 648.80(b)(2), except as provided in § 648.80 (b)(3), (d), (e), and (i), or unless the vessel has not been issued a multispecies permit and fishes for multispecies exclusively in state waters.

(37) Fish with, use, or have available for immediate use within the area described in § 648.80(c)(1), nets of mesh size smaller than the minimum size specified in § 648.80(c)(2), except as provided in § 648.8 (c)(3), (d), (e), and (i), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(38) Enter or be in the area described in § 648.81(a)(1) on a fishing vessel, except as provided in § 648.81(a) (2) and (d).

(39) Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided by § 648.81(b)(2).

(40) Enter or be in the area described in § 648.81(c)(1), on a fishing vessel, except as provided in § 648.81 (c)(2) and (d)(2).

(41) Fail to comply with the gear-marking requirements of § 648.84.

(42) Fish within the areas described in § 648.80(a)(4) with nets of mesh smaller than the minimum size specified in § 648.80(a)(2), unless the vessel is issued and possesses on board an authorizing letter issued under § 648.80(a)(4)(i).

(43) Violate any of the provisions of § 648.80(a)(4), (5), (8), or (9). A violation of any of these paragraphs is a separate violation.

(44) Fish for, land, or possess NE multispecies harvested by means of pair trawling or with pair trawl gear, except under the provisions of § 648.80(d), or unless the vessels that engaged in pair trawling have not been issued multispecies permits and fish for NE multispecies exclusively in state waters.

(45) Fish for, harvest, possess, or land in or from the EEZ northern shrimp, unless such shrimp were fished for or harvested by a vessel meeting the requirements specified in § 648.80(a)(3).

(46) Violate any terms of a letter authorizing experimental fishing pursuant to § 648.12 or fail to keep such letter on board the vessel during the period of the experiment.

(47) Fish for the species specified in § 648.80 (d) or (e) with a net of mesh size smaller than the applicable mesh size specified in § 648.80(a) (2), (b)(2), or (c)(2), or possess or land such species, unless the vessel is in compliance with the requirements specified in § 648.80 (d) or (e), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(48) Violate any provision of § 648.88.

(49) Violate any of the restrictions on fishing with scallop dredge gear specified in § 648.80(h).

(50) Violate any of the provisions of § 648.80(i).

(51) Obstruct or constrict a net as described in § 648.80(g) (1) or (2).

(52) Enter, be on a fishing vessel in, or fail to remove gear from the EEZ portion of the areas described in § 648.81 (f)(1) through (h)(1) during the time period specified, except as provided in § 648.81(d), (f)(2), (g)(2), and (h)(2).

(53) Possess, land, or fish for regulated species, except winter flounder as provided for in accordance with § 648.80(i) and from or within the areas described in § 648.80(i), while in possession of scallop dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a general scallop permit, unless the vessel and the dredge gear conform with the stowage requirements of § 648.51 (a)(2)(ii) and (e)(2), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(54) Possess or land fish caught with nets of mesh smaller than the minimum size specified in § 648.51, or with scallop dredge gear on a vessel not fishing under the scallop DAS program described in § 648.54 of this chapter, or fishing under a general scallop permit, unless said fish are caught, possessed or landed in accordance with §§ 648.80 and 648.86, or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(55) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, regulated species in excess of the possession limit specified in § 648.86 applicable to a vessel issued a multispecies permit.

(56) Possess, or land per trip, scallops in excess of 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, unless:

(i) The scallops were harvested by a vessel that has been issued and carries on board a general or limited access scallop permit; or

(ii) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(57) Fish for, possess, or land per trip, scallops in excess of 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops, unless:

(i) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit, or a letter under § 648.4(b)(2)(viii)(F); or

(ii) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(58) Fish for, possess, or land per trip, scallops in excess of 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, unless:

(i) The scallops were harvested by a vessel with an operator on board who has been issued an operator's permit and the permit is on board the vessel and is valid; or

(ii) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(59) Have a shucking or sorting machine on board a vessel that shucks scallops at sea, while in possession of more than 400 lb (181.44 kg) of shucked scallops, unless that vessel has not been issued a scallop permit and fishes exclusively in state waters.

(60) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer, scallops from one vessel to another, unless that vessel has not been issued a scallop permit and fishes exclusively in state waters.

(61) Sell, barter or trade, or otherwise transfer, or attempt to sell, barter or trade, or otherwise transfer, for a commercial purpose, any scallops from a trip whose catch is 40 lb (18.14 kg) of shucked scallops or less, or 5 bu (176.1 L) of in-shell scallops, unless the vessel has been issued a valid general or limited access scallop permit, or the scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(62) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, in the capacity of a dealer, scallops taken from a fishing vessel that were harvested in or from the EEZ, unless issued, and in possession of, a valid scallop dealer's permit.

(63) Purchase, possess, or receive for commercial purposes, or attempt to purchase or receive for commercial purposes, scallops caught by a vessel other than one issued a valid limited access or general scallop permit unless the scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(64) Operate or act as an operator of a vessel fishing for or possessing any species of fish regulated by this part in or from the EEZ, or issued a permit pursuant to this part, without having been issued and possessing a valid operator's permit.

(65) Possess in or harvest from the EEZ summer flounder, either in excess of the possession limit specified in § 648.105, or before or after the time period specified in § 648.102, unless the vessel was issued a summer flounder moratorium permit and the moratorium permit is on board the vessel and has not been surrendered, revoked, or suspended.

(66) Possess nets or netting with mesh not meeting the minimum mesh requirement of § 648.104 if the person possesses summer flounder harvested in or from the EEZ in excess of the threshold limit of § 648.105(a).

(67) Purchase or otherwise receive, except for transport, summer flounder from the owner or operator of a vessel issued a summer flounder moratorium permit, unless in possession of a valid summer flounder dealer permit.

(68) Purchase or otherwise receive for commercial purposes summer flounder caught by other than a vessel with a summer flounder moratorium permit not subject to the possession limit of § 648.105.

(69) Purchase or otherwise receive for a commercial purpose summer flounder landed in a state after the effective date published in the **Federal Register** notifying permit holders that commercial quota is no longer available in that state.

(70) Fail to comply with any sea turtle conservation measure specified in § 648.106, including any sea turtle conservation measure implemented by notification in the **Federal Register** in accordance with § 648.106(d).

(71) Use any vessel of the United States for taking, catching, harvesting, fishing for, or landing any Atlantic salmon taken from or in the EEZ.

. (72) Transfer, directly or indirectly, or attempt to transfer to any vessel any Atlantic salmon taken in or from the EEZ.

(73) Take and retain, or land more mackerel, squid, and butterfish than specified under a notice issued under § 648.22.

(74) Possess nets or netting with mesh not meeting the minimum size requirement of § 648.23 and not stowed in accordance with the requirements of § 648.23, if in possession of *Loligo* harvested in or from the EEZ.

(75) Transfer *Loligo* or butterfish within the EEZ, unless the vessels participating in the transfer have been issued valid *Loligo* and butterfish moratorium permits or valid letters of authorization from the Regional Director.

(76) Purchase, possess or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, in the capacity of a dealer, except for transport on land, mackerel, squid, and butterfish taken from a fishing vessel unless issued, and in possession of a valid mackerel, squid, and butterfish fishery dealer permit.

(77) Purchase or otherwise receive for a commercial purpose, mackerel, squid, and butterfish caught by other than a vessel issued a mackerel, squid, and butterfish permit, unless the vessel has not been issued a permit under this part and fishes exclusively within the waters under the jurisdiction of any state.

(78) Land any scup harvested in or from the EEZ in fillet form with the skin removed.

(79) Violate any other provision of this part, the Magnuson Act, or any regulation, notice, or permit issued under the Magnuson Act.

(b) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel holding a multispecies permit, issued an operator's permit, or issued a letter under § 648.4(a)(1)(i)(H)(*3*), to land, or possess on board a vessel, more than the possession limits specified in § 648.86(a), or violate any of the other provisions of § 648.86.

(c) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (b) of this section, it is unlawful for any person owning or operating a vessel issued a limited access multispecies permit or a letter under § 648.4(a)(1)(i)(H)(*3*), to do any of the following:

(1) Fish for, possess at any time during a trip, or land per trip more than the possession limit of regulated species specified in § 648.86(c) after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 648.82, unless otherwise exempted under § 648.82(b)(3) or § 648.89.

(2) If required by § 648.10 to have a VTS unit:

(i) Fail to have a certified, operational, and functioning VTS unit that meets the specifications of § 648.9 on board the vessel at all times.

(ii) Fail to comply with the notification, replacement, or any other requirements regarding VTS usage as specified in § 648.10(a).

(3) Combine, transfer, or consolidate DAS allocations.

(4) Fish for, possess, or land NE multispecies with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(1)(i) (E) and (F).

(5) Fish for, possess, or land NE multispecies with or from a vessel that has had the length, GRT, or NT of such vessel or its replacement increased or upgraded in excess of limitations specified in § 648.4(a)(1)(i) (E) and (F).

(6) Fail to comply with any requirement specified in § 648.10.

(7) Possess or land per trip more than the possession limit specified under § 648.8 if the vessel has been issued a limited access multispecies permit.

(8) Fail to comply with the restrictions on fishing and gear specified in § 648.82(b)(4), if the vessel has been issued a limited access multispecies hook-gear permit.

(9) Fail to declare, and be, out of the NE multispecies fishery as required by § 648.82(g), using the procedure described under § 648.82(h), as applicable.

(10) Land, or possess on board a vessel, more than the possession limit of winter flounder specified in § 648.86(b), or violate any of the other provisions specified of § 648.86(b).

(d) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (b), and (c) of this section, it is unlawful for any person owning or operating a vessel issued a multispecies handgear permit to do any of the following:

(1) Possess, at any time during a trip, or land per trip, more than the possession limit of regulated species specified in § 648.88(a), unless the regulated species were harvested by a charter or party vessel.

(2) Use, or possess on board, gear capable of harvesting NE multispecies, other than rod and reel or handline, while in possession of, or fishing for, NE multispecies.

(3) Possess or land NE multispecies during the time period specified in § 648.86(a)(2).

(e) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) through (d) of this section, it is unlawful for any person owning or operating a vessel issued a multispecies possession limit permit for scallops to possess or land more than the possession limit of regulated species specified at § 648.88(c) or to possess or land regulated species when not fishing under a scallop DAS.

(f) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a limited access scallop permit or a general scallop permit under § 648.4(a)(2) to land, or possess at or after landing, in-shell scallops smaller than the minimum shell height specified in § 648.50(a).

(g) In addition to the general prohibitions specified in § 600.725 of this chapter and the prohibitions specified in paragraphs (a) through (f) of this section, it is unlawful for the owner or operator of a charter or party boat issued a multispecies permit, or of a recreational vessel, as applicable, to:

(1) Fish with gear in violation of the restrictions specified in § 648.89(a).

(2) Possess cod and haddock in excess of the possession limits specified in § 648.89(c).

(3) Sell, trade, barter, or otherwise transfer, or attempt to sell, trade, barter or otherwise transfer, NE multispecies for a commercial purpose as specified in § 648.89(d).

(h) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (g) of this section, it is unlawful for any person owning or operating a vessel issued a limited access scallop permit under § 648.4(a)(2) to do any of the following:

(1) Possess, or land per trip, more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 648.10, unless exempted from DAS allocations as provided in § 648.54.

(2) Land scallops on more than one trip per calendar day after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 648.10, unless exempted from DAS allocations as provided in § 648.55.

(3) Fail to have an approved, operational, and functioning VTS unit that meets the specifications of § 648.9 on board the vessel at all times, unless the vessel is not subject to the VTS requirements specified in § 648.10.

(4) If the vessel is not subject to VTS requirements specified in § 648.10(a), fail to comply with the requirements of the call-in system specified in § 648.10(b).

(5) Combine, transfer, or consolidate DAS allocations.

(6) Have an ownership interest in more than 5 percent of the total number of vessels issued limited access scallop permits, except as provided in § 648.4(a)(2)(i)(H).

(7) Fish for, possess, or land scallops with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(2)(i) (E) or (F).

(8) Fish for, possess, or land scallops with or from a vessel that has had the length, GRT, or NT of such vessel or its replacement increased or upgraded in excess of limitations specified in § 648.4(a)(2)(i) (E) or (F).

(9) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops or participate in the DAS allocation program, while in possession of trawl nets that have a maximum sweep exceeding 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing of the net, except as specified in § 648.51(a)(2)(iii).

(10) Fish under the DAS allocation program with, or have available for immediate use, trawl nets of mesh smaller than the minimum size specified in § 648.51(a)(2).

(11) Fish under the DAS allocation program with trawl nets that use chafing gear or other means or devices that do not meet the requirements of § 648.51(a)(3).

(12) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops or participate in the DAS allocation program, while in possession of dredge gear that has a maximum combined dredge width exceeding 31 ft (9.4 m), measured at the widest point in the bail of each dredge, except as specified in § 648.51(b)(1).

(13) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, or fish under the DAS allocation program, while in possession of dredge gear that uses net or net material on the top half of the dredge of a minimum mesh size smaller than that specified in § 648.51(b)(2).

(14) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, or fish under the DAS allocation program, while in possession of dredge gear containing rings that have minimum sizes smaller than those specified in § 648.51(b)(3).

(15) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, or participate in the DAS allocation program, while in possession of dredge gear that uses links between rings of the gear or ring configurations that do not conform to the specifications described in § 648.51(b)(4)(ii).

(16) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, or participate in the DAS allocation program, while in possession of dredge gear that uses cookies or chafing gear, or other gear, means, or devices on the top half of a dredge that obstruct the openings in or between the rings, except as specified in § 648.51(b)(4).

(17) Participate in the DAS allocation program with more than the number of persons specified in § 648.51(c), including the operator, on board when the vessel is not docked or moored in port, unless otherwise authorized by the Regional Director.

(18) Fish under the small dredge program specified in § 648.51(e), with, or while in possession of, a dredge that exceeds 10.5 ft (3.2 m) in overall width, as measured at the widest point in the bail of the dredge.

(19) Fish under the small dredge program as specified in § 648.51(e) with more than five persons, including the operator, aboard the vessel, unless otherwise authorized by the Regional Director.

(20) Have a shucking or sorting machine on board a vessel that shucks scallops at sea while fishing under the DAS allocation program, unless otherwise authorized by the Regional Director.

(21) Refuse or fail to carry an observer if requested to do so by the Regional Director.

(22) Fail to provide an observer with required food, accommodations, access, and assistance, as specified in § 648.11.

(23) Fail to comply with any requirement for declaring in and out of the DAS allocation program as specified in § 648.10.

(24) Fail to comply with any requirement for participating in the DAS Exemption Program as specified in § 648.54.

(25) Fish with, possess on board, or land scallops while in possession of trawl nets, when fishing for scallops under the DAS allocation program, unless exempted as provided for in § 648.51(f).

(26) Fail to comply with the restriction on twine top described in § 648.51(b)(4)(iv).

(i) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (f), and (g) of this section, it is unlawful for any person owning or operating a vessel issued a general scallop permit to do any of the following:

(1) Possess, or land per trip, more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops.

(2) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that has a maximum combined dredge width exceeding 31 ft (9.4 m), measured at the widest point in the bail of each dredge, except as specified in § 648.51(b)(1).

(3) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses net or net material on the top half of the dredge of a minimum mesh size smaller than that specified in § 648.51(b)(2).

(4) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear containing rings that have minimum sizes smaller than those specified in § 648.51(b)(3).

(5) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses links between rings of the gear or ring configurations that do not conform to the specifications described in § 648.51(b)(4)(ii).

(6) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses cookies or chafing gear, or other gear, means, or devices on the top half of a dredge that obstruct the openings in or between the rings, except as specified in § 648.51(b)(4).

(7) Fish for, or land, more than 40 lb (18.14 kg) of scallops on more than one trip per calendar day.

(j) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a summer flounder permit (including moratorium permit) to do any of the following:

(1) Possess 100 lb or more (45.4 kg or more) of summer flounder between May 1 and October 31, or 200 lb or more (90.7 kg or more) of summer flounder between November 1 and April 30, unless the vessel meets the minimum mesh size requirement specified in § 648.104(a), or is fishing in the exempted area with an exemption permit as specified in § 648.104(b)(1), or

holds an exemption permit and is in transit from the exemption area with nets properly stowed as specified in § 648.104(f), or is fishing with exempted gear specified in § 648.104(b)(2).

(2) Possess summer flounder in other than a box specified in § 648.105(d) if fishing with nets having mesh that does not meet the minimum mesh-size requirement specified in § 648.104(a), unless the vessel is fishing pursuant to the exemptions specified in § 648.104(b).

(3) Land summer flounder for sale in a state after the effective date of the notification in the **Federal Register** notifying permit holders that commercial quota is no longer available in that state.

(4) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if subject to the minimum mesh requirement specified in § 648.104, unless the nets or netting are stowed in accordance with § 648.104(f).

(5) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if fishing with an exempted net described in § 648.104, unless the nets or netting are stowed in accordance with § 648.104(f).

(6) Fish west or south, as appropriate, of the line specified in § 648.104(b)(1) if exempted from the minimum mesh requirement specified in § 648.104 by a summer flounder exemption permit.

(7) Sell or transfer to another person for a commercial purpose, other than transport, any summer flounder, unless the transferee has a valid summer flounder dealer permit.

(8) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing commercially pursuant to a summer flounder moratorium permit.

(k) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person owning or operating a vessel fishing commercially for scup that are harvested in or from the EEZ, to do any of the following:

(1) Possess 4,000 lb or more (1,814.4 kg or more) of scup harvested in or from the EEZ, unless the vessel meets the minimum mesh size requirement specified in § 648.124(a).

(2) Fish with or possess nets or netting in the EEZ that do not meet the minimum mesh requirement, or that are modified, obstructed, constricted, or constructed with mesh in which the bars entering or exiting the knots twist around each other, if subject to the minimum mesh requirement specified in § 648.124(a), unless the nets or netting are stowed in accordance with § 648.23(b).

(3) Engage in recreational fishing in the EEZ while simultaneously conducting commercial fishing operations.

(l) It is unlawful for the owner or operator of any recreational fishing vessel, including party or charter boats, to possess scup harvested in or from the EEZ smaller than the minimum size limit for recreational fishermen specified in § 648.125(b).

(m) It is unlawful for the owner and operator of a party or charter boat issued a summer flounder permit (including moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

(1) Possess summer flounder in excess of the possession limit established pursuant to § 648.105.

(2) Fish for summer flounder other than during a season specified pursuant to § 648.102.

(3) Sell or transfer summer flounder to another person for a commercial purpose.

(n) It is unlawful to violate any terms of a letter authorizing experimental fishing pursuant to § 648.12 or to fail to keep such letter aboard the vessel during the time period of the experimental fishing.

(o) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a surf clam and ocean quahog permit or issued a surf clam and ocean quahog allocation permit under § 648.70, to land or possess any surf clams or ocean quahogs in excess of, or without, an individual allocation, or to transfer any surf clams or ocean quahogs to any person for a commercial purpose other than transport, unless that person has a surf clam and ocean quahog processor/dealer permit.

(p) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person owning or operating a vessel issued a valid mackerel, squid, and butterfish fishery permit, or issued an operator's permit, to do any of the following:

(1) Possess more than the incidental catch allowance of *Loligo* or butterfish, unless issued a Loligo squid and butterfish fishery moratorium permit.

(2) Take, retain, or land mackerel, squid, or butterfish in excess of a trip allowance specified under § 648.22.

(3) Take, retain, or land mackerel, squid, or butterfish after a total closure specified under § 648.22.

(4) Fish with or possess nets or netting that do not meet the minimum mesh requirement for *Loligo* specified in § 648.23(a), or that are modified, obstructed, or constricted, if subject to the minimum mesh requirement, unless the nets or netting are stowed in accordance with § 648.23(b) or the vessel is fishing under an exemption specified in § 648.23(a).

(5) Transfer squid or butterfish at sea to another vessel, unless that other vessel has been issued a valid *Loligo* squid and butterfish fishery moratorium permit or a letter of authorization by the Regional Director.

(6) Fail to comply with any measures implemented pursuant to § 648.21.

(7) Carry passengers for hire while fishing commercially under a mackerel, squid, and butterfish fishery permit.

(8) Fail to carry on board a letter of authorization, if fishing in an experimental fishery pursuant to § 648.12.

(q) It is unlawful for the owner and operator of a party or charter boat issued a mackerel, squid, and butterfish fishery permit (including a moratorium permit), when the boat is carrying passengers for hire, to do any of the following:

(1) Violate any recreational fishing measures established pursuant to § 648.21(d).

(2) Sell or transfer mackerel, squid, or butterfish to another person for a commercial purpose.

(r) It is unlawful for any person to violate any terms of a letter authorizing experimental fishing pursuant to § 648.11 or to fail to keep such letter on board the vessel during the period of the experiment.

(s) Any person possessing or landing per trip, scallops in excess of 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, at or prior to the time when those scallops are received or possessed by a dealer, is subject to all of the scallop prohibitions specified in this section, unless the scallops were harvested by a vessel without a scallop permit that fishes for scallops exclusively in state waters. Any person, regardless of the quantity of scallops possessed or landed, is subject to the prohibitions of paragraphs (a)(4) through (7), (10), (11), (68), (69), (71), (72), (73), and (87) of this section.

(t) For purposes of this section, the following presumptions apply:

(1) *Surf clams and ocean quahogs.* (i) Possession of surf clams or ocean quahogs on the deck of any fishing vessel in closed areas, or the presence of any part of a vessel's gear in the water in closed areas, or the presence of any part of a vessel's gear in the water more than 12 hours after an announcement closing the entire fishery becomes effective, is prima facie evidence that such vessel was fishing in violation of the provisions of the Magnuson Act and these regulations.

(ii) Surf clams or ocean quahogs landed from a trip for which notification was provided under § 648.15(b) or § 648.70(b) are deemed to have been harvested in the EEZ and count against the individual's annual allocation.

(iii) Surf clams or ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ, and to be part of an individual's allocation, unless such individual demonstrates that he/she has surrendered his/her surf clam and ocean quahog vessel permit issued under § 648.4 and has conducted fishing operations exclusively within waters under the jurisdiction of any state. Surf clams and ocean quahogs in cages with a Federal tag or tags, issued and still valid pursuant to this section, affixed thereto are deemed to have been harvested by the individual allocation holder to whom the tags were issued or transferred under § 648.70(d)(2) or § 648.75(b).

(2) *Scallops.* Scallops that are possessed or landed at or prior to the time when the scallops are received by a dealer, or scallops that are possessed by a dealer, are deemed to be harvested from the EEZ, unless the preponderance of all submitted evidence demonstrates that such scallops were harvested by a vessel without a scallop permit and fishing exclusively for scallops in state waters.

(3) *Summer flounder.* All summer flounder possessed aboard a party or charter boat issued a summer flounder permit are deemed to have been harvested from the EEZ.

(4) *NE multispecies.* (i) Regulated species possessed for sale that do not meet the minimum sizes specified in § 648.83 for sale are deemed to have been taken or imported in violation of these regulations, unless the preponderance of all submitted evidence demonstrates that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters. This presumption does not apply to fish being sorted on deck.

(ii) Regulated species possessed for sale that do not meet the minimum sizes specified in § 648.83 for sale are deemed taken from the EEZ or imported in violation of these regulations, unless the preponderance of all submitted evidence demonstrates that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters. This presumption does not apply to fish being sorted on deck.

(5) *Mackerel, squid, and butterfish.* All mackerel and butterfish possessed on board a party or charter boat issued a mackerel, squid, and butterfish fishery permit are deemed to have been harvested from the EEZ.

§ 648.15 Facilitation of enforcement.

(a) *General.* See § 600.504 of this chapter.

(b) *Special notification requirements applicable to surf clam and ocean quahog vessel owners and operators.* (1) Vessel owners or operators are required to call the NMFS Office of Law Enforcement nearest to the point of offloading (contact the Regional Director for locations and phone numbers) and accurately provide the following information prior to the departure of their vessel from the dock to fish for surf clams or ocean quahogs in the EEZ: Name of the vessel; NMFS permit number assigned to the vessel; expected date and time of departure from port; whether the trip will be directed on surf clams or ocean quahogs; expected date, time, and location of landing; and name of the individual providing notice.

(2) Owners or operators that have given notification of a fishing trip under this paragraph (b) who decide to cancel or postpone the trip prior to departure must immediately provide notice of cancellation by telephone to the Office of Law Enforcement to which the original notification was provided. A separate notification shall be provided for the next fishing trip. Owners or operators that discontinue a fishing trip in the EEZ must immediately provide notice of discontinuance by telephone to the Office of Law Enforcement to which the original notification was provided. The owner or operator providing notice of discontinuance shall advise of any changes in landing time or port of landing. The owner or operator discontinuing a fishing trip in the EEZ must return to port and offload any surf clams or ocean quahogs prior to commencing fishing operations in the waters under the jurisdiction of any state.

(3) The vessel permits, the vessel, its gear, and catch shall be subject to inspection upon request by an authorized officer.

§ 648.16 Penalties.

See § 600.735.

Subpart B—Management Measures for the Atlantic Mackerel, Squid, and Butterfish Fisheries

§ 648.20 Maximum optimum yield (OYs).

The OYs specified pursuant to § 648.21 during a fishing year may not exceed the following amounts:

(a) Mackerel—that quantity of mackerel that is less than or equal to the allowable biological catch (ABC) in U.S. waters specified pursuant to § 648.21.

(b) *Loligo*—36,000 mt (79,362,000 lb).

(c) *Illex*—30,000 mt (66,135,000 lb).

(d) Butterfish—16,000 mt (35,272,000 lb).

§ 648.21 Procedures for determining initial annual amounts.

(a) *Initial recommended annual specifications.* The Atlantic Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) shall meet annually to develop and recommend the following specifications for consideration by the Mackerel, Squid, and Butterfish Committee of the MAFMC: (1) Initial OY (IOY), domestic annual harvest (DAH), and domestic annual processing (DAP) for the squids; (2) IOY, DAH, DAP, and bycatch level of the total allowable level of foreign fishing (TALFF), if any, for butterfish; and (3) IOY, DAH, DAP, joint venture processing (JVP), if any, and TALFF, if any, for mackerel. The Monitoring Committee may also recommend that certain ratios of TALFF, if any, for mackerel to purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the Monitoring Committee shall review available data pertaining to: Commercial and recreational landings, discards, current estimates of fishing mortality, stock status, the most recent estimates of recruitment, virtual population analysis results, levels of noncompliance by harvesters or individual states, impact of size/mesh regulations, results of a survey of domestic processors and joint venture operators of estimated mackerel processing capacity and intent to use that capacity, results of a survey of fishermen's trade associations of estimated mackerel harvesting capacity and intent to use that capacity, and any other relevant information. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

(1) *Squid.* (i) The ABC for any fishing year must be either the maximum OY specified in § 648.20, or a lower amount, if stock assessments indicate that the

potential yield is less than the maximum OY.

(ii) IOY is a modification of ABC based on social and economic factors.

(2) *Mackerel.* (i) Mackerel ABC must be calculated from the formula ABC = S − C − T, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year; S is the mackerel spawning stock size at the beginning of the year for which quotas are specified; and T, which must be equal to or greater than 900,000 mt (1,984,050,000 lb), is the spawning stock size that must be maintained in the year following the year for which quotas are specified.

(ii) IOY is a modification of ABC, based on social and economic factors, and must be less than or equal to ABC.

(iii) IOY is composed of DAH and TALFF. DAH, DAP, and JVP must be projected by reviewing data from sources specified in paragraph (a) of this section and other relevant data, including past domestic landings, projected amounts of mackerel necessary for domestic processing and for joint ventures during the fishing year, projected recreational landings, and other data pertinent for such a projection. The JVP component of DAH is the portion of DAH that domestic processors either cannot or will not use. In addition, IOY is based on the criteria set forth in the Magnuson Act, specifically section 201(e), and on the following economic factors:

(A) Total world export potential by mackerel producing countries.

(B) Total world import demand by mackerel consuming countries.

(C) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers.

(D) Increased/decreased revenues to the United States from foreign fees.

(E) Increased/decreased revenues to U.S. harvesters (with/without joint ventures).

(F) Increased/decreased revenues to U.S. processors and exporters.

(G) Increases/decreases in U.S. harvesting productivity due to decreases/increases in foreign harvest.

(H) Increases/decreases in U.S. processing productivity.

(I) Potential impact of increased/decreased TALFF on foreign purchases of U.S. products and services and U.S.-caught fish, changes in trade barriers, technology transfer, and other considerations.

(3) *Butterfish.* (i) If the Monitoring Committee's review indicates that the stock cannot support a level of harvest equal to the maximum OY, the Monitoring Committee shall recommend establishing an ABC less than the maximum OY for the fishing year. This level represents the modification of maximum OY to reflect biological and ecological factors. If the stock is able to support a harvest level equivalent to the maximum OY, the ABC must be set at that level.

(ii) IOY is a modification of ABC based on social and economic factors. The IOY is composed of a DAH and bycatch TALFF that is equal to 0.08 percent of the allocated portion of the mackerel TALFF.

(c) *Recommended measures.* Based on the review of the data described in paragraph (a) of this section, the Monitoring Committee will recommend to the Squid, Mackerel, and Butterfish Committee the measures it determines are necessary to assure that the specifications are not exceeded from the following measures:

(1) Commercial quotas.

(2) The amount of *Loligo* and butterfish that may be retained, possessed and landed by vessels issued the incidental catch permit specified in § 648.4(a)(5).

(3) Commercial minimum fish sizes.

(4) Commercial trip limits.

(5) Commercial seasonal quotas.

(6) Minimum mesh sizes.

(7) Commercial gear restrictions.

(8) Recreational harvest limit.

(9) Recreational minimum fish size.

(10) Recreational possession limits.

(11) Recreational season.

(d) *Annual fishing measures.* (1) The Squid, Mackerel, and Butterfish Committee shall review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment received thereon, the Squid, Mackerel, and Butterfish Committee shall recommend to the MAFMC appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC shall review these recommendations and based on the recommendations and any public comment received thereon, the MAFMC shall recommend to the Regional Director appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Director shall review the recommendations, and on or about November 1 of each year, shall publish notification in the **Federal Register** proposing specifications and any measures necessary to assure that the specifications will not be exceeded and providing a 30-day public comment period. If the proposed specifications differ from those recommended by the MAFMC, the reasons for any differences shall be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The MAFMC's recommendations shall be available for inspection at the office of the Regional Director during the public comment period.

(2) On or about December 15 of each year, the Assistant Administrator will make a final determination concerning the specifications for each species and any measures necessary to assure that the specifications will not be exceeded contained in the **Federal Register** notification. After the Assistant Administrator considers all relevant data and any public comments, notification of the final specifications and any measures necessary to assure that the specifications will not be exceeded and responses to the public comments will be published in the **Federal Register**. If the final specification amounts differ from those recommended by the MAFMC, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section.

(e) *Inseason adjustments.* The specifications established pursuant to this section may be adjusted by the Regional Director, in consultation with the MAFMC, during the fishing year by publishing notification in the **Federal Register** stating the reasons for such an action and providing a 30-day comment public comment period.

§ 648.22 Closure of the fishery.

(a) *General.* The Assistant Administrator shall close the directed mackerel or *Loligo* or *Illex* squid or butterfish fishery in the EEZ when U.S. fishermen have harvested 80 percent of the DAH, of that fishery if such closure is necessary to prevent the DAH from being exceeded. The closure shall remain in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When the Regional Director projects that DAH will be attained for any of the species, the Assistant Administrator shall close the fishery in the EEZ to all fishing for that species, and the incidental catches specified in paragraph (c) of this section will be prohibited.

(b) *Notification.* Upon determining that a closure is necessary, the Assistant Administrator will notify, in advance of the closure, the Executive Directors of the MAFMC, NEFMC, and SAFMC; mail notification of the closure to all holders of mackerel, squid, and butterfish fishery permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of closure in the **Federal Register**.

(c) *Incidental catches.* During the closure of a directed fishery, the trip limit for the species for which the fishery is closed is 10 percent, by weight, of the total amount of fish on board for a vessel with a *Loligo*/butterfish moratorium permit or *Illex* or a mackerel commercial permit. During a period of closure of the directed fishery for *Loligo* or butterfish, the trip limit for a vessel with an incidental catch permit for those species is 10 percent, by weight, of the total amount of fish on board, or the allowed level of incidental catch specified in § 648.4(e)(2), whichever is less.

§ 648.23 Gear restrictions.

(a) *Mesh restrictions and exemptions.* Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ may only fish with nets having a minimum mesh size of 1⅞ inches (48 mm) diamond mesh, inside stretch measure, applied throughout the entire net, unless they are fishing during the months of June, July, August, and September for *Illex* seaward of the following coordinates (copies of a map depicting this area are available from the Regional Director upon request):

Point	N. Lat.	W. Long.
M1	43°58.0′	67°22.0′
M2	43°50.0′	68°35.0′
M3	43°30.0′	69°40.0′
M4	43°20.0′	70°00.0′
M5	42°45.0′	70°10.0′
M6	42°13.0′	69°55.0′
M7	41°00.0′	69°00.0′
M8	41°45.0′	68°15.0′
M9	42°10.0′	67°10.0′
M10	41°18.6′	66°24.8′
M11	40°55.5′	66°38.0′
M12	40°45.5′	68°00.0′
M13	40°37.0′	68°00.0′
M14	40°30.0′	69°00.0′
M15	40°22.7′	69°00.0′
M16	40°18.7′	69°40.0′
M17	40°21.0′	71°03.0′
M18	39°41.0′	72°32.0′
M19	38°47.0′	73°11.0′
M20	38°04.0′	74°06.0′
M21	37°08.0′	74°46.0′
M22	36°00.0′	74°52.0′
M23	35°45.0′	74°53.0′
M24	35°28.0′	74°52.0′

Vessels fishing under this exemption may not have available for immediate use, as defined in paragraph (b) of this section, any net, or any piece of net, with a mesh size less than 1⅞ inches (48 mm) diamond mesh or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with such minimum mesh size, when the vessel is landward of the specified coordinates.

(b) *Definition of "not available for immediate use."* A net that can be shown not to have been in recent use and that is stowed in conformance with one of the following methods is considered to be not available for immediate use:

(1) *Below deck stowage.* (i) It is stored below the main working deck from which it is deployed and retrieved;

(ii) The towing wires, including the leg wires, are detached from the net; and

(iii) It is fan-folded (flaked) and bound around its circumference.

(2) *On-deck stowage.* (i) It is fan-folded (flaked) and bound around its circumference;

(ii) It is securely fastened to the deck or rail of the vessel; and

(iii) The towing wires, including the leg wires, are detached from the net.

(3) *On-reel stowage.* (i) It is on a reel and it's entire surface is covered with canvas or other similar material that is securely bound;

(ii) The towing wires, including the leg wires, are detached from the net; and

(iii) The codend is removed and stored below deck.

(4) *Other methods of stowage.* Any other method of stowage authorized in writing by the Regional Director and published in the **Federal Register**.

(c) *Mesh obstruction or constriction.* The owner or operator of a fishing vessel shall not use any combination of mesh or liners that effectively decreases the mesh size below the minimum mesh size, except that a liner may be used to close the opening created by the rings in the rearmost portion of the net, provided the liner extends no more than 10 meshes forward of the rearmost portion of the net.

(d) *Net obstruction or constriction.* The owner or operator of a fishing vessel shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net that results in an effective mesh opening of less than 1⅞ inches (48 mm) diamond mesh, inside stretch measure. Net strengtheners (covers), splitting straps and/or bull ropes or wire may be used, provided they do not constrict the top of the regulated portion of the net to less than an effective mesh opening of 1⅞ inches (48 mm), diamond mesh, inside stretch measure. Net strengtheners (covers) may not have an effective mesh opening of less than 4.5 inches (11.43 cm), diamond mesh, inside stretch measure. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (d), head ropes are not to be considered part of the top of the regulated portion of a trawl net.

Subpart C—Management Measures for Atlantic Salmon

§ 648.40 Prohibition on possession.

(a) *Incidental catch.* All Atlantic salmon caught incidental to a directed fishery for other species in the EEZ must be released in such a manner as to insure maximum probability of survival.

(b) *Presumption.* The possession of Atlantic salmon is prima facie evidence that such Atlantic salmon were taken in violation of this regulation. Evidence that such fish were harvested in state waters, or from foreign waters, or from aquaculture enterprises, will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

§ 648.50 Shell-height standard.

(a) *Minimum shell height.* The minimum shell height for in-shell scallops that may be landed, or possessed at or after landing, is 3.5 inches (89 mm). Shell height is a straight line measurement from the hinge to the outermost part of the shell, that is, the edge farthest away from the hinge.

(b) *Compliance and sampling.* Compliance with the minimum shell-height standard will be determined by inspection and enforcement at or after landing, including the time when the scallops are received or possessed by a dealer or person acting in the capacity of a dealer as follows: An authorized officer will take samples of 40 scallops each, at random, from the total amount of scallops in possession. The person in possession of the scallops may request that as many as 10 samples (400 scallops) be examined as a sample group. A sample group fails to comply with the standard if more than 10 percent of all scallops sampled are less than the shell height specified. The total amount of scallops in possession will be deemed in violation of this subpart and subject to forfeiture, if the sample group

fails to comply with the standard. All scallops will be subject to inspection and enforcement, in accordance with these compliance and sampling procedures, up to and including the time when a dealer receives or possesses scallops for a commercial purpose.

§ 648.51 Gear and crew restrictions.

(a) *Trawl vessel gear restrictions.* Trawl vessels in possession of more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, trawl vessels fishing for scallops, and trawl vessels issued a limited access scallop permit under § 648.4(a)(2), while fishing under or subject to the DAS allocation program for scallops and authorized to fish with or possess on board trawl nets pursuant to § 648.51(f), must comply with the following:

(1) *Maximum sweep.* The trawl sweep of nets in use by or available for immediate use, as specified in paragraph (a)(2)(iii) of this section, shall not exceed 144 ft (43.9 m) as measured by the total length of the footrope that is directly attached to the webbing of the net.

(2) *Net requirements*—(i) *Minimum mesh size.* The mesh size for any scallop trawl net in all areas shall not be smaller than 5.5 inches (13.97 cm).

(ii) *Mesh stowage.* Same as § 648.23(b).

(iii) *Measurement of mesh size.* Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm in 8 cm and a thickness of 2.3 mm, inserted into the meshes under a pressure or pull of 5 kg. The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net will be measured at least five meshes away from the lacings running parallel to the long axis of the net.

(3) *Chafing gear and other gear obstructions*—(i) *Net obstruction or constriction.* A fishing vessel may not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. "The top of the trawl net" means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph (a)(3), head ropes shall not be considered part of the top of the trawl net.

(ii) *Mesh obstruction or constriction.* A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (a)(3)(i) of this section, if it obstructs the meshes of the net in any manner.

(iii) A fishing vessel may not use or possess a net capable of catching scallops in which the bars entering or exiting the knots twist around each other.

(b) *Dredge vessel gear restrictions.* All dredge vessels fishing for or in possession of more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, and all dredge vessels issued a limited access scallop permit and fishing under the DAS Program, with the exception of hydraulic clam dredges and mahogany quahog dredges in possession of 400 lb (181.44 kg) of scallops, or less, must comply with the following restrictions:

(1) *Maximum dredge width.* The combined dredge width in use by or in possession on board such vessels shall not exceed 31 ft (9.4 m) measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section. However, component parts may be on board the vessel such that they do not conform with the definition of "dredge or dredge gear" in § 648.2, i.e., the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and such that no more than one complete spare dredge could be made from these components parts.

(2) *Minimum mesh size.* (i) The mesh size of net material on the top of a scallop dredge in use by or in possession of such vessels shall not be smaller than 5.5 inches (13.97 cm).

(ii) Mesh size is measured as provided in paragraph (a)(2)(iii) of this section.

(3) *Minimum ring size.* (i) The inside ring size of a scallop dredge in use by or in possession of such vessels shall not be smaller than 3.5 inches (89 mm).

(ii) Ring size is determined by measuring the shortest straight line passing through the center of the ring from one inside edge to the opposite inside edge of the ring. The measurement shall not include normal welds from ring manufacturing or links. The rings to be measured will be at least five rings away from the mouth, and at least two rings away from other rigid portions of the dredge.

(4) *Chafing gear and other gear obstructions*—(i) *Chafing gear restrictions.* No chafing gear or cookies shall be used on the top of a scallop dredge.

(ii) *Link restrictions.* No more than double links between rings shall be used in or on all parts of the dredge bag, except the dredge bottom. No more than triple linking shall be used in or on the dredge bottom portion and the diamonds. Damaged links that are connected to only one ring, i.e., "hangers," are allowed, unless they occur between two links that both couple the same two rings. Dredge rings may not be attached via links to more than four adjacent rings. Thus, dredge rings must be rigged in a configuration such that, when a series of adjacent rings are held horizontally, the neighboring rings form a pattern of horizontal rows and vertical columns. (A copy of a diagram showing a schematic of a legal dredge ring pattern is available upon request to the Office of the Regional Director).

(iii) *Dredge or net obstructions.* No material, device, net, dredge, ring, or link configuration or design shall be used if it results in obstructing the release of scallops that would have passed through a legal sized and configured net and dredge, as described in this part, that did not have in use any such material, device, net, dredge, ring link configuration or design.

(iv) *Twine top restrictions.* Vessels issued limited access scallop permits that are fishing for scallops under the DAS Program are also subject to the following restrictions:

(A) If a vessel is rigged with more than one dredge, or if rigged with only one dredge, such dredge is greater than 8 ft (2.44 m) in width, there must be at least seven rows of non-overlapping steel rings unobstructed by netting or any other material, between the terminus of the dredge (club stick) and the net material on the top of the dredge (twine top).

(B) For vessels rigged with only one dredge, and such dredge is less than 8 ft (2.44 m) in width, there must be at least four rows of non-overlapping steel rings unobstructed by netting or any other material between the club stick and the twine top of the dredge. (A copy of a diagram showing a schematic of a legal dredge with twine top is available from the Regional Director upon request).

(c) *Crew restrictions.* Limited access vessels participating in or subject to the scallop DAS allocation program may have no more than seven people aboard, including the operator, when not docked or moored in port, unless participating in the small dredge program specified in paragraph (e) of this section, or otherwise authorized by the Regional Director.

(d) *Sorting and shucking machines.* (1) Shucking machines are prohibited on all limited access vessels fishing under the scallop DAS program or any vessel in possession of more than 400 lb (181.44 kg) of scallops, unless the vessel has not been issued a limited access scallop permit and fishes exclusively in state waters.

(2) Sorting machines are prohibited on limited access vessels fishing under the scallop DAS program that shuck scallops at sea.

(e) *Small dredge program restrictions.* Any vessel owner whose vessel is assigned to either the part-time or occasional category may request, in the application for the vessel's annual permit, to be placed in one category higher. Vessel owners making such a request will be placed in the appropriate category for the entire year, if they agree to comply with the following restrictions, in addition to and notwithstanding other restrictions of this part, when fishing under the DAS program described in § 648.53, or in possession of more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops:

(1) The vessel must fish exclusively with one dredge no more than 10.5 ft (3.2 m) in width.

(2) The vessel may not have more than one dredge on board or in use.

(3) The vessel may have no more than five people, including the operator, on board.

(f) *Restrictions on use of trawl nets*—(1) *Prohibition on use of trawl nets.* Vessels issued a limited access scallop permit fishing for scallops under the DAS allocation program may not fish with, possess on board, or land scallops while in possession of trawl nets, unless such vessels have on board a valid letter of authorization to use trawl nets issued under paragraphs (f)(2) and (3) of this section.

(2) *Eligibility for a letter of authorization to use trawl nets.* To be eligible for a letter of authorization to use trawl nets, a vessel may not have fished for scallops with a scallop dredge from January 1, 1988, to the present, except pursuant to a letter of authorization issued pursuant to paragraph (f)(3) of this section. Only vessels that were issued 1995 limited access scallop permits or that were eligible to be issued such a permit, and for which a determination has been made in 1995, except as provided in paragraph (f)(4) of this section, are eligible to receive a letter of authorization.

(3) *Authorization to use trawl nets.* Vessels determined to have met the criteria set forth in paragraph (f)(2) of this section for a letter of authorization shall be issued a letter of authorization by the Regional Director. Such letter must be carried on board the vessel at all times. In subsequent years, eligibility for this exemption will be indicated on the vessel's permit.

(4) *Authorization to use trawl nets by replacement vessels.* To be eligible for a letter of authorization to use trawl nets, any replacement vessel of a vessel authorized to fish for scallops with trawl nets must meet the eligibility requirements of paragraph (f)(2) of this section and have on board a valid letter of authorization issued under paragraph (f)(3) of this section. The letter of authorization must be requested at the time the vessel owner initially applies for a permit for the replacement vessel.

§ 648.52 Possession restrictions.

(a) Owners or operators of vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or have used up their DAS allocations and vessels possessing a general scallop permit, unless exempted under the state waters exemption program described under § 648.54, are prohibited from possessing or landing per trip more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops, with not more than one scallop trip allowable in any calendar day.

(b) Owners or operators of vessels without a scallop permit, except vessels fishing for scallops exclusively in state waters, are prohibited from possessing or landing per trip, more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops. Owners or operators of vessels without a scallop permit are prohibited from selling, bartering, or trading scallops harvested from Federal waters.

§ 648.53 DAS allocations.

(a) *Assignment to DAS categories.* For each fishing year, each vessel issued a limited access scallop permit shall be assigned to the DAS category (full-time, part-time, or occasional) it was assigned in the preceding fishing year. Limited access scallop permits will indicate which category the vessel is assigned to. Vessels are prohibited from fishing for, landing per trip, or possessing more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops once their allocated number of DAS, as specified under paragraph (b) of this section, are used up.

(b) *DAS allocations.* Each vessel qualifying for one of the three categories specified in paragraph (a) of this section shall be allocated, annually, the maximum number of DAS it may participate in the limited access scallop fishery, according to its category. A vessel whose owner/operator has declared it out of the scallop fishery pursuant to the provisions of § 648.10, or has used up its allocated DAS, may leave port without being assessed a DAS, so long as it does not possess or land more than 400 lb (181.44 kg) of shucked, or 50 bu (176.2 L) of in-shell scallops, and complies with the other requirements of this part. The annual allocations of DAS for each category of vessel for the fishing years indicated are as follows:

DAS category	1995–96 and 1996–97	1997–98	1998–99 and 1999–2000	2000+
Full-time	182	164	142	120
Part-time	82	66	57	48
Occasional	16	14	12	10

(c) *Adjustments in annual DAS allocations.* Adjustments or changes in annual DAS allocations, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in § 648.55.

(d) *End-of-year carry-over.* Limited access vessels with unused DAS on the last day of February of any year may carry over a maximum of 10 DAS into the next year. At no time may more than 10 DAS be carried over.

(e) *Accrual of DAS.* DAS shall accrue in hourly increments, with all partial hours counted as full hours.

(f) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea assisting in a USCG search and rescue operation or assisting the USCG in

towing a disabled vessel, and that can document the occurrence through the USCG, will not accrue DAS for the time documented.

§ 648.54 State waters exemption.

(a) *DAS exemption.* Any vessel issued a limited access scallop permit is exempt from the DAS requirements specified in § 648.54(c) while fishing exclusively landward of the outer boundary of a state's waters, provided the vessel complies with paragraphs (c) through (f) of this section.

(b) *Gear restriction exemption*—(1) *Limited access permits.* Any vessel issued a limited access scallop permit that is exempt from the DAS requirements of § 648.53(c) under paragraph (a) of this section is also exempt from the gear restrictions specified in § 648.51 (a), (b), and (e) (1) and (2) while fishing exclusively landward of the outer boundary of the waters of a state that has been determined by the Regional Director under paragraph (b)(3) of this section to have a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP, provided the vessel complies with paragraphs (c) through (f) of this section.

(2) *General permits.* Any vessel issued a general scallop permit is exempt from the gear restrictions specified in § 648.51 (a), (b), and (e) (1) and (2) while fishing exclusively landward of the outer boundary of the waters of a state that has been determined by the Regional Director under paragraph (b)(3) of this section to have a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP, provided the vessel complies with paragraphs (d) through (f) of this section.

(3) *State eligibility for gear exemption.* (i) A state is eligible to have vessels fishing exclusively landward of the outer boundary of the waters of that state exempted from the gear requirements specified in § 648.51 (a), (b), and (e) (1) and (e)(2), if it has a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP.

(ii) The Regional Director shall determine which states have a scallop fishery and which of those states have a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP.

(iii) Maine, New Hampshire, and Massachusetts have been determined by the Regional Director to have scallop fisheries and scallop conservation programs that do not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP. These states must immediately notify the Regional Director of any changes in their respective scallop conservation program. The Regional Director will review these changes and, if a determination is made that the state's conservation program jeopardizes the fishing mortality/effort reduction objectives of the Scallop FMP, or that the state no longer has a scallop fishery, the Regional Director shall publish a final rule in the **Federal Register** amending this paragraph (b)(3)(iii) to eliminate the exemption for that state. The Regional Director may determine that other states have scallop fisheries and scallop conservation programs that do not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP. In such case, the Regional Director shall publish a final rule in the **Federal Register** amending this paragraph (b)(3)(iii) to provide the exemption for such states.

(c) *Notification requirements.* Vessels fishing under the exemptions provided by paragraphs (a) and/or (b) of this section must notify the Regional Director in accordance with the provisions of § 648.10(f).

(d) *Restriction on fishing in the EEZ.* A vessel fishing under a state water's exemption may not fish in the EEZ during that time.

(e) *Duration of exemption.* An exemption expires upon a change in the vessel's name or ownership.

(f) *Applicability of other provisions of this part.* A vessel fishing under the exemptions provided by paragraphs (a) and/or (b) of this section remains subject to all other requirements of this part.

§ 648.55 Framework adjustments to management measures.

(a) Annually, upon request from the NEFMC, but at a minimum in the years 1996 and 1999, the Regional Director will provide the NEFMC with information on the status of the scallop resource.

(b) Within 60 days of receipt of that information, the NEFMC PDT shall assess the condition of the scallop resource to determine the adequacy of the total allowable DAS reduction schedule, described in § 648.53(b), to achieve the target fishing mortality rate. In addition, the PDT shall make a determination whether other resource conservation issues exist that require a management response in order to meet the goals and objectives outlined in the Scallop FMP. The PDT shall report its findings and recommendations to the NEFMC. In its report to the NEFMC, the PDT shall provide the appropriate rationale and economic and biological analysis for its recommendation, utilizing the most current catch, effort, and other relevant data from the fishery.

(c) After receiving the PDT findings and recommendations, the NEFMC shall determine whether adjustments to, or additional management measures are necessary to meet the goals and objectives of the Scallop FMP. After considering the PDT's findings and recommendations, or at any other time, if the NEFMC determines that adjustments to, or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two NEFMC meetings. The NEFMC shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second NEFMC meeting. The NEFMC's recommendation on adjustments or additions to management measures must come from one or more of the following categories:

(1) DAS changes.
(2) Shell height.
(3) Offloading window reinstatement.
(4) Effort monitoring.
(5) Data reporting.
(6) Trip limits.
(7) Gear restrictions.
(8) Permitting restrictions.
(9) Crew limits.
(10) Small mesh line.
(11) Onboard observers.
(12) Any other management measures currently included in the FMP.

(d) After developing management actions and receiving public testimony, the NEFMC shall make a recommendation to the Regional Director. The NEFMC's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the NEFMC recommends that the management measures should be published as a final rule, the NEFMC must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the NEFMC's recommended management measures.

(3) Whether there is an immediate need to protect the resource.

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(e) If the NEFMC's recommendation includes adjustments or additions to management measures, and if, after reviewing the NEFMC's recommendation and supporting information:

(1) The Regional Director concurs with the NEFMC's recommended management measures and determines that the recommended management measures may be published as a final rule based on the factors specified in paragraph (d) of this section, the action will be published in the **Federal Register** as a final rule; or

(2) The Regional Director concurs with the NEFMC's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Director concurs with the NEFMC recommendation, the action will be published as a final rule in the **Federal Register**; or

(3) The Regional Director does not concur, the NEFMC will be notified, in writing, of the reasons for the non-concurrence.

(f) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson Act.

Subpart E—Management Measures for the Atlantic Surf Clam and Ocean Quahog Fisheries

§ 648.70 Annual individual allocations.

(a) *General.* (1) For each fishing year, the Regional Director shall determine the allocation of surf clams and ocean quahogs for each vessel owner issued an allocation for the preceding fishing year, by multiplying the quotas specified for each species by the Regional Director under § 648.71 by the allocation percentage, specified for that owner on the allocation permit for the preceding fishing year, adjusted to account for any transfer pursuant to paragraph (b) of this section. These allocations shall be made in the form of an allocation permit specifying for each species the allocation percentage and the allocation in bushels. Such permits shall be issued on or before December 15, to the registered holders who were assigned an allocation by November 1. The total number of bushels of allocation shall be divided by 32 to determine the appropriate number of cage tags to be issued or acquired under § 648.75. Amounts of allocation 0.5 or smaller created by this division shall be rounded downward to the nearest whole number and amounts of allocation greater than 0.5 created by this division shall be rounded upward to the nearest whole number so that allocations are specified in whole cages. An allocation permit is only valid for the entity for which it is issued.

(2) The Regional Director may, after publication of a fee notification in the **Federal Register**, charge a permit fee before issuance of the permit to recover administrative expenses. Failure to pay the fee will preclude issuance of the permit.

(b) *Transfers*—(1) *Allocation percentage.* Subject to the approval of the Regional Director, part or all of an allocation percentage may be transferred, in amounts equivalent to not less than 160 bu (8,500 L) (i.e., 5 cages) in the year in which the transfer is made, to any person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). Approval of a transfer by the Regional Director and for a new allocation permit reflecting that transfer may be requested by submitting a written application for approval of the transfer and for issuance of a new allocation permit to the Regional Director at least 10 days before the date on which the applicant desires the transfer to be effective, in the form of a completed transfer log supplied by the Regional Director. The transfer is not effective until the new holder receives a new or revised annual allocation permit from the Regional Director. An application for transfer may not be made between October 15 and December 31 of each year.

(2) *Cage tags.* Cage tags issued pursuant to § 648.75 may be transferred in quantities of not less than 5 tags at any one time, subject to the restrictions and procedure specified in paragraph (b)(1) of this section; provided that application for such cage tag transfers may be made at any time before December 10 of each year and the transfer is effective upon the receipt by the transferee of written authorization from the Regional Director.

(3) *Review.* If the Regional Director determines that the applicant has been issued a Notice of Permit Sanction for a violation of the Magnuson Act that has not been resolved, he/she may decline to approve such transfer pending resolution of the matter.

§ 648.71 Catch quotas.

(a) *Surf clams.* The amount of surf clams that may be caught annually by fishing vessels subject to these regulations will be specified by the Assistant Administrator, on or about December 1 of each year, within the range of 1.85 to 3.4 million bu (98.5 to 181 million L).

(1) *Establishing quotas.* (i) Prior to the beginning of each year, the MAFMC, following an opportunity for public comment, will recommend to the Assistant Administrator quotas and estimates of DAH and DAP within the ranges specified. In selecting the quota, the MAFMC shall consider current stock assessments, catch reports, and other relevant information concerning:

(A) Exploitable and spawning biomass relative to the OY.

(B) Fishing mortality rates relative to the OY.

(C) Magnitude of incoming recruitment.

(D) Projected effort and corresponding catches.

(E) Geographical distribution of the catch relative to the geographical distribution of the resource.

(F) Status of areas previously closed to surf clam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(ii) The quota shall be set at that amount that is most consistent with the objectives of the Atlantic Surf Clam and Ocean Quahog FMP. The Assistant Administrator may set quotas at quantities different from the MAFMC's recommendations only if he/she can demonstrate that the MAFMC's recommendations violate the national standards of the Magnuson Act and the objectives of the Atlantic Surf Clam and Ocean Quahog FMP.

(2) *Report.* Prior to the beginning of each year, the Regional Director shall prepare a written report, based on the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors according to these regulations, and other relevant data. The report will include consideration of:

(i) Exploitable biomass and spawning biomass relative to OY.

(ii) Fishing mortality rates relative to OY.

(iii) Magnitude of incoming recruitment.

(iv) Projected effort and corresponding catches.

(v) Status of areas previously closed to surf clams fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(vi) Geographical distribution of the catch relative to the geographical distribution of the resource.

(3) *Public review.* Based on the information presented in the report, and in consultation with the MAFMC, the Assistant Administrator shall propose an annual surf clam quota and an annual ocean quahog quota and shall publish them in the **Federal Register**. Comments on the proposed annual quotas may be submitted to the Regional Director within 30 days after publication. The Assistant Administrator shall consider all comments, determine the appropriate annual quotas, and publish the annual quotas in the **Federal Register** on or about December 1 of each year.

(b) *Ocean quahogs.* The amount of ocean quahogs that may be caught by fishing vessels subject to these regulations shall be specified annually by the Assistant Administrator, on or about December 1, within the range of 4 to 6 million bu (213 to 319.4 million L), following the same procedures set forth in paragraph (a) of this section for surf clams.

§ 648.72 Minimum surf clam size.

(a) *Minimum length.* The minimum length for surf clams is 4.75 inches (12.065 cm).

(b) *Determination of compliance.* No more than 50 surf clams in any cage may be less than 4.75 inches (12.065 cm) in length. If more than 50 surf clams in any inspected cage of surf clams are less than 4.75 inches (12.065 cm) in length, all cages landed by the same vessel from the same trip are deemed to be in violation of the minimum size restriction.

(c) *Suspension.* Upon the recommendation of the MAFMC, the Regional Director may suspend annually, by publication in the **Federal Register**, the minimum shell-height standard, unless discard, catch, and survey data indicate that 30 percent of the surf clams are smaller than 4.75 inches (12.065 cm) and the overall reduced shell height is not attributable to beds where the growth of individual surf clams has been reduced because of density dependent factors.

(d) *Measurement.* Length is measured at the longest dimension of the surf clam shell.

§ 648.73 Closed areas.

(a) *Areas closed because of environmental degradation.* Certain areas are closed to all surf clam and ocean quahog fishing because of adverse environmental conditions. These areas will remain closed until the Assistant Administrator determines that the adverse environmental conditions no longer exist. If additional areas are identified by the Assistant Administrator as being contaminated by the introduction or presence of hazardous materials or pollutants, they may be closed by the Assistant Administrator in accordance with paragraph (c) of this section. The areas closed are:

(1) *Boston Foul Ground.* The waste disposal site known as the "Boston Foul Ground" and located at 42°25′36 N. lat., 70°3500 W. long., with a radius of 1 nm in every direction from that point.

(2) *New York Bight.* The polluted area and waste disposal site known as the "New York Bight Closure" and located at 40°2504 N. lat., 73°4238 W. long., and with a radius of 6 nm in every direction from that point, extending farther northwestward, westward, and southwestward between a line from a point on the arc at 40°3100 N. lat., 73°4338 W. long., directly toward Atlantic Beach Light in New York to the limit of state territorial waters of New York; and a line from a point on the arc at 40°1948 N. lat., 73°4542 W. long., to a point at the limit of the state territorial waters of New Jersey at 40°1400 N. lat., 73°5542 W. long.

(3) *106 Dumpsite.* The toxic industrial dump site known as the "106 Dumpsite" and located between 38°4000 and 39°0000 N. lat. and between 72°0000 and 72°3000 W. long.

(b) *Areas closed because of small surf clams.* Areas may be closed because they contain small surf clams.

(1) *Closure.* The Assistant Administrator may close an area to surf clams and ocean quahog fishing if he/she determines, based on logbook entries, processors' reports, survey cruises, or other information, that the area contains surf clams of which:

(i) Sixty percent or more are smaller than the minimum size (4.5 inches (11.43 cm)); and

(ii) Not more than 15 percent are larger than 5.5 inches (13.97 cm) in size.

(2) *Reopening.* The Assistant Administrator may reopen areas or parts of areas closed under paragraph (b)(1) of this section if he/she determines, based on survey cruises or other information, that:

(i) The average length of the dominant (in terms of weight) size class in the area to be reopened is equal to or greater than 4.75 inches (12.065 cm); or

(ii) The yield or rate of growth of the dominant shell-height class in the area to be reopened would be significantly enhanced through selective, controlled, or limited harvest of surf clams in the area.

(c) *Procedure.* (1) The Regional Director may hold a public hearing on the proposed closure or reopening of any area under paragraph (a) or (b) of this section. The Assistant Administrator shall publish notification in the **Federal Register** of any proposed area closure or reopening, including any restrictions on harvest in a reopened area. Comments on the proposed closure or reopening may be submitted to the Regional Director within 30 days after publication. The Assistant Administrator shall consider all comments and publish the final notification of closure or reopening, and any restrictions on harvest, in the **Federal Register**. Any adjustment to harvest restrictions in a reopened area shall be made by notification in the **Federal Register**. The Regional Director shall send notice of any action under this paragraph (c)(1) to each surf clam and ocean quahog processor and to each surf clam and ocean quahog permit holder.

(2) If the Regional Director determines, as the result of testing by state, Federal, or private entities, that a closure of an area under paragraph (a) of this section is necessary to prevent any adverse effects fishing may have on the public health, he/she may close the area for 60 days by publication of notification in the **Federal Register**, without prior comment or public hearing. If an extension of the 60-day closure period is necessary to protect the public health, the hearing and notice requirements of paragraph (c)(1) of this section shall be followed.

§ 648.74 Shucking at sea.

(a) *Observers.* (1) The Regional Director may allow the shucking of surf clams or ocean quahogs at sea if he/she determines that an observer carried aboard the vessel can measure accurately the total amount of surf clams and ocean quahogs harvested in the shell prior to shucking.

(2) Any vessel owner may apply in writing to the Regional Director to shuck surf clams or ocean quahogs at sea. The application shall specify: Name and address of the applicant, permit number of the vessel, method of calculating the amount of surf clams or ocean quahogs harvested in the shell, vessel dimensions and accommodations, and length of fishing trip.

(3) The Regional Director shall provide an observer to any vessel owner whose application is approved. The owner shall pay all reasonable expenses of carrying the observer on board the vessel.

(4) Any observer shall certify at the end of each trip the amount of surf clams or ocean quahogs harvested in the shell by the vessel. Such certification shall be made by the observer's signature on the daily fishing log required by § 648.7.

(b) *Conversion factor.* (1) Based on the recommendation of the MAFMC, the Regional Director may allow shucking at sea of surf clams or ocean quahogs, with or without an observer, if he/she determines a conversion factor for shucked meats to calculate accurately the amount of surf clams or ocean quahogs harvested in the shell.

(2) The Regional Director shall publish notification in the **Federal Register** specifying a conversion factor together with the data used in its calculation for a 30-day comment period. After consideration of the public comments and any other relevant data, the Regional Director may publish final notification in the **Federal Register** specifying the conversion factor.

(3) If the Regional Director makes the determination specified in paragraph (b)(1) of this section, he/she may authorize the vessel owner to shuck surf clams or ocean quahogs at sea. Such authorization shall be in writing and be carried aboard the vessel.

§ 648.75 Cage identification.

(a) *Tagging.* Before offloading, all cages that contain surf clams or ocean quahogs must be tagged with tags acquired annually under paragraph (b) of this section. A tag must be fixed on or as near as possible to the upper crossbar of the cage for every 60 ft^3 (1,700 L), or portion thereof, of the cage. A tag or tags must not be removed until the cage is emptied by the processor, at which time the processor must promptly remove and retain the tag(s) for collection or disposal as specified by the Regional Director.

(b) *Issuance.* The Regional Director will issue a supply of tags to each individual vessel owner qualifying for an allocation under § 648.70 prior to the beginning of each fishing year or he/she may specify, in the **Federal Register**, a vendor from whom the tags shall be purchased. The number of tags will be based on the owner's allocation. Each tag represents 32 bu (1,700 L) of allocation.

(c) *Expiration.* Tags will expire at the end of the fishing year for which they are issued, or if rendered null and void in accordance with 15 CFR part 904.

(d) *Return.* Tags that have been rendered null and void must be returned to the Regional Director, if possible.

(e) *Loss.* Loss or theft of tags must be reported by the owner, numerically identifying the tags to the Regional Director by telephone as soon as the loss or theft is discovered and in writing within 24 hours. Thereafter, the reported tags shall no longer be valid for use under this part.

(f) *Replacement.* Lost or stolen tags may be replaced by the Regional Director if proper notice of the loss is provided by the person to whom the tags were issued. Replacement tags may be purchased from the Regional Director or a vendor with a written authorization from the Regional Director.

(g) *Transfer.* See § 648.70(b)(2).

(h) *Presumptions.* Surf clams and ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ and to be part of an individual's allocation, unless the individual demonstrates that he/she has surrendered his/her Federal vessel permit issued under § 648.4(a)(4) and conducted fishing operations exclusively within waters under the jurisdiction of any state. Surf clams and ocean quahogs in cages with a Federal tag or tags, issued and still valid pursuant to this section, affixed thereto are deemed to have been harvested by the individual allocation holder to whom the tags were issued under § 648.75(b) or transferred under § 648.70(b).

Subpart F—Management Measures for the NE Multispecies Fishery

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

All vessels fishing for, harvesting, possessing, or landing NE multispecies in or from the EEZ and all vessels holding a multispecies permit must comply with the following minimum mesh size, gear, and methods of fishing requirements, unless otherwise exempted or prohibited.

(a) *Gulf of Maine/Georges Bank (GOM/GB) Regulated Mesh Area.*—(1) *Area definition.* The GOM/GB Regulated Mesh Area (copies of a map depicting the area are available from the Regional Director upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

GULF OF MAINE/GEORGES BANK REGULATED MESH AREA

Point	N. Lat.	W. Long.
G1	(1)	(1)
G2	43°58′	67°22′
G3	42°53.1′	67°44.4′
G4	42°31′	67°28.1′
G5	41°18.6′	66°24.8′

[1] The intersection of the shoreline and the U.S.-Canada Maritime Boundary.

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.	Approximate loran C bearings
G6	40°55.5′	66°38′	5930–Y–30750 and 9960–Y–43500.
G7	40°45.5′	68°00′	9960–Y–43500 and 68°00′ W. lat.
G8	40°37′	68°00′	9960–Y–43450 and 68°00′ W. lat.
G9	40°30′	69°00′	
NL3	40°22.7′	69°00′	
NL2	40°18.7′	69°40′	
NL1	40°50′	69°40′	
G11	40°50′	70°00′	
G12		[1] 70°00′	

[1] Northward to its intersection with the shoreline of mainland Massachusetts.

(2) *Gear restrictions.* (i) *Minimum mesh size.* Except as provided in paragraphs (a)(2) (iii) and (i) of this section, and unless otherwise restricted under paragraphs (a) (2)(ii) and (5) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, midwater trawl, or purse seine on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM/GB Regulated Mesh Area is 6-inch (15.24-cm) square or diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 ft^2 (0.81 m^2)), or to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(ii) *Large-mesh vessels.* When fishing in the GOM/GB regulated mesh area, the

minimum mesh size for any sink gillnet on a vessel or used by a vessel fishing under a DAS in the large-mesh DAS program specified in § 648.82(b) (6) and (7) is 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel or used by a vessel fishing under a DAS in the large-mesh DAS program is 8-inch (20.32-cm) diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 ft² (0.81 m²)), or to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(iii) *Other gear and mesh exemptions.* The minimum mesh size for any trawl net, sink gillnet, Scottish seine, midwater trawl, or purse seine on a vessel or used by a vessel when fishing in the GOM/GB Regulated Mesh Area while not under the NE multispecies DAS program, but when under one of the exemptions specified in paragraphs (a)(3), (a)(4), (a)(6), (a)(8), (a)(9), (d), (e), (h), and (i) of this section, is set forth in the respective paragraph specifying the exemption. Vessels that are not fishing under one of these exemptions, under the scallop state waters exemption specified in § 648.54, or under a NE multispecies DAS, are prohibited from fishing in the GOM/GB regulated mesh area.

(3) *Small Mesh Northern Shrimp Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish for, harvest, possess, or land northern shrimp in the Small Mesh Northern Shrimp Fishery Exemption Area with nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements of paragraphs (a)(3) (i) through (iii) of this section. The Small Mesh Northern Shrimp Fishery Exemption Area is defined by straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Director upon request):

SMALL MESH NORTHERN SHRIMP FISHERY EXEMPTION AREA

Point	N. Lat.	W. Long.
SM1	41°35′	70°00′
SM2	41°35′	69°40′
SM3	42°49.5′	69°40′
SM4	43°12′	69°00′
SM5	43°41′	68°00′
G2	43°58′	67°22′; (the U.S.-Canada maritime Boundary).
G1	(1)	(1)

[1] Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* A vessel fishing in the northern shrimp fishery described in this section under this exemption may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable bycatch species: Longhorn sculpin; silver hake—up to two standard totes; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less.

(ii) *Requirement to use a finfish excluder device (FED).* A vessel must have a rigid or semi-rigid grate consisting of parallel bars of not more than 1-inch (2.54-cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl, secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate, in any net with mesh smaller than the minimum size specified in paragraph (a)(2) of this section. The net must have a outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit out of the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate. (Copies of a schematic example of a properly configured and installed FED are available from the Regional Director upon request.)

(iii) *Time restrictions.* A vessel may only fish under this exemption during the northern shrimp season, as established by the Commission. The northern shrimp season is December 1 through May 30, or as modified by the Commission.

(4) *Cultivator Shoal Whiting Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with, use, or possess nets in the Cultivator Shoal Whiting Fishery Exemption Area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(4)(i) of this section. The Cultivator Shoal Whiting Fishery Exemption Area (copies of a map depicting the area are available from the Regional Director upon request) is defined by straight lines connecting the following points in the order stated:

CULTIVATOR SHOAL WHITING FISHERY EXEMPTION AREA

Point	N. Lat.	W. Long.
C1	42°10′	68°10′
C2	41°30′	68°41′
CI4	41°30′	68°30′
C3	41°12.8′	68°30′
C4	41°05′	68°20′
C5	41°55′	67°40′
C1	42°10′	68°10′

(i) *Requirements.* (A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have a letter of authorization issued by the Regional Director on board and may not fish for, possess on board, or land any species of fish other than whiting, except for the following, with the restrictions noted, as allowable bycatch species: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; and American lobster—up to 10 percent by weight of all other species on board or 200 lobsters, whichever is less.

(B) All nets must comply with a minimum mesh size of 3-inch (7.62 cm) square or diamond mesh applied to the first 160 meshes counted from the terminus of the net.

(C) Fishing is confined to a season of June 15 through October 31, unless otherwise specified by notification in the **Federal Register**.

(D) When transiting through the GOM/GB Regulated Mesh Area specified under paragraph (a)(1) of this section, any nets with a mesh size smaller than the minimum mesh size specified in paragraph (a)(2) of this section must be stowed in accordance with one of the methods specified in § 648.23(b).

(ii) *Sea sampling.* The Regional Director shall conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species, especially haddock.

(iii) *Annual review.* The NEFMC shall conduct an annual review of data to determine if there are any changes in

area or season designation necessary, and to make appropriate recommendations to the Regional Director following the procedures specified in § 648.90 of this part.

(5) *Stellwagen Bank/Jeffreys Ledge (SB/JL) Juvenile Protection Area.* Except as provided in paragraphs (a)(3), (d), (e), and (h) of this section, the minimum mesh size for any trawl net, Scottish seine, purse seine, or midwater trawl in use, or available for immediate use as described in § 648.23(b) by a vessel fishing in the following area is 6-inch (15.24-cm) square or diamond mesh in the last 50 bars of the codend and extension piece for vessels 45 ft (13.7 m) in length and less, and in the last 100 bars of the codend and extension piece for vessels greater than 45 ft (13.7 m) in length.

(i) The SB/JL Juvenile Protection Area (copies of a map depicting the area are available from the Regional Director upon request) is defined by straight lines connecting the following points in the order stated:

STELLWAGEN BANK JUVENILE PROTECTION AREA

Point	N. Lat.	W. Long.	Approximate Loran coordinates	
SB1	42°34.0′	70°23.5′	13737	44295
SB2	42°28.8′	70°39.0′	13861	44295
SB3	42°18.6′	70°22.5′	13810	44209
SB4	42°05.5′	70°23.3′	13880	44135
SB5	42°11.0′	70°04.0′	13737	44135
SB1	42°34.0′	70°23.5′	13737	44295

JEFFREYS LEDGE JUVENILE PROTECTION AREA

Point	N. Lat.	W. Long.	Approximate Loran coordinates	
JL1	43°12.7′	70°00.0′	13369	44445
JL2	43°09.5′	70°08.0′	13437	44445
JL3	42°57.0′	70°08.0′	13512	44384
JL4	42°52.0′	70°21.0′	13631	44384
JL5	42°41.5′	70°32.5′	13752	44352
JL6	42°34.0′	70°26.2′	13752	44300
JL7	42°55.2′	70°00.0′	13474	44362
JL1	43°12.7′	70°00.0′	13369	44445

(ii) Fishing for northern shrimp in the SB/JL Juvenile Protection Area is allowed, subject to the requirements of paragraph (a)(3) of this section.

(6) *Transiting.* (i) Vessels fishing in the Small Mesh Northern Shrimp Fishery Exemption Area and in Small Mesh Area 1/Small Mesh Area 2, as specified in paragraphs (a) (3) and (8) of this section, may transit through the SB/JL Juvenile Protection Area defined in paragraph (a)(5) of this section with nets on board that do not conform to the requirements specified in paragraph (a)(2) or (a)(5) of this section, provided that the nets are stowed in accordance with one of the methods specified in § 648.23(b).

(ii) Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may transit through the Small Mesh Northern Shrimp Fishery Exemption Area defined in paragraph (a)(3) of this section with nets on board with a mesh size smaller than the minimum size specified, provided that the nets are stowed in accordance with one of the methods specified in § 648.23(b), and provided the vessel has no fish on board.

(iii) Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may transit through the GOM/GB Regulated Mesh Area defined in paragraph (a)(1) of this section with nets on board with a mesh size smaller than the minimum mesh size specified and with small mesh exempted species on board, provided that the following conditions are met:

(A) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (a)(2) of this section are stowed in accordance with one of the methods specified in § 648.23(b).

(B) A letter of authorization issued by the Regional Director is on board.

(C) Vessels do not fish for, possess on board, or land any fish, except when fishing in the areas specified in paragraphs (a)(4), (a)(9), (b), and (c) of this section. Vessels may retain exempted small mesh species as provided in paragraphs (a)(4)(i), (a)(9)(i), (b)(3), and (c)(3) of this section.

(7) *Addition or deletion of exemptions.* (i) An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Director, after consultation with the NEFMC, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Director may take into consideration factors such as, but not limited to, juvenile mortality. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. An existing exemption may be deleted or modified if the Regional Director determines that the catch of regulated species is equal to or greater than 5 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions or modifications will be made through issuance of a rule in the **Federal Register**.

(ii) The NEFMC may recommend to the Regional Director, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Director to determine, without

public comment, percentage catch of regulated species.

(iii) The Regional Director may, using the process described in either paragraph (a)(7)(i) or (ii) of this section, authorize an exemption for a white hake fishery by vessels using regulated mesh or hook gear. Determination of the percentage of regulated species caught in such fishery shall not include white hake.

(iv) Exempted fisheries authorized under this paragraph (a)(7) are subject, at minimum, to the following restrictions:

(A) With the exception of fisheries authorized under paragraph (a)(7)(iii) of this section, a prohibition on the possession of regulated species.

(B) A limit on the possession of monkfish or monkfish parts of 10 percent, by weight, of all other species on board.

(C) A limit on the possession of lobsters of 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less.

(D) A limit on the possession of skate or skate parts in the Southern New England regulated mesh area described in paragraph (a)(10) of this section of 10 percent, by weight, of all other species on board.

(8) *Small Mesh Area 1/Small Mesh Area 2.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with or possess nets with a mesh size smaller than the minimum size specified from July 15 through October 31 when fishing in Small Mesh Area 1, and from January 1 through June 30 when fishing in Small Mesh Area 2. A vessel may not fish for, possess on board, or land any species of fish other than: Butterfish, dogfish, herring, mackerel, ocean pout, scup, squid, silver hake, and red hake, except for the following species, with the restrictions noted, as allowable bycatch species: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less. These areas are defined by straight lines connecting the following points in the order stated (copies of a map depicting these areas are available from the Regional Director upon request):

SMALL MESH AREA 1

Point	N. Lat.	W. Long.	Approximate Loran C bearings	
SM1	43°03′	70°27′	13600	25910
SM2	42°57′	70°22′	13600	25840
SM3	42°47′	70°32′	13720	25840
SM4	42°45′	70°29′	13710	25810
SM5	42°43′	70°32′	[1]	25810
SM6	42°44′	70°39′	13780	[1]
SM7	42°49′	70°43′	13780	25910
SM8	42°50′	70°41′	13760	25910
SM9	42°53′	70°43′	13760	25935
SM10	42°55′	70°40′	25935	[1]
SM11	42°59′	70°32′	[1]	25910
SM1	43°03′	70°27′	13600	25910

[1] 3-mile line

SMALL MESH AREA 2

Point	N. Lat.	W. Long.	Approximate Loran C bearings	
SM13	43°20.3′	69°59.4′	13320	44480
SM14	43°25.9′	69°45.6′	13200	44480
SM15	42°49.5′	69°40′	13387.5	44298
SM16	42°41.5′	69°40′	13430	44260
SM17	42°34.9′	70°00′	13587	44260
SM13	43°20.3′	69°59.4′	13320	44480

(9) *Nantucket Shoals dogfish fishery exemption area.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with, use, or possess nets of mesh smaller than the minimum size specified in the Nantucket Shoals Dogfish Fishery Exemption Area, if the vessel complies with the requirements specified in paragraph (a)(9)(i) of this section. The Nantucket Shoals Dogfish Fishery Exemption Area (copies of a map depicting this area are available from the Regional Director upon request) is defined by straight lines connecting the following points in the order stated:

NANTUCKET SHOALS DOGFISH EXEMPTION AREA

Point	N. Lat.	W. Long.
NS1	41°45′	70°00′
NS2	41°45′	69°20′
NS3	41°30′	69°20′
CI1	41°30′	69°23′
NS5	41°26.5′	69°20′
NS6	40°50′	69°20′
NS7	40°50′	70°00′
NS1	41°45′	70°00′

(i) *Requirements.* (A) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area under the exemption must have on board a letter of authorization issued by the Regional Director and may not fish for, possess on board, or land any species of fish other than dogfish, except as provided under paragraph (a)(9)(i)(D) of this section.

(B) Fishing is confined to June 1 through October 15.

(C) When transitting the GOM/GB regulated mesh area, specified under paragraph (a)(1) of this section, any nets with a mesh size smaller than the minimum mesh size specified in paragraph (a)(2) of this section must be stowed and unavailable for immediate use in accordance with § 648.23(b).

(D) The following species may be retained, with the restrictions noted, as allowable bycatch species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to two standard totes; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(E) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area under the exemption must comply with any additional gear restrictions specified in the letter of authorization issued by the Regional Director.

(ii) *Sea sampling.* The Regional Director may conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species.

(b) *Southern New England (SNE) Regulated Mesh Area*—(1) *Area definition.* The SNE Regulated Mesh Area (copies of a map depicting this area are available from the Regional Director upon request) is that area:

(i) bounded on the east by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND REGULATED MESH AREA

Point	N. Lat.	W. Long.
G5	41°18.6′	66°24.8′
G6	40°55.5′	66°38′
G7	40°45.5′	68°00′
G8	40°37′	68°00′
G9	40°30.5′	69°00′
NL3	40°22.7′	69°00′
NL2	40°18.7′	69°40′
NL1	40°50′	69°40′
G11	40°50′	70°00′
G12	.....	[1] 70°00′

[1] Northward to its intersection with the shoreline of mainland Massachusetts.

(ii) bounded on the west by the eastern boundary of the Mid-Atlantic Regulated Mesh Area.

(2) *Gear restrictions*—(i) *Minimum mesh size.* Except as provided in paragraphs (b)(2) (iii) and (i) of this section, and unless otherwise restricted under paragraph (b)(2)(ii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine or midwater trawl, not stowed and not unavailable in use or available for immediate use in accordance with § 648.23(b) by a vessel fishing under a DAS in the multispecies DAS program in the SNE regulated mesh area, is 6-inch (15.24-cm) square or diamond mesh throughout the entire net. This restriction does not apply to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(ii) *Large Mesh vessels.* When fishing in the SNE regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program specified in § 648.82(b) (6) and (7) is 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel or used by a vessel fishing under a DAS in the Large Mesh DAS program is 8-inch (20.32-cm) diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 ft² (0.81 m²)), or to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(iii) *Other gear and mesh exemptions.* The minimum mesh size for any trawl net, sink gillnet, Scottish seine, midwater trawl, or purse seine in use or available for immediate use, as described under § 648.23(b), by a vessel when not fishing under the NE multispecies DAS program and when fishing in the SNE regulated mesh area is specified under the exemptions set forth in paragraphs (b)(3), (c), (e), (h), and (i) of this section. Vessels that are not fishing in one of these exemption programs, with exempted gear (as defined under this part), or under the scallop state waters exemption specified in § 648.54, or under a NE multispecies DAS, are prohibited from fishing in the SNE regulated mesh area.

(3) *Exemptions*—(i) *Species exemptions.* Vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may fish for, harvest, possess, or land butterfish, dogfish, herring, mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake, and weakfish with nets with a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with the requirements specified in paragraph (b)(3)(ii) of this section.

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (b)(2)(i) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (b)(2)(i) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; searobins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea ravens; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts—up to 10 percent, by weight, of all other species on board.

(4) *Addition or deletion of exemptions.* Same as paragraph (a)(7) of this section.

(c) *Mid-Atlantic (MA) Regulated Mesh Area*—(1) *Area definition.* The MA Regulated Mesh Area (copies of a map depicting this area are available from the Regional Director upon request) is that area bounded on the east by a line running from the Rhode Island shoreline along 71°47.5′ W. long. to its intersection with the 3-nm line, south along the 3-nm line to Montauk Point, southwesterly along the 3-nm line to the intersection of 72°30′ W. long., and south along that line to the intersection of the outer boundary of the EEZ.

(2) *Gear restrictions*—(i) *Minimum mesh size.* Except as provided in paragraphs (c)(3) and (i) of this section, and unless otherwise restricted under paragraph (c)(2)(ii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine or midwater trawl not stowed or not unavailable for immediate use as described in § 648.23(b), by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area shall be that specified at § 648.104(a). This restriction does not apply to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(ii) *Large mesh vessels.* When fishing in the MA Regulated Mesh Area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program specified in § 648.82(b) (6) and (7) is 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum

mesh size for any trawl net on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program is 8-inch (20.32-cm) diamond mesh throughout the net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 ft² (0.81 m²)), or to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(3) *Net stowage exemption.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (c)(2)(i) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (c)(2)(i) of this section.

(4) *Additional exemptions.* The Regional Director may, using the process described in either paragraph (a)(7) (i) or (ii) of this section, authorize an exemption for a white hake fishery by vessels using regulated mesh or hook gear. Determination of the percentage of regulated species caught in such a fishery shall not include white hake.

(d) *Midwater trawl gear exemption.* Fishing may take place throughout the fishing year with midwater trawl gear of mesh size less than the applicable minimum size specified in this section, provided that:

(1) Midwater trawl gear is used exclusively;

(2) When fishing under this exemption in the GOM/GB and SB/JL Areas, the vessel has on board a letter of authorization issued by the Regional Director;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or squid in areas south of 42°20′ N. lat.; and Atlantic herring, blueback herring, or mackerel in areas north of 42°20′ N. lat; and

(4) The vessel does not fish for, possess, or land NE multispecies.

(e) *Purse seine gear exemption.* Fishing may take place throughout the fishing year with purse seine gear of mesh size smaller than the applicable minimum size specified in this section, provided that:

(1) The vessel uses purse seine gear exclusively;

(2) When fishing under this exemption in the GOM/GB and SB/JL areas, the vessel has on board an authorizing letter issued by the Regional Director;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or menhaden; and

(4) The vessel does not fish for, possess, or land NE multispecies.

(f) *Mesh measurements*—(1) *Gillnets.* Beginning October 15, 1996, mesh size of gillnet gear shall be measured by lining up five consecutive knots perpendicular to the float line and, with a ruler or tape measure, measuring ten consecutive measures on the diamond, inside knot to inside knot. The mesh shall be the average of the measurements of ten consecutive measures.

(2) *All other nets.* With the exception of gillnets, mesh size shall be measured by a wedged-shaped gauge having a taper of 2 cm in 8 cm and a thickness of 2.3 mm, inserted into the meshes under a pressure or pull of 5 kg.

(i) *Square-mesh measurement.* Square mesh in the regulated portion of the net is measured by placing the net gauge along the diagonal line that connects the largest opening between opposite corners of the square. The square mesh size is the average of the measurements of 20 consecutive adjacent meshes from the terminus forward along the long axis of the net. The square mesh is measured at least five meshes away from the lacings of the net.

(ii) *Diamond-mesh measurement.* Diamond mesh in the regulated portion of the net is measured running parallel to the long axis of the net. The mesh size is the average of the measurements of any series of 20 consecutive meshes. The mesh is measured at least five meshes away from the lacings of the net.

(g) *Restrictions on gear and methods of fishing*—(1) *Net obstruction or constriction.* A fishing vessel shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. "The top of the trawl net" means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph (g)(1), head ropes are not considered part of the top of the trawl net.

(2) *Mesh obstruction or constriction.* (i) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (g)(1) of this section, if it obstructs the meshes of the net in any manner.

(ii) A fishing vessel may not use a net capable of catching multispecies if the bars entering or exiting the knots twist around each other.

(3) *Pair trawl prohibition.* No vessel may fish for NE multispecies while pair trawling, or possess or land NE multispecies that have been harvested by means of pair trawling.

(h) *Scallop vessels.* (1) Except as provided in paragraph (h)(2) of this section, a scallop vessel that possesses a limited access scallop permit and either a multispecies combination vessel permit or a scallop multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species, provided it has at least one standard tote on board, unless otherwise restricted by § 648.86(a)(2).

(2) Combination vessels fishing under a NE multispecies DAS are subject to the gear restrictions specified in § 648.80 and may possess and land unlimited amounts of regulated species. Such vessels may simultaneously fish under a scallop DAS.

(i) *State waters winter flounder exemption.* Any vessel issued a multispecies permit may fish for, possess, or land winter flounder while fishing with nets of mesh smaller than the minimum size specified in paragraphs (a)(2), (b)(2), and (c)(2) of this section, provided that:

(1) The vessel has on board a certificate approved by the Regional Director and issued by the state agency authorizing the vessel's participation in the state's winter flounder fishing program and is in compliance with the applicable state laws pertaining to minimum mesh size for winter flounder.

(2) Fishing is conducted exclusively in the waters of the state from which the certificate was obtained.

(3) The state's winter flounder plan has been approved by the Commission as being in compliance with the Commission's winter flounder fishery management plan.

(4) The state elects, by a letter to the Regional Director, to participate in the exemption program described by this section.

(5) The vessel does not enter or transit the EEZ.

(6) The vessel does not enter or transit the waters of another state, unless such other state is participating in the exemption program described by this section and the vessel is enrolled in that state's program.

(7) The vessel, when not fishing under the DAS program, does not fish for, possess, or land more than 500 lb (226.8 kg) of winter flounder, and has at least one standard tote on board.

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small mesh species specified under paragraphs (a)(3)(i), (a)(8)(iii), (b)(3), and (c)(3) of this section when fishing in the areas specified under paragraphs (a)(3), (a)(8), (b)(1), and (c)(1) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters may also possess and retain skate as incidental take in this fishery.

(9) The vessel complies with all other applicable requirements.

§ 648.81 Closed areas.

(a) *Closed Area I.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area I (copies of a map depicting this area are available from the Regional Director upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (a)(2) and (d) of this section:

CLOSED AREA I

Point	N. Lat.	W. Long.
CI1	41°30′	69°23′
CI2	40°45′	68°45′
CI3	40°45′	68°30′
CI4	41°30′	68°30′
CI1	41°30′	69°23′

(2) Paragraph (a)(1) of this section does not apply to persons on fishing vessels or fishing vessels—

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish, and that have no other gear on board capable of catching NE multispecies; or

(ii) Fishing with or using pelagic hook or longline gear or harpoon gear, provided that there is no retention of regulated species, and provided that there is no other gear on board capable of catching NE multispecies.

(b) *Closed Area II.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area II (copies of a map depicting this area is available from the Regional Director upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (b)(2) of this section:

CLOSED AREA II

Point	N. Lat.	W. Long.
CII1	41°00′	67°20′
CII2	41°00′	68°35.8′
G5	41°18.6′	66°24.8′ (the U.S.-Canada Maritime Boundary)
CII3	42°22′	67°20′ (the U.S.-Canada Maritime Boundary)
CII1	41°00′	67°20′

(2) Paragraph (b)(1) of this section does not apply to persons on fishing vessels or fishing vessels fishing with gears as in paragraph (a)(2) (i) or (ii) of this section, or that are transitting the area, provided—

(i) The operator has determined that there is a compelling safety reason; and

(ii) The vessel's fishing gear is stowed in accordance with the requirements of paragraph (e) of this section.

(c) *Nantucket Lightship Closed Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as the Nantucket Lightship Closed Area (copies of a map depicting this area are available from the Regional Director upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (c)(2) and (d) of this section:

NANTUCKET LIGHTSHIP CLOSED AREA

Point	N. Lat.	W. Long.
G10	40°50′	69°00′
CN1	40°20′	69°00′
CN2	40°20′	70°20′
CN3	40°50′	70°20′
G10	40°50′	69°00′

(2) Paragraph (c)(1) of this section does not apply to persons on fishing vessels or fishing vessels—

(i) Fishing with gear as in paragraph (a)(2) (i) or (ii) of this section;

(ii) Fishing with or using dredge gear designed and used to take surf clams or ocean quahogs, and that have no other gear on board capable of catching NE multispecies; or

(iii) Classified as charter, party or recreational vessel, provided that—

(A) If the vessel is a party or charter vessel, it has a letter of authorization issued by the Regional Director on board;

(B) Fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the fish are caught; and

(C) The vessel has no gear other than rod and reel or handline gear on board.

(d) *Transitting.* Vessels may transit Closed Area I, the Nantucket Lightship Closed Area, the NE Closure Area, the Mid-coast Closure Area, and the Massachusetts Bay Closure Area, as defined in paragraphs (a)(1), (c)(1), (f)(1), (g)(1), and (h)(1), respectively, of this section, provided that their gear is stowed in accordance with the provisions of paragraph (e) of this section.

(e) *Gear stowage requirements.* Vessels transitting the closed areas must stow their gear as follows:

(1) *Nets.* In accordance with one of the methods specified in § 648.23(b) and capable of being shown not to have been in recent use.

(2) *Scallop dredges.* The towing wire is detached from the scallop dredge, the towing wire is reeled up onto the winch, and the dredge is secured and covered so that it is rendered unusable for fishing.

(3) *Hook gear (other than pelagic).* All anchors and buoys are secured and all hook gear, including jigging machines, is covered.

(4) *Sink gillnet gear.* All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck or rail, and all buoys larger than 6 inches (15.24 cm) in diameter, high flyers, and anchors are disconnected.

(f) *NE Closure Area.* (1) From August 15 through September 13, no fishing vessel or person on a fishing vessel may enter, fish, or be, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part may be, in the area known as the NE Closure Area (copies of a map depicting this area are available from the Regional Director upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (f)(2) of this section:

NORTHEAST CLOSURE AREA

Point	N. Lat.	W. Long.
NE1	(1)	68°55.0′
NE2	43°29.6′	68°55.0′
NE3	44°04.4′	67°48.7′
NE4	44°06.9′	67°52.8′
NE5	44°31.2′	67°02.7′
NE6	(1)	67°02.7′

[1] Maine shoreline.

(2) Paragraph (f)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) That have not been issued a multispecies permit and that are fishing exclusively in state waters;

(ii) That are fishing with or using exempted gear as defined under this part, excluding midwater trawl gear, provided that there is no other gear on board capable of catching NE multispecies; or

(iii) That are classified as charter, party, or recreational.

(g) *Mid-coast Closure Area.* (1) From November 1 through December 31, no fishing vessel or person on a fishing vessel may enter, fish, or be, and no fishing gear capable of catching multispecies, unless otherwise allowed in this part, may be in the area known as the Mid-coast Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (g)(2) of this section (copies of a map depicting this area are available from the Regional Director upon request):

MID-COAST CLOSURE AREA

Point	N. Lat.	W. Long.
MC1	42°30′	(1)
MC2	42°30′	70°15′
MC3	42°40′	70°15′
MC4	42°40′	70°00′
MC5	43°00′	70°00′
MC6	43°00′	69°30′
MC7	43°15′	69°30′
MC8	43°15′	69°00′
MC9	(2)	69°00′W

[1] Massachusetts shoreline.
[2] Maine shoreline.

(2) Paragraph (g)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraph (f)(2)(i), (ii), or (iii) of this section.

(h) *Massachusetts Bay Closure Area.* (1) During the period March 1 through March 30, no fishing vessel or person on a fishing vessel may enter, fish, or be in; and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in the area known as the Massachusetts Bay Closure Area (copies of a map depicting this area are available from the Regional Director upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (h)(2) of this section:

MASSACHUSETTS BAY CLOSURE AREA

Point	N. Lat.	W. Long.
MB1	42°30′	(1)
MB2	42°30′	70°30′
MB3	42°12′	70°30′
MB4	42°12′	70°00′
MB5	(2)	70°00′
MB6	42°00′	(2)
MB7	42°00′	(1)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline.

(2) Paragraph (h)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraph (f)(2)(i), (ii), or (iii) of this section.

§ 648.82 Effort-control program for limited access vessels.

(a) *General.* A vessel issued an limited access multispecies permit may not fish for, possess, or land regulated species, except during a DAS as allocated under and in accordance with the applicable DAS program described in this section, unless otherwise provided in these regulations.

(b) *DAS program—permit categories, allocations and initial assignments to categories.* Beginning with the 1996 fishing year, all limited access multispecies permit holders shall be assigned to one of the following DAS permit categories according to the criteria specified. Permit holders may request a change in permit category for the 1996 fishing year and all fishing years thereafter, as specified in § 648.4(a)(1)(i)(I)(*2*). Each fishing year shall begin on May 1 and extend through April 30 of the following year.

(1) *Individual DAS category*—(i) *DAS allocation.* A vessel fishing under the individual DAS category shall be allocated 65 percent of its initial 1994 allocation baseline, as established under Amendment 5 to the NE Multispecies FMP, for the 1996 fishing year and 50 percent of its initial allocation baseline for the 1997 fishing year and beyond, as calculated under paragraph (d)(1) of this section.

(ii) *Initial assignment.* Any vessel issued a valid limited access multispecies individual DAS permit, including any vessel also issued a limited access multispecies gillnet permit, as of July 1, 1996, shall be initially assigned to the individual DAS category.

(2) *Fleet DAS category*—(i) *DAS allocation.* A vessel fishing under the fleet DAS category shall be allocated 116 DAS (139 DAS multiplied by the proration factor of 0.83) for the 1996 fishing year and 88 DAS for the 1997 fishing year and beyond.

(ii) *Initial assignment.* Any vessel issued a valid fleet DAS permit, including any vessel also issued a limited access multispecies gillnet permit; limited access multispecies hook-gear permit; limited access multispecies gillnet permit that has not also been issued a DAS permit; or a limited access multispecies small vessel (less than or equal to 45 ft (13.7 m)) permit and that is larger than 20 ft (6.1 m) in length as determined by its most recent permit application, as of July 1, 1996, shall be initially assigned to the fleet DAS category.

(3) *Small vessel category*—(i) *DAS allocation.* A vessel qualified and electing to fish under the small vessel category may retain cod, haddock, and yellowtail flounder, combined up to 300 lb (136.1 kg) per trip without being subject to DAS restrictions. Such a vessel is not subject to a possession limit for other NE multispecies.

(ii) *Initial assignment.* A vessel issued a valid limited access multispecies permit and fishing under the small vessel category (less than or equal to 45 ft (13.7 m)) permit as of July 1, 1996, and that is 20 ft (6.1 m) or less in length as determined by the vessel's last application for a permit, shall be initially assigned to the small vessel category. Any other vessel may elect to switch into this category, as provided for in § 648.4(a)(1)(i)(I)(*2*), if such vessel meets or complies with the following:

(A) The vessel is 30 ft (9.1 m) or less in length overall as determined by measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

(B) If construction of the vessel was begun after May 1, 1994, the vessel must be constructed such that the quotient of the overall length divided by the beam is not less than 2.5.

(C) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be USCG documentation or state registration papers. For vessels over 20 ft (6.1 m) in length, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the vessel's construction plans, or by other means determined acceptable by the Regional Director. A copy of the verification must accompany an application for a multispecies permit.

(D) Adjustments to the small vessel category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made by the Regional Director following framework procedures of § 648.90.

(4) *Hook-gear category*—(i) *DAS allocation.* Any vessel issued a valid limited access multispecies hook-gear

permit shall be allocated 116 DAS (139 DAS multiplied by the proration factor of 0.83) for the 1996 fishing year and 88 DAS for the 1997 fishing year, and beyond. A vessel fishing under this category in the DAS program must meet or comply with the following while fishing for, in possession of, or landing, regulated species:

(A) Vessels, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel.

(B) Vessels, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 4,500-hook limit. A "snap-on" hook is deemed to be a replacement hook if it is not rigged or baited.

(ii) *Initial assignment.* No vessel shall be initially assigned to the hook-gear category. Any vessel that meets the qualifications specified in § 648.4(a)(1)(ii) may apply for and obtain a permit to fish under this category.

(5) *Combination vessel category*—(i) *DAS allocation.* A vessel fishing under the combination vessel category shall be allocated 65 percent of its initial 1994 allocation baseline, as established under Amendment 5 to the FMP, for the 1996 fishing year and 50 percent of its initial allocation baseline for the 1997 fishing year and beyond, as calculated under paragraph (d)(1) of this section.

(ii) *Initial assignment.* A vessel issued a valid limited access multispecies permit qualified to fish as a combination vessel as of July 1, 1996, shall be assigned to the combination vessel category.

(6) *Large Mesh Individual DAS category*—(i) *DAS allocation.* A vessel fishing under the large mesh individual DAS category shall be allocated a DAS increase of 12 percent in year one and of 36 percent in year two beyond the DAS allocations specified in paragraph (b)(1)(i) of this section (this includes the proration factor for 1996). To be eligible to fish under the large mesh individual DAS category, a vessel while fishing under this category must fish with gillnet gear with a minimum mesh size of 7-inch (17.78-cm) diamond mesh or with trawl gear with a minimum mesh size of 8-inch (20.32-cm) diamond mesh, as described under § 648.80 (a)(2)(ii), (b)(2)(ii), and (c)(2)(ii).

(ii) *Initial assignment.* No vessel shall be initially assigned to the large mesh individual DAS category. Any vessel that is initially assigned to the individual DAS, fleet DAS, or small vessel category may request and be granted a switch into this category as specified in § 648.4(a)(1)(i)(I)(*2*).

(7) *Large Mesh Fleet DAS category*—(i) *DAS allocation.* A vessel fishing under the large mesh fleet DAS category shall be allocated 129 DAS (155 DAS multiplied by the proration factor of 0.83) for the 1996 fishing year and 120 DAS for the 1997 fishing year, and beyond. To be eligible to fish under the large mesh fleet DAS category, a vessel while fishing under this category must fish with gillnet gear with a minimum mesh size of 7-inch (17.78-cm) diamond mesh or with trawl gear with a minimum mesh size of 8-inch (20.32-cm) diamond mesh, as described under § 648.80 (a)(2)(ii), (b)(2)(ii), and (c)(2)(ii).

(ii) *Initial assignment.* No vessel shall be initially assigned to the large mesh fleet DAS category. Any vessel that is initially assigned to the individual DAS, fleet DAS, or small vessel category may request and be granted a switch into this category as specified in § 648.4(a)(1)(i)(I)(*2*).

(c) *1996 DAS appeals.* (1) *Previously exempted vessels.* A vessel that was issued a valid 1995 limited access multispecies permit, and that has been fishing under the small vessel (less than or equal to 45 ft (13.7 m)), hook-gear, or gillnet categories, is eligible to appeal its allocation of DAS, if it has not previously done so, as described under paragraph (d)(2) of this section. Each vessel's initial allocation of DAS will be considered to be 176 DAS for purposes of this appeal (i.e., the fleet DAS category baseline prior to the 1996–1997 reductions).

(2) *Exempted gillnet vessels that held an individual DAS permit.* A vessel that was issued a valid 1995 limited access multispecies permit and that has been fishing under both the gillnet and individual DAS categories, is eligible to appeal its allocation of gillnet DAS, as described under paragraph (d)(2) of this section. Each vessel's initial allocation of DAS will be considered to be 176 DAS for purposes of this appeal (i.e., the fleet DAS category baseline prior to the 1996–1997 reductions).

(d) *Individual DAS allocations*—(1) *Calculation of a vessel's individual DAS.* The DAS assigned to a vessel for purposes of determining that vessel's annual allocation under the individual DAS program is calculated as follows:

(i) Count the total number of the vessel's NE multispecies DAS for the years 1988, 1989, and 1990. NE multispecies DAS are deemed to be the total number of days the vessel was absent from port for a trip where greater than 10 percent of the vessel's total landings were comprised of regulated species, minus any days for such trips in which a scallop dredge was used;

(ii) Exclude the year of least NE multispecies DAS; and

(iii) If 2 years of multispecies DAS are remaining, average those years' DAS; or

(iv) If only 1 year remains, use that year's DAS.

(2) *Appeal of DAS allocation.* (i) Initial allocations of individual DAS to those vessels authorized to appeal under paragraph (c) of this section may be appealed to the Regional Director if a request to appeal is received by the Regional Director no later than July 31, 1996, or 30 days after the initial allocation is made, whichever is later. Any such appeal must be in writing and be based on one or more of the following grounds:

(A) The information used by the Regional Director was based on mistaken or incorrect data.

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria.

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make an initial decision on the written appeal.

(iii) If the applicant is not satisfied with the initial decision, the applicant may request that the appeal be presented at a hearing before an officer appointed by the Regional Director.

(iv) The hearing officer shall present his/her findings to the Regional Director and the Regional Director will make a decision on the appeal. The Regional Director's decision on this appeal is the final administrative decision of the Department of Commerce.

(3) *Status of vessels pending appeal of DAS allocations.* While a vessel's individual DAS allocation is under appeal, the vessel may fish under the fleet DAS category until the Regional Director has made a final determination on the appeal. Any DAS spent fishing for regulated species by a vessel while that vessel's initial DAS allocation is under appeal, shall be counted against any DAS allocation that the vessel may ultimately receive.

(e) *Accrual of DAS.* Same as § 648.53(e).

(f) *Good Samaritan credit.* Same as § 648.53(f).

(g) *Spawning season restrictions.* A vessel issued a valid small vessel permit under paragraph (b)(3) of this section may not fish for, possess, or land regulated species from March 1 through March 20 of each year. Any other vessel issued a limited access multispecies permit must declare out and be out of

the regulated NE multispecies for a 20-day period between March 1 and May 31 of each fishing year using the notification requirements specified in § 648.10. If a vessel owner has not declared and been out for a 20-day period between March 1 and May 31 of each fishing year on or before May 12 of each such year, the vessel is prohibited from fishing for, possessing or landing any regulated species after May 11 of such year for the number of days needed to fulfill the 20-day requirement.

(h) *Declaring DAS and 20-day blocks.* A vessel's owner or authorized representative shall notify the Regional Director of a vessel's participation in the DAS program and declaration of its 20-day out period of the NE multispecies fishery, using the notification requirements specified in § 648.10.

(i) *Adjustments in annual DAS allocations.* Adjustments in annual DAS allocations, if required to meet fishing mortality goals, may be made by the Regional Director following the framework procedures of § 648.90.

§ 648.83 Minimum fish sizes.

(a) *Minimum fish sizes.* (1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. All other vessels are subject to the following minimum fish sizes (TL):

MINIMUM FISH SIZES (TL)

Species	Size (Inches)
Cod	19 (48.3 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Winter flounder (blackback)	12 (30.48 cm)
Redfish	9 (22.9 cm)

(2) The minimum fish size applies to the whole fish or to any part of a fish while possessed on board a vessel, except as provided in paragraph (b) of this section, and to whole fish only, after landing. Fish or parts of fish must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. "Skin on" means the entire portion of the skin normally attached to the portion of the fish or fish parts possessed.

(b) *Exceptions.* (1) Each person on board a vessel that has been issued a valid Certificate of Authorization in accordance with § 648.4(b) may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade, or barter.

(2) Recreational, party, and charter vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(c) *Adjustments.* (1) At any time when information is available, the NEFMC will review the best available mesh selectivity information to determine the appropriate minimum size for the species listed in paragraph (a) of this section, except winter flounder, according to the length at which 25 percent of the regulated species would be retained by the applicable minimum mesh size.

(2) Upon determination of the appropriate minimum sizes, the NEFMC shall propose the minimum fish sizes to be implemented following the procedures specified in § 648.90.

(3) Additional adjustments or changes to the minimum fish sizes specified in paragraph (a) of this section, and exemptions as specified in paragraph (b) of this section, may be made at any time after implementation of the final rule as specified under § 648.90.

§ 648.84 Gear-marking requirements and gear restrictions.

(a) Bottom-tending fixed gear, including, but not limited to gillnets and longlines, designed for, capable of, or fishing for NE multispecies must have the name of the owner or vessel, or the official number of that vessel permanently affixed to any buoys, gillnets, longlines, or other appropriate gear so that the name of the owner or vessel or official number of the vessel is visible on the surface of the water.

(b) Bottom-tending fixed gear, including, but not limited to gillnets or longline gear, must be marked so that the westernmost end (measuring the half compass circle from magnetic south through west to, and including, north) of the gear displays a standard 12-inch (30.5-cm) tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 ft (1.8 m) above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to, and including, south) of the gear need display only the standard 12-inch (30.5-cm) tetrahedral radar reflector positioned in the same way.

(c) Continuous gillnets must not exceed 6,600 ft (2,011.7 m) between the marked at the extremity of the deviation with an additional marker, which must display two or more visible streamers and may either be attached to or independent of the gear.

§ 648.85 Flexible Area Action System.

(a) The Chair of the Multispecies Oversight Committee, upon learning of the presence of discard problems associated with large concentrations of juvenile, sublegal, or spawning multispecies, shall determine if the situation warrants further investigation and possible action. In making this determination, the Committee Chair shall consider the amount of discard of regulated species, the species targeted, the number and types of vessels operating in the area, the location and size of the area, and the resource condition of the impacted species. If he/she determines it is necessary, the Committee Chair will request the Regional Director to initiate a fact finding investigation to verify the situation and publish notification in the **Federal Register** requesting public comments in accordance with the procedures therefor in Amendment 3 to the NE Multispecies FMP.

(b) After examining the facts, the Regional Director shall, within the deadlines specified in Amendment 3, provide the technical analysis required by Amendment 3.

(c) The NEFMC shall prepare an economic impact analysis of the potential management options under consideration within the deadlines specified in Amendment 3.

(d) Copies of the analysis and reports prepared by the Regional Director and the NEFMC shall be made available for public review at the NEFMC's office and the Committee shall hold a meeting/public hearing, at which time it shall review the analysis and reports and request public comments. Upon review of all available sources of information, the Committee shall determine what course of action is warranted by the facts and make a recommendation, consistent with the provisions of Amendment 3 to the Regional Director.

(e) By the deadline set in Amendment 3 the Regional Director shall either accept or reject the Committee's recommendation. If the recommended action is consistent with the record established by the fact-finding report, impact analysis, and comments received at the public hearing, he/she shall

other appropriate media, including, but not limited to, mailings to the news media, fishing industry associations and radio broadcasts, to disseminate information on the action to be implemented.

(f) Once implemented, the Regional Director shall monitor the affected area to determine if the action is still warranted. If the Regional Director determines that the circumstances under which the action was taken, based on the Regional Director's report, the NEFMC's report, and the public comments, are no longer in existence, he/she shall terminate the action by notification in the **Federal Register**.

(g) Actions taken under this section will ordinarily become effective upon the date of filing with the Office of the Federal Register. The Regional Director may determine that facts warrant a delayed effective date.

§ 648.86 Possession restrictions.

(a) *Haddock*—(1) *NE multispecies DAS vessels.* A vessel issued a limited access multispecies permit that is fishing under a NE multispecies DAS may land or possess on board up to 1,000 lb (453.6 kg) of haddock provided it has at least one standard tote on board. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(2) *Scallop dredge vessels.* (i) No person owning or operating a scallop dredge vessel issued a multispecies permit may land haddock from, or possess haddock on board, a scallop dredge vessel, from January 1 through June 30.

(ii) No person owning or operating a scallop dredge vessel without a multispecies permit may possess haddock in, or harvested from, the EEZ, from January 1 through June 30.

(iii) From July 1 through December 31, scallop dredge vessel or persons owning or operating a scallop dredge vessel that is fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg) of haddock provided the vessel has at least one standard tote on board. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(b) *Winter flounder.* A vessel issued a limited access multispecies permit that is less. Winter flounder on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection in standard totes.

(c) *Other possession restrictions.* Vessels are subject to any other applicable possession limit restrictions of this part.

§ 648.87 Sink gillnet requirements to reduce harbor porpoise takes.

(a) *Areas closed to sink gillnets.* Section 648.81(f) through (h) sets forth closed area restrictions to reduce the take of harbor porpoise consistent with the harbor porpoise mortality reduction goals.

(b) *Additional areas closed to sink gillnets.* All persons owning or operating vessels must remove all of their sink gillnet gear from, and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.23(b), a sink gillnet in the EEZ portion of the areas and for the times specified in paragraphs (b)(1) and (2) of this section, and all persons owning or operating vessels issued a limited access multispecies permit must remove all of their sink gillnet gear from, and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.23(b), a sink gillnet in the EEZ portion of the areas and for the times specified in paragraphs (b)(1) and (2) of this section.

(1) *Mid-coast Closure Area.* From March 25 through April 25 of each fishing year, the restrictions and requirements specified in paragraph (a)(2) of this section apply to the Mid-coast Closure area, as defined under § 648.81(g)(1).

(2) *Cape Cod South Area Closure.* From March 1 through March 10 of each fishing year, the restrictions and requirements specified under paragraph (a)(2) of this section shall apply to the area known as the Cape Cod South Closure Area (copies of a map depicting this area are available from the Regional Director upon request), which is the area bounded by straight lines connecting the following points in the order stated.

CAPE COD SOUTH CLOSURE AREA

Point	N. Lat.	W. Long.

(c) *Framework adjustment.* (1) At least annually, the Regional Director will provide the NEFMC with the best available information on the status of Gulf of Maine harbor porpoise, including estimates of abundance and estimates of bycatch in the sink gillnet fishery. Within 60 days of receipt of that information, the NEFMC's HPRT shall complete a review of the data, assess the adequacy of existing regulations, evaluate the impacts of other measures that reduce harbor porpoise take and, if necessary, recommend additional measures in light of the NEFMC's harbor porpoise mortality reduction goals. In addition, the HPRT shall make a determination on whether other conservation issues exist that require a management response to meet the goals and objectives outlined in the NE Multispecies FMP. The HPRT shall report its findings and recommendations to the NEFMC.

(2) After receiving and reviewing the HPRT's findings and recommendations, the NEFMC shall determine whether adjustments or additional management measures are necessary to meet the goals and objectives of the NE Multispecies FMP. If the NEFMC determines that adjustments or additional management measures are necessary, or at any other time in consultation with the HPRT, it shall develop and analyze appropriate management actions over the span of at least two NEFMC meetings.

(3) The NEFMC may request, at any time, that the HPRT review and make recommendations on any harbor porpoise take reduction measures or develop additional take reduction proposals.

(4) The NEFMC shall provide the public with advance notice of the availability of the proposals, appropriate rationale, economic and biological analyses, and opportunity to comment on them prior to and at the second NEFMC meeting. The NEFMC's recommendation on adjustments or additions to management measures must come from one or more of the categories specified under § 648.90(b)(1).

(5) If the NEFMC recommends that the management measures should be issued as a final rule, the NEFMC must consider at least the factors specified in § 648.90(b)(2).

§ 648.88 Open access permit restrictions.

(a) *Handgear permit.* A vessel issued a valid open access multispecies handgear permit is subject to the following restrictions:

(1) The vessel may possess and land up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, per trip, and unlimited amounts of the other NE multispecies, provided that it does not use or possess on board gear other than rod and reel or handlines while in possession of, fishing for, or landing NE multispecies, and provided it has at least one standard tote on board.

(2) A vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year.

(b) *Charter/party permit.* A vessel that has been issued a valid open access multispecies charter/party permit is subject to the restrictions on gear, recreational minimum fish sizes and prohibitions on sale specified in § 648.89, and any other applicable provisions of this part.

(c) *Scallop multispecies possession limit permit.* A vessel that has been issued a valid open access scallop multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30 as specified under § 648.86(a)(2)(i), and provided the vessel has at least one standard tote on board.

§ 648.89 Recreational and charter/party restrictions.

(a) *Recreational gear restrictions.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, are prohibited from fishing with more than two hooks per line and one line per angler and must stow all other fishing gear on board the vessel as specified under §§ 648.23(b) and 648.81(e) (2), (3), and (4).

(b) *Recreational minimum fish sizes*—(1) *Minimum fish sizes.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, are subject to minimum fish sizes (TL) as follows:

MINIMUM FISH SIZES (TL)

Species	Inches	
	1996	1997+
Cod	20 (50.8 cm)	21 (53.3 cm)
Haddock	20 (50.8 cm)	21 (53.3 cm)
Pollock	19 (48.3 cm)	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)	14 (35.6 cm)
Winter flounder (blackback)	12 (30.5 cm)	12 (30.5 cm)
Redfish	9 (22.9 cm)	9 (22.9 cm)

(2) *Exception.* Vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(c) *Possession restrictions.* Each person on a recreational vessel may not possess more than 10 cod and/or haddock, combined, in or harvested from the EEZ.

(1) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing fillet number by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(2) Cod and haddock harvested by recreational vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons aboard. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(3) Cod and haddock must be stored so as to be readily available for inspection.

(d) *Restrictions on sale.* It is unlawful to sell, barter, trade, or otherwise transfer for a commercial purpose, or to attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, NE multispecies caught or landed by charter or party vessels permitted under this part not fishing under a DAS or a recreational fishing vessels fishing in the EEZ.

§ 648.90 Framework specifications.

(a) *Annual review.* The Multispecies Monitoring Committee (MSMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year and options for NEFMC consideration on any changes, adjustment or additions to DAS allocations, closed areas, or other measures necessary to achieve the NE Multispecies FMP goals and objectives.

(1) The MSMC shall review available data pertaining to: Catch and landings, DAS and other measures of fishing effort, survey results, stock status, current estimates of fishing mortality, and any other relevant information.

(2) Based on this review, the MSMC shall recommend target TACs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The MSMC must demonstrate through analysis and documentation that the options it develops are expected to meet the NE Multispecies FMP goals and objectives. The MSMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MSMC may include any of the management measures in the NE Multispecies FMP, including, but not limited to: Annual target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the NE Multispecies FMP for the 10 regulated species; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; and any other management measures currently included in the NE Multispecies FMP.

(3) The NEFMC shall review the recommended target TACs and all of the options developed by the MSMC and other relevant information, consider public comment, and develop a recommendation to meet the NE Multispecies FMP objective that is consistent with other applicable law. If the NEFMC does not submit a recommendation that meets the NE Multispecies FMP objectives and is consistent with other applicable law, the Regional Director may adopt any option developed by the MSMC, unless rejected by the NEFMC, as specified in paragraph (a)(5) of this section, provided that the option meets the NE Multispecies FMP objective and is consistent with other applicable law.

(4) Based on this review, the NEFMC shall submit a recommendation to the Regional Director of any changes, adjustments or additions to DAS allocations, closed areas or other measures necessary to achieve the NE Multispecies FMP's goals and objectives. Included in the NEFMC's recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the NEFMC.

(5) If the NEFMC submits, on or before January 7, a recommendation to the Regional Director after one NEFMC meeting, and the Regional Director concurs with the recommendation, the Regional Director shall publish the NEFMC's recommendation in the **Federal Register** as a proposed rule. The **Federal Register** notification of the proposed action will provide a 30-day public comment period. The NEFMC may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (b) of this section and requests that the Regional Director publish the recommendation as a final rule. If the Regional Director concurs that the NEFMC's recommendation meets the NE Multispecies FMP objective and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the **Federal Register**. If the Regional Director concurs that the recommendation meets the FMP objective and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue. However, DAS used by a vessel on or after May 1 will be counted against any DAS allocation the vessel ultimately receives for that year.

(6) If the Regional Director concurs in the NEFMC's recommendation, a final rule shall be published in the **Federal Register** on or about April 1 of each year, with the exception noted in paragraph (a)(5) of this section. If the NEFMC fails to submit a recommendation to the Regional Director by February 1 that meets the FMP goals and objectives, the Regional Director may publish as a proposed rule one of the options reviewed and not rejected by the NEFMC, provided that the option meets the FMP objective and is consistent with other applicable law. If, after considering public comment, the Regional Director decides to approve the option published as a proposed rule, the action will be published as a final rule in the **Federal Register**.

(b) *Within season management action.* The NEFMC may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the NE Multispecies FMP.

(1) *Adjustment process.* After a management action has been initiated, the NEFMC shall develop and analyze appropriate management actions over the span of at least two NEFMC meetings. The NEFMC shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to and at the second NEFMC meeting. The NEFMC's recommendation on adjustments or additions to management measures must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifiers in the hook-gear fishery, fleet sector shares, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, and any other management measures currently included in the FMP.

(2) *NEFMC recommendation.* After developing management actions and receiving public testimony, the NEFMC shall make a recommendation to the Regional Director. The NEFMC's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Director on whether to issue the management measures as a final rule. If the NEFMC recommends that the management measures should be issued as a final rule, the NEFMC must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the NEFMC's recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Regional Director action.* If the NEFMC's recommendation includes adjustments or additions to management measures and, after reviewing the NEFMC's recommendation and supporting information:

(i) If the Regional Director concurs with the NEFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (b)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If the Regional Director concurs with the NEFMC's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Director concurs with the NEFMC recommendation, the measures will be issued as a final rule in the **Federal Register**.

(iii) If the Regional Director does not concur, the NEFMC will be notified in writing of the reasons for the non-concurrence.

(c) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson Act.

Subpart G—Management Measures for the Summer Flounder Fisheries

§ 648.100 Catch quotas and other restrictions.

(a) *Annual review.* The Summer Flounder Monitoring Committee shall review the following data on or before August 15 of each year to determine the allowable levels of fishing and other restrictions necessary to achieve a fishing mortality rate (F) of 0.41 in 1996, 0.30 in 1997, and 0.23 in 1998 and thereafter, provided the allowable levels of fishing in 1996 and 1997 may not exceed 18,518,830 lb (8,400 mt), unless such fishing levels have an associated F of 0.23: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates

of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls on the mortality of summer flounder; and any other relevant information.

(b) *Recommended measures.* Based on this review, the Summer Flounder Monitoring Committee shall recommend to the Demersal Species Committee of the MAFMC and the Commission the following measures to assure that the F specified in paragraph (a) of this section will not be exceeded:

(1) Commercial quota set from a range of 0 to the maximum allowed to achieve the specified F.

(2) Commercial minimum fish size.

(3) Minimum mesh size.

(4) Recreational possession limit set from a range of 0 to 15 summer flounder to achieve the specified F.

(5) Recreational minimum fish size.

(6) Recreational season.

(7) Restrictions on gear other than otter trawls.

(8) Adjustments to the exempted area boundary and season specified in § 648.104(b)(1) by 30-minute intervals of latitude and longitude and 2-week intervals, respectively, based on data specified in paragraphs (a) (8) and (10) of this section to prevent discarding of sublegal sized summer flounder in excess of 10 percent, by weight.

(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to assure that the applicable specified F will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Director measures necessary to assure that the applicable specified F will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Director shall review these recommendations and any recommendations of the Commission. After such review, the Regional Director will publish a proposed rule in the **Federal Register** by October 15 to implement a coastwide commercial quota and recreational harvest limit and additional management measures for the commercial fishery, and will publish a proposed rule in the **Federal Register** by February 15 to implement additional management measures for the recreational fishery, if he/she determines that such measures are necessary to assure that the applicable specified F will not be exceeded. After considering public comment, the Regional Director will publish a final rule in the **Federal Register** to implement the measures necessary to assure that the applicable specified F will not be exceeded.

(d) *Distribution of annual quota.* (1) The annual commercial quota will be distributed to the states, based upon the following percentages:

ANNUAL COMMERCIAL QUOTA SHARES

State	Share (percent)
Maine	0.04756
New Hampshire	0.00046
Massachusetts	6.82046
Rhode Island	15.68298
Connecticut	2.25706
New York	7.64699
New Jersey	16.72499
Delaware	0.01779
Maryland	2.03910
Virginia	21.31676
North Carolina	27.44584

(2) All summer flounder landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year.

(e) *Quota transfers and combinations.* Any state implementing a state commercial quota for summer flounder may request approval from the Regional Director to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for summer flounder may request approval from the Regional Director to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for summer flounder must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Director shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Director shall consider whether:

(i) The transfer or combination would preclude the overall annual quota from being fully harvested.

(ii) The transfer addresses an unforeseen variation or contingency in the fishery.

(iii) The transfer is consistent with the objectives of the Summer Flounder FMP and Magnuson Act.

(2) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made and will be effective upon the filing by NMFS of a notice of the approval of the transfer or combination with the Office of the Federal Register.

(3) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Director. A state may submit a new request when it receives notice that the Regional Director has disapproved the previous request or when notice of the approval of the transfer or combination has been filed at the Office of the Federal Register.

(4) If there is a quota overage among states involved in the combination of quotas at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in paragraph (d) of this section.

§ 648.101 Closures.

(a) *EEZ closure.* The Regional Director shall close the EEZ to fishing for summer flounder by commercial vessels for the remainder of the calendar year by publishing notification in the **Federal Register** if he/she determines that the inaction of one or more states will cause the applicable F specified in § 648.100(a) to be exceeded, or if the commercial fisheries in all states have been closed. The Regional Director may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the applicable specified F to be exceeded.

(b) *State quotas.* The Regional Director will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. The Regional Director shall publish notification in the **Federal Register** advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing summer flounder in that state.

§ 648.102 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(3) and fishermen subject to the possession limit may fish for summer flounder from January 1 through December 31. This time period may be adjusted pursuant to the procedures in § 648.100.

§ 648.103 Minimum fish sizes.

(a) The minimum size for summer flounder is 13 inches (33 cm) TL for all vessels issued a moratorium permit under § 648.4(a)(3), except on board party and charter boats carrying passengers for hire or carrying more than three crew members, if a charter boat, or more than five crew members, if a party boat;

(b) The minimum size for summer flounder is 14 inches (35.6 cm) TL for all vessels that do not qualify for a moratorium permit, or party and charter boats holding moratorium permits, but fishing with passengers for hire or carrying more than three crew members, if a charter boat, or more than five crew members, if a party boat.

(c) The minimum sizes in this section apply to whole fish or to any part of a fish found in possession, e.g., fillets. These minimum sizes may be adjusted pursuant to the procedures in § 648.100.

§ 648.104 Gear restrictions.

(a) *General.* (1) Otter trawlers whose owners are issued a summer flounder permit and that land or possess 100 or more lb (45.4 or more kg) of summer flounder from May 1 through October 31, or 200 lb or more (90.8 kg or more) of summer flounder from November 1 through April 30, per trip, must fish with nets that have a minimum mesh size of 5.5-inch (14.0-cm) diamond mesh or 6-inch (15.2-cm) square mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or, for codends with less than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the head rope, excluding any turtle excluded device extension.

(2) Mesh sizes are measured by a wedge-shaped gauge having a taper of 2 cm in 8 cm and a thickness of 2.3 mm inserted into the meshes under a pressure or pull of 5 kg. The mesh size is the average of the measurement of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings, running parallel to the long axis of the net.

(b) *Exemptions.* The minimum mesh-size requirements specified in paragraph (a)(1) of this section do not apply to:

(1) Vessels issued a summer flounder moratorium permit and fishing from November 1 through April 30 in the "exemption area," which is east of the line that follows 72°30.0' W. long. until it intersects the outer boundary of the EEZ. Vessels fishing with a summer flounder exemption permit shall not fish west of the line. Vessels issued a permit under § 648.4(a)(3)(iii) may transit the area west or south of the line, if the vessel's fishing gear is stowed in a manner prescribed under § 648.100(e), so that it is not "available for immediate use" outside the exempted area. The Regional Director may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption are discarding more than 10 percent, by weight, of their entire catch of summer flounder per trip. If the Regional Director makes such a determination, he/she shall publish notification in the **Federal Register** terminating the exemption for the remainder of the exemption season.

(2) Vessels fishing with a two-seam otter trawl fly net with the following configuration, provided that no other nets or netting with mesh smaller than 5.5 inches (14.0 cm) are on board:

(i) The net has large mesh in the wings that measures 8 inches (20.3 cm) to 64 inches (162.6 cm).

(ii) The first body section (belly) of the net has 35 or more meshes that are at least 8 inches (20.3 cm).

(iii) The mesh decreases in size throughout the body of the net to 2 inches (5 cm) or smaller towards the terminus of the net.

(3) The Regional Director may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption, on average, are discarding more than 1 percent of their entire catch of summer flounder per trip. If the Regional Director makes such a determination, he/she shall publish a notice in the **Federal Register** terminating the exemption for the remainder of the calendar year.

(c) *Net modifications.* No vessel subject to this part shall use any device, gear, or material, including, but not limited to nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net; except that, one splitting strap and one bull rope (if present) consisting of line or rope no more than 3 inches (7.2 cm) in diameter may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (c), head ropes shall not be considered part of the top of the regulated portion of a trawl net. A vessel shall not use any means or mesh configuration on the top of the regulated portion of the net, as defined in § 648.104(e), if it obstructs the meshes of the net or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than the minimum specified in § 648.100(a).

(d) *Mesh obstruction or constriction.* (1) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (c) of this section, that obstructs the meshes of the net in any manner.

(2) No person on any vessel may possess or fish with a net capable of catching summer flounder in which the bars entering or exiting the knots twist around each other.

(e) *Stowage of nets.* Otter trawl vessels retaining 100 lb (45.3 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.6 kg) or more of summer flounder from November 1 through April 30, and subject to the minimum mesh size requirement of paragraph (a)(1) of this section may not have "available for immediate use" any net or any piece of net that does not meet the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with the minimum mesh size requirement. A net that is stowed in conformance with one

of the methods specified in § 648.23(b) and that can be shown not to have been in recent use is considered to be not "available for immediate use."

§ 648.105 Possession restrictions.

(a) No person shall possess more than eight summer flounder in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a summer flounder moratorium permit are not subject to the possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

(b) If whole summer flounder are processed into fillets, the number of fillets will be converted to whole summer flounder at the place of landing by dividing the fillet number by two. If summer flounder are filleted into single (butterfly) fillets, each fillet is deemed to be from one whole summer flounder.

(c) Summer flounder harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of summer flounder on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(d) Owners and operators of otter trawl vessels issued a permit under § 648.4(a)(3) that fish with or possess nets or pieces of net on board that do not meet the minimum mesh requirements and that are not stowed in accordance with § 648.104(f), may not retain 100 lb (45.3 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.6 kg) or more of summer flounder from November 1 through April 30. Summer flounder on board these vessels must be stored so as to be readily available for inspection in standard 100-lb (45.3-kg) totes or fish boxes having a liquid capacity of 18.2 gal (70 L), or a volume of not more than 4,320 in^3 (2.5 ft^3 or 70.79 cm^3).

§ 648.106 Sea turtle conservation.

This section will be suspended during the effectiveness of any temporary regulations issued to regulate incidental take of sea turtles in the summer flounder under authority of the ESA under parts 217, 222, and 227 of this title. Such suspensions and temporary regulations will be issued by publication in the **Federal Register** and will be effective for a specified period of time, not to exceed 1 year.

(a) *Sea turtle handling and resuscitation.* The sea turtle handling and resuscitation requirements specified in § 227.72(e)(1) (i) and (ii) of this title apply with respect to sea turtles incidentally taken by a vessel fishing for summer flounder.

(b) *Sea turtle monitoring and assessment program.* (1) The Regional Director will establish a monitoring and assessment program, in cooperation with the MAFMC and the State of North Carolina, to measure the incidental take of sea turtles in the summer flounder fishery, monitor compliance with required conservation measures by trawlers, and predict interactions between the fishery and sea turtles to prevent turtle mortalities.

(2) A scientifically designed, observer-based monitoring program in accordance with § 648.11 may be used to gather scientific data measuring the incidental take of turtles by trawlers in the summer flounder fishery and to report turtle distribution and abundance.

(3) A cooperative sea turtle monitoring and assessment program utilizing a variety of information, including aerial and vessel surveys; onboard observers; individually tagged turtles; physical parameters, such as sea surface temperatures, and reports from the sea turtle stranding network; and other relevant and reliable information, will assess and predict turtle distribution, abundance, movement patterns, and timing to provide information to NMFS to prevent turtle mortality caused by the summer flounder fishery.

(c) *Required use of Turtle Excluder Devices (TED).* The Regional Director will require the use of a NMFS-approved TED by any vessels engaged in summer flounder fishing operations and utilizing trawl gear on or after October 15 as necessary to protect sea turtles. The Regional Director will publish notification in the **Federal Register** with the specific time period. Descriptions of NMFS-approved TEDs can be found in § 227.72(e)(4) of this title. This requirement applies to vessels within the EEZ bounded on the north by a line along 37°05′ N. lat., bounded on the south by a line along 33°35′ N. lat., and bounded on the east by a line 7 nm from the shoreward boundary of the EEZ.

(d) *Closure of the fishery.* The Regional Director may close the summer flounder fishery in the EEZ, or any part thereof, after consultation with the MAFMC, the Director of the State of North Carolina Division of Marine Fisheries, and the marine fisheries agency of any other affected state, by publishing notification in the **Federal Register**. The Regional Director shall take such action if he/she determines a closure is necessary to avoid jeopardizing the continued existence of any species listed under the ESA. The determination of the impact on sea turtles must be based on turtle mortalities and projections of turtle mortality by the NMFS monitoring and assessment program. A closure will be applicable to those areas specified in the notification and for the period specified in the notification. The Regional Director will provide as much advance notice as possible, consistent with the requirements of the ESA, and will have the closure announced on channel 16 of the marine VHF radio. A closure may prohibit all fishing operations, may prohibit the use of certain gear, may require that gear be stowed, or may impose similar types of restrictions on fishing activities. The prohibitions, restrictions, and duration of the closure will be specified in the notification.

(e) *Reopening of the fishery.* (1) The Regional Director may reopen the summer flounder fishery in the EEZ, or any part thereof, after consultation with the MAFMC, the Director of the State of North Carolina Division of Marine Fisheries, and the marine fisheries agency of any other affected state, by publishing notification in the **Federal Register**. The Regional Director may reopen the summer flounder fishery in the EEZ, or any part thereof, if additional sea turtle conservation measures are implemented and if projections of NMFS' sea turtle monitoring program indicate that such measures will ensure that continued operation of the summer flounder fishery is not likely to jeopardize the continued existence of any species listed under the ESA.

(2) The Regional Director may reopen the summer flounder fishery in the EEZ, or any part thereof, if the sea turtle monitoring program indicates changed conditions and if projections of the sea turtle monitoring program indicate that NMFS can ensure that continued operation of the summer flounder fishery is not likely to jeopardize the continued existence of any species listed under the ESA.

(f) *Additional sea turtle conservation measures.* (1) The Regional Director may impose additional sea turtle conservation measures, including tow-time requirements, in the EEZ, after consultation with the MAFMC, the Director of the State of North Carolina Division of Marine Fisheries, and the marine fisheries agency of any other affected state, by publishing notification in the **Federal Register**. The Regional Director shall take such action if he/she determines further measures are necessary to avoid jeopardizing the continued existence of any species listed under the ESA or if such action would allow reopening of the summer flounder fishery in the EEZ. The determination of the impact on sea turtles must be based on turtle mortalities and projections of turtle mortality by the NMFS monitoring and assessment program.

(2) Consistent with the procedures specified in § 648.10, the Regional Director may require that all or a certain portion of the vessels engaged in fishing for summer flounder carry observers, consistent with the requirements of § 648.10, to gather data on incidental capture of sea turtles and to monitor compliance with required conservation measures. This requirement may apply to certain types of vessels, certain areas, or during certain times of the year.

(g) *Experimental projects.* Notwithstanding paragraphs (a) through (f) of this section, the Regional Director may authorize summer flounder fishing, as a part of experimental projects to measure turtle capture rates, to monitor turtle abundance, to test alternative gear or equipment, or for other research purposes. Research must be approved by the Regional Director, and it must not be likely to jeopardize the continued existence of any species listed under the ESA. The Regional Director will impose such conditions as he/she determines necessary to ensure adequate turtle protection during experimental projects. Individual authorizations may be issued in writing. Authorizations applying to multiple vessels will be published in the **Federal Register**.

Subpart H—Management Measures for the Scup Fishery

§ 648.124 Gear restrictions.

(a) *General.* Otter trawl vessels that land or possess 4,000 lb or more (1,814.4 kg or more) of scup harvested in or from the EEZ must fish with nets that have a minimum mesh size of 4 inches (10.2 cm) applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or, for codends with less than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the center of the head rope, excluding any turtle excluder device extension.

(b) *Mesh-size measurement.* Mesh sizes will be measured according to the procedure described in § 648.104(a)(2).

(c) *Net modification and mesh obstruction and constriction.* Same as § 648.104 (c) and (d) except substitute the word "scup" for the words "summer flounder."

(d) *Stowage of nets.* Otter trawl vessels retaining 4,000 pounds or more (1,814.4 or more kg) of scup harvested in or from the EEZ, and subject to the minimum mesh requirement specified in paragraph (a) of this section may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that conforms to the specifications specified in § 648.23(b) and that can be shown not to have been in recent use is considered to be not "available for immediate use."

§ 648.125 Minimum fish sizes.

(a) The minimum size for scup is 9 inches (22.9 cm) TL for all vessels engaged in commercial fishing.

(b) The minimum size for scup is 7 inches (17.8 cm) TL for all vessels that are engaged in recreational fishing.

(c) The minimum size applies to whole fish or any part of a fish found in possession, e.g., fillets.

PARTS 625, 650, 651, 652, 655, AND 657—[REMOVED]

4. Parts 625, 650, 651, 652, 655, and 657 are removed.

[FR Doc. 96–16660 Filed 7–1–96; 8:45 am]
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July 3, 1996

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Single Family Mortgage Insurance; Loss Mitigation Procedures; Interim Rule

24 CFR Parts 203 and 206

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Single Family Mortgage Insurance—Loss Mitigation Procedures

24 CFR Parts 203 and 206

[Docket No. FR–4032–I–01]

RIN 2502–AG72

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends 24 CFR part 203 to eliminate the Mortgage Assignment Program and to provide that HUD may: recompense mortgagees for using mortgage foreclosure alternatives, such as special forbearance, loan modifications, and deeds in lieu of foreclosure; pay the mortgagee a partial claim which would be applied to the arrearage of a defaulted mortgage; and accept assignment of a mortgage which the mortgagee has modified to cure the default.

DATES: Effective Date: August 2, 1996. Comments due date: September 3, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Single Family Servicing Division, Room 9178, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708–1672, or, TTY for hearing and speech impaired, (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The Department is seeking approval of the information collection requirements contained in § 203.605 by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The OMB control number will be published in the **Federal Register** upon approval. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

II. Background

Summary of Legislative Changes

This interim rule implements section 407 of The Balanced Budget Downpayment Act, I (Pub. L. 104–99, approved January 26, 1996) (Downpayment Act), which amended sections 204 and 230 of the National Housing Act. The amendment of section 230 eliminated the current HUD programs for Temporary Mortgage Assistance Payments and Assignment of Mortgages at §§ 203.640 - 203.660 of 24 CFR. This amendment did not become effective until the passage of The Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, approved April 26, 1996). However, this Appropriations Act provided that mortgagors who had applied for relief under the Assignment Program before April 26, 1996 will be governed by the requirements of section 230 before the amendments made by the Downpayment Act.

To continue to provide foreclosure alternatives for mortgagors, the Downpayment Act amended sections 204 and 230 of the National Housing Act to promote foreclosure alternatives and loss mitigation tools to be used by mortgagees. Section 204 was amended to provide that the Secretary may recompense mortgagees for their actions to provide mortgage foreclosure alternatives, such as special forbearance, loan modifications, and deeds in lieu of foreclosure. Section 230 was amended to provide that the Secretary may pay the mortgagee a partial claim which would be applied to the arrearage of a defaulted mortgage. In addition, Section 230 was amended to provide that the Secretary may accept assignment of a mortgage which the mortgagee has modified to cure the default and where repooling of the loan is not possible. This procedure is to be distinguished from forbearance relief for defaulted loans, as well as from the former Mortgage Assignment Program. It should be noted that the Downpayment Act permitted, but did not require, the Secretary to establish these partial claim and assignment procedures. Further, the Downpayment Act provided that no decision by the Secretary to exercise or forego exercising his authority under section 230 and the new authority under section 204 shall be subject to judicial review.

Overview of HUD's Approach

The techniques to be employed under HUD's new foreclosure alternatives/loss mitigation approach implemented by this rule will include special forbearance plans, loan modifications, partial claims, preforeclosure sales, deeds in lieu of foreclosure, and similar tools. These approaches generally fall into two broad categories—(a) those which (if utilized successfully) would result in curing the default and retaining homeownership, and (b) those which would result in the relinquishment of homeownership, by means of a sale to a third party or by a voluntary conveyance of the property by deed in lieu of foreclosure.

The Department has decided to implement a comprehensive approach toward promoting alternatives to foreclosure, as well as loss mitigation, which enhances lender flexibility in dealing with the circumstances in which homeowners find themselves. This approach describes a series of servicing actions and strategies that may be used singly or in combination to meet those objectives; provides insurance benefits to lenders that evaluate mortgagors with delinquent and defaulted loans and choose appropriate steps which—when successful—result in outcomes other than foreclosure of the mortgage; and establishes the groundwork for Departmental monitoring of lenders' efforts.

End of Assignment Program

In October, 1995, the General Accounting Office (GAO) issued a report to Congress regarding HUD's Mortgage Assignment Program. After analyzing over 68,000 mortgages assigned to HUD since 1989, the GAO estimated that the loss to FHA per assigned mortgage would be $49,000, compared to the estimated $27,000 FHA would have lost had the loan not entered the Assignment Program. The GAO noted that to offset these losses, FHA was required to charge higher mortgage insurance premiums to new mortgagors. As a result of the GAO report, Congress, as discussed above, has amended section 230 of the National Housing Act to end the Mortgage Assignment Program with respect to the intake of new applicants into that program. Therefore, references to the Assignment Program are amended or removed accordingly in the following sections: 203.350, 203.355, 203.402a, 203.438, 203.500, 203.604, 203.606, 203.640–203.660, and 203.664–203.666.

Early Default Counseling

The Department emphasizes that early intervention coupled with the use of default counseling are effective techniques for curing defaulted mortgages. A successful servicing strategy by a mortgagee takes into consideration each defaulted mortgage individually. Based on the circumstances involved, the mortgagee executes a plan which will eliminate the default and prevent a foreclosure. In an effort to clarify misunderstandings of various alternatives available to homeowners whose mortgages are in a defaulted status, and to reduce delays in obtaining assistance, HUD Handbook 4330.1 REV–5, Administration of Insured Home Mortgages, continues to require lenders to refer those homeowners to HUD-approved housing counseling agencies early in the default period.

Actions To Promote Foreclosure Alternatives/Loss Mitigation

Section 407(a) of the Downpayment Act amended section 204(a) of the National Housing Act to provide that HUD may pay insurance benefits to the mortgagee to recompense the mortgagee for its actions to provide an alternative to the foreclosure of a mortgage that is in default. These actions may include special forbearance, loan modification, and/or deeds in lieu of foreclosure, all upon terms and conditions as the mortgagee shall determine in the mortgagee's sole discretion, within guidelines provided by HUD.

The current regulations already provide for most of these foreclosure alternative or loss mitigation actions. Therefore, § 203.501 of the regulations, governing loss mitigation, is amended to provide cross references to these various foreclosure alternative actions available to mortgagees. To clarify that the claim file requirements at § 203.365(c) include claims involving these loss mitigation actions, a new § 203.605 is added to specify that mortgagees must document that they have considered—beginning no later than when three full monthly installments due on the mortgage are unpaid, and continuing with monthly reevaluations while the loan remains in default—all loss mitigation options to determine which, if any, are appropriate before initiating foreclosure. In addition, a new § 203.412 is added to the regulations to provide that the Secretary may pay insurance benefits to encourage mortgagees to pursue these loss mitigation techniques.

Some of the provisions to promote loss mitigation are given a delayed implementation date in the text of this interim rule to enable the Department to consider any comments before making them effective in a final rule. Thus, the reduction from nine to six months for taking action upon default of a mortgage in § 203.355, and the amendment to the provision in § 203.402(f) for varying the percentage of foreclosure costs or the costs of acquiring a property that are reimbursed, are made to apply only after March 1, 1997. Each of these changes is discussed below in this preamble.

In certain cases foreclosure may be avoided where the mortgagor's sale of the property is facilitated by the assumption of the mortgage by a credit-worthy, owner-occupant purchaser. Although not included in this interim rule, procedures to facilitate the use of assumptions as a type of "preforeclosure sale" are being considered by HUD for future implementation. Finally, this rule amends the regulations to provide for the increased flexibility in the use of these foreclosure alternative tools, as described below.

Reduction of Time for Taking Action

Concerning the reduction of the foreclosure initiation time frame from nine months to six months, in 1991 the Department proposed to reduce the time frame for lenders to initiate foreclosure from twelve months to six months (56 Fed. Reg. 19212, April 25, 1991). Public comments received indicated that the six-month deadline could not reasonably be met due to several reasons including compliance with the HUD Assignment Program, administrative matters, State law requirements regarding notice, and the desire to encourage workout or forbearance agreements with mortgagors.

The Department believes that the biggest obstacle to initiating foreclosure within six months was the requirement to process borrower applications for acceptance into the HUD Assignment Program. Since the Assignment Program is no longer an option for those mortgagors who did not apply for assignment relief on or before April 25, 1996, HUD now believes that a shortened time frame is workable. As evidenced by this rule, HUD also desires to encourage workout and forbearance agreements with mortgagors. However, HUD believes that early intervention is necessary for effective loss mitigation and that a workout must be established before six months of arrearage has accumulated, wherever possible.

With regard to State legal notice requirements, there should not be a problem meeting the six month time frame, because under the new procedures, HUD will generally permit mortgagees to make timely preparations to initiate foreclosure, even while simultaneously considering the various loss mitigation tools. Also, under current regulations the foreclosure initiation time frame is stayed when the mortgagor has entered into a special forbearance agreement or has commenced participation in the pre-foreclosure sales procedure.

The Department specifically requests public comments on this proposed time frame. The rule expressly provides for a delayed implementation of the six-month time limit to permit notice and comment on this change.

Varying the Percentage of Costs Reimbursed

Section 203.402(f) currently provides for ⅔ reimbursement of foreclosure and acquisition costs on mortgage insurance claims. This regulation would amend that section to allow HUD to vary the percentage of reimbursement by administrative issuance such as a Mortgagee Letter. The percentage may be based on individual mortgagee performance in mitigating loss. The Department specifically requests public comments on this proposed change in reimbursement for foreclosure costs. The rule has expressly provided for a delayed implementation of the amendment in order to provide for notice and comment on this change. The same change has also been incorporated into the Home Equity Conversion Mortgage (HECM) rule at § 206.129(d)(2)(ii).

1. Special Forbearance

Section 203.614 currently provides the conditions under which mortgagees may enter into special forbearance agreements with mortgagors. This interim rule amends § 203.614 to provide lenders with more flexibility in administering special forbearance, with the exception that partial claims will not be permitted when forbearance is extended for more than 18 months. Rather than including requirements in the rule, HUD will provide special forbearance guidelines in Mortgagee Letters and handbooks. A statutory requirement remains, pursuant to section 204(a) of the National Housing Act, that a default must be due to circumstances beyond the mortgagor's control for additional note rate interest to be paid should a mortgage insurance claim be filed after an unsuccessful special forbearance agreement.

In addition, § 203.471, which provides for the conditions under which mortgagees may enter into special forbearance agreements in the case of 203(k) rehabilitation loans, is amended to be consistent with the amendment to

§ 203.614. Finally, as noted above, a new § 203.412 is added to the regulations to provide, among other things, that HUD may pay the mortgagee for its actions in entering into special forbearance agreements under § 203.614. At this time, HUD intends to issue a Mortgagee Letter specifying that this amount will be $100.

2. Partial Claims

Section 407(b) of the Downpayment Act amended section 230(a) of the National Housing Act to provide that the Secretary may establish a program for payment of a partial claim to a mortgagee that agrees to apply the claim amount to payment of a defaulted single family mortgage. The amended section 230(a) provides that such payment shall be in an amount determined by the Secretary, and shall not exceed an amount equivalent to 12 monthly mortgage payments plus any costs related to the default that are approved by the Secretary. In addition, the amended section 230(a) provides that the mortgagor shall agree to repay this amount to the Secretary, and that the Secretary may pay the mortgagee in connection with any activities that the mortgagee is required to undertake concerning repayment by the mortgagor of the amount owed to the Secretary.

New §§ 203.371 and 203.414 are added to the regulations to provide that the mortgagee may apply for a partial claim after a period of forbearance. The partial claim will be in the amount of the arrearage accumulated during the forbearance period. The lender shall apply this amount to the mortgage to bring it current and the mortgagor shall be required to execute a subordinate mortgage in favor of the Secretary in the amount of the partial claim. The forbearance period may be extended until the arrearage equals the equivalent of 12 monthly mortgage payments. The equivalent of twelve monthly payments for mortgages with varying monthly payments, such as adjustable rate mortgages (ARMS), graduated payment mortgages (GPMS) and growing equity mortgages (GEMS), will be calculated by multiplying 12 times the monthly mortgage payment due on the date of default. The Department expects to issue guidelines to assure that such forbearances do not extend beyond 18 calendar months. Similarly, guidelines will provide that mortgagees may file a partial claim only after the borrower has been delinquent for at least 4 months. Mitigation of losses through forbearance with a subordinate mortgage would not be available to borrowers who had the financial capacity to modify the mortgage or obtain a new refinanced mortgage. Nor would this approach be available to a mortgagor who could not make at least a full monthly mortgage payment after the forbearance period.

It is expected that repayment terms of the subordinate mortgage will vary depending on the income and debts of the mortgagor. The subordinate mortgage may call for repayment commencing at a future date before maturity of the insured mortgage, or may not require repayment until a transfer of ownership of the property or payoff of the insured mortgage. HUD guidelines will likely specify that subordinate mortgages must be interest free.

Mortgagees can file for a partial claim under the new § 203.414 if the mortgagor is able to resume full monthly payments, but not pay off the arrearage. The claim amount will be the amount of the payments in arrears, including costs related to the default as established by HUD. The new regulation also permits the Secretary to require the mortgagee to be responsible for servicing the subordinate mortgage and provides that servicing mortgagees may be compensated for activities that they perform on behalf of the Secretary.

3. Modifications/Recastings

Mortgagees currently have the authority under § 203.616 of the regulations to modify defaulted mortgages, in certain cases, for the purpose of changing the amortization provisions by recasting the total unpaid amount due over the remaining term of the mortgage, or over a term extending not more than 10 years beyond the original maturity date. In most cases, mortgagees cannot utilize this authority because of secondary mortgage market restrictions. Approximately 95% of FHA-insured mortgages are pooled in Government National Mortgage Association (Ginnie Mae) mortgage backed securities. The pool requirements prevent the mortgagee from keeping the mortgage in the pool if the terms of the mortgage are modified. Thus, to modify the terms of the mortgage, Ginnie Mae issuers must buy the mortgage out of the Ginnie Mae pool.

Ginnie Mae requirements generally have prevented the repooling of a modified mortgage if more than 24 months have elapsed since the date of the first scheduled payment under the mortgage. To facilitate FHA's loss mitigation efforts, Ginnie Mae has agreed to permit the removal of mortgages that are 90 days or more past due from Ginnie Mae pools so that the mortgages can be modified and repooled using the date of modification of the mortgages as the origination date. Ginnie Mae will provide its issuers with specific instructions and requirements for this process. Therefore, HUD encourages mortgagees to make increased use of loan modifications or recastings to avoid foreclosure and will shortly provide detailed guidance in a Mortgagee Letter. A new § 203.412 is added to the regulations to provide, among other things, that HUD may pay the mortgagee for its actions in modifying or recasting the mortgage and repooling it. The payment would include reimbursement for any necessary title examination and/or title insurance policy endorsement.

In addition, § 203.616 of the regulations is being amended to allow recasting of mortgages even where the mortgage is not in default, by agreement of the parties, although loss mitigation claims are permitted only with respect to mortgages in default. This amendment will allow willing mortgagees, especially state or local housing authorities or portfolio lenders, to recast a mortgage where there may be an imminent default if the mortgage is not recast, but where no default has yet occurred. This procedure, in turn, can prevent adverse impacts on mortgagors' credit ratings. A conforming amendment is made to § 203.342. The authority to allow recasting of mortgages where the mortgage is not in default is based on the Secretary's inherent broad authority to operate the insurance programs, and is not based on the authority contained in sections 204 or 230 of the National Housing Act, as amended. Those two sections generally refer only to mortgages in default. It should be noted that, pursuant to the National Housing Act, if a mortgage insurance claim is eventually filed, the unpaid principal balance paid on the claim will be based on the modified amount only where there had been a default caused by circumstances beyond the mortgagor's control, as defined by the Secretary.

In rare circumstances, the mortgagee may not be able to repool the modified or recast mortgage. In such situations, HUD will now be able to approve the assignment to HUD of a mortgage modified after default. Section 407(b) of the Downpayment Act amended section 230(b) of the National Housing Act to provide that HUD may accept assignment of a mortgage if the mortgage was in default and the mortgagee has modified the mortgage to cure the default and to provide for mortgage payments within the reasonable ability of the mortgagor to pay, at interest rates not exceeding current market interest rates. HUD is also required to arrange for servicing of the assigned mortgage by a mortgagee, which may include the assigning mortgagee.

Section 203.350 of the regulations is amended to provide for assignment of mortgages under the requirements just noted, and § 203.404 of the regulations is amended to provide for the amounts the mortgagee will be reimbursed on such an assignment claim.

4. Pre-foreclosure Sales

Section 203.370 of the regulations, which provides for pre-foreclosure sales, is amended to remove the reference to the now obsolete Assignment Program. Section 203.402 of the regulations currently provides in paragraphs (l) and (s) that HUD will reimburse the mortgagee for the costs of an appraisal and a title search. Section 203.402(t) provides HUD will pay the mortgagee an administrative fee, as authorized by the Secretary, for the mortgagee's role in facilitating a successful pre-foreclosure sale. Presently, HUD is reimbursing mortgagees for reasonable and customary costs of the appraisal and title search, and $1,000 as the administrative fee for each successful pre-foreclosure sale. The selling mortgagor is also paid a consideration from gross sales proceeds of up to $1,000, depending on the length of time it takes to close the sale. HUD intends to continue these reimbursement amounts for the present, although they are subject to change in the future.

5. Deeds in Lieu of Foreclosure

Section 203.402(p) of the regulations currently provides that in a conveyance claim the Secretary will reimburse the mortgagee an amount approved by the Secretary that was paid to the mortgagor as consideration for the execution of a deed in lieu of foreclosure. This amount is currently a maximum of $500. This interim rule amends § 203.402(p) to provide that the Secretary may also pay the mortgagee an administrative fee for its role in facilitating a successful deed in lieu of foreclosure. HUD intends to issue a Mortgagee Letter specifying that this amount shall not exceed $250. Also, this rule amends § 203.402(s) to clarify that, as part of a conveyance claim, HUD will reimburse the mortgagee for the cost of a title search involved in determining whether it is feasible to accept a deed in lieu of foreclosure. HUD intends to issue a Mortgagee Letter specifying that this amount shall not exceed $250. This rule also amends the Home Equity Conversion Mortgage (HECM) rule at § 206.129(d)(2)(i) to conform to the revised language of § 203.402(s).

III. Other Matters

Regulatory Planning and Review

This interim rule has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Regulatory Flexibility Act

The Secretary, in accordance with provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule before publication and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Most of the economic impact of the interim rule will affect the Department, which stands to benefit from the successful implementation of the loss mitigation techniques addressed by the interim rule.

Executive Order 12612, Federalism

HUD has determined, in accordance with Executive Order 12612, *Federalism*, that this interim rule will not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government, since the interim rule involves primarily relationships between the Department and private entities.

Executive Order 12606, The Family

HUD has determined that this interim rule would have only an indirect impact on family formation, maintenance, and general well-being within the meaning of Executive Order 12606, *The Family*, because it would assist mortgagors in maintaining ownership of their properties. To the extent such mortgagors consist of families, the impact would be beneficial. As such, no further review is necessary.

Justification for Interim Rulemaking

The Omnibus Consolidated Rescissions and Appropriations Act of 1996 (the Act) directs the Department to issue interim regulations to implement section 407 of the Downpayment Act within 30 days of the date of enactment of the Act.

List of Subjects

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeepfng requirements.

Accordingly, parts 203 and 206 of title 24 of the Code of Federal Regulations are amended as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 is revised to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

2. Section 203.342 is revised to read as follows:

§ 203.342 Recasting of mortgage.

If a mortgage is recast pursuant to § 203.616 subsequent to a finding by the mortgagee that the default was due to circumstances beyond the mortgagor's control, as defined by HUD, the principal amount of the mortgage, as modified, shall be considered to be the "original principal balance of the mortgage" as that term is used in § 203.401.

§ 203.350 [Removed]

3. In § 203.350, the following are removed:

a. The "Effective Date Note (1);

b. The "Effective Date Note (2)";

c. The second undesignated center heading "ASSIGNMENT OF MORTGAGE";

d. The "Effective Date Note (3);

e. All text of the second version of § 203.350, which includes paragraphs (a) through (d) and the information collection parenthetical; and

f. The FR source "[52 FR 6914, Mar. 5, 1987].

3a. In the remaining § 203.350, the section heading and paragraph (a) are revised, to read as follows:

§ 203.350 Assignment of mortgage.

(a) *Assignment of modified mortgages pursuant to section 230, National Housing Act.* HUD may accept an assignment of any mortgage covering a one-to-four family residence if the following requirements are met:

(1) The mortgage was in default;

(2) The mortgagee has modified the mortgage under § 203.616 to cure the default and to provide for mortgage payments within the reasonable ability of the mortgagor to pay, at an interest rate not exceeding current market interest rates; and

(3) Such other conditions that HUD may prescribe, which may include the requirement that the mortgagee continue to be responsible for servicing the mortgage.

* * * * *

4. In § 203.355:

a. The introductory text of paragraph (a) and paragraph (a)(2) are revised;

b. Paragraphs (a)(3) through (a)(6) are added; and

c. Paragraphs (b), the introductory text of paragraph (c) and the introductory text of paragraph (g) are revised; and

d. Paragraph (h) is added, to read as follows:

§ 203.355 Acquisition of property.

(a) *In general.* Upon default of a mortgage, except as provided in paragraphs (b) through (h) of this section, the mortgagee shall take one of the following actions within nine months from the date of default, or within any additional time approved by the Secretary or authorized by §§ 203.345 or 203.346. For mortgages where the date of default is on or after March 1, 1997, the mortgagee shall take one of the following actions within six months of the date of default or within such additional time approved by HUD or authorized by §§ 203.345 or 203.346:

* * * * *

(2) Enter into a special forbearance agreement under § 203.614;

(3) Complete a refinance of the mortgage under § 203.43(c);

(4) Complete a modification of the mortgage under § 203.616;

(5) Complete an assumption under § 203.512; or

(6) Commence foreclosure.

(b) *Vacant or abandoned property.* With respect to defaulted mortgages on vacant or abandoned property, if the mortgagee discovers, or should have discovered, that the property is vacant or abandoned, the mortgagee must commence foreclosure within the later of 120 days after the date the property became vacant, or 60 days after the date the property is discovered, or should have been discovered, to be vacant or abandoned; but no later than the number of months from the date of default as provided in paragraph (a) of this section. The mortgagee must not delay foreclosure on vacant or abandoned property because of the requirements of § 203.606.

(c) *Prohibition of foreclosure within time limits.* If the laws of the State in which the mortgaged property is located, or Federal bankruptcy law:

* * * * *

(g) *Pre-foreclosure sale procedure.* Within 60 days of the end of a mortgagor's participation in the pre-foreclosure sale procedure, or within the time limit described in paragraph (a) of this section, whichever is later, if no closing of an approved pre-foreclosure sale has occurred, the mortgagee must obtain a deed in lieu of foreclosure, with title being taken in the name of the mortgagee or the Secretary, or commence foreclosure. The end-of-participation date is defined as:

* * * * *

(h) *Special forbearance.* If the mortgagor fails to meet the requirements of a special forbearance under § 203.614 and the failure continues for 60 days, the mortgagee must commence foreclosure within the time limit described in paragraph (a) of this section or 90 days after the mortgagor's failure to meet the special forbearance requirements.

§ 203.370 [Amended]

5. In § 203.370, paragraph (c)(3) is removed, and paragraphs (c)(4) and (c)(5) are redesignated as paragraphs (c)(3) and (c)(4).

6. A new § 203.371 is added before the undesignated center heading "CONDITION OF PROPERTY", to read as follows:

§ 203.371 Partial claim.

(a) *General.* Notwithstanding the conveyance, sale or assignment requirements for payment of a claim elsewhere in this part, HUD will pay partial FHA insurance benefits to mortgagees after a period of forbearance, the maximum length of which HUD will prescribe, and in accordance with this section.

(b) *Requirements.* The following conditions must be met for payment of a partial claim:

(1) The mortgage has been delinquent for at least 4 months or such other time prescribed by HUD;

(2) The amount of the arrearage has not exceeded the equivalent of 12 monthly mortgage payments;

(3) The mortgagor is able to resume making full monthly mortgage payments;

(4) The mortgagor is not financially able to make sufficient additional payments to repay the arrearage within a time specified by HUD; and

(5) The mortgagor is not financially able to support monthly mortgage payments on a modified mortgage or on a refinanced mortgage in which the total arrearage is included.

(c) *Repayment of the subordinate lien.* The mortgagor must execute a mortgage in favor of HUD with terms and conditions acceptable to HUD for the amount of the partial claim under § 203.414(a). HUD may require the mortgagee to be responsible for servicing the subordinate mortgage on behalf of HUD.

(d) *Application for insurance benefits.* Along with the prescribed application for partial claim insurance benefits, the mortgagee shall forward to HUD the original credit and security instruments required by paragraph (c) of this section.

7. In § 203.402, paragraphs (f), (p) and (s) are revised to read as follows:

§ 203.402 Items included in payment—conveyed and non-conveyed properties.

* * * * *

(f) Foreclosure costs or costs of acquiring the property otherwise (including costs of acquiring the property by the mortgagee and of conveying and evidencing title to the property to HUD, but not including any costs borne by the mortgagee to correct title defects) actually paid by the mortgagee and approved by HUD, in an amount not in excess of two-thirds of such costs or $75, whichever is the greater. For mortgages insured on or after March 1, 1997, the Secretary will reimburse a percentage of foreclosure costs or costs of acquiring the property, which percentage shall be determined in accordance with such conditions as the Secretary shall prescribe. Where the foreclosure involves a mortgage sold by the Secretary on or after August 1, 1969, or a mortgage executed in connection with the sale of property by the Secretary on or after such date, the mortgagee shall be reimbursed (in addition to the amount determined under the foregoing) for any extra costs incurred in the foreclosure as a result of a defect in the mortgage instrument, or a defect in the mortgage transaction or a defect in title which existed at or prior to the time the mortgage (or its assignment by the Secretary) was filed for record, if the mortgagee establishes to the satisfaction of the Commissioner that such extra costs are over and above those customarily incurred in the area.

* * * * *

(p) An amount approved by HUD and paid to the mortgagor as consideration for the execution of a deed in lieu of foreclosure and, if authorized by HUD, an administrative fee approved by HUD paid to the mortgagee for its role in facilitating a successful deed in lieu of foreclosure, not to be subject to the payment of debenture interest thereon.

* * * * *

(s) Reasonable costs of the title search ordered by the mortgagee, in accordance with procedures prescribed by HUD, to determine the status of a mortgagor meeting all other criteria for approval to participate in the pre-foreclosure sale procedure, or to determine if a mortgagor meets the criteria for approval of the mortgagee's acceptance of a deed in lieu of foreclosure.

* * * * *

§ 203.402a [Amended]

8. In § 203.402a, paragraph (b)(1) is removed and paragraphs (b)(2) and (b)(3) are redesignated as paragraphs (b)(1) and (b)(2).

9. In § 203.404, paragraph (a)(3) is revised, and new paragraphs (a)(5) and (a)(6) are added, to read as follows:

§ 203.404 Amount of payment—assigned mortgages.

* * * * *

(a) * * *

(3) Reimbursement for such costs and attorney's fees as HUD finds were properly incurred in connection with the defaulted mortgage and its modification and assignment to HUD.

* * * * *

(5) An administrative fee to the mortgagee for modifying the mortgage.

(6) A fee for servicing the mortgage assigned to HUD, if HUD requires such servicing.

* * * * *

10–11. New §§ 203.412 and 203.414 are added before the undesignated center heading "CERTIFICATE OF CLAIM", and § 203.413 is reserved, to read as follows:

§ 203.412 Payment for foreclosure alternative actions.

Notwithstanding the conveyance, sale, or assignment requirements for payment of a claim elsewhere in this part, HUD may pay the mortgagee, in accordance with procedures prescribed by HUD, for the following foreclosure alternative actions, in such amounts as HUD determines:

(a) Assumptions under § 203.512;

(b) Special forbearance under §§ 203.471 and 203.614;

(c) Recasting or modification of defaulted mortgages under § 203.616, where the mortgagee is not reimbursed under § 203.405(a);

(d) Refinancing under § 203.43(c).

§ 203.413 [Reserved]

§ 203.414 Amount of payment—partial claims.

(a) *Claim amount.* Where a claim for partial insurance benefits is filed in accordance with § 203.371, the amount of the insurance benefits shall consist of the arrearage accumulated during the forbearance period, not to exceed an amount equivalent to 12 monthly mortgage payments, and any costs prescribed by HUD related to the default.

(b) *Servicing fee.* The claim may also include a payment for activities, such as servicing the subordinate mortgage, which HUD may require.

12. In § 203.438, paragraph (c) is revised to read as follows:

§ 203.438 Mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

* * * * *

(c) *Foreclosure by HUD.* HUD may initiate foreclosure proceedings with respect to any mortgage acquired under this section in a tribal court, a court of competent jurisdiction or Federal district court. If the mortgagor remains on the property following foreclosure, HUD may seek an eviction order from the court hearing the foreclosure action.

13. Section 203.471 is revised to read as follows:

§ 203.471 Special forbearance.

If the mortgagee finds that a default is due to circumstances beyond the mortgagor's control, as defined by the Secretary, the mortgagee may grant special forbearance relief to the mortgagor in accordance with the conditions prescribed by the Secretary.

14. In § 203.473 paragraph (a) is revised to read as follows:

§ 203.473 Claim procedure.

(a) A claim for insurance benefits on a loan secured by a first mortgage shall be made, and insurance benefits shall be paid, as provided in §§ 203.350 through 203.414.

* * * * *

15. Section 203.500 is revised to read as follows:

§ 203.500 Mortgage servicing generally.

This subpart identifies servicing practices of lending institutions that HUD considers acceptable for mortgages insured by HUD. Failure to comply with this subpart shall not be a basis for denial of insurance benefits, but a pattern of refusal or failure to comply will be cause for withdrawal of HUD's approval of a mortgagee. It is the intent of the Department that no mortgagee commence foreclosure or acquisition of a property until the requirements of this subpart have been followed.

16. Section 203.501 is amended by adding at the end of the section the following two sentences:

§ 203.501 Loss mitigation.

* * * Such actions include, but are not limited to, deeds in lieu of foreclosure under § 203.357, pre-foreclosure sales under § 203.370, partial claims under § 203.414, assumptions under § 203.512, special forbearance under §§ 203.471 and 203.614, and recasting of mortgages under § 203.616. HUD may prescribe conditions and requirements for the appropriate use of these loss mitigation actions, concerning such matters as owner-occupancy, extent of previous defaults, prior use of loss mitigation, and evaluation of the mortgagor's income, credit and property.

17. In § 203.552, paragraph (a) introductory text is revised to read as follows:

§ 203.552 Fees and charges after endorsement.

(a) The mortgagee may collect reasonable and customary fees and charges from the mortgagor after insurance endorsement only as provided in this paragraph (a). The mortgagee may not collect these fees or charges from the mortgagor if the mortgagee has been or will be reimbursed by the Secretary for the services for which the fees or charges are assessed.

* * * * *

§ 203.604 [Amended]

18. In § 203.604, paragraphs (e)(2) (iii) and (iv) are removed, and paragraph (e)(2)(v) is redesignated as paragraph (e)(2)(iii).

19. A new § 203.605 is added to read as follows:

§ 203.605 Loss mitigation evaluation.

No later than when three full monthly installments due on the mortgage are unpaid, the mortgagee shall evaluate all of the loss mitigation techniques provided at § 203.501 to determine which, if any, are appropriate, and shall reevaluate monthly thereafter. The mortgagee shall maintain documentation of such evaluations. Should a claim for mortgage insurance benefits later be filed, the mortgagee shall maintain this documentation in

the claim file under the requirements of § 203.365(c).

20. In § 203.606, paragraph (a) is amended by adding at the end the following sentence, and the introductory text of paragraph (b) is revised, to read as follows:

§ 203.606 Pre-foreclosure review.

(a) * * * In addition, prior to initiating any action required by law to foreclose the mortgage, the mortgagee shall notify the mortgagor in a format prescribed by the Secretary that the mortgagor is in default and the mortgagee intends to foreclose unless the mortgagor cures the default.

(b) If the mortgagee determines that any of the following conditions has been met, the mortgagee may initiate foreclosure without the delay in foreclosure required by paragraph (a) of this section:

* * * * *

21. Section 203.614 is revised to read as follows:

§ 203.614 Special forbearance.

If the mortgagee finds that a default is due to circumstances beyond the mortgagor's control, as defined by HUD, the mortgagee may grant special forbearance relief to the mortgagor in accordance with the conditions prescribed by HUD.

22. Section 203.616 is revised to read as follows:

§ 203.616 Recasting of mortgage.

The mortgagee may modify a mortgage for the purpose of changing the amortization provisions by recasting the total unpaid amount due over the remaining term of the mortgage or a term not exceeding 360 months. The mortgagee must notify HUD of such modification in a format prescribed by HUD within 30 days of the execution of the modification agreement.

§§ 203.640 through 203.660 [Removed]

23. All versions of §§ 203.640 through 203.660 are removed.

24. Section 203.664 is revised to read as follows:

§ 203.664 Processing defaulted mortgages on property located on Indian land.

Before a mortgagee requests that the Secretary accept assignment under § 203.350(b) of a mortgage insured pursuant to section 248 of the National Housing Act (§ 203.43h), the mortgagee must submit documents showing that the requirements of § 203.604 have been met.

25. Section 203.665 is revised to read as follows:

§ 203.665 Processing defaulted mortgages on property located on Hawaiian home lands.

Before a mortgagee requests the Secretary to accept assignment under § 203.350(c) of a mortgage insured pursuant to section 247 of the National Housing Act (§ 203.43i), the mortgagee must submit documents showing that the requirements of § 203.604 have been met.

26. In § 203.666 paragraph (b) is revised, and paragraphs (c) and (d) are removed, to read as follows:

§ 203.666 Processing defaulted mortgages on property in Allegany Reservation of Seneca Nation of Indians.

* * * * *

(b) *Claims through assignment.* Before a mortgagee requests the Secretary to accept assignment under § 203.350(d) the mortgagee must submit documents showing that the requirements of § 203.604 have been met.

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

27. The authority citation for part 206 continues to read as follows:

Authority: 12 U.S. C. 1715b, 1715z–1720; 42 U.S.C. 3535(d).

28. In § 206.129, paragraphs (d)(2)(i) and (d)(2)(ii) are revised to read as follows:

§ 206.129 Payment of claim.

* * * * *

(d) * * *

(2)(i) Items listed in § 203.402 (a), (b), (c), (d), (e), (g), (j), and (s), and § 204.322(l) of this chapter.

(ii) Foreclosure costs or costs of acquiring the property actually paid by the mortgagee and approved by HUD, in an amount not in excess of two-thirds of such costs or $75, whichever is the greater. For mortgages insured after March 1, 1997, HUD may reimburse a percentage of foreclosure costs or costs of acquiring the property, which percentage shall be determined in accordance with such conditions as HUD shall prescribe.

* * * * *

Dated: June 5, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–16869 Filed 7–2–96; 8:45 am]

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July 3, 1996

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing: Funding Availability for FY 1996 for the Public and Indian Housing Tenant Opportunities Program Technical Assistance; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4066–N–01]

Office of the Assistant Secretary for Public and Indian Housing; NOFA for FY 1996 for the Public and Indian Housing Tenant Opportunities Program Technical Assistance

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability for FY 1996.

SUMMARY: HUD is announcing the availability of $15 million for Fiscal Year 1996 under the Public and Indian Housing Tenant Opportunities Program (TOP). HUD reinvented resident management and created the TOP to expand the range of the resident-managed activities, so that resident organizations can set priorities based on the needs in their communities. The program provides assistance to Resident Councils (RCs), Resident Management Corporations (RMCs) Resident Organizations (ROs) and National Resident Organizations (NROs), Regional Resident Organizations (RROs), and Statewide Resident Organizations (SROs), to fund training and other tenant opportunities, such as the formation of such entities, identification of the relevant social support needs, and securing of such support for residents of public and Indian housing. The NOFA discusses eligibility, funding amounts, selection criteria, how to apply for funding, and the selection process, and includes an appendix setting out the Consultant/Trainer Checklist.

DATES: Application kits may be requested beginning July 3, 1996. The application deadline will be specified in the application kit, and will be firm as to date and time. Applicants will have at least 30 days from today's publication of the NOFA to prepare and submit their applications.

The separate deadline for comments on the information collection requirements is September 3, 1996.

ADDRESSES: To obtain a copy of the application kit, please write the Resident Initiatives Clearinghouse, Post Office Box 6424, Rockville, MD 20850, or call the toll free number 1–800–955–2232. Requests for application kits must include your name, mailing address (including zip code), telephone number (including area code), and should refer to document FR–4066. Applicants may access the TOP Application Kit through HUD's World Wide Web site at http://www.hud.gov/pih. This NOFA cannot be used as the application.

Comments on the proposed information collection requirements must refer to the NOFA for FY 1996 for the Public and Indian Housing Tenant Opportunities Program Technical Assistance (FR–4066), and must be sent to: Reports Liaison Officer, Office of Community Relations and Involvement, Department of Housing and Urban Development, 451 7th Street, SW, Room 4112, Washington, DC 20410–3600.

FOR FURTHER INFORMATION CONTACT: Christine Jenkins or Barbara J. Armstrong, Office of Community Relations and Involvement, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4112, Washington, D.C. 20410; telephone: (202) 708–3611. All Indian Housing applicants may contact Tracy Outlaw, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW, Room B–133, Washington, D.C. 20410; telephone: (202) 755–0088. For hearing- and speech-impaired persons, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339. (Other than the "800" TTY number, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and have been assigned OMB control number 2577–0087. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. Because this OMB control number will be expiring later this year, the Department is soliciting comments, as required under 5 CFR 1320.8(d), before submitting the information collection requirements contained in this NOFA to OMB for renewal of the control number in accordance with 5 CFR 1320.10. Information on the estimated information collection burden is provided under the heading, *Other Matters*, at the end of this notice.

I. Purpose and Description

A. Authority

Section 20, United States Housing Act of 1937 (42 U.S.C. 1437r); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). The amount of funding provided under this NOFA was appropriated for the program in the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, 110 Stat. 1321; approved April 26, 1996).

B. Statutory Background

Section 122 of the Housing and Community Development Act of 1987 (Pub. L. 100–42, approved February 5, 1988) amended the United States Housing Act of 1937 (1937 Act) by adding a new section 20 (42 U.S.C. 1437r) (section 20). Section 20 states as part of its purpose the encouragement of "increased resident management of public housing projects [and the provision of funding] . . . to promote formation and development of resident management entities" (Sec. 20(a)). Under Section 20(f)(1):

> . . . [T]he Secretary shall provide financial assistance to resident management corporations or resident councils that obtain, by contract or otherwise, technical assistance for the development of resident management entities, including the formation of such entities, the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public housing projects, and the securing of such support.

Under Section 20(f)(2), this financial assistance may not exceed $100,000 with respect to any public housing project. Section 20 is implemented in 24 CFR part 950, subpart O (for Indian housing), and part 964 (for public housing). The rules set forth, among other things, the policies, procedures, and requirements of resident participation and management of public and Indian housing.

The TOP meets the need in many communities for business development, education, job training and development, social services, and opportunities for other self-help initiatives. The program enables resident entities to establish priorities, based on the efforts in their public and Indian housing communities, that are aimed at furthering economic lift and independence. Financial assistance in the form of technical assistance grants is provided by the Secretary to resident grantees to prepare for management activities in their housing development (hereinafter referred to as TOP technical assistance grants). The TOP technical assistance grants are available for "the development of resident management entities, including the formation of such entities, the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public housing projects and the securing of such support."

Residents may use TOP technical assistance grants for training related to any TOP initiative. The results from organizations in training have been significant and multifaceted. For example, resident-managed activities have resulted in economic development, resident self-sufficiency, improved living conditions, and enhanced social services for residents (i.e., child care and other youth projects). TOP will provide public and Indian housing residents the opportunity to be trained and move toward responsible roles in their communities. The training will aim to enhance the functioning of the resident council as well as develop skills to engage in resident-managed activities in its community. The Department strongly encourages resident entities to develop a partnership with their public housing agency or Indian housing authority (hereafter jointly referred to as "HA"). The Department is committed to building a real partnership among HAs, residents, and HUD.

In FY 1996, $15 million is available to public and Indian housing RCs/RMCs/ROs, of which $500,000 is set-aside for NROs/RROs/SROs to provide technical assistance and training activities under the TOP program.

Today, approximately 905 resident groups throughout the country are in training under this program. HUD supports the tenant opportunities movement, as well as other self-sufficiency and improvement programs designed to benefit public and Indian housing residents. HUD's Office of Community Relations and Involvement has the responsibility of delivering a variety of resident initiative programs, with assistance from a network of Community Relations and Involvement Specialists (CRIs) in HUD's field structure. The CRIs are available to provide direct assistance to residents and resident groups interested in resident initiatives programs.

C. Termination and Enforcement of Grant Award

All grant awards may be terminated if a recipient materially fails to comply with the terms and conditions of an award in accordance with Revised OMB Circular A–110 and 24 CFR part 84 (§§ 84.60, 84.61, and 84.62).

D. New Features of This NOFA

(1) All applicants are required to submit a TOP Work Plan that includes TOP-specific training programs/performance standards for implementing the TOP grant. The purpose of the training programs/performance standards is to facilitate positive outcomes, products or deliverables such as jobs, businesses, and services. The applicant must select and implement the training programs/performance standards of choice in accordance with the needs of the community. The training programs/performance standards are not all-inclusive, and grantees may work with the HUD Field Offices to establish other training programs/performance standards to meet their needs, provided that the results would be measurable. (See Section I.Q of this NOFA).

(2) All TOP grantees must adhere to the new travel policy established by HUD. The policy ensures that all travel funded under TOP is directed toward the successful completion of the required TOP Work Plan/Performance Standards and time frames as explained in Section I.Q of this NOFA. The travel policy sets a maximum amount of $5,000 over the 3- to 5-year period of the grant. Requests for funds beyond the limit of $5,000 must be approved by the local HUD Office. All grantees must attend a HUD-sponsored TOP orientation training prior to expending TOP funds, with the exception of funds needed to attend the training. If the grantee's grant agreement is executed and the organization is properly established in the Line of Credit Control System/Voice Response System (LOCCS/VRS), the grantee must draw down the total amount needed to attend the training. If the grantee's grant agreement is not executed and the organization is not properly established in the LOCCS/VRS, the grantee may request the HA to advance the organization the total amount needed to attend the HUD orientation training. The grantee must reimburse the HA when the organization is properly established in the LOCCs/VRS.

This travel policy is not applicable to NROs/RROs/SROs. HUD will be developing a travel policy that establishes guidelines for NROs/RROs/SROs in the near future.

(3) To ensure the successful implementation of the TOP Work plan activities, RCs/RMCs/ROs are required to determine the need to contract for outside consulting/training services, after considering their own capacity. Each RC/RMC/RO is encouraged to make maximum use of its HA; nonprofits; or other Federal, State, or local government resources for technical assistance and training needs. All Basic Grantees may use up to $15,000 to obtain a consultant/trainer from the TOP database of registered consultant/trainers for assistance in implementing Tasks 1 through 4 of the TOP Work Plan. (The TOP Work Plan is included in the TOP Application Kit).

The HA; other nonprofits; and Federal, State, or local government resources may serve as the consultant/trainer; however, the identified source that intends to establish a contract with the RC/RMC/RO must register with HUD prior to executing a contract.

(4) HUD encourages all interested consultants/trainers to register to participate in the TOP by completing the Consultant/Trainer Checklist included as an Appendix to this NOFA and mailing it to the following address: Department of Housing and Urban Development, Office of Public and Indian Housing, Office of Resident Involvement, 451 7th Street, SW, Room 4112, Washington, D.C. 20410.

The TOP grantee may select the HA as the consultant/trainer, however, the HA must register to be included in the TOP database. Grantees may invite other familiar consultants/trainers to register in the TOP database.

(5) After completion of Tasks 1 through 4 of the TOP Work Plan, the RC/RMO/RO may hire a consultant/trainer to assist in the implementation of Tasks 5 through 7 of the TOP Work Plan. The grantees must follow 24 CFR 84, which implements OMB Circular A–110 and prescribes standards and policies essential to ensure open and free competition for the proper execution of procurement transactions when selecting a consultant/trainer. HUD will make available the source list of registered consultant/trainers upon request, for use in a competitive solicitation for consultant services to assist the RC/RMC/RO in implementing TOP Work Plan Tasks 5 through 7 of the TOP Work Plan. The amount allowed for hiring an individual consultant for this purpose shall not exceed 50 percent of the total grant award or $50,000, whichever is less. HUD Field Offices will monitor this process to ensure compliance with these requirements.

(6) *Applicants shall not solicit any proposals for application preparation or a training and technical assistance contract prior to receiving a TOP grant award.* This year HUD is eliminating the "full-service" and "separation of application preparation" approaches to be used by grantees for obtaining consultant services. The full-service approach allowed RCs/RMCs/ROs to solicit competitive proposals for consultants to assist in the preparation of the application and included provisions for a training and technical assistance contract without another competitive process if the RCs/RMCs/ROs were selected to receive a grant.

The separation of application preparation from consultant work to be performed after the award of a grant approach allowed an applicant to solicit competitive proposals and contract with a Consultant-Trainer/Housing Management specialist for the development of an application for technical assistance. If the applicant was selected for funding, the Consultant/Trainer/Housing Management Specialist had to compete again through an open and free procurement process for a training and technical assistance contract.

(7) All NROs/RROs/SROs must be registered as a nonprofit organization at the time of application submission. NROs/RROs/SROs must list in the application the name of the RCs/RMCs/ROs that the organization will train or provide technical assistance and must provide letters of support from each entity identified in the application. The NROs/RROs/SROs cannot list RCs/RMC/ROs that have received a maximum of $100,000.

(8) HUD no longer allows the formation of Partnership Paradigm Technical Assistance (PPTA) organizations or the Technical Assistance Organizations (TAOs). Therefore, no PPTA or TAO applications will be considered for a TOP grant.

(9) HUD has included eligible activities for the elderly or disabled persons. (See section I.K(5) of this NOFA).

(10) All RCs/RMCs/ROs, city-wide/jurisdiction-wide organizations and NROs/RROs/SROs previously funded the maximum of $100,000 under the TOP cannot reapply for funding under this NOFA. This decision was made in accordance with section 20(f)(2), which states "the financial assistance provided under this subsection with respect to any public housing project may not exceed $100,000." This section would also prohibit an award to NROs/RROs/SROs if the resident organizations being served have received the maximum amount of $100,000.

E. Other Features of This NOFA

(1) RCs/RMCs/ROs that have duly elected boards may receive up to $100,000.

(2) All applicants that are selected for funding (including NROs/RROs/SROs) will access the grant funds through the LOCCS/VRS as explained in Section I.F, "Funding," of this NOFA.

(3) An application kit is required as the formal submission to apply for funding. The kit includes information on the preparation of a TOP Work Plan/Performance Standards and Budget for activities proposed by the applicant. This process facilitates the expeditious execution of a TOP Technical Assistance Grant (TOP TAG) for those applicants that are selected to receive funding (see Section I.H., TOP Technical Assistance Grant Agreement). The kit also includes narratives, certifications, and forms.

(4) A specific certification form is included in the application kit that requires each RC/RMC/RO to certify that it has held a democratic election. The certification must be signed by an authorized representative of the local HA and/or an independent third party monitor. (Not applicable to Indian ROs or NROs/RROs/SROs).

(5) The information listed below is regarding *all HOPE I (lead or joint) applicants:*

All applications that are submitted by HOPE I (lead or joint) grantees will be screened. A cross-check will be made against the HOPE I Planning grants and HOPE I Implementation grants, to assure compliance with section 20(f)(4) of the 1937 Act, which states: "The Secretary may not provide financial assistance under this subsection to any resident management corporation or resident council with respect to which assistance for the development or formation of such entity is provided under title III." HOPE I Planning and Implementation grantees were required to propose plans to establish a RC, RMC, or cooperative association where one did not exist for the proposed homeownership site, including the development or formation of that entity. In addition, HOPE I Full Planning and Implementation grant applicants were expected to include in their applications all eligible activities necessary to make their proposed homeownership program feasible (even if some of the proposed activities were to be carried out with non-HOPE I funds, such as resident management funds). Consequently, in reviewing TOP grant applications, for all applicants who are HOPE I (lead or joint) grantees the following rules apply:

Rule 1. An applicant for TOP funds that has received a HOPE I Full Planning or Implementation grant (as a lead or joint applicant) may not also receive a TOP grant, unless the applicant proposed in its HOPE I application to use TOP funding to carry out those activities.

Rule 2. An applicant for TOP funds that has received a HOPE I Mini Planning grant (as a lead or joint applicant) may not receive a TOP grant for any activity proposed for funding in the HOPE I grant. Mini Planning grant applicants may apply for a TOP grant if the activities proposed in the TOP application are not duplicative.

(6) All applicants will have an opportunity to correct technical deficiencies that are curable in this application submission as provided for in this NOFA.

F. Funding

As noted, $15 million was appropriated in FY 1996 for the TOP. Of this amount, $25,000 has been allocated to one RC not funded in the FY 1995 funding cycle because of a HUD technical error. The remainder of the funds is being made available on a competitive basis under this NOFA to applicants that submit timely applications and are selected for funding. Under section 20(f)(2), this financial assistance may not exceed $100,000 with respect to any public housing project.

Of the remaining $14,975,000 in funds, $500,000 will be awarded to NROs, RROs, and SROs. The purpose of these grants is to provide technical assistance to public and Indian housing residents desiring either to establish a RC/RMC/RO where one does not exist or to organize an inactive RC/RMC/RO.

With the remaining $14,475,000, the Department will provide two types of grants to RCs/RMCs/ROs: (1) Basic Grants; and (2) Additional Grants.

Basic Grants

All RCs/RMCs/ROs that have been in existence for several years, and new emerging groups that meet eligibility requirements (see Definitions, Section I.I of the NOFA), may apply for a Basic Grant for up to $100,000. All grantees will access the TOP grant funds through the LOCCS/VRS.

To ensure the progress of the grantees, each grantee will be allowed to draw down through LOCCS/VRS only the specific amount of funding needed to complete the tasks and subtasks specified in the TOP Work Plan. The grantee must complete all activities under Tasks 1 through 4 in the TOP Work Plan prior to advancing to TOP Work Plan Tasks 5 through 7 and receiving additional funds.

The local HUD Field Office or Area Office of Native American Programs (ONAP) will be responsible for approving the TOP Work Plan and permitting grantees access to the LOCCS/VRS.

Additional Grants

Any RC/RMC/RO selected for a Resident Management(RM)/TOP grant in FYs 1988–1995 (including a mini grant for start-up activities) that received less than a total of $100,000 may apply for an Additional Grant not to exceed (including previous grants) the total statutory maximum of $100,000.

To ensure the progress of the grantees, each grantee will be allowed to draw down from LOCCS/VRS only the specific amount of funding needed to complete the tasks and subtasks specified in the TOP Work Plan. Each Additional Grant grantee must provide a progress report that will indicate accomplishments and the remaining tasks to be completed. The local HUD Field Office or Area ONAP will be responsible for approving the TOP Work Plan and permitting grantees access to the LOCCS/VRS.

Each Additional Grant applicant must demonstrate the need for additional funding by submitting evidence of completing specific activities. An Additional Grant applicant may receive a higher score if most of the activities listed in Section I.O(1) of this NOFA are completed and documentation is included as evidence.

NROs/SROs/RROs Grants

The purpose of this grant is to provide technical assistance to public and Indian housing residents desiring either to establish a RC/RMC/RO where one does not exist or to organize an inactive RC/RMC/RO. The awards will be competitive, using the Rating Factors in Section I.P of this NOFA, and applicants must meet eligibility requirements. The local HUD Field Office or Area ONAP will be responsible for approving the TOP Work Plan and determining the ability of the grantee to access the LOCCS/VRS.

Each NRO/RRO/SRO must be registered as a nonprofit organization at the time of application submission. NROs/RROs/SROs must list in the application the name of the RCs/RMCs/ROs that the organization will train or provide technical assistance, and provide letters of support from each entity identified in the application. The NROs/RROs/SROs cannot list RCs/RMC/ROs that have already received the maximum of $100,000.

G. Fair Housing Act Requirement

No grantee may discriminate based on race, national origin, religion, color, familial status, disability, or sex in the provision of any benefits or services.

H. TOP Technical Assistance Grant Agreement

Grant awards will be made through a TOP Technical Assistance Grant Agreement which defines the legal framework for the relationship between HUD and a resident grantee for the proposed activities approved for funding. The grant agreement will contain all administrative documents and forms needed to execute the grant. No funds can be drawn down by a grantee until the grant agreement is executed by the local HUD Field Office or Area ONAP.

I. Definitions

The following definitions apply to public housing, as provided in 24 CFR 964.115 and 964.120:

Resident Council (RC). An incorporated or unincorporated nonprofit organization or association that shall consist of persons residing in public housing and must meet each of the following requirements in order to receive official recognition from the HA/HUD, and be eligible to receive funds for resident council activities, and stipends for officers for their related costs for volunteer work in public housing:

(1) It may represent residents residing in scattered site buildings, in areas of contiguous row houses; or in one or more contiguous buildings; in a development; or in a combination of these buildings or developments.

(2) It must adopt written procedures such as by-laws, or a constitution which provides for the election of residents to the governing board by the voting membership of the residents residing in public housing on a regular basis but at least once every 3 years. The written procedures must provide for the recall of the resident board by the voting membership. These provisions shall allow for a petition or other expression of the voting membership's desire for a recall election, and set the number of percentage of voting membership ("threshold") who must be in agreement in order to hold a recall election. This threshold shall not be less than 10 percent of the voting membership.

(3) It must have a democratically elected governing board that is elected by the voting membership. At a minimum, the governing board should consist of five elected board members. The voting membership must consist of heads of households (any age) and other residents at least 18 years of age or older and whose name appears on a lease for the unit in the public housing that the resident council represents.

Resident Management Corporation (RMC). An entity that consists of residents residing in public housing must have each of the following characteristics in order to receive official recognition by the HA and HUD:

(1) It shall be a nonprofit organization that is validly incorporated under the laws of the State in which it is located;

(2) It may be established by more than one resident council, so long as each such council:

(a) Approves the establishment of the corporation; and

(b) Has representation on the Board of Directors of the corporation.

(3) It shall have an elected Board of Directors, and elections must be held at least once every 3 years;

(4) Its by-laws shall require the Board of Directors to include resident representatives of each resident council involved in establishing the corporation; include qualifications to run for office, frequency of elections, procedures for recall, and term limits if desired;

(5) Its voting members shall be heads of households (any age) and other residents at least 18 years of age and whose name appears on the lease of a unit in public housing represented by the resident management corporation;

(6) Where a resident council already exists for the development, or a portion of the development, the resident management corporation shall be approved by the resident council board and a majority of the residents. If there is no resident council, a majority of the residents of the public housing development it will represent must approve the establishment of such a corporation for the purposes of managing the project; and

(7) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of this part for a resident council.

The following definitions apply to Indian Housing, as defined in 24 CFR part 950:

Resident Management Corporation (RMC). An entity that proposes to enter into, or enters into, a contract to manage IHA property. The corporation shall have each of the following characteristics:

(1) It shall be a nonprofit organization that is incorporated under the laws of the State or Indian tribe in which it is located;

(2) It may be established by more than one resident organization, so long as each such organization both approves the establishment of the corporation and has representation on the Board of Directors of the corporation;

(3) It shall have an elected Board of Directors;

(4) Its by-laws shall require the Board of Directors to include representatives of each resident organization involved in establishing the corporation;

(5) Its voting members are required to be residents of the project or projects it manages; and

(6) It shall be approved by the resident organization. If there is no organization, a majority of the households of the project or projects shall approve the establishment of such an organization.

Resident Organization (RO). A Resident Organization (or "Resident Council" as defined in Section 20 of the Act) is an incorporated or unincorporated nonprofit organization or association that meets each of the following criteria:

(1) It shall consist of residents only, and only residents may vote;

(2) If it represents residents in more than one development or in all of the developments of an IHA, it shall fairly represent residents from each development that it represents;

(3) It shall adopt written procedures providing for the election of specific officers on a regular basis; and

(4) It shall have a democratically elected governing board. The voting membership of the board shall consist solely of the residents of the development or developments that the RO represents.

The following definitions apply to NROs/RROs/SROs applicants:

(Note: A NRO/RRO/SRO must be incorporated as a nonprofit organization at the time of application submission to be eligible for funding under this NOFA.)

National Resident Organization (NRO). An incorporated nonprofit organization or association for public and Indian housing that meets each of the following requirements:

(1) It is national (i.e., conducts activities or provides services in at least two HUD Areas or two States);

(2) It has experience in providing start-up and capacity-building training to residents and resident organizations; and

(3) Public or Indian housing residents representing different geographical locations in the country must comprise the majority of the board of directors.

Regional Resident Organization (RRO). An incorporated nonprofit organization or association for public or Indian housing that meets each of the following requirements:

(1) It is regional (i.e., not limited by HUD Areas, including Tribal Areas); and

(2) It has experience in providing start-up and capacity-building training to residents and resident organizations; and

(3) Public or Indian housing residents representing different geographical locations in the region must comprise the majority of the board of directors.

Statewide Resident Organization (SRO). An incorporated nonprofit organization or association for public or Indian housing that meets the following requirements:

(1) It is Statewide;

(2) It has experience in providing start-up and capacity-building training to residents and resident organizations; and

(3) Public or Indian housing residents representing different geographical locations in the State must comprise the majority of the board of directors.

J. Eligibility

Only organizations that meet the definition of a RC/RMC/RO or a NRO/RRO/SRO, as set forth under the Section I.I, "Definitions," of this NOFA will be eligible for funding under this NOFA. The local HUD Field Office or Area ONAP will screen applications to determine compliance with the following:

(1) Only public and Indian housing RCs/RMCs/ROs and NROs/SROs/RROs are eligible to apply for this grant. The local HAs, Section 8 developments, or other federally subsidized housing communities are not eligible to apply.

(2) An RC/RMC/RO must have a democratically elected governing board to be eligible for funding. The applicant will be required to complete a certification of resident council board election, which must be notarized and signed by the local HA or an independent third-party monitor. (Not applicable to Indian ROs and NROs/RROs/SROs.)

(3) A RC/RMC/RO will receive consideration for a Basic Grant based on the rating factors contained in Section I.N of this NOFA.

(4) A RC/RMC/RO selected for funding in FYs 1988–1995 that received less than the statutory maximum of $100,000 may apply for an Additional Grant not to exceed (including previous grants) the total statutory maximum of $100,000. Grantees that were awarded the maximum total amount of $100,000 in FYs 1988–1995 are not eligible to apply.

(5) A RC/RMC/RO will receive consideration for an Additional Grant based on the rating factors contained in Section I.O of this NOFA.

(6) Only one application will be considered for funding from an individual development. If more than one application is received from a development, only the application from the duly elected RC/RMC/RO will be considered. All other applications will be rejected.

(7) A city-wide organization (consisting of members from RCs/RMCs/ROs who reside in housing developments that are owned and operated by the same HA within the city) may represent more than one RC/RMC/RO within an HA and apply jointly for a TOP grant. However, the city-wide organization cannot represent any RC/RMC/RO that has received Resident Management (RM)/TOP technical assistance funding totalling $100,000 in previous years. The individual developments under the umbrella of the city-wide organization may apply for a separate grant only if the activities that are included in the individual development's application are not the same activities that are included in the city-wide organization's application, and as long as no public housing development receives more than $100,000. All applications will be screened for duplicative activities.

(8) A jurisdiction-wide organization (consisting of members from RCs/RMCs/ROs who reside in housing developments that are owned and operated by the same HA within that HA's jurisdiction, other than a city-wide organization making an application in accordance with paragraph (7) in this Section I.I) may be formed for the purpose of advising the HA Board of Commissioners or Executive Directors in all areas of HA operations. In that case, the jurisdiction-wide organization may apply for a grant to carry out jurisdiction-wide programs. Jurisdiction-wide organization applicants may receive up to the maximum total of $100,000, provided no public housing development included in its application receives more than a total of $100,000 of TOP funding.

(9) An NRO/SRO/RRO that is organized to provide technical assistance to RCs/RMCs/ROs may receive grants up to the maximum total of $100,000, provided no public housing development included in its application receives more than a total of $100,000 of TOP funding. An NRO/SRO/RRO previously funded for $100,000 cannot reapply for funding under this NOFA, because of the statutory limitation of $100,000.

K. Eligible Activities

Activities for which funding under this NOFA may be provided to an eligible RC/RMC/RO or NRO/RRO/SRO include any combination of, but are not limited to, the following:

(1) Resident Capacity Building:

- Training board members in community organizing, board development, and leadership training; and
- Determining the feasibility of the TOP initiatives for a specific development.

(2) Resident Management:

- Building and strengthening its capacity as an organization (e.g., establishing operating/planning committees and block/building captains to carry out specific organizational tasks, developing by-laws, etc.); developing a cohesive relationship between the residents and the local community; and building a partnership with the HA;
- Training residents, as potential employees of an RMC, in skills directly related to the operation, management, maintenance and financial systems of a project;
- Training of residents with respect to fair housing and equal opportunity requirements, including the residents' rights under the housing program, procedures for reporting violations, all civil rights-related program requirements, requirements for reasonable accommodation, and alleviating architectural barriers.
- Gaining assistance in negotiating management contracts and in related contract monitoring and management procedures, and designing a long-range planning system related to contracts; and
- Assisting in the actual creation of a RC/RMC/RO, such as consulting and acquiring legal assistance to incorporate, prepare by-laws, draft a corporate charter, and apply for nonprofit status.

(3) Resident Management Business Development:

- Economic development training related to resident management and technical assistance for job training and placement in RC/RMC/RO developments;
- Technical assistance and training in business development related to resident management, through feasibility and market studies; development of business plans; affirmative outreach activities; and innovative financing methods, including revolving loan funds; and
- Legal advice in establishing resident management-required business entities.

(4) Partnerships:

- Training that is required to establish a partnership between the HA and the residents. RCs/RMCs/ROs under the same HA's jurisdiction may wish to come together jointly, pool grant funds, and hire a consultant who will provide technical assistance and training related to building a partnership with the HA and assist in implementing activities in the TOP program.
- Other partnerships developed by the local residents/HA in the community.

(5) Social Support Services (such as self-sufficiency; youth initiatives; and elderly/handicapped activities):

- Conducting feasibility studies to determine training and social services needs;
- Coordinating support services;
- Training for programs such as child care, early childhood development, parent involvement, volunteer services, parenting skills, and before- and after-school programs;
- Training programs on health, nutrition, and safety;
- Conducting workshops for youth services, child abuse and neglect prevention, and tutorial services, in partnership with community-based organizations, such as local Boys and Girls Clubs, YMCA/YWCA, Boys/Girls Scouts, Campfire, Big Brothers/Big Sisters, 4–H Clubs, etc.; and
- Training in the development of strategies to implement youth programs successfully. For example, assessing the needs and problems of the youth; improving youth initiatives that are currently active; and training youth, housing authority staff, and RCs/RMCs/ROs on youth initiatives and program activities.
- Developing a plan to establish a congregate meal program for seniors, including seniors living in a family project;
- Developing a plan to establish a transportation system that would provide transportation of residents to senior and youth activities and activities for persons with disabilities; and
- Training programs in developing a resident newspaper that would be written by and for residents.

(6) General:

- Training required on HUD regulations and policies governing the operation of low-income public and Indian housing, financial management, capacity building to develop the necessary skills to assume management responsibilities at the project, and property management;
- Training in accessing other funding sources;
- Developing training programs/performance standards and assessment procedures to measure the success of the RC/RMC/RO;
- Gaining assistance in acquiring fidelity bonding and insurance, but not the cost of the bonding and insurance;
- Assessing potential management functions or tasks that the RC/RMC/RO might undertake;
- Training in resident management-related skills, such as computer and clerical (payroll clerk/records management) skills;
- Resident management-related employment training and counseling;
- Hiring trainers or other experts. By law, resident grantees must ensure that all training is provided by a qualified public housing management specialist (Consultant/Trainer) or the local HA. To ensure the successful implementation of the TOP Work Plan activities, the RCs/RMCs/ROs are required to determine the need to contract for outside consulting/training services, after considering their own capacity. The RCs/RMCs/ROs are encouraged to make maximum use of their HA, nonprofits, or other Federal, State, or local government resources for technical assistance and training needs. All Basic Grantees may use up to $15,000 to obtain a consultant/trainer from the TOP database of registered consultant/trainers for assistance in implementing Tasks 1 through 4 of the TOP Work Plan. (The TOP Work Plan is included in the TOP Application Kit.)

The HA, other nonprofits, Federal, State or local government resources may serve as the consultant/trainer; however, the identified source that intends to establish a contract with the RC/RMC/RO must register with HUD prior to executing a contract.

After completion of Tasks 1 through 4 of the TOP Work Plan, the RC/RMO/RO may hire a consultant/trainer to assist in the implementation of Tasks 5 through 7 of the TOP Work Plan. The grantees must follow 24 CFR 84, which implements OMB Circular A–110 and prescribes standards and policies essential to ensure open and free competition for the proper execution of procurement transactions when selecting a consultant/trainer. HUD will make available the source list of registered consultant/trainers upon request, for use in a competitive solicitation for consultant services to assist the RC/RMC/RO in implementing TOP Work Plan Tasks 5 through 7 of the TOP Work Plan. The amount allowed for hiring an individual consultant for this purpose shall not exceed 50 percent of the total grant award or $50,000, whichever is less. HUD Field Offices will monitor this process to ensure compliance with these requirements.

- Rental or lease of a car, van, or bus by resident grantees to attend training related to the TOP initiatives; and
- Stipends, as provided in this paragraph. Officers and members of a RC/RMC/RO will only receive stipends for participating in or receiving training under the TOP, subject to the availability of funds, if the following applies:

(i) The RCs/RMCs/ROs have completed at least two training programs/performance standards, one of which must be the training program/performance standard listed as number

one in the Work Plan/Training Programs/Performance Standards section (see Work Plan/Training Programs/Performance Standards, Section I.Q of this NOFA). The stipends should be used for additional costs incurred during the training programs, such as childcare and transportation costs; or

(ii) RCs/RMCs/ROs are being trained to implement resident management activities only, and the officers and members of the resident entity are within 3 to 6 months of establishing a dual/full management contract with the PHA/IHA. Generally, no more than 10 percent of the grant funds should be used for this purpose.

(7) Capacity building and training to facilitate resident participation in the Comprehensive Grant Program.

(8) Implementation of activities by a RC/RMC/RO associated with the operation and maintenance of the public and Indian housing project. Examples of eligible activities in this category that have not been mentioned previously are:

- Designing and implementing financial management systems that include provisions for budgeting, accounting, and auditing;
- Designing and implementing the TOP travel policy and personnel policies; performance standards for measuring staff productivity; policies and procedures covering organizational structure, such as recordkeeping, maintenance, insurance, occupancy, and management information systems; any other recognized functional responsibilities relating to property management, in general, and public and Indian housing management, in particular; and responsibilities relating to any TOP initiative;
- Identifying the social support needs of residents, and the securing of that support by hiring a services coordinator. The services coordinator should identify a plan to provide short-term technical assistance, assess, coordinate, and assist in implementing the services needed by the residents, such as health clinics, day care, and security; and
- Assessing potential homeownership opportunities for residents within public and Indian housing or anywhere in the community.

(9) *Administrative costs* necessary for the implementation of activities outlined in paragraphs (1) through (8) of this Section I.K, "Eligible Activities," of the NOFA. Appropriate administrative costs include, but are not limited to, the following items or activities:

- Telephone, telegraph, printing, and sundry nondwelling equipment (such as office supplies, computer software, and furniture). In addition, a reasonable portion of funds may be applied to the acquisition of equipment, such as computer hardware and copying machines. A grantee must justify the need for this equipment in relationship to implementing the TOP initiatives.
- Travel directly related to the successful completion of the required TOP Work Plan. All grantees must adhere to the travel policy established by HUD and must have received TOP orientation training prior to spending any TOP funds, with the exception of funds needed to attend a HUD-sponsored TOP orientation training. The policy sets travel costs at a maximum amount of $5,000 per RC/RMC/RO (not applicable to NROs/RROs/SROs).
- Child care expenses for individual staff and board members, in cases where staff or board members who need child care are involved in training-related activities associated with the development of resident management entities. Not more than 2 percent of the total grant amount (0.02 times the grant award amount) may be used for expenses to support child care needs.

(10) *For NROs/RROs/SROs only:* Organizing and establishing democratically elected and effective RCs/RMCs/ROs:

- Identify inactive RCs/RMCs/ROs that have RM/TOP grants and provide local training and technical assistance to enable the organizations to implement the RM/TOP Work Plan;
- Assist residents in organizing a RC/RMC/RO and provide appropriate training and technical assistance (i.e., incorporation, nonprofit status, by-laws, elections; buildings, floor, and block captains; leadership training; form a partnership with the HA; develop and implement a needs assessment survey). This list is not inclusive.
- Provide training and technical assistance to the resident organizations in accomplishing any of the eligible activities related to the TOP initiatives.
- Provision of training must be performed within the jurisdiction of the resident organization. This will require the trainer to be a local person or entity.

All NROs/RROs/SROs must be knowledgeable and adhere to all policies that relate to the RC/RMC/RO.

L. Ineligible Activities

Ineligible items or activities include, but are not limited to, the following:

(1) Entertainment, including associated costs such as food and beverages, except normal per diem for meals related to travel performed in connection with implementing the TOP Work Plan. (See TOP Travel Notice for more specific guidance.)

(2) Purchase or rental of land or buildings or any improvements to land or buildings;

(3) Activities not directly related to the TOP initiatives, e.g., lead-based paint testing and abatement and operating capital for economic development activities;

(4) Purchase of any vehicle (car, van, bus, etc.) or any other property, other than as described under paragraph (9) of Section I.K, "Eligible Activities," of this NOFA, unless approved by HUD Headquarters or the local HUD Field Office;

(5) Architectural and engineering fees;

(6) Payment of salaries for routine project operations, such as security and maintenance, or for RC/RMC/RO staff, except that a reasonable amount of grant funds may be used to hire a person to coordinate the TOP grant activities or coordinate on-site social services;

(7) Payment of fees for lobbying services;

(8) Any fraudulent or wasteful expenditures or expenditures otherwise incurred contrary to HUD program regulations or directives will be considered ineligible expenditures, upon appropriate determination by an audit by HUD Field Office staff, and HUD will reduce the grantee's grant for the amount expended; and

(9) Any activity otherwise eligible under this NOFA for which funds are being provided from any other source.

M. Selection Process

Each application for a grant award that is submitted in a timely manner, as specified in the application kit, to the appropriate local HUD field office or Area Office of Native American Programs (ONAP) (see Appendix to this NOFA) and that otherwise meets the requirements of this NOFA, will be evaluated. An application for either a Basic Grant or an Additional Grant must receive a minimum score of 50 points (out of the maximum of 110 points) to be eligible for funding. NROs/RROs/SROs must receive a minimum score of 50 points (out of a maximum of 110) to be considered for funding. The local Field Office or Area ONAP will transfer all RC/RMC/RO applications to a grant review site for processing by a Grants Management Team. Upon completion of the review, all applications will be placed in an overall nationwide ranking order and funded until all funds are exhausted.

N. Rating Factors—Basic Grants

An application for funding for a Basic Grant will be reviewed based on the following Rating Factors (maximum of 110 points, including 10 bonus points).

(1) DESCRIBE THE ACTIVITIES AND GOALS OF THE RC/RMC/RO AND THE COMMUNITY (Maximum Points: 25):

- A high score (Maximum Points: 25) is received where the RC/RMC/RO identifies activities and describes the goals of the community. The applicant includes a detailed and structured plan for addressing the needs and accomplishing the overall goals of the RC/RMC/RO.
- A medium score (Maximum Points: 12) is received where the RC/RMC/RO identifies activities and describes the goals of the community, but the plan to address the needs and accomplish the goals is general.
- A low score (Maximum Points: 5) is received where the RC/RMC/RO does not identify any activities and the plan to address the needs and accomplish the goals of the community is unclear.
- A score of zero (0 points) will be given if the applicant fails to respond to this factor.

(2) EVIDENCE OF SUPPORT BY DEVELOPMENT'S RESIDENTS AND RESIDENT INVOLVEMENT IN THE RC's/RMC's/RO's ACTIVITIES (Maximum Points: 25):

- A high score (Maximum Points: 25) is received where the RC/RMC/RO describes support by the residents and provides documentation that shows support and the involvement of the residents in the RC's/RMC's/RO's activities. An applicant must submit a copy of a petition or other documentation (e.g., membership list) showing 75–100 percent of support and involvement of the residents, minutes of the RC's/RMC's/RO's recent monthly meeting, and the attendance log.
- A medium score (Maximum Points: 12) is received where the RC/RMC/RO describes support by the residents and the documentation of support includes a petition or other documentation (e.g., membership list) showing 50 percent of support and involvement of the residents.
- A low score (5 points) is received where the RC/RMC/RO describes support by the residents and the documentation of support includes documentation (e.g., petition, membership list) showing less than 50 percent of support and involvement of the residents.
- A score of zero (0 points) is received where the RC/RMC/RO fails to provide documentation of support by the development's residents and support is not mentioned in the narrative.

(3) EVIDENCE THAT THE RC/RMC/RO HAS A PARTNERSHIP WITH THE HA: (Maximum Points: 25 + 10 bonus points). Under this factor, *10 Bonus Points* will be given if the applicant can provide a narrative describing any additional partnerships the RC/RMC/RO has developed with the housing authority in order to implement other programs or initiatives such as Section 3 initiatives, HUD's Drug Elimination Program, Youth Sports Program, Comprehensive Grant (CGP), or other related initiatives. The narrative describing the additional partnerships must be signed by both the HA's Executive Director and a member of the RC's/RMC's/RO's Board. The narrative cannot include activities that are listed in the letter of support provided by the local HA.

- A high score (Maximum Points: 25) is received where the RC/RMC/RO provides a letter of support from the local HA that shows evidence that the HA and RC/RMC/RO have been working in partnership for at least 2 years, and the HA has provided opportunities and services such as training, contracts for services, transportation, and other in-kind services. (The letter must be signed by the local HA Executive Director.) There must be evidence that the HA has committed to support the RC/RMC/RO activities under the TOP program and has assisted in the preparation of the RC/RMC/RO's application for funding. The partnership must also be evidenced by submitting a copy of an executed Memorandum of Understanding (MOU).
- A medium score (Maximum Points: 12) is received where either: (i) The RC/RMC/RO provides a letter of support from the HA that states its support of the RC's/RMC's/RO's activities, but there is no evidence of a commitment to assist the RC/RMC/RO in implementing the TOP Work Plan or of a partnership established between the HA and the residents; or (ii) the RC/RMC/RO provides detailed documents (e.g., copies of correspondence exchanged with the HA, summaries of meetings held with the HA, and summaries of efforts made to establish a partnership with the HA) indicating that the residents have made a substantial effort to establish a partnership with the HA, but the HA will not support the RC's/RMC's/RO's activities.
- A low score (Maximum Points: 5) is received if the applicant mentions HA support or obstacles encountered in attempting to build a partnership with the HA.
- A score of zero (0 points) is received where the RC/RMC/RO fails to submit a letter of support or documentation of its efforts to obtain HA support.

(4) EVIDENCE THAT THE RC/RMC/RO HAS SUPPORT OF STATE/TRIBAL/LOCAL GOVERNMENT, COMMUNITY ORGANIZATIONS, OR OTHER PUBLIC/PRIVATE SECTOR GROUPS (Maximum Points: 15)

- A high score (Maximum Points: 15) is received where the RC/RMC/RO provides copies of letters of support discussing specific assistance from three or more entities (e.g., State/Tribal/local government, community organizations, or other public/private sector groups).
- A medium score (Maximum Points: 7) is received where the RC/RMC/RO provides letters of support from two entities.
- A low score (Maximum Points: 3) is received where the RC/RMC/RO fails to provide any letters of support, but support of the State/Tribal/local government, community organizations, or other public/private sector groups is mentioned in the narrative.
- A score of zero (0 points) is received where the RC/RMC/RO fails to submit a letter of support or documentation of its efforts to obtain support from the State/Tribal/local government, community organizations, or other public/private sector groups.

(5) CAPABILITY OF RC/RMC/RO IN HANDLING FINANCIAL RESOURCES (Maximum Points: 10). This factor can be demonstrated by including previous experience of the RC/RMC/RO or by providing an explanation of how the financial resources will be obtained:

- A high score (Maximum Points: 10) is received where the RC/RMC/RO provides evidence of having 2 or more years of experience in handling financial resources and has adequate accounting procedures in place or lacks experience but has provided an acceptable plan (i.e., hiring the HA or other private organizations) to develop the financial controls.
- A medium score (Maximum Points: 5) is received where the RC/RMC/RO provides evidence of having 1 year of experience in handling financial resources, but no accounting procedures are established and no acceptable plan has been provided to hire the HA or other private organizations to develop the financial controls.
- A low score (Maximum Points: 2) is received where the RC/RMC/RO provides evidence of having less than 1 year of experience in handling financial resources.
- A score of zero (0 points) is received where the RC/RMC/RO has no experience in handling financial resources and there is clearly no accounting system or procedures established.

O. Rating Factors—Additional Grants

An application for funding for an Additional Grant will be reviewed based

on the following Rating Factors (maximum 110 points, including 10 bonus points).

(1) EVIDENCE OF ACCOMPLISHMENTS AND NEED FOR ADDITIONAL FUNDING (Maximum Points: 30):

• A high score (Maximum Points: 30) is received where the RC/RMC/RO provides a summary that includes accomplishments and a description of need for additional funding. Applicant must also provide evidence that shows the completion of all of the activities listed below, therefore demonstrating progress and a need for additional funding:

(a) Developed an active community organization that includes democratically elected officers (example: election certification signed by the local HA and/or an independent third-party organization and minutes of meetings);

(b) Developed by-laws pursuant to 24 CFR part 950, subpart O, or 24 CFR part 964, whichever is applicable, that govern the operation of the organization (example: a copy of the RC's/RMC's/RO's by-laws);

(c) Developed floor/block captains or residential community groups and program committees that are in training or had training to carry out specific tasks (example: a copy of a list that includes the floor/block captains or residential community groups and program committees, and training plan or certificate of completion of training);

(d) Developed a basic financial management and accounting system that will provide effective control over and accountability for all grant funds; (example: a certification that the accounting system is developed);

(e) Developed a Memorandum of Understanding (MOU) between the RC/RMC/RO and HA that states the elements of their relationship and delineates what support the HA will provide to the resident organization (e.g., on-the-job training, technical assistance, equipment, space, transportation, etc.) and the activities to be conducted by the RC/RMC/RO (example: a copy of an executed MOU between the RC/RMC/RO and HA); and

(f) Evidence of completing a course of TOP-related training (example: a copy of the certificate or letter from the consultant/trainer that indicates the successful completion of training by the RC/RMC/RO).

• A medium score (Maximum Points: 20) is received where the RC/RMC/RO provides a summary that includes accomplishments and a description of need for additional funding and submits evidence of completing four of the activities listed under "high score" of this factor.

• A low score (Maximum Points: 10) is received where the RC/RMC/RO submits evidence of completing two of the activities listed under "high score" of this factor, but does not submit a summary that includes accomplishments and a description of need for additional funding.

• A score of zero (0 points) is given if the applicant does not submit a summary that includes accomplishments and a description of need for additional funding or evidence of accomplishing any of the activities listed under "high score" of this factor.

(2) EVIDENCE OF SUPPORT BY DEVELOPMENT'S RESIDENTS AND RESIDENT INVOLVEMENT IN THE RC's/RMC's/RO's ACTIVITIES (Maximum Points: 25):

• A high score (Maximum Points: 25) is received where the RC/RMC/RO describes support by the residents and provides documentation that shows support and the involvement of the residents in the RC's/RMC's/RO's activities. An applicant must submit a copy of a petition or other documentation (e.g., membership list) showing 75–100 percent of support and involvement of the residents, minutes of the RC's/RMC's/RO's recent monthly meeting, and the attendance log.

• A medium score (Maximum Points: 12) is received where the RC/RMC/RO describes support by the residents and the documentation of support includes a petition or other documentation (e.g., membership list) showing 50 percent of support and involvement of the residents.

• A low score (5 points) is received where the RC/RMC/RO describes support by the residents and the documentation of support includes documentation (e.g., petition, membership list) showing less than 50 percent of support and involvement of the residents.

• A score of zero (0 points) is received where the RC/RMC/RO fails to provide documentation of support by the development's residents and support is not mentioned in the narrative.

(3) EVIDENCE THAT THE RC/RMC/RO HA$ A PARTNERSHIP WITH THE HA: (Maximum Points: 25 + 10 bonus points). Under this factor, *10 Bonus Points* will be given if the applicant can provide a narrative describing any additional partnerships the RC/RMC/RO has developed with the housing authority in order to implement other programs or initiatives such as Section 3 initiatives, HUD's Drug Elimination Program, Youth Sports Program, CGP, or other related initiatives. The narrative describing the additional partnerships must be signed by both the HA's Executive Director and a member of the RC's/RMC's/RO's Board. The narrative cannot include activities that are listed in the letter of support provided by the local HA.

• A high score (Maximum Points: 25) is received where the RC/RMC/RO provides a letter of support from the local HA that shows evidence that the HA and RC/RMC/RO have been working in partnership for at least 2 years, and the HA has provided opportunities and services such as training, contracts for services, transportation, and other in-kind services. (The letter must be signed by the local HA Executive Director.) There must be evidence that the HA has committed to support the RC/RMC/RO activities under the TOP program and has assisted in the preparation of the RC/RMC/RO's application for funding. The partnership must also be evidenced by submitting a copy of an executed Memorandum of Understanding (MOU).

• A medium score (Maximum Points: 12) is received where either: (i) the RC/RMC/RO provides a letter of support from the HA that states its support of the RC's/RMC's/RO's activities, but there is no evidence of a commitment to assist the RC/RMC/RO in implementing the TOP Work Plan or of a partnership established between the HA and the residents; or (ii) the RC/RMC/RO provides detailed documents (e.g., copies of correspondence exchanged with the HA, summaries of meetings held with the HA, and summaries of efforts made to establish a partnership with the HA) indicating that the residents have made a substantial effort to establish a partnership with the HA, but the HA will not support the RC's/RMC's/RO's activities.

• A low score (Maximum Points: 5) is received if the applicant mentions HA support or obstacles encountered in attempting to build a partnership with the HA.

• A score of zero (0 points) is received where the RC/RMC/RO fails to submit a letter of support or documentation of its efforts to obtain HA support.

(4) EVIDENCE THAT THE RC/RMC/RO HAS THE SUPPORT OF THE STATE/TRIBAL/LOCAL GOVERNMENT, COMMUNITY ORGANIZATIONS, OR OTHER PUBLIC/PRIVATE SECTOR GROUPS (Maximum Points: 20)

• A high score (Maximum Points: 20) is received where the RC/RMC/RO provides copies of letters from three or more entities (e.g., State/Tribal/local government, community organizations, or other public/private sector groups).

• A medium score (Maximum Points: 10) is received where the RC/RMC/RO provides letters of support from two entities.

• A low score (Maximum Points: 5) is received where the RC/RMC/RO provides a letter of support from one entity.

P. Rating Factors—NROs/RROs/SROs

An application for funding will be reviewed based on the following Rating Factors (maximum of 110 points, including 10 bonus points).

(1) DESCRIBE THE GOALS AND OBJECTIVES OF THE NRO/RRO/SRO (Maximum Points: 30):

• A high score (Maximum Points: 30) is received where the NRO/RRO/SRO provides a detailed plan clearly describing methods for accomplishing the overall goals and objectives of organizing and training RCs/RMCs/ROs in the TOP initiatives. Applicants should also provide a description of the proposed training, identify selected trainers, and submit support letters from selected trainers and a list of RCs/RMCs/ROs that will receive training.

• A medium score (Maximum Points: 15) is received where the NRO/RRO/SRO provides a general outline of proposed methods for accomplishing the goals and objectives of organizing and training RCs/RMCs/ROs in the TOP initiatives.

• A score of zero (0 points) is received where the NRO/RRO/SRO does not clearly state the goals and objectives of the TOP initiative.

(2) EVIDENCE OF SUPPORT BY NRO/RRO/SRO BOARD OF DIRECTORS. (Maximum Points: 10):

• A high score (Maximum Points: 10) is received where the NRO/RRO/SRO provides documentation that shows support from its board of directors, as evidenced by a board resolution, minutes of meetings, and letters of support.

• A medium score (Maximum Points: 5) is received where the NRO/RRO/SRO provides documentation of support that is limited to minutes of meetings or letters of support.

• Low score (Maximum Points: 2) is received where the NRO/RRO/SRO fails to provide documentation of support, but support is mentioned.

(3) DESCRIPTION OF A PLAN TO FACILITATE THE CREATION OF A PARTNERSHIP(S) AMONG THE HA, RESIDENTS, AND OTHER LOCAL ORGANIZATIONS. (Maximum Points: 20 + 10 bonus points) *Ten Bonus Points* will be given if the applicant can provide a letter of support from the local HA of each RC/RMC/RO identified to receive training/technical assistance in the application.

• A high score (Maximum Points: 20) is received where the NRO/RRO/SRO provides a detailed plan that clearly describes methods for facilitating the creation of a strong partnership among the HAs, residents, and other local organizations. The plan includes the advantages of the partnership to the residents and the community.

• A medium score (Maximum Points: 10) is received where the NRO/RRO/SRO provides a general outline of methods for facilitating the creation of a strong partnership among the HA, residents, and other local organizations.

• A score of zero (0 Points) is received where the NRO/RRO/SRO provides a plan that is not clear.

(4) TRAINING EXPERIENCE:

(4a) *EVIDENCE OF PRIOR RESIDENT TRAINING EXPERIENCE.* This factor can be demonstrated by the support of the RCs/RMCs/ROs. The letters of support should indicate the type and quality of prior training and how the training is being used by the RC/RMC/RO. (Maximum Points: 20)

• A high score (Maximum Points: 20) is received where the applicant provides documentation that shows support by the residents (i.e., letters of support and a list that includes each RC/RMC/RO that the NRO/RRO/SRO has provided training or technical assistance. The list must also include the type of contract the NRO/RROs/SRO has established with each RC/RMC/RO).

• A medium score (Maximum Points: 10) is received where the applicant provides documentation that is limited to a list that includes the RCs/RMCs/ROs to which the NRO/RRO/SRO has provided training or technical assistance. The list must also include the type of contract the NRO/RRO/SRO has established with each RC/RMC/RO.

• Low score (Maximum Points: 5) is received where the applicant fails to provide documentation of support by the development's residents, but support is mentioned.

(4b) *EVIDENCE OF THE CAPABILITY TO PROVIDE LOCAL TRAINING.* The applicant should demonstrate the ability to sustain the training and technical assistance through provision of local or on-site trainers and to coordinate these activities throughout the grant period. The applicant should also demonstrate that the residents will have access to continued training and technical assistance through the local provider after the completion of the grant period. (Maximum Points: 10):

• A high score (Maximum Points: 10) is received where the applicant provides a detailed plan clearly showing its capability to identify and provide local training and to coordinate activities of the local training provider.

• A medium score (Maximum Points: 5) is received where the applicant provides a general description of its capability to identify and provide local training.

• A score of zero (0 points) is received where the applicant does not clearly state its capability to identify and provide local training.

(5) CAPABILITY OF HANDLING FINANCIAL RESOURCES. This factor can be demonstrated through previous experience, adequate financial control procedures, or similar evidence, or by an explanation of how such capability will be obtained. (Maximum Points: 10):

• A high score (Maximum Points: 10) is received where the NRO/RRO/SRO provides evidence of having 2 or more years of experience in handling financial resources and has adequate accounting procedures in place.

• A medium score (Maximum Points: 5) is received where the NRO/RRO/SRO provides evidence of having less than 2 years of experience in handling financial resources or has provided a plan for developing financial controls that are adequate.

• A score of zero (0 points) is received where the NRO/RRO/SRO has no experience in handling financial matters and does not submit evidence that shows that an adequate accounting system is in place or under development.

Q. Top Work Plan/Training Programs/Performance Standards

Each applicant is required to submit a TOP Work Plan that includes TOP-related activities that clearly show accomplishment of the RC's/RMC's/RO's goals within 3–5 years. The budget should include costs that are needed to implement each activity and training program/performance standard included in the TOP Work Plan. The projected budget should not exceed the maximum amount of $100,000. The TOP Work Plan should also include training programs, against which HUD will measure performance standards based on task accomplishments and time frames; for example, how detailed is the TOP Work Plan; what is the time frame for accomplishing the tasks; what resources will be used to accomplish these tasks, etc. Therefore, it is essential that training programs/performance standards and time frames be designed to produce results. Grantees are required to complete at least two training programs/performance standards, one of which must be the training program/performance standard listed below as

number "1." These training programs/performance standards are not all-inclusive, and grantees may work with the HUD Field Office and the local HA to select other training programs/performance standards to meet their specific needs; however, the results must be measurable. Time frames for the suggested training programs/performance standards listed below are flexible, up to the limit established in each activity. Failure to meet the time frames may result in default of the Technical Assistance Grant (TAG) Agreement. Whenever the RC/RMC/RO hires a trainer or other expert for training/technical assistance, the training/technical assistance must be provided by a qualified housing management specialist, Consultant/Trainer, the HA, or other sources knowledgeable about the program.

Training Programs/Performance Standards

The training programs/performance standards include, but are not limited to:

1. Train block/building/floor captains, members of the RC/RMC/RO board, and other interested residents to increase its capacity as an organization. Examples may include, but are not limited to, establishing operating/planning committees and block/building/floor captains to carry out specific organization tasks and developing a cohesive relationship between the residents and the local community.

The training program must begin within 3–6 months after the TAG Agreement has been executed. All grantees must perform this training activity in a timely manner, because it serves to focus the resident community and will broaden participation by providing specific training to a large body of residents.

The following HUD requirements and training elements can be included in a training program:

- 24 CFR part 964 and part 950 (Public/Indian Housing).
- Training in civil rights requirements, including those for persons with disabilities.
- Procedures and guidelines governing TOP.
- Organization development.
- Conflict resolution and mediation.
- Techniques on planning and conducting organizational meetings.
- HUD regulations and policies governing the operation of low-income housing, which includes CGP, Section 3, etc.
- Procurement and contracting; financial management.

2. Develop strategies to decrease crime and violence by creating a sense of community responsibility and common concerns.

This training program must be in place within 6 months of completing TOP Work Plan Tasks 1 through 4; however, the results may take much longer. By completing the first training activity listed in number 1, above, there may be automatic progress made on this training activity, because crime and violence decreases when a sense of community begins to develop. Community and caring, combined with appropriate law enforcement, are the best tools against crime.

3. Train residents to develop a tutorial and scholarship program using a "Board of Very Important Persons (VIP)," such as Accountants, Bankers, Lawyers, officials in public/private agencies/organizations, to provide opportunities for educational attainment needed to perform resident-managed functions, including through institutions of higher learning.

This training program must be in place within 12 to 19 months of completing TOP Work Plan Tasks 1 through 4. This training activity may not be appropriate for every resident. The HA and grantee should work closely to develop strategies that fit the needs of the residents living in public/Indian housing.

4. Train residents in areas related to resident-owned businesses and provide technical assistance for job training and placement in the RMC development. This can be accomplished by using programs, such as the Section 3 jobs initiative or, for IHAs, Indian preference in accordance with 24 CFR Part 950.175 and Section 7(b) of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450e(b)).

This training program must be in place within 18 to 24 months of completing TOP Work Plan Tasks 1 through 4. This training activity may be achievable if developed in conjunction with the Section 3 technical assistance initiative and the Comprehensive Grant Program. The training strategy developed to implement the first training activity listed in number 1, above, can facilitate a practical approach to economic development and job training.

5. Train and provide technical assistance to residents in resident-managed business development.

This training program must be in place within 12 to 18 months of completing TOP Work Plan Tasks 1 through 4. This training activity would involve feasibility and market studies, development of business plans, outreach activities and innovative financing methods involving revolving loan funds and legal advice in establishing a resident-managed business entity.

6. Train residents in areas related to social support needs.

This training program must be in place within 24 months of completing TOP Work Plan Tasks 1 through 4. This training activity may involve feasibility studies to determine training and social support needs; training in management-related employment training and counseling; coordination of support services; training for programs such as child care, early childhood development, parent involvement, volunteer services, parenting skills, and before and after school programs; and training programs on health, nutrition and safety.

7. Train residents in the development of strategies to implement successfully a youth program that will address the needs of the youth, such as reducing crime, drug use, violence, and teenage pregnancy.

This training program must be in place within 18 months of completing TOP Work Plan Tasks 1 through 4; however, results may take longer. This training activity could involve, for example, the needs and problems of youth; improving youth initiatives that are currently active; and training youth, housing authority staff, resident management corporations, and resident councils on youth initiatives and program activities.

8. Train residents in the management of public and Indian housing developments.

This training program must be in place within 24 months of completing TOP Work Plan Tasks 1 through 4. This training activity requires residents to establish a partnership with the HA, receive training relating to property management, and establish a dual/full management contract with the HA. The dual management contract allows residents to work jointly with the HA in preparation for managing certain functions in the development. The full management contract allows residents to manage certain functions at the development. Training may involve skills directly related to the operation, management, maintenance, and financial systems of a project; training of residents with respect to fair housing requirements; negotiating management contracts; designing a long-range planning system; and training on HUD regulations and policies governing the operation of low-income public housing.

9. Train residents to develop a homeownership plan under section 5(h) (of the United States Housing Act of 1937) or an equivalent program.

This training program must be in place within 18 months of completing TOP Work Plan Tasks 1 through 4. Training would involve determining feasibility for homeownership by residents, including assessing the feasibility of other housing (including HUD-owned or -held single or multifamily) affordable for purchase by residents.

This training activity may result in residents developing a homeownership plan under the 5(h) (section 5(h) of the United States Housing Act of 1937, 42 U.S.C. 1437c(h)(5)) or an equivalent program and submitting the plan to HUD for approval.

General Top Work Plan Outline (for Basic and Additional Applicants)

(The TOP Work Plan in its entirety is provided in the TOP Application Kit.)

TASK 1—Organize public housing community and outreach to formulate basis to implement TOP initiatives.

TASK 2—Develop operating procedures for grant administration.

TASK 3—Develop memorandum of understanding (MOU) between the RC/RMC/RO and the HA based on collaborative principles, to empower the public housing community to implement TOP initiatives.

TASK 4—Develop a plan to obtain technical assistance and training to implement TOP initiatives.

TASK 5—Contract with consultant/trainer to obtain required training, guidance, and technical assistance in TOP initiatives.

TASK 6—Design, development, and implementation of resident and/or property management initiatives.

TASK 7—Design, development, and implementation of self-sufficiency programs.

TASK 8—Miscellaneous activities/expenditures.

TASK 9—Travel.

General Top Work Plan Outline (for NROs/RROs/SROs)

(The TOP Work Plan in its entirety is provided in the TOP Application Kit.)

TASK 1—Develop and implement an outreach strategy.

TASK 2—Organize resident groups.

TASK 3—Assist in organizing residents around concerns and issues of the TOP and other PIH programs as appropriate.

TASK 4—Develop strategies and implement a plan to ensure an effective partnership among RCs/RMCs/ROs, HAs, and the NROs/RROs/SROs.

TASK 5—Assist resident groups in implementing a strategy for developing TOP initiatives selected by the RC/RMC/RO.

R. HUD Notification

HUD will publish a listing of all successful applicants in the **Federal Register**, for public information.

II. Checklist of Application Submission Requirements

The application kit, which includes the NOFA, will contain a list of all application submission requirements to complete the application process.

III. Application Process

A. Actions Preceding Application Submission

Consistent with this NOFA, HUD may direct a HA to notify its existing RCs/RMCs/ROs of this funding opportunity. It is important for residents to be advised that, even in the absence of a RC/RMC/RO, the opportunity exists to establish a RC/RMC/RO before applying for funding. If no RC/RMC/RO exists for any of the developments, HUD encourages every HA to post this NOFA in a prominent location within the HA's main office, as well as in each development's office.

B. Application Submission and Development

(1) Submission. An application kit is required as the formal submission to apply for funding. The kit includes the overview of the TOP program, application requirements, forms, certifications, assurances, worksheets, selection criteria, TOP Work Plan, and budget information. An application kit may be obtained by writing the Resident Initiatives Clearinghouse, P.O. Box 6091, Rockville, MD 20850, or by calling the toll-free number: 1–800–955–2232. Requests for application kits must include your name, mailing address (including zip code), and telephone number (including area code), and should refer to document FR–4066. Applications may be requested beginning July 3, 1996. Applicants may access the TOP Application Kit through HUD's World Wide Web at http://www.hud.gov/pih. Each RC/RMC/RO and NRO/RRO/SRO must submit its application to the local HUD Field Office or, in the case of an IHA, to the appropriate HUD Office of Native American Programs, listed in the Appendix to this NOFA.

Each applicant must submit the original and two copies of its application. The Appendix lists addresses of HUD Field Offices that will accept a completed application. All applications must be received by the local HUD Field Office no later than 3:00 p.m. (local time) on the deadline date listed in the application kit. In the interest of fairness to all competing applicants, any application that is received after the deadline date and time will be considered ineligible. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will date-stamp incoming applications to evidence (timely or late) receipt, and, upon request, will provide an acknowledgement of receipt. Facsimile and telegraphic applications are not authorized and will not be considered.

HUD also encourages an applicant to submit a copy of the application to the HA for the jurisdiction in which the RC/RMC/RO is located.

(2) Development. The application must contain the following information:

(a) *RCs/RMCs/ROs:* Name and address of the RC/RMC/RO. Name and title of the board members of the RC/RMC/RO and date of the last election. A copy of the RC's/RMC's/RO's organizational documents (board resolution, charter, articles of incorporation (if incorporated)) and by-laws, narratives for all rating factors (Basic or Additional Grant), support letters, evidence needed for certain rating factors, forms, certifications, assurances, TOP Work Plan, budget, and training programs/performance standards information. Name and phone number of a contact person (in the event further information or clarification is needed during the application review process). Name, address, and phone number of the HA for the applicant's jurisdiction, to which inquiries may be addressed concerning the application.

(b) *NROs/RROs/SROs:* Name and address of the applicant. Name, title, and telephone number of a contact person (in the event further information or clarification is needed during the application review process). Name and title of the board members and date of last election. A copy of the articles of incorporation and nonprofit documents (i.e., by-laws, tax-exempt status or other organizational documents). Each NRO/RRO/SRO is required to list in the application the RCs/RMCs/ROs that the organization will train or provide technical assistance to, and to provide letters of support from each RC/RMC/RO identified in the application. In addition, the application should include the name and address of the HA for any jurisdiction in which the applicant proposes to organize new or inactive

RCs/RMCs/ROs and a proposed schedule of activities.

(c) *For all applicants:*

• The name of any development for which the funds are proposed to be used;

• A summary of the program proposed in the application. Also include in the summary the proposed length of time, in months, needed to complete TOP activities (i.e., 24 months, 36 months, etc). The maximum length to complete all activities is 5 years;

• The application must be signed by an authorized member of the board of the RC/RMC/RO or NRO/RRO/SRO (not the HA), and must include a resolution from the RC/RMC/RO or NRO/RRO/SRO stating that it agrees to comply with the terms and conditions established under this program and under 24 CFR parts 964 (for public housing) and 950 (for Indian housing); and

• Assurances (e.g., board resolution or certificate) that the RC/RMC/RO or NRO/RRO/SRO will comply with all applicable Federal laws, Executive Orders, regulations, and policies governing this program, including all applicable civil rights laws, regulations, and program requirements.

(3) *HA Support.* HUD is in full support of a cooperative relationship between each RC/RMC/RO and its HA. A resident organization is urged to involve its HA in the application planning and submission process. This can be achieved through meetings to discuss resident concerns and objectives and how best to translate these objectives into activities in the application. The RC/RMC/RO is also encouraged to obtain a letter of support from the HA, indicating to what extent the HA supports the proposed activities listed by the RC/RMC/RO and how the HA will assist the RC/RMC/RO. To foster partnership, HUD encourages NROs/RROs/SROs to obtain letters of support from the local HA of each RC/RMC/RO identified in the application to receive training/technical assistance.

IV. Training and Procurement Requirements

All grantees must adhere to the training and procurement requirements established by HUD. All grantees must attend a HUD-sponsored TOP orientation training before spending TOP funds, with the exception of funds needed to attend the training. If the grantee's grant agreement is executed and the organization is properly established in the LOCCS/VRS, the grantee may request the HA to advance the organization the total amount needed to attend the HUD orientation training. The grantee must reimburse the HA when the organization is properly established in the LOCCS/VRS.

A. Training Requirements

(1) RC/RMC/RO grantees are required to have training, and NRO/SRO/RRO grantees are requested to provide training, in the areas listed below, but the amount and scope of training will depend on the resident groups' goals. For example, training required to assume property management is more extensive than training needed to establish a landscaping enterprise. The required training areas are:

(a) HUD regulations and policies governing the operation of low-income housing, which includes the part 900 series of 24 CFR; Section 3 (of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u), implemented in 24 CFR part 135; other Fair Housing Act requirements; and applicable civil rights laws as implemented for public housing (24 CFR part 964) and Indian housing (24 CFR part 950);

(b) Financial management, including budgetary and accounting principles and techniques, in accordance with Federal guidelines, including OMB Circulars A–110 (and implementing regulations at 24 CFR part 84) and A–122, which contain Federal administrative requirements for grants, and A–133, relating to audit requirements for nonprofit organizations;

(c) Capacity building to develop the necessary skills to assume management responsibilities at the project; and

(d) Based on the goals of the RC/RMC/RO, property management or any TOP activities training that is required.

(2) Each grantee must ensure that this training is provided by a qualified housing management specialist (Consultant/Trainer) or the local HA. The RC/RMC/RO may spend up to $15,000 to hire an individual consultant to assist in implementing the TOP Work Plan Tasks 1 through 4. The total allowed for hiring an individual consultant to assist in implementing the TOP Work Plan Tasks 5 through 7 shall not exceed 50 percent of the total award to the grantee or $50,000, whichever is less.

C. OMB Procurement Requirements

(1) The resident grantees must follow 24 CFR part 84, which implements OMB Circulars A–110 and A–122, prescribing standards and policies essential to the proper execution of procurement transactions, including standards of conduct for resident grantees' employees, officers, or agents engaged in procurement actions, to avoid any conflict of interest.

(2) To ensure the successful implementation of the TOP Work Plan activities, the RC/RMC/RO is required to determine the need to contract for outside consulting/training services, after considering its own capacity. Each RC/RMC/RO is encouraged to make maximum use of its HA, nonprofits, or other Federal, State, or local government resources for technical assistance and training needs. To ensure the successful implementation of the TOP Work Plan activities, each Basic Grantee may use up to $15,000 to obtain a consultant/trainer from the TOP database of registered consultant/trainers for assistance in implementing Tasks 1 through 4 of the TOP Work Plan.

(3) HUD encourages all interested consultants/trainers to register to participate in the TOP by completing the Consultant/Trainer Checklist included as an appendix to this NOFA and mailing it to the following address: Department of Housing and Urban Development, Office of Public and Indian Housing, Office of Resident Involvement, 451 7th Street, SW Room 4112, Washington, D.C. 20410.

The TOP grantee may select the HA to serve as the consultant/trainer; however, the HA must register to be included in the TOP database. Grantees may invite other familiar consultants/trainers to register in the TOP database.

(4) After completion of Tasks 1 through 4 of the TOP Work Plan, the RC/RMO/RO may hire a consultant/trainer to assist in the implementation of Tasks 5 through 7 of the TOP Work Plan. The grantee must follow 24 CFR part 84 when selecting a consultant/trainer. HUD will make available the source list of registered consultant/trainers upon request, for use in a competitive solicitation for consultant services to assist the RC/RMC/RO in implementing TOP Work Plan Tasks 5 through 7 of the TOP Work Plan. The amount allowed for hiring an individual consultant for this purpose shall not exceed 50 percent of the total grant award or $50,000, whichever is less. HUD Field Offices will monitor this process to ensure compliance with these requirements.

V. Corrections to Deficient Applications

HUD will notify an applicant in writing of any technical deficiencies in the application. Any deficiency capable of cure will involve only items not necessary for HUD to assess the merits of an application against the Rating Factors specified in this NOFA. For example, signatures needed on certain forms, certifications, TOP Work Plan, budget, and other required forms may be considered curable deficiencies. All applicants, including NROs/RROs/SROs, must submit corrections to the local HUD Field Office (including Area ONAPs, as appropriate) within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency. If corrections are received by the local Field Office after the 14-day time frame, the applications will be considered incomplete and will not be considered for funding.

After the application due date, applicants will not have an opportunity to submit independently information omitted from the application that directly relates to the rating factors contained in the sections on rating factors in this NOFA (sections I.N–I.P.), so as to enhance the merits of the application. HUD encourages all applicants to submit all documents with their applications before the due date, so that applicants will not be affected by the technical deficiency period.

VI. Other Matters

A. Freedom of Information Act

Applications submitted in response to this NOFA are subject to disclosure under the Freedom of Information Act (FOIA). To assist the Department in determining whether to release information contained in an application in the event a FOIA request is received, an applicant may, through clear

identification, request confidential treatment for information it considers confidential. HUD suggests that an applicant provide a basis, when possible, for its belief that confidential treatment is appropriate; general assertions or blanket requests for confidentiality, without more information, are of limited value to the Department in making determinations concerning the release of information under FOIA. The Department is required to segregate disclosable information from non-disclosable items, so an applicant should be careful to identify each portion of the application for which confidential treatment is requested.

The Department emphasizes that the presence or absence of comments or earmarking regarding confidential information will have no bearing on the evaluation of applications submitted in response to this solicitation.

B. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures contained in this rule relate only to technical assistance and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

C. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this notice, as those policies and programs relate to family concerns.

D. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the

It will have no meaningful impact on States or their political subdivisions.

E. Documentation and Public Access Requirements; Applicant/Recipient Disclosures: HUD Reform Act

Documentation and public access requirements. Pursuant to Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (HUD Reform Act), HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Materials will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in a **Federal Register** notice of recipients of HUD assistance awarded on a competitive basis. (See section 102 and 24 CFR part 4, subpart A, as published on April 1, 1996 (61 FR 14448).)

Disclosures. HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

F. Prohibition Against Advance Information on Funding Decisions

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (Reform Act), codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are

who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics-related questions should contact the HUD Office of Ethics (202) 708–3815 (TTY/Voice) (this is not a toll-free number). Any HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact the appropriate Field Office Counsel or Headquarters counsel for the program to which the question pertains.

G. Information Collection Burden

The Department is soliciting comments, as required under 5 CFR 1320.8(d), before submitting the information collection requirements contained in this NOFA to OMB for renewal of the control number in accordance with 5 CFR 1320.10. The Department is seeking comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within 60 days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR–4066–N–01) and must be sent to: Reports Liaison Officer, Office of Community Relations and Involvement, Department of Housing and Urban Development, 451 7th Street, SW, Room 4112, Washington, DC 20410–3600.

This Notice also lists the following information:

Title of Proposal: NOFA for FY 1996 for the Public and Indian Housing Tenant Opportunities Program—Technical Assistance.

Description of the Need for the Information and Proposed Use: This information collection is required in connection with the issuance of this NOFA, announcing the availability of $15 million to Resident Councils (RCs)/Resident Management Corporations (RMCs)/Resident Organizations (ROs), of which $500,000 is set-aside for National Resident Organizations (NROs)/Regional Resident Organizations (RROs)/Statewide Resident Organizations (SROs) to provide technical assistance and training activities under the TOP program.

Form Number: None.

Members of Affected Public: State and local governments.

Estimation of the Total Number of Hours Needed to Prepare the Information Collection including Number of Respondents, Frequency of Response, and Hours of Response:

	Number of respondents	Frequency of responses	Hours per response	Burden hours
Application Development	5225	10	41	21,422
Total Estimated Burden Hours: 21,422.				

H. Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees of federal agencies to certify that they will provide drug-free workplaces. Each potential recipient under this NOFA must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.853.

Authority: 42 U.S.C. 1437r; 42 U.S.C. 3535(d).

Dated: June 27, 1996.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210-33-P

APPENDIX A

Tenant Opportunities Program

Consultant/Trainer Checklist

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Public Housing Tenant Opportunities Program (TOP) Technical Assistance

OMB Approval No. 2577-0087 (exp.08/31/96)

Public reporting burden for this collection of information is estimated to average 16 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0087), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600.

Do not send this form to the above address.

Completion of this form is voluntary, but if you wish to provide technical assistance, it will ensure that your primary areas of interest/expertise are recorded. Data collected is publicly available. The collection of this information is authorized by Sections 23(c) and (g) of the U.S. Housing Act of 1937 as amended by Section 554 of the Cranston-Gonzales National Affordable Housing Act, P.L. 101-625. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Privacy Act Statement: The U.S. Housing Act of 1937, as amended, authorizes the Department of Housing & Urban Development (HUD) to collect all the information on this form. The Housing & Community Development Act of 1987, 42 U.S.C 3543 authorizes HUD to collect Social Security Numbers (SSN). The information will used to help manage the number and quality of consultants participating in the program. Specifically, the information will allow HUD to categorize consultants by field of expertise, geographic location, check references, and determine daily fees. The SSN is used as a unique identifier. HUD may disclose this information to Federal, State and local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions. It will not be otherwise disclosed or released outside of HUD, except as required and permitted by law. Failure to provide the information could result in HUD's denial of proposed management or fees or cancellation of management contracts for noncompliance with HUD procedures. Providing the SSN is mandatory, and failure to provide it could affect your participation in HUD programs.

Please answer all the following questions. Part 1 asks for your name and other personal information and your business mailing address. Part 2 requests you identify from a list your specific capabilities and skills. Part 3 requests information about your references and background.

Part 1: Personal Information

Your Last Name	Your First Name	Your Social Security Number	Your Home Phone (Include Area Code)

Your Mailing Address (Department)

Office

Street Address — Business Phone (Include Area Code)

City, State & Zip Code — Business Fax (Include Area Code)

Part 2: Skills Inventory

Please identify the types of projects you feel you would be most effective in providing technical assistance. Refer the the categories on the back of this form. These categories are refined further into specific Skill Areas. Please review the categories listed, and then list the specific Skill Areas (eg.A204, C303) which best fits your capabilities and interests in the spaces provided below. You may list up to 15 Skill Areas. Please attach a narrative capability statement and approach to giving drug technical assistance in the Skill Areas you list.

Skill 1	Skill 2	Skill 3	Skill 4	Skill 5	Skill 6	Skill 7	Other (specify)
Skill 8	Skill 9	Skill 10	Skill 11	Skill 12	Skill 13	Skill 14	

Part 3: Work References (Please list at least three references. At least one should be a Housing Agency, Resident Management Corp., or Resident Council you have provided services for.)

Name and Address of Reference	Contact Person	Phone Number (Include Area Code)
1.		
2.		
3.		

Part 3: Background

Do you have experience working with persons who: speak only Spanish? Yes ☐ No ☐ are Native Americans? Yes ☐ No ☐

Do you have a criminal record? Yes ☐ No ☐ Having a criminal record may not prevent you from participating in the program. If you checked "Yes," please explain: (attach additional information if necessary.)

Have you completed all parts of this form? Yes ☐ No ☐

Have you attached a narrative capability statement that explains your experience in the Skill Areas you listed in Part 2? Yes ☐ No ☐

Have you attached your resume? Yes ☐ No ☐

Have you attached your rate of pay justification? Yes ☐ No ☐ This could include a previous invoice for similar work, a recent W-2 form, or an accountant's statement.

Incomplete applications will be returned

form HUD-52371 (05/15/96)

APPENDIX A

Resource Skill Areas

A	**Agency Organization and Management**
A101	Reserved
A202	Reserved
A203	Reserved
A204	Eviction Procedures
A205	Lease Agreements
A206	Legal Issues and Services
A207	M.I.S./Records Management
A208	Management Concepts, Systems and Techniques
A209	Analysis/Study
A210	Organizational Development
A211	Policy/Mission Development
A212	Population Management
A213	Screening Procedures
A214	Contract Negotiations
A999	Other (Specify)
B	**Facility Operations** (Reserved)
C	**Program Development**
C301	Action Planning
C302	Crises Intervention/Mediation/Conflict Resolution
C303	Designing/Implementing Programs
C304	Facilitation of Work Groups
C305	Needs Assessment/Surveys
C306	Program Evaluation
C307	Public/Private Partnerships
C308	Reserved
C309	Strategic Planning
C310	Training Design and Development
C311	Training Delivery Strategies
C312	Reserved
C313	Use of Volunteers
C314	Working With Local/State Elected Officials
C315	Working With State Legislatures
C316	Working in Multi-Cultural Populations
C317	Self Sufficiency Program
C999	Other (Specify)
D	**Prevention/Intervention Programs**
D401	Aftercare
D402	Community Outreach
D403	Community Based Treatment
D404	Reserved
D405	Reserved
D406	Family Meetings
D407	Intervention/Referral
D408	Reserved
D409	Reserved
D410	Parent Education
D411	Parenting/Family Management
D412	Peer Support Programs
D413	Personal Goal Setting
D414	Reserved
D415	Resident Assistance Programs
D416	Student Assistance Programs
D417	Reserved
D418	Youth Resistance Training
D419	Youth Leadership
D999	Other (Specify)
E	**Anti-Crime Strategies**
E501	Reserved
E502	Reserved
E503	Reserved
E504	Reserved
E505	Reserved
E506	Reserved
E507	Reserved
E508	Hotlines/Tiplines
E509	Neighborhood Watch
E510	Reserved
E511	Resident Patrols
E512	Reserved
E513	Reserved
E514	Reserved
E999	Other (Specify)
F	**Alternative Programs**
F601	4-H
F602	Big Brothers/Big Sisters
F603	Boys/Girls Clubs
F604	Career Planning
F605	College/Scholarship Programs
F606	Education/GED
F607	Entrepreneurship
F608	Foster Grandparents
F609	Reserved
F610	Job Placement/Follow-up
F611	Job Training
F612	Reserved
F613	Mentor/Surrogate Relationships
F614	Reserved
F615	Reserved
F616	Reserved
F617	Sports/Cultural Activities
F618	Tutoring
F619	Vocational Training
F999	Other (Specify)
G	**Community/Resident Organization and Leadership Training**
G700	Community Organizing
G701	Working with Residents or Resident Involvement
G702	Resident Management
G703	Economic Development
G704	Procedures/Guidelines governing TOP
G705	Financial Management/Accounting
G706	Property Management
G707	Procurement and Contracting
F999	Other (Specify)

form HUD-52371 (05/15/96)

BILLING CODE 4210-33-C

Appendix B—Names, Addresses, and Telephone Numbers of HUD Field Offices Accepting Applications for Tenant Opportunities Program Technical Assistance

Massachusetts State Office

Public Housing Division, Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts 02222–1092, (617) 565–5234

Connecticut State Office

Public Housing Division, First Floor, 330 Main St., Hartford, Connecticut 06106–1860, (203) 240–4523

New Hampshire State Office

Public Housing Division, Norris Cotton Federal Building, 275 Chestnut St., Manchester, New Hampshire 03101–2487, (603) 666–7681

Rhode Island State Office

Public Housing Division, Sixth Floor, 10 Weybosset Street, Providence, Rhode Island 02903–3234, (401) 528–5351

New York State Office

Public Housing Division, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–5500

Buffalo Area Office

Public Housing Division, 465 Main Street, Lafayette Court, 5th Floor, Buffalo, New York 14203–1780, (716) 551–5755

New Jersey State Office

Public Housing Division, One Newark Center, Thirteenth Floor, Newark, New Jersey 07102–5260, (201) 622–7900

Washington, D.C. Office

Public Housing Division, 820 First St. N.E., Suite 300, Washington, D.C. 20002–4502, (202) 275–9200

Pennsylvania State Office

Public Housing Division, 100 Penn Square East, Philadelphia, Pennsylvania 19107–3390, (215) 656–0579

Maryland State Office

Public Housing Division, City Crescent Building, 10 South Howard St., 5th Floor, Baltimore, Maryland 21202–2505, (410) 962–2520

Pittsburgh Area Office

Public Housing Division, 339 Sixth Avenue, Pittsburgh, Pennsylvania 15222–2515, (412) 644–6428

Virginia State Office

Public Housing Division, The 3600 Centre, 3600 West Broad St., P.O. Box 90331, Richmond, Virginia 23230–0331, (804) 278–4559

West Virginia State Office

Public Housing Division, 405 Capitol St., Suite 708, Charleston, West Virginia 25301–1795, (304) 347–7000

Georgia State Office

Public Housing Division, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303–3388, (404) 331–5136

Alabama State Office

Public Housing Division, Beacon Ridge Tower, 600 Beacon Parkway West, Suite 300, Birmingham, Alabama 35209–3144, (205) 290–7617

Kentucky State Office

Public Housing Division, P.O. Box 1044, 601 W. Broadway, Louisville, Kentucky 40201–1044, (502) 582–6163

Mississippi State Office

Public Housing Division, Dr. A. H. McCoy Federal Building, 100 West Capitol St., Suite 910, Jackson, Mississippi 39269–1096, (601) 965–5308

North Carolina State Office

Public Housing Division, Koger Building, 2306 W. Meadowview Rd., Greensboro, North Carolina 27407–3707, (910) 547–4001

Caribbean Office

Public Housing Division, New San Juan Office Building, 159 Carlos E. Chardon Ave., San Juan, Puerto Rico 00918–1804, (809) 766–6121

South Carolina State Office

Public Housing Division, Strom Thurmond Federal Building, 1835 Assembly St., Columbia, South Carolina 29201–2480, (803) 765–5592

Knoxville Area Office

Public Housing Division, John J. Duncan Federal Building, 710 Locust St. 3rd Floor, Knoxville, Tennessee 37902–2526, (615) 545–4384

Tennessee State Office

Public Housing Division, 251 Cumberland Bend Drive, Suite 200, Nashville, Tennessee 37228–1803, (615) 736–5213

Jacksonville Area Office

Public Housing Division, Southern Bell Tower, 301 West Bay Street, Suite 2200, Jacksonville, Florida 32202–5121, (904) 232–2626

Illinois State Office

Public Housing Division, Ralph Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507, (312) 353–5680

Michigan State Office

Public Housing Division, Patrick V. McNamara Federal Building, 477 Michigan Ave., Detroit, Michigan 48226–2592, (313) 226–7900

Indiana State Office

Public Housing Division, 151 North Delaware St., Indianapolis, Indiana 46204–2526, (317) 226–6303

Grand Rapids Area Office

Public Housing Division, Trade Center Building, 50 Louis, N.W., Grand Rapids, Michigan 49503–2648, (616) 456–2127

Minnesota State Office

Public Housing Division, 220 2nd St. South, Bridge Place Building, Minneapolis, Minnesota 55401–2195, (612) 370–3000

Cincinnati Area Office

Public Housing Division, 525 Vine St., 7th Floor, Cincinnati, Ohio 45202–3188, (513) 684–2884

Cleveland Area Office

Public Housing Division, Renaissance Building, 1350 Euclid Ave., 5th Floor, Cleveland, Ohio 44115–1815, (216) 522–4058

Ohio State Office

Public Housing Division, 200 North High Street, Columbus, Ohio 43215–2499, (614) 469–5737

Wisconsin State Office

Public Housing Division, Henry S. Reuss Federal Plaza, 310 W. Wisconsin Ave., Suite 1380, Milwaukee, Wisconsin 53203–2289, (414) 297–3214

Texas State Office

Public Housing Division, 1600 Throckmorton, P.O. Box 2905, Fort Worth, Texas 76113–2905, (817) 885–5401

Houston Area Office

Public Housing Division, Norfolk Tower, 2211 Norfolk, Suite 200, Houston, Texas 77098–4096, (713) 834–3274

San Antonio Area Office

Public Housing Division, Washington Square Building, 800 Dolorosa St., San Antonio, Texas 78207–4563, (210) 229–6783

Arkansas State Office

Public Housing Division, TCBY Tower, 425 West Capitol Ave., Little Rock, Arkansas 72201–3488, (501) 324–5931

Louisiana State Office

Public Housing Division, Fisk Federal Building, 1661 Canal St., Suite 3100, New Orleans, Louisiana 70112–2887, (504) 589–7200

New Mexico State Office

Public Housing Division, 625 Truman Street N.E., Albuquerque, NM 87110–6443, (505) 262–6463

Oklahoma State Office

Public Housing Division, 500 W. Main Street, 3rd Floor, Oklahoma City, OK 73102–3202, (405) 553–7559

Nebraska State Office

Public Housing Division, 10909 Mill Valley Rd., Omaha, Nebraska 68154–3955, (402) 492–3100

St. Louis Area Office

Public Housing Division, Robert A. Young Federal Building, 1222 Spruce St. Room 3207, St. Louis, Missouri 63103–2836, (314) 539–6583

Kansas/Missouri State Office

Public Housing Division, Room 200, Gateway Tower II, 400 State Avenue, Kansas City, Kansas 66101–2406, (913) 551–5462

Iowa State Office

Public Housing Division, Federal Building, 210 Walnut St., Rm. 239, Des Moines, Iowa 50309–2155, (515) 284–4512

Colorado State Office

Public Housing Division, 633 17th Street, First Interstate Tower North, Denver, Colorado 80202–3607, (303) 672–5440

California State Office

Public Housing Division, Philip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102–3448, (415) 556–4752

Hawaii State Office

Public Housing Division, 7 Waterfront Plaza, 500 Ala Moana Blvd., Suite 500, Honolulu, Hawaii 96813–4918, (808) 522–8185

Los Angeles Area Office

Public Housing Division, 1615 W. Olympic Blvd., Los Angeles, California 90015–3801, (213) 251–7122

Sacramento, California Office

Public Housing Division, 777 12th St., Suite 200, Sacramento, California 95814–1997, (916) 551–1351

Arizona State Office

Public Housing Division, Two Arizona Center, 400 N. 5th St., Suite 1600, Phoenix, Arizona 85004–2361, (602) 379–4434

Oregon State Office

Public Housing Division, Cascade Building, 400 Southwest Sixth Ave., Suite 700, Portland, Oregon 97204–1596, (503) 326–2661

Washington State Office

(Alaska public housing applicants send applications to address below)

Public Housing Division, Suite 360, Seattle Federal Office Building, 909 First Avenue, Seattle, Washington 98104–1000, (206) 220–5292

Native American Program Offices

Serves: All States East of the Mississippi River and Iowa:

Mr. Frances Harjo, Administrator, Eastern/Woodlands Office of Native American Programs, 5P, 77 W. Jackson Boulevard, 24th Floor, Chicago, Illinois 60604–3507, (312) 353–1282 or 1–800–735–3239, TDD—1–800–927–9275 or (312) 886–3741

Serves: Oklahoma, Kansas, Missouri, Texas, Arkansas, and Louisiana:

Mr. Wayne Simms, Administrator, Southern Plains Office of Native American Programs, 6.7P, 500 W. Main Street, Suite 400, Oklahoma City, OK 73102–3202, (405) 553–7520

Serves: Colorado, Montana, the Dakotas, Nebraska, Utah, and Wyoming:

Mr. Vernon Haragara, Administrator, Northern Plains Office of Native American Programs, 8P, First Interstate Tower North, 633 17th Street, Denver, Colorado 80202–3607, (303) 672–5462

Serves: California, Nevada, Arizona, and New Mexico:

Mr. Raphael Mecham, Administrator, Southwest Office of Native American Programs, Two Arizona Center, 9 OIP, 400 N. Fifth Street, Suite 1650, Phoenix, Arizona 85004, (602) 379–4156

Administrator, Southwest Office of Native American Programs, Albuquerque Division of Native American Programs, 9EPIDI, Albuquerque Plaza, 201 3rd Street, NW, Suite 1830, Albuquerque, NM 87102–3368, (505) 766–1372

Serves: Washington, Idaho, and Oregon:

Mr. Jerry Leslie, Administrator, Northwest Office of Native American Programs, 10PI, Seattle Federal Office Building, 909 First Avenue, Suite 300, Seattle, Washington 98104, (206) 220–5270

Serves: Alaska:

Mr. Marlin Knight, Administrator, Alaska Office of Native American Programs, 10.1PI, University Plaza Building, 949 East 36th Avenue, Suite 401, Anchorage, Alaska 99508–4399, (907) 271–4633

[FR Doc. 96–17007 Filed 7–2–96; 8:45 am]

BILLING CODE 4210–33–P

federal register

Wednesday
July 3, 1996

Part VI

Environmental Protection Agency

Effluent Guideline Plan; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL 5527–5]

RIN 2040–AC85

Effluent Guidelines Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Effluent Guidelines Plan.

SUMMARY: Today's notice announces the Agency's proposed plans for developing new and revised effluent guidelines, which regulate industrial discharges to surface waters and to publicly owned treatment works. Section 304(m) of the Clean Water Act requires EPA to publish a biennial Effluent Guidelines Plan. The Agency requests comment on the proposal and will publish a final plan following the close of the comment period.

DATES: Comments must be received on or before August 2, 1996.

ADDRESSES: Submit comments in writing to: Water Docket Clerk (4101), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The public record for this notice is available for review in the EPA Water Docket, Room 2616 Mall, 401 M Street, SW., Washington, DC. For access to Docket materials, call (202) 260–3027 between 9 a.m. and 3 p.m. for an appointment. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Eric Strassler, EPA Engineering and Analysis Division, telephone 202–260–7150.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities
II. Legal Authority
III. Introduction
A. Purpose of Today's Notice
B. Overview of Today's Notice
IV. Effluent Guidelines Program Background
A. Statutory Framework
B. Components of an Effluent Guideline Regulation
C. Development of Effluent Guideline Regulations
D. NRDC Litigation and Consent Decree
V. Today's Proposed Effluent Guidelines Plan
A. Effluent Guidelines Currently Under Development
1. Schedule for Ongoing Rulemaking
2. Changes in Rulemaking Scope, Schedules and/or Organization
a. Metal Products and Machinery
b. Pulp, Paper and Paperboard
c. Pharmaceutical Manufacturing
d. Transportation Equipment Cleaning
B. Process for Selection of New Effluent Guideline Regulations
1. Selection Criteria and Data Sources
a. Selection Criteria
b. Data Sources
2. New Rulemaking Activities
a. Iron and Steel Manufacturing
b. Other Rules
C. Preliminary Studies
1. Recently Completed Studies
a. Petroleum Refining
b. Metal Finishing
c. Textile Mills
d. Inorganic Chemicals
e. Steam Electric Power Generating
f. Iron and Steel Manufacturing
2. Ongoing Studies
a. Photographic Processing
b. Chemical Formulators and Packagers
3. Future Studies
a. Coal Mining
b. Feedlots
c. Stormwater Discharges
d. Hospitals
e. Ore Mining and Dressing
f. Glass Manufacturing
g. Canmaking
h. Organic Chemicals, Plastics and Synthetic Fibers
i. Pulp, Paper and Paperboard
j. Generic Effluent Guideline Issues
D. Other Rulemaking Actions
1. Leather Tanning and Finishing
2. Ore Mining and Dressing
3. Marine Discharges from Vessels of the Armed Forces
VI. Recommendations of the Effluent Guidelines Task Force
A. Data Sources
B. Criteria for Selecting Industries for Preliminary Studies
C. Design of Preliminary Studies
VII. Request for Comments
VIII. Economic Impact Assessment; Executive Order 12866
Appendix A—Promulgated Effluent Guidelines
Appendix B—Current and Future Rulemaking Projects
Appendix C—Preliminary Studies

I. Regulated Entities

Today's proposed plan does not contain regulatory requirements and does not provide specific definitions for each industrial category. Entities potentially affected by decisions regarding the final plan are listed below.

Category of entity	Examples of potentially affected entities
Industry	Pulp, Paper and Paperboard; Pesticide Formulating, Packaging and Repackaging; Coastal Oil and Gas Extraction; Centralized Waste Treatment; Pharmaceutical Manufacturing; Metal Products and Machinery; Landfills and Incinerators; Industrial Laundries; Transportation Equipment Cleaning; Iron and Steel Manufacturing; Coal Mining; Feedlots; Hospitals; Ore Mining and Dressing; Glass Manufacturing; Canmaking

To determine whether your facility would be regulated, you should carefully examine the applicability criteria in the appropriate proposed rule (previously published or forthcoming). Citations for previously published proposed rules and schedules for forthcoming proposed rules are provided in Appendix B of today's notice.

II. Legal Authority

Today's notice is published under the authority of section 304(m) of the Clean Water Act, 33 U.S.C. 1314(m), which requires EPA to publish a biennial Effluent Guidelines Plan, schedule review and revision of existing regulations and identify categories of dischargers to be covered by new regulations.

III. Introduction

A. Purpose of Today's Notice

Today's notice announces the Agency's proposed biennial plan pursuant to sec. 304(m). EPA invites the public to comment on the proposed plan, and following the close of the comment period the Agency will publish a final plan.

B. Overview of Today's Notice

The Agency proposes to develop effluent limitation guidelines and standards ("effluent guidelines") as follows:

1. Continue development of 10 rules listed in the 1994 Effluent Guidelines Plan (59 FR 44234, August 26, 1994). The categories are: Pulp, Paper and Paperboard; Pesticide Chemicals (Formulating, Packaging and Repackaging); Coastal Oil and Gas Extraction; Centralized Waste Treatment; Pharmaceutical Manufacturing; Metal Products and Machinery, Phases 1 and 2; Landfills and Incinerators; Industrial Laundries; and Transportation Equipment Cleaning.

2. Begin development of revised effluent guidelines for the Iron and Steel Manufacturing category.

3. Initiate three preliminary studies to assist in determining whether new or revised rules should be developed for particular categories. Each preliminary study will generally take approximately two years to complete.

4. Complete preliminary studies on the Photographic Processing and Chemical Formulating and Packaging industries.

5. Plan for development of seven additional effluent guidelines, either new or revised. The point source categories to be covered by these guidelines will be identified in future biennial Effluent Guidelines Plans. EPA's current plan is to begin development of one additional rule in 1996 and two rules each year from 1997 to 1999, with proposed rules published between 1998 and 2001, and final action taken between 2000 and 2003 respectively.

IV. Effluent Guidelines Program Background

A. Statutory Framework

The Federal Water Pollution Control Act (FWPCA) of 1972 (Pub. L. 92–500, Oct. 18, 1972) (the "Act") established a program to restore and maintain the integrity of the nation's waters. To implement the Act, Congress directed EPA to issue effluent limitation guidelines, pretreatment standards, and new source performance standards for industrial dischargers. These regulations were to be based principally on the degree of effluent reduction attainable through the application of control technologies.

The 1977 amendments to the FWPCA, known as the Clean Water Act Amendments (Pub. L. 95–217, Dec. 27, 1977) (CWA), added an additional level of control for conventional pollutants such as biochemical oxygen demand (BOD) and total suspended solids (TSS), and stressed additional control of 65 toxic compounds or classes of compounds (from which EPA later developed a list of 126 specific "priority pollutants"). To further strengthen the toxics control program, sec. 304(e), added by the 1977 amendments, authorized the Administrator to establish management practices to control toxic and hazardous pollutants in plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage.

The effluent guidelines promulgated by EPA reflect the several levels of regulatory stringency specified in the Act, and they also focus on different types of pollutants. Section 301(b)(1)(A) directs the achievement of effluent limitations requiring application of best practicable control technology currently available (BPT). In general, effluent limitations based on BPT represent the average of the best treatment technology performance for an industrial category. For conventional pollutants listed under sec. 304(a)(4), sec. 301(b)(2)(E) directs the achievement of effluent limitations based on the performance of best conventional pollutant control technology (BCT). The Act requires that BCT limitations be established in light of a two-part "cost-reasonableness" test. The test, which assesses the relative costs of conventional pollutant removals, is described in detail in the **Federal Register** notice promulgating the final BCT rule on July 9, 1986 (51 FR 24974).

Both BPT and BCT regulations apply only to direct dischargers, i.e., those facilities that discharge directly into waters of the United States. In general, regulations are not developed to control conventional pollutants discharged by indirect dischargers because the POTWs receiving those wastes normally provide adequate treatment of these types of pollutants or they can be adequately controlled through local pretreatment limits.

For the toxic pollutants listed in sec. 307(a), and for nonconventional pollutants, secs. 301(b)(2)(A), (C), (D) and (F) direct the achievement of effluent limitations requiring application of best available technology economically achievable (BAT). Effluent limitations based on BAT are to represent at a minimum the best control technology performance in the industrial category that is technologically and economically achievable.

In addition to limitations for existing direct dischargers, EPA also establishes new source performance standards (NSPS) under sec. 306 of the Act, based on the best available demonstrated control technology, processes operating methods, or other alternatives. NSPS apply to new direct dischargers. Generally the NSPS limitations are to be as stringent, or more stringent than BAT limitations for existing sources within the industry category or subcategory.

Although the limitations are based on the performance capability of particular control technologies, including in some cases in-process controls, dischargers may meet their requirements using whatever combination of control methods they choose, such as manufacturing process or equipment changes, product substitution, and water re-use and recycling. The limitations and standards are implemented in permits issued through the National Pollutant Discharge Elimination System (NPDES) pursuant to sec. 402 of the Act for point sources discharging directly to the waters of the United States.

Section 402 of the CWA provides for the issuance of permits to direct dischargers under NPDES. These permits, which are required by sec. 301, are issued either by EPA or by a State agency approved to administer the NPDES program. Individual NPDES permits must incorporate applicable technology-based limitations contained in guidelines and standards for the industrial category in question. Where EPA has not promulgated applicable technology-based effluent guidelines for an industry, sec. 402(a)(1)(B) provides that the permit must incorporate such conditions as the Administrator determines are necessary to carry out the provisions of the Act. In other words, the permit writer uses best professional judgment (BPJ) to establish technology-based limitations for the dischargers.

Indirect dischargers are regulated by the general pretreatment regulations (40 CFR Part 403), local discharge limits developed pursuant to Part 403, and categorical pretreatment standards for new and existing sources (PSNS and PSES) covering specific industrial categories. These categorical standards under sections 307(b) and (c) apply to the discharge of pollutants from non-domestic sources which interfere with or pass through publicly owned treatment works (POTWs), and are enforced by POTWs or by State or Federal authorities. The categorical pretreatment standards for existing sources covering specific industries are generally analogous to the BAT limitations imposed on direct dischargers. The standards for new sources are generally analogous to NSPS.

To ensure that effluent guidelines remain current with the state of the industry and with available control technologies, section 304(b) of the Act provides that EPA shall revise the effluent guidelines at least annually if appropriate. In addition, section 301(d) provides that EPA shall review and if appropriate, revise any effluent limitation required by section 301(b)(2).

B. Components of an Effluent Guideline Regulation

The principal components of effluent guideline regulations are numerical wastewater discharge limitations controlling specified pollutants for a given industry. These are typically concentration-based limits (specified in units such as milligrams of pollutant per liter of water) or production-based mass limits (specified in units such as milligrams of pollutant per unit of production). Numerical limits also cover parameters such as pH and temperature.

A guideline often subcategorizes an industry based on differences in raw materials, manufacturing processes, characteristics of the wastewaters, or type of product manufactured; in some cases, non-water quality environmental impacts or other appropriate factors that justify the imposition of specialized requirements on the subcategorized facilities are used as a basis. EPA develops a set of effluent limitations for each category or subcategory at each level of control (BPT, BAT, etc.) that is addressed in the guideline.

A guideline also may prescribe Best Management Practices ("BMPs") in addition to or in lieu of numerical limits. BMPs may include, for example, requirements addressing the minimization or prevention of storm water runoff, plant maintenance schedules and requirements addressing the training of plant personnel.

C. Development of Effluent Guideline Regulations

EPA has accumulated substantial experience and expertise in the course of preparing 51 effluent guidelines. This section of the notice summarizes the various tasks which the Agency typically undertakes in an effluent guideline rulemaking.

EPA begins work on an effluent guideline rulemaking project by tentatively defining the scope and dimensions of the industry category. The Agency determines the size of the category as it has been defined, using all available sources of information. Given the diversity of regulatory categories, no single source suffices to establish size. At various times, EPA has used one or more of the following sources: standard published sources, information available through trade associations, data purchased from the Dun and Bradstreet, Inc. data base, other publicly available data bases, U.S. Census Bureau data, other U.S. Government information, and any available EPA data base. If a category is very large and/or diverse, the Agency will determine whether it can be broken down into appropriate categories or subcategories. If more than one subcategory can be identified, the Agency may need to establish priorities for regulation.

EPA works with interested stakeholders early in the regulation development process. State and local regulatory officials familiar with the industry are consulted, and business associations and citizen groups are also invited to share information.

Regulatory information about industry categories is obtained by EPA largely through its survey questionnaires, site visits and wastewater sampling. Survey questionnaires solicit detailed information necessary to assess the statutory rulemaking factors (particularly technological and economic achievability of available controls), water use, production processes, and wastewater treatment and disposal practices. A significant portion of the Agency's questionnaires typically seek information necessary to assess the economic achievability of a prospective regulation.

Generally, the Agency defines its site visits and wastewater sampling effort based on information received in response to the questionnaires. While the questionnaire provides information about production processes, water uses and, in general terms, what is found in the industry's wastewater, on-site sampling and detailed monitoring data are used to characterize the pollutants found in discharges. Site visits are also used to assess manufacturing processes, wastewater generation, pollutant control technologies, pollution prevention opportunities (e.g., process changes), and potential non-water quality impacts of effluent guidelines (i.e., air emissions, sludge generation, energy usage).

In developing a list of pollutants of concern for an industry, EPA initially will study wastewater samples for all pollutants that can be measured by recognized analytical methods.

Currently over 457 pollutants or analytes can be measured by these methods. This includes the subset of 126 pollutants known as "priority" pollutants developed pursuant to CWA sec. 307(a). EPA will develop new analytical methods to cover additional pollutants as necessary. For example, the Agency has developed new methods for use in the Pesticides, Pulp and Paper, Pharmaceuticals, and Offshore Oil and Gas effluent guidelines. (EPA generally proposes any new methods for public comment concurrently with the proposed rule.)

Most of the effluent sampling and analysis that has been conducted specifically to support effluent guideline regulations promulgated to date has been conducted by EPA. On occasion, however, these activities have been pursued on a cooperative basis with industry parties. For example, EPA and numerous pulp and paper manufacturers participated in cooperative efforts to sample and analyze effluent, wastewater treatment sludge, and pulp from domestic mills that bleach chemical pulp in their production processes.

EPA conducts engineering and statistical analyses of the technical data to develop control and treatment options for the pollutants of concern, and the projected costs for these options. The Agency considers the costing information and economic data gathered from the survey and other sources in its economic impact analysis, and then selects one or more of the options as the basis for a rulemaking proposal. It also develops assessments of the environmental impact of the industry discharges, and may conduct a regulatory impact analysis as well.

The Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Title III of Pub.L. 104–121, March 29, 1996), requires that EPA conduct regulatory flexibility analyses for rules which have a significant impact on a substantial number of small entities. These analyses are to assess the impact of the rule on small entities and consider alternative ways of reducing those impacts. Section 344 of SBREFA also requires EPA to organize a "small business advocacy review panel" for each rule where a regulatory flexibility analysis is required.

Prior to publishing a proposed rule, EPA usually conducts a public meeting to discuss the Agency's findings and describe the general outlines of the rule. Following publication, a hearing is conducted during the public comment period, and supplemental notices of new data may be published, if appropriate.

The Agency's outreach efforts to improve the regulatory development process have involved some industries subject to effluent guidelines. One such special effort is the Common Sense Initiative (CSI), a committee established under the Federal Advisory Committee Act (FACA)(Pub.L. 92–463). Through CSI, EPA has brought together federal, state, and local government representatives, environmental interest and environmental justice leaders, labor representatives, and industry executives to examine the full range of environmental requirements affecting six pilot industries. These six teams are exploring comprehensive strategies for environmental protection which include regulatory and voluntary approaches on which all can agree. Two of the six teams, Metal Finishing and Iron and Steel, are discussing effluent guidelines issues as well as other regulations. EPA looks forward to receiving recommendations from these CSI teams.

D. NRDC Litigation and Consent Decree

EPA has developed today's proposed Effluent Guidelines Plan pursuant to a consent decree in *NRDC et al* v. *Browner* (D.D.C. Civ. No. 89–2980, January 31, 1992, as modified). The Decree commits EPA to schedules for proposing and taking final action on effluent guidelines, and also for conducting preliminary studies. Some of the industry categories to be regulated are specified in the Decree. For the remaining required rulemakings, EPA retains the discretion to select guidelines for development based on Agency priorities.

EPA will use the results of the preliminary studies and other information (such as public comments and recommendations from state and local governments) to select industries for future regulation. The Decree requires the Agency to study eleven industries.

The Decree also required EPA to establish the Effluent Guidelines Task Force, an advisory committee, to formulate recommendations for improvements to the effluent guidelines program. The Agency created the Task Force in 1992. The Task Force has held several public meetings and has begun to present recommendations to the EPA Administrator. The work of the Task Force is discussed further in Section V of today's notice.

Since 1992, EPA and NRDC have agreed to several modifications of the Decree consisting of deadline extensions for certain rules.

V. Today's Proposed Effluent Guidelines Plan

A. Effluent Guidelines Currently Under Development

1. Schedule for Ongoing Rulemaking

The Agency is currently in the process of developing new or revised effluent guidelines for 10 categories. (These categories were listed in the Agency's 1994 Effluent Guidelines Plan.) The categories and actual or Consent Decree dates for proposal and final action are set forth in Table 1.

TABLE 1.—EFFLUENT GUIDELINES CURRENTLY UNDER DEVELOPMENT

Category	Proposal	Final action
	Consent decree or actual	Consent decree
Pulp, Paper and Paperboard	12/17/93	(1)
Pesticide Formulating, Packaging, and Repackaging	4/14/94	9/96
Centralized Waste Treatment	1/27/95	2 9/96
Coastal Oil and Gas Extraction	2/17/95	10/96
Pharmaceutical Manufacturing	5/2/95	2 8/96
Metal Products and Machinery, Phase	15/30/95	2,3 9/96
Industrial Laundries	2 12/96	2 12/98
Transportation Equipment Cleaning	2 12/96	2 12/98
Landfills and Incinerators	2 3/97	2 3/99
Metal Products and Machinery, Phase 2	3 12/97	2,3 12/99

[1] The Pulp, Paper and Paperboard rulemaking is not covered by the January 31, 1992 consent decree.
[2] EPA is discussing extensions to Consent Decree dates with NRDC.
[3] EPA is considering merging Phases 1 and 2 of the Metal Products and Machinery rule. See discussion below.

The Agency has only recently received funding for Fiscal Year 1996, and funding restrictions may affect rulemaking schedules. EPA is discussing extensions to all the Consent Decree dates with NRDC, for both budgetary reasons and specific policy, technical and administrative issues in some regulations.

2. Changes in Rulemaking Scope, Schedules and/or Organization

a. Metal Products and Machinery. EPA is considering merging Phases 1 and 2 of the Metal Products and Machinery rule. The Phase 1 proposed rule, covering seven industry sectors, was published on May 30, 1995 (60 FR 28209). Such a merger would mean that EPA would not proceed with a final rule for Phase 1, but would issue a new proposal covering both phases (15 sectors total) and promulgate a final rule covering both phases.

There are several reasons why a single final rule for this category would be desirable:

- The same basis and applied metals as well as the same manufacturing and wastewater treatment unit operations typically are used throughout both phases of the MP&M category. The classification of a facility as MP&M Phase 1 or Phase 2 should not affect its ability to treat its wastewater to a given level.
- The complexities of having different effluent limits across the two phases (for the same pollutant and level of control) would be avoided. Having one set of effluent limits for the MP&M category greatly simplifies implementation for POTWs and compliance for facilities.
- Merging these rules would allow EPA to use POTW survey data being collected for Phase 2 to develop more precise estimates of the administrative burden for all sectors, and to consider aggregated environmental impacts and compliance costs.
- Opportunities to explore alternative permitting requirements such as BMPs would be enhanced.
- The additional time needed for a combined rule would allow more extensive stakeholder involvement. For example, members of the Metal Finishing CSI team have expressed interest in working with EPA on obtaining additional data, and POTWs and NPDES permit authorities will be able to provide more substantive data on implementation issues.

EPA invites comment on the merits of combining the two phases into one rule.

b. Pulp, Paper and Paperboard. EPA issued the proposed Pulp, Paper and Paperboard "Cluster Rules", covering both effluent guidelines and National Emission Standards for Hazardous Air Pollutants (NESHAP), on December 17, 1993 (40 CFR part 430, 58 FR 66078). The proposed effluent guidelines were organized into 12 subcategories.

EPA plans to promulgate final effluent guidelines for two subcategories later this year: Bleached Papergrade Kraft and Soda (proposed Subpart B), and Papergrade Sulfite (proposed Subpart E). At least eight of the remaining subcategories will be addressed in a final rule expected in 1997: Unbleached Kraft; Semi-Chemical; Mechanical Pulp; Non-Wood Chemical Pulp; Secondary Fiber Deink; Secondary Fiber Non-Deink; Fine and Lightweight Papers from Purchased Pulp; Tissue, Filter, Non-Woven, and Paperboard from Purchased Pulp (proposed Subparts C, F, G, H, I, J, K and L, respectively). Two remaining subcategories, Dissolving Kraft (proposed Subpart A) and

Dissolving Sulfite (proposed Subpart D), will be addressed in a subsequent rule.

c. Pharmaceutical Manufacturing. EPA published a proposed rule for the Pharmaceutical Manufacturing Category on May 2, 1995 (60 FR 21592). In that notice, the Agency stated that it is required by the Clean Air Act Amendments of 1990 (CAAA) to promulgate NESHAP regulations by 1997; no NESHAP regulations were proposed along with the water regulations.

In developing the proposed effluent guidelines and standards, EPA coordinated its efforts to make sure that the rule would be consistent, within the constraints of the governing statutes, with the forthcoming air emissions standards. The Agency's analysis of industry wastewater showed a substantial portion consists of volatile organic compounds which pose a risk to human health through increased exposure to carcinogens and increased exposure to systemic toxicants from atmospheric exposure.

The Agency intends to propose the NESHAP in November 1996, and promulgate the standards in November 1997. The current Consent Decree for effluent guidelines requires promulgation for the pharmaceutical industry by August 1996. While EPA's original intent was to issue separate air and water rules utilizing a common technology basis, the Agency is considering the merits of jointly promulgating the air and water regulations by the 1997 CAAA deadline. The Agency believes that a single promulgation of industry standards will be beneficial in terms of consistency and clarity, and will result in more integrated multi media regulatory controls. EPA also believes that these benefits would outweigh benefits that might be obtained from a slightly earlier promulgation of the effluent guidelines alone.

EPA invites public comment on the merits of simultaneous promulgation of air and water standards for this industry.

d. Transportation Equipment Cleaning. EPA began development of effluent guidelines for the Transportation Equipment Cleaning industry assuming that the scope would include effluent generated from the interior cleaning of tank trucks, rail tank cars, and tank barges, and the exterior cleaning and de-icing of aircraft. However, as a result of data collection and analysis, the Agency has decided to limit the scope of the rule to effluent generated from tank and container interior cleaning.

Last year EPA decided to exclude aircraft exterior cleaning and de-icing from the current effluent guidelines development effort because of other Agency requirements recently promulgated under the stormwater program (60 FR 51215, September 29, 1995). New stormwater permits applicable to airports require implementation of pollution prevention plans to control stormwater discharges. EPA anticipates that the stormwater permit program will reduce, and may eliminate the need for a specific effluent guideline covering these discharges.

The Agency will track the effectiveness of stormwater pollution prevention efforts to control deicing discharges and other airport stormwater runoff and decide later if an effluent guideline is necessary for aircraft exterior cleaning and de-icing.

B. Process for Selection of New Effluent Guideline Regulations

Section 304(m) does not specify criteria that the Agency should use to select categories for regulation by effluent guidelines. For the first Effluent Guidelines Plan, published January 2, 1990 (55 FR 80), EPA listed criteria it had used to select categories. The 1992 consent decree, while specifying some of the categories to be regulated, allows the Agency flexibility in selecting future categories for regulation, and does not specify selection criteria. Therefore EPA intends to continue to use selection criteria such as those listed in the 1990 plan.

1. Selection Criteria and Data Sources

a. Selection Criteria. EPA considers three kinds of criteria for selection of categories: environmental factors, utility to states and POTWs, and economic impacts. The environmental factors allow the Agency to compare the discharges of various categories to approximate risk to human health and the environment. The specific factors used have included:

- Total priority pollutants discharged (lbs/day).
- Total pollutants discharged (lbs/day).
- Total priority toxic pounds-equivalent discharged (lbs/day).
- Number of carcinogens present in discharges.
- Number of facilities discharging to water quality-impaired receiving waters.
- Number of documented cases of sediment contamination.

Data for all of the above factors may not be available for all of the categories under consideration. EPA has found that an estimate of the total priority pollutants discharged is usually available for each category, and can be used to calculate the total priority toxic pounds-equivalent discharged. These have been among the most useful indicators for selecting categories for effluent guidelines. The toxic pounds-equivalent (developed for most of the 126 priority pollutants and hundreds of nonconventional pollutants) are calculated using the mass loading of a pollutant (measured in pounds), multiplied by a weighting factor for each pollutant based on toxicity and potential for bioaccumulation. The individual values are then summed to provide the category value.

The second broad criterion EPA uses in selecting industries for development of effluent guidelines is the "utility" or "usefulness" of the regulation. This factor reflects the fact that, even in the absence of a national effluent guideline, a discharger of pollutants into waters of the United States must obtain an NPDES permit incorporating technology-based effluent limits. Permit writers at facilities not covered by national guidelines are directed to use Best Professional Judgment in determining what technology-based limits are appropriate. (A roughly analogous situation exists with respect to the development of "local limits" for those facilities discharging into POTWs). At some facilities, however, development of BPJ permits by individual permit writers may be especially difficult due to the complexity of wastestreams, presence of pollutants with poorly understood treatability characteristics, or other factors. National effluent guidelines may be especially appropriate for such facilities and the categories of which they are a part. Promulgation of new and revised categorical pretreatment standards was the first recommendation in "National Pretreatment Program: Report to Congress" (EPA 21W–4004, July 1991).

In assessing the utility or usefulness of a national effluent guideline, EPA typically looks at a variety of factors. Among these are:

- Average priority pollutants discharged per facility;
- Average priority toxic pounds-equivalent discharged per facility;
- Number of discharging facilities.

The number of priority pollutants discharged per facility and the toxic pounds-equivalent levels are considered as relative indicators of plant complexity. The number of discharging facilities signifies the greater impact of a guideline on a large-population category, in reducing permit writing workload and implementing permit limitations on a timely basis.

The economic impact factors consist of cost and economic achievabilty of additional controls, and investment cycle. The cost and economic achievability factor is an estimate based on the Agency's projection of what the "best available technology" would be in a new or revised regulation, and the impacts of such costs on the industry. The investment cycle factor is a consideration of the timing of an industry's capital investments in equipment. This is based on an assumption that if there is a periodic equipment replacement cycle for an industry, the economic impact of a new or revised regulation may be less if the compliance period coincides with the replacement cycle. These economic factors are difficult to estimate in the absence of detailed questionnaire data and other information that are gathered during a regulation development project, but EPA attempts to assemble some economic projections during its preliminary studies.

These criteria are groups of factors that the Agency considers and weighs in setting rulemaking priorities. The criteria can not be applied mechanically. In applying the criteria and selecting categories of dischargers for the preparation of new or revised guidelines, the Agency uses considerable judgment grounded in its expertise in the regulation of the discharge of pollutants and the administration of the Clean Water Act and other authorities that address pollution of the nation's waters.

The Effluent Guidelines Task Force has developed recommendations on criteria for selecting industries for preliminary studies. The recommendations are discussed in section V below.

b. Data Sources. The Agency evaluates which categories should be subject to new or revised effluent guidelines using the following sources of information:

- Recommendations from NPDES permit writers in its own regional offices and State agencies.
- Recommendations from POTWs and the Association of Metropolitan Sewerage Agencies (AMSA).
- Preliminary studies of industries, which are discussed further in section IV.C of today's notice.
- Rulemaking records from existing effluent guidelines, which document unresolved issues from past rulemaking activity for some categories.
- Other EPA reports, such as the annual Toxic Release Inventory (TRI), "An Overview of Sediment Quality in the United States" (EPA 905/9–88–002, June 1987), and "National Sediment Contaminant Point Source Inventory: Analysis of Facility Release Data" (Draft, May 1996).
- Reviews of variance requests and petitions.
- Public comments.

EPA continues to rely on these data sources for effluent guidelines planning. The Effluent Guidelines Task Force has developed recommendations on use of data sources for selecting industries. These recommendations are discussed below.

2. New Rulemaking Activities

The 1992 consent decree requires that EPA begin rulemaking on two categories in 1996, and start work on two more in 1997.

a. Iron and Steel Manufacturing. EPA has decided to develop revisions for the Iron and Steel Manufacturing category (40 CFR part 420). This decision is based on consideration of a preliminary data summary on the category recently prepared by the Agency. Initial development of a proposed rule will begin later this year, with proposal scheduled for December 2000 and promulgation scheduled for December 2002. The preliminary data summary is discussed below in section IV.C.1.

b. Other Rules. EPA has not yet selected additional rulemaking projects. EPA is not proposing specific industrial categories for selection in today's notice. However, based on the above discussion of data sources, the Agency may choose the next categories from the following list:

- Petroleum Refining.
- Textile Mills.
- Inorganic Chemicals.
- Steam Electric Power Generating.
- Photographic Processing.
- Chemical Formulators and Packagers.
- Other categories being considered for preliminary studies. Recent, ongoing and future preliminary studies are discussed briefly in Section IV.C of today's notice. The public is invited to comment on these categories, as well as recommending other categories for development of new or revised effluent guidelines.

C. Preliminary Studies

The purpose of a Preliminary Study is to indicate whether and to what extent an industry discharges toxic and nonconventional pollutants, and to provide a basis for comparison with other industries for purposes of assigning priorities for regulation. The results of a Preliminary Study for an industry are published in a "Preliminary Data Summary." The Preliminary Data Summary presents a synopsis of recent technical and economic information on a category of dischargers. The Preliminary Data Summaries are not used directly as a basis for rulemaking, but are used in the Agency's determination of which categories most require preparation of new or revised effluent guidelines. (They also may be expanded to become guidance documents for NPDES permit writers and POTWs.)

A Preliminary Study typically collects data on the following:

- The products manufactured and/or services provided by an industry;
- Number, types and geographic location of facilities;
- Destination of discharges (directly to surface waters, indirectly to POTWs, or both);
- Characterization of the wastewater discharges and identification of pollutants present in the wastestreams (e.g., mean concentrations of pollutants, wastewater volumes, mass loadings);
- Sampling and analytical methods employed to ascertain the presence and concentration of pollutants in the wastewater;
- Source reduction, recycling and pollution control technologies in use and potentially applicable to the industry;
- Non-water quality environmental impacts associated with wastewater treatment in the industry (e.g., air emissions, wastewater treatment sludges, and other wastes including hazardous wastes);
- Cost of control technologies in place and cost estimates for additional controls;
- Cost-effectiveness of reduction of toxic and nonconventional pollutants;
- Estimates of water quality impacts of discharges within the subject industry;
- Economic assessment (current financial condition of firms in the industry, industry expansion or reduction trends, size characterization of firms, impact of estimated treatment costs on representative facilities).

The type and level of detail of information varies among the Preliminary Data Summaries, depending on the data available to the Agency when each document is prepared and whether the industry is covered by an existing effluent guideline. For example, some of the Summaries have comprehensive, primary data on the number and location of the discharging facilities while others contain estimates drawn from secondary data sources. However, the Summaries represent the Agency's best characterization of industries at the time the summaries are compiled. As additional data are

acquired, they are factored into the evaluation process. Consequently, the Preliminary Data Summaries are also subject to revision. The Agency has made the Summaries available to the public and intends to continue to do so.

1. Recently Completed Studies

a. Petroleum Refining. The BAT regulations for the Petroleum Refining category were promulgated in 1982 at 40 CFR part 419. The preliminary data summary, completed in 1994, compared data collected by EPA in 1992 and 1993 with data collected for the 1982 rule in the late 1970s.

Historically, U.S. petroleum refineries have been large water users. The industry has changed significantly since the previous rulemaking with regard to patterns of water usage and product formulations. Many of the refineries studied use well below 50 percent of the flows predicted by the Agency's 1982 BPT and BAT flow models, with some refineries as low as 15 percent of their water use rates predicted by the BPT flow model. (The BAT regulations did not require any further flow reductions; however, as a result of litigation, the 1986 amendment to BAT and NSPS incorporated additional flow reduction as part of the basis for limitations for phenol and total chromium.)

Refineries have modified product formulations such as gasoline to comply with Clean Air Act requirements covering volatile organic compounds and lead. Such manufacturing process changes have led to modifications of wastewater collection systems, which may still be underway at some facilities.

A summary of the treatment technologies that are identified as currently in place is presented in the report. Of the 27 refineries studied, 20 are direct dischargers and 7 are indirect dischargers. All of the 20 direct discharging refineries have some form of biological treatment. Three have sand filtration and one facility has an in-plant activated carbon system in addition to biological treatment.

A summary of the effluent data collected from six refineries visited as part of this study compares the pollutants covered by BPT with the concentrations used as a basis to develop the BPT limitations in 1974. Effluent concentration data are also summarized for a number of other pollutants, including pollutants covered by the current effluent guidelines. These data were obtained from the following sources:

- Average concentration data (over a one year period) collected during Environment Canada's "Seven Refineries Study" conducted in 1989;
- Long term average data collected from seven U.S. refineries during the Canadian study;
- EPA's Permit Compliance System (PCS) covering 138 direct discharging refineries for 1992.

A preliminary assessment of the pollutant loadings and potential water quality impacts of discharges from petroleum refining facilities to surface waters and POTWs, using readily available data and information sources on refinery wastewater volume and constituents, annual loadings and average concentration, are estimated in the summary. In addition, potential aquatic life and human health impacts are summarized based on a review of documented environmental impacts and a review of the physical-chemical properties and toxicity of pollutants associated with wastewater discharges from the petroleum refining industry.

EPA's categorization of the 98 pollutants of interest, based on their fate and impact, indicated that approximately one quarter of the pollutants exhibit high or moderate acute toxicity to aquatic life. EPA classifies 23 of the pollutants as potential carcinogens, while 52 are recognized as human systemic toxicants. Of the pollutants of concern, 41 have EPA-assigned concentration limits for drinking water protection. Approximately half of the pollutants are expected to biodegrade fast or moderately fast in oxygenated water. However, several highly to moderately toxic pollutants are resistant to biodegradation or only slowly biodegrade. Whole effluent toxicity (WET) tests done at 47 petroleum refining facilities in Texas, Louisiana, and Oklahoma showed approximately 40 percent failed at least one WET test for acute, chronic, or sublethal effects. Tests conducted at five refineries in the San Francisco Bay region were in compliance with chronic WET test requirements. Twenty petroleum refining facilities are identified by States as point sources impairing (or contributing to impairment of) water quality and are included on their CWA Section 304(l) "Short List", which identifies facilities discharging to impaired water bodies. Three cases of sediment contamination are identified with petroleum refineries based on a 1987 report.

b. Metal Finishing. The Metal Finishing regulations were promulgated in 1983 at 40 CFR part 433. The preliminary data summary, completed in 1994, briefly summarized the Metal Finishing regulations and a related category, Electroplating, promulgated in 1981 at 40 CFR part 413. The summary also discussed then-current efforts in the development of the Metal Products and Machinery (MP&M) rule. Because the MP&M rule was expected to significantly overlap in coverage with the Metal Finishing rule, the preliminary data summary deferred additional technical, economic and environmental assessment of the industry.

c. Textile Mills. The Textile Mills regulations were promulgated in 1982 at 40 CFR part 410. EPA completed its study of the industry in 1995. The numbers of establishments engaged in the manufacture of textile products were estimated at nearly 6,000. Approximately 35 to 50 percent are engaged in wet processing (dyeing, finishing, printing and coating), and at least 90 percent of these sources discharge their process wastewater to POTWs. Water conservation programs developed by textile facilities have reduced the total volume of wastewater discharged through more efficient use of process water. Compared with 1980, the industry in 1993 averaged 22 percent less water per pound of fiber processed. A survey of POTWs afforded a review of the pretreatment technologies and innovative pollution prevention techniques that are currently being employed by textile users of POTWs.

Pollutant parameters in textile process wastewater were characterized before and after treatment. Available data indicated: (1) Few organic priority pollutants were identified consistently and, when detected, were quantified at very low concentrations (less than 100 ppb); and (2) metal parameters consistently detected at low levels include: copper, chromium, and zinc. At textile operations using metallized dyes, copper, chromium or nickel are often chelated by organic ligands to form water-soluble metal complexes. While their solubility limits the removal of such metal complexes during biological treatment, complexation also suppresses the immediate and subsequent bioavailability (toxicity) of metal species in the treated wastewater.

Although most textile facilities engaged in wet processing discharge their wastewater to POTWs, a survey of POTWs with textile users did not identify any general operational problems that could be related to the lack of categorical pretreatment standards for this industry. In the absence of categorical pretreatment standards, each POTW surveyed has developed local limits for those parameters it has determined must be controlled to assure compliance with its own NPDES permit.

d. Inorganic Chemicals. The Inorganic Chemicals regulations were promulgated in 1982 (Phase 1) and 1984 (Phase 2) at 40 CFR part 415. EPA completed its study of the industry in 1994. EPA identified approximately 51 chlor-alkali facilities, 47 inorganic pigment facilities, 140 industrial gas facilities, and 422 other inorganic chemical manufacturing facilities. These are believed to represent nearly complete coverage of this category in the United States. Inorganic chemicals are mostly used by major manufacturing industries to produce automobiles, steel, paper, petroleum products, and housing materials.

EPA identified 30 inorganic pollutants and their compounds (13 priority and 17 nonconventional) as pollutants of interest in the wastewater discharges from inorganic chemical manufacturing facilities. These include 15 metals, one metal oxide, two non-metallic elements, five inorganic acids, and seven other inorganic compounds. An analysis of 1992 data from PCS indicates that permit limits for copper and zinc are exceeded most frequently of the 12 metals examined. A chemical load analysis of the data shows that zinc represents the vast majority of total discharge quantity (about 70 percent) followed by chromium and nickel. A one-year chemical load analysis of surface water releases and transfers to POTWs of inorganic chemicals using 1992 TRI data shows that 5.4 million pounds are being released to surface waters and 27.1 million pounds are being transferred to POTWs. Ammonia, ammonium nitrate and ammonium sulfate represent the vast majority of total releases, with ammonia being reported most frequently. Mercury was the most frequently reported metal in discharges from the 1992 TRI facilities. The total discharge of priority pollutants from the Inorganic Chemicals Manufacturing Category is estimated at 0.51 million pounds per year.

EPA's categorization of the 30 pollutants of interest, based on their potential environmental fate and impact, indicates that one-third of the pollutants (10 of 30), primarily metals in their elemental form, are highly toxic to aquatic life. The Agency has set drinking water maximum contaminant level standards for approximately one-third of the pollutants (11 of 30), and about half (16 of 30) have been identified as human systemic toxicants. EPA classifies arsenic, cadmium, and lead as Class A, B1, and B2 carcinogens, respectively. Calculated toxic weighted loads, based on toxicity and bioaccumulation potential, indicate that approximately 40 percent of the weighted surface water releases are from priority pollutants and approximately 30 percent of POTW transfers are from priority pollutants. States, in developing lists of point sources impairing water quality under sec. 304(l), identified 27 inorganic chemical manufacturing facilities. Inorganic chemical manufacturing ranks first among 40 industrial categories as a source of potential sediment contaminants in a 1995 draft EPA report ("National Sediment Contaminant Point Source Inventory: Analysis of Release Data for 1992", EPA Office of Science and Technology, May 1995 draft). EPA also reports 12 cases of possible sediment contamination associated with inorganic chemical manufacturing.

e. Steam Electric Power Generating. The Steam Electric Power Generating regulations were promulgated in 1982 at 40 CFR part 423. The Preliminary Data Summary for the Steam Electric Point Source Category was completed in 1995. The 1982 Guidelines and Standards are currently being applied to about 900 utility steam electric facilities, and potentially to over one thousand non-utility steam electric generators. Steam electric generation is by far the Nation's largest industrial water user, estimated at over 110 trillion (110×10^{12}) gallons per year.

Pollutants of concern for this industry include chlorine, mercury, arsenic, copper, zinc and lead. EPA estimates a total annual pollutant load of 22 million pounds, of which 727 thousand pounds are priority pollutants, based on 1992 PCS data. Chlorine and iron represent the vast majority of total loads, being 34 and 40 percent respectively. Zinc and copper represent the majority of priority pollutant loads, respectively comprising 37 and 28 percent of the total. When arranged by toxic weighted pounds chlorine is found to be the most significant pollutant, comprising 70 percent of total toxic pounds-equivalent. Mercury and arsenic contribute the greatest number of toxic pounds-equivalent among the priority pollutants. These estimated pollutant loading represent only 361 of the 910 U.S. steam electric utility plants operating in 1992, due to insufficient data for the excluded facilities.

The Steam Electric Industry ranks third among 44 industrial categories as a source of potential sediment impact. Categorization of the 53 pollutants of interest based on their environmental fate and impact indicate that 22 of the 53 are highly or moderately toxic to aquatic life. A review of documented environmental impacts shows that States identify 39 steam electric facilities as point sources impairing water quality based on their CWA Section 304(l) "short list."

Due to many changes that have occurred in this industry since the 1982 rule, the current guidelines and standards do not address issues such as:

- "Non-utilities", mainly comprised of cogenerators and renewable fuel burners,
- Combined cycle generators, with gas turbine exhaust heat driving a steam turbine,
- Use of bromine and other biocides in place of chlorine,
- Zebra mussel control strategies, and
- Wastewaters from a growing population of non-steam electric generators.

f. Iron and Steel Manufacturing. The Iron and Steel Manufacturing regulations were promulgated in 1982 at 40 CFR part 420 and amended in 1984. EPA completed its study of the industry in 1995. The industry has consolidated and modernized in the past fifteen years. Integrated mills continue to "down-size" to reflect changes in the demand of different steels and to remain competitive. "Mini-mills" continue to grow due to their ability to make higher quality steels. Coking operations are declining due to changes in iron-making processes. Continuous casting is now the norm for the industry due to the higher energy efficiency of the process over the traditional piecemeal casting operations. These changes are believed to be fostered by domestic and world competition.

The 300 industry facilities are becoming more efficient. This has led to substantial changes in how the industry operates. Pollutant loadings are down due to improved recycle rates on many unit operations, more efficient processing of conventional operations, elimination of obsolete processes, improved computerization of manufacturing, changes in market demands, and improved treatment processes. Many better-performing mills are discharging wastewater loadings far below EPA's current standards.

However, not all of the industry has kept pace with the improved operations or pollution prevention opportunities. Forty mills are included on the sec. 304(l) "short list", and a number of mills continue to discharge in excess of current effluent guidelines. Facilities in 10 of the 12 subcategories discharge some toxic and nonconventional pollutants that are not covered in the current regulation. Changes made by the industry in its cold forming operations have rendered some current standards inapplicable, and some elements of the current regulation are obsolete. Many better-performing mills are discharging

wastewater loadings far below EPA's current standards (e.g., § 420.01(b), involving centralized waste treatment).

Revised effluent guidelines for the Iron and Steel industry could result in a substantial reduction in pollutants discharged: as much as 29 million pounds per year of total suspended solids, 6.9 million pounds of oil and grease, and 710,000 pounds of ammonia-N.

2. Ongoing Studies

a. Photographic Processing. The Photographic regulations were promulgated in 1976 for BPT (direct dischargers) only, at 40 CFR part 459. Subsequent to promulgation of the BPT rule, EPA collected some additional information to support development of BAT, NSPS and pretreatment standards, but no additional rules were promulgated. As of 1980, the Agency estimated that 99 percent of 11,000 photographic processing facilities were indirect dischargers. Several POTWs have recommended that EPA develop categorical standards for indirect dischargers. While processing facilities are believed to be widely dispersed across the United States, POTW efforts vary considerably. Some POTWs have implemented local limits for silver and perhaps other pollutants, while others have no specific mechanisms for this industry.

EPA is reviewing the pollutants of concern (such as silver, cyanide, and chromium), what technologies are available for controlling discharges and POTWs' efforts to address the discharges by means of local limits or other mechanisms. In addition to working with states and POTWs, the Agency is consulting with business associations in the review of industry-recommended silver management practices.

b. Chemical Formulators and Packagers. Chemical formulators and packagers (CFP) purchase concentrated chemical products from chemical manufacturers, and mix or otherwise formulate and/or package them into end-use products for sale to consumers, businesses and institutions. CFP facilities are similar to pesticide formulating, packaging and repackaging (PFPR) facilities in that some discharge wastewater, while others have no discharge. However, some CFP facilities are not covered by either the impending PFPR final rule, the Organic Chemicals, Plastics and Synthetic Fibers (OCPSF) category (40 CFR part 414), nor the Inorganic Chemicals category (40 CFR part 415).

In the course of developing the PFPR rule, EPA acquired some data on CFP facilities. EPA will continue to review these data and develop a profile of the industry's discharges.

3. Future Studies

EPA intends to begin three preliminary studies in 1996. Studies are being considered on the following subjects:

a. Coal Mining. Regulations for the Coal Mining category were promulgated in 1982 at 40 CFR part 434. The Agency is aware of several issues that have emerged subsequent to the rulemaking or that were not resolved in the promulgated rule. These include the question of whether there should be separate subcategories for remining operations and western coal mines; whether limitations on manganese discharges should be revised; whether the criteria for "bond release" as defined at 40 CFR 434.11(d) should be revised; and whether discharges related to methane gas production should be regulated in Part 434.

b. Feedlots. Regulations for the Feedlots category were promulgated in 1974 at 40 CFR part 412. The effluent guidelines, which apply to feedlots of 1,000 or more animal units (AUs), contain limitations requiring no discharge of process wastewater pollutants, based on treatment of wastes in lagoons or holding ponds. The Agency is aware of several issues which could be explored in a preliminary study. These include:

- Changes in industry (e.g., there has been an increase in recent years in the number of large corporate hog farms)
- The ability of facilities to comply using technology that was the basis for the 1974 effluent guidelines during chronic rainfall and snowmelt runoff events
- Regulatory coverage of livestock markets
- Proper runoff control structure dewatering to maintain free-board and land disposal of contained runoff by techniques consistent with non-point source controls.

c. Stormwater Discharges. Stormwater discharges are explicitly addressed in several effluent guidelines, such as Fertilizer Manufacturing (40 CFR Part 418) and Coal Mining (40 CFR part 434). In addition, discharges associated with industrial activity and from municipal separate stormwater sewer systems serving a population of 100,000 or more are subject to NPDES stormwater permitting requirements at 40 CFR 122.21 and 122.26. The stormwater permit program is being implemented by EPA and States utilizing the NPDES regulations and permits, including individual, general and sector permits. The Agency is considering whether development of additional technical information and guidance on characterizing stormwater discharges and evaluating the efficacy of controls would be useful to discharging facilities in complying with permit requirements. EPA may conduct a study to explore what kinds of documentation would be helpful. For example, the Agency could develop a compilation of municipal stormwater control techniques appropriate for specific situations, along with cost models and cost-effectiveness analyses.

d. Hospitals. BPT regulations for the Hospitals category were promulgated in 1976 at 40 CFR part 460. EPA published a Preliminary Data Summary on the Hospitals category in 1989. The 1989 summary reported that there were 6,870 registered hospitals in the United States as of 1985, and approximately 97 percent of these were indirect dischargers. A principal pollutant of concern from hospital discharges has been silver, emanating from processing of x-ray images. While some hospitals employ silver recovery systems, a national PSES limitation for silver may be useful to some POTWs in promoting fuller control of silver discharges. Recommended silver management practices developed by the photographic industry may be reviewed for relevancy to addressing hospital discharges. Additionally, the Agency may explore discharges associated with procedures for deactivation of infectious waste, including discharges from scrubber water of on-site incinerators.

e. Ore Mining and Dressing. Most portions of the Ore Mining and Dressing category were promulgated in 1982 at 40 CFR part 440. (Subpart M, Gold Placer Mining Subcategory, was promulgated in 1988). EPA may study issues stemming from a pending action affecting some gold mines under Subpart J (see section IV.D.2 of today's notice), and may also examine the need for revised analytical methods for cyanide, which affects multiple subcategories in part 440.

f. Glass Manufacturing. BPT regulations for the Glass Manufacturing category were promulgated in 1974 at 40 CFR part 426. The Agency is aware of changes in industry manufacturing practices since 1974 that may affect wastewater discharge characteristics, and revisions to the effluent guidelines may be appropriate. For example, there are new processes for manufacturing light bulbs and fiber optics, and there has been a substantial increase in production of float glass, while plate glass manufacturing has declined.

g. Canmaking. Regulations for the Canmaking subcategory of the Coil Coating category were promulgated in 1983 at 40 CFR part 465, Subpart D. One of the pollutant parameters included in this subcategory is Total Toxic Organics (TTO). EPA's inclusion of the TTO limit was based on the industry's use of can sealant compounds. The Agency has received reports from some POTWs that industry may no longer be using these compounds, but POTWs continue to require TTO monitoring because the limitation remains in the regulation. EPA may investigate the TTO issue to determine whether a revision to the limitation is appropriate.

h. Organic Chemicals, Plastics and Synthetic Fibers. Regulations for the OCPSF category were promulgated in 1987 at 40 CFR part 414. EPA may conduct a retrospective study of the industry's actual compliance strategies and incurred costs for complying with the final regulation in comparison to the Agency's projected technology bases and estimated costs of compliance used for developing the regulation. The Agency establishes end-of-pipe numerical standards based on the performance of specific waste management and wastewater treatment unit operations. Individual plants may select appropriate wastewater management practices and treatment alternatives to comply with the numerical standards. This study would identify the selected in-plant and end-of-pipe wastewater treatment unit operations and determine the extent to which process modifications, source reduction, water conservation, and pollution prevention were used to meet the numerical standards. The study would identify the actual costs incurred to comply with the regulation and compare them to the Agency's estimated engineering costs of compliance. This information may assist the Agency in improving the accuracy of its general approach to estimating the engineering costs of compliance.

i. Pulp, Paper and Paperboard. The proposed rule for the Pulp, Paper and Paperboard Category included BPT, BCT and NSPS for conventional pollutants for six of the proposed subcategories (Subparts G, H, I, J, K, and L), but did not address toxic and nonconventional pollutant discharges. EPA is aware of increased activity in the secondary fiber and deinking segments of the industry, and may conduct a study focusing on toxic and nonconventional pollutant discharges from these and other mills in these subcategories.

j. Generic Effluent Guideline Issues. A number of suggestions which could affect numerous existing or planned effluent guidelines have been raised in the context of recently proposed regulations. Several of these suggestions involve implementation of effluent guidelines, while others directly impact the content of effluent guideline regulations. These suggestions include such things as allowing certification in lieu of monitoring for specified pollutants under defined circumstances, defining Best Management Practices in concert with concentration-based limitations as an alternative to mass-based limitations, considering exemptions for indirect dischargers below a cut-off point defined in terms of either flow or pollutant loadings, and allowing a reduced sampling frequency (e.g., once a year) for indirect dischargers under defined circumstances. EPA is aware of a great interest in some of these suggestions by the regulated community and local governments and may conduct a study to evaluate the potential effects of implementing these suggestions.

D. Other Rulemaking Actions

1. Leather Tanning and Finishing

EPA is promulgating minor revisions to pretreatment standards for existing and new sources applicable to certain facilities in the Leather Tanning and Finishing point source category (40 CFR part 425). The facilities involved discharge process wastewaters to POTWs. EPA is eliminating the upper (alkaline) pH limits for facilities in these subcategories. Affected POTWs may still elect to set an alternative upper (alkaline) pH limit based on local circumstances. EPA is promulgating these changes as a "direct" final rule in order to provide prompt implementation, which will allow facilities to minimize any potential hazards to worker safety and health that may occur in the absence of this rule.

This regulation is being promulgated in response to a petition submitted by a trade association for the leather tanning industry, the Leather Industries of America. The petition requests the Agency to consider relaxing the upper pH limit for certain indirect dischargers. The Agency is making a minor amendment to these regulations, provided that such an amendment would not adversely affect POTW operations or receiving water quality. This minor amendment would not affect the other rulemakings described in today's notice. EPA is not planning other revisions to the Leather Tanning regulations.

2. Ore Mining and Dressing

EPA is proposing to exempt a waste stream from existing effluent guidelines for the Copper, Lead, Zinc, Gold, Silver and Molybdenum Ores Subcategory of the Ore Mining and Dressing Category (40 CFR part 440, Subpart J). The Agency published a proposed rule on February 12, 1996 (61 FR 5364).

Dewatered tailings generated by the Alaska-Juneau (A–J) gold mine project near Juneau, Alaska would be affected by this proposal. The use of impoundments or "tailings ponds" was an important component of the technology basis of the existing regulations, which were promulgated in 1982. EPA is proposing this exemption based on the results of a preliminary review of the technology basis for the existing regulations that appear to show that, because of the severe topographic and climatic conditions that exist at the A–J site, the use of a tailings impoundment is impractical. If constructed, an extraordinary amount of wet weather runoff would flow into the impoundment which would make it impracticable to treat the mill tailings. In addition, construction of a massive tailings impoundment may result in long-term environmental degradation and there are safety concerns with a pond of this size.

This proposal opens the way for the detailed evaluation of alternatives for treatment of the tailings. The discharge of tailings from the A–J project to marine waters, which otherwise would be prohibited by Subpart J, could appropriately be evaluated. The proposal does not in itself authorize or endorse any method of tailings treatment or disposal. The discharge of tailings to marine waters would require final revision of Subpart J under the proposal. EPA will evaluate all comments and information received prior to making a final determination, which the Agency currently expects to do by the end of 1996.

3. Marine Discharges from Vessels of the Armed Forces

Section 325 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106, February 10, 1996) amended the Clean Water Act by adding sec. 312(n), which requires EPA and the Department of Defense (DOD) to:

- Determine discharges from vessels of the armed forces requiring control
- Promulgate performance standards for marine pollution control
- Promulgate regulations governing design, construction, installation and use of marine pollution controls.

EPA is currently developing a plan with DOD to comply with sec. 312(n).

The amendment requires the discharge determination within two years of enactment, promulgation of performance standards within two years of discharge determination, and promulgation of other regulations within one year after promulgation of standards.

VI. Recommendations of the Effluent Guidelines Task Force

The Effluent Guidelines Task Force was established by EPA to recommend improvements to the effluent guidelines program. The Task Force consists of members appointed by the Agency from industry, citizen groups, state and local government, the academic and scientific communities, and EPA's Office of Research and Development. The Task Force was created to offer advice to the EPA Administrator on the long-term strategy for the effluent guidelines program, and particularly to provide recommendations on a process for expediting the promulgation of effluent guidelines. It is chartered as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the external policy advisory board to the Administrator, pursuant to the Federal Advisory Committee Act (FACA).

The Task Force has developed recommendations on three topics pertinent to EPA's effluent guidelines planning process: data sources, criteria for selecting industries for preliminary studies, and the design of studies.

A. Data Sources

The Task Force generally agreed with EPA on the sources of data that are appropriate for comparing categories. It encouraged EPA to consider information supplied by POTWs, AMSA, States, and trade associations. Reviews of technical literature and the Toxic Release Inventory (for basic identification of industry sources and locations) were also recommended.

B. Criteria for Selecting Industries for Preliminary Studies

The Task Force supported EPA's use of total toxic pounds-equivalent discharged as one of the principal selection criteria. Other criteria that EPA has used in previous Effluent Guidelines Plans were supported with varying degrees of emphasis, and several new factors were recommended. The recommendations included using number of facilities and flow (including establishing a cutoff below which alternatives to establishing effluent guidelines will be developed); giving priority to industries not covered by existing guidelines; giving priority to industries targeted for regulations by other EPA programs (e.g. air, solid waste); giving priority to service industries; and priority to industries which are at or near the beginning of their investment cycles.

C. Design of Preliminary Studies

The Task Force recommended that in cases where an industry and its issues are documented, EPA should proceed directly to rulemaking rather than conducting an intermediate preliminary study. This should only be done where there is a preponderance of already assimilated information indicating full rulemaking is appropriate, or in cases where stakeholders have clearly indicated that effluent guidelines are needed. Where there is uncertainty about the extent of industrial discharges and comparability to other categories, a study should be conducted.

VII. Request for Comments

EPA invites public comment on its plans for development of effluent guidelines and preliminary studies. Comments will be accepted until August 2, 1996. In particular, the Agency is interested in data that would facilitate category-wide comparisons of industries with regard to discharge characteristics, treatment practices and effects on water quality. In addition to the industries discussed or listed in today's notice, EPA will consider information on other industries in developing Effluent Guidelines Plans.

VIII. Economic Impact Assessment; Executive Order 12866

Today's notice proposes a plan for the review and revision of existing effluent guidelines and for the selection of priority industries for new regulations. This notice is not a "rule" and does not establish any requirements; therefore, no economic impact assessment has been prepared. EPA will provide economic impact analyses or regulatory impact analyses, as appropriate, for all of the future effluent guideline rulemakings developed by the Agency.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this plan is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Dated: June 27, 1996.

Carol M. Browner,

Administrator.

APPENDIX A—PROMULGATED EFFLUENT GUIDELINES

["Promulgation" refers to the date of promulgation of BAT controls unless otherwise noted. Minor amendments or corrections are not shown.]

Category	40 CFR Part	Promulgation	Revised Rule (P: Proposal F: Final Action) or Study Completion (S)
Aluminum Forming	467	10/83	
Asbestos Manufacturing	427	2/74	
Battery Manufacturing	461	3/84	
Builder's Paper and Board Mills [1]	431	12/86 (BCT)	
Carbon Black Manufacturing	458	1/78	
Cement Manufacturing	411	8/79 (BCT)	

APPENDIX A—PROMULGATED EFFLUENT GUIDELINES—Continued

["Promulgation" refers to the date of promulgation of BAT controls unless otherwise noted. Minor amendments or corrections are not shown.]

Category	40 CFR Part	Promulgation	Revised Rule (P: Proposal F: Final Action) or Study Completion (S)
Coal Mining	434	10/82	
Coil Coating	465	12/82	
Canmaking Subcategory		11/83	
Copper Forming	468	8/83	
Dairy Products Processing	405	6/86 (BCT)	
Electroplating	413	1/81 (PSES)	
Electrical and Electronic Components	469	4/83	
Explosives Manufacturing	457	3/76	
Feedlots	412	2/74	
Ferroalloy Manufacturing	424	7/86 (BCT)	
Fertilizer Manufacturing	418	8/79 (BCT)	
Fruits and Vegetables Processing	407	7/86 (BCT)	
Glass Manufacturing	426	7/86 (BCT)	
Grain Mills	406	7/86 (BCT)	
Gum and Wood Chemicals	454	5/76 (BPT)	
Hospitals	460	5/76 (BPT)	S 1989
Ink Formulating	447	7/75	
Inorganic Chemicals	415	5/82	S 1994
Iron and Steel Manufacturing	420	5/82	S 1995
Leather Tanning and Finishing	425	11/82	
Meat Products	432	7/76 (BCT)	
Metal Finishing	433	7/83	S 1994
Metal Molding and Casting (Foundries)	464	10/85	
Mineral Mining and Processing	436	7/77 (BPT)	
Nonferrous Metals Forming	471	8/85	
Nonferrous Metals Manufacturing	421	5/84	
Oil and Gas Extraction	435		
Offshore Subcategory		3/4/93	
Coastal Subcategory		11/79 (BPT)	P 2/17/95; F 10/96
Other Subcategories		11/79 (BPT)	
Ore Mining and Dressing	440	12/82	
Gold Placer Mining Subcategory		5/85	
Organic Chemicals, Plastics and Synthetic Fibers	414	11/87	
Paint Formulating	446	7/75	S 1989
Paving and Roofing Materials	443	7/75	
Pesticide Chemicals	455		
Manufacturing		9/20/93	
Formulating, Packaging, Repackaging		4/78 (BPT)	P 4/14/94; F 9/96
Petroleum Refining	419	10/82	S 1993
Pharmaceutical Manufacturing	439	10/83	P 5/2/95; F 11/97 [2]
Phosphate Manufacturing	422	5/76	
Photographic Processing	459	7/76 (BPT)	S 1996
Plastics Molding and Forming	463	12/84	
Porcelain Enameling	466	11/82	
Pulp, Paper and Paperboard	430	12/86 (BCT)	P 12/17/93; F [1]
Rubber Manufacturing	428	2/74	
Seafood Processing	408	7/86 (BCT)	
Soap and Detergent Manufacturing	417	4/74	
Steam Electric Power Generating	423	11/82	S 1995
Sugar Processing	409	7/86 (BCT)	
Textile Mills	410	9/82	S 1994
Timber Products Processing	429	1/81	

Notes:

[1] EPA proposed merging part 431 with part 430 in the proposed Pulp, Paper and Paperboard rule on 12/17/93. The Pulp, Paper and Paperboard rulemaking is not covered by the January 31, 1992 consent decree.

[2] EPA is discussing extensions to Consent Decree dates with NRDC.

APPENDIX B—CURRENT AND FUTURE RULEMAKING PROJECTS

Category	Proposed	Final
Pulp, Paper and Paperboard	12/17/93 (58 FR 66078)	([1])
Pesticide Formulating, Packaging and Repackaging	4/14/94 (59 FR 17850)	9/96
Centralized Waste Treatment	1/27/95 (60 FR 5464)	[2] 9/96

APPENDIX B—CURRENT AND FUTURE RULEMAKING PROJECTS—Continued

Category	Proposed	Final
Coastal Oil and Gas Extraction	2/17/95 (60 FR 9428)	10/96
Pharmaceutical Manufacturing	5/2/95 (60 FR 21592)	[2] 8/96
Metal Products and Machinery, Phase 1	5/30/95 (60 FR 28209)	[2,3] 9/96
Industrial Laundries	[2] 12/96	[2] 12/98
Transportation Equipment Cleaning	[2] 12/96	[2] 12/98
Landfills and Incinerators	[2] 5/97	[2] 5/99
Metal Products and Machinery, Phase 2	[2] 12/97	[2,3] 12/99
Iron and Steel Manufacturing	[2] 12/98	[2] 12/00
1 category	[2] 12/98	[2] 12/00
2 categories	[2] 12/99	[2] 12/01
2 categories	[2] 12/00	[2] 12/02
2 categories	[2] 8/01	[2] 12/03

Notes:
[1] The Pulp, Paper and Paperboard rulemaking is not covered by the January 31, 1992 consent decree.
[2] EPA is discussing extensions to Consent Decree dates with NRDC.
[3] EPA is considering merging Phases 1 and 2 of the Metal Products and Machinery rule. See discussion above.

APPENDIX C—PRELIMINARY STUDIES

Category	Complete
Petroleum Refining	1993
Metal Finishing	1993
Textile Mills	1994
Inorganic Chemicals	1994
Steam Electric Power Generating	1995
Iron and Steel Manufacturing	1995
Photographic Processing	1996
Chemical Formulators and Packagers	1996
Three studies (see discussion in Section IV.C.3)	1997

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federal register

Wednesday
July 3, 1996

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 25
Revision of Hydraulic Systems Airworthiness Standards To Harmonize With European Airworthiness Standards for Transportation Category Airplanes, and Proposed Advisory Circular for Hydraulic System Certification Tests and Analysis; Proposed Rule and Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 28617; Notice 96–6]

RIN 2120–AF79

Revision of Hydraulic Systems Airworthiness Standards To Harmonize With European Airworthiness Standards for Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the airworthiness standards for transport category airplanes to harmonize hydraulic systems design and test requirements with standards proposed for the European Joint Aviation Requirements (JAR). These proposals were developed in cooperation with the Joint Aviation Authorities (JAA) of Europe and the U.S. and European aviation industry through the Aviation Rulemaking Advisory Committee (ARAC). These changes are intended to benefit the public interest by standardizing certain requirements, concepts, and procedures contained in the airworthiness standards without reducing, but potentially enhancing, the current level of safety.

DATES: Comments must be received on or before October 1, 1996.

ADDRESSES: Comments on this notice may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28617, 800 Independence Avenue SW., Washington, DC 20591; or delivered in triplicate to: Room 915G, 800 Independence Avenue SW., Washington, DC 20591.

Comments delivered must be marked Docket No. 28617. Comments may also be sent electronically to the following internet address: nrmpcmts@mail.hq.faa.gov. Comments may be examined in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is in maintaining an information docket of comments in the Transport Airplane Directorate (ANM–100), Federal Aviation Administration,

FOR FURTHER INFORMATION CONTACT: Mahinder K. Wahi, Flight Test and Systems Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (206) 227–2142; facsimile (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comment Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to any environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments in triplicate to the Rules Docket address above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available in the Rules Docket, both before and after the comment period closing date, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which is stated: "Comments to Docket No. 28617." The postcard will be date stamped and returned to the commenter.

Availability of the NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the Federal Register's electronic bulletin board service (telephone 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Aviation Administration (FAA), Office of Rulemaking, ARM–1, 800 Independence Avenue, S.W., Washington, D.C. 20591 or by calling (202) 267–9680. Communications must identify the notice number or docket number of this notice.

Persons interested in being placed on a mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The airworthiness standards for transport category airplanes are contained in 14 CFR part 25. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the relevant standards of part 25. These standards apply to airplanes manufactured within the U.S. for use by U.S. registered operators and to airplanes manufactured in other countries and imported under a bilateral airworthiness agreement.

In Europe, the Joint Aviation Requirements (JAR) were developed by the Joint Aviation Authorities (JAA) to provide a common set of airworthiness standards for use within the European aviation community. The airworthiness standards for European type certification of transport category airplanes, JAR–25, are based on part 25 of Title 14. Airplanes certificated to the JAR–25 standards, including airplanes manufactured in the U.S. for export to Europe, receive type certificates that are accepted by the aircraft certification authorities of 23 European countries.

Although part 25 and JAR–25 are very similar, they are not identical. Differences between the FAR and the JAR can result in substantial additional costs when airplanes are type certificated to both standards. These additional costs, however, frequently do not bring about an increase in safety. For example, part 25 and JAR–25 may use different means to accomplish the same safety intent. In this case, the manufacturer is usually burdened with meeting both requirements, although the level of safety is not increased correspondingly. Recognizing that a common set of standards would not only economically benefit the aviation industry, but would also maintain the necessary high level of safety, the FAA

process to harmonize the airworthiness requirements of the United States and the airworthiness requirements of Europe, especially in the areas of Flight Test and Structures.

In 1992, the FAA harmonization effort was undertaken by the ARAC. A working group of industry and government hydraulic systems specialists of Europe and the United States was chartered by notice in the **Federal Register** (57 FR 58843, December 12, 1992). The working group was tasked to develop a draft notice of proposed rulemaking (NPRM) and any collateral documents, such as advisory circulars, concerning new or revised requirements for hydraulic systems, and the associated test conditions for hydraulic systems, installed in transport category airplanes (§ 25.1435). The JAA is to develop a similar proposal to amend JAR–25, as necessary, to achieve harmonization.

The rulemaking proposal contained in this notice is based on a recommendation developed by the Hydraulic Systems Harmonization Working Group, and was presented to the FAA by the ARAC as a recommendation.

The Aviation Rulemaking Advisory Committee

The ARAC was formally established by the FAA on January 22, 1991 (56 FR 2190) to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity. This advice was sought to develop better rules in less overall time using fewer FAA resources than are currently needed. The committee provides the opportunity for the FAA to obtain firsthand information and insight from interested parties regarding proposed new rules or revisions of existing rules.

There are 64 member organizations on the committee, representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop proposals to recommend to the FAA for resolving specific issues. Tasks assigned to working groups are published in the **Federal Register**. Although working group meetings are not generally open to the public, all an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures. After an ARAC recommendation is received and found acceptable by the FAA, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package will be fully disclosed in the public docket.

Discussion of the Proposals

The FAA proposes to amend § 25.1435 to harmonize this section with JAR–25. The JAA intend to publish a Notice of Proposed Amendment (NPA), also developed by the Hydraulic Systems Harmonization Working Group to revise JAR–25 as necessary to ensure harmonization in those areas for which the proposed amendments differ from the current JAR–25, Change 14. When it is published, the NPA will be placed in the docket for this rulemaking.

Generally, the FAA proposes to: (1) Add appropriate existing JAR requirements to achieve harmonization; (2) Move some of the existing regulatory text to an advisory circular; (3) Consolidate and/or separate requirement subparagraphs for clarity; and (4) Revise airplane static proof pressure test requirements to require a complete functional (dynamic) airplane test at a lower pressure. A new proposed Advisory Circular (AC) 25.1435–1 has been developed by the ARAC to ensure consistent application of these proposed revised standards. Public comments concerning the AC 25.1435–1 are invited by separate notice published elsewhere in this issue of the **Federal Register**. The JAA intend to publish an Advisory Material Joint (AMJ), also developed by the Harmonization Working Group, to accompany their NPA. The proposed AC and the proposed AMJ contain harmonized advisory information. The following is a discussion of the specific proposals prescribed in this NPRM.

Proposal 1. The FAA proposes to replace current § 25.1435(a)(1) to add the existing requirements of JAR 25.1435(a)(10) and associated Appendix K requirements regarding design load factors for proof and ultimate pressure conditions for elements of the hydraulic system (see proposal 2 below regarding current § 25.1435(a)(1)). The proof and ultimate pressure conditions would be and the consequences of failures (e.g. pressure vessel failure). The proposed load factors, ranging between 1.5 and 4.0, relate to the design operating pressure (DOP) and would apply to tubes, fittings, pressure vessels containing gas at high pressure (e.g., accumulators) and at low pressure (e.g. hydraulic reservoirs), hoses, and all other elements.

By adopting these JAR minimum factors of safety standards which currently are not specifically stated in the FAR, the FAA intends to maintain an existing level of safety because normal U.S. Industry practices meet or exceed these standards.

DOP is the normal maximum steady pressure. Excluded are reasonable tolerances and transient pressure effects such as may arise from acceptable pump ripple or reaction to system functioning or flow demands that may affect fatigue. In localized areas of systems and system elements the DOP may be different from the DOP for the system as a whole due to the range or normally anticipated airplane operational, dynamic and environmental conditions. Such differences would be required to be taken into account. The term "design operating pressure" would be discussed in AC 25.1435–1.

Proposal 2. The FAA proposes to redesignate the current § 25.1435(a)(1) as § 25.1435(a)(2), delete the word "loads" from "pressure loads" ("loads" is redundant) and edit some text to avoid repetition. The term "limit structural load", and a recommended minimum time to hold pressure would be discussed in AC 25.1435–1.

Proposal 3. The FAA proposes to redesignate the current § 25.1435(a)(2) as a new § 25.1435(a)(3), delete the word "loads" from "pressure loads" ("loads" is redundant) and edit some text to avoid repetition. The term "ultimate structural load" and a minimum time to hold pressure would be discussed in AC 25.1435–1.

Proposal 4. The FAA proposes to add a new § 25.1435(a)(4) that would contain the current requirements of § 25.1435(b)(2)(i) and (b)(2)(ii) regarding induced loads, pressure transients, and fatigue as well as the current JAR 25.1435(a)(11) requirements regarding fatigue design considerations accounting for fluctuating or repeated external or internal loads and pressure transients. These loads could be structurally or environmentally

level of safety. The terms "fatigue", and "externally induced loads" would be discussed in AC 25.1435–1.

Proposal 5. The FAA proposes to add a new § 25.1435(a)(5) that would contain the current requirements of § 25.1435(b)(2)(i) through (b)(2)(v), except those addressed under proposal 4 above, as well as parts of the current JAR 25.1435 (a)(5) and (a)(6) requirements addressing excessive vibration, abrasion, corrosion, mechanical damage, and the ability to withstand inertia loads. These requirements would be consolidated and simplified by stating that each element must be designed to perform as intended under all environmental conditions for which the airplane is certificated. An acceptable means of compliance would be included in AC 25.1435–1.

Proposal 6. The FAA proposes to add a modified version of the existing JAR 25.1435(a)(2) as § 25.1435(a)(1), requiring means to indicate appropriate system parameters at a flight crewmember station if (1) the system performs a function necessary for continued safe flight and landing, or (2) in the event of hydraulic system malfunction, corrective action by the crew is required to ensure continued safe flight and landing. The existing JAR 25.1435(a)(2) requires fluid quantity and pressure indication under specified circumstances; prior to Amendment 25–72, § 25.2435 contained an identical requirement. It was considered at the time that this requirement is covered by § 25.1309(c), which requires that warning information must be provided to alert the crew to unsafe system operating conditions, and to enable them to take appropriate corrective action, and the § 25.1435 requirement was therefore deleted. It is, however, now recognized that there is value in defining indication requirements for hydraulic systems and implications of their loss. The existing level of safety would not be impacted since the FAA is proposing the adopt an existing industry practice. The term "appropriate system parameters" would be discussed in AC 25.1435–1. (Note: see proposal 12 below with respect to status of current § 25.1435(b)(1) requirements).

Proposal 7. The FAA proposes to replace the current § 25.1435(b)(2) by adding a modified version of the current JAR 25.1435 (a)(4) and (a)(7) to require that each system have means to ensure that system pressures remain within the design capabilities of each element. Prior to Amendment 25–72, § 25.1435 contained a requirement that was identical to the current JAR requirement, but it was characterized as both containing arbitrary pressure transient limits and unnecessary because the intent is covered under § 25.1309. The requirement was therefore deleted from § 25.1435. The proposed version deletes the arbitrary limits but would require that the intent be specifically addressed by § 25.1435(b)(2) to ensure consideration of the pressure and volume related transients that are unique to the hydraulic systems. There would be no impact on level of safety since an existing industry practice is being adopted. An acceptable means of compliance with § 25.1435(b)(2) would be included in AC 25.1435–1.

Proposal 8. The FAA proposes to add a new § 25.1435(b)(3) which would contain a modified version of the existing JAR 25.1435(a)(5) requirements regarding the means to minimize harmful or hazardous concentrations of the hydraulic fluid or vapors, if liberated in any form, into the crew and passenger compartments during flight. Prior to Amendment 25–72, § 25.1435 contained an identical requirement. It was considered at the time that § 25.831(b) covers this requirement under a general statement that the ventilation air must be free of hazardous or harmful gases or vapors. However, § 25.831(b) specifies allowable limits for carbon monoxide and carbon dioxide, but no other products. It could be construed that those two gases are the only hazardous products. Section 25.1435 would therefore be revised to state the specific requirement with respect to the hydraulic fluid or vapors.

The JAR requirement currently states, in relevant part, that "there must be a means to prevent harmful or hazardous concentration of fluid. * * *" In recognition of the fact that absolute prevention of such concentrations is not an achievable objective, the FAA proposes that the hydraulic system must have "means to minimize the release of harmful or hazardous concentrations * * *" To show compliance with this requirement, an applicant would have to show, both that the likelihood of releases has been minimized, and that, if there is such a release, the concentrations from the release would also be minimized. The level of safety would remain unaffected because it's an existing industry practice to address this issue. An acceptable means of compliance with § 25.1435(b)(3) and a discussion of the terms "harmful" and "hazardous" would be included in AC 25.1435–1.

Proposal 9. The FAA proposes to redesignate the existing § 25.1435(c) as § 25.1435(b)(4); this is identical to the existing JAR 25.1435(c) requirements regarding use of flammable hydraulic fluid and fire protection. A discussion of the term "flammable hydraulic fluid' would be included in AC 25.1435–1.

Proposal 10. The FAA proposes to add a new § 25.1435(b)(5), containing the current JAR 25.1435(d) requirements that the airplane manufacturer must specify the approved hydraulic fluid(s) suitable to be used in the system(s) and ensure that the system(s) meet the applicable placarding requirements of the current § 25.1541. Although it is a standard U.S. industry practice to identify the compatible hydraulic fluid on each component's name plate, the practice may not be universal. In order to minimize the potential use of incompatible fluids, seals, etc. in any system, it is necessary to include this requirement. A discussion of mixability of hydraulic fluids would be included in AC 25.1435–1.

Proposal 11. Current § 25.1435(b)(2) requirements for hydraulic system compliance by test and analysis would be separated into §§ 25.1435 (c), (c)(1) and (c)(2); the list of environmental factors [current § 25.1435 (b)(2)(ii) through (b)(2)(v)] would be moved to AC 25.1435–1; and, text in the aforementioned sections would be clarified. In addition, analysis would be permitted in place of or to supplement testing, where shown to be reliable and appropriate. A discussion on endurance and fatigue testing, and simulated failures would be included in AC 25.1435–1.

Proposal 12. Current § 25.1435(b)(1) requirements for static testing of a complete hydraulic system to 1.5 times the design operating pressure (without deformation of any part of the system that would prevent performance of intended function) would be replaced with a new § 25.1435(c)(3) requirement that "the complete hydraulic system must be functionally tested on the airplane over the range of motion of all associated user systems." Also, the section would require that "the test must be conducted at the system relief pressure or 1.25 times the DOP if a system pressure relief device is not part of the system design." This proposal reflected the recently granted petition for exemption to the Boeing Company, Regulatory Docket No. 27384. The petition, any comments received, and a copy of the final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC 200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132. A discussion on relief pressure settings and an acceptable means of compliance with § 25.1435(c)(3) would be included in AC 25.1435–1.

The FAA considers that the proposed functional (i.e., dynamic) test more closely approximates actual operating conditions than the existing static test. This is because for the static test, several parts of the system and associated relief valves (including return lines) may need to be disabled to allow system pressurization at 1.5 times the design operating pressure because the relief valves are designed to open at a pressure lower than 1.5 times the design operating pressure. Although the proposed test pressure would be lower than 1.5 times the design operating pressure, all elements would still be required to be able to withstand at least 1.5 times the design operating pressure per current § 25.1435(a)(2) (proposed § 25.1435(a)(3)), at least retaining and potentially enhancing the current level of safety by identification of additional dynamic interference problems.

Regulatory Evaluation Summary

Regulatory Evaluation, Regulatory Flexibility Determination, and Trade Impact Assessment

Changes to federal regulations must undergo several economic analyses. First, Executive Order 12866 directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society outweigh the potential costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Finally, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these assessments, the FAA has determined that this proposed rule: (1) Would generate benefits exceeding its costs and is not "significant" as defined in Executive Order 12866; (2) Is not "significant" as defined in DOT's Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would lessen restraints on international trade. These analyses, available in the docket, are summarized below.

Although several revisions would be made to § 25.1435, only three of them would impose additional costs (see below—proposals 1, 4, and 12, with the latter having potential cost savings for some manufacturers). Most of the changes codify current industry practice or conform § 25.1435 to corresponding sections of the JAR. Adoption of the proposed changes would increase harmonization and commonality between American and European airworthiness standards. Harmonization would eliminate unnecessary duplication of airworthiness requirements, thus reducing manufacturers' certification costs. One manufacturer of part 25 large airplanes estimated such cost-savings could range between $60,000 and 600,000 per type certification (pertaining to hydraulic systems only); a manufacturer of part 25 small airplanes estimated such savings at $30,000 to $90,000 per type certification; Potential safety benefits resulting from specification of minimum accepted standards would supplement these cost-savings.

Proposal 1. These changes codify existing industry standards. As such, they would not result in additional costs for most manufacturers, However, one manufacturer of small transport category airplanes estimated increased testing costs of approximately $25,000 per type certification Codification of the proposed standards would ensure that current safety levels are retained.

Proposals 2, 3, and 9. There would be no additional costs associated with these minor changes.

Proposal 4. Although some of the changes described are new requirements in the FAR, most American manufacturers of large transport category airplanes are already in compliance with the similar current European standards, which had to be met in order to market airplanes in JAA member countries. The modified testing and analysis regime is already in place. Initial first-time costs have already been incurred; such costs have diminished in recent certifications. Consequently, actual incremental costs would be negligible. One manufacturer, however, indicated that additional testing and analysis costs, ranging between $100,000 and $200,000 per type certification, would be incurred for the first one or two type certifications. Learning curve efficiencies would likely reduce these costs thereafter. Manufacturers of small transport category airplanes, on the other hand, expect no or negligible additional costs attributable to the new fatigue-related proposals. Codification of the proposed standards would ensure that minimum acceptable fatigue requirements are specified with potential for safety enhancement.

Proposals 5, 6, 7, 8, and 10. These changes codify existing industry standards and would not result in additional certification/production costs. Codification of the proposed standards would ensure that current safety levels are retained.

Proposal 11. There would be no additional costs associated with these revisions. The use of analysis in lieu of or supplemental to testing may reduce certification costs in some cases.

Proposal 12. Most manufacturers of part 25 airplanes would not experience additional costs associated with dynamic testing of hydraulic systems. In fact, testing time and associated costs could be reduced to some small extent since, unlike static testing, the proposed dynamic testing would not entail disabling any system(s) or otherwise reconfiguring the airplane. One manufacturer of part 25 large airplanes estimated potential savings between $100,000 and $200,000 per type certification in this regard (another estimated such savings at only $25,000). However, a manufacturer of part 25 small transport category airplanes estimates $25,000 in additional testing, analysis, and report preparation costs per type certification attributable to this proposal. The proposed requirements would at least retain, and potentially enhance, the current level of safety by identification of additional dynamic interference problems.

Summary of Costs and Benefits

Manufacturers of part 25 small airplanes could experience additional costs totalling approximately $50,000 per type certification resulting from proposals 1 (design load factors) and 12 (dynamic testing). The estimated $30,000–$90,000 harmonization cost savings, coupled with potential safety benefits from proposals 4 and 12, would exceed these costs.

For manufacturers of part 25 large airplanes, the cost differential could range from a $25,000–$200,000 reduction (resulting from proposal 12) to a $100,000–$200,000 increase (resulting from proposal 4). The proposal 12 cost savings coupled with the estimated $60,000–$600,000 harmonization cost savings would exceed the additional costs of proposal 4; potential safety benefits from proposals 4 and 12 would supplement the cost-savings.

The FAA finds the proposed rule, therefore, to be cost-beneficial for both part 25 small and large transport manufacturers.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by government regulations. The RFA requires a Regulatory

Flexibility Analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, prescribes standards for complying with RFA review requirements in FAA rulemaking actions. The order defines "small entities" in terms of size thresholds, "significant economic impact" in terms of annualized cost threshold, and "substantial number" as a number which is not less than eleven and which is more than one-third of the small entities subject to the proposed or final rule.

The proposed rule would affect manufacturers of transport category airplanes produced under future new airplane type certifications. For manufacturers, Order 2100.14A specifies a size threshold for classification as a small entity as 75 or fewer employees. Since no transport category airplane manufacturer has 75 or fewer employees, the proposed rule would not have a significant economic impact on a substantial number of small manufacturers.

International Trade Impact Assessment

The proposed rule would not constitute a barrier to international trade, including the export of American airplanes to foreign countries, and the import of foreign airplanes into the United States. Instead, the proposed changes to the FAR would harmonize with corresponding existing or proposed standards in the JAR, thereby lessening restraints on trade.

Federalism Implications

The amended regulations proposed in this rulemaking would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant preparing a Federalism Assessment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) standards and recommended practices to the maximum extent practicable. The FAA has determined that this rule does not conflict with any international agreement of the United States.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed rule.

Conclusion

Because the proposed changes to standardize specific hydraulic systems test requirements of part 25 are not expected to result in substantial economic cost, the FAA has determined that this proposed regulation would not be significant under Executive Order 12866. Because this is an issue which has not prompted a great deal of public concern, the FAA has determined that this action is not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 25, 1979). In addition since there are no small entities affected by this proposed rulemaking, the FAA certifies, under the criteria of the Regulatory Flexibility Act, that this rule, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities. An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under FOR FURTHER INFORMATION CONTACT.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendments

Accordingly, the Federal Aviation Administration proposes to amend 14 CFR part 25 as follows:

PART 25—AIRWORTHINESS STANDARDS—TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

2. Section 25.1435 is revised to read as follows:

§ 25.1435 Hydraulic systems.

(a) *Element design.* Each element of the hydraulic system must be designed to:

(1) Withstand the proof pressure without leakage or permanent deformation that prevents it from performing its intended function, and the ultimate pressure without rupture. The proof and ultimate pressures are defined in terms of the design operating pressure (DOP) as follows:

Element	Proof (xDOP)	Ultimate (xDOP)
1. Tubes & fittings	1.5	3.0
2. Pressure vessels containing gas:		
High pressure (e.g., accumulators)	3.0	4.0
Low pressure (e.g., reservoirs)	1.5	3.0
3. Hoses	2.0	4.0
4. All other elements	1.5	2.0

(2) Withstand, without deformation that would prevent it from performing its intended function, the design operating pressure in combination with limit structural loads that may be imposed;

(3) Withstand, without rupture, the design operating pressure multiplied by a factor of 1.5 in combination with ultimate structural load that can reasonably occur simultaneously;

(4) Withstand the fatigue effects of all cyclic pressures, including transients, and associated externally induced loads, taking into account the consequences of element failure; and

(5) Perform as intended under all environmental conditions for which the airplane is certificated.

(b) *System design.* Each hydraulic system must:

(1) Have means located at a flightcrew station to indicate appropriate system parameters.

(i) It performs a function necessary for continued safe flight and landing; or

(ii) In the event of hydraulic system malfunction, corrective action by the crew to ensure continued safe flight and landing is necessary;

(2) Have means to ensure that system pressures, including transient pressures and pressures from fluid volumetric changes in elements that are likely to remain closed long enough for such changes to occur, are within the design capabilities of each element, such that they meet the requirements defined in § 25.1435(a)(1) through (a)(5);

(3) Have means to minimize the release of harmful of hazardous concentrations of hydraulic fluid or vapors into the crew and passenger compartments during flight;

(4) Meet the applicable requirements of §§ 25.863, 25.1183, 25.1185, and 25.1189 if a flammable hydraulic fluid is used; and

(5) Be designed to use any suitable hydraulic fluid specified by the airplane manufacturer, which must be identified by appropriate markings as required by § 25.1541.

(c) *Tests.* To demonstrate compliance with § 25.1435 and support compliance with § 25.1309, tests must be conducted on the hydraulic system(s), and/or

subsystem(s) and elements, except that analysis may be used in place of or to supplement testing, where the analysis is shown to be reliable and appropriate. All internal and external influences must be taken into account to an extent necessary to evaluate their effects, and to assure reliable system and element functioning and integration. Failure or unacceptable deficiency of an element or system must be corrected and be sufficiently retested, where necessary.

(1) The system(s), subsystem(s), or element(s) must be subjected to performance, fatigue, and endurance tests representative of airplane ground flight operations.

(2) The complete system must be tested to determine proper functional performance and relation to the other systems, including simulation of relevant failure conditions, and to support or validate element design.

(3) The complete hydraulic system(s) must be functionally tested on the airplane in normal operation over the range of motion of all associated user systems. The test must be conducted at the system relief pressure 1.25 times the DOP if a system pressure relief device is not part of the system design. Clearances between hydraulic system elements and other systems or structural elements must remain adequate and there must be no detrimental effects.

Issued in Washington, DC, on June 26, 1996.

Ava L. Robinson,

Acting Director, Aircraft Certification Service.

[FR Doc. 96–17034 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.1435–1, Hydraulic System Certification Tests and Analysis

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular (AC) 25.1435–1 and request for comments.

SUMMARY: This notice announces the availability of and requests comments on proposed Advisory Circular (AC) 25.1435–1, Hydraulic System Certification Tests and Analysis. This AC provides guidance on acceptable means, but not the only means, of demonstrating compliance with the requirements of § 25.1435 and related regulations pertaining to hydraulic systems. The proposed AC complements revisions to the airworthiness standards that are being proposed by a separate notice. This notice provides interested persons an opportunity to comment on the proposed AC.

DATES: Comments must be received on or before October 1, 1996.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attention: Mahinder K. Wahi, Flight Test and Systems Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, WA 98055–4056. Comments may be examined at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Regulations Branch, ANM–114, at the above address, telephone (206) 227–2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters must identify the title of the AC and submit comments in triplicate to the address specified above. All comments received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Discussion

In 1988, the FAA, in cooperation with the European Joint Aviation Authorities (JAA) and other organizations representing the American and European aerospace industries, began a process to harmonize the airworthiness requirements of the United States and the airworthiness requirements of Europe.

In 1992, the harmonization effort was undertaken by the Aviation Rulemaking Advisory Committee (ARAC). A working group of industry and government hydraulic systems specialists of Europe and the United States was chartered by notice in the **Federal Register** (57 FR 58843, December 12, 1992). The working group was tasked to develop a draft notice of proposed rulemaking (NPRM) and any collateral documents such as advisory circulars concerning new or revised requirements for hydraulic systems and the associated test conditions for hydraulic systems installed in transport category airplanes (§ 25.1435). The JAA is to develop a similar proposal to amend the Joint Aviation Requirements (JAR) as necessary, to achieve harmonization.

The advisory material made available via this notice was developed by the Hydraulic Systems Harmonization Working Group to ensure that the harmonized standards would be interpreted and applied consistently. It was presented to the FAA by the ARAC as a recommendation.

Part 25 of the Federal Aviation Regulations (FAR) prescribes the United States airworthiness standards for transport category airplanes. Proposed AC 25.1435–1 provides guidelines that the FAA has found acceptable to demonstrate compliance with those airworthiness standards for hydraulic systems. Revisions to part 25 are being proposed by the FAA in a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. That notice also describes the use of the Aviation Rulemaking Advisory Committee to develop both the proposed revisions to part 25 and the proposed AC 25.1435–1.

Proposed AC 25.1435–1 provides additional guidance material and one means, but not the only means, of complying with the part 25 revisions proposed in Notice No. 96–[insert notice number of NPRM entitled, "Revision of Hydraulic Systems Airworthiness Standards to Harmonize with European Airworthiness Standards for Transport Category Airplanes") published in the same edition of the **Federal Register**]. Issuance of the AC 25.1435–1 is contingent on final adoption of the proposed revision to part 25.

Issued in Renton, Washington, on February 29, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 96–17035 Filed 7–2–96; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday
July 3, 1996

Part VIII

Department of Transportation

Coast Guard

33 CFR Part 164

Navigation Safety Equipment for Towing Vessels; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 164

[CGD 94–020]

RIN 2115–AE91

Navigation Safety Equipment for Towing Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard here requires that towing vessels carry and properly use equipment such as radars, compasses, marine charts or maps, and publications and that they carefully choose, inspect, and maintain towlines. This final rule is necessary as part of a comprehensive initiative to improve navigational safety for towing vessels. The purpose of requiring navigational-safety equipment on towing vessels is to help prevent another catastrophic train wreck such as that of the Sunset Limited in Alabama during September, 1993, and another spill such as that off Puerto Rico during January, 1994.

DATES: This rule is effective on August 2, 1996. The Director of the Federal Register approves as of August 2, 1996 the incorporation by reference of certain publications listed in this rule.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Edward LaRue, Navigation Rules Division (G–MOV–3), (202) 267–0416, or LCDR Suzanne Englebert, Project Development Division (G–MSR–2), Office of Marine Safety and Environmental Protection, (202) 267–6490.

SUPPLEMENTARY INFORMATION:

Regulatory History

Soon after the fatal accident on September 22, 1993, near Mobile, Alabama, in which a barge collided with a railroad bridge and caused the Sunset Limited to plunge into a bayou, the Secretary of Transportation directed that the Coast Guard and the Federal Railroad Administration review the circumstances of the accident and undertake initiatives to minimize the risk of any similar tragedy in the future. A detailed review of marine-safety issues related to uninspected towing vessels appears in the notice of proposed rulemaking (NPRM) entitled "Navigation Safety Equipment for Towing Vessels" published on November 3, 1995 (60 FR 55890).

This final rule constitutes part of a comprehensive initiative by the Coast Guard to improve navigational safety for towing vessels. While other regulatory efforts are concentrating on reporting of casualties, on licensing, and on training on radar, this rule helps ensure that the marinor piloting a towing vessel has adequate equipment to safely navigate the waters being transited. It will impose the following: (1) Requirements for carriage of radars, searchlights, radios, compasses, swing-meters, echo depth-sounding devices, electronic position-fixing devices, marine charts or maps, and publications; (2) requirements for proper use of this navigational equipment; (3) requirements for maintenance, inspection, and serviceability of towlines, towing gear, and terminal gear; and (4) general requirements for navigational safety.

Thirty-seven letters were received in response to the NPRM. The Coast Guard has considered all of the comments and, in some instances, revised the proposed rule as appropriate. One comment requested that a public meeting be held. The Coast Guard determined that a public meeting was unnecessary for this rulemaking because the comments received were substantive and represented all aspects of both the industry and the public. The other comments have been grouped by issue and are discussed as follows:

Discussion of Comments and Changes

1. General

Seven comments supported and applauded the Coast Guard in its efforts to improve safety in the towing industry. The Coast Guard acknowledges and appreciates these comments.

One comment recommended that the Coast Guard verify the availability of radar standards from the Radio Technical Commission for Maritime Services (RTCM). The comment claimed either that the standards are unavailable or that the RTCM is exhibiting an unwillingness to provide them. The Coast Guard verified that the standards are readily available from the RTCM.

One comment recommended that the term "gear" in § 164.80(a) be defined because it may be confused with "terminal gear." The Coast Guard reviewed § 164.80(a) and does not agree that the two terms will be confused, because "gear" as used in paragraph (a) is a general term for the equipment and systems to be inspected onboard the vessel and is further qualified in the subordinate, numbered paragraphs.

One comment stated that the term "rivers and Western Rivers" as used in paragraph 2 of the Discussion of Proposed Rules of the preamble was confusing. The comment also noted that the proposed rule expanded the definition of "Western Rivers" to include waters not covered for purposes of the Inland Navigation Rules. The comment recommended that the definition of "other designated waterways" be consistent with that in 33 CFR 89.25. The Coast Guard agrees and has removed the term "river" from the definitions in § 164.70. The Coast Guard has also expanded the definition of "Western Rivers" to include all waters specified by §§ 89.25 and 89.27, and has added the words "and such other, similar waters as are designated by the COTP."

Four comments recommended that the definition of river include the Gulf Intracoastal Waterway (GIWW). By including all waters specified by §§ 89.25 and 89.27 in the definition of "Western Rivers", the Coast Guard has included the GIWW. This change should eliminate any confusion over the applicability of this rule on the GIWW.

One comment commended the Coast Guard for its efforts to exempt vessels engaged in assistance towing. The Coast Guard acknowledges and appreciate this comment.

Four comments noted the vast differences between the marine-assistance industry and the tug and barge industry. They also stated that few marine-assistance firms' vessels would meet the criteria for exclusion offered by the Coast Guard. They recommended that the applicability of this final rule be changed from towing vessels of 8 meters (26.25 feet) or more in length to towing vessels of 12 meters (39.4 feet) or more in length. The Coast Guard, knowing and understanding the differences between the marine-assistance and the tug and barge industries, asked its Towing Safety Advisory Committee (TSAC) to research the possibility of a regulatory threshold based on a risk analysis. A risk analysis was done by a TSAC working group; after reviewing the analysis, which was in turn based on both historical data and analysis of forces, the Coast Guard agrees with the comments and has applied this rule only to towing vessels of 12 meters (39.4 feet) or more in length rather than to those of 8 meters (26.25 feet) or more in length. This analysis by TSAC is

available in the docket, as described earlier in this preamble. This change should exempt the vast majority of vessels engaged in the marine-assistance industry from the requirements of this rule.

Four comments proposed that § 164.01(b)(2) contain a definition for a disabled vessel as follows: "Disabled vessel means a vessel that is in need of assistance, whether docked, underway, aground, sunk or abandoned. Disabled vessel does not include a barge or any vessel [that] is not regularly operated under its own power." The comments assert that, if this definition is accepted, then any comments by marine-assistance firms become academic since marine-assistance vessels will no longer as affected by this final rule. This rule, especially since the Coast Guard has changed the length of affected vessels from 8 to 12 meters, exempts the bulk of vessels engaged in marine assistance—helping people in disabled vessels on rivers, bays, or oceans. However, the Coast Guard must be careful not to exempt vessels that are performing commercial towing, even if the vessels are owned or operated by marine-assistance firms. The Coast Guard does not accept the four comments' definition of "disabled vessel" and has not amended the rule in the recommended manner.

Four comments concerned exemptions. Two recommended extending the proposed exemptions in § 164.01 to small, private work boats or tow boats involved in limited towing inside a limited geographical area, as other exemptions extend to work boats operating in fleeting areas and shipyards. A third recommended that the COTP be able to exempt vessels under certain traffic conditions and in restricted operating areas. The fourth recommended that the Coast Guard devise a method for exemption using speed and draft because of the differences in speeds and drafts between assistance vessels and tugs and pushboats. Seven comments recommended adding provision to § 164.01 specifying that the responsibility for determining applicability of an exemption besides with the COTP. In addition, they recommended a formal process to request a waiver. While it would be impossible to cover every possible exemption scenario, the Coast Guard agrees that an exemption process should be established and that the final exemption authority should rest with the COTP. The Coast Guard has amended § 164.01 to specify the availability of exemptions, the process to request them, and the final granting authority of the COTP. The COTP will base the decision for exemption on such things as routes, traffic, and capabilities of vessels.

One comment raised the issue of moving an exempted vessel from one fleeting area to another. The comment asked whether permission would be needed and, if so, how it would be obtained and whether it would have to be reverified with the new COTP for any different fleeting area. After review, the Coast Guard does not see the need to grant permission for an exempted vessel to move from one fleeting area to another if it is not engaged in towing, but it does see the need to reverify the exemption if the fleeting area is in a different COTP zone. In any case, the owner, master, or operator of a towing vessel engaged in towing from one fleeting area to another would have to request an exemption in accordance with § 164.01(b)(4) of this final rule.

Three comments recommended that towing vessels covered by this final rule become inspected vessels. They also recommended that all towing gear on these vessels be inspected by the Coast Guard or an approved classification ("class") society. They recognized the time and financial constraints of annual boardings and recommended that towing vessels obtain certificates of inspection from entities such as approved class societies or from the National Association of Marine Surveyors. They also recommended that an initial exam occur within 24 months of the effective date of the rule and that the certificate be renewed every five years thereafter. Inspection of towing vessels has been studied by the Coast Guard and is outside the scope of this rulemaking.

One comment recommended that § 164.01 be modified to exempt vessels used in response-related activities, including training, as well as vessels of opportunity, such as fishing vessels engaged in those activities. The comment continued that an exemption should not apply to those vessels actually engaged in traditional towing activities but only to those vessels used solely in oil-spill response. The Coast Guard agrees and has amended § 164.01 so it exempts vessels used solely for pollution response.

One comment alleged delay in the rulemaking. It held the neglect of the Coast Guard, as it thought, representative of the discharge of its responsibilities in support of the Oil Pollution Act of 1990 (OPA 90) and urged the Coast Guard to quickly institute this final rule. The Coast Guard notes that this rulemaking allowed for early and meaningful public participation in its development.

Six comments stated that Coast Guard rules pertaining to towing vessels, now on the books, already provide navigational safety when properly enforced and followed. They also stated that more rules do not guarantee additional safety or prevention of accidents, especially in instances of major neglect by operators of towing vessels. Until now, few and minimal rules have applied to towing vessels 12 meters in length or over. This final rule is based in large measure on the general industry standard of care and sets a reasonable threshold consistent with this standard. This rule should raise the performance, of the few owners and operators who are hazardous, to that standard of care.

One comment questioned the Coast Guard's ability to enforce its rules. This final rule requires towboats to carry certain equipment and gear that usually are permanently installed. The Coast Guard anticipates that the verification of onboard, operational equipment and appropriately maintained gear will be achievable.

2. Carriage of navigational equipment

a. Radar

Two comments noted that proposed § 164.01(b)(1) may conflict with § 165.803(m)(2)(i), which requires radar-equipped fleeting boats, and with § 165.803(m)(2)(v), which requires continuous radar surveillance during periods of restricted visibility. The Coast Guard finds no conflict. A vessel that may not be required, under § 164.01(b)(1), to carry radar, may nonetheless be required, under § 165.803(m)(2), to carry radar when engaged in the activities described there.

Two comments recommended that the Coast Guard establish very limited local areas where towing would be permitted without radar-equipped towboats; this should prevent non-radar-equipped fleeting vessels from traveling large distances. The Coast Guard agrees that towing without radar should be conducted only within a company's fleeting area. Any other type of operations should be referred to the COTP for approval or exemption, if applicable.

Six comments concurred with radar as required equipment, yet expressed opposition to the development of minimum performance standards by a third-party technical organization. They recommended that the Coast Guard develop the standards with assistance of representatives from towing companies.

The RTCM, which developed radar standards, consists of members from industry, government, and manufacturers. The Coast Guard did participate in the development of the radar standards and maintains that the standards are reasonable.

One comment concurred with the radar requirement, but raised concerns about radar's being on harbor boats because of limited space in the pilot house, excessive vibration, and the constant facing and unfacing of tows. Harbor operations may qualify for an exemption that can be granted by the COTP. Masters, owners, and operators may present their particular operations to the COTP to consider for exemption.

Three comments supported the radar requirement, but recommended that it be for two marine radars. They also recommended that the grace period be reduced from 96 to 48 hours before notice to the COTP of the lack of an operating radar. The Coast Guard disagrees. On smaller vessels there may not be enough room for two radar consoles and their antennas. For some operations, it may also be cost-prohibitive. The Coast Guard has determined that a grace period of 96 hours is generous while it still secures safety.

One comment recommended that for an owner or operator of an existing radar some means of determining whether the existing radar conforms to RTCM standards needs to be developed. No formal certificate or sticker is affixed to the radar. The comment asked whether the Coast Guard would develop a list of approved radars, and recommended a list and some type of labelling requirement. Once the RTCM standards are referred to in this final rule, manufacturers will market radars that meet them. Manufacturers' self-certification is presently used successfully with regard to performance standards adopted by the International Maritime Organization (IMO). The deferred effective dates should provide enough time to determine whether an existing radar meets standards, and the Coast Guard expects lists of standards to be developed by various interested parties.

Two comments recommended reducing the grace period for having a radar that meets the display and stabilization requirements. One recommended from 5 to 3 years; the other recommended from 4 to 2 years. The Coast Guard has not implemented either of these timelines, because an accelerated implementation could put too much of an economic burden on owners or operators with small businesses. In addition, radar manufacturers need time to gear up to RTCM standards.

b. Searchlight

Three comments supported a requirement for a searchlight. Two recommended that the language in § 164.72(a)(2) better define the searchlight's capability. One called for an effective beam of twice the length of the tow; the other called for an effective beam of three to four times the length of the tow. The Coast Guard agrees with a better defined capability for the searchlight and has amended § 164.72(a)(2) to indicate a capability of illuminating objects at a distance of at least two times the length of the tow. For vessels towing astern, this requirement should be met for the length of tow used during transits on waters subject to Inland Navigation Rules.

c. Radios

Two comments supported a requirement for radios. They also supported a requirement for either a backup power source for a permanently installed radio or a separate, portable, battery-powered VHF–FM marine radio with a capability of 24-hour continuous use. The Coast Guard notes the support; however, technical requirements such as those relating to power source are established by the Federal Communications Commission (FCC).

Three comments observed that in April, 1992, the FCC lifted the requirement that vessel captains and operators must have Restricted Radiotelephone operators' permits. The comments questioned whether § 164.72(a)(3) is incompatible with the FCC ruling. The Coast Guard verified with the FCC that the lifting of the requirement affected only noncompulsory vessels (those not required by convention, statute, or regulation to have ship radio-station licenses). This final rule still supports the requirement to have Restricted Radiotelephone operators' permits.

d. Compasses and Swing-meters

Three comments took exception to vessels' not being able to carry a fluxgate compass in lieu of a magnetic compass. They pointed out that some tugs cannot use a card-type magnetic compass, because of the magnetic field in the pilot house due to electric welding. They noted that a fluxgate compass is approximately 1/20th the cost of a gyrocompass. They challenged the reasoning of disallowing a fluxgate compass because it requires an external power source. They stated that most card-type compasses have light bulbs for night use and that other navigational equipment, such as Long Range Aid to Navigation (LORAN) or Global Positioning System (GPS), need external power. The Coast Guard notes the exception, yet will not allow the substituting of a fluxgate compass for a magnetic one in this final rule. The fluxgate compass requires power to operate; a magnetic compass does not, and can be viewed with a flashlight should the vessel experience a power failure.

One comment wanted to know whether the Coast Guard was going to adopt "standards" for swing-meters. At the present time, the Coast Guard does not see the need to adopt "standards" for swing-meters.

Two comments supported a requirement for a magnetic compass, but also wanted a requirement for a gyrocompass equipped with an audible course-change indicator; they also recommended that both requirements cover towing vessels on Western Rivers as well as on all other waters. The Coast Guard does not agree with the requirement of a gyrocompass on all tug boats operating on all navigable waters of the U.S. It has set a swing-meter or magnetic compass as the minimum because either is cost-effective for all operators including small companies.

Two comments recommended that towing vessels pushing ahead and operating on Western Rivers be equipped with an audible swing-meter; this would be in addition to, not instead of, the magnetic compass proposed in § 164.72(a)(4)(i). The Coast Guard disagrees with the recommendation. One or the other should be more than sufficient to aid the vessel in its operations.

One comment recommended that § 164.72(a)(4) be modified, to allow a gyroscope. The Coast Guard has not set a gyroscope as an equivalent to a magnetic compass, because a gyroscope relies on an outside power source.

One comment opposed the requirement because a compass or swing-meter would not aid a harbor boat working in a small harbor or a fleeting area. Note that this final rule lets a vessel owner or operator seek from the COTP an exemption from this requirement.

e. Echo Depth-Sounding Device

Three comments supported the requirement. Two recommended compliance within 1 year from the effective date of this final rule; the other recommended compliance within 2 years. One comment also recommended the installation of two sounding devices. The Coast Guard disagrees with bringing

compliance forward from 5 years to 1 year. It notes that, while taken individually navigation equipment is relatively inexpensive, taken cumulatively the costs are not negligible. The 5-year implementation schedule is intended to lessen the impact of multiple requirements. The Coast Guard agrees that in some circumstances two sounding devices may be desirable; in general, however, one should give the operator or master adequate depth information.

Five comments disagreed with exempting tows on Western Rivers from having sounding devices; they stated there should be no exemptions. One of the five also stated that, at a minimum, sounding devices should be installed on vessels that move environmentally threatening cargoes. The Coast Guard holds that depth sounders are not so useful in pooled water as they are in open water where depths vary greatly. On towboats pushing ahead, they would be located too far aft to provide even a last-minute warning of shallow water. The Coast Guard has maintained the exemption as proposed.

One comment disagreed that a sounding device should be placed on every towing vessel. It recommended that ship-docking tugs operating in harbors, lakes, rivers, and bays be exempted from the requirement. Again, the owner or operator of a vessel may seek an exemption from this requirement.

f. Electronic Position-Fixing Device

No comments concerned the requirement for an electronic position-fixing device.

g. Marine Charts or Maps

One comment recommended that the words "reasonably available" remain in the definition of "currently corrected." This would allow for a delay in the entry of corrections because of late receipt of Notices to Mariners (NTMs). The Coast Guard agrees, and the wording remains.

Three comments recommended that § 164.72(b)(1) require the carriage of current or currently corrected charts or maps and that, to this end, the definition for "currently corrected" change. The Coast Guard agrees with the concept of allowing either current editions or currently corrected editions of charts and maps; however, it has achieved this end without amending the definition.

Three comments recommended that § 164.72(b)(2) refer to NTMs, but not to Local Notices to Mariners (LNMs), because of the impossibility of ensuring delivery of LNMs. The Coast Guard partially agrees and has cast the final rule to include NTMs published by the Defense Mapping Agency. LNMs have remained because they are available for Western Rivers.

One comment recommended that a towing vessel on the Western Rivers be authorized to carry either a current edition of, or a currently corrected, river map from the U.S. Army Corps of Engineers (ACOE). It also recommended creating a new definition for "currently corrected", which would apply to Western Rivers and allow currently corrected charts to be used up to 5 years after their date of publication. The Coast Guard agrees and has amended the definition of "currently corrected" to include current editions of ACOE river maps and currently corrected editions provided it has not been over 5 years since their publication.

One comment recommended that § 164.72(b)(1)(i) be revised to reflect that "All towing vessels, both inland and seagoing, are required * * *." This section already covers "each towing vessel." The only variation allowed is in § 164.72(b)(1)(ii), which accommodates different routes.

One comment suggested that other sources of charts or maps, such as chartbooks published by State authorities or commercial publishers, be approved. The Coast Guard disagrees. Although these charts or maps may be updated annually, they conform to no hydrographic standard and therefore are not recognized by the Coast Guard as legal charts. In addition, these charts are usually advertised as "not for navigation."

Six comments opposed requiring towing vessels to be equipped with charts or maps that both are published by the National Ocean Service (NOS), the ACOE, or another authority and are either current editions or currently corrected charts or maps. They argued that, for lack of funding to the NOS, U.S. waterways are not regularly charted or mapped and stated that it is therefore unrealistic to require current editions or currently corrected charts or maps. They further recommended that the rule should include British Admiralty Charts as a possible alternative. NOS procures excellent nautical products, and the Coast Guard will continue to require their use. However, the Coast Guard also recognizes that there are charts produced by foreign governments of U.S. waters, such as British Admiralty charts, that are legally sufficient and could be acceptable alternatives. The Coast Guard has amended the rule as proposed to include charts published by a foreign government that will make safe navigation possible, that are based on hydrographic standards similar to those used by NOS, and that are applicable to a vessel's transit.

One comment did not support the requirement of a chart or map and felt it an excessive burden on those vessels that work in the same operating area. The Coast Guard does not agree. Vessels are required only to have charts or maps for their areas of operation, so the number of charts or maps to maintain should be minimal: the smaller the area, the fewer the charts or maps. The local information these charts or maps provide to operate is valuable and should assist them in verification of their position along their voyages.

h. Publications

One comment noted that proposed § 164.72(b)(3) restated the requirement of 33 CFR 88.05 that self-propelled vessels of 12 meters or more must have on board and maintain for ready reference a copy of the Inland Navigation Rules. It recommended that this section be removed. The Coast Guard agrees, and it does not appear in this final rule.

Two comments disagreed with the selection of nautical publications that the proposed rule would have required to be on board. They stated that some, such as NTMs, were good but did not need to be physically on board. They also felt that the Coast Pilot was of little use to a captain in local waters; the captain's "local knowledge" was of far greater value. It is not the intent of the Coast Guard that a vessel maintain a huge library of nautical publications. Rather, the Coast Guard is requiring those publications that most prudent mariners would retain on board their vessels. The final rule also provides that latitude for an owner or operator to have only those publications or extracts from publications for the area(s) to be transited. The number of publications or extracts required to be on board is minimal, and should not be a burden to the owner or operator; and the publications or extracts do provide valuable port-specific information.

3. Proper Use of Navigational Equipment

Two comments recommended that the tug and barge industry adopt a system where three qualified watchstanders or operators are always on board. Two others also recommended that on all towing vessels, especially on those on oceangoing and coastwise transits, at least one crewmember be a licensed engineer. These are manning issues not within the scope of this rulemaking.

Three comments recommended that the licensing system be restructured

similar to that for vessels of unlimited tonnage, so that an individual would have to serve as a mate before becoming a master on tugs greater than 8 meters. Two other comments strongly recommended that training standards be incorporated either into the navigational sections of the final rule or into a new section in part 164. The Coast Guard has published an NPRM entitled, "Licensing and Manning for Officers of Towing Vessels" (61 FR 31332, June 19, 1996) and invites comments to that docket on these issues.

One comment recommended that, when in pilotage waters, all tank barges that are over a certain minimum (1,000 tons) and are subject to Federal jurisdiction have to be under the direction and control of a pilot holding a Federal license or pilotage endorsement for the waters being traversed. It further recommended that this requirement include the towing vessels propelling these barges. The placement of pilots in charge of barges and onboard tugs is another issue of manning not within the scope of this rulemaking.

4. Maintenance, Inspection, and Serviceability of Towlines and Terminal Gear

Two comments recommended that the responsibility for towing gear used in pushing ahead or towing alongside belong to just one party, the master or the operator. They stated that not making the master or the operator solely responsible might cause some decision between the owner and either the master or the operator, or result in no one's being responsible. The Coast Guard disagrees. As for vessels towing astern, for vessels towing alongside or pushing ahead the owner is included with the master or operator so that the responsibility is "several": Rests on each. If the owner and the master or operator are the same, then the responsibility rests on one individual. If a company owns a fleet, then it is appropriate that the company have adequate maintenance policies and appropriately empower the master or operator to ensure the requirements are met. In this way, all parties have a share of the responsibility for failing to meet the requirements—one for liability, either or both of the others for their licenses.

Two comments recommended that every owner of a towing vessel be required to have a prescribed Preventive Maintenance System (PMS) for all towing gear; this PMS should include maintenance and inspection schedules and a supply system that provides spare parts. In this final rule the Coast Guard has outlined minimum factors for proper maintenance. The owner should base each vessel's PMS on the owner's experience and expertise and on the manufacturers' recommendations and suggestions rather than use one prescribed by the Coast Guard.

Two comments recommended that this final rule direct the carriage aboard the towing vessel of manufacturers' maintenance requirements and wear specifications for towlines. The Coast Guard agrees with TSAC that the requirements and specifications can be located in a company office, at a repair facility, or on the vessel, and deems it appropriate to allow this flexibility.

Four comments recommended that the Coast Guard specify sizes for towing wires. Two recommended that it establish minimum standards to ensure that the size of the wire, the bollard pull of the tug, and the maneuverability of the tug and tow are properly matched. Two others recommended that § 164.74(a)(1) include graphs or tables to assist the master, owner, or operator in determining minimum breaking strength of a towline and that these graphs or tables be guidelines, not minimum standards. The Coast Guard has determined that manufacturers' published specifications should provide the owner, master, or operator with the information needed to properly determine a towline's strength and appropriate use. The towing industry is diverse, operating in many different environments. By not specifying sizes, the Coast Guard has provided a flexible format to allow companies to assess their operations and choose their towlines appropriately.

Two comments recommended that every towing vessel operating on oceans or coastwise be required to have an emergency tow wire and that this rule prescribe its maintenance and repair. The Coast Guard disagrees. 33 CFR part 155 already requires emergency towlines aboard large oil barges; but duplicate towlines now appear unnecessary aboard most barges, since the competent repair of most towlines, at sea, is feasible. By recognizing and dictating the minimum acceptable repair, § 164.74(a)(2) should avoid incompetent repair such as that which caused the grounding of the T/B MORRIS J. BERMAN and yet also avoid the costly alternative of requiring duplicate towlines.

One comment felt that it would be difficult, if not impossible, to keep records on towlines. Two recommended that the reference to "shock loading" in proposed § 164.74(a)(3)(iv)(C) be eliminated because the phenomenon is difficult to define or quantify. All three also asked whether this provision would require a monitor of tow-wire tension with data-recording capability. The Coast Guard has reviewed the recording requirements and, with the exception of that on shock loading, finds them to be reasonable and valuable for the assessment of the towline's history. It never intended to require monitors of tow-wire tension, and it has removed the reference to shock loading.

One comment recommended that § 164.74(a)(3)(iv)(G) be revised to read "Results of a tensile test taken to confirm the residual strength of the towline, if necessary." The comment noted that tensile testing is an integral component of towline inspection and maintenance. But an operator may just as well determine that a towline or segment of towline must be removed without conducting a tensile test: It should not be implied that a tensile test must be conducted in every instance. The Coast Guard concurs and, although it has not adopted the suggested wording, in this final rule has revised the proposed wording.

Two comments recommended that the Coast Guard clarify the applicability to terminal gear of § 164.74(b)(4), which would have required a method for emergency release of towlines. One stated that the final rule should clarify whether this wording applies to synthetic towlines or towlines employed without a winch and should also specify whether the winch-brake requirement of § 164.74(b)(7) will satisfy the requirement of paragraph (b)(4) for a tugboat outfitted with a tow winch. The Coast Guard has clarified the release requirement by removing the term "emergency." This requirement is intended to ensure some manner of safety disengaging the towline. If a vessel has a winch, letting the cable run off the drum will be acceptable. If a vessel uses synthetic line, an axe will be acceptable provided there is a protected area where the person can stand while releasing the line. The winch-brake requirement is separate from this releasing requirement: It ensures that winch speed can be controlled, even if power is lost.

Two comments recommended that the towing-gear standards be more stringent than proposed. They considered the wording in § 164,74 too ambiguous, especially the term "appropriate." They recommended that what is appropriate should be some standard such as the AWO Responsibile Carrier Program, the U.S. Navy Standards, or some manufacturers' recommendations. They urged that to be valid the final rule should incorporate specific standards by reference or spell them out. The Coast Guard has not made this rule more specific than proposed, because it applies to a diverse industry and because no current standards adequately address every towing-vessel arrangement. The Coast Guard has allowed the owners and operators the flexibility of developing their own maintenance standards. but has outlined specific, minimal criteria to ensure an irreducible measure of safety.

Six comments stated that the requirements for towlines and terminal gear in general were not appropriate for small assistance-towing vessels. Other comments objected in particular to requirements on thimbles, poured sockets, wire cables, shackles, and metal fittings, because these items could damage light boats and injure personnel aboard disabled vessels; on the use of cotter pins or other means to secure connections of terminal gear, because such items are unacceptable and even dangerous; and on testing towlines and maintaining elaborate records of towlines' history, because these items impose a disproportionate burden. The Coast Guard has determined that these requirements are not appropriate for most small assistance-towing vessels. It has amended the applicability of this final rule from vessels of 8 meters in length to vessels of 12 meters in length and over. It developed these requirements to ensure that towlines remain intact and attached during towing especially for those combinations of tugs and barges that pose greater risk to the waterways.

5. Navigation; Tests and Inspections; Maintenance, Failure, and Reporting

Two comments expressed the opinion that § 164.80 was not appropriate for small assistance-towing vessels, since applying the same criteria to a 1,600-gross-ton (GT) vessel as to an 8–GT vessel is not reasonable (least of all when the latter uses an outboard motor). The Coast Guard has determined that § 164.80 indeed should not apply to small assistance-towing vessels. It has amended the applicability of this rule from vessels 8 meters in length to vessels of 12 meters in length and over. This change exempts smaller assistance-towing vessels, yet covers larger assistance-towing vessels (also engaged in commercial towing), which pose greater risk to the waterways.

Three comments noted that proposed § 164.80 would have required vessel operators to inspect and test equipment before departure from port or at least weekly. They supposed that the intent was to compel routine, walk-through inspections of a towing vessel's vital systems before its embarking on an extended voyage. They contended that any periodic tests or inspections might fall mid-voyage while, in practice, all tests and inspections fall either upon embarkation or, by harbor tugs engaged in essentially continuous service, upon change of crew (weekly or biweekly). They asserted that industry practices are consistent with dictates of prudent navigation. The Coast Guard agrees, and has revised § 164.80 to ratify this frequency of tests and inspections.

Three comments expressed confusion over § 164.80(a)(2) due to the term "vessel-control alarms", which to them connoted autopilot or steering-system alarms. They stated that few towing vessels have either of these. They recommended either clarifying the meaning or changing the requirement to "vessel's installed alarm systems." The Coast Guard has kept the wording as proposed. If steering-system alarms or autopilot alarms are installed, it is appropriate to test them before departing from port; however, this final rule does not require installation of additional alarms.

One comment questioned whether § 164.80(b) should require that navigational equipment be checked by vessels under 1,600 GT. The Coast Guard did not propose to require this measure for towing vessels under 1,600 GT in the NPRM; however, it did state that this equipment must be operational. It is logical to include a test of this equipment for these vessels and it is consistent with the intent of the rulemaking. The Coast Guard has added a test of this equipment for towing vessels under 1,600 GT.

Two comments stated that proposed § 164.82 should be more stringent. One urge that § 164.82(d) have language strong enough to obligate a towing vessel's operator to moor or anchor the vessel if, in the operator's judgment, proceeding without radar would jeopardize the safety of the tow, of other vessels, or of the environment; at a minimum, a tow of environmentally hazardous cargoes should have to moor in hours of darkness when the towing vessel's radar is inoperative. One comment held that personnel who order a vessel to depart with a broken radar are ordering a "less seaworthy" vessel to go to sea and should be held responsible for doing so. The Coast Guard wrote this requirement to ensure that towing vessels' owners, operators, and masters address and correct equipment problems. But it is not necessarily unsafe to operate without a radar in some areas and weather. The operator or master certainly risks his or her license if he or she operates in poor weather, at night, or in congested traffic without an operable radar. Section 164.82 of this final rule outlines clearly that an owner as well as an operator or master must consider the conditions before leaving port or continuing a transit once equipment fails—one for avoiding liability and each of the others for keeping the license.

One comment raised the question whether the COTP really wanted to know if a small assistance-towing vessel's radar was inoperable in accordance with § 164.82(d). The Coast Guard has changed the applicability of this final rule so most assistance-towing vessels are exempt from the rule. Those 12 meters in length and over that also operate as commercial towing vessels remain subject to it, and should. The Coast Guard has reviewed the reporting requirements and values reports of defective radars on all towing vessels of 12 meters or more in length engaged in commercial towing.

Three comments recommend that § 164.82 include the option of telephoning the COTP and requesting a deviation for an inoperative radar. Section 164.82(c) of this final rule allows a phoned-in request for deviation; but, because of the legal nature of this type of request, it also requires a written follow-up.

One comment recommended keeping the words "Failure of redundant * * *" in § 164.82(d). The Coast Guard concurs and has kept them.

Two comments recommended inserting the words "after entering a port" behind "96 hours" in § 164.82(d) because it is probable that a radar would fail during a sea voyage and would be inoperative more than 96 hours before a technician could get aboard. The two also felt that such a requirement would create a burden because it would mean that the vessel has to request a deviation from each COTP as the vessel passes through the zones. Information of an inoperative radar is critical when a vessel is under way, and services of a technician should not be difficult to obtain, least of all in the zones; therefore, the Coast Guard has not amended this requirement from the NPRM.

One comment noted that, if this final rule applied to foreign-flag vessels towing in U.S. waters, it would mandate equipment not now required by treaty such as the International Convention for the Safety of Life at Sea 74/78 (SOLAS), as amended; the comment argued that to impose regulations as a requirement of port entry without agreement of the IMO would be inappropriate. The comment offered as an example the proposed requirement for an illuminated swing-meter or magnetic compass: It is

VOL 61 ISS 129 JL 3 1996 UMI

conceivable (though unlikely) that a foreign-flag towing vessel not subject to SOLAS would not have a compass. The Coast Guard has determined that it could not require less in this final rule without defaulting on its duty to protect the U.S. navigable waters from the risk posed by towing vessels. These vessels can seek from the COTP an exemption if they enter U.S. navigable waters without the required equipment. By requiring this equipment, the Coast Guard ensures that these vessels will be adequately equipped while operating in U.S. navigable waters or, at a minimum, that the COTP will be aware of their substandard state.

6. Logs

One comment recommended that the final rule require maintenance of more-comprehensive logbooks; the proposed rule would have authorized maintenance of a simple "diary", which the comment held insufficient because it could not prove that vessel personnel comply with the work-hour limitations of 46 U.S.C. 8104 and would not offer a comprehensive list of items to take account of. The same comment recommended that, because of the illiteracy of some operators, log books should have a minimal number of items that could be answered by initial, check-marks, or numbers rather than call for long, narrative paragraphs. The same comment recommended that § 164.78(b) be streamlined to require a log entry only when a pre-departure test or inspection indicated a failure or malfunction of a component; this approach would be consistent with industry practice and would minimize unnecessary paperwork. The Coast Guard considers it appropriate for companies to determine the method of recordkeeping that meets the requirements in this rule and their own needs and that suits the capability of the operators and masters they employ. (Again, manning and rest hours are not within the scope of this rule.) To ensure compliance with this rule, the Coast Guard requires a record of tests even if nothing fails. In the interest of minimizing these reports, the Coast Guard has not dictated the format of the entry and will allow companies to continue to use their established procedures.

One comment recommended that the local Officer in Charge of Marine Inspection (OCMI) be authorized to approve a company's individual safety-certification process in lieu of establishing a new and inflexible regime of logging and reporting for ensuring that vessels' systems, gear, and the like are inspected and tested. The Coast Guard has changed the language on inspecting and testing in this final rule to reflect companies' procedures. The Coast Guard sees no need for an OCMI's special approval of a company's individual process. However, the process must record at least the tests and inspections required by this rule.

A final comment recommended that retroreflective material be placed on both sides of barges to aid in seeing the barges, especially of a large tow. This is outside the scope of this rulemaking, but is under consideration by the Navigation Safety Advisory Council (NAVSAC). If found to be feasible, it may be the subject of a separate rulemking or of standard agreed to by government and industry.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 164.03 for incorporation by reference under 5 U.S.C. 552 and 1 CFR Part 51. The material is available as indicated in that section.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

A final Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES.** This final rule applies to all commercial towing vessels 12 meters or greater in length. An estimated 4,686 existing towing vessels currently operate on U.S. waters and are affected by this rule. The Coast Guard estimates that the one-time cost of implementing this rule is $28 million. Summaries of the comments to the NPRM on its regulatory evaluation, of the anticipated benefits of this final rule, and of the estimated cost of this rule follow:

Summary of Comments

Two comments held the statement "this rule would not result of a significant economic impact on a substantial number of small entities" entirely false. They noted that the cost to upgrade a marine-assistance vessel valued at $30,000 would be substantial. This rule in final form does not affect marine-assistance vessels; it affects only those vessels engaged in commercial towing. It applies to all of the latter vessels 12 meters (39.25 feet) or greater in length operating in U.S. waters. These vessels will have to retain manufacturing specifications on towlines and regularly maintain and inspect the towlines. They will have to carry updated charts or maps and publications, marine radar, and searchlights. Some (depending on service) will also have to carry magnetic compasses or swing-meters, depth-sounders, and electronic position-fixing devices.

Summary of Benefits

The principal benefits of this final rule will be to enhance the safety of navigation and reduce the risk of collisions, allisions, and groundings.

The allision in September, 1993, of a tow with a fixed railroad bridge near Mobile, Alabama, established the necessity of navigational-safety equipment for towing vessels. These navigational-safety measures will reduce damage to the human and natural environments by increasing the number of tools at the disposal of a vessel operator, thereby decreasing the likelihood of an accident.

The preliminary findings of studies prepared after the derailment of the Sunset Limited indicate that many owners and operators of towing vessels voluntarily equip their vessels with much of the proposed equipment here required. Review of the kind and amount of equipment voluntarily installed suggests the desirability of the industry's taking these measures. In addition, reliability and performance of modern navigational equipment has improved, which also suggests that mariners can have available to them, at falling cost, valued, accurate information. The benefits of each piece of equipment are as follows:

A marine surface-navigation radar is an essential piece of navigational-safety equipment. Not only does it aid in detecting and avoiding other vessels; it helps in constricted waterways and during periods of decreased visibility.

A searchlight also helps in restricted waterways, and is essential in checking the condition of tows and warning other vessels of the presence of towlines.

A magnetic compass indicates headings, which are critical to safe navigation of a vessel in open waters. It allows dead-reckoning in restricted visibility, enables the vessel to fix its position, helps the vessel to determine the effect of winds and currents, and tells the rate of turn for the tow.

A swing-meter, or rate-of-turn indicator, tells the rate of turn for the towing vessel itself, which is valuable for every vessel pushing ahead and is critical for every large, multiple-barge tow pushing ahead. TSAC has indicated the considerable value of this device to every vessel pushing ahead.

A depth-sounder decreases the risk of grounding. It provides immediate information on depth, and also helps fix the vessel's position.

An electronic position-fixing device has become a basic navigational tool on board both offshore and coastal vessels. It supplants plotting by traditional means, for which few towing vessels have either the time or the personnel.

Charts or maps, and publications, have always been a basic navigational tool. They give detailed, recent information on obstructions, routes, bridge clearances, communication channels, river currents, and hazards to navigation.

Finally, owners' and operators' retention of manufacturers' data on the breaking strength of towlines, together with minimal standards of inspection and serviceability, will help ensure that towlines remain intact throughout transits and are of the appropriate sizes or configurations. The desirability of keeping tugs made up to their barges appears self-evident.

All of these measures serve essentially the same purpose: to increase navigational safety for towing vessels and barges on U.S. waters. Although the Coast Guard recognizes that many prudent operators already practice them, this rule will codify them, provide basic performance standards for the equipment, and compel compliance for vessels not conforming to the sound practices of the majority of the industry.

The benefits from these measures are significant, but the Coast Guard cannot quantify them from available data.

Summary of Costs

The present value of the one-time costs to the towing industry of installing the required navigational equipment is, on a very conservative estimate, just under $28 million. This estimate is based on Coast Guard research. It assumes that a high proportion of vessels do not already carry the equipment, and does not factor in the difference in requirements for the difference in routes. Therefore, although it does not include costs for maintenance and repair, the Coast Guard expects that the actual value of the costs to the industry will run appreciably lower than $28 million.

The estimated one-time cost of towing vessels 20 meters (65.62 feet) or more in length totals $10.2 million; this comes to about $4,600 a vessel. That for those between 12 and 20 meters totals $17.4 million; this comes to about $7,000 a vessel. The average cost for smaller vessels, paradoxically, is higher than that for larger ones because the Coast Guard's estimating methodology assumes that a larger proportion of smaller vessels do not already carry the required navigational-safety equipment.

This final rule will impose recurring costs in following years. There will be three annual components of recurring costs: updates, deviations, and towline testing. (a) Estimated cost of updates is $468,000 a year for the purchase of new editions of charts or maps and publications as necessary. (b) Estimated costs of deviations is about $43,000 a year, assuming 1,072 of them a year. This number is low because the rule will allow 96 hours to make any necessary repairs. This is to decrease the burden on industry, especially on small entities. (c) Finally, estimated cost of towline testing is about $300 a test. At 937 tests a year (20 percent of vessels), this component will be $281,000 a year. These three annual components of recurring costs will total $792,000.

Small Entities

The costs to small entities will not be significant, because, unlike the proposed rule, this final rule exempts towing vessels of less than 12 meters in length, certain yard and fleeting craft, assistance-towing vessels, and pollution-response vessels; because of the large number of vessels already in compliance; and because of the phase-in periods for several provisions. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)'that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This final rule contains collection-of-information requirements in the following sections: 164.72(b), 164.74(a) 164.78(b), and 164.82(d). The following particulars apply:

DOT No.: 2115.

OMB Control No.: 2115–0628.

Administration: U.S. Coast Guard.

Title: Navigation Safety Equipment for Towing Vessels.

Need for Information: This final rule will require the mariner to log or otherwise record information necessary for the safe operation of the vessel, including (1) Updating navigational charts or maps and publications to ensure that they accurately reflect local conditions; (2) keeping documentation on the vessel's towline to verify its strength and recording regular inspections of it to ensure that it remains sound; (3) recording tests of the navigation and towing equipment to ensure that they are functioning properly; and (4) requesting a deviation from the COTP if the vessel's radar is inoperative to ensure that this essential equipment is repaired. These recordkeeping requirements are thoroughly consistent with good commercial practice and the dictates of good seamanship for safe navigation and maintenance of critical navigational-safety equipment.

Proposed Use of Information

The primary use of this information will be to ensure that the mariner records information necessary for the safe operation and maintenance of the vessel. The secondary use will be to help Coast Guard inspectors determine whether a vessel is in compliance or, in the case of a casualty, whether failure to comply with this final rule contributed to the casualty. The Coast Guard has no specific plan to collect these data for statistical analysis.

Frequency of Response: The various information called for by this final rule will be recorded at different intervals. Updates of charts or maps and publications under § 164.72(b) bill occur at least weekly. Towline verification will entail, for each towline, keeping a record of the initial manufacturing data indefinitely. Entries in inspection logs or other documentation for towlines under § 164.74(a) will entail recording at least monthly. The recording under § 164.78(b) of tests and inspection of equipment will be frequent, and consistent with the underway schedule of the vessel. Finally, the submittal of requests for deviations under § 164.82(d) should occur infrequently, only when certain navigational-safety equipment fails and remains inoperative for greater than 96 hours.

Burden Estimate: 302,663 hours.

Respondents: 4,686 owners, masters, or operators of towing vessels.

Average Burden Hours a respondent: 64.6 annual hours a respondent.

Persons need not respond to an information collection unless it displays a currently valid control number from

OMB. This final rule contains information collections that have been approved by OMB.

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 (October 26, 1987) and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federal Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under paragraphs 2.B.2.e(34) (d) and (e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 164

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways, Incorporation by reference.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 164 as follows:

PART 164—NAVIGATION SAFETY REGULATIONS

1. The authority citation for part 164 is revised to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. 2103, 3703; 49 CFR 1.46. Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.61 also issued under 46 U.S.C. 6101.

2. In § 164.01, paragraph (b) is added to read as follows:

§ 164.01 Applicability.

* * * * *

(b) Sections 164.70 through 164.82 of this part apply to each towing vessel of 12 meters (39.4 feet) or more in length operating in the navigable waters of the United States other than the St. Lawrence Seaway; except that a towing vessel is exempt from the requirements of § 164.72 if it is—

(1) Used solely within a limited geographic area, such as a fleeting-area for barges or a commercial facility, and used solely for restricted service, such as making up or breaking up larger tows;

(2) Used solely for assistance towing as defined by 46 CFR 10.103;

(3) Used solely for pollution response; or

(4) Any other vessel exempted by the Captain of the Port (COTP). The COTP, upon written request, may, in writing, exempt a vessel from § 164.72 for a specified route if he or she decides that exempting it would not allow its unsafe navigation under anticipated conditions.

3. Section 164.03 is amended by revising paragraph (b) to read as follows:

§ 164.03 Incorporation by reference.

* * * * *

(b) The materials approved for incorporation by reference in this part and the sections affected are as follows:

American Petroleum Institute (API), 1220 L Street NW., Washington, DC 20005
- API Specification 9A, Specification for Wire Rope, Section 3, Properties and Tests for Wire and Wire Rope, May 28, 1984 ..... 164.74

American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103
- ASTM D4268–93, Standard Test Method for Testing Fiber Ropes 164.74

Cordage Institute, 350 Lincoln Street, Hingham, MA 02043
- CIA–3, Standard Test Methods for Fiber Rope Including Standard Terminations, Revised, June 1980 ..... 164.74

International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR, U.K.
- IMO Resolution A342(IX), Recommendation on Performance Standards for Automatic Pilots, adopted November 12, 1975 ..... 164.13

International Telecommunication Union Radiocommunication Bureau (ITU–R), Place de Nations CH–1211 Geneva 20 Switzerland
- (1) ITU–R Recommendation M.821, Optional Expansion of the Digital Selective-Calling System for Use in the Maritime Mobile Service, 1992 .....
- (2) ITU–R Recommendation M.825, Characteristics of a Transponder System Using Digital Selective-Calling Techniques for Use with Vessel Traffic Services and Ship-to-Ship Identification, 1992 .....

Radio Technical Commission for Maritime Services, 655 Fifteenth Street, NW., Suite 300, Washington, DC 20005
- (1) RTCM Paper 12–78/DO–100, Minimum Performance Standards, Loran C Receiving Equipment, 1977 ..... 164.41
- (2) RTCM Paper 194–93/SC104–STD, RTCM Recommended Standards for Differential NAVSTAR GPS Service, Version 2.1, 1994 ... 164.43
- (3) RTCM Paper 71–95/SC112–STD, RTCM Recommended Standards for Marine Radar Equipment Installed on Ships of Less Than 300 Tons Gross Tonnage, Version 1.1, October 10, 1995 ..... 164.72
- (4) RTCM Paper 191–93/SC112–X, RTCM Recommended Standards for Maritime Radar Equipment Installed on Ships of 300 Tons Gross Tonnage and Upwards, Version 1.2, December 20, 1993 ..... 164.72

4. Sections 164.70, 164.72, 164.74, 164.76, 164.78, 164.80, and 164.82 added to read as follows:

§ 164.70 Definitions.

For purposes of §§ 164.72 through 164.82, the term—

Current edition means the most recent published version of a publication, chart, or map required by § 164.72.

Currently corrected edition means a current or previous edition of a publication required by § 164.72, corrected with changes that come from Notices to Mariners (NTMs) or Notices to Navigation reasonably available and that apply to the vessel's transit. Hand-annotated river maps from the U.S. Army Corps of Engineers (ACOE) are currently corrected editions if issued within the previous 5 years.

Great Lakes means the Great Lakes and their connecting and tributary waters including the Calumet River as far as the Thomas J. O'Brien Lock and Controlling Works (between miles 326 and 327), the Chicago River as far as the east side of the Ashland Avenue Bridge (between miles 321 and 322), and the Saint Lawrence River as far east as the lower exit of Saint Lambert Lock.

Swing-meter means an electronic or electric device that indicates the rate of turn of the vessel on board which it is installed. 164.43

Towing vessel means a commercial vessel engaged in or intending to engage in pulling, pushing or hauling alongside, or any combination of pulling, pushing, or hauling alongside.

Western Rivers means the Mississippi River, its tributaries, South Pass, and Southwest Pass, to the navigational-demarcation lines dividing the high seas from harbors, rivers, and other inland waters of the United States, and the Port Allen-Morgan City Alternative Route, and that part of the Atchafalaya River above its junction with the Port Allen-Morgan City Alternative Route 164.43

including the Old River and the Red River and those waters specified by §§ 89.25 and 89.27 of this chapter, and such other, similar waters as are designated by the COTP.

§ 164.72 Navigational-safety equipment, charts or maps, and publications required on towing vessels.

(a) Except as provided by § 164.01(b), each towing vessel must be equipped with the following navigational-safety equipment:

(1) *Marine Radar.* By August 2, 1997, a marine radar that meets the following applicable requirements:

(i) For a vessel of less than 300 tons gross tonnage that engages in towing on navigable waters of the U.S., including Western Rivers, the radar must meet—

(A) The requirements of the Federal Communications Commission (FCC) specified by 47 CFR part 80; and

(B) RTCM Standard for Marine Radar Equipment Installed on Ships of Less Than 300 Tons Gross Tonnage, RTCM Paper 71–95/SC112–STD, Version 1.1, display Category II and stabilization Category Bravo.

(ii) For a vessel of less than 300 tons gross tonnage that engages in towing seaward of navigable waters of the U.S. or more than three nautical miles from shore on the Great Lakes, the radar must meet—

(A) The requirements of the FCC specified by 47 CFR part 80; and

(B) RTCM Standard for Marine Radar Equipment Installed on Ships of Less Than 300 Tons Gross Tonnage, RTCM Paper 71–95/SC112–STD, Version 1.1, display Category I and stabilization Category Alpha.

(iii) For a vessel of 300 tons gross tonnage or more that engages in towing, the radar must meet RTCM Recommended Standards for Marine Radar Equipment Installed on Ships of 300 Tons Gross tonnage and Upwards, RTCM Paper 191–93/SC112–X, Version 1.2.

(iv) A vessel with an existing radar must meet the applicable requirements of paragraphs (a)(1) (i) through (iii) of this section by August 2, 1998; except that a vessel with an existing radar must meet the display and stabilization requirements of paragraph (a)(1)(ii)(B) of this section by August 2, 2001.

(2) *Searchlight.* A searchlight, directable from the vessel's main steering station and capable of illuminating objects at a distance of at least two times the length of the tow.

(3) *VHF–FM Radio.* An installation or multiple installations of VHF–FM radios as prescribed by part 26 of this chapter and 47 CFR part 80, to maintain a continuous listening watch on the designated calling channel, VHF–FM Channel 13 (except on portions of the Lower Mississippi River, where VHF–FM Channel 67 is the designated calling channel), and to separately monitor the International Distress and Calling Channel, VHF–FM Channel 16, except when transmitting or receiving traffic on other VHF–FM channels or when participating in a Vessel Traffic Service (VTS) or monitoring a channel of a VTS. (Each U.S. towing vessel of 26 feet (about 8 meters) or more in length, except a public vessel, must hold a ship-radio-station license for radio transmitters (including radar and EPIRBs), and each operator must hold a restricted operator's license or higher. To get an application for either license, call (800) 418–FORM or (202) 418–FORM, or write to the FCC; Wireless Bureau, Licensing Division; 1270 Fairfield Road; Gettysburg, PA 17325–7245.)

(4) *Magnetic Compass.* Either—

(i) An illuminated swing-meter or an illuminated car-type magnetic steering compass readable from the vessel's main steering station, if the vessel engages in towing exclusively on Western Rivers; or

(ii) An illuminated card-type magnetic steering compass readable from the vessel's main steering station.

(5) *Echo Depth-Sounding Device.* By August 2, 2001, an echo depth-sounding device readable from the vessel's main steering station, unless the vessel engages in towing exclusively on Western Rivers.

(6) *Electronic Position-Fixing Device.* An electronic position-fixing device, either a LORAN–C receiver or a satellite navigational system such as the Global Positioning System (GPS) as required by § 164.41, if the vessel engages in towing seaward of navigable waters of the U.S. or more than three nautical miles from shore on the Great Lakes.

(b) Each towing vessel must carry on board and maintain the following:

(1) *Charts or maps.* Marine charts or maps of the areas to be transited, published by the National Ocean Service (NOS), the ACOE, or a river authority that satisfy the following requirements:

(i) The charts or maps must be of a large enough scale and have enough detail to make safe navigation of the areas possible.

(ii) The charts or maps must be either—

(A) Current editions or currently corrected editions, if the vessel engages in towing exclusively on navigable waters of the U.S., including Western Rivers; or

(B) Currently corrected editions, if the vessel engages in towing seaward of navigable waters of the U.S. or more than three nautical miles from shore on the Great Lakes.

(iii) The charts or maps may be, instead of charts or maps required by paragraphs (b)(1) (i) and (ii) of this section, currently corrected marine charts or maps, or applicable extracts, published by a foreign government. These charts or maps, or applicable extracts, must contain information similar to that on the charts or maps required by paragraphs (b)(1) (i) and (ii) of this section, be of large enough scale, and have enough detail to make safe navigation of the areas possible, and must be currently corrected.

(3) *General publications.* A currently corrected edition of, or an applicable currently corrected extract from, each of the following publications for the area to be transited:

(i) If the vessel is engaged in towing exclusively on Western Rivers—

(A) U.S. Coast Guard Light List;

(B) Applicable Notices to Navigation published by the ACOE, or Local Notices to Mariners (LNMs) published by the Coast Guard, for the area to be transited, when available; and

(C) River-current tables published by the ACOE or a river authority, if available.

(ii) If the vessel is engaged other than in towing exclusively on Western Rivers—

(A) Coast Guard Light List;

(B) Notices to Mariners published by the Defense Mapping Agency, or LNMs published by the Coast Guard;

(C) Tidal-current tables published by the NOS, or river-current tables published by the ACOE or a river authority:

(D) Tide tables published by the NOS; and

(E) U.S. Coast Pilot.

(c) Table 164.72, following, summarizes the navigational-safety equipment, charts or maps, and publications required for towing vessels of 12 meters or more in length:

VOL 61 ISS 129 JL 3 1996 UMI

TABLE 164.72.—EQUIPMENT, CHARTS OR MAPS, AND PUBLICATIONS OF TOWING VESSELS OF 12 METERS OR MORE IN LENGTH

	Western rivers	U.S. navigable waters other than Western rivers	Waters seaward of navigable waters and 3 NM or more from shore on the Great Lakes
Marine Radar:			
Towing vessels of less than 300 GT.	RTCM Paper 71–95/SC112–STD Version 1.1, Display Category II[1] Stabilization Category BRAVO.	RTCM Paper 71–95/SC112–STD Version 1.1, Display Category II[1] Stabilization Category BRAVO.	RTCM Paper 71–95/SC112–STD Version 1.1, Display Category I[2] Stabilization Category ALPHA.
Towing vessels of 300 GT or more.	RTCM Paper 191–93/SC112–X Version 1.2.[1]	RTCM Paper 191–93/SC112–X Version 1.2.[1]	RTCM Paper 191–93/SC112–X Version 1.2.[1]
Searchlight	X	X	X.
VHF–FM radio	X	X	X.
Magnetic compass.	X[3]	X	X.
Swing-meter	X[3]		
Echo depth-sounding device.		X	X.
Electronic position-fixing device.			X.
Charts or maps	(1) Large enough scale (2) Current edition or currently corrected edition.	(1) Large enough scale (2) Current edition or currently corrected edition.	(1) Large enough scale. (2) Currently corrected edition.
General publications.	(1) U.S. Coast Guard Light List	(1) U.S. Coast Guard Light List	(1) U.S. Coast Guard Light List.
	(2) Notices to Navigation or Local Notice to Mariners.	(2) Local Notices to Mariners	(2) Local Notices to Mariners.
	(3) River-current Tables	(3) Tidal-current Tables (4) Tide Tables (5) U.S. Coast Pilot	(3) Tidal-current Tables. (4) Tide Tables. (5) U.S. Coast Pilot.

NOTES:
[1] Towing vessels with existing radar must meet this requirement by August 2, 1998.
[2] Towing vessels with existing radar must meet this requirement by August 2, 1998, but do not need to meet the display and stabilization requirement until August 2, 2001.
[3] A towing vessel may carry either a swing-meter or a magnetic compass.

§ 164.74 Towline and terminal gear for towing astern.

(a) *Towline.* The owner, master, or operator of each vessel towing astern shall ensure that the strength of each towline is adequate for its intended service, considering at least the following factors:

(1) The size and material of each towline must be—

(i) Appropriate for the horsepower or bollard pull of the vessel;

(ii) Appropriate for the static loads and dynamic loads expected during the intended service;

(iii) Appropriate for the sea conditions expected during the intended service;

(iv) Appropriate for exposure to the marine environment and to any chemicals used or carried on board the vessel;

(v) Appropriate for the temperatures of normal stowage and service on board the vessel;

(vi) Compatible with associated navigational-safety equipment; and

(vii) Appropriate for the likelihood of mechanical damage.

(2) Each towline as rigged must be—

(i) Free of knots;

(ii) Spliced with a thimble, or have a poured socket at its end; and

(iii) Free of wire clips except for temporary repair, for which the towline must have a thimble and either five wire clips or as many wire clips as the manufacturer specifies for the nominal diameter and construction of the towline, whichever is more.

(3) The condition of each towline must be monitored through the—

(i) Keeping on board the towing vessel or in company files of a record of the towline's initial minimum breaking strength as determined by the manufacturer, by a classification ("class") society authorized in § 157.04 of this chapter, or by a tensile test that meets API Specification 9A, Specification for Wire Rope, Section 3; ASTM D4268–93, Standard Test Method for Testing Fiber Ropes; or Cordage Institute CIA 3, Standard Test Methods for Fiber Rope Including Standard Terminations;

(ii) If the towline is purchased from another owner, master, or operator of a vessel with the intent to use it as a towline or if it is retested for any reason, keeping on board the towing vessel or in company files of a record of each retest of the towline's minimum breaking strength as determined by a class society authorized in § 157.04 of this chapter or by a tensile test that meets API Specification 9A, Section 3; ASTM D4268–93; or Cordage Institute CIA 3, Standard Test Methods;

(iii) Conducting visual inspections of the towline in accordance with the manufacturer's recommendations, or at least monthly, and whenever the serviceability of the towline is in doubt (the inspections being conducted by the owner, master, or operator, or by a person on whom the owner, master, or operator confers the responsibility to take corrective measures appropriate for the use of the towline);

(iv) Evaluating the serviceability of the whole towline or any part of the towline, and removing the whole or part from service either as recommended by the manufacturer or a class society authorized in § 157.04 of this chapter or in accordance with a replacement schedule developed by the owner, master, or operator that accounts for at least the—

(A) Nautical miles on, or time in service of, the towline;

(B) Operating conditions experienced by the towline;

(C) History of loading of the towline;

(D) Surface condition, including corrosion and discoloration, of the towline;

(E) Amount of visible damage to the towline;

(F) Amount of material deterioration indicated by measurements of diameter and, if applicable, measurements of lay extension of the towline; and

(G) Point at which a tensile test proves the minimum breaking strength of the towline inadequate by the standards of paragraph (a)(1) of this section, if necessary; and

(v) Keeping on board the towing vessel or in company files of a record of the material condition of the towline when inspected under paragraphs (a)(3)(iii) and (iv) of this section. Once this record lapses for three months or more, except when a vessel is laid up or out of service or has not deployed its towline, the owner, master, or operator shall retest the towline or remove it from service.

(b) *Terminal gear.* The owner, master, or operator of each vessel towing astern shall ensure that the gear used to control, protect, and connect each towline meets the following criteria:

(1) The material and size of the terminal gear are appropriate for the strength and anticipated loading of the towline and for the environment;

(2) Each connection is secured by at least one nut with at least one cotter pin or other means of preventing its failure;

(3) The lead of the towline is appropriate to prevent sharp bends in the towline from fairlead blocks, chocks, or tackle;

(4) There is provided a method, whether mechanical or non-mechanical, that does not endanger operating personnel but that easily releases the towline;

(5) The towline is protected from abrasion or chafing by chafing gear, lagging, or other means;

(6) Except on board a vessel towing in ice on Western Rivers or one using a towline of synthetic or natural fiber, there is fitted a winch that evenly spools and tightly winds the towline; and

(7) If a winch is fitted, there is attached to the main drum a brake that has holding power appropriate for the horsepower or bollard pull of the vessel and can be operated without power to the winch.

§ 164.76 Towline and terminal gear for towing alongside and pushing ahead.

The owner, master, or operator of each vessel towing alongside or pushing ahead shall ensure that the face wires, spring lines, and push gear used—

(a) Are appropriate for the vessel's horsepower;

(b) Are appropriate for the arrangement of the tow;

(c) Are frequently inspected; and

(d) Remain serviceable.

§ 164.78 Navigation under way: Towing vessels.

(a) The owner, master, or operator of each vessel towing shall ensure that each person directing and controlling the movement of the vessel—

(1) Understands the arrangement of the tow and the effects of maneuvering on the vessel towing and on the vessel, barge, or object being towed;

(2) Can fix the position of the vessel using installed navigational equipment, aids to navigation, geographic reference-points, and hydrographic contours;

(3) Does not fix the position of the vessel using buoys alone (Buoys are aids to navigation placed in approximate positions either to alert mariners to hazards to navigation or to indicate the orientation of a channel. They may not maintain exact charted positions, because strong or varying currents, heavy seas, ice, and collisions with vessels can move or sink them or set them adrift. Although they may corroborate a position fixed by other means, they cannot fix a position; however, if no other aids are available, buoys alone may establish an estimated position.);

(4) Evaluates the danger of each closing visual or radar contact;

(5) Knows and applies the variation and deviation, where a magnetic compass is fitted and where charts or maps have enough detail to enable this type of correction;

(6) Knows the speed and direction of the current, set, drift, and tidal state for the area to be transited; and

(7) Proceeds at a speed prudent for the weather, visibility, traffic density, tow draft, possibility of wake damage, speed of the current, and local speed-limits.

(b) The owner, master, or operator of each vessel towing shall ensure that the tests and inspections required by § 164.80 are conducted and that the results are entered in the log or other record carried on board.

§ 164.80 Tests and inspections.

(a) The owner, master, or operator of each towing vessel of less than 1,600 GT shall ensure that the following tests and inspections of gear occur before the vessel embarks on a voyage of more than 24 hours or when each new master or operator assumes command:

(1) *Steering-systems.* A test of the steering-gear-control system; a test of the main steering gear from the alternative power supply, if installed; a verification of the rudder-angle indicator relative to the actual position of the rudder; and a visual inspection of the steering gear and its linkage.

(2) *Navigational equipment.* A test of all installed navigational equipment.

(3) *Communications.* Operation of all internal vessel control communications and vessel-control alarms, if installed.

(4) *Lights.* Operation of all navigational lights and all searchlights.

(5) *Terminal gear.* Visual inspection of tackle; of connections of bridle and towing pendant, if applicable; of chafing gear; and of the winch brake, if installed.

(6) *Propulsion systems.* Visual inspection of the spaces for main propulsion machinery, of machinery, and of devices for monitoring machinery.

(b) The owner, master, or operator of each towing vessel of 1,600 GT or more shall ensure that the following tests of equipment occur at the frequency required by § 164.25 and that the following inspections of gear occur before the vessel embarks on a voyage of more than 24 hours or when each new master or operator assumes command:

(1) *Navigational equipment.* Tests of onboard equipment as required by § 164.25.

(2) *Terminal gear.* Visual inspection of tackle; of connections of bridle and towing pendant, if applicable; of chafing gear; and of the winch brake, if installed.

§ 164.82 Maintenance, failure, and reporting.

(a) *Maintenance.* The owner, master, or operator of each towing vessel shall maintain operative the navigational-safety equipment required by § 164.72.

(b) *Failure.* If any of the navigational-safety equipment required by § 164.72 fails during a voyage, the owner, master, or operator of the towing vessel shall exercise due diligence to repair it at the earliest practicable time. He or she shall enter its failure in the log or other record carried on board. The failure of equipment, in itself, does not constitute a violation of this rule; nor does it constitute unseaworthiness; nor does it obligate an owner, master, or operator to moor or anchor the vessel. However, the owner, master, or operator shall consider the state of the equipment—along with such factors as weather, visibility, traffic, and the dictates of good seamanship—in deciding whether it is safe for the vessel to proceed.

(c) *Reporting.* The owner, master, or operator of each towing vessel whose

VOL
61
ISS
129
JL
3
1996
UMI

equipment is inoperative or otherwise impaired while the vessel is operating within a Vessel Traffic Service (VTS) Area shall report the fact as required by 33 CFR 161.124. (33 CFR 161.124 requires that each user of a VTS report to the Vessel Traffic Center as soon as practicable:

(1) Any absence or malfunction of vessel-operating equipment for navigational safety, such as propulsion machinery, steering gear, radar, gyrocompass, echo depth-sounding or other sounding device, automatic dependent surveillance equipment, or navigational lighting;

(2) Any condition on board the vessel likely to impair navigation, such as shortage of personnel or lack of current nautical charts or maps, or publications; and

(3) Any characteristics of the vessel that affect or restrict the maneuverability of the vessel, such as arrangement of cargo, trim, loaded condition, under-keel clearance, and speed.)

(d) *Deviation and authorization.* The owner, master, or operator of each towing vessel unable to repair within 96 hours an inoperative marine radar required by § 164.72(a) shall so notify the Captain of the Port (COTP) and shall seek from the COTP both a deviation from the requirements of this section and an authorization for continued operation in the area to be transited. Failure of redundant navigational-safety equipment, including but not limited to failure of one of two installed radars, where each satisfies § 164.72(a), does not necessitate either a deviation or an authorization.

(1) The initial notice and request for a deviation and an authorization may be spoken, but the request must also be written. The written request must explain why immediate repair is impracticable, and state when and by whom the repair will be made.

(2) The COTP, upon receiving even a spoken request, may grant a deviation and an authorization from any of the provisions of §§ 164.70 through 164.82 for a specified time if he or she decides that they would not impair the safe navigation of the vessel under anticipated conditions.

Dated: June 26, 1996.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Marine Safety and Environmental Protection.

[FR Doc. 96–16892 Filed 7–2–96; 8:45 am]

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federal register

Wednesday
July 3, 1996

Part IX

The President

Presidential Determination No. 96–36—Delegation of Authority To Identify Germany Under Title VII and Modify or Restrict Title VII Trade Action Taken Against Germany

VOL
61
ISS
129
JL
3
1996
UMI

Federal Register
Vol. 61, No. 129
Wednesday, July 3, 1996

Presidential Documents

Title 3—

The President

Presidential Determination No. 96-36 of June 28, 1996

Delegation of Authority To Identify Germany Under Title VII and Modify or Restrict Title VII Trade Action Taken Against Germany

Memorandum for the United States Trade Representative

By the authority vested in me by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to the United States Trade Representative the powers granted the President:

(1) in section 305(g)(1)(A) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515(g)(1)(A) (the "Act")), to formally identify Germany as a country that discriminates against U.S. products or services in government procurement of heavy electrical equipment; and

(2) in section 305(g)(2) of the Act to impose, modify, or restrict sanctions in response to the discrimination so identified.You are authorized and directed to publish this memorandum in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, June 28, 1996.

[FR Doc. 96–17241
Filed 7–2–96; 11:40 am]
Billing code 3190–01–P

VOL
61

ISS
129

JL
3

1996

UMI

federal register

Wednesday
July 3, 1996

Part X

Office of the United States Trade Representative

Determination Under Section 305 of the Trade Agreements Act of 1979; Notice

VOL
61
ISS
129
JL
3
1996
UMI

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Under Section 305 of the Trade Agreements Act of 1979

AGENCY: Office of the United States Trade Representative.

ACTION: Determination Under Section 305 of the Trade Agreements Act of 1979.

Pursuant to section 305(g)(1) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515(g)(1)(A)), and the authority vested in me by the President pursuant to Presidential Determination 96–36, I hereby identify Germany as a country that maintains in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses. Pursuant to section 305(g)(2) of the Trade Agreements Act of 1979, as amended, on behalf of the President, I hereby determine that immediate imposition of the sanctions specified in section 305(g)(1)(B) of the Act would harm the public interest of the United States, and accordingly postpone imposition of those sanctions so that they will take effect September 30, 1996.

Reasons for a Determination

On April 30, 1996, in the Administration's annual report to the Congress under Title VII of the Omnibus Trade and Competitiveness Act of 1988 (section 305 of the Trade Agreements Act of 1979, as amended), the Administration identified Germany for discrimination in the procurement of heavy electrical equipment. Specifically cited was the failure of Germany to implement the provisions of the 1993 U.S.-European Union (EU) Memorandum of Understanding on Government Procurement (MOU), which requires Germany, among other things, to give U.S. suppliers access to an effective remedies system.

If the 60-day period of consultations specified in the statute is not successful in resolving U.S. concerns, the President is required to make this determination. Although the United States held consultations with the Commission of the European Communities, representing Germany, to address the practices cited in the Title VII report, U.S. concerns have not yet been addressed by Germany in a satisfactory manner. Therefore, pursuant to the requirements of the statute, I have determined to identify Germany. However, in light of progress in these consultations, I am postponing implementation of the sanctions until September 30, 1996, to provide an opportunity to resolve remaining U.S. concerns by then.

This determination shall be published in the **Federal Register**.

Ambassador Charlene Barshefsky,

Acting United States Trade Representative.

[FR Doc. 96–17240 Filed 7–2–96; 11:33 am]

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Reader Aids

Federal Register

Vol. 61, No. 129

Wednesday, July 3, 1996

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FEDERAL REGISTER PAGES AND DATES, JULY

33825–34366	1
34367–34712	2
34713–35082	3

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Presidential Determinations:

No. 96–36 of June 28, 1996 35075

5 CFR

530 34713
531 34713
534 34713
550 34713
575 34713
581 34713
582 34713
630 34713

7 CFR

400 34367
868 34714
1493 33825

Proposed Rules:

300 34379
319 34379
1240 34385

9 CFR

112 33840
113 33840

Proposed Rules:

1 34386
3 ..... 34386, 34389
11 34747
391 34747

12 CFR

324 33842

Proposed Rules:

207 33874
218 34749
220 33874
221 33874
250 34749
327 34751

14 CFR

1 34508
25 34716
29 33963
39 ..... 33874, 34368, 34718
61 34508
71 ..... 33843 33844, 33845, 34720, 34721, 34722, 34723
91 34508
121 ..... 34508, 34927
125 34508
135 ..... 34508, 34927
141 34508
142 34508
211 34724
213 34724

Proposed Rules:

25 35056
39 34767
71 ..... 34391, 34393, 34394, 34395, 34396, 34397, 34398, 34769

15 CFR

902 ..... 34570, 34930, 34966

Proposed Rules:

922 33876

19 CFR

10 33845
12 33845
102 33845
134 33845

21 CFR

177 34370
178 33846
452 34726
520 34727
522 34727
529 34727
558 34727

24 CFR

203 35024
206 35014

25 CFR

10 34371

Proposed Rules:

21 33876
45 34399
152 34400

28 CFR

42 34729

Proposed Rules:

31 34770

29 CFR

Ch. XXVI 34002
Ch. XL 34002
2509 33847
2520 33847
2550 33847

Proposed Rules:

Ch. XIV 34405

30 CFR

256 34730

33 CFR

164 35064
334 34732

Proposed Rules:

154 34775
155 34775

35 CFR

1 33850

VOL
61
ISS
129
JL
3
1996
UMI

Proposed Rules:
1.....33878

40 CFR
9.....33851, 34202
55.....34202
63.....34140
70.....34733
71.....34202
180.....34739, 34741
257.....34253
261.....34252
271.....34252

Proposed Rules:
80.....34775
81.....33879
90.....34778
260.....33881
261.....33881
262.....33881
264.....33881
268.....33881
269.....33881
271.....33881

42 CFR

Proposed Rules:
410.....34614
415.....34614

44 CFR
65.....33852, 33854
67.....33856

Proposed Rules:
67.....33882

46 CFR
111.....34927

47 CFR
20.....33859
22.....34375
24.....33850
36.....34375
73.....34368, 34743, 34744
90.....34375

Proposed Rules:
Ch. I.....34405
73.....34406, 34407, 34784, 34785
76.....34408, 34409

49 CFR
1.....34745
233.....33871
235.....33871
236.....33871
571.....33891

Proposed Rules:
1.....33886
8.....33886
192.....34410, 34413
195.....34410, 34413

50 CFR
622.....34930
625.....34966
630.....34746
638.....34930
641.....34930
642.....34785
645.....34930
646.....34930
647.....34930
648.....34966
650.....34966
651.....34966
652.....34966
653.....34930
655.....34966
657.....34966
658.....34930
659.....34930
660.....34570
661.....34570
663.....34570
669.....34930
670.....34930
679.....34377
680.....34570
681.....34570
683.....34570
685.....34570
697.....34746

Proposed Rules:
642.....34785

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Atlantic swordfish; correction; published 7-3-96

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Pentaerythritol stearates; published 7-3-96
Potassium citrate; published 7-3-96

INTERIOR DEPARTMENT
Indian Affairs Bureau
Delaware Indians of Western Oklahoma, Delaware Indians, and Indians of San Pasqual Band; membership rolls; CFR parts removed; published 6-3-96

TRANSPORTATION DEPARTMENT
Organization, functions, and authority delegations:
Commandant, Coast Guard; published 7-3-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
McDonnell Douglas; published 5-29-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Agricultural commodities; U.S. grade standards and other selected regulations; removal from CFR; Federal regulatory reform; comment period extension; comments due by 7-9-96; published 3-11-96
Limes grown in Florida and imported; comments due by 7-8-96; published 6-26-96

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Horses; importation permit applications and health certificate requirements; comments due by 7-9-96; published 5-10-96

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
Texas citrus fruit crop; comments due by 7-8-96; published 6-5-96

ARMS CONTROL AND DISARMAMENT AGENCY
Freedom of Information Act; implementation; comments due by 7-8-96; published 5-30-96

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish; comments due by 7-8-96; published 6-12-96
Gulf of Mexico reef fish; comments due by 7-8-96; published 5-14-96
National Weather Service; modernization criteria; comments due by 7-8-96; published 6-6-96

COMMODITY FUTURES TRADING COMMISSION
Contract markets:
Trading cards and trading records; correction of erroneous information; procedures; comments due by 7-8-96; published 6-6-96

CONSUMER PRODUCT SAFETY COMMISSION
Consumer Product Safety Act:
Multi-purpose lighters; child-resistance standard; rulemaking petition; comments due by 7-8-96; published 5-7-96

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric utilities (Federal Power Act):
Open access same-time information system (formerly real-time information networks) and standards of conduct for public utilities
Conference cancellation, etc.; comments due by 7-8-96; published 6-18-96

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Radon emissions from phosphogypsum stacks; comments due by 7-8-96; published 5-8-96
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 7-12-96; published 6-12-96
Tennessee; comments due by 7-12-96; published 6-12-96
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Washington; comments due by 7-8-96; published 6-11-96
Wisconsin; comments due by 7-11-96; published 6-11-96
Air quality planning purposes; designation of areas:
Idaho; correction; comments due by 7-12-96; published 6-12-96
Clean Air Act:
Acid rain provisions--
Direct sale elimination and independent power producers written guarantee program; comments due by 7-8-96; published 6-6-96
Direct sale elimination and independent power producers written guarantee program; comments due by 7-8-96; published 6-6-96
Drinking water:
National primary drinking water regulations--
Lead and copper; comments due by 7-11-96; published 4-12-96

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Telecommunications Act of 1996; implementation--
Local competition provisions; comments due by 7-8-96; published 7-2-96
Radio stations; table of assignments:
Texas; comments due by 7-8-96; published 5-23-96
Television broadcasting:
Digital broadcast television licensees; digital television standard requirement; comments due by 7-11-96; published 5-29-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare and Medicaid:
Essential access community hospitals; designation criteria for rural hospitals; comments due by 7-12-96; published 5-13-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Public Health Service
Interstate shipment of etiologic agents:
Facilities transferring or receiving select infectious agents; additional requirements; comments due by 7-10-96; published 6-10-96

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Mortgage and loan insurance programs:
Home equity conversion mortgage insurance demonstration; use of direct endorsement program; comments due by 7-9-96; published 5-10-96

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Federal regulatory review:
Permanent program and abandoned mine land reclamation plan submissions; comments due by 7-8-96; published 5-8-96
Permanent program and abandoned mine land reclamation plan submissions:
Ohio; comments due by 7-11-96; published 6-11-96
Virginia; comments due by 7-11-96; published 6-11-96

JUSTICE DEPARTMENT
Federal Bureau of Investigation
Communications Assistance for Law Enforcement Act of 1994; cost recovery regulations; comments due by 7-9-96; published 5-10-96

JUSTICE DEPARTMENT
Civil Liberties Act redress provisions:

VOL
61
ISS
129
JL
3
1996
UMI

Persons of Japanese ancestry
Individuals who relocated to Japan as minors during World War II; guidelines; comments due by 7-12-96; published 6-12-96
LABOR DEPARTMENT
Occupational Safety and Health Administration
Shipyard employment safety and health standards:
Fire Protection in Shipyard Employment Negotiated Rulemaking Advisory Committee; meeting; comments due by 7-8-96; published 6-6-96
LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright licenses:
subscription digital transmissions; notice and recordkeeping; comments due by 7-12-96; published 5-13-96
SECURITIES AND EXCHANGE COMMISSION
Securities, etc.:
Independent Offices Appropriations Act fees; elimination; comments due by 7-8-96; published 5-22-96
TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
New York; comments due by 7-12-96; published 5-13-96
Ports and waterways safety:
San Diego Bay, CA; security zone; comments due by 7-8-96; published 5-23-96
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operations:
Omnibus Transportation Employee Testing Act of 1991--
Preemployment alcohol testing requirements; comments due by 7-8-96; published 5-9-96
Airworthiness directives:
Beech; comments due by 7-8-96; published 5-30-96
Boeing; comments due by 7-8-96; published 5-9-96
Learjet; comments due by 7-8-96; published 5-30-96
McDonnell Douglas; comments due by 7-8-96; published 5-9-96
New Piper Aircraft, Inc.; comments due by 7-8-96; published 5-3-96
Airworthiness Directives:
New Piper Aircraft, Inc.; comments due by 7-8-96; published 5-3-96
Class E airspace; comments due by 7-8-96; published 5-22-96
TRANSPORTATION DEPARTMENT
Federal Highway Administration
Motor carrier safety standards:
Omnibus Transportation Employee Testing Act of 1991--
Preemployment alcohol testing requirements; comments due by 7-8-96; published 5-9-96
TRANSPORTATION DEPARTMENT
Federal Railroad Administration
Omnibus Transportation Employee Testing Act of 1991:
Preemployment alcohol testing requirements; comments due by 7-8-96; published 5-9-96
Rail passenger equipment safety standards; comments due by 7-9-96; published 6-17-96
TRANSPORTATION DEPARTMENT
Federal Transit Administration
Omnibus Transportation Employee Testing Act of 1991:
Preemployment alcohol testing requirements; comments due by 7-8-96; published 5-9-96
TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Fuel economy program, automotive; semi-annual reports; comments due by 7-12-96; published 5-13-96
VETERANS AFFAIRS DEPARTMENT
Disabilities rating schedule:
Fibromyalgia; comments due by 7-8-96; published 5-7-96

LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 3029/P.L. 104–151

To designate the United States courthouse in Washington, District of Columbia, as the "E. Barrett Prettyman United States Courthouse". (July 1, 1996; 110 Stat. 1383)

Last List June 5, 1996

Microfiche Editions Available...

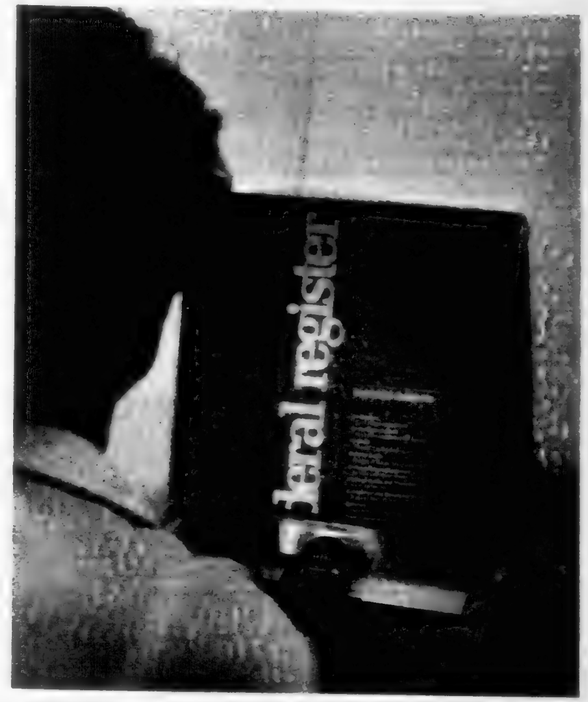

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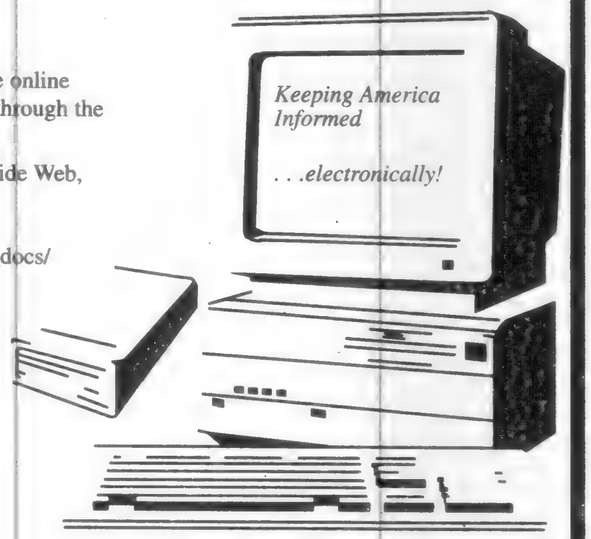

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61
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VOL
61
ISS
130
JL
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7–5–96
Vol. 61 No. 130
Pages 35083–35588

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Friday
July 5, 1996

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VOL
61
ISS
130
JL
5
1996
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Contents

Federal Register
Vol. 61, No. 130
Friday, July 5, 1996

Agricultural Marketing Service
RULES
Potatoes (Irish) grown in—
Washington, 35109–35111

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Food and Consumer Service
See Food Safety and Inspection Service

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Karnal bunt disease—
Arizona et al., 35107–35109
Compensation, 35102–35107

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Thompson Corp. et. al., 35250–35265

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Broadcasting Board of Governors
NOTICES
Meetings; Sunshine Act; 35176

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
State pregnancy and pediatric nutrition surveillance systems; demonstration sites, 35217–35219
Organization, functions, and authority delegations:
National Center for HIV, STD, and TB Prevention (NCHSTP), 35219–35228

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Residential energy assistance challenge option (REACH) program, 35518–35546

Civil Rights Commission
NOTICES
Meetings; State advisory committees
Hawaii, 35176
Meetings; Sunshine Act, 35177

Coast Guard
RULES
Federal regulatory reform:
Inspected and uninspected commercial vessels industry standards
Correction, 35138
Ports and waterways safety:
Delaware Bay and Delaware River, PA; safety zone, 35132–35133
East River, NY; safety zone, 35130–35132

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 35176

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 35195

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Dupont Pharmaceuticals, 35265
Research Triangle Institute, 35265–35266
Stepan Co., 35266

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 35195
Grants and cooperative agreements; availability, etc.:
School-to-work and urban/rural opportunities programs, 35582–35584
Meetings:
Rehabilitation Act of 1973; reauthorization, 35195–35197

Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
School-to-work and urban/rural opportunities programs, 35582–35584

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 35266–35269

Energy Department
See Federal Energy Regulatory Commission
See Southwestern Power Administration
RULES
Administrative procedures and sanctions and Hearings and Appeals Office procedural regulations; Federal regulatory reform, 35112–35114
Conflict of interests, 35085–35088
Oil; and energy conservation:
Administrative procedures and sanctions; and annual reports from States and nonregulated utilities on ratemaking progress, etc.; Federal regulatory reform, 35114–35115

VOL
61
ISS
130
JL
5
1996
UMI

NOTICES
Grant and cooperative agreement awards:
South Carolina Energy Research and Development Center, 35197–35198
Meetings:
Secretary of Energy Advisory Board, 35198

Environmental Protection Agency
RULES
Air programs; fuels and fuel additives:
Deposit control gasoline additives; certification standards, 35310–35381
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 35137–35138
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Weekly receipts, 35210–35211

Executive Office of the President
See Management and Budget Office
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 35122–35125
Boeing, 35126–35129
Class E airspace; correction, 35307
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 35296
Exemption petitions; summary and disposition, 35296–35299
Weather observation service standards; policy statement; correction, 35307

Federal Communications Commission
RULES
Radio stations; table of assignments:
Georgia, 35139
NOTICES
Meetings:
1997 World Radiocommunication Conference Industry Committee (WRC-97 Advisory Committee), 35211

Federal Deposit Insurance Corporation
RULES
Contractors suspension and exclusion and contracts termination, 35115–35122

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
New York State Electric & Gas Corp. et al., 35202–35204
Niagara Mohawk Power Corp. et al., 35204–35207
Environmental statements; availability, etc.:
Hydro Matrix Partnership, Ltd., 35207–35208
Northern Border Pipeline Co. et al., 35208–35209
Applications, hearings, determinations, etc.:
Alabama-Tennessee Natural Gas Co., 35198–35199
Cenerprise Inc., 35199
Cleveland Electric Illuminating Co., 35199
El Paso Natural Gas Co., 35199–35200
Koch Gateway Pipeline Co., 35200
Maverick County Water Control and Improvement District No. 1, 35200–35201
NE HUB Partners, L.P., 35201
New York State Electric & Gas Corp., 35201
Southern Natural Gas Co., 35201–35202
South Georgia Natural Gas Co., 35201
Williams Natural Gas Co., 35202

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
King County, WA, 35299–35300
Sarpy County et al., NE, 35300
Grants and cooperative agreements; availability, etc.:
Commercial vehicle information systems and networks (CVISN) model deployment program, 35300–35305
Surveying and mapping services; private sector utilization; comment request, 35305

Federal Labor Relations Authority
NOTICES
Amicus curiae briefs in representation proceedings pending before FLRA; opportunity to present, 35211–35214

Federal Maritime Commission
NOTICES
Agreements filed, etc., 35214
Freight forwarder licenses:
Air Cargo Expediters Inc. et al., 35214

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 35215
Formations, acquisitions, and mergers, 35215–35216
Permissible nonbanking activities, 35216

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 35216–35217

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 35305–35306

Food and Consumer Service
PROPOSED RULES
Child nutrition programs:
National school lunch, school breakfast, child and adult care food, and summer food service programs—
Meat alternates, 35152–35157

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
New drug applications—
Ceftiofur, 35129–35130
NOTICES
Food additive petitions:
Asahi Denka Kogyo K.K.; withdrawn, 35228–35229
Ciba-Geigy Corp., 35229
Microbio Resources, Inc.; withdrawn, 35229
Meetings:
Advisory committees, panels, etc., 35229–35231

Food Safety and Inspection Service
PROPOSED RULES
Meat and poultry inspection:
Public Health Hazard Analysis Board; bone particles and foreign material in meat and poultry products; report availability, 35157–35158

Foreign Claims Settlement Commission
NOTICES
Meetings; Sunshine Act, 35266

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Substance Abuse and Mental Health Services Administration

Health Care Financing Administration
RULES
Medicare and Medicaid:
Provider appeals; technical amendments
Correction, 35307
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 35231–35232

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request; correction, 35307
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 35234–35244

Immigration and Naturalization Service
RULES
Nationality:
Citizenship acquisition; equal treatment of women in conferring citizenship on children born abroad, 35111–35112

Indian Affairs Bureau
PROPOSED RULES
Land and water:
Irrigation projects and systems, 35167–35172
Law and order:
Courts of Indian Offenses and law and order code, 35158–35163
Indian country law enforcement, 35163–35167
NOTICES
Liquor and tobacco sale or distribution ordinance:
Sac and Fox Nation, OK, 35244–35247

Interior Department
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Reclamation Bureau

International Trade Administration
NOTICES
Antidumping:
Polyethylene terephthalate film, sheet, and strip from—
Korea, 35177–35188
Welded carbon steel pipe and tube from—
Turkey, 35188–35193
Applications, hearings, determinations, etc.:
Duke University Medical Center, 35193

Justice Department
See Antitrust Division
See Drug Enforcement Administration
See Foreign Claims Settlement Commission
See Immigration and Naturalization Service

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Survey plat filings:
Nevada, 35248

Management and Budget Office
NOTICES
North American Industry Classification System development; comment request, 35384–35515

Minerals Management Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 35248–35249

Mine Safety and Health Administration
NOTICES
Meetings:
Pneumoconiosis Elimination Among Coal Mine Workers Advisory Committee, 35269

National Labor Relations Board
PROPOSED RULES
Summary judgment motions and advisory opinions; Federal regulatory review, 35172–35174

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeast multispecies, 35142–35143
Ocean salmon off coasts of Washington, Oregon, and California, 35144–35145
Pacific Coast groundfish, 35143–35144
Western Pacific crustacean, 35145–35151
International fisheries regulations:
International fisheries in U.S. Exclusive Economic Zone and on high seas; regulations consolidation, 35548–35580
PROPOSED RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 35174–35175
NOTICES
Grants and cooperative agreements; availability, etc.:
National sea grant Federal fellows program, 35193–35194
Permits:
Foreign fishing, 35194–35195

VOL 61 ISS 130 JL 5 1996 UMI

National Park Service
RULES
National Park System:
Protection of wildlife and other values and purposes on all navigable waters within park boundaries, regardless of ownership of submerged lands, 35133–35137

National Science Foundation
NOTICES
Meetings:
Biological Sciences Advisory Committee, 35269
Chemical and Transport Systems Special Emphasis Panel, 35269
Civil and Mechanical Systems Special Emphasis Panel, 35269–35270
Human Resource Development Special Emphasis Panel, 35270
Research, Evaluation and Communication Special Emphasis Panel, 35270
Undergraduate Education Special Emphasis Panel, 35270

National Skill Standards Board
NOTICES
Meetings, 35271

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 35271

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 35271–35272
Submission for OMB review; comment request, 35272
Applications, hearings, determinations, etc.:
Tennessee Valley Authority, 35272

Office of Management and Budget
See Management and Budget Office

Personnel Management Office
RULES
Political activities, Federal employees; 1993 Hatch Act Reform Amendments; permitted and prohibited activities, 35088–35102
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 35272–35273

Presidential Documents
PROCLAMATIONS
State of emergency, declaration and release of feed grain from the disaster reserve (Proc. 6907), 35083
Special observances:
Unity, a National Month of (Proc. 6908), 35587

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration

Reclamation Bureau
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 35249–35250

Research and Special Programs Administration
RULES
Pipeline safety:
Gas pipeline safety standards, Federal regulatory reform Correction, 35139

Securities and Exchange Commission
NOTICES
Meetings:
Consumer Affairs Advisory Committee, 35281
Self-regulatory organizations:
Clearing agency registration applications—MBS Clearing Corp., 35281–35282
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 35282–35284
National Association of Securities Dealers, Inc., 35284–35289
National Securities Clearing Corp. et al., 35289–35291
Philadelphia Depository Co. et al., 35291–35292
Philadelphia Depository Trust Co., 35292–35294
Philadelphia Stock Exchange, Inc., 35294–35295
Applications, hearings, determinations, etc.:
American Corporate Trust, 35273
BEA Investment Funds, Inc., 35273–35274
Public utility holding company filings, 35274–35275
Royce Capital Trust et al., 35275–35280
Sherman, Dean Fund, Inc., 35280–35281

Social Security Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 35295–35296

Southwestern Power Administration
NOTICES
Power rates:
Robert D. Willis Project, 35209–35210

Substance Abuse and Mental Health Services Administration
NOTICES
Federal agency urine drug testing; certified laboratories meeting minimum standards, list, 35232–35233

Surface Transportation Board
RULES
Carriage rates and service terms;
Pipeline common carriage; disclosure and notice of rates and other service terms, 35139–35141
Carrier rates and service terms:
Rail common carriage; disclosure, publication, and notice of change of rates and other service terms, 35141–35142

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department
See Fiscal Service

Separate Parts In This Issue

Part II
Environmental Protection Agency, 35310–35381

Part III
Office of Management and Budget, 35384–35515

Part IV
Health and Human Services Department, Children and Families Administration, 35518–35546

Part V
Commerce Department, National Oceanic and Atmospheric Administration, 35548–35580

Part VI
Labor Department, Employment Training Administration, 35582–35584

Part VII
The President, 35587

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

VOL 61 ISS 130 JL 5 1996 UMI

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
36907 35083
6908 35587

5 CFR
734 35088
Ch. XXIII 35085

7 CFR
301 (2 documents) 35102, 35107
946 35109
Proposed Rules:
210 35152
220 35152
225 35152
226 35152

8 CFR
301 35111

9 CFR
Proposed Rules:
319 35157
381 35157

10 CFR
205 (2 documents) 35112, 35114
463 35114
1003 35112
1010 35085

12 CFR
367 35115

14 CFR
39 (3 documents) 35122, 35126, 35127
71 35307

15 CFR
902 (2 documents) 35145, 35548

21 CFR
522 35129

25 CFR
Proposed Rules:
11 35158
12 35163
171 35167

29 CFR
Proposed Rules:
101 35172
102 35172

33 CFR
165 (2 documents) 35130, 35132

36 CFR
1 35133
13 35133

40 CFR
80 35310
300 (2 documents) 35137

42 CFR
405 35307
417 35307
431 35307
473 35307
498 35307

46 CFR
76 35138
167 35138

47 CFR
73 35139

49 CFR
192 35139
1300 35139
1305 35141

50 CFR
245 35548
280 35548
281 35548
282 35548
298 35548
299 35548
Ch. III 35548
648 35142
660 (2 documents) 35143, 35144
679 35548
681 35145
695 35548
Proposed Rules:
679 35174

Federal Register
Vol. 61, No. 130
Friday, July 5, 1996

Presidential Documents

Title 3—

The President

Proclamation 6907 of July 1, 1996

Declaration of a State of Emergency and Release of Feed Grain From the Disaster Reserve

By the President of the United States of America

A Proclamation

WHEREAS, an extended drought and other natural disasters in feed grain-producing areas of the United States have caused significant reductions in feed grain supplies and severe hardship to livestock producers;

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 *et seq.*) and section 813 of the Agricultural Act of 1970 (7 U.S.C. 1427a) (the "Act"), do hereby find and proclaim that the extended drought in the Southwest and other natural disasters in other feed grain areas of the United States have resulted in a state of emergency and that the state of emergency warrants the release of the reserve established pursuant to section 813(a) of the Act (7 U.S.C. 1427a(a)). Accordingly, I hereby declare that such amounts of the reserve as determined necessary by the Secretary of Agriculture ("the Secretary") should be disposed of by the Secretary as authorized by the Act.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of July, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 96–17327
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VOL
61
ISS
130
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1996
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Rules and Regulations

Federal Register
Vol. 61, No. 130
Friday, July 5, 1996

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DEPARTMENT OF ENERGY

5 CFR Chapter XXIII

10 CFR Part 1010

RINs 1990–AA04, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of Energy

AGENCY: Department of Energy (DOE).

ACTION: Interim final rule with invitation for comments.

SUMMARY: The Department of Energy, with the concurrence of the Office of Government Ethics (OGE), is issuing a regulation for employees of DOE that supplements the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. This interim rule is a necessary supplement to the Standards because it addresses ethical issues unique to DOE. The supplemental regulation requires DOE employees to seek approval from management prior to engaging in certain outside activities. The supplemental regulation also requires employees to document recusals in writing. DOE is also revising its residual standards regulation in its own CFR title and adding a cross-reference to the new provisions.

DATES: These regulations take effect July 5, 1996. Comments must be received on or before September 3, 1996.

ADDRESSES: All comments concerning these regulations should be addressed to Susan Beard (Deputy Assistant General Counsel for Standards of Conduct), Office of the Assistant General Counsel for General Law, GC–80, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Susan Beard (Deputy Assistant General Counsel for Standards of Conduct), Office of the Assistant General Counsel for General Law, GC–80, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, telephone 202–586–1522.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published the Standards of Ethical Conduct for Employees of the Executive Branch. See 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52583, and 60 FR 51667, with additional grace period extensions at 59 FR 4779–4780, 60 FR 6390–6391 and 60 FR 66857–66858. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, establish uniform standards of ethical conduct applicable to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive agencies to publish agency-specific supplemental regulations that are necessary to implement an agency's ethics program. DOE, with OGE's concurrence, has determined that the following supplemental rules, being codified in new chapter XXIII of 5 CFR, consisting of part 3301, are necessary for successful implementation of DOE's ethics program.

II. Analysis of the Regulations

Section 3301.101 General

Section 3301.101 explains that the regulations contained in the interim rule apply to all employees of the Department of Energy, with the exception of employees of the Federal Energy Regulatory Commission, and are supplemental to the uniform executive branch standards at 5 CFR part 2635. The Federal Energy Regulatory Commission was established as part of DOE by sections 204 and 401 of the Department of Energy Organization Act (Pub. L. 95–91, codified at 42 U.S.C. 7134 & 7171). Section 401(d) of that Act specifies that employees of the Federal Energy Regulatory Commission shall not be subject to supervision or direction of any officer, employee, or agent of any other part of DOE. Accordingly, employees of the Federal Energy Regulatory Commission are not subject to these regulations.

This section also notes that DOE employees are subject to the executive branch financial disclosure regulations at 5 CFR part 2634, and additional rules of conduct published in 5 CFR part 735 and DOE's Conduct of Employees Regulation at 10 CFR part 1010. In addition, this section contains definitions of the terms used in this part. "Agency designee" is defined as an employee's immediate supervisor. This supplement to the definition of this term at 5 CFR 2635.102(b) is needed so that DOE employees know how to contact their agency designee. This section also defines the term "counselor," a term that has historically been used at DOE, to identify the persons primarily responsible for providing counseling on ethics and standards of conduct matters.

Section 3301.102 Procedure for Accomplishing Disqualification

Section 3301.102 of the interim rule supplements the Standards for disqualification contained in 5 CFR part 2635 by requiring written notice of employee disqualifications under 5 CFR 2635.402(c), 2635.502(e) and 2635.604. In the past, it has been DOE's practice to require a written notice of employee disqualification. DOE has determined that it is necessary to the success of its ethics program to continue its procedures for written notice of employee disqualification. DOE recognizes the problems noted by the Office of Government Ethics in adopting a requirement for written notice of disqualification on an executive branch-wide basis. See 57 FR 35024. It is not DOE's purpose to impose an overly technical requirement that would result in disciplining an employee for failure to provide written notice by some arbitrary deadline. Thus, the notice requirement imposed by this regulation is phrased to give an employee flexibility in determining precisely when the employee will give notice of disqualification from a matter to which the employee has been assigned. Notice is to be given when the employee determines that he or she will not participate in the matter. In no way does the notice requirement affect the employee's obligation not to participate in the matter.

Section 3301.103 Prior Approval for Outside Employment

The Standards, at 5 CFR 2635.803, recognize that individual agencies may find it necessary or desirable to

VOL 61 ISS 130 JL 5 1996 UMI

supplement the executive branch-wide regulations with a requirement that their employees obtain approval prior to engaging in outside activities. Pursuant to 10 CFR 1010.204, which is being repealed in this rulemaking document, the Department of Energy has long required employees, other than special Government employees, to provide written notification, and in some cases, to obtain written permission before engaging in certain outside activities or employment. The Department has found this requirement useful in ensuring that employees' outside activities conform to all applicable laws and regulations, and, in accordance with 5 CFR 2635.803, has determined that it is necessary to the administration of its ethics program to require any employee of DOE who wants to engage in outside employment to obtain prior approval of such activity from the employee's supervisor and the counselor.

Accordingly, new § 3301.103(a) imposes a requirement on employees to obtain written approval from their immediate supervisors before engaging in such activities, and describes what must be contained in the approval form. To ensure that this provision is not itself construed as authority to deny permission to engage in any outside activity, § 3301.103(b) specifies that approval will be granted unless the activity is expected to involve conduct prohibited by statute or regulation. Section 3301.103(c) defines outside "employment" to include any non-Federal employment involving the provision of personal services by the employee.

III. Repeal and Revision of Department of Energy Conduct of Employees Regulations

On November 30, 1993, the National Defense Authorization Act for Fiscal Year 1994 was enacted. Pub. L. 103–160, sec. 3161. That statute repealed certain statutory conflict-of-interest provisions applicable to DOE employees. On February 10, 1996, the National Defense Authorization Act for Fiscal Year 1996 was enacted. Public Law 104–106. That statute repealed the remaining statutory conflict-of-interest provisions that were unique to DOE. Accordingly, DOE is repealing the regulatory provisions in 10 CFR part 1010 implementing the repealed statutory provisions. This repeal also applies to those provisions of part 1010 that were applicable to the Federal Energy Regulatory Commission (FERC). The FERC is an independent regulatory commission within the DOE and, to an extent, is subject to DOE rulemaking authority. 42 U.S.C. §§ 7134, 7171, & 7254. The FERC has agreed to DOE's repeal of this provision, and FERC has indicated its intention to publish its own supplemental regulations pursuant to its own regulatory authority.

Because much of the remainder of 10 CFR part 1010, DOE's Conduct of Employees regulation, is largely superseded by new chapter XXIII of title 5, as added by this rulemaking, and the provisions of 5 CFR part 2635, DOE is herewith amending part 1010 to remove the existing provisions, with the exception of the provisions concerning reporting fraud, waste, abuse, and corruption, cooperation with the Inspector General, and the conflict of interest waiver for widely diversified mutual funds. The latter provision will only remain in effect until the Office of Government Ethics publishes final regulations on 18 U.S.C. 208 (at which time DOE will repeal the residual waiver provision at § 1010.105). A new cross-reference provision is also being added to part 1010 to refer to the executive branch-wide Standards and financial disclosure regulation as well as the new DOE supplemental standards regulation.

Section 1010.101 General

Section 1010.101 explains that these regulations apply to DOE employees, excluding employees of the Federal Energy Regulatory Commission.

Section 1010.102 Cross Reference to Employee Ethical Conduct Standards and Financial Disclosure Regulations

Section 1010.102 provides cross-references to the executive branch-wide Standards at 5 CFR part 2635, to DOE's new supplemental regulation at 5 CFR part 3301, to the executive branch financial disclosure regulation at 5 CFR part 2634, and to the executive branch-wide employee responsibilities and conduct regulation at 5 CFR part 735.

Section 1010.103 Reporting Fraud, Waste, Abuse, and Corruption

Section 1010.103 assists employees in adhering to the general principle of ethical conduct at 5 CFR 2635.101(b)(11), under which an employee shall disclose waste, fraud, abuse, and corruption to appropriate authorities. It identifies the Department's Office of Inspector General as an authority to which it would be appropriate for an employee to disclose waste, fraud, abuse, and corruption. In addition, this section institutes a procedure by which appropriate authorities within the Department who receive such allegations that involve the ethical restrictions cross-referenced in § 1010.102 of this part shall refer those allegations to the designated agency ethics official or his delegatee, or the Inspector General.

Section 1010.104 Cooperation with the Inspector General

This section requires employees to cooperate with official inquiries. Section 2(1) & (2) of the Inspector General Act, 5 U.S.C. app. sec. 2, provides that the Inspector General shall be responsible for conducting investigative activities relating to the promotion of economy and efficiency in the administration of, or the detection and prevention of fraud and abuse in, programs and operations of the Department. This regulation is intended to facilitate such activities and those activities provided for in section 6 of the Inspector General Act, including accessing materials and information with respect to agency programs and operations.

Section 1010.105 Conflict of Interest Waiver

This section grandfathers an existing exemption to the prohibition of 5 CFR 2635.402(a). It exempts ownership of stock in a widely diversified mutual fund or other regulated investment company that in turn owns stock in, or bonds of, another enterprise. This provision will be repealed by DOE when the Office of Government Ethics publishes its final regulation on 18 U.S.C. 208.

IV. Matters of Regulatory Procedure

Review Under Executive Order 12866

Today's regulatory action has been determined by the Department of Energy not to be a "significant regulatory action" under Executive order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive order by the Office of Information and Regulatory Affairs.

Review Under the Regulatory Flexibility Act

Pursuant to section 605 of the Regulatory Flexibility Act (Pub. L. 96–354), it is hereby certified that the interim final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Act. It is related solely to internal agency organization, management, or personnel.

Review Under the National Environmental Policy Act

This rule revises DOE's regulations on standards of conduct. It will not change the environmental effects of the regulations being amended. The Department has therefore determined that the rule is covered under the Categorical Exclusion found at paragraph A.5 of appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings interpreting or amending an existing rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

Review Under the Paperwork Reduction Act

This interim final rule does not impose a "collection of information" requirement, as defined in 44 U.S.C. 3502(4).

Review Under Executive Order 12988

Section 3 of Executive order 12988 on Civil Justice Reform, 61 FR 4729 (February 7, 1996), instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in section 3(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that regulation describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. The Department has determined that today's regulatory action meets the requirements of sections 3(a) and (b) of Executive order 12988.

Administrative Procedure Act

Since these interim final regulations relate to agency management and personnel, they are exempt from notice and comment rulemaking requirements under the Administrative Procedure Act. 5 U.S.C. § 553(a). Accordingly, DOE is neither giving prior notice nor providing for a 30-day hiatus between the date of publication and the date the regulations take effect. However, DOE will consider public comments made within 60 days after the publication of this interim final rule.

Congressional Notification

The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress on the promulgation of certain final rules prior to their effective dates. 5 U.S.C. 801. That reporting requirement does not apply to the interim final rule in this notice because it falls within a statutory exception for rules relating to agency management personnel. 5 U.S.C. 804(3)(B).

List of Subjects

5 CFR Part 3301

Conflict of interests, Government employees, Energy Department, Standards of conduct.

10 CFR Part 1010

Conflicts of interest, Government employees, Energy Department, Standards of conduct.

Issued in Washington, DC, June 28, 1996.

Robert R. Nordhaus,

General Counsel, Department of Energy.

Approved: June 28, 1996.

F. Gary Davis,

Deputy Director, Office of Government Ethics.

For the reasons set forth in the preamble, title 5 and chapter X of title 10 of the Code of Federal Regulations are amended as follows:

TITLE 5—[AMENDED]

1. A new chapter XXIII, consisting of part 3301, is added to title 5 of the Code of Federal Regulations to read as follows:

5 CFR Chapter XXIII—Department of Energy

PART 3301—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF ENERGY

Sec.

3301.101 General.
3301.102 Procedure for accomplishing disqualification.
3301.103 Prior approval for outside employment.

Authority: 5 U.S.C. 301, 7301; 5 U.S.C. App. (Ethics in Government Act); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.402(c), 2635.502(e), 2635.604, 2635.802, 2635.803.

§ 3301.101 General.

(a) *Purpose.* The regulations in this part apply to employees of the Department of Energy (DOE), excluding employees of the Federal Energy Regulatory Commission, and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. DOE employees are also subject to the regulations on financial disclosure contained in 5 CFR part 2634, and to additional regulations on responsibilities and conduct at 5 CFR part 735, and DOE specific provisions contained in 10 CFR part 1010.

(b) *Definitions.* Unless a term is otherwise defined in this part, the definitions set forth in 5 CFR part 2635 apply to terms used in this part. In addition, for purposes of this part:

Agency designee, as used also in 5 CFR part 2635, means the employee's immediate supervisor and, for purposes of the approval required by § 3301.103(a), includes the Counselor.

Counselor means the DOE's designated agency ethics official or his delegates.

§ 3301.102 Procedure for accomplishing disqualification.

(a) *Disqualifying financial interests.* A DOE employee who is required, in accordance with 5 CFR 2635.402(c), to disqualify himself from participation in a particular matter to which he has been assigned shall, notwithstanding the guidance in 5 CFR 2635.402(c)(1) and

VOL 61 ISS 130 JL 5 1996 UMI

(2), provide written notice of disqualification to his supervisor and counselor upon determining that he will not participate in the matter.

(b) *Disqualification to ensure impartiality.* A DOE employee who is required, in accordance with 5 CFR 2635.502(e), to disqualify himself from participation in a particular matter involving specific parties to which he has been assigned shall, notwithstanding the guidance in 5 CFR 2635.502(e)(1) and (2), provide written notice of disqualification to his supervisor and counselor upon determining that he will not participate in the matter.

(c) *Disqualification from matter effecting prospective employers.* A DOE employee who is required, in accordance with 5 CFR 2635.604(a), to disqualify himself from participation in a particular matter to which he has been assigned shall, notwithstanding the guidance in 5 CFR 2635.604(b) and (c), provide written notice of disqualification to his supervisor and counselor upon determining that he will not participate in the matter.

(d) *Withdrawal of notification.* A DOE employee may withdraw written notice under paragraphs (a), (b), or (c) of this section upon deciding that disqualification from participation in the matter is no longer required. A withdrawal of notification shall be in writing and provided to the employee's supervisor and counselor.

§ 3301.103 Prior approval for outside employment.

(a) *Prior approval requirement.* Before engaging in any outside employment, whether or not for compensation, an employee, other than a special Government employee, must obtain written approval of his immediate supervisor and the Counselor. Requests for approval shall include the name of the person, group or organization for whom the work is to be performed; the type of work to be performed; and the proposed hours of work and approximate dates of employment.

(b) *Standard for approval.* Approval shall be granted unless there is a determination that the outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(c) *Definition of employment.* For purposes of this section, "employment" means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes but is not limited to personal services as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, employee, advisor, or teacher. It does not include participating in the activities of a nonprofit, charitable, religious, public service or civic organization, unless such activities involve the provision of professional services or are for compensation.

TITLE 10—ENERGY

Chapter X—Department of Energy (General Provisions)

2. 10 CFR part 1010 is revised to read as follows:

PART 1010—CONDUCT OF EMPLOYEES

Sec.
1010.101 General.
1010.102 Cross-reference to employee ethical conduct standards and financial disclosure regulations.
1010.103 Reporting wrongdoing.
1010.104 Cooperation with the Inspector General.
1010.105 Conflict of interest waiver.

Authority: 5 U.S.C. 301, 303; 5 U.S.C. App. (Inspector General Act of 1978); 18 U.S.C. 208; and E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

§ 1010.101 General.

This part applies to employees of the Department of Energy (DOE), excluding employees of the Federal Energy Regulatory Commission.

§ 1010.102 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Employees of DOE are subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the DOE regulation at 5 CFR part 3301 which supplements the executive branch-wide standards, the executive branch-wide financial disclosure regulations at 5 CFR part 2634, and the executive branch-wide employee responsibilities and conduct regulation at 5 CFR part 735.

§ 1010.103 Reporting wrongdoing.

(a) Employees shall, in fulfilling the obligation of 5 CFR 2635.101(b)(11), report fraud, waste, abuse, and corruption in DOE programs, including on the part of DOE employees, contractors, subcontractors, grantees, or other recipients of DOE financial assistance, to the Office of Inspector General or other appropriate Federal authority.

(b) All alleged violations of the ethical restrictions described in section 1010.102 that are reported in accordance with (a) of this section to an appropriate authority within the Department shall in turn be referred by that authority to the designated agency ethics official or his delegatee, or the Inspector General.

§ 1010.104 Cooperation with the Inspector General.

Employees shall respond to questions truthfully under oath when required, whether orally or in writing, and must provide documents and other materials concerning matters of official interest. An employee is not required to respond to such official inquiries if answers or testimony may subject the employee to criminal prosecution.

§ 1010.105 Conflict of interest waiver.

If a financial interest arises from ownership by an employee, or other person or enterprise referred to in 5 CFR 2635.402(b)(2), of stock in a widely diversified mutual fund or other regulated investment company that in turn owns stock in, or bonds of, another enterprise, that financial interest is exempt from the prohibition of 5 CFR 2635.402(a).

[FR Doc. 96–17115 Filed 7–3–96; 8:45 am]
BILLING CODE 6450–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 734

RIN 3206–AH33

Political Activities of Federal Employees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations regarding the political activity of Federal employees. These regulations will inform Federal employees of the political activities which are permitted and prohibited under the Hatch Act Reform Amendments of 1993. Covered employees also should refer to OPM's interim regulations as part 733, published in the **Federal Register** in the February 4, 1994 edition, which specifically address political activities connected with local elections in designated communities.

EFFECTIVE DATE: August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Chabot at (202) 606–1700.

SUPPLEMENTARY INFORMATION: On October 6, 1993, the President signed the Hatch Act Reform Amendments of 1993. The Reform Amendments became effective on February 3, 1994 and OPM has the authority to issue regulations under the Reform Amendments. On September 23, 1994, OPM issued interim regulations with a request for comments at part 734 concerning the political activities that generally are permitted and prohibited to Federal employees. OPM received comments from nine Federal agencies, two Federal employee labor organizations, and an individual before the comment period closed on November 22, 1994. OPM's observations about the comments follow the numerical order of the regulations starting at subpart A and ending with subpart G.

Comment on Supplementary Information Preceding the OPM Interim Regulations

One Federal agency commented that the supplementary information preceding OPM's interim regulations requires clarification of the language which makes it appear that § 734.208 applies exclusively to Federal employees who belong to a Federal employee labor organization. The agency noted that the language of § 734.208 clearly shows that the requirement of belonging to a Federal employee labor organization, or other Federal employee organization, applies only to the fundraising activities described in § 734.208(b)(4). OPM agrees. Every employee who is covered under subparts B and C of part 734 may participate in the activities described in § 734.208 (a) and (b) (1) through (3). The activities described in § 734.208(b)(4) are limited to members of the Federal employee labor organizations and Federal employee organizations that meet the requirements of 5 U.S.C. 7323(a)(2) and 5 CFR 734.103. Sections 734.404(c)–(d) and 734.410 describe permitted and prohibited fundraising activities for employees covered under subpart D.

Subpart A—General Provisions

Section 734.101 of the interim regulations provides definitions for certain terms used throughout the regulations. The regulations define "accept" and "receive" as the acts of accepting or receiving something from a person officially on behalf of a candidate, a campaign, a political party, or a partisan political group. One Federal agency and one Federal employee labor organization commented that the language from the supplementary material preceding the interim regulations which noted that "ministerial activities preceding or following the official acceptance and receipt are not covered under the definitions" should be added to the definitions. OPM agrees that adding such language to the definitions of "accept" and "received" clarifies the definitions and has made the suggested changes.

OPM also received two comments on the definition of "on duty" in § 734.101. A Federal agency commented that the definition should contain language from the supplementary material preceding the interim regulations noting that it is not appropriate to grant excused absence (administrative leave) to participate in political activities. This agency also noted that the definition should note that it is not appropriate to request sick leave in order to participate in political activity. While OPM has the authority to regulate a covered employee's partisan political activity, the granting of excused absence is a matter of agency discretion. However, an agency's decision to grant excused absences for the purposes of engaging in partisan political activities or partisan political management would not be appropriate. Indeed, granting excused absences solely for the purposes of participation in partisan political activities might be a violation of the prohibitions against use of official authority or influence to interfere with or affect the results of an election. In addition, 5 U.S.C. 6307 and OPM's regulations at 5 CFR 630.401 prescribe the conditions under which an employee may use sick leave. It is not appropriate to permit the use of sick leave to participate in partisan political activities. Sick leave should be granted only under the conditions prescribed by 5 U.S.C. 6307 and 5 CFR 630.401.

Citing *Bureau of Alcohol, Tobacco and Firearms* v. *Federal Labor Relations Authority*, 464 U.S. 89, 105 (1983), a Federal employee labor organization commented that the definition of "on duty" should exclude "official time" given to employees who are labor organizations officials because employees on "official time" are not considered to be in duty status, except for purposes of being paid. Thus, the labor organization noted that, as a matter of statutory construction, official time is simply not time "on duty." The Supreme Court concluded in this decision that Federal employees who negotiate on behalf of a labor organization are not conducting official business on behalf of the Government. However, the Supreme Court reached this conclusion for the limited purpose of determining whether Federal employees who represent their labor unions in collective bargaining with agencies are entitled to reimbursement from the Government for travel and per diem expenses.

Citing *National Federation of Federal Employees and U.S. Department of Veterans Affairs*, 47 FLRA 1118, 1124, (1993) (*NFFE*) and *American Federation of Government Employees and U.S. Department of Labor*, 39 FLRA 546, 553 (1991), (*AFGE*), the labor organization also noted that the Federal Labor Relations Authority (FLRA) has sanctioned the use of official time for union representatives to lobby Congress concerning working conditions. *NFFE* concerned a collective bargaining proposal to authorize the use of a reasonable amount of time as official time under 5 U.S.C. 7131(d) to lobby members of Congress in support of or opposition to pending or desired legislation which would affect the working conditions of employees represented by the union. The FLRA found that 5 U.S.C. 7102 contemplates that employees will express their views to Congress through their exclusive representative, and specifically grants employees functioning as labor representatives the right to present the views of the labor organization to Congress. It also found that the proposal concerned labor-management relations activities for which official time is authorized under section 7131(d). Although the FLRA concluded that the proposal was negotiable under section 7131(d), the FLRA reached its decision within the context of petitioning Congress regarding nonpartisan issues that generally affect employees' working conditions. It did not determine whether these statutory provisions also provide for official time to participate in partisan political activities on behalf of individuals who are candidates for partisan political office.

AFGE concerns an agency denial of an employee's request to use an agency automobile and to use official time for travel to and from a hearing regarding his claim for workers' compensation. The FLRA held that 5 U.S.C. 7131(d) did not preclude the parties in the case from agreeing to provide for official time in circumstances unrelated to labor-management relations activities, provided that granting such official time was consistent with the statute and other applicable laws and regulations. The FLRA cited attendance at hearings before the Equal Employment Opportunity Commission and responding to discovery requests in cases before the Merit Systems Protection Board as examples of circumstances unrelated to labor-management relations activities where use of official time might be authorized. Thus, this decision clearly was made

VOL 61 ISS 130 JL 5 1996 UMI

within the context of prehearing for and appearing at administrative hearings on behalf of employees, and does not address the use of official time to participate actively in partisan political activities.

The Federal Service Labor-Management Relations Statute (Labor Statute), at 5 U.S.C. 7101(a)(1)(A) provides that statutory protection of employee rights to organize, bargain collectively, and participate through labor organizations in decisions which affect them safeguard the public interest. It also provides at section 7102 that employees who represent labor organizations are entitled to present labor organization views to Congress in connection with matters regarding conditions of employment. However, none of the provisions in chapter 71 of title 5, United States Code, concern participation in partisan political activities.

The Hatch Act Reform Amendments of 1993, enacted subsequent to the Labor Statute, specifically address participation in partisan political activities and permit Federal employees to participate actively in most of the partisan political activities that previously had been prohibited to these employees under the original Hatch Act. In return for the opportunity for wider political participation, the Reform Amendments specifically prohibit Federal employees from engaging in *any* partisan political activities basically while on duty or on Federal premises.

The intent of Congress in enacting the Reform Amendments, a statute specifically intended to govern the partisan political activities of Federal employees, controls the previously enacted provisions on labor-management, at 5 U.S.C. Chapter 71, which clearly do not permit Federal employees to participate in partisan political activities while they are on duty or on Federal premises, and do not even address participation in partisan political activities. In contrast, the Reform Amendments, at 5 U.S.C. 7324(a), specifically prohibit most Federal employees from such participation and provide for only one exemption from the prohibition. The Reform Amendments, at 5 U.S.C. 7324(b), exempt employees whose official duties and responsibilities continue outside normal duty hours and while away from the normal duty post, and who are (1) paid from an appropriation for the Executive Office of the President, or (2) appointed by the President, by and with the advice and consent of the Senate, to positions that are located within the United States and involve determinations of policy to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws. If Congress had intended to exempt other employees from the prohibition, Congress clearly would have provided for such exemptions in the statute itself.

In addressing the question of whether the Reform Amendments prohibit Federal employees from making voluntary salary allotments to political action committees, an opinion issued by the Office of Legal Counsel at the Department of Justice to the Office of Personnel Management on February 22, 1995, also discussed at length the prohibitions against partisan political participation on duty or on Federal premises, and Congressional intent in enacting it. The opinion stated:

> It is evident from the statements of the (Reform Amendments') leading sponsors that Congress intended to create a bright-line rule, with no exceptions: Section 7324(a) prohibits covered employees from engaging in *all* on-duty and on-site political activity. As the principal Senate sponsor of the bill states, on-the-job political activity "would be absolutely and unequivocally prohibited." 139 Cong. Rec. S8605 (daily ed. July 13, 1993) (statement of Senator Glenn). Thus, for example Congress intended to prohibit the wearing of political buttons on duty. Nor can covered employees stuff envelopes with political materials or send out campaign materials while they are on the job or in a federal building—such activities are permitted only off-site and "off the job."

Thus, Congress clearly intended to prohibit partisan political participation on duty, and on Federal premises, and exempted only one category of employees from these prohibitions. Consequently, for the purposes of the Reform Amendments, OPM cannot define "on duty" to exclude "official time," as that term is defined in the Labor Statute.

In this connection, Example 5 in § 734.306 of the interim regulations, which issued September 23, 1994 (59 FR 48756, 48773–48774), provides that employees who are not on duty may engage in political activity in the office of their labor organization even if the space is provided by an agency or instrumentality of the United States Government. In view of the Office of Legal Counsel opinion of February 22, 1995, a subsequent intervening event, OPM found it necessary to revisit its initial review of the statutory scheme established through the Reform Amendments. Based on this further review, OPM has concluded that the Reform Amendments require it to treat the questions of time and space consistently in considering the activities which the Reform Amendments permit and prohibit. Moreover, it is clear both from OPM's statutory review and the Office of Legal Counsel opinion of February 22, 1995, that Congress intended to create a bright line prohibition against partisan political activities when conducted on duty or on Federal premises, or both. Consequently, OPM must remove Example 5 from § 734.306 of the interim regulations.

A Federal agency commented that the definition of "political purpose" should include non-partisan political purposes because many political purposes are non-partisan. In the interim regulations, the definition of "political activity" is limited to partisan political activity because OPM has interpreted the Reform Amendments as restricting Federal employees' participation in partisan political activities. The legislative history of the Reform Amendments shows that Congress was well aware that the Hatch Act prohibited active participation in partisan political activities and, in enacting the Reform Amendments, Congress was referring to partisan purposes and activities when referring to a political purpose or political activity. S. Rep. No. 57, 103rd Cong. 1st Sess. 2–6, 13–14, 24–39 (1993); 139 Cong. Rec. S8605–8606 (daily ed. July 13, 1993) (statement of Senator Glenn); *id.* at S8685–8686 (daily ed. July 14, 1993) (statement of Senator Roth); *id.* at S8701–8703 (daily ed. July 14, 1993) (statement of Senator Stevens); *id.* at S8946 (daily ed. July 20, 1993) (statement of Senator Durenberger); *id.* at S8947–8948 (daily ed. July 20, 1993) (statement of Senator Levin). *See* H.R. Rep. No. 16, 103rd Cong. 1st Sess. 16 (1993) (to accompany H.R. 20). President Clinton's remarks on signing the Reform Amendments, delivered October 6, 1993, the day on which he signed the Reform Amendments, reflect his understanding that the terms "political purpose" and "political activity" refer to partisan political purposes and partisan political activities. He stated:

> The Federal Employees Political Activities Act, which I'm about to sign, will permit Federal employees and postal workers on their own time to manage campaigns, raise funds, to hold positions within political parties. Still, there will be some reasonable restrictions. They wouldn't be able to run for partisan political office themselves, for example, and there will be some new responsibilities, which I applaud the Federal employees' unions for embracing and supporting.
>
> While we restore political rights to these millions of citizens, we also hold them to high standards. The Federal workplace, where the business of our Nation is done will still be strictly off limits to partisan political activity.

Therefore, defining "political purpose" as a partisan political purpose is consistent with other definitions in the regulations, Congressional intent as reflected in the legislative history of the Reform Amendments, and President Clinton's understanding of the term "political activities" as reflected in his remark on signing the Reform Amendments.

Two Federal agencies and one Federal labor union commented that the interim regulations do not provide enough guidance concerning a "room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof." The Federal labor organization noted that the regulations did not specify which areas in a "room or building * * *" encompasses. Another Federal agency noted that the regulations did not address use of areas such as recreational space in leased space or cafeterias, hallways, restrooms and employee lounges. In response to these comments, OPM has added a definition of "room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof."

The definition specifically excludes those rooms in the White House which are part of the Residence area or which are not regularly used solely in the discharge of official duties. This exclusion is based on the January 17, 1979, opinion of the Office of the Legal Counsel of the Department of Justice. The same principles that govern the White House also would apply to the residence of the Vice President which, historically, has been treated like the White House. Therefore, the same analysis and conclusions that apply to the White House also apply to the residence of the Vice President.

The Federal labor organization further commented that political activities in areas defined as "public areas" in the General Services Administration's (GSA's) Federal Property Management Regulations should not be prohibited because GSA's regulations create a protected public forum. OPM sought comment from GSA on the issue of "public areas". GSA noted that "public areas" remain "rooms or buildings" even when in use by the public for cultural, recreational, or educational activities governed by the Cooperative Use Act of 1976, 40 U.S.C. 490(a)(17), as implemented in the Federal Property Management Regulations at 41 CFR subpart 101–20.4. GSA provided that the Cooperative Use Act and the Reform Amendments should be read together. Accordingly, the definition of "room or building" incorporates the definition of "public area" in 40 U.S.C. 490(a)(17) and 41 CFR 101–20.003.

OPM also sought comments on this issue from the United States Office of Special Counsel (OSC), which noted that the GSA regulations at 41 CFR 101–20.003 define "public areas" as any areas of a building under the control and custody of GSA which ordinarily are open to the public, such as lobbies, meeting rooms, auditoriums, and similar areas not assigned to a lessee or occupant. OSC stated its belief that permitting political activities "in such generally defined areas could lead to confusion and enforcement problems in trying to determine what parts of buildings remain 'off limits' for such activity." It noted further that "allowing political activity in a hallway and courtyard but not a conference room, or in an auditorium but not a cafeteria, could result in confusing and possibly unenforceable interpretations."

Moreover, the Supreme Court noted in *Cornelius* v. *NAACP Legal Defense and Education Fund, Inc.*, 47 U.S. 788, 802–903 (1985), a designated public forum is created in a Federal office building, or any other government property, only when there is a "clear intent to dedicate the property for assembly, debate and speech." The Cooperative Use Act does not dedicate every public building as a public forum, but only authorizes the GSA Administrator to make certain spaces available "on occasion" and "on such other terms and conditions as the Administrator deems to be in the public interest" if such use "will not disrupt the operation of the building." In *Cornelius*, the Supreme Court held that it will not "infer that the government intended to create a public forum when the nature of the property is inconsistent with expressive activity" and is reluctant to find a "designated public forum," if expressive activity would disrupt the principal function of the property. *Id.* at 803–804. In addition, in *Greer* v. *Spock*, 424 U.S. 828, 831–836 (1976) the Court held that allowing some speech or expressive activity in a forum does not dedicate the property as a "public forum" for free and uninhibited expressive activity by the public. Accordingly, "public areas" are not "public fora" and employees are prohibited from engaging in partisan political activity in those areas. In view of this, OPM has deleted Example 11 from § 734.306 which provides that a Federal employee may engage in political activity in the courtyard outside of a Federal building when the employee is not on duty.

One Federal agency commented that the regulations did not specify whether an area leased to contractors such as a cafeteria or fitness facility is a "room or building * * *.". Pursuant to the discussion above, we have added an example in § 734.306 providing that employees may not engage in partisan political activity in space leased to contractors in Federal buildings.

Regarding § 734.306 of the interim regulations, a Federal labor organization commented that the regulations imply that the prohibition on political activities in rooms or buildings occupied in the discharge of official duties does not extend to areas not controlled by the Government, such as union offices and the leased offices of candidates. The labor organization suggested modifying Example 5 in § 734.306 to state that political activity is permitted in space, such as meeting rooms or other facilities, temporarily under the control of labor organizations or other non-government entities. In view of the Reform Amendments' prohibition against partisan political participation on Federal property, and the Office of Legal Counsel's interpretation of that prohibition, as described in the discussion relating to the definition of the item "on duty" in § 734.101, OPM must remove this example from § 734.306.

A Federal employee labor organization commented that the definition of "subordinate" in the interim regulations would suggest that it includes more categories of employees than the definitions of the terms "supervisor" and "management official" in 5 U.S.C. 7103(10) and (11). This organization suggested that, rather than defining the term "subordinate," the regulations use the definition of "supervisor" in 5 U.S.C. 7103(10), because the definition of "supervisor" is familiar to many Federal employees. The interim regulations define "subordinate" as "the relationship between two employees when one employee is under the supervisory authority, control or administrative direction of the other employee." OPM believes that the definition of "subordinate" is clear and relects the intent of Congress to prevent any coercion of subordinate employees by a supervisor or any other employee who may otherwise direct, control or exercise authority over an employee.

Section 734.102 outlines the authority of the Office of Personnel Management, the Office of Special Counsel, and the

VOL
61
ISS
130
JL
5
1996
UMI

Merit Systems Protection Board under the Reform Amendments and the implementing regulations. One Federal employee labor organization commented that this section should cite to the Reform Amendments as the underlying authority. OPM agrees and has added these citations.

One Federal agency and one Federal employee labor organization commented that the regulations do not specify whether the Office of Special Counsel and the Merit Systems Protection Board have exclusive jurisdiction. OPM agrees that the regulations need clarification. Individual agencies do not have authority to investigate suspected political activity violations or to impose administrative remedies. Therefore, OPM is changing the regulations to reflect that the Office of Special Counsel and the Merit Systems Protection Board have exclusive jurisdiction.

Section 734.104 prohibits further restriction on the political activities of covered employees except for employees who are appointed by the President by and with the advice and consent of the Senate, employees who are appointed by the President, non-career Senior Executive Service members, Schedule C employees (appointed pursuant to 5 CFR 213.3301, 213.3302) and any other employees who serve at the pleasure of the President. A Federal agency suggested adding a new subsection to cover United States Trustees appointed under 28 U.S.C. 581. The exceptions in § 734.104 are based upon a September 20, 1994 opinion of the Office of Legal Counsel of the Department of Justice issued to the Office of Personnel Management which provided that an Administration could impose additional restrictions on the specific groups of political appointees outlined in § 734.104. Accordingly, the President or his designee may further restrict the political activities of the specific employees described in § 734.104. However, pursuant to 28 U.S.C. 581, United States Trustees serve at the pleasure of the Attorney General, not the President, and do not fall within the exceptions provided by the Office of legal counsel Opinion. therefore, OPM does not have the authority to add the United States Trustees to the list in § 734.104.

Subpart B—Permitted Activities

Section 734.203 of the interim regulations permits employees under subpart B (Permitted Activities) to participate in nonpartisan political activities and describes various nonpartisan activities. A Federal employee labor organization noted that § 734.203 fails to reflect that 5 U.S.C. 7211 provides Federal employees with a statutory right to petition Congress. It further commented that this issue is confusing to Federal employees, and suggested adding another example to § 734.203 which illustrates that the Reform Amendments do not prohibit Federal employees from exercising their rights under 5 U.S.C. 7211. OPM agrees with this suggestion, and has added such an example to § 734.203.

Section 734.204 of the interim regulations concerns permitted participation in political organizations. A Federal agency suggested amending this section by adding another paragraph which specifies that an employee may serve as a delegate, alternate, or proxy to a political party convention. OPM agrees with this suggestion and has added such a paragraph to § 734.204.

Example 2 in § 734.204 specifies that an employee may serve as an officer of a partisan or nonpartisan political action committee, as long as the employee does not personally solicit, accept, or receive political contributions. A Federal employee labor organization suggested clarifying the example by stating that ministerial activities which precede or follow the official acceptance and receipt of contributions are not covered under the regulatory definitions of "accept" and "receive." OPM agrees with this suggestion and has amended Example 2 accordingly. Example 2 also describes a political action committee as partisan or nonpartisan. This description does not accord with the definition of political action committee that OPM has added to its political activity regulations at 5 CFR part 734. The definition of this term does not distinguish between partisan and nonpartisan political action committees. Therefore, OPM has further amended Example 2 by removing the descriptive terms "partisan" and "nonpartisan."

Section 734.205 of subpart B (Permitted Activities) describes permissible political activities connected with participation in campaigns for partisan political office. Example 5 in this section specifies that an independent contractor is not covered under subpart B and may display a political button while performing his contractual duties. A Federal employee labor organization submitted several comments concerning the display of political buttons by employees who are covered under subpart B. OPM has discussed those comments in connection with its discussion of § 734.306, *infra*, which prohibits partisan political participation while on duty, in uniform, in any room or building occupied in the discharge of official duties, or while using a Government-owned or leased vehicle.

Section 734.207 concerns candidacy for public office and permits employees to run as independent candidates in the local partisan elections described in 5 CFR part 733, or as candidates in nonpartisan elections. A Federal agency proposed that OPM add an example to this provision specifying that employees may distribute campaign leaflets, even though the leaflets include information on where to send contributions. The Federal agency further noted that the example also should specify that the employee should refer to another campaign worker any questions concerning further information about contributions. OPM agrees with this suggestion, but has provided in the example that such questions should be referred to another campaign worker who is not a Federal employee. OPM also believes that it would be more appropriate to add the example to § 734.205, which concerns participation in campaigns for partisan political office, rather than to § 734.207.

Section 734.208 describes permissible activities connected with participation in fundraising. Subsection (b)(2) permits employees to accept and receive political contributions in a partisan election described in 5 CFR part 733, which pertains to the political activities of covered employees who reside in certain localities designated by OPM. A Federal agency stated its belief that subsection (b)(2) conflicts with the statutory definition of the term "political contribution" included in section 2(a) of the Reform Amendments and codified at 5 U.S.C. 7322(3), as amended, which does not refer to contributions for "partisan" political purposes. Therefore, the Federal agency suggested deleting subsection (b)(2) from § 734.208 of the OPM regulations.

Section 2(a) of the Reform Amendments, codified at 5 U.S.C. 7325, as amended, authorizes OPM to issue regulations permitting employees, "without regard to the prohibitions in paragraphs (2) and (3) of section 7323(a) (of title 5, United States Code)," to take an active part in certain local elections. Section 7323(a)(2) and (3), respectively, prohibit employees from knowingly soliciting, accepting, or receiving political contributions, and from running "for the nomination or as a candidate for election to a partisan political office." Candidacy for partisan political office occurs within the context of partisan political elections. Accordingly, § 734.208(b)(2) of the OPM regulations does not conflict with the

definition at 5 U.S.C. 7322(3), as amended. Therefore, OPM has not deleted § 734.208(b)(2) from the final version of its regulations.

Section 734.208(b)(4)(ii) of the regulations provides that, under specified limited circumstances, an employee may solicit, accept, or receive political contributions from another employee who is not a subordinate employee. A Federal employers labor organization suggested including in the regulations the definition of the term "supervisor" stated at 5 U.S.C. 7103(10). This suggestion already has been addressed in the discussion of § 734.101 of the Regulations.

Example 5 in § 734.208 prohibits employees from making telephone solicitations for political contributions, even anonymously. A Federal employee labor organization noted that, if a telephone solicitation truly was anonymous, there would be no way of finding the employee who might have made the solicitation. The Federal employee labor organization further noted that a reference to anonymous telephone solicitations might even encourage employees to make such solicitations. Consequently, it suggested that OPM delete the reference to anonymous telephone solicitions in Example 5. OPM believes that this reference makes it clear to Federal employees that, except for solicitations made under the circumstances described in 5 U.S.C. 7323(a)(2), solicitations of political contributions, even anonymous telephone solicitations, are prohibited under the Reform Amendments. Therefore, OPM will retain the reference to anonymous telephone solicitations in Example 5.

Example 11 in § 734.208 provides that a Federal employee may solicit, accept, or receive the uncompensated volunteer services of any individual, except a subordinate employee, to work on behalf of a partisan political candidate or organization. A Federal employee labor organizations suggested deleting the phrase "except a subordinate employee" from Example 11. The labor organization said that the interim regulations clearly specify that a political contribution does not include the uncompensated volunteer services of an individual. Thus, the labor organization did not find any basis for the example prohibiting any employee from soliciting the volunteer services of another employee.

Although it is true that uncompensated volunteer service of an individual is not a political contribution, OPM believes that soliciting such services from subordinate employees is covered under § 734.302, which prohibits employees from using their official authority or influence for the purpose of influencing or affecting the results of an election. OPM further believes that removing the reference to subordinate employees in Example 11 would mislead employees into believing that part 734 permits employees to solicit, accept ore receive such services from subordinate employees. Therefore, OPM has retained the reference to subordinate employees in Example 11.

The labor organization also said that Example 11 is at odds with Example 4 in § 734.208, which permits employees to sign letters soliciting the contribution of uncompensated services of individuals. It noted that, in a mass mailing, an employee's subordinates might receive these letters. OPM agrees that Example 4 is confusing and requires clarification in this regard. Therefore, it has revised Example 4 to specify that an employee may not knowingly send such a letter to his or her subordinate employees. However, Example 4 also will specify that it is permissible to sign such letters as part of a general mass mailing, as long as the mailing is not specifically targeted to one's subordinate employees.

Another Federal employee labor organization noted that employees who are not members may contribute to the labor organization's political action committee, but Federal employees associated with the labor organization may not accept or receive the contribution. It suggested that § 734.208 might be clarified through an additional example stating that a Federal employee labor organization can receive contributions, independent of their receipt by Federally employed members of the labor organization, and describing procedures for making such contributions. OPM believes that the regulations clearly state that any employee may contribute to the multicandidate political action committee of a Federal labor or Federal employee organization, and that the Federally employed members of such organizations may not accept contributions from Federal employees who are not organization members. Therefore, OPM believes that it is not necessary to add the suggested example to § 734.208.

Finally, the Reform Amendments include an exception to the general prohibition on soliciting, accepting, or receiving political contributions. This exception permits employees to solicit, accept, or receive such contributions from other employees who are not subordinate employees and who are members of the same Federal labor organization or Federal employee organization for the multicandidate political committees of their organizations. It may not be clear to employees that this exception only extends to the general prohibition against soliciting, receiving, or accepting political contributions. It does not extend to the other prohibitions against engaging in partisan political activities either while on duty, or while on Federal premises, or both. Thus, employees may solicit, accept, and receive political contributions for the multicandidate political committees of their organizations from employees who are not subordinates and who belong to the same Federal labor or employee organization. However, they may not conduct such activities either while they are on duty, or while on Federal premises, or both. Accordingly, OPM has added an example to § 734.208 to clarify this matter. In addition, OPM notes that labor organizations certified by the National Labor Relations Board pursuant to 29 U.S.C. 151 et seq. to represent Postal Service employees are not covered under the definition of "labor organization" in 5 U.S.C. 7103(4) and, therefore, are not Federal labor organizations within the meaning of the Reform Amendments. However, these Postal Service labor organizations clearly qualify as Federal employee organizations for purposes of the Hatch Act Reform Amendments.

Subpart C—Prohibited Activities

Section 734.302 prohibits employees from using their official authority or influence in order to interfere with or affect the results of an election. A Federal agency commented that this section does not give adequate guidance and needs to be clarified. The agency noted that if the section intended to prohibit misues or coercion that it did not clearly do so. OPM agrees that the Reform Amendments intended to prevent employees from misusing their official authority or influence in order to interfere with or affect the result of an election. OPM is revising its regulations to clarify that § 734.302 not only prohibits the misuse of official authority such as the use of an official title, as distinguished from a general form of address such as "The Honorable," while participating in partisan political activities, but also bans coercive actions such as awarding contracts on the basis of contributions to partisan political campaigns or soliciting subordinates for any partisan political purpose. OPM notes in this regard that the merit system principles, at 5 U.S.C. 2301(b)(8), provide that employees should be protected against arbitrary

VOL 61 ISS 130 JL 5 1996 UMI

action, personal favoritism, and coercion for partisan political purposes. Section 2301(b)(8) also provides that employees should be prohibited from using their official authority to interfere with or affect an election or a nomination for election. Moreover, 5 U.S.C. 2302(b)(3) makes it a prohibited personal practice to coerce the political activity of any person (including the providing of any political contribution or service), or to take action against an employee for his or her refusal to participate in these political activities. Thus, soliciting uncompensated volunteer services from a subordinate for a political purpose clearly falls within the prohibition against the use of official authority to interfere with or affect an election.

Accepting or receiving uncompensated volunteer services from a subordinate results in as great a potential for coercion, or the appearance of coercion, as soliciting such services from a subordinate. Although an employee might not directly solicit uncompensated volunteer services from a subordinate, he still could make it clear to the subordinate in more subtle ways that it would be in the subordinate's best interest to provide such services. In view of a superior's authority to promote, discipline, issue awards, or take other personnel actions affecting an employee's career, or to make recommendations regarding such actions to an official above him in the chain of command, and the potential for coercion that exists under such circumstances, accepting and receiving uncompensated volunteer services from subordinates also falls within the prohibition against the use of official authority to interfere with or affect the results of an election. Accordingly, OPM will retain the prohibition against accepting and receiving uncompensated volunteer services from subordinates.

Section 734.303 describes prohibited activities connected with fundraising. Subsection (d) prohibits employees from soliciting, accepting, or receiving uncompensated volunteer services from individuals who are subordinates. A Federal employee labor organization commented that, because the definition of "political contribution" does not include uncompensated volunteer services, employees should not be prohibited from soliciting, accepting, or receiving such services from their subordinates. For the reasons stated in its discussion of § 734.302, *supra*, OPM is retaining these prohibition in its political activity regulation at part 734.

A Federal agency noted that the regulations do not reflect specifically that, as long as an employee is not coerced, the employee may voluntarily donate uncompensated volunteer services to his supervisor. While OPM's regulations do not specifically prohibit an employee from voluntarily donating uncompensated volunteer services to his supervisor, § 734.303(d) of the regulations does prohibit a supervisor from accepting such services. Therefore, the concern expressed by this agency in its comment has been adequately addressed in the regulation.

This prohibition clearly would not apply to requests for volunteer services made by the President or the Vice-President to the employees specified in 5 U.S.C. 7324(b)(2) whose duties and responsibilities continue outside of normal duty hours and away from the normal duty post, and who are (1) paid from an appropriation for the Executive Office of the President, or (2) appointed by the President, by and with the advice and consent of the Senate, whose positions are located within the United States and who determine policies to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws. Congress recognized their special status in specifically excluding them from the prohibitions against political participation while on duty, in uniform, on Federal premises, or using a Government vehicle. Moreover, the President and Vice-President of the United States specifically are excluded from the definition of employee in 5 U.S.C. 7322(1) and, therefore, they are not subject to the prohibitions on political activity in Reform Amendments or part 734.

The agency also asked whether a subordinate employee may speak at a political event in place of his superior, a PAS employee, when the PAS employee suddenly learns that she cannot attend the event. The regulations generally permit covered employees to speak at partisan political events, but prohibit an employee who does not qualify for coverage under subpart E of the interim regulations from giving such a speech while on duty.

However, the ultimate answer to such questions depend on the facts and circumstances in each individual case, and also may involve issues related to the standards of ethical conduct for employees of the Executive Branch. Therefore, OPM has determined not to address in its regulatory examples the issues raised in the agency's comments, because such examples might be misleading. Individual detailed guidance on such fact based issues should be sought through an advisory opinion from the United States Office of Special Counsel and, if warranted, from the designated agency ethics official at the employee's agency.

Example 2 in § 734.303 states that an employee's name may not appear on an invitation to a fundraiser as a sponsor or a point of contact. A Federal employee labor organization commented that this example appeared to be inconsistent with Example 3 in § 734.208 which permits employees' names to appear on such invitations as guest speakers. It also commented that a point of contract on an invitation for a fundraiser would not necessarily be involved with soliciting, accepting or receiving political contributions in an official manner. Thus, it suggested amending Example 2 to provide that an employee's name could appear on an invitation as a point of contact for general information about a fundraiser.

OPM does not believe that these two examples are inconsistent. A person who is identified as a point of contact on a fundraising invitation clearly gives the appearance of being associated with soliciting, accepting, or receiving political contributions. Such is not the case with a person who is only identified on the invitation as a guest speaker. Thus, OPM has decided not to amend Example 2 in § 734.303.

Example 3 in § 734.303 provides that an employee may not ask a subordinate to volunteer on behalf of a partisan political campaign. Section 734.303 describes fundraising activities which are prohibited. A Federal employee labor organization suggested that OPM remove this example because individual uncompensated volunteer services are not political contributions. OPM has addressed the question of requesting subordinate employees to perform uncompensated volunteer services in § 734.302, *supra*.

Section 734.305 prohibits an employee from knowingly soliciting or discouraging the political participation of anyone who has matters pending before the employee's employing office or of anyone who is the subject of investigation or enforcement carried out by the employee's employing office. A Federal agency commented that the regulations should address soliciting or discouraging participation in non-partisan elections. As OPM stated above in response to comments on the definition of "political purpose," the pertinent legislative history and the President's remarks on signing the Reform Amendments show that the Reform Amendments concern participation in partisan political activities. Consequently, the regulations do not address soliciting or discouraging participation in non-partisan political activities.

This same Federal agency further requested that this section address whether an employee may endorse a candidate for an elective office, the duties of which require the incumbent of that office to consistently transact business before the agency. In this instance, it is impossible to provide an example that would accurately answer this agency's inquiry because the answers to such questions depend on the facts and circumstances of each individual case.

This agency also asked whether employees appointed by the President by and with the advice and consent of the Senate (PAS) are prohibited from making political speeches in their personal capacity addressing issues related to agency business. The Reform Amendments and OPM regulations at part 734 generally do not prohibit a PAS from making a political speech in her personal capacity, providing that the President or his designee has not placed further restrictions on her political activities in accordance with § 734.104, and the speech is not made to solicit or discourage the political participation of certain persons described in § 734.305.

Depending on the facts and circumstances associated with the speech, however, such activity also may be government by provisions other than the Reform Amendments. Because determinations on whether this activity is prohibited ultimately rest on the facts and circumstances of each individual case, employees should consult the Office of Special Counsel and, if warranted, the designated agency ethics official for advice.

Section 734.305 requires that each agency or instrumentality of the United States or District of Columbia Government must determine when matters are pending and ongoing within the employing office of the agency or instrumentality. This same Federal agency also commented that the regulations should provide guidelines for agencies to follow in determining when a matter is pending or ongoing. Since there are great differences among agencies or instrumentalities, OPM disagrees with this comment and believes each agency and instrumentality should make its own determination.

Section 734.306 prohibits employees covered by subparts B and C from participating in partisan political activities while they are on duty, in uniform, in a room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States, using a Government-owned or leased vehicle, or using a privately-owned vehicle in the discharge of official duties. An individual commented that, if OPM intended through its interim regulations to prohibit employees from wearing partisan political buttons while on duty, OPM should add a provision to subpart C, Prohibited Activities, explicitly stating that employees may not wear partisan political buttons while on duty. Two Federal agencies also suggested OPM might do this by adding an example to § 734.036 specifically stating that employees may not wear partisan political buttons while they are on duty or display partisan political materials at their work stations. OPM agrees with these suggestions and, through another example added to § 734.306, has prohibited employees from wearing partisan political buttons while on duty.

A Federal employee labor organization commented that the interim regulations permit SES members to wear partisan political buttons while they are on duty, but prohibit competitive service employees from wearing partisan political buttons under the same circumstances. The Reform Amendments' prohibition against partisan political participation on duty extends to all covered employees except for the two employee categories described in 5 U.S.C. 7324(b)(2) and covered under subpart E (Special Provisions for Certain Presidential Appointees and Employees Paid from the Appropriation for the Executive Office of the President). All other employees, including SES members, are prohibited from wearing partisan political buttons on duty.

One Federal agency asked whether the prohibition on employees wearing political buttons while on duty extends to items worn on duty, or displayed in the work place, relating to candidates in nonpartisan elections or to nonpartisan issues. The interim regulations provide that the prohibition against political participation on duty only extends to partisan political participation. Thus, the prohibition against wearing political buttons on duty or displaying political items in the workplace does not extend to nonpartisan candidates or to nonpartisan issue-oriented campaigns.

A Federal employee labor organization commented that wearing political buttons is an expression of speech guaranteed by the Constitution, as well as an expression of opinion about a political candidate that clearly is permitted under the Hatch Act and should continue to be permitted under the Reform Amendments. Citing *American Federation of Government Employees AFL-CIO* v. *Pierce*, 586 F. Supp. 1559 (1984), the labor organization said that the prohibition against wearing political buttons on duty and the illustrative examples are overboard, and do not appear to have a specific purpose such as protecting the efficient performance of official duties or preventing a conflict, or apparent conflict, of interest.

The legislative history of the Reform Amendments shows Congress was aware that, under the then-existing provisions of the Hatch Act, Federal employees were permitted to wear partisan political buttons while on duty. *See* 139 Cong. Rec. S8604–S8606 (daily ed. July 13, 1993) (statement of Senator Glenn). It also shows that Congress clearly intended to establish a bright-line rule prohibiting all political participation on duty, and that this rule extends to wearing partisan political buttons while on duty. S. Rep. No. 57, 103rd Cong. 1 st Sess. 14 (1993), *reprinted in* 1993 U.S.C.C.A.N. 1082, 1815; 139 Cong. Rec. S8684 (daily ed. July 14, 1993) (statement of Senator Glenn); *id.* at S8765, S8770, S8785–S8786 (daily ed. July 15, 1993) (statement of Senator Glenn); *id.* at S8805, 8808 (daily ed. July 15, 1993) (statements of Senators Boxer and Sarbanes); *id.* at S8929 (daily ed. July 20, 1993) (statement of Senator Glenn). *See* H.R. Rep. No. 16, 103rd Cong. 1st Sess. 16, 19–20 (1993) (to accompany H.R. 20).

The legislative history of the Reform Amendments further shows that Congress focused on wearing partisan political buttons on duty because this activity could result in subtle and unspoken coercion when done by a supervisor, the appearance of a conflict of interest, and the erroneous identification of the Government as a supporter of particular partisan candidates, parties, or groups. 139 Cong. Rec. S8604–S8605 (daily ed. July 13, 1993) (statement of Senator Glenn); *id.* at S8785 (daily ed. July 15, 1993) (statement of Senator Glenn); *id.* at S8926 (daily ed. July 20, 1993) (statement of Senator Glenn). *See* H.R. Rep. No. 16, 103rd Cong. 1st Sess. 16, 19–20 (1993) (to accompany H.R. 20). Thus, the regulatory prohibition against employees wearing partisan political buttons while on duty originates with the clear expression of Congressional intent in enacting these Amendments.

American Federation of Government Employees v. *Pierce* concerned a Veterans' Administration regulation prohibiting employees from wearing political buttons while on duty. The United States District Court for the District of Columbia struck down the prohibition as overboard, finding that the prohibition did not protect the

VOL 61 ISS 130 JL 5 1996 UMI

efficient performance of official duties or prevent a conflict or apparent conflict of interest.

Current circumstances differ from the circumstances which resulted in the district court decision. At that time, the Hatch Act prohibited Federal employees from participating actively in any partisan political activities, and Federal employees clearly could not be associated with partisan political candidates, parties, or groups. Now the Reform Amendments permit most Federal employees to participate actively in almost all partisan political activities and to become prominently identified with partisan political candidates, parties, or groups. The expansion of such opportunities for Federal employees to become involved in, and identified with, partisan politics, increases the danger of erroneous perceptions about coercion of Federal employees or individual citizens having business with the Government, identification of the Government with specific partisan candidates or groups, favoritism in administering Government programs, and conflicts of interest. A prohibition narrowly tailored to displays of partisan political buttons, pictures, signs, stickers, or badges on duty or in the workplace clearly promotes the efficient performance of official duties and prevents a conflict or apparent conflict of interest under current circumstances.

In a related matter, an individual, a Federal employee organization, and five Federal agencies commented unfavorably on the requirement to cover bumper stickers on personal vehicles, particularly during occasional use for official travel, such as driving the vehicle to the site of a training course. The labor organization commented that there was no rational basis for requiring employees to cover bumper stickers when they use their personal vehicles as incidental transportation, for example, in lieu of taking a taxi to or from another agency for a meeting. The labor organization stated that the requirement was not realistic and suggested that it should apply only when the private vehicle itself is used in the performance of official duties, such as delivering mail on a rural route or inspecting crops. The agencies and individual commented that the requirement to cover bumper stickers when using a personal vehicle for official business was excessive, unreasonable, unduly burdensome, and virtually unenforceable.

OPM agrees that a requirement to cover bumper stickers in every instance is not practical and would be difficult to enforce where employees use their private vehicles only occasionally, such as in driving to a meeting or training course. Imposing this requirement within the context of such occasional use of private vehicles would result in inadvertent violations by employees who easily may forget to cover the bumper stickers on their vehicles, and would be very difficult to enforce. Therefore, OPM has amended the examples in § 734.306 to reflect that the requirement to cover bumper stickers on private vehicles only applies when the vehicle is used for official business on a recurrent basis, or clearly is identified as being on official business, and does not apply to the occasional use of such a vehicle for official business. However, within this context, OPM also desires to make it clear to covered employees that they are prohibited from placing partisan political bumper stickers on any Government-owned or leased vehicle.

OPM accordingly has defined the terms "recurrent" and "occasional" in § 734.101. These definitions are based on common usage. The Random House Dictionary of the English Language (Unabridged), 2d Ed., 1987, defines "occasional" as "occurring or appearing at irregular or infrequent intervals; occurring now and then; acting or serving for the occasion or only on particular occasions." Webster's Third New International Dictionary of the English Language (Unabridged), 1966 Ed., defines "occasional" as "occurring or operating on a particular occasion; proceeding from the occasion; met with, appearing, or occurring irregularly and accordingly to no fixed or certain scheme; infrequent."

The Random House Dictionary defines "recurrent" as "occurring or appearing again, esp. repeatedly or periodically." Webster's Dictionary defines "recurrent" as "returning from time to time; appearing or coming periodically; happening again and again." Finally, the Oxford English Dictionary (1933) defines "recurrent" as occurring or coming again (esp. frequently or periodically); reappearing." The regulatory definitions of "occasional" and "recurrent" incorporate these concepts.

Example 6 of § 734.306 of the interim regulations concerns political activities in a commercial building where Government agencies and instrumentalities lease office space, and where the headquarters of a candidate for partisan political office also are situated. The example provides that an employee of the Government agency or instrumentality may do volunteer work at the candidate's headquarters when the employee is not on duty.

OPM believes that this example is confusing because it suggests that employees may participate in political activities only in the candidate's headquarters, and not elsewhere in the building. Therefore, OPM has revised the example to clarify that, when employees are not on duty, the Reform Amendments do not prohibit them from participating in political activities in the other areas of the building that are not leased by the Government, including public areas that are shared by all of the tenants, such as the main lobby. Although the Reform Amendments would not prohibit employees from political participation in areas that are shared by all of the tenants, OPM notes that political activities in these areas may be restricted by the landlord.

For purposes of contrast and further clarification, OPM has included an additional example specifying that, where a Government agency or instrumentality leases all of the space in a commercial building, employees may not participate in political activity in any area of the building, including the public areas of the leased building.

OPM believes this distinction is in accord with the February 22, 1995 opinion of the Office of Legal Counsel at the Department of Justice to the Office of Personnel Management. That opinion stressed that Congress intended to create a bright-line rule against participating in partisan political activities while on Federal premises. To apply this prohibition to all areas of a commercial building, when the Government has leased only a part of the building, would undermine the bright-line rule described in the Office of Legal Counsel opinion. Accordingly, distinguishing between a commercial building in which the Government has leased part of the space and a commercial building in which the Government has leased all of the space accords with the Congressional intent of establishing a bright-line rule as described in the Office of Legal Counsel opinion.

Example 10 of § 734.306 of the interim regulations provides that Federal employees may participate in partisan political activities while they are sitting in the park on their lunch break, if they are not on duty during their lunch break. A Federal agency suggested that the regulations specify when Federal employees would not be on duty during their lunch breaks, and that individual agencies should determine whether employees are on duty at that time. In general, employees who are covered by title 5, United States Code, are not in a pay status during a bona fide lunch break and, therefore, they are not on duty. However, for the purposes of these regulations, an employee still is considered to be on duty during his lunch hour when he is representing an agency or instrumentality of the United States in an official capacity during that time.

Example 1 of § 734.307 prohibits the Federally employed spouses of candidates for partisan political office from soliciting, accepting, or receiving contributions of money or personal services. A federal employee labor organization suggested deleting personal services from Example 1 because soliciting volunteer services is not prohibited. Although personal services are different from the uncompensated volunteer services of an individual, it is clear from the comment that use of the term "personal services" in Example 1 is confusing. To clarify the example, OPM has deleted the term "personal services" from Example 1, and substituted the phrase "paid or unpaid services of a business or corporation."

Subpart D—Employees in Certain Agencies and Positions

Subpart D of the regulations concerns the political activities of employees in the sensitive agencies and positions that are listed in § 734.401. Through section 501(k) of Pub. L. 103–359 (October 14, 1994), Congress added the Central Imagery Office to the sensitive agencies and positions listed in 5 U.S.C. 7323 (b)(2)(B)(i). Accordingly, OPM has added the Central Imagery Office to the agencies and positions listed in § 734.401(a) of the regulations.

Section 734.402 of subpart D describes permissible expressions of individual opinion for these employees. Subsection (b) of § 734.402 provides that they may display partisan political pictures, signs, stickers, badges, or buttons, as long as these items are displayed off duty and away from Federal premises in accordance with the provisions of § 734.408. Two Federal agencies suggested changing the cross-reference in subsection (b) from §§ 734.408 to 734.406. Section 734.408 generally prohibits active participation in partisan political management and partisan political campaigns. Section 734.406 prohibits political participation while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle. We agree with the suggestions that a cross-reference to § 734.406 would be more appropriate, and have changed § 734.402(b) to reflect this. OPM also has amended Example 5 in § 734.402 to reflect when it is permissible for an employee who is covered under subpart D to wear a partisan political button and, for purposes of clarification, has added another example providing that an employee may place partisan political signs on his or her private property.

Section 734.404 describes permissible participation in political organizations. Subsection (c) provides that employees may attend political conventions, rallies, fund-raising functions, or other political gatherings. A Federal agency noted that Example 1 appears to contradict, rather than to illustrate, this principle by prohibiting employees from participating in demonstrations or parades while they are attending a convention or rally. The Federal agency suggested that OPM should explain further exactly what activities are permissible, or define what is meant by attending a convention, rally, or other political gathering.

OPM agrees that Example 1 in § 734.404 should be clarified. Although employees may attend the conventions and rallies of political parties or partisan political groups, joining in the parades and demonstrations held at these functions is considered active participation in partisan political activity. Therefore, Example 1 in § 734.404 has been amended to reflect that employees may attend partisan political conventions or partisan political rallies solely as spectators, but they may not participate in demonstrations or parades at these partisan political functions.

Section 734.406 prohibits employees from participating in political activities while they are on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle.

Another Federal agency asked whether § 734.406 prohibits displays in the workplace or while on duty of pictures, signs, badges, or buttons for candidates in non-partisan elections or for ballot issues not specifically identified with a political party. The interim regulations provide that the prohibition against political participation on duty only extends to partisan political participation. Thus, the prohibition against wearing political buttons on duty or displaying political items in the workplace does not extend to displays for candidates in nonpartisan elections or to issues that are not specifically identified with a political party.

The same Federal agency requested clarification on the restriction in § 734.406(a)(4) of participating in political activities while using a privately owned vehicle in the discharge of official duties. The agency noted that, since political participation includes displays of partisan political bumper stickers, the restriction could be interpreted as barring employees from having such bumper stickers on their private vehicle if the employees use the vehicle for official travel. The agency further noted that enforcement of such a restriction would be impractical. We agree with this assessment, and have added clarifying examples to § 734.406 applying the restriction only to privately owned vehicles that are used for official business on a recurrent basis or clearly are identified as being on official business. The restriction does not apply to the occasional use of such a vehicle for official business. The terms "occasional" and "recurrent" are defined in § 734.101.

In a related matter, an individual and two Federal agencies generally commented in connection with subpart C that, if OPM intended through its interim regulations to prohibit employees from wearing partisan political buttons while on duty, OPM should add a provision explicitly stating that employees may not wear partisan political buttons while on duty. Two Federal agencies suggested OPM might do this by adding an example specifically stating that employees may not wear partisan political buttons while they are on duty or display partisan political materials at their work stations. OPM believes that these suggestions are instructive with regard to subpart D. Therefore, OPM has added to § 734.406 another example which specifies that wearing partisan political buttons while on duty or displaying partisan political items in the workplace is prohibited.

An agency commented that §§ 734.408 and 734.411(a) prohibit the same behavior, are duplicative and potentially confusing, and should be combined. Section 734.408 generally prohibits active participation in political management and campaigns, "except as permitted by this part." Section 734.411(a) prohibits active participation in managing the political campaign of a candidate for partisan political or party office. Section 734.408 covers a broader range of political activities than § 734.411(a), which prohibits active participation in managing the political campaign of a candidate for partisan political office or political party office. Section 734.408 also prohibits activities described in §§ 734.409 and 734.410, as well as in the remaining subsections of § 734.411. Although OPM has not combined §§ 734.408 and 734.411(a), OPM believes that the phrase "except as permitted by this part" in § 734.408 is confusing because employees covered under this section are permitted to

VOL 61 ISS 130 JL 5 1996 UMI

participate only in the political activities described in subpart D. Therefore, OPM revised this phrase to include a reference to "subpart D" rather than to "this part."

Section 734.412(a) of the interim regulations provides that an employee covered under subpart D may not be a candidate for partisan political office except as described in § 734.403 which permits candidacy in *nonpartisan* elections. A Federal agency commented that the exception in § 734.412(a) should be eliminated because it is meaningless and confusing. OPM agrees with this suggestion; a nonpartisan election by definition cannot include *any* candidates for partisan political office. Therefore, OPM has removed from § 734.412(a) the reference to § 734.403.

Subpart E—Special Provisions for Certain Presidential Appointees and Employees Paid From the Appropriation for the Executive Office of the President

A Federal agency suggested that § 734.502(a)(2)(ii) include examples of, or a method for determining whether, an employee who is appointed by the President, by and with the advice and consent of the Senate, "determines policies to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws." OPM cannot devise a precise procedure that would apply to all positions that might be covered under § 734.502(a)(2)(ii) because each position has its own unique qualifications and duties. In view of this, providing examples of covered positions based on descriptions of their duties and responsibilities would not be of assistance is deciding whether a position meets the criteria in § 734.502(a)(2)(ii). Thus, determinations concerning the coverage of a specific position under § 734.502 must be made on an individual basis by the President or his appropriate designee.

Section 734.502(d) provides that an employee, to whom subpart E of part 734 does not apply and who is not on duty, may participate in political activities in rooms of the White House which are part of the Residence area or which are not regularly used solely in the discharge of official duties. In its discussion of the Residence area of the White House in connection with § 734.101, OPM noted that the same principles that govern the White House also should apply to the residence of the Vice President which, historically, has been treated like the White House. OPM also noted that the same analysis and conclusions that apply to the White House also apply to the residence of the Vice President. Therefore, OPM is amending § 734.502(d) to include the residence of the Vice President.

One Federal agency commented that all Inspectors General, including those appointed by the heads of designated Federal entities pursuant to the Inspector General Act of 1978, section 8G, should be prohibited from taking an active part in political management or political campaigns. We find no basis for this across-the-board restriction of all such Inspectors General. Section 3(c) of the Inspector General Act, which provides that for the purposes of section 7324 of title 5, United States Code, an Inspector General is not considered to determine policies to be pursued by the United States in the nationwide administration of Federal laws, applies only to an Inspector General who is appointed by the President by and with the advice and consent of the Senate. Section 8G(c) provides that an Inspector General in a designated Federal entity is appointed by the head of the designated Federal entity according to the laws and regulations governing appointments within that specific designated Federal entity. Therefore, the treatment Inspectors General, other than those appointed by the President by and with the advice and consent of the Senate, receive under the regulations depends on their appointment and the entities in which they serve.

Use of Official Title, Noncareer Members of the Senior Executive Service, Use of the Phrase "in Concert With" in the Final Regulations, and Political Signs

Two Federal agencies commented that the treatment of the use of official title in connection with political activities was not clear. In response, we have amended § 734.302 to include a prohibition on the use of official title in connection with any partisan political activity. However, a form of address, such as "Honorable" may be used on letters, invitations, or when introducing a covered employee at partisan political functions.

A Federal agency noted that although career Senior Executive Service (SES) employees are specifically mentioned in § 734.401, noncareer SES employees are not mentioned in the regulations. Noncareer SES employees who do not work in the agencies or positions described in § 734.401 are subject to the provisions of subparts B and C of part 734. OPM has added examples about these noncareer SES employees to the provisions in subparts B and C to make it clear that they are subject to the provisions of these subparts. Noncareer SES employees who work in the agencies or positions described in § 734.401 are subject to the more restrictive provisions of subpart D of part 734. Examples regarding noncareer SES employees also have been added to subpart D. Finally, all career SES employees also are subject to the provisions of subpart D.

A Federal agency noted that the phrases "in concert with" and "in consultation or coordination with" both appear in subpart D, and questioned whether the difference in language signifies any difference in meaning. Although these phrases were intended to express the same concept, the use of the two phrases is a source of confusion. Therefore, OPM has eliminated the phrase "in consultation or coordination with" and exclusively used "in concert with" in the final version of the regulations. OPM relies on the language in *Blaylock* v. *United States Merit Systems Protection Board,* 851 F.2d 1348 (11th Cir. 1988) and *Biller* v. *United States Merit Systems Protection Board,* 863 F.2d 1079 (2d Cir. 1988), which refers to political activity done "in concert with" political parties, partisan groups, or candidates for public office in partisan elections. *See Blaylock* v. *United States Merit Systems Protection Board,* 851 F.2d at 1354; *Biller* v. *United States Merit Systems Protection Board,* 863 F.2d at 1090–1091.

A Federal agency suggested that an example should be added to the regulations that clearly permits employees to place partisan political signs on their property. OPM has added such an example to § 734.205. In addition, another example in § 734.402 reflects that employees covered under subpart D also may display partisan political signs on their property.

Contributions to Political Action Committees Through Voluntary Salary Allotments

The final regulations also contain new provisions which result from the issuance, on February 22, 1995, of an opinion by the Office of Legal Counsel (OLC) at the Department of Justice to the Office of Personnel Management. The OLC opinion addresses the question of whether the Reform Amendments prohibit Federal employees from making voluntary salary allotments to political action committees (PACs). The OLC initially noted that "PACs" are not defined as such under Federal law. OLC noted further that 26 U.S.C. 9002(9) defined the term "political committee" and stated that, for the purposes of its opinion, "PAC" referred only to an organization that came within this definition. OPM has incorporated into part 734 the definition of "PAC" that OLC used in its opinion. OPM notes that the definition does not make a distinction between partisan and nonpartisan PACs because, according to the OLC opinion, donating to a PAC that meets this definition would be considered political activity within the meaning of the Reform Amendments.

OLC noted in this regard that political activity includes actions sufficient to effect the making of a political contribution, such as taking steps to ensure that part of one's salary is contributed to a political campaign or a PAC. OLC noted that the OPM interim regulations on political activity confirmed its view that contributing to political candidates constitutes political activity within the meaning of the OPM interim regulations because it is directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group. OPM has not revised this definition of political activity.

Moreover, OLC noted that Congress intended that making contributions to PACs would be considered political activity under the terms of the Reform Amendments. It noted that Senator Glenn, the leading Senate sponsor of the Reform Amendments, referred specifically to PAC contributions in describing examples of the political activities that the Reform Amendments would prohibit on duty. *See* 139 Cong. Rec. S8929 (daily ed. July 20, 1993). In view of this, OMP believes that it is not necessary to further refine the OLC definition of PAC. OPM has added to § 734.101, a definition of the term "political action committee" which tracks the definition of "political committee" in 26 U.S.C. 9002(9).

OLC opined that most Federal employees are not barred from using the salary allotment system to make contributions to PACs. Thus, Federal employees who are subject to subparts B through D of part 734 are not prohibited from making a voluntary allotment to a PAC.

OLC opined in addition that 5 U.S.C. 7324(a)(1)(4) prohibits Federal employees from taking steps sufficient to effect the making of a PAC contribution while they are on duty or in a Federal building. Thus, employees who are subject to subparts B through D of part 734 are prohibited from filling out direct-deposit forms for salary allotments to PACs while they are on duty or in a Federal building, and from personally delivering such forms to payroll employees who would process or administer these allotments. OPM has amended §§ 734,208, 734.306, 734.404, and 734.406 of its regulations to reflect the conclusions stated on the OLC opinion. OPM also has added to § 734.101, a definition of the term "political action committee" which tracks the definition of "political committee" in 26 U.S.C. 9002(9).

OLC also opined that Federal employees who are identified in 5 U.S.C. 7324(b)(2) may not use the salary allotment system to contribute money to PACs. Section 7324(b)(2) applies to employees whose duties and responsibilities "continue outside normal duty hours and while away from the normal duty post" and who are either employees (1) "paid from an appropriation for the Executive Office of the President" or (2) "appointed by the President, by and with the advice and consent of the Senate, whose position(s are) located within the United States in relations with foreign powers or in the nationwide administration of Federal laws." Such employees are covered under subpart E of OPM's regulations. OLC opined that in the use of the salary allotment system, the costs associated with the transfer of contributions to PACs would be borne by the Federal Government, and 5 U.S.C. 7324(b)(1) of the Reform Amendments prohibits these employees form engaging in political activity using "money derived from the Treasury of the United States." OPM has added to subpart E a new provision that reflects this prohibition.

Finally, the OLC opinion stressed that 5 U.S.C. 5525, the statutory provision governing allotment and assignment of pay, as well as the OPM allotment regulations at 5 CFR 550.311(b), provide that individual agency heads have the discretion to determine whether eligible employees of the agency may use the allotment system for particular purposes, such as making contributions to PACs.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 734

Political activities (Government employees).

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, the Office of Personnel Management interim rule adding 5 CFR part 734, published at 59 FR 48765 on September 23, 1994, is adopted as a final rule with the following changes:

PART 734—POLITICAL ACTIVITIES OF FEDERAL EMPLOYEES

1. The authority citation for part 734 continues to read as follows:

Authority: 5 U.S.C. 1103, 1104, 7325; Reorganization Plan No. 2 of 1978, 92 Stat. 3783, 3 CFR 1978 Comp. p. 323; and E.O. 12107, 3 CFR 1978 Comp. p. 264.

2. In § 734.101 the definitions of *accept*, and *receive*, are revised, and the definitions of *occasional, political action committee, recurrent,* and *room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency thereof* are added in alphabetical order, to read as follows:

§ 734.101 Definitions.

* * * * *

Accept means to come into possession of something from a person officially on behalf of a candidate, a campaign, a political party, or a partisan political group, but does not include ministerial activities which precede or follow this official act.

* * * * *

Occasional means occurring infrequently, at irregular intervals, and according to no fixed or certain scheme; acting or serving for the occasion or only on particular occasions.

* * * * *

Political Action Committee means any committee, association, or organization (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the nomination or election of one or more individuals to Federal, State, or local elective public office.

* * * * *

Receive means to come into possession of something from a person officially on behalf of a candidate, a campaign, a political party, or a partisan political group, but does not include ministerial activities which precede or follow this official act.

Recurrent means occurring frequently, or periodically on a regular basis.

Room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or

VOL 61 ISS 130 JL 5 1996 UMI

any agency thereof includes, but is not limited to:

(1) Any Federally owned space (including, but not limited to, "public buildings" as defined in 40 U.S.C. 612(1)) or Federally leased space in which Federal employees perform official duties on a regular basis;

(2) Public areas as defined in 40 U.S.C. 490(a)(17) and 41 CFR 101–20.003 of buildings under the custody and control of the General Services Administration.

(3) A room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency thereof does not include rooms in the White House, or in the residence of the Vice President, which are part of the Residence area or which are not regularly used solely in the discharge of official duties.

3. In § 734.102 paragraphs (a) introductory text and (b) are revised to read as follows:

§ 734.102 Jurisdiction.

(a) The United States Office of Special Counsel has exclusive authority to investigate allegations of political activity prohibited by the Hatch Act Reform Amendments of 1993, as implemented by 5 CFR part 734, prosecute alleged violations before the United States Merit Systems Protection Board, and render advisory opinions concerning the applicability of 5 CFR part 734 to the political activity of Federal employees and employees of the District of Columbia government. (5 U.S.C. 1212 and 1216. Advice concerning the Hatch Act Reform Amendments may be requested from the Office of Special Counsel:

* * * * *

(b) The Merit Systems Protection Board has exclusive authority to determine whether a violation of the Hatch Act Reform Amendments of 1993, as implemented by 5 CFR part 734, has occurred and to impose a minimum penalty of suspension for 30 days and a maximum penalty of removal for violation of the political activity restrictions regulated by this part. (5 U.S.C. 1204 and 7326).

* * * * *

4. In § 734.203, Example 2 is added to read as follows:

§ 734.203 Participation in nonpartisan activities.

* * * * *

Example 2: An employee, individually or collectively with other employees, may petition or provide information to Congress as provided in 5 U.S.C. 7211.

5. In § 734.204, paragraph (f) is added, and Example 2 is revised, to read as follows:

§ 734.204 Participation in political organizations.

* * * * *

(f) Serve as a delegate, alternate, or proxy to a political party convention.

* * * * *

Example 2: A noncareer member of the Senior Executive Service, or other employee covered under this subpart, may serve as a vice-president of a political action committee, as long as the duties of the office do not involve personal solicitation, acceptance, or receipt of political contributions. Ministerial activities which precede or follow the official acceptance and receipt, such as handling, disbursing, or accounting for contributions are not covered under the definitions of *accept* and *receive* in § 734.101. Sections 734.208 and 734.303 describe in detail permitted and prohibited activities which are related to fundraising.

* * * * *

6. In § 734.205, Examples 8 and 9 are added to read as follows:

§ 734.205 Participation in political campaigns.

* * * * *

Example 8: While not on duty, a Federal employee may distribute campaign leaflets by hand to homes or parked cars even though the leaflet may contain information concerning where to send contributions among other factual material about a partisan political candidate. However, should a member of the public stop the employee and request further information about contributions, the employee should refer that request to another campaign worker who is not a Federal employee.

Example 9: An employee may place in his or her front yard a sign or banner supporting a partisan political candidate.

7. § 734.208, paragraphs (c) and (d) are added, Examples 12 and 13 are added, and Example 4 is revised, to read as follows:

§ 734.208 Participation in fundraising.

* * * * *

(c) Subject to the provisions of § 734.306, an employee may make a financial contribution to a political action committee through a voluntary allotment made under § 550.311(b) of this chapter, if the head of the employee's agency permits agency employees to make such allotments to political action committees.

(d) An employee who is covered under this subpart and is a payroll official in an agency where employees are permitted to make allotments to political action committees may process the completed direct deposit forms for voluntary allotments which have been made to such committees under section 550.311(b) of this title.

* * * * *

Example 4: When an employee of the Department of Transportation is not on duty, he or she may engage in activities which do not require personal solicitations of contributions, such as organizing mail or phone solicitations for political contributions. Activities such as stuffing envelopes with requests for political contributions also are permitted. However, he or she may not sign the solicitation letter unless the solicitation is for the contribution of uncompensated volunteer services of individuals who are not subordinate employees. An employee may not knowingly send to his or her subordinate employees a letter soliciting the contribution of their uncompensated services. However, he or she may sign a letter that solicits contributions of uncompensated volunteer services as part of a general mass mailing that might reach a subordinate employee, as long as the mass mailing is not specifically targeted to his or her subordinate employees.

* * * * *

Example 12: An employee who desires to make a financial contribution to a political action committee through a voluntary allotment personally may obtain blank direct deposit forms from his or her payroll office. However, he or she may not complete the form while he or she is on duty, on Federal property, or in a Federally owned or leased vehicle. Moreover, he or she may not personally deliver his or her completed form, or the completed form of another employee, to the payroll office. However, the employee may mail his or her direct deposit form to his or her agency payroll office.

Example 13: Employees who are permitted to solicit, accept, or receive political contributions under the circumstances described in § 734.208(b)(4) may not solicit, accept, or receive such contributions either while they are on duty, or while they are on Federal premises, or both.

8. Section 734.302 is revised to read as follows:

§ 734.302 Use of official authority; prohibition.

(a) An employee may not use his or her official authority or influence for the purpose of interfering with or affecting the result of an election.

(b) Activities prohibited by paragraph (a) of this section include, but are not limited to:

(1) Using his or her official title while participating in political activity;

(2) Using his or her authority to coerce any person to participate in political activity; and

(3) Soliciting, accepting, or receiving uncompensated individual volunteer services from a subordinate for any political purpose.

Example 1: An employee who signs a letter seeking uncompensated volunteer services from individuals may not identify himself or herself by using his or her official title. However, the employee may use a general form of address, such as "The Honorable."

Example 2: A noncareer member of the Senior Executive Service, or another employee covered by this subpart, may not ask his or her subordinate employees to provide uncompensated individual volunteer services for a political party, partisan political group, or candidate for partisan political office. Moreover, he or she may not accept or receive such services from a subordinate employee who offers to donate them.

Example 3: An employee may not require any person to contribute to a partisan political campaign in order to win a Federal contract:

9. In § 734.306, Example 3 through 13 are revised and 14 through 19 are added to read as follows:

734.306 Participation in political activities while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle.

* * * * *

Example 3: An employee who uses his or her privately owned vehicle on a recurrent basis for official business may place a partisan political bumper sticker on the vehicle, as long as he or she covers the bumper sticker while the vehicle is being used for official duties.

Example 4: An employee who uses his or her privately owned vehicle on official business, must cover any partisan political bumper sticker while the vehicle is being used for official duties, if the vehicle is clearly identified as being on official business.

Example 5: A noncareer member of the Senior Executive Service, or any other employee covered by this subpart, who uses his or her privately owned vehicle only on an occasional basis to drive to another Federal agency for a meeting, or to take a training course, is not required to cover a partisan political bumper sticker on his or her vehicle.

Example 6: An employee may not place a partisan political bumper sticker on any Government owned or Government leased vehicle.

Example 7: An employee may place a bumper sticker on his or her privately owned vehicle and park his or her vehicle in a parking lot of an agency or instrumentality of the United States Government or in a non-Federal facility for which the employee receives a subsidy from his or her employing agency or instrumentality.

Example 8: When an agency or instrumentality of the United States Government leases offices in a commercial building and that building includes the headquarters of a candidate for partisan political office, an employee of that agency or instrumentality may do volunteer work, when he or she is not on duty, at the candidate's headquarters and in other areas of the building that have not been leased by the Government.

Example 9: A Government agency or instrumentality leases all of the space in a commercial building; employees may not participate in political activity in the public areas of the leased building.

Example 10: An employee of the National Aeronautics and Space Administration (NASA) may not engage in political activities while wearing a NASA flight patch, NASA twenty-year pin or anything with an official NASA insignia.

Example 11: If a political event begins while an employee is on duty and continues into the time when he or she is not on duty, the employee must wait until he or she is not on duty to attend the event. Alternatively, an employee may request annual leave to attend the political event when it begins.

Example 12: Officials of labor organizations who have been given official time to perform representational duties are on duty.

Example 13: An employee may stuff envelopes for a mailing on behalf of a candidate for partisan political office while the employee is sitting in the park during his or her lunch period if he or she is not considered to be on duty during his or her lunch period.

Example 14: An employee who works at home may engage in political activities at home when he or she is not in a pay status or representing the Government in an official capacity.

Example 15: An employee who is appointed by the President by and with the advice and consent of the Senate (PAS) may attend a political event with an non-PAS employee whose official duties do not require accompanying the PAS as long as the non-PAS employee is not on duty.

Example 16: A noncareer member of the Senior Executive Service, or any other employee covered by this subpart, may not wear partisan political buttons or display partisan political pictures, signs, stickers, or badges while he or she is on duty or at his or her place of work.

Example 17: An employee may not engage in political activity in the cafeteria of a Federal building, even if the cafeteria is in space leased by a contractor.

Example 18: An employee who contributes financially to a political action committee through a voluntary allotment made under § 550.311(b) of this title may not complete the direct deposit forms while he or she is on duty, in a "room or building" defined in § 734.101 or in a Federally owned or leased vehicle.

Example 19: An employee who contributes financially to a political action committee through a voluntary allotment may not personally deliver his or her completed direct deposit form, or the completed direct deposit form of another employee, to the payroll employees who would process or administer such forms. However, the employee may mail his or her direct deposit form to his or her agency payroll office.

10. In § 734.307, Example 1 is revised to read as follows:

§ 734.307 Campaigning for a spouse or family member.

* * * * *

Example 1: An employee who is married to a candidate for partisan political office may attend a fundraiser for his or her spouse, stand in the receiving line, sit at the head table, and urge others to vote for his or her spouse. However, the employee may not personally solicit, accept, or receive contributions of money or the paid or unpaid services of a business or corporation, or sell or collect money for tickets to the fundraiser.

* * * * *

11. In § 734.401, paragraphs (a)(14) through (a)(16) are revised and paragraph (a)(17) is added to read as follows:

§ 734.401 Coverage.

(a) * * *

(14) The Central Imagery Office;

(15) Career Senior Executive Service positions described in 5 U.S.C. 3132(a)(4);

(16) Administrative Law Judge positions described in 5 U.S.C. 5372;

(17) Contract Appeals Board Member positions described in 5 U.S.C. 5372a.

* * * * *

12. In § 734.402, paragraph (b) is revised, Examples 4 and 5 are redesignated as Examples 5 and 6 respectively, newly redesignated Examples 5 and 6 are revised, and Example 4 is added, to read as follows:

§ 734.402 Expression of an employee's individual opinion.

* * * * *

(b) Display a political picture, sign, sticker, badge, or button, as long as these items are displayed in accordance with the provisions of § 734.406;

* * * * *

Example 4: An employee may place in his or her yard a sign supporting a candidate for partisan political office.

Example 5: An employee may stand outside of a political party convention with a homemade sign which states his or her individual opinion that one of the candidates for nomination is the best qualified candidate.

Example 6: An employee, including a career SES employee, may wear a button with a partisan political theme when the employee is not on duty or at his or her place of work.

13. Section 734.404 is revised to read as follows:

§ 734.404 Participation in political organizations.

(a) Each employee covered under this subpart retains the right to:

(1) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;

(2) Be a member of a political party or other partisan political group and participate in its activities to the extent consistent with other Federal law;

(3) Attend a political convention, rally, fund-raising function, or other political gathering; and

VOL 61 ISS 130 JL 5 1996 UMI

(4) Make a financial contribution to a political party, partisan political group, or to the campaign committee of a candidate for partisan political office.

(b) Subject to the provisions in § 734.406, an employee covered under this subpart may make a financial contribution to a political action committee through a voluntary allotment made under § 550.311(b) of this chapter if the head of the employee's agency permits agency employees to make such allotments to political action committees.

(c) An employee who is covered under this subpart and is a payroll official in an agency where employees are permitted to make allotments to political action committees may process the completed direct deposit forms for voluntary allotments which have been made to such committees under § 550.311(b) of this chapter.

Example 1: An employee, or a noncareer SES employee who is subject to subpart D of part 734, may attend a political convention or rally solely as a spectator. However, the employee and noncareer SES employee may not participate in demonstrations or parades which are sponsored by a political party, a partisan political group, or an individual who is running for nomination to be a candidate for partisan political office.

Example 2: An employee may attend a political party's annual barbecue, but he or she may not organize, distribute invitations to, or sell tickets to the barbecue.

Example 3: An employee who desires to contribute to a political action committee through an allotment personally may obtain blank direct deposit forms from his or her payroll office. The employee may not complete the direct deposit form while he or she is on duty, on Federal property, or in a Federally owned or leased vehicle. The employee also may not personally deliver his or her completed direct deposit form, or the completed direct deposit form of another employee, to his or her payroll office. However, the employee may mail the completed form to his or her agency payroll office.

14. In § 734.406, Examples 1 through 8 are added to read as follows:

§ 734.406 Participation in political activities while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle; prohibition.

* * * * *

Example 1: An employee who uses his or her privately owned vehicle on a recurrent basis for official business may place a bumper sticker on the vehicle, as long as he or she covers the bumper sticker while the vehicle is being used for official duties.

Example 2: An employee who uses his or her privately owned vehicle on official business, must cover any partisan political bumper sticker while the vehicle is being used for official duties, if the vehicle is clearly identified as being on official business.

Example 3: An employee or career SES employee who uses his or her privately owned vehicle only on an occasional basis to drive to another Federal agency for a meeting, or to take a training course, if not required to cover a partisan political bumper sticker on his or her vehicle.

Example 4: An employee may not place a partisan political bumper sticker on any Government owned or Government leased vehicle.

Example 5: An employee may place a bumper sticker on his or her privately owned vehicle and park the vehicle in a parking lot of an agency or instrumentality of the United States Government or in a non-Federal facility for which the employee receives a subsidy from his or her employing agency or instrumentality.

Example 6: An employee, or noncareer SES employee who is subject to subpart D of this part 734, may not wear partisan political buttons or display partisan political pictures, signs, stickers, or badges while he or she is on duty or at his or her place of work.

Example 7: An employee who contributes financially to a political action committee through a voluntary allotment made under § 550.311(b) of this title may not complete the direct deposit forms while he or she is on duty, in a "room or building" defined in § 734.101, or in a Federally owned or leased vehicle.

Example 8: An employee who contributes financially to a political action committee may not personally deliver his or her completed direct deposit form, or the completed direct deposit form of another employee, to the payroll employees who would process or administer such forms. However, the employee may mail his or her direct deposit form to his or her agency payroll office.

15. Section 734.408 is revised to read as follows:

§ 734.408 Participation in political management and political campaigning; prohibitions.

An employee covered under this subpart may not take an active part in political management or in a political campaign, except as permitted by subpart D of this part.

16. In § 734.412, paragraphs (a), (b), and (c) are revised to read as follows:

§ 734.412 Participation in elections; prohibitions.

(a) Be a candidate for partisan political office;

(b) Act as recorder, watcher, challenger, or similar officer at polling places in concert with a political party, partisan political group, or a candidate for partisan political office;

(c) Drive voters to polling places in concert with a political party, partisan political group, or a candidate for partisan political office;

17. In § 734.502 paragraph (d) is revised to read as follows:

§ 734.502 Participation in political activity while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle.

* * * * *

(d) An employee, to whom subpart E of this part does not apply, who is not on duty may participate in political activities in rooms of the White House or the Residence of the Vice President which are part of the Residence area or which are not regularly used solely in the discharge of official duties.

* * * * *

18. Section 734.504 is added to read as follows:

* * * * *

§ 734.504 Contributions to political action committees through voluntary payroll allotments prohibited.

An employee described in § 734.502(a) may not financially contribute to a political action committee through a voluntary allotment made under § 550.311(b) of this title.

[FR Doc. 96–17006 Filed 7–3–96; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–7]

Karnal Bunt; Compensation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations to provide compensation for certain growers and handlers, owners of grain storage facilities, and flour millers in order to mitigate losses and expenses incurred because of Karnal bunt. The payment of compensation is necessary in order to reduce the economic impact of the Karnal bunt quarantine on affected wheat growers and other individuals, and to help obtain cooperation from affected individuals in Karnal bunt eradication efforts.

DATES: Interim rule effective June 27, 1996. Consideration will be given only to comments received on or before September 3, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–016–7, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–016–7. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a serious fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores. The spores can be carried on a variety of surfaces, including plants and plant parts, seeds, soil, elevators, buildings, farm equipment, tools, and even vehicles. Spores and the sporidia they produce also can be windborne. Although the sporidia are fragile and may be able to move only short distances, Teliospores are thought to move longer distances.

Karnal bunt is a serious disease that can affect both yield and grain quality when present at levels over 3 to 5 percent. It adversely affects the color, odor, and palatability of flour and other foodstuffs made from heavily infested wheat. Wheat containing a significant amount of bunted kernels is reduced in quality. Karnal bunt does not present a risk to human or animal health.

On March 8, 1996, Karnal bunt was detected in Arizona during a seed certification inspection done by the Arizona Department of Agriculture. On March 20, 1996, the Secretary of Agriculture signed a "Declaration of Extraordinary Emergency" authorizing the Secretary to take emergency action under 7 U.S.C. 150dd with regard to Karnal bunt within the States of Arizona, New Mexico, and Texas. In an interim rule effective on March 25, 1996, and published in the **Federal Register** on March 28, 1996 (61 FR 13649–13655, Docket No. 96–016–3), the Animal and Plant Health Inspection Service (APHIS) established the Karnal bunt regulations (7 CFR 301.89–1 through 301.89–11), and quarantined all of Arizona and portions of New Mexico and Texas because of Karnal bunt. The regulations define regulated articles and restrict the interstate movement of these regulated articles from the quarantined areas.

After the establishment of the regulations, Karnal bunt was detected in lots of seed that were either planted or stored in certain areas in California. On April 12, 1996, the Secretary of Agriculture signed a "Declaration of Extraordinary Emergency" authorizing the Secretary to take emergency action under 7 U.S.C. 150dd with regard to Karnal bunt within California. In an interim rule effective on April 19, 1996, and published in the **Federal Register** on April 25, 1996, APHIS also quarantined portions of California because of Karnal bunt (61 FR 18233–18235, Docket No. 96–016–5).

Under an extraordinary emergency, the Secretary is authorized, but not obligated, to compensate growers and other persons for economic losses incurred by them as a result of the quarantine or emergency action. This interim rule amends the Karnal bunt regulations to provide compensation for certain growers and handlers, owners of grain storage facilities, and flour millers in order to mitigate losses and expenses incurred because of actions taken by the Department regarding Karnal bunt. We are adding a new § 301.89–12 that lists classes of individuals who are eligible to receive compensation for actions taken or losses experienced because of actions taken by the Department regarding Karnal bunt. This section also sets forth the rates of compensation and explains how to make a claim for compensation, including what forms need to be filed and what documents need to be provided by the claimant to the United States Department of Agriculture (USDA).

Compensation for Destroyed Crops in New Mexico and Texas

Approximately 4,000 acres of planted wheat in New Mexico and Texas were traced back to seed produced in Arizona and known to be contaminated with Karnal bunt. Under an extraordinary emergency, the Secretary of Agriculture has the authority to order the destruction of crops (see 7 U.S.C. 150dd(b)). On April 1, 1996, the Secretary signed a memorandum authorizing APHIS to issue orders for the destruction by plowing of all wheat crops in New Mexico and Texas that were planted with seed known to be contaminated with Karnal bunt. Destruction of these crops was determined to be beneficial in preventing the spread of Karnal bunt because the crops in New Mexico and Texas were at an early stage of growth, before Karnal bunt infection of the current crop could occur.

The vehicle for issuing destruction orders is an Emergency Action Notification (PPQ Form 523) given by an APHIS inspector to the owner of the wheat crop that is to be destroyed. Pursuant to the Secretary's authorization, APHIS began issuing Emergency Action Notifications for the destruction of contaminated wheat fields in New Mexico and Texas on April 1, 1996.

Consequently, we are listing as eligible for compensation growers in New Mexico and Texas who have destroyed crops of wheat pursuant to an Emergency Action Notification (PPQ Form 523) issued by an inspector. Compensation for these individuals has been set at the rate of $300 per acre of destroyed crop. The rate of $300 per acre includes a payment of $275 per acre compensation for expenses incurred by the owner of the wheat crop in planting and cultivating the contaminated wheat (this is based on the average cost of expenses such as seed, fertilizer, irrigation, and employee expenses) plus $25 per acre to pay for crop destruction and soil preparation for replanting the plowed acres with a new crop.

To receive compensation, the growers must complete and submit to an inspector whichever of the following three forms are applicable, as determined by the inspector: ASCS Form 574, ASCS Form 578, and FCI Form 73. The forms will be furnished by USDA. ASCS Form 574 is a form used to request acreage or disaster credit, and will document a record of management practices for the crop and the reason for its destruction. ASCS Form 578 is a form used to document a farmer's total acreage and how the farmer uses that acreage. Most affected farmers will already have a copy of ASCS Form 578 on file with the USDA in connection with their enrollment in federal crop insurance or other USDA programs, but will have to revise this form to reflect that the crop on some or all of the acreage listed on the form has been ordered destroyed by an inspector because of Karnal bunt. FCI Form 73 will be used to certify the number of destroyed acres of wheat and the reason for their destruction.

Compensation for Lost Value of Wheat in the Quarantined Area

Most other wheat grown in the quarantined areas, especially in the quarantined areas outside of New Mexico and Texas, was past the early stage of growth at which plowing the

VOL 61 ISS 130 JL 5 1996 UMI

crop under would prevent infection of the current crop with Karnal bunt. Much of the wheat grown in the quarantined area is under contract with millers or grain handlers for processing or for use as seed. Under the Karnal bunt regulations, growers and handlers in the quarantined area are restricted from selling wheat for propagative purposes (seed) and from moving wheat outside of the quarantined area. This means that, in most cases, growers and handlers in the quarantined area cannot move their wheat to the market for which it was contracted.

Growers and handlers may export their wheat to another country or may market the wheat within the quarantined area, where it will most likely be processed as animal feed. The value for wheat to be used as animal feed is typically lower than the value for wheat used for propagative purposes or for use in products for human consumption. Further, many growers and handlers are finding it difficult to market wheat from the quarantined area, whether or not it has tested positive for Karnal bunt infection, because wheat from the quarantined area may incur additional costs for handling and treatment. This may force some growers and handlers to accept a lower price for their wheat than they would have received if the area had not been quarantined for Karnal bunt.

Therefore, we are listing as eligible for compensation growers and handlers of wheat grown in the quarantined area for the loss in value of their wheat due to the quarantine for Karnal bunt. We will compensate for the loss in value of wheat testing negative and wheat testing positive from the quarantined area. Compensation calculations will be different depending on the purpose for which the wheat was grown and the purpose for which the wheat is eventually sold. Compensation calculations will also be different for growers and for handlers.

This rule only includes calculations for compensation of wheat grown for nonpropagative purposes (meaning it was not grown for use as seed). We do intend to compensate seed producers for the loss in value of their seed. However, we are still developing protocols for seed movement and disposition, and those protocols will affect how that compensation will be calculated. A rule providing for compensation for seed producers will be published at a later date. The calculations for nonpropagative wheat compensation are discussed below.

Growers of Nonpropagative Wheat

For growers of wheat grown under contract for nonpropagative purposes in the quarantined area, the amount of compensation will be based on the difference between the contracted price and the salvage value (described below). Salvage value for wheat grown under contract will be as follows:

If the contracted wheat is tested by APHIS and found positive for Karnal bunt, and the positive wheat is sold for use as animal feed, salvage value equals $6 per hundred weight or $3.60 per bushel for all classes of wheat. This value is based on the feeding value of wheat relative to other feed grains, in addition to considering the costs of required treatment of positive wheat for use in livestock feed and the costs of transporting wheat to processing centers and to feeding locations. If the positive wheat is sold for uses other than animal feed (e.g., milling or export), salvage value equals whichever price is higher of the following: the average price paid in the region of the quarantined area where the wheat is sold for the relevant class of wheat for the period between May 1 and June 30, 1996; or, $3.60 per bushel. (Relevant class of wheat means the type of wheat, for example, Durum or Hard red winter wheat. Because these classes of wheat are suitable for different products, they command different market prices.) If contracted wheat is tested by APHIS and found negative for Karnal bunt, regardless of the eventual use of the wheat, salvage value equals the same as for positive contracted wheat sold for uses other than animal feed.

For growers of nonpropagative wheat not grown under contract, compensation will be based on the difference between the estimated market price for the relevant class of wheat and the salvage value. Salvage values will be the same as described above for contracted wheat. The estimated market price is intended to represent what the market price would have been if there were no quarantine for Karnal bunt, and will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) for the period between May 1 and June 30, 1996, with adjustments for transportation and other handling costs.

For nonpropagative wheat, whether grown under contract or not, whether positive or negative, compensation will not exceed $2.50 per bushel.

To receive compensation, the grower must complete and submit to an inspector whichever of the following three forms are applicable, as determined by the inspector: ASCS Form 574, ASCS Form 578, and FCI Form 73. These are the same forms described above for claims for destroyed crops, and will be furnished by USDA. In addition, the grower must submit a copy of the contract the grower has for the wheat, if the wheat was under contract, and a copy of the receipt for the final sale of the wheat, showing the intended use for which the wheat was sold.

Handlers of Nonpropagative Wheat

There are two circumstances under which handlers will be eligible for compensation: (1) Handlers who honor contracts by paying the grower full contract price on wheat grown for nonpropagative purposes in the quarantined area that was tested by APHIS and found positive for Karnal bunt; and (2) handlers who purchase contracted or noncontracted wheat grown for nonpropagative purposes in the quarantined area that was tested by APHIS and found negative for Karnal bunt prior to purchase, but which is tested by APHIS and found positive for Karnal bunt after purchase. The amount of compensation for both these circumstances will be based on the difference between the estimated market price (as described previously in this document) and the salvage value. Salvage value will be the same as for grower compensation (described previously in this document). However, compensation will not exceed $2.50 per bushel under any circumstances.

The calculations described above do not provide for compensation for handlers who purchase positive wheat not grown under contract, or who purchase negative wheat that does not later test positive. Handlers who purchase positive wheat not grown under contract, or for less than contract price, will likely pay a very low price for the wheat, so that compensation for loss in value will not be necessary. Handlers who purchase negative wheat that continues to test negative after purchase will likewise not experience a loss in value for the wheat compared to the price they paid for it. Handlers who purchase negative wheat that later tests positive would, however, experience a loss in expected value because positive wheat is worth less than negative wheat.

To receive compensation, the handler must complete and submit to an inspector whichever of the following three forms are applicable, as determined by the inspector: ASCS Form 574, ASCS Form 578, and FCI Form 73. The forms will be furnished by USDA. In addition, the handler must submit a copy of the contract the handler had with the grower for the wheat, if the wheat was under contract, to verify that the contract was honored. If the wheat was not purchased under contract, the handler must submit a copy of the receipt for the final sale of the wheat, showing the intended use for which the wheat was sold.

If a grower or handler of nonpropagative wheat in the quarantined area is not able to or elects not to sell their wheat, they will be eligible to receive compensation at the rate of $2.50 per bushel. However, compensation will only be paid if the grower or handler has destroyed the wheat by burying it in a sanitary landfill. To receive compensation, the grower or handler must complete and submit to an inspector whichever of the following three forms are applicable, as determined by an inspector: ASCS Form 574, ASCS Form 578, and FCI Form 73. The forms will be furnished by USDA. The grower or handler must also submit a receipt from a sanitary landfill verifying how much wheat was buried.

Compensation for Decontamination of Grain Storage Facilities

Owners of grain storage facilities that have been decontaminated pursuant to an Emergency Action Notification (PPQ Form 523) issued by an inspector are eligible for compensation. These grain storage facilities have been determined by APHIS to be contaminated with Karnal bunt. We estimate that the cost of decontamination, which consists of treatment with a chlorine solution and water, detergent and water, steam, or fumigation with methyl bromide in accordance with § 301.89–11 of the regulations, can range between $30,000 to $50,000 per facility.

We will compensate owners of contaminated grain storage facilities on a one time only basis for up to 50 percent of the cost of decontamination. However, compensation will not exceed $20,000 per premise. We will add a definition for "premise" to § 301.89–1 to mean "all structures, conveyances, or materials associated with a grain storage facility at a single location." Compensation is limited to the direct costs of decontaminating facilities. General clean-up, repair, and refurbishment costs are excluded from compensation.

To receive compensation, owners of grain storage facilities must submit to the inspector records demonstrating that decontamination was performed on all structures, conveyances, or materials ordered to be decontaminated by the Emergency Action Notification on the facility premise. The records must include a copy of the Emergency Action Notification, contracts with individuals or companies hired to perform the decontamination, receipts for equipment and materials purchased to perform the decontamination, time sheets for employees of the grain storage facility who perform actions related to the decontamination, and any other documentation that helps show decontamination has been completed and its cost.

Compensation for Treating Millfeed

In accordance with compliance agreements established between APHIS and flour millers located in high-risk areas (areas where there is a high risk of spreading Karnal bunt into surrounding areas), millfeed (a byproduct of milling wheat into flour) produced from wheat from the quarantined area must be treated using a heat process. This treatment adds approximately $35 per short ton to the cost of producing millfeed products, such as animal feed. It is unlikely that millers would purchase wheat from the quarantined area without compensation for the cost of millfeed treatment. Loss of these markets would further lower the value of wheat in the quarantined area.

Flour millers who heat-treat millfeed made from wheat produced in the quarantined area are eligible to receive compensation at the rate of $35.00 per short ton of millfeed. The amount of millfeed compensated will be calculated by multiplying the weight of wheat that is milled from the quarantined area by 25 percent (the average percent of millfeed derived from a short ton of grain). We will calculate the amount of millfeed to be compensated in this manner because many millers routinely mix together different types of wheat from different areas. The resulting millfeed would be a product of wheat from quarantined and nonquarantined areas. However, we will only compensate for the cost of treating millfeed made from wheat produced in the quarantined area. Therefore, the amount compensated cannot be determined by simply weighing the total amount of millfeed at the end of the milling process.

To claim compensation, flour millers must submit to an inspector a copy of the limited permit under which the wheat was moved to the mill, in order to show that the wheat was produced in a quarantined area, and a copy of the bill of lading for the wheat, showing the weight of the wheat in short tons. Flour millers must also submit verification that the millfeed produced from wheat from the quarantined area was properly heat treated.

We believe the compensations described above will help ensure cooperation from affected individuals in APHIS' efforts to eliminate the spread of Karnal bunt and will help mitigate the economic impact of the Karnal bunt quarantine and emergency actions on affected wheat growers and others within the industry.

Miscellaneous

We are also making a miscellaneous change to the Karnal bunt regulations. Section 301.89–2(d) lists plants and plant parts of the species *Triticum aestivum* X *Seale cereals* as regulated articles. However, the correct scientific name for this species is *Triticum aestivum* X *Secale cereale*. We are amending § 301.89–2(d) to correct this error.

Emergency Action

In accordance with 7 U.S.C. 150dd(b)(2), the amount of compensation, if any, which the Secretary determines may be paid to individuals for economic losses incurred because of the declaration of an extraordinary emergency shall be final.

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to provide compensation for those persons who were and are required to take emergency actions to eliminate the spread of Karnal bunt or who experience economic losses because of the quarantine for Karnal bunt.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action amends the regulations to provide compensation for certain

VOL
61
ISS
130
JL
5
1996
UMI

growers and handlers, owners of grain storage facilities, and flour millers in order to mitigate losses and expenses incurred because of the Karnal bunt quarantine and emergency actions. This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604) impracticable. This rule may have a significant economic impact on a substantial number of small entities. If we determine this is so, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this interim rule have been approved by the Office of Management and Budget (OMB). The assigned OMB control numbers are as follows: for PPQ Form 523 the number is 0579–0121; for ASCS Form 574 the number is 0563–0003; for ASCS Form 578 the number is 0560–0004; and for FCI Form 73 the number is 0563–0033.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.89–2 [Amended]

2. In § 301.89–1, a definition for *Premise* is added in alphabetical order to read as follows:

§ 301.89–1 Definitions.

* * * * *

Premise. All structures, conveyances, or materials associated with a grain storage facility at a single location.

* * * * *

3. In § 301.89–2, in paragraph (d), the entry for *Triticale* is amended by removing the words *"Seale cereals"* and adding the words *"Secale cereale"* in their place.

4. A new § 301.89–12 is added to read as follows:

§ 301.89–12 Compensation.

The following individuals are eligible to receive compensation from the United States Department of Agriculture (USDA) for losses or expenses incurred because of the Karnal bunt quarantine and emergency actions, as follows:

(a) *Growers who have destroyed crops.* Growers in New Mexico and Texas who have destroyed crops of wheat pursuant to an Emergency Action Notification (PPQ Form 523) issued by an inspector are eligible to be compensated at the rate of $300 per acre of destroyed crop. To claim compensation, the grower must complete and submit to an inspector whichever of the following three forms are applicable, as determined by the inspector: ASCS Form 574, ASCS Form 578, and FCI Form 73. The forms will be furnished by USDA.

(b) *Growers and handlers who sell nonpropagative wheat grown in the quarantined area.* Growers and handlers who sell nonpropagative wheat grown in the quarantined area are eligible to be compensated for the loss in value of their wheat due to the quarantine for Karnal bunt, as follows:

(1) *Growers who sell nonpropagative wheat.* For growers who sell wheat grown for nonpropagative purposes, compensation will be as described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section. However, compensation will not exceed $2.50 per bushel under any circumstances.

(i) If the wheat was grown under contract, compensation will equal the contracted price minus the salvage value, as described in paragraph (b)(3) of this section.

(ii) If the wheat was not grown under contract, compensation will equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as Durum or Hard red winter) minus the salvage value, as described in paragraph (b)(3) of this section. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) for the period between May 1 and June 30, 1996, with adjustments for transportation and other handling costs.

(2) *Handlers who sell nonpropagative wheat.* Handlers are eligible to be compensated only under the circumstances described in paragraphs (b)(2)(i) and (b)(2)(ii) of this section. Compensation for both circumstances will equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as Durum or Hard red winter) minus the salvage value, as described in paragraph (b)(3) of this section. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) for the period between May 1 and June 30, 1996, with adjustments for transportation and other handling costs. However, compensation will not exceed $2.50 per bushel under any circumstances.

(i) Handlers who honor contracts by paying the grower full contract price on wheat grown for nonpropagative purposes in the quarantined area that was tested by APHIS and found positive for Karnal bunt; or

(ii) Handlers who purchase contracted or noncontracted wheat grown for nonpropagative purposes in the quarantined area that was tested by APHIS and found negative for Karnal bunt prior to purchase but that was tested by APHIS and found positive for Karnal bunt after purchase.

(3) *Salvage value.* Salvage values will be as follows:

(i) If the wheat is positive for Karnal bunt and is sold for use as animal feed, salvage value equals $6.00 per hundredweight or $3.60 per bushel for all classes of wheat.

(ii) If the wheat is positive for Karnal bunt and is sold for a use other than animal feed, salvage value equals whichever is higher of the following: the average price paid in the region of the quarantined area where the wheat is sold for the relevant class of wheat (meaning type of wheat, such as Durum or Hard red winter) for the period between May 1 and June 30, 1996; or, $3.60 per bushel.

(iii) If the wheat is negative for Karnal bunt and is sold for any use, salvage value equals whichever is higher of the following: the average price paid in the region of the quarantined area where the wheat is sold for the relevant class of wheat (meaning type of wheat, such as Durum or Hard red winter) for the period between May 1 and June 30, 1996; or, $3.60 per bushel.

(4) *To claim compensation.* To claim compensation, a grower or handler must complete and submit to an inspector whichever of the following three forms are applicable, as determined by the inspector: ASCS Form 574, ASCS Form 578, and FCI Form 73. The forms will be furnished by USDA. Growers must also submit a copy of the contract the grower has for the wheat, if the wheat was under contract; handlers must also submit a copy of the contract the handler had with the grower for the wheat, if the wheat was under contract. Finally, a grower or handler must submit a copy of the receipt for the final sale of the wheat, showing the intended use for which the wheat was sold.

(c) *Nonpropagative wheat that is not sold.* If a grower or handler of nonpropagative wheat in the quarantined area is not able to or elects not to sell their wheat, they will be eligible to receive compensation at the rate of $2.50 per bushel. Compensation will only be paid if the grower or handler has destroyed the wheat by burying it in a sanitary landfill. To claim compensation, the grower or handler must complete and submit to an inspector whichever of the following three forms are applicable, as determined by the inspector: ASCS Form 574, ASCS From 578, and FCI Form 73. The forms will be furnished by USDA. In addition, the grower or handler must submit a receipt from the sanitary landfill verifying how much wheat was buried.

(d) *Decontamination of grain storage facilities.* Owners of grain storage facilities that have been decontaminated pursuant to an Emergency Action Notification (PPQ Form 523) issued by an inspector are eligible to be compensated, on a one time only basis, for up to 50 percent of the cost of decontamination. However, compensation will not exceed $20,000 per premise (as defined in § 301.89–1). Compensation is limited to the direct costs of decontaminating facilities. General clean-up, repair, and refurbishment costs are excluded from compensation. To claim compensation, the owner of the grain storage facility must submit to an inspector records demonstrating that decontamination was performed on all structures, conveyances, or materials ordered to be decontaminated by the Emergency Action Notification on the facility premise. The records must include a copy of the Emergency Action Notification, contracts with individuals or companies hired to perform the decontamination, receipts for equipment and materials purchased to perform the decontamination, time sheets for employees of the grain storage facility who performed activities connected to the decontamination, and any other documentation that helps show decontamination has been completed.

(e) *Flour millers.* Flour millers who, in accordance with a compliance agreement with APHIS, heat-treat millfeed made from wheat produced in the quarantined area are eligible to be compensated at the rate of $35.00 per short ton of millfeed. The amount of millfeed compensated will be calculated by multiplying the weight of wheat from the quarantined area received by the miller by 25 percent (the average percent of millfeed derived from a short ton of grain). To claim compensation, the miller must submit to an inspector a copy of the limited permit under which the wheat was moved to the mill and a copy of the bill of lading for the wheat (showing the weight of the wheat in short tons). Flour millers must also submit verification that the millfeed was heat treated, in the form of a copy of the limited permit under which the wheat was moved to a treatment facility and a copy of the bill of lading accompanying that movement.

Done in Washington, DC, this 27th day of June 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–16999 Filed 7–3–96; 8:45 am]

BILLING CODE 3410–34–P

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7 CFR Part 301

[Docket No. 96–016–6]

Karnal Bunt; Removal of Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Karnal bunt regulations by removing areas in Arizona, New Mexico, and Texas from the list of areas quarantined because of infestations of Karnal bunt. This action is necessary to relieve restrictions on the areas of Arizona, New Mexico, and Texas that do not produce wheat, durum wheat, or triticale or that do produce wheat but we have been able to determine that they have no association with Karnal bunt contaminated seed. The interstate movement of regulated articles from these areas does not present a risk of spreading Karnal bunt.

DATES: Interim rule effective June 27, 1996. Consideration will be given only to comments received on or before September 3, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–016–6, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale MD 20737–1238. Please state that your comments refer to Docket No. 96–016–6. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a serious fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Seale cereals*), a hybrid of wheat and rye. The disease is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores. Karnal bunt is a serious disease that affects both yield and grain quality. It adversely affects the color, odor, and palatability of flour and other foodstuffs made from affected grain. Grain containing any amount of bunted kernels is reduced in quality. Karnal bunt does not present a risk to human health.

On March 20, 1996, the Secretary of Agriculture signed a "Declaration of Extraordinary Emergency" authorizing the Secretary to take emergency action under 7 U.S.C. 150dd with regard to Karnal bunt within the States of Arizona, New Mexico, and Texas. The "Declaration of Extraordinary Emergency" was published in the **Federal Register** on March 25, 1996 (61 FR 12058, Docket No. 96–016–1). On March 26, 1996, the Secretary of Agriculture signed a "Declaration of Emergency" authorizing the transfer and use of funds within the Department for a program to control Karnal bunt wherever it may be found in the United States. The "Declaration of Emergency" was published in the **Federal Register** on March 29, 1996 (61 FR 14046, Docket No. 96–016–2).

VOL
61
ISS
130
JL
5
1996
UMI

In an interim rule effective March 25, 1996, and published in the **Federal Register** March 28, 1996 (61 FR 13649–13655, Docket No. 96–016–3), we established the Karnal bunt regulations (7 CFR 301.89–1 through 301.89–11) and quarantined the State of Arizona and a total of six counties in the States of New Mexico and Texas. The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the artificial spread of Karnal bunt to noninfested areas of the United States.

On April 12, 1996, the Secretary of Agriculture signed a "Declaration of Extraordinary Emergency" authorizing the Secretary to take emergency action under 7 U.S.C. 150dd with regard to Karnal bunt within the State of California. The "Declaration of Extraordinary Emergency" was published in the **Federal Register** on April 18, 1996 (61 FR 16895–16896, Docket No. 96–016–4).

In an interim rule effective April 19, 1996, and published in the **Federal Register** on April 25, 1996 (61 FR 18233–18235, Docket No. 93–016–5) we amended the regulations by adding Imperial County, CA, and a portion of Riverside County, CA, to the list of areas quarantined because of infestations of Karnal bunt. We also added *Tilletia indica* (Mitra) Mundkur, the organism that causes Karnal bunt, to the list of restricted articles.

Removal of Quarantined Areas

Section 301.89–3(e) of the regulations lists those States or portions of States that are quarantined because of Karnal bunt. We are amending § 301.89–3(e) by removing the following portions of the States of Arizona, New Mexico, and Texas from the list of quarantined areas: Yavapai County, Coconino County, Navajo County, Apache County, Gila County, Greenlee County, and Santa Cruz County, AZ; portions of Mohave County and Pima County, AZ; portions of Hidalgo County, Luna County, and Sierra County, NM; and a portion of Hudspeth County, TX. These areas do not produce wheat, durum wheat, or triticale, or do produce wheat but we have been able to determine that they have no association with Karnal bunt contaminated seed, and, therefore, do not present a risk of being, or becoming, infested with Karnal bunt. The remainder of the counties in the State of Arizona, Dona Ana County, NM, and El Paso County, TX, will remain under quarantine because of infestations of Karnal bunt.

The area of Mohave County, AZ, that will remain under quarantine is that portion of the county bounded as follows: Beginning at the intersection of Arizona/Nevada State line and State Route 68; then east along State Route 68 to U.S. Highway 93; then southeast along U.S. Highway 93 to Interstate 40; then south along Interstate 40 to the Arizona/California State line; then north along the State line to the point of beginning.

The area of Pima County, AZ, that will remain under quarantine is that portion of the county bounded as follows: Beginning at the intersection of the Pima County line, the Pinal County line, and the Papago Indian Reservation boundary; then east along the Pima County line to its easternmost point; then south along the Pima County line to the Cochise and Santa Cruz County lines; then west along the Pima County line to the United States/Mexico boundary; then west along the United States/Mexico boundary to the Papago Indian Reservation boundary; then north along the Papago Indian Reservation boundary to the point of beginning.

The area of Hidalgo County, NM, that will remain under quarantine is that portion of the county bounded as follows: Beginning at the intersection of the Arizona/New Mexico State line and Interstate 10; then east along Interstate 10 to the Hidalgo/Grant County line; then south and east along the Hidalgo County line to the Luna County line; then south along the Hidalgo County line to its southernmost point; then west and north along the Hidalgo county line to point of beginning.

The area of Luna County, NM, that will remain under quarantine is that portion of the county bounded as follows: Beginning at the intersection of the Grant/Luna County line and Interstate 10; then east along Interstate 10 to U.S. Highway 180; then north along U.S. Highway 180 to State Route 26; then north along State Route 26 to State Route 27; then northeast along State Route 27 to the Luna/Sierra County line; then east along the Luna County line to the Dona County line; then south along the Luna County line to the United States/Mexico boundary; then west along the United States/Mexico boundary to the Hidalgo County line; then north along the Luna County line to the point of beginning.

The area of Sierra County, NM, that will remain under quarantine is that portion of the county bounded as follows: Beginning at intersection of the Luna/Sierra County line and State Route 27; then north along State Route 27 to State Route 152; then east along State Route 152 to Interstate 25; then north along Interstate 25 to State Route 52; then northwest along State Route 52 to the Sierra/Socorro County line; then east along the Sierra County line to the Lincoln County line; then south along the Sierra County line to the Dona Ana County line; then west along the Sierra County line to the point of beginning.

The area of Hudspeth County, TX, that will remain under quarantine is that portion of the county bounded as follows: Beginning at the intersection of the El Paso/Hudspeth County line and U.S. Highway 62/U.S. Highway 180; then east along U.S. Highway 62/U.S. Highway 180 to County Road 1111; then south along County Road 1111 to its terminus; then west along an imaginary line to the United States/Mexico boundary; then northwest along the United States/Mexico boundary to the El Paso/Hudspeth County line; then north along the El Paso/Hudspeth County line to the point of beginning.

This action relieves unnecessary regulatory restrictions on the public while continuing to prevent the artificial spread of Karnal bunt into noninfested areas of the United States.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. The areas affected by this document were quarantined to prevent Karnal bunt from spreading to noninfested areas of the United States. Because wheat, durum wheat, and triticale are not grown in these areas or these areas have no association with Karnal bunt contaminated seed and because the continued quarantined status of these areas would impose unnecessary regulatory restrictions on the public, immediate action is warranted to relieve restrictions.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action removes seven entire counties in Arizona and portions of six counties in Arizona, New Mexico, and Texas from the list of areas quarantined because of Karnal bunt. This situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604) impracticable. This rule may have a significant economic impact on a substantial number of small entities. If we determine this is so, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Act Analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which required intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In section 301.89–3, paragraph (e) is amended by revising the entries for Arizona, New Mexico, and Texas to read as follows:

§ 301.89–3 Quarantined areas.

* * * * *

(e) * * *

Arizona

Cochise County. The entire county.
Graham County. The entire county.
LaPaz County. The entire county.
Maricopa County. The entire county.
Mohave County. Beginning at the intersection of Arizona/Nevada State line and State Route 68; then east along State Route 68 to U.S. Highway 93; then southeast along U.S. Highway 93 to Interstate 40; then south along Interstate 40 to the Arizona/California State line; then north along the State line to the point of beginning.
Pima County. Beginning at the intersection of the Pima County line, the Pinal County line, and the Papago Indian Reservation boundary; then east along the Pima County line to its easternmost point; then south along the Pima County line to the Cochise and Santa Cruz County lines; then west along the Pima County line to the United States/Mexico boundary; then west along the United States/Mexico boundary to the Papago Indian Reservation boundary; then north along the Papago Indian Reservation boundary to the point of beginning.
Pinal County. The entire county.
Yuma County. The entire county.

* * * * *

New Mexico

Dona Ana County. The entire county.
Hidalgo County. Beginning at the intersection of the Arizona/New Mexico State line and Interstate 10; then east along Interstate 10 to the Hidalgo/Grant County line; then south and east along the Hidalgo County line to the Luna County line; then south along the Hidalgo County line to its southernmost point; then west and north along the Hidalgo County line to point of beginning.
Luna County. Beginning at the intersection of the Grant/Luna County line and Interstate 10; then east along Interstate 10 to U.S. Highway 180; then north along U.S. Highway 180 to State Route 26; then north along State Route 26 to State Route 27; then northeast along State Route 27 to the Luna/Sierra County line; then east along the Luna County line to the Dona County line; then south along the Luna County line to the United States/Mexico boundary; then west along the United States/Mexico boundary to the Hidalgo County line; then north along the Luna County line to the point of beginning.
Sierra County. Beginning at intersection of the Luna/Sierra County line and State Route 27; then north along State Route 27 to State Route 152; then east along State Route 152 to Interstate 25; then north along Interstate 25 to State Route 52; then northwest along State Route 52 to the Sierra/Socorro County line; then east along the Sierra County line to the Lincoln County line; then south along the Sierra County line to the Dona County line; then west along the Sierra County line to the point of beginning.

Texas

El Paso County. The entire county.
Hudspeth County. Beginning at the intersection of the El Paso/Hudspeth County line and U.S. Highway 62/U.S. Highway 180; then east along U.S. Highway 62/U.S. Highway 180 to County Road 1111; then south along County Road 1111 to its terminus; then west along an imaginary line to the United States/Mexico boundary; then northwest along the United States/Mexico boundary to the El Paso/Hudspeth County line; then north along the El Paso/Hudspeth County line to the point of beginning.

* * * * *

Done in Washington, DC, this 27th day of June 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–16998 Filed 7–3–96; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 946

[Docket No. FV96–946–2FIR]

Irish Potatoes Grown in Washington; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that established an assessment rate of the State of Washington Potato Committee (Committee) under Marketing Order 946 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of Irish potatoes grown in Washington. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: Effective on July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Program Assistant, Marketing Order Administration

VOL
61
ISS
130
JL
5
1996
UMI

Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, FAX 202–720–5698, or Daniel L. West, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724, FAX 503–326–7440.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 113 and Order No. 946, both as amended (7 CFR part 946) regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Washington potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes beginning July 1, 1996, and continuing until amended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 450 producers of Washington potatoes in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Washington potato producers and handlers may be classified as small entities.

The Washington potato marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Washington potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on February 15, 1996, and unanimously recommended 1996–97 expenditures of $42,500 and an assessment rate of $0.003 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were $42,300. The assessment rate of $0.003 is the same as last year's established rate. Major expenditures recommended by the Committee for the 1996–97 year include $17,400 for an agreement with the Washington State Potato Commission to provide miscellaneous services to the Committee and $6,000 for compliance audits, the same as the budgeted amounts for these items in 1995–96.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of Washington potatoes. Potato shipments for the year are estimated at 9,000,000 hundredweight which should provide $27,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

An interim final rule regarding this action was published in the May 6, 1996, issue of the **Federal Register** (61 FR 20119). That interim final rule added § 946.248 to establish an assessment rate for the Committee. That rule provided that interested persons could file comments through June 5, 1996. No comments were received.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996–97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This final rule also corrects an error in the interim final rule published May 6, 1996, (61 FR 20119). The note

appearing before the amendatory instruction 2 incorrectly states that § 946.248 will not appear in the Code of Federal Regulations. Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period begins on July 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action and provided for a 30-day comment period, and no comments were received.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 946—IRISH POTATOES GROWN IN WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 946 which was published at 61 FR 20119 on May 6, 1996, is adopted with the following correction to the note immediately following amendatory instruction 2. The note should read:

Note: This section will appear in the annual Code of Federal Regulations.

Dated: June 26, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–16852 Filed 7–3–96; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 301

[INS No. 1736–95]

RIN 1115–AE19

Acquisition of Citizenship; Equal Treatment of Women in Conferring Citizenship on Children Born Abroad

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service (Service) regulations by establishing procedures for certain United States citizen women to confer citizenship on their children born outside of the United States before noon (Eastern Standard Time) May 24, 1934. The purpose of this rule is to ensure that all women receive equal treatment under laws relating to nationality. Implementation of the rule would allow for the issuance of certificates of citizenship to certain foreign-born children previously ineligible to acquire citizenship from their United States citizen mothers.

DATES: This interim rule is effective July 5, 1996. Written comments must be submitted on or before September 3, 1996.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1736–95 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Jane B. Barker, Adjudications Officer, Adjudications Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

Prior to the enactment of the Immigration and Nationality Technical Corrections Act of 1994 (INTCA), Public Law 103–416, dated October 25, 1994, a child born abroad before noon (Eastern Standard Time (EST) May 24, 1934, to an alien father and United States citizen mother could not acquire United States citizenship through his or her mother. If, however, the mother was the alien and the father was the United States citizen, the child could become a citizen through his or her father, pursuant to Section 1993 of Revised Statutes, February 10, 1855, 10 Stat. 604.

On May 24, 1934, Congress amended Section 1993 of the Revised Statutes so that children born abroad to parents, only one of whom was a United States citizen, would become citizens regardless of whether the citizen was the father or the mother. The 1934 amendment, however, was not retroactive. Subsection 101(a)(2) of INTCA amended the Immigration and Nationality Act (the Act) by adding a new subsection 301(h) to provide for the acquisition of United States citizenship from either parent for persons born abroad before noon (EST) May 24, 1934, to parents, only one of whom is a United States citizen.

Section 301(h)

Under section 301(h) of the Act, a person born abroad before noon (EST) May 24, 1934, to a United States citizen mother and an alien father, may now acquire United States citizenship if his or her mother resided in the United States prior to the person's birth. A person who qualifies for United States citizenship under section 301(h) of the Act shall not be subject to any provisions of law that provided for loss of citizenship or nationality (including section 301(b) of the Act (as in effect before October 10, 1978) and the provisos of section 201(g) of the Nationality Act of 1940) if the person failed to come to, reside, or be physically present in the United States.

For purposes of transmission of citizenship, section 301(h) shall have no effect on the residence and retention requirements for those persons born abroad to a citizen parent and an alien parent between May 24, 1934, and October 10, 1978. Section 301(h) also shall have no effect on the validity of the citizenship of anyone who obtained United States citizenship under section 1993 of the Revised Statutes (as in effect before the enactment of the Act of May 24, 1934, 49 Stat. 797). Further, section 301(h) shall not confer citizenship on, nor have any effect on, the validity of any denaturalization, deportation, or exclusion action against any person who is or was excludable from the United States for participation in Nazi persecution or genocide, or who was excluded from, or who would not have been eligible for admission to the United States under the Displaced Persons Act of 1948 or under section 14 of the Refugee Relief Act of 1953.

Procedures for Acquiring United States Citizenship Under Section 301(h)

A person who is eligible for benefits under section 301(h) may make his or her citizenship claim in the United States with the Attorney General or abroad with the Secretary of State. A person who currently resides in the United States may file Form N–600, Application for Certificate of Citizenship, accompanied by the fee specified in 8 CFR 103.7(b)(1), with the Service office having jurisdiction over the applicant's place of residence, or with such other Service office as the Commissioner may designate. The application shall be supported by

VOL 61 ISS 130 JL 5 1996 UMI

documentary and other evidence essential to establish the claimed citizenship, such as birth, adoption, marriage, death, and divorce certificates. Applicants will be notified, in writing, of the date and time to appear for an interview. If an applicant fails to appear for a required interview without good cause, the application will not be approved and may be denied. Upon completion of the interview, if all requirements are met, the applicant will be required to take the oath of allegiance, as prescribed under 8 CFR part 337, and will be issued a certificate of citizenship.

A person who currently resides abroad and is eligible for citizenship under section 301(h) may proceed to a United States embassy or consulate for an interview under oath concerning his or her claim of citizenship, in accordance with such regulations as may be prescribed by the Secretary of State.

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comment, is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The reason for immediate implementation of this interim rule is as follows: This rule provides a benefit to the public by ensuring that all women receive equal treatment under laws relating to nationality.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic effect on a substantial number of small entities because of the following factors. This interim rule establishes procedures for certain United States citizen women to confer citizenship on their children born outside of the United States before May 24, 1934. The affected parties are not small entities, and the effect of the regulation is not an economic one.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12812

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The clearance number for this collection is contained in 8 CFR part 299.5, Display of Control Numbers.

List of Subjects in 8 CFR Part 301

Citizenship and naturalization, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended by adding a new part 301 to subchapter C to read as follows:

PART 301—NATIONALS AND CITIZENS OF THE UNITED STATES AT BIRTH

Sec.
301.0 Procedures.

Authority: 8 U.S.C. 1103, 1401; 8 CFR part 2.

§ 301.1 Procedures.

(a) *Application.* (1) A person residing in the United States who desires to become a United States citizen pursuant to section 301(h) of the Act shall submit an application on Form N–600, Application for Certificate of Citizenship, as provided in 8 CFR part 341. Such application shall be filed with the Service office having jurisdiction over the applicant's place of residence, or with such other Service office as the Commissioner may designate. It must be accompanied by the fee specified in 8 CFR 103.7(b)(1). The application also must be accompanied by supporting documentary and other evidence essential to establish the claimed citizenship, such as birth, adoption, marriage, death, and divorce certificates. The applicant will be notified in writing when and where to appear before a Service officer for examination on his or her application.

(2) A person residing outside of the United States who desires to become a United States citizen under subsection 301(H) of the Act shall make his or her claim at a United States embassy or consulate, in accordance with such regulations as may be prescribed by the Secretary of State. (b) *Oath of allegiance; issuance of certificate* (1) Upon determination by the district director that a person is eligible for United States citizenship pursuant to section 301(h) of the Act, the person shall take the oath of allegiance, prescribed in 8 CFR part 337, before an officer of the Service designated to administer the oath of allegiance within the United States, and a certificate of citizenship shall be issued. The person shall be considered a United States citizen as of the date of his or her birth.

(2) A person residing outside of the United States who is eligible for United States citizenship under section 301(h) of the Act shall take the oath of allegiance abroad before any diplomatic or consular officer of the United States, in accordance with such regulations as may be prescribed by the Secretary of State. The person shall be considered a United States citizen as of the date of his or her birth.

Dated: May 23, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–17157 Filed 7–3–96; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF ENERGY

10 CFR Parts 205 and 1003

Administrative Procedures and Sanctions; Office of Hearings and Appeals Procedural Regulations; Removal of Unnecessary Regulations

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy is amending the Code of Federal Regulations (CFR) to apply existing procedural rules to certain petroleum proceedings and to remove unnecessary regulations. This action is being taken in response to the President's Regulatory Reform Initiative to eliminate unnecessary regulations and streamline existing rules.

EFFECTIVE DATE: August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, (HG–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0107, (202) 426–1492.

SUPPLEMENTARY INFORMATION: In connection with the President's Regulatory Reinvention Initiative, the Department of Energy (Department or DOE) is engaged in a continuing and comprehensive review of its regulatory program. As part of that review, the Department is removing from Title 10 of the CFR those regulations for which statutory authority has expired or been superseded by subsequent legislation, and those regulations that are no longer necessary to the agency's mission, as well as regulations governing unfunded and nonfunctioning programs. The DOE has already published final rules removing obsolete regulations on September 22, 1995 (60 FR 49195) and December 5, 1995 (60 FR 62316).

The Department has identified the following regulations for removal:

10 CFR Part 205—Subpart D Exception

10 CFR Part 205—Subpart E Exemption

10 CFR Part 205—Subpart H Appeal

10 CFR Part 205—Subpart I Stay and Temporary Exception

10 CFR Part 205—Subpart J Modification or Rescission

10 CFR Part 205—Subpart R Office of Private Grievances and Redress

Part 205 establishes the procedures to be utilized and identifies the sanctions that are available in proceedings before the Department of Energy concerning the pricing and allocation of crude oil under parts 209 and 214. Parts 209 through 214 implement the provisions of the Emergency Petroleum Allocation Act of 1973 (Pub L. 93–159, as amended) which expired in 1981. The Department has determined that subpart D, subpart E, subpart H, subpart I, subpart J, and subpart R of part 205, which set forth procedures that apply to crude oil regulation, are no longer necessary. Part 205 also provides certain procedural protections required by section 504 of the Department of Energy Organization Act for persons affected by oil-related regulations issued under authority of the Federal Energy Administration Act, the Emergency Petroleum Allocation Act of 1973, the Energy Supply and Environmental Coordination Act of 1974, or the Energy Policy and Conservation Act, 42 U.S.C. 7194. As described below, for the few oil-related cases currently under appeal in the courts or the Federal Energy Regulatory Commission, the procedural protections of 10 CFR part 1003, which are substantially the same as in part 205, will be available in the event of a remand to the Department.

The Department is aware of the possibility that, in certain instances, proceedings initiated under 10 CFR parts 209 through 214, and as yet not concluded, may be remanded to the Office of Hearings and Appeals for further proceedings. The Department has, in place, regulations that govern the procedures for exceptions, appeals, stays, modifications, recessions, redress and resolution of private grievances that apply agency-wide, 10 CFR part 1003. To protect the rights of any party to a proceeding remanded to the Office of Hearings and Appeals, today's regulation amends part 205 to provide that a person's right to exceptions, exemptions, appeals, stays, modifications, recessions, redress or resolution of private grievances under the statutes set forth in section 504 of the Department of Energy Organization Act shall be governed by the procedural rules in 10 CFR part 1003. The Department is revising 10 CFR 1003.1 to permit the application of the Office of Hearings and Appeals procedural regulations to matters which relate to the federal oil regulations that are no longer covered by part 205. Finally, the Department is revising 10 CFR 1003.20 to apply to exemptions and adjustments as provided for in 42 U.S.C. 7194.

Rulemaking Analyses

Regulatory Planning and Review

The elimination of unnecessary regulations does not constitute a "significant regulatory action" as defined in section 3(f) of Executive Order 12866 (58 FR 51735); therefore, this rulemaking has not been reviewed by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Federalism

The Department has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined that there are no federalism implications that would warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

This rule amends Title 10 of the Code of Federal Regulations by removing regulations that are unnecessary. This rulemaking will not change the environmental effect of the regulations being amended because the regulations have no current environmental effect. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A.5 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to a rulemaking amending an existing regulation that does not change the environmental effect of the regulation being amended.

Paperwork Reduction Act

This rulemaking contains no reporting requirement that is subject to OMB approval under 5 CFR Part 1320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Final Rulemaking

As the foregoing discussion indicates, the Code of Federal Regulation subparts being removed are no longer necessary. The procedural protections afforded by these subparts are available under 10 CFR part 1003. Accordingly, the Department has determined, pursuant to 5 U.S.C. 553, that there is good cause to conclude that prior notice and opportunity for public comment is unnecessary and contrary to the public interest.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, directs agencies to prepare a regulatory flexibility analysis whenever an agency is required to publish a general notice of proposed rulemaking for a rule. As discussed above, the Department has determined, that prior notice and opportunity for public comment is unnecessary and contrary to the public interest. In accordance with 5 U.S.C. 604(a), no regulatory flexibility analysis has been prepared for today's rule.

Congressional Notification

The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress on the promulgation of certain final rules prior to their effective dates. 5 U.S.C. 801. That reporting requirement does not apply to the final rule in this notice because it falls within a statutory exception for procedural rules that do not substantially affect the substantive rights or obligations of non-agency persons. 5 U.S.C. 804(3)(C).

List of Subjects

10 CFR Part 205

Administrative practice and procedure, Petroleum allocation, Petroleum price regulations.

10 CFR Part 1003

Administrative practice and procedure.

Issued in Washington, DC, on June 28, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

For the reasons set forth in the preamble, title 10 of the Code of Federal Regulations is amended as set forth below:

VOL 61 ISS 130 JL 5 1996 UMI

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

1. The authority citation for part 205 is revised to read as follows:

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159; Federal Energy Administration Act of 1974, Pub. L. 93–275 (88 Stat. 96; E.O. 11790, 39 FR 23185); 42 U.S.C. 7101 *et seq.*, unless otherwise noted.

2. Section 205.1 is revised to read as follows:

§ 205.1 Purpose and scope.

This part establishes the procedures to be utilized and identifies the sanctions that are available in proceedings before the Department of Energy and State Offices, in accordance with parts 209 through 214 of this chapter. Any exception, exemption, appeal, stay, modification, recession, redress or resolution of private grievance sought under the authority of 42 U.S.C. 7194 shall be governed by the procedural rules set forth in 10 CFR part 1003.

Subparts D, E, H, I, J and R [Removed]

3. Subparts D, E, H, I, J, and R of Part 205 are removed and reserved.

PART 1003—OFFICE OF HEARINGS AND APPEALS PROCEDURAL REGULATIONS

4. The authority citation for Section 1003 continues to read as follows:

Authority: 15 U.S.C. 761 *et seq.*; 42 U.S.C. 7101 *et seq.*

5. The last sentence of § 1003.1 is revised to read as follows:

§ 1003.1 Purpose and scope.

* * * These rules also do not apply to matters before the DOE Board of Contract Appeals or other procurement and financial assistance appeals boards, which are covered by their own rules.

6. The first sentence of § 1003.20(a) is revised to read as follows:

§ 1003.20 Purpose and scope.

(a) This subpart establishes the procedures for applying for an exception or exemption, as provided for in section 504 (42 U.S.C. 7194) of the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*), from a rule, regulation or DOE action having the effect of a rule as defined by 5 U.S.C. 551(4), based on an assertion of serious hardship, gross inequity or unfair distribution of burdens, and for consideration of such application by the OHA. * * *

* * * * *

[FR Doc. 96–17066 Filed 7–3–96; 8:45 am]

BILLING CODE 6450–01–P

10 CFR Parts 205 and 463

Administrative Procedures and Sanctions; Annual Reports From States and Nonregulated Utilities on Progress in Considering the Ratemaking and Other Regulatory Standards Under the Public Utility Regulatory Policies Act of 1978; Removal of Unnecessary or Obsolete Regulations

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy is amending the Code of Federal Regulations (CFR) to remove unnecessary regulations. This action is being taken in response to the President's Regulatory Reform Initiative to eliminate unnecessary regulations and streamline existing rules.

EFFECTIVE DATE: August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Romulo L. Diaz, Jr., Director, Rulemaking Support, Office of the General Counsel, (GC–75), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2902.

SUPPLEMENTARY INFORMATION: In connection with the President's Regulatory Reinvention Initiative, the Department of Energy (Department or DOE) is engaged in a continuing and comprehensive review of its regulatory program. As part of that review, the Department is removing from Title 10 of the CFR those regulations for which statutory authority has expired or been superseded by subsequent legislation, those regulations that are no longer necessary to the agency's mission, as well as regulations governing unfunded and nonfunctioning programs. DOE removed obsolete regulations on September 22, 1995 (60 FR 49195) and December 5, 1995 (60 FR 62316).

The Department has identified the following regulations for removal:

10 CFR Part 205—Subpart L Rulemaking

10 CFR Part 205—Subpart P Investigations, Violations, Sanctions, and Judicial Actions

Part 205 establishes the procedures to be utilized and identifies the sanctions that are available in proceedings before the Department of Energy, in accordance with parts 209 through 214 concerning the pricing and allocation of crude oil. Parts 209 through 214 implement the provisions of the Emergency Petroleum Allocation Act of 1973 (Pub L. 93–159, as amended) which expired in 1981. Subpart L establishes the procedures that govern a rulemaking proceeding. Subpart P establishes procedures relating to investigations, violations, sanctions, and judicial actions. The Department has determined that subpart L and subpart P of part 205, which set forth procedures and sanctions that apply to crude oil regulation, are no longer necessary.

10 CFR Part 463—Annual Reports From States and Nonregulated Utilities on Progress in Considering the Ratemaking and Other Regulatory Standards Under the Public Utility Regulatory Policies Act of 1978

Part 463 was promulgated to implement sections 116 and 309 of the Public Utility Regulatory Policies Act of 1978 ("Act"), 16 U.S.C. 2626 and 15 U.S.C. 3209. Sections 116 and 309 required each State regulatory authority and nonregulated gas utility to submit annually a report to the Secretary of Energy on actions taken with respect to standards in the Act. The Act required these reports for a 10-year period, which expired at the end of 1989 (*see* 10 CFR § 463.3(a)). Because the authority for the reporting requirement has expired, this part is now obsolete.

Rulemaking Analyses

Regulatory Planning and Review

The elimination of unnecessary regulations does not constitute a "significant regulatory action" as defined in section 3(f) of Executive Order 12866 (58 FR 51735); therefore, this rulemaking has not been reviewed by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Federalism

The Department has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined that there are no federalism implications that would warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

This rule amends Title 10 of the Code of Federal Regulations by removing regulations that are unnecessary. This rulemaking will not change the environmental effect of the regulations being amended because the regulations have no current environmental effect. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A.5 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to a rulemaking amending an existing regulation that does not change the environmental effect of the regulation being amended.

Paperwork Reduction Act

This rulemaking contains no reporting requirement that is subject to OMB approval under 5 CFR Part 1320; pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Final Rulemaking

As the foregoing discussion indicates, the Code of Federal Regulation subparts being removed are no longer necessary. Accordingly, the Department has determined, pursuant to 5 U.S.C. 553, that there is good cause to conclude that prior notice and opportunity for public comment is unnecessary and contrary to the public interest.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, directs agencies to prepare a regulatory flexibility analysis whenever an agency is required to publish a general notice of proposed rulemaking for a rule. As discussed above, the Department has determined, that prior notice and opportunity for public comment is unnecessary and contrary to the public interest. In accordance with 5 U.S.C. 604(a), no regulatory flexibility analysis has been prepared for today's rule.

Congressional Notification

The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress on the promulgation of certain rules prior to their effective dates. 5 U.S.C. 801. The Department is reporting today's rulemaking to Congress in accordance with 5 U.S.C. 801(a)(1)(A). The Office of Management and Budget has determined that this is not a major rule as defined in 5 U.S.C. 804(2)

List of Subjects

10 CFR Part 205

Administrative practice and procedure, Petroleum allocation, Petroleum price regulations.

10 CFR Part 463

Public utilities.

Issued in Washington, DC on June 28, 1996.

Robert R. Nordhaus,

General Counsel.

For the reasons set forth in the preamble, title 10 of the Code of Federal Regulations is amended as set forth below:

PART 205–ADMINISTRATIVE PROCEDURES AND SANCTIONS

1. The authority citation for part 205 continues to read as follows:

Authority: Emergency Petroleum Allocation Act of 1973, Pub. L. 93–159; Federal Energy Administration Act of 1974, Pub. L. 93–275 (88 Stat. 96; E.O. 11790, 39 FR 23185); 42 U.S.C. 7101 *et seq.*, unless otherwise noted.

Subpart L and P—[Removed]

2. Subparts L (§§ 205.160–205.162) and P (§§ 205.200–205.204) of part 205 are removed.

PART 463—ANNUAL REPORTS FROM STATES AND NONREGULATED UTILITIES ON PROGRESS IN CONSIDERING THE RATEMAKING AND OTHER REGULATORY STANDARDS UNDER THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 [REMOVED]

3. Part 463 of 10 CFR is removed.

[FR Doc. 96–17116 Filed 7–3–96; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 367

RIN 3064–AB76

Suspension and Exclusion of Contractors and Termination of Contracts

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Interim final rule; request for comments.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation (FDIC or Corporation) is adopting an interim final rule concerning suspension and exclusion of FDIC contractors and termination of contracts. The interim final rule is adopted pursuant to section 12(f) (4) and (5) of the Federal Deposit Insurance Act (FDI Act), and the rule-making authority of the FDIC found at section 9 of the Act. Additional provisions implementing these statutory directives appear in the FDIC's regulation, as published in the **Federal Register** on June 6, 1996, governing contractor conflicts of interest and the requirements that FDIC contractors meet minimum standards of competence, experience, fitness and integrity. This interim final rule is a companion to the conflict of interest regulation in that it sets forth procedures for the suspension and/or exclusion of contractors that have violated the conflicts of interest regulations (and hence, fail to meet minimum standards of fitness and integrity), or have otherwise acted in a manner warranting such action. In addition to FDIC contractors, this interim final rule also applies to subcontractors, key employees, management officials and affiliated business entities of FDIC contractors (all such terms are defined herein), and is designed to inform such contractors regarding their rights to notice and an opportunity to be heard on FDIC suspension and exclusion actions.

DATES: Effective date. This interim final rule is effective July 5, 1996.

Comment period date. Comments must be received on or before September 3, 1996.

ADDRESSES: Send written comments to Jerry L. Langley, Executive Secretary, FDIC, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to room 400, 1776 F Street, NW., Washington, DC 20429 on business days between 8:30 a.m. and 5:00 p.m. (FAX number: (202) 898–3604; Internet: comments@FDIC.gov). Comments will be available for inspection and photocopying in the FDIC Public Information Center, room 100, 801 17th Street, NW., Washington, DC 20429, between 9:00 a.m. and 5:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Peter A. Ziebert, Counsel, Legal Division, (202) 736–0742; or Richard M. Handy, Assistant Executive Secretary (Ethics), Office of the Executive Secretary, (202) 898–7271.

SUPPLEMENTARY INFORMATION:

I. Background

This interim final rule sets forth standards and procedures governing suspension and exclusion of FDIC contractors, which includes subcontractors, management officials, key employees and affiliated business entities of such contractors, for violations of 12 CFR part 366, the FDIC's contractor conflict of interest regulation (61 FR 28725, June 6, 1996). This interim final rule also provides for the termination of awarded contracts of FDIC contractors. For the most part, this rule is modeled after the suspension and exclusion regulation used by the Resolution Trust Corporation (RTC) until RTC sunset on December 31, 1995, which had been codified at 12 CFR part 1618. This rule also bears similarity to the suspension and debarment procedures utilized by other federal entities, which have been developed after extensive public comment and

VOL 61 ISS 130 JL 5 1996 UMI

have withstood considerable judicial scrutiny. However, as discussed below, the rule departs in certain respects from the procedures used by other federal entities because the FDIC is not subject to the Federal Acquisition Regulation (FAR). The rule also revises the former RTC regulation in several ways as the FDIC now promulgates its own suspension and exclusion regulation.

Generally, this rule provides for more expedited and less formal procedures than are used by other federal agencies, while at the same time satisfying due process requirements regarding notice and an opportunity to be heard. These expedited procedures are necessary due to the urgent need to protect the FDIC and the public interest against further dissipation of assets now under FDIC control and previously under RTC control.

As noted above, FDIC has a statutory mandate to be vigilant in enforcing the highest ethical standards for its contractors. Accordingly, it is imperative that contractor suspension and exclusion proceedings be processed as expeditiously as possible consistent with due process requirements that affected contractors be afforded notice and an opportunity to be heard on such enforcement actions.

II. Summary of the Interim Final Rule

The regulation is comprised of 20 sections. Section 367.1 covers the authority, purpose, scope and application of the regulation. It makes clear that the regulation applies to contractors other than attorneys or law firms that provide services or enter into contracts to provide services to the FDIC acting in any capacity. The regulation is effective as of the date of publication in the **Federal Register** for reasons set out in section III, below. Moreover, the regulation applies to actions initiated by the FDIC on or after the effective date regardless of the date of the cause giving rise to such actions. Finally, § 367.1 provides that this regulation supersedes and replaces the RTC suspension and exclusion regulation (12 CFR part 1618) and that RTC actions taken under that part will be honored as if taken by the FDIC.

Section 367.2 contains the definitions to be used in this part. The definitions are generally based on the commonly accepted definitions used in the FDIC's conflict of interest regulation (12 CFR part 366) or by other federal entities. Key terms that are defined here include affiliated business entity, conflict of interest, contract, contractor, control, key employee, management official, pattern or practice of defalcation, subcontractor, and substantial loss to federal deposit insurance funds.

Section 367.3 identifies the appropriate officials in the FDIC suspension and debarment program. The FDIC "Ethics Counselor" (FDIC Executive Secretary) is the official responsible for rendering suspension and exclusion decisions. The "Corporation Ethics Committee" provides a review forum of any suspension or exclusion decision appealed by a contractor.

Section 367.4 is reserved.

Section 367.5 covers exclusions. Contractors excluded from FDIC contracting are prohibited from entering into any new contracts with FDIC for the duration of the exclusion period. The FDIC shall not solicit offers from, award contracts to, extend or modify existing contracts, award task orders under existing contracts, or consent to subcontracts with excluded contractors.

Section 367.5 (b)(1) sets forth a significant change in the regulation from the FAR-based debarment and suspension regulation, and from the former RTC regulation. FDIC exclusion actions will only become effective upon the Ethics Counselor's decision to exclude a contractor *after* the contractor has received written notice of a possible cause to exclude from FDIC and has had an opportunity to respond. In other words, a contractor's receipt of a notice of possible cause to exclude does not act as an exclusion from the FDIC contracting program. This provision provides contractors with ample due process as the exclusion matter is considered.

Section 367.6 sets forth 13 causes for exclusion, which generally parallel the former RTC regulations. There are four mandatory causes for exclusion set forth at § 367.6 (a) (1) through (4); the remainder are discretionary bases for which exclusion may be warranted if a violation is established by a preponderance of the evidence.

Section 367.7 covers suspensions. The same contracting prohibitions apply to suspended contractors as is the case with excluded contractors. An important distinction in the regulation, however, is that a suspension action shall become effective immediately upon issuance of a notice of suspension, which as noted above differs from the notice of possible cause to exclude. Suspensions will be used when immediate action is necessary to protect the integrity of the FDIC contracting program and/or the security of FDIC assets during the pendency of legal or investigative proceedings against a contractor.

Section 367.8 lists causes for suspension. Suspensions will be imposed upon a showing of adequate evidence of any of the causes listed in § 367.7.

Section 367.9 provides that causes to suspend and/or exclude a contractor can be imputed between a contractor and its affiliated business entities, key employees, management officials, joint venture partners, and subcontractors.

Sections 367.10-.11 are reserved.

Section 367.12 states that FDIC suspension and exclusion actions shall be processed as informally as practicable, consistent with due process considerations.

Section 367.13 covers the issuance of the notice of possible cause to exclude, and notice of suspension, and the information that will be set forth therein.

Section 367.14 covers contractor responses to such notices and clearly states that the contractor shall have 15 days from the date of the notice within which to respond.

Section 367.15 addresses those situations where additional proceedings may be held, as determined by the Ethics Counselor, in situations where the contractor's response raises a genuine dispute over material facts. In such cases, the contractor shall be afforded the opportunity to appear (with counsel if desired) before the FDIC.

Section 367.16 covers the Ethics Counselor's decisions in suspension and exclusion matters. It sets forth the information that will be included in a suspension or exclusion decision and makes clear that any exclusion decision rendered pursuant to this provision shall include a period of exclusion.

Section 367.17 provides further information as to the period of suspension or exclusion.

Section 367.18 covers abrogation of contracts (i.e., termination or recision) as an additional remedy for the FDIC.

Section 367.19 sets forth procedures regarding exceptions to suspensions and exclusions and makes clear that such exceptions are only available in unique circumstances when there is a compelling reason to utilize a particular contractor for a specific task.

Section 367.20 sets forth the procedures for the review and reconsideration of Ethics Counselor decisions to the Corporation Ethics Committee.

III. Administrative Procedure Act

The FDIC is adopting this regulation as an interim final rule effective upon publication in the **Federal Register** without the usual notice-and-comment period or delayed effective date as

provided for under the Administrative Procedure Act. 5 U.S.C. 551, et seq. (APA). The APA requirements may be waived for "good cause."

Promulgation of the regulation on an expedited basis is necessary due to the urgent need to protect the FDIC and the public interest against further dissipation of the assets now under FDIC control, and formerly under RTC control, as a consequence of the resolution of hundreds of failed savings associations. Furthermore, many FDIC contractors have in their possession extremely valuable documents and legal instruments which can be readily converted to private gain.

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) has imposed a duty on the FDIC to be vigilant and aggressive in enforcing the highest ethical standards for its independent contractors. Accordingly, it is imperative that a regulation be immediately adopted setting forth policies and procedures pertaining to the suspension or exclusion of FDIC contractors that have been found to have violated those standards. The cost of any delay in promulgating the regulation would ultimately be borne by the taxpaying public in terms of additional erosion in the value of the assets under FDIC control.

IV. Regulatory Flexibility Analysis

The Board of Directors has concluded that the interim final rule will not impose a significant economic hardship on small institutions. Therefore, the Board of Directors hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the interim final rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore, the provisions of that Act relating to an initial and final regulatory flexibility analysis do not apply.

V. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act are contained in this interim final rule. Therefore, no information has been submitted to the Office of Management and Budget (OMB) for review.

For the above reasons, the FDIC finds that the benefits to the public in adopting the interim rule outweigh any harm from the delay in seeking public comment. The FDIC actively solicits comments from the public and will carefully evaluate and act upon any such comments before adopting the rule as final within 60 days after the close of the public comment period.

List of Subjects in 12 CFR Part 367

Administrative practice and procedure, Conflict of interest, Government contracts.

For the reasons set out in the preamble, FDIC adds part 367 to title 12, chapter III of the Code of Federal Regulations to read as follows:

PART 367—SUSPENSION AND EXCLUSION OF CONTRACTORS AND TERMINATION OF CONTRACTS

Sec.

367.1 Authority, purpose, scope and application.
367.2 Definitions.
367.3 Appropriate officials.
367.4 [Reserved]
367.5 Exclusions.
367.6 Causes for exclusion.
367.7 Suspensions.
367.8 Causes for suspension.
367.9 Imputation of causes.
367.10–367.11 [Reserved]
367.12 Procedures.
367.13 Notices.
367.14 Responses.
367.15 Additional proceedings as to disputed material facts.
367.16 Ethics Counselor decisions.
367.17 Duration of suspensions and exclusions.
367.18 Abrogation of contracts.
367.19 Exceptions to suspensions and exclusions.
367.20 Review and reconsideration of Ethics Counselor decisions.

Authority: 12 U.S.C. 1822(f) (4) and (5).

§ 367.1 Authority, purpose, scope and application.

(a) *Authority.* This part is adopted pursuant to section 12(f) (4) and (5) of the Federal Deposit Insurance Act, 12 U.S.C. 1822(f) (4) and (5), and the rule-making authority of the Federal Deposit Insurance Corporation (FDIC) found at 12 U.S.C. 1819. Other regulations implementing these statutory directives appear at 12 CFR part 366.

(b) *Purpose.* This part is designed to inform contractors and subcontractors (including their affiliated business entities, key employees and management officials) regarding their rights to notice and an opportunity to be heard on FDIC actions involving suspension and exclusion from contracting and rescission of existing contracts. This part is in addition to, and not in lieu of, any other statute or regulation that may apply to such contractual activities.

(c) *Scope.* (1) This part applies to:

(i) Contractors, other than attorneys or law firms providing legal services, submitting offers to provide services or entering into contracts to provide services to the FDIC acting in any capacity; and

(ii) Subcontractors entering into contracts to perform services under a proposed or existing contract with the FDIC.

(d) *Application.* (1) This part will apply to entities that become contractors, as defined in § 367.2(f), on or after July 5, 1996. In addition, this part will apply to contractors as defined in § 367.2(f) that are performing contracts on July 5, 1996.

(2) This part will also apply to actions initiated on or after July 5, 1996 regardless of the date of the cause giving rise to the actions.

(3) Contracts entered into by the former Resolution Trust Corporation (RTC) that were transferred to the FDIC will be treated in the same manner as FDIC contracts under this part.

(4) This part supersedes and replaces the former RTC regulation relating to suspension and exclusion of registered contractors and rescission of contracts in effect through December 31, 1995. RTC actions taken under the RTC regulation will be honored as if taken by the FDIC. A contractor subject to an RTC exclusion or suspension will be precluded thereby from participation in the FDIC's contracting program unless that exclusion or suspension is modified or terminated under the provision of this part.

§ 367.2 Definitions.

(a) *Adequate evidence* means information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliated business entity* means a company that is under the control of the contractor, is in control of the contractor, or is under common control with the contractor.

(c) *Civil judgment* means a judgment of a civil offense or liability by any court of competent jurisdiction in the United States.

(d) *Company* means any corporation, firm, partnership, society, joint venture, business trust, association, consortium or similar organization.

(e) *Conflict of interest* means a situation in which:

(1) A contractor; any management officials or affiliated business entities of a contractor; or any employees, agents, or subcontractors of a contractor who will perform services under a proposed or existing contract with the FDIC:

(i) Has one or more personal, business, or financial interests or relationships which would cause a reasonable individual with knowledge of the relevant facts to question the integrity or impartiality of those who are

VOL 61 ISS 130 JL 5 1996 UMI

or will be acting under a proposed or existing FDIC contract;

(ii) Is an adverse party to the FDIC, RTC, Federal Savings and Loan Insurance Corporation (FSLIC), or their successors in a lawsuit; or

(iii) Has ever been suspended, excluded, or debarred from contracting with a federal entity or has ever had a contract with the FDIC, RTC, FSLIC or their successors rescinded or terminated prior to the contract's completion and which rescission or termination involved issues of conflicts of interest or ethical responsibilities; or

(2) Any other facts exist which the FDIC, in its sole discretion, determines may, through performance of a proposed or existing FDIC contract, provide a contractor with an unfair competitive advantage which favors the interests of the contractor or any person with whom the contractor has or is likely to have a personal or business relationship.

(f) *Contractor* means a person or company which has submitted an offer to perform services for the FDIC or has a contractual arrangement with the FDIC to perform services. For purposes of this part, contractor also includes:

(1) A contractor's affiliated business entities, key employees, and management officials of the contractor;

(2) Any subcontractor performing services for the FDIC and the management officials and key employees of such subcontractors; and

(3) Any entity or organization seeking to perform services for the FDIC as a minority or woman-owned business (MWOB).

(g) *Contract(s)* means agreement(s) between FDIC and a contractor, including, but not limited to, agreements identified as "task orders", for a contractor to provide services to FDIC. Contracts also mean contracts between a contractor and its subcontractor.

(h) *Control* means the power to vote, directly or indirectly, 25 percent or more of any class of the voting stock of a company; the ability to direct in any manner the election of a majority of a company's directors or trustees; or the ability to exercise a controlling influence over the company's management and policies. For purposes of this definition, a general partner of a limited partnership is presumed to be in control of that partnership.

(i) *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, and includes pleas of nolo contendere.

(j) *FDIC* means the Federal Deposit Insurance Corporation acting in its receivership and corporate capacities, and FDIC officials or committees acting under delegated authority.

(k) *Indictment* shall include an information or other filing by a competent authority charging a criminal offense.

(l) *Key employee* means an individual who participates personally and substantially in the negotiation of, performance of, and/or monitoring for compliance under a contract with the FDIC. Such participation is made through, but is not limited to, decision, approval, disapproval, recommendation, or the rendering of advice under the contract.

(m) *Management official* means any shareholder, employee or partner who controls a company and any individual who directs the day-to-day operations of a company. With respect to a partnership, all partners are deemed to be management officials unless the partnership is governed by a management or executive committee with responsibility for the day-to-day operations. In partnerships with such committees, management official means only those partners who are a member of such a committee.

(n) *Material fact* means one that is necessary to determine the outcome of an issue or case and without which the case could not be supported.

(o) *Offer* means a proposal or other written or oral offer to provide services to FDIC.

(p) *Pattern or practice of defalcation regarding obligations* means two or more instances in which a loan or advance from an insured depository institution:

(1) Is in default for ninety (90) or more days as to payment of principal, interest, or a combination thereof, and there remains a legal obligation to pay an amount in excess of $50,000; or

(2) Where there has been a failure to comply with the terms of a loan or advance to such an extent that the collateral securing the loan or advance was foreclosed upon, resulting in a loss in excess of $50,000 to the insured depository institution.

(q) *Preponderance of the evidence* means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(r) *Subcontractor* means an entity or organization that enters into a contract with an FDIC contractor or another subcontractor to perform services under a proposed or existing contract with the FDIC.

(s) *Substantial loss to federal deposit insurance funds means:*

(1) A loan or advance from an insured depository institution, which is currently owed to the FDIC, RTC, FSLIC or their successors, or the Bank Insurance Fund (BIF), the Savings Association Insurance Fund (SAIF), the FSLIC Reserve Fund (FRF), or funds that were maintained by the RTC for the benefit of insured depositors, that is or has ever been delinquent for ninety (90) or more days as to payment of principal, interest, or a combination thereof and on which there remains a legal obligation to pay an amount in excess of $50,000;

(2) An obligation to pay an outstanding, unsatisfied, final judgment in excess of $50,000 in favor of the FDIC, RTC, FSLIC, or their successors, or the BIF, the SAIF, the FRF or the funds that were maintained by the RTC for the benefit of insured depositors; or

(3) A loan or advance from an insured depository institution which is currently owed to the FDIC, RTC, FSLIC or their successors, or the BIF, the SAIF, the FRF or the funds that were maintained by the RTC for the benefit of insured depositors, where there has been a failure to comply with the terms to such an extent that the collateral securing the loan or advance was foreclosed upon, resulting in a loss in excess of $50,000.

§ 367.3 Appropriate officials.

(a) The *Ethics Counselor* is the Executive Secretary of the FDIC. The Ethics Counselor shall act as the official responsible for rendering suspension and exclusion decisions under this part. In addition to taking suspension and/or exclusion action under this part, the Ethics Counselor has authority to terminate exclusion and suspension proceedings. As used in this part, "Ethics Counselor" includes any official designated by the Ethics Counselor to act on the Ethics Counselor's behalf.

(b) The *Corporation Ethics Committee* is the committee appointed by the Chairman of the FDIC, or Chairman's designee, which provides review of any suspension or exclusion decision rendered by the Ethics Counselor that is appealed by a contractor who has been suspended and/or excluded from FDIC contracting.

(c) Information concerning the possible existence of any cause for suspension or exclusion shall be reported to the Office of the Executive Secretary (Ethics Section). This part does not modify the responsibility to report allegations of fraud, waste and abuse, including but not limited to criminal violations, to the Office of Inspector General.

§ 367.4 [Reserved]

§ 367.5 Exclusions.

(a) The Ethics Counselor may exclude a contractor from the FDIC contracting program for any of the causes set forth in § 367.6, using procedures established in this part.

(b) Exclusion is a serious action to be imposed when a contractor has violated one or more of the causes set forth in § 367.6. Contractors excluded from FDIC contracting programs are prohibited from entering into any new contracts with FDIC for the duration of the period of exclusion as determined pursuant to this part. The FDIC shall not solicit offers from, award contracts to, extend or modify existing contracts, award task orders under existing contracts, or consent to subcontracts with such contractors. Excluded contractors are also prohibited from conducting business with FDIC as agents or representatives of other contractors.

(c) Exclusion actions do not become effective upon the notification of the contractor that there is a possible cause to exclude under § 367.13. Rather, they become effective only upon the Ethics Counselor's decision to exclude the contractor pursuant to § 367.16.

(d) The causes for exclusion set forth in § 367.6(a)(1) through (4) reflect statutorily established mandatory bars to contracting with the FDIC.

(e) Except when one or more of the statutorily established mandatory bars to contracting are shown to exist, the existence of a cause for exclusion does not necessarily require that the contractor be excluded; the seriousness of the contractor's acts or omissions and any mitigating or aggravating circumstances shall be considered in making any exclusion decision.

§ 367.6 Causes for exclusion.

The FDIC may exclude a contractor, in accordance with the procedures set forth in this part, upon a finding that:

(a) The contractor has been convicted of any felony;

(b) The contractor has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation or their successors;

(c) The contractor has demonstrated a pattern or practice of defalcation;

(d) The contractor has caused a substantial loss to Federal deposit insurance funds;

(e) The contractor has failed to disclose, pursuant to 12 CFR 366.6, a material fact to the FDIC;

(f) The contractor has failed to disclosed any material adverse change in the representations and certifications provided to FDIC under 12 CFR 366.6;

(g) The contractor has miscertified its status as a minority and/or woman owned business (MWOB);

(h) The contractor has a conflict of interest that was not waived by the Ethics Counselor or designee;

(i) The contractor has been subject to a final enforcement action by any federal financial institution regulatory agency, or has stipulated to such action;

(j) The contractor is debarred from participating in other federal programs;

(k) The contractor has been convicted of, or subject to a civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, or conspiracy to do the same;

(2) Violation of federal or state antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging, or conspiracy to do the same;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstructing of justice, or conspiracy to do the same;

(4) Commission of any other offense indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to do the same;

(l) The contractor's performance under previous contract(s) with FDIC or RTC has resulted in:

(1) The FDIC or RTC declaring such contract(s) to be in default;

(2) The termination of such contract(s) for poor performance; or

(3) A violation of the terms of a contract that would have resulted in a default or termination of the contract for poor performance if that violation had been discovered during the course of the contract; or

(m) The contractor has engaged in any conduct:

(1) Indicating a breach of trust, dishonesty, or lack of integrity that seriously and directly affects its ability to meet standards of present responsibility required of an FDIC contractor; or

(2) So serious or compelling in nature that it adversely affects the ability of a contractor to meet the minimum ethical standards required by 12 CFR part 366.

§ 367.7 Suspensions.

(a) The Ethics Counselor may suspend a contractor for any of the causes in § 367.8 using the procedures established in this section.

(b) Suspension is an action to be imposed when there exists adequate evidence of one or more of the causes set out in § 367.8. This includes, but is not limited to, situations where immediate action is necessary to protect the integrity of the FDIC contracting program and/or the security of FDIC assets during the pendency of legal or investigative proceedings initiated by FDIC, any federal agency or any law enforcement authority.

(c) The duration of any suspension action shall be for a temporary period pending the completion of an investigation and such other legal proceedings as may ensue.

(d) A suspension shall become effective immediately upon issuance of the notice specified in § 367.13(b).

(e) Contractors suspended from FDIC contracting programs are prohibited from entering into any new contracts with the FDIC for the duration of the period of suspension. The FDIC shall not solicit offers from, award contracts to, extend or modify existing contracts, award task orders under existing contracts, or consent to subcontracts with such contractors. Suspended contractors are also prohibited from conducting business with FDIC as agents or representatives of other contractors.

§ 367.8 Causes for suspension.

(a) Suspension may be imposed under the procedures set forth in this section upon adequate evidence:

(1) Of suspension by another federal agency;

(2) That a cause for exclusion under § 367.6 may exist;

(3) Of the commission of any other offense indicating a breach of trust, dishonesty, or lack of integrity that seriously and directly affects the minimum ethical standards required of an FDIC contractor; or

(4) Of any other cause so serious or compelling in nature that it adversely affects the ability of a contractor to meet the minimal ethical standards required by 12 CFR part 366.

(b) Indictment for any offense described in § 367.6 is adequate evidence to suspend a contractor.

(c) In assessing the adequacy of the evidence, FDIC will consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated and what inferences can reasonably be drawn as a result.

VOL 61 ISS 130 JL 5 1996 UMI

§ 367.9 Imputation of causes.

(a) Where there is cause to suspend and/or exclude any affiliated business entity of the contractor, that conduct may be imputed to the contractor if the conduct occurred in connection with the affiliated business entity's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(b) Where there is cause to suspend and/or exclude any contractor, that conduct may be imputed to any affiliated business entity, key employee, or management official of a contractor who participated in, knew of or had reason to know of the contractor's conduct.

(c) Where there is cause to suspend and/or exclude a key employee or management official of a contractor, that cause may be imputed to the contractor if the conduct occurred in connection with the key employee or management official's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(d) Where there is cause to suspend and/or exclude one contractor participating in a joint venture or similar arrangement, that cause may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(e) Where there is cause to suspend and/or exclude a subcontractor, that cause may be imputed to the contractor for which the subcontractor performed services, if the conduct occurred for or on behalf of the contractor and with the contractor's knowledge, approval, or acquiescence. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

§§ 367.10–367.11 [Reserved]

§ 367.12 Procedures.

(a) FDIC shall process suspension and exclusion actions as informally as practicable, consistent with its policy of providing contractors with adequate information on the grounds that give rise to the proposed action and affording contractors with a reasonable opportunity to respond.

(b) For purposes of determining filing dates for the pleadings required by this part, including responses, notices of appeal, appeals and requests for reconsideration, the provisions relating to the construction of time limits in 12 CFR 308.12 will control.

§ 367.13 Notices.

(a) *Exclusions.* Before excluding a contractor, the FDIC shall send it a written notice of possible cause to exclude. Such notice shall include:

(1) Notification that exclusion for a specified period of time is being considered based on the specified cause(s) in § 367.6 to be relied upon;

(2) Identification of the event(s), circumstance(s), or condition(s) that indicates that there is cause to believe a cause for exclusion exists, described in sufficient detail to put the contractor on notice of the conduct or transaction(s) upon which an exclusion proceeding is based;

(3) Notification that the contractor is not prohibited from contracting with the FDIC unless and until it is either suspended from FDIC contracting or the FDIC Ethics Counselor issues a decision excluding the contractor, *provided however*, in any case where the possible cause for exclusion would also be an impediment to the contractor's eligibility pursuant to 12 CFR part 366, the contractor's eligibility for any contract will be determined under that part; and

(4) Notification of the regulatory provisions governing the exclusion proceeding and the potential effect of a final exclusion decision.

(b) *Suspensions.* Before suspending a contractor, the FDIC shall send it notice, including:

(1) Notice that a suspension is being imposed based on specified causes in § 367.8;

(2) Identification of the event(s), circumstance(s), or condition(s) that indicate that there is adequate evidence to believe a cause for suspension exists, described in sufficient detail to put the contractor on notice of the basis for the suspension, recognizing that the conduct of ongoing investigations and legal proceedings, including criminal proceedings, place limitations on the evidence that can be released;

(3) Notification that the suspension prohibits the contractor from contracting with the FDIC for a temporary period, pending the completion of an investigation or other legal proceedings; and

(4) Notification of the regulatory provisions governing the suspension proceeding.

(c) *Service of notices.* Notices will be sent to the contractor by first class mail, postage prepaid. For purposes of compliance with this section, notice shall be considered to have been received by the contractor if the notice is properly mailed to the last known address of such contractor. Whenever practical, a copy of the notice will also be transmitted to the contractor by facsimile. In the event the notice is not sent by facsimile, a copy will be sent by an overnight delivery service such as Express Mail or a commercial equivalent.

§ 367.14 Responses.

(a) The contractor will have 15 days from the date of the notice within which to respond.

(b) The response shall be in writing and may include: information and argument in opposition to the proposed exclusion and/or suspension, including any additional specific information pertaining to the possible causes for exclusion; and information and argument in mitigation of the proposed period of exclusion.

(c) The response may request a meeting with an FDIC official identified in the notice to permit the contractor to discuss issues of fact or law relating to the suspension and/or proposed exclusion or to otherwise resolve the pending matters.

(1) Any such meetings between a contractor and FDIC shall take such form as the FDIC deems appropriate.

(2) In cases of suspensions, no meeting will be held where a representative of the Department of Justice has advised in writing that the substantial interests of the Government would be prejudiced by such a meeting and the Ethics Counselor determines that a suspension is based on the same facts as pending or contemplated legal proceedings referenced by the representative of the Department of Justice.

(d) Failure to respond to the notice shall be deemed an admission of the existence of the cause(s) for suspension and/or exclusion set forth in the notice and an acceptance of the period of exclusion proposed therein. In such circumstances, the FDIC may proceed to a final decision without further proceedings.

(e) Where a contractor has received more than one notice, the FDIC may consolidate the pending proceedings, including the scheduling of any meetings, in accordance with this section.

§ 367.15 Additional proceedings as to disputed material facts.

(a) In actions not based upon a conviction or civil judgment, if the Ethics Counselor finds that the contractor's submission raises a genuine dispute over facts material to the proposed suspension and/or exclusion, the contractor shall be afforded an opportunity to appear (with counsel, if desired), submit documentary evidence, present witnesses, and confront any witnesses the FDIC presents.

(b) The Ethics Counselor may refer disputed material facts to another official for analysis and recommendation.

(c) If requested, a transcribed record of any additional proceedings shall be made available at cost to the contractor.

§ 367.16 Ethics Counselor decisions.

(a) Standard of proof:

(1) An exclusion must be based on a finding that the cause(s) for exclusion is established by a preponderance of the evidence in the administrative record of the case; and

(2) A suspension must be based on a finding that the cause(s) for suspension is established by adequate evidence in the administrative record of the case.

(b) The administrative record consists of the portion of any information, reports, documents or other evidence identified and relied upon in the Notice of Possible Cause to Exclude, the Notice of Suspension and/or supplemental Notices, if any, together with any material portions of the contractor's response. When additional proceedings are necessary to determine disputed material facts, the Ethics Counselor shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(c) In actions based upon a conviction, judgment, a final enforcement action by a federal financial institution regulatory agency, or in which all facts and circumstances material to the exclusion action have been finally adjudicated in another forum, the Ethics Counselor may exclude a contractor without regard to the procedures set out in §§ 367.13 through 367.14. Any such decisions will be subject to the review and reconsideration provisions of § 367.20.

(d) Notice of decisions. Contractors shall be given prompt notice of the Ethics Counselor's decision in the manner described in § 367.13(c). If the Ethics Counselor suspends a contractor or imposes a period of exclusion, the decision shall:

(1) Set forth the cause(s) for suspension and/or exclusion included in the Notice that were found by a preponderance of the evidence with reference to the administrative record support for that finding;

(2) Set forth the effect of the exclusion action and the effective dates of that action;

(3) Refer the contractor to its procedural rights of review and reconsideration under § 367.20; and

(4) Inform the contractor that a copy of the exclusion decision shall be placed in the FDIC Public Reading Room.

(e) If the FDIC Ethics Counselor decides that a period of exclusion is not warranted, the Notice of Possible Cause to Exclude may be withdrawn or the proceeding may be otherwise terminated. A decision to terminate an exclusion proceeding may include the imposition of appropriate conditions on the contractor in their future dealings with the FDIC.

§ 367.17 Duration of suspensions and exclusions.

(a) *Suspensions.* (1) Suspensions shall be for a temporary period pending the completion of an investigation or other legal or exclusion proceedings.

(2) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless a representative of the Department of Justice requests its extension in writing. In such cases, the suspension may be extended for an additional six months. In no event may a suspension be imposed for more than 18 months, unless such proceedings have been initiated within that period.

(3) FDIC shall notify the Department of Justice of an impending termination of a suspension at least 30 days before the 12-month period expires to give the Department of Justice an opportunity to request an extension.

(4) The time limitations for suspension in this section may be waived by the affected contractor.

(b) *Exclusions.* (1) Exclusions shall be for a period commensurate with the seriousness of the cause(s) after due consideration of mitigating evidence presented by the contractor.

(2) If a suspension precedes an exclusion, the suspension period shall be considered in determining the exclusion period.

(3) Exclusion for causes other than the mandatory bars in 12 CFR 366.4(a) generally should not exceed three years, but where circumstances warrant, a longer period of exclusion may be imposed.

(4) The Ethics Counselor may extend an existing exclusion for an additional period if the Ethics Counselor determines that an extension is necessary to protect the integrity of the FDIC contracting program and the public interest. However, an exclusion may not be extended solely on the basis of the facts and circumstances upon which the initial exclusion action was based. The standards and procedures in this part shall be applied in any proceeding to extend an exclusion.

§ 367.18 Abrogation of contracts.

(a) The FDIC may, in its discretion, rescind or terminate any contract in existence at the time a contractor is suspended or excluded.

(b) Any contract not rescinded or terminated shall continue in force in accordance with the terms thereof.

(c) The right to rescind or terminate a contract in existence is cumulative and in addition to any other remedies or rights the FDIC may have under the terms of the contract, at law, or otherwise.

§ 367.19 Exceptions to suspensions and exclusions.

(a) Exceptions to the effects of suspensions and exclusions may be available in unique circumstances, where there are compelling reasons to utilize a particular contractor for a specific task. Requests for such exceptions may be submitted only by the FDIC program office requesting the contract services.

(b) In the case of the modification or extension of an existing contract, the Ethics Counselor may except such a contracting action from the effects of suspension and/or exclusion upon a determination, in writing, that a compelling reason exists for utilization of the contractor in the particular instance. The Ethics Counselor's authority under this section shall not be delegated to any lower official.

(c) In the case of new contracts, the Corporation Ethics Committee may except a particular new contract from the effects of suspension and/or exclusion upon a determination in writing that a compelling reason exists for utilization of the contractor in the particular instance.

§ 367.20 Review and reconsideration of Ethics Counselor decisions.

(a) *Review.* (1) A suspended and/or excluded contractor may appeal the exclusion decision to the Corporation Ethics Committee.

(2) In order to avail itself of the right to appeal, a suspended and/or excluded contractor must file a written notice of intent to appeal within 5 days of the Ethics Counselor's decision.

VOL
61
ISS
130
JL
5
1996
UMI

(3) The appeal shall be filed in writing within 30 days of the decision.

(4) The Corporation Ethics Committee, at its discretion and after determining that it is in the best interests of the FDIC, may stay the effect of the suspension and/or exclusion pending conclusion of its review of the matter.

(b) *Reconsideration.* (1) A suspended and/or excluded contractor may submit a request to the Ethics Counselor to reconsider the suspension and/or exclusion decision, reduce the period of exclusion or terminate the suspension and/or exclusion.

(2) Such requests shall be in writing and supported by documentation that the requested action is justified by:

(i) Reversal of the conviction or civil judgment upon which the suspension and/or exclusion was based;

(ii) Newly discovered material evidence;

(iii) Bona fide change in ownership or management;

(iv) Elimination of other causes for which the suspension and/or exclusion was imposed; or

(v) Other reasons the FDIC Ethics Counselor deems appropriate.

(3) A request for reconsideration based on the reversal of the conviction or civil judgment may be filed at any time.

(4) Requests for reconsideration based on other grounds may only be filed during the period commencing 60 days after the Ethics Counselor's decision imposing the suspension and/or exclusion. Only one such request may be filed in any twelve month period.

(5) The Ethics Counselor's decision on a request for reconsideration is subject to the review procedure set forth in paragraph (a) of this section.

By order of the Board of Directors.

Dated at Washington, D.C., this 17th day of June 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96–16510 Filed 7–3–96; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–102–AD; Amendment 39–9679; AD 96–13–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Airbus Model A300 B2, B4–100, and B4–200 series airplanes, that currently requires supplemental structural inspections to detect fatigue cracking, and repair of cracked structure. This amendment requires revising the supplemental structural inspection (SSID) program by changing some of the inspection techniques, changing some of the thresholds and intervals for inspections, expanding the area to be inspected for some of the inspections, and revising the Fleet Leader Program. This amendment is prompted by a review of recent service history and reports received from the current SSID program required by the existing AD. The actions specified by this AD are intended to prevent reduced structural integrity of these airplanes due to fatigue cracking.

DATES: Effective August 9, 1996.

The incorporation by reference of Airbus Industrie A300 Supplemental Structural Inspection Document (SSID), Revision 2, dated June 1994, as listed in the regulations is approved by the Director of the Federal Register as of August 9, 1996.

The incorporation by reference of Airbus Industrie A300 Supplemental Structural Inspection Document (SSID), dated September 1989, as listed in the regulations, was approved previously by the Director of the Federal Register as of March 9, 1993 (58 FR 6703, February 2, 1993).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2146; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–01–24, amendment 39–8478 (58 FR 6703, February 2, 1993), which is applicable to all Airbus Model A300 B2, B4–100, and B4–200 series airplanes, was published in the **Federal Register** on January 31, 1996 (61 FR 3343). The action proposed to continue to require supplemental structural inspections to detect fatigue cracking, and repair of cracked structure. The action also proposed to require revising the supplemental structural inspection program, including changing some of the inspection techniques, changing some of the thresholds and intervals for certain inspections, expanding the area to be inspected for some of the inspections, and revising the Fleet Leader Program.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Support for the Proposal

Both commenters support the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that approximately 26 Model A300 series airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 93–01–24 take approximately 564 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions required by AD 93–01–24 is estimated to be $879,840, or $33,840 per airplane.

Implementation of the inspections, repairs, and replacements specified in Revision 2 of the SSID into an operator's maintenance program is estimated to require approximately 597 work hours (including removal, inspection, and installation work hours) per airplane per year, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the proposed requirements of this AD is estimated to be $931,320, or $35,820 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8478 (58 FR 6703, February 2, 1993), and by adding a new airworthiness directive (AD), amendment 39–9679, to read as follows:

96–13–11 Airbus Industries: Amendment 39–9679. Docket 94–NM–102–AD. Supersedes AD 93–01–24, Amendment 39–8478.

Applicability: All Model A300 B2–1A, B2–1C, B2K–3C, and B2–203 series airplanes, and Model A300 B4–2C, B4–103, and B4–203 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (m) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of these airplanes due to fatigue cracking, accomplish the following:

(a) Within one year after March 9, 1993 (the effective date of AD 93–01–24, amendment 39–8478), incorporate a revision into the FAA-approved maintenance inspection program that provides for supplemental maintenance inspections, modifications, repair, or replacement of the significant structural details (SSD) and significant structural items (SSI) specified in "Airbus Industrie A300 Supplemental Structural Inspection Document" (SSID), dated September 1989 (hereafter referred to as "the SSID").

(b) Within one year after the effective date of this AD, replace the revision of the FAA-approved maintenance program required by paragraph (a) of this AD with the inspections, inspection intervals, repairs, and replacements defined in "Airbus Industrie A300 Supplemental Structural Inspection Document" (SSID), Revision 2, dated June 1994 (hereafter referred to as "Revision 2 of the SSID"). Accomplish the actions specified in the service bulletins identified in Section 6, "SB Reference List," Revision 2 of the SSID, at the times specified in those service bulletins. The actions are to be accomplished in accordance with those service bulletins.

(1) For airplanes that have exceeded the threshold specified in any of the service bulletins identified in Section 6, "SB Reference List," Revision 2 of the SSID: Accomplish the actions specified in those service bulletins within the grace period specified in that service bulletin. The grace period is to be measured from the effective date of this AD.

(2) For airplanes that have exceeded the threshold specified in any of the service bulletins identified in Section 6, "SB Reference List," Revision 2 of the SSID, and a grace period is not specified in that service bulletin: Accomplish the actions specified in that service bulletins within 1,500 flight cycles after the effective date of this AD.

(c) If any cracked structure is detected during the inspections required by either paragraph (a) or (b) of this AD, prior to further flight, permanently repair the cracked structure in accordance with either paragraph (c)(1), (c)(2), or (c)(3) of this AD.

Note 2: A permanent repair is defined as a repair that meets the certification basis of the airplane, and does not require additional modification at a later date.

(1) The service bulletins listed in Section 6, "SB Reference List," of the SSID [for airplanes that are currently being inspected in accordance with paragraph (a) of this AD]; or in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, if a permanent repair is not specified in any of these service bulletins. Or

(2) The service bulletins listed in Section 6, "SB Reference List," of Revision 2 of the SSID [for airplanes that are currently being inspected in accordance with paragraph (b) of this AD]; or in accordance with a method approved by the Manager, Standardization Branch, ANM–113, if a permanent repair is not specified in any of these service bulletins. Or

(3) Other permanent repair data meeting the certification basis of the airplane which is approved by the Manager, Standardization Branch, ANM–113, or by the Direction Gonorale de l'Aviation Civile (DGAC) of France.

(d) For airplanes identified as Fleet Leader Program (FLP) in Section 5, "Fleet Leader Program," of the SSID or Revision 2 of the SSID: Inspect according to the instructions and intervals specified in paragraph 4.4, "Adjustment of Inspection Requirements and DSG," of Section 4, or Section 9, as applicable, of the SSID [for airplanes inspected in accordance with paragraph (a) of this AD], or Revision 2 of the SSID [for airplanes inspected in accordance with paragraph (b) of this AD], for each SSD.

(e) For the purpose of accomplishing paragraphs (d), (f), (g), and (i) of this AD, operators shall not use paragraph 6.2, "Complete RR Method," of Section 9 of the SSID to calculate inspection thresholds and intervals.

(f) For Model A300–B2 and B2K–3C series airplanes: For any SSD that has exceeded the values of the threshold specified in paragraph 6, "Inspection Threshold and Intervals," Section 9 of the SSID, inspect at the time specified in either paragraph (f)(1) or (f)(2) of this AD, as applicable.

(1) For airplanes inspected in accordance with paragraph (a) of this AD: Inspect within 2,000 landings after March 9, 1993, in accordance with the SSID. Or

(2) For airplanes inspected in accordance with paragraph (b) of this AD: Inspect within 2,000 landings after the effective date of this AD, in accordance with Revision 2 of the SSID.

(g) For Model A300–B4 series airplanes: For any SSD that has exceeded the values of the threshold specified in paragraph 6, "Inspection Threshold and Intervals," Section 9 of the SSID, inspect at the time specified in either paragraph (g)(1) or (g)(2) of this AD, as applicable.

VOL 61 ISS 130 JL 5 1996 UMI

(1) For airplanes inspected in accordance with paragraph (a) of this AD: Inspect within 1,500 landings after March 9, 1993 [the effective date of AD 93–01–24, amendment 39–8478]. Or

(2) For airplanes inspected in accordance with paragraph (b) of this AD: Inspect within 1,500 landings after the effective date of this AD.

(h) For airplanes identified as FLP in Section 5, "Fleet Leader Program," of the SSID or Revision 2 of the SSID: Within one year after the effective date of this AD, apply the basic requirements given in Revision 2 of the SSID.

(i) For airplanes that are subject to the requirements of paragraph (b) of this AD, and have exceeded the initial inspection threshold specified in paragraph 4.4, "Adjustment of Inspection Requirements and DSG," of Section 4, or paragraph 6, "Inspection Threshold and Intervals," of Section 9, for each SSD: Perform the initial inspection prior to the accumulation of the number of flight cycles specified in paragraph 7, "Additional Information," Section 9, of Revision 2 of the SSID.

Note 3: Fatigue ratings are not applicable to these allowances; therefore, no adjustment is required.

Note 4: Paragraph (i) of this AD provides the "grace" periods for those airplanes that are new to the FLP or that have newly added or revised SSID requirements in accordance with paragraph (b) of this AD.

(j) The grace period provided by paragraph (i) of this AD is also applicable to the thresholds and/or repeat intervals for each SSD for which the inspection interval or threshold was reduced in accordance with the requirements of paragraph (b) of this AD.

(k) For FLP airplanes identified in Section 5, "Fleet Leader Program," of the SSID or Revision 2 of the SSID that are listed in Section 7, "SSI Limitation List," of the SSID [for airplanes that are currently being inspected in accordance with paragraph (a) of this AD] , or Revision 2 of the SSID [for airplanes that are currently being inspected in accordance with paragraph (b) of this AD]: Inspect at intervals not to exceed the interval specified for each SSI, in accordance with the values given in Section 7, "SSI Limitation List," of the SSID or Revision 2 of the SSID, as applicable.

(l) For all airplanes: All inspection results, positive or negative, must be reported to Airbus Industrie in accordance with either paragraph (l)(1) or (l)(2) of this AD, as applicable. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For FLP airplanes, identified in Section 5, "Fleet Leader Program," of the SSID or Revision 2 of the SSID: Submit reports in accordance with the instructions in paragraph 5.2, "SSIP Inspection Reporting," of Section 5, and paragraph 7.1, "General," of Section 7 of the SSID [for airplanes that are currently being inspected in accordance with paragraph (a) of this AD]; or Revision 2 of the SSID [for airplanes inspected in accordance with paragraph (b) of this AD].

(2) For all airplanes that are subject to Section 6, "SB Reference List," of the SSID: Submit reports in accordance with the instructions in the applicable service bulletins identified in Section 6 of the SSID [for airplanes that are currently being inspected in accordance with paragraph (a) of this AD]; or Revision 2 of the SSID [for airplanes that are currently being inspected in accordance with paragraph (b) of this AD].

(m) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

Note 6: Alternative methods of compliance previously granted for AD 93–01–24, amendment 39–8478, continue to be considered as acceptable alternative methods of compliance with this amendment.

(n) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(o) The actions shall be done in accordance with Airbus Industrie Supplemental Structural Inspection Document (SSID), dated September 1989; or Airbus Industrie A300 SSID, Revision 2, dated June 1994, as applicable. Airbus Industrie A300 SSID, Revision 2, dated June 1994, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
Record of revision	2	Jun 94
Section 0:		
0–LEP 1	2	Jun 94.
0–TOC 1	2	Jun 94.
Section 1:		
1–LEP 1	2	Jun 94.
1–TOC 1	1	Mar 93.
1	1	Mar 93.
2, 3	2	Jun 94.
Section 2:		
2–LEP 1	2	Jun 94.
2–TOC 1	1	Mar 93.
1, 2	1	Mar 93.
3	2	Jun 94.
Section 3:		
3–LEP 1	2	Jun 94.
3–TOC 1	2	Jun 94.
1, 2	2	Jun 94.
Section 4:		
4–LEP 1	1	Mar 93.
4–TOC 1	1	Mar 93.
1–3, 7–9, 11–16, 19, 24–38, 40–46.	1	Mar 93.
4–6, 10, 17, 18, 20–23, 39.	0	Sep 89.
Section 5:		
5–LEP 1	2	Jun 94.
5–TOC 1	2	Jun 94.
1–48	2	Jun 94.
Section 6:		
6–LEP 1	2	Jun 94.
6–TOC 1	1	Mar 93.
1	1	Mar 93.
2–4	2	Jun 94.
Section 7:		
7–LEP 1	1	Mar 93.
7–TOC 1	1	Mar 93.
1–10	1	Mar 93.
Section 8:		
8–LEP 1	1	Mar 93.
8–TOC 1	1	Mar 93.
1–5	1	Mar 93.
Section 9:		
9–LEP 1–6	2	Jun 94.
9–LEP 7–9	2	Jun 94.
9–TOC 1	1	Mar 93.
1–3	1	Mar 93.
4	2	Jun 94.
526305/1–4	0	Sep 89.
526305/5	1	Mar 93.
526305/6	2	Jun 94.
536101/1	0	Sep 89.
536101/2	1	Mar 93.
536101/3	2	Jun 94.
536101/4	0	Sep 89.
536110/1, 2	0	Sep 89.
536110/3	1	Mar 93.
536110/4	2	Jun 94.
536110/5	0	Sep 89.
536202/1	0	Sep 89.
536202/2, 3	1	Mar 93.
536202/4	2	Jun 94.
536202/5–7	0	Sep 89.
536204/1, 2	0	Sep 89.
536204/3, 4	1	Mar 93.
536204/5	2	Jun 94.
536204/6, 7	0	Sep 89.
536205/1, 2	0	Sep 89.
536205/3	2	Jun 94.
536205/4	1	Mar 93.
536205/5	2	Jun 94.
536205/6, 7	0	Sep 89.
536206/1	0	Sep 89.
536206/2, 3	1	Mar 93.
536206/4	2	Jun 94.
536206/5, 6	0	Sep 89.
536207/1	0	Sep 89.
536207/2	1	Mar 93.
536207/3	2	Jun 94.
536207/4–7	0	Sep 89.
536225/1	0	Sep 89.
536225/2	1	Mar 93.
536225/3	2	Jun 94.
536225/4–6	0	Sep 89.
536301/1–3	0	Sep 89.
536301/4	1	Mar 93.
536301/5	0	Sep 89.
536301/6	1	Mar 93.
536301/7–9	2	Jun 94.
536301/10	2	Jun 94.
536311/1–3	0	Sep 89.
536311/4	1	Mar 93.
536311/5, 6	2	Jun 94.

Page No.	Revision level shown on page	Date shown on page
536311/7	2	Jun 94.
536355/1–4	0	Sep 89.
536355/5	1	Mar 93.
536355/6	2	Jun 94.
536359/1	0	Sep 89.
536359/2	1	Mar 93.
536359/3	2	Jun 94.
536365/1	0	Sep 89.
536365/2	1	Mar 93.
536365/3	2	Jun 94.
536365/4	1	Mar 93.
536367/1	0	Sep 89.
536367/2	1	Mar 93.
536367/3	2	Jun 94.
536403/1	0	Sep 89.
536403/2	1	Mar 93.
536403/3	2	Jun 94.
536403/4	0	Sep 89.
536405/1–3	0	Sep 89.
536405/4–5	1	Mar 93.
536405/6	2	Jun 94.
536405/7	0	Sep 89.
536407/1–3	0	Sep 89.
536407/4, 5	1	Mar 93.
536407/6	2	Jun 94.
536407/7	0	Sep 89.
536415/1, 2	1	Mar 93.
536415/3	2	Jun 94.
536415/4	0	Sep 89.
536502/1–4	0	Sep 89.
536502/5, 6	1	Mar 93.
536502/7–9	2	Jun 94.
536502/10	2	Jun 94.
536503/1, 2	0	Sep 89.
536503/3, 4	1	Mar 93.
536503/5	2	Jun 94.
536503/6–10	0	Sep 89.
536506/1, 2	0	Sep 89.
536506/3, 4	1	Mar 93.
536506/5	2	Jun 94.
536506/6–11	0	Sep 89.
536509/1, 2	0	Sep 89.
536509/3	1	Mar 93.
536509/4	2	Jun 94.
536509/5	0	Sep 89.
536510/1, 2	0	Sep 89.
536510/3	1	Mar 93.
536510/4	2	Jun 94.
536510/5, 6	0	Sep 89.
536521/1, 2	0	Sep 89.
536521/3, 4	1	Mar 93.
536521/5	2	Jun 94.
536523/1	0	Sep 89.
536523/2, 3	1	Mar 93.
536523/4	2	Jun 94.
536523/5, 6	0	Sep 89.
536541/1	0	Sep 89.
536541/2, 3	2	Jun 94.
536541/4	2	Jun 94.
536546/1	0	Sep 89.
536546/2	1	Mar 93.
536546/3	2	Jun 94.
536546/4–6	0	Sep 89.
536547/1	0	Sep 89.
536547/2	1	Mar 93.
536547/3	2	Jun 94.
536547/4	0	Sep 89.
536548/1, 2	0	Sep 89.
536548/3, 4	1	Mar 93.
536548/5	2	Jun 94.
536548/6–8	1	Mar 93.
536596/1, 2	0	Sep 89.
536596/3	1	Mar 93.
536596/4	2	Jun 94.
536596/5	0	Sep 89.
536598/1, 2	0	Sep 89.
536598/3, 4	1	Mar 93.
536598/5	2	Jun 94.
536598/6–9	0	Sep 89.
536599/1	0	Sep 89.
536599/2	1	Mar 93.
536599/3–6	2	Jun 94.
536599/7	2	Jun 94.
536651/1, 2	0	Sep 89.
536651/3, 4	1	Mar 93.
536651/5	2	Jun 94.
536652/1–3	0	Sep 89.
536652/4	1	Mar 93.
536652/5	2	Jun 94.
536652/6	0	Sep 89.
536704/1, 2	0	Sep 89.
536704/3	1	Mar 93.
536704/4	2	Jun 94.
536704/5	0	Sep 89.
546001/1	0	Sep 89.
546001/2, 3	1	Mar 93.
546001/4	2	Jun 94.
546001/5–10	1	Mar 93.
536014/1	0	Sep 89.
536014/2, 3	1	Mar 93.
536014/4	2	Jun 94.
536014/5–7	0	Sep 89.
556002/1	0	Sep 89.
556002/2, 3	1	Mar 93.
556002/4	2	Jun 94.
556002/5–7	1	Mar 93.
556003/1–4	0	Sep 89.
556003/5, 6	1	Mar 93.
556003/7	2	Jun 94.
556003/8–10	1	Mar 93.
556004/1, 2	0	Sep 89.
556004/3	1	Mar 93.
556004/4	2	Jun 94.
576004/1	0	Sep 89.
576004/2	1	Mar 93.
576004/3	2	Jun 94.
576004/4–6	0	Sep 89.
576007/1	0	Sep 89.
576007/2	1	Mar 93.
576007/3	2	Jun 94.
576007/4–6	0	Sep 89.
576009/1	0	Sep 89.
576009/2	1	Mar 93.
576009/3	2	Jun 94.
576009/4–6	0	Sep 89.
576011/1	0	Sep 89.
576011/2	1	Mar 93.
576011/3	2	Jun 94.
576011/4–6	0	Sep 89.
576013/1–3	0	Sep 89.
576013/4	1	Mar 93.
576013/5–8	2	Jun 94.
576013/9	2	Jun 94.
576017/1	0	Sep 89.
576017/2	1	Mar 93.
576017/3	2	Jun 94.
576017/4	0	Sep 89.
576021/1	0	Sep 89.
576021/2	1	Mar 93.
576021/3	2	Jun 94.
576021/4–6	0	Sep 89.
576029/1, 2	0	Sep 89.
576029/3	1	Mar 93.
576029/4	2	Jun 94.
576029/5–7	0	Sep 89.
576031/1	0	Sep 89.
576031/2	1	Mar 93.
576031/3	2	Jun 94.
576031/4–6	0	Sep 89.
576035/1	0	Sep 89.
576035/2	1	Mar 93.
576035/3	2	Jun 94.
576035/4–6	0	Sep 89.
576037/1	0	Sep 89.
576037/2	1	Mar 93.
576037/3–6	2	Jun 94.
576037/7	2	Jun 94.
576041/1–4	0	Sep 89.
576041/5, 6	2	Jun 94.
576047/1	0	Sep 89.
576047/2–6	2	Jun 94.
576051/1	0	Sep 89.
576051/2	1	Mar 93.
576051/3	2	Jun 94.
576051/4–6	0	Sep 89.
576062/1, 2	1	Mar 93.
576062/3–5	2	Jun 94.
576063/1–5	2	Jun 94.
576064/1–6	2	Jun 94.
576065/1–7	2	Jun 94.
576067/1–3	2	Jun 94.
576068/1–3	2	Jun 94.
576070/1–7	2	Jun 94.

This incorporation by reference of Airbus Industrie SSID, dated September 1989, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of March 9, 1993 (58 FR 6703, February 2, 1993). The incorporation by reference of Airbus Industrie SSID, Revision 2, dated June 1994, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(p) This amendment becomes effective on August 9, 1996.

Issued in Renton, Washington, on June 17, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–15953 Filed 7–3–96; 8:45 am]

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VOL
61
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130
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1996
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14 CFR Part 39

[Docket No. 96–NM–128–AD; Amendment 39–9683; AD 96–14–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200 ("Combi") and 747–300 ("Combi") Airplanes Modified in Accordance With Heath Tecna Supplemental Type Certificate (STC) SA2365NM or STC SA5108NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–200 "combi" and 747–300 "combi" airplanes. This action requires the installation of a new hose and fitting for the oxygen supply system. This amendment is prompted by a report indicating that a gasket seal in the oxygen hose assembly was omitted during installation. The actions specified in this AD are intended to prevent leakage of oxygen from the passenger oxygen supply lines, which could prevent an adequate flow of oxygen from reaching passengers in the event of a deployment of the passenger oxygen masks.

DATES: Effective July 22, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 22, 1996.

Comments for inclusion in the Rules Docket must be received on or before September 3, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–128–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Heath Tecna Interiors, 3225 Woburn Street, Bellingham, Washington 98226. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Don Kurle, Senior Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2798; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report indicating that, due to an engineering drawing error, a gasket seal was inadvertently omitted from the passenger oxygen supply assembly installed on certain Boeing Model 747–200 and –300 "combi" airplanes that have been modified in accordance with Heath Tecna Supplemental Type Certificate (STC) SA2365NM or STC SA5108NM. ("Combi" airplanes are aircraft that are configured and certificated to transport both cargo and passengers at the same time on the main deck.) Without the gasket seal, oxygen can leak from the low pressure passenger oxygen supply lines. This condition, if not corrected, could prevent an adequate flow of oxygen from reaching passengers when the passenger oxygen masks are deployed (due to a drop in cabin pressure, for example). There have been no incidents of this sort in service, however.

Explanation of Relevant Service Information

Heath Tecna, which is the manufacturer of the oxygen supply assembly, has issued Service Bulletin H0364–35–001, dated March 15, 1996, which describes procedures for installing a new hose and fitting for the oxygen system located in Zones D and E of the airplane.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent leakage of oxygen from the passenger oxygen supply lines, which could prevent an adequate flow of oxygen from reaching passengers in the event of a deployment of the passenger oxygen masks. This AD requires the installation of a new hose and fitting for the oxygen supply system. The actions are required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

None of the Model 747–200 "combi" or 747–300 "combi" airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 8 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Required parts would cost approximately $400 per airplane. Based on these figures, the cost impact of this AD would be $880 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–128–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–14–01 Boeing: Amendment 39–9683. Docket 96–NM–128–AD.

Applicability: Model 747–200 "combi" airplanes and Model 747–300 "combi" airplanes; modified in accordance with Heath Tecna Supplemental Type Certificate (STC) SA2365NM or STC SA5108NM; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of oxygen from the passenger oxygen supply lines, which could prevent an adequate flow of oxygen from reaching passengers in the event of a deployment of the passenger oxygen masks, accomplish the following:

(a) Within 15 months after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with Heath Tecna Service Bulletin H0364–35–001, dated March 15, 1996:

(1) Remove the oxygen hose assembly, part number (P/N) 173479–16; the two bushings, P/N MS21915–12–10 and P/N AN893–19D; the tube, P/N HPD5–74223–7; and the two nuts, P/N AN818–12D. And

(2) Install a union-bulkhead, P/N MS21924D10, and oxygen hose assembly, P/N 45901–10–0200.

(b) Prior to further fight after accomplishing the installation required by paragraph (a)(2) of this AD, perform an oxygen system leak test, in accordance with Boeing 747 Maintenance Manual, Chapter 35.21.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Heath Tecna Service Bulletin H0364–35–001, dated March 15, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Heath Tecna Interiors, 3225 Woburn Street, Bellingham, Washington 98226. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 22, 1996.

Issued in Renton, Washington, on June 25, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–16653 Filed 7–3–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–154–AD; Amendment 39–9684; AD 96–14–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With Pratt & Whitney Model JT9D–7R4 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that requires a visual inspection to verify proper clearance between the number 18 fuel nozzle secondary transfer fuel tube and the pylon drain tube of the engine, and various follow-on actions. This amendment also requires the installation of clamps and associated fasteners between the environmental control system (ECS) controller tube and the pylon drain tube. This amendment is prompted by reports of chafing of the number 18 fuel nozzle secondary transfer fuel tube of the engine due to an improperly installed or loose pylon drain tube. The actions specified by this AD are intended to prevent such chafing, which could lead to subsequent fuel leakage and a possible engine fire.

DATES: Effective August 9, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 9, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Monica Merritt, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton,

VOL 61 ISS 130 JL 5 1996 UMI

Washington; telephone (206) 227–2683; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes was published in the **Federal Register** on January 31, 1996 (61 FR 3340). That action proposed to require a visual inspection to verify proper clearance between the number 18 fuel nozzle secondary transfer fuel tube and the pylon drain tube of the engine, and various follow-on actions. That action also proposed to require the installation of clamps and associated fasteners between the environmental control system (ECS) controller tube and the pylon drain tube.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposal.

Request To Revise Description of Affected Component

One commenter, Boeing, requests that all references in the proposed rule to the "ECS" controller tube be changed to "the high pressure controller muscle air tube." The commenter states that the high pressure controller and muscle air tube are components of the airplane pneumatic system, which provides engine bleed air to various airplane systems, including the ECS.

The FAA agrees with the commenter's suggestion that the revised wording may be a more accurate description of the subject component. However, the service information (Boeing Service Bulletin 767–71A0082) that is referenced in the AD uses the term "ECS controller tube" throughout the procedures it contains relative to the modification. In light of this, the FAA finds that using the term "ECS controller tube" in the final rule will maintain consistency with the terminology used in the referenced service bulletin and, thereby, will avoid confusion.

Request To Revise Description of Service History

This same commenter requests that the description of the incidents that prompted the AD be revised. The commenter points to a specific statement that appeared in the Discussion section of the preamble to the notice: "In the engine fire incident, investigation revealed that the cause of the chafing was attributed to the installation of the wrong engine fuel manifold, which did not provide for adequate clearance for the fuel tube." The commenter states that subsequent investigation of this particular incident revealed that an acceptable clearance could be maintained even if the wrong configuration of number 18 fuel tube was installed. The contributing factor to the chafing of the number 18 fuel tube was the mis-installation of the pylon drain tube.

The FAA acknowledges this new information. However, it in no way affects the intent of or need for this AD. Since the Discussion section is not repeated in the final rule, no change to the rule is necessary.

Request To Clarify Damage Specifications

This same commenter requests that proposed paragraph (a)(2) be revised to clarify the amount of damage to the number 18 fuel tube and the pylon drain tube of the engine that would require replacement or repair of those items. The commenter points out that the damage specifications indicated in the proposal are different from those specified in both the 767 Maintenance Manual and the Pratt & Whitney JT9D Engine Manual.

The FAA concurs that clarification is necessary. Based on information contained in the two manuals referenced by the commenter, the FAA finds that repair or replacement must be accomplished if damage to the number 18 fuel tube is greater than 0.003 inch, and if damage to the pylon drain tube is greater than 0.004 inch. Paragraphs (a)(2)(i) and (a)(2)(ii) of the final rule have been changed accordingly. Additionally, those paragraphs have been revised to include reference to the 767 Maintenance Manual and the Pratt & Whitney JT9D Engine Manual as sources of information relative to damage measurements.

Request To Extend Compliance Time

One commenter requests that the compliance time for accomplishing the inspection be extended from the proposed 6 months to 12 months. The commenter, a non-U.S. operator, requests this extension in order to accommodate the modification of a number of engines in its fleet that currently are equipped with different clamps.

The FAA does not concur with the commenter's request to extend the compliance time. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of accomplishing the inspection and installing the modification within an interval of time that parallels normally scheduled maintenance for the majority of affected operators. The FAA has found that an ample number of modification parts will be available to accommodate the affected fleet within the 6-month compliance period. In light of these factors, the FAA finds that the compliance time, as proposed, is appropriate. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 93 Model 767 series airplanes equipped with Pratt & Whitney Model JT9D–7R4 engines of the affected design in the worldwide fleet. The FAA estimates that 30 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $31 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $8,130, or $271 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–14–02 Boeing: Amendment 39–9684. Docket 95–NM–154–AD.

Applicability: Model 767 series airplanes having line position 1 through 329, inclusive; equipped with Pratt & Whitney Model JT9D–7R4 engines; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the number 18 fuel nozzle secondary transfer fuel tube of the engine, and subsequent fuel leakage and possible engine fire, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a visual inspection to verify proper clearance (0.5 inch) between the number 18 fuel nozzle secondary transfer fuel tube and the pylon drain tube of the engine.

(1) If the clearance is equal to or greater than 0.5 inch: Prior to further flight, install clamps and associated fasteners between the environmental control system (ECS) and the pylon drain tube, in accordance with Boeing Alert Service Bulletin 767–71A0082, dated July 6, 1995.

(2) If the clearance is less than 0.5 inch: Prior to further flight, perform a visual inspection to detect damage of the number 18 fuel nozzle secondary transfer fuel tube and the pylon drain tube.

(i) If no damage is detected; or if any damage to the number 18 fuel nozzle secondary transfer tube is less than or equal to 0.003 inch deep, as specified in Section 72–09–71 of Pratt & Whitney JT9D Engine Manual, and if any damage to the drain tube is less than or equal to 0.004 inch deep, as specified in the Boeing 767 Maintenance Manual 28–22–07: Prior to further flight, relocate the pylon drain tube to meet the 0.5 inch specification. After accomplishing the relocation, prior to further flight, install the clamps and associated fasteners between the ECS and the pylon drain tube, in accordance with Boeing Alert Service Bulletin 767–71A0082, dated July 6, 1995.

(ii) If any damage to the number 18 fuel tube is greater than 0.003 inch deep, as specified in Section 72–09–71 of the Pratt & Whitney JT9D Engine Manual; or if any damage to the drain tube is greater than 0.004 inch deep, as specified in the Boeing 767 Maintenance manual 28–22–07: Prior to further flight, repair or replace the damaged tube, in accordance with Section 28–00–10 of the Boeing 767 Overhaul Manual. After accomplishing the repair or replacement, prior to further flight, install the clamps and associated fasteners between the ECS and the pylon drain tube, in accordance with Boeing Alert Service Bulletin 767–71A0082, dated July 6, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation of the clamps and associated fasteners shall be done in accordance with Boeing Alert Service Bulletin 767–71A0082, dated July 6, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on August 9, 1996.

Issued in Renton, Washington, on June 25, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–16652 Filed 7–3–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Ceftiofur

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by The Upjohn Co. The supplemental NADA provides for a revised indication for use of a reconstituted solution of ceftiofur sterile powder for injection in day-old chicks for control of mortality associated with *Escherichia coli* organisms susceptible to ceftiofur and for use of the reconstituted injection in day-old turkey poults for the same indication.

EFFECTIVE DATE: July 5, 1996.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1644.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, is sponsor of supplemental NADA 140–338, which provides for use of Naxcel® Sterile Powder (ceftiofur sodium) as a 50 milligrams per milliliter reconstituted injectable for use in cattle, swine, day-old chicks, horses, and dogs. The supplemental NADA provides for: (1) A revised indication for use in

VOL
61
ISS
130
JL
5
1996
UMI

chicks for control of early mortality associated with *E. coli* organisms susceptible to ceftiofur, and (2) use in a new species, day-old turkey poults, for the revised indication. According to 21 CFR 556.113 a tolerance for ceftiofur residues in edible tissues derived from treated poultry is not needed. The supplemental NADA is approved as of May 21, 1996, and the regulations are amended in 21 CFR 522.313(d) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), approval for use in turkeys qualifies for 3 years of marketing exclusivity beginning May 21, 1996, because the application contains reports of new clinical or field investigations (other than bioequivalence or residue studies) or human food safety studies (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.313 is amended by revising paragraph (d)(3)(ii), by redesignating paragraphs (d)(4) and (d)(5) as paragraphs (d)(5) and (d)(6), respectively, and by adding new paragraph (d)(4) to read as follows:

§ 522.313 Ceftiofur sterile powder for injection.

* * * * *

(d) * * *

(3) * * *

(ii) *Indications for use.* For control of early mortality associated with *Escherichia coli* organisms susceptible to ceftiofur.

* * * * *

(4) *Day-old turkey poults*—(i) *Amount.* 0.17 to 0.5 milligram per poult.

(ii) *Indications for use.* For control of early mortality associated with *E. coli* organisms susceptible to ceftiofur.

(iii) *Limitations.* For subcutaneous use in the neck of day-old poults only. As a single dose only. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

Dated: June 14, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–17103 Filed 7–3–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–96–041]

RIN 2115–AA97

Safety Zone: Macy's 1996 Fourth of July Fireworks, East River, New York

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the annual Macy's Fourth of July Fireworks program in New York Harbor. The event will take place on Thursday, July 4, 1996, from 7:30 p.m. until 11 p.m. on the East River. This safety zone temporarily closes a major portion of the East River to vessel transits.

EFFECTIVE DATE: This rule is effective from 7:30 p.m. until 11 p.m. on July 4, 1996, unless extended or terminated sooner by the Captain of the Port New York.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. W. Green, Chief, Waterways Oversight Branch, Waterways Management Division, Coast Guard Activities New York (212) 668–7906.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date complete information regarding this event was received, there was insufficient time to draft and publish an NPRM. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed protect the maritime public from the hazards associated with large amounts of fireworks exploding from four separate barge locations in the waters of the East River.

Background and Purpose

Macy's has submitted an Application for Approval of Marine Event to hold a fireworks program on the waters of the East River. This regulation establishes a temporary safety zone in the waters of the East River. The safety zone includes all waters of the East River, shore to shore, north of a line drawn from the foot of East 10th Street, Manhattan, east through the chartered position of Buoy 18 (LLNR 27335) to the foot of North 8th Street, Brooklyn, New York, and south of a line drawn from Lawrence Point (40°47′27″N latitude 073°54′35″W longitude) to Stony Point (40°47′48″N latitude 073°54′42″W longitude), and south of the Harlem River Foot Bridge, New York. This safety zone area also includes all waters of Newtown Creek west of the 073°57′37″W line of longitude and all waters inward of the pierheads and bulkheads between the Queensboro Bridge, Roosevelt Island, and the southern boundary of this safety zone. No vessel may enter the safety zone without permission of the Captain of the Port New York. Certain designated vessels will be allowed to take position within the zone as follows: (1) vessels less than 20 meters (65.6 feet) in length, carrying persons for the sole purpose of viewing the fireworks may take position north of the southern tip of Roosevelt Island; and (2) vessels equal to or greater than 20 meters (65.6 feet) in length, carrying persons for the sole purpose of viewing the fireworks display, may take position in an area at least 300 yards off the bulkhead on the west bank and just off the pierhead faces on the east bank of the East River between a line drawn from East 15th Street, Manhattan, to a point due east on the Brooklyn shore north of the entrance to Bushwick Inlet and a line drawn from the foot of East 10th Street, Manhattan, east through the chartered position of Buoy 18 (LLNR 27335) to the foot of North 8th Street, Brooklyn.

All vessels must be in their respective viewing areas not later than 7:30 p.m. These vessels once in position within the zone must remain in position until released by the Captain of the Port New York. On scene patrol personnel will monitor the number of designated vessels taking position in the viewing areas of the zone. If it becomes apparent that any additional spectator vessels in a specific viewing area will create a safety hazard, the patrol commander may prevent additional vessels from entering into that viewing area.

Vessels not complying with this criteria have a significant potential to create a hazardous condition in this area of the East River, due in great part, to the extremely strong currents.

This safety zone covers the minimum area needed and imposes the minimum restrictions necessary to ensure the protection of all vessels and the fireworks handlers aboard the barges.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This proposed safety zone temporarily closes a major portion of the East River to vessel traffic. There is a regular flow of traffic through this area; however, due to the limited duration of the event; the extensive, advance advisories that will be made to allow the maritime community to schedule transits before and after the event; the fact that the event is taking place at a late hour on a Federal holiday, and that vessel traffic is expected to be somewhat reduced due to this Federal holiday falling on a weekday not immediately proceeding or following a weekend, the impact of this regulation is expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard expects the impact of this proposal to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Therefore, the Coast Guard finds that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have significant economic impact on your business or organization, please submit a comment explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.e. of Commandant Instruction M16475.1B, revised 59 FR 38654, July 29, 1994, the promulgation of this regulation is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section, 165.T01–041 is added to read as follows:

§ 165.T01–041 Safety Zone: Macy's 1996 Fourth of July Fireworks, East River, New York.

(a) *Location.* The safety zone includes all waters of the East River, shore to shore, north of a line drawn from the foot of East 10th Street, Manhattan, east through the charted position of Buoy 18 (LLNR 27335) to the foot of North 8th Street, Brooklyn, and south of a line drawn from Lawrence Point (40°47′27″N latitude 073°54′35″W longitude) to Stony Point (40°47′48″N latitude 073°54′42″W longitude), and south of the Harlem River Foot Bridge, New York. This safety zone area also includes all waters of Newtown Creek west of the 073°57′37″W line of longitude and all waters inward of the pierheads and bulkheads between the Queensboro Bridge, Roosevelt Island and the southern boundaries of this safety zone.

(b) *Effective period.* This section is effective from 7:30 p.m. until 11 p.m. on July 4, 1996, unless extended or terminated sooner by the Captain of the Port New York.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply to this safety zone.

(2) No vessels will be allowed to enter the safety zone without permission of the Captain of the Port New York.

(3) The following vessels may remain within the safety zone:

(i) Vessels less than 20 meters (65.6 feet) in length, carrying persons for the sole purpose of viewing the fireworks display may take position within the zone north of the southern tip of Roosevelt Island.

(ii) Vessels greater than 20 meters (65.6 feet) in length, carrying persons for the sole purpose of viewing the fireworks display may take position within an area at least 300 yards off the bulkhead on the west bank and just off the pierhead faces on the east bank of the East River between a line drawn from the foot of 15th Street, Manhattan, to a point due east on the Brooklyn shore north of the entrance to Bushwick Inlet and a line drawn from the foot of

VOL 61 ISS 130 JL 5 1996 UMI

East 10th Street, Manhattan, east through the charter position of Buoy 18 (LLNR 27335) to the foot of North 8th Street, Brooklyn.

(iii) Vessels taking position within the safety zone in either of these viewing areas must be in their respective viewing area not later than 7:30 p.m.

(4) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 20, 1996.

T.H. Gilmour,

Captain, U.S. Coast Guard, Captain of the Port of New York.

[FR Doc. 96–16894 Filed 7–3–96; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD 05–96–045]

RIN 2115–AA97

Safety Zone Regulations: Delaware Bay, Delaware River

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Delaware Bay and Delaware River from Marcus Hook, Pennsylvania, to the Delaware Breakwater. This safety zone is needed to protect vessels, the port community and the environment from potential safety and environmental hazards associated with the loading and outbound transit of the T/V EMSGAS.

EFFECTIVE DATES: This rule is effective from 11:59 p.m. June 23, 1996, and terminates at 11:59 p.m. July 5, 1996. The Captain of the Port, Philadelphia, may, at an earlier date, advise mariners by Broadcast Notice to Mariners that the safety zone will not be enforced.

FOR FURTHER INFORMATION CONTACT: LTJG S.J. Kelly, Project Officer at the Captain of the Port, Philadelphia, (215) 271–4909.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. The Coast Guard was informed by the owner/operator of the T/V EMSGAS on June 19, 1996 of the intended transit of the T/V EMSGAS along the Delaware River. Publishing a NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to respond to protect the environment and vessel traffic against potential hazards associated with the transit of the T/V EMSGAS while it is loaded with liquefied petroleum gas.

Drafting Information

The drafters of this regulation are LTJG Scott J. Kelly, project officer for the Captain of the Port, Philadelphia, and CDR T. Cahill, project Attorney, Maintenance and Logistics Command Atlantic, Legal Division.

Discussion of the Regulation

This safety zone includes a specified area around the vessel during cargo operations and while underway outbound. It will be in effect during the T/V EMSGAS's transit of the Delaware River and Delaware Bay and during cargo operations at the Sun Refining and Marketing Refinery terminal on the Delaware River, at Marcus Hook, Pennsylvania. The circumstances requiring this regulation are the potential hazards associated with the transportation of liquefied petroleum gas by a large tankship in heavily trafficked areas of the Delaware River and Delaware Bay as well as in the Ports of Philadelphia. The transit consists of T/V EMSGAS's outbound transit on the Delaware River and the Delaware Bay between the vessel's berth at the Sun Refining and Marketing Refinery terminal on the Delaware River, at Marcus Hook, Pennsylvania and the Delaware Breakwater. Coast Guard Captain of the Port Philadelphia may impose transit restrictions on vessels operating within the safety zone while the T/V EMSGAS is loaded with LPG that exceeds 2% of the vessel's cargo carrying capacity.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Environment

The Coast Guard considered the environmental impact of this temporary rule and concluded that under section 2.B.2.e (34) of Commandant Instruction M16475.1B (as revised by 49 FR 38654; July 29, 1994), this rule is categorically excluded from further environmental documentation.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and Record Keeping Requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.T05–045 is added to read as follows:

§ 165.T05–045 Safety Zone: Delaware Bay, Delaware River

(a) *Location.* A safety zone is established for:

(1) All waters within an area which extends 500 yards on either side and 1,000 yards ahead and astern of the T/V EMSGAS while the vessel is in the loaded condition and underway in the area bounded by the Delaware Breakwater and the Sun Refining and Marketing Refinery terminal on the Delaware River, at Marcus Hook, Pennsylvania.

(2) All waters within a 200 yard radius of the T/V EMSGAS while it is moored at the Sun Refining and Marketing Refinery terminal.

(b) No vessel may enter the safety zone unless its operator obtains permission of the Captain of the Port or his designated representative.

(c) As a condition of entry, the COTP may order that each vessel:

(1) Maintain a continuous radio guard on channels 13 and 16 VHF–FM while underway;

(2) Not overtake the T/V EMSGAS unless the overtaking is to be completed before any bends in the channel, and the pilots, masters and operators of both vessels clearly agree on all action including speeds, time and location of overtaking.

(3) Operate at a minimum no wake speed sufficient to maintain steerage while T/V EMSGAS is moored at the Sun Refining and Marketing Refinery terminal on the Delaware River, at Marcus Hook, Pennsylvania;

(4) Proceed as directed by the Captain of the Port or by his designated representative.

(d) The COTP may be contacted on VHF channels 13 & 16. The Captain of the Port of Philadelphia and the Command Duty Officer at the Marine Safety Office, Philadelphia, may be contacted at telephone number (215) 271–4940.

(e) *Definitions:*

Captain of the Port or *COTP* means the Captain of the Port Philadelphia or any Coast Guard commissioned, warrant or petty officer authorized to act on his behalf.

Loaded Condition means loaded with LPG that exceeds 2 percent of the vessel's cargo carrying capacity.

Dated: June 20, 1996.

John E. Veentjer,

Captain, U.S. Coast Guard, Captain of the Port, Philadelphia, PA.

[FR Doc. 96–16893 Filed 7–3–96; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 1 and 13

RIN 1024–AC21

General Regulations for Areas Administered by the National Park Service and National Park System Units in Alaska

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is revising portions of its general regulations for areas it administers that define the primary scope and applicability and contain definitions for terms used in the text of the regulations. NPS is also modifying regulations that relate to National Park System units in Alaska. This revision clarifies the applicability of those NPS regulations that apply in all National Park System areas to waters subject to federal jurisdiction located within park boundaries, including navigable waters.

In order to protect wildlife and the other values and purposes of the National Park System, NPS developed general regulations intended to be applicable on navigable waters located within park boundaries irrespective of ownership of submerged lands. However, litigation concerning a seal shot in the navigable waters of a national park revealed that a 1987 editorial correction to 36 CFR 1.2(b), aimed at clarifying a separate and distinct application of the regulations, had the unforeseen and unintended effect of arguably linking federal title to submerged lands with the exercise of management authority over activities occurring on navigable waters. This rulemaking will clarify the regulations and ensure the continued protection of wildlife and other National Park System values and purposes on navigable waters within parks, regardless of ownership of submerged lands. The revision clarifies that NPS regulations continue to apply on navigable waters, as they have for years. Two definitions, "park area" and "boundary," are modified by this revision. This rulemaking clarifies and interprets existing NPS regulatory intent, practices and policies, and generally would not place new or additional regulatory controls on the public.

EFFECTIVE DATE: August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Dennis Burnett, Ranger Activities Division, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127, Telephone (202) 208–4874.

SUPPLEMENTARY INFORMATION:

Background

The NPS Organic Act of 1916 directs the Secretary of the Interior and the NPS to manage national parks and monuments to "conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. § 1. The organic act also grants the secretary the authority to implement "rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments and reservations under the jurisdiction of the National Park Service." 16 U.S.C. § 3. In the Redwood Expansion Act of 1978, Congress gave further direction to the secretary to ensure that:

> The authorization of activities shall be construed and the protection, management and administration of [NPS] areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress. 16 U.S.C. § 1a–1.

In to general regulatory authority delegated in 16 U.S.C. § 3, in 1976 Congress amended the 1970 Act for Administration (known as the General Authorities Act) and authorized NPS to "[p]romulgate and enforce regulations concerning boating and other activities on or relating to waters located within areas of the National Park System, including waters subject to the jurisdiction of the United States.* * *" 16 U.S.C. § 1a-2(h). "Waters subject to the jurisdiction of the United States" include navigable waters. *See,* H. Rep. No. 1569, 94th Cong., 2nd Sess., 4292 (1976). Under these authorities the NPS has managed and regulated activities occurring on and in the waters of the National Park System.

Before 1966, NPS regulations for boating, sanitation, and other water-use regulations were scattered throughout 36 CFR parts 1 and 2. In 1966, NPS published consolidated boating regulations as 36 CFR part 3. The regulations provided for the enforcement of U.S. Coast Guard regulations by NPS "on navigable waters of the United States" located within park boundaries (31 FR 16650). In 1983, NPS moved water-use activity regulations from part 2 to part 3 (48 FR 30290). In addition to regulations generally applicable in all national park areas, NPS has promulgated special park-specific regulations that NPS enforces on and in navigable waters within the boundaries of particular National Park System units. *See, e.g.,* 36 CFR 7.45(f)-(h) (Everglades National Park, Fishing and Boating); 36 CFR 7.38(b) (Isle Royale National Park, Underwater diving); 36 CFR 7.83(a) (Ozark National Scenic Riverways, Boating); 36 CFR 13.65(b) (Glacier Bay National Park, Vessel Management/ Whale protection).

Applicability and Scope Provision

In 1982–83 NPS undertook a comprehensive review of general regulations that apply in virtually all NPS administered areas (47 FR 11598). The applicability and scope provisions adopted pursuant to the 1983 rulemaking included navigable waters.

VOL
61
ISS
130
JL
5
1996
UMI

In that rulemaking, 36 CFR 1.2(a) provided that the regulations contained in 36 CFR chapter 1 would apply: (1) on federally owned waters, and (2) on waters "controlled, * * * administered or otherwise subject to the jurisdiction of the National Park Service. * * *" (48 FR 30252). In some park areas, the United States holds title to the submerged lands under navigable waters. In other park areas, the United States does not hold title to the submerged lands beneath navigable waters within the boundaries of the park; federal authority to regulate within the ordinary reach of these waters is based on the commerce and property clauses of the U.S. Constitution, not ownership. Like the United States Coast Guard, NPS exercises authority over navigable waters irrespective of ownership of submerged lands. 16 U.S.C. § 1a–2(h). As promulgated in 1983, 36 CFR 1.2(a)(2) reflected the congressional intent that NPS regulations applied in these waters.

The 1983 regulations also provided that—except in park areas under the legislative jurisdiction of the United States, where 10 specifically enumerated provisions were intended to apply regardless of ownership—the regulations were "not applicable on privately owned lands and waters. * * *" (48 FR 30252); 36 CFR 1.2(b). While 36 CFR 1.2(b) (as promulgated in 1983) was specific as to the applicability of the 10 enumerated provisions on privately owned lands, it was silent as to the applicability of those 10 regulations on lands and waters owned by a state or other government entity. In 1987, in response to questions concerning this issue, and in order to clarify the original NPS intent (*i.e.*, that the 10 specifically enumerated provisions were meant to apply on all lands and waters regardless of landownership) the term "privately owned lands and waters" was replaced with the term "non-federally owned lands and waters." (52 FR 35238; *see also*, 52 FR 12037). The 1987 rulemaking emphasized that it was only an editorial change and not a substantive change, the sole purpose of which was to clarify the originally intended reach of the 10 enumerated provisions; there was no change intended concerning state lands.

However, in its effort to ensure that (in areas of legislative jurisdiction) the 10 enumerated regulations clearly apply on all "non-federally owned lands and waters" within the boundaries of park areas, the 1987 revision to section 1.2(b) inadvertently incorporated language that seems ambiguous and could preclude park regulation of "non-federally owned * * * waters." *See*, 52 FR 35238, September 18, 1987. NPS recognizes that regulations must provide an ordinary person a reasonable opportunity to know when regulations apply. Accordingly, this rulemaking clarifies that NPS regulations otherwise applicable within the boundaries of a National Park System unit apply on and within waters subject to the jurisdiction of the United States located within that unit, including navigable waters and areas within their ordinary reach (up to the mean high water line in places subject to the ebb and flow of the tide, or up to the ordinary high water mark in other places that are navigable), irrespective of ownership of submerged lands, tidelands or lowlands, and jurisdictional status.

This rulemaking also revises the definition of "boundary" to better cover the many and diverse sites that have been placed under the care and administration of NPS. The revision provides protection to people and property at NPS sites such as maintenance facilities and warehouses, administrative sites, ranger stations, visitor information centers and associated parking lots, which, though located outside a park proper, are managed and administered by NPS as components of the National Park System. This definition is also tailored to cover the various NPS-administered sites in the District of Columbia. The term "park area" is revised to mean the same as the term "National Park System." The definition for "National Park System" adopted by this rulemaking repeats the statutory definition from 16 U.S.C. § 1c.

Revisions to section 13.2 in this rule serve three purposes: (1) Paragraph (c) is revised to clarify that NPS subsistence regulations, promulgated under the authority of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. § 3101 *et seq.*, Titles II and VIII, apply only "on federally owned lands and interests therein within park areas where subsistence is authorized;" (2) paragraph (e) is revised to clarify that, pursuant to proposed § 1.2(a)(3), NPS general regulations specifically apply within the reach of navigable waters located within the boundaries of park areas in Alaska; and (3) paragraph (e) is revised to clarify that the part 13 modifications (that generally are relaxations of prohibitions contained in the general regulations) also apply on the navigable waters of national parks in Alaska (*e.g.*, 36 CFR 13.20 (authorization for recreational gold panning), *see also*, 43 CFR 36.11(d) (special authorization for motorboat use)).

Analysis of Comments

NPS published the proposed rule in the **Federal Register** on December 5, 1995 (60 FR 62233). NPS received six timely comments on the proposed rule. The State of Alaska, Office of the Attorney General and the Alaska State Legislature; the Alaska Miners Association, Incorporated; the International Association of Fish and Wildlife Agencies; Sierra Club; and the National Parks and Conservation Association commented. NPS has carefully considered each of these comments. NPS's responses to the comments are as follows:

Legislative Jurisdiction: Ten Enumerated Regulations

One commenter supposed that adoption of this rule would make the 10 enumerated 36 CFR part 2 regulations that apply on all lands and waters within a park that are under the legislative jurisdiction of the United States apply on park waters (regardless of legislative jurisdiction). Those ten regulations are:

36 CFR 2.2	Wildlife protection
36 CFR 2.3	Fishing
36 CFR 2.4	Weapons, traps and nets
36 CFR 2.13	Fires
36 CFR 2.22	(a)(2), (b) and (c) Property
36 CFR 2.30	Misappropriation of property and services
36 CFR 2.31	Trespassing, tampering and vandalism
36 CFR 2.32	Interfering with agency functions
36 CFR 2.34	Disorderly conduct
36 CFR 2.36	Gambling

NPS believes that confusion over this point stems from the fact that the rule uses the term "waters subject to the jurisdiction of the United States" in subparagraph 1.2(a)(3). NPS notes that this term may be confused with the term "lands and waters under the legislative jurisdiction of the United States" (*see, e.g.*, 36 CFR 2.2(g); *see also*, 36 CFR 4.1).

"Legislative jurisdiction" means exclusive federal or concurrent (state and federal) jurisdiction (*see*, 36 CFR § 1.4 (definition of legislative jurisdiction) and 40 U.S.C. 255 (the legislative authority for cessions of jurisdiction)), i.e., lands and waters over which the federal government has general lawmaking authority. The 10 enumerated provisions of 36 CFR part 2 apply on lands and waters that are within park boundaries and under the legislative jurisdiction of the United States regardless of ownership (*see, e.g.*, 36 CFR 2.2(g); *see also*, 36 CFR 4.1).

"Waters subject to the jurisdiction of the United States" has a different meaning, and refers to waters over which the United States exercises federal commerce clause authority (*see*, H. Rep. No. 1569, 94th Cong., 2nd Sess., 4292 (1976); *see also*, 33 CFR parts 328–329). This rulemaking clarifies that NPS regulations contained in 36 CFR parts 1 through 5, part 7, and part 13 (including the 10 enumerated regulations) apply on such waters located within park boundaries regardless of jurisdictional status.

National Park System Units in Alaska: ANILCA Section 103

The Alaska State Legislature contends in their comments that ANILCA § 103(c) should be interpreted as superseding NPS authority to regulate waters within park boundaries pursuant to 16 U.S.C. § 1a–2(h). The Attorney General of Alaska makes a similar contention concerning NPS general authority to protect natural and other resources through general regulations; the Attorney General concedes only that 16 U.S.C. § 1a–2(h) permits NPS to promulgate and enforce regulations concerning boating and related activities, and to enforce Coast Guard regulations on navigable waters within park boundaries. In contrast, the National Parks and Conservation Association writes that NPS has clear authority to regulate on all waters within National Park System areas to protect park purposes and values.

In ANILCA, Congress outlined an expansive and inclusive scope of resource protection that was to apply within national parks in Alaska. Congress further charged NPS to protect populations of fish and wildlife and habitat that necessarily includes the great river systems running through and within the parks (ANILCA Title II). NPS does not agree with the State of Alaska's contention that ANILCA § 103(c) preempts NPS's well-established authority on navigable waters. NPS does not think that ANILCA § 103(c), which was characterized by Congress as a minor technical provision, should be read in isolation from the context of the whole act. ANILCA should be interpreted consistent with its underlying protective purposes: to protect objects of ecological, cultural, geological, historical, prehistorical, and scientific interest.

National Park System Units in Alaska: Subsistence Uses on "Public Lands"

In response to a comment NPS would like to emphasize that this rulemaking does not affect subsistence uses conducted in National Park System units in Alaska. As adopted, subparagraph (c) of 36 CFR 13.2 provides that: "Subpart B of this part 13 contains regulations applicable to subsistence uses. Such regulations apply on federally owned lands and interests therein within park areas where subsistence is authorized." This revision merely moves the reference to federally owned lands currently found in subparagraph (e) to subparagraph (c) to maintain the status quo. Although the term "public lands" appeared in the proposed rule (rather than "federally owned lands") NPS intended no change. Application of Federal Subsistence Board regulations (i.e. seasons and bag limits) to navigable waters or selected but not yet conveyed lands is outside the scope of this rulemaking. *See*, 61 FR 15014, April 4, 1996.

Lands Administered Pursuant to the Terms of a Written Instrument

NPS would like to clarify that when NPS leases property and administers the property for public-use purposes, NPS regulations apply. If an owner/lessor wishes to retain rights or uses, the owner should do so as part of the lease; otherwise NPS general regulations will apply equally to the owner as they would to a third party. When NPS administers property for public use pursuant to an easement, the easement will define the federal interest. The scope of the acquired federal interest will determine the regulations that would apply. However, when NPS enters into an agreement to administer property through a written instrument, such as a memorandum of agreement, memorandum of understanding, or other written form (such as a national trail certification agreement), NPS regulations will apply only to the extent provided by the owner of the property during the term of the agreement. The agreement document must describe the type(s) of public use to be managed by NPS or otherwise define the scope of management delegated by the owner to NPS. Regulations that are consistent with the intent of the agreement will then apply.

NPS wishes to note that NPS often enters into agreements with landowners where there is no intent by the landowner to grant—nor by NPS to assume—regulatory control of the property.

Section-by-Section Analysis

Section 1.2 paragraph (a) is promulgated without change. This paragraph limits the applicability of NPS regulations to within park boundaries and interests.

Subparagraphs (a)(1) and (a)(2) provide that the regulations apply, respectively, on lands and waters located within park system boundaries that are federally owned, or administered as park lands by NPS (in whole or in part) through a written instrument with the owner, party of interest, or the person, corporation, company, organization, state or political subdivision holding an interest in, or title to, such land. A written instrument could be in the form of a lease or public use easement, or a memorandum of agreement or some other written form authorizing NPS management. Without such an agreement, NPS regulations would not apply on non-federally owned lands within park boundaries, the exception being particular regulations containing a provision that makes them specifically applicable to such lands. *See, e.g.*, 36 CFR 2.2(g) (regulation applies to lands and waters under legislative jurisdiction within a park); *see also*, 36 CFR part 6 (59 FR 65948).

Subparagraph (a)(3) clearly defines and includes waters subject to federal jurisdiction that are located within National Park System boundaries, including navigable waters, within the scope of NPS regulations. Subparagraph (a)(4) contains a provision for NPS to administer lands and waters in the District of Columbia (pursuant to the Act of March 17, 1948 (62 Stat. 81)), that was added to the former subparagraph (2) in 1986 (51 FR 37010). The less-than-fee interests provision, formerly subparagraph (a)(3), has been revised, renumbered and adopted as subparagraph (a)(5). This provision encompasses scenic easements (sometimes referred to as negative easements) and other federal interests where NPS administration of the site is shared or limited.

Paragraph (b) continues to limit the applicability of NPS general regulations to federally owned lands in the absence of an agreement or a superseding provision. Similarly, in order for NPS general regulations to apply on Indian tribal trust lands located within National Park System boundaries, NPS must enter into an agreement with the benefiting Indian nation, tribe, band, or pueblo (pursuant to proposed subparagraph (a)(2)). Without such an agreement, and regardless of jurisdictional status, NPS authority on Indian lands located within National Park System units is limited to federal laws and implementing regulations made applicable at the express direction of Congress. Paragraph (d) extends existing administrative exceptions to include part 13 regulations.

VOL 61 ISS 130 JL 5 1996 UMI

Section 1.4 adopts revisions to the definitions "boundary" and "park area." "Boundary," as revised, affords comprehensive coverage to the many and diverse sites that have been placed under the care and administration of NPS, including those sites located in the District of Columbia. The term "park area" is revised to mean the same as the term "National Park System." The definition for "National Park System" repeats the statutory definition from 16 U.S.C. 1c.

Section 13.2 paragraph (c) has been revised to clarify that NPS general subsistence regulations for Alaska apply on federally owned lands and interests therein within park areas where subsistence is authorized. The final rule refers to subsistence uses rather than subsistence activities to standardize part 13 text. The term "subsistence uses" is defined at section 13.42(c) and used throughout section 13, subpart B. The omission of Sitka National Historical Park from the list of subsistence-excepted parks in the proposed rule was an oversight that this rulemaking corrects. ANILCA does not authorize subsistence uses in Sitka National Historical Park. Paragraph (e) is revised to clarify that NPS general regulations (*e.g.*, part 2), as modified by part 13, apply to waters subject to federal jurisdiction, including navigable waters, located within the boundaries of park areas in Alaska.

Drafting Information

The primary authors of this revision are Michael Tiernan, Division of Conservation and Wildlife, Office of the Solicitor, Department of the Interior, Washington, DC, and Steve Shackelton and Russel J. Wilson of the Alaska System Support Office and Alaska Field Office, National Park Service. Richard G. Robbins, Division of Conservation and Wildlife, Office of the Solicitor, Department of the Interior, Washington, DC, also contributed.

Paperwork Reduction Act

This rule does not contain collections of information requiring approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior has determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope.

NPS has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses that may compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

List of Subjects

36 CFR Part 1

National parks. Reporting and recordkeeping requirements.

36 CFR Part 13

Alaska, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, NPS amends 36 CFR chapter I, parts 1 and 13, as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460 l–6a(e), 462(k); D.C. Code 8–137, 40–721 (1981).

2. Section 1.2 is amended by revising paragraphs (a), (b) and (d) to read as follows:

§ 1.2 Applicability and scope.

(a) The regulations contained in this chapter apply to all persons entering, using, visiting, or otherwise within:

(1) The boundaries of federally owned lands and waters administered by the National Park Service;

(2) The boundaries of lands and waters administered by the National Park Service for public-use purposes pursuant to the terms of a written instrument;

(3) Waters subject to the jurisdiction of the United States located within the boundaries of the National Park System, including navigable waters and areas within their ordinary reach (up to the mean high water line in places subject to the ebb and flow of the tide and up to the ordinary high water mark in other places) and without regard to the ownership of submerged lands, tidelands, or lowlands;

(4) Lands and waters in the environs of the District of Columbia, policed with the approval or concurrence of the head of the agency having jurisdiction or control over such reservations, pursuant to the provisions of the Act of March 17, 1948 (62 Stat. 81);

(5) Other lands and waters over which the United States holds a less-than-fee interest, to the extent necessary to fulfill the purpose of the National Park Service administered interest and compatible with the nonfederal interest.

(b) The regulations contained in parts 1 through 5, part 7, and part 13 of this chapter do not apply on non-federally owned lands and waters or on Indian tribal trust lands located within National Park System boundaries, except as provided in paragraph (a) or in regulations specifically written to be applicable on such lands and waters.

* * * * *

(d) The regulations contained in parts 2 through 5, part 7, and part 13 of this section shall not be construed to prohibit administrative activities conducted by the National Park Service, or its agents, in accordance with approved general management and resource management plans, or in emergency operations involving threats to life, property, or park resources.

* * * * *

3. Section 1.4 is amended in paragraph (a) by revising the definition of *Boundary*, by adding a definition for *National Park System*, and by revising the definition of *Park area* to read as follows:

§ 1.4 Definitions.

(a) * * *

Boundary means the limits of lands or waters administered by the National Park Service as specified by Congress, or denoted by presidential proclamation, or recorded in the records of a state or political subdivision in accordance with applicable law, or published pursuant to law, or otherwise published or posted by the National Park Service.

* * * * *

National Park System (Park area) means any area of land and water now or hereafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes.

* * * * *

Park area. See the definition for National Park System in this section.

* * * * *

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

4. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; subpart D also issued under 16 U.S.C. 20, 3197; § 13.65(b) also issued under 16 U.S.C. 1361, 1531.

5. Section 13.2 is amended by revising paragraphs (c) and (e), to read as follows:

§ 13.2 Applicability and scope.

* * * * *

(c) Subpart B of this part 13 contains regulations applicable to subsistence uses. Such regulations apply on federally owned lands and interests therein within park areas where subsistence is authorized. Subsistence uses are not allowed in Kenai Fjords National Park, Katmai National Park, Glacier Bay National Park, Klondike Gold Rush National Historical Park, Sitka National Historical Park, and parts of Denali National Park. The regulations in subpart B amend in part the general regulations contained in this chapter and the regulations contained in subpart A of this part 13.

* * * * *

(e) For purposes of this chapter, "federally owned lands" does not include those land interests:

(1) Tentatively approved to the State of Alaska; or

(2) Conveyed by an interim conveyance to a Native corporation.

Dated: June 21, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–17168 Filed 7–3–96; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5527–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Martin Marietta Aluminum Company site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 10, announces the deletion of the Martin Marietta Aluminum Company site from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). EPA and the State of Oregon Department of Environmental Quality (DEQ) have determined that no further cleanup under CERCLA is appropriate and that the selected remedy has been protective of human health and the environment.

EFFECTIVE DATE: July 5, 1996.

FOR FURTHER INFORMATION CONTACT: Howard Orlean, U.S. EPA Region 10, 1200 Sixth Avenue, Mail Stop: ECL–113, Seattle, Washington 98101, (206) 553–6903.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is:

Martin Marietta Aluminum Company, The Dalles, Oregon.

A Notice of Intent to Delete for this site was published on May 13, 1996, (61 FR 22006). The closing date for comments on the Notice of Intent to Delete was June 12, 1996. EPA received no comments.

EPA identifies sites which appear to present a significant risk to human health, welfare or the environment, and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substances Response Trust Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425 of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 14, 1996.

Chuck Clarke,

Regional Administrator, Region 10.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the Martin Marietta Aluminum Company Site, The Dalles, Oregon.

[FR Doc. 96–17021 Filed 7–3–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 300

[FRL–5530–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of the Arsenic Trioxide Site from the National Priorities List (NPL).

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces the deletion of the Arsenic Trioxide Superfund Site (Site) in North Dakota, from the National Priorities List (NPL). The NPL is Appendix B of Title 40 of the Code of Federal Regulations (40 CFR) part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of North Dakota have determined that the Site poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA

VOL 61 ISS 130 JL 5 1996 UMI

are appropriate. Further, EPA and the State of North Dakota have determined that all appropriate response actions have been implemented at the Site and that no further cleanup by responsible parties is appropriate.

EFFECTIVE DATE: July 5, 1996.

FOR FURTHER INFORMATION CONTACT: Erna Acheson, Site Manager, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Mail Stop 8EPR–SR, Denver, Colorado 80202–2466, (303) 312–6762.

SUPPLEMENTARY INFORMATION: The Site to be deleted from the NPL is:

Arsenic Trioxide Superfund Site, North Dakota.

A Notice of Intent to Delete for this Site was published October 2, 1995 (60 FR 51395 (1995)). The closing date for comments on the Notice of Intent to Delete was November 1, 1995. No comments have been received.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as a list of those sites. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that future conditions at the site warrant such action. Section 300.425 (e)(3). Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental Protection, Hazardous Waste, Superfund.

Dated: June 19, 1996.

Jack W. McGraw,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region VIII.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended under Colorado by removing the site "Arsenic Trioxide Site, North Dakota,".

[FR Doc. 96–17022 Filed 7–3–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 76 and 167

[CGD 95–027]

RIN 2115–AF09

Adoption of Industry Standards; Correction

AGENCY: Coast Guard, DOT.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to the final rule in CGD 95–027, published Thursday, May 23, 1996, at 61 FR 25984. The regulations affect both inspected and uninspected vessels and relate to removal or revision of obsolete, unnecessary or excessive regulations and the adoption of industry consensus standards in place of detailed regulations.

EFFECTIVE DATE: These amendments are effective on July 5, 1996.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander R. K. Butturini, Marine Safety and Environmental Protection (G–MSE–3), Room 1300, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001, (202) 267–2206 or fax (202) 267–4816.

SUPPLEMENTARY INFORMATION: The final rules that are the subject of these corrections were published as part of the ongoing Presidential Regulatory Reform Initiative and affects both inspected and uninspected commercial vessels. The final rule removes obsolete, unnecessary and excessive regulations and adopts industry consensus standards in place of detailed regulations.

Need for Correction

As published, the final rule contains typographical errors that may prove to be misleading and need correcting.

Correction of Publication

Accordingly, the final rule published on Thursday, May 23, 1996, [CGD 95–027], at 61 FR 25984 is corrected as follows:

§ 56.30–25 [Corrected]

1. On page 26000, in § 56.30–25, paragraph (e) is corrected to read as follows:

§ 56.30–25 Flared, flareless and compression fittings.

* * * * *

(e) For fluid services, other than hydraulic systems, using a combustible fluid as defined in § 30.10–15 of this chapter and for fluid services using a flammable fluid as defined in § 30.10–22 of this chapter, flared fittings must be used; except that flareless fittings of the nonbite type may be used when the tubing system is of steel, nickel copper or copper nickel alloy. When using copper or copper zinc alloy, flared fittings are required. (See also § 56.50–70 for gasoline fuel systems, § 56.60–75 for diesel fuel systems, and § 58.25–20 for hydraulic systems for steering gear.)

§ 76.05–20 [Corrected]

2. On page 26003, § 76.05–20 is corrected to read as follows:

§ 76.05–20 Fixed fire extinguishing systems.

Approved fire extinguishing systems must be installed, as required by table 76.05–1(a) on all self-propelled vessels and on all barges with sleeping accommodations for more than six persons. Previously approved installations may be retained as long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

§ 76.20–90 [Corrected]

3. On page 26003, in § 72.20–90, the paragraph designation "(d)" is corrected to read "(c)".

§ 168.15–15 [Corrected]

4. On page 26010, in § 168.15–15, paragraph (a) is corrected to read as follows:

§ 168.15–15 Size.

(a) Sleeping accommodations must be divided into rooms, no one of which may berth more than six persons. The purpose for which each space is to be used and the number of persons it may accommodate, must be marked outside the space.

* * * * *

§ 168.15–25 [Corrected]

5. On page 26010, in § 168.15–25, paragraph (a) is corrected to read as follows:

§ 168.15–25 Washrooms.

(a) There must be provided 1 shower for each 10 persons or fraction thereof and 1 wash basin for each 6 persons or fraction thereof for all persons who do not occupy rooms to which private or semi-private facilities are attached.

* * * * *

Dated: June 27, 1996.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 96–17003 Filed 7–3–96; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–214; RM–7101 and RM–7226]

Radio Broadcasting Services; Homerville, Lakeland, and Statenville, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission affirms the grant of the rulemaking petition (RM–7226) of Lakeland Broadcasters, Inc., permittee of a station authorized to operate on Channel 290A, Lakeland, Georgia, requesting an upgrade from a Class A to a Class C3 channel. *See Memorandum Opinion and Order* 58 FR 26918, May 6, 1993. In so doing, the Commission denies the petition for reconsideration of La Taurus Productions, Inc. and dismisses as moot the petition for reconsideration filed by Southland Radio, Inc.

EFFECTIVE DATE: July 5, 1996.

FOR FURTHER INFORMATION CONTACT: Paul R. Gordon, Mass Media Bureau, (202) 418–2130.

SUPPLEMENTARY INFORMATION: The Commission declined to reconsider the allotment of Channel 248A to Statenville, Georgia, as that community's first local transmission service, and the upgrade of Channel 290A in Lakeland, Georgia, to Channel 290C3. Channel 248B can be allotted to Statenville in compliance with the Commission's requirements for minimum station distance separations with a site restricted to 16.0 kilometers (9.9 miles) northeast of Statenville, at reference coordinates 30, 46, 24 North, 82, 52, 50 West. With this action, the proceeding is terminated.

This is a summary of the Commission's *Second Memorandum Opinion and Order*, MM Docket No. 90–214, adopted June 21, 1996 and released June 28, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–17112 Filed 7–3–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket PS–124; Amdt. 192–78]

RIN 2137–AC25

Regulatory Review; Gas Pipeline Safety Standards; Correction

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Correction of final regulation.

SUMMARY: This document corrects a final regulation published June 6, 1996 (61 FR 28770). The final regulation clarified the circumstances in which pipeline operators may adjust the boundaries of Class 2 and 3 locations that involve clusters of buildings. Because the regulation could have a significant, unintended economic impact on the gas pipeline industry, it is corrected to remove any substantive change to the rules governing boundary adjustment.

EFFECTIVE DATE: July 8, 1996.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 366–4559.

SUPPLEMENTARY INFORMATION: RSPA revised the class location definitions (§ 192.5) to provide clarity and minimize the possibility of needless design and construction expenditures (61 FR 28783; June 6, 1996). One revision concerned the boundary adjustment of Class 2 and 3 locations that involve a cluster of buildings intended for human occupancy (old §§ 192.5(f)(2) and (f)(3)). With this adjustment, a Class 2 or 3 location on a pipeline ends 220 yards from the nearest building in the cluster. As revised, the adjustment applies only when all buildings in a 1-mile class location unit (the basis for classification under § 192.5) are in a single cluster (new § 192.5(c)(2)).

Since the revision was published, RSPA has learned that many operators customarily apply the cluster adjustment irrespective of buildings outside the cluster. We also learned this practice has been tacitly accepted by RSPA enforcement personnel and may be consistent with instruction at RSPA's Transportation Safety Institute. Under these circumstances, the revised regulation could have a significant, unintended economic impact on the pipeline industry. Also, because this pipeline classification practice reflects the adjoining population density, the practice is consistent with pipeline safety. Therefore, we are correcting new § 192.5(c)(2) so there is no substantive change from old §§ 192.5(f)(2) and (f)(3).

Correction of Publication

Accordingly, the publication on June 6, 1996, of the final regulations in FR Doc. 96–13787 is corrected as follows:

§ 192.5 [Corrected]

On page 28783, in the 2nd column, in § 192.5, paragraph (c)(2) is corrected to read as follows:

* * * * *

(c) * * *

(2) When a cluster of buildings intended for human occupancy requires a Class 2 or 3 location, the class location ends 220 yards from the nearest building in the cluster.

Issued in Washington DC, on June 28, 1996.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 96–17111 Filed 7–3–96; 8:45 am]

BILLING CODE 4910–60–P

Surface Transportation Board

49 CFR Part 1300

[STB Ex Parte No. 528]

Disclosure, Publication, and Notice of Change of Rates and Other Service Terms for Rail Common Carriage

AGENCY: Surface Transportation Board.

ACTION: Final rules.

SUMMARY: The ICC Termination Act of 1995 (ICCTA) eliminated the tariff requirements formerly applicable to rail carriers, but imposed instead certain obligations to disclose common carriage rates and service terms as well as a requirement for advance notice of increases in such rates or a change in service terms. The ICCTA requires the Board to promulgate regulations to administer these new obligations by June 29, 1996. The Board adds a new part 1300 to its regulations for that purpose.

EFFECTIVE DATE: These rules are effective August 4, 1996.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The Board's decision adopting these

VOL
61
ISS
130
1996
JL
5
UMI

regulations is available to all persons for a charge by phoning DC NEWS & DATA, INC. at (202) 289–4357.

Small Entities

The Board certifies that these rules will not have a significant economic impact on a substantial number of small entities. Although many railroads and shippers are small entities, we believe that the costs of compliance and other impacts would be minimal. We note that the rules should result in easier access to rail rate and service information, and to that extent, our action should benefit small entities.

Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1300

Administrative practice and procedure, Agricultural commodities, Railroads, Reporting and recordkeeping requirements.

Decided: June 27, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, Chapter X of the Code of Federal Regulations is amended as follows:

SUBCHAPTER D—CARRIER RATES AND SERVICE TERMS

1. The heading for Subchapter D is revised as set forth above.

2. The undesignated center headings for parts 1300–1319, parts 1320–1329, and parts 1330–1339 are removed.

3. A new part 1300 is added to read as follows:

PART 1300—DISCLOSURE, PUBLICATION, AND NOTICE OF CHANGE OF RATES AND OTHER SERVICE TERMS FOR RAIL COMMON CARRIAGE

Sec.

1300.1 Scope; definitions.
1300.2 Disclosure requirement for existing rates.
1300.3 Response to request for establishment of a new rate.
1300.4 Notice requirement.
1300.5 Additional publication requirement for agricultural products and fertilizer.

Authority: 49 U.S.C. 721(a) and 11101(f).

§ 1300.1 Scope; definitions.

(a) The provisions of this part address the requirements imposed on rail carriers by 49 U.S.C. 11101(b), 11101(c), 11101(d) and 11101(f).

(b) Except as otherwise provided in this section, the provisions of this part apply to any common carriage transportation or service provided by a rail carrier subject to the jurisdiction of the Surface Transportation Board under 49 U.S.C. 10501.

(c) The provisions of this part do not apply to any transportation or service provided by a rail carrier under a contract authorized under 49 U.S.C. 10709 or former 49 U.S.C. 10713 (repealed effective January 1, 1996).

(d) The provisions of this part do not apply to any transportation or service provided by a rail carrier to the extent that such transportation or service is exempted from rate notice and disclosure requirements pursuant to an exemption issued under 49 U.S.C. 10502 or former 49 U.S.C. 10505 (repealed effective January 1, 1996).

(e) For the purposes of this part, "service terms" means all classifications, rules, and practices that affect the rates, charges, or level of service for rail transportation.

§ 1300.2 Disclosure requirement for existing rates.

(a) A rail carrier must disclose to any person, upon formal request, the specific rate(s) requested (or the basis for calculating the specific rate(s)), as well as all charges and service terms that may be applicable to transportation covered by the rate(s). For purposes of § 1300.4(a)(1) of this part, a formal request under this part is one that clearly notifies the railroad that the requester seeks not only immediate information but also notification of any future increases in the rate(s) involved or changes in pertinent service terms.

(b) The information provided by a rail carrier under this section must be provided immediately. (It is expected that the response will be sent within hours, or at least by the next business day, in most situations.) Such information may be provided either in written or electronic form as agreed to by the parties. If the parties cannot agree, such information is to be provided in electronic (non-passive) form where both parties have the requisite capabilities; otherwise, it is to be provided in writing.

(c) A rail carrier may, at its option, require that all requests submitted under this section be in written or electronic form, although the carrier may permit oral requests.

§ 1300.3 Response to request for establishment of a new rate.

Where a shipper or a prospective shipper or person acting on behalf of a shipper or a prospective shipper requests that the carrier establish a rate in the absence of an existing rate for particular transportation, the carrier must promptly establish and provide to the requester a rate and applicable service terms. The information may be provided either in written or electronic form, as agreed to by the parties. If the parties cannot agree, such information is to be provided in electronic (non-passive) form where both parties have the requisite capabilities; otherwise, it is to be provided in writing. The response should be provided as soon as reasonably possible, but no later than 10 business days from receipt of the request. If a carrier determines that additional information is required from the requester before a rate or term can be established, the carrier must so notify the requester as soon as possible, but no later than 10 business days after receipt of the request. Once the additional information is received, the carrier must set the rate and related service terms, and relay them to the requester, as soon as reasonably possible, but no later than 10 business days from the receipt of the additional information. (However, the parties may agree to a different time period, in which case these time periods would not apply.) A rail carrier may, at its option, require that requests submitted under this section be in written or electronic form, although the carrier may permit oral requests.

§ 1300.4 Notice requirement.

(a) A rail carrier may not increase any rates or charges, or change any service terms (except for changes that are equivalent to rate reductions), unless 20 days have expired after written or electronic notice has been provided to all persons who, within the previous 12 months:

(1) Have formally requested under §§ 1300.2 or 1300.3 of this part the affected rates or service terms; or

(2) Have made arrangements with the carrier for a future shipment that would be subject to the increased rates or changed service terms.

(b) The notice required by this section may be in written or electronic form, as agreed to by the parties. If the parties cannot agree, the information is to be provided in electronic (non-passive) form where both parties have the requisite capabilities; otherwise, it is to be provided in writing.

(c) For purposes of this section, a mailed notice is deemed "provided" on the date such notice is postmarked.

(d) The notice required by this section must clearly identify the increases in rates or charges or the changes in service terms.

§ 1300.5 Additional publication requirement for agricultural products and fertilizer.

(a) With respect to transportation of agricultural products (including grain, as defined in 7 U.S.C. 75, and all products thereof) and fertilizer, a rail carrier shall publish, make available, and retain for public inspection its currently effective rates, schedules of rates, charges, and other service terms, and any scheduled changes to such rates, charges, and service terms. This requirement is in addition to the requirements imposed by §§ 1300.2, 1300.3, and 1300.4 of this part.

(b) The information published under this section must include an accurate description of the services offered to the public; must provide the specific applicable rates (or the basis for calculating the specific applicable rates), charges, and service terms; and must be arranged in a way that allows for the determination of the exact rate, charges, and service terms applicable to any given shipment (or to any given group of shipments). Increases, reductions and other changes must be symbolized or highlighted in some way to facilitate ready identification of the changes, the nature of those changes and their effective dates.

(c) A rail carrier must make the information available at offices where it normally keeps rate information. Access to the information at such offices must be provided to any person, without charge, during normal business hours.

(d) A rail carrier must also make the required publications available to all persons (hereinafter referred to as subscribers) who have subscribed to a publication service operated either by the rail carrier itself or by an agent acting at the rail carrier's direction. Such publications may be made available either in printed or in electronic form as agreed to by the parties. Any scheduled changes must be published in a manner that provides timely notice to subscribers. A rail carrier may impose reasonable charges for such publications. Publications may be limited to the specific information requested by the subscriber, and charges for such limited publications should be set accordingly.

[FR Doc. 96–16989 Filed 7–3–96; 8:45 am]

BILLING CODE 4915–00–P

49 CFR Part 1305

[STB Ex Parte No. 538]

Disclosure and Notice of Change of Rates and Other Service Terms for Pipeline Common Carriage

AGENCY: Surface Transportation Board

ACTION: Final rules.

SUMMARY: The ICC Termination Act of 1995 (ICCTA) eliminated the tariff requirements formerly applicable to pipeline carriers transporting commodities other than water, gas or oil. Instead, the ICCTA imposed certain obligations to disclose rates and service terms, as well as a requirement for advance notice of an increase in such rates or a change in service terms. The ICCTA requires the Board to promulgate regulations to administer these new obligations by June 29, 1996. The Board adds a new part 1305 to its regulations for that purpose.

EFFECTIVE DATE: These rules are effective August 4, 1996.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The Board's decision adopting these regulations is available to all persons for a charge by phoning DC NEWS & DATA, INC., at (202) 289–4357.

A notice of proposed rulemaking was published in the **Federal Register** on May 15, 1996 at 61 FR 24474.

Small Entities

The Board certifies that this rule will not have a significant economic effect on a substantial number of small entities. The rules should result in easier access to pipeline rate and service information, and, to that extent, our action should benefit small entities.

Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1305

Pipelines, Reporting and recordkeeping requirements, Transportation.

Decided: June 27, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, the Board adds a new part 1305 to title 49, chapter X, of the Code of Federal Regulations, to read as follows:

PART 1305—DISCLOSURE AND NOTICE OF CHANGE OF RATES AND OTHER SERVICE TERMS FOR PIPELINE COMMON CARRIAGE

Sec.

1305.1 Scope; definitions.
1305.2 Disclosure requirement for existing rates.
1305.3 Response to request for establishment of a new rate.
1305.4 Notice requirement.

Authority: 49 U.S.C. 721(a) and 15701(e).

§ 1305.1 Scope; definitions.

(a) The provisions of this part address the requirements imposed on pipeline carriers by 49 U.S.C. 15701(b) and 15701(c). Such requirements apply to pipeline carriers only with respect to the transportation of commodities other than water, gas, or oil.

(b) Except as otherwise provided in paragraph (c) of this section, the provisions of this part apply to any transportation or service provided by a pipeline carrier subject to the jurisdiction of the Surface Transportation Board under 49 U.S.C. 15301.

(c) The provisions of this part do not apply to any transportation or service provided by a pipeline carrier to the extent that such transportation or service is exempted from rate notice and disclosure requirements pursuant to 49 U.S.C. 15302.

(d) For the purposes of this part, *service terms* means all classifications, rules, and practices that affect the rates, charges, or level of service for pipeline transportation.

§ 1305.2 Disclosure requirement for existing rates.

(a) A pipeline carrier must disclose to any person, on request, the specific rate(s) requested (or the basis for calculating the specific rate(s)), as well as all charges and service terms that may be applicable to transportation covered by those rate(s).

(b) The information provided by a pipeline carrier under this section must be provided immediately. (It is expected that the response will be sent within hours, or at the latest by the next business day, in most situations.) Such information may be provided either in writing or in electronic form, as agreed to by the parties. If the parties cannot agree, such information is to be provided in electronic form where both parties have the requisite capabilities; otherwise, it is to be provided in writing.

(c) A pipeline carrier may, at its option, require that all requests

VOL 61 ISS 130 JL 5 1996 UMI

submitted under this section be in writing or electronic form, or the carrier may permit oral requests.

§ 1305.3 Response to request for establishment of a new rate.

Where a shipper or a prospective shipper, or a person acting on behalf of a shipper or a prospective shipper, requests that the carrier establish a rate in the absence of an existing rate for particular transportation, the carrier must promptly establish and provide to the requester a rate and applicable service terms. The information may be provided either in writing or in electronic form, as agreed to by the parties. If the parties cannot agree, such information is to be provided in electronic form where both parties have the requisite capabilities; otherwise, it is to be provided in writing. The response should be provided as soon as reasonably possible, but no later than 10 business days from receipt of the request. If a carrier determines that additional information is required from the requester before a rate or term can be established, the carrier must so notify the requester as soon as possible, but no later than 10 business days after receipt of the request. Once the additional information is received, the carrier must set the rate and related service terms, and relay them to the requester, as soon as possible, but no later than 10 business days. The time period for response set forth in this section will not apply when the parties agree to a different time period. A pipeline carrier may, at its option, require that requests submitted under this section be in writing or electronic form, or the carrier may permit oral requests.

§ 1305.4 Notice requirement.

(a) A pipeline carrier may not increase any rates or charges, or change any service terms (except for changes that are equivalent to rate reductions) unless 20 days have expired after written or electronic notice has been provided to all persons who, within the previous 12 months:

(1) Have requested, under § 1305.2 or § 1305.3, the affected rates or service terms; or

(2) Have made arrangements with the carrier for a shipment that would be subject to the increased rates or changed service terms.

(b) The notice required by this section may be provided either in writing or in electronic form, as agreed to by the parties. If the parties cannot agree, the information is to be provided in electronic form where both parties have the requisite capabilities; otherwise, it is to be provided in writing.

(c) For purposes of this section, a mailed notice is deemed "provided" on the date such notice is postmarked.

(d) The notice required by this section must clearly identify the increase in rates or charges or the change in service terms.

[FR Doc. 96–16990 Filed 7–3–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 062896B]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Exempted Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Additions and modifications to fishery exemptions.

SUMMARY: NMFS issues this notification to authorize new fishery exemptions and to modify an existing exemption under the regulations implementing the Northeast Multispecies Fishery Management Plan (FMP). This notification advises the public of three additional exempted fisheries to be conducted in the Gulf of Maine/Georges Bank (GOM/GB) and Southern New England (SNE) regulated mesh areas, adds restrictions to an existing exempted fishery, and adds two species to the list of allowed bycatch species in the Cultivator Shoal whiting exemption program. The intent of this notification is to maximize fishing opportunities in a manner that is consistent with the conservation objectives of the FMP.

EFFECTIVE DATE: The GOM/GB monkfish exempted fishery is effective from July 1, 1996, through September 14, 1996. The GOM/GB dogfish exempted fishery is effective from July 1, 1996, through August 31, 1996. The SNE monkfish exempted fishery is effective from July 1, 1996, through October 31, 1996. The SNE dogfish exempted fishery modifications are effective from July 29, 1996 through October 31, 1996. The Cultivator Shoals whiting exemption program bycatch modification is effective from July 1, 1996, through December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 7 to the FMP are effective on July 1, 1996 (61 FR 27710, May 31, 1996). These regulations implement a comprehensive set of measures to control fishing mortality and rebuild the primary stocks of regulated multispecies. Among the specific measures is a bycatch control measure that prohibits prosecution of any fishery that has not been determined to have a minimal bycatch of regulated multispecies.

The bycatch control restriction is applied on a fishery basis in each of two specific geographical areas, referred to as regulated mesh areas: GOM/GB and SNE. A vessel may not fish in these areas unless it is fishing lawfully in the multispecies fishery, under a scallop days-at-sea allocation, with exempted gear, or in an exempted fishery. A list of the exempted fisheries that have been previously determined to meet the bycatch criteria and that may currently be conducted in each area appears in § 648.80.

Additions or deletions to the list of exempted fisheries may be authorized by the Director, Northeast Region, NMFS (Regional Director), if he/she determines that the bycatch of regulated species is, or can be reduced to, less than 5 percent by weight of the total catch and that such exemption will not jeopardize fishing mortality objectives (§ 648.80(a)(7), (c)(5), and (d)(4)). The Regional Director is also authorized to impose specific gear and area limitations to exempted fisheries. Proposals for exemptions were submitted by members of the fishing industry and have been examined by the NMFS Northeast Fisheries Science Center. The proposals were to allow a sink gillnet fishery for monkfish and dogfish and to allow squid (two species) to be retained as bycatch in the Cultivator Shoals whiting fishery within the GOM/GB area. Based on the data available, the Regional Director has determined that these fisheries meet the exemption criteria in specific areas during limited open seasons and under certain minimum mesh-size restrictions.

GOM/GB Monkfish Exempted Fishery

For the period July 1, 1996, through September 14, 1996, an exempted fishery for monkfish may be conducted by vessels using sink gillnet gear within a specific portion of the GOM/GB regulated mesh area. This is defined by connecting the following coordinates:

Latitude	*Longitude*
41°35′ N.	70°00′ W.
42°49.5′ N.	70°00′ W.
42°49.5′ N.	69°40′ W.
43°12′ N.	69°00′ W.
Maine shoreline	69°00′ W.

Vessels fishing under this exemption are restricted to a minimum mesh size of 10 inches (25.4 cm)(diamond). No species other than monkfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board or 200 lobsters (whichever is less), may be retained when fishing in this exempted fishery.

GOM/GB Dogfish Exempted Fishery

For the period July 1, 1996, through August 31, 1996, an exempted fishery for dogfish may also be conducted in the area defined above by vessels using sink gillnet gear with a minimum mesh size of 6.5 inches (16.5 cm)(diamond). No species other than dogfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board or 200 lobsters (whichever is less), may be retained when fishing in this exemption program.

SNE Monkfish Exempted Fishery

For the period July 1, 1996, through October 31, 1996, an exempted fishery for monkfish may be conducted by vessels using sink gillnet gear within a specific portion of the SNE regulated mesh area. This is defined by a line running south from the Massachusetts shoreline at 41°35′ N. lat. and 70°00′ W. long. and bounded on the west by the Mid-Atlantic regulated mesh area. Vessels fishing under this exemption are restricted to a minimum mesh size of 12 inches (25.4 cm)(diamond). No species other than monkfish may be retained when fishing in this exempted fishery.

SNE Dogfish Exempted Fishery Modification

Analysis of the available data also revealed that an existing fishery exemption, allowing sink gillnets in the dogfish fishery to be used year-round in the SNE regulated mesh area, should be restricted by a season and a minimum mesh-size requirement to remain consistent with the bycatch control objective. NMFS observer data documents that several trips exceeded the bycatch limit during the months of November through April. Therefore, the Regional Director has determined that, during the months of November through April, this fishery should no longer be exempted; NMFS intends to address this through future rulemaking. To provide additional assurance against bycatch of regulated multispecies during the time period the fishery is exempted, effective from July 29, 1996 through October 31, 1996, a minimum mesh size of 6 inches (15.24 cm)(diamond) must be used. Further, from July 1, 1996, through October 31, 1996, this fishery is restricted to the area described above for the SNE monkfish exempted fishery (i.e., the area defined by a line running south from the Massachusetts shoreline at 41°35′ N. lat. and 70°00′ W. long. and bounded on the west by the Mid-Atlantic regulated mesh area). The allowed bycatch species for this exemption are not changed.

Cultivator Shoals Whiting Exemption Program Bycatch

For the period July 1, 1996, through December 31, 1996, the bycatch of squid is to be allowed under the existing time, area, and mesh-size restrictions of the Cultivator Shoals whiting fishery exemption.

The Regional Director has informed the New England Fishery Management Council of the proposals to allow the sink gillnet fisheries for monkfish and dogfish in the GOM/GB area and to add squid to the list of allowable bycatch in the Cultivator Shoals whiting fishery during 1996. No objection was raised. The Regional Director has determined that the GOM/GB sink gillnet fisheries, as described above, and the previously exempted SNE sink gillnet fishery for dogfish, as temporarily modified by this action, meet the exemption qualification requirements specified in § 648.80(a)(7).

Fish that are caught, possessed, or landed in accordance with provisions of this action will be deemed by NMFS to be in accordance with 50 CFR 648.80.

Classification

This action is taken under 50 CFR 648.80 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 28, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–17061 Filed 6–28–96; 4:20 pm]

BILLING CODE 3510–22–W

50 CFR Part 660

[Docket No. 951227306–5306–01 ; I.D. 062696A]

Pacific Coast Groundfish Fishery; Trip Limit Reductions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces further restrictions to the Pacific coast groundfish fisheries for Pacific ocean perch (POP) coastwide and Dover sole north of Cape Mendocino, CA (40°30′ N. lat.). These actions are authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. These restrictions are intended to keep landings as close as possible to the 1996 harvest guidelines for these species.

DATES: Effective from 0001 hours (local time) July 1, 1996, until the effective date of the 1997 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the *Federal Register*. Comments will be accepted through July 22, 1996.

ADDRESSES: Submit comments to William Stelle, Jr., Director, Northwest Region (Director), National Marine Fisheries Service, 7600 Sand Point Way NE., BIN–C15700, Seattle, WA 98115–0070; or Hilda Diaz-Soltero, Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140; or Rodney McInnis at 310–980–4040.

SUPPLEMENTARY INFORMATION: The following changes to routine management measures for POP and Dover sole were recommended by the Pacific Fishery Management Council (Council) at its June 18–19, 1996, meeting in Seattle, WA.

POP. POP has been overfished and has been managed under a rebuilding schedule since 1981. The acceptable biological catch (ABC) is zero, and the harvest guideline is intended to provide only for incidental catch of POP taken while fishing for other species. The harvest guideline was reduced from 1,300 metric tons (mt) in 1995 to 750 mt on January 1, 1996, at which time a 2-month cumulative trip limit of 10,000 lb (4,536 kg) was implemented.

The best available information at the June 1996 Council meeting indicated that 315 mt of POP had been taken through May 31, 1996, and that the 750–mt harvest guideline would be reached by September 28, 1996, if the rate of landings is not slowed. The Council recommended that the 2-month cumulative limit for POP be reduced from 10,000 lb (4,536 kg) to 8,000 lb (3,629 kg) coastwide to keep landings within the harvest guideline in 1996.

Dover sole. Dover sole is one component of the Dover sole,

VOL 61 ISS 130 JL 5 1996 UMI

thornyheads (both shortspine and longspine), and trawl-caught sablefish (DTS) complex. In recent years, the DTS complex has been managed with cumulative trip limits, with specific limits on sablefish and thornyheads. The remainder of catch could be Dover sole. The industry generally concentrated on the higher valued fish, thornyheads and sablefish. However, at its extreme, the entire cumulative limit for the DTS complex (since January 1, 1996, 70,000 lb (31,752 kg) per 2-month period) could consist of Dover sole. Dover sole currently is managed with a coastwide harvest guideline, which includes a harvest guideline for Dover sole in the Columbia area (43°00'–47°30' N. lat.), where harvest typically has been the highest.

The best available information at the June 1996 Council meeting indicated that 1,361 mt of Dover sole in the Columbia area had been taken through May 31, 1996, and that the 2,850–mt harvest guideline for this area would be reached by October 25, 1996, if the rate of landings is not slowed. The Council recommended that an explicit 2-month cumulative limit of 38,000 lb (17,236 kg) be specified for Dover sole taken and retained north of Cape Mendocino, CA. This is the amount of the DTS complex that would remain under the existing cumulative 2-month limit north of Cape Mendocino if the sub-limits for sablefish and thornyheads are fully taken. The 2-month cumulative limit for Dover sole is applied north of Cape Mendocino because this encompasses the Columbia area, and is consistent with current 2-month cumulative limits for the DTS complex (which differ north and south of Cape Mendocino) without unduly restricting the fishery south of Cape Mendocino.

NMFS action. NMFS concurs with the Council's recommendations, which are intended to keep landings of POP and Dover sole within their 1996 harvest guidelines. These restrictions apply to both the limited entry and open access fisheries, including exempt trawl gear used to harvest pink shrimp and prawns. As stated in the annual management measures at 61 FR 279 (January 4, 1996), "A vessel operating in the open access fishery must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery; or for the same gear and/or subarea in the limited entry fishery; or, in any calendar month, 50 percent of any 2-month cumulative trip limit for the same gear and/or subarea in the limited entry fishery, called the '50–percent monthly limit.'" The annual management measures announced at 61 FR 279, as amended, are modified as follows:

1. Paragraphs IV.D.(1) and (2) of the annual management measures for POP are revised to read as follows:

"D.(1) *Limited entry fishery.* The cumulative trip limit for POP is 8,000 lb (3,629 kg) per vessel per 2-month period. The 60–percent monthly limit is 4,800 lb (2,177 kg).

D.(2) *Open access fishery.* Within the limits at paragraph IV.I. for the open access fishery, the 50–percent monthly limit for POP is 4,000 lb (1,814 kg)."

2. Paragraphs IV.E.(3)(b)(i), IV.E.(3)(b)(iii), and IV.E.(4) of the annual management measures for the DTS complex are revised to read as follows:

"E.(3)(b)(i). *North of Cape Mendocino.* The cumulative trip limit for the DTS complex taken and retained north of Cape Mendocino is 70,000 lb (31,752 kg) per vessel per 2-month period. Within this cumulative trip limit, no more than 12,000 lb (5,443 kg) may be sablefish, no more than 38,000 lb (17,236 kg) may be Dover sole, and no more than 20,000 lb (9,072 kg) may be thornyheads. No more than 4,000 lb (1,814 kg) of the thornyheads may be shortspine thornyheads."

"E.(3)(b)(iii) The 60–percent monthly limits are: For the DTS complex, 42,000 lb (19,051 kg) north of Cape Mendocino, and 60,000 lb (27,216 kg) south of Cape Mendocino; for trawl-caught sablefish, 7,200 lb (3,266 kg); for Dover sole north of Cape Mendocino, 22,800 lb (10,342 kg); for both species of thornyheads combined, 12,000 lb (5,443 kg); and for shortspine thornyheads 2,400 lb (1,089 kg)."

"E.(4) *Open access fishery.* Within the limits in paragraph IV.I. of the annual management measures, a vessel using exempt trawl gear in the open access fishery is subject to the 50–percent monthly limits which are as follows: For the DTS complex, 35,000 lb (15,876 kg) north of Cape Mendocino, and 50,000 lb (22, 680 kg) south of Cape Mendocino; for trawl-caught sablefish, 6,000 lb (2,722 kg); for Dover sole north of Cape Mendocino, 19,000 lb (8,618 kg); for both species of thornyheads combined, 10,000 lb (4,536 kg); and for shortspine thornyheads, 2,000 lb (907 kg)."

Classification

These actions are authorized by the regulations implementing the FMP. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Director, Northwest Region, NMFS (see ADDRESSES) during business hours. Because of the need for immediate action to slow the rate of harvest of Dover sole and POP, and because the public had an opportunity to comment on the action at the June 1996 Council meeting, NMFS has determined that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 660.323(b)(1)(i), and are exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 28, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–17009 Filed 6–28–96; 4:20 pm]

BILLING CODE 3510–22–F

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50 CFR Part 660

[Docket No. 960126016–6121–04; I.D. 062896A]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Closure from Point Arena, CA, to the U.S.-Mexican Border

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS announces that the recreational salmon fishery in the area from Point Arena, CA, to the U.S.-Mexican border, in the exclusive economic zone (EEZ), closes at 0001 hours, July 2, 1996 and will remain closed until 0001 hours, July 15, 1996. The season in the EEZ will reopen under the terms of the preseason announcement of the 1996 management measures. NMFS has determined that the 2-week closure is necessary to offset the increased impacts on Sacramento River winter chinook salmon resulting from the decision by the California Fish and Game Commission (Commission) to delay implementing an increase in the recreational minimum size limit for chinook salmon within state waters. This action is necessary for ocean salmon fisheries to remain in conformance with the March 8, 1996, biological opinion issued by NMFS and is intended to provide protection to Sacramento River winter chinook salmon.

DATES: Effective 0001 hours local time, July 2, 1996, through 0001 hours local time, July 15, 1996. Comments will be accepted through July 15, 1996.

ADDRESSES: Comments may be mailed to Hilda Diaz-Soltero, Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the Southwest Regional Office, and at the Northwest Regional Office, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Rodney R. McInnis or Daniel Viele, 310–980–4030.

SUPPLEMENTARY INFORMATION: Sacramento River winter chinook was listed under the Endangered Species Act (ESA) in 1989. In response to continuing and dangerously low abundance of winter chinook, NMFS issued a March 8, 1996, biological opinion (revised April 5, 1996) which required that ocean fishery impacts on winter chinook be reduced to the extent that winter chinook spawning escapement would be increased by 35 percent compared to current levels. The 1996 ocean salmon management measures (61 FR 20175, May 6, 1996) recommended by the Pacific Fishery Management Council (Council) and approved and implemented by NMFS meet the requirements of the biological opinion through a combination of season reductions and increased minimum size limits.

The State of California acted in late April to conform its commercial and recreational fishing regulations to the Council's recommended management measures. On May 1, 1996, the Commission, which regulates the recreational salmon fishery within state waters, announced its intent to consider delaying implementation of the July 2 increase in the minimum size limit south of Point Arena for recreationally caught chinook until August 26.

The Council considered the Commission's proposed action at its June 18–19 meeting in Seattle, WA. NMFS informed the Council that any state actions resulting in an increase in winter chinook impacts would trigger inseason action by NMFS to ensure the requirements of the biological opinion would continue to be met. NMFS urged the Council to recommend adjustments to the fishing seasons in the EEZ, which would result in ocean salmon fisheries operating within the constraints of the biological opinion, should the Commission delay implementation of the July 2 minimum size limit increase. Despite advice from its Salmon Technical Team (STT) that the decrease in winter chinook spawning escapement resulting from the proposed delay would not meet ESA requirements, the Council, at its June 18–19 meeting, recommended that NMFS delay the minimum size limit increase in Federal waters as well. The Council further advised NMFS to constrain any Federal regulatory adjustments stemming from the Commission's actions to the California recreational fishery.

On June 21, the Commission approved a July 15, 1996, date for the increase in the minimum size limit for chinook in the recreational salmon fishery south of Point Arena. A preliminary analysis by the STT indicates that the difference between the winter chinook spawning escapement increase expected under the NMFS approved and implemented management measures and the Commission's delay to July 15 would be 0.7 percent. Although small, this difference results in winter chinook impacts that do not meet the requirement of the biological opinion to increase winter chinook spawning escapement by 35 percent.

NMFS has taken this inseason action to close the recreational fishery in the EEZ during the same time period that the Commission has delayed the increase in the minimum size limit in state waters. Differing size limits in Federal and state waters are considered to be unenforceable. Analysis of how to compensate in the EEZ for the 2-week delay is made difficult by the lack of data partitioning recreational effort between the EEZ and state waters, and an inability to predict the portion of the recreational effort normally occurring in the EEZ that will shift to state waters as a result of an EEZ closure. Data for the commercial troll fishery off California in 1983 and 1984 indicate 67 percent of the catch occurred in the EEZ. However, there is no reason to assume a similar distribution of the recreational effort. Officials at the California Department of Fish and Game estimate that perhaps 70 percent of the recreational effort in July may occur inside state waters. If it is assumed that 30 percent of the recreational fishing effort occurs in the EEZ and that no effort shift will result from an EEZ closure, a 2-week closure of the EEZ to recreational fishing in July would approximately compensate for the winter chinook impacts caused by the 2-week delay in the minimum size limit in state waters, according to the Winter Chinook Ocean Harvest Model. Based on that analysis, NMFS expects that with this 2-week closure the ocean fisheries will continue to meet the requirements of the biological opinion. If, however, further analysis by the STT should indicate that additional adjustments are required, NMFS will consider further closures to salmon fisheries in the EEZ.

The Regional Director consulted with representatives of the Council and the California Department of Fish and Game. Because of the need for immediate action, NMFS has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. This notice does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 28, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–17010 Filed 6–28–96; 4:20 pm]

BILLING CODE 3510–22–F

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50 CFR Part 681 and 15 CFR Part 902

[Docket No. 960401094–6183–02; I.D. 022296D]

RIN 0648–AI32

Western Pacific Crustacean Fisheries; Amendment 9; OMB Control Numbers

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 9 to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP). This rule establishes a new annual harvest limitation program for the Northwestern Hawaiian Islands (NWHI) lobster fishery based on the status of stocks and an explicit level of risk of overfishing. This eliminates operational problems with the current quota system. Current prohibitions on retaining juvenile lobsters and berried lobsters are eliminated. The rule establishes framework procedures to implement regulatory changes if needed in the future. This rule also announces the harvest guideline for the 1996 fishing season. The rule is intended to maintain the productivity of the stocks while providing a reasonable opportunity for permit holders to participate in the fishery and to maintain their markets. The changes also improve the administration of the

VOL
61
ISS
130
1996
JL
5
UMI

management program and enforcement efforts.

EFFECTIVE DATES: June 28, 1996, except new § 681.12 which is effective on August 5, 1996.

ADDRESSES: Copies of Amendment 9 and the associated environmental assessment may be obtained from Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

A copy of the Biological Opinion (BO) associated with this rule and the Final Regulatory Flexibility Analysis (FRFA) may be obtained from Hilda Diaz-Soltero, Director, Southwest Region, NMFS (Regional Director), 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

Send comments on the modifications to approved collection-of-information requirements to the Regional Director and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Paperwork Reduction Project 0648–0204 and 0648–0214, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds at (808) 522–8220; Svein Fougner at (310) 980–4034; or Alvin Z. Katekaru at (808) 973–2985.

SUPPLEMENTARY INFORMATION: The FMP was approved in 1983 and governs fishing for spiny and slipper lobsters in the NWHI. The history of the development of the FMP and Amendment 9 is summarized in the proposed rule (61 FR 15452, April 8, 1996) and will not be repeated here.

Amendment 9 includes the following measures, which are explained in more detail in the proposed rule published on April 8, 1996:

1. *Establish an annual harvest guideline based on a constant harvest rate and a specific level of risk of overfishing.* Under the constant harvest rate policy, the harvest guideline, which is expressed in terms of the total number of lobsters (spiny and slipper combined), is proportional to the estimated exploitable population size.

2. *Allow the retention of egg-bearing ("berried") lobsters and eliminate size limits.* The FMP and implementing regulations currently prohibit fishers from retaining berried lobsters or lobsters with a tail width of less than 50 mm for spiny lobsters and 56 mm for slipper lobsters.

3. *Eliminate the in-season quota adjustment.* The in-season quota adjustment has proven to be unworkable, given the extreme sensitivity of the quota formula to changes in catch-per-unit-of-effort (CPUE). A harvest guideline will be set once annually and will not be adjusted during the year.

4. *Authorize the Regional Director to close the fishery by direct notice to fishermen.* The Council concluded that the fishery is sufficiently small (there are only 15 persons with limited entry permits) that direct notice to permit holders by telephone or radio is feasible and provides the most effective means of ensuring timely closure of the fishery with minimal likelihood of premature or late closure.

5. *Establish broad framework procedures for future regulatory changes.* The FMP currently has framework procedures dealing with protected species conservation, and the annual harvest quota is set under a specific framework (i.e., formula). Amendment 9 authorizes measures affecting the operation of the fisheries, gear, harvest guidelines, or changes in catch and/or effort, and provides a mechanism to respond to new information quickly.

6. *Conduct a 5-year review of the new program.* The Council is aware that the proposed new management approach of Amendment 9 is an innovative approach to crustacean fishery management and that it warrants a complete review of its effectiveness. This analysis is in addition to the annual review of the fishery.

This rule eliminates the requirement that fishers notify NMFS in advance of plans to embark on each fishing trip so that NMFS may place observers on the fishing vessel. Although the single vessel fishing in 1994 under an Experimental Fishing Permit carried a NMFS observer, NMFS does not anticipate sending observers on lobster trips on a regular basis. Therefore, NMFS removes the requirement to report each trip in advance. This action accords with President Clinton's directive that agencies reduce public reporting requirements.

In compliance with the new procedures of Amendment 9, a harvest guideline of 186,000 lobsters for the NWHI crustacean fishery is announced for the 1996 fishing season, which begins July 1, 1996. This harvest guideline supersedes the initial quota published on February 21, 1996 (61 FR 6577), and is the final landings limit for the 1996 fishing season. The harvest guideline is computed by using a harvest rate associated with a 10 percent risk of overfishing applied to the estimate of the exploitable population. For 1996, the exploitable population is 1,432,586 lobsters.

Comments

Comments were received from the State of Hawaii Department of Land and Natural Resources, the Marine Mammal Commission (MMC), the U.S. Fish and Wildlife Service (USFWS), and the Small Business Administration (SBA). Similar comments have been combined.

Comment: Some comments suggested that NMFS was reopening or resuming the NWHI lobster fishery, implying that the fishery is now closed.

Response: The lobster fishery has been closed only when there was no announced quota or after available quota has been taken. Commercial fishing is allowed under the current system when there are lobsters to be harvested according to the formula contained in the FMP. Without Amendment 9, the fishery would open on July 1, 1996, under a quota system.

Comment: The regulations should require the retention of all small and berried female lobsters. Giving the fishermen no choice would minimize highgrading and would provide more sound information in the sales reports.

Response: This measure was not included by the Council in Amendment 9, so it cannot be implemented at this time. However, NMFS does not expect highgrading to occur because competition for the total number of lobsters set by the harvest guideline will encourage fishermen to keep all lobsters, but NMFS will provide the Council with catch, effort, and sales data to evaluate whether this expectation is realized. The Council has agreed to consider requiring retention if the first year of data demonstrates a need and provides a sound basis for such action.

Comment: A vessel monitoring system (VMS) should be required on each vessel. Such a system would monitor vessel traffic and determine if there were illegal entry to the Hawaiian Islands National Wildlife Refuge (HINWR).

Response: This measure was not included by the Council in Amendment 9, so it cannot be implemented at this time. The Council did not propose the use of VMS because VMS has not been justified to the satisfaction of the Council as being needed in the lobster fishery. The Council has agreed, however, to review the measure in the future within the framework procedures of the amendment.

Comment: Amendment 9 is deficient in its description of the HINWR. It is the USFWS position that the boundaries of the HINWR extend to the 20 fathom isobath around Necker Island and to the 10 fathom isobath around the other islands of the refuge; and that permits are required for access to the HINWR. The Amendment could lead to the impression that, in the absence of the FMP, fishing would be allowed in the HINWR.

Response: The legal basis for this assertion of jurisdiction over offshore waters was not provided. The original Executive Order designating the HINWR does not indicate that offshore waters are included in the HINWR. The original FMP provides a more complete discussion of management agencies and their authorities in the NWHI, and there is no new information concerning USFWS authority or jurisdiction. The USFWS has been asked to provide to the Council more information concerning HINWR jurisdiction and controls for use in future planning efforts. The original FMP clearly explains that fishing in waters in the HINWR or in state waters is not controlled under the FMP; nothing in Amendment 9 changes that position.

Comment: An area-wide harvest guideline means that specific areas in the Hawaiian Islands chain could be severely depleted of lobster, possibly adversely affecting monk seals.

Response: Due to the lack of scientific data and enforcement resources, bank-by-bank management is not possible at this time. The stock assessment model is conservative, however, and guards against excessive harvests. Historically, most of the harvest has occurred at a small number of locations, and this is likely to continue unless productivity of the lobster stocks returns to the levels of the late 1970's and 1980's. The Council has agreed to evaluate the use of VMS, which could be useful in reporting the catch at sea. Such a system may be able to provide a basis for area specific management in the future.

Comment: Area specific spawning potential ratios (SPR) should be evaluated and used to restrict fishing in areas where it is important to maintain healthy lobster populations.

Response: As stated above, this is not possible at this time. If area-specific management becomes a reality, determining the SPR for individual areas would be a factor to be considered.

Comment: The conclusion that the proposed fishery will not affect Hawaiian monk seals is not supported by the information in Amendment 9 and the biological assessment. The Amendment should include a full discussion of the potential impacts, such as increasing entrapment hazards and decreasing food availability. Also, Amendment 9 does not address the status of monk seals at French Frigate Shoals (FFS), where the seal population is undergoing a severe decline due to starvation. If lobster and octopus are relatively important components of monk seal diets, the proposed lobster fishery could impact monk seals. The MMC recommends closing FFS to lobster fishing until the importance of lobster and octopus in the diets of monk seals is known. Amendment 9 should be disapproved and no fishing allowed until an adequate BO is completed.

Response: There are three records of direct interaction between monk seals and the lobster fishery. One occurred early in the fishery when a seal became entangled in a trap bridle and drowned. The second occurred in 1994, when a fisherman reported that a monk seal approached the vessel and fed on released lobster. In the third, a seal was observed attempting to move a lost trap, presumably in search of food underneath the trap. No reports have been received of dead or live monk seals with scars or injuries that suggest interaction with lobster fishing gear. No interactions have occurred on research cruises. With reduced effort in the fishery, the potential for direct entrapment or harm has greatly declined. There is no information on the number of lost lobster traps and the likelihood that a lost trap would harm a seal, but the maximum allowable size of the trap openings was set with the objective of protecting monk seals.

There may be indirect effects on monk seals from the lobster fishery, especially for the population at FFS, where overall prey availability appears to be low. However, NMFS has concluded that there is insufficient information to support closing waters around FFS at this time. The NMFS Honolulu Laboratory is conducting research on foraging and feeding behavior, as well as on the diet of monk seals through the use of remote video cameras attached to seals and by analyzing seal scats and spewings. Eventually, a better understanding of the relationship between monk seals and their food sources will be available. Amendment 9 recognizes a potential for impacts, but NMFS agreed with the Council's view that there is no basis to determine that impacts are likely. On May 24, 1996, the NMFS Office of Protected Resources issued a BO, under the Endangered Species Act, that concluded that the fishery, as it would be conducted under Amendment 9 and these implementing regulations, is not likely to jeopardize the continued existence of any listed species. The May 24, 1996, BO will be provided to the Council for use in future planning and management decisions.

Comment: The frameworking procedures may not be quick enough to respond effectively to rapidly occurring changes in the proposed fishery, including the implementation of measures to protect monk seals. The procedures should be streamlined to provide for quick action.

Response: Actions cannot be taken until effects of the actions are thoroughly analyzed. The new framework procedures will provide for a proper review, and actions can be taken without amending the plan, which is a much more lengthy process. The ability of the Regional Director to close the fishery by direct notice to fishermen is one of the benefits of the Amendment. Also, the Magnuson Act authorizes NMFS, on behalf of the Secretary, to take emergency action if necessary. Existing regulations in 50 CFR §§ 681.27 and 681.28 also provide authority for NMFS to issue quickly a short-term regulation (10 days to 6 months), specifically in the event of a monk seal mortality that appears related to the fishery.

Comment: Eliminating size limits introduces a strong incentive for highgrading and underreporting, which is to be detected by untested and unconvincing methods.

Response: NMFS expects highgrading to be minimal. The following year's harvest guideline will be adjusted for any identified highgrading following review of landings data through the monitoring system. The relationship between lobster size and price depends on the market, which varies from year to year. There is a market for all lobster, so a fisherman would have to decide whether the vessel's economic return would be sufficiently greater if some lobster were discarded in order to retain others. Competition for the available quota puts pressure on fishermen to catch as many lobsters as possible and return to port before the harvest guideline is reached. Highgrading is more likely to occur when fishing begins, and becomes less likely as the fishery approaches the limit on total harvest established by the annual quota. The fewer vessels harvesting the quota, the greater the possibility that highgrading will occur, depending on the size of the quota. High levels of harvest are required to sustain a lobster operation, and the decision to forego the catch of some lobster in anticipation of a more valuable catch is not a simple decision and not the most likely choice.

If highgrading occurs, it can be detected. Catch and effort reported in logbooks can be compared with historic catch and effort data and with the results of research cruise data from the same year. The specific management response to highgrading will depend on

VOL
61
ISS
130
1996
JL
5
UMI

the extent of the highgrading and the benefits and costs of corrective measures, which can be implemented through the framework process. The Council has agreed to evaluate the degree and effects of highgrading in the first year of the fishery under Amendment 9 to determine if adjustments are necessary.

Comment: The basis for the statement that mandatory escape vents reduce the number of undersized lobsters caught in traps by 50 percent should be stated. NMFS should explain why the percentage of sublegal lobsters in the catch doubled between 1985 and 1994. The increasing percentage of undersized lobsters suggests that the fishery has substantially reduced the number of large, preferred lobsters.

Response: The information on the effectiveness of escape vents was obtained through NMFS research. The most likely explanation for an increase in the percentage of sublegal lobsters caught is that the spatial nature of the fishery has changed. Before 1990, the main fishing areas were Maro Reef and Necker Island. Sublegal and legal spiny lobster inhabit separate areas on Maro Reef; however, they occur together on the fishing grounds at Necker Island. After 1990, fishing effort was targeted primarily on Necker Island, thus increasing the relative proportion of sublegal spiny lobster in the catch.

Comment: Past harvest projections designed to achieve sustainable harvest levels have exceeded sustainable catch levels, and the approach of Amendment 9 is untested.

Response: There have not been errors in projections of sustainable harvest. The in-season adjustment, however, has resulted in very large and unpredictable variations in harvest quotas due to extreme sensitivity to changes in CPUE. For example, in 1994 the initial quota was 200,000 lobsters, but was adjusted down to 20,000 lobsters using data from the first month of fishing and a target CPUE of 1.0 lobster/trap haul. However, the CPUE dropped to only 0.9 lobster/trap haul. The resource has not been overfished, and the resource has grown since a quota system was implemented.

Comment: An explanation should be provided as to why in-season harvest adjustments are administratively cumbersome and how fishery management would be improved by eliminating the measure.

Response: The in-season adjustment caused wide and unpredictable changes in the quotas for the fishery. As a result, it was difficult for permit holders to plan their activities and for NMFS to manage the opening and closing of the fishery in a rational manner. The 1994 experience cited by the reviewer demonstrated that the old quota formula was overly sensitive to very small changes in catch rates, such that a 10 percent change in catch rate led to a 90 percent change in the quota.

Comment: The best way to assess and detect highgrading is through observers.

Response: The FMP provides authority for the Regional Director to place observers on permitted vessels, and observers may be placed if deemed necessary and appropriate. As previously explained, highgrading can be detected without using observers.

Comment: The variability of the constant harvest proposal may force some fishermen out of business and ultimately interfere with the current competitive market structure, or could result in a number of fishermen deciding not to participate. This could result in excessive market power for remaining businesses. Also, a few of the companies could merge or a large business could decide to enter the market if it sees the small harvesters exiting the market. This could adversely affect other small businesses, such as markets and restaurants.

Response: Most of the kinds of prospective problems foreseen by the SBA are also inherent in the current management scheme and would arise if the constant catch alternative were chosen. However, monopolization of the harvesting capacity is not likely given that any single entity may not now hold more than one permit. Both now and under the proposed alternative, it is possible for a large business to enter the fishery. It should be noted that NWHI lobster fishermen are generally unable to set market prices due to the relatively low overall volume of the fishery (the projected average harvest guideline is 288,000 lobsters per year); the strong competition from other sources of lobsters (Australia and Brazil especially); and the limited season (not more than 6 months per year). It seems unlikely, therefore, that a large firm would enter the fishery. It is even more unlikely that any single firm could set prices because of competition from international sources. Neither the fishery in aggregate nor any one participant can affect supply or price in the long run to the extent that the consumer would be impacted. It is expected that the difference in ultimate supply of lobster under either the constant harvest rate or the constant catch approach would not be large enough to affect price or markets. However, as the "use-or-lose" provision has been eliminated, greater flexibility is provided to permit holders to decide when (if at all) they want to enter the fishery. They are already free to transfer their permits. Thus the proposed management program should result in the more efficient producers being more likely to participate in the fishery.

Comment: The proposal may affect small businesses by interfering with their ability to make short-term and long-term plans. Since the businesses will have to decide each year about whether or not to operate, the businesses may be apprehensive about making administrative decisions, expanding their fleets, upgrading or repairing vessels, or selecting a product price that is beneficial to the economy. The variable nature of the proposal will discourage long-term business expansion. It may be difficult for the business to obtain capital for long-term projects that may require payment over a number of years.

Response: The concerns expressed are generic to this fishery and would exist if the constant catch alternative were selected. The constant catch alternative does not eliminate variability because any harvest guideline would be based on the exploitable biomass, which fluctuates naturally. Since harvest guidelines must be linked to the biological status of the lobster stocks, the FMP cannot guarantee any particular long-term harvest for the industry, or for a particular vessel or business. Expansion of fleets is not likely given the limit on the number of permits any one entity (defined to include a business) can hold. Most participants in the fishery are active in other fisheries and make a decision each year about whether to go lobster-fishing. In fact, the constant catch alternative would more likely discourage some prospective fishermen from entering the lobster fishery. The advantage of the constant harvest rate alternative, to these fishermen, is that some years with very strong recruitment may provide income that they would not expect in average years. It should be noted that the average expected harvest under any of the alternatives with a 10 percent risk level is not likely to be large enough to support a full year—s operation for a large portion of the fleet.

Comment: The constant harvest rate proposal is not the most viable alternative for small businesses. The net present value (NPV) analysis of the alternatives indicated that the constant catch alternative had the highest NPV. The constant catch approach involves less uncertainty, has low overall catch variability, and allows high catch rates. The SBA urges the Council to reconsider its decision and suggests that the Council execute the constant catch alternative.

Response: This reading of Table 7 of the Regulatory Impact Review is correct. However, in the Council's and NMFS' view, the constant harvest rate approach was preferred because it provides higher allowable catches with moderate to high CPUE, and takes greater advantage of years with exceptional lobster production, while still limiting uncertainty and providing full protection to stocks when production is low. While maximizing NPV was considered, tradeoffs were made based on biological and operational considerations, with the constant harvest rate option deemed the optimal strategy. Maximizing NPV was not the sole decision criterion. The Council recognizes that most lobster fishermen are not dependent on the lobster fishery. It is likely that only a few permit holders will be active most years and that most permit holders will not shift from other fisheries to lobster except in years of exceptional production. There would be greater incentive for permit holders to exit the fishery altogether if there were a constant catch approach with a relatively low and fixed harvest limit for a number of years. That is, with no potential for the harvest limit to increase for a period of time, many permit holders would appear more likely to leave the fishery, such that the concerns about the concentration of harvesting capacity and control over markets would be more likely to materialize. The constant harvest rate appears more likely to provide an incentive for potential harvest capacity to be maintained.

Changes From the Proposed Rule

When the harvest guideline is projected to be taken, NMFS will notify fishermen 5 days in advance that further landings are prohibited under § 681.29(b)(3). This is shorter notice than the 7 days provided in the former regulations at § 681.31(c)(4). The delay in prohibiting landings, after fishing for lobster has been prohibited, is intended to allow a minimum number of days for vessels to return to port. In most circumstances lobstermen in the NWHI do not need 7 days to get to port. Seven days notice provides additional time to fish, while weakening NMFS' ability to keep the harvest within the harvest guideline. Five days is sufficient time to get back to port from most areas under normal weather conditions. The requirement is for a minimum number of days and does not preclude NMFS from giving more than 5 days if circumstances warrant. Advance notice may be given by direct notice to fishermen or by publication in the **Federal Register.**

Classification

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, Office of Management and Budget (OMB), for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule amends a recordkeeping and reporting requirement, 15 CFR 902.1(b) is revised to reference correctly the new sections resulting from the consolidation.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register.**

This rule includes a reduction in collection-of-information requirements subject to the Paperwork Reduction Act. The current rule, which was approved by the Office of Management and Budget (OMB) under OMB Control No. 0648–0204, requires that permits be renewed annually. Under the final rule, permits are effective until modified, suspended, or revoked. The permit holder must advise NMFS of changes in permit information such as change of ownership or the vessel covered by the permit. The estimated burden decreases from ½ hour per year to ½ hour per 3 years. Vessel owners are no longer required to notify NMFS prior to departing on each fishing trip, a requirement approved under OMB Control No. 0648–0214. This reduces the estimated burden by 5 minutes per vessel per trip, or up to 30 minutes per year. This rule also mentions the daily lobster and sales reports which take 5 minutes to complete, respectively, and have been approved under OMB control number 0648–0214. The total burden is estimated to decrease by about 10 hours per year. Send comments regarding these burden estimates or any other aspect of these collection-of-information requirements, including suggestions for reducing the burden, to the Regional Director and to OMB (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS has prepared a FRFA as part of the regulatory impact review, which describes the impact this rule would have on small entities. To the extent that there are impacts, they are expected to be beneficial. Under the proposed harvest guideline, there will likely be fewer years in which the fishery is closed. The increased harvest guideline and reduction in costs may result in a 5 percent or greater increase in gross annual revenues. All vessels in this fishery (15 vessels have permits) are considered small entities. No new reporting, recordkeeping, or compliance requirements are imposed by this rule. No Federal rules are known to duplicate, overlap, or conflict with this rule. The reasons for, objectives of, and legal basis for this rule are described elsewhere in this preamble. Multiple alternatives are analyzed in the FRFA. A copy of the FRFA is available for public review (see **ADDRESSES**).

The Southwest Region, NMFS, completed a formal consultation under section 7 of the ESA to consider the possible impacts of the fishery on Hawaiian monk seals and other listed species and critical habitat. The BO concludes that the fishery under Amendment 9 is not likely to jeopardize the continued existence of the listed species or adversely effect critical habitat within the management area.

The Assistant Administrator finds that under 5 U.S.C. 553(d)(1), this rule (except for § 681.21) is not subject to a 30-day delay in effectiveness date as it relieves restrictions on lobster fishermen. Therefore, except for new § 681.12, which is effective on August 5, 1996, the rule is effective June 28, 1996.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 681

Fisheries, Reporting and recordkeeping requirements.

Nancy Foster, Ph.D.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR Chapter VI are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS 0648–204 and 0648–214

1. The authority citation for part 902 continues to read as follows:

VOL 61 ISS 130 JL 5 1996 UMI

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b), the table is amended by removing in the left column under 50 CFR, the entry "681.10", and in the right column the corresponding control number.

50 CFR CHAPTER VI

In § 902.1, paragraph (b), the table, in the entries for 50 CFR in the left column, the following entry and corresponding OMB number are removed: "681.10".

PART 681—WESTERN PACIFIC CRUSTACEAN FISHERIES

1. The authority citation for part 681 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 681.2, the definitions of "Final quota", "Initial quota", "Processing", "Processor", "Receiving Vessel", "Tail width of slipper lobster", "Tail width of spiny lobster", and "U.S.-harvested lobster" are removed; the definition of "Harvest guideline" is added in alphabetical order, and the definition of "Slipper lobster" is revised to read as follows:

§ 681.2 Definitions.

* * * * *

Harvest guideline means a specified numerical harvest objective.

* * * * *

Slipper lobster means any crustacean of the family *Scyllaridae*.

* * * * *

3. In § 681.4, paragraphs (b) (2), (d), and (f) are revised, paragraph (g) is removed, and paragraphs (h) through (l) are redesignated as paragraphs (g) through (k) respectively, to read as follows:

§ 681.4 Permits.

* * * * *

(b) * * *

(2) Each application must be submitted on a Southwest Region Federal Fisheries application form obtained from the Pacific Area Office containing all the necessary information, attachments, certification, signature, and fees.

* * * * *

(d) *Change in application information.* Any change in information on the permit application form submitted under paragraph (b)(2) of this section must be reported to the Pacific Area Office at least 10 days before the effective date of the change. Failure to report such change is a basis for permit sanctions.

* * * * *

(f) *Expiration.* Permits issued under this section will remain valid indefinitely unless transferred, revoked, suspended, or modified under 15 CFR part 904.

* * * * *

4. In § 681.5, paragraphs (b) and (d) are removed, paragraphs (c) and (e) are redesignated as paragraphs (b) and (c) respectively, and paragraph (a) and newly redesignated paragraph (b) are revised to read as follows:

§ 681.5 Recordkeeping and reporting.

(a) *Daily Lobster Catch Report.* The operator of any vessel engaged in commercial fishing for lobster subject to this part must maintain on board the fishing vessel, while fishing for lobster, an accurate and complete NMFS Daily Lobster Catch Report on a form provided by the Regional Director. All information specified on the form, which has been approved under the Paperwork Reduction Act, must be recorded on the form within 24 hours after the completion of the fishing day. The Daily Lobster Catch Reports for a fishing trip must be submitted to the Regional Director within 72 hours of each landing of lobsters.

(b) *Lobster Sales Report.* The operator of any vessel engaged in commercial fishing for lobster subject to this part must submit to the Regional Director, within 72 hours of off-loading of lobster, an accurate and complete Lobster Sales Report on a form provided by the Regional Director, and attach packing or weigh-out slips provided to the operator by the first-level buyer(s), unless the packing/weigh-out slips have not been provided in time by the buyer(s). The form, which has been approved under the Paperwork Reduction Act, must be signed and dated by the vessel operator.

* * * * *

5. In § 681.7, paragraphs (a)(5), (b)(2) through (b)(4) are removed, paragraphs (b)(5) through (b)(14) are redesignated as paragraphs (b)(2) through (b)(11) respectively, and paragraphs (b)(1)(i) through (b)(1)(v), newly redesignated paragraphs (b)(6), (b)(7), (b)(9), and (b)(11) are revised to read as follows:

§ 681.7 Prohibitions.

* * * * *

(b) * * *

(1) * * *

(i) Without a limited access permit issued under § 681.28;

(ii) By methods other than lobster traps or by hand for lobsters, as specified in § 681.22;

(iii) From closed areas for lobsters, as specified in § 681.21;

(iv) During a closed season, as specified in § 681.27; or

(v) After the closure date, as specified in § 681.29(b)(3), and until the fishery opens again in the following calendar year.

* * * * *

(6) Leave a trap unattended in the Management Area except as provided in § 681.22(f).

(7) Maintain on board the vessel or in the water, more than 1200 traps per fishing vessel, of which no more than 1100 can be assembled traps, as specified in § 681.22(e).

* * * * *

(9) Land lobsters taken in Permit Area 1 after the closure date, as specified in § 681.29 (b)(3), until the fishery opens again the following year.

* * * * *

(11) Refuse to make available to an authorized officer and employee of NMFS designated by the Regional Director for inspection and copying any records that must be made available in accordance with § 681.11(a).

* * * * *

6. Section 681.10 is revised to read as follows:

§ 681.10 Observers.

All fishing vessels subject to this part must carry an observer when requested to do so by the Regional Director.

7. In § 681.11, paragraph (a) introductory text is revised to read as follows:

§ 681.11 Availability of records for inspection.

(a) Upon request, any first-level buyer must immediately allow an authorized officer and any employee of NMFS designated by the Regional Director, to access, inspect, and copy all records relating to the harvest, sale, or transfer of management unit species taken by vessels that have permits issued under this part or that are otherwise subject to this part, including, but not limited to information concerning:

* * * * *

8. Section 681.12 is added effective (insert 30 days after publication in the **Federal Register**) to subpart A to read as follows:

§ 681.12 Framework procedures.

(a) *Introduction.* New management measures may be added through rulemaking if new information demonstrates that there are biological, social, or economic concerns in Permit Areas 1, 2, or 3. The following framework process authorizes the implementation of measures that may affect the operation of the fisheries, gear, harvest guidelines, or changes in catch and/or effort.

(b) *Annual report.* By June 30 of each year, the Council-appointed Crustaceans Plan Team will prepare an annual report on the fisheries in the management area. The report shall contain, among other things, recommendations for Council action and an assessment of the urgency and effects of such action(s).

(c) *Procedures for established measures.* (1) Established measures are management measures that, at some time, have been included in regulations implementing the FMP, and for which the impacts have been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 9 to the FMP, the Council may recommend to the Regional Director that established measures be modified, removed, or re-instituted. Such recommendation shall include supporting rationale and analysis, and shall be made after advance public notice, public discussion, and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Director.

(d) *Procedure for New Measures.* (1) New measures are management measures that have not been included in regulations implementing the FMP, or for which the impacts have not been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 9 to the FMP, the Council will publicize, including by **Federal Register** notification, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a **Federal Register** document summarizing the Council's deliberations, rationale, and analysis for the preferred action, and the time and place for any subsequent Council meeting(s) to consider the new measure. At subsequent public meeting(s), the Council will consider public comments and other information received to make a recommendation to the Regional Director about any new measure. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Director.

9. In Subpart B, §§ 681.21 and 681.22 are removed and §§ 681.23 through 681.32 are redesignated as §§ 681.21 through 681.30, respectively.

10. In newly redesignated § 681.25, in paragraphs (b) and (g)(1), the words "He" and "he" are removed and the words "The Regional Director" and "the Regional Director" are added in their place, respectively.

11. In newly redesignated § 681.26, in paragraphs (a) introductory text, (b)(1), and (b)(3), the words "he", "He", and "He" are removed and the words "the Regional Director", "The Regional Director", and "The Regional Director" are added in their place, respectively.

12. In newly redesignated § 681.28, paragraphs (b) and (c) are removed, paragraphs (d), (e), and (f) are redesignated as paragraphs (b), (c), and (d), respectively, and paragraphs (a)(8) and newly redesignated paragraph (c) are revised to read as follows:

§ 681.28 Limited access management program.

(a) * * *

(8) A limited entry permit has no fixed expiration date.

* * * * *

(c) *Replacement of a vessel covered by a limited access permit.* A limited access permit issued under this section may, without limitation as to frequency, be transferred by the permit holder to a replacement vessel owned by that person.

* * * * *

13. In newly redesignated § 681.29, the section heading is revised, and paragraph (c) is removed, paragraph (d) is redesignated as paragraph (c), and paragraphs (a) and (b) are revised to read as follows:

§ 681.29 Harvest limitation program.

(a) *General.* A harvest guideline for Permit Area 1 will be set annually for the calendar year and shall:

(1) Apply to the total catch of spiny and slipper lobsters.

(2) Be expressed in terms of numbers of lobsters.

(b) *Harvest guideline.* (1) The Regional Director shall use information from daily lobster catch reports and lobster sales reports from previous years, and may use information from research sampling and other sources, to establish the annual harvest guideline in accordance with the FMP.

(2) NMFS shall publish a document indicating the annual harvest guideline in the **Federal Register** by March 31 each year, and shall use other means to notify permit holders of the harvest guideline for the year.

(3) The Regional Director shall determine, on the basis of the information reported to NMFS during the open season by the operator of each vessel fishing, when the harvest guideline will be reached. Notice of this determination, with a specification of the closure date after which fishing for lobster or further landings of lobster taken in Permit Area 1 is prohibited, will be provided to each permit holder and operator of each permitted vessel or announced in the **Federal Register**. At least 5 days advance notice of the effective date of the prohibition on landings will be given.

* * * * *

14. Newly redesignated § 681.30 is revised to read as follows:

§ 681.30 Five-year review.

The Council, in cooperation with NMFS, will conduct a review of the effectiveness and impacts of the NWHI management program, including biological, economic, and social aspects of the fishery, by July 1, 2001.

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Proposed Rules

Federal Register
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Friday, July 5, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 210, 220, 225 and 226

RIN 0584–AC15

National School Lunch Program, School Breakfast Program, Child and Adult Care Food Program and Summer Food Service Program for Children: Meat Alternates Used in the Child Nutrition Programs

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food and Consumer Service of the Department of Agriculture is proposing to amend regulations concerning the meal pattern requirements for the National School Lunch Program (NSLP), School Breakfast Program (SBP), Summer Food Service Program (SFSP) and Child and Adult Care Food Program (CACFP) to allow yogurt to be credited as a meat alternate for all meals. Currently, yogurt may only be credited as a meat alternate for the supplement (snack) meal patterns of the SFSP and CACFP. Under this proposal, four ounces of yogurt would satisfy one ounce of the meat/meat alternate requirement for breakfasts and lunches served under any of the Child Nutrition Programs. This proposal responds to numerous recommendations for additional meat alternates and provides local food service operations with greater flexibility in planning and preparing meals using low-fat meat alternates.

DATES: To be assured of consideration, comments must be postmarked on or before August 19, 1996.

ADDRESSES: Comments may be mailed to Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie or Charles Heise at the above address or by telephone at 703–305–2620.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the Food and Consumer Service (FCS) has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule provides greater flexibility to schools, institutions and homes participating in the NSLP, SBP, SFSP and CACFP rather than imposing more restrictive requirements upon them. The overall types and frequency of service of foods used in the meals served in these four programs would not be significantly affected by this rule. Currently, yogurt may be served as an additional, uncredited food which is used to complement meal pattern requirements to meet regional and ethnic food preferences and as a meat alternate only in the supplement meal patterns of the CACFP and the SFSP.

Catalog of Federal Assistance

The NSLP, SBP, SFSP and the CACFP are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555, 10.553, 10.559 and 10.558, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and final rule-related notice at 48 **Federal Register** (FR) 29112, June 24, 1983.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This proposed rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge to the provisions of this proposed rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the NSLP and SBP, the administrative procedures are set forth under the following regulations: (1) school food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR §§ 210.18(q) and 220.14(e); (2) school food authority appeals of FCS findings as a result of an administrative review must follow FCS hearing procedures as established pursuant to 7 CFR §§ 210.30(d)(3) and 220.14(g); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR § 235.11(b)) must follow the FCS Administrative Review Process as established pursuant to 7 CFR § 235.11(f). In the SFSP, (1) Program sponsors and food service management companies must follow State agency hearing procedures issued pursuant to 7 CFR 225.13; and (2) disputes involving procurement by State agencies and sponsors must follow administrative appeal procedures to the extent required by 7 CFR 225.17 and 7 CFR Part 3015. In the CACFP, (1) institution appeal procedures are set forth in 7 CFR 226.6(k); and (2) disputes involving procurement by State agencies and institutions must follow administrative appeal procedures to the extent required by 7 CFR 226.22 and 7 CFR Part 3015.

Information Collection

This proposed rule contains no new information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). The programs being amended are approved by OMB under the following control numbers: NSLP, 0584–0006; SBP, 0584–0012; SFSP, 0584–0280; and CACFP, 0584–0055.

Background

Sections 9(a), 13(f) and 17(g) of the National School Lunch Act (42 U.S.C. 1758(a); 1761(f); and 1766(g) and Section 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)(1)(A)) require the Secretary of Agriculture to set minimum nutritional requirements for meals and supplements served in the Child Nutrition Programs. The Department meets these requirements by requiring the use of menu planning alternatives for lunches and breakfasts designed to enable these meals, over time, to provide approximately one-third and one-fourth of the Recommended Dietary Allowances (RDA) for key nutrients, respectively. Although SFSP and CACFP meal patterns are not designed to satisfy a particular percentage of daily required nutrients, the program requirements are designed to provide nutritious and well-balanced meals and supplements.

On June 13, 1995, the Department published a final rule (60 FR 31188) to update the nutrition standards for the school meals programs and to provide local schools with a variety of menu planning systems to choose from in meeting these standards. Under the School Meals Initiative for Healthy Children, beginning in School Year 1996/1997, school lunches must provide over a week's time one-third of the RDA for key nutrients as well as one-third of the Recommended Energy Intake (calories) needed by children (7 CFR 210.10(b)(1) and (2)). The meals must also comply with the recommendations of the 1990 *Dietary Guidelines for Americans*, including limits on calories from fat (no more than 30 percent of total calories) and saturated fat (less than 10 percent of total calories) (42 U.S.C. 1758(f); 7 CFR 210.10(b)(3)). Breakfasts must provide one-fourth of the RDA and calories and meet the recommendations of the Dietary Guidelines (7 CFR 220.8(a)).

The updated regulations also provide school meal planners with various menu planning options: Nutrient Standard Menu Planning (NuMenus), Assisted Nutrient Standard Menu Planning (Assisted NuMenus) and a food-based system. Subsequent to publication of the updated regulation, section 2 of Public Law 104–149, the Healthy Meals for Children Act, provided for additional food-based alternatives. The Department will discuss the effects of this law when it issues guidance for implementation.

Since NuMenus and Assisted NuMenus require that schools analyze the nutrient content of meals rather than consider specific food components, the crediting rules applicable to meal patterns are no longer relevant for these meal planning options. As long as the nutrition standards are achieved, meal planners have wide latitude in determining the foods they will serve and the size of the portions. Crediting rules continue to be necessary under any food-based systems, however, to ensure that all components are available to children in sufficient quantities to meet all of the nutrition standards. The nutrition requirements and NuMenus and Assisted NuMenus options of the School Meals Initiative for Healthy Children are not currently applicable to meals and supplements served in the SFSP or CACFP.

Crediting of Yogurt

One long-standing crediting issue involves the appropriate use of yogurt in the Child Nutrition Programs' meal patterns. In 1981 (46 FR 44452, September 4, 1981), in response to requests from program participants (principally child care providers) and the food industry, the Department proposed that yogurt be allowed, at local option, to meet either the milk or meat/meat alternate requirement in the Child Nutrition Programs. This proposed provision, which was included as part of a larger proposed rulemaking dealing with crediting issues, generated responses from over 1,000 commenters, many of whom were concerned about sugar content, cost, acceptability and the lower iron levels in yogurt relative to other meat alternates. Ultimately, the Department decided to withdraw the entire proposed rulemaking (46 FR 48688, October 2, 1981).

The issue of yogurt resurfaced in 1985 when a proposed rule (50 FR 49933, December 6, 1985) to allow certain nuts and seeds (and any nut or seed butter) to be credited as meat alternates also solicited comments on crediting yogurt as a meat alternate. In part, the Department requested comments on this program modification for a second time due to findings that the use of yogurt as or in main dish items was becoming increasingly popular in the diets of various segments of the population. That proposal requested comments on recommendations to permit plain or flavored yogurt, but not frozen yogurt. The Department stated that frozen yogurt was most commonly used as a dessert and, therefore, should not be allowed as a meat alternate (50 FR 49935).

The Department received 56 comments on this issue, 82 percent of which were in favor of allowing yogurt as a meat alternate in meals served in Child Nutrition Programs. However, while commenters were generally in favor of yogurt, some expressed the opinion that only "plain" yogurt should be allowed. The consensus opinion was that yogurt would be a nutritious addition to the meat alternates (comparable to cheese and cottage cheese) and a good source of calcium for lactose intolerant children while providing variety and flexibility to meals.

The commenters who were against allowing yogurt as a meat alternate were concerned about the nutritional equivalency of yogurt to meat (especially for iron) and the prevalence of sweetened yogurt. Several of these commenters suggested that yogurt might be more appropriate as a supplement item. Also, some commenters mentioned that yogurt is generally considered an alternative to milk as opposed to meat. The Department concluded that the responses to the 1985 proposal did not provide any new nutritional data or sufficient support for allowing yogurt as a meat alternate, and the decision was made to continue studying the issue.

The issue of yogurt's potential role in Child Nutrition Program meal patterns was not revisited again until 1989 when final regulations were published (54 FR 27151, June 28, 1989) to allow yogurt to be credited as a meat alternate for supplements in the CACFP and the SFSP. The Department limited the crediting of yogurt to snacks because of findings that yogurt was less appropriate as a meat alternate in other meals due to the sugar content of the majority of the yogurt products, the likelihood of decreased fluid milk consumption when yogurt was served in meals which required milk as a beverage, and yogurt's inherently low iron content (54 FR 27152).

Since the 1989 rulemaking, the Department has continued to receive requests from Program participants and the food industry to allow yogurt as a creditable food for other meals. Most recently, the Department received a number of comments on the proposed rules to implement the School Meals Initiative for Healthy Children urging that yogurt be authorized as a meat alternate in the food-based menu planning systems. In response to these comments, the Department stated in the preamble to the June 13, 1995, rule (60 FR 31206) that it would consider a future rulemaking on the role of yogurt in the Child Nutrition Programs.

Nutrition Issues

It is important to emphasize that yogurt made with lowfat milk can offer a low fat, low cholesterol source of protein and carbohydrates, while providing high levels of calcium, riboflavin and phosphorous.

In addition, the increasing popularity of yogurt (the per capita consumption in the United States has increased over 100% during the past decade) makes it an attractive addition to the meal

VOL 61 ISS 130 JL 5 1996 UMI

patterns for administrators and participants in the Child Nutrition Programs. The addition of yogurt as a meat/meat alternate may increase participation in programs and would certainly provide variety in the meal patterns while providing another non-meat option. Yogurt is also an excellent source of calcium for lactose intolerant individuals. Yogurt with active cultures is one of the few calcium-rich foods that is easily digested by most children. Finally, yogurt is an easy food to serve in that no preparation is needed; it comes pre-packaged. There are, however, several issues that need to be recognized.

Lower levels of some key nutrients—Yogurt is inherently low in two essential nutrients, iron and niacin, generally provided by the meat/meat alternate component. Yogurt, like other dairy products, is nutritionally inferior to meat or bread in these nutrients. Nevertheless, the Department recognizes that cheese and most of the fish used as a meat/meat alternate in the NSLP are also not major sources of iron. The crediting of an additional dairy product as a meat/meat alternate in the meal pattern may further reduce the iron level in the meals unless care is taken in menu planning or a nutrient analysis performed.

While recognizing these deficiencies, the Department is proposing that 4 ounces of flavored or unflavored yogurt be credited as 1 ounce of meat alternate in the NSLP, SBP, SFSP and CACFP. For example, under the enhanced food-based menu planning alternative (§ 210.10(k)), schools could serve 8 ounces of yogurt to fulfill the total 2 ounce meat/meat alternate requirement for children in grades 7–12 for lunch, or they might wish to use a 4 ounce portion of yogurt (one-half the meat/meat alternate requirement) served with a sandwich, hearty soup or salad which would have to contain a 1 ounce equivalent portion of a meat/meat alternate. For a school breakfast, 4 ounces of yogurt might be served to fulfill the 1 ounce meat/meat alternate for grades K–12. Used in these ways, yogurt could provide food service managers with additional variety of foods in their menus that would reflect changing food consumption habits and recognize the diversity of regional, cultural and ethnic food preferences.

Consumption of fluid milk—The Department has some concerns about the effects of yogurt service on fluid milk consumption. Fluid milk consumption could decrease if both milk and yogurt are served in the same meal. While another dairy food, cheese, has been allowed to be credited as a meat/meat alternate for years, it is more likely to be consumed with fluid milk due to organoleptic differences. In a case study: *Yogurt Introduction in Michigan in Public Schools*, published in August 1991 by the Michigan Milk Producers Association, 120 students were observed in order to assess the willingness of the students to select and consume yogurt and the effects that choice would have on the selection of other NSLP items. Fifty-three percent chose milk, 49 percent chose yogurt and only 2 percent chose both.

Cost—Cost is also a consideration for programs that might choose to serve yogurt as a meat/meat alternate. In the Michigan study cited above, one of the objectives was to assess the willingness of food service directors to place yogurt on the menu as an alternate to milk. School district participation was much lower than anticipated by the research team. In the initial survey, 29 schools indicated a willingness to be included in the study. After contact with each school, only seven actually participated. The cost of serving yogurt was the reason schools gave for their inability and refusal to participate.

Conclusion

The Department wishes to stress that yogurt is being proposed as a meat/meat alternate in response to numerous requests from food service professionals and participants for increased flexibility in menu planning and to meet regional and ethnic food preferences. There are numerous products and formulations available in the yogurt market, and some may be more appropriately utilized as a meat alternate than others. The Department is aware that many of the yogurt products that could satisfy the regulatory requirements as the meat/meat alternate portion of the meal are actually more like dessert items. In proposing this rule, the Department fully expects that schools and institutions will exercise good judgment in the type of yogurt products selected.

Finally, this proposed rule applies only to commercially prepared products which meet the Standard of Identity for yogurt as established by the Food and Drug Administration in the Code of Federal Regulations for yogurt, lowfat yogurt and nonfat yogurt, 21 CFR 131.200, 21 CFR 131.203 and 21 CFR 131.206, respectively. As in the 1989 final rule permitting yogurt as a meat alternate for snacks in the SFSP and CACFP, the Department's proposal does not apply to noncommercial and/or nonstandardized yogurt products, such as frozen yogurt, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruit and/or nuts or similar products.

List of Subjects

7 CFR Part 210

Food assistance programs, National School Lunch Program, Commodity School Program, Grants programs-social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 220

Food assistance programs, School Breakfast Program, Grants programs-social programs, Nutrition, Children, Reporting and recordkeeping requirements.

7 CFR Part 225

Food assistance programs, Grant programs—health, infants and children, Reporting and Recordkeeping requirements.

7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, infants and children, Surplus agricultural commodities.

Accordingly, the Department proposes to amend 7 CFR Part 210, 220, 225 and 226 as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for Part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In § 210.2 a new definition for *Yogurt* is added in alphabetical order to read as follows:

§ 210.2 Definitions.

* * * * *

Yogurt means commercially prepared coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements and to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration's Standard of Identity for yogurt, lowfat yogurt, and nonfat yogurt, 21 CFR 131.200, 21 CFR 131.203, 21 CFR 131.206, respectively.

3. In § 210.10

a. the meat or meat alternate section in the first column of the table in paragraph (k)(2) is amended by adding a new entry for yogurt after the entry for "Peanut Butter or other nut or seed butters";

b. new paragraph (k)(3)(iii) is added;

c. paragraph (n)(3)(iv) is amended by removing the words "in the snack only" from the first sentence of footnote 4 in the "Meal Supplement Chart for Children".

The additions read as follows:

§ 210.10 Nutrition standards for lunches and menu planning methods.

* * * * *

(k) *Food-based menu planning.* * * *

Meal component	Minimum quantities required for Ages 1–2	Preschool	Grades K–6	Grades 7–12	Option for Grades K–3
Meat or Meat Alternate (quantity of the edible portion as served). * * *					
Yogurt, plain or flavored, unsweetened or sweetened.	4 oz. or ½ cup	6 oz. or ¾ cup	8 oz. or 1 cup	8 oz. or 1 cup	6 oz. or ¾ cup.

* * * * *

(3) * * *

(iii) Yogurt may be used to meet all or part of the meat/meat alternate requirement. Yogurt served may be either plain or flavored, unsweetened or sweetened. Noncommercial and/or nonstandardized yogurt products, such as frozen yogurt, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruit and/or nuts or similar products shall not be credited. Four ounces (weight) or ½ cup (volume) of yogurt fulfills the equivalent of one ounce of the meat/meat alternate requirement in the meal pattern.

* * * * *

4. In § 210.10a:

a. the meat or meat alternate section in the first column of the table in paragraph (c) is amended by adding a new entry for yogurt after the entry for "Peanut Butter or other nut or seed butters";

b. new paragraph (d)(2)(iii) is added;

c. paragraph (j)(3) is amended by removing the words "in the snack only" from the first sentence of footnote 4 in the "Meal Supplement Chart for Children."

The additions read as follows:

§ 210.10a Lunch components and quantities for the meal pattern.

* * * * *

(c) *Minimum required lunch quantities.* * * *

School Lunch Pattern—Per Lunch Minimums

Food components and food items	Minimum quantities Group I, ages 1–2, (preschool)	Group II, ages 3–4 (Preschool)	Group III, ages 5–8 (K–3)	Group IV, age 9 and older (4–12)	Recommended quantities: Group V, 12 years and older (7–12)
Meat or Meat Alternate (quantity of the edible portion as served): * * *					
Yogurt, plain or flavored, unsweetened or sweetened.	4 oz. or ½ cup	6 oz. or ¾ cup	6 oz. or ¾ cup	8 oz. or 1 cup	12 oz. or 1½ cup.

* * * * *

(d) *Lunch components.* * * *

(2) *Meat or meat alternate.* * * *

(iii) Yogurt may be used to meet all or part of the meat/meat alternate requirement. Yogurt served may be either plain or flavored, unsweetened or sweetened. Noncommercial and/or nonstandardized yogurt products, such as frozen yogurt, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruit and/or nuts or similar products shall not be credited. Four ounces (weight) or ½ cup (volume) of yogurt fulfills the equivalent of one ounce of the meat/meat alternate requirement in the meal pattern.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for Part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

2. In § 220.2 a new paragraph (bb) is added to read as follows:

§ 220.2 Definitions

* * * * *

(bb) *Yogurt* means commercially prepared coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements and to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration's Standard of Identity for yogurt, lowfat yogurt, and nonfat yogurt, 21 CFR 131.200, 21 CFR 131.203, 21 CFR 131.206, respectively.

3. In § 220.8, the meat or meat alternate section in the first column of the table in paragraph (g)(2) is amended by adding a new entry for yogurt after the entry for "Nut and/or seeds" to read as follows:

§ 220.8 Nutrition standards for breakfast and menu planning alternatives.

* * * * *

(g) *Food-based menu planning.* * * *

(2) *Minimum quantities.* * * *

VOL 61 ISS 130 JL 5 1996 UMI

Meal component	Minimum Quantities Required For: Ages 1–2	Preschool	Grades K–12	Option for grades 7–12
. . . . .				
Meat or Meat Alternates * * * Yogurt, plain or flavored, unsweetened or sweetened.	2 oz. or ¼ cup	2 oz. or ¼ cup	4 oz. or ¼ cup	4 oz. or ½ cup.

* * * * *

4. In § 220.8a, the meat or meat alternate section in the first column of the table in paragraph (a)(2) is amended by adding a new entry for yogurt after the entry for "Nuts and/or seeds" to read as follows:

§ 220.8a Breakfast components and quantities for the meal pattern.

(a) * * *

(2) * * *

SCHOOL BREAKFAST PATTERN

[Required minimum serving sizes]

Food components/items	Ages 1 and 2	Ages 3, 4, and 5	Grades K–12
. . . . .			
Meat/Meat Alternates: * * * Yogurt, plain or flavored, unsweetened or sweetened.	2 oz. or ¼ cup	2 oz. or ¼ cup	4 oz. or ½ cup

* * * * *

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for Part 225 continues to read as follows:

Authority: Sec. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

2. In § 225.16.

a. the Meat and Meat Alternates (Optional) section of the table in paragraph (d)(1) is amended by adding the word "or" and a new entry for yogurt after the entry for "Peanut Butter or an equivalent quantity of any combination of meat/meat alternate";

b. the Meat and Meat Alternates section of the table in paragraph (d)(2) is amended by adding the word "or" and a new entry for yogurt after the entry for "Peanuts or soynuts or tree nuts or seed".

The additions read as follows:

§ 225.16 Meal service requirements.

* * * * *

(d) * * *

Breakfast

(1) * * *

Food components	Minimum amount
. . . . .	
Meat and Meat Alternates (Optional) * * * or Yogurt, plain or flavored, unsweetened or sweetened	4 oz. or ½ cup.

* * * * *

Lunch or Supper

(2) * * *

Food components	Minimum amount
Meat and Meat Alternates * * * or Yogurt, plain or flavored, unsweetened or sweetened.	8 oz. or 1 cup.

* * * * *

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for Part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

2. In § 226.20:

a. new paragraph (a)(2)(ii)(C) is added;

b. the Meat and Meat Alternates sections in the first column of the tables in paragraphs (c)(2) and (c)(3) are amended by adding the word "or" and a new entry for yogurt after the entries for "Peanuts or soynuts or tree nuts or seeds;"

c. paragraph (d)(1) is amended by adding a semicolon and the words "or 4 oz of yogurt" after the words "peanut butter".

The additions read as follows:

§ 226.20 Requirements for meals.

(a) * * *

(2) * * *

(ii) * * *

(C) Yogurt may be used to meet all or part of the meat/meat alternate requirement. Yogurt served may be either plain or flavored, unsweetened or sweetened. Noncommercial and/or nonstandardized yogurt products, such as frozen yogurt, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruit and/or nuts or similar products shall not be credited. Four ounces (weight) or 1/2 cup (volume) of yogurt fulfills the equivalent of one ounce of the meat/meat alternate requirement in the meal pattern.

* * * * *

(c) * * *

Lunch

(2) * * *

Food Components	Age 1 and 2	Age 3 through 5	Age 6 through 12 [1]	Adult Participants [9]
. . . . .				
Meat and Meat Alternates or Yogurt, plain or flavored, unsweetened or sweetened	4 oz. or ½ cup	6 oz. or ¾ cup	8 oz. or 1 cup	8 oz. or 1 cup.

* * * * *

(3) * * *

Supper

Food components	Children ages 1 and 2	Children ages 3 through 5	Children ages 6 through 12 [1]	Adult participants
Meat and Meat Alternates or Yogurt, plain or flavored, unsweetened or sweetened	4 oz. or ½ cup	6 oz. or ¾ cup	8 oz. or 1 cup	8 oz. or 1 cup.

* * * * *

Dated: June 27, 1996.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 96–16992 Filed 7–3–96; 8:45 am]

BILLING CODE 3410–30–P

Food Safety and Inspection Service

9 CFR Parts 319 and 381

[Docket No. 95–056N]

Public Health Hazard Analysis Board Report; Availability

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability of report; request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of a report prepared by the Public Health Hazard Analysis Board on "Bone Particles and Foreign Material in Meat and Poultry Products." The report contains an executive summary by the Public Health Hazard Analysis Board, which includes the Board's conclusions on the establishment of criteria for determining the safety of meat and poultry products containing bone particles and foreign materials such as glass, metal and plastic; a list of Board members and other participants; and a bibliography. FSIS is seeking comments on the need for and nature of any additional regulatory actions beyond those provided for in its meat and poultry regulations that should be taken regarding bone particle size and foreign material, such as glass, metal, and plastic, in boneless meat and poultry products deboned by hand or other means.

DATES: Comments will be accepted through August 19, 1996.

ADDRESSES: Interested persons may submit an original and two copies of written comments and requests for single copies of the report to: FSIS Docket Clerk, DOCKET #95–056N, Room 4352 South Agriculture Building, Washington, DC 20250–3700. Oral comments, as provided by the Poultry Products Inspection Act, can be given to Dr. Jill Hollingsworth, (202) 205–0293. The report and comments will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 1:00 p.m. and from 2:00 p.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Jill Hollingsworth, Deputy Director, Epidemiology and Emergency Response Program, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 2168 South Building, Washington, DC 20250–3700, (202) 205–0293.

SUPPLEMENTARY INFORMATION: FSIS is announcing the availability of a report prepared by the Public Health Hazard Analysis Board (the Board) on "Bone Particles and Foreign Material in Meat and Poultry Products." The Board consists of public health, medical, and food safety experts in FSIS and other government agencies. Private medical specialists were contacted by the Board for additional information on the subject. The Board was charged with determining health and safety concerns related to bone particles or foreign material in boneless meat and poultry products. Consequently, the Board provided criteria for use by the Agency to determine the existence of a potential safety hazard, due to bone particles or foreign material, such as glass, metal, and plastic, in meat or poultry products, that warrant recall of the affected product in order to protect the public health.

The Board determined that bone particles less than 0.4 inches (10 mm) would not be considered a safety hazard. Bone particles from 0.4 to 0.8 inches (10 to 20 mm) may present a discomfort, but would be a low risk for a safety hazard, and bone particles greater than 0.8 inches (20 mm) have the potential to be a safety hazard and may cause injury to consumers. According to the Board, any occurrence of foreign material, such as glass, metal, and plastic, in meat or poultry products, has the potential to be a safety hazard and should be evaluated on a case-by-case basis to determine whether it presents such a hazard.

The Board agreed that boneless product produced in accordance with the provisions in 9 CFR 319.5 for mechanically-separated meat (MSM) and provisions in 9 CFR 381.173 (59 FR 62629, December 6, 1994, and 59 FR 55962, November 3, 1995) for mechanically-separated poultry (MSP) to be effective on November 4, 1996, does not present a safety hazard. Regulatory requirements limit bone particle size in MSM and MSP which is produced by crushing or grinding of bone before removal of edible tissue. Provisions in 9 CFR 319.5 for MSM require that at least 98 percent of bone particles present in MSM be no greater than 0.2 inches (5 mm) in their greatest dimension, with no bone particles larger than 0.034 inches (0.85 mm) in their greatest dimension. Similar provisions in 9 CFR 381.173 for MSP require that at least 98 percent of bone particles present in MSP be no greater than 0.06 inches (1.5 mm) in their greatest dimension, with no particles greater than 0.08 inches (2 mm) in their greatest dimension. FSIS has concluded that

VOL 61 ISS 130 JL 5 1996 UMI

these bone particle size limitations represent good manufacturing practices and reflect processes that are in control and protect finished product quality. Because bone particles are extremely small in MSM and MSP, they would not be considered to be a safety hazard.

Products containing bone fragments larger than 0.8 inches (20 mm) are of regulatory concern to FSIS, and the Agency will consider regulatory action, as appropriate, to protect consumers. There are currently no regulations that specifically address the limiting of bone particle size for boneless meat and poultry products deboned by hand, or for meat produced by an advanced mechanical method that does not involve crushing or grinding the bones (59 FR 62551, December 6, 1994). Safety determinations about boneless product produced by these methods are made on an ad hoc basis, based on the criteria recommended by the Board. Companies producing boneless meat and poultry products deboned by hand or produced by advanced mechanical separation generally employ manufacturing practices that keep the size of bone particles well below the 0.8-inch (20-mm) level considered to be a potential safety hazard by the Board.

FSIS's proposed rule, "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems," (60 FR 6774, February 3, 1995) proposes requiring meat and poultry processors to establish HACCP systems of preventive controls to ensure the safety of foods they produce. This would include the addressing of potential physical hazards in meat and poultry products, such as bone particles, in HACCP plans. The proposed HACCP system would place an affirmative duty on companies to establish procedures to prevent bone particles of foreign material from presenting a safety hazard in boneless meat and poultry products.

FSIS invites comments on whether additional regulatory action is needed, beyond that provided by FSIS in its regulations, regarding bone particle size and foreign material, such as glass, metal, or plastic, in boneless meat and poultry products deboned by hand, produced by advanced mechanical separation, or by other procedural means not identified in current meat and poultry regulations.

Done at Washington, DC, on: June 27, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–17001 Filed 7–03–96; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

RIN 1076–AD76

Law and Order on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is proposing to amend its regulations governing Courts of Indian Offenses to clarify the authority of the Assistant Secretary for Indian Affairs to establish the courts, the jurisdiction of the courts, their relationship to tribal governments and the Department of the Interior, and to provide those courts with an updated code of laws.

DATES: Comments must be received on or before October 3, 1996.

ADDRESSES: Comments are to be mailed to Bettie Rushing, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW, MS 2611–MIB, Washington, DC 20240; or, hand delivered to Room 4603 at the same address.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Bureau of Indian Affairs (202) 208–3463.

SUPPLEMENTARY INFORMATION:

Background

The comments received in response to a prior proposed rule published on October 24, 1985, and published as a final rule on October 21, 1993, included suggestions for the inclusion of new provisions in the Law and Order Code (Code). Because the inclusion of the suggested provisions in the final rule would have constituted new matter adopted without opportunity for general public comment, a separate rule is now proposed for those provisions to be added to the Code.

This proposed rule (1) provides for the establishment of courts when tribal justice systems are not functioning, (2) changes the method of listing Indian reservations to which the Code applies, (3) clarifies the provision on jurisdictional limitations which excludes from jurisdiction under this part Federal employees acting within the scope of their employment, (4) adds provisions for drug abuse, abuse of psychotoxic substances, child abuse, prostitution, and family violence, and (5) increases the maximum penalties for various offenses in the Code.

The increased penalties are proposed in response to the law enforcement provisions of the Anti-Drug Abuse Act of 1986, amending the sentencing limitations of the Indian Civil Rights Act, 25 U.S.C. 1302. Indian may courts to impose maximum fines up to $5,000 and sentences of imprisonment up to one year.

Inclusion in § 11.100, Listing of Courts of Indian Offenses, does not defeat the inherent sovereignty of a tribe to establish tribal courts and exercise jurisdiction under tribal law. *Tillett* v. *Lujan*, 931 F.2d 636, 640 (10th Cir. 1991) (C.F.R. courts "retain some characteristics of an agency of the federal government" but they "also function as tribal courts"); *Combrink* v. *Allen*, 20 Indian L. Rep. 6029, 6030 (Ct. Ind. App., Tonkawa, Mar. 5, 1993) (C.F.R. court is a "federally administered tribal court"); *Ponca Tribal Election Board* v. *Snake*, 17 Indian L. Rep. 6085, 6088 (Ct. Ind. App., Ponca, Nov. 10, 1988) ("The Courts of Indian Offenses act as tribal courts since they are exercising the sovereign authority of the tribe for which the court sits."). Such exercise of inherent sovereignty and the establishment of tribal courts shall comply with the requirements set forth in 25 CFR § 11.100(c).

A clarifying sentence has been added to the jurisdictional limitations section to express unambiguously that Federal and state employees acting within the scope of their employment are not subject to the jurisdiction of Courts of Indian Offenses.

The new offenses are abuse of psychotoxic chemical solvents and dangerous drug offense. They are also proposed in response to the Anti-Drug Abuse Act, and are intended to enhance the ability of law enforcement agencies on Indian reservations to prevent and penalize the traffic of illegal narcotics and the misuse of dangerous substances. The two sections were suggested by the Anadarko Area Law Enforcement Office of the Bureau of Indian Affairs. No specific exception for peyote is included because peyote for religious use by the Native American Church is excluded from prosecution under the referenced federal statute.

Prostitution was inadvertently omitted from the revision of the Law and Order Code and is, therefore, included here. The crime is a continuation of the provision contained in 25 CFR Part 11 which has been in force for many years, with the addition of the crime of pandering which is intended to facilitate the prosecution of persons procuring for prostitutes.

Child abuse and neglect has been added as a separate criminal offense. Its inclusion was inspired by the Draft Child/Family Protection Code developed by the National Indian Justice Center for the Bureau of Indian Affairs. Although there is some overlapping of these offenses and the sexual assault provisions of the revised Law and Order Code, the abuse provision is much broader and will give prosecutors more flexibility in protecting children from abuse. The mandatory reporting provision was added to conform with the Bureau's administrative reporting requirements.

The family violence subpart establishes a new procedure for acts of family violence. This approach to family violence reflects the decision set forth in *Thurman* v. *City of Torrington*, 595 F. Supp. 1521 (D. Conn. 1984). Thurman filed an action against the city alleging a violation of equal protection for the city's failure to provide the same type of protection to persons in a family relationship as it provides to other abused persons. The court, finding that Thurman had a cause of action under the equal protection clause, held that the city had an affirmative duty to treat family partners as it would other abused persons. The knowledge that arrests deter subsequent family violence has resulted in all states passing some type of special legislation for acts of family violence. Forty-eight states have warrantless arrest provisions and many have special protective orders. This subpart is drawn from those statutes. Although much of this subpart is procedural, we have not included it in the procedures sections. Because the procedure is complicated, comprehensive and applicable to only one general situation, we concluded that it deserved its own subpart under Part 11.

The proposed rule will not require additional staffing for these courts. It is not anticipated that this revision will have a significant effect on the annual caseload of these courts because it does not enlarge their jurisdiction. Prosecutors must routinely use their discretion in balancing their workloads with the time and prosecutorial resources available. Likewise, in sentencing convicted defendants, judges are acutely aware of the constraints imposed by limited jail space.

Courts of Indian Offenses are funded in their entirety by the Federal Government and do not receive additional funding from tribal governments. Because we do not foresee any economic effect on Courts of Indian Offenses as a result of these amendments, there will be no requirement of additional outlays by the Federal Government or the tribes affected by the proposed amendments.

Certification and Evaluation

The authority to issue this amendment is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9, and 25 U.S.C. 13 which authorize appropriations for "Indian judges."

Publication of the proposed rule by the Department of the Interior (Department) provides the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding the proposed rule to the location identified in the "addresses" section of this document.

Executive Order 12988

The Department has determined that this proposed rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This proposed rule is not a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Executive Order 12630

The Department has determined that this proposed rule does not have "significant" takings implications. The proposed rule does not pertain to "taking" of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this proposed rule does not have significant federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

NEPA Statement

The Department has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

This proposed rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Paperwork Reduction Act of 1995

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements.

Drafting Information

The primary authors of this document are Neil R. McDonald, Office of the Solicitor, Division of Indian Affairs, and Bettie Rushing, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior.

List of Subjects in 25 CFR Part 11

Courts, Indians—law, Law enforcement, Penalties.

For the reasons set out in the preamble, Part 11 of Chapter 1 of Title 25 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 11—COURTS OF INDIAN OFFENSES AND LAW AND ORDER CODE

1. The authority citation for 25 CFR Part 11 continues to read as follows:

Authority: 5 U.S.C. 301; R.S. 463; 25 U.S.C. 2; R.S. 465; 25 U.S.C. 9; 42 Stat. 208; 25 U.S.C. 13; 38 Stat. 586; 25 U.S.C. 200.

Subpart A—Application; Jurisdiction

2. Section 11.100 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 11.100 Where are Courts of Indian Offenses established?

(a) Unless indicated otherwise in this title, the regulations in this part apply to the Indian country (as defined in 18 U.S.C. 1151) occupied by the following tribes:

(1) Red Lake Band of Chippewa Indians (Minnesota).

(2) Confederated Tribes of the Goshute Reservation (Nevada).

(3) Lovelock Paiute Tribe (Nevada).

(4) Te-Moak Band of Western Shoshone Indians (Nevada).

(5) Yomba Shoshone Tribe (Nevada).

(6) Kootenai Tribe (Idaho).

(7) Shoalwater Bay Tribe (Washington).

(8) Eastern Band of Cherokee Indians (North Carolina).

(9) For the following tribes located in the former Oklahoma Territory (Oklahoma):

(i) Absentee Shawnee Tribe of Indians of Oklahoma

(ii) Apache Tribe of Oklahoma

(iii) Caddo Tribe of Oklahoma

(iv) Cheyenne-Arapaho Tribe of Oklahoma

(v) Citizen Band of Potawatomi Indians of Oklahoma

VOL 61 ISS 130 JL 5 1996 UMI

(vi) Comanche Tribe of Oklahoma (Except Comanche Children's Court)
(vii) Delaware Tribe of Western Oklahoma
(viii) Fort Sill Apache Tribe of Oklahoma
(ix) Iowa Tribe of Oklahoma
(x) Kaw Tribe of Oklahoma
(xi) Kickapoo Tribe of Oklahoma
(xii) Kiowa Tribe of Oklahoma
(xiii) Otoe-Missouria Tribe of Oklahoma
(xiv) Pawnee Tribe of Oklahoma
(xv) Ponca Tribe of Oklahoma
(xvi) Tonkawa Tribe of Oklahoma
(xvii) Wichita and Affiliated Tribes of Oklahoma.

(10) Hoopa Valley Tribe, Yurok Tribe, and Coast Indian Community of California (California Jurisdiction limited to special fishing regulations).

(11) Louisiana Area (includes Coushatta and other tribes in the State of Louisiana which occupy Indian country and which accept the application of this part);

Provided that this part shall not apply to any Louisiana tribe other than the Coushatta Tribe until notice of such application has been published in the **Federal Register**.

(12) For the following tribes located in the former Indian Territory (Oklahoma):
(i) Chickasaw Nation
(ii) Choctaw Nation
(iii) Thlopthlocco Tribal Town
(iv) Seminole Nation
(v) Eastern Shawnee Tribe
(vi) Miami Tribe
(vii) Modoc Tribe
(viii) Ottawa Tribe
(ix) Peoria Tribe
(x) Quapaw Tribe
(xi) Wyandotte Tribe
(xii) Seneca-Cayuga Tribe
(xiii) Osage Tribe.

(13) Ute Mountain Ute Tribe (Colorado).

(b) The purpose of the regulations in this part is to provide adequate machinery for the administration of justice for Indian tribes in those areas of Indian country where tribes retain jurisdiction over Indians that is exclusive of state jurisdiction but where tribal courts have not been established to exercise that jurisdiction or where tribal justice systems are not functioning.

(c) The regulations in this part continue to apply to tribes listed in § 11.100(a) until a law and order code which includes the establishment of a court system has been adopted by the tribe in accordance with its constitution and by-laws or other governing documents has become effective, and the Assistant Secretary—Indian Affairs or his or her designee has received a valid tribal enactment identifying the future effective date of the code's implementation. The effective date of the code's implementation must allow 60 days for publication of the amendment to § 11.100(a) which provides public notice of the change. The tribally established future effective date will also be published as the effective date of the change.

* * * * *

3. The headings of the following sections are revised to read as follows:

Section	Old heading	New heading
11.101	Prospective application of regulations.	When are these regulations effective?
11.102	Criminal jurisdiction; limitation of actions.	What is the criminal jurisdiction of the Court of Indian Offenses?
11.103	Civil jurisdiction; limitation of actions.	What is the civil jurisdiction of the Court of Indian Offenses?

4. Section 11.104 is amended by revising paragraphs (a) through (d) to read as follows:

§ 11.104 What are the jurisdictional limitations of the Court of Indian Offenses?

(a) No Court of Indian Offenses may exercise any jurisdiction over a Federal or state official that it could not exercise if it were a tribal court. The jurisdiction of Courts of Indian Offenses shall not extend to Federal or state employees acting within the scope of their employment.

(b) Unless otherwise provided by a resolution or ordinance of the tribal governing body of the tribe occupying the Indian country over which a Court of Indian Offenses has jurisdiction, no Court of Indian Offenses may adjudicate an election dispute or take jurisdiction over a suit against the tribe or adjudicate any internal tribal government dispute.

(c) A decision of the Court of Indian Offenses, acting as a tribal forum by resolution or ordinance of a tribal governing body under paragraph (b) of this section, must be given great weight by the Bureau of Indian Affairs in deciding who is a tribal official.

(d) A tribe may not be sued in a Court of Indian Offenses unless its tribal governing body explicitly waives its tribal immunity by tribal resolution or ordinance.

* * * * *

Subpart B—Courts of Indian Offenses; Personnel; Administration

5. Section 11.200 is amended by revising the heading and paragraph (c) to read as follows:

§ 11.200 What is the composition of the Court of Indian Offenses?

* * * * *

(c) Appeals shall be heard by a magistrate who was not involved in the trial of the case.

* * * * *

6. Section 11.201 is amended by revising the heading and paragraph (a) to read as follows:

§ 11.201 How are magistrates for the Court of Indian Offenses appointed?

(a) Each magistrate shall be appointed by the Assistant Secretary—Indian Affairs or his or her designee subject to confirmation by a majority vote of the tribal governing body of the tribe occupying the Indian country over which the court has jurisdiction. In the case of multi-tribal courts, the appointment of the magistrate is subject to confirmation by a majority of the tribal governing bodies of the tribes under the jurisdiction of a Court of Indian Offenses. Only the Assistant Secretary—Indian Affairs may grant a waiver of this paragraph when discord precludes confirmation, and appoint a magistrate for a term not to exceed one year.

* * * * *

7. The headings of the following sections are revised to read as follows:

Section	Old heading	New heading
11.202	Removal of magistrates.	How is a magistrate of the Court of Indian Offenses removed?
11.203	Court clerks	How are the clerks of the Court of Indian Offenses appointed and what are their duties?
11.205	Standard governing appearance of attorneys and lay counselors.	Are there standards for the appearance of attorneys and lay counselors?
11.206	Court records	Is the Court of Indian Offenses a court of record?
11.207	Cooperation of Bureau of Indian Affairs employees.	What are the responsibilities of Bureau of Indian Affairs employees?

Section	Old heading	New heading
11.208	Payment of judgments from individual Indian money accounts.	May Individual Indian Money accounts be used for payment of judgments?
11.209	Disposition of fines.	How does the Court of Indian Offenses dispose of fines?

Subpart C—Criminal Procedure

8. Section 11.315 is amended by revising paragraph (a) to read as follows:

§ 11.315 Sentencing.

(a) Any person who has been convicted in a Court of Indian Offenses of a criminal offense under the regulations of this part may be sentenced to one or a combination of the following penalties:

(1) Imprisonment for a period not to exceed the maximum permitted by the section defining the offense, which in no case shall be greater than one year.

(2) A money fine in an amount not to exceed the maximum permitted by the section defining the offense, which in no case shall be greater than five thousand dollars ($5,000).

* * * * *

Subpart D—Criminal Offenses

9. Section 11.450 is amended by revising paragraph (a) to read as follows:

§ 11.450 Maximum fines and sentences of imprisonment.

(a) A person convicted of an offense under the regulations in this part may be sentenced as follows:

(1) If the offense is a misdemeanor, to a term of imprisonment not to exceed one year or to a fine not to exceed five thousand dollars ($5,000), or both;

(2) If the offense is a petty misdemeanor, to a term of imprisonment not to exceed six months, and to a fine not to exceed five hundred dollars ($500), or both;

(3) If the offense is a violation, to a term of imprisonment not to exceed three months or to a fine not to exceed two hundred fifty dollars ($250), or both.

* * * * *

10. Sections 11.451 through 11.455 are added to read as follows:

§ 11.451 Abuse of psychotoxic chemical solvents.

(a) It shall be unlawful purposely to smell or inhale the fumes of any psychotoxic chemical solvent, or to possess, purchase, or attempt to possess or purchase any psychotoxic chemical solvent, with the intention of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system; or to sell, give away, dispense, or distribute, or offer to sell, give away, dispense, or distribute any psychotoxic chemical solvent knowing or believing that the purchaser or another intends to use the solvent in violation of this section.

(b) This section shall not apply to the inhalation of anesthesia for medical or dental purposes.

(c) As used in this section, "psychotoxic chemical solvent" includes any glue, gasoline, paint, hair spray, lysol, or other substance containing one or more of the following chemical compounds: acetone and acetate, benzene, butyl-alcohol, methyl ethyl, peptone, pentachlorophenol, petroleum ether, or other chemical substances capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance. The statement of listing of the contents of a substance packaged in a container by the manufacturer or producer thereof shall be proof of the contents of such substances without further expert testimony if it reasonably appears that the substance in such container is the same substance placed therein by the manufacturer or producer.

(d) Abuse of psychotoxic chemical solvents, as defined in this section, shall be punishable as a petty misdemeanor, and the court may order any person using psychotoxic chemical solvents for inhalation to be committed to a facility for treatment for a term not to exceed six months.

(e) Such psychotoxic chemical solvents kept or used in violation of this section are hereby declared to be contraband and upon proof of a violation, following public notice and an opportunity for any person claiming an interest therein to be heard, shall be forfeited to the government by order of the court.

§ 11.452 Dangerous drug offense.

(a) It shall be unlawful, except as authorized and controlled by Federal law, to manufacture, distribute, possess with intent to distribute, dispense, create, possess, or cultivate a controlled or a counterfeit substance; or to obtain or acquire possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge; or to knowingly or intentionally use any communication facility in committing any of the above prohibited acts.

(b) Controlled or counterfeit substances shall consist of the substances listed in 21 U.S.C. 812, and any other chemical substance, natural or artificial, defined as a controlled or dangerous substance, the possession, sale, distribution, or use of which is prohibited by Federal law.

(c) Each of the unlawful acts listed in paragraph (a) of this section shall be punishable as a misdemeanor. Upon conviction under this section for sales distribution, possession with the intent to distribute, manufacture with intent to sell, or cultivation with intent to distribute, banishment may also be imposed for a term not to exceed ten years.

(d) Any substance handled in violation of this section is deemed and declared to be contraband and upon proof of such a violation, after public notice and an opportunity for any person claiming an interest in the substance to be heard, shall be forfeited to the government by order of the court.

(e) Any personal property used to transport, conceal, manufacture, cultivate, or distribute the controlled dangerous substance in violation of this section shall be subject to forfeiture to the government by order of the court upon proof of such use, following public notice and opportunity for any person claiming an interest in the property to be heard.

§ 11.453 Prostitution.

A person who commits prostitution or pandering or who knowingly keeps, maintains, rents or leases, any house, room, tent, or other place for the purpose of prostitution is guilty of a misdemeanor.

§ 11.454 Child abuse and neglect.

(a) A person commits a misdemeanor if he or she inflicts abuse or neglect on a child. Child abuse or neglect includes:

(1) Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or is dead and such condition or death is not justifiably explained, or where the history given concerning such condition or death or circumstances indicate that such condition or death may not be the product of an accidental occurrence;

(2) Any case in which a child is subjected to sexual assault or molestation, sexual exploitation, or prostitution;

(3) Any case in which circumstances indicate that a child's health or welfare is harmed or threatened by negligent treatment or maltreatment by a person; and/or,

VOL 61 ISS 130 JL 5 1996 UMI

(4) Any case in which a child is in need of services because of the failure of the child's parent(s), legal guardian(s), or custodian(s) to provide adequate food, clothing, shelter, medical care, or supervision that a prudent parent would take.

(b) For purposes of this section, "child" means any individual who is not married and has not attained 18 years of age.

§ 11.455 Persons required to report child abuse and neglect.

(a) Any person having reasonable cause to know or suspect that a child was abused or neglected in Indian country shall report the incident. Any person shall also report any actions which would reasonably result in abuse or neglect.

(b) Any person who fails to report an instance of child abuse or neglect in Indian country of which he or she has knowledge or of which he or she should reasonably have knowledge is guilty of a misdemeanor. Any person who inhibits the making of a report is guilty of a misdemeanor.

(c) Any person making a report in good faith shall be immune from criminal and civil liability.

11. A new Subpart L is added to read as follows:

Subpart L—Child Protection and Family Violence Procedures

Sec.
11.1200 Child protection procedures.
11.1201 Family violence procedures.

Subpart L—Child Protection and Family Violence Procedures

§ 11.1200 Child protection procedures.

As required by the Indian Child Protection and Family Violence Prevention Act, 25 U.S.C. 3203, the following child protection procedures are established.

(a) *Reporting child abuse and neglect.* Oral reports of child abuse and neglect in Indian country must be made immediately to the local child protective services or local law enforcement.

(b) *Federal Bureau of Investigation.* If the report involves an Indian child or the person alleged to have abused or neglected the child is an Indian and the preliminary inquiry indicates a criminal violation has occurred, the local law enforcement agency (if other than the Federal Bureau of Investigation) must immediately report the incident to the Federal Bureau of Investigation.

(c) *Child protection report.* Within 36 hours, a written report must be prepared by the receiving agency. The report must include:

(1) The name, address, age, and sex of the child that is the subject of the report;

(2) The grade and the school in which the child is currently enrolled;

(3) The name and address of the child's parents or other persons responsible for the child's care;

(4) The name and address of the alleged offender;

(5) The name and address of the person who made the report to the agency;

(6) A brief narrative as to the nature and extent of the child's injuries, including any previously known or suspected abuse of the child or the child's siblings and the suspected date of the abuse; and,

(7) Any other information the agency or the person who made the report to the agency believes to be important to the investigation and disposition of the alleged abuse.

(d) *Investigation.* Any local law enforcement agency or local child protective services agency that receives a report alleging abuse or neglect described in § 11.454 must immediately initiate an investigation of such allegation and take appropriate steps to secure the safety and well-being of the child or children involved.

(e) *Investigative report.* Upon completion of the investigation of any report of alleged abuse that is made to a local law enforcement agency or local child protective services agency, such agency must prepare a final written report on such allegation.

(f) *Confidentiality.* The identity of any person making a report under this section must not be disclosed, without the consent of the individual, to any person other than a court of competent jurisdiction or an employee of the Indian tribe, state or Federal Government who needs to know the information in the performance of the employee's duties.

(g) *Complaint.* A complaint must be filed by a law enforcement officer.

§ 11.1201 Family violence procedures.

(a) *Warrantless arrest.* A law enforcement officer shall arrest a person and take that person into custody without a warrant when the officer has probable cause to believe that the person has committed a family violence act such as intentional or negligent infliction of bodily injury; unreasonable confinement; intimidation; cruel punishment resulting in physical harm, pain or mental anguish; any sexual contact intended to sexually gratify the person making the contact and which is without consent or obtained by intimidation or fraud; intentional infliction of threats, humiliation or intimidation; unauthorized or improper use of funds, property or other resources; or criminal trespass upon a spouse, former spouse, family member, present or former household member, or co-parent.

(b) *Definition of co-parent.* For purposes of this subpart "co-parent" means persons who have a child in common regardless of whether they have been married or have lived together at any time. For purposes of this subpart "family member" includes grandparents, aunts, uncles and cousins who are present or former household members.

(c) *Liability.* No law enforcement officer shall be held criminally or civilly liable for making an arrest pursuant to this subpart, provided he or she acts reasonably and in good faith.

(d) *Petition for order of protection.* A victim of a family violence act may petition the court under this subpart for an order of protection.

(1) The petition shall be made under oath or shall be accompanied by a sworn affidavit setting out specific facts describing the act of family violence.

(2) No petitioner is required to file for annulment, separation, or divorce as a prerequisite to obtaining an order of protection. However, the petition shall state whether any other family action is pending between the petitioner and the respondent.

(3) Standard simplified petition forms with instructions for completion shall be available to petitioners not represented by counsel. Law enforcement agencies shall keep such forms and make them available upon request to victims of family violence.

(e) *Emergency order of protection.* Upon the filing of a petition for order of protection:

(1) The court may immediately grant an ex parte emergency order of protection if there is clear and convincing evidence from the specific facts shown by the affidavit or by the petition that a family violence act has occurred;

(2) The court shall cause the emergency order of protection together with notice of hearing to be served immediately on the person alleged to have committed a family violence act; and,

(3) The court shall hold a hearing on the question of continuing the order within ten days of granting the emergency order of protection; or

(4) If an ex parte order is not granted, the court shall serve notice to appear upon both parties and hold a hearing on the petition for order of protection within seventy-two hours after the filing of the petition; if notice of hearing cannot be served within seventy-two hours, a temporary order of protection may be issued;

(5) If notice of hearing cannot be served within 10 days, the temporary order of protection shall be automatically extended for ten days; and,

(6) If after the 10-day extension notice to appear cannot be served, the temporary order of protection shall expire.

(f) *Order of protection.* Following a hearing and finding that a family violence act occurred, the court may enter an order of protection that specifically describes in clear language, understandable to the person who committed the family violence act, the behavior the court has ordered he or she do or refrain from doing. In any order of protection, the court:

(1) May order the person who committed the family violence act to refrain from acts or threats of violence against the petitioner or any other household member.

(2) May order that the person who committed the family violence act be removed from the home of the petitioner;

(3) May grant sole possession of the residence or household to the petitioner during the period the order of protection is effective, or order the person who has committed a family violence act to provide temporary suitable alternative housing for the petitioner and other household members to whom the respondent owes a legal obligation of support;

(4) May award temporary custody of any children involved when appropriate and provide for visitation rights, child support, and temporary support for the petitioner on a basis which gives primary consideration to the safety of the petitioner and other household members;

(5) May order that the person who committed a family violence act not initiate contact with the petitioner;

(6) May restrain the parties from transferring, concealing, encumbering, or otherwise disposing of one another's property or the joint property of the parties except in the usual course of business or for the necessities of life; and to account to the court for all such transferring, encumbrances, and expenditures made after the order is served or communicated;

(7) May order other injunctive relief as the court deems necessary for the protection of the petitioner including orders to law enforcement agencies as provided by this subpart;

(8) Shall give notice that violation of any provision of the order of protection constitutes contempt of court and may result in a fine or imprisonment, or both;

(9) Shall indicate whether the order of protection supersedes or alters prior orders pertaining to family matters between the parties;

(10) Shall not affect the title to any property or allow the petitioner to transfer, conceal, encumber, or otherwise dispose of respondent's property or the joint property of the parties.

(g) *Review hearing.* Either party may request a review hearing to amend or vacate the order of protection.

(h) *Service of the protection order.* An order of protection granted under this subpart shall be filed with the clerk of the court and a copy shall be sent by the clerk of the court to the law enforcement agency with the jurisdiction over the areas of Indian Country in which the court is located. The order shall be personally served upon the respondent, unless the respondent or his or her attorney was present at the time the order was issued. If the court finds the petitioner unable to pay court costs, the order shall be served without cost to the petitioner.

(i) *Duration of order of protection.* An order of protection granted by the court shall be effective for a fixed period of time not to exceed three months. The order may be extended for good cause upon motion of the petitioner for an additional period of time not to exceed three months.

(j) *Contempt of court.* Any willful disobedience or interference with any court order constitutes contempt of court which may result in a fine or imprisonment, or both in accordance with this part.

(k) *Remedies.* The remedies provided in this subpart are in addition to the other civil or criminal remedies available to the petitioner.

(l) *Emergency assistance.* The court shall require the local law enforcement agency to give notice of the availability of emergency assistance. Notice shall include telling all victims of family violence where a shelter or other services are available in the community and giving all victims immediate notice of their legal rights and remedies. The notice must also include furnishing all victims of family violence a copy of the following statement:

IF YOU ARE A VICTIM OF FAMILY VIOLENCE, you can ask the prosecutor to file a criminal complaint. You also have the right to go to court and file a petition requesting an order of protection from family violence. The order may include the following:

(1) an order restraining the person who has committed a family violence act from further acts of family violence;

(2) an order directing the person who has committed a family violence act to leave your household;

(3) an order preventing the person who has committed a family violence act from entering your residence, school, business, or place of employment;

(4) an order awarding you custody of or the other parent visitation with a minor child or children;

(5) an order directing the person who has committed a family violence act to pay support to you and the minor children if the person who has committed an act of family violence has a legal obligation to do so;

(6) an order directing the person who has committed a family violence act to account for your funds or property or to pay restitution for damages resulting from the wrongdoing;

(7) an order directing the appropriate human services agency to deliver protective services and provide the least restrictive alternatives for services, care, treatment, or placement.

Dated: June 6, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–16039 Filed 7–3–96; 8:45 am]

BILLING CODE 4310-02-P

25 CFR Part 12

RIN 1076–AD58

Indian Country Law Enforcement

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed Rule.

SUMMARY: The Bureau of Indian Affairs is proposing to establish standards for Bureau of Indian Affairs (BIA) and tribal law enforcement programs receiving Federal funding or performing duties using a cross commission. These regulations will insure that law enforcement, crime prevention and recidivism reduction programs are implemented and maintained in a constitutionally sound manner and comply with the Indian Law Enforcement Reform Act of 1990, Pub. L. 101–379 (25 U.S.C. 2801 *et seq.*).

DATES: Comments must be received on or before September 3, 1996.

Comments will be available for inspection at the address below from 9:00 a.m. to 4:00 p.m., Monday through Friday beginning approximately July 19, 1996.

ADDRESSES: Mail comments to Theodore R. Quasula, Director of Law Enforcement Services, Bureau of Indian Affairs, 1849 C Street, NW, Mail Stop 4443, Washington, D.C., 20240; OR, hand deliver them to Room 4443 at the above address.

FOR FURTHER INFORMATION CONTACT: Theodore R. Quasula, Director of Law

VOL
61
ISS
130
JL
5
1996
UMI

Enforcement Services, Bureau of Indian Affairs, Telephone: 202–208–5786.

SUPPLEMENTARY INFORMATION:

Background

The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9.

What has provided Law Enforcement rules and standards for Bureau of Indian Affairs and tribal programs in the past?

Indian Police and Detention Standards regulations were published in 1975 and 1976, respectively, and have not been updated. *See* 25 U.S.C. Part 12. In 1990, the Indian Law Enforcement Reform Act (Pub. L. 101–379, 25 U.S.C. 2801 *et seq.*) specified changes for the Bureau of Indian Affairs and tribal law enforcement and detention programs that need to be implemented as rules of the Secretary of the Interior who was given the overall responsibility for providing, or assisting in the provision of law enforcement services in Indian country (as defined in 18 U.S.C. 1151). The law enforcement revision will be assigned to Part 12, and Detention and Rehabilitation will be found in Part 10, Chapter I of Title 25 Code of Federal Regulations.

The Office of Law Enforcement Services, Bureau of Indian Affairs, is updating and revising the *Bureau of Indian Affairs Manual (BIAM)*, and accompanying operational handbooks that will provide policy, procedures, guidelines and standards for all law enforcement programs. This manual and accompanying handbooks will be available for the program managers and supervisors, the public, other agencies, and law enforcement officers or investigators. Self-governance tribes with compacts or other tribal entities with enforcement jurisdiction other than the Bureau of Indian Affairs or contracts, are encouraged to use the manuals and handbooks for guidance in developing or maintaining their own programs. The Indian Country Detention Facilities and Programs manuals and handbooks may be found in Chapter 69 *Bureau of Indian Affairs Manual (BIAM)* including an inmate handbook for all individuals who are incarcerated in a BIA or tribal detention facility.

Evaluation and Certification

Executive Order 12988

The Department has determined that this proposed rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This proposed rule is not a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12630

The Department has determined that this proposed rule does not have "significant" takings implications. The proposed rule does not pertain to "taking" of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this proposed rule does not have significant federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

NEPA Statement

The Department has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

This proposed rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Paperwork Reduction Act of 1995

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements.

Drafting Information

The primary author of this document is Mark Mullins, Bureau of Indian Affairs, Office of Law Enforcement Services.

List of Subjects in 25 CFR Part 12

Indians—residential and holding facilities, Law enforcement.

For the reasons given in the preamble, Part 12, Chapter I of Title 25 of the Code of Federal Regulations is proposed to be revised as set forth below:

PART 12—INDIAN COUNTRY LAW ENFORCEMENT

Subpart A—Responsibilities

Sec.
12.1 Who is responsible for the Bureau of Indian Affairs law enforcement function?
12.2 What is the role of the Bureau of Indian Affairs Director of Law Enforcement Services?
12.3 Who supervises Bureau of Indian Affairs criminal investigators?
12.4 Who Supervises the Bureau of Indian Affairs uniformed police, detention and conservation enforcement functions?

Subpart B—Policies and Standards

Sec.
12.11 Do I have to follow these regulations?
12.12 What about self-determination?
12.13 What happens if I do not follow the rules in this part?
12.14 Where can I find specific policies and standards for law enforcement functions in Indian country?

Subpart C—Authority and Jurisdiction

Sec.
12.21 What authority is given to Indian country law enforcement officers to perform their duties?
12.22 Can Bureau of Indian Affairs law enforcement officers enforce tribal laws?
12.23 What are the jurisdictional limits in Indian country?

Subpart D—Qualifications and Training Requirements

Sec.
12.31 Are there any minimum employment standards for Indian country law enforcement personnel?
12.32 Do minimum employment standards include a background investigation?
12,33 Are Indian country law enforcement officers paid less than other law enforcement officers?
12.34 Do minimum salaries and position classifications apply to a tribe that has contracted or compacted law enforcement under self-determination?
12.35 Do Indian country law enforcement officers complete any special training?
12.36 Does other law enforcement training count?

Subpart E—Records and Information

Sec.
12.41 Who keeps statistics for Indian country law enforcement activities?
12.42 Do Indian country law enforcement programs share information with their own communities or other agencies?

Subpart F—Conduct

Sec.
12.51 Must Indian country law enforcement officers follow a code of conduct?
12.52 How do I report misconduct?
12.53 Who investigates officer misconduct?
12.54 What can I do if I believe my civil rights have been violated?
12.55 Are there any limits on how much force an officer can use when performing law enforcement duties?

Subpart G—Support Functions

Sec.
12.61 Can I be paid for information that helps solve a crime?
12.62 Who decides what uniform an Indian country law enforcement officer can wear and who pays for it?
12.63 Do Indian country law enforcement officers perform other duties as well?

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 13, 2417, 2453, and 2802.

Subpart A—Responsibilities

§ 12.1 Who is responsible for the Bureau of Indian Affairs law enforcement function?

The Deputy Commissioner of Indian Affairs is responsible for Bureau of Indian Affairs operated and contracted law enforcement programs, and for overall policy development and implementation of the Indian Law Enforcement Reform Act, Public Law 101–379 (25 U.S.C. 2801 *et seq.*).

§ 12.2 What is the role of the Bureau of Indian Affairs Director of Law Enforcement Service?

The Director of the Office of Law Enforcement Services for the Bureau of Indian Affairs (Director) has been designed as the single individual responsible for the overall law enforcement and detention policies and standards, and management of all Bureau of Indian Affairs criminal investigations, drug enforcement, training, internal affairs, inspection and evaluation, emergency response forces, and other national level Indian country law enforcement initiatives. The Director publishes these policies and standards in law enforcement manuals and handbooks. The Director is also directly responsible for developing crime prevention and outreach programs within Indian country law enforcement.

§ 12.3 Who supervises Bureau of Indian Affairs criminal investigators?

All Bureau of Indian Affairs criminal investigators are supervised by other criminal investigators within the Office of Law Enforcement Services.

§ 12.4 Who supervises the Bureau of Indian Affairs uniformed police, detention and conservation enforcement functions?

The agency superintendent is directly responsible for the operation and management of Bureau of Indian Affairs uniformed police operations, detention facilities, and conservation enforcement operations at any agency having these programs. The agency superintendent must also ensure technical support is provided to any agency contracting the law enforcement and/or detention program.

Subpart B—Policies and Standards

§ 12.11 Do I have to follow these regulations?

You must follow the minimum standards outlined in the regulations in this part if you are part of a Bureau of Indian Affairs or tribal law enforcement program receiving Federal funding or operating under a Bureau of Indian Affairs law enforcement commission.

§ 12.12 What about self-determination?

The regulations in this part are not intended to discourage contracting of Indian country law enforcement programs under the Indian Self-determination and Education Assistance Act (Public Law 93–638, as amended, 25 U.S.C. 450). The Deputy Commissioner of Indian Affairs will ensure minimum standards are maintained in high risk activities where the Federal government retains liability and the responsibility for settling tort claims arising from contracted law enforcement programs. It is not fair to law abiding citizens of Indian country to have anything less than a professional law enforcement program in their community. Indian country law enforcement programs that receive Federal funding and/or commissioning will be subject to a periodic inspection or evaluation to provide technical assistance, to insure compliance with minimum Federal standards, and to identify necessary changes or improvements to Bureau of Indian Affairs policies.

§ 12.13 What happens if I do not follow the rules in this part?

Your Bureau of Indian Affairs law enforcement commission may be revoked, your law enforcement contract may be canceled, and you may no longer be eligible for tribal shares allocated from the law enforcement budget.

§ 12.14 Where can I find specific policies and standards for law enforcement functions in Indian country?

The Bureau of Indian Affairs will ensure that all Indian country law enforcement programs are provided a copy of the most current policy manuals and handbooks. Every Indian country law enforcement program covered by the regulations in this part must maintain an effective and efficient law enforcement program meeting minimal qualitative standards and procedures specified in Chapter 68 *Bureau of Indian Affairs Manual (BIAM)* and the *Law Enforcement Handbook*.

Subpart C—Authority and Jurisdiction

§ 12.21 What authority is given to Indian country law enforcement officers to perform their duties?

Bureau of Indian Affairs law enforcement officers are commissioned under the authority established in Title 28 U.S.C. 2803. The Bureau of Indian Affairs may issue law enforcement commissions to other Federal, State, local and tribal full-time certified law enforcement officers to obtain active assistance in the enforcement of applicable Federal criminal statutes, including Federal hunting and fishing regulations in Indian country. Any such deputization of personnel not employed by the Bureau of Indian Affairs will only be issued after an agreement is completed between the head of the local government or Federal agency requesting the authority and the Deputy Commissioner of Indian Affairs. Any such agreement will include language that allows the Bureau of Indian Affairs to evaluate the effectiveness of such delegated commissions and to investigate any allegations of misuse of authority involving these commissions. Tribal law enforcement officers operating under a Bureau of Indian Affairs contact or compact are not commissioned Federal officers; however, they may be commissioned on a case-by-case basis.

§ 12.22 Can Bureau of Indian Affairs law enforcement officers enforce tribal laws?

Bureau of Indian Affairs officers will only enforce tribal laws with the permission of the tribe. Local programs are encouraged to make arrangements and agreements with local jurisdictions to facilitate law enforcement objectives.

§ 12.23 What are the jurisdictional limits in Indian country?

The Department of the Interior and the Department of Justice must maintain and periodically review and update a memorandum of understanding describing the relationship between the Federal Bureau of Investigation and the Bureau of Indian Affairs in the investigation and prosecution of major crimes in Indian country. The guidelines in this memorandum of understanding and any local United States Attorney's guidelines for the investigation and prosecution of Federal crimes will be followed by any law enforcement programs performing duties or under the authority of 25 U.S.C. 2803.

VOL
61
ISS
130
JL
5
1996
UMI

Subpart D—Qualifications and Training Requirements

§ 12.31 Are there any minimum employment standards for Indian country law enforcement personnel?

The Director must develop, maintain, and periodically review the qualification standards, including medical qualification standards, for all Bureau of Indian Affairs law enforcement, detention and conservation enforcement occupational series. The standards will be no less stringent than the minimum standards established by the U.S. Office of Personnel Management (OPM) for these occupational series, and may exceed the OPM standards. The Bureau of Indian Affairs standards are available for review at any Bureau of Indian Affairs personnel office. All tribal programs are encouraged to develop standards at least as stringent as those established for Bureau of Indian Affairs officers.

§ 12.32 Do minimum employment standards include a background investigation?

Law enforcement authority is only entrusted to personnel possessing adequate education and/or experience, training, aptitude, and high moral character. All Indian country law enforcement programs receiving Federal funding and/or authority must ensure that all law enforcement officers successfully complete a thorough background investigation no less stringent than required of a Federal officer performing the same duties. The background investigations of applicants and employees must be adjudicated by trained and qualified security professionals. All background investigations must be documented and available for inspection by the Bureau of Indian Affairs.

§ 12.33 Are Indian country law enforcement officers paid less than other law enforcement officers?

The Deputy Commissioner of Indian Affairs must insure that all Bureau of Indian Affairs law enforcement officer positions are established at no lower grade level on the Federal scale than similar Federal law enforcement officer positions in other agencies. No Bureau of Indian Affairs position performing commissioned law enforcement duties will be classified in other than GS 0083, police officer series, for uniformed officers and the GS 1811, criminal investigating series, for criminal investigators.

§ 12.34 Do minimum salaries and position classifications apply to a tribe that has contracted or compacted law enforcement under self-determination?

Any contract or compact with the Bureau of Indian Affairs to provide law enforcement services for an Indian tribe must require a law enforcement officer to be paid at least the same salary as a Bureau of Indian Affairs officer performing the same duties.

§ 12.35 Do Indian country law enforcement officers complete any special training?

Law enforcement personnel of any program funded by the Bureau of Indian Affairs must not perform law enforcement duties until they have successfully completed a basic law enforcement training course prescribed by the Director. The Director will also prescribe mandatory supplemental and in-service training courses.

§ 12.36 Does other law enforcement training count?

All requests for evaluation of equivalent training must be submitted to the Indian Police Academy for review, with final determination made by the Director. Requests for a waiver of training requirements to utilize personnel prior to completing the required courses of instruction must be submitted to the Director and approved or disapproved by the Deputy Commissioner of Indian Affairs. In no case will such a waiver allow personnel to be utilized in any position for more than one year without achieving training standards. Failure to complete basic training requirements will result in removal from a law enforcement position.

Subpart E—Records and Information

§ 12.41 Who keeps statistics for Indian country law enforcement activities?

The Director maintains a criminal justice information system for Indian country. The Director will prescribe the types of data to be collected and the reporting format to be used to collect information and assemble reports on crime reported in Indian country. These reports may be provided to the Department of Justice. Any law enforcement program receiving funding from the Bureau of Indian Affairs must use the same reporting format and submit the same statistical reports to the Office of Law Enforcement Services as prescribed by the Director and as are required of all Bureau of Indian Affairs law enforcement programs.

§ 12.42 Do Indian country law enforcement programs share information with their own communities or other agencies?

At intervals established by the Director, each Bureau of Indian Affairs criminal investigations program, and any investigations program receiving funds from the Bureau of Indian Affairs will consult with local tribal leaders and managers of local patrol and detention programs. They will discuss the quality of the local investigations program and offer feedback and technical assistance. There will be no requirement to disclose confidential investigative information or to compromise on-going investigations during this process.

Subpart F—Conduct

§ 12.51 Must Indian country law enforcement officers follow a code of conduct?

All law enforcement programs receiving Bureau of Indian Affairs funding or commissioning must establish a law enforcement code of conduct which establishes specific guidelines for conduct on and off duty, impartiality and professional conduct in the performance of duty, and acceptance of gifts or favors. Each officer must acknowledge receipt and understanding of this code of conduct in writing and it will remain on file with the law enforcement program manager as long as the officer is employed there. Training will be conducted on this code of conduct and other ethics issues at least once each year.

§ 12.52 How do I report misconduct?

The Director will develop and maintain a reporting system which allows any resident of or visitor to Indian country to report officer misconduct. Each law enforcement program in Indian country will maintain instructions on how to register a complaint. An overview of these steps will be posted for public viewing at each law enforcement facility in Indian country.

§ 12.53 Who investigates officer misconduct?

The Director, Office of Law Enforcement Services maintains an internal affairs program which investigates all allegations of misconduct by Bureau of Indian Affairs officers, and any officer receiving funding and/or authority from the Bureau of Indian Affairs. All allegations of misconduct must be thoroughly investigated and appropriate action taken when warranted. Any person having knowledge of officer misconduct must report that information to the officer's supervisor. The supervisor must immediately report allegations to the internal affairs unit. Depending upon the severity of the allegation, the matter may be dealt with locally or it will be investigated by the internal affairs unit. Failure of any Bureau of Indian Affairs employee to report known allegations may be considered misconduct in itself. Citizens may report officer misconduct directly to the internal affairs unit if that is more practical.

§ 12.54 What can I do if I believe my civil rights have been violated?

All allegations of civil rights violations must be reported immediately to the internal affairs unit. That office will insure such allegations are immediately reported to the Civil Rights Division of the U. S. Department of Justice through established procedures. The Bureau of Indian Affairs internal affairs unit may also conduct an investigation into the matter and make recommendations for additional action as necessary.

§ 12.55 Are there any limits on how much force an officer can use when performing law enforcement duties?

The Director will develop and maintain the use of force policy for all Bureau of Indian Affairs law enforcement personnel, and for programs receiving Bureau of Indian Affairs funding or authority. Training in the use of force, to include non-lethal measures, will be provided annually. All officers will successfully complete a course of instruction in firearms, to include judgement pistol shooting, approved by the Indian Police Academy prior to carrying a firearm on or off duty.

Subpart G—Support Functions

§ 12.61 Can informants be paid for information that helps solve a crime?

The Director has the authority to expend money for the purchase of evidence or information, or to offer a reward, in the investigation of a crime. This is subject to the availability of funds. This authority may be delegated in writing to supervisory criminal investigators within the Office of Law Enforcement Services in the Bureau of Indian Affairs. The Director must develop policies and procedures for the expenditure, control, and audit of these funds prior to their use.

§ 12.62 Who decides what uniform an Indian country law enforcement officer can wear and who pays for it?

Each local law enforcement program must establish their own uniform requirements for patrol and detention personnel. Uniformed Bureau of Indian Affairs police officers may be paid an annual uniform allowance not to exceed $400. Local programs may provide uniforms and related equipment to officers in lieu of this payment. All law enforcement officers must also have their official identification on their person at all times when performing law enforcement duties. Uniforms, when worn, will be plainly distinguishable from the uniforms of any non-law enforcement personnel working on the reservation.

§ 12.63 Do Indian country law enforcement officers perform other duties as well?

Law enforcement commissions will only be issued by the Bureau of Indian Affairs to persons occupying positions as full-time officers. Bureau of Indian Affairs funded or commissioned criminal investigators will not be responsible for supervising or managing any patrol, detention, or other uniformed police programs.

Dated: May 31, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–16040 Filed 7–03–96; 8:45 am]

BILLING CODE 4310–02–P

25 CFR Part 171

RIN 1076–AD44

Irrigation Projects and Systems

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is revising its regulations governing irrigation projects. The purpose of the revisions is to make it easier to read and understand for the customers of Indian irrigation projects; provide for consistent administration; establish the process for updating practices, policies, and procedures for the administration, operation, maintenance, and rehabilitation of irrigation projects; and provide uniform accounting and record keeping procedures.

DATES: You may send us written comments. We must receive them by September 3, 1996.

ADDRESSES: You must mail or hand carry your comments to Terrance Virden, Acting Director, Office of Trust Responsibilities, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, N.W., MS 4513 MIB, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Ross Mooney, Chief, Branch of Irrigation and Power, Division of Water and Land Resources, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, N.W., Mail Stop 4513 MIB, Washington, D.C. 20240, Phone Number (202) 208–5480.

SUPPLEMENTARY INFORMATION: We are publishing this revised rule by the authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs by 209 DM 8.

Our policy is to give the public an opportunity to participate in the rule making process by submitting written comments regarding proposed rules. We will consider all comments received during the public comment period. We will determine necessary revisions and issue the final rule. Please refer to this preamble's "ADDRESSES" section for where you must submit your written comments on this proposed rule.

We have determined that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

This rule is not a significant rule under Executive Order 12866 and does not require approval by the Office of Management and Budget.

This rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the *Unfunded Mandates Act of 1995.*

We determined this proposed rule:

(a) Does not constitute a major Federal action significantly affecting the human environment, and no detailed statement is needed under the Environmental Policy Act of 1969;

(b) Does not have significant takings implications in accordance with Executive Order 12630; and

(c) Does not have significant federalism effects.

Paperwork Reduction Act of 1995

Sections 171.214 and 171.215 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Bureau of Indian Affairs has submitted a copy of these sections to the Office of Management and Budget for its review.

Water users must apply for water delivery. The information to be collected includes: name; watery deliver location; time and date of requested water delivery; duration of water delivery; rate of water flow; number of acres irrigated; crop statistics; and other operational information identified in the local administration manuals. The Bureau needs and uses the information to operate and maintain its irrigation projects and fulfill our reporting requirements.

All information is to be collected annually from each water user. Annual

VOL 61 ISS 130 JL 5 1996 UMI

reporting and record keeping burden for this collection of information is estimated to average 40 minutes for each response for approximately 51,500 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 4,292 hours.

Organizations and individuals wishing to submit comments on the information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10202, New Executive Office Building, Washington, D.C. 20503; Attention Desk Officer for U.S. Department of Interior.

The Bureau of Indian Affairs considers comments by the public on this proposed collection of information in:

Evaluating whether the proposed collection of information is necessary for the proper performance of the Bureau, including whether the information will have practical utility;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate collection techniques or other form of information technology.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to the OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Bureau of Indian Affairs on the proposed rule.

List of Subjects in 25 CFR Part 171

Indians-lands, Irrigation.

For the reasons set out in the preamble we are proposing to revise Part 171 of Title 25 of the Code of Federal Regulations, as follows:

PART 171—IRRIGATION PROJECTS AND SYSTEMS

Subpart A—General Provisions

Sec.
171.101 Definitions.
171.102 How we will administer irrigation projects.
171.103 How we will establish local administration manuals for each project.
171.104 What are the responsibilities and authorities of irrigation districts?
171.105 How can you appeal our decisions?

Subpart B—How We Will Distribute Water

171.201 Water delivery points for farm units.
171.202 What if my farm is too high?
171.203 What must I do if I subdivide a farm unit?
171.204 What must I do if I combine farm units?
171.205 How we will distribute water.
171.206 What restrictions are there on my use of water?
171.207 Will you deliver water to my farm unit if I have not paid my assessments?
171.208 May I ever receive water if I cannot pay my assessments on time?
171.209 May I use water for leaching?
171.210 Is there a deadline by which I must use water that you deliver for leaching?
171.211 May I use water for domestic and stock purposes?
171.212 Will you deliver water over my quota?
171.213 How can I get water delivered to my service or farm ditch?
171.214 How do I apply for water delivery?
171.215 How we record your water delivery.
171.216 What are my responsibilities concerning waste water and surface drainage?
171.217 When will we establish carriage agreements?

Subpart C—Project Facilities

171.301 Who is responsible for obtaining rights of way?
171.302 Who is responsible for structures on our property or rights of way?
171.303 May I ever take over a structure that you have built?
171.304 Can you install a fence on our property or rights of way?
171.305 Can you place an obstruction on our property or rights of way?

Subpart D—Financial Matters and Records

171.401 Definitions for this subpart.
171.402 What costs must I pay?
171.403 How will I know what fees you will charge me?
171.404 How do you compute the costs that you charge me?
171.405 How will I be billed for the water that I use?
171.406 Uniform accounting and billing procedures are required.
171.407 What procedures apply if there are assessment or construction repayment charges?
171.408 How will you recover late payments?

Subpart E—Miscellaneous

171.501 Information you must provide us.
171.502 Your responsibility concerning refuse.

Authority: Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385. Sec. 171.4(b) also issued under 34 Stat. 1024, 38 Stat. 583, and 68 Stat. 1026. Secs. 171.4(a), 171.4(c), 171.16(b), and 171.17(f) also issued under sec. 11, 39 Stat. 142.

Subpart A—General Provisions

§ 171.101 Definitions.

Administration Manual means the written compilation of policies, procedures, and practices we must use to govern the local day-to-day administration, operation, maintenance, and rehabilitation of our individual projects.

Construction assessment means the periodic charge you must pay us to repay appropriated funds we used to build project facilities that the United States Congress has determined to be reimbursable to us.

Farm ditch means a ditch or canal located on your farm unit which you own, operate, maintain, and rehabilitate.

Farm unit means the smallest parcel of land for which we will establish a delivery point.

Farm unit size will be defined by us for each project in the local Administration Manual.

Irrigation district means an organization representing water users, established under proper legal authority to represent all of, or a portion of, the water users for the purposes of the fair and beneficial use of irrigation water, and conferring with us on the administration, operation, maintenance, and rehabilitation of our project serving it.

Operation & Maintenance (O&M) Assessment means the computed per acre cost you must pay us for administering, operating, maintaining, and rehabilitating our facilities.

Project means a facility we own, including all appurtenant works, for the delivery, diversion, and storage of irrigation water, authorized and established by specific Congressional legislation. For the purposes of this part, we will reference both projects and systems using the term "project."

Service ditch means a ditch or canal you own, operate, maintain, and rehabilitate into which we deliver water.

Severance agreement means an agreement between us and a landowner to provide access, if we, through construction or extension of a project, cause severance of the owner's property.

System means a facility we own, including all appurtenant works, for the delivery, diversion, and storage of irrigation water, which we established under the authority of the Snyder Act (25 U.S.C. 13).

Waste water means the runoff of water we deliver to you.

Water means water we deliver from, or return to, our facilities for the general purpose of irrigation.

Water user means any person, business, government, or other entity we provide water.

Water users' ledger means our record of water user accounts.

We means the United States Government, the Secretary of the Interior, the Bureau of Indian Affairs, and all who are authorized to represent us in matters covered under this part.

You means all interested parties receiving beneficial use of our projects, such as water users and landowners, irrigation districts, or other entities affected by this part.

§ 171.102 How we will administer irrigation projects.

(a) We must enforce the regulations in this part and the provisions of the local administration manuals to ensure the safe, reliable, and efficient administration, operation, maintenance, and rehabilitation of our facilities.

(b) Our enforcement includes refusing water delivery to you.

(c) We must use the construction debt repayment funds we collect from you to repay the construction debt of the particular project where we collect the money.

(d) You must agree to a construction debt repayment plan for the project where you are located if repayment of the appropriated construction funds is required.

§ 171.103 How we will establish local administration manuals for each project.

(a) We will establish policies, procedures, and practices for the local administration, operation, maintenance, and rehabilitation of each project and compile them in a local administration manual.

(b) We must publish a notice in the **Federal Register** before establishing, or amending, a project's administration manual.

(c) We must consult with the water users, or their authorized representatives, and tribal representatives to seek comment on administration manuals and other matters of irrigation priorities and policies.

§ 171.104 What are the responsibilities and authorities of irrigation districts?

(a) Water users may form an irrigation district to represent their interests.

(b) An irrigation district must do the following before we will deliver water:

(1) Properly execute a construction repayment contract;

(2) Pay all charges in accordance with the construction repayment contract;

(3) Pay us all past and current construction assessment charges; and

(4) Pay us all past and current O&M assessment charges.

(c) Irrigation districts may make rules, policies, and procedures they may find necessary to administer water delivery within their district.

(d) Irrigation districts cannot make rules, policies, or procedures that conflict with the regulations in this part, or the local administration manual.

§ 171.105 How can you appeal our decisions?

(a) You may appeal our decisions in accordance with subchapter A, part 2 of Title 25 or in accordance with the established local administrative manual, whichever has specific application for what you are appealing.

(b) Until your appeal is settled, you must:

(1) Conform to our requirements for us to deliver water; and

(2) Pay the charge(s) or rates, if you are appealing assessments, rates, or fees.

Subpart B—How We Will Distribute Water

§ 171.201 Water delivery points for farm units.

(a) We will normally deliver water to your farm unit at a single point we designate.

(b) We may establish additional delivery point(s) under the following conditions:

(1) We determine it is impractical for you to irrigate your farm unit from a single delivery point;

(2) You must bear all costs for establishing additional delivery point(s); and

(3) We may establish your delivery point(s) at a well head.

§ 171.202 What if my farm is too high?

(a) We will not change our water level to deliver water to you.

(b) You may install, operate and maintain equipment, at your expense, to put our water on your land:

(1) From a point we designate; and

(2) In accordance with specifications we approve.

§ 171.203 What must I do if I subdivide a farm unit?

(a) Legally record a plat or map of the subdivision and provide us a copy; and

(b) Show on the plat or map how water is to be delivered within the subdivision; and

(c) Assume full responsibility for the facilities within your subdivision.

§ 171.204 What must I do if I combine farm units?

(a) If you combine farm units, or portions of farm units, under a lease, or ownership, we must modify or remove existing delivery points to comply with § 171.203 (a) and (b). You must pay us the cost of modification or removal to meet this requirement. Any modifications must not disrupt water delivery to other water users.

(b) Should you change your mind about combining farm units after we have modified or removed our facilities:

(1) We must approve reestablishment of the water delivery points;

(2) Other water users must not have their water delivery service disrupted to reestablish the water delivery points, and

(3) You must pay us all costs to reestablish the delivery points.

§ 171.205 How we will distribute water.

We will follow the distribution procedures in the local administration manual. We will notify you in writing when your quota of water for the season has been delivered.

§ 171.206 What restrictions are there on my use of water?

(a) You must not interfere with, or alter, water flow, storage, or delivery without our authorization.

(b) You must not possess or use water in any way without our permission.

§ 171.207 Will you deliver water to my farm unit if I have not paid my assessments?

No. You must pay all O&M and construction assessments before we will deliver water to your farm unit. The only limited exceptions to this rule are contained in § 171.208.

§ 171.208 May I ever receive water if I cannot pay my assessments on time?

We may agree to deliver water to your farm unit if you cannot pay your assessments on time and if you meet one of the conditions in the following table.

We may deliver water to you if:	and . . .
your farm unit is held in trust or is restricted land.	(1) we certify in writing that you are an Indian owner and are financially unable to pay on time; (2) you make arrangements to pay us eventually; and (3) you allow us to place a first lien against your land until you pay the assessments.

VOL 61 ISS 130 JL 5 1996 UMI

We may deliver water to you if:	and . . .
your farm unit is leased trust or restricted land and the lease was negotiated by the Indian owner.	you make delayed payment arrangements with us.
you have asked us for an adjustment or cancellation for the assessment on your land.	we have not yet acted on your request.
you have an approved deferred payment contract on your land that was executed under the Act of June 22, 1936 (49 Stat. 1803).	

§ 171.209 May I use water for leaching?

We may deliver water to your farm unit for leaching land that is impregnated by alkali. We may charge for this water. We will deliver this water if:

(a) The water is available;

(b) You have a plan of operation that we have approved;

(c) You have made a written agreement with us to correct the alkali problem; and

(d) You do not owe us any money.

§ 171.210 Is there a deadline by which I must use water that you deliver for leaching?

Yes. You must make full beneficial use of water delivered for leaching purposes by the date in the administration manual. If you have not:

(a) We must refuse to deliver water to you for leaching; and

(b) We must charge you for any delivered water.

§ 171.211 May I use water for domestic and stock purposes?

We may deliver water for domestic and stock purposes if it will not:

(a) Interfere with the operation, maintenance, or rehabilitation of our facilities;

(b) Be detrimental to, or endanger, our facilities;

(c) Adversely affect the stored water supply, and

(d) Incur additional costs to us.

§ 171.212 Will you deliver water over my quota?

We may deliver additional water above your quota:

(a) If we determine excess water is available;

(b) You request the water in writing; and

(c) You agree to pay for the water at published rates.

§ 171.213 How do I get water delivered to my service or farm ditch?

For us to deliver water to your service or farm ditch you must:

(a) Put the water to beneficial use;

(b) Make sure your ditch has sufficient carrying capacity;

(c) Properly maintain and rehabilitate your ditch; and

(d) Make sure your ditch has minimal losses.

§ 171.214 How do I apply for water delivery?

(a) You must request water delivery in accordance with the administration manual we have established for your project.

(b) Your request must contain at least the following information:

(1) Your name;

(2) Where you want water delivered;

(3) The time and date you want water delivered;

(4) How long you want water delivered;

(5) The rate of water flow you want; and

(6) How many acres you are irrigating.

§ 171.215 How we record your water delivery.

(a) We maintain the water delivery records in accordance with the administration manual.

(b) We will keep at least the following information as part of your water delivery record:

(1) Your name;

(2) Beginning date and time of your water delivery;

(3) Ending date and time of your water delivery;

(4) Amount of water we delivered to you; and

(5) The actual acreage you irrigated.

§ 171.216 What are my responsibilities concerning waste water and surface drainage?

(a) You are responsible for conveying your irrigation waste water back to our facilities for drainage.

(b) You are responsible for all costs we might incur in helping you meet your responsibility as described in paragraph (a) of this section.

(c) You will return waste water to our facilities only at points we designate, and in a way we approve.

(d) When there are two or more landowners or water users, it is their responsibility to work out a satisfactory arrangement for conveying their irrigation waste water to our facilities.

(e) Your waste water must not flow upon, or collect on, our rights of way or roads, except at points we designate, and in a way we approve.

§ 171.217 When will we establish carriage agreements?

(a) We may enter into an agreement to deliver non-project water to non-project land if we have determined there is excess capacity in our facilities to do so.

(b) We may enter into an agreement with a private enterprise or individual to convey water through other than our own facilities to isolated project land you are irrigating.

(c) You must pay us all administrative, operating, maintenance, and rehabilitation costs associated with these agreements before we will convey the water.

Subpart C—Project Facilities

§ 171.301 Who is responsible for obtaining rights of way?

You must obtain rights of way necessary for us to construct or extend facilities to deliver water to your farm unit, in accordance with the following:

(a) For rights of way across trust or restricted lands, you must obtain these rights-of-way in accordance with 25 CFR part 169.

(b) For rights of way across fee patented lands, you must obtain the right-of-way from the property owner(s).

(c) You must provide the rights of way to us at no cost.

(d) The right of way must be wide enough to permit passage and use of our equipment for construction, operation, maintenance, and rehabilitation of our facilities.

§ 171.302 Who is responsible for structures, on our property or rights-of-way?

(a) We must build, operate, maintain, and rehabilitate our own structures, including bridges and other crossings, unless we authorize someone else to do it, in writing.

(b) When we are building, or extending our existing facilities, we may build other structures or facilities for private use when justified by severance agreements, or other considerations.

(c) We own these structures unless we decide to do otherwise.

(d) If we build and own a structure for your benefit, we may require you to maintain it. If you do not, and we perform the necessary maintenance ourselves, you must pay us all costs incurred.

(e) You may build a structure encroaching on our rights of way for your private use after:

(1) We approve in writing;

(2) We approve the plans for construction; and

(3) You sign a written agreement with us stating you will bear all costs of installation, maintenance,

rehabilitation, and possible future removal.

(f) If any structure built under this part is no longer needed, we may remove it.

§ 171.303 May I ever take over a structure that you have built?

(a) If you want to use a structure we plan on removing, you may request in writing to take ownership of the structure.

(b) We may transfer ownership of a structure to you under an agreement which:

(1) Relieves us from any future liability or responsibility for the structure;

(2) Relieves us from any future costs incurred for maintaining the structure; and

(3) Stipulates all that is granted and accepted by you.

(4) Provides that if you do not regularly use a structure for a period of one year, or do not properly maintain and rehabilitate the structure, we will notify you in writing that:

(i) You must either remove it or correct any unsafe condition; and

(ii) If you do not comply with our notice, we may remove the structure and you must pay us all costs we incur.

§ 171.304 Can you install a fence on our property or rights of way?

(a) You must not place a fence across or within our property or rights of way without our written approval.

(b) We will approve fences on our property or rights of way only if it:

(1) Is properly installed;

(2) Does not interfere with the flow or delivery of water; and

(3) Does not interfere with the passage of our equipment and employees.

(c) We must notify you in writing to remove fences we do not approve.

(d) If you do not remove the fence in accordance with our notice, we will remove the fence at your expense.

§ 171.305 Can you place an obstruction on our property or rights of way?

No. You must not place obstructions on our property or rights-of-way. If you do, we will notify you in writing that you must remove it. If you do not remove the obstruction in accordance with our notice, we will remove it at your expense.

Subpart D—Financial Matters and Records

§ 171.401 Definitions for this subpart.

Administrative costs means all expenses we incur to administer our project at the local level. This does not include the agency, area, or central office expenses.

Assessment rate means the published charge you must pay for us to deliver water to your farm unit.

Costs means the expenses we incur to provide direct support or benefit to your project's activities for administration, operation, maintenance, and rehabilitation. Depending on the activity, we must include at least:

(1) Salary and benefits for the project engineer/manager and our employees under his or her control;

(2) Materials and supplies;

(3) Major and minor vehicle and equipment repairs;

(4) Equipment, including transportation, fuel, oil, grease, lease and replacement;

(5) Capitalization expenses;

(6) Acquisition expenses; and

(7) Other expenses we determine necessary to properly perform the activities and functions necessary for an irrigation project.

Maintenance costs means all expenses we incur to maintain and repair our facilities and equipment of our project.

Operation costs means all expenses we incur to operate the facilities and equipment of our project.

Rehabilitation costs means all expenses we incur to maintain our project facilities to original design specifications.

Total assessable acres means the total authorized acres within a project to which we can deliver water.

Total cost means the total of all administrative, operating, maintenance, and rehabilitation costs we incur to deliver water at the particular project you are located. These costs do not generally include costs above the project engineer/manager.

Total cost per acre means the computed cost we incur on a per acre basis by dividing the total cost by the total assessable acres, as follows:

Total Costs per Acre equals Total Cost divided by Total Assessable Acres.

§ 171.402 What costs must I pay?

You must pay us for the total costs we incur for operating and maintaining the project where you are located. You must pay your assessment, in accordance with the local administration manual, before we will deliver water to your farm unit.

§ 171.403 How will I know what fees you will charge me?

(a) We will establish, and adjust as necessary, rates, charges, and fees for recovering our total cost.

(b) When we establish or adjust the fees for your project, we will notify you by publishing a notice in the **Federal Register**. We will review our costs for your project each year, and adjust the rates, charges, and fees when necessary to comply with § 171.402.

(c) We must use the assessed money we collect from you to support the administration, operation, maintenance, and rehabilitation activities of the project where you are located.

§ 171.404 How do you compute the costs that you charge me?

We will base our assessments for your farm unit on the computed total cost per acre times the total number of assessable acres in your farm unit. If you subdivide your farm unit into smaller farming acreages we may set a higher assessment rate for your subdivided acreage. If we do this, we will notify you by publishing a notice in the **Federal Register**.

§ 171.405 How will I be billed for the water that I use?

(a) We will maintain water users' ledgers in accordance with the administration manual on all projects where we levy and collect assessment and construction repayment charges.

(1) We will make separate entries in the ledger for each water user, and issue bills to the water users of record.

(2) When we receive payment, we will credit it to the proper ledger account.

(3) If water is used for leased trust or restricted land, we will bill the lessee.

(b) Where irrigation districts have been established and have executed a construction repayment contract, the district will bill you and will follow the procedures in paragraph (a) of this section.

§ 171.406 Uniform accounting and billing procedures are required.

All projects under the jurisdiction of the Bureau must follow the accounting and billing procedures that we establish.

§ 171.407 What procedures apply if there are assessment or construction repayment charges?

Where payment of assessment or construction repayment charges is required, refer to 4 CFR Parts 102, 103, 104, 105, and 25 CFR Part 115, in addition to this part.

§ 171.408 How will we recover late payments?

(a) We will file liens in accordance with the administration manual, against fee patent or trust lands within a project to recover delinquent payments.

(b) Federal, State, and tribal government agencies are exempt from interest, penalty, and administrative charges for delinquent payments.

(c) We will file and execute liens against Individual Indian Moneys (IIM) in accordance with 25 CFR 115.10.

VOL 61 ISS 130 JL 5 1996 UMI

Subpart E—Miscellaneous

§ 171.501 Information you must provide us.

(a) You must provide us with the information we request to assist in the proper administration, operation, maintenance, and rehabilitation of our facilities.

(b) We will request all information in accordance with the local administration manual.

§ 171.502 Your responsibility concerning refuse.

You must not use our property or rights of way to dispose of sewage, trash, or other refuse.

Dated: May 24, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–16184 Filed 7–3–96; 8:45 am]

BILLING CODE 4310–02–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Parts 101 and 102

Procedure Governing Advisory Opinions and Rules Governing Summary Judgment Motions and Advisory Opinions

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: As part of its ongoing efforts to streamline its operations by eliminating unnecessary and inefficient procedures, the National Labor Relations Board (NLRB) is proposing to revise its rules to eliminate the notice-to-show-cause procedure in summary judgment cases and to remove provisions which permit parties to pending state proceedings to file petitions for an advisory opinion on whether the Board would assert jurisdiction under its commerce standards.

DATES: All comments must be received on or before August 5, 1996.

ADDRESSES: All written comments should be sent to the Office of the Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Room 11600, Washington, DC 20570. The comments should be filed in eight copies, double spaced, on 8 1/2 by 11 inch paper and shall be printed or otherwise legibly duplicated.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, Telephone: (202) 273–1940.

SUPPLEMENTARY INFORMATION: Over approximately the last two years, the NLRB has been conducting an intensive internal review of its procedures at all levels of the Agency. The purpose of this internal review has been to find ways to maintain and improve the Agency's case-processing efficiency in light of the Agency's diminishing resources. Many initiatives have already been implemented by the Board as part of this ongoing review, such as the recent initiative authorizing the use of settlement judges and providing judges with the discretion to dispense with briefs and to issue bench decisions, which was published as a final rule on February 23, 1996, following a one-year experimental period (61 FR 6940). Other initiatives are currently under consideration. Two such initiatives, involving the elimination of the notice-to-show-cause procedure in summary judgment cases and the removal of provisions permitting parties to pending state proceedings to file petitions for an advisory opinion on whether the Board would assert jurisdiction under its commerce standards, are set forth below.

1. Notices to show cause in summary judgment cases. Section 102.24(b) of the Board's rules currently requires the Board to issue a notice to show cause to the parties prior to granting a motion for summary judgment or dismissal. Such notices have historically served several purposes or functions, including providing notice of the motion to the opposing party, postponing any scheduled hearing date, and setting the deadline for responding (normally 14 days from the date of the notice).

All of these functions are essentially unnecessary, however. The motion itself must be served on the opposing party and the motion therefore provides its own notice to the opposing party. No further notice is necessary.

With respect to postponing the hearing date, the Regional Director has the unrestricted authority under Section 102.16 of the Board's rules to do so at any time prior to 21 days before the hearing. Thus, the General Counsel need not rely on the Board to postpone the hearing upon filing a timely motion for summary judgment, which under Section 102.24(b) of the Board's rules must normally be filed at least 28 days before the scheduled hearing. In the event the General Counsel does not determine that a motion for summary judgment is warranted until after expiration of the 28-day deadline for filing such motions with the Board and the 21-day deadline on the Regional Director's unrestricted authority to postpone the hearing, the General Counsel may in that event seek a postponement from the Division of Judges prior to filing the motion for summary judgment. See, e.g., *R. B. Contracting Co.*, 321 NLRB No. 41 (May 20, 1996).

Of course, it may still be necessary in certain circumstances for the Board to issue an order postponing the hearing in response to a respondent's motion for summary judgment or dismissal. The Board's experience with such motions, however, indicates that in the vast majority of such cases there are factual issues which make summary judgment or dismissal inappropriate. Thus, the Board in the past has only rarely issued notices to show cause postponing the hearing in response to respondent motions, and there is no reason why this experience would change under the revised rule. In any event, as under the current rule, under the revised rule the respondent may request the Regional Director, administrative law judge, and/or the Board to postpone the hearing when it files the motion for summary judgment or dismissal. The Board normally completes its initial review of the respondent's motion prior to the hearing, and in the event that its initial review indicates that summary judgment may be appropriate, and the hearing has not already been postponed, as under the current rule the Board may issue an order postponing the hearing.

With respect to setting the time for responding, there is no reason why the deadline for responding cannot be established by rule in all cases. Similar deadlines are set forth in the Board's rules for the filing of other pleadings (see, e.g., Sec. 102.20 of the Board's rules, setting 14-day deadline for filing an answer to the complaint), and no further or special notice of the deadline is required with respect to those pleadings. See, e.g., *Superior Industries*, 289 NLRB 834, 835 n. 13 (1988) (no further reminder or warning of the failure to file an answer required).

Moreover, we note that the General Counsel's practice with respect to complaints and compliance specifications has been to specifically advise the respondent in the complaint or specification itself of the time for filing an answer. See NLRB Casehandling Manual, Sec. 10267 (complaints) and 10622.1 and App. 14 (compliance specifications). We approve of this practice and anticipate that the General Counsel would also adopt this practice with respect to default and other summary judgment motions in the event the proposed revisions are adopted by the Board.[1]

[1] The General Counsel's failure to include such notice in the motion for summary judgment would not necessarily require denial of the motion, but would be considered by the Board as a factor in ruling on any subsequent motion filed by the respondent for reconsideration of the Board's decision granting the General Counsel's motion for summary judgment.

Accordingly, the Board is proposing to revise Section 102.24(b) of its rules to eliminate the notice-to-show-cause procedure in summary judgment cases, and to instead provide that the 14-day period for responding to the motion shall commence upon service of the motion. The revised rule specifically provides that the hearing is not automatically postponed upon filing of the motion for summary judgment, and that it is the responsibility of the party moving for summary judgment to postpone the hearing (if the General Counsel files the motion for summary judgment) or to file a request for a postponement with the regional director, administrative law judge, and/or the Board (if the respondent or charging party files the motion for summary judgment or dismissal). This latter provision is intended to make clear that the General Counsel should not rely on the Board to postpone the hearing or assume that the Board will issue an order postponing the hearing, which was a function of the traditional notice to show cause. Thus, when the General Counsel files the motion for summary judgment, the General Counsel should also postpone the hearing (assuming the General Counsel wishes to postpone the hearing and has the authority to do so under Section 102.16 of the Board's rules.)

2. Party petitions for an advisory opinion. Sections 102.98(a) and 102.99(a) of the Board's rules, and Section 101.39 of the Board's statements of procedures, currently authorize parties to pending state proceedings to file a petition for an advisory opinion with the Board as to whether the Board would assert jurisdiction under its current commerce standards. There is no statutory requirement that the Board entertain such advisory opinions, however, and the procedure is not widely utilized.[2] Further, the Board's jurisdictional standards are generally well developed, and are readily available in numerous published decisions and opinions. Experience with past party petitions has shown that the parties themselves, or the state agency or court, could just as easily have researched and applied the Board's current commerce standards without invoking the Board's processes.

Moreover, there are other, often more speedy, avenues available for obtaining a jurisdictional determination or opinion. For example, Section 101.41 of the Board's statements of procedure provides that persons may seek informal opinions on jurisdictional issues from the Regional offices. And the Regional Office will also make a jurisdictional determination early in its investigation of any representation petition or unfair labor practice charges filed with that office. See NLRB Casehandling Manual, Sec. 11706.

Finally, the proposed change would not affect the provisions of current Section 102.98(b) and 102.99(b) of the Board's rules and Section 101.39 of the Board's statements of procedure, which permit the state or territorial agency or court itself to file a petition for an advisory opinion on whether the Board would decline to assert jurisdiction based either on its commerce standards or because the employer is not within the jurisdiction of the Act. The provisions permitting such petitions are retained, with minor modification to Section 101.39 of the Board's statements of procedure to conform it with Board decisions indicating that the Board will not issue an opinion unless the relevant facts are undisputed or the state agency or court has already made the relevant factual findings. See *Correctional Medical Systems*, 299 NLRB 654 (1990); *University of Vermont*, 297 NLRB 291 (1989); and *St. Paul Ramsey Medical Center*, 291 NLRB 755 (1988). See also *Brooklyn Bureau of Community Service*, 320 NLRB No. 157 (April 15, 1996).

Although the Agency has decided to give notice of proposed rulemaking with respect to these rule changes, the changes involve rules of agency organization, procedure or practice and thus no notice of proposed rulemaking is required under Sec. 553 of the Administrative Procedure Act (5 U.S.C. 553). Accordingly, the Regulatory Flexibility Act (5 U.S.C. 601), does not apply to these rule changes.

List of Subjects in 29 CFR Parts 101 and 102

Administrative practice and procedure, Labor management relations.

For the reasons set forth above, the NLRB proposes to amend 29 CFR parts 101 and 102 as follows:

PART 101—STATEMENTS OF PROCEDURE

1. The authority citation for 29 CFR part 101 continues to read as follows:

Authority: Sec. 6 of the National Labor Relations Act, as amended (29 U.S.C. 151, 156), and sec. 522(a) of the Administrative Procedure Act (5 U.S.C. 552(a)). Section 101.14 also issued under sec. 2112(a)(1) of Pub. L. 100–236, 28 U.S.C. 2112(a)(1).

2. § 101.39 is revised to read as follows:

§ 101.39 Initiation of advisory opinion case.

(a) The question of whether the Board will assert jurisdiction over a labor dispute which is the subject of a proceeding in an agency or court of a State or territory is initiated by the filing of a petition with the Board. This petition may be filed only if:

(1) A proceeding is currently pending before such agency or court;

(2) The petitioner is the agency or court itself; and

(3) The relevant facts are undisputed or the agency or court has already made the relevant factual findings.

(b) The petition must be in writing and signed. It is filed with the Executive Secretary of the Board in Washington, DC. No particular form is required, but the petition must be properly captioned and must contain the allegations required by § 102.99 of the Board's Rules and Regulations. None of the information sought relates to the merits of the dispute. The petition may be withdrawn at any time before the Board issues its advisory opinion determining whether it would or would not assert jurisdiction on the basis of the facts before it.

PART 102—RULES AND REGULATIONS

1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)), and section 552a(j) and (k) of the Privacy Act (5 U.S.C. 552a(j) and (k). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.24(b) is revised to read as follows:

§ 102.24 Motions; where to file; contents; service on other parties; promptness in filing and response; summary judgment procedures.

* * * * *

(b) All motions for summary judgment or dismissal shall be filed with the Board no later than 28 days prior to the scheduled hearing. Where no hearing is scheduled, or where the hearing is scheduled less than 28 days after the date for filing an answer to the complaint or compliance specification, whichever is applicable, the motion

[2] The Board typically receives about 10–15 party petitions for advisory opinion each year. Although relatively few in number, substantial staff resources are consumed in preparing and issuing the Board's opinion in each case.

VOL 61 ISS 130 JL 5 1996 UMI

shall be filed promptly. Any opposition to the motion shall be filed within 14 days after the service of the motion for summary judgment on the opposing party. It is not required that the opposition be supported by affidavits or other documentary evidence showing that there is a genuine issue for hearing. The Board in its discretion may deny the motion where the motion itself fails to establish the absence of a genuine issue, or where the opposing party's pleadings and/or opposition indicate on their face that a genuine issue may exist. If the opposing party files no opposition, the Board may treat the motion as conceded, and summary judgment or dismissal, if appropriate, shall be entered. The hearing shall not be automatically postponed upon filing of the motion for summary judgment. It shall be the responsibility of the party filing the motion to postpone the hearing (if the General Counsel files the motion for summary judgment, subject to the provisions of § 102.16 of the Board's rules and regulations) or to file a request for a postponement with the Regional Director, administrative law judge, and/or the Board (if the respondent or charging party files the motion).

§ 102.98 [Amended]

3. In § 102.98, paragraph (a) and the paragraph designation (b) are removed.

§ 102.99 [Amended]

4. In § 102.99, paragraph (a) is removed and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b) respectively.

Dated, Washington, DC, June 28, 1996.

By direction of the Board:

John J. Toner,

Executive Secretary.

[FR Doc. 96–16986 Filed 7–3–96; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 062596B]

RIN 0648–AH58

Groundfish of the Gulf of Alaska; Pacific Ocean Perch; Amendment 38

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 38 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) for Secretarial review. Amendment 38 would provide the flexibility for the Council to recommend a total allowable catch amount for Pacific ocean perch (POP) below the level currently established in the FMP. NMFS is requesting comments from the public on the proposed amendment. Copies of the amendment may be obtained from the Council (see **ADDRESSES**).

DATES: Comments on the FMP amendment should be submitted on or before August 30, 1996.

ADDRESSES: Comments on the FMP amendment should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK.

Copies of Amendment 38 and the environmental assessment and the economic analysis prepared for the amendment are available from the North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving a fishery management plan or amendment, immediately publish a notice that the fishery management plan or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve the FMP or amendment.

Decline of the POP stock since the early period of the foreign fishery (mid 1960's) prompted the Council to recommend a rebuilding plan for POP. The Pacific Ocean Perch Rebuilding Plan (Rebuilding Plan) was established in Amendment 32 to the FMP. Details of the justification for the Rebuilding Plan can be found in the Notice of Availability for Amendment 32 (59 FR 295; January 4, 1994). The POP Rebuilding Plan provides a specific rebuilding strategy for POP stocks, based on available biological and economic information. The Rebuilding Plan establishes a formula to determine annually the POP TAC, which is then apportioned among Gulf of Alaska (GOA) regulatory areas based on biomass distribution. However, the amendment does not provide for any flexibility to reduce the TAC below the amount specified by the formula.

Under the current Rebuilding Plan, the potential exists for the calculated TAC to be greater than the acceptable biological catch (ABC), which would be inconsistent with the current management practice for other groundfish stocks. The Council has also expressed concern that it does not have the flexibility to lower the POP TAC under the Rebuilding Plan to accomodate other resource conservation concerns. Therefore, the Council adopted Amendment 38 to the FMP at its December 1995 meeting. Amendment 38 would not prescribe a TAC lower than that specified by the formula; however, it would allow the Council the flexibility to recommend a TAC below the level of the specified formula in one or more GOA regulatory areas or districts. To be consistent with the Rebuilding Plan for POP, any downward adjustment of TAC would be based on biological or resource conservation concerns.

Under the Rebuilding Plan, an ABC is set for POP in the GOA and this ABC is apportioned among regulatory areas based on biomass distribution. The TAC is determined using the formula and is then apportioned to each regulatory area according to the percentage biomass distribution used for the ABC apportionment.

Under Amendment 38, once the TAC is apportioned among regulatory areas, as specified by the current FMP, the Council could recommend a further downward adjustment of the POP TAC in one or more of the GOA regulatory areas or districts. Any downward adjustments would be based on biological or resource conservation concerns about the POP resource or associated with the POP fishery that are not accounted for in the Rebuilding Plan or the annual Stock Assessment and Fishery Evaluation (SAFE) reports, or to maintain the TAC below the ABC. NMFS will consider information provided by a recognized scientific body such as the Council's Scientific and Statistical Committee, Plan Team, or by NMFS stock assessment scientists regarding any downward adjustment of the TAC.

The FMP amendment would only give the Council the alternative of recommending a lower POP TAC in the annual specifications process to address biological or resource conservation concerns that are not addressed under the Rebuilding Plan or SAFE reports. If socioeconomic concerns exist with respect to the management of the POP fishery, particularly in the Eastern GOA, the Council would need to consider a separate amendment to address these issues.

Amendment 38 is intended to improve conservation and management of POP and to further the goals and objectives of the FMP. No regulatory changes are necessary to implement this FMP amendment. The TAC would be considered for implemention during the annual specification process under regulations at § 679.20(c).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 27, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–17123 Filed 7–1–96; 3:18 pm]

BILLING CODE 3510–22–F

VOL
61
ISS
130
JL
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1996
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Notices

Federal Register
Vol. 61, No. 130
Friday, July 5, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 5, 1996.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION:

On February 23 and March 29, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 FR 6977 and 14088) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Pad, Energy Dissipating

1670–00–753–3928

Web Door Assembly

5340–02–000–0319

Tape, Pressure-Sensitive

7510–00–680–2395
7510–00–680–2450
7510–00–680–2470
7510–00–680–2471
7510–00–680–8784
7510–00–680–4963

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–17269 Filed 7–3–96; 8:45 am]

BILLING CODE 6353–01–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: July 9, 1996; 9:00 a.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., S.W., Washington, D.C. 20547.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b. (c)(2) and (6)). The BBG meeting will be followed by closed meetings of the members of the boards of RFE/RL, Inc., and Asia Pacific Network, both nonprofit private corporations.

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Barbara Floyd at (202) 401–3736.

Dated: July 2, 1996.

David W. Burke,

Chairman.

[FR Doc. 96–17303 Filed 7–1–96; 2:51 pm]

BILLING CODE 8115–0493–M

COMMISSION ON CIVIL RIGHTS

Notice of Cancellation of Public Meeting of the Hawaii Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Hawaii Advisory Committee to the Commission which was to have convened at 2:00 p.m. and adjourned at 5:30 p.m. on Wednesday, July 31, 1996, at the Ala Moana Hotel, 410 Atkinson Drive, Hawaii, has been canceled.

The original notice for the meeting was announced in the **Federal Register** on June 18, 1996, FR Doc. 96–15428, 61 FR 30851–30852.

Persons desiring additional information should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435).

Dated at Washington, DC, June 28, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–17124 Filed 7–3–96; 8:45 am]

BILLING CODE 6335–01–P

Sunshine Act Meeting

July 1, 1996.

DATE AND TIME: Friday, July 12, 1996, 9:30 a.m.

PLACE: U.S Commission on Civil Rights, 624 Ninth Street, NW, Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of June 14, 1996 Meeting
III. Announcements
IV. Staff Director's Report
V. Continuation of General Programmatic Theme Discussion·
VI. State Advisory Committee Report

"The Enforcement of Affirmative Action Compliance in Indiana Under Executive Order 11246" (Indiana)

VII. Future Agenda Items

11:00 a.m. Briefing on Three Strikes and You're Out—Mandatory Life Sentences After Three Felony Convictions

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376-8312.

Miguel A. Sapp,

Parliamentarian.

[FR Doc. 96–17268 Filed 7–2–96; 2:10 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews and Notice of Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews and Notice of Revocation in Part.

SUMMARY: On September 29, 1995, the Department of Commerce (the Department) published the preliminary results of administrative reviews and notice of intent to revoke in part the antidumping duty order on polyethylene terephthalate (PET) film, sheet, and strip from the Republic of Korea. The reviews cover four manufacturers/exporters of the subject merchandise to the United States and the periods June 1, 1992 through May 31, 1993 and June 1, 1993 through May 31, 1994.

As a result of comments we received, the antidumping margins have changed from those we presented in our preliminary results.

EFFECTIVE DATES: July 5, 1996.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney, or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4475/0649.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1995 (59 FR 50547), the Department published the preliminary results of administrative reviews and notice of intent to revoke in part the antidumping duty order on PET film from the Republic of Korea (56 FR 25669, June 5, 1991). At the request of petitioners and three respondents, we held a hearing on April 9, 1996.

These reviews cover four manufacturer/exporters: Cheil Synthetics, Inc. (Cheil), Kolon Industries (Kolon), SKC Limited (SKC), and STC Corporation (STC).

We are revoking the order for Cheil because Cheil has sold the subject merchandise at not less than foreign market value (FMV) in these reviews and for at least three consecutive periods. Cheil has also submitted certification that it will not sell at less than FMV in the future.

Scope of the Review

Imports covered by these reviews are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The reviews cover the periods June 1, 1992 through May 31, 1993 (second review period) and June 1, 1993 through May 31, 1994 (third review period). The Department has conducted these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results of this administrative review. We received timely comments from the petitioners and all four respondents. At the request of the petitioners and three respondents, we held a public hearing on April 9, 1996.

Comment 1: Petitioners argue generally that the methodologies employed by SKC and Cheil to value recycled chip (RC) assign an unreasonably low cost to recycled resin. Petitioners contend that the cost of processing recycled film is directly associated with the cost of the chemicals which are reclaimed. Petitioners assert that to properly account for the cost of producing PET film, the Department must include both the cost of the materials content of the recycled film and the cost of the recycling. Petitioners also argue that both virgin resin and recycled resin contain the same basic chemicals in the same quantities, and that recycled resin is a nearly "one for one" substitute for virgin resin. Petitioners assert that the differences between virgin resin and recycled resin are "minimal." While limits exist on the amount of recycled resin that can be used in PET film production, petitioners note that in many instances recycled resin accounts for more than 50 percent of the raw material inputs. Petitioners further note that the bill of materials ("recipes") for PET films can be adjusted to tolerate a greater or lesser volume of recycled resin, and that producers can adjust the molecular weight of virgin chip (VC) to accommodate varying usage of recycled resin. Petitioners also assert that producers can modify the production process to minimize problems related to discoloration caused by using recycled resin.

Petitioners contend that, in general, the methodologies used by Cheil and SKC to value recycled resin do not reflect the actual cost of that material. Petitioners assert that the Statement of

VOL 61 ISS 130 JL 5 1996 UMI

Administrative Action (SAA), Congressional Reports on the Uruguay Round Agreements Act, and the Court of Appeals for the Federal Circuit (CAFC) decision in *Ipsco Inc.* v. *the United States*, 965 F. 2d 1056, 1059–1061 (Fed. Cir. 1992) (*Ipsco Appeal*), preclude the Department from using cost calculations which substitute assigned values for actual costs. Even if the methodologies employed by Cheil and SKC to account for recycled film are consisted with Korean Generally Accepted Accounting Principles (GAAP), petitioners argue that Cheil's and SKC's methodologies are unacceptable because they fail to reasonably reflect the costs associated with recycled material. Petitioners contend that the Department has accepted from Cheil and SKC different, contradictory accounting treatments of the cost of RC.

Cheil: Specifically with regard to Cheil, petitioners assert that the number of sales used by Cheil to establish the net realizable value (NRV) of recycled resin is too small to be representative of the actual cost of the material. Petitioners further argue that the customers who purchase resin from Cheil are using the resin in a less demanding process. These customers, petitioners assert, do not require recycled resin of the same quality as PET film producers. Petitioners argue that there is no indication that the grades of PET film sold by Cheil on the open market are the same as that which Cheil uses internally.

Petitioners contend that most PET films can be made within a broad range of virgin resin/recycled resin ratios. petitioners argue that given the flexibility to increase or reduce the usage of recycled resin, Cheil's decision to sell a small amount of PET resin at a price that is much lower than the price of virgin resin makes little economic sense. Petitioners suggest that Cheil's rationale for selling a small amount of recycled chip on the open market could be to establish an artificially low value for the recycled chip used in PET film exports to the United States.

In response, Cheil argues that the appropriate accounting treatment for valuing its recycled resin (pellets) is the NRV that Cheil assigns to these pellets. Cheil notes that the NRV methodology is consistent with both Korean and U.S. GAAP. Cheil contends that Departmental review, analysis, and verification of the cost data submitted by Cheil uncovered no evidence that Cheil's NRV methodology is manipulative, or that Cheil substituted increasing quantities of pellets for VCs in an attempt to minimize its dumping liability.

Cheil contends that the NRV established for recycled pellet represents a market price for that merchandise. Cheil argues that the Department has no basis to exclude these sales because such sales are "too small" to constitute a valid market. Cheil further contends that its NRV methodology was in place before the onset of the Department's less-than-fair-value (LTFV) investigation in 1991, and that the Department accepted and used that methodology during the fair value investigation and the first administrative review. Cheil also argues that precedent obligates the Department to accept Cheil's practice of valuing RC at its NRV. Cheil cites to thirteen separate cases in which NRV methodologies have been applied. Moreover, Cheil argues that the Court of International Trade (CIT) has approved the use of NRV for valuing by-products in *Asociacion Colombiana de Exportadores de Flores* v. *United States*, 704 F. Supp. 1114, 1125 (CIT 1989). Cheil contends that there is nothing on the record that distinguishes the instant facts from the numerous other cases in which the Department has used an NRV methodology to value by-products.

Cheil also asserts that VCs and the resin it recycles as pellets are not physically one-for-one substitutes, and, thus, its practice of valuing pellets at an NRV below that of VC is economically sound. Cheil argues that pellets and VCs have different molecular structures and chemical compositions. Cheil contends that a mixture of pellet and VC can create blending problems. Because of differences in the molecular structure of pellets and VCs, Cheil contends that VCs and pellets melt at different temperatures. Cheil also claims that additional production problems (such as contamination) will result if too many pellets are employed in the production process.

Cheil argues that waste film production has a direct costs impact on PET film (through lower yields, and that higher pellet usage increases fabrication costs. Cheil contends that the Department has no basis to assume that historical production yields would remain constant if the production process utilizes 100 percent VCs. Based on these factors, Cheil argues that pellets should be assigned a lower cost than VCs.

Cheil contends that, contrary to petitioners' assertion, its usage of VC relative to pellets has actually increased from the second to the third review. Cheil asserts that the true value of pellets (because of the lack of substitutability between VC and pellet) is actually lower than their NRV.

Cheil argues that the NRVs that it assigned to pellets reflect the same set of assumptions and market behavior as the NRVs that it assigned to off-grade chip production. Cheil thus concludes that if the Department decides to back out the NRVs at the virgin and chip level, it must also back out the NRVs at the chip production cost level.

Cheil further contends that any methodology which assigns an equal value to VCs and RCs would not properly account for the valuation of beginning and ending inventory. Cheil contends that this is because VCs and recycled pellets would be valued according to one cost methodology, while period-of-review costs would be valued according to a completely different methodology.

SKC: With regard to SKC, petitioners contend that its methodology for costing recycled resin is economically unreasonable and was concocted especially for the Department's fair value investigation. Petitioners assert that prior to the fair value investigation of this case, SKC calculated an average materials cost without distinguishing between virgin and recycled resin. Petitioners assert that the methodology used by SKC in these reviews ignores the costs of the material content of the recycled resin. Petitioners argue that the true cost of the recycled resin is much higher than the value assigned to it by SKC.

Petitioners argue that SKC's normal method of accounting for recycled resin correctly accounts for the processing costs (*i.e.*, labor, overhead, etc.) of recycling, but fails to address the cost of the chemicals which are reclaimed as the recycled resin. Petitioners maintain that SKC must recognize the presence of valuable PET resin in the chips that SKC recycles. By omitting material costs in determining the cost of RC, petitioners assert that SKC understates the cost of films that use a higher proportion of recycled materials.

In response, SKC maintains that its cost accounting methodology does not exclude the cost of the raw materials of recycled resin from PET film cost of production (COP). SKC argues that the PET film production process is a closed cycle, and that all costs are fully accounted for in the system. SKC explains that both VCs and RCs are released into the production line to form PET film as follows: at the end of the film production line scrap film is recovered; the recovered scrap is then reprocessed to produce recycled resin, and the recycled material is then used together with VC to produce more PET film, a portion of which will again be reclaimed. According to SKC raw

materials (ethylene glycol (EG) and dimethyl terephthalate (DMT) or terephthalic acid (TPA)) are used exclusively for the production of VC; the recycled material is produced entirely from scrap film without input of additional raw materials. In other words, all recycled resin is produced from VCs that were released into the film production line during a previous production cycle. SKC states that it does not take a credit for the scrap which it recycles. Therefore, SKC argues that the finished film bears the cost of all raw materials consumed in the film production process, including the cost of raw materials that are later reclaimed to produce RCs.

SKC argues that the Department should continue to value recycled resin according to the methodology employed by SKC in its internal cost accounting system. SKC contends that its cost methodology is reasonable and consistent with accepted accounting concepts. SKC contends that recycled resin has a "lower intrinsic viscosity, lower molecular weight, and increased discoloration" than do VCs. SKC notes that the Department determined that there is no evidence on the record suggesting that SKC has manipulated its chip blends to alter production costs. Finally, SKC asserts that its blending ratios have been stable over time.

Department's Position: We believe that Cheil's and SKC's methods of accounting for their recycled raw materials are reasonable and have relied on them for these final determinations. The legislative history of section 773(b) states that "in determining whether merchandise has been sold at less than cost [the Department] will employ accounting principles generally accepted in the home market of the country of exportation if [the Department] is satisfied that such principles *reasonably reflect* the variable and fixed costs of producing the merchandise." H.R. Rep. No. 571, 93d Cong., 1st Sess. 71 (1973) (emphasis added). The CIT has upheld the Department's use of expenses recorded in the company's financial statements, when those statements are prepared in accordance with the home country's GAAP and do not significantly distort the company's actual costs. *See, e.g., Læclede Steel Co.* v. *United States*, Slip Op. 94–160 at 22 (CIT 1994).

Accordingly, our practice is to adhere to an individual firm's recording of costs, if we are satisfied that such principles reasonably reflect the costs of producing the subject merchandise, and are in accordance with the GAAP of its home country. *See, e.g., Canned Pineapple Fruit from Thailand: Final Determination of Sales at Less Than Fair Value (Canned Pineapple from Thailand)*, 60 FR 29553, 29559 (June 5, 1995); *Certain Stainless Steel Welded Pipe from the Republic of Korea; Final Determination of Sales at Less Than Fair Value*, 57 FR 53693, 53705 (November 12, 1992); *and Furfuryl Alcohol from South Africa: Final Determination of Sales at Less Than Fair Value*, 60 FR 22550, 22556 (May 8, 1995) ("The Department normally relies on the respondent's books and records prepared in accordance with the home country GAAP unless these accounting principles do not reasonably reflect the COP of the merchandise"). Normal accounting practices provide an objective standard by which to measure costs, while allowing respondents a predictable basis on which to compute those costs. However, in those instances where it is determined that normal accounting practices result in an unreasonable allocation of production costs, the Department will make certain adjustments or may use alternative methodologies that more accurately capture the costs incurred. *See, e.g., New Minivans from Japan; Final Determination of Sales at Less Than Fair Value*, 57 FR 21937, 21952 (May 26, 1992).

In the instant proceeding, therefore, the Department examined whether the respondents' normal recycled resin accounting methodology results in costs of producing the *subject merchandise* (finished PET film) that reasonably reflect its cost of production. Notably, we found that a characteristic of the PET film production process is that a substantial amount of film becomes unusable during production. The PET film production process generally takes place in two stages. In the first stage, a mixture of basic chemicals and special additives are used to crate VCs. Both Cheil and SKC produce several different types of VCs, each from a specific chemical recipe designed to promote certain physical attributes in the finished PET film product.

In the second production stage, one or more VC types are measured and mixed with recycled material. The mixture of VC and recycled material is then melted. The molten polymer is extruded onto a chilled casting drum, where it spreads into a continuous polymer film. From the casting drum the film passes through a series of stretching machines. As the finished film cools, it is wound onto a master roll. The master rolls of finished film undergo quality inspection for various physical characteristics. Films that fail this inspection are either sold as off-quality PET film or recycled.

As previously stated, the PET film manufacturing process and finished film quality standards are such that substantial quantities of recyclable waste film are generated. This film is recycled as a raw material input to the production process for PET film. Each type of PET film has a maximum amount of recycled materials that can be added while still allowing the film to meet its quality requirements. We note that the respondents use different processes for recycling the waste film and different methods of accounting for the recycled materials. (See recycled raw materials accounting memorandum, August 17, 1995). However, each company's method is similar in that they assign significantly less cost to the recycled material than they do to the original VC.

Under its normal cost accounting system, SKC attributes to its recycled film only the costs related to recycling. SKC assigns no costs to the waste film used in the recycling process. Thus, SKC records as the cost of recycled material, only the labor and overhead costs incurred for shredding the film and reprocessing it.

Cheil recycled film is treated as a by-product of the film production process and valued at its NRV. Cheil's NRV represents the revenues received (less disposal costs) for recycled material sold as filler for mattresses and toys. Cheil deducts the pellets' NRV from the cost of producing the good PET film output.

On March 20, 1996, the CIT issued its decision in the appeal of the underlying investigation in this proceeding, *E.I. Dupont de Nemours & Co., et al.* versus *United States*, Slip. Op. 96–56, Court No. 91–07–00487 (March 20, 1996) (*Dupont II*). The CIT's decision recognized the above facts with respect to the production of PET film and each respondent's accounting for recycled materials. In light of those facts, the CIT found that:

> [petitioners'] argument that pellets should be costed like virgin chip because they are functionally equivalent defies common sense and arithmetic logic. The reason that PET film production utilizes recycled material is that it is cheaper to recycle scrap film than to manufacture virgin chip; this being the case, assigning pellets the cost of virgin chip would overstate the actual costs of PET film production. *Dupont II*, at 9.

The CIT further noted that the record did not support the allegation that Cheil manipulated the usage rate of pellet in order to shift costs away from PET film exported to the United States.

The CIT also rejected petitioners' arguments concerning SKC's accounting practices. The Court noted that the

VOL 61 ISS 130 JL 5 1996 UMI

reason SKC uses a "zero value" for the material cost of RC is that "SKC did not subtract the value of pellets resulting from PET film production runs from the accounting cost of producing PET film; therefore, there was no basis for adding any pellet value back into the accounting cost of PET film manufactured with pellet material input." *Dupont II*, at 10. While the CIT determined that the Department's refusal to address SKC's methodology for valuing pellet was proper under the scope of the remand, it indicated that even if such instructions "had been part of the remand order, SKC's methodology is reasonable and fully accounts for the value of" its recycled resin. *Dupont II*, at 11.

In this review, we continue to find that Cheil and SKC have reasonably valued RC. We determined that although differing in approach, both methodologies reasonably capture the cost of producing PET film. As previously noted, every PET film production run uses both virgin chip and recycled material. The scrap film resulting from each production run is recycled into subsequent production passes. Each respondent's method of accounting for the recycled material is used in the normal course of business and is GAAP-consistent.

We examined Cheil's and SKC's books and records and found that each company relies on its recycled resin methodology in the normal course of business and has done so for at least the last several years. We further found that each respondent's allocation methodology is consistent with GAAP practiced in Korea.

We disagree with petitioners' argument that the cost basis for recycled materials should be the purchase price of the raw material. The record in this case demonstrates that recycled resin is not the functional equivalent of VC, since the production process degrades the chemicals and introduces contaminants into the process. Thus, while recycled material can be used in place of VC within certain limits, recycled resin and VC are not completely equivalent.

We also do not accept petitioners' contention that SKC's methodology is economically unreasonable. SKC's methodology fully accounts for all costs because each type of film is charged with the cost of the material consumed in its production (as well as the material which will be reused in later production runs). Thus, all production costs are fully charged to the subject merchandise.

We also disagree with petitioners' arguments that Cheil's NRV should be disallowed because it is not representative of a market value. Despite the fact that Cheil's recycled film purchasers use the pellets in less demanding processes, there is no evidence that these transactions do not represent a fair valuation for this material. Moreover, we note that a petitioner also makes sales of recycled film chips or pellets to manufacturers of pillows and carpet. This company indicated that it sells the recycled chip at a price significantly less than the cost to manufacture VC. In addition, the company explained that it had recently adopted a costing methodology based on the relative sales value of RC that is similar to that used by Cheil. (See plant tour memorandum, April 5, 1995.)

Comment 2: Petitioners contend that Cheil and SKC have understated their costs and overstated their U.S. selling prices by misrepresenting the quantities of film that they produce and sell, and that the quantity of films actually shipped are not the quantities of film actually billed. Petitioners assert that since producers will be penalized if they include too little film on a roll, producers will generally include more film on a roll than they actually invoice. Petitioners assert that exhibits collected as part of the verifications for the second and third reviews of Cheil and SKC support their assertion that SKC and Cheil are providing more film on a roll than they have actually reported to the Department. Petitioners additionally contend that the verification exhibits collected in these reviews provide further evidence that reported costs are incorrect because the sales and production quantities used to derive those costs and prices are either "conceptionally inappropriate" or "simply wrong." Petitioners assert that the production quantities reported by Cheil fail to account for losses occurring in the second slitting process. Petitioners suggest that SKC's shifting of the reporting period form 1/1/93–12/31/93 to 7/1/93–6/30/94 for the third administrative review distorted the valuation of RCs and scrap. Petitioners assert that Cheil may have distorted its costs through a similar shifting of the reporting period.

SKC and Cheil contend that the Department verified reported production quantities. SKC and Cheil assert that there is no evidence on the record supporting petitioners' assertion that production quantities were understated or that either company shipped more film on a roll than was reported in SKC's or Cheil's responses.

Department's Position: We disagree with petitioners because there is no evidence on the record to support their claim that either Cheil or SKC understated their production quantities, or that either company shipped more PET film on a roll than the customer ordered. During these verifications, we traced reported production of PET film to the PET film production records of Cheil and SKC. Our trace of production quantities for Cheil accounted for the amount of film (sold exclusively to third countries) that underwent second slitting. (See Cheil July 28, 1995 second review period verification report at page 5; Cheil January 26, 1996 third review period verification report at page 3.) The Department also verified the production quantities reported by SKC. (See SKC July 28, 1995 second review period verification report at page 15; SKC February 27, 1996 third review period verification report at page 10.)

Moreover, we disagree with the petitioners' assertion that Cheil's and SKC's valuation of RC and scrap was distorted because they shifted the reporting period. The Department directed Cheil and SKC to report costs for the third review period from July 1, 1993 through June 30, 1994, rather than for the calendar year January 1, 1993 through December 31, 1993, so that the period for reporting COP/CV information would more closely correspond to the time frame covered by the third review. We have not allowed either Cheil or SKC to manipulate to their advantage the period for reporting cost information.

Comment 3: Petitioners note that the language used to determine whether below-cost sales were made over an extended period of time for Cheil and Kolon fails to identify such sales of merchandise that were sold in less than three months of each period of review. Petitioners contend that this programming error exists for each of the respondents included in these reviews.

Department's Position: We agree. For each of the respondents included in these reviews, we have amended our computer programs to exclude from FMV below-cost sales that were sold in less than three months of the PORs and that made over an extended period of time.

Comment 4: Petitioners contend that the Department erred in adjusting Cheil's home market price for pre-sale inland freight from its factory to its warehouse. Petitioners contend that this deduction contravenes *Ad Hoc Comm. of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, 13 F.3d 398, 401 (Fed. Cir. 1994).

Cheil contends that Departmental practice is to treat pre-sale inland freight as a direct expense in instances where

products are channeled or customized for certain buyers.

Department's Position: We disagree with petitioners. As noted in *Canned Pineapple Fruit from Thailand*, in *Ad Hoc Committee*, the Court ruled that the Department could not use its inherent authority to deduct home market pre-sale movement expenses. Instead, we will adjust for these expenses under the circumstance-of-sale provision as long as we determine that these expenses are directly related to the sales under investigation. The Department generally treats pre-sale movement expenses as direct where those expenses "involve products channeled or customized" for certain buyers (*Id.* at 29563). Because Cheil knew the identity of its customer and the product specifications of that customer prior to the shipment of film from the factory to the warehouse, we have treated Cheil's pre-sale inland freight as a direct selling expense. This is consistent with our position in past segments of this proceeding. (*See Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Determination of Sales at Less than Fair Value* 56 FR 16300, 16303 (April 21, 1991) (*Final Determination*)).

Comment 5: Petitioners contend that certain sales that Cheil has characterized as "samples" were sold in significant volume and should be included in the Department's calculations. Petitioners contend that Cheil's failure to report these sales mandates use of the best information available for Cheil.

Cheil contends that the Department verified that its zero-priced samples were not commercially valued. Cheil contends that the Department's decision to exclude there sales was consistent with past Departmental practice.

Department's Position: We do not consider Cheil's zero-priced samples to be sales within the meaning of the antidumping law. This is consistent with the position taken in *Granular Polytetrafluoroethylene Resin from Japan; Final Results of Antidumping Duty Administrative Review (PTFE from Japan)* 58 FR 50343, 50345 (September 27, 1993), in which we did not include zero-priced samples in our calculations because the samples were used for product evaluation purposes rather than for commercial consumption.

During the PORs Cheil provided a limited number of zero-priced samples to the United States. Cheil provided full documentation that the shipments were not commercially valued, and were for product evaluation purposes only. Accordingly, we did not include these zero-priced samples in our analysis.

Comment 6: Petitioners assert that Cheil has failed to report related-party commissions associated with its U.S. sales. Petitioners assert that these expenses are directly related to U.S. price.

Cheil contends that the mark-up between the price charged by Cheil to its U.S. subsidiary and the price charged by Cheil's U.S. subsidiary to Cheil's U.S. customer is not a "commission." Cheil notes that a commission is "a sum or percentage allowed to agents, sales representatives, etc., for their services." (See *Timken Co.* v. *United States*, 37 F.3d 1470, 1478 (Fed. Cir. 1994).) To receive a commission, Cheil argues that a commissionaire must make a sale on another party's behalf. Because there is no evidence on the record suggesting that Cheil's U.S. subsidiary solicits sales for Cheil, or engages in any activity to generate sales on Cheil's behalf, Cheil argues that the mark-up between the price charged by Cheil to its U.S. subsidiary and the price charged by Cheil's U.S. subsidiary to Cheil's U.S. customer is not a "commission" within the meaning of the antidumping law.

Department's Position: We agree with Cheil. Because Cheil's U.S. subsidiary did not solicit sales for Cheil, we do not consider the mark-up between the price charged by Cheil to its U.S. subsidiary and the price charged by Cheil to Cheil's U.S. customer to be a commission within the meaning of the antidumping law.

Comment 7: Petitioners assert that the Department should use quality control criteria values (QCCVs) rather than product codes to match Cheil's home market and U.S. sales. Petitioners contend that matching sales through QCCVs would be less susceptible to manipulation.

Cheil asserts that use of QCCVs instead of product codes would result in comparisons of home market merchandise that is less similar to the merchandise sold in the United States.

Department's Position: We disagree with petitioners. As noted in *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, et. al.*, 57 FR 28360, 28366, (June 24, 1992) our policy is to "maintain a stable, normal and predictable approach" with regards to model match, and not to alter that methodology unless compelling reasons exist. In these reviews we have used the same methodology for matching Cheil's home market sales that we employed in the less than fair value (LTFV) investigation and in the first review. There is no evidence on the record to suggest that use of product codes has enabled Cheil to manipulate the matching of home market sales.

Finally, we note that use of QCCVs would in several instances result in the matching of merchandise that is less similar to the U.S. merchandise than would the product codes submitted by Cheil. In one instance this dissimilarity would result in the comparison of a product that is coated with a product that is non-coated, and in another instance this would result in comparison of merchandise that is of different chemical compositions.

Comment 8: Petitioners contend that the Department should calculate the credit period for Cheil's U.S. sales from the date of shipment from Cheil's factory to the U.S. customer rather than from the date of export shipment from Korea. Petitioners also assert that the Department should require Cheil to provide the actual date of payment for those U.S. sales for which Cheil had not received payment at the time that Cheil prepared its U.S. response.

Cheil contends that the Department should recalculate Cheil's inventory carrying cost expenses, if it decides to recalculate the credit period from the date of shipment from Cheil's factory.

Department's Position: In these final results we have followed our normal policy and calculated the U.S. credit period beginning with the date that the merchandise leaves the factory. (*See Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, et. al.*, 60 FR 10900, 10916, (February 28, 1995).) We have also recalculated Cheil's inventory carrying costs to avoid double counting of Cheil's credit expenses. Because we noted no significant discrepancies between payment term and the date that Cheil actually received payment, we used payment terms to calculate Cheil's U.S. credit expense for those U.S. sales for which Cheil had not received payment at the time that it prepared its response.

Comment 9: Petitioners contend that the Department should adjust U.S. sales for advertising and promotion expenses that Cheil incurred on its U.S. sales.

Cheil contends that it had no direct advertising or sales promotion expenses during the PORs.

Department's Position: We disagree with petitioners. In response to our questionnaire and our request for supplemental information, Cheil indicated that it had no direct promotion or advertising expenses during the periods of review, and there is no contrary evidence on the record. Since all of Cheil's sales were PP transactions and there were no commissions incurred for home market

VOL 61 ISS 130 JL 5 1996 UMI

sales, the issue of whether Cheil had indirect advertising or sales promotion expenses is moot because in PP transactions we do not adjust for indirect selling expenses, absent commissions in the other market.

Comment 10: SKC contends that the Department's reallocation of its manufacturing costs between A- and B-grade film is contrary to Department practice and unreasonably overstates SKC's B- grade film costs. SKC asserts that B-grade film cannot be used by its normal PET film customers, and should not bear the same cost as A-grade film. SKC contends that the Department's allocation of cost to B-grade film should reflect the economic value of the products manufactured. SKC argues that B-grade film is a by-product of PET film rather than a co-product, and that B-grade film is an unavoidable consequence of manufacturing A-grade film. SKC contends that it seeks to minimize the production of B-grade film, and that B-grade film does not undergo significant processing prior to sale. SKC asserts that sales of B-grade film constitute a small (less than 10 percent) and declining portion of its PET film revenues.

SKC notes that in *Canned Pineapple from Thailand*, The Department did not use physical measures to allocate joint products but rather used an allocation methodology that recognized the significantly different economic values of the products. Based on the dissimilarity of A-grade and B-grade film, SKC contends that the Department's joint allocation of costs between these two products is economically unreasonable.

SKC further asserts that it valued B-grade film in accordance with its longstanding practice. SKC contends that the Department has consistently rejected the use of physical allocation methodologies in cases where the one joint product has a significantly lower economic value than the other product. SKC cites to *Elemental Sulphur from Canada: Final Results of Antidumping Finding Administrative Review*, 61 FR 8239, 8241–8243 (March 4, 1996) (*Sulphur*), and *Oil Country Tubular Goods from Argentina, Final Determination of Sales at Less than Fair Value*, 60 FR 33539, 33547 (June 28, 1995), as two such cases where the Department did not use physical measures to allocate costs. SKC contends that the Department's general practice is to use a company's normal accounting system unless that system results in an unreasonable allocation of costs. SKC further argues that the Department's methodology of allocating yield losses equally between A-grade and B-grade film produces absurd results because the methodology allocates expenses associated with one type of scrap to another part of scrap. SKC also contends that the physical defects inherent in B-grade film compel SKC to (1) sell B-grade film for non-PET film applications, and (2) assign B-grade film a lower value than A-grade film.

SKC asserts that the Department's decision to allocate yield losses equally between A-grade and B-grade film conflicts with the model-match and cost test methodologies employed in these reviews. SKC notes that for model-match purposes, the Department restricted comparisons of U.S. B-grade film to home market sales of B-grade film. SKC asserts that the Department cannot ignore differences between A-grade and B-grade film for purposes of its cost analysis.

Finally, SKC asserts that the Department should accept its cost methodology even if the Department determines that B-grade film is a co-product rather than a by-product of A-grade film. SKC asserts that its cost system is consistent with the *Ipsco Appeal* decision, since, unlike *Ipsco*, SKC does not rely upon sales value to allocate costs. SKC asserts that this is consistent with the methodology employed by the Department in *Polyvinyl Alcohol from Taiwan*, 61 FR 14064 (March 29, 1996). (See Memorandum to Chris Marsh from Art Stein, September 27, 1995.)

Petitioners argue that the Department was correct in equalizing the yield loss that SKC experienced between A-grade and B-grade films. Petitioners contend that allocating all yield loss to A-grade film would result in a misallocation of SKC's costs, an improper use of below-cost sales in the Department's margin calculations, and an understatement of margins for SKC's sales of slitted B-grade film.

Petitioners point out that in various submissions filed in the course of the initial investigation, respondents as a group (including SKC) stated that the essential facts in the administrative proceedings underlying the *Ipsco Appeal* are indistinguishable from the facts in this case.

Petitioners contend that the Department's reallocation reflects the mandate of the *Ipsco Appeal*, and also the realities of PET film production. Petitioners explain that from a batch of resin, a single production run will generate a given amount of A-grade film and a given amount of B-grade film. Regardless of the quality of film, the actual costs of producing a run of film are borne equally. Petitioners maintain that it takes the same volume of raw materials and the same processing effort to make A-grade film as B-grade film.

Petitioners argue that the fact that the *Ipsco Appeal* involved oil country tubular goods instead of PET film is irrelevant. Petitioners maintain that B-grade PET film is not a *by-product* of the PET film production process, but is PET film. B-grade PET film is used in PET film applications, and is generated from the same production run as A-grade film using the same materials and processes. Petitioners therefore conclude that SKC's A-grade and B-grade film must bear the same costs.

Department's Position: We believe that A-grade and B-grade PET film have identical production costs and we have relied on equal costing for this final determination. The CIT's decision in the remand of the underlying investigation (*Dupont II*) affirmed the Department's remand calculation of the cost of production for prime and off-grade film (*i.e.*, A-grade and B-grade film). *Dupont II*, at 6–7. The CIT determined that our recalculation of Cheil's and SKC's production costs was reasonable. As we explained in the remand, we recalculated the cost of off-grade film to reflect actual costs by allocating production costs based on actual production quantities.

Moreover, our use of an equal costing methodology in this proceeding is based on substantial evidence and is otherwise in accordance with law. In the instant reviews, the A-grade and B-grade film undergo an identical production process, involving an equal amount of material and fabrication expenses. The only difference in the resulting A- and B-grade film is that at the end of the manufacturing process a quality inspection is performed during which some of the film is classified as high quality A-grade product, while other film is classified as lower quality B-grade film. The identification of different grades of merchandise does not transform the manufacturing process into a joint production process which would require the allocation of costs.

SKC mischaracterizes the continuous production process of PET film as joint processing. A joint production process occurs when "two or more products result simultaneously from the use of one raw material as production takes place." (*See Management Accountants' Handbook*, Keeler, et. al., Fourth Edition at 11:1.) The essential point of a joint production process is that "the raw material, labor, and overhead costs prior to the initial split-off can be allocated to the final product only in some arbitrary, although necessary, manner," *Id.* In this case, the costs attributable to PET film yield losses can clearly be allocated to the production of specific types of PET film.

SKC argues incorrectly that its method of accounting for lesser quality product is consistent with the *Ipsco Appeal*. Ipsco Appeal involved the Department's use of an appropriate methodology for allocating costs between two grades of steel pipe. These two grades of steel pipe were distinguished on the basis of quality. *Ipsco Appeal*, 965 F.2d at 1058. The same production inputs for materials, labor, and overhead went into the manufacturing lot that yielded both grades of pipe. *Id.* Given these facts, in our final determination we allocated production costs equally between those two grades of pipe. We reasoned that because they were produced at the same time, on the same production lines, and following the identical manufacturing process, the two grades of pipe in fact had identical production costs. *Id.*

SKC's reliance on *Sulphur, Canned Pineapple Fruit from Thailand*, and *Polyvinyl Alcohol from Taiwan* is misplaced. Those cases relate primarily to by-product/co-product costing methodologies. In none of the cases cited by SKC were both products within the scope of the same antidumping order. The PET film production process produces two finished products, both of which are salable, and both of which are PET film products. B-grade PET film (like A-grade film) is sold as *PET film* and consumed as *PET film*. By contrast, the resulting joint products or by-products in the cases cited by SKC were of a different class or kind of merchandise than the products that the manufacturer set out to produce. Pineapple shells, cores, and ends are made into pineapple juice. Natural gas is not of the same class or kind as elemental sulphur, nor are polyvinyl alcohol and methyl acetate. Moreover, we note that in the ordinary course of business SKC treats methanol, and not B-grade film, as the by-product of the PET film production process. Accounting literature identifies by-products as separate and distinct products, not grades of the same product. Unlike the chemical reaction that occurs in the production of polyvinyl alcohol resulting in the by-product methyl acetate, B-grade film is not a by-product. Theoretically the production of B-grade film is avoidable since the PET film manufacturing process need not result in poor quality product.

Finally, SKC's argument that matching A- and B-grade film to identical merchandise necessitates that each of these models have a unique cost is without merit. Two products that are not "identical" for model-match purposes may indeed have the same costs. For purposes of determining COP/CV, however, we must account for all of the costs associated with the production of the merchandise.

Comment 11: Petitioners contend that SKC understated the cost of extending credit to Anacomp on its U.S. sales. Petitioners contend that the credit terms offered to Anacomp by SKC do not constitute a normal extension of credit between buyer and seller, but rather involve an "incentive to finance Anacomp's film purchases at below market rates." Further, petitioners argue that the antidumping statute does not contemplate a circumstance-of-sale adjustment to U.S. price for interest payments that offset credit risk. Finally, petitioners argue that if the Department accepts the Anacomp payments as interest income, it should "impute SKC's interest expense" using an interest rate that is the "equivalent of the market rate sales to Anacomp."

SKC contends that petitioners have offered no grounds for reversing the Department's previous decision to offset interest income against SKC's imputed credit expense.

Department's Position: We disagree with petitioners because, as noted in the first review of this order, "* * * failure to adjust for SKC's interest income received from Anacomp would overstate SKC's U.S. credit expense, and distort our dumping analysis." (*See Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea, Final Results of Antidumping Administrative Review* (*Final Results of the First Review*), 60 FR 42835, 42838 (August 17, 1995). During our verification of SKC we determined that SKC and Anacomp adhered to all of the terms of the "Master Supply Agreement" which governed the payment of interest income to SKC. We also verified the amount of interest income received by SKC. Accordingly, in these final results we have continued to make an offset for interest income as we did in the preliminary results of this review.

Comment 12: Petitioners note that Kolon Industries (Kolon) did not include home market sales of scrap film in its sales listing because "this scrap is not PET film." Petitioners contend that Kolon has failed to substantiate its claim that these scrap sales were not of PET film.

Kolon asserts that the scrap material is not PET film. Kolon contends that the material consists of (1) molten PET material that is deposited in the filters of the extruder before the molten PET material is extruded onto the cooling drum and formed into sheet and film, and (2) shredded trimmings from the film production process. Because the scrap material is not PET film, Kolon argues that it is not within the scope of the order.

Department's Position: We agree with Kolon. Because the scope of the antidumping order is limited to PET "film, sheet and strip," and this material is not PET film, we have not included these scrap sales in our calculations.

Comment 13: Petitioners contend that the Department should include Kolon's U.S. sample sales in its margin calculations. Petitioners contend that while the Department has the authority to omit zero-price samples if the samples were not used for commercial consumption, that exception does not apply for Kolon since those sales were consumed commercially. Petitioners note that the Department included Kolon's zero-price samples in its calculations for the first review.

Kolon contends that the Department should exclude these zero-price samples from its analysis. Kolon notes that in *PTFE from Japan*, the Department excluded such transactions even though the merchandise was not returned to the manufacturer. Kolon contends that the Department's decision to include zero-price sales in its first period analysis was based upon "the incorrect belief that there is no evidence on the record that Kolon's U.S. sample sales are destroyed or rendered unusable." Kolon contends that the nature of PET film requires the tester to unwind the film, and to usually coat the film, stamp it, or use it on a machine. Kolon contends that such testing, by its nature, renders the PET film unusable.

Department's Position: As noted in response to *Comment 5*, in *PTFE from Japan* we determined that zero-priced transactions were not "sales" within the meaning of the antidumping law because the zero-priced samples were used for product evaluation purposes rather than commercial consumption. In the *Final Results of the First Review*, we indicated that *PTFE from Japan* was not applicable because there was no evidence on the record that Kolon's U.S. samples were destroyed or rendered unusable. (*See Final Results of First Review*, at 42841.)

However, the record in these reviews demonstrates that Kolon provided the zero-priced samples for product evaluation and testing purposes rather than commercial consumption. Kolon stated that its one shipment of zero-priced samples during the third review was used for product testing. Moreover, we find that record evidence shows that like PTFE resin, the nature of PET film

VOL
61
ISS
130
1996
JL
5
UMI

is such that once it has been tested, it cannot be re-used. Therefore, consistent with *PTFE from Japan*, we did not include Kolon's zero priced samples in our analysis.

Comment 14: Petitioners contend that Kolon incorrectly used home market adjustments applicable to other reviews in compiling its second and third review responses. Petitioners contend that such a methodology results in inconsistencies.

Kolon contends that it did not revise sales data that it had reported in previous questionnaires in order to avoid inconsistencies from one review to the next.

Department's Position: We disagree with petitioners. It is the Department's longstanding practice to base USP and FMV price comparisons on reasonably contemporaneous sales of similar merchandise. (*See Certain Forged Steel Crankshafts from the United Kingdom*, 56 FR 5975, 5976 (February 14, 1991).) In compliance with our instructions, during the second review Kolon reported data for its sales for the period from December 1991 through July 1993. For the third review, in order to ensure contemporaneous matches, we requested data on sales for the period December 1992 through July 1994. Kolon complied with our request and did not make any revisions to the sales and adjustment data that is had previously reported in prior reviews. Because revising these data previously submitted would result in inconsistencies for identical sales, we determine that Kolon's approach is a reasonable methodology to avoid such inconsistencies.

Comment 15: Petitioners content that Kolon has incorrectly omitted labor and overhead expenses from its calculation of home market packing expenses. Petitioners contend that this error results in an understatement of FMV.

Kolon contends that its cost accounting system does not permit it to retrieve the labor and overhead costs attributable to packing.

Department's Position: We disagree with the petitioners. In Kolon's cost accounting system, because packing and labor costs for PET film are recorded in a single cost center, Kolon cannot separate the specific amount of labor and overhead expenses that are attributable to packing from the labor and overhead expenses that are attributable to the production of PET film. Moreover, since the merchandise that Kolon sold in the home market and the United States is identical, the labor and overhead expenses attributable to packing (were Kolon able to isolate them) would have no effect upon the calculations.

Comment 16: Petitioners contend that expenses associated with replacing defective film for Kolon's home market customers do not qualify as indirect selling expenses. Furthermore, rather than directly-related selling expenses, petitioners argue that these replacement shipments should be included in Kolon's home-market sales listing.

Kolon argues that, consistent with past practice, the Department properly treated the costs associated with defective film as indirect selling expenses.

Kolon contents that it reported the movement expenses incurred on its ESP transactions with as much specificity as possible.

Department's Position: We disagree with the petitioners. The cost of replacing defective film is properly classified as a warranty cost rather than as new sale since these expenses are associated with replacing defective merchandise that had previously been sold. Kolon's accounting records do not separately record the costs for replacing defective film. Because the warranty expenses can not be isolated to specific sales, Kolon properly treated these expenses as indirect selling expenses. (*See, e.g., Color Television Receivers from Korea; Final Results of Antidumping Duty Administrative Review*, 51 FR 41365, 41377 (November 14, 1986).)

Comment 17: Petitioners argue that Kolon should be required to report Korean inland freight on a transaction-specific basis where Kolon's accounting records would permit such reporting. Petitioners contend that for certain exporter's sales price (ESP) transactions, Kolon could provide transaction-specific movement expenses.

Kolon contents that it reported the movement expenses incurred on its ESP transactions with as much specificity as possible.

Department's Position: We disagree with the petitioners. We accept Kolon's approach of allocating movement expenses as reasonable. Generally, the Department will accept a party's alternative methodology for allocating expenses if the party's normal accounting records do not permit it to provide data in the format requested and the party provides data in a manner that approaches the Department's preferred methodology as close as its records will allow. We have stated that we will allow this alternative methodology as long as we determine that it is reasonable. (*See Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany*, 56 FR 31692, 31715 (July 11, 1991). In calculating its U.S. movement expenses Kolon did not use a single average expense for inland freight. Kolon attempted to match each ESP sale to the particular entry. Since ESP merchandise was sold from inventory, however, Kolon could not normally tie a particular ESP sale to an individual entry. Therefore, Kolon allocated movement expenses to the particular group of entries on which that merchandise could have entered. We verified Kolon's data and have no evidence that Kolon's methodology is unreasonable.

Comment 18: Petitioners argue that to the extent that the lower U.S. interest rate was available to the borrower, the Department should use that rate to calculate Kolon's home market credit expense. Petitioners assert that the Department should follow the precedent established in *LMI La Metalli Industriale, S.p.A.* v. *United States*, 912 F.2d 455 (Fed. Cir. 1990), (*LMI*) wherein the Department applied the lowest rate available to the borrower to calculate U.S. and home market interest expenses.

Kolon contends that U.S. dollar interest rates only measure the time value of money for dollars. Kolon argues that the U.S. interest rate cannot be used to determine the opportunity cost of a delayed payment in another currency, such as Korean won.

Department's Position: We disagree with the petitioners. We have used Kolon's calculation of U.S. and Home market credit expenses in these final results because Kolon's calculation of credit expenses is consistent with 'reasonable business behavior' and because we find that Kolon's actual borrowing experience is the best indicator of Kolon's cost of extending credit. *LMI* requires us to use 'usual and reasonable business behavior' to calculate credit expenses. Kolon based its calculation of both home market and U.S. credit expenses on its actual borrowings in the home market and the United States. In the home market, Kolon used the interest expenses incurred in Korea to represent its interest expense. In the United States, Kolon used the interest rate charged on borrowings by its U.S. subsidiary because the U.S. subsidiary was the entity that bore the cost of delayed payment from the customer.

Comment 19: Petitioners argue that Kolon should be required to provide customer- or transaction-specific U.S. rebates where such information is available in Kolon's accounting records. Petitioners contend that the Department should apply second-tier best information available to those sales for which Kolon has reported rebates, but did not quantify the rebate on a transaction- or customer-specific basis.

Kolon contends that it did not provide transaction-specific rebates because such a methodology would not capture rebates that were granted after the preparation of the response. Kolon contends that its methodology of dividing total rebate expense during the POR by total PET film sales is not distortive, and was adopted so that Kolon would not understate its rebate expense.

Department's Position: We agree with petitioners that our normal policy is to calculate discounts or rebates on a transaction- or customer-specific basis. (*See Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, et. al.*, 58 FR 39729, 39762 (July 26, 1993). In reporting its rebate expense for the first review of this order, however, Kolon discovered that a number of rebates were paid several months after Kolon filed its questionnaire response for that review. To avoid understating its rebate expenses in these reviews, Kolon divided the total rebate amount granted on PET film sold during the POR by the total U.S. sales of PET film during the period. Because we did not ask Kolon to provide customer-specific rebates, and because there is no evidence on the record suggesting that Kolon's allocation of rebates is manipulative, we have used Kolon's calculation of rebate expense in these reviews.

Comment 20: Petitioners contend that the Department should make an adjustment to PP for post-sale warehousing expenses incurred on Kolon's PP sales.

Kolon contends that the Department's normal practice is to treat post-sale warehousing expense as direct only if the expense can be tied to particular sales. Kolon asserts that in this case, the after-sale expense does not vary with specific sales. Consistent with past practice, Kolon argues that the Department should treat these warehousing expenses as indirect.

Department's Position: We disagree with the petitioners. During the PORs Kolon maintained a warehouse as its Korean factory. The expenses associated with maintaining that warehouse were fixed and did not vary with individual sales. Accordingly, we properly treated these expenses as indirect selling expenses. *See Professional Electric Cutting Tools and Professional Electric Standing/Grinding Tools from Japan: Final Determination of Sales at Less Than Fair Value*, 58 FR 30144, 30147–30148 (May 26, 1993).

Comment 21: Petitioners contend that in its margin calculations the Department overstated the value of STS Corporation's (STC) further-processed sales by using the wrong variable to represent the quantity sold.

Department's Position: We agree and have adjusted our calculations accordingly.

Comment 22: Cheil contends that the Department should use the transfer price paid to a related supplier to represent the material cost of EG in the Department's second record period calculations. Cheil contends that Departmental practice is to accept transfer prices where direct or indirect ownership is less than 50 percent between buyer and seller. Cheil notes that the equity interest between Cheil and its supplier of EG was much less than 50 percent, and asserts that there is no evidence that Cheil had control over its suppliers.

Petitioners claim that the Department was correct in its determination that Cheil is related to one of its suppliers of EG and that the Department correctly adjusted Cheil's COP/CV calculations to reflect its supplier's cost of producing EG.

Department's Position: We agree with petitioners that Cheil is related to one of its suppliers of EG. Section 773(e)(4)(F) of the Tariff Act of 1930, as amended, defines "related parties" as "two or more persons directly or indirectly controlling, *controlled by*, or under common control with, any person" (emphasis added). Cheil has stated that it was a member of the Samsung Group, which is a group of companies under common management control. (*See* Cheil September 27, 1993 Questionnaire Response at Exhibit 1, *E.I. Dupont de Nemours, et. al.* v. *United States*, 841 F. Supp. 1237, 1247–48 (CIT 1993).) The Samsung Group owns more than 50 percent of Cheil's supplier of EG. By virtue of these relationships, we consider that both Cheil and its supplier are under common control by the Samsung Group. Therefore, they are related parties within the meaning of § 773(e)(4)(F).

Based on this relationship, we tested the transactions between Cheil and its related supplier of EG. During verification we collected a schedule that reported the production costs of the related supplier. The schedule indicated that the product cost of EG exceeded the average price paid by Cheil. (See Memorandum to Chris Marsh from Art Stein, p.3, September 7, 1995.) Accordingly, consistent with our general practice, we relied on the supplier's cost as the value for EG in PET film production.

Comment 23: Cheil contends that the Department should subtract its short-term interest income from its interest expense to derive Cheil's net interest expense. Cheil asserts that the record indicates that its interest income was clearly short-term in nature. Cheil contends that the methodology which it employed in these reviews to derive net interest expense is identical to that which was accepted by the Department in the fair value investigation and the first review of this case. Cheil contends that the Department may not depart from its established practice without explaining its basis for so long. Finally, Cheil asserts that there is no statutory or regulatory basis for denying interest income as an offset to interest expense because that interest income is restricted.

Petitioners claim that the Department correctly denied Cheil's claimed short-term interest income offset because the income generating assets were pledged as collateral for loans. Petitioners note that the Department's standard questionnaire allows the respondent to reduce its interest expense by any interest income earned on short-term investments of its working capital. Petitioner contends that the assets that were collateralized have, in effect, been transformed from short-term to long-term assets.

Department's Position: We have disallowed Cheil's claimed offset of short-term interest income against interest expense. We allow an offset for interest expense only with interest income from short-term investments. (*See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plat from Canada*, 61 FR 13815, 13819 (March 28, 1996).) While this interest income was classified as "short-term" in Cheil's financial statements, the financial statements indicate that the assets are "pledged for collateral for borrowings," and "are restricted as to use and are not subject to immediate withdrawal." (See notes (3) and (5) to Cheil's 1992 audited financial statements, Section A Questionnaire Response, September 27, 1993). Because these assets are not readily available to Cheil, we consider it inappropriate to treat them as short-term investments of working capital.

Comment 24: Cheil, Kolon, and STC contend that the Department should make a tax-neutral adjustment to U.S. price for home market taxes which were forgiven by virtue of export of the product to the United States.

Department's Position: We agree. In light of the CAFC's decision in *Federal Mogul Corp.* v. *United States*, 63 F. 3d 1572 (Fed. Cir. 1995) the Department

VOL 61 ISS 130 JL 5 1996 UMI

has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. We have adjusted our calculations accordingly.

Comment 25: Cheil contends that the Department should include indirect selling expenses in its calculation of COP.

Department's Position: We agree. Since indirect selling expenses were included in the price compared to COP, we have included indirect selling expenses in our calculation of COP.

Comment 26: Cheil contends that the Department should include duty drawback in the home market price that is compared to COP.

Department's Position: We agree. Duty drawback was applicable to Cheil's local export sales. Accordingly, when comparing the home market price to COP, we have included the duty drawback incurred on Cheil's "local export" sales.

Comment 27: Cheil contends that in calculating profit the Department should not use net price rather than gross price.

Department's Position: We agree. Because profit represents the arithmetic difference between sales revenue and the expenses incurred in realizing that revenue, we have used Cheil's home market price net of adjustments to calculate home market profit.

Comment 28: Cheil contends that in its second review period calculations, the Department used an incorrect amount for differences in merchandise (difmer). Cheil further contends that the Department erroneously added rather than subtracted difmer from FMV in the second review period. Finally, Cheil contends that since its difmer claim is denominated in Korean won, the Department should convert difmer into U.S. dollars prior to adding this amount to an FMV stated in dollars.

Department's Position: We agree and have adjusted our calculations accordingly.

Comment 29: Cheil contends that the Department should exclude direct selling expenses from its CV calculations because they are comprised exclusively of movement expenses.

Department's Position: We agree and have excluded these expenses from our calculation of CV.

Comment 30: Cheil and SKC contend that the Department double-counted packing in its CV calculations.

Department's Position: We agree and have revised our CV calculations to eliminate the double-counting of packing expenses.

Comment 31: Cheil, SKC, and STC contend that for U.S. sales which were compared to CV, the Department should make an addition to U.S. price for duty drawback. Cheil, SKC, and STC contend that this adjustment is necessary because they included these duties in the cost of manufacture (COM) component of CV.

Department's Position: We agree. Because Cheil, SKC, and STC included import duties in their calculation of COM, we have made an addition to U.S. price in these final results for duty drawback.

Comment 32: Kolon contends that for comparisons to CV, home market inventory carrying costs would be included in the pool of indirect selling expenses.

Department's Position: We agree. In these final results we included inventory carrying costs in the pool of indirect selling expenses.

Comment 33: SLC argues that the Department should accept the price charged to SKC by its related supplier of DMT and TPA. SKC notes that the equity interest between SKC and its supplier of DMT and TPA was much less than 50 percent, and asserts that there is no evidence that SKC has control over its supplier. SKC asserts that it demonstrated that its purchases of DMT and TPA were at arms-length. SKC also asserts that it purchased DMT and TPA at "market prices." SKC further contends that a proper analysis of the cost of producing DMT and TPA provides no evidence that prices for these materials were below cost.

Petitioners contend that the Department correctly adjusted SKC's COP/CV calculations to reflect the supplier's cost of producing DMT and TPA. Petitioners contend that SKC and its supplier are related within the meaning of the antidumping law because an equity relationship exists between SKC and that supplier.

Department's Position: We agree with petitioners that SKC is related to one of its suppliers of DMT and TPA. During the PORS, SKC owned more than a 5 percent interest in its supplier. (*See* SKC October 12, 1993 questionnaire response at § VIII at 18, and SKC October 11, 1994 questionnaire response § VIII at 21.) Thus, pursuant to § 773(e)(4)(E) of the statute, these parties are related.

Based on this relationship, we tested the transactions between SKC and its related supplier. Analysis of these prices indicated that the transfer price between SKC and its supplier was less than the supplier's cost of producing DMT and TPA. During our verification of SKC, we met with the supplier, who furnished us with a copy of the detailed inventory statement from its financial statement. The inventory statement listed the total and per-unit cost of goods sold in the supplier's finished inventory.

SKC's supplier suggested that selling, general and administrative expenses, and interest expense should be based on the cost of goods sold (COGS) from the supplier's income statement. We calculated the full cost of producing DMT and TPA based on that methodology. We then compared these costs to the average monthly transfer prices reported on attachments 4 and 5 of SKC's March 13, 1995 submission, and determined that the supplier's cost for TPA exceeded the average transfer price charged to SKC. We also determined that the supplier's cost for DMT exceeded the average transfer price charged to SKC. (See Memorandum to Chris Marsh from Paul McEnrue, August 18, 1995, at page 3.) Accordingly, consistent with our general practice, we relied on the supplier's cost as the value for TPA and DMT purchased from related suppliers.

Comment 34: SKC asserts that if the Department does not use the prices charged to SKC from a related supplier, the Department should ensure that it relies upon a reasonable estimate of the supplier's cost. SKC argues that the Department used an erroneous rate for SG&A expenses in its analysis of the cost of producing DMT and TPA. SKC also asserts that the Department in its third review calculations erroneously compared the prices for DMT and TPA charged by all of its suppliers for these materials, rather than the prices paid by SKC to its related suppler.

Petitioners argue that the calculation methodology reflects a reasonable and proper exercise of the Department's discretion. Petitioners note that the methodology was proposed by SKC's related supplier in the second review. Petitioners maintain that SKC, unhappy with the results, proffered an alternative methodology in the third review to achieve more favorable results. Petitioners argue that the Department should reject SKC's request for changes since it failed to substantiate why a change in mehtodology would be appropriate.

Department's Position: For the third review we changed the SG&A rate used in our analysis of SKC's cost of DMT and TPA. Prior to verification, we requested supplemental information for the third review. Specifically; we asked SKC to document that its purchases of major inputs were at arm's length. Based on the information provided by SKC,

and for the reasons noted in response to *Comment 33*, we have revised our calculations of the supplier's cost of producing DMT and TPA for the third review period.

SKC also attempted to supply this information for the second review period. The information, however, was provided outside the time constraints of 19 CFR 353.31(a)(1)(ii), and was not provided in response to our request. Therefore, we did not use this untimely and unverified information in our second review period calculations.

Comment 35: SKC contends that if the Department does adjust RC costs, it should calculate a uniform cost for VCs and for RCs. SKC asserts that such an approach would be preferable to calculating the cost of RC as the full cost of the scrap film plus the cost of recycling.

Department's Position: As noted in our response to *Comment 1*, because we did not adjust RC costs, this issue is moot.

Comment 36: For the third review SKC argues that the Department should adjust its COM for certain period costs. SKC asserts that these period costs could not be determined until the end of its fiscal year. SKC assets that correction of these period costs is necessary in order to ensure that the Department's cost calculations reflect the most complete and accurate data available.

Department's Position: We agree, and for the final results of the third review we have adjusted the COM of all products to reflect the final, audited cost results.

Comment 37: SKC asserts that for the second that third reviews, the Department erroneously used CV for all U.S. sales that had sufficient home market comparisons. SKC asserts this error resulted from the Department's erroneous reading of SKC's product concordance.

Department's Position: We agree with SKC that we misread its product concordance in our preliminary results. In these final results we amended our calculations to match U.S. sales with home market sales of identical merchandise according to the concordance data provided by SKC.

Comment 38: SKC asserts that due to a spreadsheet formula error, the Department overstated the COM for products SM30/12 and SS01/12 in the second review.

Department's Position: We agree, and for the final results of the second review we have recalculated the COMs of these products.

Comment 39: SKC asserts that in these reviews the Department erroneously overstated home market profit by failing to include selling expenses in COP.

Department's Position: We agree. In these final results we have included SKC's selling expenses in our calculation of home market profit.

Comment 40: SKC contends that the Department erroneously included inventory carrying costs in CV for purchase price (PP) sales.

Department's Position: We agree with SKC that inventory carrying costs should be excluded from CV for comparisons with PP sales, and we have amended our calculations accordingly.

Comment 41: SKC asserts that the Department overstated CV financing expenses in these reviews by not including notes receivable in the calculation of the financing expense offset.

Department's Position: We agree and have added notes receivable in the offset used to calculate net finacning expenses for CV.

Comment 42. SKC asserts that for the third administrative review the Department erroneously used COMs for the second review for products SS01/12 and SS01/15.

Department's Position: We agree and have amended these final results accordingly.

Comment 43: STC asserts that the Department should exclude aberrant U.S. sales of obsolete merchandise from its margin analysis. STC contends that the CIT determined in *American Permac, Inc.* v. *the United States*, 783 F. Supp. 1421 (CIT 1992) that the Department had the discretion to exclude such U.S. sales.

Department's Position: We disagree with STC. As noted in the *Final Results of the First Review*, there is no provision in the statute for the exclusion of U.S. sales based upon those U.S. sales being "aberrant" or outside the ordinary course of trade (*See Final Results of First Review*, (42842).) Therefore, we have included these sales in our calculations.

Comment 44: STC asserts that if the Department includes sales of obsolete merchandise in its margin calculations for the third review, it should compare them to comparable home market sales, even if such sales were below cost. STC asserts that the legislative history of the sales-below-cost provision and the SAA accompanying the Uruguay Round support the use of below-cost sales of obsolete merchandise in the calculation of FMV.

Department's Position: We disagree with STC. As explained in our preliminary determination, all comparable home market sales were excluded because they were below cost. Section 773(b) of the Act explicitly mandates the exclusion of below cost sales if such sales have been made in substantial quantities over an extended period of time and are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade. Because the language of the statute unambiguously requires the exclusion of all below cost sales that have satisfied the listed criteria, it is unnecessary to resort to the legislative history for further guidance. *See Davis* v. *Michigan Dep't. of Treasury*, 489 U.S. 803, 808, n.3 (1989) ("Legislative history is irrelevant to the interpretation of an unambiguous statute.").

Moreover, it is a primary tenet of statutory construction that, if possible, legislative history must be read to be consistent with the meaning of a clear statutory mandate. *See* Sutherland Stat. Const. § 48.06 (5th ed. 1992). Therefore, the references to obsolete and end-of-model year merchandise in the legislative history of the COP provision merely provide examples of instances when below cost sales may not satisfy the statute's criteria of being made in substantial quantities over an extended period of time and at prices which permit recovery of costs.

Therefore, because we determined that STC's below-cost sales satisfied the statutory criteria for exclusion, we complied with the clear statutory mandate to disregard STC's below cost sales, including these sales of obsolete merchandise. When necessary, we have used CV, in accordance with section 773(b).

Comment 45: STC contends that the Department should correct its calculation of profit for value-added sales by adjusting for movement expenses.

Department's Position: We agree and have adjusted our calculations accordingly.

Comment 46: STC contends that for third period ESP sales compared to CV, the Department should include inventory carrying costs in the pool of indirect selling expenses.

Department's Position: We agree that inventory carrying costs should be included in the pool of indirect selling expenses for the calculation of CV when used as the comparison for ESP sales. We have adjusted our calculations accordingly.

Final Results of Review and Revocation in Part

Upon review of the comments submitted, the Department has determined that the following margins exist for the periods indicated:

VOL 61 ISS 130 JL 5 1996 UMI

Company	Period	Margin (percent)
Cheil	92–93	0
Cheil	93–94	0.01
Kolon	92–93	0.11
Kolon	92–93	0.12
SKC	92–93	5.89
SKC	93–94	0.52
STC	92–93	0.47
STC	93–94	0.93

Based upon the information submitted by Cheil during these reviews and the first administrative review, we further determine that Cheil has met the requirements for revocation set forth in § 353.25(a)(2) and § 353.25(b) of the Department's regulations. Cheil has demonstrated three consecutive years of sales at not less than fair value and has submitted the certifications required under 19 CFR 353.25(b)(1). The Department conducted a verification of Cheil as required under 19 CFR 353.25(c)(2)(ii).

On the basis of no sales at less than FMV for a period of three consecutive years, and the lack of any indication that such sales are likely, the Department concludes that Cheil is not likely to sell the merchandise at less than FMV in the future. Therefore, the Department is revoking the order with respect to Cheil.

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions concerning each respondent directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed firms will be the rates outlined above for the third review period except for Cheil and Kolon; because Kolon's weighted-average margin is *de minimis*, its cash deposit rate will be zero percent; because we are revoking Cheil, no cash deposit will be required for Cheil; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 4.82 percent, the all-others rate established in the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as the final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 26, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–17159 Filed 7–3–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–489–501]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain welded carbon steel pipe and tube from Turkey in response to a request by the petitioners.[1] This review covers shipments of this merchandise to the United States during the period May 1, 1994, through April 30, 1995.

We have preliminarily determined that sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs to assess antidumping duties equal to the differences between the United States price and NV.

Interested parties are invited to comment on the preliminary results. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: July 5, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Stagner or Magd Zalok, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1673 or (202) 482–4162, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On May 10, 1995 (60 FR 24831), the Department published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on *Certain Welded Carbon Steel Pipe and Tube from Turkey* covering the period May 1, 1994, through April 30, 1995 (58 FR 53709). In accordance with 19 CFR 353.22(a)(1), in May 1995, the petitioners requested a review of the following producers and exporters of certain welded carbon steel pipe and tube: (1) The Borusan Group[2] (Borusan); (2) Mannesmann-Sumerbank Boru Industrisi T.A.S. (Mannesmann); (3) Yucelboru Ihracat, Ithalat ve Pazarlama A.S./Cayirova Boru Sanayi ve Ticaret A.S. (Yucelboru); and (4) Erbosan

[1] Allied Tube & Conduit and Wheatland Tube Company.

[2] Including Borusan Birlesik Boru Fabrikalar A.S., Kartal Boru Sanayi ve Ticaret A.S., and Borusan Ihracat Ithalat ve Dagitim A.S.

Erviyas Boru Sanayii ve Ticaret A.S. (Erbosan). On June 15, 1995, the Department published a notice of initiation of this antidumping duty administrative review (60 FR 31447). The Department is conducting this administrative review in accordance with section 751 of the Act.

On June 30 and November 13, 1995, respectively, Yucelboru and Mannesmann stated that they did not have any shipments during the period of review (POR). In November 1995, Borusan and Erbosan submitted responses to the Department's September 12, 1995, questionnaire. We issued supplemental questionnaires to Borusan and Erbosan in May 1996. Responses to these questionnaires were received in June 1996.

On January 16, 1996, the petitioners alleged that Borusan made sales at below its cost of production (COP). On May 3, 1996, we initiated an investigation of sales below cost. In June 1996, Borusan submitted a response to the Department's May 23, 1996, cost questionnaire.

Scope of the Review

The products covered by this review include circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, bevelled end, threaded and coupled). Those pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe application. All carbon steel pipes and tubes within the physical description outlined above are included in the scope of this review, except for line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Facts Available

In November 1995, we received a questionnaire response from Erbosan. In addition, Erbosan responded to a supplemental questionnaire in June 1996. In its responses, Erbosan did not provide: (1) The data necessary for the Department to quantify the cost attributable to physical differences in its U.S. and home market merchandise; (2) U.S. and home market packing expenses; and (3) duty drawback amounts.

Section 776(a)(1) states that if necessary information is not available on the record, the Department "shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title." Section 782(e) provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the Department if: (1) The information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information; and (5) the information can be used without undue difficulties. Accordingly, in using the facts available, the Department may disregard information submitted by a respondent if any of the five criteria has not been met.

Due to the above-referenced omissions, we have determined that Erbosan's response is so incomplete that it cannot serve as a reliable basis for calculating dumping margins for these preliminary results (section 782(e)(3) of the Act). Therefore, pursuant to section 776(a) of the Act, we are using facts available to calculate a margin for Erbosan.

The Department must then determine whether an adverse inference is warranted. Section 776(b) of the Act provides that, where the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from (the Department) * * * (the Department) may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available."

Despite there being insufficient information to calculate a preliminary margin, we believe that Erbosan has cooperated to the best of its ability in supplying the requested information in this review. Therefore, we are not using an adverse inference in selecting from among the facts otherwise available (*see* section 776(b) of the Act).

Erbosan is a new respondent that has not been investigated before. Therefore, its past entries have been subject to the "All Others" rate from the original investigation. We have determined that continued use of the rate is warranted as a cooperative facts available rate for purposes of these preliminary results. Accordingly, we have assigned to Erbosan a margin of 14.74 percent, the "All Others" rate from the original investigation.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA), provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* H. Doc. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1996).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike for other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as facts available, the Department will disregard the margin and determine an appropriate margin (see, e.g., Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review (61 FR 6812, 6814, February 22, 1996)) (where the Department

VOL 61 ISS 130 JL 5 1996 UMI

disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). In this case there are no circumstances present to indicate that the selected margin is not appropriate to use as facts available.

Although we are using facts available for the preliminary results, we intend to provide Erbosan an opportunity to submit the missing information referenced above as part of a response to another supplemental questionnaire. If Erbosan's reported information is accurate, complete and verified, we will use such information in the final results.

Product Comparisons

In accordance with section 777A(d)(2) of the Act, we calculated for Borusan transaction-specific Export Prices (EPs) for comparison to either weighted-average NVs or constructed values. The EPs and NVs were calculated and compared by product characteristics and levels of trade. For price to price comparisons, we compared identical merchandise, where possible. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar comparisons based on the characteristics listed in the Department's antidumping questionnaire. We excluded certain products in the home market from our analysis because there were either missing values or because the merchandise was not part of the foreign like product.

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the SAA accompanying the URAA, at 829–831, to the extent practicable, the Department will calculate normal value based on sales at the same level of trade as the U.S. sales. When the Department is unable to find sales in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different levels of trade (see also, Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy (61 FR 30326, June 14, 1996) (Pasta from Italy)).

In accordance with section 773(a)(7)(A) of the Act, if sales at different levels of trade are compared, the Department will adjust the normal value to account for the difference in level of trade if two conditions are met. First, there must be differences between the actual selling functions performed by the seller at the level of trade of the U.S. sale and the level of trade of the normal value sale. Second, the differences must affect price comparability as evidenced by a pattern of consistent price differences between sales at the different levels of trade in the market in which normal value is determined.

In implementing these principles in this case, the Department's first task was to obtain information about the selling activities of the producers/exporters. Information relevant to level of trade comparisons and adjustments was requested of Borusan in our May 1996 supplemental questionnaire. We asked Borusan to establish any claimed levels of trade based on the selling functions provided to each proposed customer group, and to document and explain any claims for a level of trade adjustment.

Our review of Borusan's submission shows that it has identified levels of trade based on its selling activities by customer categories and channels of distribution. In order to confirm whether separate levels of trade actually existed within or between the U.S. and home markets, we reviewed the selling functions attributable to the levels of trade claimed by Borusan. Pursuant to section 773(a)(1)(B)(i) of the Act, and the SAA at 827, in identifying levels of trade for directly observed export price and normal value sales, we considered the selling functions reflected in the starting price, before any adjustments. In reporting selling functions, whenever sales within a level of trade were made by or through an affiliated company or agent, Borusan "collapsed" the affiliated parties before considering the functions performed.

The selling functions and activities examined for each reported level of trade were: (1) Inventory maintenance; (2) technical services; (3) warranty services; (4) customer advice and product information; (5) agent coordination of production and delivery; (6) general vs. speciality sales staff; (7) delivery arrangements; (8) sales from warehouse vs. direct sales; and (9) direct advertising. We did not consider trade discounts as a selling function (see Pasta from Italy).

In reviewing the selling functions reported by Borusan for each claimed level of trade, we considered all types of selling functions, both claimed and unclaimed, that had been performed. Where possible, we further examined whether the selling function was performed on a substantial portion of sales within the relevant level of trade. In analyzing whether separate levels of trade exist in this review, we found that no single selling function in the pipe and tube industry was sufficient to warrant a separate level of trade (see, Notice of Proposed Rulemaking and Request for Public Comments (61 FR 7307, 7348, February 27, 1996)).

In determining whether separate levels of trade existed in or between the U.S. and home markets, the Department considered the level of trade claims of Borusan, but the ultimate decision was based on the Department's analysis of the selling functions associated with the levels of trade reported by Borusan.

For Borusan, we determined that there is one U.S. level of trade and three home market levels of trade, one of which we determined to be identical in aggregate selling functions to that found in the United States. We compared sales at the sole level of trade in the U.S. market to sales at the identical home market level of trade. If no match was available at the same level of trade, we compared sales at the sole level of trade in the U.S. market to sales at the next most similar home market level of trade. We then examined whether a level of trade adjustment was appropriate for Borusan when comparing sales at its U.S. level of trade to sales at the two non-identical home market levels of trade.

To determine whether a level of trade adjustment was necessary, we examined, on a monthly basis, the prices of comparable product categories, net of all adjustments, between sales at the one identical home market level of trade and sales at each of the two non-identical home market levels of trade. We found a consistent pattern of price differences between sales at these levels of trade. Therefore, for non-identical level of trade matches, we made a level of trade adjustment based on the weighted-average difference between the prices of the product at the identical home market level of trade and each of the products at the two non-identical home market levels of trade in the given month. If no match was found, we compared EP to constructed value.

Fair Value Comparisons

To determine whether sales of pipe and tube to the United States were made at less than fair value, we compared the EP to the NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Turkey experienced an inflation rate of over 75 percent during the POR, as measured by the wholesale price index published in International Financial Statistics. Accordingly, to avoid the distortions caused by the effects of this level of inflation on prices, we limited our comparisons to sales in the same month and did not apply the Department's 90/60 day rule.

Export Price

For Borusan, we calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and Constructed Export Price (CEP) methodology was not otherwise warranted based on the facts of this investigation.

We based EP on prices to unaffiliated purchasers in the United States. We made deductions from the starting price (gross unit price), where appropriate, for foreign inland freight, foreign inland insurance, international freight and charges. We recalculated credit expenses due to errors in Borusan's credit methodology. Additionally, we added countervailing duties and duty drawback. We disallowed Borusan's claimed value-added tax drawback because no statutory authority exists for such an adjustment.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Borusan's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Since Borusan's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. We calculated NV as noted in the "Price to Price Comparisons" and "Price to CV Comparisons" sections of this notice.

Cost of Production Analysis

Based on the petitioner's allegation, the Department found reasonable grounds to believe or suspect that Borusan's sales in the home market were made at prices below the cost of producing the merchandise. As a result, the Department initiated an investigation to determine whether Borusan made home market sales during the POR at prices below its COP within the meaning of section 773(b) of the Act.

A. Calculation of COP

We calculated the COP based on the sum of Borusan's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general, and administrative expenses (SG&A) and packing costs in accordance with section 773(b)(3) of the Act. As noted above, we determined that the Turkish economy experienced significant inflation during the POR. Therefore, in order to avoid the distortive effect of inflation on our comparison of costs and prices, we requested that Borusan submit monthly production costs incurred during each month of the POR. For a small number of sales, Borusan did not report production costs. These sales were not matched to any U.S. sales. We therefore excluded these sales from our analysis. We calculated a simple-average cost for each product after indexing the reported monthly costs of manufacturing during the POR to an equivalent currency level using the wholesale price index for Turkey. The simple-average cost of manufacturing was then restated in the currency value of each respective month and used to calculate monthly COP and CV for each product. We relied on Borusan's submitted costs except in the following specific instances where the reported costs were improperly valued:

(1) Borusan reduced its reported coil costs by inventory holding gains. Our current cost methodology for economies with significant inflation requires valuing any materials used to produce the subject merchandise at the average purchase price of those materials during the month of shipment. We therefore adjusted coil costs by removing these holding gains.

(2) Borusan reported interest expenses which reflect a deduction for foreign exchange gains. We adjusted these interest expenses by excluding the foreign exchange gains since Borusan did not describe the nature of the transactions giving rise to the gains.

B. Test of Home Market Prices

We used Borusan's adjusted monthly COP amounts and the wholesale price index from the government of Turkey's State Institute of Statistics to compute an annual weighted average COP for the POR. We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, and direct selling expenses.

C. Results of COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were at prices less than the COP, we disregarded the below-cost sales where such sales were found to be made at prices which would not permit the recovery of all costs within a reasonable period of time (in accordance with section 773(b)(2)(D) of the Act). Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product, and calculated NV based on CV, in accordance with section 773(a) of the Act.

We found that, for certain pipe and tube products, more than 20 percent of Borusan's home market sales were sold at below the COP. Further, we did not find that the prices for these sales provided for the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1). For those pipe and tube products for which there were no above-cost sales in the ordinary course of trade, we compared export prices to CV.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Borusan's cost of materials, fabrication, SG&A and U.S. packing costs as reported in the U.S. sales databases. In accordance with section 773(e)(2)(A), we based SG&A and profit on the actual amounts incurred and realized by Borusan in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. We calculated CV based on the methodology described in the calculation of COP above. For selling expenses, we used the weighted-average home market selling expenses.

Price to Price Comparisons

For those comparison products for which there were sales at prices above the COP, we based NV on home market prices. For Borusan, we calculated NV based on FOB mill/warehouse or delivered prices to unaffiliated customers, or prices to affiliated customers which were determined to be at arm's length (see discussion below regarding these sales). We made deductions, where appropriate, from the starting price for inland freight, pre-sale warehouse expense, discounts, and rebates. We recalculated credit expenses to correct for missing payment dates.

Additionally, we added late payment charges. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs.

VOL 61 ISS 130 JL 5 1996 UMI

In addition, we adjusted for differences in the circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act. These circumstances included differences in imputed credit expenses. We also made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We calculated simple average variable and total costs of manufacturing by product after indexing the reported monthly costs using the wholesale price index for Turkey. We then indexed the average variable and total costs of manufacturing to restate them in the currency value of each respective month. The adjusted monthly variable costs of manufacturing for U.S. and home market products were then compared to arrive at the difference in merchandise adjustment. For a single U.S. product, where no costs were reported, we assigned the highest reported U.S. variable cost of manufacture as facts available. Where the difference in merchandise adjustment for any product comparison exceeded 20 percent, we based normal value on CV.

To determine whether Borusan's affiliated sales were made at arm's length, we compared the gross unit prices of sales to affiliated and unaffiliated customers net of all movement charges, direct and indirect selling expenses, and packing (see the Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37062, 37077, July 9, 1993)). We included those sales that passed the arm's length test in our analysis (see 19 CFR 353.45(a)).

Price to CV Comparisons

Where we compared CV to export prices, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses.

Currency Conversion

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Turkish lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones Service, as published in the Wall Street Journal.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from a benchmark rate by 2.25 percent. The benchmark rate is defined as the rolling average of the rates for the past 40 business days.

However, we believe that it is appropriate in this case to use actual daily exchange rates for currency conversion purposes, rather than the benchmark rate. As noted in Policy Bulletin 96–1: Currency Conversions (61 FR 9434, March 8, 1996), the Department is continuing to examine the appropriateness of the currency conversion policy in situations where the foreign currency depreciates substantially against the dollar over the POI. In those situations, it may be appropriate to rely on daily exchange rates. When the rate of domestic price inflation is significant, as it is in this case, it is important that we use as a basis for NV home market prices that are as contemporaneous as possible with the date of the U.S. sale. This is to minimize the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and home market sales. For this reason, we have used the daily exchange rates for currency conversion purposes.

Further, section 773A(b) directs the Department to allow a 60 day adjustment period when a currency has undergone a sustained movement. Such an adjustment period is required only when the foreign currency is appreciating against the U.S. dollar. No adjustment period is warranted in this review, because the Turkish Lira generally remained constant or depreciated against the dollar during the POR.

Verification

On June 7, 1996, the petitioners requested that the Department conduct verification of all factual information submitted by the respondents upon which the Department relies in its final results. Although this request was untimely and therefore not in accordance with 19 CFR 351.307(v)(A), the petitioners stated that this request should not be rejected due to the fact that: (1) No verification has been conducted in a review of the order since the 1986–87 administrative review; (2) a sales below cost of production investigation had only recently been initiated; and (3) no response had been received on petitioners' request for a verification of the 1993–94 administrative review. The petitioners stated that the delay in the completion of the 1993–94 review had impeded their ability to timely assess the need for verification in this review.

Although the petitioners' request was untimely, we believe that in this case, good cause for verification exists pursuant to 19 CFR 353.36(a)(iii) since: (1) No verification has been conducted since the 1986–87 administrative review; (2) we expect that there will be significant post-preliminary results submissions of information; and (3) this review includes a company (Erbosan) that has never been subject to a verification. Therefore, pursuant to section 776(b) of the Act and 19 CFR 353.36, we plan to verify the sales and cost response of Borusan and the sales response of Erbosan (provided that Erbosan responds in full to the next supplemental questionnaire) in this administrative review.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period May 1, 1994, through April 30, 1995:

Manufacturer/exporter	Review period	Margin (percent)
Borusan	5/1/94–4/30/95	2.97
Erbosan	5/1/94–4/30/95	14.74
Mannesmann	5/1/94–4/30/95	[3]23.12
Yucelboru	5/1/94–4/30/95	[4]28.28

[3] No shipments subject to the review. Rate is from the last relevant segment of the proceeding in which the firm had shipments.
[4] Ibid.

Parties to the proceeding may request disclosure within 5 days of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between EP and NV may vary from the percentages stated above. Upon completion of this review, the Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of pipe and tube from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 752(a)(2)(c) of the Act: (1) The cash deposit rates for Borusan and Erbosan will be the rates established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis* within the meaning of section 733(b)(3) of the Act, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the "All Others" rate, as set forth below.

On March 25, 1993, the U.S. Court of International Trade (CIT), in *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993), and *Federal-Mogul Corporation* v. *United States*, 822 F.Supp. 782 (CIT 1993), decided that once an "All Others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement this decision, it is appropriate to reinstate the original "All Others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. In proceedings governed by antidumping findings, unless we are able to ascertain the "All Others" rate from the original investigation, the Department has determined that it is appropriate to adopt the "New Shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical errors or as a result of litigation) as the "All Others" rate for the purposes of establishing cash deposits in all current and future administrative reviews. Because this proceeding is governed by an antidumping duty order, the "All Others" rate for the purposes of this review will be 14.74 percent, the "All Others" rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Date: June 27, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–17160 Filed 7–3–96; 8:45 am]

BILLING CODE 3510–DS–P

Duke University Medical Center; Notice of Decision on Applications for Duty-free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

DECISION: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

REASONS: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following dockets.

Docket Number: 95–104. *Applicant:* Duke University Medical Center, Durham, NC 27110. *Instrument:* Stopped-Flow Spectrometer, Model SX.17MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. Date of Denial without Prejudice to Resubmission: March 4, 1996.

Docket Number: 95–105. *Applicant:* University of Washington, Department of Physiology & Biophysics, Box 357290, Seattle, WA 98195–7290. *Instrument:* Stopped-Flow Spectrometer, Model SX.17MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Date of Denial without Prejudice to Resubmission:* March 6, 1996.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–17161 Filed 7–3–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Dean John A. Knauss Marine Policy Fellowship; Open for Applications

SUMMARY: In 1979, the National Sea Grant College Program Office (NSGCPO), in fulfilling its broad educational responsibilities, initiated a program to provide educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government to graduate students in marine related fields. The Fellowship program accepts applications once a year during the month of September. All applicants must submit an application to one of the state Sea Grant College Programs in their area.

FOR FURTHER INFORMATION CONTACT: Dr. Shirley J. Fiske, Director, National Sea Grant Federal Fellows Program, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, Maryland 20910, telephone (301) 713–2431 extension 148 or call your nearest Sea Grant program:

University of Alaska—(907) 474–7086
University of California—(619) 534–4440
University of Connecticut—(860) 445–3457
University of Delaware—(302) 831–2841
University of Florida—(904) 392–5870
University of Georgia—(706) 542–6009
University of Hawaii—(808) 956–7031
University of Illinois—(317) 494–3593
Louisiana State University—(504) 388–6710
University of Maine—(207) 581–1436
University of Maryland—(301) 405–6371
Massachusetts Institute of Technology—(617) 253–7131
University of Michigan—(313) 763–1437
University of Minnesota—(218) 726–8106
Mississippi-Alabama Sea Grant Consortium—(601) 875–9341
University of New Hampshire—(603) 862–3505
New Jersey Marine Science Consortium—(908) 872–1300
State University of New York—(516) 632–6905

VOL 61 ISS 130 JL 5 1996 UMI

University of North Carolina—(919) 515–2454
The Ohio State University—(614) 292–8949
Oregon State University—(503) 737–3396
University of Puerto Rico—(787) 832–3585
Purdue University—(317) 494–3593
University of Rhode Island—(401) 874–6800
South Carolina Sea Grant Consortium—(803) 727–2078
University of Southern California—(213) 740–1961
Texas A&M University—(409) 845–3854
Virginia Graduate Marine Science Consortium—(804) 924–5965
University of Washington—(206) 543–6600
University of Wisconsin—(608) 262–0905
Woods Hole Oceanographic Institute—(508) 457–2000 ext. 2665

SUPPLEMENTARY INFORMATION:

Dean John A. Knauss Marine Policy Fellowship; National Sea Grant College Federal Fellows Program

Purpose of the Fellowship Program

In 1979, the National Sea Grant College Program Office (NSGCPO), in fulfilling its broad educational responsibilities, initiated a program to provide educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government to graduate students in marine related fields. The U.S. Congress recognized the value of this program and in 1987, P.L. 100–220 stipulated that the Sea Grant Federal Fellows Program was to be a formal part of the National Sea Grant College Program Act. The recipients are designated Dean John A. Knauss Marine Policy Fellows pursuant to 33 U.S.C. 1127(b).

Announcement

Fellows program announcements are sent annually to all participating Sea Grant institutions and campuses by the state Sea Grant Director upon receipt of notice from the National Sea Grant College Program Office (NSGCPO). A brochure describing the program is also available from the NSGCPO for distribution by both that office and the state Sea Grant programs.

Eligibility

Any student who, on September 30th of the year of application, is in a master's, doctoral or professional program in a marine related field from any accredited institution of higher education may apply to the NSGCPO through any state Sea Grant program.

Deadlines

Students must submit applications to the state Sea Grant Director, who will be the applicant's sponsor, by the date set by the Directors in their individual program announcement (usually early to mid-September). Applications are to be submitted to the NSGCPO by the sponsoring state Sea Grant Director, no later than close of business on September 30th of any given year.

The competitive selection process and subsequent notification will be completed by October 31st of any given year.

Stipend and Expenses

For 1997 a Fellow will receive an award of $30,000 which is distributed between salary (stipend) and living expenses in accordance with University guidelines. Other expenses covered are travel, moving costs, health insurance and institutional overhead.

Application

An application will include:
Personal and academic resume or curriculum vitae.
Personal education and career goal statement which emphasizes expectations from the experience in the way of career development. (not to exceed 2 pages)
No more than two letters of recommendation with at least one being from the student's major professor.
A letter of endorsement from the sponsoring state Sea Grant Director.
Copy of undergraduate and graduate student transcripts. Thesis papers are not desired.

It is our intent that all applicants be evaluated only on their ability, therefore letters of endorsements from members of Congress, friends, relatives or others will not be considered.

Placement preference in the Executive or Legislative Branches of the Government may be stated, and will be honored to the extent possible.

Selection Criteria

The selection criteria will include:
Strength of Academic Performance.
Communications Skills (both written and oral).
Diversity of Academic Background.
Work Experience.
Support of Major Professor.
Support of Sea Grant Director.
Ability to Work with People.

Selection

Applicants will be individually reviewed and ranked by a panel chaired by the Director of Federal Fellowships of the NSGCPO and include representation from (1) the Council of Sea Grant Directors, (2) the Office of the Assistant Administrator for Oceanic and Atmospheric Research, and (3) the current and possibly last past group of Fellows. The individuals representative of these groups will be chosen on a year by year basis according to availability, timing, and other exigencies. Selection of finalists by the panel will be done by the Panel Chair according to the criteria outlined above. After selection, the panel chair will group applicants into the two categories, legislative and executive, based upon the applicant's stated preference and/or judgment of the panel based upon material submitted. The number of fellows assigned to the Congress will be limited to 10.

Kurt Schrebile,

Executive Dir. OAR, Office of Oceanic and Atmospheric Research.

[FR Doc. 96–17154 Filed 7–03–96; 8:45 am]

BILLING CODE 3510–12–P

[I.D. 062696B]

Permits; Foreign Fishing

In accordance with a memorandum of understanding with the Secretary of State, the National Marine Fisheries Service publishes for public review and comment summaries of applications received by the Secretary of State requesting permits for foreign fishing vessels to operate in the Exclusive Economic Zone under provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*). This notice concerns the receipt of an application from the Government of the Republic of Poland requesting authorization to conduct a joint venture in the Northwest Atlantic Ocean for Atlantic sea herring and Atlantic mackerel. The freezer trawler GRINWAL is identified as the vessel that will receive sea herring and mackerel from U.S. vessels. Send comments on this application to:

NOAA - National Marine Fisheries Service, Office of Fisheries Conservation and Management, 1315 East-West Highway, Silver Spring, MD 20910;

and/or to one or both of the Regional Fishery Management Councils listed below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906, 617/231–0422;

David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901–6790, 302/674–2331.

For further information contact Robert A. Dickinson, Office of Fisheries Conservation and Management, (301) 713–2337.

Dated: June 27, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–17158 Filed 7–3–96; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, July 10, 1996.

LOCATION: Room 420, East West Towers, 4430 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

FY 1998 Budget Request

The Commission will consider issues related to the Commission's budget for fiscal year 1998.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway., Bethesda, MD 20207 (301) 504–0800.

Dated: July 1, 1996.

Sadye E. Dunn,

Secretary.

[FR Doc. 96–17287 Filed 7–2–96; 2:09 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 3, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 28, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: NEW.
Title: William D. Ford Federal Direct Loan Program, Loan Discharge Application Documents.
Frequency: On Occasion.
Affected Public: Individuals or households.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 3,000.
Burden Hours: 1,500.
Abstract: These forms will serve as the means of collecting the information that the Department of Education requires in order to determine whether a direct loan borrower qualifies for a loan discharge based on school closure, false certification of student eligibility, or unauthorized signature.

Office of Elementary and Secondary Education

Type of Review: NEW.
Title: Title IV Innovative Program Strategies.
Frequency: Biennially.
Affected Public: State, local or Tribal Gov't, SEAs and LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 52.
Burden Hours: 780.
Abstract: This form will be used by the Department as a means for collecting information on program effectiveness to report to Congress. This report requests information on the participation of students and the expenditure of funds.

[FR Doc. 96–17090 Filed 7–3–96; 8:45 am]

BILLING CODE 4000–01–P

Office of Special Education and Rehabilitative Services

Reauthorization of the Rehabilitation Act of 1973, as Amended

AGENCY: Department of Education.

ACTION: Notice of public meetings.

SUMMARY: The Assistant Secretary announces a series of public meetings to solicit comments from the public regarding needed improvements in the Rehabilitation Act of 1973, as amended (29 U.S.C. 701 *et seq.*), to assist in the development of reauthorization legislation.

DATES: Meetings will be held in Oakland, California, on July 8, 1996, in Washington, D.C., on July 11, 1996, in Boston, Massachusetts, on July 23, 1996, in Atlanta, Georgia, on September 17, 1996, in Chicago, Illinois, on September 19, 1996, and in Bellevue, Washington, on October 29, 1996.

In addition, written comments will be accepted and must be received on or before October 29, 1996.

ADDRESSES: The meetings will be held at the following locations:

VOL 61 ISS 130 JL 5 1996 UMI

1. Oakland, California—Marriott City Center, Jewett Ballroom A & B, 1001 Broadway, Oakland, California.

2. Washington, D.C.—Wilbur J. Cohen Federal Building, 1st Floor Auditorium, 300 C Street, S.W., Washington, D.C.

3. Boston, Massachusetts—Thomas P. O'Neill, Jr. Federal Building, 1st Floor Auditorium, 10 Causeway Street, Boston, Massachusetts.

4. Atlanta, Georgia—Shepherd Center, Callaway Auditorium, Marcus Building, 2020 Peachtree Road, N.W., Atlanta, Georgia.

5. Chicago, Illinois—O'Hare Marriott Hotel, 8535 W. Higgens Road, Chicago, Illinois.

6. Bellevue, Washington—Red Lion Inn, 300 112th Street, S.E., Bellevue, Washington.

Individuals who cannot attend the meeting are invited to send in written comments. Written comments should be addressed to Fredric K. Schroeder, U. S. Department of Education, 600 Independence Avenue, S.W., Room 3028, Mary E. Switzer Building, Washington, D.C. 20202–2531. Comments transmitted by facsimile should be sent to (202) 205–9772 or (202) 260–7527. Comments can be transmitted in an electronic format either through the electronic bulletin board system (BBS) of the Rehabilitation Services Administration (RSA) or through internet. The internet address is "Rehab_Reauth@ed.gov". The access number for the RSA BBS is (202) 205–5574 for low speed (2400 BPS or lower) modems and (202) 401–6174 for high speed (9600 BPS and higher) modems. Comments can also be transmitted to the RSA BBS through Fedworld via internet using the telnet command. Telnet to: "Fedworld.gov". All comments transmitted in an electronic format should be sent to the following RSA BBS mailbox: "RSADPPES". To facilitate the analysis of comments, electronic transmission of comments is preferred.

FOR FURTHER INFORMATION CONTACT: Persons desiring to participate in the meetings or seeking additional information should contact Beverlee Stafford, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3014, Mary E. Switzer Building, Washington, D.C. 20202–2550. Telephone (202) 205–8831. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5538.

SUPPLEMENTARY INFORMATION:

Need for Reauthorization.

The Rehabilitation Act of 1973 (Act) was reauthorized in 1992. The current Act expires on September 30, 1997. The need for another reauthorization in 1997 provides an opportunity to review and revise the Act to strengthen Federal efforts to assist individuals with disabilities and to support the National Education Goal that, by the year 2000, every adult American will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Description of the Act

The Rehabilitation Act of 1973, as amended, contains eight titles. Section 2 of the Act specifies that the purposes of the Act are: (1) To empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society through comprehensive and coordinated state-of-the art programs of vocational rehabilitation, independent living centers and services, research, training, demonstration projects, and the guarantee of equal opportunity; and (2) to ensure that the Federal Government plays a leadership role in promoting the employment of individuals with disabilities, especially individuals with severe disabilities, and in assisting States and providers of services in fulfilling the aspirations of individuals with disabilities for meaningful and gainful employment and independent living.

Title I of the Act establishes The State Vocational Rehabilitation Services Program that supports the Federal-State partnership in providing vocational rehabilitation services to individuals with disabilities with the goal of gainful employment. The Act requires that, in the event services cannot be provided to all eligible individuals with disabilities who apply, States shall give priority to individuals with the most severe disabilities. Each State is required to define who is an "individual with the most severe disabilities" for services in that State. Each State vocational rehabilitation agency that is not a consumer-controlled independent commission primarily concerned with rehabilitation is also required to establish a State Rehabilitation Advisory Council to provide advice and guidance to the State agency to ensure that individuals with disabilities and other stakeholders have input in the agency's policies and practices. This title also includes the authorization for the State Client Assistance Program and the American Indian Vocational Rehabilitation Services Program.

Title II of the Act establishes the National Institute on Disability and Rehabilitation Research (NIDRR) and authorizes research and related activities. NIDRR administers a program of rehabilitation research, including research and training centers, rehabilitation engineering research centers, research and demonstration projects, field-initiated research projects, utilization and dissemination projects, innovative research grants, and career development grants.

Title III authorizes personnel training programs and special demonstrations. Training grants are authorized to assist in increasing the numbers of and skills of qualified personnel who provide services to individuals with disabilities. The training program supports pre-service training at degree granting institutions, experimental and innovative training, continuing education programs, in-service training for personnel of State vocational rehabilitation agencies, and training of interpreters for individuals who are deaf or deaf-blind.

The discretionary project authority under title III funds demonstration projects that focus on the service delivery needs of individuals with severe disabilities, including supported employment and transition from school-to-work services, projects for migratory workers with disabilities, and recreational programs for individuals with disabilities.

Title IV of the Act establishes the National Council on Disability. The National Council on Disability is an independent Federal agency whose duties include providing advice to Congress and the President on the development of programs under the Rehabilitation Act and reviewing and evaluating, on a continuing basis, all policies and programs for individuals with disabilities conducted or assisted by the Federal Government.

Title V contains various civil rights provisions and establishes the Access Board. The function of the Access Board is to develop accessibility guidelines and to ensure compliance with Federal statutes requiring accessibility for persons with disabilities. This title also authorizes the Protection and Advocacy of Individual Rights Program, which supports a system in each State to protect the human and legal rights of individuals with disabilities who need services that are beyond the scope of the State Client Assistance Program and who are not eligible for services from other protection and advocacy programs.

Title VI of the Act includes authorization for funding Projects With Industry and supported employment programs. The primary goal of the discretionary Projects With Industry grant program is to expand job opportunities for individuals with disabilities in the competitive labor market. In order to develop a partnership between business, industry, labor, and the rehabilitation community, each project is required to have a Business Advisory Council to provide advice on available jobs and training requirements.

Title VI also includes a formula grant program to assist States in developing collaborative programs with public agencies and nonprofit organizations to provide training and other services leading to supported employment for individuals with the most severe disabilities.

Title VII of the Act was amended significantly in 1992. This title authorizes funding for comprehensive services for independent living, independent living centers, and independent living services for older persons who are blind or visually impaired. Each State must establish a State Independent Living Council that jointly prepares and submits the required State plan for independent living services.

A new title VIII was added to the Act in 1992. This title authorizes a variety of discretionary special demonstration and training programs.

Cooperation with Other Federal Agencies

The public meetings on the Act will be held in cooperation with the National Council on Disability and the Federal agencies that are responsible for the various civil rights provisions contained in title V of the Act. The Assistant Secretary encourages participants at the public meetings and respondents to the request for written comments to consider the provisions of titles IV and V of the Act in their deliberations, as well as those research, training, and service delivery programs contained in the Act that are administered by the Office of Special Education and Rehabilitative Services.

AVAILABILITY OF COPIES OF THE REHABILITATION ACT OF 1973, AS AMENDED: An electronic copy of the Act can be accessed through the RSA BBS by calling the following access number: (202) 205–9694. If you experience any difficulty in accessing the BBS, please contact either John Chapman at (202) 205–9290 or Teresa Darter at (202) 205–8444, co-system operators (sysops), for assistance. For those individuals unable to access the BBS, copies of the Act are available in regular print, large print, and computer diskette (WordPerfect 5.1 and ASCII formats) by calling (202) 205–8831. A limited number of copies in braille are also available.

MEETING INFORMATION: Meetings will be held in Oakland, California, Washington, D.C., Boston, Massachusetts, Atlanta, Georgia, Chicago, Illinois, and Bellevue, Washington. Individuals desiring to present comments at the meetings are encouraged to reserve a time on the agenda. Individuals will be allowed between five and seven minutes to present comments. The amount of time available will depend upon the number of individuals who request reservations. Commenters are encouraged to bring two copies of their proposed comments. Reservations will be accepted on a first-come, first-served basis. Given the level of response expected, individuals should make reservations as soon as possible. When making reservations, individuals must indicate the need for any special accommodations, including sign language interpreters. While reservations are not needed for those individuals who wish to attend the meetings but do not want to make formal comments, reservations are encouraged to facilitate the participant's access into the proceedings held in Federal buildings. The meetings are open to the public, and the meeting rooms and proceedings will be accessible for individuals with disabilities.

The meeting in Oakland, California, will be held on July 8, 1996, from 1:00 p.m. to 6:00 p.m. The location for the meeting is the Marriott City Center Hotel, Jewett Ballroom A & B, 1001 Broadway, Oakland, California. For reservations for the meeting in Oakland, California, please call Gilbert "Doc" Williams at (415) 437–7840.

The meeting in Washington, D.C., will be held on July 11, 1996, from 10:00 a.m. to 3:00 p.m. The location for the meeting is the Wilbur J. Cohen Federal Building, 1st Floor Auditorium, 300 C Street, S.W., Washington, D.C. Photo identification is required to enter the Federal building, and reservations are encouraged to facilitate access. For reservations for the meeting in Washington, D.C., please call Beverlee Stafford at (202) 205–8831.

The meeting in Boston, Massachusetts, will be held on July 23, 1996, from 10:00 a.m. to 3:00 p.m., at the Thomas P. O'Neill, Jr. Federal Building, 1st Floor Auditorium, 10 Causeway Street, Boston, Massachusetts. Participants will have to pass through a security check/metal detector for admittance into the Federal building. For reservations for the meeting in Boston, Massachusetts, please call Anthony Ruscio at (617) 223–4089.

The meeting in Atlanta, Georgia, will be held on September 17, 1996, from 10:00 a.m. to 3:00 p.m., at the Shepherd Center, Callaway Auditorium, Marcus Building, 2020 Peachtree Road, N.W., Atlanta, Georgia. For reservations for the meeting in Atlanta, Georgia, please call Diane Hart at (404) 331–2352.

The meeting in Chicago, Illinois, will be held on September 19, 1996, from 10:00 a.m. to 3:00 p.m., at the O'Hare Marriott Hotel, 8535 W. Higgens Road, Chicago, Illinois. For reservations for the meeting in Chicago, Illinois, please call Kathleen Niemi at (312) 886–8623.

The meeting in Bellevue, Washington, will be held on October 29, 1996, from 10:00 a.m. to 3:00 p.m., at the Red Lion Inn, 300 112th Street, S.E., Bellevue, Washington. For reservations for the meeting in Bellevue, Washington, please call Cecelia Cramer at (206) 220–7840.

(Authority: 29 U.S.C. 701)

Dated: June 28, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–17087 Filed 7–3–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center Financial Assistance Award

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of Noncompetitive Financial Assistance Action, Award of Cooperative Agreement.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.6(c)(2), the DOE, Morgantown Energy Technology Center (METC) gives notice of its plans to award a cooperative agreement to The South Carolina Energy Research & Development Center at the Clemson University, Clemson, South Carolina 29634–5180, in the amount of approximately $2,400,000, of which $400,000 will be funded by DOE in the first budget period. The total project period will be for an estimated three (3) years.

FOR FURTHER INFORMATION CONTACT: D. Denise Riggi, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880. Telephone: (304) 285–4241. Procurement Request No. 21–96MC33115.000.

SUPPLEMENTARY INFORMATION: The purpose of the agreement is to provide

VOL 61 ISS 130 JL 5 1996 UMI

financial assistance to the South Carolina Energy R&D Center for conducting the activities of the Waste Technology Center (WTC) which will facilitate the demonstrations of municipal solid waste disposal technologies at the U.S. Department of Energy Savannah River Site Subtitle D landfill near Aiken, South Carolina. The WTC will focus on technologies that produce value-added products cleanly, safely and economically, while reducing the volume of municipal solid wastes processed in landfills. The WTC will be co-located with the Savannah River Site Subtitle D landfill. By providing financial support, DOE expects to better satisfy the municipal solid wastes disposal needs of the DOE Savannah River Site, encourage development of technologies which will produce value-added products and reduce the volume of municipal solid wastes processed in landfills. The South Carolina Energy R&D Center is uniquely positioned to perform this activity due to its ongoing activities with municipal solid waste reduction, recycling, and energy production, and because of its established relationship with the entities participating in the establishment of the Savannah River Site Subtitle D landfill. The criterion in 10 CFR 600.6(c)(2), permits award of this noncompetitive action because the activities are being conducted by the applicant using its own resources and resources provided by third parties; and, DOE support will enhance the public benefits and DOE knows of no other entity which is conducting or planning to conduct such activities.

Issued: June 24, 1996.

James J. Grabulis,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 96–17118 Filed 7–3–96; 8:45 am]

BILLING CODE 6450–01–P

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

NAME: Secretary of Energy Advisory Board—Openness Advisory Panel.

DATES AND TIMES: Wednesday, July 24, 1996, 8:30 AM–4:30 PM.

PLACE: Capital Hilton Hotel, South American Room, 16th and K Streets, NW, Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: David Cheney, Executive Director (Acting), 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7092.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee:

The purpose of the Openness Advisory Panel (Panel) is to provide advice to the Secretary of Energy Advisory Board (SEAB) regarding the current status and strategic direction for the Department's classification and declassification policies and programs, as well as other aspects of the Department's ongoing Openness Initiative. The Panel's work will help institutionalize the Department's Openness Initiative.

Tentative Agenda

8:30 AM–9:00 AM Opening Remarks
9:00 AM–9:30 AM The DOE Openness Initiative; The Classification System; Challenges and Issues
9:30 AM–10:00 AM Discussion
10:00 AM–10:15 AM Break
10:15 AM–10:30 AM Human Radiation Records Experience—Implications for Openness
10:30 AM–10:45 AM Discussion
10:45 AM–11:30 AM Invited Presentations
11:30 AM–12:00 Noon Discussion
12:00 Noon–12:30 PM Public Comment
12:30 PM–1:30 PM Lunch
1:30 PM–4:00 PM Discussion of a Work Plan for the Advisory Panel
4:00 PM Adjourn

A final agenda will be available at the meeting.

Public Participation

The Chairman of the Panel is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, D.C. the Panel welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Panel will make every effort to hear the views of all interested parties. Written comments may be submitted to David Cheney, Executive Director (Acting), Secretary of Energy Advisory Board, AB–1, 1000 Independence Avenue, SW, Washington, DC 20585.

Minutes

Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays.

Issued at Washington, DC, on July 1, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–17117 Filed 7–3–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP93–198–005]

Alabama-Tennessee Natural Gas Company; Notice of Refund Report

June 28, 1996

Take notice that Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) on June 5, 1996, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Refund Report summarizing a flow-through refund from Tennessee Gas Pipeline (Tennessee) dated May 13, 1996. The refund is being flowed through pursuant to Section 33.4(f) of the General Terms and Conditions of Alabama-Tennessee's FERC Gas Tariff, Second Revised Volume No. 1.

Alabama-Tennessee states that the refund relates to certain stranded upstream capacity Alabama-Tennessee had on Tennessee after implementation of FERC Order 636, the costs of which were collected from the customers shown on the Appendix B to the filing.

Alabama-Tennessee states that it is making this refund by way of a credit to the affected customers' May, 1996 invoices which will be submitted on or about June 10, 1996. Alabama-Tennessee is flowing through the entire amount received from Tennessee. A summary sheet setting forth the refund calculation is enclosed in Appendix A to the filing. Alabama-Tennessee requests that any necessary waiver be granted.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be file don or before July 8, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17073 Filed 7–3–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–998–001]

Cenerprise, Inc.; Notice of Filing

June 28, 1996.

Take notice that on June 19, 1996, Cenerprise, Inc. (Cenerprise), corporate successor to Cenergy, Inc. (Cenergy), filed an amendment to its application in Docket No. ER96–998–000 filed pursuant to Section 205 of the Federal Power Act, Part 35 of the Commission's Regulations, and the Commission's Rules of Practice and Procedure, for an order approving certain changes to Cenerprise's Rate Schedule FERC No. 1 and changes to its Standards of Conduct.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 10, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17074 Filed 7–3–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1471–000]

Cleveland Electric Illuminating Company; Notice of Filing

June 28, 1996.

Take notice that on June 6, 1996, Cleveland Electric Illuminating Company tendered for filing an amendment to its June 1, 1996, filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 10, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17075 Filed 7–3–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–594–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

June 28, 1996.

Take notice that on June 25, 1996, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP96–94–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to operate three existing metering facilities located in San Juan County, New Mexico, as jurisdictional delivery points for delivery of natural gas under El Paso's blanket certificate issued in Docket Nos. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that it installed two metering facilities in connection with the construction and installation of various procession and treating facilities at the Blanco Plant and one metering facility in connection with the pigging facilities on El Paso's 16" O.D. Blanco-Fruitland Line (Line No. 3200) to facilitate the delivery of pipeline quality gas to those facilities for use as fuel. El Paso further states that the Blanco Plant processing and treating facilities and Line No. 3200 have been abandoned by El Paso and are now owned by a different non-regulated entity; however, a need for pipeline quality gas as fuel at these facilities still remains. El Paso states that in order to facilitate the delivery of gas for fuel, El Paso now seeks authorization to utilize the three existing metering facilities as jurisdictional delivery points under a transportation arrangement and to charge its tariff rates for any deliveries of gas to such points.

El Paso states that pursuant to the spin-down of production-area facilities by El Paso to El Paso Field Services Company (Field Services) as described in El Paso's application at Docket Nos. CP94–183–000 and 001, Field Services acquired, among other things, the Blanco Plant processing and treating facilities and Line No. 3200. El Paso has been informed that Field Services will continue to need pipeline quality gas to be utilized as fuel at the transferred facilities.

El Paso states that the operation of the proposed delivery points at the Blanco Plant processing and treating facilities and the pigging operations on Line No. 3200 is not prohibited by El Paso's existing Volume No. 1–A Tariff. El Paso further states that it will provide interruptible transportation service to the proposed delivery points pursuant to an effective Transportation Service Agreement (TSA) between El Paso and El Paso Gas Marketing Company. In addition, El Paso states that it has sufficient capacity to accomplish the deliveries specified under the TSA without detriment or disadvantage to El Paso's other customers.

El Paso states that the volumes of natural gas to be transported through the proposed delivery points are:

(a) Blanco Plant Miscellaneous Operating Fuel No. 1—15.63 Mcf per day for an average day;

(b) Blanco Miscellaneous Operating Fuel No. 2—5.30 Mcf per day for an average day during those months when in use; and

(c) Dry Gas to Pig 16" Wet Line—1,112 Mcf per day based on a peak day with approximately 2 flow hours total (only used when pigging of Line No. 3200 is necessary).

El Paso believes the delivery of gas through the existing metering facilities will have a negligible effect upon El Paso's peak day and annual deliveries based on its 1995 peak day transportation of 3,224,879 Mcf and a total annual transportation of 872,056,118 Mcf.

The request also states that El Paso's environmental analysis supports the conclusion that the operation of the existing metering facilities as jurisdictional delivery points will not be a major Federal action significantly affecting the human environment.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section

VOL 61 ISS 130 JL 5 1996 UMI

157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17076 Filed 7–3–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–587–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

June 28, 1996.

Take notice that on June 21, 1996, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP96–587–000 a request pursuant to Sections 157.205 and 175.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to install a two-inch delivery tap and meter station in Jasper County, Texas under Koch Gateway's blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway proposes to install a two-inch tap on its 16-inch line designated as TPL 64 to provide a new delivery point and meter station to serve Entex, Inc. (Entex), which in turn will serve Louisiana Pacific Company in Jasper County, Texas. All work will be within Koch Gateway's existing right of way. The estimated cost of construction is $21,861 and Entex will reimburse Koch Gateway for the actual cost of the construction.

Koch Gateway states that the installation of this delivery point is not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers. The proposed delivery point will not have an effect on Koch Gateway's peak day and annual deliveries and the total volumes delivered will not exceed total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17077 Filed 7–3–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–589–000]

Koch Gateway Pipeline Company; Notice of Application

June 28, 1996.

Take notice that on June 21, 1996, Koch Gateway Pipeline Company, P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP96–589–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to acquire and operate by sale certain facilities in southeast Louisiana and offshore Louisiana, permission to abandon by sale certain offsystem/offshore facilities in offshore Louisiana, and a declaratory order disclaiming jurisdiction over certain facilities it will acquire from Southern, all as more fully set forth in the application on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 19, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Gateway to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17078 Filed 7–3–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1952]

Maverick County Water Control and Improvement District No. 1; Notice of Authorization for Continued Project Operation

June 28, 1996.

Maverick County Water Control and Improvement District No. 1 has not filed an application for a new or subsequent license for the Maverick County Project No. 1952 pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 1952 is located on the Rio Grande River in Maverick and Kinney Counties, Texas.

The license for Project No. 1952 was issued for a period ending June 30, 1996. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA.

Notice is hereby given that an annual license for Project No. 1952 is issued to Maverick County Water Control and Improvement District No. 1 for a period effective July 1, 1996, through June 30, 1997, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 1997, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17079 Filed 7–3–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–53–000]

NE HUB Partners, L.P.; Notice of Site Visit for the Proposed NE Hub Tioga Storage Project

June 28, 1996.

On July 10 and 11, 1996, the Office of Pipeline Regulation staff will conduct a site visit with representatives of NE HUB Partners, L. P. of the locations related to the facilities proposed in the NE Hub Tioga Storage Project in Tioga County, Pennsylvania. All interested parties may attend. Those planning to attend must provide their own transportation.

Information about the proposed project is available from Mr. John Wisniewski, Project Manager, at (202) 208–1073.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17080 Filed 7–3–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2183–000]

New York State Electric & Gas Corporation; Notice of Filing

June 26, 1996.

Take notice that on June 19, 1995, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Regulations, 18 CFR 35.12, as an initial rate schedule, an agreement with Virginia Electric and Power Company (VEPCO). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG request that the agreement become effective on June 20, 1996, so that the parties may, if mutually agreeable, enter into separately scheduled transaction under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and VEPCO.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 10, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17081 Filed 7–3–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–285–000]

South Georgia Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 28, 1996.

Take notice that on June 25, 1996, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective July 25, 1996:

Second Revised Sheet Nos. 66–67.
Third Revised Sheet No. 124.
First Revised Sheet Nos. 125–128.

South Georgia states that it proposes to make the following revisions to the capacity release procedures of its Tariff to respond to shippers' requests: (1) to allow releasing shippers to post for competitive bid those offers currently not required by the Commission's regulations to be posted (i.e. prearranged deals for a month or less); (2) to provide for one business day to process prearranged, permanent releases of capacity; and (3) to change its posting deadlines from business days to calendar days for those offers that do not require manual intervention by South Georgia, at the releasing shipper's option. South Georgia proposes to make these changes effective on July 25, 1996.

South Georgia states that copies of this filing have been served on all shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17082 Filed 7–3–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–585–000]

Southern Natural Gas Company; Notice of Application

June 28, 1996.

Take notice that on June 20, 1996, Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP96–585–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to abandon certain pipeline and appurtenant facilities in LaFourche, Jefferson, Plaquenmines, Terrebonne, St. Bernard and St. Charles Parishes, Louisiana, approximately 45 miles of jointly-owned pipeline located offshore Louisiana, as well as any interest in measurement and appurtenant facilities located thereon, and its Rate Schedule X–36 exchange service with Koch Gateway Pipeline Company, all as more fully set forth in the application on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 19, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in

VOL 61 ISS 130 JL 5 1996 UMI

determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules and Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17083 Filed 7–3–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–277–001]

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 28, 1996.

Take notice that on June 25, 1996, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following corrected tariff sheet to become effective July 15, 1996:

First Substitute First Revised Sheet No. 278.

Southern states that the tariff sheet is being filed to correct an inadvertent error contained on First Revised Sheet No. 278 submitted by Southern as part of its filing made in the captioned docket on June 14, 1996.

Southern states that copies of this filing have been served on all shippers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures (18 CFR Section 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17084 Filed 7–3–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–296–005]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 28, 1996.

Take notice that on June 25, 1996, Williams Natural Gas Company (WNG), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, with the proposed effective date of March 14, 1996:

Third Substitute First Revised Sheet No. 253.

WNG states that it made a filing on June 17, 1996 in compliance with Commission order issued May 17, 1996 in Docket No. RP95–296–002. On Sheet No. 253 of that filing the phrase "to WNG" was inadvertently omitted. WNG states that the instant filing is being made to correct this omission.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the docket referenced above and on all jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17085 Filed 7–3–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–2184–000, *et al.*]

New York State Electric & Gas Corporation, et al.; Electric Rate and Corporate Regulation Filings

June 26, 1996.

Take notice that the following filings have been made with the Commission:

1. New York State Electric & Gas Corporation

[Docket No. ER96–2184–000]

Take notice that on June 19, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Regulations, 18 CFR 35.12, as an initial rate schedule, an agreement with TransCanada Power Corp. (TransCanada). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to TransCanada and TransCanada will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on June 20, 1996, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and TransCanada.

Comment date: July 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Boise Cascade Corporation

[Docket No. ER96–2178–000]

Take notice that on June 18, 1996, Boise Cascade Corporation, organized under the laws of Delaware, submitted for filing pursuant to 18 CFR 35.12(b) initial rates for the sale of capacity and energy to Minnesota Power & Light Company (Minnesota Power). A copy of the filing has been served on Minnesota Power.

Comment date: July 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Cinergy Services, Inc.

[Docket No. ER96–2181–000]

Take notice that on June 19, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated March 1, 1996 between Cinergy, CG&E, PSI and National Gas & Electric L.P. (NG&E).

The Interchange Agreement provides for the following service between Cinergy and NG&E:

1. Exhibit A—Power Sales by NG&E
2. Exhibit B—Power Sales by Cinergy

Cinergy and NG&E have requested an effective date of June 24, 1996.

Copies of the filing were served on National Gas & Electric L.P., the Texas Public Utility Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: July 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Long Island Lighting Company

[Docket No. ER96–2182–000]

Take notice that on June 19, 1996, Long Island Lighting Company (LILCO), tendered for filing service agreements entered into as of the following dates by LILCO and the following parties:

Date and Purchaser

5/10/96, TransCanada Power Corp.
5/10/96, NorAm Energy Services, Inc.
5/21/96, Northeast Utilities Service Company.

These service agreements supplement a Power Sales umbrella tariff accepted for filing on April 4, 1996 and made effective August 11, 1995 by the Commission in Docket No. ER95–1518–000.

In accordance with the policy set forth in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶61,139, *clarified and reh'g granted in part and denied in part*, 65 FERC ¶61,081 (1993), LILCo requests the Commission to make the Agreements effective as of May 21, 1996, because service will be provided under an umbrella tariff and each service agreement is filed within 30 days after the commencement of service. In accordance with 18 CFR 35.11, LILCO has requested waiver of the sixty-day notice period in 18 CFR 35.2(e).

A copy of this filing was provided to the customers involved and to the New York State Public Service Commission.

Comment date: July 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Coral Power, L.L.C.

[Docket No. ER96–2185–000]

Take notice that on June 19, 1996, Coral Power, L.L.C. (Coral), tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that Coral had completed all the steps for pool membership. Coral requests that the Commission amend the WSPP Agreement to include it as a member.

Coral requests an effective date of June 17, 1996, for the proposed amendment. Accordingly, Coral requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: July 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Illinois Power Company

[Docket No. ER96–2188–000]

Take notice that on June 20, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Minnesota Power Company will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of June 15, 1996.

Comment date: July 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Illinois Power Company

[Docket No. ER96–2189–000]

Take notice that on June 20, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 52526, tendered for filing firm transmission agreements under which Apogee Coal Company, d/b/a/ Arch of Illinois will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of June 1, 1996.

Comment date: July 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Illinois Power Company

[Docket No. ER96–2190–000]

Take notice that on June 20, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Industrial Energy Applications, Inc. will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of June 1, 1996.

Comment date: July 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Illinois Power Company

[Docket No. ER96–2191–000]

Take notice that on June 20, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which PPG Industries, Inc. will take transmission service pursuant to its open access transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of June 1, 1996.

Comment date: July 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Arizona Public Service Company

[Docket No. ER96–2192–000]

Take notice that on June 20, 1996, Arizona Public Service Company (APS), tendered for filing revised estimated load Exhibits to APS-FERC Rate Schedule No. 225 between APS and Citizens Utilities Company (Citizens).

Current rate levels are unaffected, revenue levels are unchanged from those currently on file with the Commission, and no other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

Copies of this filing have been served on Citizens and the Arizona Corporation Commission.

Comment date: July 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Company

[Docket No. ER96–2193–000]

Take notice that on June 20, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing a Service

VOL 61 ISS 130 JL 5 1996 UMI

Agreement with Coral Power, L.L.C. (Coral) under the NU System Companies' System Power Sales/ Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to Coral.

NUSCO requests that the Service Agreement become effective sixty (60) days following the Commission's receipt of the filing.

Comment date: July 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER96–2194–000]

Take notice that on June 20, 1996, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Duke/Louis Dreyfus L.L.C. (D/LD), dated June 14, 1996. This Service Agreement specifies that D/LD has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and D/LD to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of June 14, 1996 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: July 10, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. MDU Resources Group, Inc.

[Docket No. ES96–31–000]

Take notice that on June 20, 1996, MDU Resources Group, Inc. (MDU) filed an application, under § 204 of the Federal Power Act, seeking authorization to issue up to 1,010,916 additional shares of Common Stock, par value $3.33 in connection with MDU's tax deferred compensation savings plan for non-bargaining unit employees. MDU further requests an exemption from the Commission's competitive bidding and negotiated placement requirements.

Comment date: July 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. MDU Resources Group, Inc.

[Docket No. ES96–32–000]

Take notice that on June 20, 1996, MDU Resources Group, Inc. (MDU) filed an application, under § 204 of the Federal Power Act, seeking authorization to issue up to 743,661 additional shares of Common Stock, par value $3.33 in connection with MDU's tax deferred compensation savings plan for collective bargaining unit employees. MDU further requests an exemption from the Commission's competitive bidding and negotiated placement requirements.

Comment date: July 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. MDU Resources Group, Inc.

[Docket No. ES96–33–000]

Take notice that on June 20, 1996, MDU Resources Group, Inc. (MDU) filed an application, under § 204 of the Federal Power Act, seeking authorization to issue up to 3,273,273 additional shares of Common Stock, par value $3.33 in connection with MDU's automatic dividend reinvestment and stock purchase plan. MDU further requests an exemption from the Commission's competitive bidding and negotiated placement requirements.

Comment date: July 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. MidAmerican Energy Company

[Docket No. ES96–34–000]

Take notice that on June 21, 1996, MidAmerican Energy Company (MidAmerican) filed an application, under § 204 of the Federal Power Act, seeking authorization to issue and sell up to $500 million principal amount of bonds, notes, debentures, guarantees or other evidences of indebtedness of like kind to bonds, notes or debentures. MidAmerican further requests an exemption from the Commission's competitive bidding and negotiated placement requirements.

Comment date: July 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17070 Filed 7–3–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER96–2197–000, et al.]

Niagara Mohawk Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

June 27, 1996

Take notice that the following filings have been made with the Commission:

1. Niagara Mohawk Power Corporation

[Docket No. ER96–2197–000]

Take notice that on June 20, 1996, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing, an amendment to its filing dated June 14, 1996, regarding the Marcy-South Facilities Agreement with the Power Authority of the State of New York (NYPA).

Copies of this filing were served upon NYPA and the Public Service Commission of New York.

Comment date: July 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER96–2195–000]

Take notice that on June 20, 1996, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Southern Energy Marketing, Inc. (SEM), dated June 17, 1996. This Service Agreement specifies that SEM has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co. Metropolitan Edison Co., and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and SEM to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of June 17, 1996 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: July 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Oklahoma Southwestern Electric Power Co.

[Docket No. ER96–2198–000]

Take notice that on June 20, 1996, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the Companies), tendered for filing a service agreement under which they will provide transmission service to Koch Power Services, Inc. under their point-to-point transmission service tariff.

The Companies state that a copy of the filing has been served on Koch Power Services, Inc.

Comment date: July 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Central Power and Light Company West Texas Utilities Company

[Docket No. ER96–2199–000]

Take notice that on June 20, 1996, Central Power and Light Company and West Texas Utilities Company, (jointly, the Companies), tendered for filing service agreements under which they will provide transmission service to Brazos Electric Power Cooperative, Inc. and to Koch Power Services, Inc. under their point-to-point transmission service tariff.

The Companies state that copies of the filing have been served on Brazos Power Marketing Cooperative, Inc., and on Koch Power Services, Inc.

Comment date: July 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Edison Company

[Docket No. ER96–2200–000]

Take notice that on June 20, 1996, Commonwealth Edison Company (ComEd), tendered for filing new Schedule 8 and related changes to its PS–1 Tariff.

ComEd requests an effective date of June 21, 1996 and has therefore requested that the Commission waive the Commission's notice requirement. Copies of this filing have been served on the Illinois Commerce Commission and all customers served under ComEd's PS–1 Tariff.

Comment date: July 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Northern Indiana Public Service Company

[Docket No. ER96–2201–000]

Take notice that on June 21, 1996, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement between Northern Indiana Public Service Company and Federal Energy Sales, Inc.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Federal Energy Sales, Inc. pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–1426–000 and allowed to become effective by the Commission. *Northern Indiana Public Service Company*, 75 FERC ¶ 61,213 (1996). Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of July 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: July 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Company Services, Inc.

[Docket No. ER96–2202–000]

Take notice that on June 21, 1996, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed a service agreement between SCS, as agent of the Southern Companies, and CNG Power Services Corporation for non-firm transmission service under the Point-to-Point Transmission Service Tariff of Southern Companies.

Comment date: July 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Company

[Docket No. ER96–2203–000]

Take notice that on June 21, 1996, New England Power Company filed a Service Agreement and Certificates of Concurrence with Aquila Power Corporation under NEP's FERC Electric Tariffs, Original Volume Nos. 5 and 6.

Comment date: July 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Duke Power Company

[Docket No. ER96–2204–000]

Take notice that on June 21, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement (TSA) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and South Carolina Public Service Authority (SCPSA). Duke states that the TSA sets out the transmission arrangements under which Duke will provide SCPSA non-firm transmission service under its Transmission Service Tariff.

Comment date: July 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Arizona Public Service Company

[Docket No. ER96–2205–000]

Take notice that on June 21, 1996, Arizona Public Service Company (APS), tendered for filing the following Agreements:

1. Amendment No. 3 to the Navajo Project Co-Tenancy Agreement
2. Amendment No. 4 to the Navajo Project Southern Transmission System Operating Agreement

As Operating Agent of the Navajo Project Southern Transmission System, APS has constructed the Yavapai 500 Kv Switchyard which will be interconnected with, and become part of, the Navajo Southern Transmission System. These Amendments establish interests of ownership in the Yavapai 500 Kv Switchyard as well as cost responsibilities relating to initial construction costs, capital improvements and O&M costs related to the Switchyard.

APS requests waiver of the Commission's Notice Requirements in 18 CFR 35.11 to allow for an effective date of June 20, 1996.

VOL 61 ISS 130 JL 5 1996 UMI

A copy of this filing has been served on the Arizona Corporation Commission, the Nevada Public Service Commission, Salt River Project Agricultural Improvement & Power District, Tucson Electric Power Company, the United States Bureau of Reclamation, and Nevada Power Company.

Comment date: July 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. New York State Electric & Gas Corporation

[Docket No. ER96–2206–000]

Take notice that on June 21, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with Xenergy, Inc. (Xenergy) for the sale of power at cost based rates to Xenergy for resale to retail customers participating in the New Hampshire Retail Access Pilot Program and other retail customers in the future. The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to Xenergy and Xenergy will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on June 22, 1996, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and Xenergy.

Comment date: July 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Carolina Power & Light Company

[Docket No. ER96–2207–000]

Take notice that on June 24, 1996, Carolina Power & Light Company (Carolina), tendered for filing separate Service Agreements executed between Carolina and the following Eligible Entities: Duke/Louis Dreyfus L.L.C., Stand Energy Corporation, Federal Energy Sales, Inc., DuPont Power Marketing, Inc., South Carolina Public Service Authority, Energy Transfer Group, L.L.C.; Aquila Power Corporation, Calpine Power Service Company, Central Illinois Public Service Company, AIG Trading Corporation, North Carolina Electric Membership Corporation, and Coral Power, L.L.C. Service to each Eligible Entity will be in accordance with the terms and conditions of Carolina's Tariff No. 1 for Sales of Capacity and Energy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: July 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Company of Oklahoma

[Docket No. ER96–2208–000]

Take notice that on June 24, 1996, Public Service Company of Oklahoma (PSO), tendered for filing Amendment 3 to the Contract for Electric Service, dated April 20, 1995, between PSO and Northeast Oklahoma Electric Cooperative, Inc. (NEO). Amendment 3 provides for an additional point of delivery.

PSO seeks an effective date of June 25, 1996, and accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served on NEO and the Oklahoma Corporation Commission. Copies are also available for public inspection at PSO's offices in Tulsa, Oklahoma.

Comment date: July 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Commonwealth Electric Company

[Docket No. ER96–2209–000]

Take notice that on June 24, 1996, Commonwealth Electric Company (Commonwealth), tendered for filing a non-firm transmission service agreement between Commonwealth and New England Power Company (NEP). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide non-firm transmission service to NEP under Commonwealth's FERC Electric Tariff, Original Volume No. 4, accepted for filing in Docket No. ER94–1518–000.

Comment date: July 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Houston Lighting & Power Company

[Docket No. ER96–2210–000]

Take notice that on June 24, 1996, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) under HL&P's FERC Electric Tariff, Original Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. The filing consists of a TSA with West Texas Utilities Company (WTU) providing for firm power transmission service over the North HVDC, Interconnection. HL&P has requested a waiver to permit an effective date of June 12, 1996.

Copies of the filing were served on WTU and the Public Utility Commission of Texas.

Comment date: July 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Houston Lighting & Power Company

[Docket No. ER96–2211–000]

Take notice that on June 24, 1996, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) under HL&P's FERC Electric Tariff, Original Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. The filing consists of an economy energy and emergency power TSA with Coastal Electric Services Company (CESC) providing for the transmission of energy to be scheduled over the East HVDC Interconnection. HL&P has requested an effective date of June 21, 1996.

Copies of the filing were served on CESC and the Public Utility Commission of Texas.

Comment date: July 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Portland General Electric Company

[Docket No. ER96–2212–000]

Take notice that on June 24, 1996, Portland General Electric Company (PGE), tendered for filing under FERC Electric Tariff, 1st Revised Volume No. 2, an executed Service Agreement between PGE and Cinergy Services, Inc.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002). PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreement to become effective June 1, 1996.

Copies of this filing were served upon Cinergy Services, Inc.

Comment date: July 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary.

[FR Doc. 96–17071 Filed 7–3–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11437–001–NC]

Hydro Matrix Partnership, Ltd.; Notice Ready for Environmental Analysis, Notice Requesting Interventions, Protests, and Comments, and Notice of Scoping Pursuant to the National Environmental Policy Act of 1969

June 28, 1996.

On June 21, 1996, the Federal Energy Regulatory Commission (Commission) issued a letter accepting Hydro Matrix Partnership, Ltd.'s application for the Jordan Hydroelectric Project located at the U.S. Army, Corps of Engineers Jordan Dam on the Haw River in Chatham County, North Carolina.

The Jordan Hydroelectric Project's principal project features would consist of 80 small turbine generator units installed in two modules placed in slots on the intake tower. Each generator would have a rated capacity of 100 kW for a total rated capacity of 8,000 kW. The project would have an average annual generation of 38 GWh. The project site is owned by the U.S. Army Corps of Engineers.

The purpose of this notice is to: (1) Invite interventions and protests; (2) advise all parties as to the proposed scope of the staff's environmental analysis, including cumulative effects, and to seek additional information pertinent to this analysis; and (3) advise all parties of their opportunity for comment.

The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

Interventions, Protests, and Comments

All filings must: (1) Bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," NOTICE OF INTENT TO FILE COMPETING APPLICATION," OR "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," OR "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

An additional copy must be sent to: Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

All filings for any protest or motion to intervene must be received 60 days from the issuance date of this notice.

The Commission directs, pursuant to section 4.34(b) of the regulations (see order No. 533 issued May 8, 1991, 56 FR 23108 (May 20, 1991)), that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

Scoping Process

The Commission's scoping objectives are to:

- identify significant environmental issues;
- determine the depth of analysis appropriate to each issue;
- identify the resource issues not requiring detailed analysis; and,
- identify reasonable project alternatives.

The purpose of the scoping process is to identify significant issues related to the proposed action and to determine what issues should be covered in the environmental document pursuant to the National Environmental Policy Act of 1969. The document entitled "Scoping document I" (SDI) will be circulated shortly to enable appropriate federal, state, and local resource agencies, developers, Indian tribes, non-governmental organizations (NGOs) and other interested parties to effectively participate in and contribute to the scoping process. SDI provides a brief description of the proposed action, project alternative, and the geographic and temporal scope of a cumulative effects analysis, and a list of preliminary issues identified by staff.

The Commission will decide, based on the application, and agency and public comments to scoping, whether licensing the Jordan Hydroelectric Project constitutes a major federal action significantly impacting the quality of the human environment. The Commission staff will not hold scoping meetings unless the Commission decides to prepare an environmental impact statement, or the response to SDI warrants holding such meetings.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to comment on SDI and assist the staff in defining and clarifying the issues to be addressed.

All filings should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h). In addition, commentors may submit a copy of their comments on a 3½-inch diskette formatted for MS–DOS based computers. In light of our ability to translate MS–DOS based materials, the text need only be submitted in the format and version that it was generated (i.e., MS Word, WordPerfect 5.1/5.2, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format then write them to files on a diskette formatted for MS–DOS machines. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, and should show the following captions on the first page: Jordan Hydroelectric Project, FERC No. 11437–001.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedures, requiring

VOL 61 ISS 130 JL 5 1996 UMI

parties or interceders (as defined in 18 CFR 385.2010) to file documents on each person whose name is on the official service list for this proceeding. See CFR 4.34(b).

The Commission staff will consider all written comments and may issue a Scoping Document II (SDII). SDII will include a revised list of issues, based on the scoping process.

For further information regarding the scoping process, please contact Ms. Julie Bernt, Federal Energy Regulatory Commission, Office of Hydropower Licensing, 888 First Street, N.E., Washington, DC 20426 at (202) 219–2814.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17072 Filed 7–3–96; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP95–194–001, and CP96–027–000 and CP96–027–001, Respectively]

Northern Border Pipeline Company and Natural Gas Pipeline Company of America; Notice of Additional Facilities by Natural Gas Pipeline Company of America To Be Included in The Environmental Impact Statement for the Proposed Northern Border Project and Request for Comments on Environmental Issues

June 28, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Northern Border Project.[1] The original notice was issued February 16, 1996. The purpose of this supplemental notice is to inform the public of additional facilities which will be included in the EIS.

On June 18, 1996, Natural Gas Pipeline Company of America (Natural) amended its application to add 9.6 miles of loop in Louisa and Muscatine Counties, Iowa and to increase the amount of new compression at Compressor Station 110 in Henry County, Illinois from 7,250 horsepower (hp) to 9,000 hp. This addition is because Natural no longer proposes to add compression at Compressor Station 199 in Muscatine County, Iowa. Maps showing the location of the newly proposed loop are in appendix 1.

This EIS will be used by the Commission in its decisionmaking process to determine whether to approve the project.[2]

Land Requirements for Construction

Pipeline

The additional 9.6-mile-long loop would be built adjacent to Natural's existing pipeline, using as much of the existing right-of-way as possible. Natural would use a right-of-way ranging in width from 75 to 100 feet. Additional temporary work space would generally be used where the pipeline crosses roads, streams, and rivers. An estimated 67.3 acres would be disturbed during construction. After construction, the disturbed area would be restored, and a 25-foot-wide permanent right-of-way in addition to the existing right-of-way would be maintained. Existing land uses on the remainder of the disturbed area, as well as most land uses on the permanent right-of-way, such as agriculture and open areas, would be allowed to continue following construction.

Aboveground Facilities

All construction at Compressor Station 110 would take place within the existing fenced station yard.

The EIS Process/Environmental Issues

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. The EIS we are preparing will give the Commission the information to do that. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. We encourage state and local government representatives to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues under each topic that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by the applicants. These issues are listed below. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis.

- Geology and Soils
  - — Prime and farmland soils.
  - — Erosion control.
  - — Topsoil/subsoil mixing.
  - — Soil compaction.
  - — Drain tiles and ditches.
  - — Revegetation of non-agricultural areas.
- Water Resources
  - — 7 crossings of waterbodies, including the Ceder River.
  - — Effect on groundwater and surface water supplies.
- Biological Resources
  - — Effect on wildlife and fisheries habitat.
  - — Effect on federally listed endangered and threatened species.
  - — Effect on wetland habitat.
- Cultural Resources
  - — Effect on historic and prehistoric sites.
  - — Native American and tribal concerns.
- Land Use
  - — Effect on farming.
  - — Effect on residences and recreation areas.
  - — Effect on public lands
- Air Quality and Noise
  - — Effect on local and regional air quality and local noise environment as a result of operation of additional compression.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in a Draft EIS which will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for these proceedings. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to each comment received.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426;
- Reference Docket No. CP95–194–001;
- Send a *copy* of your letter to: Ms. Laura Turner, EIS Project Manager, Federal Energy Regulatory Commission, 888 First Street, NE, Room 7M–02, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before July 29, 1996.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding or become an "intervenor." Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding expires on June 28, 1996. After that date parties seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why the time limitation should be waived. Environmental issues have been viewed as good cause for late interventions. You do not need intervenor status to have your scoping comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested and/or potentially affected by the proposed project. It is also being sent to all potential right-of-way grantors to solicit focused comments regarding environmental considerations related to the proposed project. As details of the project become established, representatives of Northern Border and Natural will directly contact landowners, communities, and public agencies concerning any other matters, including acquisition of permits and rights-of-way.

If you do not want to send comments at this time but still want to keep informed and receive copies of the Draft and Final EISs, please return the Information Request (appendix 3). PLEASE NOTE: IF WE HAVE NOT HEARD FROM YOU, EITHER BY COMMENT LETTER, RESPONSE TO ONE OF THE TWO NOI's, OR REGISTERING AT THE SCOPING MEETINGS, YOU WILL BE DROPPED FROM THE MAILING LIST. If you have previously provided us with your name and address you need not send in this information request.

Additional information about the proposed project is available from Ms. Laura Turner, EIS Project Manager, at (202) 208–0916.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–17134 Filed 7–3–96; 8:45 am]

BILLING CODE 6717-01-M

Notice of Proposed Power Rate—Robert D. Willis

AGENCY: Southwestern Power Administration (Southwestern), DOE.

ACTION: Notice for public review and comment.

SUMMARY: The Administrator, Southwestern, has prepared Current and Revised 1996 Power Repayment Studies for the Robert D. Willis (Willis) project which show the need for a decrease in annual revenues required to meet cost recovery criteria. The decrease in the revenues required will result from a change in the allocation of costs due to the remote operation of the Whitney Project from the Sam Rayburn (Rayburn) Project beginning in FY 1997. The existing power plant operators' costs will be allocated among three projects rather than just Willis and Rayburn. The Administrator has also developed a proposed rate schedule for the isolated Willis project to recover the required revenues. The proposed rate for the Willis project would decrease annual revenues approximately 9.3 percent from $294,312 to $266,928 beginning October 1, 1996.

DATES: A Public Information Forum has been scheduled for July 16, 1996, in Tulsa Oklahoma. A Public Comment Forum will be held July 30, 1996, in Tulsa, Oklahoma. Written comments are due on or before (insert 30 days from the date of **Federal Register** publication). Southwestern is conducting a 30 day public notice and comment period (10 CFR 903.14(d)). This public participation period is for a minor rate adjustment which does not require any comment period to exceed 30 days. In addition, this project has a single hydroelectric power customer and that customer directly impacted has been informed of the proposed rate decrease. It is anticipated that any comments from the customer will be developed well within the 30 day period.

ADDRESSES: Written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: Mr. George C. Grisaffe, Assistant Administrator, Office of Administration and Rates, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 595–6628.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of Energy Organization Act, P. L. 95–91, dated August 4, 1977, and Southwestern's power marketing activities were transferred from the Department of the Interior to the Department of Energy, effective October 1, 1977.

Southwestern markets power from 24 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the States of Arkansas, Missouri, Oklahoma and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. Of the total, 22 projects comprise an Integrated System and are interconnected through Southwestern's transmission system and exchange agreements with other utilities. The Sam Rayburn Dam project, located in eastern Texas, is not interconnected with Southwestern's Integrated System hydraulically, electrically, or financially. Instead, the power produced by the Sam Rayburn Dam project is marketed by Southwestern as an isolated project under a contract through which the customer purchases the entire power output of the project at the dam. The Willis project, located on the Neches River downstream from the Sam Rayburn Dam, consists of two 4,000 kilowatt hydroelectric generating units. It, like the Sam Rayburn Dam project, is

[1] Northern Border Pipeline Company's and Natural Gas Pipeline Company of America's applications were filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426 or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

VOL
61
ISS
130
JL
5
1996
UMI

marketed as an isolated project under a contract through which the customer, Sam Rayburn Municipal Power Agency (SRMPA), receives the entire output of the project for a period of 50 years as a result of funding the construction of the hydroelectric facilities at the project. A separate power repayment study is prepared for each project which has a special rate based on its isolated project determination.

Following Department of Energy Order Number RA 6120.2, the Administrator, Southwestern, prepared a current power repayment study for the Robert D. Willis project using the existing annual rate of $294,312. The study indicated that maintaining the current rate will create a revenue surplus for the project. This is primarily a result of adding the remote operation of the Whitney Project, beginning in FY 1997, by the Corps of Engineers from the Sam Rayburn Project. The Revised Power Repayment Study for the isolated Willis project shows that a decrease of $27,384 (a 9.3 percent decrease) annually will satisfy repayment criteria. This decrease would change annual revenues produced by the Willis Project from $294,312 to $266,928 and satisfy the present financial criteria for repayment of the project.

Opportunity is presented for customers and interested parties to receive copies of the studies and proposed rate schedule for the Willis project. If you desire a copy of the Repayment Study Data Package for the Willis project, please do not hesitate to submit your request to: Mr. George C. Grisaffe, Assistant Administrator, Office of Administration and Rates, P.O. Box 1619, Tulsa, OK 74101, (918) 595–6628.

A Public Information Forum is scheduled to be held at 4:30 p.m., central time (c.t.) Tuesday, July 16, 1996, in Southwestern's offices, room 1600, Williams Center Tower 1, One West Third Street, Tulsa, Oklahoma. The Forum is to explain to customers and interested parties the proposed rates and supporting studies. The Forum will be conducted by a chairman who will be responsible for orderly procedure. Questions concerning the rates, studies and information presented at the forum may be submitted from interested persons and will be answered, to the extent possible, at the forum. Questions not answered at the Forum will be answered in writing, except the questions involving voluminous data contained in Southwestern's records may best be answered by consultation and review of pertinent records at Southwestern's offices. Persons interested in attending the Public Information Forum should indicate in writing by 4:00 p.m., c.t., Friday, July 12, 1996, their intent to appear at such Forum. Accordingly, if no one so indicates their intent to attend, no such Forum will be held.

A Public Comment Forum is scheduled to be held at 1:30 p.m., c.t., Tuesday, July 30, 1996, at the same location established for the Public Information Forum. At the Public Comment Forum interested persons may submit written comments or make oral presentations of their views and comments. This forum will also be conducted by a chairman who will be responsible for orderly procedure. Southwestern's representatives will be present, and they and the chairman may ask questions of speakers. The chairman may allow others to speak if time permits. Persons interested in attending or speaking at the Public Comment Forum should indicate in writing by 4:00 p.m., c.t., Friday, July 26, 1996, their intent to appear at such Forum. Accordingly, if no one so indicates their intent to attend, no such Forum will be held.

A transcript of each Forum will be made. Copies of the transcripts may be obtained from the transcribing service. Copies of all documents introduced will be available from Southwestern upon request, for a fee. Written comments on the proposed rates for the project are due on or before 30 days from publication. Written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

Following review of the oral and written comments, the Administrator will submit the rate proposals and the Power Repayment Studies for the Willis project, in support of the proposed rates, to the Deputy Secretary of Energy for confirmation and approval on an interim basis and to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis. The FERC will allow the public an opportunity to provide written comments on the proposed rate increases before making a final decision.

Issued in Tulsa, Oklahoma, this 24th day of June, 1996.

Frances R. Gagan,

Acting Administrator.

[FR Doc. 96–17119 Filed 7–3–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5471–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed June 24, 1996 Through June 28, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 960299, Final EIS, FRC, GA, SC, North Georgia Hydroelectric Project, (FERC. No. 2354–018) Issuance of Relicensing, Savannah River Basin, Tallulah, Tugalo and Chattooga Rivers, GA and SC, Due: August 05, 1996, Contact: Joe Davis (202) 219–2865.

EIS No. 960300, Draft Supplement, FHW, AL, Tuscaloosa East Bypass Corridor, Construction, I–59/I–20 east of Tuscaloosa to US 82 west of Northport, Funding, NPDES Permit, COE Section 10 and 404 Permits, Tuscaloosa County, AL, Due: August 26, 1996, Contact: Joe D. Wilkerson (334) 223–7370.

EIS No. 960301, Final EIS, FHW, NH, NH 9/US 202 Highway Improvements Project, between Henniker to the east and NH 31 to the west, Funding, COE Section 404 Permit and NPDES Permit, Hillsborough County, NH, Due: August 05, 1996, Contact: William F. O'Donnell's (603) 225–1608.

EIS No. 960302, Final EIS, FRC, WI, Wisconsin River Basin Hydroelectric Project, Application for Licensing for ten FERC Hydroelectric Project: Nos. 2119, 2239, 2476, 1999, 2212, 2590, 2256, 2255, 2291 and 2292, Vilas, Forest, Oneida, Lincoln, Marathon, Portage and Wood Counties, WI and Gogebic County, MI, Due: August 05, 1996, Contact: Sabina Joe (202) 219–1648.

EIS No. 960303, Final EIS, BLM, CO, White River Resource Area, Land and Resource Management Plan, Implementation, Craig District, Towns of Meeker, Rangely and Dinosaur, Rio Blanco, Garfield and Moffat Counties, CO, Due: August 05, 1996, Contact: Bill Hill (970) 878–3601.

EIS No. 960304, Draft EIS, BLM, NV, Twin Creeks Mine Consolidation and Expansion, which Encompasses the former Rabbit Creek Mine and the former Chimney Creek Mine, Plan of Operation and Permit Application, Winnemucca District, Humboldt County, NV, Due: September 03, 1996, Contact: Gerald Moritz (703) 623–1500.

EIS No. 960305, Draft EIS, AFS, WA, Huckleberry Land Exchange Consolidate Ownership and Enhance Future Conservation and Management, Federal Land and Non Federal Land, Mt. Baker-Snoqualmie National Forest, Skagit, Snohomish, King, Pierce, Kittitas and Lewis Counties, WA, Due: August 19, 1996, Contact: Doug Schrenk (206) 888–1421.

EIS No. 960306, Draft EIS, COE, CA, Kaweah River Basin Investigation Feasibility Study, Flood Protection of Terminus Dam, Increase Storage Space in Lake Kaweah for Irrigation of Water Supply, Construction, Modification and Operation, San Joaquin Valley, Tulare and King Counties, CA, Due: August 27, 1996, Contact: Jane Rinck (916) 557–6715.

EIS No. 960307, Draft EIS, AFS, OR, Augusta Timber Sale, Implementation, Willamette National Forest, Blue River Ranger District, Willamette Meridian, Blue River, Lane County, OR, Due: August 19, 1996, Contact: Lynn Burditt (503) 822–3317.

EIS No. 960308, Draft EIS, DOE, CT, SIC Prototype Reactor Plant Disposal, Windsor Site Located at the Knolls Atom Power Laboratory, CT, Due: August 19, 1996, Contact: Christopher G. Overton (860) 687–5610.

EIS No. 960309, Final EIS, EOE, WA, Northwest Regional Power Facility (NRPF), Construction and Operation if a 838 Megawatt (MW) Gas-fired Combustion Turbine Facility. Approval of Permits, Located near the Town of Creston, WA, Due: August 05, 1996, Contact: Nancy Wittpen (503) 230–3297.

EIS No. 960310, Final EIS, FHW, MO, US Route 71/Range Line Road Bypass east of the Joplin City Limits Construction, Funding and COE Section 404 Permit, Jasper County, MO, Due: August 05, 1996, Contact: Donald Neumann (573) 636–7104.

EIS No. 960311, Final EIS, FRC, WA, Rocky Reach Hydroelectric Project (FERC) No. 2145) Operating License Amendment Issuance to Increase Lake Entiat Reservoir, Chelan and Douglas Counties, WA, Due: August 05, 1996, Contact: James Hastreiter (503) 326–5858.

Dated: July 1, 1996.

William D. Dickerson,

Director, NEPA Compliance Division Office of Federal Activities.

[FR Doc. 96–17162 Filed 7–3–96; 8:45 am]

BILLING CODE 6560–60–M

FEDERAL COMMUNICATIONS COMMISSION

Fourth Meeting of the WRC–97 Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–97 Advisory Committee will be held on Monday, July 8, 1996, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 1997 World Radiocommunication Conference.

DATES: July 8, 1996; 2:00 p.m.-5:00 p.m.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: Crystal Foster, FCC International Bureau, Satellite and Radiocommunication Division, at (202) 418–0749.

SUPPLEMENTARY INFORMATION:

1. The Federal Communications Commission (FCC) established the Advisory Committee for the 1997 World Radiocommunication Conference to provide advice, technical support and recommendations relating to the preparation of recommended United States proposals and positions for the 1997 World Radiocommunication Conference (WRC–97). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the fourth meeting of the WRC–97 Advisory Committee.

2. This meeting will continue reviewing the work of the Advisory Committee. It will provide an update on the FCC's preparatory process for WRC–97 and discuss issues for the agenda of WRC–99.

3. The WRC–97 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. Further information regarding the WRC–97 Advisory Committee is available on the World Wide Web at: http://www.fcc.gov/ib/wrc97/.

4. The proposed agenda for the fourth meeting is as follows:

Agenda

Fourth Meeting of the WRC–97 Advisory Committee, Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington, D.C. 20554, Monday, July 8, 1996; 2:00 p.m.-5:00 p.m.

Remarks
2. Agenda Approval
3. Administrative Matters
4. Update on NTIA's Radiocommunication Conference Subcommittee
5. Report of the Chairs of the Informal Working Groups
6. Consideration of Draft Proposals of the Informal Working Groups
7. Discussion of Issues for the Agenda of WRC–99
8. Meeting Schedules
9. Other Business

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–17113 Filed 7–3–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL LABOR RELATIONS AUTHORITY

Notice of Opportunity to Submit Amicus Curiae Briefs in Representation Proceedings Pending Before the Federal Labor Relations Authority

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of the opportunity to file briefs as amici curiae in proceedings before the Federal Labor Relations Authority raising issues regarding: (1) the relationship between sections 7111(f)(1) and 7120 of the Federal Service Labor-Management Relations Statute (5 U.S.C. 7111(f)(1) and 5 U.S.C. 7120); and (2) the criteria to be used by the Authority in resolving representation cases under section 7111(f)(1) of the Statute arising from an agency reorganization where both successorship and accretion principles are claimed to apply.

SUMMARY: The Federal Labor Relations Authority provides an opportunity for all interested persons to file briefs as amici curiae on significant issues arising in cases pending before the Authority. The Authority is considering the cases pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101–7135 (1994) (the Statute) and its regulations, set forth at 5 CFR part 2422 (1995), revised by 5 CFR part 2422 (1996). The issues concern how the Authority should: (1) determine whether a labor organization is subject to corrupt influences or influences opposed to democratic principles within the meaning of section 7111(f)(1) of the Statute; and (2) resolve representation petitions arising from a reorganization where both successorship and accretion principles are claimed to apply to the same employees.

DATES: Briefs submitted in response to this notice will be considered if filed by close of business on July 24, 1996.

VOL 61 ISS 130 JL 5 1996 UMI

Extensions of time will not be granted. The date of filing shall be determined by the date of mailing, as indicated by the postmark date. If no postmark date is evident on the mailing, it shall be presumed to have been mailed 5 days prior to receipt. If filing is by personal delivery, it shall be considered filed on the date it is received by the Authority.

ADDRESSES: Mail or deliver briefs to James H. Adams, Acting Director, Case Control Office, Federal Labor Relations Authority, 607 14th Street, NW, Suite 415, Washington, D.C. 20424–0001.

FORMAT: All briefs regarding the relationship between sections 7111(f)(1) and 7120 of the Statute shall be captioned "Division of Military and Naval Affairs (New York National Guard), Latham, New York, Case No. BN–RO–40060, Amicus Brief." All briefs regarding the criteria to be used in resolving representation cases arising from a reorganization where both successorship and accretion principles are claimed to apply shall be captioned "Department of Navy, Fleet and Industrial Supply Center, Case Nos. WA–CU–50061, WA–CU–50062 and SF–CU–50071, Amicus Brief." Briefs shall also contain separate, numbered headings for each issue discussed. An original and four (4) copies of each amicus brief must be submitted, with any enclosures, on 8½ x 11 inch paper. Briefs must include a signed and dated statement of service that complies with the Authority's regulations showing service of one copy of the brief on all counsel of record or other designated representatives. 5 C.F.R. 2429.27(a) and (c). Copies of the Authority's decisions granting applications for review in these cases and a list of the designated representatives for each case may be obtained in the Authority's Case Control Office at the address set forth below. Copies will be forwarded (by mail or by facsimile) to any person who so requests by contacting James H. Adams at the same address.

FOR FURTHER INFORMATION CONTACT: James H. Adams, Acting Director, Case Control Office, Federal Labor Relations Authority, 607 14th Street, NW., Suite 415, Washington, D.C. 20424–0001, Telephone: FTS or Commercial (202) 482–6540.

SUPPLEMENTARY INFORMATION: A summary of Division of Military and Naval Affairs (New York National Guard), Latham, New York, Case No. BN–RO–40060, and Department of Navy, Fleet and Industrial Supply Center, Case Nos. WA–CU–50061, WA–CU–50062 and SF–CU–50071, follows.

A. Division of Military and Naval Affairs (New York National Guard), Latham, New York, Case No. BN–RO–40060

1. Background

On September 15, 1995, the Authority granted review of the Regional Director's Decision and Order in the captioned case under the Authority's regulations in effect at the time of the application for review, 5 CFR 2422.17(c)(1) and (3) (1995), on the grounds that: (1) a substantial question of law or policy is raised because of the absence of Authority precedent; and (2) the conduct of the hearing held or any ruling made in connection with the proceeding has resulted in prejudicial error. The Authority has directed the parties to file briefs addressing certain questions, as set forth below.

The petition in this case, which was filed by the National Federation of Civilian Technicians (NFCT), seeks an election to decide the exclusive representative in a unit of employees of the New York National Guard. The Association of Civilian Technicians (ACT) currently is the exclusive representative for the unit and is the Intervenor in the case.

Following the filing of NFCT's petition, ACT filed a challenge under section 7111(f)(1) of the Statute. It asserts that NFCT is subject to "corrupt influences or influences opposed to democratic principles" and asks that the petition be dismissed.

The Statute provides that exclusive recognition shall not be accorded to a labor organization if the Authority determines that the labor organization is subject to corrupt influences or influences opposed to democratic principles. 5 U.S.C. § 7111(f)(1).

Section 7120(a) of the Statute provides that an agency shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Section 7120(d) directs the Assistant Secretary of Labor for Labor-Management Relations to prescribe regulations necessary to carry out the purposes of section 7120, and further provides that complaints of violations of this section shall be filed with the Assistant Secretary.

2. The Regional Director's Decision

The Regional Director advised the parties that ACT's challenge raised issues concerning NFCT's compliance with internal union standards of conduct imposed by section 7120 of the Statute and concluded that because standards of conduct issues are committed to the exclusive jurisdiction of the Assistant Secretary of Labor by section 7120 of the Statute, they were not appropriate for investigation or adjudication in a representation proceeding before the Authority. Because there had been no decision by the Assistant Secretary that NFCT was subject to corrupt influences or influences opposed to democratic principles, the regional director directed that an election be conducted among the employees in the petitioned-for unit.

3. The Application for Review

ACT filed an application for review and for a stay of the Regional Director's decision and order. It contends that section 7111(f)(1) of the Statute requires the Authority to determine whether a labor organization involved in a representation proceeding is subject to corrupt influences or influences opposed to democratic principles. NFCT filed a reply to ACT's application for review, and attached a letter from a regional director of the U.S. Department of Labor. The letter states that the Office of Labor-Management Standards of the Department of Labor had considered ACT's argument that NFCT was subject to corrupt influences and did not find that the officers of NFCT had violated standards of conduct set forth in 5 U.S.C. 7120.

4. Questions on Which Briefs are Solicited

The Authority has directed the parties in this case to file briefs addressing the following questions:

1. In making the required determination under section 7111(f) of the Statute, should the Authority rely on the investigation conducted by the Assistant Secretary pursuant to section 7120, or should the Authority conduct its own investigation?

2. If the Authority relies on investigations conducted by the Assistant Secretary:

a. What procedures should be used (e.g., should any pending Authority proceedings be placed in abeyance pending the Assistant Secretary's final action; should the Authority's regional director examine the Assistant Secretary's findings in a hearing)?

b. How should the Authority proceed if no complaint has been filed with the Assistant Secretary under section 7120(d)?

c. Should the Authority defer to the Assistant Secretary's findings and conclusions? What standard of review should be applied in reviewing such findings and conclusions?

3. If the Authority conducts its own investigation:

a. What procedures should be used (e.g., should the determination be made in an adversarial or nonadversarial proceeding)?

b. What criteria should be applied to determine whether a labor organization is subject to corrupt influences or influences opposed to democratic principles?

4. Do the answers to these questions depend on whether, at the time the section 7111(f)(1) issue is raised:

a. a petition has been filed seeking to represent a unit that has no current exclusive representative;

b. a petition has been filed seeking to decertify an exclusive representative; or

c. there is an exclusive representative and no representation petitions are pending?

As these matters are likely to be of concern to agencies, labor organizations, and other interested persons, the Authority finds it appropriate to provide for the filing of amicus briefs addressing these issues.

B. Department of Navy, Fleet and Industrial Supply Center, Case Nos. WA–CU–50061, WA–CU–50062 and SF–CU–50071

On June 24, 1996, the Authority granted, in part, applications for review of the Regional Director's Decision and Order in *United States Department of the Navy, Fleet and Industrial Supply Center, Norfolk, Virginia*, Case Nos. WA–CU–50061 and WA–CU–50062 (51 FLRA No. 114) (FISC Norfolk) and the Regional Director's Decision and Order in *Naval Supply Center, Puget Sound*, Case No. SF–CU–50071 (51 FLRA No. 115) (FISC Puget Sound).

1. Case Nos. WA–CU–50061, 50062—FISC Norfolk

As a result of a reorganization, on March 1, 1993, the Department of the Navy created the Fleet and Industrial Supply Centers in Norfolk, Virginia (FISC Norfolk) and Puget Sound, Bremerton, Washington (FISC Puget Sound). As originally constituted, FISC Norfolk consisted of a headquarters operation at Norfolk, Virginia, the Cheatham Annex at Williamsburg, Virginia, and two detachments at Newport, Rhode Island and Colts Neck, New Jersey (the Leonardo Detachment). The approximately 520 General Schedule (GS) and 330 Wage Grade (WG) employees at Norfolk, Virginia have been represented in separate bargaining units by the American Federation of Government Employees, Local 53, AFL–CIO (AFGE Local 53) and the International Association of Machinists and Aerospace Workers, Local Lodge 97, AFL–CIO (IAM Local 97), respectively. The GS and WG employees at Cheatham Annex have been represented by AFGE Local 53 and IAM Local 97, respectively, in separate units at Williamsburg. Employees of the Newport and Leonardo Detachments have been unrepresented.

In October and November 1994, FISC Norfolk established five detachments under its Acquisitions Group and four detachments under its Customer Operations Division, respectively. The FISC Norfolk Detachment at Yorktown, Virginia (Yorktown Detachment) consists of approximately 26 GS and WG employees who were transferred from the Naval Weapons Station, Yorktown, Virginia, where they were represented by the National Association of Government Employees, Local R4–1, SEIU, AFL–CIO (NAGE Local R4–1). The FISC Norfolk Detachment at Charleston, Goose Creek, South Carolina (Charleston Detachment) consists of approximately 23 GS and WG employees who were transferred from the Naval Weapons Station, Charleston, Goose Creek, where they were represented by the American Federation of Government Employees, Local 2298, AFL–CIO (AFGE Local 2298).

The petitions in Case Nos. WA–CU–50061 and WA–CU–50062 were filed by FISC Norfolk and sought to clarify the GS and WG units represented by AFGE Local 53 and IAM Local 97, respectively, by establishing that all of the transferred employees, including those from the Yorktown and the Charleston Detachments, had accreted to these units. Three other petitions were filed wherein, as relevant here, NAGE Local R4–1 and AFGE Local 2298 sought to retain representation of the unit employees transferred to FISC Norfolk from the Yorktown and Charleston Detachments, respectively.

2. Case No. SF–CU–50071—FISC Puget Sound

A bargaining unit of approximately 265 GS and WG employees at FISC Puget Sound has been historically represented by the Bremerton Metal Trades Council (BMTC). In October 1993 and October 1994, FISC Puget Sound established two detachments. The FISC Puget Sound Detachment at Everett, Washington (Everett Detachment) consists of 6 employees who were transferred from the Naval Station Everett where they were represented by the American Federation of Government Employees (AFGE). The FISC Puget Sound Detachment at Concord, California (Concord Detachment) consists of 21 employees who were transferred from the Naval Weapons Station, Concord, where they were represented by the American Federation of Government Employees, Local 1931, AFL–CIO (AFGE Local 1931).

The petition in Case No. SF–CU–50071 was filed by FISC Puget Sound and sought to clarify the GS/WG bargaining unit represented by BMTC by establishing that all of the transferred employees in the Everett and the Concord Detachments had accreted to the BMTC unit.

3. The Regional Directors' Decisions

In *FISC Norfolk*, the RD found that all the transferred employees, including those located at the Yorktown and Charleston Detachments, had accreted to the AFGE Local 53 and IAM Local 97 bargaining units and granted the petitions for unit clarification. In *FISC Puget Sound*, the RD found that the Everett Detachment employees had accreted into the BMTC. The RD concluded that the Concord Detachment employees had not accreted into the BMTC unit because FISC Puget Sound was a successor employer.

4. The Applications for Review

In *FISC Norfolk*, NAGE Local R4–1 and AFGE Local 2298 filed applications for review challenging the RD's use of accretion principles in resolving the issues presented by their petitions. In particular, AFGE Local 2298 maintains that the RD failed to apply current Authority precedent for determining successorship, as set forth in *Naval Facilities Engineering Service Center, Port Hueneme, California*, 50 FLRA 363 (1995) (*Port Hueneme*). In *FISC Puget Sound*, the Activity filed the application for review challenging the RD's decision regarding the Concord Detachment as relying "too heavily" upon the *Port Hueneme* successorship criteria. The Activity maintains that a "literal application" of *Port Hueneme* will lead to an increased number of bargaining units and "government inefficienc[y]."

5. Question on Which Briefs are Solicited

The Authority granted the applications for review in *FISC, Norfolk* and *FISC, Puget Sound* under 5 CFR § 2422.17(c)(1) on the ground that there is an absence of, or the Regional Directors' decisions constitute a departure from, Authority precedent on resolving representation cases involving agency reorganizations where both successorship and accretion principles are claimed to apply. The Authority has directed the parties in the two cases to file briefs addressing the following question:

VOL
61
ISS
130
JL
5
1996
UMI

In a representation case arising from a reorganization where both successorship and accretion principles are claimed to apply to the same employees, how should the Authority resolve the representation issues raised by the petitions?

As these matters are likely to be of concern to agencies, labor organizations, and other interested persons, the Authority finds it appropriate to provide for the filing of amicus briefs addressing these issues.

Dated: July 1, 1996.

For the FLRA.

James H. Adams,

Acting Director, Case Control Office.

[FR Doc. 96–17163 Filed 7–3–96; 8:45 am]

BILLING CODE 6727–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communication with the Commission regarding a pending agreement.

Agreement No.: 232–011384–001.

Title: Mitsui O.S.K. Lines, Ltd./ Hoegh-Ugland Auto Liners, A/S Space Charter Agreement.

Parties: Mitsui O.S.K. Lines, Ltd., Hoegh-Ugland Auto Liners A/S.

Synopsis: The proposed amendment adds non-binding rate authority to the Agreement. The parties have requested a shortened review period.

Agreement No.: 202–010689–061.

Title: Transpacific Westbound Rate Agreement.

Parties: American President Lines, Ltd., Hapag-Lloyd Aktiengesellschaft, Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd., Nedlloyd Lijnen B.V., Neptune Orient Lines, Ltd., Nippon Yusen Kaisha Ltd., Orient Overseas Container Line, Inc., Sea-Land Service, Inc.

Synopsis: The proposed amendment provides for a shortened notice period of three calendar days for independent action on "out-of-gauge" cargo. The parties have requested a shortened review period.

Agreement No.: 232–011526–001.

Title: Mitsui O.S.K. Lines, Ltd./ Hoegh-Ugland Auto Liners, A/S Space Charter Agreement.

Parties: Mitsui O.S.K. Lines, Ltd., Hoegh-Ugland Auto Liners A/S.

Synopsis: The proposed amendment adds non-binding rate authority to the Agreement. The parties have requested a shortened review period.

Agreement No.: 217–011546.

Title: Wilhelmsen/NYK Space Charter Agreement.

Parties: Nippon Yusen Kaisha ("NYK"), Wilhelmsen Lines A/S ("Wilhelmsen").

Synopsis: The proposed Agreement authorizes Wilhelmsen to charter space to NYK in the trade between ports and points in Japan and U.S. Atlantic and Gulf Coasts ports and points.

By Order of the Federal Maritime Commission.

Dated: June 26, 1996.

[FR Doc. 96–17056 Filed 7–3 –96; 8:45 am]

BILLING CODE 6730–01–M

Notes of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement of the Washington, D.C. office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in section 560.602 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of the document to the person filing the agreement at the address shown below.

Agreement No.: 224–200969–001.

Title: Port of Houston/Mediterranean Shipping Co., S.A., Terminal Agreement.

Parties: Port of Houston Authority (Port), Mediterranean Shipping Co., S.A. ("MSC").

Filing Agent: Martha T. Williams, Esquire, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The proposed amendment permits MSC to relocate its South American service cargo operations to the Port's Fentress Bracewell Barbours Cut Terminal.

By Order of the Federal Maritime Commission.

Dated: June 26, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–17057 Filed 7–3–96; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Air Cargo Expediters Inc., 167–17 146th Road, Jamaica, NY 11434. Officers: Harry J. Phieffer, President; John R. Phieffer, Vice President.

Southern International Cargo, Inc., 10131 S.W. 33rd Street, Miami, FL 33165. Officer: Ana Gamarra, President.

Genesis Forwarding Group USA, Inc., 808 Hindry Avenue, Unit E, Inglewood, CA 90301. Officer: Mo-Ling Mary Goon, Assistant Secretary.

Transcargo International, 5155 Rosecrans Ave., Suite 110, Hawthorne, CA 90250. Mario F. Chavarria, Sole Proprietor.

NG Enterprises, Inc. d/b/a Randy International Ltd., 590 Belleville Turnpike, Building 26, Kearny, NJ 07032. Officers: Norman Greif, President; Alice F. Sciara, Vice President.

Dated: June 26, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–17102 Filed 7–3–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 26, 1996.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Marble Falls National Bank 401(K) Employee Stock Ownership Plan; to acquire a total of 13.47 percent of the voting shares of Marble Falls National Bancshares, Inc., and thereby directly acquire Marble Falls National Bank, all of Marble Falls, Texas.

Board of Governors of the Federal Reserve System, June 28, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–17094 Filed 7–3–96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The company listed in this notice has applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The application listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 30, 1996.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Interstate BancSystem of Montana, Inc., Billings Montana, JS Investments, Limited Partnership, Billings, Montana; and Nbar5, Limited Partnership, Billings, Montana; to acquire 100 percent of the voting shares of First Interstate Bank of Montana, N.A., Kalispell, Montana, and First Interstate Bank of Wyoming, N.A., Casper, Wyoming.

Board of Governors of the Federal Reserve System, June 28, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–17092 Filed 7–3–96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 29, 1996.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Monarch Bancorp, Laguna Niguel, California; to acquire 100 percent of the voting shares of Western Bank, Los Angeles, California.

2. Eggemeyer Corp., Castle Creek Capital Partners Fund—I, L.P., Castle Creek Capital, L.L.C., all of Chicago, Illinois; to become bank holding companies by acquiring more than 5 percent, and Mutual Series Fund, Inc., Short Hills, New Jersey, to become a

VOL 61 ISS 130 JL 5 1996 UMI

bank holding company by acquiring an additional 4.42 percent, for a total of 14.12 percent, of the voting shares of Monarch Bancorp, Laguna Niguel, California, and thereby directly acquire Monarch Bank, Laguna Niguel, California, and Western Bank, Los Angeles, California.

In addition, Eggemeyer Corp, Chicago, Illinois; has applied to retain its 52 percent investment in Belle Plaine Financial, L.L.C., Chicago, Illinois, and thereby engage in providing investment and financial advice, pursuant to § 225.25(b)(4)(vi)(A)(1).

Board of Governors of the Federal Reserve System, June 28, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–17095 Filed 7–3–96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 19, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Gulf West Banks, Inc., St. Petersburg, Florida; to acquire Liberty Leasing Corporation, Tampa, Florida, and thereby engage in leasing activities, pursuant to § 225.25(b)(5) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Sharon Bancshares, Inc., Sharon, Tennessee, to engage *de novo* in offering a full range of portfolio investment advice and securities brokerage services to customers of its subsidiary banks, pursuant to §§ 225.25(b)(4) and (15) of the Board's Regulation Y.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota, Norwest Financial Services, Inc., Des Moines, Iowa, and Norwest Financial, Inc., Des Moines, Iowa; to indirectly acquire Sunburst Financial Services, Inc., Jackson, Mississippi, dba Rapid Finance, Inc., through it subsidiaries, Norwest Financial Louisiana, Inc., Des Moines, Iowa, and Norwest Financial Mississippi, Inc., Des Moines, Iowa, and thereby indirectly engage in consumer finance activities and in the sale of credit life, credit accident and health, and property and credit-related casualty insurance pursuant to §§ 225.25(b)(1) and (8)(vii) of the Board's Regulation Y.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Community Bancshares Employee Stock Ownership Plan, Neosho, Missouri, and Community Bancshares, Inc., Neosho, Missouri; to engage *de novo* through its subsidiary Community Mortgage Company, Neosho, Missouri, in mortgage lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Security Shares, Inc., Abilene, Texas; to acquire through its subsidiary First Independent Computers, Inc., a 50 percent interest in Vision Plus Card Services, L.L.C., Abilene, Texas, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

F. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Imperial Bancorp, Los Angeles, California; to engage *de novo* through its subsidiary Pacific Bancard Association, Inglewood, California (PBA), in the servicing of extensions of credit for credit cards, pursuant to § 225.25(b)(1)(ii) of the Board's Regulation Y. PBA represents a 50 percent partner in American Heritage/Pacific Bancard Association, Chatsworth, California (American). American is a California general partnership engaged in the business of acquiring and servicing portfolios of merchant agreements for the processing of bank card transactions from financial institutions to be serviced by Imperial Bancorp's bank subsidiary, Imperial Bank, as a bank card merchant bank, in the ordinary course of Imperial Bank's business.

2. Wells Fargo & Company, San Francisco, California; to expand the geographic scope of its subsidiary, Wells Fargo Ventures, Inc., San Francisco, California, which engages in data processing and data transmission services through the ownership, installation, operation, and maintenance of automatic teller machines in the states of Texas and Oregon, pursuant to § 225.25(b)(7) of the Board's Regulation Y. Wells Fargo Ventures, Inc. proposes to operate nationwide.

Board of Governors of the Federal Reserve System, June 28, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–17093 Filed 7–3–96; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. (EDT), July 15, 1996.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the June 17, 1996, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Discussion of additional or different system developer selection criteria, if any.
4. Review of KPMG Peat Marwick audit reports:

(a) "Pension and Welfare Benefits Administration Review of ADP Hardware Operations Management of the Thrift Savings Plan at the United States Department of Agriculture, National Finance Center".

(b) "Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Forfeiture and Forfeiture Restoration Operations and Interfund Transfer Process at the United States Department of Agriculture, National Finance Center".

(c) "Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Loan Operations at the United States Department of Agriculture, National Finance Center".

(d) "Pension and Welfare Benefits Administration Review of the Thrift Savings Plan System Enhancements and Software Change Controls at the United States Department of Agriculture, National Finance Center".

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs (202) 942–1640.

Dated: July 1, 1996.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 96–17256 Filed 7–2–96; 8:45 am]

BILLING CODE 6760-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 651]

1996 Demonstration Sites for State Pregnancy and Pediatric Nutrition Surveillance Systems

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1996 funds for a cooperative agreement for Demonstration Sites for Pediatric Nutrition Surveillance Systems (PedNSS) and State Pregnancy Nutrition Surveillance Systems (PNSS) to improve data quality and to add additional questions to these systems.

The CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Nutrition, Maternal and Infant Health, and Surveillance and Data Systems. (For ordering a copy of "Healthy People 2000", see the section "Where To Obtain Additional Information.")

Authority

This program is authorized under sections 301(a)and 317(k)(2)of the Public Health Service Act [42 U.S.C. 241(a) and 247b(k)(2)], as amended.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are the official public health agencies of States or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Eligible applicants must:

1. Provide evidence that the State is currently participating in, and submitting data for, items indicated below in the PedNSS and/or PNSS:

a. If applying to work with the PedNSS system, a minimum of 4 of the 5 data items listed in Appendix A should have no more than 40% missing data. (A copy of Appendix A will be included in the application kit.)

b. If applying to work with the PNSS system, a minimum of 14 of the 18 data items listed in Appendix B should have no more than 40% missing data. (A copy of Appendix B will be included in the application kit.)

2. Provide written documentation that each demonstration site includes:

a. A minimum of 1,000 children enrolled in Women, Infants, and Children (WIC) are seen in each of at least 10 potential demonstration sites per year (PedNSS system only).

b. A minimum of 300 women enrolled in WIC are seen in each of at least 10 potential demonstration sites per year (PNSS system only).

Availability Of Funds

Approximately $350,000 is available in FY 1996 to fund approximately 4 awards, no more than two of which will be made to applicants who participate in PedNSS only. It is expected that the average award will range from $80,000 to $100,000. It is expected that the awards will begin on or about September 30, 1996, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

These awards are to establish demonstration test clinic sites to improve the quality of the PedNSS and/or PNSS surveillance; collect high quality data; process, analyze, and disseminate data; add new data items; and enhance the ability of these systems to monitor nutrition-related problems of women and children.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A, and CDC shall be responsible for conducting activities under B.

A. Recipient Activities

1. Establish demonstration sites to: (a) improve the quality of data collected by the PedNSS and/or PNSS; (b) expand the PedNSS and/or PNSS to include additional data items that are routinely collected in public health clinics; and (c) develop standardized questions to add to the PedNSS and/or PNSS on two of the following topics: food security, dietary information, and physical activity.

2. Choose potential demonstration sites (clinics, county, or agency) based on clinic size, current data quality, geographic representation, and ethnic diversity.

3. Document equipment used, current practices of measuring health parameters, and data collection procedures using standard qualitative research methods such as focus groups, key informant interviews, etc.

4. Develop and carry out a plan to assure standardized equipment and measurement techniques, training procedures, and data collection forms in accordance with guidelines to be provided by CDC.

5. Include in the surveillance system, information on type of formula fed to infants, whether the infant's mother participates in WIC (PedNSS only), and risk factors contributing to WIC eligibility. Add new standardized

VOL 61 ISS 130 JL 5 1996 UMI

questions to the data collection form on two of the following three topics: food security, dietary information, and physical activity. The recipient should be willing to consider including other data items as the need arises.

6. Develop and implement a plan to monitor data collection activities.

7. Develop a plan to assess data quality on an ongoing basis and revise practices and techniques as needed.

8. Evaluate the project in terms of: (a) improvement of data quality, (b) feasibility of collecting new data items, and (c) usefulness of new data items.

9. Prepare and disseminate procedures used and findings through presentation and publication in appropriate forums.

B. CDC Activities

1. Provide technical support to evaluate current practices of data collection and develop a plan to improve data quality.

2. Collaborate in the design of standardized data items, definitions, procedures, and methods to collect the desired surveillance information.

3. Provide technical support for monitoring data collection and data quality, data processing and analysis, and the distribution of tasks between State and clinic offices.

Evaluation Criteria (100 Points)

Applications will be reviewed and evaluated according to the following criteria:

A. Statement of Need (5 Points)

The need for State-specific, high-quality data on data items currently collected and new data items.

B. Goals and Objectives (5 Points)

The appropriateness of goals, objectives, and activities stated in the overall plan, and whether objectives are specific, measurable, time-phased, and feasible.

C. Operational Plan (45 Points)

The extent and adequacy of the plan to use qualitative methods, assure use of standardized equipment and operational procedures, monitor data collection activities, assess data quality, revise practices and techniques, and add new standardized questions to the data collection.

D. Capability (35 Points)

1. The extent and appropriateness of the existing surveillance system for PedNSS and/or PNSS.

2. The extent to which project staff appear to have the skills to provide training on data collection, data quality assessment and data processing.

3. Evidence that adding new data items and software to analyze data quality to the existing computerized surveillance systems will be feasible.

E. Project Evaluation (10 Points)

The appropriateness of the evaluation to assess improvements to data quality and feasibility of collecting new data items.

F. Budget (Not Weighted)

The extent to which the budget clearly relates to proposed objectives and activities.

G. Human Subjects: (Not Scored)

Whether or not exempt from the DHHS regulations, procedures are to be adequate for the protection of human subjects. Recommendations on the adequacy of protections include: (1) protections appear adequate and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the ORG has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mail Stop E–18, Atlanta, Georgia 30305, no later than 30 days after the receipt date of the application.

The appropriation for this financial assistance program was received late in the fiscal year and would not allow for an application date which would accommodate the 60-day State recommendation process period. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Sharron P. Orum, Grants Management Office, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mail Stop E–18, Atlanta, Georgia 30305. This should be done no later than 30 days after the receipt date of the application. The granting agency does not guarantee to "accommodate or explain" for tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93–283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Should human subjects review be required, the proposed workplan should incorporate timelines for such development and review activities.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mail Stop E–18, Atlanta, Georgia 30305, on or before August 2, 1996.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Application: Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, application package, and business management technical assistance may be obtained from Albertha Carey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mail Stop E–18, Atlanta, Georgia 30305, telephone (404) 842–6508, fax (404) 842–6513, or Internet or CDC WONDER electronic mail at <ayc1@opspgo1.em.cdc.gov>.

Technical assistance may be obtained from Diane Clark, Public Health Nutritionist, Division of Nutrition, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), Mail Stop K–25, 4770 Buford Highway, NE., Atlanta, Georgia 30341–3724, telephone (770) 488–4913, fax (770) 488–4728, or Internet or CDC WONDER electronic mail at <ldc2@ccddn1.em.cdc.gov>.

Please refer to Announcement 651 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report; Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report; Stock No. 017–001–00473–1) referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: June 28, 1996.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–17098 Filed 7–03–96; 8:45 am]

BILLING CODE 4163–18–P

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers of Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 60 FR 52199, October 5, 1995) is amended to (1) establish the National Center for HIV, STD, and TB Prevention (NCHSTP) within the Centers for Disease Control and Prevention (CDC) to strengthen and enhance the ability to prevent and control the spread of HIV/AIDS in the United States and throughout the world, and (2) abolish the National Center for Prevention Services.

Section C–B, *Organization and Function*, is hereby amended as follows:

After the functional statement for the *Immunization Services Division (CJ4), National Immunization Program (CJ)*, insert the following:

National Center for HIV, STD, and TB Prevention (CK). The mission of this organization is to provide leadership in preventing and controlling human immunodeficiency virus infection, other sexually transmitted diseases, and tuberculosis by collaborating with community, state, national, and international partners and applying well integrated, multi-disciplinary programs of research, surveillance, technical assistance, and evaluation. In carrying out this mission, the National Center for HIV, STD, and TB Prevention (NCHSTP): (1) coordinates the development of CDC short- and long-range plans for preventing the spread of HIV infection in the United States; (2) allocates and tracks CDC resources for HIV prevention programs; (3) conducts national public information and awareness activities; (4) coordinates HIV prevention activities with other Federal agencies and with international organizations, including the World Health Organization in conjunction with the Associate Director for International Health; (5) plans, directs, and coordinates national programs of assistance involving preventive health services to state and local health agencies; (6) assists state and local health agencies in integrating and coordinating preventive services delivered by private and public organizations in the community and in assuring delivery of preventive services to all persons regardless of socioeconomic status; (7) assists states and localities in specifying major health problems in the community and in formulating technical theories on which intervention strategies can be based; (8) serves as the primary focus for assisting states and localities through grants and other mechanisms, in establishing and maintaining prevention and control programs directed toward health problems related to acquired immunodeficiency syndrome, sexually transmitted diseases, and tuberculosis; (9) maintains operational knowledge of the nature, scope, and occurrence of preventable health problems; (10) conducts operational research to improve the assistance programs; (11) assesses program operations and public health practices and provides technical assistance to states in the operation of preventive health service programs; (12) maintains liaison with other U.S. governmental agencies, state and local health agencies, national organizations, and educational institutions; (13) provides technical assistance to other nations; (14) in carrying out the above functions, collaborates, as appropriate, with other Centers, Institute, and Offices (CIOs) of the CDC.

Office of the Director (CKI). (1) Provides leadership and guidance on the development of goals and objectives, policies, program planning and development, program management and operations of the activities of the NCHSTP; (2) manages, directs, coordinates, and evaluates the Center's activities; (3) facilities closer linkages between HIV, STD, and TB surveillance activities and prevention programs at all levels; (4) facilitates collaboration, integration, and multi-disciplinary

VOL 61 ISS 130 JL 5 1996 UMI

approaches to enhance the effectiveness of HIV, STD, and TB prevention programs; (5) facilitates integration of science and prevention programs throughout the NCHSTP; (6) enhances the coordination and integration of HIV, STD, and TB prevention services for individuals and populations at increased risk for more than one of these infections; (7) coordinates the integration of CDC funding of state and local health departments for HIV, STD, and TB prevention; (8) facilities the assignment of field staff in accordance with CDC and NCHSTP priorities and objectives; (9) reassesses the role of NCHSTP field staff assignees to state and local health jurisdictions and restructures career development plans accordingly; (10) provides and coordinates administrative and program support services; (11) provides technical information services to facilitate dissemination of relevant public health information; (12) facilitates collaboration with national health activities with CDC components, other agencies and organizations, and foreign governments on international health activities; (13) provides oversight for the programmatic coordination of HIV, STD, and TB activities between NCHSTP and other CIOs and, as the lead CIO for these programs, develops recommendations to the CDC Director in concert with other CIOs, for distribution of HIV, STD, and TB fund CDC-wide; (14) advises the Director, CDC, on other policy matters concerning NCHSTP activities.

Resource Management Office (CK12). (1) Plans, coordinates, and provides administrative and management advice and guidance for NCHSTP; (2) provides and coordinates Center-wide administrative, management, and support services in the areas of fiscal management, personnel, travel, procurement, facility management, and other administrative services; (3) coordinates NCHSTP requirements relating to small purchase procurements, VISA procurements, material management, and intra-agency agreement/reimbursable agreements; (4) provides lead fiscal management for contracts and supportive fiscal management for grants and cooperative agreements; (5) serves as a liaison for external inquiries of current fiscal year funding expenditures; (6) coordinates facility management issues, problems and changes, physical security issues, and policies regarding telecommunications, office furniture and equipment; (7) provides oversight and management of NCHSTP conference rooms, support and setup of Envision services and assistance with audio-visual equipment; (8) provides meeting planning assistance and services, serves as Project Officer and liaison for any meeting planning contractors, negotiates with vendors for providing conference location, rental of equipment; (9) maintains liaison with CIOs, Staff Offices, Staff Service Offices, and NCHSTP staff.

Communications Office (CK13). (1) Provides technical assistance to Divisions on issues management, public affairs, and health communications strategies; (2) collaborates with external organizations and the news, public service, and entertainment and other media to ensure that effective findings and their implications for public health reach the public; (3) collaborates closely with Divisions to produce materials designed for use by the news media, including press releases, letters to the editor, public service announcements, television programming, video news releases, and other electronic and printed materials; (4) secures appropriate clearance of these materials within NCHSTP and CDC; (5) coordinates the development and maintenance of Center-wide information systems through an Internet Home Page; (6) develops strategies and operational systems for the proactive dissemination of effective findings and their implications for prevention partners and the public; (7) apart from the clearing houses, hotlines, or other contractual mechanisms, responds to public inquiries and distributes information materials; (8) provides editorial, graphics, and publishing services for NCHSTP staff; (9) operates a Center-wide Information Center; (10) maintains liaison with CDC public affairs and communications staff offices.

Prevention Informatics Office (CK14). (1) Designs, develops, and maintains a Center-wide network to facilitate the dissemination and availability of information; (2) designs, develops, and supports Center-wide consolidated application file servers, remote access servers, and administrative database servers; (3) collaborates with Divisions to coordinate, plan, and advocate for training to ensure that all staff have and fully utilize their IRM environment; (4) provides a focus for joint planning within NCHSTP both long-term and short-term; (5) conducts cost-benefit, cost effectiveness, and economic analyses, evaluation, and other special studies related to the impact of advanced information processing technology on NCHSTP programs; (6) provides a centralized research and development function and, in consultation with Division IRM staff, undertakes research and development projects; (7) develops unified Center-wide administrative systems and advocates and supports the commitment of resources to application development; (8) establishes the Center's Internet file servers and supports organizational components to disseminate or access information on the Internet; (9) maintains liaison with the Office of Program Support and CIO IRM offices.

Planning and Evaluation Office (CK15). (1) Reviews, prepares, and coordinates congressional testimony and briefing documents, and analyzes the implications of legislation and legislative proposals; (2) maintains liaison with the CDC Office of Program Planning and Evaluation and the Financial Management Office; (3) plans and coordinates the annual program planning process; (4) establishes procedures and proposes approaches for the development of future year annual budget initiatives; (5) maintains liaison with CIOs in determining and interpreting operating policy and in ensuring their respective management input for specific program activity plans; (6) interprets general policy directives and proposed legislation relation to NCHSTP program goals and objectives; (7) coordinates the development and review of congressional reports; (8) serves as the coordination point for Inspector General and General Accounting Office audits and reviews; (9) coordinates and manages external groups such as advisory committees; (10) serves as central point for Office of Management and Budget clearances, controlled correspondence, Freedom of Information Act requests, and Privacy Act inquiries; (11) advises on activities that might affect other CIOs.

Prevention Support Office (CK16). (1) Serves as an initial point of contact between partners and NCHSTP programs; (2) provides guidance and coordination to Divisions on cross-divisional negotiated agreements; (3) facilitates NCHSTP shifts to the administration of non-categorical, cross-cutting grants/cooperative agreements; (4) facilitates state and local cross-divisional issues identification and solutions; (5) advocates for consistent and judicious interpretation and application of established Center-level policy related to cross-divisional issues and field staff management; (6) strengthens communications among Divisions, field staff, and partners; (7) facilitates Center-wide public health advisor/associate recruitment for field assignments; (8) provides focal point for cross-divisional issues related to field staff deployment; (9) facilitates the development of a Center-wide field staff career development plan; (10) assures consistency in Center-wide procedures for field staff selection, assignment, and transfer processes; (11) facilitates and provides consultation on field staff human resource management issues; (12) advocates the use of information technology to strengthen the communications among the divisions, field staff, and partners; (13) advocates for the disease-specific needs of Divisions and grantees; (14) develops, reviews, and implements policies, methods, and procedures for NCHSTP extramural assistance programs; (15) provides financial tracking for Center-wide extramural grants and cooperative agreements; (16) provides consultation and technical assistance to NCHSTP program officials in the planning, implementation, and administration of assistance programs; (17) participates in evaluation of project resources and the resolution of audit exceptions; (18) assures the appropriate projection of needs and executes shifts in project funds between geographic areas to accommodate personnel in lieu of cash; (19) develops and implements objective review processes, including use of special emphasis panels, for competitive application cycles; (20) assures Center-wide consistency in providing review of continuation assistance applications; (21) interprets general policy directives, proposed legislation, and appropriations language for implications on extramural programs; and (22) provides liaison with OPS and OD staff offices.

Division of HIV/AIDS Prevention (CK2). (1) In cooperation with other CDC components, administers operational programs for the prevention of human immunodeficiency virus (HIV) infection and acquired immunodeficiency syndrome (AIDS); (2) provides consultation, training, statistical, promotional, educational, epidemiological, and other technical services to assist state and local health departments, as well as national, state, and local nongovernmental organizations, in the planning, development, implementation, and overall improvement of HIV prevention programs; (3) conducts epidemiologic, surveillance, behavioral, etiologic, communications, and operational research into factors affecting the prevention of HIV/AIDS; (4) develops recommendations and guidelines on the prevention of HIV/AIDS and associated illnesses; (5) monitors sentinel surveillance of HIV infection and infectious diseases and other complications of HIV/AIDS, as well as surveillance of risk behaviors associated with HIV transmission; (6) conducts national and international HIV transmission; (6) conducts national and international HIV/AIDS surveillance, epidemiologic investigations, and studies to determine risk factors and transmission patterns of HIV/AIDS; (7) evaluates prevention and control activities in collaboration with other CDC components; (8) provides assistance and consultation on issues related to epidemiology, surveillance, programmatic support, research, evaluation methodologies, and fiscal and grants management to state and local health departments, nongovernmental organizations, national organizations, and other research institutions; (9) promotes linkages between health department HIV/AIDS programs and other governmental and nongovernmental partners who are vital to effective HIV/AIDS prevention efforts; (10) provides consultation to other PHS Agencies, medical institutions, private physicians, and international organizations or agencies; (11) provides information to the scientific community and the general public through publications and presentations; (12) works closely with The National Center for Infectious Diseases (NCID) on HIV/AIDS surveillance and epidemiologic investigations that require laboratory collaboration, and on activities related to the investigation and prevention of HIV-related opportunistic infections; (13) implements national HIV/AIDS prevention communications programs and develops strategic communications activities and services at the national level to inform and educate the American public about HIV/AIDS, especially individuals whose behavior places them at risk for HIV infection; (14) provides technical support to CDC assignees to state and local health departments who are working on HIV/AIDS surveillance and prevention activities.

Office of the Director (CK21). (1) Plans, directs, and evaluates the activities of the Division; (2) develops goals and objectives and provides national leadership and guidance in HIV/AIDS prevention policy formulation and program planning and development; (3) provides leadership for developing research in epidemiologic, communications, and behavioral aspects of HIV/AIDS prevention, and in coordinating activities between the Division and others involved in HIV/AIDS investigations, research, and prevention, including other CIOs and national-level prevention partners who influence HIV/AIDS prevention programs; (4) provides oversight for human subjects review of protocols and coordinates human subjects review training; (5) maintains lead responsibility for HIV/AIDS strategic communications and coordinates communications on major issues related to prevention, surveillance, or policy; (6) coordinates the response to the national media on HIV/AIDS issues within the Division and between the Division and the Office of Public Affairs; (7) ensures multidisciplinary collaboration in HIV/AIDS prevention activities; (8) provides leadership and guidance for program management and operations, as well as the development of data management systems and training and educational programs; (9) coordinates the development of guidelines and standards to ensure ongoing effective HIV prevention programs and their evaluations; (10) oversees the creation of materials designed for use by the media, including press releases, letters to the editor, and other print and electronic materials and programs and ensures appropriate clearance of these materials; (11) ensures that Deputy Directors and subject area specialists are prepared for interaction with the media as needed; (12) oversees the preparation of speeches and Congressional testimony on HIV/AIDS for the Division Director, the NCHSTP Director, the CDC Director, and other public health officials; (13) coordinates international HIV/AIDS activities of the Division and ensures coordination within CDC, as appropriate; (14) provides program management and administrative and technical support services for intramural, extramural, domestic, and international HIV/AIDS activities; (15) collaborates, as appropriate, with nongovernmental organizations to achieve the mission of the division; (16) in carrying out these activities, collaborates, as appropriate, with other divisions and offices of NCHSTP, and with other CIOs throughout CDC.

International Activity (CK211). (1) Designs and executes epidemiologic and interventional studies of HIV infection and its associated illnesses in nations; (2) develops and conducts epidemiologic studies of risk factors for AIDS and HIV transmission; (3) assists in the design, implementation, and evaluation of AIDS prevention and control activities; (4) manages international field sites and staff assigned to those sites; (5) in collaboration with NCID, conducts international surveillance and studies of HIV genotypic variants and their epidemiologic and diagnostic

VOL
61
ISS
130
JL
5
1996
UMI

implications; (6) provides technical assistance to other nations to develop AIDS case surveillance systems; (7) assists foreign governments in carrying out seroprevalence studies and surveys; (8) collaborates with other Branches in assisting developing countries in the design, implementation, and evaluation of strategies to protect their blood supplies; (9) coordinates with other CIOs in CDC that have similar international responsibilities; (10) provides consultation to WHO, USAID, and other organizations whose mission is to prevent and control HIV infection and related outcomes; (11) collaborates with national and international organizations to strengthen public health infrastructures at the country level, leading to technical and managerial sustainability of national HIV prevention and control programs; (12) assists national and international organizations in identifying, developing, and promoting HIV interventions and technologies that are feasible, effective, and culturally appropriate for use in developing countries.

Technical Information Activity (CK212). (1) Provides scientific, statistical, visual, and technical information on HIV/AIDS, in cooperation with other CDC organizations, to health care professionals, public health officials, prevention partners, and the general public; (2) develops policy and procedures that utilize technology and resources for information dissemination and management; (3) provides information services, including electronic publications, bibliographies, and current awareness information; (4) develops and maintains HIV/AIDS information and training materials for dissemination via the Internet and other electronic means; (5) maintains a specialized collection of HIV/AIDS resources, the HIV/AIDS Resource Center, that includes reprints, *Morbidity and Mortality Weekly Report (MMWR)* articles, and journals; (6) prepares HIV-related publications, including articles and guidelines published in the *MMWR* and other medical and scientific journals; (7) reviews HIV/AIDS materials from outside organizations and other agencies for technical and scientific accuracy; (8) provides lead scientific/technical support for the CDC National AIDS Hotline and the CDC National AIDS Clearinghouse; (9) prepares, edits, and monitors clearance of manuscripts for publication in scientific and technical journals and publications; (10) tracks and coordinates controlled and general correspondence; (11) prepares responses and coordinates the provision of materials requested by Congress; (12) prepares reports, speeches, and Congressional testimony on HIV/AIDS for the Division Director, the NCHSTP Director, the CDC Director, and other public health officials; (13) coordinates preparation of documents for annual program review with the Directors of NCHSTP and CDC; (14) prepares HIV/AIDS briefing reports for Director, CDC; (15) serves as the Division liaison with the Management Analysis and Services Office (MASO) to ensure appropriate management and disposition of Federal records; (16) coordinates responses and maintains records for Freedom of Information Act requests; (17) designs, develops, and produces visual information for widespread dissemination using computer graphics, desktop publishing, and video production services to support scientific presentations, publications, and training for HIV/AIDS.

Behavioral Intervention Research Branch (CK22). (1) Applies current theory, practice, and empirical findings in designing and conducting research on state-of-the-art interventions to prevent HIV infection; (2) summarizes and synthesizes the interventions to prevent HIV infection; (3) collaborates with HIV prevention partners within and outside CDC in identifying research priorities, designing intervention research, and translating and diffusing research findings to HIV prevention programs; (4) contributes to the intervention research literature by publishing regularly in peer-reviewed journals and CDC-sponsored publications.

Community Assistance, Planning, and National Partnerships Branch (CK23). (1) In collaboration with state and local public health and nongovernmental national, regional, and local partners (including the national business, labor, media, religious, and voluntary sectors) and other branches, CIOs, and Federal agencies, develops and implements programs, policies, and activities that enable and mobilize affiliates and communities to become involved with and support local and statewide strategic community planning that improves HIV prevention programs and activities; (2) develops, implements, and manages strategies and resources for HIV Prevention Community Planning, Minority and other Community-based Organizations Initiative, National/Regional Minority Organizations Initiative, National Partnerships Program, Business Responds to AIDS/Labor Responds to AIDS, CDC religious initiatives, and other nongovernmental organization, initiatives, including cooperative agreements with the American Red Cross, United States Conference of Mayors, the Association of State and Territorial Health Officials, the National Alliance of State and Territorial AIDS Directors, and the National Conference of State Legislators, that build a comprehensive public health-private sector partnership to prevent HIV infection/AIDS; (3) in collaboration with other Division components, provides technical consultation and assistance to state and local health departments and nongovernmental and other prevention partners in operational aspects of HIV prevention; (4) monitors activities of HIV prevention projects to ensure operational objectives are being met; (5) establishes guidelines and policies for implementation and continuation of state and local HIV prevention programs; (6) provides technical review of grant applications and prevention plans; (7) conducts continuing analysis of support utilization and career development of field personnel and analysis of other resource allocations and utilization in relation to HIV prevention; (8) provides supervision for HIV field staff; (9) assists in the development of new operational programs and program solicitations for HIV prevention; (10) coordinates program development and implementation with state/local/regional community planning processes; (11) facilitates linkages with STD and other HIV prevention programs at all levels to ensure coordination of harm reduction and intervention strategies for populations with common prevention needs; (12) develops and monitors systems and coordinates and provides consultation and technical assistance for health departments, community planning groups, and nongovernmental HIV prevention programs; (13) works with national partners to foster HIV prevention capabilities and activities in affected communities; (14) funds and monitors the progress of minority and other community-based organizations undertaking HIV prevention programs and activities.

Epidemiology Branch (CK24). (1) Designs and conducts epidemiologic and behavioral studies in the United States to determine risk factors, co-factors, and modes of transmission for HIV infection; (2) conducts studies of the natural history of HIV infection, including manifestations of HIV disease in adults, adolescents, and children; (3) designs and conducts research on the psychosocial and cultural determinates of disease progression and quality of life of infected persons; (4) conducts both epidemiologic and behavioral studies to evaluate appropriate biomedical

interventions for preventing HIV infection (primary prevention) and for preventing manifestations of AIDS (secondary prevention); (5) conducts applied research, including effectiveness trials, to assist in evaluation of strategies, major activities, and policies; (6) conducts epidemic aid investigations of HIV infection and associated infectious diseases, as well as other illnesses related to HIV/AIDS; (7) develops policy related to both primary prevention of HIV infection and secondary prevention of its severe manifestations based on scientific investigations and clinical trials; (8) provides epidemiologic consultation to state and local health departments, other PHS Agencies, universities, and other groups and individuals investigating HIV/AIDS; (9) responds to inquiries from physicians and other health providers for information on the medical and epidemiologic aspects of HIV/AIDS; (10) collaborates internationally with HIV/AIDS researchers and the International Activity to conduct epidemiologic studies; (11) works closely with NCID to determine virologic and immunologic factors related to transmission and natural history of HIV infection.

HIV/AIDS Surveillance Branch (CK25). (1) Conducts surveillance of HIV infection and AIDS in coordination with state and local health departments to provide population-based data for public health policy development and evaluation; (2) maintains, analyzes, and disseminates information from the national confidential registry of HIV/AIDS cases; (3) monitors HIV-related morbidity and mortality and the use of PHS recommendations for prevention and treatment of HIV infection and AIDS; (4) promotes uses of surveillance data for prevention and evaluation; (5) conducts surveillance of special populations of epidemiologic importance, e.g., HIV–2, occupationally-related HIV transmission, and persons reported with unrecognized modes of transmission; (6) conducts population-based surveillance of HIV-related risk behaviors in coordination with state and local health departments; (7) assesses socioeconomic, educational, and other factors of use to target and evaluate prevention and care programs, (8) evaluates surveillance systems for HIV infection and AIDS and modifies surveillance methodologies as needed to meet changing needs of HIV/AIDS programs; (9) manages extramural funding of surveillance activities and provides consultations and technical assistance on surveillance activities and methodologies to state and local health departments, national, and international organizations and agencies.

HIV Seroepidemiology Branch (CK26). (1) Plans, develops, and coordinates national studies of prevalence and incidence of HIV and related infections in selected geographic areas; (2) provides data and serves as the focus for information about the extent of HIV prevalence and incidence in the United States; (3) collaborates and provides technical assistance to public and private organizations regarding HIV seroprevalence and seroincidence; (4) works closely with other CDC organizations in applying prevalence and incidence data to target and evaluate HIV prevention programs; (5) works with the Surveillance Branch and the Statistics and Data Management Branch to evaluate HIV/AIDS trends in incidence and prevalence projections; (6) collects and analyzes HIV prevalence and incidence data from publicly funded HIV counseling and testing sites; (7) conducts domestic surveillance for HIV genotypic variations; (8) collaborates with NCID laboratories to develop a repository of stored sera and cells for studies of HIV and related infections; (9) serves as a focus for national and international activities related to transfusion-related HIV transmission; and (10) assists NCID with the evaluation of new HIV-related tests.

Prevention Communications Branch (CK27). (1) Develops national communications strategies for HIV/AIDS prevention; (2) works closely with behavioral scientists to create communications messages that effectively promote adoption or maintenance of safe behaviors; (3) promotes and facilitates the application of social marketing principles to HIV prevention at the state and local levels; (4) collaborates with external organizations and the news, public service, and entertainment, and other media to ensure that these effective messages reach the public; (5) in collaboration with the Community Assistance, Planning, and National Partnerships Branch, maintains a network of prevention collaborative partners to ensure consistent HIV prevention messages at national, state, and local levels; (6) works closely with the Training and Technical Support Systems Branch to provide technical assistance on communications and prevention marketing, and to coordinate release of new scientific and surveillance data; (7) in collaboration with the Training and Technical Support Systems Branch, creates and disseminates materials that incorporate prevention marketing principles for use at national, state, and local levels; (8) plans and implements the Prevention Marketing Initiative; (9) manages the CDC National AIDS Clearinghouse; (10) works closely with the Behavioral Intervention Research Branch to disseminate research through the Clearinghouse; (11) works closely with the Training and Technical Support Systems Branch to disseminate technical assistance materials through the Clearinghouse; (12) works closely with all Division branches to disseminate surveillance reports and other scientific publications through the Clearinghouse; (13) works closely with other relevant offices or groups to produce materials designed for use by the news media, including press releases, letters to the editor, public service announcements, television programming, video news releases, and other electronic and print materials, and, in cooperation with the Associate Director for Management and Operations, secures appropriate clearance of these materials both within and outside of the Division; (14) develops and produces brochures and other written materials for the public; (15) manages the CDC National AIDS Hotline.

Program Evaluation Branch (CK28). (1) Evaluates the effectiveness, costs, and impact of HIV prevention interventions, strategies, policies, and programs as practiced or implemented by public health agencies and organizations at the national/regional and state/local levels; (2) collaborates in the application of evaluation findings and techniques to the ongoing assessment and improvement of HIV prevention programs; (3) conducts evaluation research activities that include studies to evaluate the effectiveness and impact of prevention strategies and programs, major prevention activities, and policies; economic evaluations of HIV prevention, including assessments of alternative prevention strategies to encourage the best use of prevention resources; and development of both process and outcome measures that HIV prevention programs can use to assess their ongoing performance; (4) seeks to advance the methodology of HIV prevention evaluation through evaluation research activities; (5) applies evaluation methods to improving HIV prevention programs, including serving as a resource to other branches/activities, grantees, and prevention partners regarding evaluation of both domestic and international HIV prevention programs; collaborating with other branches as they develop, test, and disseminate

VOL 61 ISS 130 JL 5 1996 UMI

models for quality assurance of programs and services; and collaborating with other branches/activities in the development of methods to support the systematic assessment (including self-assessment) and continuous improvement of HIV prevention programs.

Statistics and Data Management Branch (CK29). (1) Manages, directs, and coordinates the statistics and data management activities and services for the Division; (2) provides leadership in the development of statistical and data management planning, policy, implementation, and evaluation; (3) provides Division LAN/user support services; (4) provides data management and statistical support for HIV/AIDS surveillance, HIV serosurveys, and epidemiologic studies; (5) creates mathematical models to project the incidence of AIDS and HIV infection; (6) develops, monitors, and evaluates projects to construct mathematical models of the spread of AIDS and HIV infection; (7) provides statistical models of epidemiologic parameters to describe the efficiency of HIV transmission and the incubation time for AIDS; (8) responds to inquiries from medical professionals, health departments, the media, and the public about AIDS epidemic statistical issues, including projections of the number of AIDS cases and estimates of persons infected with HIV; (9) coordinates Division work performed under CDC-wide Information Resource Management Office contracts for programming services, local area network support, and computer hardware support.

Training and Technical Support Systems Branch (CK2A). (1) Assesses training and technical assistance needs and develops strategies to address the training of grantee organizations, other external partners involved in HIV/AIDS prevention programs and activities, and Division headquarters staff; (2) works with other branches to synthesize, translate, and disseminate research findings applicable to HIV prevention program operations through training, conferences, and other systems; (3) conducts intramural/extramural training and training needs assessments; (4) manages conference grants and conference support services; (5) develops, maintains, and facilitates technical support systems (such as large-scale, on-site or distance-based, multi-access, science-based, rapid-response training mechanisms) to assist HIV prevention providers in applying sound technologies; (6) assesses technical assistance and training needs of HIV prevention service providers, coordinates with other Branches, and maintains communications between research and program staff at CDC.

Division of Sexually Transmitted Disease Prevention (CK3). (1) In cooperation with other CDC components, administers operational programs for the prevention of sexually transmitted diseases (STD); (2) provides consultation, training, statistical, educational, epidemiological and other technical services to assist state and local health departments in the planning, development, implementation, evaluation and overall improvement of STD prevention programs; (3) supports a nationwide framework for effective surveillance of STDs other than HIV; (4) conducts behavioral, clinical, epidemiological, preventive health services, and operational research into factors affecting the prevention and control of STD; (5) provides leadership and coordinates, in collaboration with other NCHSTP components, research and prevention activities that focus on STD and HIV interaction; (6) promotes linkages between health department STD programs and other governmental and non-governmental partners who are vital to effective STD prevention efforts; (7) provides technical supervision for Division state and local assignees.

Office of the Director (CK31). (1) Plans, directs and evaluates the activities of the Division; (2) provides national leadership and guidance in STD prevention and control policy formulation; program planning, development and evaluation; development of training, educational, health communications and data management systems; and program management systems; (3) provides administrative, fiscal, technical, and communications support for Division programs and units; (4) assures multidisciplinary collaboration in STD prevention and control activities; (5) in cooperation with other CDC components, provides leadership for developing research in behavioral, clinical, epidemiologic, and health services aspects of STD prevention and control, and for coordinating activities between the Division and others involved in STD research; (6) coordinates the development of guidelines and standards to assure ongoing evaluation of STD prevention and control programs; (7) coordinates international STD activity of the Division; (8) collaborates, as appropriate, with other divisions and offices in NCHSTP, and with other CIOs throughout CDC; (9) collaborates as appropriate with non-governmental organizations to achieve the mission of the Division; (10) establishes linkages with other CIOs and national level prevention partners that impact on STD prevention and control programs.

Behavioral Interventions and Research Branch (CK32). (1) Plans and conducts research on individual and group behavior patterns, their individual and societal determinants, and consequences as they affect STD occurrence and transmission, and disseminates the results of this research; (2) in collaboration with other relevant CDC units, plans and conducts studies to develop, evaluate, and apply new community and clinic-based behavioral intervention methods to STD prevention and control; (3) in collaboration with other components of the Division, NCHSTP, and CDC, plans, coordinates, implements and monitors demonstration projects designed to provide information which will guide national program direction in behavioral intervention for STD prevention and control; (4) in collaboration with other components of the Division, NCHSTP, and CDC, develops an effective behavioral surveillance system to assist national STD prevention efforts; implements and evaluates new approaches to behavioral surveillance related to STD prevention and control; and analyzes behavioral surveillance data in conjunction with STD morbidity surveillance data to guide national STD prevention policy and program direction; (5) in collaboration with internal and external colleagues, translates behavioral research findings into programmatic interventions; (6) provides state and local health departments and other prevention partners with technical assistance in the development, implementation, and evaluation of behavioral intervention strategies to reduce STD morbidity; (7) participates in STD prevention and control reviews and guideline development.

Epidemiology and Surveillance Branch (CK33). (1) Provides national and international leadership in the design and analysis of epidemiologic studies and surveillance data for STD to guide STD and HIV prevention programs; (2) plans epidemiology and surveillance direction-setting, in coordination with Branch staff and leadership in Division and outside CDC; (3) plans and develops new research opportunities and relationships; (4) plans and conducts scientific oversight for focus, impact, and quality of scientific work.

Epidemiologic Studies Section (CK332). (1) Collaborates with a wide network of leading researchers in academia, other government agencies, and international organizations in developing a research agenda for critical epidemiologic and biomedical research issues related to STD prevention and to STD/HIV interactions; (2) plans, implements, and publishes findings from planned intramural and collaborative intramural-extramural studies; (3) studies and evaluates various schedules of STD therapy to assure continued efficacy of current and proposed regimens and conducts drug toxicity studies, where appropriate, to determine long-term effects of recommended therapies; (4) studies and evaluates diagnostic tests for STD detection; (5) collaborates with divisions, other centers, and academic or research institutions in conducting laboratory-based research on STDs; (6) provides technical assistance to state and local agencies in conducting epidemiological or clinical studies of STDs; (7) participates in the development of guidelines to translate research findings into program practice; (8) regularly updates STD Treatment Guidelines to incorporate recommendations based on new scientific information; (9) supports and contributes actively to the Division's Initiative-based teams (e.g., HIV/STD Interactions, Infertility Prevention, Adverse Outcomes of Pregnancy); (10) collaborates with other branches in the Division and with the Division of HIV/AIDS Prevention in joint HIV/STD program reviews; (11) provides management and operations expertise to on-going National STD prevention initiatives, such as Infertility and Syphilis in the South; (12) in collaboration with other Division components, develops and evaluates mathematical models of STD transmission dynamics and intervention effectiveness.

Surveillance and Special Studies Section (CK333). (1) Provides leadership in the design and analysis of surveillance data for STD, and in the use of surveillance data to guide STD and HIV prevention programs; (2) in collaboration with other Division components, analyzes surveillance data and develops innovative surveillance strategies for use at the local level in estimating STD prevalence, incidence, sequelae, and health impact; (3) takes lead responsibility for coordinating EPI–AIDS; (4) conducts surveillance studies to develop more precise methods to identify persons infected with STD/HIV; (5) provides technical assistance to state and local agencies in conducting surveillance of STD; (6) participates in collaborations with other Division staff in STD/HIV epidemiologic and surveillance investigations and outbreak control investigations; (7) participates in the development of guidelines and training to assist in translating surveillance research findings into operational-programmatic practice; (8) participates in STD/HIV prevention program reviews; (9) supports and contributes actively to initiative-based teams (e.g., HIV/STD Interactions, Infertility Prevention, Adverse Outcomes of Pregnancy); (10) provides management and surveillance operations expertise to on-going National STD prevention initiatives, such as Infertility and Syphilis in the South; (11) publishes findings from planned intramural and collaborative intramural-extramural surveillance studies.

Program Development and Support Branch (CK34). (1) In collaboration with other Division components, provides technical consultation and assistance to state and local health departments, non-governmental, and other prevention partners in operational aspects of STD prevention and control; (2) monitors activities of STD prevention projects to assure operational objectives are being met; (3) establishes guidelines and policies for implementation and continuation of state and local STD prevention and control programs; (4) establishes guidelines and standards for STD negotiated agreements and assures implementation; (5) provides technical review and funding recommendations related to grant applications; (6) conducts continuing analysis of field personnel and other resource allocations and utilization in relation to STD prevention and control; conducts site review to identify and resolve STD prevention problems in project areas; (7) provides technical support and supervision, including analysis of performance and development, for STD field staff; (8) assists in the development of new operational programs and program solicitations for STD prevention and control; (9) facilitates coordination within state/local project areas regarding STD activities with other program partners; (10) coordinates program development and implementation with state/local/regional community planning processes; (11) facilitates linkages with HIV prevention programs at all levels to assure coordination of harm reduction and intervention strategies for STD and HIV.

Program Evaluation and Preventive Health Services Research Branch (CK35). (1) Develops and evaluates methodologies for conducting program evaluation and preventive health services research related to STD prevention and control; (2) plans, coordinates and disseminates the results of evaluation studies for a wide variety of behavioral, clinical, and operational program issues including access (and barriers) to care, quality of care, health care delivery systems and the impact of these on STD-related clinical/behavioral outcomes; (3) serves as a bridge in translating program relevant research into STD program operations; including cost-effectiveness and cost-benefit analyses; (4) develops preventive health services models for a variety of STD-related issues including counseling/testing, partner notification, and integration of services; (5) in collaboration with other components of the Division, NCHSTP, and CDC, explores and evaluates the role of managed care and other private sector entities in STD prevention and control efforts; (6) in collaboration with other components of the Division, conducts studies to develop new or to refine old methods of STD prevention; (7) in conjunction with other branches, establishes guidelines and standards for operational program development and evaluation; (8) provides technical assistance to state and local health departments and other prevention partners in building program evaluation and preventive health services research capacity.

Statistics and Data Management Branch (CK36). (1) Provides leadership in the development of statistical and data management planning, policy, implementation, and evaluation; (2) collaborates with Division researchers in the design, implementation and analysis of studies; (3) coordinates the collection, compilation, analysis and dissemination of national STD surveillance data, including STD-related behavioral and health services data and STD morbidity data, and other large databases related to STD prevention and control efforts; (4) supports local/state health departments in the timely reporting, data processing and analysis of STD data, including electronic transmission of STD surveillance (morbidity) data; (5) develops, implements, and supports data systems for information management in local, state, and national STD prevention programs; (6) provides data management and statistical support for STD surveillance and epidemiologic studies; (7) assists state/local STD prevention programs in identifying STD outbreaks, and participates in such outbreak investigations by providing data analysis; (8) in collaboration with other components of the Division, NCHSTP, and CDC, develops and participates in studies/surveys of the prevalence of:

VOL 61 ISS 130 JL 5 1996 UMI

sexual and drug using behaviors which increase the risk of STD infection, factors associated with risk behaviors, and health care seeking, utilization and provider behaviors; (9) provides advice and consultation regarding data management and statistical issues to other Division components; (10) in collaboration with other Division components develops and evaluates mathematical models of STD transmission dynamics and intervention effectiveness.

Training and Health Communication Branch (CK37). (1) Provides leadership in development, implementation, and evaluation of training programs for providers of interventions to prevent and control STDs; (2) maintains and evaluates the performance of the national network of STD/HIV Prevention Training Centers, STD Public Health and Epidemiology Fellowships, and other professional training programs; (3) establishes communication networks with national organizations involved with STD-related training of medical and paramedical personnel; (4) identifies training needs, designs programmatic training and career development initiatives, and plans, implements, and evaluates training programs for STD program staff; (5) provides technical assistance to state and local STD prevention programs in developing, implementing, marketing, and evaluating their STD prevention training and community education activities; (6) performs technical reviews of intervention initiatives and proposals and advises other Division units on the need for and the form of training and health communications components; (7) either directly or in cooperation with other CDC components, provides STD information and education to private and public organizations at the national level and provides technical assistance to other Federal agencies, non-governmental organizations, and national organizations to improve and coordinate STD-related community educational activities; (8) assists other CDC components in planning, conducting, coordinating, and evaluating national programs for STD communication education; (9) assists in the development and dissemination of educational materials for national STD prevention programs; (10) participates in the development of guidelines and program-specific instructional materials to be used in STD intervention, supervision, and management; (11) promotes the appropriate use of new technologies in distance learning and rapid communication with prevention partners; and (12) manages the CDC National STD Hotline and provides technical assistance to the CDC National AIDS Hotline.

Division of Tuberculosis Elimination (CK4). (1) In cooperation with other CDC components, administers and promotes a national program for the prevention, control, and elimination of tuberculosis (TB) which includes the formulation of national policies and guidelines; (2) supports a nationwide framework for surveillance of tuberculosis and evaluation of national TB prevention and control program performance; (3) provides consultation, training, statistical, promotional, educational, epidemiological, and other technical services to assist state and local health departments, international health care providers, and other partners, in the planning, implementation, evaluation, and overall improvement of TB control programs; (4) detects and investigates outbreaks of TB; (5) conducts operational and behavioral research; (6) provides support for the Federal Tuberculosis Task Force; (7) supports and collaborates with the National Tuberculosis Controllers Association to promote effective national communications and coordinated feedback on urgent policy and program performance issues; (8) provides technical supervision and training to Federal assignees working in state and local tuberculosis control programs; (9) participates in the development of policies and guidelines for human immunodeficiency virus (HIV) prevention and control activities within TB populations at high risk; (10) provides policy leadership for, and guides implementation and evaluation of tuberculosis prevention and control activities in HIV prevention and control programs; (11) works to prevent the importation of TB from other countries; (12) oversees the development and operation of Tuberculosis Model Centers.

Office of the Director (CK41). (1) Plans, provides leadership and guidance in program planning and management, policy formulation, and development of training, surveillance, and research programs; (2) directs and evaluates the operations of the Division; (3) establishes contact with, and promotes tuberculosis activities of, other national organizations which have an important role to play in echieving tuberculosis elimination; (4) provides administrative support services for the Division; (5) collaborates and coordinates Division activities with other components of NCHSTP and CDC; (6) provides administrative and technical support to the statutorily mandated Advisory Committee for the Elimination of Tuberculosis (ACET); provides administrative and technical support for the National Coalition for the Elimination of Tuberculosis (NCET).

International Activity (CK412). (1) Coordinates Division and NCHSTP international TV activities; (2) coordinates the assessment of immigration and its impact on TB patterns in the United States and the evaluation of overseas TB screening procedures for immigrants and refugees; (3) conducts and coordinates operational research and demonstrations to improve both the overseas screening for tuberculosis of immigrants and refugees and the domestic follow-up of those entering with suspected TB, in collaboration with Division of Quarantine, NCID; (4) promotes the improved recognition and management of tuberculosis among the foreign-born through special studies on the U.S./Mexico border and at other overseas sites; (5) collaborates with the nation of Botswana, the World Health Organization (WHO), the World Bank, the International Union Against Tuberculosis and Lung Diseases (IUATLD), and the United States Agency for International Development (USAID), and others, to conduct investigations into the diagnosis, management and prevention of tuberculosis in persons with and without HIV infection.

Communications and Education Branch (CK42). (1) Provides coordination and oversight for Division responses and relations with the media and public and serves as the first point of contact for telephonic and written requests for information from the media and public; (2) presents communication and education issues to the Advisory Committee for the Elimination of Tuberculosis and to Division management staff; (3) develops, produces, disseminates, and evaluates educational pamphlets and other materials providing tuberculosis information to the scientific community as well as the general population; (4) provides writer/editor support to the Division and coordinates and tracks materials for purposes of editing, clearance and approval for publications and presentations; (5) periodically conducts training and education needs assessments and identifies resources available for health department TB control officers and senior managers, TB nurse consultants, TB training/education directors and for senior staff carrying out TB activities in other programs or facilities serving persons at high risk for TB; (6) develops, conducts, and coordinates formal training courses on tuberculosis for State and big city TB program managers and nurse consultants; (7) based on needs assessments, develops and conducts or coordinates train-the-trainer courses for staff who train and/or supervise frontline TB program staff; (8) assists in planning and coordinating agendas necessary to conduct tuberculosis conferences and workshops sponsored by the Division; (9) provides coordination and oversight for duty officer functions; (10) provides technical assistance to health departments and other health care providers in assessing and meeting their training needs and in assessing the impact of their training and education activities; (11) provides graphic support to the Division and senior field staff; (12) organizes and maintains a library of scientific and non-scientific information related to TB; (13) provides consultation and assistance in coordinating training and education activities carried out by other CDC programs, Model TB Centers, and NCET members; (14) develops and provides support for, or coordinates a TB Voice and FAX Information System; (15) assists in developing or coordinating a clearing house of TB training and education resources; (16) maintains inventory of training opportunities and coordinates with employees and supervisors training necessary for staff to carry out their duties.

Computer and Statistics Branch (CK43). (1) Provides computer programming, systems analysis, information management, and statistical services to the Division; (2) consults and assists in the development and implementation of appropriate data collection and management methods; (3) collaborates in the analysis of data and in the preparation of materials for publication; (4) maintains expertise in information science and technology to effect the best use of the division's resources; (5) provides technical assistance in the selection and use of equipment, systems, and services to process information; (6) manages security for the Division's information systems; (7) maintains computer hardware; (8) provides training and consultation to headquarters and field staff in the use of computer hardware software; (9) develops, distributes, provides training for and supports the TB Information Management System (TIMS) to facilitate the collection and analyses of data, both patient and program, to improve the effectiveness of prevention and control activities.

Field Services Branch(CK44). (1) provides medical and programmatic consultation to assist state and local health departments in developing, implementing, and evaluating their activities toward achieving tuberculosis prevention, control, and elimination; (2) promotes adoption of CDC tuberculosis-related policies by national organizations, health departments and health care providers; (3) acts as advocate for health departments when conveying resource needs; (4) participates in development of national policies and guidelines for tuberculosis elimination; (5) evaluates tuberculosis program performance and provides technical assistance to states and localities for improving program operations; (6) develops funding guidelines, coordinates reviews, makes funding recommendations, and monitors performance of programmatic portion of Tuberculosis Cooperative Agreements with state and local health departments; (7) provides supervision to medical staff assigned to state and local health departments; (8) analyses data to assess progress toward achieving national TB objectives and prepares program management and evaluation reports for publication; (9) supports program consultants in providing technical assistance and recommendations to health departments; (10) encourages and facilitates the transfer of new technology and guidelines into clinical and public health practice.

Field Operations Section I (CK442). (1) Serves as liaison or focal point to assist TB controllers in linking with proper resource persons and obtaining technical assistance, both within and outside the Division; (2) conducts a continuing analysis of the effectiveness of field personnel and utilization of other resources in relation to the tuberculosis problems; (3) provides consultation and assists state and local health departments in the methodology and application of tuberculosis control techniques recommended by CDC; (4) acts as advocate for state and local health departments during needs assessments and requests for resources; (5) provides technical supervision and support for the CDC field staff; (6) identifies specific management, operational, and staff performance problems associated with not achieving TB control objectives or with not implementing essential TB components, and recommends solutions; (7) provides input into the development of branch and division policy, priorities and operational procedures; (8) coordinates technical reviews of cooperative agreement applications and makes appropriate funding recommendations; and (9) serves as an agent of technology transfer to ensure that good program methodology in one program is known and made available to other state and local programs.

Field Operations Section II (CK443). (1) Serves as liaison or focal point to assist TB controllers in linking with proper resource persons and obtaining technical assistance, both within and outside the Division; (2) conducts a continuing analysis of the effectiveness of field personnel and utilization of other resources in relation to the tuberculosis problems; (3) provides consultation and assists state and local health departments in the methodology and application of tuberculosis control techniques recommended by CDC; (4) acts as advocate for state and local health departments during needs assessments and requests for resources; (5) provides technical supervision and support for the CDC field staff; (6) identifies specific management, operational, and staff performance problems associated with not achieving TB control objectives or with not implementing essential TB components, and recommends solutions; (7) provides input into the development of branch and division policy, priorities and operational procedures; (8) coordinates technical reviews of cooperative agreement applications and makes appropriate funding recommendations; (9) serves as an agent of technology transfer to ensure that good program methodology in one program is known and made available to other state and local programs.

Research and Evaluation Branch (CK45). (1) Identifies and evaluates new public health strategies for the prevention, diagnosis, and treatment of tuberculosis and infections with M. tuberculosis, in collaboration with others; (2) identifies and investigates behavioral and operational factors affecting health-care seeking and treatment outcomes; (3) identifies and investigates new drugs, drug delivery systems, and immunologic agents for the treatment and prevention of tuberculosis; (4) evaluates the economic and public health impact of existing and alternative prevention, diagnostic, and treatment strategies; (5) based on findings from research studies, recommends prevention, diagnostic, and treatment methods for national tuberculosis elimination strategies; (6) provides consultation to national and international organizations on prevention, diagnosis, and treatment strategies and research needs.

Prevention Effectiveness Section (CK452). (1) Conducts studies of aspects of health care systems that impact on health-care seeking and treatment outcome for tuberculosis patients, such

VOL 61 ISS 130 JL 5 1996 UMI

as studies of directly observed therapy in various settings and in-patient compared to out-patient management of tuberculosis; (2) develops methodologies for evaluation of tuberculosis treatment and prevention program activities and develops strategies and tools for program self-evaluation; (3) conducts studies of health-care provider tuberculosis control practices and assesses the extent to which recommended practices are implemented; (4) conducts studies to assess the cost-effectiveness and public health impact of recommended practices; (5) conducts studies to evaluate and compare strategies to improve the operation of tuberculosis treatment and prevention programs; (6) develops strategies and tools for TB programs to assess the cost-effectiveness of various TB prevention and control interventions; (7) conducts research on individual and social factors affecting health-care seeking and treatment outcomes related to tuberculosis; (8) in collaboration with the Communications and Education Branch, conducts formative research on approaches to patient and provider education and public communications; (9) provides consultation to national and international organizations on behavioral and operational research needs and study designs; (10) coordinates the writing of studies for publication of manuscripts in scientific journals, *MMWR*, etc; (10) presents findings at national and scientific meetings.

Therapeutic and Diagnostics Section (CK453). (1) Conducts studies of new drug regimens used in the prevention and treatment of tuberculosis, including dosage, duration, and toxicity; (2) conducts studies of new drugs, drug delivery systems, immunologic agents and other treatments for tuberculosis and latent infection with Mycobacterium tuberculosis; (3) in collaboration with others, conducts studies of new diagnostic tests in clinical and field trials of more specific and rapid tests to diagnose tuberculosis and latent infection with M. tuberculosis; (4) conducts studies to evaluate the safety and efficacy of recommended regimens for the treatment and prevention of tuberculosis; (5) provides consultation and assistance to national and international organizations on the design and conduct of clinical trials and research needs; (6) coordinates the writing of studies for publication of manuscripts in scientific journals, *MMWR*, etc; (7) presents findings at national clinical and scientific meetings; (8) provides support and oversight for the distribution of investigational drugs for the treatment and prevention of tuberculosis by NCID.

Surveillance and Epidemiology Branch (CK46). (1) Directs national surveillance of tuberculosis morbidity and mortality; (2) based on the analysis of surveillance data, recommends strategies for national tuberculosis elimination activities; (3) conducts studies of special epidemiologic significance; (4) responds to public and private inquiries about outbreaks; (5) assesses the prevalence and trends of mycobacterial infections in the United States; (6) develops more precise epidemiologic methods to identify persons with mycobacterial infections; (7) assesses the risk, in collaboration with NCID and the National Institute for Occupational Safety and Health, of mycobacterial infections and diseases among different segments of the population, such as health care workers, correctional facility employees and inmates, and homeless persons; (8) provides consultation to other federal agencies, state and local health departments, and national organizations.

Epidemiology Section (CK462). (1) Conducts and coordinates investigations of major outbreaks of tuberculosis, including multidrug-resistant tuberculosis; (2) analyzes investigation findings and relates the results and recommendations of the investigations to the involved outside agencies and State health departments; (3) conducts studies to assess the characteristics of persons with M. tuberculosis and HIV co-infection in order to develop and implement intervention strategies, in collaboration with others; (4) conducts case control, cohort, and other studies of the epidemiology of TB disease and infection; (5) conducts studies of restriction fragment length polymorphism (RFLP) techniques in the epidemiology of tuberculosis, in collaboration with others; (6) assess the prevalence of, and risk factors for, infection with M. tuberculosis in the United States through surveys and special studies; (7) conducts studies of the epidemiology of drug resistance in the United States, in collaboration with others; (8) prepares manuscripts for publication in scientific journals, and the MMWR; (9) presents findings at scientific meetings; (10) responds to public and private inquiries about the epidemiology of tuberculosis.

Surveillance Section (CK463). (1) Conducts national surveillance for tuberculosis morbidity through the expanded surveillance system; (2) implements and provides technical support for the computer software used by the state and local health departments to transmit data from the reporting areas to CDC; (3) analyzes data from the surveillance system to determine risk factors for the increases and/or decreases in tuberculosis morbidity and disseminates results through scientific journals, periodic reports and public presentations; (4) monitors the impact of immigration to the trends and projections of TB morbidity in the United States; (8) responds to public and private inquiries about surveillance findings.

Delete in its entirety the title and functional statement for the *National Center for Prevention Services (CM).*

Dated: June 20, 1996.

David Satcher,

Director, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–16855 Filed 7–3–96; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 94F–0393]

Asahi Denka Kogyo K. K.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 4B4434), filed by Asahi Denka Kogyo K. K., proposing that the food additive regulations be amended to provide the expanded safe use of phosphorous acid, cyclic neopentanetetrayl bis(2,6-di-*tert*-butyl-4-methylphenyl)ester as an antioxidant and/or stabilizer at a level not to exceed 0.25 percent by weight in olefin copolymers in contact with certain food categories, and at levels not to exceed 0.10 percent by weight in either olefin copolymers or polypropylene in contact with certain other food categories.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 23, 1994 (59 FR 60363), FDA announced that a food additive petition (FAP 4B4434) had been filed by Asahi Denka Kogyo K. K., 2, Sirahata 5-Chome, Urawa City, Saitama 366, Japan. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of phosphorous acid, cyclic neopentanetetrayl bis(2,6-di-*tert*-butyl-4-methylphenyl)ester for use (i) at levels not to exceed 0.25 percent by weight of olefin polymers complying with § 177.1520 (21 CFR 177.1520) in contact with foods of types I, II, III, IV–B, VI–B, and VIII, as described in Table 1, and under conditions of use B through H described in Table 2 of § 176.170(c) (21 CFR 176.170(c)) of this chapter, and with foods of types IV–A, V, VI–A, VI–C, VII–A, and IX, under conditions of use C through G, as described in § 176.170(c) of this chapter, Tables 1 and 2 respectively; and (ii) at levels not to exceed 0.10 percent by weight of either olefin polymers or polypropylene complying with § 177.1520 which may be used only in contact with foods of types IV–A, V, VI–C, VII–A, and IX, under conditions of use H, as described in § 176.170(c) of this chapter, Tables 1 and 2 respectively. Asahi Denka Kogyo K. K. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 12, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–17104 Filed 7–3–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96F–0214]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2,9-dichloro-5,12-dihydroquinone[2,3-b]acridine-7,14-dione (C. I. Pigment Red 202) as a colorant in polymers used in contact with food.

DATES: Written comments on petitioner's environmental assessment by August 5, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6B4512) has been filed by Ciba-Geigy Corp., 335 Water St., Newport, DE 19804. The petition proposes to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of 2,9-dichloro-5,12-dihydroquinone[2,3-b]acridine-7,14-dione (C. I. Pigment Red 202) as a colorant in polymers used in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before (*insert date 30 days after date of publication in the* **Federal Register**), submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 20, 1996.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–17105 Filed 7–3–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 92C–0178]

Microbio Resources, Inc.; Withdrawal of a Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to future filing, of a color additive petition (CAP 1C0237) proposing that the color additive regulations be amended to provide for the safe use of comminuted *Haematococcus pluvialis* algae meal as a color additive in aquaculture feeds.

FOR FURTHER INFORMATION CONTACT: James C. Wallwork, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3066.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 18, 1992 (57 FR 27256), FDA announced that a color additive petition (CAP 1C0237) had been filed by Microbio Resources, Inc., 6150 Lusk Blvd., suite B–105, San Diego, CA 92121. The petition proposed that 21 CFR part 73 of the color additive regulations be amended to provide for the safe use of comminuted *Haematococcus pluvialis* algae meal as a color additive in aquaculture feeds. Microbio Resources, Inc., 18278 Hadden Hall Ct., San Diego, CA 92128, has now withdrawn the petition without prejudice to a future filing (21 CFR 71.6(c)(2)).

Dated: June 20, 1996.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–17059 Filed 7–3–96; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the

VOL 61 ISS 130 JL 5 1996 UMI

hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Medical Imaging Drugs Advisory Committee

Date, time, and place. July 23, 1996, 8 a.m., Holiday Inn—Bethesda, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open committee discussion, 8 a.m. to 8:45 a.m., open public hearing, 8:45 a.m. to 9:45 a.m., unless public participation does not last that long; open committee discussion, 9:45 a.m. to 5 p.m.; Leander B. Madoo, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Medical Imaging Drugs Advisory Committee, code 12540. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 15, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will continue discussion and drafting a "Points to Consider (PTC) Document for Developing Medical Imaging Agents". The agents encompassed will include radiologic contrast media and nuclear medicine pharmaceuticals.

Food Advisory Committee

Date, time, and place. July 25 and 26, 1996, 8:15 a.m., Crystal Gateway Marriott, Rooms F, G, and H, 1700 Jefferson Davis Hwy., Arlington, VA.

Type of meeting and contact person. Open committee discussion, July 25, 1996, 8:15 a.m. to 4 p.m.; open public hearing, 4 p.m. to 5 p.m., unless public participation does not last that long; open committee discussion, July 26, 1996, 8:15 a.m. to 1 p.m.; open public hearing, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 4 p.m.; Lynn A. Larsen, Center for Food Safety and Applied Nutrition (HFS–5), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4727, or Catherine M. DeRoever, Advisory Committee Staff (HFS–22), 202–205–4251, FAX 202–205–4970, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Food Advisory Committee, code 10564. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee provides advice on emerging food safety, food science, and nutrition issues that FDA considers of primary importance in the next decade.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person by close of business July 19, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments. If necessary, comments may be limited to 5 minutes.

Open committee discussion. The committee will undertake a discussion of the final report from the Keystone National Policy Dialogue on Food, Nutrition, and Health. The focus of this report is on both NLEA-authorized health claims and other nutrition messages in the broad context of communicating diet and health information to consumers. The committee may also consider current issues pertaining to dietary supplements and the Dietary Supplement Health and Education Act.

Under 21 CFR 14.20 and 14.35, interested persons may submit written information or views on the matter(s) before the committee. Voluminous data are to be accompanied by a summary. Submissions must be made to the Executive Secretary and not directly to any committee members. Substantive submissions received at least 3 weeks prior to a meeting may be included in members' briefing materials; submissions received later will be distributed at the committee meeting. All submissions that include copyrighted materials must be accompanied by documented permission for duplication and distribution at no copyright expense to FDA.

At least 50 copies of each submission must be provided; sufficient additional copies may be requested by the agency for distribution to the public at a meeting. Fewer copies of voluminous submissions will be required; only summaries of such submissions will be provided to committee members, with complete copies of submissions being made available for circulation among committee members and for viewing by the public at a meeting.

More detailed information regarding the meeting agenda that may become available prior to the meeting will be provided to the public via the 800 number given above.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: June 28, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–17170 Filed 7–3–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Request:* Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements contained in 42 CFR 447.253; *Form No.:* HCFA-R–117; *Use:* In order to receive HCFA approval of a Medicaid State plan amendment which changes the methods and standards used to establish payment rates for inpatient hospital or long-term care services, a Medicaid State Agency must provide a statement which assures the HHS Secretary that the resulting rates will conform to all the requirements specified in section 1902(a)(13)(A) of the Social Security Act and implementing regulations at 42 CFR 447.253; *Frequency:* Annually; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 54; *Total Annual Responses:* 54; *Total Annual Hours:* 54.

To request copies of the proposed paperwork collection referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: Linda Mansfield, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 27, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–17126 Filed 7–03–96; 8:45 am]

BILLING CODE 4120–03–P

[R-136]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Medicare Geographical Classification Review Board (MGCRB) Procedures and Criteria; *Form No.:* HCFA-R-138; *Use:* This regulation sets up an application process for prospective payment system hospitals who choose to appeal their geographic status to the Medicare Geographic Classification Review Board (MGCRB). This regulation also establishes procedural guidelines for the MGCRB. *Frequency:* Annually; *Affected Public:* Business or other for profit, and Not for profit institutions; *Number of Respondents:* 1,000; *Total Annual Responses:* 1,000; *Total Annual Hours Requested:* 1,000.

To request copies of the proposed paperwork collections referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to

VOL 61 ISS 130 JL 5 1996 UMI

the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: June 27, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–17127 Filed 7–03–96; 8:45 am]

BILLING CODE 4120–03–P

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300.

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/205–263–5745.

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900.

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866.

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787.

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783, (formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444/800–877–7016.

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5810.

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020.

Clinical Reference Lab, 11850 West 85th St., Lenexa, KS 66214, 800–445–6917.

CompuChem Laboratories, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–549–8263/800–833–3984, (formerly: CompuChem Laboratories, Inc. A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., a member of the Roche Group).

CORNING Clinical Laboratories, 4771 Regent Blvd., Irving, TX 75063, 800–526–0947, (formerly: Damon Clinical Laboratories, Damon/MetPath).

CORNING Clinical Laboratories, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–284–7515, (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories).

CORNING Clinical Laboratories, 24451 Telegraph Rd., Southfield, MI 48034, 800–444–0106 ext. 650 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath).

CORNING Clinical Laboratories Inc., 1355 Mittel Blvd., Wood Dale, IL 60191, 708–595–3888, (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories).

CORNING Clinical Laboratories, South Central Divison, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293, (formerly: Metropolitan Reference Laboratories, Inc.).

CORNING Clinical Laboratory, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5000, (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories).

CORNING National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485, (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science).

CORNING Nichols Institute, 7470–A Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200, (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT)).

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (formerly: Cox Medical Centers).

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171.

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 813–936–5446/800–735–5416.

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468.

Drs. Weber, Palmer, Macy, Chartered, 338 N. Front St., Salina, KS 67401, 913–823–9246.

DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180/206–386–2672, (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310.

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267.

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300, (formerly: Harrison & Associates Forensic Laboratories).

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051.

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927, (formerly: Center for Laboratory Services, a Division of LabOne, Inc.).

Laboratory Corporation of America, 13900 Park Center Rd., Herndon, VA 22071, 703–742–3100, (formerly: National Health Laboratories Incorporated).

Laboratory Corporation of America, 21903 68th Ave. South, Kent, WA 98032, 206–395–4000, (formerly: Regional Toxicology Services).

Laboratory Corporation of America Holdings, 1120 Stateline Rd., Southaven, MS 38671, 601–342–1286, (formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986, (formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961.

Marshfield Laboratories, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–222–5835.

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38175, 901–795–1515.

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699–0008, 419–381–5213.

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227.

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466.

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587.

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199.

MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808 (x4512).

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250.

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361.

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 503–687–2134.

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400.

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177.

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory).

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627.

Poisonlab, Inc., 7272 Clairemont Mesa Rd., San Diego, CA 92111, 619–279–2600/800–882–7272.

Premier Analytical Laboratories, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784 (formerly: Drug Labs of Texas).

Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640.

Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601–264–3856/800–844–8378.

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130.

Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788.

S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–244–8800, 800–999–LABS.

Sierra Nevada Laboratories, Inc., 888 Willow St., Reno, NV 89502, 800–648–5472.

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91045, 818–989–2520.

SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 904–787–9006 (formerly: Doctors & Physicians Laboratory).

SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories).

SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 708–885–2010 (formerly: International Toxicology Laboratories).

SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–5447 (formerly: SmithKline Bio-Science Laboratories).

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories).

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176.

Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507.

St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 314–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.).

UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–343–8191 (formerly: MetWest-BPL Toxicology Laboratory).

The following laboratory withdrew from the National Laboratory Certification Program on July 4, 1996:

SmithKline Beecham Clinical Laboratories, 1737 Airport Way South, Suite 200, Seattle, WA 98134, 206–623–8100.

Pat Bransford,

Director of Personnel For Richard Kopanda, Executive Officer Substance Abuse and Mental Health Services Administration.

[FR Doc. 96–17183 Filed 7–3–96; 8:45 am]

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VOL 61 ISS 130 JL 5 1996 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3778–N–02]

Office of the Assistant Secretary for Community Planning and Development; Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR Part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR Part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purposes for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Army: Mr. Derrick Mitchell, CECPW-FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310–3862; (703) 428–6083; Navy: Mr. John Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; Air Force: Ms. Barbara Jenkins, Air Force Real Estate Agency (Area—MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building, 5683, Washington, DC 20332–8020; (202) 767–4184; Interior: Ms. Lola D. Knight, Department of the Interior, 1849 C Street, NW, Mail Stop 5512–MIB, Washington, DC 20240; (202) 208–4080; (These are not toll-free numbers).

Dated: June 28, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 07/05/96

Suitable/Available Properties

Buildings (by State)

Alabama

Bldgs. 2802, 2805, 3811
Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219620662
Status: Unutilized
Comment: #2802=13,082 sq. ft., #2805=13,082 sq. ft., #3811=3000 sq. ft., most recent use—admin., needs repair, off-site use only.

Arizona

Bldgs. 13548, 72918
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219620663
Status: Unutilized
Comment: #13548=2048 sq. ft., most recent use—maint. shop, #72918=2822 sq. ft., most recent use—storage, possible asbestos/lead base paint, off-site use only.

California

Bldg. T–26
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219620684
Status: Underutilized
Comment: 15,551 sq. ft., most recent use—guest house, needs repair, off-site use only.

Colorado

Bldg. 08000
Lamar Comm. Facility
La Mar Co: Prowers CO 81052–
Landholding Agency: Air Force
Property Number: 189620034
Status: Excess
Comment: 2332 sq. ft. bldg. on approx. 3.67 acres, hook-ups disconnected, needs repair.

Georgia

Bldg. 34300
Fort Gordon
Ft. Gordon, Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219620664
Status: Unutilized
Comment: 2525 sq. ft., most recent use—auto svc store, possible asbestos, off-site use only.

Hawaii

Bldg. S–571
Wheeler Army Airfield
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219620654
Status: Unutilized
Comment: 10,053 sq. ft., most recent use—classroom, off-site use only.

Bldg. S–120
Wheeler Army Airfield
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219620655
Status: Unutilized
Comment: 2750 sq. ft., most recent use—admin., off-site use only.

Bldg. S–570
Wheeler Army Airfield
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219620656
Status: Unutilized
Comment: 60 sq. ft., most recent use—ticket booth, off-site use only.

Bldg. T–723
Fort Shafter
Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219620657
Status: Unutilized
Comment: 1751 sq. ft., most recent use—store house, off-site use only.

Bldg. T–1629
Schofield Barracks
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219620658
Status: Unutilized
Comment: 3287 sq. ft., most recent use—storage, possible termite infestation, off-site use only.

Bldg. T–489
Schofield Barracks
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219620659
Status: Unutilized
Comment: 6120 sq. ft., most recent use—storage, needs repair, off-site use only.

Bldg. T–310
Fort Shafter
Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219620660
Status: Unutilized
Comment: 400 sq. ft., most recent use—storage, off-site use only.

Illinois

Bldg. 54
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–
Landholding Agency: Army
Property Number: 219620666
Status: Unutilized
Comment: 2000 sq. ft., most recent use—oil storage, needs repair, off-site use only.

Kansas

Bldg. P–313, Fort Riley
Ft. Riley KS 66442–
Landholding Agency: Army
Property Number: 219620668
Status: Unutilized
Comment: 6222 sq. ft., most recent use—admin. bldg., needs repair, possible asbestos.

Kentucky

Bldg. 2632
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219620669
Status: Unutilized
Comment: 5310 sq. ft., most recent use—admin., possible asbestos, off-site use only.

Bldg. 2436
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219620670
Status: Unutilized
Comment: 1200 sq. ft., most recent use—admin., possible asbestos, off-site use only.

Bldg. 2264
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219620671
Status: Unutilized
Comment: 2500 sq. ft., most recent use—admin., possible asbestos, off-site use only.

Bldg. 2344
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219620672
Status: Unutilized
Comment: 5310 sq. ft., most recent use—admin., needs repair, possible asbestos, off-site use only.

Bldg. 02157
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219620673
Status: Unutilized
Comment: 2500 sq. ft., most recent use—admin., off-site use only.

Bldg. 6111
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219620674
Status: Unutilized
Comment: 2700 sq. ft., most recent use—admin., off-site use only.

Bldg. 02411
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219620675
Status: Unutilized
Comment: 5310 sq. ft., most recent use—admin., off-site use only.

Louisiana

Bldg. 7316, Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620676
Status: Underutilized
Comment: 507 sq. ft., most recent use—BOQ Transient.

Bldg. 7315, Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620677
Status: Underutilized
Comment: 507 sq. ft., most recent use—BOQ Transient.

Bldg. 7314, Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620678
Status: Underutilized
Comment: 507 sq. ft., most recent use—BOQ Transient.

Bldg. 7313, Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620679
Status: Underutilized
Comment: 507 sq. ft., most recent use—BOQ Transient.

Bldg. 7312, Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620680
Status: Underutilized
Comment: 507 sq. ft., most recent use—BOQ Transient.

Bldg. 7311, Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620681
Status: Underutilized
Comment: 643 sq. ft., most recent use—BOQ Transient.

Bldg. 7310, Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620682
Status: Underutilized
Comment: 643 sq. ft., most recent use—BOQ Transient.

Bldg. 7309, Fort Polk
Ft. Polk Co: Vernon LA 71459–
Landholding Agency: Army
Property Number: 219620683
Status: Underutilized
Comment: 643 sq. ft., most recent use—BOQ Transient, needs repair.

Maryland

Shoemaker Property
NPS Tract 405–45
Boonsboro Co: Washington MD 21713–
Landholding Agency: Interior
Property Number: 619620003
Status: Unutilized
Comment: 816 sq. ft., needs rehab, most recent use—residential, off-site use only.

North Carolina

Bldg. 0–9064
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219620686
Status: Unutilized
Comment: 480 sq. ft., most recent use—storage bldg., possible asbestos, needs repair, off-site use only.

Bldg. 0–9107
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–

VOL 61 ISS 130 JL 5 1996 UMI

Landholding Agency: Army
Property Number: 219620687
Status: Unutilized
Comment: 80 sq. ft., most recent use—storage shed, possible asbestos, off-site use only.

Bunk House
Great Smoky Mountains National Park
Fontana Dam Co: Swain NC 28733–
Landholding Agency: Interior
Property Number: 619620004
Status: Unutilized
Comment: 450 sq. ft., most recent use—residential, off-site use only.

Bldg. 119, Camp Lejeune
Greater Sandy Run Training Area
Camp Lejeune Co: Onslow NC 28542–
Landholding Agency: Navy
Property Number: 779620024
Status: Unutilized
Comment: 1721 sq. ft., 1-story, most recent use—residence, off-site use only.

Bldg. 120, Camp Lejeune
Greater Sandy Run Training Area
Camp Lejeune Co: Onslow NC 28542–
Landholding Agency: Navy
Property Number: 779620025
Status: Unutilized
Comment: 1823 sq. ft., 1-story, most recent use—residence, off-site use only.

Bldg. 121, Camp Lejeune
Greater Sandy Run Training Area
Camp Lejeune Co: Onslow NC 28542
Landholding Agency: Navy
Property Number: 779620026
Status: Unutilized
Comment: 1456 sq. ft., 1-story, most recent use—residence, off-site use only.

Bldg. 127, Camp Lejeune
Greater Sandy Run Training Area
Camp Lejeune Co: Onslow NC 28542–
Landholding Agency: Navy
Property Number: 779620027
Status: Unutilized
Comment: 14276 sq. ft., 1-story, most recent use—garage, off-site use only.

Bldg. 128, Camp Lejeune
Greater Sandy Run Training Area
Camp Lejeune Co: Onslow NC 28542–
Landholding Agency: Navy
Property Number: 779620028
Status: Unutilized
Comment: 2008 sq. ft., 2-story, most recent use—residence, may have State historical significance, off-site use only.

Bldg. 146, Camp Lejeune
Greater Sandy Rune Training Area
Camp Lejeune Co: Onslow NC 28542–
Landholding Agency: Navy
Property Number: 779620029
Status: Unutilized
Comment: 1900 sq. ft., concrete block, most recent use—gas station, off-site use only.

Oklahoma

Bldg. T–4721
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620688
Status: Unutilized
Comment: 114 sq. ft., most recent use—storehouse, possible asbestos/lead paint, off-site use only.

Bldg. T–4430
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620689
Status: Unutilized
Comment: 2974 sq. ft., most recent use—warehouse, possible asbestos/lead paint, off-site use only.

Bldg. T–4428
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620690
Status: Unutilized
Comment: 2974 sq. ft., most recent use—storage/dining, possible asbestos/lead paint, off-site use only.

Bldg. T–4400
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620691
Status: Unutilized
Comment: 2974 sq. ft., most recent use—storage, possible asbestos/lead paint, off-site use only.

Bldg. T–4115
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620692
Status: Unutilized
Comment: 96 sq. ft., most recent use—shelter, possible asbestos/lead paint, off-site use only.

Bldg. T–3326
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620693
Status: Unutilized
Comment: 8832 sq. ft., most recent use—storage, possible asbestos/lead paint, off-site use only.

Bldg. T–3290
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620694
Status: Unutilized
Comment: 96 sq. ft., most recent use—shelter, possible asbestos/lead paint, off-site use only.

Bldg. T–2955
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620695
Status: Unutilized
Comment: 3660 sq. ft., most recent use—storage, possible asbestos/lead paint, off-site use only.

Bldg. T–2917
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620696
Status: Unutilized
Comment: 3746 sq. ft., most recent use—exchange svc outlet, possible asbestos/lead paint, off-site use only.

Bldg. T–2450
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620697
Status: Unutilized
Comment: 1173 sq. ft., most recent use—storage, possible asbestos/lead paint, off-site use only.

Bldg. T–2438
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620698
Status: Unutilized
Comment: 9002 sq. ft., most recent use—storage/office, possible asbestos/lead paint, off-site use only.

Bldg. T–2425
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620699
Status: Unutilized
Comment: 9052 sq. ft., most recent use—storehouse, possible asbestos/lead paint, off-site use only.

Bldg. T–2242
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620700
Status: Unutilized
Comment: 348 sq. ft., most recent use—shower, possible asbestos/lead paint, off-site use only.

Bldg. P–2093
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620701
Status: Unutilized
Comment: 106 sq. ft., most recent use—transformer bldg., possible asbestos/lead paint, off-site use only.

Bldg. P–2092
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620702
Status: Unutilized
Comment: 131 sq. ft., most recent use—storage, possible asbestos/lead paint, off-site use only.

Bldg. P–2091
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620703
Status: Unutilized
Comment: 106 sq. ft., most recent use—transformer possible asbestos/lead paint, off-site use only.

Bldg. T–1951
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620704
Status: Unutilized
Comment: 402 sq. ft., most recent use—storage, possible asbestos/lead paint, off-site use only.

Bldg. T–1943
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620705
Status: Unutilized

Comment: 1439 sq. ft., most recent use—office/shop, possible asbestos/lead paint, off-site use only.

Bldg. P–1710
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620706
Status: Unutilized
Comment: 7668 sq. ft., most recent use—warehouse, possible asbestos/lead paint, off-site use only.

Bldg. P–1700
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620707
Status: Unutilized
Comment: 7574 sq. ft., most recent use—maint. shop/office, possible asbestos/lead paint, off-site use only.

Bldg. T–1610
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620708
Status: Unutilized
Comment: 96 sq. ft., most recent use—shelter, possible asbestos/lead paint, off-site use only.

Bldg. T–1002
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620709
Status: Unutilized
Comment: 264 sq. ft., most recent use—shelter, possible asbestos/lead paint, off-site use only.

Bldg. P–594
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620710
Status: Unutilized
Comment: 106 sq. ft., most recent use—transformer bldg., possible asbestos/lead paint, off-site use only.

Bldg. P–586
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620711
Status: Unutilized
Comment: 106 sq. ft., most recent use—transformer bldg., possible asbestos/lead paint, off-site use only.

Bldg. T–299
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620712
Status: Unutilized
Comment: 2974 sq. ft., most recent use—classroom, possible asbestos/lead paint, off-site use only.

Bldg. T–271
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620713
Status: Unutilized
Comment: 283 sq. ft., most recent use—storage, possible asbestos/lead paint, off-site use only.

Bldg. T–298
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219620714
Status: Unutilized
Comment: 2432 sq. ft., most recent use—classroom, possible asbestos/lead paint, off-site use only.

South Carolina

Bldg. 4510
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219620715
Status: Unutilized
Comment: 10424 sq. ft., needs repair, most recent use—craft shop, off-site use only.

Bldg. 6528
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219620716
Status: Unutilized
Comment: 3960 sq. ft., needs repair, most recent use—office, off-site use only.

Bldg. 6529
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219620717
Status: Unutilized
Comment: 3960 sq. ft., needs repair, most recent use—office, off-site use only.

Bldg. 6530
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219620718
Status: Unutilized
Comment: 3960 sq. ft., needs repair, most recent use—office, off-site use only.

Texas

Bldg. 57015
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219620722
Status: Unutilized
Comment: 7680 sq. ft., needs repair, most recent use—storage, off-site use only.

Bldg. 57016
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219620723
Status: Unutilized
Comment: 7680 sq. ft., needs repair, most recent use—storage, off-site use only.

Bldg. 53
Fort Hood
Fort Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219620724
Status: Unutilized
Comment: 3746 sq. ft., most recent use—chapel, off-site use only.

Bldg. 2808
Fort Hood
Fort Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219620725
Status: Unutilized
Comment: 3746 sq. ft., most recent use—chapel, off-site use only.

Bldg. T–2653
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219620726
Status: Unutilized
Comment: 12,152 sq. ft., presence of asbestos/lead paint, most recent use—research lab, off-site use only.

Bldg. T–1545
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219620727
Status: Unutilized
Comment: 10,240 sq. ft., presence of asbestos/lead paint, most recent use—recreation, off-site use only.

Bldg. S–655
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219620728
Status: Unutilized
Comment: 3296 sq. ft., presence of asbestos/lead paint, most recent use—storage, possible National Historic Pres. Act requirements.

Bldg. 2202
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219620741
Status: Unutilized
Comment: 3525 sq. ft., needs rehab, most recent use—chapel.

9 Bldgs., Family Quarters
Hayes Housing Complex, Fort Bliss
El Paso Co: El Paso TX 79916–
Location: 2125A/B, 2135A/B, 2159A/B, 2175A/B, 2197A/B, 2201A/B, 2213A/B, 2221A/B, 2243A/B
Landholding Agency: Army
Property Number: 219620742
Status: Unutilized
Comment: 903 sq. ft. each, needs rehab, most recent use—family quarters, presence of asbestos/lead paint, off-site use only.

14 Bldgs., Family Quarters
Hayes Housing Complex, Fort Bliss
El Paso Co: El Paso TX 79916–
Location: 2120A/B, 2121A/B, 2131A/B, 2157A/B, 2166A/B, 2177A/B, 2185A/B, 2200A/B, 2210A/B, 2211A/B, 2229A/B, 2235A/B, 2240A/B, 2247A/B
Landholding Agency: Army
Property Number: 219620743
Status: Unutilized
Comment: 899 sq. ft. each, needs rehab, most recent use—family quarters, presence of asbestos/lead paint, off-site use only.

35 Bldgs., Family Quarters
Hayes Housing Complex, Fort Bliss
El Paso Co: El Paso TX 79916–
Location: 2107, 2110, 2112, 2114, 2122, 2123, 2130, 2133, 2136, 2138, 2146, 2149, 2154, 2155, 2165, 2169, 2170, 2178, 2180, 2181, 2187, 2189, 2190, 2196, 2198, 2204, 2207, 2208, 2215, 2222, 2225, 2233, 2236, 2248, 2251—A/B
Landholding Agency: Army
Property Number: 219620744
Status: Unutilized

VOL 61 ISS 130 JL 5 1996 UMI

Comment: 776 sq. ft. each, needs rehab, most recent use—family quarters, presence of asbestos/lead paint, off-site use only.

Virginia

Bldg. 602, Fort Eustis
Ft. Eustis VA 23604–
Landholding Agency: Army
Property Number: 219620729
Status: Unutilized
Comment: 2368 sq. ft., 1-story brick, most recent use—storage, presence of asbestos, off-site use only.

Bldg. 74
Fort Monroe
Fort Monroe VA 23651–
Landholding Agency: Army
Property Number: 219620730
Status: Unutilized
Comment: 284 sq. ft., needs repair, most recent use—storage, off-site use only.

Bldg. 75
Fort Monroe
Fort Monroe VA 23651–
Landholding Agency: Army
Property Number: 219620731
Status: Unutilized
Comment: 171 sq. ft., needs repair, most recent use—storage, off-site use only.

Bldg. T–99
Fort Monroe
Fort Monroe VA 23651–
Landholding Agency: Army
Property Number: 219620732
Status: Unutilized
Comment: 7410 sq. ft. most recent use—storage, off-site use only.

Bldg. T–193
Fort Monroe
Fort Monroe VA 23651–
Landholding Agency: Army
Property Number: 219620733
Status: Unutilized
Comment: 2415 sq. ft., most recent use—training, off-site use only.

Bldg. T–194
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Property Number: 219620734
Status: Unutilized
Comment: 1950 sq. ft., most recent use—office, off-site use only.

Bldg. T–195
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Property Number: 219620735
Status: Unutilized
Comment: 1830 sq. ft., most recent use—office, off-site use only.

Bldg. T–196
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Property Number: 219620736
Status: Unutilized
Comment: 1500 sq. ft., most recent use—office/storage, off-site use only.

Bldg. T–248
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Property Number: 219620737
Status: Unutilized
Comment: 1894 sq. ft., most recent use—office, off-site use only.

Bldg. T–249
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Property Number: 219620738
Status: Unutilized
Comment: 1909 sq. ft., most recent use—office, off-site use only.

Bldg. T–259
Fort Monroe
Ft. Monroe VA 23651–
Landholding Agency: Army
Property Number: 219620739
Status: Unutilized
Comment: 1983 sq. ft., most recent use—office, off-site use only.

Washington

Bldg. 6126
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219620640
Status: Unutilized
Comment: 1600 sq. ft., most recent use—admin. bldg., off-site use only.

Bldg. 9594
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219620642
Status: Unutilized
Comment: 7378 sq. ft., most recent use—store house, off-site use only.

Bldg. E0205
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219620645
Status: Unutilized
Comment: 1161 sq. ft., most recent use—bachelor's quarters.

Bldg. 6127
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219620646
Status: Unutilized
Comment: 4095 sq. ft., most recent use—church, off-site use only.

Bldg. A–0217
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219620647
Status: Unutilized
Comment: 4087 sq. ft., most recent use—admin. bldg., off-site use only.

Bldg. C–0330, E0438, C1350
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219620648
Status: Unutilized
Comment: 3714 sq. ft., most recent use—Church, off-site use only.

Bldg. 1304
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219620649
Status: Unutilized
Comment: 612 sq. ft., most recent use—vehicle shop, off-site use only.

Bldg. E0320
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219620650
Status: Unutilized
Comment: 714 sq. ft., most recent use—bachelor's quarters, off-site use only.

Bldg. C0113
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219620651
Status: Unutilized
Comment: 11040 sq. ft., most recent use—vehicle shop, off-site use only.

Bldg. 4060
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219620652
Status: Unutilized
Comment: 18,240 sq. ft., most recent use—vehicle shop, off-site use only.

Wisconsin

U.S. Army Reserve Center
2310 Center Street
Racine Co: Racine WI 53403–3330
Landholding Agency: Army
Property Number: 219620740
Status: Unutilized
Comment: 3 bldgs (14,137 sq. ft.) on 3 acres, needs repair, most recent use—office/storage/training.

Land (by State)

Alaska

Land—Fairbanks North Star
Ft. Wainwright AK 99703–
Landholding Agency: Army
Property Number: 219620661
Status: Unutilized
Comment: 13 acres.

North Carolina

24.83 acres—Tract of Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 219620685
Status: Underutilized
Comment: 24.83 acres, municipal park, most recent use—New Hanover County explosive buffer zone.

Oregon

1–C Drain Right-of-Way
Klamath Project
Klamath Falls Co: Klamath OR 97603–
Landholding Agency: Interior
Property Number: 219620002
Status: Unutilized
Comment: 0.51 acres, narrow strip of land.

Suitable/Unavailable Properties

Buildings (by State)

Hawaii

Bldg. P–S0021
Signal Cable Trunking System
Waialua HI 96791–
Landholding Agency: Army
Property Number: 219620653
Status: Unutilized

Comment: 121 sq. ft., most recent use—cable hut, needs repair, off-site use only.

Indiana

Bldg. 1021
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219620667
Status: Unutilized
Comment: 18,028 sq. ft., most recent use—laundry.

Texas

Bldg. P–1
Bay City Memorial Reserve Center
Bay City Co: Matagorda TX 77414–3813
Landholding Agency: Army
Property Number: 219620719
Status: Unutilized
Comment: 4408 sq. ft., possible asbestos/lead paint, possible lease restrictions, most recent use—reserve center.

Bldg. P–3
Bay City Memorial Reserve Center
Bay City Co: Matagorda TX 77414–3813
Landholding Agency: Army
Property Number: 219620720
Status: Unutilized
Comment: 1798 sq. ft., possible asbestos/lead paint, possible lease restrictions, most recent use—vehicle maint. shop.

Bldg. P–5
Bay City Memorial Reserve Center
Bay City Co: Matagorda TX 77414–3813
Landholding Agency: Army
Property Number: 219620721
Status: Unutilized
Comment: 56 sq. ft., possible asbestos/lead paint, possible lease restrictions, most recent use—shed.

Washington

Bldg. 9644
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219620639
Status: Unutilized
Comment: 1255 sq. ft., most recent use—admin. bldg., off-site use only.

Bldg. 9571
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219620641
Status: Unutilized
Comment: 9000 sq. ft., most recent use—store house, off-site use only.

Bldg. 9638
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219620643
Status: Unutilized
Comment: 6176 sq. ft., most recent use—store house, off-site use only.

Bldg. 9645
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219620644
Status: Unutilized
Comment: 12,808 sq. ft., most recent use—store house, off-site use only.

Land (by State)

Illinois

Bridge Ramp & Property
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–
Landholding Agency: Army
Property Number: 219620665
Status: Unutilized
Commit: Bridge Ramp 24 ft. wide, 600 ft. long.

Unsuitable Properties

Building (by State)

Alabama

Bldg. 205, Fort Rucker
Ft. Rucker, Co: Dale AL 3662–5000
Landholding Agency: Army
Property Number: 219620802
Status: Unutilized
Reason: Extensive deterioration.

California

Rode
13650 Ocean View Terrace
Klamath Co: Del Norte CA 95548–
Landholding Agency: Interior
Property Number: 619620005
Status: Unutilized
Reason: Extensive deterioration.

Carter, Paul Cabin
Klamath Beach Road
Klamath Co: Del Norte CA 95531–
Landholding Agency: Interior
Property Number: 619620006
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 00358
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779620046
Status: Unutilized
Reason: Secured Area.

Bldg. 00357
Naval Air Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779620047
Status: Unutilized
Reason: Secured Area.

Georgia

Bldg. 246, Fort McPherson
Ft. McPherson Co: Fulton CA 30330–5000
Landholding Agency: Army
Property Number: 219620803
Status: Underutilized
Reason: Secured Area.

Bldg. 1730
Fort Benning
Ft. Benning Co: Muscogee CA 31905–
Landholding Agency: Army
Property Number: 219620804
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1745
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219620805
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2392
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219620806
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2415
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219620807
Status; Unutilized
Reason: Extensive deterioration.

Bldg. 2454
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219620808
Status; Unutilized
Reason: Extensive deterioration.

Bldg. 2487
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219620809
Status; Unutilized
Reason: Extensive deterioration.

Bldg. 4410
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219620810
Status; Unutilized
Reason: Extensive deterioration.

Bldg. 4417
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219620811
Status; Unutilized
Reason: Extensive deterioration.

Bldg. 2477
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219620812
Status; Unutilized
Reason: Extensive deterioration.

Bldg. 4483
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219620813
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 4489
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219620814
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 308, Fort Gillem
Ft. Gillem Co: Clayton GA 30050–5000
Landholding Agency: Army
Property Number: 219620815
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 318, Fort Gillem
Ft. Gillem Co: Clayton GA 30050–5000
Landholding Agency: Army
Property Number: 219620816
Status: Unutilized
Reason: Secured Area.

VOL 61 ISS 130 JL 5 1996 UMI

Bldg. 413, Fort Gillem
Ft. Gillem Co: Clayton GA 30050–5000
Landholding Agency: Army
Property Number: 219620817
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 415, Fort Gillem
Ft. Gillem Co: Clayton GA 30050–5000
Landholding Agency: Army
Property Number: 219620818
Status: Unutilized
Reason: Secured Area.

Bldg. 417, Fort Gillem
Ft. Gillem Co: Clayton GA 30050–5000
Landholding Agency: Army
Property Number: 219620819
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 418, Fort Gillem
Ft. Gillem Co: Clayton GA 30050–5000
Landholding Agency: Army
Property Number: 219620820
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 419, Fort Gillem
Ft. Gillem Co: Clayton GA 30050–5000
Landholding Agency: Army
Property Number: 219620821
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 420, Fort Gillem
Ft. Gillem Co: Clayton GA 30050–5000
Landholding Agency: Army
Property Number: 219620822
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 422, Fort Gillem
Ft. Gillem Co: Clayton GA 30050–5000
Landholding Agency: Army
Property Number: 219620823
Status: Unutilized
Reason: Secured Area; Extensive deterioration.

Bldg. 922, Fort Gillem
Ft. Gillem Co: Clayton GA 30050–5000
Landholding Agency: Army
Property Number: 219620824
Status: Unutilized
Reason: Secured Area.

Hawaii

Pacific Missile Range Facility
Barking Sands
Kekaha Co: Kauai HI 96752–0128
Landholding Agency: Navy
Property Number: 779620049
Status: Unutilized
Reason: Extensive deterioration.

Indiana

Coast Guard Housing
5 Houses
Dana Co: Vermillion IN 47847–
Landholding Agency: GSA
Property Number: 549620011
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; GSA Number: 1–U–IN–505D.

Kansas

Bldg. S–1970, Fort Riley
Ft. Riley KS 66442–
Landholding Agency: Army
Property Number: 219620825
Status: Unutilized
Reason: Extensive deterioration.

Bldg. P–9000, Fort Riley
Ft. Riley KS 66442–
Landholding Agency: Army
Property Number: 219620826
Status: Unutilized
Reason: Extensive deterioration.

Louisiana

Buildings T–0421, T–0422
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Location: T–0423, X–5109, X5110, X5111, X5112, and X–5113
Landholding Agency: Army
Property Number: 219620745
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building. A–148
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620746
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building T–417
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620747
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building M–636
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620748
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building M–650
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620749
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Buildings D–1265, D–1266
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620750
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building C–1359
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620751
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building B–1462
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620752
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building B–1478
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620753
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building S–1651
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620754
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building E–1741
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620755
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building N–1819
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620756
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building N–1820
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620757
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building N–1823
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620758
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building N–1824
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620759
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building L–2301
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620760
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building L–2302
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620761
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building L–2303
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620762
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building L–2304
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620763
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building L–2305
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620764
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building L–2306
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620765
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building L–2307
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620766
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building L–2308
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620767
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building L–2309
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620768
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building L–2310
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620769
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building L–2311
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620770
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building L–2312
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620771
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building L–2313
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620772
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building L–2314
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620773
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building L–2315
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620774
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building L–2316
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620775
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building L–2317
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620776
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building L–2318
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620777
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building L–2319
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620778
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building L–2320
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620779
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Building L–2321
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620780
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Buildings L–2322, L–2323,
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Location: L–2324, L–2325, L–2326, L–2327, L–2328
Landholding Agency: Army
Property Number: 219620781
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Buildings L–2329, L–2330,
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Location: L–2331, L–2332, L–2333, L–2334, L–2335
Landholding Agency: Army
Property Number: 219620782
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Buildings L–2336, L–2337,
Louisiana Army Ammunition Plant,
Doyline Co: Webster LA 71023–
Location: L2337, L–2339, L–2340, L–2341, L–2342
Landholding Agency: Army
Property Number: 219620783
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Buildings L–2343, L–2359,
Louisiana Army Ammunition Plant,
Doyline Co: Webster LA 71023–
Location: L2360, L–2361, L–2362, L–2363, L–2364
Landholding Agency: Army
Property Number: 219620784
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Buildings L–2422, L–2423,
Louisiana Army Ammunition Plant,
Doyline Co: Webster LA 71023–
Location: L2424, L–2425, L–2426, L–2427. L–2428
Landholding Agency: Army
Property Number: 219620785
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Buildings L–2429, L–2430,
Louisiana Army Ammunition Plant,
Doyline Co: Webster LA 71023–
Location: L2431, L–2432, L–2433, L–2434, L–2435
Landholding Agency: Army
Property Number: 219620786
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Buildings L–2436, L–2437,
Louisiana Army Ammunition Plant,
Doyline Co: Webster LA 71023–
Location: L2438, L–2439, L–2440, L–2441, L–1442
Landholding Agency: Army
Property Number: 219620787

VOL 61 ISS 130 JL 5 1996 UMI

Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Buildings L–2443, L–2465,
Louisiana Army Ammunition Plant,
Doyline Co: Webster LA 71023–
Location: L2466, L–2467, L–2468, L–2469, L–2470
Landholding Agency: Army
Property Number: 219620788
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Buildings L–2471, L–2472,
Louisiana Army Ammunition Plant,
Doyline Co: Webster LA 71023–
Location: L2474, L–2475, L–2476, L–2477, L–2478
Landholding Agency: Army
Property Number: 219620789
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Buildings L–2415, L–2416,
Louisiana Army Ammunition Plant,
Doyline Co: Webster LA 71023–
Location: L2417, L–2418, L–2419, L–2420, L–2421
Landholding Agency: Army
Property Number: 219620790
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Buildings L–2408, L–2409,
Louisiana Army Ammunition Plant,
Doyline Co: Webster LA 71023–
Location: L2410, L–2411, L–2412, L–2413, L–2414
Landholding Agency: Army
Property Number: 219620791
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Buildings L–2401, L–2402,
Louisiana Army Ammunition Plant,
Doyline Co: Webster LA 71023–
Location: L2403, L–2404, L–2405, L–2406, L–2407
Landholding Agency: Army
Property Number: 219620792
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Buildings P–2500,
Louisiana Army Ammunition Plant,
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620793
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Buildings P–2501
Louisiana Army Ammunition Plant,
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620794
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Building Y–2606
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620795
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Building Y–2617
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620796
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Building Y–2632
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620797
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Building Y–2633
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620798
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Building Y–2640
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620799
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Building X–5088
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620800
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Building X–5108
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219620801
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Texas

Bldg. 1ST–1
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75671–
Landholding Agency: Army
Property Number: 219620827
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Bldg. 7–S
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75671–
Landholding Agency: Army
Property Number: 219620828
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Bldgs. 36T–2, 36T–3
Longhorn Army Ammunition Plant
Karnack Co: Harrsion TX 75671–
Landholding Agency: Army
Property Number: 219620829
Status: Unutilized
Reason: Within 2000ft. of flammable or explosive material; Secured Area.
Bldg. 41–W
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75671–
Landholding Agency: Army
Property Number: 219620830
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Bldg. 61–T
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75671–
Landholding Agency: Army
Property Number: 219620831
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Bldg. 207
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75671–
Landholding Agency: Army
Property Number: 219620832
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Bldg. 411–A
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75671–
Landholding Agency: Army
Property Number: 219620833
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Bldg. 718–A
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75671–
Landholding Agency: Army
Property Number: 219620834
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Bldg. 719
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75671–
Landholding Agency: Army
Property Number: 219620835
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Bldg. 744–A
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75671–
Landholding Agency: Army
Property Number: 219620836
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.
Bldg. 801–F
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75671–
Landholding Agency: Army
Property Number: 219620837
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Vermont

Happy Hill Cabin
NPS Tract 202–08
Norwich Co: Windsor VT 05055–
Landholding Agency: Interior
Property Number: 619620007
Status: Unutilized
Reason: Extensive deterioration.

Virginia

Bldg. T–1309
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620838
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1317
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620839
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1320
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620840
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1410
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620841
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1419
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620842
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1420
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620843
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1421
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620844
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1422
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620845
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1427
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620846
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1428
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620847
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1507
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620848
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1508
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620849
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1509
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620850
Status:
Reason: Extensive deterioration.
Bldg. T–1510
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620851
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1511
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620852
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1512
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620853
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1513
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620854
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1517
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620855
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1518
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620856
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1519
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620857
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1520
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620858
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1521
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620859
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1522
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620860
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1523
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620861
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1524
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620862
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–1617
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620863
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–4001
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620864
Status: Unutilized
Reason: Extensive deterioration.
Bldg. T–4002
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army

VOL 61 ISS 130 JL 5 1996 UMI

Property Number: 219620865
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–4003
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620866
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–4310
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620867
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–5105
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620868
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–5200
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620869
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–5209
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620870
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–5211
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620871
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–5213
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620872
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–5216
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620873
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–8022
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620874
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–8023
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620875
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–8024
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620876
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–11722
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219620877
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 15A
Norfolk Naval Shipyard
Portsmouth VA 23709–5000
Landholding Agency: Navy
Property Number: 779620048
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Land (by State)

Kentucky

9 Tracts
Daniel Boone National Forest Co: Owsley Ky 37902–
Landholding Agency: GSA
Property Number: 549620012
Status: Excess
Reason: Floodway.
GSA Number: 4–G–KY–607.

Oregon

Cherry Creek Property Disposal
1.56 acres of land
Madras Co: Jefferson OR 97741–
Landholding Agency: Interior
Property Number: 619620008
Status: Unutilized
Reason: Within airport runway clear zone.

[FR Doc. 96–17016 Filed 7–3–96; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Sac and Fox Nation Beer and Liquor Act

AGENCY: Bureau of Indian Affairs.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that by Resolution SF–95–51, the Sac and Fox Nation Beer and Liquor Act was duly adopted by the Sac and Fox Nation on February 23, 1995. The Act provides for the possession, sale, introduction for sale, purchase, or other dealing in alcoholic beverages within Sac and Fox Indian country, as defined by 18 U.S.C. § 1151.

DATES: This Act is effective as of July 5, 1996.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street, N.W., MS–4603–MIB, Washington, D.C. 20240; telephone (202) 208–4401.

SUPPLEMENTARY INFORMATION: The Sac and Fox Nation Beer and Liquor Act is to read as follows:

Sac and Fox Nation Beer and Liquor Act

Section 1001. Title and Purpose

This chapter shall be known as the Sac and Fox Nation Beer and Liquor Act. These laws are enacted to regulate the sale and distribution of liquor and beer products on All Properties under the jurisdiction of the Sac and Fox Nation, and to generate revenue to fund needed tribal programs and services.

Section 1002. Definitions

Unless otherwise required by the context, the following words and phrases shall have the designated meanings:

a. "Nation/Tribe/Tribal" shall mean the Sac and Fox Nation of Oklahoma.

b. "Business Committee" shall mean the Sac and Fox Nation Business Committee as constituted by Article III of the Constitution of the Sac and Fox Nation.

c. "Commission" shall mean the Sac and Fox Tax Commission.

d. "Indian Country" shall mean Indian Country as defined by 18 U.S.C. Section 1151 subject to the jurisdiction of the Sac and Fox Nation, including without limitation:

i. Tribal Trust Land. Any lands and waters held in trust by the Federal Government within the jurisdiction of the Sac and Fox Nation;

ii. Tribal Properties in Trust Status Process. Lands and waters in process to achieve trust status under the Federal Government within the jurisdiction of the Sac and Fox Nation;

iii. Other Properties. All other lands and waters however acquired and not currently in process to achieve trust status under the Federal Government within the jurisdiction of the Sac and Fox Nation.

e. "Sale" shall mean the transfer, exchange or barter, by any means whatsoever, for a consideration by any person, association, partnership, or corporation, of liquor and beer products.

f. "Alcohol" means and includes hydrated oxide of ethyl, ethyl alcohol, ethanol, or spirits of wine, beer in excess of 3.2% alcohol, from whatever source or by whatever source or by whatever process produced including all dilutions and mixtures of this substance.

g. "Beer" means any non-alcoholic beverage containing 3.2% or less alcohol and obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops, barley, or other grain, malt or similar products. "Beer" includes among other things, beer, ale, stout, lager beer, porter and other malt or brewed liquors.

h. "Liquor" or "Alcoholic Beverage" includes the four varieties of liquor commonly referred to as alcohol, spirits, wine, and beer in excess 3.2%, and all fermented, spirituous, vinous or malt liquor or any other intoxicating liquid, solid, semi-solid or other substance, patented or not, containing alcohol, spirits, wine or beer and intended for oral consumption.

i. "Outlet", "Liquor Outlet", or "Licensed Premises" means the location within the Sac and Fox Indian Country at which a person licensed to sell alcoholic beverages under this Act carries on such business, and includes all related and associated facilities under the control of the Licensee. Moreover, where a Licensee's business is carried on as part of the operation of an entertainment or recreation facility, the "licensed premises" shall be deemed to include the entire entertainment or recreation facility and associated areas.

j. "Operator" shall mean any person twenty-one (21) years of age or older, properly licensed by the Nation to operate a liquor and/or beer outlet.

k. "License" shall mean the privilege granted pursuant to this Act to any person to sell or distribute liquor or beer within the Sac and Fox Jurisdiction.

Section 1003. Prohibition

The sale, introduction for sale, purchase, or other dealing in alcoholic beverages, except as is specifically authorized by this title, is prohibited within the Sac and Fox Indian Country.

Section 1004. Liquor and Beer Control Commission

The Sac and Fox Nation Tax Commission shall be empowered to :

a. Administer this law by exercising general control, management, and supervision of all liquor and beer sales, places of sale and sales outlets as well as exercising all powers necessary to accomplish the purposes of this law.

b. Adopt and enforce rules and regulations in furtherance of the purpose of this law and in the performance of its administrative functions.

Section 1005. Application for Liquor and Beer Outlet License

a. Application. Any person twenty-one (21) years of age or older, may apply to the Commission for a liquor and/or beer outlet license.

b. Licensing Requirements. The person applying for such permit must make a showing once a year, and must satisfy the Commission; including the following, but not limited to:

i. that he is person of good moral character;

ii. that he has never been convicted of violating any of the laws regarding the regulation of any spirituous, vinous, fermented or malt liquors, or of the gambling laws of the Nation, the State of Oklahoma, or any other Tribe or State of the United States, within three (3) years immediately preceding the date of his petition;

iii. that he has not violated the laws commonly called "prohibition laws";

iv. that she or he has not had any permit or license to sell intoxicating liquors revoked by any governmental authority, within the past twelve (12) months;

c. Processing of Application. The Sac and Fox Nation Tax Commission Chairperson or Authorized Representative shall receive and process applications and be the official representative of the Nation and Commission in matters relating to receipt of applications and related matters. If the Commission or its authorized representative is satisfied that the applicant is suitable and a respectable person, the Commission or its authorized representative may issue a license for the sale of liquor and/or beer products.

d. Application Fee. Each Beer License application shall be accompanied by a non-refundable application fee to be set by regulation of the Commission, with the concurrence of the Business Committee.

e. Discretionary Licensing. Nothing herein shall be deemed to create a duty or requirement to issue a license. Issuance of licenses is discretionary upon the Commission's determination of the best interests of the Sac and Fox Nation, and the license grants a privilege, but not a property right, to sell liquor and/or beer within the jurisdiction of the Sac and Fox Nation at the licensed outlet(s).

Section 1006. Liquor and Beer Licenses

Upon approval of an application, the Commission shall issue the applicant a liquor and/or beer license, for one year from the date of issuance, which shall entitle the operator to establish and maintain only the type of outlet being permitted. This license shall not be transferable. The Licensee must properly and publicly display the license in the place of business. It shall be renewable at the discretion of the Commission, by submission of the Licensee of subsequent application form and payment of application fee as provided in Section 1005.

Section 1007. Sales by Liquor Wholesalers and Transport of Liquors Upon Sac and Fox Indian Country

a. Right of Commission to Scrutinize Suppliers. The Operation of any licensed outlet shall keep the Commission informed, in writing, of the identity of suppliers and/or wholesalers who supply or are expected to supply liquor or beer stocks to the outlet(s). The Commission may, at its discretion, limit or prohibit the purchase of said stock from a supplier or wholesaler for the following reasons: non-payment of tribal taxes; bad business practices, or sale of unhealthy supplies. A ten (10) day notice to stop supplier purchases will be given by the Commission. However, a Stop Purchase order may take effect immediately if there is a health emergency.

b. Freedom of Information from Suppliers. Operators shall, in their purchase of stock and in their business relations with suppliers, cooperate with and assist the free flow of information and data to the Commission from suppliers relating to the sales and business arrangements between the suppliers and Operators. The Commission may, at its discretion, require the receipts from the suppliers of all invoices, bills of lading, billings or other documentary receipts of sales to the Operators.

c. Businesses shall comply with applicable Tribal Laws, for domestication or entry of Foreign Corporations.

Section 1008. Sales by Retail Operators

a. Commission Procedures. The Commission shall adopt procedures which shall supplement these laws and facilitate their enforcement. These procedures shall include prohibitions on sales to minors, where liquor may be

VOL 61 ISS 130 JL 5 1996 UMI

consumed, persons not allowed to purchase alcoholic beverages, hours, and days when outlets may be open for business, and other appropriate matters and controls.

b. Sales to Minors. No person shall give, sell, or otherwise supply liquor or beer to any person under twenty-one (21) years of age, either for his or her own use or for the use of his or her parents or for use of any other person.

c. Consumption of Beer or Liquor Upon Licensed Premises shall be prohibited in Sac and Fox Indian Country until the Sac and Fox Business Committee otherwise allows by regulation.

d. Conduct on Licensed Premises.

i. No Operator shall be disorderly, boisterous, or intoxicated on the licensed premises or on any public premises adjacent thereto which are under his or her control, nor shall he or she permit any disorderly, boisterous, or intoxicated person to be thereon; nor shall he or she use or allow the use of profane or vulgar language thereon.

ii. No Operator shall permit suggestive, lewd, or obscene conduct or acts on his or her premises. For the purpose of this section, suggestive, lewd or obscene acts of conduct shall be those acts or conduct identified as such by the laws of the Nation.

e. Employment of Minors. No person under the age of twenty-one (21) years shall be employed in any service in connection with the sale or handling of liquor and/or beer, either on a paid or voluntary basis.

f. Operator's Premises Open to Inspection. The premises of all Operators, including vehicles used in connection with beer or liquor sales, shall be open at all times to inspection by the Commission or its designated representative.

g. Operator's Record. The originals or copies of all sales slips, invoices, and other memoranda covering all purchases of liquor by Operators shall be kept on file on the retail premises of the Operator purchasing the same, for at least three (3) years after each purchase, and shall be filed separately and kept apart from all other records, and as nearly as possible shall be filed in consecutive order and each month's records kept separate so as to render the same readily available for inspection. All canceled checks, bank statements and books of accounting covering or involving the purchase of liquor, and all memoranda, if any, showing payment of money for liquor other than by check, shall be likewise preserved for availability for inspection.

h. Records Confidential. All records of the Commission showing the purchase of liquor by any individual or group shall be confidential and shall not be inspected except by members of the Commission or its authorized representative.

i. Conformity with State Law. Operators shall comply with State of Oklahoma Liquor and Beer Control Standards to the extent required by 18 U.S.C. 1161. However, the Nation shall have the fullest jurisdiction allowed under Federal law over liquor and beer, and related products or activities, within the boundaries of all Sac and Fox Indian Country.

Section 1009. Tribal Excise Tax Imposed Upon Distribution of Liquor

a. Nation Excise Taxes. The Nation shall have authority to assess and collect tax on sales of liquor and beer products to the consumer or purchaser. The tax shall be collected and paid to the Sac and Fox Tax Commission upon all Liquor and Beer products sold within the jurisdiction of the Nation. The Nation may establish differing tax rates for any given class of merchandise, which shall be paid prior to the time of retail sale and delivery thereof.

b. Added to Retail Price. An excise tax, to be set by the Business Committee of the Sac and Fox Nation, on the wholesale price shall be added to the retail selling price of liquor and beer products sold to the consumer or purchaser. All taxes paid pursuant to this Act shall be conclusively presumed to be direct taxes on the retail consumer precollected for the purposes of convenience and facility only.

c. Within 72 hours after receipt of any beer or alcoholic beverages by any wholesaler or retailer subject to this Act a tribal tax stamp shall be securely affixed thereto denoting the tribal tax thereon. Retailers or sellers of beer or alcoholic beverages within the Nation's jurisdiction may buy and sell or have in their possession only beer or alcoholic beverages which have the tribal tax stamp affixed to each package.

Section 1010. Liability for Bills

The Nation and/or the Commission shall have no legal responsibility for any unpaid bills owed by a liquor or beer outlet to a wholesale supplier or any other person or entity.

Section 1011. Other Business by Operator

An Operator may conduct another business simultaneously with managing a liquor or beer outlet: PROVIDED, if such other business is in any manner affiliated or related to the beer or liquor outlet it must be approved by majority vote of the Commission prior to initiation. Said other business may be conducted on the same premises as a liquor or beer outlet, but the Operator shall be required to maintain books of account that clearly differentiate the liquor or beer portion of the business.

Section 1012. Tribal Liability and Credit

a. Unless explicitly authorized by Tribal statute, Operators are forbidden to represent or give the impression to any person or entity that he or she is an official representative of either the Nation or the Commission authorized to pledge tribal credit or financial responsibility for any of the expenses of his or her business operation. The Operator shall hold the Nation harmless from all claims and liability of whatever nature. The Commission shall revoke Operator's outlet license(s) if said outlet(s) is not operated in a businesslike manner or if it does not remain financially solvent or does not pay its operating expenses and bill before they become delinquent.

b. Insurance. The Operator shall maintain at his or her expense adequate insurance covering liability, fire, theft, vandalism, and other insurance risks. The Commission may establish as a condition of any license, the required insurance limits and any additional coverage deemed advisable, proof of which shall be filed with the Commission.

Section 1013. Audit and Inspection

a. All of the books and other business records of the outlet shall be available for inspection and audit by the Commission or its authorized representative at any reasonable time.

b. Bond for Excise Tax. The excise tax together with reports on forms to be approved by the Commission shall be remitted to the Commission office on a monthly basis, unless otherwise specified in writing by the Commission. The Operator shall furnish a satisfactory bond to the Commission in an amount to be specified by the Commission, guaranteeing his or her payment of excise taxes.

Section 1014. Revocation of Operator's License

Failure of an Operator to abide by the requirements of this Act and any additional regulations or requirements imposed by the Commission will constitute grounds for revocation of the Operator's license as well as enforcement of the penalties provided in Section 1015 of this Act.

a. Upon determining that any person licensed by the Sac and Fox to sell beer or alcoholic beverages is for any reason no longer qualified to hold such license or reasonably appears to have violated any terms of the license or tribal regulation, including failure to pay taxes when due and owing, or has been found by any forum of competent jurisdiction, including the Commission, to have violated the terms of a tribal or state license or of any provision of this title, the Chairman shall immediately serve written notice upon the Licensee directing that he show cause within ten (10) days why his or her Sac and Fox license should not be revoked or restricted. The notice shall state the grounds relied upon for the proposed revocation or restriction.

b. If the Licensee fails to respond to the notice within ten (10) days of service, the Chairman may issue an order revoking the license or placing such restrictions of the license as the Chairman deems appropriate, effective immediately. The Licensee may, within the 10 day period, file with the Office of the Chairman a written response and request for hearing before the Commission.

c. At the hearing, the Licensee may present evidence and argument directed at the issue of whether or not the asserted grounds for the proposed revocation or restriction are in fact true, and whether such grounds justify the revocation or modifications of the license. The Nation may present other evidence as it deems appropriate.

d. The Commission after considering all of the evidence and arguments shall issue a written decision either upholding the license, revoking the license or imposing some lessor penalty (such as a temporary suspension or a fine), and such decision shall be final and conclusive.

e. The Commission's final decision, upon posting a bond with the Court sufficient to cover the Commission's final hearing assessment or ruling, may be appealed by Licensee to the Sac and Fox Court. Any findings of fact of the Commission are conclusive upon the Court unless clearly contrary to law. The purposes of Court review are not to substitute the Court's finding of facts or opinion for the Commission's but to guarantee due process of law. If the Court should rule for the appealing party, the court may order a new hearing giving such guidance for the conduct of such as it deems necessary for a fair hearing. No damages or monies may be awarded against the Commission, its members, nor the Nation and its agents and employees in such an action.

Section 1015. Violations—Penalties

Any person who violates these laws or elicits, encourages, directs or causes to be violated these laws shall be guilty of an offense and subject to a fine. Failure to have a current, valid or proper license shall not constitute a defense to an alleged violation of the licensing laws or regulations. The Sac and Fox Nation Court System will have jurisdiction over the proceedings.

a. Any person convicted of committing any violation of this Act shall be subject to punishment of up to one year imprisonment and/or a fine not to exceed Five Thousand Dollars ($5,000.00).

b. Additionally, any person upon committing any violation of any provision of this Act may be subject to a civil action for trespass, and upon having been determined by the Court to have committed the violation, shall be found to have trespassed upon the lands of the Sac and Fox Nation, and shall be assessed such damages as the Court deems appropriate in the circumstances.

c. Any person suspected of having violated any provision of this Act shall, in addition to any other penalty imposed hereunder, be required to surrender any beer or alcoholic beverages in such person's possession to the officer making the arrest or complaint. The surrendered beverages, if previously unopened, shall only be returned upon a finding by the Court after trial that the individual committed no violation of this Title.

d. Any Operator who violates the provisions set forth herein shall forfeit all of the remaining stock in the outlet(s). The Commission shall be empowered to seize forfeited products.

e. Any stock, goods or other items subject to this Act that have not been registered, licensed, or taxes paid shall be contraband and subject to immediate confiscation by the Commission or its employees or agents, Provided, that within 15 days of the seizure the Commission shall cause to be filed an action against such property alleging the reason for the seizure or confiscation, and upon proof, the Court shall order the property forfeited and title vested in the Sac and Fox Nation of Oklahoma.

f. Physical seizure of items shall be in accordance with the provisions contained in Title 14, chapter 1, General Revenue and Taxation.

Section 1016. Possession for Personal Use

Possession of beer or alcoholic beverages for the personal use by persons over the age of 21 years shall, unless otherwise prohibited by Federal or Tribal law or regulation, be lawful within the Sac and Fox Indian Country, so long as such beer or alcoholic beverages were lawfully purchased from an establishment duly licensed to sell such beverages, whether on or off the Sac and Fox Indian Country and consumed within a private residence or location, or at a location or facility specifically licensed for the public consumption of alcoholic beverages.

Section 1017. Transportation Through Reservation Not Affected

Nothing herein shall pertain to the otherwise lawful transportation of beer or alcoholic beverages through the Sac and Fox Indian Country by persons remaining upon public highways and where such beverages are not delivered, or sold or offered for sale to anyone within the Sac and Fox Indian Country.

Section 1018. Separability

If any provision of these laws is held invalid, the remainder of the laws and their application to other persons or circumstances is not affected.

Section 1019. Relation to Other Sac and Fox Laws

All prior statutes, ordinances, and resolutions enacted by the Sac and Fox Nation regulating, authorizing, prohibiting or in any way relating to the sale of beer or alcoholic beverages within the Sac and Fox Indian Country are hereby repealed and have no further force or effect.

Section 1020. Sovereign Immunity Preserved

Nothing in this statute shall be construed as a waiver or limitation of the sovereign immunity of the Sac and Fox Indian Nation or its agencies, nor their officers or employees.

Section 537. Possession of an Alcoholic Beverage.

(a). It shall be unlawful to buy, sell, give away, consume, furnish, or possess any beer, ale, wine, liquor, spirits, or any other beverage or product containing alcohol for ingestion by human beings; or to appear or be found in a place where beer or alcoholic beverages are sold and/or consumed, except as allowed by the Sac and Fox Beer and Liquor Act or regulation there under.

Dated: June 25, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–17089 Filed 7–3–96; 8:45 am]

BILLING CODE 4310–02–P

VOL
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Bureau of Land Management

[NV–942–06–1420–00]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATE: Filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: Robert H. Thompson, Acting Chief, Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–785–6541.

SUPPLEMENTARY INFORMATION: 1. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on March 7, 1996:

The plat showing a subdivision of original lot 1, section 24, Township 21 South, Range 53 East, Mount Diablo Meridian, Nevada, was accepted March 5, 1996.

This plat was prepared to meet certain admnistrative needs of the Bureau of Land Management.

2. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on June 26, 1996:

The plat, in two (2) sheets, representing the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, and a portion of the Boulder Canyon Project Federal Reservation Boundary, and the subdivision of sections 2, 11, and 14, Township 23 South, Range 63 East, Mount Diablo Meridian, Nevada, under Group No. 760, was accepted June 25, 1996.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

3. The Plats of Survey of the following described lands will be officially filed at the Nevada State Office, Reno, Nevada on August 22, 1996:

The plat, in six (6) sheets, representing the dependent resurvey of a portion of the north boundary and the east boundary of Township 40 North, Range 63 East; and the dependent resurvey of the Eighth Standard Parallel North, through a portion of Ranges 63 and 64 East, the south boundary and a portion of the west boundary, and the dependent and independent resurvey of the subdivisional lines, and the metes-and-bounds survey of Tracts 42 through 49, and the survey of sections 37 through 41, Township 40 North, Range 64 East, Mount Diablo Meridian, Nevada, under Group No. 676, was accepted June 18, 1996.

The plat representing the dependent resurvey of the Eighth Standard Parallel North, through a portion of Ranges 62 and 63 East; and the dependent resurvey of a portion of the north boundary of Township 40 North, Range 63 East; and the dependent resurvey of a portion of the east boundary of Township 40 North, Range 62 East; and the survey of the subdivisional lines of Township 40½ North, Range 63 East, Mount Diablo Meridian, Nevada, under Group No. 676, was accepted June 18, 1996.

The plat, in two (2) sheets, representing the dependent resurvey of the Eighth Standard Parallel North, through a portion of Range 62 East, the east boundary, a portion of the north boundary and a portion of the subdivisional lines of Township 41 North, Range 62 East, Mount Diablo Meridian, Nevada, under Group No. 676, was accepted June 18, 1996.

The plat, in two (2) sheets, representing the dependent resurvey of the west and north boundaries and the subdivisional lines, and the subdivision of section 30, Township 41 North, Range 63 East, Mount Diablo Meridian, Nevada, under Group No. 676, was accepted June 18, 1996.

The plat representing the dependent resurvey of the south boundary of Township 42 North, Range 64 East; and the dependent resurvey of the west boundary and a portion of the subdivisional lines of Township 41 North, Range 64 East, Mount Diablo Meridian, Nevada, under Group No. 676, was accepted June 18, 1996.

The plat comprising the boundaries of Township 40½ North, Range 62½ East, Mount Diablo Meridian, Nevada, under Group No. 676, was accepted June 18, 1996.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management.

4. Subject to valid existing rights the provisions of existing withdrawals and classifications, the requirements of applicable laws, and other segregations of record, those portions of the lands listed under item 3 that are original surveys are open to application, petition, and disposal, including application under the mineral leasing laws. All such valid applications received on or prior to August 22, 1996, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

5. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: June 27, 1996.

Robert H. Thompson,

Acting Chief Cadastral Surveyor, Nevada.

[FR Doc. 96–17129 Filed 7–3–96; 8:45 am]

BILLING CODE 4310–HC–P

Minerals Management Service

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of information collection.

SUMMARY: The Department of the Interior has submitted a proposal for the collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995 (Act). The Act provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit written comments by August 5; 1996.

ADDRESSES: Submit comments and suggestions directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0058), Washington, D.C. 20503.

Send a copy of your comments to the Chief, Engineering and Standards Branch, Mail Stop 4700, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Engineering and Standards Branch, Mail Stop 4700, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070–4817; telephone: (703) 787–1562. You may obtain copies of the proposed collection of information and related forms by contacting MMS's Clearance Officer at the telephone number listed below.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart I, Platforms and Structures.

OMB Number: 1010–0058.

Abstract: Section 3506 of the Act (44 U.S.C. Chapter 35) requires that OMB provide interested Federal agencies and the public an opportunity to comment on information collection requests.

Respondents submit information on, and maintain records of, the design, fabrication, installation, use, and inspection of all platforms and structures on the OCS. The MMS regional offices use this information to ensure the structural integrity for the safe conduct of drilling, workover, and production operations, considering the specific environmental conditions at the platform location, and to ensure that such integrity will be maintained throughout the useful life of the structures.

Description of Respondents: Federal OCS oil and gas lessees.

Frequency: Varies.

Estimated Number of Respondents: 130 respondents providing 555 responses.

Estimated Total Annual Burden on Respondents: 15,803 reporting hours; 6,000 recordkeeping hours.

Type of Request: Extension of currently approved collection.

Form Number: N/A.

Comments: The OMB is required to make a decision concerning the proposed collection of information between 30 and 60 days after publication of this notice in the **Federal Register**. Therefore, a comment to OMB is best ensured of having its full effect if OMB receives it within 30 days of publication.

Bureau Clearance Officer: Carole deWitt (703) 787–1242.

Dated; June 17, 1996.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 96–17130 Filed 7–3–96; 8:45 am]

BILLING CODE 4310–MR–M

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of information collection.

SUMMARY: The Department of the Interior has submitted a proposal for the collection of information listed below to the Office Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995 (Act). The Act provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. When OMB approves the collection and assigns a control number and expiration date, they will be displayed on the cover sheet to the questionnaire.

DATES: Submit written comments by August 5, 1996.

ADDRESSES: Submit comments and suggestions directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–XXXX), Washington, D.C. 20503.

Send a copy of your comments to the Chief, Engineering and Standards Branch, Mail Stop 4700, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Engineering and Standards Branch, Mail Stop 4700, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070–4817; telephone (703) 787–1562. You may obtain copies of the proposed collection of information and related forms by contacting MMS's Clearance Officer at the telephone number listed below.

SUPPLEMENTARY INFORMATION:

Title: Social and Economic Adaptations by Fish Harvesters in the Santa Barbara Channel-Santa Marie Basin Area, California.

OMB Number: To be assigned.

Abstract: Section 3506 of the Act (44 U.S.C. Chapter 35) requires that OMB provide interested Federal agencies and the public an opportunity to comment on information.

Utah State University, Department of Forest Resources, will conduct a study for MMS which will provide an analysis of the social composition and the social and economic adaptation of commercial fish harvesters in the Santa Barbara Channel-Santa Maria Basin area. The research will be centered upon the commercial fish harvesters working out of the ports of Morro Bay, Port San Luis, Santa Barbara, Ventura, and either Channel Islands or Port Hueneme. The research will require interviews with fish harvesters from each port with analysis comparisons among ports and in the aggregate. The information collected under this study will aid MMS in assessing the actual or potential impacts of Outer Continental Shelf oil and gas activities on the social organization of fish harvesters, the lives of fishing.

Description of Respondents: Fish harvesters and spouses.

Frequency: One time (1 response per respondent).

Estimate of Burden: We estimate interviews with fish harvesters will average 53 minutes each; interviews with the spouses will average 30 minutes each.

Estimated Number of Respondents: 450 fish harvesters; 284 spouses.

Estimated Total Annual Burden on Respondents: 539.5 hours.

Type of Request: New.

Form Number: N/A.

Comments: The OMB is required to make a decision concerning the proposed collection of information between 30 and 60 days after publication of this notice in the **Federal Register**. Therefore, comment to OMB is best ensured of having its full effect if OMB received it within 30 days of publication.

Bureau Clearance Officer: Carole deWitt (703) 787–1242.

Dated: June 10, 1996.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 96–17131 Filed 7–3–96; 8:45 am]

BILLING CODE 4310–MR–M

Bureau of Reclamation

Information Collection Submitted to the Office of Management and Budget for Review under the Paperwork Reduction Act

The proposal for the revised collection of information listed below has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Copies of the information collection and the supporting documentation may be obtained by contacting Reclamation's Clearance Officer at the telephone number listed below. Comments on this information collection should be made within 30 days directly to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Bureau of Reclamation, Paperwork Reduction Project (1006–0006), Washington DC 20503, Telephone (202) 395–7340.

Title: Certification and Reporting Summary Forms for Acreage Limitation, 43 CFR Part 426.

Abstract: These forms are to be used by water district offices to summarize individual landholder certification and reporting forms as required by the Reclamation Reform Act of 1982 (Title II of Pub. L. 97–293) and 43 CFR Part 426, Rules and Regulations for Projects Governed by Federal Reclamation Law. This information allows Reclamation to

VOL 61 ISS 130 JL 5 1996 UMI

establish water users' compliance with Reclamation law.

Bureau Form Numbers: 7–21SUMM–R and 7–21SUMM–C.

OMB Approval Number: 1006–0006.

Reclamation will display a valid OMB control number on either the forms or the instructions associated with the forms. Persons who are required to respond to the information collection need not respond unless the OMB control number is current.

Frequency: Annually.

Description of Respondents: Contracting organizations for Reclamation project irrigation water.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 40 hours per response.

Estimated Number of Respondents: 303.

Estimated Number of Responses per Respondent: 1.25.

Estimated Annual Responses: 379.

Estimated Total Annual burden on Respondents: 15,160 hours.

Reclamation's Clearance Officer: Marilyn Rehfeld (303) 236–0305 extension 459.

All comments received on this information collection request in **Federal Register** notice 61 FR 9485, Mar. 8, 1996, have been summarized and included in the request for OMB approval.

Dated: June 28, 1996.

J. Austin Burke,

Director, Program Analysis Office.

[FR Doc. 96–17099 Filed 7–3–96; 8:45 am]

BILLING CODE 4310–94–M

Information Collection Submitted to the Office of Management and Budget for Review under the Paperwork Reduction Act

The proposal for the revised collection of information listed below has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Copies of this information collection and the supporting documentation may be obtained by contacting Reclamation's Clearance Officer at the telephone number listed below. Comments on this information collection should be made within 30 days directly to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Bureau of Reclamation, Paperwork Reduction Project (1006–0005), Washington, DC 20503, Telephone (202) 395–7340.

Title: Individual Landholder's Certification and Reporting Forms for Acreage Limitation, 43 CFR Part 426.

Abstract: This information collection requires certain landholders to complete forms demonstrating their compliance with the acreage limitation provisions of reclamation law. The forms establish each landholder's status with respect to landownership limitations, full-cost pricing thresholds, lease requirements, and other provisions of reclamation law.

Bureau Form Numbers: 7–21INFO, 7–2180, 7–2180EZ, 7–2181, 7–2184, 7–2190, 7–2190EZ, 7–2191, 7–2194, 7–21PE, 7–21TRUST, 7–21VERIFY, 7–21XS, 7–21FC, 7–21CONT.

OMB Approval Number: 1006–0005.

Reclamation will display a valid OMB control number on either the forms or the instructions associated with the forms. Persons who are required to respond to the information collection need not respond unless the OMB control number is current.

Frequency: Annually.

Description of Respondents: Owners and lessees of land on Federal Reclamation projects, whose landholdings exceed specified thresholds.

Estimated Number of Respondents: 41,400.

Estimated Number of Responses per Respondent: 1.02.

Estimated Annual Responses: 42,200.

Estimated Total Annual Burden on Respondents: 14,800.

Reclamation's Clearance Officer: Marilyn Rehfeld (303) 236–0305 extension 459.

All comments received on this information collection requested in **Federal Register** notice 61 FR 9485, Mar. 8, 1996, have been summarized and included in the request for OMB approval.

Dated: June 28, 1996.

J. Austin Burke,

Director, Program Analysis Office.

[FR Doc. 96–17100 Filed 7–3–96; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America vs. The Thomson Corporation and West Publishing Company; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* vs. *The Thomson Corporation and West Publishing Company*, Civ. Action No. 96–1415. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h).

On June 19, 1996, the United States filed a Complaint seeking to enjoin a transaction in which The Thomson Corporation ("Thomson") agreed to acquire West Publishing Company ("West"). Thomson and West are two of the country's largest publishers of law books and legal research materials. Thomson and West publish numerous competing legal publications, including the only two annotated United States Codes and the only two enhanced U.S. Supreme Court reporters. The Complaint alleged that the proposed acquisition would substantially lessen competition in the market for legal publications in violation of section 7 of the Clayton Act, 15 U.S.C. 18, and Section 1 of the Sherman Antitrust Act, 15 U.S.C. 1.

The proposed Final Judgment orders defendants to divest 51 legal publications to one or more purchasers who have the ability effectively to compete in the market for legal publications. To insure that each divested product will be sold as a viable, ongoing line of business, Thomson is required to divest related production assets in addition to its rights to publication titles, and to allow the purchaser to seek to hire employees who have been working on the products. The defendants are also required to license openly the right to use the pagination of individual pages in West's National Reporter System to any interested third party for a fee. Thomson is also to grant to Lexis-Nexis options to extend for five years its current licenses for the three important non-legal databases: Investext, ASAP, and Preicasts. In addition, Thomson is required to allow the state of California, Washington and Wisconsin to reopen the bidding for contracts presently held by Thomson for the publication of their respective official state case law reporters. In the event any of these states choose another official reporter, Thomson is required to divest its assets related to its current contract and to divest its associated state digest.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

Public comment is invited within the statutory 60-day comment period. Such comments, and the responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Craign W. Conrath, Chief, Merger Task Force, Antitrust Division, 1401 H Street NW., Suite 4000, Washington, DC 20530 (telephone: 202–307–5779). Copies of the Complaint, Stipulation, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th Street NW., Washington, DC 20530 (telephone: 202–514–2481) and at the office of the Clerk of the United States District Court for the District of Columbia, Third Street and Constitution Avenue NW., Washington, DC 20001.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Lawrence R. Fullerton,

Deputy Assistant Attorney General, Antitrust Division.

United States District Court for the District of Columbia

In the matter of United States of America, State of California, by and through its Attorney General Daniel E. Lungren; State of Connecticut, by and through its Attorney General Richard Blumenthal; State of Illinois, by and through its Attorney General Jim Ryan; Commonwealth of Massachusetts, by and through its Attorney General Scott Harshbarger; State of New York, by and through its Attorney General Dennis C. Vacco; State of Washington, by and through its Attorney General Christine O. Gregoire, and State of Wisconsin, by and through its Attorney General James E. Doyle, Jr.; Plaintiffs, vs. The Thomson Corporation and West Publishing Company, Defendants; Docket No.: 96–CV01415, Judge Charles R. Richey, File: 6/19/96.

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District for the District of Columbia.

(2) The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the plaintiffs have not withdrawn their consent, which they may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

(3) Plaintiffs' consent to the entry of this decree should not be read to suggest that plaintiffs believe that a license is required before a legal publisher may star paginate to defendants' products. Plaintiffs expressly reserve the right to assert their views concerning the extent, validity, or significance of any intellectual property right claimed by defendants, in judicial proceedings or in any other forum. Plaintiffs and defendants agree that this Final Judgment shall have no impact whatsoever on any adjudication concerning these matters.

(4) Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

(5) Defendants will not consummate their transaction before the Court has signed this Stipulation and Order.

(6) Thomson shall prepare and deliver reports in the form required by the provisions of paragraph B of Section VI of the proposed Final Judgment commencing no later than July 19, 1996, and every thirty (30) days thereafter pending entry of the Final Judgment.

(7) In the event the plaintiffs withdraw their consent, as provided in paragraph 2 above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: June , 1996.

For plaintiff United States of America:
Craig W. Conrath,
Attorney, U.S. Department of Justice.
Keith S. Blair (DC Bar #450252),
Attorney, U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street N.W., Washington, D.C. 20005, (202) 307–5779.

For defendant the Thomson Corporation.
Wayne D. Collins,
Shearman & Sterling, Citicorp Center, 153 East 53rd Street, New York, N.Y. 10022, (212) 848–4000, Attorney for The Thomson.

For plaintiff State of California:
Kathleen F. Foote.

For plaintiff State of Connecticut:
Aaron S. Bayer.

For plaintiff State of Illinois:
Christine H. Rosso.

For plaintiff Commonwealth of Massachusetts:
George K. Weber.

For plaintiff State of New York:
Stephen N. Houck.

For defendant West Publishing Company:
James E. Schatz,
Schatz Paquin Lockridge Grindal & Holstein P.L.L.P., Suite 2200, 100 Washington Avenue Sol, Minneapolis, MN 55401, (612) 339–6900, Attorney for West Publishing, Company.

For plaintiff State of Washington:
Tina E. Kondo.

For plaintiff State of Wisconsin:
Kevin J. O'Connor.

So ordered: _____ United States District Judge.

Final Judgment

WHEREAS plaintiffs, the United States of America (hereinafter "United States"), the State of California, the State of Connecticut, the State of Illinois, the Commonwealth of Massachusetts, the State of New York, the State of Washington, and the State of Wisconsin, having filed their Complaint herein, and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, prompt and certain divestiture or license of certain assets to one or more third parties is the essence of this agreement;

AND WHEREAS, defendants acknowledge that plaintiffs' consent to the entry of this decree should not be read to suggest that plaintiffs believe

VOL 61 ISS 130 JL 5 1996 UMI

that a license is required before a legal publisher may star paginate to defendants' products and that plaintiffs expressly reserve the right to assert their views concerning the extent, validity, or significance of any intellectual property right claimed by defendants, in judicial proceedings or in any other forum. Plaintiffs and defendants further agree that this Final Judgment shall have no impact whatsoever on any adjudication concerning these matters.

AND WHEREAS, the parties intend to require defendants to divest, as viable lines of business, certain assets so as to ensure, to the sole satisfaction of the plaintiffs, that the Acquirer will be able to publish and sell the assets as viable, ongoing product lines;

AND WHEREAS, defendants have represented to plaintiffs that the divestitures required below can and will be made as provided in this Final Judgment and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I.

Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II.

Definitions

As used in this Final Judgment:

A. "Acquirer" means the person(s) to whom Thompson shall sell the Divestiture Products (as defined below).

B. "Divestiture Products" means the product lines listed on Exhibit A.1 and Exhibit A.2 attached hereto, in any medium, including all rights and interests in them, including all intellectual property rights, all existing work in progress, plates, films, master tapes, machine-readable codes for CD–ROM production, existing inventory, pertinent correspondence and files, a copy of the current subscriber list, all related subscriber information, advertising materials, contracts with authors, software, and, at Acquirer's option, computers and other physical assets used primarily for production of the Divestiture Product. Auto-Cite is a Divestiture Product and its divestiture shall include the sale of all Auto-Cite trademarks and service marks, the assignment of the Auto-Cite License Agreement, and delivery of a transferable royalty-free perpetual license of the Auto-Cite case database as of the time of the devestitive and all software, trade secrets, and know-how used in producing and updating the Auto-Cite case database.

C. "Official Reporter Contract States" means California, Washington, and Wisconsin."

D. "Official Reporter Contract" means a contract between Thomson and an Official Reporter Contract State pursuant to which Thomson publishes the official case law reporters for that state.

E. "Retained Product" means any product offered for sale or in development by Thomson or West as of June 1, 1996, that is not a Divestiture Product.

F. "Auto-Cite License Agreement" shall mean the agreement by which Thomson currently licenses the use of Auto-Cite to Lexis-Nexis, specifically, the Thomson Legal Publishing License Agreement dated March 7, 1991, as amended by a letter agreement dated March 22, 1996 between Andrew G. Mills of Thomson and Louis J. Andreozzi of Lexis-Nexis.

G. "Thomson" means defendant The Thomson Corporation, a Canadian corporation with its headquarters in Toronto, Ontario, Canada, and includes its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

H. "West" means defendant West Publishing Company, a Minnesota corporation with its headquarters in Eagan, Minnesota, and includes its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

I. "Lexis-Nexis" means Lexis-Nexis, a division of Reed Elsevier Inc., a Massachusetts corporation with its headquarters in Newton, Massachusetts, and includes its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

J. "National Reporter System" means those printed case report series published by West that West has designated, or in future designates, as part of the National Reporter System.

III.

Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Thomson, as a condition of the sale or other disposition of any or all of the Divestiture Products, shall require the Acquirer to agree to be bound by the provisions of this Final Judgment.

IV.

Divestiture of Assets

A. Thomson is hereby ordered and directed, within nine (9) months from the date of this Final Judgment is filed with the Court, to divest the Divestiture Products listed on Exhibit A.1 and A.2. the United States, in its sole discretion, may agree to an extension of this time period of up to three (3) months, and shall notify the Court in such circumstances.

B. Divestiture under Section IV.A of the Divestiture Products listed on Exhibit A.1 shall be accomplished in such a way as to satisfy the United States, in its sole discretion after consultation with the state plaintiffs, (and, for state specific Divestiture Products, to satisfy, the appropriate state plaintiff) that the Divestiture Products can and will be operated by the Acquirer as viable, ongoing product lines. Divestiture Products under Section IV.A shall be made to a purchaser for whom it is demonstrated to the sole satisfaction of the United States after consultation with the state plaintiffs, (and, for state specific Divestiture Products, to the satisfaction of the appropriate state plaintiff) that (1) the purchase is for the purpose of competing effectively in the publication and sale of the Divestiture Products, and (2) the Acquirer has the managerial, operational, and financial capability to compete effectively in the publication and sale of the Divestiture Products. Defendants are prohibited from entering into any agreement with the Acquirer to license exclusively the Divestiture Products to the Defendants.

C. Thomson shall include in any purchase agreement made in connection with the divestiture obligations in Section IV.A the option to the Acquirer, exercisable at the time of the closing of the purchase agreement, to require Thomson to continue, for a reasonable period of time and for reasonable compensation, to produce the Divestiture Product on behalf of the Acquirer, provided that the Acquirer shall control all non-production-related

aspects of the Divestiture Product, including pricing, promotion, sales, and order fulfillment.

D. The Acquirer of any Divestiture Product which Thomson currently uses, in whole or in part, in any Retained Product (e.g., for purposes of supplying a Retained Product with primary law content or copies or indices of annotations or headnotes from a Divestiture Product) shall grant Thomson a royalty-free license to continue to use the Divestiture Product to the same extent for another twelve (12) months immediately following the closing of the sale of the Divestiture Product (twenty-four (24) months in the case of Auto-Cite).

E. In accomplishing the divestiture ordered by this Final Judgment, the defendants shall make known, by usual and customary means, the availability of the Divestiture Products. The defendants shall provide any person making inquiry regarding a possible purchase of a copy of the Final Judgment. The defendants shall also offer to furnish to any bona fide prospective purchaser, subject to custody confidentiality assurances, all reasonably necessary information regarding the Divestiture Products, except such information subject to attorney-client privilege or attorney work product privilege. Defendants shall make available such information to the plaintiffs at the same time that such information is made available to any other person. Defendants shall permit bona fide prospective purchasers of the Divestiture Products to have access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the divestiture required by this Final Judgment.

F. Defendants shall make available to plaintiffs and to Acquirer information about the personnel involved in editorial product of each of the Divestiture Products to enable Acquirer to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer to employ any West or Thomson employee whose primary responsibility is the production, sale or marketing of such Divestiture Product.

G. Thomson shall take all reasonable steps to accomplish quickly the divestitures contemplated by this Final Judgment.

V.

Appointment of Trustee

A. In the event that Thomson has not divested the Divestiture Products within nine (9) months from the date this Final Judgment is filed with the Court, Thomson shall notify the plaintiffs of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States to effect the divestiture of the Divestiture Products. Unless the plaintiff otherwise consent in writing, the divestiture shall be accomplished in such a way as to satisfy the United States, in its sole discretion after consultation with the state plaintiffs, (and, for state specific Divestiture Products, to satisfy the appropriate state plaintiff), that the Divestiture Products can and will be used by the Acquirer as viable on-going product lines. The divestiture shall be made to an Acquirer for whom it is demonstrated to the United States' sole satisfaction after consultation with the state plaintiffs, (and, for state specific Divestiture Products, to the satisfaction of the appropriate state plaintiff) that the Acquirer has the managerial, operational, and financial capability to compete effectively in the publication and sale of the Divestiture Products, and that none of the terms of the divestiture agreement interfere with the ability of the purchaser to compete effectively in the publication and sale of the Divestiture Products.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Products. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV, V and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. The trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States after consultation with the state plaintiffs, (and, for state specific Divestiture Products, acceptable to the appropriate state plaintiff), and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds other than (1) the trustee's malfeasance, or (2) that the sale is contrary to the express terms of this Final Judgment. Any such objections by defendants must be conveyed in writing to the plaintiffs and the trustee within ten (10) days after the trustee has provided the notice required under Section VI.

C. The trustee shall serve at the cost and expense of Thomson, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Thomson and the trust shall then be terminated. The compensation of such trustee and that of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Products and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Thomson shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of Thomson and West, and defendants shall develop financial or other information relevant to such assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include

VOL 61 ISS 130 JL 5 1996 UMI

extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI.

Notification

A. Within two (2) business days following execution of a definitive agreement, Thomson or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the plaintiffs of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Thomson. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Products, together with full details of the same. Within fifteen (15) days after receipt of the notice, the plaintiffs may request additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Thomson or the trustee shall furnish the additional information within fifteen (15) days of the receipt of the request. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information, whichever is later, the United States (or, for state specific Divestiture Products, the appropriate state plaintiff) shall notify in writing Thomson and the trustee, if there is one, if it objects to the proposed divestiture. If the United States (or, for state specific Divestiture Products, the appropriate state plaintiff) fails to object within the period specified, or if the United States (or, for state specific Divestiture Products, the appropriate state plaintiff) notifies in writing Thomson and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to Thomson's limited right to object to the sale under Section V.B. Upon objection by the United States (or, by the state specific Divestiture Products, the appropriate state plaintiff) or by Thomson under Section V.B, the proposed divestiture shall not be accomplished unless approved by the Court.

B. Thirty (30) days from the date when this Order becomes final, and every thirty (30) days thereafter until the divestiture has been completed or a trustee is appointed, Thomson shall deliver to the plaintiffs a written report as to the fact and manner of compliance with Section IV of this Final Judgment. Each such report shall include, for each person who during the preceding thirty (30) days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in all or any portion of the Divestiture Products, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. Thomson shall maintain full records of all efforts made to divest all or any portion of the Divestiture Products.

VII.

Financing

Thomson shall not finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment without the prior written consent of the United States.

VIII.

Preservation of Assets

Until the divestitures required by Section IV.A of the Final Judgment have been accomplished:

A. Defendants shall take all steps necessary to ensure that each Divestiture Product listed on Exhibit A.1 will be maintained as an independent, ongoing, economically viable and active competitor in its respective line of business in the United States and that, except as necessary to comply with Section IV.B of this Final Judgment, the product management for all Divestiture Products, including the marketing and pricing information and decision-making, be kept separate and apart from, and not influenced by, Thomson's and West's businesses in other products.

B. Defendants shall use all reasonable efforts to maintain and increase sales of the Divestiture Products, and shall maintain at 1995 or previously approved levels for 1996, whichever are higher, promotional advertising, sales, marketing, and merchandising support for the Divestiture Products.

C. Defendants shall take all steps necessary to ensure that the Divestiture Products are fully maintained. Defendants shall not establish, prior to divestiture, any license of any of the Divestiture Products to themselves. Defendants' production, sales and marketing employees with primary responsibility for the Divestiture Products shall not be transferred or reassigned to any Retained Product, except for transfer bids initiated by employees pursuant to defendants' regular, established job posting policy, provided that defendants give the United States (and, for the state specific Divestiture Products, the appropriate state plaintiff) and Acquirer ten (10) days' notice of such transfer.

D. Defendants shall not, except as part of a divestiture approved by the United States, sell any Divestiture Products.

E. Defendants shall take no action that would jeopardize the sale of the Divestiture Products.

IX.

Star Pagination

A. Beginning no later than ten (10) business days after the entry of the Final Judgment, defendants shall grant to any third party a license in the form attached as Exhibit B to star paginate to West's National Reporter System publications subject to license fees not to exceed the price indicated below per format per year per 1,000 Characters (as defined in Exhibit B) contained in the material being star paginated:

First year of license:—$0.09.
Second year of license:—$0.11.
Third and subsequent years of license:—$0.13.

The license fees may increase at a rate based upon, but not to exceed, the change in the United States Department of Labor Producer Price Index for Finished Goods.

B. Any existing star pagination licensee may elect to modify its existing license on star pagination by substituting the terms and conditions of the license contained in Exhibit B on 120 days' notice.

X.

Options to Lexis-Nexis

Within ten (10) business days after the entry of the Final Judgment, Thomson shall grant to Lexis-Nexis the options to extend the License Agreements for Investext, ASAP, and Predicasts databases or any successor, follow-on, replacement, or substitute databases for an additional five (5) years beyond their current expiration dates, exercisable within one year of the date of the entry of this Final Judgment. Should Lexis-Nexis elect to exercise this option, all other terms and conditions of such License Agreement shall be no less favorable than the current terms and conditions. Nothing contained in any Lexis-Nexis agreement with Thomson shall be deemed to prohibit Lexis-Nexis from negotiating and contracting, but not implementing, the direct or indirect sourcing of information in those databases.

XI.

Option to Official Reporter Contract States

Within ten (10) business days after the entry of the Final Judgment, Thomson shall grant to the Official Reporter Contract States the option to terminate the contracts presently held by Thomson, for the publication of the official state case law reporters (listed in Exhibit A.3) in those states without cause upon ninety (90) days' notice, notwithstanding anything to the contrary in those contracts. This option may be exercised at any time prior to the expiration of the current Official Reporter Contract. In the event any of the Official Reporter Contract States elect to exercise this option:

A. Thomson shall undertake all reasonable efforts to assist the Official Reporter Contract State in finding a substitute publisher for the product(s) at issue.

B Upon the identification of a substitute publisher:

1. Thomson shall provide that entity with copies of all existing work in progress, plates, films, master tapes, machine-readable codes for CD–ROM production, existing inventory, pertinent correspondence and files, a current copy of the subscriber list, all related subscriber information, advertising materials, Official Reporter Contracts, software, and, at the substitute publisher's option, computers and other physical assets used primarily for production of the respective official state case law reporters.

2. Thomson shall make available to the United States (and, for state specific Divestiture Products, the appropriate state plaintiff) and to that entity information about the personnel involved in editorial production of the respective official state case law reporter to enable that entity to make offers of employment. Thomson shall not interfere with any negotiations by that entity to employ any Thomson employee whose primary responsibility is the production, sale or marketing of such official state case law reporter.

3. Thomson shall not transfer or reassign production, sales and marketing employees with primary responsibility for the official state case law reporter to any Retained Product, except for transfer bids initiated by employees pursuant to Thomson's regular, established job posting policy, provided that Thomson gives the United States (or, for state specific Divestiture Products, the appropriate state plaintiff) and that entity ten (10) days' notice of such transfer.

4. Thomson shall grant that entity an option to acquire Thomson's inventory of the official reports at its cost to Thomson; and

5. Thomson shall divest the digest product for that state set forth in Exhibit A.4, within the time periods and pursuant to the procedures set forth in Sections IV, V, VI, VII, and VIII of this Judgment.

C. Thomson shall transfer to the Official Reporter Contract State a license, which shall be perpetual in term, sublicensable, assignable, and royalty-free, to the use of any intellectual property rights which Thomson holds pertaining to the headnotes, case notes, and/or case summaries in the product(s) at issue.

XII.

Compliance Inspection

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiffs, including consultants and other persons retained by the United States, shall, upon the written request of the Assistant Attorney General in charge of the Antitrust Division, or the appropriate State Attorney General with respect to the state specific Divestiture Products, and on reasonable notice to Thomson made to its principal offices, be permitted:

1. access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. subject to the reasonable convenience of Thomson and without restraint or interference from it, to interview directors, officers, employees, and agents of defendants, which may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, or the appropriate State Attorney General with respect to the state specific Divestiture Products, made to Thomson at its principal offices, Thomson shall submit written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information nor any documents obtained by the means provided in this Section XII shall be divulged by any representative of the plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States or of each state government, except in the course of legal proceedings to which the plaintiffs are a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Thomson to the plaintiffs, Thomson represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Thomson marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the plaintiffs shall give ten (10) days' notice to Thomson prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Thomson is not a party.

XIII.

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIV.

Termination of Provisions

Paragraphs IV, V, VI, VII, VIII, and XI, of this Final Judgment will expire on the tenth anniversary of the date of its entry.

XV.

Public Interest

Entry of this Final Judgment is in the public interest.

Dated

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16 _____ United States District Judge.

Exhibit A

Exhibit A.1

U.S. Code Service
U.S. Reports, L.Ed.
U.S. Digest
Manual of Federal Practice, 4th Ed.
Bankruptcy Law & Practice, 6th Ed.
Bankruptcy (Epstein, Nickels & White)
Corbin on Contracts
Insurance Law (Appleman)
Search & Seizure (Thomson)

VOL 61 ISS 130 JL 5 1996 UMI

Ballantine's Law Dictionary
Auto-Cite
Deering's Annotated California Code
California ADR Practice Guide
California Civil Practice Handbook: Choice Between State and Federal Courts
California Civil Trailbook
California Litigation By the Numbers Court Rules Companion
California Negligence & Settlement
California Products Liability Law & Practice
California Trail
California Tort Law
Modern California Discovery
Colorado Trial Handbook
Trial Handbook for Connecticut Lawyers
Florida Criminal Practice & Procedure
Florida Evidence 2d
Illinois Jurisprudence
Indiana Appellate Handbook 2d
Kentucky Probate PSL
Kentucky Workers' Compensation PSL
Louisiana Code of Evidence—Annotated
Louisiana Successions
Louisiana Workers' Compensation
Annotated Laws of Massachusetts
Massachusetts Corporation PSL
Massachusetts Domestic Relations PSL
Massachusetts Landlord-Tenant Law
Massachusetts Real Estate PSL
Michigan Criminal Law
Michigan Statutes Annotated
Michigan Digest
New Jersey Criminal Procedure
New York Consolidated Laws Service
New York Wills and Trusts
Ohio Family Law
Ohio Probate
Modern Texas Discovery
Texas Civil Pre-Trail Procedure
Texas Trial and Appellate Practice
Washington Trial Handbook

Exhibit A.2

Michigan Law & Practice
New York Estate Administration
Pennsylvania Law Encyclopedia

Exhibit A.3

California Appellate Reports
California Reports
California Reports Advance Sheets
Washington Appellate Court Reports
Washington Supreme Court Reports
Wisconsin Official Reports
Wisconsin Official Reports Advance Sheets

Exhibit A.4

California Digest
Wisconsin Digest

EXHIBIT B

LICENSE AGREEMENT

THIS AGREEMENT, entered into in Eagan, Minnesota by and between _____ ("Licensee") and WEST PUBLISHING COMPANY (and its successors, collectively "Licensor");

WHEREAS, Licensee desires to obtain a license from Licensor to allow Licensee to star paginate to certain West Case Reports in Licensee Case Reports contained in Licensee's [Licensee Product(s)/Service(s)]; and

WHEREAS, Licensor desires to grant Licensee such a license;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants which follow, the parties hereby agree that:

Article 1—Definitions

As used in this Agreement, the following terms shall have the following meanings:

1.01. "West Case Reports" shall mean Licensor's reports of judicial decisions, identified in Exhibit A to this Agreement, that are selected for reporting by Licensor and coordinated and arranged by Licensor within NRS Reporters.

1.02. "NRS Reporters" shall mean the following printed case report series published by Licensor that are a part of Licensor's National Reporter System and any future case report series published by Licensor that Licensor designates as a part of Licensor's National Reporter System:

Supreme Court Reporter
Federal Reporter
Federal Supplement
Federal Rules Decisions
Atlantic Reporter
North Eastern Reporter
North Western Reporter
Pacific Reporter
South Eastern Reporter
Southern Reporter
South Western Reporter
California Reporter
Illinois Decisions
New York Supplement
Bankruptcy Reporter
Military Justice Reporter
United States Claims Court Reporter
Federal Claims Reporter
Veterans Appeals Reporter

If Licensor (i) ceases publishing any NRS Reporter in printed form; and (ii) includes the case, reports of the court(s) previously included in said NRS Reporter as a part of a New Technology or only on WESTLAW, such case reports as a part of a New Technology or on WESTLAW shall be deemed to be said NRS Reporter. In such event, should WESTLAW or the New Technology continue to contain citations to such case reports in the same form (including volume numbers, abbreviated NRS Reporter designation, and beginning page numbers) as the "NRS Citations" for said NRS Reporter and with the same type of pagination as previously included in said NRS Reporter (i.e., such pagination shall not include the electronic pagination presently included on WESTLAW, any pagination related to WESTLAW Cites or any successor WESTLAW and/or New Technology citation form, or any other electronic pagination used on WESTLAW and/or the New Technology; jointly, "WESTLAW/New Technology Pagination") WESTLAW and/or the New Technology shall be deemed to be said NRS Reporter (with respect to the case reports in question) for purposes of the "Star Pagination License" provided for in Article 2; provided, however, that Licensee shall have no right whatsoever under this Agreement to produce, use, or make available WESTLAW/New Technology Pagination in any form or by any means.

1.03. "Licensee Case Reports" shall mean Licensee's reports of judicial decisions that are selected for reporting by Licensee in [Licensee Product(s)/Service(s)] and coordinated and arranged by Licensee within [Licensee Product(s)/Service(s)].

1.04. "[Licensee Product(s)/Service(s)]" shall mean *[description of Licensee Product(s)/Service(s)]* published or provided in [print, CD–ROM, online or other electronic format] by Licensee after the effective date of this Agreement.

1.05. "NRS Pagination" shall mean the page breaks and related page numbers of NRS Reporter publications. Should WESTLAW and/or a New Technology be deemed to be an NRS Reporter pursuant to Section 1.02, the "pagination" referenced in Section 1.02 (other than WESTLAW/New Technology Pagination) shall be deemed to be NRS Pagination; provided, however, that WESTLAW/New Technology Pagination shall not be NRS Pagination.

1.06. "Licensed NRS Pagination" shall mean the NRS Pagination which Licensee obtains a license to use pursuant to the terms and conditions of this Agreement.

1.07. "Licensee Subscribers" shall mean subscribers to or other licensees of [Licensee Product(s)/Service(s)] that include Licensed NRS Pagination.

1.08. "Licensee Subscriber Limitations" shall mean contractual obligations contained in the agreements pursuant to which Licensee Subscribers are licensed the right to access and use Licensed NRS Pagination as a part of [Licensee Product(s)/Service(s)] that (i) allow access to and use of Licensed NRS Pagination solely in the regular course of legal research and related work; (ii) prohibit the publication, broadcast, loan, rent, lease, sale or other transfer of Licensed NRS Pagination, or of any copy or reproduction thereof; and (iii) prohibit or limit the making, maintenance or use of Licensed NRS Pagination, or of any copy or reproduction thereof, in the same manner as such actions are prohibited or limited for the other contents of [Licensee Product(s)/Service(s)]. [*Will not apply in cases of print licenses*]

1.09. "PPI" shall mean the United States Department of Labor, Bureau of Labor Statistics, Producer Price Index for Finished Goods (1982 = 100) or its successor index(es).

1.10. "Character" shall mean each alphabetic, numeric and punctuation symbol, and each space, in the material in question, and includes each mnemonic and other control, format and character code, whether or not displayed.

1.11. "New Technology" shall mean any form or means (including, without limitation, compact disc) by which databases containing legal materials may be used, made available, or otherwise distributed other than in any (i) printed or other hard copy form or means; (ii) microfilm, microfiche, or other form or means that can be visually perceived through magnification; or (iii) Online form or means.

1.12 "Online" shall mean a system of computer terminals directly linked to a central processing unit or units and related peripheral equipment on which a database is stored and/or searched, regardless of the software architecture employed.

1.13. "WESTLAW" shall mean the Online computer-assisted legal research services presently marketed by Licensor under the WESTLAW trademark, any portion of such services or any Online computer-assisted legal research service marketed by Licensor after the effect date of this Agreement, regardless of the name of the service; provided, however, that WESTLAW shall not include Licensor compact disc or "New Technology" products or services or Online updates or supplements thereto. Except as otherwise provided in the first sentence of this Section 1.13 or elsewhere in this Agreement, WESTLAW shall include all Online services (or portions thereof) described in the preceding sentence, regardless of how such services are distributed (including, without limitation, being made available directly to subscribers by Licensor, through agents or resellers, or through gateway arrangements with other database providers or distributors).

Article 2—License And Related Terms

2.01. *Star Pagination License.* During the term of this Agreement, subject to the terms and conditions hereof, including, without limitation, the timely payment by Licensee to Licensor of the license fees provided for in Section 2.03 hereof, Licensor hereby grants to Licensee, and Licensee hereby accepts from Licensor, a non-exclusive, non-transferable (except as specifically provided in Section 6.05 hereof), limited license (i) to obtain NRS Pagination from West Case Reports contained in NRS Reporter publications; (ii) to include such NRS Pagination (which shall become Licensed NRS Pagination when so included) in corresponding Licensee Case Reports contained in [Licensee Product(s)/Service(s)] to Licensee Subscribers subject to Licensee Subscriber Limitations; provided, however, that no right to in any way reproduce, use or make available, or authorize any third party to in any way reproduce, use or make available, West Case Reports, or any portion or portions thereof other than Licensed NRS Pagination as provided herein, is granted by Licensor to Licensee under this Agreement; provided, further, that Licensor shall not challenge, under any present or future legislation, any use by the Licensee of Licensed NRS Pagination if Licensee's use of same conforms to the terms of this Agreement.

2.02 *License Limitations.* Notwithstanding the provisions of Section 2.01 hereof or any other provision of this Agreement, the limited license granted by Licensor to Licensee hereunder does not include any right to in any way reproduce, use or make available, or authorize any third party to in any way reproduce, use or make available, any NRS Pagination or Licensed NRS Pagination in any form, format or means other than as specifically provided in Section 2.01 hereof; provided, however, that, subject to the terms and conditions of this Agreement, Licensee may authorize Licensee Subscribers to create and use printouts of Licensee Case Reports containing Licensed NRS Pagination subject to Licensee Subscriber Limitations; provided, further, that nothing in this Agreement shall prohibit Licensee from selling, leasing, licensing or otherwise transferring Licensee Case Reports that contain Licensed NRS Pagination to third party information providers, but such transfers shall not include or grant any right to reproduce, publish, broadcast, distribute, loan, rent, lease, sell or otherwise transfer, make available or use the Licensed NRS Pagination contained in such Licensee Case Reports.

2.03. *License Fees.* In consideration of the license granted under Section 2.01 hereof, Licensee shall pay Licensor the license fees provided for in this Section 2.03. *[Specific license fee terms to be agreed upon, but not to exceed the following license fees per format (i.e., for each existing format and for each New Technology) per year per 1,000 characters contained in Licensee Case Reports contained in [Licensee Product(s)/Service(s)] that include Licensed NRS Pagination, subject to change based upon, but not to exceed, changes in the PPI: nine cents ($.09) during the first year of this Agreement, eleven cents ($.11) during the second year of this Agreement, and thirteen cents ($.13) during the third year and subsequent years of this Agreement.]*

2.04. *No Warranty or Liability.* ALL NRS PAGINATION SHALL BE OBTAINED AND USED BY LICENSEE ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND LICENSOR SHALL HAVE NO LIABILITY WHATSOEVER TO LICENSEE IN ANY WAY RELATED TO ANY COPY OF NRS PAGINATION OR LICENSED NRS PAGINATION OBTAINED OR USED BY LICENSEE HEREUNDER.

2.05. *Display of Licensed NRS Pagination.* During the term of this Agreement, if Licensee includes Licensed NRS Pagination as a part of any Licensee Case Report, such Licensed NRS Pagination shall be presented no less prominently (in terms of size, high-lighting, underling, etc.) than any other unofficial pagination or pinpoint locators for the Licensee Case Report in question.

2.06. *Impossibility.* Nothing contained in this Agreement shall in any way require Licensor to continue to publish or provide NRS Reporters.

2.07. *Licensor's Subscription(s) to [Licensee Product(s)/Service(s)].* In order for Licensor to monitor Licensee's compliance with the terms and conditions of Articles 2 and 3 hereof, Licensee shall, at no charge to Licensor, provide Licensor with (a) subscription(s) to [Licensee Product(s)/Service(s)]. [A copy/Copies] of [Licensee Products(s)/Service(s)] shall be provided to Licensor as soon as it/they is/are made available to any third party.

Article 3—Notice Provisions

3.01. *Copyrights.* During the term of this Agreement, Licensee (i) shall respect and not contest the validity of the copyrights claimed by Licensor in Licensor's arrangements of case reports in NRS Reporters as expressed by NRS

VOL 61 ISS 130 JL 5 1996 UMI

Pagination; and (ii) shall not, except as specifically provided in this Agreement, copy, prepare a derivative work of, distribute a copy of or display publicly, any portion of any NRS Pagination for any commercial purpose whatsoever. Nothing contained in this Agreement shall be deemed to prohibit Licensee from copying or making any other use of the contents or pagination of any NRS Reporter publication after the term of copyright in such publication has expired as provided in 17 U.S.C. § 302, *et. seq.* and related statutes and regulations (or their successors).

3.02. *Copyright Notice.* As a condition of the license granted by Licensor to Licensee under Section 2.01 hereof, Licensee shall ensure that a copyright notice which complies with the provisions of 17 U.S.C. § 401, *et. seq.* and related statutes and regulations (or their successors) appears on all publicly distributed copies of [Licensee Product(s)/Service(s)] that contain any Licensed NRS Pagination from which such [Licensee Product(s)/Service(s)] can be visually perceived, either directly or with the aid of a machine or device.

3.03. *Notice to be Used in Connection with Licensed NRS Pagination.* Licensee shall cause the following notice, or such other notice as the parties may mutually agree upon from time to time, to be prominently displayed as a part of the [Licensee Product(s)/Service(s)] that contain(s) any Licensed NRS Pagination and as a part of the documentation made available in connection therewith:

STAR PAGINATION TO WEST PUBLISHING COMPANY'S NATIONAL REPORTER SYSTEM® PUBLICATIONS HAS BEEN CREATED AND ADDED TO THIS PUBLICATION BY [LICENSEE] AND IS BEING MADE AVAILABLE UNDER A LICENSE FROM WEST.

Article 4—Confidentiality

4.01. *Confidentiality Obligations.* During the term of this Agreement and thereafter, except as specifically provided herein and/or to the extent reasonably necessary to perform its obligations or exercise or enforce its rights hereunder, neither party shall provide or disclose to any third party, or itself use, unless authorized in writing to do so by the other party or properly directed or ordered to do so by public authority, any information or matter that (i) constitutes or concerns the terms and conditions of this Agreement; (ii) is provided to it by the other party hereunder or as a result hereof; or (iii) regards any dealings or negotiations with the other party related to this Agreement; provided, however, that the parties may consult with their respective counsel with respect to such information or matter and said counsel agree to abide by the terms and conditions of this Article 4.

4.02. *Limitation on Confidentiality.* Except with respect to information or matter constituting or concerning the terms and conditions of this Agreement or regarding any dealings or negotiations between the parties hereunder, the parties shall have no confidentiality obligation under Section 4.01 hereof with respect to any information or matter specified therein that (i) is already known to them, (ii) is rightfully disclosed to them by a third party that is not acting as an agent or representative for the other party, (iii) is independently developed by or for them, (iv) is publicly known, or (v) is generally utilized by unaffiliated third parties engaged in the same business or businesses as the parties. Any party claiming an exception to Section 4.01 hereof under this Section 4.02 shall have the burden of proving the basis for the exception.

4.03. *Confidentiality Standard.* The parties shall follow the same procedures to insure their compliance with the requirements of Section 4.01 hereof as they follow to protect their own confidential and proprietary information and matter of a similar nature.

4.04. *Injunctive Relief.* Each party shall be entitled to injunctive relief to enforce the other party's compliance with the obligations contained in Section 4.01 hereof, it being understood and agreed that the parties will not have an adequate remedy at law if such obligations are not complied with.

Article 5—Term and Termination

5.01. *Term and Termination.* Subject to the terms and conditions hereof, this Agreement shall become effective upon execution by both parties and shall remain in force [*specific term and related provisions as agreed upon*]. Licensee may terminate this Agreement by giving Licensor at least 90 days' prior written notice of termination.

5.02. *Effect of Termination.* After termination of this Agreement, Licensee shall have no contractual right to include NRS Pagination in [Licensee Product(s)/Service(s)] published or provided after the effective date of such termination.

Article 6—Miscellaneous Provisions

6.01. *Limitations of Liability and Claims.*

(a) EXCEPT AS SPECIFICALLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY HEREUNDER FOR ANY PROFITS LOST BY THE OTHER PARTY OR FOR ANY CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES SUFFERED BY THE OTHER PARTY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) No claim, regardless of form, which in any way arises out of this Agreement or the parties' performance of this Agreement may be made, nor arbitration proceeding based upon such a claim commenced, by either party more than one year after the basis for the claim becomes known to the party desiring to assert it.

6.02. *Relationship of the Parties.* The parties shall be independent contractors hereunder and neither party shall have the power or authority to bind the other party with respect to any third party. Except as specifically provided herein, each party shall bear its own costs and expenses.

6.03. *Effect of Agreement.* This Agreement embodies the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior understandings and agreements, oral or written, relating thereto. Any amendment hereof must be in writing and signed by both parties.

6.04. *Force Majeure.* Each party's performance hereunder is subject to interruption or delay due to causes beyond its reasonable control such as acts of God, acts of government, war or other hostility, the elements, fire, explosion, power failure, equipment failure, industrial or labor dispute, inability to obtain necessary supplies, and the like. In the event of such an interruption or delay, any relevant period of performance of the party affected shall be extended for a period of time equal to the period of the interruption or delay and any obligation of the party whose performance is not affected which correspond to the interrupted or delayed performance shall be suspended for a period of time equal to the period of the interruption or delay. Any party whose performance hereunder is subject to such interruption or delay shall give prompt notice to the other party of the reason or reasons for the commencement of and of the conclusion of such interruption or delay.

6.05. *Assignment and Successors.* Neither this Agreement nor any part or portion hereof, or right granted hereunder, shall be assigned, sublicensed or otherwise transferred by Licensee without Licensor's prior written consent.

6.06. *Severability.* Should any provision of this Agreement be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions shall not be affected thereby.

6.07. *Arbitration.*

(a) Any and all disputes or controversies arising under this Agreement shall be resolved by private arbitration conducted in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association ("AAA"), as modified by the terms and conditions of this Section 6.07. The arbitration proceeding relating to any such arbitration shall be held in Minneapolis, Minnesota, and any judgment upon the resulting arbitration decision may be entered in the appropriate federal or state court located in Minneapolis, Minnesota. Each party hereby consents to arbitration jurisdiction and the jurisdiction of such courts for the purposes of the arbitration and related proceeding described in this Section 6.07.

(b) Arbitration proceedings under this Section 6.07 shall be commenced by a party by serving the other party with a notice of intent to arbitrate and filing such notice with the Minneapolis, Minnesota office of the AAA ("Office"). All arbitrations shall be conducted by a panel of three arbitrators selected as follows:

(i) Within ten (10) days after the notice of intent to arbitrate is filed with the Office, each party shall select an arbitrator and shall notify the other party and the Office of its selection. If either party fails to select an arbitrator within such ten (10) day period, the Office shall so notify such party, who shall thereafter have five (5) business days to select an arbitrator. Failing such selection, the Office shall make the appointment for such party.

(ii) The two arbitrators so selected shall select an neutral arbitrator within 15 days after the selection of the second of the initial arbitrators to be selected. The neutral arbitrator shall be counsel skilled in the licensing of copyrighted property. The neutral arbitrator shall not (A) be a present of former owner, officer, director, or employee of a party; (B) have or have had any business relationship (including, without limitation, an attorney-client relationship) with a party; or (c) be a present or former owner, officer, director, employee or member of any entity that has or has had a business relationship (including, without limitation, an attorney-client relationship) with a party. The initial arbitrators may seek a list of potential neutral arbitrators from the Office, but shall not be limited to such a list in selecting the neutral arbitrator. If the initial two arbitrators cannot agree on the required neutral arbitrator within said 15 day period, they shall so notify the Office within five (5) business days after the expiration of said 15 day period, and the Office shall then promptly select the required neutral arbitrator (who shall meet the criteria set forth above).

(iii) The neutral arbitrator so selected shall be the head of the arbitration panel and responsible for scheduling and coordinating the arbitration proceedings.

(c) The decision of the arbitration panel of three arbitrators shall (i) be made by at least a majority of the arbitrators; (ii) be made within 60 days after the neutral arbitrator is selected; (iii) be in writing; and (iv) set forth each of the factors considered by the arbitrators and the impact of each such factor on their decision.

(d) All arbitration decisions made in accordance with this Section 6.07 shall be final and binding upon the parties. Arbitration as provided for in this Section 6.07 shall be the sole and exclusive right and remedy of the parties with respect to any and all disputes or controversies, and each party hereby waives its right to institute any judicial proceedings with respect to any such matters, other than the right to enter judgment upon any arbitration decision rendered as provided above and to seek enforcement of such judgment once so entered.

(e) Each party shall bear its own costs and expenses (including, without limitation, all attorneys' fees, and all costs and expenses of presenting evidence to and calling witnesses before the arbitration panel) and those of the arbitrator it selects in connection with any arbitration proceeding conducted pursuant to this Section 6.07. The arbitrators shall, in their sole discretion, determine how the parties shall bear all other arbitration expenses. If required by the Office, each party shall deposit such sums of money with said Office as said Office deems necessary to defray arbitration expenses, and failure to so deposit shall be grounds for a default arbitration decision to be entered by the arbitrators against a party which fails to make such a deposit.

6.08. *Non-Waiver.* Failure of either party to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision nor of the right to enforce such provision.

6.09. *Certain Taxes.* Any sales, use, value added and similar taxes which may be due with respect to Licensed NRS Pagination licensed to Licensee hereunder, or the license payments due or made by Licensee to Licensor hereunder, shall be the responsibility of Licensee and shall be paid by Licensee directly to the relevant taxing authority. Licensee shall obtain and provide to Licensor any exemption certificates necessary to absolve Licensor of any responsibility relating to such taxes.

6.10. *Notices.* In order to be effective, all notices, requests, demands, agreements, consents, approvals, permissions and other communications required or permitted hereunder shall be in writing, shall be delivered personally, faxed, transmitted by courier or express service, or mailed, with proper charge prepaid, to the party for whom intended as set forth below, and shall be deemed to be given upon the date of actual receipt:

To Licensee:

To Licensor: President, West Publishing Company,

By mail: P.O. Box 64526, 610 Opperman Drive, St. Paul, MN 55164.

(By other means): 610 Opperman Drive, Eagan, MN 55123.

The sending party shall have the burden of proving receipt. Either party may change any address to which notices and other communications are to be directed to it by giving notice of such change to the other party in the manner provided above.

6.11. *Governing Law.* This agreement shall be governed by and construed under the laws of the State of Minnesota, and, subject to Section 6.07 hereof, any action related in any way to this Agreement shall be brought in the appropriate federal or state court located in Minneapolis, Minnesota. Each party hereby consents to the jurisdiction of such courts for the purposes of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their authorized representatives.

[LICENSEE]

By _____

Its _____

Date _____

WEST PUBLISHING COMPANY

By _____

Its _____

Date _____

United States District Court for the District of Columbia

In the matter of: United States of America, 1401 H Street, NW., Suite 4000, Washington, DC 20530, (202) 307–1858; State of California, by and through its Attorney General, Daniel E. Lungren, 1300 I Street, Sacramento, California 95814, (916) 324–7874; State of Connecticut, by and through its Attorney General, Richard Blumenthal, 110

VOL 61 ISS 130 JL 5 1996 UMI

Sherman Street, Hartford, Connecticut 06105, (860) 566–5374; State of Illinois, by and through its Attorney General, Jim Ryan, 100 West Randolph Street, Chicago, IL 60601, (312) 814–5610; Commonwealth of Massachusetts, by and through its Attorney General, Scott Harshbarger, 1 Ashburton Place, Boston, Massachusetts 02108, (617) 727–2200; State of New York, by and through its Attorney General, Dennis C. Vacco, 120 Broadway, Suite 2601, New York, New York 10271, (212) 416–8275; State of Washington, and by and through its Attorney General, Christine O. Gregoire, 900 Fourth Avenue, Suite 2000, Seattle, Washington 98164, (206) 464–7663; State of Wisconsin, by and through its Attorney General, James E. Doyle, Jr., 123 West Washington, Madison, Wisconsin 53707, (608) 266–8986; Plaintiffs, vs. the Thomson Corporation, and One Station Place, Stamford, Connecticut 06902, (203) 328–9400; West Publishing Company, 620 Opperman Drive, Eagan, Minnesota 55123, 1–800–328–9352, Defendants; Civil No. 96–1415 (CRR), File: 6/25/96, Judge Charles R. Richey.

Competitive Impact Statement

The United States pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The plaintiffs filed a civil antitrust complaint on June 19, 1996, alleging that the proposed acquisition of West Publishing Company by the Thomson Corporation would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 1 of the Sherman Antitrust Act, 15 U.S.C. 1. West and Thomson are two of the largest publishers of legal research materials in the United Staes.

The complaint alleges that the combination of these major competitors would substantially lessen competition in (1) the publication of research-enhanced cases and statutes ("enhanced primary law") in nine enhanced primary law product markets, (2) the markets for certain secondary law products, and (3) the market for the provision of comprehensive online legal research services. The prayer for relief seeks a judgment that the proposed acquisition would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 1 of the Sherman Antitrust Act, 15 U.S.C. 1. The prayer for relief also seeks a preliminary and permanent injunction preventing Thomson and West from carrying out the proposed merger, or any similar agreement, understanding or plan.

Shortly before that suit was filed, a proposed settlement was reached that permits Thomson to complete its acquisition of West, yet requires extensive divestitures and takes other steps to preserve competition in the markets in which the transaction raises significant competitive concerns. A Stipulation and proposed Final Judgment embodying the proposed settlement were filed at the same time the complaint was filed.

The proposed Final Judgment orders the defendants to divest the products listed in Exhibit A.1 and A.2 of this Competitive Impact Statement and to offer to divest the products listed in Exhibit A.3 and A.4 of this Competitive Impact Statement. In general, the defendants must complete these divestitures within nine months after entry of Final Judgment. If they do not, the Court may appoint a trustee to sell the assets. The proposed Final Judgment further requires Thomson to ensure that, until the divestitures mandated by the Final Judgment have been accomplished, the products to be divested will be operated independently as continuing, viable, ongoing lines of business, and kept separate and apart from Thomsons and West's businesses in other products. The proposed Final judgment also requires Thomson to license to any publisher, for a fee, the use of "star pagination" (explained below), and requires Thomson to extend the licenses of certain products to Lexis-Nexis.

The plaintiffs and Thomson have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Defendant Thomson Corporation is a corporation organized and existing under the laws of the Province of Ontario, Canada, with its principal office in Toronto, Ontario, Canada. It is the world's largest publisher of information for professional markets, and it is one of the largest publishers of legal research materials in the United States.

West Publishing Company is a corporation organized and existing under the laws of the State of Minnesota, with its principal office in Eagan, Minnesota. West is the largest publisher of legal research materials in the United States, notably of court decisions contained in its National Reporter System.

On February 25, 1996, Thomson agreed to purchase West for approximately $3.42 billion in cash. This transaction, which would combine West and Thomson, precipitated the Government's suit.

B. Legal Research Materials

1. Enhanced Primary Law Products

Thomson and West compete directly with each other for print and/or CD–ROM sales in the following nine enhanced primary law product markets: United States code; United States Supreme Court case law; California code; California case law; Massachusetts code; Michigan code; New York code; Washington case law; and Wisconsin case law.

For both law reporters and codes, Thomson and West provide unique, enhanced primary law products. The enhanced case law reporters sold by Thomson and West in the above markets are distinguishable from any other legal research product in two respects. First, each reporter contains the entire body of case law for its respective jurisdiction. Second, each reporter contains comprehensive written descriptions of points of law within the opinions, also known as "headnotes" and "summaries." Similarly, Thomson's and West's enhanced codes are distinguishable from other codes because they contain the entire code for the jurisdiction and contain comprehensive written descriptions of relevant case law relating to code sections, also known as "annotations." There are no other codes or case law reporters in the above markets that offer this set of enhancements to consumers.

Unenhanced codes sold in print are not a substitute for enhanced primary codes, and legal researchers do not view them to be reasonably interchangeable. First, unenhanced codes are priced significantly lower than annotated primary codes. Second, unenhanced codes are used for different purposes than enhanced codes. For example, unenhanced codes are often used for the limited purposes of identifying the correct wording of a known statute or for obtaining a brief overview of the relevant statutes on a particular topic. Enhanced codes, unlike unenhanced codes, are appropriate sources of information when a researcher has a need to promptly determine judicial interpretations of statutory language or to determine how statutes may apply to a particular factual situation—the typical functions of an attorney providing legal advice as it relates to statutes.

Likewise, unenhanced case law sold in print is not a substitute for enhanced case law. Unenhanced case law is generally used for different purposes than enhanced case law. For example, unenhanced case law is useful to check the correct language in a known case. However, enhanced primary law is necessary when the legal researcher wishes to identify and evaluate judicial interpretation of points of law within an opinion, what case law might apply to a particular factual situation, or how case law can be used to support a particular legal position—the standard practices of an attorney wishing to provide legal advice relating to case law.

Full-text searching of primary law on Lexis-Nexis, WESTLAW, and CD–ROM products is only a partial substitute to the enhanced primary law offered by Thomson and West. Full-text searching is not a good substitute, for most users and most uses, because it does not provide users with the editorial analysis of the West or Thomson enhanced primary materials.

Purchasers desiring to purchase enhanced codes would not turn to any alternative product in sufficient numbers to defeat a small but significant increase in price. In addition, purchasers desiring to purchase enhance case law reporters would not turn to any alternative product in sufficient numbers to defeat a small but significant increase in price.

2. Secondary Law Materials

Thomson and West also compete against each other for print and/or CD–ROM sales of national and state-oriented secondary law products, such as treatises and practice guides. Each of these competing products, together with similar competing products, is contained within a relevant secondary law product market ("relevant secondary law product markets"). One product from each such relevant secondary law product market is identified in Exhibit A (in addition to the enhanced primary law listed therein, as noted above). In each relevant secondary law product market, West and Thomson are either dominant or significant competitors.

Secondary law materials are used by researchers to become familiar with the law both before and after turning to primary law materials. These secondary materials enable the legal researcher, who might not have expertise in a particular area of the law, to begin his or her research in a focused manner. Secondary sources of law lead researchers to relevant case law, statutes, and other secondary law products. Secondary sources of law can also be used by researchers to provide clarification of primary law.

Purchasers desiring to purchase any of the secondary law products in the relevant secondary law product markets alleged in the complaint would not turn to any alternative product in sufficient numbers to defeat a small but significant increase in price.

3. Comprehensive Online Legal Research Services

West, through WESTLAW, is one of two major competitors in the provision of comprehensive online legal research services; the other competitor is Lexis-Nexis. WESTLAW and Lexis-Nexis are the two largest comprehensive online legal research services and they compete directly with one another.

West places its own primary and secondary law products on WESTLAW. Lexis-Nexis places its own and third parties' materials on its service, including some Thomson enhanced primary and secondary law products. Thomson licenses to Lexis-Nexis, among other products, the Auto-Cite electronic citator service. Auto-Cite is used to gather negative commentary on a case and quickly determine case history for use in correct citation. Thomson also licenses to Lexis-Nexis the United States Code Service, as well as several other Thomson enhanced primary law materials, and certain non-legal materials.

Print versions of the law are not adequate substitutes for comprehensive online legal research services. Legal researchers who have the necessary computer hardware and the necessary skills to use this product value the timeliness and speed of comprehensive online legal research services. Material provided on a comprehensive online legal research service is updated often and is thus more timely than material offered in printed form.

Full-text word searching of primary law on CD–ROMs is not an adequate substitute for comprehensive online legal research services. The content of most CD–ROMs is limited to a particular jurisdiction or topic. Moreover, the material contained on CD–ROMs is not as current as the material offered on an online legal research service. If the materials on CD–ROMs are not current, lawyers must still use online legal research services to supplement their research. Furthermore, the topical or limited jurisdictional focus of CD–ROMs limits their primary appeal to smaller law firms or firms specializing in a particular area of the law. These firms are not heavy users of comprehensive online legal research services.

While the Internet is a useful tool for some researchers, it is not a substitute for Lexis-Nexis and WESTLAW for several reasons. First, the material contained on the Internet is not nearly as comprehensive as the material offered on Lexis and WESTLAW. The Internet does not provide access to historical opinions, every court's opinions, every jurisdiction's statutes, or the number of secondary law products that Lexis-Nexis and WESTLAW offer. Second, the Internet's search mechanism is not as sophisticated or effective as Lexis-Nexis' or WESTLAW's. Third, the case law offered on the Internet does not provide citations that are accepted by courts or are relied on by attorneys.

Purchasers of comprehensive online legal research services would not turn to any alternative product in sufficient numbers to defeat a small but significant increase in price. Therefore, the provision of comprehensive online legal research services is an appropriate product market in which to assess the competitive effects of the acquisition.

C. Competition Between West and Thomson

Thomson and West compete directly to provide enhanced primary law in the relevant markets and consumers view the Thomson and West products as their first and second choices for primary law products. Indeed, in each relevant market, the Thomson and West products are the only printed products to which consumers can turn for enhanced primary law, and, to the limited extent to which full-text searching is a research enhancement, enhanced primary law products are offered by only Thomson, West, Lexis-Nexis and a few CD–ROM publishers.

It is unlikely that an entrant could offer comparable products, for three reasons. First, the entrant would have to compile an historical collection of cases. Second, the entrant would have to develop a sophisticated editorial staff capable of creating editorial enhancements that customers would accept as reliable. Third, West claims that its copyright is infringed by what is commonly referred to as "star pagination," the insertion of symbols in the text of decisions to indicate where internal page breaks are in West's National Reporter System, and the placement nearby of the corresponding West reporter's page number. West page numbers are commonly required or expected by courts. West has granted few, if any, licenses to employ star pagination. Thus, existing or potential

VOL 61 ISS 130 JL 5 1996 UMI

participants in the markets for primary law products cannot offer products with star pagination without the threat of costly infringement litigation.

West and Thomson also aggressively compete against each other in the sale of several secondary law products, referred to in Exhibit B. Thomson and West are the only publishers—or two of very few publishers—in each relevant secondary law product market. As with enhanced primary law, it is unlikely that an extrant would be able to offer comparable products. Thomson's and West's titles are established resources and it would take a long time for a putative entrant to overcome West's and Thomson's acceptance by consumers. Furthermore, West's claim of copyright infringement for "star pagination" has a significant effect on the competitive viability of CD–ROM products, where it would be possible to include both primary and secondary law products on the same CD–ROM.

Thomson and West compete vigorously on the basis of price for both enhanced primary law products and secondary law products. Thomson and West look almost exclusively to each other in making pricing decisions and promoting both their enhanced primary and their secondary law products in the relevant markets, and consumers have benefitted from this competition. Thomson and West also compete directly on the basis of quality. The quality of Thomson's and West's enhanced primary and secondary law products has improved as a result of such competition. Unless restrained, the proposed acquisition would allow the combined entity unilaterally to raise prices without the threat of a new entry into these markets by a third party. Unless restrained, the proposed acquisition would also have an adverse effect on the quality of enhanced primary law products and secondary law products.

In the comprehensive online legal research services market, Thomson supplies enhanced primary law, secondary law products, non-legal products, and Auto-Cite to Lexis-Nexis. West offers the competing WESTLAW service, and consumers have benefitted from the vigorous competition that has existed between Lexis-Nexis and WESTLAW. To effectively compete against WESTLAW, Lexis-Nexis depends upon access to certain products that Thomson licenses to Lexis-Nexis. Unless restrained, the proposed acquisition will increase Thomson's incentive to exercise market power by increasing prices for, reducing quality and innovation of, or withholding access to certain products that Thomson licenses to Lexis-Nexis.

D. Anticompetitive Consequences of the Acquisition

The complaint alleges that Thomson's acquisition of West would substantially reduce or eliminate competition in (1) nine relevant enhanced primary law product markets, (2) the publication of secondary law in the relevant secondary law product markets and (3) the market for the provision of comprehensive online legal research services.

The complaint alleges that the acquisition would increase concentration significantly in the nine relevant enhanced primary law product markets and in the secondary law product markets. After the acquisition, the combined Thomson/West entity would dominate these relevant markets. Using a measure of market concentration called the HHI, defined and explained in Exhibit C, a combination of Thomson and West would substantially increase concentration in each of the nine relevant enhanced primary law product markets. The post-merger HHIs and increases in the HHIs for each market are listed in Exhibit C. Post-merger HHIs range between 4521 and 9010; increases range from 959 to 4234.

The complaint also alleges that it is unlikely that a new entrant would enter into any of these relevant markets that would be capable of restraining any anticompetitive increase in price within a two-year period. In the nine relevant enhanced primary law product markets and in the secondary law product markets, there is now competition between the parties that would end after the acquisition, risking price increases and reduced product quality and innovation for consumers.

In the market for the provision of comprehensive online legal research services, Lexis-Nexis depends upon access to some of Thomson's products to compete effectively against WESTLAW. The complaint alleges that the acquisition is likely to lessen competition substantially in the market for comprehensive online legal research services by increasing Thomson's incentive to increase the prices of, reduce the quality of, or withhold access to certain materials it provides to Lexis-Nexis. As a result of such an exercise of market power, there could be material injury to Lexis-Nexis' ability to compete effectively, and thus harm to competition in this market. In the event of such an exercise of market power by Thomson, Lexis-Nexis would be unable or unlikely to replace the licensed Thomson products in such a way, or within such time, as to maintain the level of competition that existed between WESTLAW and Lexis-Nexis before the acquisition. Reduced competition in the provision of comprehensive online legal research services would mean higher prices and reduced product quality and innovation for consumers of those services.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the nine enhanced primary law product markets. The proposed Final Judgment requires the divestiture of enhanced code products for the United States, California, Massachusetts, Michigan, and New York. It also requires the divestiture of U.S. Reports, L.Ed., a United States Supreme Court case law reporter. Divestiture of these, and all products to be divested pursuant to the proposed Final Judgment, must be accomplished by Thomson within nine months after entry of the Final Judgment. The defendants must divest the assets and rights associated with the divested products in such a way as to satisfy the plaintiffs that the divested products can and will be operated by the acquirer as viable, ongoing product lines, and that until the divestiture, the defendants will maintain them as such.

The proposed Final Judgment also permits states to reopen bidding of three state contracts to publish the official state reporter. This process will allow the states effectively to cause a divestiture of the state reporters are all contracted by a bid process, the reopening of the bidding would stimulate competition in the publication of state reporters.

Furthermore, under the proposed Final Judgment, one secondary law product in each of the secondary law markets will be divested. Competition from buyers of the divested secondary products should cause Thomson to continually enhance and improve its products in response to such competition. Thus, the proposed Final Judgment would preserve competition in the secondary law product markets.

The proposed Final Judgment also requires Thomson to license the use of star pagination in the National Reporter System to other legal publishers. As noted above, West has claimed that a license is required for star pagination. There is pending litigation over the validity of West's copyright claim. *See Oasis Publishing Co.* v. *West Publishing Co.*, F. Supp. , 1996 WL 264773 (D.Minn. 1996); *Matthew Bender and Company, Inc.* v. *West Publishing Co.*, Docket No. 94–CIV–0589 (S.D.N.Y.).

However, West has asserted a copyright claim and has thus far prevailed in litigation. As a result, only two licenses to use West pagination have been issued by West. This has created a barrier to entry for enhanced primary law and secondary law products incorporating such pagination. The proposed Final Judgment would allow any person to license use of the West pagination at maximum prices. Thus, the proposed relief reduces one important barrier to entry and provides publishers who wish to produce such products with a new option for introducing products that will compete with Thomson/West. Thus, this relief, together with the divestitures of enhanced primary and secondary law products, will aid in maintaining the vigorous competition in these markets that has existed before the merger.

The proposed Final Judgment should not be read to suggest that the plaintiffs believe that a license is required before a legal publisher may star paginate to defendants' products. Indeed, the Antitrust Division expressly reserves the right to assert its views concerning the extent, validity, or significance of any intellectual property right claimed by defendants, in judicial proceedings or in any other forum. The proposed Final Judgment shall have no impact whatsoever on any adjudication concerning these matters.

Additionally, pursuant to the proposed Final Judgment, Thomson must divest itself of Auto-Cite and extend the terms of existing licenses of Investext, ASAP and Predicasts databases to Lexis-Nexis. The divestiture of Auto-Cite will ensure that Thomson-West cannot injure competition in the comprehensive online legal research services market by increasing prices for, reducing quality and innovation of, or by denying Lexis-Nexis access Auto-Cite. Likewise, the extension of the licenses will ensure that Lexis-Nexis will have access to these resources while it has the opportunity to make appropriate competitive adjustments. Furthermore, the divestiture of the enhanced primary law products and the secondary law products would enable the new owner of those products to make them available to Lexis-Nexis without the owner having the anticompetitive incentive that arises from owning the main Lexis-Nexis competitor.

If the defendants fail to divest the divestiture products within nine months after entry of final judgment, the Court, upon application of the United States, shall appoint a trustee nominated by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that Thomson will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. The compensation paid to the trustee and any persons retained by the trustee shall be both reasonable in light of the value of the Divested Products and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished. After appointment, the trustee will file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under the proposed Final Judgment. If the trustee has not accomplished the divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. At the same time, the trustee will furnish such report to the parties, who will each have the right to be heard and to make additional recommendations consistent with the purpose of the trust.

The proposed Final Judgment requires that Thomson maintain the Divested Products separate and apart pending divestiture.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The plaintiffs and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to:

Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street NW., Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The plaintiffs considered, as an alternative to the proposed Final Judgment, a full trial on the merits of their complaint against Thomson. The plaintiffs are satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in (1) the nine enhanced primary law product markets, (2) the markets for the relevant secondary law products, and (3) the market for the provision of comprehensive online legal research services. Thus, the proposed Final Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

VOL 61 ISS 130 JL 5 1996 UMI

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the United States Court of Appeals for the DC Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[1] Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert denied*, 454 U.S. 1083 (1981); *see also Microsoft*, 56 F.3d at 1460–62. Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment require a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)."[3]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: June 25, 1996.

Respectfully submitted,

Craig W. Conrath,

Chief, Merger Task Force, U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, N.W., Suite 4000, Washington, D.C. 20530, (202) 307–5779.

Exhibit A

Exhibit A.1

U.S. Code Service
U.S. Reports, L.Ed.
U.S. Digest
Manual of Federal Practice, 4th Ed.
Bankruptcy Law & Practice, 6th Ed.
Bankruptcy (Epstein, Nickels & White)
Corbin on Contracts
Insurance Law (Appleman)
Search & Seizure (Thomson)
Ballantine's Law Dictionary
Auto-Cite
Deering's Annotated California Code
California ADR Practice Guide
California Civil Practice Handbook: Choice Between State and Federal Courts
California Civil Trialbook
California Litigation By the Numbers Court Rules Companion
California Negligence & Settlement
California Products Liability Law & Practice
California Trial
California Tort Law
Modern California Discovery
Colorado Trial Handbook
Trial Handbook for Connecticut Lawyers
Florida Criminal Practice & Procedure
Florida Evidence 2d
Illinois Jurisprudence
Indiana Appellate Handbook 2d
Kentucky Probate PSL
Kentucky Workers' Compensation PSL
Louisiana Code of Evidence—Annotated
Louisiana Successions
Louisiana Workers' Compensation
Annotated Laws of Massachusetts
Massachusetts Corporations PSL
Massachusetts Domestic Relations PSL
Massachusetts Landlord-Tenant Law
Massachusetts Real Estate PSL
Michigan Criminal Law
Michigan Statutes Annotated
Michigan Digest
New Jersey Criminal Procedure
New York Consolidated Laws Service
New York Wills and Trusts
Ohio Family Law
Ohio Probate
Modern Texas Discovery
Texas Civil Pre-Trial Procedure
Texas Trial and Appellate Practice
Washington Trial Handbook

Exhibit A.2

Michigan Law & Practice
New York Estate Administration
Pennsylvania Law Encyclopedia

Exhibit A.3

California Appellate Reports
California Reports
California Reports Advance Sheets
Washington Appellate Court Reports
Washington Supreme Court Reports
Wisconsin Official Reports
Wisconsin Official Reports Advance Sheets

Exhibit A.4

California Digest
Wisconsin Digest

Exhibit B

Secondary Law Products

U.S. Digest

[1] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[2] *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see BNS*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. *see also Microsoft*, 56 F.3d at 1461 (whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'") (citations omitted).

[3] *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983), *quoting Gillette Co.*, 406 F. Supp. at 716, *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Manual of Federal Practice, 4th Ed.
Bankruptcy Law & Practice, 6th Ed.
Bankruptcy (Epstein, Nickels & White)
Corbin on Contracts
Insurance Law (Appleman)
Search & Seizure (Thomson)
Ballantine's Law Dictionary
California ADR Practice Guide
California Civil Practice Handbook: Choice Between State and Federal Courts
California Civil Trialbook
California Litigation By the Numbers Court Rules Companion
California Negligence & Settlement
California Products Liability Law & Practice
California Digest
California Trial
California Tort Law
Modern California Discovery
Colorado Trial Handbook
Trial Handbook for Connecticut Lawyers
Florida Criminal Practice & Procedure
Florida Evidence 2d
Illinois Jurisprudence
Indiana Appellate Handbook 2d
Kentucky Probate PSL
Kentucky Workers' Compensation PSL
Louisiana Code of Evidence—Annotated
Louisiana Successions
Louisiana Workers' Compensation
Massachusetts Corporations PSL
Massachusetts Domestic Relations PSL
Massachusetts Landlord-Tenant Law
Massachusetts Real Estate PSL
Michigan Criminal Law
Michigan Digest
Michigan Law & Practice
New Jersey Criminal Procedure
New York Wills and Trusts
New York Estate Administration
Ohio Family Law
Ohio Probate
Pennsylvania Law Encyclopedia
Modern Texas Discovery
Texas Civil Pre-Trial Procedure
Texas Trial and Appellate Practice
Washington Trial Handbook
Wisconsin Digest

Exhibit C

Definition of HHI and Calculations for Nine Markets

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2+30^2+20^2+20^2=2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which HHI is between 1000 and 1800 are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. See *Merger Guidelines* § 1.51.

The HHIs for the nine primary law markets are as follows:

	Post merger	HHI increase
The market for:		
Enhanced United States Supreme Court case law	5023	959
Enhanced United States statutory law	9019	3964
Enhanced California statutory law	8088	3866
Enhanced California case law	4762	1540
Enhanced New York statutory law	8686	3792
Enhanced Massachusetts statutory law	8954	4234
Enhanced Michigan statutory law	8702	4196
Enhanced Washington case law	4521	996
Enhanced Wisconsin case law	5535	2424

Certificate of Service

I, Keith S. Blair, hereby certify that on June 25, 1996, I caused a copy of the Competitive Impact Statement, filed this day in *United States* v. *The Thomson Corporation and West Publishing Company*, to be served on defendants the Thomson Corporation and West Publishing Company by having a copy mailed, first class, postage prepaid, to:

Wayne D. Collins, Esq., Shearman & Sterling, Citicorp Building, 153 East 53rd Street, New York, New York 10022, Counsel for The Thomson Corporation.

James E. Schatz, Esq., Schatz Paquin Lockridge Grindal & Holstein P.L.L.P., Suite 2200, 100 Washington Avenue So., Minneapolis, MN 55401, Counsel for West Publishing Company.

Dated: June 25, 1996,

Keith S. Blair.

[FR Doc. 96–16891 Filed 7–3–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manfacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 13, 1996, Dupont Pharmaceuticals, The Dupont Merck Pharmaceutical Company, 1000 Stewart Avenue, Garden City, New York 11530, made application to the Drug Enforcement Administration (DEA) for registration as bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II
Oxymorphone (9652)	II

The firm plans to manufacture the listed controlled substances to make finished products.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 3, 1996.

Dated: June 27, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–17063 Filed 7–3–96; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby

VOL 61 ISS 130 JL 5 1996 UMI

given that on April 22, 1996, Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The firm wishes to maintain its capability to import small quantities of the listed controlled substances in the event they are needed by the National Institute on Drug Abuse and other clients.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 5, 1996.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: June 27, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–17064 Filed 7–3–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 1, 1996, and published in the **Federal Register** on April 8, 1996, (61 FR 15523), Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

No comments or objections have been received. DEA has considered the factors on Title 21, United States Code, Section 823(a) and determined that the registration of the Stepan Company to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 C.F.R. 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 27, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–17065 Filed 7–3–96; 8:45 am]

BILLING CODE 4410–09–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 6-96; Sunshine Act Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and time	Subject matter
Fri., August 16, 1996 at 10:00 a.m.	Consideration of proposed decisions on claims against Albania.

Subject matter not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6029, Washington, DC 20579. Telephone: (202) 616-6988.

Dated at Washington, DC on July 2, 1996.

Jeanette Matthews,

Administrative Assistant.

[FR Doc. 96–17288 Filed 7–2–96; 2:18 pm]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination Nos. Ak960006 and WA960009 dated March 15, 1996. Agencies with construction projects pending, to which this wage decision would have been applicable, should utilize Wage Decision AK960005 and WA960011. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" are listed by Volume and States:

Volume IV

Ohio
OH96–0038 (July 5, 1996)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey:
NJ96–0002 (March 15, 1996)
NJ96–0003 (March 15, 1996)
NJ96–0004 (March 15, 1996)
NJ96–0007 (March 15, 1996)
New York:
NY96–0002 (March 15, 1996)
NY96–0003 (March 15, 1996)
NY96–0004 (March 15, 1996)
NY96–0005 (March 15, 1996)
NY96–0006 (March 15, 1996)
NY96–0007 (March 15, 1996)
NY96–0008 (March 15, 1996)
NY96–0009 (March 15, 1996)
NY96–0010 (March 15, 1996)
NY96–0011 (March 15, 1996)
NY96–0012 (March 15, 1996)
NY96–0013 (March 15, 1996)
NY96–0014 (March 15, 1996)
NY96–0015 (March 15, 1996)
NY96–0016 (March 15, 1996)
NY96–0017 (March 15, 1996)
NY96–0018 (March 15, 1996)
NY96–0019 (March 15, 1996)
NY96–0020 (March 15, 1996)
NY96–0021 (March 15, 1996)
NY96–0022 (March 15, 1996)
NY96–0025 (March 15, 1996)
NY96–0026 (March 15, 1996)
NY96–0031 (March 15, 1996)
NY96–0032 (March 15, 1996)
NY96–0033 (March 15, 1996)
NY96–0034 (March 15, 1996)
NY96–0036 (March 15, 1996)
NY96–0037 (March 15, 1996)
NY96–0038 (March 15, 1996)
NY96–0039 (March 15, 1996)
NY96–0040 (March 15, 1996)
NY96–0041 (March 15, 1996)
NY96–0042 (March 15, 1996)
NY96–0043 (March 15, 1996)
NY96–0044 (March 15, 1996)
NY96–0045 (March 15, 1996)
NY96–0046 (March 15, 1996)
NY96–0047 (March 15, 1996)
NY96–0048 (March 15, 1996)
NY96–0049 (March 15, 1996)
NY96–0050 (March 15, 1996)
NY96–0051 (March 15, 1996)
NY96–0060 (March 15, 1996)
NY96–0067 (March 15, 1996)
NY96–0073 (March 15, 1996)
NY96–0074 (March 15, 1996)
NY96–0075 (March 15, 1996)
NY96–0076 (March 15, 1996)
NY96–0077 (March 15, 1996)
Rhode Island:
RI96–0001 (March 15, 1996)
RI96–0002 (March 15, 1996)
RI96–0003 (March 15, 1996)
RI96–0004 (March 15, 1996)

Volume II

Pennsylvania:
PA96–0009 (March 15, 1996)
PA96–0029 (March 15, 1996)

Volume III

Alabama:
AL96–0034 (March 15, 1996)
Florida:
FL96–0001 (March 15, 1996)
FL96–0011 (March 15, 1996)
Georgia:
GA96–0003 (March 15, 1996)
GA96–0050 (March 15, 1996)
GA96–0053 (March 15, 1996)
GA96–0065 (March 15, 1996)
GA96–0073 (March 15, 1996)
GA96–0084 (March 15, 1996)
GA96–0085 (March 15, 1996)
GA96–0086 (March 15, 1996)
GA96–0087 (March 15, 1996)
GA96–0088 (March 15, 1996)
Kentucky:
KY96–0001 (March 15, 1996)
KY96–0007 (March 15, 1996)
KY96–0029 (March 15, 1996)
KY96–0044 (March 15, 1996)

Volume IV

Illinois:
IL96–0001 (March 15, 1996)
IL96–0002 (March 15, 1996)
IL96–0003 (March 15, 1996)
IL96–0005 (March 15, 1996)
IL96–0006 (March 15, 1996)
IL96–0007 (March 15, 1996)
IL96–0008 (March 15, 1996)
IL96–0009 (March 15, 1996)
IL96–0016 (March 15, 1996)
IL96–0023 (March 15, 1996)
IL96–0026 (March 15, 1996)
IL96–0049 (March 15, 1996)

VOL
61
ISS
130
1996
JL
5
UMI

Michigan:
MI96–0001 (March 15, 1996)
MI96–0002 (March 15, 1996)
MI96–0003 (March 15, 1996)
MI96–0004 (March 15, 1996)
MI96–0005 (March 15, 1996)
MI96–0007 (March 15, 1996)
MI96–0012 (March 15, 1996)
MI96–0017 (March 15, 1996)
MI96–0030 (March 15, 1996)
MI96–0031 (March 15, 1996)
MI96–0046 (March 15, 1996)
MI96–0047 (March 15, 1996)
MI96–0049 (March 15, 1996)
MI96–0062 (March 15, 1996)
MI96–0063 (March 15, 1996)
MI96–0064 (March 15, 1996)
Minnesota:
MN96–0005 (March 15, 1996)
MN96–0007 (March 15, 1996)
MN96–0008 (March 15, 1996)
MN96–0015 (March 15, 1996)
MN96–0027 (March 15, 1996)
MN96–0031 (March 15, 1996)
MN96–0058 (March 15, 1996)
MN96–0061 (March 15, 1996)
Ohio:
OH96–0001 (March 15, 1996)
OH96–0002 (March 15, 1996)
OH96–0003 (March 15, 1996)
OH96–0028 (March 15, 1996)
OH96–0029 (March 15, 1996)
OH96–0034 (March 15, 1996)
OH96–0035 (March 15, 1996)
OH96–0036 (March 15, 1996)
OH96–0038 (March 15, 1996)
Index

Volume V

Nebraska:
NE96–0001 (March 15, 1996)
NE96–0003 (March 15, 1996)
NE96–0007 (March 15, 1996)
NE96–0009 (March 15, 1996)
NE96–0010 (March 15, 1996)
NE96–0011 (March 15, 1996)
NE96–0038 (March 15, 1996)
NE96–0058 (March 15, 1996)
NE96–0059 (March 15, 1996)
Texas:
TX96–0003 (March 15, 1996)
TX96–0005 (March 15, 1996)
TX96–0007 (March 15, 1996)
TX96–0010 (March 15, 1996)
TX96–0014 (March 15, 1996)
TX96–0018 (March 15, 1996)
TX96–0046 (March 15, 1996)
TX96–0060 (March 15, 1996)
TX96–0061 (March 15, 1996)
TX96–0085 (March 15, 1996)
TX96–0100 (March 15, 1996)
TX96–0114 (March 15, 1996)

Volume VI

Alaska:
AK96–0005 (March 15, 1996)
California:
CA96–0001 (March 15,1996)
CA96–0002 (March 15,1996)
CA96–0004 (March 15,1996)
CA96–0027 (March 15,1996)
CA96–0028 (March 15,1996)
CA96–0029 (March 15,1996)
CA96–0030 (March 15,1996)
CA96–0031 (March 15,1996)
CA96–0032 (March 15,1996)
CA96–0033 (March 15,1996)
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CA96–0036 (March 15,1996)
CA96–0037 (March 15,1996)
CA96–0038 (March 15,1996)
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CA96–0040 (March 15,1996)
CA96–0041 (March 15, 1996)
CA96–0042 (March 15, 1996)
CA96–0043 (March 15, 1996)
CA96–0044 (March 15, 1996)
CA96–0045 (March 15, 1996)
CA96–0046 (March 15, 1996)
CA96–0047 (March 15, 1996)
CA96–0048 (March 15, 1996)
CA96–0049 (April 12, 1996)
CA96–0050 (April 12, 1996)
CA96–0051 (April 12, 1996)
CA96–0052 (April 12, 1996)
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CA96–0065 (April 12, 1996)
CA96–0066 (April 12, 1996)
CA96–0067 (April 12, 1996)
CA96–0069 (April 12, 1996)
CA96–0070 (April 12, 1996)
CA96–0071 (April 12, 1996)
CA96–0072 (April 12, 1996)
CA96–0073 (April 12, 1996)
CA96–0074 (April 12, 1996)
CA96–0075 (April 12, 1996)
CA96–0076 (April 12, 1996)
CA96–0077 (April 12, 1996)
CA96–0078 (April 12, 1996)
CA96–0079 (April 12, 1996)
CA96–0080 (April 12, 1996)
CA96–0081 (April 12, 1996)
CA96–0082 (April 12, 1996)
CA96–0084 (April 12, 1996)
CA96–0085 (April 12, 1996)
CA96–0086 (April 12, 1996)
CA96–0087 (April 12, 1996)
CA96–0088 (April 12, 1996)
CA96–0089 (April 12, 1996)
CA96–0090 (April 12, 1996)
CA96–0091 (April 12, 1996)
CA96–0092 (April 12, 1996)
CA96–0093 (April 12, 1996)
Colorado:
CO96–0001 (March 15, 1996)
CO96–0003 (March 15, 1996)
CO96–0005 (March 15, 1996)
CO96–0006 (March 15, 1996)
CO96–0007 (March 15, 1996)
CO96–0008 (March 15, 1996)
CO96–0009 (March 15, 1996)
CO96–0011 (March 15, 1996)
CO96–0021 (March 15, 1996)
CO96–0023 (March 15, 1996)
CO96–0025 (March 15, 1996)
Idaho:
ID96–0001 (March 15, 1996)
North Dakota:
ND96–0001 (March 15, 1996)
ND96–0002 (March 15, 1996)
ND96–0005 (March 15, 1996)
ND96–0019 (March 15, 1996)
ND96–0024 (March 15, 1996)
Oregon:
OR96–0001 (March 15, 1996)
OR96–0017 (March 15, 1996)
Washington:
WA96–0001 (March 15, 1996)
WA96–0002 (March 15, 1996)
WA96–0003 (March 15, 1996)
WA96–0004 (March 15, 1996)
WA96–0005 (March 15, 1996)
WA96–0007 (March 15, 1996)
WA96–0008 (March 15, 1996)
WA96–0011 (March 15, 1996)
Alaska:
Index
Washington:
Index

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Document, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC.; this 28th day of June 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–17012 Filed 7–3–96; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers; Meeting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of advisory committee meeting.

SUMMARY: This notice announces the date, time, place, and agenda summary for the fifth and final meeting of the Mine Safety and Health Administration's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, room 631, Arlington, Virginia 22203; phone 703–235–1910.

SUPPLEMENTARY INFORMATION: A public meeting of the advisory committee will be held as follows:

(1) *Date and Time:*

a. July 22, 1996, beginning at 1:00 p.m. and ending at 7:00 p.m.

b. July 23–24, 1996, beginning at 8:00 a.m. and ending at 7:00 p.m. each day.

c. July 25, 1996, beginning at 8:00 a.m. and ending at 5:00 p.m.

(2) *Location:*

The meeting will be held the Hyatt Regency-Lexington, At Lexington Center, 400 West Vine Street, Lexington, Kentucky 40507; phone: 606–235–1234.

The Secretary of Labor established this advisory committee (60 FR 5947) to develop recommendations for improved standards or other appropriate actions addressing: permissible exposure limits to eliminate black lung disease and silicosis; the means to control respirable coal mine dust levels; improved monitoring of respirable coal dust levels and the role of the miner in that monitoring; and the adequacy of operator sampling programs to determine the actual levels of dust concentrations to which miners are exposed. The advisory committee is chartered through September 30, 1996 (60 FR 55284).

The agenda for the fifth meeting will include discussions on:

(1) Draft recommendations on permissible exposure limits for respirable coal mine dust and respirable silica developed by the committee during the fourth meeting;

(2) Implementation of dust controls at surface coal mines;

(3) Sampling to assure representative samples;

(4) Application of personal and area sampling strategies;

(5) Compliance sampling by MSHA and by the operator;

(6) The miner's role in respirable dust sampling;

(7) Dust sampling for surface mines;

(8) Utilization of medical data obtained as part of the medical surveillance program; and

(9) Research needs.

The committee will also take final votes on all previously drafted recommendations.

The public is invited to attend. The chairperson will provide one hour on July 23 and 24, 1996 for interested persons to make comments. Official records of the meeting will be available for public inspection at the above MSHA address.

Dated: June 28, 1996.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 96–17101 Filed 7–1–96; 11:57 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences; Committee of Visitors (1110).

Dates and Times: July 22–24, 1996; 8:30 a.m. to 5:00 p.m.

Place: Room 390, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Machi Dilworth, Division of Integrative Biology and Neuroscience, National Science Foundation, Rm. 685, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1420.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Developmental Mechanisms Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: July 1, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–17136 Filed 7–3–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemical and Transport Systems (#1190).

Dates and Times: July 22–23, 1996; 8:30 a.m.–5:00 p.m.

Place: Room 580 National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Program Managers, NSF/EPA Partnership, Chemical and Transport Systems Divisions, Room 525, NSF, 4201 Wilson Blvd., Arlington, VA 22230, (703) 306–1371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF/EPA Partnership Proposal Solicitation (95–48) for financial support.

Agenda: To review and evaluate nominations for the NSF/EPA Partnership proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 1, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–17137 Filed 7–3–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

VOL
61
ISS
130
JL
5
1996
UMI

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Dates and Times: July 23 and July 24, 1996; 8:30 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, Virginia.

Type of Meeting: Closed.

Contract Person: Dr. Devendra P. Garg, Program Director, Dynamic Systems & Control Program, Division of Civil and Mechanical Systems, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230 703/306–1361, x 5068.

Purpose of Meeting: To provide advise and recommendations concerning proposals submitted to NSF for finanicial support.

Agenda: To review and evaluate research proposals as part of selection process for awards.

Reason for Closing: The proposal being reviewed include information of a proprietary or confidential nature, including Technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. There matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: July 1, 1996

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–17138 Filed 7–3–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).

Dates and Times: Thursday, July 25, 1996 8:00 a.m.–5:00 p.m.

Place: Room 390, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Drs. Betty Ruth Jones & Alexandra King, Program Directors, HRD, Room 815, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1633.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Centers of Excellence for Research, Teaching, and Learning (CERTL) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 1, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–17139 Filed 7–3–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research, Evaluation and Communication; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended); the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Research, Evaluation and Communication.

Dates and Times: July 22, 1996; 8:30 a.m. to 5:00 p.m., July 23, 1996; 8:30 a.m. to 5:00 p.m., July 24, 1996, 8:30 a.m. to 4:00 p.m.

Place: Rooms 310, 320, and 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Nora Sabelli, Senior Program Director, 4201 Wilson Boulevard, Room 855, Arlington, VA 22230. Telephone (703) 306–1651.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted to the Networking Infrastructure for Education Program.

Reason for Closing: Because the proposals reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: July 1, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–17140 Filed 7–3–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Undergraduate Education.

Dates and Times: July 22, 1996; 7:30 p.m. to 9:00 p.m., July 23, 1996; 8:30 a.m. to 5:00 p.m., July 24, 1996; 8:30 a.m. to 5:00 p.m., July 25, 1996; 8:30 a.m. to 2:00 p.m.

Place: The Doubletree Hotel, 300 Army-Navy Drive, Arlington, VA 22202.

Type of Meeting: Closed.

Contact Person: Dr. Herbert Levitan, Section Head, Dr. Susan Hixson, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1666.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Course & Curriculum Development & the Faculty Enhancement Programs Panel Meetings.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: July 1, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–17141 Filed 7–3–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Undergraduate Education.

Dates and Times: July 26, 1996; 8:30 a.m. to 5:00 p.m., July 27, 1996; 8:30 a.m. to 5:00 p.m.

Place: The Doubletree Hotel, 300 Army Navy Drive, Arlington, VA 22202.

Type of Meeting: Closed.

Contact Person: Dr. Herbert Levitan, Section Head, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1666.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Institution Reform of Undergraduate Education Panel Meeting.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 1, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–17142 Filed 7–3–96; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SKILL STANDARDS BOARD

Notice of Open Meeting

AGENCY: National Skill Standards Board.

ACTION: Notice of Open Meeting.

SUMMARY: The National Skill Standards Board was established by an Act of Congress, the Goals 2000: Educate America Act of 1994, Title V, Pub. L. 103–227. The 27-member National Skill Standards Board will serve as a catalyst and be responsible for the development and implementation of a national system of voluntary skill standards and certification through voluntary partnerships which have the full and balanced participation of business, industry, labor, education, and other key groups.

TIME AND PLACE: The meeting will be held from 8 a.m. to approximately 4 p.m. on Friday, July 19, 1996, in the Mt. Vernon Salon A & B, 2nd Floor of the Madison Hotel at 15th & M Streets, NW., Washington, DC.

AGENDA: The agenda for the Board Meeting will include discussion of: planning and framework discussions for the upcoming Skill Standards Summit this fall.

PUBLIC PARTICIPATION: The meeting from 8 a.m. to 4 p.m., is open to the public. Seating is limited and will be available on a first-come, first-served basis. Seats will be reserved for the media. Disabled individuals should contact Claire Grenewald at (202) 254–8628, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Sally Conway, NSSB Outreach Director, at (202) 254–8628.

Signed at Washington, DC, this 24th day of June 1996.

Judy Gray,

Executive Director, National Skill Standards Board.

[FR Doc. 96–17155 Filed 7–3–96; 8:45 am]

BILLING CODE 4510–23–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Thursday, July 11, 1996.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: The first two items are open to the public. The last item is closed to the public under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

6721 Railroad Accident Report: Derailment of Amtrak Train 49 "The Lake Shore Limited" While on the Consolidated Rail Corporation Tracks at Batavia, New York, August 3, 1994.

6722 Railroad Briefs of Accidents:

- The Raking Collision and Derailment of San Francisco Muni Cable Car 5 and Muni Cable Car 9 in San Francisco, California, August 17, 1995.
- The Rear End Collision and Derailment of Union Pacific Train APSE5Z with Union Pacific Train APLA5 in Laramie, Wyoming, November 18, 1995.
- The Employee Fatalities of 2 Port Authority Trans Hudson Track Workers in the Accident Involving Port Authority Trans Hudson Subway Train 122 in Harrison, New Jersey, December 2, 1995.

6700 Opinion and Order: Administrator v. Buckel, Docket SE–14129; disposition of Administrator's appeal.

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: July 1, 1996.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 96–17239 Filed 7–2–96; 11:03 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: NRC Form 396, Certification of Medical Examination by Facility Licensee.

2. Current OMB approval number: 3150–0024.

3. How often the collection is required: Upon application for an initial operator license, every six years for the renewal of operator or senior operator licenses, and upon notices of disability.

4. Who is required or asked to report: Facility employers of applicants for operator licenses.

5. The number of annual respondents: 975.

6. The number of hours needed annually to complete the requirement or request: Reporting: 243.75 hours (.25 hours per response), Recordkeeping: 497.5 hours (.10 hours per record).

7. Abstract: NRC Form 396 establishes the procedure for transmitting information to the NRC regarding the medical condition of applicants for initial or renewal operator licenses and for the maintenance of medical records for all licensed operators. The information is used to determine whether the physical condition and general health of applicants for operator licenses is such that the applicant would not be expected to cause operational errors endangering public health and safety.

Submit, by September 3, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, by

VOL 61 ISS 130 JL 5 1996 UMI

telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 26th day of June, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford, Designated Senior,

Official for Information Resources Management.

[FR Doc. 96–17107 Filed 7–03–96; 8:45 am]

BILLING CODE 7590–01–P

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: Data Report on Spouse.

3. The Form number, if applicable: NRC Form 354.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: NRC employees, NRC contractors, and NRC licensees, applicants and others (e.g. intervenors) who marry after completing NRC's Personnel Security Forms; or marry after having been granted an NRC access authorization or employment clearance.

6. An estimate of the number of responses: 60.

7. The estimated number of annual respondents: 60.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 12 (.20 hours per response).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: Completion of the NRC Form 354 is a mandatory requirement for NRC employees, contractors, licensees, applicants and others who marry after submission of the Personnel Security Forms, or after receiving an access authorization or employment clearance to permit the NRC to assure there is no increased risk to the common defense and security.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by (insert date) 30 days after publication in the **Federal Register**: Peter Francis, Office of Information and Regulatory Affairs (3150–0026), NEOB–10202, Office of Management and Budget, Washington DC, 20503.

Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo Shelton (301) 415–7233.

Dated at Rockville, Maryland, this 26th day of June, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–17106 Filed 7–3–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 40–1341]

Tennessee Valley Authority; Notice of Placing the Edgemont, South Dakota, Uranium Mill Tailings Disposal Site in the Custody and Long-Term Care of the U.S. Department of Energy Under the General Licensing Provisions of 10 CFR Part 40.28

AGENCY: Nuclear Regulatory Commission.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has accepted the Long-Term Surveillance Plan (LTSP) submitted by U.S. Department of Energy (DOE), by letter dated June 24, 1996, for the Edgemont, South Dakota uranium mill tailings disposal site. The LTSP was developed by DOE as the long-term custodian of the Edgemont site. By accepting the LTSP, the Edgemont site will be regulated by NRC under the general licensing provisions of 10 CFR 40.28, and the Tennessee Valley Authority's Source Material License SUA–816 for the Edgemont uranium mill site has been terminated. These actions complete all requirements for closure of the Edgemont site under Title II of the Uranium Mill Tailings Radiation Control Act of 1978, as amended.

FOR FURTHER INFORMATION CONTACT: Mohammad W. Haque, Uranium Recovery Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6640.

Dated at Rockville, Maryland, this 27th day of June 1996.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–17108 Filed 7–3–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission For OMB Review; Comment Request; Extension of Standard Form 113–A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995) this notice announces a request submitted to the Office of Management and Budget (OMB) for renewal of authority to collect data for the Monthly Report of Federal Civilian Employment (SF 113–A). The information that is collected provides a timely count of Governmentwide employment, payroll, and turnover data. Uses of the data include monthly reporting to OMB and publishing the bimonthly Federal Civilian Workforce Statistics—Employment and Trends: answering data requests from the Congress, White House, other Federal agencies, the media, and the public; providing employment counts required by OMB; and serving as benchmark data for quality control of the Central Personnel Data File. The number of responding agencies is 130. The report is submitted 12 times a year. The total number of person-hours required to prepare and transmit the reports annually is estimated at 3,120. OPM published a preliminary notice of its intention to submit this request to OMB in the May 3, 1996 **Federal Register** at page 19963. No comments were received as a result of this notification.

For copies of the clearance package, call James M. Farron, Reports and Forms Manager, on (202) 418–3208, or by e-mail to jmfarron@mail.opm.gov.

DATES: Comments on this proposal should be received on or before August 5, 1996.

ADDRESSES: Send or deliver comments to: May Eng, U.S. Office of Personnel Management, Room 7439, 1900 E Street, NW., Washington, DC 20415; and Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: May Eng, (202) 606–2684, U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–16275 Filed 7–3–96; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22048; 811–4876]

American Corporate Trust; Notice of Application for Deregistration

June 28, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: American Corporate Trust.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 5, 1996 and amended on May 31, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 23, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, City Center, 100 2nd Ave. S., Suite 902, Box 8, St. Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT: Mary T. Geffroy, Staff Attorney, at (202) 942–0553, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a registered unit investment trust under the Act. On October 16, 1986, applicant filed with the SEC a notification of registration on Form N–8A pursuant to section 8(a) of the Act, and a registration statement to register its units under section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on August 21, 1987.

2. Applicant, during the life of the trust, offered shares in the following five series: First Yield Series, Second Yield Series, Third Yield Series, Fourth Yield Series, and Fifth Yield Series.

3. Trust assets were distributed to unitholders based upon their *pro rata* share. The size of each trust portfolio fell below mandatory liquidation levels and thus, each trust was liquidated. The bonds remaining in each series were sold at fair market value. The net asset value of those bonds was distributed in cash to the unitholders of the respective series. No brokerage commissions were incurred in connection with the distribution.

4. No expenses were incurred in connection with the distribution. As of the date of the application, applicant had no assets liabilities, or unitholders. Applicant is not engaged, nor proposes to engage, in any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17153 Filed 7–3–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22044; 811–5668]

BEA Investment Funds, Inc.; Notice of Application for Deregistration

June 27, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: BEA Investment Funds, Inc.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on April 15, 1996, and amended on June 11, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 22, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, One Citicorp Center, 153 East 53rd Street, New York, N.Y. 10022.

FOR FURTHER INFORMATION CONTACT: Mary T. Geffroy, Staff Attorney, at (202) 942–0553, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. the complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is registered under the Act as an open-end investment company and is organized as a Maryland corporation. On May 26, 1988, applicant filed with the SEC a registration statement on Form N–1A registering an indefinite number of shares of its Institutional Money Market Fund ("IMM"). The registration statement was declared effective on July 22, 1988 and the initial public offering

VOL 61 ISS 130 JL 5 1996 UMI

commenced that same day. Applicant registered shares in three additional series: the Institutional Government Fund ("IGF"), the Tax-Exempt Money Market Fund ("TEMMF"), and the U.S. Treasury Money Fund ("TMMF"). IGF was declared effective on December 28, 1999, and TEMMF and TMMF were declared effective on March 1, 1993. As of January 31, 1996, IGF was applicant's only outstanding series.

2. On January 10, 1996, applicant's board of directors approved the liquidation and dissolution and authorized the officers of the applicant to sell all or substantially all of the securities held by the applicant and other properties of the applicant for cash at the fair market value of such assets and properties. The board of director's determination to liquidate the applicant was based upon the perceived inability to raise assets, lack of shareholder interest, and inefficiencies associated with investing limited funds. Also on January 10, 1996, applicant's shareholders adopted and ratified resolutions approving and authorizing the liquidation and dissolution of the applicant.

3. As of January 31, 1996, there were 1,862,808.568 shares of common stock of IGF. These shares had an aggregate net asset value of $17,938,846.49 and a per share net asset value of $9.63. There were no other classes of securities of the applicant outstanding.

4. Applicant sold all of the securities held by it on February 1, 1996. The proceeds from the sale of these securities were $17,938,846.49. Such proceeds were fully distributed in cash to the shareholders on February 1, 1996. Each shareholder received the net asset value of its shares.

5. Expenses consisting of accounting, administrative, and certain legal expenses were incurred in connection with the liquidation and termination of applicant. These expenses totalled approximately $4,200 and were borne by BEA Associates, applicant's investment adviser. No brokerage commissions were incurred in connection with the liquidation.

6. As of the date of the application, applicant had no shareholders, assets, or liabilities, and was not a party to any litigation or administrative proceeding. Applicant is neither engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

7. Applicant intends to file a notice of termination with the State Department of Taxation and Assessment of Maryland.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–17099 Filed 7–3–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26536]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

June 28, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 22, 1996, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or other issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

System Energy Resources, Inc., et al. (70–8511)

Entergy Corporation ("Entergy"), P.O. Box 61005, New Orleans, Louisiana 70161, a registered holding company, and its subsidiary companies System Energy Resources, Inc. ("SERI"), Echelon One, 1340 Echelon Parkway, Jackson, Mississippi 39213; Entergy Arkansas, Inc., formerly Arkansas Power & Light Company ("Entergy Arkansas"), P.O. Box 551, Little Rock, Arkansas 72203; Entergy Louisiana, Inc., formerly Louisiana Power & Light Company ("Entergy Louisiana"), 639 Loyola Avenue, New Orleans, Louisiana 70113; Entergy Mississippi, Inc., formerly Mississippi Power & Light Company ("Entergy Mississippi"), P.O. Box 1640, Jackson, Mississippi 39205; and Entergy New Orleans, Inc., formerly New Orleans Public Service Inc. ("Entergy New Orleans" and together with Entergy Arkansas, Entergy Louisiana, and Entergy Mississippi, "Operating Subsidiaries"), 639 Loyola Avenue, New Orleans, Louisiana 70113, have filed a post-effective amendment to their application-declaration pursuant to Sections 6(a), 7, 9(a), 10, 12(b) and 12(d) of the Act and Rules 44, 45 and 54 thereunder.

By orders dated May 9, 1995 (HCAR No. 26287) and August 18, 1995 (HCAR No. 26358) ("Orders"), the Commission authorized SERI, from time to time through December 31, 1996, to (a) issue and sell one or more series of its first mortgage bonds ("Bonds") and one or more series of its debentures ("Debentures") in an aggregate principal amount not to exceed $265 million, and (b) enter into arrangements for the issuance and sale of tax-exempt revenue bonds ("Tax-Exempt Bonds") in an aggregate principal amount not to exceed $235 million through December 31, 1996. The Commission additionally authorized SERI through December 31, 1996 to issue and pledge one or more new series of its first mortgage bonds ("Collateral Bonds") in an aggregate principal amount not to exceed $251 million as security for the Tax-Exempt Bonds.

In the Orders, the Commission reserved jurisdiction over proposals by SERI to enter into reimbursement agreements underlying letters of credit ("Letters of Credit") issued to support SERI's obligations in connection with the Tax-Exempt Bonds, pending completion of the record.

SERI proposes to increase its authorization to issue and sell one or more series of the Bonds and/or Debentures to a combined aggregate principal amount not to exceed $540 million. SERI further proposes to increase its authority to incur obligations in connection with the issuance and sale of Tax-Exempt Bonds to an aggregate principal amount not to exceed $350 million. Also, SERI proposes to increase its authority to issue and pledge Collateral Bonds, as security for the Tax-Exempt Bonds, to an aggregate principal amount not to exceed $395 million. SERI requests authority to extend its authorization to enter into the above transactions through December 31, 2000.

All other terms and conditions authorized in the Orders will remain the same, other than a change in the up-front fees that may be paid for any Letter of Credit to up to one percent of the face amount of such Letter of Credit. These terms and conditions include, *inter alia*, assignments by SERI of contractual rights held be SERI under certain agreements entered into among SERI, Entergy and the Operating Subsidiaries as additional security for holders of any series of Bonds or in connection with the issuance of Tax-Exempt Bonds.

Entergy Corporation, et al. (70–8863)

Entergy Corporation ("Entergy"), 639 Loyola Avenue, New Orleans, Louisiana 70113, a registered holding company, and Entergy Power Marketing Corporation ("EPMC"), 900 South Shackleford Road, Suite 210, Little Rock, Arkansas 72211, a proposed wholly owned nonutility subsidiary company of Entergy, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and rules 45, 54, 87(b)(1), 90 and 91 thereunder.

Presently, EPMC has an order from the Federal Energy Regulatory Commission ("FERC") certifying it as an exempt wholesale generator ("EWG") in accordance with the requirements of the Act. Entergy, which owns 100% of the authorized and issued common stock of EPMC, has invested in EPMC and complied with the applicable requirements of section 32 and rule 53, of the Act, However, due to the uncertainty surrounding the requirement that EWGs be engaged solely and exclusively in the business of owning and/or operating eligible facilities and selling electric energy at wholesale, EPMC states that it will elect to decertify, and not maintain its status as a EWG.

As a result thereof, Entergy now proposes to finance EPMC, as a wholly owned nonutility subsidiary company, and EPMC will engage in wholesale brokering and marketing of energy commodities. EPMC will not own any utility assets, not will it own or operate any electric or gas utility company, as defined under the Act.

Specifically, EPMC proposes to provide, on behalf of associate and nonassociate companies, choices to major customers with respect to the purchase, sale, borrowing and lending of electricity, natural gas and other fuels, and the management of their operations. In connection with these activities, EPMC will purchase, sell, supply, market, broker, or otherwise trade electricity, gas or other fuels,[1] provide electricity or fuel management services, and engage in activities or perform services, related to the foregoing. In addition, EPMC proposes to provide instantaneous supply and sales options to electric generators; help customers manage price changes in electricity and fuel relative to time and location; and assist electric utilities and nonutility generators by managing fuel supply and transportation contracts, banking electricity until needed and providing price and deliver flexibility.[2]

EPMC also anticipates that it may engage in fuel delivery or fuel conversion, activities, whereby EPMC would deliver fuel supplies to a utility or non-utility generator for the conversion of such fuel into electric energy which then would be delivered to EPMC for resale. With respect to traditional power brokering activities, EPMC will act as an agent or broker for utilities, non-utility generators and other power marketers, to effectuate such parties' sales and purchases of electric energy at wholesale. With respect to retail activities, the applicants request that the Commission reserve jurisdiction pending completion of the record.

In order top finance the above-mentioned activities, Entergy seeks authority to make capital contributions to EPMC in an amount up to $20 million, and to provide up to $150 million in credit support, in the form of guarantees, for certain of EPMC's proposed transactions. Entergy's investment in EPMC will constitute EPMC's total capitalization.

EPMC proposes to engage in risk management transactions, including swaps, options and futures contracts that will assist its customers in hedging against adverse price impacts, However, EPMC will employ risk-reduction measures to limit potential losses that could be incurred through its activities. Specifically, EPMC will: (1) Seek to minimize the financial exposure of Entergy through its guarantees; and (2) not engage in speculative trading in the energy market and will use market hedging measures solely to minimize risk and will limit hedging activity to no more than the total amount of its commodities subject to market price fluctuation.

EPMC proposes to enter into a service contract with Entergy Enterprises, Inc. ("EEI"), whereby EEI will provide EPMC with administrative services, including maintaining books and records and preparing corporate filings. EEI will provide such services on an at-cost basis in accordance with rules 90 and 91 of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17151 Filed 7–3–96; 8:45 am]

BILLING CODE 8010–01–M

[1] EMPC anticipates that such fuels will include those likely to be involved in transactions concerning natural gas, such as oil and other hydrocarbons, wood chips, wastes and other combustible substances.

[2] In the future, EPMC may help electric utilities find the best way to meet Clean Air Act requirements through a combination of new gas technologies, emission credits, cross-fuel management and wholesale electricity purchases and sales.

[Rel. No. IC–22045; No. 812–9968]

Royce Capital Trust, et al.

June 27, 1996.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Royce Capital Trust ("Trust") and Quest Advisory Corp. ("Quest").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) granting exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting shares of any current or future series of the Trust and shares of any other investment company that is designed to fund variable insurance products and for which Quest or its affiliates may in the future serve as investment adviser, administrator, manager, principal underwriter or sponsor (collectively with the Trust, "Funds"), to be sold to and held by: (1) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated insurance companies ("Participating Insurance Companies"); and (2) qualified pension and retirement plans outside of the separate account context ("Plans").

FILING DATE: The application was filed on February 9, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 22, 1996 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a

VOL 61 ISS 130 JUL 5 1996 UMI

certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: Howard J. Kashner, Esq., Quest Advisory Corp., 1414 Avenue of the Americas, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Wendy F. Friedlander, Deputy Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. The Trust was organized as a Delaware Business Trust in January, 1996, and has registered with the Commission as an open-end management investment company.

2. Quest serves as investment adviser to the Trust and is a registered investment adviser under the Investment Advisers Act of 1940.

3. The Funds propose to offer shares of one or more of their series to insurance company separate accounts that fund variable annuity and variable life insurance contracts ("Contracts") established by Participating Insurance Companies. These separate accounts may be registered as investment companies under the 1940 Act or exempt from registration pursuant to Section 3(c)(1) of the 1940 Act. Each Participating Insurance Company will enter into a fund participation agreement with the Funds in which the Participating Insurance company invests.

4. The Funds also intend to offer shares of each series directly to Plans outside of the separate account context. The Plans may choose one or more series of any of the Funds as the sole investment under the Plan or as one of several investments.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust ("UIT"), Rule 63–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by Rule 6e–2(b)(15) is available to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by Rule 6e–2(b)(15) are available, however, only where the management investment company underlying the UIT offers its shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company."

2. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as "mixed funding." The use of a common management investment company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of unaffiliated insurance companies is referred to as "shared funding." "Mixed and shared funding" denotes the use of a common management investment company to fund the variable annuity and variable life insurance separate accounts of affiliated and unaffiliated insurance companies. The relief granted by Rule 6e–2(b)(15), thus, is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated life insurance company. Rule 6e–2(b)(15), therefore, precludes mixed and shared funding.

3. Applicants state that because the relief under rule 6e–2(b)(15) is available only where shares are offered exclusively to separate accounts of insurance companies, additional exemptive relief is necessary if shares of the Funds are also to be sold to Plans.

4. In connection with flexible premium variable life insurance contracts issued through a UIT, rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." Rule 6e–3(T) thus permits mixed funding but does not permit shared funding.

5. Applicants state that because the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts, additional relief is necessary if shares of the Funds also are to be sold to Plans. Applicants assert that the relief granted by paragraphs (b)(15) of Rules 6e–2 and 6e–3(T) should not be affected by the proposed sale of Fund shares to Plans because such sales may allow for the development of larger pools of assets, resulting in the potential for greater investment and diversification opportunities and for decreased expenses at higher asset levels resulting in greater cost efficiencies.

6. Applicants state that changes in the tax law have created the opportunity for the Funds to increase their asset base through the sale of Fund shares to the Plans. Applicants state that Section 817(h) of the Internal Revenue code, as amended, ("Code") imposes certain diversification requirements on the underlying assets of the Contracts held in the Funds. The Code provides that such Contracts shall not be treated as an annuity contract or a life insurance contract for any period in which the underlying assets are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations which established diversification requirements for the investment portfolios underlying variable contracts. Treas. Reg. 1.817–5 (1989). The regulations provide that, to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do, however contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by a qualified pension or retirement plan without adversely effecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable contracts. Treas. Reg. 1.817–5(f)(3)(iii).

7. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) under the 1940 Act preceded the issuance of these Treasury regulations, and that the sale of shares of the same investment company to both separate accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

8. Applicants therefore request relief from Section 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Fund to be offered and sold in connection with both mixed and shared funding, and to be sold directly to Plans. Relief is requested for a class or classes of persons and transactions consisting of Participating Insurance Companies and their scheduled premium variable life insurance separate accounts and flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter, and depositor of such separate accounts) investing in any of the Funds.

Disqualification

9. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as an investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provide exemption from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permit a person disqualified under Section 9(a) to serve as an officer, director or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permit the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) participate in the management or administration of the Fund.

10. Applicants state that the partial relief from Section 9(a) of the 1940 Act found in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of that section. Applicants state that those rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy or provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals employed by the Participating Insurance Companies, most of whom will have no involvement in matters pertaining to investment companies within that organization. Applicants note that the Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Therefore, Applicants assert, applying the restrictions of Section 9(a) serves no regulatory purpose. Applicants state that the relief requested should not be affected by the proposed sale of shares of the Funds to the Plans because the Plans are not investment companies and are not, therefore, subject to Section 9(a).

Pass-Through Voting

11. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act assume the existence of a pass-through voting requirement with respect to management investment company share held by a separate account. The application states that the Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission interprets the 1940 Act to require such privileges.

12. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming observance of the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder.

Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its Variable Contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority.

Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard voting instructions of its Contract owners if the Contract owners initiate any change in the investment company's investment policies, principal underwriter, or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(15)(ii) and (b)(7)(ii)(B) and (C) of each rule.

13. Applicants state that shares of the Funds sold to Plans will be held by the trustees of such Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) When the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, there is no pass-through voting to the participants in such Plans. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Plans because the Plans are not entitled to pass-through voting privileges. Applicants further assert that investments in the Funds by Plans will not create any of the voting complications occasioned by mixed and shared funding because Plan investor votirg rights cannot be frustrated by veto rights of insurers or state regulators.

14. Applicants state that some Plans may provide participants with the right to give voting instructions. Applicants submit that there is no reason to believe that participants in Plans generally, or those in a particular Plan, either as a single group or in combination with other Plans, would vote in a manner that would disadvantage Contract owners. Accordingly, Applicants assert that the purchase of Fund shares by Plans that provide voting rights to participants does not present any complication not otherwise occasioned by mixed and shared funding.

Conflicts of Interest

15. Applicants state that no increased conflicts of interest would be present by the granting of the requested relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. Applicants note that where Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants submit that this possibility is no different and no greater than exists where a single insurer and

VOL
61
ISS
130
JL
5
1996
UMI

its affiliates offer their insurance products in several states.

16. Applicants further submit that affiliation does not reduce the potential for differences among state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15) discussed below) are designed to safeguard against any adverse effects that these differences may produce. If a particular state insurance regulator's decision conflicts with the decisions of a majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Funds.

17. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating insurance Company could disregard Contract owner voting instructions. Potential disagreement is limited by the requirement that the Participating Insurance Company's disregard of voting instructions be both reasonable and based on specific good faith determinations. However, if a Participating Insurance Company's decision to disregard Contract owner instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw its investment in that Fund. No charge or penalty will be imposed as a result of such withdrawal.

18. Applicants submit that there is no reason why the investment policies of a Fund with mixed funding would or should be materially different from what those policies would or should be if such investment company or series thereof funded only variable annuity or variable life insurance contracts. Applicants therefore argue that there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, Applicants represent that the Funds will not be managed to favor or disfavor any particular insurance company or type of Contract.

19. Applicants note that Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits "qualified pension or retirement plans" and separate accounts to share the same underlying investment company. Therefore, Applicants have concluded that neither the Code, nor the Treasury regulations, nor the revenue rulings thereunder, present any inherent conflicts of interests if Plans, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

20. Applicants note that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans these tax consequences do not raise any conflicts of interest. When distributions are to be made, and the separate account or the Plan is unable to net purchase payments to make the distributions, the separate account or the Plan will redeem shares of the Funds at their respective net asset values. The Plan will then make distributions in accordance with the terms of the Plan. A Participating Insurance Company will make distributions in accordance with the terms of the variable contract.

21. Applicants state that they do not see any greater potential for material irreconcilable conflicts arising between the interests of Plan participants and owners of the Contracts issued by the separate accounts of Participating Insurance Companies from possible future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

22. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving such voting rights to Contract owners and to Plans. Applicants represent that a Fund will inform each shareholder, including each separate account and Plan, of information necessary for the shareholder meeting, including their respective share ownership in the Fund. A Participating Insurance Company will then solicit voting instructions in accordance with the "pass-through" voting requirements of Rules 6e–2 and 6e–3(T).

23. Applicants argue that the ability of the Funds to sell their respective shares directly to Plans does not create a "senior security", as such term is defined under Section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a participant under a Plan. Regardless of the rights and benefits of Plan participants and Contract owners under their respective Plans and Contracts, the Plans and separate accounts have rights only with respect to their shares of the Funds. Such share may be redeemed only at net asset value. No shareholder of any of the Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

24. Applicants state that there are no conflicts of interest between Contract owners and Plan participants with respect to the state insurance commissioners' veto powers over investment objectives. The state insurance commissioners have been given the veto power to prevent insurance companies indiscriminately redeeming their separate accounts out of one Fund and investing those assets in another Fund. Generally, to accomplish such redemptions and transfers, complex and time consuming transactions must be undertaken. Conversely, trustees of Plans or the participants in participant-direct Plans can make the decision quickly and implement redemption of shares from a Fund and reinvest the monies in another funding vehicle without the same regulatory impediments or, as in the case with most Plans, even hold cash pending a suitable investment. Based on the foregoing, Applicants represent that even should there arise issues where the interests of Contract owners and the interests of the Plans and Plan participants conflict, the issues can be almost immediately resolved in that trustees of the Plans can, independently, redeem shares out of the Funds.

25. Applicants state that various factors have kept certain insurance companies from offering Contracts. According to Applicants, these factors include: the cost of organizing and operating an investment funding medium; the lack of expertise with respect to investment managers; and the lack of public name recognition as investment experts. Specifically, Applicants state that smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Contract business on their own. Applicants argue the use of the Funds as common investment media for the Contracts would ease these concerns. Participating Insurance Companies would benefit not only from the investment and administrative expertise of Quest and its affiliates, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants state that making the Funds available for mixed and shared funding may encourage more insurance companies to offer variable contract such as the Contracts, which may then increase competition with respect to both the design and the pricing of variable contracts. Applicants submit that this can be expected to result in greater product variation and lower charges. Thus, Applicants argue that Contract owners would benefit because mixed and shared funding will eliminate a significant portion of the costs of establishing and administering separate funds. Moreover, Applicants assert that sales of shares of the Funds to Plans should increase the amount of assets available for investment by such Funds. This should, in turn, promote economies of scale, permit increased safety of investments through greater diversification, and make the addition of new portfolios more feasible.

26. Applicants state that, regardless of the types of Fund shareholders, Quest is legally obligated to manage the Funds in accordance with each Fund's investment objectives, policies and restrictions as well as any guidelines established by the relevant Board of Directors or Trustees of the Funds. Applicants assert that Quest work with a pool of money without consideration for the identity of shareholders, and, thus, manage the Funds in the same manner as any other mutual fund.

27. Applicants believe that there is no significant legal impediment to permitting mixed and shared funding. Additionally, Applicants note the previous issuance of orders permitting mixed and share funding where shares of a fund were sold directly to qualified plans, such as the Plans. Applicants note further that there is ample precedent for extending exemptive relief to members of a class or classes or persons, not currently identified, that may be similarly situated in the future. Such class relief has been granted in various contexts and from a wide variety of the 1940 Act's provisions including class exemption in the context of mixed and shared funding.

Applicants' Conditions

The Applicants have consented to the following conditions if the order requested in the application is granted:

1. A majority of the Board of Trustees or Board of Directors (each a "Board") of each Fund shall consist of persons who are not "interested persons" of the Funds, as defined by Section 2(a)(19) of the 1940 Act and Rules thereunder, and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of death, disqualification, or bona fide resignation of any Director or Trustee, then the operation of this condition shall be suspended: (i) for a period of 45 days, if the vacancy or vacancies may be filled by the appropriate Board, (ii) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (ii) for such longer period as the Commission may prescribe by order upon application.

2. The Boards will monitor their respective Funds for the existence of any irreconcilable material conflict between the interests of Contract owners of all separate accounts and of Plan participants and Plans investing in the Funds, and determine what action if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter billing, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Funds are managed; (e) a difference in voting instructions given by owners of variable annuity and variable life insurance contracts; or (f) a decision by a Participating Insurance Company to disregard voting instructions of Contract owners; and, (g) if applicable, a decision by a Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies, Quest (or any other investment manager of a Fund), and any Plan that executes a participation agreement upon becoming an owner of 10% or more of the issued and outstanding shares of a Fund ("Participating Plans") will report any potential or existing conflicts to the Board of any relevant Fund. Quest (or any other investment adviser of a Fund), Participating Insurance Companies and Participating Plans will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for it to consider any issues raised. This responsibility includes, but is not limited to, an obligation by a Participating Insurance Company to inform the Board whenever it has determined to disregard Contract holders' voting instructions and, if pass-through voting is applicable, an obligation by a Participating Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all Participating Insurance Companies and Participating Plans investing in the Funds under their agreements governing participating in the Funds, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of the Contract owners and, if applicable, Plan participants.

4. If it is determined by a majority of the Board of a Fund, or by a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Participating Plans will, at their expense and to the extent reasonably practicable (as determined by a majority of disinterested trustees or members of the Board), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, including: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series and reinvesting such assets in a different investment medium, which may include another series of a Fund or another Fund; (b) submitting the question of whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to Contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the Fund, to withdraw its separate account's investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Participating Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Participating Plan may be required, at the election of the Fund, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility of taking remedial action in the event of a Board determination of the existence of an irreconcilable material conflict and bearing the cost of such remedial action, shall be a contractual obligation of all

VOL 61 ISS 130 JL 5 1996 UMI

Participating Insurance Companies and Participating Plans under their agreements governing participation in the Funds, and these responsibilities will be carried out with a view only to the interests of the Contract owners and, as applicable, Plan participants.

For purposes of this Condition Four, a majority of the disinterested members of the applicable Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the relevant Fund or Quest (or any other investment advisor to a Fund) be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by this Condition Four to establish a new funding medium for any Contract if an offer to do so has been declined by a vote of a majority of Contract owners materially affected by the material irreconcilable conflict. No Participating Plan shall be required by this Condition Four to establish a new funding medium for such Plan if (a) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer, or (b) pursuant to governing plan documents and applicable law, the Participating Plan makes such decision without Plan participant vote.

5. Quest, all Participating Insurance Companies, and Participating Plans will be promptly informed in writing of any Board's determination that a material irreconcilable conflict exists, and its implications.

6. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Contract owners. Accordingly, the Participating Insurance Companies will vote shares of a Fund held in their separate accounts in a manner consistent with voting instructions timely received from Contract owners. Participating Insurance Companies will be responsible for assuring that each of their separate accounts calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Fund. Each Participating Insurance Company will vote shares for which it has not received voting instructions as well as shares attributable to it in the same proportion as it votes shares for which it has received instructions. Each Participating Plan will vote as required by applicable law and governing plan documents.

7. All reports of potential or existing conflicts of interest received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Quest, Participating Insurance Companies and Participating Plans of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

8. Each Fund will notify all Participating Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund shall disclose in its prospectus that: (a) Its shares may be offered to insurance company separate accounts that fund both variable annuity and variable life insurance contracts, and to Plans; (b) due to differences of tax treatment and other considerations, the interests of various Contracts owners participating in the Fund and the interests of Plans investing in the Fund may conflict; and, (c) the Board will monitor the Fund for any material conflicts of interest and determine what action, if any, should be taken.

9. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which for these purposes, shall be the persons having a voting interest in the shares of the Fund) and in particular, each Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Fund is one of the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a) and, if applicable, Section 16(b) of the 1940 Act. Further, the Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

10. If and to the extent Rule 6e–2 or Rule 6e–3(T) is amended, or Rule 6e–3(T) is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Fund and the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 or Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

11. No less than annually, Quest (or any other investment adviser of a Fund), the Participating Insurance Companies and Participating Plans shall submit to the Boards such reports, materials, or data as the Boards may reasonably request so that the Boards may carry out fully the obligations imposed upon them by the conditions stated in the application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Boards. The obligations of Quest, Participating Insurance Companies and Participating Plans to provide these reports, materials, and data to the Boards shall be a contractual obligation of Quest, all Participating Insurance Companies and Participating Plans under the agreements governing their participation in the Fund.

12. If a Plan should become an owner of 10% or more of the issued and outstanding shares of a Fund, such Plan will execute a participation agreement with the applicable Fund including the conditions set forth herein to the extent applicable. A Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of the Fund.

Conclusion

For the reasons stated above, Applicants assert that the requested exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, are appropriate in the public interest consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–17150 Filed 7–3–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22046; 811–1500]

Sherman, Dean Fund, Inc.; Notice of Application

June 28, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Sherman, Dean Fund, Inc.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 10, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 23, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 3570 Hunters Sound, San Antonio, Texas 78230.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. On May 15, 1967, applicant, a Delaware corporation, registered as an open-end management investment company under the Act by filing with the SEC a Notification of Registration on Form N–8A. SEC records indicate that on August 10, 1967, applicant filed a registration statement on Form S–5 that became effective on February 14, 1968. Applicant commenced its initial immediately. On September 13, 1993, pursuant to a shareholder vote, applicant changed its classification to a closed-end investment company. On September 14, 1993, applicant filed a registration statement with the SEC on Form N–2 to reflect this change.

2. On March 8, 1996, in order to accommodate requests from shareholders seeking to sell their shares, applicant filed a Notification of Repurchase Offer pursuant to rule 23c–3 under the Act to repurchase a total of 61,155 shares.[1] On March 29, 1996, applicant repurchased 60,580.683 shares at net asset value from 235 shareholders. As a result, applicant states that presently there are 68 beneficial owners of its shares.

3. As of the filing of this application, applicant had assets of $1,760,000 invested in three publicly traded securities. Applicant's liabilities consisted of approximately $13,000 attributable to management fees, legal and accounting expenses, and office expenses.

4. Applicant presently is not a party to any litigation or administrative proceeding.

Applicant's Legal Analysis

1. Section 8(f) of the Act provides that whenever the SEC, upon application or its own motion, finds that a registered investment company has ceased to be an investment company, the SEC shall so declare by order and upon the taking effect of such order, the registration of such company shall cease to be in effect.

2. Section 3(c)(1) of the Act provides that an issuer is not an investment company within the meaning of the Act if (a) its outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons, and (b) it is not making and does not propose to make a public offering of securities.

3. Applicant believes that, pursuant to section 3(c)(1), it is no longer an investment company as defined in section 3 because only 68 persons are beneficial holders of its securities. Applicant states that it is not making and does not presently propose to make a public offering of its securities. Accordingly, applicant requests that the SEC issue an order under section 8(f) declaring that it has ceased to be an investment company.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17152 Filed 7–3–96; 8:45 am]

BILLING CODE 8010–01–M

[1] Rule 23c–3 under the Act generally provides that a closed-end company may offer to repurchase securities, of which it is the issuer, subject to certain restrictions.

[Release No. 34–37379; File No. 265–19]

Consumer Affairs Advisory Committee; Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of the Securities and Exchange Commission ("Commission") Consumer Affairs Advisory Committee ("Committee").

SUMMARY: The Securities and Exchange Commission's Consumer Affairs Advisory Committee will meet on July 22, 1996, in Room 1C30 at the Commission's Headquarters, 450 Fifth Street, NW., Washington, DC, beginning at 9:45 a.m. The meeting will be open to the public. This notice also serves to invite the public to submit written comments to the Committee.

ADDRESSES: You should submit written comments in triplicate and refer to File No. 265–19. Send your comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Jonathan M. Gottsegen, Counsel to the Director, Office of Investor Education and Assistance (202) 942–7040; Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app 10a, requires the Securities and Exchange Commission to give notice that the Consumer Affairs Advisory Committee will meet on July 22, 1996, in Room 1C30 at the Commission's Headquarters, 450 Fifth Street, NW., Washington, DC., beginning at 9:45 a.m. The meeting will be open to the public.

The Committee's responsibilities include assisting the Commission in identifying investor problems and being more responsive to their needs. The Committee will explore fundamental issues of concern to investors, including matters currently under consideration by the Commission and topics of emerging concern to investors and the financial services industry.

Dated: June 28, 1996.

Jonathan G. Katz,

Advisory Committee Management Officer.

[FR Doc. 96–17143 Filed 7–3–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37372; File No. 600–22]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of Request and Order Approving Application for Extension of Temporary Registration as a Clearing Agency

June 26, 1996.

On June 6, 1996, the MBS Clearing Corporation ("MBS") filed with the Securities and Exchange Commission ("Commission") a request pursuant to

VOL 61 ISS 130 JL 5 1996 UMI

Section 19(a)[1] of the Securities Exchange Act of 1934 ("Act") for extension of its temporary registration as a clearing agency under Section 17A[2] of the Act for a period of one year.[3] The Commission is publishing this notice of filing of request and order to solicit comments from interested persons and to grant MBS's request for an extension of its temporary registration as a clearing agency through June 30, 1997.

On February 2, 1987, the Commission granted MBS's application for registration as a clearing agency pursuant to Sections 17A(b) and 19(a)(1) of the Act[4] and Rule 17Ab2-1(c)[5] thereunder on a temporary basis for a period of eighteen months.[6] Subsequently, the Commission has issued orders that extended MBS's temporary registration as a clearing agency. The last extension order extended MBS's temporary registration through June 30, 1996.[7]

As discussed in detail in the original order granting MBS's registration, one of the primary reasons for MBS's registration was to enable it to provide for the safe and efficient clearance and settlement of transactions in mortgage-backed securities. Since the original temporary registration order, MBS has implemented several improvements to its operating and financial standards and continues to work towards enhancing the safety and efficiency of its operations. For example, over he past year the Commission granted permanent approval of MBS's Electronic Pool Notification ("EPN") service, an electronic, post-trade communication system for mortgage-backed securities.[8] In addition, MBS modified its procedures relating to settlement balance order ("SBO") settlement to help prevent participants from influencing the amount of their cash adjustments through submissions of internal trades.[9]

MBS has functioned effectively as a registered clearing agency for over nine years. Accordingly, in light of MBS's past performance and the need for MBS to provide continuity of service to its participants, the Commission believes that, pursuant to Section 17A(b)(2) of the Act, it is necessary and appropriate in the public interest and for the prompt and accurate clearance and settlement of securities transactions to approve MBS's request to extend its temporary registration through June 30, 1997. During this temporary registration period, the Commission expects MBS to file a request for permanent registration as a clearing agency. Any comments received during MBS's temporary registration will be considered in conjunction with the Commission's consideration of whether to grant MBS permanent registration as a clearing agency under Section 17A(b) of the Act.[10]

Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the request for extension of temporary registration as a clearing agency that are filed with the Commission, and all written communications relating to the requested extension between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of MBS. All submissions should refer to File No. 600–22.

Conclusion

On the basis of the foregoing, the Commission finds that MBS's request for extension of temporary registration as a clearing agency is consistent with the Act and in particular with Section 17A of the Act.

It is therefore ordered, that MBS's temporary registration as a clearing agency (File No. 600–22) be, and hereby is, extended through June 30, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–17145 Filed 7–3–96; 8:45 am]

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[1] 15 U.S.C. 78s(a) (1988).

[2] 15 U.S.C. 78q–1(a) (1988).

[3] Letter from Robert J. Woldow, Secretary and General Counsel, MBS, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (June 6, 1996).

[4] 15 U.S.C. 78q–1(b) and 78s(a)(1) (1988).

[5] 17 CFR 240.17Ab2–1(c) (1994).

[6] Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218.

[7] Securities Exchange Act Release Nos. 25957 (August 2, 1988), 53 FR 29537; 27079 (July 31, 1989), 54 FR 32412; 28492 (September 28, 1990), 55 FR 41148; 29571 (September 27, 1991), 56 FR 50602; 31750 (January 21, 1993), 58 FR 6424; 33348 (December 15, 1993), 58 FR 68183; and 35132 (December 21, 1994), 59 FR 67743.

[8] Securities Exchange Act Release No. 36540 (November 30, 1995) 60 FR 63089 [File No. MBS–95–09] (order granting accelerated approval of proposed rule change).

[9] Securities Exchange Act Release No. 37205 (May 13, 1996), 989 61 FR 24898 [File No. MBS–95–08] (order approving proposed rule change).

[10] 15 U.S.C. 78q-1(b) (1988).

[11] 17 CFR 200.30–3(a)(50)(i) (1994).

[Release No. 34–37380; File No. SR–CBOE–96–37]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Amended, by Chicago Board Options Exchange, Incorporated Relating to a Pilot Operation of a System for Monitoring News Announcements Made After the Close of Trading in the Primary Market for the Underlying Stock

June 28, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 17, 1996, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Exchange submitted to the Commission Amendment Nos. 1[3] and 2[4] to the proposed rule change on June 26, 1996. The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to institute a pilot test of a system that, shortly before the close of trading each day, will monitor news announcements pertaining to underlying securities, and will automatically suspend the Exchange's automatic execution system in respect of options on those securities that are the subject of such announcements. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange makes several clarifications to the proposed pilot. See Letter from Michael L. Meyer, Attorney, Schiff Hardin & Waite, to John Ayanian, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Market Regulations"), Commission, dated June 26, 1996 ("Amendment No. 1").

[4] In Amendment No. 2, the Exchange clarifies that it intends to turn on the system each day a few minutes prior to the 3:00 p.m. central time close of trading in the primary market, in order to be certain that the system is operating by the time the primary market closes. Letter from Michael L. Meyer, Attorney, Schiff Hardin & Waite, to John Ayanian, Attorney, OMS, Market Regulation, Commission, dated June 28, 1996 ("Amendment No. 2").

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to establish a limited pilot test of an automated system that would monitor news wires received at the Exchange shortly before the close of trading each day, and would suspend the Exchange's automatic order execution system in a class of equity options whenever there is a news announcement pertaining to the security underlying options of that class. Options on equity securities are currently traded on CBOE until 3:10 p.m. central time on each trading day, which is 10 minutes after the close of trading on the primary market's for underlying securities. The Exchange notes that this additional period of options trading after the underlying market has closed is provided to accommodate orders to buy or sell options at prices that reflect the closing prices of the underlying securities. The Exchange has experienced difficulties when issuers of underlying stocks make significant news announcements after the 3:00 p.m. central time close of trading in the underlying stocks, but before options cease trading at 3:10 p.m. central time. The Exchange believes that because these issuers are often unaware of or indifferent to the fact that options trading on their stocks continues for 10 minutes after the stocks cease to trade, they do not wait until 3:10 p.m. central time to make these announcements. According to the Exchange, it is not uncommon for significant news announcements to be made between 3:00 p.m. and 3:10 p.m., when options are still traded primary markets. These announcements often require an immediate adjustment to the prices of series of options on the stock in question, to take into account the likely affect of the announcement on the market price of the underlying stock, even through the stock is not then trading in its primary market. The Exchange believes that until such option prices are adjusted, the Exchange's retail automatic execution system ("RAES") may be providing automatic executions of customer orders at prices that do not reflect the current state of the market.

Currently, CBOE addresses this occurrence by positioning two Floor Officials in close communication with newsreaders in the Exchange's Control Room beginning shortly before 3:00 p.m. central time. If a significant news announcement is made, these two Floor Officials may exercise their authority under Exchange Rule 6.6(a) to declare a "fast" market, in the interest of maintaining a fair and orderly market, in the class or classes of options affected by the news announcement, and then to suspend RAES in respect of those classes as authorized under Rule 6.6(b)(v). The Exchange believes that there are at least two difficulties with this approach. First, it depends on the continuous availability of two Floor Officials at a critical time prior to the close of options trading when they might be needed to attend to other matters. Second, even if two Floor Officials are available, it still can take 30 seconds or more after a news announcement is received before the Floor Officials are able to suspend RAES, during which time a considerable number of orders may be automatically executed at inappropriate prices.

In response to these problems, CBOE developed a system that can monitor news wires during the 10 minutes following the close of trading in primary stock markets while options are still traded, and automatically suspend RAES in all series of options on those stocks that are the subject of news announcements. This permits RAES to be turned off at virtually the same time as the news item appears on the wire. According to the Exchange, when RAES is turned off, customer orders that might otherwise have been automatically executed will instead be automatically routed to the Public Automated Routing System ("PAR") workstation[5] at the appropriate trading post, where they can be immediately executed at the then current price almost as quickly as if they had received automatic execution in RAES.

The Exchange notes that the automatic news monitor cannot determine the significance of a particular announcement, and will automatically suspend RAES in a class of options whenever there is any news announcement pertaining to its underlying stock. Because significant news announcements, however, tend to be concentrated during the period immediately following the close of trading in primary stock markets, CBOE intends to operate its new system only during the time from just before 3:00 p.m. central time to the close of options trading on CBOE at 3:10 p.m. central time, when it is not expected that there will be very many "false alarm" announcements. Additionally, two Floor Officials will promptly be informed each time RAES is automatically turned off in response to a news announcement, and if enough time remains before the 3:10 p.m. central time close of options trading, the Floor Officials should be able to evaluate the significance of the announcement, and if it is not significant or if there has been time for prices to have been adjusted, to turn on RAES for the remainder of the trading session.[6]

In order to test the effectiveness of this automatic system in actual market conditions, CBOE proposes to implement it in respect of various classes of options during a 30-day pilot period.[7] The Exchange believes that this will enable it to evaluate how quickly the automatic system if able to respond to news announcements, how many, if any, false alarms are received, how quickly customer orders are able to be rerouted and executed over the PAR system, and whether Floor Officials are able to make an evaluation of the situation and restore the operation of RAES in the limited time available after there has been an automatic suspension of RAES. If after the 30-day pilot period

[5] A PAR workstation is an automated, computer-based workstation that provides users with the ability to execute trades, transmit trade reports, and enter other data and commands at the touch of a screen, thereby eliminating the delay inherent in a keyboard-based system.

[6] The Commission expects that if there is enough time before the close of options trading, and the news is not significant or if there has been time for prices to have been adjusted, the Floor Officials will resume RAES operations for the subject options class.

[7] The Exchange will issue a circular to its membership outlining the terms of the pilot and the classes that will be included in it. Telephone conversation between Michael L. Meyer, Schiff Hardin & Waite, and Sharon Lawson and John Ayanian, OMS, Market Regulation, Commission, on June 25, 1996.

VOL 61 ISS 130 JL 5 1996 UMI

CBOE desires to implement the automatic system on a permanent basis for all classes of equity options, CBOE will make a subsequent filing to this effect under Section 19(b)(2) of the Act.

CBOE believes that the implementation of a pilot test of a system that, if successful, would permit the continued availability of CBOE's automatic execution system for public customer orders during the period when options are traded after the close of trading in the primary markets for underlying stocks and would assure that these orders are executed at fair prices in the event of significant news announcements, is in the interest of promoting just and equitable principles of trade and protecting investors and the public interest, and thus is consistent with the objectives of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular the requirements of Section 6(b)(5) thereunder.

The Commission believes that the Exchange's proposal provides a reasonable method of testing a system to address pending news announcements after the close of trading in the primary market for the underlying securities.[8] The Commission notes that the test will be limited to news announcements after the close of trading in the primary market for the underlying stock, while continuing to (1) ensure prompt execution of customer orders in the particular class subject to a news announcement by rerouting such orders to a PAR workstation and (2) make RAES executions available in classes of options not subject to news announcements during the time when options continue to be traded after the close of trading in the primary market for underlying stocks.

As noted, the CBOE intends to evaluate the pilot in several respects to determine if it wants to implement the system on a permanent basis.[9] The CBOE will provide the Commission with the analysis of the pilot.

The Commission finds good cause for approving this proposed rule change, as amended, on an accelerated basis prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Specifically, the Commission believes that accelerated approval of the proposal, as amended, is appropriate because it is to be implemented for a limited 30-day period which will provide CBOE with the time to test the effectiveness of the system.

Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve the proposed rule change, as amended, on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing and Amendment Nos. 1 and 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–96–37 and should be submitted by July 26, 1996.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–CBOE–96–37), as amended, is hereby approved for a 30-day pilot period, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17149 Filed 7–3–96; 8:45 am]

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[8] See Amendment No. 2, *supra* note 4.

[9] The pilot expires at 3:10 p.m. central time on July 26, 1996. Any request for an extension of the pilot period or request for permanent approval of the system would have to be submitted to the Commission pursuant to Section 19(b)(2) of the Act.

[10] 17 CFR 200.30–3(a)(12).

[Release No. 34–37377; File No. SR–NASD–96–22]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Extension of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature Until January 31, 1997

June 27, 1996.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 10, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to extend, until January 31, 1997, the effectiveness of certain rules governing the operation of the Nasdaq Stock Market, Inc.'s ("Nasdaq") Small Order Execution System ("SOES"). Specifically, these SOES rules, which were previously approved by the Commission on a pilot basis on December 23, 1993[2] and recently extended through July 31, 1996,[3] provide for: (1) a reduction in the minimum exposure limit for unpreferenced SOES orders from five times the maximum order size to two times the maximum order size, and for the elimination of exposure limits for preference orders ("SOES Minimum Exposure Limit Rule"); and (2)

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 33377 (December 23, 1993), 58 FR 69419 (December 30, 1993) ("Interim SOES Rules Approval Order").

[3] *See* Securities Exchange Act Release No. 36795 (January 31, 1996), 61 FR 4504 (February 6, 1996) ("Interim SOES Rules Extension Order").

implementation of an automated function for updating market maker quotations when the market maker's exposure limit has been exhausted ("SOES Automated Quotation Update Feature"). These rules are part of a set of SOES rules approved by the SEC on a pilot basis known as the Interim SOES Rules.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commission originally approved the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature on a one-year pilot basis in December 1993, along with two other SOES rules which have since lapsed.[5] Since December 1993, the SEC has approved four NASD proposals to extend the effectiveness of the rules, with the most recent approval extending the rules through July 31, 1996.[6] With this filing the NASD proposes to further extend the effectiveness of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature until January 31, 1997, so that the rules can continue on an uninterrupted basis until the SEC has had an opportunity to consider Nasdaq's proposed NAqcess system.

As described in more detail below, because the NASD believes implementation of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature have been associated with positive developments in the markets for Nasdaq securities and clearly have not had any negative effects on market quality, the NASD believes it is appropriate and consistent with the maintenance of fair and orderly markets and the protection of investors for the Commission to approve a further limited extension of the effectiveness of these rules. The NASD believes the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature reflect a reasoned approach by the NASD to address the adverse effects on market liquidity attributable to active intra-day trading activity through SOES, while at the same time not compromising the ability of small, retail investors to receive immediate executions through SOES. Specifically, these rules are designed to address concern that concentrated, aggressive use of SOES by a growing number of order entry firms has resulted in increased volatility in quotations and transaction prices, wider spreads, and the loss of liquidity for individual and institutional investor orders.

The NASD believes that the same arguments and justifications made by the NASD in support of approval of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature and four extensions of these rules are just as compelling today as they were when the SEC relied on them to initially approve these rules. In sum, the NASD continues to believe that concentrated bursts of SOES activity by active order-entry firms contribute to increased short-term volatility, wider spreads, and less market liquidity on Nasdaq and that the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature are an effective means to minimize these adverse market impacts. In addition, given the increased utilization of SOES since the SOES Maximum Order Size Rule lapsed at the end of March 1995, the NASD believes it is even more imperative that the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature remain in effect to help to ensure the integrity of the Nasdaq market and prevent waves of SOES orders from a handful of SOES order-entry firms from degrading market liquidity and contributing to excessive short-term market volatility.

The NASD notes that the SEC made specific findings in the Interim SOES Rules Approval Order that the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature were consistent with the Act. In particular, the SEC stated in its approval order that:

a. Because the benefits for market quality of restricting SOES usage outweigh any potential decrease in pricing efficiency, the Commission concludes that the net effect of the proposal is to remove impediments to the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that the proposed rule changes are designed to produce accurate quotations, consistent with Sections 15A(b)(6) and 15A(b)(11) of the Act. In addition, the Commission concludes that the benefits of the proposal in terms of preserving market quality and preserving the operational efficiencies of SOES for the processing of small size retail orders outweigh any potential burden on competition or costs to customers or broker-dealers affected adversely by the proposal. Thus, the Commission concludes that the proposal is consistent with Section 15A(b)(9) of the Act in that it does not impose a burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act.[7]

b. The Commission also concludes that the proposal advances the objectives of Section 11A of the Act. Section 11A provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically effective execution of securities transactions, fair competition among market participants, and the practically of brokers executing orders in the best market. The Commission concludes that the proposal furthers these objectives by preserving the operational efficiencies of SOES for the processing of small orders from retail investors.[8]

c. The Commission believes that it is appropriate to restrict trading practices through SOES, that impose excessive risks and costs on market makers and jeopardize market quality, and which do not provide significant contributions to liquidity or pricing efficiency. * * * The Commission believes that it is more important to ensure that investors seeking to establish or liquidate an inventory position have ready access to a liquid Nasdaq market and SOES than to protect the ability of customers to use SOES for intra-day trading strategies.[9]

d. The Commission believes that there are increased costs associated with active intra-day trading activity through SOES that undermine Nasdaq market quality. * * * Active intra-day trading activity through SOES can also contribute to instability in the market.[10]

e. In addition, these waves of executions can make it difficult to maintain orderly markets. Given the increased volatility

[4] As first approved by the Commission on December 23, 1993, the Interim SOES Rules has four components: (1) the SOES Minimum Exposure; (2) the Automated Quotation Update; (3) a reduction in the maximum size order eligible for executive through SOES from 1,000 shares to 500 shares ("SOES Maximum Order Size"); and (4) the prohibition of short sales through SOES. The SOES Maximum Order Size Rule lapsed effective March 28, 1995 and the rule prohibiting the execution of short sales through SOES lapsed effective January 26, 1995.

[5] *See* Interim SOES Rules Approval Order, *supra* note 2.

[6] *See* Interim SOES Rules Extension Order, *supra* note 3, and Securities Exchange Act Release Nos. 35275 (January 25, 1995), 60 FR 6327 (February 1, 1995); 35535 (March 27, 1995), 60 FR 16690 (March 31, 1995); and 36311 (September 29, 1995), 60 FR 52438 (October 6, 1995) ("October 1995 Extension Order").

[7] Interim SOES Rules Approval Order, *supra* note 2, 58 FR at 69423.

[8] *Id.*

[9] *Id.* at 69424–25.

[10] *Id.*

VOL 61 ISS 130 JL 5 1996 UMI

associated with these waves of intra-day trading activity, market makers are subject to increased risks that concentrated waves of orders will cause the market to move away. As a result, individual market makers may be unwilling to narrow the current spread and commit additional capital to the market by raising the bid or lowering the offer. When market makers commit less capital and quote less competitive markets, prices can be expected to deteriorate more rapidly. Accordingly, the Commission believes that it is appropriate for the NASD to take measured steps to redress the economic incentives for frequent intra-day trading inherent in SOES to prevent SOES activity from having a negative effect on market prices and volatility.[11]

f. The Commission does not believe the intra-day trading strategies through SOES contribute significantly to market efficiency in the sense of causing prices to reflect information more accurately.[12]

g. The Commission has evaluated each of the proposed modifications to SOES, and concludes that each of the modifications reduces the adverse effects of active trading through SOES and better enables market makers to manage risk while maintaining continuous participation in SOES. In addition, the Commission does not believe that any of the modifications will have a significant negative effect on market quality. To the extent that any of the modifications may result in a potential loss of liquidity for small investor orders, the Commission believes that these reductions are marginal and are outweighed by the benefits of preserving market maker participation in SOES and increasing the quality of executions for public and institutional orders as a result of the modifications.[13]

h. The Commission * * * has determined that the instant modifications to SOES further the objectives of investor protection and fair and orderly markets, and that these goals, on balance, outweigh any marginal effects on liquidity for small retail orders, and any anti-competitive effects on order entry firms and their customers. The Commission concludes that the ability of active traders to place trades through a system designed for retail investors can impair market efficiency and jeopardize the level of market making capital devoted to Nasdaq issues. The Commission believes that the rule change is an appropriate response to active trading through SOES, and that the modifications will reduce the effects of concentrated intra-day SOES activity on the market.[14]

The NASD believes these significant statutory findings by the SEC regarding the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature and the SEC's assessment of the likely benefits to the marketplace that would result from the rules have been confirmed and substantiated by econometric studies on the effectiveness of the Interim SOES Rule conducted by the NASD's Economic Research Development[15] and an independent economist commissioned by the NASD.[16] When the SEC approved the Interim SOES Rules, it stated that "[a]ny further action the NASD seeks with respect to SOES—extension of these modifications upon expiration, or introduction of other changes—will require independent consideration under Section 19 of the Act."[17] In addition, the SEC stated that, should the NASD desire to extend these SOES changes or modify SOES, the Commission would expect "the NASD to monitor the quality of its markets and assess the effects of the approved SOES changes on market quality for Nasdaq securities." Also, if feasible, the SEC instructed the NASD to provide a quantitative and statistical assessment of the effects of the SOES changes on market quality; or, if an assessment is not feasible, the SEC stated that the NASD should provide a reasoned explanation supporting that determination.

In sum, the NASD's study found that:

• Since the SOES changes went into effect in January 1994, the statistical evidence indicated that when average daily volume, stock price, and stock price volatility are held constant through regression techniques, quoted percentage spreads in Nasdaq securities experienced a decline in the immediate period following implementation of the changes and have continued to decline since then. The statistical evidence also showed that the narrowing of quoted percentage spreads became more pronounced and robust the longer the Interim SOES Rules were in effect. In particular, quoted spreads in cents per share for the 500 largest Nasdaq National Market ("NNM") securities experienced a sharp decline from April 28 to May 12 and from June 23 to July 18.[18]

• With the exception of a brief, market-wide period of volatility experienced by stocks traded on Nasdaq, the New York Stock Exchange, and the American Stock Exchange during the Spring, the volatility of Nasdaq securities appears to be unchanged in the period following implementation of the changes; and

• A smaller percentage of Nasdaq stocks experienced extreme relative price volatility after implementation of the rules and that these modifications, in turn, suggest a reduction in relative volatilities since the rules were put into effect.

The Furbush Study found that there was a statistically significant improvement in effective spreads for the top 100 Nasdaq stocks (based on dollar volume) during the three month period following implementation of the rules. Moreover, the study also found that the most significant improvement in effective spreads for the top 100 stocks occurred for trade sizes between 501 and 1,000 shares, precisely the level that was made ineligible for SOES trading by the Interim SOES Rules. In addition, the study found that the average number of market makers for the top ten Nasdaq-listed stocks increased from 44.3 to 46.0, or 3.8 percent, and from 30.2 to 30.9 for the top 100 stocks, or 2.3 percent. Although correlation does not necessarily imply causation, as noted by the SEC when it approved the Interim SOES Rules and extensions of the Interim SOES Rules, the NASD believes that positive market developments clearly have been associated with implementation of the Interim SOES Rules.

The NASD also believes that these studies of the effectiveness of the Interim SOES Rules lend credence to another NASD study that was submitted to the SEC in support of approval of the Interim SOES Rules.[19] In the May 1993 SOES Study, the NASD found that concentrated waves of orders entered into SOES by active order-entry firms resulted in discernible degradation to the quality of the Nasdaq market. Specifically, the study found, among other things, that: (1) Bursts of orders entered into SOES by active order entry firms frequently result in a decline in the bid price and a widening of the bid-ask spread; (2) that there is a significant positive relationship between increases in spreads and volume attributable to active order-entry firms as it related to total SOES volume per security; and (3) activity by active order-entry firms resulted in higher price volatility and less liquidity—higher price changes are associated with high active trading firm volume, even after controlling for normal price fluctuations.

The NASD also believes market activity since the SOES Maximum Order Size Rule lapsed on March 28, 1995, provides further support for the effectiveness of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature and the NASD's economic rationale for these rules. In particular, an analysis prepared by the NASD's Economic Research Department clearly illustrates that there has been a dramatic increase in SOES volume since the SOES Maximum Order Size Rule lapsed and that many market maker positions have been abandoned. These two phenomena appear to be linked. Those Nasdaq stocks that have experienced the greatest decline in the number of market makers are the ones that have experienced the greatest increase in SOES volume since the rule lapsed.[20] The NASD believes these figures indicate that the relaxation of one of the Interim SOES Rules may have contributed to some of the adverse market developments that the NASD was seeking to avoid through implementation of the Interim SOES Rules (*e.g.*, degradation in market maker participation and market liquidity).[21] Accordingly, the NASD believes that any further relaxation of the Interim SOES Rules by permitting the SOES Minimum Exposure Limit Rule or the SOES Automated Quotation Update Feature to lapse would further harm the Nasdaq market. In light of the significance of these figures and their indicated adverse ramifications upon the Nasdaq market, the NASD also believes that SEC reconsideration of its position with respect to the entry of 1,000-share orders into SOES is warranted.

The NASD also has prepared another report that the NASD believes illustrates that the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature have had no adverse impact on the market for Nasdaq securities.[22] This report was in response to the Commission's request in the Interim SOES Rules Extension Order that the NASD:

> monitor the extent to which exposure limits are exhausted, the extent to which the automated quotation update feature is used, and the effects these two aspects have on liquidity. Moreover, the Commission expects the NASD to consider the possibility of enhancements to eliminate the potential for delayed and/or inferior executions.[23]

In sum, the December 1995 Monitoring Report found that it is a very infrequent occurrence for a market maker to have its exposure limit exhausted in a NNM security. In particular, from the period October 2, 1995 to November 22, 1995, there were, on average, 83 instances per day where a market maker's exposure limit in NNM securities was exhausted.[24] Thus, given the fact that there was an average of 44,062 market making positions in NNM securities and 3,932 NNM securities trading per day during this time period, the impact of these individual exposure limit exhaustions on the availability of SOES to investors throughout the trading day was infinitesimal. Each market making position experienced .0019 exposure limit exhaustions per day over this time period and each NNM security experienced .0211 exhaustions per day. Moreover, while Nasdaq could not readily determine the extent to which the exposure limit exhaustions occurred simultaneously in the same security, given the stark infrequency with which the exposure limit exhaustions occurred, the NASD believes it is extremely improbable that a NNM security would experience a situation where the SOES exposure limits for all market makers in that stock were exhausted at the same time. Indeed, this conclusion is borne out by the extremely short time-span in which SOES orders are executed. Specifically, the report shows that, on average, SOES orders are executed 1.62 seconds after entry and that 98.5 percent of all SOES orders are executed within three seconds.[25]

The report also showed that SOES exposure limit exhaustions tend to cluster in active NNM securities with high numbers of market makers. This further illustrates the extremely low probability that all market makers in the same security would ever have their exposure limits exhausted simultaneously. Lastly, examining one trading day, the report shows that active SOES order entry firms accounted for 92 percent of the exposure limit exhaustion, as might be expected given that these firms account for 89 percent of SOES dollar volume. Accordingly, the NASD and Nasdaq believe that the SOES Minimum Exposure Limit Rule has had a very negligible, if any, impact on the availability of SOES to small, retail investors.

The report also found that the Automated Quotation Update Feature appears to be used extensively by some market making firms. Specifically, the report shows that the quote update feature is sued by 126 market makers for 10,646 market making positions. Thus, this feature is currently being used by 26 percent of the market makers and for 24 percent of all market making positions. In addition the report showed that, on average, 3,394 quotations a day were generated by the quote update feature from October 2, 1995 to November 21, 1995. Accordingly, the NASD and Nasdaq believe that the Automated Update Feature has effectively served its intended purpose of helping to maintain continuous quotations in Nasdaq, minimize "closed quote" conditions, and avoid unexcused market maker withdrawals, thereby promoting market liquidity.

Accordingly, the NASD believes the Commission should properly view these two SOES rules as strictures that are highly correlated with improvements in market liquidity, not as rules that have had or could have a damaging effect on liquidity. The NASD and Nasdaq also believe the monitoring report illustrates that implementation of the Automated Quotation Update Feature and the SOES Minimum Exposure Limit Rule have not diminished the significant benefits provided to investors through the automatic execution capabilities of SOES. Simply put, these two SOES rules have in no way altered the operation of SOES as an automatic

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[11] *Id.* at 69425–26.

[12] *Id.*

[13] *Id.*

[14] *Id.* at 69429.

[15] *See* letter from Gene Finn, Vice President & Chief Economist, NASD, to Katherine England, Assistant Director, National Market System & OTC Regulation, SEC, dated October 24, 1994 (letter submitted in connection with the NADD'S)N•PROVE filing, SR–NASD–94–13).

[16] The Association Between the Interim SOES Rules and Nasdaq Market Quality, Fear Furbush, Ph D.

[17] Interim SOES Rules Approval Order , *Supra* note 2, 59 FR at 69429.

[18] Some press reports have attributed the recent decline in spreads for Nasdaq stocks to the publication, on May 26 and 27, 1994, of newspaper articles in The Wall Street Journal, The Los Angeles Times and other publications reporting the results of an economic study conducted by two academicians that illustrated the lack of odd-eighth quotes for active Nasdaq stocks. Contrary to these press reports, this study shows that spreads had indeed narrowed before publication of these articles (from April 28 to May 12), stabilized at these narrower levels from mid-May until June 23, and declined again from June 23 to July 18.

[19] *See* NASD Department of Economic Research! Impact of SOES Active Trading Firms on Nasdaq Market Quality (May 12, 1993) ("May 1993 SOES Study"). *See also* Securities Exchange Act Release No. 32313 (May 17, 1993), 58 FR 29647 (publication of the study for comment).

[20] *See* letter from Richard G. Ketchum, Executive Vice President & Chief Operating Officer, NASD, to Brandon Becker, Director, Division of Market Regulation, SEC, dated August 1, 1995.

[21] The NASD believes that elimination of the ban against short sales through SOES did not have a dramatic negative market effect because the NASD's short sale rule was approved during the time that the ban was in effect.

[22] *See* Monitoring Report of Exhaustion of SOES Exposure Limits and the Usage of Nasdaq Automated Quotation Update Feature, NASD Economic Research Department, December 18, 1995.

[23] October 1995 Extension Order, *supra* note 6, 60 FR at 52439, n. 12 ("December 1995 Monitoring Report").

[24] The highest number of exposure limits exhausted on any day during this period was 119 on November 21, 1995 and the lowest number was 47 on October 4, 1995.

[25] The report also found that SOES orders can experience brief execution delays in isolated instances, as one order took as long as 87 seconds to be executed. While the NASD could not readily identify the reasons for these infrequent execution delays, the NASD believes these delays are likely the result of two factors. First, consistent with the NASD's short-sale rule, short sales entered into SOES cannot be executed on down bids. Second, waves of SOES orders transmitted by active SOES order-entry firms cause queues to develop in the processing of SOES orders, which, in turn, causes execution delays.

VOL 61 ISS 130 JL 5 1996 UMI

execution system that affords small, retail investors immediate execution at the inside market. However, as noted in the NASD's proposed NAqcess filing, the NASD believes the limit order processing capabilities and order execution algorithm of SOES could be significantly improved upon for the benefit of small investors and the market place as a whole.

Moreover, in the Interim SOES Rules Extension Order, an order approving a proposal identical to the NASD's instant proposal, the SEC found that the continued effectiveness of the SOES Minimum Exposure Limit Rule "provides customers fair access to the Nasdaq market and reasonable assurance of timely executions."[26] With respect to the SOES Automated Quotation Update Feature, the SEC also stated that it believes "that extending the automated update function is consistent with the Act and, in particular, the Firm Quote Rule. The update function provides market makers the opportunity to update their quotations automatically after executions through SOES; under the Commission's Firm Quote Rule, market makers are entitled to update their quotations following an execution and prior to accepting a second order at their published quotes."[27]

Therefore, in light of the above-cited statutory findings made by the SEC when it first approved the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature and extensions of these rules, coupled with the NASD's findings that these rules have been associated with positive market developments in terms of lower spreads on Nasdaq and fewer stocks with extreme relative price volatility, the NASD believes it would be consistent with the Act for the Commission to extend the effectiveness of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature for an additional six-month period. Moreover, even if the Commission is unwilling to find positive significance in the NASD's statistical analyses, at the very least, these studies indicate that the market has not been harmed by implementation of these rules.[28] Indeed, the Commission clearly stated in the Interim SOES Rules Extension Order that the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature have not had a detrimental effect on the Nasdaq market: "the Commission * * * continues to believe that the data submitted by the NASD demonstrates * * * [no] serious deterioration in the quality of the Nasdaq market subsequent to the adoption of the January 1994, January 1995, March 1995, and September 1995 Amended SOES Rules."[29]

The NASD believes that the proposed rule change is consistent with Sections 15A9b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Specifically, the NASD is proposing to extend the effectiveness of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature until January 31, 1997 because of concerns tat concentrated, aggressive use of SOES by a growing number of order entry firms has resulted in increased volatility in quotations and transaction prices, wider spreads, and the loss of liquidity for individual and institutional investor orders, all to the detriment of public investors and the public interest. The NASD believes the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature have operated to rectify this situation while continuing to provide an effective opportunity for the prompt, reliable execution of small orders received from the investing public. Accordingly, in order to protect investors and the public interest, the NASD believes the SEC should approve an additional six-month extension of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature through January 31, 1997, so that small investors' orders will continue to receive the fair and efficient executions that SOES was designed to provide.

Section 15A(b)(9) provides that the rules of the Association may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature apply across the board and do not target any particular user or participant, as all dealers may set their exposure limits at two times the tier size and all dealers may elect to utilize the automated quote update feature. Accordingly, the NASD believes that these rule changes are not anti-competitive, as they are uniform in application and they seek to preserve the ability of SOES to provide fair and efficient automated executions for small investor orders, while preserving market maker participation in SOES and market liquidity.

Section 15A(b)(11) empowers the NASD to adopt rules governing the form and content of quotations relating to securities in the Nasdaq market. Such rules must be designed to produce fair and informative quotations, prevent fictitious and misleading quotations, and promote orderly procedures for collecting and distributing quotations. The NASD is seeking to continue the effectiveness of SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature so that SOES activity may not result in misleading quotations in the Nasdaq market. Market makers place quotes in the Nasdaq system and these quotes comprise the inside market and define the execution parameters of SOES. When volatility in the SOES environment causes market makers to widen spreads or to change quotes in anticipation of waves of SOES orders, quotes in the Nasdaq market become more volatile and may be misleading to the investing public. Accordingly, absent continuation of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature, the quotations published by Nasdaq may not reflect the true market in a security and, as a result, there may be short-term volatility and loss of liquidity in Nasdaq securities, to the detriment of the investing pubic. Further, the continuation of the automated refresh feature will ensure that a market maker's quotation is updated after an exposure limit is exhausted. Uninterrupted use of this function will maintain continuous quotations in Nasdaq as market makers exhausting their exposure limits in SOES will not be subject to a "closed quote" condition or an unexcused withdrawal from the market.

Finally, the NASD believes that the proposed rule change is consistent with significant national market system objectives contained in Section 11A(a)(1)(C) of the Act. This provision states it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things: (i) Economically efficient execution of securities transactions; (ii) fair competition among brokers and dealers; and (iii) the practicality of brokers executing investor orders in the best market. Specifically, the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature advance each of these objectives by preserving the operational efficiencies of SOES for the processing of small investors' orders, by maintaining current levels of market maker participation through reduced financial exposure from unpreferenced orders, and by reducing price volatility and the widening of market makers' spreads in response to the practices of order entry firms active in SOES.

In addition, for the same reasons provided by the SEC when it approved the Interim SOES Rules that are cited above in the text accompanying footnotes 6 through 13, the NASD believes that the proposed rule change is consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR–NASD–96–22 and should be submitted by July 26, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–17144 Filed 7–3–96; 8:45 am]

BILLING CODE 8010–01–M

[26] Interim SOES Rules Extension Order, *supra* note 3, 61 FR at 4505.

[27] *Id.* (footnotes omitted).

[28] Even if the Commission concludes that the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature have had no impact on market quality, the NASD believes the Commission's approval of New York Stock Exchange ("NYSE") Rule 80A on a permanent basis illustrates that the Commission would still have a sufficient basis to approve an extension of the rules for a four-month period. In particular, the SEC's discussion of the statutory basis for approval of NYSE Rule 80A focused in large part on the fact that Rule 80A did not have any adverse impacts on market quality on the NYSE and that, as a result, the NYSE should be given the latitude to take reasonable steps to address excessive volatility in its marketplace. *See* Securities Exchange Act Release No. 29854 (October 24, 1994), 56 FR 55963 (October 30, 1994). Accordingly, the NASD believes the SEC should afford the NASD the same regulatory flexibility that it afforded the NYSE to implement rules reasonably designed to enhance the quality of Nasdaq and minimize the effects of potential disruptive trading practice.

[29] Interim SOES Rules Extension Order, *supra* note 3, 61 FR at 4506.

[30] 17 CFR 200.30–3(a)(12).

[Release No. 34–37381; File Nos. SR–NSCC–96–09; SR–SCCP–96–02]

Self-Regulatory Organizations; National Securities Clearing Corporation; Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Permanent Approval on an Accelerated Basis of Proposed Rule Changes Relating to the Guarantee of Trades in Continuous Net Settlement Systems

June 28, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that the National Securities Clearing Corporation ("NSCC") and Stock Clearing Corporation of Philadelphia ("SCCP") (collectively referred to as "Clearing Corporations") filed with the Securities and Exchange Commission ("Commission") on April 3, 1996, and May 8, 1996, respectively, the proposed rule changes as described in Items I and II below, which items have been prepared primarily by the Clearing Corporations. On May 8, 1996, SCCP filed an amendment to the proposed rule change to remove from consideration certain proposed amendments to its clearing fund calculations.[2] The proposals seek permanent approval of rule changes relating to the guarantee of trades in the Clearing Corporations' continuous net settlement ("CNS") systems. The Commission is publishing this notice and order to solicit comments on the proposed rule changes from interested persons and to grant accelerated permanent approval of the proposed rule changes.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposals seek permanent approval of proposed rule changes to which the Commission has granted temporary approval.[3] The proposals authorize the Clearing Corporations to guarantee at an earlier time the settlement of participant trades in their CNS systems. In addition, NSCC's

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from J. Keith Kessel, Compliance Officer, SCCP, to Peter R. Geraghty, Senior Counsel, Commission (May 8, 1996). The amendment also requested permanent approval of SCCP's CNS guarantee procedures.

[3] The proposals, along with a similar proposal submitted by the Midwest Clearing Corporation ("MCC"), were originally approved on a temporary basis in 1989. For a complete discussion of these proposals, refer to Securities Exchange Act Release Nos. 27192 (August 29, 1989), 54 FR 37010 (approving File Nos. SR–NSCC–87–04, SR–MCC–87–03, and SR–SCCP–87–03 until December 31, 1990). In addition, the Commission has temporarily extended the respective proposals on six previous occasions in Securities Exchange Act Release Nos. 28726 (December 31, 1990), 56 FR 717 (approving File Nos. SR–NSCC–90–25, SR–MCC–90–08, and SR–SCCP–90–03 until June 30, 1991); 29388 (June 28, 1992), 56 FR 30951 (approving File Nos. SR–NSCC–91–06, SR–MCC–91–03, and SR–SCCP–91–03 through June 30, 1992); 30879 (July 1, 1992), 57 FR 30279 (approving File Nos. SR–NSCC–92–04, SR–MCC–92–07, and SR–SCCP–92–02 through June 30, 1993); 32547 (June 29, 1993), 58 FR 36491 (approving File Nos. SR–NSCC–93–04, SR–MCC–93–02, and SR–SCCP–93–02 through June 30, 1994); and 33996 (June 27, 1994), 59 FR 33996 (approving File Nos. SR–NSCC–94–09, SR–MCC–94–06, and SR–SCCP–94–02 through June 30, 1995); and 35916 (June 28, 1995), 60 FR 35575 (July 10, 1995) (approving File Nos. SR–NSCC–95–04, SR–MCC–95–02, and SR–SCCP–95–03). On January 5, 1996, MCC withdrew from the securities clearance business. Securities Exchange Act Release No. 36684 (January 5, 1996), 61 FR 1195 (order approving File No. SR–MCC–95–04).

VOL 61 ISS 130 JL 5 1996 UMI

proposal seeks approval of its revised clearing fund calculations designed to protect against any increased risk caused by such earlier guarantees.[4]

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the Clearing Corporations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The Clearing Corporations have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[5]

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The proposed rule changes seek permanent approval of the Clearing Corporations' procedures whereby they guarantee the settlement of all pending CNS trades as of midnight on the day after the trade date for locked-in or automatically compared trades and as of midnight on the day trades are reported to members as compared for all other trades.[6] NSCC's proposal also seeks approval of revisions to the CNS portion of its clearing fund formula.[7] This revision is designed to protect against increased risk associated with earlier guarantees.[8]

The Clearing Corporations believe that the proposed rule changes are consistent with the Act and particularly with Section 17A of the Act because the proposed changes will help the Clearing Corporations to assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible.[9]

(B) Self-Regulatory Organizations' Statement on Burden on Competition

The Clearing Corporations believe that the proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

The Clearing Corporations have neither solicited nor received any comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[10] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and be designed to remove impediments to and perfect the national system for the clearance and settlement of securities transactions. The Commission believes that the Clearing Corporations' procedures for earlier guarantees and NSCC's revised formula for calculating CNS clearing fund contributions are consistent with the Clearing Corporations' obligations under Section 17A(b)(3)(F) because the proposals should help the Clearing Corporations increase certainty as to settlement of securities transactions by reducing the time that clearing members are exposed to the risk of counterparty default. The Commission further believes that the proposals achieve that goal without compromising the safeguarding of securities and funds in the Clearing Corporations' custody or control or for which they are responsible.

The Commission also believes that NSCC's revised CNS formula,[11] as well as its additional existing safeguards such as monitoring member financial condition, reviewing member settlement activity in relation to prior activity, monitoring securities settled in its system for volatility, and the ability to collect additional fund deposits, should reduce the risk that a member purchasing securities will be unable to pay for the securities upon delivery and protects NSCC if the market price of compared trades moves away from their contract price before settlement. Thus, the Commission believes the NSCC proposal is also consistent with Section 17A(b)(3)(F)[12] of the Act because it should help NSCC reduce its risk of loss and thereby should enhance its ability to safeguard securities and funds under its control.

Because the Commission was concerned about the ability of the proposed CNS clearing fund formulas to guard against increased risk posed by an earlier CNS guarantee,[13] the Commission originally approved the proposed rule changes on a temporary basis in order that the procedures and formulas could be carefully monitored before they were approved permanently. The Commission is now permanently approving the Clearing Corporations' earlier guarantee procedures and NSCC's revised CNS formula because during the temporary approval period, the Commission has not received any reports of problems caused by NSCC's CNS clearing fund formula or the earlier CNS guarantees.

The Clearing Corporations have requested that the Commission find good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for so approving the proposed rule changes because the Commission has noticed the proposals on seven separate occasions without receiving any comment letters and does not expect to receive any with regard to the current proposals. Furthermore, accelerated approval will allow the Clearing Corporations to continue to utilize the procedures without any disruption when the current temporary approval expires on June 28, 1996.

[4] In its original filing with the Commission, SCCP proposed revisions to its program governing the guarantee of CNS trades and its clearing fund calculations. *Supra* note 2. Because the Commission has recently granted temporary approval to the proposed revisions to SCCP's clearing fund calculations in connection with a different filing in a separate order, SCCP, as noted above, amended its proposal to eliminate the proposed amendments to its clearing fund calculations. For a complete description of SCCP's formula, refer to Securities Exchange Act Release No. 36875 (February 22, 1996), 61 FR 7846 [SR–SCCP–95–06] (order approving proposed rule change).

[5] The Commission has modified the language in these sections.

[6] Until the Clearing Corporations guarantee settlement of a trade, each side to the trade bears the risk of the contraside defaulting if the Clearing Corporations cease to act for a defaulting member. Once the Clearing Corporations guarantee settlement, the original contractual obligations between the two parties are discharged and replaced by contracts between the Clearing Corporations and each of the original parties.

[7] NSCC's revised CNS clearing fund formula includes the following components (a) 2% of the member's projected total long CNS positions plus (b) the net of each day's difference between the contract price of pending, compared CNS trades, exclusive of trades reported by The Options Clearing Corporation ("OCC") which are the result of options exercises and assignments, and the current market price for all guaranteed pending CNS trades, exclusive of trades reported by OCC which are the result of options exercises and assignments which have not yet reached settlement plus (c) .25% of the net of all guaranteed pending CNS trades and open CNS positions. The specific changes being made to NSCC's clearing fund formulas and other procedures are set forth in Exhibit A to NSCC's proposed rule change. A copy of the proposal with Exhibit A is available through the Commission's Public Reference Room or through NSCC.

[8] For a more detailed discussion of the proposal, refer to Securities Exchange Act Release Nos. 34261, 32547, 30879, 29388, 28728, and 27192 and the accompanying rule filings, *supra* note 4.

[9] 15 U.S.C. 78q–1 (1988).

[10] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[11] *Supra* notes 7 and 8.

[12] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[13] In addition, the Commission was concerned that daily clearing fund calculations based on mark-to-market average exposure for a rolling twenty-day period would not reflect actual mark-to-the-market exposure as well as, for example, daily collection of marks-to-the-market.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes, as amended (File Nos. SR–NSCC–96–09 and SR–SCCP–96–02), be, and hereby are, permanently approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17146 Filed 7–3–96; 8:45 am]

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[14] 17 CFR 200.30–3(a)(12) (1995).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal offices of NSCC and SCCP. All submissions should refer to file numbers SR–NSCC–96–09 and SR–SCCP–96–02 and should be submitted by July 26, 1996.

[Release No. 34–37382; File Nos. SR–Philadep–96–08 and SR–SCCP–96–04]

Self-Regulatory Organizations; Philadelphia Depository Trust Company and Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of Proposed Rule Changes Requesting Permanent Approval of the Adoption of Article 8 of the New York Uniform Commercial Code To Govern Certain Transactions

June 28, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 30, 1996, the Philadelphia Depository Trust Company ("Philadep") and the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes (File Nos. SR–Philadep–96–08 and SR–SCCP–96–04) as described in Items I and II below, which Items have been prepared primarily by Philadep and SCCP. The Commission is publishing this notice to solicit comments from interested persons and to grant accelerated approval of the proposed rule changes on a temporary basis through December 31, 1996.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

Philadep requests permanent approval of the adoption of Rule 32 and the amendment of Rule 1 of its rules, and SCCP requests permanent approval of the adoption of Rule 41 and the amendment of Rule 1 of its rules governing the choice of law to be elected in certain transactions effecting Philadep, SCCP, their participants, and pledged. On January 26, 1996, the Commission temporarily approved through June 30, 1996, Philadep's and SCCP's proposed rule changes adopting Article 8 of the New York Uniform Commercial Code ("UCC") as their choice of law governing certain transactions.[2]

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, Philadep and SCCP included statements concerning the purpose of and the basis for the proposed rule changes and discussed any comments received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. Philadep and SCCP have prepared summaries, as set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and the Statutory Basis for, the Proposed Rule Changes

Philadep and SCCP propose to permanently adopt Rules 32 and Rule 41, respectively, and to permanently amend Rule 1 of their rules to codify their decision to elect certain New York commercial code provisions to govern certain transactions for the purpose of providing a uniform, consistent, and predictable body of law. Specifically, Rule 32 and Rule 41 will assure that the rights and obligations of Philadep and SCCP, their participants, and their pledgees with respect to transfers and pledges of securities, to the extent Article 8 of the UCC applies thereto, will be governed by and construed in accordance with Article 8 of the UCC of New York in effect from time to time. The definition of "security" under Rule 1 of both Philadep's and SCCP's rules was amended to cite to New York UCC Article 8 as opposed to Pennsylvania UCC Article 8.

Philadep and SCCP note that uncertainty exists whether New York law or Pennsylvania law may apply to any particular transfers and whether some transfers within Philadep's or SCCP's systems may be governed by Pennsylvania's UCC Article 8 while other transaction within such systems may be governed by New York's UCC Article 8. With so many of the transactions for which Philadep and SCCP provide depository, clearance, and settlement services potentially being affected (*e.g.*, those transactions effected through interface with broker-dealers, banks, and other institutions which are participants in The Depository Trust Company ("DTC") and National Securities Clearing Corporation ("NSCC") systems), it is problematic that different rules of law under Article 8 of the UCC may govern the rights and obligations of parties to such transfers. Philadep and SCCP, therefore, have chosen to elect the application of New York's UCC Article 8 rather than Pennsylvania's UCC Article 8. The choice of New York law also assures that DTC, NSCC, and their respective participants and pledgees will find harmonious commercial code

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 36781 (January 26, 1996), 61 FR 3956 [File Nos. SR–SCCP–96–01 and SR–Philadep–96–01] (order granting accelerated approval on a temporary basis of proposed rule changes to provide for the application of Article 8 of the New York UCC).

provisions governing their extensive dealings with Philadep and SCCP, their participants, and pledgees in this area as the former New York based groups already are subject to New York law.

Philadep and SCCP believe the proposed rule changes are consistent with Section 17A of the Act and the rules and regulations thereunder because the rules are designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities, to remove impediments to and perfect the mechanism of a national market system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organizations' Statements on Burden on Competition

Philadep and SCCP do not believe that the proposed rule changes will impact or impose a burden on competition.

C. Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants or Others

No written comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Section 17A(b)(3)(F)[3] of the Act requires the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities. The Commission believes the proposed rule changes are consistent with these requirements because adoption of Article 8 of the New York UCC should help provide certainty with respect to the substantive rights and obligations under UCC Article 8 that are applicable to Philadep and SCCP and their participants particularly with respect to transactions with broker-dealers, banks, and other institutions that are participants of other foreign or domestic clearing entities.

Philadep and SCCP have requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval will enable Philadep and SCCP to continue to choose Article 8 of the New York UCC as the governing law for certain transactions, thus enabling Philadep and SCCP to continue to settle without any disruption securities transactions between U.S. broker-dealers and Canadian broker-dealers. Currently, the West Canada Depository Trust Company ("WCDTC") and the West Canada Clearing Corporation ("WCCC") act as a corresponding depository for and conduct clearance and settlement with Philadep and SCCP, respectively. With WCDTC and WCCC as participants of SCCP and Philadep, transactions in certain Canadian and U.S. securities between Canadian and American brokers will continue to be cleared and settled through the facilities of Philadep and SCCP. The staff of the Board of Governors of the Federal Reserve System has concurred with the Commission's granting of accelerated approval.[4]

The Commission is granting temporary approval of the proposed rule changes because the Commission believes the adoption of Article 8 of the New York UCC should continue to be examined before the selection of such governing law is permanently approved. The Commission will continue to analyze the developments and the application of Article 8 of the New York UCC including the effect of the choice of law provisions upon third parties. For these reasons, the Commission is temporarily approving the proposed rule changes through December 31, 1996.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making such submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552 will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal offices of Philadep and SCCP. All submissions should refer to File Nos. SR–Philadep–96–08–SR–SCCP–96–04 and should be submitted by July 26, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–Philadep–96–08 and SR–SCCP–96–04) be, and hereby are, approved through December 31, 1996.

For the Commission by the Division of Market Regulation pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17147 Filed 7–3–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37383; International Series Release No. 998; File No. SR–Philadep–96–09]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Seeking Permanent Approval of the Designation of the West Canada Depository Trust Company as a Correspondent Depository

June 28, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 30, 1996, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–Philadep–96–09) as described in Items I and II below, which items have been prepared primarily by Philadep. The Commission is publishing this notice to solicit comments from interested persons and to grant accelerated approval of the proposed rule change on a temporary basis through December 31, 1996.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to seek permanent approval of the designation of the West Canada Depository Trust Company ("WCDTC") as Philadep's nonexclusive agent and custodian in receiving securities deposited by WCDTC participants for delivery to Philadep. This custodial arrangement was temporarily approved through June 30, 1996.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to seek permanent approval of the designation of WCDTC to act as a nonexclusive agent and custodian for Philadep in receiving securities deposited by certain WCDTC sponsored participants for credit to their respective subaccounts in WCDTC's omnibus account at Philadep. The custodial arrangement was effectuated by a contract executed between Philadep and WCDTC. WCDTC's rights and obligations as a participant will be governed by Philadep's rules and procedures.

At or before 12:45 p.m. (Philadelphia time) on any business day Philadep is open, WCDTC will notify Philadep via facsimile transmission or through Philadep's Automated Deposit System of initiated and pending instructions to Canadian transfer agents to transfer various Canadian securities held by WCDTC into Philadep's nominee name. Philadep will credit WCDTC's account(s) for Canadian issues at the time of this notification. At the time of physical receipt of the securities by Philadep, Philadep will credit WCDTC's account for incoming deposits of U.S. issues which were received by WCDTC and designated for physical delivery and deposit to its Philadep account.

With regard to Canadian issues, WCDTC will cause the Canadian transfer agent to reregister the shares in Philadep's nominee name and to deliver them to WCDTC as agent and custodian of Philadep. With respect to acting as Philadep's agent for interfacing with Canadian transfer agents, WCDTC has more direct knowledge of and familiarity with Canadian transfer agents. WCDTC has a Canadian address and is expected to obtain receipt of certificates faster than Philadep would obtain receipt through the international postal system. Earlier receipt of certificates means earlier certainty with respect to the value and validity of deposited certificates. This is a benefit to Philadep because the earlier Philadep receives notice of defects in a certificate the sooner it can reverse the credit to the WCDTC's account and the better it can limit the risk that the securities will have been transferred out of the account before the reversal of the credit can take place.

For Canadian issues returning to WCDTC from the Canadian transfer agent, WCDTC will safeguard the deposited securities and will hold them with deposit tickets attached and segregated from other securities held by WCDTC until forwarded to Philadep via licensed air courier or other carrier agreed upon by the parties. Securities held overnight will be deposited in WCDTC's vault. If WCDTC fails to deliver these securities to Philadep, Philadep will apply a short charge to WCDTC's account for the full value of the fails. For fails to deliver resulting from settled CNS transactions, Philadep will short the participant's CNS account with the Stock Clearing Corporation of Philadelphia ("SCCP"), Philadep's affiliated clearing corporation. SCCP will mark to market all short positions and collect marks daily.

If the deposited securities are U.S. securities, WCDTC will forward the securities directly to Philadep on the day the securities are reported to Philadep. Securities will be shipped to Philadep via licensed air courier or other carrier agreed upon by the parties.

WCDTC and Philadep have agreed that securities placed within the custody and control of WCDTC on behalf of Philadep will not be subject to any right, charge, security interest, lien or claim of any kind in favor of WCDTC or any person claiming through WCDTC. WCDTC and Philadep have further agreed that WCDTC will have no legal or equitable right, title, or interest in or to such securities including but not limited to any right, title, or interest in or to any principal or interest coupons, redemption proceeds, payments or payable amounts relating to any securities. In addition, WCDTC will maintain adequate insurance coverage with respect to any securities which are in its custody on behalf of Philadep. Furthermore, WCDTC has made a participants fund contribution of $1,000,000, which is in excess of the minimum amount required under the applicable formula, and WCDTC's parent organization, the Vancouver Stock Exchange, has executed an irrevocable standby letter of credit in the amount of $5 million (Canadian Dollars) to be issued to Philadep securing its obligations.

Philadep believes the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because the rule proposal fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and further assures the safeguarding of securities and funds in its custody or control or for which Philadep is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Philadep does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.[3] The Commission believes that Philadep's designation of WCDTC as a correspondent depository is consistent with Philadep's obligations under Section 17A(b)(3)(F) because the proposed rule change should help foster cooperation and coordination between the U.S. and Canadian clearance and settlement systems by facilitating a link between Philadep and WCDTC.

Philadep has requested that the Commission find good cause for proving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval will allow Philadep to continue its custodial

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[3] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[4] Telephone conversation between John Rudolph, Board of Governors of the Federal Reserve System, and Chris Concannon, Staff Attorney, Division of Market Regulation, Commission (June 28, 1996).

[5] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. 78s(B)(1) (1988).

[2] Securities Exchange Act Release No. 36782; International Series Release No. 923 (January 26, 1996), 61 FR 3956 [File No. SR–Philadep–96–01] (order granting accelerated approval on a temporary basis of a proposed rule change to appoint the West Canada Depository Trust Company as a Correspondent Depository).

[3] 15 U.S.C. 78q–1(b)(3)(F) (1988)

arrangement with WCDTC thus allowing WCDTC to continue to settle without any disruption securities transactions between U.S. broker-dealers and Canadian broker-dealers.

The Commission is granting temporary approval of the proposed rule change through December 31, 1996, so that Philadep and the Commission can continue to monitor and analyze the development of WCDTC as a correspondent depository before granting permanent approval. During this period, the Commission will continue to monitor and correspondent depository arrangement between Philadep and WCDTC to ensure that proper risk management procedures are in place. Furthermore, Philadep will continue to be required to file monthly reports analyzing activity in WCDTC's omnibus account and subaccounts. For these reasons, the Commission is temporarily approving the proposed rule change through December 31, 1996. The staff of the Board of Governors of the Federal Reserve System have concurred with the Commission's granting of accelerated approval.[4]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to the file number SR–Philadep–96–09 and should be submitted by July 26, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–Philadep–96–09) be, and hereby is, approved through December 31, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17148 Filed 7–3–96; 8:45 am]

BILLING CODE 8010–01–M

[4] Telephone conversation between John Rudolph, Board of Governors of the Federal Reserve Board, and Chris Concannon, Division of Market Regulation, Commission (June 28, 1996).

[5] 17 CFR 200.30 3(a)(12) (1995).

[Release No. 34–37378; File No. SR–PHLX–96–24]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend Its Holiday Schedule Respecting the Early Closure of Its Equity Trading Floor at 1:15 p.m., Equity and Index Options Trading Floor at 1:10 and 1:15 p.m. Respectively, and Its Currency Options at 1:00 p.m. on Friday July 5, 1996

June 27, 1996.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 24, 1996, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is approving this proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to Rule 19b–4 of the Act, proposes to amend its holiday schedule respecting the early closure of the PHLX equity trading floor at 1:15 p.m.,[3] equity and index options trading floor at 1:10 and 1:15 p.m. respectively, and PHLX currency options at 1:00 p.m. on Friday July 5, 1996.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PHLX, under its previously adopted holiday schedule, had planned to be open for a full day of trading on Friday, July 5, 1996. However, the registered national securities exchanges are planning an early closure of equity trading at 1:00 P.M.[4] on Friday, July 5, 1996, in part due to fact that the exchanges do not anticipate that there will be significant trading volume on the day after the Fourth of July, Independence Day, our national holiday. Therefore, the PHLX proposes the early closure of its equity trading floor at 1:15, the equity and index options trading floor at 1:10 P.M. and 1:15 P.M. respectively, and PHLX currency options at 1:00 P.M. on Friday, July 5, 1996.

The PHLX requests accelerated effectiveness of this proposed rule change pursuant to Section 19(b)(2) in order to provide member firms and customers with sufficient notice and lead time to prepare for closing on July 5, 1996.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to protect and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that, according to PHLX, equity trading between 1:00 and 1:15 p.m. will be pursuant to PHLX Rule 101.02 which facilitates "PPS" and "GTX" designated orders. Telephone Conversation between Murray L. Ross, Secretary, PHLX, and Elizabeth Prout Lefler, SEC, on June 26, 1996.

[4] The Commission notes that, according to the PHLX, the New York Stock Exchange will conduct its normal after-hours session between 1:00 and 1:30 P.M. *Id.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–96–24 and should be submitted by July 26, 1996.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the PHLX's proposal to amend its holiday schedule respecting the early closure of the PHLX equity trading floor at 1:15 P.M., equity and index options trading floor at 1:10 and 1:15 P.M. respectively, and PHLX currency options at 1:00 P.M. on Friday, July 5, 1996, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

The Commission believes that, because the registered national securities exchanges are planning an early closure of equity trading at 1:00 P.M. on Friday, July 5, 1996, in part due to fact that the exchanges do not anticipate that there will be significant trading volume on the day after the Fourth of July, Independence Day, our national holiday, it is appropriate to grant the request of the PHLX to modify its previously adopted holiday schedule. Because the PHLX had planned to be open for a full day of trading on Friday, July 5, 1996, accelerated approval will permit the PHLX to provide member firms and customers with sufficient notice and lead time to prepare for closing early on July 5, 1996.

Based on the above, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act, to accelerate approval of the amended proposed rule change in that it will promote just and equitable principles of trade and remove impediments to a free and open market by providing the Exchange with the basis for notifying its members and customers of the scheduled change, thus ensuring the protection of investors and the public.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Accelerating approval of this proposal will provide the Exchange with sufficient time to notify member firms, and customers of the schedule change and allow such persons and entities to consider their trading strategies in light of the amended holiday schedule. The Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6(b)(5) and 19(b)(2) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (SR–PHLX–96–24) is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–17068 Filed 7–3–96; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. § 78s(b)(2) (1988).

[6] 17 CFR 200.30–3(a)(12) (1995).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Request

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with P.L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. Since the last list was published in the **Federal Register** on June 14, the information collections listed below have been proposed or will require extension of the current OMB approvals.

(Call the SSA Reports Clearance Officer on (410) 965–4125 for a copy of the form(s) or package(s), or write to her at the address listed below the information collections.)

1. Application for Wife's or Husband's Insurance Benefits—0960–0008. The information collected on form SSA–2 is needed by the Social Security Administration to determine an applicant's eligibility to wife's or husband's benefits. The respondents are individuals who wish to file for those types of benefits.

Number of Respondents: 700,000
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 116,667 hours

2. Statement of Marital Relationship (By One of the Parties)—0960–0038. The information collected on form SSA–754 is used by the Social Security Administration to prove or disapprove the existence of a valid common-law marriage. The respondents are individuals who allege a common-law marriage to someone entitled to Social Security benefits.

Number of Respondents: 30,000
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 15,000 hours

3. Worker's Compensation/Public Disability Benefit Questionnaire—0960–0247. The information collected on form SSA–546 is used by the Social Security Administration to help determine if receipt of a workmen's compensation or public disability benefit by an individual will cause a reduction in his or her Social Security disability benefits. The respondents are applicants for Social Security Title II disability benefits.

Number of Respondents: 100,000
Frequency of Response: 1
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 25,000 hours

4. Voluntary Customer Surveys In Accordance with E.O. 12862 Within the Social Security Administration—0960–0526. These voluntary customer surveys will be used to ascertain customer satisfaction with the Social Security Administration in terms of timeliness, appropriateness, access, and other measures of quality service. Surveys will involve individuals that are the direct or indirect beneficiaries of SSA services. The average burden per response for these activities is estimated to range from 5 minutes for a simple comment card to 2 hours for participation in a focus group.

FY 1997: Number of Respondents: 1,328,767
Frequency of Response: 1
Estimated Annual Burden: 121,840 Hours
FY 1998: Number of Respondents: 1,339,327
Frequency of Response: 1
Estimated Annual Burden: 124,784
FY 1999: Number of Respondents: 1,328,707
Frequency of Response: 1
Estimated Annual Burden: 122,670

Written comments and recommendations regarding these information collections should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Judith T. Hasche, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

The information collections listed below, which were published in the **Federal Register** on May 2 and May 8, 1996 have been submitted to OMB.

1. Survey of Employers Regarding A Pre-retirement Satellite Broadcast—0960–NEW. The Social Security Administration is attempting to establish satellite communications with private sector employers as an economical and efficient means of providing program information and training. SSA will broadcast a pre-retirement seminar via satellite and ask employers to provide information on the broadcast. The information collected by SSA will be used to determine employer interest in receiving information by satellite and to determine what issues should be covered; i.e., retirement, legislative updates, wage reporting training, etc. The respondents are employers who have received the satellite transmission.

Number of Respondents: 10,000
Frequency of Response: 1
Average Burden Per Response: 5 minutes
Estimated Annual Burden: 833 hours

2. Modified Benefit Formula Questionnaire-Foreign Pension—0960–NEW. The information collected on form SSA–308 is used by SSA to determine exactly how much (if any) of a foreign pension may be used to reduce the amount of Social Security retirement or disability benefits under the modified benefit formula. The respondents are applicants for Social Security retirement/disability benefits.

Number of Respondents: 50,000
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 8,333 hours

Written comments and recommendations regarding these information collections should be sent within 30 days of the date of this publication. Comments may be directed to OMB and SSA at the following addresses:

(OMB), Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

(SSA), Social Security Administration, DCFAM, Attn: Judith T. Hasche, 6401 Security Blvd, 1–A–21 Operations Bldg., Baltimore, MD 21235.

Dated: June 24, 1996.

Judith T. Hasche,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 96–16695 Filed 7–3–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation, Federal Aviation Administration. (FAA)

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) this notice announces that the information collection request described below has been forwarded to the Office of Management and Budget (OMB) for review. The FAA is requesting an emergency clearance by July 23, 1996, in accordance with 5 CFR 1320.13. The following information describes the nature of the information collection and its expected burden.

DATES: Submit any comments to OMB by July 22, 1996.

SUPPLEMENTARY INFORMATION: Each year the System Safety Office produces a videotape titled "VFR Arrival Procedures: Oshkosh '96" for the Oshkosh Fly-In in August. To better serve our customers needs for this information and our distribution procedures, we will be asking pilots who fly in to Oshkosh a few short questions on the availability and usefulness of the videotape. This is a one day, one time survey.

Title: Oshkosh Video Survey.

Need: The System Safety Office will use this information to serve the needs of our customers better. Per their suggestions, we may be able to add information to the video or add distribution points.

Respondents: An estimated 100 pilots who fly into Oshkosh for the annual fly-in.

Frequency: One time oral survey.

Burden: One minute, 13 seconds per respondent for a total of 2 hours and 2 minutes.

FOR FURTHER INFORMATION: or to receive copies of the justification document submitted to OMB, you can contact Judith Street on (202) 267–9895 or write to her at: Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Avenue, SW, Washington, DC 20591

Comments may be submitted to the agency at the address above or to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW, Washington, DC 20503

Issued in Washington, DC on June 28, 1996.

Patricia W. Carter,

Acting Manager, Corporate Information Division, ABC–100.

[FR Doc. 96–17167 Filed 7–3–96; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–96–31]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of informaion in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 25, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragrahs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on July 1, 1996.

Joseph A. Conte,

Acting Assistant Chief Counsel for Regulations.

Petition for Exemption

Docket No.: 25886.
Petitioner: Washoe County Sheriff's Office.
Sections of the FAR Affected: 14 CFR 61.118.
Description of Relief Sought: To allow Washoe County to reimburse members of the Sheriff's Air Squadron for fuel, oil, and maintenance costs that occur during official search missions. In addition, the exemption, if granted, would permit the Sheriff's Air Squadron to transport personnel and equipment to the scene of a rescue.

Docket No.: 28545.
Petitioner: United Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.135(a)(3).
Description of Relief Sought: To allow United Airlines, Inc., to use electronic digital technology to present certain maintenance information and instructions to ground operations and management personnel without meeting the requirement to have the date of the last revision on each page of the information and instructions.

Docket No.: 28569.
Petitioner: Rocky Mountain Helicopters.
Sections of the FAR Affected: 14 CFR 133.1(d), 133.35(a), and 133.45(e).
Description of Relief Sought: To permit Rocky Mountain Helicopters to conduct external-hoist, high-altitude rescue operations using two Agusta A109K2 helicopters that are type certificated in the normal category and are not capable of maintaining hover with one engine inoperative.

Dispositions of Petitions

Docket No.: 5010.
Petitioner: Federal Aviation Administration, Office of Aviation Standards/Department of the Air Force.
Sections of the FAR Affected: 14 CFR 91.119 (b) and (c), 91.159, 91,175 (a) and (b), and 91.179(b).
Description of Relief Sought/Disposition: To extend and amend Exemption No. 5118, as amended, which permits the FAA's Office of Aviation Standards (AVN) to deviate from certain flight rules required by subpart B of part 91 while conducting flight inspections of air navigation facilities and instrument approach procedures. The amendment allows the Department of the Air Force's Flight Inspection Center, which operates jointly with the FAA's AVN, to conduct operations under the authority of Exemption No. 5118, as amended.

Grant, May 16, 1996, Exemption No. 5118B

Docket No.: 25060.
Petitioner: Douglas Aircraft Company.
Sections of the FAR Affected: 14 CFR 21.197.
Description of Relief Sought/Disposition: To extend Exemption No. 4936, as amended, which permits the Douglas Aircraft company (DAC) to conduct training of DAC's pilot flightcrew personnel while operating under special flight permits issued for the purpose of production flight testing.

Grant, April 18, 1996, Exemption No. 4936B

Docket No.: 25336.
Petitioner: United Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.697(a)(3), 121.697 (b) through (d), and 121.709(b)(3).
Description of Relief Sought/Disposition: To extend Exemption No. 5121, as amended, which permits United Airlines, Inc., to use computerized signatures to satisfy the airworthiness release signature requirements of §§ 121.697(a)(3), 121.697 (b) through (d), and 121.709(b)(3) in lieu of physical signatures.

Grant, April 18, 1996, Exemption No. 4121D

Docket No.: 25988.
Petitioner: Soloy Corporation.
Sections of the FAR Affected: 14 CFR 21.19(b)(1).
Description of Relief Sought/Disposition: To extend and amend Exemption No. 5172, as amended, which permits the Soloy Corporation to apply for a supplemental type certificate, rather than a new type certificate, for a design change that would convert the Cessna Caravan from a one-engine aircraft to a two-engine aircraft. The amendment you request would revise the name of the exemption holder from Soloy Dual Pac, Inc., to Soloy Corporation to reflect a merger of the two companies.

Grant, April 18, 1996, Exemption No. 5172C

[FR Doc. 96–17165 Filed 7–3–96; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–96–32]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 1, 1996.

Joseph A. Conte,

Acting Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 26063
Petitioner: Reflectone Training Center—Dulles
Sections of the FAR Affected: 14 CFR 121.411 (a) (2) and (3) and (b)(2); 121.413 (b), (c), and (d); and appendix H to 121; 135.337 (a) (2) and (3) and (b)(2); and 135.339 (a)(2), (b), and (c)
Description of Relief Sought/ Disposition: To extend Exemption No. 5190, as amended, which permits the Reflectone Training Center—Dulles (RTC–D) to use qualified RTC–D instructor pilots and check airmen to conduct training and checking for certain part 121 and 135 certificate holders' pilots and flight engineers in airplanes manufactured by British Aerospace, Inc., or in FAA-approved Phase II (Level C) simulators without those instructors and check airmen meeting all the applicable training requirements of parts 121 and 135 and without RTC–D holding an air carrier operating certificate.
Grant, May 29, 1996, Exemption No. 5190C

Docket No.: 26349
Petitioner: Vocational Industrial Clubs of America
Sections of the FAR Affected: 14 CFR 147.21
Description of Relief Sought/ Disposition: To extend Exemption No. 5297, as amended, which permits aviation maintenance technician schools whose students participate in the U.S. Skill Olympics, sponsored by the Vocation Industrial Clubs of America, to allow authorized faculty members of those schools to determine if the student time dedicated to preparing for and participating in the U.S. Skill Olympics, up to 60 hours per student, per year, may be considered creditable in order to satisfy the requirements of § 147.21.
Grant, April 30, 1996, Exemption No. 5297C

Docket No.: 26533
Petitioner: Jump Shack
Sections of the FAR Affected: 14 CFR 105.43(a)
Description of Relief Sought/ Disposition: To extend and amend Exemption No. 5448, as amended, which permits Jump Shack to allow its employees, representatives, and other volunteer experimental parachute test jumpers under its direct supervision and control to make intentional tandem parachute jumps, and permits pilots in command of aircraft involved in these operations to allow such persons to make parachute jumps wearing a dual-harness, dual-pack parachute have at least one main parachute and one approved auxiliary (reserve) parachute packed in accordance with § 105.43(a). The amendment would modify the conditions and limitations of Exemption No. 5448, as amended, to correspond to the conditions and limitations in Exemption No. 4047, issued to Strong Enterprises, Inc., and The Relative Workshop, Inc., on June 25, 1984 (Docket No. 23869). By doing so, condition and limitation Nos. 10–14 would be removed from the Jump Shack exemption. While the request for extension has been granted, the request for amendment has been denied.
Grant, April 29, 1996, Exemption No. 5448B

Docket No.: 26669
Petitioner: Evergreen International Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.583(a)(8)
Description of Relief Sought/ Disposition: To permit Evergreen International Airlines, Inc., to provide transportation for its employees and dependents of its employees, to any destination, on company business, without complying with certain passenger-carrying requirements of part 121.
Grant, May 24, 1996, Exemption No. 5443

Docket No.: 26696
Petitioner: Ryan International Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.503(b) and 121.511(a)
Description of Relief Sought/ Disposition: To extend Exemption No. 5461, as amended, which permits pilots and flight engineers employed by Ryan International Airlines, Inc., to complete certain scheduled coast-to-coast, all-cargo, transcontinental flights with no more than one intermediate stop that exceeds 8 hours but no more than 11 hours of flight time during any 24 consecutive hours before being provided with at least 16 hours of rest.
Grant, May 30, 1996, Exemption No. 5461B

Docket No.: 26741
Petitioner: Pacific Wing, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To extend Exemption No. 5445, as amended, which permits appropriately trained pilots employed by Pacific Wing, Inc., to remove and reinstall the passenger seats in its aircraft that are used in operations conducted under part 135.
Grant, April 29, 1996, Exemption No. 5445B

Docket No.: 26753
Petitioner: Regional Airline Association
Sections of the FAR Affected: 14 CFR 61.49(a)
Description of Relief Sought/ Disposition: To extend Exemption No. 5492B, as amended, which permits the subject applicants to retake a written test or a flight test without waiting 30 days, provided that the part 135 authorized instructor who has given the applicant flight or ground instruction, as appropriate, endorses that the individual has successfully performed the failed item and finds the applicant competent to pass the test.
Grant, May 29, 1996, Exemption No. 5492B

Docket No.: 27494
Petitioner: Mr. Leon Lipsky
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought/ Disposition: To permit Mr. Lipsky to act as a pilot in operations conducted under part 121 after reaching his 60th birthday.
Denial, May 31, 1996, Exemption No. 5449

Docket No.: 27577
Petitioner: Aviall
Sections of the FAR Affected: 14 CFR 145.45(f)
Description of Relief Sought/ Disposition: To extend Exemption No. 5940, which permits Aviall to maintain one copy of its repair station inspection procedures manual at each facility, rather than give a copy of the manual to each of its supervisory and inspection employees.
Grant, April 15, 1996, Exemption No. 5940A

Docket No.: 27665
Petitioner: Arnautical, Inc.
Sections of the FAR Affected: 14 CFR 121.411(a) (2) and (3) and (b)(2); 121.413 (b), (c), and (d); and appendix H to part 121
Description of Relief Sought/ Disposition: To extend Exemption No. 5894, which permits certain Arnautical, Inc. (ANC) pilot and flight engineer (FE) instructors to act as instructors and check airmen in FAA-approved simulators for part 121 certificate holders that contract for training provided by ANC without those instructors having received all the required ground and flight training for each contracting part 121 certificate holder. It also permits certain ANC simulator instructors and check airmen to serve in advanced simulators without being employed by the contracting certificate holder for at least 1 year.
Grant, May 29, 1996, Exemption No. 5894A

Docket No.: 27690
Petitioner: Atlas Air, Inc.
Sections of the FAR Affected: 14 CFR appendix H to part 121
Description of Relief Sought/ Disposition: To extend Exemption No. 5888, as amended, which permits Atlas Air, Inc. (Atlas) to provide initial or upgrade training and checking in a Phase II (Level C) simulator and allow certain experienced pilots and flight engineers who have received training in a Phase II simulator to become Boeing 747 seconds in command in accordance with the training and checking provisions permitted under Phase III (Level D) of appendix H to part 121. This exemption also permits Atlas to conduct initial training in a Phase II simulator for pilots in command who have been approved by Atlas' Principal Operations Inspector.
Grant, May 29, 1996, Exemption No. 5888C

Docket No.: 28132
Petitioner: Washington State Department of Transportation
Sections of the FAR Affected: 14 CFR 61.118
Description of Relief Sought/ Disposition: To allow the Washington State Department of Transportation to reimburse private pilots who volunteer in its search and rescue program for their fuel and oil expenses incurred while performing search and rescue training and operations.
Partial grant, May 24, 1996, Exemption No. 6442

Petitioner: Ameriflight, Inc.
Sections of the FAR Affected: 14 CFR 21.197(c)(2)
Description of Relief Sought/ Disposition: To allow the issuance of a special flight permit with continuing authorization to Ameriflight, Inc., for aircraft that are operated and maintained in accordance with §§ 135.411(a)(1) and 135.419, "Approved aircraft inspection program."
Denial, April 18, 1996, Exemption No. 6422

[FR Doc. 96–17166 Filed 7–3–96; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Bellevue, King County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised Notice of Intent (ref. 12–1–94, FR Vol. 59, No.230)

SUMMARY: The Federal Highway Administration is issuing this notice to advise the public that the purpose and scope of the Environmental Impact Statement proposed in the notice published in the Federal Register of December 1, 1994, has been substantially modified. The original NOI stated that an environmental impact statement (EIS) would be prepared for a proposed modification to a freeway interchange in King County, Washington, and that the modification would include realignment of the NE 8th St./I–405 interchange and implementation of a one-way couplet along NE 8th and NE 10th Streets." The scope of the proposes EIS will be expanded to include other alternatives that would add or modify access points on I–405 from NE 4th Street to NE 10th Street and improve traffic circulation between I–405 and downtown Bellevue.

FOR FURTHER INFORMATION CONTACT: Gene K. Fong, Federal Highway Administration, Evergreen Plaza Building, 711 South Capital Way, Suite 501, Olympia, Washington 98501, Telephone: (360) 753–9554; Robert D. Aye, Acting Region Administrator, Washington State Department of Transportation, Northwest Region, 15700 Dayton Avenue North, Seattle, Washington 98133–9710, Telephone: (206) 440–4691; Hank Howard, City of Bellevue Transportation Department, P.O. Box 90012, Bellevue Washington 98009–9012, Telephone: (202) 455–6867.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation and the City of Bellevue, Washington, will prepare an environmental impact statement (EIS) on a proposal to modify I–405 access to and from downtown Bellevue. The proposed improvements are considered necessary to accommodate the existing and projected traffic demand between downtown Bellevue and I–405; to relieve existing traffic congestion at the I–405/NE 8th Street freeway interchange, and to support improved high-occupancy-vehicle (HOV) access and usage.

Three build alternatives and a no-action alternative are presently under consideration. One build alternative would modify the interchange to provide I–405 access to NE 10th Street and to modify I–405 access from NE 8th Street. This alternative would include new ramps connecting NE 10th Street with I–405 and modifications to the existing ramps connecting NE 8th Street to I–405. It would also convert NE 8th and NE 10th Streets from I–405 to Bellevue Way to a one-way couplet system (both streets have two-way traffic at present) and provide for additional lanes at the intersection of NE 8th Street and 116th Avenue. This alternative was the only build alternative under consideration when the original Notice of Intent was issued. The second build alternative would widen the NE 8th Street/I–405 overpass, modify the existing southbound I–405 off-ramp at NE 8th Street, and construct a new HOV/transit interchange at NE 6th Street/I–405. NE 8th Street and the I–405 overpass would be widened from west of 112th Avenue to east of 116th Avenue to include an additional eastbound lane and provide for dual left turn lanes at the NE 8th Street/116th Avenue intersection. The existing southbound I–405 off-ramp to westbound NE 8th Street would also be modified to divert traffic to NE 10th Street. In conjunction with this ramp modification, 112th Avenue would be widened from NE 8th Street to NE 10th Street. The alternative would construct new ramps to the proposed I–405 inside HOV lanes at NE 6th Street and remove the existing HOV restrictions at NE 4th Street and I–405. The third build alternative would construct a new two-way viaduct over I–405 connecting NE 8th Street to NE 10th Street, provide I–405 access to and from NE 10th Street, and modify an existing I–405 on-ramp at NE 8th Street. The new two-way viaduct, with one lane in each direction, would connect NE 8th Street east of 116th Avenue to NE 10th Street at 112th Avenue. The existing southbound to westbound I–405 off-ramp at NE 8th Street would be relocated to NE 10th St. A new on-ramp would be constructed on NE 10th Street to provide new access to southbound I–405. In addition, NE 10th Street would be widened between 112th and 110th Avenue. The existing westbound to southbound I–405 on-ramp at NE 8th would be modified to accommodate these changes.

This EIS is being prepared because City of Bellevue officials believe that the project could have significant impacts related to land use and development and to visual quality. Although air quality is an issue of concern, no significant air quality impact are

anticipated from project implementation.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, affected tribes, and private organizations and citizens who have previously expressed or are known to have interest in this proposal. An open house and new public scoping meeting was held on June 27th, 1996 to provide information and seek public input on the proposed alternatives. An open house and public hearing will be held to receive comments on the draft EIS after it is circulated. The draft EIS will be available for public and agency review and comment prior to the public hearing. Public notice will be given of the time and place of the open house and hearing and the availability of the draft EIS.

To assure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS, or requests to be added to the mailing list should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 26, 1996.

José M. Miranda,

Environmental Program Manager Olympia, Washington.

[FR Doc. 96–17132 Filed 7–3–96; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Sarpy and Cass Counties, NE

AGENCY: Federal Highway Administration (FHWA), Nebraska Department of Roads (NDOR).

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplement to a final environmental impact statement will be prepared for a proposed highway project in Sarpy and Cass Counties, Nebraska.

FOR FURTHER INFORMATION CONTACT:

Philip E. Barnes, PE, Operations Engineer, Federal Highway Administration, Room 220, 100 Centennial Mall North, Lincoln, Nebraska 68508–3851, Phone: (402) 437–5971

Mr. Arthur Yonkey, Project Development Engineer, Nebraska Department of Roads, P.O. Box 94759, Lincoln, Nebraska 68509, Phone: (402) 479–4795

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the NDOR, will prepare a supplement to the final environmental impact statement (EIS) on a proposal to improve U.S. Highway 75 in Sarpy and Cass Counties, Nebraska. The original EIS for the improvements (FHWA–Neb–EIS–73–11–F) was approved on June 6, 1979. The proposed improvements to U.S. 75 will provide a divided four-lane, limited access highway along existing alignment between the towns of Nebraska City and Bellevue, Nebraska for a distance of about 48 km (29.8 miles). Improvements to the corridor are considered necessary to provide for existing and projected traffic demand and improve upon high accident locations.

The NDOR and FHWA have determined that a supplement to the EIS will be required for the 20 km (12.5 mile) segment from Murray (N–1) to Bellevue (Fairview Road) segment of the U.S. 75 improvements studied in 1994. The supplement will identify those aspects of the project that have changed, as well as those aspects of the existing environmental setting, that have changed since the FEIS was filed 16 years ago. Since the 1979 EIS, the concept is proposed to be revised as follows:

- Murray (N–1) to south edge of Plattsmouth—changed to a four lane rural expressway on existing alignment;
- Through Plattsmouth—suburban signalized four lane expressway; and
- North of Plattsmouth to Bellevue (Fairview Road)—retain four lane highway but increase access control to that of a freeway with access points (Interchanges) at Bay Road and north of LaPlatte Road.

This alternative, a bypass to the west of Plattsmouth, and no action (retain 1979 preferred alternative) are currently being considered.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal.

An agency scoping meeting was held on April 22, 1996. A public scoping meeting will not be held. Public notice will be given of the time and place of the public hearing. This draft supplemental EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues relating to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the Nebraska Department of Roads at the addresses provided above.

Philip E. Barnes,

Operations Engineer.

[FR Doc. 96–17133 Filed 7–3–96; 8:45 am]

BILLING CODE 4910–22–M

Commercial Vehicle Information Systems and Networks (CVISN) Model Deployment Program

AGENCY: Federal Highway Administration (FHWA).

ACTION: Request for application (RFA).

SUMMARY: The FHWA is soliciting applications for the CVISN Model Deployment Program. CVISN are information systems that support commercial vehicle operations (CVO). This includes information systems owned and operated by governments, motor carriers, and other stakeholders. CVISN is not a new national information system, but rather a way for existing systems to exchange information through the use of standards and the United States commercially available communications infrastructure. CVISN will enable government agencies, the motor carrier industry, and other parties engaged in commercial vehicle operations, safety, and regulation to exchange information and conduct business transactions electronically. The objectives of CVISN include the following elements:

a. Distribution of safety information to computers at the roadside to target high risk carriers;

b. Use of license plate reader(s) at roadside to electronically identify commercial vehicles and carriers to check safety information;

c. Electronic collection of inspection data from the roadside and uploading to SAFETYNET;

d. Electronic application for credentials by motor carriers;

e. Interfacing of State systems to the International Registration Plan (IRP) clearinghouse;

f. Interfacing of State systems to the International Fuel Tax Agreement (IFTA) clearinghouse; and

g. Electronic clearance at fixed and/or mobile sites.

This RFA has been sent to all State agencies that have major responsibilities for the State transportation system, Motor Carrier Safety Assistance Program (MCSAP), vehicle registration, and vehicle fuel tax. The RFA outlines FHWA's plans for model deployment of CVISN in seven pilot States. A full text of the CVISN RFA is being provided for responses.

DATES: Applications must be submitted to FHWA on or before July 19, 1996.

ADDRESSES: Submit applications or mail to: Mr. Doug McKelvey, Federal Highway Administration, Office of Motor Carriers, 400 7th Street, SW., HSA–20, Room 3419, Washington, D.C. 20590 or Facsimile to: FHWA CVISN RFA at (202) 366–7908.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Swartzlander, Office of Motor Carriers, (202) 366–6066, or Mr. Kenneth Baxter, Office of Motor Carriers, (202) 366–8957.

SUPPLEMENTARY INFORMATION:

1. Introduction

1.1 Background

On April 11, 1996, notice of the FHWA intention to solicit application was published in the **Federal Register** (61FR16157). Comments from twenty-two states and two entities were received. The FHWA received comments from twenty-two States and two private agencies on the request for information (RFI). Overall, the responders were very supportive of CVISN and believe it is a worthy endeavor. The major comments and the FHWA's responses include the following:

1.1.1 All but one commenter agreed with the seven objectives. One commenter recommended that the hazardous materials transportation registration and permitting as an optional objective be added and require one pilot State to test this objective. This objective was not added because there are already seven objectives, and program funds and time are limited.

1.1.2 The majority of the States believe the Federal funding over a two-year period is appropriate to accomplish the seven objectives. Because of limited funding, it was decided to keep the two-year funding period.

1.1.3 The commenters offered varying opinions on the 50% minimum non-Federal cost sharing. FHWA will keep the 50% requirement in order to comply with the Department of Transportation and Related Agencies Appropriations Act, 1996 to vigorously pursue cost-sharing opportunities.

1.1.4 Several States were against giving extra credit for States that provide more than a 50% non-Federal match. This selection criteria element has been deleted because it would impose a hardship on some States.

1.1.5 The majority of the responders believe motor carrier support should be required/encouraged during the model deployment project, but there should be no required signature from the industry. The FHWA agreed to require documentation indicating motor carrier support.

1.1.6 The commenters offered varying opinions on the issue of requiring the governor's signature on the Memorandum of Agreement (MOA). Four States said the governor's signature should be required because deploying CVISN will require involvement of numerous State agencies and the signature will ensure complete allocation of resources. Other States said the governor's signature should not be required because every State's administrative requirements are different, the signature of the head of the State's lead agency should be sufficient, and requiring the governor's signature could discourage participation of larger States. It was decided to keep this item optional and allow each State to decide if they wanted to obtain the governor's signature.

1.1.7 A few responders recommended that States be allowed to form CVISN private and/or public partnerships. The FHWA supports this concept and believes the RFI/RFA acknowledges this concept. Additional language was added in the RFA to clarify this issue.

1.1.8 A recommendation to delete the requirement for a 20% non-Federal hard match was supported by the FHWA and the RFA will reflect this deletion and only specify a 50% non-Federal match.

1.1.9 One commenter suggested deleting the reference to provide free Carrier Automated Transaction (CAT) software. The commenter believes the reference to free software would result in government competing unfairly with private sector participation in CVO deployment. The FHWA agrees with this request and the RFA has been changed to say that it is available from commercial sources.

1.1.10 Interoperability with toll systems was also a concern. This issue is addressed in the RFI/RFA by requiring interoperability with major CVO clearance programs and encourages interoperability with toll deployment technology.

Commercial vehicle business practices and systems were originally designed primarily for intrastate trucking, but several factors have changed the way CVO business is conducted. These factors include increased emphasis on safety, improved truck technology, the construction of the Interstate Highway System, the industry's deregulation in 1980, and the interstate agreements for registration and fuel tax being adopted nationwide. The systems supporting CVO operations have not kept pace. Many of the systems supporting CVO are manual processes requiring redundant data entry and cannot share information within and among States and customers. Additionally, State safety and administrative responsibilities for commercial vehicles are projected to increase over the next several years and State budgets are anticipated to remain stable or face reductions. To address these issues, the United States Department of Transportation (US DOT), through the FHWA, intends to support model deployment of CVISN in a number of States. CVISN are information systems that support commercial vehicle operations. This includes information systems owned and operated by governments, motor carriers, and other stakeholders. CVISN is not a new information system, but rather a way for existing systems to exchange information through the use of standards and the existing commercially available communications infrastructure. CVISN will enable government agencies, the motor carrier industry, and other parties engaged in CVO safety and regulation to exchange information and conduct business transactions electronically. The purpose of investing in model deployment of CVISN in States is (1) to facilitate the development and deployment of Intelligent Transportation Systems (ITS) services that will increase the safety and productivity of CVO; and (2) to ascertain and educate the general public and key State and industry decision makers on the costs and benefits of ITS for CVO.

1.2 Description of CVISN Model Deployment Program

The model deployment of CVISN is focused on safety and administrative processes. Safety systems are being pursued to improve safety on the nation's highways and to reduce the burden on safe carriers, and help streamline government processes. Administrative processes are being pursued because of expected benefits to States and the high benefit/cost ratio identified in a recent study ("Assessment of ITS/Commercial Vehicle Operations and User Services—Qualitative Benefit/Cost Analysis" June, 1996, American Trucking Associations) for carriers possessing 100 or more trucks.

Three examples of CVISN include screening for safety, acquiring credentials, and mainline screening. Screening for safety would include Safety and Fitness Electronic Records (SAFER) System information that would provide a carrier safety snap-shot to the State or its agent for use at the roadside mobile and/or fixed inspection/weigh facility. The vehicle would pull into the facility and the US DOT number would be obtained. This information is then checked on the pen base computer that has a selection algorithm that suggests if the vehicle should be inspected for safety. If the inspection is performed, information is entered into the database via the pen base computer.

Carriers and commercial motor vehicle operators will obtain credentials and perform carrier to State business transactions electronically, directly from their offices. Carrier Automated Transaction (CAT) Software that performs these transactions is available from commercial sources. Commercial vendors have agreed to use open standards being developed through the American National Standards Institute (ANSI). ANSI open standards allow organizations to develop compatible CAT type software. Larger carriers would likely use these open standards to integrate carrier to State transaction software into their existing fleet management systems. While the FHWA strongly encourages carriers and States to use multiple vendors and encourage a healthy competitive market, the CVO architecture requires that all communication systems and interfaces deployed under CVISN use an open architecture and comply with the ANSI X.12 standards for electronic data interchange. Public private partnerships are encouraged in CAT development and integration as they are in all CVISN systems.

Carriers could enroll in mainline screening projects that allow carriers to pass inspection stations at mainline speeds for those States with roadside inspection/weigh facilities. A carrier's safety record will be evaluated using available safety information. The probability of a safe carrier being inspected would be very low while the probability of an historically unsafe carrier would be very high. Participating motor carrier vehicles in the mainline screening program would be weighed and classified by high speed screening equipment on the highway preceding the inspection facility and electronically examined via a vehicle-mounted transponder to ensure that all required electronic screening criteria was met. If the vehicle meets the criteria, the driver will be electronically notified by an indicator device inside of the vehicle and allowed to bypass the inspection facility. When one or more of the criteria are not satisfied, the driver will be required to enter the inspection facility for further review.

This Request for Application (RFA) outlines FHWA's plans for model deployment of CVISN in seven model deployment States, one State from each of the seven truckshed regions. The truckshed were defined by geographic distribution in the United States and by truck freight volumes, therefore piloting a national program in each of the seven regions is a logical progression to "grow" the program. Maryland and Virginia will be used to try the first generation of CVISN and it will then be refined and transferred to the model deployment State. States are encouraged to form partnerships with other States and the private sector in the CVISN program.

The complete RFA and additional information will be maintained on the World Wide Web at the Johns Hopkins University Applied Physics Laboratory (JHU/APL) home page (http://www.jhuapl.edu/transportation/ssd/cvo/other /downdocs/downdocs.htm). The Intelligent Transportation Society of America also provides information relevant to ITS and CVO on their home page (http://davinci.csn.net/itsa/).

1.3 CVISN Objectives

Each model deployment State is required to demonstrate the following over a two-year funding period at a few sites and for a portion of the truck and motor coach industry:

a. Distribution of safety information to computers at the roadside to target high risk carriers.

b. Use of license plate reader(s) at roadside to electronically identify commercial vehicles and carriers to check safety information.

c. Electronic collection of inspection data from the roadside and uploading to SAFETYNET.

d. Electronic application for credentials by motor carriers.

e. Interfacing of State systems to the International Registration Plan (IRP) clearinghouse.

f. Interfacing of State systems to the International Fuel Tax Agreement (IFTA) clearinghouse.

g. Electronic clearance at fixed and/or mobile sites.

The system for requesting oversize/overweight permits electronically is optional.

CVISN model deployment States using Dedicated Short Range Communications (DSRC) must be interoperable with major CVO clearance programs and it is desirable to be interoparable with toll deployment technology. This specifically includes adopting Electronic Data Interchange (EDI) and DSRC standards applicable to CVO when they become available. This is not designed to limit strategies, but to encourage innovative approaches to achieving the ITS/CVO vision of increased safety and efficiency. In addition, the FHWA will accept proposals outlining projects that include partnering of additional States in a truckshed region. The FHWA's plan includes expansion to additional States that may overlap trucksheds, however, funding is limited to one lead State per region. An example is a methodology that will identify high risk carriers, drivers, and vehicles based on a regional hypothesis.

Evaluation is another requirement. CVISN model deployment State must participate in an overall project evaluation. As a partner, the FHWA will provide an independent evaluator to work with the stakeholder in refining their draft evaluation plan early in the test. The evaluation process will help focus stakeholder efforts and resources through early evaluation planning to achieve the maximum cost/benefits from the program.

1.4 Expected CVISN Benefits

Expected Benefits for State Governments

a. Data interchange among State, carriers, financial institutions, and insurance carriers will be electronic and efficient.

b. Administrators and enforcement personnel will have electronic access to required data.

c. Enforcement resources can be focused on high risk carriers and drivers.

d. Credentials issuance, taxation, inspections, and compliance reviews will be automated to proceed more efficiently.

e. Better enforcement of weight, size, safety, and tax regulations.

f. In the long term, re-engineered policies and practices can be based on measured data and careful analysis.

Expected Benefits for Motor Carriers

a. Reduced administrative burden in regulatory compliance.

b. Vehicles of safe and legal carriers will incur less delay.

c. Technology investment can support multiple services.

d. Uniformity of services across North America.

e. Focus on unsafe carriers will "level the playing field."

f. Reduction in exposure to lane change movements at inspection sites.

g. Increased commercial vehicle fuel efficiency.

h. Reduced commercial vehicle emissions.

2. CVISN System and Organizational Coordination

The objectives of the CVISN model deployment program (Section 1.3) will require system and organizational coordination. The organizations and capabilities described here include the safety inspections and electronic clearance; registration; electronic credentials, clearance, and motor carriers; fuel tax system; and oversize/overweight. This section takes a paragraph to describe what each objective achieves with the CVISN deployment and how this is accomplished. The FHWA assumes that model deployment States will upgrade existing systems or use a private provider to operate and maintain the systems. The FHWA supports automation of the existing functions, but is not encouraging the addition of new systems.

2.1 Safety Inspections and Electronic Clearance

The State commercial vehicle safety system will upload inspections electronically at the roadside using the ASPEN portable computer system or current State system. Safety information will be provided electronically to the roadside to enforcement officers. Preliminary data have indicated that the effectiveness of roadside safety inspections can be doubled combining this safety information with experienced law enforcement officers. This will allow automated screening to clear safe operators and focus safety enforcement on high risk carriers. Federal model deployment funds could be used for hardware and software, and the State will provide manpower to solve organizational issues leading to deployment and resources such as motor carrier inspectors to operate the system. This will be coordinated with the existing Motor Carrier Safety Assistance Program (MCSAP). The State will also electronically clear transponder-equipped safe and legal trucks and buses at fixed and/or mobile sites.

2.2 Registration

The State registration system will electronically accept registration requests, issue credentials electronically, and respond to queries of authorized users. Federal model deployment funds could be used to purchase the necessary hardware and software to interface the existing pilot State registration system and utilize an interstate IRP clearinghouse. This IRP clearinghouse will be developed and operated under the direction of the IRP board of directors. The State registration agency will provide organizational coordination of the technology deployment and any modifications required in the existing State system software. Federal model deployment funds could be used for travel funding to resolve organizational issues and to participate in ANSI standards meetings to ensure the registration standards developed meet the pilot State's requirements.

2.3 Electronic Credentials, Clearance, and Motor Carriers

Carriers and commercial motor vehicle operators will be able to obtain credentials electronically. A small carrier if needed would go to a single location, either a State or private provider, versus the numerous locations currently required. User friendly personal computer (PC) software would be developed. This software will allow carriers to obtain credentials directly from their office. Larger carriers would likely integrate credential software in their existing fleet management system.

Carriers could apply for electronic clearance that allows safe and legal carriers with transponder-equipped vehicles to pass inspection stations or mobile sites at mainline speeds.

2.4 Fuel Tax System

The State fuel tax system will (1) electronically accept applications for fuel credentials, (2) issue them, (3) accept quarterly fuel tax reports, (4) respond to authorized queries, and (5) notify other IFTA application States electronically of carriers allocated for their State. Federal model deployment funds could be used to purchase the necessary hardware and software to interface the existing model deployment State fuel tax system and utilize an interstate fuel clearinghouse. This fuel clearinghouse will be developed and operated under the direction of the IFTA board of directors and coordinated with IFTA. The clearinghouse will notify the model deployment State electronically of all carriers allowed to operate in the pilot State, who are base-stated in other States. The fuel tax system will provide organizational coordination for the technology deployment and necessary modifications required in the existing system software. Federal model deployment funds could be used for travel funding to resolve organizational issues and to participate in the ANSI standards meetings to ensure the fuel tax standards developed meet the pilot State's requirements.

2.5 Oversize/Overweight (Optional)

The State oversize/overweight system will allow the carrier to request credentials electronically and issue oversize/overweight permits electronically for CVO vehicles in an approved envelope for size and weight. Requests outside the envelope will be notified to contact the organization in person. Where States have developed regional oversize/overweight agreements, the region will select a single State to issue credentials for that region. The State will provide manpower to resolve issues and operate the system. Federal model deployment funds could be used to purchase and install the system and provide travel funding to resolve the organizational issues and to participate in ANSI standards meetings to ensure the oversize/overweight standards developed meet the model deployment State's requirements.

3. CVISN Funding

In fiscal year (FY) 96, the FHWA expects to provide $500,000 to each model deployment State to enable them to automate their systems, purchase technologies for the model deployment, and develop business plans. Additional Federal FY 97 funding is planned. The actual amount will be based on implementation cost estimates, Congressional funding levels, and past performance. The availability of CVISN funding beyond FY 97 is undetermined at this time. Success of the CVISN model deployment program will have a significant role in future Federal funding.

3.1 Federal Allocation

Funding for each selected pilot State will be provided over a two-year funding period.

3.2 Eligible Costs for Federal Funding

Eligible expenditures for Federal funding will be for software development, equipment, installation, maintenance, and other expenses to achieve the objectives of the CVISN project.

3.3 Non-Federal Cost Sharing

The CVISN model deployment States will be asked to contribute at least 50% of the cost of the project in hard and/or soft matches. Non-Federal cost sharing (private and public) funds and other resources are required. An example of non-Federal cost sharing

includes (a) funds for equipment, (b) staff, (c) cash and (d) cost of integrating existing equipment for CVISN model deployment. In addition, the future non-Federal cost sharing percentage is subject to change depending upon Congressional funding.

4. Mainstreaming

Mainstreaming funds will be available to States and regions in FY 1996. These funds will help continue to build the organizational and institutional arrangements among State, carriers, and vendors to ensure the development and deployment of ITS/CVO user services to public and private markets. While the model deployment of the CVISN architecture proceeds in the model deployment State over the next two funding years, the State and regional forums will be strengthened by providing Federal funding to hire regional champions responsible for near-term deployment activities. The regional champions and forums will serve the following functions: (a) the development of regional and State ITS/CVO Mainstreaming plans to prepare for CVISN model deployment in States throughout the seven truckshed regions, (b) the dissemination of results from the initial CVISN model deployment to the rest of the regional forum and (c) facilitating information transfer between the regional champion and the program manager.

5. Evaluation

The FHWA will conduct a rigorous, independent evaluation of the effectiveness of the CVISN model deployment in achieving the CVISN objectives and National ITS program goals. The independent evaluation may be conducted using existing FHWA resources, or, as part of another solicitation, the FHWA may contract with one or more independent evaluation contractor(s) to evaluate the model deployments.

6. Application Requirements

The application to be a model deployment State shall include a memorandum of agreement (MOA) with the chief executive officer's (CEO) signature of relevant agencies demonstrating their support for providing the CVISN services previously outlined. A signature of the Governor is optional. A letter(s) of support from the CEO of a motor carrier is strongly encouraged. An organizational chart showing the relationship between the agencies, a point of contact for each agency and a lead agency will be identified at this time. This process is to ensure management support for CVISN services at all levels. If there is no MOA, the application will not be considered further.

Each application shall include and fully address the selection criteria statements in Section 7, Selection Criteria.

7. Selection Criteria

Selection for participation in the CVISN model deployment program will include the following criteria:

7.1 Institutional Capabilities

States interested in model deployment of CVISN should include, with their application of interest, supporting documentation indicating the extent to which of these institutional capabilities exist. Possessing more of these institutional capabilities will increase the ability of a State to be selected and to be a successful model deployment State.

a. Leadership and initiative on ITS/CVO issues and programs through participation in ITS/CVO institutional studies and operational tests.

b. Integration with safety strategies and projects targeting high risk carriers.

c. An ITS/CVO working group involving agencies and private industry.

d. An ITS/CVO plan (strategic, business, deployment, etc.). If a plan is available, a bullet list of major elements should be attached with the application including: (1) Goals, (2) Objectives, (3) Actions, (4) Schedule, and (5) Funding summary.

e. Strong commitment to customer service and the ability to work with the motor carrier industry in their State.

f. A project manager to oversee deployment of these services.

g. Experience and willingness to work with other State and CVO-related organizations at the regional and national level.

h. Commitment to participate in the evaluation and the CVISN model deployment following the two-year operational test.

i. Public/private partnerships involving CVO.

7.2 Technical Capabilities

States interested in model deployment of CVISN should include supporting documentation indicating their technical capabilities for the items below. It is not anticipated that most of these technical capabilities exist in States, but possessing more of these technical capabilities will increase the ability of a State to be a successful model deployment .

a. Significant public and/or private sector investment and technical capability in developing, operating, and maintaining CVO-related information management systems and technologies.

b. Significant progress in developing and operating (including the private sector) several ITS/CVO services, including:

1. Distribution of safety information to computers at the roadside to target high risk carriers.

2. Use of license plate reader(s) at roadside to electronically identify commercial vehicles and carriers to check safety information.

3. Electronic application for credentials by motor carriers.

4. Electronic collection of inspection data from fixed and/or mobile electronic safety screening programs, and the ability to support on-line data entry of safety information to SAFETYNET.

5. Electronic clearance programs where States operate a significant number of weigh stations, ports-of-entry, or mobile operations.

6. Electronic registration programs for carriers for interstate and intrastate registrations, and the ability to respond to electronic queries from government and industry to verify the status of registrations.

7. Electronic fuel tax reporting, and the ability to respond to electronic queries from government and industry to verify the status of fuel tax accounts.

8. Electronic oversize/overweight permitting, and the ability to respond to electronic queries from government and industry to verify the status of oversize/overweight permits.

c. State communications infrastructure or that of a private provider is sufficiently developed to provide on-line information exchange capability to the designated users.

d. Sufficient support equipment to carry out the model deployment of CVISN and ITS/CVO services.

8. Schedule

The time line for the CVISN model deployment State application and selection process is as follows:

Number and date	Event
1. May 20, 1996	Distribute request for Applications for CVISN Model Deployment Program.
2. July 19, 1996	Applications for CVISN Model Deployment Program due.
3. August 16, 1996 ...	Applications selected for CVISN Model Deployment Program.
4. September 20, 1996.	Funding agreements completed.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: June 28, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–17110 Filed 7–3–96; 8:45 am]

BILLING CODE 4910–22–P

[FHWA Docket No. 96–23]

Utilization of the Private Sector for Surveying and Mapping Services

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: Section 306 of title 23, United States Code, requires the Secretary of Transportation to issue guidance to encourage States to utilize, to the maximum extent practicable, private sector sources for surveying and mapping services for projects under title 23 of the United States Code. The FHWA requests information from the public, State and local transportation agencies, public and private professional organizations, private sector firms, and others on the appropriate role of the State and private sector in surveying and mapping activities.

DATES: Comments must be received on or before September 3, 1996.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 96–23, Federal Highway Administration Room 4232, HCC–10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Félix Rodríguez-Soto, Office of Engineering, 202–366–1564, or Wilbert Baccus, (HCC–32), Office of the Chief Counsel, 202–366–0780. The address is Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Section 306 of title 23 of the United States Code, as amended by the National Highway System Designation Act of 1995, authorizes, wherever practicable, the use of photogrammetric methods in mapping and the utilization of the private sector for such services. Section 306(b) requires the Secretary of Transportation to issue guidance to encourage States to utilize, to the maximum extent practicable, private sector sources for surveying and mapping services for projects under title 23 of the United States Code. Interested persons are invited to submit information and comments addressing the appropriate roles for States and the private sector in mapping and surveying activities including the following areas:

(1) preparation of standards and specifications;

(2) research in surveying and mapping instrumentation and procedures and technology transfer to the private sector;

(3) providing technical guidance, coordination, and administration of State surveying and mapping activities; and

(4) recommending methods for increasing the use by the States of private sector sources for surveying and mapping activities.

The FHWA will review the information received and consider it in the development of the guidance required by the Act.

Authority: 23 U.S.C. 306, 315; 49 CFR 1.48.

Issued on: June 25, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–17109 Filed 7–3–96; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Proposed Collection of Information: Notice of Reclamation; Electronic Funds Transfer, Federal Recurring Payments; Request for Debit, Electronic Funds Transfer, Federal Recurring Payments

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the forms "Notice of Reclamation, Electronic Funds Transfer; Federal Recurring Payments request for Debit, Electronic Funds Transfer, Federal Recurring Payments.".

DATES: Written comments should be received on or before September 3, 1996.

ADDRESSES: Direct all written comments to Financial Management Service, 3361–L 75th Avenue, Landover, Maryland 20785.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dorothy Wilson, Financial Management Service, Room 357–D, 401 14th St., S.W., Washington, D.C. 20227, (202) 874–7157.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Notice of Reclamation, Electronic Funds Transfer, Federal recurring Payments; Request for Debit, Electronic Funds Transfer, Federal Recurring Payments.

OMB Number: 1510–0043.

Form Number: FMS–133 and FMS–135.

Abstract: These forms are used when a program agency authorizes Treasury to recover payments that have been issued after the death of the beneficiary. FMS–133 is used by Treasury to notify the financial organization of its accountability concerning the funds. When there is no response to the FMS–133, an FMS–135 is sent requesting a debit to the financial organization's account.

Current Actions: There are no changes to this information collection. It is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business/Financial Institutions.

Estimated Number of Respondents: 55,000.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 50,930.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: June 26, 1996.

Mitchell A. Levine,

Assistant Commissioner.

[FR Doc. 96–17135 Filed 7–3–96; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register

Vol. 61, No. 130

Friday, July 5, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD–704–FC]

42 CFR Parts 405, 417, 431, 473, and 498

Medicare and Medicaid Programs; Provider Appeals; Technical Amendments

Correction

In rule document 96–13521, beginning on page 32347 in the issue of Monday, June 24, 1996, make the following correction:

§498.74 [Amended]

On page 32351, in the first column, in amendatory instruction 9.b. to §498.74, in line 4, "Council" should read "Council" "is".

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3917–N–96]

Office of Administration; Submission for OMB Review: Comment Request

Correction

In notice document 96–15228, on page 30635 in the issue of Monday, June 17, 1996, in the first column, the Docket number in the heading should be corrected as set forth in the heading.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Weather Observation Service Standards

Correction

In notice document 96–16046 beginning on page 32887 in the issue of Tuesday, June 25, 1996, make the following corrections:

1. On page 32888, in the first column, in the second paragraph, in the third line, the second "of" should read "or".

2. On page 32889, in the second column, in the third and fourth lines from the bottom, the heading "TOWER–AUGMENTED SERVICE (SERVICE LEVEL C)" was inadvertently printed twice.

3. On page 32890, in the second column, in the ninth line from the bottom, "Houston" was misspelled.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–01]

Revision of Class E Airspace; Zuni, MN

Correction

In rule document 96–15646 appearing on page 31013 in the issue of Wednesday, June 19, 1996, make the following correction:

§71.1 [Corrected]

On page 31013, in the third column, in §71.1, under **ASW NM E5 Zuni, NM [Revised]**, in the seventh line, insert "Rock" after "Black".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–01]

Revision of Class E Airspace; Zuni, MN

Correction

In rule document 96–15646 appearing on page 31013 in the issue of Wednesday, June 19, 1996, make the following correction:

§71.1 [Corrected]

On page 31013, in the third column, in §71.1, under **ASW NM E5 Zuni, NM [Revised]**, in the seventh line, insert "Rock" after "Black".

BILLING CODE 1505–01–D

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federal register

Friday
July 5, 1996

Part II

Environmental Protection Agency

40 CFR Part 80
Regulation of Fuels and Fuel Additives: Certification Standards for Deposit Control Gasoline Additives; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS-FRL-5528-5]

RIN 2060-AG05

Regulation of Fuels and Fuel Additives: Certification Standards for Deposit Control Gasoline Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action establishes a certification program for detergent additives used to control the formation of port fuel injector deposits (PFID) and intake valve deposits (IVD) in gasoline engines. In accordance with Clean Air Act section 211(l), an interim detergent program has been in effect since January 1, 1995, requiring the use of detergents in virtually all gasoline used in the U.S. This final rule contains standardized test procedures and performance standards to ensure that such detergent gasoline will provide an effective level of protection against PFID and IVD. The regulations include a variety of certification options and compliance alternatives, affording cost-effective flexibility to regulated parties.

The effective control of deposits in gasoline engine and fuel supply systems has been shown to reduce the emission of nitrogen oxides, hydrocarbons, and carbon monoxide in engine exhaust, while enhancing fuel economy. Accordingly, the intent of the detergent certification program is to help achieve the primary public health and environmental protection goals of the Clean Air Act.

DATES: *Effective Date:* This rule is effective September 3, 1996.

The information collection requirements in 40 CFR 80.157(f)(5), 80.160(b)(2), 80.164(b)(3), 80.170(f)(5), and 80.173(b)(2) have not been approved by the Office of Management and Budget (OMB) and will not be effective until OMB has approved them, and EPA publishes a document announcing their approval.

The incorporation by reference of certain publications listed in the regulations are approved by the Director of the Federal Register as of September 3, 1996.

Compliance Dates: Compliance with the requirements of the detergent certification program is mandatory for detergent manufacturers, detergent blenders, and gasoline distributors on July 1, 1997, and on August 1, 1997 for gasoline retailers and wholesale purchaser-consumers, and any other party selling or transferring gasoline to the ultimate consumer.

ADDRESSES: Materials relevant to this final rule are contained in Public Docket No. A–91–77 at the following address: Air Docket Section (LE–131), room M–1500, 401 M Street SW., Washington, DC 20460; phone (202) 260–7548; fax (202) 260–4000. The docket is open for public inspection from 8:00 a.m. until 5:30 p.m., except on government holidays. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying docket materials. Electronic copies of major documents associated with this rulemaking are available from the EPA internet site and via dial-up modem on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS). Details on how to access these sources are included in Section X of this preamble.

FOR FURTHER INFORMATION CONTACT: For information related to qualification of detergent additives for use in complying with gasoline detergency requirements contact: Jeffrey A. Herzog, U.S. EPA (FED), Fuels and Energy Division, 2565 Plymouth Road, Ann Arbor, MI 48105; Telephone: (313) 668–4227, Fax: (313) 741–7869. For information related to the registration of fuels and fuel additives under 40 CFR Part 79 contact: James W. Caldwell, U.S. EPA (6406J), Fuels and Energy Division, 401 M Street SW., Washington, DC 20460; Telephone: (202) 233–9303, Fax: (202) 233–9556. For information related to enforcement contact: Judith Lubow, U.S. EPA, Office of Enforcement and Compliance Assurance, Western Field Office, 12345 West Alameda Parkway Suite 214, Lakewood, CO 80228; Telephone: (303) 969–6483, FAX: (303) 969–6490.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those involved with the production, distribution, and sale of gasoline and gasoline detergent additives. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Detergent manufacturers, Detergent transporters, Gasoline refiners and importers, Gasoline terminals, Detergent blenders, Gasoline truckers, and Gasoline retailers and wholesale purchaser-consumers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in § 80.161(a), the detergent certification requirements in § 80.161(b), the program controls and prohibitions in § 80.168, and other related program requirements in subpart G, title 40, of the Code of Federal Regulations (CFR). If you have any questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Table of Contents

I. Background
A. Rulemaking History
B. Statutory Provisions and Legal Authority
C. Overview of this Action
D. Applicability
E. Program Start-Up and Compliance Dates
II. Combustion Chamber Deposit Control
A. CCD Impacts on Vehicle Emissions
B. CCD Energy Impacts
C. CCD Interference
D. Unwashed Gum Levels and CCD
E. Other Potential Adverse Side Effects of Detergent Overuse
III. Basic Information Requirements
A. Detergent Additive Information Requirements
1. Compositional Data
2. Minimum Effective Concentration
3. Certification Letter
B. Information Requirements for Fuel Manufacturers
IV. Certification Options
A. Background
B. Single-Tier Certification System
C. Geographic Certification Options
1. National Certification
2. PADD Certification
3. U.S. Territories
4. Certification Sub-Options
a. Nonoxygenated Gasoline Certification Option
b. Oxygenate-Specific Certification Option
c. Premium Grade Certification Option
d. Reformulated Gasoline Certification Option
5. Recertification Requirements
D. Fuel-specific Certification Option
1. General Description
2. Variants
3. Monitoring and Recertification Requirements
V. CARB Certifications
A. Background
B. Applicability of CARB Equivalent Certification
VI. Certification Test Fuels
A. National and PADD Certification Test Fuels
1. Proposed Test Fuel Requirements
2. Final Test Fuel Requirements
a. Test Fuel Source and Screening Requirements
b. Test Fuel Severity Factors
c. Number and Severity of Test Fuels
d. Other Issues
B. Fuel-Specific Certification Test Fuels
C. Summary of Test Fuel Requirements
D. Test Fuels for Leaded Gasoline Certification
E. Measurement of Gasoline Fuel Parameters
VII. Certification Tests and Performance Requirements.
A. Certification Test Procedures
B. Deposit Control Test Standards
1. PFID-Control Test Standard
2. IVD-Control Test Standard
C. Alternate Performance Requirements for Leaded Gasoline
D. Confirmatory Testing By EPA
VIII. Enforcement Provisions
A. Overview
1. Certification Conformity
2. Compliance with Volumetric Additive Reconciliation (VAR) Requirements
3. Equipment Calibration
4. Product Transfer Documents (PTDs)
5. Liability and Defenses
6. Exemptions
B. Enforcement Aspects of the Certification Program, Including Clarifications of, and Changes to, the Interim Program
1. VAR Requirements
a. Automated Detergent Blender Compliance Periods
b. VAR Formula Records per Detergent Storage System
c. Brands and Grades of Gasoline on VAR Records
d. Recording of Detergent LAC and Actual Concentration
e. VAR Recording of Use-Restricted LACs
f. Diluted Detergent
g. VAR Recording of Gasoline Which is Overadditized for the Anticipated Addition of Ethanol or Other PRC
h. VAR Recording of Transfers of Unadditized Gasoline
i. Supporting Documentation of VAR Volumes for Hand-Blending Facilities
j. Electronic VAR Formula and Supporting Records
k. Detergent Tank Transitioning
l. Automated Additization Equipment Calibration
m. Detergent Blender Record Retention
2. Affirmative Defense and Liability Issues
a. Detergent Manufacturer Affirmative Defense Modification
b. Extension of Liability for VAR Violations
c. Defense Against Liability Where More Than One Party May Be Liable for VAR Violations
d. Defense to Liability for Gasoline Nonconformity Violations Based Solely on the Addition of Misadditized Ethanol or Other PRC to Gasoline
e. Liability for the Sale of Nonconforming Gasoline or PRC when the Gasoline or PRC Also Violates VAR Requirements
f. Detergent Blender Affirmative Defense Clarification, and Clarification of Presumptive Liability Arising from Detergent Blending
g. Liability Clarification
3. Inclusion of Importers of Additized Gasoline Within the Definition of Detergent Blender
4. Certification Use Restrictions
5. PTD Changes
a. Elimination of PTD Retention Requirement for Additized Gasoline for Wholesale Purchaser-Consumers (WPCs)
b. Elimination of PTD Requirements for Transfer of Small Loads of Additized Gasoline to Ultimate Consumers
c. Address of the Transferee/Transferor
d. PTD Identification of Oxygenates and PRC Added to Gasoline
e. Detergent Package Use Restriction Designations
f. Fuel-Specific Gasoline Designations
g. PADD Designation on PTDs for Additized Gasoline or PRC
h. Identification of Oxygenate and PRC Use Restrictions on PTDs for Additized Gasoline
i. Base Gasoline Identification
j. Use of Product Codes on PTDs
k. PTD Requirements for Gasoline Overadditized for the Later Addition of Ethanol or Other PRC
6. Extension of the Agency's Right of Entry into Facilities of Detergent Manufacturers, Distributors, and Carriers
7. Exemptions
a. Research, Development, and Testing Exemption
b. Racing and Aviation Fuel Exemptions
c. California Gasoline Exemptions
C. Proposed Changes not Incorporated in the Certification Rule
IX. Administrative Requirements
A. Administrative Designation and Regulatory Analysis
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Unfunded Mandates Reform Act
E. Submission to Congress and the General Accounting Office
X. Electronic Copies of Rulemaking Documents
A. Technology Transfer Network Bulletin Board System (TTNBBS)
B. Internet

I. Background

A. Rulemaking History

Section 211(l) of the Clean Air Act (CAA) specifies that, beginning January 1, 1995, all gasoline sold or transferred to the consumer must contain additives to prevent the accumulation of deposits in engines or fuel supply systems. The CAA charged EPA with the task of establishing specifications for such deposit control (detergent) additives.[1] As described below, today's final rule is the fourth in a series of rulemaking actions which EPA has taken to develop a gasoline detergent program that is both effective and reasonable, and to ensure ample opportunity for public participation in the regulation development process.

On December 6, 1993, EPA published a Notice of Proposed Rulemaking (NPRM, 58 FR 64213) which proposed that all gasoline, with limited exceptions, must contain additives to control port fuel injector deposits (PFID) and intake valve deposits (IVD). When fully implemented, the proposed program would establish a detergent additive certification program, including vehicle-based test procedures, specified test fuels, deposit control performance standards, and related enforcement provisions. However, recognizing that the regulated industry would need adequate lead time to complete such certification requirements, simpler interim requirements were proposed for use at the start of the program. While gasoline would be required to contain properly registered detergent additives beginning January 1, 1995, the procedures and criteria established to qualify a detergent additive for use in the interim program would be less rigorous than the standardized performance requirements envisioned for the full detergent certification program.

Rules governing the two phases of the program were not finalized at the same time. The rules for the Interim Detergent Program were published on October 14, 1994 (59 FR 54678), while today's rule establishes the final detergent certification program. EPA took these actions in two separate rulemaking steps for two main reasons. First, the effective date for the CAA's mandate to use deposit control additives was January 1, 1995. This required rapid promulgation of the interim program rule after close of the NPRM comment period, to give the regulated parties as much lead time as possible. However, to ensure consistency with industry practices, EPA wished to incorporate standardized test procedures in the detergent certification rule. At the time the interim program was promulgated, the American Society for Testing and Materials (ASTM) had just completed its IVD control test procedure (ASTM D 5500), but anticipated several more months' delay before completing development of its PFID control test

[1] EPA uses the term "detergent" to refer broadly to the additives required to meet the deposit control requirements established in this program. It is not meant to specify a design standard or to limit the kind of engine or fuel supply system deposits that are, or would properly be, the subject of regulation under sections 211(l) or 211(c).

procedure (later published as ASTM D–5598). EPA judged that a delay in finalization of the detergent certification program would be appropriate to permit adoption of both ASTM procedures.

The second reason for delaying promulgation of the certification program was to provide additional opportunity for public discussion and evaluation of potential regulatory requirements for control of combustion chamber deposits (CCD). Following publication of the NPRM, a public hearing was held (in Ann Arbor, Michigan on January 11, 1994) and written comments were accepted until March 11, 1994. Much of this public commentary pertained to the CCD issue. The comments were split between those who believed CCD controls were unneeded and infeasible and those who maintained that CCD problems were already significant and could be expected to grow worse with increased use of PFID and IVD detergents, and that CCD controls were both needed and feasible.

To further the resolution of this important issue, EPA published a Notice of Reopening of the Comment Period (59 FR 66860, December 28, 1994). The Reopening Notice requested additional information regarding the potential impacts of CCD on emissions, fuel economy, and driveability; the possible relationship(s) between IVD and PFID detergent additive levels, unwashed gum levels, and CCD formation; and possible CCD control approaches. The notice also sought additional public input on other key concerns raised during the initial comment period, including certification test fuel issues and various implementation and enforcement provisions proposed for the certification program.

EPA's summary and analysis of public comments on issues relevant to the interim provisions of the detergent program were published in a section of the preamble to the interim program final rule. Public comments on general provisions of the detergent certification program, including those received following the NPRM as well as those sent to EPA in response to the Reopening Notice, are extensively reviewed and analyzed in a separate document accompanying this rule.[2] A synopsis of EPA's evaluation of the CCD issue is provided below in Section II, and comments on other key topics are briefly described in the relevant sections of this notice. However, the reader is directed to the separate Summary and Analysis of Comments for detailed presentation and evaluation of these issues.

Public comments concerning the detergent program's enforcement issues have been handled in a somewhat different manner. Following promulgation of the interim detergent program, the regulated industry submitted a number of questions about the practical implementation of some of the enforcement provisions of the rule. In response, EPA provided guidance on various enforcement provisions, in a series of four Detergent Rule Question and Answer Documents ("Q&A Documents").[3] Today's rule incorporates a variety of regulatory changes that are being made to codify the guidance. Section VIII of this preamble contains a synopsis of the key issues related to these regulatory changes, along with EPA's analysis of other enforcement-related comments not discussed in previously published documents.

B. Statutory Provisions and Legal Authority

Recognizing that deposits in gasoline engines and fuel supply systems can increase harmful exhaust emissions and adversely affect vehicle fuel economy and driveability, Congress specified in section 211(l) of the Clean Air Act that: "Effective beginning January 1, 1995, no person may sell or dispense to an ultimate consumer in the United States, and no refiner or marketer may directly or indirectly sell or dispense to persons who sell or dispense to ultimate consumers in the United States, any gasoline which does not contain additives to prevent the accumulation of deposits in engines or fuel supply systems * * *" Section 211(l) further provides that "the Administrator shall promulgate a rule establishing specifications for such additives."

In section 211(l), Congress delegated to EPA rulemaking authority to set specifications for detergent additives to prevent the accumulation of deposits in engines or fuel supply systems. To implement this grant of authority, EPA has reasonably interpreted the several ambiguous elements of this provision. EPA believes that its interpretations will promote the intent of Congress in adopting this provision. First, the statute states that the additives must "prevent the accumulation of deposits." This term is ambiguous; it could be interpreted to mean that the specifications must ensure that an additive will not allow any deposits whatsoever to form, or that an additive must be able to prevent all deposits and eliminate existing deposits, or that an additive could be acceptable if it would provide a reasonable level of protection against accumulation of new deposits but would not make a great impact on any existing deposits. In addition, section 211(l) refers to "deposits in engines or fuel supply systems." Deposits can form in almost any part of an engine or its fuel supply system, *e.g.* the intake valves, the port fuel injectors, the combustion chamber, the carburetor, the exhaust valves, and so on. Congress, however, did not specify which particular deposits must be controlled by the additives mandated by section 211(l), nor did it state that EPA must set specifications such that additives would prevent *all* possible deposits which could possibly form anywhere in an engine or fuel supply system. Finally, Congress did not define the term "specifications" in any way. This term could be interpreted to mean the additives' specific chemical composition, or performance characteristics, or the general type or amount of additive which must be added to gasoline. Therefore, the Agency believes that Congress left EPA with broad discretion and authority to implement those provisions in an appropriate regulatory framework that achieves the general goals of Congress in adopting section 211(l).

Looking at the Act's legislative history, EPA believes that the primary purpose of section 211(l) is to reduce emissions from gasoline-fueled vehicles and engines and to prevent engine wear or damage which could lead to increased emissions. Section 211(l) was added to the 1990 Clean Air Act Amendments during conference. Prior to the conference sessions, detergent additive provisions were included in the bills passed by each house of Congress only as items in different provisions for reformulated gasoline (RFG).

The bill passed by the House of Representatives contained a requirement that cleaner gasolines "shall contain additives to prevent the accumulation of deposits in engine fuel supply systems." S. 1630, 101st Cong., 2d Sess., (1990). The Report of the House Committee on Energy and Commerce described the purpose of the RFG provision, stating that "(s)uch cleaner gasoline must achieve the greatest reduction in ozone-forming VOC and air toxic emissions achievable through reformulation of conventional gasoline, taking into consideration the cost of achieving such emissions reductions and health, environmental and energy impacts." H.R. Rep. 490, 101st Cong. 2d sess., 297 (1990). Given the stated purpose of the RFG provision to reduce vehicle emissions, and the express requirement that RFG contain detergent additives, EPA believes that the House intended that EPA would require additives in RFG for the purpose of reducing emissions.

The bill passed by the Senate included detergents as an alternative to RFG regulations, as follows:

> In the event that the Administrator does not promulgate the [fuel quality] regulations required by this paragraph, effective January 1, 1994, it shall be unlawful to sell, offer for sale, supply, offer for supply, dispense, transport, or introduce into commerce any fuel for use in a gasoline-powered vehicle unless such fuel contains additives effective in preventing the accumulation of deposits in fuel-injected engines.

S. 1630, 101st Cong. 2d sess., (1990). The Report of the Senate Committee on Environment and Public Works expressed the purpose of the RFG regulations as follows:

> Subsection (k)(1) requires the Administrator to establish fuel quality standards to maximize engine performance and to minimize emissions from the combustion of fuels in vehicles and engines. Engines may prematurely wear out due to impurities in the fuel. Such fuel can clog fuel injectors, cause additional corrosion and otherwise affect engine performance, and cause an increase in air pollution emissions from the engine. *In addition, fuel additives, such as detergents, are available to maximize the performance of engines and minimize emissions.*

S. Rep. No. 228, 101st Cong. 1st Sess., 116 (1989) (emphasis added). Thus, EPA believes that the primary legislative intent behind the precursors of section 211(l) was to prevent or reduce vehicle emissions.

The bill reported by the conference committee adopted an RFG provision which was similar to the House provision, although it no longer expressly required detergent additives in RFG. This provision required the Administrator to promulgate regulations imposing the more stringent of two options, either a formula, which would require detergent additives, or a performance standard for VOC emissions. In addition, this bill included the current section 211(l), which requires detergent additives in all gasoline sold after January 1, 1995. There is no further explanation anywhere in the legislative history of the addition of section 211(l) to the bill. H.R. Conf. Rep. No. 952, 101st Cong., 2d Sess., (1990).

EPA believes that it is reasonable to assume that the intent of Congress with respect to section 211(l) was essentially the same as its intent with respect to the prior iterations of the similar provisions in the RFG arena, *i.e.* to reduce vehicle and engine emissions, and to prevent engine wear which may contribute to such emissions. Section 211(l) provides EPA with broad authority to implement its provisions within an appropriate regulatory scheme that furthers the goals of Congress in adopting this provision.

In accordance with this interpretation, the certification program specifies the engine and fuel supply system deposits that must be controlled, the level of control that is required, and the responsibilities of various persons in the manufacturing, refining, and distribution systems to see that gasoline used by the ultimate consumer is properly additized. The certification program also establishes specifications for detergents for different gasoline pools depending on their deposit-forming tendency, and a specification for "zero additive" if a particular segregated gasoline pool is shown to have very little deposit-forming tendency. Like the existing interim detergent program, the certification program specifies that all parties involved in the chain of gasoline production, distribution and sale are responsible for compliance with the gasoline detergency requirements. The certification program also continues the interim program's precedent of applying certain requirements of the detergent program directly to manufacturers, distributors, and carriers of detergent additives, prior to, and after the blending of such additives into gasoline.

As discussed in the preamble to the interim rule, EPA is issuing today's final rule under the authority of sections 211 (a), (b), and (c) as well as section 211(l). These sections of the CAA underscore EPA's authority to require the submittal of compositional information and test data directly from manufacturers of gasoline detergent additives. Section 211(b)(1) authorizes EPA to require manufacturers to submit information on the composition and use of fuels and fuel additives designated under section 211(a). In 40 CFR part 79, gasoline fuels and any additives intended for use in gasoline fuels have been so designated. Furthermore, 211(b)(2)(B) specifically calls for fuel additive registrants to "furnish the description of any analytical technique that can be used to detect and measure any additive in such fuel * * *" EPA's authority to require the submittal of data from the detergent additive manufacturer is also supported by the provisions of Section 114 of the CAA, which authorizes the Administrator to collect any information which may reasonably be required to carry out the purposes of the Act from any person subject to the provisions of the Act.

Section 211(c)(1) provides EPA broad authority to regulate the introduction into commerce, production, distribution, and sale of fuels and fuel additives to protect the public health and welfare. Since the interim and certification program rules have been adopted pursuant to section 211(c) as well as section 211(l), the preemption provisions of section 211(c)(4)(A) act to prohibit certain state fuel controls. A specific exception to the Federal preemption is applicable in the case of California, which has established its own detergent program as permitted under section 211(4)(B). Also, pursuant to section 211(c)(4)(C), a state could adopt a detergent program as part of its State Implementation Plan if it were necessary to achieve a national primary or secondary ambient air quality standard. The relationship between the Federal and California detergent gasoline programs is discussed further in Section V below.

Section 211(c)(1) requires a finding that either (A) any emission product of a fuel or fuel additive causes, or contributes, to air pollution which may reasonably be anticipated to endanger the public health or welfare, or (B) emission products of a fuel or fuel additive will impair to a significant degree the performance of any emission control device or system. EPA has determined that emissions from gasoline use cause or contribute to such harmful air pollution (58 FR 64213, 64215). This rule is the second phase in EPA's attempt to control such emissions through restrictions on the production and sale of gasoline and gasoline detergent additives. This rule requires that detergent additives manufactured for use in gasoline meet certain standards, and requires that gasoline be blended with such additives at the proper rate. This will reduce emissions from gasoline use that cause or contribute to harmful air pollution.

Before EPA can regulate under its section 211(c)(1)(A) authority, section 211(c)(2)(A) requires the Agency to consider "other technologically or economically feasible means of achieving emission standards under section (202)." This has been interpreted as requiring consideration of regulation through motor vehicle standards under section 202 prior to regulation of fuels or fuel additives under section 211(c)(1)(A). *Ethyl Corp. v. Environmental Prot. Agcy.*, 541 F.2d 1, 32 (D.C.Cir. 1976). This does not establish a mandatory preference for

[2] See "Summary and Analysis of Comments on General Provisions of the Detergent Certification Program", Docket item V–B–02.

[3] Docket numbers IV–C–08, IV–C–09, IV–C–10, and IV–C–11.

vehicle controls over fuel controls, but instead calls for the good faith consideration of motor vehicle standards before imposition of fuel controls (541 F.2d at 32, n. 66). This merely reflects Congress' recognition that fuel controls under section 211(c)(1)(A) might logically involve controls on fuel composition itself, while vehicle standards under section 202 are generally performance standards regulating vehicle emissions and not the design or structure of the vehicle. Fuel controls might therefore lead to greater government involvement in the regulation of the manufacturing process than would be expected from vehicle controls (541 F.2d at 11, n. 13). Congress addressed this concern by requiring Agency "consideration" of vehicle standards under section 202 before imposition of fuel controls under section 211(c)(1)(A). It is important to note that the Administrator must in good faith consider such vehicle controls, but retains full discretion in deciding whether to adopt either fuel or vehicle controls, or both (541 F.2d at 32, n. 66).

In evaluating motor vehicle controls under section 202 in this context, EPA has found that vehicle manufacturers already have an incentive to design vehicles to reduce deposit formation. Deposits in fuel injectors and intake valves affect a vehicle's driveability as well as its emissions. Because consumers often look to a vehicle's manufacturer to resolve driveability problems, manufacturers who address such issues proactively through design modifications have a market advantage over those who do not.

Another issue that EPA considered with respect to motor vehicle controls is that deposits affect vehicles currently in use. Any motor vehicle standard which EPA might impose to prevent accumulation of deposits therefore would not have an impact until new model vehicles replaced a significant portion of the existing vehicle fleet. In addition, EPA is barred by section 202(i)(3)(C) from imposing new standards on light duty vehicles until after model year 2003; thus any emissions or other standard for such vehicles would not even be introduced into the U.S. vehicle market for almost a decade. A fuel control related to the gasoline, however, will help reduce emissions from the entire in-use fleet of motor vehicles, as well as from non-road engines and vehicles that use gasoline.

Finally, 211(l) requires that all gasoline sold to the ultimate consumer after January 1, 1995 contain detergent additives to prevent accumulation of deposits, and requires the Administrator to establish specifications for such additives. Therefore, whether or not it was appropriate to establish vehicle standards, it would not be possible for EPA to set vehicle standards alone.

Given these circumstances, EPA has determined that it is appropriate to promulgate this additive regulation now, regardless of whether motor vehicle controls are adopted later under section 202. This decision is based on the following facts. First, motor vehicle manufacturers are already designing engines to prevent susceptibility to deposit formation due to market incentives. Second, the requirement to sell additized gasoline will have immediate impacts on emissions from gasoline combustion from both motor vehicles and non-road engines and vehicles, as the detergents will begin preventing deposit formation as soon as the fuel is used. There also may be some additional clean-up benefit of using detergent additized gasoline in engines which already have deposits. Finally, EPA is required by law to promulgate this regulation under the separate authority of section 211(l).

C. Overview of This Action

With this final rule, EPA is establishing a detergent additive certification program which modifies many of the provisions of the existing interim detergent additive program. As mentioned above, the interim program requires compliance with the CAA mandate that all U.S. gasoline be treated with deposit control additive prior to its use by the consumer. To qualify for use as a detergent under the interim program, an additive must be properly registered (under 40 CFR part 79) and must have undergone some testing to demonstrate its ability to control deposit formation when used at the concentration (treat rate) recommended by its manufacturer. However, the interim program does not require specific test procedures and test fuels to be used for this purpose, nor does it include specific deposit control performance standards which must be met. Today's rule establishes these specific requirements for detergent certification, along with changes to the regulations regarding enforcement of the certification program. Further discussion of the enforcement provisions is presented below in Section VIII.

Broadly speaking, the detergent additive certification program follows the overall performance-based approach proposed in the NPRM. To be certified for use in compliance with gasoline detergency requirements, an additive must demonstrate the ability to meet specified standards of IVD and PFID control in the context of prescribed test fuels and standardized, vehicle-based test procedures. The practical result of this testing is to ascertain an additive treat rate that can meet the required standards of performance. The certification treat rate constitutes the lowest concentration at which the additive may be used by detergent blenders in formulating gasoline for sale to or use by the consumer.

As proposed in the NPRM, the certification program includes a number of voluntary certification options. These options permit a detergent additive to be tested in one or more test fuels, resulting in different minimum treat rate requirements for different types of gasoline (e.g., oxygenated or nonoxygenated, premium or regular) and/or different gasoline pools (e.g., national, PADD, or segregated supplies). The flexibility provided by these options is described in more detail in Section IV of this preamble.

While generally similar to the proposed approach, the detergent certification program finalized today differs somewhat from the NPRM in certain key areas. Most of these changes are the result of efforts by EPA to streamline and simplify the requirements of the program. For example, the NPRM proposed an approach based on a two-tier certification structure, such that gasolines of very high severity (i.e., tendency to produce IVD and PFID), would be required to be additized only with detergents that had undergone testing in specified high-severity test fuels. Implementation of this provision would not only require separate detergent certification for use in generic and high-severity gasolines, but would also require ongoing evaluations of the severity of gasoline supplied to the distribution terminals to determine if detergent certified for severe gasoline would be needed or if generic detergent would suffice. As described further in Section IV.H, EPA now believes that the potential benefit of the two-tier certification approach is far outweighed by the associated implementation burdens. Thus, today's rule finalizes a single-tier certification approach and does not contain special requirements for gasoline of very high severity.

Another departure from the proposed approach pertains to the number and composition of test fuels required for each certification option. Under the proposed rule, to qualify for national certification or for any certification option, a detergent additive would be required to undergo testing in a matrix of up to four test fuels. Each test fuel

was to contain a different combination of relatively high levels of specified fuel parameters (i.e., "severity factors") and oxygenate components. In addition, test fuels meeting the required specifications would have been required to be located among commercial fuel supplies, not specially formulated to specification from refinery blend stocks.

For reasons explained at length in the Summary and Analysis of Comments, and summarized below in Section VI, the test fuel requirements adopted today are considerably simpler than the proposed requirements. The final regulations require testing of a detergent additive in only one specified test fuel for any given certification option, and permit test fuels to be formulated to specification from refinery blend stocks rather than requiring them to be taken from finished gasoline stock located by sampling among commercial gasoline supplies. However, to ensure that test fuels resulting from this simplified process will adequately challenge the detergent additive, the regulations require certifiers to test the unadditized test fuels to demonstrate their deposit-forming tendency, prior to their use in additive certification testing.

A third set of provisions which reflect change from the proposed provisions is in the important area of basic information requirements. For example, the information which additive manufacturers must submit regarding the composition of their detergent additives has been changed to be more consistent with typical additive manufacturing practices (see Section III.A). Moreover, the proposed registration requirements for fuel blenders that relate specifically to the usage of detergent additives are not retained in this final rule (see Section III.B).

Subsequent sections of this preamble describe the major provisions of the detergent certification program in more detail, including further discussion of the way in which the requirements differ from those proposed in the NPRM.

D. Applicability

The applicability of detergency requirements to various categories of gasoline is based on the statutory language of § 211(l), which explicitly includes "any gasoline" in its mandate. EPA has interpreted this to include fuel commonly or commercially known as gasoline, that is produced for use in motor vehicles or engines or nonroad vehicles or engines. Thus, the applicability of this program is essentially the same as under the interim detergent program. The regulations apply to all gasoline, including conventional, reformulated (RFG), oxygenated, and leaded [4] gasoline, whether intended for or used by highway or nonroad vehicles or engines. Marine fuel, gasoline used for military purposes, gasoline service accumulation fuel under the Federal motor vehicle control program (for emissions control system deterioration testing purposes), and factory fill fuels are also required to comply with detergency requirements.

In the Reopening Notice, EPA requested comment on whether detergent-additized gasoline should continue to be required for the gasoline portion of E85 or M85 alcohol-based fuels, in view of comment from the automobile industry that some detergent additives might be incompatible with such fuels. In response, the American Petroleum Institute (API) commented that EPA should allow industry to resolve compatibility issues through the marketplace. API pointed out that E85 and M85 fuels are used in flexible-fuel vehicles, which are expected to be operated at times on "ordinary" detergent gasoline. Thus, due to mixing in the fuel tank, alcohol-based incompatibility problems which might arise between some detergents and alcohol-based fuels would need to be addressed even if the gasoline portion of the alcohol blends were exempt from detergency requirements. EPA agrees with API and, in this rule, has not changed the detergent applicability requirements of the interim program as they relate to the gasoline portion of alcohol-based fuels.

As in the interim program, the only categories of gasoline which EPA is exempting from detergency requirements are racing fuel, aviation fuel, emissions certification fuel, and fuel used for research and development purposes. In the case of the racing fuel exemption, this final rule removes the interim program's restriction that only gasoline sold or dispensed on the premises of a racing facility can qualify. In response to comments stating that the interim rule's restriction is inconsistent with the actual handling and use of racing fuel, EPA decided to permit racing fuel to qualify for the detergency exemption regardless of location, provided that the fuel is distributed only to racing vehicles that are restricted to nonhighway use, and dispensed only from retail pumps clearly labeled as containing racing gasoline (see Section VIII.B.7).

E. Program Start-Up and Compliance Dates

Full compliance with the provisions of the detergent certification program is not mandatory for approximately a year's time. This one-year start-up period is provided to allow certifiers sufficient lead time to complete their testing and reporting requirements, for detergent blenders to obtain supplies of certified additives and establish associated administrative and quality control support procedures, and for gasoline retailers to obtain sufficient quantities of properly additized gasoline. Since the interim program is to continue in effect until the certification program becomes mandatory, today's rule also revises enforcement provisions of the interim program to make these provisions more efficient and commensurate with those in the parallel certification program. The revisions to the interim program in today's rule become effective September 3, 1996.

Mandatory compliance with the requirements of the detergent certification program is required for different parties in the gasoline and detergent distribution system at different times, based on their position in the distribution chain. As of July 1, 1997, detergent manufacturers must sell only properly certified detergents to their detergent blending customers. Also as of July 1, 1997, detergent blenders must blend certified detergent at the prescribed concentration into all gasoline they distribute, and distributors must sell or transfer only gasoline and PRC properly additized with certified detergents. To facilitate the proper disposal of residual non-certified detergent additive, EPA will allow such detergent to be blended into gasoline in combination with certified detergent until January 1, 1998, provided that the noncertified detergent was in the detergent blender's possession prior to July 1, 1997 and that it accounts for less than 10 percent of a detergent storage tank's delivered capacity (i.e. no more than 10 percent of the detergent blended into a batch of gasoline). In addition, the total detergent blended into a batch of gasoline must be sufficient to attain the minimum concentration recommended by the additive manufacturer for the certified detergent.

Effective August 1, 1997, all gasoline sold or transferred to the ultimate

[4] Leaded gasoline was banned from use in highway vehicles as of January 1, 1996, and the EPA regulations no longer contain a generally applicable definition of leaded gasoline. However leaded fuel is still permitted to be used in nonroad engines, and leaded gasoline is subject to gasoline detergency requirements. In this final rule, therefore, EPA has included a definition of leaded gasoline (at § 80.140) that is applicable only to 40 CFR subpart G. This definition is effectively the same as the previous, generally applicable definition.

consumer must be additized with certified detergents in conformity with any applicable detergent use restrictions. An extra month is allowed from the time detergent blenders are required to begin blending certified detergent to the time gasoline retailers are required to sell gasoline containing certified detergent, to provide adequate time for gasoline containing noncertified detergent in the retailer's storage tanks to be replaced with properly additized gasoline. This approach is consistent with that used successfully in other EPA fuels programs, such as in the regulation of gasoline volatility (54 FR 11869, March 22, 1989), and the reformulated gasoline program (59 FR 7841, February 16, 1994).

Prior to July 1, 1997, additive manufacturers and detergent blenders may comply either with the interim detergent program regulations or the detergent certification program regulations finalized today. EPA anticipates that, many detergent additives will be certified prior to the final deadline,[5] and certified additives will inevitably be delivered to fuel terminals and blended into gasoline before the deadline. If a detergent is certified prior to July 1, 1997, the requirements of the certification program will apply to the use of that detergent as of the effective certification date. In most instances, the use of a certified additive prior to the required date will not significantly change the detergent blender's requirements under the interim rule. The provisions of both programs require the detergent blender to add detergent to gasoline at a treat rate no less than the minimum concentration recommended by the additive manufacturer (also called the lowest additive concentration or LAC),[6] and require the additive manufacturer to provide adequate blending instructions to the detergent blender, including the minimum recommended concentration reported to EPA in accordance with the applicable detergent certification requirements. Thus, while the specified minimum amount of detergent may well change after certification, the nature of the additization and record-keeping activities of the detergent blender will usually not be greatly affected.

Exceptions will occur in the case of detergent additives which have been certified under options that place restrictions on the type of gasoline in which the additive may be used (see Section IV). For example, a detergent may be certified with two different treat rates, one for use in all gasoline, and one for use only in nonoxygenated gasoline. In such an instance, if the detergent blender chooses to use the detergent at the treat rate certified for use in nonoxygenated gasoline, then the blender is required to conform to the certification program provisions which govern the handling of use-restricted certified detergents, even if this occurs before July 1, 1997. In the cited example, where the treat rate certified for nonoxygenated gasoline is to be used, the blender must use the detergent only to additize nonoxygenated gasoline. In addition, the blender must indicate on the outgoing product transfer document that the gasoline has been additized with detergent restricted only to nonoxygenated gasoline, thus informing downstream parties of the existing restrictions. In essence, each party in the distribution chain that handles gasoline additized with a detergent under a use-restricted certification must observe the product transfer document and all other applicable requirements of the certification program. Further discussion on additive manufacturer and detergent blender responsibilities in regard to the handling of use-restricted detergents can be found in Section VIII.

II. Combustion Chamber Deposit Control

In the NPRM, EPA did not propose any requirements for combustion chamber deposit (CCD) control because of uncertainty regarding the scope of the problem and the lack of suitable performance test procedures and performance standards. Subsequently, some commenters expressed concern that a Federal requirement for PFID and IVD control might encourage detergent overuse, which could potentially exacerbate CCD concerns. Other commenters, however, agreed that regulatory control of CCD was not appropriate due to the lack of data and adequate standardized performance test procedures and standards. As a result, EPA requested additional input from affected industries (see Docket item IV–E–35, "Summary of Additional Comments on Combustion Chamber Deposits"), and published a notice formally reopening the comment period on the issue of CCD control. A detailed discussion of the comments and EPA's response may be found in the Summary and Analysis of Comments document located in the docket for this rulemaking. A brief synopsis of this discussion appears below.

After carefully reviewing all of the public comment and currently available information, EPA is not able to determine that a CCD control requirement is warranted. Available information on the impacts of CCD on emissions, fuel economy, and driveability are inadequate to draw conclusions regarding the costs and benefits of requiring additives for CCD control. In addition, no appropriate performance test procedures and standards or effective surrogate parameters for measuring CCD have yet been developed. Further study may indeed provide more information on which EPA could base a CCD control requirement. Thus, EPA will continue to evaluate CCD issues and will reconsider adopting a CCD control requirement at a later date if appropriate.

For these reasons, EPA is very pleased that, under the auspices of the Coordinating Research Council (CRC), members of the automotive and petroleum industries have embarked on a joint research program to investigate some of the controversial issues which still remain about the causes, effects, and accurate evaluation of CCD. The work of the CRC is expected to help elucidate the potential need for and environmental benefits of CCD control, and to investigate vehicle parameters that influence vehicle response to CCD in preparation for potential development of standard test procedures for measuring CCD and evaluating a detergent's ability to effectively control CCD. EPA believes that the products of CRC's work will greatly facilitate EPA's investigation of whether CCD control is necessary and feasible.

A. CCD Impacts on Vehicle Emissions

Most members of the petroleum and detergent additives industry commented that uncertainties persist regarding the scope of a CCD-related emission problem and that test procedures and standards are lacking. They stated that EPA should defer action until research planned by the CRC has been completed.

Automotive industry commenters stated that the CCD-related emissions impact is sufficiently well demonstrated to compel EPA to implement a CCD control requirement; this statement was supported by limited data and literature references. Others stated that EPA should implement a requirement to ensure that detergent additives are used that can remove existing CCD and prevent the formation of CCD, because the vehicle octane requirement increase (ORI) caused by CCD results in higher emissions.

While EPA agrees that there is sufficient data to demonstrate a probable link between CCD formation and increased NO_x emissions, the magnitude of the NO_x emissions impact has not been sufficiently defined to allow EPA to determine how substantial an impact it is. The impact of CCD on hydrocarbon and carbon monoxide emissions is even more uncertain. Characterization of the magnitude of the CCD emissions impact is important so that EPA can evaluate the costs and effectiveness of potential CCD control measures. At this time, EPA is not in a position to determine that CCD, and particularly any detergent additive contribution to CCD, causes vehicle emission and performance problems warranting regulatory control. The weight of the public comment indicates that, for major marketers, representing 60–70 percent of gasoline sold in the U.S., EPA's IVD and PFID performance mandate will not cause a change in the types of detergent additives used or result in appreciably increased concentrations of these detergents. As for the rest of the market, EPA's IVD and PFID performance requirements are expected to bring the entire industry up to the levels of deposit control protection provided by major marketers prior to implementation of regulatory controls. Because EPA's IVD and PFID performance requirements are expected to bring the entire market up to a level of deposit control protection previously achieved by major marketers, EPA believes that these requirements will not create or exacerbate CCD problems. Thus, in the absence of sufficient data to support the need for a requirement to control the contribution of detergent additives to CCD, EPA disagrees with automobile industry comments that EPA is obligated to take immediate action in implementing such a requirement.

B. CCD Energy Impacts

As mentioned above, several commenters stated that CCD contributes to vehicle octane requirement increase (ORI), i.e., the need for higher octane fuels to prevent engine knock as the engine ages. Higher octane fuels require more crude oil to produce, thus causing an increase in total refinery and vehicle energy use. Several commenters also stated that if ORI were reduced, engine design might be further optimized for improved fuel economy using gasoline of the octane quality currently on the market.

The Department of Energy (DOE) conducted an evaluation of CCD control additive technologies that also have ORI claims, and of the potential energy and vehicle and refinery emissions implications of ORI control.[7] DOE concluded that a correlation exists between CCD and ORI. However, DOE also stated that automobile manufacturers generally design their vehicles to accommodate a worst case ORI condition, and provide a built-in margin to ensure that the vehicle can continue to operate on the fuel specified after the octane requirement stabilizes at about 15,000 miles. DOE stated that most automobiles do not require a higher octane fuel than recommended by the manufacturer. It is true that exceeding the octane specification of the fuel recommended by the manufacturer, if not compensated for by the use of a higher octane fuel, could cause engine knock in vehicles that are not equipped with knock sensors or retardation of engine timing in engines that are equipped with knock sensors. Both engine responses could result in inefficient combustion, and attendant reduced fuel economy. However, at this time, EPA agrees with DOE that the available information does not indicate widespread exceedance of the ORI tolerance built-in by engine manufacturers. Thus, EPA can not conclude that an ORI-based CCD control requirement should be implemented to prevent an adverse impact on fuel economy.

On the broader energy use question, the DOE analysis suggested that the potential changes in crude oil use combined with questionable effects on vehicle fuel economy would not make a compelling argument to support the position that a reduction in CCD would result in a cost-effective overall reduction in fuel consumption, total gasoline refinery and motor vehicle emissions or energy use, or dependency on foreign oil. In conducting its assessment, DOE took into account refinery processing efficiencies, energy yield, and vehicle fuel consumption. DOE stated that, based on their evaluation of available data, the potential direct vehicle emission effects of CCD control should be the primary factor considered in evaluating whether it is appropriate for EPA to implement a CCD control requirement. EPA agrees that the available information is inadequate to conclude that a reduction in ORI would result in a cost-effective reduction in total energy use or emissions from gasoline refineries and motor vehicles.

C. CCD Interference

Automotive industry commenters urged EPA to implement a CCD control requirement to prevent potential negative impacts of CCD on driveability, including combustion chamber deposit interference (CCDI). They stated that CCDI problems are expected with the increased use of IVD control additives.

The petroleum industry stated that there is no documented basis for EPA to consider a CCD control measure to prevent CCDI associated with detergent additive overuse. They stated that data indicates that manufacturing tolerances play a predominant role in the CCDI problem, and cited a study indicating that engines with a 0.9 mm squish gap design were unaffected by CCDI, while off-specification tolerances as low as 0.3 mm were virtually guaranteed to produce the engine knock associated with CCDI regardless of the fuel used.

EPA agrees that available data indicates that manufacturing tolerances play a predominant role in the CCDI problem. EPA therefore does not believe that there are compelling reasons at this time to implement a CCD control requirement in order to prevent CCDI-related driveability problems. Moreover, the IVD and PFID requirements implemented with this rulemaking are not expected to increase levels of CCD relative to those seen in current vehicles using major petroleum marketers' gasoline.

D. Unwashed Gum Levels and CCD

Several automobile industry commenters stated that, as a surrogate for CCD control, EPA should implement an interim limit on gasoline unwashed gum levels to prevent adverse side effects that might result from EPA's IVD and PFID performance mandates. One commenter presented an analysis of gasoline survey data which, it stated, indicates a correlation between increasing unwashed gum levels in commercial gasolines and the use of increasing concentrations of IVD detergent additives. Data was submitted by another commenter which, it stated, indicated that certain IVD and PFID additives contribute to CCD formation, and showed a correlation between unwashed gum levels and CCD.

On the other hand, several fuel and additive industry commenters stated that available data does not demonstrate a correlation between unwashed gum levels and CCD. They presented data which they stated indicates that no general correlation between unwashed

[5] The certification date will be the earlier of the receipt by the certifier of acknowledgement by EPA of its receipt of the certification letter, or 60 days after the certifying party receives the return receipt from the postal carrier acknowledging that the letter was delivered to EPA.

[6] However, both the interim and certification programs contain a special provision allowing the detergent blender to use a detergent at a lower concentration than that recommended by the additive manufacturer, provided that the detergent blender informs EPA of this intent and can provide supporting data to substantiate the deposit control effectiveness of the detergent at the specified lower concentration.

[7] Docket items VI–D–43 and VI–D–45.

gum levels and CCD exists. They also stated that unwashed gum levels are not necessarily a predictor of detergent additive concentrations.

EPA has concluded that no correlation of unwashed gum levels or additive concentrations with gasoline CCD-forming tendency has been established. EPA agrees with comments from fuel and additive producers that unwashed gum levels cannot be used as a reliable predictor of detergent concentration. EPA believes that available data indicates that detergent additives vary in their tendency to contribute to CCD, and that this tendency does not necessarily correlate with unwashed gum levels. Based on a review of all of the available data, EPA believes that implementing an unwashed gum limit on additized gasoline would not necessarily produce beneficial results and might actually produce a barrier to the development of CCD control additives.

E. Other Potential Adverse Side Effects of Detergent Overuse

Automobile industry commenters raised concerns about the effects detergent additive overuse might have on materials and components of automobiles. The comments stated that intake valve sticking and deterioration of the fuel system, oxygen sensor and catalyst could result from the use of overadditized fuel. API commented that negative impacts on vehicles of accidental overtreatment have been very rare.

EPA finds no compelling reason from an emissions control standpoint to implement specific regulatory measures to prevent occurrences of detergent overuse. To the extent that driveability problems may exist due to the failure of fuel marketers to institute adequate quality control measures, the industries involved are in a position to adequately resolve these problems without the imposition of a regulatory control. As noted above and discussed in the Summary and Analysis of Comments, EPA has sufficient reason to believe that its IVD and PFID control requirements will not increase the likelihood that detergent overuse, and any attendant side effects, will take place.

III. Basic Information Requirements

Pursuant to the fuel and fuel additive registration regulations in 40 CFR part 79, both additive manufacturers and fuel manufacturers are required to report specific identification, composition, and other basic product information to EPA. In the NPRM for the detergents program, EPA proposed additional information that would be required for detergent additive registration in order for a detergent product to be eligible for use by blenders in complying with the gasoline detergency requirements of the rule. EPA also proposed specific registration requirements for fuel manufacturers related to their detergent blending responsibilities under the program. This section briefly describes the originally proposed information requirements as well as those included in the interim detergent rule, and summarizes the changes to these requirements reflected in today's final rule.

A. Detergent Additive Information Requirements

Under the fuel additive registration requirements of § 79.21, an additive manufacturer must submit certain compositional and analytical information on each of the additive products it wishes to market. Among other requirements, these include the chemical identification and concentration of the components of the additive product; the chemical structure of each component; an analytical technique for detecting and/or measuring the additive as mixed in fuel; the identity of the fuels in which the use of the additive is recommended and the purpose-in-use and manufacturer's recommended range of concentration of the additive in each such fuel.

Consistent with these standard registration requirements, EPA proposed that, for a detergent additive to be eligible for fulfilling gasoline detergency requirements, detergent certifiers would be required to submit the following information on detergent additive composition: (1) A specific chemical description of each component of the detergent package, (2) the exact weight/volume percent of each component of the detergent package, (3) a fourier transform infrared spectroscopy (FTIR) test method to obtain a qualitative and quantitative spectrum of the detergent additive package both in its pure state and in finished gasoline, and (4) an actual infrared spectrum of the detergent additive package and each component of the detergent package. The detergent NPRM also proposed that, upon EPA's request, a sample of the detergent additive must be provided to the Agency for evaluation.

The information reporting requirements finalized in the interim detergent rule (at § 80.141(c)) maintains the proposed requirement that the exact amount of each component of the detergent additive package must be reported, and specifically prohibits the reporting of any detergent-active component as the product of other chemical reactants. In addition, the interim rule requires that, for each detergent-active component, the registration must indicate which of the following chemical categories applies: (1) Polyalkyl amine, (2) polyether amine, (3) polyalkylsuccinimide, (4) polyalkylaminophenol, (5) detergent-active carrier oil, (6) other detergent-active component. The interim regulations state that a single detergent additive registration may contain no variation in the identity or concentration of any detergent-active component.[8] The regulations require the availability of an analytic procedure, preferably based on FTIR, that is capable of both qualitative and quantitative identification of each component of the detergent additive package. The regulations do not require that the procedure be capable of identifying the additive when mixed in fuel.

Following publication of the interim rule, CMA proposed several alternatives to those requirements. CMA stated that the compositional reporting requirements in the interim rule failed to recognize the essential chemical nature of deposit control additives and the processes by which they are manufactured. CMA asserted that compliance with the requirements would be impossible, given the non-homogeneous nature of detergent polymers and carrier oils, and the inherent variability in detergent manufacturing, blending, and analytic sampling processes. CMA was also concerned about the compositional test results required to establish a defense to presumptive liability under § 80.156(c)(4)(ii) of the interim regulations.

CMA suggested that, rather than exact concentrations, only target concentrations of the various detergent-active components should be required to be reported for registration. CMA also stated that registrants should not be precluded from reporting detergent-active components as the product of other chemical reactants, provided that the registrant also provide a description of product parameters that are sufficient to effectively define the registered product.

As described fully in the Summary and Analysis of Comments and in a memorandum to the docket,[9] EPA has

[8] Subsequently, in Question and Answer Document #3 (Docket item IV–C–10), EPA clarified that only downward variation in the concentration of any detergent-active component was prohibited.

[9] "Interactions Between the Environmental Protection Agency (EPA) and the Chemical Manufacturers Association (CMA)", Jeff Herzog, OMS, Judy Lubow, OECA, Docket item IV–E–41.

considered the various issues raised by CMA, and has also reviewed its own experience with the interim program. Under the interim program, some manufacturers appear to have been able to comply with the requirement to specifically identify and quantify each component of the detergent package, while others have maintained that they are unable to comply. While this experience does not enable EPA to make a definitive judgment as to the general appropriateness of the interim reporting requirements, it does demonstrate an ongoing problem in at least some cases. Thus, EPA is adopting several provisions in today's rule that will provide alternative reporting requirements. EPA believes these alternative will accommodate industry's reasonable concerns about practical and technical limitations on the ability to define detergent additive composition, while also providing EPA with assurance that detergent composition variability will not adversely affect in-use deposit control effectiveness. The requirements finalized in today's rule are summarized below.

1. Compositional Data. The interim rule's requirement that all components of the detergent additive package be identified chemically and by concentration (weight or volume percent of the product, as applicable) will remain in effect. Within a single detergent additive registration, the identity of detergent-active components is still not permitted to vary. However, today's final rule accommodates manufacturing variability to a greater degree than previously allowed under the interim rule. Specifically, a range of concentrations is permitted to be reported for detergent-active components, provided that at the lower end of the range, the deposit control effectiveness of the additive package is not less than that demonstrated during certification testing.[10]

Recognizing the heterogeneous nature of the carrier oils and detergent-active polymers which frequently occur in detergent additive formulations, these final regulations provide two methods by which the chemical composition of detergent-active components may be reported. When it is reasonable to do so, detergent-active components are to be identified (as originally proposed) using standard chemical nomenclature or a description of the chemical structure, or both. However, when the manufacturer believes this requirement to be infeasible or impractical, detergent-active components (both detergent-active polymers and detergent-active (chiefly synthetic) carrier oils) may be reported as the product of specified reactants. In such cases, the reactant materials must be identified, together with the acceptance criteria normally used by the manufacturer for determining that these materials are suitable for use in synthesizing the detergent components. Upon EPA's request, documentation must be provided by the manufacturer that the reported acceptance criteria are in fact those normally required of its suppliers. In addition, the detergent-active components must be described by means of gel permeation chromatography (GPC), providing a quantitative distribution of the polymeric components by molecular size. The GPC requirements include a description of the test procedure, including the use of appropriate calibration standards, and the resulting chromatograms. EPA believes that, when combined with other reporting and sample requirements (described below), this alternative approach will provide adequate identifying information for detergent-active components.

For non-detergent-active carrier oils (usually petroleum-based), the additive manufacturer must provide the percentage by weight of oxygen, nitrogen and sulfur, when present in the carrier oil at greater than 0.5 percent by weight. In addition, the manufacturer must provide the T10, T50, T90, end boiling point, API gravity, and viscosity of the carrier oil mixture.

These registration requirements will provide some useful information for determining whether an in-use detergent additive conforms to the composition of the detergent additive package which was shown to be effective during certification testing. However, in light of the limited ability of detergent manufacturers to precisely define the chemical properties of their additive, EPA believes that additional means are needed by which conformity with the composition reported in the certification process can be confirmed. Therefore, today's rule requires a sample of the detergent product to be submitted to EPA at the time the certification letter is sent to the Agency, as well as an FTIR-based test procedure together with the actual infrared spectra produced by the procedure.

Under the interim rule and proposed certification rule, these items were to be submitted on a per-request basis only. Thus, to accomplish the Agency's objectives, EPA could have chosen to request the detergent sample and FTIR from each additive manufacturer individually at the time of detergent certification. However, this would be a time-consuming and inefficient procedure. In fact, EPA's past experience indicates that manufacturers may be reluctant to cooperate with such requests. Therefore, EPA has instead chosen to require the submission of these items with every certification letter. It should be noted, however, that submission of detergent samples to EPA at the time of certification does not mean that the Agency will confirm the validity of the compositional information submitted by the additive manufacturer. EPA reserves the right to request and analyze other samples. Some detergent samples (or portions of samples) may indeed be used to verify the registration information provided by the additive manufacturers; others may be kept as baseline samples for monitoring the conformity of future production batches. Detergent samples may also be used by EPA chemists in efforts to develop improved analytical methods for detergents and their components.

EPA is sensitive to manufacturer's concerns about the handling of the samples they submit. To ensure the proper treatment of samples claimed as confidential by the manufacturer, the regulations require the detergent samples to be sent to EPA's chemistry laboratory in Ann Arbor, which handles and stores such proprietary materials as part of its day-to-day operations.[11] Information claimed as confidential will be protected as required under EPA's regulations concerning confidential business information, at 40 CFR part 2. EPA also will take all reasonable steps to maximize the shelf life of detergent samples. To that end, today's rule requires that manufacturers inform EPA about any known sample shelf life limitations, if any, and to indicate what conditions (e.g.,temperature or light exposure) most affect shelf life. Such information should be readily available to additive manufacturers for their own quality control purposes.

The Agency anticipates that detergent shelf life (i.e. the length of time during which all of the pertinent properties that define a detergent's functionality remain unchanged) will nearly always exceed a year or more. In addition, certain basic properties (e.g., API gravity, and viscosity), tend to be less sensitive to the passage of time. Thus, a detergent sample may be useful for

[10] Detergent certification testing must be conducted with each detergent-active component present in the test fuel at a concentration that does not exceed the concentration reported as the lower bound in the range of concentrations.

[11] See Docket item IV–B–09 for a discussion of the procedures that will be observed in handling proprietary detergent additive samples.

certain limited testing purposes even after the normal shelf life has expired. After an additive sample is no longer suitable for any analytical testing purposes, it will be destroyed by the Agency.

Today's rule contains one additional compositional reporting requirement which detergent manufacturers must fulfill if they wish to be able to take advantage of relatively simple mechaniams which the rule provides for demonstrating an affirmative defense to presumptive liability (see Section VIII.B.2.a of this preamble). This provision requires the manufacturer to submit to EPA certain physical product parameters which will be monitored on each detergent production batch for quality control purposes. Generally, the parameters to be monitored for affirmative defense purposes include viscosity, density, and basic nitrogen content, although other parameters may be added or substituted upon the manufacturer's request and EPA's approval. For each such parameter, the target value and range of variability and a description of a standardized measurement test procedure are to be provided at the time of certification. The designated test methods must be consistent with the chemical and physical nature of the detergent product, and the documented ASTM repeatability [12] for the method must be specified. EPA will consider the parameter measurement to be an acceptable basis for establishing an affirmative defense to presumptive liability if the range of variability differs from the target value by no more than five times the ASTM repeatability value, or by no more than 10 percent of the target value, whichever is less. Due to the practical limitations associated with the measurement of small quantities of certain product parameters, this variability limit does not apply in the case of nitrogen analysis (or other procedures for measuring concentrations of specific chemical compounds or elements) when the target value is less than 10 parts per million. In such cases, the acceptable variability is instead limited to 50 percent of the target value.

EPA believes that establishing such limitations on the acceptable range of product parameter variability is necessary to a credible claim that a given batch of detergent is equivalent to the certified detergent product. This is especially important in view of the fact that deposit control performance testing is required only on a single detergent sample of a given composition. While acknowledging that some production variability is expected, EPA must still ensure that the functionality of the detergent actually produced is reasonably equivalent to that demonstrated during certification. EPA believes that, along with other affirmative defense elements, the required limits on manufacturing variability will provide adequate assurance on a routine basis that the composition and attendant deposit control efficacy of detergent production batches do not vary to such an extent that the minimum recommended treatment rate reported by the additive manufacturer is no longer representative of the detergent's actual performance. Outside of these limits, EPA is not sufficiently confident that the composition of detergent production batches would provide adequate deposit control. The affirmative defense provisions in today's rule provide additive manufacturers with practical and economical methods to demonstrate that the deposit control efficacy of detergent batches is maintained, while allowing a reasonable degree of production variability. The regulations also allow manufacturers who cannot meet these variability limits to request (and justify) other arrangements.

2. Minimum Effective Concentration. As specified in § 79.21(d), a fuel additive registration must report the minimum blending concentration which the manufacturer recommends for the additive in each type of fuel for which the additive's use is designated. In the case of detergent additives registered for use in gasoline, the minimum recommended concentration is required to be no less than the lowest amount which the additive manufacturer has determined to be effective for deposit control. Thus, the minimum recommended concentration is also the lowest additive concentration (LAC) which the detergent blender may use in gasoline to be in compliance with the detergency requirements of this program (subject to any use restrictions that may be applicable under a given certification option).

The interim detergent regulations require that the reported minimum effective concentration be supported by appropriate test data, which is to be supplied to EPA upon request. While rigorous test procedures and performance standards are not specified, the interim rule does contain general guidelines regarding the type(s) of tests and test fuels which EPA will regard as sufficient, during the interim period, for demonstrating an additive's deposit control effectiveness at the specified minimum concentration. These flexible testing requirements were appropriate, given the purpose and practical limitations of the interim program.

As described in subsequent sections, however, the detergent certification program requires that the minimum recommended concentration be determined on the basis of specific deposit control performance standards, as shown in the context of specific performance tests and test fuels. Moreover, this final rule offers a number of certification options (described in Section IV), such that a different minimum concentration may be determined for different gasoline pools (e.g., national, PADD, fuel-specific) or gasoline types (e.g., premium, oxygenated, nonoxygenated). Thus, in reporting the minimum recommended concentration(s) for gasoline detergent additives, the additive manufacturer must also specify the applicable certification option(s) for each minimum concentration. In addition, if the detergent is also registered separately for use in leaded gasoline, the applicable minimum concentration for deposit control in leaded gasoline must be specified. This amount may be the same as that needed for PFID control under any certification option (except fuel specific) or, optionally, the amount demonstrated to be needed for carburetor deposit control.

The information on minimum concentration, as reported in the detergent registration, must also be accurately communicated by the additive manufacturer to its customers, i.e., detergent blenders and secondary additive manufacturers. For protection of all parties involved in the transaction, this communication must be made in writing. For example, if a gasoline misadditization were to occur, such that detergent were added at a concentration less than the required minimum amount, the detergent manufacturer could potentially be held liable for the misadditization unless he could demonstrate that proper blending instructions were provided prior to the additization. These liability issues are discussed further in Section VIII of this preamble.

[12] Repeatability of a test method is defined by ASTM as the quantitative expression of the random error associated with a single operator in a given laboratory obtaining replicate results with the same apparatus under constant operating conditions on identical test material within a short period of time. It is further defined as that difference between two such single results as would be exceeded in the long run in only one case out of twenty in the normal and correct operation of the test method. (ASTM D 3244, Standard Practice for Utilization of Test Data to Determine Conformance with Specifications.)

3. Certification Letter. In addition to satisfying the above requirements concerning detergent additive composition and recommended concentration, the additive manufacturer (or other party wishing to certify the detergent [13]) must submit a certification letter to EPA. The certification letter must include a statement attesting that the additive has undergone the performance testing required by the regulations, using the specified test fuels, and has met the deposit control performance standards required for certification. The statement must also affirm that the performance tests were conducted in a manner consistent with sound engineering practices, and that complete documentation of the test fuel formulation, performance test procedures, and test results is available for EPA's inspection. In addition, the letter must provide summary information on the test fuel composition and source(s), the additive concentration(s) used in certification testing, the results of the testing, and the lowest additive concentration (minimum recommended concentration) which the certifier seeks to establish for each certification option under which the detergent is to be certified. This is a self-certification process, with the party providing EPA with information that indicates compliance with the various requirements. EPA will not issue a certificate, for example as done in the Federal motor vehicle emissions control program.

The Agency will acknowledge receipt of the certification letter. The certification date will be the earlier of either the certifier's receipt of EPA's acknowledgement, or 60 days after EPA's receipt of the certification letter, as documented by a certified mail receipt. EPA does not intend routinely to examine the full test documentation, and will in many cases rely on the certifier's attestations. Neither EPA's acknowledgement of receipt of the letter or the passage of time indicates that the certification letter has been reviewed by the Agency or that a determination has been made regarding whether the requirements of certification have been satisfied. This is consistent with the self certification approach adopted in this rule. On a case-by-case basis, EPA may require that an additive certifier provide the actual test data to EPA to substantiate the claim of deposit control effectiveness made in the certification letter. EPA believes that the declaration by the certifier that a detergent certification meets the program testing requirements, coupled with the occasional Agency review of certification test data, should provide reasonable assurance that the program requirements will in fact be met in the vast majority of cases.

EPA might request submission of supporting data for a variety of reasons. For example, the detergent treat rate recommended by an additive manufacturer under one certification option may seem anomalous relative to the treat rates recommended for the same additive under other certification options. Alternatively, the treat rates recommended by one additive manufacturer may not be consistent with the treat rates recommended by manufacturers of apparently similar additives. EPA may also learn from fuel or automobile manufacturers that a particular detergent product appears to be less effective than others. For these or other reasons, including random oversight of compliance, EPA may request that the additive certifier provide some or all of the test procedure and fuel data required under the regulations. In such a case, the detergent registrant must provide the supporting data to EPA within 30 days of receipt of the request for such data. If EPA judges the supporting data to be inadequate (or if it is not received), EPA may disqualify the subject detergent for use in compliance with the requirements of this rule (see § 80.161(e)). The detergent additive manufacturer will be required to provide EPA with a list of its customers who use the disqualified detergent. EPA shall inform all such fuel manufacturers and secondary additive manufacturers that the detergent is no longer eligible for use in complying with Federal gasoline detergency requirements. In addition, EPA may initiate the enforcement actions described in Section VIII.

Under the interim program, a disqualification order becomes legally effective for the additive manufacturer five days after its publication in the **Federal Register**. Today's rule provides that under the certification program a disqualification order will become effective for the certifier on the date the order is received by the certifier. The disqualification order will be published in the **Federal Register** as under the interim program. However, EPA believes there is no reason to delay the effective date of a disqualification for the certifier past the date when the notification is received from EPA. At this point in the disqualification process, the certifier will have been afforded ample notice of a disqualification and an opportunity to participate in the Agency's evaluation of whether the disqualification was appropriate. Thus, the certifier will have had sufficient opportunity to prepare to comply with the disqualification order upon its arrival. If the certifier is also a blender of the disqualified additive, the certifier must also stop using the ineligible detergent upon receipt of the disqualification order. As under the interim program, other blenders affected by the disqualification order will be afforded 45 days from their receipt of a notification from EPA that the detergent is no longer eligible for use to comply with gasoline detergency requirements, or 45 days from the publication of such notification in the **Federal Register**, which ever is sooner, to discontinue use of the disqualified detergent and substitute an eligible detergent additive.

B. Information Requirements for Fuel Manufacturers

The NPRM and the interim detergent program recognized that detergent blenders, as fuel manufacturers (under the existing definition of a fuel manufacturer in § 79.2(d)), are subject to standard fuel registration requirements under 40 CFR part 79. These standard requirements include the identification of any additive products intended to be used in the registered fuel and the range of concentration of each such additive in the fuel. The only additional feature proposed to meet the information requirements for fuel registration under the detergent program was that the lower boundary of the range of concentration of detergent additives could be no less than the minimum recommended concentration specified in the detergent additive's registration, unless otherwise approved by EPA under special circumstances.

For reasons not directly related to the detergents program, EPA is currently considering possible changes to the definition of "fuel manufacturer" in § 79.2(d). If this change is adopted, EPA realizes that many detergent blenders would no longer be required to submit the registration information envisioned in the NPRM. However, EPA experience under the interim program indicates that EPA's monitoring and enforcement activities regarding the proper use of certified detergents rely much more on the detergent blenders' additization accounting records (see Section VIII) than on the up-front registration information which they would be required to submit. Thus, while this final rule requires detergent blenders to maintain specific records concerning

[13] For example, in the case of a fuel-specific certification, the certifying party could be the fuel manufacturer or another party with title and access to the segregated fuel supply, rather than the detergent manufacturer. See Section IV.D.

their additization activities, it does not include any special registration requirements for detergent blenders, nor for fuel manufacturers in general.

IV. Certification Options

A. Background

The gasoline produced by the U.S. refining industry is not homogeneous with respect to the tendency to form deposits. Gasoline pools with different characteristics occur as a result of different crude oil sources, refining capabilities and fuel distribution networks, the octane rating of gasoline provided for different engine designs, and regulatory programs which control certain parameters in gasoline sold in polluted urban areas. A study of the relative deposit-forming severity of these gasoline pools showed that different pools of gasoline may vary in their deposit forming potential, as reflected by different distributions in the levels of specified "severity factors" (see Section VI). To provide industry the opportunity to optimize the detergent additization of these various pools while still ensuring the environmental benefits of the program, EPA proposed detergent certification options based on the deposit related characteristics of the various gasoline pools.

The proposed certification options included a nationwide program, geographical options based on the Petroleum Administration Districts for Defense (PADDs), oxygenate options because of the variety of oxygenates which may be blended into gasoline to meet regulatory requirements or octane specifications, an option for premium gasoline, and a fuel-specific option for segregated gasoline pools. These options are all being finalized in today's rule. EPA also proposed an option to certify detergent additives for use in reformulated gasoline. However, as discussed in more detail below, the deposit-forming severity of that pool of gasoline has not yet been sufficiently characterized. Another proposed option would have allowed detergent additives certified for California gasoline to be used in all PADD V gasoline, but for the reasons discussed below in Section V, EPA is not finalizing this option. Nevertheless, California certifications will be accepted for demonstrating compliance with the certification requirements of the Federal program in California (see Section V). A proposed second tier of detergent certification, to ensure sufficient additization of the most severe gasolines, is also not finalized today. All these options and the comments by the public on these options are discussed further below.

It is important to understand that the choice of a particular certification option actually represents a choice as to the test fuel in which a particular detergent will be mixed when it undergoes certification testing. (Test fuel composition [severity] is an important element in determining the challenge to a detergent's ability to control deposits represented by certification testing.) As a result of such testing, a required minimum treat rate (minimum recommended concentration or lowest additive concentration) will be established for the additive when used in the type of gasoline represented by the test fuel. In other words, the certification of a detergent under a particular certification option has the result of setting a treat rate for that detergent in the pool of gasoline covered by the certification option. To say a detergent has been certified under several options merely means that the detergent has undergone performance testing in the context of several different test fuels, each representing a different option, and that different treat rate requirements have thus been established for the additive when used in the different gasoline pools covered by these options. The relationship between certification options and test fuels is discussed further in Section VI of this preamble.

These options, when considered together, provide a great deal of flexibility to the fuel industry for additizing gasoline. Of course, in each situation, the industry must find the optimal balance between the costs of additional certification testing and the potential opportunity to use reduced additive amounts in particular gasoline pools. Based on the number of oxygenates listed in the discussion on the oxygenates suboption below, there are over 90 different combinations of certification options and suboptions. Table #IV–1 summarizes the categories of options and suboptions.

TABLE #IV–1.—OPTIONS AND SUBOPTIONS FOR CERTIFICATION OF DETERGENT ADDITIVES

Options	Suboptions
Nationwide Option	Generic Certification; * Oxygenated; Nonoxygenated; Oxygenate-Specific; Premium: Oxygenated; Nonoxygenated: Oxygenate-Specific.

TABLE #IV–1.—OPTIONS AND SUBOPTIONS FOR CERTIFICATION OF DETERGENT ADDITIVES—Continued

Options	Suboptions
PADD Option for PADDs I, II, III, IV, and V Outside California.	Generic Certification; Oxygenated; Nonoxygenated; Oxygenate-Specific; Premium: Oxygenated; Nonoxygenated: Oxygenate-Specific.
Fuel-specific Option	Parallels National and PADD Specific Certification.
California Equivalency	Per CARB Certification.

* Prescribed test fuel must contain 10% ethanol.

B. Single-Tier Certification System

In the NPRM, EPA proposed two detergent certification tiers. The first tier would target the deposit control requirements of "typical" gasoline, containing relatively moderate levels of specified fuel severity factors (sulfur, olefins, aromatics, and T–90). The second tier was proposed as a means for controlling deposit formation from the most severe gasolines. A gasoline would be identified as "most severe" when at least one of the identified severity factors in the gasoline was at or above the 95th percentile of the distribution of measured values for that parameter in gasoline survey data. EPA proposed the second tier certification because of the concern that these most severe gasolines might exceed the ability of the detergent additive, at the concentration required by the first tier, to control engine deposits at the required level. EPA was particularly concerned about the possibility that some motorists might consistently choose to use the same brand of gasoline, which might happen to be the most severe brand of gasoline available in an area. Used perennially, these most severe gasolines could exceed an additive's ability to control deposits and lead to much higher motor vehicle emissions and driveability problems for those motorists.

As proposed, the additive manufacturers would certify their additives to the second or more severe tier through the use of test fuels containing higher concentrations of the gasoline severity parameters. The expected results would be higher additive treat rate requirements for the high-severity gasolines. Detergent blenders would be responsible for testing their gasoline on a weekly or batch-by-batch basis to characterize the severity of their gasoline using specified test methods. Then, if the gasoline exceeded the 95th percentile of the gasoline severity distribution created from survey data, the fuel blender would have to additize its gasoline at the concentration prescribed for the high-severity gasoline pool.

Comments submitted by both the oil and automobile industries were opposed to the two-tier scheme for additizing gasoline. These comments and other available information suggest that only rarely will particular service stations or localities continually be supplied with only the most severe additized gasoline. More often, the impact of severe gasolines will be moderated by the consumer's subsequent use of less severe gasoline. Furthermore, a review of PADD-specific gasoline survey data suggests that gasoline which may be labeled severe because of high levels of one or two severity factors may have relatively low levels of the other severity factors. Thus, the incremental testing, monitoring, and recordkeeping requirements that would be needed on a regular basis to address the relatively rare instances in which the impact of very severe gasoline might be significant and long-lasting do not seem warranted. EPA concludes that the potential benefits of a second tier of detergent additive certifications for severe gasolines are uncertain, and do not justify the incremental costs and burdens. This final rule, therefore, is based on a single-tier certification approach. A complete description of the public comments on this issue and EPA's associated analysis are contained in Section IV of the Summary and Analysis of Comments document.

C. Geographical Certification Options

1. National Certification. To obtain a national certification, the certifier must demonstrate a detergent additive's compliance with the performance standards through testing with specified test fuel(s) based on characteristics of the national gasoline supply (see Section VI). The LAC established under a generic national certification option will be valid for use of the detergent in any type of gasoline, oxygenated or nonoxygenated, unleaded or leaded, of any octane grade, that is sold in the United States, including imported gasoline. However, California fuel marketers should be aware that CARB requires detergents used in California gasoline to comply with CARB detergent certification requirements, and that a detergent certified under the Federal program may or may not also satisfy CARB's certification requirements. Therefore, parties additizing gasoline for sale in California must ensure that they are in compliance with both the Federal and CARB detergent programs (See Section V for the applicability of a CARB certification in meeting Federal detergent requirements).

The test fuel for the generic national certification option must contain four specified severity parameters at no less than the 65th percentile of the national survey data, and must be blended with ethanol to 10 percent of the final blended volume. As described in more detail in Section VI, ethanol was chosen for the generic test fuel because the available data shows that it tends to have a greater impact on deposit-forming tendency than the other oxygenates. Using different test fuels, national certification can also be obtained for a variety of subpools of the national gasoline supply (e.g., oxygenated versus nonoxygenated, premium, and combinations of these pools). These suboptions are further discussed below.

EPA proposed the national certification option and suboptions to provide a broadly applicable method to certify a detergent. EPA anticipates that many major gasoline marketers will use the national certification option because of the simplicity of blending one concentration of detergent additive in all the fuel manufacturers' gasoline across the nation. In their comments on the proposed rule, the refining industry supported the national option and stated that most of its member companies would probably use this option.

2. PADD Certification. As described above, the prescribed additive treatment levels under the national certification option are based on a spectrum of nationwide gasolines. As a result, for some pools of relatively low-severity gasoline distinguished by their geographical location, the national option may cause more additive to be used than necessary to maintain the required level of deposit control performance. Thus, additive costs might tend to be higher than necessary for those pools of gasoline. EPA's analysis of the distribution of gasoline severity factors showed that the composition of gasoline sold tends to differ between the various PADDs of the United States. This difference probably results from the varying sources of crude oil and the differences in crude processing capabilities among the refineries in each PADD, and the relatively consistent pattern of gasoline production and distribution within the PADDs.

Given these fuel compositional differences between the PADDs, EPA proposed, and is now finalizing, detergent additive certification options applicable to the gasoline sold within each PADD. A PADD certification can be obtained by demonstrating compliance with the performance standards through testing on a specified test fuel(s) based on the characteristics of the gasoline sold in the given PADD. As summarized in Table #IV–1 above, the PADD certification option parallels the national certification option in that there are opportunities for a generic PADD certification or certification under specified suboptions.

A PADD certification pertains to the additive treat rate requirements for the gasoline sold to retail outlets, wholesale purchaser consumers (WPC), or to the ultimate consumer within a PADD, no matter where the gasoline may have been refined or additized. This reflects the fact that the PADD certification test fuels are defined according to survey data of gasoline sold at retail outlets within the PADD, not gasoline produced or additized within the PADD. For a detergent blender who commonly distributes detergent-additized gasoline across PADD lines, and who wishes to have full flexibility as to the destination of each batch of additized gasoline, a detergent with a national certification would probably be more appropriate than a detergent subject to the use restrictions of a PADD certification. Use of a PADD-certified detergent will be most practical when the downstream distribution networks from a given blending facility terminate within a single PADD, or when a detergent blender is willing and able to implement control systems to ensure that gasoline blended with a PADD-certified detergent will end up at a retail outlet within the appropriate PADD.

A PADD V certification is applicable only to the PADD V states other than California. Accordingly, the required test fuel is based on gasoline survey data collected from PADD V excluding California. This is appropriate because California Phase II reformulated gasoline is expected to be much less severe than gasoline available elsewhere in PADD V (see Section V).

PADD certifications are likely to be sought only when the respective certification test fuel specifications will result in a lower minimum detergent treatment rate requirement than under a national certification, i.e. for PADDs with less severe gasoline. In the more severe PADDs, i.e., those in which the gasoline supply tends to have higher levels of deposit-forming characteristics than the national supply, the PADD certification test fuel specifications would result in higher treatment requirements. Thus the national certification option would likely be

chosen. This raises a potential concern that gasoline in relatively severe PADDs might receive inadequate amounts of additive.

For this reason, the generic national test fuels have been designed to represent greater than average deposit-forming conditions. For example, as explained in detail in Section VI, this final rule specifies that each test fuel must contain the fuel severity factors at no less than the 65th percentile in the respective fuel survey distribution. Only a very small proportion of the gasoline sold in the United States contains the combination of all four of the fuel severity parameters at levels this high or higher. Other approaches for assuring adequate deposit control in the more severe PADDs were also considered by EPA in the NPRM. As already discussed above, one option would be to apply a second level of additization based on severity for national or PADD certification, which would be triggered by a high level of one or more severity parameters. For the reasons discussed, this approach was not followed in this final rule. Under another alternative, the national certification would be abandoned and only PADD-based certifications would be allowed. This alternative was not pursued because EPA judged it would multiply the costs of certification and recordkeeping without sufficient additional benefit. In a third alternative, national certification would still be allowed, but the specifications on national test fuel severity would be increased to provide additional assurance of adequate stringency for all PADDs. Due to the wide support expressed for the proposed option in the comments, the lack of support for these other alternatives, and a desire to limit certification testing and additization costs to levels that are offset by concomitant benefits, EPA has decided to finalize the proposed methods of national and PADD certification, and to omit the alternatives considered.

EPA believes that the PADD option in conjunction with the national certification option will give the regulated industry a high degree of flexibility toward optimizing the amount of detergent additive used in fungible gasoline while ensuring adequate additization under either option. The choice for each certifier of what combination of PADD and national certifications to undertake will be made according to the characteristics of the certifier's particular refinery, distribution, or marketing network, weighing the additional cost of certification in multiple areas against the potential savings (or competitive advantage) of achieving a lower certified LAC.

3. U.S. Territories. This final rule requires gasoline sold in U.S. territories to be additized at the concentration required under the national certification option. In the NPRM, EPA acknowledged that its information on gasoline severity and distribution networks was insufficient to propose that a territory may be additized consistent with the requirements of a particular PADD. Comment was requested on whether it would be appropriate to include U.S. territories under a PADD certification option and how territories could be appropriately assigned to the various PADDs. EPA also requested comment on whether special circumstances affecting gasoline supply, distribution, or marketing might make compliance with these rules unreasonably burdensome in some or all of the territories and whether special provisions should apply or if these territories should be exempted.

EPA did not receive any response to the request for comments and has not obtained additional information which would help determine if the gasoline sold in any of the territories is consistent with any specific PADD. Thus, the final rule requires gasoline sold in U.S. territories to be additized with a nationally certified detergent at the appropriate level.[14] This will ensure a high level of deposit control protection in these territories. In the NPRM, EPA identified the following U.S. territories: Virgin Islands, Guam, the Commonwealth of the Northern Marianas Islands, and Puerto Rico. American Samoa was inadvertently omitted from this list, and is now properly noted as a U.S. territory and therefore subject to Federal gasoline detergency requirements.

4. Certification Sub-Options.

a. Nonoxygenated Gasoline Certification Option. The data presented in the NPRM on the fuel parameters that impact deposit-forming severity indicate that the addition of oxygenates such as ethanol and MTBE tends to increase the amount of additive required to maintain the desired level of deposit control protection. Thus, the generic certification approach, based on test fuels containing oxygenate at the maximum percentage, may lead to overadditization of nonoxygenated gasoline. Thus, EPA is permitting the separate certification of detergents for nonoxygenated gasolines, using appropriate nonoxygenated test fuels. This suboption can be used in conjunction with the national and PADD options, the fuel-specific option, and the premium fuel suboption.

b. Oxygenate-Specific Certification Option. A generic national or PADD certification option based on ethanol-blended test fuels may require higher additive blend concentrations and higher costs than necessary for gasolines blended with oxygenates other than ethanol. Thus, EPA is allowing specific certification of additives based on testing with fuels containing other oxygenates. Examples of such other oxygenates include ethyl tertiary butyl ether (ETBE), tertiary amyl methyl ether (TAME), tertiary amyl ethyl ether (TAEE), tertiary hexyl methyl ether (THME), diisopropyl ether (DIPE), and tert-butyl alcohol (TBA). Like ethanol, the concentration of these oxygenates in the test fuels shall be at the maximum concentration allowable in commercial gasoline. However, while a detergent certified with a test fuel containing ethanol can be used in gasoline containing any other oxygenate or no oxygenate, oxygenate-specific certification will be a use-restricted certification option. For example, the minimum additive concentration determined through performance testing with MTBE-blended test gasoline will be applicable only to gasoline blended with MTBE, or without any oxygenates.

EPA requested comment on the potential benefits, problems, and costs of either providing for or requiring a separate certification for oxygenated and nonoxygenated fuels, and on the appropriate specificity regarding the oxygenate to be used in certification testing. In particular, EPA requested comment on the potential difficulties and costs associated with differentiating oxygenated and nonoxygenated gasolines for enforcement purposes. The oil industry supported the options to certify additives for use in gasoline containing specific oxygenates, or for use in gasoline without oxygenates. The ethanol industry disputed the notion that ethanol is more deposit-forming than the other oxygenates. In addition, they expressed concern that many deposit control additives are not soluble in ethanol, thus restricting ethanol blender choices for additizing ethanol blends. They further contended that fuel manufacturers and blenders may not be willing to continue using ethanol if they are placed at economic risk in case of disruption in the supply of the appropriate detergent additives available to them. EPA evaluated the available data on the solubility of detergent additives in ethanol-gasoline blends and determined that, even though some detergent additives may not be soluble in pure ethanol, most (if not all) are soluble in the 10 percent and lower ethanol blends currently being produced.

The ethanol industry also commented that fuel blenders who blend ethanol into gasoline would be precluded from doing so if the gasoline is already blended upstream with a detergent additive that is either not certified for, or not used in sufficient amount to account for, the addition of ethanol. This final rule requires incremental additization when ethanol is added to previously additized gasoline, as proposed, but to address the ethanol industry's concern, the rule permits a different detergent to be used than the one already present in the gasoline. The amount of incremental detergent must be sufficient to account for the increase in base fuel severity caused by the presence of ethanol, as well as the detergency requirements of the added ethanol volume itself. To allow the proper amount to be determined, the newly added detergent must be one which has been certified both for nonoxygenated gasoline and for ethanol-blended (generic use) gasoline. The proper incremental amount can then be computed based on the different rates required under the two certifications. Additional discussion of this issue and similar "cures" for other use restrictions can be found in Section VIII of this preamble.

c. Premium Grade Certification Option. An analysis of AAMA fuel survey data in the NPRM showed that premium gasolines, defined as having an octane rating of $91 (R+M)/2, tend to have lower olefin content, sulfur content, and T–90 than regular and intermediate grade gasolines. Of the four pertinent nonoxygenated fuel parameters, only aromatic content is higher in the premium grade. This suggests that premium fuels may require a lower concentration of detergent additive to maintain the same level of deposit control performance.

Based on these compositional differences, EPA expects that a separate detergent certification suboption for use in premium gasoline within the national and PADD certification options would allow the industry to reduce costs by reducing the amount of additive required. The oil industry supported the premium suboption in their comments on the NPRM. Thus, the final rule will allow certification of additives for use in premium gasoline.

d. Reformulated Gasoline Certification Option. The Federal RFG regulations (59 FR 7716, February 16, 1994, 40 CFR 80.40) require changes to gasoline in certain areas where the national ambient air quality standard for ozone is not being met, and these changes may potentially affect the deposit forming tendency of these gasolines. The first phase of the RFG requirements, which took effect January 1, 1995, is expected to cause a small reduction in some or all of the four deposit-forming severity factors, although the oxygenate that the program requires to be blended into RFG could counter the potential fuel severity benefits. However, the effect of oxygenates must be considered for all fuels under the detergents program and is therefore not a particular concern with respect to RFG. Beginning in the year 2000, more stringent RFG fuel reformulation requirements will take effect, and may result in more substantial reduction in deposit-formation severity (mainly, a large sulfur reduction).

Anticipating that RFG may cause changes in gasoline severity, EPA considered including a separate detergent certification option for use in RFG. In the NPRM, EPA proposed the adoption of either a required or optional RFG certification option and asked for comments on these potential options. The oil industry favored a separate RFG option as long as it was not required. However, EPA recognizes that sufficient RFG survey data is not yet available for differentiating the deposit-forming tendency of RFG from conventional gasoline, or from which to establish test fuel specifications for an RFG test fuel. When additional data becomes available, the Agency intends to review the RFG severity parameter levels and compare them to other pools of gasoline. If a review of the survey data shows that there is indeed a significant difference in the severity of RFG, EPA may propose an RFG option in a future rulemaking. In the meantime, additives may be certified with a separate treat rate for RFG based on a refinery's own segregated RFG pool using the procedures put into place for the fuel-specific certification option. Otherwise, additives which are certified under any geographic option may be used in RFG at the certified treat rate.

5. Recertification Requirements. In the NPRM, EPA discussed a possible mechanism whereby national or PADD recertification could be required if the composition of the gasoline pool in question changed sufficiently to bring the adequacy of deposit control into question. For this purpose, EPA would monitor trends in the composition of the respective gasoline pools, and would periodically recalculate the national and PADD percentile concentration values for the relevant parameters. A need for recertification would be indicated if the newly calculated 50th percentile level of any one of the monitored fuel parameters was greater than or equal to the 60th percentile level in the original fuel survey data.

However, to require recertification under the national and PADD certification options would entail the adoption of new test fuel specifications, which would most appropriately occur through a subsequent rulemaking. Thus, today's rule does not include any provisions that would automatically trigger national or PADD-based recertification requirements. If EPA should determine in the future that gasoline composition has shifted to such an extent to suggest that detergents certified pursuant to the test fuel specifications in today's final rule may no longer provide sufficient deposit control protection, then EPA will publish a public notice that explores potential recertification requirements and seeks public comment.

D. Fuel-Specific Certification Option

1. General Description. The fuel-specific certification option proposed in the NPRM is also being finalized in today's rule. This option provides fuel and additive manufacturers an opportunity to tailor certification test fuels and subsequent detergent additive treat rate requirements to the unique characteristics of segregated pools of low-severity gasoline. These special gasoline pools may be produced from inherently mild crude oil or, in other cases, from refinery practices that reduce the deposit-forming tendency of the gasoline. Such gasoline may require reduced concentrations of detergent additives to meet the detergency requirements. Reduced additive concentrations, when multiplied by the large volume of gasoline that is produced, could provide a refiner or other fuel manufacturer with a substantial savings in additive costs. To take advantage of this opportunity, however, the fuel manufacturer must be able to segregate its special gasoline pool(s) from the general fuel supply until the gasoline has been blended with

[14] However, this provision of the final rule does not affect the potential availability of a special exemption for certain territories under CAA section 325. Section 325 provides that, upon petition by the respective governor, the Administrator is authorized to exempt any person or class of persons in certain territories (Virgin Islands, Guam, Commonwealth of the Northern Marianas Islands, and American Samoa) from certain requirements under the CAA, including the gasoline detergency requirements. Such an exemption may be granted if the Administrator finds that compliance with a regulatory requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors within a given territory, or such other local factors as the Administrator deems significant. Puerto Rico is not included among the territories permitted to petition the Agency for an exemption under the provisions of Section 325.

the detergent additive specifically certified for use in this fuel. Once properly additized, the gasoline need not be segregated from other additized gasoline.

The fuel-specific option requires demonstration of the deposit control performance standards through testing of a detergent additive in a test fuel that is representative of the subject segregated gasoline pool. To determine the composition and characteristics of the segregated pool, certifiers are required to measure the concentrations of aromatics, olefins, and sulfur in the gasoline, as well as the T–90 distillation point. These parameters are to be measured at least once per month over a twelve-month period at each refinery or other facility contributing to the defined gasoline pool, and a percentile distribution of these defining characteristics is to be constructed. A fuel sample, located from within the defined pool or blended from the refinery blendstocks normally used to manufacture this pool, and containing each of the parameters at a level no less than the 65th percentile value of the entire pool, is then required to serve as the test fuel (see Section VI.B., below, and § 80.164(c)(2)).

Fuel-specific certification is fundamentally different from all other certification options, in that the precise test fuel specifications are defined by the certifier (under prescribed procedures) rather than defined by EPA and codified in the regulations. Thus, the certifier under the fuel-specific option must be a person who has access to and control over the subject gasoline supply. Frequently, this will be the refiner or other fuel manufacturer. EPA anticipates cooperation between additive and fuel manufacturers in implementing the fuel-specific option. The additive manufacturer retains responsibility for (1) the registration of its detergent additive, and (2) proper labeling of the additive as use restricted. In this instance, however, it may be the fuel manufacturer, or another party with title to and access to the segregated fuel supply, who takes responsibility for certification instead of the detergent manufacturer.

Use of a detergent under the conditions of a fuel-specific certification is restricted only to the defined pools of gasoline produced by or distributed from the facilities included in the fuel composition survey. Furthermore, as described in detail below, the certification will become invalid if the composition of the subject gasoline pool changes beyond a prescribed amount.

2. Variants. The fuel-specific option, like all other certification options, gives registrants the flexibility to certify with non-oxygenated, oxygenated, and/or oxygenate-specific test fuels. Data indicates that non-oxygenated fuels have a lower deposit forming tendency than oxygenated fuels and thus require lower concentrations of detergent additives to provide deposit control. Furthermore, because the deposit-forming tendency of oxygenated fuels varies from one oxygenate to the next, some oxygenated fuels may require a lower additive concentration than others. As mentioned previously, substantial savings could result from tailoring the detergent concentration requirements to the deposit-forming characteristics of the fuel. Accordingly, fuel manufacturers using the fuel-specific option may further optimize their detergent use by certifying under one or more oxygenate-related suboptions. These suboptions are implemented for fuel-specific certification in the same manner as for national or PADD certifications.

EPA is also aware that some gasolines have such extremely low deposit-forming tendencies that they may require only a PFID control additive or, perhaps in some cases, no detergent additive at all. In these special situations, certifiers may provide EPA with PFID and IVD test results under the fuel-specific option to demonstrate that a deposit control additive is not necessary for deposit control.

3. Monitoring and Recertification Requirements. The certifier under the fuel-specific option is required to monitor fuel composition on a monthly basis, and must provide an annual report to the Agency on the composition of the gasoline covered by the certification and how the composition deviates from baseline data. Recertification will be required if the composition of the gasoline pool changes such that the new 50th percentile concentration of any non-oxygenate fuel parameter (i.e. aromatics, olefins, sulfur, or T–90) exceeds the 60th percentile concentration reported in the original certification letter. New percentiles are calculated on an annual basis using the last 12 months of data. If the baseline percentile level is exceeded, the detergent blender will be required to stop using the fuel-specific detergent until recertification is complete and, in the meantime, must substitute either a national or appropriate PADD-certified additive within 45 days of the certification renewal date on which the recertification became necessary to avoid a violation. The fuel-specific detergent may have also been certified under the national or PADD certification options. If so, the same detergent additive may be used at the appropriate national or PADD-certified treat rate.

V. CARB Certifications

A. Background

Section 211(c)(4)(A) of the Clean Air Act generally prohibits states from adopting their own state fuel programs to control motor vehicle emissions, once EPA has regulated a fuel characteristic or component under 211(c)(1). EPA's adoption of a Federal deposit control additive program would therefore preempt certain state fuel programs. However, section 211(c)(4)(B) clarifies that the state of California is not subject to this prohibition. CARB has in fact implemented a detergent additive certification program effective January 1, 1992 (Title 13, Section 2257 of the California Code of Regulations). EPA determined that a CARB detergent certification would provide adequate demonstration that a detergent could be used to meet Federal detergent performance requirements under the Federal interim program.[15]

To ensure that the CARB detergent program would continue to provide a level of deposit control protection equivalent to that of the Federal program, once the Federal certification program was implemented, the Agency proposed that the applicability of a CARB detergent certification would be limited to gasolines sold in PADD V. EPA's judgment that CARB-certified detergents would provide adequate deposit control performance in all PADD V gasolines was based on the similarities in the gasoline composition (and hence deposit forming tendency) between California and the rest of PADD V, and the similarities between CARB's and the proposed Federal deposit control performance requirements. EPA proposed that PADD V gasoline additized with CARB-certified detergents (CARB-based PADD V certification) would be subject to the same use restrictions as gasoline certified under the other PADD-specific options.

Public comment was in agreement with EPA that, for California gasoline, a CARB-certified detergent would provide at least as effective deposit control as a detergent meeting Federal detergent certification requirements. However, commenters disagreed with each other on the extent to which a CARB-certified additive could be used to satisfy Federal requirements for non-California gasoline. The automotive industry

[15] A detailed comparison of the CARB and Federal detergent programs is included in the Summary and Analysis of Comments.

stated that CARB-certified detergents would not provide adequate deposit control protection for non-California gasolines because of differences in fuel composition, particularly under CARB's Phase II reformulated gasoline requirements. Some commenters from the petroleum industry supported the applicability of a CARB certification within PADD V, while others stated that a CARB certification should be applicable nationwide provided that CARB certification fuel parameter levels meet EPA requirements. Other commenters stated that a CARB certification should be accepted nationwide in order to avoid the economic burden on small and independent refiners which would result from being required to meet two sets of certification requirements.

B. Applicability of CARB Equivalent Certification

To determine the appropriate applicability of the CARB certification program, EPA compared the level of deposit control protection which will be provided under the Federal detergent certification program finalized today to that provided under CARB's program (see the Summary and Analysis of Comments for an extensive discussion). In conducting this analysis, EPA compared the performance standards, test procedures, and test fuels of the two programs, and concluded that they were sufficiently similar to ensure that the use of a detergent certified under CARB's current detergent program in California gasoline will provide at least as effective deposit control as a detergent meeting Federal certification requirements. However, implementation of California Phase II RFG requirements has greatly widened the compositional differences between California and non-California gasolines. A detergent certified for the relatively low-severity conditions of California Phase II gasoline can no longer be expected to provide adequate deposit control in gasoline in the other PADD V states or elsewhere in the nation. Thus, EPA will accept data which supports a valid CARB detergent certification as sufficient demonstration that a detergent additive is capable of satisfying Federal gasoline detergency performance standards for CARB phase II RFG, but not for non-California gasolines.

Certain changes proposed by CARB for its detergent program would, if implemented, serve to make the two certification programs even more similar. However, if CARB should implement other, unanticipated changes, then EPA would evaluate whether such changes would reduce the acceptability of CARB-certified detergents in meeting Federal gasoline detergency requirements, and would propose changes to these applicability provisions through another rulemaking if warranted.

To ensure that a CARB-certified detergent is only used to meet Federal detergency requirements in California phase II RFG, the gasoline must be additized in California, or sold or dispensed to the ultimate consumer in California (or to parties who sell or dispense to the ultimate consumer in California), or both. Some commenters suggested that EPA should allow CARB-certified detergents to be used in gasoline sold in all PADDs, provided that the severity parameter levels in the gasoline did not exceed the severity limits in the CARB certification. EPA believes this approach is not feasible, since it would require a complex set of fuel composition monitoring requirements similar to those proposed under the two-tier certification scheme (see Section IV.B) which the Agency has determined would not be cost effective. EPA does not believe that requiring all gasoline sold outside of California to meet Federal detergent certification requirements would cause significant financial hardship to smaller gasoline marketers, as some commenters suggested. The costs to these marketers of using a CARB-certified detergent would be similar to the costs of using a Federally certified detergent, and the necessary infrastructure is likely to exist already in the fuel marketers' facilities outside of California due to their obligation to comply with the interim Federal program. EPA believes that use of CARB-certified detergent additives in non-California gasolines would not provide adequate deposit control protection. Thus, to allow small gasoline marketers to use CARB-certified detergents in non-California gasolines could significantly reduce the emissions control benefits of this program.

VI. Certification Test Fuels

A. National and PADD Certification Test Fuels

1. Proposed Test Fuel Requirements. Under the proposed certification test fuel requirements, testing to demonstrate detergent additive effectiveness would be conducted using test fuels containing specified levels of five parameters (olefins, sulfur, aromatics, T–90 distillation point, and oxygenate content) that have been shown to affect gasoline deposit-forming tendency. The minimum levels of these severity factors in the test fuels proposed for each certification option corresponded with values at the 55th to 65th percentiles of the 1989–1991 AAMA fuel survey data for the gasoline pool covered by the certification option in question (e.g., national, PADD, premium, etc.).

EPA also discussed in the NPRM its concerns that the specified level of these fuel severity factors may not completely define a gasoline's deposit-forming severity. If this were the case, detergent certifiers might blend certification test fuels that contained the required levels of the fuel severity factors, but nevertheless were not representative of in-use gasoline deposit forming tendency. To help account for unknown factors in gasoline composition that might affect fuel severity, EPA proposed that gasoline samples for certification testing must be drawn from normal production gasoline stock (finished commercial gasoline) taken from normally operating refinery and/or terminal facilities. In addition, the test fuels required for each certification were to be drawn from separate production/distribution facilities in different areas of the nation. This requirement would tend to increase the certainty that unknown severity factors would be represented by ensuring that various refinery stocks were tested, and would act as a screen to prevent the use of inappropriately mild (i.e., low deposit-forming severity) fuels. It would also serve to limit the opportunity to select test fuels from refineries that, for unidentified reasons, tend to produce gasoline with a relatively low deposit-forming tendency. To ensure that the certification process accounts for any interactive effects between detergent additives and non-detergent additives, EPA proposed that the type and concentration of non-detergent additives in the certification fuels must not differ in any way from the fuels that are dispensed to the ultimate consumer.

EPA recognized in the NPRM that it could be difficult for an additive certifier to locate a single finished gasoline which contained all four nonoxygenate severity factors at the required levels. To reduce this difficulty while ensuring adequate test fuel severity, EPA proposed that testing for each certification option be conducted using a matrix of four test fuels, each containing a different combination of two of the nonoxygenate severity factors at levels no less than the required 55th to 65th percentile values. Alternatively, additive certifiers could perform testing in as few as two fuels, as long as each of the severity parameters was present at the required levels in at least one such fuel.

The proposed minimum of two test fuels was believed to be necessary to account for the deposit-forming tendency of oxygenates. EPA proposed that one of the test fuels would be required to contain 10 volume percent ethanol, and another would be required to contain 15 volume percent MTBE. These oxygenates were selected for testing because they were expected to have the most significant impact on gasoline deposit-forming tendency of the oxygenates within their respective oxygenate classes (alcohols and ethers), and because they were expected to be the two most widely used oxygenates.

EPA also proposed that certification test fuels be contained in new, sealed containers during transportation and storage and that these fuels could be stored no longer than one full year from when they were drawn from the refinery before testing.

2. Final Test Fuel Requirements.

a. Test Fuel Source and Screening Requirements. In response to the NPRM, commenters stated that finding finished fuels that met the test fuel compositional specifications would be extremely burdensome and impractical, and that EPA should instead allow the use of refinery blendstocks to formulate certification fuels. To ensure that test fuels were not inappropriately mild, they stated, test fuel blenders could be required to provide EPA with documentation of the source and identification of all of the refinery blendstocks used, as well as the fuel parameter levels in the finished test fuel. Finally, they stated that the finished test fuel should be required to conform to ASTM D 4814, for commercial gasolines. In combination, the commenters felt that this information should alleviate EPA's concern about using blendstocks for formulating test fuels.

EPA acknowledges that the proposed requirement that test fuels be drawn from finished gasoline stock is a burdensome one. However, the ideas raised by the oil industry, while somewhat helpful, are not sufficient to prevent intentional manipulation of test results, or to ensure that test fuels will adequately represent the deposit-forming severity of in-use gasoline.

Thus, in the Reopening Notice, EPA asked for comment on other potential approaches to ensure the adequacy of test fuels if they were created from refinery blendstocks (see Summary and Analysis of Comments), and has finalized one of these approaches in today's rule. Specifically, the final rule requires that, to be eligible as a test fuel, a candidate nonoxygenated, unadditized fuel must be tested to demonstrate its severity by causing the formation of at least a specified level of IVD in a 10,000 mile BMW test.

In its comments, API stated that increasing the required number of expensive BMW tests just for this purpose would be cost-ineffective and unnecessary. However, most other commenters supported EPA's proposed demonstration test. Some commenters stated that, if a performance severity test were established, it should be the exclusive requirement for test fuel qualification, and that fuel parameter requirements should be dropped. Other commenters stated that if such a test were established, it should be allowed as an alternative to meeting fuel parameter requirements in qualifying test fuels for certification testing purposes.

EPA believes that the performance-based approach for qualifying test fuels provides a practical and effective way to screen out test fuels of inappropriately low deposit-forming severity that otherwise conform to compositional specifications. Thus, this final rule allows the use of refinery blendstocks for formulating test fuels, provided that the unadditized test fuel severity is demonstrated by IVD testing. If test fuels are drawn directly from finished gasolines, they do not have to undergo severity demonstration testing to qualify for use in certification tests.

EPA disagrees with the comment that a test fuel deposit demonstration criterion will not be cost-effective. In the absence of this assurance, EPA cannot be confident that test fuels created from refinery blendstocks will be adequate to assure proper additization of the in-use gasoline to achieve the emission reduction goals of the detergent certification program. In comparison with the original proposal, which would have required detergent certification testing to be conducted in up to four specified test fuels, each to be located from normal finished fuel supplies, the cost of a single demonstration test for a batch of test fuel is modest. Furthermore, the costs for test fuel blending and IVD demonstration testing can be shared. For example, a testing laboratory can qualify a large quantity of test fuel and then use it for certifying multiple detergent additives. In these and other ways, the costs associated with the test fuel IVD demonstration requirements can be spread over a large number of detergents or companies. Thus, EPA believes that the test fuel deposit demonstration requirement is reasonable and necessary, and that it can be met in a very cost-effective manner.

EPA also disagrees with the comment that certifiers should be given the option to qualify test fuels either by meeting the requirements of the IVD demonstration test or by meeting the test fuel compositional criteria, rather than being required to satisfy both. The fuel parameter specifications are necessary to set the overall stringency of the test fuel and to provide reasonable assurance that the composition of the deposits formed is representative of deposits that result from in-use gasoline. The deposit demonstration test is necessary to confirm that the level of stringency prescribed by the fuel parameter specification has been achieved. Thus, both types of test fuel criteria are necessary to assure the validity of subsequent detergent certification testing.

EPA received varied comments regarding an appropriate qualification standard, i.e., the minimum amount of IVD that the unadditized test fuel must generate during the demonstration test in order to qualify for use in detergent certification testing. Suggestions ranged from 175 mg of deposit formation per valve up to 500 mg per valve. To resolve this issue, EPA reviewed available BMW IVD test data on unadditized test fuels.[16] Tests on gasoline of "typical" deposit-forming tendency, i.e., containing fuel severity factors at generally lower levels than required in the detergent certification test fuels and more representative of average severity gasolines, were selected as the subject of this study. The results of this analysis showed that a typical unadditized nonoxygenated fuel can generally be expected to produce approximately 290 mg of deposits over the accumulation of 10,000 miles in a BMW test. Uncertainty in the 5,000 mile test data precluded EPA from considering a standard based on that shorter test.[17]

Based on this analysis, the final rule requires the accumulation of at least 290 mg of IVD using unadditized, nonoxygenated fuel, during the 10,000 mile BMW test, for qualifying base test fuels for the national certification option. The same standard will apply to PADD certifications in those PADDs where the IVD severity factor distributions tend to be similar to or higher than the national levels (PADDS I and III). For the other PADDs characterized by fuels which tend to have lower levels of severity factors most related to IVD formation, the standard is adjusted downward by 10 percent. For the premium certification test fuels, the standards are reduced an additional 10 percent below the respective all-grade test fuels. Thus, to qualify for generic certification testing in PADDs II, IV, and V (excluding California), the unadditized, nonoxygenated test fuels must demonstrate a minimum accumulation of 260 mg of IVD (i.e., 90 percent of 290 mg) in a 10,000 mile BMW test. The 260 mg standard also applies to the premium option at the national level and in PADDs I and III. For the premium option within PADDs II, IV, and V (excluding California), test fuels meeting the applicable nonoxygenate fuel parameter levels must accumulate at least 235 mg of IVD (i.e., 90 percent of 260 mg). These IVD demonstration criteria are expected to achieve the goal of the IVD demonstration test while ensuring that the applicable fuel parameter specifications remain the primary contributor to test fuel severity. At the discretion of the certifier, the IVD severity demonstration test may be terminated at fewer than the 10,000 miles specified in the test procedure. However, the IVD demonstration criteria specified above (for the 10,000 mile test length) must be satisfied for the test to qualify for certification purposes. Once the engine has been disassembled to examine the IVD (other than by removing the fuel injectors for boroscope inspection) the test must be terminated.

The IVD demonstration is to be conducted on base test fuels, i.e., fuels which conform to the specified nonoxygenate severity factor requirements, but do not contain oxygenate (or detergent). Once qualified for use in certification testing, a base test fuel can be blended with ethanol for use as a generic test fuel, and/or with other oxygenates for use in oxygenate-specific certification testing options.

As suggested by a commenter, the final rule requires test fuels to conform to ASTM D 4814 specifications.[18] To further ensure the representativeness of test fuels and the composition of deposits, the rule also requires the certifier to provide to EPA documentation of the source and identification of all of the refinery blendstocks used, as well as the fuel parameter levels in the finished test fuel. Consistent with the proposal, test fuels for national and PADD certification may not be formulated using refinery blendstocks from a gasoline pool which has been certified as a fuel-specific pool.

b. Test Fuel Severity Factors. The weight of public comment supported the proposed five severity parameters (aromatics, sulfur, olefins, T–90, and oxygenates) identified by EPA to characterize the severity of gasoline for forming IVD and PFID. As stated above, some commenters encouraged EPA to include additional severity factors to these five; however, the information available on these potential factors was not sufficient to conclude that any other factor would be appropriate. Some commenters questioned whether these factors should be considered equal in their severity, especially with respect to their specific effect on PFID and IVD formation. However, EPA could not find sufficient information to justify giving more weight to one severity factor over another for either form of deposit. For these reasons, EPA is finalizing the detergent certification program based on the five severity factors weighted equally as proposed.

While the majority of commenters agreed that the impact of oxygenates should be accounted for in the definition of certification test fuels, the Renewable Fuels Association (RFA) commented that only limited test data is available to indicate that a higher detergent treatment rate may be necessary in oxygenate blends. EPA disagrees. Data from a number of sources indicates that the addition of oxygenates, in particular ethanol, has a substantial impact on gasoline deposit-forming tendency.[19] Also, most commenters stated that testing on fuel containing 10 volume percent ethanol provides a more difficult test of a detergent's deposit control efficacy than testing on a fuel that contains 15 volume percent MTBE, and hence EPA should allow testing on a single ethanol-containing certification fuel.

Consistent with the weight of available test data and public comment, ethanol is included in the test fuel specifications related to each of the generic certification options, i.e., those options which certify a detergent for use in any oxygenated or nonoxygenated gasoline in the related PADD-specific or national pool. To ensure representation of the maximum deposit-forming effects of ethanol (or other oxygenate, in the case of an oxygenate-specific certification option), additive certifiers must blend the oxygenate into the test fuel so that its final concentration is no less than the maximum concentration that the oxygenate can be used in commercial gasoline. For ethanol this corresponds to the addition of ethanol so that the final concentration in the certification test fuel after blending is no less than 10 percent by volume. In the case of MTBE, this corresponds to the addition of MTBE so that the final concentration in the certification test fuel after blending is no less than 15 percent by volume. Oxygenates used for certification testing purposes must be of fuel-grade quality. The use of oxygenates that are specially processed to remove impurities is not allowed.

c. Number and Severity of Test Fuels. As mentioned earlier, EPA proposed in the NPRM that a detergent additive be tested in at least two, and up to four test fuels, for each certification option selected. In commenting on the proposal, API, CMA, and others from the petroleum and detergent additive industries stated that this was unnecessary and that EPA should allow certification testing to be conducted using a single test fuel. On the other hand, AAMA stated that requiring more than one certification test fuel would allow for the inclusion of more refinery streams in the formulation of certification test fuels, thereby providing more representative results. Requiring multiple test fuels would also tend to help ensure that yet-to-be-identified fuel severity factors are represented in the certification test fuels.

As described above, EPA decided to allow use of test fuels formulated to the severity factor specifications from refinery blendstocks as an alternative to using test fuels drawn from finished commercial fuel supplies. This decision eliminates one of the most important reasons for which multiple test fuels were originally proposed, i.e. to ensure that detergents are tested in the presence of adequately high levels of fuel severity factors, without creating the impractical requirement that one finished fuel must be found which happens to contain the specified levels of all the requisite parameters. In addition, as described above in the section on severity factors, EPA has determined that testing on ethanol-containing fuel will suffice to demonstrate a detergent's effectiveness in other oxygenated fuels, obviating the need for separate tests to be conducted in the presence of ethanol and MTBE.

Reflecting these changes in the program's requirements, EPA has further simplified the certification

[16] Memorandum to the docket from David Swain, OMS, entitled "Data Review of Intake Valve Deposit Weights for Detergent Certification Fuel Screening", Docket item IV-B-07.

[17] It should be noted that the 5,000-mile deposit demonstration test, in addition to its technical shortcomings, would save only about 25 percent of the cost of a 10,000-mile test.

[18] ASTM D 4814–95c, "Standard Specification for Automotive Spark-Ignition Engine Fuel", 1995, is incorporated by reference in 40 CFR 80.164.

[19] See the extensive discussion in the NPRM, the memorandum to the docket entitled "Data Review of Intake Valve Deposit (IVD) Weights for Detergents Certification Fuel Screening", by David Swain, OMS (Docket item IV–B–07), and the Summary and Analysis of Comments.

testing program by requiring detergent performance testing in only one test fuel for each certification option selected. Of course, this does not preclude any additive certifier from performing multiple tests itself on a variety of test fuels derived from different sources. Such redundancy would help to ensure that the additive is as effective as claimed in all the gasolines in the gasoline pool.

Having decided to require one test fuel per certification option, EPA also reviewed the required levels of test fuel severity factors. For the NPRM, EPA originally derived the nonoxygenate fuel parameter specifications for each of the fuels in the proposed test fuel matrices through a complex process based on ensuring no less than a 1-in-5 chance that a randomly selected commercial fuel would meet the required fuel parameter levels. As mentioned previously, this process resulted in proposed fuel parameter levels corresponding to the 55th to 65th percentile range of concentrations relative to the national gasoline pool.

Although commenters generally opposed the 20 percent availability approach EPA used to determine test fuel specifications, there was broad support for the 65th/55th percentile fuel parameter levels derived from this approach. EPA believes it is appropriate to require that each nonoxygenate fuel parameter be represented at its respective 65th percentile level, in the applicable gasoline pool (national, PADD, premium, etc.). This decision is based on the facts that: (1) test fuels may now be specially blended so that fuel parameter specifications no longer need to be linked to fuel sample availability; (2) there is no conclusive data on which to weight any one fuel parameter's impact on fuel severity above another's, and (3) the 65th percentile levels predominated in the originally proposed test fuel matrix.

The required parameter levels are to be met in the certification test fuel before the addition of ethanol. EPA analyzed AAMA fuel survey data, comparing levels of the nonoxygenate fuel parameters in nonoxygenated fuels to those in oxygenated fuels (all oxygenates included in the analysis).[20] While the results of this study were not totally consistent, they indicated that the parameter levels in oxygenated fuels tended to be lower than those in nonoxygenated fuels. This result suggests a dilution effect when oxygenate is added. Thus, specifying that the prescribed 65th percentile levels be met in the test fuel before the addition of the oxygenate appears to conform to the real-world behavior of in-use fuels.

In its comments, API urged EPA to use test method reproducibility to establish enforcement tolerances, i.e., levels below the specifications which would still be considered to be in compliance with the specifications, for the measurement of test fuel parameters (per ASTM methods). EPA rejects this approach. As with the approach taken for the deposit control performance standards, EPA believes that the required test fuel parameter levels should be absolute minimums which must be satisfied. Allowing downward variability in meeting test fuel compositional requirements would compromise the program's emissions control benefits as would allowing downward variability in meeting deposit control testing standards.

d. Other Issues. EPA received a number of comments on its proposed requirement that the non-detergent additives present in certification fuels must be representative of those used in commercial gasoline. The petroleum and detergent additives industries stated that it is unlikely that non-detergent additives affect deposit-forming tendency because they are present in commercial fuels at very low concentrations. Hence, they stated that it was not necessary to require that non-detergent additives be present in certification test fuels.

EPA's chief concerns regarding the additive content of test fuels are (1) that no detergent-active substances be present in the test fuel other than those substances which are part of the detergent additive package being tested, and (2) that the deposit control performance demonstrated by the detergent package in the test fuel not be adversely affected by other additives encountered in use. In reviewing this subject, EPA concluded that it is not practical at this time, nor has a significant need yet been demonstrated, to require specific nondetergent additives to be present in certification test fuels. EPA has also concluded that requiring the identification of nondetergent additives in the test fuel would not very effectively address EPA's concerns; moreover, many certifiers would not be able to fully comply with such a requirement.

Thus, consistent with the views of the commenters, today's rule is generally not prescriptive with respect to nondetergent additive use in certification test fuels. Typical nondetergent additives may be, but are not required to be present in the test fuels. Also, the presence of such additives does not need to be reported. The addition of detergent-active substances other than the additive being tested is specifically prohibited. On the other hand, if EPA subjects a certified detergent to confirmatory testing, then EPA may include in its test fuel any nondetergent additive which can reasonably be expected to be encountered in use. If the performance of the certified detergent is adversely affected by the presence of such additive, to the extent that the detergent fails the confirmatory test, then the certification might be jeopardized (see § 80.161(e) regarding the disqualification of detergent additives).

The additive industry disagreed with EPA's proposed requirement that certification test fuels must be contained in new, sealed containers during storage and transportation, claiming that this requirement would be infeasible, unreasonable, and expensive, and would generate a lot of waste. Instead, it said, clean tank trucks should be adequate for the transport and storage of test fuels. EPA is persuaded that the use of clean tank trucks or other containers will ensure that test fuels are not contaminated or otherwise altered in a way that might bias certification test results, and that requiring the use of new sealed containers is unnecessary to maintain sample integrity. Therefore, the certification program requires that certification test fuels be transported and stored in clean tank trucks or other containers. In response to EPA's request for data on the affect of fuel storage on test fuel severity, comments from the additive industry suggested that the passage of time would tend to increase test fuel severity due to the effects of fuel oxidation. Therefore, the use of test fuel which has been stored would tend to make the performance test more stringent. EPA agrees with these comments. Furthermore, no data is available to indicate that gasolines may become less severe over time. Therefore, EPA will not limit the time a test fuel sample may be stored before certification testing is conducted.

The majority of commenters were in agreement with EPA's proposal to define test fuel parameter levels based on an analysis of the three most current years of AAMA fuel survey data. However, several commenters from the petroleum industry stated that EPA should use refinery baseline data collected under the Reformulated Gasoline Program. EPA disagrees with this comment. The RFG baseline data pertains to 1990 only. Therefore, it would not provide as current, nor as representative, a characterization of longer-term trends in fuel quality as the proposed use of the average of three years of AAMA data. The analysis presented in the NPRM was based on 1989 through 1991 AAMA fuel survey data. However, more recent AAMA data is available now. Thus, consistent with the proposal and the support expressed in the public comment, the fuel specifications for detergent certification testing have been updated to reflect the results of the 1992–1994 gasoline AAMA survey data.[21]

[20] "Analysis of Differences in Nonoxygenate Fuel Parameter Levels in Oxygenated and Nonoxygenated Gasolines: 1992–1994 American Automobile Manufacturers Association Data", George Hoffman, DynCorp/DynTel, Docket item IV–B–05.

[21] "Statistical Analysis Methodology: 1992–1994 American Automobile Manufacturers Association Data", George Hoffman, CSC, Docket item IV–B–06.

B. Fuel-Specific Certification Test Fuels

Unlike the test fuels described above for certification testing under the national and PADD options, which are designed to represent fungible gasolines, EPA proposed that the certification test fuels under the fuel-specific option would be tailored to represent the unique deposit-forming tendency of segregated gasoline pools. As proposed, the additive certifier would have to establish its own test fuels specific to its gasoline pool. To characterize the severity of the test fuel, the certifier would use the four nonoxygenate parameters specified under the national and PADD certification scheme for nonoxygenated fuels, and would include oxygenate as a severity parameter if oxygenate was used in the specified gasoline pool. (Otherwise, the detergent would be restricted to use in non-oxygenated fuel-specific gasoline.) EPA proposed that, subject to EPA's prior approval, other parameters could be used in addition to the standard four or five parameters. In order to use another parameter, EPA proposed that the certifier of a fuel-specific detergent would submit test data to EPA to demonstrate that the subject parameter affects the deposit-forming severity of the segregated gasoline pool for which the certification is sought. In addition, the applicant would submit a test method approved by the American Society for Testing and Materials (ASTM) to measure the additional fuel parameter in finished gasoline. EPA proposed that the Agency would respond to such requests within 90 days after receiving the test data to support the use of the additional parameters.

EPA received several comments expressing support for the proposal to require certifiers of fuel-specific detergent to characterize the composition of their segregated gasoline pool. Under this final rule, the certifier must create and maintain fuel survey data from each of the facilities that contribute to the subject gasoline pool for a complete year. At a minimum, this data must include monthly measurements of gasoline aromatics, olefin, and sulfur content, and T–90 distillation point. The certifier must also calculate and provide to EPA the percentile concentrations or levels for each of the fuel parameters studied for the segregated pool as a whole (see § 80.164(c)). The use of such additional parameters will not require prior approval by EPA since EPA judged that EPA's prior approval was not necessary to ensure their proper use. However, to be taken into account by EPA in case of confirmatory testing (see Section VII.D.), such additional parameters must be surveyed, analyzed, and reported according to the same requirements applicable to the four standard parameters.

Consistent with the certification program's approach for national and PADD certification test fuels, under this final rule, testing for generic fuel-specific certification must be conducted using a single test fuel that has nonoxygenate fuel parameter levels at or above their respective 65th percentile values for the subject segregated gasoline pool as determined by the fuel marketer's required fuel survey analysis. Also paralleling the national and PADD certification options, a nonoxygenated fuel-specific test fuel may be blended with ethanol (to a concentration of at least 10 volume percent ethanol in the finished fuel) to qualify as a test fuel for certifying a detergent for use with any oxygenate. The requirements for oxygenate-specific fuel-specific certification test fuels also parallel those under the national and PADD certification options. Certification fuels used in conducting testing to demonstrate that either a PFID-only detergent or no detergent additive are needed to satisfy EPA's IVD/PFID control requirements must meet the same compositional criteria described above.

No specific comments were received on whether EPA should apply an IVD demonstration fuel qualification criterion under the fuel-specific certification option. Gasoline within a given fuel-specific gasoline pool is likely to be much less variable in composition than fungible gasoline for several reasons. The sources contributing to a fuel-specific pool will likely be limited in number and belong to a single refiner. In addition, refining parameters would be more closely controlled to maintain the unique composition that defines the segregated fuel-specific gasoline pool. The fuel composition monitoring and associated detergent recertification requirements under the fuel-specific option will act to limit the variability in the composition (and thus the severity) of such gasoline pools. Thus, under this final rule, fuel-specific certification test fuels are not required to satisfy deposit demonstration test requirements.

C. Summary of Test Fuel Requirements

The following table summarizes test fuel compositional requirements under the different national, PADD, premium, and fuel-specific certification sub-options.[22]

[22] See § 80.164 of the regulatory text for specific values under the different certification options and suboptions. 65th percentile nonoxygenate fuel parameter levels must be met prior to the addition of the required oxygenate.

TABLE VI–1—SUMMARY OF TEST FUEL REQUIREMENTS; GENERIC DETERGENT CERTIFICATION

[For use in any gasoline grade, with any oxygenate]

Gasoline pool	Nonoxygenate fuel parameters	IVD demonstration standard (mg)	Oxygenate/concentration
National	65th percentile in national survey	290	10% Ethanol.
PADDs I and III	....do	290	Do.
PADDs II, IV, and V	....do	260	Do.

PREMIUM DETERGENT CERTIFICATION

[For use in premium gasoline, with any oxygenate]

Gasoline pool	Nonoxygenate fuel parameters	IVD Demonstration Standard (mg)	Oxygenate/concentration
National	65th percentile in national/premium survey	260	10% Ethanol.
PADDs I and III	65th percentile (premium) in respective PADD	260	Do.
PADDs II, IV, and V	....do	235	Do.

NONOXYGENATE OR OXYGENATE-SPECIFIC CERTIFICATION

Gasoline pool	Nonoxygenate fuel parameters	IVD Demonstration standard (mg)	Oxygenate/concentration
Any Grade:			
no oxygenate	Same as national or PADD generic certification shown above		None.
oxy specific			Max concentration.
Premium Only:			
no oxygenate	Same as national or PADD premium certification shown above		None.
oxy specific			Max concentration.

FUEL-SPECIFIC CERTIFICATION

Gasoline pool	Nonoxygenate fuel parameters	IVD demonstration standard (mg)	Oxygenate/concentration
No Oxygenate	65th percentile in the specified pool	none	None.
Any Oxygenate	....do	....do	10% Ethanol.
Specific Oxygenate	....do	....do	Specified oxygenate at maximum conc.

* Similar to the national and PADD certification case, fuel-specific certifications may be obtained for all gasoline grades or for premium gasoline.

Test fuel samples used in IVD and PFID performance testing for a given detergent must conform to identical qualification criteria, but need not be drawn from the same batch of gasoline. Likewise, the samples of the detergent additive package used in the required certification tests need not be from the same production batch, provided that both samples conform to the compositional information provided to EPA by the additive certifier.

D. Test Fuels for Leaded Gasoline Certification

The certification program retains the interim rule's specifications for leaded gasoline test fuels to allow use of existing test data to the greatest extent possible. Given the very low level of leaded gasoline use in the U.S., EPA believes that increasing the stringency of these test fuels would not result in an environmental benefit that would compensate for the cost incurred in conducting the additional testing which would be required.

E. Measurement of Gasoline Fuel Parameters

For the purposes of measuring the fuel parameters which define certification test fuels, EPA proposed to allow the use of specified ASTM procedures, as well as other procedures proposed for use under the RFG program (58 FR 11722, February 26, 1993). This proposal was expected to allow reasonable flexibility in test procedure selection while ensuring the needed measurement precision. EPA also wanted to coordinate testing and compliance requirements across the RFG and detergent additive rulemakings. To that end, the Agency proposed to incorporate into the final detergent additive program, as appropriate, any changes to the fuel parameter measurement procedures finalized in the RFG program.

Certifiers under the fuel-specific option may use additional fuel parameters to describe the composition of their segregated gasoline pools and to define the required certification test fuels (see Section VI.B.). EPA proposed to require that ASTM-approved test procedures be used for measurement of such additional test fuel parameters under the fuel-specific certification option.

The RFG regulations, including final versions of the fuel parameter test requirements, were published by EPA on February 16, 1994 (59 FR 7716). In finalizing these test procedures under the RFG program, the Agency addressed some of the issues that were also raised in the context of the public comment on the detergent NPRM.[23] For the reasons discussed under the RFG program **Federal Register** notice, and in the interest of maintaining uniformity of fuel parameter testing requirements between regulatory programs, EPA is adopting the procedures finalized under the RFG program (40 CFR 80.46) for the required measurement of levels of sulfur, olefins, aromatics, T90, and oxygenate content under this final regulation. The use of alternate test procedures is not allowed except as provided for under the RFG program. As discussed in the final RFG rule, EPA believes that allowing the use of additional alternate procedures would result in uncertain quality and unacceptable variability of test results. EPA is currently considering modifying 40 CFR 80.46 to update the test procedure for the measurement of olefins. If such a change is adopted, and if other such revisions are implemented, they will naturally also apply to the fuel parameter measurement requirements under this rule.

Because EPA is not finalizing the proposed two-tier certification scheme with associated terminal fuel parameter monitoring requirements (see Section IV), the required measurement of fuel parameters will be limited to that necessary to formulate test fuels and to conduct fuel survey analysis under the fuel-specific certification option. EPA believes that restricting the procedures used to measure fuel parameter levels to those prescribed under the RFG program will not represent an undue hardship to the industry considering the limited fuel parameter measurement requirements.

No specific comment was received on EPA's proposal that additional test fuel parameters which may be used under the fuel-specific certification option must be measured according to ASTM procedures. Comment from the petroleum industry generally supported the use of ASTM-approved methods and any other test methods which may be specified for use under the reformulated gasoline program for use in measuring test fuel parameters. Since it is unclear what additional parameters might be used to define fuel-specific gasoline pools and the fuel parameters selected may not commonly be measured by industry, EPA now believes that it may be too restrictive to require to use of only ASTM-approved procedures. Given this concern, EPA will require that test procedures used to measure optional fuel parameters under the fuel-specific option must conform to reasonable and customary standards of repeatability and reproducibility, and reasonable and customary limits of detection and accuracy for the type of test procedure in question. ASTM-approved measurement procedures would conform to this requirement, as might others that have not received ASTM approval.

[23] See the Regulatory Impact Analysis for the Reformulated Gasoline Final Rule, December 13, 1993, EPA Air Docket A–92–12, Docket item V–B–01.

VII. Certification Tests and Performance Requirements

A. Certification Test Procedures

In the NPRM, EPA proposed test procedures to evaluate IVD and PFID control that were based on draft procedures under evaluation by ASTM. It was also proposed that, if these test procedures were finalized by ASTM, they would be incorporated by reference in this final rule. This proposal was supported in the public comment. ASTM has since finalized their IVD and PFID test procedures with minimal changes from the earlier drafts proposed by EPA, and the procedures are incorporated in this final rule.[24]

The IVD and PFID tests adopted by today's notice require an accumulation of 10,000 miles on a standard test vehicle. EPA proposed an alternative IVD test which could be conducted using an abbreviated 5,000 mile test cycle. However, EPA has determined that the use of such a shortened test cycle might result in a significant increase in test variability. Therefore, EPA will not accept results from this test for IVD certification testing purposes.[25]

The Agency is aware that ASTM is developing updated deposit control test procedures which might be finalized by ASTM shortly after this rule is published. Several commenters requested that EPA speed adoption of these procedures when they become available. EPA recognizes that, because these test procedures would use more current vehicle technology, they might provide an improved means of determining the IVD and PFID control requirements of modern vehicles. Therefore, the Agency is interested in expediting consideration of the adoption of these test procedures, particularly if they are finalized by ASTM in time to allow their potential use in meeting initial detergent certification testing needs. If EPA judges that the updated ASTM procedures are suitable for regulatory purposes, the Agency will either publish a proposal requesting comment on their adoption either as alternate or replacement procedures for the deposit control performance tests adopted by today's rule, or will publish a direct final rule for this purpose. A necessary criterion for the adoption of the updated procedures would be the determination of a correlation of test results from these procedures with the performance standards of the current procedures, or data that demonstrates that a specific performance standard for these procedures provides an appropriate level of deposit control performance.

B. Deposit Control Test Standards

1. PFID-Control Test Standard. For the PFID control test procedure finalized by today's notice, EPA proposed a performance standard of less than 5 percent flow loss in any injector over the accumulation of 10,000 miles. Public comment requested that EPA adopt the 10 percent standard which was widely used by industry to prevent driveability problems. Commenters stated that the 10 percent standard should be sufficient to prevent a PFID emissions increase given the stringency of the PFID test relative to typical in-use driving conditions.

EPA accepted the traditional industry PFID standard of 10 percent under the interim program to allow maximal use of existing test data. However, to ensure realization of the potential emission benefits to be provided by effective deposit control, the proposed 5 percent

[24] ASTM test method D 5598–94, "Standard Test Method for Evaluating Unleaded Automotive Spark-Ignition Engine Fuel for Electronic Port Fuel Injector Fouling", and ASTM test method D 5500–94, "Standard Test Method for Evaluation of Unleaded Automotive Spark-Ignition Engine Fuel for Intake Valve Deposit Formation" are incorporated by reference in 40 CFR 80.165(a) and (b) respectively. ASTM is currently considering revisions to the test validation criteria for these test procedures to provide more flexibility (See Docket item IV–E–58). When available from ASTM, EPA will evaluate the suitability of such revisions, and if appropriate, might undertake a rulemaking activity regarding their adoption.

[25] For similar reasons, EPA will not allow the use of the abbreviated 5,000 mile IVD test for demonstrating the deposit forming tendency of unadditized fuels. (See Section VI.A.4.)

standard is being adopted in the detergent certification program. The necessity of the more stringent performance standard follows logically from an understanding of the mechanism by which PFID cause exhaust emissions to increase. As was reviewed in the NPRM, the most significant factor appears to be the difference in PFID-related flow loss between one fuel injector and another.[26] Electronic fuel control equipment onboard the vehicle cannot adjust the air/fuel ratio for combustion efficiency in each cylinder; rather, it adjusts the air/fuel mixture in response to the average oxygen level in the exhaust. As a result, the fuel flow may be suboptimal for every cylinder. Some cylinders will be overfueled, causing HC and CO emissions to increase and fuel economy to decrease. In other cylinders, the combustion mixture will be overly lean, causing a NO_X emissions increase. Furthermore, as the disparity between cylinders rises, the combustion process in any cylinder will become less and less efficient.

The experience of auto manufacturers indicates that the average driver will tolerate some degradation in vehicle driveabiliy. When deposits increase to a level where the flow rate of one or more injectors is reduced by 10 percent or more, however, combustion efficiency and vehicle driveability will be impaired to the extent that driver complaints can be expected.[27] Thus, the 10 percent standard has been the traditional industry norm. However, it is clear that the efficiency of the combustion process may be significantly affected, and emission rates increased, well before this point. Because the main focus of the detergent certification program is the prevention of emission problems, not driveability problems, EPA believes the 10 percent standard to be inappropriate.

Although emission effects may begin as soon as any PFID begin to accumulate, a standard of zero percent would obviously not be reasonable. EPA has chosen instead to harmonize its PFID performance standard with that of CARB, which implemented the 5 percent standard under its regulation of detergent additives in January of 1992. Experience under CARB's program has shown that the 5 percent standard can be readily achieved using commonly available additive formulations. Furthermore, as discussed in the NPRM, the application of a 5 percent rather than a 10 percent PFID standard will usually not be the deciding factor in controlling the amount of detergent needed to pass the certification performance test requirements. Rather, in most cases, the treatment rate required for IVD control will be the controlling factor. Still, in those instances where PFID control requirements do affect the treatment rate, the 5 percent standard will offer adequate stringency to make the test meaningful from an emissions control standpoint.

2. IVD-Control Test Standard. For the IVD test, EPA proposed a performance standard deposit weight of less than 100 mg-per-valve on average over the accumulation of 10,000 miles. The public comment supported adoption of this standard. Also, this is the performance standard required by CARB. Based on the reasons discussed in the NPRM and the public's support, EPA is adopting the proposed 100 mg-per-valve IVD standard in this final rule.

C. Alternate Performance Requirements for Leaded Gasoline

The certification program, like the interim program, allows the use of either carburetor-type, PFID, or IVD/PFID detergents to comply with leaded gasoline detergency requirements. The responsibilities of fuel and detergent manufacturers regarding the requirements for leaded gasoline are otherwise the same as those described previously for unleaded gasoline.

D. Confirmatory Testing by EPA

EPA may conduct confirmatory testing on gasoline blended with a detergent additive to verify that the additive performs as well as or better than required by the deposit control standards finalized today. At its discretion, EPA may choose to conduct one or more of the prescribed vehicle tests on a detergent additive. For this testing, EPA would blend the additive in the designated test fuel at the minimum concentration specified by the manufacturer. The severity parameter levels in the test fuel would be equal to or less than that required for the respective test fuel. The test fuel may also contain any mixture of nondetergent gasoline additives found in commercial gasoline at the concentration normally used. For verification of a CARB-based certification, EPA would use the applicable CARB test procedures and standards. EPA would run the IVD and perhaps the PFID ASTM test and a carburetor test, and if the applicable performance standards were not met, the certification could be invalidated. (See Section III.A.3. and § 80.161(e) regarding the disqualification of detergent additives).

The final rule does not include tolerances to allow for test-to-test variability as requested by some commenters. EPA cannot establish test tolerances for the same reason ASTM was unable to specify precision parameters for their IVD and PFID test procedures. A sufficient amount of repeat tests using these tests is not available. Certifiers must therefore take into account a reasonable level of uncertainty in evaluating their test results and reporting the detergent's LAC. At its discretion, EPA may take such uncertainty into account when evaluating the results of any confirmatory tests it may conduct.

VIII. Enforcement Provisions

A. Overview

The enforcement provisions of the detergent certification program closely track those in effect under the interim detergent program promulgated on November 1, 1994. Following is a general outline of the enforcement provisions that will apply in the certification program. In general, these are the same enforcement provisions that apply under the current interim program, with certain revisions that make them more efficient and streamlined. (See section VIII(B) of this preamble for a discussion of the revisions to the interim rule's enforcement provisions.) Since the interim program is to continue in effect for non-certified detergents until the certification program becomes mandatory (on July 1, 1997 for detergent manufacturers, detergent blenders, and other upstream parties, and on August 1, 1997 for gasoline retailers and wholesale-purchaser consumers [WPCs]), revisions to the interim program's enforcement provisions will apply as of September 3, 1996. Enforcement provisions that are not revised by today's rule will continue to apply under both the interim and final certification programs.

For the convenience of the reader, many of the previously promulgated provisions that are not being revised in this rule (such as the core of the prohibited acts, liability, and product transfer document sections), are nonetheless repeated in the regulations issued today. It is important to note that this repetition is to make the Code of Federal Regulations more useable and to avoid confusion. The repetition of previously promulgated regulatory text is not intended to be a re-promulgation

[26] Tupa, R.C., Koehler, D.E., "Gasoline Port Fuel Injectors—Keep Clean/Clean up With Additives," SAE Technical Series No. 861536.

[27] Tupa, R.C. and Dorer, C.J. "Gasoline and Diesel Fuel Addditives for Performance/Distribution Quality—II," SAE Technical Series No. 861179.

of that text. The only regulatory provisions promulgated today are new provisions, and the revisions to previously promulgated provisions.

1. Certification Conformity. Effective August 1, 1997, all gasoline sold or transferred to the ultimate consumer, and effective July 1, 1997, all gasoline sold or transferred to those who sell or transfer to the ultimate consumer, must be additized with detergent that has been certified pursuant to the requirements of § 80.161. The detergent must be present in at least the lowest additive concentration (LAC) certified to EPA as effective, and in conformity with the use restrictions of the certification. Prior to July 1, 1997, detergent manufacturers may choose to certify their detergents in conformity with § 80.161. Gasoline/PRC additized with such certified detergents must be additized in compliance with the requirements of § 80.161.

Use restrictions pertain to the type of gasoline product to which the detergent may be added under a given certification. As previously described, detergents certified under the national option may be used with any gasoline (e.g., oxygenated or non-oxygenated, premium or regular) sold anywhere in the U.S. (subject to approved state programs). Detergents may also be certified at a different LAC for use with gasoline sold to the ultimate consumer in a particular PADD. Detergents certified under the fuel-specific option may only be used with the segregated gasoline specified in the certification. Furthermore, within a national, PADD-specific, or fuel-specific certification, a detergent may be separately certified at a different LAC for use only with non-oxygenated fuel, for leaded fuel (for nonroad use only), for fuel blended with a specific oxygenate, and/or for premium fuel. Finally, detergent certifications based on certification by the California Air Resources Board (CARB-based detergents), may only be used with gasoline additized and/or ultimately sold in California.

Under the certification program, detergent in its pure state, i.e., prior to its addition to gasoline, must meet the chemical composition and concentration specifications set forth in its 40 CFR part 79 registration (as is also the case under the interim program rule), and in its Federal certification.

2. Compliance With Volumetric Additive Reconciliation (VAR) Requirements. All parties who blend detergent into non-exempted gasoline, or into components added to gasoline after the refining process (post-refinery components, or PRC), must complete mandatory accounting reconciliations establishing that the product was additized at an actual detergent concentration that was at least equal to the LAC certified as effective to prevent deposit formation. All additized gasoline and PRC must be accounted for on VAR records.

Automated detergent blenders must complete these mandatory reconciliations in consecutive compliance periods, each no greater than 31 days in length. The reconciliation for automated blenders is based on averaging the additization concentrations over the compliance period. Today's final rule, like the interim program, does not require that a per-gallon minimum detergent concentration be attained by blenders within the averaging period. Hand-blending detergent blenders must complete the mandatory VAR on a per-batch basis.

VAR reconciliation records (VAR formula records) and VAR supporting documentation must be maintained by detergent blenders for a five year period from date of creation.

3. Equipment Calibration. To assure measurement accuracy, under this final rule, automated additization equipment must be calibrated on a semiannual basis, and every time the detergent in the storage tank is changed to one with a different viscosity.

4. Product Transfer Documents. (PTDs). All regulated parties transferring gasoline, detergent, or additized PRCs (except retailers and WPCs transferring gasoline to the ultimate consumer) must also transfer product transfer documents (PTDs) providing necessary information about additization status, identity of the product, and identity of the transferring parties. All regulated parties receiving such product, including retailers and WPCs, must likewise obtain these documents. Most regulated parties will be required to maintain these documents for five years. However, WPCs receiving such documentation for additized gasoline will not have any record maintenance requirement as to the received documents.

5. Liability and Defenses. As is typical in EPA fuels programs, presumptive liability will be the cornerstone of compliance assurance under the certification program. All parties in the relevant gasoline, detergent, and detergent-additized PRC distribution chain for a nonconforming product will be presumed liable for detergent program violations arising from that nonconformity, specifically, violations involving the sale, transfer, etc. of nonconforming detergent, nonconforming gasoline, and nonconforming additized PRC, as applicable. Two exceptions to this general rule exist, however. First, carriers are only presumptively liable for violations discovered at their own facilities. For downstream violations, carriers will be deemed liable only when EPA can prove that they caused the violations. Second, for VAR violations, expected to be the primary source of violations under the detergent program, only those parties meeting the definition of detergent blender for the nonconforming product will be presumptively liable.

In addition, any regulated parties that EPA can establish caused VAR violations will be deemed liable for these violations, and branded refiners will be vicariously liable for any violations, other than violations of the PTD provisions, found at facilities operating under the refiner's brand name. Presumptive liability for PTD violations is imposed under the certification program only on those parties owning, leasing, operating, controlling, or supervising facilities at which such violations are found.

All parties subject to presumptive and vicarious liability have the right to assert an affirmative defense to that liability.

6. Exemptions. As provided in the interim program, racing and aviation fuel, and detergent and gasoline used for research, development, and testing purposes, are exempt from the requirements of the detergent certification rule, provided certain safeguards are met to ensure the proper use of these exempted fuels. In addition, provided certain conditions are satisfied, gasoline additized in the state of California is exempt from the VAR requirements of today's certification rule, and gasoline sold within California is exempt from the rule's PTD requirements.

B. Enforcement Aspects of the Certification Program, Including Clarifications of, and Changes to, the Interim Program

While the enforcement provisions of the certification program closely track and continue those found in the current interim program, there are certain important aspects in which EPA is revising its enforcement provisions, for both the interim and certification program. The following description of the enforcement program includes modifications of the interim program. These changes primarily result from industry queries about the practical implication of certain provisions of the interim program rule. The Agency provided implementation guidance on some aspects of the interim rule in

response to these queries, through the issuance of four Detergent Rule Question and Answer Documents (Q&A Documents or Q&As). In addition, some of the statements found in the Q&A Documents were issued by EPA to address the Agency's implementation concerns that became apparent to EPA upon initiating its enforcement program. All four Q&A Documents are available in the docket (items IV–C–08 through IV–C–11). Also available in the docket is a summary of significant industry implementation questions that have not been incorporated in a Q&A document (item VI–D–57).

Since these Q&A Documents do not have the same legal force as a regulation, the Agency is incorporating these provisions in today's rule. All of these modifications adopted into today's rule are within the scope of the proposals found in the NPRM, and are logical outgrowths of the proposal, typically based on comments in the form of industry queries. The changes and clarifications mitigate industry burdens in comparison to the regulatory language found in the current interim program, while at the same time, maintain the effectiveness of the Agency's detergent additive enforcement program.

Other changes from the interim program are also discussed below. These changes were developed from ideas presented in the NPRM, or are based on proposals raised in the Reopening Notice. The discussion of these enforcement provisions includes EPA's response to comments received about the proposals.

1. VAR Requirements. Mandatory VAR procedures are the foundation of today's certification program, as they have been under the interim program. All detergent blenders are required to record their actual detergent concentration attained for a specified compliance period and compare it with the detergent's applicable certified LAC. If the actual detergent concentration for the compliance period is equal to or greater than the LAC, then the blender's detergent concentration rate is in compliance with the VAR requirements. To help prevent misadditization, automated detergent blenders are prohibited from setting their additization equipment at rates below the LAC rate. Hand blenders are required to calculate VAR compliance for every load of gasoline or PRC additized, for each detergent used in the load, and each certified LAC rate used.

a. Automated Detergent Blender Compliance Periods. The interim program final rule specified that VAR compliance periods for automated blenders may continue no more than a calendar month, and may not extend beyond the end of the calendar month in which they are started. The monthly time period was established because it was considered a reasonable compromise between industry's desire to average additization compliance over an extended period, and the Agency's need to ensure an effective additization level in the actual gasoline dispensed to consumers. The original proposal in the NPRM was for a weekly VAR compliance period. After reviewing industry comments to the NPRM universally requesting VAR periods longer than a week's duration, the Agency re-evaluated the matter and established the monthly period in the final interim rule.

It was subsequently brought to the Agency's attention that tying VAR compliance periods to calendar months was causing operational problems for some detergent blenders. Blenders claimed that varied operational procedures and needs made such rigid terminations difficult. In the Q&A Documents, therefore, EPA relaxed this requirement and permitted blenders to terminate their monthly VAR compliance periods on the last working day of the month, or on the first working day of the next month, etc. (See Q&A Document #2, Q.13, p.8; and Q&A Document #4, Q.3, p.4.)

One blender suggested a manner of resolving these operational concerns in a much simpler manner, by structuring the automated blender monthly compliance periods so that they could last no longer than 31 days, without being restricted to a calendar month. Thus, the problems involving calendar month terminations would be alleviated. (See Docket item IV–E–44.)

The Agency agrees that this is a reasonable method of ensuring that automated VAR compliance periods are no greater than a month, without forcing regulated parties to conform their operational practices to rigid calendar month time frames. Therefore, today's final rule adopts this flexible approach for both the interim and certification programs, specifying that the automated VAR compliance period must be less than or equal to 31 days, at the blender's option.

The interim program rule requires that the VAR record identify the dates of the compliance period, as was proposed in the NPRM. The Agency has also interpreted this requirement in the Q&A Documents. (See Q&A Document #2, Q.13, p.8 & 9; and Q&A Document #4, Q.3, p.4 & 5.) Under this interpretation, if the VAR formula record for a particular compliance period includes all the additizations occurring within a certain calendar month, then the VAR formula record need only identify the month. However, if the compliance period does not include the entire calendar month, then the blender must indicate on its VAR records the exact dates and times of the period's beginning and end. The point of recording such information is to ensure that the VAR time periods are inclusive of all additizations. Today's final rule includes these requirements and interpretations for both the interim and certification programs.

As in the interim program, the certification program requires termination of the VAR period when an automated blender's additization equipment concentration rate is increased more than 10 percent over the original rate. A new reconciliation period must be commenced at that point. The 10 percent limit was intended to provide industry with some flexibility in adjusting additization equipment while preventing large increases in additization rates as compensation for significant under-additizations. It was not intended to prohibit the use of a temporary rate change to correct a misadditized batch of gasoline, or to fix a temporary equipment problem. In Q&A Document #4 (q.5, p.6), EPA clarified its intent in promulgating this provision and stated that it would allow temporary rate changes beyond the 10 percent cutoff, provided that the purpose is to correct a temporary problem involving a batch misadditization and that documentation about the temporary correction is maintained.

Today's rule contains the rate change flexibility as introduced in the Q&A Documents. It also permits rate changes solely intended to correct an equipment malfunction, provided that any detergent used in this corrective procedure and not blended with gasoline is subtracted from the detergent volume totals. Similarly, today's rule provides that automated blenders may set their equipment's concentration rate lower than the LAC, provided such alteration is a documented temporary procedure performed solely to correct a batch misadditization. In the NPRM, EPA proposed that automated blenders could never set their equipment lower than the LAC, and the interim rule incorporated this proposal. However, based on experiences of blenders under the interim rule, and in the interest of encouraging correction of batch misadditizations within a VAR compliance period, EPA is including this exception to the LAC rate minimum in today's final rule.

b. VAR Formula Records per Detergent Storage System. As proposed in the NPRM, the interim program requires automated blenders to create a separate VAR formula record for each detergent storage tank. However, some blenders expressed concern to the Agency about the rigidity of this requirement, since their detergent additization systems were fed by more than one tank or container, and it would thus be difficult to create separate VAR records for the different tanks. (See Q&A Document #1, Q.9, p.6.) To address this concern and provide the necessary operational flexibility for such blenders, the Agency stated that it would allow VAR records to be based on detergent tank storage systems. (Q&A Document #1, supra.) Today's final rule formalizes this more flexible approach.

c. Brands and Grades of Gasoline on VAR Records. As proposed in the NPRM, the interim rule requires brands and grades of the gasoline product covered by a VAR formula record to be listed on that record to ensure identification of the product covered. Detergent blenders expressed concern about this requirement because brands of product were not always known and because product identification was available on supporting records and was thus not necessary on each formula record. (See Q&A Document #1, Q.17, p.7; and Docket item IV–E–44.)

These concerns prompted an Agency Q&A Document response, specifying that gasoline brands had to be identified only when known to the blender. Today's final rule adopts this Q&A provision, and provides further flexibility by permitting product identification as to brand and grade to be recorded on supporting documentation. As to gasoline identification on the VAR formula record itself, detergent blenders only have to identify, when relevant, that the product is additized under a customer-controlled proprietary system. This latter requirement is necessary to alert Agency auditors that a party in addition to the terminal operator might be liable for VAR violations for this product.

The additional flexibility in these provisions will facilitate VAR recordkeeping tasks without interfering with the Agency's need for proper identification of additized product.

d. Recording of Detergent LAC and the Actual Concentration. As proposed in the NPRM, the interim rule required that the LAC must appear on the VAR formula record and in detergent manufacturer blending instructions in units of gallons of detergent per gallons of gasoline. However, in implementing the detergent registration provisions, the Agency realized that such a figure would typically contain three zeros after the decimal point because the amount of detergent being used per gallon of gasoline is so small. The constant use of such a figure would be unwieldy and difficult to work with. Therefore, EPA advised blenders that the LAC would be permitted to be stated in terms of gallons of detergent per one thousand gallons of gasoline (Docket item IV–C–12). This more workable LAC identification system is contained in today's final rule. Further, today's rule requires the LAC to be reported in relation to the volume of PRC in which the detergent is blended, as well as gasoline volume, since the effective detergent concentration depends on the total volume of additized product.

Neither the NPRM nor the interim rule specified the number of figures to which the blender must express actual detergent concentration. Pursuant to a request for clarification of the Agency's intent on this issue (see Q&A Document #1, Q.22, p.9), today's final rule clarifies that the actual concentration must be expressed to four figures. This specification is appropriate, given the large volumes typically encountered.

Today's final rule also specifies that the LAC identified on the VAR records and in the manufacturers' blending instructions to their customers must also be expressed to four figures. Neither the NPRM nor the interim rule specifically addressed this point. Both concentrations now have to be recorded to the same arithmetic rounding standard. This will facilitate comparison of the LAC with the blender's actual detergent concentration, and it also ensures that this information is standardized on all VAR formula records.

e. VAR Recording of Use-Restricted LACs. Under the interim program, a detergent can be registered with multiple LACs for use of the detergent in different types of gasoline. For example, a detergent can have one LAC for generic product, and another, lower LAC for leaded gasoline. The generic/leaded distinction retains limited relevance under today's final rule, because the sale or dispensing of leaded gasoline for use in nonroad vehicles continues to be permitted even though the sale or dispensing of such product for use in highway vehicles was banned as of January 1, 1996.

As previously mentioned in this preamble, there are additional certification rule situations under which a detergent may be certified with multiple LACs. As proposed in the NPRM and codified in the interim program, under the certification program a VAR formula record may account for the use of only one such certified LAC. Additization based on a different certified LAC must be recorded on a different record. In addition, the VAR formula record for a detergent's use-restricted LAC must state the respective use restriction(s) for the LAC on the VAR record. This requirement will highlight for the regulated party, and for the Agency, the specific use for which the detergent is certified, and will help ensure that gasoline is additized at a proper rate.

f. Diluted Detergent. Under the interim rule, any change in detergent package composition which changes the LAC requires a new registration. Thus, a detergent blender could not dilute a detergent with the marketer's own gasoline in order to make the detergent less viscous for ease in use in the colder winter months.

Pursuant to a request to permit such detergent dilution, EPA has allowed such a practice, since it does not make the detergent less efficient in preventing deposit formation, and it facilitates winter use of the detergent (Q&A Document #4, Q.1, p.1.). Safeguards are established under the Q&A to ensure that the use of this procedure does not result in less effective additization. Blenders using this procedure are required to use the diluted detergent at an LAC rate that compensates for the dilution, and they are required to inform EPA of this usage in writing, prior to the dilution. Today's final rule codifies this provision allowing lenders to dilute their detergent for winter handling, thus modifying the strict prohibition against detergent package LAC variation originally proposed in the NPRM.

g. VAR Recording of Gasoline Which is Overadditized for the Anticipated Addition of Ethanol or Other PRC. Under the interim program, excess detergent can initially be added to gasoline to account for the anticipated later addition of unadditized ethanol or other PRC to that gasoline. The purpose of such initial overadditization of the gasoline portion is to ensure that the combined gasoline/PRC product contains the appropriate detergent concentration.

Neither the NPRM nor the interim program rule specified how this permitted practice was to be recorded on the VAR formula records. EPA clarified this matter by the issuance of Q&A Documents which stated that the Agency expects such a VAR formula record to identify the volume of gasoline being overadditized, and the anticipated volume of ethanol/PRC being accounted for. In addition, EPA expects that the volume of ethanol/PRC being accounted

for by the gasoline overadditization is to be included in the recorded final volume of product additized (Q&A Document #1, Attachment 1, p.24–25; and Q&A Document #2, Q.8, p.7). Such identification on the VAR record is necessary to highlight that the blender is over-additizing gasoline in this manner, as well as to ensure that the actual detergent concentration for the gasoline/PRC blend is sufficient to effectively control deposit formation.

Today's final rule codifies these VAR recording clarifications found in the Q&A Documents, so as to make the VAR records reflect the reality of this specialized overadditization practice. These clarifications should enable the regulated community and EPA to verify that this procedure, which was also permitted under the interim rule, is implemented in an accurate, effective manner.

Today's final rule also extends these PRC-related overadditization VAR procedures to the hand blender VAR requirements, for the same reasons they are necessary for automated blenders. This corrects the Agency's oversight to include them in the interim program's provisions for hand blenders.

h. VAR Recording of Transfers of Unadditized Gasoline. Under the interim program, automated detergent blending facilities and terminals at which hand blending occurs are required to create and maintain VAR supporting documentation for each transfer of unadditized gasoline from the facility in the compliance period (for automated blenders), or monthly (for the hand blending terminals). A record that unadditized product has left the detergent blending terminal is needed by the Agency so that the product can be traced, if necessary, to ensure that it was ultimately properly additized prior to use by the consumer.

Because terminals already are required under the interim program to maintain product transfer documents for each such transfer, the Agency stated in Q&A Document #1 (Attachment #1.) that detergent blenders could indicate on VAR records the total amount of such transfers occurring either in the VAR compliance period (for the automated blenders), or during the month (for hand blenders), without indicating the date, volume, or recipient of each transfer. These total volumes are to be recorded on the automated blender VAR formula record or the hand blender monthly record of unadditized transfers. This simplified approach is codified in today's rule. It streamlines the more exhaustive recording provision found in the interim rule, while providing useful notification to the Agency on VAR records of the transfer of unadditized product from detergent blending terminals.

In requiring detergent blenders to identify on their VAR records transfers of unadditized gasoline leaving their facilities, neither the NPRM nor the interim rule considered that this would require refineries which also happen to be detergent blending terminals to record routine bulk transfers of unadditized product to other detergent blending facilities. Such bulk transfers were not the target of this record requirement because they are not intended for immediate consumer use.

Consequently, pursuant to industry inquiry about this matter, the Agency stated in Q&A Document #4 (Q.4, p.5.) that it would excuse such refinery bulk transfers from inclusion in the VAR recording requirement for transfers of unadditized product. Today's final rule codifies this exception and extends it to pipelines which also happen to be detergent blenders and which also regularly make bulk upstream transfers of unadditized gasoline. The proposal as originally described in the NPRM has thus been modified to take into account the reality of upstream bulk transfers of unadditized gasoline which do not warrant the special VAR attention necessary for downstream transfers of such product.

i. Supporting Documentation of VAR Volumes for Hand Blending Facilities. As proposed in the NPRM, the interim rule required hand blending detergent facilities to retain VAR supporting documentation, specifically, PTDs and bills of lading for all product they receive or send out. However, the interim rule did not require hand detergent blenders to maintain documentation supporting their recorded VAR volumes for gasoline, PRC, and detergent.

Since such documents would obviously be important if the reported volumes were ever subject to question, EPA has issued guidance that such data, if available to the hand blender, should be maintained (Attachment 1 of Q&A Document #1, p.28.). Today's final rule codifies this requirement for hand blenders.

j. Electronic VAR Formula and Supporting Records. Neither the NPRM nor the interim program final rule addressed the use of electronic records to satisfy VAR formula or supporting record requirements. Pursuant to industry request for approval of electronic records (Docket VI–D–57.), in Q&A Document #1 (Q.4, p.11) the Agency clarified that the use of electronic VAR and PTDs complies with the rule, provided that these records are complete, easily readable, and accessible.

In written discussions with petroleum industry groups, EPA discussed permitting the use of computer identification codes in lieu of VAR formula signatures, provided that safeguards of authenticity would be met (Docket item IV–C–13). Blenders using such ID codes would be required to maintain a document signed by the VAR record's creator, acknowledging that the use of this identification code on the record is equivalent to his/her signature, and must take record security and access precautions.

Some regulated parties objected to the idea of the Agency placing conditions on the use of electronic records, asserting that these records are as reliable as paper records which are not subject to any additional conditions (Docket items VI–D–59 and VI–D–60).

The Agency disagrees with such comments, and believes that its enforcement needs justify the establishment of conditions on its approval of the use of electronic records. If electronic records are to be used by industry to satisfy detergent rule requirements, EPA needs to be assured that these electronically generated documents will be easy to read and easily accessible. If they are encoded or stored in a manner that makes them unusable by the Agency, the effectiveness of the detergent enforcement program would be compromised. Therefore, the Agency is choosing to establish readability and accessibility requirements for electronic records.

Further, since electronically generated documents can be easily altered without evidence of such alteration being visible, and because compliance with the detergent program is determined primarily through review of the VAR formula records, the Agency needs to ensure that electronic VAR formula records are stored with access and audit security. Consequently, the use of electronically created VAR formula records requires the existence of access and audit security precautions, including documentation verifying the true identity of parties identified on these documents only through the use of computer ID codes.

The final rule promulgated today includes a specific provision approving the use of electronic VAR records. It thus expands the range of permissible documents that will be acceptable to satisfy VAR requirements, while maintaining safeguards necessary for EPA's enforcement needs.

k. Detergent Tank Transitioning. The interim rule prohibited the commingling of different detergents through provisions prohibiting the supply, storage, etc. of an unregistered detergent (which commingled different detergents would be), and the additization of gasoline with an unregistered detergent. During implementation of the interim program, the Agency was asked whether a detergent blender could transition from the use of one detergent to another by adding a new detergent into a tank that contains the residue of an old, different detergent, even though some commingling would result (See Q&A Document #1, and Docket item VI–D–57).

Such detergent tank transitioning process is a common industry practice and prohibiting it would greatly inconvenience many blenders. Therefore, EPA believes it is reasonable to permit this practice in spite of the limited commingling involved. At the same time, the Agency needs to ensure that protective procedures will be followed which limit the amount, or effect, of the commingling. EPA is concerned that the combined detergent may be used at a LAC that would not adequately additize the gasoline. Further, commingling of detergent would make it difficult or impossible to confirm the identity of the detergent by testing, if this should be necessary for enforcement purposes.

If a blender desires to use the same detergent, but at a different LAC certified for use restricted to a different product, this would not constitute an actual tank transitioning process. In this instance, the detergent in the storage tank remains the same and no commingling occurs. Therefore, in such a situation, the only requirement that today's rule imposes is that the blender must create separate VAR formula records for each certified LAC use, identifying the separate use restrictions, and must use measurement equipment able to accurately measure the detergent recorded for each record.

For the case of a tank transitioning situation, *i.e.*, where different detergents are being commingled, EPA issued a response in Q&A Document #1 (Q.5, p.4) which provided limited approval for such commingling. Associated procedures ensure proper VAR identification and usage the proper LAC for the combined detergent. They also encourage the maximum depletion of the prior detergent in the tank so as to limit the commingling involved.

Today's final rule follows this Q&A approach by permitting detergent commingling during legitimate tank transitioning periods, while requiring necessary procedural and recordkeeping safeguards to ensure proper VAR identification of the detergents and proper additization with the commingled detergent. It thus relaxes the total prohibition against detergent commingling proposed in the NPRM, to provide industry with the flexibility it needs to execute this standard tank transitioning procedure.

In addition, today's rule codifies the detergent transitioning policy, first outlined in Q&A Document #1, supra, under which the addition of new detergent into a detergent storage tank is specifically permitted and the combined detergent is treated as if only the new detergent were in the tank, provided that the tank is drained of the old detergent to a remaining level no greater than 10 percent of the tank's newly delivered, commingled volume. This volume includes the tank's remaining inventory of the residue detergent, plus the newly delivered detergent.

This 10 percent cutoff figure creates an incentive to detergent blenders to reduce the amount of actual commingling involved in their detergent transitioning. The Agency has chosen this figure because EPA judges this small amount of residual detergent to be inconsequential enough to minimize concern about the use of an inappropriate LAC for the combined mixture. At the same time, it is large enough to accommodate blender need for flexibility in tank drainage procedures. Furthermore, the drained detergent can be re-delivered into storage tanks containing the new detergent, provided that the re-delivered detergent comprises no greater than 10 percent of the tank's total commingled delivered volume. The Agency believes it is appropriate to allow this particular commingling procedure because it eliminates the need for blenders to dispose of the previous detergent.

If both detergents have the same LAC, today's final rule permits blenders to drain their detergent tanks (and/or redeliver old detergent) so that the old detergent makes up no greater than 20 percent of the total newly delivered volume without following additional procedures. In such situations, there is no risk of blender confusion as to what LAC applies, so greater flexibility is warranted than for those situations in which the detergent LACs are different.

Finally, today's rule establishes provisions that will apply when two detergents being commingled in tank transitioning situations have different certification use restrictions. Neither the NPRM nor the interim program specifically addressed this matter, and no comments on this topic were received by EPA. When two separately certified detergents are being commingled, the rule establishes that the original detergent's use restrictions no longer apply, while the use restrictions for the new detergent must be followed. The Agency believes that this procedure is appropriate, practical, and easy to follow, provided the transitioning steps discussed above are followed. Under these steps, a blender commingling 10 percent or less of the original detergent would essentially disregard the carry-over of the original detergent, and follow the LAC and use restrictions of the newly added detergent.

In situations where a blender commingles in the detergent tank a residue of more than 10 percent of the original detergent which has a different LAC than the new detergent, the blender is required by the transitioning procedures to use the higher LAC of the two detergents until an amount of detergent is used up which is equal to that of the original detergent remaining in the tank at the time of the new detergent's delivery. The use of the higher LAC should ensure that the commingled detergent will be effective in the fuel for which either detergent was certified. Therefore, the blender is allowed to use that higher LAC with the new detergent's use restrictions, and to disregard the original detergent's use restrictions.

Each of the permitted tank transitioning procedures described above must be documented, either on the VAR record or in supporting documentation. Documentation of the detergent commingling will be useful to EPA if enforcement testing of the detergent is contemplated by the Agency.

l. Automated Additization Equipment Calibration. The interim rule required automated detergent blenders to calibrate their additization equipment each time they change their detergent package and at the beginning of each calendar quarter. The purpose of this regulatory requirement was to ensure the accuracy of the volume numbers recorded on the VAR forms by confirming the measuring accuracy of the equipment generating those numbers. Today's certification rule somewhat eases these calibration requirements in response to comments from detergent blenders that these requirements were unnecessarily severe.

Industry's initial implementation concern was that it would be impossible to fulfill the requirement that every blender's quarterly calibration had to be performed in the first month of each quarter (See Docket item IV–E–45). To reduce this burden, the Agency issued a Q&A Document stating that blenders

could perform the required quarterly calibration in any month within a calendar quarter, provided that the quarterly calibrations occurred no later than three months from the previous calibration (Q&A Document #1, Q.12, p.6.).

As a further concern about quarterly calibration, API and NPRA commented, in response to Agency inquiry, that the quarterly requirement was, itself, too severe. API suggested that an annual calibration requirement would be more appropriate, while NPRA asserted that calibration information should only be asserted as an affirmative defense element. (Docket items IV–C–14, VI–D–58, VI–D–61, VI–D–62, VI–D–63, and VI–D–64.) API further asserted that parties performing additive reconciliations on a daily or weekly basis, *i.e.*, more frequently than the required monthly reconciliations, would be assuring the accuracy of their monthly VAR volumes as effectively as those parties performing quarterly calibrations. Therefore, for such parties, API believed an annual calibration requirement would be sufficient.

However, EPA received conflicting information from a representative of an additization equipment company (Docket items IV–E–46 and VI–D–65). This party asserted that merely performing reconciliations at a greater frequency, while not addressing the real issue of the equipment's measurement accuracy, would not result in improved accuracy of the VAR records. According to this commenter, if the amount of detergent being injected per recorded pulse happens to change while the equipment continues recording the same pulses as before, the mere fact that a blender increases the frequency of reviewing the recorded pulses will not ensure that the blender discovers the measurement accuracy problem. This commenter suggested that the only way to address this concern is to actually recalibrate the equipment.

The Agency agrees that merely increasing the frequency of VAR reconciliations does not necessarily ensure measurement accuracy, and that periodic additization equipment calibrations are thus essential. Under similar reasoning, the Agency rejects the suggestion that periodic calibrations should merely be asserted as part of an affirmative defense. If a blender does not calibrate its equipment regularly, the fact that its additizations are inaccurate may never be known.

However, it is also apparent that quarterly calibrations are burdensome to some facilities, without necessarily providing commensurate benefits. Therefore, today's final rule requires that automated detergent blenders perform at least two equipment calibrations per year. To ensure that the calibrations will be reasonably spaced throughout the year, the rule also specifies that these procedures are to be conducted within each calendar half year, but at least one hundred and twenty days apart. This modified approach will reduce the equipment calibration burden to industry, while also satisfying the Agency's need for regular verification of VAR volume accuracy.

As additional input on the calibration issue, API commented that it was not technically necessary or useful to recalibrate additization equipment every time a detergent package was changed. API stated that merely changing a detergent package, in itself, would not affect equipment measurement accuracy. On this point, the equipment manufacturer commenter indicated that if detergent viscosity changes due to a detergent package change, the amount of detergent being injected per recorded pulse would change. A new calibration of the recording equipment would thus be necessary to ensure that the recorded measurements were still accurate.

The Agency agrees that re-calibration is necessary only when the viscosity of the new package is different from that of the previous package. Thus, today's final rule requires that equipment recalibration must be performed each time the detergent package is changed, unless written documentation indicates that the new detergent package has the same viscosity as the previous detergent package. To provide additional flexibility, today's rule permits a calibration performed to fulfill the package change requirement to serve also as compliance with the semi-annual calibration requirement, provided that the package change calibration satisfies the associated spacing requirements. The Agency believes that these modifications to the proposed calibration requirements will assure VAR measurement accuracy while minimizing industry quality control burdens.

m. Detergent Blender Record Retention. The interim program rule requires detergent blenders to provide EPA with all VAR formula and supporting records upon request. EPA had proposed that the records be maintained at the place of creation, but the interim rule did not include this requirement. The interim program also did not specify the manner in which these records were to be provided.

Several detergent blending terminals requested clarification of EPA's expectations under the interim program concerning document provision at the time of inspection. (See Q&A Document #1, Q.24 and 25, p. 9 and 10 respectively; and Docket item VI–D–57.) The Agency responded that terminals were not expected to store all the required documentation on site (Q&A Document #1, supra.). The Agency also stated that detergent blenders were expected to provide EPA inspectors with six months of VAR formula and supporting records (including PTDs) within one hour of request, with the remaining requested documents to be provided by the next business day. The Agency believed that this time frame for record review would provide EPA with the ability to quickly review a moderate amount of records, but would not burden respondents with the need to provide immediately the full five years of documents which they are required to maintain.

However, EPA's experience in implementing the interim program has revealed that the Agency needs immediate access to VAR formula records for a time span greater than six months. Detergent program violations are not typically discovered through pre-arranged, exhaustive record audits like those conducted under the RFG baseline audit program. Instead, detergent program violations are primarily discovered through on-site inspection review of VAR formula records. These inspections typically occur during unannounced and expedited terminal inspections to determine compliance with a variety of EPA fuels programs. Such inspections are usually completed in several hours and typically do not extend beyond the day of the initial inspection contact.

Therefore, EPA needs the immediate availability at inspection sites of a long enough period of VAR formula records to give a clear picture of a facility's compliance performance. EPA considers one year of VAR formula records to be the minimum time frame within which EPA can determine the facility's compliance, so that immediate access to at least that period of VAR formula records is essential for effective detergent program enforcement. Since VAR formula records are typically only one or two pages in length per reconciliation, retention of this small amount of documentation should not be unduly burdensome.

Today's final rule requires automated detergent blenders and hand blending terminals to provide the preceding year's VAR formula records within one hour of a request by EPA personnel. The remainder must be supplied by the start of the next business day, or later if approved by EPA. In the case of VAR

supporting records, only the preceding two month's records need be immediately available.

For non-terminal hand blenders, only the prior two months VAR formula and supporting records must be made available within one hour of EPA's request. Since these blenders are required to create VAR formula records for each batch of fuel they blend, they typically create many more VAR formula records per month than automatic blenders, and thus more records will be available for EPA review. Further, since such blenders are typically small businesses with little storage space, EPA believes it would not be appropriate to impose on them the same record provision burdens as on the larger, terminal blenders.

Today's certification rule (at §§ 80.157(g) and 80.170(g)) also clarifies that "immediate provision" of the required records means that the records should be provided within an hour of request, or later with EPA approval. Such flexibility permits records to be stored on site, or to be transmitted, electronically or by other means, from any other location of the party's choice. Furthermore, if any blender can establish by documentation that its VAR supporting records are either centrally maintained at another location, or maintained at an alternative location by a terminal customer operating its own proprietary detergent system, then that blender does not have to provide VAR supporting records until the start of the following business day, instead of within an hour.

2. Affirmative Defense and Liability Issues. The affirmative defense and liability provisions of the certification program are a continuation of, and are substantially the same as, those promulgated by the interim rule. Immediately following is an analysis of the certification program's affirmative defense provisions. Significant differences from the interim program are discussed thereafter.

The certification program gives all parties which are subject to presumptive and vicarious liability the right to assert an affirmative defense to that liability. In general, such parties must establish that they did not cause the violation. In addition, they must provide applicable PTD(s) meeting the requirements of § 80.171 for the product in violation, documenting that the product satisfied all requirements of this program when it left their control.

Specific parties have additional requirements to establish an affirmative defense:

Branded refiners are subject to vicarious liability for product nonconformity violations involving gasoline, detergent, and detergent-additized PRC, as well as for VAR violations, that occur at branded facilities, *i.e.*, facilities which operate under the corporate, trade, or brand name of the refiner or any of its marketing subsidiaries. In addition to establishing the lack of causation and the PTD elements of a presumptive liability affirmative defense, branded refiners are also required to establish either of two additional elements to avoid vicarious liability for a violation. They must either establish that the violation was caused by sabotage or in violation of law, or that the violation occurred despite the existence of a contractual obligation designed to prevent it, where such obligation was monitored by an appropriate oversight program including periodic review of PTDs to ensure contractual compliance. These requirements are the same as those that currently apply under the interim program.

Detergent blenders, as the parties with the most control over proper additization, have to demonstrate additional affirmative defense elements to avoid presumptive liability for detergent rule violations. In addition to lack of causation and PTD compliance, detergent blenders must have a quality assurance program to ensure proper additization of the product they additize. The quality assurance program must include periodic review of their PTD and volume measurement records to ensure the accuracy of the blender's PTD and VAR records. Further, a detergent blender asserting an affirmative defense must establish the receipt (or provision, as appropriate) of accurate written blending instructions prior to the blending of the detergent into the nonconforming gasoline or PRC. These affirmative defense elements are essentially the same as, and are a continuation of, those found under the interim program.

Detergent manufacturers are subject to presumptive liability for non-VAR related detergent, gasoline, and detergent-additized PRC nonconformity violations. As the parties controlling the production of the detergent, the detergent manufacturers must make specific showings to establish an affirmative defense to such liability. (See the following subsection for an analysis of changes to detergent manufacturer affirmative defense requirements under today's rule.) Detergent manufacturers are also subject to liability for any detergent, gasoline or PRC nonconformity violations, or VAR violations, which EPA can establish they caused.

Carriers of gasoline or detergent are the last parties with different liability and affirmative defense elements under the detergent program. Since these parties do not take title to the product they transfer, carriers have less incentive (although not necessarily less ability) to cause violations. Therefore, like the interim detergent program and other EPA fuels programs, carriers are presumptively liable under the certification program only for the detergent program violations found at their facilities. They are, however, also subject to liability for non-PTD detergent program violations discovered downstream from them, provided that EPA can establish they caused the violations.

a. Detergent Manufacturer Affirmative Defense Modification. In the NPRM, EPA proposed that, in order to successfully establish an affirmative defense to presumptive liability, a detergent manufacturer would have to establish the two standard defense elements (*i.e.*, lack of causation and complying PTDs), as well as the existence of test results confirming that the detergent in question conformed to compositional specifications when it left the manufacturer's control.

Detergent manufacturers commented that these proposed additional requirements were unfair, because their actual ability to cause gasoline nonconformity violations was limited. The proposed requirements were thus modified in the interim rule. Under the interim rule, to successfully assert an affirmative defense to presumptive liability for non-VAR product nonconformity violations, a detergent manufacturer was required to establish that it did not cause the violation. Instead, it had to demonstrate or furnish: (1) That it provided timely and accurate written blending instructions to its customer, (2) a detergent PTD, meeting the requirements of § 80.158, showing product compliance when the detergent left the manufacturer's control, and (3) accurate test results establishing that the product was in compliance with its registration specifications at the time the manufacturer transferred the detergent.

In subsequent discussions with EPA, CMA objected to the interim rule's affirmative defense requirement that relatively sophisticated test results be available on each batch to establish its chemical conformity to registration specifications (see Docket item IV–E–41). CMA maintained that conducting such tests on each batch of detergent was unnecessary and prohibitively expensive. Instead, for quality control purposes, detergent manufacturers

typically monitor the quality of the reagents which are input to the production process, and then test each produced batch to ascertain that it meets relevant physical property specifications. CMA contended that these same measures would be adequate to show that a questioned batch of detergent did meet its registration specifications.

In establishing the interim rule requirement for relatively rigorous analytical test results as an affirmative defense element, EPA's intent was to ensure that the detergent manufacturer would be prepared to supply scientifically defensible, objective evidence that the detergent component of a product was consistent with its registered compositional specifications when it left the manufacturer's control. However, EPA is persuaded by its discussions with the industry that alternative approaches, more consistent with the industry's normal production practices, can also be used to fulfill these objectives adequately.

EPA acknowledges that a requirement to perform an FTIR [28] routinely on every production batch, in case it might be needed in the future for affirmative defense to presumptive liability, might be overly burdensome for some manufacturers. Thus, EPA is making alternative provisions available which manufacturers may choose to follow for affirmative defense purposes. If EPA informs the detergent manufacturer of the possible existence of a violation for which the manufacturer may be presumptively liable within one year of the production of the detergent batch involved, then FTIR results are required for that batch. However, the manufacturer need not have conducted the FTIR procedure on the batch at the time of production. Instead, the manufacturer may choose to retain a sample of each detergent batch when it is produced, and to store it for at least a year in case it becomes a component of a product thought to be in violation of this rule. In that instance, the manufacturer would conduct the FTIR analysis on the retained sample of the batch involved. Whether the FTIR analysis was done at the time the batch was produced, or performed as needed on a retained sample of the batch, EPA would compare the results with the FTIR submitted at time of certification, to determine whether, in its judgement, the composition of the production detergent batch was in reasonable conformity with the certified detergent product.

If the manufacturer receives notification from EPA of possible presumptive liability concerning a detergent batch that was produced more than a year previously, the manufacturer has additional choices for the affirmative defense showing. The manufacturer still has the option to provide an FTIR on the batch (either taken a time of production or on a retained sample), as would be required if the batch had been produced less than one year ago. However, EPA understands that shelf life restrictions may become a factor for some detergents after a year or more of sample storage time. Thus, in lieu of an FTIR, the manufacturer may choose to rely on the following two affirmative defense requirements: (1) Documentation that the reagents used to synthesize the batch were the same in identity and quality as those specified in the certification, and (2) documentation that relevant physical properties of the batch fell within the range established in the detergent's certification (see section III.A.1 of this preamble).

b. Extension of Liability for VAR Violations. Under the interim program, only detergent blenders are subject to presumptive liability for VAR violations. Because detergent blenders were the only parties required to perform VAR reconciliations, it appeared logical that they should be the only parties liable for violations involving such reconciliations.

The Agency has become convinced, however, that parties other than detergent blenders can cause VAR violations, even if such other parties do not conduct the VAR reconciliations. For example, such parties can provide erroneous instructions to the detergent blender about detergent concentration rates or use restrictions. Conceivably, parties could also conspire with the detergent blender to transfer competitively low-priced unadditized or misadditized gasoline.

Therefore, in the Reopening Notice, EPA proposed extending presumptive liability for VAR violations to other regulated parties in the gasoline and detergent distribution chains. In the alternative, EPA proposed maintaining presumptive liability for VAR violations solely for detergent blenders, but extending liability to any regulated party whom EPA could show actually caused a VAR violation. This option was proposed with a new requirement that parties in the detergent distribution system would have an affirmative duty to provide accurate, written blending instructions for the detergent (59 FR 66872).

Most commenters on this issue disagreed with the Agency's proposal to extend presumptive liability for VAR violations to additional parties, asserting that EPA should be able to effectively enforce the VAR requirements with the liability scheme currently in effect under the interim program rule. These commenters also argued that detergent blenders are the only parties who could reasonably be held responsible for their own VAR violations. However, two commenters stated that parties other than detergent blenders could cause VAR violations, and should therefore also be subject to presumptive liability for such violations.

Few parties commented specifically about the alternative proposal to impose an affirmative duty on parties to provide accurate detergent blending instructions. One commenter agreed with the idea, provided that this requirement would take the place of extending presumptive liability for VAR violations to additional parties. A second commenter opposed the proposal, basing its opposition on the idea that a new affirmative duty was not necessary in the detergent program. Other commenters asserted that, in general, no new enforcement provisions were warranted at this point in the detergent program.

EPA agrees with the majority of commenters that most VAR violations will be caused by detergent blenders. Therefore, the Agency agrees that extending presumptive liability to parties other than detergent blenders would be inappropriate. However, since other regulated parties in addition to detergent blenders clearly do have some capacity to cause VAR violations, today's rule does extend liability for VAR violations to those regulated parties that EPA shows caused such violations.

Today's final rule does not impose a new affirmative duty on parties in the detergent distribution system to provide their customers accurate detergent blending instructions. It is obviously important to the effectiveness of the detergent program that detergent blenders receive accurate blending instructions. However, EPA's experience enforcing the detergent program has shown the effectiveness of the existing affirmative defense requirements concerning blending instructions, i.e., the reciprocal affirmative defense requirements of the detergent manufacturer and the detergent blender, respectively, to provide and receive accurate, written blending instructions. This experience indicates that the added imposition of an affirmative obligation (in addition to the affirmative defense element) to provide such instructions is not necessary.

[28] Under the interim program, the test may be an FTIR-based analysis or other procedure which can qualitatively and quantitatively identify each component of the detergent additive package (§ 80.141(f)). Under the certification program, an FTIR analysis is required (§ 80.162(d)).

c. Defense Against Liability Where More Than One Party May Be Liable for VAR Violations.

As proposed in the NPRM, both the interim program and the certification program provide that multiple parties may be subject to liability for the same VAR violations. This possibility exists for several reasons: Multiple parties may fit the definition of detergent blender; several regulated parties may have caused the VAR violations; and branded refiners may be vicariously liable for another party's violations if a VAR violation occurs at a branded facility, including a detergent storage system, operating under the corporate, trade, or brand name of that branded refiner.

Many commenters suggested that liability for VAR violations should be limited by the terms of contracts that the parties themselves have created concerning additization of gasoline. These commenters stated that detergent additization is often carried out pursuant to the terms of such contracts which dictate responsibilities between the parties, and which should be respected by the Agency.

As EPA stated in the preamble to the interim program rule, the Agency is not required to base its own determination of liability for violations on the consensual agreements created by potential violators. However, the Agency may consider the division of responsibilities contractually established between the parties when deciding whom it will prosecute for violations.

It is the Agency's policy that: if such division of responsibilities is established by a written contract; if the parties not assuming responsibility have implemented reasonable contractual oversight procedures to ensure that the assuming party has fulfilled its responsibilities; if the assuming party is fiscally sound and capable of paying the penalty for failure to comply with the VAR requirements; and if the non-assuming parties have not otherwise caused the VAR violation; then, it is appropriate for the non-assuming parties to avoid liability for a VAR violation.

The Agency believes that contractual arrangements meeting these criteria provide reasonable assurance that the assuming party is responsible for the VAR requirements and has the financial ability to pay penalties if it fails to adequately meet these requirements. Therefore, EPA does not believe that compliance with the detergent program will be compromised if parties are permitted to assert reliance on such contracts as a defense to the imposition of multiple liability for VAR violations.

Consequently, today's final rule provides that parties subject to liability for VAR violations may successfully assert an affirmative defense to such liability, provided that the elements described above are satisfied. This defense cannot be used, however, to avoid imposition of liability related to a detergent blender's failure to provide VAR records upon EPA request, as required pursuant to § 80.170(g). As previously mentioned, the Agency needs to review certain limited, but essential, VAR records during inspections at detergent blending terminals. EPA cannot allow parties to avoid this enforcement necessity through a privately created contract.

d. Defense to Liability for Gasoline Nonconformity Violations Based Solely on the Addition of Misadditized Ethanol or Other PRC to Gasoline. Under the interim and certification programs, gasoline which is properly additized at a detergent blending terminal can subsequently become a nonconforming product when a party downstream of the gasoline's additization terminal blends mis- or unadditized ethanol or other PRC into the gasoline. The reason for the nonconformity is that the combined product fails to attain the proper additization concentration through the addition of the misadditized PRC.

The sale, offering for sale, etc. of nonconforming gasoline is a violation of the detergent rule for which all parties in the relevant gasoline, detergent, and PRC distribution systems are presumed liable, although each such party has the right to assert an affirmative defense to liability. In addition, branded refiners are also subject to vicarious liability if the violation involves branded products. Neither the NPRM nor the interim rule addressed the appropriateness of a special affirmative defense specifically geared to violations caused by misadditized PRC.

In commenting on the Reopening Notice, representatives of the ethanol industry stated that the interim program is causing a chilling effect on the use of ethanol. According to one industry representative, this situation is brought about, in part, because parties in the distribution chain who do not add ethanol to the product are concerned about their potential liability if mis- or unadditized ethanol is subsequently added to the gasoline. This commenter asserted that such parties were avoiding or prohibiting the use of ethanol with their product because of their apprehension of potential liability.

As a response to this comment, today's final rule provides that the party not adding the ethanol or other PRC can avoid the imposition of liability (whether presumptive or vicarious) in this situation merely by establishing that it did not cause the violation, and that it has PTDs establishing that the product was in conformity with program specifications when it left the party's control. This provision relaxes the presumptive and vicarious liability affirmative defense requirements established for other violations in the interim program and proposed in the NPRM, and thus makes it easier for the party not adding the ethanol to avoid liability for nonconforming product. The Agency believes this is appropriate because such parties have little control over this type of violation, and because the environmental harm of the violation tends to be mitigated by the industry practice of slightly over-additizing gasoline to ensure that actual additization is above the required LAC.

e. Liability for the Sale of Nonconforming Gasoline or PRC When the Gasoline or PRC Also Violates VAR Requirements. This section articulates Agency policy about enforcement of detergent rule provisions when the same gasoline violates both the VAR standard requirement and the prohibition against the sale of nonconforming product. When gasoline or PRC is misadditized because it failed to attain the VAR standard, a VAR violation has occurred. Only the detergent blender and/or those whom EPA can establish caused the violation are responsible for that VAR violation. However, any party, including the detergent blender, who sells, transfers, etc. the nonconforming gasoline or PRC is also subject to liability for a different violation, *i.e.*, the sale, etc. of nonconforming gasoline or PRC. Any party subject to liability for any of these violations has the right to assert an affirmative defense to such liability.

In the preamble to the interim program final rule (59 FR 54700), the Agency made clear that it intended to treat fairly those parties who unknowingly sell such non-complying gasoline. EPA is reiterating that position. Specifically, when a VAR standard violation is found, the Agency does not intend, as a general practice, to take enforcement action against the detergent blending party for both the VAR violation and the violations stemming from the sale of the same nonconforming gasoline or PRC. However, if the circumstances of the

violation make the Agency believe that the imposition of liability for both violations is appropriate, then EPA will bring an enforcement action for both violations. Such unusual circumstances could include the party's deliberate attempt to profit from detergent program violations, or a pattern of significant and repetitive VAR standard violations.

In a similar manner, when a VAR standard violation is found, the Agency will not generally take an enforcement action against the non-blending parties for selling or transferring the nonconforming gasoline or PRC. The reason is that parties receiving the nonconforming product typically have no practical means of knowing that the product is misadditized, and, consequently, they should easily be able to establish their affirmative defense element. However, if unusual circumstances exist indicating that the non-detergent blending parties had responsibility for the nonconforming sale violations, EPA may take enforcement action against these parties for such sale violations.

f. Detergent Blender Affirmative Defense Clarification and Clarification of Presumptive Liability Arising from Detergent Blending. Under the interim program, for detergent blenders to avoid liability for VAR and product nonconformity violations, they must establish the standard detergent rule affirmative defense elements of lack of causation and PTD compliance. In addition, because of their unique status in the detergent program as the parties actually adding the detergent to the gasoline or PRC, they are also required to establish two additional affirmative defense elements. First, they must show that, prior to blending, they received (or provided) accurate, written blending instructions including the LAC and any applicable use restriction information for the detergent. Second, they must establish that they have a quality assurance (quality) program which includes periodic review of supporting transfer and measurement documents, confirming the correctness of the PTD's and VAR documents.

At an API detergent additives compliance task group meeting discussing implementation of the interim rule, and through an NPRA comment on the Reopening Notice (see Docket items #IV–E–44 & #VI–D–63), the Agency was advised of industry concern about this quality program element for an affirmative defense. The commenters were concerned that this quality program defense element might require detergent blenders to review records of downstream parties handling the gasoline, to ensure that these other parties were complying with detergent rule requirements. Since these other parties were not under the control of the detergent blenders, according to these commenters, the blenders feared that it would be difficult for them to fulfill this responsibility.

The Agency agrees that detergent blenders should not be required to review the records or other actions of parties over whom the blenders have no control. The Agency's primary intent in establishing this affirmative defense element was to ensure that detergent blenders properly control and assure the quality of their own additization process, not the operations of others over whom they have no control. Therefore, EPA is clarifying that the detergent blender quality program element applies to the blender's review of its own records and the supporting documents it possesses to confirm the correctness of its own additization activities.

Blenders wishing to assert an affirmative defense should be aware, however, that they may find it difficult to successfully establish their lack of causation if they knew of a customer's misadditization of their product, and they failed to prevent the continuance of that practice. In such situations, the blender can control future misadditizations by refusing to sell to the violating party. The Agency believes that, in this unusual situation, the blender does have some control over such a violation, and that blenders can, and should, be held accountable for reasonable steps to prevent it in order to establish an affirmative defense.

Today's rule also clarifies another point about detergent blending liability. As proposed in the NPRM and as codified in the interim rule, regulated parties are presumptively in violation if they own, control, etc. the facility where a gasoline or PRC nonconformity violation is found. In addition, applicable parties are presumptively in violation if they do actions (whether upstream or downstream of the place where the violation is found), such as selling or transferring the product or components of the product in violation, which could cause the nonconformity or other violation and which make it reasonable for such parties to be presumptively in violation.

For this latter liability, as was proposed in the NPRM, the interim rule specifies the acts giving rise to this presumptive liability, including such activities as manufacturing, refining, selling, dispensing, and transporting the products in question. While the interim rule does not specifically mention the act of detergent blending as one which would give rise to this liability, the act of detergent blending is typically associated with the other activities (such as selling, dispensing, or transferring the relevant product), which are specified in the rule. The act of detergent blending clearly could give rise to gasoline or PRC nonconformity violations. Therefore, today's certification rule clarifies that detergent blending is an activity that will trigger presumptive liability under both the interim and the certification programs. This clarification is within the scope of the NPRM proposal since it merely specifies another action that is related to the other—similar actions—which precipitate such liability.

g. Liability Clarification. The Agency received a comment from CMA requesting clarification as to what specific violations detergent manufacturers would be deemed liable for, and how the continuing days of penalties would relate to those violations. CMA stated that the regulations were unclear, because the section of the rule which designates the prohibited acts appeared to make manufacturers liable for a single event, such as the sale of non-conforming detergent, while the penalty provision appeared to impose liability for all the days that such non-conforming detergent remained anywhere in the gasoline distribution chain. CMA also claimed that it was unreasonable for EPA to impose such extended liability on detergent manufacturers, since their involvement with the detergent and its subsequent blending is typically limited to the initial sale or distribution of the detergent.

EPA is clarifying in today's rule that parties are responsible for causing the presence of nonconforming products in their distribution systems, in addition to their liability for their own sale, transfer, etc. of nonconforming products. This scheme for presumptive liability is similar to that adopted under several of EPA's fuel regulations in Part 80, and has been found in practice to efficiently provide a mechanism for EPA to identify the party or parties that have caused a violation, and to impose adequate potential liability for purposes of deterrence.

Under today's rule, if a detergent manufacturer makes a sale of a nonconforming detergent, the detergent manufacturer is liable for a violation of the prohibition against selling nonconforming detergent. The detergent manufacturer is also liable for a violation for each of the days that any of the nonconforming detergent from that sale remains in the detergent distribution system. In addition, if the nonconforming detergent was used by its purchaser to create nonconforming additized gasoline or post refinery component (PRC), then each day that the nonconforming gasoline or PRC remains anywhere in the gasoline or PRC distribution systems, is also included (but not duplicated), in the total number of days that the detergent manufacturer is in violation.

In addition, if there were two original sales of nonconforming detergent by the detergent manufacturer, each of these sales would be a separate violation for that manufacturer, with additional separate violations for each day that the nonconforming detergent from each sale remains anywhere in the detergent, PRC, and gasoline distribution systems, *i.e.*, if detergent from each sale is in its detergent distribution system or is found in additized gasoline or PRC in their distribution systems on a specific day, then there are two violations for that day. However, the detergent manufacturer is not also responsible for additional violations committed by downstream parties who deal with the nonconforming product. The daily violation for causing the presence of nonconforming product in the relevant distribution systems does not change depending on the number of people who happen to store, transport, sell or otherwise deal with the nonconforming product.

Although the comment related specifically to detergent manufacturers, this principle is applicable to all parties' liability under the detergent program. Causing the presence of nonconforming product in the relevant distribution systems is the basis upon which EPA established in the interim program the provision under which penalties continue to accrue for each day that the nonconforming product remains in these distribution systems. Thus, in clarifying this point in today's final rule, EPA has added appropriate language to §§ 80.155, 80.156, 80.168, and 80.169. This clarification does not constitute a change in EPA's implementation or intent with respect to either the interim program or the certification program.

3. Inclusion of Importers of Additized Gasoline Within the Definition of Detergent Blender. The definition of detergent blender in the interim rule did not include importers of additized gasoline. It became apparent to the Agency that this omission interfered with EPA's ability to determine if imported additized product had been properly additized, since only detergent blenders are required to maintain VAR records. EPA thus had less oversight over importers of additized gasoline than it did over the domestic detergent blending parties marketing the same product, increasing the risk of importation of misadditized gasoline. This omission also put domestic detergent blenders of gasoline at a competitive disadvantage in relation to importers.

To correct this problem, EPA proposed in the Reopening Notice to amend the definition of detergent blender to include those parties who imported additized gasoline. All of the comments received on this issue supported the proposed change. Commenters stated that including importers of additized gasoline within the definition of detergent blenders is fair and closes a gap in EPA's ability to enforce the regulation.

EPA agrees with these comments. Accordingly, today's final rule includes importers of additized gasoline within the definition of detergent blender. This change applies to both the interim program and the certification program.

4. Certification Use Restrictions. Under the interim program, the only possible detergent use restriction applies to detergents which have a separate LAC specific to leaded gasoline. Such detergents cannot be used at the leaded-only LAC with unleaded gasoline. In all other circumstances, any properly registered detergent can be legally used with any gasoline or PRC under the interim program.

Under the certification program, however, a detergent may be certified for one or more restricted uses, thus taking advantage of lower LACs applicable to some restricted gasoline pools (see Section IV). These use restrictions require corresponding prohibitions to ensure compliance with the restrictions, as proposed in the NPRM. Those parties choosing to take advantage of the use-restricted certification options in today's program must fully abide by the certified use restrictions or they will be subject to liability for violations for the sale, transfer, etc. of the nonconforming gasoline or PRC that results from the noncompliance. The following is a description of the certification rule's use restrictions, followed by a discussion of a permissible method of removing the restrictions under appropriate circumstances.

Under the PADD-specific certification option, gasoline and/or PRC additized with a PADD-specific detergent must be sold, transferred, etc. to the ultimate consumer or to a retail outlet or WPC facility, only in that specified PADD.

Detergent certified under the fuel-specific option, may only be blended into gasoline or PRC that conforms with the fuel segregation and composition requirements of the fuel-specific certification.

Under the national, PADD-specific, and fuel-specific certification options, if a detergent is certified with an LAC which is effective for use only with non-oxygenated gasoline, or only with gasoline containing a specified oxygenate (or non-oxygenated product), then that detergent at that LAC may only be used with the appropriate base gasoline or PRC product. In addition, oxygenates cannot subsequently be added to gasoline previously additized at a lower LAC certified for use with non-oxygenated gasoline. Similarly, an oxygenate not included in a given detergent's certification cannot be added to gasoline which was previously additized according to that certification.

Properly additized gasoline may be commingled with another gasoline which was properly additized with a different detergent, even if the second detergent's certification includes different use restrictions from the first. However, this does not apply to PADD specific detergents. Gasoline or PRC additized with a detergent certified specifically to one PADD may not be commingled with gasoline or PRC additized with a detergent certified specifically to a different PADD since, by definition, each batch of gasoline, including any PRC, must be sold or transferred to the ultimate consumer, etc., in its own PADD in order to be considered properly additized.

If, prior to EPA inspection or sale to the ultimate consumer, a party discovers that it possesses product that is nonconforming because of failure to conform to use restrictions, or that party wants to use an additized product in a way that would be nonconforming to that product's use restrictions, it is possible under appropriate circumstances to cure such nonconformity. Such a situation may occur, for example, during mandated oxygenate seasons, if a terminal has gasoline which it previously additized with detergent restricted for use with non-oxygenated product. In order to comply with the oxygenate requirements, such a terminal would be permitted to add oxygenate to the gasoline in spite of its oxygenate restriction, provided the appropriate curing steps were followed.

The Agency proposed in the NPRM that violations of certification restrictions (specifically, PADD-specific restrictions), would be curable by full readditization of the product with the proper PADD-specific detergent. Commenters from the automotive industry objected to this approach,

claiming that such double additization could cause combustion chamber deposit formation.

While EPA agrees that double additization is not a desirable cure for use restriction misadditizations, today's rule does permit limited readditization as a curing procedure under appropriate circumstances. For example, prior to EPA inspection and discovery of the problem and prior to sale of the product to the consumer, readditization is clearly appropriate in the case of gasoline that is nonconforming solely because it contains detergent at a lower treat rate than required for that gasoline product. This could occur when a batch of regular unleaded gasoline is accidentally additized with detergent at the lower treat rate certified for use only with premium gasoline, or when a batch of oxygenated gasoline is accidentally additized at a detergent's lower, non-oxygenated product treat rate. If the detergent has also been certified at a higher treat rate for use with the gasoline product at issue, then the violation can be cured merely by adding enough of the detergent to attain the appropriate, certified treat rate, pursuant to the formula specified in the rule. In such cases, documentation in the form of a "curing VAR" for the added detergent must be maintained. In addition, any PTDs created for the cured product must not include any reference to the prior use restriction which no longer applies.

Today's final rule similarly permits such curing to enable downstream parties to add substances which would otherwise be precluded by the upstream addition of restricted-use detergent. For example, oxygenate can be added to gasoline which already contains a detergent at a treat rate certified only for unoxygenated gasoline, provided the marketer adds at least enough additional detergent to achieve a combined detergent concentration no less than the detergent's certified LAC for oxygenated gasoline. In such cases, not only must the oxygenate component be properly additized with detergent, but the previously additized gasoline portion must be further additized to attain the certified treat rate for the combined end-product, *i.e.*, oxygenated gasoline.

However, if a downstream party does not know which detergent has been used upstream or does not have access to it, or if the initial detergent has not been certified for the downstream party's desired use, then the above provision would not enable the use restriction to be cured. For this reason, today's rule also permits a party to cure a use restriction, prior to EPA inspection or knowledge of the problem and prior to sale to the ultimate consumer, by adding the proper amount of any detergent (according to the formula for such addition provided at § 80.169(g)), that has been certified both for the desired use and the initial use. For example, oxygenate can be added to gasoline which already contains a detergent certified only for nonoxygenated gasoline, provided an adequate amount of another detergent is added which has different LACs certified for use with nonoxygenated and oxygenated gasolines. The minimum amount of new detergent required is a function of the difference between its certified treat rates for the new (e.g., oxygenated) and the initial (e.g., nonoxygenated) uses.

In a similar manner, if a party has misadditized gasoline or PRC in violation of a PADD restriction, the error can be cured most easily, prior to EPA discovery of the violation and prior to sale to the ultimate consumer, by adding more of the same detergent, provided it has been certified for the desired use. However, the violation can also be cured by adding an appropriate amount of a different detergent, provided it has been certified both for the PADD and the desired use (*e.g.*, national). The amount of additional detergent must be based upon the difference between the LACs for the PADD and other certification, and must at least equal the amount determined by the regulatory formula. In all these instances, the party must create a readditization VAR to document the use restriction curing procedure. If the above procedures are fully complied with, then the use restriction is effectively negated, and any violation that would have resulted from the use restriction is also obviated.

5. PTD Changes. The core of the PTD requirements established under the interim program continue under the certification program. However, certain changes and additions to the PTD requirements have been incorporated into the final rule. The following is a discussion of these changes.

a. Elimination of PTD Retention Requirement for Additized Gasoline for Wholesale Purchaser-Consumers (WPCs). Under the interim program, gasoline WPCs, as regulated parties under this program, are required to retain their PTDs for five years. However, EPA has determined that retention of PTDs for additized gasoline by such parties is not necessary.

The Agency's enforcement of the interim program thus far has centered around auditing the VAR activities of detergent blenders and conducting paperwork reviews of other parties in the gasoline distribution system, all as part of general fuel regulation compliance inspections. Because inspections of WPC facilities have not been extensive, and because EPA does not expect an increase in such inspections, EPA will not require WPCs to retain PTDs for additized gasoline under today's final rule. In the unusual event that they receive any other regulated product (such as unadditized gasoline or additized PRC), today's rule does require these parties to retain the PTDs for such unusual transfers. Parties selling or transferring regulated products to WPCs are still required to transfer PTD's to those parties and to retain copies of all such PTDs (except as discussed in the following section).

As proposed under the NPRM and as is required under the interim program, the certification program requires WPCs to receive PTDs at the time gasoline is transferred to them, so that they can review these documents to determine proper additization compliance (with the one exception for small loads discussed below). In addition, if a WPC transfers gasoline to another regulated party which is not an ultimate consumer using it in a motor vehicle, then the WPC is a distributor of the gasoline, and must comply with all PTD requirements that apply to distributors.

b. Elimination of PTD Requirements for Transfer of Small Loads of Additized Gasoline to Ultimate Consumers. Under the interim program, all regulated parties who transfer gasoline or additized PRC, with the exception of WPCs or retail outlets transferring gasoline to the ultimate consumer, are required to transfer PTDs for that product to the transferee. Similarly, all regulated parties receiving the product must obtain the PTDs from their transferor. The interim program further requires that such documents be maintained for five years from date of transfer.

The Agency was advised by the Independent Petroleum Marketers Association (IPMA) that this PTD requirement was creating a hardship for distributors in rural areas who pick up additized gasoline from terminals, and then deliver small amounts of this product to farmers. (See Docket items VI–D–51, VI–D–52, VI–D–66, and VI–D–67.) IPMA suggested that such transfers be made exempt from the PTD requirements since such sales are analogous to sales to the ultimate consumer from retail outlets, which are exempt from PTD requirements. These loads are typically divided from the larger truckloads picked up at the terminals. New delivery tickets are created for each of the divided loads, typically hand written and containing

minimal information. Thus, the creation and storage of detailed PTDs for those small deliveries is unduly burdensome.

The Agency agrees that small sales by distributors of additized gasoline to ultimate consumers for their own use can be considered analogous to retail sales and should be exempt from PTD requirements. The PTD requirements were established to alert regulated parties and the Agency to the additization status of the transferred product. This notification was not intended to be extended to retail customers. Further, the small amount of product involved, and the fact that the gasoline is not intended for additional transfer, diminishes even further the notification value of the PTDs in this situation.

In light of the purported record creation and maintenance burdens associated with these documents, and because of the minimal notification value associated with them, today's final rule exempts from the PTD requirements certain transfers of small amounts of gasoline. Specifically, the rule exempts transfers of additized gasoline of no greater than 550 gallons made by distributors which are not the detergent blenders of the gasoline, to ultimate consumers for their own use or the use of their agents or employees. The 550 gallon maximum is established because that is the criteria for minimum tank size used in the fuels regulations (40 CFR 80.2(o)) to define a party as a wholesale-purchaser consumer.

The PTD exemption is further limited by the type of parties involved with the transfer. The exemption does not apply to those distributors actually doing the detergent blending, since such parties typically are terminals with equipment that automatically produces PTDs, and thus have no need for the exemption. Further, the exemption is restricted to small deliveries to ultimate consumers of gasoline, who are not in the business of distributing gasoline to other parties. Deliveries to parties which distribute gasoline are excluded from this exemption since such marketers are responsible for the further transfer of gasoline to their own customers. The Agency expects gasoline marketers to fulfill their regulatory responsibility of reviewing PTD receipts to ensure that the product received is properly additized.

c. Address of the Transferee/Transferor. The certification program continues the interim program requirement that the addresses of both the transferor and the transferee of the product are to be listed on the PTD. Today's rule also adopts the Q&A Document modification that allows the address of the transferee to be identified on a separate document which must be made available to EPA inspectors upon request (Q&A Document #1, Q.15, p.14). This change responds to industry's concern about lack of space on commercial transfer documents due to PTD requirements.

For the sake of conformity with the PTD requirements of the RFG rules (40 CFR part 80, subparts D & E), as implemented by that rule's Q&A Documents, and because of document space concerns, today's final rule expands this alternative procedure to the identification of addresses of transferrers also. However, as in the RFG program, today's final rule establishes the following additional requirements for those who would use this alternative procedure: (1) The normal business practice between the parties must not include listing addresses on their transfer documents, and (2) both parties to the transaction must know and have records of the required addresses.

d. PTD Identification of Oxygenates and PRC Added to Gasoline. In promulgating the interim program, it was not necessary to require regulated parties such as refiners to identify on a gasoline product's PTD whether the gasoline had been blended with a particular oxygenate, since a properly registered detergent could be used with any gasoline, including oxygenated gasoline, sold in the United States. Using the same reasoning, the Q&As for the interim program clarified that any PRC (including an oxygenate) which was added to gasoline prior to detergent additization was not required to be identified on the gasoline's PTD. (Q&A Document #2, Q.6, p.11.) If, however, a PRC was additized separately from the gasoline, the same Q&A reaffirmed the regulatory requirement that the gasoline's PTD does have to identify the component, because it is useful for the Agency and regulated parties to be aware of the separate additization of the components.

In contrast, the identification of a refinery-added oxygenate or a PRC is very important under today's final rule, since a specific detergent certification may not cover the use of a particular oxygenate or, under the fuel-specific certification option, a particular PRC. Therefore, as originally proposed, today's rule requires that all gasoline product transfer documents identify any PRC added to the gasoline. It further extends the identification requirement to any oxygenate, whether refinery-added or a PRC, added to gasoline. Without such identification, parties may inadvertently additize gasoline containing an oxygenate or PRC with detergent that has not been certified for use with that product.

e. Detergent Package Use Restriction Designations. Since today's final rule permits detergents to be certified for use with a specific fuel, or for a variety of restricted uses, it is important that the PTDs for detergent packages identify the existence of any special use restrictions. Without such identification, there would be greater possibility that a detergent blender would inadvertently use the detergent with inappropriate gasoline.

In the NPRM, the Agency proposed that PTDs for certified detergents with PADD, fuel-specific, CARB-based, or leaded gasoline use restrictions must specify the use restriction that applied to the detergent being transferred. Today's rule adopts the concept that a detergent's use restrictions must be highlighted on the detergent's PTD. However, because detergents under today's rule may be certified with a multitude of different LACs related to different use restrictions, today's final rule only requires PTDs for such products to include a general warning that use restrictions apply to the product. The Agency believes that requiring identification on a detergent package's PTD of all the options and corresponding use restrictions under which a detergent has been certified would result in a waste of space on PTDs for those detergents with numerous use-restricted LACs. Furthermore, identification of numerous LACs could be confusing and counter-productive to the recipient of the detergent, since many of the use restrictions may not be relevant to the particular party receiving the detergent.

Therefore, under today's rule, if a detergent has only one certified LAC for generic use with any fuel product, then the PTD for the detergent must not include any reference to use restrictions. However, if the detergent's only certified LAC is for use with a restricted product (*e.g.*, fuel-specific, leaded only, premium only, etc.), then the PTD for that detergent package must identify the detergent as use-restricted detergent. Similarly, if a detergent has been certified with two or more LACs, and thus has a variety of restricted use possibilities, the PTD for that detergent package must indicate that the detergent has special use options available. The Agency believes that such PTD identification will give adequate notice to detergent recipients of the use-restricted status of transferred detergents, while not presenting so much information that the recipient might be misled by it.

f. Fuel-Specific Gasoline Designations. As proposed in the NPRM, today's final rule requires that base gasoline which is segregated for use with a particular fuel specific-detergent must be identified as such on its PTD. This identification will help prevent the use of the specialized detergent with an inappropriate gasoline. The PTD for such gasoline must indicate that it is base gasoline for use with the designated detergent package.

Because fuel-specific certification is based on gasoline from a segregated fuel supply, oxygenates or PRCs may be added to the subject gasoline only if they were specifically included in the detergent's fuel-specific certification. Today's rule adopts the proposed provision that base gasoline with oxygenates or PRCs which were not included in the designated detergent's fuel-specific certification cannot be identified on its PTD as base gasoline for use with that fuel-specific detergent.

At the marketer's option, base gasoline which is designated for a fuel-specific detergent may be additized with a different detergent, or at a non-fuel-specific LAC treat rate. The fuel-specific designation does not require the use of the fuel-specific detergent, it merely permits it.

Today's certification rule also specifies the proper PTD identification for the fuel-specific gasoline designated in a fuel-specific detergent certification which establishes that such gasoline does not need to be additized. Because some unusual gasoline supplies may be able to pass the performance requirements of detergent certification testing without the use of detergents, today's rule provides that such gasoline may be legally sold and transported under the fuel-specific certification option. The rule further requires that a PTD for such product must identify it as "detergent-equivalent gasoline". This is appropriate nomenclature, since the fuel is equivalent to additized gasoline in its deposit prevention capability. The use of this PTD identification will provide notice to recipients of the actual additization status of the product.

g. PADD Designation on PTDs for Additized Gasoline or PRC. Today's rule adopts the proposal that the PTD for gasoline or PRC additized with a PADD-specific detergent must identify the product as restricted for ultimate sale or transfer in that PADD. For example, use of the phrase "PADD I only" would be considered acceptable identification of this restricted use. In a similar manner, the PTD for gasoline additized with a CARB-based certified detergent must identify the product as CARB-based, to alert recipients that the gasoline must either have been additized in California or sold to the ultimate consumer in that state. (See section VIII(B)(7)(c), below, for a discussion of specified detergent rule exemptions for gasoline additized and sold in California.) As discussed above, gasoline or PRC may be cured of PADD or other use restrictions through the approved readditization curing process.

h. Identification of Oxygenate and PRC Use Restrictions on PTDs for Additized Gasoline. As previously discussed, a misadditization violation would arise under today's rule if oxygenate or PRC were added to gasoline additized with a detergent restricted against that use. Therefore, successful implementation of the detergent program requires that gasoline additized with such detergent must have a PTD identifying the oxygenate or PRC restriction. Use of such phrases such as "oxygenate use prohibited" or "MTBE use only", would be acceptable identification. Such PTD identification for the additized gasoline will provide notice to downstream parties of the continuing oxygenate or PRC use restriction applying to the product. It will also alert these parties to the need to eliminate the restriction through the approved curing method if they desire to add the restricted component.

This PTD identification requirement for additized gasoline is a modification of the NPRM proposal, which would have required that PTDs for additized gasolines identify the EPA certification number of the detergent used to additize the gasoline. Under the proposal, the use of the specified certification number would have provided notice to recipients that the particular use restrictions certified with that specified detergent needed to be followed.

However, today's final rule does not provide certification numbers for detergents, since EPA does not believe that the informational benefits of such numbers would outweigh the administrative and recordkeeping burdens associated with them. As a more efficient substitute, today's rule merely requires that those gasolines actually additized at a use-restricted LAC rate must identify the applicable oxygenate or PRC use restrictions on their PTDs.

i. Base Gasoline Identification. Under the interim program rule, all regulated parties transferring unadditized gasoline are required to identify the product on its PTD as base gasoline. In addition, PTDs for such product are also required to state the warning that this gasoline is "Not for sale to the ultimate consumer". These base gasoline requirements originally proposed in the NPRM were considered necessary to highlight to the recipients the significant information that such unadditized product could not legally be sold or transferred for consumer use.

Although the Agency still believes it is important for unadditized gasoline to be highlighted as such within the gasoline distribution system, EPA no longer considers it necessary to mandate particular identification language (e.g. the phrase "base gasoline") for it. EPA experience in implementing the interim program has shown that permitting industry flexibility in complying with PTD identification requirements has not resulted in significant identification problems. Therefore, under today's final rule, PTDs for base gasoline may use any nomenclature which clearly states that the base gasoline is unadditized. However, today's rule does require that PTDs for most base gasolines must include the mandated language specifically warning against the sale of unadditized gasoline to the ultimate consumer.

An exception is base gasoline to be used for research and development purposes, as discussed below in section VIII.B.7. Another exception was initially articulated by EPA in Q&A Document #1, Q.13, p.13, in response to a refiner's suggestion that the consumer-sale prohibition language was unnecessary on certain specialized PTDs. Specifically, an industry party requested permission to delete this language on PTDs for contractually controlled bulk transfers of unadditized product from refiners to pipelines, when the parties have a written agreement which states that the pipeline will not sell or transfer the unadditized gasoline to ultimate consumers.

The Agency agreed in the Q&A Document that transfers between these parties under these circumstances should not require the PTD warning language, because the likelihood of such unadditized product being mistakenly delivered to a consumer is minimal. Today's final rule codifies this exception to the PTD warning language requirement in the limited circumstances outlined above. The Agency believes that this modification of the proposal will not result in the sale of unadditized product to consumers, but will reduce the paperwork burden on refiners and pipelines.

j. Use of Product Codes on PTDs. The NPRM and interim program did not address the use of product codes and other language not specified in the regulation, to satisfy the information requirements established for PTDs. However, both in comments on the NPRM, and in implementation feedback to the Agency (See Q&A Document #1, Q.13, p.13), regulated parties requested permission to use product codes to satisfy PTD information requirements proposed in the NPRM and codified in the interim program. The rationale given by the parties supporting such substitution is that the use of product codes would greatly reduce the amount of space needed to convey the required information.

The Agency is sympathetic to industry's need to conserve space on commercial documents because transfer documents have to comply with several regulatory information requirements, not only those associated with the detergent rule. In response to this concern, the Agency issued a Q&A Document which permitted the use of product codes to comply with the interim program's PTD requirements, provided certain conditions were met (Q&A Document #1, supra.) The conditions are designed to ensure clear communication of the information required by the regulation.

Under the Q&A guidance, product codes or other alternative language must be clear, accurate, and not misleading. They must be standardized throughout the distribution system in which they are used, and downstream parties must be informed of their full meaning. However, parties may not use product codes or alternative language to substitute for the two required warnings found in the interim regulation. These are the prohibition against the sale of base gasoline to the ultimate consumer, and the statement that a detergent certified only for the control of carburetor deposits must be used with leaded gasoline only. The Agency believes that these warnings are so important that abbreviations or substitutions for them would not provide adequate notice to receiving parties.

Today's final rule codifies this approach. The rule's provision requires such codes to be clear and accurate, so that any parties transferring PTDs with product codes or alternative language which are confusing or not effectively explained to downstream parties, are not in compliance with the detergent rule's PTD requirements. Such parties are also liable for any product nonconformity violations caused by the non-complying PTDs.

Today's rule does not prohibit the use of product codes to convey the leaded gasoline only warning, since PTD notification requirements for all detergent package use restrictions, including the leaded gasoline restriction, are treated in the same way under today's final rule (See preamble section VIII.B.5.e.). Instead, compliance with the generic use-restriction language is required, to provide effective notice to recipients of the detergent package that the use of the detergent is subject to conditions.

As discussed in the previous section, today's rule does not permit, in most instances, substitution for the regulatory warning language against the sale of base gasoline to the ultimate consumer. However, electronic data transmissions cannot accommodate the PTD regulatory language for base gasoline transfers. Consequently, as under the RFG program, today's final rule permits the warning language on electronic PTDs to be reflected by product codes, provided that such documents are for title transfers only, and do not involve actual transfer or possession of the product. Under the specified conditions, the Agency does not believe that the absence of the exact regulatory warning language from the electronic PTDs will result in the improper transfer of unadditized product.

k. PTD Requirements for Gasoline Overadditized for the Later Addition of Ethanol or Other PRC. Under the interim rule, when gasoline is overadditized to account for the later addition of unadditized PRC, the PTD for the gasoline must indicate that the product has been overadditized to account for the later addition of a specified volume of PRC. The purpose of this requirement is to provide notice to the recipient that only the stated volume of PRC has been accounted for by the gasoline's overadditization.

At the 1994 API public seminar on the interim program, EPA received industry feedback that it would be difficult for marketers to identify on PTDs the actual amount of anticipated ethanol that the particular overadditization accounted for, and that it would be much more convenient and preferable to identify the standardized, maximum percentage of product volume that the anticipated ethanol could comprise (See Docket item IV–E–45). For example, most blenders using this procedure would over-additize a batch of gasoline in anticipation of the later addition of ethanol amounting to no greater than 10 percent of the fuel's finished volume.

The Agency believes that identification of the maximum percentage of total product volume that the blender anticipates will be PRC, and for which the blender has additized, will provide adequate notice of the maximum amount of such product that may be added to the additized gasoline. Therefore, EPA stated at the API seminar that blenders could identify on PTDs the amount of ethanol that could be added to overadditized gasoline either by this percentage, or by the volume of ethanol. Today's final rule codifies this change as to ethanol and other PRCs.

6. Extension of the Agency's Right of Entry into Facilities of Detergent Manufacturers, Distributors, and Carriers. Neither the NPRM nor the interim program addressed the Agency's authority to enter and inspect the premises of parties in the detergent distribution system. The EPA believes that such authority is included in its information gathering authority under section 114, as well as in its authority to regulate detergents under section 211(l) of the Clean Air Act, and in its general authority under section 301(a). Therefore, EPA proposed in the Reopening Notice to expand its right of entry provision located at 40 CFR 80.4.

Section 80.4 currently states that the Administrator or her authorized representative may enter the premises of parties in the gasoline distribution system to make inspections, take samples, and conduct tests to determine compliance with EPA fuels requirements under 40 CFR Part 80. In the Reopening Notice, the Agency proposed expanding this section to include entry into the facilities of the detergent manufacturers, distributors, and carriers now regulated under Part 80.

Only one commenter, the Chemical Manufacturers Association, opposed the proposal, and did so only in regard to detergent manufacturers. CMA stated that section 211(l) does not make it unlawful for detergent manufacturers to produce or store detergents out of conformity with EPA specifications. CMA argued that EPA's only legitimate concern under section 211(l) was to ensure that detergents met specifications when they were blended into gasoline. This commenter believed that the Agency could adequately address this concern by sampling detergents only at the premises of detergent blenders. Thus, argued CMA, EPA's right to enter and inspect the premises of a detergent manufacturer could not be considered necessary to carry out its functions under the Act and was, therefore, not authorized under section 301.

The Agency disagrees with CMA's argument. The Agency believes that it is necessary for EPA to inspect the premises of detergent manufacturers, both to enforce the detergent specifications mandated by section 211(l), as well as to prevent the creation of misadditized gasoline which would also be in violation of section 211(l).

Detergent manufacturers can clearly cause detergents to fail to conform to required specifications through their improper manufacture of the detergents Their sale of such nonconforming detergent, which is a violation of the detergent program in itself, would then cause other violations of the program, namely, the sale of misadditized gasoline based on that detergent nonconformity.

To ensure that the regulatory detergent specifications are met and that detergent is not sold which would cause the sale of misadditized gasoline, it is necessary for the Agency to sample and test detergent at all points in its sale/distribution system, including at detergent manufacturer facilities. It would be counter-productive and impractical for the Agency to wait to sample and test nonconforming detergent until a detergent blender is actually in the process of using it, or has already used it, in violation of section 211(l) prohibitions. Thus, the Agency's ability to inspect the premises of detergent manufacturers is reasonable and necessary for EPA to effectively carry out its statutory mandates.

7. Exemptions. As proposed in the NPRM, the interim program includes an exemption from the requirements of the detergent rule for detergent used for research, development, and testing purposes. Also exempt under the interim program are aviation fuel and racing fuel. Several parties commenting on the interim program have requested modifications of these exemptions. (See Docket items #IV–E–41, VI–D–08 and VI–D–69.) The following is a discussion of the exemptions finalized today, including a discussion of the newly-included California gasoline exemptions.

a. Research, Development, and Testing Exemption. In the NPRM, EPA proposed that parties conducting research and development (R&D) testing of gasoline and detergent additives could apply to the Agency to obtain detergent rule exemption waivers for their products. Pursuant to industry comment that the proposed waiver procedures were burdensome and unnecessary, the interim program established an R&D-exemption which did not require a specific EPA waiver. Under this provision, detergents that are in a research, development, or test status, or are sold to petroleum, automobile, engine, or component manufacturers for such purposes, are exempt from the rule's requirements, provided that (1) the detergent or the fuel containing the detergent is kept segregated, (2) documentation identifies the product as R&D and states that it is only to be used for R&D purposes, (3) the product is not sold or transferred, or offered for sale or transfer, from a retail outlet, (4) if the detergent is transferred or offered for transfer from a WPC facility, that facility is R&D associated, and (5) the party using the product notifies EPA at least annually, and prior to usage, of the purposes of the R&D program and the volume of the product to be used.

A comment on the Reopening Notice pointed out that this R&D exemption did not appear to include base gasoline to be used for R&D purposes. This commenter suggested that EPA specifically add base gasoline to be used for R&D purposes to the products being exempted under the rule. The commenter also suggested amending the PTD warning requirements for base gasoline, so that a base gasoline PTD could say either that the product was not for sale to the ultimate consumer or, if appropriate, that it was to be used only for R&D purposes.

The Agency agrees with this comment about the R&D exemption. The omission of R&D base gasoline from the language of this exemption provision was unintentional. Today's final rule therefore corrects this omission and specifically includes within the exemption all R&D gasoline, both base and additized product. The rule requires, however, that for gasoline to be exempt under this provision, it must be used by an appropriate R&D institution, *i.e.*, a manufacturer of additives, gasoline, automotive parts, or automobiles, or it must be used under the control of such a party. This requirement will ensure that only parties legitimately connected with petroleum, additive, or automotive research and development will be able to use the exemption.

In response to the request that EPA allow PTDs for R&D base gasoline to identify the product as such, and to state "For R&D purposes only" instead of the general warning against sale to the ultimate consumer, today's final rule permits such information on PTDs for this fuel.

CMA commented that the R&D exemption requirement of prior and annual notification to EPA was unfair and burdensome. This commenter asserted that such notification was not required for the other detergent rule exemptions, and therefore should not be required for this one. Further, CMA argued that the actual volume of R&D product to be used in an upcoming year was not knowable at the beginning of the year, which would make it difficult to comply with the reporting requirement. Both CMA and a second industry commenter (Docket item #VI–D–57) believed that the notification requirement was confusing as to which parties had to report, because contract laboratories often perform research on behalf of the gasoline, additive, or automotive manufacturers.

While today's final rule retains the annual notification requirement for the R&D exemption, EPA has modified the requirement in response to these comments. The Agency believes that annual notification is necessary because it alerts the Agency to intended R&D product use. The Agency can then inspect the R&D facilities to ensure that the exempted product is actually being used for legitimate R&D purposes. In addition, the prior notification requirement is useful for enforcement purposes because any party attempting to assert R&D status as a rationale for noncompliance will first have to establish that it previously notified the Agency of its intended R&D use.

However, in response to commenter concern, the final rule does ease the R&D notification requirements. The rule permits either the party actually conducting the research or the party controlling the research to make the notification to EPA. Therefore, if they choose, manufacturers can submit one annual notification to cover all the R&D products that their contract laboratories are testing for them, obviating the need for contract laboratories to submit multiple notifications for their varied testing work. Moreover, the annual notification need only identify a reasonable estimate of the R&D product to be used in the coming year, rather than a certain amount.

b. Racing and Aviation Fuel Exemptions. As proposed in the NPRM, the interim program included an exemption from detergent rule requirements for fuel sold, transferred, etc. as automotive racing fuel and for fuel sold, etc. as airplane engine fuel. For such fuel to be exempt, it must be kept segregated and must be accompanied by documentation identifying it as racing or aviation fuel, not for street or highway use. The exemption provision also required that the product not be sold or transferred from a retail outlet.

Several comments on the NPRM protested the restriction that racing fuel sold or transferred from a retail outlet would not qualify for the exemption. These comments stated that prohibiting the sale of such fuel at retail outlets would be unfair to auto racing participants, since some racing facilities do not have fuel pumps available. Further, the comments alleged that this requirement would discriminate unfairly against retail outlets.

The interim program's exemption for racing fuel included the retail outlet sale restriction because such fuel, which normally has a high lead content and lacks detergent additives, is not appropriate for street or highway use. Retail outlets, by their very nature, are facilities at which fuel is sold to consumers for street or highway use. Therefore, the Agency believed that permitting the sale of this product at facilities regularly selling gasoline to general consumers would be conducive to the illegal sale and use of this exempted product.

EPA remains concerned about this potential problem, but agrees with the commenters that completely prohibiting the sale of exempt racing fuel at retail outlets is an unnecessarily broad solution. Therefore, today's final rule places less restrictive requirements on the sale of exempt racing fuel to protect against the sale of this product to highway-use consumers.

The product segregation and documentation requirements promulgated in the interim program will continue under today's rule. Also, the rule affirms that the exemption is confined to fuel distributed to racing vehicles that are restricted for nonhighway use. This requirement is consistent with that of the RFG program. The consistency between the two fuels programs will make it easier for parties to comply with both programs. In addition, today's rule requires that pumps from which racing fuel is dispensed must be clearly labeled as such.

The Agency believes that these provisions will prevent the improper use of unadditized racing fuel in highway vehicles as effectively as the proposed retail outlet sale prohibition would. At the same time, these requirements do not unfairly discriminate against retail outlets but apply, instead, to all parties selling or transferring racing fuel.

It is a violation of today's rule to sell product claimed to be exempt racing fuel and not properly additized to a consumer for street or highway use. The Agency believes that parties who sell or transfer the product to inappropriate recipients may have difficulty establishing for an affirmative defense that they did not cause the violation if they cannot demonstrate that they complied with the exemption requirements and that they had taken reasonable steps to ensure the product would be used in the proper manner so that the exemption would apply.

Today's rule continues to exempt aviation gasoline. Similar to the exemption for racing fuel, today's rule requires dispensers of exempt aviation gasoline to properly label the aviation pumps, and to sell or transfer the product for aviation use only. The interim program's segregation and documentation requirements for this product are also continued in today's rule. The Agency believes that these requirements will ensure that the exempt product is used only in aviation engines.

c. California Gasoline Exemptions. The interim program requires that gasoline additized and sold or transferred to the ultimate consumer in California is subject to all the enforcement-related provisions of the Federal detergent program, including the VAR and paperwork requirements, in spite of the fact that CARB is also regulating this fuel under its own detergent program. At the time the interim rule was promulgated, EPA was concerned that CARB's detergent program might not be as effective as the Federal program in ensuring compliance with the Federal standards for proper additization. However, CARB's enforcement of its detergent regulation program has proven to be very vigorous, and its enforcement requirements have been shown to be effective.[29] Further, CARB has proposed changes to its detergent program which would make CARB's program even more rigorous in the future.[30]

Therefore, EPA now considers that CARB's VAR and paperwork requirements, even under the present CARB statutory language, will be as effective in ensuring compliance with the Federal standards as are their Federal program equivalents. Consequently, EPA has decided to create exemptions for California gasoline from the Federal VAR and PTD provisions. Since the equivalent CARB record keeping and reconciliation provisions are effective, these Federal enforcement requirements would be superfluous in California.

Today's rule merely exempts the specified California gasoline from certain Federal enforcement program requirements that are unnecessary in California. Specifically, gasoline additized in California is exempt from the Federal VAR requirements, and gasoline sold or transferred wholly within California is exempt from the Federal PTD requirements. Such gasoline is still subject under today's rule to the general requirements of additization and sale in conformity with Federal certification requirements, since Congress mandated the additization, pursuant to EPA specifications, of all gasoline sold to consumers in the United States. California detergent blenders can comply with both the state and Federal requirements by using detergents which have CARB-based Federal certifications, and following the CARB-mandated record keeping and VAR procedures. EPA will evaluate California blenders' compliance with the Federal LAC standards by examining the records of the same type mandated by CARB, plus the CARB-mandated type of records for gasoline additized in California for ultimate sale elsewhere. The Agency does not expect to regularly conduct detergent program inspections in California. EPA believes that CARB's enforcement of the California requirements will adequately assure compliance with Federal standards. However, if EPA believes it appropriate, the Agency will conduct detergent program inspections of California facilities.

To ensure that the Agency will have access to the same amount of compliance records for California detergent blenders as for blenders outside of California, today's final rule requires California-regulated parties who operate under the exemption from the Federal VAR requirements to maintain the detergent program records required by CARB (and the same type of records for gasoline to be sold outside of California), for the same five-year period that records are required to be maintained under the Federal program. The Federal VAR exemption is predicated on this record creation and maintenance. The Agency will thus be able to review these compliance records, if and when it chooses to inspect California facilities, covering the same time period that applies in other states.

The California gasoline exemptions from the specified VAR and PTD provisions of the Federal detergent enforcement program are also predicated on EPA's conclusion that the CARB program is as effective as the Federal program in ensuring compliance with the Federal detergent standards. EPA intends to monitor CARB's program to ensure that these exemptions continue to be justified. If EPA determines that changes in CARB's regulations or its enforcement practices, or other changed circumstances, would compromise the CARB program's ability to ensure compliance with Federal additization standards, then EPA may

[29] See Docket item VI–D–68 for a summary of CARB's detergent program enforcement actions.

[30] See Docket item VI–D–55 regarding the 9/29/95 Proposed Amendments to CARB's Detergent Additive Rule.

delete these exemptions through a future rulemaking.

C. Proposed Changes Not Incorporated in the Certification Rule

Several changes to enforcement provisions of the interim program were proposed in the Reopening Notice but are *not* incorporated in today's certification rule. The following is a summary of these proposed changes along with the reasons they were ultimately rejected by the Agency.

The first such nonfinalized proposal would have required the use of meters on all automated additization equipment injectors. EPA proposed this metering requirement to promote greater additization accuracy. However, comments on this proposal universally condemned it as being expensive, disruptive of industry's present operating procedures, and not necessarily effective in ensuring greater accuracy. The commenters believed that the detergent program should continue to permit blenders to use their existing equipment, unless enforcement experience established a need for greater accuracy.

These comments are persuasive. EPA enforcement experience of the first year of the detergent program has indicated minimal problems with non-metered records. Therefore, the extra expense of new metered additization equipment has not proven to be necessary.

The second nonfinalized proposal would have required VAR volumes to be recorded to the nearest tenth of a gallon, instead of the nearest gallon requirement established under the interim program. Commenters disputed the need for increasing the severity of the recording requirement, since some additization systems cannot measure volumes to that degree of precision and installing new equipment would be very costly. At the same time, commenters asserted that increasing the precision would not bring noticeable benefits in greater additization accuracy. In particular, it was pointed out that recording volume figures to one tenth of a gallon, for the large volumes of fuel typically being recorded, would be meaningless in improving additization compliance.

The Agency finds these comments persuasive, except as regards VAR reporting of detergent volumes of five gallons or less. Reporting such small amounts of detergent only to the nearest gallon would create a greater than 10 percent degree of inaccuracy in reporting the additization that actually occurred. The Agency believes that this is an unacceptable level of inaccuracy in VAR compliance reporting. Therefore, although the proposed change to a tenth of gallon reporting is not generally incorporated in today's final rule, detergent volumes of five gallons of less are required to be recorded on the VAR formula records to the nearest tenth of a gallon (or smaller unit), if the blender's equipment can measure to this level. If not, such volumes are to be reported down to the nearest gallon. This procedure will address EPA's concerns for accurate reporting of additization, while also meeting industry's objection to purchasing upgraded equipment merely to ensure this accuracy.

Another proposed change not incorporated in today's final rule was the imposition of a minimum detergent concentration for each gallon of gasoline additized, in addition to meeting the VAR averaging requirement. This was another proposal that industry commenters to the Reopening Notice consistently opposed, primarily because of the huge expenses they said would be entailed for installing additization equipment that could monitor per-gallon compliance. Commenters argued that little gain would result from this requirement, since deposit formation occurs over the long term. Therefore, according to these commenters, the compliance already required under the VAR averaging procedures should be adequate to prevent such buildups.

EPA concedes the points made, and has chosen to delete the proposed requirement of per-gallon minimum additization. This decision could be revisited in the future, however, if experience shows that such additional compliance requirements are necessary to effectively prevent deposit formation.

The fourth change not incorporated was the extension of presumptive liability for VAR violations to all parties, except upstream carriers, in the product's distribution system. See Section VIII.B.2.b. for a discussion of this issue.

The final proposed change from the Reopening Notice that was not included in today's rule was the prohibition against the use of multiple equipment set rates within one VAR formula record. The Agency was concerned that if gasoline additized under several detergent concentration set rates were included within the reported VAR volumes in the same formula record, then there would be inadequate assurance that the gasoline additized at the lower rates was in compliance with the LAC standard. Compliance at the higher rates could mask noncompliance in the lower rates. Therefore, the Agency proposed the prohibition against the use of multiple set rates within the same VAR record.

Detergent blender commenters to this proposal wanted to retain the ability to use multiple set rates in the same VAR record because it would minimize their VAR paperwork burdens and would allow the use of present equipment. They rejected the need for the proposed prohibition, arguing that the interim program's prohibition against setting any injector's set rate lower than the LAC and the additional prohibition against adjusting any injector's set rate higher than 10 percent of its initial setting, would effectively ensure that the gasoline additized at the lower treat rates also attains the LAC standard.

The Agency agrees with these comments that the interim program's set rate requirements do provide some insurance that the gasoline additized under the lower concentrations will be adequately additized. Therefore, EPA does not consider the added paperwork and equipment expenditures associated with the proposed multiple set rate prohibition to be warranted. However, the certification program maintains the interim program requirement that detergents being used at different LACs must be recorded and reconciled on separate VAR formula records (See section VIII.B.2.e.). Since VAR compliance is based on the comparison of the actual detergent concentration attained with the appropriate LAC certified for the fuel product being additized, each restricted LAC must be separately compared to the respective additized product.

To make this requirement meaningful, the certification program continues the interim program's requirement that blenders using a detergent at different LACs must have the ability to accurately measure the additization occurring under each LAC. Both the interim and certification programs provide flexibility to blenders in satisfying this requirement. For example, such blenders could measure usage from different tanks containing the detergent being used at different LACs, use a separate meter on an injector that is additizing under a separate LAC, or use a meter capable of distinguishing additizations under separate LACs.

In summary, for the reasons outlined above, EPA agrees with the overwhelming majority of commenters to the Reopening Notice that the above compliance provision modifications discussed in this section should not be adopted. To date, EPA's enforcement experience with the interim program has shown a high level of additization compliance. If future experience reveals that current enforcement provisions are inadequate, then EPA may revise these provisions through another rulemaking.

IX. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this final rule is a "significant regulatory action". EPA's regulatory impact analysis (RIA),[31] available in the public docket and summarized below, indicates that the annual costs to producers for compliance with the requirements of the certification program are expected to exceed $100 million. Therefore, EPA has treated this action as significant and has submitted a regulatory analysis to the Office of Management and Budget (OMB) for review.

The total cost of the detergent additive certification program includes costs associated with certification testing and additional registration and record-keeping requirements, as well as additization costs. Over 90 percent of the total estimated cost of the program is associated with the price of the additives needed to bring all gasoline up to the effective detergency levels which much of U.S. gasoline already contains. The average incremental cost to consumers is projected to be approximately 0.10 cents per gallon of gasoline. This amount will be partially compensated for by the increased fuel economy and decreased maintenance requirements which improved deposit control is expected to provide.

The gasoline detergent additive requirements are expected to result in reductions in motor vehicle emissions of hydrocarbons, carbon monoxide, and oxides of nitrogen, totalling over one million tons during the 30-month interim program and about 600,000 tons per year under the detergent certification program. These emissions reductions will be achieved at relatively low cost, i.e., about $226 per ton. Fuel economy benefits are also expected as a result of the detergent program, amounting to nearly 450 million gallons during the 1995–2001 period. The savings associated with this fuel economy benefit are expected to partially offset the costs of the program, decreasing the cost per ton of emissions reduction to $120.

The program is not expected to be a significant cost burden to individual businesses, and adverse effects on competitive relationships are not expected. In fact, this rule should result in increased sales and business opportunities within the fuel additive industry. Any written comments from OMB and any EPA response to OMB's comments are available in the public docket for this rule.

B. Regulatory Flexibility Act

EPA's analysis of the impact of this rule on small entities is included as Chapter 5 in the Regulatory Impact Assessment (RIA) that was prepared in association with the interim program as described above.

The analysis shows that the regulatory responsibilities of the various types of businesses affected by this rule, along the chain from gasoline refiner to distributor to retailer, differ significantly. For each type of business, however, even for the small business entities in this chain, the costs of the regulation are estimated to be modest. The largest costs will be incurred by gasoline producers in the price of the additional detergent additive required to be added to gasoline. However, this basic cost is essential to the Clean Air Act mandate and for realization of the program's emission control objectives. Also, to some extent, additization costs are expected to be passed along the distribution chain to consumers. In the case of small additive manufacturers and additive injection equipment manufacturers, rather than being unduly burdensome, this regulation could result in significant economic opportunities through increased sales.

The addendum to the RIA, as noted in the previous section, was prepared to reflect minor changes in the regulatory program from the previous analysis. Relevant changes were primarily associated with the cost of detergent certification testing, especially in regard to test fuel qualification. For small additive manufacturers, which are likely to use the services of contract laboratories for certification testing, such costs can be largely defrayed by cost sharing, since "proven" test fuels can be used by an unlimited number of laboratory customers. Furthermore, the economic benefits to small additive manufacturers of the requirements for detergent use will more than compensate for the manufacturer's certification costs under this rule. Thus, as was found in the original analysis, the addendum to the RIA concluded that significant adverse economic impacts on small businesses are very unlikely to occur as a result of this rule. Consequently, EPA has determined that this rule will not have a significant adverse impact on a substantial number of small entities.

C. Paperwork Reduction Act

The changes to the detergent program's information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the requirements of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1655.03) and a copy may be obtained from Sandy Farmer, Regulatory Information Division; EPA; 401 M Street, SW. (Mail Code 2137); Washington, DC 20460, or by calling (202) 260–2740. These new requirements are not effective until OMB approves them. The information collection requirements currently in force under the interim detergent program (ICR No. 1655–02) will continue to be effective until replaced by those contained in today's rule. In addition, many of the information collection requirements unique to the detergent certification program were anticipated in the NPRM and were previously approved by OMB (ICR No. 1655–01). These requirements will also be effective until the requirements contained in today's rule are approved by OMB.

The information to be collected is necessary for the Agency to ensure that detergent additives that are effective in controlling deposits are used and that the emissions control goals of this

[31] The RIA was prepared in conjunction with the interim detergent program based on costs and benefits projected for the detergent certification program (Docket item V–B–01). An addendum updating the RIA was prepared to reflect minor changes in program costs from those projected in the original analysis (Docket item V–B–03).

regulation are realized. The information will be used by the Agency to evaluate whether the deposit control performance standards in today's rule have been satisfied, that detergents are blended into gasoline at the required levels, and that the restrictions placed on the use of detergents certified under the different certification options are observed. The information collection requirements are mandatory apart from those associated with maintaining affirmative defenses. Section 114 of the Clean Air Act (CAA), 42 U.S.C. 7414 authorizes EPA to require recordkeeping and reporting regarding enforcement of the provisions of Title II of the CAA, including the provisions related to this rule. Any information or detergent samples submitted to EPA for which a claim of confidentiality is made will be safeguarded according to EPA regulations at 40 CFR 2.201 *et seq.*

The following estimates of this collection requirements hourly and cost burden include the time to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The desegregated hourly burden estimates for this collection are as follows:

(a) *Additive manufacturers:* (1) EPA estimate that two research exemptions will be reported each year per respondent at about 0.08 hr. per response, with 59 total respondents; (2) The certification testing recordkeeping burden is estimated at approximately 3.5 certifications per respondent in 1996 and 1997 with 59 total respondents. In 1998 and following years this is estimated to drop to approximately one certification per respondent. The burden initially includes about 382 certifications but is reduced dramatically to a turnover rate of about 15 percent of the initial number of certifications annually in future years. The burden per certification response is estimated to be less than 90 hours. The 1997 hours for all respondents is approximately 21,830. This is reduced to about 5,160 hours in 1998 and 1999; (3) Other yearly requirements are customary business practices or have no hourly burden except a 0.15 hr. burden to review the instruction for quality assurance provision;

(b) *Refiners and importers:* (1) Refiner/importer voluntary quality assurance for defense involves about 20 responses per respondent with about 0.01 hr. per response. One hundred parties are estimated to perform these voluntary quality assurance procedures; (2) Other requirements involve no hourly burden;

(c) *Terminals who blend detergent:* The monthly detergent use accounting records requirement is largely a customary business practice that was adapted to EPA format under the previous interim rule. It is estimated that there will be 12 responses per year per detergent for each terminal. The on-customary business practice hourly burden per terminal per month is about 0.01 hour. It is estimated that there might be as many as 1,246 respondents; (2) The required calibration of terminal equipment is already performed, however, the rule requires that it be performed at least twice per year. The associated non-customary business practice burden per response associated with this calibration requirement is estimated at 0.21 hours, with 1,200 automated terminals participating. The startup burden per terminal to read rule/instructions is estimated at 0.25 hr; (3) It is estimated that 1,246 terminals conduct recordkeeping quality assurance on 15 occasions per year at 0.02 hr. per review; (4) Other requirements require no hourly burden;

(d) *Truckers who hand blend detergent:* It is estimated that truckers who hand blend detergent might do so on as many as 875 occasions annually, with approximately 0.03 hour per response and 100 total respondents annually for this requirement; (2) Other trucker requirements are customary business practices;

(e) *Retailers and wholesale purchaser-consumers:* It is estimated that retailers and wholesale purchaser-consumers of gasoline who also dispense detergent-exempt aviation fuel or racing fuel will spend 0.55 hrs to label pumps. This is a one-time requirement for a total of 5,000 respondents.

The disaggregated cost estimates for this collection are as follows:

(a) *Additive manufacturers:* (1) It is estimated that the 59 respondents will spend a total of $559,967 in 1996 and $697,882 in 1997 for recordkeeping involving the approximately 382 certifications that will occur initially. This is reduced to $163,060/year in ensuing years since it is estimated that 15 percent of the number of initially certified additives will be certified annually after the program's first year. For certification testing itself, there are no capital costs; most of the additives tested will be tested in-house on existing equipment already used as a customary business practice by these manufacturers. Test costs for 1997 average $242,559 per party for 59 parties, and in 1996 average $210,921 per party for 59 parties. For 1998 and beyond, the cost is estimated to fall to $63,276 per party. These parties will also spend about $4.86 per year for exemption notices and will have a startup cost of about $4.80 in 1996 for a quality assurance program that is otherwise a customary business practice;

(b) *Refiners and importers:* It is estimated that 100 refiners and importers of gasoline will pay $2,564 per year per party for voluntary defense quality assurance;

(c) *Terminals:* The VAR records for terminals are expected to cost each of 1,246 terminals about $2.28 per year beyond customary business practice costs. Calibration requirements are expected to cost each of 1,200 terminals about $13 each beyond customary business practices with a startup cost of $8 per respondent in 1996 for reviewing the changed requirement. Record checks are expected to cost each terminal about $8.00 per year;

(d) *Truckers:* If any truckers hand blend a large number of loads per year, the cost per trucker could be as high as $691 per year. Other costs are customary business practices;

(e) *Retailers and wholesale purchaser-consumers:* It is estimated that retailers and wholesale purchaser-consumers of gasoline who also dispense exempt aviation gas or racing gas will pay about $12.60 in the first year for labelling their pumps and about $1 each year after for the capital cost of purchasing the label.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Ch. 15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing the respondent burden, including through the use of automated collection techniques to the Director, Regulatory Information Division, U.S. Environmental Protection Agency (Mail Code 2137), 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

Include the ICR number in any correspondence.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more for any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the program would significantly or uniquely affect small governments. EPA has determined that this rule contains Federal mandates that will result in expenditures of $100 million or more in any one year for the private sector. EPA believes that the program represents the least costly, most cost-effective approach to achieving the air quality goals of the proposed rule. EPA has performed the required analyses under Executive Order 12866 which contains identical analytical requirements. The reader is directed to Section IX.A., Administrative Designation and Regulatory Analysis, for further information regarding these analyses.

E. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is a "major rule" as defined by section 804(2) of the APA as amended.

X. Electronic Copies of Rulemaking Documents

The preamble, the RIA, and regulatory language of this final rule are available in the public docket as described under "**ADDRESSES**" above and are also available electronically on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer network Bulletin Board System (TTNBBS). Instructions for accessing TTNBBS and downloading the relevant files are described below.

A. Technology Transfer Network Bulletin Board System (TTNBBS)

TTNBBS can be accessed using a dial-in telephone line (919–541–5742) and a 1200, 2400, or 9600 bps modem (equipment up to 14.4 Kbps can be accommodated). The parity of the modem should be set to N or none, the data bits to 8, and the stop bits to 1. When first signing on to the bulletin board, the user will be required to answer some basic informational questions to register into the system. After registering, proceed through the following options from a series of menus:

(T) Gateway to TTN Technical Areas (Bulletin Boards)
(M) OMS—Mobile Sources Information
(K) Rulemaking and Reporting
(3) Fuels
(4) Detergent Additives

At this point, the system will list all available files in the chosen category in reverse chronological order with brief descriptions. The following eight "zip" files are currently available:

DCA__CFP.ZIP (Preamble to the final rule on the Certification Requirements for Deposit Control Additives)
DCA__CFR.ZIP (Regulatory text for the final rule on the Certification Requirements for Deposit Control Additives)
DCA__RIAA.ZIP (Addendum to the Regulatory Impact Analysis)
DCA__RCN.ZIP (Notice to Reopen the Comment Period)
DCA__RIA.ZIP (Regulatory Impact Analysis)
DCA__1FP.ZIP (Preamble to the final rule on the Interim Requirements for Deposit Control Additives)
DCA__IFR.ZIP (Regulatory text for the final rule on the Interim Requirements for Deposit Control Additives)
DCA__PRE.ZIP (Preamble from the Notice of Proposed Rulemaking)

File information can be obtained from the "READ.ME" file. Choose from the following options when prompted:
<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, <H>elp or <ENTER> to exit.

To download a file, e.g., <D> filename.ZIP, the user needs to choose a file transfer protocol appropriate for the user's computer from the options listed on the terminal. The user's computer is then ready to receive the file by invoking the user's resident file transfer software. Programs and instructions for de-archiving compressed files can be found under <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

TTNBBS is available 24 hours a day, 7 days a week except Monday morning from 8–12 EST, when the system is down for maintenance and backup. For help in accessing the system, call the systems operator at 919–541–5384 in Research Triangle Park, North Carolina, during normal business hours EST.

B. Internet

Rulemaking documents may be found on the internet as follow:

World Wide Web
http://www.epa.gov/omswww
FTP
ftp://ftp.epa.gov Then CD to the /pub/gopher/OMS/ directory
Gopher
gopher://gopher.epa.gov:70/11/Offices/Air/OMS

Alternatively, go to the main EPA gopher, and follow the menus:
gopher.epa.gov
EPA Offices and Regions

Office of Air and Radiation
Office of Mobile Sources

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline detergent additives, Gasoline, Incorporation by reference, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: June 21, 1996.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: Sec. 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.4 is revised to read as follows:

§ 80.4 Right of entry; tests and inspections.

The Administrator or his authorized representative, upon presentation of appropriate credentials, shall have a right to enter upon or through any refinery, retail outlet, wholesale purchaser-consumer facility, or detergent manufacturer facility; or the premises or property of any gasoline or detergent distributor, carrier, or importer; or any place where gasoline or detergent is stored; and shall have the right to make inspections, take samples, obtain information and records, and conduct tests to determine compliance with the requirements of this part.

3–4. Section 80.140 is amended by revising the definition of "Detergent Blender" and by adding definitions for "Leaded Gasoline" and "Repeatability", in alphabetical order, to read as follows:

§ 80.140 Definitions.

* * * * *

Detergent blender means any person who owns, leases, operates, controls or supervises the blending operation of a detergent blending facility, or imports detergent-additized gasoline or detergent-additized post-refinery component.

* * * * *

Leaded gasoline means gasoline which is produced with the use of any lead additive or which contains more than 0.05 gram of lead per gallon or more than 0.005 gram of phosphorus per gallon.

* * * * *

Repeatability of a test method means the amount of random error which is expected to affect the results obtained for a given test substance, when the test is replicated by a single operator in a given laboratory within a short period of time, using the same apparatus under constant operating conditions. Quantitatively, it is the difference between two such single results that would be exceeded in the long run in only one out of twenty normal and correct replications of the test method.

* * * * *

5. Section 80.141 is amended as follows:

a. Paragraphs (a) and (b), the second sentence of paragraph (c)(1)(i), paragraphs (c)(1)(ii), (c)(2), (c)(3)(i), (d), and (e)(1), the first sentence of paragraph (e)(2)(ii)(B), and the last sentence of paragraph (g)(3) are revised.

b. Paragraph (c)(3)(iv) is added.

c. Paragraph (e)(2)(ii)(B)(*1*)(*iii*) is removed and reserved.

d. In paragraph (g)(1), the reference to paragraph (d)(2)(ii)(B) is revised to (d)(3)(ii).

§ 80.141 Interim detergent gasoline program.

(a) *Effective dates of requirements.* (1) Until June 30, 1997, the products listed in paragraphs (a)(1)(i) through (iii) of this section must comply with either the interim program requirements described in this section or the certification program requirements described in § 80.161. Beginning July 1, 1997, the listed products must comply with the requirements in § 80.161. These dates and requirements apply to:

(i) All gasoline sold or transferred to a party who sells or transfers gasoline to the ultimate consumer;

(ii) All additized post-refinery component (PRC); and

(iii) All detergent additives sold or transferred for use in gasoline or PRC for compliance with the requirements of this subpart.

(2) Until July 31, 1997, all gasoline sold or transferred to the ultimate consumer must contain detergent additive(s) meeting either the interim requirements of this § 80.141 or the certification program requirements of § 80.161. Beginning August 1, 1997, such gasoline must contain detergent additive(s) meeting the certification requirements of § 80.161.

(b) *Applicability of gasoline and PRC detergency requirement; responsible parties.* (1) Except as specifically exempted in § 80.160, the detergency requirements of this subpart apply to all gasoline, whether intended for on-highway or nonroad use, including conventional, reformulated, oxygenated, and leaded gasolines, as well as the gasoline component of fuel mixtures of gasoline and alcohol fuels, gasoline used as marine fuel, gasoline service accumulation fuel (as described in § 86.113–94(a)(1) of this chapter), the gasoline component of fuel mixtures of gasoline and methanol used for service accumulation in flexible fuel vehicles (as described in § 86.113–94(d) of this chapter), gasoline used for factory fill purposes, and all additized PRC.

(2) Pursuant to paragraphs (c) through (f) of this section, compliance with these requirements is the responsibility of parties who directly or indirectly sell or dispense gasoline to the ultimate consumer as well as parties who manufacture, supply, or transfer detergent additives or detergent-additized post-refinery components.

(c) * * *

(1) * * *

(i) * * * Polymeric components may be reported as the product of other chemical reactants, provided that the supporting data specified in § 80.162(b) is also reported for such components.

(ii) The weight and/or volume percent (as applicable) of each component of the package, with variability in these amounts restricted according to the provisions of paragraph (c)(2) of this section.

* * * * *

(2) *Allowable variation in compositional data.* (i) A single detergent additive registration may contain no variation in the identity of any of the detergent-active components identified pursuant to paragraph (c)(1)(iii) of this section.

(ii) A single detergent additive registration may specify a range of concentrations for identified detergent-active components, provided that, if each such component were present in the detergent additive package at the lower bound of its reported range of concentration, the minimum recommended concentration reported in accordance with the requirements of paragraph (c)(3) of this section would still provide the deposit control effectiveness claimed by the detergent registrant.

(iii) The identity or concentration of non-detergent-active components of the detergent additive package may vary under a single registration, provided that the range of such variation is specified in the registration, and that such variability does not reduce the deposit control effectiveness of the additive package as compared with the level of effectiveness claimed by the detergent registrant pursuant to the requirements of paragraph (c)(3) of this section.

(iv) Except as provided in paragraph (c)(2)(v) of this section, detergent additive packages which do not satisfy these restrictions must be separately registered. EPA may disqualify an additive for use in satisfying the requirements of this subpart if EPA determines that the variability included within a given detergent additive registration may reduce the deposit control effectiveness of the detergent package such that it could invalidate the minimum recommended concentration reported in accordance with the requirements of paragraph (c)(3) of this section.

(v) A change in minimum concentration requirements resulting from a modification of detergent additive composition shall not require a new detergent additive registration or a change in existing registration if:

(A) The modification is effected by a detergent blender only for its own use or for the use of parties which are subsidiaries of, or share common ownership with, the blender, and the modified detergent is not sold or transferred to other parties; and

(B) The modification is a dilution of the additive for the purpose of ensuring proper detergent flow in cold weather; and

(C) Gasoline is the only diluting agent used; and

(D) The diluted detergent is subsequently added to gasoline at a rate that attains the detergent's registered-minimum recommended concentration, taking into account the dilution; and

(E) EPA is notified, either before or within seven days after the dilution action, of the identity of the detergent, the identity of the diluting material, the amount or percentage of the dilution, the change in treat rate necessitated by the dilution, and the locations and time period of diluted detergent usage. The notification shall be sent or faxed to the address in § 80.174(c).

(3) * * *

(i) The lower boundary of the recommended range of concentration for the detergent additive package in gasoline, which the additive manufacturer must report pursuant to the registration requirements in § 79.21(d) of this chapter, must equal or exceed the minimum concentration which the manufacturer has determined to be necessary for the control of deposits in the associated fuel type, pursuant to paragraph (e) of this section. The minimum recommended concentration shall be provided to EPA in units of gallons of detergent additive package per thousand gallons of gasoline or PRC, reported to four digits. This concentration is the lowest additive concentration (LAC) referred to elsewhere in this subpart.

* * * * *

(iv) Once included in the registration for a detergent additive package, the minimum concentration recommended by the detergent manufacturer to detergent blenders and other users of the detergent additive, pursuant to paragraph (c)(3)(ii) of this section, may not be changed without first notifying EPA. The notification must be sent by certified mail to the address specified in § 80.174(b). Changes to the minimum recommended concentration must be supported by available test data pursuant to paragraph (c)(3)(iii) of this section.

(d) The rate at which a detergent blender treats gasoline with a detergent additive package must be no less than the minimum recommended concentration reported for the subject detergent additive pursuant to paragraph (c)(3) of this section, except under the following conditions:

(1) If a detergent blender believes that the minimum treat rate recommended by the manufacturer of a detergent additive exceeds the amount of detergent actually required for effective deposit control, and possesses substantiating data consistent with the guidelines in paragraph (e) of this section, then, upon informing EPA in writing of these circumstances, the detergent blender may use the detergent at a lower concentration.

(2) The notification to EPA must clearly specify the name of the detergent product and its manufacturer, the concentration recommended by the detergent manufacturer, and the lower concentration which the detergent blender intends to use. The notification must also attest that data are available to substantiate the deposit control effectiveness of the detergent at the intended lower concentration. The notification must be sent by certified mail to the address specified in § 80.174(b).

(3) At its discretion, EPA may require that the detergent blender submit the test data purported to substantiate the claimed effectiveness of the lower concentration of the detergent additive. EPA may also require the manufacturer of the subject detergent additive to submit test data substantiating the minimum recommended concentration specified in the detergent additive registration. In either case, EPA will send a letter to the appropriate party, and the supporting data will be due to EPA within 30 days of receipt of EPA's letter.

(i) If the detergent blender fails to submit the required supporting data to EPA in the allotted time period, or if EPA judges the submitted data to be inadequate to support the detergent blender's claim that the lower concentration provides a level of deposit control consistent with the requirements of this section, then EPA will disapprove the use of the detergent at the lower concentration. Further, the detergent blender may be subject to applicable liabilities and penalties pursuant to §§ 80.156 and 80.159 for any gasoline or PRC it has additized at the lower concentration.

(ii) If the detergent manufacturer fails to submit the required test data to EPA within the allotted time period, EPA will proceed on the assumption that data are not available to substantiate the minimum recommended concentration specified in the detergent registration, and the subject additive may be disqualified for use in complying with the requirements of this subpart, pursuant to the procedures in paragraph (g) of this section. The detergent manufacturer may also be subject to applicable liabilities and penalties pursuant to §§ 80.156 and 80.159.

(iii) If both parties submit the required information, EPA will evaluate the quality and results of both sets of test data in relation to each other and to industry-consensus test practices and standards, in a manner consistent with the guidelines described in paragraph (e) of this section. EPA will approve or disapprove the use of the detergent at the lower concentration, and will inform both the detergent blender and the detergent manufacturer of the results of its analysis within 60 days of receipt of both sets of data.

(e) * * *

(1) *CARB-based supporting test data.* For detergent additives which are certified by the California Air Resources Board (CARB) for use in the state of California (pursuant to Title 13, section 2257 of the California Code of Regulations), the CARB certification data constitutes adequate support of the detergent's effectiveness under this section, with the exception that CARB detergent certification data specific to California Phase II reformulated gasoline (pursuant to Title 13, Chapter 5, Article 1, Subarticle 2, California Code of Regulations, Standards for Gasoline Sold Beginning March 1, 1996) will not be considered adequate support for detergent effectiveness in gasolines that do not conform to the compositional specifications for California's Phase II reformulated gasoline. For CARB-based supporting data to be used to demonstrate detergent performance, the minimum recommended concentration reported in

the detergent additive registration must be no less than the concentration of the detergent-active components reported in the subject CARB detergent certification.

(2) * * *

(ii) * * *

(B) For demonstration of fuel injector and intake valve deposit control performance, the tests specified in §§ 80.165, or other vehicle-based tests using generally accepted industry procedures and standards, are preferred.* * *

* * * * *

(g) * * *

(3) * * * All correspondence regarding a disqualification must be sent to the address specified in § 80.174(b).

* * * * *

6. Section 80.155 is revised to read as follows:

§ 80.156 Interim detergent program controls and prohibitions.

(a)(1) No person shall sell, offer for sale, dispense, supply, offer for supply, transport, or cause the transportation of gasoline to the ultimate consumer for use in motor vehicles or in any off-road engines (except as provided in § 80.160), or to a gasoline retailer or wholesale purchaser-consumer, and no person shall detergent-additize gasoline, unless such gasoline is additized in conformity with the requirements of § 80.141. No person shall cause the presence of any gasoline in the gasoline distribution system unless such gasoline is additized in conformity with the requirements of § 80.141.

(2) Gasoline has been additized in conformity with the requirements of § 80.141 when the detergent component satisfies the requirements of § 80.141 and when:

(i) The gasoline has been additized in conformity with the detergent composition and purpose-in-use specifications of an applicable detergent registered under 40 CFR part 79, and in accordance with at least the minimum concentration specifications of that detergent as registered under 40 CFR part 79 or as otherwise provided under § 80.141(d); or

(ii) The gasoline is composed of two or more commingled gasolines and each component gasoline has been additized in conformity with the detergent composition and purpose-in-use specifications of a detergent registered under 40 CFR part 79, and in accordance with at least the minimum concentration specifications of that detergent as registered under 40 CFR part 79 or as otherwise provided under § 80.141(d); or

(iii) The gasoline is composed of a gasoline commingled with a post-refinery component (PRC), and both of these components have been additized in conformity with the detergent composition and use specifications of a detergent registered under 40 CFR part 79, and in accordance with at least the minimum concentration specifications of that detergent as registered under 40 CFR part 79 or as otherwise provided under § 80.141(d).

(b) No person shall blend detergent into gasoline or PRC unless such person complies with the volumetric additive reconciliation requirements of § 80.157.

(c) No person shall sell, offer for sale, dispense, supply, offer for supply, store, transport, or cause the transportation of any gasoline, detergent, or detergent-additized PRC unless the product transfer document for the gasoline, detergent or detergent-additized PRC complies with the requirements of § 80.158.

(d) No person shall refine, import, manufacture, sell, offer for sale, dispense, supply, offer for supply, store, transport, or cause the transportation of any detergent that is to be used as a component of detergent-additized gasoline or detergent-additized PRC, unless such detergent conforms with the composition specifications of a detergent registered under 40 CFR part 79 and the detergent otherwise complies with the requirements of § 80.141. No person shall cause the presence of any detergent in the detergent, PRC, or gasoline distribution systems unless such detergent complies with the requirements of § 80.141.

(e)(1) No person shall sell, offer for sale, dispense, supply, offer for supply, transport, or cause the transportation of detergent-additized PRC, unless the PRC has been additized in conformity with the requirements of § 80.141. No person shall cause the presence in the PRC or gasoline distribution systems of any detergent-additized PRC that fails to conform to the requirements of § 80.141.

(2) PRC has been additized in conformity with the requirements of § 80.141 when the detergent component satisfies the requirements of § 80.141 and:

(i) The PRC has been additized in accordance with the detergent composition and use specifications of a detergent registered under 40 CFR part 79, and in accordance with at least the minimum concentration specifications of that detergent as registered under 40 CFR part 79 or as otherwise provided under § 80.141(d); or

(ii) The PRC is composed of two or more commingled PRCs, and each component has been additized in accordance with the detergent composition and use specifications of a detergent registered under 49 CFR part 79, and in accordance with at least the minimum concentration specifications of that detergent as registered under 40 CFR part 79 or as otherwise provided under § 80.141(d).

7. Section 80.156 is amended by revising paragraphs (a)(1)(ii), (a)(2), introductory text, (a)(2)(ii), (a)(3), introductory text, (a)(3)(ii), (a)(4), (a)(5), introductory text; (c)(1), introductory text, (c)(1)(i), (c)(3), (c)(4), and by adding paragraphs (c)(5) through (c)(8) to read as follows:

§ 80.156 Liability for violations of the interim detergent program controls and prohibitions.

(a) * * *

(1) * * *

(ii) Each gasoline refiner, importer, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, distributor, or blender, who refined, imported, manufactured, sold, offered for sale, dispensed, supplied, offered for supply, stored, detergent additized, transported, or caused the transportation of the detergent-additized gasoline (or the base gasoline component, the detergent component, or the detergent-additized post-refinery component of the gasoline) that is in violation, and each such party that caused the gasoline that is in violation to be present in the gasoline distribution system; and

* * * * *

(2) *Post-refinery component non-conformity.* Where detergent-additized PRC contained in any storage tank at any facility owned, leased, operated, controlled or supervised by any gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, is found in violation of the prohibitions specified in § 80.155(e), the following persons shall be deemed in violation:

(i) * * *

(ii) Each gasoline refiner, importer, distributor, reseller, retailer, wholesale-purchaser consumer, oxygenate blender, detergent manufacturer, distributor, or blender, who sold, offered for sale, dispensed, supplied, offered for supply, stored, detergent additized, transported, or caused the transportation of the detergent-additized PRC (or the detergent component of the PRC) that is in violation, and each such party that caused the PRC that is in violation to be present in the PRC or gasoline distribution systems; and

* * * * *

(3) *Detergent non-conformity.* Where the detergent (prior to additization) contained in any storage tank or container found at any facility owned, leased, operated, controlled or supervised by any gasoline refiner importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, is found in violation of the prohibitions specified in § 80.155(d), the following persons shall be deemed in violation:

(i) * * *

(ii) Each gasoline refiner, importer, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, distributor, or blender, who sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of the detergent that is in violation, and each such party that caused the detergent that is in violation to be present in the detergent, gasoline, or PRC distribution systems; and

* * * * *

(4) *Volumetric additive reconciliation.* Where a violation of the volumetric additive reconciliation requirements established by § 80.155(b) has occurred, the following persons shall be deemed in violation:

(i) Each detergent blender who owns, leases, operates, controls or supervises the facility (including, but not limited to, a truck or individual storage tank) where the violation has occurred; and

(ii) Each gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, or oxygenate blender, and each detergent manufacturer, carrier, distributor, or blender, who refined, imported, manufactured, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of the detergent-additized gasoline, the base gasoline component, the detergent component, or the detergent-additized post-refinery component, of the gasoline that is in violation, provided that the EPA demonstrates, by reasonably specific showings by direct or circumstantial evidence, that such person caused the violation.

(5) *Product transfer document.* Where a violation of § 80.155(c) is found at a facility owned, leased, operated, controlled, or supervised by any gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, the following persons shall be deemed in violation:

* * * * *

(c) *Defenses.* (1) In any case in which a gasoline refiner, importer, distributor, carrier, reseller, retailer, wholesale-purchaser consumer oxygenate blender, detergent distributor, carrier, or blender, is in violation of any of the prohibitions of § 80.155, pursuant to paragraphs (a) or (b) of this section as applicable, the regulated party shall be deemed not in violation if it can demonstrate:

(i) That the violation was not caused by the regulated party or its employee or agent (unless otherwise provided in this paragraph (c));

* * * * *

(3) *Detergent blender.* In any case in which a detergent blender is liable for violating any of the prohibitions of § 80.155, the detergent blender shall not be deemed in violation if it can demonstrate, in addition to the defense requirements stated in paragraph (c)(1) of this section, the following:

(i) That it obtained or supplied, as appropriate, prior to the detergent blending, accurate written instructions from the detergent manufacturer or other party with knowledge of such instructions, specifying the detergent's minimum recommended concentration (lowest additive concentration) pursuant to § 80.141(c)(3) and, if applicable, the limitations of this concentration for use in leaded product.

(ii) That it has implemented a quality assurance program that includes, but is not limited to, a periodic review of its supporting product transfer and volume measurement documents to confirm the correctness of its product transfer and volumetric additive reconciliation documents created for all products it additized.

(4) *Detergent manufacturer*—(i) *Presumptive liability affirmative defense.* Notwithstanding the provisions of paragraph (c)(1) of this section, in any case in which a detergent manufacturer is liable for violating any of the prohibitions of § 80.155, the detergent manufacturer shall be deemed not in violation if it can demonstrate each of the following:

(A) Product transfer documents which account for the detergent component of the product in violation and which indicate that such detergent satisfied all relevant requirements when it left the detergent manufacturer's control; and

(B) Written blending instructions which, pursuant to § 80.141(c)(3)(ii), were supplied by the detergent manufacturer to its customer who purchased or obtained from the manufacturer the detergent component of the product determined to be in violation. The written blending instructions must have been supplied by the manufacturer prior to the customer's use or sale of the detergent. The instructions must accurately identify the minimum recommended concentration (lowest additive concentration) specified in the detergent's 40 CFR part 79 registration, and must also accurately identify if the detergent, at that concentration, is only registered as effective for use in leaded gasoline.

(C) If the detergent batch used in the noncomplying product was produced less than one year before the manufacturer was notified by EPA of the possible violation, then the manufacturer must provide FTIR or other test results for the batch of detergent used in the noncomplying product, performed in accordance with the detergent testing procedure submitted by the manufacturer, or available for submission, pursuant to § 80.141(f).

(*1*) The analysis may have been conducted on the subject detergent batch at the time it was manufactured, or may be conducted on a sample of that batch which the manufacturer retained for such purpose at the time the batch was manufactured.

(*2*) The test results must accurately establish that, when it left the manufacturer's control, the detergent component of the product determined to be in violation was in conformity with the chemical composition and concentration specifications reported pursuant to § 80.141(c)(1);

(D) If the detergent batch used in the noncomplying product was produced more than one year prior to the manufacturer's notification by EPA of the possible violation, then the manufacturer must provide either:

(*1*) Test results for the batch in question as specified in the paragraph (c)(4)(i)(C) of this section; or

(*2*) The following materials:

(*i*) Documentation of the measured viscosity, density, and basic nitrogen content of the detergent batch in question, or any other such physical parameters which the manufacturer normally uses to ensure production quality control, which establishes conformity with the manufacturer's quality control standards for such parameters; and

(*ii*) If the detergent registration identifies polymeric component(s) of the detergent package as the product(s) of other chemical reactants, documentation that the reagents used to synthesize the detergent batch in question were the same as those specified in the registration and that they met the manufacturer's normal acceptance criteria for such reagents, reported pursuant to § 80.162(b)(1).

(ii) *Detergent manufacturer causation liability.* In any case in which a detergent manufacturer is liable for a violation of § 80.155, and the manufacturer establishes an affirmative defense to such liability pursuant to paragraph (c)(4)(i) of this section, the detergent manufacturer will nonetheless be deemed liable for the violation of § 80.155 if EPA can demonstrate, by reasonably specific showings by direct or circumstantial evidence, that the detergent manufacturer caused the violation.

(5) *Defense against liability where more than one party may be liable for VAR violations.* In any case in which a party is presumptively or vicariously liable for a violation of § 80.155 due to a failure to meet the VAR requirements § 80.157, except for the VAR record requirements pursuant to § 80.157(g), such party shall not be deemed liable if it can establish the following:

(i) Prior to the violation it had entered into a written contract with another potentially liable detergent blender party ("the assuming party"), under which that other party assumed legal responsibility for fulfilling the VAR requirement that had been violated;

(ii) The contract included reasonable oversight provisions to ensure that the assuming party fulfilled its VAR responsibilities (including, but not limited to, periodic review of VAR records) and the oversight provision was actually implemented by the party raising the defense;

(iii) The assuming party is fiscally sound and able to pay its penalty for the VAR violation; and

(iv) The employees or agents of the party raising the defense did not cause the violation.

(6) *Defense to liability for gasoline non-conformity violations caused solely by the addition of misadditized ethanol or other PRC to the gasoline.* In any case in which a party is presumptively or vicariously liable for a gasoline non-conformity violation of § 80.155(a) caused solely by another party's addition of misadditized ethanol or other PRC to the gasoline, the former party shall not be deemed liable for the violation provided that it can establish that is has fulfilled the requirements of paragraphs (c)(1)(i) and (ii) of this section.

(7) *Detergent tank transitioning defenses.* The commingling of two detergents in the same detergent storage tank will not be deemed to violate or cause violations of any of the provisions of this subpart, provided the following conditions are met:

(i) The commingling must occur during a legitimate detergent transitioning event, *i.e.*, a shift from the use of one detergent to another through the delivery of the new detergent into the same tank that contains the original detergent; and

(ii) If the new detergent is restricted to use in leaded gasoline, then such restriction must be applied to the combined detergents; and

(iii) The commingling event must be documented, either on the VAR formula record or on attached supporting records; and

(iv) Notwithstanding any contrary provisions in § 80.157, a VAR formula record must be created for the combined detergents. The VAR compliance period must begin no later than the time of the commingling event. However, at the blender's option, the compliance period may begin earlier, thus including use of the uncombined original detergent within the same period, provided that the 31-day limitation pursuant to § 80.157(a)(6) is not exceeded; and

(v) The VAR formula record must also satisfy the requirements in one of the following paragraphs (c)(7)(v)(A) through (C) of this section, whichever applies to the commingling event. If neither paragraph (c)(7)(v)(A) nor (B) of this section initially applies, then the blender may drain and subsequently redeliver the original detergent into the tank in restricted amounts, in order to meet the conditions of paragraph (c)(7)(v)(A) or (B) of this section. Otherwise, the blender must comply with paragraph (c)(7)(v)(C) of this section.

(A) If both detergents have the same LAC, and the original detergent accounts for no more than 20 percent of the tank's total delivered volume after addition of the new detergent, then the VAR formula record is required to identify only the use of the new detergent.

(B) If the two detergents have different LACs and the original detergent accounts for 10 percent or less of the tank's total delivered volume after addition of the new detergent, then the VAR formula record is required to identify only the use of the new detergent, and must attain the LAC of the new detergent. If the original detergent's LAC is greater than that of the new detergent, then the compliance period may begin earlier than the date of the commingling event (pursuant to paragraph (c)(7)(iv) of this section) only if the original detergent does not exceed 10 percent of the total detergent used during the compliance period.

(C) If neither of the preceding paragraphs (c)(7)(v)(A) or (B) of this section applies, then the VAR formula record must identify both of the commingled detergents, and must use and attain the higher LAC of the two detergents. Once the commingled detergent has been depleted by an amount equal to the volume of the original detergent in the tank at the time the new detergent was added, subsequent VAR formula records must identify and use the LAC of only the new detergent.

(8) *Defense to liability for noncompliance with leaded-only use restrictions.* A party shall not be deemed liable for violations of § 80.155(a) or (e) caused solely by the additization or use of gasoline or PRC in violation of leaded-only use restrictions, provided that the conditions specified in § 80.169(c)(9) are met.

8. Section 80.157 is amended by revising the introductory text and paragraphs (a) and (b), by revising paragraphs (d), (e), and (f) and redesignating them as paragraphs (e), (f), and (g), and by adding a new paragraph (d), to read as follows:

§ 80.157 Volumetric additive reconciliation (VAR), equipment calibration, and recordkeeping requirements under the interim detergent program.

This section contains requirements for automated detergent blending facilities and hand-blending detergent facilities. All gasolines and all PRC intended for use in gasoline must be additized, unless otherwise noted in supporting VAR records, and must be accounted for in VAR records. The VAR reconciliation standard is attained under this section when the actual concentration of detergent used per VAR formula record equals or exceeds the lowest additive concentration (LAC) specified for that detergent pursuant to § 80.141(c)(3), or, if appropriate, under § 80.141(d). A separate VAR formula record must be created for leaded gasoline additized with a detergent registered for use only with leaded gasoline, or used at a concentration that is registered as effective for leaded gasoline only. Detergent so used must be accurately and separately measured, either through the use of a separate storage tank, a separate meter, or some other measurement system that is able to accurately distinguish its use. Recorded volumes of gasoline, detergent, and PRC must be expressed to the nearest gallon (or smaller units), except that detergent volumes of five gallons or less must be expressed to the nearest tenth of a gallon (or smaller units). However, if the blender's equipment cannot accurately measure to the nearest tenth of a gallon, then such volumes must be rounded downward to the next lower gallon. PRC included in the reconciliation must be identified. Each VAR formula record must also contain the following information:

(a) *Automated blending facilities.* In the case of an automated detergent blending facility, for each VAR period, for each detergent storage system and each detergent in that storage system, the following must be recorded:

(1) The manufacturer and commercial identifying name of the detergent additive package being reconciled, and the LAC specified in the detergent registration for use with the applicable type of gasoline (i.e., unleaded or leaded). The LAC must be expressed in terms of gallons of detergent per thousand gallons of gasoline or PRC, and expressed to four digits. If the specified LAC is only effective for use with leaded gasoline, the record must so indicate. If the detergent storage system which is the subject of the VAR formula record is a proprietary system under the control of a customer, this fact must be indicated on the record.

(2) The total volume of detergent blended into gasoline and PRC, in accordance with one of the following paragraphs, as applicable.

(i) For a facility which uses in-line meters to measure detergent usage, the total volume of detergent measured, together with supporting data which includes one of the following: the beginning and ending meter readings for each meter being measured, the metered batch volume measurements for each meter being measured, or other comparable metered measurements. The supporting data may be supplied on the VAR formula record or in the form of computer printouts or other comparable VAR supporting documentation.

(ii) For a facility which uses a gauge to measure the inventory of the detergent storage tank, the total volume of detergent shall be calculated from the following equation:

Detergent Volume=(A)−(B)+(C)−(D)

Where:

A=Initial detergent inventory of the tank
B=Final detergent inventory of the tank
C=Sum of any additions to detergent inventory
D=Sum of any withdrawals from detergent inventory for purposes other than the additization of gasoline or PRC.

The value of each variable in this equation must be separately recorded on the VAR formula record. In addition, a list of each detergent addition included in variable C and a list of each detergent withdrawal included in variable D must be provided, either on the formula record or as VAR supporting documentation.

(3) The total volume of gasoline plus PRC to which detergent has been added, together with supporting data which includes one of the following: The beginning and ending meter measurements for each meter being measured, the metered batch volume measurements for each meter being measured, or other comparable metered measurements. The supporting data may be supplied on the VAR formula record or in the form of computer printouts or other comparable VAR supporting documentation. If gasoline has intentionally been overadditized in anticipation of the later addition of unadditized PRC, then the total volume of gasoline plus PRC recorded must include the expected amount of unadditized PRC to be added later. In addition, the amount of gasoline which was overadditized for this purpose must be specified.

(4) The actual detergent concentration, calculated as the total volume of detergent added (pursuant to paragraph (a)(2) of this section), divided by the total volume of gasoline plus PRC (pursuant to paragraph (a)(3) of this section). The concentration must be calculated and recorded to four digits.

(5) A list of each detergent concentration rate initially set for the detergent that is the subject of the VAR record, together with the date and description of each adjustment to any initially set concentration. The concentration adjustment information may be supplied on the VAR formula record or in the form of computer printouts or other comparable VAR supporting documentation. No concentration setting is permitted below the applicable LAC, except as may be modified pursuant to § 80.141(d) or as described in paragraph (a)(7) of this section.

(6) The dates of the VAR period, which shall be no longer than thirty-one days. If the VAR period is contemporaneous with a calendar month, then specifying the month will fulfill this requirement; if not, then the beginning and ending dates and times of the VAR period must be listed. The times may be supplied on the VAR formula record or in supporting documentation. Any adjustment to any detergent concentration rate more than 10 percent over the concentration rate initially set in the VAR period shall terminate that VAR period and initiate a new VAR period, except as provided in paragraph (a)(7) of this section.

(7) The concentration setting for a detergent injector may be set below the applicable LAC, or it may be adjusted more than 10 percent above the concentration initially set in the VAR period without terminating that VAR period, provided that:

(i) The purpose of the change is to correct a batch misadditization prior to the end of the VAR period and prior to the transfer of the batch to another party, or to correct an equipment malfunction; and

(ii) The concentration is immediately returned after the correction to a concentration that fulfills the requirements of paragraphs (a)(5) and (6) of this section; and

(iii) The blender creates and maintains documentation establishing the date and adjustments of the correction; and

(iv) If the correction is initiated only to rectify an equipment malfunction, and the amount of detergent used in this procedure is not added to gasoline in the compliance period, then this amount is subtracted from the detergent volume listed on the VAR formula record.

(8) If unadditized gasoline has been transferred from the facility, other than bulk transfers from refineries or pipelines to non-retail outlets or non-WPC facilities, the total amount of such gasoline must be specified.

(b) *Non-automated facilities.* In the case of a facility in which hand blending or any other non-automated method is used to blend detergent, for each detergent and for each batch of gasoline and each batch of PRC to which the detergent is being added, the following shall be recorded:

(1) The manufacturer and commercial identifying name of the detergent additive package being reconciled, and the LAC specified in the detergent registration for use with the applicable type of gasoline (i.e., unleaded or leaded). The LAC must be expressed in terms of gallons of detergent per thousand gallons of gasoline or PRC, and expressed to four digits. If the specified LAC is only effective for use with leaded gasoline, the record must so indicate.

(2) The date of the additization that is the subject of the VAR formula record.

(3) The volume of added detergent.

(4) The volume of the gasoline and/or PRC to which the detergent has been added. If gasoline has intentionally been overadditized in anticipation of the later addition of unadditized PRC, then the total volume of gasoline plus PRC recorded must include the expected amount of unadditized PRC to be added later. In addition, the amount of gasoline which was overadditized for this purpose must be specified.

(5) The brand (if known), grade, and leaded/unleaded status of gasoline, and/or the type of PRC.

(6) The actual detergent concentration, calculated as the volume of added detergent (pursuant to paragraph (b)(3) of this section), divided by the volume of gasoline and/or PRC (pursuant to paragraph (b)(4) of this section). The concentration must be calculated and recorded to four digits.

* * * * *

(d) *Electronically-generated VAR formula and supporting records.* (1) Electronically-generated records are acceptable for VAR formula records and supporting documentation (including PTDs), provided that they are complete, accessible, and easily readable. VAR formula records must also be stored with access and audit security, which must restrict to a limited number of specified people those who have the ability to alter or delete the records. In addition, parties maintaining records electronically must make available for EPA use the hardware and software necessary to review the records.

(2) Electronically-generated VAR formula records may use an electronic user identification code to satisfy the signature requirements of paragraph (c)(1) of this section, provided that:

(i) The use of the ID is limited to the record creator; and

(ii) A paper record is maintained, which is signed and dated by the VAR formula record creator, acknowledging that the use of that particular user ID on a VAR formula record is equivalent to his/her signature on the document.

(e) Automated detergent blenders must calibrate their detergent equipment once in each calendar half year, with the acceptable calibrations being no less than one hundred twenty days apart. Equipment recalibration is also required each time the detergent package is changed, unless written documentation indicates that the new detergent package has the same viscosity as the previous detergent package. Detergent package change calibrations may be used to satisfy the semiannual requirement provided that the calibrations occur in the appropriate half calendar year and are no less than one hundred twenty days apart.

(f) The following VAR supporting documentation must also be created and maintained:

(1) For all automated detergent blending facilities, documentation reflecting performance of the calibrations required by paragraph (e) of this section, and any associated adjustments of the automated detergent equipment;

(2) For all hand-blending facilities which are terminals, a record specifying, for each calendar month, the total volume in gallons of transfers from the facility of unadditized base gasoline;

(3) For all detergent blending facilities, product transfer documents for all gasoline, detergent and detergent-additized PRC transferred into or out of the facility; in addition, bills of lading, transfer, or sale for all unadditized PRC transferred into the facility;

(4) For all automated detergent blending facilities, documentation establishing the brands (if known) and grades of the gasoline which is the subject of the VAR formula record;

(5) For all hand blending detergent blenders, the documentation, if in the party's possession, supporting the volumes of gasoline, PRC, and detergent reported on the VAR formula record; and

(6) For all detergent blending facilities, documentation establishing the curing of a batch or amount of misadditized gasoline or PRC, or the curing of a use restriction on the additized gasoline or PRC, and providing at least the following information: the date of the curing procedure; the problem that was corrected; the amount, name, and LAC of the original detergent used; the amount, name, and LAC of the added curing detergent; and the actual detergent concentration attained in, and the volume of, the total cured product.

(g) *Document retention and availability.* All detergent blenders shall retain the documents required under this section for a period of five years from the date the VAR formula records and supporting documentation were created, and shall deliver them upon request to the EPA Administrator or the Administrator's authorized representative.

(1) Except as provided in paragraph (g)(3) of this section, automated detergent blender facilities and hand-blender facilities which are terminals, which physically blend detergent into gasoline, must make immediately available to EPA, upon request, the preceding twelve months of VAR formula records plus the preceding two months of VAR supporting documentation.

(2) Except as provided in paragraph (g)(3) of this section, other hand-blending detergent facilities which physically blend detergent into gasoline must make immediately available to EPA, upon request, the preceding two months of VAR formula records and VAR supporting documentation.

(3) Facilities which have centrally maintained records at other locations, or have customers who maintain their own records at other locations for their proprietary detergent systems, and which can document this fact to the Agency, may have until the start of the next business day after the request to supply VAR supporting documentation, or longer if approved by the Agency.

(4) In this paragraph (g) of this section, the term immediately available means that the records must be provided, electronically or otherwise, within approximately one hour of EPA's request, or within a longer time frame as approved by EPA.

9. Section 80.158 is revised to read as follows:

§ 80.158 Product transfer documents (PTDs).

(a) *Contents.* For each occasion when any gasoline refiner, importer, reseller, distributor, carrier, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, distributor, carrier, or blender, transfers custody or title to any gasoline, detergent, or detergent-additized PRC other than when detergent-additized gasoline is sold or dispensed at a retail outlet or wholesale purchaser-consumer facility to the ultimate consumer, the transferor shall provide to the transferee, and the transferee shall acquire from the transferor, documents which accurately include the following information:

(1) The names and addresses of the transferee and transferor; the address requirement may be fulfilled, in the alternative, through separate documentation which establishes said addresses and is maintained by the parties and made available to EPA for the same length of time as required for the PTDs, provided that the normal business procedure of these parties is not to identify addresses on PTDs.

(2) The date of the transfer.

(3) The volume of product transferred.

(4)(i) The identity of the product being transferred (i.e., its identity as base gasoline, detergent, detergent-additized gasoline, or specified detergent-additized oxygenate or detergent-additized gasoline blending stock that comprises a detergent-additized PRC). PTDs for detergent-additized gasoline or PRC are not required to identify the particular detergent used to additize the product.

(ii) If the product being transferred consists of two or more different types of product subject to this regulation, i.e., base gasoline, detergent-additized gasoline, or specified detergent-additized PRC, then the PTD for the commingled product must identify each such type of component contained in the commingled product.

(5) If the product being transferred is gasoline to which an oxygenate or a PRC has been added, then the PTD for the gasoline must identify the oxygenate or PRC. The PTDs for commingled, additized gasolines must identify all the oxygenates and PRCs added to either component.

(6) If the product being transferred is base gasoline, then in addition to the base gasoline identification, the following warning must be stated on the PTD: "Not for sale to the ultimate consumer". If, pursuant to § 80.160(a), the product being transferred is exempt base gasoline to be used for research, development, or test purposes only, the following warning must also be stated on the PTD: "For use in research, development, and test programs only."

(7) The name of the detergent additive as reported in its registration must be used to identify the detergent package on its PTD.

(8) If the product being transferred is leaded gasoline, then the PTD must disclose that the product contains lead and/or phosphorous, as applicable.

(9) If the product being transferred is detergent that is only authorized for the control of carburetor deposits, then the following must be stated on the detergent's transfer document: "For use with leaded gasoline only."

(10) If the product being transferred is detergent-additized gasoline that has been overadditized in anticipation of the later (or earlier) addition of PRC, then the PTD must include a statement that the product has been overadditized to account for a specified volume in gallons, or a specified percentage of the product's total volume, of additional, specified PRC.

(b) Gasoline may not be additized with a detergent authorized only for the control of carburetor deposits and whose product transfer document states "For use with leaded gasoline only", and gasoline may not be additized at the lower concentration specified for a detergent authorized at a lower concentration for the control of carburetor deposits only, unless the product transfer document for the gasoline to be additized identifies it as leaded gasoline.

(c) *Use of product codes and other non-regulatory language.* (1) Product codes and other non-regulatory language may not be used as a substitute for the specified PTD warning language specified in paragraph (a)(6) of this section for base gasoline, except that:

(i) The specified warning language may be omitted for bulk transfers of base gasoline from a refinery to a pipeline if there is a prior written agreement between the parties specifying that all such gasoline is unadditized and will not be transferred to the ultimate consumer;

(ii) Product codes may be used as a substitute for the specified warning language provided that the PTD is an electronic data interchange (EDI) document being used solely for the transfer of title to the base gasoline, and provided that the product codes otherwise comply with the requirements of this section.

(2) Product codes and other language not specified in this section may otherwise be used to comply with PTD information requirements, provided that they are clear, accurate, and not misleading.

(3) If product codes are used, they must be standardized throughout the distribution system in which they are used, and downstream parties must be informed of their full meaning.

(d) *PTD exemption for small transfers of additized gasoline.* Transfers of additized gasoline are exempt from the PTD requirements of this section provided all the following conditions are followed:

(1) The product is being transferred by a distributor who is not the product's detergent blender; and

(2) The recipient is a wholesale purchaser-consumer (WPC) or other ultimate consumer of gasoline, for its own use only or for that of its agents or employees; and

(3) The volume of additized gasoline being transferred is not greater than 550 gallons.

(e) *Recordkeeping period.* Any person creating, providing or acquiring product transfer documentation for gasoline, detergent, or detergent-additized PRC, except as provided in paragraph (d) of this section, shall retain the documents required by this section for a period of five years from the date the product transfer documentation was created, received or transferred, as applicable, and shall deliver such documents to EPA upon request. WPCs are not required to retain PTDs of additized gasoline received by them.

10. Section 80.160 is revised to read as follows:

§ 80.160 Exemptions.

(a) *Research, development, and testing exemptions.* Any detergent that is either in a research, development, or test status, or is sold to petroleum, automobile, engine, or component manufacturers for research, development, or test purposes, or any gasoline to be used by, or under the control of, petroleum, additive, automobile, engine, or component manufacturers for research, development, or test purposes, is exempted from the provisions of the interim detergent program, provided that:

(1) The detergent (or fuel containing the detergent), or the gasoline, is kept segregated from non-exempt product, and the party possessing the product maintains documentation identifying the product as research, development, or testing detergent or fuel, as applicable, and stating that it is to be used only for research, development, or testing purposes; and

(2) The detergent (or fuel containing the detergent), or the gasoline, is not sold, dispensed, or transferred, or offered for sale, dispensing, or transfer from a retail outlet. It shall also not be sold, dispensed, or transferred, or offered for sale, dispensing, or transfer from a wholesale purchaser-consumer facility, unless such facility is associated with detergent, fuel, automotive, or engine research, development or testing; and

(3) The party using the product for research, development, or testing purposes, or the party sponsoring this usage, notifies the EPA, on at least an annual basis and prior to the use of the product, of the purpose(s) of the program(s) in which the product will be used and the anticipated volume of the product to be used. The information must be submitted to the address or fax number provided in § 80.174(c).

(b) *Racing fuel and aviation fuel exemptions.* Any fuel that is refined, sold, dispensed, transferred, or offered for sale, dispensing, or transfer as automotive racing fuel or as aircraft engine fuel, is exempted from the provisions of this subpart, provided that:

(1) The fuel is kept segregated from non-exempt fuel, and the party possessing the fuel for the purposes of refining, selling, dispensing, transferring, or offering for sale, dispensing, or transfer as automotive racing fuel or as aircraft engine fuel, maintains documentation identifying the product as racing fuel, restricted for non-highway use in racing motor vehicles, or as aviation fuel, restricted for use in aircraft, as applicable;

(2) Each pump stand at a regulated party's facility, from which such fuel is dispensed, is labeled with the applicable fuel identification and use restrictions described in paragraph (b)(1) of this section; and

(3) The fuel is not sold, dispensed, transferred, or offered for sale, dispensing, or transfer for highway use in a motor vehicle.

(c) *California gasoline exemptions.* (1) Gasoline or PRC which is additized in the state of California is exempt from

the VAR provisions in §§ 80.155(b) and (e) and 80.157, provided that:

(i) For all such gasoline or PRC, whether intended for sale within or outside of California, records of the type required for California gasoline (specified in title 13, California Code of Regulations, section 2257) are maintained; and

(ii) Such records, with the exception of daily additization records, are maintained for a period of five years from the date they were created and are delivered to EPA upon request.

(2) Gasoline or PRC that is transferred and/or sold solely within the state of California is exempt from the PTD provisions of the interim detergent program, specified in §§ 80.155(c) and 80.158.

(3) Nothing in this paragraph (c) exempts such gasoline or PRC from the requirements of § 80.155(a) and (e), as applicable. EPA will base its determination of California gasoline's conformity with the detergent's LAC on the additization records required by CARB, or records of the same type.

11. Subpart G is further amended by adding new §§ 80.161 through 80.173, to read as follows:

§ 80.161 Detergent additive certification program.

(a) *Effective dates and applicability of requirements.* (1) As of July 1, 1997:

(i) Detergent additives for the control of port fuel injector deposits (PFID) and/or intake valve deposits (IVD) in gasoline engines may not be transferred or sold for use in compliance with this subpart unless such additives have been certified according to the requirements of this section.

(ii) Except as provided in § 80.169(c)(8), PFID and IVD control additives may not be added to gasoline or post-refinery component (PRC) for compliance with this subpart unless such additives have been certified according to the requirements of this section.

(iii) Gasoline may not be sold or transferred to a party who sells or transfers gasoline to the ultimate consumer unless such gasoline contains detergent additives which have been certified according to the requirements of this section.

(2) Beginning August 1, 1997, all gasoline sold or transferred to the ultimate consumer must contain detergent additive(s) which have been certified, according to the requirements of this section, to be effective for the control of PFID and IVD in gasoline engines.

(3) Except as specifically exempted in § 80.173, these detergency requirements apply to all gasoline, whether intended for on-highway or nonroad use, including conventional, oxygenated, reformulated, and leaded gasolines, as well as the gasoline component in mixtures of petroleum and alcohol fuels, gasoline used as marine fuel, gasoline service accumulation fuel (as described in § 86.113–94(a)(1) of this chapter), the gasoline component of fuel mixtures of petroleum and methanol used for service accumulation in flexible fuel vehicles (as described in § 86.113–94(d) of this chapter), the gasoline used for factory fill purposes, and all additized PRC.

(4) The specific controls and prohibitions applicable to persons subject to these regulations are set forth in § 80.168.

(b) *Detergent additive certification requirements.* For a detergent additive package to be certified as eligible for use by detergent blenders in complying with the gasoline detergency requirements of this subpart, the requirements listed in this paragraph (b) must be satisfied for such detergent. Subject to the provisions of paragraph (e) of this section, if the certifier fails to conduct the specified tests or to submit the specified materials, or if EPA judges the testing or materials to be inadequate, or if the detergent fails EPA confirmatory deposit control performance testing pursuant to § 80.167, the Administrator may deny or withdraw the detergent's eligibility to be used to satisfy the detergency requirements of this subpart.

(1) The detergent additive manufacturer must properly register the detergent additive under 40 CFR part 79. For this purpose:

(i) The compositional data required under § 79.21(a) of this chapter shall include the information specified in § 80.162.

(ii) The minimum recommended additive concentration required under § 79.21(d) of this chapter shall be reported to EPA in units of gallons of detergent additive package per 1000 gallons of gasoline or PRC, provided to four digits. This concentration is the lowest additive concentration (LAC) referred to in § 80.170, and shall be reported as follows:

(A) For a detergent additive registered for use in unleaded gasoline, the minimum concentration must be determined and reported for each certification option under which the manufacturer wishes to certify the additive pursuant to § 80.163.

(*1*) In the case of a detergent certified for use in California gasoline based on an existing certification granted by the California Air Resources Board (CARB), pursuant to § 80.163(d), the minimum recommended concentration must equal or exceed the amount specified in the CARB certification.

(*2*) In the case of any other detergent certification option, the minimum recommended concentration must equal or exceed the amount mixed into the associated test fuel specified in § 80.164, which was shown to satisfy the PFID and IVD deposit control performance tests and standards specified in § 80.165.

(B) For a detergent registered for use in leaded gasoline, the minimum recommended concentration must be no less than the amount shown to be needed for control of carburetor deposits, pursuant to the test procedure and test fuel guidelines in § 80.166.

(C) Once it has been registered by EPA, the minimum recommended concentration specified by a detergent manufacturer to detergent blenders and other users of the additive, pursuant to paragraph (c) of this section, may not be changed without first notifying EPA. Such notification should be sent by certified mail to the address specified in § 80.174(b). The change in minimum concentration must be supported by existing certification data or else the notification to EPA must be accompanied by new certification information which demonstrates that the modification is consistent with the requirements of paragraphs (b)(1)(ii)(A) and (B) of this section.

(2) The detergent additive manufacturer (or other certifying party) must submit to EPA a sample of the actual detergent additive package which was used in the certification testing specified in § 80.164 or, if such sample is not available, then a sample which has the same composition as the package used in certification testing.

(i) The sample volume shall be between 250 ml and 500 ml.

(ii) The sample shall be packaged in a container which has a resealable closure and which will maintain sample integrity for at least one year. The container shall be labeled with the name and address of the manufacturer and the name of the detergent additive package.

(iii) Any known shelf life limitations, and any available information on optimal temperature, light exposure, or other conditions to prolong sample shelf life, shall be provided.

(iv) If the certifying party wishes to claim that the sample or any accompanying documents are entitled to special handling for reasons of business confidentiality, the party must clearly identify the sample or documents as such. EPA will handle any samples or documents with such claims according to the regulations at 40 CFR part 2.

(v) The sample shall be submitted to EPA, at the address provided in § 80.174(a), within seven days of the date on which the certification letter for the detergent package is sent to EPA as required by paragraph (b)(3) of this section.

(3) The detergent additive manufacturer (or other certifying party) shall submit a certification letter for the detergent additive package to the address in § 80.174(b). The party must use certified or express mail with return receipt service. The letter shall be signed by a person legally authorized to represent the certifying party and shall contain the following information:

(i) Identifying information.

(A) The name and address of the detergent additive manufacturer.

(B) In any case where the certifier is not the detergent additive manufacturer, such as in the case of a fuel-specific certification pursuant to § 80.163(c), the name and address of the certifier.

(C) The commercial identifying name of the detergent additive product as registered under the requirements of § 79.21 of this chapter.

(ii) A statement attesting that:

(A) The detergent package which is the subject of this certification has been tested according to applicable procedural and test fuel requirements in this subpart and has met the applicable performance standards; and

(B) The testing was conducted in a manner consistent with good engineering practices; and

(C) Complete documentation of the test fuel formulation and IVD demonstration procedures, detergent performance test procedures, and test results are available for EPA's inspection upon request.

(iii) The name and location of the laboratory(ies) at which the certification testing was conducted and the dates during which the testing was conducted.

(iv) For each option under which certification is sought pursuant to § 80.163, specifications of the test fuel(s) in which the detergent underwent performance testing. These fuel specifications must include:

(A) The sulfur content in weight percent.

(B) The T–90 distillation point in degrees Fahrenheit.

(C) The olefin content in volume percent.

(D) The aromatic content in volume percent.

(E) The identity and volume percent of any oxygenate compound.

(F) The source of the test fuel(s) and/or fuel blend stocks used to formulate the test fuel(s).

(v) In the case of a national or PADD certification (pursuant to § 80.163 (a) or (b)) for which the test fuel was specially formulated from refinery blend stocks, the results of the IVD demonstration test, pursuant to § 80.164(b)(3).

(vi) In the case of a fuel-specific detergent certification, pursuant to § 80.163(c), the definition of the segregated gasoline pool, including any permitted PRC, for which the certification is sought, and the fuel parameter percentile distributions determined for the subject gasoline pool, as specified in § 80.164(c). The percentile distributions must include all of the fuel parameters listed in paragraph (b)(3)(iv) (A) through (D) of this section, along with any other fuel parameter(s) which the certifier wishes to use to define the certification fuel. As specified in § 80.164(c)(1)(iv), the procedures used to measure the additional parameters must be identified, as well as the levels of these additional parameters present in the test fuel(s).

(vii) In the case of a certification for California gasoline based on an existing certification granted by CARB, pursuant to § 80.163(d), a copy of the CARB certificate.

(viii) The test concentration(s) of the subject detergent additive in each test fuel, and the corresponding test results (percent flow restriction demonstrated in the PFID test and milligrams of deposit per valve demonstrated in the IVD test).

(ix) For each option under which certification of the detergent is sought, the minimum recommended concentration which the certifying party seeks to establish for the detergent additive package, pursuant to paragraph (b)(1)(ii) of this section.

(4) EPA will acknowledge receipt of the detergent certification letter. The effective date of certification will be the sooner of 60 days from the date on which EPA receives the certification letter, or the certifier's receipt of EPA's acknowledgement of the certification letter. However, neither the passage of 60 days nor EPA's acknowledgement will signify acceptance by EPA of the validity of the information in the certification letter or the adequacy or potency of the detergent sample submitted pursuant to paragraph (b)(2) of this section. EPA may elect at any time to review the detergent certification data, analyze the submitted detergent additive sample, or subject the detergent additive package to confirmatory testing as described in § 80.167 and, where appropriate, may disqualify a detergent certification according to the provisions in paragraph (e) of this section.

(c) The minimum concentration reported in the detergent registration according to the provisions of paragraph (b)(1)(ii) of this section, plus any restrictions in use associated with that concentration, must be accurately communicated in writing by the additive manufacturer to each fuel manufacturer or detergent blender who purchases the subject detergent for purpose of compliance with the gasoline detergency requirements of this subpart, and to any additive manufacturer who purchases the subject additive with the intent of reselling it to a fuel manufacturer for this purpose.

(d) The rate at which a detergent blender treats gasoline with a detergent additive package must be no less than the minimum recommended concentration reported for the subject detergent additive pursuant to paragraph (b)(1)(ii) of this section, except under the following conditions:

(1) If a detergent blender possesses deposit control performance test results as specified in § 80.165 or § 80.166 which show that the minimum treat rate recommended by the manufacturer of a detergent additive product exceeds the amount of that detergent actually required for effective deposit control, then, upon informing EPA in writing of these circumstances, the detergent blender may use the detergent at the lower concentration substantiated by these test results.

(2) The notification to EPA must clearly specify the name of the detergent product and its manufacturer, the concentration recommended by the detergent manufacturer, and the lower concentration which the detergent blender intends to use. The notification must also attest that the required data are available to substantiate the deposit control effectiveness of the detergent at the intended lower concentration. The notification must be sent by certified mail to the address specified in § 80.174(b).

(3) At its discretion, EPA may require that the detergent blender submit the test data purported to substantiate the claimed effectiveness of the lower concentration of the detergent additive. In addition, EPA may require the manufacturer of the subject detergent additive to submit test data substantiating the minimum recommended concentration specified in the detergent additive registration. In either case, EPA will send a letter to the appropriate party; the supporting data will be due to EPA within 30 days of receipt of EPA's letter.

(i) If the detergent blender fails to submit the required supporting data to EPA in the allotted time period, or if EPA judges the submitted data to be inadequate to support the detergent blender's claim that the lower concentration provides a level of deposit control consistent with the requirements of this section, then EPA will disapprove the use of the detergent at the lower concentration. Further, the detergent blender may be subject to applicable liabilities and penalties pursuant to §§ 80.169 and 80.172 for any gasoline or PRC it has additized at the lower concentration.

(ii) If the detergent manufacturer fails to submit the required test data to EPA within the allotted time period, EPA will proceed on the assumption that data are not available to substantiate the minimum recommended concentration specified in the detergent registration, and the subject additive may be disqualified for use in complying with the requirements of this subpart, pursuant to the procedures in paragraph (e) of this section. The detergent manufacturer may also be subject to applicable liabilities and penalties in §§ 80.169 and 80.172.

(iii) If both parties submit the required information, EPA will evaluate the quality and results of both sets of test data, and will either approve or disapprove the use of the lower treat rate submitted by the detergent blender. EPA will inform both parties of the results of its analysis.

(e) *Disqualification of a detergent additive package.* (1) When EPA makes a preliminary determination that a detergent additive certifier has failed to comply with the detergent certification requirements of this section, including a failure to submit required materials for a detergent additive or submission of materials which EPA deems inadequate, or if a detergent additive fails confirmatory testing conducted pursuant to § 80.167, EPA shall notify the additive certifier by certified mail, return receipt requested, setting forth the basis for that determination and informing the certifier that the detergent may lose its eligibility to be used to comply with the detergency requirements of this section.

(2) If EPA determines that the detergent certification was created by fraud or other misconduct, such as a negligent disregard for the truthfulness or accuracy of the required information, the detergent certification will be considered void *ab initio* and the disqualification will be retroactive to July 1, 1997 or the date on which the additive product was first certified, whichever is later.

(3) The certifier will be afforded 60 days from the date of receipt of the notice of intent of detergent disqualification to submit written comments concerning the notice, and to demonstrate or achieve compliance with the specific requirements which provide the basis for the proposed disqualification. If the certifier does not respond in writing within 60 days from the date of receipt of the notice of intent of disqualification, the detergent disqualification shall become final and the Administrator shall notify the certifier of such final disqualification order. If the certifier responds in writing within 60 days from the date of receipt of the notice of intent to disqualify, the Administrator shall review and consider all comments submitted by the certifier before taking final action concerning the proposed disqualification. All correspondence regarding a disqualification must be sent to the address provided in § 80.174(b).

(4) As part of a written response to a notice of intent to disqualify, a certifier may request an informal hearing concerning the notice. Any such request shall state with specificity the information the certifier wishes to present at such a hearing. If an informal hearing is requested, EPA shall schedule such a hearing within 90 days from the date of receipt of the request. If an informal hearing is held, the subject matter of the hearing shall be confined solely to whether or not the certifier has complied with the specific requirements which provide the basis for the proposed disqualification. If an informal hearing is held, the designated presiding officer may be any EPA employee, the hearing procedures shall be informal, and the hearing shall not be subject to or governed by 40 CFR part 22 or by 5 U.S.C. 554, 556, or 557. A verbatim transcript of each informal hearing shall be kept and the Administrator (or designee) shall consider all relevant evidence and arguments presented at the hearing in making a final decision concerning a proposed disqualification.

(5) If a certifier who has received a notice of intent to disqualify submits a timely written response, and the Administrator (or designee) decides after reviewing the response and the transcript of any informal hearing to disqualify the detergent for use in complying with the requirements of this subpart, the Administrator (or designee) shall issue a final disqualification order and forward a copy of the disqualification order to the certifier by certified mail. Notice of the disqualification order will also be published in the **Federal Register**. The disqualification will become effective as of the date on which the copy of the order is received by the certifier. If the certifier is also a blender of the disqualified additive, then the certifier must stop using the ineligible detergent upon receipt of the disqualification order.

(6) Within 10 days of receipt of EPA's notification of the final decision to disqualify a detergent additive package pursuant to this paragraph (e), the detergent certifier must submit to EPA, at the address specified in § 80.174(b), a list of its customers who use the disqualified detergent. Failure to do so may subject the certifier to liabilities for violations of § 80.168 that result from the use of the uncertified detergent. EPA shall inform the certifier's customers by certified mail that the detergent is no longer eligible for compliance with the requirements of this subpart. These parties must stop using the ineligible detergent additive package and substitute an eligible detergent additive within 45 days of receiving the notification, or within 45 days of publication of the disqualification notice in the **Federal Register**, whichever occurs sooner.

§ 80.162 Additive compositional data.

For a detergent additive product to be eligible for use by detergent blenders in complying with the gasoline detergency requirements of this subpart, the compositional data to be supplied to EPA by the additive manufacturer for the purpose of registering a detergent additive package under § 79.21(a) of this chapter must include the items listed in this section. In the case of items requiring measurement or other technical analysis, and for which a specific test procedure is not stipulated herein, the procedure must conform to reasonable and customary standards of repeatability and reproducibility, and reasonable and customary limits of detection and accuracy for the type of test procedure or analytic procedure in question. At EPA's request, detailed documentation of any such test procedure must be submitted within 10 days of the registrant's receipt of EPA's request.

(a) A complete listing of the components of the detergent additive package and the weight and/or volume percent (as applicable) of each component of the package.

(1) When possible, standard chemical nomenclature shall be used or the chemical structure of the component shall be given. Polymeric components may be reported as the product of other chemical reactants, provided that the supporting data specified in paragraph (b) of this section is also reported.

(2) Each detergent-active component of the package shall be classified into one of the following designations:

(i) Polyalkyl amine;

(ii) Polyether amine;

(iii) Polyalkylsuccinimide;

(iv) Polyalkylaminophenol;

(v) Detergent-active petroleum-based carrier oil;

(vi) Detergent-active synthetic carrier oil; and

(vii) Other detergent-active component (identify category, if feasible.)

(3) Composition variability.

(i) The composition of a detergent additive reported in a single additive registration (and the detergent additive product sold under a single additive registration) may not:

(A) Include detergent-active components which differ in identity from those contained in the detergent additive package at the time of certification testing; or

(B) Include a range of concentration for any detergent-active component such that, if the component were present in the detergent additive package at the lower bound of the reported range, the deposit control effectiveness of the additive package would be reduced as compared with the level of effectiveness demonstrated during certification testing.

(ii) The identity or concentration of non-detergent-active components of the detergent additive package may vary under a single registration, provided that the range of such variation is specified in the registration and that such variability does not reduce the deposit control effectiveness of the additive package as compared with the level of effectiveness demonstrated during certification testing.

(iii) Except as provided in paragraph (a)(3)(iv) of this section, detergent additive packages which do not satisfy the restrictions in this paragraph (a)(3) must be separately registered. EPA may disqualify an additive for use in satisfying the requirements of this subpart if EPA determines that the variability included within a given detergent additive registration may reduce the deposit control effectiveness of the detergent package such that it may invalidate the minimum recommended concentration reported in accordance with the applicable requirements of § 80.161(b)(1)(ii).

(iv) A change in minimum concentration requirements resulting from a modification of detergent additive composition shall not require a new detergent additive registration or a change in existing registration if:

(A) The modification is effected by a detergent blender only for its own use or for the use of parties which are subsidiaries of, or share common ownership with, the blender, and the modified detergent is not sold or transferred to other parties; and

(B) The modification is a dilution of the additive for the purpose of ensuring proper detergent flow in cold weather; and

(C) Gasoline is the only diluting agent used; and

(D) The diluted detergent is subsequently added to gasoline at a rate that attains the detergent's registered minimum recommended concentration, taking into account the dilution; and

(E) EPA is notified, either before or within seven days after the dilution action, of the identity of the detergent, the identity of the diluting material, the amount or percentage of the dilution, the change in treat rate necessitated by the dilution, and the locations and time period of diluted detergent usage. The notification shall be sent or faxed to the address in § 80.174(c).

(b) For detergent-active polymers and detergent-active carrier oils which are reported as the product of other chemical reactants:

(1) Identification of the reactant materials and the manufacturer's acceptance criteria for determining that these materials are suitable for use in synthesizing detergent components. The manufacturer must maintain documentation, and submit it to EPA upon request, demonstrating that the acceptance criteria reported to EPA are the same criteria which the manufacturer specifies to the suppliers of the reactant materials.

(2) A Gel Permeation Chromatograph (GPC), providing the molecular weight distribution of the polymer or detergent-active carrier oil components and the concentration of each chromatographic peak representing more than one percent of the total mass. For these results to be acceptable, the GPC test procedure must include equipment calibration with a polystyrene standard or other readily attainable and generally accepted calibration standard. The identity of the calibration standard must be provided, together with the GPC characterization of the standard.

(c) For non-detergent-active carrier oils, the following parameters:

(1) T10, T50, and T90 distillation points, and end boiling point, measured according to applicable test procedures cited in § 80.46.

(2) API gravity and viscosity

(3) Concentration of oxygen, sulfur, and nitrogen, if greater than or equal to 0.5 percent (by weight) of the carrier oil

(d) Description of an FTIR-based method appropriate for identifying the detergent additive package and its detergent-active components (polymers, carrier oils, and others) both qualitatively and quantitatively, together with the actual infrared spectra of the detergent additive package and each detergent-active component obtained by this test method.

(e) To provide a basis for establishing an affirmative defense to presumptive liability pursuant to § 80.169(c)(4)(i)(D)(*2*)(*i*), specific physical parameters must be identified which the manufacturer considers adequate and appropriate, in combination with other information and sampling requirements under this subpart, for identifying the detergent additive package and monitoring its production quality control.

(1) Such parameters shall include (but need not be limited to) viscosity, density, and basic nitrogen content, unless the additive manufacturer specifically requests, and EPA approves, the substitution of other parameter(s) which the manufacturer considers to be more appropriate for a particular additive package. The request must be made in writing and must include an explanation of how the requested physical parameter(s) are helpful as indicator(s) of detergent production quality control. EPA will respond to such requests in writing; the additional parameters are not approved until the certifier receives EPA's written approval.

(2) The manufacturer shall identify a standardized measurement method, consistent with the chemical and physical nature of the detergent product, which will be used to measure each parameter. The documented ASTM repeatability for the method shall also be cited. The manufacturer's target value for each parameter in the detergent package, and the expected range of production values for each parameter, shall be specified.

(3) EPA will consider the parameter measurements to be an acceptable basis for establishing an affirmative defense to presumptive liability, if the expected range of variability differs from the target value by an amount no greater than five times the standard repeatability of the test procedure, or by no more than 10 percent of the target value, whichever is less. However, in the case of nitrogen analysis or other procedures for measuring concentrations of specific chemical compounds or elements, when the target value is less than 10 parts per million, a range of variability up to 50 percent

of the target value will be considered acceptable.

(4) If a manufacturer wishes to rely on measurement methods or production variability ranges which do not conform to the above limitations, then the manufacturer must receive prior written approval from EPA in order to be assured that any related parameter measurements will be considered an acceptable basis for establishing an affirmative defense. A request for such allowance must be made in writing. It must fully justify the adequacy of the test procedure, explain why a broader range of variability is required, and provide evidence that the production detergent will perform adequately throughout the requested range of variability.

§ 80.163 Detergent certification options.

To be used to satisfy the detergency requirements under § 80.161(a), a detergent additive must be certified in accordance with the requirements of one or more of the options and suboptions described in this section. Where a certification option makes an additive eligible for use in a particular gasoline, that additive is also eligible for use in PRC which will be added to the particular gasoline. Under each option, the lowest additive concentration (LAC) or minimum recommended concentration registered for a detergent additive package, pursuant to § 80.161(b)(1)(ii), must equal or exceed the lowest detergent treat rate shown to be needed in the designated test fuel in order to meet the deposit control performance requirements specified in § 80.165.

(a) *National certification.* A detergent certified under a national certification option is eligible for use in gasoline which can be sold or dispensed anywhere within the United States or its territories (subject to approved state programs).

(1) *National generic certification option.* To be certified under this option, a candidate detergent must meet the deposit control performance test requirements and standards specified in § 80.165 using test fuels that conform to the requirements in § 80.164(b)(1), Table 1, Line 1. A detergent certified under this option is eligible to be used at a conforming LAC in any grade of gasoline, with or without an oxygenate component.

(i) *National nonoxygenate suboption.* The requirements for certification under this suboption are the same as those in paragraph (a)(1) of this section, except that, pursuant to § 80.164(a)(2)(ii), the certification test fuel shall contain no ethanol or other oxygenate. A detergent certified under this suboption is eligible to be used at a conforming LAC only in gasoline that does not contain an oxygenate component.

(ii) *National oxygenate-specific suboption.* The requirements for certification under this suboption are the same as those in paragraph (a)(1) of this section, except that, pursuant to § 80.164(a)(2)(iii), the certification test fuel shall contain an oxygenate compound other than ethanol. A detergent certified under this suboption is eligible to be used at a conforming LAC only in gasoline that contains no oxygenate component other than the one present in the test fuel.

(2) *National premium certification option.* To be certified under this option, a candidate detergent must meet the deposit control performance test requirements and standards specified in § 80.165 using test fuels that conform to the requirements in § 80.164(b)(1), Table 1, Line 2. A detergent certified under this option is eligible to be used at a conforming LAC only in premium grade gasoline, with or without an oxygenate component.

(i) *National premium nonoxygenate suboption.* The requirements for certification under this suboption are the same as those in paragraph (a)(2) of this section, except that, pursuant to § 80.164(a)(2)(ii), the certification test fuel shall contain no ethanol or other oxygenate. A detergent certified under this suboption is eligible to be used at a conforming LAC only in premium grade gasoline that does not contain an oxygenate component.

(ii) *National premium oxygenate-specific suboption.* The requirements for certification under this suboption are the same as those in paragraph (a)(2) of this section, except that, pursuant to § 80.164(a)(2)(iii), the certification test fuel shall contain an oxygenate compound other than ethanol. A detergent certified under this suboption is eligible to be used at a conforming LAC only in premium grade and contains no oxygenate component other than the one present in the test fuel.

(b) *Petroleum Administrative Defense District (PADD) Certification.* A detergent certified under a PADD certification option is eligible for use in gasoline which can be sold or dispensed to the ultimate purchaser, or to those parties who sell or dispense to the ultimate consumer, only within the PADD for which the certification was granted. The states and jurisdictions included within each PADD are specified in § 79.59(b)(3)(i) through (v), except that, for purposes of PADD certification, the state of California is excluded from PADD V.

(1) *PADD generic certification option.* To be certified under this option, a candidate detergent must meet the deposit control performance test requirements and standards specified in § 80.165 using test fuels that conform to the requirements in § 80.164(b)(1), Table 2, for a selected PADD. A detergent certified under this option is eligible to be used at a conforming LAC in any grade of gasoline, with or without an oxygenate component, provided that the gasoline is ultimately dispensed in the selected PADD.

(i) *PADD nonoxygenate suboption.* The requirements for certification under this suboption are the same as those in paragraph (b)(1) of this section, except that, pursuant to § 80.164(a)(2)(ii), the certification test fuel shall contain no ethanol or other oxygenate. A detergent certified under this suboption is eligible to be used at a conforming LAC only in gasoline that is nonoxygenated and is ultimately dispensed in the selected PADD.

(ii) *PADD oxygenate-specific suboption.* The requirements for certification under this suboption are the same as those in paragraph (b)(1) of this section, except that, pursuant to § 80.164(a)(2)(iii), the certification test fuel shall contain an oxygenate compound other than ethanol. A detergent certified under this suboption is eligible to be used at a conforming LAC only in gasoline that contains no oxygenate component other than the one present in the test fuel and is ultimately dispensed in the selected PADD.

(2) *PADD premium certification option.* To be certified under this option, a candidate detergent must meet the deposit control performance test requirements and standards specified in § 80.165 using test fuels that conform to the requirements in § 80.164(b)(1), Table 2, for a selected PADD. A detergent certified under this option is eligible to be used at a conforming LAC only in gasoline that is premium grade (with or without an oxygenate component) and is ultimately dispensed in the selected PADD.

(i) *PADD premium nonoxygenate suboption.* The requirements for certification under this suboption are the same as those in paragraph (b)(2) of this section, except that, pursuant to § 80.164(a)(2)(ii), the certification test fuel shall contain no ethanol or other oxygenate. A detergent certified under this suboption is eligible to be used at a conforming LAC only in gasoline that is premium grade, contains no oxygenate component, and is ultimately dispensed in the selected PADD.

(ii) *PADD premium oxygenate-specific suboption.* The requirements for certification under this suboption are the same as those in paragraph (b)(2) of this section, except that, pursuant to § 80.164(a)(2)(iii), the certification test fuel shall contain an oxygenate compound other than ethanol. A detergent certified under this suboption is eligible to be used at a conforming LAC only in gasoline that is premium grade, contains no oxygenate component other than the one present in the test fuel, and is ultimately dispensed in the selected PADD.

(c) *Fuel-specific certification.* Except as provided in paragraph (c)(3) of this section, to be certified under the fuel-specific certification option, a candidate detergent must meet the deposit control performance test requirements and standards specified in § 80.165 using test fuels that conform to the requirements of § 80.164(c).

(1) A detergent certified under this option is eligible to be used at a conforming LAC only in the defined gasoline pool reported in the certification letter pursuant to § 80.161(b)(3).

(i) The gasoline pool may only include gasoline produced or distributed from the facilities covered by the fuel survey which was used to define the fuel-specific certification test fuels, pursuant to § 80.164(c)(1).

(ii) The gasoline pool must be kept segregated from any other gasoline prior to blending with the detergent additive.

(iii) Depending on the oxygenate components added to the test fuel pursuant to § 80.164(a)(2), the gasoline pool may be inclusive of all grades and all oxygenate blending characteristics (i.e., generic), or may be restricted to non-oxygenated gasoline, or to gasoline containing a specific oxygenate compound. The certification may also be restricted to premium grade gasoline. Any such use restrictions must be specified in the certification letter. Provisions in §§ 80.168 and 80.171(a)(9) through (12) related to such use restrictions also apply.

(2) Detergent certification under this option entails special initial and annual reporting requirements, specified under §§ 80.161(b)(3)(vi) and 80.164(c)(3), which necessitate that the responsible party have control over and access to the segregated gasoline pool for which the detergent is certified. For this reason, the certifying party under this option is likely to be (but is not required to be) a fuel manufacturer or detergent blender, rather than the additive manufacturer.

(3) If a certifier demonstrates that the required test fuel representing a segregated pool of gasoline meets the deposit control performance standards specified in § 80.165 in the absence of a detergent additive, or using a detergent additive which has only PFID-control activity, then this gasoline pool (and PFID detergent, if applicable) can be certified accordingly under the fuel-specific option.

(4) Gasoline properly additized with a detergent certified under the fuel-specific option may be transferred or sold anywhere within the United States and its territories (subject to approved state programs).

(d) *CARB-Based Certification.* A valid certification under section 2257 of Title 13, California Code of Regulations (CARB certification) may be the basis for a certification under the following restrictions and conditions:

(1) A detergent certified under this option may be used at the LAC specified in the CARB certification only in gasoline that meets the requirements of California Phase II reformulated gasoline (pursuant to Title 13, Chapter 5, Article 1, Subarticle 2, California Code of Regulations, Standards for Gasoline Sold Beginning March 1, 1996). The grade(s) of California gasoline which may be so additized, and the oxygenate(s) which may be present, are as specified in the CARB certification for the detergent in question.

(2) The gasoline must be either: Additized in California; or sold or dispensed to the ultimate consumer in California (or to parties who sell or dispense to the ultimate consumer in California); or both additized and ultimately dispensed in California.

(3) A certification under this option will continue to be valid only as long as the CARB certification remains valid. The certifier must cease selling or using a detergent immediately upon being notified by CARB that the CARB certification for this detergent has been invalidated, and must notify EPA within 7 days of receipt of this notification.

§ 80.164 Certification test fuels.

(a) *General requirements.* This section provides specifications for the test fuels required in conjunction with the certification options described in § 80.163. For each such certification option, the associated test fuel must meet or exceed the levels of four basic fuel parameters (aromatics, fuel sulfur, olefins, and T–90) prescribed here and may also contain specified oxygenate compounds. In addition, pursuant to paragraph (b)(3) of this section, some fuels must undergo an IVD demonstration test before they are eligible to be used as test fuels under this certification program. Test fuel characteristics must be reported to EPA in the detergent certification letter required pursuant to § 80.161(b)(3).

(1) Quantitative specifications for the four basic fuel parameters, provided in paragraphs (b) and (c) of this section, refer to the levels of these parameters in the base gasoline prior to the addition of any oxygenate. The levels of the basic fuel parameters must be measured in accordance with applicable procedures in § 80.46.

(2) Oxygenate components of certification test fuels must be of fuel grade quality. The type and amount of oxygenate to be blended into the test fuel (if any) shall be as follows:

(i) To certify a detergent for generic use (i.e., for use in gasoline containing any oxygenate compound, as well as for use in nonoxygenated gasoline), the finished test fuel shall contain ethanol at 10 volume percent.

(ii) To certify a detergent specifically for use in nonoxygenated gasoline, no oxygenate compounds shall be added to the test fuel.

(iii) To certify a detergent specifically for use in gasoline blended with a specified oxygenate compound other than ethanol, the specified oxygenate must be added to the test fuel in an amount such that the finished fuel contains the oxygenate at the highest concentration at which the specific oxygenate may be used in in-use gasoline.

(3) No detergent-active substance other than the detergent additive package undergoing testing may be added to a certification test fuel. Typical nondetergent additives, such as antioxidants, corrosion inhibitors, and metal deactivators, may be present in the test fuel at the discretion of the additive certifier. In addition, any nondetergent additives (other than oxygenate compounds) which are commonly blended into gasoline and which are known or suspected to affect IVD or PFID formation, or to reduce the ability of the detergent in question to control such deposits, should be added to the test fuel for certification testing.

(4) Certification test requirements may be satisfied for a detergent additive using more than one batch of test fuel, provided that each batch satisfies all applicable test fuel requirements under this section.

(5) Unless otherwise required by this section, finished test fuels must conform to the requirements for commercial gasoline described in ASTM D 4814–95c, "Standard Specification for Automotive Spark-Ignition Engine

Fuel", which is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at U.S. EPA, OAR, 401 M Street, Southwest, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies of this material may be obtained from ASTM, 1916 Race St., Philadelphia, PA 19103.

(b) National and PADD certification test fuels.

(1) Test fuels for the national generic and premium certification options must contain levels of the designated fuel parameters which meet or exceed the applicable values in Table 1. Test fuels for the PADD generic certification options must contain levels of the designated fuel parameters which meet or exceed the applicable values in Table 2. Test fuels for the PADD premium certification options must contain levels of the designated fuel parameters which meet or exceed the applicable values in Table 3. Oxygenate requirements for the respective nonoxygenate and oxygenate-specific suboptions are specified in paragraph (a)(2) of this section.

TABLE 1.—NATIONAL CERTIFICATION TEST FUELS

Certification option	Required minimum fuel parameter values				
	Sulfur (weight %)	T–90 (F)	Olefins (volume %)	Aromatics (volume %)	Oxygenate (volume %)
1. National Generic	0.034	339	11.4	31.1	10% Ethanol.
2. National Premium	0.016	332	6.5	35.9	

TABLE 2.—PADD-SPECIFIC GENERIC CERTIFICATION TEST FUELS

Certification option	Required minimum fuel parameter values				
	Sulfur (weight %)	T–90 (F)	Olefins (volume %)	Aromatics (volume %)	Oxygenate (volume %)
PADD 1 Generic	0.039	343	15.4	32.1	
PADD 2 Generic	0.034	338	10.3	29.3	
PADD 3 Generic	0.032	343	12.9	29.8	10% Ethanol.
PADD 4 Generic	0.050	326	10.0	27.1	
PADD 5 Generic	0.021	337	7.6	34.5	

TABLE 3.—PADD-SPECIFIC PREMIUM-GRADE CERTIFICATION TEST FUELS

Certification option	Required minimum fuel parameter values				
	Sulfur (weight %)	T–90 (F)	Olefins (volume %)	Aromatics (volume %)	Oxygenate (volume %)
PADD 1 Premium	0.018	332	9.2	38.6	
PADD 2 Premium	0.014	333	8.0	34.3	
PADD 3 Premium	0.015	334	5.0	34.6	10% Ethanol.
PADD 4 Premium	0.040	319	6.0	22.3	
PADD 5 Premium	0.011	332	4.3	36.7	

(2) National and PADD certification test fuels must either be formulated to specification from normal refinery blend stocks, or drawn from finished gasoline supplies. The source of such samples must be normally-operating gasoline production or distribution facilities located in the U.S. Samples must not be drawn from a segregated gasoline pool that is or will be covered by a fuel-specific certification under § 80.163(c) on the date when the certification information under this option is submitted to EPA.

(3) To be eligible for use in detergent additive certification testing, in addition to the specifications above, national and PADD test fuels which are specially formulated from refinery blend stocks must themselves undergo testing to demonstrate their deposit-forming tendency. For this purpose, the unadditized, nonoxygenated test fuel must be subjected to the IVD control test procedure described in § 80.165(b). At the discretion of the tester, the duration of the demonstration test may be less than 10,000 miles, provided the results satisfy the standard of this paragraph. In order to qualify for use in certification testing, the formulated fuel's test results must meet or exceed the values shown in Table 4 for the relevant certification option. If the demonstration test results do not meet these criteria, then the formulated fuel may not be used for detergent certification testing.

TABLE 4.—IVD DEMONSTRATION TEST CRITERIA

Certification option	Minimum required deposit level in IVD demonstration test (mg/valve, average)					
	National	PADD 1	PADD 2	PADD 3	PADD 4	PADD 5
Generic	290	290	260	290	260	260

TABLE 4.—IVD DEMONSTRATION TEST CRITERIA—Continued

Certification option	Minimum required deposit level in IVD demonstration test (mg/valve, average)					
	National	PADD 1	PADD 2	PADD 3	PADD 4	PADD 5
Premium	260	260	235	260	235	235

(c) *Fuel-specific certification test fuels.* (1) Test fuels required for fuel-specific certification must contain levels of each of the four basic fuel parameters (aromatics, olefins, T–90, and fuel sulfur) at no less than their respective 65th percentile values in the segregated gasoline pool for which the detergent certification is sought in accordance with § 80.163(c). These values must be determined by the certifier as follows:

(i) At least once monthly for at least one complete year prior to the certification, the certifier must measure the levels of the required parameters in representative fuel samples contributed to the segregated gasoline pool by each participating refinery, terminal, or other fuel production or distribution facility. The fuel parameters must be measured in accordance with the test procedures in § 80.46. If the applicability of the fuel-specific certification is to be limited to premium gasoline, then the required fuel compositional data must be collected only from samples of premium gasoline.

(ii) The fuel composition survey results, weighted according to the percentage of gasoline contributed to the segregated gasoline pool from each participating facility, shall be used to construct a percentile distribution of the measured values for each of the fuel parameters.

(iii) Data from more than one year may be used to construct the required statistical distribution provided that only the total data from complete consecutive years is used and that all survey data must have been collected within three years of the date the certification information is submitted to EPA.

(iv) At the discretion of the certifier, other fuel parameters may be used to define the certification test fuels in addition to the four required parameters. To be taken into account by EPA in case of confirmatory testing pursuant to § 80.167, such additional parameters must be surveyed and analyzed according to the same requirements applicable to the four standard parameters. In addition, any optional parameters must be measured using test procedures which conform to reasonable and customary standards of repeatability and reproducibility, and reasonable and customary limits of detection and accuracy for the type of test procedure or analytic procedure in question.

(v) Using the percentile distributions calculated from the survey data for the four required parameters and any additional discretionary parameters, the 65th percentile value for each such parameter shall be determined. Prior to the addition of any oxygenate compound, the fuel-specific certification test fuel shall contain each specified parameter at a level or concentration no less than this 65th percentile value. Test fuel oxygenate requirements for generic, nonoxygenate, and oxygenate-specific certification suboptions are specified in paragraph (a)(2) of this section.

(2) Fuel-specific certification test fuels must either be formulated to specification from the same refinery blend stocks which are normally used to blend the gasolines included in the subject gasoline pool, or drawn from the finished fuel supplies which contribute to this pool of gasoline. Fuel-specific certification test fuels need not undergo an IVD demonstration test prior to use in certification testing.

(3) The certifier must submit an annual report to EPA within 30 days of the anniversary of the initial certification effective date. Failure to submit the annual report by the required date will invalidate the fuel-specific certification and may subject the certifier to liability and penalties under §§ 80.169 and 80.172. The purpose of the annual report is to update the information on the composition of the segregated gasoline pool that was characterized by the initial fuel survey.

(i) For this purpose, the same fuel survey and statistical analysis requirements that were conducted pursuant to paragraphs (c)(1)(i),(ii), and (iv) of this section must be repeated, using data for the most current twelve-month period from each of the production/distribution facilities that contributed to the original fuel survey.

(ii) The annual report must present the percentile distributions for each fuel parameter as determined from the new survey data and, for each measured fuel parameter, must compare the newly determined 50th percentile value with the 60th percentile value for that parameter as determined in the original fuel survey.

(iii) If the new 50th percentile level for any fuel parameter is greater than or equal to the 60th percentile level reported in the initial certification, then the fuel-specific certification is no longer valid. In such instance, the certifier must immediately discontinue the sale and use of the subject detergent under the conditions of the fuel-specific certification and must immediately notify any downstream customers/recipients of the subject detergent that the certification is no longer valid and that their use of the detergent must discontinue within seven days. To avoid liability and penalties under §§ 80.169 and 80.172, the certifier must take these remedial steps within 45 days of the anniversary of the original fuel-specific certification. Downstream customers/recipients must discontinue usage of the detergent within seven days of receipt of notification of the detergent's invalidity to avoid such liability.

(4) The fuel composition survey results which support the original test fuel specifications and the annual statistical analyses, along with related documentation on test methods and statistical procedures, shall be retained by the certifier for a period of at least five years, and shall be made available to EPA upon request.

§ 80.165 Certification test procedures and standards.

This section specifies the deposit control test requirements and performance standards which must be met in order to certify detergent additives for use in unleaded gasoline, pursuant to § 80.161(b)(1)(ii)(A)(*2*). These standards must be met in the context of the specific test procedures identified in paragraphs (a) and (b) of this section, except as provided in paragraph (c) of this section. In any case, the testing must be conducted and the performance standards met when the subject detergent additive is mixed in a test fuel meeting all relevant requirements of § 80.164, including the deposit-forming tendency demonstration specified in § 80.164(b)(3), if applicable. Complete test documentation must be submitted

by the certifying party within 30 days of receipt of a written request from EPA for such records.

(a) *Fuel injector deposit control testing.* (1) The required test fuel must produce no more than 5% flow restriction in any one injector when tested in accordance with ASTM D 5598–94, "Standard Test Method for Evaluating Unleaded Automotive Spark-Ignition Engine Fuel for Electronic Port Fuel Injector Fouling," 1994, which is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at U.S. EPA, OAR, 401 M Street, Southwest, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies of this material may be obtained from ASTM, 1916 Race St., Philadelphia, PA 19103.

(2) At the option of the certifier, fuel injector flow may be measured at intervals during the 10,000 mile test cycle described in ASTM D 5598–94, in addition to the flow measurements required at the completion of the test cycle, but not more than every 1,000 miles.

(b) *Intake valve deposit control testing.* The required test fuel must produce the accumulation of less than 100 mg of intake valve deposits on average when tested in accordance with ASTM D 5500–94, "Standard Test Method for Vehicle Evaluation of Unleaded Automotive Spark-Ignition Engine Fuel for Intake Valve Deposit Formation," 1994, which is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at U.S. EPA, OAR, 401 M Street, Southwest, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies of this material may be obtained from ASTM, 1916 Race St., Philadelphia, PA 19103.

(c) If conducted using test fuels meeting all relevant requirements of § 80.164, and completed prior to September 3, 1996, then the PFID and IVD control test procedures required for detergent certification in California (specified in section 2257 of Title 13, California Code of Regulations) will also be considered acceptable. California Air Resources Board, "Test Method for Evaluating Port Fuel Injector (PFI) Deposits in Vehicle Engines", March 1, 1991, and California Air Resources Board, "HMW—10,000 Miles Intake Valve Test Procedure", March 1, 1991, are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at U.S. EPA, OAR, 401 M Street, Southwest, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies of this material may be obtained from the California Air Resource Board, Stationary Source Division, 2020 L Street, PO Box 2815, Sacramento, CA, 95814.

§ 80.166 Carburetor deposit control performance test and test fuel guidelines.

EPA will use the guidelines in this section to evaluate the adequacy of carburetor deposit control test data, used to support the minimum concentration recommended for detergents used in leaded gasoline pursuant to § 80.161(b)(1)(ii)(B).

(a) *Carburetor Deposit Control Test Procedure and Performance Standard Guidelines.* For demonstration of carburetor deposit control performance, any generally accepted vehicle, engine, or bench test procedure and associated performance standard for carburetor deposit control will be considered adequate. Port and throttle body fuel injector deposit control test data will also be considered to be adequate demonstration of an additive's ability to control carburetor deposits. Examples of acceptable test procedures for demonstration of carburetor deposit control, in addition to the fuel injector test procedure listed in § 80.165(a), are contained in the following references:

(1) "Test Method for Evaluating Port Fuel Injector (PFI) Deposits in Vehicle Engines", March 1, 1991, Section 2257, Title 13, California Code of Regulations.

(2) "A Vehicle Test Technique for Studying Port Fuel Injector Deposits—A Coordinating Research Council Program", Robert Tupa et al., SAE Technical paper No. 890213, 1989.

(3) "The Effects of Fuel Composition and Additives on Multiport Fuel Injector Deposits", Jack Benson et al., SAE Technical Paper Series No. 861533, 1986.

(4) "Injector Deposits—The Tip of Intake System Deposit Problems", Brian Taneguchi, et al., SAE Technical Paper Series No. 861534, 1986.

(5) "Fuel Injector, Intake Valve, and Carburetor Detergency Performance of Gasoline Additives", C.H. Jewitt et al., SAE Technical Paper No. 872114, 1987.

(6) "Carburetor Cleanliness Test Procedure, State-of-the-Art Summary, Report: 1973–1981", Coordinating Research Council, CRC Report No. 529, Coordinating Research Council Inc. (CRC), 219 perimeter Center Parking, Atlanta, Georgia, 30346.

(b) *Carburetor Deposit Control Test Fuel Guidelines.* (1) The gasoline used in the tests described in paragraph (a) of this section must contain the detergent-active components of the subject detergent additive package in an amount which corresponds to the minimum recommended concentration recorded in the respective detergent registration, or less than this amount.

(2) The test fuel must not contain any detergent-active components other than those recorded in the subject detergent certification.

(3) The composition of the test fuel used in carburetor deposit control testing, conducted to support the claimed effectiveness of detergents used in leaded gasoline, should be reasonably typical of in-use gasoline in its tendency to form carburetor deposits (or more severe than typical in-use fuels) as defined by the olefin and sulfur content. A test fuel conforming to these compositional guidelines may be sampled directly from finished gasolines or may be blended to specification using typical refinery blend stocks. Test data using leaded fuels is preferred for this purpose, but data collected using unleaded fuels may also be acceptable provided that some correlation with additive performance in leaded fuels is available.

§ 80.167 Confirmatory testing.

EPA may test a detergent to confirm that the required performance levels are met. Based on the findings of this confirmatory testing, a detergent certification may be denied or revoked under the provisions of § 80.161(e).

(a) Confirmatory testing conducted to evaluate the validity of detergent certifications under the national, PADD, or fuel-specific options will generally entail a single vehicle test using the procedures detailed in § 80.165. The test fuel(s) used in conducting confirmatory certification testing will contain the specified fuel parameters at or below the minimum levels specified in § 80.164, and will otherwise conform to the applicable certification test fuel specifications therein.

(b) Confirmatory certification testing conducted to evaluate the validity of CARB-based detergent certifications will use the subject detergent in test fuel(s) containing the relevant fuel parameters at levels no greater than the maximum levels for which the CARB certification was granted. The test procedures will be conducted pursuant to the procedures specified under section 2257 of Title 13, California Code of Regulations.

(c) Confirmatory testing conducted to evaluate the validity of registration and certification information specific to detergent use in leaded gasoline will use the subject detergent in a test fuel containing the test fuel parameters at levels no greater than those prescribed in § 80.164. EPA will make all reasonable efforts to use the same test procedure for confirmatory testing purposes as was used by the certifier in conducting deposit control performance testing.

(d) When EPA decides to conduct confirmatory testing on a fuel or additive which is not readily available in the open market, EPA may request that the detergent certifier and/or manufacturer of such fuel or additive furnish a sample in the needed quantity. If testing is conducted to evaluate the validity of a detergent certification under the fuel-specific option, the detergent blender must supply EPA with test fuel, or with blend stocks with which to formulate such test fuel, in sufficient quantity to conduct the specified deposit control performance testing. The fuel or additive manufacturer shall comply with a sample request made pursuant to this paragraph within 30 days of receipt of the request.

§ 80.168 Detergent certification program controls and prohibitions.

(a)(1) No person shall sell, offer for sale, dispense, supply, offer for supply, transport, or cause the transportation of gasoline to the ultimate consumer for use in motor vehicles or in any off-road engines (except as provided in § 80.173), or to a gasoline retailer or wholesale purchaser-consumer, and no person shall detergent-additize gasoline, unless such gasoline is additized in conformity with the requirements of § 80.161. No person shall cause the presence of any gasoline in the gasoline distribution system unless such gasoline is additized in conformity with the requirements of § 80.161.

(2) Gasoline has been additized in conformity with the requirements of § 80.161 when the detergent component satisfies the requirements of § 80.161 and when:

(i) The gasoline has been additized in conformity with the detergent composition and purpose-in-use specifications of a detergent certified in accordance with this subpart, and in accordance with at least the minimum concentration specifications of that detergent as certified or as otherwise provided under § 80.161(d); or

(ii) The gasoline is composed of two or more commingled gasolines and each component gasoline has been additized in conformity with the detergent composition and purpose-in-use specifications of a detergent certified in accordance with this subpart, and in accordance with at least the minimum concentration specifications of that detergent as certified or as otherwise provided under § 80.161(d); or

(iii) The gasoline is composed of a gasoline commingled with a post-refinery component (PRC), and both of these components have been additized in conformity with the detergent composition and use specifications of a detergent certified in accordance with this subpart, and in accordance with at least the minimum concentration specifications of that detergent as certified or as otherwise provided under § 80.161(d).

(b) No person shall blend detergent into gasoline or PRC unless such person complies with the volumetric additive reconciliation requirements of § 80.170.

(c) No person shall sell, offer for sale, dispense, supply, offer for supply, store, transport, or cause the transportation of any gasoline, detergent, or detergent-additized PRC, unless the product transfer document for the gasoline, detergent or detergent-additized PRC complies with the requirements of § 80.171.

(d) No person shall refine, import, manufacture, sell, offer for sale, dispense, supply, offer for supply, store, transport, or cause the transportation of any detergent that is to be used as a component of detergent-additized gasoline or detergent-additized PRC unless such detergent conforms with the composition specifications of a detergent certified in accordance with this subpart and the detergent otherwise complies with the requirements of § 80.161. No person shall cause the presence of any detergent in the detergent, PRC, or gasoline distribution systems unless such detergent complies with the requirements of § 80.161.

(e)(1) No person shall sell, offer for sale, dispense, supply, offer for supply, transport, or cause the transportation of detergent-additized PRC unless the PRC has been additized in conformity with the requirements of § 80.161. No person shall cause the presence in the PRC or gasoline distribution systems of any detergent-additized PRC that fails to conform to the requirements of § 80.161.

(2) PRC has been additized in conformity with the requirements of § 80.161 when the detergent component satisfies the requirements of § 80.161 and when:

(i) The PRC has been additized in accordance with the detergent composition and use specifications of a detergent certified in accordance with this subpart and in conformity with at least the minimum concentration specifications of that detergent as certified or as otherwise provided under § 80.161(d), or

(ii) The PRC is composed of two or more commingled PRCs, and each component has been additized in accordance with the detergent composition and use specifications of a detergent certified in accordance with this subpart, and in conformity with at least the minimum concentration specifications of that detergent as certified or as otherwise provided under § 80.161(d).

§ 80.169 Liability for violations of the detergent certification program controls and prohibitions.

(a) *Persons Liable*—(1) *Gasoline non-conformity.* Where gasoline contained in any storage tank at any facility owned, leased, operated, controlled or supervised by any gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, or detergent blender, is found in violation of any of the prohibitions specified in § 80.168(a), the following persons shall be deemed in violation:

(i) Each gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, or detergent blender, who owns, leases, operates, controls or supervises the facility (including, but not limited to, a truck or individual storage tank) where the violation is found;

(ii) Each gasoline refiner, importer, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, distributor, or blender, who refined, imported, manufactured, sold, offered for sale, dispensed, supplied, offered for supply, stored, detergent additized, transported, or caused the transportation of the detergent-additized gasoline (or the base gasoline component, the detergent component, or the detergent-additized post-refinery component of the gasoline) that is in violation, and each such party that caused the gasoline that is in violation to be present in the gasoline distribution system; and

(iii) Each gasoline carrier who dispensed, supplied, stored, or transported any gasoline in the storage tank containing gasoline found to be in violation, and each detergent carrier who dispensed, supplied, stored, or transported the detergent component of

any PRC or gasoline in the storage tank containing gasoline found to be in violation, provided that EPA demonstrates, by reasonably specific showings by direct or circumstantial evidence, that the gasoline or detergent carrier caused the violation.

(2) *Post-refinery component non-conformity.* Where detergent-additized PRC contained in any storage tank at any facility owned, leased, operated, controlled or supervised by any gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, is found in violation of the prohibitions specified in § 80.168(e), the following persons shall be deemed in violation:

(i) Each gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale-purchaser consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, who owns, leases, operates, controls or supervises the facility (including, but not limited to, a truck or individual storage tank) where the violation is found;

(ii) Each gasoline refiner, importer, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, distributor, or blender, who sold, offered for sale, dispensed, supplied, offered for supply, stored, detergent additized, transported, or caused the transportation of the detergent-additized PRC (or the detergent component of the PRC) that is in violation, and each such party that caused the PRC that is in violation to be present in the PRC or gasoline distribution systems; and

(iii) Each carrier who dispensed, supplied, stored, or transported any detergent-additized PRC in the storage tank containing PRC that is in violation, and each detergent carrier who dispensed, supplied, stored, or transported the detergent component of any detergent-additized PRC which is in the storage tank containing detergent-additized PRC found to be in violation, provided that EPA demonstrates by reasonably specific showings by direct or circumstantial evidence, that the gasoline or detergent carrier caused the violation.

(3) *Detergent non-conformity.* Where the detergent (prior to additization) contained in any storage tank or container found at any facility owned, leased, operated, controlled or supervised by any gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, is found in violation of the prohibitions specified in § 80.168(d), the following persons shall be deemed in violation:

(i) Each gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, who owns, leases, operates, controls or supervises the facility (including, but not limited to, a truck or individual storage tank) where the violation is found;

(ii) Each gasoline refiner, importer, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, distributor, or blender, who sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of the detergent that is in violation, and each such party that caused the detergent that is in violation to be present in the detergent, gasoline, or PRC distribution systems; and

(iii) Each gasoline or detergent carrier who dispensed, supplied, stored, or transported any detergent which is in the storage tank or container containing detergent found to be in violation, provided that EPA demonstrates, by reasonably specific showings by direct or circumstantial evidence, that the gasoline or detergent carrier caused the violation.

(4) *Volumetric additive reconciliation.* Where a violation of the volumetric additive reconciliation requirements established by § 80.168(b) has occurred, the following persons shall be deemed in violation:

(i) Each detergent blender who owns, leases, operates, controls or supervises the facility (including, but not limited to, a truck or individual storage tank) where the violation has occurred; and

(ii) Each gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, or oxygenate blender, and each detergent manufacturer, carrier, distributor, or blender, who refined, imported, manufactured, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of the detergent-additized gasoline, the base gasoline component, the detergent component, or the detergent-additized PRC of the gasoline that is in violation, provided that EPA demonstrates, by reasonably specific showings by direct or circumstantial evidence, that such person caused the violation.

(5) *Product transfer document.* Where a violation of § 80.168(c) is found at a facility owned, leased, operated, controlled, or supervised by any gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, the following persons shall be deemed in violation: each gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, who owns, leases, operates, control or supervises the facility (including, but not limited to, a truck or individual storage tank) where the violation is found.

(b) *Branded Refiner Vicarious Liability.* Where any violation of the prohibitions specified in § 80.168 has occurred, with the exception of violations of § 80.168(c), a refiner will also be deemed liable for violations occurring at a facility operating under such refiner's corporate, trade, or brand name or that of any of its marketing subsidiaries. For purposes of this section, the word facility includes, but is not limited to, a truck or individual storage tank.

(c) *Defenses.* (1) In any case in which a gasoline refiner, importer, distributor, carrier, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent distributor, carrier, or blender, is in violation of any of the prohibitions of § 80.168, pursuant to paragraph (a) or (b) of this section as applicable, the regulated party shall be deemed not in violation if it can demonstrate:

(i) That the violation was not caused by the regulated party or its employee or agent (unless otherwise provided in this paragraph (c));

(ii) That product transfer documents account for the gasoline, detergent, or detergent-additized PRC in violation and indicate that the gasoline, detergent, or detergent-additized PRC satisfied relevant requirements when it left the party's control; and

(iii) That the party has fulfilled the requirements of paragraphs (c) (2) or (3) of this section, as applicable.

(2) *Branded refiner.* Where a branded refiner is in violation of any of the prohibitions of § 80.168 as a result of violations occurring at a facility (including, but not limited to, a truck or individual storage tank) which is operating under the corporate, trade or brand name of a refiner or that of any of its marketing subsidiaries, the refiner shall be deemed not in violation if it can demonstrate, in addition to the defense requirements stated in paragraph (c)(1) of this section, that the violation was caused by:

(i) An act in violation of law (other than these regulations), or an act of sabotage or vandalism, whether or not such acts are violations of law in the jurisdiction where the violation of the prohibitions of § 80.168 occurred; or

(ii) The action of any gasoline refiner, importer, reseller, distributor, oxygenate blender, detergent manufacturer, distributor, blender, or retailer or wholesale purchaser-consumer supplied by any of these persons, in violation of a contractual undertaking imposed by the refiner designed to prevent such action, and despite the implementation of an oversight program, including, but not limited to, periodic review of product transfer documents by the refiner to ensure compliance with such contractual obligation; or

(iii) The action of any gasoline or detergent carrier, or other gasoline or detergent distributor not subject to a contract with the refiner but engaged by the refiner for transportation of gasoline, PRC, or detergent, to a gasoline or detergent distributor, oxygenate blender, detergent blender, gasoline retailer or wholesale purchaser consumer, despite specification or inspection of procedures or equipment by the refiner which are reasonably calculated to prevent such action.

(iv) In this paragraph (c)(2), to show that the violation "was caused" by any of the specified actions, the party must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another.

(3) *Detergent blender.* In any case in which a detergent blender is liable for violating any of the prohibitions of § 80.168, the detergent blender shall not be deemed in violation if it can demonstrate, in addition to the defense requirements stated in paragraph (c)(1) of this section, the following:

(i) That it obtained or supplied, as appropriate, prior to the detergent blending, accurate written instructions from the detergent manufacturer or other party with knowledge of such instructions, specifying the appropriate LAC for the detergent, as specified in § 80.161(b)(1)(ii), together with any use restrictions which pertain to this LAC pursuant to the detergent's certification; and

(ii) That it has implemented a quality assurance program that includes, but is not limited to, a periodic review of its supporting product transfer and volume measurement documents to confirm the correctness of its product transfer and volumetric additive reconciliation documents created for all products it additized.

(4) *Detergent manufacturer.*— (i) *Presumptive Liability Affirmative Defense.* Notwithstanding the provisions of paragraph (c)(1) of this section, in any case in which a detergent manufacturer is liable for violating any of the prohibitions of § 80.168, the detergent manufacturer shall be deemed not in violation if it can demonstrate each of the following:

(A) Product transfer documents which account for the detergent component of the product in violation and which indicate that such detergent satisfied all relevant requirements when it left the detergent manufacturer's control.

(B) Written blending instructions which, pursuant to § 80.161(c), were supplied by the detergent manufacturer to its customer who purchased or obtained from the manufacturer the detergent component of the product determined to be in violation. The written blending instructions must have been supplied by the manufacturer prior to the customer's use or sale of the detergent. The instructions must accurately specify both the appropriate LAC for the detergent, pursuant to § 80.161(b)(1)(ii), plus any use restrictions which may pertain to this LAC pursuant to the detergent's certification.

(C) If the detergent batch used in the noncomplying product was produced less than one year before the manufacturer was notified by EPA of the possible violation, then the manufacturer must provide FTIR test results for the batch in question.

(*1*) The FTIR analysis may have been conducted on the subject detergent batch at the time it was manufactured, or may be conducted on a sample of that batch which the manufacturer retained for such purpose at the time the batch was manufactured.

(*2*) To establish that, when it left the manufacturer's control, the detergent component of the noncomplying product was in conformity with the chemical composition and concentration specifications reported pursuant to § 80.161(b), the FTIR test results for the detergent batch used in the noncomplying product must, in EPA's judgment, be consistent with the FTIR results submitted at the time of registration pursuant to § 80.162(d).

(D) If the detergent batch used in the noncomplying product was produced more than one year prior to the manufacturer's notification by EPA of the possible violation, then the manufacturer must provide either:

(*1*) FTIR test results for the batch in question as specified in the preceding paragraph (c)(4)(i)(C) of this § 80.169(c); or

(*2*) The following materials:

(*i*) Documentation for the batch in question, showing that its measured viscosity, density, and basic nitrogen content, or any other such physical parameter(s) which EPA may have approved for monitoring production quality control, were within the acceptable range of production values specified in the certification pursuant to § 80.162(e); and

(*ii*) If the detergent registration identifies polymeric component(s) of the detergent package as the product(s) of other chemical reactants, documentation that the reagents used to synthesize the detergent batch in question were the same as those specified in the registration and that they met the manufacturer's normal acceptance criteria reported pursuant to § 80.162(b)(1).

(ii) *Detergent manufacturer causation liability.* In any case in which a detergent manufacturer is liable for a violation of § 80.168, and the manufacturer establishes an affirmative defense to such liability pursuant to § 80.169(c)(4)(i), the detergent manufacturer will nonetheless be deemed liable for the violation of § 80.168 if EPA can demonstrate, by reasonably specific showings by direct or circumstantial evidence, that the detergent manufacturer caused the violation.

(5) *Defense against liability where more than one party may be liable for VAR violations.* In any case in which a party is presumptively or vicariously liable for a violation of § 80.170, except for the VAR record requirements pursuant to § 80.170(g), such party shall not be deemed liable if it can establish the following:

(i) Prior to the violation it had entered into a written contract with another potentially liable detergent blender party ("the assuming party"), under which that other party assumed legal responsibility for fulfilling the VAR requirement that had been violated;

(ii) The contract included reasonable oversight provision to ensure that the assuming party fulfilled its VAR responsibilities (including, but not limited to, periodic review of VAR records) and the oversight provision was actually implemented by the party raising the defense;

(iii) The assuming party is fiscally sound and able to pay its penalty for the VAR violation; and

(iv) The employees or agents of the party raising the defense did not cause the violation.

(6) *Defense to liability for gasoline non-conformity violations caused solely by the addition of misadditized ethanol or other PRC to the gasoline.* In any case in which a party is presumptively or vicariously liable for a gasoline non-conformity violation of § 80.168(a)

caused solely by another party's addition of misadditized ethanol or other PRC to the gasoline, the former party shall not be deemed liable for the violation, provided that it can establish that it has fulfilled the defense requirements of paragraphs (c)(1) (i) and (ii) of this section.

(7) *Detergent tank transitioning defenses.* The commingling of two detergents in the same detergent storage tank will not be deemed to violate or cause violations of any of the provisions of this subpart; provided the following conditions are met:

(i) The commingling must occur during a legitimate detergent transitioning event, *i.e.*, a shift from the use of one detergent to another through the delivery of the new detergent into the same tank that contains the original detergent; and

(ii) Any use restrictions applicable to the new detergent's certification also apply to the combined detergents; and

(iii) The commingling event must be documented, either on the VAR formula record or on attached supporting records; and

(iv) Notwithstanding any contrary provisions in § 80.170, a VAR formula record must be created for the combined detergents. The VAR compliance period must begin no later than the time of the commingling event. However, at the blender's option, the compliance period may begin earlier, thus including use of the uncombined original detergent within the same period, provided that the 31-day limitation pursuant to § 80.170(a)(6) is not exceeded; and

(v) The VAR formula record must also satisfy the requirements in one of the following paragraphs (c)(7)(v) (A) through (C) of this section, whichever applies to the commingling event. If neither paragraph (c)(7)(v) (A) nor (B) of this section initially applies, then the blender may drain and subsequently redeliver the original detergent into the tank in restricted amounts, in order to meet the conditions of paragraph (c)(7)(v) (A) or (B) of this section. Otherwise, the blender must comply with paragraph (c)(7)(v)(C) of this section.

(A) If both detergents have the same LAC, and the original detergent accounts for no more than 20 percent of the tank's total delivered volume after addition of the new detergent, then the VAR formula record is required to identify only the use of the new detergent.

(B) If the two detergents have different LACs and the original detergent accounts for 10 percent or less of the tank's total delivered volume after addition of the new detergent, then the VAR formula record is required to identify only the use of the new detergent, and must attain the LAC of the new detergent. If the original detergent's LAC is greater than that of the new detergent, then the compliance period may begin earlier than the date of the commingling event (pursuant to paragraph (c)(7)(iv) of this section) only if the original detergent does not exceed 10 percent of the total detergent used during the compliance period.

(C) If neither of the preceding paragraphs (c)(7)(v) (A) or (B) of this section applies, then the VAR formula record must identify both of the commingled detergents, and must use and attain the higher LAC of the two detergents. Once the commingled detergent has been depleted by an amount equal to the volume of the original detergent in the tank at the time the new detergent was added, subsequent VAR formula records must identify and use the LAC of only the new detergent.

(8) *Transition from noncertified to certified detergent.* Notwithstanding the prohibitions in §§ 80.161(a)(3) and 80.168, after June 30, 1997, the addition to gasoline or PRC of a detergent which has not been certified pursuant to § 80.161 shall not be deemed to violate or cause violations of provisions of this subpart, provided that all of the following conditions are met:

(i) The detergent was received by the detergent blender prior to July 1, 1997 and is used prior to January 1, 1998. Documentation which supports these dates must be maintained for at least five years and must be available for EPA's inspection upon request;

(ii) The detergent is added to gasoline or PRC only in combination with a certified detergent and, at any one time, accounts for no more than 10 percent of the detergent tank's delivered volume;

(iii) The total volume of detergent added to the gasoline or PRC is sufficient to attain the LAC of the certified detergent; and

(iv) Use restrictions associated with the certified detergent are adhered to.

(g) Procedures for curing use restrictions. In the case of a fuel product which has been additized with a detergent under the conditions of a use-restricted certification (pursuant to § 80.163), the use restriction can be negated ("cured") by application of the procedures in this paragraph (g). A party shall not be liable for violations of § 80.168(a) or (e) caused solely by the additization or subsequent use of gasoline or PRC in violation of such use restriction, provided that the following steps and conditions are applied before EPA has identified the nonconformity and prior to the sale or transfer of nonconforming product to the ultimate consumer:

(i) Additional detergent must be added in sufficient quantity to provide effective deposit control, taking into account both the amount of detergent previously added and the final anticipated volume and composition of the subject fuel product.

(ii) The additional detergent may be either the original detergent or a different detergent, so long as the additional detergent has been separately certified both for use with the subject fuel product and for use with the type of fuel product associated with the restriction which the party wishes to negate by the curing procedure. Detergents which have not been separately certified for both types of fuel products are not eligible to be used for this curing procedure.

(iii) If a fuel product has been detergent additized under the conditions of a use-restricted certification which would preclude the addition of an oxygenate or other PRC, then such oxygenate or other PRC may nevertheless be added to that fuel product under this curing procedure, provided that additional eligible detergent is added, in an amount which equals or exceeds the number of gallons (D_A) derived from the following equation:

Additional Detergent Volume = $D_A = Vp(LAC_2 - LAC_1) + V(1-p)LAC_2$

Where:

V = Final volume of fuel product (in gallons)

p = Fraction of final fuel product composed of the original (uncombined) fuel product

LAC_2 = Detergent's LAC certified for the final combined fuel product (in gallons of detergent per 1,000 gallons of fuel product)

LAC_1 = Detergent's LAC certified for the original (uncombined) fuel product (in gallons of detergent per 1,000 gallons of fuel product)

(iv) In other instances in which gasoline or PRC has been additized in violation of a detergent use restriction, and no additional fuel components are to be added, such use restriction can be cured by the addition of eligible detergent in an amount which equals or exceeds the number of gallons (DA) derived from the following equation, which is a simplified version of the previous equation:

Additional Detergent Volume = $D_A = V(LAC_2 - LAC_1)$

Where:

V = Volume of fuel product (in gallons) to be cured of the use restriction

LAC_2 = Detergent's LAC certified for the fuel product without the use restriction (in gallons of detergent per 1,000 gallons of fuel product)

LAC_1 = Detergent's LAC certified for the fuel product with the use restriction to be cured (in gallons of detergent per 1,000 gallons of fuel product)

(v) In all such instances, a curing VAR must be created and maintained, which documents the use of the appropriate equation as specified above, and otherwise complies with the requirements of § 80.170(f)(6).

§ 80.170 Volumetric additive reconciliation (VAR), equipment calibration, and recordkeeping requirements.

This section contains requirements for automated detergent blending facilities and hand-blending detergent facilities. All gasoline and all PRC intended for use in gasoline must be additized unless otherwise noted in supporting VAR records, and must be accounted for in VAR records. The VAR reconciliation standard is attained under this section when the actual concentration of detergent used per VAR formula record equals or exceeds the applicable LAC certified for that detergent pursuant to § 80.161(b)(3)(ix) or, if appropriate, § 80.161(d). If a given detergent package has been certified under more than one certification option pursuant to § 80.163, then a separate VAR formula record must be created for gasoline or PRC additized on the basis of each certification and its respective LAC. In such cases, the amount of the detergent used under different certification options must be accurately and separately measured, either through the use of a separate storage tank, a separate meter, or some other measurement system that is able to accurately distinguish its use. Recorded volumes of gasoline, detergent, and PRC must be expressed to the nearest gallon (or smaller units), except that detergent volumes of five gallons or less must be expressed to the nearest tenth of a gallon (or smaller units). However, if the blender's equipment cannot accurately measure to the nearest tenth of a gallon, then such volumes must be rounded downward to the next lower gallon. PRC included in the reconciliation must be identified. Each VAR formula record must also contain the following information:

(a) *Automated blending facilities.* In the case of an automated detergent blending facility, for each VAR period, for each detergent storage system and each detergent in that storage system, the following must be recorded:

(1) The manufacturer and commercial identifying name of the detergent additive package being reconciled, the LAC, and any use restriction applicable to the LAC. The LAC must be expressed in terms of gallons of detergent per thousand gallons of gasoline or PRC, and expressed to four digits. If the detergent storage system which is the subject of the VAR formula record is a proprietary system under the control of a customer, this fact must be indicated on the record.

(2) The total volume of detergent blended into gasoline and PRC, in accordance with one of the following paragraphs (a)(2)(i) or (ii) of this section, as applicable.

(i) For a facility which uses in-line meters to measure detergent usage, the total volume of detergent measured, together with supporting data which includes one of the following: the beginning and ending meter readings for each meter being measured, the metered batch volume measurements for each meter being measured, or other comparable metered measurements. The supporting data may be supplied on the VAR formula record or in the form of computer printouts or other comparable VAR supporting documentation.

(ii) For a facility which uses a gauge to measure the inventory of the detergent storage tank, the total volume of detergent shall be calculated from the following equation:

Detergent Volume = (A) − (B) + (C) − (D)

Where:

A = Initial detergent inventory of the tank

B = Final detergent inventory of the tank

C = Sum of any additions to detergent inventory

D = Sum of any withdrawals from detergent inventory for purposes other than the additization of gasoline or PRC.

The value of each variable in this equation must be separately recorded on the VAR formula record. In addition, a list of each detergent addition included in variable C and a list of each detergent withdrawal included in variable D must be provided, either on the formula record or as VAR supporting documentation.

(3) The total volume of gasoline plus PRC to which detergent has been added, together with supporting data which includes one of the following: the beginning and ending meter measurements for each meter being measured, the metered batch volume measurements for each meter being measured, or other comparable metered measurements. The supporting data may be supplied on the VAR formula record or in the form of computer printouts or other comparable VAR supporting documentation. If gasoline has intentionally been overadditized in anticipation of the later addition of unadditized PRC, then the total volume of gasoline plus PRC recorded must include the expected amount of unadditized PRC to be added later. In addition, the amount of gasoline which was overadditized for this purpose must be specified.

(4) The actual detergent concentration, calculated as the total volume of detergent added (pursuant to paragraph (a)(2) of this section), divided by the total volume of gasoline plus PRC (pursuant to paragraph (a)(3) of this section). The concentration must be calculated and recorded to four digits.

(5) A list of each detergent concentration rate initially set for the detergent that is the subject of the VAR record, together with the date and description of each adjustment to any initially set concentration. The concentration adjustment information may be supplied on the VAR formula record or in the form of computer printouts or other comparable VAR supporting documentation. No concentration setting is permitted below the applicable certified LAC, except as may be modified pursuant to § 80.161(d) or as described in paragraph (a)(7) of this section.

(6) The dates of the VAR period, which shall be no longer than thirty-one days. If the VAR period is contemporaneous with a calendar month, then specifying the month will fulfill this requirement; if not, then the beginning and ending dates and times of the VAR period must be listed. The times may be supplied on the VAR formula record or in supporting documentation. Any adjustment to any detergent concentration rate more than 10 percent over the concentration rate initially set in the VAR period shall terminate that VAR period and initiate a new VAR period, except as provided in paragraph (a)(7) of this section.

(7) The concentration setting for a detergent injector may be set below the applicable LAC, or it may be adjusted more than 10 percent above the concentration initially set in the VAR period without terminating that VAR period, provided that:

(i) The purpose of the change is to correct a batch misadditization prior to the end of the VAR period and prior to the transfer of the batch to another party, or to correct an equipment malfunction; and

(ii) The concentration is immediately returned after the correction to a concentration that fulfills the

requirements of paragraphs (a) (5) and (6) of this section; and

(iii) The blender creates and maintains documentation establishing the date and adjustments of the correction; and

(iv) If the correction is initiated only to rectify an equipment malfunction, and the amount of detergent used in this procedure is not added to gasoline within the compliance period, then this amount is subtracted from the detergent volume listed on the VAR formula record.

(8) If unadditized gasoline has been transferred from the facility, other than bulk transfers from refineries or pipelines to non-retail outlets or non-WPC facilities, the total amount of such gasoline must be specified.

(b) *Non-automated facilities.* In the case of a facility in which hand blending or any other non-automated method is used to blend detergent, for each detergent and for each batch of gasoline and each batch of PRC to which the detergent is being added, the following shall be recorded:

(1) The manufacturer and commercial identifying name of the detergent additive package being reconciled, the LAC, and any use restriction applicable to the LAC. The LAC must be expressed in terms of gallons of detergent per thousand gallons of gasoline or PRC, and expressed to four digits.

(2) The date of the additization that is the subject of the VAR formula record.

(3) The volume of added detergent.

(4) The volume of the gasoline and/or PRC to which the detergent has been added. If gasoline has intentionally been overadditized in anticipation of the later addition of unadditized PRC, then the total volume of gasoline plus PRC recorded must include the expected amount of unadditized PRC to be added later. In addition, the amount of gasoline which was overadditized for this purpose must be specified.

(5) The brand (if known), grade, and leaded/unleaded status of gasoline, and/or the type of PRC.

(6) The actual detergent concentration, calculated as the volume of added detergent (pursuant to paragraph (b)(3) of this section), divided by the volume of gasoline and/or PRC (pursuant to paragraph (b)(4) of this section). The concentration must be calculated and recorded to four digits.

(c) Every VAR formula record created pursuant to paragraphs (a) and (b) of this section shall contain the following:

(1) The signature of the creator of the VAR record;

(2) The date of the creation of the VAR record; and

(3) A certification of correctness by the creator of the VAR record.

(d) Electronically-generated VAR formula and supporting records.

(1) Electronically-generated records are acceptable for VAR formula records and supporting documentation (including PTDs), provided that they are complete, accessible, and easily readable. VAR formula records must also be stored with access and audit security, which must restrict to a limited number of specified people those who have the ability to alter or delete the records. In addition, parties maintaining records electronically must make available to EPA the hardware and software necessary to review the records.

(2) Electronically-generated VAR formula records may use an electronic user identification code to satisfy the signature requirements of paragraph (c)(1) of this section, provided that:

(i) The use of the ID is limited to the record creator; and

(ii) A paper record is maintained, which is signed and dated by the VAR formula record creator, acknowledging that the use of that particular user ID on a VAR formula record is equivalent to his/her signature on the document.

(e) Automated detergent blenders must calibrate their detergent equipment once in each calendar half year, with the acceptable calibrations being no less than one hundred twenty days apart. Equipment recalibration is also required each time the detergent package is changed, unless written documentation indicates that the new detergent package has the same viscosity as the previous detergent package. Detergent package change calibrations may be used to satisfy the semiannual requirement provided that the calibrations occur in the appropriate half calendar year and are no less than one hundred twenty days apart.

(f) The following VAR supporting documentation must also be created and maintained:

(1) For all automated detergent blending facilities, documentation reflecting performance of the calibrations required by paragraph (e) of this section, and any associated adjustments of the automated detergent equipment;

(2) For all hand-blending facilities which are terminals, a record specifying, for each VAR period, the total volume in gallons of transfers from the facility of unadditized base gasoline;

(3) For all detergent blending facilities, product transfer documents for all gasoline, detergent and detergent-additized PRC transferred into or out of the facility; in addition, bills of lading, transfer, or sale for all unadditized PRC transferred into the facility;

(4) For all automated detergent blending facilities, documentation establishing the brands (if known) and grades of the gasoline which is the subject of the VAR formula record; and

(5) For all hand blending detergent blenders, the documentation, if in the party's possession, supporting the volumes of gasoline, PRC, and detergent reported on the VAR formula record.

(6) For all detergent blending facilities, documentation establishing the curing of a batch or amount of misadditized gasoline or PRC, or the curing of a use restriction on the additized gasoline or PRC, and providing at least the following information: the date of the curing procedure; the problem that was corrected; the amount, name, and LAC of the original detergent used; the amount, name, and LAC of the added curing detergent; and the actual detergent concentration attained in, and the volume of, the total cured product.

(g) Document retention and availability. All detergent blenders shall retain the documents required under this section for a period of five years from the date the VAR formula records and supporting documentation are created, and shall deliver them upon request to the EPA Administrator or the Administrator's authorized representative.

(1) Except as provided in paragraph (g)(3) of this section, automated detergent blender facilities and hand-blender facilities which are terminals, which physically blend detergent into gasoline, must make immediately available to EPA, upon request, the preceding twelve months of VAR formula records plus the preceding two months of VAR supporting documentation.

(2) Except as provided in paragraph (g)(3) of this section, other hand-blending detergent facilities which physically blend detergent into gasoline must make immediately available to EPA, upon request, the preceding two months of VAR formula records and VAR supporting documentation.

(3) Facilities which have centrally maintained records at other locations, or have customers who maintain their own records at other locations for their proprietary detergent systems, and which can document this fact to the Agency, may have until the start of the next business day after the EPA request to supply VAR supporting documentation, or longer if approved by the Agency.

(4) In this paragraph (g) of this section, the term *immediately available* means that the records must be provided, electronically or otherwise, within approximately one hour of EPA's request, or within a longer time frame as approved by EPA.

§ 80.171 Product transfer documents (PTDs).

(a) *Contents.* For each occasion when any gasoline refiner, importer, reseller, distributor, carrier, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, distributor, carrier, or blender, transfers custody or title to any gasoline, detergent, or detergent-additized PRC other than when detergent-additized gasoline is sold or dispensed at a retail outlet or wholesale purchaser-consumer facility to the ultimate consumer, the transferor shall provide to the transferee, and the transferee shall acquire from the transferor, documents which accurately include the following information:

(1) The name and address of the transferee and transferor; the address requirement may be fulfilled, in the alternative, through separate documentation which establishes said addresses and is maintained by the parties and made available to EPA for the same length of time as required for the PTDs, provided that the normal business procedure of these parties is not to identify addresses on PTDs.

(2) The date of the transfer.

(3) The volume of product transferred.

(4)(i) The identity of the product being transferred (*i.e.*, its identity as base gasoline, detergent, detergent-additized gasoline, or specified detergent-additized oxygenate or detergent-additized gasoline blending stock that comprises a detergent-additized PRC). PTDs for detergent-additized gasoline or PRC are not required to identify the particular detergent used to additize the product.

(ii) If the product being transferred consists of two or more different types of product subject to this regulation, *i.e.*, base gasoline, detergent-additized gasoline, or specified detergent-additized PRC, component, then the PTD for the commingled product must identify each such type of component contained in the commingled product.

(5) If the product being transferred is gasoline to which an oxygenate or a PRC has been added, the PTD for the gasoline must identify the oxygenate or PRC. The PTDs for commingled additized gasolines must identify all the oxygenates and PRCs added to either component.

(6) If the product being transferred is base gasoline, then in addition to the base gasoline identification, the following warning must be stated on the PTD: "Not for sale to the ultimate consumer". If, pursuant to § 80.173(a), the product being transferred is exempt base gasoline to be used for research, development, or test purposes only, the following warning must also be stated on the PTD: "For use in research, development, and test programs only".

(7) The name of the detergent additive as reported in its registration must be used to identify the detergent package on its PTD.

(8) If the product being transferred is leaded gasoline, then the PTD must disclose that the product contains lead and/or phosphorous, as applicable.

(9) If the product being transferred is gasoline or PRC that has been additized with detergent under a PADD-specific or CARB-based certification, or under a certification option which creates an oxygenate or PRC use restriction, then the PTD for the additized product must identify the applicable use restriction. The PTD for commingled additized gasolines or PRCs containing such restrictions must indicate the applicable restriction(s) from each component.

(10) If the product being transferred is detergent-additized gasoline or PRC that has been overadditized in anticipation of the later (or earlier) addition of PRC, then the PTD must include a statement that the product has been overadditized to account for a specified volume in gallons, or a specified percentage of the product's total volume, of additional, specified PRC.

(11) If a detergent package has been certified under only one certification option, and that option places a use restriction on the respective LAC, then the PTD must identify the detergent as use-restricted; the PTD for a detergent package certified with more than one LAC must identify that the detergent has special use options available.

(12) Base gasoline designated for fuel-specific certification.

(i) The PTD for segregated base gasoline intended for additization with a specific fuel-specific detergent pursuant to § 80.163(c) must indicate that it is for use with the designated, fuel-specific detergent.

(ii) A PTD for base gasoline may not indicate that the product is for use with a designated, fuel-specific detergent, unless the entire quantity of base gasoline is from the segregated fuel supply specified in the detergent's certification and the gasoline contains only those oxygenates or PRCs, if any, specified and approved in the detergent's certification.

(iii) If, pursuant to § 80.163(c)(3), the fuel-specific certification for the segregated pool of gasoline has established that no detergent additives are necessary for such gasoline to comply with this subpart, then the PTD must identify this gasoline as detergent-equivalent gasoline.

(b) *Use of product codes and other non-regulatory language.* (1) Product codes and other non-regulatory language may not be used as a substitute for the specified PTD warning language specified in paragraph (a)(6) of this section for base gasoline, except that:

(i) The specified warning language may be omitted for bulk transfers of base gasoline from a refinery to a pipeline if there is a prior written agreement between the parties specifying that all such gasoline is unadditized and will not be transferred to the ultimate consumer;

(ii) Product codes may be used as a substitute for the specified warning language provided that the PTD is an electronic data interchange (EDI) document being used solely for the transfer of title to the base gasoline, and provided that the product codes otherwise comply with the requirements of this section.

(2) Product codes and other non-regulatory language may not be used in place of the PTD language specified in paragraph (a)(11) of this section regarding detergent package use restrictions.

(3) Product codes and other language not specified in this section may otherwise be used to comply with PTD information requirements, provided that they are clear, accurate, and not misleading.

(4) If product codes are used, they must be standardized throughout the distribution system in which they are used, and downstream parties must be informed of their full meaning.

(c) *PTD exemption for small transfers of additized gasoline.* Transfers of additized gasoline are exempt from the PTD requirements of this section provided all the following conditions are satisfied:

(1) The product is being transferred by a distributor who is not the product's detergent blender; and

(2) The recipient is a wholesale purchaser-consumer (WPC) or other ultimate consumer of gasoline, for its own use only or for that of its agents or employees; and

(3) The volume of additized gasoline being transferred is no greater than 550 gallons.

(d) *Recordkeeping Period.* Any person creating, providing or acquiring product transfer documentation for gasoline, detergent, or detergent-additized PRC shall retain the documents required by this section for a period of five years from the date the product transfer

documentation was created, received or transferred, as applicable, and shall deliver such documents to EPA upon request. WPCs are not required to retain PTDs of additized gasoline received by them.

§ 80.172 Penalties.

(a) *General.* Any person who violates any prohibition or affirmative requirement of § 80.168 shall be liable to the United States for a civil penalty of not more than the sum of $25,000 for every day of such violation and the amount of economic benefit or savings resulting from the violation.

(b) *Gasoline non-conformity.* Any violation of § 80.168(a) shall constitute a separate day of violation for each and every day the gasoline in violation remains at any place in the gasoline distribution system, beginning on the day that the gasoline is in violation of the respective prohibition and ending on the last day that such gasoline is offered for sale or is dispensed to any ultimate consumer.

(c) *Detergent non-conformity.* Any violation of § 80.168(d) shall constitute a separate day of violation for each and every day the detergent in violation remains at any place in the gasoline or detergent distribution system, beginning on the day that the detergent is in violation of the prohibition and ending on the last day that detergent-additized gasoline, containing the subject detergent as a component thereof, is offered for sale or is dispensed to any ultimate consumer.

(d) *Post-refinery component non-conformity.* Any violation of § 80.168(e) shall constitute a separate day of violation for each and every day the PRC in violation remains at any place in the PRC or gasoline distribution system, beginning on the day that the PRC is in violation of the respective prohibition and ending on the last day that detergent-additized gasoline containing the PRC is offered for sale or is dispensed to any ultimate consumer.

(e) *Product transfer document non-conformity.* Any violation of § 80.168(c) shall constitute a separate day of violation for every day the PTD is not fully in compliance. This is to begin on the day that the PTD is created or should have been created and to end at the later of the following dates:

(1) The day that the document is corrected and comes into compliance; or

(2) The day that gasoline not additized in conformity with interim detergent program requirements, as a result of the PTD non-conformity, is offered for sale or is dispensed to the ultimate consumer.

(f) *Volumetric additive reconciliation recordkeeping non-conformity.* Any VAR recordkeeping violation of § 80.168(b) shall constitute a separate day of violation for every day that VAR recordkeeping is not fully in compliance. Each element of the VAR record keeping program that is not in compliance shall constitute a separate violation for purposes of this section.

(g) *Volumetric additive reconciliation compliance standard non-conformity.* Any violation of the VAR compliance standard established in § 80.170 shall constitute a separate day of violation for each and every day of the VAR compliance period in which the standard was violated.

(h) *Volumetric additive reconciliation equipment calibration non-conformity.* Any VAR equipment calibration violation of § 80.168(b) shall constitute a separate day of violation for every day a VAR equipment calibration requirement is not met.

§ 80.173 Exemptions.

(a) *Research, development, and testing exemptions.* Any detergent that is either in a research, development, or test status, or is sold to petroleum, automobile, engine, or component manufacturers for research, development, or test purposes, or any gasoline to be used by, or under the control of, petroleum, additive, automobile, engine, or component manufacturers for research, development, or test purposes, is exempted from the provisions of the detergent certification program, provided that:

(1) The detergent (or fuel containing the detergent), or the gasoline, is kept segregated from non-exempt product, and the party possessing the product maintains documentation identifying the product as research, development, or testing detergent or fuel, as applicable, and stating that it is to be used only for research, development, or testing purposes; and

(2) The detergent (or fuel containing the detergent), or the gasoline, is not sold, dispensed, or transferred, or offered for sale, dispensing, or transfer, from a retail outlet. It shall also not be sold, dispensed, or transferred or offered for sale, dispensing, or transfer from a wholesale purchaser-consumer facility, unless such facility is associated with detergent, fuel, automotive, or engine research, development or testing; and

(3) The party using the product for research, development, or testing purposes, or the party sponsoring this usage, notifies the EPA, on at least an annual basis and prior to the use of the product, of the purpose(s) of the program(s) in which the product will be used and the anticipated volume of the product to be used. The information must be submitted to the address or fax number specified in § 80.174(c).

(b) *Racing fuel and aviation fuel exemptions.* Any fuel that is refined, sold, dispensed, transferred, or offered for sale, dispensing, or transfer as automotive racing fuel or as aircraft engine fuel, is exempted from the provisions of this subpart, provided that:

(1) The fuel is kept segregated from non-exempt fuel, and the party possessing the fuel for the purposes of refining, selling, dispensing, transferring, or offering for sale, dispensing, or transfer as automotive racing fuel or as aircraft engine fuel, maintains documentation identifying the product as racing fuel, restricted for non-highway use in racing motor vehicles, or as aviation fuel, restricted for use in aircraft, as applicable;

(2) Each pump stand at a regulated party's facility, from which such fuel is dispensed, is labeled with the applicable fuel identification and use restrictions described in paragraph (b)(1) of this section; and

(3) The fuel is not sold, dispensed, transferred, or offered for sale, dispensing, or transfer for highway use in a motor vehicle.

(c) *California gasoline exemptions.* (1) Gasoline or PRC which is additized in the state of California is exempt from the VAR provisions in §§ 80.168 (b) and (e) and 80.170, provided that:

(i) For all such gasoline or PRC, whether intended for sale within or outside of California, records of the type required for California gasoline (specified in title 13, California Code of Regulations, section 2257) are maintained; and

(ii) Such records, with the exception of daily additization records, are maintained for a period of five years from the date they were created and are delivered to EPA upon request.

(2) Gasoline or PRC that is transferred and/or sold solely within the state of California is exempt from the PTD provisions of the detergent certification program, specified in §§ 80.168(c) and 80.171.

(3) Nothing in this paragraph (c) exempts such gasoline or PRC from the requirements of § 80.168 (a) and (e), as applicable. EPA will base its determination of California gasoline's conformity with the detergent's LAC on the additization records required by CARB, or records of the same type.

§ 80.174 Addresses.

(a) The detergent additive sample required under § 80.161(b)(2) shall be sent to: Manager, Fuels and Technical Analysis Group, Testing Services Division, U.S. Environmental Protection Agency, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

(b) Other detergent registration and certification data, and certain other information which may be specified in this subpart, shall be sent to: Detergent Additive Certification, Director, Fuels and Energy Division, U.S. Environmental Protection Agency (6406J), 401 M Street, SW., Washington, DC 20460.

(c) Notifications to EPA regarding program exemptions, detergent dilution and commingling, and certain other information which may be specified in this subpart, shall be sent to: Detergent Enforcement Program, U.S. Environmental Protection Agency, Suite 214, 12345 West Alameda Parkway, Denver, CO 80228, (FAX 303–969–6490).

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Federal Register

Friday
July 5, 1996

Part III

Office of Management and Budget

Economic Classification Policy Committee: Standard Industrial Classification Replacement—the North American Industry Classification System Proposed Industry Classification Structure; Notice

OFFICE OF MANAGEMENT AND BUDGET

Economic Classification Policy Committee: Standard Industrial Classification Replacement—The North American Industry Classification System Proposed Industry Classification Structure

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of solicitation of comments for North American Industry Classification System industries.

SUMMARY: Under 44 U.S.C. 3504, the Office of Management and Budget (OMB) is seeking public comment on a series of notices documenting the development of the new North American Industry Classification System (NAICS), the industry classification system being proposed to replace the current Standard Industrial Classification (SIC) system. All Federal agencies that collect establishment-based data are expected to utilize the new system.

OMB is seeking comments on the usefulness and advisability of the proposed new NAICS as submitted by the Economic Classification Policy Committee (ECPC), an interagency committee established by OMB.

This notice, the sixth related to preparation of NAICS and the fourth in a series seeking comment on proposed industry structures, presents the entire proposed industry structure for NAICS including those sectors not previously published, the hierarchy, and the coding system. The structure and coding system shown in Part IV, Table 1 do not include any changes based on comments received in response to previous **Federal Register** notices regarding NAICS. The ECPC is currently reviewing those comments. Thus comments provided in response to any of the previous notices need not be resubmitted. This fall OMB will publish the ECPC's final recommendations to OMB for comment in a **Federal Register** notice that incorporates all of the ECPC's recommended revisions to the structure and coding system based on comments received in the U.S. and comments received by Canada and Mexico.

NAICS is being developed in cooperation with Statistics Canada and Mexico's Instituto Nacional de Estadística, Geografía e Informática (INEGI). The new NAICS system provides common industry definitions for Canada, Mexico, and the United States to facilitate economic analyses that cover the economies of the three North American countries. The three country collaboration on an industry classification system for North America was announced for public comment in the **Federal Register**, July 26, 1994, pp. 38092–38096.

The July 26, 1994 **Federal Register** notice includes the concepts for the new system, as developed by Statistics Canada, Mexico's INEGI, and the ECPC. It also includes a copy of the joint statement of the three countries' statistical agencies regarding the development of NAICS. That agreement includes the following principles:

(1) NAICS will be erected on a production-oriented, or supply-based, conceptual framework. This means that producing units that use identical or similar production processes will be grouped together in NAICS.

(2) The system will give special attention to developing production-oriented classifications for (a) new and emerging industries, (b) service industries in general, and (c) industries engaged in the production of advanced technologies.

(3) Time series continuity will be maintained to the extent possible. However, changes in the economy and proposals from data users must be considered. In addition, adjustments will be required for sectors where the United States, Canada, and Mexico presently have incompatible industry classification definitions in order to produce a common industry system for all three North American countries.

(4) The system will strive for compatibility with the 2-digit level of the International Standard Industrial Classification of All Economic Activities (ISIC, Rev. 3) of the United Nations.

ECPC Report No. 3—Summary of Public Responses to the Proposed New North American Industry Classification Industry System provides a summary of public comments received in response to the July 26, 1994, **Federal Register** notice.

A notice was published in the **Federal Register**, July 26, 1995, pp. 38436–38452, requesting comment on proposed industry structures for petroleum and coal product manufacturing, chemical manufacturing, and rubber and plastics manufacturing; for broadcasting and telecommunications; and for food services and drinking places and accommodations. A second **Federal Register** notice was published on February 6, 1996, pp. 4524–4578, requesting comment on proposed industry structures for crop production, animal production, forestry and logging; textile mills, textile product mills, apparel manufacturing, and leather and allied product manufacturing; food manufacturing and beverage and tobacco product manufacturing; fabricated metal product manufacturing; machinery manufacturing; electrical equipment, appliance and component manufacturing; and transportation equipment manufacturing. A third **Federal Register** notice was published on May 28, 1996, pp. 26558–26668, requesting comment on proposed industry structures for health and social assistance; educational services; computers and electronics product manufacturing; furniture manufacturing; printing and related support activities; professional, technical and scientific services; performing arts, spectator sports and related industries; museums, historical sites and similar institutions; recreation, amusement and gambling; information; wood product manufacturing, except furniture; rental and leasing; repair and maintenance; management and support; transportation; mining; paper manufacturing; nonmetallic minerals manufacturing; primary metal manufacturing; miscellaneous manufacturing; and postal service and couriers.

DATES: To ensure consideration and response to all comments on the proposals set forth in this notice, comments must be in writing and should be submitted as soon as possible, but no later than September 3, 1996. It is planned that this proposed industry system would become effective in the U.S. on January 1, 1997.

ADDRESSES: Correspondence about the industry proposals of the NAICS structure announced in this **Federal Register** notice should be sent to: Carole A. Ambler, Coordinator, Economic Classification Policy Committee, Bureau of the Census, U.S. Department of Commerce, Room 2633–3, Washington, DC 20233, telephone number: (301) 457–2668, FAX number: (301) 457–1343.

Copies of all ECPC issues papers and ECPC reports are available by contacting Jack E. Triplett, Chairman, Economic Classification Policy Committee, Bureau of Economic Analysis (BE–42), U.S. Department of Commerce, Washington, DC 20230, telephone number: (202) 606–9615, FAX number: (202) 606–5311.

ELECTRONIC AVAILABILITY AND COMMENTS: This document is available on the Internet from the Census Bureau via WWW browser, ftp, and E-mail.

To obtain this document via WWW browser, connect to "http://www.census.gov" then select the "Current Economic Indicators" circular icon, then select "Economy-wide topics" from the "About businesses" theme, then select "North American Industry Classification System (NAICS)", then select this **Federal Register** notice.

To obtain this document via ftp, login to ftp.census.gov as anonymous, and retrieve the file "naicsfr6" from the "/pub/epcd/naics" directory. (That directory also contains previous NAICS **Federal Register** notices and related documents.)

To obtain this document via Internet E-mail, send a message to majordomo@census.gov with the body text as follows: "get gatekeeper naicsfr6.txt". The document will be delivered as a message attachment.

Comments may be sent via Internet E-mail to the Census Bureau at naics@census.gov (do not include any capital letters in the address). Comments received at this address by the dates specified above will be included as part of the official record.

FOR FURTHER INFORMATION CONTACT: Carole A. Ambler, Coordinator, Economic Classification Policy Committee, Bureau of the Census, U.S. Department of Commerce, Room 2633–3, Washington, DC 20233, telephone number: (301) 457–2668, FAX number: (301) 457–1343.

SUPPLEMENTARY INFORMATION:

Structure of Notice

There are four parts to this notice. PART I includes the proposals for Finance and Insurance; PART II includes the structure for all of the subsectors not made comparable across all three countries and the structure for the retail and wholesale sectors, the boundaries of which are included in NAICS; PART III includes the proposed NAICS hierarchy; and PART IV presents the entire proposed structure of the new classification system, including the proposed coding system.

Part I of the notice is organized into two sections. The first section includes a copy of the proposed agreement signed by the ECPC, Statistics Canada, and INEGI; the structure of NAICS; and an explanation of the structure. For a number of reasons, NAICS industries do not always provide as much industry detail as has been present in the U.S. SIC. Each country may add additional detailed industries, below the proposed 5-digit industry level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 5-digit industry NAICS level in order to ensure full comparability among the three countries. The second section includes the U.S. detailed industries within NAICS and two comparison tables showing the differences between the 1987 SIC and the 1997 NAICS with United States detail.

Part II includes the structure for industries that have not been made comparable across all three countries. Because both resources and time for constructing NAICS were limited, the statistical agencies of the three countries agreed on the boundaries of some sectors or subsectors rather than a detailed industry structure. Those sectors (subsectors) are construction; utilities; retail trade; wholesale trade; real estate; lessors of other non-financial assets; waste management and remediation services; and other services that include personal and laundry services and religious, grantmaking, civic, and other membership organizations. For each of these sectors, except wholesale trade, Canada and the United States have agreed on an industry structure and hierarchy to ensure comparability of statistics between those two countries. The United States will provide for additional industries at the national level to reflect important industries in the United States that will not be shown separately in Canada.

Part III includes the proposed hierarchy for NAICS. This structure includes those sectors for which detailed industries have been agreed upon by the three countries and those industries that include only an agreement between Canada and the United States.

Part IV presents the entire structure of the new classification system for the United States including both NAICS and non-NAICS industries. Table 1 shows the proposed 1997 hierarchy, including NAICS and U.S. national detail industries, and the proposed coding system for NAICS with a comparison to the 1987 SIC. Table 2 is in 1987 SIC sequence and relates the 1987 SIC to the 1997 NAICS.

The structure and coding system shown in Part IV, Table 1 do not include any changes based on comments received about previous **Federal Register** notices regarding NAICS. The ECPC is currently reviewing these comments. If you have provided comments on any of the previous notices, you do not need to resubmit those comments. This fall OMB will publish the ECPC's final recommendations to OMB for comment in a **Federal Register** notice that incorporates all of the ECPC's recommended revisions to the structure and coding system based on comments received in the U.S. and comments received by Canada and Mexico.

Time Series Summary

The standard approach to preserving time series continuity after classification revisions is to create linkages where the series break. This is accomplished by producing the data series using both the old and new classifications for a given period of transition. With the dual classifications of data, the full impact of the revision can be assessed. Data producers then may measure the reallocation of the data at aggregate industry levels and develop a concordance between the new and old series for that given point in time. The concordance creates a crosswalk between the old and new classification systems. This link between the 1987 U.S. SIC and NAICS (with U.S. national detail) will be developed by the statistical agencies in the U.S.

Outreach Activities

OMB and the Economic Classification Policy Committee (ECPC) are seeking comments on the proposed NAICS structure for the industries described in this notice. In carrying out its mandate to ensure maximum public participation in the process of constructing NAICS, the ECPC has already discussed many of these industry proposals with industry and user groups and will continue to do so. In addition, the ECPC is replying on a flow basis as soon as the work is completed for industry subsectors to previous **Federal Register** notices. Thus, this **Federal Register** notice supplements other ECPC public outreach activities in the development of NAICS.

Part 1—Proposed New Industry Structure for Finance and Insurance

Section A—NAICS Structure

North American Industry Classification System (NAICS)

Agreement Number 24

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following sector: Finance and Insurance.

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the NAICS industry level of NAICS, as

necessary to meet national needs, so long as this additional detail aggregates to the NAICS industry level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on December 12 and December 13, 1995 in Washington, DC.

Accepted	Signature	Date
Canada	/s/ Jacob Ryten.	12/13/95
Mexico	/s/ Enrique Ordaz.	12/13/95
United States	/s/ Jack E. Triplett.	12/13/95

Attachment 1—NAICS Structure

52 FINANCE AND INSURANCE
521 Monetary Authorities—Central Bank
5211 Monetary Authorities—Central Bank
52111 Monetary Authorities—Central Bank
522 Credit Intermediation and Related Activities
523 Securities, Commodity Contracts, and Other Intermediation and Related Activities
5231 Securities and Commodity Contracts Intermediation and Brokerage
5232 Securities and Commodity Exchanges
52321 Securities and Commodity Exchanges
5239 Other Financial Investment Activities
524 Insurance Carriers and Related Activities
5241 Insurance Carriers
5242 Agencies, Brokerages, and Other Insurance Related Activities

Attachment 2—North American Industry Classification System

Draft Classification for:
Finance and Insurance

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft classification for these industries.

This draft classification constitutes the sector Finance and Insurance. This sector is composed of four subsectors: Monetary Authorities—Central Bank; Credit Intermediation and Related Activities; Securities, Commodity Contracts, and Other Intermediation and Related Activities; and Insurance Carriers and Related Activities. These subsectors are subdivided into six industry groups.

In addition, Canada and the United States will further subdivide the NAICS structure, creating, in all, nine industry groups and 25 industries; this structure is shown in Attachment 3. Mexico will have its own industry detail to reflect the very different financial institutions that exist in Mexico.

A General Outline

The Finance and Insurance sector consists of establishments primarily engaged in financial transactions—that is, transactions involving the creation, liquidation, or change in ownership of financial assets—or in facilitating financial transactions. Three principal types of activities can be identified:

- Some establishments raise funds by taking deposits and/or issuing securities, and, in the process, incur liabilities. They use these funds to acquire financial assets by making loans and/or purchasing securities. Putting themselves at risk, they channel funds from lenders to borrowers and transform or repackage the funds with respect to maturity, scale and risk. This activity is known as financial intermediation, and that term will be used in the rest of this agreement.
- Some establishments are engaged in the pooling of risk. They collect fees—insurance premiums or annuity considerations; build up reserves; invest those reserves; and make contractual payments. Fees are based on the expected incidence of the insured risk and the expected return on investment.
- Some establishments are engaged in providing specialized services facilitating, or supporting, financial intermediation, insurance, and employee benefit programs.

In addition, establishments charged with monetary control—the monetary authorities—are included in this sector.

The subsectors, industry groups, and industries within this sector have been defined on the basis of their unique production processes. As with all industries, the production processes are distinguished by their use of specialized human resources and specialized physical capital. In addition, the way in which these establishments acquire and allocate financial capital—their source of funds and the use of those funds—provides a third basis for distinguishing characteristics of the production process. For instance, the production process in raising funds through deposit taking is different from the process of raising funds in bond or money markets. The process of making loans to individuals also requires different production processes than does the creation of investment pools or the underwriting of securities.

Most of the Finance and Insurance subsectors contain one or more industry groups of intermediaries with similar patterns of raising and using funds and another industry group of establishments engaged in activities that facilitate, or are otherwise related to, that type of financial or insurance intermediation.

The subsector Monetary Authorities-Central Bank consists of establishments engaged in such central banking functions as issuing currency, regulating the supply of credit, managing the nation's international reserves, holding deposits that represent the reserves of other banks and other central banks, and acting as fiscal agent for the central government. The institutional arrangements for performing these functions may differ among countries. In Canada these functions are performed by the Bank of Canada, in Mexico by the Bank of Mexico, and in the United States by the Federal Reserve banks.[1]

The subsector Credit Intermediation and Related Activities consists of two types of establishments: those that intermediate in credit markets and those that facilitate such intermediation. Establishments in the first group lend funds to the public or to other borrowers, raising the funds that they lend by accepting deposits from the public, by borrowing from other financial intermediaries, or by issuing commercial paper and debt in the capital markets. Establishments that facilitate credit intermediation are engaged in such activities as mortgage and loan brokerage, clearinghouse and reserve services, and check cashing services.

The subsector Securities, Commodity Contracts, and Other Intermediation and Related Activities contains three industry groups. The first industry group, Securities and Commodity Contracts Intermediation and Brokerage, consists of establishments that put capital at risk in the process of engaging in underwriting securities issues or in making markets for securities and establishments that, as agents and brokers, act as intermediaries between buyers and sellers, usually charging a commission. The second industry group, Securities and Commodity Exchanges, consists of securities and commodity exchanges that provide administrative, monitoring, and enforcement services for financial markets. The third industry group, Other Financial Investment Activities, consists of establishments that facilitate the marketing of other financial contracts or provide portfolio management, other investment advisory services, trust, fiduciary, and custody services.

The subsector Insurance Carriers and Related Activities contains two industry groups. The first industry group,

[1] The Board of Governors of the Federal Reserve System is classified in Public Administration.

Insurance Carriers, consists of establishments that intermediate as the consequence of pooling risks. They invest premiums to build up a portfolio of financial assets to be used against future claims. Industries are defined in terms of the type of risk being insured against, such as, death, loss of employment because of age or disability, and property damage. Contributions and premiums are set on the basis of actuarial calculations of probable payouts based on risk factors from experience tables and expected investment returns on reserves. The second industry group, Agencies, Brokerages, and Other Insurance Related Activities, consists of agencies and brokerages selling insurance and establishments providing other insurance- and employee-benefit-related services.

Background. Existing industry classification structures for this sector typically have been specified at the enterprise level by type of financial institution—banks, life insurance companies, etc. Until recently, the functions that could be performed by particular institutions were constrained by the regulatory structure in each country; but this situation is rapidly changing, particularly in Canada and the United States. The NAICS classification proposed for Finance and Insurance is a bridge between the existing institutional basis and a structure based on the activities performed within these institutions.

Industries are defined in terms of activities for which a production process can be specified, and many of these activities are not exclusive to a particular type of financial institution. Although the activities carried out by establishments in the Finance and Insurance sector appear to be broadly similar in the three countries, the manner in which they have been organized and delivered are unique to each country—depending on laws, regulations, tradition, and technological advancements. The extent to which these activities can be separately identified and measured is not clear; consequently, three-country NAICS is specified, for the most part, only at the subsector or industry group level.

To deal with the varied activities taking place within existing financial institutions, the approach is to split these institutions into components performing specialized services. This requires defining the units engaged in providing those services and developing procedures that allow for their delineation. These units are the equivalents for Finance and Insurance of the establishments defined for other industries. There are differences in the present definition of the production unit in the three countries, ranging from the location in the United States to the enterprise in Mexico. This requires that, in designing the classification structure, consideration be given to the appropriate definition and delineation of the producing unit to be classified.

The output of many financial services, as well as the inputs and the processes by which they are combined, cannot be observed at a single location and can only be defined at a higher level of the organizational structure of the enterprise. Additionally, a number of independent activities that represent separate and distinct production processes may take place at a single location belonging to a multi-location financial firm. Activities are more likely to be homogeneous with respect to production characteristics than are locations, at least in financial services. The classification proposed defines activities broadly enough that it can be used both by those classifying by location and by those employing a more top-down approach to the delineation of the establishment.

Limitations and Constraints of the Classification

The classification of establishments engaged in activities that facilitate, or are otherwise related to, the various types of intermediation have been included in individual subsectors, rather than in a separate subsector dedicated to services alone. This is because these services are performed by intermediaries as well as by specialist establishments, and the extent to which the activity of the former can be separately identified is not clear. An aggregate that includes all of the service, wherever it is produced, is preferable to one that misses much of it. In particular, in many instances Mexico proposes to collect data on an institutional basis and would be unable to separate services. Aggregates for related activities are identified at the 3-digit industry group level, wherever possible. They can be reaggregated to a services subsector if desired.

The boundaries of the Finance and Insurance sector have been defined so as to encompass establishments primarily engaged in financial transactions—that is, transactions involving the creation, liquidation, or change in ownership of financial assets—or in facilitating financial transactions. Financial industries are extensive users of electronic means for facilitating the verification of financial balances, authorizing transactions, transferring funds to and from transactors' accounts, notifying banks (or credit card issuers) of the individual transactions and providing daily summaries. Since these transaction processing activities are integral to the production of finance and insurance services, establishments that principally provide a financial transaction processing service are classified to this sector, rather than to the data processing industry in the Information sector.

Funds, trusts and other financial vehicles that are not separate production units and do not have employees are excluded from the structure in the three-country agreement. The management of these funds can require significant human and capital resources, however, and the management activity is a major source of the value added in the investment intermediary industry. In NAICS, where there are separate establishments and employees devoted to the management of funds, they are classified in "Other Financial Investment Activities" by all three countries.

These legal entities that hold portfolios of assets on behalf of others are significant, however, and data on them are required for a variety of purposes. All three countries may include these legal entities in the compilation of financial and other statistics, but whereas Canada and Mexico do not propose to include them in their compilation of production statistics, the United States proposes to do so. The United States, therefore, has extended the boundary to include funds, trusts and other financial vehicles in a fifth subsector.

Relationship to ISIC

All of the industries included in this sector are contained within Divisions 65, Financial Intermediation, Except Insurance and Pension Funding; 66, Insurance and Pension Funding, and 67, Activities Auxiliary to Financial Intermediation in the current International Standard Industrial Classification of All Economic Activities (ISIC, Revision 3) of the United Nations. ISIC Division 67, however, also includes actuarial consulting services, which are in the Professional, Scientific, and Technical subsector of NAICS.

For Finance and Insurance, NAICS differs from ISIC, Rev.3, in the following respects: there are fewer detailed industries in NAICS; NAICS does not distinguish between monetary intermediation and other intermediation; NAICS monetary authorities (ISIC central banking) are not part of depository credit intermediation; NAICS includes activities related to financial intermediation within each

subsector, although to the extent that such industry groups are identified, they can be reaggregated to approximate ISIC Division 67; and those holding companies, pension funds, and other funds that are included in ISIC are excluded from NAICS.

Some Changes to the National Classifications

For Canada, an important revision is that the retail operations of banks, trust companies, and other related institutions, as well as the corporate and institutional activities of these institutions, are classified to Commercial Banking, which is in the Depository Credit Intermediation industry group. There are no longer separate classes for institutions as defined in the 1980 Canadian Standard Industrial Classification (CSIC), except credit unions.

The classes contained in Major Group 71 of the CSIC are to be found in a new industry group entitled Non-Depository Credit Intermediation in NAICS, with the exception of Venture Capital Companies, which are in the industry Miscellaneous Intermediation.

Activities related to depository and non-depository credit intermediation are included in a single industry group, Activities Related to Credit Intermediation, within the NAICS subsector, Credit Intermediation and Related Activities. For instance, central credit unions, clearing houses, and reserve and other depository services are included here. Previously all of the operations of credit card companies were classified to CSIC 7122, Credit Card Companies. In NAICS, establishments specializing in the lending activities associated with credit cards are classified in the industry, Credit Card Issuing, a component of the industry group, Non-Depository Credit Intermediation. Establishments involved in the processing of credit cards (including billing and collection) are classified in an industry within the industry group, Activities Related to Credit Intermediation. In Canada, any establishments primarily involved in the processing of credit cards and also involved in other financial transactions would be placed in the industry group, Activities Related to Credit Intermediation.

There are also important revisions in the treatment of investment intermediary industries. CSIC Major Group 72, Investment Intermediary Industries, includes establishments engaged in investing in a portfolio of securities and other investments on behalf of shareholders or unit holders. Also included in this major group are various funds and holding companies. The funds themselves are the result of savings attributable to other sectors of the economy, do not have a direct role in production, and have been excluded from NAICS. The management of these funds can require significant human and capital resources and is the primary source of the value added in this industry. Where there are separate establishments with employees devoted to the management of funds, such as in the case of mutual fund management companies, they are classified in the industry group, Other Financial Investment Activities.

For Mexico, this sector corresponds almost entirely to the combination of CMAP's subsector 81 (Insurance and financial services) and branch 9740 (Services related to financial, insurance and bond institutions). The current subsector 81 comprises 18 activity classes and branch 9740 has 5 additional classes; of these 23 classes, 11 are entirely comparable with other similar NAICS industry classes, whereas the remaining 12 underwent some changes.

Class 811046 (Non-banking Institutions engaged in savings and loans) and class 811047 (other credit institutions) are included in NAICS subsector, Credit Intermediation and Related Activities; class 813002 refers to insurance services that is included in NAICS industry group Insurance Carriers.

On the other hand, some minor CMAP classes were regrouped or placed in miscellaneous NAICS industries as in the case of surety services (813001) or the financial advisory category and development committees (811045).

Many NAICS activities will not be applicable in the case of Mexico since they refer to activities that do not exist in that country, although some may be created in the future. These activities are credit unions, interbanking and reserve boards, consumer credit, real estate credit, mortgage brokers and other credit, securities and commodity brokerage. The two other "new" industries with respect to the CMAP are miscellaneous industries generated by the restructuring of this sector.

Most of the current CMAP classes will correspond either to a NAICS industry or to a national industry. So, in fact, with respect to the CMAP, these changes do not represent a great impact on the time series.

For the United States, 1987 SIC Major Group 60, Depository Institutions, and 1987 SIC Major Group 61, Non-Depository Credit Institutions, differ from NAICS subsector Credit Intermediation and Related Activities in that the NAICS subsector does not include the central bank, which is in a subsector of its own; and a number of activities are broken out as industries and classified in other industry groups or subsectors—trust, fiduciary, and custody services, for example. In addition, NAICS recognizes the lending activities of pawnbrokers in this subsector; pawnbrokers were classified in 1987 SIC 5932, Used Merchandise Stores.

1987 SIC Major Group 62, Security and Commodity Brokers, Dealers, Exchanges, and Services, differs from NAICS subsector Securities, Commodity Contracts, and Other Intermediation and Related Activities in that the NAICS subsector more clearly delineates the distinction between portfolio management (classified here) and the assets under management (excluded from NAICS); it includes the trust, fiduciary, and custody activities of banks and other financial institutions; it includes part of 1987 SIC 6733, Trusts Except Educational, Religious, and Charitable; it includes part of 1987 SIC 6792, Oil Royalty Traders; and it includes part of 1987 SIC 6799, Investors Not Elsewhere Classified.

1987 SIC Major Group 63, Insurance Carriers, and 1987 SIC Major Group 64, Insurance Agents, Brokers, and Service, differ from NAICS subsector Insurance Carriers and Related Activities in that the NAICS subsector excludes those pension and other employee benefit funds that are simply legal entities organized to hold portfolios of securities and other assets on behalf of the beneficiaries of the funds.

Most of 1987 SIC Major Group 67, Holding and Other Investment Offices, is not included in the Finance and Insurance subsector in NAICS. 1987 SIC Industry Group 671, Holding Companies, and 1987 SIC Industry Group 672, Investment Offices, are included in the Funds, Trusts, and Other Financial Vehicles subsector, which is not part of NAICS but is a U.S. only subsector. 1987 SIC 6732, Educational, Religious, and Charitable Trusts, is included in the Religious, Grantmaking, Civic and Other Membership Organizations subsector; part of 1987 SIC 6733, Trusts Except Educational, Religious, and Charitable, is included in the Securities, Commodity Contracts, and Other Intermediation and Related Activities and part in Funds, Trusts and Other Financial Vehicles subsector; 1987 SIC 6794, Patent Owners and Lessors, is now a separate subsector; and 1987 SIC 6798, Real Estate Investment Trusts, and part of 1987 SIC 6799, Investors Not Elsewhere Classified, are included in the Funds, Trusts, and Other Financial Vehicles subsector.

Achievement of Objectives

The classification meets the objectives for the North American Industry Classification System (NAICS). It is based on the production function concept, and it groups establishments with similar production processes. Data for financial institutions carrying out several activities will need to be disaggregated into their components for classification.

The classification achieves comparability at the subsector or industry group level for the three countries and at the industry level for Canada and the United States. The unique aspects of the financial systems in the three countries, as well as countries' differing abilities to break down institutional data into their component activities, are accommodated through the provision of a number of national industries in the classification.

To the extent possible, the classification structure allows for the delineation of new and emerging industries in this sector by taking into account the foreseeable changes in regulation. Innovative use of technology allows the sector to rapidly develop new products and to deliver them in new ways.

Attachment 3—Proposed U.S./Canadian 5-Digit Detail For Finance and Insurance

52 Finance and Insurance
521 Monetary Authorities—Central Bank
52111 Monetary Authorities—Central Bank
522 Credit Intermediation and Related Activities
5221 Depository Credit Intermediation
52211 Commercial Banking
52212 Savings Institutions
52213 Credit Unions
52219 Other Depository Credit Intermediation
5222 Non-Depository Credit Intermediation
52221 Credit Card Issuing
52222 Sales Financing
52229 Other Non-Depository Credit Intermediation
5223 Activities Related to Credit Intermediation
52231 Mortgage and Other Loan Brokers
52232 Financial Transactions Processing, Reserve, and Clearing House Activities
52239 Other Activities Related to Credit Intermediation
523 Securities, Commodity Contracts, and Other Intermediation and Related Activities
5231 Securities and Commodity Contracts Intermediation and Brokerage
52311 Investment Banking and Securities Dealing
52312 Securities Brokerage
52313 Commodity Contracts Dealing
52314 Commodity Brokerage
5232 Securities and Commodity Exchanges
52321 Securities and Commodity Exchanges
5239 Other Financial Investment Activities
52391 Miscellaneous Intermediation
52392 Portfolio Management
52393 Investment Advice
52399 All Other Financial Investment Activities
524 Insurance Carriers and Related Activities
5241 Insurance Carriers
52411 Direct Life Insurance Carriers
52412 Direct Non-Life Insurance Carriers
52413 Reinsurance Carriers
5242 Agencies, Brokerages, and Other Insurance Related Activities
52421 Insurance Agencies and Brokerages
52429 Other Insurance Related Activities

As mentioned earlier, Canada and the United States have agreed to subdivide the NAICS structure and create a number of industries. Three additional industry groups are specified, all in the sector Credit Intermediation and Related Activities, and 23 industries are defined in the industry groups that are not detailed in NAICS. As compared with the existing classifications, the major features of the proposed elaboration of the NAICS classification structure for this sector are the following:

- Financial intermediation is more clearly differentiated from services facilitating or otherwise related to financial intermediation.
- Industries are more homogeneous in terms of the activities included.
- The classification is less reflective of regulatory definitions.
- The proposed NAICS structure clearly differentiates between the management of funds and the assets under management.
- Remaining class of customer distinctions reflect true differences in production processes.

The NAICS subsector Credit Intermediation and Related Activities is subdivided into three industry groups: Depository Credit Intermediation, Non-Depository Credit Intermediation, and Activities Related to Credit Intermediation. The first industry group, Depository Credit Intermediation, consists of establishments that raise the funds they lend by accepting deposits; within it, industries are defined on the basis of differences in the types of deposit liabilities assumed and the nature of the credit extended. The second industry group, Non-Depository Credit Intermediation, consists of establishments that fund themselves by borrowing from other financial intermediaries or by issuing commercial paper and other debt instruments; within this group, industries are defined on the basis of the type of credit being extended. The third industry group, Activities Related to Credit Intermediation, consists of establishments that facilitate credit intermediation by such activities as bringing borrowers and lenders together and clearing checks and credit card transactions.

The NAICS industry group Securities and Commodity Contracts Intermediation and Brokerage is subdivided into four industries that distinguish between brokers who bring together buyers and sellers of financial instruments, usually charging a commission, and establishments that intermediate by putting capital at risk and that are compensated by price spreads on the instruments they trade. An additional distinction is made between establishments operating in securities markets and establishments operating in commodities contract markets.

The NAICS industry group Other Financial Investment Activities is subdivided into four industries. Miscellaneous Intermediation consists of establishments that put capital at risk in instruments other than securities and commodity contracts. Establishments in Portfolio Management have authority to direct the use or investment of funds or other assets; for a fee, they buy and sell securities or other assets in portfolios of assets entrusted to them and make decisions about the objectives and content of these portfolios. Investment Advice consists of establishments that provide investment information on a fee basis, but do not have authority to execute trades. Establishments in All Other Financial Investment Activities are engaged in such activities as providing trust, fiduciary and custody services.

The NAICS industry group Insurance Carriers is subdivided into three industries. Direct Life Insurance Carriers underwrite annuities and life, accidental death and dismemberment, and disability income insurance directly to policyholders. Direct Non-Life Insurance Carriers underwrite various lines of insurance (other than life insurance) directly to policyholders. Reinsurance Carriers assume all or part of insurance policies originally written by another carrier.

The NAICS industry group Agencies, Brokerages, and Other Insurance Related Activities is subdivided into two industries. Insurance Agencies and Brokerages consists of establishments that sell insurance products. Other Insurance Related Activities consists of establishments providing, on a fee or

contract basis, such insurance services as claims administration and adjusting.

Section B—Annex: United States National Industry Detail

As explained in the Structure presentation of this notice, the three country agreement on NAICS envisions that each country may develop national detail industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability. As explained earlier, for finance and insurance the three countries agreed to comparability at either the subsector or the industry group level. However, Canada and the United States have agreed to a classification that extends comparability to the 5-digit industry level. Attachment 3 shows the industry detail agreed upon by Canada and the United States. These industries can be aggregated to the NAICS classifications, thus assuring full North American comparability.

The ECPC is proposing U.S. 6-digit industry detail for this NAICS industry sector. In the following tables, proposed 6-digit detail is shown. For cases where no 6-digit detail is shown, the ECPC is proposing that the 5-digit industries will also represent the most detailed U.S. industries.

In addition to the 6-digit detail, there is a U.S.-only subsector—Funds, Trusts, and Other Financial Vehicles—that provides a classification structure for legal entities organized to hold portfolios of securities or other assets on behalf of shareholders, beneficiaries of pension funds, etc. The portfolio is customized so as to achieve specific investment characteristics, such as diversification, risk, rate of return, and price volatility. These entities earn interest, dividends, and other property income, but have no employment or revenue from the sale of services. The funds themselves are excluded from the NAICS classification, because they are not separate production units and do not have employees, although establishments with employees devoted to the management of funds are classified in several of the industries within the NAICS subsectors Securities, Commodity Contracts, and Other Intermediation and Related Activities and Insurance Carriers and Related Activities.

Despite their lack of employment, these funds are economically significant, and the United States requires data related to them for various purposes. For instance, financial flow accounts and balance of payments accounts track changes in outstanding assets and liabilities, and interest and dividend income earnings are important in determining the distribution of income. Moreover, funds are frequently given tax numbers, become part of the survey frame, and are sometimes surveyed. It is necessary to have a structure for classifying such records and keeping them separate from those of producing units. Consequently, these funds are placed in a U.S.-only subsector at the end of the NAICS classification structure. Included in this subsector are: Holding Companies, Insurance and Employee Benefit Funds, and Investment Pools and Funds.

TABLE 1

The definition of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
521	Monetary Authorities—Central Bank			
5211	Monetary Authorities—Central Bank			
52111	Monetary Authorities—Central Bank	E	6011	Federal Reserve Banks.
522	Credit Intermediation and Related Activities			
5221	Depository Credit Intermediation			
52211	Commercial Banking	R	*6021	National Commercial Banks (banking).
			*6022	State Commercial Banks (banking).
			6029	Commercial Banks, NEC.
			*6081	Branches and Agencies of Foreign Banks (banking).
52212	Savings Institutions	R	6035	Savings Institutions, Federally Chartered.
			6036	Savings Institutions, Not Federally Chartered.
52213	Credit Unions	R	6061	Credit Unions, Federally Chartered.
			6062	Credit Unions, Not Federally Chartered.
52219	Other Depository Credit Intermediation	N	*6099	Functions Related to Depository Banking, NEC (money order issuance).
5222	Non-Depository Credit Intermediation			
52221	Credit Card Issuing	N	*6021	National Commercial Banks (credit card issuing).
			*6022	State Commercial Banks (credit card issuing).
			*6141	Personal Credit Institutions (credit card issuing).
52222	Sales Financing	N	*6141	Personal Credit Institutions (installment sales finance).
			*6153	Short-Term Business Credit Institutions, Except Agricultural (business sales finance).
			*6159	Miscellaneous Business Credit Institutions (finance leasing).
52229	Other Non-Depository Credit Intermediation			
522291	Consumer Credit	R	*6141	Personal Credit Institutions (except installment sales finance and credit card issuing).
522292	Real Estate Credit	R	*6162	Mortgage Bankers and Loan Correspondents (mortgage bankers and originators).
522293	International Trade Financing	N	*6081	Branches and Agencies of Foreign Banks (international trade financing).
			6082	Foreign Trade and International Banking Institutions.
			*6111	Federal and Federally-Sponsored Credit Agencies (trade banks).

TABLE 1—Continued

The definition of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
			*6159	Miscellaneous Business Credit Institutions (trade banks).
522294	Secondary Market Financing	N	*6111	Federal and Federally Sponsored Credit Agencies (except trade banks).
522299	All Other Non-Depository Credit Intermediation.	N	*5932	Used Merchandise Stores (pawnshops)
			*6081	Branches and Agencies of Foreign Banks (agencies).
			*6111	Federal and Federally-Sponsored Credit Agencies (except trade banks and secondary market financing).
			*6153	Short-Term Business Credit Institutions, Except Agricultural (except credit card service and business sales finance).
			*6159	Miscellaneous Business Credit Institutions (except trade banks and finance leasing).
5223	Activities Related to Credit Intermediation			
52231	Mortgage and Other Loan Brokers	E	6163	Loan Brokers.
52232	Financial Transactions Processing, Reserve, and Clearing House Activities.	N	6019	Central Reserve Depository Institutions, NEC.
			*6099	Functions Related to Depository Banking, NEC (electronic funds transfer networks and clearing house associations).
			*6153	Short-Term Business Credit Institutions, Except Agricultural (credit card service).
			*7389	Business Services, NEC (credit card service).
52239	Other Activities Related to Credit Intermediation	N	*6099	Functions Related to Depository Banking, NEC (except money orders, electronic funds transfer networks and clearing houses, foreign currency exchanges, escrow and fiduciary agencies and deposit brokers).
			*6162	Mortgage Bankers and Loan Correspondents (mortgage servicing).
523	Securities, Commodity Contracts and Other Intermediation and Related Activities			
5231	Securities and Commodity Contracts Intermediation and Brokerage			
52311	Investment Banking and Securities Dealing	N	*6211	Security Brokers, Dealers, and Flotation Companies (securities dealers and underwriters).
52312	Securities Brokerage	N	*6211	Security Brokers, Dealers, and Flotation Companies (security brokers).
52313	Commodity Contracts Dealing	N	*6099	Functions Related to depository Banking, NEC (foreign currency exchange).
			*6221	Commodity Contracts Brokers and Dealers (commodity dealers).
52314	Commodity Brokerage	N	*6221	Commodity Contracts Brokers and Dealers (commodity brokers).
5232	Securities and Commodity Exchanges			
52321	Securities and Commodity Exchanges	E	6231	Security and Commodity Exchanges.
5239	Other Financial Investment Activities			
52391	Miscellaneous Intermediation	N	*6211	Securities Brokers, Dealers and Flotation Companies (except securities and commodity dealers).
			*6799	Investors, NEC (venture capital companies).
52392	Portfolio Management	N	*6282	Investment Advice (portfolio managers).
			*6371	Pension, Health, and Welfare Funds (managers).
			*6733	Trust, Except Educational, Religious, and Charitable (managers).
			*6799	Investors, NEC (pool operators).
52393	Investment Advice	R	*6282	Investment Advice (except portfolio managers).
52399	All Other Financial Investment Activities			
523991	Trust, Fiduciary and Custody Activities	N	*6021	National Commercial Banks (trust services).
			*6022	State Commercial Banks (trust services).
			6091	Nondeposit Trust Facilities.
			*6099	Functions Related to Depository Banking, NEC (escrow and fiduciary agencies).
			*6289	Services Allied With the Exchange of Securities or Commodities, NEC (securities custodians).

TABLE 1—Continued

The definition of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
			*6733	Trusts, Except Educational, Religious, and Charitable (administrators of private estates).
523999	Miscellaneous Financial Investment Activities	R	*6099	Functions Related to Depository Banking, NEC (deposit brokers).
			*6211	Security Brokers, Dealers, and Flotation Companies (dealers, except security and commodity).
			*6289	Services Allied With the Exchange of Securities or Commodities, NEC (except security custodians).
			*6792	Oil Royalty Traders (investors on own account).
524	Insurance Carriers and Related Activities			
5241	Insurance Carriers			
52411	Direct Life Insurance Carriers	R	*6311	Life Insurance (life insurers-direct).
52412	Direct Non-Life Insurance Carriers			
524121	Property and Casualty Insurance Carriers	R	*6331	Fire, Marine, and Casualty Insurance (fire, marine, and casualty insurers-direct).
			*6351	Surety Insurance (financial responsibility insurers-direct).
524122	Health and Medical Insurance Carriers	R	*6324	Hospital and Medical Service Plans (health and medical insurers-direct).
			*6321	Accident and Health Insurance (health and medical insurers-direct).
524123	Title Insurance Carriers	R	*6361	Title Insurance (title insurers-direct).
524129	Other Direct Non-Life Insurance Carriers	E	6399	Insurance Carriers, NEC.
52413	Reinsurance Carriers	N	*6311	Life Insurance (reinsurers).
			*6321	Accident and Health Insurance (reinsurers).
			*6324	Hospital and Medical Service Plans (reinsurers).
			*6331	Fire, Marine, and Casualty Insurance (reinsurers).
			*6351	Surety Insurance (reinsurers).
			*6361	Title Insurance (reinsurers).
5242	Agencies, Brokerages and Other Insurance Related Activities			
52421	Insurance Agencies and Brokerages	R	*6411	Insurance Agents, Brokers and Service (insurance agents and brokers)
52429	Other Insurance Related Activities			
524291	Claims Adjusters	N	*6411	Insurance Agents, Brokers and Service (insurance claims adjusters).
524292	Third Party Administration for Insurance and Pension Funds.	N	*6371	Pension, Health, and Welfare Funds (administrators).
			*6411	Insurance Agents, Brokers and Service (processors).
524299	All Other Activities Related to Insurance	N	*6411	Insurance Agents, Brokers and Service (except processors, agents and brokers, and claims adjusters).
525	Funds, Trusts and Other Financial Vehicles (U.S. Only)			
5251	Holding Companies			
52511	Holding Companies			
525111	Bank Holding Companies	E	6712	Offices of Bank Holding Companies.
525119	Other Holding Companies	E	6719	Offices of Holding Companies, NEC.
5252	Insurance and Employee Benefit Funds			
52521	Pension Funds	N	*6371	Pension, Health, and Welfare Funds (pension funds).
52522	Health and Welfare Funds	N	*6371	Pension, Health, and Welfare Funds (health and welfare funds).
52523	Insurance and Other Employee Benefit Funds	N	*6321	Accident and Health Insurance (self insurers).
			*6324	Hospital and Medical Service Plans (self insurers).
			*6331	Fire, Marine, and Casualty Insurance (self insurers).
			*6733	Trusts, Except Educational, Religious, and Charitable (vacation funds for employees).
5259	Other Investment Pools and Funds			
52591	Open-End Investment Funds	E	6722	Management Investment Offices, Open-End.
52592	Personal Trusts, Estates, and Agency Accounts	N	*6733	Trusts, Except Educational, Religious, and Charitable (personal trusts, estates, and agency accounts).
52593	Mortgage Investment Funds	E	6798	Real Estate Investment Trusts (REIT funds).

TABLE 1—Continued

The definition of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
52599	Other Financial Vehicles	E	6726	Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-End Management Investment Offices.

TABLE 2

The abbreviation "pt" means "part of". @ means time series break has been created that is greater than 3% of the 1992 value of revenue for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 USIC code	1987 USIC description	1997 U.S. description
5932	Used Merchandise Stores	
	Pawnshops	All Other Non-Depository Credit Intermediation (pt).
	Except Pawnshops	Used Merchandise Stores.
6011	Federal Reserve Banks	Monetary Authorities-Central Banks.
6019@	Central Reserve Depository Institutions, NEC	Financial Transactions Processing, Reserve, and Clearing House Activities (pt).
6021@	National Commercial Banks	
	Commercial Banks	Commercial Banking (pt).
	Credit Card Issuing	Credit Card Issuing (pt).
	Trust Services.	
	Trust, Fiduciary and Custody Activities (pt)	
6022@	State Commercial Banks	
	Commercial Banks	Commercial Banking (pt).
	Credit Card Issuing	Credit Card Issuing (pt).
	Trust Services	Trust, Fiduciary and Custody Activities (pt).
6029@	Commercial Banks, NEC	Commercial Banking (pt).
6035@	Savings Institutions, Federally Chartered	Savings Institutions (pt).
6036@	Savings Institutions, Not Federally Chartered	Savings Institutions (pt).
6061@	Credit Unions, Federally Chartered	Credit Unions (pt).
6062@	Credit Unions, Not Federally Chartered	Credit Unions (pt).
6081@	Branches and Agencies of Foreign Banks	
	International Trade Financing	International Trade Financing (pt).
	Branches of Foreign Banks	Commercial Banking (pt).
	Agencies of Foreign Banks	All Other Non-Depository Credit Intermediation (pt).
6082@	Foreign Trade and International Banking Institutions	International Trade Financing (pt).
6091@	Nondeposit Trust Facilities	Trust, Fiduciary, and Custody Activities (pt).
6099@	Functions Related to Deposit Banking, NEC	
	Money Order Issuance	Other Depository Credit Intermediation (pt).
	Clearinghouses	Financial Transactions Processing, Reserve, and Clearing House Activities (pt).
	Foreign Currency Exchange	Commodity Contracts Dealing (pt).
	Escrow and Fiduciary Agencies	Trust, Fiduciary, and Custody Activities (pt).
	Deposit Brokers	Miscellaneous Financial Investment Activities (pt).
	Other	Other Activities Related to Credit Intermediation (pt).
6111	Federal and Federally Sponsored Credit Agencies.	
	Trade Banks	International Trade Financing (pt).
	Secondary Market Financing	Secondary Market Financing.
	Other	All Other Non-Depository Credit Intermediation (pt).
6141@	Personal Credit Institutions	
	Credit Card Issuing	Credit Card Issuing (pt).
	Installment Sales Financing	Sales Financing and Finance Leasing (pt).
	Other	Consumer Credit (pt).
6153@	Short-Term Business Institutions, Except Agricultural	
	Business Sales Finance	Sales Financing and Finance Leasing (pt).
	Credit Card Service	Financial Transactions Processing, Reserve, and Clearing House Activities (pt).
	Other	All Other Non-Depository Credit Intermediation (pt).
6159@	Miscellaneous Business Credit Institutions	
	Finance Leasing	Sales Financing and Finance Leasing.
	Trade Banks	International Trade Financing (pt).
	Other	All Other Non-Depository Credit Intermediation (pt).
6162@	Mortgage Bankers and Loan Correspondents	
	Mortgage Bankers and Originators	Real Estate Credit.
	Mortgage Servicing	Other Activities Related to Credit Intermediation (pt).
6163	Loan Brokers	Mortgage and Other Loan Brokers.
6211@	Security Brokers, Dealers, and Flotation Companies	

TABLE 2—Continued

The abbreviation "pt" means "part of". @ means time series break has been created that is greater than 3% of the 1992 value of revenue for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 USIC code	1987 USIC description	1997 U.S. description
	Security Dealers and Underwriters	Investment Banking and Securities Dealing (pt).
	Security Brokers	Securities Brokerage.
	Dealers, Except Securities and Commodities	Miscellaneous Intermediation (pt).
	Other	Miscellaneous Financial Investment Activities (pt).
6221@	Commodity Contracts Brokers and Dealers	
	Commodity Dealers	Commodity Contracts Dealing (pt).
	Commodity Brokers	Commodity Brokerage (pt).
6231	Security and Commodity Exchanges	Securities and Commodity Exchanges.
6282@	Investment Advice	
	Portfolio Managers	Portfolio Management (pt).
	Other	Investment Advice (pt).
6289@	Services Allied With the Exchange of Securities or Commodities, NEC	
	Securities Custodians	Trust, Fiduciary, and Custody Activities (pt).
	Other	Miscellaneous Financial Investment Activities (pt).
6311@	Life Insurance	
	Life Insurers—Direct	Direct Life Insurance Carriers (pt).
	Reinsurance Carriers, Life	Reinsurance Carriers (pt).
6321@	Accident and Health Insurance	
	Health and Medical Insurers—Direct	Health and Medical Insurance Carriers (pt).
	Reinsurance Carriers, Accident and Health	Reinsurance Carriers (pt).
	Self Insurers	Insurance and Other Employee Benefit Funds (pt).
6324@	Hospital and Medical Service Plans	
	Health and Medical Insurers—Direct	Health and Medical Insurance Carriers (pt).
	Reinsurance Carriers, Health and Medical	Reinsurance Carriers (pt).
	Self Insurers	Insurance and Other Employee Benefit Funds (pt).
6331@	Fire, Marine, and Casualty Insurance	
	Fire, Marine, and Casualty Insurers-Direct	Property and Casualty Insurance Carriers (pt).
	Reinsurance Carriers, Fire, Marine, and Casualty	Reinsurance Carriers (pt).
	Self Insurers	Insurance and Other Employee Benefit Funds (pt).
6351@	Surety Insurance	
	Financial Responsibility Insurers-Direct	Property and Casualty Insurance Carriers (pt).
	Reinsurance Carriers, Financial Responsibility	Reinsurance Carriers (pt).
6361@	Title Insurance	
	Title Insurers—Direct	Title Insurance Carriers (pt).
	Reinsurance Carriers, Title	Reinsurance Carriers (pt).
6371@	Pension, Health, and Welfare Funds	
	Managers	Portfolio Management.
	Administrators	Third Party Administration for Insurance and Pension Funds (pt).
	Pension Funds	Pension Funds (pt).
	Health and Welfare Funds	Health and Welfare Funds (pt).
6399	Insurance Carriers, NEC	Other Direct Non-Life Insurance Carriers.
6411@	Insurance Agents, Brokers, and Service	
	Insurance Agents and Brokers	Insurance Agencies and Brokerages.
	Claim Adjusters	Claims Adjusters.
	Claim Processors	Third Party Administrators for Insurance and Pension Funds (pt).
	Other	All Other Activities Related to Insurance.
6712	Offices of Bank Holding Companies	Bank Holding Companies.
6719	Offices of Holding Companies, NEC	Other Holding Companies.
6722	Management Investment Offices, Open-End	Open-End Investment Funds.
6726	Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-End Management Investment Offices.	Other Financial Vehicles.
6732	Educational, Religious and Charitable Trusts	Grantmaking Foundations.
6733@	Trusts, Except Educational, Religious, and Charitable	Grantmaking Foundations.
	Managers	Portfolio Management (pt).
	Administrators of Private Estates	Trust, Fiduciary, and Custody Services (pt).
	Vacation Funds for Employees	Insurance and Other Employee Benefit Funds (pt).
	Personal Trusts, Estates, and Agency Accounts	Personal Trusts, Estates, and Agency Accounts (pt).
6792@	Oil Royalty Traders	
	Investors on Own Account	Miscellaneous Financial Investment Activities (pt).
	Oil Royalty Trading Companies	Owners and Lessors of Other Non-Financial Assets.
6794	Patent Owners and Lessors	Owners and Lessors of Other Non-Financial Assets.
6798	Real Estate Investment Trusts	Mortgage Investment Funds.
6799@	Investors, NEC	
	Venture Capital Companies	Miscellaneous Intermediation (pt).
	Pool Operators	Portfolio Management (pt).
	Other	Miscellaneous Financial Investment Activities (pt).

TABLE 2—Continued

The abbreviation "pt" means "part of". @ means time series break has been created that is greater than 3% of the 1992 value of revenue for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 USIC code	1987 USIC description	1997 U.S. description
7389	Business Services, NEC	
	Credit Card Service	Financial Transactions Processing, Reserve, and Clearing House Activities (pt).
	Other Business Services	Included in Other Subsectors of NAICS.

Overview of the U.S. Classification Structure

1987 SIC Major Group 60, Depository Institutions, differs from industry group Depository Credit Intermediation in that the new industry group does not include the central bank, which is in a subsector of its own; industries are no longer defined by charter; and a number of activities are broken out as industries and classified in other industry groups or subsectors—trust, fiduciary, and custody services, for example. In addition, activities such as clearing houses and reserve services, which were part of 1987 SIC Major Group 60, are classified to the new industry group Activities Related to Credit Intermediation.

1987 SIC Major Group 61, Non-Depository Credit Institutions, is similar in coverage to the new industry group Non-Depository Credit Intermediation, but, in the latter, industry detail is based on production differences in granting particular types of credit, not on class of customers or on the extent of government sponsorship. In particular, the activities previously included in 1987 Industry Group 615, Business Credit Institutions, are now more clearly specified. In addition, NAICS recognizes the lending activities of pawnbrokers in this subsector; pawnbrokers were classified in 1987 SIC 5932, Used Merchandise Stores. In addition, activities such as mortgage brokers and financial transactions processing are classified to the new industry group Activities Related to Credit Intermediation.

1987 SIC Major Group 62, Security and Commodity Brokers, Dealers, Exchanges, and Services, differs from NAICS subsector Securities, Commodity Contracts, and Other Intermediation and Related Activities in that the NAICS subsector separates brokerage from underwriting and dealing; it more clearly delineates the distinction between portfolio management (classified here) and the assets under management (excluded from NAICS but shown as U.S. detail); and it includes the trust, fiduciary, and custody activities of banks and other financial institutions.

1987 SIC Major Groups 63, Insurance Carriers, and 64, Insurance Agents, Brokers, and Service, differ from NAICS subsector Insurance Carriers and Related Activities in that in NAICS, reinsurance carriers are separated from direct insurance carriers; pension and other employee benefit funds (now in the U.S. subsector Funds, Trusts, and Other Financial Vehicles) are no longer included; and separate industries are defined for several insurance-related services.

1987 Major Group 67, Holding and Other Investment Offices, differs from the U.S.-only subsector Funds, Trusts, and Other Financial Vehicles, in that the latter includes 1987 SIC 6371, Pension, Health and Welfare Funds, but excludes 1987 SIC 6732, Educational, Religious, and Charitable Trusts; 1987 SIC 6792, Oil Royalty Traders; 1987 SIC 6794, Patent Owners and Lessors; and 1987 SIC 6799, Investors NEC. 1987 SIC 6732 has been transferred to the Religious, Grantmaking, Civic, and Other Membership Association subsector on the grounds that they are essentially treasury establishments supporting the charitable purposes of the entities that own the assets under management. Part of 1987 SIC 6792, Oil Royalty Traders, and part of 1987 SIC 6794, Patent Owners and Lessors, have been transferred to a new subsector. The remainder of 1987 SIC 6792, Oil Royalty Traders, and 1987 SIC 6799, Investors, NEC, are classified in Miscellaneous Financial Investment Activities.

Description of Changes to the U.S. System

There are 44 industries in this sector, of which 23 are new, 14 are revised, and 7 remain the same as in the 1987 SIC.

1. Monetary Authorities—Central Bank: There were two industries in this subsector for 1987. One, 1987 SIC 6011, Federal Reserve Banks, remains in this subsector; the other, 1987 SIC 6019, Central Reserve Depository Institutions, NEC, is moved to Credit Intermediation and Related Activities.

2. Credit Intermediation and Related Activities: Eight new industries are added to the 1997 industry structure for this subsector. New industries are the following:

Other Depository Credit Intermediation from part of 1987 SIC 6099, Functions Related to Depository Banking, NEC.

Credit Card Issuing from part of 1987 SIC 6021, National Commercial Banks; part of 1987 SIC 6022, State Commercial Banks; and part of 1987 SIC 6141, Personal Credit Institutions.

Sales Financing and Finance Leasing from part of 1987 SIC 6141, Personal Credit Institutions' part of 1987 SIC 6153, Short-Term Business Credit Institutions, Except Agricultural; and part of 1987 SIC 6159, Miscellaneous Business Credit Institutions.

International Trade Financing from part of 1987 SIC 6081, Branches and Agencies of Foreign Banks; from 1987 SIC 6082, Foreign Trade and International Banking Institutions; part of 1987 SIC 6111, Federal and Federally-Sponsored Credit Agencies; and part of 1987 SIC 6159, Miscellaneous Business Credit Institutions.

Secondary Market Financing from part of 1987 SIC 6111, Federal and Federally-Sponsored Credit Agencies.

All Other Non-Depository Credit Intermediation from part of 1987 SIC 5932, Used Merchandise Stores; part of 1987 SIC 6081, Branches and Agencies of Foreign Banks; part of 1987 SIC 6111, Federal and Federally-Sponsored Credit Agencies; part of 1987 SIC 6153, Short-Term Business Credit Institutions, Except Agriculture; and part of 1987 SIC 6159, Miscellaneous Business Credit Institutions.

Financial Transactions Processing, Reserve, and Clearing House Activities from 1987 SIC 6019, Central Reserve Depository Institutions, NEC; part of 1987 SIC 6099, Functions Related to Depository Banking, NEC; part of 1987 SIC 6153, Short-Term Business Credit Institutions, Except Agricultural; and part of 1987 SIC 7389, Business Services, NEC.

Other Activities Related to Credit Intermediation from part of 1987 SIC 6099, Functions Related to Depository Banking, NEC, and part of 1987 SIC 6162, Mortgage Bankers and Loan Correspondents.

Five industries are revised for the 1997 industry structure for this subsector. The revised industries are the following:

Commercial Banking revised from part of 1987 SIC 6021, National Commercial Banks; part of 1987 SIC 6022, State Commercial Banks; 1987 SIC 6029, Commercial Banks, NEC; and part of 1987 SIC 6081, Branches and Agencies of Foreign Banks.

Savings Institutions revised to include 1987 SIC 6035, Savings Institutions, Federally Chartered, and 1987 SIC 6036, Savings Institutions, Not Federally Chartered.

Credit Unions revised to include 1987 SIC 6061, Credit Unions, Federally Chartered, and 1987 SIC 6062, Credit Unions, Not Federally Chartered.

Consumer Credit revised to include part of 1987 SIC 6141, Personal Credit Institutions.

Real Estate Credit revised from part of 1987 SIC 6162, Mortgage Bankers and Loan Correspondents.

The number of Credit Intermediation and Related Activities industries decreased from 18 in 1987 to 14 in 1997. For time series linkage, there is one 1987 industry that is comparable within 3 percent of the 1997 industry.

3. Securities, Commodity Contracts, and Other Intermediation and Related Activities: Seven new industries are added to the 1997 industry structure for this subsector. New industries are the following:

Investment Banking and Securities Dealing from part of 1987 SIC 6211, Security Brokers, Dealers, and Flotation Companies.

Securities Brokerage from part of 1987 SIC 6211, Security Brokers, Dealers, and Flotation Companies.

Commodity Contracts Dealing from part of 1987 SIC 6099, Functions Related to Depository Banking, NEC, and part of 1987 SIC 6221, Commodity Contracts Brokers and Dealers.

Commodity Brokerage from part of 1987 SIC 6221, Commodity Contracts Brokers and Dealers.

Miscellaneous Intermediation from part of 1987 SIC 6211, Security Brokers, Dealers, and Flotation Companies; and part of 1987 SIC 6799, Investors, NEC.

Portfolio Management from part of 1987 SIC 6282, Investment Advice; part of 1987 SIC 6371, Pension, Health, and Welfare Funds; part of 1987 SIC 6733, Trusts, Except Educational, Religious, and Charitable; and part of 1987 SIC 6799, Investors, NEC.

Trust, Fiduciary and Custody Activities from part of 1987 SIC 6021, National Commercial Banks; part of 1987 SIC 6022, State Commercial Banks; 1987 SIC 6091, Non-deposit Trust Facilities; part of 1987 SIC 6099, Functions Related to Depository Banking, NEC; part of 1987 SIC 6289, Services Allied With the Exchange of Securities or Commodities, NEC; and part of 1987 SIC 6733, Trusts, Except Educational, Religious, and Charitable.

Two industries are revised for the 1997 industry structure for this subsector. The revised industries are the following:

Investment Advice revised to include part of 1987 SIC 6282, Investment Advice.

Miscellaneous Financial Investment Activities revised to include part of 1987 SIC 6099, Functions Related to Depository Banking, NEC; part of 1987 SIC 6211, Security Brokers, Dealers, and Flotation Companies; part of 1987 SIC 6289, Services Allied With the Exchange of Securities or Commodities, NEC; part of 1987 SIC 6792, Oil Royalty Traders; and part of 1987 SIC 6799, Investors, NEC.

The number of Securities, Commodity Contracts, and Other Intermediation and Related Activities industries increased from 5 in 1987 to 10 in 1997. For time series linkage, one 1987 industry is comparable within 3 percent of the 1997 industry.

4. Insurance Carriers and Related Activities: Four new industries are added to the 1997 industry structure for this subsector. New industries are the following:

Reinsurance Carriers from part of 1987 SIC 6311, Life Insurance; part of 1987 SIC 6321, Accident and Health Insurance; part of 1987 SIC 6324, Hospital and Medical Service Plans; part of 1987 SIC 6331, Fire, Marine, and Casualty Insurance; part of 1987 SIC 6351, Surety Insurance; and part of 1987 SIC 6361, Title Insurance.

Claims Adjusters from part of 1987 SIC 6411, Insurance Agents, Brokers, and Service.

Third Party Administrators for Insurance and Pension funds from part of 1987 SIC 6371, Pension, Health, and Welfare Funds, and part of 1987 SIC 6411, Insurance Agents, Brokers and Service.

All Other Activities Related to Insurance from part of 1987 SIC 6411, Insurance Agents, Brokers and Service.

Five industries are revised for the 1997 industry structure for this subsector. The revised industries are the following:

Direct Life Insurance Carriers revised to include part of 1987 SIC 6311, Life Insurance, and part of 1987 SIC 6321, Accident and Health Insurance.

Property and Casualty Insurance Carriers revised to include part of 1987 SIC 6331, Fire, Marine, and Casualty Insurance, and part of 1987 SIC 6351, Surety Insurance.

Health and Medical Insurance Carriers revised to include part of 1987 SIC 6324, Hospital and Medical Service Plans, and part of 1987 SIC 6321, Accident and Health Insurance.

Title Insurance Carriers revised to include part of 1987 SIC 6361, Title Insurance.

Insurance Agencies and Brokerages revised to include part of 1987 SIC 6411, Insurance Agents, Brokers and Service.

The number of Insurance Carriers and Related Activities industries increased from 9 in 1987 to 10 in 1997. For time series linkage, there is one 1987 industry that is comparable within 3 percent of the 1997 industry.

5. Funds, Trusts, and Other Financial Vehicles: Four new industries are added to the 1997 industry structure for this (U.S. only) subsector. New industries are the following:

Pension Funds from part of 1987 SIC 6371, Pension, Health, and Welfare Funds.

Health and Welfare Funds from part of 1987 SIC 6371, Pension, Health, and Welfare Funds.

Insurance Funds and Other Employee Benefit Funds from part of 1987 SIC 6321, Accident and Health Insurance; part of 1987 SIC 6324, Hospital and Medical Service Plans; part of 1987 SIC 6331, Fire, Marine, and Casualty Insurance; and part of 1987 SIC 6733, Trusts, Except Educational, Religious, and Charitable.

Personal Trusts, Estates, and Agency Accounts from part of 1987 SIC 6733, Trusts, Except Educational, Religious, and Charitable.

Two industries were revised for 1987. The revised industries are as follows:

Financial Holding Companies from 1987 SIC 6712, Offices of Bank Holding Companies and part of 1987 SIC 6719, Offices of Holding Companies, NEC.

Managing Holding Companies from part of 1987 SIC 6719, Offices of Holding Companies, NEC.

The number of Funds, Trusts, and Other Financial Vehicles industries decreased from 10 in 1987 to nine in 1997. For time series linkage, four 1987 industries are comparable within 3 percent of the 1997 industries.

For time series linkage, 10 of the 43 1987 industries are comparable within 3 percent of the 1997 industries. Nine of the 44 1997 industries are included in the subsector Funds, Trusts, and Other Financial Vehicles.

Part II—Proposed New Industry Structure for Construction; Utilities; Waste Management and Remediation Services; Retail Trade; Wholesale Trade; Real Estate; Lessors of Other Non-Financial Assets; Personal and Laundry Services; and Religious, Grantmaking, Civic and Other Membership Organizations

Construction

This draft classification is provided for the Construction sector.

The Construction sector includes establishments primarily engaged in the construction of buildings and other structures, additions, alterations, reconstruction, installations and maintenance and repairs. The industries within this sector have been defined on the basis of their unique production processes. As with all industries, the production processes are distinguished by their use of specialized human resources and specialized physical capital. Construction activities are generally administered or managed at a relatively fixed place of business, but the actual construction work is performed at one or more different project sites.

This sector is divided into three subsectors of construction activities: (1) building construction and land subdivision and land development; (2) heavy construction other than buildings, such as highways, tunnels, and pipelines; and (3) construction activity by special trade contractors.

Establishments classified in the Building, Developing and General Contracting subsector and the Heavy Construction (other than buildings) subsector, usually assume responsibility for an entire construction project, and may subcontract some or all of the actual construction work. Operative builders who build on their own account for sale, and Land Subdividers and Land Developers, who engage in subdividing real property into lots for sale, are included in the Building, Developing and General Contracting subsector. Special Trade Contractors can be included in the Heavy Construction subsector if they are engaged in activities primarily relating to heavy construction, such as grading for highways. Some establishments included in these subsectors operate under arrangements such as design-build, engineer-constructor, joint venture, and turnkey construction. Construction management is also included.

The Special Trade Contractors subsector includes establishments that are primarily engaged in specialized construction activities, such as plumbing, painting, and electrical work and work for builders and general contractors under subcontract or directly for project owners.

"Force Account" construction is construction work performed by an establishment primarily engaged in some business other than construction, for its own account and use, and by employees of the establishment. This activity is not included in this industry sector unless the construction work performed is the primary activity of a separate establishment of the enterprise.

The installation of prefabricated building equipment and materials, such as elevators and revolving doors, is classified in the construction industry sector. Installation work incidental to sales by employees of a manufacturing or retail establishment is classified as secondary activity of those establishments.

TABLE 1

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
236	Building, Developing and General Contracting			
2361	Land Subdivision and Land Development			
23611	Land Subdivision and Land Development	E	6552	Land Subdividers and Developers, Except Cemeteries.
2362	Residential Building Construction			
23621	Single-Family Housing Construction	R	1521	General contractors-Single-Family Houses.
			*1531	Operative Builders (single-family housing construction).
23622	Multi-Family Housing Construction	R	*1522	General Contractors-Residential Building, Other Than Single-Family (except hotel and motel construction).
			*1531	Operative Builders (multi-family housing construction).
2363	Nonresidential Building Construction			
23631	Manufacturing and Light Industrial Building Construction.	R	*1531	Operative Builders (manufacturing and light industrial building construction).
			*1541	General Contractors-Industrial Buildings and Warehouses (except warehouse construction).
23632	Commercial and Institutional Building Construction.	R	*1522	General Contractors-Residential Building Other than Single-Family (hotel and motel construction).
			*1531	Operative Builders (commercial and institutional building construction).
			*1541	General Contractors-Industrial Buildings and Warehouses (warehouse construction).
			1542	General Contractor-Nonresidential Buildings, Other than Industrial Buildings and Warehouses.
237	Heavy Construction			
2371	Highway, Street, Bridge and Tunnel Construction.			
23711	Highway and Street Construction	E	1611	Highway and Street Construction, Except Elevated Highways.
23712	Bridge and Tunnel Construction	R	1622	Bridge, Tunnel, and Elevated Highway Construction.

TABLE 1—Continued

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
2379	Other Heavy Construction			
23791	Water, Sewer, and Pipeline Construction	N	*1623	Water, Sewer, Pipeline, and Communications and Power Line Construction (water and sewer mains and pipelines construction).
23792	Power and Communication Transmission Line Construction.	N	*1623	Water, Sewer, Pipelines, and Communications and Power Line Construction (communications and power line construction).
23793	Industrial Nonbuilding Structure Construction	N	*1629	Heavy Construction, NEC (industrial nonbuilding structures construction).
23799	All Other Heavy Construction	R	*1629	Heavy Construction, NEC (except industrial nonbuilding structures construction).
238	Special Trade Contractors			
2381	Plumbing, Heating and Air-Conditioning Contractors			
23811	Plumbing, Heating and Air-Conditioning Contractors.	E	1711	Plumbing, Heating and Air-Conditioning.
2382	Painting and Wall Covering Contractors			
23821	Painting and Wall Covering Contractors	R	1721	Painting and Paper Hanging.
			*1799	Special Trade Contractors, NEC (paint and wallpaper, stripping and wallpaper removal contractors).
2383	Electrical Contractors			
23831	Electrical Contractors	R	*1731	Electrical Work (except burglar and fire alarm installation).
2384	Masonry and Drywall Insulation, and Tile Contractors			
23841	Masonry and Stone Contractors	E	1741	Masonry, Stone Setting and Other Stone Work.
23842	Drywall, Plastering, Acoustical and Insulation Contractors.	R	1742	Plastering, Drywall, Acoustical, and Insulation Work.
			*1743	Terrazzo, Tile, Marble and Mosaic work (fresco work).
			*1771	Concrete Work (stucco construction).
23843	Tile, Marble, Terrazzo and Mosaic Contractors	R	*1743	Terrazzo, Tile, Marble, and Mosaic Work (except fresco work).
2385	Carpentry and Floor Contractors			
23851	Carpentry Contractors	E	1751	Carpentry Work.
23852	Floor Laying and Other Floor Contractors	E	1752	Floor Laying and Other Floor Work, NEC.
2386	Roofing, Siding and Sheet Metal Contractors			
23861	Roofing, Siding and Sheet Metal Contractors	E	1761	Roofing, Siding, and Sheet Metal Work.
2387	Concrete Contractors			
23871	Concrete Contractors	R	*1771	Concrete Work (except stucco construction).
2388	Water Well Drilling Contractors			
23881	Water Well Drilling Contractors	E	1781	Water Well Drilling.
2389	Other Special Trade Contractors			
23891	Structural Steel Erection Contractors	E	1791	Structural Steel Erection.
23892	Glass and Glazing Contractors	R	1793	Glass and Glazing Work.
			*1799	Specialty Trade Contractors, NEC (tinting glass work).
23893	Excavation Contractors	E	1794	Excavation Work.
23894	Wrecking and Demolition Contractors	E	1795	Wrecking and Demolition Work.
23895	Building Equipment and Other Machinery Contractors.	E	1796	Installation of Erection of Building Equipment, NEC.
23899	All Other Special Trade Contractors	R	1799	Special Trade Contractors, NEC (except paint and wallpaper stripping, wall paper removal contractors, and tinting glass work).
			7353	Heavy Construction Equipment Rental and Leasing (with operator).

TABLE 2

The abbreviation "pt" means "part of". @ means time series break has been created that is greater than 3% of the 1992 value of construction work for the 1987 SIC Industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 SIC code	1987 SIC description	1997 U.S. description
1521 @	General Contractors—Single-Family Houses	Single-Family Housing Construction (pt).

TABLE 2—Continued

The abbreviation "pt" means "part of". @ means time series break has been created that is greater than 3% of the 1992 value of construction work for the 1987 SIC Industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 SIC code	1987 SIC description	1997 U.S. description
1522 @	General Contractors—Residential Buildings, Other Than Single-Family.	
	Hotel and Motel Construction	Commercial and Institutional Building Construction (pt).
	Except Hotel and Motel Construction	Multi-Family Housing Construction (pt).
1531@	Operative Builders	
	Single-Family Housing	Single-Family Housing Construction (pt).
	Multi-Family Housing	Multi-Family Housing Construction (pt).
	Manufacturing and Light Industrial Buildings	Manufacturing and Light Industrial Building Construction (pt).
	Commercial and Institutional Buildings	Commercial and Institutional Building Construction (pt).
1541@	General Contractors—Industrial Buildings and Warehouses	
	Warehouse Construction	Commercial and Institutional Building Construction (pt).
	Except Warehouse Construction	Manufacturing and Light Industrial Building Construction (pt).
1542@	General Contractors—Nonresidential Buildings, Other than Industrial Buildings and Warehouses.	Commercial and Institutional Building Construction (pt).
1611	Highway and Street Construction, Except Elevated Highways	Highway and Street Construction.
1622	Bridge, Tunnel, and Elevated Highway Construction	Bridge and Tunnel Construction.
1623	Water, Sewer, Pipeline, and Communications and Power Line Construction.	Water, Sewer and Pipelines Construction.
	Water, Sewer and Pipeline Power and Communication Transmission Lines.	Power and Communication Transmission Line Construction.
1629	Heavy Construction, NEC	
	Industrial Nonbuilding Structures Construction	Industrial Nonbuilding Structure Construction.
	Except Industrial Nonbuilding Structures Construction	All Other Heavy Construction.
1711	Plumbing, Heating, and Air-Conditioning	Plumbing, Heating and Air-Conditioning Contractors.
1721@	Painting and Paper Hanging	Painting and Wall Covering Contractors (pt).
1731@	Electrical Work	
	Burglar and Fire Alarm Installation	Security Systems Services, except Locksmiths (pt).
	Except Burglar and Fire Alarm Installation	Electrical Contractors.
1741	Masonry, Stone Setting and Other Stone Work	Masonry and Stone Contractors.
1742	Plastering, Drywall, Acoustical and Insulation Work	Drywall, Plastering, Acoustical and Insulation Contractors (pt).
1743	Terrazzo, Tile, Marble, and Mosaic Work	
	Fresco Work	Drywall, Plastering, Acoustical and Insulation Contractors (pt).
	Except Fresco Work	Tile, Marble, Terrazzo and Mosaic Contractors.
1751	Carpentry Work	Carpentry Contractors.
1752	Floor Laying and Other Floor Work, NEC	Floor Laying and Other Floor Contractors.
1761	Roofing, Siding, and Sheet Metal Work	Roofing, Siding, and Sheet Metal Contractors.
1771@	Concrete Work	
	Stucco Construction	Drywall, Plastering, Acoustical and Insulation Contractors (pt).
	Except Stucco Construction	Concrete Contractors.
1781	Water Well Drilling	Water Well Drilling Contractors.
1791	Structural Steel Erection	Structural Steel Erection Contractors.
1793	Glass and Glazing Work	Glass and Glazing Contractors (pt).
1794	Excavation Work	Excavation Contractors.
1795	Wrecking and Demolition Work	Wrecking and Demolition Contractors.
1796	Installation of Erection of Building Equipment, NEC	Building Equipment and Other Machinery Installation Contractors.
1799@	Special Trade Contractors, NEC	
	Paint and Wallpaper Stripping and Wallpaper Removal Contractors.	Painting and Wall Covering Contractors (pt.).
	Tinted Glass Work	Glass and Glazing Contractors (pt).
	All Other Special Trade Contractors	All Other Special Trade Contractors (pt).
6552	Land Subdividers and Developers, Except Cemeteries	Land Subdivision and Land Development.
7353@	Heavy Construction Equipment Rental and Leasing	
	With Operator	All Other Special Trade Contractors (pt).
	Without Operator	Rental and Leasing of Heavy Construction, Mining and Forestry Machinery and Equipment (pt).

Description of Changes to the U.S. System

The overall number of industries for the Construction sector increased from 26 to 28 from the 1987 SIC.

Three new industries were created for the Heavy Construction subsector as follows: 1987 SIC 1623, Water, Sewer, Pipeline, and Communications and Power Line Construction is split into two industries: Water, Sewer and Pipeline Construction and Power and Communication Transmission Line Construction. The third new industry is Industrial Nonbuilding Structure Construction from part of 1987 SIC 1629, Heavy Construction, NEC. The split of 1987 SIC 1629 separates heavy construction activities for industrial

nonbuilding construction from the nonindustrial nonbuilding construction and groups similar production activities. The result is improved reporting of information in greater detail according to industrial versus nonindustrial nonbuilding grouping and a reduction in the NEC classification.

One industry, 1987 SIC 6552, Land Subdividers and Developers, Except Cemetery was moved from 1987 SIC 65, Real Estate, to the Construction sector because the production process is more closely related to the production process of construction industries in the Building, Developing, and General Contracting subsector.

In addition, part of 1987 SIC 7353, Heavy Construction Equipment Rental and Leasing (with operators), was moved to the Construction sector because these establishments become part of the production process. The move was recommended by the Business Services Subcommittee to improve comparability with Canada and Mexico.

A number of changes were made to 1987 industries in the Construction sector. These changes are:

1987 SIC 1531, Operative Builders, was deleted as a separate industry. These establishments are now included in the Building, Developing, and General Contracting subsector based on type of construction activity. The production process for these establishments is the same as other contractors who engage in constructing buildings and structures with the exception that these buildings are generally for sale on own account. The kinds of construction classified in 1987 SIC 1531 and the production processes associated with them are comparable to and consistent with the types of construction and production processes of building contractors in general. The existence of an operative builder classification is duplicative and only the U.S. includes a separate 4-digit industry specifically for operative builders. Canada and Mexico provide for operative builders within all relevant types of construction. The existence of a separate industry creates an incomparability between the three systems and this change increases comparability among the Canadian, Mexican and the U.S. classification systems.

Hotel and motel construction was moved from part of 1987 SIC 1522, General Contractors—Residential Building, Other Than Single Family, to Commercial and Institutional Building Construction. Also warehouse construction was moved from part of 1987 SIC 1541, General Contractors—Industrial Buildings and Warehouses, to Commercial and Institution Building Construction. The construction activity and physical capital used in hotel, motel, and warehouse construction are closely related to the construction activity and physical capital used by nonresidential building contractors. The reassignment of the hotel and motel construction to commercial and institutional buildings will not create collectability and reportability problems. In fact, such problems may be reduced. Because contractors are more likely to classify hotels and motels within nonresidential or commercial buildings, reassigning the two items enhances the logic of the system and may improve data collectability and reportability. This change will create explicit consistency with the Canadian classification system and implicit comparability with the Mexican classification system.

1987 SIC 1611, Highway and Street Construction, Except Elevated Highways, and 1987 SIC 1622, Bridge, Tunnel, and Elevated Highway Construction, are grouped together in the industry group Highway, Street, Bridge and Tunnel Construction in the Heavy Construction subsector. The establishments in both industries have similar production processes.

Fresco work was moved from part of 1987 SIC 1743, Terrazzo, Tile, Marble, and Mosaic Work, to Drywall, Plastering, Acoustical and Insulation Contractors. Fresco work is similar to the work performed by specialty plaster contractors. In Canada, fresco work is included with the plastering industry.

Stucco construction was moved from part of 1987 SIC 1771, Concrete Work, to Drywall, Plastering, Acoustical and Insulation Contractors. Stucco work is done by plastering contractors on interior ceilings and walls. Stucco work is similar to plastering and drywall work and is not considered to be concrete work construction. Canada includes stucco work with the plastering industry.

Paint and wallpaper removal was moved from part of 1987 SIC 1799, Specialty Trade Contractors, NEC, to Painting and Wall Covering Contractors. The production process for paint and wallpaper stripping activities are more closely allied with the activities of painting and wall covering contractors than with Other Special Trade contractors. This move achieves comparability with Canada and reduces the U.S. NEC classification.

Tinting glass was moved from part of 1987 SIC 1799, Specialty Trade Contractors, NEC, to Glass and Glazing Contractors. The production process for glass tinting is more closely allied with glass and glazing construction activities. This move improves comparability with Canada. All of the above recommended changes in the classification of fresco, stucco, paint and wallpaper removal, and tinting glass improve comparability with Canada and do not reduce the comparability with Mexico.

Burglar and fire alarm installation (with incidental installation) was moved from part of 1987 SIC 1731, Electrical Work, to Security System Services, except Locksmiths in the Management and Support Services subsector because more and more establishments that install also offer monitoring services. This change was proposed by an outside user.

Utilities

The Utilities sector includes three industry groups. The first industry group, Electric Power Generation, Transmission and Distribution, includes establishments that provide electric power, services to both businesses and households. These are grouped together based on the presence of the system required to provide the services to the customers location. The second, Natural Gas Distribution, includes establishments that provide for the distribution of natural gas via pipelines to final customers. The last industry group, Water, Sewerage, and Other Systems, includes establishments that provide water, irrigation, sewerage and other services to customers. This group includes separate classifications for water and irrigation systems, sewerage systems, and steam and air-conditioning supply.

TABLE 1

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of." The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
221	Utilities			
2211	Electric Power Generation, Transmission and Distribution			
22111	Electric Power Generation			
221111	Hydroelectric Power Generation	N	*4911	Electric Services (hydroelectric power generation).
			*4931	Electric and Other Services Combined (hydroelectric power generation).
			*4939	Combination Utilities, NEC (hydroelectric power generation).
221112	Fossil Fuel Electric Power Generation	N	*4911	Electric Services (fossil fuel power generation).
			*4931	Electric and Other Services Combined (fossil fuel power generation).
			*4939	Combination Utilities, NEC (fossil fuel power generation).
221113	Nuclear Electric Power Generation	N	*4911	Electric Services (nuclear electric power generation).
			*4931	Electric and Other Services Combined (nuclear power generation).
			*4939	Combination Utilities, NEC (nuclear power generation).
221119	Other Electric Power Generation	N	*4911	Electric Services (other electric power generation).
			*4931	Electric and Other Services Combined (other electric power generation).
			*4939	Combination Utilities, NEC (other electric power generation).
22112	Electric Power Transmission, Distribution and Control			
221121	Electric Bulk Power Transmission and Control.	N	*4911	Electric Services (electric power transmission and control).
			*4931	Electric and Other Services Combined (electric power transmission and control).
			*4939	Combination Utilities, NEC (electric power transmission and control).
221122	Electric Power Distribution	N	*4911	Electric Services (electric power distribution).
			*4931	Electric and Other Services Combined (electric power distribution).
			*4939	Combination Utilities, NEC (electric power distribution).
2212	Natural Gas Distribution			
22121	Natural Gas Distribution	R	*4923	Natural Gas Transmission and Distribution (distribution).
			4924	Natural Gas Distribution.
			4925	Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution (natural gas distribution).
			*4932	Gas and Other Services Combined (natural gas distribution).
			*4939	Combination Utilities, NEC (natural gas distribution).
2213	Water, Sewerage and Other Systems			
22131	Water and Irrigation Systems	R	4941	Water Supply.
			4971	Irrigation Systems.
22132	Sewerage Systems	E	4952	Sewerage Systems.
22133	Steam and Air-Conditioning Supply	E	4961	Steam and Air-Conditioning Supply.

TABLE 2

The abbreviation "pt" means "part of" and @ means time series break has been created that is greater than 3% of the 1992 revenue for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 SIC code	1987 SIC description	1997 U.S. description
4911	Electric Services	
	Hydroelectric Power Generation	Hydroelectric Power Generation (pt).
	Electric Power Generation by Fossil Fuels	Fossil Fuel Electric Power Generation (pt).
	Electric Power Generation by Nuclear Fuels	Nuclear Electric Power Generation (pt).
	Other Electric Power Generation	Other Electric Power Generation (pt).
	Electric Power Transmission and Control	Electric Bulk Power Transmission and Control (pt).

TABLE 2—Continued

The abbreviation "pt" means "part of" and @ means time series break has been created that is greater than 3% of the 1992 revenue for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 SIC code	1987 SIC description	1997 U.S. description
	Electric Power Distribution	Electric Power Distribution.
4922	Natural Gas Transmission	Pipeline Transportation of Natural Gas.
4923@	Natural Gas Transmission and Distribution	Natural Gas Distribution (pt).
4924@	Natural Gas Distribution	Natural Gas Distribution (pt).
4925@	Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution.	Natural Gas Distribution (pt).
4931@	Electric and Other Services Combined	
	Hydroelectric Power Generation When Combined with Other Services.	Hydroelectric Power Generation (pt).
	Electric Power Generation by Fossil Fuels When Combined with Other Services.	Fossil Fuel Electric Power Generation (pt).
	Electric Power Generation by Nuclear Fuels When Combined with Other Services.	Nuclear Electric Power Generation (pt).
	Other Electric Power Generation When Combined with Other Services.	Other Electric Power Generation (pt).
	Electric Power Transmission When Combined with Other Services.	Electric Bulk Power Transmission and Control (pt).
	Electric Power Distribution When Combined with Other Services.	Electric Power Distribution (pt).
4932@	Gas and Other Services Combined	Natural Gas Distribution (pt).
4939@	Combination Utilities, Not Elsewhere Classified	
	Hydroelectric Power Generation When Combined with Other Services.	Hydroelectric Power Generation (pt).
	Electric Power Generation by Fossil Fuels When Combined with Other Services.	Fossil Fuel Electric Power Generation (pt).
	Electric Power Generation by Nuclear Fuels When Combined with Other Services.	Nuclear Electric Power Generation (pt).
	Other Power Generation When Combined with Other Services.	Other Electric Power Plants (pt).
	Electric Power Transmission When Combined with Other Services.	Electric Bulk Power Transmission and Control (pt).
	Electric Power Distribution When Combined with Other Services.	Electric Power Distribution.
	Natural Gas Distribution When Combined with Other Services.	Natural Gas Distribution (pt)..
4941	Water Supply	Water and Irrigation Systems (pt).
4952	Sewerage Systems	Sewerage Systems.

Description of Changes to the U.S. System

The U.S. detail for the Utilities sector consists of two subsectors, six industry groups, and 21 U.S. detail industries. For 1987, there were 14 industries.

For the electrical power industry group, NAICS has added new detail for four classifications that identify different types of power plants including Hydroelectric Power Generation, Fossil Fuel Electric Power Generation, Nuclear Electric Power Generation, and Other Electric Power Generation. The Electric Power Transmission, Distribution, and Control industry group includes two U.S. detail classifications that identify establishments that provide transmission and control services separately from those that provide for the distribution of power to final customers.

The change to 1987 Industry Group 492, Gas Production and Distribution, separates the activities of transmission and distribution. The natural gas transmission activities included in 1987 SIC 4924, Natural Gas Transmission, and 1987 SIC 4923, Natural Gas Transmission and Distribution, have been moved to the Transportation sector. 1987 SIC 4925, Mixed, Manufactured, or Liquefied Gas Production and/or Distribution, has been eliminated. These activities along with the distribution activities included in 1987 SIC 4923, Natural Gas Transmission and Distribution, have been consolidated with 1987 SIC 4922, Natural Gas Distribution. The industries for combination utilities, 1987 SIC 4931, Electric and Other Services Combined, and 1987 SIC 4932, Gas and Other Services Combined, and 1987 SIC 4939, Combination Utilities, Not Elsewhere Classified, have been eliminated. These activities will be classified according to their primary activity.

Waste Management and Remediation Services

The Waste Management and Remediation Services subsector includes establishments engaged in collection, treatment, and disposal of waste materials. This includes establishments providing related services like materials recovery facilities (those that sort recyclable materials from the trash stream), remediation services (those that provide for the cleanup of polluted ground, ground water, etc.), septic and sewer services, and other sanitary services. There are three industry groups within the subsector which separate these activities into Waste Collection, Waste Treatment and Disposal, and Remediation Services and Other Waste Management.

TABLE 1

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of." The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
572	Waste Management and Remediation Services			
5721	Waste Collection			
57211	Waste Collection			
572111	Solid Waste Collection	N	*4212	Local Trucking Without Storage (solid waste collection).
			*4953	Refuse Systems (solid waste collection).
572112	Hazardous Waste Collect	N	*4212	Local Trucking Without Storage (hazardous waste collection).
			*4953	Refuse Systems (hazardous waste collection).
572119	Other Waste Collection	N	*4212	Local Trucking Without Storage (other waste collection without disposal).
5722	Waste Treatment and Disposal			
57221	Waste Treatment and Disposal			
572211	Hazardous Waste Treatment and Disposal	N	*4953	Refuse Systems (hazardous waste treatment and disposal).
572212	Solid Waste Landfill	N	*4953	Refuse Systems (solid waste landfills).
572213	Solid Waste Combustors and Incinerators	N	*4953	Refuse Systems (solid waste combustors and incinerators).
572219	Other Nonhazardous Waste Treatment and Disposal.	N	*4953	Refuse Systems (other nonhazardous waste treatment and disposal).
5723	Remediation Services and Other Waste Management			
57231	Materials Recovery Facilities	N	*4953	Refuse Systems (materials recovery facilities).
57232	Remediation Services and All Other Waste Management			
572321	Remediation Services	N	*4959	Sanitary Services, NEC (remediation services).
572322	Septic Tank and Related Services	N	*7359	Equipment Rental and Leasing, NEC (portable toilet rental).
			*7699	Repair Shops and Related Services, NEC (cesspool cleaning, sewer cleaning and rodding).
572329	All Other Miscellaneous Waste Management	R	*4953	Refuse Systems (waste transfer stations).
			*4959	Sanitary Services, NEC (all but remediation services, malaria control, mosquito eradication, snowplowing, street sweeping, and airport runway vacuuming).

TABLE 2

The abbreviation "pt" means "part of" and @ means time series break has been created that is greater than 3% of the 1992 revenue for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 SIC code	1987 SIC description	1997 U.S. description
4212	Local Trucking Without Storage	
	Solid Waste Collection Without Disposal	Solid Waste Collection (pt).
	Hazardous Waste Collection Without Disposal	Hazardous Waste Collection (pt).
	Other Waste Collection Without Disposal	Other Waste Collection (pt).
	Other	Included in Transportation subsector.
4953	Refuse Systems	
	Solid Waste Collection When Combined with Disposal	Solid Waste Collection (pt).
	Hazardous Waste Collection When Combined with Disposal	Hazardous Waste Collection (pt).
	Materials Recovery Facilities	Materials Recovery Facilities.
	Waste Transfer Stations	All Other Miscellaneous Waste Management (pt).
	Other Waste Collection When Combined with Disposal	Other Waste Collection.
	Hazardous Waste Disposal	Hazardous Waste Treatment and Disposal.
	Solid Waste Landfills	Solid Waste Landfills.
	Solid Waste Combustors and Incinerators	Solid Waste Combustors and Incinerators.
	Other Waste Treatment and Disposal	Other Nonhazardous Waste Treatment and Disposal.
4959	Sanitary Services, NEC	
	Vacuuming of Airport Runways	Airport Operations, Except Air Traffic Control.
	Remediation Services	Remediation Services.
	Malaria Control and Mosquito Eradication	Exterminating and Pest Control.
	Snowplowing and Street Sweeping	Lawn and Garden Services (pt).
	Other	All Other Miscellaneous Waste Management (pt).
4961	Steam and Air-Conditioning Supply	Steam and Air-Conditioning Supply.
4971@	Irrigation Systems	Water and Irrigation Systems (pt).
7359	Equipment Rental and Leasing, NEC.	

TABLE 2—Continued

The abbreviation "pt" means "part of" and @ means time series break has been created that is greater than 3% of the 1992 revenue for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 SIC code	1987 SIC description	1997 U.S. description
	Portable Toilet Rental	Septic Tank and Related Services (pt).
	Consumer Electronics and Appliances Rental and Leasing	Rental of Consumer Electronics and Appliances.
	Home and Garden Tools and Equipment Rental and Leasing.	Rental and Leasing of Home and Garden Equipment.
	Residential Furniture, Party Supplies, and All Other Miscellaneous Consumer Goods Rental and Leasing.	All Other Rental and Leasing of Consumer Goods (pt).
	Oilfield and Well Drilling Machinery and Equipment Rental and Leasing.	Rental and Leasing of Heavy Construction, Mining, and Forestry Machinery and Equipment.
	Airplane Rental and Leasing	Rental and Leasing of Commercial Air, Rail, and Water Transportation Equipment.
	Industrial Trucks Rental and Leasing	Rental and Leasing of Other Machinery and Equipment.
	Office Machinery and Equipment Rental and Leasing	Rental and Leasing of Office Machinery and Equipment.
7699	Repair Shops and Relates Services, NEC	
	Cesspool Cleaning, Sewer Cleaning and Rodding	Septic Tank and Related Services (pt).
	Other Non-Automotive Transportation Equipment	Transportation Equipment Repair and Maintenance (pt).
	Industrial Machines and Equipment	Other Industrial Machinery and Equipment Repair and Maintenance (pt).
	Typewriter Repair	Computer and Office Machine Repair and Maintenance (pt).
	Ship Scaling	Other Support Activities for Water Transportation (pt).
	Dental Instrument Repair, Laboratory Instrument Repair, Medical Equipment and Other Electronic and Precision Equipment Repair, Except Typewriters.	Other Electronic and Precision Equipment Repair and Maintenance (pt).
	Bicycle Sales Locations Providing Supporting Repair Services as a Major Source of Revenue.	Sporting Good Stores (pt).
	Furnce Ducts, Chimney and Gutter Cleaning Services	Other Services to Dwellings and Building (pt).
	Lawnmower Repair Shops, Sharpening and Repairing Knives, Saws and Tools.	Home and Garden Equipment Repair and Maintenance (pt).
	Gas Appliance Repair Service, Sewing Machine Repair, Stove Repair Shops, and Other Non-Electrical Appliances.	Appliance Repair and Maintenance.
	Leather Goods Repair Shops, Luggage Repair Shops, Pocketbook Repair Shops.	Footwear and Leather Goods Repair (pt).
	Locksmith Shops	Locksmiths.
	Except Industrial, Electronic, Home and Garden, Appliance, Locksmith, and Leather Goods.	Other Personal or Household Goods Repair and Maintenance.

Description of Changes to the U.S. System

1987 SIC 4953, Refuse Systems, has been restructured to separate the operations of waste collection and waste disposal. This includes moving the garbage collection activity included in 1987 SIC 4212, Local Trucking Without Storage, from Transportation and combining it with the collection activities included in 1987 SIC 4953, Refuse Systems. There are separate classifications for hazardous waste, solid waste landfills, solid waste incinerators and other nonhazardous waste treatment.

The miscellaneous sanitary services classification (1987 SIC 4959, Sanitary Services, Not Elsewhere Classified) has also been split to separate the Remediation Services.

Retail

In most sectors of NAICS, the statistical agencies of Canada, Mexico, and the United States agreed to a detailed structure that includes subsectors, industry groups, and detailed industry definitions. However, because both resources and time for constructing NAICS were limited, in the the Retail Trade sector, the three statistical agencies agreed that only the boundaries of the sectors will be made comparable internationally at the present time. The structure and detailed definitions of the industries within the boundaries will be determined by national requirements. The three country agreement on the boundaries of retail and wholesale trade was published in the May 28, 1996, **Federal Register**, pp. 26642–26644.

For Retail Trade, Canada and the United States have agreed to restructure their respective existing 4-digit hierarchies to provide for more comparable data at the detailed industry level between the two countries. This resulted primarily in developing a new hierarchy that better reflects the structure of economic activity occurring within the two countries. The United States will provide for additional industries at the national level to reflect important industries in the United States. The ECPC is proposing 5-digit industries that will be comparable with Canada and 6-digit national detail industries as shown in Table 1 for Retail Trade. In that table, where no 6-digit detail is shown, the ECPC is proposing that the NAICS 5-digit industries will also represent the most detailed U.S. industries.

The Retail Trade sector is divided into twelve subsectors: Motor Vehicles and Parts Dealers; Furniture and Home Furnishing Stores; Electronics and Appliance Stores; Building Materials and Garden Equipment and Supplies Dealers; Food and Beverage Stores; Health and Personal Care Stores; Gasoline Stations; Clothing and Accessories Stores; Sports, Hobby, Book and Music Stores; General Merchandise Stores; Miscellaneous Store Retailers; and Nonstore Retailers.

Two types of retailers are identified. Store retailers sell goods through a sales location and/or stores and are differentiated by characteristics of the location and selling equipment, the types and variety of services provided, and the skills of the personnel. Nonstore retailers sell goods by means other than

through the sales location or store. Nonstore retailers include establishments engaged in activities like television and electronic shopping, mail order sales, door-to-door sales, home fuel sales, and sales through portable stands and stalls. The principal distinction is that the business comes to the customer rather than the customer going to the business.

Store retailers are divided into 11 subsectors. Motor Vehicle and Parts Dealers operate from a showroom and/or an open lot where the vehicles are on display. The display of vehicles and the related parts require little by way of display equipment. The personnel include both the sales and sales support staff familiar with the requirements for registering, licensing, and financing a vehicle as well as a staff of parts experts and mechanics trained to provide repair and maintenance services for the vehicles. Specific industries have been included in this subsector to identify the type of vehicle being sold.

The Furniture and Home Furnishing Stores also usually operate from showrooms; however, their expertise is in the areas of decorating and coordinating the furniture and accessories for the home. Many of these establishments offer interior decorating services in conjunction with the sale of products. Furniture Stores provide substantial areas for the proper presentation of the furniture which differentiates them within this group. The Floor Covering Stores maintain special equipment for the handling and display of the rolled carpet. Window Treatment Stores have special display equipment and have expertise in the way curtains, drapes, and shades should be matched to the particular type of window and coordinated with the style of furnishings being used in the room.

Electronics and Appliance Stores operate from locations that have special provisions for floor displays requiring special electrical capacity to accommodate the proper demonstration of the products. The staff includes sales personnel knowledgeable in the characteristics, warranties, etc. of the line of goods sold and may also include trained repairmen to handle the maintenance and repair of the electronic equipment and appliances. The classifications within this subsector are made principally on the type of product and repair knowledge required to operate each store.

Building Materials and Garden Equipment and Supplies Dealers have display equipment designed to handle lumber and related products and garden equipment and supplies that may be kept either indoors or outdoors under covered areas. The staff is usually well versed in the use of the specific products being sold in the construction, repair, and maintenance of the home and associated grounds. Hardware Stores are identified separately based on the display equipment and expertise in the use of tools and related equipment sold at these stores. Home center stores are identified separately based on the display equipment for lumber and the expertise in the use of tools and related equipment. Paint and wallpaper stores have special equipment to color and mix paint and display wallpaper. Outdoor power equipment stores typically have both inside and outside displays of equipment and provide the expertise to repair and maintain the equipment. Nursery and garden centers have the equipment and expertise to maintain a stock of live trees and plants.

Food and beverage stores have special equipment for the display of the goods usually including refrigerators, freezers, and refrigerated display cases. They have staff trained in the processing of food products to guarantee the proper storage and sanitary conditions required by regulatory authority. General grocery stores are separated between convenience stores and supermarket and other grocery stores based on the mix of products. Supermarkets and other grocery stores maintain a broad variety of products including a number of highly perishable goods. Convenience stores sell a narrow line of products that includes very few perishable products. Meat markets are separated based on the equipment (extensive use of refrigeration) and the expertise to properly prepare meat products. Fish and seafood markets share much of the same refrigeration equipment but also have special equipment and skill to properly process the seafood products safely. Fruit and vegetable markets have many health and safety considerations but have far less by way of refrigeration equipment. Baked goods stores and candy, nut, and confectionery stores are separated based on the product.

Health and personal care stores are characterized principally by specialized staff trained in dealing with the products. This includes pharmacists, beauticians, opticians, and other professionals that sell and may fit the product sold to the customer needs. This expertise is the principal basis for the distinctions within this subsector.

Gasoline stations are establishments that sell gasoline and diesel fuel. As such, they have specialized equipment for the storage and dispensing of automotive fuels.

Clothing and accessories stores have similar display equipment and staff that are knowledgeable regarding fashion trends and the proper match of styles, colors, and combinations of clothing and accessories to the characteristics and tastes of the customer.

Sports, hobby, book and music stores are establishments that provide expertise on use of sporting equipment or other specific activities such as needlework, musical instruments, etc. Book stores are also included in this grouping.

General merchandise stores are unique in that they have the equipment and staff capable of selling a large variety of goods from a single location. This includes a variety of display equipment and staff trained to provide information on many lines of products. Department Stores have been identified separately based on the operation of separate subunits or departments within the stores. The warehouse clubs and other general merchandise stores are separated based on the use of equipment for both the processing of food and nonfood items. This is a new and emerging industry that has not previously been identified in the classification system.

Miscellaneous store retailers include stores with unique characteristics like florists, used merchandise stores, and pet and pet supply stores as well as other store retailers.

TABLE 1

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and description	Status code	1987 SIC code	1987 SIC description
441	Motor Vehicle and Parts Dealers			
4411	Automobile Dealers			

TABLE 1—Continued

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and description	Status code	1987 SIC code	1987 SIC description
44111	New Car Dealers	E	5511	Motor Vehicle Dealers (New and Used).
44112	Used Car Dealers	E	5521	Motor Vehicle Dealers (Used Only).
4412	Other Motor Vehicle Dealers			
44121	Recreational Vehicle Dealers	E	5561	Recreational Vehicle Dealers.
44122	Motorcycles, Boats and Other Motor Vehicle Dealers.			
441221	Motorcycle Dealers	E	5571	Motorcycle Dealers.
441222	Boat Dealers	E	5551	Boat Dealers.
441229	All Other Motor Vehicle Dealers	E	5599	Automotive Dealers, NEC.
4413	Automotive Parts, Tires and Supplies Stores			
44131	Automotive Parts and Supplies Stores	N	*5013	Motor Vehicle Supplies and New Parts (Wholesale) (auto parts sold via retail method).
			*5731	Radio, Television, and Consumer Electronics Stores (automobile radios).
			*5531	Auto and Home Supply Stores (except tires and tubes).
44132	Tire Dealers	N	*5014	Tires and Tubes (Wholesale) (tires and tubes sold via retail method).
			*5531	Auto and Home Supply Stores (tires and tubes).
442	Furniture and Home Furnishings Stores			
4421	Furniture Stores			
44211	Furniture Stores	R	*5021	Furniture (Wholesale) (sold via the retail method).
			*5712	Furniture Stores (except custom furniture and cabinets).
4422	Home Furnishings Stores			
44221	Floor Covering Stores	R	*5023	Homefurnishings (Wholesale) (floor covering sold via retail method).
			5713	Floor Coverings Stores.
44229	Other Home Furnishings Stores.			
442291	Window Treatment Stores	N	*5714	Drapery, Curtain, and Upholstery Stores (drapery and curtain stores).
			*5719	Miscellaneous Homefurnishings Stores (blinds and shades).
442299	All Other Home Furnishings Stores	R	*5719	Miscellaneous Homefurnishings Stores (except pottery and crafts made and sold on site and frame shops, and window furnishings).
443	Electronics and Appliance Stores			
4431	Electronics and Appliance Stores			
44311	Appliance, Television and Other Electronics Stores			
443111	Household Appliance Stores	R	5722	Household Appliance Stores.
			*5999	Miscellaneous Retail Stores, NEC (personal appliance stores).
			*7623	Refrigeration and Air-Conditioning Service and Repair Shops (sales location providing supporting refrigerator repair services as major source of receipts).
			*7629	Electrical and Electronic Repair Shops, NEC (Services) (Sales location providing supporting appliance repair services as major source of receipts).
443112	Radio, Television and Other Electronics Stores	R	*5731	Radio, Television, and Consumer Electronics Stores (except auto radios).
			*5999	Miscellaneous Retail Stores, NEC (typewriters and telephones).
			*7622	Radio and Television Repair Shops (sales locations providing supporting repair services as major source of receipts).
44312	Computer and Software Stores	R	*5045	Computers and Computer Peripheral Equipment and Software (sold via retail method).
			*7378	Computer Maintenance and Repair (sales locations providing supporting repair services as major source of receipts).

TABLE 1—Continued

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and description	Status code	1987 SIC code	1987 SIC description
44411	Home Centers	N	*5211	Lumber and Other Building Materials Dealers (home center stores).
44412	Paint and Wallpaper Stores	R	*5198	Paints, Varnishes, and Supplies (sold via retail method).
			*5231	Paint, Glass, and Wallpaper Stores (paint and wallpaper).
44413	Hardware Stores	E	5251	Hardware Stores.
44419	Other Building Materials Dealers	R	*5031	Lumber, Plywood, Millwork, and Wood Panels (Wholesale) (sold via retail method).
			*5032	Brick, Stone, and Related Construction Materials (Wholesale) (sold via retail method).
			*5039	Construction Materials, NEC (Wholesale) (glass sold via retail method).
			*5063	Electrical Apparatus and Equipment, Wiring Supplies, and Construction Materials (Wholesale) (sold via retail method).
			*5074	Plumbing and Heating Equipment and Supplies (Hydronics) (sold via retail method).
			*5211	Lumber and Other Building Materials Dealers (except home centers).
			*5231	Paint, Glass, and Wallpaper Stores (glass).
4442	Lawn and Garden Equipment and Supplies Stores			
44421	Outdoor Power Equipment Stores	N	*5083	Farm and Garden Machinery and Equipment (Wholesale) (sold via retail method).
			*5261	Retail Nurseries, Lawn and Garden Supply Stores (outdoor power equipment).
44422	Nursery and Garden Centers	R	*5191	Farm Supplies (sold via retail method).
			*5193	Flowers, Nursery Stock, and Florists' Supplies (sold via retail method).
			*5261	Retail Nurseries, Lawn and Garden Supply Stores (except outdoor power equipment and cut Christmas trees).
445	Food and Beverage Stores.			
4451	General Food Stores.			
44511	Supermarkets and Grocery Stores	N	*5411	Grocery Stores (except convenience stores).
44512	Convenience Stores	N	*5411	Grocery Stores (convenience stores without gas).
4452	Specialty Food Stores.			
44521	Meat Markets	R	*5421	Meat and Fish (Seafood) Markets, Including Freezer Provisioners (meat except freezer provisioners).
			*5499	Miscellaneous Food Stores (poultry and poultry products).
44522	Fish and Seafood Markets	N	*5421	Meat and Fish (Seafood) Markets, Including Freezer Provisioners (seafood).
44523	Fruit and Vegetable Markets	E	5431	Fruit and Vegetable Markets.
44529	Other Specialty Food Stores.			
445291	Baked Goods Stores	R	*5461	Retail Bakeries (selling only).
445292	Candy, Nut and Confectionery Stores	R	*5441	Candy, Nut and Confectionery Stores (selling only).
445299	All Other Specialty Food Stores	R	*5499	Miscellaneous Food Stores (except food supplements).
			5451	Dairy Products Stores.
4453	Beer, Wine and Liquor Stores.			
44531	Beer, Wine and Liquor Stores	E	5921	Liquor Stores.
446	Health and Personal Care Stores.			
4461	Health and Personal Care Stores.			
44611	Drug Stores and Pharmacies	E	5912	Drug Stores and Proprietary Stores.
44612	Cosmetics, Beauty Supplies and Perfume Stores.	N	*5087	Service Establishment Equipment and Supplies (beauty and barber supplies sold via retail method).
			*5999	Miscellaneous Retail Stores, NEC (cosmetics and perfumes).

TABLE 1—Continued

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and description	Status code	1987 SIC code	1987 SIC description
			*5999	Miscellaneous Retail Stores, NEC (hearing aids and artificial limbs).
447	Gasoline Stations.			
4471	Gasoline Stations.			
44711	Gasoline Stations with Convenience Stores	N	*5541	Gasoline Service Station (gasoline station with convenience store).
			*5411	Grocery Stores (convenience store with gas).
44719	Other Gasoline Stations	N	*5541	Gasoline Service Station (gasoline station without convenience store).
448	Clothing and Accessories Stores.			
4481	Clothing Stores.			
44811	Men's Clothing Stores	R	*5611	Men's and Boys' Clothing and Accessory Stores (clothing stores).
44812	Women's Clothing Stores	E	5621	Women's Clothing Stores.
44813	Children's and Infants' Clothing Stores	E	5641	Children's and Infants' Wear Stores.
44814	Family Clothing Stores	E	5651	Family Clothing Stores.
44819	Other Clothing Stores	R	*5632	Women's Accessory and Specialty Stores (specialty clothing).
			*5699	Miscellaneous Apparel and Accessory Stores (miscellaneous apparel).
4482	Jewelry and Accessories Stores			
44821	Jewelry Stores	R	*5999	Miscellaneous Retailer, NEC (rough gems).
			5944	Jewelry Stores.
44822	Luggage and Leather Goods Stores	E	5948	Luggage and Leather Goods Stores.
44823	Accessories Stores	N	*5611	Men's and Boys' Clothing and Accessory Stores (accessories).
			*5632	Women's Accessory and Specialty Stores (accessories).
			*5699	Miscellaneous Apparel and Accessory Stores (accessories).
4483	Shoe Stores			
44831	Shoe Stores	E	5661	Shoe Stores.
451	Sports, Hobby, Book and Music Stores			
4511	Sports, Hobby and Music Stores			
45111	Sporting Goods Stores	R	*7699	Repair Shops and Related Services, NEC (bicycle sales locations providing supporting repair services as major source of receipts).
			5941	Sporting Goods Stores and Bicycle Shops.
45112	Hobby, Toy and Game Stores	E	5945	Hobby, Toy, and Game Stores.
45113	Sewing, Needlework and Piece Goods Stores	R	*5714	Drapery, Curtain, and Upholstery Stores (upholstery materials).
			5949	Sewing, Needlework, and Piece Goods Stores.
45114	Musical Instrument and Supply Stores	E	5736	Musical Instruments Stores.
4512	Books, Periodicals and Music Stores			
45121	Book Stores and News Dealers			
451211	Book Stores	E	5942	Book Stores.
451212	News Dealers and Newsstands	E	5994	News Dealers and Newsstands.
45122	Prerecorded Tape, Compact Disk and Record Stores.	E	5735	Record and Prerecorded Tape Stores.
452	General Merchandise Stores			
4521	Department Stores			
45211	Department Stores	E	5311	Department Stores.
4522	Other General Merchandise Stores			
45221	Warehouse Clubs and Other General Merchandise Stores with Food.	N	*5399	Miscellaneous General Merchandise Stores (warehouse clubs and supermarket/general merchandise combination).
			*5411	Grocery Stores (grocery stores and supermarkets selling substantial amounts of nonfood items).
45229	All Other General Merchandise Stores	R	*5399	Miscellaneous General Merchandise Stores (except warehouse club and supermarket/general merchandise combination).
			5331	Variety Stores.
453	Miscellaneous Store Retailers			
4531	Florists			
45311	Florists	E	5992	Florists.
4532	Office Supply and Stationery and Gift Stores			
45321	Office Supply and Stationery Stores	R	*5049	Professional Equipment and Supplies, NEC (school and church supplies sold via retail method).

TABLE 1—Continued

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and description	Status code	1987 SIC code	1987 SIC description
			*5112	Stationery and Office Supplies (sold via retail method).
			5943	Stationery Stores.
45322	Gift, Novelty and Souvenir Stores	E	5947	Gift, Novelty, and Souvenir Shops.
4533	Used Merchandise Stores.			
45331	Used Merchandise Stores	R	*5932	Used Merchandise Stores (except pawn shops).
4539	Other Miscellaneous Store Retailers.			
45391	Pet and Pet Supply Stores	N	*5999	Miscellaneous Retail Stores, NEC (pet and pet supplies).
45392	Art Dealers	N	*5999	Miscellaneous Retail Stores, NEC (art dealer).
45393	Manufactured (Mobile) Home Dealers	E	5271	Mobile Home Dealers.
45399	All Other Miscellaneous Store Retailers.			
453991	Tobacco Stores	E	5993	Tobacco Stores and Stands.
453999	All Other Miscellaneous Store Retailers	R	*5999	Miscellaneous Retail Stores, NEC (except art, pet and pet supplies, hearing aids, artificial limbs, cosmetics, live Christmas trees, telephones, typewriters, personal appliances and rough gems).
			*5261	Retail Nurseries, Lawn and Garden Supply Stores (cut Christmas trees).
454	Nonstore Retailers			
4541	Electronic Shopping and Mail-Order Houses.			
45411	Electronic Shopping and Mail-Order Houses	E	5961	Catalog and Mail-Order Houses.
4542	Vending Machine Operators.			
45421	Vending Machine Operators	E	5962	Automatic Merchandise Machine Operators.
4543	Direct Selling Establishments.			
45431	Fuel Dealers.			
454311	Heating Oil Dealers	R	*5171	Petroleum Bulk Stations and Terminals (heating oil sold to final consumer).
			5983	Fuel Oil Dealers.
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers.	R	*5171	Petroleum Bulk Stations and Terminals (LP gas sold to final consumer).
			5984	Liquefied Petroleum Gas (Bottled Gas) Dealers.
454319	Other Fuel Dealers	E	5989	Fuel Dealers, NEC.
45439	Other Direct Selling Establishments	R	*5421	Meat and Fish (Seafood) Markets, Including Freezer Provisioners (freezer provisioners).
			*5963	Direct Selling Establishments (except mobile food services).

TABLE 2

The abbreviation "pt" means "part of", @ means time series break has been created that is greater than 3% of the 1992 revenue for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 SIC code	1987 SIC description	1997 U.S. description
5013	Motor Vehicle Supplies and New Parts	
	Sold Via Retail Method	Automotive Parts and Supplies Stores (pt).
	Sold Via Wholesale Method	Motor Vehicle Supplies and New Parts (pt).
5014	Tires and Tubes	
	Sold Via Retail Method	Tire Dealers (pt).
	Sold Via Wholesale Method	Tires and Tubes.
5021	Furniture	
	Sold Via Retail Method	Furniture Stores (pt).
	Sold Via Wholesale Method	Furniture.
5023	Home Furnishings	
	Sold Via Retail Method	Floor Covering Stores (pt).
	Sold Via Wholesale Method	Homefurnishings (pt).
5031	Lumber, Plywood, Millwork and Wood Panels	
	Sold Via Retail Method	Other Building Materials Dealers (pt).
	Sold Via Wholesale Method	Lumber, Plywood, Millwork, and Wood Panels (pt).
5032	Brick, Stone and Related Construction Materials	
	Sold Via Retail Method	Other Building Materials Dealers (pt).
	Sold Via Wholesale Method	Brick, Stone and Related Construction Materials.
5039	Construction Materials, NEC	
	Sold Via Retail Method	Other Building Materials Dealers (pt).
	Sold Via Wholesale Method	Other Construction Materials.
5045	Computers and Computer Peripheral Equipment and Software	

TABLE 2—Continued

The abbreviation "pt" means "part of", @ means time series break has been created that is greater than 3% of the 1992 revenue for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 SIC code	1987 SIC description	1997 U.S. description
	Sold Via Retail Method	Computer and Software Stores (pt).
	Sold Via Wholesale Method	Computers and Computer Peripheral Equipment and Software.
5047	Medical, Dental and Hospital Equipment	
	Sold Via Retail Method	All Other Health and Personal Care Stores (pt)—Retail
	Sold Via Wholesale Method	Medical, Dental and Hospital Equipment and Supplies—Wholesale.
5049	Professional Equipment and Supplies, NEC	
	Religious and School Supplies Sold Via Retail Method	Office Supply and Stationery Stores (pt).
	Sold Via Wholesale Method	Other Professional Equipment and Supplies.
5063	Electrical Apparatus and Equipment Wiring Supplies and Construction Materials	
	Sold Via Retail Method	Other Building Materials (pt).
	Sold Via Wholesale Method	Electrical Apparatus and Equipment Wiring Supplies and Construction Materials.
5074	Plumbing and Heating Equipment and Supplies (Hydronics)	
	Sold Via Retail Method	Other Building Materials (pt).
	Sold Via Wholesale Method	Plumbing and Heating Equipment and Supplies.
5083	Farm and Garden Machinery and Equipment Garden and Lawn Equipment	
	Sold Via Retail Method	Outdoor Power Equipment Stores (pt).
	Sold Via Wholesale Method	Farm and Garden Machinery and Equipment.
5087	Service Establishment Equipment and Supplies	
	Sold Via Retail Method	Cosmetics, Beauty Supplies and Perfume Stores (pt).
	Sold Via Wholesale Method	Service Establishment Equipment and Supplies
5112	Stationery and Office Supplies	
	Sold Via Retail Method	Office Supply and Stationery Stores (pt).
	Sold Via Wholesale Method	Stationery and Office Supplies.
5171	Petroleum Bulk Stations and Terminals Heating Oil	
	Sold Via Retail Method	Heating Oil Dealers (pt).
	LP Gas Sold Via Retail Method	Liquefied Petroleum Gas (Bottled Gas) Dealers (pt).
	All Other Petroleum and Bulk Stations and Terminals	Petroleum Bulk Stations and Terminals.
5191	Farm Supplies	
	Lawn and Garden Supplies Sold Via Retail Method	Nursery and Garden Centers (pt).
	Except Lawn and Garden Supplies Sold Via Retail Method	Farm Supplies.
5193	Flowers, Nursery Stock, and Florists' Supplies	
	Sold Via Retail Method	Nursery and Garden Centers (pt).
	Sold Via Wholesale Method	Flowers, Nursery Stock and Florists' Supplies.
5198	Paints, Varnishes, and Supplies	
	Sold Via Retail Method	Paint and Wallpaper Stores (pt).
	Sold Via Wholesale Method	Paints, Varnishes and Supplies.
5211	Lumber and Other Building Materials Dealers	
	Sold Via Wholesale Method	Lumber, Plywood, Millwork and Wood Panels - Wholesale (pt)
	Sold Via Retail Method, Except Home Centers and Glass	Other Building Materials Dealers (pt).
	Home Centers	Home Centers.
5231	Paint, Glass, and Wallpaper Stores	
	Paint and Wallpaper Sold Via Wholesale Method	Paint, Varnishes and Supplies—Wholesale (pt).
	Glass Stores	Other Building Materials Dealers (pt).
	Paint and Wallpaper Sold Via Retail Method	Paint and Wallpaper Stores (pt).
5251	Hardware Stores	Hardware Stores
5261	Retail Nurseries, Lawn and Garden Supply Stores	
	Except Cut Christmas Trees	Nursery and Garden Centers (pt).
	Cut Christmas Trees	All Other Miscellaneous Store Retailers (pt).
	Outdoor Power Equipment Stores	Outdoor Power Equipment Stores.
5271	Mobile Home Dealers	Manufactured (Mobile) Home Dealers.
5311	Department Stores	Department Stores.
5331	Variety Stores	All Other General Merchandise Stores (pt).
5399	Miscellaneous General Merchandise Stores	
	Warehouse Clubs and General Merchandise Combination Stores.	Warehouse Clubs and Other General Merchandise Stores with Food.
	All Other General Merchandise Stores	All Other General Merchandise Stores (pt).
5411	Grocery Stores	
	Convenience Stores with Gas	Gasoline Stations with Convenience Stores (pt).
	Supermarkets and Grocery Stores with Little General Merchandise.	Supermarkets and Grocery Stores.
	Supermarkets and Grocery Stores with Substantial General Merchandise.	Warehouse Clubs and Other General Merchandise Stores with Food.
	Convenience Stores	Convenience Stores.
5421	Meat and Fish (Seafood) Markets, Including Freezer Provisioners	

TABLE 2—Continued

The abbreviation "pt" means "part of", @ means time series break has been created that is greater than 3% of the 1992 revenue for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 SIC code	1987 SIC description	1997 U.S. description
	Freezer Provisioners	Other Direct Selling Establishments (pt).
	Meat Markets	Meat Markets.
	Fish and Seafood Markets	Fish and Seafood Markets
5431	Fruit and Vegetable Markets	Fruit and Vegetable Markets.
5441	Candy, Nut, and Confectionery Stores	
	Candy Makers that Sell at Same Location	Confectionery Manufacturing from Purchased Chocolate (pt).
	Candy Makers that Sell at Same Location	Non-Chocolate Confectionery Manufacturing (pt).
	Sales Only	Candy, Nut, and Confectionery Stores.
5451	Dairy Products Stores	All Other Specialty Food Stores (pt).
5461	Retail Bakeries	
	Doughnut Shops, Pretzel Shops, Cookie Shops, Bagel Shops, and Other Such Shops that Make and Sell For Immediate Consumption.	Refreshment Places (pt).
	Bakeries that Make and Sell at the Same Location	Retail Bakeries.
	Sales Only of All Other Baked Goods	Baked Goods Stores.
5499	Miscellaneous Food Stores	
	Poultry and Poultry Products	Meat Markets (pt).
	Coffee Shops Making and Serving Food and Beverages for Immediate Consumption.	Limited-Service Restaurants (pt).
	Food Supplement Stores	Food (Health) Supplement Stores.
	All Other Miscellaneous Food Stores	All Other Specialty Food Stores (pt).
5511	Motor Vehicle Dealers (New and Used)	New Car Dealers.
5521	Motor Vehicle Dealers (Used Only)	Used Car Dealers.
5531	Auto and Home Supply Stores	
	Tire Dealers	Tire Dealers.
	All Other Auto and Home Supply Stores	Automotive Parts and Supplies Stores (pt).
5541	Gasoline Service Stations	
	Convenience Store with Gas	Gasoline Stations with Convenience Store (pt).
	Except with Convenience Stores	Other Gasoline Stations.
5551	Boat Dealers	Boat Dealers.
5561	Recreational Vehicle Dealers	Recreational Vehicle Dealers.
5571	Motorcycle Dealers	Motorcycle Dealers.
5599	Automotive Dealers, NEC	All Other Motor Vehicle Dealers.
5611	Men's and Boys' Clothing and Accessory Stores	
	Men's Clothing Stores	Men's Clothing Stores.
	Men's Accessory Stores	Accessories Stores (pt).
5621	Women's Clothing Stores	Women's Clothing Stores.
5632	Women's Accessory and Specialty Stores	
	Specialty stores	Other Clothing Stores (pt).
	Accessory stores	Accessories Stores (pt).
5641	Children's and Infants' Wear Stores	Children's and Infants' Clothing Stores.
5651	Family Clothing Stores	Family Clothing Stores.
5661	Shoe Stores	Shoe Stores.
5699	Miscellaneous Apparel and Accessory Stores	
	Custom Tailors and Seamstresses	Included in Apparel Manufacturing subsector based on type of garment produced.
	Miscellaneous Apparel	Other Clothing Stores (pt).
	Miscellaneous Accessories	Accessories Stores (pt).
5712	Furniture Stores	
	Custom Made Furniture, Except Cabinets	Wood Household Furniture Manufacturing, Except Upholstered (pt).
	Custom Wood Cabinets	Wood Kitchen Cabinet Manufacturing (pt).
	Upholstered Custom Made Furniture	Upholstered Wood Household Furniture Manufacturing (pt).
	Except Custom Cabinet and Furniture Builders	Furniture Stores.
5713	Floor Covering Stores	Floor Covering Stores (pt).
5714	Drapery, Curtain and Upholstery Stores	
	Drapery and Curtain Stores	Window Treatment Stores (pt).
	Upholstery Stores	Sewing, Needlework and Piece Goods Stores (pt).
	Custom Drapes	Curtain and Drapery Mills (pt).
5719	Miscellaneous Homefurnishings Stores	
	Blinds and Shades	Window Treatment Stores.
	Pottery and Crafts Made and Sold on Site	Included in Manufacturing sector based on article produced.
	Except Blinds, Shades, and Pottery and Crafts Made and Sold on Site.	All Other Home Furnishings Stores.
5722	Household Appliance Stores	Household Appliance Stores.
5731	Radio, Television, and Consumer Electronics Stores	
	Except Auto Radio Stores	Radio, Television, and Other Electronics Stores.
	Auto Radio Stores	Automotive Parts and Supplies Stores (pt).
5734	Computer and Computer Software Stores	Computer and Software Stores.

TABLE 2—Continued

The abbreviation "pt" means "part of", @ means time series break has been created that is greater than 3% of the 1992 revenue for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 SIC code	1987 SIC description	1997 U.S. description
5735	Record and Prerecorded Tape Stores	Prerecorded Tape, Compact Disk and Record Stores.
5736	Musical Instrument Stores	Musical Instrument and Supply Stores.
5912	Drug Stores and Proprietary Stores	Drug Stores and Pharmacies.
5921	Liquor Stores	Beer, Wine and Liquor Stores.
5932	Used Merchandise Stores	
	Pawn Shops	All Other Non-Depository Credit Intermediation (pt).
	Except Pawn Shops	Used Merchandise Stores.
5941	Sporting Goods Stores and Bicycle Shops	Sporting Goods Stores (pt).
5942	Book Stores	Book Stores.
5943	Stationery Stores	Office Supply and Stationery Stores (pt).
5944	Jewelry Stores	Jewelry Stores.
5945	Hobby, Toy and Game Shops	Hobby, Toy and Game Stores.
5946	Camera and Photographic Supply Stores	Camera and Photographic Supply Stores.
5947	Gift, Novelty, and Souvenir Shops	Gift, Novelty and Souvenir Stores.
5948	Luggage and Leather Goods Stores	Luggage and Leather Goods Stores.
5949	Sewing, Needlework, and Piece Goods Stores	Sewing, Needlework and Piece Goods Stores (pt).
5961	Catalog and Mail-Order Houses	Electronic Shopping and Mail-Order Houses.
5962	Automatic Merchandising Machine Operator	Vending Machine Operators.
5963	Direct Selling Establishments	
	Mobile Food Service	Mobile Caterers.
	All Other Direct Selling Establishments	Other Direct Selling Establishments (pt).
5983	Fuel Oil Dealers	Heating Oil Dealers (pt).
5984	Liquefied Petroleum Gas (Bottled Gas) Dealers	Liquefied Petroleum Gas (Bottled Gas) Dealers (pt).
5989	Fuel Dealers, NEC	Other Fuel Dealers.
5992	Florists	Florists.
5993	Tobacco Stores and Stands	Tobacco Stores.
5994	News Dealers and Newsstands	News Dealers and Newsstands.
5995	Optical Goods Stores	
	Optical Stores Grinding Prescription Lenses, except 1-Hour Labs.	Eyeglass and Contact Lens Manufacturing (pt).
	Except Optical Laboratories Grinding Prescription Lenses	Optical Goods Stores.
5999	Miscellaneous Retail Stores, NEC	
	Cosmetic Stores	Cosmetics, Beauty Supplies and Perfume Stores (pt).
	Hearing Aid and Artificial Limb Stores	All Other Health and Personal Care Stores (pt).
	Pets and Pet Supply Stores	Pet and Pet Supply Stores.
	Art Dealers	Art Dealers.
	Personal Appliance Stores	Household Appliance Stores (pt).
	Telephone and Typewriter Stores	Radio, Television and Other Electronics Stores (pt).
	Rough Gem Stores	Jewelry Stores (pt).
	Other Miscellaneous Retail Stores	All Other Miscellaneous Store Retailers (pt).
7378	Computer Maintenance and Repair	
	Sales Locations Providing Supporting Repair Services as Major Source of Revenue.	Computer and Software Stores (pt).
	All Other Repair and Maintenance	Computer and Office Machine Repair and Maintenance (pt).
7622	Radio and Television Repair Shops	
	Radio and TV Sales Locations Providing Supporting Repair Services as Major Source of Revenue.	Radio, Television and Other Electronics Stores (pt).
	Stereo, TV, VCR and Radio Repair	Consumer Electronics Repair and Maintenance (pt).
	Telecommunication Equipment Repair	Communication Equipment Repair and Maintenance (pt).
7623	Refrigeration and Air-Conditioning Services and Repair Shops	
	Refrigerator and A/C Sales Locations Providing Supporting Repair Service as Major Source of Revenue.	Household Appliance Stores (pt).
	Commercial Refrigerator Equipment Repair	Other Industrial Machinery and Equipment Repair and Maintenance (pt).
	Except Commercial	Appliance Repair and Maintenance (pt).
7629	Electrical and Electronic Repair Shops, NEC	
	Appliance Sales Locations Providing Supporting Repair Services as Major Source of Revenue.	Household Appliance Stores (pt).
	All Other Repair and Maintenance	Included in Repair and Maintenance subsector.
7699	Repair Shops and Related Services, NEC	
	Bicycle Sales Locations Providing Supporting Repair Services as Major Source of Revenue.	Sporting Goods Stores (pt)
	All Other Repair and Maintenance	Included in Repair and Maintenance subsector.

Description of Changes to the U.S. System

Seventeen new industries have been added to the Retail Trade sector. These new industries are the following:

Automotive Parts and Supplies Stores from part of 1987 SIC 5013, Motor Vehicle Supplies and New Parts; part of 1987 SIC 5731, Radio, Television and Consumer Electronics Stores; and part of 1987 SIC 5531, Auto and Home Supply Stores.

Tire Dealers from part of 1987 SIC 5014, Tires and Tubes, and part of 1987 SIC 5531, Auto and Home Supply Stores. These changes were made to incorporate the revised boundaries of retail/wholesale and improve comparability with Canada.

Window Treatment Stores from part of 1987 SIC 5714, Drapery, Curtain, and Upholstery Stores, and 1987 SIC 5719, Miscellaneous Home Furnishings Stores, to recognize a growing and unique type of store.

Home Centers from part of 1987 SIC 5211, Lumber and Other Building Materials Dealers. Home Centers are identified separately based on the equipment and personnel expertise required to sell both lumber and the related products included in this classification.

Outdoor Power Equipment Stores from part of 1987 SIC 5083, Farm and Garden Machinery and Equipment, and part of 1987 SIC 5261, Retail Nurseries, Lawn and Garden Supply Stores. Outdoor power equipment stores provide trained staff to sell and service power equipment while nursery and garden centers employ staff that are knowledgeable about plants. These stores also have the equipment necessary to maintain a stock of living plants, etc.

Supermarkets and Grocery Stores from part of 1987 SIC 5411, Grocery Stores.

Convenience Stores from part of 1987 SIC 5411, Grocery Stores.

Fish and Seafood Markets from part of 1987 SIC 5421, Meat and Fish (Seafood) Markets, Including Freezer Provisioners. These three new industries employ distinct production processes.

Cosmetics, Beauty Supplies and Perfume Stores from part of 1987 SIC 5087, Service Establishment Equipment and Supplies, and part of 1987 SIC 5999, Miscellaneous Retail Stores, Not Elsewhere Classified. These types of stores are growing in number and are more like each other than the stores in the industries in which they were formerly classified.

Food (Health) Supplement Stores from part of 1987 SIC 5499, Miscellaneous Food Stores.

All Other Health and Personal Care Stores from part of 1987 SIC 5047, Medical, Dental and Hospital Equipment and Supplies, and part of 1987 SIC 5999, Miscellaneous Retail Stores, Not Elsewhere Classified. These are distinct types of stores and also reduce the size of the miscellaneous category.

Gasoline Stations with Convenience Stores from part of 1987 SIC 5541, Gasoline Stations, and part of 1987 SIC 5541, Gasoline Service Stations. Gasoline stations with convenience stores combine the processes of gas stations (requiring special equipment like gas pumps) and convenience stores (requiring food display and refrigeration equipment).

Other Gasoline Stations from part of 1987 SIC 5541, Gasoline Stations. These gasoline stations do not have a convenience store.

Accessories Stores from part of 1987 SIC 5611, Men's and Boys' Clothing and Accessories Stores; part of 1987 SIC 5632, Women's Accessory and Specialty Stores; and part of 1987 SIC 5699, Miscellaneous Apparel and Accessory Stores.

Warehouse Clubs and Other General Merchandise Stores from part of 1987 SIC 5399, Miscellaneous General Merchandise Stores and part of 1987 SIC 5411, Grocery Stores. These stores are separated based on the equipment and personnel required to handle a wide variety of products.

Pet and Pet Supply Stores from part of 1987 SIC 5999, Miscellaneous Retail Stores, Not Elsewhere Classified.

Art Dealers from part of 1987 SIC 5999, Miscellaneous Retail Stores.

The number of industries in this industry sector increased from 64 in 1987 to 72 in 1997. For time series linkage, 44 of the 64 industries are comparable within three percent of the 1997 industries. For five other industries, changes involve splitting a part of 1987 industries to obtain more industry detail in response to new economic developments in this sector. For these industries, the new, more detailed industries can readily be reaggregated for analytical purposes where time series comparability is important.

Wholesale

For Wholesale Trade, the ECPC is proposing only those changes necessary to define the boundaries of Wholesale Trade agreed upon with Canada and Mexico. Rather, the ECPC proposes to undertake a thorough review of the wholesale sector, in cooperation with its North American partners, within the next five years that may result in a complete restructuring of the wholesale sector in the next revision. That review will focus on the different types of wholesalers that undertake different activities and provide different services. For example, some wholesalers may be directly associated with a manufacturer, such as a manufacturer's sales branches. Manufacturer's sales branches promote and sell a particular manufacturers' product to a wide range of other wholesalers or retailers. Other wholesalers may be connected to a retail chain or a limited number of retail chains and only provide a variety of products needed by that particular retail operation(s). Still other wholesalers may take title to goods and provide a wide range of products to a wide range of retailers. Some analysts have suggested that these types of distinctions, based on activities and services provided, should be made in the industry classification system rather than the product distinction that is imbedded in the current system.

Therefore, to avoid disrupting time series, the ECPC proposes to make no changes for 1997 except those needed for clarification of the boundaries of wholesale trade. Proposals to restructure the wholesale sector may be made in the next revision based on the study to be undertaken. This delay also will allow the U.S. to consult more thoroughly with its North American partners and design a system that provides for more comparability with Canada and Mexico. The proposed structure for Wholesale Trade for 1997 is shown in Table 1.

TABLE 1

The definitions of status codes are as follows: E-existing industry; N-new industry; R-revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status Code	1987 SIC Code	1987 SIC description
431	Wholesale Trade, Durable Goods			
4311	Motor Vehicles and Motor Vehicle Parts and Supplies			
43111	Automobiles and Other Motor Vehicles	E	5012	Automobiles and Other Motor Vehicles.
43112	Motor Vehicles Supplies and New Parts	R	*5013	Motor Vehicle Supplies and New Parts (except parts sold via retail methods).
43113	Tires and Tubes	R	*5014	Tires and Tubes (except tires sold via retail method).
43114	Motor Vehicle Parts, Used	E	5015	Motor Vehicle Parts, Used.
4312	Furniture and Home Furnishings			
43121	Furniture	R	*5021	Furniture (except furniture sold via retail method).
43122	Home Furnishings	R	*5023	Homefurnishings (except homefurnishings sold via retail method).
4313	Lumber and Other Construction Materials			
43131	Lumber, Plywood, Millwork and Wood Panels	R	*5031	Lumber, Plywood, Millwork, and Wood Panels (except construction materials sold via retail method).
			5211	Lumber and Other Building Materials Dealers—Retail (construction materials sold by establishments "known as retail in the trade" selling via wholesale method).
43132	Brick, Stone and Related Construction Materials.	R	*5032	Brick, Stone, and Related Construction Materials (except construction materials sold via retail method).
43133	Roofing, Siding and Insulation Materials	E	5033	Roofing, Siding, and Insulation Materials.
43139	Other Construction Materials	R	*5039	Construction Materials, NEC (sold via wholesale method).
4314	Professional and Commercial Equipment and Supplies			
43141	Photographic Equipment and Supplies	E	5043	Photographic Equipment and Supplies.
43142	Office Equipment	E	5044	Office Equipment.
43143	Computers and Computer Peripheral Equipment and Software.	R	*5045	Computers and Computer Peripherals Equipment and Software (except computers, equipment, and software sold via retail method).
43144	Other Commercial Equipment	E	5046	Commercial Equipment, NEC.
43145	Medical, Dental and Hospital Equipment and Supplies.	R	*5047	Medical, Dental and Hospital Equipment and Supplies (except medical, dental, and hospital equipment and supplies sold via retail method).
43146	Ophthalmic Goods	E	5048	Ophthalmic Goods.
41349	Other Professional Equipment and Supplies	R	*5049	Professional Equipment and Supplies, NEC (except religious and school supplies sold via retail method).
4315	Metals and Minerals, Except Petroleum			
43151	Metals Service Centers and Offices	E	5051	Metals Service Centers and Offices.
43152	Coal and Other Minerals and Ores	E	5052	Coal and Other Mineral and Ores.
4316	Electrical Goods			
43161	Electrical Apparatus and Equipment, Wiring Supplies and Construction Materials.	R	*5063	Electrical Apparatus and Equipment, Wiring Supplies and Construction Materials (except electrical supplies sold via retail method).
43162	Electrical Appliances, Television and Radio Sets.	E	5064	Electrical Appliances, Television and Radio Sets.
43169	Other Electronic Parts and Equipment	E	5065	Electronic Parts and Equipment, NEC.
4317	Hardware, and Plumbing and Heating Equipment and Supplies			
43171	Hardware	E	5072	Hardware.
43172	Plumbing and Heating Equipment and Supplies (Hydronics).	R	*5074	Plumbing and Heating Equipment and Supplies (Hydronics) (except plumbing equipment sold via retail method).
43173	Warm Air Heating and Air-Conditioning Equipment and Supplies.	E	5075	Warm Air Heating and Air-Conditioning Equipment and Supplies.
43174	Refrigeration Equipment and Supplies	E	5078	Refrigeration Equipment and Supplies.
4318	Machinery, Equipment and Supplies			
43181	Construction and Mining (Except Petroleum) Machinery and Equipment.	E	5082	Construction and Mining (Except Petroleum) Machinery and Equipment.
43182	Farm and Garden Machinery and Equipment	R	*5083	Farm and Garden Machinery and Equipment (except lawn and garden equipment sold via retail method).
43183	Industrial Machinery and Equipment	R	5084	Industrial Machinery and Equipment.

TABLE 1—Continued

The definitions of status codes are as follows: E-existing industry; N-new industry; R-revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status Code	1987 SIC Code	1987 SIC description
			*5085	Industrial Supplies (fluid power accessories).
43184	Industrial Supplies	R	*5085	Industrial Supplies (except fluid power accessories and reconditioning barrels).
43185	Service Establishment Equipment and Supplies	R	*5087	Service Establishment Equipment and Supplies (except sales of the service establishment equipment and supplies sold via retail method).
43186	Transportation Equipment and Supplies, Except Motor Vehicles.	E	5088	Transportation Equipment and Supplies, Except Motor Vehicles.
4319	Miscellaneous Durable Goods			
43191	Sporting and Recreational Goods and Supplies	E	5091	Sporting and Recreational Goods and Supplies.
43192	Toys and Hobby Goods and Supplies	E	5092	Toys and Hobby Goods and Supplies.
43193	Recyclable Materials	E	5093	Scrap and Waste Materials.
43194	Jewelry, Watches, Precious Stones and Precious Metals.	E	5094	Jewelry, Watches, Precious Stones, and Precious Metals.
43199	Other Miscellaneous Nondurable Goods	R	5099	Durable Goods, NEC.
			7822	Motion Picture and Video Tape Distribution (prerecorded video tapes—distribution).
432	Wholesale Trade Nondurable Goods			
4321	Paper and Paper Products			
43211	Printing and Writing Paper	E	5111	Printing and Writing Paper.
43212	Stationery and Office Supplies	R	*5112	Stationery and Office Supplies (except stationery and office supplies sold via retail method).
43213	Industrial and Personal Service Paper	E	5113	Industrial and Personal Service Paper.
4322	Drugs, Drug Proprietaries and Druggists' Sundries			
43221	Drugs, Drug Proprietaries and Druggists' Sundries.	E	5122	Drugs, Drug Proprietaries, and Druggists' Sundries.
4323	Apparel, Piece Goods, and Notions			
43231	Piece Goods, Notions and Other Dry Goods	R	*5131	Piece Goods, Notions, and Other Dry Goods (except piece goods converters).
43232	Men's and Boys' Clothing and Furnishings	E	5136	Men's and Boys' Clothing and Furnishings.
43233	Women's, Children's, and Infants' and Accessories.	E	5137	Women's, Children's, and Infants' Clothing and Accessories.
43234	Footwear	E	5139	Footwear.
4324	Groceries and Related Products			
43241	Groceries, General Line	E	5141	Groceries, General Line.
43242	Packaged Frozen Foods	E	5142	Packaged Frozen Foods.
43243	Dairy Products, Except Dried or Canned	E	5143	Dairy Products, Except Dried or Canned.
43244	Poultry and Poultry Products	E	5144	Poultry and Poultry Products.
43245	Confectionery	E	5145	Confectionery.
43246	Fish and Seafoods	E	5146	Fish and Seafoods.
43247	Meats and Meat Products	R	*5147	Meats and Meat Products (except boxed beef).
43248	Fresh Fruits and Vegetables	E	5148	Fresh Fruits and Vegetables.
43249	Other Groceries and Related Products	E	5149	Groceries and Related Products, NEC.
4325	Farm Product Raw Materials			
43251	Grain and Field Beans	E	5153	Grain and Field Beans.
43252	Livestock	E	5154	Livestock.
43259	Other Farm Product Raw Materials	E	5159	Farm-Product Raw Materials, NEC.
4326	Chemicals and Allied Products			
43261	Plastics Materials and Basic Forms and Shapes	E	5162	Plastics Materials and Basic Forms and Shapes.
43269	Other Chemicals and Allied Products	E	5169	Chemicals and Allied Products, NEC.
4327	Petroleum and Petroleum Products			
43271	Petroleum Bulk Stations and Terminals	R	*5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method).
43272	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals.	E	5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals.
4328	Beer, Wine, and Distilled Alcoholic Beverages			
43281	Beer and Ale	E	5181	Beer and Ale.
43282	Wine and Distilled Alcoholic Beverages	E	5182	Wine and Distilled Alcoholic Beverages.
4329	Miscellaneous Nondurable Goods			
43291	Farm Supplies	R	*5191	Farm Supplies (except lawn and garden supplies sold via retail method).
43292	Books, Periodicals and Newspapers	E	5192	Books, Periodicals, and Newspapers.
43293	Flowers, Nursery Stock and Florists' Supplies	E	*5193	Flowers, Nursery Stock, and Florists' Supplies (except nursery stock sold via retail method).
43294	Tobacco and Tobacco Products	E	5194	Tobacco and Tobacco Products.
43295	Paints, Varnishes and Supplies	R	*5198	Paints, Varnishes, and Supplies (except paints, etc. sold via retail method).

TABLE 1—Continued

The definitions of status codes are as follows: E-existing industry; N-new industry; R-revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status Code	1987 SIC Code	1987 SIC description
43299	Other Miscellaneous Nondurable Goods	R	*5231	Paint, Glass and Wallpaper Stores (sold via wholesale method).
			*5199	Nondurable Goods, NEC (except specialty advertising).

TABLE 2

The abbreviation "pt" means part of and @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 SIC code	1987 SIC description	1997 U.S. description
5012	Automobiles and Other Motor Vehicles	Automobiles and Other Motor Vehicles.
5013	Motor Vehicle Supplies and New Parts	
	Sold Via Retail Method	Automotive Parts and Supplies Stores (pt)—Retail.
	Sold Via Wholesale Method	Motor Vehicle Supplies and New Parts (pt)—Wholesale.
5014	Tires and Tubes	
	Sold Via Retail Method	Tire Dealers (pt.)—Retail.
	Sold Via Wholesale Method	Tires and Tubes—Wholesale.
5015	Motor Vehicle Parts, Used	Motor Vehicle Parts, Used.
5021	Furniture	
	Sold Via Retail Method	Furniture Stores (pt)—Retail.
	Sold Via Wholesale Method	Furniture—Wholesale.
5023	Home Furnishings	
	Sold Via Retail Method	Floor Covering Stores (pt.)—Retail.
	Sold Via Wholesale Method	Homefurnishings.
5031	Lumber, Plywood, Millwork, and Wood Panels	
	Sold Via Retail Method	Other Building Materials Dealers (pt.)—Retail.
	Sold Via Wholesale Method	Lumber, Plywood, Millwork and Wood Panels (pt)—Wholesale.
5032	Brick, Stone, and Related Construction Materials	
	Sold Via Wholesale Method	Brick, Stone, and Related Construction Materials—Wholesale.
	Sold Via Retail Method	Other Building Materials Dealers (pt.)—Retail.
5033	Roofing, Siding, and Insulation Materials	Roofing, Siding, and Insulation Materials.
5039	Construction Materials, NEC	
	Sold Via Retail Method	Other Building Materials Dealers—Retail.
	Sold Via Wholesale Method	Other Construction Materials.
5043	Photographic Equipment and Supplies	Photographic Equipment and Supplies.
5044	Office Equipment	Office Equipment.
5045	Computers and Computer Peripheral Equipment and Software	
	Sold Via Wholesale Method	Computers and Computer Peripheral Equipment and Software.
	Sold Via Retail Method	Computer and Software Stores (pt)—Retail.
5046	Commercial Equipment, NEC	Other Commercial Equipment.
5047	Medical, Dental, and Hospital Equipment and Supplies	
	Sold Via Wholesale Method	Medical, Dental and Hospital Equipment and Supplies—Wholesale.
	Sold Via Retail Method	All Other Health and Personal Care Stores (pt)—(Retail).
5048	Ophthalmic Goods	Ophthalmic Goods.
5049	Professional Equipment and Supplies, NEC	
	Sold Via Wholesale Method	Other Professional Equipment and Supplies.
	Religious and School Supplies Sold Via Retail Method	Office Supply and Stationery Stores (pt)—Retail.
5051	Metals Service Centers and Offices	Metals Service Centers and Offices.
5052	Coal and Other Minerals and Ores	Coal and Other Minerals and Ores.
5063	Electrical Apparatus and Equipment, Wiring Supplies, and Construction Materials	
	Sold Via Wholesale Method	Electrical Apparatus and Equipment, Wiring Supplies, and Construction Materials.
	Sold Via Retail Method	Other Building Materials (pt)—Retail.
5064	Electrical Appliances, Television and Radio Sets	Electrical Appliances, Television and Radio Sets.
5065	Electronic Parts and Equipment, NEC	Other Electronic Parts and Equipment.
5072	Hardware	Hardware.
5074	Plumbing and Heating Equipment and Supplies (Hydronics)	
	Sold Via Wholesale Method	Plumbing and Heating Equipment and Supplies (Hydronics)—Wholesale.
	Sold Via Retail Method	Other Building Materials Dealers (pt)—Retail.
5075	Warm Air Heating and Air-Conditioning Equipment and Supplies.	Warm Air Heating and Air-Conditioning Equipment and Supplies.
5078	Refrigeration Equipment and Supplies	Refrigeration Equipment and Supplies.

TABLE 2—Continued

The abbreviation "pt" means part of and @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 SIC code	1987 SIC description	1997 U.S. description
5082	Construction and Mining (Except Petroleum) Machinery and Equipment.	Construction and Mining (Except Petroleum) Machinery and Equipment.
5083	Farm and Garden Machinery and Equipment	
	Sold Via Wholesale Method	Farm and Garden Machinery and Equipment—Wholesale.
	Sold Via Retail Method	Outdoor Power Equipment Stores (pt)—Retail.
5084	Industrial Machinery and Equipment	Industrial Machinery and Equipment.
5085	Industrial Supplies	
	Fluid Power Accessories	Industrial Machinery and Equipment (pt).
	Reconditioning Barrels and Drums	Other Metal Container Manufacturing.
	Except Fluid Power Accessories and Reconditioning Barrels and Drums.	Industrial Supplies.
5087	Service Establishment Equipment and Supplies	
	Sold Via Wholesale Method	Service Establishment Equipment and Supplies.
	Sold Via Retail Method	Cosmetics, Beauty Supplies, and Perfume Stores (pt)—(Retail).
5088	Transportation Equipment and Supplies, Except Motor Vehicles.	Transportation Equipment and Supplies, Except Motor Vehicles.
5091	Sporting and Recreational Goods and Supplies	Sporting and Recreational Goods and Supplies.
5092	Toys and Hobby Goods and Supplies	Toys and Hobby Goods and Supplies.
5093	Scrap and Waste Materials	Recyclable Materials.
5094	Jewelry, Watches, Precious Stones, and Precious Metals	Jewelry, Watches, Precious Stones, and Precious Metals.
5099	Durable Goods, NEC	Other Miscellaneous Durable Goods (pt).
5111	Printing and Writing Paper	Printing and Writing Paper.
5112	Stationery and Office Supplies	
	Sold Via Wholesale Method	Stationery and Office Supplies.
	Sold Via Retail Method	Office Supply and Stationery Stores (pt)—Retail.
5113	Industrial and Personal Service Paper	Industrial and Personal Service Paper.
5122	Drugs, Drug Proprietaries, and Druggists' Sundries	Drugs, Drug Proprietaries, and Druggists' Sundries.
5131	Piece Goods, Notions, and Other Dry Goods	
	Except Converters	Piece Goods, Notions, and Other Dry Goods.
	Piece Good Converters, Broadwoven Fabrics	Broadwoven Fabric Finishing Mills (pt).
	Piece Good Converters, Except Broadwoven Fabrics	Textile and Fabric Finishing Mills, Except Broadwoven Fabrics (pt).
5136	Men's and Boys' Clothing and Furnishings	Men's and Boys' Clothing and Furnishings.
5137	Women's, Children's, and Infants' Clothing and Accessories	Women's, Children's, and Infants' Clothing and Accessories.
5139	Footwear	Footwear.
5141	Groceries, General Line	Groceries, General Line.
5142	Packaged Frozen Foods	Packaged Frozen Foods.
5143	Dairy Products, Except Dried or Canned	Dairy Products, Except Dried or Canned.
5144	Poultry and Poultry Products	Poultry and Poultry Products.
5145	Confectionery	Confectionery.
5146	Fish and Seafoods	Fish and Seafoods.
5147	Meats and Meat Products	
	Boxed Beef	Meat Processed from Carcasses (pt).
	Except Boxed Beef	Meats and Meat Products.
5148	Fresh Fruits and Vegetables	Fresh Fruits and Vegetables.
5149	Groceries and Related Products, NEC	Other Groceries and Related Products.
5153	Grain and Field Beans	Grain and Field Beans.
5154	Livestock	Livestock.
5159	Farm-Product Raw Materials, NEC	Other Farm-Product Raw Materials.
5162	Plastics Materials and Basic Forms and Shapes	Plastics Materials and Basic Forms and Shapes.
5169	Chemicals and Allied Products, NEC	Other Chemicals and Allied Products.
5171	Petroleum Bulk Stations and Terminals	
	Heating Oil Sold Via Retail Method	Heating Oil Dealers (pt)—Retail.
	LP Gas Sold Via Retail Method	Liquefied Petroleum Gas (Bottled Gas) Dealers (pt)—Retail.
	Sold Via Wholesale Method	Petroleum Bulk Stations and Terminals.
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals.	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals.
5181	Beer and Ale	Beer and Ale.
5182	Wine and Distilled Alcoholic Beverages	Wine and Distilled Alcoholic Beverages.
5191	Farm Supplies	
	Lawn and Garden Supplies Sold Via Retail Method	Nursery and Garden Centers (pt)—Retail.
	Except Lawn and Garden Supplies Sold Via Retail Method	Farm Supplies—Wholesale.
5192	Books, Periodicals, and Newspapers	Books, Periodicals and Newspapers.
5193	Flowers, Nursery Stock, and Florists' Supplies	
	Sold Via Wholesale Method	Flowers, Nursery Stock and Florists' Supplies.
	Sold Via Retail Method	Nursery and Garden Centers (pt)—Retail.
5194	Tobacco and Tobacco Products	Tobacco and Tobacco Products.
5198	Paint, Varnishes, and Supplies	

TABLE 2—Continued

The abbreviation "pt" means part of and @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 SIC code	1987 SIC description	1997 U.S. description
	Sold Via Wholesale Method	Paint, Varnishes and Supplies—Wholesale.
	Sold Via Retail Method	Paint and Wallpaper Stores (pt)—(Retail).
5199	Nondurable Goods, NEC	
	Advertising Specialty Goods Distributors	Other Services Related to Advertising (pt).
	Except Specialty Advertising	Other Miscellaneous Nondurable Goods—Wholesale.
5211	Lumber and Other Building Materials Dealers	
	Home Centers	Home Centers.
	Sold Via Retail Method, Except Home Centers and Glass	Other Building Materials Dealers—Retail.
	Sold Via Wholesale Method	Lumber, Plywood, Millwork, and Wood Panels (pt)—Wholesale.
5231	Paint, Glass and Wallpaper Stores	
	Paint and Wallpaper Sold Via Wholesale Method	Paint, Varnishes, and Supplies (pt).
	Glass Stores	Other Building Materials Dealer (pt).
	Paint and Wallpaper Sold Via Retail Method	Paint and Wallpaper Stores—Retail.
7822	Motion Picture and Video Tape Distribution	
	Prerecorded Video Tapes (Wholesaling of)	Other Miscellaneous Nondurable Goods (pt).
	All Other	Motion Picture and Video Distribution.

Description of Changes to the U.S. System

Changes to the Wholesale Trade sector were generally the result of the movement of activities to or from wholesale trade from other sectors in NAICS.

Four activities that were in Wholesale Trade in the 1987 SIC are moved to Manufacturing. These activities are reconditioning and sale of drums and barrels, boxed beef processors, and piece goods converters. The sale of reconditioned drums and barrels was included in 1987 SIC 5085, Industrial Supplies. Dealers in boxed beef receive carcasses, cut them up, and then vacuum seal the cuts. These establishments were in 1987 SIC 5147, Meat and Meat Products. Establishments that purchase fabrics in the gray and contract to have the fabric dyed are referred to as piece goods converters. They were in 1987 SIC 5131, Piece Goods, Notions, and Other Dry Goods. Establishments that sell advertising specialties were 1987 SIC 5199, Nondurable Goods, Not Elsewhere Classified. For NAICS, this activity is included in Advertising Services.

Establishments engaged in the wholesale distribution of prerecorded video tapes were included in 1987 SIC 7822, Motion Picture and Video Tape Distribution. In NAICS, this activity is included in Wholesale Trade as Other Miscellaneous Durable Goods.

In the 1987 SIC, the principal determination of whether an establishment was included in wholesale or retail was whether the goods were sold to business consumers (wholesale) or household consumers (retail). In NAICS, an establishment is included in either retail or wholesale based on its production characteristics (see Agreement 25 published in the May 28, 1996 **Federal Register**, pp.26642–26644). Thus, establishments that sell goods to business users through retail methods are included in the Retail Trade sector in NAICS. This affects several industries within Wholesale but primarily those establishments selling such items as computers, office supplies, and electrical building materials.

Real Estate

This draft classification provides for the subsector Real Estate.

The Real Estate subsector comprises establishments that rent real estate to others, manage real estate for others, and/or facilitate the sale and/or rental of real estate.

The industry group Lessors of Real Estate comprises establishments that own real estate that in turn is leased to others. Rent is the major source of revenue for these establishments. The industries, Lessors of Residential Buildings and Dwellings, Lessors of Nonresidential Buildings, Except Warehouses, Lessors of Miniwarehouses and Self Storage Units, and Lessors of Other Real Estate Property, are based on processes needed for the different types of properties being leased.

The industry group Activities Related to Real Estate comprises establishments primarily engaged in providing real estate services, other than those owning and leasing. The industries included in this industry group are the following:

Real Estate Property Managers comprises establishments responsible for ensuring that various activities associated with the overall operation of property are performed (property managers do not own the property). Property managers are usually hired by the property owners, and their major source of revenue is fees charged for their management services. The industries, Condominium Management, Cooperative Housing, and Homeowners' Associations, Other Residential Property Managers, and Other Nonresidential Property Managers are distinguished by the types of property managed by the establishment.

The industry Offices of Real Estate Agents and Brokers comprises establishments engaged in renting, buying, and selling real property on behalf of others. The establishments usually receive commission as revenue. The staff at these establishments receive special certification and licensing to perform the specific duties.

The remaining discrete industries, Offices of Real Estate Appraisers and Title Abstract Offices, use staff who receive specialized training, certification, and licensing to perform the specific duties.

TABLE 1

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of." The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 USIC description
531	Real Estate			
5311	Lessors of Real Estate			
53111	Lessors of Residential Buildings and Dwellings	R	6513	Operators of Apartment Buildings.
			6514	Operators of Dwellings Other Than Apartment Buildings.
53112	Lessors of Nonresidential Buildings, Except Miniwarehouses.	E	6512	Operators of Nonresidential Buildings.
53113	Lessors of Miniwarehouses and Self Storage Units.	N	*4225	General Warehousing and Storage (miniwarehouses and self-storage units).
53119	Lessors of Other Real Estate Property	R	6515	Operators of Residential Mobile Home Sites.
			6517	Lessors of Railroad Property.
			6519	Lessors of Real Property, NEC.
5312	Activities Related to Real Estate			
53121	Real Estate Property Managers			
531211	Condominium Management, Cooperative Housing, and Homeowners' Associations.	N	*6531	Real Estate Agents and Managers (condominium and cooperative management).
			*8641	Civic, Social, and Fraternal Associations (condominium and homeowners associations, except property management).
531212	Other Residential Property Managers	N	*6531	Real Estate Agents and Managers (managers-residential, real estate).
531213	Other Nonresidential Property Managers	N	*6531	Real Estate Agents and Managers (managers-nonresidential, real estate).
53122	Offices of Real Estate Agents and Brokers	N	*6531	Real Estate Agents and Managers (agents and brokers).
53123	Offices of Real Estate Appraisers	N	*6531	Real Estate Agents and Managers (appraisers).
53129	Other Activities Related to Real Estate			
531291	Title Abstract Offices	E	6541	Title Abstract Offices.
531299	All Other Activities Related to Real Estate	N	*6531	Real Estate Agents and Managers (except real estate managers, agents and brokers, and appraisers).

TABLE 2

The abbreviation "pt" means "part of". @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry, The abbreviation NEC is used for Not Elsewhere Classified.

1987 SIC code	1987 SIC description	1997 U.S. description
4225	General Warehousing and Storage	
	Miniwarehouses and Self-Storage Units	Lessors of Miniwarehouses and Self Storage Units.
	General Warehousing and Storage	General Storage Facilities (pt).
6512	Operators of Nonresidential Buildings	
	Stadium and Arena Owners	Promoters of Arts, Sports and Similar Events With Facilities (pt).
	Except Stadium and Arena Owners	Lessors of Nonresidential Buildings, Except Miniwarehouses.
6513@	Operators of Apartment Buildings	Lessors of Residential Buildings and Dwellings (pt).
6514@	Operators of Dwellings Other Than Apartment Buildings	Lessors of Residential Buildings and Dwellings (pt).
6515@	Operators of Residential Mobile Home Sites	Lessors of Other Real Estate Property (pt).
6517@	Lessors of Railroad Property	Lessors of Other Real Estate Property (pt).
6519@	Lessors of Real Property, NEC	Lessors of Other Real Estate Property (pt).
6531@	Real Estate Agents and Managers	
	Real Estate Agents and Brokers	Offices of Real Estate Agents and Brokers.
	Condominium and Cooperative Managers	Condominium Management, Cooperative Housing, and Homeowners' Associations (pt).
	Residential Property Managers, Except Condominium and Cooperative.	Other Residential Property Managers.
	Nonresidential Property Managers, Except Condominium and Cooperative.	Other Nonresidential Property Managers.
	Real Estate Appraisers	Offices of Real Estate Appraisers.
	Cemetery Management	Cemeteries and Crematories (pt).
	Other	All Other Activities Related to Real Estate.
6541	Title Abstract Offices	Title Abstract Offices
6552	Land Subdividers and Developers, Except Cemeteries	Land Subdivision and Development.
6553	Cemetery Subdividers and Developers	Cemeteries and Crematories (pt).
8641	Civic, Social, and Fraternal Associations	

TABLE 2—Continued

The abbreviation "pt" means "part of". @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry, The abbreviation NEC is used for Not Elsewhere Classified.

1987 SIC code	1987 SIC description	1997 U.S. description
	Homeowner and Condominium Associations, Except Property Management.	Condominium Management, Cooperative Housing, and Homeowners' Associations (pt).
	With Restaurants and Bars	Civic and Social Associations with Restaurants and Bars (pt).
	Without Restaurants and Bars	Civic and Social Associations without Restaurants and Bars (pt)

Description of Changes to the U.S. System

Seven new industries were created for this subsector as follows:

Lessors of Miniwarehouses and Self Storage Units from part of 1987 SIC 4225, General Warehousing and Storage. These establishments collect rent from a person (company) who uses the facility and has access to the space without undue interference or assistance from the facility operator. This activity is more like lessors of real estate than general warehousing and storage.

Condominium Management, Cooperative Housing, and Homeowners' Associations from part of 1987 SIC 6531, Real Estate Agents and Managers, and part of 1987 SIC 8641, Civic, Social, and Fraternal Associations.

Other Residential Property Managers; Other Nonresidential Property Managers; Offices of Real Estate Agents and Brokers; Offices of Real Estate Appraisers; and All Other Activities Related to Real Estate were each created from part of 1987 SIC 6531, Real Estate Agents and Managers. These five new industries are all significant and can be better represented under the new classification system. On a production orientation basis, each industry is unique.

Two industries were moved from the Real Estate subsector.

1987 SIC 6552, Land Subdividers and Developers, was moved to the Construction sector because the production process for this industry is more closely related to the production process of construction industries.

1987 SIC 6553, Cemetery Subdivision and Developers, was moved to Cemeteries and Crematories in the Other Services sector. Most of this activity is conducted by establishments that operate the cemetery after development; therefore, it is not possible to separate the subdivision and development of cemeteries from their operation. Neither of these two types of operations is closely related to the production activity of real estate establishments.

Lessors of Other Non-Financial Assets

The subsector Lessors of Other Non-Financial Assets comprises establishments primarily engaged in holding non-financial assets other than real estate and equipment and in allowing others to use or reproduce those assets for a fee. The establishments did not themselves produce the assets that they hold and permit others to use.

Examples of the assets involved are trademarks, industrial designs, and artistic works not subject to copyright.

Excluded from this industry are: (a) establishments engaged in the creation, production, reproduction, and/or distribution of artistic and literary works subject to copyright, such as newspapers, periodicals, books, databases, software and multimedia products, film and videos, and musical works—that is, publishing industries, motion picture and video production and distribution industries, record production companies, integrated record companies, music publishers, broadcasters, and independent artists, writers and performers (Information Sector and the Arts, Entertainment, and Recreation Sector); (b) establishments engaged in the leasing of real property, subsector Lessors of Real Estate; and © establishments engaged in the leasing of equipment, NAICS subsector Rental and Leasing Services.

Provision for the activities of lessors of intangible assets and of tangible assets other than real estate and equipment has been inadequate in existing classifications. In the United States, establishments engaged in franchising, licensing trademarks, leasing taxi medallions, etc., have been assigned to 1987 SIC 6794, Patent Owners and Lessors. It is desirable to create a broader industry in which to classify these activities.

TABLE 1

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
534	Lessors of Other Non-Financial Assets			
5341	Lessors of Other Non-Financial Assets			
53411	Lessors of Other Non-Financial Assets	R	*6792	Oil Royalty Traders (except investors on own account).
			6794	Patent Owners and Lessors.

TABLE 2

The abbreviation "pt" means "part of". @ means time series break has been created that is greater than 3% of the 1992 value of revenue for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

1987 USIC code	1987 USIC description	1997 U.S. description
6792@	Oil Royalty Traders	
	Investors on Own Account	Miscellaneous Financial Investment Activities.
	Oil Royalty Companies	Lessors of Other Non-Financial Assets (pt).
6794	Patent Owners and Lessors	Lessors of Other Non-Financial Assets (pt).

Description of Changes to the U.S. System

One new industry, Lessors of Other Non-Financial Assets, has been created from part of 1987 SIC 6792, Oil Royalty Traders, and 1987 SIC 6794, Patent Owners and Lessors.

Personal and Laundry Services

This draft classification provides for the subsector Personal and Laundry Services.

The Personal and Laundry Services subsector includes establishments that provide a range of services to individuals and businesses. The industries are distinguished by their use of specialized human resources and specialized physical facilities. The subsector contains four industry groups.

The industry group Personal Care Services comprises establishments that provide appearance-care services to individual consumers such as barber and beauty services. The industry group contains the industry Hair Care and Esthetic Services that is subdivided into Barber Shops, Beauty Salons, and Nail Salons. The industry Other Personal Care Services is subdivided into Diet and Weight Reducing Centers and Other Personal Care Services.

The industry group Funeral Services comprises establishments that provide funeral services such as preparation of bodies for burial and operation of cemeteries and crematories. The group contains two industries, Funeral Homes and Cemeteries and Crematories.

The industry group Laundry Services comprises establishments that provide a range of laundry, drycleaning, and related services to individual and business customers. The industry group contains the industries Coin-Operated Laundries and Drycleaning; Drycleaning and Laundry Services, except Coin-Operated that is subdivided into the Laundries, Family and Commercial, and Drycleaning Plants; Linen and Uniform Supply that is subdivided into Linen Supply and Industrial Launderers; and Other Laundry Services that is subdivided into Garment Pressing and Agents for Laundries and All Other Laundry Services.

The industry group Miscellaneous Personal Services comprises establishments that provide a wide variety of consumer-related services. The industry group contains the industries Pet Care Services, Except Veterinary Services; Photo Finishing that is subdivided into Photo Finishing Laboratories, except One-Hour and One-Hour Photo Finishing; Parking Lots and Garages; and Other Miscellaneous Personal Services.

TABLE 1

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of.". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
812	Personal and Laundry Services.			
8121	Personal Care Services.			
81211	Hair Care and Esthetic Services.			
812111	Barber Shops	R	*7241	Barber Shops (except barber colleges).
812112	Beauty Salons	R	*7231	Beauty Shops (except beauty and cosmetology schools and manicure and pedicure salons).
812113	Nail Salons	N	*7231	Beauty Shops (manicure and pedicure salons).
81219	Other Personal Care Services.			
812191	Diet and Weight Reducing Centers	N	*7299	Miscellaneous Personal Services, NEC (diet and weight reducing services).
812199	Other Personal Care Services	N	*7299	Miscellaneous Personal Services, NEC, (personal care services).
8122	Funeral Services			
81221	Funeral Homes	R	7261	Funeral Services and Crematories (funeral homes).
81222	Cemeteries and Crematories	R	*6531	Real Estate Agents and Managers (cemetery management).
			6553	Cemetery Subdividers and Developers.
			*7261	Funeral Services and Crematories (except funeral homes).
8123	Laundry Services			
81231	Coin-Operated Laundries and Drycleaning	E	7215	Coin-Operated Laundry and Drycleaning.
81232	Drycleaning and Laundry Services, Except Coin-Operated			
812321	Laundries, Family and Commercial	E	7211	Power Laundries, Family and Commercial.
812322	Drycleaning Plants	E	7216	Drycleaning Plants, Except Rug Cleaning.
81233	Linen and Uniform Supply			
812331	Linen Supply	R	7213	Linen Supply.

TABLE 1—Continued

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of.". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
			*7219	Laundry and Garment Services, NEC, (diaper service).
812332	Industrial Launderers	E	7218	Industrial Launderers.
81239	Other Laundry Services.			
812391	Garment Pressing, and Agents for Laundries	E	7212	Garment Pressing and Agents for Laundries.
812399	All Other Laundry Services	R	*7219	Laundry and Garment Services, NEC (except diaper service and clothing alteration and repair).
8129	Miscellaneous Personal Services.			
81291	Pet Care Services, Except Veterinary Services	R	*0752	Animal Speciality Services, Except Veterinary (pet care services, except veterinary).
			*8734	Testing Laboratories (veterinary testing labs).
81292	Photo Finishing			
812921	Photo Finishing Laboratories, Except One-Hour.	N	*7384	Photofinishing Laboratories (except one-hour).
812922	One-Hour Photo Finishing	N	*7384	Photofinishing Laboratories (one-hour).
81293	Parking Lots and Garages	E	7521	Automobile Parking.
81299	Other Miscellaneous Personal Services	R	*7299	Miscellaneous Personal Services, NEC (except diet and weight reducing services, personal care services, and formal wear and costume rental service).

Table 2

The abbreviation "pt" means "part of". @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry.

1987 SIC code	1987 SIC description	1997 U.S. description
0752@	Animal Specialty Services, Except Veterinary	
	Pet Care Services	Pet Care Services, Except Veterinary Services (pt).
	Horses and Equines Services and Animal Production Breeding.	Support Activities for Animal Production (pt).
6553@	Cemetery Subdividers and Developers	Cemeteries and Crematories (pt).
7211	Power Laundries, Family and Commercial	Laundries, Family and Commercial.
7212	Garment Pressing and Agents for Laundries	Garment Pressing and Agents for Laundries.
7213@	Linen Supply	Linen Supply (pt).
7215	Coin-Operated Laundry and Drycleaning	Coin-Operated Laundries and Drycleaning.
7216	Drycleaning Plants, Except Rug Cleaning	Drycleaning Plants.
7217	Carpet and Upholstery Cleaning	Carpet and Upholstery Cleaning Services.
7218	Industrial Launderers	Industrial Launderers.
7219@	Laundry and Garment Services, NEC	
	Diaper Service	Linen Supply (pt).
	Clothing Alteration and Repair	Other Personal or Household Goods Repair and Maintenance (pt).
	Except Diaper Service and Clothing Alteration and Repair	All Other Laundry Services.
7221	Photographic Studios, Portrait	Photography Studios, Portrait.
7231@	Beauty Shops	
	Beauty Shops and Salons	Beauty Salons.
	Manicure and Pedicure Salons	Nail Salons.
	Beauty and Cosmetology Schools	Cosmetology and Barber Schools (pt).
7241@	Barber Shops	
	Barber Shops	Barber Shops.
	Barber Colleges	Cosmetology and Barber Schools (pt).
7251	Shoe Repair Shops and Shoeshine Parlors	Footwear and Leather Goods Repair (pt).
7261	Funeral Services and Crematories	
	Funeral Homes	Funeral Homes.
	Except Funeral Homes	Cemeteries and Crematories (pt).
7291	Tax Return Preparation Services	Tax Preparation Services.
7299@	Miscellaneous Personal Services, NEC	
	Locker Rental, Except Cold Storage	All Other Rental and Leasing of Consumer Goods (pt).
	Diet and Weight Reducing Centers	Diet and Weight Reducing Centers.
	Formal Wear and Costume Rental	Rental of Formal Wear and Costumes.
	Personal Care Services	Other Personal Care Services.
	All Other Miscellaneous Personal Services, NEC	Other Miscellaneous Personal Services.
7384	Photofinishing Laboratories	
	Photo Finishing Laboratories (Except One-Hour)	Photo Finishing Laboratories (except one-hour).
	One-Hour Photo Finishing	Photo Finishing Laboratories (one-hour).

Table 2—Continued

The abbreviation "pt" means "part of". @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry.

1987 SIC code	1987 SIC description	1997 U.S. description
7521	Automobile Parking	Parking Lots and Garages.
8734	Testing Laboratories	
	Veterinary Testing Labs	Pet Care Services, Except Veterinary Services (pt).
	Except Veterinary Testing Labs	Testing Laboratories.

Description of Changes to the U.S. System

Five new industries were created for this subsector as follows:

Nail Salons from part of 1987 SIC 7231, Beauty Shops. These establishments specialize in providing pedicure and other nail care and design services.

Diet and Weight Reducing Centers from part of 1987 SIC 7299, Miscellaneous Personal Services. These establishments provide specialized counseling, weight reduction programs, and nutritional supplements to individual clients.

Other Personal Care Services from part of 1987 SIC 7299, Miscellaneous Personal Services. This is a residual industry containing a variety of personal care service establishments.

Photo Finishing Laboratories, Except One-Hour from part of 1987 SIC 7384, Photo Finishing Laboratories. These establishments provide a range of developing and photo processing services clients.

One-Hour Photo Finishing from part of 1987 SIC 7384, Photo Finishing Laboratories. These establishments offer a limited range of photo finishing services with work usually being done on-site in short period of time.

One industry was moved to this subsector from the Agriculture sector:

Pet Care Services, Except Veterinary Services from part of 1987 SIC 0752, Animal Speciality Services, Except Veterinary. These establishments provide a range of pet care services to customers such as grooming and boarding.

Religious, Grantmaking, Civic and other Membership Organizations

This draft classification provides for the subsector Religious, Grantmaking, Civic and Other Membership Organizations.

The Religious, Grantmaking, Civic and Other Membership Organizations subsector comprises establishments that are typically defined as religious, grantmaking, civic and/or membership organizations. These establishments solicit members, promote and advocate causes, and provide donations or funding of causes.

There are five industry groups within this subsector.

The industry group Religious Organizations comprises establishments related to the activities of organized religion.

The industry group Grantmaking and Giving Services comprises establishments that provide competitive funding for specific causes from a trust fund or raise money to distribute for a variety of charitable causes. The industry group Grantmaking and Giving Services is subdivided into Grantmaking Foundations, Voluntary Health Organizations, and Other Grantmaking and Giving Services.

The industry group Social Advocacy Organizations comprises establishments that advocate and actively promote causes and beliefs for the public good. The industry Social Advocacy Organizations are subdivided into Human Rights Organizations; Environment, Conservation, and Wildlife Organizations; and Other Social Advocacy Organizations.

The industry group Civic and Social Associations comprises establishments that have an active membership structure and are engaged in a wide array of civic, social, or fraternal activities. The industry group contains the industry Civic and Social Associations that is subdivided into Civic and Social Associations with Restaurants and Bars and Civic and Social Associations without Restaurants and Bars.

The industry group Other Membership Organizations comprises establishments that have an active membership structure to promote causes or represent the interests of the members at large. The industry group includes the following industries: Business Associations, Professional Membership Organizations, Labor Unions and Similar Labor Organizations, Political Organizations, and All Other Membership Organizations.

TABLE 1

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and description	Status code	1987 SIC code	1987 SIC description
813	Religious, Grantmaking, Civic and Other Membership Organizations			
8131	Religious Organizations			
81311	Religious Organizations	E	8661	Religious Organizations.
8132	Grantmaking and Giving Services			
81321	Grantmaking and Giving Services			
813211	Grantmaking Foundations	E	6732	Educational, Religious, and Charitable Trust.
813212	Voluntary Health Organizations	N	*8399	Social Services, NEC (voluntary health organizations).
813219	Other Grantmaking and Giving Services	N	*8399	Social Services, NEC (except grantmaking and voluntary health organizations).

TABLE 1—Continued

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

	1997 NAICS and description	Status code	1987 SIC code	1987 SIC description
8133	Social Advocacy Organizations			
81331	Social Advocacy Organizations			
813311	Human Rights Organizations	N	*8399	Social Services, NEC (human rights organizations).
813312	Environment, Conservation and Wildlife Organizations.	N	*8399	Social Services, NEC (environment, conservation, and wildlife advocacy).
			*8699	Membership Organizations, NEC (humane societies).
813319	Other Social Advocacy Organizations	N	*8399	Social Services, NEC (except human rights, environment, conservation and wildlife organizations).
8134	Civic and Social Associations			
81341	Civic and Social Associations			
813411	Civic and Social Organizations, with Restaurants and Bars.	N	*8641	Civic, Social, and Fraternal Organizations (except condominium and homeowner associations).
			*8699	Membership Organizations, NEC (farm granges with restaurant and bars).
813412	Civic and Social Organizations, without Restaurants and Bars.	N	*8641	Civic, Social, and Fraternal Organizations (except condominium and homeowner associations).
			*8699	Membership Organizations, NEC (farm granges without restaurant, and bars).
8139	Other Membership Organizations			
81391	Business Associations	R	8611	Business Associations.
			*8699	Membership Organizations, NEC (farm business organizations).
81392	Professional Membership Organizations	E	8621	Professional Membership Organizations.
81393	Labor Unions and Similar Labor Organizations	E	8631	Labor Unions and Similar Labor Organizations.
81394	Political Organizations	E	8651	Political Organizations.
81399	All Other Membership Organizations	R	*8699	Membership Organizations, NEC (except farm business organizations, farm granges, and environmental, conservation, and wildlife organizations).

TABLE 2

The abbreviation "pt" means "part of". @ means a time series break has been created that is greater than 3% of the 1992 revenues for the 1989 SIC industry.

1987 SIC code	1987 SIC description	1997 U.S. description
6732	Education, Religious, and Charitable Trusts	Grantmaking Foundations.
8399	Social Services, NEC	
	Voluntary Health Organizations	Voluntary Health Organizations.
	Grantmaking and Giving	Other Grantmaking and Giving Services.
	Human Rights Organizations	Human Rights Organizations.
	Environment, Conservation, and Wildlife Organizations	Environment, Conservation and Wildlife Organizations (pt).
	All Other Social Advocacy Organizations	Other Social Advocacy Organizations.
8611	Business Associations	Business Associations (pt).
8621	Professional Membership Organizations	Professional Membership Organizations.
8631	Labor Unions and Similar Labor Organizations	Labor Unions and Similar Labor Organizations.
8641	Civic, Social, and Fraternal Associations	
	With Restaurants and Bars	Civic and Social Associations with Restaurants and Bars (pt.).
	Without Restaurants and Bars	Civic and Social Associations without Restaurants and Bars (pt.).
	Homeowner and Condominium Associations, Except Property Management.	Condominium Associations (pt).
8651	Political Organizations	Political Organizations.
8661	Religious Organizations	Religious Organizations.
8699 @	Membership Organizations, Not Elsewhere Classified	All Other Membership Organizations.
	Farm Granges With Restaurants and Bars	Civic and Social Associations with Restaurants and Bars (pt.).
	Farm Granges Without Restaurants and Bars	Civic and Social Associations without Restaurants and Bars (pt).
	Farm Business Organizations	Business Associations (pt).
	Environmental, Conservation, and Wildlife Organizations	Environment, Conservation, and Wildlife Organizations (pt).
	Except Farm Granges, Farm Business Organizations and Environmental Conservation and Wildlife Organizations.	All Other Membership Organizations.

Description of Changes to the U.S. System

There are seven new industries in this 1997 subsector. Five of these industries were created from 1987 SIC 8399, Social Services, NEC. These new industries are:

Voluntary Health Organizations
Other Grantmaking and Giving Services
Human Rights Organizations
Environment, Conservation and Wildlife Organizations
Other Social Advocacy Organizations

Civic and Social Associations, with Restaurants and Bars
Civic and Social Organizations, without Restaurants and Bars

Two new industries were created from parts of 1987 SIC 8641, Civic, Social and Fraternal Organizations and 1987 SIC 8699, Membership Organization, NEC. These new industries are:

Civic and Social Organizations with Restaurants and Bars
Civic and Social Organizations without Restaurants and Bars

In addition, a number of activities were moved from this subsector or to different industries within the subsector. These are:

Homeowner, tenant, and condominium associations from part of 1987 SIC 8641, Civic, Social, and Fraternal Associations to the Real Estate subsector.

Farm business organizations from part of 1987 SIC 8699, Membership Organizations, NEC to Business Associations.

Farm granges from part of 1987 SIC 8699, Membership Organizations, NEC to Civic and Social Associations with Restaurants and Bars and Civic and Social Associations without restaurants and bars.

Part III—Proposed Hierarchy for NAICS, including Sectors and Subsectors

NAICS code	Sector and subsector
11	Agriculture, Forestry, Hunting and Fishing.
111	Crop Production.
112	Animal Production.
113	Forestry and Logging.
114	Fishing, Hunting and Trapping.
115	Support Activities for Agriculture and Forestry.
21	Mining.
211	Oil and Gas Extraction.
212	Mining, Except Oil and Gas.
213	Support Activities for Mining.
22	Utilities.
221	Utilities.
23	Construction.
236	Building, Developing and General Contracting.
237	Heavy Construction.
238	Special Trade Contractors.
31–33	Manufacturing.
311	Food Manufacturing.
312	Beverage and Tobacco Product Manufacturing.
313	Textile Mills.
314	Textile Product Mills.
315	Apparel Manufacturing.
316	Leather and Allied Product Manufacturing.
321	Wood Product Manufacturing, Except Furniture.
322	Paper Manufacturing.
323	Printing and Related Support Activities.
324	Petroleum and Coal Product Manufacturing.
325	Chemical Manufacturing.
326	Rubber and Plastics Product Manufacturing.
327	Nonmetallic Mineral Product Manufacturing.
331	Primary Metal Manufacturing.
332	Fabricated Metal Product Manufacturing.
333	Machinery Manufacturing.
334	Computer and Electronic Product Manufacturing.
335	Electrical Equipment, Appliance and Component Manufacturing.
336	Transportation Equipment Manufacturing.
337	Furniture Manufacturing.
339	Miscellaneous Manufacturing.
43	Wholesale Trade.
431	Wholesale Trade, Durable Goods.
432	Wholesale Trade, Nondurable Goods.
44, 45	Retail Trade.
441	Motor Vehicle and Parts Dealers.
442	Furniture and Home Furnishings Stores.
443	Electronics and Appliance Stores.
444	Building Materials and Garden Equipment and Supplies Dealers.
445	Food and Beverage Stores.
446	Health and Personal Care Stores.
447	Gasoline Stations.
448	Clothing and Accessories Stores.
451	Sports, Hobby, Book and Music Stores.
452	General Merchandise Stores.
453	Miscellaneous Store Retailers.
454	Nonstore Retailers.
48, 49	Transportation.
481	Air Transportation.
482	Rail Transportation.
483	Water Transportation.
484	Truck Transportation.
485	Transit and Ground Passenger Transportation.
486	Pipeline Transportation.
487	Scenic and Sightseeing Transportation.
488	Support Activities for Transportation.
491	Postal Service.
492	Couriers.
51	Information.
511	Publishing.
512	Motion Picture and Sound Recording.
513	Broadcasting and Telecommunications.
514	Information Services and Data and Transaction Processing.
52	Finance and Insurance.
521	Monetary Authorities—Central Bank.
522	Credit Intermediation and Related Activities.
523	Securities, Commodity Contracts and Other Intermediation and Related Activities.
524	Insurance Carriers and Related Activities.
53	Real Estate and Rental and Leasing.
531	Real Estate.
533	Rental and Leasing Services.
534	Lessors of Other Non-Financial Assets.
56	Professional, Scientific and Technical Services.
561	Professional, Scientific and Technical Services.
57	Management, Support, Waste Management and Remediation Services.
571	Management and Support Services.
572	Waste Management and Remediation Services.
61	Educational Services.
611	Educational Services.
62	Health and Social Assistance.
621	Ambulatory Health Care Services.
622	Hospitals.
623	Nursing and Residential Care Facilities.
624	Social Assistance.
71	Arts, Entertainment and Recreation.
711	Performing Arts, Spectator Sports and Related Industries.
712	Museums, Historical Sites and Similar Institutions.
713	Recreation, Amusement and Gambling Industries.
72	Food Services, Drinking Places, and Accommodations.
721	Accommodations.
722	Food Services and Drinking Places.
81	Other Services, Except Public Administration.
811	Repair and Maintenance.
812	Personal and Laundry Services.
813	Religious, Grantmaking, Civic and Other Membership Organizations.
814	Private Households.
93	Public Administration.
931	Executive, Legislative, Public Finance and General Government.
932	Justice, Public Order and Safety.
933	Administration of Human Resource Programs.
934	Administration of Environmental Quality Programs.
935	Administration of Housing Programs, Urban Planning and Community Development.

NAICS code	Sector and subsector
936	Administration of Economic Programs.
937	National Security and International Affairs.
98	Funds, Trusts, and Other Financial Vehicles (U.S. Only).
981	Funds, Trusts, and Other Financial Vehicles (U.S. Only).
99	Unclassified Establishments.
999	Unclassified Establishments.

Part IV Proposed 1997 NAICS Structure, Including Relationship to 1987 SIC

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
11	Agriculture, Forestry, Hunting and Fishing			
111	Crop Production			
1111	Grain and Oilseed Farming			
11111	Wheat Farming	E	0111	Wheat.
11112	Corn Farming	R	0115	Corn.
			*0119	Cash Grains, NEC (popcorn farming).
11113	Rice Farming	E	0112	Rice.
11114	Grain Farming, Except Wheat, Corn, and Rice	R	*0119	Cash Grains, NEC (except popcorn, barley, soybean, and dry pea and bean farming).
11115	Soybean Farming	E	0116	Soybeans.
11116	Oilseed Farming, Except Soybean Farming	N	*0119	Cash Grains, NEC (oilseed, except soybean farming).
11117	Dry Pea and Bean Farming	N	*0119	Cash Grains, NEC (dry pea and bean farms).
1112	Root, Tuber and Peanut Farming			
11121	Potato Farming	E	0134	Irish Potatoes.
11122	Peanut and Other Root and Tuber Farming			
111221	Sugarbeet Farming	N	*0133	Sugarcane and Sugar Beets (sugar beet farming).
111222	Peanut Farming	N	*0139	Field Crops Except Cash Grains, NEC (peanut farms).
111229	Other Root and Tuber Farming	N	*0139	Field Crops Except Cash Grains, NEC (root and tuber, except potato and sugar beet farms).
1113	Vegetable and Melon Farming			
11131	Vegetable and Melon Farming	E	0161	Vegetables and Melons
1114	Tree Nut and Fruit Farming			
11141	Orange Groves	N	*0174	Citrus Fruits (orange groves and farms).
11142	Other Citrus Groves	R	*0174	Citrus Fruits (except, orange groves and farms).
11143	Tree Nut and Noncitrus Fruit Farming			
111431	Apple Orchards	N	*0175	Deciduous Tree Fruits (apple orchards and farms).
111432	Grape Vineyards	E	0172	Grapes.
111433	Strawberry Farming	N	*0171	Berry Crops (strawberry farms).
111434	Other Berry Farming	R	*0171	Berry Crops (except strawberry farms).
111435	Tree Nut Farming	E	0173	Tree Nuts.
111439	Other Noncitrus Fruit Farming	R	*0175	Deciduous Tree Fruits (except apple orchards and farms).
			0179	Fruit and Tree Nuts, NEC.
1115	Greenhouse, Nursery and Floriculture Production			
11151	Food Crops Grown Under Cover			
111511	Mushroom Production	N	*0182	Food Crops Grown Under Cover (mushrooms, growing of).
111519	Other Food Crops Grown Under Cover	R	*0182	Food Crops Grown Under Cover (except mushroom, growing of).
11152	Nursery and Floriculture Production			
111521	Nursery and Tree Production	N	*0181	Ornamental Floriculture and Nursery Products (nursery farming).
			*0811	Timber Tracts (short rotation woody crops).
111522	Floriculture Production	N	*0181	Ornamental Floriculture and Nursery Products (floriculture farming).
1119	Other Crop Farming			
11191	Tobacco Farming	E	0132	Tobacco.
11192	Cotton Farming	E	0131	Cotton.
11193	Sugarcane Farming	N	*0133	Sugarcane and Sugar Beets (sugarcane farms).
11196	Hay Farming	N	*0139	Field Crops, Except Cash Grains, NEC (hay farms).
11199	All Other Crop Farming	R	*0139	Field Crops, Except Cash Grains, NEC (except root, tuber, peanut, and hay farms).
			0191	General Farms, Primarily Crop
			*0831	Forest Products (maple sap, gathering of)
			*0919	Miscellaneous Marine Products (plant aquaculture)
			*2099	Food Preparations, NEC (reducing maple sap to maple syrup)
112	Animal Production			

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
1121	Cattle Ranching and Farming			
11211	Beef Cattle Ranching and Farming, Including Feedlots			
112111	Beef Cattle Ranching and Farming	R	0212	Beef Cattle, Except Feedlots (cattle farms).
			*0241	Dairy Farms (dairy heifer replacement farms).
112112	Cattle Feedlots	E	0211	Beef Cattle Feedlots (cattle farms).
11212	Dairy Cattle and Milk Production	R	0241	Dairy Farms
11213	Dual Purpose Cattle Ranching and Farming	L		
1122	Hog and Pig Farming			
11221	Hog and Pig Farming	E	0213	Hogs.
1123	Poultry Production			
11231	Chicken Egg Production	E	0252	Chicken Eggs.
11232	Broilers and Other Meat Type Chicken Production	E	0251	Broiler, Fryers, and Roaster Chickens.
11234	Turkey Production	E	0253	Turkey and Turkey Eggs.
11235	Poultry Hatcheries and Other Poultry Production			
112351	Poultry Hatcheries	E	0254	Poultry Hatcheries.
112359	Other Poultry Production	E	0259	Poultry and Eggs, NEC.
1124	Sheep and Goat Farming			
11241	Sheep Farming	N	*0214	Sheep and Goats (sheep farms).
11242	Goat Farming	N	*0214	Sheep and Goats (goat farms).
1125	Animal Aquaculture			
11251	Animal Aquaculture			
112511	Finfish Production	N	*0273	Animal Aquaculture (finfish farms).
			*0921	Fish Hatcheries and Preserves (finfish hatcheries).
			0912	Finfish.
112512	Shellfish Production	N	*0273	Animal Aquaculture (shellfish farms).
			*0921	Fish Hatcheries and Preserves (shellfish hatcheries).
			0913	Shellfish.
112519	Other Animal Aquaculture	R	*0273	Animal Aquaculture (except finfish and shellfish).
1129	Other Animal Production			
11291	Apiculture	N	*0279	Animal Specialties, NEC (apiculture).
11292	Horse and Other Equine Production	E	0272	Horse and Other Equine.
11293	Fur-Bearing Animal and Rabbit Production	E	0271	Fur-Bearing Animals and Rabbits.
11299	All Other Animal Production	R	0219	General Livestock, Except Dairy and Poultry.
			*0279	Animal Specialties, NEC (except apiculture).
			0291	General Farms, Primarily Livestock and Animal Specialties.
113	Forestry and Logging			
1131	Timber Tract Operations			
11311	Timber Tract Operations	R	*0811	Timber Tracts (long term timber farms).
1132	Forest Nurseries and Gathering of Forest Products			
11321	Forest Nurseries and Gathering of Forest Products	E	*0831	Forest Nurseries and Gathering of Forest Products (forest products, except gathering of maple sap).
1133	Logging			
11331	Logging	E	2411	Logging.
114	Fishing, Hunting and Trapping			
1141	Fishing			
11411	Fishing			
114111	Finfish Fishing	E	0912	Finfish.
114112	Shellfish Fishing	E	0913	Shellfish.
114119	Other Marine Fishing	R	0919	Miscellaneous Marine Products (except plant aquaculture).
1142	Hunting and Trapping			
11421	Hunting and Trapping	E	0971	Hunting and Trapping, and Game Propagation.
115	Support Activities for Agriculture and Forestry.			
1151	Support Activities For Crop Production			
11511	Support Activities For Crop Production			
115111	Soil Preparation, Planting, and Cultivating	R	0711	Soil Preparation Services.
			0721	Crop Planting, Cultivating, and Protecting.
115112	Crop Harvesting, Primarily by Machine	E	0722	Crop Harvesting, Primarily by Machine.
115113	Postharvest Crop Activities	E	0723	Crop Preparation Services For Market, Except Cotton Ginning.
115114	Farm Labor Contractors and Crew Leaders	E	0761	Farm Labor Contractors and Crew Leaders.
1152	Support Activities For Animal Production			
11521	Support Activities For Animal Production	N	*0751	Livestock Services, Except Veterinary (except custom slaughtering).
			*0752	Animal Specialty Services, Except Veterinary (horses and equines services and animal production breeding).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
			*7699	Repair Services, NEC (farriers).
1153	Support Activities for Forestry			
11531	Support Activities for Forestry	E	0851	Forestry Services.
21	Mining			
211	Oil and Gas Extraction			
2111	Oil and Gas Extraction			
21111	Oil and Gas Extraction			
211111	Crude Petroleum and Natural Gas Extraction	E	1311	Crude Petroleum and Natural Gas.
211112	Natural Gas Liquid Extraction	E	1321	Natural Gas Liquids.
212	Mining, Except Oil and Gas			
2121	Coal Mining			
21211	Coal Mining			
212111	Bituminous Coal and Lignite Surface Mining	E	1221	Bituminous Coal and Lignite Surface Mining.
212112	Bituminous Coal Underground Mining	E	1222	Bituminous Coal Underground Mining.
212113	Anthracite Mining	E	1231	Anthracite Mining.
2122	Metal Ore Mining			
21221	Iron Mining	E	1011	Iron Ores
21222	Gold and Silver Mining			
212221	Gold Mining	E	1041	Gold Ores.
212222	Silver Mining	E	1044	Silver Ores.
21223	Copper, Nickel, Lead and Zinc Mining			
212231	Copper and Nickel Mining	R	1021	Copper Ores.
			*1061	Ferroally Ores, Except Vanadium (nickel).
212232	Lead and Zinc Mining	E	1031	Lead and Zinc Ores.
21229	Other Metal Ore Mining.			
212291	Uranium-Radium-Vanadium Ore Mining	E	1094	Uranium-Radium-Vanadium Ores.
212299	Other Metal Ore	R	*1061	Ferroally Ores, Except Vanadium (other ferroalloys except nickel).
			1099	Miscellaneous Metal Ores, NEC.
2123	Non-Metallic Mineral Mining or Quarrying			
21231	Stone, Mining or Quarrying			
212311	Dimension Stone Mining or Quarrying	E	1411	Dimension Stone.
212312	Crushed and Broken Limestone Mining or Quarrying	E	1422	Crushed and Broken Limestone.
212313	Crushed and Broken Granite Mining or Quarrying	E	1423	Crushed and Broken Granite.
212319	Other Crushed and Broken Stone Mining or Quarrying.	R	1429	Crushed and Broken Stone, NEC.
			*1499	Miscellaneous Nonmetallic Minerals, Except Fuels (bituminous limestone and bituminous sandstone).
21232	Sand, Gravel, Clay, Ceramic and Refractory Mineral Mining or Quarrying			
212321	Construction Sand and Gravel Mining	E	1442	Construction Sand and Gravel.
212322	Industrial Sand Mining	E	1446	Industrial Sand.
212323	Kaolin and Ball Clay Mining	E	1455	Kaolin and Ball Clay.
212324	Clay, Ceramic and Refractory Mineral Mining	E	1459	Clay, Ceramic, and Refractory Minerals, NEC.
21239	Other Non-Metallic Mineral Mining or Quarrying			
212391	Potash, Soda, and Borate Mineral Mining	E	1474	Potash, Soda, and Borate Minerals.
212392	Phosphate Rock Mining	E	1475	Phosphate Rock.
212393	Other Chemical and Fertilizer Mineral Mining	E	1479	Chemical and Fertilizer Mineral Mining, NEC.
212399	All Other Non-Metallic Mineral Mining	R	*1499	Miscellaneous Nonmetallic Minerals, Except Fuels (bituminous limestone and bituminous sandstone).
213	Support Activities for Mining			
2131	Support Activities for Mining			
21311	Support Activities for Mining			
213111	Support Activities for Metal Mining	E	1081	Metal Mining Services.
213112	Support Activities for Coal Mining	E	1241	Coal Mining Services.
213113	Drilling Oil and Gas Wells	E	1381	Drilling Oil and Gas Wells.
213114	Support Activities for Oil and Gas Field Exploration	E	1382	Oil and Gas Field Exploration Services.
213115	Other Oil and Gas Field Support Activities	E	1389	Oil and Gas Field Services, NEC.
213116	Support Activities for Non-Metallic Minerals, Except Fuels.	E	1481	Nonmetallic Minerals Services, Except Fuels.
22	Utilities.			
221	Utilities.			
2211	Electric Power Generation, Transmission and Distribution.			
22111	Electric Power Generation.			
221111	Hydroelectric Power Generation	N	*4911	Electric Services (hydroelectric power generation).
			*4931	Electric and Other Services Combined (hydroelectric power generation).
			*4939	Combination Utilities, NEC (hydroelectric power generation).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
221112	Fossil Fuel Electric Power Generation	N	*4911	Electric Services (fossil fuel power generation).
			*4931	Electric and Other Services Combined (fossil fuel power generation).
			*4939	Combination Utilities, NEC (fossil fuel power generation).
221113	Nuclear Electric Power Generation	N	*4911	Electric Services (nuclear electric power generation).
			*4931	Electric and Other Services Combined (nuclear power generation).
			*4939	Combination Utilities, NEC (nuclear power generation).
221119	Other Electric Power Generation	N	*4911	Electric Services (other electric power generation).
			*4931	Electric and Other Services Combined (other electric power generation).
			*4939	Combination Utilities, NEC (other electric power generation).
22112	Electric Power Transmission, Distribution and Control			
221121	Electric Bulk Power Transmission and Control	N	*4911	Electric Services (electric power transmission and control).
			*4931	Electric and Other Services Combined (electric power transmission and control).
			*4939	Combination Utilities, NEC (electric power transmission and control).
221122	Electric Power Distribution	N	*4911	Electric Services (electric power distribution).
			*4931	Electric and Other Services Combined (electric power distribution).
			*4939	Combination Utilities, NEC (electric power distribution).
2212	Natural Gas Distribution			
22121	Natural Gas Distribution	R	*4923	Natural Gas Transmission and Distribution (distribution).
			4924	Natural Gas Distribution.
			4925	Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution (natural gas distribution).
			*4932	Gas and Other Services Combined (natural gas distribution).
			*4939	Combination Utilities, NEC (natural gas distribution).
2213	Water, Sewerage and Other Systems			
22131	Water and Irrigation Systems	R	4941	Water Supply.
			4971	Irrigation Systems.
22132	Sewerage Systems	E	4952	Sewerage Systems.
22133	Steam and Air-Conditioning Supply	E	4961	Steam and Air-Conditioning Supply.
23	Construction			
236	Building, Developing and General Contracting			
2361	Land Subdivision and Land Development			
23611	Land Subdivision and Land Development	E	6552	Land Subdividers and Developers, Except Cemeteries.
2362	Residential Building Construction			
23621	Single-Family Housing Construction	R	1521	General contractors-Single- Family Houses.
			*1531	Operative Builders (single-family housing construction).
23622	Multi-Family Housing Construction	R	*1522	General Contractors-Residential Building, Other Than Single-Family (except hotel and motel construction).
			*1531	Operative Builders (multi-family housing construction).
2363	Nonresidential Building Construction			
23631	Manufacturing and Light Industrial Building Construction.	R	*1531	Operative Builders (manufacturing and light industrial building construction).
			*1541	General Contractors-Industrial Buildings and Warehouses (except warehouse construction).
23632	Commercial and Institutional Building Construction	R	*1522	General Contractors-Residential Building Other than Single-Family (hotel and motel construction).
			*1531	Operative Builders (commercial and institutional building construction).
			*1541	General Contractors-Industrial Buildings and Warehouses (warehouse construction).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
			1542	General Contractor-Nonresidential Buildings, Other than Industrial Buildings and Warehouses.
237	Heavy Construction			
2371	Highway, Street, Bridge and Tunnel Construction			
23711	Highway and Street Construction	E	1611	Highway and Street Construction, Except Elevated Highways.
23712	Bridge and Tunnel Construction	R	1622	Bridge, Tunnel, and Elevated Highway Construction.
2379	Other Heavy Construction			
23791	Water, Sewer, and Pipeline Construction	N	*1623	Water, Sewer, Pipeline, and Communications and Power Line Construction (water and sewer mains and pipelines construction)
23792	Power and Communication Transmission Line Construction.	N	*1623	Water, Sewer, Pipelines, and Communications and Power Construction (communications and power line construction).
23793	Industrial Nonbuilding Structure Construction	N	*1629	Heavy Construction, NEC (industrial nonbuilding structures construction).
23799	All Other Heavy Construction	R	*1629	Heavy Construction, NEC (except industrial nonbuilding structures construction).
238	Special Trade Contractors			
2381	Plumbing, Heating and Air-Conditioning Contractors			
23811	Plumbing, Heating and Air-Conditioning Contractors	E	1711	Plumbing, Heating and Air-Conditioning.
2382	Painting and Wall Covering Contractors.			
23821	Painting and Wall Covering Contractors	R	1721	Painting and Paper Hanging.
			*1799	Special Trade Contractors, NEC (paint and wallpaper, stripping and wallpaper removal contractors).
2383	Electrical Contractors			
23831	Electrical Contractors	R	*1731	Electrical Work (except burglar and fire alarm installation).
2384	Masonry and Drywall Insulation, and Tile Contractors			
23841	Masonry and Stone	E	1741	Masonry, Stone Setting and Contractors Other Stone Work.
23842	Drywall, Plastering, Acoustical and Insulation Contractors.	R	1742	Plastering, Drywall, Acoustical, and Insulation Work.
			*1743	Terrazzo, Tile, Marble and Mosaic work (fresco work).
			*1771	Concrete Work (stucco construction).
23843	Tile, Marble, Terrazzo and Mosaic Contractors	R	*1743	Terrazzo, Tile, Marble, and Mosaic Work (except fresco work).
2385	Carpentry and Floor Contractors			
23851	Carpentry Contractors	E	1751	Carpentry Work.
23852	Floor Laying and Other Floor Contractors	E	1752	Floor Laying and Other Floor Work, NEC.
2386	Roofing, Siding and Sheet Metal Contractors			
23861	Roofing, Siding and Sheet Metal Contractors	E	1761	Roofing, Siding, and Sheet Metal Work.
2387	Concrete Contractors			
23871	Concrete Contractors	R	*1771	Concrete Work (except stucco construction).
2388	Water Well Drilling Contractors			
23881	Water Well Drilling Contractors	E	1781	Water Well Drilling.
2389	Other Special Trade Contractors			
23891	Structural Steel Erection Contractors	E	1791	Structural Steel Erection.
23892	Glass and Glazing Contractors	R	1793	Glass and Glazing Work.
			*1799	Specialty Trade Contractors, NEC (tinting glass work).
23893	Excavation Contractors	E	1794	Excavation Work.
23894	Wrecking and Demolition Contractors	E	1795	Wrecking and Demolition Work.
23895	Building Equipment and Other Machinery Contractors.	E	1796	Installation of Erection of Building Equipment, NEC.
23899	All Other Special Trade Contractors	R	1799	Special Trade Contractors, NEC (except paint and wallpaper stripping, wall paper removal contractors, and tinting glass work).
			7353	Heavy Construction Equipment Rental and Leasing (with operator).
31–33	Manufacturing			
311	Food Manufacturing			
3111	Animal Food Manufacturing			
31111	Animal Food Manufacturing			
311111	Dog and Cat Food Manufacturing	E	2047	Dog and Cat Food.

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
311119	Other Animal Food Manufacturing	R	*2048	Prepared Feeds and Feed Ingredients for Animals and Fowls, Except Dogs and Cats (except slaughtering animals for pet food).
3112	Grain and Oilseed Milling			
31121	Flour Milling and Malt Manufacturing.			
311211	Flour Milling	R	*2034	Dehydrated Fruits, Vegetables and Soup Mixes (vegetable flour).
			2041	Flour and Other Grain Mill Products
311212	Rice Milling	E	2044	Rice Milling.
311213	Malt Manufacturing	E	2083	Malt.
31122	Starch and Vegetable Fats and Oils Manufacturing			
311221	Wet Corn Milling	E	2046	Wet Corn Milling.
311222	Soybean Processing	E	2075	Soybean Oil Mills.
311223	Other Oilseed Processing	N	2074	Cottonseed Oil Mills.
			2076	Vegetable Oil Mills, Except Corn, Cottonseed, and Soybean.
311225	Edible Fats and Oils Manufacturing	R	*2077	Animal and Marine Fats and Oil, NEC (vegetable oil foots).
			2079	Shortening, Table Oils, Margarine, and Other Edible Fats and Oils, NEC.
31123	Breakfast Cereal Manufacturing	R	*2043	Cereal Breakfast Foods (breakfast cereal).
3113	Sugar and Confectionery Product Manufacturing			
31131	Sugar Manufacturing			
311311	Sugarcane Mills	E	2061	Cane Sugar, Except Refining.
311312	Cane Sugar Refining	E	2062	Cane Sugar Refining.
311313	Beet Sugar Manufacturing	E	2063	Beet Sugar.
31132	Chocolate and Confectionery Manufacturing from Cocoa Beans	E	2066	Chocolate and Cocoa Products.
31133	Confectionery Manufacturing from Purchased Chocolate	N	*2064	Candy and Other Confectionery Products (chocolate confectionery).
31134	Non-Chocolate Confectionery Manufacturing	N	*2064	Candy and Other Confectionery Products (non-chocolate confectionery).
			2067	Chewing Gum.
3114	Preserved Fruit, Vegetable and Specialty Manufacturing		*2099	Food Preparations, NEC (marshmallow creme).
31141	Frozen Food Processing			
311411	Frozen Fruit, Juice and Vegetable Processing	E	2037	Frozen Fruits, Fruit Juices, and Vegetables.
311412	Frozen Specialty Processing	E	2038	Frozen Specialties, NEC.
31142	Canning, Pickling and Drying			
311421	Fruit and Vegetable Canning	R	2033	Canned Fruits, Vegetables, Preserves, Jams, and Jellies.
			*2035	Pickled Fruits and Vegetables, Vegetable Sauces, and Seasonings and Salad Dressings (pickled fruits and vegetables).
311422	Specialty Canning	R	*2032	Canned Specialties (except canned puddings).
311423	Dried and Dehydrated Food Manufacturing	R	*2034	Dried and Dehydrated Fruits, Vegetables and Soup Mixes (except vegetable flour).
			*2099	Food Preparation, NEC (bouillon).
3115	Dairy Product Manufacturing			
31151	Dairy Product, Except Frozen Dairy Product Manufacturing			
311511	Fluid Milk Manufacturing	E	2026	Fluid Milk.
311512	Creamery Butter Manufacturing	E	2021	Creamery Butter.
311513	Cheese Manufacturing	E	2022	Natural, Processed, and Imitation Cheese.
311514	Dry, Condensed, and Evaporated Milk Manufacturing.	E	2023	Dry, Condensed and Evaporated Dairy Products.
31152	Ice Cream and Frozen Dessert Manufacturing	E	2024	Ice Cream and Frozen Desserts.
3116	Meat and Seafood Product Manufacturing			
31161	Animal Slaughtering and Processing			
311611	Animal Slaughtering, Except Poultry	R	*0751	Livestock Services, Except Veterinary (custom slaughtering).
			2011	Meat Packing Plants.
			*2048	Prepared Feeds and Feed Ingredients for Animals and Fowls, Except Dogs and Cats (animal slaughtering for pet food).
311612	Meat Processed From Carcasses	R	*2013	Sausages and Other Prepared Meats (meat processing).
			*5147	Meat and Meat Products (boxed beef).
311613	Rendering and Meat By-product Processing	N	*2013	Sausage and Other Prepared Meats (lard).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
			*2077	Animal and Marine Fats and Oils (animal fats and oils).
311615	Poultry Processing	R	*2015	Poultry Slaughtering and Processing (poultry processing).
31162	Seafood Product Preparation and Packaging.			
311621	Seafood Canning	R	*2077	Animal and Marine Fats and Oils (canned marine fats and oils).
			2091	Canned and Cured Fish and Seafood.
311622	Fresh and Frozen Seafood Processing	R	*2077	Animal and Marine Fats and Oils (fresh and frozen marine fats and oils).
			2092	Prepared Fresh or Frozen Fish and Seafood.
3117	Bakeries and Tortilla Manufacturing			
31171	Bread and Bakery Product Manufacturing			
311711	Commercial Bakeries	R	2051	Bread and Other Bakery Products, Except Cookies and Crackers.
			*2052	Cookies and Crackers (unleavened bread).
311712	Retail Bakeries	N	*5461	Retail Bakeries (bread, cake and related products baked and sold on premise).
311713	Frozen Bakery Product Manufacturing	E	2053	Frozen Bakery Products, Except Bread.
31172	Cookie, Cracker, and Pasta Manufacturing			
311721	Cookie and Cracker Manufacturing	R	*2052	Cookies and Crackers (except unleavened bread and pretzels).
311722	Flour Mixes and Dough Manufacturing from Purchased Flour.	E	2045	Prepared Flour Mixes and Doughs.
311723	Pasta Manufacturing	E	2098	Macaroni, Spaghetti, Vermicelli and Noodles.
31173	Tortilla Manufacturing	N	*2099	Food Preparations, NEC (tortillas).
3119	Miscellaneous Food Manufacturing			
31191	Snack Food Manufacturing			
311911	Roasted Nuts and Peanut Butter Manufacturing	R	2068	Salted and Roasted Nuts and Seeds.
			*2099	Food Preparations, NEC (peanut butter).
311919	Other Snack Food Manufacturing	R	*2052	Cookies and Crackers (pretzels).
			2096	Potato Chips, Corn Chips, and Similar Snacks.
31192	Coffee and Tea Manufacturing	N	*2043	Cereal Breakfast Foods (coffee substitute).
			*2095	Roasted Coffee (roasted coffee).
			*2099	Food Preparations, NEC (tea).
31193	Flavoring Syrup and Concentrate Manufacturing	R	*2087	Flavoring Extracts and Flavoring Syrups (flavoring syrup and concentrate).
31194	Seasoning and Dressing Manufacturing			
311941	Mayonnaise, Dressing and Other Prepared Sauce Manufacturing.	N	*2035	Pickled Fruits and Vegetables, Vegetable Seasonings, and Sauces and Salad Dressings (sauces and salad dressing).
			*2099	Food Preparations, NEC (vinegar).
311942	Spice and Extract Manufacturing	N	*2087	Flavoring Extracts and Flavoring Syrups (flavoring extracts).
			*2095	Roasted Coffee (coffee extracts).
			*2099	Food Preparations, NEC (spices, dip mix, salad dressing mix, and seasoning mix).
			*2899	Chemical Preparations, NEC (salt).
31199	Other Miscellaneous Food Manufacturing			
311991	Perishable Prepared Food Manufacturing	N	*2099	Food Preparations, NEC (perishable prepared food).
311999	All Other Miscellaneous Food Manufacturing	R	*2015	Poultry Slaughtering and Processing (egg processing).
			*2032	Canned Specialties (canned puddings).
			*2087	Flavoring Extracts and Flavoring Syrups (powered drink mix).
			*2099	Food Preparations, NEC (except bouillon, marshmallow cream, peanut butter, perishable prepared foods, tortillas, tea, spices, dip mix, salad dressing mix, seasoning mix, and vinegar).
312	Beverage and Tobacco Product Manufacturing			
3121	Beverage Manufacturing			
31211	Soft Drink and Ice Manufacturing			
312111	Soft Drink Manufacturing	R	*2086	Bottled and Canned Soft Drinks and Carbonated Water (except purified water).
312112	Ice Manufacturing and Water Purification	N	2097	Manufactured Ice.
			*2086	Bottled and Canned Soft Drinks and Carbonated Water (purified water).
31212	Breweries	E	2082	Malt Beverages.
31213	Wineries	E	2084	Wines, Brandy, and Brandy Spirits.
31214	Distilleries			

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
312141	Distilled and Blended Liquor Manufacturing	E	2085	Distilled and Blended Liquors.
312142	Ethyl Alcohol Manufacturing	N	*2869	Industrial Organic Chemicals (ethyl alcohol).
3122	Tobacco Manufacturing			
31221	Tobacco Stemming and Redrying	R	*2141	Tobacco Stemming and Redrying (redrying and stemming).
31222	Tobacco Product Manufacturing			
312221	Cigarette Manufacturing	E	2111	Cigarettes.
312229	Other Tobacco Product Manufacturing	N	2121	Cigars.
			2131	Chewing and Smoking Tobacco and Snuff.
			*2141	Tobacco Stemming and Redrying (reconstituted tobacco).
313	Textile Mills			
3131	Fiber, Yarn, and Thread Mills			
31311	Fiber, Yarn, and Thread Mills			
313111	Yarn Spinning Mills	R	2281	Yarn Spinning Mills.
			*2299	Textile Goods, NEC (yarn of flax, hemp, jute, and ramie).
313112	Yarn Texturing, Throwing and Twisting Mills	R	*2282	Yarn Texturing, Throwing, Winding Mills (except spooling purchased yarns).
313113	Thread Mills	R	*2284	Thread Mills (except finishing).
			*2299	Textile Goods, NEC (thread of hemp, linen, and ramie).
3132	Fabric Mills			
31321	Broadwoven Fabric Mills	N	2211	Broadwoven Fabric Mills, Cotton.
			2221	Broadwoven Fabric Mills, Manmade Fiber and Silk.
			*2231	Broadwoven Fabric Mills, Wool (Including Dyeing and Finishing)(except wool finishing).
			*2299	Textile Goods, NEC (broadwoven fabrics of jute, linen, hemp, and ramie).
31322	Narrow Fabric Mills and Schiffli Machine Embroideries			
313221	Narrow Fabric Mills	R	2241	Narrow Fabric and Other Smallware Mills: Cotton, Wool, Silk and Manmade Fiber.
			*2299	Textile Goods, NEC (narrow woven fabric of jute, linen, kemp, and ramie).
313222	Schiffli Machine Embroideries	E	2397	Schiffli Machine Embroideries.
31323	Nonwoven Fabric Mills	R	2297	Nonwoven Fabrics.
			*2299	Textile Goods, NEC (nonwoven felt).
31324	Knit Fabric Mills			
313241	Weft Knit Fabric Mills	R	*2257	Weft Knit Fabric Mills (except finishing).
			*2259	Knitting Mills NEC (finished articles of weft knit fabric).
313249	Other Knit Fabric and Lace Mills	R	*2258	Lace and Warp Knit Fabric Mills (except finishing).
			*2259	Knitting Mills NEC (finished articles of warp knit fabric).
3133	Textile and Fabric Finishing and Fabric Coating Mills			
31331	Textile and Fabric Finishing Mills			
313311	Broadwoven Fabric Finishing Mills	R	*2231	Broadwoven Fabric Mills, Wool (wool broadwoven fabric finishing).
			2261	Finishers of Broadwoven Fabrics of Cotton.
			2262	Finishers of Broadwoven Fabrics of Manmade Fiber and Silk.
			*2269	Finishers of Textiles, NEC (broadwoven fabric finishing).
			*5131	Piece Goods and Notions (broadwoven converters).
313312	Textile and Fabric Finishing Mills, Except Broadwoven Fabric.	R	*2231	Broadwoven Fabric Mills, Wool (wool finishing except broadwoven fabric).
			*2257	Weft Knit Fabric Mills (finishing).
			*2258	Lace and Warp Knit Fabric Mills (finishing).
			*2269	Finishers of Textiles, NEC (except broadwoven fabric finishing).
			*2282	Yarn Texturizing, Throwing, Twisting, and Winding Mills (spooling purchased yarn).
			*2284	Thread Mills (thread finishing).
			*2299	Textile Goods, NEC (finishing hard fiber thread and yarn).
			*5131	Piece Goods and Notions (converters, except broadwoven).
31332	Fabric Coating Mills	R	2295	Coated Fabrics, Not Rubberized.

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
			*3069	Fabricated Rubber Products, NEC (rubberized fabric).
314	Textile Product Mills			
3141	Textile Furnishings Mills			
31411	Carpet and Rug Mills	E	2273	Carpets and Rugs.
31412	Curtain and Linen Mills			
314121	Curtain and Drapery Mills	R	2391	Curtains and Draperies.
			5714	Drapery, Curtain, and Upholstery Stores (custom drapes).
314129	Other Household Textile Product Mills	R	*2392	Housefurnishings, Except Curtains and Draperies Mills (except mops and bags).
3149	Miscellaneous Textile Product Mills			
31491	Textile Bag and Canvas Mills			
314911	Textile Bag Mills	R	*2392	Housefurnishings, Except Curtains and Draperies (blanket, laundry, and wardrobe bags).
			2393	Textile Bags.
314912	Canvas and Related Product Mills	E	2394	Canvas and Related Products.
31499	Other Miscellaneous Textile Product Mills.			
314991	Rope, Cordage and Twine Mills	E	2298	Cordage and Twine.
314992	Tire Cord and Tire Fabric Mills	E	2296	Tire Cord and Fabrics.
314999	All Other Miscellaneous Textile Product Mills	R	*2299	Textile Goods, NEC (other textile products).
			*2395	Pleating, Decorative and Novelty Stitching, and Tucking for the Trade (except apparel contractors).
			*2396	Automotive Trimmings, Apparel Findings, and Related Products (textile products except automotive and apparel trim and printing on apparel).
			*2399	Fabricated Textile Products, NEC (except apparel, automotive seat belts, and seat and tire covers).
315	Apparel Manufacturing			
3152	Men's and Boys' Cut and Sew Apparel Manufacturing.			
31521	Men's and Boys' Cut and Sew Underwear and Nightwear Manufacturing.	R	*2322	Men's and Boys' Underwear and Nightwear (except contractors).
			*2341	Women's, Misses', Children's, and Infants' Underwear and Nightwear (boys' except contractors).
			*2369	Girls', Children's, and Infants' Outerwear, NEC (boys' robes except contractors).
			*2384	Robes and Dressing Gowns (men's except contractors).
31522	Men's and Boys' Cut and Sew Suit, Coat and Overcoat Manufacturing.	R	*2311	Men's and Boys' Suits, Coats, and Overcoats (except contractors).
			*2369	Girls', Children's, and Infants' Outerwear, NEC (boys' suits and coats except contractors).
			*2385	Waterproof Outerwear (men's and boys' raincoats except contractors).
31523	Men's and Boys' Cut and Sew Shirt, Except Work Shirt Manufacturing.	R	*2321	Men's and Boys' Shirts, Except Work Shirts (except contractors).
			*2361	Girls', Children's, and Infants' Dresses, Blouses, and Shirts (boys' shirts except contractors).
31524	Men's and Boys' Cut and Sew Trouser, Slack and Jean Manufacturing.	R	*2325	Men's and Boys' Trousers and Slacks (except contractors).
			*2369	Girls', Children's, and Infants' Outerwear, NEC (boys' trousers, slacks, and jeans except contractors).
31525	Men's and Boys' Cut and Sew Work Clothing Manufacturing.	R	*2326	Men's and Boys' Work Clothing (except contractors).
31526	Men's and Boys' Cut and Sew Other Outerwear Manufacturing.	R	*2329	Men's and Boys' Clothing, NEC (men's and boys' other outerwear except contractors).
			*2369	Girls', Children's, and Infants' Outerwear, NEC (boys' other outerwear except contractors).
			*2385	Waterproof Outerwear (except contractors).
3153	Women's and Girls' Cut and Sew Apparel Manufacturing			
31531	Women's and Girls' Cut and Sew Lingerie, Loungewear and Nightwear Manufacturing.	R	*2341	Women's, Misses', Children's, and Infants' Underwear and Nightwear (women and girls' except contractors).
			*2342	Brassieres, Girdles, and Allied Garments (except contractors).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
			*2369	Girls', Children's, and Infants' Outerwear, NEC (girls' robes except contractors).
			*2384	Robes and Dressing Gowns (women's except contractors).
			*2389	Apparel and Accessories, NEC (garters and garter belts).
31532	Women's and Girls' Cut and Sew Blouse and Shirt Manufacturing.	R	*2331	Women's, Misses', and Juniors' Blouses and Shirts (except contractors).
			*2361	Girls', Children's, and Infants' Dresses, Blouses and Shirts (girls' blouses and shirts except contractors).
31533	Women's and Girls' Cut and Sew Dress Manufacturing.	R	*2335	Women's, Misses', and Juniors' Dresses (except contractors).
			*2361	Girls', Children's, and Infants' Dresses, Blouses and Shirts (girls' dresses except contractors).
31534	Women's and Girls' Cut and Sew Suit, Coat, Tailored Jacket and Skirt Manufacturing.	R	*2337	Women's, Misses', and Juniors' Suits, Skirts, and Coats (except contractors).
			*2369	Girls', Children's, and Infants' Outerwear, NEC (girls' suits, coats, jackets, and skirts except contractors).
			*2385	Waterproof Outerwear (women's and girls' raincoats except contractors).
31539	Women's and Girls' Cut and Sew Other Outerwear Manufacturing.	R	*2339	Women's, Misses', and Juniors' Outerwear, NEC (except contractors).
			*2369	Girls', Children's, and Infants' Outerwear, NEC (girls' except contractors).
			*2385	Waterproof Outerwear (other women's and girls' outerwear except contractors).
3154	Other Cut and Sew Apparel Manufacturing			
31541	Infants' Cut and Sew Apparel Manufacturing	R	*2341	Women's, Misses', Children's, and Infants' Underwear and Nightwear (infants' except contractors).
			*2361	Girls', Children's, and Infants' Dresses, Blouses, and Shirts (infants' except contractors).
			*2369	Girls', Children's, and Infants' Outerwear, NEC (infants' except contractors).
			*2385	Waterproof Outerwear (infants' other outerwear except contractors).
31542	Fur and Leather Apparel Manufacturing	R	2371	Fur Goods.
			2386	Leather and Sheep-lined Clothing.
31549	All Other Cut and Sew Apparel Manufacturing	R	*2329	Men's and Boys' Outerwear, NEC (athletic uniforms except contractors).
			*2339	Women's, Misses', and Juniors' Outerwear, NEC (athletic uniforms except contractors).
			*2389	Apparel and Accessories, NEC (academic and clerical outerwear, except contractors).
3155	Cut and Sew Apparel Contractors			
31551	Cut and Sew Apparel Contractors			
315511	Men's and Boys' Cut and Sew Apparel Contractors	N	*2311	Men's and Boys' Suits, Coats, and Overcoats (contractors).
			*2321	Men's and Boys' Shirts, Except Work Shirts (contractors).
			*2322	Men's and Boys' Underwear and Nightwear (contractors).
			*2325	Men's and Boys' Trousers and Slacks (contractors).
			*2326	Men's and Boys' Work Clothing (contractors).
			*2329	Men's and Boys' Clothing, NEC (contractors).
			*2341	Women's, Misses', Children's, and Infants' Underwear and Nightwear (boys' contractors).
			*2361	Girls', Children's, and Infants' Dresses, Blouses and Shirts (boys' contractors).
			*2369	Girls', Children's, and Infants' Outerwear, NEC (boys' contractors).
			*2384	Robes and Dressing Gowns (men's and boys' contractors).
			*2385	Waterproof Outerwear (men's and boy's contractors).
			*2389	Apparel and Accessories, NEC (contractors).
			*2395	Pleating, Decorative and Novelty Stitching, and Tucking for the Trade (men's and boy's apparel contractors).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
315512	Women's and Girls' Cut and Sew Apparel Contractors.	N	*2331	Women's, Misses', and Juniors' Blouses and Shirts (contractors).
			*2335	Women's, Misses' and Juniors' Dresses (contractors).
			*2337	Women's, Misses', and Juniors' Suits, Skirts, and Coats (contractors).
			*2339	Women's, Misses', and Juniors' Outerwear, NEC (contractors).
			*2341	Women's, Misses', Children's, and Infants' Underwear and Nightwear (contractors).
			*2342	Brassieres, Girdles, and Allied Garments (contractors).
			*2361	Girls', Children's, and Infants' Dresses, Blouses, and Shirts (girls' contractors).
			*2369	Girls', Children's, and Infants' Outerwear, NEC (girls' contractors).
			*2384	Robes and Dressing Gowns (women's and girls' contractors).
			*2385	Waterproof Outerwear (women's and girls' contractors).
			*2389	Apparel and Accessories, NEC (contractors).
			*2395	Pleating, Decorative and Novelty Stitching, and Tucking for the Trade (women's and girls' apparel contractors).
3156	Apparel Knitting Mills			
31561	Hosiery and Socks Mills			
315611	Sheer Hosiery Mills	R	2251	Women's Hosiery, except Socks.
			*2252	Hosiery, NEC (girls' hosiery).
315619	Other Hosiery and Socks Mills	R	*2252	Hosiery, NEC (socks).
31569	Other Apparel Knitting Mills			
315691	Outerwear Knitting Mills	R	2253	Knit Outerwear Mills.
			*2259	Knitting Mills, NEC (gloves and mittens).
315692	Underwear and Nightwear Knitting Mills	R	2254	Knit Underwear and Nightwear Mills.
			*2259	Knitting Mills, NEC (girdles).
3159	Apparel Accessories and Other Apparel Manufacturing			
31591	Apparel Accessories and Other Apparel Manufacturing			
315911	Hat, Cap and Millinery Manufacturing	E	2353	Hats, Caps, and Millinery.
315912	Glove and Mitten Manufacturing	R	2381	Dress and Work Gloves, Except Knit and All-Leather.
			3151	Leather Gloves and Mittens.
315913	Men's and Boys' Neckwear Manufacturing	E	2323	Men's and Boys' Neckwear.
315919	Other Apparel Accessories and Other Apparel Manufacturing.	N	*2339	Women's, Misses', and and Juniors' Outerwear, NEC (scarves).
			*2385	Waterproof Outerwear (aprons, bibs, and other miscellaneous waterproof items).
			2387	Apparel Belts.
			*2389	Apparel and Accessories, NEC (handkerchiefs, arm bands, etc.).
			*2396	Automotive Trimmings, Apparel Findings, and Related Products (apparel findings and trimming).
			*2399	Fabricated Textile Products, NEC (apparel and apparel accessories).
316	Leather and Allied Product Manufacturing			
3161	Leather and Hide Tanning and Finishing			
31611	Leather and Hide Tanning and Finishing	R	3111	Leather Tanning and Finishing.
			*3999	Manufacturing Industries, NEC (fur dressing and finishing).
3162	Footwear Manufacturing			
31621	Footwear Manufacturing			
316211	Rubber and Plastics Footwear Manufacturing	E	3021	Rubber and Plastics Footwear.
316212	House Slipper Manufacturing	E	3142	House Slippers.
316213	Men's Footwear Manufacturing, Except Athletic	E	3143	Men's Footwear, except Athletic.
316214	Women's Footwear Manufacturing, Except Athletic	E	3144	Women's Footwear, except Athletic.
316219	Other Footwear Manufacturing	E	3149	Footwear except Rubber, NEC.
3169	Miscellaneous Leather and Allied Product Manufacturing			
31691	Miscellaneous Leather and Allied Product Manufacturing			

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
316911	Luggage Manufacturing	E	3161	Luggage.
316912	Women's Handbag and Purse Manufacturing	E	3171	Women's Handbags and Purses.
316913	Personal Leather Good, Except Women's Handbags and Purse Manufacturing	E	3172	Personal Leather Goods, except Women's Handbags and Purses.
316919	Other Miscellaneous Leather Good Manufacturing	R	*3131	Boot and Shoe Cut Stock and Findings (except wood heels and metal buckles).
			3199	Leather Goods, NEC.
321	Wood Product Manufacturing, Except Furniture			
3211	Sawmill Product and Wood Preservation Manufacturing			
32111	Sawmill Product and Wood Preservation Manufacturing			
321113	Sawmills	R	2421	Sawmills and Planing Mills, General.
			2429	Special Product Sawmills, NEC.
321114	Wood Preserving	E	2491	Wood Preserving.
3212	Laminated Wood Product Manufacturing			
32121	Laminated Wood Product Manufacturing			
321211	Hardwood Veneer and Plywood Manufacturing	E	2435	Hardwood Veneer and Plywood.
321212	Softwood Veneer and Plywood Manufacturing	E	2436	Softwood Veneer and Plywood.
321213	Structural Wood Member Manufacturing, Except Trusses.	R	*2439	Structural Wood Members, NEC (except trusses).
321217	Reconstituted Wood Product Manufacturing	E	2493	Reconstituted Wood Products.
3219	Other Wood Product Manufacturing			
32191	Wood Construction Product Manufacturing			
321911	Wood Window and Door Manufacturing	N	*2431	Millwork (wood windows and doors).
321912	Hardwood Dimension Mills	R	*2426	Hardwood Dimension and Flooring Mills (except flooring).
321913	Millwork Manufacturing, Including Flooring	R	*2426	Hardwood Dimension and Flooring Mills (hardwood flooring).
			*2431	Millwork (except wood doors and windows).
321914	Truss Manufacturing	N	*2439	Structural Wood Members, NEC (trusses).
32192	Wood Container and Package Product Manufacturing	N	2441	Nailed and Lock Corner Wood Boxes and Shook.
			2448	Wood Pallets and Skids.
			2449	Wood Containers, NEC.
			*2499	Wood Products, NEC (wood tubs and vats, jewelry and cigar boxes).
32199	All Other Wood Product Manufacturing			
321991	Manufactured Home (Mobile Home) Manufacturing	E	2451	Mobile Homes.
321992	Prefabricated Wood Building and Component Manufacturing	E	2452	Prefabricated Wood Buildings and Components.
321999	All Other Miscellaneous Wood Product Manufacturing	R	*2426	Hardwood Dimension and Flooring Mills (wood stock and turnings).
			*2499	Wood Products, NEC (other wood products).
			*3053	Gaskets, Packing, and Sealing Devices (cork gaskets, packaging, and sealing devices).
			*3131	Boot and Shoe Cut Stock and Findings (wood heels).
			*3993	Signs and Advertising Specialties (wood signs).
			*3999	Manufacturing Industries, NEC (burnt wood articles and other wood products).
322	Paper Manufacturing			
3221	Pulp, Paper and Paperboard Mills			
32211	Pulp Mills	R	*2611	Pulp Mills (pulp producing mills only).
32212	Paper Mills			
322121	Paper Mills, Except Newsprint Mills	R	*2611	Pulp Mills (pulp mills producing paper).
			*2621	Paper Mills (except newsprint mills).
322122	Newsprint Mills	N	*2621	Paper Mills (newsprint mills).
32213	Paperboard Mills	E	2631	Paperboard Mills.
3222	Converted Paper Product Manufacturing			
32221	Paperboard Container Manufacturing			
322211	Corrugated and Solid Fiber Box Manufacturing	E	2653	Corrugated and Solid Fiber Boxes.
322212	Folding Paperboard Box Manufacturing	E	2657	Folding Paperboard Boxes, Including Sanitary.
322213	Setup Paperboard Box Manufacturing	E	2652	Setup Paperboard Boxes.
322214	Fiber Can, Tube, Drum, and Similar Product Manufacturing.	E	2655	Fiber Cans, Tubes, Drums, and Similar Products.
322215	Non-Folding Sanitary Food Container Manufacturing	R	2656	Sanitary Food Containers, Except Folding.
			*2679	Converted Paper and Paperboard Products, NEC (egg cartons and other containers from purchased paper).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
32222	Paper Bag and Coated and Treated Paper Manufacturing			
322221	Coated and Laminated Packaging Paper and Plastics Film Manufacturing.	R	*2671	Packaging Paper and Plastics Film, Coated and Laminated (single-web paper, paper multiweb laminated rolls and sheets for packaging uses).
322222	Coated and Laminated Paper Manufacturing	R	2672	Coated and Laminated Paper, NEC.
			*2679	Converted Paper and Paperboard Products, NEC (wallpaper and gift wrap paper).
322223	Plastics, Foil, and Coated Paper Bag Manufacturing	R	*2673	Plastics, Foil, and Coated Paper Bags (coated or multiweb laminated bags).
322224	Uncoated Paper and Multiwall Bag Manufacturing	E	2674	Uncoated Paper and Multiwall Bags.
322225	Laminated Aluminum Foil Manufacturing for Flexible Packaging Uses.	N	*3497	Metal Foil and Leaf (laminated aluminum foil rolls and sheets for flexible packaging uses).
32223	Stationery Product Manufacturing			
322231	Die-Cut Paper and Paperboard Office Supply Manufacturing.	N	*2675	Die-Cut Paper and Paperboard and Cardboard (file folders, tabulating cards, and other paper and paperboard office supplies).
			*2679	Converted Paper and Paperboard Products, NEC (paper supplies for business machines and other paper office supplies).
322232	Envelope Manufacturing	E	2677	Envelopes.
322233	Stationery, Tablet, and Related Product Manufacturing.	E	2678	Stationery, Tablets, and Related Products.
32229	Other Converted Paper Product Manufacturing			
322291	Sanitary Paper Product Manufacturing	E	2676	Sanitary Paper Products.
322292	Surface-Coated Paperboard Manufacturing	N	*2675	Die-Cut Paper and Paperboard and Cardboard (pasted, lined, laminated, or surface-coated paperboard).
322298	All Other Converted Paper Product Manufacturing	R	*2675	Die-Cut Paper and Paperboard and Cardboard (die-cut paper and paperboard products, except office supplies).
			*2679	Converted Paper and Paperboard Products, NEC (other converted paper and paperboard products such as paper filters, crepe paper, and laminated and tiled wallboard).
323	Printing and Related Support Activities			
3231	Printing and Related Support Activities			
32311	Printing			
323111	Printing on Apparel	N	*2396	Automotive Trimmings, Apparel Findings, and Related Products (printing and embossing on fabric articles).
323112	Manifold Business Form Printing	E	2761	Manifold Business Forms.
323113	Book Printing	E	2732	Book Printing.
323114	Commercial Lithographic Printing	R	*2752	Commercial Printing, Lithographic (except quick printing).
			*2771	Greeting Cards (lithographic printing of greeting cards).
			*2782	Blankbooks, Loose-leaf Binders and Devices (lithographic printing of checkbooks).
			*3993	Signs and Advertising Specialties (lithographic printing of advertising specialties).
			*3999	Manufacturing Industries, NEC (lithographic printing of eyeglass frames for the trade).
323115	Commercial Gravure Printing	R	2754	Commercial Printing, Gravure.
			*2771	Greeting Cards (gravure printing of greeting cards).
			*2782	Blankbooks, Loose-leaf Binders and Devices (gravure printing of checkbooks).
			*3993	Signs and Advertising Specialties (gravure printing of advertising specialties).
			*3999	Manufacturing Industries, NEC (gravure printing of eyeglass frames for the trade).
323116	Commercial Screen Printing	N	*2759	Commercial Printing, NEC (screen printing).
			*2771	Greeting Cards (screen printing of greeting cards).
			*2782	Blankbooks, Loose-leaf Binders and Devices (screen printing of checkbooks).
			*3993	Signs and Advertising Specialties (screen printing of advertising specialties).
			*3999	Manufacturing Industries, NEC (screen printing of eyeglass frames for the trade).
323117	Commercial Flexographic Printing	N	*2759	Commercial Printing, NEC (flexographic printing).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
			*2771	Greeting Cards (flexographic printing of greeting cards).
			*2782	Blankbooks, Loose-leaf Binders and Devices (flexographic printing of checkbooks).
			*3993	Signs and Advertising Specialties (flexographic printing of advertising specialties).
			*3999	Manufacturing Industries, NEC (flexographic printing of eyeglass frames for the trade).
323118	Other Commercial Printing	R	*2759	Commercial Printing, NEC (other commercial printing except quick printing).
			*2771	Greeting Cards (other printing of greeting cards).
			*2782	Blankbooks, Loose-leaf Binders and Devices (other printing of checkbooks).
			*3993	Signs and Advertising Specialties (other printing of advertising specialties for the trade).
			*3999	Manufacturing Industries, NEC (other printing of eyeglass frames for the trade).
323119	Bankbook, Loose-leaf Binder and Device Manufacturing.	R	*2782	Blankbooks, Loose-leaf Binders and Devices (except checkbooks).
32312	Support Services for Printing.			
323121	Tradebinding and Related Work	E	2789	Bookbinding and Related Work.
323122	Prepress Services	R	2791	Typesetting.
			2796	Platemaking and Related Services.
324	Petroleum and Coal Product Manufacturing			
3241	Petroleum and Coal Product Manufacturing			
32411	Petroleum Refineries	E	2911	Petroleum Refining.
32412	Asphalt Paving and Roofing and Saturated Material Manufacturing			
324121	Asphalt Paving Mixture and Block Manufacturing	E	2951	Asphalt Paving Mixtures and Blocks.
324122	Asphalt Felt and Coating Manufacturing	E	2952	Asphalt Felts and Coatings.
32419	Other Petroleum and Coal Product Manufacturing.			
324191	Lubricating Oil and Grease Manufacturing	E	2992	Lubricating Oils and Greases.
324199	All Other Petroleum and Coal Product Manufacturing.	R	2999	Products of Petroleum and Coal, NEC.
			*3312	Blast Furnaces and Steel Mills (coke ovens).
325	Chemical Manufacturing			
3251	Basic Chemical Manufacturing			
32511	Petrochemical Manufacturing	N	*2865	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments (aromatics).
			*2869	Industrial Organic Chemicals, NEC (aliphatics).
32512	Industrial Gases Manufacturing	R	2813	Industrial Gases.
			*2869	Industrial Organic Chemicals, NEC (fluorocarbon gases).
32513	Dye and Pigment Manufacturing			
325131	Inorganic Dye and Pigment bone and Manufacturing	N	*2816	Inorganic Pigments (except lamp black).
			*2819	Industrial Inorganic Chemicals, NEC (inorganic dyes).
325132	Organic Dye and Pigment Manufacturing	N	*2865	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments (organic dyes and pigments).
32518	Other Inorganic Chemical Manufacturing			
325181	Alkalies and Chlorine Manufacturing	E	2812	Alkalies and Chlorine.
325182	Carbon Black Manufacturing	R	*2816	Inorganic pigments (bone and lamp black).
			2895	Carbon Black.
325188	All Other Inorganic Chemical Manufacturing	R	*2819	Industrial Inorganic Chemicals, NEC (except activated carbon and charcoal, alumina, and inorganic industrial dyes).
			*2869	Industrial Organic Chemicals, NEC (carbon bisulfide).
32519	Other Organic Chemical Manufacturing			
325191	Gum and Wood Chemical Manufacturing	E	2861	Gum and Wood Chemicals.
325192	Cyclic Crude and Intermediate Manufacturing	R	*2865	Cyclic Organic Crudes and Intermediates and Organic Dyes and Pigments (except aromatics and organic dyes and pigments).
325199	All Other Organic Chemical Manufacturing	R	*2869	Industrial Organic Chemicals, NEC (except aliphatics, carbon bisulfide, ethyl alcohol, fatty acid esters, and fluorocarbon gases).
3252	Resin, Synthetic Rubber, Artificial and Synthetic Fiber and Filament Manufacturing			
32521	Resin and Synthetic Rubber Manufacturing			

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
325211	Plastics Material and Resin Manufacturing	E	2821	Plastics Materials, Synthetic and Resin, and Nonvulcanizable Elastomers.
325212	Synthetic Rubber Manufacturing	E	2822	Synthetic Rubber.
32522	Artificial and Synthetic Fiber and Filament Manufacturing			
325221	Cellulosic Manmade Fiber Manufacturing	E	2823	Cellulosic Manmade Fibers.
325222	Noncellulosic Organic Fiber Manufacturing	E	2824	Manmade Organic Fibers, Except Cellulosic.
3253	Pesticide, Fertilizer and Other Agricultural Chemical Manufacturing			
32531	Fertilizer Manufacturing			
325311	Nitrogenous Fertilizer Manufacturing	E	2873	Nitrogenous Fertilizers.
325312	Phosphatic Fertilizer Manufacturing	E	2874	Phosphatic Fertilizers.
325314	Fertilizer, Mixing Only, Manufacturing	E	2875	Fertilizers, Mixing Only.
32532	Pesticide and Other Agricultural Chemical Manufacturing.	E	2879	Pesticides and Agricultural Chemicals, NEC.
3254	Pharmaceutical and Medicine Manufacturing			
32541	Pharmaceutical and Medicine Manufacturing			
325411	Medicinal and Botanical Manufacturing	E	2833	Medicinal Chemicals and Botanicals Products.
325412	Pharmaceutical Preparation Manufacturing	R	2834	Pharmaceutical Preparations.
			*2835	In-Vitro and In-Vivo Diagnostic Substances (except in-vitro diagnostic).
325413	In-Vitro Diagnostic Substance Manufacturing	N	*2835	In-Vitro and In-Vivo Diagnostic Substances (in-vitro diagnostic substances).
325414	Biological Product Manufacturing, Except Diagnostic	E	2836	Biological Products, Except Diagnostic Substance.
3255	Paint, Coating, Adhesive, and Sealant Manufacturing			
32551	Paint and Coating Manufacturing	R	2851	Paints, Varnishes, Lacquers, Enamels and Allied Products.
			*2899	Chemicals and Chemical Preparations, NEC (frit).
32552	Adhesive and Sealant Manufacturing	E	2891	Adhesives and Sealants.
3256	Soap, Cleaning Compound and Toilet Preparation Manufacturing			
32561	Soap and Cleaning Compound Manufacturing			
325611	Soap and Other Detergent Manufacturing	R	2841	Soaps and Other Detergents, Except Specialty Cleaners.
			*2844	Toilet Preparations (toothpaste).
325612	Polish and Other Sanitation Good Manufacturing	E	2842	Specialty Cleaning, Polishing, and Sanitary Preparations.
325613	Surface Active Agent Manufacturing	E	2843	Surface Active Agents, Finishing Agents, Sulfanated Oils, and Assistants.
32562	Toilet Preparation Manufacturing	R	*2844	Perfumes, Cosmetics, and Other Toilet Preparations (except toothpaste).
3259	Miscellaneous Chemical Product Manufacturing			
32591	Printing Ink Manufacturing	R	2893	Printing Ink.
			*2899	Chemical Preparations, NEC (writing inks).
			*3952	Lead Pencils and Art Goods (drawing inks and india ink).
32592	Explosive Manufacturing	E	2892	Explosives.
32599	Other Miscellaneous Chemical Product Manufacturing			
325991	Custom Compounding of Purchased Resin	E	3087	Custom Compounding of Purchased Plastics Resin.
325992	Photographic Film, Paper, Plate and Chemical Manufacturing.	N	*3861	Photographic Equipment and Supplies (photographic films, paper, plates chemicals).
325998	All Other Miscellaneous Chemical Product Manufacturing.	R	*2819	Industrial Inorganic Chemicals, NEC (activated carbon and charcoal).
			*2869	Industrial Organic Chemicals, NEC (fatty acid esters).
			*2899	Chemicals and Chemical Preparations, NEC (except frit, salt, and writing and drawing ink).
			*3999	Manufacturing Industries, NEC (matches).
326	Rubber and Plastics Product Manufacturing			
3261	Rubber Product Manufacturing			
32611	Tire and Tube Manufacturing			
326111	Tire and Inner Tube Manufacturing	E	3011	Tires and Inner Tubes.
326112	Tire Rebuilding	N	*7534	Tire Retreading and Repair Shops (rebuilding).
32612	Rubber and Plastics Hose and Belting Manufacturing.	E	3052	Rubber and Plastics Hose and Belting.
32619	Other Rubber Product Manufacturing			
326191	Mechanical Rubber Product Manufacturing	E	3061	Molded, Extruded, and Lathe-Cut Mechanical Rubber Goods.

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
326199	All Other Rubber Product Manufacturing	R	*3053	Gaskets, Packings and Sealing Devices (rubber gaskets, packings and sealing devices).
			*3069	Fabricated Rubber Products, NEC (except rubberized fabric and rubber resilient floor covering).
3262	Plastics Product Manufacturing			
32621	Unsupported Plastics Film, Sheet and Bag Manufacturing			
326211	Unsupported Plastics Bag Manufacturing	N	*2673	Plastics, Foil, and Coated Paper Bags (plastics bags).
326212	Unsupported Plastics Packaging Film and Sheet Manufacturing.	N	*2671	Packaging Paper and Plastics Film, Coated, and Laminated (plastics packaging film and sheet).
326213	Unsupported Plastics Film and Sheets, Except Packaging Manufacturing.	E	3081	Unsupported Plastics Film and Sheet.
32622	Unsupported Profile Shape, Plastics Pipe and Fitting Manufacturing			
326221	Unsupported Plastics Profile Shape Manufacturing	R	3082	Unsupported Plastics Profile Shapes.
			*3089	Plastics Product, NEC (plastics sausage casings).
326222	Plastics Pipe and Pipe Fitting Manufacturing	R	3084	Plastics Pipe.
			*3089	Plastics Products, NEC (pipe fittings).
32623	Laminated Plastics Plate, Sheet and Shape Manufacturing.	E	3083	Laminated Plastics Plate, Sheet and Profile Shapes.
32624	Polystyrene Foam Product Manufacturing	N	*3086	Plastics Foam Products (polystyrene foam products).
32625	Urethane Foam Product Manufacturing	N	*3086	Plastics Foam Products (urethane foam products).
32626	Plastics Bottle Manufacturing	E	3085	Plastics Bottles.
32629	Other Plastics Product Manufacturing.			
326291	Plastics Plumbing Fixture Manufacturing	E	3088	Plastics Plumbing Fixtures.
326292	Resilient Floor Covering Manufacturing	R	*3069	Fabricated Rubber Products, NEC (rubber resilient floor coverings).
			3996	Linoleum, Asphalted-Felt-Base, and Other Hard Surface Floor Coverings, NEC.
326299	All Other Plastics Product Manufacturing	R	*3053	Gaskets, Packing and Sealing Devices (plastics gaskets, packing and sealing devices).
			*3993	Signs and Advertising Specialties (non-electric plastics signs).
			*3089	Plastics Products, NEC (except plastics pipe fittings and plastics sausage casings).
			*3999	Manufacturing Industries, NEC (plastics products such as combs, hair curlers, etc.).
327	Nonmetallic Mineral Product Manufacturing			
3271	Clay Product and Refractories Manufacturing			
32711	Pottery, Ceramic and Plumbing Fixture Manufacturing			
327111	Vitreous China Plumbing Fixture and China and Earthenware Fitting and Bathroom Accessory Manufacturing.	E	3261	Vitreous China Plumbing and China and Earthenware Fittings and Bathroom Accessories.
327112	Vitreous China, Fine Earthenware and Other Pottery Product Manufacturing.	N	3262	Vitreous China Table and Kitchen Articles.
			3263	Fine Earthenware (Whiteware) Table and Kitchen Articles.
			3269	Pottery Products, NEC.
327113	Porcelain Electrical Supply Manufacturing	E	3264	Porcelain Electrical Supplies.
32712	Clay Building Material and Refractories Manufacturing			
327121	Brick and Structural Clay Tile Manufacturing	E	3251	Brick and Structural Clay Tile.
327122	Ceramic Wall and Floor Tile Manufacturing	E	3253	Ceramic Wall and Floor Tile.
327123	Other Structural Clay Product Manufacturing	E	3259	Structural Clay Products, NEC.
327124	Clay Refractory Manufacturing	E	3255	Clay Refractories.
327125	Nonclay Refractory Manufacturing	E	3297	Nonclay Refractories.
3272	Glass, Glass Product and Glass Container Manufacturing			
32721	Glass and Glass Product Manufacturing			
327211	Flat Glass Manufacturing	E	3211	Flat Glass.
327212	Other Pressed and Blown Glass and Glassware Manufacturing.	E	3229	Pressed and Blown Glass and Glassware, NEC.
327213	Glass Product Manufacturing Made of Purchased Glass.	E	3231	Glass Products Made of Purchased Glass.
32722	Glass Container Manufacturing	E	3221	Glass Containers.
3273	Cement and Concrete Product Manufacturing			
32731	Hydraulic Cement Manufacturing	E	3241	Cement, Hydraulic.

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
32732	Ready-Mix Concrete Manufacturing	E	3273	Ready-Mixed Concrete.
32733	Concrete Pipe, Brick and Block Manufacturing			
327331	Concrete Block and Brick Manufacturing	E	3271	Concrete Block and Brick.
327332	Concrete Pipe Manufacturing	N	*3272	Concrete Products, Except Block and Brick (concrete pipe).
32739	Other Precast Concrete Product Manufacturing	N	*3272	Concrete Products, Except Block and Brick (concrete products, except dry mix concrete and pipe).
3274	Lime, Gypsum and Gypsum Product Manufacturing			
32741	Lime Manufacturing	E	3274	Lime.
32742	Gypsum and Gypsum Product Manufacturing	R	3275	Gypsum Products.
			*3299	Nonmetallic Mineral Products, NEC (moldings, ornamental and architectural plaster work).
3279	Miscellaneous Nonmetallic Mineral Product Manufacturing			
32791	Abrasive Product Manufacturing	R	*3291	Abrasive Products (except steel wool with or without soap).
32799	Other Miscellaneous Nonmetallic Mineral Product Manufacturing			
327991	Cut Stone and Stone Product Manufacturing	E	3281	Cut Stone and Stone Products.
327992	Ground or Treated Mineral and Earth Manufacturing	E	3295	Minerals and Earths, Ground or Otherwise Treated.
327993	Mineral Wool Manufacturing	E	3296	Mineral Wool.
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing.	R	*3272	Concrete Products, Except Block and Brick (dry mixture concrete).
			*3292	Asbestos Products (except brake pads and linings)
			*3299	Nonmetallic Mineral Products, NEC (except moldings, ornamental and architectural plaster work).
331	Primary Metal Manufacturing			
3311	Iron and Steel Mills and Ferroalloy Manufacturing			
33111	Iron and Steel Mills and Ferroalloy Manufacturing			
331111	Iron and Steel	N	*3312	Steel Works, Blast Furnaces (Including Coke Ovens), and Rolling Mills (except coke ovens not integrated with steel mills).
			*3399	Primary Metal Products, NEC (ferrous powder, paste, flakes, etc.).
331112	Electrometallurgical Ferroalloy Product Manufacturing.	R	*3313	Electrometallurgical Products, Except Steel (ferroalloys).
3312	Steel Products Made from Purchased Steel			
33121	Iron and Steel Pipe and Tube Manufacturing from Purchased Steel.	E	3317	Steel Pipe and Tubes.
33122	Rolling and Drawing of Purchased Steel			
331221	Cold-Rolled Steel Shape Manufacturing	E	3316	Cold-Rolled Steel Sheet, Strip and Bars.
331222	Steel Wire Drawing	R	*3315	Steel Wiredrawing and Steel Nails and Spikes (steel wire drawing).
3313	Smelting, Refining, Rolling, Drawing and Extruding of Aluminum			
33131	Smelting, Refining, Rolling, Drawing and Extruding of Aluminum			
331311	Alumina Manufacturing	N	*2819	Industrial Inorganic Chemicals, NEC (alumina).
331312	Primary Refining of Aluminum	E	3334	Primary Production of Aluminum.
331314	Secondary Smelting of Aluminum	N	*3341	Secondary Smelting and Refining of Nonferrous Metals (aluminum).
			*3399	Primary Metal Products, NEC (aluminum powder, paste, flakes, etc.).
331315	Aluminum Sheet, Plate and Foil Manufacturing	E	3353	Aluminum Sheet, Plate, and Foil.
331316	Aluminum Extruded Product Manufacturing	E	3354	Aluminum Extruded Products.
331319	Other Aluminum Rolling and Drawing	R	3355	Aluminum Rolling and Drawing, NEC.
			*3357	Drawing and Insulating of Nonferrous Wire (aluminum wire drawing).
3314	Smelting, Refining, Rolling, Drawing and Extruding of Other Nonferrous Metal			
33141	Smelting and Refining of Nonferrous Metal Except Aluminum			
331411	Primary Smelting and Refining of Cooper	E	3331	Primary Smelting and Refining of Copper.
331412	Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum.	E	3339	Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum.
331413	Secondary Smelting and Refining of Nonferrous Metals.	R	*3313	Electrometallurgical Products, Except Steel (nonferrous alloys).
			*3341	Secondary Smelting and Refining of Nonferrous Metals (except aluminum).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
			*3399	Primary Metal Products, NEC (nonferrous powders, flakes, paste, etc., except aluminum).
33142	Rolling, Drawing and Extruding Copper			
331421	Rolling, Drawing and Extruding Copper, Except Wire.	E	3351	Rolling, Drawing, and Extruding of Copper.
331422	Drawing of Copper Wire	N	*3357	Drawing and Insulating of Nonferrous Wire (copper wire drawing).
33143	Rolling, Drawing, and Extruding of Nonferrous Metals Except Copper or Aluminum.	R	3356	Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper and Aluminum.
			*3357	Drawing and Insulating of Nonferrous Wire (wire drawing except copper or aluminum).
3315	Metal Castings			
33151	Ferrous Castings			
331511	Gray, Malleable and Ductile Iron Foundries	R	3321	Gray and Ductile Iron Foundries.
			3322	Malleable Iron Foundries.
331512	Steel Investment Foundries	E	3324	Steel Investment Foundries.
331513	Steel Foundries, Except Investment	E	3325	Steel Foundries, NEC.
33152	Nonferrous Castings			
331521	Aluminum Die-Castings	E	3363	Aluminum Die-Castings.
331522	Nonferrous Die-Castings, Except Aluminum	E	3364	Nonferrous Die-Castings, Except Aluminum.
331524	Aluminum Foundries	E	3365	Aluminum Foundries.
331525	Copper Foundries	E	3366	Copper Foundries.
331526	Nonferrous Foundries, Except Aluminum and Copper.	E	3369	Nonferrous Foundries, Except Aluminum and Copper.
332	Fabricated Metal Product Manufacturing			
3321	Forging and Stamping			
33211	Forging and Stamping			
332111	Iron and Steel Forging	E	3462	Iron and Steel Forgings.
332112	Nonferrous Forging	E	3463	Nonferrous Forgings.
332114	Custom Roll Forming	N	*3449	Miscellaneous Structural Metal Work (custom roll forming).
332115	Crown and Closure Manufacturing	E	3466	Crowns and Closures.
332116	Metal Stamping	N	*3469	Metal Stampings, NEC (except kitchen utensils, pots and pans for cooking and coins).
332117	Powder Metallurgy Part Manufacturing	N	*3499	Fabricated Metal Products, NEC (powder metallurgy).
3322	Cutlery and Hand Tool Manufacturing			
33221	Cutlery and Hand Tool Manufacturing			
332211	Cutlery and Flatware Manufacturing, Except Precious.	N	3421	Cutlery.
			*3914	Silverware, Plated Ware, and Stainless Steel Ware (cutlery and flatware except precious).
332212	Hand and Edge Tool Manufacturing	R	3423	Hand and Edge Tools, Except Machine Tools and Handsaws.
			*3523	Farm Machinery and Equipment (hand hair clippers for animals).
			*3524	Lawn and Garden Tractors and Home Lawn and Garden Equipment (nonpowered lawnmowers).
			*3545	Cutting Tools, Machine Tools Accessories, and Machinist Precision Measuring Devices (precision measuring devices).
			*3799	Transportation Equipment, NEC (wheelbarrows).
			*3999	Manufacturing Industries, NEC (tape measures).
332213	Saw Blade and Handsaw Manufacturing	E	3425	Saw Blades and Handsaws.
332214	Kitchen Utensil, Pot and Pan Manufacturing	N	*3469	Metal Stampings, NEC (kitchen utensils, pots, and pans for cooking).
3323	Architectural and Structural Metal Manufacturing			
33231	Plate Work and Fabricated Structural Product Manufacturing			
332311	Prefabricated Metal Buildings and Component Manufacturing.	E	3448	Prefabricated Metal Building and Components.
332312	Fabricated Structural Metal Manufacturing	R	3441	Fabricated Structural Metal.
			*3449	Miscellaneous Structural Metal Work (fabricated bar joists and concrete reinforcing bars).
332313	Plate Work Manufacturing	N	*3443	Fabricated Plate Work (Boiler Shops) (fabricated plate work and metal weldments).
33232	Ornamental and Architectural Metal Product Manufacturing			
332321	Metal Door, Sash, Frame, Molding and Trim Manufacturing.	R	3442	Metal Doors, Sash, Frames, and Molding Trim.

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
			*3449	Miscellaneous Structural Metal Work (curtain wall).
332322	Sheet Metal Work Manufacturing	R	*3444	Sheet Metal Work (ducts, flumes, flooring, siding, dampers, etc.).
332323	Ornamental and Architectural Metal Work Manufacturing.	R	3446	Architectural and Ornamental Metal Work.
			*3449	Miscellaneous Structural Metal Work (metal plaster bases).
			*3523	Farm Machinery and Equipment (corrals, stalls, and holding gates).
3324	Boiler, Tank, and Shipping Container Manufacturing			
33241	Power Boiler and Heat Exchanger Manufacturing	N	*3443	Fabricated Plate Work (Boiler Shops) (power boilers and heat exchangers).
33242	Metal Tank Manufacturing (Heavy Gauge)	N	*3443	Fabricated Plate Work (Boiler Shops) (heavy gauge tanks).
33249	Metal Can, Box, and Other Metal Container (Light Gauge) Manufacturing			
332491	Metal Can Manufacturing	E	3411	Metal Cans.
332499	Other Metal Container Manufacturing	R	3412	Metal Shipping Barrels, Drums, Kegs, and Pails.
			*3429	Hardware, NEC (vacuum and insulated bottles, jugs, and chests).
			*3444	Sheet Metal Work (metal bins and vats).
			*3499	Fabricated Metal Products, NEC (metal boxes).
			*3537	Industrial Trucks, Tractors, Trailers, and Stackers (metal air cargo containers).
			*5085	Industrial Supplies (reconditioning barrels and drums).
3325	Hardware Manufacturing			
33251	Hardware Manufacturing	R	*3429	Hardware, NEC (hardware, except hose nozzles, and vacuum and insulated bottles, jugs and chests).
			*3499	Fabricated Metal Products, NEC (safe and vault locks).
3326	Spring,Wire and Turned Product Manufacturing			
33261	Spring and Wire Product Manufacturing			
332611	Steel Spring Manufacturing, Except Wire	E	3493	Steel Springs, Except Wire.
332612	Wire Spring Manufacturing	R	*3495	Wire Springs (except watch Manufacturing and clock springs).
332618	Other Fabricated Wire Product Manufacturing	R	*3315	Steel Wiredrawing and Steel Nails and Spikes (nails, spikes, paper clips and wire not made in wiredrawing plants).
			*3399	Primary Metal Products, NEC (nonferrous nails, brads, staples, etc.).
			3496	Miscellaneous Fabricated Wire Products.
33262	Turned Product Manufacturing			
332621	Precision Turned Product Manufacturing	E	3451	Screw Machine Products.
332622	Bolt, Nut, Screw, Rivet and Washer Manufacturing	E	3452	Bolts, Nuts, Screws, Rivets, and Washers.
3327	Machine Shops and Coating, Engraving, Heat Treating and Allied Activities			
33271	Machine Shops	N	*3599	Industrial and Commercial Machinery and Equipment, NEC (machine shops).
33272	Coating, Engraving, Heat Treating and Allied Activities			
332721	Metal Heat Treating	E	3398	Metal Heat Treating.
332722	Metal Coating, Engraving and Allied Services to Manufacturing, Except Jewelry and Silverware.	R	*3479	Coating, Engraving, and Engraving and Allied Services, NEC (except jewelry engraving and etching).
332723	Electroplating, Plating, Polishing, Anodizing and Coloring.	R	*3399	Primary Metal Products, NEC (laminating steel).
			3471	Electroplating, Plating, Polishing, Anodizing, and Coloring.
3329	Other Fabricated Metal Product Manufacturing			
33291	Metal Valve Manufacturing			
332911	Industrial Valve Manufacturing	E	3491	Industrial Valves.
332912	Fluid Power Valve and Hose Fittings Manufacturing	R	3492	Fluid Power Valves and Hose Fitting.
			*3728	Aircraft Parts and Auxiliary Equipment, NEC (fluid power aircraft subassemblies).
332913	Plumbing Fixture Fitting and Trim Manufacturing	R	*3432	Plumbing Fixture Fittings and Trim (except shower rods).
332919	Other Metal Valve and Pipe Fitting Manufacturing	R	*3429	Hardware, NEC (hose nozzles).
			*3494	Valves and Pipe Fittings, NEC (except metal pipe hangers and supports).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
			*3499	Fabricated Metal Products, NEC (metal aerosol valves).
33299	All Other Fabricated Metal Product Manufacturing			
332991	Ball and Roller Bearing Manufacturing	E	3562	Ball and Roller Bearings.
332992	Small Arms Ammunition Manufacturing	E	3482	Small Arms Ammunition.
332993	Ammunition Manufacturing, Except Small Arms	E	3483	Ammunition, Except for Small Arms.
332994	Small Arms Manufacturing	E	3484	Small Arms.
332995	Other Ordnance and Accessories, Manufacturing	E	3489	Ordnance and Accessory NEC.
332996	Fabricated Pipe and Pipe Fitting Manufacturing	E	3498	Fabricated Pipe and Pipe Fittings.
332997	Industrial Pattern Manufacturing	E	3543	Industrial Patterns.
332998	Enameled Iron and Metal Sanitary Ware Manufacturing.	E	3431	Enameled Iron and Metal Sanitary Ware.
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing.	R	*3053	Gaskets, Packing, and Sealing Devices (metal gaskets, packing and sealing Product devices).
			*3291	Abrasive Products (steel wool with or without soap).
			*3432	Plumbing Fixture Fittings and Trim (metal shower rods).
			*3494	Valves and Pipe Fittings, NEC (metal pipe hangers and supports).
			*3497	Metal Foil and Leaf (foil and foil containers).
			*3499	Fabricated Metal Products, NEC (other metal products).
			*3537	Industrial Trucks, Tractors, Trailers, and Stackers (metal pallets).
			*3599	Industrial and Commercial Machinery and Equipment, NEC (flexible metal hose).
			*3993	Signs and Advertising Specialties (non-electric metal signs).
			*3999	Manufacturing Industries, NEC (other miscellaneous metal products, such as combs, hair curlers, etc.).
333	Machinery Manufacturing			
3331	Agriculture, Construction, and Mining Machinery Manufacturing		.....	
33311	Agricultural Implement Manufacturing			
333111	Farm Machinery and Equipment Manufacturing	R	*3523	Farm Machinery and Equipment (except corrals, stalls, holding gates, hand clippers for animals, and farm conveyors/elevators).
333112	Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing.	R	*3524	Lawn and Garden Tractors and Home Lawn and Garden Equipment (except nonpowered lawnmowers).
33312	Construction Machinery Manufacturing	R	*3531	Construction Machinery and Equipment (except railway track maintenance equipment; winches, aerial work platforms; and automotive wreckers hoists).
33313	Mining and Oil and Gas Field Machinery Manufacturing			
333131	Mining Machinery and Equipment Manufacturing	E	3532	Mining Machinery and Equipment Equipment, Except Oil and Gas Field Machinery and Equipment.
333132	Oil and Gas Field Machinery and Equipment Manufacturing.	E	3533	Oil and Gas Field Machinery and Equipment.
3332	Industrial Machinery Manufacturing			
33321	Sawmill and Woodworking Machinery Manufacturing	E	3553	Woodworking Machinery.
33322	Rubber and Plastics Industry Machinery Manufacturing.	N	*3559	Special Industry Machinery, NEC (rubber and plastics manufacturing machinery).
33329	Other Industrial Machinery Manufacturing			
333291	Paper Industry Machinery Manufacturing	E	3554	Paper Industries Machinery.
333292	Textile Machinery Manufacturing	E	3552	Textile Machinery.
333293	Printing Machinery and Equipment Manufacturing	E	3555	Printing Trades Machinery and Equipment.
333294	Food Product Machinery Manufacturing	E	3556	Food Products Machinery.
333295	Semiconductor Machinery Manufacturing	N	*3559	Special Industry Machinery, NEC (semiconductor machinery manufacturing).
333298	All Other Industrial Machinery Manufacturing	R	*3559	Special Industry Machinery, NEC (except rubber and plastics manufacturing machinery, semiconductor manufacturing machinery, and automotive maintenance equipment).
			*3639	Household Appliances, NEC (household sewing machines).
3333	Commercial and Service Industry Machinery Manufacturing			

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
33331	Commercial and Service Industry Machinery Manufacturing			
333311	Automatic Vending Machine Manufacturing	E	3581	Automatic Vending Machines.
333312	Commercial Laundry, Drycleaning and Pressing Machine Manufacturing.	E	3582	Commercial Laundry, Drycleaning and Pressing Machines.
333313	Office Machinery Manufacturing	N	*3578	Calculating and Accounting Machinery, Except Electronic Computers (except point of sales terminals and funds transfer devices).
			*3579	Office Machines, NEC (except timeclocks, time stamps, pencil sharpeners, stapling machines, etc.).
333314	Optical Instrument and Lens Manufacturing	E	3827	Optical Instruments and Lenses.
333315	Photographic and Photocopying Equipment Manufacturing.	N	*3861	Photographic Equipment and Supplies (except photographic film, paper, plates and chemicals).
333319	Other Commercial and Service Industry Machinery Manufacturing.	R	*3559	Special Industry Machinery, NEC (automotive maintenance equipment).
			3589	Service Industry Machinery, NEC.
			*3599	Industrial and Commercial Machinery and Equipment, NEC (carnival amusement park equipment).
			*3699	Electrical Machinery, Equipment and Supplies, NEC (electronic teaching machines and flight simulators).
3334	Heating, Ventilation, Air-Conditioning and Commercial Refrigeration Manufacturing			
33341	Heating, Ventilation, Air-Conditioning and Commercial Refrigeration Manufacturing			
333411	Air Purification Equipment Manufacturing	N	*3564	Industrial and Commercial Fans and Blowers and Air Purification Equipment (air purification equipment).
333412	Industrial and Commercial Fan and Blower Manufacturing.	R	*3564	Industrial and Commercial Fans and Blowers and Air Purification Equipment (fans and blowers).
333414	Heating Equipment Manufacturing, Except Electric and Warm Air Furnaces.	R	3433	Heating Equipment, Except Electric and Warm Air Furnaces.
			*3634	Electric Housewares and Fans (wall and baseboard heating units for permanent installation).
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.	R	*3443	Fabricated Plate Work (Boiler Shops) (metal cooling towers).
			*3585	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment (except water coolers).
3335	Metalworking Machinery Manufacturing			
33351	Metalworking Machinery Manufacturing			
333511	Industrial Mold Manufacturing	R	*3544	Special Dies and Tools, Die Sets, Jigs and Fixtures, and Industrial Molds (industrial molds).
333512	Machine Tool Manufacturing, Metal Cutting Types	E	3541	Machine Tools, Metal Cutting Type.
333513	Machine Tool Manufacturing, Metal Forming Types	E	3542	Machine Tools, Metal Forming type.
333514	Special Die and Tool, Die Set, Jig and Fixture Manufacturing.	R	*3544	Special Dies and Tools, Die Set, Jigs and Fixtures, and Industrial Molds (except molds).
333515	Cutting Tool and Machine Tool Accessory Manufacturing.	R	*3545	Cutting Tools, Machine Tool Accessories, and Machinists' Precision Measuring Devices (except precision measuring device).
333516	Rolling Mill Machinery and Equipment Manufacturing.	E	3547	Rolling Mill Machinery and Equipment.
333518	Other Metalworking Machinery Manufacturing	E	3549	Metalworking Machinery, NEC.
3336	Engine, Turbine, and Power Transmission Equipment Manufacturing			
33361	Engine, Turbine and Power Transmission Equipment Manufacturing			
333611	Steam, Gas, and Hydraulic Turbines and Turbine Generator Set Unit Manufacturing.	E	3511	Steam, Gas, and Hydraulic Turbines, and Turbine Generator Set Units.
333612	Speed Changer, Industrial High-Speed Drive and Gear Manufacturing.	E	3566	Speed Changers, Industrial High-Speed Drives, and Gears.
333613	Mechanical Power Equipment Manufacturing	E	3568	Mechanical Power Transmission Equipment, NEC.
333618	Other Engine Equipment Manufacturing	R	*3519	Internal Combustion Engines, NEC (except stationary engine radiators).
			*3699	Electrical Machinery, Equipment and Supplies, NEC (outboard electric motors).
3339	Other General Purpose Machinery Manufacturing			
33391	Pump and Compressor Manufacturing			

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
333911	Pump and Pumping Equipment Manufacturing	R	3561	Pumps and Pumping Equipment.
			*3743	Railroad Equipment (locomotive fuel lubricating or cooling medium pumps).
333912	Air and Gas Compressor Manufacturing	E	3563	Air and Gas Compressors.
333913	Measuring and Dispensing Pump Manufacturing	E	3586	Measuring and Dispensing Pumps.
33392	Material Handling Equipment Manufacturing			
333921	Elevator and Moving Stairway Manufacturing	E	3534	Elevators and Moving Stairways.
333922	Conveyor and Conveying Equipment Manufacturing	R	*3523	Farm Machinery and Equipment (farm conveyors and elevators).
			3535	Conveyors and Conveying Equipment.
333923	Overhead Traveling Crane, Hoist and Monorail System Manufacturing.	R	3536	Overhead Traveling Cranes, Hoists, and Monorail Systems.
			*3531	Construction Machinery and Equipment (winches, aerial work platforms, and automobile wrecker hoists).
333924	Industrial Truck, Tractor, Trailer and Stacker Machinery Manufacturing.	R	*3537	Industrial Trucks, Tractors, Trailers, and Stackers and Stacker (except metal pallets and metal air cargo containers).
33399	All Other General Purpose Machinery Manufacturing.			
333991	Power-Driven Hand Tool Manufacturing	E	3546	Power-Driven Handtools.
333992	Welding and Soldering Equipment Manufacturing	R	*3548	Electric and Gas Welding and Soldering Equipment (except transformers for arc-welding).
333993	Packaging Machinery Manufacturing	E	3565	Packaging Machinery.
333994	Industrial Process Furnace and Oven Manufacturing	E	3567	Industrial Process Furnaces and Ovens.
333995	Fluid Power Cylinder and Actuator Manufacturing	E	3593	Fluid Power Cylinders and Actuators.
333996	Fluid Power Pump and Motor Manufacturing	E	3594	Fluid Power Pumps and Motors.
333997	Scale and Balance Manufacturing, Except Laboratory.	E	3596	Scales and Balances, Except Laboratory.
333999	All Other General Purpose Machinery Manufacturing	R	*3599	Industrial and Commercial Machinery and Equipment, NEC (other industrial and commercial machinery and equipment).
			3569	General Industrial Machinery and Equipment, NEC.
334	Computer and Electronic Product Manufacturing			
3341	Computer and Peripheral Equipment Manufacturing			
33411	Computer and Peripheral Equipment Manufacturing			
334111	Electronic Computer Manufacturing	E	3571	Electronic Computers.
334112	Computer Storage Device Manufacturing	E	3572	Computer Storage Devices.
334113	Computer Terminal Manufacturing	E	3575	Computer Terminals.
334119	Other Computer Peripheral Equipment Manufacturing.	R	3577	Computer Peripheral Equipment, NEC.
			*3578	Calculating and Accounting Machines, Except Electronic Computers (point of sale terminals and fund transfer devices).
			*3699	Electrical Machinery, Equipment and Supplies, NEC (bar code scanners).
3342	Communication Equipment Manufacturing			
33421	Telephone Apparatus	R	*3661	Telephone and Telegraph Manufacturing Apparatus (except telephone transformers and consumer external modems).
33422	Broadcast and Studio Equipment for Radio, TV, and Cable Manufacturing	R	3663	Radio and Television Broadcasting and Communication Equipment.
			*3679	Electronic Components, NEC (communication equipment).
33429	Other Communication Equipment Manufacturing	E	3669	Communications Equipment, NEC.
3343	Audio and Video Equipment Manufacturing			
33431	Audio and Video Manufacturing Equipment	E	3651	Household Audio and Video Equipment.
3344	Semiconductor and Electronic Component Manufacturing			
33441	Semiconductor and Electronic Component Manufacturing			
334411	Electron Tube Manufacturing	E	3671	Electron Tubes.
334412	Printed Circuit Board Manufacturing	E	3672	Printed Circuit Boards.
334413	Semiconductor and Related Device Manufacturing	E	3674	Semiconductors and Related Devices.
334414	Electronic Capacitor Manufacturing	E	3675	Electronic Capacitors.
334415	Electronic Resistor Manufacturing	E	3676	Electronic Resistors.
334416	Electronic Coil, Transformer, and Other Inductor Manufacturing	R	*3661	Telephone and Telegraph Apparatus (telephone transformers).
			3677	Electronic Coils, Transformers, and Other Inductors.

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
			*3825	Instruments for Measuring and Testing of Electricity and Electrical Signals (portable instrument transformers).
334417	Electronic Connector Manufacturing	E	3678	Electronic Connectors.
334419	Other Electronic Component Manufacturing	R	*3661	Telephone and Telegraph Apparatus (consumer external modems).
			*3679	Electronic Components, NEC (other electronic components including loaded PC boards).
3345	Navigational, Measuring, Medical, and Control Instrument Manufacturing			
33451	Navigational, Measuring, Medical, and Control Instrument Manufacturing			
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing	R	*3842	Orthopedic, Prosthetic and Surgical Appliances and Supplies (electronic hearing aids).
			3845	Electromedical and Electrotherapeutic Apparatus.
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instrument Manufacturing	E	3812	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instruments.
334512	Automatic Control for Regulating Residential and Commercial Environment and Appliances Manufacturing	E	3822	Automatic Controls for Regulating Residential and Commercial Environments and Appliances.
334513	Industrial Instruments for Measurement, Display, and Control of Process Variables; and Related Product Manufacturing	E	3823	Industrial Instruments for Measurement, Display, and Control of Process Variables, and Related Product.
334514	Totalizing Fluid Meter and Counting Device Manufacturing	E	3824	Totalizing Fluid Meters and Counting Devices.
334515	Instruments for Measuring and Testing of Electricity and Electrical Signal Manufacturing	R	*3825	Instruments for Measuring and Testing of Electricity and Electrical Signals (except portable instrument transformers).
334516	Analytical Instrument Manufacturing	E	3826	Laboratory Analytical Instruments.
334517	X-Ray Apparatus and Tubes and Related Irradiation Apparatus Manufacturing.	E	3844	X-Ray Apparatus and Tubes and Related Irradiation Apparatus.
334518	Watch, Clock, and Part Manufacturing	R	*3495	Wire Springs (clock and watch springs).
			*3579	Office Machines, NEC (time clocks and other time recording devices).
			3873	Watches, Clocks, Clockwork Operated Devices, and Parts.
334519	Other Measuring and Controlling Device Manufacturing	R	*3829	Measuring and Controlling Devices, NEC (except medical thermometers).
3346	Manufacturing and Reproduction of Magnetic and Optical Media			
33461	Manufacturing and Reproduction of Magnetic and Optical Media			
334611	Reproduction of Software	N	*7372	Prepackaged Software (reproduction of software).
334612	Prerecorded Compact Disk (Except Software), Tape and Record Manufacturing	N	*3652	Phonograph Records and Prerecorded Audio Tapes and Disks (reproduction of all other media except video).
			*7819	Services Allied to Motion Picture Production (reproduction of video).
334613	Magnetic and Optical Recording Media Manufacturing	E	3695	Magnetic and Optical Recording Media.
335	Electrical Equipment, Appliance and Component Manufacturing			
3351	Electric Lighting Equipment and Sign Manufacturing			
33511	Electric Lamp Bulb and Part Manufacturing	E	3641	Electric Lamp Bulbs and Tubes.
33512	Electric Sign and Lighting Fixture Manufacturing			
335121	Electric Sign Manufacturing	N	*3993	Signs and Advertising Specialties (electric signs).
335122	Residential Electric Lighting Fixture Manufacturing	E	3645	Residential Electric Lighting Fixtures.
			*3999	Manufacturing Industries, NEC (lamp shades of paper or textile)
335123	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing.	E	3646	Commercial, Industrial and Institutional Electric Lighting Fixtures.
335129	Other Lighting Equipment Manufacturing	R	3648	Lighting Equipment, NEC.
			*3699	Electrical Machinery, Equipment, and Supplies, NEC(Christmas tree lighting sets and electric insect lamps).
3352	Household Appliance Manufacturing			
33521	Small Electrical Appliance Manufacturing			

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
335211	Electric Houseware and Fan Manufacturing	R	*3634	Electric Housewares and Fans (except wall and baseboard heating units for permanent installation).
335212	Household Vacuum Cleaner Manufacturing	R	3635	Household Vacuum Cleaners.
			*3639	Household Appliances, NEC (floor waxing and floor polishing machines).
33522	Major Appliance Manufacturing			
335221	Household Cooking Appliance Manufacturing	E	3631	Household Cooking Equipment.
335222	Household Refrigerator and Home and Farm Freezer Manufacturing.	R	*3585	Refrigeration and Heating Equipment (water coolers).
			3632	Household Refrigerators and Home and Farm Freezers.
335224	Household Laundry Equipment Manufacturing	E	3633	Household Laundry Equipment.
335228	Other Household Appliance Manufacturing	R	*3639	Household Appliances, NEC (except floor waxing and floor polishing machines, and household sewing machines).
3353	Electrical Equipment Manufacturing			
33531	Electrical Equipment Manufacturing			
335311	Power, Distribution and Specialty Transformer Manufacturing.	R	*3548	Electric and Gas Welding and Soldering Equipment (transformers for arc-welders).
			3612	Power, Distribution, and Speciality Transformers.
335312	Motor and Generator Manufacturing	R	3621	Motors and Generators.
			*7694	Armature Rewinding Shops (remanufacturing).
335313	Switchgear and Switchboard Apparatus Manufacturing.	E	3613	Switchgear and Switchboard Apparatus.
335314	Relay and Industrial Control Manufacturing	E	3625	Relays and Industrial Controls.
3359	Other Electrical Equipment and Component Manufacturing			
33591	Accumulator and Battery Manufacturing			
335911	Storage Battery Manufacturing	E	3691	Storage Batteries.
335912	Dry and Wet Primary Battery Manufacturing	E	3692	Primary Batteries, Dry and Wet.
33592	Communication and Energy Wire Manufacturing			
335921	Fiber Optic Cable Manufacturing	N	*3357	Drawing and Insulating of Manufacturing Nonferrous Wire (fiber optic cable-insulating only).
335929	Other Communication and Energy Wire Manufacturing.	N	*3357	Drawing and Insulating of Nonferrous Wire (communication and energy wire, except fiber optic-insulating only).
33593	Accessories and Conductors for Carrying Current Manufacturing			
335931	Current-Carrying Wiring Device Manufacturing	E	3643	Current-Carrying Wiring Devices.
335932	Noncurrent-Carrying Wiring Device Manufacturing	E	3644	Noncurrent-Carrying Wiring Devices.
33599	All Other Electrical Equipment and Component Manufacturing			
335991	Carbon and Graphite Product Manufacturing	E	3624	Carbon and Graphite Products.
335999	All Other Electrical Industrial Equipment and Supply Manufacturing.	R	3629	Electrical Industgrial Apparatus, NEC.
			*3699	Electrical Machinery, Equipment, and Supplies, NEC (other electrical industrial apparatus).
336	Transportation Equipment Manufacturing			
3361	Motor Vehicle Manufacturing			
33611	Passenger Car and Light Truck Manufacturing	N	*3711	Motor Vehicles and Passenger Car Bodies (passenger car and light duty trucks).
33612	Heavy Duty Truck Manufacturing	N	*3711	Motor Vehicles and Passenger Manufacturing Car Bodies (heavy duty trucks).
3362	Truck and Bus Body and Trailer Manufacturing			
33621	Truck and Bus Body and Trailer Manufacturing			
336211	Truck and Bus Body Manufacturing	R	*3711	Motor Vehicles and Passenger Car Bodies (kit car and other passenger car bodies).
			3713	Truck and Bus Bodies.
			*3714	Motor Vehicle Parts and Accessories (dumptruck lifting mechanisms and fifth wheels).
336212	Truck Trailer Manufacturing	E	3715	Truck Trailers.
336213	Motor Home Manufacturing	E	3716	Motor Homes.
336214	Travel Trailer and Camper Manufacturing	R	3792	Travel Trailers and Campers.
			*3799	Transportation Equipment, NEC (automobile, boat, utility and light truck trailers).
3363	Motor Vehicle Part Manufacturing			
33631	Motor Vehicle Gasoline Engine and Engine Part Manufacturing			

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
336311	Carburetor, Piston, Piston Ring and Valve Manufacturing.	E	3592	Carburetors, Pistons, Piston Rings, and Valves.
336312	Engine and Engine Part Manufacturing	N	*3714	Motor Vehicle Parts and Accessories (gasoline engines and engine parts including rebuilt).
33632	Motor Vehicle Electrical and Electronic Equipment Manufacturing			
336321	Vehicular Lighting Equipment Manufacturing	E	3647	Vehicular Lighting Equipment.
336322	Motor Vehicle Electrical and Electronic Equipment Manufacturing.	R	*3679	Electronic Components, NEC (electronic control modular chips for motor vehicles).
			3694	Electrical Equipment for Internal Combustion Engines.
			*3714	Motor Vehicle Parts and Accessories (wiring harness sets, other than ignition; block heaters and battery heaters; instrument board assemblies; permanent defrosters; windshield washer-wiper mechanisms; cruise control mechanisms; and other electrical equipment for internal combustion engines).
33633	Motor Vehicle Steering and Suspension Component (Except Springs) Manufacturing.	N	*3714	Motor Vehicle Parts and Accessories (steering and suspension parts).
33634	Motor Vehicle Brake System Manufacturing	N	*3292	Asbestos Products (asbestos brake linings and pads).
			*3714	Motor Vehicle Parts and Accessories (brake and brake systems, including assemblies).
33635	Motor Vehicle Transmission and Power Train Part Manufacturing.	N	*3714	Motor Vehicle Parts and Accessories (transmissions and power train parts, including rebuilding).
33636	Motor Vehicle Fabric Accessory and Seat Manufacturing.	N	*2396	Automotive Trimmings, Apparel Findings, and Related Products (textile motor vehicle trimmings).
			*2399	Fabricated Textile Products, NEC (seat belts, and seat and tire covers).
			*2531	Public Building and Related Furniture (seats for motor vehicles).
33637	Motor Vehicle Metal Stamping	E	3465	Automotive Stampings.
33639	Other Motor Vehicle Part Manufacturing	R	*3519	Internal Combustion Engines, NEC (stationary engine radiators).
			*3599	Industrial and Commercial Machinery and Equipment, NEC (gasoline, oil and intake filters for internal combustion engines, except for motor vehicles).
			*3714	Motor Vehicle Parts and Accessories (except truck and bus bodies, trailers, engine and engine parts, motor vehicle electrical and electronic equipment, motor vehicle steering and suspension components, motor vehicle brake systems, and motor vehicle transmission and power train parts).
3364	Aerospace Product and Part Manufacturing			
33641	Aerospace Product and Part Manufacturing			
336411	Aircraft Manufacturing	E	3721	Aircraft.
336412	Aircraft Engine and Engine Part Manufacturing	E	3724	Aircraft Engines and Engine Parts.
336413	Other Aircraft Part and Auxiliary Equipment Manufacturing.	R	*3728	Aircraft Parts and Auxiliary Equipment, NEC (except fluid power aircraft subassemblies).
336414	Guided Missile and Space Vehicle Manufacturing	E	3761	Guided Missiles and Space Vehicles.
336415	Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Part Manufacturing.	E	3764	Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts.
336419	Other Guided Missile and Space Vehicle Part and Auxiliary Equipment Manufacturing.	E	3769	Guided Missile and Space Vehicle Parts and Equipment Auxiliary.
3365	Railroad Rolling Stock Manufacturing			
33651	Railroad Rolling Stock Manufacturing	R	*3531	Construction Machinery and Equipment (railway track maintenance equipment).
			*3743	Railroad Equipment (except locomotive fuel lubricating or cooling medium pumps).
3366	Ship and Boat Building			
33661	Ship and Boat Building			
336611	Ship Building and Repairing	E	3731	Ship Building and Repairing.
336612	Boat Building	R	*3732	Boat Building and Repairing (boat building).
3369	Miscellaneous Transportation Equipment Manufacturing			
33691	Miscellaneous Transportation Equipment Manufacturing			

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
336911	Motorcycle, Bicycle and Part Manufacturing	R	*3944	Games, Toys, and Children's Vehicles, Except Dolls and Bicycles (metal tricycles).
			3751	Motorcycles, Bicycles and Parts.
336912	Military Armored Vehicle, Tank and Tank Component Manufacturing.	R	*3711	Motor Vehicles and Passenger Car Bodies (military armored vehicles).
			3795	Tanks and Tank Components.
336919	Other Miscellaneous Transportation Equipment Manufacturing.	R	*3799	Transportation Equipment, NEC (except automobile, boat, utility light truck trailers, and wheelbarrows).
337	Furniture Manufacturing			
3371	Furniture Manufacturing			
33711	Mattress Manufacturing	E	2515	Mattresses, Foundations, and Convertible Beds.
33712	Blind and Shade Manufacturing	E	2591	Drapery Hardware and Window Blinds and Shades.
33713	Wood Furniture Manufacturing			
337131	Wood Household Furniture Manufacturing, Except Upholstered.	R	*2426	Hardwood Dimension and Flooring Mills (wooden chair frames and chair seats).
			*2499	Wood Products, NEC (wood laundry hampers).
			2511	Wood Household Furniture, Except Upholstered.
			2517	Wood Television, Radio, Phonograph and Sewing Machine Cabinets.
			*5712	Furniture Stores (custom made wood household furniture except cabinets).
337132	Upholstered Wood Household Furniture Manufacturing.	R	2512	Wood Household Furniture, Upholstered.
			*2426	Hardwood Dimension and Flooring Mills (chair frames).
			*5712	Furniture (custom made upholstered wood household furniture except cabinets).
337133	Wood Kitchen Cabinet Manufacturing	R	2434	Wood Kitchen Cabinets.
			*5712	Furniture Stores (custom wood cabinets).
337134	Wood Office and Public Building Furniture Manufacturing.	R	*2426	Hardwood Dimension and Flooring Mills (office chair frames and chair seats).
			2521	Wood Office Furniture.
			*2531	Public Building and Related Furniture (wood furniture for public buildings).
			*2599	Furniture and Fixtures, NEC (wood industrial work benches and stools, and other wood furniture such as ship furniture).
			*3952	Lead Pencils, Crayons, and Artists' Materials (wood drafting tables and boards).
337135	Wood Office and Fixture, Partition, Shelving and Locker Manufacturing.	R	*2541	Wood Office and Store Fixtures, Partitions, Shelving and Lockers (except custom architectural woodwork, millwork, and fixtures).
337136	Custom Architectural Woodwork, Millwork and Fixtures.	N	*2541	Wood Office and Store Fixtures, Partitions, Shelving, and Lockers (architectural woodwork, millwork, and fixtures).
33714	Metal Furniture Manufacturing			
337143	Metal Household Furniture Manufacturing	R	2514	Metal Household Furniture.
			*3499	Fabricated Metal Products, NEC (metal furniture frames and parts, household).
337144	Metal Office and Public Building Furniture Manufacturing.	R	*2522	Office Furniture, Except Wood (metal office furniture).
			*2531	Public Building and Related Furniture (metal furniture for public buildings).
			*2599	Furniture and Fixtures, NEC (metal industrial work benches and stools, and other metal furniture such as ship furniture).
			*3499	Fabricated Metal Products, NEC (metal furniture frames and parts, office).
			*3952	Lead Pencils, Crayons, and Artists' Materials (metal drafting tables and boards).
			*3999	Manufacturing Industries, NEC (barber and beauty chairs).
337145	Metal Office and Fixture, Partition, Shelving and Locker Manufacturing.	R	*2542	Office and Store Fixtures, Partitions, Shelving and Lockers, Except Wood (metal office and store fixtures, partitions, shelving, and lockers).
33719	Other Furniture Manufacturing	R	*2499	Wood Products, NEC (laundry hampers made from rattan, reed or willow).
			2519	Household Furniture, NEC.
			*2522	Office Furniture, Except Wood (office furniture not made of wood or metal).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
			*2531	Public Building and Related Furniture (other furniture not made of wood or metal for public buildings).
			*2542	Office and Store Fixtures, Partitions, Shelving and Lockers, Except Wood (office and store fixtures, partitions, shelving, and lockers not made of metal).
			*2599	Furniture and Fixtures, NEC (other furniture or fixtures).
339	Miscellaneous Manufacturing			
3391	Medical Equipment and Supply Manufacturing.			
33911	Medical Equipment and Supply Manufacturing.			
339111	Laboratory Apparatus and Furniture Manufacturing	E	3821	Laboratory Apparatus and Furniture.
339112	Surgical and Medical Instrument Manufacturing	E	3841	Surgical and Medical Instruments and Apparatus.
339113	Surgical Appliance and Supply Manufacturing	R	*2599	Furniture and Fixtures, NEC (hospital beds).
			*3829	Measuring and Controlling Devices, NEC (medical thermometers).
			*3842	Orthopedic, Prosthetic, and Surgical Appliances and Supplies (except electronic hearing aids).
339114	Dental Equipment and Supply Manufacturing	E	3843	Dental Equipment and Supplies.
339115	Opthalmic Good Manufacturing	E	3851	Opthalmic Goods.
339116	Dental Laboratories	E	8072	Dental Laboratories.
339117	Eyeglass and Contact Lens Manufacturing	E	*5995	Optical Goods Stores (grinding of lenses to prescription, except one hour labs).
3392	Cotton Ginning			
33921	Cotton Ginning	E	0724	Cotton Ginning.
3399	Other Miscellaneous Manufacturing			
33991	Jewelry and Silverware Manufacturing			
339911	Jewelry Manufacturing, Including Precious Metal	R	*3469	Metal Stamping, NEC (stamping coins).
			*3479	Coating, Engraving, and Allied Services, NEC (jewelry engraving and etching, including precious metal).
			3911	Jewelry, Precious Metal
339912	Silverware and Plated Ware Manufacturing	R	*3479	Coating, Engraving, and Allied Services, NEC (silver and plated ware engraving and etching).
			*3914	Silverware, Plated Ware, and Stainless Steel Ware (except nonprecious metal cutlery and flatware)
339913	Jewelers' Material and Lapidary Work Manufacturing.	E	3915	Jewelers' Findings and Materials, and Lapidary Work.
339914	Costume Jewelry and Novelty Manufacturing	R	*3479	Coating, Engraving, and Allied Services, NEC (costume jewelry engraving and etching).
			*3499	Fabricated Metal Products, NEC (trophies of nonprecious metals)
			3961	Costume Jewelry and Costume Novelties, Except Precious Metal.
33992	Sporting and Athletic Good Manufacturing	E	3949	Sporting and Athletic Goods, NEC.
33993	Doll, Toy and Game Manufacturing			
339931	Doll and Stuffed Toy Manufacturing	E	3942	Dolls and Stuffed Toys.
339932	Game, Toy and Children's Vehicle Manufacturing	R	*3944	Games, Toys, and Children's Vehicles, Except Dolls and Bicycles (except metal tricycles).
33994	Office Supply , Except Paper, Manufacturing			
339941	Pen and Mechanical Pencil Manufacturing	E	3951	Pens, Mechanical Pencils, and Parts.
339942	Lead Pencil and Art Good Manufacturing	R	*2531	Public Buildings and Related Furniture (blackboards).
			*3579	Office Machines, NEC (pencil sharpeners, staplers and other office equipment).
			*3952	Lead Pencils, Crayons, and Artists' Materials (except drawing and india ink, and drafting tables and boards).
339943	Marking Device Manufacturing	E	3953	Marking Devices.
339944	Carbon Paper and Inked Ribbon Manufacturing	E	3955	Carbon Paper and Inked Ribbons.
33999	All Other Miscellaneous Manufacturing			
339991	Musical Instrument Manufacturing	E	3931	Musical Instruments.
339992	Fastener, Button, Needle and Pin Manufacturing	R	3965	Fasteners, Buttons, Needles, and Pins.
			*3131	Boot and Shoe Cut Stock and Findings (metal buckles).
339993	Broom, Brush and Mop Manufacturing	R	3991	Brooms and Brushes.
			*2392	Housefurnishings, Except Curtains and Draperies (mops, floor and dust).
339994	Burial Casket Manufacturing	E	3995	Burial Caskets.

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
339999	All Other Miscellaneous Manufacturing	R	*2499	Wood Products, NEC (mirror and picture frames).
			*3999	Manufacturing Industries, NEC (other miscellaneous products not specially provided for previously).
43	Wholesale Trade			
431	Wholesale Trade, Durable Goods			
4311	Motor Vehicles and Motor Vehicle Parts and Supplies			
43111	Automobiles and Other Motor Vehicles	E	5012	Automobiles and Other Motor Vehicles.
43112	Motor Vehicles Supplies and New Parts	R	*5013	Motor Vehicle Supplies and New Parts (except parts sold via retail methods).
43113	Tires and Tubes	R	*5014	Tires and Tubes (except tires sold via retail method).
43114	Motor Vehicle Parts, Used	E	5015	Motor Vehicle Parts, Used.
4312	Furniture and Home Furnishings			
43121	Furniture	R	*5021	Furniture (except furniture sold via retail method).
43122	Home Furnishings	R	*5023	Homefurnishings (except homefurnishings sold via retail method).
4313	Lumber and Other Construction Materials			
43111	Lumber, Plywood, Millwork and Wood Panels	R	*5031	Lumber, Plywood, Millwork, and Wood Panels (except construction materials sold via retail method).
			*5211	Lumber and Other Building Materials Dealers—Retail (construction materials sold by establishments "known as retail in the trade" selling via wholesale method).
43132	Brick, Stone and Related Construction Materials	R	*5032	Brick, Stone, and Related Construction Materials (except construction materials sold via retail method).
43133	Roofing, Siding and Insulation Materials	E	5033	Roofing, Siding, and Insulation Materials.
43139	Other Construction Materials	R	*5039	Construction Materials, NEC (sold via wholesale method).
4314	Professional and Commercial Equipment and Supplies			
43141	Photographic Equipment and Supplies	E	5043	Photographic Equipment and Supplies.
43142	Office Equipment	E	5044	Office Equipment.
43143	Computers and Computer Peripherals Equipment and Software.	R	*5045	Computers and Computer Peripherals Equipment and Software (except computers, equipment, and software sold via retail method).
43144	Other Commercial Equipment	E	5046	Commercial Equipment, NEC.
43145	Medical, Dental and Hospital Equipment and Supplies.	R	*5047	Medical, Dental and Hospital Equipment and Supplies (except medical, dental, and hospital equipment and supplies sold via retail method).
43146	Ophthalmic Goods	E	5048	Ophthalmic Goods.
43149	Other Professional Equipment and Supplies	R	*5049	Professional Equipment and Supplies, NEC (except religious and school supplies sold via retail method).
4315	Metals and Minerals, Except Petroleum			
43151	Metals Service Centers and Offices	E	5051	Metals Service Centers and Offices.
43152	Coal and Other Minerals and Ores	E	5052	Coal and Other Mineral and Ores.
4316	Electrical Goods			
43161	Electrical Apparatus and Equipment, Wiring Supplies and Construction Materials.	R	*5063	Electrical Apparatus and Equipment, Wiring Supplies and Construction Materials (except electrical supplies sold via retail method).
43162	Electrical Appliances, Television and Radio Sets	E	5064	Electrical Appliances, Television and Radio Sets.
43169	Other Electronic Parts and Equipment	E	5065	Electronic Parts and Equipment, NEC.
4317	Hardware, and Plumbing and Heating Equipment and Supplies.			
43171	Hardware	E	5072	Hardware.
43172	Plumbing and Heating Equipment and Supplies (Hydronics).	R	*5074	Plumbing and Heating Equipment and Supplies (Hydronics)(except plumbing equipment sold via retail method).
43173	Warm Air Heating and Air-Conditioning Equipment and Supplies.	E	5075	Warm Air Heating and Air-Conditioning Equipment and Supplies.
43174	Refrigeration Equipment and Supplies	E	5078	Refrigeration Equipment and Supplies.
4318	Machinery, Equipment and Supplies	E	5078	Refrigeration Equipment and Supplies.
43181	Construction and Mining (Except Petroleum) Machinery and Equipment.	E	5082	Construction and Mining (Except Petroleum) Machinery and Equipment.
43182	Farm and Garden Machinery and Equipment	R	*5083	Farm and Garden Machinery and Equipment (except lawn and garden equipment sold via retail method).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
43183	Industrial Machinery and Equipment	R	5084	Industrial Machinery and Equipment.
			*5085	Industrial Supplies (fluid power accessories).
43184	Industrial Supplies	R	*5085	Industrial Supplies (except fluid power accessories and reconditioning barrels).
43185	Service Establishment Equipment and Supplies	R	*5087	Service Establishment Equipment and Supplies (except sales of the service establishment equipment and supplies sold via retail method).
43186	Transportation Equipment and Supplies, Except Motor Vehicles.	E	5088	Transportation Equipment and Supplies, Except Motor Vehicles.
4319	Miscellaneous Durable Goods			
43191	Sporting and Recreational Goods and Supplies	E	5091	Sporting and Recreational Goods and Supplies.
43192	Toys and Hobby Goods and Supplies	E	5092	Toys and Hobby Goods and Supplies.
43193	Recyclable Materials	E	5093	Scrap and Waste Materials.
43194	Jewelry, Watches, Precious Stones, and Precious Metals.	E	5094	Jewelry, Watches, Precious Stones, and Precious Metals.
43199	Other Miscellaneous Nondurable Goods	R	5099	Durable Goods, NEC.
			7822	Motion Picture and Video Tape Distribution (prerecorded video tapes—distribution).
432	Wholesale Trade Nondurable Goods			
4321	Paper and Paper Products			
43211	Printing and Writing Paper	E	5111	Printing and Writing Paper.
43212	Stationery and Office Supplies	R	*5112	Stationery and Office Supplies (except stationery and office supplies sold via retail method).
43213	Industrial and Personal Service Paper	E	5113	Industrial and Personal Service Paper.
4322	Drugs, Drug Proprietaries and Druggists' Sundries			
43221	Drugs, Drug Proprietaries and Druggists' Sundries	E	5122	Drugs, Drug Proprietaries, and Druggists' Sundries.
4323	Apparel, Piece Goods, and Notions			
43231	Piece Goods, Notions and Other Dry Goods	R	*5131	Piece Goods, Notions, and Other Dry Goods (except piece goods coverters).
43232	Men's and Boys' Clothing and Furnishings	E	5136	Men's and Boys' Clothing and Furnishings.
43233	Women's, Children's, and Infants' and Accessories	E	5137	Women's, Children's, and Infants' Clothing and Accessories.
43234	Footwear	E	5139	Footwear.
4324	Groceries and Related Products			
43241	Groceries, General Line	E	5141	Groceries, General Line.
43242	Packaged Frozen Foods	E	5142	Packaged Frozen Foods.
43243	Dairy Products, Except Dried or Canned	E	5143	Dairy Products, Except Dried or Canned.
43244	Poultry and Poultry Products	E	5144	Poultry and Poultry Products.
43245	Confectionery	E	5145	Confectionery.
43246	Fish and Seafoods	E	5146	Fish and Seafoods.
43247	Meats and Meat Products	R	*5147	Meats and Meat Products (except boxed beef).
43248	Fresh Fruits and Vegetables	E	5148	Fresh Fruits and Vegetables.
43249	Other Groceries and Related Products	E	5149	Groceries and Related Products, NEC.
4325	Farm Product Raw Materials			
43251	Grain and Field Beans	E	5153	Grain and Field Beans.
43252	Livestock	E	5154	Livestock.
43259	Other Farm Product Raw Materials	E	5159	Farm-Product Raw Materials, NEC.
4326	Chemicals and Allied Products			
43261	Plastics Materials and Basic Forms and Shapes	E	5162	Plastics Materials and Basic Forms and Shapes.
43269	Other Chemicals and Allied Products	E	5169	Chemicals and Allied Products, NEC.
4327	Petroleum and Petroleum Products			
43271	Petroleum Bulk Stations and Terminals	R	*5171	Petroleum Bulk Stations and Terminals (except petroleum sold via retail method).
43272	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals.	E	5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals.
4328	Beer, Wine, and Distilled Alcoholic Beverages			
43281	Beer and Ale	E	5181	Beer and Ale.
43282	Wine and Distilled Alcoholic Beverages	E	5182	Wine and Distilled Alcoholic Beverages.
4329	Miscellaneous Nondurable Goods			
43291	Farm Supplies	R	*5191	Farm Supplies (except lawn and garden supplies sold via retail method).
43292	Books, Periodicals and Newspapers	E	5192	Books, Periodicals, and Newspapers.
43293	Flowers, Nursery Stock and Florists' Supplies	E	*5193	Flowers, Nursery Stock, and Florists' Supplies (except nursery stock sold via retail method).
43294	Tobacco and Tobacco Products	E	5194	Tobacco and Tobacco Products.
43295	Paints, Varnishes and Supplies	R	*5198	Paints, Varnishes, and Supplies (except paints, etc. sold via retail method).
			*5231	Paint, Glass and Wallpaper Stores (sold via wholesale method).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
43299	Other Miscellaneous Nondurable Goods	R	*5199	Nondurable Goods, NEC (except specialty advertising).
44, 45	Retail Trade			
441	Motor Vehicle and Parts Dealers.			
4411	Automobile Dealers			
44111	New Car Dealers	E	5511	Motor Vehicle Dealers (New and Used).
44112	Used Car Dealers	E	5521	Motor Vehicle Dealers (Used Only).
4412	Other Motor Vehicle Dealers			
44121	Recreational Vehicle Dealers	E	5561	Recreational Vehicle Dealers.
44122	Motorcycles, Boats and Other Motor Vehicle Dealers			
441221	Motorcycle Dealers	E	5571	Motorcycle Dealers.
441222	Boat Dealers	E	5551	Boat Dealers.
441229	All Other Motor Vehicle Dealers	E	5599	Automotive Dealers, NEC.
4413	Automotive Parts, Tires and Supplies Stores			
44131	Automotive Parts and Supplies Stores	N	*5013	Motor Vehicle Supplies and New Parts (Wholesale) (auto parts sold via retail method).
			*5731	Radio, Television, and Consumer Electronics Stores (automobile radios).
			*5531	Auto and Home Supply Stores (except tires and tubes).
44132	Tire Dealers	N	*5014	Tires and Tubes (Wholesale) (tires and tubes sold via retail method).
			*5531	Auto and Home Supply Stores (tires and tubes).
442	Furniture and Home Furnishings Stores			
4421	Furniture Stores			
44211	Furniture Stores	R	*5021	Furniture (Wholesale) (sold via the retail method).
			*5712	Furniture Stores (except custom furniture and cabinets).
4422	Home Furnishings Stores			
44221	Floor Covering Stores	R	*5023	Homefurnishings (Wholesale) (floor covering sold via retail method).
			5713	Floor Coverings Stores.
44229	Other Home Furnishings Stores			
442291	Window Treatment Stores	N	*5714	Drapery, Curtain, and Upholstery Stores (drapery and curtain stores).
			*5719	Miscellaneous Homefurnishings Stores (blinds and shades).
442299	All Other Home Furnishings Stores	R	*5719	Miscellaneous Homefurnishings Stores (except pottery and crafts made and sold on site and frame shops, and window furnishings).
443	Electronics and Appliance Stores			
4431	Electronics and Appliance Stores			
44311	Appliance, Television and Other Electronics Stores			
443111	Household Appliance Stores	R	5722	Household Appliance Stores.
			*5999	Miscellaneous Retail Stores, NEC (personal appliance stores).
			*7623	Refrigeration and Air-Conditioning Service and Repair Shops (sales location providing supporting refrigerator repair services as major source of receipts).
			*7629	Electrical and Electronic Repair Shops, NEC (Services) (Sales location providing supporting appliance repair services as major source of receipts).
443112	Radio, Television and Other Electronics Stores	R	*5731	Radio, Television, and Consumer Electronics Stores (except auto radios).
			*5999	Miscellaneous Retail Stores, NEC (typewriters and telephones).
			*7622	Radio and Television Repair Shops (sales locations providing supporting repair services as major source of receipts).
44312	Computer and Software Stores	R	*5045	Computers and Computer Peripheral Equipment and Software (sold via retail method).
			*7378	Computer Maintenance and Repair (sales locations providing supporting repair services as major source of receipts).
			5734	Computer and Computer Software Stores.
44313	Camera and Photographic Supply Stores	E	5946	Camera and Photographic Supply Stores.
444	Building Materials and Garden Equipment and Supplies Dealers			

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
4441	Building Materials and Supplies Dealers			
44411	Home Centers	N	*5211	Lumber and Other Building Materials Dealers (home center stores).
44412	Paint and Wallpaper Stores	R	*5198	Paints, Varnishes, and Supplies (sold via retail method).
			*5231	Paint, Glass, and Wallpaper Stores (paint and wallpaper).
44413	Hardware Stores	E	5251	Hardware Stores.
44419	Other Building Materials Dealers	R	*5031	Lumber, Plywood, Millwork, and Wood Panels (Wholesale) (sold via retail method).
			*5032	Brick, Stone, and Related Construction Materials (Wholesale) (sold via retail method).
			*5039	Construction Materials, NEC (Wholesale) (glass sold via retail method).
			*5063	Electrical Apparatus and Equipment, Wiring Supplies, and Construction Materials (Wholesale) (sold via retail method).
			*5074	Plumbing and Heating Equipment and Supplies (Hydronics) (sold via retail method).
			*5211	Lumber and Other Building Materials Dealers (except home centers).
			*5231	Paint, Glass, and Wallpaper Stores (glass).
4442	Lawn and Garden Equipment and Supplies Stores			
44421	Outdoor Power Equipment Stores	N	*5083	Farm and Garden Machinery and and Equipment (Wholesale) (sold via retail method).
			*5261	Retail Nurseries, Lawn and Garden Supply Stores (outdoor power equipment).
44422	Nursery and Garden Centers	R	*5191	Farm Supplies (sold via retail method).
			*5193	Flowers, Nursery Stock, and Florists' Supplies (sold via retail method).
			*5261	Retail Nurseries, Lawn and Garden Supply Stores (except outdoor power equipment and cut Christmas trees).
445	Food and Beverage Stores			
4451	General Food Stores			
44511	Supermarkets and Grocery Stores	N	*5411	Grocery Stores (except convenience stores).
44512	Convenience Stores	N	*5411	Grocery Stores (convenience stores without gas).
4452	Specialty Food Stores			
44521	Meat Markets	R	*5421	Meat and Fish (Seafood) Including Freezer Provisioners (meat except freezer provisioners).
			*5499	Miscellaneous Food Stores (poultry and poultry products).
44522	Fish and Seafood Markets	N	*5421	Meat and Fish (Seafood) Markets, Including Freezer Provisioners (seafood).
44523	Fruit and Vegetable Markets	E	5431	Fruit and Vegetable Markets.
44529	Other Specialty Food Stores.			
445291	Baked Goods Stores	R	*5461	Retail Bakeries (selling Goods only).
445292	Candy, Nut, and Confectionery Stores	R	*5441	Candy, Nut and Confectionery Stores (selling only).
445299	All Other Specialty Food Stores	R	*5499	Miscellaneous Food Stores (except food supplements).
			5451	Dairy Products Stores.
4453	Beer, Wine and Liquor Stores			
44531	Beer, Wine and Liquor Stores	E	5921	Liquor Stores.
446	Health and Personal Care Stores			
4461	Health and Personal Care Stores.			
44611	Drug Stores and Pharmacies	E	5912	Drug Stores and Proprietary Stores.
44612	Cosmetics, Beauty Supplies and Perfume Stores	N	*5087	Service Establishment Equipment and Supplies (beauty and barber supplies sold via retail method).
			*5999	Miscellaneous Retail Stores, NEC (cosmetics and perfumes).
44613	Optical Goods Stores	R	*5995	Optical Goods Stores (except grinding prescription lenses).
44619	Other Health and Personal Care Stores			
446191	Food (Health) Supplement Stores	N	*5499	Miscellaneous Food Stores (food supplements).
46199	All Other Health and Personal Care Stores	N	*5047	Medical, Dental, and Hospital Equipment and Supplies (sold via retail method).
			*5999	Miscellaneous Retail Stores, NEC (hearing aids and artificial limbs).
447	Gasoline Stations			

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
4471	Gasoline Stations			
44711	Gasoline Stations with Convenience Stores	N	*5541	Gasoline Service Station (gasoline station with convenience store).
			*5411	Grocery Stores (convenience store with gas).
44719	Other Gasoline Stations	N	*5541	Gasoline Service Station (gasoline station without convenience store).
448	Clothing and Accessories Stores.			
4481	Clothing Stores.			
44811	Men's Clothing Stores	R	*5611	Men's and Boys' Clothing and Accessory Stores (clothing stores).
44812	Women's Clothing Stores	E	5621	Women's Clothing Stores.
44813	Children's and Infants' Clothing Stores	E	5641	Children's and Infants' Wear Stores.
44814	Family Clothing Stores	E	5651	Family Clothing Stores.
44819	Other Clothing Stores	R	*5632	Women's Accessory and Specialty Stores (specialty clothing)
			*5699	Miscellaneous Apparel and Accessory Stores (miscellaneous apparel)
4482	Jewelry and Accessories Stores			
44821	Jewelry Stores	R	*5999	Miscellaneous Retailer, NEC (rough gems).
			5944	Jewelry Stores.
44822	Luggage and Leather Goods Stores	E	5948	Luggage and Leather Goods Stores.
44823	Accessories Stores	N	*5611	Men's and Boys' Clothing and Accessory Stores (accessories).
			*5632	Women's Accessory and Specialty Stores (accessories).
			*5699	Miscellaneous Apparel and Accessory Stores (accessories).
4483	Shoe Stores			
44831	Shoe Stores	E	5661	Shoe Stores.
451	Sports, Hobby, Book and Music Stores			
4511	Sports, Hobby and Music Stores			
45111	Sporting Goods Stores	R	*7699	Repair Shops and Related Services, NEC (bicycle sales locations providing supporting repair services as major source of receipts).
			5941	Sporting Goods Stores and Bicycle Shops.
45112	Hobby, Toy and Game Stores	E	5945	Hobby, Toy, and Game Stores.
45113	Sewing, Needlework and Piece Goods Stores	R	*5714	Drapery, Curtain, and Upholstery Stores (upholstery materials).
			5949	Sewing, Needlework, and Piece Goods Stores.
45114	Musical Instrument and Supply Stores	E	5736	Musical Instruments Stores.
4512	Books, Periodicals and Music Stores			
45121	Book Stores and News Dealers			
451211	Book Stores	E	5942	Book Stores.
451212	News Dealers and Newsstands	E	5994	News Dealers and Newsstands.
45122	Prerecorded Tape, Compact Disk and Record Stores.	E	5735	Record and Prerecorded Tape Stores.
452	General Merchandise Stores			
4521	Department Stores.			
45211	Department Stores	E	5311	Department Stores.
4522	Other General Merchandise Stores			
45221	Warehouse Clubs and Other General Merchandise Stores with Food.	N	*5399	Miscellaneous General Merchandise Stores (warehouse clubs and supermarket/general merchandise combination).
			*5411	Grocery Stores (grocery stores and supermarkets selling substantial amounts of nonfood items).
45229	All Other General Merchandise Stores	R	*5399	Miscellaneous General Merchandise Stores (except warehouse club and supermarket/general merchandise combination).
			5331	Variety Stores.
453	Miscellaneous Store Retailers			
4531	Florists			
45311	Florists	E	5992	Florists.
4532	Office Supply and Stationery and Gift Stores			
45321	Office Supply and Stationery Stores	R	*5049	Professional Equipment and Supplies, NEC (school and church supplies sold via retail method).
			*5112	Stationery and Office Supplies (sold via retail method).
			5943	Stationery Stores.
45322	Gift, Novelty and Souvenir Stores	E	5947	Gift, Novelty, and Souvenir Shops.
4533	Used Merchandise Stores			

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
45331	Used Merchandise Stores	R	*5932	Used Merchandise Stores (except pawn shops).
4539	Other Miscellaneous Store Retailers			
45391	Pet and Pet Supply Stores	N	*5999	Miscellaneous Retail Stores, NEC (pet and pet supplies).
45392	Art Dealers	N	*5999	Miscellaneous Retail Stores, NEC (art dealer).
45393	Manufactured (Mobile) Home Dealers	E	5271	Mobile Home Dealers.
45399	All Other Miscellaneous Store Retailers.			
453991	Tobacco Stores	E	5993	Tobacco Stores and Stands.
453999	All Other Miscellaneous Store Retailers	R	*5999	Miscellaneous Retail Stores, NEC (except art, pet and pet supplies, hearing aids, artificial limbs, cosmetics, live Christmas trees, telephones, typewriters, personal appliances and rough gems).
			*5261	Retail Nurseries, Lawn and Garden Supply Stores (cut Christmas trees).
454	Nonstore Retailers			
4541	Electronic Shopping and Mail-Order Houses			
45411	Electronic Shopping and Mail-Order Houses	E	5961	Catalog and Mail-Order Houses.
4542	Vending Machine Operators			
45421	Vending Machine Operators	E	5962	Automatic Merchandise Operators Machine Operators.
4543	Direct Selling Establishments			
45431	Fuel Dealers			
454311	Heating Oil Dealers	R	*5171	Petroleum Bulk Stations and Terminals (heating oil sold to final consumer).
			5983	Fuel Oil Dealers.
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers	R	*5171	Petroleum Bulk Stations and Terminals (LP gas sold to final consumer).
			5984	Liquefied Petroleum Gas (Bottled Gas) Dealers.
454319	Other FuelDealers	E	5989	Fuel Dealers, NEC.
45439	Other Direct Selling Establishments	R	*5421	Meat and Fish (Seafood) Markets, Including Freezer Provisioners (freezer provisioners).
			*5963	Direct Selling Establishments (except mobile food services).
48, 49	Transportation			
481	Air Transportation			
4811	Scheduled Air Transportation			
48111	Scheduled Air Transportation.			
481111	Scheduled Passenger Air Transportation	N	*4512	Air Transportation, Scheduled (passenger).
481112	Scheduled Freight Air Transportation	N	*4512	Air Transportation, Scheduled (freight).
4812	Nonscheduled Air Transportation			
48121	Nonscheduled Chartered Air Transportation			
481211	Nonscheduled Chartered Passenger Air Transportation.	N	*4522	Air Transportation, Nonscheduled (passenger).
481212	Nonscheduled Chartered Freight Air Transportation	N	*4522	Air Transportation, Nonscheduled (freight).
48122	Nonscheduled Specialty Air Transportation	N		Establishments that use small, general purpose aircraft to provide a variety of specialized flying services, with none of them predominating, such as the following:
			*0721	Crop Planting, Cultivating, and Protecting (crop dusting).
			*0851	Forestry Services (aerial forest fighting).
			*1382	Oil and Gas Field Exploration Services (aerial geophysical exploration).
			*4522	Air Transportation, Nonscheduled (mixed operations).
			*7319	Advertising, NEC (aerial advertising).
			*7335	Commercial Photography (aerial photography).
			*7997	Membership Sports and Recreation Clubs (membership aviation clubs).
			*8299	Schools and Educational Services, NEC (flight school).
			*8713	Surveying Services (aerial surveying).
482	Rail Transportation			
4821	Rail Transportation			
48211	Rail Transportation			
482111	Line-Haul Railroads	E	4011	Railroads, Line-Haul Operating.
482112	Short Line Railroads	N	*4013	Railroad Switching and Terminal Establishments (belt line and logging railroads).
483	Water Transportation			

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
4831	Deep Sea, Coastal and Great Lakes Water. Transportation			
48311	Deep Sea, Coastal and Great Lakes Water Transportation			
483111	Deep Sea Freight Transportation	E	4412	Deep Sea Foreign Transportation of Freight.
483112	Deep Sea Passenger Transportation	R	*4481	Deep Sea Transportation of Passengers, Except by Ferry (deep sea activities).
483113	Coastal and Great Lakes Freight Transportation	R	4424	Deep Sea Domestic Transportation of Freight.
			4432	Freight Transportation on the Great Lakes—St. Lawrence Seaway.
			*4492	Towing and Tugboat Services (coastal barge operations).
483114	Coastal and Great Lakes Passenger Transportation	R	*4481	Deep Sea Transportation of Passengers, Except by Ferry (coastal activities).
			*4482	Ferries (coastal and Great Lakes).
4832	Inland Water Transportation			
48321	Inland Water Transportation			
483211	Inland Water Freight	R	4449	Water Transportation of Transportation Freight, NEC.
			*4492	Towing and Tugboat Services (inland barge operations).
483212	Inland Water Passenger Transportation	R	*4482	Ferries (inland).
			*4489	Water Transportation of Passengers, NEC (water taxi).
484	Truck Transportation			
4841	General Freight Trucking			
48411	General Freight Trucking, Local	N	*4212	Local Trucking without Storage (general freight).
			*4214	Local Trucking with Storage (general freight).
48412	General Freight Trucking, Long-Distance			
484121	General Freight Trucking, Long-Distance, Truckload	N	*4213	Trucking, Except Local (general freight, truckload).
484122	General Freight Trucking, Long-Distance, Less Than Truckload.	N	*4213	Trucking, Except Local (general freight, less than truckload).
4842	Specialized Freight Trucking			
48421	Used Household and Office Goods Moving	N	*4212	Local Trucking Without Storage (household goods moving).
			*4213	Trucking, Except Local (household goods moving).
			*4214	Local Trucking With Storage (household goods moving).
48422	Specialized Freight (Except Used Goods) Trucking, Local.	N	*4212	Local Trucking without Storage (specialized freight).
			*4214	Local Trucking with Storage (specialized freight).
48423	Specialized Freight (Except Used Goods) Trucking, Long-Distance.	N	*4213	Trucking, Except Local (specialized freight).
485	Transit and Ground Passenger Transportation			
4851	Urban Transit Systems			
48511	Urban Transit Systems			
485111	Mixed Mode Transit Systems	N	*4111	Local and Suburban Transit (mixed mode).
485112	Commuter Rail Systems	N	*4111	Local and Suburban Transit (commuter rail).
485113	Bus and Motor Vehicle Transit Systems	N	*4111	Local and Suburban Transit (bus and motor vehicle).
485119	Other Urban Transit Systems	N	*4111	Local and Suburban Transit (other than mixed mode, commuter rail, and bus and motor vehicle).
4852	Interurban and Rural Bus Lines			
48521	Interurban and Rural Bus Lines	E	4131	Intercity and Rural Bus Transportation.
4853	Taxi and Limousine Service			
48531	Taxi Service	E	4121	Taxicabs.
48532	Limousine Service	N	*4119	Local Passenger Transportation, NEC (limousine rental with driver and automobile rental with driver).
4854	School and Employee Bus Industry			
48541	School and Employee Bus Industry	R	*4151	School Buses
			4119	Local Passenger Transportation, NEC (employee transportation).
4855	Charter Bus Industry			
48551	Charter Bus Industry	R	4141	Local Charter Bus Service.
			4142	Bus Charter Services, Except Local.
4859	Other Transit and Ground Passenger Transportation			
48591	Other Transit and Ground Passenger Transportation			
485911	Special Needs Transportation	N	*4119	Local Passenger Transportation, NEC (special needs transportation).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
485919	All Other Transit and Ground Passenger Transportation.	R	*4111	Local and Suburban Transit (airport transportation service).
			*4119	Local Passenger Transportation, NEC (hearse rental with driver and carpool and vanpool operation).
486	Pipeline Transportation			
4861	Pipeline Transportation of Crude Oil			
48611	Pipeline Transportation of Crude Oil	E	4612	Crude Petroleum Pipelines.
4862	Pipeline Transportation of Natural Gas			
48621	Pipeline Transportation of Natural Gas	R	4922	Natural Gas Transmission.
			*4923	Natural Gas Transmission and Distribution (transmission).
4869	Other Pipeline Transportation			
48691	Pipeline Transportation of Refined Petroleum Products.	E	4613	Refined Petroleum Pipelines.
48699	All Other Pipeline Transport	E	4619	Pipelines, NEC.
487	Scenic and Sightseeing Transportation.			
4871	Scenic and Sightseeing Transportation, Land			
48711	Scenic and Sightseeing Transportation, Land	N	*4119	Local Passenger Transportation, NEC (sightseeing buses and cable and cog railways, except scenic).
			*4789	Transportation Services, NEC (horse-drawn cabs and carriages).
			*7999	Amusement and Recreation Services, NEC (scenic railroads).
4872	Scenic and Sightseeing Transportation, Water.			
48721	Scenic and Sightseeing Transportation, Water	N	*4489	Water Transportation of Passengers, NEC (airboats, excursion boats, and sightseeing boats).
4879	Scenic and Sightseeing Transportation, Other			
48791	Scenic and Sightseeing Transportation, Other	N	*4522	Air Transportation, Non-Scheduled (sightseeing planes).
			*7999	Amusement and Recreation Services, NEC (aerial tramways, scenic and amusement).
488	Support Activities for Transportation.			
4881	Support Activities for Air Transportation			
48811	Airport Operations			
488111	Air Traffic Control	N	*4581	Airports, Flying Fields, and Airport Terminal Services (private air traffic control).
			*9621	Regulation and Administration of Transportation Programs (government air traffic control).
488112	Air Operations, Except Air Traffic Control	N	*4581	Airports, Flying Fields, and Airport Terminal Services (airfreight handling at airports, hangar operations, airport terminal services, aircraft storage, airports, and flying fields).
			*4959	Sanitary Services, NEC (vacuuming of runways).
48819	Other Support Activities for Air Transportation	N	*4581	Airports, Flying Fields, and Airport Terminal Services (aircraft servicing and repairing).
4882	Support Activities for Rail Transportation.			
48821	Support Activities for Rail Transportation	R	*4013	Railroad Switching and Terminal Establishments (all but short line railroads).
			*4741	Rental of Railroad Cars (grain leveling in railroad cars, grain trimming for railroad equipment, precooling of fruits and vegetables in connection with transportation, and railroad car cleaning, icing, ventilating, and heating).
			*4789	Transportation Services, NEC (car loading and unloading; cleaning of railroad ballasts; dining, parlor, sleeping, and other car operations; and railroad maintenance).
4883	Support Activities for Water Transportation.			
48831	Port and Harbor Operations	N	*4491	Marine Cargo Handling (dock and pier operations).
			*4499	Water Transportation Services, NEC (seaway and lighthouse operations).
48832	Marine Cargo Handling	R	*4491	Marine Cargo Handling (all but dock and pier operations).
48833	Navigational Services to Shipping	N	*4492	Towing and Tugboat Services (all but barge operations).
			*4499	Water Transportation Services, NEC (piloting vessels in and out of harbors and marine salvage).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
48839	Other Support Activities for Water Transportation	R	*4499	Water Transportation Services, NEC (all but seaway and lighthouse operations, piloting vessels in and out of harbors, and marine salvage).
			*4785	Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation (marine cargo checkers).
			*7699	Repair Shops and Related Services, NEC (ship scaling).
4884	Support Activities for Road Transportation.			
48841	Motor Vehicle Towing	N	*7549	Automotive Services, Except Repair and Carwashes (towing).
48849	Other Support Activities for Road Transportation	R	4173	Terminal and Service Facilities for Motor Vehicle Passenger Transportation.
			4231	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation.
			*4785	Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation (all but marine cargo checkers).
4885	Freight Transportation Arrangement.			
48851	Freight Transportation Arrangement	R	*4731	Arrangement of Transportation of Freight and Cargo (except freight rate auditors and tariff consultants).
4886	Storage Facilities			
48861	Refrigerated Storage Facilities	R	4222	Refrigerated Warehousing and Storage.
			*4226	Special Warehousing and Storage, NEC (fur storage).
48862	Farm Product Storage Facilities	E	4221	Farm Product Warehousing and Storage.
48869	Other Storage Facilities			
488691	General Storage Facilities	R	4225	General Warehousing and Storage (all but self-storage miniwarehouse warehousing).
488699	All Other Storage Facilities	R	4226	Special Warehousing and Storage, NEC (all but fur storage).
4889	Other Support Activities. for Transportation			
48891	Other Support Activities for Transportation.			
488911	Packing and Crating	E	4783	Packing and Crating.
488919	All Other Support Activities for Transportation	R	*4729	Arrangement of Passenger Transportation, NEC (arrangement of carpools and vanpools).
			*4789	Transportation Services, NEC (pipeline terminals and stockyards for transportation).
491	Postal Service			
4911	Postal Service			
49111	National Post Office	E	4311	United States Postal Service.
49112	Contract Postal Operations, Excluding Bulk Mail Transportation.	N	*7389	Business Services, NEC (Post Office contract operations).
492	Couriers			
4921	Couriers			
49211	Couriers	R	*4215	Courier Services, Except by Air (hub and spoke intercity delivery).
			4513	Air Courier Services.
4922	Local Messengers and Local Delivery			
49221	Local Messengers and Local Delivery	N	*4215	Courier Services, Except by Air (local delivery).
51	Information.			
511	Publishing			
5111	Newspaper, Periodical, Book and Database Publishing			
51111	Newspaper Publishing	E	2711	Newspapers: Publishing or Publishing and Printing.
51112	Periodical Publishing	E	2721	Periodicals: Publishing or Publishing and Printing.
51113	Book Publishing	E	2731	Books: Publishing or Publishing and Printing.
51114	Database Publishing	N	*2741	Miscellaneous Publishing (database publishers).
51119	Other Publishing.			
511191	Greeting Card Publishing	E	*2771	Greeting Cards.
511199	All Other Publishing	R	*2741	Miscellaneous Publishing (except database publishing).
5112	Software Publishing			
51121	Software Publishing	R	*7372	Prepackaged Software (software publishing).
512	Motion Picture and Sound Recording			
5121	Motion Picture and Video Industries			
51211	Motion Picture and Video Industries	E	7812	Motion Picture and Video Tape Production.
51212	Motion Picture and Video Distribution	E	7822	Motion Picture and Video Tape Distribution (except video tape and cassette wholesalers).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
51213	Teleproduction and Other Post-Production Services	N	*7819	Services Allied to Motion Picture Production (teleproduction and post-production services).
51214	Motion Picture and Video Exhibition			
512141	Motion Picture Theaters, Except Drive-Ins	E	7832	Motion Picture Theaters, Except Drive-In.
512142	Drive-In Motion Picture Theaters	E	7833	Drive-In Motion Picture Theaters.
51219	Other Motion Picture and Video Industries	N	*7819	Services Allied to Motion Picture Production (except casting bureaus, wardrobe and equipment rental, talent payment services, teleproduction and other post-productions services).
			7829	Services Allied to Motion Picture Distribution.
5122	Sound Recording Industries			
51221	Record Production Companies	N	*8999	Services, NEC (music royalties, sheet and record).
51222	Integrated Record Companies	N	*3652	Phonograph Records and Prerecorded Audio Tapes and Disks (integrated record companies, except duplication only).
51223	Music Publishing	N	*8999	Services, NEC (music publishing).
51224	Sound Recording Studios	N	*7389	Business Services, NEC (recording studios).
51229	Other Sound Recording Industires	N	*7389	Business Services, NEC (audio taping services).
			*7922	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services (producers of radio programs).
513	Broadcasting and Telecommunications			
5131	Radio and Television Broadcasting			
51311	Radio Broadcasting			
513111	Radio Networks	N	*4832	Radio Broadcasting Stations (networks).
513112	Radio Stations	N	*4832	Radio Broadcasting Stations (except networks).
51312	Television Broadcasting	N	4833	Television Broadcasting Stations.
5132	Cable Networks and Program Distribution			
51321	Cable Networks	N	*4841	Cable and Other Pay Television Services (cable. networks)
51322	Cable and Program	N	*4841	Cable and Other Pay Distribution Television Services (except cable networks).
5133	Telecommunications			
51331	Wired	N	*4813	Telephone Communications, Telecommunications Except Radiotelephone (except resellers).
			4822	Telegraph and Other Message Communications.
51332	Wireless Telecommunications Carriers, Except Satellite			
513321	Paging	N	*4812	Radiotelephone Communications (paging carriers).
513322	Cellular and Other	N	*4812	Radiotelephone Communications (cellular carriers).
			*4899	Communications Services, NEC (radio dispatch).
51333	Telecommunications Resellers	N	*4812	Radio Communications (paging and cellular resellers). Resellers and cellular resellers)
			*4813	Telephone Communications, Except Radiotelephone (resellers).
51334	Satellite Telecommunications	N	*4899	Communications Services, NEC (satellite communications).
51339	Other Telecommunications	N	*4899	Communications Services, NEC (except radio dispatch, satellite communications).
514	Information Services and Data Processing			
5141	Information Services			
51411	News Syndicates	E	7383	News Syndicates.
51412	Libraries and Archives	E	8231	Libraries.
51419	Other Information Services.			
514191	On-Line Information Services	E	7375	Information Retrievni.
514199	All Other Information Services	N	*8999	Services, NEC (miscellaneous Information providers).
5142	Data Processing			
51421	Data Processing	E	7374	Computer Processing and Data Preparation and Processing Services.
52	Finance and Insurance			
521	Monetary Authorities - Central Bank			
5211	Monetary Authorities - Central Bank			
52111	Monetary Authorities - Central Bank	E	6011	Federal Reserve Banks.
522	Credit Intermediation and Related Activities			
5221	Depository Credit Intermediation			
52211	Commercial Banking	R	*6021	National Commercial Banks (banking).
			*6022	State Commercial Banks (banking).
			6029	Commercial Banks, NEC.
			*6081	Branches and Agencies of Foreign Banks (banking).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
52212	Savings Institutions	R	6035	Savings Institutions, Federally Chartered.
			6036	Savings Institutions, Not Federally Chartered.
52213	Credit Unions	R	6061	Credit Unions, Federally Chartered.
			6062	Credit Unions, Not Federally Chartered.
52219	Other Depository Credit Intermediation	N	*6099	Functions Related to Intermediation Depository Banking, NEC (money order issuance).
5222	Non-Depository Credit Intermediation			
52221	Credit Card Issuing	N	*6021	National Commercial Banks (credit card issuing).
			*6022	State Commercial Banks (credit card issuing).
			*6141	Personal Credit Institutions (credit card issuing).
52222	Sales Financing	N	*6141	Personal Credit Institutions (installment sales finance).
			*6153	Short-Term Business Credit Institutions, Except Agricultural (business sales finance).
			*6159	Miscellaneous Business Credit Institutions (finance leasing).
52229	Other Non-Depository Credit Intermediation			
522291	Consumer Credit	R	*6141	Personal Credit Institutions (except installment sales finance and credit card issuing).
522292	Real Estate Credit	R	*6162	Mortgage Bankers and Loan Correspondents (mortgage bankers and originators).
522293	International Trade	N	*6081	Branches and Agencies of Financing Foreign Banks (international trade financing).
		N	6082	Foreign Trade and International Banking Institutions.
		N	*6111	Federal and Federally-Sponsored Credit Agencies (trade banks).
			*6159	Miscellaneous Business Credit Institutions (trade banks).
522294	Secondary Market Financing	N	*6111	Federal and Federally Sponsored Credit Agencies (except trade banks).
522299	All Other Non-Depository Credit Intermediation	N	*5932	Used Merchandise Stores Depository Credit (pawnshops).
			*6081	Branches and Agencies of Foreign Banks (agencies).
			*6111	Federal and Federally-Sponsored Credit Agencies (except trade banks and secondary market financing).
			*6153	Short-Term Business Credit Institutions, Except Agricultural (except credit card service and business sales finance).
			*6159	Miscellaneous Business Credit Institutions (except trade banks and finance leasing).
5223	Activities Related to Credit Intermediation			
52231	Mortgage and Other Loan Brokers	E	6163	Loan Brokers.
52232	Financial Transactions Processing, Reserve, and Clearing House Activities.	N	6019	Central Reserve Depository Institutions, NEC.
			*6099	Functions Related to Depository Banking, NEC (electronic funds transfer networks and clearing house associations).
			*6153	Short-Term Business Credit Institutions, Except Agricultural (credit card service).
			*7389	Business Services, NEC (credit card service).
52239	Other Activities Related to Credit Intermediation	N	*6099	Functions Related to Depository Banking, NEC (except money orders, electronic funds transfer networks and clearing houses, foreign currency exchanges, escrow and fiduciary agencies and deposit brokers).
			*6162	Mortgage Bankers and Loan Correspondents (mortgage servicing).
523	Securities, Commodity Contracts and Other Intermediation and Related Activities			
5231	Securities and Commodity Contracts Intermediation and Brokerage			
52311	Investment Banking and Securities Dealing	N	*6211	Security Brokers, Dealers, and Flotation Companies (securities dealers and underwriters).
52312	Securities Brokerage	N	*6211	Security Brokers, Dealers, and Flotation Companies (security brokers).
52313	Commodity Contracts Dealing	N	*6099	Functions Related to depository Banking, NEC (foreign currency exchange).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
			*6221	Commodity Contracts Brokers and Dealers (commodity dealers).
52314	Commodity Brokerage	N	*6221	Commodity Contracts Brokers and Dealers (commodity brokers).
5232	Securities and Commodity Exchanges			
52321	Securities and Commodity Exchanges	E	6231	Security and Commodity Exchanges.
5239	Other Financial Investment Activities			
52391	Miscellaneous Intermediation	N	*6211	Securities Brokers, Dealers and Flotation Companies (except securities and commodity dealers).
			*6799	Investors, NEC (venture capital companies).
52392	Portfolio Management	N	*6282	Investment Advice (portfolio managers).
			*6371	Pension, Health, and Welfare Funds (managers).
			*6733	Trust, Except Educational, Religious, and Charitable (managers).
			*6799	Investors, NEC (pool operators).
52393	Investment Advice	R	*6282	Investment Advice (except portfolio managers).
52399	All Other Financial Investment Activities			
523991	Trust, Fiduciary and Custody Activities	N	*6021	National Commercial Banks (trust services).
			*6022	State Commercial Banks (trust services).
			6091	Nondeposit Trust Facilities.
			*6099	Functions Related to Depository Banking, NEC (escrow and fiduciary agencies).
			*6289	Services Allied With the Exchange of Securities or Commodities, NEC (securities custodians).
			*6733	Trusts, Except Educational, Religious, and Charitable (administrators of private estates).
523999	Miscellaneous Financial Investment Activities	R	*6099	Functions Related to Depository Banking, NEC (deposit brokers).
			*6211	Security Brokers, Dealers, and Flotation Companies (dealers, except security and commodity).
			*6289	Services Allied With the Exchange of Securities or Commodities, NEC (except security custodians).
			*6792	Oil Royalty Traders (investors on own account).
524	Insurance Carriers and Related Activities			
5241	Insurance Carriers			
52411	Direct Life Insurance Carriers	R	*6311	Life Insurance (life insurers—direct).
52412	Direct Non-Life Insurance Carriers			
524121	Property and Casualty Insurance Carriers	R	*6331	Fire, Marine, and Casualty Insurance (fire, marine, and casualty insurers—direct).
			*6351	Surety Insurance (financial responsibility insurers—direct).
524122	Health and Medical Insurance Carriers	R	*6324	Hospital and Medical Service Plans (health and medical insurers—direct).
			*6321	Accident and Health Insurance (health and medical insurers—direct).
524123	Title Insurance Carriers	R	*6361	Title Insurance (title insurers—direct).
524129	Other Direct Non-Life Insurance Carriers	E	6399	Insurance Carriers, NEC.
52413	Reinsurance Carriers	N	*6311	Life Insurance (reinsurers).
			*6321	Accident and Health Insurance (reinsurers).
			*6324	Hospital and Medical Service Plans (reinsurers).
			*6331	Fire, Marine, and Casualty Insurance (reinsurers).
			*6351	Surety Insurance (reinsurers).
			*6361	Title Insurance (reinsurers).
5242	Agencies, Brokerages and Other Insurance Related Activities			
52421	Insurance Agencies and Brokerages	R	*6411	Insurance Agents, Brokers and Service (insurance agents and brokers).
52429	Other Insurance Related Activities			
524291	Claims Adjusters	N	*6411	Insurance Agents, Brokers and Service (insurance claims adjusters).
524292	Third Party Administration for Insurance and Pension Funds.	N	*6371	Pension, Health, and Welfare Funds (administrators).
			*6411	Insurance Agents, Brokers and Service (processors).
524299	All Other Activities Related to Insurance	N	*6411	Insurance Agents, Brokers and Service (except processors, agents and brokers, and claims adjusters).
525	Funds, Trusts and Other Financial Vehicles (U.S. Only)			
5251	Holding Companies			

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
52511	Holding Companies			
525111	Bank Holding Companies	E	6712	Offices of Bank Holding Companies.
525119	Other Holding Companies	E	6719	Offices of Holding Companies, NEC.
5252	Insurance and Employee Benefit Funds			
52521	Pension Funds	N	*6371	Pension, Health, and Welfare Funds (pension funds).
52522	Health and Welfare Funds	N	*6371	Pension, Health, and Welfare Funds (health and welfare funds).
52523	Insurance and Other Employee Benefit Funds	N	*6321	Accident and Health Insurance (self insurers).
			*6324	Hospital and Medical Service Plans (self insurers).
			*6331	Fire, Marine, and Casualty Insurance (self insurers).
			*6733	Trusts, Except Educational, Religious, and Charitable (vacation funds for employees).
5259	Other Investment Pools and Funds			
52591	Open-End Investment Funds	E	6722	Management Investment Offices, Open-End.
52592	Personal Trusts, Estates, and Agency Accounts	N	*6733	Trusts, Except Educational, Religious, and Charitable (personal trusts, estates, and agency accounts).
52593	Mortgage Investment Funds	E	6798	Real Estate Investment Trusts (REIT funds).
52599	Other Financial Vehicles	E	6726	Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-End Management Investment Offices.
53	Real Estate and Rental and Leasing			
531	Real Estate			
5311	Lessors of Real Estate			
53111	Lessors of Residential Buildings and Dwellings	R	6513	Operators of Apartment Buildings.
			6514	Operators of Dwellings Other Than Apartment Buildings.
53112	Lessors of Nonresidential Buildings, *Except Miniwarehouses.	N	6512	Operators of Nonresidential Buildings.
53113	Lessors of Miniwarehouses and Self Storage Units	E	*4225	General Warehousing and Storage (miniwarehouses and self-storage units).
53119	Lessors of Other Real Estate Property	R	6515	Operators of Residential Mobile Home Sites.
			6517	Lessors of Railroad Property.
			6519	Lessors of Real Property, NEC.
5312	Activities Related to Real Estate.			
53121	Real Estate Property Managers			
531211	Condominium Management, Cooperative Housing, and Homeowners' Associations.	N	*6531	Real Estate Agents and Managers (condominium and cooperative management).
			*8641	Civic, Social, and Fraternal Associations (condominium and homeowners associations, except property management).
531212	Other Residential Property Managers	N	*6531	Real Estate Agents and Managers (managers—residential, real estate).
531213	Other Nonresidential Property Managers	N	*6531	Real Estate Agents and Managers (managers—nonresidential, real estate).
53122	Offices of Real Estate Agents and Brokers	N	*6531	Real Estate Agents and Managers (agents and brokers).
53123	Offices of Real Estate Appraisers	N	*6531	Real Estate Agents and Managers (appraisers).
53129	Other Activities Related to Real Estate			
531291	Title Abstract Offices	E	6541	Title Abstract Offices.
531299	All Other Activities Related to Real Estate	N	*6531	Real Estate Agents and Managers (except real estate managers, agents and brokers, and appraisers).
533	Rental and Leasing Services			
5331	Rental and Leasing of Automotive Equipment Without Drivers			
53311	Rental and Leasing of Passenger Cars Without Drivers			
533111	Rental of Passenger Cars Without Drivers	E	7514	Passenger Car Rental.
533112	Leasing of Passenger Cars Without Drivers	R	7515	Passenger Car Leasing.
53312	Rental and Leasing of Trucks Without Drivers, Utility Trailers and Recreational Vehicles.	N	7513	Truck Rental and Leasing Without Drivers
			7519	Utility Trailers and Recreational Vehicle Rental.
5332	Rental and Leasing of Consumer Goods			
53321	Rental of Consumer Electronics, Appliances and Home and Garden Tools			
533211	Rental of Consumer Electronics and Appliances	N	*7359	Equipment Rental and Leasing, NEC (appliances, TV, VCR, and electronic equipment rental).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
532212	Rental and Leasing of Home and Garden Equipment.	N	*7359	Equipment Rental and Leasing, NEC (home and garden tool rental).
53322	Rental of Formal Wear and Costumes	N	*7299	Miscellaneous Personal Services, NEC (formal wear and costume rental).
			*7819	Services Allied to Motion Picture Production (wardrobe rental for motion picture film production).
53323	Rental of Video Tapes	E	7841	Video Tape Rental.
53329	Other Rental and Leasing of Consumer Goods			
532291	Rental and Leasing of Home Health Furniture and Equipment.	N	*7352	Medical Equipment Rental and Leasing (home health furniture and equipment rental and leasing).
532292	Rental of Recreational Goods	N	*7999	Amusement and Recreation Services, NEC (canoe, pleasure boats, bicycles, motorcycles, moped, go carts, etc. rental).
532299	All Other Rental and Leasing of Consumer Goods	R	*7299	Miscellaneous Personal Services, NEC (locker rental, except cold storage).
			*7359	Equipment Rental and Leasing, NEC (except transportation equipment, industrial equipment, and consumer electronics, appliances and home and garden equipment).
5333	Rental and Leasing of Machinery and Equipment			
53331	Rental and Leasing of Heavy Construction, Transportation, Mining and Forestry Machinery and Equipment			
533311	Rental and Leasing of Commercial Air, Rail, and Water Transportation Equipment.	N	*4499	Water Transportation Services, NEC (boat and ship rental, commercial).
			*4741	Rental of Railroad Cars (rental of railroad cars).
			*7359	Equipment Rental and Leasing, NEC (airplane rental and leasing).
533312	Rental and Leasing of Heavy Construction, Mining and Forestry Machinery and Equipment.	R	*7353	Heavy Construction Equipment Rental and Leasing (without operators).
			*7359	Equipment Rental and Leasing, NEC (oil field and well drilling equipment).
53332	Rental and Leasing of Office Machinery and Equipment.	N	*7359	Equipment Rental and Leasing (office machine rental and leasing).
			7377	Computer Rental and Leasing.
53339	Rental and Leasing of Other Machinery and Equipment.	N	*7352	Medical Equipment Rental and Leasing (medical machinery and equipment).
			*7359	Equipment Rental and Leasing, NEC (industrial truck and equipment rental and leasing).
			*7819	Services Allied to Motion Picture Production (motion picture equipment rental).
			*7922	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services (theatrical equipment rental).
534	Lessors of Other Non-Financial Assets			
5341	Lessors of Other Non-Financial Assets.			
53411	Lessors of Other Non-Financial Assets		*6792	Oil Royalty Traders (except investors on own account).
			6794	Patent Owners and Lessors.
56	Professional, Scientific and Technical Services			
561	Professional, Scientific and Technical Services			
5611	Legal Services			
56111	Offices of Lawyers	E	8111	Legal Services.
56112	Offices of Notaries	L		Null Set for U.S.
56119	Other Legal Services	N	*7389	Business Services, NEC (process services, patent agents, notaries public, paralegal services).
5612	Accounting, Tax Preparation, Bookkeeping and Payroll Services.			
56121	Offices of Accountants			
561211	Offices of Certified Public Accountants	N	*8721	Accounting, Auditing, and Bookkeeping Services (certified public accountants).
561212	Offices of Accountants, Except Certified	N	*8721	Accounting, Auditing, and Bookkeeping Services (accountants, except certified public accountants).
56122	Tax Preparation, Bookkeeping and Payroll Services			
561221	Tax Preparation Services	E	7291	Tax Return Preparation Services.
561222	Bookkeeping and Billing Services	N	*8721	Accounting, Auditing, and Bookkeeping Services (bookkeeping and billing).
561223	Payroll Services	N	*7819	Services Allied to Motion Picture Production (talent payment services).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
			*8721	Accounting, Auditing, and Bookkeeping Services (payroll services).
5613	Architectural, Engineering and Related Services			
56131	Architectural Services	E	0712	Architectural Services.
56132	Engineering Services	E	8711	Engineering Services.
56133	Drafting Services	N	*7389	Business Services, NEC (drafting service).
56134	Building Inspection Services	N	*7389	Business Services, NEC (home and building inspection services).
56135	Landscape Architecture Services	E	0781	Landscape Counseling and Planning.
56136	Surveying and Mapping Services	N	*7389	Business Services, NEC (map making services).
			*8713	Surveying Services (except geophysical surveying).
56137	Geophysical Surveying Services	N	*8713	Surveying Services (geophysical surveying).
56138	Testing Laboratories	R	*8734	Testing Laboratories (except veterinary testing laboratories).
5614	Specialized Design Services			
56141	Interior Design Services	N	*7389	Business Services, NEC (interior design).
56142	Industrial Design Services	N	*7389	Business Services, NEC (industrial design).
56143	Graphic Design Services	R	7336	Commercial Art and Graphic Design.
			*8099	Health and Allied Services, NEC (medical artists).
56149	Other Specialized Design Services			
561491	Land Use Planners Services	M	*8748	Business Consulting Services, NEC (planners of land use).
561499	All Other Design Services	N	*7389	Business Services, NEC (fashion, furniture, and other design services).
5615	Computer Systems Design and Related Services			
56151	Computer Systems Design and Related Services			
561511	Custom Computer Programming Services	E	7371	Computer Programming Services.
561512	Systems Design Services	N	7373	Computer Integrated Systems Design.
			*7379	Computer Related Services, NEC (computer systems consultants).
561513	Computer Facilities Management Services	E	7376	Computer Facilities Management Services.
561519	Other Computer Systems Design and Related Services	R	*7379	Computer Related Services, NEC (except computer systems consultants).
5616	Management, Scientific and Technical Consulting Services			
56161	Management Consulting Services			
561611	Administrative and General Management	N	*8742	Management Consulting Services (administrative management and general management consulting).
561612	Human Resources Consulting	N	*8742	Management Consulting Services (human resources and personnel management consulting).
			*7361	Employment Agencies (executive placement services).
561613	Marketing Consulting	N	*8742	Management Consulting Services (marketing consulting).
561614	Process, Physical, Distribution and Logistics Consulting.	N	*8742	Management Consulting Services (manufacturing management, physical distribution, and site location consulting).
561619	Other Management Consulting Services	N	*4731	Arrangement of Transportation of Freight and Cargo (freight rate-auditors and tariff consulting).
			*8748	Business Consulting Services, NEC (safety consulting).
56162	Environmental Consulting	N	*8999	Services, NEC (environmental consultants).
56169	Other Scientific and Technical Consulting Services	N	*8748	Business Consulting Services, NEC (economic, radio, and traffic consultants).
			*8999	Services, NEC (nuclear consultants, geologists, physicists and actuarial consulting).
5617	Scientific Research and Development Services			
56171	Research and Development in the Physical and Engineering Sciences.	N	*8731	Commercial Physical and Biological Research (physical and engineering sciences).
			*8733	Noncommercial Research Organizations (physical and engineering services).
56172	Research and Development in the Life Sciences	N	*8731	Commercial Physical and Biological Research (life sciences).
			*8733	Noncommercial Research Organizations (life sciences).
56173	Research and Development in the Social Sciences and Humanities.	N	*8732	Commercial Economic, Sociological, and Educational Research (social sciences and humanities).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
			*8733	Noncommercial Research Organizations (social sciences and humanities).
5618	Advertising and Related Services			
56181	Advertising Agencies	E	7311	Advertising Agencies.
56182	Public Relations Services	E	8743	Public Relations Services.
56183	Media Buying Agencies	N	*7319	Advertising, NEC (media buying services).
56184	Media Representatives	E	7313	Radio, Television, and Publishers' Advertising Representatives.
56185	Display Advertising	N	7312	Outdoor Advertising Services.
			*7319	Advertising, NEC (display advertising, except outdoor).
56186	Direct Mail Advertising	E	7331	Direct Mail Advertising Services.
56187	Advertising Material Distributors	N	*7319	Advertising, NEC (advertising materials distributor).
56189	Other Services Related to Advertising	N	*7319	Advertising, NEC (except media buying, display advertising, except outdoor, and advertising material distributors).
			*5199	Nondurable Goods, NEC (advertising specialties goods distributors).
5619	Other Professional, Scientific and Technical Services			
56191	Market Research and Public Opinion Polling	N	*8732	Commercial Economic, Sociological, and Educational Research (market research and opinion research).
56192	Photography Services			
561921	Photography Studios, Portrait	E	7221	Photographic Studios, Portrait.
561922	Commercial Photography	R	7335	Commercial Photography.
			*8099	Health and Allied Services, NEC (medical photography).
56193	Translation and Interpretation Services	N	*7389	Business Services, NEC (translation and interpretation services).
56194	Veterinary Services	E	0741	Veterinary Services for Livestock.
			0742	Veterinary Services for Animal Specialties.
56199	All Other Professional, Scientific and Technical Services.	N	*7389	Business Services (appraisers, except insurance and real estate, and miscellaneous professional, scientific, and technical services).
57	Management, Support, Waste Management, and Remediation Services			
571	Management and Support Services			
5711	Management and Facilities Support Services.			
57111	Management Services	R	*8741	Management Services (except construction management).
57112	Facilities Support Management Services	E	8744	Facilities Support Management Services.
5712	Employment Services			
57121	Employment Placement Agencies	R	*7361	Employment Agencies (except executive placing services).
			*7819	Services Allied to Motion Pictures Production (casting bureaus).
			*7922	Theatrical Producers and Miscellaneous Theatrical Services (casting agencies).
57122	Temporary Help Services	N	*7363	Help Supply Services (except employee leasing service).
57123	Employee Leasing Services	N	*7363	Help Supply Services (except temporary help service).
5713	Administrative Support Services.			
57131	Document Preparation Services	N	*7338	Secretarial and Court Reporting (except court reporting).
57132	Telephone Call Centers			
571321	Telephone Answering Services	N	*7389	Business Services, NEC (telephone answering).
571322	Telemarketing Bureaus	N	*7389	Business Services, NEC (telemarketing bureaus and telephone soliciting).
57133	Business Service Centers.			
571331	Photocopying and Duplicating Services	R	*2752	Commercial Printing, Lithographic (electrostatic, digital, and nonimpact quick printing).
			*2759	Commercial Printing, NEC (quick printing).
			7334	Photocopying and Duplicating Services.
571332	Private Mail Centers	N	*7389	Business Services, NEC (private mail box centers and mail box rental).
57134	Collection Agencies	R	*7322	Adjustment and Collection Services (except adjustment bureaus).
57135	Credit Bureaus	E	7323	Credit Reporting Services.

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
57139	Other Administrative Support Services			
571391	Repossession Services	N	*7322	Adjustment and Collection (adjustment bureaus).
			*7389	Business Services, NEC (recovery and repossession services).
571392	Court Reporting and Stenotype Services	N	*7338	Secretarial and Court Reporting (except secretarial).
571399	All Other Administrative Support Services	N	*7389	Business Services, NEC (administrative support services except telephone answering, telemarketing bureaus, private mail centers and repossession services).
5714	Travel Arrangement and Reservation Services			
57141	Travel Agencies	E	4724	Travel Agencies.
57142	Tour Operators	E	4725	Tour Operators.
57149	Other Travel Arrangement and Reservation Services			
571491	Convention and Visitors Bureaus	N	*7389	Business Services, NEC (convention and visitors bureaus, tourist information bureaus).
571499	All Other Travel Arrangement and Reservation Services.	N	*4729	Arrangement of Passenger Transportation, NEC (except arrangement of vanpools and carpools).
			*7389	Business Services, NEC (reservation systems: hotel & restaurants).
			*7999	Amusement and Recreation Services, NEC (ticket agencies).
5715	Security and Investigation Services.			
57151	Investigation, Guard and Armored Car Services.			
571511	Investigation Services	N	*7381	Detective, Guard, and Armored Car Services (detective services).
571512	Security Guards and Patrol Services	N	*7381	Detective, Guard, and Armored Car Services (guard services).
571513	Armored Car Services	N	*7381	Detective, Guard, and Armored Car Services (armored car services).
57152	Security Systems Services			
571521	Security Systems Services, Except Locksmiths	R	7382	Security Systems Services.
			*1731	Electrical Work (burglar and fire alarm installation).
571522	Locksmiths	N	*7699	Repair Shops and Related Services, NEC (locksmith shops).
5716	Services to Buildings and Dwellings			
57161	Exterminating and Pest Control Services	R	*4959	Sanitary Services, NEC (malaria control and mosquito eradication).
			*7342	Disinfecting and Pest Control Services (exterminating and pest control).
57162	Janitorial Services	R	*7342	Disinfecting and Pest Control Services (except exterminating).
			7349	Building Cleaning and Maintenance Services, NEC.
			*4581	Airports, Flying Fields, and Airport Terminal Services (airplane cleaning and janitorial services).
57163	Landscaping Care and Maintenance Services			
571631	Lawn and Garden Services	E	0782	Lawn and Garden Services.
			*4959	Sanitary Services, NEC (snowplowing and street sweeping).
571632	Ornamental Shrub and Tree Services	E	0783	Ornamental Shrub and Tree Services.
57164	Carpet and Upholstery Cleaning Services	E	7217	Carpet and Upholstery Cleaning.
57169	Other Services to Buildings and Dwellings	N	*7349	Business Services, NEC (swimming pool cleaning and maintenance).
			*7699	Repair Shops and Related Services, NEC (furnace, duct, chimney cleaning and furnace cleaning services).
5719	Miscellaneous Support Services			
57191	Packaging and Labeling Services	N	*7389	Business Services, NEC (packaging and labeling services).
57192	Convention and Trade Show Organizers	N	*7389	Business Services, NEC (convention and trade show services).
57199	Other Miscellaneous Support Services	N	*7389	Business Services, NEC (business support services except packaging and labeling, convention and trade shows services, convention and visitor bureaus, tourist information bureaus).
572	Waste Management and Remediation Services			
5721	Waste Collection			
57211	Waste Collection			
572111	Solid Waste Collection	N	*4212	Local Trucking Without Storage (solid waste collection).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
572112	Hazardous Waste Collection	N	*4953	Refuse Systems (solid waste collection).
			*4212	Local Trucking Without Storage (hazardous waste collection).
572119	Other Waste Collection	N	*4953	Refuse Systems (hazardous waste collection).
			*4212	Local Trucking Without Storage (other waste collection without disposal).
			*4953	Refuse Systems (other waste collection).
5722	Waste Treatment and Disposal			
57221	Waste Treatment and Disposal			
572211	Hazardous Waste Treatment and Disposal	N	*4953	Refuse Systems (hazardous waste treatment and disposal).
572212	Solid Waste Landfill	N	*4953	Refuse Systems (solid waste landfills).
572213	Solid Waste Combustors and Incinerators	N	*4953	Refuse Systems (solid waste combustors and incinerators).
572219	Other Nonhazardous Waste Treatment and Disposal.	N	*4953	Refuse Systems (other nonhazardous waste treatment and disposal).
5729	Remediation Services and Other Waste Management			
57291	Materials Recovery Facilities	N	*4953	Refuse Systems (materials recovery facilities).
57299	Remediation Services and All Other Waste Management			
572991	Remediation Services	N	*4959	Sanitary Services, NEC (remediation services).
572992	Septic Tank and Related Services	N	*7359	Equipment Rental and Leasing, NEC (portable toilet rental).
			*7699	Repair Shops and Related Services, NEC (cesspool cleaning, sewer cleaning and rodding).
572993	All Other Miscellaneous Waste Management	R	*4959	Sanitary Services, NEC (all but remediation services, malaria control, mosquito eradication, snowplowing, street sweeping, and airport runway vacuuming).
61	Educational Services			
611	Educational Services			
6111	Elementary and Secondary Schools			
61111	Elementary and Secondary Schools	E	8211	Elementary and Secondary Schools.
6112	Junior Colleges			
61121	Junior Colleges	E	8222	Junior Colleges and Technical Institutes.
6113	Colleges, Universities and Professional Schools			
61131	Colleges, Universities and Professional Schools	E	8221	Colleges, Universities, and Professional Schools.
6114	Business, Computer, and Management Training Schools			
61141	Business and Secretarial Schools	E	8244	Business and Secretarial Schools.
61142	Computer Training Schools	E	8243	Data Processing Schools.
61143	Professional and Management Development Training Schools.	N	*8299	Schools and Educational Services, NEC (professional and management development training).
6115	Technical and Trade Schools			
61151	Technical and Trade Schools			
611511	Cosmetology and Barber Schools	N	*7231	Beauty Shops (beauty and cosmetology schools).
			*7241	Barber Shops (barber colleges).
611512	Vocational and Technical Schools	N	*8249	Vocational Schools, NEC (vo-tech schools, except high schools).
611513	Aviation and Flight Training	N	*8249	Vocational Schools, NEC (aviation schools, excluding flying instruction).
			*8299	Schools and Educational Services, NEC (flying instruction).
611514	Apprenticeship Training	N	*8249	Vocational Schools, NEC (vocational apprenticeship training).
611519	Other Technical and Trade Schools	N	*8249	Vocational Schools, NEC (except vo-tech schools, aviation and flight training, apprenticeship training, and driving schools).
6116	Miscellaneous Schools and Instruction			
61161	Fine Arts Schools	N	*8299	Schools and Educational Services, NEC (art, drama, and music schools).
			*7911	Dance Studios, Schools, and Halls (dance instructors, and professional and other dance schools).
61162	Athletic Instruction	N	*7999	Amusement and Recreation Services, NEC (baseball, basketball, bowling, gymnastic, judo, karate, parachute, scuba and skin diving, skating, ski, swimming, tennis, and other sports instruction; and sports instructional schools and camps).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
61163	Language Schools	N	*8299	Schools and Educational Services, NEC (language schools).
61169	Other Miscellaneous Schools and Institutions			
611691	Exam Preparation and Tutoring	N	*8299	Schools and Educational Services, NEC (exam preparation and tutoring).
611692	Automobile Driving Schools	N	*8249	Vocational Schools, NEC (truck driving schools).
			*8299	Schools and Educational Services, NEC (automobile driving instruction).
611699	All Other Miscellaneous Schools and Instruction	N	*8299	Schools and Educational Services, NEC (except professional and management training, aviation and flight training, fine arts schools, language schools, exam preparation and tutoring, automobile driving schools, and educational support services).
6117	Educational Support Services			
61171	Educational Support Services	N	*8299	Schools and Educational Services NEC (except instruction).
			*8748	Business Consulting Services, NEC (educational test development and evaluation services, educational testing services, and educational consultants).
62	Health and Social Assistance			
621	Ambulatory Health Care Services			
6211	Offices of Physicians			
62111	Offices of Physicians			
621111	Offices of Physicians Except Mental Health Specialists.	N	*8011	Offices and Clinics of Doctors of Medicine (except mental health specialists).
			*8031	Offices and Clinics of Doctors of Osteopathy (except mental health specialists).
621112	Offices of Physicians, Mental Health Specialists	N	*8011	Offices and Clinics of Doctors of Medicine (mental health specialists).
			*8031	Offices and Clinics of Doctors of Osteopathy (mental health specialists).
6212	Offices of Dentists			
62121	Offices of Dentists	E	8021	Offices and Clinics of Dentists.
6213	Offices of Other Health Practitioners			
62131	Offices of Chiropractors	E	8041	Offices and Clinics of Chiropractors.
62132	Offices of Optometrists	E	8042	Offices and Clinics of Optometrists.
62133	Offices of Mental Health Practitioners, Except Physicians.	N	*8049	Offices and Clinics of Health Practitioners, NEC (mental health practitioners except physicians).
62134	Offices of Physical, Occupational and Speech Therapists and Audiologists.	N	*8049	Offices and Clinics of Health Practitioners, NEC (physical, occupational, speech therapists, and audiologists).
62135	Offices of All Other Health Practitioners			
621351	Offices of Podiatrists	E	8043	Offices and Clinics of Podiatrists.
621359	Miscellaneous Health Practitioners	N	*8049	Offices and Clinics of Health Practitioners, NEC (except mental health practitioners, physical, occupational, speech therapists, and audiologists).
6214	Outpatient Care Facilities			
62141	Family Planning Centers	N	*8093	Speciality Outpatient Facilities, NEC (family planning centers).
			*8099	Health and Allied Services, NEC (childbirth preparation).
62142	Outpatient Mental Health Facilities	N	*8093	Specialty Outpatient Facilities, NEC (mental health facilities).
62149	Other Outpatient Care Facilities			
621491	HMO Medical Centers	N	*8011	Offices and Clinics of Doctors of Medicine (HMO Medical Centers).
621492	Kidney Dialysis Centers	E	8092	Kidney Dialysis Centers.
621493	Ambulatory Surgical and Freestanding Emergency Centers.	N	*8011	Offices and Clinics of Doctors of Medicine (surgical and emergency centers.
621499	All Other Outpatient Care Facilities	N	*8093	Specialty Outpatient Facilities, NEC (except family planning and mental health centers).
6215	Medical and Diagnostic Laboratories			
62151	Medical and Diagnostic Laboratories			
621511	Medical Laboratories	R	*8071	Medical Laboratories (except diagnostic imaging centers).
621512	Diagnostic Imaging Centers	N	*8071	Medical Laboratories (diagnostic imaging centers).
6216	Home Health Care Services			
62161	Home Health Care Services			

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
621611	Home Health Agencies	N	*8082	Home Health Care Services (home health agencies).
621619	Other Home Health Care Services	N	*8082	Home Health Care Services (except home health agencies).
6219	Miscellaneous Ambulatory Health Care Services			
62191	Ambulance Services	N	*4119	Local Passenger Transportation, NEC (land ambulance).
			*4522	Air Transportation, Nonscheduled (air ambulance).
62199	Other Miscellaneous Health Care Services			
621991	Blood and Organ Banks	N	*8099	Health and Allied Services, NEC (blood and organ banks).
621999	All Other Miscellaneous Health Care Services	N	*8099	Health and Allied Services, NEC (except blood and organ banks).
622	Hospitals.			
6221	General Medical and Surgical Hospitals			
62211	General Medical and Surgical Hospitals	R	8062	General Medical and Surgical Hospitals.
			*8069	Specialty Hospitals, Except Psychiatric (childrens' hospitals).
6222	Psychiatric and Substance Abuse Hospitals			
62221	Psychiatric and Substance Abuse Hospitals	R	8063	Psychiatric Hospitals.
			*8069	Specialty Hospitals, Except Psychiatric (substance abuse hospitals).
6223	Specialty Hospitals, Except Psychiatric and Substance Abuse Hospitals			
62231	Specialty Hospitals, Except Psychiatric and Substance Abuse Hospitals.	R	*8069	Specialty Hospitals, Except Psychiatric (except childrens' and substance abuse hospitals).
623	Nursing and Residential Care Facilities			
6231	Nursing Care Facilities			
62311	Nursing Care Facilities	N	*8051	Skilled Nursing Care Facilities (except continuing care retirement communities).
			*8052	Intermediate Care Facilities (except continuing care retirement communities and mental retardation facilities).
			*8059	Nursing and Personal Care Facilities, NEC (except continuing care retirement communities).
6232	Mental Health, Mental Retardation, and Substance Abuse Facilities			
62321	Mental Retardation Facilities	N	*8052	Intermediate Care Facilities (mental retardation facilities).
62322	Mental Health and Substance Abuse Facilities	N	*8361	Residential Care (mental health and substance abuse facilities).
6233	Community Care Facilities for the Elderly			
62331	Community Care Facilities for the Elderly			
623311	Continuing Care Retirement Communities	N	*8051	Skilled Nursing Care Facilities (continuing care retirement communities).
			*8052	Intermediate Care Facilities (continuing care retirement communities).
			*8059	Nursing and Personal Care Facilities, NEC (continuing care retirement communities).
623312	Homes for the Elderly	N	*8361	Residential Care (homes for the elderly).
6239	Other Residential Care Facilities			
62391	Other Residential Care Facilities	N	*8361	Residential Care (except mental health and substance abuse facilities, homes for the elderly).
624	Social Assistance			
6241	Individual and Family Services			
62411	Child and Youth Services	N	*8322	Individual and Family Social Services (child and youth services).
62412	Services for the Elderly and Persons with Disabilities.	N	*8322	Individual and Family Social Services (services for the elderly and disabled).
62419	Other Individual and Family Services	N	*8322	Individual and Family Social Services (except services for children, youth, elderly, disabled; food, housing, emergency and relief).
6242	Community Food, Shelter, and Emergency			
62421	Community Food Services	N	*8322	Individual and Family Social Services (food services).
62422	Community Housing Services			
624221	Temporary Shelter	N	*8322	Individual and Family Social Services (temporary shelter).
624229	Other Community Housing Services	N	*8322	Individual and Family Social Services (housing services except temporary shelter).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
62423	Emergency and Other Relief Services	N	*8322	Individual and Family Social Services (emergency and and relief services).
6243	Job Training and Vocational Rehabilitation			
62431	Job Training and Vocational Rehabilitation Services	E	8331	Job Training and Vocational Rehabilitation Services.
6244	Child Day Care Services			
62441	Child Day Care Services	E	8351	Child Day Care Services.
71	Arts, Entertainment and Recreation			
711	Performing Arts, Spectator Sports and Related Industries			
7111	Performing Arts Companies			
71111	Theater Companies	N	*5812	Eating Places (dinner theaters).
			*7922	Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (theater companies, opera companies).
71112	Dance Companies	N	*7922	Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (ballet and dance companies).
71113	Musical Groups and Artists	N	*7929	Bands, Orchestras, Actors, and Entertainment Groups (musical groups and artists and orchestras).
71119	Other Performing Arts Companies	N	*7929	Bands, Orchestras, Actors, and Entertainment Groups, (except musical groups, artists, actors, and actresses).
			*7999	Amusement and Recreation Services, NEC (circus companies).
7112	Spectator Sports			
71121	Spectator Sports			
711211	Sports Clubs	N	*7941	Professional Sports Clubs and Promoters (professional sports clubs).
711212	Race Tracks	N	*7948	Racing, Including Track Operations (track operations).
711219	Other Spectator Sports	N	*7941	Professional Sports Clubs Promoters (except sports clubs, stadium operators, sports promoters and agents).
			*7948	Racing, Including Track Operations (except track operators).
			*7999	Amusement and Recreation Services, NEC (professional athletes).
7113	Promoters of Arts, Sports and Similar Events			
71131	Promoters of Arts, Sports and Similar Events with Facilities	N	*6512	Operators of Nonresidential Buildings (stadium and arena owners).
			*7922	Theatrical Procedures (Except Motion Pictures) and Miscellaneous Theatrical Services (theater operators).
			*7941	Professional Sports Clubs and Promoters (stadium operators).
71132	Promoters of Arts, Sports and Similar Events without Facilities	N	*7922	Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (theatrical promoters.
			*7941	Professional Sports Clubs and Promoters (sports promoters).
7114	Agents and Managers for Artists, Athletes and Other Entertainers			
71141	Agents and Managers for Artists, Athletes and Other Entertainers	N	*7389	Business Services, NEC (agents and brokers for authors and artists).
			*7922	Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (theatrical agents).
			*7941	Professional Sports Clubs and Promoters (sports agents).
7115	Independent Artists, Writers, and Performers			
71151	Independent Artists, and Performers	N	*7819	Services Allied to Motion Picture Production (film directors and related motion picture production services, independent).
			*7929	Bands, Orchestras, Actors, and Other Entertainers and Entertainment Services (actors and actresses).
			*8999	Services, NEC (authors, artists, and related technical services independent).
712	Museums, Historical Sites and Similar Institutions.			

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
7121	Museums, Historical Sites and Similar Institutions			
71211	Museums	R	*8412	Museums and Art Galleries (except historic and heritage sites).
71212	Historical Sites	N	*8412	Museums and Art Galleries (historic and heritage sites).
71213	Botanical and Zoological Gardens	R	*8422	Arboreta and Botanical and Zoological Gardens (except nature parks and reserves).
71214	Nature Parks and Similar Institutions	N	*7999	Amusement and Recreation Services, NEC (caverns and miscellaneous commercial parks).
			*8422	Arboreta and Botanical and Zoological Gardens (nature parks and reserves).
713	Recreation, Amusement and Gambling Industries			
7131	Operators of Sports and Recreation Facilities			
71311	Golf Courses	N	7992	Public Golf Courses.
			*7997	Membership Sports and Recreation Clubs (golf clubs).
71312	Skiing Facilities	N	*7999	Amusement and Recreation Services, NEC (skiing facilities).
71313	Marinas	E	4493	Marinas.
71314	Recreational, Sports and Fitness Centers	N	7991	Physical Fitness Facilities.
			*7997	Membership Sports and Recreation Clubs (recreation clubs with facilities).
			*7999	Amusement and Recreation Services, NEC (nonmembership recreation facilities).
71315	Bowling Centers	E	7933	Bowling Centers.
7132	Amusement Facilities			
71321	Amusement and Theme Parks	E	7996	Amusement Parks.
71322	Amusement Arcades and Other Coin Operated Amusement Devices.	R	*7993	Coin-Operated Amusement Devices (except slot machine operators).
7133	Gambling Industries			
71331	Casinos, except Hotel Casinos	N	*7999	Amusement and Recreation Services, NEC (casinos, except hotel casinos).
71339	Other Gambling Industries	N	*7993	Coin-Operated Amusement Devices (slot machine operators).
			*7999	Amusement and Recreation Services, NEC (lottery, bingo, bookie, and other gambling operations).
7139	Other Recreation and Amusement Services			
71399	Other Recreation and Amusement Services	N	*7911	Dance Studios, Schools, and Halls (except instruction).
			*7997	Membership Sports and Recreation Clubs (recreation clubs without facilities).
			*7999	Amusement and Recreation Services, NEC (except circuses, professionals, athletes, caverns and other commercial parks, skiing facilities, casinos and other gambling operations, amusement and recreation facilities, sports instruction, sports equipment rental, and amusement or scenic transport operations).
72	Accommodations, Food Services, and Drinking Places			
721	Accommodations			
7211	Traveler Accommodations			
72111	Hotels and Motels, Except Casino Hotels	R	*7011	Hotels and Motels (hotels and motels, except casino hotels).
			*7041	Organization Hotels and Lodging Houses, on Membership Basis (hotels).
72112	Casino Hotels	N	*7011	Hotels and Motels (casino hotels).
72119	Other Traveler Accommodations			
721191	Bed and Breakfast Inns	N	*7011	Hotels and Motels (bed and breakfast inns).
721199	All Other Traveler Accommodations	N	*7011	Hotels and Motels (except hotels, motels and bed and breakfast inns).
7212	Recreation and Other Accommodations			
72121	Recreational Vehicle Parks and Camps			
721211	Sporting and Recreation Camps	E	7032	Sporting and Recreational Camps.
721212	Recreational Vehicle Parks and Campgrounds	E	7033	Recreational Vehicle Parks and Campgrounds.
72122	Rooming and Boarding Houses	R	7021	Rooming and Boarding Houses.
			*7041	Organization Hotels and Lodging Houses, on Membership Basis (except hotels).
722	Foodservices and Drinking Places			
7221	Full-Service Restaurants			

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
72211	Full-Service Restaurants	N	*5812	Eating Places (full-service restaurants).
7222	Limited-Service Eating Places			
72221	Limited-Service Restaurants and Cafeterias			
722211	Limited-Service Restaurants	N	*5812	Eating Places (limited-service restaurants).
			*5499	Miscellaneous Food Stores (coffee shops making and serving food and beverages for immediate consumption).
722212	Cafeterias	N	*5812	Eating Places (cafeterias).
72222	Refreshment Places	N	*5812	Eating Places (refreshment places).
			*5461	Retail Bakeries (snacks).
7223	Special Foodservices			
72231	Foodservice Contractors	N	*5812	Eating Places (food service contractors).
72232	Caterers	N	*5812	Eating Places (caterers).
72233	Mobile Caterers	N	*5963	Direct Selling Establishments (mobile caterers).
7224	Bars, Taverns, and Other Drinking Places (Alcoholic Beverages)			
72241	Bars, Taverns, and Drinking Places (Alchoholic Beverages).	E	5813	Drinking Places (alcoholic beverages).
81	Other Services, Except Public Administration			
811	Repair and Maintenance			
8111	Automotive Repair and Maintenance			
81111	Automotive Mechanical and Electrical Repair and Maintenance			
811111	General Automotive Repair	E	7538	General Automotive Repair Shops.
811112	Automotive Exhaust System Repair	E	7533	Automotive Exhaust System Repair Shops.
811113	Automotive Transmission Repair	E	7537	Automotive Transmission Repair Shops.
811119	Other Automotive Mechanical and Electrical Repair and Maintenance.	E	7539	Automotive Repair Shops, NEC.
81112	Automotive Body, Paint and Interior Repair			
811121	Automotive Body, Paint and Upholstery Repair and Maintenance.	E	7532	Top, Body, and Upholstery Repair Shops and Paint Shops.
811122	Automotive Glass Replacement Shops	E	7536	Automotive Glass Replacement Shops.
81119	Other Automotive Repair and Maintenance			
811191	Automotive Oil Change and Lubrication Shops	N	*7549	Automotive Services, Except Repair and Carwashes (Lubrication service, automotive).
811192	Car Washes	E	7542	Carwashes.
811199	All Other Automotive Repair and Maintenance	R	*7534	Tire Retreading and Repair Shops (repair).
			*7549	Automotive Services, Except Repair and Carwashes (except lubricating and towing).
8112	Heavy and Industrial Machinery and Equipment Repair and Maintenance			
81121	Heavy and Industrial Machinery and Equipment Repair and Maintenance			
811211	Transportation Equipment Repair and Maintenance	N	*3732	Boat Building and Repairing (boat repair).
			*7699	Repair Shops and Related Services, NEC (other non-automotive transportation equipment).
811219	Other Industrial Machinery and Equipment Repair and Maintenance.	R	*7623	Refrigerator and Air-Conditioning Service and Repair Shops (commercial refrigerator equipment repair).
			*7694	Armature Rewinding Shops (repair).
			*7699	Repair Shops and Related Services, NEC (industrial machines and equipment).
8113	Electronic and Precision Equipment Repair and Maintenance			
81131	Electronic and Precision Equipment Repair and Maintenance			
811311	Consumer Electronics Repair and Maintenance	N	*7622	Radio and Television Repair Shops (stereo, TV, VCR, and radio).
			*7629	Electrical and Electronic Repair Shops, NEC (consumer equipment except computer, TV, stereo, VCR, and radio).
811312	Computer and Office Machine Repair and Maintenance.	N	7378	Computer Maintenance and Repair.
			*7629	Electrical and Electronic Repair Shops, NEC (business and office machine repair, electrical).
			*7699	Repair Shops and Related Services, NEC (typewriter repair).
811313	Communication Equipment Repair and Maintenance	N	*7622	Radio and Television Repair Shops (telecommunication repair).

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
			*7629	Electrical and Electronic Repair Shops, NEC (telephone set repair).
811319	Other Electronic and Precision Equipment Repair and Maintenance.	N	*7629	Electrical and Electronic Repair Shops, NEC (electrical measuring instrument repair and calibration, medical equipment repair, electrical).
			*7699	Repair Shops and Related Services, NEC (dental instrument repair, laboratory instrument repair, medical equipment and other electronic and precision equipment repair, except typewriters).
8114	Personal or Household Goods Repair and Maintenance			
81141	Home and Garden Equipment and Appliance Repair and Maintenance			
811411	Home and Garden Equipment Repair and Maintenance.	N	*7699	Repair Shops and Related Services, NEC (lawnmower repair shops, sharpening and repairing knives, saws and tools).
811412	Appliance Repair and Maintenance	N	*7623	Refrigeration and Air-Conditioning Service and Repair Shops (except commercial).
			*7629	Electrical and Electronic Repair Shops, NEC (appliance repair, electrical; washing machine repair; electric razer repair).
			*7699	Repair Shops and Related Services, NEC (gas appliance repair service, sewing machine repair, stove repair shops, and other non-electrical appliance).
81142	Reupholstery and Furniture Repair	E	7641	Reupholstery and Furniture Repair.
81143	Footwear and Leather Goods Repair	R	7251	Shoe Repair and Shoeshine Parlors.
			*7699	Repair Shops and Related Services (leather goods repair shops, luggage repair shops, pocketbook repair shops).
81149	Other Personal or Household Goods Repair and Maintenance.	N	*7219	Laundry and Garment Services, NEC (alteration and repair).
			7631	Watch, Clock, and Jewelry Repair.
			7692	Welding Repair.
			*7699	Repair Shops and Related Services, NEC (except industrial, electronic, home and garden, appliance, and leather goods).
812	Personal and Laundry Services.			
8121	Personal Care Services.			
81211	Hair Care and Esthetic Services.			
812111	Barber Shops	R	*7241	Barber Shops (except barber colleges).
812112	Beauty Salons	R	*7231	Beauty Shops (except beauty and cosmetology schools and manicure and pedicure salons).
812113	Nail Salons	N	*7231	Beauty Shops (manicure and pedicure salons).
81219	Other Personal Care Services.			
812191	Diet and Weight Reducing Centers	N	*7299	Miscellaneous Personal Services, NEC (diet and weight reducing services).
812199	Other Personal Care Services	N	*7299	Miscellaneous Personal Services, NEC, (personal care services).
8122	Funeral Services.			
81221	Funeral Homes	R	7261	Funeral Services and Crematories (funeral homes).
81222	Cemeteries and Crematories	R	*6531	Real Estate Agents and Managers (cemetery management).
			6553	Cemetery Subdividers and Developers.
			*7261	Funeral Services and Crematories (except funeral homes).
8123	Laundry Services.			
81231	Coin-Operated Laundries and Drycleaning	E	7215	Coin-Operated Laundry and Drycleaning.
81232	Drycleaning and Laundry Services, Except Coin-Operated			
812321	Laundries, Family and Commercial	E	7211	Power Laundries, Family and Commercial.
812322	Drycleaning Plants	E	7216	Drycleaning Plants, Except Rug Cleaning.
81233	Linen and Uniform Supply.			
812331	Linen Supply	R	7213	Linen Supply.
			*7219	Laundry and Garment Services, NEC, (diaper service).
812332	Industrial Launderers	E	7218	Industrial Launderers.
81239	Other Laundry Services.			
812391	Garment Pressing, and Agents for Laundries	E	7212	Garment Pressing and Agents for Laundries.

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
812399	All Other Laundry Services	R	*7219	Laundry and Garment Services, NEC (except diaper service and clothing alteration and repair).
8129	Miscellaneous Personal Services			
81291	Pet Care Services, Except Veterinary Services	R	*0752	Animal Speciality Services, Except Veterinary (pet care services, except veterinary).
			*8734	Testing Laboratories (veterinary testing labs).
81292	Photo Finishing.			
812921	Photo Finishing Laboratories, Except One-Hour	N	*7384	Photofinishing Laboratories (except one-hour).
812922	One-Hour Photo Finishing	N	*7384	Photofinishing Laboratories (one-hour).
81293	Parking Lots and Garages	E	7521	Automobile Parking.
81299	Other Miscellaneous Personal Services	R	*7299	Miscellaneous Personal Services, NEC (except diet and weight reducing services, personal care services, and formal wear and costume rental service).
813	Religious, Grantmaking, Civic and Other Membership Organizations			
8131	Religious Organizations			
81311	Religious Organizations	E	8661	Religious Organizations.
8132	Grantmaking and Giving Services.			
81321	Grantmaking and Giving Services.			
813211	Grantmaking Foundations	E	6732	Educational, Religious, and Charitable Trust.
813212	Voluntary Health Organizations	N	*8399	Social Services, NEC (voluntary health organizations).
813219	Other Grantmaking and Giving Services	N	*8399	Social Services, NEC (except grantmaking and voluntary health organizations).
8133	Social Advocacy Organizations			
81331	Social Advocacy Organizations			
813311	Human Rights Organizations	N	*8399	Social Services, NEC (human rights organizations).
813312	Environment, Conservation and Wildlife Organizations.	N	*8399	Social Services, NEC (environment, conservation, and wildlife advocacy).
			*8699	Membership Organizations, NEC (humane societies).
813319	Other Social Advocacy Organizations	N	*8399	Social Services, NEC (except human rights, environment, conservation and wildlife organizations).
8134	Civic and Social Associations			
81341	Civic and Social Associations			
813411	Civic and Social Organizations, with Restaurants and Bars.	N	*8641	Civic, Social, and Fraternal Organizations (except condominium and homeowner associations).
			*8699	Membership Organizations, NEC (farm granges with restaurant and bars).
813412	Civic and Social Organizations, without Restaurants and Bars.	N	*8641	Civic, Social, and Fraternal Organizations (except condominium and homeowner associations).
			*8699	Membership Organizations, NEC (farm granges without restaurant, and bars).
8139	Other Membership Organizations.			
81391	Business Associations	R	8611	Business Associations.
			*8699	Membership Organizations, NEC (farm business organizations).
81392	Professional Membership Organizations	E	8621	Professional Membership Organizations.
81393	Labor Unions and Similar Labor Organizations	E	8631	Labor Unions and Similar Labor Organizations.
81394	Political Organizations	E	8651	Political Organizations.
81399	All Other Membership Organizations	R	*8699	Membership Organizations, NEC (except farm business organizations, farm granges,and environmental, conservation, and wildlife organizations).
814	Private Households			
8141	Private Households			
81411	Private Households	E	8811	Private Households.
93	Public Administration		.....	Public Administration.
931	Executive, Legislative, Public Finance and General Government			
9311	Executive, Legislative, Public Finance and General Government			
93111	Executive Offices	E	9111	Executive Offices.
93112	Legislative Bodies	E	9121	Legislative Bodies.
93113	Public Finance, Taxation, and Monetary Policy	E	9311	Public Finance, Taxation and Monetary Policy.
93114	Executive and Legislative Offices, Combined	E	9131	Executive and Legislative Office, Combined.
93119	All Other General Government	E	9199	General Government, NEC.
932	Justice, Public Order, and Safety			
9321	Justice, Public Order, and Safety			
93211	Courts	E	9211	Courts.

TABLE 1.—1997 NAICS MATCHED TO 1987 SIC—Continued

1997 NAICS code	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
92212	Police Protection	E	9221	Police Protection.
92213	Legal Counsel and Prosecution	E	9222	Legal Counsel and Prosecution.
92214	Correctional Institutions	E	9223	Correctional Institutions.
92215	Parole Offices and Probation Offices	N	*8322	Individual and Family Social Services (parole and probation offices).
92216	Fire Protection	E	9224	Fire Protection.
92219	All Other Public Order and Safety	E	9229	Public Order and Safety, NEC.
923	Administration of Human Resource Programs.			
9231	Administration of Human Resource Programs.			
92311	Administration of Educational Programs	E	9411	Administration of Educational Programs.
92312	Administration of Public Health Programs	E	9431	Administration of Public Health Programs.
92313	Administration of Social, Human Resource and Income Maintenance Programs.	E	9441	Administration of Social, Human Resource and Income Maintenance Programs.
92314	Administration of Veteran's Affairs, Except Health Insurance.	E	9451	Administration of Veteran's Affairs, Except Health Insurance.
924	Administration of Environmental Quality Programs			
9241	Administration of Environmental Quality Programs			
92411	Air and Water Resource and Solid Waste Management.	E	9511	Air and Water Resource and Solid Waste Management.
92412	Land, Mineral, Wildlife, and Forest Conservation	E	9512	Land, Mineral, Wildlife, and Forest Conservation.
925	Administration of Housing Programs, Urban Planning, and Community Development			
9251	Administration of Housing Programs, Urban Planning, and Community Development			
92511	Administration of Housing Programs	E	9531	Administration of Housing Programs.
92512	Administration of Urban Planning and Community and Rural Development.	E	9532	Administration of Urban Planning and Community and Rural Development.
926	Administration of Economic Programs			
9261	Administration of Economic Programs			
92611	Administration of General Economic Programs	E	9611	Administration of General Economic Programs.
92612	Regulation and Administration of Transportation Programs.	R	9621	Regulations and Administration of Transportation Programs (except air traffic control).
92613	Regulation and Administration of Communications, Electric, Gas, and Other Utilities.	E	9631	Regulation and Administration of Communications, Electric, Gas, and Other Utilities.
92614	Regulation of Agricultural Marketing and Commodities.	E	9641	Regulation of Agricultural Marketing and Commodities.
92615	Regulation, Licensing, and Inspection of Miscellaneous Commercial Sectors.	E	9651	Regulation, Licensing, and Inspection of Miscellaneous Commercial Sectors.
927	Space Research and Technology			
9271	Space Research and Technology			
92711	Space Research and Technology	E	9661	Space Research and Technology.
928	National Security and International Affairs			
9281	National Security and International Affairs			
92811	National Security	E	9711	National Security.
92812	International Affairs	E	9721	International Affairs.
99	Unclassified Establishments			
999	Unclassified Establishments			
9999	Unclassified Establishments	E	9999	Nonclassifiable Establishments.

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
0111	Wheat	11111	Wheat Farming.
0112	Rice	11113	Rice Farming.
0115	Corn	11112	Corn Farming (pt).
0116	Soybeans	11115	Soybean Farming.
0119	Cash Grains, NEC		
	Dry Pea and Bean Farms	11117	Dry Pea and Bean Farming.
	Oilseed, Except Soybean Farms	11116	Oilseed Farming, Except Soybean Farming.
	Popcorn Farms	11112	Corn Farming (pt).
	Other Farms	11114	Other Grain Farming, Except Wheat, Corn, and Rice.
0131	Cotton	11192	Cotton farming.
0132	Tobacco	11191	Tobacco Farming.
0133	Sugarcane and Sugar Beets		
	Sugarbeets	111221	Sugarbeet Farming.
	Sugarcane	11193	Sugarcane Farming.
0134	Irish Potatoes	11121	Potato Farming.

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
0139	Field Crops, Except Cash Grains, NEC		
	Hay Farms	11196	Hay Farming.
	Peanut Farming	111222	Peanut Farming.
	Root and Tuber, Except Potato, Peanut, and Sugar Beet Farms.	111229	Other Root and Tuber Farming.
	Other Field Crop Farms	11199	All Other Crop Farming.
0161	Vegetables and Melons	11131	Other Vegetable and Melon Farming.
0171	Berry Crops		
	Strawberry Farms	111433	Strawberry Farming.
	Other Berry Farms	111434	Other Berry Farming
0172	Grapes	111432	Grape Vineyards.
0173	Tree Nuts	111435	Tree Nut Farming.
0174@	Citrus Fruits		
	Orange Groves and Farms	11141	Orange Groves.
	Other Citrus Groves and Farms	11142	Other Citrus Groves.
0175	Deciduous Tree Fruits		
	Apple Orchard and Farms	111431	Apple Orchards.
	Other Farms	111439	Other Noncitrus Fruit Farming (pt).
0179@	Fruits and Tree Nuts, NEC	111439	Other Noncitrus Fruit Farming (pt).
0181@	Ornamental Floriculture and Nursery Products		
	Floriculture Farming	111522	Floriculture Production.
	Nursery Farming	111521	Nursery and Tree Production (pt).
0182	Food Crops Grown Under Cover		
	Mushroom, Growing Of	111511	Mushroom Production.
	Other Food Crops Grown Under Cover	111519	Other Food Crops Grown Under Cover.
0191@	General Farms, Primarily Crop	11199	All Other Crop Farming (pt).
0211	Beef Cattle Feedlots	112112	Cattle Feedlots.
0212	Beef Cattle, Except Feedlots	112111	Beef Cattle Ranching and Farming (pt).
0213	Hogs	11221	Hog and Pig Farming.
0214	Sheep and Goats		
	Sheep Farms	11241	Sheep Farming.
	Goat Farms	11242	Goat Farming.
0219@	General Livestock, Except Dairy and Poultry	11299	All Other Animal Production (pt).
0241	Dairy Farms		
	Dairy Heifer Replacement Farms	112111	Beef Cattle Ranching and Farming (pt).
	Dairy Farms	11212	Dairy Cattle and Milk Production.
0251	Broiler, Fryers, and Roaster Chickens	11232	Broilers and Other Meat-Type Chicken Production.
0252	Chicken Eggs	11231	Chicken Egg Production.
0253	Turkey and Turkey Eggs	11234	Turkey Production.
0254	Poultry Hatcheries	112351	Poultry Hatcheries.
0259	Poultry and Eggs, NEC	112359	Other Poultry Production.
0271	Fur-Bearing Animals and Rabbits	11293	Fur-Bearing Animal and Rabbit Production.
0272	Horses and Other Equines	11292	Horse and Other Equine Production.
0273	Animal Aquaculture		
	Finfish Farming	112511	Finfish Production (pt).
	Shellfish Farming	112512	Shellfish Production (pt).
	Other Animal Aquaculture	112519	Other Animal Aquaculture (pt).
0279@	Animal Specialities, NEC		
	Apiculture	11291	Apiculture.
	Other	11299	All Other Animal Production (pt).
0291@	General Farms, Primarily Livestock and Animal Specialties.	11299	All Other Animal Production (pt).
0711	Soil Preparation Services	115111	Soil Preparation, Planting and Cultivating (pt).
0721	Crop Planting, Cultivating and Protecting		
	Crop Dusting When Combined With a Variety of Aircraft-Based Services.	48122	Nonscheduled Speciality Air Transportation (pt).
	Other	115111	Soil Preparation, Planting and Cultivating (pt).
0722	Crop Harvesting, Primarily by Machine	115112	Crop Harvesting, Primarily By Machine.
0723	Crop Preparation Services For Market, except Cotton Ginning.	115113	Postharvest Crop Activities.
0724	Cotton Ginning	33921	Cotton Ginning.
0741	Veterinary Service For Livestock	56194	Veterinary Services (pt).
0742	Veterinary Services for Animal Specialties	56194	Veterinary Services (pt).
0751@	Livestock Services, Except Veterinary		
	Custom Slaughtering	311611	Animal Slaughtering, Except Poultry (pt).
	Other Livestock Service, Except Veterinary	11521	Support Activities For Animal Production (pt).
0752@	Animal Specialty Services, Except Veterinary		
	Horses and Equines Services and Animal Production Breeding.	11521	Support Activities For Animal Production (pt).
	Pet Care Services	81291	Pet Care Services, Except Veterinary Services (pt).
0761	Farm Labor Contractors and Crew Leaders	115114	Farm Labor Contractors and Crew Leaders.

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
0762@	Farm Management Services		
	Animal Production Management Services	11521	Support Activities For Animal Production (pt).
	Crop Production Management Services		Included with the particular crop production industries they serve such as wheat, rice, corn, etc.
0781	Landscape Counseling and Planning	56135	Landscape Architecture Services.
0782	Lawn and Garden Services	571631	Lawn and Garden Services (pt).
0783	Ornamental Shrub and Tree Services	571632	Ornamental Shrub and Tree Services.
0811@	Timber Tracts.		
	Short Rotation Woody Crops	111521	Nursery and Tree Production (pt).
	Long Term Timber Farming	11311	Timber Tract Operations.
0831@	Forest Nurseries and Gathering of Forest Products		
	Maple Sap	11199	All Other Crop Farming (pt).
	Other Forest Products	11321	Forest Nurseries and Gathering of Forest Products.
0851	Forestry Services.		
	Aerial forest fighting when combined with a variety of aircraft-based services.	48122	Nonscheduled Speciality Air Transportation (pt).
	Other Forestry Services	11531	Support Activities for Forestry.
0912	Finfish	114111	Finfish Fishing (pt).
0913	Shellfish	114112	Shellfish Fishing (pt).
0919	Miscellaneous Marine Products		
	Except Plant Aquaculture	114119	Other Marine Fishing.
	Plant Aquaculture	11199	All Other Crop Farming (plant aquaculture).
0921@	Fish Hatcheries and Preserves		
	Finfish Hatcheries	112511	Finfish Production (pt).
	Shellfish Hatcheries	112512	Shellfish Production (pt).
	Fish Preserves	71214	Nature Parks and Similar Institutions (pt).
0971	Hunting, Trapping, Game Propagation	11421	Hunting and Trapping.
1011	Iron Ores	21221	Iron Mining.
1021	Copper Ores	212231	Copper and Nickel Mining (pt).
1031	Lead and Zinc Ores	212232	Lead and Zinc Mining.
1041	Gold Ores	212221	Gold Mining.
1044	Silver Ores	212222	Silver Mining.
1061	Ferroalloy Ores, Except Vanadium		
	Nickel Ore Mining	212231	Copper and Nickel Mining (pt).
	Other Ferroalloys (except nickel)	212299	Other Metal Ore Mining (pt).
1081	Metal Mining Services	213111	Support Activities for Metal Mining.
1094	Uranium-Radium-Vanadium Ores	212291	Uranium-Radium-Vanadium Ore Mining.
1099	Miscellaneous Metal Ores, NEC	212299	Other Metal Ore Mining (pt).
1221	Bituminous Coal and Lignite Surface Mining	212111	Bituminous Coal and Lignite Surface Mining.
1222	Bituminous Coal Underground Mining	212112	Bituminous Coal Underground Mining.
1231	Anthracite Mining	212113	Anthracite Mining.
1241	Coal Mining Services	213112	Support Activities for Coal Mining.
1311	Crude Petroleum and Natural Gas	211111	Crude Petroleum and Natural Gas Extraction.
1321	Natural Gas Liquids	211112	Natural Gas Liquid Extraction.
1381	Drilling Oil and Gas Wells	213113	Drilling Oil and Gas Wells.
1382	Oil and Gas Field Exploration Services		
	Aerial geophysical exploration combined with a variety of aircraft-based services.	48122	Nonscheduled Speciality Air Transportation (pt).
	Oil and Gas Field Exploration Services	213114	Support Activities for Oil and Gas Field Exploration.
1389	Oil and Gas Field Services, NEC	213115	Other Oil and Gas Field Support Activities.
1411	Dimension Stone	212311	Dimension Stone Mining of Quarry.
1422	Crushed and Broken Limestone	212312	Crushed and Broken Limestone Mining or Quarrying.
1423	Crushed and Broken Granite	212313	Crushed and Broken Granite Mining or Quarrying.
1429	Crushed and Broken Stone, NEC	212319	Other Crushed and Broken Stone Mining or Quarrying (pt).
1442	Construction Sand and Gravel	212321	Construction Sand and Gravel Mining.
1446	Industrial Sand	212322	Industrial Sand Mining.
1455	Kaolin and Ball Clay	212323	Kaolin and Ball Clay Mining.
1459	Clay, Ceramic, and Refractory Minerals, NEC	212324	Clay, Ceramic, and Refractory Mineral Mining.
1474	Potash, Soda, and Borate Minerals	212391	Potash, Soda, and Borate Mineral Mining.
1475	Phosphate Rock	212392	Phosphate Rock Mining.
1479	Chemical and Fertilizer Mineral Mining, NEC	212393	Other Chemical and Fertilizer Mineral Mining.
1481	Nonmetallic Mineral Services Except Fuels	213116	Support Activities for Non-metallic Minerals, Except Fuels.
1499	Miscellaneous Nonmetallic Minerals, Except Fuels		
	Bituminous Limestone and Bituminous Sandstone	212319	Other Crushed and Broken Stone Mining or Quarrying (pt).
	Except Bituminous Limestone and Bituminous Sandstone.	212399	All Other Non-Metallic Mineral Mining.
1521@	General Contractors—Single-Family Houses	23621	Single-Family Housing Construction (pt).
1522@	General Contractors-Residential Buildings, Other Than Single-Family		

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
	Hotel and Motel Construction	23632	Commercial and Institutional Building Construction (pt).
	Except Hotel and Motel Construction	23622	Multi-Family Housing Construction (pt).
1531@	Operative Builders		
	Single-Family Housing	23621	Single-Family Housing Construction (pt).
	Multi-Family Housing	23622	Multi-Family Housing Construction (pt).
	Manufacturing and Light Industrial Buildings	23631	Manufacturing and Light Industrial Building Construction (pt).
	Commercial and Institutional Buildings	23632	Commercial and Institutional Building Construction (pt).
1541@	General Contractors-Industrial Buildings and Warehouses		
	Warehouse Construction	23632	Commercial and Institutional Building Construction (pt).
	Except Warehouse Construction	23631	Manufacturing and Light Industrial Building Construction (pt).
1542@	General Contractors-Nonresidential Buildings, Other than Industrial Buildings and Warehouses.	23632	Commercial and Institutional Building Construction (pt).
1611	Highway and Street Construction, Except Elevated Highways.	23711	Highway and Street Construction.
1622	Bridge, Tunnel, and Elevated Highway Construction	23712	Bridge and Tunnel Construction.
1623	Water, Sewer, Pipeline, and Communications and Power Line Construction		
	Water, Sewer and Pipelines	23791	Water, Sewer and Pipeline Construction.
	Power and Communication Transmission Lines	23792	Power and Communication Transmission Line Construction.
1629	Heavy Construction, NEC		
	Industrial Nonbuilding Structures Construction	23793	Industrial Nonbuilding Structure Construction.
	Except Industrial Nonbuilding Structures Construction	23799	All Other Heavy Construction.
1711	Plumbing, Heating, and Air-Conditioning	23811	Plumbing, Heating and Air-Conditioning Contractors.
1721@	Painting and Paper Hanging	23821	Painting and Wall Covering Contractors (pt).
1731@	Electrical Work		
	Burglar and Fire Alarm Installation	571521	Security Systems Services, Except Locksmiths (pt).
	Except Burglar and Fire Alarm Installation	23831	Electrical Contractors.
1741	Masonry, Stone Setting and Other Stone Work	23841	Masonry and Stone Contractors.
1742	Plastering, Drywall, Acoustical and Insulation Work	23842	Drywall, Plastering, Acoustical and Insulation Contractors (pt).
1743	Terrazzo, Tile, Marble, and Mosaic Work		
	Fresco Work	23842	Drywall, Plastering, Acoustical and Insulation Contractors (pt).
	Except Fresco Work	23843	Tile, Marble, Terrazzo and Mosaic Contractors.
1751	Carpentry Work	23851	Carpentry Contractors.
1752	Floor Laying and Other Floor Work, NEC	23852	Floor Laying and Other Floor Contractors.
1761	Roofing, Siding, and Sheet Metal Work	23861	Roofing, Siding, and Sheet Metal Contractors.
1771@	Concrete Work		
	Stucco Construction	23842	Drywall, Plastering, Acoustical and Insulation Contractors (pt).
	Except Stucco Construction	23871	Concrete Contractors.
1781	Water Well Drilling	23881	Water Well Drilling Contractors.
1791	Structural Steel Erection	23891	Structural Steel Erection Contractors.
1793	Glass and Glazing Work	23892	Glass and Glazing Contractors (pt).
1794	Excavation Work	23893	Excavation Contractors.
1795	Wrecking and Demolition Work	23894	Wrecking and Demolition Contractors.
1796	Installation or Erection of Building Equipment, NEC	23895	Building Equipment and Other Machinery Contractors.
1799@	Special Trade Contractors, NEC		
	Paint and Wallpaper Stripping and Wallpaper Removal Contractors.	23821	Painting and Wall Covering Contractors (pt).
	Tinted Glass Work	23592	Glass and Glazing Contractors (pt).
	All Other Special Trade Contractors	23899	All Other Special Trade Contractors (pt).
2011	Meat Packing Plants	311611	Animal Slaughtering, Except Poultry.
2013@	Sausages and Other Prepared Meats.		
	Meat Processing	311612	Meat Processed From Carcasses (pt).
	Lard	311613	Rendering and Meat By-product Processing (pt).
2015@	Poultry Slaughtering and Processing.		
	Poultry Processing	311615	Poultry Processing.
	Egg Processing	311999	All Other Miscellaneous Food Manufacturing (pt).
2021	Creamery Butter	311512	Creamery Butter Manufacturing.
2022	Natural, Processed, and Imitation Cheese	311513	Cheese Manufacturing.
2023	Dry, Condensed, and Evaporated Dairy Products	311514	Dry, Condensed, and Evaporated Milk Manufacturing.
2024	Ice Cream and Frozen Desserts	31152	Ice Cream and Frozen Dessert Manufacturing.
2026	Fluid Milk	311511	Fluid Milk Manufacturing.
2032	Canned Specialties.		
	Canned Specialties	311422	Specialty Canning (pt).
	Canned Pudding	311999	All Other Miscellaneous Food Manufacturing (pt).

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
2033@	Canned Fruits, Vegetables, Preserves, Jams, and Jellies	311421	Fruit and Vegetable Canning (pt).
2034	Dried and Dehydrated Fruits, Vegetables, and Soup Mixes.		
	Dried and Dehydrated Fruit, Vegetable, and Soup Mixes.	311423	Dried and Dehydrated Food Manufacturing (pt).
	Vegetable Flours	311211	Flour Milling (pt).
2035	Pickled Fruits and Vegetables, Vegetables Sauces and Seasonings, and Salad Dressings		
	Pickled Fruits and Vegetables	311421	Fruit and Vegetable Canning (pt).
	Sauces and Salad Dressings	311941	Mayonnaise, Dressing, and Other Prepared Sauce Manufacturing (pt).
2037	Frozen Fruits, Fruit Juices, and Vegetables	311411	Frozen Fruit, Juice, and Vegetable Processing.
2038	Frozen Specialties, NEC	311412	Frozen Specialty Processing.
2041	Flour and Other Grain Mill Products	311211	Flour Milling (pt).
2043	Cereal Breakfast Foods		
	Coffee Substitute	31192	Coffee and Tea Manufacturing (pt).
	Breakfast Cereal	31123	Breakfast Cereal Manufacturing.
2044	Rice Milling	311212	Rice Milling.
2045	Prepared Flour Mixes and Doughs	311722	Flour Mixes and Dough Manufacturing from Purchased Flour.
2046	Wet Corn Milling	311221	Wet Corn Milling.
2047	Dog and Cat Food	311111	Dog and Cat Food Manufacturing.
2048	Prepared Feed and Feed Ingredients for Animals and Fowls, Except Dogs and Cats		
	Animal Slaughtering for Pet Food	311611	Animal Slaughtering, Except Poultry (pt).
	Except Slaughtering Animals for Pet Food	311119	Other Animal Food Manufacturing.
2051	Bread and Other Bakery Products, Except Cookies and Crackers.	311711	Commercial Bakeries (pt).
2052@	Cookies and Crackers		
	Cookie and Cracker	311721	Cookie and Cracker Manufacturing.
	Pretzels	311919	Other Snack Food Manufacturing (pt).
	Unleavened Bread	311711	Commercial Bakeries (pt).
2053	Frozen Bakery Products, Except Bread	311713	Frozen Bakery Product Manufacturing.
2061	Cane Sugar, Except Refining	311311	Sugarcane Mills.
2062	Cane Sugar Refining	311312	Cane Sugar Refining.
2063	Beet Sugar	311313	Beet Sugar Manufacturing.
2064@	Candy and Other Confectionery Products.		
	Chocolate Confectionery	31133	Confectionery Manufacturing from Purchased Chocolate.
	Non-Chocolate Confectionery Manufacturing	31134	Non-Chocolate Confectionery Manufacturing (pt).
2066	Chocolate and Cocoa Products	31132	Chocolate and Confectionery Manufacturing from Cocoa Beans.
2067@	Chewing Gum	31134	Non-Chocolate Confectionery Manufacturing (pt).
2068@	Salted and Roasted Nuts and Seeds	311911	Roasted Nuts and Peanut Butter Manufacturing (pt).
2074@	Cottonseed Oil Mills	311223	Other Oilseed Processing, (pt).
2075	Soybean Oil Mills	311222	Soybean Processing.
2076@	Vegetable Oil Mills, Except Corn, Cottonseed, and Soybeans.	311223	Other Oilseed Processing (pt).
2077@	Animal and Marine Fats and Oils.		
	Animal Fats and Oils	311613	Rendering and Meat By-product Processing (pt).
	Canned Marine Fats and Oils	311621	Seafood Canning (pt).
	Fresh and Frozen Marine Fats and Oils (pt)	311622	Fresh and Frozen Seafood Processing.
	Vegetable Oil Foots	311225	Edible Fats and Oils Manufacturing (pt).
2079	Shortening, Table Oils, Margarine, and Other Edible Fats and Oils, NEC.	311225	Edible Fats and Oils Manufacturing (pt).
2082	Malt Beverages	31212	Breweries.
2083	Malt	311213	Malt Manufacturing.
2084	Wines, Brandy, and Brandy Spirits	31213	Wineries.
2085	Distilled and Blended Liquors	312141	Distilled and Blended Liquor Manufacturing.
2086	Bottled and Canned Soft Drinks and Carbonated Waters		
	Soft Drinks	312111	Soft Drink Manufacturing.
	Purified Water	312112	Ice Manufacturing and Water Purification (pt).
2087@	Flavoring Extracts and Flavoring Syrups NEC		
	Flavoring Syrup and Concentrate	31193	Flavoring Syrup and Concentrate Manufacturing.
	Flavoring Extracts	311942	Spice and Extract Manufacturing (pt).
	Powdered Drink Mix	311999	All Other Miscellaneous Food Manufacturing (pt).
2091@	Canned and Cured Fish and Seafood	311621	Seafood Canning (pt).
2092@	Prepared Fresh or Frozen Fish and Seafoods	311622	Fresh and Frozen Seafood Processing (pt).
2095@	Roasted Coffee		
	Roasted Coffee	31192	Coffee and Tea Manufacturing (pt).
	Coffee Extracts	311942	Spice and Extract Manufacturing (pt).
2096@	Potato Chips, Corn Chips, and Similar Snacks	311919	Other Snack Food Manufacturing (pt).

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
2097	Manufactured Ice	312112	Ice Manufacturing and Water Purification (pt).
2098	Macaroni, Spaghetti, Vermicelli, and Noodles	311723	Pasta Manufacturing.
2099	Food Preparations, NEC		
	Bouillon	311423	Dried and Dehydrated Food Manufacturing.
	Reducing Maple Sap to Maple Syrup	11199	All Other Crop Farming (pt).
	Marshmallow Creme	31134	Non-Chocolate Confectionery Manufacturing (pt).
	Peanut Butter	311911	Roasted Nuts and Peanut Butter Manufacturing (pt).
	Perishable Prepared Food	311991	Perishable Prepared Food Manufacturing.
	Tortillas	31173	Tortilla Manufacturing.
	Tea	31192	Coffee and Tea Manufacturing (pt).
	Vinegar, Dip Mix, Salad Dressing Mix and Seasoning Mix.	311941	Mayonnaise, Dressing, and Other Prepared Sauce Manufacturing (pt).
	Spices and Extracts	311942	Spice and Extract Manufacturing (pt).
	Other	311999	All Other Miscellaneous Food Manufacturing (pt).
2111	Cigarettes	312221	Cigarette Manufacturing.
2121	Cigars	312229	Other Tobacco Product Manufacturing (pt).
2131@	Chewing and Smoking Tobacco and Snuff	312229	Other Tobacco Product Manufacturing (pt).
2141@	Tobacco Stemming and Redrying		
	Reconstituted Tobacco	312229	Other Tobacco Product Manufacturing (pt).
	Redrying and Stemming	31221	Tobacco Stemming and Redrying.
2211@	Broadwoven Fabric Mills, Cotton	31321	Broadwoven Fabric Mills (pt).
2221@	Broadwoven Fabric Mills, Manmade Fiber and Silk	31321	Broadwoven Fabric Mills (pt).
2231@	Broadwoven Fabric Mills, Wool (Including Dyeing and Finishing)		
	Except Finishing	31321	Broadwoven Fabric Mills (pt).
	Wool Broadwoven Fabric Finishing	313311	Broadwoven Fabric Finishing Mills (pt).
	Wool Finishing, Except Broadwoven Fabric	313312	Textile and Fabric Finishing Mills, Except Broadwoven Fabric.
2241	Narrow Fabric and Other Smallware Mills: Cotton, Wool, Silk, and Manmade Fiber.	313221	Narrow Fabric Mills (pt).
2251@	Women's Full-Length and Knee-Length Hosiery, Except Socks.	315611	Sheer Hosiery Mills (pt).
2252@	Hosiery, NEC		
	Girls' Hosiery	315611	Sheer Hosiery Mills (pt).
	Socks	315619	Other Hosiery and Socks Mills
2253@	Knit Outerwear Mills	315691	Outerwear Knitting Mills (pt).
2254	Knit Underwear and Nightwear Mills	315692	Underwear and Nightwear Knitting Mills (pt).
2257@	Weft Knit Fabric Mills		
	Except Finishing	313241	Weft Knit Fabric Mills (pt).
	Finishing	313312	Textile and Fabric Finishing Mills, Except Broadwoven Fabric (pt).
2258@	Lace and Warp Knit Fabric Mills		
	Except Finishing	313249	Other Knit Fabric and Lace Mills (pt).
	Finishing	313312	Textile and Fabric Finishing Mills, Except Broadwoven Fabric (pt).
2259@	Knitting Mills, NEC		
	Knit Gloves and Mittens	315691	Outerwear Knitting Mills (pt).
	Girdles	315692	Underwear and Nightwear Knitting Mills (pt).
	Finished Articles of Weft Knit Fabric	313241	Weft Knit Fabric Mills (pt).
	Finished Articles of Warp Knit Fabric	313249	Other Knit Fabric and Lace Mills (pt).
2261@	Finishers of Broadwoven Fabrics of Cotton	313311	Broadwoven Fabric Finishing Mills (pt).
2262@	Finishers of Broadwoven Fabrics of Manmade Fiber and Silk.	313311	Broadwoven Fabric Finishing Mills (pt).
2269@	Finishers of Textiles, NEC		
	Broadwoven Finishing	313311	Broadwoven Fabric Finishing Mills (pt).
	Except Broadwoven Finishing	313312	Textile and Fabric Finishing Mills, Except Broadwoven Fabric (pt).
2273	Carpets and Rugs	31411	Carpet and Rug Mills.
2281@	Yarn Spinning Mills	313111	Yarn Spinning Mills (pt).
2282@	Yarn Texturizing, Throwing, Twisting, and Winding Mills		
	Except Spooling Purchased Yarn	313112	Yarn Texturing, Throwing and Twisting Mills.
	Spooling Purchased Yarn	313312	Textile and Fabric Finishing Mills, Except Broadwoven Fabric (pt).
2284@	Thread Mills		
	Except Finishing	313113	Thread Mills (pt).
	Finishing	313312	Textile and Fabric Finishing Mills, Except Broadwoven Fabric (pt).
2295@	Coated Fabrics, Not Rubberized	31332	Fabric Coating Mills (pt).
2296	Tire Cord and Fabrics	314992	Tire Cord and Tire Fabric Mills.
2297@	Nonwoven Fabrics	31323	Nonwoven Fabric Mills (pt).
2298	Cordage and Twine	314991	Rope, Cordage and Twine Mills.

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
2299@	Textile Goods, NEC		
	Broadwoven Fabric of Jute, Linen, Hemp, and Ramie	31321	Broadwoven Fabric Mills (pt).
	Nonwoven Felt	31323	Nonwoven Fabric Mills (pt).
	Finishing Thread and Yarn of Flax, Hemp, Jute, Linen, and Ramie.	313312	Textile and Fabric Finishing Mills, Except Broadwoven Fabric (pt).
	Narrow Woven Fabric of Jute, Linen, Hemp, and Ramie.	313221	Narrow Fabric Mills (pt).
	Thread of Hemp, Linen, and Ramie	313113	Thread Mills (pt).
	Yarn of Flax, Hemp, Jute, and Ramie	313111	Yarn Spinning Mills (pt).
	Other Textile Goods	314999	All Other Miscellaneous Textile Product Mills (pt).
2311@	Men's and Boys' Suits, Coats and Overcoats		
	Contractors	315511	Men's and Boys' Cut and Sew Apparel Contractors (pt).
	Except Contractors	31522	Men's and Boys' Cut and Sew Suit, Coat, and Overcoat Manufacturing (pt).
2321@	Men's and Boys' Shirts, Except Work Shirts		
	Contractors	315511	Men's and Boys' Cut and Sew Apparel Contractors (pt).
	Except Contractors	31523	Men's and Boys' Cut and Sew Shirt, Except Work Shirt Manufacturing (pt).
2322@	Men's and Boys' Underwear and Nightwear		
	Contractors	315511	Men's and Boys' Cut and Sew Apparel Contractors (pt).
	Except Contractors	31521	Men's and Boys' Cut and Sew Underwear and Nightwear Manufacturing (pt).
2323	Men's and Boys' Neckwear	315993	Men's and Boys' Neckwear Manufacturing.
2325@	Men's and Boys' Trousers and Slacks.		
	Contractors	315511	Men's and Boys' Cut and Sew Apparel Contractors (pt).
	Except Contractors	31524	Men's and Boys' Cut And Sew Trouser, Slack, And Jean Manufacturing (pt).
2326@	Men's and Boys' Work Clothing		
	Contractors	315511	Men's and Boys' Cut and Sew Apparel Contractors (pt).
	Except Contractors	31525	Men's and Boys' Cut and Sew Work Clothing Manufacturing.
2329@	Men's and Boys' Clothing, NEC		
	Contractors	315511	Men's and Boys' Cut and Sew Apparel Contractors (pt).
	Except Contractors	31526	Men's and Boys' Cut and Sew Other Outerwear Manufacturing (pt).
	Athletic Uniforms	31549	All Other Cut and Sew Apparel Manufacturing (pt).
2331@	Women's, Misses', and Juniors' Blouses and Shirts		
	Contractors	315512	Women's and Girls' Cut and Sew Apparel Contractors (pt).
	Except Contractors	31532	Women's and Girls' Cut and Sew Blouse and Shirt Manufacturing (pt).
2335@	Women's, Misses' and Junior's Dresses		
	Contractors	315512	Women's and Girls' Cut and Sew Apparel Contractors (pt).
	Except Contractors	31533	Women's and Girls' Cut and Sew Dress Manufacturing (pt).
2337@	Women's, Misses' and Juniors' Suits, Skirts and Coats		
	Contractors	315512	Women's and Girls' Cut and Sew Apparel Contractors (pt).
	Except Contractors	31534	Women's and Girls' Cut and Sew Suit, Coat, Tailored Jacket, and Skirt Manufacturing (pt).
2339@	Women's, Misses' and Juniors' Outerwear, NEC		
	Scarves	315919	Other Apparel Accessories and Other Apparel Manufacturing (pt).
	Contractors	315512	Women's and Girls' Cut and Sew Apparel Contractors (pt).
	Athletic Uniforms	31549	All Other Cut and Sew Apparel Manufacturing (pt).
	All Other, Except	31539	Women's and Girls' Cut and Sew Other Contractors Outerwear Manufacturing (pt).
2341@	Women's, Misses, Children's, and Infants' Underwear and Nightwear		
	Women and Girls' Contractors	315512	Women's and Girls' Cut and Sew Apparel Contractors (pt).
	Boys' Contractors	315511	Men's and Boys' Cut and Sew Apparel Contractors (pt).
	Women's and Girls', Except Contractors	31531	Women's and Girls' Cut and Sew Lingerie, Loungewear, and Nightwear Manufacturing (pt).
	Boys' Except Contractors	31521	Men's and Boys' Cut and Sew Underwear and Nightwear Manufacturing (pt).
	Infants'	31541	Infants' Cut and Sew Apparel Manufacturing (pt).
2342@	Brassieres, Girdles, and Allied Garments		

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
	Contractors	315512	Women's and Girls' Cut and Sew Apparel Contractors (pt).
	Except contractors	31531	Women's and Girls' Cut and Sew Lingerie, Loungewear, and Nightwear Manufacturing (pt).
2353	Hats, Caps, and Millinery	315911	Hat, Cap, and Millinery Manufacturing.
2361@	Girls', Children's and Infants' Dresses, Blouses and Shirts		
	Infants' Dresses, Blouses, and Shirts	31541	Infants' Cut and Sew Apparel Manufacturing (pt).
	Boys' Shirts	31523	Men's and Boys' Cut and Sew Shirt, Except Work Shirt Manufacturing (pt).
	Boys' Shirt Contractors	315511	Men's and Boys' Cut and Sew Apparel Contractors.
	Girls' Blouses and Shirts	31532	Women's and Girls' Cut and Sew Blouse and Shirt Manufacturing (pt).
	Girls' Dresses	31533	Women's and Girls' Cut and Sew Dress Manufacturing (pt).
	Girls' Contractors	315512	Women's and Girls' Cut and Sew Apparel Contractors (pt).
2369@	Girls', Children's and Infants' Outerwear, NEC		
	Infants' Outerwear, NEC	31541	Infants' Cut and Sew Apparel Manufacturing (pt).
	Boys' Suits and Coats	31522	Men's and Boys' Cut and Sew Suit, Coat, and Overcoat Manufacturing (pt).
	Boys' Trousers and Slacks	31524	Men's and Boys' Cut and Sew Trouser, Slack, and Jean Manufacturing (pt).
	Boys' Outerwear, NEC	31526	Men's and Boys' Cut and Sew Other Outerwear Manufacturing (pt).
	Boys' Robes	31521	Men's and Boys' Cut and Sew Underwear and Nightwear Manufacturing (pt).
	Boys' Contractors	315511	Men's and Boys' Cut and Sew Apparel Contractors (pt).
	Girls' Suits, Coats, Skirts, Etc.	31534	Women's and Girls' Cut and Sew Suit, Coat, Tailored Jacket, and Skirt Manufacturing (pt)
	Girls' Outerwear, NEC	31539	Women's and Girls' Cut and Sew Other Outerwear Manufacturing (pt).
	Girls' Robes	31531	Women's and Girls' Cut and Sew Lingerie, Loungewear, and Nightwear Manufacturing (pt).
	Girls' Contractors	315512	Women's and Girls' Cut and Sew Apparel Contractors (pt).
2371	Fur Goods	31542	Fur and Leather Apparel Manufacturing (pt).
2381@	Dress and Work Gloves, Except Knit and All-Leather	315992	Glove and Mitten Manufacturing (pt).
2384@	Robes and Dressing Gowns		
	Women's Except Contractors	31531	Women's and Girls' Cut and Sew Lingerie, Loungewear, and Nightwear Manufacturing (pt).
	Men's Except Contractors	31521	Men's and Boys' Cut and Sew Underwear and Nightwear Manufacturing (pt).
	Men's and Boys' Contractors	315511	Men's and Boys' Cut and Sew Apparel Contractors (pt).
	Women's and Girls' Contractors	315512	Women's and Girls' Cut and Sew Apparel Contractors (pt).
2385@	Waterproof Outerwear		
	Raincoats (Men's and Boys')	31522	Men's and Boys' Cut and Sew Suit, Coat, and Overcoat Manufacturing (pt).
	Raincoats (Women's and Girls')	31534	Women's and Girls' Cut and Sew Suit, Coat, Tailored Jacket, and Skirt Manufacturing (pt).
	Other Men's and Boys' Outerwear	31526	Men's and Boys' Cut and Sew Other Outerwear Manufacturing (pt).
	Other Women's and Girls' Outerwear	31539	Women's and Girls' Cut and Sew Other Outerwear Manufacturing (pt).
	Infants' Waterproof Outerwear Except Contractors	31541	Infants' Cut and Sew Apparel Manufacturing (pt).
	Aprons, Bibs, and Other Miscellaneous Waterproof Items.	315919	Other Apparel Accessories and Other Apparel Manufacturing (pt).
	Contractors (Men's and Boys')	315511	Men's and Boys' Cut and Sew Apparel Contractors (pt).
	Contractors (Women's and Girls')	315512	Women's and Girls' Cut and Sew Apparel Contractors (pt).
2386@	Leather and Sheep-Lined Clothing	31542	Fur and Leather Apparel Manufacturing (pt).
2387@	Apparel Belts	315919	Other Apparel Accessories and Other Apparel Manufacturing (pt).
2389@	Apparel and Accessories, NEC		
	Handkerchiefs, Arm bands, etc	315919	Other Apparel Accessories and Other Apparel Manufacturing (pt).
	Academic and Clerical Outerwear	31549	All Other Cut and Sew Apparel Manufacturing (pt).
	Garters and Garter Belts	31531	Women's and Girls' Cut and Sew Lingerie, Loungewear, and Nightwear Manufacturing (pt).

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
	Women' Contractors	315512	Women's and Girls' Cut and Sew Apparel Contractors (pt).
	Men's Contractors	315511	Mens' and Boys' Cut and Sew Apparel Contractors (pt).
2391	Curtains and Draperies	314121	Curtain and Drapery Mills (pt).
2392@	Housefurnishings, Except Curtains and Draperies		
	Blanket, Laundry, and Wardrobe Bags	314911	Textile Bag Mills (pt).
	Mops, Floor and Dust	339993	Broom, Brush and Mop Manufacturing (pt).
	Other Housefurnishings	314129	Other Household Textile Product Mills (pt).
2393@	Textile Bags	314911	Textile Bag Mills (pt).
2394	Canvas and Related Products	314912	Canvas and Related Product Mills.
2395@	Pleating, Decorative and Novelty Stitching, and Tucking for the Trade		
	Pleating and Stitching, Except Apparel Contractors	314999	All Other Miscellaneous Textile Product Mills (pt).
	Men's and Boys' Apparel Contractors	315511	Mens' and Boys' Cut and Sew Apparel Contractors (pt).
	Women's and Infants' Apparel Contractors	315512	Women's and Girls' Cut and Sew Apparel Contractors (pt).
2396@	Automotive Trimmings, Apparel Findings, and Related Products		
	Textile Automotive	33636	Motor Vehicle Fabric Accessory and Trimmings Seat Manufacturing (pt).
	Apparel Findings and Trimmings	315919	Other Apparel Accessories, and Other Apparel Manufacturing (pt).
	Printing and Embossing on Fabric	323111	Printing on Apparel Articles.
	Other Apparel Products	314999	All Other Miscellaneous Textile Product Manufacturing (pt).
2397	Schiffli Machine Embroideries	313222	Schiffli Machine Embroideries.
2399	Fabricated Textile Products, NEC		
	Seat Belts and Seat and Tire Covers	33636	Motor Vehicle Fabric Accessory and Seat Manufacturing (pt).
	Apparel and Apparel Accessories	315919	Other Apparel Accessories and Other Apparel Manufacturing (pt).
	Other Fabricated Textile Products	314999	All Other Miscellaneous Textile Product Mills (pt).
2411	Logging	11331	Logging
2421@	Sawmills and Planing Mills, General		
	Sawmills	321113	Sawmills (pt).
	Planing Mills	321913	Millwork Manufacturing, Including Flooring (pt).
2426@	Hardwood Dimension and Flooring Mills		
	Hardwood Flooring	321913	Millwork Manufacturing, Including Flooring (pt).
	Wood Stock and Turnings	321999	All Other Miscellaneous Wood Product Manufacturing (pt).
	Office Chair Frames and Chair Seats	337134	Wood Office and Public Building Furniture Manufacturing (pt).
	Chair Frames for Nonupholstered Furniture (Household).	337131	Wood Household Furniture Manufacturing, Except Upholstered (pt).
	Chair Frames for Upholstered Furniture (Household)	337132	Upholstered Wood Household Furniture Manufacturing (pt).
	Other Hardwood Dimension Except Flooring	321912	Hardwood Dimension Mills.
2429@	Special Product Sawmills, NEC	321113	Sawmills (pt).
2431	Millwork		
	Wood Windows and Doors	321911	Wood Window and Door Manufacturing.
	Except Wood Window and Doors	321913	Millwork Manufacturing, Including Flooring (pt).
2434	Wood Kitchen Cabinets	337133	Wood Kitchen Cabinet Manufacturing (pt).
2435	Hardwood Veneer and Plywood	321211	Hardwood Veneer and Plywood Manufacturing.
2436	Softwood Veneer and Plywood	321212	Softwood Veneer and Plywood Manufacturing.
2439@	Structural Wood Members, NEC		
	Trusses	321914	Truss Manufacturing.
	Except Trusses	321213	Structural Wood Member Manufacturing, Except Trusses.
2441	Nailed and Lock Corner Wood Boxes and Shook	32192	Wood Container and Package Product Manufacturing (pt).
2448	Wood Pallets and Skids	32192	Wood Container and Package Product Manufacturing (pt).
2449	Wood Containers, NEC	32192	Wood Container and Package Product Manufacturing (pt).
2451	Mobile Homes	321991	Manufactured Home (Mobile Home) Manufacturing.
2452	Prefabricated Wood Buildings and Components	321992	Prefabricated Wood Building and Component Manufacturing.
2491	Wood Preserving	321114	Wood Preserving.
2493	Reconstituted Wood Products	321217	Reconstituted Wood Product Manufacturing.
2499	Wood Products, NEC		
	Mirror and Picture Frames	339999	All Other Miscellaneous Manufacturing (pt).
	Laundry Hampers Made from Rattan, Reed or Willow	33719	Other Furniture Manufacturing (pt).

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
	Wood Laundry Hampers	337131	Wood Household Furniture Manufacturing, Except Upholstered (pt).
	Wood Tubs and Vats, Jewelry and Cigar Boxes	32192	Wood Container and Package Product Manufacturing (pt).
	Other Wood Products	321999	All Other Miscellaneous Wood Product Manufacturing (pt).
2511@	Wood Household Furniture, Except Upholstered	337131	Wood Household Furniture Manufacturing, Except Upholstered (pt).
2512	Wood Household Furniture, Upholstered	337132	Upholstered Wood Household Furniture Manufacturing (pt).
2514	Metal Household Furniture	337143	Metal Household Furniture Manufacturing (pt).
2515	Mattresses, Foundations, and Convertible Beds	33711	Mattress Manufacturing.
2517@	Wood Television, Radio, Phonograph and Sewing Machine Cabinets.	337131	Wood Household Furniture Manufacturing, Except Upholstered (pt).
2519@	Household Furniture, NEC	33719	Other Furniture Manufacturing (pt).
2521	Wood Office Furniture	337134	Wood Office and Public Building Furniture Manufacturing (pt).
2522@	Office Furniture, Except Wood		
	Metal Office Furniture	337144	Metal Office and Public Building Furniture Manufacturing (pt).
	Office Furniture Not Made of Wood or Metal	33719	Other Furniture Manufacturing (pt).
2531@	Public Building and Related Furniture		
	Seats for Motor Vehicles	33636	Motor Vehicle Fabric Accessory and Seat Manufacturing (pt).
	Wood Furniture Made for Public Buildings	337134	Wood Office and Public Building Furniture Manufacturing (pt).
	Metal Furniture Made for Public Buildings	337144	Metal Office and Public Building Furniture Manufacturing (pt).
	Blackboards	339942	Lead Pencil and Art Good Manufacturing.
	Other than Wood or Metal Furniture Made for Use in Public Buildings.	33719	Other Furniture Manufacturing (pt).
2541	Wood Office and Store Fixtures, Partitions, Shelving, and Lockers		
	Architectural Woodwork, Millwork and Fixtures	337135	Wood Office and Fixture, Partition, Shelving and Locker Manufacturing.
	Custom Architectural Woodwork, Millwork and Fixtures	337136	Custom Architectural Woodwork, Millwork, and Fixtures.
2542@	Office and Store Fixtures, Partitions Shelving, and Lockers, Except Wood		
	Metal Office and Store Fixtures, Partitions, Shelving, and Lockers.	337145	Metal Office and Fixture, Partition, Shelving and Locker Manufacturing.
	Office and Store Fixtures, Partitions, Shelving, and Lockers Not Made of Metal.	33719	Other Furniture Manufacturing (pt).
2591	Drapery Hardware and Window Blinds and Shardes	33712	Blind and Shade Manufacturing.
2599@	Furniture and Fixtures, NEC		
	Hospital Beds	339113	Surgical Appliance and Supply Manufacturing (pt).
	Metal Industrial Work Benches and Stools, and Other Metal Furniture Such As Ship Furniture.	337144	Metal Office and Public Building Furniture Manufacturing (pt).
	Wood Industrial Work Benches and Stools, and Other Wood Furniture Such As Ship Furniture.	337134	Wood Office and Public Building Furniture Manufacturing (pt).
	Other Furniture or Fixtures	33719	Other Furniture Manufacturing (pt).
2611	Pulp Mills		
	Pulp Producing Mills Only	32211	Pulp Mills.
	Pulp Mills Producing Paper	322121	Paper Mills, Except Newsprint Mills (pt).
2621@	Paper Mills.		
	Except Newsprint Mills	322121	Paper Mills, Except Newsprint Mills (pt).
	Newsprint Mills	322122	Newsprint Mills.
2631	Paperboard Mills	32213	Paperboard Mills.
2652	Setup Paperboard Boxes	322213	Setup Paperboard Box Manufacturing.
2653	Corrugated and Solid Fiber Box	322211	Corrugated and Solid Fiber Box Manufacturing.
2655	Fiber Cans, Tubes, Drums, and Similar Products	322214	Fiber Can, Tube, Drum, and Similar Product Manufacturing.
2656	Sanitary Food Containers, Except Folding	322215	Non-Folding Sanitary Food Container Manufacturing (pt).
2657	Folding Paperboard Boxes, Including Sanitary	322212	Folding Paperboard Box Manufacturing.
2671	Packaging Paper and Plastics Film, Coated and Laminated		
	Single-Web Paper, Paper Multiweb Laminated Rolls and Sheets for Packaging Uses.	322221	Coated and Laminated Packaging Paper and Plastics Film Manufacturing.
	Plastics Packaging Film and Sheet	326212	Unsupported Plastics Packaging Film and Sheet Manufacturing.
2672	Coated and Laminated Paper, NEC	322222	Coated and Laminated Paper Manufacturing (pt).
2673	Plastics, Foil, and Coated Paper Bags		

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
	Coated or Multiweb Laminated Bags	322223	Plastics, Foil, and Coated Paper Bag Manufacturing.
	Plastics Bags	326111	Unsupported Plastics Bag Manufacturing.
2674	Uncoated Paper and Multiwall Bags	322224	Uncoated Paper and Multiwall Bag Manufacturing.
2675@	Die-Cut Paper and Paperboard and Cardboard		
	File Folders, Tabulating Cards, and Other Paper and Paperboard Office Supplies.	322231	Die-Cut Paper and Paperboard Office Supply Manufacturing (pt).
	Pasted, Lined, Laminated, or Surface-Coated Paperboard.	322292	Surface-Coated Paperboard Manufacturing.
	Die-Cut Paper and Paperboard Products, Except Office Supplies.	322298	All Other Converted Paper Product Manufacturing (pt).
2676	Sanitary Paper Products	322291	Sanitary Paper Product Manufacturing.
2677	Envelopes	322232	Envelope Manufacturing.
2678	Stationery, Tablets, and Related Products	322233	Stationery, Tablet, and Related Product Manufacturing.
2679@	Converted Paper and Paperboard Products, NEC		
	Egg Cartons and Other Containers from Purchased Paper.	322215	Non-Folding Sanitary Food Container Manufacturing (pt).
	Wallpaper and Gift Wrap Paper	322222	Coated and Laminated Paper Manufacturing (pt).
	Paper Supplies for Business Machines and Other Paper Office Supplies.	322231	Die-Cut Paper and Paperboard Office Supply Manufacturing (pt).
	Other Converted Paper and Paperboard such as Paper Filters, Crepe Paper, and Laminated and Tiled Wallboard.	322298	All Other Converted Paper and Paperboard Products Manufacturing (pt).
2711	Newspapers: Publishing, or Publishing and Printing	51111	Newspaper Publishing.
2721	Periodicals: Publishing, or Publishing and Printing	51112	Periodical Publishing.
2731	Books: Publishing, or Publishing and Printing	51113	Book Publishing.
2732	Book Printing	323113	Book Printing.
2741	Miscellaneous Publishing		
	Database Publishing	51114	Database Publishing.
	Miscellaneous Publishing, Except Database	511199	All Other Publishing.
2752@	Commercial Printing, Lithographic		
	Electrostatic Digital and Nonimpact Quick Printing	571331	Photocopying and Duplicating Services (pt).
	Except Electrostatic Digital and Nonimpact Quick Printing.	323114	Commercial Lithographic Printing (pt).
2754	Commercial Printing, Gravure	323115	Commercial Gravure Printing (pt).
2759@	Commercial Printing, NEC		
	Screen Printing	323116	Commercial Screen Printing (pt).
	Flexographic Printing	323117	Commercial Flexographic Printing (pt).
	Quick Printing	571331	Photocopying and Duplicating Services (pt).
	Other Commercial Printing	323118	Other Commercial Printing (pt).
2761	Manifold Business Forms	323112	Manifold Business Form Printing (pt).
2771@	Greeting Cards		
	Lithographic Printing of Greeting Cards	323114	Commercial Lithographic Printing (pt).
	Gravure Printing of Greeting Cards	323115	Commercial Gravure Printing (pt).
	Flexographic Printing of Greeting Cards	323117	Commercial Flexographic Printing (pt).
	Screen Printing of Greeting Cards	323116	Commercial Screen Printing (pt).
	Other Printing of Greeting Cards	323118	Other Commercial Printing (pt).
	Publishing Greeting Cards	511191	Greeting Card Publishing.
2782@	Blankbooks, Loose-leaf Binders and Devices		
	Lithographic Printing of Checkbooks	323114	Commercial Lithographic Printing (pt).
	Gravure Printing of Checkbooks	323115	Commercial Gravure Printing (pt).
	Flexographic Printing of Checkbooks	323117	Commercial Flexographic Printing (pt).
	Screen Printing of Checkbooks	323116	Commercial Screen Printing (pt).
	Other Printing of Checkbooks	323118	Other Commercial Printing (pt).
	Blankbooks, Loose-leaf Binders and Devices	323119	Blankbook, Loose-leaf Binder and Device Manufacturing.
2789	Bookbinding and Related Work	323121	Tradebinding and Related Work.
2791@	Typesetting	323122	Prepress Services (pt).
2796@	Platemaking and Related Services	323122	Prepress Services (pt).
2812	Alkalies and Chlorine	325181	Alkalies and Chlorine Manufacturing.
2813	Industrial Gases	32512	Industrial Gases Manufacturing (pt).
2816	Inorganic Pigments		
	Inorganic Pigments, Except Bone and Lamp Black	325131	Inorganic Dye and Pigment Manufacturing (pt).
	Bone and Lamp Black	325182	Carbon Black Manufacturing (pt).
2819@	Industrial Inorganic Chemicals, NEC		
	Activated Carbon and Charcoal	325998	All Other Miscellaneous Chemical Product Manufacturing (pt).
	Alumina	331311	Alumina Manufacturing.
	Inorganic Dyes	325131	Inorganic Dye and Pigment Manufacturing (pt).
	Other	325188	All Other Inorganic Chemical Manufacturing (pt).
2821	Plastics Material Synthetic Resins, and Nonvulcanizable Elastomers.	325211	Plastics Material and Resin Manufacturing.
2822	Synthetic Rubber	325212	Synthetic Rubber Manufacturing.

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
2823	Cellulosic Manmade Fibers	325221	Cellulosic Manmade Fiber Manufacturing.
2824	Manmade Organic Fibers, Except Cellulosic	325222	Noncellulosic Organic Fiber Manufacturing.
2833	Medicinal Chemicals and Botanical Products	325411	Medicinal and Botanical Manufacturing.
2834	Pharmaceutical Preparations	325412	Pharmaceutical Preparation Manufacturing (pt).
2835@	In Vitro and In Vivo Diagnostic Substances		
	Diagnostic Substances, Except In-Vitro Diagnostic	325412	Pharmaceutical Preparation Manufacturing (pt).
	In-Vitro Diagnostic Substances	325413	In-Vitro Diagnostic Substance Manufacturing.
2836	Biological Products, Except Diagnostic Substances	325414	Biological Product Manufacturing, Except Diagnostic.
2841	Soaps and Other Detergents, Except Specialty Cleaners	325611	Soap and Other Detergent Manufacturing (pt).
2842	Specialty Cleaning, Polishing, and Sanitary Preparations	325612	Polish and Other Sanitation Good Manufacturing.
2843	Surface Active Agents, Finishing Agents, Sulfonated Oils, and Assistants.	325613	Surface Active Agent Manufacturing.
2844	Perfumes, Cosmetics, and Other Toilet Preparations		
	Toilet Preparations Except Toothpaste	32562	Toilet Preparation Manufacturing.
	Toothpaste	325611	Soap and Other Detergent Manufacturing (pt).
2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products.	32551	Paint and Coating Manufacturing (pt).
2861	Gum and Wood Chemicals	325191	Gum and Wood Chemical Manufacturing.
2865@	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments		
	Aromatics	32511	Petrochemical Manufacturing (pt).
	Organic Dyes and Pigments	325132	Organic Dye and Pigment Manufacturing.
	Other	325192	Cyclic Crude and Intermediate Manufacturing.
2869@	Industrial Organic Chemicals, NEC		
	Aliphatics	32511	Petrochemical Manufacturing (pt).
	Carbon Bisulfide	325188	All Other Inorganic Chemical Manufacturing (pt).
	Ethyl Alcohol	312142	Ethyl Alcohol Manufacturing.
	Fatty Acid Esters	325998	All Other Miscellaneous Chemical Product Manufacturing (pt).
	Fluorocarbon Gases	32512	Industrial Gases Manufacturing (pt).
	Other	325199	All Other Organic Chemical Manufacturing.
2873	Nitrogenous Fertilizers	325311	Nitrogenous Fertilizer Manufacturing.
2874	Phosphatic Fertilizers	325312	Phosphatic Fertilizer Manufacturing.
2875	Fertilizers, Mixing Only	325314	Fertilizer, Mixing Only, Manufacturing.
2879	Pesticides and Agricultural Chemicals, NEC	32532	Pesticide and Other Agricultural Chemical Manufacturing.
2891	Adhesives and Sealants	32552	Adhesive and Sealant Manufacturing.
2892	Explosives	32592	Explosive Manufacturing.
2893	Printing Ink	32591	Printing Ink Manufacturing (pt).
2895	Carbon Black	325182	Carbon Black Manufacturing (pt).
2899	Chemicals and Chemical Preparations, NEC		
	Frit	32551	Paint and Coating Manufacturing (pt).
	Salt	311942	Spice and Extract Manufacturing (pt).
	Writing Inks	32591	Printing Ink Manufacturing (pt).
	Other	325998	All Other Miscellaneous Chemical Product Manufacturing (pt).
2911	Petroleum Refining	32411	Petroleum Refineries.
2951	Asphalt Paving Mixtures and Blocks	324121	Asphalt Paving Mixture and Blocks Manufacturing.
2952	Asphalt Felts and Coatings	324122	Asphalt Felt and Coating Manufacturing.
2992	Lubricating Oils and Greases	324191	Lubricating Oil and Grease Manufacturing.
2999	Products of Petroleum and Coal, NEC	324199	All Other Petroleum and Coal Product Manufacturing.
3011	Tires and Inner Tubes	326111	Tire and Inner Tube Manufacturing.
3021	Rubber and Plastics Footwear	316211	Rubber and Plastics Footwear Manufacturing.
3052	Rubber and Plastics Hose and Belting	32612	Rubber and Plastics Hose and Belting Manufacturing.
3053@	Gaskets, Packing, and Sealing Devices		
	Cork Gaskets, Packing, and Sealing Devices	321999	All Other Miscellaneous Wood Product Manufacturing (pt).
	Metal Gaskets, Packing, and Sealing Devices	332999	All Other Miscellaneous Fabricated Metal Product Manufacturing (pt).
	Plastics Gaskets, Packing, and Sealing Devices	326299	All Other Plastics Product Manufacturing (pt).
	Rubber Gaskets, Packing, and Sealing Devices	326199	All Other Rubber Product Manufacturing (pt).
3061	Molded, Extruded, and Lathe-Cut Mechanical Rubber Products.	326191	Mechanical Rubber Product Manufacturing.
3069	Fabricated Rubber Products, NEC		
	Rubberized Fabric	31332	Fabric Coating Mills (pt).
	Rubber Resilient Floor Covering	326292	Resilient Floor Covering Manufacturing (pt).
	Other	326199	All Other Rubber Product Manufacturing (pt).
3081	Unsupported Plastics Film and Sheet	326213	Unsupported Plastics Film and Sheet, Except Packaging Manufacturing (pt).
3082	Unsupported Plastics Profile Shapes	326221	Unsupported Plastics Profile Shape Manufacturing (pt).
3083	Laminated Plastics Plate, Sheet, and Profile Shapes	32623	Laminated Plastics Plate, Sheet, and Shape Manufacturing.

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
3084@	Plastic Pipe	326222	Plastic Pipe and Pipe Fitting Manufacturing (pt).
3085	Plastics Bottles	32626	Plastics Bottle Manufacturing.
3086	Plastics Foam Products		
	Urethane Foam Products	32625	Urethane Foam Product Manufacturing.
	Polystyrene Foam Products	32624	Polystyrene Foam Product Manufacturing.
3087	Custom Compounding of Purchased Plastics Resins	325991	Custom Compounding of Purchased Resin.
3088	Plastics Plumbing Fixtures	326291	Plastics Plumbing Fixtures Manufacturing.
3089	Plastics Products, NEC		
	Pipe Fittings	326222	Plastics Pipe and Pipe Fitting Manufacturing (pt).
	Plastics Sausage Casings	326221	Unsupported Plastics Profile Shape Manufacturing (pt).
	Other	326299	All Other Plastics Product Manufacturing (pt).
3111	Leather Tanning and Finishing	31611	Leather and Hide Tanning and Finishing (pt).
3131@	Boot and Shoe Cut Stock and Findings		
	Wood Heels	321999	All Other Miscellaneous Wood Product Manufacturing (pt).
	Metal Buckles	339992	Fastener, Button, Needle, and Pin Manufacturing (pt).
	Except Wood Heels and Metal Buckles	316919	Other Miscellaneous Leather Good Manufacturing (pt).
3142	House Slippers	316212	House Slipper Manufacturing.
3143	Men's Footwear, Except Athletic	316213	Men's Footwear Manufacturing, Except Athletic.
3144	Women's Footwear, Except Athletic	316214	Women's Footwear Manufacturing, Except Athletic.
3149	Footwear, Except Rubber, NEC	316219	Other Footwear Manufacturing.
3151	Leather Gloves and Mittens	315912	Glove and Mitten Manufacturing (pt).
3161	Luggage	316911	Luggage Manufacturing.
3171	Women's Handbags and Purses	316912	Women's Handbag and Purse Manufacturing.
3172	Personal Leather Goods, Except Women's Handbags and Purses.	316913	Personal Leather Goods, Except Women's Handbags and Purse Manufacturing.
3199@	Leather Goods, NEC	316919	Other Miscellaneous Leather Good Manufacturing (pt).
3211	Flat Glass	327211	Flat Glass Manufacturing.
3221	Glass Containers	32722	Glass Container Manufacturing.
3229	Pressed and Blown Glass and Glassware, NEC	327212	Other Pressed and Blown Glass and Glassware Manufacturing.
3231	Glass Products, Made of Purchased Glass	327213	Glass Product Manufacturing Made of Purchased Glass.
3241	Cement, Hydraulic	32731	Hydraulic Cement Manufacturing.
3251	Brick and Structural Clay Tile	327121	Brick and Structural Clay Tile Manufacturing.
3253	Ceramic Wall and Floor Tile	327122	Ceramic Wall and Floor Tile Manufacturing.
3255	Clay Refractories	327124	Clay Refractory Manufacturing.
3259	Structural Clay Products, NEC	327123	Other Structural Clay Product Manufacturing.
3261	Vitreous China Plumbing Fixtures and China and Earthenware Fittings and Bathroom Accessories.	327111	Vitreous China Plumbing Fixture and China and Earthenware Fitting and Bathroom Accessory Manufacturing.
3262	Vitreous China Table and Kitchen Articles	327112	Vitreous China, Fine Earthenware and Other Pottery Product Manufacturing (pt).
3263	Fine Earthenware (Whiteware) Table and Kitchen Articles.	327112	Vitreous China, Fine Earthenware and Other Pottery Product Manufacturing (pt).
3264	Porcelain Electrical Supplies	327113	Porcelain Electrical Supply Manufacturing.
3269	Pottery Products, NEC	327112	Vitreous China, Fine Earthenware, and Other Pottery Product Manufacturing (pt).
3271	Concrete Block and Brick	327331	Concrete Block and Brick Manufacturing.
3272@	Concrete Products, Except Block and Brick		
	Dry Mixture Concrete	327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing (pt).
	Concrete Pipes	327332	Concrete Pipe Manufacturing.
	Other Concrete Products	32739	Other Precast Concrete Product Manufacturing.
3273	Ready-Mixed Concrete	32732	Ready-Mix Concrete Manufacturing.
3274	Lime	32741	Lime Manufacturing.
3275	Gypsum Products	32742	Gypsum and Gypsum Product Manufacturing (pt).
3281	Cut Stone and Stone Products	327991	Cut Stone and Stone Product Manufacturing.
3291	Abrasive Products		
	Steel Wool With or Without Soap	332999	All Other Miscellaneous Fabricated Metal Product Manufacturing (pt).
	Abrasive Products (Except Steel Wool With or Without Soap).	32791	Abrasive Product Manufacturing.
3292	Asbestos Products		
	Asbestos Brake Linings and Pads	33634	Motor Vehicle Brake System Manufacturing (pt).
	Other Asbestos Products	327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing (pt).
3295	Minerals and Earths, Ground or Otherwise Treated	327992	Ground or Treated Mineral and Earth Manufacturing.
3296	Mineral Wool	327993	Mineral Wool Manufacturing.
3297	Nonclay Refractories	327125	Nonclay Refractory Manufacturing.
3299@	Nonmetallic Mineral Products, NEC		
	Moldings, Ornamental and Architectural Plaster Work	32742	Gypsum and Gypsum Product Manufacturing (pt).

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
	Other Nonmetallic Mineral Products	327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing (pt).
3312@	Steel Works, Blast Furnaces (Including Coke Ovens), and Rolling Mills		
	Coke Ovens, Not Integrated With Steel Mills	324199	All Other Petroleum and Coal Product Manufacturing (pt).
	Except Coke Ovens Not Integrated with Steel Mills	331111	Iron and Steel Mills (pt).
3313@	Electrometallurgical Products, Except Steel.		
	Ferroalloys	331112	Electrometallurgical Ferroalloy Product Manufacturing.
	Nonferrous Alloys	331413	Secondary Smelting and Refining of Nonferrous Metals (pt).
3315@	Steel Wiredrawing and Steel Nails and Spikes		
	Steel Wire Drawing	331222	Steel Wire Drawing.
	Nails, Spikes, Paper Clips, and Wire, Not Made in Wire Drawing Plants.	332618	Other Fabricated Wire Product Manufacturing (pt).
3316	Cold-Rolled Steel Sheet, Strip and Bars	331221	Cold-Rolled Steel Shape Manufacturing.
3317	Steel Pipe and Tubes	33121	Iron and Steel Pipe and Tube Manufacturing from Purchased Steel.
3321	Gray and Ductile Iron Foundries	331511	Gray, Malleable, and Ductile Iron Foundries (pt).
3322	Malleable Iron Foundries	331511	Gray Malleable and Ductile Iron Foundries (pt).
3324	Steel Investment Foundries	331512	Steel Investment Foundries.
3325	Steel Foundries, NEC	331513	Steel Foundries, Except Investment.
3331	Primary Smelting and Refining of Copper	331411	Primary Smelting and Refining of Copper.
3334	Primary Production of Aluminum	331312	Primary Refining of Aluminum.
3339	Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum.	331412	Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum.
3341@	Secondary Smelting and Refining of Nonferrous Metals		
	Aluminum	331314	Secondary Smelting of Aluminum (pt).
	Except Aluminum	331413	Secondary Smelting and Refining of Nonferrous Metals (pt).
3351	Rolling, Drawing, and Extruding of Copper	331421	Rolling, Drawing, and Extruding Copper, Except Wire.
3353	Aluminum Sheet, Plate, and Foil	331315	Aluminum Sheet, Plate, and Foil Manufacturing.
3354	Aluminum Extruded Products	331316	Aluminum Extruded Product Manufacturing.
3355	Aluminum Rolling and Drawing, NEC	331319	Other Aluminum Rolling and Drawing, (pt).
3356	Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper or Aluminum.	33143	Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper or Aluminum (pt).
3357@	Drawing and Insulating of Nonferrous Wire		
	Aluminum Wire Drawing	331319	Other Aluminum Rolling and Drawing (pt).
	Copper Wire Drawing	331422	Drawing of Copper Wire.
	Wire Drawing Except Copper or Aluminum	33143	Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper or Aluminum (pt).
	Fiber Optic Cable—Insulating Only	335921	Fiber Optic Cable Manufacturing.
	All Other	335929	Other Communication and Energy Wire Manufacturing.
3363	Aluminum Die-Castings	331521	Aluminum Die-Castings.
3364	Nonferrous Die-Castings, Except Aluminum	331522	Nonferrous Die-Castings, Except Aluminum.
3365	Aluminum Foundries	331524	Aluminum Foundries.
3366	Copper Foundries	331525	Copper Foundries.
3369	Nonferrous Foundries, Except Aluminum and Copper	331528	Nonferrous Foundries, Except Aluminum and Copper.
3398	Metal Heat Treating	332721	Metal Heat Treating.
3399@	Primary Metal Products, NEC		
	Ferrous Powder, Paste, Flakes, etc.	331111	Iron and Steel Mills (pt).
	Aluminum Powder, Paste, Flakes, etc.	331314	Secondary Smelting of Aluminum (pt).
	Other Nonferrous Powder, Paste, Flakes, etc	331413	Secondary Smelting and Refining of Nonferrous Metals (pt).
	Nonferrous Nails, Brads, Staples, etc	332618	Other Fabricated Wire Product Manufacturing (pt).
	Laminated Steel	332723	Electroplating, Plating, Polishing, Anodizing, and Coloring (pt).
3411	Metal Cans	332431	Metal Can Manufacturing,
3412	Metal Shipping Barrels, Drums, Kegs and Pails	332439	Other Metal Container Manufacturing (pt).
3421	Cutlery	332211	Cutlery and Flatware Manufacturing, Except Precious (pt).
3423	Hand and Edge Tools, Except Machine Tools and Handsaws.	332212	Hand and Edge Tool Manufacturing (pt).
3425	Saw Blades and Handsaws	332213	Saw Blade and Handsaw Manufacturing.
3429@	Hardware, NEC		
	Vacuum and Insulated Bottles, Jugs, and Chests	332439	Other Metal Container Manufacturing (pt).
	Hose Nozzles	332919	Other Metal Valve and Pipe Fitting Manufacturing (pt).
	Hardware, NEC (Hardware, Except Hose Nozzles, and Vacuum and Insulated Bottles, Jugs, and Chests).	33251	Hardware Manufacturing (pt).
3431	Enameled Iron and Metal Sanitary Ware	332998	Enameled Iron and Metal Sanitary Ware Manufacturing.
3432	Plumbing Fixture Fittings and Trim		

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
	Plumbing Fixtures Fittings and Trim, Except Shower Rods.	332913	Plumbing Fixture Fitting and Trim Metal Manufacturing (pt).
	Metal Shower Rods	332999	All Other Miscellaneous Fabricated Metal Product Manufacturing (pt).
3433	Heating Equipment, Except Electric and Warm Air Furnaces.	333414	Heating Equipment Manufacturing, Except Electric and Warm Air Furnaces (pt).
3441	Fabricated Structural Metal	332312	Fabricated Structural Metal Manufacturing.
3442	Metal Doors, Sash, Frames, Molding, and Trim Manufacturing.	332321	Metal Door, Sash, Frame, Molding, and Trim Manufacturing.
3443@	Fabricated Plate Work (Boiler Shops)		
	Fabricated Plate Work and Metal Weldments	332313	Plate Work Manufacturing.
	Power Boilers and Heat Exchanges	33241	Power Boiler and Heat Exchanger Manufacturing.
	Heavy Gauge Tanks	33242	Metal Tank Manufacturing (Heavy Gauge).
	Metal Cooling Towers	333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing (pt).
3444	Sheet Metal Work		
	Ducts, Flumes, Flooring, Siding, Dampers, etc	332322	Sheet Metal Work Manufacturing.
	Metal Bins and Vats	332499	Other Metal Container Manufacturing (pt).
3446	Architectural and Ornamental Metal Work	332323	Ornamental and Architectural Metal Work Manufacturing (pt).
3448	Prefabricated Metal Buildings and Components	332311	Prefabricated Metal Building and Component Manufacturing.
3449@	Miscellaneous Structural Metal Work		
	Custom Roll Forming	332114	Custom Roll Forming.
	Fabricated Bar Joists and Concrete Reinforcing Bars	332312	Fabricated Structural Metal Manufacturing (pt).
	Curtain Wall	332321	Metal Door, Sash Frame, Molding, and Trim Manufacturing (pt).
	Metal Plaster Bases	332323	Ornamental and Architectural Metal Work Manufacturing (pt).
3451	Screw Machine Products	332721	Precision Turned Product Manufacturing.
3452	Bolts, Nuts, Screws, Rivets, and Washers	332722	Bolt, Nut, Screw, Rivet, and Washer Manufacturing.
3462	Iron and Steel Forgings	332111	Iron and Steel Forging.
3463	Nonferrous Forgings	332112	Nonferrous Forging.
3465	Automotive Stamping	33637	Motor Vehicle Metal Stamping.
3466	Crowns and Closures	332115	Crown and Closure Manufacturing.
3469	Metal Stamping, NEC		
	Stamping Coins	339911	Jewelry Manufacturing, including Precious Metal (pt).
	Metal Stamping, NEC (Except Kitchen Utensils, Pots and Pans for Cooking and Coins).	332116	Metal Stamping.
	Kitchen Utensils and Pots and Pans for Cooking	332214	Kitchen Utensil, Pot and Pan Manufacturing.
3471	Electroplating, Plating, Polishing, Anodizing, and Coloring	332723	Electroplating, Plating, Polishing, Anodizing, and Coloring (pt).
3479	Coating, Engraving, and Allied Services, NEC		
	Jewelry Engraving and Etching, Costume Jewelry	339914	Costume Jewelry and Novelty Manufacturing (pt).
	Jewelry Engraving and Etching, Precious Metal	339911	Jewelry Manufacturing, Including Precious Metal (pt).
	Silverware and Flatware Engraving and Etching	339912	Silverware and Plated Ware Manufacturing (pt).
	Other Coating, Engraving and Allied Services	332722	Metal Coating, Engraving, and Allied Services to Manufacturers, Except Jewelry and Silverware.
3482	Small Arms Ammunition	332992	Small Arms Ammunition Manufacturing.
3483	Ammunition, Except for Small Arms	332993	Ammunition Manufacturing, Except Small Arms.
3484	Small Arms	332994	Small Arms Manufacturing.
3489	Ordnance and Accessories, NEC	332995	Other Ordnance and Accessory Manufacturing.
3491	Industrial Valves	332911	Industrial Valve Manufacturing.
3492	Fluid Power Valves and Hose Fittings	332912	Fluid Power Valve and Hose Fitting Manufacturing (pt).
3493	Steel Springs, Except Wire	332611	Steel Spring Manufacturing, Except Wire.
3494	Valves and Pipe Fittings, NEC		
	Valves and Pipe Fittings, NEC (Except Metal Pipe Hangers and Supports).	332919	Other Metal Valve and Pipe Fitting Manufacturing (pt).
	Metal Pipe Hangers and Supports	332999	All Other Miscellaneous Fabricated Metal Product Manufacturing (pt).
3495	Wire Springs		
	Wire Springs (Except Watch and Clock Springs)	332612	Wire Spring Manufacturing.
	Watch and Clock Springs	334518	Watch, Clock, and Part Manufacturing (pt).
3496	Miscellaneous Fabricated Wire Products	332618	Other Fabricated Wire Product Manufacturing (pt).
3497	Metal Foil and Leaf		
	Laminated Aluminum Foil Rolls/sheets for Flexible Packaging Uses.	322225	Laminated Aluminum Foil Manufacturing for Flexible Packaging Uses.
	Foil and Foil Containers	332999	All Other Miscellaneous Fabricated Metal Product Manufacturing (pt).
3498	Fabricated Pipe and Pipe Fittings	332996	Fabricated Pipe and Pipe Fitting Manufacturing.

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
3499	Fabricated Metal Products, NEC		
	Metal Furniture Frames and Parts, Household	337143	Metal Household Furniture Manufacturing (pt).
	Metal Furniture Frames and Parts, Office	337144	Metal Office and Public Building Furniture Manufacturing (pt).
	Powder Metallurgy	332117	Powder Metallurgy Part Manufacturing.
	Metal Boxes	332439	Other Metal Container Manufacturing (pt).
	Safe and Vault Locks	33251	Hardware Manufacturing (pt).
	Metal Aerosol Valves	332919	Other Valve and Pipe Fitting Manufacturing (pt).
	Trophies of Nonprecious Metals	339914	Costume Jewelry and Novelty Manufacturing.
	Other Metal Products	332999	All Other Miscellaneous Fabricated Metal Product Manufacturing (pt).
3511	Steam, Gas, and Hydraulic Turbine, and Turbine Generator Set Unit.	333611	Steam, Gas, and Hydraulic Turbines, and Turbine Generator Set Units Manufacturing.
3519	Internal Combustion Engines, NEC		
	Stationary Engine Radiators	33639	Other Motor Vehicle Part Manufacturing (pt).
	Except Stationary Engine Radiators	333618	Other Engine Equipment Manufacturing (pt).
3523@	Farm Machinery and Equipment		
	Farm Machinery and Equipment (Except Corrals, Stalls, Holding Gates, Hand Hair Clippers for Animals, Farm Conveyors, and Elevators).	333111	Farm Machinery and Equipment Manufacturing.
	Corrals, Stalls, Holding Gates	332323	Ornamental and Architectural Metal Work Manufacturing (pt).
	Hand Hair Clippers for Animals	332212	Hand and Edge Tool Manufacturing(pt).
	Farm Conveyors and Farm Elevators, Stackers, and Bale Throwers.	333922	Conveyor and Conveying Equipment Manufacturing (pt).
3524	Lawn and Garden Tractors and Home Lawn and Garden Equipment		
	Lawn and Garden Tractors and Home Lawn and Garden Equipment (Except Nonpowered Lawnmowers).	333112	Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing.
	Nonpowered Lawnmowers	332212	Hand and Edge Tool Manufacturing (pt).
3531@	Construction Machinery and Equipment		
	Railway Track Maintenance Equipment	33651	Railroad Rolling Stock Manufacturing (pt).
	Winches, Aerial Work Platforms, and Automotive Wrecker Hoists.	333923	Overhead Traveling Crane, Hoist, and Monorail System Manufacturing (pt).
	Other Construction Machinery and Equipment	33312	Construction Machinery Manufacturing.
3532	Mining Machinery and Equipment, Except Oil and Gas Field Machinery and Equipment.	333131	Mining Machinery and Equipment Manufacturing.
3533	Oil and Gas Field Machinery and Equipment	333132	Oil and Gas Field Machinery and Equipment Manufacturing.
3534	Elevators and Moving Stairways	333921	Elevator and Moving Stairway Manufacturing.
3535	Conveyors and Conveying Equipment	333922	Conveyor and Conveying Equipment Manufacturing (pt).
3536	Overhead Traveling Cranes, Hoist and Monorail Systems	333923	Overhead Traveling Crane, Hoists and Monorail System Manufacturing (pt).
3537	Industrial Trucks, Tractors, Trailers, and Stackers		
	Industrial Trucks, Tractors, Trailers, and Stackers (Except Metal Pallets and Air Cargo Containers).	333924	Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing.
	Metal Pallets	332999	All Other Miscellaneous Fabricated Metal Product Manufacturing (pt).
	Metal Air Cargo Containers	332439	Other Metal Container Manufacturing (pt).
3541	Machine Tools, Metal Cutting Type	333512	Machine Tool Manufacturing, Metal Cutting Types.
3542	Machine Tools, Metal Forming Type	333513	Machine Tool Manufacturing, Metal Forming Types.
3543	Industrial Patterns	332997	Industrial Pattern Manufacturing.
3544	Special Dies and Tools, Die Sets, Jigs and Fixtures, and Industrial Molds		
	Special Dies and Tools, Die Sets, Jigs and Fixture	333514	Special Die and Tool, Die Set, Jig, and Fixture Manufacturing.
	Industrial Molds	333511	Industrial Mold Manufacturing.
3545@	Cutting Tools, Machine Tool Accessories, and Machinists' Precision Measuring Devices		
	Cutting Tools, Machine Tool Accessories, and Machinists' Precision Measuring Devices (Except Precision Measuring Devices).	333515	Cutting Tool and Machine Tool Accessory Manufacturing.
	Precision Measuring Devices	332212	Hand and Edge Tool Manufacturing (pt).
3546	Power-Driven Handtools	333991	Power-Driven Hand Tool Manufacturing.
3547	Rolling Mill Machinery and Equipment	333516	Rolling Mill Machinery and Equipment Manufacturing.
3548@	Electric and Gas Welding and Soldering Equipment.		
	Welding and Soldering Equipment	333992	Welding and Soldering Equipment Manufacturing.
	Transformers for Arc-Welding	335311	Power, Distribution, and Specialty Transformer Manufacturing (pt).
3549	Metalworking Machinery, NEC	333518	Other Metalworking Machinery Manufacturing.
3552	Textile Machinery	333292	Textile Machinery Manufacturing.

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
3553	Woodworking Machinery	33321	Sawmill and Woodworking Machinery Manufacturing.
3554	Paper Industries Machinery	333291	Paper Industry Machinery Manufacturing.
3555	Printing Trades Machinery and Equipment	333293	Printing Machinery and Equipment Manufacturing.
3556	Food Products Machinery	333294	Food Product Machinery Manufacturing.
3559@	Special Industry Machinery, NEC		
	Rubber and Plastics Manufacturing Machinery	33322	Rubber and Plastics Industry Machinery Manufacturing.
	Automotive Maintenance Equipment	333319	Other Commercial and Service Industry Machinery Manufacturing (pt).
	Semiconductor Machinery Manufacturing	333295	Semiconductor Manufacturing Machinery.
	Except Rubber and Plastics Manufacturing Machinery, Semiconductor Manufacturing Machinery and Automotive Maintenance Equipment.	333298	All Other Industrial Machinery Manufacturing (pt).
3561	Pumps and Pumping Equipment	333911	Pump and Pumping Equipment Manufacturing (pt).
3562	Ball and Roller Bearings	332991	Ball and Roller Bearing Manufacturing.
3563	Air and Gas Compressors	333912	Air and Gas Compressor Manufacturing.
3564	Industrial and Commercial Fans and Blowers and Air Purification Equipment		
	Air Purification Equipment	333411	Air Purification Equipment Manufacturing.
	Fans and Blowers	333412	Industrial and Commercial Fan and Blower Manufacturing.
3565	Packaging Machinery	333993	Packaging Machinery Manufacturing.
3566	Speed Changers, Industrial High-Speed Drives, and Gears.	333612	Speed Changer, Industrial High-Speed Drive, and Gear Manufacturing.
3567	Industrial Process Furnaces and Ovens	333994	Industrial Process Furnace and Oven Manufacturing.
3568	Mechanical Power Transmission Equipment, NEC	333613	Mechanical Power Transmission Equipment Manufacturing.
3569	General Industrial Machinery and Equipment, NEC	333999	All Other General Purpose Machinery Manufacturing (pt).
3571	Electronic Computers	334111	Electronic Computer Manufacturing.
3572	Computer Storage Devices	334112	Computer Storage Device Manufacturing.
3575	Computer Terminals	334113	Computer Terminal Manufacturing.
3577	Computer Peripheral Equipment, NEC	334119	Other Computer Peripheral Equipment Manufacturing (pt).
3578@	Calculating and Accounting Machines, Except Electronic Computers		
	Point of Sales Terminals and Fund Transfer Devices	334119	Other Computer Peripheral Equipment Manufacturing (pt).
	Calculating and Accounting Machines, Except Point of Sales Terminals and Fund Transfer Devices.	333313	Office Machinery Manufacturing (pt).
3579@	Office Machines, NEC		
	Pencil Sharpeners, Staplers, and Other Office Equipment.	339942	Lead Pencil and Art Good Manufacturing (pt).
	Time Clocks and Other Time Recording Devices	334518	Watch, Clock, and Part Manufacturing (pt).
	Other Office Machines	333313	Office Machinery Manufacturing (pt).
3581	Automatic Vending Machines	333311	Automatic Vending Machine Manufacturing.
3582	Commercial Laundry, Drycleaning, and Pressing Machines.	333312	Commercial Laundry, Drycleaning, and Pressing Machine Manufacturing.
3585	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment		
	Water Coolers	335222	Household Refrigerator and Home and Farm Freezer Manufacturing (pt).
	Except Water Coolers	333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.
3586	Measuring and Dispensing Pumps	333913	Measuring and Dispensing Pump Manufacturing.
3589	Service Industry Machinery, NEC	333319	Other Commercial and Service Industry Machinery Manufacturing (pt).
3592	Carburetors, Pistons, Piston Rings and Valves	336311	Carburetor, Piston, Piston Ring and Valve Manufacturing.
3593	Fluid Power Cylinders and Actuators	333995	Fluid Power Cylinder and Actuator Manufacturing.
3594	Fluid Power Pumps and Motors	333996	Fluid Power Pump and Motor Manufacturing.
3596	Scales and Balances, Except Laboratory	333997	Scale and Balance Manufacturing, Except Laboratory.
3599@	Industrial and Commercial Machinery and Equipment, NEC		
	Gasoline, Oil and Intake Filters for Internal Combustion Engines, Except Motor Vehicle.	33639	Other Motor Vehicle Part Manufacturing (pt).
	Flexible Metal Hose	332999	All Other Miscellaneous Fabricated Metal Product Manufacturing (pt).
	Carnival Amusement Park Equipment	333319	Other Commercial and Service Industry Machinery Manufacturing (pt).
	Machine Shops	33271	Machine Shops.
	Other Industrial and Commercial Machinery and Equipment.	333999	All Other General Purpose Machinery Manufacturing (pt).

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
3612	Power, Distribution, and Specialty Transformers	335311	Power, Distribution, and Specialty Transformer Manufacturing (pt).
3613	Switchgear and Switchboard Apparatus	335313	Switchgear and Switchboard Apparatus Manufacturing.
3621	Motors and Generators	335312	Motor and Generator Manufacturing (pt).
3624	Carbon and Graphite Products	335991	Carbon and Graphite Product Manufacturing.
3625	Relays and Industrial Controls	335314	Relay and Industrial Control Manufacturing.
3629	Electrical Industrial Apparatus, NEC	335999	All Other Electrical Industrial Equipment and Supply Manufacturing (pt).
3631	Household Cooking Equipment	335221	Household Cooking Appliance Manufacturing.
3632	Household Refrigerators and Home and Farm Freezers	335222	Household Refrigerator and Home and Farm Freezer Manufacturing (pt).
3633	Household Laundry Equipment	335224	Household Laundry Equipment Manufacturing.
3634	Electric Housewares and Fans		
	Heating, Cooking, and Other Electric Housewares including Fans.	335211	Electric Houseware and Fan Manufacturing (pt).
	Wall and Baseboard Heating Units for Permanent Installation.	333414	Heating Equipment Manufacturing, Except Electric and Warm Air Furnaces.
3635	Household Vacuum Cleaners	335212	Household Vacuum Cleaner Manufacturing (pt).
3639	Household Appliances, NEC		
	Floor Waxing and Floor Polishing Machines	335212	Household Vacuum Cleaner Manufacturing (pt).
	Household Sewing Machines	333298	All Other Industrial Machinery Manufacturing (pt).
	Other Household Appliances	335228	Other Household Appliance Manufacturing.
3641	Electric Lamp Bulbs and Tubes	33511	Electric Lamp Bulb and Part Manufacturing.
3643	Current-Carrying Wiring Devices	335931	Current-Carrying Wiring Device Manufacturing.
3644	Noncurrent-Carrying Wiring Devices	335932	Noncurrent-Carrying Wiring Device Manufacturing.
3645	Residential Electric Lighting Fixtures	335122	Residential Electric Lighting Fixture Manufacturing (pt).
3646	Commercial, Industrial, and Institutional Electric Lighting Fixtures.	335123	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing.
3647	Vehicular Lighting Equipment	336321	Vehicular Lighting Equipment Manufacturing.
3648@	Lighting Equipment, NEC	335129	Other Lighting Equipment Manufacturing (pt).
3651	Household Audio and Video Equipment	33431	Audio and Video Equipment Manufacturing.
3652	Phonograph Records and Prerecorded Audio Tapes and Disks		
	Record Publishing	51221	Recording Production (pt).
	Reproduction of Recording Media	334612	Prerecorded Compact Disc (Except Software), Tape and Record Manufacturing (pt).
	Integrated Record Companies, Except Duplication Only	51222	Integrated Record Companies (pt).
3661	Telephone and Telegraph Apparatus		
	Telephone and Telegraph Apparatus, Except Telephone Transformers, and Consumer External Modems.	33421	Telephone Apparatus Manufacturing.
	Telephone Transformers	334416	Electronic Coil, Transformer, and Other Inductor Manufacturing (pt).
	Consumer External Modems	334419	Other Electronic Component Manufacturing (pt).
3663	Radio and Television Broadcasting and Communication Equipment.	33422	Broadcast and Studio Equipment for Radio, TV, and Cable Manufacturing (pt).
3669	Communications Equipment, NEC	33429	Other Communication Equipment Manufacturing.
3671	Electron Tubes	334411	Electron Tube Manufacturing.
3672	Printed Circuit Boards	334412	Printed Circuit Board Manufacturing.
3674	Semiconductors and Related Devices	334413	Semiconductor and Related Device Manufacturing.
3675	Electronic Capacitors	334414	Electronic Capacitor Manufacturing.
3676	Electronic Resistors	334415	Electronic Resistor Manufacturing
3677	Electronic Coils, Transformers, and Other Inductors	334416	Electronic Coil, Transformers, and Other Inductor Manufacturing (pt).
3678	Electronic Connectors	334417	Electronic Connector Manufacturing.
3679	Electronic Components, NEC		
	Communication Equipment	33422	Broadcast and Studio Equipment for Radio, TV and Cable Manufacturing (pt)..
	Electronic Control Modular Chips for Motor Vehicles	336322	Motor Vehicle Electrical and Electronic Equipment Manufacturing (pt).
	Other Electronic Components including Loaded PC Boards.	334419	Other Electronic Component Manufacturing (pt).
3691	Storage Batteries	335911	Storage Battery Manufacturing.
3692	Primary Batteries, Dry and Wet	335912	Dry and Wet Primary Battery Manufacturing.
3694	Electrical Equipment for Internal Combustion Engines	336322	Motor Vehicle Electrical and Electronic Equipment Manufacturing (pt).
3695	Magnetic and Optical Recording Media	334613	Magnetic and Optical Recording Media Manufacturing.
3699	Electrical Machinery, Equipment, and Supplies, NEC		
	Electronic Teaching Machines and Flight Simulators	333319	Other Commercial and Service Industry Machinery Manufacturing (pt).
	Outboard Electric Motors	333618	Other Engine Equipment Manufacturing (pt).

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
	Bar Code Scanners	334119	Other Computer Peripheral Equipment Manufacturing (pt).
	Lasers		Classify According to Function.
	Christmas Tree Lighting Sets and Electric Insect Lamps.	335129	Other Lighting Equipment Manufacturing (pt).
	Other Electrical Machinery, Equipment, and Supplies	335999	All Other Electrical Industrial Equipment and Supply Manufacturing (pt).
3711@	Motor Vehicles and Passenger Car Bodies		
	Passenger Car and Light Duty Trucks	33611	Passenger Car and Light Duty Truck Manufacturing.
	Heavy Duty Trucks	33612	Heavy Duty Truck Manufacturing.
	Kit Car and Other Passenger Car Bodies	336211	Truck and Bus Body Manufacturing (pt).
	Military Armored Vehicles	336992	Military Armored Vehicle, Tank, and Tank Component Manufacturing (pt).
3713	Truck and Bus Bodies	336211	Truck and Bus Body Manufacturing (pt).
3714@	Motor Vehicle Parts and Accessories		
	Dump-Truck Lifting Mechanisms and Fifth Wheels	336211	Truck and Bus Body Manufacturing (pt).
	Gasoline Engines Including Rebuilt and Engine Parts Including Rebuilt for Motor Vehicles.	336312	Engine and Engine Part Manufacturing.
	Wiring Harness Sets, Other than Ignition; Block Heaters and Battery Heaters; Instrument Board Assemblies; Permanent Defroster; Windshield Washer-Wiper Mechanisms; Cruise Control Mechanisms; and Other Electrical Equipment for Internal Combustion Engines.	336322	Motor Vehicle Electrical and Electronic Equipment Manufacturing (pt).
	Steering and Suspension Parts	33633	Motor Vehicle Steering and Suspension Componerit (Except Springs) Manufacturing.
	Brake and Brake Systems, Including Assemblies	33634	Motor Vehicle Brake System Manufacturing (pt).
	Transmissions and Power Train Parts, Including Rebuilding.	33635	Motor Vehicle Transmission and Power Train Part Manufacturing.
	Other Motor Vehicle Parts	33639	Other Motor Vehicle Part Manufacturing (pt).
3715	Truck Trailers	336212	Truck Trailer Manufacturing.
3716	Motor Homes	336213	Motor Home Manufacturing.
3721	Aircraft	336411	Aircraft Manufacturing.
3724	Aircraft Engines and Engine Parts	336412	Aircraft Engine and Engine Part Manufacturing.
3728	Aircraft Parts and Auxiliary Equipment, NEC		
	Fluid Power Aircraft Subassemblies	332912	Fluid Power Valve and Hose Fitting Manufacturing (pt).
	Other Aircraft Parts and Equipment	336413	Other Aircraft Part and Auxiliary Equipment Manufacturing.
3731	Ship Building and Repairing	336611	Ship Building and Repairing.
3732	Boat Building and Repairing		
	Boat Repair	811211	Transportation Equipment Repair and Maintenance.
	Boat Building	336612	Boat Building.
3743	Railroad Equipment		
	Locomotive Fuel Lubricating or Cooling Medium Pumps.	333911	Pump and Pumping Equipment Manufacturing (pt).
	Other Railroad Equipment	33651	Railroad Rolling Stock Manufacturing (pt)
3751	Motorcycles, Bicycles, and Parts	336991	Motorcycle, Bicycle, and Part Manufacturing (pt).
3761	Guided Missiles and Space Vehicles	336414	Guided Missile and Space Vehicle Manufacturing.
3764	Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts.	336415	Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Part Manufacturing.
3769	Guided Missile Space Vehicle Parts and Auxiliary Equipment, NEC.	336419	Other Guided Missile and Space Vehicle Part and Auxiliary Equipment Manufacturing.
3792	Travel Trailers and Campers	336214	Travel Trailer and Camper Manufacturing (pt).
3795	Tanks and Tank Components	336992	Military Armored Vehicle, Tank, and Tank Component Manufacturing (pt).
3799@	Transportation Equipment, NEC		
	Automobile, Boat, Utility and Light Truck Trailers	336214	Travel Trailer and Camper Manufacturing (pt).
	Wheelbarrows	332212	Hand and Edge Tool Manufacturing (pt).
	Other Transportation Equipment	336999	Other Miscellaneous Transportation Equipment Manufacturing.
3812	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments.	334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing
3821	Laboratory Apparatus and Furniture	339111	Laboratory Apparatus and Furniture Manufacturing.
3822	Automatic Controls for Regulating Residential and Commercial Environments and Appliances.	334512	Automatic Control for Regulating Residential and Commercial Environment and Appliance Manufacturing.
3823	Industrial Instruments for Measurement, Display, and Control of Process Variables; and Related Products.	334513	Industrial Instruments for Measurement, Display, and Control of Process Variables, and Related Product Manufacturing.
3824	Totalizing Fluid Meters and Counting Devices	334514	Totalizing Fluid Meter and Counting Device Manufacturing.

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
3825	Instruments for Measuring and Testing of Electricity and Electrical Signals		
	Portable Instrument Transformers	334416	Electronic Coil, Transformer, and Other Inductor Manufacturing (pt).
	Except Portable Instrument Transformers	334515	Instruments for Measuring and Testing of Electricity and Electrical Signal Manufacturing.
3826	Laboratory Analytical Instruments	334516	Analytical Instrument Manufacturing.
3827	Optical Instruments and Lenses	333314	Optical Instrument and Lens Manufacturing.
3829	Measuring and Controlling Devices, NEC		
	Medical Thermometers	339113	Surgical Appliance and Supply Manufacturing (pt).
	Except Medical Thermometers	334519	Other Measuring and Controlling Device Manufacturing.
3841	Surgical and Medical Instruments and Apparatus	339112	Surgical and Medical Instrument Manufacturing.
3842@	Orthopedic, Prosthetic, and Surgical Appliances and Supplies		
	Orthopedic, Prosthetic, and Surgical Appliances and Supplies, except Electronic Hearing Aids.	339113	Surgical Appliance and Supply Manufacturing (pt).
	Electronic Hearing Aids	334510	Electromedical and Electrotherapeutic Apparatus Manufacturing (pt).
3843	Dental Equipment and Supplies	339114	Dental Equipment and Supply Manufacturing.
3844	X-Ray Apparatus and Tubes and Related Irradiation Apparatus.	334517	X-Ray Apparatus and Tubes and Related Irradiation Apparatus Manufacturing.
3845	Electromedical and Electrotherapeutic Apparatus	334510	Electromedical and Electrotherapeutic Apparatus (pt.).
3851	Ophthalmic Goods	339115	Opthalmic Good Manufacturing.
3861	Photographic Equipment and Supplies		
	Photographic Equipment and Supplies (Except Photographic Film, Paper, Plate and Chemicals).	333315	Photographic and Photocopying Equipment Manufacturing.
	Photographic Film, Paper, Plates and Chemicals	325992	Photographic Film, Paper, Plate and Chemical Manufacturing.
3873	Watches, Clocks, Clockwork Operated Devices and Parts.	334518	Watch, Clock, and Part Manufacturing (pt).
3911	Jewelry, Precious Metal	339911	Jewelry Manufacturing, Including Precious Metal (pt).
3914	Silverware, Plated Ware, and Stainless Steel Ware		
	Cutlery and Flatware Except Precious	332211	Cutlery and Flatware Manufacturing, Except Precious (pt).
	Silverware, Plated Ware, and Stainless Steel Ware (Except Nonprecious Metal Cutlery and Flatware).	339912	Silverware and Plated Ware Manufacturing (pt).
3915	Jewelers' Findings and Materials, and Lapidary Work	339913	Jewelers' Material and Lapidary Work Manufacturing.
3931	Musical Instruments	339991	Musical Instrument Manufacturing.
3942	Dolls and Stuffed Toys	339931	Doll and Stuffed Toy Manufacturing.
3944	Games, Toys, and Children's Vehicles, Except Dolls and Bicycles		
	Metal Tricycles	336991	Motorcycle, Bicycle and Part Manufacturing (pt).
	Other Games, Toys and Children's Vehicles	339932	Game, Toy, and Children's Vehicle Manufacturing (pt).
3949	Sporting and Athletic Goods, NEC	33992	Sporting and Athletic Good Manufacturing.
3951	Pens, Mechanical Pencils and Parts	339941	Pen and Mechanical Pencil Manufacturing.
3952@	Lead Pencils, Crayons, and Artist's Materials		
	Metal Drafting Tables and Boards	337144	Metal Office and Public Building Furniture Manufacturing (pt).
	Wood Drafting Tables and	337134	Wood Office and Public Building Boards Furniture Manufacturing (pt).
	Drawing and India Ink	32591	Printing Ink Manufacturing (pt).
	Other	339942	Lead Pencil and Art Good Manufacturing (pt).
3953	Marking Devices	339943	Marking Device Manufacturing.
3955	Carbon Paper and Inked Ribbons	339944	Carbon Paper and Inked Ribbon Manufacturing.
3961	Costume Jewelry and Costume Novelties, Except Precious Metals.	339914	Costume Jewelry and Novelty Manufacturing (pt).
3965	Fasteners, Buttons, Needles, and Pins	339992	Fastener, Button, Needle and Pin Manufacturing (pt).
3991	Brooms and Brushes	339993	Broom, Brush and Mop Manufacturing (pt).
3993@	Signs and Advertising Specialties		
	Lithographic Printing of Advertising Specialties	323114	Commercial Lithographic Printing (pt).
	Gravure Printing of Advertising Specialties	323115	Commercial Gravure Printing (pt).
	Flexographic Printing of Advertising Specialties	323117	Commercial Flexographic Printing (pt).
	Screen Printing of Advertising Specialties	323116	Commercial Screen Printing (pt).
	Other Printing of Advertising Specialties	323118	Other Commercial Printing (pt).
	Electric Signs	335121	Electric Sign Manufacturing.
	Non-Electric Wood Signs	321999	All Other Miscellaneous Wood Product Manufacturing (pt).
	Non-Electric Metal Signs	332999	All Other Miscellaneous Fabricated Metal Product Manufacturing (pt).
	Non-Electric Plastics Signs	326299	All Other Plastics Product Manufacturing (pt).
3995	Burial Caskets	339994	Burial Casket Manufacturing.

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
3996	Linoleum, Asphalted-Felt-Base, and Other Hard Surface Floor Coverings, NEC.	326292	Resilient Floor Covering Manufacturing (pt).
3999	Manufacturing Industries, NEC		
	Beauty and Barber Chairs	337144	Metal Office and Public Building Furniture Manufacturing (pt).
	Burnt Wood Articles	321999	All Other Miscellaneous Wood Product Manufacturing (pt).
	Fur Dressing and Bleaching	31611	Leather and Hide Tanning and Finishing (pt).
	Lamp Shades of Paper or Textile	335122	Residential Electric Lighting Fixture Manufacturing (pt).
	Matches	325998	All Other Miscellaneous Chemical Product Manufacturing (pt).
	Metal Products, Such As Combs, Hair Curlers, Etc.	332999	All Other Miscellaneous Fabricated Metal Product Manufacturing (pt).
	Plastics Products, Such As Combs, Hair Curlers, Etc.	326299	All Other Plastics Product Manufacturing (pt)
	Flexographic Printing Eyeglass Frames for the Trade	323117	Commercial Flexographic Printing (pt).
	Gravure Printing Eyeglass Frames for the Trade	323115	Commercial Gravure Printing (pt).
	Lithographic Printing Eyeglass Frames for the Trade	323114	Commercial Lithographic Printing (pt).
	Screen Printing of Eyeglass Frames for the Trade	323116	Commercial Screen Printing (pt).
	Other Printing of Eyeglass Frames for the Trade	323118	Other Commercial Printing (pt).
	Tape Measures	332212	Hand and Edge Tool Manufacturing (pt).
	Other	339999	All Other Miscellaneous Manufacturing (pt.).
4011	Railroads, Line-haul Operating	482111	Line-Haul Railroads.
4013@	Railroad Switching and Terminal Establishments		
	Beltline and Logging Railroads	482112	Short Line Railroads.
	Other	48821	Support Activities for Rail Transportation (pt.).
4111@	Local and Suburban Transit		
	Mixed Mode Transit Systems	485111	Mixed Mode Transit Systems.
	Commuter Rail Systems	485112	Commuter Rail Systems.
	Bus and Motor Vehicle Transit Systems	485113	Bus and Motor Vehicle Transit Systems.
	Other Urban Transit Systems	485119	Other Urban Transit Systems.
	Airport Limousine Transportation	485919	All Other Transit and Ground Passenger Transportation (pt.).
4119@	Local Passenger Transportation, NEC		
	Ambulances	62191	Ambulance Service (pt.).
	Employee Transportation	48541	School and Employee Bus Industry (pt.).
	Sightseeing Buses and Cable and Cog Railways, Except Scenic.	48711	Scenic and Sightseeing Transportation, Land (pt.).
	Special Needs Transportation	485991	Special Needs Transportation.
	Hearse Rental with Driver and Carpool and Vanpool Operations.	485919	All Other Transit and Ground Passenger Transportation (pt.).
	Automobile Rental with Driver and Limousine Rental with Driver.	48532	Limousine Service.
4121	Taxicabs	48531	Taxi Service.
4131	Intercity and Rural Bus Transportation	48521	Interurban and Rural Bus Lines.
4141@	Local Bus Charter Service	48551	Charter Bus Industry (pt.).
4142	Bus Charter Service, Except Local	48551	Charter Bus Industry (pt.).
4151	School Buses	48541	School and Employee Bus Industry (pt.).
4173@	Terminal and Service Facilities for Motor Vehicle Passenger Transportation.	48849	Other Support Activities for Road Transportation (pt.).
4212@	Local Trucking Without Storage		
	Solid Waste Collection Without Disposal	572111	Solid Waste Collection (pt.).
	Hazardous Waste Collection Without Disposal	572112	Hazardous Waste Collection (pt.).
	Other Waste Collection Without Disposal	572119	Other Waste Collection (pt.).
	Local General Freight Trucking Without Storage	48411	General Freight Trucking, Local (pt.).
	Household Goods Moving Without Storage	48421	Used Household and Office Goods Moving (pt.).
	Local Specialized Freight Trucking Without Storage	48422	Specialized Freight (Except Used Goods) Trucking, Local (pt.).
4213@	Trucking, Except Local		
	Long-distance Truckload General Freight Trucking	484121	General Freight Trucking, Long-Distance, Truckload.
	Long-distance Less Than Truckload General Freight Trucking.	484122	General Freight Trucking, Long-Distance, Less Than Truckload.
	Long-distance Household Goods Moving	48421	Used Household and Office Goods Moving (pt.).
	Long-distance Specialized Freight Trucking	48423	Specialized Freight (Except Used Goods) Trucking, Long-Distance.
4214@	Local Trucking with Storage		
	Local General Freight Trucking with Storage	48411	General Freight Trucking, Local (pt.).
	Local Household Goods Moving	48421	Used Household and Office Goods Moving (pt.).
	Local Specialized Freight Trucking with Storage	48422	Specialized Freight (Except Used Goods) Trucking, Local.
4215@	Couriers Services Except by Air		
	Hub and Spoke Intercity Delivery	49211	Couriers (pt.).

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
	Local Delivery	49221	Local Messengers and Local Delivery.
4221	Farm Product Warehousing and Storage	48862	Farm Product Storage Facilities.
4222	Refrigerated Warehousing and Storage	48861	Refrigerated Storage Facilities (pt.).
4225	General Warehousing and Storage		
	General Warehousing and Storage	488691	General Storage Facilities (pt.).
	Miniwarehouses and Self-Units	53112	Lessors of Miniwarehouses and Self Storage Units.
4226	Special Warehousing and Storage, NEC		
	Fur Storage	48861	Refrigerated Storage Facilities (pt.).
	Other	488699	All Other Storage Facilities.
4231@	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation.	48849	Other Support Activities for Road Transportation (pt.).
4311	United States Postal Service	49111	National Post Office.
4412	Deep Sea Foreign Transportation of Freight	483111	Deep Sea Freight Transportation .
4424@	Deep Sea Domestic Transportation of Freight	483113	Coastal and Great Lakes Freight Transportation (pt.).
4432@	Freight Transportation on the Great Lakes—St. Lawrence Transportation Seaway.	483113	Coastal and Great Lakes Freight Transportation (pt.).
4449	Water Transportation of Freight, NEC	483211	Inland Water Freight Transportation (pt.).
4481	Deep Sea Transportation of Passengers, Except by Ferry		
	Deep Sea Passenger Transportation	483112	Deep Sea Passenger Transportation.
	Coastal and Great Lakes Passenger Transportation	483114	Coastal and Great Lakes Passenger (pt.).
4482@	Ferries		
	Coastal and Great Lakes Ferries	483114	Coastal and Great Lakes Passenger Transportation (pt.).
	Inland Water Ferries	483212	Inland Water Passenger Transportation (pt.).
4489	Water Transportation of Passengers, NEC		
	Water Taxis	483212	Inland Water Passenger Transportation (pt.).
	Airboats, Excursion Boats, and Sightseeing Boats	48721	Scenic and Sightseeing Transportation, Water.
4491	Marine Cargo Handling		
	Dock and Pier Operations	48831	Port and Harbor Operations (pt.).
	Except Dock and Pier Operations	48832	Marine Cargo Handling.
4492@	Towing and Tugboat Services Barge Operations Coastal and Great Lakes	483113	Coastal and Great Lakes Freight Transportation (pt).
	Inland Water Barge Operations	483211	Inland Water Freight Transportation (pt.).
	Except Barge Operations	48833	Navigational Services to Shipping (pt.).
4493	Marinas	71313	Marinas.
4499@	Water Transportation Services, NEC		
	Boat and Ship Rental	533311	Rental and Leasing of Commercial Air, Rail, and Water Transportation Equipment.
	Seaway and Lighthouse Operations	48831	Port and Harbor Operations (pt.).
	Marine Salvage and Piloting Vessels in and Out of Harbors.	48833	Navigational Services to Shipping (pt.).
	Other	48839	Other Support Activities for Water Transportation (pt.).
4512	Air Transportation, Scheduled		
	Scheduled Passenger Air Transportation	481111	Scheduled Passenger Air Transportation.
	Scheduled Freight Air Transportation	481112	Scheduled Freight Air Transportation.
4513@	Air Courier Services	49211	Couriers (pt).
4522@	Air Transportation, Nonscheduled		
	Air Ambulance	62191	Ambulance Services (pt.).
	Nonscheduled Charter Freight Air Transportation	481212	Nonscheduled Chartered Freight Air Transportation.
	Nonscheduled Charter Passenger Air Transportation	481211	Nonscheduled Chartered Passenger Air Transportation.
	Nonscheduled Specialty Air Transportation	48122	Nonscheduled Specialty Air Transportation.
	Sightseeing airplanes	48791	Scenic and Sightseeing Transportation, Other (pt.).
4581	Airports, Flying Fields, and Airport Terminal Services		
	Air Traffic Control	488111	Air Traffic Control.
	Airfreight Handling at Airport Hangar Operations, Airports Terminal Services, Aircraft Storage, Airports, and Flying Fields.	488112	Airport Operations, Except Air Traffic Control.
	Aircraft Cleaning and Janitorial Services	57162	Janitorial Services (pt).
	Aircraft Servicing and Repairing	48819	Other Support Activities for Air Transportation.
4612	Crude Petroleum Pipelines	48611	Pipeline Transportation of Crude Oil.
4613	Refined Petroleum Pipelines	48691	Pipeline Transportation of Refined Petroleum Products.
4619	Pipelines, NEC	48699	All Other Pipeline Transport.
4724	Travel Agencies	57141	Travel Agencies.
4725	Tour Operators	57142	Tour Operators.
4729@	Arrangement of Passenger Transportation, NEC		
	Arrangement of Carpools and Vanpools	488919	All Other Support Activities for Transportation (pt.)
	Except Arrangement of Carpools and Vanpools	571499	Other Travel Arrangement and Reservation Services (pt.).
4731	Arrangement of Transportation of Freight and Cargo.		
	Freight Rate Auditors and Tariff Consultants	561619	Other Management Consulting Services.
	Except Freight Rate Auditors and Tariff Consultants	48851	Freight Transportation Arrangement.

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
4741@	Rental of Railroad Cars		
	Rental of Railroad Cars	533311	Rental and Leasing of Commercial Air, Rail, and Water Transportation Equipment (pt).
	Grain Leveling in Railroad Cars, Grain Trimming for Railroad Equipment, Precooling of Fruits and Vegetables in Connection with Transportation, and Railroad Car Cleaning, Icing, Ventilating and Heating.	48821	Support Activities for Rail Transportation (pt.).
4783	Packing and Crating	488911	Packing and Crating.
4785	Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation		
	Marine Cargo Checkers	48839	Other Support Activities for Water Transportation (pt.).
	Except Marine Cargo Checkers	48849	Other Support Activities for Road Transportation (pt.).
4789	Transportation Services, NEC		
	Pipeline Terminals and Stockyards for Transportation	488919	All Other Support Activities for Transportation (pt.).
	Horse-drawn Cabs and Carriages	48711	Scenic and Sightseeing Transportation, Land (pt.).
	Other	48821	Support Activities for Rail Transportation (pt.).
4812@	Radiotelephone Communications		
	Paging Carriers	513321	Paging.
	Cellular Carriers	513322	Cellular and Other Wireless Telecommunications (pt.).
	Paging and Cellular Resellers	51333	Telecommunications Resellers (pt.).
4813@	Telephone Communications, Except Radiotelephone		
	Except Resellers	51331	Wired Telecommunications Carriers (pt.).
	Resellers	51333	Telecommunications Resellers (pt.).
4822@	Telegraph and Other Message Communications	51331	Wired Telecommunications Carriers (pt.).
4832	Radio Broadcasting Stations		
	Networks	513111	Radio Networks.
	Stations	513112	Radio Stations.
4833	Television Broadcasting Stations	51312	Television Broadcasting.
4841	Cable and Other Pay Television Services		
	Cable Networks	51321	Cable Networks.
	Except Cable Networks	51322	Cable and Program Distribution.
4899	Communications Services, NEC		
	Radio Dispatch	513322	Cellular and Other Wireless Telecommunications (pt.).
	Satellite Communications	51334	Satellite Telecommunications.
	Except Radio Dispatch and Satellite Communications	51339	Other Telecommunications.
4911	Electric Services		
	Hydroelectric Power Generation	221111	Hydroelectric Power Generation (pt).
	Electric Power Generation by Fossil Fuels	221112	Fossil Fuel Electric Power Generation (pt).
	Electric Power Generation by Nuclear Fuels	221113	Nuclear Electric Power Generation (pt).
	Other Electric Power Generation	221119	Other Electric Power Generation (pt).
	Electric Power Transmission and Control	221121	Electric Bulk Power Transmission and Control (pt).
	Electric Power Distribution	221122	Electric Power Distribution.
4922	Natural Gas Transmission	48621	Pipeline Transportation of Natural Gas.
4923@	Natural Gas Transmission and Distribution		
	Distribution	22121	Natural Gas Distribution (pt).
	Transmission	48621	Pipeline Transportation of Natural Gas.
4924@	Natural Gas Distribution	22121	Natural Gas Distribution (pt).
4925@	Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution.	22121	Natural Gas Distribution (pt).
4931@	Electric and Other Services Combined		
	Hydroelectric Power Generation When Combined with Other Services.	221111	Hydroelectric Power Generation (pt).
	Electric Power Generation by Fossil Fuels When Combined with Other Services.	221112	Fossil Fuel Electric Power Generation (pt).
	Electric Power Generation by Nuclear Fuels When Combined with Other Services.	221113	Nuclear Electric Power Generation (pt).
	Other Electric Power Generation When Combined with Other Services.	221119	Other Electric Power Generation (pt).
	Electric Power Transmission When Combined with Other Services.	221121	Electric Bulk Power Transmission and Control (pt).
	Electric Power Distribution When Combined with Other Services.	221122	Electric Power Distribution (pt).
	Natural Gas When Combined with Electric Services	22121	Natural Gas Distribution (pt).
4932@	Gas and Other Services Combined	22121	Natural Gas Distribution (pt).
4939@	Combination Utilities, NEC		
	Hydroelectric Power Generation When Combined with Other Services.	221111	Hydroelectric Power Generation (pt).
	Electric Power Generation by Fossil Fuels When Combined with Other Services.	221112	Fossil Fuel Electric Power Generation (pt).
	Electric Power Generation by Nuclear Fuels When Combined with Other Services.	221113	Nuclear Electric Power Generation (pt).
	Other Power Generation When Combined with Other Services.	221119	Other Electric Power Plants (pt).
	Electric Power Transmission When Combined with Other Services.	221121	Electric Bulk Power Transmission and Control (pt).
	Electric Power Distribution When Combined with Other Services.	221122	Electric Power Distribution (pt).
	Natural Gas Distribution when Combined with Other Services.	22121	Natural Gas Distribution (pt).
4941	Water Supply	22131	Water and Irrigation Systems (pt).
4952	Sewerage Systems	22132	Sewerage Systems.
4953	Refuse Systems.		
	Solid Waste Collection When Combined with Disposal	562111	Solid Waste Collection (pt).
	Hazardous Waste Collection When Combined with Disposal.	562112	Hazardous Waste Collection (pt).
	Materials Recovery Facilities	56291	Materials Recovery Facilities.
	Other Waste Collection When Combined with Disposal	562119	Other Waste Collection.
	Hazardous Waste Disposal	562211	Hazardous Waste Treatment and Disposal.
	Solid Waste Landfills	562212	Solid Waste Landfills.
	Solid Waste Combustors and Incinerators	562213	Solid Waste Combustors and Incinerators.
	Other Waste Treatment and Disposal	562219	Other Nonhazardous Waste Treatment and Disposal.
4959	Sanitary Services, NEC		
	Vacuuming of Airport Runways	488112	Airport Operations, Except Air Traffic Control.
	Remediation Services	562991	Remediation Services.
	Malaria Control and Mosquito Eradication	56171	Exterminating and Pest Control Services.
	Snowplowing and Street Sweeping	561730	Lawn and Garden Services (pt).
	Other	562998	All Other Miscellaneous Waste Management (pt).
4961	Steam and Air-Conditioning Supply	22133	Steam and Air-Conditioning Supply.
4971	Irrigation Systems	22131	Water and Irrigation Systems (pt).
5012	Automobiles and Other Motor Vehicles	43111	Automobiles and Other Motor Vehicles.
5013	Motor Vehicle Supplies and New Parts		
	Sold Via Retail Method	44131	Automotive Parts and Supplies Stores (pt)—Retail.
	Sold Via Wholesale Method	43112	Motor Vehicle Supplies and New Parts (pt)—Wholesale.
5014	Tires and Tubes		
	Sold Via Retail Method	44132	Tire Dealers (pt.)—Retail.
	Sold Via Wholesale Method	43113	Tires and Tubes—Wholesale.
5015	Motor Vehicle Parts, Used	43114	Motor Vehicle Parts, Used.
5021	Furniture		
	Sold Via Retail Method	44211	Furniture Stores (pt).
	Sold Via Wholesale Method	43121	Furniture
5023	Home Furnishings..		
	Sold Via Retail Method	44221	Floor Covering Stores (pt).
	Sold Via Wholesale Method	43122	Homefurnishings
5031	Lumber, Plywood, Millwork, and Wood Panels.		
	Sold Via Retail Method	44419	Other Building Materials Dealers (pt).
	Sold Via Wholesale Method	43131	Lumber, Plywood, Millwork, and Wood Panels (pt).
5032	Brick, Stone and Related Construction Materials		
	Sold Via Retail Method	44419	Other Building Materials Dealers (pt).
	Sold Via Wholesale Method	43132	Brick, Stone and Related Construction Materials.
5033	Roofing, Siding, and Insulation Materials	43133	Roofing, Siding, and Insulation.
5039	Construction Materials, NEC.		
	Sold Via Retail Method	44419	Other Building Materials Dealers (pt).
	Sold Via Wholesale Method	43139	Other Construction Materials.
5043	Photographic Equipment and Supplies	43141	Photographic Equipment and Supplies.
5044	Office Equipment	43142	Office Equipment.
5045	Computers and Computer Peripheral Equipment and Software		
	Sold Via Wholesale Method	43143	Computers and Computer Peripheral Equipment and Software.
	Sold Via Retail Method	44312	Computer and Software Stores (pt)—Retail.
5046	Commercial Equipment, NEC	43144	Other Commercial Equipment.
5047	Medical, Dental, and Hospital Equipment and Supplies		
	Sold Via Wholesale Method	43145	Medical, Dental and Hospital Equipment and Supplies—Wholesale.
	Sold Via Retail Method	446199	All Other Health and Personal Care Stores (pt)—Retail.
5048	Ophthalmic Goods	43146	Ophthalmic Goods.
5049	Professional Equipment and Supplies, NEC		
	Sold Via Wholesale Method	43149	Other Professional Equipment and Supplies.
	Religious and School Supplies Sold Via Retail Method	45321	Office Supply and Stationery Stores (pt)—Retail.
5051	Metals Service Centers and Offices	43151	Metals Service Centers and Offices.
5052	Coal and Other Minerals and Ores	43152	Coal and Other Minerals and Ores.
5063	Electrical Apparatus and Equipment Wiring Supplies, and Construction Materials		

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
	Sold Via Retail Method	44419	Other Building Materials (pt).
	Sold Via Wholesale Method	43161	Electrical Apparatus and Equipment Wiring Supplies and Construction Materials.
5064	Electrical Appliances, Television and Radio Sets	43162	Electrical Appliances, Television and Radio Sets.
5065	Electronic Parts and Equipment, Not Elsewhere Classified.	43169	Other Electronic Parts and Equipment.
5072	Hardware	43171	Hardware.
5074	Plumbing and Heating Equipment and Supplies (Hydronics)		
	Sold Via Retail Method	44419	Other Building Materials (pt).
	Sold Via Wholesale Method	43172	Plumbing and Heating Equipment and Supplies (Hydronics).
5075	Warm Air Heating and Air-Conditioning Equipment and Supplies.	43173	Warm Air Heating and Air-Conditioning Equipment and Supplies.
5078	Refrigeration Equipment and Supplies	43174	Refrigeration Equipment and Supplies.
5082	Construction and Mining (Except Petroleum) Machinery and Equipment.	43181	Construction and Mining (Except Petroleum) Machinery and Equipment.
5083	Farm and Garden Machinery and Equipment		
	Sold Via Wholesale Method	43182	Farm and Garden Machinery and Equipment—Wholesale.
	Garden and Lawn Equipment Sold Via Retail Method	44421	Outdoor Power Equipment Stores (pt)—Retail.
5084	Industrial Machinery and Equipment	43183	Industrial Machinery and Equipment.
5085	Industrial Supplies		
	Fluid Power Accessories	43183	Industrial Machinery and Equipment (pt).
	Reconditioning Barrels and Drums	332439	Other Metal Container Manufacturing.
	Except Fluid Power Accessories and Reconditioning Barrels and Drums.	43184	Industrial Supplies.
5087	Service Establishment Equipment and Supplies		
	Sold Via Wholesale Method	43185	Service Establishment Equipment and Supplies.
	Sold Via Retail Method	44612	Cosmetics, Beauty Supplies, and Perfume Stores (pt)—(Retail).
5088	Transportation Equipment and Supplies, Except Motor Vehicles.	43186	Transportation Equipment and Supplies, Except Motor Vehicles.
5091	Sporting and Recreational Goods and Supplies	43191	Sporting and Recreational Goods and Supplies.
5092	Toys and Hobby Goods and Supplies	43192	Toys and Hobby Goods and Supplies.
5093	Scrap and Waste Materials	43193	Recyclable Materials.
5094	Jewelry, Watches, Precious Stones, and Precious Metals	43194	Jewelry, Watches, Precious Stones, and Precious Metals.
5099	Durable Goods, NEC	43199	Other Miscellaneous Durable Goods.
5111	Printing and Writing Paper	43211	Printing and Writing Paper.
5112	Stationery and Office Supplies		
	Sold Via Retail Method	45321	Office Supply and Stationery Stores (pt).
	Sold Via Wholesale Method	43212	Stationery and Office Supplies.
5113	Industrial and Personal Service Paper	43213	Industrial and Personal Service Paper.
5122	Drugs, Drug Proprietaries, and Druggists' Sundries	43221	Drugs, Drug Proprietaries, and Druggists' Sundries.
5131	Piece Goods, Notions, and Other Dry Goods		
	Piece Good Converters, Broadwoven Fabrics	313311	Broadwoven Fabric Finishing Mills (pt).
	Piece Good Converters, Except Broadwoven Fabrics	313312	Textile and Fabric Finishing Mills, Except Broadwoven Fabric (pt).
	Except Converters	43231	Piece Goods, Notions, and Other Dry Goods.
5136	Men's and Boys' Clothing and Furnishings	43232	Men's and Boys' Clothing and Furnishings.
5137	Women's, Children's and Infants' Clothing and Accessories.	43233	Women's, Children's, and Infants' Clothing and Accessories.
5139	Footwear	43234	Footwear.
5141	Groceries, General Line	43241	Groceries, General Line.
5142	Packaged Frozen Foods	43242	Packaged Frozen Foods.
5143	Dairy Products, Except Dried or Canned	43243	Dairy Products, Except Dried or Canned.
5144	Poultry and Poultry Products	43244	Poultry and Poultry Products.
5145	Confectionery	43245	Confectionery.
5146	Fish and Seafoods	43246	Fish and Seafoods.
5147	Meats and Meat Products		
	Boxed Beef	311612	Meat Processed from Carcasses (pt).
	Except Boxed Beef	43247	Meats and Meat Products.
5148	Fresh Fruits and Vegetables	43248	Fresh Fruits and Vegetables.
5149	Groceries and Related Products, NEC	43249	Other Groceries and Related Products.
5153	Grain and Field Beans	43251	Grain and Field Beans.
5154	Livestock	43252	Livestock.
5159	Farm-Product Raw Materials, NEC	43259	Other Farm-Product Raw Materials.
5162	Plastics Materials and Basic Forms and Shapes	43261	Plastics Materials and Basic Forms and Shapes.
5169	Chemicals and Allied Products, NEC	43269	Other Chemicals and Allied Products.
5171	Petroleum Bulk Stations and Terminals		

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
	Heating Oil Sold Via Retail Method	454311	Heating Oil Dealers (pt).
	LP Gas Sold Via Retail Method	454312	Liquefied Petroleum Gas (Bottled Method Gas) Dealers (pt).
	Sold Via Wholesale Method	43271	Petroleum Bulk Stations and Terminals.
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals.	43272	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals.
5181	Beer and Ale	43281	Beer and Ale.
5182	Wine and Distilled Alcoholic Beverages	43282	Wine and Distilled Alcoholic.
5191	Farm Supplies		
	Lawn and Garden Supplies Sold Via Retail Method	44422	Nursery and Garden Centers (pt)—Retail.
	Except Lawn and Garden Supplies Sold Via Retail Method.	43291	Farm Supplies—Wholesale.
5192	Books, Periodicals, and Newspapers	43292	Books, Periodicals and Newspapers.
5193	Flowers, Nursery Stock, and Florists' Supplies		
	Sold Via Wholesale Method	43293	Flowers, Nursery Stock and Florists' Supplies.
	Sold Via Retail Method	44422	Nursery and Garden Centers (pt)—Retail.
5194	Tobacco and Tobacco Products	43294	Tobacco and Tobacco Products.
5198	Paint, Varnishes, and Supplies Sold Via Wholesale Method	43295	Paint, Varnishes and Supplies—Wholesale.
	Sold Via Retail Method	44412	Paint and Wallpaper Stores (pt)—(Retail).
5199	Nondurable Goods, NEC		
	Advertising Specialties Distributors	56189	Other Services Related to Goods Advertising (pt).
	Except Specialty Advertising	43299	Other Miscellaneous Nondurable Goods—Wholesale.
5211	Lumber and Other Building Materials Dealers		
	Home Centers	44411	Home Centers.
	Sold Via Wholesale Method	43131	Lumber, Plywood, Millwork and Wood Panels—Wholesale (pt).
	Sold Via Retail Method, Except Home Centers and Glass.	44419	Other Building Materials Dealers (pt).
5231	Paint, Glass, and Wallpaper Stores.		
	Paint and Wallpaper Sold Via Wholesale Method	43295	Paint, Varnishes and Supplies—Wholesale (pt).
	Glass Stores	44419	Other Building Materials Dealers (pt).
	Paint and Wallpaper Sold Via Retail Method	44412	Paint and Wallpaper Stores (pt).
5251	Hardware Stores	44413	Hardware Stores.
5261	Retail Nurseries, Lawn and Garden Supply Stores		
	Except Cut Christmas Trees	44422	Nursery and Garden Centers (pt).
	Cut Christmas Trees	453999	All Other Miscellaneous Store Retailers (pt.).
	Outdoor Power Equipment Stores	44421	Outdoor Power Equipment Stores.
5271	Mobile Home Dealers	45393	Manufactured (Mobile) Home Dealers.
5311	Department Stores	45211	Department Stores.
5331	Variety Stores	45229	All Other General Merchandise Stores (pt).
5399	Miscellaneous General Merchandise Stores		
	Warehouse Clubs and General Combination Stores	45221	Warehouse Clubs and Other General Merchandise Stores with Food.
	All Other General Merchandise Stores	45229	All Other General Merchandise Stores (pt).
5411	Grocery Stores		
	Convenience Stores with Gas	44711	Gasoline Stations with Convenience Stores (pt).
	Supermarkets and Grocery Stores with Little General Merchandise	44511	Supermarkets and Grocery Stores.
	Supermarkets and Grocery Stores with Substantial General Merchandise.	45221	Warehouse Clubs and Other General Merchandise Stores with Food.
	Convenience Stores	44512	Convenience Stores.
5421	Meat and Fish (Seafood) Markets, Including Freezer Provisioners		
	Freezer Provisioners	45439	Other Direct Selling Establishments (pt).
	Meat Markets	44521	Meat Markets.
	Fish and Seafood Markets	44522	Fish and Seafood Markets.
5431	Fruit and Vegetable Markets	44523	Fruit and Vegetable Markets.
5441	Candy, Nut, and Confectionery Stores		
	Candy Makers that Sell at Same Location	31133	Confectionary Manufacturing from Purchased Chocolate (pt).
	Candy Makers that Sell at Same Location Sales Only	31134	Non-Chocolate Confectionary Manufacturing (pt).
		445292	Candy, Nut, and Confectionary Stores.
5451	Dairy Products Stores	445299	All Other Specialty Food Stores (pt).
5461	Retail Bakeries		
	Donut Shops, Pretzel Shops, Cookie Shops, Bagel Shops, and Other Such Shops that Make and Sell for Immediate Consumption.	72222	Refreshment Places (pt).
	Bakeries That Make and Sell at the Same Location	311712	Retail Bakeries.
	Sales Only of All Other Baked Goods	445291	Baked Goods Stores.
5499	Miscellaneous Food Stores		

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
	Poultry and Poultry Products	44521	Meat Markets (pt).
	Coffee Shops Making and Serving Food and Beverages for Immediate Consumption.	722211	Limited-Service Restaurants (pt).
	Food Supplement Stores	446191	Food (Health) Supplement Stores.
	All Other Miscellaneous Food Stores	445299	All Other Specialty Food Stores (pt).
5511	Motor Vehicle Dealers (New and Used)	44111	New Car Dealers.
5521	Motor Vehicle Dealers (Used Only)	44112	Used Car Dealers.
5531	Auto and Home Supply Stores		
	Tire Dealers	44132	Tire Dealers.
	All Other Auto and Home Supply Stores	44131	Automotive Parts and Supplies Stores (pt).
5541	Gasoline Service Stations		
	Convenience Store with Gas	44711	Gasoline Stations with Convenience Store (pt).
	Except with Convenience Stores	44719	Other Gasoline Stations.
5551	Boat Dealers	441222	Boat Dealers.
5561	Recreational Vehicle Dealers	44121	Recreational Vehicle Dealers.
5571	Motorcycle Dealers	441221	Motorcycle Dealers.
5599	Automotive Dealers, NEC	441229	All Other Motor Vehicle Dealers.
5611	Men's and Boys' Clothing and Accessory Stores		
	Men's Clothing Stores	44811	Men's Clothing Stores.
	Men's Accessory Stores	44823	Accessories Stores (pt).
5621	Women's Clothing Stores	44812	Women's Clothing Stores.
5632	Women's Accessory and Specialty Stores		
	Specialty Stores	44819	Other Clothing Stores (pt).
	Accessory Stores	44823	Accessories Stores (pt).
5641	Children's and Infants' Wear Stores	44813	Children's and Infants' Clothing Stores.
5651	Family Clothing Stores	44814	Family Clothing Stores.
5661	Shoe Stores	44831	Shoe Stores.
5699	Miscellaneous Apparel and Accessory Stores		
	Custom Tailors and Seamstresses	315	Included in Apparel Manufacturing Subsector Based on Type of Garment Produced.
	Miscellaneous Apparel	44819	Other Clothing Stores (pt).
	Miscellaneous Accessories	44823	Accessories Stores (pt).
5712	Furniture Stores		
	Custom Made Furniture, Except Cabinets and Upholstered.	337131	Wood Household Furniture Manufacturing, Except Upholstered (pt).
	Custom Wood Cabinets	337133	Wood Kitchen Cabinet Manufacturing (pt).
	Upholstered Custom Made	337132	Upholstered Wood Household Furniture Manufacturing (pt.).
	Except Custom Cabinet and Furniture Builders	44211	Furniture Stores (pt).
5713	Floor Covering Stores	44221	Floor Covering Stores (pt).
5714	Drapery, Curtain, and Upholstery Stores		
	Drapery and Curtain Stores	442291	Window Treatment Stores (pt).
	Upholstery Stores	45113	Sewing, Needlework and Piece Goods Stores (pt).
	Custom Drapes	314121	Curtain and Drapery Mills (pt).
5719	Miscellaneous Homefurnishings Stores		
	Blinds and Shades	442291	Window Treatment Stores.
	Pottery and Crafts Made and Sold on Site		Included in Manufacturing sector based on article produced.
	Except Blinds, Shades, and Pottery and Crafts Made and Sold on Site.	442299	All Other Home Furnishings Stores.
5722	Household Appliance Stores	443111	Household Appliance Stores.
5731	Radio, Television, and Consumer Electronics Stores		
	Except Auto Radio Stores	443112	Radio, Television, and Other Electronics Stores.
	Auto Radio Stores	44131	Automotive Parts and Supplies Stores (pt).
5734	Computer and Computer Software Stores	44312	Computer and Software Stores.
5735	Record and Prerecorded Tape Stores	45122	Prerecorded Tape, Compact Disk and Record Stores.
5736	Musical Instrument Stores	45114	Musical Instrument and Supply Stores.
5812@	Eating and Drinking Places		
	Full Service Resturants	72211	Full-Service Restaurants.
	Limited Service Resturants	722211	Limited-Service Restaurants.
	Cafeterias	722212	Cafeterias.
	Refreshment Places	72222	Refreshment Places (pt).
	Food Service Contractors	72231	Foodservice Contractors Caterers.
	Caterers	72232	Caterers.
	Dinner Theaters	71111	Theater Companies (pt).
5813	Drinking Places (Alcoholic Beverages)	72241	Bars, Taverns, and Other Drinking) Places (Alcoholic Beverages).
5912	Drug Stores and Proprietary Stores	44611	Drug Stores and Pharmacies.
5921	Liquor Stores	44531	Beer, Wine and Liquor Stores.
5932	Used Merchandise Stores		
	Pawn Shops	522299	All Other Non-Depository Credit Intermediation (pt).

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
	Except pawn shops	45331	Used Merchandise Stores.
5941	Sporting Goods Stores and Bicycle Shops	45111	Sporting Goods Stores (pt).
5942	Book Stores	451211	Book Stores.
5943	Stationery Stores	45321	Office Supply and Stationery Stores (pt).
5944	Jewelry Stores	44821	Jewelry Stores.
5945	Hobby, Toy, and Game Shops	45112	Hobby, Toy and Game Stores.
5946	Camera and Photographic Supply Stores	44313	Camera and Photographic Supply.
5947	Gift, Novelty, and Souvenir Shops	45322	Gift, Novelty and Souvenir Stores.
5948	Luggage and Leather Goods Stores	44822	Luggage and Leather Goods Stores.
5949	Sewing, Needlework, and Piece Goods Stores	45113	Sewing, Needlework and Piece Goods Stores (pt).
5961	Catalog and Mail-Order Houses	45411	Electronic Shopping and Mail-Order Houses.
5962	Automatic Merchandising Machine Operator	45421	Vending Machine Operators.
5963	Direct Selling Establishments		
	Mobile Food Service	72233	Mobile Caterers.
	All Other Direct Selling Establishments	45439	Other Direct Selling Establishments (pt).
5983	Fuel Oil Dealers	454311	Heating Oil Dealers (pt).
5984	Liquefied Petroleum Gas (Bottled Gas) Dealers	454312	Liquefied Petroleum Gas (Bottled Gas) Dealers (pt).
5989	Fuel Dealers, NEC	454319	Other Fuel Dealers.
5992	Florists	45311	Florists.
5993	Tobacco Stores and Stands	453991	Tobacco Stores.
5994	News Dealers and Newsstands	451212	News Dealers and Newsstands.
5995	Optical Goods Stores		
	Optical Stores Grinding Prescription Lenses, except 1-Hour Labs.	339117	Eyeglass and Contact Lens Manufacturing (pt).
	Except Optical Laboratories Grinding Prescription Lenses.	44613	Optical Goods Stores.
5999	Miscellaneous Retail Stores, NEC		
	Cosmetic Stores	44612	Cosmetics, Beauty Supplies and Perfume Stores (pt).
	Hearing Aid and Artificial Limb Stores	446199	All Other Health and Personal Care Stores (pt).
	Pets and Pet Supply Stores	45391	Pet and Pet Supply Stores.
	Art Dealers	45392	Art Dealers.
	Personal Appliance Stores	443111	Household Appliance Stores (pt).
	Telephone and Typewriter Stores	443112	Radio, Television and Other Electronics Stores (pt.).
	Rough Gem Stores	44821	Jewelry Stores (pt).
	Other Miscellaneous Retail Store	453999	All Other Miscellaneous Store Retailers (pt).
6011	Federal Reserve Banks	52111	Monetary Authorities-Central Banks.
6019@	Central Reserve Depository Institutions, NEC	52232	Financial Transactions Processing, Reserve, and Clearing House Activities (pt).
6021@	National Commercial Banks		
	Commercial Banks	52211	Commercial Banking (pt).
	Credit Card Issuing	52221	Credit Card Issuing (pt).
	Trust Services	523991	Trust, Fiduciary and Custody Activities (pt).
6022@	State Commercial Banks		
	Commercial Banks	52211	Commercial Banking (pt).
	Credit Card Issuing	52221	Credit Card Issuing (pt).
	Trust Services	523991	Trust, Fiduciary and Custody Activities (pt).
6029@	Commercial Banks, NEC	52211	Commercial Banking (pt).
6035@	Savings Institutions, Federally Chartered	52212	Savings Institutions (pt).
6036@	Savings institutions, Not Federally Chartered	52212	Savings Institutions (pt).
6061@	Credit Unions, Federally Chartered	52213	Credit Unions (pt).
6062@	Credit Unions, Not Federally Chartered	52213	Credit Unions (pt).
6081@	Branches and Agencies of Foreign Banks		
	International Trade Financing	522293	International Trade Financing (pt).
	Branches of Foreign Banks	52211	Commercial Banking (pt).
	Agencies of Foreign Banks	522299	All Other Non-Depository Credit Intermediation (pt).
6082@	Foreign Trade and International Banking Institutions	522293	International Trade Financing (pt).
6091@	Nondeposit Trust Facilities	523991	Trust, Fiduciary, and Custody Activities (pt).
6099@	Functions Related to Deposit Banking, NEC		
	Money Order Issuance	52219	Other Depository Credit Intermediation (pt).
	Clearinghouses	52232	Financial Transactions Processing, Reserve, and Clearing House Activities (pt).
	Foreign Currency Exchange	52313	Commodity Contracts Dealing (pt).
	Escrow and Fiduciary	523991	Trust, Fiduciary, and Custody Agencies Activities (pt).
	Deposit Brokers	523999	Miscellaneous Financial Investment Activities (pt).
	Other	52239	Other Activities Related to Credit Intermediation (pt).
6111@	Federal and Federally Sponsored Credit Agencies		
	Trade Banks	522293	International Trade Financing (pt).
	Secondary Market Financing	522294	Secondary Market Financing.
	Other	522299	All Other Non-Depository Credit Intermediation (pt).
6141@	Personal Credit Institutions		
	Credit Card Issuing	52221	Credit Card Issuing (pt).

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
	Installment Sales Financing	52222	Sales Financing and Finance Leasing (pt).
	Other	522291	Consumer Credit (pt).
6153@	Short-Term Business Credit Institutions, Except Agricultural		
	Business Sales Finance	52222	Sales Financing and Finance Leasing (pt).
	Credit Card Service	52232	Financial Transactions Processing, Reserve, and Clearing House Activities (pt).
	Other	522299	All Other Non-Depository Credit Intermediation (pt).
6159@	Miscellaneous Business Credit Institutions		
	Finance Leasing	52222	Sales Finance and Finance Leasing.
	Trade Banks	522293	International Trade Financing (pt).
	All Other	522299	All Other Non-Depository Credit Intermediation (pt).
6162@	Mortgage Bankers and Loan Correspondents		
	Mortgage Bankers and Originators	522292	Real Estate Credit.
	Mortgage Servicing	52239	Other Activities Related to Credit Intermediation (pt).
6163	Loan Brokers	52231	Mortgage and Other Loan Brokers.
6211@	Security Brokers, Dealers, and Flotation Companies		
	Security Dealers and Underwriters	52311	Investment Banking and Securities Dealing (pt).
	Security Brokers	52312	Securities Brokerage.
	Dealers, Except Securities and Commodities	52391	Miscellaneous Intermediation (pt.)
	Other	523999	Miscellaneous Financial Investment Activities (pt.)
6221@	Commodity Contracts Brokers and Dealers		
	Commodity Dealers	52313	Commodity Contracts Dealing (pt).
	Commodity Brokers	52314	Commodity Brokerage (pt).
6231	Security and Commodity Exchanges	52321	Securities and Commodity Exchanges.
6282@	Investment Advice		
	Portfolio Managers	52392	Portfolio Management (pt).
	Other	52393	Investment Advice (pt).
6289@	Services Allied With the Exchange of Securities or Commodities, NEC		
	Securities Custodians	523991	Trust, Fiduciary, and Custody Activities (pt).
	Other	523999	Miscellaneous Financial Investment Activities (pt).
6311@	Life Insurance		
	Life Insurers-Direct	52411	Direct Life Insurance Carriers.
	Reinsurance Carriers, Life	52413	Reinsurance Carriers (pt).
6321@	Accident and Health Insurance		
	Health and Medical Insurers-Direct	524122	Health and Medical Insurance Carriers (pt).
	Self Insurers	52523	Insurance and Other Employee Benefit Funds (pt).
	Reinsurance Carriers, Accident and Health	52413	Reinsurance Carriers (pt).
6324@	Hospital and Medical Service Plans		
	Health and Medical Insurers-Direct	524122	Health and Medical Insurance Carriers (pt).
	Self Insurers	52523	Insurance and Other Employee Benefit Funds (pt).
	Reinsurance Carriers, Health and Medical	52413	Reinsurance Carriers (pt).
6331@	Fire, Marine, and Casualty Insurance		
	Fire, Marine, and Casualty Insurers-Direct	524121	Property and Casualty Insurance Carriers (pt).
	Self Insurers	52523	Insurance and Other Employee Benefit Funds (pt).
	Reinsurance Carriers, Fire, Marine, and Casualty	52413	Reinsurance Carriers (pt).
6351@	Surety Insurance		
	Financial Responsibility Insurers-Direct	524121	Property and Casualty Insurance Carriers (pt).
	Reinsurance Carriers, Financial Responsibility	52413	Reinsurance Carriers (pt).
6361@	Title Insurance		
	Title Insurers-Direct	524123	Title Insurance Carriers (pt).
	Reinsurance Carriers, Title	52413	Reinsurance Carriers (pt).
6371@	Pension, Health, and Welfare Funds		
	Managers	52392	Portfolio Management.
	Administrators	524292	Third Party Administration for Insurance and Pension Funds (pt).
	Pension Funds	52521	Pension Funds (pt).
	Health and Welfare Funds	52522	Health and Welfare Funds (pt).
6399	Insurance Carriers, NEC	524129	Other Direct Non-Life Insurance Carriers.
6411@	Insurance Agents, Brokers, and Service		
	Insurance Agents and Brokers	52421	Insurance Agencies and Brokerages.
	Claim Adjusters	524291	Claims Adjusters.
	Claim Processors	524292	Third Party Administrators for Insurance and Pension Funds (pt).
	Other	524299	All Other Activities Related to Insurance.
6512	Operators of Nonresidential Buildings		
	Stadium and Arena Owners	71131	Promoters of Arts, Sports and Similar Events with Facilities (pt).
	Except Stadium and Arena Owners	53113	Lessors of Nonresidential Buildings, Except Miniwarehouses.

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
6513@	Operators of Apartment Buildings	53111	Lessors of Residential Buildings and Dwellings (pt).
6514@	Operators of Dwellings Other Than Apartment Buildings	53111	Lessors of Residential Buildings and Dwellings (pt).
6515@	Operators of Residential Mobile Home Sites	53119	Lessors of Other Real Estate Property (pt).
6517@	Lessors of Railroad Property	53119	Lessors of Other Real Estate Property (pt).
6519@	Lessors of Real Property, NEC	53119	Lessors of Other Real Estate Property (pt).
6531@	Real Estate Agents and Managers		
	Real Estate Agents and Brokers	53122	Offices of Real Estate Agents and Brokers.
	Condominium and Cooperative Managers	531211	Condominium Management, Cooperative Housing, and Homeowners' Associations (pt).
	Residential Property Managers, Except Condominium and Cooperative.	531212	Other Residential Property Managers.
	Nonresidential Property Managers, Except Condominium and Cooperative.	531213	Other Nonresidential Property Managers.
	Real Estate Appraisers	53123	Offices of Real Estate Appraisers.
	Cemetery Management	81222	Cemeteries and Crematories (pt).
	Other	531299	All Other Activities Related to Real Estate.
6541	Title Abstract Offices	531291	Title Abstract Offices.
6552	Land Subdividers and Developers, Except Cemeteries	23611	Land Subdivision and Land Development.
6553@	Cemetery Subdividers and Developers	81222	Cemeteries and Crematories (pt).
6712	Offices of Bank Holding Companies	525111	Bank Holding Companies.
6719	Offices of Holding Companies, NEC	525119	Other Holding Companies.
6722	Management Investment Offices, Open-End	52591	Open-End Investment Funds.
6726	Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-End Management Investment Offices.	52599	Other Financial Vehicles.
6732	Education, Religious, and Charitable Trusts	813211	Grantmaking Foundations.
6733@	Trusts, Except Educational, Religious, and Charitable		
	Managers	52392	Portfolio Management (pt).
	Administrators of Private Estates	523991	Trust, Fiduciary, and Custody Services (pt).
	Vacation Funds for Employees	52523	Insurance and Other Employee Benefit Funds (pt).
	Personal Trusts, Estates, and Agency Accounts	52592	Personal Trusts, Estates, and Agency Accounts (pt).
6792@	Oil Royalty Traders		
	Investors on Own Account	523999	Miscellaneous Financial Investment Activities (pt).
	Oil Royalty Trading Companies	53411	Lessors of Other Non-Financial Assets.
6794	Patent Owners and Lessors	53411	Lessors of Other Non-Financial Assets.
6798	Real Estate Investment Trusts	52593	Mortgage Investment Funds.
6799@	Investors, NEC		
	Venture Capital Companies	52391	Miscellaneous Intermediation (pt).
	Pool Operators	52392	Portfolio Management (pt).
	Other	523999	Miscellaneous Financial Investment Activities (pt).
7011	Hotels and Motels		
	Hotels and Motels, except Casino Hotels	72111	Hotels and Motels, except Casino Hotels (pt).
	Casino Hotels	72112	Casino Hotels.
	Bed and Breakfast Inns	721191	Bed and Breakfast Inns.
	Other	721199	All Other Traveler Accommodations.
7021	Rooming and Boarding Houses	72122	Rooming and Boarding Houses (pt).
7032	Sporting and Recreational Camps	721211	Sporting and Recreation Camps.
7033	Recreational Vehicle Parks and Campsites	721212	Recreational Vehicle Parks and Campgrounds.
7041@	Organization Hotels and Lodging Houses, on Membership Basis		
	Organization Hotels	72111	Hotels and Motels, except Casino Hotels (pt).
	Other	72122	Rooming and Boarding Houses (pt).
7211	Power Laundries, Family and Commercial	812321	Laundries, Family and Commercial.
7212	Garment Pressing, and Agents for Laundries	812391	Garment Pressing and Agents for Laundries.
7213@	Linen Supply	812331	Linen Supply (pt.).
7215	Coin-Operated Laundry and Drycleaning	81231	Coin-Operated Laundries and Drycleaning.
7216	Drycleaning Plants, Except Rug Cleaning	812322	Drycleaning Plants.
7217	Carpet and Upholstery Cleaning	57184	Carpet and Upholstery Cleaning Services.
7218	Industrial Launderers	812332	Industrial Launderers.
7219@	Laundry and Garment Services, NEC		
	Diaper Service	812331	Linen Supply (pt.).
	Clothing Alteration and Repair	81149	Other Personal or Household Goods Repair and Maintenance (pt).
	Except Diaper Service and Clothing Alteration and Repair.	812399	All Other Laundry Services.
7221	Photographic Studios, Portrait	561921	Photographic Studios, Portrait.
7231@	Beauty Shops		
	Beauty Shops and Salons	812112	Beauty Salons.
	Manicure and Pedicure Salons	812113	Nail Salons.
	Beauty and Cosmetology Schools	611511	Cosmetology and Barber Schools (pt).
7241	Barber Shops		
	Barber Shops	812111	Barber Shops.

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
	Barber Colleges	611511	Cosmetology and Barber Schools (pt.)
7251	Shoe Repair Shops and Shoeshine Parlors	81143	Footwear and Leather Goods Repair (pt).
7261	Funeral Services and Crematories		
	Funeral Homes	81221	Funeral Homes.
	Except Funeral Homes	81222	Cemeteries and Crematories (pt.).
7291	Tax Return Preparation Services	561221	Tax Preparation Services.
7299@	Miscellaneous Personal Services, NEC		
	Locker Rental, Except Cold Storage	533299	All Other Rental and Leasing of Consumer Goods (pt).
	Diet and Weight Reducing Centers	812191	Diet and Weight Reducing Centers.
	Formal Wear and Costume Rental	53322	Rental of Formal Wear and Costumes.
	Personal Care Services	812199	Other Personal Care Services.
	All Other Miscellaneous Personal Services, NEC	81299	Other Miscellaneous Personal Services.
7311	Advertising Agencies	56181	Advertising Agencies.
7312	Outdoor Advertising Services	56185	Display Advertising (pt.).
7313	Radio, Television, and Publishers' Advertising	56184	Media Representatives.
7319	Advertising, NEC		
	Aerial Advertising When Combined With a Variety of Aircraft-based Services.	48122	Nonscheduled Specialty Air Transportation (pt).
	Media Buying Services	56183	Media Buying Agencies.
	Display Advertising, Except Outdoor	56185	Display Advertising (pt.).
	Advertising Materials Distributor	56187	Advertising Material Distributors.
	Other	56189	Other Services Related to Advertising (pt.).
7322	Adjustment and Collection. Services.		
	Collection Services	57134	Collection agencies.
	Adjustment Bureaus	571391	Repossession Services (pt).
7323	Credit Reporting Services	57135	Credit Bureaus.
7331	Direct Mail Advertising Services	56186	Direct Mail Advertising.
7334@	Photocopying and Duplicating Services	571331	Photocopying and Duplicating Services (pt).
7335	Commercial Photography		
	Aerial Photography When Combined With a Variety of Aircraft-based Services.	48122	Nonscheduled Specialty Air Transportation (pt).
	Except When Combined With a Variety of Aircraft-based Services.	561922	Commercial Photography.
7336	Commercial Art and Graphic Design	56143	Graphic Design Services (pt.).
7338	Secretarial and Court Reporting Services		
	Secretarial Services	57131	Document Preparation Services.
	Court Reporting Services	571392	Court Reporting and Stenotype Services.
7342	Disinfecting and Pest Control Services		
	Disinfecting Services	57162	Janitorial Services (pt).
	Exterminating and Pest Control Services	57161	Exterminating and Pest Control Services.
7349	Building Cleaning and Maintenance Services, NEC	57162	Janitorial Services (pt).
7352@	Medical Equipment Rental and Leasing		
	Home Health Furniture and Equipment Rental and Leasing.	533291	Rental and Leasing of Home Health Furniture and Equipment.
	Medical Machinery Rental and Leasing	53339	Rental and Leasing of Other Machinery and Equipment (pt).
7353@	Heavy Construction Equipment Rental and Leasing		
	With Operator	23899	All Other Special Trade Contractors (pt).
	Without Operator	533312	Rental and Leasing of Heavy Construction, Mining and Forestry Machinery and Equipment (pt).
7359@	Equipment Rental and Leasing, NEC		
	Consumer Electronics and Appliances Rental and Leasing.	533211	Rental of Consumer Electronics and Appliances.
	Home and Garden Tools and Equipment Rental and Leasing.	533212	Rental and Leasing of Home and Garden Equipment.
	Residential Furniture, Party Supplies, and All Other Miscellaneous Consumer Goods Rental and Leasing.	533299	All Other Rental and Leasing of Consumer Goods (pt).
	Oilfield and Well Drilling Machinery and Equipment Rental and Leasing.	533312	Rental and Leasing of Heavy Construction, Mining and Forestry Rental and Leasing Machinery and Equipment (pt).
	Airplane Rental and Leasing	533311	Rental and Leasing of Commercial Air, Rail, and Water Transportation Equipment (pt).
	Portable Toilet Rental	572992	Septic Tank and Related Services (pt).
	Office Machinery and Equipment Rental and Leasing	53332	Rental and Leasing of Office Machinery and Equipment (pt).
	Industrial Trucks Rental and Leasing	53339	Rental and Leasing of Other Leasing Machinery and Equipment (pt).
7361@	Employment Agencies		
	Executive Placing Services	561612	Human Resources Consulting (pt).
	Except Executive Placing Services	57121	Employment Placement Agencies (pt).
7363	Help Supply Services		

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
	Temporary Help Supply	57123	Temporary Help Services.
	Employee Leasing Services	57122	Employee Leasing Services.
7371	Computer Programming Services	561511	Custom Computer Programming Services.
7372	Prepackaged Software		
	Software Publishing	51121	Software Publishing.
	Reproduction of Software	334611	Reproduction of Software.
7373	Computer Integrated Systems Design	561512	Systems Design Services (pt.).
7374	Computer Processing and Data Preparation and Processing Services.	51421	Data Processing.
7375	Information Retrieval Services	514191	On-Line Information Services.
7376	Computer Facilities Management Services	561513	Computer Facilities Management Services.
7377	Computer Rental and Leasing	53332	Rental and Leasing of Office Machinery and Equipment (pt).
7378	Computer Maintenance and Repair		
	Sales Locations Providing Supporting Repair Services as Major Source of Revenue.	44312	Computer and Software Stores (pt).
	All Other Repair and Maintenance	811312	Computer and Office Machine Repair and Maintenance (pt).
7379	Computer Related Services, NEC		
	Computer Systems Consultants	561512	Systems Design Services (pt.).
	Except Computer Systems Consultants	561519	Other Computer Systems Design and Related Services.
7381	Detective, Guard, and Armored Car Services		
	Detective Services	571511	Investigation Services.
	Guard Services	571512	Security Guards and Patrol Services.
	Armored Car Services	571513	Armored Car Services.
7382	Security Systems Services	571521	Security Systems Services, Except Locksmiths (pt).
7383	News Syndicates	51411	New Syndicates.
7384	Photofinishing Laboratories		
	Photofinishing Laboratories (Except One-Hour).	812921	Photo Finishing Laboratories, Except One-Hour.
	One-Hour Photofinishing	812922	One-Hour Photo Finishing.
7389	Business Services, NEC		
	Sound Recording Studios	51224	Sound Recording Studios.
	Audio Taping Services	51229	Other Sound Recording Industries (pt.).
	Post Office Contract Stations	49112	Contract Postal Operations, Excluding Bulk Mail Transportation.
	Process Services, Patent Agents, Notaries Public and Paralegal Services.	56119	Other Legal Services.
	Mapmaking Services	56136	Surveying and Mapping Services (pt.).
	Interior Design	56141	Interior Design Services.
	Industrial Design	56142	Industrial Design Services.
	Drafting Service	56133	Drafting Services.
	Fashion, Furniture and Other Design Services	561499	All Other Design Services.
	Translation and Interpretation Services	56193	Translation and Interpretation Services.
	Home and Building Inspection Services	56134	Building Inspection Services.
	Appraisers, Except Insurance and Real Estate, and Miscellaneous Professional, Scientific, and Technical Services.	56199	All Other Professional, Scientific and Technical Services.
	Agents and Brokers for Authors and Artists	71141	Agents and Managers for Artists, Athletes, and Other Entertainers (pt.).
	Telephone Answering Services	571321	Telephone Answering Services.
	Telemarketing Bureaus and Telephone Soliciting Services.	571322	Telemarketing Bureaus.
	Private Mail Centers and Mail Box Rental	571332	Private Mail Centers.
	Recovery and Repossess	571391	Repossession Services (pt).
	Packaging and Labeling Services	57191	Packaging and Labeling Services.
	Swimming Pool Cleaning and Maintenance	57169	Other Services to Dwellings and Buildings (pt).
	Hotel and Restaurant Reservation Services	571499	Other Travel Arrangement and Reservation Services.
	Convention and Trade Show Services	57192	Convention and Trade Show Organizers.
	Convention and Visitors Bureaus and Tourist Information Service.	571491	Convention and Visitors Bureaus.
	Credit Card Services	52232	Financial Transactions, Processing, Reserve and Clearing House Activities (pt).
	Administrative Support Services, Except Telephone Answering, Telemarketing Bureaus, Private Mail Centers, and Repossession Services.	571399	All Other Administrative Support Services.
	All Other Business Support Services	57199	Other Miscellaneous Support Services.
7513	Truck Rental and Leasing, Without Drivers	53312	Rental and Leasing of Trucks Without Drivers, Utility Trailers and Recreational Vehicles (pt).
7514	Passenger Car Rental	533111	Rental of Passenger Cars Without Drivers.
7515	Passenger Car Leasing	531112	Leasing of Passenger Cars Without Drivers (pt).

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
7519	Utility Trailer and Recreational Vehicle Rental	53312	Rental and Leasing of Trucks Without Drivers, Utility Trailers and Recreational Vehicles (pt).
7521	Automobile Parking	81293	Parking Lots and Garages.
7532	Top, Body, and Upholstery Repair Shops and Paint Shops.	811121	Automotive Body, Paint, and Upholstery Repair and Maintenance.
7533	Automotive Exhaust System Repair Shops	811112	Automotive Exhaust System Repair.
7534@	Tire Retreading and Repair Shops		
	Remanufacturing	326112	Tire Rebuilding.
	Repair	811199	All Other Auto Repair and Maintenance (pt).
7536	Automotive Glass Replacement Shops	811122	Automotive Glass Replacement Shops.
7537	Automotive Transmission Repair Shops	811113	Automotive Transmission Repair.
7538	General Automotive Repair Shops	811111	General Automotive Repair.
7539	Automotive Repair Shops, NEC	811119	Other Automotive Mechanical and Electrical Repair and Maintenance.
7542	Carwashes	811192	Car Washes.
7549@	Automotive Services, Except Repair and Carwashes		
	Lubricating Services, Automotive	811191	Automotive Oil Change, and Lubrication Shops.
	Towing	48841	Motor Vehicle Towing.
	Except Lubricating Services and Towing	811199	All Other Automotive Repair and Maintenance.
7622	Radio and Television Repair Shops		
	Stereo, TV, VCR, and Radio Repair	811311	Consumer Electronics Repair and Maintenance (pt).
	Telecommunication Equipment Repair	811313	Communication Equipment Repair and Maintenance (pt).
	Radio and TV Sales Locations Providing Supporting Repair Services As Major Source of Revenue.	443112	Radio, Television and Other Electronics Stores (pt.).
7623	Refrigeration and Air-Conditioning Services and Repair Shops		
	Refrigerator and A/C Sales Locations Providing Supporting Repair Service as Major Source of Revenue.	443111	Household Appliance Stores (pt.).
	Commercial Refrigerator Equipment Repair	811219	Other Industrial Machinery and Equipment Repair and Maintenance (pt).
	Except Commercial	811412	Appliance Repair and Maintenance (pt).
7629	Electrical and Electronic Repair Shops, NEC		
	Appliance Sales Locations Providing Supporting Repair Services As Major Source of Revenue.	443111	Household Appliance Stores (pt.).
	Business and Office Machine Repair, Electrical	811312	Computer and Office Machine Repair and Maintenance (pt).
	Telephone Set Repair	811313	Communication Equipment Repair and Maintenance (pt).
	Electrical Measuring Instrument Repair and Calibration, Medical Equipment Repair, Electrical.	811319	Other Electronic and Precision Equipment Repair and Maintenance (pt).
	Appliance Repair, Electrical; Washing Machine Repair; Electric Razor Repair.	811412	Appliance Repair and Maintenance (pt).
	Consumer Electronic Equipment Repair Except Computer, Radio, Television, Stereo, and VCR.	811311	Consumer Electronics Repair and Maintenance (pt).
7631@	Watch, Clock, and Jewelry Repair	81149	Other Personal or Household Goods Repair and Maintenance (pt).
7641	Reupholstery and Furniture Repair	81142	Reupholstery and Furniture Repair.
7692@	Welding Repair	81149	Other Personal or Household Goods Repair and Maintenance (pt).
7694@	Armature Rewinding Shops		
	Repair	811219	Other Industrial Machinery and Equipment Repair and Maintenance (pt).
	Remanufacturing	335312	Motor and Generator Manufacturing.
7699	Repair Shops and Related Services, NEC		
	Locksmith Shops	571522	Locksmiths.
	Cesspool Cleaning, Sewer Cleaning and Rodding	572992	Septic Tank and Related Services (pt).
	Furnace Ducts, Chimney and Gutter Cleaning Services	57169	Other Services to Dwellings and Buildings (pt).
	Ship Scaling	47839	Other Supporting Activities for Water Transportation (pt).
	Bicycle Sales Locations Providing Supporting Repair Services As Major Source of Revenue.	45111	Sporting Goods Stores (pt.).
	Other Non-Automotive Transportation Equipment	811211	Transportation Equipment Repair and Maintenance (pt).
	Industrial Machines and Equipment	811219	Other Industrial Machinery and Equipment Repair and Maintenance (pt).
	Farriers	11521	Support Activities for Animal Production.
	Typewriter Repair	811312	Computer and Office Machine Repair and Maintenance (pt).
	Dental Instrument Repair, Laboratory Instrument Repair, Medical Equipment and Other Electronic and Precision Equipment Repair, Except Typewriters.	811319	Other Electronic and Precision Equipment Repair and Maintenance (pt).
	Lawnmower Repair Shops, Sharpening and Repairing Knives, Saws and Tools.	811411	Home and Garden Equipment Repair and Maintenance (pt).

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
	Gas Appliance Repair Service, Sewing Machine Repair, Stove Repair Shops, and Other Non-Electrical Appliances.	811412	Appliance Repair and Maintenance.
	Leather Goods Repair Shops, Luggage Repair Shops, Pocketbook Repair Shops.	81143	Footwear and Leather Goods Repair (pt).
	Except Industrial, Electronic, Home and Garden, Appliance, Locksmith, and Leather Goods.	81149	Other Personal or Household Goods Repair and Maintenance.
7812	Motion Picture and Video Tape Production	51211	Motion Picture and Video Production.
7819	Services Allied to Motion Picture Production		
	Teleproduction and Post-Production Services	51213	Teleproduction and Other Post-Production Services.
	Casting Bureaus	57121	Employment Agencies (pt.).
	Wardrobe Rental (Motion Pictures)	53322	Rental of Formal Wear and Costumes (pt.).
	Rental of Motion Picture Equipment	53339	Rental and Leasing of Other Machinery and Equipment (pt.).
	Talent Payment Services	561223	Payroll Services (pt).
	Film Directors and Related Motion Picture Production Services, Independent.	71151	Independent Artists, Writers, and Performers (pt.).
	Reproduction of Video	334612	Prerecorded Compact Disk (Except Software), Tape, and Record Manufacturing (pt).
	All Other Services	51219	Other Motion Picture and Video Industries (pt.).
7822	Motion Picture and Video Tape Distribution		
	Prerecorded Video Tapes (Wholesaling of)	43199	Other Miscellaneous Durable Goods (pt).
	All Other	51212	Motion Picture and Video Distribution.
7829	Services Allied to Motion Picture Distribution	51219	Other Motion Picture and Video Industries (pt.).
7832	Motion Picture Theaters, Except Drive-Ins	512141	Motion Picture Theaters, Except Drive-In.
7833	Drive-In Motion Picture Theaters	512142	Drive-In Motion Picture Theaters.
7841	Video Tape Rental	53323	Rental of Video Tapes.
7911@	Dance Studios, Schools, and Halls		
	Dance Studios and Halls	71399	Other Recreation and Amusement Facilities.
	Dance Schools	61161	Fine Arts Schools (pt.).
7922@	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services		
	Casting Agencies	57121	Employment Placement Agencies (pt.).
	Theater and Opera Companies	71111	Theater Companies (pt.).
	Theatrical Agents	71141	Agents and Managers for Artists, Athletes and Other Entertainers (pt.).
	Ballet and Dance Companies	71112	Dance Companies.
	Theater Operators	71131	Promoters of Arts, Sports, and Similar Events with Facilities (pt.).
	Theatrical Promoters	71132	Promoters of Arts, Sports, and Similar Events without Facilities (pt.).
	Producers of Radio Programs	51229	Other Sound Recording Industries (pt.).
	Theatrical Equipment Rental	53339	Rental and Leasing of Other Machinery and Equipment (pt).
7929@	Bands, Orchestras, Actors, and Other Entertainers and Entertainment Groups		
	Musical Groups and Artists, Orchestras	71113	Musical Groups and Artists.
	Actors and Actresses	71151	Independent Artists, Writers, and Performers (pt.).
	Except Musical Groups and Artists, Actors and Actresses.	71119	Other Performing Arts Companies (pt.).
7933	Bowling Centers	71315	Bowling Centers.
7941@	Professional Sports Clubs and Promoters		
	Professional Sports Clubs	711211	Sports Clubs.
	Sports Agents	71141	Agents and Managers for Artists, Athletes, and other Entertainers (pt.).
	Sports Promoters	71132	Promoters of Arts, Sports and Similar Events without Facilities (pt.).
	Stadium Operators	71131	Promoters of Arts, Sports, and Similar Events with Facilities (pt.).
	Except Sports Clubs, Stadium	711219	Other Spectator Sports (pt.) Operators, Sports Promoters, and Agents.
7948@	Racing, Including Track Operations		
	Racetracks	711212	Race Tracks.
	Racing, except Track Operators	711219	Other Spectator Sports (pt.).
7991@	Physical Fitness Facilities	71314	Recreational, Sports and Fitness Centers (pt.).
7992@	Public Golf Courses	71311	Golf Courses (pt.).
7993@	Coin Operated Amusement Devices		
	Except Gambling (Slot Machine) Operators	71322	Amusement Arcades and Other Coin Operated Amusement Devices.
	Gambling (Slot Machine) Operators	71339	Other Gambling Industries (pt.).
7996	Amusement Parks	71321	Amusement and Theme Parks.

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
7997@	Membership Sports and Recreation Clubs		
	Membership Aviation Clubs When Combined With a Variety of Aircraft-based Services.	48122	Nonscheduled Specialty Air Transportation (pt).
	Golf Clubs	71311	Golf Courses (pt.).
	Recreation Clubs with Facilities	71314	Recreational, Sports and Fitness Centers (pt.).
	Recreation Clubs Without Facilities	71399	Other Recreation and Amusement Services (pt.).
7999	Amusement and Recreation Services, NEC		
	Ticket Agencies	571499	All Other Travel Arrangement and Reservation Services (pt).
	Aerial Tramways, Scenic and Amusement	48791	Scenic and Sightseeing Transportation, Other.
	Scenic Railroads	48711	Scenic and Sightseeing Transportation, Land.
	Circus Companies	71119	Other Performing Arts Companies (pt.).
	Professional Athletes	711219	Other Spectator Sports (pt.).
	Skiing Facilities	71312	Skiing Facilities.
	Nonmembership Recreation Facilities	71314	Recreational, Sports and Fitness Centers (pt.).
	Casinos, except Hotel Casinos	71331	Casinos, except Hotel Casinos.
	Lottery, Bingo, Bookie and Other Gaming Operations	71339	Other Gambling Industries (pt.).
	Caverns and Miscellaneous Commercial Parks	71214	Nature Parks and Similar Institutions (pt.).
	Sports Instruction	61162	Athletic Instruction.
	Sports Equipment Rental	533292	Rental of Recreation Goods.
	Scenic Transport Operations, Land	48711	Scenic and Sightseeing Transportation, Land.
	Charter Fishing	48721	Scenic and Sightseeing Transportation, Water.
	Amusement and Recreation Services, NEC (except circuses, professional athletes, caverns, and other commercial parks, skiing facilities, casinos and other gambling operations, amusement and recreation facilities).	71399	Other Recreation and Amusement Services (pt.).
8011@	Offices and Clinics of Doctors of Medicine		
	Surgical and Emergency Centers	621493	Ambulatory Surgical and Freestanding Emergency Centers.
	HMO Medical Centers	621491	HMO Medical Centers.
	Offices of Physicians, Mental Health Specialists	621112	Offices of Physicians, Mental Health Specialists (pt.).
	Other Offices of Physicians	621111	Offices of Physicians, Except Mental Health Specialists (pt.).
8021	Offices and Clinics of Dentists	62121	Offices of Dentists.
8031@	Offices and Clinics of Doctors of Osteopathy		
	Offices of Doctors of Osteopathy, Except Mental Health.	621111	Offices of Physicians, Except Mental Health Specialists (pt.)
	Offices of Doctors of Osteopathy, Mental Health, Specialists.	621112	Offices of Physicians, Mental Health Specialists (pt.)
8041	Offices and Clinics of Chiropractors	62131	Offices of Chiropractors
8042	Offices and Clinics of Optometrists	62132	Offices of Optometrists
8043	Offices and Clinics of Podiatrists	621351	Offices of Podiatrists
8049	Offices and Clinics of Health Practitioners, NEC		
	Mental Health Practitioners, Except Physicians	62133	Offices of Mental Health Practitioners, Except Physicians
	Offices of Physical, Occupational, and Speech Therapists and Audiologists.	62134	Offices of Physicial, Occupational, and Speech Therapists and Audiologists
	Other Offices of Health Practitioners	621359	Miscellaneous Health Practitioners
8051	Skilled Nursing Care Facilities		
	Continuing Care Retirement Communities	623311	Continuing Care Retirement Communities (pt.)
	All Other Skilled Nursing Care Facilities	62311	Nursing Care Facilities (pt.)
8052	Intermediate Care Facilities		
	Continuing Care Retirement Communities	623311	Continuing Care Retirement Communities (pt.)
	Mental Retardation Facilities	62321	Mental Retardation Facilities.
	Other Intermediate Care Facilities	62311	Nursing Care Facilites (pt.)
8059@	Nursing and Personal Care Facilities, NEC		
	Continuing Care Retirement Communities	623311	Continuing Care Retirement Communities (pt.)
	Other Nursing and Personal Care Facilities	62311	Nursing Care Facilities (pt.)
8062@	General Medical and Surgical Hospitals	62211	General Medical and Surgical Hospitals (pt.)
8063@	Psychiatric Hospitals	62221	Psychiatric and Substance Abuse Hospitals (pt.)
8069@	Specialty Hospitals, Except Psychiatric		
	Children's Hospitals	62211	General Medical and Surgical Hospitals (pt.)
	Psychiatric and Substance Abuse Hospitals	62221	Psychiatric and Substance Abuse Hospitals (pt.)
	Other Specialty Hospitals	62231	Specialty Hospitals, Except Psychiatric and Substance Abuse Hospitals
8071	Medical Laboratories		
	Diagnostic Imaging Centers	621512	Diagnostic Imaging Centers
	Medical Laboratories, Except Diagnostic Imaging Centers.	621511	Medical Laboratories
8072	Dental Laboratories	339116	Dental Laboratories
8082	Home Health Care Services		

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
	Home Health Agencies	621611	Home Health Agencies
	Home Health Care Services, Except Home Health Agencies.	621619	Other Home Health Care Services
8092	Kidney Dialysis Centers	621492	Kidney Dialysis Centers
8093	Specialty Outpatient Facilities, NEC		
	Family Planning Centers	62141	Family Planning Centers
	Outpatient Mental Health Facilities	62142	Outpatient Mental Health Facilities
	Other Specialty Outpatient Facilities	621499	All Other Outpatient Care Facilities
8099@	Health and Allied Services, NEC		
	Blood and Organ Banks	621991	Blood and Organ Banks
	Medical artists	56143	Graphic Design Services (pt.)
	Medical Photography	561922	Commercial Photography (pt.)
	Childbirth Preparation Classes	62141	Family Planning Centers
	Other Health and Allied Services	621999	All Other Miscellaneous Health Care Services
8111	Legal Services	56111	Offices of Lawyers
8211	Elementary and Secondary Schools	61111	Elementary and Secondary Schools
8221	Colleges, Universities, and Professional Schools	61131	Colleges, Universities, and Professional Schools
8222	Junior Colleges and Technical Institutes	61121	Junior Colleges
8231	Libraries	51412	Libraries and Archives
8243	Data Processing Schools	61142	Computer Training Schools
8244	Business and Secretarial Schools	61141	Business and Secretarial Schools
8249@	Vocational Schools, NEC		
	Vocational Apprenticeship Training	611514	Apprenticeship Training
	Truck Drivers Schools	611692	Automobile Driving Schools (pt.)
	Aviation Schools	611513	Aviation and Flight Training (pt.)
	Vocational Schools	611512	Vocational and Technical Schools
	Other Technical and Trade Schools	611519	Other Technical and Trade Schools
8299@	Schools and Educational Services, NEC		
	Flight Schools When Combined With a Variety of Aircraft-based Services.	48122	Nonscheduled Specialty Air Transportation (pt.)
	Flying Instruction	611513	Aviation and Flight Training (pt.).
	Automobile Driving Instruction	611692	Automobile Driving Schools (pt.).
	Curriculum Development, Educational	61171	Educational Support Services (pt.).
	Exam Preparation and Tutoring	611691	Exam Preparation and Tutoring.
	Art Schools	61161	Fine Arts Schools (pt.).
	Language Schools	61163	Language Schools.
	Personal Development Schools	61143	Professional and Management Development Training Schools (pt.).
	All Other Schools and Educational Services, NEC	611699	All Other Miscellaneous Schools and Instruction.
8322	Individual and Family Social Services		
	Child and Youth Services	62411	Child and Youth Services.
	Community Food Services	62421	Community Food Services.
	Community Housing Services, Except Temporary Shelters.	624229	Other Community Housing Services.
	Emergency and Other Relief Services	62423	Emergency and Other Relief Services.
	Services for the Elderly and Persons with Disabilities	62412	Services for the Elderly and Persons with Disabilities.
	Temporary Shelter	624221	Temporary Shelter.
	Parole Offices and Probation Offices	93215	Parole Offices and Probation Offices.
	Other Individual and Family Services	62419	Other Individual and Family Services.
8331	Job Training and Vocational Rehabilitation Services	62431	Job Training and Vocational Rehabilitation Services.
8351	Child Day-care Services	62441	Child Day Care Services.
8361	Residential Care		
	Homes for the Elderly	623312	Homes for the Elderly.
	Mental Health and Substance Abuse Facilities	62322	Mental Health and Substance Abuse Facilities.
	Other Residential Care	62391	Other Residential Care Facilities.
8399	Social Services, NEC		
	Voluntary Health Organizations	813212	Voluntary Health Organizations.
	Grantmaking and Giving	813219	Other Grantmaking and Giving Services.
	Human Rights Organizations	813311	Human Rights Organizations.
	Environment, Conservation, and Wildlife Organizations	813312	Environment, Conservation and Wildlife Organizations (pt.).
	All Other Social Advocacy Organizations	813319	Other Social Advocacy Organizations.
8412	Museums and Art Galleries		
	Museums	71211	Museums.
	Historical and Heritage Sites	71212	Historical Sites.
8422	Arboreta and Botanical or Zoological Gardens		
	Botanical and Zoological Gardens	71213	Botanical and Zoological Gardens.
	Nature Parks and Reserves	71214	Nature Parks and Similar Institutions (pt.).
8611	Business Associations	81391	Business Associations (pt.).
8621	Professional Membership Organizations	81392	Professional Membership Organizations.
8631	Labor Unions and Similar Labor Organizations	81393	Labor Unions and Similar Labor Organizations.

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
8641	Civic, Social, and Fraternal Associations		
	With Restaurants and Bars	813411	Civic and Social Associations with Restaurants and Bars (pt.).
	Without Restaurants and Bars	813412	Civic and Social Associations without Restaurants and Bars (pt.).
	Homeowner and Condominium Associations, Except Property Management.	531211	Condominium Management, Cooperative Housing, and Homeowners' Associations (pt).
8651	Political Organizations	81394	Political Organizations.
8661	Religious Organizations	81311	Religious Organizations.
8699@	Membership Organizations, NEC		
	Farm Granges With Restaurants and Bars	813411	Civic and Social Organizations with Restaurants and Bars.
	Farm Granges Without Restaurants and Bars	813412	Civic and Social Associations without Restaurants and Bars (pt.).
	Farm Business Organizations	81391	Business Associations (pt.).
	Environmental, Conservation, and Wildlife Organizations.	813312	Environment, Conservation, and Wildlife Organizations (pt.).
	Except Farm Granges, Farm Business Organizations and Environmental Conservation and Wildlife Organizations.	81399	All Other Membership Organizations.
8711	Engineering Services	56132	Engineering Services.
8712	Architectural Services	56131	Architectural Services.
8713	Surveying Services		
	Geophysical Surveying Services	56137	Geophysical Surveying Services
	Aerial Surveying When Combined With a Variety of Aircraft-based Services.	48122	Nonscheduled Specialty Air Transportation (pt.).
	Except Geophysical Surveying	56136	Surveying and Mapping Services (pt.).
8721@	Accounting, Auditing, and Bookkeeping Services		
	Certified Public Accountants	561211	Offices of Certified Public Accountants.
	Accountants, Except Certified Public Accountants	561212	Offices of Accountants, except Certified.
	Bookkeeping and Billing Services	561222	Bookkeeping and Billing Services.
	Payroll Services	561223	Payroll Services.
8731@	Commercial Physical and Biological Research		
	Physical and Engineering Sciences	56171	Research and Development in the Physical and Engineering Sciences (pt.).
	Life Sciences	56172	Research and Development in the Life Sciences (pt).
8732@	Commercial Economic, Sociological, and Educational Research		
	Social Sciences and Humanities	56173	Research and Development in the Social Sciences and Humanities (pt.).
	Market Research and Opinion Research	56191	Market Research and Public Opinion Polling.
8733@	Noncommercial Research Organizations		
	Physical and Engineering Services	56171	Research and Development in the Physical and Engineering Sciences (pt.).
	Life Sciences	56172	Research and Development in the Life Sciences (pt.).
	Social Sciences and Humanities	56173	Research and Development in the Social Sciences and Humanities (pt.).
8734	Testing Laboratories		
	Veterinary Testing Labs	81291	Pet Care Services, Except Veterinary Services (pt.).
	Except Veterinary Testing Labs	56138	Testing Laboratories.
8741@	Management Services		
	Except Construction Management Services	57111	Management Services.
	Construction Management Services	23	Included in Construction Sector By Type of Construction.
8742@	Management Consulting Services		
	Administrative and General Management Consulting	561611	Administrative and General Management Consulting.
	Human Resources and Personnel Management Consulting.	561612	Human Resources Consulting (pt.).
	Marketing Consulting	561613	Marketing Consulting.
	Manufacturing Management, Physical Distribution, and Site Location Consulting.	561614	Process, Physical, Distribution, and Logistics Consulting.
8743	Public Relations Services	56182	Public Relations Services.
8744	Facilities Support Management Services	57113	Facilities Support Management Services.
8748@	Business Consulting Services, NEC		
	Educational Test Development and Evaluation Services, Educational Testing, and Educational Consulting.	61171	Educational Support Services (pt.).
	Planners of Land Use	561491	Land Use Planners Services.
	Safety Consulting	561619	Other Management Consulting Services.
	Economic Consultants, Radio Consultants, Traffic Consultants.	56169	Other Scientific and Technical Consulting Services (pt.).
8811	Private Households	81411	Private Households.

TABLE 2.—1987 SIC COMPARED TO 1997 NAICS—Continued

1987 SIC code	1987 SIC description	NAICS code	1997 U.S. description
8999@	Services, NEC		
	Authors, Artists, and Related Technical Services, Independent.	71151	Independent Artists, Writers, and Performers (pt.).
	Music Royalties, Sheet and Record	51221	Record Production Companies.
	Nuclear Consultants, Consulting Geologists, Consulting Consulting Physicists, and Actuarial Consulting.	56169	Other Scientific and Technical Services (pt.).
	Music Publishing	51223	Music Publishing.
	Environmental Consultants	56162	Environmental Consulting.
9111	Executive Offices	93111	Executive Offices.
9121	Legislative Bodies	93112	Legislative Bodies.
9131	Executive and Legislative Offices, Combined	93114	Executive and Legislative Offices, Combined.
9199	General Government, NEC	93119	All Other General Government.
9211	Courts	93211	Courts.
9221	Police Protection	93212	Police Protection.
9222	Legal Counsel and Prosecution	93213	Legal Counsel and Prosecution.
9223	Correctional Institutions	93214	Correctional Institutions.
9224	Fire Protection	93216	Fire Protection.
9229	Public Order and Safety, NEC	93219	All Other Public Order and Safety.
9311	Public Finance, Taxation, and Monetary Policy	93113	Public Finance, Taxation, and Monetary Policy.
9411	Administration of Educational Programs	93311	Administration of Educational Programs.
9431	Administration of Public Health Programs	93312	Administration of Public Health Programs.
9441	Administration of Social, Human Resource and Income Maintenance Programs.	93313	Administration of Social, Human Resource and Income Maintenance Programs.
9451	Administration of Veteran's Affairs, Except Health Insurance.	93314	Administration of Veteran's Affairs, Except Health Insurance.
9511	Air and Water Resource and Solid Waste Management	93411	Air and Water Resource and Solid Waste Management.
9512	Land, Mineral, Wildlife, and Forest Conservation	93412	Land, Mineral, Wildlife, and Forest Conservation.
9531	Administration of Housing Programs	93511	Administration of Housing Programs.
9532	Administration of Urban Planning and Community and Rural Development.	93512	Administration of Urban Planning and Community and Rural Development.
9611	Administration of General Economic Programs	93611	Administration of General Economic Programs.
9621	Regulations and Administration of Transportation Programs		
	Air Traffic Control	488111	Air Traffic Control (pt).
	Except Air Traffic Control	93612	Regulation and Administration of Transportation Programs.
9631	Regulation and Administration of Communications, Electric, Gas, and Gas, and Other Utilities.	93613	Regulation and Administration of Communications, Electric, Gas, and Other Utilities.
9641	Regulation of Agricultural Marketing and Commodity	93614	Regulation of Agricultural Marketing and Commodity.
9651	Regulation, Licensing, and Inspection of Miscellaneous Commercial Sectors.	93615	Regulation, Licensing, and Inspection of Miscellaneous Commercial Sectors.
9661	Space Research and Technology	93711	Space Research and Technology.
9711	National Security	93811	National Security.
9721	International Affairs	93812	International Affairs.
9999	Nonclassified Establishments	9999	Unclassified Establishments.

The abbreviation "pt" means "part of"; @ means time series break has been created that is greater than 3% of the 1992 value of shipments for the 1987 industry. The abbreviation NEC is used for Not Elsewhere Classified.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

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Friday
July 5, 1996

Part IV

Department of Health and Human Services

Administration for Children and Families

Request for REACH Plans Under the Office of Community Services FY 1996 Low-Income Home Energy Assistance Program, Residential Energy Assistance Challenge Option (REACH) Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS–96–06]

Request for REACH Plans Under the Office of Community Services FY 1996 Low-Income Home Energy Assistance Program, Residential Energy Assistance Challenge Option (REACH) Program

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Announcement of availability of funds and request for REACH plans under the Office of Community Services Residential Energy Assistance Challenge Option (REACH) Program.

SUMMARY: The Administration for Children and Families (ACF), Office of Community Services (OCS) announces that, based on availability of funds, REACH Plans will be accepted for grants pursuant to the Secretary's authority under Section 2607B(b) of the Low-Income Home Energy Assistance Act of 1981, as amended, 42 U.S.C. 8621 et seq.

CLOSING DATES: The closing date and time for receipt of REACH applications is 4:30 p.m., eastern time zone, on September 3, 1996. Applications received after 4:30 p.m. on that day will be classified as late. Postmarks and other similar documents do not establish receipt of an application. Detailed application submission instructions including the addresses where applications must be received are found in Part VI B, Application Submission.

FOR FURTHER INFORMATION CONTACT: Office of Community Services, Administration for Children and Families, Division of Community Demonstration Programs, 370 L'Enfant Promenade, S.W., Fifth Floor, Washington, D. C. 20447. Attention: Richard Saul—(202) 401–9341; Anna Guidery—(202) 401–5318.

This Notice is accessible on the OCS Electronic Bulletin Board for downloading through your computer modem by calling 1–800–627–8886. For assistance in accessing the Bulletin Board, a *Guide to Accessing and Downloading* is available from Ms. Minnie Landry at (202) 401–5309.

The Catalog of Federal Domestic Assistance number for this program is 93.566.

Table of Contents

Part I—Introduction
A. Legislative Authority
B. Definition of Terms
C. Purpose

Part II—Background Information
A. Program Priority Areas
B. Project Periods and Budget Periods
C. Availability of Funds and Grant Amounts
D. Program Participants/Beneficiaries
E. Prohibition and Restrictions on the Use of Funds
F. Multiple Submittals and Multiple Grants
G. Maintenance of Effort

Part III—Reach Priority Areas and Program Requirements
A. Program Requirements for Priority Area 1.0
1. Eligible Applicants for Priority Area 1.0
2. Program Focus
3. Economic Development Strategy and Mobilization of Resources
4. Scope of the Priority Area 1.0 REACH Plan
5. Low-Income Citizen Participation
6. Third-Party Project Evaluation
7. Consistency With LIHEAP Legislation
8. Dissemination of Project Results.
B. Special Program Requirements for Priority Area 2.0
1. Eligible Applicants for Priority Area 2.0
2. Program Focus
3. Economic Development strategy
4. Scope of the Priority Area 2.0 REACH Plan
5. Low-Income Citizen Participation
6. Third Party Project Evaluation
7. Consistency With LIHEAP Legislation
8. Dissemination of Project Results

Part IV—Reach Plan Elements and Review Criteria
A. Program Elements, Review and Assessment Criteria for REACH Plans Under Priority Area 1.0
B. Special Program Elements, Review and Assessment Criteria for REACH Plans Under Priority Area 2.0

Part V—Quality Standards for Energy Efficiency Education Services Plans
A. Purpose
B. Target Population
C. Needs Assessment and Project Design Process
D. Service Delivery
E. Relation of Services to Changes, of Changes to Outcomes, and of Outcomes to Goals (a "Logic Model")
F. Evaluation

Part VI—Application Procedures
A. Availability of Forms
B. Application Submission
C. Paperwork Reduction Act of 1995
D. Application Consideration
E. Criteria for Screening Applications

Part VII—Instructions for Completing Application Forms
A. SF–424—Application for Federal Assistance
B. SF–424A—Budget Information—Non-Construction Programs
C. SF–424B—Assurances—Non-Construction

Part VIII—Contents of Reach Plan

Part IX—Post-Award Information and Reporting Requirements
A. Notification of Grant Award
B. Attendance at Workshops
C. Reporting Requirements
D. Audit Requirements
E. Prohibitions and Requirements with regard to Lobbying
F. Applicable Federal Regulations

Part I. Introduction

A. Legislative Authority

Section 2607B(b) of the Low-Income Home Energy Assistance Act of 1981, as amended, 42 U.S.C. 8621 et seq., authorizes the creation of the Residential Energy Assistance Challenge Option (REACH) Program, to be funded for the first time in FY 1996. REACH is designed to provide services through local community-based agencies to help LIHEAP eligible households reduce their energy vulnerability.

The Secretary is authorized to make incentive grants to States, Tribes, Tribal Organizations, and certain Insular Areas that submit qualifying Plans, hereinafter referred to as REACH Plans, that are approved by the Secretary as REACH initiatives. Successful applicants are to use such grants for the costs of planning, implementing, and evaluating the initiative.

The Secretary must also reserve from any funds allocated under the REACH initiative, funds to make additional payments to REACH programs that (a) have energy efficiency education services plans that meet quality standards established by the Secretary in consultation with the Secretary of Energy; and (b) have the potential for being replicable model designs for other programs.

This Announcement is requesting competitive REACH Plans from eligible applicants which are consistent with the information, requirements, and program elements and review criteria outlined in Parts II, III, IV, and V, below.

B. Definition of Terms

For purposes of this Program Announcement, the following definitions apply [Definitions marked with an asterisk(*) are the definitions found in Section 2603 of the Low Income Home Energy Assistance Act, as amended, (42 U.S.C. 8622) and apply to the REACH Initiative]:

—*Budget Period:* The term "budget period" refers to the interval of time into which a multi-year period of assistance (project period) is usually divided for budgetary and funding purposes.

—*Community-based, nonprofit:* A corporation or association whose profits may not lawfully accrue to the benefit of any shareholder or individual, and whose goals, objectives and activities are established and carried out through a process involving the participation of residents of the community or local area being served, including low-income residents.

—*Community-Based Organization Recipient (CBO Recipient):* The Community-based nonprofit entity through which State REACH Project services shall be delivered in the applicant State under Priority Area 1.0.

—*Energy burden** means the expenditures of the household for home energy divided by the income of the household.

—*Energy crisis** means weather-related and supply shortage emergencies and other household energy-related emergencies.

—*Highest home energy needs** means the home energy requirements of a household determined by taking into account both the energy burden of such household and the unique situation of such household that results from having members of vulnerable populations, including very young children, individuals with disabilities, and frail older individuals.

—*Home energy** means a source of heating or cooling in residential dwellings.

—*Household** means any individual or group of individuals who are living together as one economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.

—*Innovative project:* One that departs from or significantly modifies past program practices and tests (a) new approach(es).

—*Intervention:* Any planned activity within a project that is intended to produce changes in the target population or the environment, and can be formally evaluated.

—*Nonprofit Organization:* A corporation or association whose profits may not lawfully accrue to the benefit of any shareholder or individual (and through which REACH Project services may be delivered under Priority Area 2.0).

—*Outcome evaluation:* An assessment of measured results designed to provide a valid determination of the net effects attributable to the intervention. An outcome evaluation will produce and interpret findings related to whether the intervention produced desirable changes and its potential for replicability. It should answer the question, "Did this program work?"

—*Poverty level** means, with respect to a household in any State, the income poverty line as prescribed and revised at least annually pursuant to section 673(2) of the Community Services Block Grant Act, as applicable to such State. (See Attachment A.)

—*Process evaluation:* Descriptive information that is gathered on the development and implementation of a program/intervention that may serve as a document for replicating the program elsewhere. The evaluation should also identify problems that occurred and how they were dealt with and recommend improved means of future implementation. It should answer the question: "How was the program carried out?" In concert with the outcome evaluation, it should also help explain, "Why did this program work/not work?"

—*Project period:* The term "project period" refers to the total time for which a project is approved for support, including any extensions.

—*Secretary** means the Secretary of Health and Human Services.

—*State** means each of the several States and the District of Columbia.

—*State median income** means the State median income promulgated by the Secretary in accordance with procedures established under section 2002(a)(6) of the Social Security Act (as such procedures were in effect on the day before the date of the enactment of this Act) and adjusted, in accordance with regulations prescribed by the Secretary, to take into account the number of individuals in the household.

C. Purpose

As described in the authorizing legislation, the purpose of the REACH Program is to—

(1) minimize health and safety risks that result from high energy burdens on low-income Americans;

(2) prevent homelessness as a result of inability to pay energy bills;

(3) increase efficiency of energy usage by low-income families; and

(4) target energy assistance to individuals who are most in need.

In keeping with this broad mandate, OCS will support a limited number of innovative Pilot Projects that seek to demonstrate the long term cost effectiveness of supplementing energy assistance payments with non-monetary benefits that can increase the ability of eligible households to meet energy costs and help them to achieve energy self-sufficiency.

Part II. Background Information

A. Program Priority Areas

The REACH Program will have two Priority Areas: Priority Area 1.0, for which eligible applicants are States, the District of Columbia and Puerto Rico; and Priority Area 2.0, for which eligible applicants are Tribes, Tribal Organizations, and certain Insular Areas which are LIHEAP grantees that use LIHEAP funds to implement a LIHEAP Program.

B. Project Periods and Budget Periods

(See Part I, B, Definition of Terms)

The Low Income Home Energy Assistance Act of 1981 authorizes a block grant program of which the REACH Program is a part, and to which 45 CFR Parts 74 and 92 and OMB Circulars do not apply. However, 45 CFR Part 96 does apply to REACH funds. Grantees must obligate REACH funds within the Fiscal Year following the Fiscal Year in which the REACH grant was awarded by OCS.

1. Project Periods. Project periods will be 36 months for all REACH projects under Priority Area 1.0 and for projects under Priority Area 2.0 when the applicant elects to delegate the project to a non-profit organization as described below.

States under Priority Area 1.0 and applicants under Priority Area 2.0 with thirty-six month Project Periods are encouraged to provide for completion of the planning and consummation of awards to sub-recipients within a time frame that will allow for adequate start-up and an implementation period of at least two years, followed by a phase-out period that will permit completion of the required evaluation under Priority Area 1.0 and reporting under Priority Area 2.0.

Project periods will be 12 months under Priority Area 2.0 where applicants elect to operate projects directly, as described below.

2. Budget Periods. Budget Periods for all REACH Projects in Priority Areas 1.0 and 2.0 will be twelve months (one year).

(a) In the case of projects under Priority Area 1.0, States will receive grants for the full amount of the three-year Project Period, and will award REACH funds to CBO Recipients for total project budgets covering the full Project Period as described above, and should solicit and/or design local projects accordingly. Applicants under Priority Area 1.0 may include in the REACH Initiative budget an amount up

ten percent (10%) of the total REACH grant for planning, administration, and coordinating costs at the State level, and for contracting with a third party evaluator as defined in Part IV–A, Element VI, below, and discussed in Part III–A.6., during the first project year (the first twelve month budget period) of the REACH Initiative. States may apply for continued funding for such costs for each of the second and third project years (budget periods) on a non-competitive basis, for an amount each year of up to two and one-half percent (2.5%) of the original grant, subject to the availability of funds, satisfactory progress of the grantee, and determination that this would be in the best interest of the government.

(b) In the case of REACH Projects under Priority Area 2.0, where applicants elect to operate REACH projects through non-profit organizations, grants awarded pursuant to this announcement will likewise be for the full amount of the three year Project Period, and applicants will in like manner award REACH funds to sub-recipients for total project budgets covering the full Project Period as described in the preceding paragraph (a). Such applicants may include up to five percent (5%) of the total REACH grant for planning, administration and coordinating costs of the first year, which may be continued for years two and three on the same terms as described in preceding paragraph (a).

(c) Where applicants under Priority Area 2.0 elect to operate REACH programs themselves, as described below, grants awarded pursuant to this announcement will be for 12-month (one year) Project and Budget Periods only.

C. Availability of Funds and Grant Amounts

The total amount expected to be available for REACH Initiative grants pursuant to this announcement is approximately $5,000,000. The Office of Community Services expects to award up to eight competitive grants under Priority Area 1.0 for General Pilot Projects of $500,000 to $1,500,000 each for the planning, implementation and evaluation of REACH Initiatives; but the total amount awarded under Priority Area 1.0 will not exceed $4,000,000, except as provided under Priority Area 2.0. OCS expects to award up to eight grants under Priority Area 2.0 for smaller Pilot Projects of $50,000 to $150,000 each to Indian Tribes and Tribal Organizations for a total of up to $400,000. Any funds not awarded under Priority Area 2.0 will be available for funding under Priority Area 1.0. Pursuant to the legislative mandate, an additional $600,000 has been reserved by the Secretary to make additional payments of up to $100,000 each to qualifying funded REACH Initiatives under Priority Area 1.0, and payments of up to $25,000 each under Priority Area 2.0, for implementation and evaluation of Energy Efficiency Education Services Plans which meet the Quality Standards established in consultation with the Secretary of Energy which are set forth in Part V of this Announcement, and have the potential for being replicable model designs for other programs. Where any funded REACH Initiatives do not qualify for such payments, available reserved funds may be distributed among the applicants that do qualify, at the discretion of OCS and through negotiation with the qualifying applicants.

D. Program Participants/Beneficiaries

Projects proposed for funding under this announcement must result in direct benefits to low-income individuals and families who are eligible for LIHEAP benefits under the applicant's LIHEAP program, pursuant to Section 2605(b)(2) of the Low Income Home Energy Assistance Act of 1981, as amended. However, not all LIHEAP recipients and/or eligible households must be provided REACH services. Applicants may target a portion of the LIHEAP-eligible population for REACH services.

Attachment A to this announcement is an excerpt from the Poverty Income Guidelines currently in effect. Annual revisions of these guidelines are normally published in the **Federal Register** in February or early March of each year. Where relevant to REACH eligibility criteria, grantees will be required to apply the most recent guidelines throughout the project period. These revised guidelines also may be obtained at public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. They also are accessible on the OCS Electronic Bulletin Board for reading and/or downloading. (See **FOR FURTHER INFORMATION** at beginning of this announcement.)

Consistent with the legislative purpose of the REACH Initiative "to target energy assistance to individuals who are most in need", projects proposed for funding under this Announcement may further restrict eligibility to lower income individuals and families within the LIHEAP eligible universe.

Under the authorizing legislation applicants may designate all or part of the State or all or part of the client population as a focus of its REACH Initiative. The Secretary has determined that in order best to compare the cost effective outcomes of REACH benefits with those of LIHEAP payment benefits alone, the geographic/client focus of the REACH program should be one which results in REACH expenditures bearing a reasonable relationship to the LIHEAP payment benefits available to the same target population. For example, if the target population of the REACH Project were to receive REACH benefits costing ten times the amounts they received in LIHEAP payments, it would be difficult to compare the long-term cost effectiveness of these benefits with those of LIHEAP payments alone. Consequently, REACH Project expenditures should not be less than one-half nor more than twice the amount of LIHEAP benefits paid within the REACH service area to REACH eligible households over two years, under the current appropriation. In other words, if LIHEAP financial assistance to a REACH target population totals $100,000 over two years, the applicant should plan to provide between $50,000 and $200,000 in REACH services to that target population area.

E. Prohibition and Restrictions on the Use of Funds

The use of funds for the purchase or construction of real property is prohibited. Costs incurred for rearrangement and alteration of facilities required specifically for the funded program are allowable when specifically approved by ACF in writing. However, in keeping with the legislative mandate to include in REACH Project activities energy related residential repair and energy efficiency improvements, such activities will not be considered to be violative of these prohibitions or restrictions.

If the applicant is proposing a project which will affect a property listed in, or eligible for inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of section 106 of the National Historic Preservation Act of 1966 as amended. If there is any question as to whether the property is listed in or eligible for inclusion in the National Register of Historic Places, the applicant should consult with the State Historic Preservation Officer. (See Attachment D: SF–424B, Item 13 for additional guidelines.) The applicant should contact OCS early in the development of its application for instructions regarding compliance with the Act and data required to be submitted to the Department of Health and Human Services. Failure to comply with the cited Act will result in the application being ineligible for funding consideration.

F. Multiple Submittals and Multiple Grants

Due to the limited number of grants that will be made under this program, only one application from any one eligible applicant will be funded by OCS from FY 1996 REACH funds. (This does not preclude applicants under Priority Area 1.0 from including more than one local REACH Project/CBO Recipient in their REACH plans.)

G. Maintenance of Effort

The activities funded under this program announcement must be in addition to, and not in substitution for, activities previously carried on without Federal assistance. Also, the benefits and services provided eligible participants in the REACH Project must be provided in addition to and in coordination with benefit payments and services provided under the applicant's regular LIHEAP Program. A signed certificate of Maintenance of Effort must be included with the application (see Attachment J).

Part III. Reach Priority Areas and Program Requirements

A. Program Requirements for Priority Area 1.0

1. Eligible Applicants for Priority Area 1.0. Eligible applicants for these grants under Priority Area 1.0 are the fifty States, the District of Columbia and Puerto Rico. They must deliver REACH services, in one or more specific projects, through community-based, nonprofit organizations, hereinafter referred to as CBO Recipients, by awarding grants to or entering into contracts with such CBO Recipients for the purpose of providing such services and payments directly to individuals eligible for benefits. If a State makes LIHEAP payments directly to eligible individuals or energy suppliers, the State must enter into contract(s) with such CBO Recipients to administer such programs, including (i) determining eligibility, (ii) providing outreach services, and (iii) providing benefits other than payments.

In awarding grants or entering into contracts to carry out its REACH Initiative, the State must give priority to eligible entities, as defined in Section 673 of the Community Services Block Grant Act (42 U.S.C. 9902(1)) except where significant geographic portions of the State are not served by such entities, that (1) have a record of successfully providing services under the Low-Income Home Energy Assistance Program (as determined by DHHS), and (2) receive funds under the Department of Energy's Low Income Weatherization Assistance Program. The State may not require any such entity to operate a REACH Project.

2. Program Focus.

The goals of a Priority 1.0 funded REACH Plan over the project period must include:

(1) a reduction in energy costs of participating low-income households;

(2) an increase in the regularity of home energy bill payments by participating households; and

(3) an increase in energy vendor contributions towards reducing energy burdens of eligible households.

As noted above, so that the cost effective outcomes of REACH benefits may best be compared with those of LIHEAP benefits alone, an Applicant, in designating the REACH service area or segment of the eligible population to be served by the proposed REACH Plan, should seek to define (an) area(s) or population segment(s) whose allocation under the LIHEAP program bears a reasonable relationship to the resources available to the REACH Project. That is, REACH Project expenditures should not be less than one-half or more than twice the amount of LIHEAP benefits paid within the REACH service area to REACH eligible households over two years, under the current appropriation. In this regard, the applicant should consider the totality of resources that will be available to support the REACH Project's implementation and the level of benefit and/or services reasonably required to achieve the Project's goals and objectives. This will be a function, in part, of the specific interventions that will go to make up the "benefits and services" in the particular Project design; and an objective of every REACH Plan should be to measure the success of such interventions in achieving more cost-effective long-term outcomes than energy payment benefits alone. Thus OCS is interested in REACH Plans that propose testing innovative approaches to helping low-income families achieve energy self-sufficiency, and ultimate independence from energy assistance payments.

3. Economic Development Strategy and Mobilization of Resources. OCS is interested in having Applicants approach the energy needs of low-income families within a holistic context of the economic, social, physical, and environmental barriers to achieving self-sufficiency. Thus applicants should include in their REACH Plan an explanation of how the proposed project(s) will be integrated with and support a larger economic development strategy within the target community or communities.

REACH grantees are not required to match REACH grant awards with either cash or in-kind contributions of goods and services. However, in keeping with this holistic integration of REACH Projects within the community, they are expected to be closely coordinated with other public and private sector programs involved with community revitalization, housing rehabilitation and weatherization, and family development; and OCS will give favorable consideration in the application review process to applicants who mobilize third-party cash and/or in-kind contributions for direct use in the REACH Project. Even though there is no matching requirement for the REACH Program, grantees will be held accountable for any match, cash or in-kind contribution proposed or pledged as part of an approved application. (See Part IV, Element III.)

If the REACH service area or portion thereof is covered by a comprehensive community-based strategic plan, such as that required for applying for Empowerment Zone/-Enterprise Community (EZ/EC) status, to achieve both economic and human development in an integrated manner, applicants should document how they and/or the designated CBO Recipient(s) were involved in the preparation and implementation of the plan, and how the proposed REACH project(s) will support the goals of that plan. (See Part IV-A, Element VIII.)

4. Scope of the Priority Area 1.0 REACH Plan. A State may submit a REACH Plan which proposes one local REACH Project to be implemented by one CBO Recipient; it may submit a Plan in which the same project is proposed to be implemented in several localities by separate CBO Recipients; or it may submit a plan proposing two or more different and distinct Projects, each to be implemented through a separate CBO Recipient. Where a State proposes different and distinct REACH Projects to be carried out by more than one CBO Recipient, the REACH Plan should include, for each of these projects/CBO Recipients, a separate narrative section, no more than ten pages in length, covering Element I (with three Sub-Elements), explaining the project Theory, Design and Plan of the proposed project, as explained in Part IV, and designated as Segment One

of the Project Narrative; and a Budget Justification as described in Element II, covering Project Budget Appropriateness. As set forth in Part IV, "Segment One" of the Project Narrative should describe the concept of the proposed REACH Project, describing the goals or outcomes that the project seeks to achieve; the needs of the target population that the project seeks to address, and the assumptions about how those needs can be met; and the activities or interventions that the project will undertake to meet the needs and achieve the goals and outcomes of the project.

Where a REACH Plan proposes only one distinct project, to be implemented either in one locality or in several, by either one or more than one CBO Recipient, then the Plan need include only one Segment One narrative.

Each Priority Area 1.0 REACH Plan must also include the designation, in accordance with the priorities described in Section A. 1., above, of the CBO Recipient(s) through which the proposed project(s) will be implemented. With each Priority Area 1.0 REACH Plan there must be included a Letter of Agreement from each designated CBO Recipient subscribing to the project concept as described in the appropriate Segment One narrative section of the Plan and agreeing to operate the REACH project as proposed. The Letter of Agreement must also commit the CBO Recipient(s) to a process of Low-Income Citizen Participation in the establishment of the local REACH Project, as described in Section A. 5., below.

The REACH Plan must include a description of the methodology the State and local agencies will use to determine—

(i) which households will receive one or more forms of benefits under the REACH Initiative;

(ii) the cases in which nonmonetary benefits are likely to provide more cost-effective long-term outcomes than payment benefits alone; and

(iii) the amount of such benefits required to meet the goals of the program.

The Plan must also include a method to be used for targeting REACH nonmonetary benefits. It should further provide that the State will award the grant(s) or contract(s) for implementation of the REACH Project within a time frame that will allow for adequate start-up and an implementation period of at least two years, followed by a phase-out period that will permit completion of the required evaluation. (See Part II–B. 1., Project Periods, and Part IV–A, Sub-Element I(c))

Finally, the REACH Plan must include:

(A) a brief description of the crisis and emergency assistance activities the State will undertake that are designed to:

(1) discourage family energy crises;

(2) encourage responsible vendor and consumer behavior; and

(3) provide only financial incentives that encourage household payment; (See Part IV–A, Sub-Element I(b))

(B) a brief description of the activities the State will undertake to—

(1) provide incentives for recipients of assistance to pay home energy costs; and

(2) provide incentives to vendors to help reduce the energy burdens of recipients of assistance.

(C) an assurance that, subject to the methodologies described above, each CBO Recipient will provide a variety of services and benefits, including—

(i) payments to, or on behalf of, individuals eligible for residential energy assistance services and benefits under Section 2605(b) for home energy costs;

(ii) energy efficiency education;

(iii) residential energy demand management services, including any other energy related residential repair and energy efficiency improvements in coordination with, or delivered by, Department of Energy weatherization assistance programs at the discretion of the State;

(iv) family services, such as counseling and needs assessment, related to energy budget management, payment plans, and related services; and

(v) negotiation with home energy suppliers on behalf of households eligible for REACH services and benefits. (See Part IV–A, Sub-Element I(b)). Project activities should be closely coordinated with the applicant's LIHEAP Program and with Empowerment Zone/-Enterprise Community Initiatives where applicable; (See Part IV–A, Element VIII) and,

(D) an assurance that no regulated utility covered by the plan will be required to act in a manner that is inconsistent with applicable regulatory requirements. (See Part IV–A, Element VII.)

5. Low-Income Citizen Participation. To be considered for funding a REACH Plan must include provision for the systematic and regularized solicitation, by the designated CBO Recipient(s), of the views of eligible low-income individuals in the community; and for the assurance, by means of an advisory board or similar process, that such organization(s) will be responsive to such views in the development and implementation of the local Project. Assurance for compliance with these requirements may be accomplished through the Letter of Agreement required in Paragraph 4, above. (See Part IV–A, Sub-Element I(a))

6. Third-Party Project Evaluation. REACH Plans must include provision for an independent, methodologically sound evaluation of the effectiveness of the activities carried out with the grant and their efficacy in achieving stated project goals related to reducing participant home energy costs and increasing the ability of participants to meet such costs independent of payment subsidy, including, specifically, the performance goals set out above at the opening of Section A. 2., Program Focus, above.

The Plan should include a well thought through outline of an evaluation plan for the proposed project(s). The outline should explain how the applicant proposes to answer the key questions about how effectively the project is being/was implemented (the Process Evaluation) and whether and why/why not the project activities or interventions achieved the expected outcomes and goals of the project(s) (the Outcome Evaluation). (See Part I, Section B for definitions of Process and Outcome Evaluations.) Applicants may propose a single evaluation for their overall REACH Initiative, or separate evaluations for individual projects, as and where appropriate.

In addition to the performance goals mentioned above, the outline should include a description of the indicators that will be used by the State (and the CBO Recipient(s)) to measure whether the goals have been achieved.

The evaluation must be conducted by an independent, third-party evaluator, i.e., a person with recognized evaluation skills who has experience with social programs and is organizationally distinct from, and not under the control of, the applicant or the local organization(s) implementing the REACH Project. It is important that each successful applicant have a third-party evaluator selected, and performing at the very latest by the time the work program of the project is begun, and if possible before that time so that he or she can participate in the final design of the program, in order to assure that data necessary for the evaluation will be collected and available.

7. Consistency With LIHEAP Legislation. To be funded, a REACH Plan must include a demonstration that it is consistent with the following Sections of the Low Income Home Energy Assistance Act, as amended: Section 2603; paragraphs (2), (3), (4), (5), (7), (10), (11), (12), (13), and (14) of Section 2605(b); Subsections (d), (e), (f), (g), (h), (i), and (j) of Section 2605; and Section 2606.

The definitions in Section 2603 have been incorporated into the definitions in Part I, Section B of this Announcement and will apply to the REACH Initiative. The rest of the cited sections, subsections and paragraphs are set forth in Attachment K to this Announcement.

8. Dissemination of Project Results. REACH Plans should include provision for disseminating the results of the project. Applicants may budget up to $5,000 for dissemination purposes.

B. Special Program Requirements for Priority Area 2.0

1. Eligible Applicants for Priority Area 2.0. Eligible Applicants for these grants under Priority Area 2.0 are Indian Tribes and Tribal Organizations which are current grantees of the LIHEAP Program; and the Insular Areas of American Samoa, Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and Guam, provided they are LIHEAP grantees that use LIHEAP funds to implement a LIHEAP Program. In accordance with 45 CFR 96.42(a), the Secretary has determined that inasmuch as these applicants are generally representative of and close to their communities, which with few exceptions are relatively small; and inasmuch as they generally implement their LIHEAP programs and other social service programs directly; that therefore the requirements of Section 2607B(e)(2)(A) and (B) are not applicable to eligible applicants under Priority Area 2.0; and that consequently REACH grantees under Priority Area 2.0 may implement REACH programs directly, without delegation to CBO Recipients. However, as explained in Part II B, Budget Periods, above, applicants electing to implement their REACH Projects directly will be limited to projects of one year duration (Project and Budget Periods of one year only).

Applicants under Priority Area 2.0 may also elect to operate their projects through grants or contracts to non-profit organizations. However, in such cases the non-profit organization does not have to be a community based organization (CBO) as defined Part I. If they choose to operate their projects through non-profit organizations, the Project and Budget Periods applicable to Priority Area 1.0 will apply.

2. Program Focus. The Program Focus for Priority Area 2.0 REACH projects should be the same as for Priority Area 1.0, described above in Section A.2.

3. Economic Development Strategy. Although OCS is interested in having applicants under Priority Area 2.0 approach the energy needs of low-income families within a holistic context of the economic, social, physical, and environmental barriers to achieving self-sufficiency, applicants under Priority Area 2.0 will not be required to include a specific Economic Development Strategy in their REACH Plan.

4. Scope of the Priority Area 2.0 REACH Plan. The Priority 2.0 REACH Plan should describe the concept of the proposed REACH Project, describing the goals or outcomes that the project seeks to achieve; the needs of the target population that the project seeks to address, and the assumptions about how those needs can be met; and the activities or interventions that the project will undertake to meet the needs and achieve the goals and outcomes of the project.

The REACH Plan must include a description of the methodology the State and local agencies will use to determine—

(i) which households will receive one or more forms of benefits under the REACH Initiative;

(ii) the cases in which nonmonetary benefits are likely to provide more cost-effective long-term outcomes than payment benefits alone; and

(iii) the amount of such benefits required to meet the goals of the program;

The Plan must also include a method to be used for targeting REACH nonmonetary benefits.

Finally, the REACH Plan must include:

(A) a brief description of the crisis and emergency assistance activities the applicant will undertake that are designed to:

(1) discourage family energy crises;

(2) encourage responsible vendor and consumer behavior; and

(3) provide only financial incentives that encourage household payment;

(B) a brief description of the activities the applicant will undertake to—

(1) provide incentives for recipients of assistance to pay home energy costs; and

(2) provide incentives to vendors to help reduce the energy burdens of recipients of assistance.

(C) an assurance that, subject to the methodologies described above, each applicant or nonprofit sub-recipient, as appropriate, will provide a variety of services and benefits, including at least two of the following—

(i) payments to, or on behalf of, individuals eligible for residential energy assistance services and benefits under Section 2605(b) for home energy costs;

(ii) energy efficiency education;

(iii) residential energy demand management services, including any other energy related residential repair and energy efficiency improvements in coordination with, or delivered by, Department of Energy weatherization assistance programs at the discretion of the State;

(iv) family services, such as counseling and needs assessment, related to energy budget management, payment plans, and related services; and

(v) negotiation with home energy suppliers on behalf of households eligible for REACH services and benefits. (See Part IV–B, Sub-Element I(b)).

Given the size of most tribal and small insular territory LIHEAP programs, the Secretary has determined, in accordance with 45 CFR 96.42(a), that REACH applications from tribal and small insular area LIHEAP grantees under Priority Area 2.0 do not have to provide all of the above services.

Project activities should be closely coordinated with the applicant's LIHEAP Program.

and

(D) an assurance that no regulated utility covered by the plan will be required to act in a manner that is inconsistent with applicable regulatory requirements. (See Part IV–B, Element VI)

5. Low-Income Citizen Participation. To be considered for funding, a REACH Plan must include provision for the systematic and regularized solicitation by the grantee of the views of eligible low-income individuals in the community. (See Part IV–B, Sub-Element I(a))

6. Third-Party Project Evaluation. As noted above, the Priority Area 1.0 requirement for a third party evaluation does not apply out to Priority Area 2.0 grantees. However, Priority Area 2.0 REACH Plans must describe the indicators they will use to measure whether their performance goals have been achieved, and they must submit a report summarizing these results at the end of the grant period.

7. Consistency With LIHEAP Legislation. To be funded, a REACH Plan under Priority Area 2.0 must include a demonstration that it is consistent with the following Sections of the Low Income Home Energy Assistance Act, as amended: Section 2603; paragraphs (2), (3), (4), (5), (7),

(10), (11), (12), (13), and (14) of Section 2605(b); Subsections (d), (e), (f), (g), (h), (i), and (j) of Section 2605; and Section 2606.

The definitions in Section 2603 have been incorporated into the definitions in Part I, Section B of this Announcement and will apply to the REACH Initiative. The rest of the cited sections, subsections and paragraphs are set forth in Attachment K to this Announcement.

8. Dissemination of Project Results. Applicants under Priority 2.0 may budget up to $1,000 for dissemination of project results.

Part IV. Reach Plan Elements and Review Criteria

The ultimate goals of the projects to be funded under the REACH Program are to realize significant improvements in the ability of eligible households to meet energy costs and pay home energy bills with regularity, through innovative project interventions which will reduce energy costs and increase the capability of low-income participants to pay; in the case of REACH Projects under Priority Area 1.0, to evaluate the effectiveness of these interventions and of the project design through which they were implemented; and thus to make possible the replication of successful programs. OCS intends to make the awards of all the above grants on the basis of brief, concise REACH Plans. The elements and format of these plans, along with the review criteria that will be used to judge them, will be outlined in this Part.

The competitive review of REACH Plans will be based on the degree to which applicants:

(1) incorporate each of the Elements and Sub-Elements below into their plans, so as to describe convincingly a project that will develop and implement new and innovative approaches to address critical energy needs or problems of the poor;

(2) include the required assurances and program activities set forth in Part III, above; and,

(3) in the case of applications under Priority Area 1.0; test and evaluate such approaches and activities so as to make possible replication of a successful program.

A. Program Elements, Review and Assessment Criteria for REACH Plans under Priority Area 1.0

This Section has been divided into Two Segments: Segment One made up of Element I (with three Sub-Elements) which should be completed for each different and distinct local REACH Project to be carried out by a CBO Recipient, and must not be more than ten pages in length; and Segment Two made up of Elements II through VIII, which should be completed only once for the applicant's entire REACH Initiative, and must not be more than twenty pages in length. As explained in Part III–A, 4., Scope of REACH Plan, a State may submit a REACH Plan which proposes one local REACH Project to be implemented by one CBO Recipient; it may submit a Plan in which the same project is proposed to be implemented in several localities by separate CBO Recipients; or it may submit a plan proposing two or more different and distinct Projects, each to be implemented through a separate CBO Recipient. Where a State proposes different and distinct REACH Projects to be carried out by more than one CBO Recipient, the REACH Plan should include, for each of these projects/CBO Recipients a separate Segment One Narrative; where a REACH Plan proposes only one distinct project, to be implemented either in one locality or in several, by either one or more than one CBO Recipient, then the Plan need include only one Segment One narrative.

In order to simplify the application preparation and review process, OCS seeks to keep applications cogent and brief. For each of the Project Elements or Sub-Elements below there is at the end of the discussion a suggested number of pages to be devoted to the particular element or sub-element. These are suggestions only; but the applicant must remember that each Narrative Segment One cannot be more than ten pages in length, and that the single Project Narrative Segment Two, covering Program Elements II through VIII for the overall REACH Initiative, cannot be more than 20 pages in length.

REACH Plans with project narratives (excluding appendices) that exceed these limits will not be reviewed for funding. Project narratives should be on letter-sized pages in 12 c.p.i. type or equivalent on a single side. Applicants should prepare and assemble their project description using the following outline of required project elements. They should, furthermore, build their project concept, plans, and project description upon the guidelines set forth for each of the project elements.

In reviewing REACH Plans for funding, where Plans include more than one narrative Segment One describing a local Project/CBO Recipient, OCS reserves the right to consider each such Project/CBO Recipient on its own merits, and where review scores and other considerations merit, may choose not to fund a particular local Project/CBO Recipient. In such a case, OCS will negotiate an appropriate budget for the applicant's overall REACH Initiative.

Segment One

[Priority Area 1.0 applicants to complete for each local Project/CBO Recipient; each completed Segment (1) limited to ten pages in length]

Element I. Project Theory, Design, and Plan. (Total Weight of 0–30 points in application review.) OCS seeks to learn from the application why and how the project as proposed is expected to lead to significant improvements in individual and family energy self-sufficiency.

Applicants are urged to design and present their project in terms of a conceptual cause-effect framework. In the following paragraphs a logic model or framework is described, that suggests a way to present a project so as to show the logic of the cause-effect relations between project activities and project results. Applicants don't have to use the exact logic model language described; but it is important to present the project in a way that makes clear the cause-effect relationship between what the project plans to do and the results it expects to achieve.

Applicants are reminded that Part III–A, Section 4, Scope of the REACH Plan under Priority Area 1.0, includes a discussion of those activities which should be included in this element of their REACH Plan.

Sub-Element I(a). Description of Target Population, Analysis of Need, and Project Assumptions. (Weight of 0–10 points in application review.) The logic model begins with identifying the underlying assumptions about the program. These are the beliefs on which the proposed program is built: the assumptions about the needs of the client population to be served; about the current services available to those clients, and where and how they fail to meet their needs; about why the services or interventions proposed in the REACH Plan are appropriate, and will meet those needs; and about the impact the proposed interventions will have on the clients.

In other words, the underlying assumptions of the program are the applicant's analysis of the needs and problems to be addressed by the project, and the applicant's theory of how its proposed interventions will address those needs and problems to achieve the desired result. Thus a strong application is based upon a clear description of the needs and problems to be addressed and a persuasive understanding of the causes of those problems.

In this sub-element of the REACH Plan the applicant should precisely identify the target population to be served. The geographic area to be impacted should then be briefly highlighted, selectively emphasizing the socioeconomic/poverty and other data that are relevant to the project design. This sub-element to the REACH Plan, might include, for instance, data on the building type, condition, and age of low-income housing; the predominant fuel used for home heating; the number and percent of utility shut-offs among low-income energy consumers; climatic conditions; unemployment statistics for the area; the price of fuels; and the demand management services offered by local utilities.

The needs of this target population should then be clearly defined, and the applicant should state its underlying assumptions about how these needs can be addressed by the proposed project.

Applicants must include in this element a brief description of the provision that has been and will be made for the systematic and regular solicitation by CBO Recipients of the views of eligible low-income individuals in the community on the design and implementation of the REACH Project, and the mechanism(s) that will be employed by the applicant and the CBO Recipients to assure their responsiveness to such views in the establishment of the REACH Project. (See Part III-A, Section 5.)

It is suggested that applicants use no more than 4 pages for this narrative sub-element.

Sub-Element I(b). Project Strategy and Design Framework: Interventions, Outcomes, and Goals. (Weight of 0–10 points in application review.) To continue with the "logic model":

The underlying assumptions concerning client needs and the theory of how they can be effectively addressed, which are discussed above, lead in the project design to the conduct of a variety of project activities or interventions, each of which is assumed to result in immediate changes, or outcomes.

The immediate changes lead to intermediate outcomes; and the intermediate outcomes lead to attainment of the final project goals.

So in this sub-element the applicant should describe the major activities, or interventions, which are to be carried out to address the needs and problems identified in the previous sub-element. And it should discuss the immediate changes, or outcomes, which are expected to result. These are the results expected from each service or intervention immediately after it is provided. For example, a survey of home furnaces for safety and efficiency might be expected to result in identification of repairs and retrofits that could increase efficiency and lower costs. Or providing energy efficiency education to families in the low income community might be expected to result in modifying behavior of family members so that they would dress more warmly to be more comfortable at a lower thermostat setting, would not leave doors or windows open, would hang curtains over windows, and would use hot water more conservatively, by, for example, installing low-flow shower heads, etc.

At the next level are the intermediate outcomes which result from these immediate changes. Often an intermediate project outcome is the result of several immediate changes resulting from a number of related interventions such as repairs and education. Intermediate project outcomes should be expressed in measurable changes in knowledge, attitudes, behavior, or status/condition. In the above examples, the immediate changes achieved by the home energy survey program could be expected to lead to intermediate outcomes of furnace retrofits and home weatherization. The acquisition of energy conservation skills, coupled with the availability of energy saving devices such as efficient light bulbs or low-flow shower heads, could result in the actual installation of these devices in the home.

Finally, the REACH Plan should describe how the achievement of these intermediate outcomes will be expected to lead to the attainment of the project goals: energy efficient and healthy housing, energy consumption at a level which is affordable for the household, a successful community fuel cooperative that lowers fuel prices, new demand management services, or whatever they may be.

Applicants don't have to use the exact "logic model" terminology described above, but it is important to describe the project in a way that makes clear the expected cause-and-effect relationship between what the project plans to do—the activities or interventions, the changes that are expected to result, and how those changes will lead to achievement of the project goals of greater energy self-sufficiency.

It is suggested that applicants use no more than 4 pages for this design section of the REACH Plan.

Sub-Element I(c), Work Plan. (Weight of 0–10 points in the application review.) Once the project strategy and design framework are established, the applicant should present the highlights of a work plan for the project. The plan should explicitly tie into the project design framework and should be feasible, i.e., capable of being accomplished with the resources, time, staff, and partners available. The plan should briefly describe the key project tasks, and show the timelines and major milestones for their implementation. Critical issues or potential problems that might affect the achievement of project objectives should be explicitly addressed, with an explanation of how they would be overcome, and how the objectives will be achieved notwithstanding any such problems. The plan should be presented in such a way that it can be correlated with the Budget Justification included in the application following the budget forms. (See Element V.)

Applicant may be able to use a simple Gantt or time line chart to convey the work plan in minimal space.

It is suggested that the applicant use no more than 2 pages for this Sub-Element.

Segment Two

[Priority Area 1.0 applicants to complete once for overall REACH Plan; Segment Two limited to twenty pages in length.]

Element II. Organizational Experience and Capability. (Weight of 0 to 10 points in application review.) Applicants should cite the capability and relevant experience of each of the community-based organizations (CBO Recipients) designated to implement the proposed REACH Project in developing and operating programs which deal with poverty problems similar to those to be addressed by the proposed project. Applicants should explain how in their designation they have given priority, as required by the authorizing legislation, to eligible entities described in Section 673 of the Community Services Block Grant Act which have a record of successfully providing service under LIHEAP and which receive funds from the Department of Energy's Weatherization Assistance Program. (See Part III–A, Section I, Eligible Applicants for Priority Area 1.0) The applicant should also cite each such organization's experience in collaborative programming and operations which involve evaluations and data collection. The designated CBO Recipient(s)' capabilities and status in these regards should be established by a letter of certification to that effect by the Applicant, and by the State CSBG Director or the State LIHEAP or Weatherization Program administering agency(ies) where they are not the same. While the proposed project management team will be identified and described elsewhere in the application, applicants

should identify agency executive leadership in this section and briefly describe their involvement in the proposed project and provide assurance of their commitment to its successful implementation.

It is suggested that applicants use no more than 4 pages for this element.

Element III. Economic Development Strategies, Mobilization of Resources, and Project Innovations. (Weight of 0 to 10 points in the application review.) Applicants should in this Element explain how its REACH Initiative approaches the energy needs of low-income families within a holistic context of the economic, social, physical, and environmental barriers to achieving self-sufficiency. This should include an explanation of how the proposed project(s) will be integrated with and support a larger economic development strategy within the target community or communities.

Thus REACH Initiatives are expected to be closely coordinated with other public and private sector programs involved with community revitalization, housing rehabilitation and weatherization, and family development; and OCS will give favorable consideration in the application review process to applicants who mobilize cash and/or third-party in-kind contributions for direct use in the REACH Project. Even though there is no matching requirement for the REACH Program, grantees will be held accountable for any match, cash or in-kind contribution proposed or pledged as part of an approved application. (See Part III–A, Section 4(C))

Within the context of this holistic and coordinated plan, applicant should highlight the ways in which the proposed project represents a new and innovative approach or approaches to provide for greater energy self-sufficiency of the poor and/or to deal with particularly critical energy needs or problems of the poor that are common to a number of communities. Innovation can be in the characteristics of the target population to be served, or the needs to be addressed; the kinds of activities, or interventions, that will be carried out; the ways in which they will be carried out; new and different combinations of activities or interventions that will be implemented; or in the settings in which the project will function: e.g., new and innovative types of technologies or institutions in which the project will function.

It is suggested that applicants use no more than 4 pages for this element.

Element IV. Project Management and Organization. (Weight of 0 to 10 points in the application review.) While the experience of agency leadership is important to project success, the caliber of day-to-day project management is critical. Applicants should identify the State Project Coordinator, and key staff including the Project Director(s) in CBO Recipient(s) that will be implementing the project at the local level, and any other staff they feel are especially important to the success of the project, and include resumes as an Appendix to the REACH Plan. Where the staff have not been identified, a position description should be included in the Appendix. The REACH Plan should describe the staff's relevant capabilities for managing this multi-faceted project, with emphasis placed on successful management experience in directing both on-budget and leveraged resources to create community conditions capable of supporting effective interventions and transforming lives. REACH Plans will be assessed, for this element, on the relevant experience, capabilities, commitment and planned level of effort of the Project Coordinator and key staff members as described in the Plan.

Applicants should also, in this section, describe (and diagram if necessary) the organization of the project. The relationships among the State and the participating community-based organizations, the Project Coordinator and the key officials in those organizations, and any other partnering organizations should be depicted, and the project-related responsibilities of these key actors should be made clear.

This element should include a brief description of the crisis and emergency assistance activities the applicant will undertake that are designed to: (1) provide incentives for recipients of assistance to pay home energy costs, and (2) provide incentives to vendors to help reduce the energy burdens of recipients of assistance. (See Part III–A, Section 4 (B))

It is suggested that applicants use no more than 4 pages for this element (not counting the resumes and/or position descriptions, which should be in an Appendix).

Element V. Project Budget Appropriateness. (Weight of 0–10 points in the application review.) Applicants will be required to submit Federal forms with their REACH Plans to provide basic applicant and project information (SF 424) and information about how Federal and other project funds will be used (SF 424A). In addition to and immediately following the completed Federal budget forms, applicants must submit a Budget Justification, or explanatory budget information. This Budget Justification is not considered a part of the Project Narrative, and does not count as within the limitation on number of pages; but rather is to be included in the application following the budget forms. Each Applicant must submit one SF 424, one SF 424A, and one Budget Justification in its own name, which cover the entire REACH Initiative, and one SF 424A and Budget Justification for each local CBO Recipient.

The Budget Narrative should briefly explain the adequacy of the Federal funds and other mobilized resources to accomplish project purposes, should explain the source and nature of mobilized resources, and should identify and briefly explain any imbalances between the level of activities undertaken and project funds expended.

Applicants under Priority Area 1.0 may include in the REACH Initiative budget an amount up ten percent (10%) of the total REACH grant for planning, administration, and coordinating costs at the State level during the first project year of the REACH Initiative, and for contracting with a third-party evaluator as defined under Element VI, below, and discussed in Part III–A.6.

Applicants should include funds in the project budget for travel by State and CBO Recipient Project Directors and Chief Evaluators to attend two national evaluation workshops in Washington, D.C., and are encouraged to seek agreement from CBO Recipients to attend also. (See Part IX–B, Attendance at Workshops.)

Note: None of the costs of providing service or benefits under the REACH Program shall be considered to be an administrative cost or function for purposes of any limitation on administrative costs or functions contained in the Low-Income Home Energy Assistance Act of 1981, as amended, 42 U.S.C. 8621 et seq.

Element VI. Project Evaluation. (Weight of 0–15 points in the application review.) Sound evaluations are essential to the REACH Program. Applicants are required to include in their applications a well thought through outline of an evaluation plan for their project. The outline should explain how the applicant proposes to answer the key questions about how effectively the project is being/was implemented (the Process Evaluation) and whether and why/why not the project activities, or interventions, achieved the expected outcomes and goals of the project (the Outcome Evaluation). (See Part I, Section B for definitions of process and outcome evaluation, and Part III–A.6. for a discussion of evaluation requirements.)

OCS plans to engage an Evaluation Technical Assistance Contractor which will assist REACH Priority Area 1.0 Grantees and CBO Recipients in the finalization of Evaluation Plans, the establishment of data collection systems, the preparation of Evaluation Reports, and other aspects of project evaluation so as to assure that project evaluations will provide accurate and useful information to those interested in replication.

Applicants are not being asked to submit a complete and final Evaluation Plan as part of their REACH Plan; but they must include:

(1) A well thought through outline of an evaluation plan which identifies the principal cause-and-effect relationships to be tested, and which demonstrates the applicant's understanding of the role and purpose of both Process and Outcome Evaluations (see previous paragraph);

(2) the identity and qualifications of the proposed third party evaluator, or if not selected, the qualifications which will be sought in choosing an evaluator, which must include successful experience in evaluating social service delivery programs, and the planning and/or evaluation of programs designed to foster energy self-sufficiency in low income populations; and

(3) a commitment to the selection of a third-party evaluator approved by OCS, and to completion of a final evaluation design and plan, in collaboration with the approved evaluator and the OCS Evaluation Technical Assistance Contractor during the first six-months of the project, if funded.

Applicants should ensure, above all, that the evaluation outline presented is consistent with their project design. A clear project framework of the type recommended earlier identifies the key project assumptions about the target populations and their needs, and the hypotheses, or expected cause-effect relationships to be tested in the project: that the proposed project activities, or interventions, will address those needs in ways that will lead to the achievement of the project goals of energy self-sufficiency. It also identifies in advance the most important process and outcome measures that will be used to identify performance success and expected changes in individual participants, the grantee organization, the CBO Recipient(s), and the community.

For these reasons, the evaluator that the applicant expects to work with should be involved—at least briefly but substantively—in the development of the project design and proposal.

It is suggested that applicants use no more than 4 pages for this element, plus the Resume or Position Description for the evaluator, which should be in an Appendix.

Element VII. Significant and Beneficial Impact. (Weight of 0–10 points in the application review.) OCS seeks, with the REACH Program, to support innovative approaches that will create significant benefits for low-income energy consumers, their families, and their communities. Accordingly, it intends to make grants that have a strong likelihood of creating beneficial impacts both within the project communities and, through wide dissemination of useful project results and findings, in other communities facing similar challenges.

The proposed project is expected to lead to tangible achievements toward reducing household energy burdens on the poor and increasing their ability to pay for the household energy they need. As a result, the project should lead to verifiable reductions in homelessness and health and safety risks associated with high energy costs that are beyond the resources of low income families in the targeted community(ies). Applicants should summarize, in this section, the beneficial impacts that they propose to make in that community, their expectations for the continuation of those benefits beyond the project's life, and the kind of information that they expect to share with OCS and the social service/community development fields from their pilot project. Project proposals will be assessed, for this element, on the likely value of the project to the target community over time—given the proposed outcomes and the likelihood that they will be realized—and to the larger community of LIHEAP and CSBG grantees across the nation.

Applicants should include in this element a brief assurance that no regulated utility covered by the REACH Plan will be required to act in a manner that is inconsistent with applicable regulatory requirements. (See Part III–A, Section 4(D))

It is suggested that applicants use no more than 2 pages for this element. The score for this element will be based to some extent on the coherence and feasibility of the entire REACH Plan.

Element VIII. Community Empowerment Consideration. (Weight of 0–5 points in application review.) Special consideration will be given to applicants whose proposed REACH Projects will be located in areas which are characterized by severe poverty and other indicators of socio-economic distress such as a poverty rate of at least 20%, designation as an Empowerment Zone or Enterprise Community, high levels of unemployment, and a high incidence of violence, gang activity, crime, or drug use. If such is the case, applicants should document that they or their proposed CBO Recipients were involved in the preparation and planned implementation of a comprehensive community-based strategic plan to achieve both economic and human development in an integrated manner and how the proposed project supports the goal(s) of that plan. (See Part III–A, Section 3 and Section 4(C))

It is suggested that applicants use no more than 2 pages for this element.

B. Special Program Elements, Review and Assessment Criteria for REACH Plans Under Priority Area 2.0

In order to simplify the application preparation and review process, OCS seeks to keep grant applications cogent and brief. For each of the Project Elements or Sub-Elements below there is at the end of the discussion a suggested number of pages to be devoted to the particular element or sub-element. These are suggestions only; but the applicant must remember that Project Narratives must not be more than twenty (20) pages in length.

REACH Plans with project narratives (excluding appendices) that exceed these limits will not be reviewed for funding. Project narratives should be on letter-sized pages in 12 c.p.i. type or equivalent on a single side. Applicants should prepare and assemble their project description using the following outline of required REACH Plan elements. They should, furthermore, build their project concept, plans, and project description upon the guidelines set forth for each of the elements.

Element I. Project Theory, Design, and Plan. (Total Weight of 0 to 50 points in application review.) OCS seeks to learn from the applicaion why and how the project as proposed is expected to lead to significant improvements in individual and family energy self-sufficiency.

Applicants are urged to design and present their project in terms of a conceptual cause-effect framework. In the following paragraphs a logic model, or framework, is described that suggests a way to present a project so as to show the logic of the cause-effect relations between project activities and project results. Applicants don't have to use the exact logic model language described; but it is important to present the project in a way that makes clear the cause-effect relationship between what the project plans to do and the results it expects to achieve.

Applicants under Priority Area 2.0 are not required to carry out REACH activities through community-based organizations (CBO Recipients), but may implement REACH Plans directly themselves. However, as explained in Part II B, Budget Periods, above, applicants electing to implement their REACH Projects directly will be limited to projects of one year duration (Project and Budget Periods of one year only). Applicants under Priority Area 2.0 may also elect to operate their projects through grants or contracts to nonprofit organizations. In such cases the nonprofit organization does not have to be a community based organization (CBO) as defined in Part I. If they choose to operate their projects through nonprofit organizations, the Project and Budget Periods applicable to Priority Area 1.0 will apply. Note also that applicants under Priority 2.0 need only include two of the REACH Program activities listed in Part III B. Section 4.(C) under Scope of the Priority Area 2.0 REACH Plan.

Sub-Element I(a). Description of Target Population, Analysis of Need, and Project Assumptions. (Weight of 0 to 20 points in application review.) This sub-element should be the same as under Priority Area 1.0 and it suggested that it take no more than 4 pages of the Project Narrative.

Sub-Element I(b). Project Strategy and Design Framework: Interventions, Outcomes, and Goals. (Weight of 0 to 20 points in application review.) This sub-element should be the same as under Priority Area 1.0 and it is suggested that it take no more than 4 pages of the Project Narrative.

Sub-Element I(c), Work Plan. (Weight of 0 to 10 points in the application review.) This sub-element should be the same as under Priority Area 1.0 and it is suggested that it take no more than 2 pages of the Project Narrative.

Element II. Organizational Experience and Capability. (Weight of 0 to 10 points in application review.) Applicants should cite their capability and relevant experience in developing and operating programs which deal with energy and poverty problems similar to those to be addressed by the proposed project. While the proposed project management team will be identified and described below in Element III, applicants should identify organization executive leadership in this section and briefly describe their involvement in the proposed project and provide assurance of their commitment to its successful implementation.

It is suggested that applicants use no more than 2 pages for this element.

Element III. Project Management and Organization. (Weight of 0 to 10 points in the application review.) While the experience of agency leadership is important to project success, the caliber of day-to-day project management is critical. Applicants should identify key staff, including the Project Director, who will be implementing the project, and any other staff they feel are especially important to the success of the project. Resumes should be included as an Appendix to the REACH Plan. Where the staff have not been identified, a position description should be included in the Appendix. REACH Plans will be assessed, for this element, on the relevant experience, capabilities, commitment and planned level of effort to the project of the Project Director and key staff members as described in the Plan.

It is suggested that applicants use no more than 2 pages for this element (plus the resumes and/or position descriptions which should be in an Appendix).

Element IV. Project Budget Appropriateness. (Weight of 0–10 points in the application review.) Applicants will be required to submit Federal forms with their REACH Plans to provide basic applicant and project information (SF–424) and information about how Federal and other project funds will be used (SF–424A). Where Priority Area 2.0 applicants elect to have REACH services provided through a nonprofit organization sub-recipient, an SF–424A must be completed for the applicant, and another SF–424A must be completed for the nonprofit organization sub-recipient. The sub-recipient SF–424A should include budget information for all three years of the project period, divided into three separate budget periods as explained in Part VII and the instructions accompanying the forms. In addition to and immediately following the completed Federal budget forms, applicants must submit a Budget Justification, or explanatory budget information for the first 12-month budget period. Again, where a Priority Area 2.0 applicant elects to implement the REACH project services through a nonprofit sub-recipient, a Budget Justification should be included for the sub-recipient, covering the full three year project budget. The Budget Justification is not considered a part of the Project Narrative, and does not count as part of the twenty page limit; but rather is included in the application following the budget forms.

The Budget Justification should briefly explain the adequacy of the Federal funds and other mobilized resources to accomplish project purposes, should explain the source and nature of any mobilized resources.

Applicants should include funds in the project budget for travel by the Project Director to attend an orientation workshop in Washington, D.C.

Note: None of the costs of providing service or benefits under the REACH Program shall be considered to be an administrative cost or function for purposes of any limitation on administrative costs or functions contained in the Low-Income Home Energy Assistance Act of 1981, as amended, 42 U.S.C. 8621 et seq.

Element V. Project Evaluation. (Weight of 0–10 points in the application review.) As noted in Part III above, REACH grantees under Priority Area 2.0 will not be required to carry out a third-party evaluation of their projects. However, their REACH Plans must describe the indicators they will use to measure whether the performance goals of their project have been achieved. It is suggested that applicant use no more than 1 page for this Element.

Element VI. Significant and Beneficial Impact. (Weight of 0–10 points in the application review.) This element should be the same as under Priority Area 1.0 and it is suggested that it take no more than 3 pages of the Application Narrative.

Part V—Quality Standards for Energy Efficiency Education Services Plans

The REACH authorizing legislation includes a section which describes a separate Energy Efficiency Education Services program which applicants may include in their REACH Initiative. Those applicants which include this program in their REACH Initiative must submit separate Energy Efficiency Education Services Plans; and if they meet the quality standards set forth below, and have the potential for being replicable model designs for other programs, are eligible for supplemental payments as outlined in Part II C. This Part sets out the Quality Standards for Energy Efficiency Education Services Plans.

Section 2607B(b)(2) of the REACH authorizing legislation provides for a reservation of funds by the Secretary to make additional payments to qualifying REACH applicants that have energy efficiency education services plans that meet quality standards established in consultation with the Secretary of Energy, and have the potential for being replicable model designs for other programs. This Part sets forth those standards. As explained in Part II above, those REACH applicants under Priority Area 1.0 that are selected to receive amount of $100,000, and REACH applicants under Priority Area 2.0 will receive an additional $25,000, for the same project and budget periods, if they have submitted, as an appendix to their REACH Plans, an Energy Efficiency Education (EEE) Services Plan that has the potential for being a replicable model design for other programs and meets the following quality standards:

A. Purpose

The Plan should state the purpose of the proposed EEE services, which should be generally consistent with and include the following goals: to assist low-income households, especially those with high energy burdens, to use energy efficiently, to reduce their home energy costs, to minimize health and safety risks within their homes, to increase their indoor comfort level, and to maintain their highest possible level of energy self-sufficiency.

B. Target Population

The Plan should identify a target population for the EEE services which includes LIHEAP recipients and at least some who have received services from the Weatherization Assistance Program, and others consistent with the stated purpose and goals of the program. The Plan should include assurances that the defined target population is one from whom data on energy usage and costs before and after receipt of the EEE services will be available, and should indicate how such data will be collected.

C. Needs Assessment and Project Design Process

The Plan should describe the needs assessment that the applicant has undertaken or will undertake among the target population, how the design of the EEE Services Program will respond to the needs identified (see Paragraph D, below), and how the EEE Program priorities have been or will be determined by the needs discovered.

D. Service Delivery

(1) Setting: the Plan should indicate the setting or settings—in-office instruction (e.g. at time of initial intake), workshops, or home visits—in which the EEE services will be delivered, and project the number of service units planned for each.

(2) Services: the Plan should identify the types of services to be delivered and how—whether by lecture, audio-visual media, written materials, hands on experience, or other educational technique—and if appropriate, which services are planned to be used in which of the identified settings.

E. Relation of Services to Changes, of Changes to Outcomes, and of Outcomes to Goals (a "Logic Model")

The Plan should briefly set forth each EEE service planned (*e.g.* a demonstration and discussion on air infiltration), the immediate changes expected to result from delivery of the service (*e.g.* a better understanding of the importance of stopping infiltration), the intermediate outcomes expected to result from the changes (*e.g.* action by the client to stop infiltration in their dwelling), and how these changes and outcomes will be expected to achieve a program goal (*e.g.* reduced energy consumption). This exact terminology need not be used in the Plan; but the cause and effect relationship between the EEE services planned and the achievement of program goals should be briefly explained. This part of the Plan should include provision for the development with EEE service recipients of an Action Plan through which the recipient will make a commitment to take actions based on the EEE information received; and it should also include a provision for reinforcement of the commitment through follow-up activities by the grantee or other "interventions".

F. Evaluation

The EEE Services Plan submitted by applicants under Priority Area 1.0 should provide for the inclusion of an Evaluation of the Energy Efficiency Education Services Program as a part of the Evaluation Plan Outline for the overall REACH Initiative. It should provide for Process and Outcome Evaluations, and should describe what data will be collected and how it will relate to the achievement of EEE program goals. The EEE portion of the evaluation plan outline should make specific provision for consumer evaluation of the EEE service program interventions; and should conclude with a commitment from the grantee to revise and improve its EEE program in response to the overall evaluation where appropriate.

For applicants under Priority Area 2.0, the EEE Services Plan should provide assurances that the applicant will: (1) provide for consumer evaluation of the EEE Services program, and (2) revise and improve its EEE program in response to such evaluation, where appropriate.

The EEE Services Plan, if included, should be an Appendix to the Applicant's REACH Plan, and should not exceed ten pages in length.

Part VI. Application Procedures

A. Availability of Forms

Attachments B through J contain all of the standard forms necessary for the application for awards under this OCS program. These attachments and Parts VI and VII of this Notice contain all the instructions required for submittal of applications.

Additional copies of this Notice may be obtained by writing or telephoning the office listed under the section entitled FOR FURTHER INFORMATION CONTACT at the beginning of this announcement. In addition, this Notice is accessible on the OCS Electronic Bulletin Board for downloading through your computer modem by calling 1–800–627–8886. For assistance in accessing the Bulletin Board, a Guide to Accessing and Downloading is available from Ms. Minnie Landry at (202) 401–5309.

B. Application Submission

1. Number of Copies Required. One signed original REACH Plan and four copies should be submitted. Applicants have the option to omit from copies to be made available to non-Federal reviewers the specific salary rates or amounts for individuals identified in the application budget. Rather, only summary information is required in these copies.

2. Acknowledgment of Receipt. All applicants will receive an acknowledgement with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their State Plan which can be attached to this acknowledgement. The assigned identification number, along with any other identifying codes, must be referenced in all subsequent communications concerning the State Plan. If an acknowledgement is not received within three weeks after the deadline date, please notify ACF by telephone at (202) 401–9365.

3. Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services, Division of Community Demonstration Programs, 370 L Enfant Promenade, S.W., Washington, D.C. 20447; Attention: Application for REACH Program. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., at DHHS, Administration for Children and Families, Office of Community Services, Division of Community Demonstration Programs, Mail Room, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024, between Monday and Friday (excluding Federal holidays). (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

4. Late applications: Applications which do not meet the criteria above are considered late applications. ACF will notify each late applicant that its application will not be considered in the current competition.

5. Extension of deadline: ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

C. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Public Law 104–13, as amended, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications under OMB Control Number 0970–0139.

D. Application Consideration

Applications which meet the screening requirements in Section E below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to the Legislative Authority, the Requirements outlined in Part III, and the Application Elements and Review Criteria set forth in Part IV of this Announcement.

The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will be considered in rank order of the averaged scores. However, highly ranked applications are not guaranteed funding since other factors are taken into consideration, including, but not limited to: the timely and proper completion of projects funded with OCS funds granted in the last (5) years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to determine the applicant's performance record.

E. Criteria for Screening Applications

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively:

1. Eligibility: The applicant must be an "eligible applicant" as defined in Part III–A, Section 1 or Part III–B, Section 1. Applicants must also be aware that the applicant's legal name as required on the SF–424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6).

2. The application must contain a Standard Form 424 "Application for Federal Assistance" (SF–424), signed by an official of the organization applying for the grant who has authority to obligate the organization legally; one budget form (SF–424A) covering the entire REACH Project, and one SF–424A for each CBO Recipient (or nonprofit sub-recipient in the case of Priority Area 2.0 applicants electing to delegate their REACH Projects) and signed "Assurances" (SF–424B) completed according to instructions published in Part VII and Attachment D to this Announcement.

3. A project narrative must also accompany the standard forms, and, for Priority Area 1.0, must be limited to no more than ten (10) pages for Narrative Segment One and twenty (20) pages for Narrative Segment Two; and for Priority Area 2.0, must be limited to no more than twenty (20) pages. Narratives must be typewritten on one side of the paper only, in type no smaller than 12 c.p.i., 11 point, or equivalent, with margins no less than one inch. Charts, exhibits, letters of support, cooperative agreements, resumes and position descriptions are not counted against this page limit and should be included in the appendices to the proposal. It is strongly recommended that applicants follow the format for the narrative discussed in Part IV, REACH Plan Elements and Review Criteria.

Part VII—Instructions for Completing Application Forms

The standard forms attached to this announcement shall be used to apply for funds under this program announcement.

It is suggested that you reproduce single-sided copies of the SF–424 and SF–424A, and type your application on the copies. Please prepare your application in accordance with instructions provided on the forms (Attachments B and C) as modified by the OCS specific instructions set forth below:

A. SF–424—Application for Federal Assistance

One SF–424 to be completed by applicant. Top of Page. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled Federal Identifier located at the top right hand corner of the form (third line from the top).

Item 1. For the purposes of this announcement, all projects are considered Applications; there are no Pre-Applications.

Item 7. Enter "A" in the box for State. If applicant is an Indian Tribe enter "K" in the box for Indian Tribe.

Item 9. Name of Federal Agency - Enter DHHS-ACF/OCS.

Item 10. The Catalog of Federal Domestic Assistance number for OCS programs covered under this announcement is 93.568. The title is "LIHEAP/REACH".

Item 11. Enter a brief descriptive title of the project.

Item 13. Proposed Project—The project start date must begin on or before September 30, 1996; the ending date should be calculated on the basis of a 12-month or 36-month Project Period, whichever is applicable.

Item 15a. This amount should be no greater than $1,500,000 for applications under Priority Area 1.0; no greater than $150,000 for applications under Priority Area 2.0.

Item 15b–e. These items should reflect both cash and third-party, in-kind contributions for the Project Period.

B. SF–424A—Budget Information - Non-Construction Programs

One SF–424A completed for applicant, covering entire REACH Project, and one SF–424A to be completed for each CBO Recipient (or nonprofit sub-recipient in the case of Priority Area 2.0 applicants electing to delegate their REACH Projects).

In completing these sections, the Federal Funds budget entries will relate to the requested OCS funds only, and Non-Federal will include mobilized funds from all other sources—applicant, state, local, and other. Federal funds other than requested OCS funding should be included in Non-Federal entries.

Sections A, B, and C of SF–424A should reflect budget estimates for each year of the Project Period.

Section A—Budget Summary. You need only fill in lines 1 and 5 (with the same amounts)

Col. (a): Enter "LIHEAP/REACH."

Col. (b): Catalog of Federal Domestic Assistance number is 93.568.

Col. (c) and (d): not relevant to this program.

Column (e)–(g): enter the appropriate amounts (column e should not be more than $1,500,000 for applications under Priority Area 1.0; or more than $150,000 for applications under Priority Area 2.0.

Section B—Budget Categories. (1) For applicants, a single SF–424A covering entire REACH Project: complete a one-year budget in accordance with the instructions provided, entering the amount of grant or contract to CBO Recipient(s) or nonprofit sub-recipient under the Object Class Category "Contractual".

(2) For CBO Recipients (or nonprofit sub-recipients in the case of Priority Area 2.0 applicants), an SF–424A to be completed for each, covering the full three year project as follows:

(Note that the following information supersedes the instructions provided with the Form in Attachment C.)

Columns (1)–(5): For each of the relevant Object Class Categories:

Column 1: Enter the OCS grant funds for the first year.

Column 2: Enter the OCS grant funds for the second year.

Column 3: Enter the OCS grant funds for the third year.

Column 4: Leave blank.

Column 5: Enter the total federal OCS grant funds for the three year budget by Class Categories, showing a total budget of not more than $1,500,000.

Note: With regard to Class Categories, only out-of-town travel should be entered under Category c. Travel. Local travel costs should be entered under Category h. Other. Costs of supplies should be included under Category e. "Supplies" is tangible personal property other than "equipment". "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for financial statement purposes, or (b) $5,000. (ref.: OMB Circular A–87) In other words, unless the level established under (a) is less than $5,000, equipment costing less than $5,000 should be included in Category e. Supplies.

Section C—Non Federal Resources should be completed in accordance with the instructions provided, remembering that "all non-OCS funds" fall in this category.

Sections D, E, and F may be left blank.

As previously noted in Part IV, a supporting Budget Justification must be submitted providing details of expenditures under each budget category, and justification of dollar amounts which relate the proposed expenditures to the work program and goals of the project.

C. SF–424B Assurances-Non-Construction

One SF–424B to be submitted by applicant. Applicants requesting financial assistance for a non-construction project must file the Standard Form 424B, "Assurances: Non-Construction Programs."

Applicants must sign and return the Standard Form 424B with their applications.

Applicants must provide a certification concerning Lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their applications. Applicants should note that the Lobbying Disclosure Act of 1995 has simplified the lobbying information required to be disclosed under 31 USC 1352 (The Byrd Amendment).

Applicants must make the appropriate certification on their compliance with the Drug-Free Workplace Act of 1988 and the Pro-Children Act of 1994 (Certification Regarding Smoke Free Environment). By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications.

Copies of the certifications and assurances are located at the end of this announcement.

Part VIII—Contents of Reach Plan

Application pages should be numbered sequentially throughout the application package, beginning with an Abstract of the Plan as page number one, and each REACH Plan must include all of the following, in the order listed below:

1. *An Abstract of the plan*—very brief, not to exceed 250 words, that would be suitable for use in an announcement that the application has been selected for a grant award; which identifies the type of project(s), the target population, the CBO Recipient(s) (in the case of Priority Area 1.0 applicants), and the nonprofit organization sub-recipient (in the case of Priority Area 2.0 applicants electing to delegate their REACH Project), and the major elements of the work plan(s).

2. *Table of Contents;*

3. *A completed Standard Form 424* which has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

[**Note:** The original SF–424 must bear the original signature of the authorizing representative of the applicant organization].

4. *A single Budget Information—Non-Construction Programs (SF–424A)* for the applicant, covering the entire REACH Project; and separate SF–424A forms for each CBO Recipient or nonprofit sub-recipient as appropriate;

5. *A narrative budget justification* for each object class category included under Section B, for each SF–424A;

6. *Filled out, signed and dated Assurances—Non-Construction Programs (SF–424B),* Attachment D;

7. *Restrictions on Lobbying—Certification for Contracts, Grants, Loans, and Cooperative Agreements:* fill out, sign and date form found at Attachment G;

8. *Disclosure of Lobbying Activities, SF–LLL:* Fill out, sign and date form found at Attachment H, if appropriate (omit Items 11–15 on the SF LLL and ignore references to continuation sheet SF–LLL–A)

9. *A project narrative,* limited to the number of pages specified below, which includes all of the required elements described in Part IV; [Specific information/data required under each

component is described in Part IV Application Elements and Review Criteria].

For Plans submitted under Priority Area 1.0, the total number of pages for Segment One of the Project Narrative(s) dealing with Element I, Project Theory, Design, and Plan, must not exceed 10 pages for each such narrative submitted for a specific local project; and Segment Two of the narrative dealing with Elements II through VII must not exceed 20 pages, excluding Appendices. The Project Narratives for Plans submitted under Priority Area 2.0 must not exceed 20 pages in length. Plans for supplemental EEE Services should not exceed 10 pages in length. (See Part V) Plans must be typewritten on one side of the paper only, in type no smaller than 12 c.p.i., 11 point, or equivalent, with margins no less than one inch. Pages should be numbered sequentially throughout the application package, excluding Appendices, beginning with the Abstract as Page #1.

10. *Appendices,* including Maintenance of Effort Certification (See Attachment J); Letter(s) of Agreement from designated CBO Recipients (or nonprofit sub-recipients, as appropriate) through which project will be implemented; resumes and/or position descriptions (see Program Element IV); Certification Regarding Lobbying, if appropriate; and any letters from cooperating or partnering agencies in target communities. Such letters are not part of the narrative and should be included in the Appendices. These letters are, therefore, not counted against the page limitations.

REACH Plans must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8½ × 11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included. The applications should be two-hole punched at the top center and fastened separately with a compressor slide paper fastener, or a binder clip. The submission of bound plans, or plans enclosed in binders is specifically discouraged.

Attachment M provides a checklist to applicants in preparing a complete application package.

Part IX—Post-Award Information and Reporting Requirements

A. Notification of Grant Award

Following approval of the REACH Plans selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, the total project period for which support is contemplated, and the total required grantee financial participation, if any.

B. Attendance at Workshops

Project coordinators, Project Directors at the local CBO Recipient(s), and chief evaluators (in the case of REACH Initiatives funded under Priority Area 1.0) and Project Directors (in the case of REACH Initiatives funded under Priority Area 2.0) are encouraged to attend a national REACH Orientation workshop in Washington, D.C. scheduled during the first six months of the Project Period. They are also encouraged to attend, as presenters, a workshop on utilization and dissemination to be held at the end of the project period. Project budgets should include funds for travel to and attendance at these workshops. (See Part IV, Element V, Budget Appropriateness)

C. Reporting Requirements

Grantees will be required to submit semi-annual program progress and financial reports (SF 269) throughout the project period, as well as a final program and financial report within 90 days of the termination of the project. For REACH Projects under Priority Area 1.0 an interim evaluation report, along with the written policies and procedures resulting from the process evaluation, will be due 30 days after the first eighteen months of the project period and a final evaluation report will be due 90 days after the expiration of the grant. These reports will be submitted in accordance with instructions to be provided by OCS, and will be the basis for the dissemination effort to be conducted by the Office of Community Services.

D. Audit Requirements

Grantees are subject to the audit requirements in Section 2605B(10) of the Low Income Home Energy Assistance Act of 1981, as amended, 42 U.S.C. 8621 et seq.

E. Prohibitions and Requirements With Regard to Lobbying

Section 1352 of Public Law 101–121, signed into law on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists; (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their subtier contractors or subgrantees will pay with profits or *nonappropriated* funds on or after December 22, 1989 and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance. See Attachments H and I for certification and disclosure forms to be submitted with the applications for this program.

F. Applicable Federal Regulations

Attachment L indicates the regulations which apply to all applicants/grantees under the REACH Program.

Dated: June 19, 1996.

Donald Sykes,

Director, Office of Community Services.

ATTACHMENT A—1996 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

Size of family unit	Povery guideline
1	$7,740
2	10,360
3	12,980
4	15,600
5	18,220
6	20,840
7	23,460
8	26,080

ATTACHMENT A—1996 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA—Continued

Size of family unit	Povery guideline

For family units with more than 8 members, add $2,226 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

1996 POVERTY GUIDELINES FOR ALASKA

Size of family unit	Povery guideline
1	$9,660
2	12,940
3	16,220
4	19,500
5	22,780
6	26,060
7	29,340
8	32,620

For family units with more than 8 members, add $3,280 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

1996 POVERTY GUIDELINES FOR HAWAII

Size of family unit	Povery guideline
1	$8,910
2	11,920
3	14,930
4	17,940
5	20,950
6	23,960
7	26,970
8	29,980

For family units with more than 8 members, add $3,010 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

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VOL 61 ISS 130 JL 5 1996 UMI

Attachment B

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐☐ • ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. for multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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Attachment C

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)

BILLING CODE 4184-01-C

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 - 19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B,C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple program where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increases or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contributions if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts of Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Attachment D—Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers,

or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C §§ 6101–6107), which prohibits discrimination on the basis of age;

(e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 1988; (e) assurances of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of authorized certifying official

Title

Applicant organization

Date submitted

BILLING CODE 4184–01–P

VOL 61 ISS 130 JL 5 1996 UMI

Attachment E

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government-wide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

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VOL 61 ISS 130 JL 5 1996 UMI

Attachment F—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

(c) are not presently indicated or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for-cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment G—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184-01-P

Attachment H

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	3. Report Type: ☐ a. initial filing ☐ b. material change For Material Change Only: year _____ quarter ____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ____, *if known*: Congressional District, *if known*:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known*:	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $	
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):	
(*attach Continuation Sheet(s) SF-LLL-A, if necessary*)		
11. Amount of Payment (*check all that apply*): $ _____ ☐ actual ☐ planned	13. Type of Payment (*check all that apply*): ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____	
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:		
(*attach Continuation Sheet(s) SF-LLL-A, if necessary*)		
15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
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VOL
61
ISS
130
JL
5
1996
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Attachment I—Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all subgrantees shall certify accordingly.

Attachment J—Certification Regarding Maintenance of Effort

The undersigned certifies that:

(1) activities funded under this program announcement are in addition to, and not in substitution for, activities previously carried on without Federal assistance.

(2) funds or other resources currently devoted to activities designed to meet the needs of the poor within a community, area, or State have not been reduced in order to provide the required matching contributions.

When legislation for a particular block grant permits the use of its funds as match, the applicant must show that it has received a real increase in its block grant allotment and must certify that other anti-poverty programs will not be scaled back to provide the match required for this project.

Organization

Authorized Signature

Title

Date

Attachment K—Low-Income Home Energy Assistance Act of 1981, Omnibus Budget Reconciliation Act of 1981

[Public Law 97–35, August 13, 1981, as amended (95 Stat. 357)]

* * * * *

Title XXVI—Low-Income Home Energy Assistance

Short Title

Sec. 2601

This title may be cited as the "Low-Income Home Energy Assistance Act of 1981"

Applications and Requirements

Sec. 2605

* * * * *

(b) As part of the annual application required by subsection (a), the chief executive officer of each State shall certify that the State agrees to—

* * * * *

(2) make payments under this title only with respect to—

(A) households in which 1 or more individuals are receiving—

(i) aid to families with dependent children under the State's plan approved under part A of title IV of the Social Security Act (other than such aid in the form of foster care in accordance with section 408 of such Act);

(ii) supplemental security income payments under title XVI of the Social Security Act;

(iii) food stamps under the Food Stamp Act of 1977; or

(iv) payments under section 415, 521, 541, or 542 of title 38, United States Code, or under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978; or

(B) households with incomes which do not exceed the greater of—

(i) an amount equal to 150 percent of the poverty level for such State; or

(ii) an amount equal to 60 percent of the State median income;

except that a State may not exclude a household from eligibility in a fiscal year solely on the basis of household income if such income is less than 110 percent of the poverty level for such State, but the State may give priority to those households with the highest home energy costs or needs in relation to household income;

(3) conduct outreach activities designed to assure that eligible households, especially households with elderly individuals or disabled individuals, or both, and households with high home energy burdens, are made aware of the assistance available under this title, and any similar energy-related assistance available under subtitle B of title VI (relating to community services block grant program) or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 before the date of the enactment of this Act;

(4) coordinate its activities under this title with similar and related programs administered by the Federal Government and such State, particularly low-income energy-related programs under subtitle B of title VI (relating to community services block grant program), under the supplemental security income program, under part A of title IV of the Social Security Act, under title XX of the Social Security Act, under the low-income weatherization assistance program under title IV of the Energy Conservation and Production Act, or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 before the date of the enactment of this Act;

(5) provide, in a timely manner, that the highest level of assistance will be furnished to those households which have the lowest incomes and the highest energy costs or needs in relation to income, taking into account family size, except that the State may not differentiate in implementing this section between the households described in clauses (2)(A) and (2)(B) of this subsection;

(6) if the State chooses to pay home energy suppliers directly, establish procedures to—

(A) notify each participating household of the amount of assistance paid on its behalf;

(B) assure that the home energy supplier will charge the eligible household, in the normal billing process, the difference between the actual cost of the home energy and the amount of the payment made by the State under this title;

(C) assure that the home energy supplier will provide assurances that any agreement entered into with a home energy supplier under this paragraph will contain provisions to assure that no household receiving assistance under this title will be treated adversely because of such assistance under applicable provisions of State law or public regulatory requirements; and

(D) ensure that the provision of vendored payments remains at the option of the State in consultation with local grantees and may be contingent on unregulated vendors taking appropriate measures to alleviate the energy burdens of eligible households, including providing for agreements between suppliers and individuals eligible for benefits under this Act that seek to reduce home energy crisis, and encourage regular payments by individuals receiving financial assistance for home energy costs;

(10) provide that such fiscal control and fund accounting procedures will be established as may be necessary to assure the proper disbursal of and accounting for Federal funds paid to the State under this title, including procedures for monitoring the assistance provided under this title, and provide that the State will comply with the provisions of chapter 75 of title 31, United States Code (commonly known as the "Single Audit Act");

(11) permit and cooperate with Federal investigations undertaken in accordance with section 2608;

(12) provide for timely and meaningful public participation in the development of the plan described in subsection (c);

(13) provide an opportunity for a fair administrative hearing to individuals whose claims for assistance under the plan described in subsection (c) are denied or are not acted upon with reasonable promptness;

(14) cooperate with the Secretary with respect to data collecting and reporting under section 2610;

* * * * *

(d) The State shall expend funds in accordance with the State plan under this title or in accordance with revisions applicable to such plan.

(e) Each State shall, in carrying out the requirements of subsection (b)(10), obtain financial and compliance audits of any funds which the State receives under this title. Such audits shall be made public within the State on a timely basis. The audits shall be conducted in accordance with chapter 75 of title 31, United States Code.

(f)(1) Notwithstanding any other provision of law unless enacted in express limitation of this paragraph, the amount of any home energy assistance payments or allowances provided directly to, or indirectly for the benefit of, an eligible household under this title shall not be considered income or resources of such household (or any member thereof) for any purpose under any Federal or State law, including any law relating to taxation, food stamps, public assistance, or welfare programs.

(2) For purposes of paragraph (1) of this subsection and for purposes of determining any excess shelter expense deduction under section (5)(e) of the Food Stamp Act of 1977 (7 U.S.C. 2014(e))—

(A) the full amount of such payments or allowances shall be deemed to be expended by such household for heating or cooling expenses, without regard to whether such payments or allowances are provided directly to, or indirectly for the benefit of, such household; and

(B) no distinction may be made among households on the basis of whether such payments or allowances are provided directly to, or indirectly for the benefit of, any of such households.

(g) The State shall repay to the United States amounts found not to have been expended in accordance with this title or the Secretary may offset such amounts against any other amount to which the State is or may become entitled under this title.

(h) The Comptroller General of the United States shall, from time to time (but not less frequently than every three years), evaluate the expenditures by States of grant under this title in order to assure that expenditures are consistent with the provisions of this title and to determine the effectiveness of the State in accomplishing the purposes of this title.

(i) A household which is described in subsection (b)(2)(A) solely by reason of clause (ii) thereof shall not be treated as a household described in subsection (b)(2) if the eligibility of the household is dependent upon—

(1) an individual whose annual supplemental security income benefit rate is reduced pursuant to section 1611(e)(1) of the Social Security Act by reason of being in an institution receiving payments under title XIX of the Social Security Act with respect to such individual;

(2) an individual to whom the reduction specified in section 1612(a)(2)(A)(1) of the Social Security Act applies; or

(3) a child described in section 1614(f)(2) of the Social Security Act who is living together with a parent, or the spouse of a parent, of the child.

(j) In verifying income eligibility for purposes of subsection (b)(2)(B), the State may apply procedures and policies consistent with procedures and policies used by the State agency administering programs under part A of title IV of the Social Security Act, under title XX of the Social Security Act, under subtitle B of title VI of this Act (relating to community services block grant program), under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 before the date of the enactment of this Act, or under other income assistance or service programs (as determined by the State).

Nondiscrimination Provisions

Sec. 2606

(a) No person shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973 also shall apply to any such program or activity.

(b) Whenever the Secretary determines that a State that has received a payment under this title has failed to comply with subsection (a) or an applicable regulation, he shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed 90 days, the chief executive officer fails or refuses to secure compliance, the Secretary is authorized to (1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, or section 504 of the Rehabilitation Act of 1973, as may be applicable; or (3) take such other action as may be provided by law.

(c) When a matter is referred to the Attorney General pursuant to subsection (b), or whenever he has reason to believe that the State is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

(42 U.S.C. 8625)

PART 96—BLOCK GRANTS

Subpart A—Introduction

Sec.
96.1 Scope.
96.2 Definitions.
96.3 Information collection approval numbers.

Subpart B—General Procedures

96.10 Prerequisites to obtain block grant funds.
96.11 Basis of award to the States.
96.12 Grant payment.
96.13 Reallotments.
96.14 Time period for obligation and expenditure of grant funds.
96.15 Waivers.
96.16 Applicability of Title XVII of the Reconciliation Act (31 U.S.C. 7301–7305).
96.17 Annual and biennial reporting deadlines.

Subpart C—Financial Management

96.30 Fiscal and administrative requirements.
96.31 Audits.
96.32 Financial settlement.
96.33 Referral of cases to the Inspector General.

Subpart D—Direct Funding of Indian Tribes and Tribal Organizations

96.40 Scope.
96.41 General determination.
96.42 General procedures and requirements.
96.43 Procedures during FY 1982.
96.44 Community services.
96.45 Preventive health and health services.
96.46 Alcohol and drug abuse and mental health services.
96.47 Primary care.
96.48 Low-income home energy assistance.

Subpart E—Enforcement

96.50 Complaints.
96.51 Hearings.
96.52 Appeals.

Subpart F—Hearing Procedure

96.60 Scope.
96.61 Initiation of hearing.
96.62 Presiding officer.
96.63 Communications to presiding officer.
96.64 Intervention.
96.65 Discovery.
96.66 Hearing procedure.
96.67 Right to counsel.

Subpart G—Social Services Block Grants

96.70 Scope.
96.71 Definitions.
96.72 Transferability of funds.
96.73 Sterilization.

Subpart H—Low Income Home Energy Assistance Program

96.80 Scope.
96.81 Reallotment report.
96.82 Required report.
96.83 Increase in maximum amount that may be used for weatherization and other energy related home repair.
96.84 Miscellaneous.
96.85 Exemption from requirement for additional outreach and intake services.
96.86 Exemption from requirement for additional outreach and intake services.
96.87 Leveraging incentive program.
96.88 Administrative costs.
96.89 Exemptions from standards for providing energy crisis intervention assistance.

Attachment M

In view of the numerous legislative requirements of the REACH Program as to elements and assurances in the REACH Plan, the following "REACH Plan Elements and Assurances Checklist" has been prepared as Attachment L, for the assistance of applicants under Priority Areas 1.0 and 2.0.

VOL
61
ISS
130
JL
5
1996
UMI

REACH Plan Elements and Assurances Checklist

A. Service delivery through community-based nonprofit entity. (For applicants under Priority Area 1.0 only.)

[Include in Plan Elements I, II, and IV]

B. Priority given to CSBG eligible entities that are successful LIHEAP service providers and receive Weatherization Assistance Program funds from the Department of Energy. (For applicants under Priority Area 1.0 only.)

[Include in Plan Element II and attach letter(s) of certification as described therein]

C. Each CBO Recipient to provide a variety of services, to include:

(i) payments to, or on behalf of, individuals eligible for residential energy assistance services and benefits under section 2605(b) for home energy costs;

(ii) energy efficiency education;

(iii) residential energy demand management services, including any other energy related residential repair and energy efficiency improvements in coordination with, or delivered by, Department of Energy weatherization assistance programs at the discretion of the State;

(iv) family services, such as counseling and needs assessment, related to energy budget management, payment plans, and related services; and

(v) negotiation with home energy suppliers on behalf of households eligible for REACH services and benefits;

[Include in Plan Element I, and for applicants under Priority Area 1.0, Element III also, as appropriate]

D. a description of the methodology the State and local agencies will use to determine—

(i) which households will receive one or more forms of benefits under the State REACH initiative;

(ii) the cases in which nonmonetary benefits are likely to provide more cost-effective long-term outcomes than payment benefits alone; and

(iii) the amount of such benefit required to meet the goals of the program;

[Include in Elements I(b), I(c), and for applicants under Priority Area 1.0, Elements III and VI also, as appropriate]

E. (F.) a method for targeting nonmonetary benefits;

[Include in Elements I(a), I(b), IV (under Priority Area 1.0), and III, (under Priority Area 2.0)]

G. a description of the crisis and emergency assistance activities the State will undertake are designed to—

(i) discourage family energy crises;

(ii) encourage responsible vendor and consumer behavior; and

(iii) provide only financial incentives that encourage household payment;

[Include in Element I and, under Priority Area 1.0, Element III also, as appropriate]

H. a description of the activities the State will undertake to—

(i) provide incentives for recipients of assistance to pay home energy costs; and

(ii) provide incentives for vendors to help reduce the energy burdens of recipients of assistance;

[Include as appropriate in Element I and, under Priority Area 1.0, Elements III and IV also, as appropriate]

I. an assurance that the State will require each entity that receives a grant or enters into a contract under this section to solicit and be responsive to the views of individuals who are financially eligible for benefits and services under this section in establishing its local program;

[Include in Elements I(a) and I(c)]

J. a description of performance goals for the State REACH initiative including—

(i) a reduction in the energy costs on participating households over one or more fiscal years;

(ii) an increase in the regularity of home energy bill payments by eligible households; and

(iii) an increase in energy vendor contributions towards reducing energy burdens of eligible households;

[Include in Element I(b) and, under Program Area 1.0, Element VI also]

K. a description of the indicators that will be used by the State to measure whether the performance goals have been achieved;

[Include in Element VI]

L. a demonstration that the plan is consistent with Section paragraphs (2), (3), (4), (5), (7), (10), (11), (12), (13), and (14) of section 2605(b) of the Low Income Home Energy Assistance Act of 1981, as amended; subsections (d), (e), (f), (g), (h), (i), and (j) of section 2605; and section 2606 of this title;

[See Attachment K for texts of these Sections and subsections; include as appropriate in Elements I, III, IV, and VII]

M. an assurance that benefits and services will be provided in addition to other benefit payments and services provided under this title and in coordination with such benefit payments and services;

[Include in Element I]

N. an assurance that no regulated utility covered by the plan will be required to act in a manner that is inconsistent with applicable regulatory requirements.

[Include in Element VII]

[FR Doc. 96–16538 Filed 7–2–96; 12:02 pm]
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federal register

Friday
July 5, 1996

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902
50 CFR Parts 246, et al.
International Fisheries; Consolidation of Regulations; Technical Amendment; OMB Control Numbers; Final Rule

VOL
61
ISS
130
JL
5
1996
UMI

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 246, 280, 281, 282, 298, 299, 679, 695, and Chapter III

[Docket No. 960419115–6178–02; I.D. 032196A]

RIN 0648–AI22

International Fisheries; Consolidation of Regulations; Technical Amendment; OMB Control Numbers

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is consolidating 10 CFR parts into one part that contains regulations governing international fisheries in the U.S. Exclusive Economic Zone (EEZ) and on the high seas. All but one of the consolidated parts implement an international agreement, convention, or treaty to which the United States is a party. The consolidated text is reorganized into a more logical and cohesive order, duplicative and outdated provisions are eliminated, and editorial changes are made for readability, clarity, and uniformity. Framework procedures are added for the specifications of annual management measures under two parts. In addition, an obsolete CFR part is removed. This final rule amends references to Paperwork Reduction Act (PRA) information-collection requirements to reflect the consolidation. This final rule also contains a technical amendment to 50 CFR part 679, Fisheries of the EEZ off Alaska, to bring cross references into conformance. The purpose of this final rule is to make the regulations more concise, better organized and, therefore, easier for the public to use. This action is part of the President's Regulatory Reinvention Initiative.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Gorrell, Team Leader, West Coast & Western Pacific Team, Office of Fisheries Conservation and Management, NMFS, 301–713–2343.

SUPPLEMENTARY INFORMATION: The Regulatory Reinvention Initiative is part of the National Performance Review calling for comprehensive regulatory reform with an emphasis on eliminating or modifying regulations that are obsolete, duplicative, or otherwise in need of reform.

Currently, regulations governing international fisheries, other than whaling and Atlantic highly migratory species, are contained in 11 separate parts of title 50 of the CFR. NMFS is removing nine of the parts (parts 246 (Marking of Containers or Packages), 280 (Pacific Tuna Fisheries), 282 (South Pacific Tuna Fisheries), 298 (United States-Canada Fisheries Enforcement Agreement), 299 (U.S. Nationals Fishing in the Russian Fisheries), 301 (Pacific Halibut Fisheries), 371 (Fraser River Sockeye and Pink Salmon Fisheries), 380 (Antarctic Marine Living Resources Convention Act of 1984), and 695 (Vessels of the United States Fishing in Columbian Treaty Waters)) to consolidate the regulations contained therein with the existing regulations in part 300 (High Seas Fisheries). NMFS also is eliminating part 281 (Restrictions on Tuna Imports) as no longer necessary. The consolidated regulations provide the public with a single reference source for the regulations applying to international fisheries. Consolidation results in one set of regulations that is more concise, clearer, and easier to use than the existing regulations found in 11 separate parts.

NMFS is also simplifying and shortening provisions of the new part 300, including the removal of duplicative, nonessential, and obsolete provisions. Five types of substantive revisions are made by this rule: (1) Subpart A—General includes a definitions section (§ 300.2) with general applicability throughout the part; (2) subpart A—General includes both a general prohibitions section (§ 300.4) and a facilitation of enforcement section (§ 300.5) containing provisions that are applicable to many situations; (3) subpart E—Pacific Halibut Fisheries greatly reduces the existing Pacific halibut regulations by eliminating from the code all but one (fishing by U.S. treaty Indian tribes (§ 300.64)) of the existing sections containing management measures and substituting a new International Pacific Halibut Commission (IPHC) annual management measures section (for publishing the IPHC regulations by single notice in the **Federal Register**) (§ 300.62) and a new catch sharing plan and domestic management section (for the Assistant Administrator and the appropriate Regional Fishery Management Council to develop plans to apportion catch limits adopted by the IPHC and implement domestic management measures by preliminary and final notices in the **Federal Register**) (§ 300.63); (4) subpart H—Antarctic Marine Living Resources would establish a framework procedure by which NMFS would publish annual management measures by single notice in the **Federal Register**, rather than by codified rules; and (5) part 281—Restrictions on Tuna Imports is eliminated because there have not been yellowfin quotas under the Convention for the Establishment of an Inter-American Tropical Tuna Commission for approximately 2 decades.

All management measures adopted by the IPHC and NMFS and currently in effect (50 CFR part 301 recodified as 50 CFR part 300 subpart E by this rule with 1996 revisions published at 61 FR 11337, March 20, 1996) will continue in effect until replaced by management measures in 1997 to be published in the **Federal Register** pursuant to §§ 300.62 and 300.63 of this rule. All management measures adopted by the Commission for the Conservation of Antarctic Marine Living Resources (Commission) and published on March 5, 1996 (61 FR 8483), as well as other Commission measures still in effect, will continue in effect until replaced in 1997 by management measures to be published in the **Federal Register** under the framework procedures at § 300.111.

NMFS published a proposed rule at 61 FR 25443 (May 21, 1996), requesting comments through June 14, 1996. No comments were received. Additional background and rationale for this rule appear in the proposed rule, with expanded discussion of substantive changes, especially the decodification of the IPHC's regulations and NMFS' catch sharing regulations as well as the establishment of broad framework procedures for future Antarctic regulatory changes. This final rule is the same as the proposed rule except for a technical amendment to 50 CFR part 679 and for the amendment of references to previously approved collections of information.

References to Other Rules

NMFS, in another rulemaking published June 24, 1996, at 61 FR 32538, consolidated general provisions of the Magnuson Fishery Conservation and Management Act into 50 CFR part 600. Because some of the general provisions to be consolidated into part 600 apply to several international fisheries regulations being consolidated in this rule, the regulatory text in this rule includes references to the consolidated part 600, rather than to existing codified text.

Changes From the Proposed Rule

(1) Technical Amendment to 50 CFR Part 679

This final rule contains a technical amendment to 50 CFR part 679. As part of the President's Regulatory Reform Initiative, NMFS issued a final rule (61 FR 31228, June 19, 1996) removing six parts in title 50 of the CFR (50 CFR parts 671, 672, 673, 675, 676, and 677) and consolidating the regulations contained therein into one new part (50 CFR part 679). No substantive changes were made to the regulations by the consolidation of the six parts. The new part 679 reference 50 CFR part 301 in several places. However, under this final rule, part 301 is removed and the regulations contained therein have been consolidated under subpart E of part 300. Therefore, references to part 301 in the new § 679.2(1) under the definition of "IFQ regulatory area" and the definition for "IPHC", § 679.3(c), § 679.4(d)(1) introductory text and (f)(1)(i), § 679.5(l) introductory text, § 679.7(a)(6)(i), (b)(3), (f)(4), and (f)(11)(i), § 679.21(b)(1), § 679.23(e)(4)(i) and (f), § 679.24 introductory paragraph, § 679.30(b)(1)(ii), and § 679.40 introductory paragraph, are revised to reference subpart E of part 300. Section 679.3, paragraph (a) references regulations governing U.S. nationals fishing in Russian fisheries as set forth in 50 CFR part 299. This final rule removes part 299 and consolidates the measures contained therein under subpart J of part 300. Therefore, § 679.3(a) is revised to reference part 300.

(2) References to Collections of Information

Section 3506(c)(B)(i) of the PRA requires that agencies inventory and display a current control assigned by the Director, Office of Management and Budget (OMB), for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. This final rule amends references to previously approved collections of information in the table in § 902.1(b).

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated, to the Assistant Administrator, the authority to sign material for publication in the **Federal Register**.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule would not have a significant economic impact on a substantial number of small entities. The reasons were published in the proposed rule (61 FR 25443, May 21, 1996). As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This rule contains collection-of-information requirements subject to the PRA that were previously approved by OMB under the following approval numbers:

a. *Approved under 0648–0304*—High seas fisheries, vessel permits (§ 300.13), estimated at .5 hours per response.

b. *Approved under 0648–0148*—Pacific tuna fisheries, yellowfin tuna recordkeeping and written reports (§ 300.22), estimated at .1 hours per response.

c. *Approved under 0648–0202*—Pacific bluefin tuna dealer permits (§ 300.24), estimated at .083 hours per response.

d. *Approved under 0648–0239*—Pacific bluefin tuna dealer recordkeeping and reporting (§ 300.25), estimated at .25 hours per response.

e. *Approved under 0648–0239*—Pacific tuna fisheries, Pacific bluefin tuna affixing of tags (§ 300.26(c)), estimated at .017 hours per response.

f. *Approved under 0648–0239*—Pacific tuna fisheries, Pacific bluefin tuna removal of tags (§ 300.26(d)), estimated at .017 hours per response.

g. *Approved under 0648–0218*—South Pacific tuna fisheries, vessel licenses (§ 300.32), estimated at .25 hours per response.

h. *Approved under 0648–0306*—South Pacific tuna fisheries, reporting requirements (§ 300.34), estimated at .25 hours per marking.

i. *Approved under 0648–0306*—South Pacific tuna fisheries, vessel and gear identification (§ 300.35), estimated at .25 hours per marking.

j. *Approved under 0648–0194*—Antarctic marine living resources, procedure for according protection to CCAMLR ecosystem monitoring program sites, general (§ 300.103(a)), estimated at 1 hour per response.

k. *Approved under 0648–0194*—Antarctic marine living resources, scientific research (§ 300.104(d)), estimated at 80 hours per response.

l. *Approved under 0648–0194*—Antarctic marine living resources, scientific research (§ 300.104(e)), estimated at .25 hours per response.

m. *Approved under 0648–0194*—Antarctic marine living resources, initiating a new fishery (§ 300.105(c)), estimated at 16 hours per response.

n. *Approved under 0648–0194*—Antarctic marine living resources, exploratory fishing (§ 300.106(e)), estimated at 40 hours per response.

o. *Approved under 0648–0306*—Antarctic marine living resources, vessel identification (§ 300.108(a)), estimated at .25 hours per marking.

p. *Approved under 0648–0305*—Antarctic marine living resources, gear identification (§ 300.108(c)), estimated at .25 hours per marking.

q. *Approved under 0648–0194*—Antarctic marine living resources, harvesting permits (§ 300.112), estimated at .5 hours per response.

r. *Approved under 0648–0194*—Antarctic marine living resources, import permits (§ 300.113), estimated at .5 hours per response.

s. *Approved under 0648–0205*—Vessels of the United States fishing in Colombian Treaty waters, certificates and permits (§ 300.123), estimated at .33 hours per response.

t. *Approved under 0648–0016*—Vessels of the United States fishing in Colombian Treaty waters, recordkeeping and reporting (§ 300.124(b)), estimated at .22 hours per response.

u. *Approved under 0648–0306*—Vessels of the United States fishing in Colombian Treaty waters, vessel identification (§ 300.125), estimated at .25 hours per marking.

v. *Approved under 0648–0228*—U.S. nationals fishing in Russian fisheries, permit procedures (§ 300.152), estimated at .5 hours per response.

w. *Approved under 0648–0228*—U.S. nationals fishing in Russian fisheries, permit issuance, copies (§ 300.153(b)), estimated at .167 hours per response.

x. *Approved under 0648–0228*—U.S. nationals fishing in Russian fisheries, recordkeeping and reporting, vessel permit abstract report (§ 300.154(b)), estimated at .5 hours per response.

y. *Approved under 0648–0228*—U.S. nationals fishing in Russian fisheries, recordkeeping and reporting, activity reports (§ 300.154(c)), estimated at .5 hours per response.

z. *Approved under 0648–0228*—U.S. nationals fishing in Russian fisheries, recordkeeping and reporting, recordkeeping (§ 300.154(d)), estimated at .083 hours per response.

The estimated response times shown include the time for reviewing

VOL 61 ISS 130 JL 5 1996 UMI

instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 246

Exports, Fish, Imports, Labeling, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Parts 280 and 282

Fisheries, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 281

Fisheries, Imports, Treaties.

50 CFR Part 298

Canada, Fisheries, Treaties.

50 CFR Part 299

Fisheries, Reporting and recordkeeping requirements, Russian Federation, Treaties.

50 CFR Part 300

Fisheries, High seas fishing, International agreements, Reporting and recordkeeping requirements, Permits.

50 CFR Parts 301 and 695

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 371

Canada, Fisheries, Fishing, Indians, Treaties.

50 CFR Part 380

Administrative practice and procedure, Antarctica, Fish, Imports, Marine resources, Reporting and recordkeeping requirements, Treaties, Wildlife.

50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: June 26, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapters II, III, and VI are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b), the table is amended by removing in the left column under 50 CFR, the entries "280.10", "280.50", "280.51", "280.53", "282.3", "282.5", "282.6", "299.3", "299.4", "299.5", "300.4", "380.4", "380.5", "380.6", "380.8", "380.20", "380.24", "380.28", "695.4", "695.5", and "696.6", and by removing in the right column the control numbers in corresponding positions; and by adding, in numerical order, the following entries to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
. . . . .	.
50 CFR	
. . . . .	.
300.13	–0304
300.22	–0148
300.24	–0202
300.25	–0239
300.26(c)	–0239
300.26(d)	–0239
300.32	–0218
300.34	–0306
300.35	–0306
300.103(a)	–0194
300.104(d)	–0194
300.104(e)	–0194
300.105(c)	–0194
300.106(e)	–0194
300.108(a)	–0306
300.108(c)	–0305
300.112	–0194
300.113	–0194
300.123	–0205
300.124(b)	–0016
300.125	–0306
300.152	–0228
300.153(b)	–0228
300.154(b)	–0228
300.154(c)	–0228
300.154(d)	–0228
. . . . .	.

50 CFR Chapter II

PARTS 246, 280, 281, 282, 298, and 299 [REMOVED]

3. Under the authority of 16 U.S.C. 3371–3378, 16 U.S.C. 951–961 and 971 *et seq.*, 16 U.S.C. 973–973r, and 16 U.S.C. 1801 *et seq.*, 50 CFR parts 246, 280, 281, 282, 298, and 299 are removed and subchapter L is vacated.

50 CFR Chapter III

4. Chapter III is revised to read as follows:

Chapter III—International Fishing and Related Activities

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart A—General

Sec.
300.1 Purpose and scope.
300.2 Definitions.
300.3 Relation to other laws.
300.4 General prohibitions.
300.5 Facilitation of enforcement.

Subpart B—High Seas Fisheries

300.10 Purpose.
300.11 Definitions.
300.12 Issuing offices.
300.13 Vessel permits.
300.14 Vessel and gear identification. [Reserved]
300.15 Prohibitions.
300.16 Penalties.
300.17 Reporting and recordkeeping. [Reserved]

Subpart C—Pacific Tuna Fisheries

300.20 Purpose and scope.
300.21 Definitions.
300.22 Yellowfin Tuna—Recordkeeping and written reports.
300.23 Yellowfin Tuna—Persons and vessels exempted.
300.24 Pacific Bluefin Tuna—Dealer permits.
300.25 Pacific Bluefin Tuna—Dealer recordkeeping and reporting.
300.26 Pacific Bluefin Tuna—Tags.
300.27 Pacific Bluefin Tuna—Documentation requirements.
300.28 Pacific Bluefin Tuna—Prohibitions.

Subpart D—South Pacific Tuna Fisheries

300.30 Purpose and scope.
300.31 Definitions.
300.32 Vessel licenses.
300.33 Compliance with applicable national laws.
300.34 Reporting requirements.
300.35 Vessel and gear identification.
300.36 Closed area stowage requirements.
300.37 Radio monitoring.
300.38 Prohibitions.
300.39 Exceptions.
300.40 Civil penalties.
300.41 Investigation notification.
300.42 Findings leading to removal from fishing area.

300.43 Observers.
300.44 Other inspections.

Subpart E—Pacific Halibut Fisheries

300.60 Purpose and scope.
300.61 Definitions.
300.62 Annual management measures.
300.63 Catch sharing plans and domestic management measures.
300.64 Fishing by U.S. treaty Indian tribes.
300.65 Prohibitions.

Subpart F—Fraser River Sockeye and Pink Salmon Fisheries

300.90 Purpose and scope.
300.91 Definitions.
300.92 Relation to other laws.
300.93 Reporting requirements.
300.94 Prohibitions and restrictions.
300.95 Treaty Indian fisheries.
300.96 Penalties.
300.97 Inseason orders.

Subpart G—Antarctic Marine Living Resources

300.100 Purpose and scope.
300.101 Definitions.
300.102 Relationship to other treaties, conventions, laws, and regulations.
300.103 Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites.
300.104 Scientific research.
300.105 Initiating a new fishery.
300.106 Exploratory fisheries.
300.107 Reporting and recordkeeping requirements.
300.108 Vessel and gear identification.
300.109 Gear disposal.
300.110 Mesh size.
300.111 Framework for annual management measures.
300.112 Harvesting permits.
300.113 Import permits.
300.114 Appointment of a designated representative.
300.115 Prohibitions.
300.116 Facilitation of enforcement and inspection.
300.117 Penalties.
Figure 1 to Subpart G—Boundaries of the Statistical Reporting Area in the Southern Ocean
Figure 2 to Subpart G—The Use of Streamer Lines to Minimize the Incidental Mortality of Seabirds in the Course of Longline Fishing or Longline Fishing Research Operations in the Convention Area

Subpart H—Vessels of the United States Fishing in Colombian Treaty Waters

300.120 Purpose.
300.121 Definitions.
300.122 Relation to other laws.
300.123 Certificates and permits.
300.124 Recordkeeping and reporting.
300.125 Vessel identification.
300.126 Prohibitions.
300.127 Facilitation of enforcement.
300.128 Penalties.
300.129 Fishing year.
300.130 Vessel and gear restrictions.
300.131 Conch harvest limitations.
300.132 Lobster harvest limitations.

Subpart I—United States-Canada Fisheries Enforcement

300.140 Purpose and scope.
300.141 Definitions.
300.142 Prohibitions.
300.143 Facilitation of enforcement.
300.144 Penalties and sanctions.

Subpart J—U.S. Nationals Fishing in Russian Fisheries

300.150 Purpose.
300.151 Definitions.
300.152 Procedures.
300.153 Permit issuance.
300.154 Recordkeeping and reporting.
300.155 Requirements.
300.156 Prohibited acts.
300.157 Penalties.

Subpart K—Transportation and Labeling of Fish or Wildlife

300.160 Requirement for marking of containers or packages.
300.161 Alternatives and exceptions.

Subpart A—General

Authority: 16 U.S.C. 773 *et seq.*; 16 U.S.C. 951–961 and 971 *et seq.*; 16 U.S.C. 973–973r; 16 U.S.C. 2431 *et seq.*; 16 U.S.C. 3371–3378; 16 U.S.C. 3636(b); 16 U.S.C. 5501 *et seq.*; and 16 U.S.C. 1801 *et seq.*

§ 300.1 Purpose and scope.

The purpose of this part is to implement the fishery conservation and management measures provided for in the international treaties, conventions, or agreements specified in each subpart, as well as certain provisions of the Lacey Act Amendments of 1981. The regulations in this part apply, except where otherwise specified in this part, to all persons and all places subject to the jurisdiction of the United States under the acts implemented under each subpart.

§ 300.2 Definitions.

In addition to the definitions in each act, agreement, convention, or treaty specified in subparts B through K of this part, the terms used in this part have the following meanings:

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, or a designee. Address: Room 14555, 1315 East-West Highway, Silver Spring, MD 20910.

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard; or any U.S. Coast Guard personnel accompanying and acting under the direction of a commissioned, warrant, or petty officer of the U.S. Coast Guard;

(2) Any special agent or fisheries enforcement officer of NMFS; or

(3) Any person designated by the head of any Federal or state agency that has entered into an agreement with the Secretary of Commerce or the Commandant of the U.S. Coast Guard to enforce the provisions of any statute administered by the Secretary.

CCAMLR inspector means a person designated by a member of the Commission for the Conservation of Antarctic Marine Living Resources as an inspector under Article XXIV of the Convention on the Conservation of Antarctic Marine Living Resources to verify compliance with measures in effect under the Convention.

Director, Alaska Region, means Director, Alaska Region, NMFS, 709 West Ninth Street, Suite 401, P.O. Box 21668, Juneau, AK 99802, or a designee.

Director, Northeast Region, means Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298, or a designee.

Director, Northwest Region, means Director, Northwest Region, NMFS, 7600 Sand Point Way, N.E., BIN C15700, Bldg. 1, Seattle, WA 98115, or a designee.

Director, Southeast Fisheries Science Center, means Director, Science and Research, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149; or a designee.

Director, Southeast Region, means Director, Southeast Region, NMFS, 9721 Executive Center Drive, N., St. Petersburg, FL 33702, or a designee.

Director, Southwest Region, means Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or a designee.

Exclusive Economic Zone or *EEZ* means the zone established by Presidential Proclamation 5030, dated March 10, 1983, as defined in 16 U.S.C. 1802(6).

Fishing or *to fish* means:

(1) The catching or taking of fish;

(2) The attempted catching or taking of fish;

(3) Any other activity that can reasonably be expected to result in the catching or taking of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1) through (3) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type normally used for fishing.

IATTC means the Inter-American Tropical Tuna Commission, established pursuant to the Convention for the Establishment of an Inter-American Tropical Tuna Commission.

Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place

VOL 61 ISS 130 JL 5 1996 UMI

subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction, constitutes an importation within the meaning of the customs laws of the United States.

IRCS means International Radio Call Sign.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq.

National of the United States or *U.S. national* means any person subject to the jurisdiction of the United States, including, but not limited to, a citizen or resident of the United States, or a person employed on a vessel of the United States. In the case of a corporation, partnership or other non-natural person, this includes, but is not limited to, any entity that is the owner of a vessel of the United States.

NMFS means the National Marine Fisheries Service, NOAA, Department of Commerce.

NMFS Headquarters means NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Attention: Office of Fisheries Conservation and Management.

Official number means the documentation number issued by the USCG or the certificate number issued by a state or the USCG for an undocumented vessel, or any equivalent number if the vessel is registered in a foreign nation.

Operator means, with respect to any vessel, the master or other individual aboard and in charge of that vessel.

Owner means, with respect to any vessel:

(1) Any person who owns that vessel in whole or part (whether or not the vessel is leased or chartered);

(2) Any charterer of the vessel, whether bareboat, time, or voyage;

(3) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(4) Any agent designated as such by a person described in this definition.

Person means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized, or existing under the laws of any state), and any Federal, state, local, or foreign government or any entity of any such government.

Secretary means the Secretary of Commerce or a designee.

USCG means the United States Coast Guard.

Yellowfin tuna means any fish of the species *Thunnus albacares* (synonomy: *Neothunnus macropterus*).

§ 300.3 Relation to other laws.

Other laws that may apply to fishing activities addressed herein are set forth in § 600.705 of chapter VI of this title.

§ 300.4 General prohibitions.

It is unlawful for any person subject to the jurisdiction of the United States to:

(a) Violate the conditions or restrictions of a permit issued under this part.

(b) Fail to submit information, fail to submit information in a timely manner, or submit false or inaccurate information, with respect to any information required to be submitted, reported, communicated, or recorded pursuant to this part.

(c) Make any false statement, oral or written, to an authorized officer concerning the catching, taking, harvesting, possession, landing, purchase, sale, or transfer of fish, or concerning any other matter subject to investigation by that officer under this part.

(d) Conceal any material fact (including by omission), concerning any matter subject to investigation by an authorized officer under this part.

(e) Refuse to allow an authorized officer to inspect any report or record required to be made or kept under this part.

(f) Falsify, cover, or otherwise obscure, the name, home port, official number (if any), or any other similar marking or identification of any fishing vessel subject to this part such that the vessel cannot be readily identified from an enforcement vessel or aircraft.

(g) Fail to comply immediately with any of the enforcement and boarding procedures specified in this part.

(h) Refuse to allow an authorized officer to board a fishing vessel, or enter any other area of custody (i.e., any vessel, building, vehicle, live car, pound, pier, or dock facility where fish might be found) subject to such person's control, for the purpose of conducting any inspection, search, seizure, investigation, or arrest in connection with the enforcement of this part or any other applicable law.

(i) Destroy, stave, or dispose of in any manner, any fish, gear, cargo, or other matter, upon any communication or signal from an authorized officer of the United States, or upon the approach of such an officer, enforcement vessel, or aircraft, before the officer has had the opportunity to inspect same, or in contravention of directions from such an officer.

(j) Intentionally destroy evidence that could be used to determine if a violation of this part has occurred.

(k) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere, in any manner, with an authorized officer in the conduct of any boarding, inspection, search, seizure, investigation, or arrest in connection with enforcement of this part.

(l) Resist a lawful arrest or detention for any act prohibited by this part.

(m) Interfere with, delay, or prevent, by any means, the apprehension, arrest, or detection of another person, knowing that such person has committed any act prohibited by this part.

(n) Interfere with, obstruct, delay, or prevent, by any means, an investigation, search, seizure, or disposition of seized property in connection with enforcement of this part.

(o) Ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any living marine resource taken or retained in violation of this part.

(p) Violate any provision of any statute implemented by this part.

(q) Attempt to do any of the foregoing.

§ 300.5 Facilitation of enforcement.

(a) *Compliance.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer or CCAMLR inspector to stop the vessel, and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing this part.

(b) *Communications.* (1) Upon being approached by a USCG vessel or aircraft, or other vessel or aircraft with an authorized officer or CCAMLR inspector aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) VHF–FM radiotelephone is the preferred method of communicating between vessels. If the size of the vessel and the wind, sea, and visibility conditions allow, a loudhailer may be used instead of the radio. Hand signals, placards, high frequency radiotelephone, voice, flags, whistle or horn may be employed by an authorized officer or CCAMLR inspector, and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. USCG units will normally use the flashing light signal "L" which, in the International Code of Signals, means "you should stop your vessel instantly."

(4) Failure of a vessel's operator promptly to stop the vessel when directed to do so by an authorized officer or CCAMLR inspector, or by an enforcement vessel or aircraft, using loudhailer, radiotelephone, flashing light, flags, whistle, horn or other means constitutes prima facie evidence of the offense of refusal to allow an authorized officer or CCAMLR inspector to board.

(5) A person aboard a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel immediately.

(c) *Boarding.* The operator of a vessel directed to stop must:

(1) Monitor Channel 16, VHF–FM, if so equipped.

(2) Stop immediately and lay to or, if appropriate and/or directed to do so by the authorized officer or CCAMLR inspector, maneuver in such a way as to allow the safe boarding of the vessel by the authorized officer or CCAMLR inspector and the boarding party.

(3) Except for those vessels with a freeboard of 4 ft (1.25 m) or less, provide a safe ladder, if needed, for the authorized officer or CCAMLR inspector and boarding party to come aboard.

(4) When necessary to facilitate the boarding or when requested by an authorized officer or CCAMLR inspector, provide a manfope or safety line, and illumination for the ladder.

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer or CCAMLR inspector and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.- .-) is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY–CY" (.-. -.-- -.-. -.--) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear that may be in the water.

(3) "SQ3" (... --.- ...--) means "you should stop or heave to; I am going to board you."

Subpart B—High Seas Fisheries

Authority: 16 U.S.C. 5501 *et seq.*

§ 300.10 Purpose.

This subpart implements the High Seas Fishing Compliance Act of 1995 (Act), which requires the Secretary to license U.S. vessels fishing on the high seas.

§ 300.11 Definitions.

In addition to the terms defined in section 300.2 and those in the Act and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the Conference of the Food and Agriculture Organization of the United Nations on November 24, 1993 (Agreement), the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Act, or the Agreement, the definition in this section shall apply.

High seas means the waters beyond the territorial sea or exclusive economic zone (or the equivalent) of any Nation, to the extent that such territorial sea or exclusive economic zone (or the equivalent) is recognized by the United States.

High seas fishing vessel means any vessel of the United States used or intended for use on the high seas for the purpose of the commercial exploitation of living marine resources as a harvesting vessel, mothership, or any other support vessel directly engaged in a fishing operation.

International conservation and management measures means measures to conserve or manage one or more species of living marine resources that are adopted and applied in accordance with the relevant rules of international law, as reflected in the 1982 United Nations Convention on the Law of the Sea, and that are recognized by the United States.

Regional Director means any one of the Directors of the five NMFS regional offices, defined under § 300.2, serving as the issuing office.

§ 300.12 Issuing offices.

Any Regional Director may issue permits required under this subpart. While applicants for permits may submit an application to any Regional Director, applicants are encouraged to submit their applications (with envelopes marked "Attn: HSFCA Permits") to the Regional Director with whom they normally interact on fisheries matters.

§ 300.13 Vessel permits.

(a) *Eligibility.* (1) Except for vessels having unpaid or overdue civil penalties, criminal fines, or other liabilities incurred in a judicial proceeding under any statute administered by NOAA, any high seas fishing vessel of the United States is eligible to receive a permit under this subpart, unless the vessel was previously authorized to be used for fishing on the high seas by a foreign nation, and—

(i) The foreign nation suspended such authorization, because the vessel undermined the effectiveness of international conservation and management measures, and the suspension has not expired; or

(ii) The foreign nation, within the 3 years preceding application for a permit under this section, withdrew such authorization, because the vessel undermined the effectiveness of international conservation and management measures.

(2) The restrictions in paragraphs (a)(1) (i) and (ii) of this section do not apply if ownership of the vessel has changed since the vessel undermined the effectiveness of international conservation and management measures, and the new owner has provided sufficient evidence to the Regional Director demonstrating that the owner and operator at the time the vessel undermined the effectiveness of such measures has no further legal, beneficial, or financial interest in, or control of, the vessel.

(3) The restrictions in paragraphs (a)(1) (i) and (ii) of this section do not apply if it is determined by the Regional Director that issuing a permit would not subvert the purposes of the Agreement.

(b) *Application forms.* The owner or operator of a high seas fishing vessel may apply for a permit under this subpart by completing an application form. Applicants may obtain an application form from a Regional Director.

(c) *Application information.* An applicant must submit a complete and accurate permit application, signed by the owner or operator, to the appropriate Regional Director.

(d) *Fees.* NMFS will charge a fee to recover the administrative expenses of permit issuance. The amount of the fee will be determined in accordance with the procedures of the NOAA Finance Handbook, available from a Regional Director, for determining administrative costs of each special product or service.

VOL
61
ISS
130
JUL
5
1996
UMI

The fee is specified with the application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded will invalidate any permit.

(e) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit, which will include appropriate conditions or restrictions, within 30 days of receipt of a completed application and payment of the appropriate fee.

(2) The Regional Director will notify the applicant of any deficiency in the application.

(f) *Validity.* Permits issued under this subpart are valid for 5 years from the date of issuance. Renewal of a permit prior to its expiration is the responsibility of the permit holder. For a permit to remain valid to its expiration date, the vessel's USCG documentation or state registration must be kept current. A permit issued under this subpart is void when the name of the owner or vessel changes, or in the event the vessel is no longer eligible for U.S. documentation, such documentation is revoked or denied, or the vessel is removed from such documentation.

(g) *Change in application information.* Any changes in vessel documentation status or other permit application information must be reported to the Regional Director in writing within 15 days of such changes.

(h) *Transfer.* A permit issued under this subpart is not transferable or assignable to another vessel or owner; it is valid only for the vessel and owner to which it is issued.

(i) *Display.* A valid permit, or a copy thereof, issued under this subpart must be on board the vessel while operating on the high seas and available for inspection by an authorized officer. Faxed copies of permits are acceptable.

§ 300.14 Vessel and gear identification. [Reserved]

§ 300.15 Prohibitions.

In addition to the prohibitions in section 300.4, it is unlawful for any person to:

(a) Use a high seas fishing vessel on the high seas in contravention of international conservation and management measures.

(b) Use a high seas fishing vessel on the high seas, unless the vessel has on board a valid permit issued under section 300.13.

§ 300.16 Penalties.

Any person or high seas fishing vessel found to be in violation of the Act, this subpart, or any permit issued under this subpart will be subject to the civil and criminal penalty provisions, permit sanctions, and forfeiture provisions prescribed in the Act, 15 CFR part 904 (Civil Procedures), and other applicable laws.

§ 300.17 Reporting and recordkeeping. [Reserved]

Subpart C—Pacific Tuna Fisheries

Authority: 16 U.S.C. 951–961 and 971 *et seq.*

§ 300.20 Purpose and scope.

The regulations in this subpart implement the Tuna Conventions Act of 1950 (Act), the Atlantic Tunas Convention Act of 1975, and the IATTC recommendations for the conservation of yellowfin tuna and the recommendations of the International Commission for the Conservation of Atlantic Tunas for the conservation of bluefin tuna, so far as they affect vessels and persons subject to the jurisdiction of the United States.

§ 300.21 Definitions.

In addition to the terms defined in § 300.2, in the Act, the Convention for the Establishment of an Inter-American Tropical Tuna Commission, and the International Convention for the Conservation of Atlantic Tunas, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Act, or the Conventions, the definition in this section shall apply.

Bluefin tuna means the fish species *Thunnus thynnus* that is found in any ocean area.

Fishing vessel means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type that is normally used for fishing or for assisting or supporting a vessel engaged in fishing, except purse seine skiffs.

Pacific bluefin tuna means the subspecies of bluefin tuna *Thunnus thynnus orientalis* that is found in the Pacific Ocean.

Regional Director means the Director, Southwest Region.

Tag means the flexible, self-locking ribbon issued by the NMFS for the identification of bluefin tuna under § 300.26 or 285.30 of chapter II of this title.

§ 300.22 Yellowfin tuna—Recordkeeping and written reports.

The master or other person in charge of a fishing vessel, or a person authorized in writing to serve as the agent for either person, must keep an accurate log of all operations conducted from the fishing vessel, entering for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the tonnage of fish on board, by species. The record and bridge log maintained at the request of the IATTC shall be sufficient to comply with this paragraph, provided the items of information specified are accurately entered in the log.

§ 300.23 Yellowfin tuna—Persons and vessels exempted.

This subpart does not apply to:

(a) Any person or vessel authorized by the IATTC, the Assistant Administrator, or any state of the United States to engage in fishing for research purposes.

(b) Any person or vessel engaged in sport fishing for personal use.

§ 300.24 Pacific bluefin tuna—Dealer permits.

(a) *General.* A dealer importing Pacific bluefin tuna, or purchasing or receiving for export Pacific bluefin tuna first landed in the United States, must have a valid permit issued under this section.

(b) *Application.* A dealer must apply for a permit in writing on an appropriate form obtained from the Regional Director. The application must be signed by the dealer and be submitted to the Regional Director at least 30 days before the date upon which the dealer desires to have the permit made effective. The application must contain the following information: Company name, principal place of business, owner's or owners' names, applicant's name (if different from owner or owners) and mailing address and telephone number, and any other information required by the Regional Director.

(c) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit within 30 days of receipt of a completed application.

(2) The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(d) *Duration.* Any permit issued under this section is valid until December 31 of the year for which it is issued, unless suspended or revoked.

(e) *Alteration.* Any permit that is substantially altered, erased, or mutilated is invalid.

(f) *Replacement.* The Regional Director may issue replacement permits. An application for a replacement permit is not considered a new application.

(g) *Transfer.* A permit issued under this section is not transferable or assignable; it is valid only for the dealer to whom it is issued.

(h) *Inspection.* The dealer must keep the permit issued under this section at his/her principal place of business. The permit must be displayed for inspection upon request of any authorized officer, or any employee of NMFS designated by the Regional Director for such purpose.

(i) *Sanctions.* The Assistant Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Fees.* The Regional Director may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Director, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(k) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the dealer issued a permit must report the change to the Regional Director in writing. The permit is void if any change in information is not reported within 15 days.

§ 300.25 Pacific bluefin tuna—Dealer recordkeeping and reporting.

Any person issued a dealer permit under § 300.24:

(a) Must submit to the Regional Director a biweekly report on bluefin imports and exports on forms supplied by NMFS.

(1) The report required by this paragraph (a) must be postmarked and mailed at the dealer's expense within 10 days after the end of each 2-week reporting period in which Pacific bluefin tuna were exported. The biweekly reporting periods are defined as the first day to the 14th day of each month and the 15th day to the last day of the month.

(2) Each report must specify accurately and completely for each tuna or each shipment of bulk-frozen tuna exported: Date of landing or import; any tag number (if so tagged); weight in kilograms (specify if round or dressed); and any other information required by the Regional Director. At the top of each form, the company's name, license number, and the name of the person filling out the report must be specified. In addition, the beginning and ending dates of the 2-week reporting period must be specified by the dealer and noted at the top of the form.

(b) Must allow an authorized officer, or any employee of NMFS designated by the Regional Director for this purpose, to inspect and copy any records of transfers, purchases, or receipts of Pacific bluefin tuna.

(c) Must retain at his/her principal place of business a copy of each biweekly report for a period of 2 years from the date on which it was submitted to the Regional Director.

§ 300.26 Pacific bluefin tuna—Tags.

(a) *Issuance.* The Regional Director will issue numbered tags to each person receiving a dealer's permit under § 300.24.

(b) *Transfer.* Tail tags issued under this section are not transferable and are usable only by the permitted dealer to whom they are issued.

(c) *Affixing tags.* At the discretion of dealers permitted under § 300.24, a tag issued under paragraph (a) of this section may be affixed to each Pacific bluefin tuna purchased or received by the dealer. If so tagged, the tag must be affixed to the tuna between the fifth dorsal finlet and the keel and tag numbers must be recorded on NMFS reports required by § 300.25(a) and any documents accompanying the shipment of Pacific bluefin tuna for domestic commercial use or export.

(d) *Removal.* A NMFS-issued tag affixed to any Pacific bluefin tuna at the option of any permitted dealer under paragraph (c) of this section or any tag affixed to any Pacific bluefin tuna to meet the requirements of § 285.202(a)(6)(v) of this chapter must remain on the tuna until the tuna is cut into portions. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the tag number must be written legibly and indelibly on the outside of any package or container.

(e) *Reuse.* Tags issued under this section are separately numbered and may be used only once, one tail tag per fish, to distinguish the purchase of one Pacific bluefin tuna. Once affixed to a tuna or recorded on any package, container or report, a tail tag and associated number may not be reused.

§ 300.27 Pacific bluefin tuna—Documentation requirements.

Bluefin tuna imported into, or exported or re-exported from the customs territory of the United States is subject to the documentation requirements specified in part 285 of this chapter (§§ 285.200–285.203).

§ 300.28 Pacific bluefin tuna—Prohibitions.

In addition to the prohibitions in § 300.4, it is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(a) Import Pacific bluefin tuna or purchase or receive for export Pacific bluefin tuna first landed in the United States without a valid dealer permit issued under § 300.24.

(b) Remove any NMFS-issued tag affixed to any Pacific bluefin tuna at the option of any permitted dealer or any tag affixed to a Pacific bluefin tuna to meet the requirements of § 285.202(a)(6)(v) of this chapter, before removal is allowed under § 300.26, or fail to write the tag number on the shipping package or container as specified in § 300.26.

(c) Reuse any NMFS-issued tag affixed to a Pacific bluefin tuna at the option of a permitted dealer or any tag affixed to a Pacific bluefin tuna to meet the requirements of § 285.202(a)(6)(v) of this chapter or reuse any tag number previously written on a shipping package or container as prescribed by § 300.26.

Subpart D—South Pacific Tuna Fisheries

Authority: 16 U.S.C. 973–973r.

§ 300.30 Purpose and scope.

This subpart implements the South Pacific Tuna Act of 1988 (Act) and the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (Treaty) and applies to persons and vessels subject to the jurisdiction of the United States.

§ 300.31 Definitions.

In addition to the terms defined in § 300.2, in the Act, and in the Treaty, and unless the context requires otherwise, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Act, or the Treaty, the definition in this section shall apply.

Administrator means the individual or organization designated by the Pacific Island Parties to act on their behalf

VOL
61
ISS
130
JL
5
1996
UMI

under the Treaty and notified to the United States.

Applicable national law means any provision of law of a Pacific Island Party that is described in paragraph 1(a) of Annex I of the Treaty.

Authorized inspector means any individual authorized by a Pacific Island Party or the Secretary to conduct inspections, to remove samples of fish, and to gather any other information relating to fisheries in the Licensing Area.

Authorized officer means any officer who is authorized by the Secretary, or the Secretary of Transportation, or the head of any Federal or state agency that has entered into an enforcement agreement with the Secretary under section 10(a) of the Act.

Authorized party officer means any officer authorized by a Pacific Island Party to enforce the provisions of the Treaty.

Closed area means any of the closed areas identified in Schedule 2 of Annex I of the Treaty.

Fishing means searching for, catching, taking, or harvesting fish; attempting to search for, catch, take, or harvest fish; engaging in any other activity that can reasonably be expected to result in the locating, catching, taking, or harvesting of fish; placing, searching for, or recovering fish aggregating devices or associated electronic equipment such as radio beacons; any operations at sea directly in support of, or in preparation for, any activity described in this paragraph; or aircraft use, relating to the activities described in this definition, except for flights in emergencies involving the health or safety of crew members or the safety of a vessel.

Fishing arrangement means an arrangement between a Pacific Island Party and the owner of a U.S. fishing vessel that complies with section 6(b) of the Act.

Fishing vessel or *vessel* means any boat, ship, or other craft that is used for, equipped to be used for, or of a type normally used for commercial fishing, and that is documented under the laws of the United States.

Licensing Area means all waters in the Treaty Area except for:

(1) Those waters subject to the jurisdiction of the United States in accordance with international law.

(2) Those waters within closed areas.

(3) Those waters within limited areas closed to fishing.

Licensing period means the period of validity of licenses issued in accordance with the Treaty.

Limited area(s) means those areas so identified in Schedule 3 of Annex I of the Treaty.

Operator means any person who is in charge of, directs or controls a vessel, including the owner, charterer and master.

Pacific Island Party means a Pacific island nation that is a party to the Treaty.

Regional Director means the Director, Southwest Region, or a designee.

Transship means to unload any or all of the fish on board a licensed vessel either ashore or onto another vessel.

Treaty Area means the area described in paragraph 1(k) of Article I of the Treaty.

§ 300.32 Vessel licenses.

(a) Each vessel fishing in the Licensing Area must have a license issued by the Administrator for the licensing period being fished, unless excepted by § 300.39. Each licensing period begins on June 15 and ends on June 14 of the following year.

(b) Upon receipt, the license or a duly certified copy, facsimile or telex confirmation must be carried on board the vessel when in the Licensing Area or Closed Areas and must be produced at the request of authorized officers, authorized party officers, or authorized inspectors. Prior to receipt of the license, but after issuance, a vessel may be used to fish, provided the number of the issued license is available on board.

(c) Application forms for licenses to use a vessel to fish in the Licensing Area may be requested from, and upon completion, must be returned to, the Regional Director. All of the information requested on the form and the following must be supplied before the application will be considered complete:

(1) The licensing period for which the license is requested.

(2) The name of an agent, located in Port Moresby, Papua New Guinea, who, on behalf of the license holder, will receive and respond to any legal process issued in accordance with the Treaty.

(3) Documentation from an insurance company showing that the vessel will be fully insured for the licensing period against all risks and liabilities normally covered by maritime liability insurance.

(4) If the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, reasonable assurances that the owner of charterer will be financially able to fulfill any and all responsibilities under the Treaty, Act, and regulations, including the payment of any penalties or fines.

(5) A copy of the vessel's USCG Certificate of Documentation.

(d) The number of available licenses are set forth in Schedule 2 of Annex II of the Treaty.

(e) Applications for vessels may be submitted at any time; complete applications will be forwarded to the Secretary of State for transmittal to the Administrator.

(f) The Secretary, in consultation with the Secretary of State, may determine that a license application for a vessel should not be forwarded to the Administrator if:

(1) The application is not in accord with the Treaty, Act, or regulations;

(2) The owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, and reasonable financial assurances have not been provided to the Secretary that the owner or charterer will be financially able to fulfill any and all responsibilities under the Treaty, Act, and regulations, including the payment of any penalties or fines;

(3) The owner or charterer has not established to the satisfaction of the Secretary that the vessel will be fully insured for the licensing period against all risks and liabilities normally covered by maritime liability insurance; or

(4) The owner or charterer has not paid any final penalty assessed by the Secretary in accordance with the Act.

(g) An applicant will be promptly notified if that applicant's license application will not be forwarded to the Administrator, and of the reasons therefor. Within 15 days of notification by the Regional Director that the application will not be forwarded, an applicant may request reconsideration by providing a petition for reconsideration accompanied by new or additional information.

§ 300.33 Compliance with applicable national laws.

The operator of the vessel shall comply with each of the applicable national laws, and the operator of the vessel shall be responsible for the compliance by the vessel and its crew with each of the applicable national laws, and the vessel shall be operated in accordance with those laws.

§ 300.34 Reporting requirements.

(a) License holders shall comply with the reporting requirements of parts 4 and 5 of Annex I to the Treaty.

(b) Information provided by license holders under Schedule 5 of Annex I of the Treaty shall be provided on the designated Forum Fisheries Agency form(s) to the Regional Director within 2 days of reaching port.

(c) Information provided by license holders under Schedule 6 of Annex I of the Treaty shall be provided on the designated Forum Fisheries Agency form(s) to the Regional Director within 2 days of completing unloading.

(d) Any information required to be recorded, or to be notified, communicated or reported pursuant to a requirement of these regulations, the Act, or the Treaty shall be true, complete and correct. Any change in circumstances that has the effect of rendering any of the information provided false, incomplete or misleading shall be communicated immediately to the Regional Director.

§ 300.35 Vessel and gear identification.

While a vessel is in the Licensing Area, a Limited Area closed to fishing, or a Closed Area, a recent and up-to-date copy of the International Code of Signals (INTERCO) shall be on board and accessible at all times. The operator shall comply with the 1989 Food and Agricultural Organization standard specifications for the marking and identification of fishing vessels. The international radio call sign of the vessel shall be painted in white on a black background, or in black on a white background, and be clear, distinct, and uncovered, in the following manner:

(a) On both sides of the vessel's hull or superstructure, with each letter and number being at least 1 m high and having a stroke width of 16.7 cm, with the background extending to provide a border around the mark of not less than 16.7 cm.

(b) On the vessel's deck, on the body of any helicopter and on the hull of any skiff, with each letter and number being at least 30 cm high, and having a stroke width of 5 cm with the background extending to provide a border around the mark of not less than 5 cm.

(c) On any other equipment being carried by and intended to be separated from the vessel during normal fishing operations, with each letter and number being at least 10 cm high and having a stroke width of 1.7 cm, with the background extending to provide a border around the mark of not less than 1.7 cm.

§ 300.36 Closed area stowage requirements.

At all times while a vessel is in a Closed Area, the fishing gear of the vessel shall be stowed in a manner as not to be readily available for fishing. In particular, the boom shall be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any shall be tied down; and launches shall be secured.

§ 300.37 Radio monitoring.

The international distress frequency, 2.182 mHz, and 156.8 mHz (Channel 16, VHF) shall be monitored continuously from the vessel for the purpose of facilitating communication with the fisheries management, surveillance and enforcement authorities of the Parties.

§ 300.38 Prohibitions.

(a) Except as provided for in § 300.39, in addition to the prohibitions in § 300.4, it is unlawful for any person subject to the jurisdiction of the United States to do any of the following:

(1) To violate the Act or any provision of any regulation or order issued pursuant to Act.

(2) To use a vessel for fishing in violation of an applicable national law.

(3) To violate the terms and conditions of any fishing arrangement to which that person is a party.

(4) To use a vessel for fishing in a Limited Area in violation of the requirements set forth in Schedule 3 of Annex I of the Treaty on "Limited Areas".

(5) To use a vessel for fishing in any Closed Area.

(6) To refuse to permit any authorized officer or authorized party officer to board a fishing vessel for purpose of conducting a search or inspection in connection with the enforcement of the Act or the Treaty.

(7) To refuse to comply with the instructions of an authorized officer or authorized party officer relating to fishing activities under the Treaty.

(8) To refuse to permit an authorized inspector full access to any place where fish taken in the Licensing Area is unloaded.

(9) To refuse to allow an authorized inspector to remove samples of fish from a vessel that fished in the Licensing Area.

(10) To forcibly assault, resist, oppose, impede, intimidate, or interfere with:

(i) Any authorized officer, authorized party officer or authorized inspector in the conduct of a search or inspection in connection with the enforcement of these regulations, the Act or the Treaty; or

(ii) An observer in the conduct of observer duties under the Treaty.

(11) To transship fish on board a vessel that fished in the Licensing Area, except in accordance with the conditions set out in parts 3 and 4 of Annex I to the Treaty.

(b) Except as provided for in § 300.39, it is unlawful for any person subject to the jurisdiction of the United States when in the Licensing Area:

(1) To use a vessel to fish unless validly licensed as required by the Administrator.

(2) To use a vessel for directed fishing for southern bluefin tuna or for fishing for any kinds of fish other than tunas, except that fish may be caught as a incidental bycatch.

(3) To use a vessel for fishing by any method, except the purse-seine method.

(4) To use any vessel to engage in fishing after the revocation of its license, or during the period of suspension of an applicable license.

(5) To operate a vessel in such a way as to disrupt or in any other way adversely affect the activities of traditional and locally based fishermen and fishing vessels.

(6) To use a vessel to fish in a manner inconsistent with an order issued by the Secretary under § 300.42 (section 11 of the Act).

(7) Except for circumstances involving force majeure and other emergencies involving the health or safety of crew members or the safety of the vessel, to use aircraft in association with fishing activities of a vessel, unless it is identified on the license application for the vessel, or any amendment thereto.

§ 300.39 Exceptions.

(a) The prohibitions of § 300.38 and the licensing requirements of § 300.32 do not apply to fishing for albacore tuna by vessels using the trolling method outside of the 200 nautical mile fisheries zones of the Pacific Island Parties.

(b) The prohibitions of § 300.38(a)(4), (a)(5), and (b)(3) do not apply to fishing under the terms and conditions of a fishing arrangement.

§ 300.40 Civil penalties.

The procedures of 15 CFR part 904 apply to the assessment of civil penalties, except as modified by the requirements of section 8 of the Act.

§ 300.41 Investigation notification.

Upon commencement of an investigation under section 10(b)(1) of the Act, the operator of any vessel concerned shall have 30 days after receipt of notification of the investigation and the operator's rights under section 10(b)(1) to submit comments, information, or evidence bearing on the investigation, and to request in writing that the Secretary provide the operator an opportunity to present the comments, information, or evidence orally to the Secretary or the Secretary's representative.

§ 300.42 Findings leading to removal from fishing area.

(a) Following an investigation conducted under section 10(b) of the Act, the Secretary, with the concurrence of the Secretary of State, and upon the request of the Pacific Island Party concerned, may order a fishing vessel

VOL 61 ISS 130 JL 5 1996 UMI

that has not submitted to the jurisdiction of that Pacific Island Party to leave immediately the Licensing Area, all Limited Areas, and all Closed Areas upon making a finding that:

(1) The fishing vessel—

(i) While fishing in the Licensing Area did not have a license under the Treaty to fish in the Licensing Area, and that under paragraph 2 of Article 3 of the Treaty, the fishing is not authorized to be conducted in the Licensing Area without a license;

(ii) Was involved in any incident in which an authorized officer, authorized party officer, or observer was allegedly assaulted with resultant bodily harm, physically threatened, forcibly resisted, refused boarding or subjected to physical intimidation or physical interference in the performance of duties as authorized by the Act or the Treaty;

(iii) Has not made full payment within 60 days of any amount due as a result of a final judgement or other final determination deriving from a violation in waters within the Treaty Area of a Pacific Island Party; or

(iv) Was not represented by an agent for service of process in accordance with the Treaty; or

(2) There is probable cause to believe that the fishing vessel—

(i) Was used in violation of section 5(a)(4), (a)(5), (b)(2), or (b)(3) of the Act;

(ii) Used an aircraft in violation of section 5(b)(7) of the Act; or

(iii) Was involved in an incident in which section 5(a)(7) of the Act was violated.

(b) Upon being advised by the Secretary of State that proper notification to Parties has been made under paragraph 7 of Article 5 of the Treaty that a Pacific Island Party is investigating an alleged infringement of the Treaty by a vessel in waters under the jurisdiction of that Pacific Island Party, the Secretary shall order the vessel to leave those waters until the Secretary of State notifies the Secretary that the order is no longer necessary.

(c) The Secretary shall rescind any order issued on the basis of a finding under paragraphs (a)(1) (iii) or (iv) of this section (subsections 11(a)(1) (C) or (D) of the Act) as soon as the Secretary determines that the facts underlying the finding do not apply.

(d) An order issued in accordance with this section is not subject to judicial review.

§ 300.43 Observers.

(a) The operator and each member of the crew of a vessel shall allow and assist any person identified as an observer under the Treaty by the Pacific Island Parties:

(1) To board the vessel for scientific, compliance, monitoring and other functions at the point and time notified by the Pacific Island Parties to the Secretary.

(2) Without interfering unduly with the lawful operation of the vessel, to have full access to and use of facilities and equipment on board the vessel that the observer may determine are necessary to carry out observer duties; have full access to the bridge, fish on board, and areas that may be used to hold, process, weigh and store fish; remove samples; have full access to vessel's records, including its log and documentation for the purpose of inspection and copying; have reasonable access to navigation equipment, charts, and radios, and gather any other information relating to fisheries in the Licensing Area.

(3) To disembark at the point and time notified by the Pacific Island Parties to the Secretary.

(4) To carry out observer duties safely.

(b) The operator shall provide the observer, while on board the vessel, at no expense to the Pacific Island Parties, with food, accommodation and medical facilities of reasonable standard as may be acceptable to the Pacific Island Party whose representative is serving as the observer.

§ 300.44 Other inspections.

The operator and each member of the crew of any vessel from which any fish taken in the Licensing Area is unloaded or transshipped shall allow, or arrange for, and assist any authorized inspector, authorized party officer, or authorized officer to have full access to any place where the fish is unloaded or transshipped, to remove samples, to have full access to the vessel's records, including its log and documentation for the purpose of inspection and photocopying, and to gather any other information relating to fisheries in the Licensing Area without interfering unduly with the lawful operation of the vessel.

Subpart E—Pacific Halibut Fisheries

Authority: 16 U.S.C. 773–773k.

§ 300.60 Purpose and scope.

This subpart implements the North Pacific Halibut Act of 1982 (Act) and is intended to supplement, not conflict with, the annual fishery management measures adopted by the International Pacific Halibut Commission (Commission) under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention).

§ 300.61 Definitions.

In addition to the terms defined in § 300.2 and those in the Act and the Convention, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Act, or the Convention, the definition in this section shall apply.

Area 2A includes all waters off the States of California, Oregon, and Washington.

Commercial fishing means fishing, the resulting catch of which either is, or is intended to be, sold or bartered.

Person includes an individual, corporation, firm, or association.

Subarea 2A–1 includes all U.S. waters off the coast of Washington that are north of 46°53′18″ N. lat. and east of 125°44′00″ W. long., and all inland marine waters of Washington.

Treaty Indian tribes means the Hoh, Jamestown S'Klallam, Lower Elwha S'Klallam, Lummi, Makah, Port Gamble S'Klallam, Quileute, Quinault, Skokomish, Suquamish, Swinomish, and Tulalip tribes.

§ 300.62 Annual management measures.

Annual management measures may be added and modified through adoption by the Commission and publication in the **Federal Register** by the Assistant Administrator, with immediate regulatory effect. Such measures may include, *inter alia*, provisions governing: Licensing of vessels, inseason actions, regulatory areas, fishing periods, closed periods, closed areas, catch limits (quotas), fishing period limits, size limits, careful release of halibut, vessel clearances, logs, receipt and possession of halibut, fishing gear, retention of tagged halibut, supervision of unloading and weighing, and sport fishing for halibut. The Assistant Administrator will publish the Commission's regulations setting forth annual management measures in the **Federal Register** by March 15 each year. Annual management measures may be adjusted inseason by the Commission.

§ 300.63 Catch sharing plans and domestic management measures.

Catch sharing plans (CSP) may be developed by the appropriate regional fishery management council, and approved by NMFS, for portions of the fishery. Any approved catch sharing plan may be obtained from the Director, Northwest Region, or the Director, Alaska Region.

(a) The catch sharing plan for area 2A provides a framework that shall be applied to the annual Area 2A total allowable catch (TAC) adopted by the Commission, and shall be implemented through domestic and Commission regulations, which will be published in the **Federal Register** each year before March 15. The Area 2A CSP allocates halibut among the treaty Indian fishery, segments of the non-Indian commercial fishery, and segments of the recreational fishery.

(1) Each year, before January 1, NMFS will publish a proposal to govern the recreational fishery under the CSP for the following year and will seek public comment. The comment period will extend until after the Commission's annual meeting, so the public will have the opportunity to consider the final area 2A total allowable catch (TAC) before submitting comments. After the Commission's annual meeting and review of public comments, NMFS will publish in the **Federal Register** the final rule governing sport fishing in area 2A. Annual management measures may be adjusted inseason by NMFS.

(2) A portion of the commercial TAC is allocated as incidental catch in the salmon troll fishery in Area 2A. Each year the landing restrictions necessary to keep the fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings, and will be published in the **Federal Register** along with the annual salmon management measures.

(3) The commercial longline fishery in area 2A is governed by the annual management measures published pursuant to §§ 300.62 and 300.63.

(4) The treaty Indian fishery is governed by § 300.64 and tribal regulations. The annual quota for the fishery will be announced with the Commission regulations under § 300.62

(b) The catch sharing plan for area 4 allocates the annual TAC among area 4 subareas, and will be implemented by the Commission in management measures published pursuant to § 300.62.

§ 300.64 Fishing by U.S. treaty Indian tribes.

(a) Halibut fishing in subarea 2A–1 by members of U.S. treaty Indian tribes located in the State of Washington is governed by this section.

(b) Commercial fishing for halibut by treaty Indians is permitted only in subarea 2A–1 with hook-and-line gear in conformance with the season and quota established annually by the Commission.

(c) Commercial fishing periods and management measures to implement paragraph (b) of this section will be established by treaty Indian tribal regulations.

(d) Commercial fishing for halibut by treaty Indians shall comply with the Commission's management measures governing size limits, careful release of halibut, logs, and fishing gear (published pursuant to § 300.62), except that the 72-hour fishing restriction preceding the opening of a halibut fishing period shall not apply to treaty Indian fishing.

(e) Ceremonial and subsistence fishing for halibut by treaty Indians in subarea 2A–1 is permitted with hook-and-line gear from January 1 to December 31.

(f) No size or bag limits shall apply to the ceremonial and subsistence fishery, except that when commercial halibut fishing is prohibited pursuant to paragraph (b) of this section, treaty Indians may take and retain not more than two halibut per person per day.

(g) Halibut taken for ceremonial and subsistence purposes shall not be offered for sale or sold.

(h) Any member of a U.S. treaty Indian tribe who is engaged in commercial or ceremonial and subsistence fishing under this section must have on his or her person a valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, and must comply with the treaty Indian vessel and gear identification requirements of Final Decision No. 1 and subsequent orders in *United States* v. *Washington* 384 F. Supp. 312 (W.D. Wash., 1974).

(i) The following table sets forth the fishing areas of each of the 12 treaty Indian tribes fishing pursuant to this section. Within subarea 2A–1, boundaries of a tribe's fishing area may be revised as ordered by a Federal Court.

Tribe	Boundaries
HOH	Between 47°54′18″ N. lat. (Quillayute River) and 47°21′00″ N. lat. (Quinault River), and east of 125°44′00″ W. long.
JAMESTOWN S'KLALLAM	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1486, to be places at which the Jamestown S'Klallam Tribe may fish under rights secured by treaties with the United States.
LOWER ELWHA S'KLALLAM.	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049 and 1066 and 626 F. Supp. 1443, to be places at which the Lower Elwha S'Klallam Tribe may fish under rights secured by treaties with the United States.
LUMMI	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 384 F. Supp. 360, as modified in Subproceeding No. 89–08 (W.D. Wash., February 13, 1990) (decision and order re: cross-motions for summary judgement), to be places at which the Lummi Tribe may fish under rights secured by treaties with the United States.
MAKAH	North of 48°02′15″ N. lat. (Norwegian Memorial), west of 123°42′30″ W. long., and east of 125°44′00″ W. long.
PORT GAMBLE S'KLALLAM.	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1442, to be places at which the Port Gamble S'Klallam Tribe may fish under rights secured by treaties with the United States.
QUILEUTE	Between 48°07′36″ N. lat. (Sand Point) and 47°31′42″ N. lat. (Quests River), and east of 125°44′00″ W. long.
QUINAULT	Between 47°40′06″ N. lat. (Destruction Island) and 46°53′18″ N. lat. (Point Chehalis), and east of 125°44′00″ W. long.
SKOKOMISH	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 384 F. Supp. 377, to be places at which the Skokomish Tribe may fish under rights secured by treaties with the United States.
SUQUAMISH	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049, to be places at which the Suquamish Tribe may fish under rights secured by treaties with the United States.

VOL 61 ISS 130 JL 5 1996 UMI

Tribe	Boundaries
SWINOMISH	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049, to be places at which the Swinomish Tribe may fish under rights secured by treaties with the United States.
TULALIP	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1531–1532, to be places at which the Tulalip Tribe may fish under rights secured by treaties with the United States.

§ 300.65 Prohibitions.

In addition to the prohibitions in § 300.4, the following prohibitions apply within this subpart. It is unlawful for any person to fish for halibut except in accordance with:

(a) The management measures published under § 300.62.

(b) The catch sharing plans and management measures implemented under § 300.63.

Subpart F—Fraser River Sockeye and Pink Salmon Fisheries

Authority: Pacific Salmon Treaty Act, 16 U.S.C. 3636(b).

§ 300.90 Purpose and scope.

This subpart implements the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3631–3644) (Act) and is intended to supplement, not conflict with, the fishery regimes and Fraser River Panel regulations adopted under the Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon, signed at Ottawa, January 28, 1985 (Treaty).

§ 300.91 Definitions.

In addition to the terms defined in § 300.2 and those in the Act and the Treaty, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Act, or the Treaty, the definition in this section shall apply.

All-citizen means any person who is not a treaty Indian fishing in that treaty Indian's tribal treaty fishing places pursuant to treaty Indian tribal fishing regulations (whether in compliance with such regulations or not).

Authorized officer means, in addition to those individuals identified under *authorized officer* at § 300.2, any state, Federal, or other officer as may be authorized by the Secretary in writing, including any treaty Indian tribal enforcement officer authorized to enforce tribal fishing regulations.

Commission means the Pacific Salmon Commission established by the Pacific Salmon Treaty.

Consistent regulation or consistent order means any Federal, state, or treaty Indian tribal regulation or order that is in addition to and not in conflict with (at least as restrictive as) any regime of the Commission, Fraser River Panel regulation, inseason order of the Secretary, or these regulations.

Fishing gear—

(1) *Gill net* means a fishing net of single web construction, not anchored, tied, staked, placed, or weighted in such a manner that it cannot drift.

(2) *Purse seine* means all types of fishing gear consisting of a lead line, cork line, auxiliary lines, purse line and purse rings and of mesh net webbing fashioned in such a manner that it is used to encircle fish, and in addition prevent their escape under the bottom or lead line of the net by drawing in the bottom of the net by means of the purse line so that it forms a closed bag.

(3) *Reef net* means a non-self-fishing open bunt square or rectangular section of mesh netting suspended between two anchored boats fashioned in such a manner that to impound salmon passing over the net, the net must be raised to the surface.

(4) *Troll fishing gear* means one or more lines that drag hooks with bait or lures behind a moving fishing vessel.

(5) *Treaty Indian fishing gear* means fishing gear defined authorized, and identified under treaty Indian tribal laws and regulations in accordance with the requirements of Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974).

Fraser River Panel means the Fraser River Panel established by the Pacific Salmon Treaty.

Fraser River Panel Area (U.S.) means the United States' portion of the Fraser River Panel Area specified in Annex II of the Treaty as follows:

(1) The territorial water and the high seas westward from the western coast of Canada and the United States of America and from a direct line drawn from Bonilla Point, Vancouver Island, to the lighthouse of Tatoosh Island, Washington—which line marks the entrance of Juan de Fuca Strait—and embraced between 48° and 49° N. lat., excepting therefrom, however, all the waters of Barkley Sound, eastward of a straight line drawn from Amphitrite Point to Cape Beale and all the waters of Nitinat Lake and the entrance thereto.

(2) The waters included within the following boundaries: Beginning at Bonilla Point, Vancouver Island, thence along the aforesaid direct line drawn from Bonilla Point to Tatoosh Lighthouse, Washington, described in paragraph (1) of this definition, thence to the nearest point of Cape Flattery, thence following the southerly shore of Juan de Fuca Strait to Point Wilson, on Whidbey Island, thence following the western shore of the said Whidbey Island, to the entrance to Deception Pass, thence across said entrance to the southern side of Reservation Bay, on Fidalgo Island, thence following the western and northern shore line of the said Fidalgo Island to Swinomish Slough, crossing the said Swinomish Slough, in line with the track of the Great Northern Railway (Burlington Northern Railroad), thence northerly following the shoreline of the mainland to Atkinson Point at the northerly entrance to Burrard Inlet, British Columbia, thence in a straight line to the southern end of Bowen Island, then westerly following the southern shore of Bowen Island to Cape Roger Curtis, thence in a straight line to Gower Point, thence westerly following the shoreline to Welcome Point on Sechelt Peninsula, thence in a straight line to Point Young on Lasqueti Island, thence in a straight line to Dorcas Point on Vancouver Island, thence following the eastern and southern shores of the said Vancouver Island, to the starting point at Bonilla Point, as shown on the British Admiralty Chart Number 579, and on the U.S. Coast and Geodetic Survey Chart Number 6300, as corrected to March 14, 1930, copies of which are annexed to the 1930 Convention between Canada and the United States of America for Protection, Preservation, and Extension of the Sockeye Salmon Fishery in the Fraser River System as amended, signed May 26, 1930. [Note: U.S. Coast and Geodetic Survey Chart Number 6300 has been replaced and updated by NOAA Chart Number 18400.]

(3) The Fraser River and the streams and lakes tributary thereto.

(4) The Fraser River Panel Area (U.S.) includes Puget Sound Management and Catch Reporting Areas 4B, 5, 6, 6A, 6B, 6C, 6D, 7, 7A, 7B, 7C, 7D, and 7E as defined in the Washington State Administrative Code at Chapter 220–22 as of June 27, 1986.

Fraser River Panel regulations means regulations applicable to the Fraser River Panel Area that are recommended by the Commission (on the basis of proposals made by the Fraser River Panel) and approved by the Secretary of State.

Mesh size means the distance between the inside of one knot to the outside of the opposite (vertical) knot in one mesh of a net.

Pink salmon means *Oncorhynchus gorbuscha.*

Sockeye salmon means the anadromous form of *Oncorhynchus nerka.*

Treaty fishing places (of an Indian tribe) means locations within the Fraser River Panel Area (U.S.) as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), to be places at which that treaty Indian tribe may take fish under rights secured by treaty with the United States.

Treaty Indian means any member of a treaty Indian tribe whose treaty fishing place is in the Fraser River Panel Area (U.S.) or any assistant to a treaty Indian authorized to assist in accordance with § 300.95(d).

Treaty Indian tribe means any of the federally recognized Indian tribes of the State of Washington having fishing rights secured by treaty with the United States to fish for salmon stocks subject to the Pacific Salmon Treaty in treaty fishing places within the Fraser River Panel Area (U.S.). Currently these tribes are the Makah, Tribe, Lower Elwha Klallam Tribe, Port Gamble Klallam Tribe, Jamestown Klallam Tribe, Suquamish Tribe, Lummi Tribe, Nooksack Tribe, the Swinomish Indian Tribal Community, and the Tulalip Tribe.

§ 300.92 Relation to other laws.

(a) Insofar as they are consistent with this part, any other applicable Federal law or regulation, or any applicable law and regulations of the State of Washington or of a treaty Indian tribe with treaty fishing rights in the Fraser River Panel Area (U.S.) will continue to have force and effect in the Fraser River Panel Area (U.S.) with respect to fishing activities addressed herein.

(b) Any person fishing subject to this subpart is bound by the international boundaries now recognized by the United States within the Fraser River Panel Area (U.S.) described in § 300.91, notwithstanding any dispute or negotiation between the United States and Canada regarding their respective jurisdictions, until such time as different boundaries are published by the United States.

(c) Any person fishing in the Fraser River Panel Area (U.S.) who also fishes for groundfish in the EEZ should consult Federal regulations at part 663 of this title for applicable requirements, including the requirement that vessels engaged in commercial fishing for groundfish (except commercial passenger vessels) have vessel identification in accordance with § 663.6. Federal regulations governing salmon fishing in the EEZ, which includes a portion of the Fraser River Panel Area (U.S.), are at part 661 of this title. Annual regulatory modifications are published in the **Federal Register**.

(d) Except as otherwise provided in this subpart, general provisions governing off-reservation fishing by treaty Indians are found at 25 CFR part 249, subpart A. Additional general and specific provisions governing treaty Indian fisheries are found in regulations and laws promulgated by each treaty Indian tribe for fishermen fishing pursuant to tribal authorization.

(e) Nothing in this subpart relieves a person from any other applicable requirements lawfully imposed by the United States, the State of Washington, or a treaty Indian tribe.

§ 300.93 Reporting requirements.

Any person fishing for sockeye or pink salmon within the Fraser River Panel Area (U.S.) and any person receiving or purchasing fish caught by such persons are subject to State of Washington reporting requirements at Washington Administrative Code, Chapter 220–69. Treaty Indian fishermen are subject also to tribal reporting requirements. No separate Federal reports are required.

§ 300.94 Prohibitions and restrictions.

In addition to the prohibitions in § 300.4, the following prohibitions and restrictions apply.

(a) In addition to the prohibited acts set forth in the Act at 16 U.S.C. 3637(a), the following restrictions apply to sockeye and pink salmon fishing in the Fraser River Panel Area (U.S.):

(1) The Fraser River Panel Area (U.S.) is closed to sockeye and pink salmon fishing, unless opened by Fraser River Panel regulations or by inseason orders of the Secretary issued under § 300.97 that give effect to orders of the Fraser River Panel, unless such orders are determined not to be consistent with domestic legal obligations. Such regulations and inseason orders may be further implemented by regulations promulgated by the United States, the State of Washington, or any treaty Indian tribe, which are also consistent with domestic legal obligations.

(2) It is unlawful for any person or fishing vessel subject to the jurisdiction of the United States to fish for, or take and retain, any sockeye or pink salmon:

(i) Except during times or in areas that are opened by Fraser River Panel regulations or by inseason order, except that this provision will not prohibit the direct transport of legally caught sockeye or pink salmon to offloading areas.

(ii) By means of gear or methods not authorized by Fraser River Panel regulations, inseason orders, or other applicable Federal, state, or treaty Indian tribal law.

(iii) In violation of any applicable area, season, species, zone, gear, or mesh size restriction.

(b) It is unlawful for any person or fishing vessel subject to the jurisdiction of the United States to—

(1) Remove the head of any sockeye or pink salmon caught in the Fraser River Panel Area (U.S.), or possess a salmon with the head removed, if that salmon has been marked by removal of the adipose fin to indicate that a coded wire tag has been implanted in the head of the fish.

(2) Fail to permit an authorized officer to inspect a record or report required by the State of Washington or treaty Indian tribal authority.

(c) Notwithstanding paragraph (a) of this section, nothing in this subpart will be construed to prohibit the retention of sockeye or pink salmon caught by any person while lawfully engaged in a fishery for subsistence or ceremonial purposes pursuant to treaty Indian tribal regulations, for recreational purposes pursuant to recreational fishing regulations promulgated by the State of Washington, or as otherwise authorized by treaty Indian tribal or State of Washington law or regulation, provided that such treaty Indian tribal or State regulation is consistent with U.S.-approved Commission fishery regimes, Fraser River Panel regulations, or inseason orders of the Secretary applicable to fishing in the Fraser River Panel Area (U.S.).

(d) The following types of fishing gear are authorized, subject to the restrictions set forth in this subpart and according to the times and areas

VOL
61
ISS
130
5
1996
JL
UMI

established by Fraser River Panel regulations or inseason orders of the Secretary:

(1) All citizens: Gill net, purse seine, reef net, and troll fishing gear. Specific restrictions on all citizens gear are contained in the Washington State Administrative Code of Chapter 220–47.

(2) Treaty Indians: Treaty Indian fishing gear.

(e) Geographic descriptions of Puget Sound Salmon Management and Catch Reporting Areas, which are referenced in the Commission's regimes, Fraser River Panel regulations, and in inseason orders of the Secretary, are found in the Washington State Administrative Code at Chapter 220–22.

§ 300.95 Treaty Indian fisheries.

(a) Any treaty Indian must comply with this section when fishing for sockeye and pink salmon at the treaty Indian tribe's treaty fishing places in the Fraser River Panel Area (U.S.) during the time the Commission or the Secretary exercises jurisdiction over these fisheries. Fishing by a treaty Indian outside the applicable Indian tribe's treaty fishing places will be subject to the Fraser River Panel regulations and inseason orders applicable to all citizens, as well as to the restrictions set forth in this section.

(b) Nothing in this section will relieve a treaty Indian from any applicable law or regulation imposed by a treaty Indian tribe, or from requirements lawfully imposed by the United States or the State of Washington in accordance with the requirements of Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974).

(c) *Identification.* (1) Any treaty Indian fishing under the authority of this subpart must have in his or her possession at all times while fishing or engaged in any activity related to fishing the treaty Indian identification required by 25 CFR 249.3 or by applicable tribal law.

(2) Any person assisting a treaty Indian under the authority of paragraph (d) of this section must have in his or her possession at all such times a valid identification card issued by the Bureau of Indian Affairs or by a treaty Indian tribe, identifying the holder as a person qualified to assist a treaty Indian. The identification card must include the name of the issuing tribe, the name, address, date of birth, and photograph of the assistant, and the name and identification number of the treaty Indian whom the assistant is authorized to assist.

(3) Identification described in paragraph (c) (1) or (2) of this section must be shown on demand to an authorized officer by the treaty Indian or authorized assistant.

(4) Any treaty Indian fishing under this subpart must comply with the treaty Indian vessel and gear identification requirements of Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974).

(d) *Fishing assistance.* (1) Any member of a treaty Indian tribe fishing under this subpart may, if authorized by the treaty Indian's tribe, receive fishing assistance from, and only from, the treaty Indian tribal member's spouse, forebears, children, grandchildren, and siblings, as authorized by the U.S. District Court for the Western District of Washington in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974). For purposes of this section, the treaty Indian tribal member whom the assistant is authorized to assist must be present aboard the fishing vessel at all times while engaged in the exercise of treaty Indian fishing rights subject to this subpart.

(2) No treaty Indian may, while fishing at a treaty fishing place in accordance with treaty-secured fishing rights, permit any person 16 years of age or older other than the authorized holder of a currently valid identification card issued in accordance with the requirements of paragraphs (c) (1) and (2) of this section to fish for said treaty Indian, assist said treaty Indian in fishing, or use any gear or fishing location identified as said treaty Indian's gear or location.

(3) Treaty Indians are prohibited from participating in a treaty Indian fishery under this section at any time persons who are not treaty Indians are aboard the fishing vessel or in contact with fishing gear operated from the fishing vessel, unless such persons are authorized employees or officers of a treaty Indian tribe or tribal fisheries management organization, the Northwest Indian Fisheries Commission, the Commission, or a fisheries management agency of the United States or the State of Washington.

§ 300.96 Penalties.

Any treaty Indian who commits any act that is unlawful under this subpart normally will be referred to the applicable tribe for prosecution and punishment. If such tribe fails to prosecute such persons in a diligent manner for the offense(s) referred to the tribe, or if other good cause exists, such treaty Indian may be subject to the penalties and procedures described in the Magnuson Act.

§ 300.97 Inseason orders.

(a) During the fishing season, the Secretary may issue orders that establish fishing times and areas consistent with the annual Commission regime and inseason orders of the Fraser River Panel. Inseason orders will be consistent with domestic legal obligations. Violation of such inseason orders is violation of this subpart.

(b) *Notice of inseason orders.* (1) Official notice of such inseason orders is available from NMFS (for orders applicable to all-citizen fisheries) and from the Northwest Indian Fisheries Commission (for orders applicable to treaty Indian fisheries) through the following Area Code 206 toll-free telephone hotlines: All-citizen fisheries: 1–800–562–6513; Treaty Indian fisheries: 1–800–562–6142.

(2) Notice of inseason orders of the Secretary and other applicable tribal regulations may be published and released according to tribal procedures in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974).

(3) Inseason orders may also be communicated through news releases to radio and television stations and newspapers in the Fraser River Panel Area (U.S.).

(4) Inseason orders of the Secretary will also be published in the **Federal Register** as soon as practicable after they are issued.

Subpart G—Antarctic Marine Living Resources

Authority: 16 U.S.C. 2431 *et seq.*

§ 300.100 Purpose and scope.

(a) This subpart implements the Antarctic Marine Living Resources Convention Act of 1984 (Act).

(b) This subpart regulates—

(1) The harvesting of Antarctic marine living resources or other associated activities by any person subject to the jurisdiction of the United States or by any vessel of the United States.

(2) The importation into the United States of any Antarctic marine living resource.

§ 300.101 Definitions.

In addition to the terms defined in § 300.2, in the Act, and in the Convention on the Conservation of Antarctic Marine Living Resources, done at Canberra, Australia, May 7, 1980 (Convention). Convention, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, such Act, or such Convention, the definition in this section shall apply.

ACA means the Antarctic Conservation Act of 1978 (16 U.S.C. 2401 *et seq.*).

Antarctic convergence means a line joining the following points along the parallels of latitude and meridians of longitude:

Lat.	*Long.*
50° S.	0.
50° S.	30° E.
45° S.	30° E.
45° S.	80° E.
55° S.	80° E.
55° S.	150° E.
60° S.	150° E.
60° S.	50° W.
50° S.	50° W.
50° S.	0.

Antarctic finfishes include the following:

Scientific name	Common name
Gobionotothen gibberifrons.	Humped rockcod.
Notothenia rossii	Marbled rockcod.
Lepidorhirus squamifrons.	Grey rockcod.
Dissostichus eleginoides.	Patagonian toothfish.
Patagonothen brevicauda guntheri.	Patagonian rockcod.
Pleuragramma antarcticum.	Antarctic silverfish.
Trematomus spp.	Antarctic cods.
Chaenocephalus aceratus.	Blackfin icefish.
Chaenodraco wilsoni	Spiny icefish.
Champsocephalus gunnari.	Mackerel icefish.
Chionodraco rastrospinosus.	Ocellated icefish.
Pseudochaenichthys georgianus.	South Georgia icefish.

Antarctic marine living resources or *AMLR(s)* means the populations of finfish, mollusks, crustaceans, and all other species of living organisms, including birds, found south of the Antarctic Convergence, and their parts or products.

Commission means the Commission for the Conservation of Antarctic Marine Living Resources established under Article VII of the Convention.

Convention waters means all waters south of the Antarctic Convergence.

Directed fishing, with respect to any species or stock of fish, means any fishing that results in such fish comprising more than 1 percent by weight, at any time, of the catch on board the vessel.

Fish means finfish, mollusks, and crustaceans.

Fishery means:

(1) One or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics.

(2) Any fishing for such stocks.

Harvesting vessel means any vessel of the United States (this includes any boat, ship, or other craft), that is used for, equipped to be used for, or of a type that is normally used for harvesting.

Individual permit means an NSF permit issued under 45 CFR part 670; or an NSF award letter (demonstrating that the individual has received an award from NSF to do research in the Antarctic); or a marine mammal permit issued under § 216.31 of this chapter; or an endangered species permit issued under § 222.21 of this chapter.

Inspection vessel means a vessel carrying a CCAMLR inspector and displaying the pennant approved by the Commission to identify such vessel.

Land or *landing* means to begin offloading any fish, to arrive in port with the intention of offloading any fish, or to cause any fish to be offloaded.

NSF means National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Recreational fishing means fishing with hook and line for personal use and not for sale.

Scientific research activity means any activity for which a person has a permit from NMFS under § 216.31 of this title or an award letter from NSF or a permit from the NSF under 45 CFR part 670. Scientific research activities may also include harvesting or other associated activities if such activities are designated as scientific research activities by the Assistant Administrator.

§ 300.102 Relationship to other treaties, conventions, laws, and regulations.

(a) Other conventions and treaties to which the United States is a party and other Federal statutes and implementing regulations may impose additional restrictions on the harvesting and importation into the United States of AMLRs.

(b) The ACA implements the Antarctic Treaty Agreed Measures for the Conservation of Antarctic Fauna and Flora (12 U.S.T. 794). The ACA and its implementing regulations (45 CFR part 670) apply to certain defined activities of U.S. citizens south of 60° S. lat.

(c) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), the Migratory Bird Treaty Act (16 U.S.C. 701 *et seq.*), and their implementing regulations also apply to the harvesting and importation of AMLRs.

§ 300.103 Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites.

(a) *General.* (1) Any person subject to the jurisdiction of the United States must apply for and be granted an entry permit authorizing specific activities prior to entering a CCAMLR Ecosystem Monitoring Program (CEMP) Protected Site designated in accordance with the CCAMLR Conservation Measure describing the Procedures for According Protection for CEMP Sites.

(2) If a CEMP Protected Site is also a site specially protected under the Antarctic Treaty (or the Protocol on Environmental Protection to the Antarctic Treaty and its Annexes, when it enters into force), an applicant seeking to enter such a Protected Site must apply to the Director of the NSF for a permit under applicable provisions of the ACA or any superseding legislation. The permit granted by NSF shall constitute a joint CEMP/ACA Protected Site permit and any person holding such a permit must comply with the appropriate CEMP Protected Site Management Plan. In all other cases, an applicant seeking a permit to enter a CEMP Protected Site must apply to the Assistant Administrator for a CEMP permit in accordance with the provisions of this section.

(b) *Responsibility of CEMP permit holders and persons designated as agents under a CEMP permit.* (1) The CEMP permit holder and person designated as agents under a CEMP permit are jointly and severally responsible for compliance with the Act, this subpart, and any permit issued under this subpart.

(2) The CEMP permit holder and agents designated under a CEMP permit are responsible for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or forbidden by the CEMP permit holder or agents, and regardless of knowledge concerning their occurrence.

(c) *Prohibitions regarding the Antarctic Treaty System and other applicable treaties and statutes.* Holders of permits to enter CEMP Protected Sites are not permitted to undertake any activities within a CEMP Protected Site that are not in compliance with the provisions of:

(1) The Antarctic Treaty, including the Agreed Measures for the Conservation of Antarctic Fauna and Flora (including the Protocol on the Environmental Protection to the Antarctic Treaty and its Annexes when it enters into force), as implemented under by the ACA and any superseding legislation. (Persons interested in

VOL 61 ISS 130 JL 5 1996 UMI

conducting activities subject to the Antarctic Treaty or the Protocol should contact the Office of Polar Programs, NSF).

(2) The Convention for the Conservation of Antarctic Seals.

(3) The Convention and its Conservation Measures in force, implemented under the Act.

(d) *Prohibitions on takings.* Permits issued under this section do not authorize any takings as defined in the applicable statutes and implementing regulations governing the activities of persons in Antarctica.

(e) *Issuance criteria.* Permits designated in this section may be issued by the Assistant Administrator upon a determination that:

(1) The specific activities meet the requirements of the Act.

(2) There is sufficient reason, established in the permit application, that the scientific purpose for the intended entry cannot be served elsewhere.

(3) The actions permitted will not violate any provisions or prohibitions of the Protected Site's Management Plan submitted in compliance with the CCAMLR Conservation Measure describing the Procedures for According Protection to CEMP Sites.

(f) *Application process.* An applicant seeking a CEMP permit from the Assistant Administrator to enter a CEMP Protected Site shall include the following in the application.

(1) A detailed justification that the scientific objectives of the applicant cannot be accomplished elsewhere and a description of how said objectives will be accomplished within the terms of the Protected Site's Management Plan.

(2) A statement signed by the applicant that the applicant has read and fully understands the provisions and prohibitions of the Protected Site's Management Plan. Prospective applicants may obtain copies of the relevant Management Plans and the CCAMLR Conservation Measure describing the Procedures for According Protection to CEMP Sites by requesting them from the Assistant Administrator.

(g) *Conditions.* CEMP permits issued under this section will contain special and general conditions including a condition that the permit holder shall submit a report describing the activities conducted under the permit within 30 days of the expiration of the CEMP permit.

(h) *Duration.* Permits issued under this section are valid for a period of 1 year. Applicants requesting a permit to reenter a Protected Site must include the report required by the general condition in the previously issued CEMP permit describing the activities conducted under authority of that permit.

(i) *Transfer.* CEMP permits are not transferable or assignable. A CEMP permit is valid only for the person to whom it is issued.

(j) *Modification.* (1) CEMP permits can be modified by submitting a request to the Assistant Administrator. Such requests shall specify:

(i) The action proposed to be taken along with a summary of the reasons therefore.

(ii) The steps that the permit holder may take to demonstrate or achieve compliance with all lawful requirements.

(2) If a requested modification is not in compliance with the terms of the Protected Site's Management Plan, the Assistant Administrator will treat the requested modification as an application for a new CEMP permit and so notify the holder. Modifications will be acted upon within 30 days of receipt. The CEMP permit holder must report to the Assistant Administrator any change in previously submitted information within 10 days of the change.

(3) Additional conditions and restrictions: The Assistant Administrator may revise the CEMP permit effective upon notification of the permit holder, to impose additional conditions and restrictions as necessary to achieve the purposes of the Convention, the Act and the CEMP Management Plan. The CEMP permit holder must, as soon as possible, notify any and all agents operating under the permit of any and all revisions or modifications to the permit.

(k) *Revocation or suspension.* CEMP permits may be revoked or suspended based upon information received by the Assistant Administrator and such revocation or suspension shall be effective upon notification to the permit holder.

(1) A CEMP permit may be revoked or suspended based on a violation of the permit, the Act, or this subpart.

(2) Failure to report a change in the information submitted in a CEMP permit application within 10 days of the change is a violation of this subpart and voids the application or permit, as applicable. Title 15 CFR part 904 governs permit sanctions under this subpart.

(l) *Exceptions.* Entry into a Protected Site described in this section is lawful if committed under emergency conditions to prevent the loss of human life, compromise human safety, prevent the loss of vessels or aircraft, or to prevent environmental damage.

(m) *Protected sites.* (1) Sites protected by the Antarctic Treaty and regulated under the ACA are listed at 45 CFR part 670 subparts G and H.

(2) The following sites have been identified as CEMP Protected Sites subject to the regulatory authority of the Act:

(i) *Seal Islands, South Shetland Islands*—The Seal Islands are composed of islands and skerries located approximately 7 km north of the northwest corner of Elephant Island, South Shetland Islands. The Seal Islands CEMP Protected Site includes the entire Seal Islands group, which is defined as Seal Island plus any land or rocks exposed at mean low tide within a distance of 5.5 km of the point of highest elevation on Seal Island. Seal Island is situated at 60°59′14″ S. lat., 55°23′04″ W. long.

(ii) *Cape Shirreff and the San Telmo Islands.* This designation takes effect on May 1, 1995. Cape Shirreff is a low, ice-free peninsula towards the western end of the north coast of Livingston Island, South Shetland Islands, situated at 62°29′ S. lat., 60°47′ W. long., between Barclay Bay and Hero Bay. San Telmo Island is the largest of a small group of ice-free rock islets, approximately 2 km west of Cape Shirreff. The boundaries of the Cape Shirreff CEMP Protected Site are identical to the boundaries of the Site of Special Scientific Interest No. 32, as specified by ATCM Recommendation XV–7. No manmade boundary markers indicate the limits of the SSSI or protected site. The boundaries are defined by natural features and include the entire area of the Cape Shirreff peninsula north of the glacier ice tongue margin, and most of the San Telmo Island group. For the purposes of the protected site, the entire area of Cape Shirreff and the San Telmo Island group is defined as any land or rocks exposed at mean low tide within the area delimited by the map of SSSI No. 32 and available from the Assistant Administrator.

§ 300.104 Scientific research.

(a) The management measures issued pursuant to the procedures at § 300.111 do not apply to catches of less than 5 tons taken by any vessel for research purposes, unless otherwise indicated.

(b) Catches taken by any vessel for research purposes will be considered as part of any catch limit.

(c) The catch reporting procedure identified in management measures issued pursuant to the procedures at § 300.111 applies whenever the catch within any 5-day reporting period exceeds 5 tons, unless more specific

reporting requirements apply to the species being fished.

(d) Any person, organization or institution planning to use a vessel for research purposes, when the estimated catch is expected to be less than 50 tons, must provide the following vessel and research notification to the Assistant Administrator at least 2 months in advance of the planned research:

(1) Name and registration number of vessel.

(2) Division and subarea in which research is to be carried out.

(3) Estimated dates of entering and leaving CCAMLR Convention Area.

(4) Purposes of research.

(5) Fishing equipment to be used (bottom trawl, midwater trawl, longline, crab pots, other).

(e) The following measures apply to any person planning to use any vessel for research purposes, when the estimated catch is expected to be more than 50 tons:

(1) The person must use the CCAMLR Format for Reporting Plans for Finfish Surveys in the Convention Area when the Total Catch is Expected to be More Than 50 Tons to report the details of the research plan to the Assistant Administrator at least 7 months in advance of the planned starting date for the research. A copy of the format is available from the Assistant Administrator.

(2) The format requires:

(i) The name of the CCAMLR Member.

(ii) Survey details.

(iii) Description of the vessel.

(iv) Description of the fishing gear to be used.

(v) Description of acoustic gear to be used.

(vi) Survey design and methods of data analyses.

(vii) Data to be collected.

(3) A summary of the results of any research fishing subject to these provisions must be provided to the Assistant Administrator within 150 days of the completion of the research fishing and a full report must be provided within 11 months.

(4) Catch and effort data resulting from the research fishing must be reported to the Assistant Administrator using the CCAMLR C4 haul-by-haul reporting format for research vessels.

§ 300.105 Initiating a new fishery.

(a) A new fishery, for purposes of this section, is a fishery on a species using a particular method in a statistical subarea for which:

(1) Information on distribution, abundance, demography, potential yield and stock identity from comprehensive research/surveys or exploratory fishing has not been submitted to CCAMLR;

(2) Catch and effort data have never been submitted to CCAMLR; or

(3) Catch and effort data from the two most recent seasons in which fishing occurred have not been submitted to CCAMLR.

(b) An individual subject to these regulations intending to develop a new fishery shall notify the Assistant Administrator no later than July 1 of the year in which he or she intends to initiate the fishery and shall not initiate the fishery pending CCAMLR review.

(c) The notification shall be accompanied by information on:

(1) The nature of the proposed fishery, including target species, methods of fishing, proposed region and any minimum level of catches that would be required to develop a viable fishery.

(2) Biological information from comprehensive research/survey cruises, such as distribution, abundance, demographic data and information on stock identity.

(3) Details of dependent and associated species and the likelihood of them being affected by the proposed fishery.

(4) Information from other fisheries in the region or similar fisheries elsewhere that may assist in the valuation of potential yield.

§ 300.106 Exploratory fisheries.

(a) An exploratory fishery, for purposes of this section, is a fishery that was previously defined as a new fishery under § 300.105.

(b) A fishery will continue to be classified as an exploratory fishery until sufficient information is available to:

(1) Evaluate the distribution, abundance, and demography of the target species, leading to an estimate of the fishery's potential yield.

(2) Review the fishery's potential impacts on dependent and related species.

(3) Allow the CCAMLR Scientific Committee to formulate and provide advice to the Commission on appropriate harvest catch levels and fishing gear.

(c) Each vessel participating in an exploratory fishery must carry a scientific observer.

(d) The operator of any vessel engaging in an exploratory fishery must submit, by the date specified in the operator's harvesting permit, catch, effort, and related biological, ecological, and environmental data as required by a data collection plan for the fishery formulated by the CCAMLR Scientific Committee.

(e) In addition to the requirements in § 300.112, any individual planning to enter an exploratory fishery must notify the Assistant Administrator no later than 4 months in advance of the annual meeting of CCAMLR. The Assistant Administrator will not issue a permit to enter an exploratory fishery until after the requirements of § 300.112 have been met and the meeting of CCAMLR, which receives and considers the notice made to the Assistant Administrator, has been concluded.

§ 300.107 Reporting and recordkeeping requirements.

The operator of any vessel required to have a permit under this subpart must:

(a) Accurately maintain on board the vessel a fishing logbook and all other reports and records required by its permit.

(b) Make such reports and records available for inspection upon the request of an authorized officer or CCAMLR inspector.

(c) Within the time specified in the permit, submit a copy of such reports and records to the Assistant Administrator.

§ 300.108 Vessel and gear identification.

(a) *Vessel identification.* (1) The operator of each harvesting vessel assigned an IRCS must display that call sign amidships on both the port and starboard sides of the deckhouse or hull, so that it is visible from an enforcement or inspection vessel, and on an appropriate weather deck so that it is visible from the air.

(2) The operator of each harvesting vessel not assigned an IRCS, such as a small trawler associated with a mothership or one of a pair of trawlers, must display the IRCS of the associated vessel, followed by a numerical suffix specific for the non-assigned vessel.

(3) The vessel identification must be in a color in contrast to the background and must be permanently affixed to the harvesting vessel in block roman alphabet letters and arabic numerals at least 1 m in height for harvesting vessels over 20 m in length, and at least 0.5 m in height for all other harvesting vessels.

(b) *Navigational lights and shapes.* Each harvesting vessel must display the lights and shapes prescribed by the International Regulations for Preventing Collisions at Sea, 1972 (TIAS 8587, and 1981 amendment TIAS 10672), for the activity in which the harvesting vessel is engaged (as described at 33 CFR part 81).

(c) *Gear identification.* (1) The operator of each harvesting vessel must ensure that all deployed fishing gear that is not physically and continuously attached to a harvesting vessel is clearly marked at the surface with a buoy displaying the vessel identification of

VOL 61 ISS 130 JUL 5 1996 UMI

the harvesting vessel (see paragraph (a) of this section) to which the gear belongs, a light visible for 2 miles at night in good visibility, and a radio buoy. Trawl codends passed from one vessel to another are considered continuously attached gear and do not have to be marked.

(2) The operator of each harvesting vessel must ensure that deployed longlines, strings of traps or pots, and gillnets are marked at the surface at each terminal end with a buoy displaying the vessel identification of the harvesting vessel to which the gear belongs (see paragraph (a) of this section), a light visible for 2 miles at night in good visibility, and a radio buoy.

(3) Unmarked or incorrectly identified fishing gear may be considered abandoned and may be disposed of in accordance with applicable Federal regulations by any authorized officer or CCAMLR inspector.

(d) *Maintenance.* The operator of each harvesting vessel must:

(1) Keep the vessel and gear identification clearly legible and in good repair.

(2) Ensure that nothing on the harvesting vessel obstructs the view of the markings from an enforcement or inspection vessel or aircraft.

(3) Ensure that the proper navigational lights and shapes are displayed for the harvesting vessel's activity and are properly functioning.

§ 300.109 Gear disposal.

(a) The operator of a harvesting vessel may not dump overboard, jettison or otherwise discard any article or substance that may interfere with other fishing vessels or gear, or that may catch fish or cause damage to any marine resource, including marine mammals and birds, except in cases of emergency involving the safety of the ship or crew, or as specifically authorized by communication from the appropriate USCG commander or authorized officer. These articles and substances include, but are not limited to, fishing gear, net scraps, bale straps, plastic bags, oil drums, petroleum containers, oil, toxic chemicals or any manmade items retrieved in a harvesting vessel's gear.

(b) The operator of a harvesting vessel may not abandon fishing gear in Convention waters.

(c) The operator of a harvesting vessel must provide a copy of the CCAMLR information brochure "Marine Debris—A Potential Threat to Antarctic Marine Mammals" to each member of the crew of the harvesting vessel and must display copies of the CCAMLR placard "Avoidance of Incidental Mortality of Antarctic Marine Mammals" in the wheelhouse and crew quarters of the harvesting vessels. Copies of the brochure and placard will be provided to each holder of a harvesting permit by NMFS when issuing the permit.

§ 300.110 Mesh size.

(a) The use of pelagic and bottom trawls having the mesh size in any part of a trawl less than indicated is prohibited for any directed fishing for the following Antarctic finfishes:

(1) *Notothenia rossii* and *Dissostichus eleginoides*—120 mm.

(2) *Champsocephalus gunnari*—90 mm.

(3) *Gobionotothen gibberifrons, Notothenia kempi* and *Lepidorhirus squamifrons*—80 mm.

(b) Any means or device that would reduce the size or obstruct the opening of the meshes is prohibited.

(c) The following procedure will be used for determining compliance with mesh size requirements.

(1) *Description of gauges.* (i) Gauges for determining mesh sizes will be 2 mm thick, flat, of durable material and capable of retaining their shape. They may have either a series of parallel-edged sides connected by intermediate tapering edges with a taper of one to eight on each side, or only tapering edges with the taper defined above. They will have a hole at the narrowest extremity.

(ii) Each gauge will be inscribed on its face with the width in millimeters both on the parallel-sided section, if any, and on the tapering section. In the case of the latter, the width will be inscribed every 1 mm interval, but the indication of the width may appear at regular intervals other than 1 mm.

(2) *Use of the gauge.* (i) The net will be stretched in the direction of the long diagonal of the meshes.

(ii) A gauge as described in paragraph (c)(1) of this section will be inserted by its narrowest extremity into the mesh opening in a direction perpendicular to the plane of the net.

(iii) The gauge may be inserted into the mesh opening either with a manual force or using a weight or dynamometer, until it is stopped at the tapering edges by the resistance of the mesh.

(3) *Selection of meshes to be measured.* (i) Meshes to be measured will form a series of 20 consecutive meshes chosen in the direction of the long axis of the net, except that the meshes to be measured need not be consecutive if the application of paragraph (c)(3)(ii) of this section prevents it.

(ii) Meshes less than 50 cm from lacings, ropes, or codline will not be measured. This distance will be measured perpendicular to the lacings, ropes or codline with the net stretched in the direction of that measurement. No mesh will be measured which has been mended or broken or has attachments to the net fixed at that mesh.

(iii) Nets will be measured only when wet and unfrozen.

(4) The measurement of each mesh will be the width of the gauge at the point where the gauge is stopped, when using this gauge in accordance with paragraph (c)(2) of this section.

(5) Determination of the mesh size of the net will be the arithmetical mean in millimeters of the measurements of the total number of meshes selected and measured as provided for in paragraphs (c) (3) and (4) of this section, the arithmetical mean being rounded up to the next millimeter.

(6) *Inspection procedure.* (i) One series of 20 meshes, selected in accordance with paragraph (c)(3) of this section, will be measured by inserting the gauge manually without using a weight or dynamometer. The mesh size of the net will then be determined in accordance with paragraph (c)(5) of this section. If the calculation of the mesh size shows that the mesh size does not appear to comply with the rules in force, then two additional series of 20 meshes selected in accordance with paragraph (c)(3) of this section will be measured. The mesh size will then be recalculated in accordance with paragraph (c)(5) of this section, taking into account the 60 meshes already measured; this recalculation will be the mesh size of the net.

(ii) If the captain of the vessel contests the mesh size determined in accordance with paragraph (c)(6)(i) of this section, such measurement will not be considered for the determination of the mesh size and the net will be remeasured.

(A) A weight or dynamometer attached to the gauge will be used for remeasurement. The choice of weight or dynamometer is at the discretion of the inspectors. The weight will be fixed to the hole in the narrowest extremity of the gauge using a hook. The dynamometer may either be fixed to the hole in the narrowest extremity of the gauge or be applied at the largest extremity of the gauge.

(B) The accuracy of the weight or dynamometer must be certified by the appropriate national authority.

(C) For nets of a mesh size of 35 mm or less as determined in accordance with paragraph (c)(6)(i) of this section, a force of 19.61 newtons (equivalent to a mass of 2 kg) will be applied, and for other nets, a force of 49.03 newtons (equivalent to a mass of 5 kg).

(D) For the purposes of determining the mesh size in accordance with paragraph (c)(5) of this section, when using a weight or dynamometer, one series of 20 meshes only will be measured.

§ 300.111 Framework for annual management measures.

(a) *Introduction.* New management measures may be added and others modified through publication of a regulatory action in the **Federal Register**. The following framework process authorizes the implementation of measures that may affect the operation of the commercial or exploratory fisheries, gear, area restrictions, or changes in catch and/or effort.

(b) *Preliminary notice.* The Secretary of State shall publish preliminary notice in the **Federal Register** of the management measures adopted by the parties to the Convention.

(c) *Procedure.* At its annual meeting, usually in October or November, the Commission may recommend new measures and that established measures be modified, removed, or re-instituted. After public notice of those recommendations by the Secretary of State and opportunity for public comment, and after considering the impact of instituting the measures and any public comment received by the Secretary of State, the Assistant Administrator may implement the management measures by notice in the **Federal Register**, with immediate force and effect. The notification in the **Federal Register** will summarize new management measures, and respond to any public comments received by the Secretary of State on the preliminary notice.

(d) *Types of management measures to be frameworked.* Management measures that may be implemented by regulatory notice rather than by codified regulation are those that generally will not remain in effect for more than 12 months and include catch restrictions, time and area closures, and gear restrictions.

§ 300.112 Harvesting permits.

(a) *General.* (1) Every vessel subject to the jurisdiction of the United States that attempts to reduce or reduces any AMLR to possession must have a harvesting permit authorizing the attempt or reduction, unless the attempt or reduction occurs during recreational fishing or is covered by an individual permit. Boats launched from a vessel issued a harvesting permit do not require a separate permit, but are covered by the permit issued the launching vessel. Any enforcement action that results from the activities of a launched boat will be taken against the launching vessel.

(2) Permits issued under this section do not authorize vessels or persons subject to the jurisdiction of the United States to harass, capture, harm, kill, harvest, or import marine mammals. No marine mammals may be taken in the course of commercial fishing operations unless the taking is allowed under the Marine Mammal Protection Act and/or the Endangered Species Act pursuant to an exemption or permit granted by the appropriate agency.

(b) *Responsibility of owners and operators.* (1) The owners and operators of each harvesting vessel are jointly and severally responsible for compliance with the Act, this subpart, and any permit issued under the Act and this subpart.

(2) The owners and operators of each such vessel are responsible for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or forbidden by the owners or operators, and regardless of knowledge concerning their occurrence.

(3) The owner of such vessel must report any sale, change in ownership, or other disposition of the vessel to the Assistant Administrator within 15 days of the occurrence.

(c) *Application.* Application forms for harvesting permits are available from the Assistant Administrator (Attn: CCAMLR permits). A separate fully completed and accurate application must be submitted for each vessel for which a harvesting permit is requested at least 90 days before the date anticipated for the beginning of harvesting.

(d) *Issuance.* The Assistant Administrator may issue a harvesting permit to a vessel if the Assistant Administrator determines that the harvesting described in the application will meet the requirements of the Act and will not:

(1) Decrease the size of any harvested population to levels below those that ensure its stable recruitment. For this purpose, the Convention recommends that its size not be allowed to fall below a level close to that which ensures the greatest net annual increment.

(2) Upset the ecological relationships between harvested, dependent, and related populations of AMLRs and the restoration of depleted populations to levels that will ensure stable recruitment.

(3) Cause changes or increase the risk of changes in the marine ecosystem that are not potentially reversible over 2 or 3 decades, taking into account the state of available knowledge of the direct and indirect impact of harvesting, the effect of the introduction of alien species, the effects of associated activities on the marine ecosystem and of the effects of environmental changes, with the aim of making possible the sustained conservation of AMLRs.

(4) Violate the management measures issued pursuant to § 300.111 of this subpart.

(5) Violate any other conservation measures in force with respect to the United States under the Convention or the Act.

(e) *Duration.* A harvesting permit is valid from its date of issuance to its date of expiration unless it is revoked or suspended.

(f) *Transfer.* Permits are not transferable or assignable. A permit is valid only for the vessel to which it is issued.

(g) *Display.* Each harvesting vessel when engaged in harvesting must either have on board an up-to-date copy of its harvesting permit or a fully completed and up-to-date harvesting vessel certificate and the vessel operator must produce it for inspection upon the request of an authorized officer or CCAMLR inspector. In order for the certificate to be considered complete, the vessel owner or operator must enter on it the name and IRCS of the vessel issued the harvesting permit, the number of the harvesting permit and its date of issuance and expiration, the harvesting authorized by the permit, and all conditions and restrictions contained in the permit. Blank certificates are available from the Assistant Administrator.

(h) *Changes in information submitted by permit applicants or holders—*(1) *Changes in pending applications.* Applicants for a harvesting permit must report to the Assistant Administrator in writing any change in the information contained in the application. The processing period for the application will be extended as necessary to review the change.

(2) *Changes occurring after permit issuance—*(i) *Changes other than in the manner and amount of harvesting.* The owner or operator of a vessel that has been issued a harvesting permit must report to the Assistant Administrator in writing any change in previously submitted information other than a proposed change in the location, manner, or amount of harvesting within 15 days of the change. Based on such reported information, the Assistant Administrator may revise the permit effective upon notification to the permit holder. As soon as possible, the vessel owner or operator must revise any

VOL 61 ISS 130 JL 5 1996 UMI

harvesting vessel certificate evidencing the permit, accordingly.

(ii) *Requested changes in the location, manner, or amount of harvesting.* Any changes in the manner or amount of harvesting must be proposed in writing to the Assistant Administrator and may not be undertaken unless authorized by the Assistant Administrator through a permit revision or issuance of a new permit. If a requested change in the location, manner, or amount of harvesting could significantly affect the status of any Antarctic marine living resource, the Assistant Administrator will treat the requested change as an application for a new permit and so notify the holder.

(i) *Additional conditions and restrictions.* The Assistant Administrator may revise the harvesting permit, effective upon notification to the permit holder, to impose additional conditions and restrictions on the harvesting vessel as necessary to achieve the purposes of the Convention or the Act. The permit holder must, as soon as possible, direct the vessel operator to revise the harvesting vessel certificate, if any, accordingly.

(j) *Revision, suspension, or revocation for violations.* A harvesting permit may be revised, suspended, or revoked if the harvesting vessel is involved in the commission of any violation of its permit, the Act, or this subpart. Failure to report a change in the information contained in an application within 15 days of the change is a violation of this subpart and voids the application or permit, as applicable. If a change in vessel ownership is not reported, the violation is chargeable to the previous owner. Title 15 CFR part 904 governs permit sanctions under this subpart.

§ 300.113 Import permits.

(a) *General.* (1) Any AMLR may be imported into the United States if its harvest is authorized by an individual permit or a harvesting permit. The harvesting permit, the harvesting vessel certificate, or the individual permit, or a copy of any thereof, must accompany the import. AMLRs harvested by entities not subject to U.S. jurisdiction and, thus, not harvested under a U.S. issued permit (i.e., a harvesting permit or an individual permit), also may be imported into the United States if such harvesting will meet or met the requirements of the Act and will not or did not violate any conservation measure in force with respect to the United States under the Convention or the Act or violate any of the regulations in this subpart, including resource management measures contained therein. A NMFS issued import permit or copy thereof must accompany such an import as proof that the foreign harvested resources met such requirements. Further, the importer is required to complete and return to the Assistant Administrator, no later than 10 days after the date of the importation, an import ticket reporting the importation. However, in no event may a marine mammal be imported into the United States unless authorized and accompanied by an import permit issued under the Marine Mammal Protection Act and/or the Endangered Species Act.

(2) A permit issued under this section does not authorize the harvest of any AMLRs.

(b) *Application.* Application forms for import permits are available from the Assistant Administrator (Attn: CCAMLR permits). A fully completed and accurate application must be submitted for each import permit requested at least 30 days before the anticipated date of the importation.

(c) *Issuance.* The Assistant Administrator may issue an import permit if the Assistant Administrator determines that the importation meets the requirements of the Act and that the resources were not or will not be harvested in violation of any conservation measure in force with respect to the United States or in violation of any regulation in this subpart. Blank import tickets will be attached to the permit. Additional blank import tickets are available from the Assistant Administrator.

(d) *Duration.* An import permit is valid from its date of issuance to its date of expiration unless it is revoked or suspended.

(e) *Transfer.* An import permit is not transferable or assignable.

(f) *Changes in information submitted by permit applicants or holders*—(1) *Changes in pending applications.* Applicants for an import permit must report in writing to the Assistant Administrator any change in the information submitted in their import permit application. The processing period for the application will be extended as necessary to review the change.

(2) *Changes occurring after permit issuance.* Any entity issued an import permit must report in writing to the Assistant Administrator any changes in previously submitted information. Any changes that would not result in a change in the importation authorized by the permit must be reported on the import ticket required to be submitted to the Assistant Administrator no later than 10 days after the date of importation. Any changes that would result in a change in the importation authorized by the permit, such as country of origin, type and quantity of the resource to be imported, and Convention statistical subarea from which the resource was harvested, must be proposed in writing to the Assistant Administrator and may not be undertaken unless authorized by the Assistant Administrator by a permit revision or new permit.

(g) *Revision, suspension, or revocation.* An import permit may be revised, suspended, or revoked based upon information subsequently reported, effective upon notification to the permit holder. An import permit may be revised, suspended, or revoked, based upon a violation of the permit, the Act, or this subpart. Failure to report a change in the information contained in an import permit application is a violation of this subpart and voids the application or permit, as applicable. Title 15 CFR part 904 governs permit sanctions under this subpart.

(h) *Disposition of resources not accompanied by required documentation.* (1) When AMLRs are imported into the United States unaccompanied by a permit authorizing import, the importer must either:

(i) Abandon the resources;

(ii) Waive claim to the resources; or

(iii) Place the resources into a bonded warehouse and attempt to obtain a permit authorizing their importation.

(2) If, within 60 days of such resources being placed into a bonded warehouse, the District Director of the U.S. Customs Service receives documentation that import of the resources into the United States is authorized by a permit, the resources will be allowed entry. If documentation of a permit is not presented within 60 days, the importer's claim to the resources will be deemed waived.

(3) When resources are abandoned or claim to them waived, the resources will be delivered to the Administrator of NOAA, or a designee, for storage or disposal as authorized by law.

§ 300.114 Appointment of a designated representative.

(a) All holders of permits authorizing fishing in subarea 48.3 must appoint a designated representative in the United States.

(b) The designated representative will be notified of closures under § 300.111 and must transmit this information to the vessel on the grounds.

(c) The designated representative may receive catch reports from the vessel and transmit the reports to NMFS in writing.

§ 300.115 Prohibitions.

In addition to the prohibitions in § 300.4, it is unlawful for any person to:

(a) Reduce to possession or attempt to reduce to possession any AMLRs without a permit for such activity as required by § 300.112.

(b) Import into the United States any AMLRs without either a permit to import those resources as required by § 300.113 or a permit to harvest those resources as required by § 300.112.

(c) Engage in harvesting or other associated activities in violation of the provisions of the Convention or in violation of a conservation measure in force with respect to the United States under Article IX of the Convention.

(d) Ship, transport, offer for sale, sell, purchase, import, export or have custody, control or possession of, any AMLR that he or she knows, or reasonably should have known, was harvested in violation of a conservation measure in force with respect to the United States under article IX of the Convention or in violation of any regulation promulgated under this subpart, without regard to the citizenship of the person that harvested, or vessel that was used in the harvesting of, the AMLR.

(e) Refuse to allow any CCAMLR inspector to board a vessel of the United States or a vessel subject to the jurisdiction of the United States for the purpose of conducting an inspection authorized by the Act, this subpart, or any permit issued under the Act.

(f) Refuse to provide appropriate assistance, including access as necessary to communications equipment, to CCAMLR inspectors.

(g) Refuse to sign a written notification of alleged violations of Commission measures in effect prepared by a CCAMLR inspector.

(h) Assault, resist, oppose, impede, intimidate, or interfere with a CCAMLR inspector in the conduct of any boarding or inspection authorized by the Act, this subpart, or any permit issued under the Act.

(i) Use any vessel to engage in harvesting after the revocation, or during the period of suspension, of an applicable permit issued under the Act.

(j) Fail to identify, falsely identify, fail to properly maintain, or obscure the identification of a harvesting vessel or its gear as required by this subpart.

(k) Fish in a closed area.

(l) Trawl with a mesh size in any part of the trawl net smaller than that allowed for any directed fishing for Antarctic finfishes as specified in management measures issued pursuant to § 300.111.

(m) Use any means or device that would reduce the size or obstruct the opening of the trawl meshes specified in management measures issued pursuant to § 300.111.

(n) Possess fish in violation of the catch limit specified in management measures issued pursuant to § 300.111.

(o) Discard netting or other substances in the Convention Area in violation of § 300.109.

(p) Violate or attempt to violate any provision of this subpart, the Act, any other regulation promulgated under the Act or any permit issued under the Act.

§ 300.116 Facilitation of enforcement and inspection.

In addition to the facilitation of enforcement provisions of § 300.5, the following requirements apply to this subpart.

(a) *Access and records.* (1) The owners and operator of each harvesting vessel must provide authorized officers and CCAMLR inspectors access to all spaces where work is conducted or business papers and records are prepared or stored, including but not limited to personal quarters and areas within personal quarters. If inspection of a particular area would interfere with specific on-going scientific research, and if the operator of the harvesting vessel makes such assertion and produces an individual permit that covers that specific research, the authorized officer or CCAMLR inspector will not disturb the area, but will record the information pertaining to the denial of access.

(2) The owner and operator of each harvesting vessel must provide to authorized officers and CCAMLR inspectors all records and documents pertaining to the harvesting activities of the vessel, including but not limited to production records, fishing logs, navigation logs, transfer records, product receipts, cargo stowage plans or records, draft or displacement calculations, customs documents or records, and an accurate hold plan reflecting the current structure of the vessel's storage and factory spaces.

(3) Before leaving vessels that have been inspected, the CCAMLR inspector will give the master of the vessel a Certificate of Inspection and a written notification of any alleged violations of Commission measures in effect and will afford the master the opportunity to comment on it. The ship's master must sign the notification to acknowledge receipt and the opportunity to comment on it.

(b) *Reports by non-inspectors.* All scientists, fishermen, and other non-inspectors present in the Convention area and subject to the jurisdiction of the United States are encouraged to report any violation of Commission conservation and management measures observed in the Convention area to the Office of Ocean Affairs (CCAMLR Violations), Department of State, Room 5801, Washington, DC 20520.

(c) *Storage of AMLRs.* The operator of each harvesting vessel storing AMLRs in a storage space on board the vessel must ensure that non-resource items are neither stowed beneath nor covered by resource items, unless required to maintain the stability and safety of the vessel. Non-resource items include, but are not limited to, portable conveyors, exhaust fans, ladders, nets, fuel bladders, extra bin boards, or other moveable non-resource items. These non-resource items may be in a resource storage space when necessary for the safety of the vessel or crew or for the storage of the items. Lumber, bin boards, or other dunnage may be used for shoring or bracing of product to ensure the safety of crew and to prevent shifting of cargo within the space.

§ 300.117 Penalties.

Any person or harvesting vessel found to be in violation of the Act, this subpart, or any permit issued under this subpart will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, 15 CFR part 904, and other applicable laws.

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VOL 61 ISS 130 JL 5 1996 UMI

Figure 1 to Subpart G—Boundaries of the Statistical Reporting Area in the Southern Ocean

Boundaries of the Statistical Reporting Area in the Southern Ocean

Figure 2 to Subpart G—The Use of Streamer Lines to Minimize the Incidental Mortality of Seabirds in the Course of Longline Fishing or Longline Fishing Research Operations in the Convention Area

The Use of Streamer Lines to Minimize the Incidental Mortality of Seabirds in the Course of Longline Fishing or Longline Fishing Research Operations in the Convention Area.

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VOL
61
ISS
130
JUL
5
1996
UMI

Subpart H—Vessels of the United States Fishing in Colombian Treaty Waters

Authority: 16 U.S.C. 1801 *et seq.*

§ 300.120 Purpose.

This subpart implements fishery conservation and management measures as provided in fishery agreements pursuant to the Treaty Between the Government of the United States of America and the Government of the Republic of Colombia Concerning the Status of Quita Sueno, Roncador and Serrana (TIAS 10120) (Treaty).

§ 300.121 Definitions.

In addition to the terms defined in § 300.2, the Magnuson Act, and § 600.10 of this title, and in the Treaty, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Magnuson Act, or the Treaty, the definition in this section shall apply.

Conch means *Strombus gigas.*

Factory vessel means a vessel that processes, transforms, or packages aquatic biological resources on board.

Lobster means one or both of the following:

(1) Smoothtail lobster, *Panulirus laevicauda.*

(2) Spiny lobster, *Panulirus argus.*

Regional Director means the Director, Southeast Region, or a designee.

Science and Research Director means the Director, Southeast Fisheries Science Center.

Treaty waters means the waters of one or more of the following:

(1) *Quita Sueno*, enclosed by latitudes 13°55′N. and 14°43′N. between longitudes 80°55′W. and 81°28′W.

(2) *Serrana*, enclosed by arcs 12 nautical miles from the low water line of the cays and islands in the general area of 14°22′N. lat., 80°20′W. long.

(3) *Roncador*, enclosed by arcs 12 nautical miles from the low water line of Roncador Cay, in approximate position 13°35′N. lat., 80°05′W. long.

§ 300.122 Relation to other laws.

(a) The relation of this subpart to other laws is set forth in § 600.705 of this title and paragraph (b) of this section. Particular note should be made to the reference in § 600.705 to the applicability of title 46 U.S.C., under which a Certificate of Documentation is invalid when the vessel is placed under the command of a person who is not a citizen of the United States.

(b) Minimum size limitations for certain species, such as reef fish in the Gulf of Mexico, may apply to vessels transiting the EEZ with such species aboard.

§ 300.123 Certificates and permits.

(a) *Applicability.* An owner of a vessel of the United States that fishes in treaty waters is required to obtain an annual certificate issued by the Republic of Colombia and an annual vessel permit issued by the Regional Director.

(b) *Application for certificate/permit.* (1) An application for a permit must be submitted and signed by the vessel's owner. An application may be submitted at any time, but should be submitted to the Regional Director not less than 90 days in advance of its need. Applications for the ensuing calendar year should be submitted to the Regional Director by October 1.

(2) An applicant must provide the following:

(i) A copy of the vessel's valid USCG certificate of documentation or, if not documented, a copy of its valid state registration certificate.

(ii) Vessel name and official number.

(iii) Name, address, telephone number, and other identifying information of the vessel owner or, if the owner is a corporation or partnership, of the responsible corporate officer or general partner.

(iv) Principal port of landing of fish taken from treaty waters.

(v) Type of fishing to be conducted in treaty waters.

(vi) Any other information concerning the vessel, gear characteristics, principal fisheries engaged in, or fishing areas, as specified on the application form.

(vii) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(c) *Issuance.* (1) The Regional Director will request a certificate from the Republic of Colombia if:

(i) The application is complete.

(ii) The applicant has complied with all applicable reporting requirements of § 300.124 during the year immediately preceding the application.

(2) Upon receipt of an incomplete application, or an application from a person who has not complied with all applicable reporting requirements of § 300.124 during the year immediately preceding the application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the Regional Director's notification, the application will be considered abandoned.

(3) The Regional Director will issue a permit as soon as the certificate is received from the Republic of Colombia.

(d) *Duration.* A certificate and permit are valid for the calendar year for which they are issued, unless the permit is revoked, suspended, or modified under subpart D of 15 CFR part 904.

(e) *Transfer.* A certificate and permit issued under this section are not transferable or assignable. They are valid only for the fishing vessel and owner for which they are issued.

(f) *Display.* A certificate and permit issued under this section must be carried aboard the fishing vessel while it is in treaty waters. The operator of a fishing vessel must present the certificate and permit for inspection upon request of an authorized officer or an enforcement officer of the Republic of Colombia.

(g) *Sanctions and denials.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(h) *Alteration.* A certificate or permit that is altered, erased, or mutilated is invalid.

(i) *Replacement.* A replacement certificate or permit may be issued upon request. Such request must clearly state the reason for a replacement certificate or permit.

(j) *Change in application information.* The owner of a vessel with a permit must notify the Regional Director within 30 days after any change in the application information required by paragraph (b)(2) of this section. The permit is void if any change in the information is not reported within 30 days.

§ 300.124 Recordkeeping and reporting.

(a) *Arrival and departure reports.* The operator of each vessel of the United States for which a certificate and permit have been issued under § 300.123 must report by radio to the Port Captain, San Andres Island, voice radio call sign "Capitania de San Andres," the vessel's arrival in and departure from treaty waters. Radio reports must be made on 8222.0 kHz or 8276.5 kHz between 8:00 a.m. and 12 noon, local time (1300–1700, Greenwich mean time) Monday through Friday.

(b) *Catch and effort reports.* Each vessel of the United States must report its catch and effort on each trip into treaty waters to the Science and Research Director on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director so as to be received no later than 7 days after the end of each fishing trip.

§ 300.125 Vessel identification.

(a) *Official number.* A vessel with a permit issued pursuant to § 300.123, when in treaty waters, must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft. The official number must be permanently affixed to or painted on the vessel and must be in block arabic numerals in contrasting color to the background at least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in length, and at least 10 inches (25.4 cm) in height for all other vessel.

(b) *Duties of operator.* The operator of each fishing vessel must—

(1) Keep the official number clearly legible and in good repair.

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number from an enforcement vessel or aircraft.

§ 300.126 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this title and the prohibited acts specified in § 300.4, it is unlawful for any person to do any of the following:

(a) Fish in treaty waters without the certificate and permit aboard, or fail to display the certificate and permit, as specified in § 300.123(a) and (f).

(b) Fail to notify the Regional Director of a change in application information, as specified in § 300.123(j).

(c) Fail to report a vessel's arrival in and departure from treaty waters, as required by § 300.124(a).

(d) Falsify or fail to display and maintain vessel identification, as required by § 300.125.

(e) Fail to comply immediately with instructions and signals issued by an enforcement officer of the Republic of Colombia, as specified in § 300.127.

(f) Operate a factory vessel in treaty waters, as specified in § 300.130(a).

(g) Use a monofilament gillnet in treaty waters, as specified in § 300.130(b).

(h) Use autonomous or semi-autonomous diving equipment in treaty waters, as specified in § 300.130(c).

(i) Use or possess in treaty waters a lobster trap or fish trap without a degradable panel, as specified in § 300.130(d).

(j) Possess conch smaller than the minimum size limit, as specified in § 300.131(a).

(k) Fish for or possess conch in the closed area or during the closed season, as specified in § 300.131(b) and (c).

(l) Retain on board a berried lobster or strip eggs from or otherwise molest a berried lobster, as specified in § 300.132(a).

(m) Possess a lobster smaller than the minimum size, as specified in § 300.132(b).

(n) Fail to return immediately to the water unharmed a berried or undersized lobster, as specified in § 300.132(a) and (b).

§ 300.127 Facilitation of enforcement.

(a) The provisions of § 600.730 of this title and paragraph (b) of this section apply to vessels of the United States fishing in treaty waters.

(b) The operator of, or any other person aboard, any vessel of the United States fishing in treaty waters must immediately comply with instructions and signals issued by an enforcement officer of the Republic of Colombia to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record, and catch for purposes of enforcing this subpart.

§ 300.128 Penalties.

Any person committing or fishing vessel used in the commission of a violation of the Magnuson Act or any regulation issued under the Magnuson Act, is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Magnuson Act, to part 600 of this title, to 15 CFR part 904, and to other applicable law. In addition, Colombian authorities may require a vessel involved in a violation of this subpart to leave treaty waters.

§ 300.129 Fishing year.

The fishing year for fishing in treaty waters begins on January 1 and ends on December 31.

§ 300.130 Vessel and gear restrictions.

(a) *Factory vessels.* Factory vessels are prohibited from operating in treaty waters.

(b) *Monofilament gillnets.* A monofilament gillnet made from nylon or similar synthetic material are prohibited from being used in treaty waters.

(c) *Tanks and air hoses.* Autonomous or semiautonomous diving equipment (tanks or air hoses) are prohibited from being used to take aquatic biological resources in treaty waters.

(d) *Trap requirements.* A lobster trap or fish trap used or possessed in treaty waters that is constructed of material other than wood must have an escape panel located in the upper half of the sides or on top of the trap that, when removed, will leave an opening no smaller than the throat or entrance of the trap. Such escape panel must be constructed of or attached to the trap with wood, cotton, or other degradable material.

(e) *Poisons and explosives.* [Reserved]

§ 300.131 Conch harvest limitations.

(a) *Size limit.* The minimum size limit for possession of conch in or from treaty waters is 7.94 oz (225 g) for an uncleaned meat and 3.53 oz (100 g) for a cleaned meat.

(b) *Closed area.* The treaty waters of Quita Sueno are closed to the harvest or possession of conch.

(c) *Closed season.* During the period July 1 through September 30 of each year, the treaty waters of Serrana and Roncador are closed to the harvest or possession of conch.

§ 300.132 Lobster harvest limitations.

(a) *Berried lobsters.* A berried (egg-bearing) lobster in treaty waters may not be retained on board. A berried lobster must be returned immediately to the water unharmed. A berried lobster may not be stripped, scraped, shaved, clipped, or in any other manner molested to remove the eggs.

(b) *Size limit.* The minimum size limit for possession of lobster in or from treaty waters is 5.5 inches (13.97 cm), tail length. Tail length means the measurement, with the tail in a straight, flat position, from the anterior upper edge of the first abdominal (tail) segment to the tip of the closed tail. A lobster smaller than the minimum size limit must be returned immediately to the water unharmed.

Subpart I—United States-Canada Fisheries Enforcement

Authority: 16 U.S.C. 1801 *et seq.*

§ 300.140 Purpose and scope.

This subpart implements the Agreement Between the Government of the United States of America and the Government of Canada on Fisheries Enforcement executed at Ottawa, Canada, on September 26, 1990 (Agreement), allowing each party to the Agreement to take appropriate measures, consistent with international law, to prevent its nationals, residents and vessels from violating those national fisheries laws and regulations of the other party. This subpart applies, except where otherwise specified in this subpart, to all persons and all places (on water and on land) subject to the jurisdiction of the United States under the Magnuson Act. This includes, but is not limited to, activities of nationals, residents and vessels of the United States (including the owners and operators of such vessels) within waters subject to the fisheries jurisdiction of Canada as defined in this subpart, as well as on the high seas and in waters subject to the fisheries jurisdiction of the United States.

VOL 61 ISS 130 JL 5 1996 UMI

§ 300.141 Definitions.

In addition to the terms defined in § 300.2 and those in the Magnuson Act and the Agreement, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Magnuson Act, or the Agreement, the definition in this section applies.

Applicable Canadian fisheries law means any Canadian law, regulation or similar provision relating in any manner to fishing by any fishing vessel other than a Canadian fishing vessel in waters subject to the fisheries jurisdiction of Canada, including, but not limited to, any provision relating to stowage of fishing gear by vessels passing through such waters, and to obstruction or interference with enforcement of any such law or regulation.

Authorized officer of Canada means any fishery officer, protection officer, officer of the Royal Canadian Mounted Police, or other employee authorized by the appropriate authority of any national or provincial agency of Canada to enforce any applicable Canadian fisheries law.

Canadian fishing vessel means a fishing vessel:

(1) That is registered or licensed in Canada under the Canada Shipping Act and is owned by one or more persons each of whom is a Canadian citizen, a person resident and domiciled in Canada, or a corporation incorporated under the laws of Canada or of a province, having its principal place of business in Canada; or

(2) That is not required by the Canada Shipping Act to be registered or licensed in Canada and is not registered or licensed elsewhere but is owned as described in paragraph (1) of this definition.

Waters subject to the fisheries jurisdiction of Canada means the internal waters, territorial sea, and the zone that Canada has established, extending 200 nautical miles from its coasts, in which it exercises sovereign rights for the purpose of exploration, exploitation, conservation and management of living marine resources, to the extent recognized by the United States.

§ 300.142 Prohibitions.

The prohibitions in this section apply within waters subject to the fisheries jurisdiction of Canada and during hot pursuit therefrom by an authorized officer of Canada. It is unlawful for any national or resident of the United States, or any person on board a vessel of the United States, or the owner or operator of any such vessel, to do any of the following:

(a) Engage in fishing in waters subject to the fisheries jurisdiction of Canada without the express authorization of the Government of Canada.

(b) Take or retain fish in waters subject to the fisheries jurisdiction of Canada without the express authorization of the Government of Canada.

(c) Be on board a fishing vessel in waters subject to the fisheries jurisdiction of Canada, without stowing all fishing gear on board either:

(1) Below deck, or in an area where it is not normally used, such that the gear is not readily available for fishing; or

(2) If the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; unless the vessel has been authorized by the Government of Canada to fish in the particular location within waters subject to the fisheries jurisdiction of Canada in which it is operating.

(d) While on board a fishing vessel in waters subject to the fisheries jurisdiction of Canada, fail to respond to any inquiry from an authorized officer of Canada regarding the vessel's name, flag state, location, route or destination, and/or the circumstances under which the vessel entered such waters.

(e) Violate the Agreement, any applicable Canadian fisheries law, or the terms or conditions of any permit, license or any other authorization granted by Canada under any such law.

(f) Fail to comply immediately with any of the enforcement and boarding procedures specified in § 300.143.

(g) Destroy, stave, or dispose of in any manner, any fish, gear, cargo or other matter, upon any communication or signal from an authorized officer of Canada, or upon the approach of such an officer, enforcement vessel or aircraft, before the officer has had the opportunity to inspect same, or in contravention of directions from such an officer.

(h) Refuse to allow an authorized officer of Canada to board a vessel for the purpose of conducting any inspection, search, seizure, investigation or arrest in connection with the enforcement of any applicable Canadian fisheries law.

(i) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere, in any manner, with an authorized officer of Canada in the conduct of any boarding, inspection, search, seizure, investigation or arrest in connection with the enforcement of any applicable Canadian fisheries law.

(j) Make any false statement, oral or written, to an authorized officer of Canada in response to any inquiry by that officer in connection with enforcement of any applicable Canadian fisheries law.

(k) Falsify, cover, or otherwise obscure, the name, home port, official number (if any), or any other similar marking or identification of any fishing vessel subject to this subpart such that the vessel cannot be readily identified from an enforcement vessel or aircraft.

(l) Attempt to do any of the foregoing.

§ 300.143 Facilitation of enforcement.

(a) *General.* Persons aboard fishing vessels subject to this subpart must immediately comply with instructions and/or signals issued by an authorized officer of the United States or Canada, or by an enforcement vessel or aircraft, to stop the vessel, and with instructions to facilitate safe boarding and inspection for the purpose of enforcing any applicable Canadian fisheries law, the Agreement, or this subpart. All of the provisions of § 300.5 regarding communications, boarding, and signals apply to this subpart. For purposes of this subpart, authorized officer in § 305 means an authorized officer of the United States or Canada. (See paragraph (b) of this section for specific requirements for complying with signals and instructions issued by an authorized officer of Canada.)

(b) *Canadian signals.* In addition to signals set forth in § 300.5, persons aboard fishing vessels subject to this subpart must immediately comply with the following signals by an authorized officer of Canada.

(1) Authorized officers of Canada use the following signals to require fishing vessels to stop or heave to:

(i) The hoisting of a rectangular flag, known as the International Code Flag "L", which is divided vertically and horizontally into quarters and colored so that:

(A) The upper quarter next to the staff and the lower quarter next to the fly are yellow; and

(B) The lower quarter next to the staff and the upper quarter next to the fly are black;

(ii) The flashing of a light to indicate the International Morse Code letter "L", consisting of one short flash, followed by one long flash, followed by two short flashes (. — . .); or

(iii) The sounding of a horn or whistle to indicate the International Morse Code letter "L", consisting of one short blast, followed by one long blast, followed by two short blasts (. — . .).

(2) Authorized officers of Canada use the following signals to require a fishing vessel to prepare to be boarded:

(i) The hoisting of flags representing the International Code Flag "SQ3"; or

(ii) The flashing of a light, or the sounding of a horn or whistle, to indicate the International Morse Code Signal "SQ3" (. . .——.—. . .——).

§ 300.144 Penalties and sanctions.

Any person, any fishing vessel, or the owner or operator of any such vessel, who violates any provision of the Agreement or this subpart, is subject to the civil and criminal fines, penalties, forfeitures, permit sanctions, or other sanctions provided in the Magnuson Act, part 600 of this title, 15 CFR part 904 (Civil Procedures), and any other applicable law or regulation.

Subpart J—U.S. Nationals Fishing in Russian Fisheries

Authority: 16 U.S.C. 1801 *et seq.*

§ 300.150 Purpose.

This subpart regulates U.S. nationals fishing in the Russian fisheries and implements the Agreement between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on Mutual Fisheries Relations, signed May 31, 1988.

§ 300.151 Definitions.

In addition to the terms defined in § 300.2 and those in the Magnuson Act, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2 or the Magnuson Act, the definition in this section shall apply.

Affiliates means two persons (including individuals and entities) related in such a way that—

(1) One indirectly or directly controls or has power to control the other; or

(2) A third party controls or has power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a reorganized entity having the same or similar management, ownership, or employees as a former entity.

Agreement means the Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on Mutual Fisheries Relations, signed May 31, 1988.

Embassy of the Russian Federation means the Fisheries Attache of the embassy located in Washington, D.C.

Fishery resource means any fish, any stock of fish, any species of fish, and any habitat of fish.

Fishing or *to fish* means any activity that does, is intended to, or can reasonably be expected to result in catching or removing from the water fishery resources. Fishing also includes the acts of scouting, processing, and support.

Operator, with respect to any vessel, means the master or other individual on board and in charge of either the vessel, the vessel's fishing operation, or both.

Owner, with respect to any vessel, means any person who owns that vessel in whole or in part, whether or not it is leased or chartered to or managed by another person, or any charterer, whether bareboat, time, or voyage, and any person who acts in the capacity of a charterer, or manager, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel, any officer, director, manager, controlling shareholder of any entity described in this definition, any agent designated as such by any person described in this definition, and any affiliate of any person described in this definition.

Processing means any operation by a vessel to receive fish from a fishing vessel and/or the preparation of fish, including but not limited to cleaning, cooking, canning, smoking, salting, drying, or freezing, either on the vessel's behalf or to assist another vessel.

Regional Director means Director, Alaska Region, or a designee.

Relevant laws and regulations of the Russian Federation means those Russian laws and regulations that concern fishing for fishery resources over which Russia exercises sovereign rights or fishery management authority.

Russian and *Federation* mean the Russian Federation, its government, or any organ or entity of its government.

Russian continental shelf or *continental shelf of Russia* means the seabed and subsoil of the submarine areas over which, consistent with international law, Russia exercises sovereign rights.

Russian Economic Zone or *Russian EZ* means a zone of waters off the coast of Russia beyond and adjacent to the Russian territorial sea extending a distance of up to 200 nautical miles from the baseline from which the territorial sea is measured, within which, consistent with international law, Russia has sovereign rights over the fishery resources.

Russian Federation or *Russia* means the governing entity that succeeded the Union of Soviet Socialist Republics, and that is the successor party to the Agreement of May 31, 1988.

Russian fisheries, Russian fishery resources, or *fishery resources over which Russia exercises sovereign rights or fishery management authority* means fishery resources within the Russian EZ, fishery resources of the Russian continental shelf, and anadromous species that originate in the waters of Russia, whether found in the Russian EZ or beyond any exclusive economic zone or its equivalent.

Scouting means any operation by a vessel exploring (on behalf of the vessel or another vessel) for the presence of fish by any means that do not involve the catching of fish.

Support means any operation by a vessel assisting fishing by another vessel, including—

(1) Transferring or transporting fish or fish products; or

(2) Supplying a fishing vessel with water, fuel, provisions, fishing equipment, fish processing equipment, or other supplies.

§ 300.152 Procedures.

(a) *Application for annual permits.* U.S. vessel owners and operators must have a valid permit issued by the Russian Federation obtained pursuant to a complete application submitted through NMFS before fishing in the Russian EZ or for Russian fishery resources. Application forms and copies of applicable laws and regulations of the Russian Federation may be obtained from NMFS Headquarters.

(b) *Other application information.* Applications for motherships, processing or transport vessels must identify the type of fishing gear to be employed or the fishing quotas if the vessel has received or is requesting a quota. To facilitate processing, NMFS requests that permit applications for more than 10 vessels be grouped by type and fishing area, and provide the name, address, telephone, and FAX number(s) of an individual who will be the official point of contact for an application.

(c) *Review of Applications.* NMFS will review each application, and, if it is complete, forward it to the Department of State for submission to the competent authorities of the Russian Federation. NMFS will notify the permit applicant when the permit is submitted to the Russian Federation. NMFS will return incomplete applications to the applicant.

(d) *Direct Communication.* U.S. applicants may communicate directly with the Russian Federation with regard to the status of their applications or permits and are encouraged to do so.

VOL 61 ISS 130 JL 5 1996 UMI

Owners and operators should make direct contact and work with Russian industry and government authorities.

§ 300.153 Permit issuance.

(a) *Acceptance.* Once the Department of State has accepted the conditions and restrictions proposed by the Russian Federation and all fees have been paid, the competent authorities of the Russian Federation will approve the application. The Russian Federation will issue a permit to the vessel owner for each fishing vessel for which it has approved an application. That vessel will thereupon be authorized by the Russian Federation to fish in accordance with the Agreement and the terms and conditions set forth in the permit. The vessel owner is prohibited from transferring the permit to any other vessel or person. Any such transfer, or the sale or other transfer of the vessel, will immediately invalidate the permit. The vessel owner must notify NMFS of any change in the permit application information submitted to NMFS Headquarters under § 300.152 within 7 calendar days of the change.

(b) *Copies.* The vessel owner and operator must mail a copy of each permit and any conditions and restrictions issued for that vessel by the Russian Federation within 7 calendar days of its receipt to NMFS Headquarters.

(c) *Validity.* Any permit issued by the Russian Federation with respect to a vessel subject to this subpart will be deemed to be a valid permit only if:

(1) A completed permit application has been forwarded to the competent authorities of the Russian Federation as provided in § 300.152(b)(1).

(2) Such application has been approved and a permit issued by the competent authorities of the Russian Federation as provided in paragraph (a) of this section.

(3) The U.S. Department of State has notified the competent authorities of the Russian Federation that it has accepted the conditions and restrictions as provided in paragraph (a) of this section. The permit will be rendered invalid by: The transfer or sale of the permit specified in paragraph (a) of this section; the failure to submit to NMFS any changes in permit application information as required by paragraph (a) of this section; failure to submit to NMFS any permit copy required by paragraph (b) of this section or any other information or report required by any other provision of this subpart; or the failure to pay required permit fees.

(d) *Russian-imposed sanctions.* (1) The Russian Federation will impose appropriate fines, penalties, or forfeitures in accordance with its laws, for violations of its relevant laws or regulations.

(2) In the case of arrest and seizure of a U.S. vessel by Russian authorities, notification will be given promptly through diplomatic channels informing the United States of the facts and actions taken.

(3) The Russian Federation will release U.S. vessels and their crews promptly, subject to the posting of reasonable bond or other security.

(4) The sanctions for violations of limitations or restrictions on fishing operations will be appropriate fines, penalties, forfeitures, or revocations or suspensions of fishing privileges.

§ 300.154 Recordkeeping and reporting.

(a) *General.* The owner and operator of a vessel subject to this subpart are responsible for complying with all recordkeeping and reporting requirements in this part in a timely and accurate manner. Reports and records required by this subpart must be in English, in the formats specified, and unless otherwise specified, based on Greenwich mean time (GMT).

(b) *Vessel permit abstract report.* (1) The owner and operator of a vessel subject to this subpart must submit to NMFS Headquarters a permit abstract report containing the following information:

(i) Vessel name.

(ii) Russian Federation permit number.

(iii) Duration of permit (e.g., 1/1/91–12/31/91).

(iv) Authorized areas of fishing operations in geographic coordinates.

(v) Authorized catch quota in tons.

(vi) Authorized fishing gear.

(vii) Type of permit (e.g., catcher).

(2) The report must be telefaxed to (301) 713–0596 within 5 calendar days of receipt of the Russian permit.

(c) *Activity reports.* The owner and operator of a vessel subject to this subpart must submit to the Regional Director by telefax to (907) 586–7313, the following reports:

(1) *Depart Report* (Action code DEPART). At least 24 hours before the vessel departs from the EEZ for the Russian EZ, NMFS must receive the following information:

(i) The date (month and day), and time (hour and minute GMT), and position (latitude and longitude to the nearest degree and minute), at which the vessel will depart the EEZ for the Russian EZ.

(ii) The weight in metric tons (to the nearest hundredth of a metric ton) of all fish and fish product (listed by species and product codes) on board the vessel at the time it will depart the EEZ.

(2) *Return Report (Action code RETURN).* At least 24 hours before a vessel that has been in the Russian EZ enters the EEZ, NMFS must receive the following information:

(i) The date (month and day), time (hour and minute GMT), and position (latitude and longitude to the nearest degree and minute), at which the vessel will enter the EEZ.

(ii) The weight in metric tons (to the nearest hundredth of a metric ton) of all fish and fish products (listed by species and product codes) on board the vessel at the time it will enter the EEZ, and the areas (Russian EZ, U.S. EEZ, or other) in which such fish products were harvested or received.

(3) All reports must specify: The appropriate action code ("DEPART" or "RETURN"); the vessel's name and international radio call sign (IRCS); the sender's name and telephone number, and FAX, TELEX, and COMSAT numbers; the date (month and day) and time (hour and minute GMT) that the report is submitted to NMFS; and the intended date and U.S. port of landing. A list of species and product codes may be obtained from the Regional Director.

(d) *Recordkeeping.* The owner and operator of a vessel subject to this subpart must retain all copies of all reports required by this subpart on board the vessel for 1 year after the end of the calendar year in which the report was generated. The owner and operator must retain and make such records available for inspection upon the request of an authorized officer at any time for 3 years after the end of the calendar year in which the report was generated, whether or not such records on board the vessel.

§ 300.155 Requirements.

(a) *Compliance with permit requirements.* (1) U.S. nationals and vessels subject to this subpart must have a valid permit, as specified in § 300.153(c) in order to fish for Russian fishery resources.

(2) U.S. nationals and vessels subject to this subpart that are fishing for Russian fishery resources must comply with all provisions, conditions, and restrictions of any applicable permit.

(b) *Compliance with Russian law.* U.S. nationals and vessels fishing for Russian fishery resources may not harass, hunt, capture, or kill any marine mammal within the Russian EZ, attempt to do so, except as may be provided for by an international agreement to which both the United States and Russia are parties, or in accordance with specific authorization and controls established by the Russian Federation. The provisions of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.* also apply to any person or vessel subject to the jurisdiction of the United States while in the Russian EZ, and it shall not be a defense to any violation of the MMPA that the person or vessel was acting in accordance with any permit or authorization issued by the Russian Federation.

(d) *Cooperation with enforcement procedures.* (1) The operator of, or any person aboard, any U.S. vessel subject to this subpart must immediately comply with instructions and signals issued by an authorized officer of the Russian Federation to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record, and catch for purposes of enforcing the relevant laws and regulations of Russia.

(2) The operator of, and any person aboard, any U.S. vessel subject to this subpart, must comply with directions issued by authorized officers of the Russian Federation in connection with the seizure of the vessel for violation of the relevant laws or regulations of the Russian Federation.

(3) U.S. nationals and vessels subject to this subpart must pay all fines and penalties and comply with forfeiture sanctions imposed by the Russian Federation for violations of its relevant laws and regulations.

(4) The operator of, and any person aboard, any U.S. vessel subject to this subpart must immediately comply with instructions and signals issued by an authorized officer of the United States to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing records, and catch for purposes of enforcing the Magnuson Act, the Agreement, and this subpart.

(e) *Compliance with observer requirements.* The owner of, operator of, and any person aboard, any U.S. vessel fishing in the Russian EZ or for Russian fishery resources to which a Russian observer is assigned must—

(1) Allow and facilitate, on request, boarding of a U.S. vessel by the observer.

(2) Provide to the observer, at no cost to the observer or the Russian Federation, the courtesies and accommodations provided to ship's officers.

(3) Cooperate with the observer in the conduct of his or her official duties.

(4) Reimburse the Russian Federation for the costs of providing an observer aboard the vessel.

§ 300.156 Prohibited acts.

In addition to the prohibited acts specified at § 300.4, it shall be unlawful for any U.S. national or vessel, or the owner or operator of any such vessel:

(a) To fish for Russian fishery resources without a valid permit issued by the competent authorities of the Russian Federation.

(b) To violate the provisions, conditions, and restrictions of an applicable permit.

(c) To violate the relevant laws and regulations of Russia.

(d) To harass, hunt, capture, or kill any marine mammal within the Russian EZ, or while fishing for Russian fishery resources, except as provided in § 300.155 (c).

(e) To fail to comply immediately with enforcement and boarding procedures specified in § 300.155 (d).

(f) To refuse to allow an authorized officer of the Russian Federation to board and inspect a vessel subject to this subpart for purposes of conducting any search, inspection, arrest, or seizure in connection with the enforcement of the relevant laws and regulations of the Russian Federation.

(g) To assault, resist, oppose, impede, intimidate, threaten, or interfere with, in any manner, any authorized officer of the Russian Federation in the conduct of any search, inspection, seizure, or arrest in connection with enforcement of the relevant laws and regulations of the Russian Federation.

(h) To fail to pay fines or penalties or comply with forfeitures imposed for a violation of the relevant laws and regulations of the Russian Federation.

(i) To refuse or fail to allow a Russian observer to board a vessel subject to this subpart while fishing in the Russian EZ, or for Russian fishery resources.

(j) To fail to provide to a Russian observer aboard a vessel fishing in the Russian EZ or for Russian fishery resources, the courtesies and accommodations provided to ship's officers.

(k) To assault, resist, oppose, impede, intimidate, threaten, interfere with, harass, or fail to cooperate, in any manner, with a Russian observer placed aboard a vessel subject to this subpart.

(l) To fail to reimburse the Russian Federation for the costs incurred in the utilization of Russian observers placed aboard such vessel.

(m) To possess, have custody or control of, ship, transport, offer for sale, sell, purchase, transship, import, export, or traffic in any manner, any fish or parts thereof taken or retained, landed, purchased, sold, traded, acquired, or possessed, in any manner, in violation of the relevant laws and regulations of the Russian Federation, the Magnuson Act, or this subpart.

(n) To enter the Russian EZ to fish unless a permit application has been submitted through NMFS to the competent authorities of the Russian Federation by the U.S. Department of State for such vessel as provided in this subpart.

(o) To fish for Russian fisheries or to possess fish taken in Russian fisheries on board a vessel subject to this subpart without a valid permit or other valid form of authorization issued by the competent authorities of the Russian Federation on board the vessel.

(p) To falsify, or fail to report to NMFS, any change in the information contained in a permit application subject to this subpart within 7 calendar days of such change.

(q) To attempt to do, cause to be done, or aid and abet in doing, any of the foregoing.

(r) To violate any other provision of this subpart.

§ 300.157 Penalties.

In addition to any fine, penalty, or forfeiture imposed by the Russian Federation, nationals and vessels of the United States violating the prohibitions of § 300.156 are subject to the fines, penalties, and forfeitures and the adjudicative procedures provided in the Magnuson Act, 16 U.S.C. 1858, 1860, 1861, and any other applicable laws and regulations of the United States.

Subpart K—Transportation and Labeling of Fish or Wildlife

Authority: 16 U.S.C. 3371–3378.

§ 300.160 Requirement for marking of containers or packages.

Except as otherwise provided in this subpart, all persons are prohibited from importing, exporting, or transporting in interstate commerce any container or package containing any fish or wildlife (including shellfish) unless each container or package is conspicuously marked on the outside with both the name and address of the shipper and consignee and an accurate list of its contents by species and number of each species.

§ 300.161 Alternatives and exceptions.

(a) The requirements of § 300.160 may be met by complying with one of the following alternatives to the marking requirement:

(1)(i) Conspicuously marking the outside of each container or package

VOL 61 ISS 130 JL 5 1996 UMI

containing fish or wildlife with the word "fish" or "wildlife" as appropriate for its contents, or with the common name of its contents by species, and

(ii) Including an invoice, packing list, bill of lading, or similar document to accompany the shipment that accurately states the name and address of the shipper and consignee, states the total number of packages or containers in the shipment, and for each species in the shipment specifies: The common name that identifies the species (examples include: chinook (or king) salmon; bluefin tuna; and whitetail deer); and the number of that species (or other appropriate measure of quantity such as gross or net weight). The invoice, packing list, bill of lading, or equivalent document must be securely attached to the outside of one container or package in the shipment or otherwise physically accompany the shipment in a manner that makes it readily accessible for inspection; or

(2) Affixing the shipper's wildlife import/export license number preceded by "FWS" on the outside of each container or package containing fish or wildlife if the shipper has a valid wildlife import/export license issued under authority of part 14 of this title. For each shipment marked in accordance with this paragraph (a)(2), the records maintained under § 14.93(d) of this title must include a copy of the invoice, packing list, bill of lading, or other similar document that accurately states the information required by paragraph (a)(1)(ii) of this section.

(3) In the case of subcontainers or packages within a larger packing container, only the outermost container must be marked in accordance with this section, provided, that for live fish or wildlife that are packed in subcontainers within a larger packing container, if the subcontainers are numbered or labeled, the packing list, invoice, bill of lading, or other similar document, must reflect that number or label.

(4) A conveyance (truck, plane, boat, etc.) is not considered a container for purposes of requiring specific marking of the conveyance itself, provided that:

(i) The fish or wildlife within the conveyance is carried loosely or is readily identifiable, and is accompanied by the document required by paragraph (a)(1)(ii) of this section; or

(ii) The fish or wildlife is otherwise packaged and marked in accordance with this subpart.

(b) The requirements of § 300.160 of chapter III of this title do not apply to containers or packages containing—

(1) Fox, nutria, rabbit, mink, chinchilla, marten, fisher, muskrat, and karakul that have been bred and born in captivity, or their products, if a signed statement certifying that the animals were bred and born in captivity accompanies the shipping documents;

(2) Fish or shellfish contained in retail consumer packages labeled pursuant to the Food, Drug and Cosmetic Act, 21 U.S.C. 301 *et seq.*; or

(3) Fish or shellfish that are landed by, and offloaded from, a fishing vessel (whether or not the catch has been carried by the fishing vessel interstate), as long as the fish or shellfish remain at the place where first offloaded.

50 CFR Chapter VI

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

5. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 16 U.S.C. 1801 *et seq.*

6. In § 679.2, paragraph (1) under the definition of "IFQ regulatory area" and the definition for "IPHC" are revised to read as follows:

§ 679.2 Definitions.

* * * * *

IFQ regulatory area means:

(1) With respect to IFQ halibut, areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E as prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of chapter III of this title.

* * * * *

IPHC means International Pacific Halibut Commission (see part 300 of chapter III of this title).

* * * * *

7. In § 679.3, paragraphs (a) and (c) are revised to read as follows:

§ 679.3 Relation to other laws.

(a) *Foreign fishing for groundfish.* Regulations governing U.S. nationals fishing in the Russian fisheries are set forth in part 300 of chapter III of this title.

* * * * *

(c) *Halibut.* Additional regulations governing the conservation and management of halibut are set forth in subpart E of part 300 of chapter III of this title.

* * * * *

8. In § 679.4, paragraph (d)(1) introductory text and (f)(1)(i) are revised to read as follows:

§ 679.4 Permits.

* * * * *

(d) * * * (1) *General.* In addition to the permit and licensing requirements prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of chapter III of this title and in the permit requirements of this section, all fishing vessels that harvest IFQ halibut or IFQ sablefish must have on board:

* * * * *

(f) * * * (1) * * * (i) *Applicability.* In addition to the permit and licensing requirements prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of chapter III of this title and paragraphs (b) and (d) of this section, and except as provided in paragraph (f)(1)(ii) of this section, a processor of fish from a Research Plan fishery must have a Federal processor permit issued by the Regional Director.

* * * * *

9. In § 679.5, paragraph (l) introductory text is revised to read as follows:

§ 679.5 Recordkeeping and reporting.

* * * * *

(l) *IFQ recordkeeping and reporting requirements.* In addition to the recordkeeping and reporting requirements in this section and as prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of chapter III of this title, the following reports are required.

* * * * *

10. In § 679.7, paragraphs (a)(6)(i), (b)(3), (f)(4), and (f)(11)(i) are revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(6) * * *

(i) Deployment of hook-and-line gear by operators of vessels fishing for halibut during seasons prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of chapter III of this title.

* * * * *

(b) * * *

(3) *Halibut.* With respect to halibut caught with hook-and-line gear deployed from a vessel fishing for groundfish, except for vessels fishing for halibut as prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of chapter III of this title:

* * * * *

(f) * * *

(4) Except as provided in § 679.5(l)(3), retain IFQ halibut or IFQ sablefish on a vessel in excess of the total amount of unharvested IFQ, applicable to the vessel category and IFQ regulatory area in which the vessel is deploying fixed gear, and that is currently held by all IFQ card holders aboard the vessel, unless the vessel has an observer aboard under subpart E of this part and maintains the applicable daily fishing log prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of chapter III of this title and § 679.5.

* * * * *

(11) * * *

(i) Discard of halibut is required as prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of chapter III of this title;

* * * * *

11. In § 679.21, paragraph (b)(1) is revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(b) * * * (1) *Definition.* Prohibited species, for the purpose of this part, means any of the species of Pacific salmon (*Oncorhynchus* spp.), steelhead trout (*Oncorhynchus mykiss*), halibut, Pacific herring (*Clupea harengus pallasi*), king crab, and Tanner crab caught by a vessel regulated under this part while fishing for groundfish in the BSAI or GOA, unless retention is authorized by other applicable laws, including the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title.

* * * * *

12. In § 679.23, paragraphs (e)(4)(i) and (f) are revised to read as follows:

§ 679.23 Seasons.

* * * * *

(e) * * *

(4) * * * (i) *CDQ halibut.* Fishing for CDQ halibut with fixed gear under an approved CDQ allocation may begin on the effective date of the allocation, except that CDQ fishing may occur only during the fishing periods specified in the annual management measures published in the **Federal Register** pursuant to § 300.62 of chapter III of this title.

* * * * *

(f) *IFQ halibut.* The fishing period(s) for IFQ halibut are established by the IPHC and are specified in the annual management measures published in the **Federal Register** pursuant to § 300.62 of chapter III of this title. Catches of halibut by fixed gear at times other than during the specified fishing periods must be treated as prohibited species as prescribed at § 679.21(b).

* * * * *

13. In § 679.24, the introductory paragraph is revised to read as follows:

§ 679.24 Gear limitations.

Regulations pertaining to vessel and gear markings are set forth in this section and as prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of chapter III of this title.

* * * * *

14. In § 679.30, paragraph (b)(1)(ii) is revised to read as follows:

§ 679.30 General CDQ regulations.

* * * * *

(b) * * *

(1) * * *

(ii) *Allocation request.* The allocation of each CDQ species requested for each subarea or district of the BSAI, as defined at § 679.2 and for each IPHC regulatory area, as prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of chapter III of this title.

* * * * *

15. In § 679.40, the introductory paragraph is revised to read as follows:

§ 679.40 Sablefish and halibut QS.

The Regional Director shall annually divide the TAC of halibut and sablefish that is apportioned to the fixed gear fishery pursuant to the annual management measures published in the **Federal Register** pursuant to § 300.62 of chapter III of this title and § 679.20, minus the CDQ reserve, among qualified halibut and sablefish quota share holders, respectively.

* * * * *

PART 695—[REMOVED]

16. Under the authority of 16 U.S.C. 1801 *et seq.*, 50 CFR part 695 is removed.

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VOL
61

ISS
130

JL
5

1996

UMI

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Part VI

Department of Labor

Employment and Training Administration

Department of Education

Office of Vocational and Adult Education; School-to-Work Opportunities; Urban/Rural Opportunities Grants; Notice

VOL
61
ISS
130
JL
5
1996
UMI

DEPARTMENT OF LABOR

Employment and Training Administration

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education School-to-Work Opportunities; Urban/Rural Opportunities Grants

AGENCIES: Employment and Training Administration, Department of Labor; Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of Final Priority for School-to-Work Urban/Rural Opportunities Grants Using Fiscal Year (FY) 1995 Funds.

SUMMARY: The Secretaries of Labor and Education (the Secretaries) announce a competitive priority for the Urban/Rural Opportunities Grants competition authorized by Title III of the School-to-Work Opportunities Act of 1994 (the Act) using FY 1995 funds. This priority provides for a competitive preference to be given to applications from local partnerships proposing to implement a School-to-Work Opportunities initiative for youth residing or attending school in an Empowerment Zone or Enterprise Community (EZ/EC) designated under section 1391 of the Internal Revenue Code (IRC), as amended by Title XIII of the Omnibus Budget Reconciliation Act of 1993. The Secretaries announce that they intend to use this priority, along with the selection criteria published in the November 14, 1995, issue of the **Federal Register** (60 FR 57276), to select applications for funding under the Urban/Rural Opportunities Grants competition using FY 1995 funds. The Secretaries take this action to focus Federal financial assistance on implementing School-to-Work Opportunities initiatives in urban or rural areas of high poverty.

EFFECTIVE DATE: This priority takes effect on August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Karen Clark, National School-to-Work Office, U.S. Departments of Labor and Education, 400 Virginia Avenue, S.W., Room 210, Washington, D.C. 20024. Telephone: (202) 401–6222 (this is not a toll-free number). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Secretaries intend to award grants to local partnerships to implement School-to-Work Opportunities initiatives serving youth residing or attending school in urban or rural high poverty areas. The Secretaries recognize the particular challenges faced by local partnerships serving youth in urban and rural high-poverty areas in preparing the youth for first jobs in high-skill, high-wage careers and in increasing their opportunities for further education and training. Similarly, the EZ/EC initiative is aimed at rebuilding communities in America's poverty-stricken inner cities and rural heartlands. Under the EZ/EC initiative, the Federal Government has designated certain geographic areas as EZs and as ECs in accordance with Internal Revenue Code (IRC) section 1391, as amended by Title XIII of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). The selected areas were designated as EZs or ECs based on the quality of their strategic plans addressing how each zone or community would link economic development with education and training, as well as how community development, public safety, human services, and environmental initiatives together would support sustainable community improvement efforts.

On December 6, 1995, the Secretaries published a notice of proposed priority for this competition in the **Federal Register** (60 FR 62698).

Note: This notice of final priority does not solicit applications. A solicitation for grant applications under this competition was published in the **Federal Register** on November 14, 1995 (60 FR 57276).

Analysis of Comments and Changes

In response to the Secretaries' invitation in the notice of proposed priority, 34 parties submitted comments. An analysis of the comments and of the changes in the priority since publication of the notice of proposed priority follows. Technical and other minor changes—and suggested changes the Secretaries are not legally authorized to make under the applicable statutory authority—are not addressed.

Comments: Several commenters expressed support for the Secretaries' proposal to give competitive preference to applications from partnerships that propose to implement a School-to-Work Opportunities initiative serving youth who reside or attend school in an area designated as an EZ or EC.

Discussion: The EZ/EC initiative seeks to implement a broad-based strategy for meeting the needs of youth in high poverty areas, and the Urban/Rural Opportunities Grants are well-suited for inclusion in such an overarching strategy. Similarly, as a part of the EZ/EC designation process, communities designated as EZs or ECs have already demonstrated a capacity for the type of collaboration and cooperative planning that is critical to developing and implementing successful School-to-Work Opportunities initiatives.

Changes: None.

Comment: Two commenters stated that there are typographical errors in the list of ECs that appeared in the **Federal Register** notice. One commenter suggested that five San Francisco neighborhoods that were also designated as ECs should have been included in the list.

Discussion: The Secretaries agree with the commenters about the typographical errors and the addition of the five San Francisco neighborhoods to the ECs list.

Changes: In the list of ECs, "New Mexico: Moro, Rico Arriba, Taos Counties" has been changed to "New Mexico: Mora, Rio Arriba, Taos Counties" and "California: San Francisco, Bayview, Hunters Point" has been changed to "California: San Francisco, Bayview-Hunters Point, Southeast Section." In addition, the following San Francisco neighborhoods have been added to the list of Enterprise Communities: Tenderloin, Chinatown, South of Market, Mission, and Visitacion Valley. This revised list is included as an appendix to this notice.

Comment: One commenter noted that there was no mention in the proposed priority of special populations (such as individuals with disabilities, economically and educationally disadvantaged individuals, individuals with limited English proficiency, individuals in non-traditional occupations by gender, and individuals in corrections programs) in the discussion of the target service population. The commenter argued that the failure to include a reference to those special populations would result in selecting EZs or ECs that do not serve those most in need.

Discussion: The inclusion of special populations in a local partnership's plan to serve high poverty area youth is covered in Criterion 3 of the selection criteria to be used for this competition. These criteria were published in the November 14, 1995, **Federal Register** notice. Criterion 3 requires that a local partnership describe its strategies for effectively ensuring opportunities for the participation of all students and to identify ways of overcoming barriers to the participation of any student. Like the Act, Criterion 3 refrains from requiring applicants to design specific programs for each specific group of students. Rather, the focus is on building a school-to-work system for all students. The Secretaries agree that to receive the maximum points for Criterion 3, applicants may not neglect the needs of any student and must convincingly describe how the local partnership's School-to-Work Opportunities system will provide the same options and produce the same results for all participating students, while recognizing that certain groups of students have different needs and, therefore, that specific strategies may be required for the target groups listed in the definition of "all students." Applications that fail to address the critical needs of various student populations and fail to develop effective strategies based on identified student needs will not be as competitive as applications that have comprehensive and effective strategies for all students.

Changes: None.

Comments: Several commenters disagreed with the Secretaries' proposal to give competitive preference to partnerships in EZs and ECs. Five commenters expressed concern that this would create a disincentive to the point of deterring innovation among existing effective high-poverty models and efforts at collaboration. One commenter suggested changing the way points are awarded by giving partnerships in EZ/ECs 5 to 10 points rather than giving them a preference among applications of comparable merit. Another commenter argued that giving priority to partnerships in EZ/ECs discounts the value of projects implemented by partnerships that do not serve EZ/EC areas and impedes the effective use of other Federal dollars by those partnerships. One commenter suggested that the proposed competitive preference would serve to exclude youth who would be denied the career and academic skills they need. Two commenters argued that this preference is unfair in general, and one of them requested a waiver from the preference. Finally, one commenter suggested that the preference is unfair to certain high-poverty rural areas that have not been able to receive an EZ/EC designation.

Discussion: The Secretaries recognize that certain otherwise worthy local areas may not have been designated as EZ/ECs. However, the Secretaries believe that the missions of the EZ/EC initiative and the School-to-Work Opportunities initiative, particularly with regard to Urban/Rural Opportunities Grants, effectively complement one another. The purpose of the EZ/EC priority is to encourage collaboration between those initiatives, not to deny services to youth in any area. Moreover, Criterion 5 of the selection criteria requires a partnership to develop a strategy for using other resources, including other Federal funds, when Federal resources under the School-to-Work Opportunities Act are no longer available. As with previous competitions, applications that fail to address a partnership's ability to leverage additional resources, including other Federal resources, will not be as competitive as other applications that demonstrate the partnership's ability to effectively use additional funding. The Secretaries believe that all Federal funds are important for building an effective School-to-Work Opportunities system and do not believe that the EZ/EC preference discounts the value of or impedes the effective use of other Federal dollars in any way. Although it is unfortunate that it is too late for high-poverty areas to gain an EZ or EC designation in time for the current Urban/Rural Opportunities Grant competition, applicants are reminded that this priority merely provides a line of distinction when two applications are of comparable merit. Applicants are also reminded that the President is expected to announce a second round of EZ/EC designations in the coming months. The Secretaries preferred this priority method over assigning a specific number of points to EZ/ECs to avoid increasing an applicant's score merely on the basis of EZ/EC designation. Finally, granting waivers of a competitive preference established as applicable to a particular grant competition is not an available option under either the Act or under applicable Department regulations.

Changes: None.

Comment: One commenter suggested that the criteria for funding programs should include the provider's background, commitment, and experience in developing partnerships in his or her community rather than giving preference to partnerships serving areas designated as EZs or ECs.

Discussion: The Secretaries agree that the quality of a provider's background, commitment, and experience are important for the implementation of successful School-to-Work Opportunities systems. Toward that end, Criterion 2 of the selection criteria requires that applicants demonstrate an effective and convincing strategy for continuing the commitment of required partners and other interested parties in the local School-to-Work Opportunities system. In addition, Criterion 5 requires that applicants develop a feasible and effective strategy for using other resources, including private sector resources, to maintain the system when Federal resources under the School-to-Work Opportunities Act are no longer available. Applications that fail to adequately address these criteria, regardless of EZ/EC designation, will not be as competitive as applications that effectively demonstrate the ability of the partnership to develop resources and commitments that will build a long-lasting, quality school-to-work system.

Changes: None.

Comments: Two commenters suggested that communities that operate Youth Fair Chance programs should be given the same preference as EZ/ECs because their areas meet the same demographic requirements as listed in the grant announcement for EZ/ECs.

Discussion: Both EZ/ECs and Urban/Rural Opportunities Grant local partnerships are called upon to carry out activities that require a high degree of collaboration as indicated in the **Federal Register** notice announcing the competition. Because EZ/ECs already demonstrate such a high degree of collaboration at the local level, the Secretaries believe that the activities and goals of Urban/Rural Opportunities Grant local partnerships and those who implement the EZ/EC initiative effectively complement each other, resulting in a high degree of collaboration among school-to-work activities. The Secretaries are sympathetic to these commenters and recognize Youth Fair Chance projects as worthwhile initiatives; however, in taking into account the scarcity of resources that promote community collaboration, they believe this competitive preference is the most effective way to channel Urban/Rural Opportunities Grant funds and foster local collaborative efforts.

Changes: None.

Comment: One commenter protested the late notification of the EZ/EC priority in the **Federal Register**, arguing that the announcement was made after the partnership submitted its application to the State for review.

Discussion: The Secretaries believe applicants had fair notice of their intent to give a competitive preference to applicants from EZs or ECs. First, on December 6, 1995, a notice of proposed priority appeared in the **Federal Register** more than three weeks before applications were due to the States. Second, applicants were asked to indicate their collaboration with other programs, including EZs or ECs, under Criterion 2 of the selection criteria. Finally, the preference is based on whether the applicant is part of an EZ or EC, not on anything else in the application, so the timing of the priority

VOL
61
ISS
130
JUL
5
1996
UMI

notice would not have affected the way the applicants wrote their applications.

Changes: None.

Comment: One commenter suggested that giving priority preference to EZ/ECs discriminates against Indian Reservations because they were excluded from the EZ/EC application process and that areas eligible for priority preference should include Indian reservations and USDA Champion designated areas.

Discussion: Many programs for Indian youth are eligible for School-to-Work Opportunities funding under Urban/Rural Opportunities Grants, Local Partnership Grants, and State Implementation subgrants to local partnerships. In addition, a special set-aside for School-to-Work Indian Program Grants is available for local partnerships that include the involvement of schools funded by the Bureau of Indian Affairs (BIA) and is used to create school-to-work systems that serve Indian youth. Last year, $593,219 was awarded under this set-aside in nine School-to-Work Indian Program Grants to develop and implement those systems. This year, $1.225 million is available for new grants and continuations to partnerships serving Indian youth.

Changes: None.

Priority

Under 34 CFR 75.105(c)(2)(ii), the Secretaries give preference to applications that meet the following competitive priority. An application that meets this competitive priority is selected by the Secretaries over applications of comparable merit that do not meet the priority:

This priority is for local partnerships serving youth residing or attending school in urban or rural high poverty areas designated as Empowerment Zones (EZs) or Enterprise Communities (ECs).

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 and 29 CFR Part 17. The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Departments' specific plans and actions for this program.

Program Authority: 20 U.S.C. 6101, *et seq.* (Catalog of Federal Domestic Assistance (CFDA) Number 278D of School-to-Work Opportunities of Urban/Rural Opportunities Grants)

Dated: June 28, 1996.

Timothy M. Barnicle,

Assistant Secretary for Employment and Training, U.S. Department of Labor.

Patricia McNeil,

Assistant Secretary for Vocational and Adult Education, U.S. Department of Education.

Appendix

Empowerment Zones and Enterprise Communities

Note: Many EZ/ECs cover only a portion of the listed city or county. To meet the competitive priority, the local partnership must serve youth residing or attending school in the EZ/EC, not just in the city or county listed.

EMPOWERMENT ZONES (EZ)

Georgia: Atlanta
Illinois: Chicago
Kentucky: Kentucky Highlands*
Maryland: Baltimore
Michigan: Detroit
Mississippi: Mid Delta*
New York: Harlem, Bronx
Pennsylvania/New Jersey: Philadelphia, Camden
Texas: Rio Grande Valley*

SUPPLEMENTAL EMPOWERMENT ZONES (SEZ)

California: Los Angeles
Ohio: Cleveland

ENTERPRISE COMMUNITIES (EC)

Alabama: Birmingham
Alabama: Chambers County*
Alabama: Greene, Sumter Counties*
Arizona: Phoenix
Arizona: Arizona Border*
Arkansas: East Central*
Arkansas: Mississippi County*
Arkansas: Pulaski County
California: Imperial County*
California: Los Angeles, Huntington Park
California: San Diego
California: San Francisco, Bayview-Hunters Point, Southeast Section
California: San Francisco, Tenderloin
California: San Francisco, Chinatown
California: San Francisco, South of Market
California: San Francisco, Mission
California: San Francisco, Visitacion Valley
California: Watsonville*
Colorado: Denver
Connecticut: Bridgeport
Connecticut: New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County*
Florida: Tampa
Florida: Miami, Dade County
Georgia: Albany
Georgia: Central Savannah*
Georgia: Crisp, Dooley Counties*
Illinois: East St. Louis
Illinois: Springfield
Indiana: Indianapolis
Iowa: Des Moines
Kentucky: Louisville
Louisiana: Northeast Delta*
Louisiana: Macon Ridge*
Louisiana: New Orleans
Louisiana: Ouachita Parish
Massachusetts: Lowell
Massachusetts: Springfield
Michigan: Five Cap*
Michigan: Flint
Michigan: Muskegon
Minnesota: Minneapolis
Minnesota: St. Paul
Mississippi: Jackson
Mississippi: North Delta*
Missouri: East Prairie*
Missouri: St. Louis
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque
New Mexico: Mora, Rio Arriba, Taos Counties*
New York: Albany, Schenectady, Troy
New York: Buffalo
New York: Newburgh, Kingston
New York: Rochester
North Carolina: Charlotte
North Carolina: Halifax, Edgecombe, Wilson Counties*
North Carolina: Robeson County*
Ohio: Akron
Ohio: Columbus
Ohio: Greater Portsmouth*
Oklahoma: Choctaw, McCurtain Counties*
Oklahoma: Oklahoma City
Oregon: Josephine*
Oregon: Portland
Pennsylvania: Harrisburg
Pennsylvania: Lock Haven*
Pennsylvania: Pittsburg
Rhode Island: Providence
South Carolina: Charleston
South Carolina: Williamsburg County*
South Dakota: Beadle, Spink Counties*
Tennessee: Fayette, Haywood Counties*
Tennessee: Memphis
Tennessee: Nashville
Tennessee/Kentucky: Scott, McCreary Counties*
Texas: Dallas
Texas: El Paso
Texas: San Antonio
Texas: Waco
Utah: Ogden
Vermont: Burlington
Virginia: Accomack*
Virginia: Norfolk
Washington: Lower Yakima*
Washington: Seattle
Washington: Tacoma
West Virginia: West Centeral*
West Virginia: Huntington
West Virginia: McDowell*
Wisconsin: Milwaukee

*denotes rural designee

ENHANCED ENTERPRISE COMMUNITIES (EEC)

California: Oakland
Massachusetts: Boston
Missouri/Kansas: Kansas City, Kansas City
Texas: Houston

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Friday
July 5, 1996

Part VII

The President

Proclamation 6908—A National Month of Unity, 1996

VOL
61
ISS
130
JL
5
1996
UMI

Federal Register
Vol. 61, No. 130
Friday, July 5, 1996

Presidential Documents

Title 3—

The President

Proclamation 6908 of July 1, 1996

A National Month of Unity, 1996

By the President of the United States of America

A Proclamation

Our Nation was founded by people who sought the right to worship freely, and religious liberty is enshrined in our Constitution as the "first freedom" granted by our Bill of Rights. The United States is now the most multi-ethnic, multi-religious democracy in history, and we must preserve this precious freedom while making the most of our diversity. Ours is a great and noble struggle to make our national voice a chorus of unity—varied by differing intonations, but carried and lifted by a rich harmony.

The recent rash of arson attacks against black churches and other houses of worship is a stark reminder that our work to build common ground is far from over and that our progress can be threatened by forces that tear at the very fabric of our society. It is hard to think of a more heinous act than the destruction of a sacred structure. The violence that charred and defaced these buildings challenges our fundamental right to worship in safety, and has left us grim emblems of the hatred and alienation that too often darken our daily experience.

And so we must look into our hearts as America approaches the new century, pledging to devote our energies to reinvigorating the shared values that will enable us to embrace the future together. We must never go back to the terrible days of racial and ethnic division, nor can we afford to dismiss our problems by ascribing them to isolated groups or areas of the country. Instead, let us join hands to lighten our burdens and build bridges among people and communities so that we can be one America—a Nation of extraordinary possibility with opportunity, freedom, and respect for all.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim July 1996, as A National Month of Unity. I call upon religious leaders of all faiths to emphasize the need for healing and tolerance. I ask all Americans to join these efforts by working together to mend divisions and promote understanding; by reaching out to friends and neighbors of all races and faiths in a spirit of fellowship; and by seeking to strengthen, through words and actions, the ideals of equality and community cherished by generations of Americans. In this birth month of our Nation, let us set an example for the world we welcome to Atlanta for the Centennial Olympic Games by rededicating ourselves to America's fundamental truth: E pluribus unum—from many, one.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of July, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

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VOL
61
ISS
130
JL
5
1996
UMI

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Vol. 61, No. 130
Friday, July 5, 1996

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Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
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FEDERAL REGISTER PAGES AND DATES, JULY

33825–34366	1
34367–34712	2
34713–35082	3
35083–35588	5

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6907 35083
6908 35587

Administrative Orders:
Presidential Determinations:
No. 96–36 of June 28, 1996 35075

5 CFR
530 34713
531 34713
534 34713
550 34713
575 34713
581 34713
582 34713
630 34713
734 35088
Ch. XXIII 35085

7 CFR
301 ..... 35102, 35107
400 34367
868 34714
946 35109
1493 33825
Proposed Rules:
210 35152
220 35152
225 35152
226 35152
300 34379
319 34379
1240 34385

8 CFR
301 35111

9 CFR
112 33840
113 33840
Proposed Rules:
1 34386
3 ..... 34386, 34389
11 34747
319 35157
381 35157
391 34747

10 CFR
205 ..... 35112, 35114
463 35114
1003 35112
1010 35085

12 CFR
324 33842
367 35115
Proposed Rules:
207 33874
218 34749
220 33874
221 33874
250 34749
327 34751

14 CFR
1 34508
25 34716
29 33963
39 ..... 33874, 34368, 34718, 35122, 35126, 35127
61 34508
71 ..... 33843 33844, 33845, 34720, 34721, 34722, 34723, 35307
91 34508
121 ..... 34508, 34927
125 34508
135 ..... 34508, 34927
141 34508
142 34508
211 34724
213 34724
Proposed Rules:
25 35056
39 34767
71 ..... 34391, 34393, 34394, 34395, 34396, 34397, 34398, 34769

15 CFR
902 ..... 34570, 34930, 34966, 35145, 35548
Proposed Rules:
922 33876

19 CFR
10 33845
12 33845
102 33845
134 33845

21 CFR
177 34370
178 33846
452 34726
520 34727
522 ..... 34727, 35129
529 34727
558 34727

24 CFR
203 35024
206 35014

25 CFR
10 34371
Proposed Rules:
11 35158
12 35163
21 33876

VOL 61 ISS 130 JL 5 1996 UMI

45 34399
152 34400
171 35167

26 CFR

42 34729

Proposed Rules:

31 34770

29 CFR

Ch. XXVI 34002
Ch. XL 34002
2509 33847
2520 33847
2550 33847

Proposed Rules:

Ch. XIV 34405
101 35172
102 35172

30 CFR

256 34730

33 CFR

164 35064
165 ..... 35130, 35132
334 34732

Proposed Rules:

154 34775
155 34775

36 CFR

1 35133
13 35133

38 CFR

1 33850

Proposed Rules:

1 33878

40 CFR

9 ..... 33851, 34202
55 34202
63 34140
70 34733
71 34202
80 35310
180 ..... 34739, 34741
257 34253
261 34252
271 34252
300 35137

Proposed Rules:

80 34775
81 33879
90 34778
260 33881
261 33881
262 33881
264 33881
268 33881
269 33881
271 33881

42 CFR

405 35307
417 35307
431 35307
473 35307
498 35307

Proposed Rules:

410 34614
415 34614

44 CFR

65 ..... 33852, 33854
67 33856

Proposed Rules:

67 33882

46 CFR

76 35138
111 35927
167 35138

47 CFR

20 33859
22 34375
24 33850
36 34375
73 ..... 34368, 34743, 34744, 35139
90 34375

Proposed Rules:

Ch. I 34405
73 ..... 34406, 34407, 34784, 34785
76 ..... 34408, 34409

49 CFR

1 34745
192 35139
233 33871
235 33871
236 33871
571 33891
1300 35139
1305 35141

Proposed Rules:

1 33886
8 33886
192 ..... 34410, 34413
195 ..... 34410, 34413

50 CFR

246 35548
280 35548
281 35548
282 35548
298 35548
299 35548
Ch. III 35548
622 34930
625 34966
630 34746
638 34930
641 34930
642 34785
645 34930
646 34930
647 34930
648 ..... 34966, 35142
650 34966
651 34966
652 34966
653 34930
655 34966
657 34966
658 34930
659 34930
660 ..... 34570, 35143, 35144
661 34570
663 34570
669 34930
670 34930
679 34377
680 34570
681 ..... 34570, 35145
683 34570
685 34570
695 35548
697 34746

Proposed Rules:

642 34785
679 35174

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Pork promotion, research, and consumer information; published 6-4-96
Tobacco inspection:
Growers; mail referendum; published 6-4-96

ENERGY DEPARTMENT
Conflict of interests; published 7-5-96

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; published 5-6-96
Illinois; published 5-6-96
Ohio; published 5-6-96
Utah; published 5-6-96
Clean Air Act:
State operating permits programs--
Rhode Island; published 5-6-96
Superfund program:
National oil and hazardous substances contingency plan--
National priorities list update; published 7-5-96
National priorities list update; published 7-5-96

FEDERAL COMMUNICATIONS COMMISSION
Maritime mobile and maritime mobile-satellite radio services; accounting authorities administration; published 5-6-96
Radio stations; table of assignments:
Georgia; published 7-5-96
Television broadcasting:
Cable television service--
Open video systems; published 6-5-96

FEDERAL DEPOSIT INSURANCE CORPORATION
Contractors suspension and exclusion and contracts termination; published 7-5-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
New drug applications--
Ceftiofur; published 7-5-96

INTERIOR DEPARTMENT
National Park Service
National Park System:
Conveyance of freehold and leasehold interests; published 6-5-96
Special regulations:
Appalachian National Scenic Trail, PA; hang gliding; published 6-5-96

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:
Benefits applicants fingerprint taking; designated outside entities certification; published 6-4-96
Nationality:
Citizenship acquisition; equal treatment of women in conferring citizenship on children born abroad; published 7-5-96

PERSONNEL MANAGEMENT OFFICE
Prevailing rate systems; published 6-4-96

TRANSPORTATION DEPARTMENT
Coast Guard
Federal regulatory reform:
Inspected and uninspected commercial vessels industry standards
Correction; published 7-5-96
Regattas and marine parades:
Augusta Southern National Drag Boat Races; published 6-5-96
Beaufort Water Festival; published 6-5-96
Fort Myers Beach Offshore Grand Prix; published 6-5-96
Suncoast Kilo Run et al.; published 6-24-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness standards:
Aircraft engines--
Continued rotation, rotor locking, and vibration; published 6-4-96
Transport category airplanes--
Subsonic transport airplanes; high altitude operation; published 6-5-96
Class E airspace; published 6-19-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Agricultural commodities; U.S. grade standards and other selected regulations; removal from CFR; Federal regulatory reform; comment period extension; comments due by 7-9-96; published 3-11-96
Limes grown in Florida and imported; comments due by 7-8-96; published 6-26-96

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Horses; importation permit applications and health certificate requirements; comments due by 7-9-96; published 5-10-96

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
Texas citrus fruit crop; comments due by 7-8-96; published 6-5-96

ARMS CONTROL AND DISARMAMENT AGENCY
Freedom of Information Act; implementation; comments due by 7-8-96; published 5-30-96

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish; comments due by 7-8-96; published 6-12-96
Gulf of Mexico reef fish; comments due by 7-8-96; published 5-14-96
National Weather Service; modernization criteria; comments due by 7-8-96; published 6-6-96

COMMODITY FUTURES TRADING COMMISSION
Contract markets:
Trading cards and trading records; correction of erroneous information; procedures; comments due by 7-8-96; published 5-6-96

CONSUMER PRODUCT SAFETY COMMISSION
Consumer Product Safety Act:
Multi-purpose lighters; child-resistance standard; rulemaking petition; comments due by 7-8-96; published 5-7-96

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric utilities (Federal Power Act):
Open access same-time information system (formerly real-time information networks) and standards of conduct for public utilities
Conference cancellation, etc.; comments due by 7-8-96; published 6-18-96

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Radon emissions from phosphogypsum stacks; comments due by 7-8-96; published 5-8-96
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 7-12-96; published 6-12-96
Tennessee; comments due by 7-12-96; published 6-12-96
Air quality implementation plans; √Aapproval and promulgation; various States; air quality planning purposes; designation of areas:
Washington; comments due by 7-8-96; published 6-11-96
Wisconsin; comments due by 7-11-96; published 6-11-96
Air quality planning purposes; designation of areas:
Idaho; correction; comments due by 7-12-96; published 6-12-96
Clean Air Act:
Acid rain provisions--
Direct sale elimination and independent power producers written guarantee program; comments due by 7-8-96; published 6-6-96

VOL
61
ISS
130
JL
5
1996
UMI

Direct sale elimination and independent power producers written guarantee program; comments due by 7-8-96; published 6-6-96
Drinking water:
National primary drinking water regulations--
Lead and copper; comments due by 7-11-96; published 4-12-96

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Telecommunications Act of 1996; implementation--
Local competition provisions; comments due by 7-8-96; published 7-2-96
Radio stations; table of assignments:
Texas; comments due by 7-8-96; published 5-23-96
Television broadcasting:
Digital broadcast television licensees; digital television standard requirement; comments due by 7-11-96; published 5-29-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare and Medicaid:
Essential access community hospitals; designation criteria for rural hospitals; comments due by 7-12-96; published 5-13-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Public Health Service
Interstate shipment of etiologic agents:
Facilities transferring or receiving select infectious agents; additional requirements; comments due by 7-10-96; published 6-10-96

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Mortgage and loan insurance programs:
Home equity conversion mortgage insurance demonstration; use of direct endorsement program; comments due by 7-9-96; published 5-10-96

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Federal regulatory review:
Permanent program and abandoned mine land reclamation plan submissions; comments due by 7-8-96; published 5-8-96
Permanent program and abandoned mine land reclamation plan submissions:
Ohio; comments due by 7-11-96; published 6-11-96
Virginia; comments due by 7-11-96; published 6-11-96

JUSTICE DEPARTMENT
Federal Bureau of Investigation
Communications Assistance for Law Enforcement Act of 1994; cost recovery regulations; comments due by 7-9-96; published 5-10-96

JUSTICE DEPARTMENT
Civil Liberties Act redress provisions:
Persons of Japanese ancestry
Individuals who relocated to Japan as minors during World War II; guidelines; comments due by 7-12-96; published 6-12-96

LABOR DEPARTMENT
Occupational Safety and Health Administration
Shipyard employment safety and health standards:
Fire Protection in Shipyard Employment Negotiated Rulemaking Advisory Committee; meeting; comments due by 7-8-96; published 6-6-96

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright licenses; subscription digital transmissions; notice and recordkeeping; comments due by 7-12-96; published 5-13-96

SECURITIES AND EXCHANGE COMMISSION
Securities, etc.:
Independent Offices Appropriations Act fees; elimination; comments due by 7-8-96; published 5-22-96

TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
New York; comments due by 7-12-96; published 5-13-96
Ports and waterways safety:
San Diego Bay, CA; security zone; comments due by 7-8-96; published 5-23-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operations:
Omnibus Transportation Employee Testing Act of 1991--
Preemployment alcohol testing requirements; comments due by 7-8-96; published 5-9-96
Airworthiness directives:
Beech; comments due by 7-8-96; published 5-30-96
Boeing; comments due by 7-8-96; published 5-9-96
Learjet; comments due by 7-8-96; published 5-30-96
McDonnell Douglas; comments due by 7-8-96; published 5-9-96
New Piper Aircraft, Inc.; comments due by 7-8-96; published 5-3-96
Airworthiness Directives:
New Piper Aircraft, Inc.; comments due by 7-8-96; published 5-3-96
Class E airspace; comments due by 7-8-96; published 5-22-96

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Motor carrier safety standards:
Omnibus Transportation Employee Testing Act of 1991--
Preemployment alcohol testing requirements; comments due by 7-8-96; published 5-9-96

TRANSPORTATION DEPARTMENT
Federal Railroad Administration
Omnibus Transportation Employee Testing Act of 1991:
Preemployment alcohol testing requirements; comments due by 7-8-96; published 5-9-96
Rail passenger equipment safety standards; comments due by 7-9-96; published 6-17-96

TRANSPORTATION DEPARTMENT
Federal Transit Administration
Omnibus Transportation Employee Testing Act of 1991:
Preemployment alcohol testing requirements; comments due by 7-8-96; published 5-9-96

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Fuel economy program, automotive; semi-annual reports; comments due by 7-12-96; published 5-13-96

VETERANS AFFAIRS DEPARTMENT
Disabilities rating schedule:
Fibromyalgia; comments due by 7-8-96; published 5-7-96

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List July 3, 1996

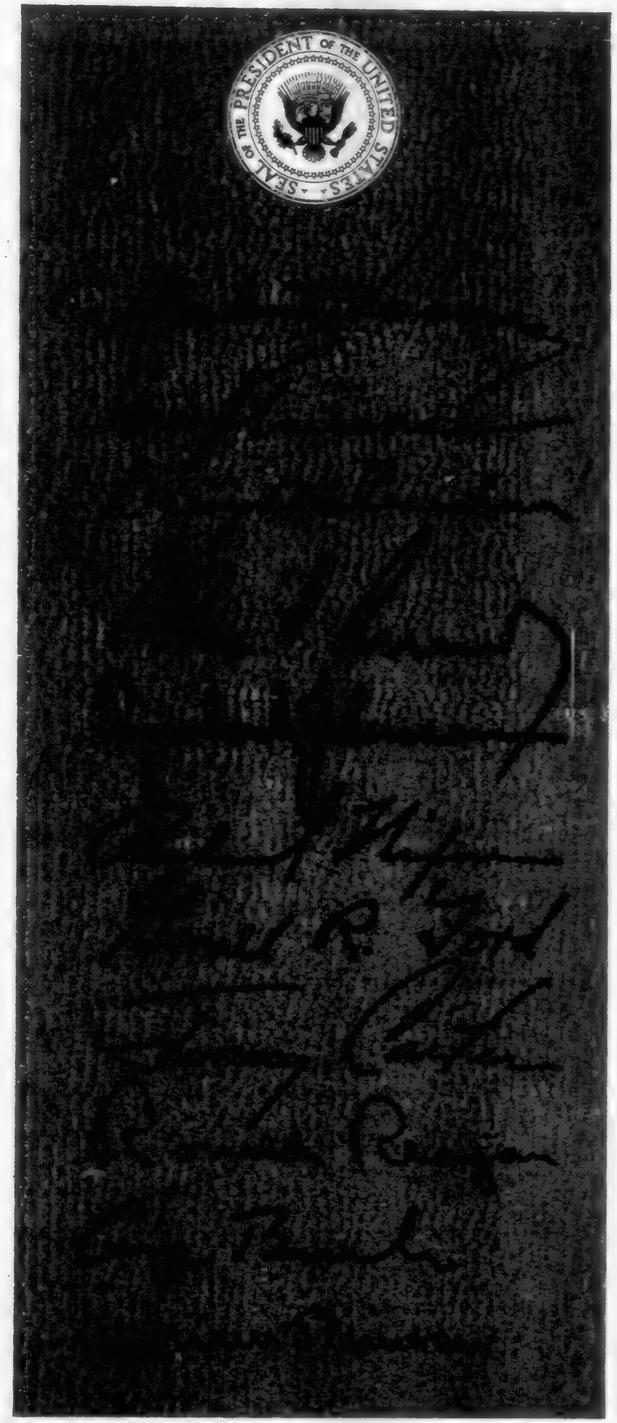

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VOL
61
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JL
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7–8–96
Vol. 61 No. 131
Pages 35589–35914

federal register

Monday
July 8, 1996

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VOL
61
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1
31
JL
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1996
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Contents

Federal Register
Vol. 61, No. 131
Monday, July 8, 1996

Editorial Note: In the **Federal Register** of July 3, 1996, many of the page numbers were incorrect in the table of contents. A corrected table of contents for the July 3, 1996 issue appears after the Reader Aids section at the back of today's **Federal Register**.

Agricultural Marketing Service
RULES
Dairy products; grading, inspection, and standards:
Instant nonfat dry milk, 35589–35592
Milk marketing orders:
Southwest Plains, 35596–35597
Onions grown in—
Idaho et al., and imported, 35592–35593
Peanuts, domestically produced, 35594–35595
Pork promotion, research, and consumer information, 35597

Agriculture Department
See Agricultural Marketing Service
See Food and Consumer Service
See Grain Inspection, Packers and Stockyards Administration
See Natural Resources Conservation Service
See Rural Housing Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 35707

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Clinical Laboratory Improvement Amendments:
Laboratory test systems, assays, and examinations; categorization by complexity, etc., 35736–35762
Meetings:
Disease, Disability, and Injury Prevention and Control special emphasis panel, 35763

Children and Families Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 35763
Medicaid:
Welfare reform and combined welfare reform/Medicaid demonstration projects—
June, 35763–35770
Organization, functions, and authority delegations:
Family Assistance Office, 35770

Coast Guard
PROPOSED RULES
Drawbridge operations:
California, 35702–35703
Ports and waterways safety:
Port access routes—
Cape Fear River and Beaufort Inlet, NC, 35703–35705

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See Minority Business Development Agency
See National Oceanic and Atmospheric Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Technical Advisory Committee to Develop Federal Information Processsing Standard for Federal Key Management Infrastructure, 35710

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 35709–35710

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 35728

Defense Department
See Uniformed Services University of the Health Sciences

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Coleman, Rita M., M.D., 35816

Education Department
NOTICES
Postsecondary education:
William D. Ford Federal direct loan program
Interest rates, 35728–35729

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission

Energy Efficiency and Renewable Energy Office
RULES
Energy conservation:
State energy program; consolidation of State Energy Conservation Program (SECP) and Institutional Conservation Program (ICP); Federal regulatory reform, 35890–35903

Environmental Protection Agency
RULES
Clean Air Act:
Reformulated gasoline program; opt-out requests—
New York et al., 35673–35680
Water pollution; effluent guidelines for point source categories:
Leather tanning and finishing, 35680–35685
PROPOSED RULES
Water pollution; effluent guidelines for point source categories:
Leather tanning and finishing, 35705

Executive Office of the President
See Trade Representative, Office of United States

VOL 61 ISS 131 JL 8 1996 UMI

Federal Aviation Administration
RULES
Air carrier certification and operations:
Commuter operator requirements
Correction, 35628
Restricted areas, 35623
Standard instrument approach procedures, 35626–35628, 35624–35626, 35623–35624
PROPOSED RULES
Airworthiness directives:
Aerospace Technologies of Australia Pty Ltd., 35693–35695
Bombardier, 35691–35693
Raytheon, 35695–35696

Federal Communications Commission
PROPOSED RULES
Radio stations; table of assignments:
Michigan, 35705–35706
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 35731

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Alaska, 35731
Iowa, 35731–35732
North Dakota, 35732
Ohio, 35732
Radiological emergencies response:
Strategic review; notice of intent, 35732–35733

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Colorado Interstate Gas Co., 35729
El Paso Natural Gas Co., 35729–35730
Tennessee Gas Pipeline Co., 35730
Williams Natural Gas Co., 35730–35731

Federal Highway Administration
RULES
Engineering and traffic operations:
Federal-aid program approval and highway project authorization, 35629–35633

Federal Housing Enterprise Oversight Office
RULES
Risk-based capital:
Minimum capital requirement for enterprises (Fannie Mae and Freddie Mac), 35607–35623

Federal Maritime Commission
RULES
Ocean freight forwarders, marine terminal operations, and passenger vessels:
Automated Tariff Filing and Information System (ATFI); essential terms search table; CFR correction, 35685–35666
NOTICES
Freight forwarder licenses:
Foreign Cargo International, Inc., et al., 35733

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
Thrall Car Manufacturing Co., 35858–35859
Traffic control systems; discontinuance and removal:
Burlington Northern Railroad Co. et al., 35859–35860

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 35733–35734
Permissible nonbanking activities, 35734
Committees; establishment, renewal, termination, etc.:
Consumer Advisory Council, 35734–35735
Meetings; Sunshine Act, 35735–35736

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
John F. Kennedy International Airport, NJ and NY; migratory birds, including several gull species, 35804–35808
Meetings:
Aquatic Nuisance Species Task Force, 35808–35809

Food and Consumer Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 35707–35708

Food and Drug Administration
NOTICES
Food additive petitions:
Henkel Corp., 35770–35771
Lonza, Inc.; withdrawn, 35771
Medical devices; premarket approval:
Adeza Biomedical Corp.; Fetal Fibronectin Enzyme Immunoassay Kit, 35771–35772

Foreign-Trade Zones Board
NOTICES
Inactive foreign-trade zones; lapse of authority, 35711–35712
Applications, hearings, determinations, etc.:
New Jersey
Coastal Eagle Point Oil Co.; oil refinery complex, 35710–35711

General Services Administration
RULES
Federal Information Resources Management Regulation:
Federal information processing multiple award schedule contracts; provisions removed, 35685
NOTICES
Public buildings and space:
Federal facilities; location on historic properties in central cities, 35736

Government Ethics Office
RULES
Public financial disclosure, conflicts of interest, and certificates of divesture for executive branch officials
Correction, 35589

Grain Inspection, Packers and Stockyards Administration
PROPOSED RULES
Fees:
Inspection services for commodities other than rice, 35687–35691

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health

Housing and Urban Development Department
See Federal Housing Enterprise Oversight Office
RULES
Public and Indian housing:
Public housing management assessment program
Heating degree day factor; adjustment removed, 35633–35634
NOTICES
Agency information collection activities:
Proposed collection; comment request, 35777
Grant and cooperative agreement awards:
Supportive housing programs—
Elderly and persons with disabilities, 35777–35800
Grants and cooperative agreements; availability, etc.:
Housing counseling agency approval program, 35906–35913
Supportive housing programs—
Elderly, 35866–35875
Persons with disabilities, 35878–35888
Organization, functions, and authority delegations:
Secretary's Field Office Representatives et al.; waiver authority, 35800–35804

Immigration and Naturalization Service
RULES
Immigration:
Defaulted payments; fees assessment, 35597–35598
Visa waiver pilot program—
Argentina, 35598–35600

Indian Affairs Bureau
RULES
Energy and minerals:
Tribal and alloted lands leasing for mineral development, 35634–35666
NOTICES
Grants and cooperative agreements; availability, etc.:
Off-reservation Indian child and family service programs, 35809–35811

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service

Internal Revenue Service
PROPOSED RULES
Income taxes:
Stock disposition loss allocation, 35696–35702

International Trade Administration
NOTICES
Antidumping:
Antifriction bearings (other than tapered roller bearings) and parts from—
France et al., 35713–35724
Chrome-plated lug nuts from—
Taiwan, 35724–35726
Antidumping and countervailing duties:
Administrative review requests, 35712–35713

International Trade Commission
NOTICES
Import investigations:
Circular welded non-alloy steel pipe from—
Romania and South Africa, 35414
U.S.-Africa trade flows and effects of Uruguay Round Agreements and U.S. trade and development policy; comment request, 35814–35815

Judicial Conference of the United States
NOTICES
Meetings:
Judicial Conference Advisory Committee on—
Appellate Procedure Rules, 35815

Justice Assistance Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 35815–35816

Justice Department
See Drug Enforcement Administration
See Immigration and Naturalization Service

Labor Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 35817

Land Management Bureau
NOTICES
Meetings:
Resource advisory councils—
Butte District, MT, 35811
Front Range, CO, 35811–35812
Opening of public lands:
Washington, 35812
Survey plat filings:
Colorado, 35812–35813

Minority Business Development Agency
NOTICES
Business development center program applications:
Florida et al., 35726
South Carolina, 35726

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 35772
National Institute of Allergy and Infectious Diseases, 35772
National Institute of Environmental Health Sciences, 35773
Research Grants Division special emphasis panels, 35773, 35773–35774
Recombinant DNA molecules research:
Actions under guidelines, 35774–35777

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Mid-Atlantic Fishery Management Council, 35726–35727
Pacific Fishery Management Council, 35727
Permits:
Endangered and threatened species, 35727–35728

VOL
61
ISS
131
JL
8
1996
UMI

National Park Service
NOTICES
Meetings:
Gettysburg National Military Park Advisory Commission, 35813–35814

National Science Foundation
NOTICES
Committees; establishment, renewal, termination, etc.:
United States Antarctic Program Blue Ribbon Panel, 35817

Natural Resources Conservation Service
NOTICES
Environmental statements; availability, etc.:
Red-White Clay Creeks Watershed, PA and DE, 35708

Navajo and Hopi Indian Relocation Office
RULES
Archaeological resources protection:
Lands developed for resettlement purposes, 35666–35673

Nuclear Regulatory Commission
RULES
Nuclear equipment and material; export and import:
U.S. export controls conformance to Nuclear Suppliers Group international export control guidelines; and State Department nuclear nonproliferation policies, 35600–35607

Office of Federal Housing Enterprise Oversight
See Federal Housing Enterprise Oversight Office

Office of United States Trade Representative
See Trade Representative, Office of United States

Personnel Management Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 35817–35818
Meetings:
National Partnership Council, 35818
Privacy Act:
Computer matching programs, 35818–35819

Postal Rate Commission
NOTICES
Post office closings; petitions for appeal:
Eagle Harbor, NY, 35819
West Rushville, OH, 35819–35820

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Railroad Retirement Board
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 35820

Research and Special Programs Administration
NOTICES
Pipeline safety; waiver petitions:
CNG Transmission Co., 35860–35861

Rural Housing Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 35708–35709

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 35821–35822
National Association of Securities Dealers, Inc., 35822–35844
Applications, hearings, determinations, etc.:
Oppenheimer Global Environment Fund, 35820–35821

Social Security Administration
NOTICES
Organization, functions, and authority delegations:
Chief Actuary Office et al., 35844–35857

State Department
RULES
Visas; nonimmigrant documentation:
Visa waiver pilot program; Argentina, 35628–35629

Thrift Supervision Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 35861–35862

Trade Representative, Office of United States
NOTICES
India:
Pharmaceuticals and agricultural chemicals patent protection; investigation and comment request, 35857–35858

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Research and Special Programs Administration

Treasury Department
See Internal Revenue Service
See Thrift Supervision Office

Uniformed Services University of the Health Sciences
NOTICES
Meetings; Sunshine Act, 35728

Veterans Affairs Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 35862–35863

Separate Parts in This Issue

Part II
Housing and Urban Development Department, 35866–35875

Part III
Housing and Urban Development Department, 35878–35888

Part IV
Energy Department, 35890–35903

Part V
Housing and Urban Development Department, 35906–35913

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

VOL 61 ISS 131 JL 8 1996 UMI

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
2634.....35589

7 CFR
58.....35589
958.....35592
997.....35594
998.....35594
1106.....35596
1230.....35597
Proposed Rules:
868.....35687

8 CFR
103.....35597
217.....35598

10 CFR
110.....55600
420.....35890
450.....35890

12 CFR
1750.....35607

14 CFR
73.....35623
97 (3 documents).....35623, 35624, 35626
119.....35628
121.....35628
135.....35628
Proposed Rules:
39 (3 documents).....35691, 35693, 35695

22 CFR
41.....35628

23 CFR
630.....35629

24 CFR
901.....35633

25 CFR
211.....35634
212.....35634
700.....35666

26 CFR
Proposed Rules:
1.....35696

33 CFR
Proposed Rules:
117.....35702
167.....35703

40 CFR
80.....35673
425.....35680
Proposed Rules:
425.....35705

41 CFR
201.....35685

46 CFR
514.....35685

47 CFR
Proposed Rules:
73.....35705

Rules and Regulations

Federal Register
Vol. 61, No. 131
Monday, July 8, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209–AA06

Public Financial Disclosure, Conflicts of Interest, and Certificates of Divestiture for Executive Branch Officials; Correction

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error in one of the amendatory instructions of the final rule on executive branch certificates of divestiture, which was published by OGE in the **Federal Register** on Tuesday, June 25, 1996 (61 FR 32633–32636).

EFFECTIVE DATE: July 25, 1996.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Office of Government Ethics; telephone: 202–208–8000, extension 1110; FAX: 202–208–8000.

SUPPLEMENTARY INFORMATION: In the above-noted final rule document published by OGE, amendatory instruction 2 inadvertently indicated that it was revising portions of paragraph (b) of § 2634.1002 of 5 CFR, whereas in fact it was intended to revise portions of paragraph (b) of § 2634.1001 of 5 CFR (amendatory instruction 3 revised portions of § 2634.1002). This correction document corrects the error in amendatory instruction 2.

Approved: July 2, 1996.

F. Gary Davis,

Deputy Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics is correcting the June 25, 1996 publication of the final rule on Public Financial Disclosure, Conflicts of Interest, and Certificates of Divestiture for Executive Branch Officials, which was the subject of FR Doc. 96–15970, as follows:

On page 32635, in the second column, in the first line of amendatory instruction 2, the reference to "§ 2634.1002" is corrected to read "§ 2634.1001".

[FR Doc. 96–17263 Filed 7–5–96; 8:45 am]
BILLING CODE 6345–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA–93–04]

Grading and Inspection, General Specification for Approved Plants and Standards for Grades of Dairy Products; United States Standards for Instant Nonfat Dry Milk

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document revises the United States Standards for Instant Nonfat Dry Milk. The revision limits the use of lactose as a processing aid in the instantizing process, provides fortification levels for instant nonfat dry milk with added vitamins A and D, and deletes the optional phosphatase test. This revision was developed in cooperation with the American Dairy Products Institute and other dairy trade associations.

EFFECTIVE DATE: August 7, 1996.

FOR FURTHER INFORMATION CONTACT: Roland S. Golden, Dairy Products Marketing Specialist, Dairy Standardization Branch, USDA/AMS/Dairy Division, Room 2750–S, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7473.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule does not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The final rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Administrator, Agricultural Marketing Service, has determined that the final rule will not have a significant economic impact on a substantial number of small entities because use of the standards is voluntary and the revisions do not increase costs to those utilizing the standards.

The Department is issuing this rule in conformance with Executive Order 12866.

To provide quality grade standards that reflect the ability of the U.S. dairy industry to produce high-quality instant nonfat dry milk, USDA is revising the U.S. Standards for Instant Nonfat Dry Milk as follows:

1. Restrict the Amount of Lactose Used as a Processing Aid

The use of lactose as a processing aid in the production of instant nonfat dry milk is an acceptable practice provided the amount used does not exceed the amount necessary to produce the desired effect. If more lactose than necessary is added, the additional lactose serves no purpose other than to displace nonfat dry milk. The revision permits the use of lactose as a processing aid and restricts the amount added to a maximum of 2.0 percent of the weight of the nonfat dry milk.

2. Provide Fortification Levels for Instant Nonfat Dry Milk With Added Vitamins A and D

Previously, the U.S. Standards for Instant Nonfat Dry Milk have not provided fortification levels for product with added vitamins A and D. This revision incorporates fortification levels that are consistent with the Food and Drug Administration's standards of identity for nonfat dry milk fortified with vitamins A and D (21 CFR 131.127).

3. Delete the Reference to the Optional Phosphatase Test

Pasteurization destroys pathogenic organisms and occurs when milk is heated to pasteurization temperature and held at that temperature for a specified period of time. To be considered pasteurized, the heating and holding of milk must take place in properly designed and installed equipment which has been inspected and sealed by the State Regulatory Agency. Phosphatase testing confirms only that a given sample of instant

VOL
61
ISS
131
JL
8
1996
UMI

nonfat dry milk has been pasteurized but does not ensure that pasteurization has occurred for product manufactured before and after the sample tested.

Before U.S. grade can be assigned to instant nonfat dry milk, it must be produced in a dairy plant which has been inspected by USDA. When a USDA dairy plant inspection is conducted, the inspector evaluates the pasteurization system for compliance with program requirements.

The Department believes that the inspection and sealing of pasteurization equipment by the State Regulatory Agency and a review of the system by the USDA inspector provides adequate assurance that the instant nonfat dry milk has been properly pasteurized. For this reason, the Department has deleted the reference to the optional phosphatase test that appears in 7 CFR § 58.2756. This action does not prohibit using the phosphatase test upon request.

4. Update the Terminology and Format of the Standards

The current U.S. Standards for Instant Nonfat Dry Milk were last revised in 1984. Since that time, changes in terminology and formatting of standards have taken place. The revision updates the standards to provide consistency among the various U.S. grade standards.

USDA grade standards are voluntary standards that are developed pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) to facilitate the marketing process. Manufacturers of dairy products are free to choose whether or not to use these grade standards. USDA grade standards for dairy products have been developed to identify the degree of quality in the various products. Quality in general refers to usefulness, desirability, and value of the product—its marketability as a commodity. When instant nonfat dry milk is officially graded, the USDA regulations and standards governing the grading of manufactured or processed dairy products are used. These regulations also require a charge for the grading service provided by USDA. The Agency believes this revision accurately identifies quality characteristics in instant nonfat dry milk.

Corollary changes are also made for the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service, to conform the definition of instant nonfat dry milk set forth therein with the revision of the United States Standards for Instant Nonfat Dry Milk.

Public Comments

On March 6, 1995, the Department published a proposed rule (60 FR 12154) to revise the United States Standards for Instant Nonfat Dry Milk. The public comment period closed on May 5, 1995. One institute representing the dry milk industry submitted comments.

Discussion of Comments

The commenter supported all of the proposed changes except for the lowering of the direct microscopic clump (DMC) count from 75 to 40 million per gram. The commenter suggested deletion of this requirement from the standard and provided the following comments in support of this position.

1. The accuracy and reproducibility of the DMC count results is unreliable.

2. A 0.1 milliliter sample of reconstituted instant nonfat dry milk is an extremely small sample to evaluate a large volume of product.

3. Grade A milk is used to manufacture most instant nonfat dry milk produced in the United States. The maximum allowable bacteria in Grade A raw milk is less than the maximum allowed in manufacturing grade milk. The production of manufacturing grade milk has decreased since the last revision of this standard and provides instant nonfat dry milk with lower DMC counts. (This fact was submitted to support the deletion of DMC count requirements.)

4. Requirements for Grade A (the designation of the National Conference on Interstate Milk Shippers, not an indication of USDA quality grade) instant nonfat dry milk do not include DMC count limits.

5. The Codex Alimentarius "Standard for Whole Milk Powder, Partly Skimmed Milk Powder and Skimmed Milk Powder" does not provide DMC count limits for product in international trade.

The comments pertaining to the accuracy, reproducibility, and small sample size become increasingly valid as DMC count limits are lowered. The Department accepts these concerns and elects not to lower the DMC count limits at this time.

The Department disagrees with the request for deletion of the DMC count requirement. U.S. Grade Standards are quality standards and differ from standards developed by the National Conference on Interstate Milk Shipments and The Codex Alimentarius Commission. The U.S. Standards for Instant Nonfat Dry Milk will retain the DMC count maximum requirement of 75 million per gram.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 58 is amended as follows:

PART 58—[AMENDED]

1. The authority citation for 7 CFR Part 58 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. In Part 58, § 58.205 paragraph (b) is revised to read as follows:

§ 58.205 Meaning of words.

* * * * *

(b) *Instant nonfat dry milk.* Instant nonfat dry milk is nonfat dry milk which has been produced in such a manner as to substantially improve its dispersing and reconstitution characteristics over that produced by the conventional process. Instant nonfat dry milk shall not contain dry buttermilk, dry whey, or products other than nonfat dry milk, except that lactose may be added as a processing aid during instantizing. The instant nonfat dry milk shall not contain any added preservatives, neutralizing agent, or other chemical. If lactose is used, the amount of lactose shall be the minimum required to produce the desired effect, but in no case shall the amount exceed 2.0 percent of the weight of the nonfat dry milk. If instant nonfat dry milk is fortified with vitamin A, and the product is reconstituted in accordance with the label directions, each quart of the reconstituted product shall contain 2000 International Units thereof. If instant nonfat dry milk is fortified with vitamin D, and the product is reconstituted in accordance with the label directions, each quart of the reconstituted product shall contain 400 International Units thereof.

* * * * *

3. In Part 58, subpart U is revised to read as follows:

Subpart U—United States Standards for Instant Nonfat Dry Milk

Definitions

Sec.
58.2750 Instant nonfat dry milk.

U.S. Grade

58.2751 Nomenclature of the U.S. grade.
58.2752 Basis for determination of the U.S. grade.
58.2753 Specifications for the U.S. grade.
58.2754 U.S. grade not assignable.
58.2756 Test methods.

Explanation of Terms

58.2759 Explanation of terms.

Subpart U—United States Standards for Instant Nonfat Dry Milk[1]

Definitions

§ 58.2750 Instant nonfat dry milk.

(a) Instant nonfat dry milk is nonfat dry milk which has been produced in such a manner as to substantially improve its dispersing and reconstitution characteristics over that produced by the conventional processes. Instant nonfat dry milk covered by these standards shall not contain dry buttermilk, dry whey, or products other than nonfat dry milk, except that lactose may be added as a processing aid during instantizing. The instant nonfat dry milk shall not contain any added preservatives, neutralizing agent, or other chemical. If lactose is used, the amount of lactose shall be the minimum required to produce the desired effect, but in no case shall the amount exceed 2.0 percent of the weight of the nonfat dry milk. If instant nonfat dry milk is fortified with vitamin A, and the product is reconstituted in accordance with the label directions, each quart of the reconstituted product shall contain 2000 International Units thereof. If instant nonfat dry milk is fortified with vitamin D, and the product is reconstituted in accordance with the label directions, each quart of the reconstituted product shall contain 400 International Units thereof.

(b) "Nonfat dry milk" is the product obtained by the removal of only water from pasteurized skim milk. It contains not more than 5 percent by weight of moisture and not more than 1½ percent by weight of milkfat and it conforms to the applicable provisions or 21 CFR 131 "Milk and Cream" as issued by the Food and Drug Administration. Nonfat dry milk shall not contain nor be derived from dry buttermilk, dry whey, or products other than skim milk, and shall not contain any added preservative, neutralizing agent, or other chemical.

U.S. Grade

§ 58.2751 Nomenclature of the U.S. grade.

The nomenclature of the U.S. grade is U.S. Extra.

§ 58.2752 Basis for determination of the U.S. grade.

The U.S. grade of instant nonfat dry milk is determined on the basis of flavor, physical appearance, bacterial estimate on the basis of standard plate count and coliform count, milkfat content, moisture content, scorched particle content, solubility index, titratable acidity, and dispersibility.

§ 58.2753 Specifications for the U.S. grade.

(a) *U.S. Extra Grade.* U.S. Extra Grade instant nonfat dry milk shall conform to the following requirements (See Tables I, II, and III of this section):

(1) *Flavor.* Reconstituted instant nonfat dry milk shall possess a sweet, pleasing, and desirable flavor, but may possess the following flavors to a slight degree: Chalky, cooked, feed, or flat. See Table I of this section.

(2) *Physical appearance.* Instant nonfat dry milk shall possess a uniform white to light cream natural color. It shall be reasonably free-flowing and free from lumps except those that readily break up with very slight pressure. See Table II of this section.

(3) *Bacterial estimate.* Not more than 30,000 per gram standard plate count. See Table III of this section.

(4) *Coliform count.* Not more than 10 per gram. See Table III of this section.

(5) *Milkfat content.* Not more than 1.25 percent. See Table III of this section.

(6) *Moisture content.* Not more than 4.5 percent. See Table III of this section.

(7) *Scorched particle content.* Not more than 15.0 mg. See Table III of this section.

(8) *Solubility index.* Not more than 1.0 ml. See Table III of this section.

(9) *Titratable acidity.* Not more than 0.15 percent (lactic acid). See Table III of this section.

(10) *Dispersibility.* Not less than 85.0 percent. See Table III of this section.

(b) [Reserved]

TABLE I OF § 58.2753—CLASSIFICATION OF FLAVOR

Flavor characteristics	U.S. extra grade
Chalky	Slight.
Cooked	Slight.
Feed	Slight.
Flat	Slight.

TABLE II OF § 58.2753—CLASSIFICATION OF PHYSICAL APPEARANCE

Physical appearance characteristics	U.S. extra grade
Color	White to light cream.
Free flowing	Reasonably.
Lumpy	Very slight pressure.

TABLE III OF § 58.2753—CLASSIFICATION ACCORDING TO LABORATORY ANALYSIS

Laboratory tests	U.S. extra grade
Bacterial estimate; Standard plate count; per gram (max)	30,000
Coliform count; per gram (max)	10
Milkfat content; percent (max)	1.25
Moisture content; percent (max)	4.5
Scorched particle content; mg (max)	15.0
Solubility index; ml (max)	1.0
Titratable acidity (lactic acid); percent (max)	0.15
Dispersibility; percent (min)	85.0

§ 58.2754 U.S. grade not assignable.

Instant nonfat dry milk shall not be assigned the U.S. grade for one or more of the following reasons:

(a) The instant nonfat dry milk fails to meet the requirements for U.S. Extra Grade.

(b) The instant nonfat dry milk has a direct microscopic clump (DMC) count exceeding 75 million per gram.

(c) The instant nonfat dry milk is produced in a plant that is rated ineligible for USDA grading service or is not USDA-approved.

§ 58.2756 Test methods.

All required tests shall be performed in accordance with DA Instruction No. 918–RL, "Instruction for Resident Grading Quality Control Service Programs and Laboratory Analysis," Dairy Grading Branch, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20090–6456; the latest revision of "Official Methods of Analysis of the Association of Official Analytical Chemists"; or the latest edition of "Standard Methods for the Examination of Dairy Products" available from the American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005.

Explanation of Terms

§ 58.2759 Explanation of terms.

(a) *With respect to flavor:*

(1) *Slight.* Detected only upon critical examination.

(2) *Chalky.* A tactual type of flavor lacking in characteristic milk flavor.

(3) *Cooked.* Similar to a custard flavor and imparts a smooth aftertaste.

(4) *Feed.* Feed flavors (such as alfalfa, sweet clover, silage, or similar feed) in milk carried through into the instant nonfat dry milk.

(5) *Flat.* Insipid, practically devoid of any characteristic reconstituted instant nonfat dry milk flavor.

[1] Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

VOL
61
ISS
131
JL
8
1996
UMI

(b) *With respect to physical appearance:*

(1) *Reasonably free-flowing.* Pours in a fairly constant, uniform stream from the open end of a tilted container or scoop.

(2) *Very slight pressure.* Lumps fall apart with only light touch.

(3) *Lumpy.* Loss of powdery consistency but not caked into hard chunks.

(4) *Natural color.* A color that is white to light cream.

Dated: June 28, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–17200 Filed 7–5–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 958

[FV96–958–1FR]

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon, and Imported Onions; Modification of Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the "repacker/prepacker" size designations for all varieties of onions except white or red varieties by increasing the minimum diameter from 1½ inches to 1¾ inches, and the maximum diameter from 2½ inches to 2¾ inches for onions in this size category. Recent trends in buyer preference reflect an increasing demand for larger size onions in the "repacker/prepacker" category. This final rule will benefit producers and handlers by increasing their flexibility and efficiency in the packaging of "repacker/prepacker" size onions. As provided under section 8e of the Agricultural Marketing Agreement Act of 1937, the change to the minimum size requirement also applies to all imported onions except white or red varieties.

EFFECTIVE DATE: July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503)326–2724; FAX: (503)326–7440; or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523, South Building, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202)690–0464; FAX: (202)720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958 (7 CFR Part 958), both as amended, regulating the handling of onions grown in certain designated counties in Idaho and Malheur County, Oregon. The marketing agreement and marketing order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule, which also affects the minimum size requirements for all varieties of imported onions, except white or red varieties, is also issued pursuant to section 8e of the Act. The provisions of section 8e and the onion import regulations are discussed later in this final rule.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative proceedings which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the act.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on those established under Federal marketing orders which regulate the handling of domestically produced products. Thus, this final rule should have small entity orientation, and impact both small and large business entities in a manner comparable to those issued under marketing orders.

There are currently 34 handlers subject to regulation under the marketing order and approximately 550 onion producers in the regulated production area. In addition, at least 148 importers of onions are subject to import regulations and will be affected by this final rule. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers and producers of Idaho-Eastern Oregon onions may be classified as small entities. The majority of importers may also be classified as small entities.

This final rule changes the "repacker/prepacker" size designations for all varieties of onions except white or red varieties by increasing the minimum diameter from 1½ inches to 1¾ inches, and the maximum diameter from 2½ inches to 2¾ inches for onions in this size category. Recent trends in buyer preference reflect an increasing demand for larger size onions in the "repacker/prepacker" category. This final rule will benefit producers and handlers by allowing them to better meet the needs of their customers, who desire slightly larger "repacker/prepacker" size onions.

As provided under section 8e of the Act, the change to the minimum size requirement also applies to all imported onions except white or red varieties. The benefits to producers and handlers should apply also to importers. The slight increase in minimum size is expected also to benefit importers by recognizing recent trends in buyer preference for larger size onions.

Because this rule is expected to benefit and have a positive impact on producers, handlers, importers, and consumers of onions, the AMS has determined that the issuance of this final rule will not have a significant

economic impact on a substantial number of small entities.

Pursuant to authority contained in section 958.51 of the marketing order, the Idaho-Eastern Oregon Onion Committee (Committee), at its November 16, 1995, meeting, unanimously recommended changing the minimum and maximum sizes set forth in section 958.328(a)(3)(ii) of the handling regulation. For this size category, the Committee recommended increasing the minimum diameter from 1½ inches to 1¾ inches, and the maximum diameter from 2½ inches to 2¾ inches for all onions except white or red varieties produced and handled in the production area. Yellow onions are the major variety produced in the regulated production area.

This final rule modifies a marketing order size category that is recognized by the onion industry as "repacker" or "prepacker" size onions. Onions in this size category are generally packed and shipped in 50-pound sacks for later repacking into various consumer packs.

The U.S. Standards for Grades of Onions were recently amended to include a classification for "repacker/prepacker" size onions (60 FR 46976, September 8, 1995), effective October 10, 1995. Section 51.2836 of the U.S. Standards defines such onions as those ranging from a minimum diameter of 1¾ inches to a maximum diameter of 3 inches. The U.S. Standards also specify that not more than 5 percent of the onions in a lot may be undersized and that not more than 10 percent may be oversized.

Recent trends in buyer preference reflect an increasing demand for larger size onions in the "repacker/prepacker" category. The Committee reports that the current maximum diameter of 2½ inches for this size category is too restrictive and has resulted in a high percentage of onions being packed in a different category due to oversize. This has resulted in fewer "repacker/prepacker" size onions being available for market. With an increase in the maximum allowable diameter to 2¾ inches for "repacker/prepacker" size onions, the Committee expects the quantity of such onions available for market to increase. The Committee recommended an increase to 2¾ inches rather than 3 inches, the upper limit of the size range specified in the U.S. Standards, because the smaller size is more suitable for this industry and its customers. In addition to the increase in the maximum diameter for onions in this category, the Committee recommended that the minimum diameter be increased from 1½ inches to 1¾ inches to be the same as the recently amended U.S. Standards.

Any costs to handlers and producers attributable to this regulation are expected to be offset by the benefits derived from improved returns. The modification increases the volume of onions marketed in this size category, and is expected to result in higher returns for producers and handlers.

Section 8e of the Act requires that when certain domestically produced commodities, including onions, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating the same commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in more direct competition with the imported commodity. Imports must then meet the requirements established for the particular area.

Grade, size, quality, and maturity regulations have been issued regularly under both Marketing Order 958 and Marketing Order 959, which regulates the handling of onions grown in South Texas. Pursuant to section 8e of the Act, the current import regulation (7 CFR 980.117) specifies that import requirements for onions are to be based on the seasonal categories of onions grown in both marketing order areas. The import regulation specifies that imported onions must meet the requirements of Marketing Order 958 during the June 5 through March 9 period each season (61 FR 25556; May 22, 1996), and Marketing Order 959 through the remainder of the year. The current import regulation also provides that all varieties of imported onions, except for white varieties, must be a minimum of 1½ inches in diameter. This final rule will change the import requirements for the period June 5 through March 9 each marketing year to provide that all varieties of onions except white or red varieties shall be a minimum of 1¾ inches in diameter. While no changes are required in the language of § 980.117, all imported onions other than white or red varieties will be required to meet the minimum size requirement herein.

The proposed rule concerning this action was published in the May 6, 1996, **Federal Register** (61 FR 20188), with a 30-day comment period ending June 5, 1996. No comments were received.

After consideration of all relevant matters presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action will provide handlers more marketing flexibility in meeting buyer preferences; (2) the 1996 crop harvest and shipments are expected to begin in August and this action needs to be effective promptly to allow handlers to make their marketing plans; and (3) interested persons were invited to submit written comments and no comments were submitted.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is hereby amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 958.328 is amended by revising paragraph (a)(3)(ii) to read as follows:

§ 958.328 Handling Regulation.

* * * * *

(a) * * *

(3) * * *

(ii) U.S. No. 1, 1¾ inches minimum to 2¾ maximum diameter; or

* * * * *

Dated: June 28, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–17197 Filed 7–5–96; 8:45 am]

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1996
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7 CFR Parts 997 and 998

[Docket No. FV96–998–2IFR]

Assessment Rate for Domestically Produced Peanuts Handled by Persons Not Subject to Peanut Marketing Agreement No. 146 and for Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the Peanut Administrative Committee (Committee) under Marketing Agreement No. 146 (agreement) for the 1996–97 and subsequent crop years. The Committee is responsible for local administration of the marketing agreement which regulates the handling of peanuts grown in 16 States. Authorization to assess peanut handlers who have signed the agreement enables the Committee to incur expenses that are reasonable and necessary to administer the program. Public Law 103–66 requires the Department of Agriculture (Department) to impose an administrative assessment on farmers stock peanuts received or acquired by handlers who are not signatory (non-signatory handlers) to the agreement. Therefore, this same assessment rate established under the agreement will apply to all non-signatory handlers.

DATES: Effective on July 1, 1996. Comments received by August 7, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, FAX 202–720–5698, or William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 941–299–4770, FAX 941–299–5169.

SUPPLEMENTARY INFORMATION: This rule is issued pursuant to the requirements of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and as further amended December 12, 1989, hereinafter referred to as the "Act"; public Law 101–220, section 4(1), (2), 103 Stat. 1878, December 12, 1989; Public Law 103–66, section 8b(b)(1), 107 Stat. 312, August 10, 1993; and under Marketing Agreement 146 (7 CFR part 998) regulating the quality of domestically produced peanuts.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Farmers' stock peanuts received or acquired by non-signatory handlers and farmers' stock peanuts received or acquired by handlers signatory to the agreement, other than from those described in §§ 998.31(c) and (d), are subject to assessments. It is intended that the assessment rates issued herein will be applicable to all assessable peanuts beginning July 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 45 handlers of peanuts who have not signed the agreement and, thus, will be subject to the regulations specified herein. Also, there are approximately 47,000 producers of peanuts in the 16 States covered under the agreement and approximately 32 handlers subject to regulation under the agreement. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A majority of the producers and the non-signatory handlers may be classified as small entities, and some of the handlers covered under the agreement are small entities.

The peanut marketing agreement provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Funds to administer the peanut agreement program are paid to the Committee and are derived from signatory handler assessments. The members of the Committee are handlers and producers of peanuts. They are familiar with the Committee's needs and with the costs for goods and services in their local areas and, thus, are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input. The handlers of peanuts who are directly affected have signed the marketing agreement authorizing the expenses that may be incurred and the imposition of assessments.

The Committee met on March 19, 1996, and unanimously recommended 1996–97 administrative expenditures of $1,025,500 and an administrative assessment rate of $0.70 per net ton of assessable farmers' stock peanuts received or acquired by handlers. The Committee met again on May 23, 1996, and with 17 favorable votes and one abstention voted not to recommend an assessment rate for indemnification for handler losses due to aflatoxin contamination. Adequate funds are included in the Committee's indemnification reserve for such expenses during the 1996–97 crop year. In comparison, last year's budgeted administrative expenditures were $1,067,500. The assessment rate of $0.70 is the same as last year's initially established rate. An interim final rule has been published on June 13, 1996 (61 FR 29926) increasing last year's administrative assessment rate to $0.83 per ton.

Major expenditures recommended by the Committee for the 1996–97 year include $112,450 for executive salaries, $131,500 for clerical salaries, $296,700 for field representatives salaries, $42,000 for payroll taxes, $148,000 for employee benefits, $40,000 for committee members travel, $5,000 for staff travel, $110,000 for field representatives travel, $9,800 for insurance and bonds, $46,200 for office rent and parking, $14,000 for office supplies and stationery, $13,200 for postage and mailing, $15,000 for telephone and telegraph, $6,000 for repairs and maintenance agreements, $10,400 for the audit fee, and $10,250 for the contingency reserve. Budgeted expenses for these items in 1995–96 were $145,051, $138,856, $304,344, $44,000, $148,000, $40,000, $5,000, $110,000, $9,500, $44,360, $14,000, $13,200, $15,000, $6,000, $10,400, and $4,789, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. Farmers' stock peanuts received or acquired by non-signatory handlers and farmers' stock peanuts received or acquired by handlers signatory to the agreement, other than from those described in §§ 998.31(c) and (d), are subject to the assessments. Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired. Peanut shipments for the year under the agreement are estimated at 1,465,000 tons, which should provide $1,025,500 in assessment income. Approximately 95 percent of the domestically produced peanut crop is marketed by handlers who are signatory to the agreement.

Public Law 101–220 amended section 608b of the Act to require that all peanuts handled by persons who have not entered into the agreement (non-signers) be subject to quality and inspection requirements to the same extent and manner as are required under the Agreement. Approximately 5 percent of the U.S. peanut crop is marketed by non-signer handlers.

Public Law 103–66 (107 Stat. 312) provides for mandatory assessment of farmer's stock peanuts acquired by non-signatory peanut handlers. Under this law, paragraph (b) of section 1001, of the Agricultural Reconciliation Act of 1993, specifies that: (1) Any assessment (except indemnification assessments) imposed under the Agreement on signatory handlers also shall apply to non-signatory handlers, and (2) such assessment shall be paid to the Secretary.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers signatory to the agreement. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing agreement. This administrative assessment is required by law to be applied uniformly to all non-signatory handlers and should be of benefit to all. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although these assessment rates are effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996–97 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) Public Law 103–66 requires the Department to impose an administrative assessment on peanuts received or acquired for the account of non-signatory handlers; (3) the 1996–97 crop year begins on July 1, 1996, and the marketing agreement and Public Law 103–66 require that the rate of assessment for each crop year apply to all peanuts handled during such crop year; (4) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (5) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 997 and 998 are amended as follows:

1. The authority citation for 7 CFR parts 997 and 998 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: These amendments will appear in the Code of Federal Regulations.

PART 997—[AMENDED]

2. In part 997, a new undesignated center heading, Assessment Rates, and § 997.101 are added to read as follows:

Assessment Rates

§ 997.101 Assessment rate.

On and after July 1, 1996, an administrative assessment rate of $0.70 per net ton of assessable farmers stock peanuts received or acquired by each non-signatory first handler is established for peanuts.

PART 998—[AMENDED]

3. In part 998, a new undesignated center heading, Assessment Rates, and § 998.409 are added to read as follows:

Subpart—Assessment Rates

§ 998.409 Assessment rate.

On and after July 1, 1996, an administrative assessment rate of $0.70 per net ton of farmers' stock peanuts received or acquired other than from those described in §§ 998.31 (c) and (d) is established for handlers signatory to the agreement. Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired.

Dated: June 28, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–17196 Filed 7–5–96; 8:45 am]

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VOL
61
ISS
131
1996
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7 CFR Part 1106

[DA–96–05]

Milk in the Southwest Plains Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document suspends a portion of the supply plant shipping requirement and the touch-base requirement of the Southwest Plains Federal milk marketing order (Order 106) for the period of September 1996 through August 1998. The action was requested by Kraft Foods, Inc. (Kraft), which contends the suspension is necessary to prevent the uneconomical and inefficient movement of milk and to ensure that producers historically associated with the market will continue to have their milk pooled under Order 106.

EFFECTIVE DATE: September 1, 1996, through August 31, 1998.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090- 6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued April 9, 1996; published April 22, 1996 (61 FR 17588).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Southwest Plains marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on April 22, 1996 (61 FR 17588) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. One comment supporting the proposed suspension was received.

After consideration of all relevant material, including the proposal in the notice, the comment received, and other available information, it is hereby found and determined that for the period of September 1996 through August 1998 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1106.6, the words "during the month".

In § 1106.7(b)(1), beginning with the words "of February through August" and continuing to the end of the paragraph.

In § 1106.13, paragraph (d)(1) in its entirety.

Statement of Consideration

This rule suspends the requirement that producers "touch- base" at a pool plant with at least one day's production during the month before their milk is eligible for diversion to a nonpool plant. By suspending the touch-base provision, producer milk will not be required to be delivered to pool plants before going to unregulated manufacturing plants.

The suspension will allow a supply plant that has been associated with the Southwest Plains order during the months of September 1995 through January 1996 to qualify as a pool plant without shipping any milk to a pool distributing plant during the months of September 1996 through August 1998. Without the suspension, a supply plant would be required to ship 50 percent of its producer receipts to pool distributing plants during the months of September through January and 20 percent of its producer receipts to pool distributing plants during the months of February through August to qualify as a pool plant under the order.

According to Kraft's letter requesting the suspension, supplemental milk supplies will not be needed to meet the fluid needs of distributing plants. Kraft anticipates that there will be an adequate supply of direct-ship producer milk located in the general area of distributing plants available to meet the Class I needs of the market. Consequently, it states, there is no need to require producers located some distance from pool distributing plants to touch-base when their milk can more economically be diverted directly to manufacturing plants in the production area.

One comment letter was received in support of the suspension request; none were received in opposition to it. A letter submitted by Associated Milk Producers, Inc. (AMPI), Southern Region, states that it supports continuation of the proposed suspension. AMPI agrees with Kraft that more than sufficient supplies of local milk are readily available to meet the fluid needs of the market.

The suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner, and to assure that producers whose milk has long been associated with the Southwest Plains marketing area will continue to benefit from pooling and pricing under the order.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Part 1106 is amended as follows:

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1106.6 [Suspended in part]

2. In § 1106.6, the words, "during the month" are suspended.

§ 1106.7 [Suspended in part]

3. In § 1106.7(b)(1), beginning with the words "of February through August" and continuing until the end of the paragraph are suspended.

§ 1106.13 [Suspended in part]

4. In § 1106.13, paragraph (d)(1) in its entirety is suspended.

Dated: June 28, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–17198 Filed 7–5–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1230

[Docket No. LS–96–001]

Pork Promotion, Research, and Consumer Information Order—Increase in Importer Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; Correction.

SUMMARY: The Agricultural Marketing Service is correcting a final rule published on June 4, 1996, 61 FR 29002 concerning the Pork Promotion, Research, and Consumer Information Order (Order).

EFFECTIVE DATE: July 5, 1996.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the Pork Promotion, Research, and Consumer Information Act (Act) of 1985 (7 U.S.C. 4801–4819) and the Order (7 CFR Part 1230) issued thereunder, the final rule increased the amount of the assessment per pound due on imported pork and pork products to reflect an increase in the 1995 five-market average price for domestic barrows and gilts. This action brought the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals. These changes will facilitate the continued collection of assessments on imported porcine animals, pork, and pork products.

Need for Correction

The final rule as published contains an error in the chart listing the cents per kilogram assessments for each of the 33 HTS numbers in the table listing assessments for imported pork and pork products. The proposed rule published in the March 22, 1996, **Federal Register** (61 FR 11777) listed the cents per kilogram assessments correctly.

Correction of Publication

Accordingly, in FR Doc 96–13833, published June 4, 1996, on page 28003, in the second column, in § 1230.110, paragraph (b) is corrected to read as follows:

§ 1230.110 [Corrected]

* * * * *

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	Cents/lb.	Cents/kg.
0203.11.0000	.27	.595242
0203.12.1010	.27	.595242
0203.12.1020	.27	.595242
0203.12.9010	.27	.595242
0203.12.9020	.27	.595242
0203.19.2010	.31	.683426
0203.19.2090	.31	.683426
0203.19.4010	.27	.595242
0203.19.4090	.27	.595242
0203.21.0000	.27	.595242
0203.22.1000	.27	.595242
0203.22.9000	.27	.595242
0203.29.2000	.31	.683426
0203.29.4000	.27	.595242
0206.30.0000	.27	.595242
0206.41.0000	.27	.595242
0206.49.0000	.27	.595242
0210.11.0010	.27	.595242
0210.11.0020	.27	.595242
0210.12.0020	.27	.595242
0210.12.0040	.27	.595242
0210.19.0010	.31	.683426
0210.19.0090	.31	.683426
1601.00.2010	.37	.815702
1601.00.2090	.37	.815702
1602.41.2020	.41	.903886
1602.41.2040	.41	.903886
1602.41.9000	.27	.595242
1602.42.2020	.41	.903886
1602.42.2040	.41	.903886
1602.42.4000	.27	.595242
1602.49.2000	.37	.815702
1602.49.4000	.31	.683426

Dated: June 28, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–17199 Filed 7–5–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 1892–95]

RIN 1115–AD92

Fees Assessed for Defaulted Payments

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations to increase the fee imposed from $5.00 to $30.00 when a check submitted to the Service in payment of a fee is not honored by the bank upon which it is drawn. The purpose of this change is to enable the Service to recoup the administrative costs incurred in processing all returned checks and other defaulted payments. This action will result in the Service no longer losing money as a result of bad check activity.

EFFECTIVE DATE: August 7, 1996.

FOR FURTHER INFORMATION CONTACT: Allen H. Sinsheimer, Systems Accountant, Debt Collection and Cash Management Branch, Office of Financial Management, Immigration and Naturalization Service, 425 I Street, NW., Room 6034, Washington, DC 20536, telephone (202) 616–7715.

SUPPLEMENTARY INFORMATION:

Introduction

Changes in the current regulation are needed to make the bad check charge consistent with the actual costs incurred by the Service in processing returned checks and other defaulted payments. The current bad check charge is $5.00.

The Service has studied the costs incurred by several Administrative Centers attributable to the return of a bad check from a financial institution. The Administrative Center, Dallas and the Administrative Center, Twin Cities were asked to identify each action that must be undertaken and quantify the time and costs involved in processing a bad check. Meaningful and reliable accumulations of the time and expense involved in the average costs of processing each bad check have been gathered by these centers since they process a substantial number of financial transactions each year. For example, three employees at the Administrative Center, Dallas each spend 38 hours each month processing bad checks. Over 900 bad checks are processed each year at the Administrative Center, Dallas. Data from

VOL
61
ISS
1
3
1
JL
8
1996
UMI

the processing of over 1,800 bad checks were provided by the Administrative Centers.

As a result of our study, we have determined that the average cost to the Service to process each bad check received is $30.11. We have rounded off the cost to $30.00.

The Service notes that the United States Customs Service has recently completed a review of the costs incurred in processing bad checks and has also concluded that a $30.00 fee for bad checks is appropriate compensation for the costs it incurs in processing bad checks.

On September 28, 1995, at 60 FR 50145, the Immigration and Naturalization Service published a proposed rule with request for comments in the **Federal Register**, to allow the Service to recoup the administrative costs incurred in processing all returned checks and other defaulted payments. Written comments were requested by November 27, 1995. The Service did not receive any comments to the proposed rule and is amending Section 103.7(a) to make the bad check charge consistent with the actual costs incurred by the Service in processing returned checks and other defaulted payments. Accordingly, the bad check charge is being increased from "$5.00" to "$30.00."

Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and for the reasons stated in the preamble, it is certified that the rule would not have a significant impact on a substantial number of small entities. Accordingly, this rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This rule will not result in a "significant regulatory action" under Executive Order 12866.

Executive Order 12612

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implication to warrant the preparation of a Federal Assessment.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252(b), 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557;3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.7 is amended by:

a. Redesignating the text of paragraph (a) following the heading as paragraph (a)(1);

b. Removing in the sixth sentence of newly designated paragraph (a)(1) the term "$5" and adding in its place the term "$30.00"; and

c. Removing the seventh sentence of newly designated paragraph (a)(1); and

d. Adding a new paragraph (a)(2), to read as follows:

§ 103.7 Fees.

(a) * * * (1) * * *

(2) A charge of $30.00 will be imposed if a check in payment of a fee, fine, penalty, and/or any other matter is not honored by the bank or financial institution on which it is drawn. A receipt issued by a Service officer for any such remittance shall not be binding upon the Service if the remittance is found uncollectible. Furthermore, credit for meeting legal and statutory deadlines will not be deemed to have been met if payment is not made within 10 business days after notification by the Service of the dishonored check.

* * * * *

Dated: April 30, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–17156 Filed 7–5–96; 8:45 am]

BILLING CODE 4410–10–M

8 CFR Part 217

[INS No. 1777–96]

RIN 1115–AB93

Adding Argentina to the List of Countries Authorized to Participate in the Visa Waiver Pilot Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service ("Service") regulations by adding Argentina to the list of countries designated to participate in the Visa Waiver Pilot Program (VWPP), thereby permitting nationals of Argentina to apply for admission to the United States for ninety (90) days or less as nonimmigrant visitors for business or pleasure without first obtaining a nonimmigrant visa. This action will facilitate travel to the United States and benefit United States businesses.

EFFECTIVE DATES: July 8, 1996. Written comments must be submitted on or before September 6, 1996.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536.

To ensure proper handling please reference INS number 1777–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Tom Graber, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., Room 7228, Washington, DC 20536, Telephone number: (202) 616–7496.

SUPPLEMENTARY INFORMATION: Section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603, added section 217 to the Immigration and Nationality Act (Act), 8 U.S.C. 1187, which established the VWPP. The VWPP waives the nonimmigrant visa requirement for the admission of certain aliens to the United States for a period not to exceed ninety (90) days. That original provision authorized the participation of eight countries in the Pilot Program. Accordingly, the Service designated by regulations published in the **Federal Register**, the following eight (8) countries to participate in the VWPP:

Country	Effective date	Federal Register citation
(1) United Kingdom	July 1, 1988	53 FR 24901, June 30, 1988.
(2) Japan	Dec. 15, 1988	53 FR 50161, Dec. 13, 1988.
(3) France	July 1, 1989	54 FR 27120, June 27, 1989.
(4) Switzerland	July 1, 1989	54 FR 27120, June 27, 1989.
(5) Germany	July 15, 1989	54 FR 27120, June 27, 1989.
(6) Sweden	July 15, 1989	54 FR 27120, June 27, 1989.
(7) Italy	July 29, 1989	54 FR 27120, June 27, 1989.
(8) Netherlands	July 29, 1989	54 FR 27120, June 27, 1989.

Section 201 of the Immigration Act of 1990 (IMMACT 90), Public Law 101–649, dated November 29, 1990, further amended the VWPP removing the eight-country cap and extending the provisions to all countries that met the qualifying provisions contained in section 217 of the Act. In addition, section 201 of IMMACT 90 also extended the period for the VWPP until September 30, 1994. Subsequently, the Service designated by regulations published in the **Federal Register**, the following fourteen (14) additional countries to participate in the VWPP:

Country	Effective date	Federal Register citation
(1) Andorra	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(2) Austria	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(3) Belgium	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(4) Denmark	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(5) Finland	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(6) Iceland	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(7) Liechtenstein	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(8) Luxembourg	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(9) Monaco	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(10) New Zealand	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(11) Norway	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(12) San Marino	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(13) Spain	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(14) Brunei	July 29, 1993	58 FR 40581, July 29, 1993.

Section 210 of the Immigration and Nationality Technical Corrections Act of 1994, Public Law 103–416, dated October 25, 1994, extended the expiration date of the VWPP until September 30, 1996.

Addition of Argentina to the VWPP

Argentina does not require visas for citizens and nationals of the United States entering for ninety (90) days or less. Thus it meets the requirement of providing reciprocal treatment for United States citizens and nationals. Argentina also meets the statutorily prescribed limits on visa refusal rates for the prior 2-year period and for each of those two years. Argentina also has a machine-readable passport program and the Attorney General has determined that law enforcement interests would not be compromised by the designation of Argentina. Accordingly, this interim rule amends 8 CFR part 217 to extend the VWPP to include the country of Argentina, which meets all the requirements for that status. Argentina is, therefore, designated as a country participating in the VWPP by the Secretary of State and the Attorney General, acting jointly through their designees. [See the Department of State rule published elsewhere in this issue of the **Federal Register**.]

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The reasons and the necessity for immediate implementation of this interim rule without prior notice and comment are as follows: This interim rule relieves a restriction and is beneficial to both the traveling public and United States businesses.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely removes a restriction for both the public and United States businesses.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 217

Administrative practices and procedures, Aliens, Nonimmigrants, Passports and visas.

Accordingly, part 217 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 217—VISA WAIVER PILOT PROGRAM

1. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

2. § 217.5, paragraph (a)(1) is revised to read as follows:

VOL
61
ISS
131
JL
8
1996
UMI

§ 217.5 Designated countries.

(a)(1) *Visa Waiver Pilot Program Countries.* United Kingdom (effective July 1, 1988); Japan (effective December 15, 1988); France and Switzerland (effective July 1, 1989); Germany and Sweden (effective July 15, 1989); Italy and the Netherlands (effective July 29, 1989); Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino, and Spain (effective October 1, 1991); Brunei (effective July 29, 1993); and Argentina July 8, 1996, have been designated as Visa Waiver Pilot Program countries based on the criteria set forth at sections 217(a)(2)(A) and 217(c) of the Act.

* * * * *

Dated: June 24, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–16624 Filed 7–5–96; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150–AF51

Export of Nuclear Equipment and Materials

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations pertaining to the export of nuclear equipment and materials. These amendments are necessary to conform the export controls of the United States to the international export control guidelines of the Nuclear Suppliers Group, of which the United States is a member, and to reflect the nuclear nonproliferation policies of the Department of State.

EFFECTIVE DATE: August 7, 1996.

FOR FURTHER INFORMATION CONTACT: Elaine O. Hemby, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–2341, e-mail EOH@NRC.GOV.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) is amending its regulations pertaining to the export of nuclear materials and equipment. Cambodia and Vietnam are removed from the list of embargoed destinations; Algeria, Comoros, Guyana, Mauritania, Niger, St. Kitts, United Arab Emirates, Vanuatu, and Yemen Arab Republic are removed from the list of restricted destinations; Brazil, New Zealand, Republic of Korea, South Africa, and Ukraine are added as member countries of the Nuclear Suppliers Group (NSG) eligible to receive radioactive materials under certain general licenses for export; Austria and Finland are added as eligible countries to receive nuclear reactor components under general license for export; plants for the conversion of uranium and especially designed or prepared equipment for uranium conversion are added to the export controls of the NRC; the kinds of uranium conversion equipment and uranium enrichment equipment under NRC export licensing authority are added for clarification; exports of less than one kilogram of source or special nuclear material exported under the U.S.-IAEA Agreement for Cooperation no longer require Executive Branch review before an NRC license is issued; a general license to export source material and a general license for import are amended to correct inadvertent errors; a reference is added to clarify that some imports and exports of nuclear items are under Department of State controls; and Appendices B and L to Part 110 are amended to correct errors.

Section 110.1, which describes the scope of 10 CFR Part 110, is revised to add a reference that nuclear items on the U.S. Munitions List are subject to the export controls of the Department of State.

In § 110.8, which lists the nuclear facilities and equipment under NRC export authority, and in the appendices to Part 110, which describe the especially designed and prepared equipment under NRC export controls, the word "specially" where it appears is changed to "especially" to conform to the NSG guidelines.

Section 110.8 is amended to add uranium conversion plants and especially designed or prepared equipment for uranium conversion plants to the export authority of the NRC to conform to the NSG guidelines. Recently, the United States and other member countries of the NSG agreed to add to the NSG Trigger List (INFCIRC/254/Part 1) uranium conversion plants. This includes conversion of uranium ore concentrates to UO3, conversion of UO3 to UO2, conversion of uranium oxides to UF4 or UF6, conversion of UF4 to UF6, conversion of UF6 to UF4, conversion of UF4 to uranium metal, and conversion of uranium fluorides to uranium oxides. The nuclear materials and equipment designated as "trigger list" items are controlled by the NRC. Conversion of uranium is an essential step of the nuclear fuel cycle for both civil and military programs, including the production of highly enriched uranium and plutonium. In § 110.2, a definition of "conversion facility" is added for clarification.

Exports of uranium conversion plants and equipment are presently controlled by the Department of Commerce (DOC). The addition of uranium conversion plants to the NRC licensing authority will allow the DOC to remove this item from its nuclear referral list. Accordingly, § 110.1(b)(3), which describes nuclear-related commodities that are subject to DOC export controls, is revised to remove the reference to DOC controls on conversion plants.

In § 110.22, paragraph (c) is amended to delete the word "not" where it first appears. This action is necessary to correct an inadvertent error in a final rule published July 21, 1995 (60 FR 37556). As corrected, § 110.22(c) authorizes the export of uranium or thorium, other than U–230, U–232, Th–227, or Th–228, in individual shipments of one kilogram or less to any country listed in § 110.29, not to exceed 100 kilograms per year to any one country, except for source material in radioactive waste.

In § 110.26, Austria and Finland are added as eligible recipients of nuclear reactor components under the NRC's general license authority for export. These countries are now members of EURATOM. EURATOM has provided the necessary written assurances to the U.S. Government to permit these kinds of exports.

In § 110.27, which describes the general licenses for import, paragraph (4) is amended to delete the term "advance" to describe the kind of notification required. For some activities under § 73.27, advance notification would not apply.

In § 110.28, which lists the embargoed destinations, Cambodia and Vietnam are removed. Because President Clinton lifted the U.S. general trade embargo against Vietnam on February 3, 1995, and the embargo restrictions for Cambodia in 1993, the Executive Branch recently recommended that Cambodia and Vietnam be removed from the embargoed destinations. Both Cambodia and Vietnam are adherents to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). Exports to Cambodia and Vietnam now qualify for the NRC general licensing authorizations specified in §§ 110.21 through 110.25.

In § 110.29, Algeria, Comoros, Guyana, Mauritania, Niger, St. Kitts, United Arab Emirates, Vanuatu, and Yemen Arab Republic are removed from

the restricted destinations. The Executive Branch recently recommended that these countries be removed because they are NPT adherents. Accordingly, exports to these countries now qualify for the NRC general licensing authorizations specified in §§ 110.21 through 110.25.

In § 110.30, Brazil, New Zealand, Republic of Korea, South Africa, and Ukraine are added as members of the NSG. Accordingly, these countries are eligible to receive radioactive materials under NRC general licenses.

In § 110.41, paragraph (4) is amended to reflect the Executive Branch judgment that any export of less than one kilogram of source or special nuclear material which is exported under the provisions of the U.S.-IAEA Agreement for Cooperation does not require review by the Executive Branch.

In Appendix B to Part 110, which describes the gas centrifuge equipment under NRC licensing authority, the footnote to section 1 is amended to change the specifications for filamentary materials suitable for gas centrifuge rotating components. This action is necessary to correct errors when the equations were converted from English to metric units. The current level of control catches items with a wide variety of non-nuclear, non-sensitive applications. Section 1.2 of Appendix B is amended to clarify the kinds of static components NRC controls to reflect the NSG Guidelines.

New appendices to Part 110 are added to clarify the uranium enrichment equipment and uranium conversion equipment under NRC export licensing authority to reflect the guidelines of the NSG. The appendices are illustrative only and not inclusive. Corresponding changes are made to § 110.8.

In Appendix L, which lists the byproduct materials under NRC licensing controls, the entry "Tungsten 185 (w 85)" is corrected to read "Tungsten 185 (W 185)."

The NRC has determined that this rule is necessary to reflect the Executive Branch's nuclear non-proliferation policies and to conform the export controls of the United States to the international export control guidelines of the NSG, of which the United States is a member. The rule also corrects several minor, inadvertent errors from previous rulemakings.

Because the substance of this rule involves a foreign affairs function of the United States, the notice and comment provisions of the Administrative Procedure Act do not apply (5 U.S.C. 553(a)(1)). In addition, solicitation of public comments would delay United States conformance with its international obligations and would thus be contrary to the public interest (5 U.S.C. 553(b)).

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB. The rule is necessary to conform the nuclear nonproliferation policies of the United States with international export guidelines.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1) and (c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements in §§ 110.26, 110.31, 110.32, 110.53 and the use of Form NRC 7 were approved by the Office of Management and Budget, approval numbers 3150–0036 and 3150–0027.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

The final rule eliminating the requirement for a specific license in some circumstances should have a positive economic effect on U.S. export business. U.S. exporters can ship nuclear equipment and materials under the NRC general license authority to additional foreign markets without the expense of license application fees, the paperwork burden, time delays, and uncertainties in delivery. For the first time, Cambodia and Vietnam are eligible to receive certain NRC nuclear materials under general license. Austria and Finland are now eligible to receive nuclear reactor equipment under NRC general license. In addition, Brazil, New Zealand, Republic of Korea, South Africa, Ukraine, Algeria, Comoros, Guyana, Mauritania, Niger, St. Kitts, United Arab Emirates, Vanuatu, and Yemen Arab Republic can now receive certain nuclear materials under NRC general licenses.

In transferring export authority of uranium conversion plants and equipment from the DOC to NRC export authority, the Commission was aware of a potential detrimental impact on exporters because of the license fee imposed by NRC for each license application submitted. However, according to DOC export licensing data, the DOC issued only one export license for conversion equipment in the past five years, at a value of $317,000. In view of this information, the NRC continues to believe that the economic impact of the rule on U.S. companies is not significant.

There are no alternatives for achieving the stated objective. This rule conforms NRC's export controls to the international export guidelines of the NSG. Thus, the regulation is required to satisfy international obligations of the United States. The foregoing discussion constitutes the regulatory analysis for this final rule.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this final rule because these amendments do not include any provisions that would require backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 110.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

1. The authority citation for part 110 continues to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 5, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243).

VOL
61
ISS
1
31
JL
8
1996
UMI

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d, 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42 (a)(9) also issued under sec. 903, Pub. L. 102–496 (42 U.S.C. 2151 et seq.).

2. In § 110.1, paragraph (b)(2) is revised, paragraphs (b)(3) and (b)(4) are redesignated as paragraphs (b)(4) and (b)(5), the redesignated paragraph (b)(4) is revised, and a new paragraph (b)(3) is added to read as follows:

§ 110.1 Purpose and scope.

* * * * *

(b) * * *

(2) Persons who export or import U.S. Munitions List nuclear items, such as uranium depleted in the isotope-235 and incorporated in defense articles. These persons are subject to the controls of the Department of State pursuant to 22 CFR 120–130 "International Traffic in Arms Regulations" (ITAR), under the Arms Export Control Act, as authorized by section 110 of the International Security and Development Cooperation Act of 1980;

(3) Persons who export uranium depleted in the isotope-235 and incorporated in commodities solely to take advantage of high density or pyrophoric characteristics. These persons are subject to the controls of the Department of Commerce under the Export Administration Act, as authorized by section 110 of the International Security and Development Cooperation Act of 1980;

(4) Persons who export nuclear referral list commodities. These persons are subject to the licensing authority of the Department of Commerce pursuant to 15 CFR part 799, such as bulk zirconium, rotor and bellows equipment, maraging steel, nuclear reactor related equipment, including process control systems and simulators; and

* * * * *

3. In § 110.2, a definition for *Conversion facility* is added in alphabetical order to read as follows:

§ 110.2 Definitions.

* * * * *

Conversion facility means any facility for the transformation from one uranium chemical species to another, including: conversion of uranium ore concentrates to UO3, conversion of UO3 to UO2, conversion of uranium oxides to UF4 or UF6, conversion of UF4 to UF6, conversion of UF6 to UF4, conversion of UF4 to uranium metal, and conversion of uranium fluorides to UO2.

* * * * *

4. Section 110.8 is revised to read as follows:

§ 110.8 List of nuclear facilities and equipment under NRC export licensing authority.

(a) Nuclear reactors and especially designed or prepared equipment and components for nuclear reactors. (See appendix A to this part.)

(b) Plants for the separation of isotopes of uranium (source material or special nuclear material) including gas centrifuge plants, gaseous diffusion plants, aerodynamic enrichment plants, chemical exchange or ion exchange enrichment plants, laser based enrichment plants, plasma separation enrichment plants, electromagnetic enrichment plants, and especially designed or prepared equipment, other than analytical instruments, for the separation of isotopes of uranium. (See appendices to this part for lists of: gas centrifuge equipment—Appendix B; gaseous diffusion equipment—Appendix C; aerodynamic enrichment equipment—Appendix D; chemical exchange or ion exchange enrichment equipment—Appendix E; laser based enrichment equipment—Appendix F; plasma separation enrichment equipment—Appendix G; and electromagnetic enrichment equipment—Appendix H.)

(c) Plants for the separation of the isotopes of lithium and especially designed or prepared assemblies and components for these plants.

(d) Plants for the reprocessing of irradiated nuclear reactor fuel elements and especially designed or prepared assemblies and components for these plants. (See Appendix I to this part.)

(e) Plants for the fabrication of nuclear reactor fuel elements and especially designed or prepared assemblies and components for these plants.

(f) Plants for the conversion of uranium and especially designed or prepared assemblies and components for these plants. (See Appendix J to this part.)

(g) Plants for the production, separation, or purification of heavy water, deuterium, and deuterium compounds and especially designed or prepared assemblies and components for these plants. (See Appendix K to this part.)

(h) Other nuclear-related commodities are under the export licensing authority of the Department of Commerce.

§ 110.22 [Amended]

5. In § 110.22(c), remove the word "not" where it appears between "country" and "listed."

§ 110.23 [Amended]

6. In § 110.23, paragraph (a)(1), "Appendix F" is revised to read "Appendix L."

§ 110.26 [Amended]

7. In § 110.26, paragraph (a)(2) is amended by adding "Austria" and "Finland" in alphabetical order.

8. In § 110.27, paragraph (d) is revised to read as follows:

§ 110.27 General license for imports.

* * * * *

(d) A person importing formula quantities of strategic special nuclear material (as defined in § 73.2 of this chapter) under this general license shall provide the notifications required by § 73.27 and § 73.72 of this chapter.

§ 110.28 [Amended]

9. Section 110.28 is amended by removing "Cambodia" and "Vietnam."

§ 110.29 [Amended]

10. Section 110.29 is amended by removing "Algeria," "Comoros," "Guyana," "Mauritania," "Niger," "St. Kitts," "United Arab Emirates," "Vanuatu," and "Yemen Arab Republic."

§ 110.30 [Amended]

11. Section 110.30 is amended by adding "Brazil," "New Zealand," "Republic of Korea," "South Africa," and "Ukraine" in alphabetical order.

§ 110.41 [Amended]

12. In § 110.41, paragraph (a)(4) is revised to read as follows:

(a) * * *

(4) One kilogram or more of source or special nuclear material to be exported under the US-IAEA Agreement for Cooperation.

* * * * *

13. In § 110.44, paragraph (b)(2), "Appendix C" is revised to read "Appendix M."

Appendix A to Part 110 [Amended]

14. In Appendix A to Part 110, paragraph (9), remove the word "specially" and add in its place the word "especially."

15. In Appendix B to Part 110, paragraph (c) of the Footnote to section 1 is revised and paragraphs (e) and (f) are added to section 1.2 to read as follows:

Footnote

The materials used for centrifuge rotating components are:

* * * * * *

(c) Filamentary materials suitable for use in composite structures and having a specific modulus of 3.18×10^6 m or greater and a specific ultimate tensile strength of 7.62×10^4 m or greater.

("Specific Modulus" is the Young's modulus in N/m^2 divided by the specific weight in N/m^3 when measured at a temperature of 23±20C and a relative humidity of 50±5%. "Specific tensile strength" is the ultimate tensile strength in N/m^2 divided by the specific weight in N/m^3 when measured at a temperature of 23±20C and a relative humidity of 50±5%.)

* * * * *

1.2 Static Components.

* * * * *

(e) Centrifuge housing/recipients: Components especially designed or prepared to contain the rotor tube assembly of a gas centrifuge. The housing consists of a rigid cylinder of wall thickness up to 30 mm (1.2in) with precision machined ends to locate the bearings and with one or more flanges for mounting. The machined ends are parallel to each other and perpendicular to the cylinder's longitudinal axis to within 0.05 degrees or less. The housing may also be a honeycomb type structure to accommodate several rotor tubes. The housings are made of or protected by materials resistant to corrosion by UF6.

(f) Scoops: Especially designed or prepared tubes of up to 12 mm (0.5in) internal diameter for the extraction of UF6 gas from within the rotor tube by a Pitot tube action (that is, with an aperture facing into the circumferential gas flow within the rotor tube, for example by bending the end of a radially disposed tube) and capable of being fixed to the central gas extraction system. The tubes are made of or protected by materials resistant to corrosion by UF6.

* * * * *

Appendices D, E, F, and G to Part 110 [Redesignated as Appendice I, K through M of Part 110]

16. Appendix D to Part 110 is redesignated Appendix I to Part 110 and Appendices E through G to Part 110 are redesignated as Appendices K through M to Part 110.

17. A new Appendix D to Part 110 is added to read as follows:

Appendix D to Part 110—Illustrative List of Aerodynamic Enrichment Plant Equipment and Components Under NRC Export Licensing Authority

Note—In aerodynamic enrichment processes, a mixture of gaseous UF6 and light gas (hydrogen or helium) is compressed and then passed through separating elements wherein isotopic separation is accomplished by the generation of high centrifugal forces over a curved-wall geometry. Two processes of this type have been successfully developed: the separation nozzle process and the vortex tube process. For both processes the main components of a separation stage included cylindrical vessels housing the special separation elements (nozzles or vortex tubes), gas compressors and heat exchangers to remove the heat of compression. An aerodynamic plant requires a number of these stages, so that quantities can provide an important indication of end use. Because aerodynamic processes use UF6, all equipment, pipeline and instrumentation surfaces (that come in contact with the gas) must be made of materials that remain stable in contact with UF6. All surfaces which come into contact with the process gas are made of or protected by UF6-resistant materials; including copper, stainless steel, aluminum, aluminum alloys, nickel or alloys containing 60% or more nickel and UF6-resistant fully fluorinated hydrocarbon polymers.

The following items either come into direct contact with the UF6 process gas or directly control the flow within the cascade:

(1) Separation nozzles and assemblies.

Especially designed or prepared nozzles that consist of slit-shaped, curved channels having a radius of curvature less than 1 mm (typically 0.1 to 0.05 mm). The nozzles are resistant to UF6 corrosion and have a knife-edge within the nozzle that separates the gas flowing through the nozzle into two fractions.

(2) Vortex tubes and assemblies.

Especially designed or prepared vortex tubes that are cylindrical or tapered, made of or protected by materials resistant to UF6 corrosion, have a diameter of between 0.5 cm and 4 cm, a length to diameter ratio of 20:1 or less and with one or more tangential inlets. The tubes may be equipped with nozzle-type appendages at either or both ends.

The feed gas enters the vortex tube tangentially at one end or through swirl vanes or at numerous tangential positions along the periphery of the tube.

(3) Compressors and gas blowers.

Especially designed or prepared axial, centrifugal, or positive displacement compressors or gas blowers made of or protected by materials resistant to UF6 corrosion and with a suction volume capacity of 2 m^3/min or more of UF6/carrier gas (hydrogen or helium) mixture. These compressors and gas blowers typically have a pressure ratio between 1.2:1 and 6:1.

(4) Rotary shaft seals.

Especially designed or prepared seals, with seal feed and seal exhaust connections, for sealing the shaft connecting the compressor rotor or the gas blower rotor with the driver motor to ensure a reliable seal against out-leakage of process gas or in-leakage of air or seal gas into the inner chamber of the compressor or gas blower which is filled with a UF6/carrier gas mixture.

(5) Heat exchangers for gas cooling.

Especially designed or prepared heat exchangers, made of or protected by materials resistant to UF6 corrosion.

(6) Separation element housings.

Especially designed or prepared separation element housings, made of or protected by materials resistant to UF6 corrosion, for containing vortex tubes or separation nozzles.

- These housings may be cylindrical vessels greater than 300 mm in diameter and greater than 900 mm in length, or may be rectangular vessels of comparable dimensions, and may be designed for horizonal or vertical installation.

(7) Feed systems/product and tails withdrawal systems.

Especially designed or prepared process systems or equipment for enrichment plants made of or protected by materials resistant to UF6 corrosion, including:

(i) Feed autoclaves, ovens, or systems used for passing UF6 to the enrichment process;

(ii) Desublimers (or cold traps) used to remove UF6 from the enrichment process for subsequent transfer upon heating;

(iii) Solidification or liquefaction stations used to remove UF6 from the enrichment process by compressing and converting UF6 to a liquid or solid form; and

(iv) "Product" or "tails" stations used for transferring UF6 into containers.

(8) Header piping systems.

Especially designed or prepared header piping systems, made of or protected by materials resistant to UF6 corrosion, for handling UF6 within the aerodynamic cascades.

The piping network is normally of the "double" header design with each stage or group of stages connected to each of the headers.

(9) Vacuum systems and pumps.

Especially designed or prepared vacuum systems having a suction capacity of 5 m^3/min or more, consisting of vacuum manifolds, vacuum headers and vacuum pumps, and designed for service in UF6-bearing atmospheres.

Especially designed or prepared vacuum pumps for service in UF6-bearing atmospheres and made of or protected by materials resistant to UF6 corrosion. These pumps may use fluorocarbon seals and special working fluids.

(10) Special shut-off and control valves.

Especially designed or prepared manual or automated shut-off and control bellows valves made of or protected by materials resistant.to UF6 corrosion with a diameter of 40 to 1500 mm for installation in main and auxiliary systems of aerodynamic enrichment plants.

(11) UF6 mass spectrometers/ion sources.

Especially designed or prepared magnetic or quadrupole mass spectrometers capable of taking "on-line" samples of feed, "product" or "tails", from UF6 gas streams and having all of the following characteristics:

(i) Unit resolution for mass greater than 320;

(ii) Ion sources constructed of or lined with nichrome or monel or nickel plated;

(iii) Electron bombardment ionization sources; and

(iv) Collector system suitable for isotopic analysis.

(12) UF6/carrier gas separation systems.

Especially designed or prepared process systems for separating UF6 from carrier gas (hydrogen or helium).

These systems are designed to reduce the UF6 content in the carrier gas to 1 ppm or less and may incorporate equipment such as:

VOL
61
ISS
131
JL
8
1996
UMI

(i) Cryogenic heat exchangers and cryoseparators capable of temperatures of −120°C or less;

(ii) Cryogenic refrigeration units capable of temperatures of −120°C or less;

(iii) Separation nozzle or vortex tube units for the separation of UF6 from carrier gas; or

(iv) UF6 cold traps capable of temperatures of −20°C or less.

18. A new Appendix E to Part 110 is added to read as follows:

Appendix E to Part 110—Illustrative List of Chemical Exchange or Ion Exchange Enrichment Plant Equipment and Components Under NRC Export Licensing Authority

Note—The slight difference in mass between the isotopes of uranium causes small changes in chemical reaction equilibria that can be used as a basis for separation of the isotopes. Two processes have been successfully developed: liquid-liquid chemical exchange and solid-liquid ion exchange.

A. In the liquid-liquid chemical exchange process, immiscible liquid phases (aqueous and organic) are countercurrently contacted to give the cascading effect of thousands of separation stages. The aqueous phase consists of uranium chloride in hydrochloric acid solution; the organic phase consists of an extractant containing uranium chloride in an organic solvent. The contactors employed in the separation cascade can be liquid-liquid exchange columns (such as pulsed columns with sieve plates) or liquid centrifugal contactors. Chemical conversions (oxidation and reduction) are required at both ends of the separation cascade in order to provide for the reflux requirements at each end. A major design concern is to avoid contamination of the process streams with certain metal ions. Plastic, plastic-lined (including use of fluorocarbon polymers) and/or glass-lined columns and piping are therefore used.

(1) Liquid-liquid exchange columns.

Countercurrent liquid-liquid exchange columns having mechanical power input (i.e., pulsed columns with sieve plates, reciprocating plate columns, and columns with internal turbine mixers), especially designed or prepared for uranium enrichment using the chemical exchange process. For corrosion resistance to concentrated hydrochloric acid solutions, these columns and their internals are made of or protected by suitable plastic materials (such as fluorocarbon polymers) or glass. The stage residence time of the columns is designed to be short (30 seconds or less).

(2) Liquid-liquid centrifugal contactors.

Especially designed or prepared for uranium enrichment using the chemical exchange process. These contactors use rotation to achieve dispersion of the organic and aqueous streams and then centrifugal force to separate the phases. For corrosion resistance to concentrated hydrochloric acid solutions, the contactors are made of or are lined with suitable plastic materials (such as fluorocarbon polymers) or are lined with glass. The stage residence time of the centrifugal contactors is designed to be short (30 seconds or less).

(3) Uranium reduction systems and equipment.

(i) Especially designed or prepared electrochemical reduction cells to reduce uranium from one valence state to another for uranium enrichment using the chemical exchange process. The cell materials in contact with process solutions must be corrosion resistant to concentrated hydrochloric acid solutions.

The cell cathodic compartment must be designed to prevent re-oxidation of uranium to its higher valence state. To keep the uranium in the cathodic compartment, the cell may have an impervious diaphragm membrane constructed of special cation exchange material. The cathode consists of a suitable solid conductor such as graphite.

These systems consist of solvent extraction equipment for stripping the U+4 from the organic stream into an aqueous solution, evaporation and/or other equipment to accomplish solution pH adjustment and control, and pumps or other transfer devices for feeding to the electrochemical reduction cells. A major design concern is to avoid contamination of the aqueous stream with certain metal ions. For those parts in contact with the process stream, the system is constructed of equipment made of or protected by materials such as glass, fluorocarbon polymers, polyphenyl sulfate, polyether sulfone, and resin-impregnated graphite.

(ii) Especially designed or prepared systems at the product end of the cascade for taking the U+4 out of the organic stream, adjusting the acid concentration and feeding to the electrochemical reduction cells.

These systems consist of solvent extraction equipment for stripping the U+4 from the organic stream into an aqueous solution, evaporation and/or other equipment to accomplish solution pH adjustment and control, and pumps or other transfer devices for feeding to the electrochemical reduction cells. A major design concern is to avoid contamination of the aqueous stream with certain metal ions. For those parts in contact with the process stream, the system is constructed of equipment made of or protected by materials such as glass, fluorocarbon polymers, polyphenyl sulfate, polyether sulfone, and resin-impregnated graphite.

(4) Feed preparation systems.

Especially designed or prepared systems for producing high-purity uranium chloride feed solutions for chemical exchange uranium isotope separation plants.

These systems consist of dissolution, solvent extraction and/or ion exchange equipment for purification and electrolytic cells for reducing the uranium U+6 or U+4 to U+3. These systems produce uranium chloride solutions having only a few parts per million of metallic impurities such as chromium, iron, vanadium, molybdenum and other bivalent or higher multi-valent cations. Materials of construction for portions of the system processing high-purity U+3 include glass, fluorocarbon polymers, polyphenyl sulfate or polyether sulfone plastic-lined and resin-impregnated graphite.

(5) Uranium oxidation systems.

Especially designed or prepared systems for oxidation of U+3 to U+4 for return to the uranium isotope separation cascade in the chemical exchange enrichment process.

These systems may incorporate equipment such as:

(i) Equipment for contacting chlorine and oxygen with the aqueous effluent from the isotope separation equipment and extracting the resultant U+4 into the stripped organic stream returning from the product end of the cascade; and

(ii) Equipment that separates water from hydrochloric acid so that the water and the concentrated hydrochloric acid may be reintroduced to the process at the proper locations.

B. In the solid-liquid ion-exchange process, enrichment is accomplished by uranium adsorption/desorption on a special, fast-acting, ion-exchange resin or adsorbent. A solution of uranium in hydrochloric acid and other chemical agents is passed through cylindrical enrichment columns containing packed beds of the adsorbent. For a continuous process, a reflux system is necessary to release the uranium from the adsorbent back in the liquid flow so that "product" and "tails" can be collected. This is accomplished with the use of suitable reduction/oxidation chemical agents that are fully regenerated in separate external circuits and that may be partially regenerated within the isotopic separation columns themselves. The presence of hot concentrated hydrochloric acid solutions in the process requires that the equipment be made of or protected by special corrosion-resistant materials.

(1) Fast reacting ion exchange resins/adsorbents.

Especially designed or prepared for uranium enrichment using the ion exchange process, including porous macroreticular resins, and/or pellicular structures in which the active chemical exchange groups are limited to a coating on the surface of an inactive porous support structure, and other composite structures in any suitable form including particles or fibers. These ion exchange resins/adsorbents have diameters of 0.2 mm or less and must be chemically resistant to concentrated hydrochloric acid solutions as well as physically strong enough so as not to degrade in the exchange columns. The resins/adsorbents are especially designed to achieve very fast uranium isotope exchange kinetics (exchange rate half-time of less than 10 seconds) and are capable of operating at a temperature in the range of 100°C to 200°C.

(2) Ion exchange columns.

Cylindrical columns greater than 1000 mm in diameter for containing and supporting packed beds of ion exchange resin/adsorbent, especially designed or prepared for uranium enrichment using the ion exchange process. These columns are made of or protected by materials (such as titanium or fluorocarbon plastics) resistant to corrosion by concentrated hydrochloric acid solutions and are capable of operating at a temperature in the range of 100°C to 200°C and pressures above 0.7 MPa (102 psia).

(3) Ion exchange reflux systems.

(i) Especially designed or prepared chemical or electrochemical reduction systems for regeneration of the chemical reducing agent(s) used in ion exchange uranium enrichment cascades.

The ion exchange enrichment process may use, for example, trivalent titanium (Ti+3) as a reducing cation in which case the reduction system would regenerate Ti+3 by reducing Ti+4.

(ii) Especially designed or prepared chemical or electrochemical oxidation systems for regeneration of the chemical oxidizing agent(s) used in ion exchange uranium enrichment cascades.

The ion exchange enrichment process may use, for example, trivalent iron (Fe+3) as an oxidant in which case the oxidation system would regenerate Fe+3 by oxidizing Fe+2.

19. A new Appendix F to Part 110 is added to read as follows:

Appendix F to Part 110—Illustrative List of Laser-Based Enrichment Plant Equipment and Components Under NRC Export Licensing Authority

Note—Present systems for enrichment processes using lasers fall into two categories: the process medium is atomic uranium vapor and the process medium is the vapor of a uranium compound. Common nomenclature for these processes include: first category-atomic vapor laser isotope separation (AVLIS or SILVA); second category-molecular laser isotope separation (MLIS or MOLIS) and chemical reaction by isotope selective laser activation (CRISLA). The systems, equipment and components for laser enrichment plants include: (a) Devices to feed uranium-metal vapor for selective photo-ionization or devices to feed the vapor of a uranium compound for photo-dissociation or chemical activation; (b) devices to collect enriched and depleted uranium metal as "product" and "tails" in the first category, and devices to collect dissociated or reacted compounds as "product" and unaffected material as 'tails' in the second category; (c) process laser systems to selectively excite the uranium-235 species; and (d) feed preparation and product conversion equipment. The complexity of the spectroscopy of uranium atoms and compounds may require incorporation of a number of available laser technologies.

All surfaces that come into contact with the uranium or UF6 are wholly made of or protected by corrosion-resistant materials. For laser-based enrichment items, the materials resistant to corrosion by the vapor or liquid of uranium metal or uranium alloys include yttria-coated graphite and tantalum; and the materials resistant to corrosion by UF6 include copper, stainless steel, aluminum, aluminum alloys, nickel or alloys containing 60% or more nickel and UF6-resistant fully fluorinated hydrocarbon polymers.

Many of the following items come into direct contact with uranium metal vapor or liquid or with process gas consisting of UF6 or a mixture of UF6 and other gases:

(1) Uranium vaporization systems (AVLIS).

Especially designed or prepared uranium vaporization systems that contain high-power strip or scanning electron beam guns with a delivered power on the target of more than 2.5 kW/cm.

(2) Liquid uranium metal handling systems (AVLIS).

Especially designed or prepared liquid metal handling systems for molten uranium or uranium alloys, consisting of crucibles and cooling equipment for the crucibles.

The crucibles and other system parts that come into contact with molten uranium or uranium alloys are made of or protected by materials of suitable corrosion and heat resistance, such as tantalum, yttria-coated graphite, graphite coated with other rare earth oxides or mixtures thereof.

(3) Uranium metal "product" and "tails" collector assemblies (AVLIS).

Especially designed or prepared "product" and "tails" collector assemblies for uranium metal in liquid or solid form.

Components for these assemblies are made of or protected by materials resistant to the heat and corrosion of uranium metal vapor or liquid, such as yttria-coated graphite or tantalum, and may include pipes, valves, fittings, "gutters", feed-throughs, heat exchangers and collector plates for magnetic, electrostatic or other separation methods.

(4) Separator module housings (AVLIS).

Especially designed or prepared cylindrical or rectangular vessels for containing the uranium metal vapor source, the electron beam gun, and the "product" and "tails" collectors.

These housings have multiplicity of ports for electrical and water feed-throughs, laser beam windows, vacuum pump connections and instrumentation diagnostics and monitoring with opening and closure provisions to allow refurbishment of internal components.

(5) Supersonic expansion nozzles (MLIS).

Especially designed or prepared supersonic expansion nozzles for cooling mixtures of UF6 and carrier gas to 150 K or less which are corrosion resistant to UF6.

(6) Uranium pentafluoride product collectors (MLIS).

Especially designed or prepared uranium pentafluoride (UF5) solid product collectors consisting of filter, impact, or cyclone-type collectors, or combinations thereof, which are corrosion resistant to the UF5/UF6 environment.

(7) UF6/carrier gas compressors (MLIS).

Especially designed or prepared compressors for UF6/carrier gas mixtures, designed for long term operation in a UF6 environment. Components of these compressors that come into contact with process gas are made of or protected by materials resistant to UF6 corrosion.

(8) Rotary shaft seals (MLIS).

Especially designed or prepared rotary shaft seals, with seal feed and seal exhaust connections, for sealing the shaft connecting the compressor rotor with the driver motor to ensure a reliable seal against out-leakage of process gas or in-leakage of air or seal gas into the inner chamber of the compressor which is filled with a UF6/carrier gas mixture.

(9) Fluorination systems (MLIS).

Especially designed or prepared systems for fluorinating UF5 (solid) to UF6 (gas).

These systems are designed to fluorinate the collected UF5 powder to UF6 for subsequent collection in product containers or for transfer as feed to MLIS units for additional enrichment. In one approach, the fluorination reaction may be accomplished within the isotope separation system to react and recover directly off the "product" collectors. In another approach, the UF5 powder may be removed/transferred from the "product" collectors into a suitable reaction vessel (e.g., fluidized-bed reactor, screw reactor or flame tower) for fluorination. In both approaches equipment is used for storage and transfer of fluorine (or other suitable fluorinating agents) and for collection and transfer of UF6.

(10) UF6 mass spectrometers/ion sources (MLIS).

Especially designed or prepared magnetic or quadrupole mass spectrometers capable of taking "on-line" samples of feed, "product" or "tails", from UF6 gas streams and having all of the following characteristics:

(i) Unit resolution for mass greater than 320;

(ii) Ion sources constructed of or lined with nichrome or monel or nickel plated;

(iii) Electron bombardment ionization sources; and

(iv) Collector system suitable for isotopic analysis.

(11) Feed systems/product and tails withdrawal systems (MLIS).

Especially designed or prepared process systems or equipment for enrichment plants made of or protected by materials resistant to corrosion by UF6, including:

(i) Feed autoclaves, ovens, or systems used for passing UF6 to the enrichment process;

(ii) Desublimers (or cold traps) used to remove UF6 from the enrichment process for subsequent transfer upon heating;

(iii) Solidification or liquefaction stations used to remove UF6 from the enrichment process by compressing and converting UF6 to a liquid or solid; and

(iv) "Product" or "tails" stations used to transfer UF6 into containers.

(12) UF6/carrier gas separation systems (MLIS).

Especially designed or prepared process systems for separating UF6 from carrier gas. The carrier gas may be nitrogen, argon, or other gas.

These systems may incorporate equipment such as:

(i) Cryogenic heat exchangers or cryoseparators capable of temperatures of −120°C or less;

(ii) Cryogenic refrigeration units capable of temperatures of −120°C or less; or

(iii) UF6 cold traps capable of temperatures of −20°C or less.

(13) Lasers or Laser systems (AVLIS, MLIS and CRISLA).

Especially designed or prepared for the separation of uranium isotopes. The laser system for the AVLIS process usually consists of two lasers: a copper vapor laser and a dye laser. The laser system for MLIS usually consists of a CO_2 or excimer laser and a multi-pass optical cell with revolving mirrors at both ends. Lasers or laser systems for both processes require a spectrum frequency stabilizer for operation over extended periods.

20. A new Appendix G to Part 110 is added to read as follows:

VOL
61
ISS
1
31
JL
8
1996
UMI

Appendix G to Part 110—Illustrative List of Plasma Separation Enrichment Plant Equipment and Components Under NRC Export Licensing Authority

Note—In the plasma separation process, a plasma of uranium ions passes through an electric field tuned to the 235U ion resonance frequency so that they preferentially absorb energy and increase the diameter of their corkscrew-like orbits. Ions with a large-diameter path are trapped to produce a product enriched in 235U. The plasma, made by ionizing uranium vapor, is contained in a vacuum chamber with a high-strength magnetic field produced by a superconducting magnet. The main technological systems of the process include the uranium plasma generation system, the separator module with superconducting magnet, and metal removal systems for the collection of "product" and "tails".

(1) Microwave power sources and antennas.

Especially designed or prepared microwave power sources and antennae for producing or accelerating ions having the following characteristics: greater than 30 GHz frequency and greater than 50 kW mean power output for ion production.

(2) Ion excitation coils.

Especially designed or prepared radio frequency ion excitation coils for frequencies of more than 100 kHz and capable of handling more than 40 kW mean power.

(3) Uranium plasma generation systems.

Especially designed or prepared systems for the generation of uranium plasma, which may contain high power strip or scanning electron beam guns with a delivered power on the target of more than 2.5 kW/cm.

(4) Liquid uranium metal handling systems.

Especially designed or prepared liquid metal handling systems for molten uranium or uranium alloys, consisting of crucible and cooling equipment for the crucibles.

The crucibles and other system parts that come into contact with molten uranium or uranium alloys are made of or protected by corrosion and heat resistance materials, such as tantalum, yttria-coated graphite, graphite coated with other rare earth oxides or mixtures thereof.

(5) Uranium metal "product" and "tails" collector assemblies.

Especially designed or prepared "product" and "tails" collector assemblies for uranium metal in solid form. These collector assemblies are made of or protected by materials resistant to the heat and corrosion of uranium metal vapor, such as yttria-coated graphite or tantalum.

(6) Separator module housings.

Especially designed or prepared cylindrical vessels for use in plasma separation enrichment plants for containing the uranium plasma source, radio-frequency drive coil and the "product" and "tails" collectors.

These housings have a multiplicity of ports for electrical feed-throughs, diffusion pump connections and instrumentation diagnostics and monitoring. They have provisions for opening and closure to allow for refurbishment of internal components and are constructed of a suitable non-magnetic material such as stainless steel.

21. A new Appendix H to Part 110 is added to read as follows:

Appendix H to Part 110—Illustrative List of Electromagnetic Enrichment Plant Equipment and Components Under NRC Export Licensing Authority

Note—In the electromagnetic process, uranium metal ions produced by ionization of a salt feed material (typically UCL4) are accelerated and passed through a magnetic field that has the effect of causing the ions of different isotopes to follow different paths. The major components of an electromagnetic isotope separator include: a magnetic field for ion-beam diversion/separation of the isotopes, an ion source with its acceleration system, and a collection system for the separated ions. Auxiliary systems for the process include the magnet power supply system, the ion source high-voltage power supply system, the vacuum system, and extensive chemical handling systems for recovery of product and cleaning/recycling of components.

(1) Electromagnetic isotope separators.

Especially designed or prepared for the separation of uranium isotopes, and equipment and components therefor, including:

(i) Ion Sources—especially designed or prepared single or multiple uranium ion sources consisting of a vapor source, ionizer, and beam accelerator, constructed of materials such as graphite, stainless steel, or copper, and capable of providing a total ion beam current of 50 mA or greater;

(ii) Ion collectors—collector plates consisting of two or more slits and pockets especially designed or prepared for collection of enriched and depleted uranium ion beams and constructed of materials such as graphite or stainless steel;

(iii) Vacuum housings—especially designed or prepared vacuum housings for uranium electromagnetic separators, constructed of suitable non-magnetic materials such as stainless steel and designed for operation at pressures of 0.1 Pa or lower.

The housings are specially designed to contain the ion sources, collector plates and water-cooled liners and have provision for diffusion pump connections and opening and closure for removal and reinstallation of these components; and

(iv) Magnet pole pieces—especially designed or prepared magnet pole pieces having a diameter greater than 2 m used to maintain a constant magnetic field within an electromagnetic isotope separator and to transfer the magnetic field between adjoining separators.

(2) High voltage power supplies.

Especially designed or prepared high-voltage power supplies for ion sources, having all of the following characteristics:

(i) Capable of continuous operation;

(ii) Output voltage of 20,000 V or greater;

(iii) Output current of 1 A or greater; and

(iv) Voltage regulation of better than 0.01% over an 8 hour time period.

(3) Magnet power supplies.

Especially designed or prepared high-power, direct current magnet power supplies having all of the following characteristics:

(i) Capable of continuously producing a current output of 500 A or greater at a voltage of 100 V or greater; and

(ii) A current or voltage regulation better than 0.01% over an 8 hour time period.

22. A new Appendix J to Part 110 is added to read as follows:

Appendix J to Part 110—Illustrative List of Uranium Conversion Plant Equipment Under NRC Export Licensing Authority

Note—Uranium conversion plants and systems may perform one or more transformations from one uranium chemical species to another, including: conversion of uranium ore concentrates to UO3, conversion of UO3 to UO2, conversion of uranium oxides to UF4 or UF6, conversion of UF4 to UF6, conversion of UF6 to UF4, conversion of UF4 to uranium metal, and conversion of uranium fluorides to UO2. Many key equipment items for uranium conversion plants are common to several segments of the chemical process industry, including furnaces, rotary kilns, fluidized bed reactors, flame tower reactors, liquid centrifuges, distillation columns and liquid-liquid extraction columns. However, few of the items are available "off-the-shelf"; most would be prepared according to customer requirements and specifications. Some require special design and construction considerations to address the corrosive properties of the chemicals handled (HF, F2, CLF3, and uranium fluorides). In all of the uranium conversion processes, equipment which individually is not especially designed or prepared for uranium conversion can be assembled into systems which are especially designed or prepared for uranium conversion.

(1) Especially designed or prepared systems for the conversion of uranium ore concentrates to UO3.

Conversion of uranium ore concentrates to UO3 can be performed by first dissolving the ore in nitric acid and extracting purified uranyl nitrate using a solvent such as tributyl phosphate. Next, the uranyl nitrate is converted to UO3 either by concentration and denitration or by neutralization with gaseous ammonia to product ammonium diuranate with subsequent filtering, drying, and calcining.

(2) Especially designed or prepared systems for the conversion of UO3 to UF6.

Conversion of UO3 to UF6 can be performed directly by fluorination. The process requires a source of fluorine gas or chlorine trifluoride.

(3) Especially Designed or Prepared Systems for the conversion of UO3 to UO2.

Conversion of UO3 to UO2 can be performed through reduction of UO3 with cracked ammonia gas or hydrogen.

(4) Especially Designed or Prepared Systems for the conversion of UO2 to UF4.

Conversion of UO2 to UF4 can be performed by reacting UO2 with hydrogen fluoride gas (HF) at 300–500°C.

(5) Especially Designed or Prepared Systems for the conversion of UF4 to UF6.

Conversion of UF4 to UF6 is performed by exothermic reaction with fluorine in a tower reactor. UF6 is condensed from the hot effluent gases by passing the effluent stream through a cold trap cooled to -10°C. The process requires a source of fluorine gas.

(6) Especially Designed or Prepared Systems for the conversion of UF4 to U metal.

Conversion of UF4 to U metal is performed by reduction with magnesium (large batches) or calcium (small batches). The reaction is carried out at temperatures above the melting point of uranium (1130°C).

(7) Especially designed or prepared systems for the conversion of UF6 to UO2.

Conversion of UF6 to UO2 can be performed by one of three processes. In the first, UF6 is reduced and hydrolyzed to UO2 using hydrogen and steam. In the second, UF6 is hydrolyzed by solution in water, ammonia is added to precipitate ammonium diuranate, and the diuranate is reduced to UO2 with hydrogen at 820°C. In the third process, gaseous UF6, CO2, and NH3 are combined in water, precipitating ammonium uranyl carbonate. The ammonium uranyl carbonate is combined with steam and hydrogen at 500–600°C to yield UO2. UF6 to UO2 conversion is often performed as the first stage of a fuel fabrication plant.

(8) Especially Designed or Prepared Systems for the conversion of UF6 to UF4. Conversion of UF6 to UF4 is performed by reduction with hydrogen.

Appendix L to Part 110 [Amended]

23. In newly redesignated Appendix L to Part 110, the entry "Tungsten 185 (W 85)" is revised to read "Tungsten 185 (W 185)."

Dated in Rockville, MD, this 28th day of June 1996.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 96–17236 Filed 7–5–96; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

12 CFR Part 1750

RIN 2550–AA03

Office of Federal Housing Enterprise Oversight; Minimum Capital

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final regulation.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is issuing a final regulation that sets forth the methodology for computing the minimum capital requirement for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises). The final regulation also establishes procedures for the filing of quarterly minimum capital reports by each Enterprise. In addition, the final regulation establishes procedures under which OFHEO will determine the capital classification of each Enterprise on a quarterly basis.

EFFECTIVE DATE: August 7, 1996.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Deputy General Counsel (202/414–3800); Isabella W. Sammons, Associate General Counsel (202/414–3800); Michael P. Scott, Assistant Director, Office of Research, Analysis and Capital Standards (202/414–3800), 1700 G Street, N.W., 4th Floor, Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (1992 Act), established OFHEO as an independent office within the Department of Housing and Urban Development. OFHEO is responsible for ensuring that the Enterprises are adequately capitalized and operating in a safe and sound manner. Included among the express statutory authorities of the Director of OFHEO is the authority to issue regulations establishing minimum and risk-based capital standards.[1]

As a separate rulemaking procedure, OFHEO published an Advance Notice of Proposed Rulemaking (ANPR)[2] as the first step toward developing the risk-based capital regulation required by section 1361 of the 1992 Act.[3] The risk-based capital regulation will specify a stress test that will determine the amount of capital that an Enterprise must hold to maintain positive capital throughout a 10-year period of economic stress. That amount, plus an additional 30 percent to cover management and operations risk, will constitute the risk-based capital requirement of the Enterprise.

The ANPR solicited public comment on a variety of issues concerning the development of the risk-based capital regulation. In light of the complex issues, OFHEO decided to issue the proposed risk-based capital regulation in two Notices of Proposed Rulemaking (NPRs).

The first NPR addresses two key components of the stress test—the "benchmark loss experience" (the basis for determining the extent of Enterprise credit losses during the stress test) and the use of the OFHEO House Price Index (HPI) in the stress test to estimate changes over time in the values of single-family properties securing Enterprise mortgages.[4] A second NPR, currently being developed, will address the remaining aspects of the risk-based capital stress test and how the stress test will be used to determine the Enterprises' risk-based capital requirements.

In addition to the risk-based capital standard, the 1992 Act prescribes a minimum capital standard for the Enterprises.[5] This final regulation implements the minimum capital standard of the 1992 Act. Unlike the risk-based capital requirement that is computed by applying the stress test, the minimum capital requirement is computed on the basis of capital ratios that are applied to certain defined on-balance sheet assets and off-balance sheet obligations of the Enterprises.

OFHEO issued a proposed Minimum Capital regulation on June 8, 1995.[6] As discussed in the preamble to the proposed regulation, the proposed regulation contained the interim administrative procedures with respect to the methodology for computing the minimum capital requirement for on- and off-balance sheet items, except for interest rate and foreign exchange rate contracts for which the methodology was modified. The proposed regulation also established procedures for the filing of minimum capital reports by the Enterprises each quarter, or at other times as required by the Director. The proposed regulation further required OFHEO to provide each Enterprise with notice and opportunity to comment on its proposed capital classification.

OFHEO received five comments in response to the proposed regulation. Comments were received from a federal government agency (Office of Thrift SupervisionJ, both Enterprises, and two trade associations (America's Community Bankers and Mortgage Bankers Association of America). OFHEO has carefully considered the comments in developing the final regulation. A discussion of the comments received follows.

II. Comments on the Proposed Minimum Capital Regulation

General Comments

Freddie Mac commented generally on OFHEO's role with respect to the

[1] 1992 Act, section 1313(b)(1) (12 U.S.C. 4513(b)(1)).

[2] 60 FR 7468, Feb. 8, 1995.

[3] 12 U.S.C. 4611.

[4] 61 FR 29592, Jun. 11, 1996.

[5] Section 1362 (12 U.S.C. 4612).

[6] 60 FR 30201.

VOL
61
ISS
131
JL
8
1996
UMI

minimum capital standard of the 1992 Act. First, Freddie Mac noted that the 1992 Act details what the capital standard is, unlike the statutes governing the capital standards for banks and thrifts. Therefore, Freddie Mac concluded that the Minimum Capital regulation should reflect Congress' intent that OFHEO act as the implementor, rather than the creator, of the minimum capital standard.

OFHEO agrees that its role is to implement the minimum capital standard set forth in the 1992 Act. Nevertheless, Congress specifically authorized OFHEO to adjust the capital ratios that are applied to certain off-balance sheet obligations, the credit risk of which differs from that of mortgage-backed securities (MBS). Additionally, in implementing the 1992 Act, OFHEO must define those terms not defined therein. OFHEO believes that the final regulation effectively implements the minimum capital standard in a manner completely consistent with the specific provisions and overall intent of the 1992 Act.

Secondly, Freddie Mac stated that Congress recognized that the minimum capital standard would create marginal capital requirements and that marginal capital requirements tend to induce changes in the Enterprises' behavior.[7] Therefore, Freddie Mac explained, Congress cautioned OFHEO against creating "perverse incentives" that may induce Freddie Mac to make inappropriate changes in the conduct of its businesses.[8] Freddie Mac further noted that, in the context of OFHEO's risk-based capital standard, "OFHEO has expressed a policy of designing the [risk-based] capital regulation to reflect closely the relative risks inherent in the Enterprises' different activities, rather than setting out to encourage or discourage particular activities by means of a [risk-based] capital regulation that rewards or punishes an Enterprise that engages in such activities.' Freddie Mac urged OFHEO to apply this policy to its design of the Minimum Capital regulation.

As recognized by Freddie Mac, congressional concern regarding the creation of perverse incentives was expressed in the context of the discussion of risk-based capital and the appropriate level of detail of the stress test.[9] OFHEO has stated that, where feasible, it will endeavor to avoid the creation of perverse incentives in its risk-based capital regulation for the Enterprises. However, this concept has little relevance to the minimum capital standard. The minimum capital requirement is computed on the basis of simple leverage ratios.

The proposed regulation deviates from the specific statutory ratios in only one area—by adjusting the statutory ratio of 0.45 percent for certain off-balance sheet obligations relative to the credit risk of MBS. The proposed regulation establishes different minimum capital ratios for collateralized and uncollateralized exposure for interest rate and foreign exchange rate contracts. Although OFHEO considered using a single capital ratio applied to all interest rate and foreign exchange rate contracts, thus treating contracts as one broad risk category, OFHEO believes that making a distinction between collateralized and uncollateralized exposure provides the Enterprises with better risk management incentives.

Section 1750.1 General

Section 1750.1 of the proposed Minimum Capital regulation provides in part that:

> The board of directors of each Enterprise is responsible for ensuring that the Enterprise maintains capital at a level that is sufficient to ensure the continued financial viability of the Enterprise and in excess of the minimum capital level contained in this Subpart A.

Freddie Mac recommended that the phrase "is sufficient to ensure the continued financial viability of the Enterprise" be deleted from section 1750.1 because it appears to establish a new or additional capital standard not provided for in the 1992 Act. Freddie Mac stated that, in light of the comprehensive guidance in the 1992 Act as to how to determine the levels of capital that the Enterprises are required to hold, it would be inappropriate for OFHEO, by regulation, to amend the minimum capital standard of the 1992 Act by adding a financial viability standard.

OFHEO disagrees with Freddie Mac's view because OFHEO has the duty and authority to ensure the safe and sound financial operation of the Enterprises, and none of the capital levels specified in the 1992 Act represent the amount needed by an Enterprise to operate safely and soundly under all circumstances. The language in proposed section 1750.1 is consistent with OFHEO's authority under section 1313(a) of the 1992 Act,[10] which provides that the duty of the Director is to ensure that the Enterprises are adequately capitalized and operating safely. OFHEO's specific authority to issue the Minimum Capital regulation is derived from section 1313(b) of the 1992 Act,[11] which provides the Director with the authority to issue regulations to carry out (a) part 1 of subtitle A of the 1992 Act (which establishes OFHEO and sets forth OFHEO's authorities), (b) subtitle B (which sets forth the required capital levels for the Enterprises and OFHEO's special enforcement powers with respect to capital levels), (c) subtitle C (which sets forth OFHEO's enforcement provisions), and (d) "other matters relating to safety and soundness."[12] As explained in section 1302 of the 1992 Act, Congress finds that—

> * * * an entity regulating such enterprises should have the authority to establish capital standards, require financial disclosure, prescribe adequate standards for books and records and other internal controls, conduct examinations when necessary, and enforce compliance with the standards and rules that it establishes * * *.

Section 1750.1 is also consistent with the manner in which the capitalization provisions of the 1992 Act are designed to operate. The capitalization provisions in the 1992 Act are structured in the following way. The 1992 Act provides for both "mandatory" and "discretionary" capital classifications.[13] The 1992 Act also sets forth certain supervisory actions that are specific to each capital classification.[14]

Under the discretionary capital classification criteria, the Director may reclassify an Enterprise at a lower capital level than it would be classified under the mandatory classification criteria. The Director may do so if the Enterprise is engaging in conduct that could result in a rapid depletion of core capital or the value of the property subject to mortgages held or securitized by the Enterprise has decreased significantly.[15]

When the Enterprise is placed in a lower capital classification as a result of either a mandatory or discretionary classification, it is required to increase its capital pursuant to a mandatory capital restoration plan.[16] The Director's discretionary classification authority thus could have the effect of requiring an Enterprise that is engaging in certain types of risky activities to increase the amount of capital it holds, pursuant to a mandatory capital restoration plan, even though it meets or exceeds the minimum capital or risk-based capital requirement.[17]

The discretionary classification authority reflects the statutory scheme that the minimum capital ratios in the 1992 Act establishes a "floor" on capital, not a "ceiling." The legislative history of the 1992 Act indicates that there was some confusion regarding this issue that was resolved in favor of the "floor" approach. For example, during Senate consideration of the bill, Senator Metzenbaum stated to the Chairman of the Committee:

> [You] said on this floor that the Director [of OFHEO] did indeed have the authority to set the required ratios above the minimum levels * * * if necessary to protect the health and security of an enterprise and that it is important that the Director act in those circumstances. Since that time, I have learned that some Senators may have a different view about the Director's authority. I would like to be assured by the chairman of the committee and the manager of this bill that the director has authority to raise capital standards, if necessary.

Senator Riegle, in replying, explained that:

> [T]he Director is given the duty to ensure that the enterprises are adequately capitalized and operating safely in accordance with this act and the Charter Acts. Under section 103(a)(1) of the bill, the Director is authorized to issue regulations concerning the financial health and security of the enterprises, including the establishment of capital standards. There is no way the Director can discharge these responsibilities unless he or she has the authority to prescribe capital standards to be met by the enterprises.
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> * * * * *
>
> Unless the legislation specifically and affirmatively prohibits the Director from establishing required capital ratios, it must be assumed that the Director has that authority in order to discharge his or her duties assigned under section 102 * * *. The only constraint on the Director's authority is that the required capital ratios cannot be set below the minimum levels contained in section 202.
>
> * * * * *
>
> If the Director believed that the minimum statutory ratios * * * should be raised, he or she would obviously have to seek a change in the law. A Director might believe an increase in the statutory minimum ratios * * * to be necessary if he or she concluded that they were clearly inadequate under all foreseeable circumstances. If the Congress were to so raise the statutory minimum ratios * * * it would establish a new and higher floor applicable to the Director's discretionary authority to prescribe capital ratios. However, there is nothing in the legislation that would preclude the Director from setting the required rated * * * without further legislation. If the circumstances that gave rise to the need for higher ratios changed, the Director could then reduce the required capital ratios, but not lower than the minimum ratios * * *.[18]

In the House of Representatives, the issue of whether the minimum capital ratios constituted a floor or a ceiling was raised during the consideration of the conference report. In a discussion between the Chairman and Ranking Member of the Committee, the two members agreed that the duty of the Director to ensure that the Enterprises are adequately capitalized and operating safely in accordance with the 1992 Act authorizes the Director to require a higher ratio than the minimum ratio specified in the statute.[19]

Freddie Mac further questioned why the board of directors of each Enterprise is held responsible for maintaining capital at a level that is sufficient to ensure the continued viability of the Enterprise. Freddie Mac stated that the board of directors has a fiduciary duty to protect the interests of the Enterprise's shareholders, and that maintaining an adequate level of capital under varying circumstances would be one aspect of the overall set of responsibilities represented within that duty. Furthermore, Freddie Mac stated that the fiduciary duties of corporate directors are derived principally from state common law, so the adoption of a viability standard and corresponding responsibility could interfere with the subtleties and complexities of that law.

OFHEO believes that to the extent there is any conflict between state law and the 1992 Act, the conflict would be resolved in favor of the 1992 Act and implementing regulations. The Enterprises are federally-chartered entities subject to federal statutory and regulatory requirements. The 1992 Act imposes capital requirements on the Enterprises and makes clear that the board of directors of each Enterprise is responsible for the financial safety and soundness of the Enterprise. Specifically, the Director is authorized to take enforcement actions, *e.g.*, cease and desist orders and civil money penalties, against directors of an Enterprise for actions that deplete the core capital of the Enterprise, cause a loss to the Enterprise, or violate an order or regulation of OFHEO.[20] In exercising its enforcement powers, OFHEO will be cognizant of all of the relevant federal and, if applicable, state requirements. However, to the extent there are any applicable state law requirements relating to the fiduciary responsibilities of the directors, they would not override the obligations created by the 1992 Act or the Minimum Capital regulation.

Freddie Mac also recommended that the phrase "in excess of the minimum capital level" be replaced by "is equal to or exceeds the minimum capital level" in order to reflect accurately the minimum capital standard set forth in the 1992 Act. OFHEO agrees and has revised section 1750.1 accordingly. OFHEO has also substituted, where appropriate, the word "requirement" for "level" to ensure consistency of terms throughout the Minimum Capital regulation.

Section 1750.1 of the proposed regulation also contains a sentence that reads: "The regulation contained in this Subpart A establishes the minimum capital requirements for each Enterprise." Freddie Mac recommended an editorial change that would clarify that the regulation sets forth the "methodology" for computing the minimum capital requirement for each Enterprise. OFHEO agrees with the need for this change and the final regulation has been revised accordingly.

Section 1750.2 Definitions

Proposed Section 1750.2 defines various terms used in the Minimum Capital regulation. OFHEO received comments on the definitions of the following terms: commitment, core capital, foreign exchange rate contract, interest rate contract, multifamily credit enhancement, off-balance sheet obligation, other off-balance sheet obligations, and qualifying collateral. The comments are discussed below.

Commitment

Freddie Mac recommended that, for the purpose of the minimum capital requirement computation, the term "commitment" should be defined as a legally binding agreement that obligates an Enterprise to purchase mortgages that

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[7] Marginal capital requirements are incremental capital requirements for each additional dollar of business.

[8] Freddie Mac cites S. Rep. No. 282, 102d Cong., 2d Sess. 24 (1992).

[9] The Senate report accompanying the legislation states: "A more detailed [stress test] model will be more likely to create the right incentives and less likely to create perverse incentives." S. Rep. No. 282, 102d Cong., 2d Sess. 24 (1992).

[10] 12 U.S.C. 4513(a).

[11] 12 U.S.C. 4513(b).

[12] 12 U.S.C. 4501.

[13] Section 1364 (12 U.S.C. 4614).

[14] Sections 1365–1367 (12 U.S.C. 4615–4617).

[15] Section 1364(b) (12 U.S.C. 4614(b)).

[16] Sections 1365(a)(1) and 1369C (12 U.S.C. 4615(a)(1) and 4622).

[17] Section 1365 (12 U.S.C. 4615).

[18] 138 Cong. Rec. S9353–54 (July 1, 1992). This colloquy was with respect to section 202, Minimum Capital Levels, of S. 2733. Although the 1992 Act was a compromise between S. 2733 and H.R. 2900, section 202 of S. 2733 is substantially similar to section 1362 of the 1992 Act. Therefore, the colloquy with respect to section 202, cited above, is relevant to the discussion of section 1362 of the 1992 Act.

[19] 138 Cong. Rec. H11,102 (Oct. 3, 1992) (discussion by Mr. Gonzalez, Mr. Frank, and Mr. Leach). In response to Mr. Gonzalez' explanation, Mr. Leach stated that "I fully share with you the interpretation that would imply that the Director could go above the 2.5-percent requirement that is currently in statute [sic] * * *." *Id.*

[20] See sections 1371, 1372, and 1376 (12 U.S.C. 4631, 4632, and 4636).

VOL 61 ISS 131 JL 8 1996 UMI

specify all the terms of the transaction, including price, volume, and fees.

Freddie Mac referenced its comments to OFHEO's ANPR on risk-based capital.[21] In those comments, Freddie Mac stated that, as a matter of general contract law, an agreement is legally binding only if all of its key terms are included and agreed upon. Therefore, any definition of a contractual commitment should include a requirement that it be a binding contractual obligation of the Enterprise to purchase mortgages and specify price, volume, and fees.

OFHEO agrees that for purposes of the Minimum Capital regulation the term "commitment" should mean any legally binding agreement that obligates an Enterprise to purchase or securitize mortgages, and has defined the term as such. However, OFHEO does not believe it necessary or appropriate to restrict the definition of the term "commitment" by reference to price, volume, and fees because agreements may be legally binding even when there is a lack of specificity on all terms.[22] It would not be possible for OFHEO to reflect the complexities of this area of contract law in a regulatory definition. Moreover, to do so would be inadvisable in light of Congress' specific concerns regarding the need for capital to support commitments and other off-balance sheet obligations.

For example, in discussing the need for the capital requirements of the 1992 Act, Congress expressed the concern that off-balance sheet obligations had not been previously captured under prior capital standards:

> The capital provisions of the GSEs' charter Acts limit their debt to 15 times their capital unless HUD sets a higher ratio * * * This is unsatisfactory because no capital need be held against the GSEs' $750 billion of off balance sheet guarantees * * *.[23]

Recognizing this concern, it would be inappropriate for OFHEO to promulgate a narrow definition that could exempt certain legally binding commitments from the minimum capital calculation.

OFHEO has made editorial revisions to the definition of the term "commitment" by substituting the word "agreement" for "arrangement" and by deletfng the phrase "for portfolio."

[21] "Comments of the Federal Home Loan Mortgage Corporation on the Advance Notice of Proposed Rulemaking on Risk-Based Capital of the Office of Federal Housing Enterprise Oversight," 139–146 (May 9, 1995) (available at OFHEO).

[22] See Restatement (Second) of Contracts section 204 (1981).

[23] S. Rep. No. 282, 102d Cong., 2d Sess. 11 (1992).

Core Capital

In drafting the definition of core capital in the proposed regulation, OFHEO made minor changes to the statutory language that were intended to improve the clarity of the provision. Freddie Mac commented that since Congress expressly defined core capital in section 1303(4) of the 1992 Act,[24] the regulation should use the same statutory language to avoid confusion. In light of the comment received, OFHEO wants to ensure that the regulation does not create any confusion and has revised the definition of core capital in the final regulation to mirror the statutory definition.

Foreign Exchange Rate Contracts and Interest Rate Contracts

OFHEO received a comment from Freddie Mac on the definitions of the terms "foreign exchange rate contracts" and "interest rate contracts." Freddie Mac stated that the definitions of these terms as they appear in section 1750.2 and Appendix A of the proposed regulation are not identical. To avoid any implication that the differences are intentional, Freddie Mac recommended that OFHEO define the terms only in one location, or that OFHEO conform the language of the two sets of definitions.

The different ways these terms are used in the regulation and Appendix A make it is necessary to include a definition in the main body of the regulation as well as a separate discussion in Appendix A. However, in light of the comment, OFHEO has made editorial changes to conform the definitions of the terms "foreign exchange rate contracts" and "interest rate contracts" in section 1750.2 to the discussion of such terms in Appendix A.

Multifamily Credit Enhancement

Section 1750.2 of the proposed regulation defines the term multifamily credit enhancement to mean "a guarantee by an Enterprise of the payments on a multifamily mortgage revenue bond issued by a state or local housing finance agency."

Fannie Mae recommended that OFHEO revise the definition to describe more fully the routine types of transactions in which an Enterprise engages "to support multifamily bond issues." Fannie Mae stated that it normally provides credit enhancement through a collateral pledge, purchase agreement, or other contractual obligation by which the mortgage loan risk is borne by the Enterprise during a period in which the bonds are credit enhanced by a letter of credit or surety obligation of another party.

Fannie Mae also commented that under many state laws, other state and local governmental units or instrumentalities may issue mortgage revenue bonds, not only state and local housing finance agencies. Therefore, Fannie Mae recommended that the definition should be expanded to include any state and local governmental issuers authorized to issue such revenue bonds secured by mortgages.

OFHEO agrees with the comment and has revised the definition of the term "multifamily credit enhancement" to describe more fully the routine types of transactions in which an Enterprise engages to support multifamily bond issues.

Off-balance Sheet Obligation and Other Off-Balance Sheet Obligations

OFHEO received comments from Freddie Mac on the definitions of the terms "off-balance sheet obligation" and "other off-balance sheet obligations." The term "off-balance sheet obligation" is defined in proposed section 1750.2 to mean—

> * * * a binding agreement, contract, or similar arrangement that requires or may require future payment(s) in money or kind by another party to an Enterprise or that effectively guarantees all or part of such payment(s) to third parties, where such agreement or contract is a source of credit risk that is not included on its balance sheet.

The term "other off-balance sheet obligations" is defined in proposed section 1750.2 to mean—

> * * * all off-balance sheet obligations of an Enterprise that are not mortgage-backed securities or substantially equivalent instruments.

Freddie Mac noted that section 1362(a)(3) of the 1992 Act[25] requires the Enterprises to hold 0.45 percent core capital against other off-balance sheet obligations (excluding commitments in excess of 50 percent of the average dollar amount of commitments outstanding each quarter over the preceding four quarters), except as the Director adjusts the 0.45 percent ratio to reflect differences between the credit risk of such obligations and MBS. Freddie Mac stated that an obligation of an Enterprise does not subject the Enterprise directly to credit risk: "it is the party holding the obligation that bears the credit risk of an Enterprise obligation." However, while the obligations of an Enterprise create no

[24] 12 U.S.C. 4502(4).

[25] 12 U.S.C. 4612(a)(3).

direct credit risk for the Enterprise, certain obligations, such as MBS or commitments to purchase mortgages, involve identifiable credit risk that is related in one way or another to those obligations (the risk of the default on the associated mortgages). Freddie Mac believes that this related credit risk is what Congress intended to capture when it enacted the minimum capital requirement applicable to other off-balance sheet obligations. Therefore, Freddie Mac believes that a definition of "other off-balance sheet obligations" will not capture the related credit risk that is apparently the focus of the 1992 Act.

To resolve this concern, Freddie Mac recommended that OFHEO delete the definition of the term "off-balance sheet obligation" and take a targeted approach in the definition of the term "other off-balance sheet obligations" by identifying only those items that OFHEO intends to include within the scope of the term, *i.e.*, commitments, multifamily credit enhancements, sold portfolio remittances pending, and interest rate and foreign exchange rate contracts. Freddie Mac believes that because OFHEO has considered no other items to be other off-balance sheet obligations, such a definition would fully implement section 1362(a)(3) of the 1992 Act.[26] Freddie Mac stated that, to the extent that the Director determines in the future that other items should be considered to be other off-balance sheet obligations, the Director should address such items in a future rulemaking proceeding to amend the Minimum Capital regulation. In connection with this recommendation, Freddie Mac also recommended that section 1750.4(a)(7) be deleted. That section provides for other off-balance sheet obligations to be included in the computation of the minimum capital requirement.

After considering Freddie Mac's comments, OFHEO has determined not to adopt the recommendations with respect to the definition of the terms "off-balance sheet obligation" and "other off-balance sheet obligations." The capital provisions of the 1992 Act require the Enterprises to hold sufficient capital to ensure against risks of both on- and off-balance sheet items. For off-balance sheet obligations, the 1992 Act specifies the ratio of 0.45 percent of the unpaid principal balance of MBS and substantially equivalent instruments issued or guaranteed by the Enterprise. The Act also specifies a ratio of 0.45 percent of other off-balance sheet obligations (excluding commitments in excess of 50 percent of the average dollar amount of the commitments outstanding each quarter over the preceding four quarters), except that the Director must adjust the 0.45 percent ratio to reflect differences between the credit risk of such obligations and MBS.

OFHEO believes that it is appropriate to provide for a definition of other off-balance sheet obligations, which ensures that capital will be held against all off-balance sheet obligations whether or not they are now used by the Enterprises or at any time in the future. The 1992 Act requires that OFHEO apply a ratio of 0.45 percent to other off-balance sheet obligations until OFHEO determines whether an adjustment is necessary. OFHEO has determined the appropriate ratios for commitments, multifamily credit enhancements, sold portfolio remittances pending, interest rate contracts, and foreign exchange rate contracts. When an Enterprise begins to use a new type of obligation, OFHEO will apply the statutory ratio of 0.45 percent. OFHEO will then analyze the obligation to determine whether an adjustment to the 0.45 percent ratio is necessary, and will amend the Minimum Capital regulation, as appropriate.

Freddie Mac believes that the proposed definitions could create confusion because they appear to conflict with how the term "obligation" is used elsewhere in the 1992 Act and in the Enterprises' Charter Acts. The proposed regulation defines the term "off-balance sheet obligation" as a binding agreement or contract that requires another party to make future payments in money or in kind to an Enterprise (or guarantees of such payments to a third party). In contrast, Freddie Mac stated that the term "obligation" used elsewhere in the 1992 Act and the Enterprises' Charter Acts applies only to future payments from an Enterprise to a third party—and not to future payments from another party to the Enterprise (or guarantees of such payments to a third party).

Freddie Mac also stated that the proposed definition of the term "other off-balance sheet obligations" could create confusion as to whether resecuritizations of MBS, such as real estate mortgage investment conduits and other multi-class MBS, are included in that definition. Freddie Mac believes that it was the intent of Congress that such resecuritizations should not be included and that OFHEO's interim procedures do not include resecuritizations. Also, Freddie Mac believes that the definition of the term "other off-balance sheet obligations" is too narrow because commitments, which Congress expressly considered to be other off-balance sheet obligations, would not fall within the proposed definition of that term.

OFHEO believes that because the term "obligation" may be used differently in the 1992 Act and the Enterprises' Charter Acts, it more important to include a definition of the terms "off-balance sheet obligation" and "other off-balance sheet obligations" for purposes of the computation of the minimum capital requirement. However, to eliminate any confusion regarding the treatment of commitments, the definition of the term "off-balance sheet obligation" has been revised to include an express reference to commitments. Also, the definition of the term "other off-balance sheet obligations" has been revised to clarify that resecuritizations of MBS are not included in the definition.

Qualifying Collateral

Freddie Mac noted that the definition of the term "qualifying collateral" in section 1750.2 differs from the discussion of what constitutes qualifying collateral in paragraph 5 of Appendix A. Consistent with this comment, OFHEO has made conforming editorial changes to both the definition in section 1750.2 and the discussion in Appendix A.

OFHEO has also revised the footnote in connection with the definition of the term "qualifying collateral" by defining the term "OECD-based group of counties" to conform with the Joint Final Rule published by the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.[27] This final rule was promulgated after the publication of the proposed Minimum Capital regulation.

Section 1750.4 Minimum Capital Requirement Computation

Section 1750.4(a) of the proposed regulation provides that the minimum capital requirement for each Enterprise is the sum of the following amounts—

—2.50 percent times the aggregate on-balance sheet assets of the Enterprise;

—0.45 percent times the unpaid principal balance of mortgage-backed securities and substantially equivalent instruments that were issued or guaranteed by the Enterprise;

—0.45 percent of 50 percent of the average dollar amount of commitments outstanding each quarter over the preceding four quarters;

[26] Id.

[27] 60 FR 66042, Dec. 20, 1995.

VOL
61
ISS
1
31
JL
8
1996
UMI

—0.45 percent of the outstanding principal amount of bonds with multifamily credit enhancements;
—0.45 percent of the dollar amount of sold portfolio remittances pending;
—3.00 percent of the credit equivalent amount of interest rate and foreign exchange rate contracts except to the extent of the current market value of posted qualifying collateral;
—1.50 percent of the credit equivalent amount of interest rate and foreign exchange rate contracts equal to the market value of posted qualifying collateral; and
—0.45 percent of the outstanding amount of other off-balance sheet obligations, excluding commitments, multifamily credit enhancements, sold portfolio remittances pending, and interest rate and foreign exchange rate contracts, except as adjusted by the Director to reflect differences in the credit risk of such obligations in relation to MBS.

Section 1750.4(b) provides that any asset or financial obligation that can be properly classified in more than one of the enumerated categories shall be classified in the category that yields the highest minimum capital amount.

OFHEO received comments with respect to section 1750.4, as explained below.

Section 1750.4(a)(6) Ratios With Respect to Interest Rate and Foreign Exchange Rate Contracts

Notice of Adjustment

Freddie Mac asserted that OFHEO has not provided adequate notice to the Enterprises of the basis, in quantifiable terms, for the proposed upward adjustment it makes to the 0.45 percent ratio with respect to interest rate and foreign exchange rate contracts.

OFHEO believes that it provided adequate notice of the basis of the proposed adjustment in the preamble of the proposed Minimum Capital regulation. The preamble explained how OFHEO analyzed the relative credit risk of interest rate and foreign exchange rate contracts as compared with the credit risk of MBS. However, in light of this comment, OFHEO believes it appropriate to summarize its reasons for adjusting the 0.45 percent ratio.

The source of credit risk of MBS to the Enterprises is the risk of defaults and losses on the mortgages underlying the MBS. The aggregate credit risk associated with the underlying mortgages is low because the Enterprises require very broad geographic diversification; strict and consistent mortgage underwriting standards; minimum initial collateralization of 125 percent (*i.e.*, maximum 80 percent loan-to-value ratio) or supplemental mortgage insurance; and increasing levels of collateralization as loans amortize and property values increase. Moreover, the credit risk of MBS is offset by the continuing source of income provided by guarantee fees.

Neither Enterprise has experienced a net credit loss on its MBS. Annual losses to date have ranged from two basis points to ten basis points (expressed as a percentage of the outstanding portfolio), and have been easily covered by guarantee fee income, which has ranged from 20 to 25 basis points.

The source of credit risk of interest rate and foreign exchange rate contracts is the risk of counterparty default. The credit risk of interest rate and foreign exchange rate contracts is greater than that of MBS, even though the Enterprises attempt to limit the credit risk of the contracts by restricting their business to high quality counterparties and adjusting collateral requirements on the basis of the counterparty credit quality and the current replacement cost of the contracts. The credit risk associated with interest rate and foreign exchange rate contracts is a result of the following characteristics:

- Large swings in market rates, on which interest rate and foreign exchange rate contracts are based, may simultaneously increase exposure to and risk of default by one or more counterparties, which are typically financial firms.
- While losses may be infrequent, the high level of interdependence of the world's major financial institutions, many of which are important interest rate and foreign exchange rate contract counterparties, could cause disproportionately high losses when they do occur. This phenomenon is often referred to as "systemic risk."
- Counterparty risk is concentrated. The loss resulting from the default of a single counterparty could be many times larger than the amount of capital that would be associated with the application of a 0.45 percent capital ratio.
- Interest rate and foreign exchange rate contract exposures are not as fully collateralized as are the mortgages underlying the Enterprises' MBS.
- The interest rate and foreign exchange rate contracts markets are comparatively new; therefore, the functioning of these markets is less predictable in terms of operational and legal risk.
- There is no current stream of fee income to offset losses on interest rate and foreign exchange rate contracts associated with counterparty failures.

OFHEO recognizes that, although the credit risk characteristics of interest rate and foreign exchange rate contracts can be identified, they are difficult to quantify. However, the 1992 Act does not require such quantification. Rather, it requires a reasonable analysis, based on available information, of the credit risk of interest rate and foreign exchange rate contracts relative to that of MBS.

The fact that the Enterprises have not experienced a net credit loss on their MBS does not mean that there are no risks associated with these instruments. Similarly, the fact that the Enterprises have not experienced losses associated with interest rate and foreign exchange rate contracts does not mean that there are no risks associated with these contracts. In these circumstances, it is appropriate for OFHEO to analyze the relative risks of these instruments by comparing their respective credit risk characteristics. Based on an analysis of these relative credit risk characteristics, OFHEO adjusted the 0.45 percent ratio applicable to MBS upward to reflect the greater risk of interest rate and foreign exchange rate contracts. As OFHEO and the Enterprises accumulate data on the risk of, and gain experience with the application of the ratios for, interest rate and foreign exchange rate contracts, OFHEO may make adjustments to the ratios, as appropriate.

Freddie Mac also commented on the upward adjustment of ratios for interest rate and foreign exchange rate contracts in light of OFHEO's statement in the Annual Report to Congress that the credit risk of the Enterprises' derivatives (interest rate and foreign exchange rate) contracts "is very small relative to the credit risk the Enterprises face with regard to mortgages they hold or guarantee."[28] This statement was in the context of the notional values of the contracts. As the Annual Report to Congress notes two sentences later, the replacement cost (current credit exposure) of the contracts is relatively small. In other words, the replacement cost, which together with an amount for potential future credit exposure constitutes the credit equivalent amount, is very small in comparison with the notional amount. We note that the credit equivalent amount represents the overall credit risk of interest rate and foreign exchange rate contracts.

Lowering the Proposed Ratios

Fannie Mae recommended lowering the proposed ratios from 3.0 percent of the credit equivalent amount of uncollateralized interest rate and foreign exchange rate contracts and 1.5 percent of the credit equivalent amount of collateralized contracts to 2.0 percent and 0.5 percent respectively. Fannie Mae believes that the proposed ratios are unreasonably high in relation to the historical loss experience for similar obligations.

Fannie Mae stated that the factors that determine an adequate amount of required capital for interest rate and foreign exchange rate contracts include the probability of default and the severity of possible loss. To determine the probability of default of collateralized interest rate and foreign exchange rate contracts, Fannie Mae analyzed historical default statistics from Moody's Investors Service over the past 25 years for unsecured, 5- to 9-year term senior debt of corporations with debt ratings from Aaa to Baa. Fannie Mae stated that it uses historical data for unsecured senior debt because data on interest rate and foreign exchange rate contracts is limited due to the relative newness of the market in such contracts. Fannie Mae believes that their default rates are functionally equivalent because interest rate and foreign exchange rate contracts and unsecured senior debt represent general corporate obligations.

Fannie Mae stated that the average rating of its interest rate and foreign exchange rate counterparties is Aa or A. Using the Moody's Investors Service historical data, the default rates for unsecured senior debt in those categories ranges from 0.3 percent to 1.5 percent. Thus, Fannie Mae suggested that an appropriate estimate of default incidence for its interest rate and foreign exchange rate contracts is between 0.3 and 1.5 percent.

Fannie Mae then stated that the historical data demonstrates that the average loss severity from 1974 through 1994 is 51.1 percent for all corporate unsecured senior debt, and 28.4 percent for Baa or better corporate unsecured senior debt. Multiplying the default incidence by the loss severity yields a "capital ratio." Thus, according to Fannie Mae, a default incidence in the range of 0.3 to 1.5 percent and a severity level in the range of 28.4 to 51.1 percent produces a "capital ratio" for unoollateralized interest rate and foreign exchange rate contracts in the range of 0.1 to 0.75 percent. The ratio that Fannie Mae recommended—2.0 percent for uncollateralized interest rate and foreign exchange rate contracts—is 2⅔ times its estimated "worst case" ratio of 0.75 percent. Consequently, Fannie Mae believes the recommended ratio to be an adequate and suitable minimum capital ratio for uncollateralized interest rate and foreign exchange rate contracts.

Fannie Mae further believes that the use of collateral significantly reduces the severity of loss associated with interest rate and foreign exchange rate contracts. Fannie Mae asserted that 10 percent is a reasonable estimate of expected loss severity for collateralized interest rate and foreign exchange rate contracts, because Fannie Mae evaluates the market value of collateral and exposures at least monthly, Fannie Mae requires over-collateralization if credit quality deteriorates below a specific level, and the loss severity of uncollateralized exposures is best represented by the 28.4 percent historical loss severity experience for unsecured senior debt. By multiplying the 10 percent loss severity by the 0.3 to 1.5 percent historical average default rates, Fannie Mae estimated a "capital ratio range" of 0.03 percent to 0.15 percent. Thus, Fannie Mae's recommendation of a 0.5 percent ratio for collateralized interest rate and foreign exchange rate contracts is 3⅓ times its estimated "worst case."

After carefully considering Fannie Mae's arguments, OFHEO has decided not to reduce the proposed ratio for interest rate and foreign exchange rate contracts. Fannie Mae's analysis assumes that the default rate for interest rate and foreign exchange rate contracts will conform with the historical default rates for corporate unsecured senior debt. As Fannie Mae noted, interest rate and foreign exchange rate contracts are relatively new instruments and historical default rates are lacking. Therefore, OFHEO cannot assume that the default rates of unsecured senior debt and interest rate and foreign exchange rate contracts will prove to be comparable.

Even assuming the default rates would be comparable, Fannie Mae's proposal does not provide an adequate capital cushion. Fannie Mae derives what it calls "capital ratios" based on more than twenty years' experience of a national sample of corporate credits. These "capital ratios" are in fact average national loss rates for a period not marked by extreme economic stress. For minimum capital purposes, Fannie Mae proposes to apply rates to both uncollateralized and collateralized counterparty exposure that are roughly three times as high as these capital ratios. The 1992 Act requires that any adjustment to the 0.45 percent ratio reflect the credit risk relative to MBS. Fannie Mae's proposed multiples are not consistent with this requirement. As the above discussion notes, neither Enterprise has experienced any net credit loss on its MBS. However, ignoring guarantee fee income, annual losses to date have ranged from two basis points to ten basis points. Thus the 0.45 percent statutory capital ratio for MBS ranges from 4.5 to 22.5 times the historical loss experience for MBS—higher than the 2⅔ and 3⅓ times the estimated "worst case" loss proposed by Fannie Mae.

Fannie Mae's analysis also ignores a number of factors which increase the potential loss associated with the credit exposure of interest rate and foreign exchange rate contracts that are not present with MBS. The credit exposures of interest rate and foreign exchange rate contracts are highly concentrated, large swings of interest rates may simultaneously increase both the credit exposure and the default risk, and systemic problems could cause disproportionately high losses when they do occur.

Furthermore, Fannie Mae predicates its proposal on its current risk management practices, with respect to counterparty creditworthiness and collateral requirements and their enforcement. OFHEO believes that a minimum capital requirement establishes an essential amount of capital that an Enterprise with given levels of business must hold to address broad categories of risk, not specific exposures. Accordingly, it should not attempt to reflect the quality of current risk management practices. For example, Fannie Mae's analysis assumes that it will continue to manage credit risk by doing business with counterparties with Aa and A ratings and that such counterparties are not subject to sudden declines in ratings. Fannie Mae also assumes that, if ratings decline, it will require and be able to obtain more collateral.

Even if these assumptions were valid, OFHEO believes that they cannot be the basis of a minimum capital requirement. The minimum capital requirement is not intended to be a risk-based capital requirement. The 1992 Act separately provides for a risk-based capital requirement in which credit, interest, and operational and management risk are calculated using a stress test. The 1992 Act requires that the 0.45 percent ratio for other off-balance sheet obligations be adjusted to reflect differences in the credit risk of the obligation and MBS. OFHEO believes that the adjustment should be for differences in risk associated with the inherent risk characteristics of different instruments, not the risk characteristics of counterparties to these obligations or

[28] OFHEO, Annual Report to Congress, 9 (June 15, 1995).

VOL
61
ISS
1
3
1
JL
8
1996
UMI

current risk management practices for these obligations.

Right to Raise the Ratio

America's Community Bankers recommended that OFHEO explicitly reserve the right to raise the ratio for uncollateralized interest rate and foreign exchange rate contracts to 4.0 percent depending on the specific counterparty risks involved. As discussed above, OFHEO believes that counterparty credit ratings are not the appropriate focus of minimum capital ratios and that it has required an adequate amount of capital for uncollateralized interest rate and foreign exchange rate contracts. If OFHEO's experience with the application of the ratio for interest rate and foreign exchange rate contracts proves otherwise, OFHEO will raise the ratio. In addition, as discussed in connection with the comments on section 1750.1, if the business practices of an Enterprise were to endanger the capital adequacy of the Enterprise, OFHEO would take any actions necessary to ensure the financial safety and soundness of the Enterprise's operations.

Avoid Changing the Capital Calculation

Mortgage Bankers Association of America (MBA) stated that the proposed change from the interim guidelines in the calculation of the capital ratio for interest rate and foreign exchange rate contracts does not appear to be so significant as to cause the Enterprises to increase current guarantee fees, which would ultimately harm consumers in the form of higher interest rates or fees. MBA understands that the Enterprises currently have sufficient capital to meet the higher capital ratios that would result from the proposal. Nevertheless, MBA urged OFHEO to remain cautious and avoid changing the capital calculation of interest rate and foreign exchange rate contracts if the calculation influences the Enterprises' selection of funding and hedging instruments in a way that affects their ability to manage risks, is detrimental to their housing mission, or increases the cost of credit to consumers.

MBA recognizes that OFHEO does not wish to jeopardize the Enterprises' ability to meet their housing mission and goals, but must ensure the safety and soundness of the Enterprises. MBA believes that OFHEO should strive to strike a balance and avoid imposing inefficient capital requirements that inhibit the management of risk.

OFHEO agrees that the capital requirements should ensure the safety and soundness of the Enterprises while not jeopardizing the Enterprises' ability to meet their housing mission and goals. Consistent with that approach, OFHEO does not believe that the change in the calculation of the capital ratio for interest rate and foreign exchange rate contracts will adversely affect the Enterprises' ability to manage risk or increase the cost of mortgage credit to consumers. Furthermore, mindful of the need to strike a balance among competing interests, OFHEO believes that it is in the best long-term interests of consumers and the Enterprises that the Enterprises have an adequate cushion of minimum capital to ensure against loss. While a decrease in capital requirements could result in a reduction in mortgage credit costs for consumers in the short-term, the decrease would not be beneficial in the long-term if it jeopardized the financial viability of the Enterprises.

This view is consistent with the congressional findings set forth in the 1992 Act that recognize the Enterprises' important housing mission and the need to provide long-term safeguards in the form of capital requirements to reduce the risk of failure.[29] The congressional findings also recognize the Enterprises' obligation to facilitate the financing of affordable housing while maintaining a strong financial condition and a reasonable economic return.[30]

"Pro Rata" Capital Charge

The Office of Thrift Supervision asked whether the proposed regulation would provide a reduced "pro rata" capital charge for partially collateralized interest rate and foreign exchange rate contracts. In response to this comment, OFHEO notes that section 1750.4(a)(6) provides a ratio of 3.00 percent of the credit equivalent amount of interest rate and foreign exchange rate contracts, except to the extent of the current market value of posted qualifying collateral; and 1.50 percent of the market value of qualifying collateral posted to secure interest rate and foreign exchange rate contracts, not to exceed the credit equivalent amount of such contracts. Thus, an interest rate or foreign exchange rate contract partially collateralized with qualifying collateral will have a reduced capital charge to the extent of the qualifying collateral.

Enterprises' Right to Require Collateral

Fannie Mae and Freddie Mac both stated that the market widely perceives an agreement with a Aaa rated counterparty that agrees to post collateral if it is downgraded to be as safe as, or safer than, a comparable agreement with a lesser-rated counterparty that posts collateral. They claimed that the proposed regulation would run counter to well-established market practices by rewarding an Enterprise with a lower capital requirement if its Aaa rated counterparties are downgraded and post collateral under their collateral agreements, or if the Enterprise avoids Aaa rated counterparties in favor of lesser-rated counterparties.

Freddie Mac recommended the following standard: The same minimum capital ratio would apply for collateralized agreements and for uncollateralized agreements where the counterparty holds the highest credit rating of any entity effectively recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for the purposes of capital rules for broker-dealers, and has entered into a binding agreement to post qualifying collateral if and when the counterparty no longer holds the highest rating of such an entity. As an alternative, Freddie Mac recommended treating the contract as fully collateralized for purposes of computing the minimum capital requirement where a Aaa rated counterparty has agreed to post collateral when it is downgraded.

OFHEO has considered Fannie Mae's and Freddie Mac's recommendations, but has decided not to adopt them. The Enterprises' recommendations rely heavily on the credit ratings of counterparties and current Enterprise practice. In fact, Freddie Mac has noted elsewhere that credit enhancements in which the counterparty is required to post collateral only when its credit rating or capital begins to deteriorate "present some management-and-operations risk because the arrangements need to be monitored and the collateral needs to be posted in a timely fashion."[31]

OFHEO believes that reliance on the credit ratings of counterparties and current Enterprise practice should not be the basis for establishing minimum capital ratios. Even though the 1992 Act requires that credit risk be taken into account when adjusting the ratio for certain off-balance sheet obligations, the minimum capital requirement essentially is computed on the basis of simple leverage ratios. Categories of obligations that are assigned a specific ratio include obligations with a mixture of greater and lesser risk, depending on borrower or counterparty characteristics.

Consistent with the concepts underlying "minimum" as opposed to "risk-based" capital, when developing the proposed regulation, OFHEO considered whether the minimum capital ratio should be the same for interest rate and foreign exchange rate contracts regardless of whether collateral was posted. In adopting the proposed regulation, OFHEO determined that a lower minimum capital ratio for the collateralized portion of an obligation was appropriate. This determination was made based on the recognition that a collateralized position affords the Enterprises greater certainty of collection than an uncollateralized position in the event of a decline in the financial condition of a counterparty. In contrast, the value of a promise by a counterparty to post collateral in the event that it is downgraded is subject to the diminished capacity of a counterparty during times of financial stress to identify and pledge adequate liquid assets to secure its contractual obligations.

OFHEO also recognizes that the value of a promise by a counterparty to post collateral when it is downgraded is influenced by the speed of the rating agency's ability to recognize changes in credit conditions. Recent incidents, such as the default of Barings from trading losses, illustrate how rapidly the financial health of a well-respected entity can deteriorate. When a decline occurs very rapidly, a promise to post collateral to secure counterparty obligations may be of little value. Finally, as a point of comparison, OFHEO notes that the risk-based capital standards for banks and thrifts do not treat agreements to post collateral as the equivalent of collateral and do not incorporate counterparty credit ratings into the determination of risk weights assigned to different counterparties.

Section 1750.4(a)(7) Ratio With Respect to Other Off-Balance Sheet Obligations

Section 1750.4(a)(7) of the proposed regulation provides the amount of other off-balance sheet obligations that is to be included in the computation of the minimum capital requirement. The amount is—

0.45 percent of the outstanding amount of other off-balance sheet obligations, excluding commitments, multifamily credit enhancements, sold portfolio remittances pending, and interest rate contracts and foreign exchange rate contracts except as adjusted by the Director to reflect differences in the credit risk of such obligations in relation to mortgage-backed securities.

Freddie Mac recommended that proposed section 1750.4(a)(7) be deleted in connection with its comments that (1) the definition of the term "off-balance sheet obligation" be deleted and (2) the definition of the term "other off-balance sheet obligations" be defined in terms of commitments, multifamily credit enhancements, sold portfolio remittances pending, and interest rate and foreign exchange rate contracts. (See the full discussion under section 1750.2, above.) If section 1750.4(a)(7) is retained, Freddie Mac recommended that OFHEO delete the phrase "the outstanding amount." Freddie Mac believes that the phrase could create confusion if, in the future, OFHEO determines that an item should be treated as an "other off-balance sheet obligation," and OFHEO also determines that the appropriate measure of credit risk should be something other than an "outstanding amount."

OFHEO agrees with Freddie Mac; however, rather than deleting the phrase "outstanding amount," OFHEO has substituted the phrase "credit equivalent amount, or other appropriate measure, as determined by the Director." This revision will clarify that, depending on the specific characteristics of the obligation, the computation of the minimum capital requirement may be based on the credit equivalent amount or other measures that the Director determines are appropriate.

OFHEO also has made a clarifying editorial revision to proposed section 1750.4(a)(6)(ii) with respect to the computation of the minimum capital amount for interest rate and exchange rate contracts.

Section 1750.4(b) Capital Treatment of On-Balance Sheet and Off-Balance Sheet Items

Section 1750.4(b) of the proposed regulation provides that, for purposes of the minimum capital requirement computation, any asset or financial obligation that is properly classifiable in more than one category of items must be classified in the category that yields the highest requirement.

Freddie Mac expressed the concern that the proposed regulation would require capital charges for foreign exchange rate contracts to be computed as if such contracts were reflected on the balance sheet, even if they are not. Freddie Mac also recommended that OFHEO clarify that the regulation will not require an Enterprise to make adjustments to a balance sheet that has been prepared in accordance with generally accepted accounting principles (GAAP).

As noted by Freddie Mac, the Enterprises are required to prepare their balance sheets in accordance with GAAP. Consistent with that requirement, the Minimum Capital regulation does not require an Enterprise to adjust its balance sheet prepared in accordance with GAAP. The requirements of the Minimum Capital regulation relate only to the computation of the minimum capital requirement.

Under GAAP, it is possible that some assets or obligations may properly be reflected either on or off the balance sheet. OFHEO believes that, for minimum capital purposes, it is appropriate to classify any asset or obligation that may be properly reflected either on or off the balance sheet in the category that yields the highest minimum capital requirement. The purpose of capital is to serve as a cushion to absorb losses and thereby reduce the risk of failure of the Enterprise. The minimum capital requirement represents a level of capital for an Enterprise which, if not met, will result in the institution being classified as 'significantly undercapitalized." Consequently, it would be inappropriate for the Minimum Capital regulation to permit an Enterprise to determine its minimum capital requirement by favoring one accounting treatment over another. The purpose of section 1750.4(b) is to avoid such a circumstance.

In addition, Freddie Mac commented on the relationship between section 1750.4(b) and paragraph 4 of Appendix A, suggesting that they articulated inconsistent requirements with respect to interest rate and foreign exchange rate contracts. In that regard, Freddie Mac recommended that OFHEO treat all foreign exchange rate contracts as other off-balance sheet obligations, and then subtract from the computed minimum capital requirement the amount, if any, that is attributable to the contracts as on-balance sheet assets.

OFHEO does not believe there is any inconsistency between section 1750.4(b) and paragraph 4 of Appendix A. The scope of the two provisions is different and, to the extent they deal with the same issue, they address different aspects of the issue. As explained above, section 1750.4(b) provides that an Enterprise's assets or obligations that may be properly classified in more than one of the on- or off-balance sheet categories will be classified according to the category that yields the highest

[29] See section 1302 (12 U.S.C. 4501).

[30] Section 1302(7) (12 U.S.C. 4501(7)).

[31] "Comments of the Federal Home Loan Mortgage Corporation on the Advance Notice of Proposed Rulemaking on Risk-Based Capital of the Office of Federal Housing Enterprise Oversight," 72 (May 9, 1995)(available at OFHEO).

VOL 61 ISS 131 JL 8 1996 UMI

minimum capital requirement. The scope of section 1750.4(b) encompasses not only interest rate and foreign exchange rate contracts, but also any other assets or obligations that could be classified in more than one category.

In contrast, paragraph 4 of Appendix A, Avoidance of Double Counting, is restricted in scope to interest rate and foreign exchange rate contracts and only addresses the issue of double counting. The purpose of paragraph 4 is to ensure that the capital amount for such contracts is not double counted if the proper accounting treatment results in a portion of the credit exposure of the contract(s) being reflected on and off the balance sheet. To that end, paragraph 4 provides that the amount of credit exposure arising from interest rate and foreign exchange rate contracts may need to be excluded from on-balance sheet assets in calculating the minimum capital requirement.

Section 1750.5 Notice of Capital Classification

Section 1750.5 outlines the procedures that OFHEO will follow when notifying each Enterprise of its capital classification.

Freddie Mac noted that while the proposed regulation sets forth a process that could result in a final capital classification not being issued until a full 150 days after the end of a quarter, it hopes that a process of less than 90 days would continue to be the norm.

Section 1750.3 provides that an Enterprise has 30 days after the end of each quarter to file a minimum capital report. Section 1750.5 provides that within 60 days of receiving the minimum capital report, OFHEO will provide each Enterprise with a notice of proposed capital classification. The Enterprise has 30 days in which to respond to the proposed capital classification. The Enterprise's response period may be extended up to 30 additional calendar days, or shortened, at the sole discretion of the Director. The Director, after taking into consideration the Enterprise's response, has up to 30 calendar days following the end of the response period in which to issue a final notice of capital classification.

The time periods specified in the regulation are designed to establish the longest possible timeframes for actions by the Enterprises and OFHEO in the capital classification process. OFHEO would expect that under most circumstances the total elapsed time for a capital classification will be substantially less than the maximum period contemplated in the regulation. In that regard, the timing of the submission of the Enterprise's minimum capital report and its response to the proposed classification will have a significant impact on the time period for receipt of the final capital classification.

Appendix A

Appendix A provides the methodology for computing the minimum capital component for interest rate and foreign exchange rate contracts.

The Office of Thrift Supervision questioned whether OFHEO had considered whether the proposed treatment of interest rate and foreign exchange rate contracts, including the bilateral netting provisions, adds unnecessary complexity to the minimum capital standard in light of the sophisticated risk-based capital regulation that OFHEO is developing.

Although the minimum capital standard is a minimum leverage ratio standard, Congress has required that OFHEO consider the credit risk of off-balance sheet obligations and adjust the 0.45 percent ratio to reflect the difference between the credit risk of interest rate and foreign exchange rate contracts and MBS. Thus, OFHEO believes that the adjusted ratios should be applied to the credit equivalent amount of interest rate and foreign exchange rate contracts because the credit equivalent amount best represents the dollar amount at risk. OFHEO also believes that bilateral netting, that is, the offsetting of positive and negative mark-to-market values in the determination of a current credit exposure used in the calculation of a credit equivalent amount, provides a more accurate representation of the dollar amount at risk. Consequently, OFHEO believes that the more complex treatment with respect to interest rate and foreign exchange rate contracts is appropriate.

Paragraph 5. Collateral

Freddie Mac noted that the definition of the term "qualifying collateral" in section 1750.2 differs from the discussion of what constitutes qualifying collateral in paragraph 5 of Appendix A. OFHEO does not intend that there be any difference and has revised the discussion in Appendix A to conform with the definition set forth in section 1750.2. (See the full discussion of this comment under section 1750.2, Qualifying collateral, above.)

Additionally, OFHEO has renumbered paragraphs 1 and 2 of Appendix A of the proposed regulation to ensure ease of reading and reference.

IV. Section-by-Section Analysis

Section 1750.1 General

This section states that the regulation sets forth the methodology for computing the minimum capital requirement for each Enterprise. It further states that the board of directors of each Enterprise is responsible for ensuring that the Enterprise maintains capital at a level that is sufficient to ensure the continued financial viability of the Enterprise and that equals or exceeds the minimum capital requirement.

Section 1750.2 Definitions

Section 1750.2 provides definitions for the terms used in the regulation.

The term "affiliate" is defined as to mean any entity that controls, is controlled by, or is under common control with, an Enterprise, except as otherwise provided by the Director.

The term "commitment" is defined to mean any contractual, legally binding agreement that obligates an Enterprise to purchase or to securitize mortgages.

The term "core capital" is defined to mean the sum of (as determined in accordance with generally accepted accounting principles) the par or stated value of outstanding common stock; the par or stated value of outstanding perpetual, noncumulative preferred stock; paid-in capital; and retained earnings. This definition does not include debt instruments or any amounts an Enterprise could be required to pay at the option of an investor to retire capital instruments. The amount of retained earnings includable in the calculation of core capital is the net of the carrying value of Treasury stock. Treasury stock is stock that an Enterprise has issued and subsequently acquired, but has not retired or resold. Carrying value is typically the amount the Enterprise paid for the Treasury stock.

The term "Director" is defined to mean the Director of OFHEO.

The term "Enterprise" is defined to mean the Federal National Mortgage Association and any affiliate thereof or the Federal Home Loan Mortgage Corporation and any affiliate thereof.

The term "foreign exchange rate contracts" is defined to mean cross-currency interest rate swaps, forward foreign exchange contracts, currency options purchased (including currency options purchased over-the-counter), and any other instrument that gives rise to similar credit risks. The definition clarifies that the term "foreign exchange rate contracts" does not mean foreign exchange rate contracts with an original maturity of 14 calendar days or less and

foreign exchange rate contracts traded on exchanges that require daily payment of variation margins.

The term "interest rate contracts" is defined to mean single currency interest rate swaps, basis swaps, forward rate agreements, interest rate options purchased (including caps, collars, and floors purchased), over-the-counter options purchased, and any other instrument that gives rise to similar credit risks (including when-issued securities and forward deposits accepted). The definition of the term "interest rate contracts" does not include instruments traded on exchanges that require daily payment of variation margins.

The term "mortgage-backed security" is defined to mean a security, investment, or substantially equivalent instrument that represents an interest in a pool of loans secured by mortgages or deeds of trust where the principal or interest payments to the investor in the security or substantially equivalent instrument are guaranteed or effectively guaranteed by an Enterprise.

The term "multifamily credit enhancement" is defined to mean any guarantee, pledge, purchase arrangement, or other obligation or commitment provided or entered into by an Enterprise with respect to multifamily mortgages to provide credit enhancement, liquidity, interest rate support, and other guarantees and enhancements for revenue bonds issued by a state or local governmental unit (including a housing finance agency) or other bond issuer.

The term "1992 Act" is defined to mean the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, found at Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102–550.

The term "notional amount" is defined to mean the face value of the underlying financial instrument(s) on which an interest rate or foreign exchange rate contract is based.

The term "off-balance sheet obligation" is defined to mean a binding agreement, contract, or similar arrangement that requires or may require future payment(s) in money or kind by another party to an Enterprise, or that effectively guarantees all or part of such payment(s) to third parties (including commitments), where such agreement or contract is a source of credit risk that is not included on its balance sheet.

The term "OFHEO" is defined to mean the Office of Federal Housing Enterprise Oversight.

The term "other off-balance sheet obligations" is defined to mean all off-balance sheet obligations of an Enterprise that are not mortgage-backed securities or substantially equivalent instruments and that are not resecuritized MBS such as real estate mortgage investment conduits or similar resecuritized instruments.

The term "perpetual, noncumulative preferred stock" is defined to mean preferred stock that does not have a maturity date, provides the issuer the ability and the legal right to eliminate dividends and does not permit the accruing or payment of impaired dividends, and that cannot be redeemed at the option of the holder. It is further defined as preferred stock that has no other provisions that will require future redemption of the issue, in whole or in part, or that will reset the dividend periodically based, in whole or in part, on the Enterprise's current credit standing, such as auction rate, money market, or remarketable preferred stock, or that may cause the dividend to increase to a level that could create an incentive for the issuer to redeem the instrument, such as exploding rate stock. For purposes of minimum capital, perpetual, noncumulative preferred stock must provide capital that is available to absorb losses of the Enterprise from any source.

The term "qualifying collateral" is defined to mean cash on deposit; securities issued or guaranteed by the central governments of the OECD-based group of countries,[32] United States Government agencies, or United States Government-sponsored agencies; and securities issued by multilateral lending institutions or regional development banks.

[32] The OECD-based group of countries comprises full members of the Organization for Economic Cooperation and Development (OECD) regardless of entry date, as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow, but excludes any country that has rescheduled its external sovereign debt within the previous 5 years. A rescheduling of external sovereign debt generally would include any renegotiation of terms arising from a country's mobility or unwillingness to meet its external debt service obligations, but generally not include any renegotiation to allow the borrower to take advantage of a decline in interest rate or other change in market conditions.

As of November 1995, the OECD countries included the following countries: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States; and Saudi Arabia has concluded special lending arrangements with the IMF associated with the IMF's General Arrangements to Borrow.

Section 1750.3 Procedures and Timing

Section 1750.3 provides that each Enterprise must file with the Director a minimum capital report each quarter, or at such other times as the Director requires, in his or her sole discretion. The report must contain the information that responds to all of the items required by OFHEO in written instructions to the Enterprise, including, but not limited to an estimate of the minimum capital requirement; an estimate of core capital overage or shortfall relative to the estimated minimum capital requirement; and such other information as may be required by the Director.

This section further provides that the report must be submitted not later than April 30, July 30, October 30, and January 30 of each year, and that it must be in writing and in such other format as may be required by the Director.

In the event an Enterprise makes an adjustment to its financial statements for a quarter or a date for which the information was requested which would cause an adjustment to a minimum capital report, section 1750.3 requires that the Enterprise file an amended minimum capital report not later than 3 business days after the date of such adjustment.

Finally, section 1750.3 provides that each minimum capital report or any amended minimum capital report must contain a declaration by an officer authorized by the board of directors of the Enterprise to make such a declaration, including, but not limited to, a president, vice president, or treasurer, that the report is true and correct to the best of such officer's knowledge and belief.

Section 1750.4 Minimum Capital Requirement Computation

Section 1750.4 sets forth the methodology for computing the minimum capital requirement. The minimum capital requirement is the sum of the following amounts:

—2.50 percent times the aggregate on-balance sheet assets of the Enterprise;
—0.45 percent times the unpaid principal balance of mortgage-backed securities and substantially equivalent instruments that were issued or guaranteed by the Enterprise;
—0.45 percent of 50 percent of the average dollar amount of commitments outstanding each quarter over the preceding four quarters;
—0.45 percent of the outstanding principal amount of bonds with multifamily credit enhancements;
—0.45 percent of the dollar amount of sold portfolio remittances pending;

VOL
61
ISS
1
31
JL
8
1996
UMI

—3.00 percent of the credit equivalent amount of interest rate contracts and foreign exchange rate contracts, except to the extent of the current market value of posted qualifying collateral, computed in accordance with Appendix A; 1.50 percent of the market value of qualifying collateral posted to secure interest rate and foreign exchange rate contracts, not to exceed the credit equivalent amount of such contracts, computed in accordance with Appendix A; and

—0.45 percent of the outstanding amount, credit equivalent amount, or other measure determined appropriate by the Director, of other off-balance sheet obligations (excluding commitments, multifamily credit enhancements, sold portfolio remittances pending, and interest rate contracts and foreign exchange rate contracts), except as adjusted by the Director to reflect differences in the credit risk of such obligations in relation to mortgage-backed securities.

In the event that any asset or financial obligation is properly classifiable in more than one of the above categories, section 1750.4 provides that, for minimum capital purposes, the asset or financial obligation must be classified in the category that yields the highest minimum capital requirement.

The section further explains that the term "preceding four quarters" means the last day of the quarter just ended (or the date for which the minimum capital report is filed, if different), and the three preceding quarter-ends.

Section 1750.5 Notice of Capital Classification

Section 1750.5 states that not later than 60 calendar days after the date for which the minimum capital report is filed, OFHEO will provide each Enterprise with a notice of proposed capital classification in accordance with section 1368 of the 1992 Act.[33] The notice of proposed capital classification includes the proposed minimum capital requirement and the summary computation of the proposed minimum capital requirement.

Each Enterprise has a period of 30 calendar days following receipt of a notice of proposed capital classification to submit a response. The response period may be extended for up to 30 additional calendar days at the sole discretion of the Director. The Director may shorten the response period with the consent of the Enterprise or without such consent if the Director determines that the condition of the Enterprise requires a shorter response period.

[33] 12 U.S.C. 4618.

Section 1750.5 further provides that the Director must take into consideration any response to the notice of proposed capital classification received from the Enterprise and must issue a notice of final capital classification for each Enterprise not later than 30 calendar days following the end of the response period.

Appendix A to Subpart A of Part 1750—Minimum Capital Components for Interest Rate and Foreign Exchange Rate Contracts

Calculation of Credit Equivalent Amounts

Appendix A provides that the minimum capital components for interest rate and foreign exchange rate contracts are computed on the basis of the credit equivalent amounts of such contracts. The credit equivalent amount of an off-balance sheet interest rate or foreign exchange rate contract that is not subject to a qualifying bilateral netting contract in accordance with Appendix A is equal to the sum of the current exposure (sometimes referred to as the replacement cost) of the contract and an estimate of the potential future credit exposure over the remaining life of the contract.

The current exposure is determined by the mark-to-market value of the contract. If the mark-to-market value is positive, then the current exposure is the mark-to-market value. If the mark-to-market value is zero or negative, then the current exposure is zero. Mark-to-market values are measured in United States dollars, regardless of the currency or currencies specified in the contract, and should reflect changes in the relevant rates as well as counterparty credit quality.

The potential future credit exposure of a contract, including a contract with a negative mark-to-market value, is estimated by multiplying the notional principal amount of the contract by a credit conversion factor. The effective rather than the apparent or stated notional amount must be used in this calculation. The credit conversion factors for interest rate contracts are 0.0 percent for interest rate contracts with a remaining maturity of 1 year or less; 0.5 percent for interest rate contracts with a remaining maturity of over 1 year; 1.0 percent for foreign exchange rate contracts with a remaining maturity of 1 year or less; and 5.0 percent for foreign exchange rate contracts with a remaining maturity of over 1 year.

Because foreign exchange rate contracts involve an exchange of principal upon maturity, and foreign exchange rates are generally more volatile than interest rates, higher conversion factors have been established for foreign exchange rate contracts than for interest rate contracts.

No potential future credit exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indexes, so-called floating/floating or basis swaps. The credit exposure on these contracts is evaluated solely on the basis of their mark-to-market values.

Avoidance of Double Counting

Appendix A provides that, in certain cases, credit exposures arising from the interest rate and foreign exchange rate contracts covered by this Appendix A may already be reflected, in part, on the balance sheet. To avoid double counting such exposures in the assessment of capital adequacy, counterparty credit exposures arising from the types of instruments covered by this Appendix A may need to be excluded from balance sheet assets in calculating the minimum capital requirement.

Collateral

Appendix A provides that the sufficiency of collateral for off-balance sheet items is determined by the market value of the collateral in relation to the credit equivalent amount. Collateral held against a netting contract is not recognized for minimum capital standard purposes unless it is legally available to support the single legal obligation created by the netting contract. Excess collateral held against one contract or a group of contracts for which a recognized netting agreement exists may not be considered.

The only forms of collateral that are formally recognized by the minimum capital standard framework are cash on deposit; securities issued or guaranteed by the central governments of the OECD-based group of countries, United States Government agencies, or United States Government-sponsored agencies; and securities issued by multilateral lending institutions or regional development banks.

Netting

For purposes of Appendix A, netting refers to the offsetting of positive and negative mark-to-market values in the determination of a current exposure to be used in the calculation of a credit equivalent amount. Any legally enforceable form of bilateral netting (that is, netting with a single counterparty) of interest rate and foreign exchange rate contracts is recognized for purposes of calculating the credit equivalent amount if it meets the following requirements. Netting is accomplished under a written netting contract that creates a single legal obligation, covering all included individual contracts, with the effect that the Enterprise would have a claim to receive, or obligation to pay, only the net amount of the sum of the positive and negative mark-to-market values on included individual contracts in the event that a counterparty, or a counterparty to whom the contract has been validly assigned, fails to perform due to default, insolvency, liquidation, or similar circumstances.

The Enterprise must obtain a written and reasoned legal opinion(s) representing that in the event of a legal challenge—including one resulting from default, insolvency, liquidation, or similar circumstances—the relevant court and administrative authorities would find the Enterprise's exposure to be such a net amount under—

—the law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

—the law that governs the individual contracts covered by the netting contract; and

—the law that governs the netting contract.

The Enterprise must establish and maintain procedures to ensure that the legal characteristics of netting contracts are kept under review in the event of possible changes in relevant law. Furthermore, the Enterprise must maintain in its files documentation adequate to support the netting of rate contracts, including a copy of the bilateral netting contract and necessary legal opinions.

A contract containing a walkaway clause is not eligible for netting for purposes of calculating the credit equivalent amount. A walkaway clause is a provision in a netting contract that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the contract, or no payment at all, to a defaulter or to the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the contract.

By netting individual contracts for the purpose of calculating its credit equivalent amount, the Enterprise represents that it has met the requirements of Appendix A, and that all the appropriate documents are in the Enterprise's files and available for inspection by OFHEO. OFHEO may determine that an Enterprise's files are inadequate or that a netting contract, or any of its underlying individual contracts, may not be legally enforceable under any one of the bodies of law described in Appendix A. If such a determination is made, the netting contract may be disqualified from recognition for minimum capital standard purposes or underlying individual contracts may be treated as though they are not subject to the netting contract.

The credit equivalent amount of interest rate and foreign exchange rate contracts that are subject to a qualifying bilateral netting contract is calculated by adding the current exposure of the netting contract and the sum of the estimates of the potential future credit exposures on all individual contracts subject to the netting contract, estimated in accordance with Appendix A. Offsetting contracts in the same currency maturing on the same date will have lower potential future exposure as well as lower current exposure. Therefore, for purposes of calculating potential future credit exposure to a netting counterparty for foreign exchange rate contracts, and other similar contracts in which notional principal is equivalent to cash flows, total notional principal is defined as the net receipts falling due on each value date in each currency.

The current exposure of the netting contract is determined by summing all positive and negative mark-to-market values of the individual contracts included in the netting contract. If the net sum of the mark-to-market values is positive, then the current exposure of the netting contract is equal to that sum. If the net sum of the mark-to-market values is zero or negative, then the current exposure of the netting contract is zero. OFHEO may determine that a netting contract qualifies for netting treatment even though certain individual contracts may not qualify. In such instances, the nonqualifying contracts should be treated as individual contracts that are not subject to the netting contract.

In the event a netting contract covers contracts that are normally excluded from the minimum capital requirement computation—for example, foreign exchange rate contracts with an original maturity of 14 calendar days or less, or instruments traded on exchanges that require daily payment of variation margin—an Enterprise may elect consistently either to include or exclude all mark-to-market values of such contracts when determining net current exposure.

As stated in the preamble to the proposed regulation, in developing Appendix A, OFHEO considered

provisions of the regulations of the federal banking agencies with respect to the calculation of the credit equivalent amount for interest rate and foreign exchange rate contracts. Subsequent to the publication of the proposed Minimum Capital regulation, the federal banking agencies amended their regulations with respect to interest rate and foreign exchange rate contracts.[34] The amendments increase the number of credit conversion factors that are used to measure the potential future credit exposure of interest rate and foreign exchange rate contracts. They also change the way the potential future credit exposure is calculated when the interest rate and foreign exchange rate contracts are subject to a qualifying bilateral netting agreement, resulting in a reduction in the amount of capital required for the netted interest rate and foreign exchange rate contracts.

OFHEO is analyzing those amendments and considering whether to conform Appendix A to the final regulations of the federal banking agencies. Based on the results of that analysis, OFHEO will publish a proposal, as appropriate.

Regulatory Impact

Executive Order 12606, The Family

This regulation does not have potential for significant impact on family formulation, maintenance, and general well-being, and thus is not subject to review under Executive Order 12606.

Executive Order 12612, Federalism

This regulation has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Executive Order 12866, Regulatory Planning and Review

This regulation has been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

Executive Order 12988, Civil Justice Reform

This proposed regulation meets the applicable standards of sections 3(a) and (b) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

The regulation does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995. Assessment statements are not required for regulations that incorporate requirements specifically set forth in

[34] 60 FR 46170 (Sept. 5, 1995).

VOL 61 ISS 131 JL 8 1996 UMI

law. As explained in the preamble, this regulation implements the minimum capital standard contained in the 1992 Act. In addition, this regulation does not include a federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.

Regulatory Flexibility Act

This regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act, and does not have a significant effect on a substantial number of small entities. Therefore, the General Counsel of OFHEO has certified that the final regulation will not have significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This regulation contains no information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 12 CFR Part 1750

Banks, banking, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Mortgages, Securities.

Accordingly, for the reasons set forth in the preamble, OFHEO amends Chapter XVII of Title 12 of the Code of Federal Regulations by adding Part 1750 to read as follows:

PART 1750—CAPITAL

Subpart A—Minimum Capital

Sec.

1750.1 General.
1750.2 Definitions.
1750.3 Procedure and timing.
1750.4 Minimum capital requirement computation.
1750.5 Notice of capital classification.

Appendix A to Subpart A of Part 1750—Minimum Capital Components for Interest Rate and Foreign Exchange Rate Contracts

Subpart B—[Reserved]

Authority: 12 U.S.C. 4513, 4514, 4612, 4614, 4618.

Subpart A—Minimum Capital

§ 1750.1 General.

The regulation contained in this subpart A sets forth the methodology for computing the minimum capital requirement for each Enterprise. The board of directors of each Enterprise is responsible for ensuring that the Enterprise maintains capital at a level that is sufficient to ensure the continued financial viability of the Enterprise and that equals or exceeds the minimum capital requirement contained in this subpart A.

§ 1750.2 Definitions.

For purposes of this subpart A, the following definitions shall apply:

Affiliate means any entity that controls, is controlled by, or is under common control with, an Enterprise, except as otherwise provided by the Director.

Commitment means any contractual, legally binding agreement that obligates an Enterprise to purchase or to securitize mortgages.

Core Capital—(1) Means the sum of (as determined in accordance with generally accepted accounting principles)—

(i) The par or stated value of outstanding common stock;

(ii) The par or stated value of outstanding perpetual, noncumulative preferred stock;

(iii) Paid-in capital; and

(iv) Retained earnings; and

(2) Does not include debt instruments or any amounts the Enterprise could be required to pay at the option of an investor to retire capital instruments.

Director means the Director of OFHEO.

Enterprise means the Federal National Mortgage Association and any affiliate thereof or the Federal Home Loan Mortgage Corporation and any affiliate thereof.

Foreign exchange rate contracts—

(1) Means cross-currency interest rate swaps, forward foreign exchange contracts, currency options purchased (including currency options purchased over-the-counter), and any other instrument that gives rise to similar credit risks; and

(2) Does not mean foreign exchange rate contracts with an original maturity of 14 calendar days or less and foreign exchange rate contracts traded on exchanges that require daily payment of variation margins.

Interest rate contracts—

(1) Means single currency interest rate swaps, basis swaps, forward rate agreements, interest rate options purchased (including caps, collars, and floors purchased), over-the-counter options purchased, and any other instrument that gives rise to similar credit risks (including when-issued securities and forward deposits accepted); and

(2) Does not mean such instruments traded on exchanges that require daily payment of variation margins.

Mortgage-backed security means a security, investment, or substantially equivalent instrument that represents an interest in a pool of loans secured by mortgages or deeds of trust where the principal or interest payments to the investor in the security or substantially equivalent instrument are guaranteed or effectively guaranteed by an Enterprise.

Multifamily credit enhancement means any guarantee, pledge, purchase arrangement, or other obligation or commitment provided or entered into by an Enterprise with respect to multifamily mortgages to provide credit enhancement, liquidity, interest rate support, and other guarantees and enhancements for revenue bonds issued by a state or local governmental unit (including a housing finance agency) or other bond issuer.

1992 Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, found at Title XIII of the Housing and Community Development Act of 1992, Pub. L. 102–550, 12 U.S.C. 4501 *et seq.*

Notional amount means the face value of the underlying financial instrument(s) on which an interest rate or foreign exchange rate contract is based.

Off-balance sheet obligation means a binding agreement, contract, or similar arrangement that requires or may require future payment(s) in money or kind by another party to an Enterprise, or that effectively guarantees all or part of such payment(s) to third parties (including commitments), where such agreement or contract is a source of credit risk that is not included on its balance sheet.

OFHEO means the Office of Federal Housing Enterprise Oversight.

Other off-balance sheet obligations means all off-balance sheet obligations of an Enterprise that are not mortgage-backed securities or substantially equivalent instruments and that are not resecuritized mortgage-backed securities, such as real estate mortgage investment conduits or similar resecuritized instruments.

Perpetual, noncumulative preferred stock means preferred stock that—

(1) Does not have a maturity date;

(2) Provides the issuer the ability and the legal right to eliminate dividends and does not permit the accruing or payment of impaired dividends;

(3) Cannot be redeemed at the option of the holder; and

(4) Has no other provisions that will require future redemption of the issue, in whole or in part, or that will reset the dividend periodically based, in whole or in part, on the Enterprise's current credit standing, such as auction rate, money market, or remarketable preferred stock, or that may cause the dividend to increase to a level that could create an incentive for the issuer to redeem the instrument, such as exploding rate stock.

Qualifying collateral means cash on deposit; securities issued or guaranteed by the central governments of the OECD-based group of countries,[1] United States Government agencies, or United States Government-sponsored agencies; and securities issued by multilateral lending institutions or regional development banks.

§ 1750.3 Procedure and timing.

(a) Each Enterprise shall file with the Director a minimum capital report each quarter or at such other times as the Director requires, in his or her sole discretion. The report shall contain the information that responds to all of the items required by OFHEO in written instructions to the Enterprise, including, but not limited to:

(1) Estimate of the minimum capital requirement;

(2) Estimate of core capital overage or shortfall relative to the estimated minimum capital requirement;

(3) Such other information as may be required by the Director.

(b) The quarterly minimum capital report shall be submitted not later than April 30, July 30, October 30, and January 30 of each year.

(c) Each minimum capital report shall be submitted in writing and in such other format as may be required by the Director.

(d) In the event an Enterprise makes an adjustment to its financial statements for a quarter or a date for which the information was requested, which would cause an adjustment to a minimum capital report, the Enterprise shall file with the Director an amended minimum capital report not later than 3 business days after the date of such adjustment.

(e) Each minimum capital report or any amended minimum capital report shall contain a declaration by an officer authorized by the board of directors of the Enterprise to make such a declaration, including, but not limited to a president, vice president, or treasurer, that the report is true and correct to the best of such officer's knowledge and belief.

§ 1750.4 Minimum capital requirement computation.

(a) The minimum capital requirement for each Enterprise shall be computed by adding the following amounts:

(1) 2.50 percent times the aggregate on-balance sheet assets of the Enterprise;

(2) 0.45 percent times the unpaid principal balance of mortgage-backed securities and substantially equivalent instruments that were issued or guaranteed by the Enterprise;

(3) 0.45 percent of 50 percent of the average dollar amount of commitments outstanding each quarter over the preceding four quarters;

(4) 0.45 percent of the outstanding principal amount of bonds with multifamily credit enhancements;

(5) 0.45 percent of the dollar amount of sold portfolio remittances pending;

(6)(i) 3.00 percent of the credit equivalent amount of interest rate contracts and foreign exchange rate contracts, except to the extent of the current market value of posted qualifying collateral, computed in accordance with appendix A to this subpart;

(ii) 1.50 percent of the market value of qualifying collateral posted to secure interest rate and foreign exchange rate contracts, not to exceed the credit equivalent amount of such contracts, computed in accordance with appendix A to this subpart; and

(7) 0.45 percent of the outstanding amount, credit equivalent amount, or other measure determined appropriate by the Director, of other off-balance sheet obligations (excluding commitments, multifamily credit enhancements, sold portfolio remittances pending, and interest rate contracts and foreign exchange rate contracts), except as adjusted by the Director to reflect differences in the credit risk of such obligations in relation to mortgage-backed securities.

(b) Any asset or financial obligation that is properly classifiable in more than one of the categories enumerated in paragraphs (a) (1) through (7) of this section shall be classified in the category that yields the highest minimum capital requirement.

(c) As used in this section, the term "preceding four quarters" means the last day of the quarter just ended (or the date for which the minimum capital report is filed, if different), and the three preceding quarter-ends.

§ 1750.5 Notice of capital classification.

(a) Pursuant to section 1364 of the 1992 Act (12 U.S.C. 4614), OFHEO is required to determine the capital classification of each Enterprise on a not less than quarterly basis.

(b) The determination of the capital classification shall be made following a notice to, and opportunity to respond by, the Enterprise.

(1) Not later than 60 calendar days after the date for which the minimum capital report is filed, OFHEO will provide each Enterprise with a notice of proposed capital classification in accordance with section 1368 of the 1992 Act (12 U.S.C. 4618). The notice shall contain the following information—

(i) The proposed capital classification;

(ii) The proposed minimum capital requirement; and

(iii) The summary computation of the proposed minimum capital requirement.

(2) Each Enterprise shall have a period of 30 calendar days following receipt of a notice of proposed capital classification to submit a response regarding the proposed capital classification. The response period may be extended for up to 30 additional calendar days at the sole discretion of the Director. The Director may shorten the response period with the consent of the Enterprise, or without such consent if the Director determines that the condition of the Enterprise requires a shorter period.

(3) The Director shall take into consideration any response to the notice of proposed capital classification received from the Enterprise and shall issue a notice of final capital classification for each Enterprise not later than 30 calendar days following the end of the response period in accordance with section 1368 of the 1992 Act (12 U.S.C. 4618).

Appendix A to Subpart A of Part 1750—Minimum Capital Components for Interest Rate and Foreign Exchange Rate Contracts

1. The minimum capital components for interest rate and foreign exchange rate contracts are computed on the basis of the credit equivalent amounts of such contracts. Credit equivalent amounts are computed for each of the following off-balance sheet

[1] The OECD-based group of countries comprises full members of the Organization for Economic Cooperation and Development (OECD) regardless of entry date, as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow, but excludes any country that has rescheduled its external sovereign debt within the previous 5 years. A rescheduling of external sovereign debt generally would include any renegotiation of terms arising from a country's mobility or unwillingness to meet its external debt service obligations, but generally not include any renegotiation to allow the borrower to take advantage of a decline in interest rate or other change in market conditions. As of November 1995, the OECD countries included the following countries: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States; and Saudi Arabia has concluded special lending arrangements with the IMF associated with the IMF's General Arrangements to Borrow.

VOL 61 ISS 131 JL 8 1996 UMI

interest rate and foreign exchange rate contracts:

a. Interest Rate Contracts

i. Single currency interest rate swaps.
ii. Basis swaps.
iii. Forward rate agreements.
iv. Interest rate options purchased (including caps, collars, and floors purchased).
v. Any other instrument that gives rise to similar credit risks (including when-issued securities and forward deposits accepted).

b. Foreign Exchange Rate Contracts

i. Cross-currency interest rate swaps.
ii. Forward foreign exchange rate contracts.
iii. Currency options purchased.
iv. Any other instrument that gives rise to similar credit risks.

2. Foreign exchange rate contracts with an original maturity of 14 calendar days or less and foreign exchange rate contracts traded on exchanges that require daily payment of variation margins are excluded from the minimum capital requirement computation. Over-the-counter options purchased, however, are included and treated in the same way as the other interest rate and foreign exchange rate contracts.

3. Calculation of Credit Equivalent Amounts

a. The minimum capital components for interest rate and foreign exchange rate contracts are computed on the basis of the credit equivalent amounts of such contracts. The credit equivalent amount of an off-balance sheet interest rate and foreign exchange rate contract that is not subject to a qualifying bilateral netting contract in accordance with this appendix A is equal to the sum of the current exposure (sometimes referred to as the replacement cost) of the contract and an estimate of the potential future credit exposure over the remaining life of the contract.

b. The current exposure is determined by the mark-to-market value of the contract. If the mark-to-market value is positive, then the current exposure is the mark-to-market value. If the mark-to-market value is zero or negative, then the current exposure is zero. Mark-to-market values are measured in United States dollars, regardless of the currency or currencies specified in the contract, and should reflect changes in the relevant rates, as well as counterparty credit quality.

c. The potential future credit exposure of a contract, including a contract with a negative mark-to-market value, is estimated by multiplying the notional principal amount of the contract by a credit conversion factor. The effective rather than the apparent or stated notional amount must be used in this calculation. The credit conversion factors are:

Remaining maturity	Interest rate contracts (percent)	Foreign exchange rate contracts (percent)
1 year or less	0.0	1.0
Over 1 year	0.5	5.0

d. Because foreign exchange rate contracts involve an exchange of principal upon maturity, and foreign exchange rates are generally more volatile than interest rates, higher conversion factors have been established for foreign exchange rate contracts than for interest rate contracts.

e. No potential future credit exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indexes, so-called floating/floating or basis swaps. The credit exposure on these contracts is evaluated solely on the basis of their mark-to-market values.

4. Avoidance of Double Counting

In certain cases, credit exposures arising from the interest rate and foreign exchange instruments covered by this appendix A may already be reflected, in part, on the balance sheet. To avoid double counting such exposures in the assessment of capital adequacy, counterparty credit exposures arising from the types of instruments covered by this appendix A may need to be excluded from balance sheet assets in calculating the minimum capital requirement.

5. Collateral

a. The sufficiency of collateral for off-balance sheet items is determined by the market value of the collateral in relation to the credit equivalent amount. Collateral held against a netting contract is not recognized for minimum capital standard purposes unless it is legally available to support the single legal obligation created by the netting contract. Excess collateral held against one contract or a group of contracts for which a recognized netting agreement exists may not be considered.

b. The only forms of collateral that are formally recognized by the minimum capital standard framework are cash on deposit; securities issued or guaranteed by the central governments of the OECD-based group of countries, United States Government agencies, or United States Government-sponsored agencies; and securities issued by multilateral lending institutions or regional development banks.

6. Netting

a. For purposes of this appendix A, netting refers to the offsetting of positive and negative mark-to-market values in the determination of a current exposure to be used in the calculation of a credit equivalent amount. Any legally enforceable form of bilateral netting (that is, netting with a single counterparty) of interest rate and foreign exchange rate contracts is recognized for purposes of calculating the credit equivalent amount provided that the following criteria are met:

i. Netting must be accomplished under a written netting contract that creates a single legal obligation, covering all included individual contracts, with the effect that the Enterprise would have a claim to receive, or obligation to pay, only the net amount of the sum of the positive and negative mark-to-market values on included individual contracts in the event that a counterparty, or a counterparty to whom the contract has been validly assigned, fails to perform due to default, insolvency, liquidation, or similar circumstances.

ii. The Enterprise must obtain a written and reasoned legal opinion(s) representing that in the event of a legal challenge—including one resulting from default, insolvency, liquidation, or similar circumstances—the relevant court and administrative authorities would find the Enterprise's exposure to be such a net amount under—

A. The law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

B. The law that governs the individual contracts covered by the netting contract; and

C. The law that governs the netting contract.

iii. The Enterprise must establish and maintain procedures to ensure that the legal characteristics of netting contracts are kept under review in the event of possible changes in relevant law.

iv. The Enterprise must maintain in its files documentation adequate to support the netting of rate contracts, including a copy of the bilateral netting contract and necessary legal opinions.

b. A contract containing a walkaway clause is not eligible for netting for purposes of calculating the credit equivalent amount.[1]

c. By netting individual contracts for the purpose of calculating its credit equivalent amount, the Enterprise represents that it has met the requirements of this appendix A and all the appropriate documents are in the Enterprise's files and available for inspection by OFHEO. OFHEO may determine that an Enterprise's files are inadequate or that a netting contract, or any of its underlying individual contracts, may not be legally enforceable under any one of the bodies of law described in this appendix A. If such a determination is made, the netting contract may be disqualified from recognition for minimum capital standard purposes or underlying individual contracts may be treated as though they are not subject to the netting contract.

d. The credit equivalent amount of interest rate and foreign exchange rate contracts that are subject to a qualifying bilateral netting contract is calculated by adding the current exposure of the netting contract and the sum of the estimates of the potential future credit exposures on all individual contracts subject to the netting contract, estimated in accordance with paragraph 3 of this appendix A. Offsetting contracts in the same currency maturing on the same date will have lower potential future exposure as well as lower current exposure. Therefore, for purposes of calculating potential future credit exposure to a netting counterparty for foreign exchange rate contracts and other similar contracts in which notional principal is equivalent to cash flows, total notional principal is defined as the net receipts falling due on each value date in each currency.

e. The current exposure of the netting contract is determined by summing all positive and negative mark-to-market values of the individual contracts included in the netting contract. If the net sum of the mark-to-market values is positive, then the current exposure of the netting contract is equal to that sum. If the net sum of the mark-to-market values is zero or negative, then the current exposure of the netting contract is zero. OFHEO may determine that a netting contract qualifies for minimum capital standard netting treatment even though certain individual contracts may not qualify. In such instances, the nonqualifying contracts should be treated as individual contracts that are not subject to the netting contract.

f. In the event a netting contract covers contracts that are normally excluded from the minimum capital requirement computation—for example, foreign exchange rate contracts with an original maturity of 14 calendar days or less, or instruments traded on exchanges that require daily payment of variation margin—an Enterprise may elect consistently either to include or exclude all mark-to-market values of such contracts when determining net current exposure.

[1] A walkaway clause is a provision in a netting contract that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the contract, or no payment at all, to a defaulter or to the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the contract.

Subpart B—[Reserved]

Aida Alvarez,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 96–17120 Filed 7–5–96; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 96–AWP–12]

Change Time of Designation for Restricted Area R–3107, Kaula Rock; HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reduces the time of designation for Restricted Area 3107 (R–3107), Kaula Rock, HI, to accurately reflect actual times of use. This administrative change, initiated by the U.S. Navy, will not affect the boundaries, designated altitudes, or activities conducted within the restricted area.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Steve Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations reduces the time of designation for R–3107, Kaula Rock, HI, to accurately reflect actual times of use. This administrative change, initiated by the U.S. Navy, will not affect the boundaries, designated altitudes, or activities conducted within the restricted area. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.31 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8C dated June 29, 1995.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action reduces the restricted area's time of designation. In accordance with FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," this action is not subject to environmental assessments and procedures and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 73.31 [Amended]

2. Section 73.31 is amended as follows:

R–3107 Kaula Rock, HI. [Amended]

By removing the current time of designation and substituting the following:

Time of designation. 0700–2200 local time Monday-Friday; 0800–1600 local time Saturday-Sunday; other times by NOTAM issued at least 24 hours in advance.

Issued in Washington, DC, on June 28, 1996.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 96–17231 Filed 7–5–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 97

[Docket No. 28615; Amdt. No. 1739]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:.

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800

VOL 61 ISS 131 JL 8 1996 UMI

Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove "or GPS" from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC, on June 28, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPS; and § 97.35 COPTER SIAPSs, identified as follows:

** * * Effective Aug. 15, 1996*

Goshen, IN, Goshen Muni, VOR or GPS RWY 9, Amdt 11 CANCELLED
Goshen, IN, Goshen Muni, VOR RWY 9, Amdt 11
Lovington, NM, Lea County-Zip Franklin Memorial, RNAV or GPS RWY 3, Orig CANCELLED
Lovington, NM, Lea County-Zip Franklin Memorial, RNAV RWY 3, Orig
Riverton, WY, Riverton Regional, VOR or GPS RWY 10, Amdt 8 CANCELLED
Riverton, WY, Riverton Regional, VOR RWY 10, Amdt 8
Riverton, WY, Riverton Regional, VOR or GPS RWY 28, Amdt 8 CANCELLED
Riverton, WY, Riverton Regional, VOR RWY 28, Amdt 8.

[FR Doc. 96–17229 Filed 7–5–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 28614; Amdt. No. 1738]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA—200); FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight DATA Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days..

FDC Date	State	City	Airport	FDC No.	SIAP
05/23/96	FL	Miami	Miami Intl	6/3205	ILS RWY 12 AMDT 3...

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC, on June 28, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97/25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

VOL
61
ISS
1
3
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JL
8
1996
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FDC Date	State	City	Airport	FDC No.	SIAP
05/23/96	GA	Reidsville	Reidsville	6/3197	NDB OR GPS RWY 11 AMDT 6A...
06/12/96	CA	Monterey	Monterey Peninsula	6/3777	LOC/DME RWY 28L AMDT 3A...
06/13/96	MN	Hibbing	Chisholm-Hibbing	6/3770	VOR OR GPS RWY 13 AMDT 11A...
06/14/96	CA	Oceanside	Oceanside Muni	6/3792	VOR OR GPS-A AMDT 3...
06/14/96	NE	Alliance	Alliance Muni	6/3801	VOR OR GPS RWY 12 AMDT 2A...
06/14/96	NE	Alliance	Alliance Muni	6/3802	NDB RWY 30 AMDT 7...
06/14/96	NE	Alliance	Alliance Muni	6/3803	VOR RWY 30 AMDT 1...
06/17/96	KS	Chanute	Chanute Martin Johnson	6/3867	VOR OR GPS-A AMDT 9...
06/17/96	KS	Chanute	Chanute Martin Johnson	6/3868	VOR/DME RNAV OR GPS RWY 36 AMDT 3...
06/17/96	NE	Sidney	Sidney Muni	6/3872	VOR RWY 12 AMDT 6...
06/17/96	NE	Sidney	Sidney Muni	6/3873	VOR/DME OR TACAN OR GPS RWY 12 AMDT 4...
06/17/96	NE	Sidney	Sidney Muni	6/3874	GPS RWY 30 ORIG...
06/17/96	NE	Sidney	Sidney Muni	6/3875	VOR RWY 30 AMDT 6...
06/17/96	NE	Tekamah	Tekamah Muni	6/3870	VOR OR GPS RWY 32 AMDT 4...
06/18/96	IL	Peoria	Greater Peoria Regional	6/3913	ILS/DME RWY 4 ORIG-A...
06/18/96	NE	Hastings	Hastings Muni	6/3898	NDB RWY 14 AMDT 12...
06/18/96	NE	Hastings	Hastings Muni	6/3900	VOR OR GPS RWY 4 AMDT 5...
06/18/96	NE	Hastings	Hastings Muni	6/3901	VOR OR GPS RWY 32 AMDT 13...
06/18/96	NE	Hastings	Hastings Muni	6/3905	VOR RWY 14 AMDT 16...
06/19/96	AR	Mountain Home	Baxter County Regional	6/3943	VOR OR GPS-A AMDT 9...
06/19/96	AR	Mountain Home	Baxter County Regional	6/3944	VOR/DME RNAV RWY 5 AMDT 1...
06/20/96	TX	Abilene	Abilene Regional	6/3952	RADAR-1 AMDT 8...
06/21/96	MO	St. Louis	Spirit of St Louis	6/4023	ILS RWY 8R AMDT 13...
06/21/96	MO	St. Louis	Spirit of St Louis	6/4024	VOR OR GPS RWY 8R AMDT 7A...
06/21/96	MO	St. Louis	Spirit of St Louis	6/4025	NDB RWY 8R AMDT 11...
06/24/96	KS	Lawrence	Lawrence Muni	6/4100	NDB OR GPS RWY 33 ORIG...
06/24/96	KS	Lawrence	Lawrence Muni	6/4101	VOR/DME RNAV RWY 33 AMDT 4...
06/24/96	KS	Lawrence	Lawrence Muni	6/4102	VOR/DME OR GPS-A AMDT 9...
06/24/96	KS	Lawrence	Lawrence Muni	6/4103	ILS RWY 33 ORIG...
06/25/96	MN	Springfield	Springfield Muni	6/4150	VOR/DME OR GPS RWY 14 AMDT 2B...
06/25/96	MN	St Paul	St Paul Downtown Holman Field.	6/4148	ILS RWY 32 AMDT 3...
06/25/96	MN	St Paul	St Paul Downtown Holman Field.	6/4153	NDB OR GPS RWY 30 AMDT 7...
06/26/96	KS	Lawrence	Lawrence Muni	6/4199	ILS RWY 33, ORIG-A...
06/26/96	MT	Helena	Helena Regional	6/4193	LOC/DME BC-C AMDT 3...
06/26/96	NE	Omaha	Eppley Airfield	6/4200	NDB OR GPS RWY 14R, AMDT 23...
06/26/96	WI	Sparta	Fort McCoy	6/4183	GPS RWY 11 ORIG...
06/26/96	WI	Sparta	Fort McCoy	6/4184	GPS RWY 29 ORIG...

[FR Doc. 96–17228 Filed 7–5–96; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28612; Amdt. No. 1737]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC, on June 28, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective July 18, 1996*

Pascagoula, MS, Trent Lott International, ILS RWY 17, Orig

* * * *Effective August 15, 1996*

Middletown, DE, Summit Airpark, GPS RWY 35, Orig
Baxley, GA, Baxley Muni, NDB RWY 8, Orig
Baxley, GA, Baxley Muni, GPS RWY 8, Orig
Hinesville, GA, Liberty County, GPS RWY 32, Orig
Sioux City, IA, Sioux Gateway, NDB RWY 35, Orig
Boise, ID, Boise Air Terminal (Gowen Field) MLS RWY 28L, Orig
Calendonia, MN, Houston County, Houston County, VOR/DME or GPS–A, Amdt 2
Rushford, MN, Rushford Muni, VOR/DME–A, Amdt–1
Warroad, MN, Warroad Intl-Swede Carlson Field, ILS RWY 31, Amdt 1
Warroad, MN, Warroad Intl-Swede Carlson Field, VOR/DME RNAV RWY 31, Amdt 4
Warroad, MN, Warroad Intl-Swede Carlson Field, NDB or GPS RWY 31, Amdt 1
Winona, MN, Winona Muni-Max Conrad Fld, VOR RWY 29, Amdt 15
Winona, MN, Winona Muni-Max Conrad Fld, VOR or GPS–A, Amdt 12
Winona, MN, Winona Muni-Max Conrad Fld, GPS RWY 29, Amdt 1
Pascagoula, MS, Trent Lott Intl, GPS RWY 17, Orig
Portland, OR, Portland Intl, ILS RWY 10L, Amdt 1
Portland, OR, Portland Intl, LOC/DME RWY 10L, Orig, CANCELLED
La Crosse, WI, La Crosse Muni, VOR RWY 13, Amdt 29
La Crosse, WI, La Crosse Muni, VOR or GPS RWY 36, Amdt 30
La Crosse, WI, La Crosse Muni, ILS RWY 18, Amdt 18
Guernsey, WY, Camp Guernsey, NDB RWY 32, Orig

* * * *Effective October 10, 1996*

Oceanside, CA, Oceanside Muni, GPS RWY 24, Orig
Fryeburg, ME, Eastern Slopes Regional, GPS RWY 32, Orig
Fryeburg, ME, Eastern Slopes Regional, NDB OR GPS–B, Amdt 1

VOL
61
ISS
1
3
1
JL
8
1996
UMI

Orange, MA, Orange Muni, GPS RWY 32, Orig
Jackson, MS, Hawkins Field, GPS RWY 16, Orig
Jackson, MS, Hawkins Field, GPS RWY 34, Orig
Forsyth, MT, Tillitt Field, GPS RWY 28, Orig
Rochester, NY, Greater Rochester International, GPS RWY 10, Orig
Lebanon, TN, Lebanon Muni, GPS RWY 19, Orig

[FR Doc. 96–17227 Filed 7–5–96; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Parts 119, 121, and 135

[Docket No. 28154; Amendments Nos. 119–2, 121–256, 135–65 and SFAR 38–13]

RIN 2120–AG03

Operating Requirements: Domestic Flag, Supplemental, Commuter, and On-Demand Operations: Corrections and Editorial Changes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule published in the **Federal Register** on June 14, 1996 (61 FR 30432). The final rule adopted changes that were editorial or typographical in nature in parts 119, 121, and 135. The changes were necessary to correct errors or clarify the intent of the regulations published in December 20, 1996 (60 FR 65832).

EFFECTIVE DATE: July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Linda William, (202) 267–9685.

Correction of Publication

In rule document 96–14565, on page 30432, in the issue of Friday, June 14, 1996, make the following correction:

On page 30432, in the first column, in the heading, Amendment No. "121–259" should read "121–256", and SFAR 38–13 should be added to the heading.

Issued in Washington, DC, on July 1, 1996.

Joseph A. Conte,

Acting Chief Counsel for Regulations.

[FR Doc. 96–17226 Filed 7–5–96; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Public Notice 2409]

VISAS: Passports and Visas Not Required for Certain Nonimmigrants

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Interim Rule with request for comments.

SUMMARY: This interim rule amends part 41, title 22 of the Code of Federal Regulations concerning visas for nonimmigrants pursuant to section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, as amended. Section 217, as amended, extends the Visa Waiver Pilot Program to nationals of all countries that qualify under the provisions of the Pilot Program and which are designated by the Secretary of State and the Attorney General as countries whose nationals benefit from the waiver of the nonimmigrant B–1/B–2 visa requirement. This amendment extends the Visa Waiver Pilot Program to Argentina, which has met all of the requirements for the Program.

DATES: This interim rule is effective July 8, 1996. Written comments are invited and must be received on or before August 7, 1996.

ADDRESSES: Written comments may be submitted, in duplicate, to the Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0113.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Office, Department of State, Washington, DC 20522–0113 (202) 663–1204.

SUPPLEMENTARY INFORMATION: This interim rule amends Part 41, Title 22 of the Code of Federal Regulations concerning visas for nonimmigrants pursuant to section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, as amended by Pub. L. 103–415, 108 Stat. 4299, October 25,1994 and Pub. L. 103–416, 108 Stat. 4305, October 25, 1994.

Section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603, added section 217 to the INA. Section 217, 8 U.S.C. 1187, established the nonimmigrant Visa Waiver Pilot Program (VWPP) which waives the nonimmigrant visa requirement for the admission of certain aliens into the United States for a period not to exceed ninety days. That original provision authorized the participation of eight countries in the VWPP to be designated by the Secretary of State and the Attorney General, acting jointly through their designees. These original qualifying countries included: France; the Federal Republic of Germany; Italy; Japan, the Netherlands; Sweden; Switzerland; and the United Kingdom. [See **Federal Register** publications 53 FR 24903–24904, June 30, 1988; 53 FR 50161–50162, December 13, 1988; and 54 FR 27120–27121, June 27, 1989.]

Pub. L.103–415 amended section 217 of the INA to extend the Visa Waiver Pilot Program (VWPP) through September 30, 1995. Pub. L. 103–416 amended section 217 of the INA to extend the Visa Waiver Pilot Program to September 30, 1996, and to create a new probationary status for certain countries which meet the requirements for that status under the Visa Waiver Pilot Program and which are designated by the Secretary of State and the Attorney General, acting jointly, as countries whose nationals benefit from the waiver of the nonimmigrant B–1/B–2 visa requirement.

On November 29, 1990, the President approved the Immigration Act of 1990 (Pub. L. 101–649, 104 Stat. 4978) [IA]). Section 201 thereof revised the Visa Waiver Pilot Program set forth in section 313 of IRCA (Sec. 217 INA, 8 U.S.C. 1187). It removed the eight-country cap and extended its provisions to all countries that meet the qualifying provisions of the Visa Waiver Pilot Program and are designated by the Secretary of State and the Attorney General as Pilot Program countries thereunder.

Effective October 1, 1991, Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino, and Spain, having met all of the requirements for participants in the nonimmigrant Visa Waiver Pilot Program, were added as participants in the Program. [See 56 FR 46716–46717, September 13, 1991.] Brunei was designated as a participant in the Visa Waiver Pilot Program by the Secretary of State and the Attorney General, acting jointly through their designees, in an interim rule published at 58 FR 40581–40586 of the **Federal Register** of July 26, 1993. On March 28, 1995 the interim rule published at 59 FR 15872–15873 added Ireland as a Visa Waiver Pilot Program country with probationary status.

Each of the above rules amended 22 CFR 41.2. This interim rule, with request for comments, further amends Part 41, Title 22 to include Argentina as a Visa Waiver Pilot Program country since it meets the requirements for that status under INA 217, as amended.

Argentina does not require visas for nationals of the United States entering for ninety (90) days or less. Thus it meets the requirement of providing reciprocal treatment for United States nationals. Other requirements are that the country meet statutorily prescribed limits on visa refusal rates for the prior two year period as well as the prior year; that it meet statutorily prescribed limits on rates of exclusion at port of entry and on overstay limits, and that it have a machine readable passport program. Argentina meets these additional requirements. Argentina is, therefore, added effective July 8, 1996 as a participating country in the Visa Waiver Pilot Program. (See the Immigration and Naturalization Service rule also published in this issue of the **Federal Register**.) Therefore, effective on the publication date of this interim rule, citizens of Argentina shall be eligible for participation in the Visa Waiver Pilot Program.

Interim Rule

The implementation of this rule as an interim rule, with a 30-day provision for post-promulgation public comments, is based upon the "good cause" exceptions established by 5 U.S.C. 553(b)(B) and 553(d)(3). This rule grants or recognizes an exemption or relieves a restriction under 5 U.S.C. 553(d)(1) and is considered beneficial to both the traveling public and United States businesses. Therefore, it is being made effective thirty days after publication in the **Federal Register**, In accordance with 5 U.S.C. 605(b) [Regulatory Flexibility Act], it is certified that this rule does not have a "significant adverse economic impact" on a substantial number of small entities, because it is inapplicable. This rule is exempt from E.O. 12866, but has been coordinated with the Immigration and Naturalization Service because joint action of the Secretary of State and the Attorney General is required under section 217 of the INA, as amended. The rule imposes no reporting or record-keeping action from the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act requirements. This rule has been reviewed as required by E.O. 12988 and is certified to be in compliance therewith.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Visas, Passports, Temporary Visitors, Waivers.

In view of the foregoing, 22 CFR Part 41 is amended as follows:

PART 41—[AMENDED]

1. The authority citation for Part 41 continues to read:

Authority: 8 U.S.C. 1104, 66 Stat. 174; 8 U.S.C. 1187, 108 Stat. 4312 and 4313.

2. In § 41.2 the last sentence of paragraph (l)(2) is amended by removing the period and adding the following text at the end of the sentence:

§ 41.2 Waiver by Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

* * * * *

(l) Visa Waiver Pilot Program. * * *; and Argentina July 8, 1996.

Dated: July 13, 1996.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 96–17194 Filed 7–5–96; 8:45 am]
BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. 94–30]

RIN 2125–AD43

Federal-Aid Project Authorization

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation on Federal-aid program approval and project authorization. In light of changes made by the Intermodal Surface Transportation Efficiency Act of 1991, in the area of statewide planning and transportation improvement programs, and the joint FHWA/Federal Transit Administration (FTA) regulations implementing those changes, this regulation removes the obsolete project programming provisions from this part. This regulation provides more flexible funding arrangements and a more flexible Federal-aid authorization process. Changes contained in related laws are included.

EFFECTIVE DATE: This final rule is effective August 7, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Wasley, Office of Engineering, 202–366–4658, or Wilbert Baccus, Office of the Chief Counsel, 202–366–0780, FHWA, 400 Seventh Street, SW., Washington, D.C. 20590. Office Hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION: The amendments in this final rule are based primarily on the notice of proposed rulemaking (NPRM) published in the February 17, 1995, **Federal Register** at 60 FR 9306 (FHWA Docket No. 94–30). All comments received in response to this NPRM have been considered in adopting these amendments.

The initiation of work for transportation projects funded under the Federal-aid highway program is a two-step process. First, the State, in cooperation and consultation with local officials, as appropriate, through the metropolitan and statewide planning process, determines activities which will be advanced with Federal funds made available under title 23, United States Code, and the Federal Transit Act (49 U.S.C. 5301–5338) and develops a Statewide program of projects for these activities. Prior to passage of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, 105 Stat. 1914) (ISTEA), the requirements for developing the program of projects were found in 23 U.S.C. 105 and the implementing regulations in 23 CFR part 630, subpart A. With passage of the ISTEA, title 23, U.S.C., was modified and the new requirements concerning development of a program of projects, now referred to as the Statewide transportation improvement program, are contained in 23 U.S.C. 135. The implementing regulation for this section is in 23 CFR part 450 and was initiated through previous rulemaking actions.

Accordingly, those requirements pertaining to a program of projects in 23 CFR part 630, subpart A, no longer need to be retained. This final rule therefore eliminates these programming references.

The second step in initiation of work is the project authorization process. The State highway agency (SHA) requests FHWA authorization to proceed with a proposed Federal-aid highway project. The FHWA authorization commits the Federal government to participate in the funding of a project, except in those instances where the State requests FHWA authorization without the commitment of Federal funds. In addition, FHWA authorization also establishes a point in time after which costs incurred on a project are eligible for Federal participation. The requirements covering project authorization are contained in this final rule. The following is a section-by-section analysis of the amendments

VOL
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made by this final rule to the present regulations.

Section-by-Section Analysis

Section 630.102 Purpose

The statement of purpose is revised to eliminate the reference to programming of projects since this activity is eliminated from this subpart.

Section 630.104 Applicability

The existing § 630.104, Definitions, is replaced by a new section identifying the types of projects that are covered by this subpart. FHWA planning and research funds, as defined in 23 CFR 420.103, are authorized using the procedures in the regulations dealing specifically with these types of funded projects. Projects utilizing special funding may have unique authorization requirements, and these types of projects will be authorized as set out in implementing instructions or regulations.

Section 630.106 Authorization to Proceed

The current § 630.106, Policy, is removed. A new § 630.106, Authorization to proceed, is redesignated from current § 630.114, covering the authorization process, and it retains many of the basic principles set forth in existing § 630.114. Modifications were made to provide greater flexibility in some funding areas, and other additions were made for clarification. The following discussion breaks down new § 630.106 by individual paragraph.

Paragraph (a) retains the requirement that FHWA authorization to proceed with a Federal-aid project will only be given in response to a request from the SHA, and then only if the applicable requirements in law have been satisfied for the project.

Paragraph (b) retains the longstanding requirement that Federal-aid funds will only participate in costs incurred after the date the FHWA has authorized the State to proceed with the project. However, exceptions to this requirement are allowed under a process set forth in 23 CFR 1.9(b). For informational purposes, wording has been included in paragraph (b) to identify and cross reference the exception process.

Paragraphs (c), (d), and (e) retain the requirement that, at the time a Federal-aid project is authorized, the total amount of appropriate Federal funds for the project must be available. Four general categories of exceptions to this rule are retained from the existing regulation. A fifth category of exceptions in the existing regulation, related to bond issue projects under 23 U.S.C. 122, has been eliminated. Section 311 of the National Highway System Designation Act of 1995 (Pub. L. 104–59, 109 Stat. 568)(NHS Act), enacted November 28, 1995, significantly revised 23 U.S.C. 122. Previously, section 122 allowed certain types of projects to be approved as bond issue projects. Similar to advance construction, these projects were advanced as Federal-aid projects without any commitment of Federal funds until the bonds matured and the State converted the projects to regular Federal-aid. As amended, section 122 makes bond related costs eligible for Federal reimbursement on any Federal-aid project; however, the process of converting bond issue projects similar to advance construction projects is no longer set forth in the section. As a result, paragraph (c) of § 630.106 has dropped bond issue projects from the listing of exceptions.

Paragraph (f) is added for purposes of clarification. The FHWA authorization represents a contractual action by the FHWA, and the Federal share of eligible costs must be agreed upon when the authorization occurs. The Federal share may be in the form of a specified percentage of eligible costs or a lump sum amount. Use of the lump sum share is intended to accommodate those instances where there is a desire to commit a fixed amount of Federal funds to a project. The lump sum amount may not exceed the legal pro rata share for the Federal funds involved; this may require downward adjustment of the lump sum amount when costs of eligible work on a project are less than the initial estimates at the time of FHWA authorization.

The Federal share agreed to at the time of FHWA authorization is to continue through the life of the project. Manipulation of funding levels of individual projects to accommodate program funding changes or needs is not allowed. However, adjustments to the Federal share are permitted for projects where bid prices are significantly different from the estimates at the time of FHWA authorization and should be made prior to, or shortly after, contract award.

In addition, Federal participation is based on eligible costs incurred by the State. The Federal share of such costs cannot exceed the maximum share permitted by legislation.

Paragraph (g) incorporates into the regulation the provision in 23 U.S.C. 120(i) that allows a State to contribute more than the normal State match on a Federal-aid project. This provision has been interpreted to mean that a State may overmatch and not be tied to a mandatory Federal share. However, project financing proposals that result in the Federal share representing only a minor percentage of eligible work should be avoided unless they are based on sound project management decisions.

Discussion of Comments

Interested persons were invited to participate in the development of this final rule by submitting written comments on the NPRM to FHWA Docket No. 94–30 on or before April 18, 1995. There were 10 commenters to this docket, all representing State transportation agencies.

Three State transportation agencies specifically endorsed the proposed rewrite of the regulation. The other State agencies raised several issues for consideration, which have been grouped into the following categories: (1) Third party (private) cash donations; (2) token financing; (3) the relationship of this rulemaking to FHWA's innovative financing test and evaluation project; and (4) establishing a project's Federal share.

Third Party Cash Donations

This issue received the most comments. The NPRM proposed to include a new provision in the regulation that would clearly set forth the cost sharing principles for Federal-aid highway projects, including the requirement at the time the NPRM was issued that a third party cash contribution to a specific project could not be applied to the required State matching share but instead had to be applied to reduce the overall project cost. The commenters felt the requirement on third party donations was overly restrictive, diminished the incentive for States to seek third party contributions, and could adversely affect the advancement of certain projects. Although these points are well taken, the requirement on third party cash contributions, as stated in the NPRM, reflected a legal interpretation consistent with title 23 as it existed at that time.

A significant change has occurred in Federal highway law related to third party donations since the NPRM was issued. The NHS Act amended 23 U.S.C. 322 to allow the value of third party funds, materials, or services donated to a specific Federal-aid project to be applied to the State's matching share. Thus, Congress has provided legislative relief on this matter.

The FHWA has issued implementing guidance on 23 U.S.C. 322 and the application of third party donations of

funds, materials, or services towards the State's matching share. That guidance is available for review in FHWA Docket No. 94–30 in the FHWA Docket Room at the address listed above. Accordingly, the matter of third party contributions will not be addressed in this regulation.

Token Financing

Several commenters expressed concern about the NPRM provision on "token financing" and the accompanying preamble discussion which suggested that, as a general rule of thumb, Federal funding for a specific project should represent at least 50 percent of eligible project costs. It was pointed out that the phrase "token financing" is vague and not clearly defined in the regulation. Further, the NPRM preamble discussion that suggested a project have at least a target Federal funding level of "50 percent" was interpreted as being too inflexible. Several commenters recommended a lower percentage threshold or a minimum dollar figure.

Section 630.106(g) of the final rule adds a new provision to implement 23 U.S.C. 120(i) which allows the State to contribute more than the normal State match on a project. The phrase "token financing" has not been used in the regulation. Instead, the concept of "token financing" has been expressed in the phrase, "project financing proposals that result in the Federal share representing only a minor percentage of eligible work should be avoided." The phrase "minor percentage" has not been defined, by a specific value or a general target value, in either the regulation or this preamble and considerable flexibility is intended. As expressed in § 630.106(g), this provision is to be applied based on sound project management decisions. For example, it would make little sense to place small amounts of Federal funds in a large number of projects. This could overburden the FHWA and would unnecessarily Federalize a large number of projects. It is expected that a State and FHWA division office will reach agreement on a reasonable implementation of this requirement based on project circumstances.

Relationship of This Rulemaking to FHWA's Innovative Financing Test and Evaluation Project

In 1994, the FHWA established a nationwide innovative financing test and evaluation project, known as TE–045, to evaluate new financing concepts to increase investment or reduce public agency costs on Federal-aid highway projects. Under TE–045, numerous concepts are currently being evaluated. Two of these concepts, "phased funding" and "tapered share," were mentioned by commenters on the NPRM as issues that could be addressed in this regulation.

When the FHWA authorizes a State to proceed with a Federal-aid highway project, the FHWA is required to obligate Federal funds for the full Federal share of the cost of the work being authorized. Phased funding is an exception to this requirement. Under phased funding, the FHWA obligates an amount of Federal funds for each year a project is under construction, the annual amount obligated being equal to the estimated project construction expenditures expected in the year. Thus, phased funding is a financing technique that can accelerate project advancement because a State can proceed with project construction before the full Federal share of the cost of the work is available to the State.

Previously, under § 630.114(h)(5), the FHWA Administrator had the authority, in special cases, to allow a project to proceed without the full Federal share of costs being available to a State. This authority had been used to approve phased funding on a small number of very costly Interstate projects. Early on, TE–045 accepted proposals to experiment further with the phased funding concept; however, no additional proposals are planned for testing. This is because of the FHWA's 1995 revision of its policy on advance construction projects that now allows an advance construction project to be converted to a regular Federal-aid project in increments over time. Partial conversion of advance construction projects can accomplish much of the same flexibility that phased funding provides a State. As a result, the FHWA has decided there is no need at this time to modify the phased funding authority the Administrator has under this regulation. The provision that allows the Administrator to approve special case exceptions for phased funding is retained as § 630.106(c)(4).

Tapered share is an alternate means of making project reimbursement to a State. Under the tapered share concept, the Federal share of costs incurred can vary as reimbursement is provided to a State, as long as the overall Federal funding provided to the State does not exceed the amount of Federal funds obligated when the project was authorized. For example, on a project that is being cost shared at 80 percent Federal, 20 percent State, the State's billings to the FHWA are normally reimbursed with Federal funds at 80 percent of the billed amount. However, the tapered share concept could be applied to allow a State to receive 100 percent Federal funds on early billings with the Federal share tapering off on later billings.

The tapered share concept is a reimbursement or payment issue, not an authorization issue. Because this regulation covers authorization requirements, the tapered share concept will not be addressed in this regulation. The FHWA continues to evaluate the tapered share concept under TE–045 and it is expected that any proposals to allow this concept, including recommendations on needed statutory changes, will emerge from TE–045.

Establishing a Project's Federal Share

In the NPRM, § 630.106(f) was proposed to clarify that the Federal share could be established either as a percentage of eligible project costs or as a lump sum amount, provided the lump sum amount did not exceed the maximum legal percentage allowed for the Federal-aid funding being used on the project.

One commenter suggested another alternative, i.e., that the authorization would specify a percentage with a maximum amount of Federal funds also specified. If a State establishes Federal share as a percentage, any decision to further impose an upper limit on additional Federal funds it will provide to a project, should overruns occur, is a State decision. This decision has no impact on the amount of Federal funds being obligated on the project when the FHWA initially authorizes the work because the amount of Federal funds obligated would still be determined based on the specified Federal share percentage. Consequently, this proposed alternative has not been incorporated into the regulation. If a State desires to set an upper limit for Federal funding on a project where Federal share has been established by percentage and desires to alert all parties involved with the project of the limit, one means of accomplishing this is with an appropriate note on the Federal-aid project agreement.

Several comments were received concerning the adjustment of Federal share during the life of a project. The authorization of a project, with the accompanying obligation of Federal funds, is a contractual action by the FHWA, which has been viewed as fixing or establishing the Federal share of the project. The FHWA's longstanding position has been that Federal share could not be adjusted after the initial project authorization. Recognizing that some flexibility is desirable, particularly in situations involving construction work where bid prices are significantly

VOL 61 ISS 131 JL 8 1996 UMI

different from the engineer's estimate on which the initial authorization of construction is based, the NPRM proposed to allow the Federal share to be adjusted after authorization to reflect bids received.

One commenter suggested eliminating the provision that Federal share is established at authorization and replacing it with a requirement that Federal share be established when the Federal-aid project agreement is executed, after which it could not be adjusted. This suggestion is not being implemented. The timing of when a Federal-aid project agreement is executed for a project can vary considerably, with it sometimes being combined directly with the authorization and sometimes following the authorization by several weeks. Keeping in mind that the FHWA's authorization is a legally binding action on the agency's part, it is at this point that the Federal share being committed to the project needs to be clearly defined.

Other commenters suggested that a State be allowed to continue to make adjustments to Federal share throughout the life of a project. Allowing these adjustments raises several concerns. How many times could changes be made? Would changes be allowed after construction is physically completed? Could changes be retroactive and applied to costs already incurred? What are the Federal fiscal implications of unrestricted changes? At this time, the decision has been made not to expand flexibility for adjusting Federal share beyond that proposed in the NPRM, namely, that Federal share could be adjusted based on the bids received. The final rule has added clarifying language to indicate that any such adjustment should occur before or shortly after award of the contract.

Another comment concerned Federal shares for various project activities. The commenter appears to be interpreting the word "project" to include all work phases of a project, such as design, right-of-way, and construction. The commenter was concerned that if a specific Federal share was established for design work, a State would be locked into using that same Federal share on all subsequent activities, such as the construction work. This is not the intent of the regulation. The term "project" is intended to mean that particular activity or phase of work for which Federal funds are being authorized. Federal share is established for each individual authorization. Design work could be authorized at one Federal share and construction work later authorized at a different Federal share.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. The amendments would simply make minor changes to update the Federal-aid project authorization regulations to conform to recent laws, regulations, and guidance, and to clarify existing policies. It is anticipated that the economic impact of this rulemaking will be minimal because the amendments would only clarify or simplify procedures presently being used by SHAs. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities. The proposed amendments would only clarify or simplify procedures used by SHA's in accordance with existing laws, regulations, or guidance.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This action merely conforms the Federal-aid project authorization regulations to recent laws, regulations, and guidance; clarifies these regulations; and gives the SHAs more flexibility in implementing them.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The Agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et.seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 630

Government contracts, Grant programs—transportation, Highways and roads, Project authorization.

Issued on: June 26, 1996.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, by revising part 630, subpart A to read as follows:

PART 630—PRECONSTRUCTION PROCEDURES

Subpart A—Federal-Aid Project Authorization

Sec.

630.102 Purpose.
630.104 Applicability.
630.106 Authorization to proceed.

Authority: 23 U.S.C. 106, 118, 120, and 315; 49 CFR 1.48(b).

Subpart A—Federal-Aid Project Authorization

§ 630.102 Purpose.

The purpose of this subpart is to prescribe policies for authorizing Federal-aid projects.

§ 630.104 Applicability.

(a) This regulation is applicable to all Federal-aid projects unless specifically exempted.

(b) Projects financed with FHWA planning and research funds, as defined in 23 CFR 420.103 are not covered by this subpart. These projects are to be handled in accordance with 23 CFR parts 420 and 450.

(c) Other projects which involve special procedures shall be authorized as set out in the implementing instructions for those projects.

§ 630.106 Authorization to proceed.

(a) The FHWA issuance of an authorization to proceed with a Federal-aid project shall be in response to a written request from the State highway agency (SHA). Authorization can be given only after applicable prerequisite requirements of Federal laws and implementing regulations and directives have been satisfied.

(b) Federal funds shall not participate in costs incurred prior to the date of authorization to proceed except as provided by 23 CFR 1.9(b).

(c) Authorization of a Federal-aid project shall be deemed a contractual obligation of the Federal government under 23 U.S.C. 106 and shall require that appropriate funds be available at the time of authorization for the total agreed Federal share, either pro rata or lump sum, of the cost of eligible work to be incurred by the State, except as follows:

(1) Advance construction projects authorized under 23 U.S.C. 115.

(2) Projects for preliminary studies for the portion of the preliminary engineering and right-of-way (ROW) phase(s) through the selection of a location.

(3) Projects for ROW acquisition in hardship and protective buying situations through the selection of a particular location. This includes ROW acquisitions within a potential highway corridor under consideration where necessary to preserve the corridor for future highway purposes. Authorization of work under this paragraph shall be in accordance with the provisions of 23 CFR part 712.

(4) In special cases where the Federal Highway Administrator determines it to be in the best interest of the Federal-aid highway program.

(d) The authorization to proceed with a project under 23 CFR 630.106(c)(1) through (c)(4) shall contain the following statement: "Authorization to proceed shall not constitute any commitment of Federal funds, nor shall it be construed as creating in any manner any obligation on the part of the Federal government to provide Federal funds for that portion of the undertaking not fully funded herein."

(e) When a project has received an authorization under 23 CFR 630.106(c)(2) and (c)(3), subsequent authorizations beyond the location stage shall not be given until appropriate available funds have been obligated to cover eligible costs of the work covered by the previous authorization.

(f)(1) The Federal-aid share of eligible project costs shall be established at the time of project authorization in one of the following manners:

(i) Pro rata, with the authorization stating the Federal share as a specified percentage, or

(ii) Lump sum, with the authorization stating that Federal funds are limited to a specified dollar amount not to exceed the legal pro rata.

(2) The pro-rata or lump sum share may be adjusted before or shortly after contract award to reflect any substantive change in the bids received as compared to the SHA's estimated cost of the project at the time of FHWA authorization, provided that Federal funds are available.

(3) Federal participation is limited to the agreed Federal share of eligible costs incurred by the State, not to exceed the maximum permitted by enabling legislation.

(g) The State may contribute more than the normal non-Federal share of title 23, U.S.C., projects. In general, financing proposals that result in only minimal amounts of Federal funds in projects should be avoided unless they are based on sound project management decisions.

[FR Doc. 96–17232 Filed 7–5–96; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 901

[Docket No. FR–3447–F–02]

RIN 2577–AA89

Office of the Assistant Secretary for Public and Indian Housing; Public Housing Management Assessment Program—Conforming Change

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule removes the adjustment for the heating degree day (HDD) factor from Indicator #4, Energy Consumption, of the Public Housing Management Assessment Program (PHMAP) at 24 CFR part 901. The effect of removing this adjustment is to conform the indicator to current HUD practice, which no longer makes use of the HDD factor.

EFFECTIVE DATE: August 7, 1996.

FOR FURTHER INFORMATION CONTACT: MaryAnn Russ, Deputy Assistant Secretary for Public and Assisted Housing Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 708–1380. A telecommunications device for hearing or speech impaired persons (TTY) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: On October 13, 1994 (59 FR 51852), a final rule was published in the **Federal Register** that eliminated the application of the HDD factor for utility consumption. That rule will first affect PHAs with fiscal year ending December 31, 1995. The PHMAP scores for these PHAs are computed as of June 30, 1996. This rule makes a conforming change to eliminate the HDD factor as an adjustment in Indicator #4, Energy Consumption.

The Department has published a proposed rule (61 FR 20358, May 6, 1996) that would revise all of the PHMAP, including the current Indicator #4. However, because a comprehensive PHMAP final rule will not be published in time to correct Indicator #4 for the June 1996 PHMAP computation, HUD is issuing this final rule to remove the HDD factor. This action will avoid confusion and permit the timely computation of PHMAP scores.

Other Matters

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1) The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary. This rule eliminates an adjustment factor that can no longer be used because of other regulatory changes.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The FONSI made in the development of the proposed rule published on May 6, 1996 (61 FR 20358) remains applicable to this final rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

VOL
61
ISS
1
3
1
JL
8
1996
UMI

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule eliminates a single adjustment factor for PHAs that has been rendered inapplicable because of other regulatory changes and HUD does not anticipate a significant economic impact on a substantial number of small entities resulting from this elimination.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule eliminates a single adjustment factor that has become obsolete. The rule does not create any new significant requirements of its own. As a result, the rule is not subject to review under the Order.

Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule only involves the removal of a single, obsolete adjustment factor for management assessment of PHAs.

List of Subjects in 24 CFR Part 901

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

Accordingly, part 901 of title 24 of the Code of Federal Regulations is amended as follows:

PART 901—PUBLIC HOUSING MANAGEMENT ASSESSMENT PROGRAM

1. The authority citation for part 901 continues to read as follows:

Authority: 42 U.S.C. 1437d(j) and 3535(d).

2. In § 901.10, paragraph (b)(4) is revised to read as follows:

§ 901.10 Indicators.

* * * * *

(b) * * *

(4) *Energy Consumption.* The annual energy consumption. This indicator has a weight of x1.

(i) Grade A: Annual energy consumption, as compared to the average of the three years' rolling base consumption, has not increased.

(ii) Grade B: Annual energy consumption, as compared to the average of the three years' rolling base consumption, has not increased by more than 3%.

(iii) Grade C: Annual energy consumption, as compared to the average of the three years' rolling base consumption, has increased by greater than 3% and less than or equal to 5%.

(iv) Grade D: Annual energy consumption, as compared to the average of the three years' rolling base consumption, has increased by greater than 5% and less than or equal to 7%.

(v) Grade E: Annual energy consumption, as compared to the average of the three years' rolling base consumption, has increased by greater than 7% and less than or equal to 9%.

(vi) Grade F: Annual energy consumption, as compared to the average of the three years' rolling base consumption, has increased by more than 9%.

* * * * *

Dated: June 27, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–17257 Filed 7–5–96; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 211 and 212

RIN 1076–AA82

Leasing of Tribal Lands for Mineral Development and Leasing of Allotted Lands for Mineral Development

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) of the Department of the Interior (Department) is promulgating regulations revising and updating regulations in 25 CFR Parts 211 and 212 that govern mineral leasing on tribal and allotted Indian lands respectively. The intent of these regulations is to ensure that Indian mineral owners, both tribes and individual owners, desiring to have their resources developed are assured that they will be developed in a manner that maximizes their best economic interests and minimizes any adverse environmental or cultural impact resulting from such development. Further, these regulations recognize Federal government reorganization, enacted legislation, and prevailing administrative practice in the 58 years since these regulations were first promulgated.

EFFECTIVE DATE: August 7, 1996.

FOR FURTHER INFORMATION CONTACT: Richard N. Wilson (303) 231–5070 or Pete C. Aguilar (303) 231–5070.

SUPPLEMENTARY INFORMATION: These final rules are published in the exercise of the authority delegated by the Secretary of the Interior (Secretary) to the Assistant Secretary for Indian Affairs by 209 DM 8. The principal authors of these rules are Richard N. Wilson and Pete C. Aguilar, both in the Division of Energy and Mineral Resources, Golden, Colorado.

This final rulemaking revises and updates the mineral leasing of tribally-owned minerals governed by the Act of May 11, 1938 (25 U.S.C. 396a), and the mineral leasing of allotted lands governed by the Act of March 3, 1909, as amended, (25 U.S.C. 396). The 1938 Act permits Indian tribes to elect whether they wish to offer their mineral resources for lease by competitive bidding, or enter into negotiations with prospective lessees if bids are not satisfactory. The Act of 1909 permits individual Indian mineral owners to offer their mineral resources for lease by competitive bidding under the aegis of the Secretary.

This is the first comprehensive revision of general BIA regulations governing mineral leasing of Indian lands since 1938. In the intervening period Congress has enacted many laws applicable to Indian mineral leases, including the National Environmental Policy Act of 1969 and the Federal Oil and Gas Royalty Management Act of 1982. There have also been major changes in Federal Indian policy, as reflected in the Indian Self-Determination Act of 1975 and recent amendments thereto. This revision is the product of many years of consultation with Indian tribal leaders. It is intended to update, streamline and clarify the procedures for Indian mineral leasing and administration, consistent with the Federal government's role as trustee for these mineral resources and with the modern Federal policy of self-determination. Indeed, they largely reflect current BIA practice and procedure, and are intended in part to eliminate the confusion often fostered by the existing, outmoded regulations. Although these revised regulations include new requirements imposed by modern statutes and intervening judicial interpretations of the BIA's legal responsibilities, they are no lengthier than the existing regulations, most of which have been in place for 58 years.

Pursuant to section 8 of the Indian Mineral Development Act (IMDA) of 1982, the BIA published a notice of proposed rulemaking in the **Federal Register** on July 12, 1983 (48 FR 31978) to revise and reorganize the regulations governing solid mineral, oil and gas, and geothermal leasing adopted pursuant to the Acts of 1909 and 1938, last revised in their entirety on December 24, 1957 (22 FR 10588); as well as to promulgate regulations implementing the IMDA. On August 24, 1987, the BIA published final regulations (52 FR 31916) that were scheduled to become effective on October 24, 1987. Then, in response to concerns expressed by the public, the regulations were amended and republished as proposed on October 21, 1987 (52 FR 39332), and the public was notified that the regulations published on August 24, 1987 would not become effective.

Public responses to these publications contained compelling arguments for restructuring the format of the proposed regulations. Several commenters stated that the October 21, 1987 proposed regulations were confusing and ambiguous. The format of the proposed regulations, implementing the Acts of March 3, 1909 and May 11, 1938, and the IMDA; combined the regulations into two separate parts: (1) Part 211, contracts for prospecting and mining on Indian lands (except oil and gas and geothermal) and (2) Part 225, oil and gas and geothermal contracts. The most common major concern was whether provisions of the IMDA would supplant lease and regulatory conditions contained in lease contracts entered into under the authority of the 1909 and 1938 Acts. The regulatory format created confusion about contract approval procedures for leasing tribal versus allotted lands. In addition, the format created confusion between regulatory requirements for solid mineral versus fluid mineral contracts. The uncertainty expressed by Indian interests and industry on numerous issues convinced the Department that the regulations needed to be entirely reformatted and revised.

The proposed regulations were then organized under a system that would be more familiar to both Indian mineral owners and industry. The proposed regulations were organized in three parts: (1) 25 CFR Part 211 provided the procedures for obtaining and operating standard mineral leases, for both solid and fluid minerals, on tribal lands under the Act of May 11, 1938, as amended; (2) 25 CFR Part 212 provided the procedures for obtaining and operating standard mineral leases, for both solid and fluid minerals, on allotted lands under the Act of March 3, 1909, as amended; and (3) 25 CFR Part 225 provided a new and separate part governing minerals agreements for development of Indian minerals under the IMDA.

Along with the reformatting, many changes were made to the individual parts of the regulation. Those changes reflected the Department's efforts to be responsive to the comments received in 1987, and to include the additional business and administrative experience that had been gained on several issues during the intervening years.

In order to provide Indian mineral owners and Indian-mineral operators full opportunity to review and comment on the reformatted and rewritten regulations, the Department determined that those regulations should be published as proposed rather than as final rules, and that the public should be given 90 days to review the regulations and provide written comments. The proposed rulemaking was published in the **Federal Register** (56 FR 58734) on November 21, 1991. The closing date for submission of review comments on the proposed rulemaking was February 19, 1992.

Comments received from Indian mineral owners, industry, and the public were directed mostly to 25 CFR Parts 211 and 212. Tribes were especially concerned that the proposed regulations did not adequately recognize tribal rules and regulations and did not provide for adequate notification and communication with tribes prior to implementation of Departmental decision and authority with respect to mineral leasing and mineral management activities. Industry expressed concern about acreage limitations in the leasing of solid minerals and oil and gas, the role of the regulatory structure of the Department and its effects on the reclamation of Indian lands mined for coal, and were still concerned about the possible effects of the proposed rules on existing mineral leases on Indian lands.

Because there were: (1) regulations formerly in place governing the mineral leasing of Indian lands (25 CFR Parts 211 and 212 as well as the regulations of other Federal agencies); (2) no regulations governing the disposition of mineral resources pursuant to the IMDA; and (3) because the IMDA is and has been utilized by tribes to participate in minerals agreements, since 1982, without benefit of formal regulations designed specifically to implement the IMDA; the Department published separately (25 CFR Part 225, 59 FR 14960, March 30, 1994) as final rulemaking the regulations implementing the IMDA. In response to the wishes and numerous comments of Indian tribes and the public and to ensure that Indian mineral owners and lessees and the general public had adequate and full opportunity for review and comment, the Department determined that the regulations revising and updating 25 CFR Parts 211 and 212 should be published as final rulemaking only after an additional opportunity for review and comment had been provided.

Accordingly, the public comment period was reopened, public meetings scheduled, and additional opportunity provided for concerned and involved parties to further discuss and provide comments, prior to final rulemaking, on 25 CFR Parts 211 and 212 published on November 21, 1991. The comment period was reopened for 60 days by **Federal Register** notice (57 FR 40298) on September 2, 1992. Public hearings were held at Denver, Colorado on September 25, 1992 and at Albuquerque, New Mexico on September 28, 1992 to receive public comments on 25 CFR Parts 211 and 212 as proposed and published on November 21, 1991. The closing date for submission of comments on proposed rulemaking was November 2, 1992.

In reviewing all of the issues raised in the 1987, 1991 and 1992 comments and in redrafting the regulations, the goal of the BIA is to ensure that the Department is able to fulfill its trust responsibility by providing adequate provisions to ensure the protection of the trust resources and at the same time benefit the Indian mineral owners by removing unnecessary regulatory barriers and complications that could make their minerals less attractive to industry and thus frustrate development. In addition, consistent with the policy on self-determination, the Department has attempted to provide the tribes as much freedom as possible to make their own determination on issues affecting the development of their minerals.

The regulations are rewritten and restructured in response to the comments received during the comment periods of 1991 and 1992. Because of previous extensive reformatting and restructuring in response to comments received in 1987 (56 FR 58735), as well as to comments received in 1991 and

VOL
61
ISS
131
1996
JUL
8
UMI

1992, the Department is of the opinion that a detailed review of comments received during a time interval of more than five years would be more confusing than helpful. Accordingly, the Department decided to provide in the preamble a listing by section of the salient changes made in the proposed regulations.

I. Changes Made to Proposed Rules

Set forth in the following list of changes are most of the clarifying changes, but not each and every minor change, made to the regulations since they were last published as proposed in the **Federal Register** on November 21, 1991. The proposed rules are modified: (1) in response to comments received; (2) to reflect the fact that 25 CFR Parts 211 and 212 now stand alone after separation and subsequent publication of 25 CFR Part 225 (59 FR 14960) as a final rule; and (3) in recognition of prevailing and customary business and administrative practices developed in the last 58 years (since regulations were first promulgated in 1938) under the Acts of 1909 and 1938. The salient modifications to the proposed rules are here summarized by section. Many of the changes and modifications made in 25 CFR Part 212 are the same as those made in 25 CFR Part 211 or the sections are included from 25 CFR Part 211 by reference. The changes and modifications in sections so referenced are the same in both parts. These changes and modifications as well as changes and modifications in common in the text of both parts of regulation are set forth only in the section summaries of Part 211 below, but are easily found because the numbering and designation of sections in Part 212 parallel those of Part 211. Where significant differences exist the sections of Part 212 are discussed separately (below). The section headings refer to this final rule.

Section 211.1. Purpose and Scope

Several changes are made to this section to more clearly state the general guidance of this section and to assure the Alaska native corporations that 25 CFR Parts 211 and 212 are applicable only to Indian mineral interests held in trust by the United States. In addition, a change is made to clarify that 25 CFR Parts 211 and 212 do not affect certain key provisions of existing mineral leases and permits.

Section 211.3. Definitions

The definitions section of Part 211 is modified somewhat, partly in response to comments, because permits are now specifically recognized in regulation, and for other reasons. The necessary changes made are:

Applicant is an addition to clarify that no one is a lessee or permittee does not exist until after the issuance of a lease or permit;

Bureau is deleted from definitions because this word is no longer used specifically without qualification in the regulations;

Cooperative Agreement is added because the term is used in many places in the discussion of agreements that allocate costs and benefits among the operator(s) and the mineral owner(s).

Director's representative is added to bring the Office of Surface Mining Reclamation and Enforcement representative formally into Part 211;

In the best interest of the Indian mineral owner is modified to clarify that the Secretary shall consider any relevant factor in making a best interest determination;

Indian Surface Owner is defined in both Part 211 and Part 212 in response to comments and because this phrase is brought into Part 212 by reference to the appropriate sections of Part 211.

Minerals is modified to better define the scope and description of minerals that may be included in a mineral lease or permit on Indian lands;

Permit is added to recognize that permits, as well as leases, may be issued in the course of exploration and development of mineral resources on Indian lands;

Permittee is added to recognize one who holds a permit as compared to one who holds a lease on Indian land;

Tar sand is deleted, but tar sand is now defined as a mineral and included as a result of the modification of the definition of "minerals."

Section 211.4. Authority and Responsibility of the Bureau of Land Management (BLM)

References are added to cite the BLM regulations concerning onshore oil and gas and geothermal unitization and communitization.

Section 211.6. Authority and Responsibility of the Minerals Management Service (MMS)

This section is expanded to clarify that the Secretary may consider alternative provisions in a lease or permit with respect to the requirements found in 30 CFR Chapter II, Subchapters A and C, if they are reasonable and adequately address the royalty functions governed by MMS regulations.

Section 211.7. Environmental Studies

A change is made in this section to clarify that although compliance with all environmental, archeological and historic preservation statutes is required, the exhaustive, site-specific analyses and surveys demanded when operations begin at a specific site are not invariably required prior to approval of a lease or permit. Rather, the degree and timing of environmental compliance activity demanded at a specific site or area is dependent upon the findings of the environmental analysis or environmental assessment.

Section 211.9. Existing Permits and Leases for Minerals Issued Pursuant to 43 CFR and Acquired for Indian Tribes

This section is modified to clarify that permits and leases issued under 43 CFR on certain Federal lands which later became Indian lands, shall be administered in accordance with the regulations set forth in 30 CFR and 43 CFR, as applicable. This section also provides guidance in the making of payments and the submittal of reports for mineral permits and leases.

Section 211.20. Leasing Procedures

Changes are made in this section to emphasize that the Secretary undertakes mineral leasing on Indian lands at the request of, and in consultation with, the Indian mineral owner. Except for oil and gas, and with the approval of the Secretary, the Indian mineral owner and/or the Secretary may engage in private negotiations in pursuit of mineral leasing. After oil and gas lands have been considered for lease by competitive bid, the oil and gas lands may be leased by private negotiation between the Indian mineral owner and the mineral industry, subject to approval of the Secretary.

Section 211.24. Bonds

Changes in this section emphasize that bonds are payable to the Secretary or the Secretary's designee and provide minimum (nationwide and/or statewide bonds) requirements for the bonding of lessees and permittees. Current financial and business practices are now recognized in the regulations by providing for a variety of financial instruments to accompany a personal bond so that a wide variety of assets can be used to satisfy the bonding requirements.

Section 211.25. Acreage Limitation

As a result of comments, Section 211.25 is rewritten to more nearly reflect current administrative practice. In the previous proposed rulemaking, coal leases were restricted to 640 acres (56 FR 58740). In the final rule the limit is raised to 2,560 acres and may, with the consent of the Indian mineral owner, be approved in larger acreage. This is similar to the existing regulation. For other minerals each lease may not exceed 640 acres, or the nearest aliquot portion thereof, although multiple leases of 640 acres each may be obtained by lessees. Indian mineral owners and applicants who find the acreage limitations in § 211.25 unduly restrictive may avail themselves of procedures under the IMDA (25 CFR Part 225).

Section 211.27. Duration of Leases

Rewording in this section clarifies the conditions under which a lease may be extended beyond its primary term of lease duration by drilling (oil and gas and geothermal leases) or actual production (solid minerals leases). A provision is added, in the interest of diligent development of oil and gas and geothermal leases, that provides a lease cannot be extended more than 120 days beyond its primary term by drilling activity in the absence of production or an approval of a cooperative agreement.

Section 211.28. Unitization and Communitization Agreements, and Well Spacing

Additions to this section include (1) the requirement that the Secretary consult with the Indian mineral owner prior to making a determination concerning a cooperative agreement or a well-spacing plan and (2) a clarification at § 211.28(e) that requests for approval of cooperative agreements, which must be appropriately filed ninety (90) days prior to the expiration date of the first Indian lease to be included in the proposed agreement, apply to all mineral commodities amenable to approval of a cooperative agreement.

Section 211.29. Exemption of Leases and Permits Made by Organized Tribes

At the suggestion of tribal commenters, the regulation currently found in 25 CFR § 211.29, acknowledging that tribal laws may supersede these regulations, has been retained in this final rule. However, for clarification purposes, a proviso has been added, stating that tribal law may not supersede the requirements of Federal statutes governing Indian mineral leasing, for example, the requirement in 25 U.S.C. § 396a that a tribal lease must be approved by the Secretary of the Interior.

Section 211.40. Manner of Payments

The change to this section clarifies the manner of payments and specifically identifies the Secretary's designees to receive payments prior to the establishment of production.

Section 211.41. Rentals and Production Royalty on Oil and Gas Leases

The change to this section: (1) raises the minimum annual rental for Indian land to $2.00 per acre in keeping with current practices and rentals for mineral leases on Federal land; (2) clarifies at § 211.41(c) that the Secretary may consider alternative lease or permit provisions to the requirements of 30 CFR Chapter II, Subchapters A and C, if the alternatives are reasonable and adequately address the royalty functions governed by regulations of the Minerals Management Service; and (3) restores the language in regulations formerly in place at § 211.13(b) thus removing the requirement in the proposed regulations (56 FR 58734) that lessor use of gas in excess of lessee's requirements must be provided for in lease provisions.

Section 211.42. Annual Rentals and Expenditures for Development on Leases Other Than Oil and Gas

The changes to this section increase the minimum annual development expenditure to $20.00 per acre and increase the minimum rental to $2.00 per acre in keeping with current rates and rentals for mineral leases on Federal land and to reflect the effects of inflation over the years.

Section 211.43. Royalty Rates for Minerals Other Than Oil and Gas

Minor changes are made to clarify that the royalty rates specified are only minimums, and that higher rates are allowed without any special approvals.

Section 211.53. Assignments, Overriding Royalties, and Operating Agreements

Changes are made in this section to clarify that: (1) the Indian mineral owner must consent to assignment or transfer of approved leases or any interest therein if such approval of the Indian mineral owner is required in the lease; (2) even if such consent is not required the Secretary shall notify the Indian mineral owner of a proposed assignment; (3) agreements creating overriding royalties or payments out of production or agreements designating operators, although not requiring the approval of the Secretary, are required to be filed with the superintendent and do not relieve the lessee from obligations imposed by the MMS for reporting, accounting, and auditing; and (4) in response to comments, the proposed restrictions concerning assignment of partial interests and assignment of stratigraphic intervals are removed from the regulations.

Section 211.54. Lease or Permit Cancellation; Bureau of Indian Affairs Notice of Noncompliance

Changes to this section include: (1) reorganization of the section in the interests of clarity of procedure in the serving of notices of noncompliance, orders of cessation, notices of cancellation, and orders of cancellation; (2) allowing a permittee or lessee thirty (30) days, rather than twenty (20) days, in which to respond to notices; and (3) clarification, by reorganization and addition of paragraphs, of BIA procedures to be followed in the event of noncompliance and necessary enforcement associated with the cancellation process which includes the option of BIA to issue a notice of non-compliance rather than to immediately start cancellation proceedings.

Section 211.55. Penalties

This section is rewritten with minor changes, including a change in section title, to clarify procedures in the event penalties are imposed on a permittee or lessee. A change is made to formally recognize the authority of the director's representative of the Office of Surface Mining Reclamation and Enforcement to impose penalties and paragraph (f) is rewritten to guard against the imposition of multiple penalties by different Federal agencies for the same violation. A penalties section in the Bureau of Indian Affairs minerals regulations continues to be necessary because the only other remedies available to the Secretary for noncompliance with permit requirements or breach of the lease are cessation of operations or cancellation of the lease, either of which may be seen as extreme measures and may cause harm to the interests of the Indian mineral owner. Also, there are no penalty provisions under any other Federal agency's regulations to provide for enforcement of provisions of a permit or lease which includes solid minerals or other mineral commodities not covered by the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) or the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The new rule also provides more detail on the due process and appeal procedures available to a lessee or operator subject to a penalty assessment, than is found in the existing rule in 25 CFR § 211.22.

Section 211.56. Geological and Geophysical Permits

Change is made in § 211.56(a)(3) to provide for the release of data after six (6) years after receipt by the Federal

VOL 61 ISS 131 JL 8 1996 UMI

Government, if no time limit for the release of data is prescribed in the permit; and to provide that data release is subject to the consent of the Indian mineral owner.

Section 212.20. Leasing Procedures

Changes made in this section emphasize that the Secretary undertakes mineral leasing on Indian lands at the request of the Indian mineral owner and that the lease or permit shall not be approved without the consent of the Indian mineral owner. After the lands have been considered for lease by competitive bid, the Secretary may engage in negotiations, at the request of, and on behalf of the Indian mineral owner, in pursuit of mineral leasing.

Section 212.21. Execution of Leases

Minor changes are made in the wording to clarify under what circumstances the Secretary may execute leases on behalf of the Indian mineral owners. A change has been made to subsection (b), in part to reflect the existence of modern tribal courts, by adding a proviso that the Secretary may exercise this authority only if there is no parent, guardian, conservator, or other person who has lawful authority to execute a lease on behalf of the minor or person with mental incapacity.

Section 212.28. Unitization and Communitization Agreements, and Well Spacing

This section, included in Part 212 by reference to Part 211 in proposed rules, is now specifically included in Part 212 in final rules because of necessary minor differences in the unitization and communitization of allotted versus unallotted lands. Clarification is made at § 212.28(e) that requests for approval of a cooperative agreement, that must be appropriately filed ninety (90) days prior to the expiration date of the first Indian lease to be included in the proposed agreement, apply to all mineral commodities amenable to approval of a cooperative agreement.

Section 212.33. Terms Applying After Relinquishment

This section is rewritten with the provision that the lessee may, after lease relinquishment by the Secretary and the revesting of the lessor's title, withhold payment of rental and royalty until all parties agree upon and designate a trustee in writing and in a recordable instrument to receive all payments due thereunder on behalf of said parties and their respective successors in title. The provision that there must be four or more parties entitled to royalties and rentals before withholding is permitted is removed.

Section 212.41. Rentals and Production Royalty on Oil and Gas Leases

Changes in this section (1) raise the minimum annual rental for Indian land to $2.00 per acre in keeping with current practices and rentals for mineral leases on Federal land and (2) clarify at § 212.41(c) that if valuation provisions in the lease are inconsistent with the regulations in 30 CFR Chapter II, Subchapters A and C, the lease provisions shall govern.

Section 212.56. Geological and Geophysical Permits

This section is reorganized in the interests of clarity of presentation and a change is made to proposed § 212.56(a)(3) to provide for the release of data after six (6) years after receipt by the Federal Government, if no time limit for the release of data is prescribed in the permit, and to provide that data release is subject to the discretion of the Secretary.

II. Comments Received on Proposed Rules

The notice of Proposed Rulemaking was published in the **Federal Register** on November 21, 1991 (56 FR 58734). The proposed rules provided for a 90-day comment period ending on February 19, 1992. The comment period was subsequently reopened (57 FR 40298) on September 2, 1992. Public hearings were held at Denver, Colorado on September 25, 1992 and at Albuquerque, New Mexico on September 28, 1992. The closing date for the submission of comments on proposed rulemaking and the reopened comment period was November 2, 1992. During the two comment periods, 27 commenters submitted written comments and/or oral statements and comments at public hearings. All comments were accepted for consideration in preparation of the final rules and are addressed in this portion of the preamble (Section II). All substantive comments applicable to sections of 25 CFR Parts 211 and 212 were considered with respect to both Parts whether or not the comments were directed to Part 212 specifically.

(1) One commenter states that the title of Part 211 creates some unnecessary confusion by referring to "Leasing" of tribal lands; that Part 225 also applies to certain "leases" of tribal lands, when negotiated under the IMDA; and that the title to Part 211 would be more accurate if it referred to "Competitive Bid Leasing" rather than just "Leasing."

Response: References to leasing are mostly removed from 25 CFR Part 225 (published separately in final rulemaking, 59 FR 14960) and efforts made to refer, where at all possible, to the disposition of mineral resources under Part 225 as disposition by minerals agreement. Also, at the request of the Indian mineral owner or in the event of waiver, rejection, or failure of the bidding process, negotiated leases may be issued under Parts 211 and 212. Thus, the present titling of Part 211 is retained without change.

(2) Several commenters stated that sufficient time for review of the proposed regulations was not initially provided and ask for extended review time as well as public hearings at locations convenient to the Indian tribes; and stated that the proposed rules should be subject to a negotiated rule-making process among interested tribes, industry, and the Bureau of Indian Affairs.

Response: As set forth in the introductory remarks (above), the Secretary reopened the period for comment for an additional 60 days and public hearings were held at Denver, Colorado and Albuquerque, New Mexico. Thus, the regulations have been subject to written oral comments twice and all interested parties have been afforded an opportunity to influence the content. Additionally, the regulations are not subject to negotiated rulemaking processes because enacted and codified legislation is not subject to subsequent unilateral negotiation to the exclusion of any concerned party.

(3) One commenter indicates that the purpose of the proposed rulemaking is to make regulations consistent with the regulations governing mineral leasing and development of Federal lands. The commenter states that mineral leasing and development on Indian lands are not sufficiently similar to mineral leasing on Federal lands to justify uniformity.

Response: One of the Department's purposes in the reformatting and changing of proposed rules is to make, *when appropriate*, these regulations consistent with the regulations governing mineral leasing and development of Federal lands (56 FR 58734). Appropriate consistency is desirable because many of the operating and reclamation regulations of other offices and bureaus of the Department of the Interior are also applicable in the day-to-day management of the mineral estate on Tribal and allotted Indian lands subject to mineral leasing and development under 25 CFR 211 and 212. The commenter is correct that in a number of important respects mineral leasing and development on Indian lands differ from such activities on Federal lands; in such instances different treatment is required, and the regulations so provide. To the extent that Indian tribes find the Department's leasing regulations generally unuseful, they may wish to enter into minerals agreements under the IMDA (*see* 25 CFR Part 225).

(4) One commenter states that the rules must provide that fixed dollar amounts (in lease provisions), whether in relation to annual rental, bonds, or other fees be indexed for inflation.

Response: Although many fixed costs and charges in these regulations have been increased to offset the inflationary effects since the rules were last revised, no provision is made for indexing costs and charges to reflect the expected decrease in the purchasing power of money in future years. It is doubtful if an index (standard) or method of calculation acceptable to all parties to Indian mineral leasing can be found. Further, the IMDA provides the means by which indexing for inflation can be done for individual mineral properties and minerals agreements.

(5) One commenter states that the Department attempting to "remove unnecessary regulatory barriers and complications which could make [Indian] minerals less attractive to industry and thus frustrate development" (56 FR 59735) should be principally addressed by tribes because many of the regulatory barriers and complications exist to protect tribes.

Response: Tribes may address how best to protect their interests in minerals agreements under the IMDA (25 CFR Part 225). Also, provision is made at § 211.29 in final rules for supersedence of Federal regulations by the provisions of any properly issued tribal constitution, bylaw, or charter.

(6) One commenter states that the proposed regulations should be reproposed with coal mining leases and operations addressed by separate regulations specific to coal operations because, as proposed, the regulations would impose an unnecessary and duplicate regulatory burden on coal operations on Indian lands; and further states that coal-specific regulations must avoid creating overlapping and duplicative regulatory requirements and that the mining of minerals other than coal also warrants separate treatment.

Response: The authorization for the leasing of allotted and unallotted Indian lands for mining (including oil and gas) is set forth at 25 U.S.C. § 396 and §§ 396a–396g, in which no provision is made for the promulgation of separate regulations for individual mineral commodities. Although not prohibited, the Secretary is of the opinion that the devising of regulations for the administration of individual mineral commodities occurring in each individual land category would create a costly and unmanageable administrative situation for those engaged in the management of minerals operations and reclamation of disturbed lands. Sections 211.7, 211.24, 211.47, 211.48, 211.51, 211.54, and 211.58 have all been changed to remove the concerns of regulatory overlap and duplication.

(7) Several Alaska Native Regional Corporations ask that language be made in the rules to clarify that the Part 211 Tribal leasing regulations do not apply to lands conveyed pursuant to the Alaska Native Claims Settlement Act of 1971.

Response: Language is added in 25 CFR 211.1(a) to clarify that the rules apply only to lands which the United States holds in trust for the benefit of an Indian tribe, or which are subject to a restriction against alienation imposed by the United States.

(8) Several tribal commenters are in favor of a broader retroactive effect for the proposed regulations. One commenter stated that only the royalty rate should not be subject to retroactive change by the regulations. One industry commenter stated that the regulations should not have any retroactive effect unless agreed to by all parties.

Response: The current regulations in § 211.28 provide for an effective date and state that the current regulations supersede all former regulations. The current regulations then include a proviso, "That no regulations made after the approval of any lease shall operate to affect the term of the lease, rate of royalty, rental or acreage unless agreed to by both parties to the lease." This provision has been carried essentially unchanged. No attempt has been made to change this provision that has been in effect for many years and has not led to any problems in interpretation or application. Therefore, no changes were made pursuant to the comments.

(9) Several commenters state that the placement of the provisions of § 211.29, from regulations formerly in place, at proposed § 211.1(c) does not: (1) adequately recognize the regulatory authority of tribes; (2) specifically provide that the proposed regulations may be superseded by the provisions of any tribal constitution, bylaw, or ordinance; nor (3) provide the proper platform for the adoption of tribal bylaws, ordinances, and other measures governing assignments, taxation, and other matters of regulation of the Indian mineral estate.

Response: In response to this and other comments the regulation in 25 CFR § 211.29 has been reinstated in the same place, with minor revisions for clarification purposes. In addition to the tribal regulatory authority recognized in the new Section 211.1(d) (211.1(c) in the proposed rules), Section 211.29 recognizes that tribes may enact laws which supersede these regulations, but not Federal statutes.

(10) One commenter states that many tribes have adopted their own mineral leasing act, which should be noted in the new regulations.

Response: See the response to comment (9).

(11) One commenter is concerned that each part of proposed 25 CFR Parts 211, 212, and 225 have separate sets of definitions and states that only one set of definitions should be used.

Response: The commenter is correct in stating that uniformity of definition is desirable. However, with the decision to separate 25 CFR Parts 211 and 212 from Part 225 (59 FR 14960), more than one set of definitions is required for publication in the **Federal Register**. Also, the three parts of regulation respond to at least three different sets of empowering legislation over about an 80-year, time span such that differences of definition are unavoidable. Wherever possible terms in the three sets of regulations have the same meaning.

(12) One commenter points out that "Bureau" is specified in definition, but not used consistently in the proposed regulations and suggests usage consistent with definition.

Response: We agree. The word "Bureau" is removed from definitions and the regulations in favor of usage of the "Secretary" or the title(s) of the Secretary's designee.

(13) One commenter states that "coal" ought to be defined because it is a referenced mineral in the proposed regulations.

Response: The definition of "minerals" includes coal specifically in definition and also by virtue of including metalliferous, non-metalliferous, energy, and non-energy minerals. A definition of "coal" is not added in final rulemaking.

(14) One commenter suggests that coal be specifically included in the definition of "solid minerals."

Response: Coal is specifically included in the definition of "minerals", and by virtue of being a solid is included in the definition of "solid minerals." The definition is unchanged in final rulemaking.

(15) Several commenters are concerned that the definition of "gas": (1) may or may not include coal-bed

VOL
61
ISS
131
JL
8
1996
UMI

methane and suggest that methane gas and other "non-traditional hydrocarbons" be exempted from definitions of minerals acquired under a traditional mineral lease; and (2) should exclude those substances found in other minerals as a constituent part of other minerals.

Response: The issues raised by commenters are currently being litigated. The definition of "gas" in these regulations is consistent with the position that the Department of the Interior has taken in litigation. If necessary, distinction among gases of various origin or association may be made by the use of suitable modifiers in lease provisions (e.g., coal-bed methane, natural gas, or carbon-dioxide gas) at the time of advertisement of properties for lease and/or subsequent lease negotiation by principals. Further, the IMDA is available to tribes (and allottees if participating in a minerals agreement under the IMDA) to specifically address in minerals agreements these issues on an individual basis.

(16) One commenter states that the definition of a "gas" should make clear the meaning of "ordinary temperatures and pressure conditions" because of perceived differences in ordinary temperature and pressure in subsurface contrasted with ordinary temperature and pressure at land surface.

Response: Ordinary temperature and pressure generally means near room temperature and about one atmosphere pressure as commonly used in the calculation and handling of gases and in specified standards for the determination of quantities of materials. The specification of temperature and pressure standards for produced gas(es) are found in the operating regulations of the BLM and the production and valuation regulations of MMS. The specification of a standard, if required, should appear in lease provisions or be specified at the time of lease negotiation.

(17) One commenter suggests that the definition in proposed rules of "in the best interest of the Indian mineral owner" be dropped because an adequate and concise definition of this phrase is difficult to compose, although the concept is generally understood.

Response: The final definition includes a partial list of factors to be considered by the Secretary and is consistent with Kenai Oil and Gas, Inc. v. Department of Interior, 671, F.2d 383.

(18) One commenter suggests that the proposed definition of "in the best interest of the Indian mineral owner" be changed to require the Secretary to consider any relevant factor in the best interest determination.

Response: We agree. The definition is changed in final rulemaking.

(19) One commenter is concerned that the definition of "Indian lands" was included in proposed rulemaking with no explanation in preamble and is different than the definition used by OSM.

Response: The proposed rules state (56 FR 58735) that the definitions section of the regulations is expanded significantly to eliminate ambiguities and questions concerning the meaning of frequently used terms. The definition of "Indian lands" used by OSM is found in SMCRA, and is applicable only to the provisions of SMCRA. Indeed, that statutory definition has been the subject of varying interpretations and litigation over its meaning. The definition used in these regulations simply recognizes that Indian-owned lands held in trust or subject to Federal restrictions against alienation are within the purview of the Indian mineral leasing statutes and the Secretary's trust responsibilities.

(20) One commenter suggests that the proposed definition of "Indian lands" specifically exclude Alaska Native Regional Corporations which own land or interest in minerals.

Response: Language is added to 25 CFR 211.1(a) to specify those lands to which 25 CFR Part 211 applies, language which excludes lands or mineral interest owned by Alaska Native Regional Corporations.

(21) One commenter objects to confusing syntax in the proposed definition of "Indian lands" and suggests that such lands be defined (in part) in terms of ownership by group(s) recognized by the United States as eligible for services from the Bureau of Indian Affairs. Another commenter suggests that in use in regulation the words "trust or restricted lands" be changed to "Indian lands."

Response: See the response to comment (19).

(22) One commenter questions the need for including lands owned by any individual Indian in the definition of "Indian lands" because Part 211 deals exclusively with leasing of tribal lands.

Response: Use of the term "Indian lands" in Part 211 is very limited. See Sections 211.9 and 211.22. There the context includes allotted as well as tribal lands.

(23) Several commenters state that "Indian surface owner" needs to be defined in rulemaking.

Response: We agree. The phrase "Indian surface owner" is defined in both Part 211 and Part 212 because sections of Part 211 are referenced in Part 212.

(24) One commenter suggests that the definition of "lessee" imposes diligent development and other operating obligations (as well as the obligation of paying royalty and rental) on a designated royalty payor rather than an operator and suggests the definition be deleted whereas another commenter states that the definition should be broadened to include anyone who has been assigned any rights associated with the lease.

Response: The definition of "lessee" in Parts 211 and 212 parallels and supports similar definitions in the operating regulations of both the BLM and the MMS. The MMS definition includes those who have been assigned an obligation to make royalty or other payments as required by the lease. The definition is retained unchanged in final rulemaking.

(25) Several commenters point out that the definition of "lessee" should not include those prior to the time a lease is granted.

Response: We agree. The definition is rewritten to reflect that those who have made application for or who are negotiating for a lease are not lessees.

(26) One commenter states that the common mineral varieties should be excluded from the definition of "minerals" at § 211.3.

Response: The authority in the Act of May 11, 1938, for the leasing of tribal lands for mining purposes has been interpreted broadly since its enactment. Nothing in the Act suggests that common varieties of minerals should not be included.

(27) Two commenters object to the exclusion of materials from the definition of mining based on the type and volume of material considered for extraction and one questions if the extraction of 5,000 cubic yards of gold and silver bearing material is a non-mining venture.

Response: Common varieties of mineral resources extracted in small amounts are excluded from the definition of mining, especially because the purpose of such extraction is often for local and/or tribal use. However, permits for these small operations are still reviewed and approved at the superintendent's office. Gold and silver are not included in the extraction of small amounts of materials because gold and silver are precious metals and not common mineral varieties. The Indian mineral owner still retains the option of disposing of the common mineral varieties in whatever types and quantities specified by a minerals agreement under the provisions of the IMDA, if desired.

(28) One commenter points out that in proposed rulemaking the definitions of "oil" and "gas" are at odds with the definitions used by the Minerals Management Service and suggests that the definitions of the two Federal agencies should be more compatible.

Response: The definitions of the two Federal agencies are unavoidably different because those at 25 CFR § 211.3 are similar to those used by the Bureau of Land Management in the management of mineral leasing and production whereas the Minerals Management Service definitions are more closely tied to measurement and royalty management concerns.

(29) Three commenters suggest that a definition of "in paying quantities" be included in proposed definitions at § 211.3.

Response: The paying quantities determination is made by the Bureau of Land Management after operations commence and production begins. The definition of paying quantities is contained in 43 CFR Part 3160. The definitions of commercial quantities for geothermal resources is in 43 CFR Part 3260 and for coal is in 43 CFR Part 3480. A definition is not needed here, because this responsibility falls to the BLM to determine whether production meets the "pay quantities" criteria. Therefore no definition is included.

(30) One commenter suggests that additional definitions be added to § 211.3 including "primary term" and "maximum term" as used in § 211.27.

Response: The primary term is defined in context when used to describe the duration of a lease. No reference is made to a maximum term of lease duration in final regulation. These definitions are not added in final rulemaking.

(31) One commenter states that the definition of "tar sands" is restrictive because it is limited in definition to production by mining or quarrying.

Response: We agree. The definition is not used in regulation and is removed from § 211.3 (and § 212.3) in final rulemaking.

(32) Two commenters feel that in proposed §§ 211.4, 211.5, and 211.6 the authority and responsibility of tribal governments over operations on reservation lands should be explicitly recognized and one believes that with respect to the authority and responsibilities of the various agencies of the U.S. Government, explicit mention of the Government's trust responsibility to Indians should be included in the regulations.

Response: The authority and responsibility of tribal governments is recognized and in these rules at § 211.1(d), at § 211.29, and discussed above (see comment number 9 and in the summary remarks of this preamble). Insofar as the mention of the Secretary's trust responsibility is concerned all Federal agencies must recognize the trust responsibility of the United States when implementing programs for Indians.

(33) One commenter is especially concerned about § 211.5 and states that the regulations should make it clear that coal mining reclamation requirements and procedures have no application to open-pit, hard-rock operations.

Response: Section 211.5 is changed to specifically cite the Code of Federal Regulations governing coal mining and reclamation requirements and procedures.

(34) One commenter states that the regulations of the MMS recognize that Indian lessees must "dual account" for gas produced from tribal lands and states that the proposed regulations are silent on this methodology which could be viewed as a retreat from the valuation system that greatly enhances tribal income. Another commenter states that these regulations must expressly state that the trust responsibility requires the Secretary to maximize valuation on Indian lands.

Response: Under FOGRMA and the Department of the Interior Manual, the valuation of production for royalty purposes is a function of the MMS. Thus, the requirements and methodology of valuation are properly set forth in appropriate case law and Title 30 of the CFR in Chapter II, Subchapters A and C, of the MMS rules and regulations. Section 211.6 is rewritten to provide that if parties to a lease or permit are able to provide reasonable provisions satisfactorily addressing the functions governed by MMS regulations, the Secretary may approve such alternate provisions.

(35) Several tribal commenters and many industry commenters raise questions concerning the application of environmental, historic preservation and archaeological protection laws to Indian lands. One tribal commenter states that the National Historic Preservation Act does not apply to Indian lands. Another opposes the application of the National Environmental Protection Act (NEPA) to Indian lands. Industry commenters state that compliance with environmental, archaeological and historic preservation survey requirements is an extremely burdensome, expensive, and unnecessary requirement. Several industry commenters recommend that archaeological surveys be performed after approval of a lease, but prior to approval of any surface disturbing operations.

Response: The National Environmental Protection Act and the other historic preservation and archaeological protection statutes cited in this section apply to Indian lands when activities on those lands are subject to approval by the Federal Government. Therefore, the Department has no discretion to determine whether or not to comply with those laws as they affect mineral leasing on Indian lands. It is also clear that the provisions of NEPA must be complied with at the time of lease approval. It is not possible to defer NEPA compliance until the surface disturbance phase of lease development. However, the prior proposed regulations stated that all historic preservation and archaeological surveys would be performed prior to approval of a lease. It has been determined that this statement may impose a greater burden than is actually required by applicable regulations. Therefore § 211.7 is modified to state that "the Secretary shall ensure that all clearances and surveys are performed in compliance with these laws * * *."

(36) One commenter states that the second sentence of § 211.9 should be revised to read that "Existing mineral prospecting permits, exploration and mining leases on these lands issued prior to these properties being placed in trust status or becoming Indian lands pursuant to 43 CFR * * *."

Response: We agree. Section 211.9 is rewritten to clarify that such lands, once taken into trust or becoming Indian lands, are no longer treated as public or Federal lands (recognizing pre-existing rights).

(37) Several commenters state that the leasing procedures of proposed § 211.20 are not clear and suggest that the procedures are in need of clarification.

Response: We agree. Section 211.20 is rewritten and recast to clarify procedures and to emphasize the involvement of the Indian mineral owner in the leasing process.

(38) One commenter states that § 211.20 is unclear as to amendments to existing leases and suggests that amendments to 1938 Act leases be negotiated under the 1982 Act (IMDA).

Response: Neither rules formerly in place nor final rules provide a formal regulatory scheme for amendment to existing leases because the amendments are either at the convenience of the parties to the lease or result from lease provisions to open and renegotiate a lease after a specified event occurs. Regardless of the approach to amendment, the resulting terms must be approved by the Secretary, an action

VOL
61
ISS
1
31
JL
8
1996
UMI

resulting in the issuance of a minerals agreement (25 CFR Part 225), a new lease, or ancillary terms appended to an existing lease; all of which are new leases that must be approved by the Secretary. Provision is made for the amendment of minerals agreements (25 CFR Part 225, 59 FR 14975). Minerals agreements are expected to be the preferred procedure for the amendment of all existing leases and agreements.

(39) One commenter states that potential lessees should be instructed to submit lease applications directly to the Indian mineral owner as well as the superintendent at the time of application.

Response: Submittal of applications to lease to multiple offices is not required in final rules. Rather, the Indian mineral owner shall be promptly notified of the lease application and the leasing alternatives. The course of action to be followed after this notification is then contingent upon the decisions of the Indian mineral owner.

(40) Several tribes comment that the royalty rate and rental as well as bonus should be included as variables in the advertisement of leases for sealed or oral bid, and that the Secretary should not unilaterally set a royalty rate and rental amount in the advertisement.

Response: Comments concerning the need for tribal input are well taken and § 211.20 is modified to require consultation with the Indian mineral owner prior to advertisement. However, the comments requesting that royalty rate and rental be variables in the sealed and oral bid process is not accepted because the procedures can be managed only with great difficulty. Past experience has shown that it is extremely difficult to compare the values of bids that are contingent upon three different variables bid separately. In addition, if an Indian mineral owner desires to receive offers to lease a land parcel or tract, the value of which is determined by the total value of a variety of considerations each of which may be dependent on another, the procedures under the IMDA or, in certain circumstances, negotiation offer flexibility to a Tribe.

(41) One commenter states that there ought to be included in § 211.20 a provision that requires BIA to issue a comprehensive analysis of the potential value of the property being considered for oil and gas development and its potential effect upon reservoir production; otherwise, tribes that do not have independent assessment capabilities will have no way of knowing what the value of properties are before they are submitted for bid.

Response: Mineral inventories and appraisals are conducted by the BLM and BIA, depending upon the resources available. Limited resources make it impossible to appraise every mineral tract prior to leasing. The best readily available measure of mineral worth of an oil and gas tract is likely the fair market value of the tract as revealed by past and present bonus bids for the tract or (if available) nearby similar tracts.

(42) One commenter states that the language of § 211.20(b)(5) indicating the high bidder "may" forfeit the required 25 percent of bonus bid should be changed to "shall" and that there is no standard to establish when the forfeiture occurs.

Response: We agree. In final rules a standard is specified and the forfeiture is made certain by the use of the word "shall" in final rules.

(43) One commenter states that the successful oral bidder should be required to immediately pay 25 percent bonus [bid as] deposit at the time of the auction.

Response: The final rules continue to permit five (5) working days in which the successful oral auction high bidder will be allowed to remit the required 25 percent deposit of the bonus bid. In the event of a spirited auction, the successful high bidder may not have at the place and time of auction the requisite 25 percent of the bonus bid for the deposit.

(44) One commenter states that the required publication of a notice of sale at least thirty (30) days prior to the sale date should be sixty (60) days to give an interested party adequate time to prepare for the sale.

Response: The publication of the advertisement of lease sale thirty (30) days in advance of the sale date is a minimum time interval. The publication of the advertisement of date of lease sale and ancillary information may take place more than thirty (30) days before the sale. This minimum time has for many years proved to be a workable minimum.

(45) Two commenters are of the opinion that the proposed rules allow for competitive bonus bid and negotiated leases at the same time and object to negotiations after the potential lessor has the advantage of evaluating bids received. Further, one commenter states that the results of competitive bidding should be final and the winning bid should be awarded the lease.

Response: As owner of the property to be leased, the Indian mineral owner has wide latitude in the determination of methods of auction and conditions of lease sale. Under the trust responsibility, the Secretary must reserve sufficient latitude to properly discharge that responsibility. Accordingly, there is no provision in final rules for lease sales and lease negotiations to be conducted at the same time for the same land tracts. In the event that the results of a lease sale are not to the liking or not in the best interest of an Indian mineral owner, action must be taken to satisfy the needs and wishes of the potential lessor. Section 211.20 therefore balances concerns of potential lessees and lessors.

(46) One commenter is uncertain why the storage option is granted at 25 CFR § 211.22 and is unsure of what benefit is derived by a lessor when a lessee produces oil and gas, but stores it for future use; and whether or not hydrocarbons not previously produced includes hydrocarbons produced, but stored; and if a lessee may store previously produced minerals indefinitely and thereby hold the lease without payments to the lessor.

Response: The storage option is included at 25 CFR § 211.22 to provide the Indian mineral owner with a mechanism to profitably participate in the demand for surge storage capacity for oil and gas (usually hydrocarbons) by underground storage. Participation is achieved by means of leasing or adjusting existing lease provisions to accommodate produced oil and gas, in existing natural or near natural underground structures (oil and gas traps comprising an oil and gas field) at or near the end of productive life; or those older, produced fields having capacity that can be used to store oil and gas. Payments to Indian mineral owners can be based on metered transfer of oil and gas in and out of the field (structure) that may provide rental in lieu of, or in addition to, royalties deriving from field production. Oil and gas stored may be from the same field or other sources (including pipelines). Usually, provision must be made in royalty, fees, and/or rentals to ensure proper accounting and payment for all oil and gas recovered from storage including quantities in excess of stored amounts and those fluid phases, produced as a result of introduction of stored hydrocarbons (say, residue gas) or other gases, that would not have been produced otherwise. Also, provision must be made in royalty, fees, and/or rentals to pay the Indian mineral owner for the use of the field (trap) for storage purposes. Section 211.22 is unchanged in final rulemaking.

(47) Two commenters representing industry interests recommend the deletion of proposed § 211.23(b) that requires: (1) the filing of a statement showing a corporate applicant's State of incorporation; (2) that the corporation is authorized to hold interests in property in the State in which the lands are operated; and (3) a notarized statement that the corporation has the power to conduct all business and operations as described in the lease.

Response: The requirements are retained because the information required has been found to be useful to the Department, is not burdensome to industry, and is a standard requirement of long standing for all significant transactions with corporations. Therefore no changes were made in final rules.

(48) Several commenters are concerned that the dollar amounts stated in § 211.24 for bond requirements are inadequate and recommend that bonds be required in amounts sufficient to protect the interests of the Indian mineral owner and the United States.

Response: The final rule balances the high cost of bonds against potential damage to the Indian mineral owner and the United States. Section 211.24 is rewritten to permit the use of personal bonds as surety as well as the customary Statewide and Nationwide bonds and § 211.24(e) provides for increasing bond amounts in any particular case at the discretion of the Secretary. The goal in regulation remains that lessees furnish bond sufficient to ensure compliance with all lease provisions and applicable rules and statutes.

(49) One commenter states that § 211.24 should make provision for bonding to include Federal, State, or fee mineral leases, the surface of which is owned by a tribe or individual Indian, for purposes of surface reclamation as proposed in an approved plan of operation.

Response: The rules in 25 CFR Parts 211 and 212 are concerned with the leasing of minerals on Indian lands. Therefore, the requirements for leasing of Federal, State, and fee minerals must be addressed under other authority, and published elsewhere.

(50) One commenter states that proposed paragraphs 211.24(c) and 211.24(c)(3) are inconsistent in naming the payee.

Response: Although § 211.24 is rewritten the language included in these proposed paragraphs is essentially the same; the payee is the Secretary with the stipulation that the letter of credit is payable to the Bureau of Indian Affairs (the Secretary's designee) upon receipt from the Secretary of a notice of attachment stating the basis thereof.

(51) One commenter states that the Indian mineral owner should be allowed to be named as the payee on a bond.

Response: An Indian mineral owner cannot be named as payee on Statewide or Nationwide bonds which affect more than one Indian mineral owner. In final rulemaking the Secretary remains the payee because, in the discharge of the trust responsibility, the bond must be continually and easily available to defray the cost of abandonment, reclamation and/or provide for payment of royalties, other charges, and fees in the event of default.

(52) One commenter states that the proposed § 211.24(d) should be changed to state explicitly that bonding shall be in an amount satisfactory to the Secretary and the Indian mineral owner or the Indian surface owner, in amounts sufficient to ensure compliance with the requirements of the authorized officer and the Indian mineral owner or the Indian surface owner and shall be available, in the Secretary's discretion, with concurrence by the Indian mineral or surface owner, to satisfy any unpaid debt of the lessee or assignee to the lessor or surface owner.

Response: In situations requiring complex and detailed bonding in response to many and varied interests, the prospective lessor should consider using a minerals agreement under the IMDA (25 CFR Part 225) rather than 25 CFR Part 211.

(53) One commenter points out that no definition is provided for the term "assignee" which is used in § 211.24.

Response: The paragraph (a) in § 211.24 is rewritten to clarify the use in context of the word "assignee."

(54) Two commenters recommend that proposed paragraph § 211.24(d) be revised to allow the posting of an individual lease bond is some amount not to exceed $5,000 to encourage independent operators to invest and work on Indian land.

Response: The rule at § 211.24 is rewritten in response to comments to provide in final rulemaking the minimal requirements for the bonding (or equivalent surety) of lessees conducting mineral operations on Indian lands such that the Secretary may adequately and timely fulfill the trust responsibility.

(55) Several commenters object to the single section of land (640 acre), lease-size limitation. It is stated that smaller leases would be less attractive to industry because they would be less economic. Other commenters request that the lease-size limitation be subject to variations on a case-by-case basis to allow for irregularities in land sections.

Response: Except for coal, the lease-size limitations remain the same as in the proposed rules. Coal leases have historically been limited to 2,560 acres with due allowances for exceptions to provide for the dedication of sufficient reserves to specific projects (powerplants) to ensure that ventures will not fail for lack of fuel. Additional language is added to § 211.25 to restore the 2,560-acre limitation (with provision for exception) for coal and to provide that the rule of approximation shall apply in the event irregular land sections are included in the leased land blocks as well as provision for lands not surveyed under the United States Governmental survey. Changes to § 211.25 are also made to emphasize that the acquisition and holding of multiple leases (both adjoining and not adjoining) of 640 acres each are not affected by the acreage limitation. In the past, large tracts of Indian land have been held by production from a small portion of a lease and in response to this concern the Department has for three decades restricted the size of offered leases (especially for oil and gas) not to exceed 640 acres or one section, with provision for irregular sections. In addition, the problems raised by commenters may easily be mitigated in several ways: (1) acquisition of multiple leases because there is no limitation on the number of leases a party may enter into; (2) inclusion of multiple leases in a unitization or communitization agreement to allow mineral development on one lease to hold more than one lease; and (3) a party desiring a larger lease may enter into negotiations with an Indian mineral owner to secure a minerals agreement in accordance with the IMDA, under which there is no provision limiting lease acreage. Finally, acreage limitations will have no retroactive effect, and so will not reduce the acreage of any current lease.

(56) One industry commenter states that the 10-year limitation on the term of any minerals lease is insufficient to permit development into production, especially for a surface coal mining operation. The commenter recommends that the 20-year time period provided in the Mineral Leasing Act of 1920, for Federal lands, be used instead. The commenter further recommends that the regulations should prevent tribes from entering into leases for periods of less than 10 years.

Response: The Indian Mineral Leasing Act of 1938, that governs leasing of tribal lands, provides a statutory 10-year limit (25 U.S.C. § 396a) with exceptions for the primary term of lease duration. This limitation is statutory and may not be waived by the parties to a lease, or altered by the Department by regulations. As an alternative, the IMDA

VOL 61 ISS 131 JUL 8 1996 UMI

does not limit the time period for development and therefore, may be for any time period negotiated by the parties.

(57) One commenter believes that a primary lease term should be determined by the commodity leased, together with a term maximum, say oil and gas leases not to exceed 3 years, solid minerals other than coal not to exceed 5 years, coal not to exceed 10 years, and no lease to exceed a 20-year maximum unless agreed to between the Indian mineral owner and the lessee.

Response: Although permitted by statute, the primary term of lease duration is not specified in final rules as a result of commodity considerations. If the specific mineral commodity is regarded as a critical factor in the determination of lease duration, then this factor may be set forth at the time of advertisement of lease sale, negotiated, or the lease provisions may be determined in minerals agreements, under the IMDA (25 CFR Part 225), by the Indian mineral owner and a prospective lessee.

(58) One tribal commenter points out that some leases impose a maximum ultimate term [of lease duration] of twenty (20) to thirty (30) years. Therefore, the commenter recommends that the regulations include a provision that would defer to specific lease terms on this point.

Response: In any instance where specific lease provisions do not conflict with statutory authorities, or do not prevent the Department from exercising its trust responsibilities, the Indian mineral owners are free to negotiate specific lease provisions of their choosing. In this particular instance the limitation of lease duration by the provisions of lease is entirely appropriate. Therefore, the comment is accepted and a change was made to clarify this point.

(59) One commenter states that commencement clauses (beyond the primary lease term) should not be permitted because such clauses permit oil companies to do nothing until the last day of the primary term, and then begin drilling. Another commenter believes the proposed regulations governing the primary-term commencement clauses works contrary to the actual intent of a primary term and believes § 211.27(b) should be changed. Two commenters recommend the inclusion of the commencement clause at § 211.27 and state that a duration of extension should be included in this section and one states that a continuous drilling clause should be included.

Response: A review of comments indicate that the possibility that this provision would allow lessees to extend leases for an inordinate time period is highly unlikely. Most current leases limit the primary term of lease duration to 3 to 5 years. An extension of this term (duration) while active drilling takes place is an appropriate extension of the lease and accords with standard business practice. However, to ensure that lessees do not abuse this provision, a 120-day limitation has been added in response to concerns of Indian mineral owners. A drilling clause without limitation could extend, by mere drilling that fails to result in production, the primary term of lease duration.

(60) One commenter states that when read literally, the first sentence of § 211.27(a) is inconsistent with the provision for the suspension of operations at § 211.44.

Response: Section 211.44 makes provision for the suspension of operations on a lease after the primary term. The paragraph at § 211.27(a) speaks to the primary term of lease duration.

(61) Several commenters state that the regulations should require tribal consent to any communitization or unitization agreement whether or not such consent is required in the lease. One commenter states that the consent of the mineral owner is seldom required for the communitization of an Indian lease, and in the commenter's view, is unnecessary.

Response: Every tribal lease executed under the Indian Mineral Leasing Act of 1938 contains the following provision or a similar provision:

> Unit Operation—The parties hereto agree to subscribe to and abide by any agreement for the cooperative or unit development of the field or area, affecting the leased lands, or any pool thereof, if and when collectively adopted by a majority operating interest therein and approved by the Secretary of the Interior, during the period of supervision.

This provision grants the consent of the tribe to cooperative agreements provided they are reviewed and approved by the Secretary. The Department does not intend to attempt to amend this lease provision through these regulations. Instead, the Department affirms that Indian mineral owners may require consent in any future leases or lease amendments. The Department believes that this remains the most equitable method of handling this issue. However, in response to tribal concerns, a provision has been added at § 211.28 requiring the Department to consult with the Indian mineral owner prior to making a determination concerning an operating, unitization, or communitization agreement or well spacing plan. This will ensure that the Indian mineral owner has an opportunity to bring any relevant information concerning the proposal to the Secretary's attention prior to any cooperative action or well spacing plan being undertaken.

(62) Two commenters state that an affidavit from the lessee stating that a notice was mailed to each mineral owner of record for whom the superintendent and/or area director has an address should satisfy the requirement that all Indian mineral owners will be notified by the lessee at the time a cooperative agreement is submitted to the superintendent and/or area director.

Response: We agree. Section 211.28(d) is changed in response to this comment.

(63) One commenter states that the Secretary shall approve well spacing programs, in the context of unit agreements and that it is not clear why the regulations single out well spacing in this context for Secretarial approval. Another commenter states that the well spacing program should be approved by the Secretary and the Indian mineral owner.

Response: The paragraph in § 211.28(h) is rewritten to provide that the well spacing program is subject to the approval of the authorized officer under the operating rules of the Bureau of Land Management. Provision is made at § 211.28(b) for consultation with the Indian mineral owner before approval of a well spacing plan.

(64) One commenter states that provision for lease segregation at § 211.28(g) should be included at § 211.28(f) as a specific "Pugh Clause." Such a clause provides that the effect of production constructively obtained through communitization is restricted to lands that are communitized and does not extend to other leases or to any other leased lands outside the communitized area. Another commenter states that § 211.28(g) should be deleted entirely because it provides a pugh clause in leases that are already reduced in size when issued and that segregation should only occur when the lands are partially included in Federal field-wide units. Another commenter states that provision for segregation will clearly discourage leasing and exploration activity on tribal lands.

Response: The segregation clause contained in § 211.28(g) is intended to ensure diligent development of Indian lands. If portions of a lease are not included in a communitization agreement, or within a producing or exploratory cooperative unit then there is no reason why the excluded lease portion should be held by the unit agreement to the disadvantage of the Indian mineral owner and perhaps of no particular advantage to the lessee, regardless of whether partially within an entire field or mining district or only a portion of an entire field or just within a mining unit. Further, the segregation provision must be applicable to the lease portions both within and excluded from an exploratory or productive unit for any mineral commodity and not satisfy only the pugh clause requirements with respect to an area communitized for gas and oil.

(65) One commenter states that well spacing is governed by state oil and gas regulations and that there is no reason for the Secretary to become involved in well spacing issues.

Response: Each State issues well spacing orders that are commonly, but not necessarily, accepted as a spacing standard within the State or area in question. However, States have no authority to regulate well spacing on Indian land. The Secretary, in consultation with the Indian mineral owner, has exclusive authority with respect to the spacing of wells, as reflected in § 211.28(h).

(66) One commenter states that § 211.28 should be expanded to permit unitization or communitization of hard rock mineral leases and expresses concern about efficiency of operation in exploiting an ore body in two or more sections of land.

Response: We agree. Although § 211.28 is not greatly changed from proposed rules, provision is made for the commenter's concern by stating in final rules that a cooperative unit or other development plan means an agreement to develop a specifically designated area without regard to ownership of the land included in the agreement.

(67) Several commenters ask that various time deadlines be imposed on the superintendent or area director to review and approve or reject cooperative agreements. One commenter requests that agreements submitted after the 90 day deadline be reviewed in the discretion of the superintendent or area director.

Response: Review of these requests for a time limitation for Departmental review of proposed cooperative agreements, indicates that the issues raised in individual agreements and the problems posed in individual cases vary so widely that it was not advisable to specify a set time frame for review. However, the 90 day time period specified in the regulations in effect imposes such a limitation. Cooperative agreements submitted after the 90 day deadline will be considered by the Department, but the lessee bears the risk that leases may expire prior to the Department being able to take action to approve the agreement.

(68) One commenter states that the existing lock-box arrangement for receipt of monies is working well and another suggests that it be stated in § 211.40 that current lock-box arrangements are not to be affected.

Response: Present lock-box arrangements for the receipt of monies are not affected by § 211.40. The final regulations merely provide for the continuation of existing and standard procedures for the receipt and handling of bonus, rent, and royalty payments.

(69) One commenter suggests that proposed § 211.40 be modified to allow lease provisions and Federal regulations to be superseded by tribal regulation and another states that the regulation should expressly authorize the Secretary to designate the tribe or the tribe's fiscal agent as the payee.

Response: Section 211.40 is rewritten to clarify that unless otherwise specifically provided for in a lease all payments after production has been established shall be made to the MMS or such other party as may be designated, and that prior to production all bonus and rental payments shall be made to the superintendent or area director. Present payment arrangements may be modified by tribal notification to the Minerals Management Service prior to the modification. All payments after production has been established are regulated in 30 CFR Chapter II, Subchapters A and C. Supersedence of Federal regulations is addressed in final rules at § 211.29.

(70) One commenter points out that proposed § 211.40 is inconsistent in identifying where payments should be made and states that payments should be made to the BIA and MMS unless otherwise provided for in lease terms.

Response: We agree. Section 211.40 is rewritten to clarify where and when all payments are to be made. Also, after production has been established the payee may modify the manner of payment in accordance with 30 CFR Chapter II, Subchapters A and C.

(71) One tribal commenter requests that the minimum rental be increased from $1.25 per acre to $10.00 per acre with a consumer price index adjustment clause. Two industry commenters object that in the proposed regulations rentals are not credited against production royalties.

Response: The minimum rental specified in final regulations is $2.00 per acre, an increase of $0.75 per acre from the current rate. This increases the rental to that presently being imposed for Federal lands leased for oil and gas, which is a standard rate throughout the industry. It is clearly stated in final regulations that the rental will be controlled by the provisions negotiated in a lease. Any Indian mineral owner who wishes to make provision for higher rental and/or adjustments as a hedge against inflation in a lease is free to do so for leases or lease provisions which are negotiated. In such cases, whether or not the rentals are credited against production royalty is entirely up to the parties. Where a lease is silent on this issue, the rentals must be paid in addition to royalties. Therefore, further changes are not made in § 211.41(a).

(72) One tribal commenter states that the minimum royalty be set at 20 percent and others do not object to the 16⅔ percent minimum royalty. Several industry commenters state that the proposed 16⅔ percent minimum royalty is too high and may place Indian minerals at a competitive disadvantage.

Response: The 16⅔ percent royalty proposed in the regulations is a minimum royalty that may be raised upon agreement of the parties to a lease, or which may be reduced upon agreement of the parties and the findings of the Department that a lower rate is in the best interest of the Indian mineral owner. Although industry has objected to the increased rates this change merely brings the rates in line with general practice on Indian lands. For over twenty years the standard royalty rate for all leases on Indian lands has been 16⅔ percent or higher. The change in the regulations will not cause any significant change in leasing procedures on Indian lands. It will not retroactively affect any current leases, and will not require applicants for Indian leases to agree to this royalty rate against their will. The minimum royalty simply requires the parties to submit a good reason why a lower royalty rate is necessary before it may be approved by the Department. This helps to ensure that the Secretary exercises his responsibility to protect trust resources.

(73) Several tribes comment that the regulations should contain provisions concerning valuation of production and other accounting issues. They are concerned that reference to the MMS regulations in 30 CFR Chapter II, Subchapters A and C, will not be sufficient to clarify that the lease provisions concerning valuation issues shall govern in the event that lease provisions are inconsistent with MMS's regulations.

Response: The valuation provisions contained in current 25 CFR § 211.13 were included in the regulations prior to

VOL
61
ISS
131
JL
8
1996
UMI

the creation of the MMS. It is appropriate, now that authority for valuation issues has been given to the MMS, that the BIA leasing regulations defer to the much more detailed treatment of this subject in the MMS regulations. However, in response to tribal concerns a sentence is added to final § 211.41(c) to clarify that the specific provisions of a lease on this issue shall govern where those provisions are inconsistent with the MMS regulations.

(74) One tribe comments that Indian mineral owners should be allowed to use gas which is in excess of the lessees needs for any purpose rather than be limited to use of excess gas for schools or other tribal buildings. Two industry commenters object to this provision and ask that it be removed entirely or that the use of excess gas for tribal buildings be treated as a taking of royalty-in-kind.

Response: The provision in the current 25 CFR § 211.13(b), which is carried over to final rules at 25 CFR § 211.41(d), provides for a reasonable and limited use of excess gas by the lessor. This provision has been included in the regulations for at least 30 years. In addition, many current leases contain a specific provision allowing such use, and all current leases contain a provision adopting regulations in effect at the time of the lease. This means that virtually all current tribal leases are subject to this provision. Also, in the many years that this provision has been either included in the leases specifically or by reference to the regulations, we know of no instance where the right to use excess gas has been abused. Therefore this section is amended to incorporate the language in § 211.13(b) of the current regulations as being clearer than the proposed language. Thus, no change is effected in final rules.

(75) One commenter states that both the annual rental and the expenditure for development on leases other than oil and gas, and geothermal resources should be not less than $10.00 per acre and should be escalated annually based on the CPI [Consumer Price Index] for all urban consumers.

Response: In § 211.14 formerly in place the minimum annual rental is fixed at $1.00 per acre and the minimum annual expenditure at $10.00 per acre unless otherwise authorized by the Secretary. These minimum payments and expenditures have not been changed in many years and thus do not reflect the effects of inflation. In final rules at § 211.42 the minimum annual rental is fixed at $2.00 per acre and the minimum annual expenditure at $20.00 per acre, but with no provision for the expected future decline in purchasing power of money. It is not likely that a satisfactory index or method can be identified. In those situations where escalation of payments and expenditures is an issue, the prospective lessors may, however include indexing in minerals agreements under the IMDA (25 CFR Part 225).

(76) One tribal commenter states that the value of production removed and sold from the lease should be established FOB at the mine rather than at the nearest shipping point as proposed at § 211.43. Another commenter states that the proposed rule would affect their sales (but did not elaborate) and urged deletion of specific commodities from this section.

Response: The wording of 25 CFR § 211.43(a) stating the 10 percent minimum royalty "at the nearest shipping point" is the same as that in regulations formerly in place at § 211.15. In those instances where the point of valuation is an issue or that § 211.43 is not appropriate, as written, to a specific mineral commodity the Indian mineral owner may wish to negotiate the royalty provisions or conclude a minerals agreement under the IMDA (25 CFR Part 225). Section 211.43(a) is essentially unchanged in the final rules.

(77) Two commenters indicate that certain royalty rates and royalty provisions at § 211.43 for minerals other than oil and gas are not sufficient and state that: (1) the royalty rate for byproducts from geothermal resources should not be less than 10 percent of the value of the byproducts; (2) a lower royalty rate should only be granted with the consent of the Indian mineral owner; (3) a lower royalty rate may be allowed, but not to exceed 5 years, after which the royalty rate should be adjusted upward; and (4) that this section should be revised to take into account potential unconventional means for developing coal resources, e.g., where a processed product is made out of coal, the royalty rate should be 12½ percent of the processed product, not 12½ percent of the value of what is removed.

Response: Special lease conditions and provisions for certain mineral commodities, and special and/or new technologies are best negotiated under the IMDA (25 CFR Part 225). Under Parts 211 and 212 a lower royalty rate may be approved only if it is in the best interest of the Indian mineral owner. This determination will require a higher level of analysis to assure that the tribe is receiving adequate consideration. Thus, a minimum royalty rate should provide no barrier to mineral development. Tribes and industry are required to justify proposed lower royalty rates for leases on a case-by-case basis.

(78) One commenter states that as noted in the proposed rules (56 FR 58736) the BIA for the first time is proposing minimum royalty rates for minerals other than oil and gas with no explanation of the reasons for imposing these minimum royalty rates and urges the BIA to withdraw the minimum royalty provisions.

Response: In current regulations at § 211.15 minimum royalty rates for minerals other than oil and gas are set forth, and have been contained in regulations since 1957. The preamble of the proposed regulations (56 FR 58736), stating that a new section would provide, for the first time, minimum royalty rates for minerals other than oil and gas, was in error.

(79) One commenter states that the proposed rules (§ 211.43(b)) allow a lower royalty rate if it is determined to be in the best interest of the Indian mineral owner but that no valid criteria are established for implementing this term [in the best interest of the Indian mineral owner]. The commenter states further that the lessee has no assurance that a lower rate can be obtained in the event that he proves that a minable deposit exists that cannot profitably be mined at the rate set by regulation and that this could have a negative effect on mineral development under Indian leases.

Response: The criteria implementing the best interest determination are set forth at proposed § 211.3 (56 FR 58738). Minor change in § 211.3 is made in the final rules to require the Secretary to consider any relevant factor in the best interest determination. Special assurances that lower royalty rates can be obtained by a lessor or lessee, cast in a scenario of expected or possible future events, are best sought by negotiation of a minerals agreement under the IMDA (25 CFR Part 225).

(80) Some industry commenters object to the minimum royalty rates in proposed § 211.43 as being too high and one commenter states that 5 percent or less of net smelter returns has long been the royalty standard for base and precious metals under leases of fee simple mineral land and suggests that the regulations should allow minimum royalties more in line with market rates or should establish a royalty formula which will accommodate variances in mineral quality and quantity, mining costs, recovery rates, and the like.

Response: In the event that minimum royalty rates, as set forth in the proposed and/or final § 211.43, are judged to be too high by the prospective parties to a minerals lease, the parties should consider negotiating an IMDA minerals agreement. Similarly, if risk sharing or royalty adjustment provisions in lease or minerals agreement instruments are contemplated, then the parties should consider negotiation rather than competitive bidding. In the final regulations, the minimum royalties for the competitive acquisition of leases from Indian mineral owners are brought into line with those prevailing on Federal lands (not fee lands). In view of the negotiation alternatives, available under both the Indian Mineral Leasing Act of 1938 and the IMDA, no further changes to § 211.43 are made.

(81) One commenter is of the opinion that proposed § 211.44 requires tribal consent to suspension of operations whereas several other commenters are concerned that suspension of operations for remedial purposes by the Secretary (§ 211.44(a)) does not require the consent of the Indian mineral owner; and another commenter states that the proposed rule would allow an operator to suspend operations without the consent of the Indian mineral owner and should not be permitted.

Response: The suspension of operations provision at § 211.44 is applicable only to leases after expiration of the primary term of lease duration and in no way affects the prerogatives of the Indian mineral owner during the primary term. Section 211.44(a) provides the Secretary the necessary latitude to act, under such provisions and conditions as may be required, in the discharge of the trust responsibility in those instances where all else has failed and remedial measures are required, usually at once, for continued production, protection of the resource, or protection of the environment. Provision is made at § 211.44(b), for mineral properties capable of production after expiration of the primary term of lease duration, such that suspension of operations requires the consent of the Indian mineral owner.

(82) One commenter states that suspension of operations should: (1) never exceed the maximum lease term; (2) require the consent of the Indian mineral owner if the suspension is longer than 90 days; and (3) result in lease cancellation if an application for suspension of operations is denied and the operator [be held] responsible for all abandonment requirements. Another commenter states that: (1) a time period for accomplishment of remedial operations is absolutely necessary; (2) the regulations should expressly define the conditions under which suspension of operations is necessary; and (3) if suspension of operations is necessary, then the Department's current policy requiring reinstatement of production within 30 days should apply.

Response: Numerous provisions and conditions could be added to § 211.44, but are best dealt with on a case-by-case basis by the Secretary.

(83) One commenter states that § 211.44(b) has to do with suspension of operations for non-physical reasons whereas with respect to non-economic or non-marketing reasons, no tribal consent is required for suspension of operations after expiration of the primary term and there is no statutory distinction that justifies requiring tribal consent in one case but not the other.

Response: We see no way of readily or reasonably separating the subtle cause and effect of physical versus non-physical reasons for situations leading to a suspension of operations or production. In the event remedial measures are required in the proper and timely discharge of the trust responsibility and in the best interest of the Indian mineral owner, the Secretary has no choice but to take requisite remedial measures. Provision is made at § 211.44(b) for the parties to the lease to make application for permission to suspend operations on a lease capable of production after expiration of the primary term of lease duration.

(84) One commenter recommends that the extended term be referred to as either "after expiration of the primary term of the lease" or as "in the extended term of the lease" and not both.

Response: We agree. Although both phrases mean the same thing, meaning that portion of the duration of the lease, when the lease is held by production beyond the primary term of the lease. The primary lease term cannot exceed 10 years. Section 211.44 is changed so that only one phrase is used.

(85) Two commenters state that they do not understand why in proposed rules that the suspension of operations necessary for remedial operations must be approved by the Assistant Secretary and that this matter is best left to the authority of the agency office.

Response: The final regulations are changed to clarify that the suspension of operations is at the discretion of the Secretary, although the suspension action will likely be issued by the authorized officer for § 211.44(a) and for § 211.44(b) by the area director or superintendent, under authority delegated by the Secretary.

(86) One commenter states that proposed § 211.44(a) makes reference to minimum royalty requirements but finds no minimum royalty requirement in the proposed regulations.

Response: The final regulations are clarified to provide that suspension of operations or production after expiration of the primary term of lease duration shall not relieve the lessee from liability for the payment of rental and other payments as required by lease provisions.

(87) One commenter states that proposed § 211.46 should make clear to whom the books and records will be made available.

Response: Section 211.46 is modified to provide that lessees shall allow the Indian mineral owner's representatives, or any authorized representative of the Secretary to enter all parts of the leased premises for the purposes of inspection and audit, that lessees shall keep a full and correct account of all operations as required by the lease and applicable regulations, and that books and records shall be made available during regular business hours.

(88) One commenter states that clarification should be added under § 211.46 to indicate that under the FOGRMA of 1982 a lessee is required only to maintain records of this type for 6 years after the records are generated unless the Secretary notifies the record holder that he has initiated an audit or investigation involving such records *and* that such records must be maintained for a longer period.

Response: Record keeping requirements are set forth in the operating regulations of BLM, MMS, and OSM which are included by reference at §§ 211.4, 211.5, and 211.6.

(89) One tribal commenter signifies that proposed § 211.47 be expanded to include protection of all Indian lands from drainage, whether leased or not. Another tribal commenter states that the burden falls on the Tribe to prove that additional development of leased lands is required by the prudent operator standard. One industry commenter states that no compensatory royalties should be assessed if "the superintendent has denied approval of a cooperative agreement for any reason."

Response: These regulations only concern the leasing of tribal lands, and the requirements which are properly placed on lessees. These regulations do not properly include provisions for dealing with drainage from unleased lands. However, the standard that will be applied to lessees as concerns the leased land is clear. Lessees are required, among other requirements to exercise diligence in mining, drilling and operating wells, protect the lease from drainage. This standard imposes an affirmative duty on the lessee. No

VOL
61
ISS
131
JL
8
1996
UMI

changes in response to these tribal comments were made. Also, no changes were made in response to the industry comment seeking relief from the compensatory royalty provision in § 211.47(b). A proposed cooperative agreement may properly be rejected by the Department when such proposed agreement fails to protect the lease. If an inappropriate cooperative agreement has been rejected by the Department, the rejection should not serve to relieve the lessee from the lessee's obligations under the lease.

(90) One tribal commenter requests that the 200 feet setback requirement for well pads and operations be increased to a minimum of 500 feet.

Response: The proposed section merely carries forward the limitation contained in current § 211.19. Because the current regulation provides a minimum setback requirement, a tribe may negotiate for a greater setback whenever it deems this to be necessary. Also a greater setback may be requested by the authorized officer prior to issuance of permission to drill. For these reasons no change is made at § 211.47(f) in final regulations.

(91) One commenter advises that proposed § 211.47(j) be revised to provide that the lessee pay the surface owner or tenant all damages, including damages to crops, buildings, other improvements of the surface owner occasioned by the lessee's operations as determined by the Secretary with the consent of the Indian mineral owner.

Response: No change is made in § 211.47 in the final regulations because the suggested change would create rights that would not be authorized in law.

(92) One industry commenter states that proposed § 211.47(i) gives the superintendent sole authority to establish the payment due the Indian tribe or allottee for surface damages and expresses the opinion that this should be a matter of negotiation, or based on an independent appraisal with at most, approval of the superintendent.

Response: Authority for the determination of payment of damages to the surface owner is retained by the Secretary, who may employ a BIA appraiser in the decision making process, in this instance the superintendent, for those situations in which the mineral and surface estates have been separated and/or surface damages are at issue.

(93) One industry commenter objects to the provision that written permission must be secured from the Secretary before any operations are started on the leased premises.

Response: The applicable operating and reclamation regulations administered by the Bureau of Land Management and the Office of Surface Mining Reclamation and Enforcement require prior approval for drilling or mining operations. Therefore, the only change made in this paragraph is to the authorities cited to include the Office of Surface Mining Reclamation and Enforcement. The intent of this paragraph is to alert the mineral industry that a mineral lease issued by an Indian mineral owner, still requires the approval of the Secretary. After the lease is approved, lessees are still required to secure written permission (written approval) from the appropriate agency or agencies before beginning any operations on the lease.

(94) A tribal commenter feels that § 211.48 should be amended to include the need for written permission of the Indian mineral owner before operations are started and that after permission is secured, operation must also be in accordance with all operating rules and regulations promulgated by the Secretary or the Indian mineral owner.

Response: Indian mineral owners are always consulted prior to final approval of any activity involving Indian mineral lands, if it is an action or activity that requires approval or consultation with the Indian mineral owner.

(95) Two industry commenters object to § 211.49 stating that the broad and vague language could be used to restrict or preclude a lessee from developing a lease. Both commenters suggest that any necessary restrictions be spelled out in the lease.

Response: This section carries into final rules § 211.21(a) of regulations currently in place. This provision has been contained in the Department's regulations for many years. The authority stated in this section has rarely been used, and to our knowledge, has never been used to preclude development of a lease. The section is necessary to ensure that the Secretary has the ability to fulfill the fiduciary duty to protect the trust resource.

(96) One commenter objects that proposed § 211.51 does not explicitly address the option of surrender of an operating oil and gas property to the tribe, but rather appears to be confined to lease surrenders after which all production ceases.

Response: There is no barrier in either proposed or final regulations to a request to surrender an operating property to an Indian mineral owner, subject to approval of the Secretary. There is a requirement in proposed and final regulations that the lessee discharge all lease obligations upon surrender, as required.

(97) Several commenters state that the requirement in proposed § 211.51(d) that the original lease documents be delivered to the Department with the request to surrender is not supported by any reason and imposes an additional administrative burden without providing any benefit.

Response: The requirement that the original lease documents be surrendered is intended, to the extent possible, to prevent any confusion as to the extent and location of lands that are leased. Additionally, surrender will prevent fraudulent assignments. This requirement has been in the Department's regulations for several decades (see § 211.27(b)(6)). Also, it is standard industry practice to require surrender of the documents. Because it is standard industry practice the requirement does not impose an additional burden on lessees.

(98) One tribal commenter questions whether this section is sufficient to ensure that all reclamation be performed in an environmentally sound manner.

Response: Section 211.51 requires that the leased land be left in an environmentally sound condition and that all environmental work, such as reclamation, be done. Changes are made in final regulations to paragraph (h) to avoid any possible conflict with this requirement.

(99) Two industry commenters seek qualification to the paragraph in this section requiring the lessee to pay for all drainage which occurs prior to acceptance of surrender of the lease. One commenter states that it is unreasonable to permit liability for compensatory royalty to continue to accrue after filing an application to surrender. One commenter asks that a provision be added to excuse the lessee from payment of compensatory royalties for drainage if a cooperative agreement has been denied "for any reason" by the Department.

Response: The provisions contained in proposed § 211.51(g) are an updated version of the current requirement found in § 211.27(b)(10). An addition to the proposed regulations is an explicit reference to compensatory royalties for drainage. Neither of the proposed changes are included in final regulations because they could permit unacceptable actions on the part of the lessee. First, it may be necessary and reasonable for the Department to assess compensatory royalties for waste or drainage, if lack of diligence or poor workmanship on the lease continues to cause the lessor damage after the date of surrender. For instance, if a lessee has

missed the opportunity to enter into a cooperative agreement, and then seeks immediately to surrender the lease, the lessor may not be able to prevent drainage immediately. The lessee may not avoid liability for the drainage by attempting to surrender the lease. Similarly, the fact that a lessee at one time submitted a cooperative agreement for approval will not relieve the lessee from responsibilities under the regulations and lease provisions. The authority reserved to the Secretary in final regulations is to "impose reasonable and equitable terms and conditions to protect the interests of the Indian mineral owner." If however, the lessee believes that provisions imposed are arbitrary or capricious, then the lessee may appeal under 25 CFR Part 2. We feel that these procedures provide adequate protection to lessees.

(100) Three industry commenters object to the increase in filing fees in proposed § 211.52, by stating that the increase is unjustified and imposes an additional burden on a struggling industry.

Response: For over four decades the BIA did not raise filing fees. The increase from $10.00 to $75.00 reflects inflation that has occurred during four decades and is in keeping with the current filing fees of the Bureau of Land Management, which increased the filing fees to $75.00 on December 22, 1987. However, surrender of leases no longer must be accompanied by a filing fee, because most standard mineral leases specify a surrender fee.

(101) Both tribes and industry comment that assignments of stratigraphic horizons or intervals should be permitted. Tribes and industry indicate that this practice is common within the industry and would provide economic benefits to the Indian mineral owner.

Response: In final regulations the provisions in proposed rules at § 211.53(a) that prohibit such assignments are removed. Assignment of stratigraphic thicknesses or intervals is permitted.

(102) One commenter states that § 211.53 should be revised so that the broad definition of "assignment" that is implied in the § 211.26(b), formerly in place, is retained.

Response: Proposed § 211.53 is rewritten to be more nearly compatible with § 211.26 formerly in place and retain the existing and widely understood concept of an assignment in current use with respect to Indian mineral leases.

(103) Three commenters state that overrides and production payments may render prudent economic development, or otherwise economic operations and proposals uneconomic or prematurely uneconomic. One commenter recommends that both the Secretary and the Indian mineral owner approve overrides, production payments, and operating agreements; one commenter recommends that overrides, production payments, and operating agreements require approval; one commenter states that at a minimum overriding royalties and operating agreements should be forwarded to the Secretary for review.

Response: The creation of overrides, production payments, and use of operating agreements have been standard business practices in the minerals industry for many years and often serve as the necessary economic incentive for the development of, and subsequent production from, mineral properties, especially for oil and gas. Commenters concerns are valid that under some conditions (e.g. a sudden decline in value of the mineral product) mineral properties can be burdened by overrides and production payments. In response to the concerns of commenters, provision is made in final regulation that the Indian mineral owner shall be notified of proposed assignments and agreements creating overriding royalties or payments out of production, or agreements designating operators shall be filed with the superintendent. In those instances where the overrides, production payments, and operating agreements are of concern to the Indian mineral owner during the leasing process, the prospective lessors and lessees may wish to arrive at a minerals agreement under the IMDA (25 CFR Part 225).

(104) Four tribal commenters state that the approval or consent of the Indian mineral owner should be required for all assignments; one, if required by lease or by tribal law; another, if any instrument or agreement either makes a present conveyance of an interest in the minerals or obligates one party to convey an interest in the minerals to another party upon performance of some condition; a third, regardless of whether the right of approval is retained in the lease document; and a fourth, would require approval of the Indian mineral owner for all actions regardless of whether the lease requires such approval. One industry commenter states that the language of proposed § 211.53 is appropriate but not consistent with the various tribal ordinances applicable to oil and gas leases; another perceives that proposed § 211.53 is a restatement of current regulatory practice and that new regulations should place no greater restriction on the lessee than currently exists.

Response: Section 211.53 is rewritten in language more nearly resembling 25 CFR Part 211 and 212 formerly in place and is therefore more familiar to both Indian mineral owners and prospective lessees. There is no consensus or general agreement among Indian mineral owners and/or industry upon the conditions of approval of assignments and related agreements. Therefore, final regulations provide for a broad right of assignment of an approved lease for Indian owned minerals, so long as there is no change in the material provisions of the lease. Final regulations are applicable to existing and future leases issued under the Act of May 11, 1938 (25 U.S.C. 396a) and the Act of March 3, 1909 (25 U.S.C. 396). Indian mineral owners that wish to require consent may, under the IMDA, or by negotiated, individual (not necessarily standard) lease provisions under the Act of May 11, 1938; either of which allow the Indian mineral owner to specify the provisions under which owner consent and/or approval would be required for lease assignments, overriding royalties, and operating agreements.

(105) One industry commenter objects to proposed lease cancellation and notice of non-compliance provisions (§ 211.54) on the grounds these provisions would allow the Bureau of Indian Affairs (BIA), to "assume responsibility for enforcement not only of the provisions of the IMDA, but of other laws and regulations as well." The commenter objects to the idea that the BIA might interfere with the authorities which SMCRA vests with the Secretary, who acts through the Office of Surface Mining Reclamation and Enforcement (OSM).

Response: Nothing in this section is intended to interfere with the authority of OSM to administer SMCRA. Section 211.54 is a continuation of the cancellation provision in current 25 CFR § 211.27(a) but includes more due process procedures to protect lessees, and provides the Department with the new option of issuing a notice of non-compliance rather than threatening lease cancellation for any and all offenses, no matter how minor. This section applies to leases issued under the Act of May 11, 1938 (25 U.S.C. 396a). These regulations neither govern IMDA agreements nor purport to govern the type of activities governed by SMCRA. However, it should be clearly understood that violations of SMCRA can also be violations of the lease which, in turn, could lead to cancellation of the lease. Only the BIA,

VOL
61
ISS
131
JL
8
1996
UMI

pursuant to these regulations, has authority to cancel the lease itself. Therefore, § 211.54 does not provide the BIA with authority that overlaps over the authority of OSM.

(106) One tribal commenter asks that a procedure be added for tribes to report any non-compliance which they may observe.

Response: Because of the close working relationship between the tribes and the BIA agency and area offices, it has been determined that a formal regulatory procedure for tribes to share lease compliance information with the BIA is not necessary. Information of any type and in any format from tribes concerning lease compliance by lessees is always welcomed by the Department.

(107) One tribal commenter asks that tribes be granted a larger independent right to cancel a lease for non-compliance.

Response: The request for tribal authority to cancel leases is not included in final regulations. The mineral lease approved by the Secretary concerns lands which the Department has a statutory obligation to protect. The Secretary will review any and all information an Indian mineral owner may have concerning whether or not a lease should be cancelled but the final decision to cancel must remain with the Secretary: See *Yavapai-Prescott Indian Tribe* v. *Watt*, 707 F.2d 1072 (9th Cir. 1983), cert. denied 464 U.S. 1017.

(108) One tribal commenter asks that a time limit be imposed on the Secretary to issue a decision with regard to a lease cancellation.

Response: The request for a time limit for issuance of a decision on cancellation of a lease is not included in final regulations. The factors to be considered and the unique nature of most lease cancellation actions makes a time deadline for action by the Secretary inappropriate.

(109) One tribal commenter suggests that proposed § 211.54(a) be expanded to include the enabling of the noncompliance and cancellation processes in the event the Secretary determines that a lessee or permittee has failed to comply with applicable tribal laws and regulations, and mining or reclamation plans.

Response: Section 211.54(a) is rewritten in the interest of simplification and to clarify that § 211.54 is enabled in the event of noncompliance with lease provisions, these regulations, or other applicable rules and regulations. Although BLM and OSM are primarily responsible under those agencies' regulations for enforcement of mining and reclamation plans, under some circumstances it may be appropriate for BIA officials to issue notices of non-compliance for violations of such plans. Tribal administrative and judicial remedies will often be the appropriate means for redressing violations of tribal laws and regulations. But the revised language of this regulation leaves open the possibility of enforcement under this Part when an alleged violation raises mixed issues of Federal and tribal law.

(110) One commenter suggests that service by certified mail should be deemed to occur seven (7) rather than five (5) days after the date of mailing (in both §§ 211.54 and 211.55) to be consistent with MMS regulations regarding constructive service of official correspondence.

Response: In the interest of consistency the date of service is deemed to be five (5) working days after the date of mailing in final regulations.

(111) One commenter states that in proposed § 211.54 there is no provision for a hearing before the Secretary prior to lease cancellation and that denial of the right to a hearing is the denial of the right to due process that exists in present regulations and that this right should be restored.

Response: Section 211.54 is rewritten in final regulations to clarify noncompliance and cancellation procedures. Final regulations provide lessees and permittees adequate time for response to notices of noncompliance, orders of cessation, and notices of proposed cancellation or of cancellation. Hearings may be requested in the responses of lessees and permittees to notices and orders and the rights of lessees and permittees under 25 CFR Part 2 (§ 211.58) are not abridged. The suggested provisions are not included at § 211.54.

(112) One commenter states that in proposed § 211.54 reference is made to an "order of cessation" and it is not clear what an order of cessation is or how it differs from a notice of noncompliance. Another commenter states that BIA does not define a "cessation order."

Response: Section 211.54 is rewritten in final regulations to clarify noncompliance and cancellation procedures.

(113) Several industry commenters object to proposed § 211.55 and request that it be removed for a number of reasons. First, several commenters challenge the authority of the Department to impose civil penalties. Second, the $1,000.00 per day limit is challenged as unduly high. Finally, even though the commenters maintain that the Secretary lacks authority to impose civil penalties, the commenters object to the civil penalties as duplicative of other civil penalties which the Secretary has authority to impose.

Response: The proposed civil penalties provision is not new. The current regulations contain § 211.22 that provides for a $500.00 per day civil penalty for violations of terms of the lease, regulations or orders. Section 211.22 has been contained in the leasing regulations for unallotted lands for many years. The proposed revisions to this section do two things. First, the dollar limit for a violation is updated to accord with current penalty limits contained in other Departmental regulations (see 43 CFR § 3162 and § 3163.2). In fact this dollar figure is conservative when compared to the $5,000.00 per violation per day limit contained in the Bureau of Land Management's regulations. The second change provides lessees and permittees with additional due process procedures to ensure that no penalty is unfairly imposed. The Department believes that the broad authority granted to the President by Congress to regulate Indian affairs (see 25 U,S.C. §§ 2 and 9), the longstanding administrative interpretation of these statutes as granting authority to assess penalties, and the unique responsibilities imposed on the Secretary to protect Indian trust resources support this section. However, in response to industry comments a provision has been added to this section in final rules to clarify that no penalty may be assessed under this section for a violation over which the BLM, OSM, or MMS have either statutory or regulatory authority to assess a penalty. This will ensure that this section does not duplicate any other penalty provision and that no duplicative penalties will be issued.

(114) Five industry commenters express concern that the language in proposed § 211.56 is not adequate to protect the rights of the data owner and more specifically that there are no requirements on the part of the Indian mineral owner to protect the confidentiality of the data provided to them. Three Indian commenters felt that the proposed regulation is too weak, because it does not provide specifically for submittal of collected data to the Indian mineral owner.

Response: The concern regarding the lack of confidentiality requirements on the part of the Indian mineral owner is best considered at the time of negotiation between the Indian mineral owner and the proponent of the permit. Therefore, no specific change is made in final regulation with respect to this item. Section 211.56 is rewritten to

reflect the major concerns of the commenters and provides that copies of collected data shall be forwarded to the Indian mineral owner, unless otherwise provided in the permit.

(115) One industry commenter expresses concern that seismic option agreements are not covered in proposed regulation.

Response: The comment regarding seismic option agreements is not considered because it is deemed that such agreements are best concluded as minerals agreements under the provisions of the IMDA (25 CFR Part 225).

(116) One of the Indian commenters requests that the regulations provide for the issuance of geological and geophysical permits by the Indian mineral owner to university students. The same commenter proposes that all collected data be submitted to the Indian mineral owner, who in turn will provide it to the Secretary and also recommends that the phrase that allows a permittee to take samples for assay and experimental purposes be deleted.

Response: The recommendation that issuance of geological and geophysical permits to universities be addressed in final regulations is not included in final regulations because such requests should be considered on a case-by-case basis by the Indian mineral owner, who has the option of requesting assistance from the Secretary if consideration of such permits pose problems in approval. The related recommendation for deletion from § 211.56(b) of the provision for the taking of assay samples for experimental purposes is also not included because, at times, the taking of experimental assay samples can be of benefit to the Indian mineral owner.

(117) One industry commenter recommends that "Indian owner" in § 211.56(a) be changed to "Indian mineral owner" in order to distinguish between the Indian surface owner and the Indian mineral owner. The same commenter recommends that the word "shall" rather than "may" (§ 211.56(c)) be used in regard to the Secretary's responsibility to maintain for a reasonable period of time the confidentiality of data submitted.

Response: The words "Indian owner" are changed to "Indian mineral owner" to aid in distinction between the Indian mineral owner and the Indian surface owner. Language in this section is unchanged in that the Secretary "may" release information after six (6) years, with the consent of the Indian mineral owner if no time period for release is prescribed in the permit. The word "may" is retained in the final regulations because the six years is a minimum time period for information retention. It may not be in the best interest of the Indian mineral owner to release information after the prescribed retention period.

(118) One commenter states that the definition of Indian lands in § 212.3 should be limited to lands owned by any individual Indian or Alaska native. Otherwise there is no substantive provision in the regulations in Part 212 which limits their applicability to allotted lands.

Response: The Secretary does not lease Indian lands without the consent of the individual Indian mineral owner(s), and thus does not unilaterally execute a lease for the individual Indian mineral owner, except as provided in § 212.21. Successors in title to approved and issued mineral leases follow without respect to these regulations. No change is made in the final rules.

(119) One commenter states that the definition of a lessor should be changed to read that a lessor is an Indian mineral owner who has accepted or consented to a lease or for whom the Secretary has executed a lease, and any successor in title to an original lessor.

Response: The Secretary does not lease Indian mineral lands without the consent of the individual Indian mineral owner(s), and thus does not unilaterally execute a lease for the individual Indian mineral owner, except as provided by specific statutory exceptions which allow the Secretary to lease allotted lands when the allottee has died and his heirs are undetermined or when the owner cannot be located. Successors in title to approved and issued mineral leases follow without respect to these regulations. No change is made in the final rules.

(120) One commenter states that to receive optimal benefit for the Indian landowner, royalty rates should be considered in the bidding process.

Response: Royalty rates are considered in the bidding process in the announcement of lease sale. Royalty bidding is not customarily included in either written or oral bidding because of the difficulty in determining the total value of bid based on multiple variables of say, total value of bonus bid, plus rental bid, plus royalty bid, or any combination thereof. Royalty rates may be considered or reconsidered separately if the lease is subsequently negotiated on behalf of the Indian mineral owner.

(121) One tribal commenter recommends an addition to proposed § 212.20 to provide that prior to negotiation for lease, a mineral property must be listed but not successfully won in the most recent lease sale of no later than the preceding 12-month period.

Response: Section 212.20 is rewritten to provide that the option in leasing procedures be decided by the Indian mineral owner. In the event that the leasing option cannot be determined by the Indian mineral owner(s) the Secretary will act on their behalf, and in the best interest of the Indian mineral owner(s).

(122) One tribal commenter suggests that proposed § 212.20 be modified to provide that if an offer to lease a mineral property is made, and no tribal property exists within the same section or spacing order, and given the approval of the Indian mineral owner, or the majority of owners; the BIA or the Indian mineral owners themselves be able to negotiate a lease agreement, subject to approval of the Secretary.

Response: The suggested modifications to § 212.20 place a great many restrictions on the leasing procedures. The required consent of all Indian mineral owners to the leasing of mineral lands composed of both tribal and individual mineral ownership could adversely affect all owners if difficulty is experienced in reaching a consensus. Thus, the suggested modifications are not made in final regulations. However, provision is made in final regulations at § 212.20 that the Indian mineral owner be advised of the results of bidding and that the lease shall not be approved until the consent of the Indian mineral owner has been obtained.

(123) One commenter suggests that a sentence be added to proposed § 212.20(b)(5) to provide that the Secretary shall not disperse any bonus money to the Indian mineral owner(s) until such time as the lease has been signed by the Indian mineral owner(s) unless otherwise agreed to by the successful bidder.

Response: Bonus monies are not dispensed until the lease is issued. Money received is placed in a special account at the BIA area or agency where it is retained until a lease number can be assigned; whereupon money is distributed after the lease is signed and a number assigned to the lease instrument.

(124) One commenter states that the language of proposed § 212.20(a) should be the same as that in proposed § 211.20(a) providing the same superintendent is meant at both places, otherwise, guidance as to the appropriate superintendent should be given.

Response: We agree. Change is made in the final regulations such that both paragraphs now include a reference to

VOL 61 ISS 131 JL 8 1996 UMI

the superintendent having jurisdiction over the lands, because the same superintendent is the same in both instances.

(125) One commenter suggests changes in § 212.30 (a) and (b) to restrict references to lessors and lessees to the mineral interest only and that there does not appear to be any good reason for relieving [from the supervision of the Secretary] the unrestricted land of an existing lease.

Response: Changes are not made in response to this comment because the references in these paragraphs are to the unrestricted owners and not to the owners under restriction. Protection for the lessee existing prior to the removal of restriction are contained in § 212.30(b) which provides that the Supervision of the Secretary shall continue until adequate arrangements have been made to account for the mineral resources of the restricted land separately from those of the unrestricted. The unrestricted lands must be relieved from the Supervision of the Secretary because the removal of restriction also removes the authority of the Secretary.

(126) One commenter states that the 30-day notice to lessee and lessor in proposed § 212.33(a) is not adequate for the lessee to prepare title opinions in order to timely and properly pay rentals and royalties and suggests that a 120-day notice is appropriate unless a shorter period is agreed to by the parties [to the lease instrument].

Response: The 30-day notice to principals in the event the Secretary relinquishes supervision during the life of a mineral lease instrument is standard and has been in the present regulations (§ 212.29) for many years without causing difficulty. No change is made in the final regulations.

(127) One commenter points out that the word "fee" is used in a dual sense in § 212.33 and suggests that distinction be made between monetary fees and fee simple title and also suggests other changes in this section in the interest of clarity.

Response: We agree. § 212.33(b) is rewritten in final regulation to clarify and simplify the provisions of this section.

(128) One commenter states that § 212.56(c) should be amended to state specifically that the subject section is applicable to allotted lands only.

Response: The title of 25 CFR Part 212 states that these regulations are applicable to the leasing of allotted lands for mineral development and full explanation of the purpose and scope of Parts 211 and 212 are contained in §§ 211.1 and 212.1 and to considerable extent in preamble. This paragraph, although redesignated, remains unchanged.

(129) One commenter states that the use of the words "surface occupant" in proposed § 212.56(c) be changed to "surface owner." Otherwise the lessee may be in the position of not knowing who to negotiate with, the surface occupant or the surface owner.

Response: The lessee may have to negotiate with both the surface occupant and the surface owner depending upon land use (e.g., row crops during the growing season on leased surface) and provisions of the surface lease between the surface lessor and surface lessee. The surface occupant is oftentimes the individual easiest to find. This section is unchanged in final rules.

(130) One commenter states that proposed § 212.56 should be revised to make clear that the consent of the Indian surface owner is not required by these regulations and that the consent referred to in proposed paragraph (c) is required only if made "necessary" by some other applicable law.

Response: Section 212.56 in final regulations provides that where the Indian mineral owner is not the surface owner, the lessee must obtain any additional necessary permits or rights of ingress or egress from the surface occupant. This information is provided to lessees so that the lessee will know that under some conditions a mineral lease does not automatically authorize surface ingress and egress.

III. Conclusion

The scope and purpose of these final rules are to revise, streamline and update implementation of the Act of May 11, 1938, as amended, and the Act of March 3, 1909, as amended, that provide for the leasing of Indian tribal and allotted lands, respectively, for mineral development. By means of these final rules, the Department provides, within statutory limitations, increased communication between the Indian mineral owner and the Secretary and provides the Indian mineral owner greater recognition and authority in the mineral leasing of Indian lands within the framework of the Secretary's trust responsibility and the determination of the best interest of the Indian mineral owner. The Department understands the concerns and importance to tribes of the recognition of tribal authority and responsibility in matters of the management generally of their own mineral resources. This authority and responsibility are recognized at §§ 211.1 and 211.29 in final rules. Section 211.29 specifically permits the supersedence of Federal regulations by the provisions of ordinance, resolution, or other action authorized under any properly issued tribal constitution, bylaw, or charter. Superseding provisions that: (1) nullify the provisions of enacted legislation or judicial decision that preclude the exercise of tribal authority; (2) modify the provisions of an existing lease or permit which constitute substantially the consideration of the lease or permit, or without which the lease or permit would not have been made; or (3) provide for a regulatory taking cannot be approved by the Secretary. Also, the rules formerly in place have not been revised in entirety since 1938 and therefore the action of the Department, in this revision, reflects in final regulation the enactment of legislation, court decisions, evolution of usual and common business and administrative practices, and changes and reorganizations within the Federal government that has taken place during the last 58 years.

Executive Order No. 12866 and Regulatory Flexibility Act

These rules have been reviewed under Executive Order 12866. In addition, the Department of the Interior has determined that these rules will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5–U.S.C. 601 et seq.).

This final rulemaking will have equal impact on anyone desiring to engage in prospecting for or developing Indian-owned minerals, including oil and gas and geothermal resources. The promulgation of final rulemaking reduces the regulatory burden imposed on such persons in several instances. This rulemaking will increase the filing fee (from $10.00 to $75.00) that must accompany each application for lease, permit, or assignment thereof and is no different from the filing fees presently required when filing on Federal lands. This increase is necessary to partially compensate the United States for its costs of processing those documents, but experience shows that this increase is not an amount that will discourage or prevent any small business from contracting to engage in mineral development on Indian lands. The minimum rental for mineral leases on Indian land will be increased from $1.25 to $2.00 per acre which is no different from the minimum rentals imposed on lessees of Federal minerals. The minimum annual development expenditure on leases other than oil and gas and geothermal resources will increase from $10.00 to $20.00 per acre. The increases in minimum rental and annual development expenditure reflect the effects of inflation during the last several years on the cost of doing business, helps ensure diligent development of the Indian mineral estate, and helps to protect the Indian mineral owner against the decline through time in purchasing power of dollars received from the Indian mineral leases. These rules promote economic growth by providing tribes and individual Indian mineral owners greater opportunity to negotiate or participate in the negotiation of leases and permits that maximize their best economic interest and minimize any adverse environmental and cultural impact and at the same time enhance economic growth by allowing wise use of a portion of the National mineral reserve base that might not be otherwise available.

Executive Order No. 12612

The Department has determined that these rules do not have significant federalism effects. These rules support the goals of E.O. No. 12612 by enhancing self determination among the Indian communities by encouraging tribes to responsibly and independently achieve their personal, cultural, and economic objectives through their own efforts.

Executive Order No. 12630

In accordance with E.O. 12630, the Department has determined that these rules do not have significant takings implications.

Executive Order No. 12988

The Department has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b) (2) of Executive Order No. 12988.

National Environmental Policy Act of 1969

The changes made in this final rulemaking are for the purpose of streamlining and updating the regulations implementing the Act of May 11, 1938, as amended, and the Act of March 3, 1909, as amended. These rules constitute an administrative action and do not impact on the physical environment. The approval of mineral leases, permits, and assignments will require compliance with the provisions of the National Environmental Policy Act of 1969, including public participation in compliance with the regulations of the Council on Environmental Quality. In analyzing the alternatives to the changes in previously proposed rulemaking that were made, the Bureau of Indian Affairs considered the changes to be of such minor variation and degree that the impacts were deemed equal to or less than the changes made by the previously proposed rulemaking. The Department of the Interior has determined therefore, that there will be no significant impact to the human environment.

Paperwork Reduction Act of 1980

This rule is exempt from the information collections requirement under the Paperwork Reduction Act, Pub. L. 95–511 (44 U.S.C. 3501 et seq.).

List of Subjects in 25 CFR Parts 211 and 212

Geothermal energy, Indians—lands, Mineral resources, Mines, Oil and gas exploration, Reporting and recordkeeping requirements.

Words of Issuance

For the reasons set out in the preamble, Parts 211 and 212 of Title 25, Chapter I of the Code of Federal Regulations are revised as set forth below.

PART 211—LEASING OF TRIBAL LANDS FOR MINERAL DEVELOPMENT

Subpart A—General

Sec.
211.1 Purpose and scope.
211.2 Information collection.
211.3 Definitions.
211.4 Authority and responsibility of the Bureau of Land Management (BLM).
211.5 Authority and responsibility of the Office of Surface Mining Reclamation and Enforcement (OSM)
211.6 Authority and responsibility of the Minerals Management Service (MMS).
211.7 Environmental studies.
211.8 Government employees cannot acquire leases.
211.9 Existing permits or leases for minerals issued pursuant to 43 CFR chapter II and acquired for Indian tribes.

Subpart B—How To Acquire Leases

211.20 Leasing procedures.
211.21 [Reserved]
211.22 Leases for subsurface storage of oil or gas.
211.23 Corporate qualifications and requests for information.
211.24 Bonds.
211.25 Acreage limitation.
211.26 [Reserved]
211.27 Duration of leases.
211.28 Unitization and communitization agreements, and well spacing.
211.29 Exemption of leases and permits made by organized tribes.

Subpart C—Rents, Royalties, Cancellations and Appeals

211.40 Manner of payments.
211.41 Rentals and production royalty on oil and gas leases.
211.42 Annual rentals and expenditures for development on leases other than oil and gas, and geothermal resources.
211.43 Royalty rates for minerals other than oil and gas.
211.44 Suspension of operations.
211.45 [Reserved]
211.46 Inspection of premises, books and accounts.
211.47 Diligence, drainage and prevention of waste.
211.48 Permission to start operations.
211.49 Restrictions on operations.
211.50 [Reserved]
211.51 Surrender of leases.
211.52 Fees.
211.53 Assignments, overriding royalties, and operating agreements.
211.54 Lease or permit cancellation; Bureau of Indian Affairs notice of noncompliance.
211.55 Penalties.
211.56 Geological and geophysical permits.
211.57 Forms.
211.58 Appeals.

Authority: Sec. 4, Act of May 11, 1938, (52 Stat. 347); Act of August 1, 1956 (70 Stat. 774); 25 U.S.C. 396a-g; and 25 U.S.C. 2 and 9.

Subpart A—General

§ 211.1 Purpose and scope.

(a) The regulations in this part govern leases and permits for the development of Indian tribal oil and gas, geothermal, and solid mineral resources except as provided under paragraph (e) of this section. These regulations are applicable to lands or interests in lands the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States. These regulations are intended to ensure that Indian mineral owners desiring to have their resources developed are assured that they will be developed in a manner that maximizes their best economic interests and minimizes any adverse environmental impacts or cultural impacts resulting from such development.

(b) The regulations in this part shall be subject to amendment at any time by the Secretary of the Interior. No regulation that becomes effective after the date of approval of any lease or permit shall operate to affect the duration of the lease or permit, rate of royalty, rental, or acreage unless agreed to by all parties to the lease or permit.

(c) The regulations of the Bureau of Land Management, the Office of Surface Mining Reclamation and Enforcement, and the Minerals Management Service that are referenced in §§ 211.4, 211.5, and 211.6 are supplemental to the regulations in this part, and apply to parties holding leases or permits for development of Indian mineral resources unless specifically stated otherwise in this part or in such other Federal regulations.

(d) Nothing in the regulations in this part is intended to prevent Indian tribes

VOL
61
ISS
131
JL
8
1996
UMI

from exercising their lawful governmental authority to regulate the conduct of persons, businesses, operations or mining within their territorial jurisdiction.

(e) The regulations in this part do not apply to leasing and development governed by regulations in 25 CFR Parts 213 (Members of the Five Civilized Tribes of Oklahoma), 226 (Osage), or 227 (Wind River Reservation).

§ 211.2 Information collection.

The information collection requirements contained in this part do not require a review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501; et seq.).

§ 211.3 Definitions.

As used in this part, the following words and phrases have the specified meaning except where otherwise indicated:

Applicant means any person seeking a permit, lease, or an assignment from the superintendent or area director.

Approving official means the Bureau of Indians Affairs official with delegated authority to approve a lease or permit.

Area director means the Bureau of Indian Affairs official in charge of an area office.

Authorized officer means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described in this part and in 43 CFR Parts 3160, 3180, 3260, 3280, 3480 and 3590.

Cooperative agreement means a binding arrangement between two or more parties purporting to the act of agreeing or of coming to a mutual arrangement that is accepted by all parties to a transaction (e.g., communitization and unitization).

Director's representative means the Office of Surface Mining Reclamation and Enforcement director's representative authorized by law or lawful delegation of authority to perform the duties described in 30 CFR part 750.

Gas means any fluid, either combustible or non-combustible, that is produced in a natural state from the earth and that maintains a gaseous or rarefied state at ordinary temperature and pressure conditions.

Geological and geophysical permit means a written authorization to conduct on-site surveys to locate potential deposits of oil and gas, geothermal or solid mineral resources on the lands.

Geothermal resources means:

(1) All products of geothermal processes, including indigenous steam, hot water and hot brines;

(2) Steam and other gases, hot water, and hot brines, resulting from water, gas or other fluids artificially introduced into geothermal formations;

(3) Heat or other associated energy found in geothermal formations; and

(4) Any by-product derived therefrom.

In the best interest of the Indian mineral owner refers to the standards to be applied by the Secretary in considering whether to take an administrative action affecting the interests of an Indian mineral owner. In considering whether it is "in the best interest of the Indian mineral owner" to take a certain action (such as approval of a lease, permit, unitization or communitization agreement), the Secretary shall consider any relevant factor, including, but not limited to: economic considerations, such as date of lease expiration; probable financial effect on the Indian mineral owner; leasability of land concerned; need for change in the terms of the existing lease; marketability; and potential environmental, social, and cultural effects.

Indian lands means any lands owned by any individual Indian or Alaska Native, Indian tribe, band, nation, pueblo, community, rancheria, colony, or other tribal group which owns land or interests in the land, the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

Indian mineral owner means an Indian tribe, band, nation, pueblo community, rancheria, colony, or other tribal group which owns mineral interests in oil and gas, geothermal or solid mineral resources, title to which is held in trust by the United States, or is subject to a restriction against alienation imposed by the United States.

Indian surface owner means any individual Indian or Indian tribe whose surface estate is held in trust by the United States, or is subject to restriction against alienation imposed by the United States.

Lease means any contract approved by the United States under the Act of May 11, 1938 (52 Stat. 347) (25 U.S.C. 396a–396g), as amended, that authorizes exploration for, extraction of, or removal of any minerals.

Lessee means a natural person, proprietorship, partnership, corporation, or other entity that has entered into a lease with an Indian mineral owner, or who has been assigned an obligation to make royalty or other payments required by the lease.

Lessor means an Indian mineral owner who is a party to a lease.

Minerals includes both metalliferous and non-metalliferous minerals; all hydrocarbons, including oil and gas, coal and lignite of all ranks; geothermal resources; and includes but is not limited to, sand, gravel, pumice, cinders, granite, building stone, limestone, clay, silt, or any other energy or non-energy mineral.

Minerals Management Service official means any employee of the Minerals Management Service (MMS) authorized by law or by lawful delegation of authority to perform the duties described in 30 CFR chapter II, subchapters A and C.

Mining means the science, technique, and business of mineral development including, but not limited to: opencast work, underground work, and in-situ leaching directed to severance and treatment of minerals; Provided, when sand, gravel, pumice, cinders, granite, building stone, limestone, clay or silt is the subject mineral, an enterprise is considered "mining" only if the extraction of such a mineral exceeds 5,000 cubic yards in any given year.

Oil means all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons). Oil includes liquefiable hydrocarbon substances such as drip gasoline and other natural condensates recovered or recoverable in a liquid state from produced gas without resorting to a manufacturing process.

Permit means any contract issued by the superintendent and/or area director to conduct exploration on; or removal of less than 5,000 cubic yards per year of common varieties of minerals from Indian lands.

Permittee means a person holding or required by this part to hold a permit to conduct exploration operations on; or remove less than 5,000 cubic yards per year of common varieties of minerals from Indian lands.

Secretary means the Secretary of the Interior or an authorized representative.

Solid minerals means all minerals excluding oil, gas and geothermal resources.

Superintendent means the Bureau of Indian Affairs official in charge of the agency office having jurisdiction over the minerals subject to leasing under this part.

§ 211.4 Authority and responsibility of the Bureau of Land Management (BLM).

The functions of the Bureau of Land Management are found in 43 CFR part 3160—Onshore Oil and Gas Operations, 43 CFR part 3180—Onshore Oil and Gas Unit Agreements: Unproven Area, 43 CFR part 3260—Geothermal Resources Operations, 43 CFR part 3280—Geothermal Resources Unit Agreements: Unproven Areas, 43 CFR part 3480—Coal Exploration and Mining Operations, and 43 CFR part 3590—Solid Minerals (other than coal) Exploration and Mining Operations; and currently include, but are not limited to, resource evaluation, approval of drilling permits, mining and reclamation, production plans, mineral appraisals, inspection and enforcement, and production verification. These regulations, apply to leases and permits approved under this part.

§ 211.5 Authority and responsibility of the Office of Surface Mining Reclamation and Enforcement (OSM).

The OSM is the regulatory authority for surface coal mining and reclamation operations on Indian lands pursuant to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.). The relevant regulations for surface coal mining and reclamation operations are found in 30 CFR part 750. Those regulations apply to mining and reclamation on leases approved under this part.

§ 211.6 Authority and responsibility of the Minerals Management Service (MMS).

The functions of the MMS for reporting, accounting, and auditing are found in 30 CFR chapter II, subchapters A and C, which, apply to leases approved under this part. To the extent the parties to a lease or permit are able to provide reasonable provisions satisfactorily addressing the functions governed by MMS regulations, the Secretary may approve alternate provisions in a lease or permit.

§ 211.7 Environmental studies.

(a) The Secretary shall ensure that all environmental studies are prepared as required by the National Environmental Policy Act of 1969 (NEPA) and the regulations promulgated by the Council on Environmental Quality (CEQ), found in 40 CFR parts 1500 through 1508.

(b) The Secretary shall ensure that all necessary surveys are performed and clearances obtained in accordance with 36 CFR parts 60, 63, and 800 and with the requirements of the Archaeological and Historic Preservation Act (16 U.S.C. 469 et seq.), the National Historic Preservation Act (16 U.S.C. 470 et seq.), The American Indian Religious Freedom Act (42 U.S.C. 1996), and Executive Order 11593, Protection and Enhancement of the Cultural Environment (3 CFR, 1971 through 1975 Comp., p. 559). If these surveys indicate that a mineral development will have an adverse effect on a property listed on or eligible for listing on the National Register of Historic Places, the Secretary shall:

(1) Seek the comments of the Advisory Council on Historic Preservation, in accordance with 36 CFR part 800;

(2) Ensure that the property is avoided, that the adverse effect is mitigated, or;

(3) Ensure that appropriate excavations or other related research is conducted and ensure that complete data describing the historic property is preserved.

§ 211.8 Government employees cannot acquire leases.

U.S. Government employees are prevented from acquiring leases or interests in leases by the provisions of 25 CFR part 140 and 43 CFR part 20 pertaining to conflicts of interest and ownership of an interest in trust land.

§ 211.9 Existing permits or leases for minerals issued pursuant to 43 CFR chapter II and acquired for Indian tribes.

(a) Title to the minerals underlying certain Federal lands, which were previously subject to general leasing and mining laws, is now held in trust by the United States for Indian tribes. Existing mineral prospecting permits, exploration and mining leases on these lands, issued prior to these lands being placed in trust status or becoming Indian lands, pursuant to 43 CFR chapter II (and its predecessor regulations), and all actions on the permits and leases shall be administered by the Secretary in accordance with the regulations set forth in 30 CFR chapters II and VII and 43 CFR chapter II, as applicable, provided, that all payment or reports required by a non-producing lease or permit, issued pursuant to 43 CFR chapter II, shall be made to the superintendent having administrative jurisdiction over the land involved, instead of the officer of the Bureau of Land Management designated in 43 CFR unless specifically stated otherwise in the statutes authorizing the United States to hold the land in trust for an Indian tribe. Producing lease payments and reports will be submitted to the Minerals Management Service in accordance with 30 CFR chapter II, subchapters A and C.

(b) Administrative actions regarding an existing lease or permit under this section, may be appealed pursuant to 25 CFR part 2.

Subpart B—How to Acquire Leases

§ 211.20 Leasing procedures.

(a) Indian mineral owners may, with the approval of the superintendent or area director, lease their land for mining purposes. No oil and gas lease shall be approved unless it has first been offered for bidding at an advertised lease sale in accordance with this section. Leases for minerals other than oil and gas shall be advertised for bids as prescribed in this section unless the Secretary grants the Indian mineral owners written permission to negotiate for lease. Application for leases shall be made to the superintendent having jurisdiction over the lands.

(b) Indian mineral owners may request that the Secretary prepare and advertise or negotiate (if the requirements of this section have been met) mineral leases on their behalf. If requested by an applicant interested in acquiring rights to Indian-owned minerals, the Secretary shall promptly notify the Indian mineral owner, and advise the owner in writing of the alternatives available, including the right to decline to lease. If the Indian mineral owner decides to have the leases advertised, the Secretary shall consult with the Indian mineral owner concerning the appropriate royalty rate and rental. The Secretary may then undertake the responsibility to advertise and lease in accordance with the following procedures:

(1) Leases shall be advertised to receive optimum competition for bonus consideration, under sealed bid, oral auction, or a combination of both. Notice of such advertisement shall be published in at least one local newspaper and in one trade publication at least thirty (30) days in advance of sale. If applicable, such notice must identify the reservation within which the tracts to be leased are found. No specific description of the tracts to be leased need be published. Specific description of such tracts shall be available at the office of the superintendent and/or area director upon request. The complete text of the advertisement, including a specific description, shall be mailed to each person listed on the appropriate agency or area mailing list. Individuals and companies interested in receiving advertisements of lease sales should send their mailing information to the appropriate superintendent or area director for future reference.

(2) The advertisement shall offer the tracts to the responsible bidder offering the highest bonus. The Secretary, after consultation with the Indian mineral owner, shall establish the rental and

VOL
61
ISS
131
JL
8
1996
UMI

royalty rates which shall be stated in the advertisement and shall not be subject to negotiation. The advertisement shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the lease bid by the Indian mineral owner is required.

(3) Each sealed bid must be accompanied by a cashier's check, certified check or postal money order, or any combination thereof, payable to the payee designated in the advertisement, in an amount not less than 25 percent of the bonus bid, which shall be returned if that bid is not accepted.

(4) A successful oral auction bidder will be allowed five (5) working days to remit the required 25 percent deposit of the bonus bid.

(5) A successful bidder shall, within thirty (30) days after notification of the bid award, remit to the Secretary the balance of the bonus, the first year's rental, a $75 filing fee, its prorated-share of the advertising costs as determined by the Bureau of Indian Affairs, and file with the Secretary all required bonds. The successful bidder shall also file the lease in completed form at that time. However, for good reasons, the Secretary may grant extensions of time in thirty (30) day increments for filing of the lease and all required bonds, provided that additional extension requests are submitted and approved prior to the expiration of the original thirty (30) days or the previously granted extension. Failure on the part of the bidder to take all reasonable actions necessary to comply with the foregoing shall result in forfeiture of the required payment of 25 percent of any bonus bid for the use and benefit of the Indian mineral owner.

(6) If no satisfactory bid is received, or if the accepted bidder fails to complete all requirements necessary for the approval of the lease, or if the Secretary determines that it is not in the best interest of the Indian mineral owner to accept any of the bids the Secretary may re-advertise the lease for sale, or, subject to the consent of the Indian mineral owner, the lease may be let through private negotiations.

(c) The Secretary shall advise the Indian mineral owner of the results of the bidding, and shall not approve the lease until the consent of the Indian mineral owner has been obtained.

(d) The Indian mineral owner may also submit negotiated leases to the Secretary for review and approval.

§ 211.21 [Reserved]

§ 211.22 Leases for subsurface storage of oil or gas.

(a) The Secretary, with the consent of the Indian mineral owners, may approve storage leases, or modifications, amendments, or extensions of existing leases, on Indian lands to provide for the subsurface storage of oil or gas, irrespective of the lands from which production is initially obtained. The storage lease, or modification, amendment, or extension to an existing lease, shall provide for the payment of such storage fee or rental on such oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in the oil and gas lease when such stored oil and gas is produced in conjunction with oil or gas not previously produced.

(b) The Secretary, with consent of the Indian mineral owners, may approve a provision in an oil and gas lease under which storage of oil and gas is authorized, for continuance of the lease at least for the period of such storage use and so long thereafter as oil or gas not previously produced is produced in paying quantities.

(c) Applications for subsurface storage of oil or gas shall be filed in triplicate with the authorized officer and shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental, or royalty offered to be paid for such storage, and all essential information showing the necessity for such project. Enough copies of the final agreement signed by the Indian mineral owners and other parties in interest shall be submitted for the approval of the Secretary to permit retention of five copies by the Department after approval.

§ 211.23 Corporate qualifications and requests for information.

(a) The signing in a representative capacity and delivery of bids, geological and geophysical permits, mineral leases, or assignments, bonds, or other instruments required by the regulations in this part constitutes certification that the individual signing (except a surety agent) is authorized to act in such capacity. An agent for a surety shall furnish a power of attorney.

(b) A corporate applicant proposing to acquire an interest in a permit or lease shall have on file with the superintendent or area director a statement showing:

(1) The State(s) in which the corporation is incorporated, and that the corporation is authorized to hold such interests in the State where the land described in the instrument is situated; and

(2) A notarized statement that the corporation has power to conduct all business and operations as described in the lease or permit.

(c) The Secretary may, either before or after the approval of a permit, mineral lease, assignment, or bond, call for any reasonable additional information necessary to carry out the regulations in this part, or other applicable laws and regulations.

§ 211.24 Bonds.

(a) The lessee, permittee or prospective lessee acquiring a lease, or any interest therein, by assignment shall furnish with each lease, permit or assignment a surety bond or personal bond in an amount sufficient to ensure compliance with all of the terms and conditions of the lease(s), permit(s), or assignment(s) and the statutes and regulations applicable to the lease, permit, or assignment. Surety bonds shall be issued by a qualified company approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(b) An operator may file a $75,000 bond for all geothermal, mining, or oil and gas leases, permits, or assignments in any one State, which may also include areas on that part of an Indian reservation extending into any contiguous State. Statewide bonds are subject to approval in the discretion of the Secretary.

(c) An operator may file a $150,000 bond for full nationwide coverage to cover all geothermal or oil and gas leases, permits, or assignments without geographic or acreage limitation to which the operator is or may become a party. Nationwide bonds are subject to approval in the discretion of the Secretary.

(d) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the provisions and conditions of the lease or permit. The certificate shall explicitly indicate on its face that Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the provisions and conditions of a lease or permit; or

(5) Letter of credit issued by a financial institution authorized to do business in the United States and whose deposits are federally insured, and identifying the Secretary as sole payee with full authority to demand immediate payment in the case of default in the performance of the provisions and conditions of a lease or permit.

(i) The letter of credit shall be irrevocable during its term.

(ii) The letter of credit shall be payable to the Bureau of Indian Affairs upon demand, in part or in full, upon receipt from the Secretary of a notice of attachment stating the basis thereof (e.g., default in compliance with the lease or permit provisions and conditions or failure to file a replacement in accordance with paragraph (d)(5)(v) of this section).

(iii) The initial expiration date of the letter of credit shall be at least-one (1) year following the date it is filed in the proper Bureau of Indian Affairs office.

(iv) The letter of credit shall contain a provision for automatic renewal for periods of not less than one (1) year in the absence of notice to the proper Bureau of Indian Affairs office at least ninety (90) days prior to the originally stated or any extended expiration date.

(v) A letter of credit used as security for any lease or permit upon which operations have taken place and final approval for abandonment has not been given, or as security for a statewide or nationwide bond, shall be forfeited and shall be collected by the Secretary if not replaced by other suitable bond or letter of credit at least thirty (30) days before its expiration date.

(e) The required amount of bonds may be increased in any particular case at the discretion of the Secretary.

§ 211.25 Acreage limitation.

A lessee may acquire more than one lease but no single lease shall be granted for mineral leasing purposes on Indian tribal or restricted lands in excess of the following acreage except where the rule of approximation applies:

(a) Leases for oil and gas and all other minerals except coal are to be contained within one United States Governmental survey section of land and shall be described by legal subdivisions including lots or tract equivalents not to exceed 640 acres; in instances of irregular surveys, including lands not surveyed under the United States Governmental survey, lands shall be considered in multiples of 40 acres or the nearest aliquot equivalent thereof;

(b) Leases for coal shall ordinarily be limited to 2,560 acres in a reasonably compact form and shall be described by legal subdivisions including lots or tract equivalents. In instances of irregular surveys, including lands not surveyed under the United States Governmental survey, lands shall be considered in multiples of 40 acres or the nearest aliquot equivalent thereof. The Secretary may, upon application and with the consent of the Indian mineral owner, approve the issuance of a single lease for more than 2,560 acres, in a reasonably compact form, upon a finding that the issuance is in the best interest of the lessor.

§ 211.26 [Reserved]

§ 211.27 Duration of leases.

(a) All leases shall be for a term not to exceed a primary term of lease duration of ten (10) years and, absent specific lease provisions to the contrary, shall continue as long thereafter as the minerals specified in the lease are produced in paying quantities. Absent specific lease provisions to the contrary, all provisions in leases governing their duration shall be measured from the date of approval by the Secretary.

(b) An oil and gas or geothermal resource lease which stipulates that it shall continue in full force and effect beyond the expiration of the primary term of lease duration ("commencement clause") if drilling operations have commenced during the primary term, shall be valid and shall hold the lease beyond the primary term of lease duration if the lessee or the lessee's designee has commenced actual drilling by midnight of the last day of the primary term of the lease with a drilling rig designed to reach the total proposed depth, and drilling is continued with reasonable diligence until the well is completed to production or abandoned. However, in no case shall such drilling hold the lease longer than 120 days past the primary term of lease duration without actual production of oil, gas, or geothermal resources. *Provided*, that this extension does not allow a lease to continue past the 10-year statutory limitation. Drilling which meets the requirements of this section and occurs within a unit or communitization agreement to which the lease is committed shall be considered as if it occurs on the leasehold itself. If there is a conflict between the commencement clause and the habendum clause of a lease, the commencement clause will control.

(c) A solid minerals lease which stipulates that it shall continue in full force and effect beyond the expiration of the primary term of lease duration if mining operations have commenced during the primary term (commencement clause), shall be valid and hold the lease beyond the primary term of lease duration if the lessee or the lessee's designee has by midnight of the last day of the primary term of the lease commenced actual removal of mineral materials intended for sale and upon which royalties will be paid. If there is a conflict between the commencement clause and the habendum clause of a lease, the commencement clause will control.

§ 211.28 Unitization and communitization agreements, and well spacing.

(a) For the purpose of promoting conservation and efficient utilization of minerals, the Secretary may approve a cooperative unit, drilling or other development plan on any leased area upon a determination that approval is advisable and in the best interest of the Indian mineral owner. For the purposes of this section, a cooperative unit, drilling or other development plan means an agreement for the development or operation of a specifically designated area as a single unit without regard to separate ownership of the land included in the agreement. Such cooperative agreements include, but are not limited to, unit agreements, communitization agreements and other types of agreements that allocate costs and benefits.

(b) The consent of the Indian mineral owner to such unit or cooperative agreement shall not be required unless such consent is specifically required in the lease. However, the Secretary shall consult with the Indian mineral owner prior to making a determination concerning a cooperative agreement or well spacing plan.

(c) Requests for approval of cooperative agreements which comply with the requirements of all applicable rules and regulations shall be filed with the superintendent or area director.

(d) All Indian mineral owners of any right, title or interest in the mineral resources to be included in a cooperative agreement must be notified by the lessee at the time the agreement is submitted to the superintendent or area director. An affidavit from the lessee stating that a notice was mailed to each mineral owner of record for whom the superintendent or area director has an address will satisfy this notice requirement.

(e) A request for approval of a proposed cooperative agreement, and all documents incident to such agreement, must be filed with the superintendent or area director at least ninety (90) days prior to the first expiration date of any of the Indian leases in the area proposed to be covered by the cooperative agreement.

VOL 61 ISS 131 JUL 8 1996 UMI

(f) Unless otherwise provided in the cooperative agreement, approval of the agreement commits each lease to the unit in the area covered by the agreement on the date approved by the Secretary or the date of first production, whichever is earlier, as long as the agreement is approved before the lease expiration date.

(g) Any lease committed in part to any such cooperative agreement shall be segregated into a separate lease or leases as to the lands committed and lands not committed to the agreement. Segregation shall be effective on the date the agreement is effective.

(h) Wells shall be drilled in conformity with a well spacing program approved by the authorized officer.

§ 211.29 Exemption of lessees and permits made by organized tribes.

The regulations in this part may be superseded by the provisions of any tribal constitution, bylaw or charter issued pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461–479), the Alaska Act of May 1, 1936 (49 Stat. 1250; 48 U.S.C. 362,258a), or the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C., and Sup., 501–509), or by ordinance, resolution, or other action authorized under such constitution, bylaw or charter; Provided, that such tribal law may not supersede the requirements of Federal statutes applicable to Indian mineral leases. The regulations in this part, in so far as they are not so superseded, shall apply to leases and permits made by organized tribes if the validity of the lease or permit depends upon the approval of the Secretary of the Interior.

Subpart C—Rents, Royalties, Cancellations and Appeals

§ 211.40 Manner of payments.

Unless otherwise specifically provided for in a lease, once production has been established, all payments shall be made to the MMS or such other party as may be designated, and shall be made at such time as provided in 30 CFR chapter II, subchapters A and C. Prior to production, all bonus and rental payments, shall be made to the superintendent or area director.

§ 211.41 Rentals and production royalty on oil and gas leases.

(a) A lessee shall pay, in advance, beginning with the effective date of the lease, an annual rental of $2.00 per acre or fraction of an acre or such other greater amount as prescribed in the lease. This rental shall not be credited against production royalty nor shall the rental be prorated or refunded because of surrender or cancellation.

(b) The Secretary shall not approve leases with a royalty rate less than 16–⅔ percent of the amount or value of production produced and sold from the lease unless a lower royalty rate is agreed to by the Indian mineral owner and is found to be in the best interest of the Indian mineral owner. Such approval may only be granted by the area director if the approving official is the superintendent and by the Assistant Secretary for Indian Affairs if the approving official is the area director.

(c) Value of lease production for royalty purposes shall be determined in accordance with applicable lease provisions and regulations in 30 CFR chapter II, subchapters A and C. If the valuation provisions in the lease are inconsistent with the regulations in 30 CFR chapter II, subchapters A and C, the lease provisions shall govern.

(d) If the leased premises produce gas in excess of the lessee's requirements for the development and operation of said premises, then the lessor may use sufficient gas, free of charge, for any desired school or other buildings belonging to the tribe, by making his own connections to a regulator installed, connected to the well and maintained by the lessee, and the lessee shall not be required to pay royalty on gas so used. The use of such gas shall be at the lessor's risk at all times.

§ 211.42 Annual rentals and expenditures for development on leases other than oil and gas, and geothermal resources.

(a) Unless otherwise authorized by the Secretary, a lease for minerals other than oil, gas and geothermal resources shall provide for a yearly development expenditure of not less than $20 per acre. All such leases shall provide for a rental payment of not less than $2.00 for each acre or fraction of an acre payable on or before the first day of each lease year.

(b) Within twenty (20) days after the lease year, an itemized statement, in duplicate, of the expenditure for development under a lease for minerals other than oil and gas shall be filed with the superintendent or area director. The lessee must certify the statement under oath.

§ 211.43 Royalty rates for minerals other than oil and gas.

(a) Except as provided in paragraph (b) of this section, the minimum rates for leases of minerals other than oil and gas shall be as follows:

(1) For substances other than coal, the royalty rate shall be 10 percent of the value of production produced and sold from the lease at the nearest shipping point.

(2) For coal to be strip or open pit mined the royalty rate shall be 12½ percent of the value of production produced and sold from the lease, and for coal removed from an underground mine, the royalty rate shall be 8 percent of the value of production produced and sold from the lease.

(3) For geothermal resources, the royalty rate shall be 10 percent of the amount or value of steam, or any other form of heat or energy derived from production of geothermal resources under the lease and sold or utilized by the lessee. In addition, the royalty rate shall be 5 percent of the value of any byproduct derived from production of geothermal resources under the lease and sold or utilized or reasonably susceptible of sale or utilization by the lessee, except that the royalty for any mineral byproduct shall be governed by the appropriate paragraph of this section.

(b) A lower royalty rate shall be allowed if it is determined to be in the best interest of the Indian mineral owner. Approval of a lower rate may only be granted by the area director if the approving official is the superintendent or by the Assistant Secretary for Indian Affairs, if the approving official is the area director.

§ 211.44 Suspension of operations.

(a) After the expiration of the primary term of the lease the Secretary may approve suspension of operations for remedial purposes which are necessary for continued production, to protect the resource, the environment, or for other good reasons. *Provided*, that such remedial operations are conducted in accordance with 43 CFR part 3160, subpart 3165 and under such stipulations and conditions as may be prescribed by the Secretary and are conducted with reasonable diligence. Any suspension shall not relieve the lessee from liability for the payment of rental and other payments as required by lease provisions.

(b) An application for permission to suspend operations or production for economic or marketing reasons on a lease capable of production after the expiration of the primary term of lease duration must be accompanied by the written consent of the Indian mineral owner, an economic analysis, and an executed amendment by the parties to the lease setting forth the provisions pertaining to the suspension of operations and production. Such application shall be treated as a negotiated change to lease provisions, and as such, shall be subject to review and approval by the Secretary.

§ 211.45 [Reserved]

§ 211.46 Inspection of premises, books and accounts.

Lessees shall allow the Indian mineral owner, the Indian mineral owner's representatives, or any authorized representative of the Secretary to enter all parts of the leased premises for the purpose of inspection and audit. Lessees shall keep a full and correct account of all operations and submit all related reports required by the lease and applicable regulations. Books and records shall be available for inspection during regular business hours.

§ 211.47 Diligence, drainage and prevention of waste.

The lessee shall:

(a) Exercise diligence in mining, drilling and operating wells on the leased lands while minerals production can be secured in paying quantities;

(b) Protect the lease from drainage (if oil and gas or geothermal resources are being drained from the lease premises by a well or wells located on lands not included in the lease, the Secretary reserves the right to impose reasonable and equitable terms and conditions to protect the interest of the Indian mineral owner of the lands, such as payment of compensatory royalty for the drainage);

(c) Carry on operations in a good and workmanlike manner in accordance with approved methods and practices;

(d) Have due regard for the prevention of waste of oil or gas or other minerals, the entrance of water through wells drilled by the lessee to other strata, to the destruction or injury of the oil or gas, other mineral deposits, or fresh water aquifers, the preservation and conservation of the property for future productive operations, and the health and safety of workmen and employees;

(e) Securely plug all wells and effectively shut off all water from the oil or gas-bearing strata before abandoning them;

(f) Not construct any well pad location within 200 feet of any structures or improvements without the Indian surface owner's written consent;

(g) Carry out, at the lessee's expense, all reasonable orders and requirements of the authorized officer relative to prevention of waste;

(h) Bury all pipelines crossing tillable lands below plow depth unless other arrangements are made with the Indian surface owner; and

(i) Pay the Indian surface owner all damages, including damages to crops, buildings, and other improvements of the Indian surface owner occasioned by the lessee's operations as determined by the superintendent.

§ 211.48 Permission to start operations.

(a) No exploration, drilling, or mining operations are permitted on any Indian lands before the Secretary has granted written approval of a mineral lease or permit pursuant to the regulations in this part.

(b) After a lease or permit is approved, written permission must be secured from the Secretary before any operations are started on the leased premises, in accordance with applicable rules and regulations in 25 CFR part 216; 30 CFR chapter II, subchapters A and C; 30 CFR part 750 (Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands), 43 CFR parts 3160, 3260, 3480, 3590, and Orders or Notices to Lessees (NTLs) issued thereunder.

§ 211.49 Restrictions on operations.

Leases issued under the provisions of the regulations in this part shall be subject to such restrictions as to time or times for well operations and production from any leased premises as the Secretary judges may be necessary or proper for the protection of the natural resources of the leased land and in the interest of the lessor.

§ 211.50 [Reserved]

§ 211.51 Surrender of leases.

A lessee may, with the approval of the Secretary, surrender a lease or any part of it, on the following conditions:

(a) All royalties and rentals due on the date the request for surrender is received must be paid;

(b) The superintendent, after consultation with the authorized officer, must be satisfied that proper provisions have been made for the conservation and protection of the property, and that all operations on the portion of the lease surrendered have been properly reclaimed, abandoned, or conditioned, as required;

(c) If a lease has been recorded, the lessee must submit a release along with the recording information of the original lease so that, after acceptance of the release, it may be recorded;

(d) If a lessee requests to surrender an entire lease or an entire undivided portion of a lease document, the lessee must deliver to the superintendent or area director the original lease documents; *Provided*, that where the request is made by an assignee to whom no copy of the lease was delivered, the assignee must deliver to the superintendent or area director only its copy of the assignment;

(e) If the lease (or a portion thereof being surrendered) is owned in undivided interests, all lessees owning undivided interests in the lease must join in the request for surrender;

(f) No part of any advance rental shall be refunded to the lessee, nor shall any subsequent surrender or termination of a lease relieve the lessee of the obligation to pay advance rental if advance rental became due prior to the date the request for surrender was received by the superintendent or area director;

(g) If oil, gas, or geothermal resources are being drained from the leased premises by a well or wells located on lands not included in the lease, the Secretary reserves the right, prior to acceptance of the surrender, to impose reasonable and equitable terms and conditions to protect the interests of the Indian mineral owners of the lands surrendered. Such terms and conditions may include payment of compensatory royalty for any drainage; and

(h) Upon expiration or surrender of a solid mineral lease the lessee shall deliver the leased premises in a condition conforming to the approved reclamation plan. Unless otherwise provided in the lease, the machinery necessary to operate the mine is the property of the lessee. However, the machinery may not be removed from the leased premises without the written permission of the Secretary.

§ 211.52 Fees.

Unless otherwise authorized by the Secretary, each permit, lease, sublease, or other contract, or assignment, thereof shall be accompanied by a filing fee of $75.00 at the time of filing.

§ 211.53 Assignments, overriding royalties, and operating agreements.

(a) Approved leases or any interest therein may be assigned or transferred only with the approval of the Secretary. The Indian mineral owner must also consent if approval of the Indian mineral owner is required in the lease. If consent is not required, then the Secretary shall notify the Indian mineral owner of the proposed assignment. To obtain the approval of the Secretary the assignee must be qualified to hold the lease under existing rules and regulations and shall furnish a satisfactory bond conditioned for the faithful performance of the covenants and conditions of the lease.

(b) No lease or interest therein or the use of such lease shall be assigned, sublet, or transferred, directly or indirectly, by working or drilling contract, or otherwise, without the consent of the Secretary.

(c) Assignments of leases, and stipulations modifying the provisions of

VOL 61 ISS 131 JL 8 1996 UMI

existing leases, which stipulations are also subject to the approval of the Secretary, shall be filed with the superintendent within five (5) working days after the date of execution. Upon execution of satisfactory bonds by the assignee the Secretary may permit the release of any bonds executed by the assignor. Upon execution of satisfactory bonds the assignee accepts all the assignor's responsibilities and prior obligations and liabilities of the assignor (including but not limited to any underpaid royalties and rentals) under the lease.

(d) Agreements creating overriding royalties or payments out of production shall not be considered as interests in the leases as such provision is used in this section. Agreements creating overriding royalties or payments out of production, or agreements designating operators are hereby authorized and the approval of the Secretary shall not be required with respect thereto, but such agreements shall be subject to the condition that nothing in such agreements shall be construed as modifying any of the obligations of the lessee, including, but not limited to, obligations imposed by requirements of the MMS for reporting, accounting, and auditing; obligations for diligent development and operation, protection against drainage and mining in trespass, compliance with oil and gas, geothermal, and mining regulations (25 CFR part 216; 43 CFR parts 3160, 3260, 3480, and 3590; and those applicable rules found in 30 CFR chapter II, subchapters A and C) and the requirements for Secretarial approval before abandonment of any oil and gas or geothermal well or mining operation. All such obligations are to remain in full force and effect, the same as if free of any such overriding royalties or payments. The existence of agreements creating overriding royalties or payments out of production, whether or not actually paid, shall not be considered as justification for the approval of abandonment of any oil and gas or geothermal well or mining operation. Nothing in this paragraph revokes the requirement for approval of assignments and other instruments which is required in this section, but any overriding royalties or payments out of production created by the provisions of such assignments or instruments shall be subject to the condition stated in this section. Agreements creating overriding royalties or payments out of production, or agreements designating operators shall be filed with the superintendent unless incorporated in assignments or instruments required to be filed pursuant to this section.

§ 211.54 Lease or permit cancellation; Bureau of Indian Affairs notice of noncompliance.

(a) If the Secretary determines that a permittee or lessee has failed to comply with the terms of the permit or lease; the regulations in this part; or other applicable laws or regulations; the Secretary may:

(1) Serve a notice of noncompliance specifying in what respect the permittee or lessee has failed to comply with the requirements referenced in this paragraph, and specifying what actions, if any, must be taken to correct the noncompliance; or

(2) Serve a notice of proposed cancellation of the lease or permit. The notice of proposed cancellation shall set forth the reasons why lease or permit cancellation is proposed and shall specify what actions, if any, must be taken to avoid cancellation.

(b) The notice of noncompliance or proposed cancellation shall specify in what respect the permittee or lessee has failed to comply with the requirements referenced in paragraph (a), and shall specify what actions, if any, must be taken to correct the noncompliance.

(c) The notice shall be served upon the permittee or lessee by delivery in person or by certified mail to the permittee or lessee at the permittee's or lessee's last known address. When certified mail is used, the date of service shall be deemed to be when the notice is received or five (5) working days after the date it is mailed, whichever is earlier.

(d) The lessee or permittee shall have thirty (30) days (or such longer time as specified in the notice) from the date that the notice is served to respond, in writing, to the official or the Bureau of Indian Affairs office that issued the notice.

(e) If a permittee or lessee fails to take any action that is prescribed in the notice of proposed cancellation, fails to file a timely written response to the notice, or files a written response that does not, in the discretion of the Secretary, adequately justify the permittee's or lessee's actions, then the Secretary may cancel the lease or permit, specifying the basis for the cancellation.

(f) If a permittee or lessee fails to take corrective action or to file a timely written response adequately justifying the permittee's or lessee's actions pursuant to a notice of noncompliance, the Secretary may issue an order of cessation of operations. If the permittee or lessee fails to comply with the order of cessation, or fails to timely file an appeal of the order of cessation pursuant to paragraph (h), the Secretary may issue an order of lease or permit cancellation.

(g) Cancellation of a lease or permit shall not relieve the lessee or permittee of any continuing obligations under the lease or permit.

(h) Orders of cessation or of lease or permit cancellation issued pursuant to this section may be appealed under 25 CFR part 2.

(i) This section does not limit any other remedies of the Indian mineral owner as set forth in the lease or permit.

(j) Nothing in this section is intended to limit the authority of the authorized officer or the MMS official to take any enforcement action authorized pursuant to statute or regulation.

(k) The authorized officer, MMS official, and the superintendent and/or area director should consult with one another before taking any enforcement actions.

§ 211.55 Penalties.

(a) In addition to or in lieu of cancellation under § 211.54, violations of the terms and conditions of any lease, or the regulations in this part, or failure to comply with a notice of noncompliance or a cessation order issued by the Secretary, or, in the case of solid minerals the authorized officer, may subject a lessee or permittee to a penalty of not more than $1,000 per day for each day that such a violation or noncompliance continues beyond the time limits prescribed for corrective action.

(b) A notice of a proposed penalty shall be served on the lessee or permittee either personally or by certified mail to the lessee or permittee at the lessee's or permittee's last known address. The date of service by certified mail shall be deemed to be the date when received or five (5) working days after the date mailed, whichever is earlier.

(c) The notice shall specify the nature of the violation and the proposed penalty, and shall specifically advise the lessee or permittee of the lessee's or permittee's right to either request a hearing within thirty (30) days from receipt of the notice or pay the proposed penalty. Hearings shall be held before the superintendent and/or area director whose findings shall be conclusive, unless an appeal is taken pursuant to 25 CFR part 2.

(d) If the lessee or permittee served with a notice of proposed penalty requests a hearing, penalties shall accrue each day the violations or noncompliance set forth in the notice continue beyond the time limits prescribed for corrective action. The Secretary may issue a written suspension of the requirement to correct the violations pending completion of the hearings provided by this section only upon a determination, at the discretion of the Secretary, that such a suspension will not be detrimental to the lessor and upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage. The amount of the bond must be sufficient to cover the cost of correcting the violations set forth in the notice or any disputed amounts plus accrued penalties and interest.

(e) Payment in full of penalties more than ten (10) days after a final decision imposing a penalty shall subject the lessee or permittee to late payment charges. Late payment charges shall be calculated on the basis of a percentage assessment rate of the amount unpaid per month for each month or fraction thereof until payment is received by the Secretary. In the absence of a specific lease provision prescribing a different rate, the interest rate on late payments and underpayments shall be a rate applicable under § 6621(a)(2) of the Internal Revenue Code of 1954. Interest shall be charged only on the amount of payment not received and only for the number of days the payment is late.

(f) None of the provisions of this section shall be interpreted as:

(1) Replacing or superseding the independent authority of the authorized officer, the director's representative or the MMS official to impose penalties for violations of applicable regulations pursuant to 43 CFR part 3160, and 43 CFR Groups 3400 and 3500, 30 CFR part 750, or 30 CFR chapter II, subchapters A and C;

(2) Replacing or superseding any penalty provision in the terms and conditions of a lease or permit approved by the Secretary pursuant to this part; or

(3) Authorizing the imposition of a penalty for violations of lease or permit terms for which the authorized officer, director's representative or MMS official, have either statutory or regulatory authority to assess a penalty.

§ 211.56 Geological and geophysical permits.

Permits to conduct geological and geophysical operations on Indian lands which do not conflict with any mineral leases entered into pursuant to this part, may be approved by the Secretary with the consent of the Indian mineral owner under the following conditions:

(a) The permit must describe the area to be explored, the duration, and the consideration to be paid the Indian owner;

(b) The permit will not grant the permittee any option or preference rights to a lease or other development contract, or authorize the production of, or removal of oil and gas, geothermal resources, or other minerals, except samples for assay and experimental purposes, unless specifically so stated in the permit; and

(c) Copies of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and the Indian mineral owner, unless otherwise provided in the permit. Data collected under a permit may be held by the Secretary as privileged and proprietary information for the time prescribed in the permit. Where no time period is prescribed in the permit, the Secretary may release such information after six (6) years, with the consent of the Indian mineral owner.

§ 211.57 Forms.

Leases, bonds, permits, assignments, and other instruments relating to mineral leasing shall be on forms, prescribed by the Secretary, that may be obtained from the superintendent or area director. The provisions of a standard lease or permit may be changed, deleted, or added to by written agreement of all parties with the approval of the Secretary.

§ 211.58 Appeals.

Appeals from decisions of Bureau of Indian Affairs officers under this part may be taken pursuant to 25 CFR part 2.

PART 212—LEASING OF ALLOTTED LANDS FOR MINERAL DEVELOPMENT

Subpart A—General

Sec.
212.1 Purpose and scope.
212.2 Information collection.
212.3 Definitions.
212.4 Authority and responsibility of the Bureau of Land Management (BLM).
212.5 Authority and responsibility of the Office of Surface Mining Reclamation and Enforcement (OSM).
212.6 Authority and responsibility of the Minerals Management Service (MMS).
212.7 Environmental studies.
212.8 Government employees cannot acquire leases.

Subpart B—How to Acquire Leases

212.20 Leasing procedures.
212.21 Execution of leases.
212.22 Leases for subsurface storage of oil or gas.
212.23 Corporate qualifications and requests for information.
212.24 Bonds.
212.25 Acreage limitation.
212.26 [Reserved]
212.27 Duration of leases.
212.28 Unitization and communitization agreements, and well spacing.
212.29 [Reserved]
212.30 Removal of restrictions.
212.31 [Reserved]
212.32 [Reserved]
212.33 Terms applying after relinquishment.
212.34 Individual tribal assignments excluded.

Subpart C—Rents, Royalties, Cancellations, and Appeals

212.40 Manner of payments.
212.41 Rentals and production royalty on oil and gas leases.
212.42 Annual rentals and expenditures for development on leases other than oil and gas, and geothermal resources.
212.43 Royalty rates for minerals other than oil and gas.
212.44 Suspension of operations.
212.45 [Reserved]
212.46 Inspection of premises, books and accounts.
212.47 Diligence, drainage and prevention of waste.
212.48 Permission to start operations.
212.49 Restrictions on operations.
212.50 [Reserved]
212.51 Surrender of leases.
212.52 Fees.
212.53 Assignments, overriding royalties, and operating agreements.
212.54 Lease or permit cancellation; Bureau of Indian Affairs notice of noncompliance.
212.55 Penalties.
212.56 Geological and geophysical permits.
212.57 Forms.
212.58 Appeals.

Authority: Act of March 3, 1909, (35 Stat. 783; 25 U.S.C. 396 (as amended)): Act of May 11, 1938, (Sec. 2, 52 Stat. 347; 25 U.S.C. 396 b-g; Act of August 1, 1956, (70 Stat. 774)); and 25 U.S.C. 2 and 9.

Subpart A—General

§ 212.1 Purpose and scope.

(a) The regulations in this part govern leases for the development of individual Indian oil and gas, geothermal and solid mineral resources. These regulations are applicable to lands or interests in lands the title to which is held, for any individual Indian, in trust by the United States or is subject to restriction against alienation imposed by the United States. These regulations are intended to ensure that Indian mineral owners desiring to have their resources developed are assured that they will be developed in a manner that maximizes their best economic interests and minimizes any adverse environmental impacts or cultural impacts resulting from such development.

(b) The regulations in this part shall be subject to amendment at any time by the Secretary of the Interior. No regulation that becomes effective after

VOL
61
ISS
1
31
JL
8
1996
JL
UMI

the date of approval of any lease or permit shall operate to affect the duration of the lease or permit, rate of royalty, rental, or acreage unless agreed to by all parties to the lease or permit.

(c) Nothing in the regulations in this part is intended to prevent Indian tribes from exercising their lawful governmental authority to regulate the conduct of persons, businesses, operations or mining within their territorial jurisdiction.

(d) The regulations of the Bureau of Land Management, the Office of Surface Mining Reclamation and Enforcement, and the Minerals Management Service that are referenced in §§ 212.4, 212.5, and 212.6 of this part are supplemental to these regulations, and apply to parties holding leases or permits for development of Indian mineral resources unless specifically stated otherwise in this part or in such other Federal regulations.

(e) The regulations in this part do not apply to leasing and development governed by regulations in 25 CFR parts 213 (Members of the Five Civilized Tribes of Oklahoma), 226 (Osage), or 227 (Wind River Reservation).

§ 212.2 Information collection.

The information collection requirements contained in this part do not require a review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501; et seq.).

§ 212.3 Definitions.

As used in this part, the following words and phrases have the specified meaning except where otherwise indicated:

Applicant means any person seeking a permit, lease, or an assignment from the superintendent or area director.

Approving official means the Bureau of Indian Affairs official with delegated authority to approve a lease or permit.

Area director means the Bureau of Indian Affairs official in charge of an area office.

Authorized officer means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described herein and in 43 CFR parts 3160, 3180, 3260, 3280, 3480, and 3590.

Cooperative agreement means a binding arrangement between two or more parties purporting to the act of agreeing or of coming to a mutual arrangement that is accepted by all parties to a transaction (e.g., communitization and unitization).

Director's representative means the Office of Surface Mining Reclamation and Enforcement director's representative authorized by law or lawful delegation of authority to perform the duties described in 30 CFR part 750.

Gas means any fluid, either combustible or non-combustible, that is produced in a natural state from the earth and that maintains a gaseous or rarefied state at ordinary temperature and pressure conditions.

Geological and geophysical permit means a written authorization to conduct on-site surveys to locate potential deposits of oil and gas, geothermal or solid mineral resources on the lands.

Geothermal resources means:

(1) All products of geothermal processes, including indigenous steam, hot water and hot brines;

(2) Steam and other gases, hot water, and hot brines, resulting from water, gas or other fluids artificially introduced into geothermal formations;

(3) Heat or other associated energy found in geothermal formations; and

(4) Any by-product derived therefrom.

In the best interest of the Indian mineral owner refers to the standards to be applied by the Secretary in considering whether to take an administrative action affecting the interests of an Indian mineral owner. In considering whether it is "in the best interest of the Indian mineral owner" to take a certain action (such as approval of a lease, permit, unitization or communitization agreement), the Secretary shall consider any relevant factor, including, but not limited to: economic considerations, such as date of lease expiration; probable financial effect on the Indian mineral owner; leasability of land concerned; need for change in the terms of the existing lease; marketability; and potential environmental, social, and cultural effects.

Indian lands means any lands owned by any individual Indian or Alaska Native, Indian tribe, band, nation, pueblo, community, rancheria, colony, or other tribal group which owns lands or interest in the minerals, the title to which is held in trust by the United States or is subject to restriction against alienation imposed by the United States.

Indian mineral owner means any individual Indian or Alaska Native who owns mineral interests in oil and gas, geothermal, or solid mineral resources, title to which is held in trust by the United States, or is subject to the restriction against alienation imposed by the United States.

Indian surface owner means any individual Indian or Indian tribe whose surface estate is held in trust by the United States, or is subject to restriction against alienation imposed by the United States.

Lease means any contract, approved by the Secretary of the Interior under the Act of March 3, 1909 (35 Stat. 783)(25 U.S.C. 396), as amended, and the Act of May 11, 1938 (52 Stat. 347) (25 U.S.C. 396a–396g), as amended, that authorize exploration for, extraction of, or removal of any minerals.

Lessee means a natural person, proprietorship, partnership, corporation, or other entity which has entered into a lease with an Indian mineral owner, or who has been assigned an obligation to make royalty or other payments required by the lease.

Lessor means an Indian mineral owner who is a party to a lease.

Minerals includes both metalliferous and non-metalliferous minerals; all hydrocarbons, including oil, gas, coal and lignite of all ranks; geothermal resources; and includes but is not limited to, sand, gravel, pumice, cinders, granite, building stone, limestone, clay, silt, or any other energy or non-energy mineral.

Minerals Management Service official means any employee of the Minerals Management Service (MMS) authorized by law or by lawful delegation of authority to perform the duties described in 30 CFR chapter II, subchapters A and C.

Mining means the science, technique, and business of mineral development including, but not limited to: opencast work, underground work, and in-situ leaching directed to severance and treatment of minerals; *Provided*, when sand, gravel, pumice, cinders, granite, building stone, limestone, clay or silt is the subject mineral, an enterprise is considered "mining" only if the extraction of such a mineral exceeds 5,000 cubic yards in any given year.

Oil means all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons). Oil includes liquefiable hydrocarbon substances such as drip gasoline and other natural condensates recovered or recoverable in a liquid state from produced gas without resorting to a manufacturing process.

Permit means any contract issued by the superintendent and/or area director to conduct exploration on; or removal of less than 5,000 cubic yards per year of common varieties of minerals from Indian lands.

Permittee means a person holding or required by this part to hold a permit to conduct exploration operations on; or remove less than 5,000 cubic yards per year of common varieties of minerals from Indian lands.

Secretary means the Secretary of the Interior or an authorized representative.

Solid minerals means all minerals excluding oil and gas and geothermal resources.

Superintendent means the Bureau of Indian Affairs official in charge of the agency office having jurisdiction over the minerals subject to leasing under this part.

§ 212.4 Authority and responsibility of the Bureau of Land Management (BLM).

The functions of the Bureau of Land Management are found in 43 CFR part 3160—Onshore Oil and Gas Operations, 43 CFR part 3180— Onshore Oil and Gas Unit Agreements: Unproven Area, 43 CFR part 3260—Geothermal Resources Operations, 43 CFR part 3280—Geothermal Resources Unit Agreements: Unproven Areas, 43 CFR part 3480—Coal Exploration and Mining Operations, and 43 CFR part 3590—Solid Minerals (other than coal) Exploration and Mining Operations, and currently include, but are not limited to, resource evaluation, approval of drilling permits, mining and reclamation, production plans, mineral appraisals, inspection and enforcement, and production verification. Those regulations, apply to leases or permits issued under this part.

§ 212.5 Authority and responsibility of the Office of Surface Mining Reclamation and Enforcement (OSM).

The OSM is the regulatory authority for surface coal mining and reclamation operations on Indian lands pursuant to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.). The relevant regulations for surface coal mining and reclamation operations are found in 30 CFR part 750. Those regulations apply to mining and reclamation on leases issued under this part.

§ 212.6 Authority and responsibility of the Minerals Management Service (MMS).

The functions of the MMS for reporting, accounting, and auditing are found in 30 CFR chapter II, subchapters A and C, which apply to leases approved under this part. To the extent the parties to a lease or permit are able to provide reasonable provisions satisfactorily addressing the functions governed by MMS regulations, the Secretary may approve alternate provisions in a lease or permit.

§ 212.7 Environmental studies.

The provisions of § 211.7 of this subchapter, as amended, are applicable to leases under this part.

§ 212.8 Government employees cannot acquire leases.

U.S. Government employees are prevented from acquiring leases or interests in leases by the provisions of 25 CFR part 140 and 43 CFR part 20 pertaining to conflicts of interest and ownership of an interest in trust land.

Subpart B—How to Acquire Leases

§ 212.20 Leasing procedures.

(a) Application for leases shall be made to the superintendent having jurisdiction over the lands.

(b) Indian mineral owners may request the Secretary to prepare, advertise and negotiate mineral leases on their behalf. Leases for minerals shall be advertised for bids as prescribed in this section unless one or more of the Indian mineral owners of a tract sought for lease request the Secretary to negotiate for a lease on their behalf without advertising. Unless the Secretary decides that negotiation of a mineral lease is in the best interests of the Indian mineral owners, he shall use the following procedure for leasing:

(1) Leases shall be advertised to receive optimum competition for bonus consideration, under sealed bid, oral auction, or a combination of both. Notice of such advertisement shall be published in at least one local newspaper and in one trade publication at least thirty (30) days in advance of sale. If applicable, such notice must identify the reservation within which the tracts to be leased are found. No specific description of the tracts to be leased need be published. Specific description of such tracts shall be available at the office of the superintendent and/or area director upon request. The complete text of the advertisement, including a specific description, shall be mailed to each person listed on the appropriate agency or area mailing list. Individuals and companies interested in receiving advertisements on lease sales should send their mailing information to the appropriate agency or area office for future reference.

(2) The advertisement shall offer the tracts to a responsible bidder offering the highest bonus. The Secretary shall establish the rental and royalty rates which shall be stated in the advertisement and will not be subject to negotiation. The advertisement shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the lease bid by or on behalf of the Indian mineral owner is required. The requirements under § 212.21 are applicable to the acceptance of a lease bid.

(3) Each sealed bid must be accompanied by a cashier's check, certified check or postal money order, or any combination thereof, payable to the payee designated in the advertisement, in an amount not less than 25 percent of the bonus bid, which shall be returned if that bid is not accepted.

(4) A successful oral auction bidder will be allowed five (5) working days to remit the required 25 percent deposit of the bonus bid.

(5) A successful bidder shall, within thirty (30) days after notification of the bid award, remit to the Secretary the balance of the bonus, the first year's rental, a $75 filing fee, its prorated share of the advertising costs as determined by the Bureau of Indian Affairs, and file with the Secretary all required bonds. The successful bidder shall also file the lease in completed form, signed by the Indian mineral owner(s), at that time. However, for good reasons, the Secretary may grant extensions of time in thirty (30) day increments for filing of the lease and all required bonds, provided that additional extension requests are submitted and approved prior to the expiration of the original thirty (30) days or the previously granted extension. Failure on the part of the bidder to take all reasonable actions necessary to comply with the foregoing shall result in forfeiture of the required payment of 25 percent of any bonus bid for the use and benefit of the Indian mineral owner.

(6) If no satisfactory bid is received, or if the accepted bidder fails to complete all requirements necessary for approval of the lease, or if the Secretary determines that it is not in the best interest of the Indian mineral owner to accept any of the bids the Secretary may re-advertise the tract for sale, or subject to the consent of the Indian mineral owner, a lease may be let through private negotiations.

(c) The Secretary shall advise the Indian mineral owner of the results of the bidding, and shall not approve the lease until the consent of the Indian mineral owner has been obtained. The requirements under § 212.21 are applicable to the approval of a mineral lease.

§ 212.21 Execution of leases.

(a) The Secretary shall not execute a mineral lease on behalf of an Indian mineral owner, except when such owner is deceased and the heirs to or devisee of the estate have not been determined, or if determined, some or all of them cannot be located. Leases involving such interests may be executed by the Secretary, provided that the mineral interest shall have been

VOL
61
ISS
131
JUL
8
1996
UMI

offered for sale under the provisions of section 212.20(b) (1) through (6).

(b) The Secretary may execute leases on behalf of minors and persons who are incompetent by reason of mental incapacity; *Provided*, that there is no parent, guardian, conservator, or other person who has lawful authority to execute a lease on behalf of the minor or person with mental incapacity.

(c) If an owner is a life tenant, the procedures set forth in 25 CFR part 179 (Life Estates and Future Interests), shall apply.

§ 212.22 Leases for subsurface storage of oil or gas.

The provisions of § 211.22 of this subchapter are applicable to leases under this part.

§ 212.23 Corporate qualifications and requests for information.

The provisions of § 211.23 of this subchapter are applicable to leases under this part.

§ 212.24 Bonds.

The provisions of § 211.24 of this subchapter are applicable to leases under this part.

§ 212.25 Acreage limitation.

The provisions of § 211.25 of this subchapter are applicable to leases under this part.

§ 212.26 [Reserved]

§ 212.27 Duration of leases.

The provisions of § 211.27 of this subchapter are applicable to leases under this part.

§ 212.28 Unitization and communitization agreements, and well spacing.

(a) For the purpose of promoting conservation and efficient utilization of minerals, the Secretary may approve a cooperative unit, drilling or other development plan on any leased area upon a determination that approval is advisable and in the best interest of the Indian mineral owner. For the purposes of this section, a cooperative unit, drilling or other development plan means an agreement for the development or operation of a specifically designated area as a single unit without regard to separate ownership of the land included in the agreement. Such cooperative agreements include, but are not limited to, unit agreements, communitization agreements and other types of agreements that allocate costs and benefits.

(b) The consent of the Indian mineral owner to such unit or cooperative agreement shall not be required unless such consent is specifically required in the lease.

(c) Requests for approval of cooperative agreements which comply with the requirements of all applicable rules and regulations shall be filed with the superintendent or area director.

(d) All Indian mineral owners of any right, title or interest in the mineral resources to be included in a cooperative agreement must be notified by the lessee at the time the agreement is submitted to the superintendent or area director. An affidavit from the lessee stating that a notice was mailed to each mineral owner of record for whom the superintendent or area director has an address will satisfy this notice requirement.

(e) A request for approval of a proposed cooperative agreement, and all documents incident to such agreement, must be filed with the superintendent or area director at least ninety (90) days prior to the first expiration date of any of the Indian leases in the area proposed to be covered by the cooperative agreement.

(f) Unless otherwise provided in the cooperative agreement, approval of the agreement commits each lease to the unit in the area covered by the agreement on the date approved by the Secretary or the date of first production, whichever is earlier, as long as the agreement is approved before the lease expiration date.

(g) Any lease committed in part to any such cooperative agreement shall be segregated into a separate lease or leases as to the lands committed and lands not committed to the agreement. Segregation shall be effective on the date the agreement is effective.

(h) Wells shall be drilled in conformity with a well spacing program approved by the authorized officer.

§ 212.29 [Reserved]

§ 212.30 Removal of restrictions.

(a) Notwithstanding the provisions of any mineral lease to the contrary, the removal of all restrictions against alienation shall operate to divest the Secretary of all supervisory authority and responsibility with respect to the lease. Thereafter, all payments required to be made under the lease shall be made directly to the owner(s).

(b) In the event restrictions are removed from a part of the land included in any lease approved by the Secretary, the entire lease shall continue to be subject to the supervision of the Secretary until such times as the holder of the lease and the unrestricted Indian owner submits to the Secretary satisfactory evidence that adequate arrangements have been made to account for the mineral resources of the restricted land separately from those of the unrestricted. Thereafter, the unrestricted portion shall be relieved from the supervision of the Secretary, the lease, the regulations of this part, and all other applicable laws and regulations.

§§ 212.31, 212.32 [Reserved]

§ 212.33 Terms applying after relinquishment.

All leases for individual Indian lands approved by the Secretary under this part shall contain provisions for the relinquishment of supervision and provide for operations of the lease after such relinquishment. These leases shall contain provisions that address the following issues:

(a) *Provisions of Relinquishment.* If the Secretary relinquishes supervision at any time during the life of the lease instrument as to all or part of the acreage subject to the lease, the Secretary shall give the Indian mineral owner and the lessee thirty (30) days written notice prior to the termination of supervision. After notice of relinquishment has been given to the lessee, the lease shall be subject to the following conditions:

(1) All rentals and royalties thereafter accruing shall be paid directly to the lessor or the lessor's successors in title, or to a trustee appointed under the provisions of paragraph (b) of this section.

(2) If, at the time supervision is relinquished by the Secretary, the lessee has made all payments then due and has fully performed all obligations on the lessee's part to be performed up to the time of such relinquishment, the bond given to secure the performance of the lease, on file in the appropriate agency or area office, shall be of no further force or effect.

(3) Should relinquishment affect only part of the lease, then the lessee may continue to conduct operations on the land covered by the lease as an entirety; *Provided*, that the lessee shall pay, in the manner prescribed by the lease and regulations for the benefit of lessor, the same proportion of all rentals and royalties due under the provisions of this part as the acreage retained under the supervision of the Secretary bears to the entire acreage of the lessee, and shall pay the remainder of the rentals and royalties directly to the remaining lessors or successors in title or said trustee as the case may be, as provided in paragraph (a) (1) of this section.

(b) *Division of fee.* If, after the execution of the lease and after the Secretary relinquishes supervision thereof, the fee of the leased land is divided into separate parcels held by different owners, or if the rental or royalty interest is divided in ownership, the obligations of the lessee shall not be modified in any manner except as specifically provided by the provisions of the lease. Notwithstanding such separate ownership, the lessee may continue to conduct operations on said premises as an entirety. Each separate owner shall receive such proportion of all rental and royalties accruing after the vesting of its title as the acreage of the fee, or rental or royalty interest, bears to the entire acreage covered by the lease; or to the entire rental or royalty interest as the case may be. If at any time after departmental supervision of the lease is relinquished, in whole or in part, to rentals and royalties, whether said parties are so entitled by virtue of undivided interest or by virtue of ownership of separate parcels of the land covered, the lessee may elect to withhold the payment of further rentals or royalties (except as the portion due the Indian lessor while under restriction), until all of said parties shall agree upon and designate a trustee in writing and in a recordable instrument to receive all payments due thereunder on behalf of said parties and their respective successors in title. Payments to said trustee shall constitute lawful payments, and the sole risk of an improper or unlawful distribution of said funds by said trustee shall rest upon the parties naming said trustee and their said respective successors in title.

§ 212.34 Individual tribal assignments excluded.

The reference in this part to Indian mineral owners does not include assignments of tribal lands made pursuant to tribal constitutions or ordinances for the use of individual Indians and assignees of such lands.

Subpart C—Rents, Royalties, Cancellations, and Appeals

§ 212.40 Manner of payments.

The provisions of § 211.40 of this subchapter are applicable to leases under this part.

§ 212.41 Rentals and production royalty on oil and gas leases.

(a) A lessee shall pay, in advance, beginning with the effective date of the lease, an annual rental of $2.00 per acre or fraction of an acre or such other greater amount as prescribed in the lease. This rental shall not be credited against production royalty nor shall the rental be prorated or refunded because of surrender or cancellation.

(b) The Secretary shall not approve leases with a royalty rate less than 16–⅔ percent of the amount or value of production produced and sold from the lease unless a lower royalty rate is agreed to by the Indian mineral owner and is found to be in the best interest of the Indian mineral owner. Such approval may only be granted by the area director if the approving official is the superintendent and the Assistant Secretary for Indian Affairs if the approving official is the area director.

(c) Value of lease production for royalty purposes shall be determined in accordance with applicable lease provisions and regulations in 30 CFR chapter II, subchapters A and C. If the valuation provisions in the lease are inconsistent with the regulations in 30 CFR chapter II, subchapters A and C, the lease provisions shall govern.

§ 212.42 Annual rentals and expenditures for development on leases other than oil and gas, and geothermal resources.

The provisions of § 211.42 of this subchapter are applicable to leases under this part.

§ 212.43 Royalty rates for minerals other than oil and gas.

The provisions of § 211.43 of this subchapter are applicable to leases under this part.

§ 212.44 Suspension of operations.

The provisions of § 211.44 of this subchapter are applicable to leases under this part.

§ 212.45 [Reserved]

§ 212.46 Inspection of premises, books, and accounts.

The provisions of § 211.46 of this subchapter are applicable to leases under this part.

§ 212.47 Diligence, drainage and prevention of waste.

The provisions of § 211.47 of this subchapter are applicable to leases under this part.

§ 212.48 Permission to start operations.

The provisions of § 211.48 of this subchapter are applicable to leases under this part.

§ 212.49 Restrictions on operations.

The provisions of § 211.49 of this subchapter are applicable to leases under this part.

§ 212.50 [Reserved]

§ 212.51 Surrender of leases.

The provisions of § 211.51 of this subchapter are applicable to leases under this part.

§ 212.52 Fees.

The provisions of § 211.52 of this subchapter are applicable to leases under this part.

§ 212.53 Assignments, overriding royalties, and operating agreements.

The provisions of § 211.53 of this subchapter are applicable to leases under this part.

§ 212.54 Lease or permit cancellation; Bureau of Indian Affairs notice of noncompliance.

The provisions of § 211.54 of this subchapter are applicable to leases under this part.

§ 212.55 Penalties.

The provisions of § 211.55 of this subchapter are applicable to this part.

§ 212.56 Geological and geophysical permits.

(a) Permits to conduct geological and geophysical operations on Indian lands which do not conflict with any mineral lease entered into pursuant to this part may be approved by the Secretary with the consent of the Indian owner under the following conditions:

(1) The permit must describe the area to be explored, the duration and the consideration to be paid the Indian owner;

(2) The permit may not grant the permittee any option or preference rights to a lease or other development contract, authorize the production of, or removal of oil and gas, or geothermal resources, or other minerals except samples for assay and experimental purposes, unless specifically so stated in the permit; and

(3) Copies of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and made available to the Indian mineral owner, unless otherwise provided in the permit. Data collected under a permit shall be held by the Secretary as privileged and proprietary information for the time prescribed in the permit. Where no time period is prescribed in the permit, the Secretary may, in the discretion of the Secretary, release such information after six (6) years.

(b) A permit may be granted by the Secretary without 100 percent consent of the individual mineral owners if:

(1) The minerals are owned by more than one person, and the owners of a

VOL
61
ISS
131
JL
8
1996
UMI

majority of the interest therein consent to the permit;

(2) The whereabouts of one or more owners of the minerals or an interest therein is unknown, and all the remaining owners of the interests consent to the permit;

(3) The heirs or devisee of a deceased owner of the land or an interest therein have not been determined, and the Secretary finds that the permit activity will cause no substantial injury to the land or any owner thereof; or

(4) The owners of interests in the land are so numerous that the Secretary finds it would be impractical to obtain their consent, and also finds that the permit activity will cause no substantial injury to the land or any owner thereof.

(c) A lessee does not need a permit to conduct geological and geophysical operations on Indian lands, if provided for in the lessee's mineral lease, where the Indian mineral owner is also the surface land owner. In instances where the Indian mineral owner is not the surface owner, the lessee must obtain any additional necessary permits or rights of ingress or egress from the surface occupant.

§ 212.57 Forms.

The provisions of § 211.57 of this subchapter are applicable to leases under this part.

§ 212.58 Appeals.

The provisions of § 211.58 of this subchapter are applicable to leases under this part.

Dated: June 13, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

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OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

25 CFR Part 700

Protection of Archaeological Resources

AGENCY: Office of Navajo and Hopi Indian Relocation.

ACTION: Interim final rule with comment period.

SUMMARY: This rule establishes procedures for implementing provisions of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470–aa–11) for the lands which are administered by the O.N.H.I.R. and have been acquired pursuant to Public Law 96–305 (25 U.S.C. 640–d(h). The rule is necessary and its intended effect is to allow the Federal Land Manager to protect archaeological resources on lands being developed for resettlement purposes.

DATES: This rule is effective August 7, 1996.

Comments must be received on or before August 7, 1996.

ADDRESSES: Comments may be mailed to the Executive Director, Office of Navajo and Hopi Indian Relocation, P.O. Box KK, Flagstaff, Arizona 86002.

FOR FURTHER INFORMATION CONTACT: Paul Tessler (Legal Counsel), Office of Navajo and Hopi Indian Relocation, at 520–779–8953.

SUPPLEMENTARY INFORMATION: Pub. L. 96–305 (25 U.S.C. 640d–11) provided for the acquisition of land for the use of Navajo families required to relocate under the terms of Pub. L. 93–531. Approximately 365,000 acres of land in Arizona have been acquired, taken into trust, and made part of the Navajo Reservation. Approximately 35,000 acres of land in the State of New Mexico will be acquired, taken into trust and made a part of the Navajo Reservation. These lands are referred to as the New Lands. Pursuant to Pub. L. 96–305, as amended, by Pub. L. 100–666, the Office of Navajo and Hopi Indian Relocation (O.N.H.I.R.) has complete administrative authority over these New Lands until the relocation program is completed as determined by the President.

The 1986 Interior Appropriations Bill (Pub. L. 99–190) provided construction funds to the Bureau of Indian Affairs for the purpose of building replacement homes on the New Lands. A number of relocations were completed at the New Lands under the authority of the Bureau of Indian Affairs. In 1988, Congress enacted Pub. L. 100–666, which transferred to the O.N.H.I.R. on January 31, 1989, all powers and duties of the Bureau of Indian Affairs derived from Pub. L. 99–190, that related to the relocation of members of the Navajo Tribe and also transferred all funds appropriated for such activities relating to such relocation. Before the passage of Pub. L. 100–666, the O.N.H.I.R. and the Bureau of Indian Affairs had worked together planning and developing the New Lands for resettlement purposes and relied upon the Bureau of Indian Affairs, to issue Archaeological Resources Protection Act (16 U.S.C. 470aa–11) permits on the New Lands. After the passage of Pub. L. 100–666, and the transfer of all powers and duties of the Bureau of Indian Affairs to the O.N.H.I.R., questions arose regarding which governmental agency was the Federal Land Manager and has the authority to issue A.R.P.A. permits on the New Lands. It was determined that the O.N.H.I.R. is the Federal Land Manager on the New Lands and that the Bureau of Indian Affairs, Navajo Area Office, did not have administrative jurisdiction or surface management responsibilities on the New Lands located in Arizona. Thus the O.N.H.I.R. has the appropriate authority to issue A.R.P.A. permits. These regulations are being published pursuant to that authority to allow the Federal Land Manager to protect archaeological resources on the New Lands by issuing permits for authorized excavation and/or removal of archaeological resources, by imposing civil penalties for unauthorized excavation, removal, damage, alteration, or defacement of archaeological resources, by providing for the preservation of archaeological resource collections and data and by ensuring confidentiality of information about archaeological resources when disclosure would threaten the resources. These regulations will apply to all New Lands in the states or Arizona and New Mexico acquired for relocation purposes.

These regulations are being published as an Interim Final Rule because of the time frame involved in the movement of eligible individuals to the New Lands. Because the O.N.H.I.R. has been requested by Congress in the 1995 Department of Interior and Related Agencies Appropriations Act (Pub. L. 103–332) to present a plan for the phase out of the relocation program, and transfer of its functions before the year 2000, there is considerable urgency to complete the development of the New Lands. In order to complete such development the O.N.H.I.R. must publish these regulations. It is, therefore, necessary for these regulations to become effective immediately so that development can go on uninterrupted.

The principal author of this final rulemaking is Paul Tessler, Legal counsel, Office of Navajo and Hopi Indian Relocation.

List of Subjects in 25 CFR Part 700

Administrative practice and procedure, Conflict of interest, Freedom of information, Grant program—Indians, Indian claims, Privacy, Real property acquisition, Relocation Assistance and New Lands Administration.

PART 700—[AMENDED]

Accordingly, the Office is amending 25 CFR Part 700, by adding Subpart R, as follows:

1. The authority citation for Part 700 continues to read as follows:

Authority Pub. L. 99–590; Pub. L. 93–531; 88 Stat. 1712, as amended by Pub. L. 96–305, 94 Stat. 929; Pub. L. 100–666, 102 Stat. 3929 (25 U.S.C. 640d).

2. 25 CFR, Part 700, is amended by adding Subpart R, Protection of Archaeological Resources, as follows:

Subpart R—Protection of Archaeological Resources

Sec.

700.801 Purpose.
700.803 Authority.
700.805 Definitions.
700.807 Prohibited acts.
700.809 Permit requirements and exceptions.
700.811 Application for permits and information collection.
700.813 Notification to Indian Tribes of possible harm to, destruction of, sites on the New Lands having religious or cultural importance.
700.815 Issuance of permits.
700.817 Terms and conditions of permits.
700.819 Suspension and revocation of permits.
700.821 Appeals relating to permits.
700.823 Relationship to section 106 of the National Historic Preservation Act.
700.825 Custody of archaeological resources.
700.827 Determination of archaeological or commercial value and cost of restoration and repair.
700.829 Assessment of civil penalties.
700.831 Civil penalty amounts.
700.833 Other penalties and rewards.
700.835 Confidentiality of archaeological resource information.
700.837 Report.
700.839 Permitting procedures for Navajo Nation Lands.

Subpart R—Protection of Archaeological Resources

§ 700.801 Purpose.

(a) The regulations in this subpart implement provisions of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa–11) by establishing the uniform definitions, standards, and procedures to be followed by the O.N.H.I.R. New Lands Manager in providing protection for archaeological resources, located on the New Lands. The regulations enable Federal land managers to protect archaeological resources, taking into consideration provisions of the American Indian Religious Freedom Act (92 Stat. 469: 43 U.S.C. 1996), through permits authorizing excavation and/or removal of archaeological resources, through civil penalties for unauthorized excavation and/or removal, through provisions for the preservation of archaeological resource collections and data, and through provisions for ensuring confidentiality of information about archaeological resources.

(b) The regulations in this part do not impose any new restrictions on activities permitted under other laws, authorities, and regulations relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

§ 700.803 Authority.

The regulations in this part are promulgated pursuant to section 10(b) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470ii). Section 10(b) of the Act (16 U.S.C. 470ii) provides that each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations in this part, as may be necessary for carrying out the purposes of the Act.

§ 700.805 Definitions.

As used for purposes of this part:

(a) *Archaeological resource* means any material remains of human life or activities which are at least 100 years of age, and which are of archaeological interest.

(1) *Of archaeological interest* means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation and explanation.

(2) *Material remains* means physical evidence of human habitation, occupation, use, or activity, including the site, location or context in which such evidence is situated.

(3) The following classes of material remains (and illustrative examples), if they are at least 100 years of age, are of archaeological interest and shall be considered archaeological resources unless determined otherwise pursuant to paragraph (a)(4) or (a)(5) of this section.

(i) Surface or subsurface structures, shelters, facilities, or features (including, but not limited to, domestic structures, storage structures, cooking structures, ceremonial structures, artificial mounds, earthworks, fortifications, canals, reservoirs, horticultural/agricultural gardens or fields, bedrock mortars, or grinding surfaces, rock alignments, cairns, trails, borrow pits, cooking pits, refuse pits, burial pits, or graves, hearths, kilns, post molds, wall trenches, middens);

(ii) Surface or subsurface artifact concentrations or scatters;

(iii) Whole or fragmentary tools, implements, containers, weapons, and weapon projectiles, clothing, and ornaments (including, but not limited to pottery and other ceramics, cordage, basketry and other weaving, bottles and other glassware, bone, ivory, shell, metal, wood, hide, feathers, pigments, and flaked ground or pecked stone);

(iv) By-products, waste products, or debris resulting from manufacture or use of human-made or natural materials;

(v) Organic waste (including, but not limited to vegetal and animal remains, coprolites);

(vi) Human remains (including, but not limited to, bone, teeth, mummified flesh, burials, cremations);

(vii) Rock carvings, rock paintings, intaglios, and other works of artistic or symbolic representation;

(viii) Rockshelters and caves or portions thereof containing any of the material remains described in this paragraph (a);

(ix) All portions of shipwrecks (including, but not limited to armaments, apparel, tackle, cargo);

(x) Any portion or piece of material remains described in this paragraph (a).

(4) The following material remains shall not be considered of archaeological interest, and shall not be considered to be archaeological resources for purposes of the Act and this part, unless found in a direct physical relationship with archaeological resources as defined in this section:

(i) Paleontological remains;

(ii) Coins, bullets, and unworked minerals and rocks.

(5) The Federal Land Manager may determine that certain material remains, in specified areas under the Federal Land Manager's jurisdiction and under specified circumstances, are not or are no longer of archaeological interest and are not to be considered archaeological resources under this part. Any determination made pursuant to this paragraph (a)(5) shall be documented. Such determination shall in no way affect the Federal Land Manager's obligations under other applicable laws or regulations.

(b) *Arrowhead* means any projectile point which appears to have been designed for use with an arrow.

(c) *Commissioner* means the Commissioner of the Office of Navajo and Hopi Indian Relocation. Reference to approval of other action by the Commissioner will also include approval or other action by another Federal Officer under delegated authority from the Commissioner.

(d) *Federal Land Manager* means, with respect to the New Lands, the Commissioner of Navajo and Hopi Indian Relocation, having primary management authority over such lands,

VOL
61
ISS
1
3
1
JL
8
1996
UMI

including persons to whom such management authority has been officially delegated.

(e) *New Lands* means the land acquired for the use of relocatees under the authority of Public Law 96–305, 25 U.S.C., 640(d)–10. These lands include the 250,000 acres of land acquired by the Navajo and Hopi Indian Relocation Commission and added to the Navajo Reservation, 150,000 acres of private lands previously owned by the Navajo Nation in fee and taken in trust by the United States pursuant to 25 U.S.C. 640d–10 and up to 35,000 acres of land in the State of New Mexico to be acquired and added to the Navajo Reservation.

(f) *Indian lands* means lands of The Navajo Nation, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for subsurface interests not owned or controlled by an Indian tribe or Indian individual.

(g) *Indian tribe* or *Tribe* means The Navajo Nation.

(h) *Person* means an individual, corporation, partnership, trust, institution, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the United States, or of any Indian tribe, or of any State or political subdivision thereof.

(i) *State* means any of the fifty states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(j) *Tribe* means the Navajo Nation.

(k) *Act* means the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470–aa11.)

§ 700.807 Prohibited acts.

(a) No person may excavate, remove, damage or otherwise alter or deface any archaeological resource located on the New Lands or Indian lands unless such activity is pursuant to a permit issued under § 700.815 or exempted by § 700.809(b) of this part.

(b) No person may sell, purchase, exchange, transport, or receive any archaeological resource, if such resource was excavated or removed in violation of:

(1) The prohibitions contained in paragraph (a) of this section; or

(2) Any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

§ 700.809 Permit requirements and exceptions.

(a) Any person proposing to excavate and/or remove archaeological resources from the New Lands or Indian lands, and to carry out activities associated with such excavation and/or removal, shall apply to the Federal Land Manager for a permit for the proposed work, and shall not begin the proposed work until a permit has been issued. The Federal Land Manager may issue a permit to any qualified person, subject to appropriate terms and conditions, provided that the person applying for a permit meets conditions in § 700.815(a) of this part.

(b) Exceptions: (1) No permit shall be required under this part for any person conducting activities on the New Lands under other permits, leases, licenses, or entitlements for use, when those activities are exclusively for purposes other than the excavation and/or removal of archaeological resources, even though those activities might incidentally result in the disturbance of archaeological resources. General earth-moving excavation conducted under a permit or other authorization shall not be construed to mean excavation and/or removed as used in this part. This exception does not, however, affect the Federal Land Manager's responsibility to comply with other authorities which protect archaeological resources prior to approving permits, leases, licenses or entitlements for use; any excavation and/or removal of archaeological resources required for compliance with those authorities shall be conducted in accordance with the permit requirements of this part.

(2) No permit shall be required under this part for any person collecting for private purposes any rock, coin, bullet, or mineral which is not an archaeological resource as defined in this part, provided that such collecting does not result in disturbance of any archaeological resource.

(3) No permit shall be required under this part or under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this part;

(4) No permit shall be required under this part for any person to carry out any archaeological activity authorized by a permit issued under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), before the enactment of the Archaeological Resources Protection Act of 1979. Such permit shall remain in effect according to its terms and conditions until expiration.

(5) No permit shall be required under section 3 of the Act of June 8, 1906 (16 U.S.C. 432) for any archaeological work for which a permit is issued under this part.

(c) Persons carrying out official agency duties under the Federal Land Manager's direction, associated with the management of archaeological resources, need not follow the permit application procedures of § 700.811. However, the Federal Land Manager shall insure that provisions of §§ 700.815 and 700.817 have been met by other documented means and that any official duties which might result in harm to or destruction of any Indian tribal religious or cultural site, as determined by the Federal Land Manager, have been the subject of consideration under § 700.813.

(d) Upon the written request of the Governor of any State, on behalf of the State or its educational institutions, the Federal Land Manager shall issue a permit, subject to the provisions of §§ 700.809(b)(5), 700.813, 700.815(a) (3), (4), (5), (6), and (7), 700.817, 700.819, 700.823, 700.825(a), to such Governor or to such designee as the Governor deems qualified to carry out the intent of the Act, for purposes of conducting archaeological research, excavating, and/or removing archaeological resources, and safeguarding and preserving any materials and data collected in a university, museum, or other scientific or educational institution approved by the Federal Land Manager.

(e) Under other statutory, regulatory, or administrative authorities governing the use of the New Lands and Indian lands, authorizations may be required for activities which do not require a permit under this part. Any person wishing to conduct on the New Lands or Indian lands any activity related to but believed to fall outside the scope of this part should consult with the Federal Land Manager, for the purpose of determining whether any authorization is required, prior to beginning such activities.

§ 700.811 Application for permits and information collection.

(a) Any person may apply to the appropriate Federal Land Manager for a permit to excavate and/or remove archaeological resources from the New Lands or Indian lands and to carry out activities associated with such excavation and/or removal.

(b) Each application for a permit shall include:

(1) The nature and extent of the work proposed, including how and why it is proposed to be conducted, proposed time of performance, location maps, and proposed outlet for public written dissemination of the results.

(2) The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training and experience in accord with the minimal qualifications listed in § 700.815(a).

(3) The name and address of the individual(s), if different from the individual(s) named in paragraph (b)(2) of this section, proposed to be responsible for carrying out the terms and conditions of the permit.

(4) Evidence of the applicant's ability to initiate, conduct and complete the proposed work, including evidence of logistical support and laboratory facilities.

(5) Where the application is for the excavation and/or removal of archaeological resources on the New Lands, the names of the university, museum, or other scientific or educational institution in which the applicant proposes to store all collections, and copies of records, data, photographs, and other documents derived from the proposed work. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, records, data, photographs and other documents and to safeguard and preserve these materials as property of the Navajo Nation.

(6) Where the application is for the excavation and/or removal of archaeological resources on Indian lands, the name of the university, museum, or other scientific or educational institution in which the applicant proposes to store copies of records, data, photographs, and other documents derived from the proposed work, and all collections in the event the Indian owners do not wish to take custody or otherwise dispose of the archaeological resources. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, if applicable, and/or the records, data, photographs, and other documents derived from the proposed work.

(c) The Federal Land Manager may require additional information, pertinent to land management responsibilities, to be included in the application for permit and shall so inform the applicant.

(d) Paperwork Reduction Act. The information collection requirement contained in § 700.811 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1024–0037. The purpose of the information collection is to meet statutory and administrative requirements in the public interest. The information will be used to assist Federal land managers in determining that applicants for permits are qualified, that the work proposed would further archaeological knowledge, that archaeological resources and associated records and data will be property preserved, and that the permitted activity would not conflict with the management of the New Lands involved. Response to the information requirement is necessary in order for an applicant to obtain a benefit.

§ 700.813 Notification to Indian tribes of possible harm to, or destruction of, sites on the New Lands having religious or cultural importance.

(a) If the issuance of a permit under this part may result in harm to, or destruction of, any Indian tribal religious or cultural site on the New Lands, as determined by the Federal Land Manager, at least 30 days before issuing such permit the Federal Land Manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9 of the Act.

(1) Notice by the Federal Land Manager to any Indian tribe shall be sent to the chief executive officer or other designated official of the tribe. Indian tribes are encouraged to designate a tribal official to be the focal point for any notification and discussion between the tribe and the Federal Land Manager.

(2) The Federal Land Manager may provide notice to any other Native American group that is known by the Federal Land Manager to consider sites potentially affected as being of religious or cultural importance.

(3) Upon request during the 30-day period, the Federal Land Manager may meet with official representatives of any Indian tribe or group to discuss their interests, including ways to avoid or mitigate potential harm or destruction such as excluding sites from the permit area. Any mitigation measures which are adopted shall be incorporated into the terms and conditions of the permit under § 700.817.

(4) When the Federal Land Manager determines that a permit applied for under this part must be issued immediately because of an imminent threat or loss or destruction of an archaeological resource, the Federal Land Manager shall so notify the appropriate tribe

(b) (1) In order to identify sites of religious or cultural importance, the Federal Land Manager shall seek to identify all Indian tribes having aboriginal or historic ties to the lands under the Federal Land Manager's jurisdiction and seek to determine, from the chief executive officer or other designated official of any such tribe, the location and nature of specific sites of religious or cultural importance so that such information may be on file for land management purposes. Information on sites eligible for or included in the National Register of Historic Places may be withheld from public disclosure pursuant to section 304 of the Act of October 15, 1966, as amended (16 U.S.C. 470w–3).

(2) If the Federal Land Manager becomes aware of a Native American group that is not an Indian tribe as defined in this part but has aboriginal or historic ties to the New Lands under the Federal Land Manager's jurisdiction, the Federal Land Manager may seek to communicate with official representatives of that group to obtain information on sites they may consider to be of religious or cultural importance.

(3) The Federal Land Manager may enter into agreement with any Indian tribe or other Native American group for determining locations for which such tribe or group wishes to receive notice under this section.

§ 700.815 Issuance of permits.

(a) The Federal Land Manager may issue a permit, for a specified period of time appropriate to the work to be conducted, upon determining that:

(1) The applicant is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in archaeological theory and methods, and in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the work proposed, and also meets the following minimum qualifications:

(i) A graduate degree in anthropology or archaeology, or equivalent training and experience;

(ii) The demonstrated ability to plan, equip, staff, organize, and supervise activity of the type and scope proposed;

(iii) The demonstrated ability to carry research to completion, as evidenced by timely completion of theses, research reports, or similar documents;

(iv) Completion of at least 16 months of professional experience and/or specialized training in archaeological field, laboratory, or library research,

VOL
61
ISS
1
31
JL
8
1996
UMI

administration, or management, including at least 4 months experience and/or specialized training in the kind of activity the individual proposes to conduct under authority of the permit; and

(v) Applicants proposing to engage in historical archaeology should have at least one year of experience in research concerning archaeological resources of the historic period. Applicants proposing to engage in prehistoric archaeology should have had at least one year of experience in research concerning archaeological resources of the prehistoric period.

(2) The proposed work is to be undertaken for the purpose of furthering archaeological knowledge in the public interest, which may include but need not be limited to, scientific or scholarly research, and preservation of archaeological data;

(3) The proposed work, including time, scope, location, and purpose, is not inconsistent with any management plan or established policy, objectives, or requirements applicable to the management of the public lands concerned;

(4) Where the proposed work consists of archaeological survey and/or data recovery undertaken in accordance with other approved uses of the New Lands or Indian lands, and the proposed work has been agreed to in writing by the Federal Land Manager, pursuant to section 106 of the National Historic Preservation Act (16 U.S.C. 470f), paragraphs (a)(2) and (a)(3) of this section shall be deemed satisfied by the prior approval.

(5) Written consent has been obtained, for work proposed on Indian lands, from the Indian land owner and the Indian tribe having jurisdiction over such lands;

(6) Evidence is submitted to the Federal Land Manager that any university, museum, or other scientific or educational institution proposed in the application as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records; and

(7) The applicant has certified that, not later than 980 days after the date the final report is submitted to the Federal Land Manager, the following will be delivered to the appropriate official of the approved university, museum, or other scientific or educational institution, which shall be named in the permit;

(i) All artifacts, samples, collections, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit where the permit is for the excavation and/or removal of archaeological resources from the New Lands.

(ii) All artifacts, samples, and collections resulting from work under the requested permit for which the custody or disposition is not undertaken by the Indian owners, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit, where the permit is for the excavation and/or removal of archaeological resources from Indian lands.

(b) When the area of the proposed work would cross jurisdictional boundaries, so that permit applications must be submitted to more than one Federal land manager, the Federal land managers shall coordinate the review and evaluation of applications and the issuance of permits.

§ 700.817 Terms and conditions of permits.

(a) In all permits issued, the Federal Land Manager shall specify:

(1) The nature and extent of work allowed and required under the permit, including the time, duration, scope, location and purpose of the work;

(2) The name of the individual(s) responsible for conducting the work and, if different, the name of the individual(s) responsible for carrying out the terms and conditions of the permit;

(3) The name of any university, museum, or other scientific or educational institution in which any collected materials and data shall be deposited; and

(4) Reporting requirements.

(b) The Federal Land Manager may specify such terms and conditions as deemed necessary, consistent with this part, to protect public safety and other values and/or resources, to secure work areas to safeguard other legitimate land uses, and to limit activities incidental to work authorized under a permit.

(c) The Federal Land Manager shall include in permits issued for archaeological work on Indian lands such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands, and for archaeological work on the New Lands shall include such terms and conditions as may have been developed pursuant to § 700.813.

(d) Initiation of work or other activities under the authority of a permit signifies the permittee's acceptance of the terms and conditions of the permit.

(e) The permittee shall not be released from requirements of a permit until all outstanding obligations have been satisfied, whether or not the term of the permit has expired.

(f) The permittee may request that the Federal Land Manager extend or modify a permit.

(g) The permittee's performance under any permit issued for a period greater than 1 year shall be subject to review by the Federal Land Manager, at least annually.

§ 700.819 Suspension and revocation of permits.

(a) Suspension or revocation for cause. (1) The Federal Land Manager may suspend a permit issued pursuant to this part upon determining that the permittee has failed to meet any of the terms and conditions of the permit or has violated any prohibition of the Act of § 700.807. The Federal Land Manager shall provide written notice to the permittee of suspension, the cause thereof, and the requirements which must be met before the suspension will be removed.

(2) The Federal Land Manager may revoke a permit upon assessment of a civil penalty under § 700.829 upon the permittee's conviction under section 6 of the Act, or upon determining that the permittee has failed after notice under this section to correct the situation which led to suspension of the permit.

(b) Suspension or revocation for management purposes. The Federal Land Manager may suspend or revoke a permit without liability to the United States, its agents, or employees when continuation of work under the permit would be in conflict with management requirements not in effect when the permit was issued. The Federal Land Manager shall provide written notice to the permittee stating the nature of and basis for the suspension or revocation.

§ 700.821 Appeals relating to permits.

Any affected person may appeal permit issuance, denial of permit issuance, suspension, revocation, and terms and conditions of a permit through existing administrative appeal procedures, or through procedures which may be established by the Federal Land Manager pursuant to section 10(b) of the Act and this part.

§ 700.823 Relationship to section 106 of the National Historic Preservation Act.

Issuance of a permit in accordance with the Act and this part does not constitute an undertaking requiring compliance with Section 106 of the Act of October 15, 1996 (16 U.S.C. 470f). However, the mere issuance of such a permit does not excuse the Federal Land Manager from compliance with section 106 where otherwise required.

§ 700.825 Custody of archaeological resources.

(a) Archaeological resources excavated or removed from public lands remain the property of the Navajo Nation.

(b) Archaeological resources excavated or removed from Indian lands remain the property of the Indian or Indian tribe having rights of ownership over such resources.

§ 700.827 Determination of archaeological or commercial value and cost of restoration and repair.

(a) Archaeolgical value. For purposes of this part, the archaeological value of any archaeological resource involved in a violation of the prohibitions in § 700.807 of this part or conditions of a permit issued pursuant to this part shall be the value of the information associated with the archaeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtained prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

(b) Commercial value. For purposes of this part, the commercial value of any archaeological resource involved in a violation of the prohibitions in § 700.807 of this part or conditions of a permit issued pursuant to this part shall be for its fair market value. Where the violation has resulted in damage to the archaeological resource, the fair market value should be determined using the condition of the archaeological resource prior to the violation to the extent that its prior condition can be ascertained.

(c) Cost of restoration and repair. For purposes of this part, the cost of restoration and repair of archaeological resources damages as a result of a violation or prohibitions or conditions pursuant to this part, shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following.

(1) Reconstruction of the archaeological resource;

(2) Stabilization of the archaeological resource;

(3) Ground contour reconstruction and surface stabilization;

(4) Research necessary to carry out reconstruction or stabilization;

(5) Physical barriers or other protective devices, necessitated by the disturbance of the archaeological resource, to protect it from further disturbance;

(6) Examination and analysis of the archaeological resource including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;

(7) Reinterment of human remains in accordance with religious custom and State, local, or tribal law, where appropriate, as determined by the Federal Land Manager.

(8) Preparation of reports relating to any of the above activities.

§ 700.829 Assessment of civil penalties.

(a) The Federal Land Manager may assess a civil penalty against any person who has violated any prohibition contained in § 700.807 or who has violated any term or condition included in a permit issued in accordance with the Act and this part.

(b) Notice of violation. The Federal Land Manager shall serve a notice of violation upon any person believed to be subject to a civil penalty, either in person or by registered or certified mail (return receipt requested). The Federal Land Manager shall include in the notice:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provision(s) of this part or to a permit issued pursuant to this part allegedly violated;

(3) The amount of penalty proposed to be assessed, including any initial proposal to mitigate or remit where appropriate, or a statement that notice of the proposed penalty amount will be served after the damages associated with the alleged violation have been ascertained;

(4) Notification of the right to file a petition for relief pursuant to paragraph (d) of this section, or to await the Federal Land Manager's notice of assessment, and to request a hearing in accordance with paragraph (g) of this section. The notice shall also inform the person of the right to seek judicial review of any final administrative decision assessing a civil penalty.

(c) The person served with a notice of violation shall have 45 calendar days from the date of its service (or the date of service of a proposed penalty amount, if later) in which to respond. During this time the person may:

(1) Seek informal discussions with the Federal Land Manager;

(2) File a petition for relief in accordance with paragraph (d) of this section;

(3) Take no action and await the Federal Land Manager's notice of assessment;

(4) Accept in writing or by payment the proposed penalty, or any mitigation or remission offered in the notice. Acceptance of the proposed penalty or mitigation or remission shall be deemed a waiver of the notice of assessment and of the right to request a hearing under paragraph (g) of this section.

(d) Petition for relief. The person served with a notice of violation may request that no penalty be assessed or that the amount be reduced, by filing a petition for relief with the Federal Land Manager within 45 calendar days of the date of service of the notice of violation (or of a proposed penalty amount, if later). The petition shall be in writing and signed by the person served with the notice of violation. If the person is a corporation, the petition must be signed by an officer authorized to sign such documents. The petition shall set forth in full the legal or factual basis for the requested relief.

(e) Assessment of penalty. (1) The Federal Land Manager shall assess a civil penalty upon expiration of the period for filing a petition for relief, upon completion of review of any petition filed, or upon completion of informal discussions, whichever is later.

(2) The Federal Land Manager shall take into consideration all available information, including information provided pursuant to paragraphs (c) and (d) of this section or furnished upon further request by the Federal Land Manager.

(3) If the facts warrant a conclusion that no violation has occurred, the Federal Land Manger shall so notify the person served with a notice of violation, and no penalty shall be assessed.

(4) Where the facts warrant a conclusion that a violation has occurred, the Federal Land Manager shall determine a penalty amount in accordance with § 700.831.

(f) Notice of assessment. The Federal Land Manager shall notify the person served with a notice of violation of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The Federal Land Manager shall include the following in the notice of assessment.

(1) The facts and conclusions from which it was determined that a violation did occur;

(2) The basis in § 700.831 for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and

(3) Notification of the right to request a hearing, including the procedures to

VOL
61
ISS
1
3
1
JL
8
1996
UMI

be followed, and to seek judicial review of any final administrative decision assessing a civil penalty.

(g) Hearings. (1) Except where the right to request a hearing is deemed to have been waived as provided in paragraph (c)(4) of this section, the person served with a notice of assessment may file a written request for a hearing with the adjudicatory body specified in the notice. The person shall enclose with the request for hearing a copy of the notice of assessment, and shall deliver the request, as specified in the notice of assessment, personally or by registered or certified mail (return receipt requested).

(2) Failure to deliver a written request for a hearing within 45 days of the date of service of the notice of assessment shall be deemed a waiver of the right to a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. 554. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with this part, and shall not be limited by the amount assessed by the Federal Land Manager under paragraph (f) of this section or any offer of mitigation or remission made by the Federal Land Manager.

(h) Final administrative decision. (1) Where the person served with a notice of violation has accepted the penalty pursuant to paragraph (c)(4) of this section, the notice of violation shall constitute the final administrative decision;

(2) Where the person served with a notice of assessment has not filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the notice of assessment shall constitute the final administrative decision;

(3) Where the person served with a notice of assessment has filed a timely request for hearing pursuant to paragraph (g)(1) of this section, the decision resulting from the hearing or any applicable administrative appeal therefrom shall constitute the final administrative decision.

(i) Payment of penalty. (1) The person assessed a civil penalty shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment assessed, unless a timely request for appeal has been filed with a U.S. District Court, as provided in Section 7(b)(1) of the Act.

(2) Upon failure to pay the penalty, the Federal Land Manager may request the Attorney General to institute a civil action to collect the penalty in a U.S. District Court for any district in which the person assessed a civil penalty is found, resides, or transacts business. Where the Federal Land Manager is not represented by the Attorney General, a civil action may be initiated directly by the Federal Land Manager.

(j) Other remedies not waived. Assessment of a penalty under this section shall not be deemed a waiver of the right to pursue other available legal or administrative remedies.

§ 700.831 Civil penalty amounts.

(a) Maximum amount of penalty. (1) Where the person being assessed a civil penalty has not committed any previous violation of any prohibition in § 700.807 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be the full cost of restoration and repair of archaeological resources damaged plus the commercial value of archaeological resources destroyed or not recovered.

(2) Where the persons being assessed a civil penalty has committed any previous violation of any prohibition in § 700.807 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be doubled the cost of restoration and repair plus double the commercial value of archaeological resources destroyed or not recovered.

(3) Violations limited to the removal of arrowheads located on the surface of the ground shall not be subject to the penalties prescribed in this section.

(b) Determination of penalty amount, mitigation, and remission. The Federal Land Manager may assess a penalty amount less than the maximum amount of penalty and may offer to mitigate or remit the penalty.

(1) Determination of the penalty amount and/or a proposal to mitigate or remit the penalty may be based upon any of the following factors.

(i) Agreement by the person being assessed a civil penalty to return to the Federal Land Manager archaeological resources removed from the New Lands or Indian lands;

(ii) Agreement by the person being assessed a civil penalty to assist the Federal Land Manager in activity to preserve, restore, or otherwise contribute to the protection and study of archaeological resources on the New Lands or Indian Lands.

(iii) Agreement by the person being assessed a civil penalty to provide information which will assist in the detection, prevention, or prosecution of violations of the Act or this part;

(iv) Demonstration of hardship or inability to pay, provided that this factor shall only be considered when the person being assessed a civil penalty has not been found to have previously violated the regulations in this part;

(v) Determination that the person being assessed a civil penalty did not willfully commit the violation.

(vi) Determination that the proposed penalty would constitute excessive punishment under the circumstances.

(vii) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.

(2) When the penalty is for a violation on Indian lands, the Federal Land Manager shall consult with and consider the interests of the Indian landowner and the Indian tribe having jurisdiction over the Indian lands prior to proposing to mitigate or remit the penalty.

(3) When the penalty is for a violation which may have had an effect on a known Indian tribal religious or cultural site on the New Lands, the Federal Land Manager should consult with and consider the interests of the affected tribe(s) prior to proposing to mitigate or remit the penalty.

§ 700.833 Other penalties and rewards.

(a) Section 6 of the Act contains criminal prohibitions and provisions for criminal penalties. Section 8(b) of the Act provides that archaeological resources, vehicles, or equipment involved in a violation may be subject to forfeiture.

(b) Section 8(a) of the Act provides for rewards to be made to persons who furnish information which leads to conviction for a criminal violation or to assessment of a civil penalty. The Federal Land Manager may certify to the Secretary of the Treasury that a person is eligible to receive payment. Officers and employees of Federal, State, or local government who furnish information or render services in the performance of their official duties, and persons who have provided information under § 700.831(b)(1)(iii) shall not be certified eligible to receive payment of rewards.

(c) In cases involving Indian lands, all civil penalty monies and any item forfeited under the provisions of this section shall be transferred to the appropriate Indiana or Indian tribes.

§ 700.835 Confidentiality of archaeological resource information.

The Federal Land Manager shall not make available to the public under subchapter II of chapter 5 of title 5 of the United States Code or any other provision of law, information concerning the nature and location of any archaeological resource, with the following exceptions:

(a) the Federal Land Manager may make information available, provided

that the disclosure will further the purposes of the Act and this part, or the Act of June 27, 1960, as amended (16 U.S.C. 469–469c) without risking harm to the archaeological resource or to the site in which it is located.

(b) The Federal Land Manager shall make information available, when the Governor of any State has submitted to the Federal Land Manager a written request for information concerning the archaeological resources within the requesting Governor's state; provided that the request includes:

(1) The specific archaeological resource or area about which information is sought.

(2) The purpose for which the information is sought; and

(3) The Governor's written commitment to adequately protect the confidentiality of the information.

§ 700.837 Report.

Each Federal Land Manager, when requested by the Secretary of the Interior, shall submit such information as is necessary to enable the Secretary to comply with section 13 of the Act.

§ 700.839 Permitting procedures for Navajo Nation lands.

(a) If the lands involved in a permit application are Indian lands, the consent of the appropriate Indian tribal authority or individual Indian landowner is required by the Act and the regulations in this subpart.

(b) When Indian tribal lands are involved in an application for a permit or a request for extension or modification of a permit, the consent of the Indian tribal government must be obtained. For Indian allotted lands outside reservation boundaries, consent from only the individual landowner is needed. When multiple-owner allotted lands are involved, consent by more than 50 percent of the ownership interest is sufficient. For Indian allotted lands within reservation boundaries, consent must be obtained from the Indian tribal government and the individual landowner(s).

(c) The applicant should consult with the Office concerning procedures for obtaining consent from the appropriate Indian tribal authorities and submit the permit application to the Office that is responsible for the administration of the lands in question. The Office shall ensure that consultation with the appropriate Indian tribal authority or individual Indian landowner regarding terms and conditions of the permit occurs prior to detailed evaluation of the application. The Indian tribal authority or individual Indian landowner shall have 30 days from the date of receipt of the consultation request from the Office to respond to such request. Failure of the Indian tribal authority or individual Indian landowner to respond timely to the consultation request shall be deemed to be consent to the request. Permits shall include terms and conditions requested by the Indian tribe or Indian landowner pursuant to § 700.817 of this part.

(d) The issuance of a permit under this part does not remove the requirement for any other permit required by Indian tribal law.

Dated: June 25, 1996.

Christopher J. Bavasi,

Executive Director, Office of Navajo and Hopi Indian Relocation.

[FR Doc. 96–16650 Filed 7–5–96; 8:45 am]

BILLING CODE 4820–BS–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5528–6]

General Procedures to Opt Out of the Reformulated Gasoline Requirements; Removal of Jefferson County, Albany and Buffalo, New York; Twenty-eight Counties in Pennsylvania; and Hancock and Waldo Counties in Maine From the Reformulated Gasoline Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This final rule establishes the criteria and general procedures for states to opt out of the federal reformulated gasoline program for ozone non-attainment areas where the state had previously voluntarily opted into the program. This action describes the petition process a state must follow to be removed from the program, the criteria used by EPA to approve a petition, and the transition period before the opt-out becomes effective. This final rule also removes Jefferson County and the Albany and Buffalo areas in New York; twenty-eight counties in Pennsylvania; and Hancock and Waldo counties in Maine from the list of covered areas identified in § 80.70 of the reformulated gasoline rule.

Today's action only applies to opt-out requests submitted by states prior to December 31, 1997, unless this final rule is superseded by another rule which pertains to new criteria and general procedures for reformulated gasoline program opt-outs. The Agency intends to propose and solicit comments on separate opt-out procedures for subsequent requests to opt out of the reformulated gasoline program.

EFFECTIVE DATE: This final rule is effective August 7, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Coryell, U.S. Environmental Protection Agency Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460, (202) 233–9014. Also, contact Christine Hawk at (202) 233–9672 or Pat Childers at (202) 233–9415.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those which produce, supply or distribute motor gasoline. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Petroleum refiners, motor gasoline distributors and retailers.
State governments.	State departments of environmental protection.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your business is regulated by this action, you should carefully examine the list of areas covered by the reformulated gasoline program in § 80.70 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

A copy of this action is available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS). The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919–541–5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, 9600, 24.4K, or 48.8K baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

(M) OMS.

(K) Rulemaking and Reporting.

(3) Fuels.

(9) Reformulated gasoline.

VOL
61
ISS
1
31
JL
8
1996
UMI

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. Today's action will be in the form of a ZIP file and can be identified by the following title: OPTOUT.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D *filename.zip*

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

Extended Summary

Based upon public comments that were solicited in the Notice of Proposed Rulemaking (60 FR 31269) published June 14, 1995, EPA has made the following decisions that are contained in this final rule.

This final rule provides the Agency's general rules concerning criteria and procedures for states to opt out certain non-attainment areas from the federal reformulated gasoline (RFG) program. This action applies to non-attainment areas where the state voluntarily opted into the program, and subsequently decides to withdraw from the reformulated gasoline program, an action referred to as "opt-out." This rule describes the process a state must follow to petition for removal from the program, the criteria used by EPA to evaluate a request, and the transition period before the opt-out becomes effective.

This final rule authorizes the EPA's Administrator to approve a petition to opt out all or a portion of an opt-in area. The final rule requires that the governor submit the opt-out petition, or the governor's authorized representative. It must include specific information on how, if at all, reformulated gasoline has been relied upon by the state in state or local implementation plans, or revisions to such plans, both pending or already approved.

This final rule specifies the effective date that an area will be removed from the list of covered areas defined in § 80.70 of the reformulated gasoline rule. If reformulated gasoline was included as a control measure in an approved State Implementation Plan (e.g. to demonstrate attainment or maintenance), then the opt-out would not become effective until 90 days from the effective date for Agency approval of a revision to the state plan removing reformulated gasoline as a control. If reformulated gasoline was relied upon in a plan pending Agency approval, then the opt-out would become effective 90 days from the date EPA provides written notification to the state that the petition has been approved. If the state does not have a plan or did not rely on reformulated gasoline in a pending plan, then the effective date is the same as for pending plans described above. The Agency would also publish a **Federal Register** notice announcing the approval of the petition and the effective date for the opt-out.

This final rule also removes Jefferson County and the Albany and Buffalo areas in New York (a total of nine counties in New York); the twenty-eight opt-in counties in Pennsylvania; and Hancock and Waldo counties in Maine from the list of covered areas defined by § 80.70 of the reformulated gasoline rule per the request of the States of New York, Pennsylvania and Maine. This is based on requests from the Governors of New York, Pennsylvania and Maine that these areas opt out of this federal program. In a separate action signed by the EPA Administrator on December 29, 1994, EPA stayed the application of the reformulated gasoline regulations in these areas effective January 1, 1995 until July 1, 1995. 60 FR 2696 (January 11, 1995). EPA proposed to extend this stay until final action was taken on the opt-out requests. 60 FR 31269 (June 14, 1995). In a separate action signed by the EPA Administrator the Agency extended the stay on June 30, 1995. 60 FR 35488 (July 10, 1995).

The regulations adopted in today's action for processing opt-outs from the reformulated gasoline requirements would be applicable for opt-out petitions received or under Agency consideration beginning June 21, 1996, until December 31, 1997, unless superseded by a subsequent rulemaking.

I. General Procedures for EPA's Processing of Future Opt-Out Requests

A. Background

The federal reformulated gasoline (RFG) program is designed to reduce ozone levels in the largest metropolitan areas of the U.S. with the worst ground level ozone problems by reducing vehicle emissions of the ozone precursors, specifically volatile organic compounds (VOC), through fuel reformulation. Reformulated gasoline also achieves a significant reduction in air toxics. In Phase II of the program nitrogen oxides (NO_x), another precursor of ozone, are also reduced. The 1990 Amendments to the Clean Air Act requires reformulated gasoline in the nine largest cities with the highest levels of ozone. In section 211(k)(6), Congress provided the opportunity for states to opt-in to the RFG program for their other nonattainment areas.

EPA issued final rules establishing requirements for reformulated gasoline on December 15, 1993. 59 FR 7716 (February 16, 1994). During the development of the RFG rule a number of states inquired as to whether they would be permitted to opt out of the RFG program at a future date, or opt out of certain of the requirements. This was based on their concern that the air quality benefits of RFG, given their specific needs, might not warrant the cost of the program, specifically focusing on the more stringent standards in Phase II of the program (starting in the year 2000). Such states wished to retain the flexibility to opt out of the program. Other states indicated they viewed RFG as an interim strategy to help bring their nonattainment areas into attainment sooner than would otherwise be the case.

The regulation issued on December 15, 1993 did not include procedures for opting out of the RFG program because EPA had not proposed and was not ready to adopt such procedures. However, the Agency did indicate that it intended to propose such procedures in a separate rule.

B. Statutory Authority

The statutory authority for this rule is granted to EPA by section 211(c) and (k) and section 301(a) of the Clean Air Act as amended, 42 U.S.C. 7545(c) and (k) and 7601(a). A discussion of EPA's statutory authority may be found in the preamble to the proposal, at 60 FR 31271 (June 14, 1995).

C. General Rulemaking vs. Notice and Comment Rulemaking for Each Opt-Out Request

In the NPRM, EPA proposed a general rule that would apply for all future opt-out requests. Some industry representatives and associations provided opposing comments. Some commenters argued that under section 307(d) of the Act, EPA must provide public notice and a comment period for each opt-out request. They argued that EPA must conduct rulemaking for each opt-out request to consider the ramifications of each opt-out request, for example, on long-term costs to state, local and tribal governments and private industry and possible adverse regional air quality consequences. Other commenters, however, preferred the Agency's proposal to develop general opt-out procedures rather than conduct a rulemaking for each state opt-out request.

EPA does not agree that a separate rulemaking must be conducted for each future opt-out request. Through this rulemaking, EPA is establishing a petition based process that will address, on a case by case basis, future individual state requests to opt out of the federal RFG program. The regulations establish clear and objective criteria for EPA to apply in these future non-rulemaking, adjudication actions. These criteria address when a state's petition is complete and the appropriate transition time under the regulations. This application of regulatory criteria on a case by case basis to future individual situations does not require notice and comment rulemaking, either under section 307(d) of the Clean Air Act or the Administrative Procedure Act.

It is not uncommon for the Agency to establish such a petition based process within a regulatory structure, in order to apply the criteria established in a regulation to a wide variety of individual cases. The reformulated gasoline regulations, for example, include a petition process for approval of individual baseline, augmentations of the complex model, exemptions, alternative test procedures, and the like. EPA believes that approach is most appropriate here as well, as it will allow for expeditious and consistent Agency action on the individual opt-out requests presented by states.

EPA believes that the general procedures adopted here will provide consistent opt-out decisions. This rule will also provide greater certainty in the market than individual rulemakings could provide. Lastly, this rule will provide quick approval for opt-out requests while maintaining a sufficient transition period to minimize costly market disruptions.

In certain cases, the affected parties will be able to comment on the state action. In those states where the reformulated gasoline program is included as a part of an approved state implementation plan (SIP), affected parties that are concerned with the impacts of an opt-out would have the opportunity to comment on a state's revised plan that removes reformulated gasoline as an air control measure.

The Agency is not taking action today on the portion of the proposed notice concerning the question whether the Agency has the discretion under section 211(k) of the act to allow attainment areas to opt into this federal program. EPA has received comments on this question and is reviewing options that would permit opt-in opportunities to be expanded. EPA anticipates announcing a policy shortly.

D. Applicability

The regulations adopted in today's action for processing opt-outs from the reformulated gasoline requirements would be applicable for opt-out petitions received or under Agency consideration beginning June 21, 1996, until December 31, 1997, unless superseded by a subsequent rulemaking.

EPA received comments that complying with the Phase II reformulated gasoline requirements involves significantly greater capital investment than for the Phase I requirements. The transition periods set forth in today's rule for opting out of Phase I reformulated gasoline requirements would be, according to the comments, grossly inadequate for industry to recover in a reasonable time frame investment costs associated with the Phase II. EPA recognizes these different circumstances may call for different opt-out provisions and intends to propose separate rules for opting out areas from the Phase II reformulated gasoline requirements.

E. Petition Process

In the NPRM, EPA proposed that a state may petition the EPA to opt out of the reformulated gasoline program. Under the proposal, a petition would have to include specific information about how the program is used in a State Implementation Plan. If a state did include the reformulated gasoline program as a control measure in such plan or revision submitted to EPA for approval, then the state would have to describe if and how it intended to replace reformulated gasoline as a control measure. In addition, the state would need to identify whether it intended to submit a revision and, if so, when.

Several commenters raised concerns about the impacts that approved petitions would have on air quality, especially in nonattainment areas, since reformulated gasoline provides significant clean air benefits. A fuels association commented that petitions should demonstrate that there will be no unacceptable adverse air quality impacts to other areas or other states. Industry representatives commented that nonattainment areas should not be permitted to opt out unless the state has binding commitments to adopt substitute measures to achieve attainment. Another commenter cautioned that a petition should not be approved if there is adequate showing that opting out would cause the area to return to nonatttainment status. Regarding opportunity for public consideration, an association remarked that the petition process should include a formal comment period.

EPA is committed to ensuring that areas around the country attain the National Ambient Air Quality Standards (NAAQS), including the ozone standard. EPA recognizes, however, that under the Clean Air Act the states play a primary role in attaining the NAAQS, including choosing those control measures they prefer to include in its plans to attain and maintain the NAAQS. Today's action maintains the flexibility that states have in air quality planning by honoring their right to opt out and substitute alternative control measures where the state considers appropriate. EPA believes that the state should retain flexibility to revise the SIP by selecting control measures it desires to include in its plan as long as it makes the necessary demonstrations under the Act.

To begin the opt-out process, this final rule requires that a Governor, or his or her authorized representative, submit an opt-out petition to the Administrator of the Agency. The opt-out petition must include information describing how, if at all, reformulated gasoline has been relied upon by the state in its State Implementation Plans, revisions to such plans, or redesignation requests, both pending or already approved. This would include, for example, attainment as well as maintenance plans. The petition must also include a geographic description of the opt-out area.

In the case where a state has included reformulated gasoline in a pending plan submission, the petition must identify whether the state is withdrawing the plan and what alternative air quality control measures, if any, that the state intends to use to replace RFG. In the case where a state intends to submit a revision to an approved plan or to a pending SIP submission, the petition must identify this intention as well as the alternative air quality control measures that will be substituted for reformulated gasoline to reach or maintain compliance with the federal ozone standard. Furthermore, the petition must include the status of any proposed revision to an approved plan or pending SIP submission and the projected schedule for the revised plan. In the event a state does not intend on

VOL 61 ISS 131 JL 8 1996 UMI

revising an approved plan or pending SIP submission, the petition must include a description why no revision is considered necessary. A revision may not be considered necessary, for instance, if the proposed opt-out area does not need to rely on reformulated gasoline to achieve or maintain attainment.

The purpose of the information required in the petition is to provide EPA the assurance that a state has considered the programmatic effects of the requested opt-out. For instance, EPA expects that states will fully consider the effects that an RFG opt-out would have on its SIP or 15% VOC rate of progress plan as well as its overall ability to attain and maintain the federal ozone standard. Through this petition exercise, a state may find that alternative control measures may not offer the cost-effectiveness, immediate benefits, or ancillary benefits such as toxics reduction that reformulated gasoline provides. Thus careful planning is needed by the state since reductions from other sources may be much less practicable, depending on the state's circumstances. Reformulated gasoline is one of the most cost-effective measures for ozone control available and also yields significant air toxics benefits. EPA believes that the information requirement will address some of the commenters' concerns that states consider the effects on air quality of their decision to opt out, stated earlier in this section.

After a state submits a petition, the Agency will review the document to determine whether it contains all of the required information. Once the Agency determines that the petition is complete with the required elements, EPA will send a letter to the state approving the petition and identifying the effective date of the opt-out. For those instances where the state does not include federal RFG in an approved plan, the effective date shall be 90 days from the date of the notification to the state. When the state has included RFG in an approved plan, the effective date will be 90 days from the effective date for Agency approval of a revision to the plan that removes reformulated gasoline as a control measure.

F. Transition Period

In the NPRM, EPA proposed to make the effective date for an opt-out dependent upon whether or not a state has an approved plan in place. If reformulated gasoline was relied upon as a control measure in an approved plan, EPA proposed to make the opt-out effective 30 days after the Agency had approved an appropriate revision to the state plan. If reformulated gasoline was not relied upon in an approved or pending SIP, SIP revision, or redesignation request, EPA proposed to make the opt-out become effective 30 days from receipt of a complete opt-out petition. If reformulated gasoline was relied upon as a control measure in a plan revision that had been submitted to the Agency but was still pending Agency approval, and the Agency had found the plan to be complete and/or made a protectiveness finding under 40 CFR §§ 51.448 and 93.128, EPA proposed to make the opt-out effective 120 days from the date a complete petition is received. When the state had a pending plan revision that the Agency had determined complete and/or for which the Agency had made a protectiveness finding and the state decided to withdraw the submission or indicated to the Agency the state's intention to submit a revision, EPA proposed to make the opt-out effective 30 days from receipt of a complete petition from the state, as described above and specified in the proposed regulatory language.

EPA received numerous comments on two aspects of the proposal. First, the majority of the commenters indicated that the proposed time period between the approval of an opt-out and the date the opt-out becomes effective (referred to in this preamble as the transition period) is insufficient for industry to change the supply of gasoline from reformulated gasoline to conventional without significant disruption to the supply infrastructure. Second, commenters recommended that the opt-out process should be more orderly, with the Agency giving expeditious and clear notification to the public as to when the opt-out becomes effective.

In response to the comments received on the timing of opt-outs, EPA is adopting opt-out provisions that are modified from the proposal. First, today's action provides for a single 90 day transition period. In determining an appropriate length of time for the transition period, EPA weighed the need for industry to plan and implement a change in gasoline throughout the distribution system to the retail stations against the request from states to opt out in a timely manner. The majority of commenters indicated that 60 to 90 days would be adequate for industry to turn over existing stocks of reformulated gasoline to conventional gasoline. Also, based upon comments from state associations, as well as EPA's experience in other opt-outs, states are concerned that the Agency make a timely decision on the opt-out and generally consider a 90-day transition period reasonable once the opt-out approval by the Agency has been made.

This action finalizes a single transition period, not two periods as proposed. In the NPRM, states with plan revisions containing RFG pending before the Agency would be opted out of the RFG program in 120 days, but a state could shorten this period to 30 days simply by withdrawing the pending plan revision or indicating to EPA the state's intention to submit a revision to the pending plan. These two conditions provide little impediment to a state to effectively opt out in 30 days. Therefore, EPA believes that a single transition period length will simplify an opt-out and maximize affected parties's ability to plan for a smooth transition from the reformulated gasoline program.

EPA is also modifying the procedure for initiating the 90 day count for the transition period. Several commenters noted, and EPA concurs, that in some cases the proposed procedures not only would have created uncertainty surrounding the transition period start date, but also would have effectively shortened the proposed transition period. In the NPRM, EPA proposed to make the transition period begin upon receipt of a complete petition. As commenters pointed out, this method would create uncertainty about whether the petition was complete on the day that the Agency received the petition and did not provide a means for communicating the petition's approval or effective date to the regulated industry.

EPA believes that in those cases where reformulated gasoline is relied upon as a control measure in an approved plan, the procedures for re-approval of the state plan, with notice, comment, and publication of the revision, would sufficiently address commenters' concerns about clear notification of Agency action. Therefore, if RFG is relied upon as a control measure in an approved plan, the opt-out would become effective 90 days after the effective date of the Agency's approval of an appropriate revision to the state plan. Notice of this action would be published in the **Federal Register**. Prior to this notice in the **Federal Register**, the state must also submit a complete petition to opt out of the reformulated gasoline program.

Where reformulated gasoline is relied upon as a control measure in a plan revision pending before the Agency, or is not relied upon in any plan, the state must petition the Agency to opt out of the reformulated gasoline program, and the opt-out will be effective 90 days after the Agency notifies the state that the state's petition is approved. The Agency will provide written notification to the state indicating EPA's approval of the petition. The 90-day transition clock will start from the date of the approval notification sent to the opt-out state. To facilitate an orderly opt-out process and minimize any uncertainties that may result from an opt-out, EPA intends to quickly review opt-out petitions and expeditiously notify the public of the effective date of opt-outs. EPA intends to make a decision on the state's petition within two weeks from receipt of the petition. EPA will promptly notify the state and publish a notice in the **Federal Register** notifying the public of the effective date of the opt-out, thereby giving consistent and timely information to the affected parties. The Agency will make every effort to notify the associations of affected industries and states after EPA has approved a state's opt-out petition. In addition EPA will announce the opt-out's effective date on the OAQPS Technology Transfer Network Bulletin Board System [TTNBBS). For information on how to access this system, see the **SUPPLEMENTARY INFORMATION** section of this rule for details.

Finally, at a state's request, the opt-out could be effective later than 90 days after the start of the transition period. In such a case, a state must indicate in its petition to the Agency the desired effective date for the opt-out. In this scenario, EPA recommends that a state consider an opt-out date which becomes effective on one of the reformulated gasoline program's natural transition points. EPA received comments supporting opt-out effective dates that are consistent with the natural transition points. These natural transition points are identified as January 1, the start of the averaging season, and May 1 and September 15, the beginning and end, respectively, of the VOC control season. The Agency understands these concerns and will support state efforts to accommodate these natural transition points.

G. Cyclic Opt-outs and Opt-ins by a State

The reformulated gasoline program is a cost-effective program designed to reduce ozone levels in participating metropolitan areas. But the cost effectiveness of the reformulated gasoline program is jeopardized by regulatory uncertainty, as it pertains to the regulated community's ability to plan for providing the manufacturing capacity to produce oxygenate and reformulated gasoline to specified control areas. Specifically, the uncertainty is increased by the perceived absence of long term commitment to the reformulated gasoline program by those states who opted into the reformulated gasoline program and by the relatively simple process for states to opt out of the reformulated gasoline program provided for in this final rule.

EPA understands and expects that before a state submits an opt-out petition it will have given thoughtful consideration to the air quality consequences of its action and considered the substitute control measures that may be needed to achieve air quality standards and protect the health of its citizens. Therefore, the Agency believes it is improbable that a state would seek to reverse an opt-out decision by shortly thereafter requesting to opt back into the program.

However, comments from the oil industry expressed their concern that states may engage in a cycle of opt-ins and opt-outs. The Agency agrees that the integrity of the reformulated gasoline program would be jeopardized if states maintained a cycle of opt-ins and opt-outs, e.g. to create a customized seasonal program. The reformulated gasoline program is a year-round program.

Given the limited applicability of this final rule to December 31, 1997, EPA believes that it is unlikely that states would have the opportunity to complete a cycle of opt-out and opt-in. Although this final rule effectively allows states to quickly opt out of the reformulated gasoline program, the Agency may set the effective date of opt-in up to one year from the date of a governor's opt-in application. Section 211(k)(6). States would not be able to plan, with any certainty, the timing of opt-ins and opt-outs which would create a seasonal reformulated gasoline program. EPA does not believe that current conditions warrant any further restrictions on opt-ins and opt-outs. EPA may promulgate restrictions in the future if it is determined in the future that cyclic opt-outs and opt-ins are occurring.

H. Effect on Averaging

Under the RFG regulations, refiners and importers may elect to meet certain RFG standards either on a per-gallon basis or on average. This election, which must be made separately for each parameter and separately for each calendar year, applies to all RFG produced at a refinery by a refiner, or imported by an importer, during a calendar year.

Some commenters indicated that a refiner or importer who elects to comply with the RFG standards on average may be adversely affected by an area opting out of the RFG program during an averaging period. This could occur where a refiner's or importer's average is out of compliance at the time of an unanticipated opt-out, and reduced future production or importation of RFG due to the opt-out results in the refiner or importer having insufficient volume in the remainder of the averaging period to bring the average into compliance.

EPA believes that the 90 day (minimum) transition period provides adequate time for refiners and importers to adjust to changes in the RFG market which may be attributed to opt-outs and that it is unlikely that a refiner's or importer's ability to comply with the RFG standards on average would be significantly impaired if an area opts out of the RFG program. As a result, EPA is not providing regulatory relief in today's action for such a possibility. Nevertheless, in setting a potential penalty in an enforcement action for violation of the RFG averaging standards, EPA will consider the effects of any opt-outs if the refiner or importer is able to demonstrate (1) that it would have been in compliance but for the opt-out, and (2) that it took all reasonable steps to address the averaging problem caused by the opt-out.

II. New York's, Pennsylvania's and Maine's Requests to Remove Selected Opt-In Areas From the Requirements of the Reformulated Gasoline Program

A, Introduction

In the NPRM, EPA proposed to grant the petitions from the governors of the States of New York, Pennsylvania and Maine to remove Jefferson County and the Albany and Buffalo areas in New York (a total of nine counties in New York); the twenty-eight opt-in counties in Pennsylvania; and Hancock and Waldo counties in Maine from the list of covered areas defined by section 80.70 of the reformulated gasoline rule.

Jefferson County and the other eight New York counties affected by this proposal were included as covered areas in EPA's reformulated gasoline regulations based on Governor Mario Cuomo's request of October 28, 1991, that these areas be included under the Act's opt-in provision for ozone nonattainment areas (57 FR 7926, March 5, 1992). See 40 CFR 80.70(j)(10)(vi). On November 29, 1994, EPA received a petition from the Commissioner of New York's Department of Environmental Conservation, Mr. Langdon Marsh, to remove Jefferson County from the list of areas covered by the requirements of the reformulated gasoline program. EPA understands that Commissioner Marsh was acting for Governor Cuomo in this

VOL 61 ISS 131 JL 8 1996 UMI

matter. The Administrator responded to the State's request in a letter to Commissioner Marsh dated December 12, 1994, stating EPA's intention to grant New York's request, and conduct rulemaking to implement this. In the letter of December 12, addressing the opt-out request for Jefferson County, the Administrator also indicated that effective January 1, 1995, and until the rulemaking to remove Jefferson County from the list of covered areas is completed, EPA would not enforce the reformulated gasoline requirements in Jefferson County for reformulated gasoline violations arising after January 1, 1995. This was based on the particular circumstances in Jefferson County.

On December 23, 1994, Commissioner Marsh of New York's Department of Environmental Conservation wrote to further request the opt-out of the Albany and Buffalo areas which include the counties of Albany, Greene, Montgomery, Rennsselaer, Saratoga, Schenectady, Erie and Niagara. EPA Assistant Administrator for Air and Radiation, Mary Nichols, responded to the state's request in a letter to Commissioner Marsh dated December 28, 1994, stating EPA's intention to grant New York's request, and conduct rulemaking to implement this. The December 28 letter also indicated EPA's intent to stay the reformulated gasoline regulations from January 1, 1995, until July 1, 1995, in the specified counties while the Agency completes rulemaking to appropriately change the regulations. The letter stated, however, that the requirements of the reformulated gasoline program would apply in these areas until the stay becomes effective January 1, 1995.

Twenty-eight counties in Pennsylvania were included as covered areas in EPA's reformulated gasoline regulations based on Governor Robert P. Casey's request dated September 25, 1991. See 40 CFR 80.70(j)(11)(i) through (xxviii). The counties referred to are listed as follows: Adams, Allegheny, Armstrong, Beaver, Berks, Blair, Butler, Cambria, Carbon, Columbia, Cumberland, Dauphin, Erie, Fayette, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Mercer, Monroe, Somerset, Northhampton, Perry, Washington, Westmoreland, Wyoming and York. On December 1, 1994, EPA received a petition from Governor Casey to remove these twenty-eight counties from the list of covered areas defined by § 80.70 of the reformulated gasoline rule. As with New York's request, the Administrator responded to the State's request in a letter to Governor Casey dated December 12, 1994, stating EPA's intention to grant Pennsylvania's request, and conduct rulemaking to implement this. Effective January 1, 1995, and until formal rulemaking to remove the twenty-eight counties from the list of covered areas is completed, EPA would not enforce the reformulated gasoline requirements in these twenty-eight counties for reformulated gasoline violations arising after January 1, 1995. This was based on the particular circumstances in Pennsylvania. EPA has reserved its authority to enforce the reformulated gasoline program for violations that may have occurred prior to January 1, 1995.

Hancock and Waldo Counties in Maine were included as covered areas in EPA's reformulated gasoline regulation based on Governor John R. McKernan's request of June 26, 1991, that these counties be included under the Act's opt-in provision for ozone nonattainment areas. (56 FR 46119, September 10, 1991) See 40 CFR 80.70(j)(5)(viii) and (ix). On December 27, EPA received a petition from the Acting Commissioner of Maine's Department of Environmental Protection, Ms. Deborah Garrett, to remove Hancock and Waldo Counties in Maine from the list of areas covered by the requirements of the reformulated gasoline program. EPA understands that Commissioner Garrett is acting for Governor McKernan in this matter. EPA Assistant Administrator for Air and Radiation, Mary Nichols, responded to the state's request in a letter to Commissioner Garrett, dated December 28, 1994, stating EPA's intention to grant Maine's request, and conduct rulemaking to implement this. The December 28 letter also stated EPA's intent to stay the reformulated gasoline regulations from January 1, 1995 until July 1, 1995, in the specified counties while the Agency completes rulemaking to appropriately change the regulations. However, EPA has reserved its authority to enforce the reformulated gasoline program for violations that may have occurred prior to January 1, 1995.

In separate notices signed by the EPA Administrator on December 29, 1994, and June 30, 1995, and for the reasons described therein, EPA has stayed the program in these thirty-nine counties, or portions thereof, effective January 1, 1995, until such time as the Agency completed rulemaking on the proposed opt-out for these areas. (60 FR 2696, January 11, 1995; 60 FR 35488, July 10, 1995) Based on this chronology, EPA proposed that these areas be removed from the reformulated gasoline program effective upon the issuance of final action in this rulemaking. (60 FR 31269, June 14, 1995)

B. EPA Grants New York's, Pennsylvania's and Maine's Requests To Remove Selected Opt-In Areas From the Requirements of the Reformulated Gasoline Program

EPA believes that it is appropriate to interpret section 211(k) as authorizing states to opt out of the RFG program, provided that a process is established for a reasonable transition out of the program. 60 FR 31269 (June 14, 1995). The Agency has considered two key aspects in granting these opt-outs: the first involves coordination of air quality planning, and the second involves appropriate lead time for industry to transition out of the program.

With respect to air quality planning, EPA believes there is no reason to delay the removal of the 39 affected counties, or portions of counties, in New York, Pennsylvania and Maine. These areas do not include or rely on reformulated gasoline as a control measure in any state implementation plan, maintenance plan or 15% rate of progress plan. Even if reformulated gasoline is included as a contingency measure in a maintenance plan for the redesignation packages, allowing an area to opt out now would not interfere with implementing that contingency. The areas could opt into the reformulated gasoline program in the future, if necessary, within the restrictions outlined in section 211 (k)(6) of the Act.

As indicated above, the reformulated gasoline program is currently stayed in all of the affected areas, and Agency consideration of an appropriate lead time for industry to change the supply of gasoline is unnecessary.

Therefore, in today's action, EPA removes Jefferson County and the Albany and Buffalo areas in New York (a total of nine counties in New York); the twenty-eight opt-in counties in Pennsylvania; and Hancock and Waldo counties in Maine from the list of covered areas defined by § 80.70 of the reformulated gasoline rule as of July 8, 1996.

III. Environmental Impact

If an area opts out of the reformulated gasoline program, it will not receive the reductions in volatile organic compounds, oxides of nitrogen (NO_X), and air toxics that are expected from this program. Instead, the areas would be subject to the federal controls on Reid vapor pressure for gasoline in the summertime, and would receive control of NO_X and air toxics through the requirements of the conventional gasoline anti-dumping program. These latter requirements are designed to ensure that gasoline quality does not degrade from the levels found in 1990. These areas would be foregoing the air quality benefits obtained from the use of reformulated gasoline.

However, as discussed in the proposal, one of the central concepts behind this rule is a recognition that states have the primary responsibility to develop the mix of control strategies needed to attain and maintain the NAAQS, and should have flexibility in determining the mix of control measures needed to meet their air pollution goals. EPA expects that states will in fact act prudently in exercising their rights to opt out under these rules. Any environmental impacts of opting out are therefore not expected to occur in isolation, but in a context of states exercising their responsibility and developing appropriate control strategies for their areas' air pollution goals.

IV. Regulatory Flexibility Analysis

This rule is not expected to result in any additional compliance cost to regulated parties and in fact is expected to decrease compliance costs to those entities who previously supplied reformulated gasoline to the area opting out. This rule also establishes a transition period which maximizes affected parties's ability to plan for smooth transition from the reformulated gasoline program, minimizing disruption to the motor gasoline marketplace. This transition period is reasonably expected to allow parties to turn over existing stocks of reformulated gasoline to conventional gasoline. Accordingly, EPA has determined that it is not necessary to prepare regulatory flexibility analysis in connection with this final rule. EPA has determined that this rule will have no significant adverse effect on substantial number of small businesses.

V. Public Participation

A. Public Comments

The Agency received submissions during the comment period for the NPRM from 36 commenters. Copies of all of the written comments submitted to EPA, as well as records of all oral comments received during the comment period, can be obtained from the docket for this rule (see **ADDRESSES**).

The Agency received comments from the public on three major issues: the opt-out process, EPA's authority to promulgate a rule on opt-outs, and transition period. A summary of these comments along with the Agency's responses are located throughout the preamble above. Discussion of public comments on the proposed opt-out process and the Agency response can be located in Section I, Parts C and E of this preamble. Discussion of public comments on the proposed transition periods and the Agency response can be found in Section I, Part F. The Agency response to comments on statutory authority are located in Section I, Part B and in the preamble to the proposal, at 60 FR 31271.

The docket also contains a document that provides a more detailed summary of the comments, including some issues not covered in this preamble because they were minor or less contentious issues, and EPA's rationale for its response.

B. Public Hearing

The Agency held a public hearing on July 5, 1995 to hear comments on the Notice of Proposed Rulemaking (60 FR 31269) published June 14, 1995. Comments at the hearing were provided by representatives of the oil industry and fuel oxygenate producers. These comments have been presented and addressed in the preamble above.

VI. Executive Order 12866

Under Executive Order 12866 [1], the Agency must determine whether a regulation is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[2]

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VII. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Pub.L. 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, for any rule subject to Section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that the final rule promulgated today does not trigger the requirements of UMRA. The rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

VIII. Judicial Review

Because this final action is nationally applicable, under section 307(b)(1) of the Clean Air Act judicial review of this action is available only by the filing of a petition for review in the U.S. Court of Appeals for the D.C. Circuit within sixty days of publication of this action in the **Federal Register**.

VIII. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution.

Dated: June 21, 1996.

Carol M. Browner,

Administrator.

40 CFR part 80 is amended as follows:

[1] *See* 58 FR 51735 (October 4, 1993).

[2] *Id.* at section 3(f)(1)-(4).

VOL
61
ISS
1
31
JL
8
1996
UMI

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.2 is amended by adding paragraph (vv) to read as follows:

§ 80.2 Definitions.

* * * * *

Opt-in area. An area which becomes a covered area under § 80.70 pursuant to section 211(k)(6) of the Clean Air Act.

3. Section 80.70 is amended by revising paragraph (j) introductory text; by removing paragraphs (j)(5)(viii), (5)(ix), (j)(10)(i), (10)(iii), (10)(v) through (10)(xi); by redesignating paragraphs (j)(10)(ii) and (iv) as (10)(i) and (10)(ii); by removing paragraph (j)(11) and redesignating (j)(12) through (14) as (j)(11) through (13) respectively; and by adding a new paragraph (l) to read as follows:

§ 80.70 Covered areas.

* * * * *

(j) The ozone nonattainment areas listed in this paragraph (j) are covered areas for purposes of subparts D, E, and F of this part. The geographic extent of each covered area listed in this paragraph (j) shall be the nonattainment area boundaries as specified in 40 CFR part 81, subpart C:

* * * * *

(l) Upon the effective date for removal under § 80.72(a), the geographic area covered by such approval shall no longer be considered a covered area for purposes of subparts D, E and F of this part.

4. Section 80.72 is added to read as follows:

§ 80.72 Procedures for opting out of the covered areas.

(a) For petitions received prior to and including December 31, 1997 and in accordance with paragraph (b) of this section, the Administrator may approve a petition from a state asking for removal of any opt-in area, or portion of an opt-in area, from inclusion as a covered area under § 80.70. If the Administrator approves a petition, he or she shall set an effective date as provided in paragraph (c) of this section. The Administrator shall notify the state in writing of the Agency's action on the petition and the effective date of the removal when the petition is approved.

(b) To be approved under paragraph (a) of this section, a petition must be signed by the governor of a state, or his or her authorized representative, and must include the following:

(1) A geographic description of each opt-in area, or portion of each opt-in area, which is covered by the petition;

(2) A description of all ways in which reformulated gasoline is relied upon as a control measure in any approved state or local implementation plan or plan revision, or in any submission to the Agency containing any proposed plan or plan revision (and any associated request for redesignation) that is pending before the Agency when the petition is submitted; and

(3) For any opt-in areas covered by the petition for which reformulated gasoline is relied upon as a control measure as described under paragraph (b)(2) of this section, the petition shall include the following information:

(i) Identify whether the state is withdrawing any such pending plan submission;

(ii)(A) Identify whether the state intends to submit a revision to any such approved plan provision or pending plan submission that does not rely on reformulated gasoline as a control measure, and describe the alternative air quality measures, if any, that the state plans to use to replace reformulated gasoline as a control measure;

(B) A description of the current status of any proposed revision to any such approved plan provision or pending plan submission, as well as a projected schedule for submission of such proposed revision;

(iii) If the state is not withdrawing any such pending plan submission and does not intend to submit a revision to any such approved plan provision or pending plan submission, describe why no revision is necessary;

(iv) If reformulated gasoline is relied upon in any pending plan submission, other than as a contingency measure consisting of a future opt-in, and the Agency has found such pending plan submission complete or made a protectiveness finding under 40 CFR 51.448 and 93.128, demonstrate whether the removal of the reformulated gasoline program will affect the completeness and/or protectiveness determinations;

(4) The Governor of a State, or his or her authorized representative, shall submit additional information upon request of the Administrator,

(c) (1) Except as provided in paragraph (c)(2) of this section, the Administrator shall set an effective date for removal of an area under paragraph (a) of this section of 90 days from the Agency's written notification to the state approving the opt-out petition.

(2) If reformulated gasoline is contained as an element of any plan or plan revision that has been approved by the Agency, other than as a contingency measure consisting of a future opt-in, then the effective date under paragraph (a) of this section shall be 90 days from the effective date for Agency approval of a revision to the plan that removes reformulated gasoline as a control measure.

(d) The Administrator shall publish a notice in the **Federal Register** announcing the approval of any petition under paragraph (a) of this section, and the effective date for removal.

[FR Doc. 96–16668 Filed 7–5–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 425

RIN 2040–AC48

[FRL–5527–4]

Leather Tanning and Finishing Effluent Limitations Guidelines; Pretreatment Standards; New and Existing Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating changes modifying the pretreatment standards for existing and new sources applicable to certain facilities in the leather tanning and finishing point source category that conduct unhairing operations and that discharge process wastewater to publicly owned treatment works ("POTW"). This rule responds to a petition submitted by the leather tanning industry. The Agency conducted an informal survey of a small number of POTWs, permitting authorities, and industry representatives knowledgeable of leather processing operations and wastewater treatment. EPA is promulgating these changes as a "direct" final rule because the Agency does not expect significant adverse or critical comments. EPA also wants to provide prompt implementation of the rule to minimize any potential hazards to worker safety and health that may occur in the absence of this rule. Prompt implementation will also allow affected facilities in this category to reduce the use of treatment chemicals.

DATES: This rule is effective on October 7, 1996 unless significant adverse or critical comments are received by September 6, 1996. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Send comments in triplicate on this rule to Mr. Ed Terry, Engineering and Analysis Division (4303), U.S. EPA, 401 M St. S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Terry, Engineering and Analysis Division (4303), U.S. EPA, 401 M St., S.W., Washington, DC 20460, or telephone 202–260–7128.

SUPPLEMENTARY INFORMATION:

Regulated entities. Entities potentially regulated by this action are those facilities in the leather tanning and finishing point source category that conduct unhairing operations and that discharge process wastewater to publicly owned treatment works, and entities include:

Category	Examples of regulated entities
Industry	Leather tanning facilities that conduct beamhouse operations and indirectly discharge process wastewater to publicly owned treatment works

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 425.15, § 425.25, § 425.65, or § 425.85 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Organization of this document:

I. Legal Authority
II. Clean Water Act
III. Overview of the Leather Tanning Industry
IV. Regulatory Activities and Responses
V. Petition Submitted by Industry
VI. Agency Action in Response to Petition
VII. Options Considered
  A. Selected Option
  B. Other Options Considered
  (1) Option 2
  (2) Option 3
VIII. Scope of This Rule
IX. Executive Order 12866
X. Unfunded Mandates Reform Act
XI. Regulatory Flexibility Analysis
XII. Submission to Congress and the General Accounting Office
XIII. Paperwork Reduction Act
XIV. Administrative Procedure Requirements

I. Legal Authority

These regulations are being promulgated under the authority of sections 301, 304, 306, 307, 308, and 501 of the Federal Water Pollution Control Act of 1972, as amended (known as the Clean Water Act), 33 U.S.C. sections 1311, 1314, 1316, 1317, 1318, and 1361.

II. Clean Water Act

The Federal Water Pollution Control Act of 1972 ("the Act") established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" [Section 101(a)]. By July 1, 1977, existing industrial dischargers were to achieve "effluent limitations requiring the application of the best practicable control technology currently available" ("BPT")[Section 301(b)(1)(A)]; and by July 1, 1983, dischargers of certain pollutants were required to achieve "effluent limitations requiring the application of the best available technology economically achievable * * * which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants" ("BAT") [Section 301(b)(2)(A)]. New industrial direct dischargers were required, under Section 306, to comply with new source performance standards ("NSPS"), based on the best available demonstrated technology; and new and existing dischargers to publicly owned treatment works ("POTW") were subject to pretreatment standards under Sections 307(b) and of the Clean Water Act. The requirements for direct dischargers were to be incorporated into National Pollutant Discharge Elimination System ("NPDES") permits issued under Section 402 of the Act, and pretreatment standards were made enforceable directly against dischargers to POTWs ("indirect dischargers").

III. Overview of the Leather Tanning Industry

Leather tanning is a general term for the various processing steps involved in converting animal skins or hides into leather. The three major hide and skin types used to manufacture leather are cattle hides, sheepskins and pigskins. The three primary steps of processing hides or skins are: beamhouse operations which wash and soak the hides or skins and (at most tanneries) chemically remove the attached hair; tanyard processes in which the tanning agent (primarily chromium) reacts with and stabilizes the proteinaceous matter in the hides or skins; and retanning and wet finishing processes which accomplish further processing by using additional tanning agents (again primarily chromium although other agents are also used) and other chemical agents such as dyes, lubricants and various finishes.

The U.S. leather tanning industry, identified by the Department of Commerce's Standard Industrial Classification as industry number 3111, is an old industry. The number of tanneries in the U.S. has steadily decreased from around 7,500 in 1865 to approximately 1,000 by the year 1900. In 1982, EPA data indicated there were 158 tanneries producing leather and discharging wastewaters to surface streams or to POTWs. According to estimates in the *U.S. Industrial Outlook—1993*, in 1992 the leather tanning and finishing industry employed about 12,700 people, distributed among 110 facilities, or an average of about 115 employees per facility. Tanneries are clustered in the northeast and mid-Atlantic states, the Chicago-Milwaukee area and the Gloversville-Johnstown area of New York State. Other facilities are scattered around the U.S. Cattle hides represent the bulk of raw material utilized for tanning done in the U.S. The following is a brief description of the three primary areas of process operations of facilities in the leather tanning and finishing industry.

The first primary area of process operations is the beamhouse in which the raw hides and skins are prepared by cleaning and soaking to make them more pliable, and unhairing, or hair removal, to make the hides more attractive and useful. Beamhouse operations usually start with siding and trimming, followed by washing and soaking, fleshing and unhairing. The unhairing operation includes lime and sodium sulfide as the primary chemicals which dissolve the hair. Wastewaters are highly alkaline, in a pH range of 10 to 12.

The second primary area of process operations is the tanyard in which a durable material is produced from the animal hides or skins. The proteinaceous matter in the hides reacts with the tanning agent and becomes stabilized. The tanning is accomplished by trivalent chromium, by vegetable tannins extracted from the bark of certain trees, or by synthetic tanning agents. These operations occur in an acidic medium and the wastewater generated usually has a pH in the range of 2.5 to 3.5. The resulting stabilized materials will not degrade by physical or biological mechanisms.

The third primary area of process operations is retanning and wet finishing which gives the tanned hides special or desired features, such as bleached appearance, added coloring, lubricants, or further tanning for finished leather properties. These operations usually do not have a significant effect on the acidity/alkalinity of associated wastewaters.

VOL
61
ISS
1
31
JL
8
1996
UMI

IV. Regulatory Activities and Responses

On April 9, 1974 (39 FR 12958) EPA promulgated the original regulation for the leather tanning industry, establishing effluent limitations guidelines and standards for the industry based on the best practicable control technology currently available ("BPT"), the best available technology economically achievable ("BAT"), new source performance standards ("NSPS") for new direct dischargers, and pretreatment standards for new indirect dischargers ("PSNS"). These requirements were codified at 40 CFR Part 425, Subparts A–F.

The Tanners Council of America, Inc. (now the Leather Industries of America, Inc.), challenged the 1974 promulgated rule. The U.S. Court of Appeals for the Fourth Circuit left BAT and PSNS undisturbed, but remanded the BPT and NSPS limitations and standards.

On March 23, 1977 (42 FR 15696), EPA promulgated pretreatment standards for existing sources ("PSES") for the leather tanning industry. These standards included only a pH range and did not establish limits on chromium or sulfide.

On July 2, 1979 (44 FR 38746), EPA proposed revised effluent limitations guidelines and standards for the leather tanning and finishing point source category. EPA proposed to replace the remanded BPT and NSPS limitations and standards, establish new best conventional pollutant control technology ("BCT") limitations, and revise BAT, PSES and PSNS limitations and standards.

On November 23, 1982 (47 FR 52848) EPA promulgated a final regulation for the leather tanning and finishing industry point source category, establishing effluent limitations and standards to control specific toxic, nonconventional and conventional pollutants for nine subcategories in the leather tanning and finishing point source category. The pretreatment standards for indirect dischargers to POTWs established categorical limits on the discharge of chromium and sulfides and revised pH limits in certain subcategories.

The Tanners Council of America (now known as the Leather Industries of America, Inc. (LIA)) filed a petition for judicial review of several aspects of the promulgated regulation. This action was followed by the filing of an administrative Petition for Reconsideration with EPA. The Agency conducted an extensive review of the existing data base and acquired additional data. Following discussions between the Agency and the LIA, the parties entered into a settlement agreement.

The settlement agreement, signed on December 11, 1984, addressed the issues raised in the LIA petition. EPA agreed to propose amendments to the 1982 rule and to solicit comments on these issues. LIA agreed to dismiss its petition for judicial review and to withdraw the Petition for Reconsideration if EPA promulgated rules consistent with the proposed amendments.

In response to the 1984 settlement agreement on the revised effluent guidelines, EPA published on January 21, 1987 (52 FR 2370) proposed amendments to the 1982 rule and preamble language with solicitation of comments. As one of the provisions of the settlement agreement, EPA agreed to propose to delete the upper pH limit for vegetable tanners in Subpart C [Hair Save or Pulp, Non-chrome Tan, Retan-Wet Finish subcategory (§ 425.35(a))] only. Also, as part of the settlement agreement, LIA and EPA jointly requested the U.S. Court of Appeals for the Fourth Circuit to stay the effectiveness of the sections of 40 CFR Part 425 which EPA had agreed to propose to amend, pending final action by EPA on the proposed amendments. On February 22, 1985, the Court entered an Order staying specified sections of Part 425, pending final promulgation of an amendment to the regulation consistent with the settlement agreement.

On March 21, 1988 (53 FR 9176) EPA promulgated amendments to 40 CFR Part 425. The promulgated rule added an alternative sulfide analytical method, clarification of the procedures that support applicability of sulfide pretreatment standards, revisions to certain BPT effluent limitations, corrections to NSPS, and an allowance for small tannery exemptions under certain conditions. The preamble to the promulgated rule stated that the Agency would not consider a waiver from the upper pH limit of 10.0 for other subcategories than Subpart C because it would be unduly complicated.

V. Petition Submitted by Industry

On March 18, 1993, Counsel for the leather tanning industry submitted a petition to the Agency, requesting that the Agency amend the upper pH limit for leather tanning facilities that conduct unhairing ("beamhouse") operations with indirect discharge to publicly owned treatment works ("POTWs"). The petition asks the Administrator "* * * to include within the relevant regulatory section language allowing a POTW, subject to EPA review, to waive the upper pH limit for regulated discharges upon a showing that any such waiver will not 'interfere,' cause a 'pass through' or be 'incompatible' with a POTW's treatment works." The petitioners go on to say: "The rulemaking is requested because, as a result of changes in operating conditions and an incorrect assumption that flow equalization alone would allow continuous control of tannery wastewaters to a level between 7.0 and 10.0, the existing upper pH limit cannot always be safely met."

Since 1977, EPA has prohibited the discharge into POTWs of effluent from such facilities where the discharge failed to fall within a pH range of 7.0 to 10.0. This limitation was established primarily due to concerns over the solubility of chromium at higher pH levels and the potential for upsetting biological treatment systems of POTWs. To meet the pH requirement, leather tanning facilities would mix high pH beamhouse wastewaters with low pH tanyard wastewaters in a flow equalization process, resulting in a wastewater discharge that would meet the pH requirement.

In 1982, EPA subsequently set chromium pretreatment standards for the industry. The treatment technology for chromium reduction is precipitation at a pH range of 8.5 to 9.0, thus requiring tanyard wastewater to be raised from its usual range of 2.5 to 3.5. However, this treatment was not required at most facilities because POTWs would grant removal credits allowing chromium to be discharged without pretreatment.

Following the invalidation of the original removal credit regulation in 1986, *see NRDC* v. *EPA*, 790 F.2d 289 (3rd Cir. 1986), *cert. denied* 479 U.S. 1084 (1987), leather tanning facilities raised the pH of the tanyard wastewaters in order to achieve necessary chromium reduction. The petitioners assert that because the resulting wastewaters, when combined with the beamhouse wastewaters, are still at a pH outside the pretreatment standard, plants have found it necessary to add acid to the combined wastewater before discharge.

The petitioners indicate this acidification is problematic for several reasons. First, this adjustment to the pH may result in the generation and release of hydrogen sulfide (H_2S), a highly toxic gas, in the leather tanning facility or in the POTW. In addition, the petitioners assert that many municipal authorities believe that tannery wastewater alkalinity and buffering capacity are highly beneficial in counteracting sewer corrosion and H_2S generation within the sewer system.

VI. Agency Action in Response to Petition

In response to the petition, the Agency conducted an informal survey of a small number of POTWs receiving leather tanning wastewaters, permitting authorities, and industry representatives knowledgeable of leather processing operations and wastewater treatment.

Eight POTW managers and operators were contacted regarding the issues raised in the petition. Three of the POTWs contacted were identified in the petition and five of the POTWs contacted were known by EPA to be receiving wastewater from leather tanning facilities. All those contacted were amenable to receiving leather tanning and finishing wastewaters with a higher pH at the point of discharge to the POTW. Four operators stated that wastewaters with alkaline pH contribute to more efficient POTW operation. Three operators expressed the opinion that higher pH levels inhibit corrosion. Two operators stated that high pH at the user's point of discharge reduces or eliminates the need for adding caustic to the POTW treatment system to maximize removal efficiency. One POTW operator stated that his system had not had any operating or performance problems associated with too high a pH in his system.

Based on review of the petition, telephone discussions with operators and managers of POTWs receiving leather tanning wastewater, and regulatory personnel, EPA has determined that there is sufficient basis for promulgating amendments to the upper pH limit contained in the pretreatment standards for existing and new sources in the subparts identified below.

VII. Options Considered

A. Selected Option

EPA is promulgating this rule to revise the existing pretreatment standards to eliminate upper (alkaline) pH limits for plants in four subcategories in which unhairing operations are conducted. This minor revision will benefit POTW operations by lowering operating costs and reducing potential risks for worker safety and health. This option was selected because EPA believes that interference with the operation of POTWs (i.e., damage to POTW collection systems and upset of biological treatment processes, and potential for adverse effect on the health and safety of POTW workers) and potential for pass through of pollutants are not likely events. Affected POTWs may still elect to set an alternative upper (alkaline) pH limit based on local circumstances.

B. Other Options Considered

The following options were considered but not selected.

(1) Option 2

EPA would promulgate a rule to develop new upper (alkaline) pH limits for all indirect dischargers in each of the four subcategories affected by the petition. This option was not selected because EPA does not have sufficient data to develop different pH limits. Even if sufficient data were available to develop different pH limits, this option also may leave individual cases where new pH limits still may not fit local circumstances, thus requiring further regulatory action. Moreover, as indicated above, the information currently available to the Agency indicate that no upper (alkaline) pH limits are necessary.

(2) Option 3

EPA would promulgate a rule adding a new section to 40 CFR Part 425 which would establish a procedure for use by individual POTWs in changing the pH range specified in the categorical pretreatment standards. The procedure would allow individual POTWs receiving these wastewaters to determine the appropriate upper (alkaline) pH limit for each of the affected leather tanning and finishing facilities. POTWs would determine the appropriate upper pH limit applicable to each indirect discharging leather tanning and finishing facility with operations in the affected subcategories based on consideration of all relevant factors pertinent to the POTW, including but not limited to those that EPA might present in support of such an option. EPA did not select this option because of the added unnecessary procedural burden this would place on POTWs; as indicated above, EPA does not believe that such limits are necessary. Where local conditions make such limits appropriate, POTWs should be free to set limits based on existing procedures rather than a new procedure developed for this rule.

VIII. Scope of This Rule

This notice of a "direct" final rule addresses only certain leather tanning facilities that conduct beamhouse operations and indirectly discharge process wastewater to publicly owned treatment works. Thus this final rule applies to the standards in Subparts A, B, F, and H of 40 CFR Part 425, at §§ 425.15, 425.25, 425.65, and 425.85.

The petition submitted by the Leather Industries of America, Inc., sought to amend only the Pretreatment Standards for Existing Sources (PSES). Because EPA set Pretreatment Standards for New Sources (PSNS) equal to PSES, this final rule applies to both existing and new indirect dischargers. However, because PSNS were set equal to PSES in each subcategory, EPA need only promulgate an amendment to PSES to effect the elimination of the upper (alkaline) pH limit for both existing and new sources in these four subcategories.

The petitioners also asked for relief from 40 CFR Part 425 Subpart C—Pretreatment Standards for Existing Sources—Hair Save or Pulp, Non-Chrome Tan, Retan—Wet Finish subcategory. However, EPA's rulemaking to implement the 1984 settlement agreement addressed removal of the upper (alkaline) pH limit for this subcategory.

IX. Executive Order 12866

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

X. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA,

VOL 61 ISS 131 JL 8 1996 UMI

EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Under section 204 of the UMRA, EPA generally must develop a process to permit elected officials of State, local and tribal governments (or their designated employees with authority to act on their behalf) to provide meaningful and timely input in the development of regulations containing significant Federal intergovernmental mandates. These consultation requirements build on those of Executive Order 12875 ("Enhancing the Intergovernmental Partnership").

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule is intended to reduce the burden of compliance by affected industries with certain federal effluent requirements. In addition, the approach selected for altering the existing regulations is intended also to decrease implementation burdens for State and local governments. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Similarly, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and thus this rule is not subject to the requirements of section 203 of UMRA. However, EPA has nonetheless involved state and local governments in the process of developing this rule. The Agency consulted with representatives of selected POTWs regarding the underlying technical aspects of this rule. The Agency will continue this process of consulting with state, local and other affected parties after issuance of the rule in order to further minimize the potential for unfunded mandates.

XI. Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5 U.S.C 601 *et seq.*, requires EPA and other agencies to prepare a final regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. This regulatory action does not have any adverse impact on either small or large entities. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

XII. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

XIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3500 *et seq.*, EPA must submit a copy of any rule that contains a collection-of-information requirement to the Director of the Office of Management and Budget for review and approval. This rule contains no additional information collection requirements beyond those already required by 40 CFR part 403 and 40 CFR part 122 and by 40 CFR Part 425, and therefore the review requirement of the Paperwork Reduction Act is not applicable.

XIV. Administrative Procedure Requirements

The Agency is publishing this action as a "direct final" rule. A direct final rule is not an "interim final" rule (*i.e.* a rule which provides for public comment after it has gone into effect); rather it is a rule which is published with a delayed effective date allowing for the receipt of and response to public comment *before* the rule goes into effect. A response to all comments received will be placed in the docket for this rule prior to the effective date. This rule thus fully complies with notice-and-comment requirements under the Administrative Procedure Act (APA). EPA has chosen to use the direct final approach for this rule because the Agency does not expect to receive adverse or critical comment and to allow for the most expeditious implementation possible, consistent with the APA. However, consistent with APA requirements, if EPA does receive significant adverse or critical comment, EPA will withdraw this rule prior to its effective date and proceed with a normal rulemaking process. As a result, elsewhere in today's **Federal Register**, EPA is also *proposing* this rule; if EPA decides to withdraw the direct final rule based on public comment, EPA will proceed with a revised rule based on this proposal. There will not be an additional comment period, so parties interested in commenting on the proposed rule should do so at this time.

List of Subjects in 40 CFR Part 425

Leather, Leather Tanning and Finishing, Water Pollution Control, Wastewater Treatment and Disposal, Pretreatment Standards for Existing and New Sources.

Dated: June 26, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 425, subchapter N, chapter I, of title 40, Code of Federal Regulations, is amended as follows:

PART 425—[AMENDED]

1. The authority citation for part 425 is revised to read as follows:

Authority: 33 U.S.C. 1311, 1314 (b), (c), (e) and (g), 1316 (b) and (c), 1317 (b) and (c), 1318 and 1361.

Subpart A—Hair Pulp, Chrome Tan, Retan-Wet Finish Subcategory

2. Section 425.15(a) is amended by revising the footnote to the table to read as follows:

§ 425.15 Pretreatment standards for existing sources (PSES).

(a) * * *

[1] Not less than 7.0.

* * * * *

Subpart B—Hair Save, Chrome Tan, Retan-Wet Finish Subcategory

3. Section 425.25 is amended by revising the footnote to the table to read as follows:

§ 425.25 Pretreatment standards for existing sources (PSES).

* * * * *

[1] Not less than 7.0.

Subpart F—Through-the-Blue Subcategory

4. Section 425.65 is amended by revising the footnote to the table to read as follows:

§ 425.65 Pretreatment standards for existing sources (PSES).

* * * * *

[1] Not less than 7.0.

Subpart H—Pigskin Subcategory

5. Section 425.85 is amended by revising the footnote to the table to read as follows:

§ 425.85 Pretreatment standards for existing sources (PSES).

* * * * *

[1] Not less than 7.0.

[FR Doc. 96–17023 Filed 7–5–96; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 201–39

RIN 3090–AF68

Amendment of FIRMR Schedule Provisions

AGENCY: Office of Policy, Planning and Evaluation, GSA.

ACTION: Interim rule with request for comments.

SUMMARY: This change to the Federal Information Resources Management Regulation (FIRMR) removes provisions for using Federal information processing (FIP) multiple award schedule (MAS) contracts. The Federal Acquisition Regulation (FAR) will now govern all MAS contacting actions. This change is an example of GSA's ongoing efforts to ensure uniform regulatory procedures within the MAS program.

DATES: This amendment is effective July 8, 1996. Comments will be considered in the final rule, but must be received on or before September 6, 1996.

ADDRESSES: Comments may be mailed to GSA, Policy and Regulations Division (MKR), 18th & F Streets, NW., Room 3224, Washington, DC 20405, Attn: Judy Steele, or delivered to that address between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Judy Steele, GSA/MKR, FTS/Commercial (202) 501–3194(v) or (202) 501–0657 (tdd), Internet (judya.steele@gsa.gov).

SUPPLEMENTARY INFORMATION: As a result of a recent reorganization, GSA's FIP MAS Program is now a part of the Federal Supply Service schedule program. The FIRMR is being revised to reflect that change. Section 201–39.801–1 is revised to clarify that the FIP MAS contracts now fall under the FSS program umbrella. Part 8 of the Federal Acquisition Regulation governs the FSS MAS Program, and will therefore, also apply to FIP MAS schedule contracts. Sections 201–39.803 and 201–39.803–1 through 201–39.803–3 are removed and reserved since a separate section on ordering from the FIP MAS contracts is no longer necessary.

This rule was submitted to, and reviewed by, the Office of Management and Budget (OMB) in accordance with Executive Order 12866, Regulatory Planning and Review.

The recordkeeping provisions of the Paperwork Reduction Act do not apply because the FIRMR changes do not impose information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 41 CFR Part 201–39

Archives and records, Computer technology, Federal information processing resources activities, Government procurement, Property management, Records management, and Telecommunications.

For the reasons set forth in the preamble, GSA is amending 41 CFR Part 201–39 as follows:

PART 201–39—ACQUISITION OF FEDERAL INFORMATION PROCESSING (FIP) RESOURCES BY CONTRACTING

1. The authority citation for part 201–39 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

2. Section 201–39.801–1 is revised to read as follows:

§ 201–39.801–1 General.

GSA directs and manages the Federal Supply Schedules programs. Except as provided in § 201.39.804, use of the Federal Supply Schedules program is covered by FAR 8.4.

§§ 201–39.803, 201–39.803–1 through 201–39.803–3 [Removed and Reserved]

3. Sections 201–39.803 and 201–39.803–1 through 201–39.803–3 are removed and reserved.

Dated: June 4, 1996.

David J. Barram,

Acting Administrator of General Services.

[FR Doc. 96–17125 Filed 7–5–96; 8:45 am]

BILLING CODE 6820–25–M

FEDERAL MARITIME COMMISSION

46 CFR Part 514

[Docket No. 90-23]

Tariffs and Service Contracts; First Interim ATFI Amendments

CFR Correction

In title 46 of the Code of Federal Regulations, parts 500 to end, revised as of October 1, 1995, the table following § 514.17(d)(1) is incorrect. It should read as follows:

VOL
61
ISS
131
JL
8
1996
UMI

[§ 514.17(d)(1)] ATFI ESSENTIAL TERMS SEARCH

ET Num: 681	JKL Line Essential Terms Publication (XYZ 004) [1]
SC Num: 765	Personal Computers from Taiwan [2]
FMC File Num: 123456	Amendment Num: 3—Available until: 31 Jan 1992 [3]
Amendment Type: C	Contract Effective: 01 Dec 1992 [4]
Filing Date: 01 Jan 1992	Special Case: 123456—Contract Expiration: 15 Jan 1993 [5]
	Contract Termination: 15 Jan 1993 [6]

Term	(Amend)	List of essential terms titles	[7]
1	(0)	Origin	[i]
2	(0)	Destination	[ii]
3	(0)	Commodities	[iii]
4	(1)	Minimum Quantity	[iv]
4	A(0)	Minimum Quantity in 20ft containers	[A]
4	B(3)	Minimum Quantity in 40ft containers	[B]
5	(0)	Service Commitments	[v]
6	(0)	Contract Rates or Rate Schedules(s)	[vi]
7	(2)	Liquidated Damages for Non-Performance (if any)	[vii]
8	(0)	Later Events Causing Deviation From ET (if any)	[viii]
9	(0)	Duration of the Contract (e.g., "46 days from 01 Dec. 1992 to 15 Jan. 1993")	[ix]
10	(0)	Assessorials	[x]
100	(0)	(Title and text—Optional)	[B]
101	(0)	(Title and text—Optional)	[B]
[999 zzz	(999)	Maximum term and amendment values]	

BILLING CODE 1505-01-D

Proposed Rules

Federal Register
Vol. 61, No. 131
Monday, July 8, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN 0580–AA46

Fees for Commodity Inspection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS), a program of the Grain Inspection, Packers and Stockyards Administration (GIPSA), is proposing to make the following changes to fees charged for inspection services for commodities, other than rice, performed under the Agricultural Marketing Act of 1946: Increase hourly and unit fees; charge actual travel and per diem costs; charge for sanitation inspections, pre-inspection conferences, and related services; establish hourly fees at time and one-half for service provided on Saturdays, Sundays, and Federal holidays; eliminate the provisions for entering into a contract for service; and change in the fee structure for stowage examinations from an hourly rate to a unit fee.

These revisions are designed to generate revenue sufficient to cover, as nearly as practicable, the projected operating costs, including related supervisory and administrative costs, for commodity inspection services rendered and to maintain an appropriate operating reserve.

DATES: Written comments must be submitted on or before August 7, 1996.

ADDRESSES: Written comments must be submitted to George Wollam, USDA–GIPSA–ART, Room 0623—South Building, 1400 Independence Avenue, SW., Washington, DC 20090–6454, or FAX (202) 720–4628. Comments may be sent by electronic mail or Internet to: gwollam@fgis.usda.gov.

All comments received will be available for public inspection during regular business hours in Room 062—South Building, 1400 Independence Avenue, SW., Washington, DC (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: George Wollam at the address above or by telephone at (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. The five changes being proposed are designed to generate revenue sufficient to recover the operating costs for commodity inspection services and to maintain an appropriate operating reserve. FGIS is proposing the following changes: (1) Increase in the hourly and unit fees for commodity inspection services, (2) begin charging actual travel costs for airlines, rental cars, etc. and per diem for travel beyond 25 miles of an official assigned duty location, (3) begin charging for sanitation inspections, pre-inspection conferences, and related services, (4) establish new hourly fees at time and one-half for service provided on Saturdays, Sundays, and Federal holidays, (5) eliminate the provisions for entering into a contract for service; and (6) change in the fee structure for stowage examinations from an hourly rate to a unit fee.

Fees for commodity inspection services were last increased on June 28, 1984 (49 FR 26547). For nearly 10 years, the 1984 fee schedule sufficiently recovered operating expenses and maintained a minimum 3-month operating reserve. However, by fiscal year (FY) 95, increased operating costs coupled with reductions in the number of services requested rendered the 1984 fee schedule inadequate for generating sufficient revenue to cover operating expenses. The operating reserve, which has been funding losses to the commodity inspection program for the past 4 years, was drawn down to the minimum 3-month operating reserve. Given these conditions, the Administrator of GIPSA determined that a fee necessary to meet rising costs and maintain an adequate reserve balance.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have a retroactive effect, nor will this proposed rule preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. No administrative procedures must be exhausted prior to any judicial challenge to provisions of this rule.

Regulatory Flexibility Act Certification

James R. Baker, Administrator, GIPSA, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the commodity inspection services do not meet the requirements for small entities. In addition, FGIS is required by statute to recover the costs of commodity inspection services, as nearly as practicable.

Information Collection and Record Keeping Requirements

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the previously approved information collection and recordkeeping requirements for applications for inspection services, including official commodity inspections, have been approved by the Office of Management and Budget under control number 0580–0013.

Background

The commodity inspection fees were last amended effective June 28, 1984 (49 FR 26547). These fees were to cover, as nearly as practicable, the operating costs for the program. They presently appear in § 868.90, Tables 1 and 2, of the regulations (7 CFR 868.90, Tables 1 and 2).

The majority of processed commodity inspections performed under the Agricultural Marketing Act of 1946 are on purchases made by the Farm Service Agency (FSA) formerly Agricultural Soil Conservation Service. Historically, approximately 92 percent of the services performed have been for FSA purchases. Defense Personnel Support Center (DPSC) inspections account for approximately 2 percent of the inspections; the remaining 6 percent are performed under nongovernment contracts. Approximately 65 percent of graded commodity inspections are for government purchases, and the

remaining 35 percent are for commercial sales.

Several actions have caused a general decrease in the number of inspections performed for both graded and processed commodities. Beginning in FY 92, FSA commodity purchases began to decline as a result of the success of a market-oriented farm program that virtually eliminated government-owned commodity grain stocks and, in turn, the portion of processed commodities derived from these stocks. In addition, in FY 94, responsibility for inspecting many products for DPSC was transferred from FGIS to AMS.

Processed commodities comprise approximately 90 percent of the program's revenue. In FY 91, FGIS inspected 26,218 lots. By FY 92, the number of inspected lots dropped to 24,004; in FY 93, 17,494 lots were inspected; and FY 94 saw a slight increase to 19,664. In FY 95, however, the total again decreased to 15,065, or a 43 percent reduction from the number of lots inspected in FY 91. Corresponding decreases have also been experienced for graded commodities.

Revenue collected in FY 91 totaled $6,562,940 and operating costs totaled $5,987,299 for a positive margin of $575,570. Revenue in FY 92 dropped to $5,158,903 due to the decrease in inspections and resulted in a $179,396 loss to the program. Losses were incurred in each of the following years: $1,184,602 in FY 93, $764,865 in FY 94, and $1,456,944 in FY 95. At the same time, FGIS reduced operating costs for the program from $5,987,370 in FY 91 to $5,468,059 in FY 95.

FGIS maintains an operating reserve specifically to cover the cost of shutting down the program in case of an emergency. Agency policy is to maintain the reserve at a level equal to 3 months operating expenses. In FY 91, the reserve was $4,942,934, which represented 10 months of operating costs. The loss of $179,396 in FY 92 was covered by this reserve.

In FY 92, FGIS reviewed the program's operating reserve to determine if the fund was being maintained at an adequate level. The Agency determined that, while the level exceeded the three-month reserve minimum, it would not be prudent to decrease the reserve because of anticipated downturns in the number of service requests and the consequent need to cover program losses while restructuring the program.

Again in FY 93, the $1,184,602 loss was covered by the reserve, which was drawn down to a year-end total of $3,889,429. Even with the loss, the fund still represented an 8.5 month reserve. By FY 94, the reserve had dropped to $3,173,033, or the equivalent of 7 months' operating costs. The losses incurred in FY 95 reduced the margin to $1,716,090, which is a 3.2 month reserve and represents the target level for the fund.

In FY 94, FGIS responded to the decline in services requests by initiating a field restructuring plan that continued into FY 95. During this time period, three field offices and one suboffice that were directly involved with providing services were closed and consolidated. This eliminated the cost of maintaining a field office and streamlined overall operations. On two separate occasions, retirement incentives (buyouts) were offered to employees which reduced the staffing levels in this program. Other personnel were transferred to field offices and redirected to other programs. In FY 91, approximately 103 staff years where devoted to this program. By FY 95, the staffing level had been reduced by 35 percent to 67 staff years. The FY 95 level of 15,065 services performed is expected to remain fairly constant in the future. Large numbers of service requests as seen in the late 1980s and early 1990s are not forecasted. However, further losses are projected if adjustments to the fee schedule are not made.

Due to reduced and sporadic FSA purchases, efficiencies gained through volume inspections have disappeared. Fluctuations in service demand have increased, even at locations that routinely requested service on a daily basis. These changes have impacted on FGIS' ability to maintain qualified staff at some locations and especially those that are large distances from a field office. In addition, there has been an increase in the proportion of inspections requested by facilities that may need service only one or two weeks per year. Many of these locations are far from field offices. The result is a great deal of long-distance travel from field offices to remote locations for one or two week jobs. Such travel has increased operating costs and, in some instances, has offset the savings gained through the restructuring.

The 1984 fee schedule was designed to recover all costs associated with performing commodity inspection service, including overtime, travel, per diem, and other related services. For nearly ten years, the 1984 fee schedule generated sufficient revenue to cover operating expenses. This was due, in large part, to continuously improved efficiencies in service delivery and strong market demand for inspection services. Although additional costs saving measures were implemented during fiscal years 94 and 95, operating expenses and service demand have reached a level at which the 1984 fee schedule no longer generates sufficient revenue to cover costs of providing service.

Since FY 90, there has been a 40 percent decrease in the amount of commodity inspections requested. The commodity inspection program experienced a $1,642,720 loss (revenue $4,011,116 and cost $5,468,059) during FY 95. The commodity program's retained earnings are currently $1,476,487, a 3.8-month operating reserve. Further losses are projected if adjustments to the 1984 fee schedule are not made.

Proposed Action

Section 203 of the AMA (7 U.S.C. 1622) provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered. In accordance with this section, FGIS proposes the following changes to maintain the current commodity inspection program: (1) Increase hourly and unit fees; (2) charge actual travel and per diem costs; (3) charge for sanitation inspections, pre-inspection conferences, and related services; (4) establish hourly fees at time and one-half for service provided on Saturdays, Sundays, and Federal holidays; (5) eliminate the provisions for entering into a contract for service; and (6) change in the fee structure for stowage examinations from an hourly rate to a unit fee.

1. *Hourly Rates.* The proposed new hourly rates are divided into two categories: Regular Workday (Monday through Friday) and Nonregular Workday (Saturday, Sunday, and Holiday). Section 868.90, Tables 1 and 3, currently define Saturday as a Regular Workday. The revised Table 1 redefines a Nonregular Workday as a Saturday, Sunday, and Holiday and the hourly rate reflects time and one-half paid to employees. In addition, the two separate hourly rates for regular and nonregular workdays contained in Tables 1 and 3 are combined into one set of hourly rates in a revised Table 1 that covers all services.

Section 868.90, Tables 1 and 3, currently provide for reduced hourly fees for applicants who elect to enter into a contract with FGIS. No applicants have used this provision since it was introduced in 1984. Because the current trends of decreasing service requests and increasing demand fluctuations indicate less likelihood for applicants to use this provision in the future, it is eliminated.

The rate for a Regular Workday will increase to $33.00 and Nonregular Workday will increase to $42.80. These new hourly fees cover FGIS' administrative and supervisory costs for the performance of official services. These costs include personnel compensation and benefits, rent, communications, utilities, contractual services, supplies, and equipment.

2. *Unit Rates.* Section 868.90, Table 2 currently provides unit fees for the grading of beans, peas, lentils, hops, and other nongraded, nonprocessed commodities. These rates are increased and the current Table 2 is deleted and combined with proposal Table 1. The new unit rates cover FGIS' administrative and supervisory costs for performing the official service, including costs for personnel compensation and benefits, rent, communication, utilities, contractual services, supplies, and equipment.

3. *Travel and Per Diem.* FGIS is making changes to § 868.92 of the regulations concerning the application of fees covered in Table 1. Specifically, service, as provided under § 868.90, Table 1, will include service provided within 25 miles of the employee's assigned duty point. Travel, per diem, and other related costs will be assessed for providing service beyond the 25-mile limit. Section 868.91, Table 1, Fees for certain Federal rice inspection services, remain unchanged; travel, per diem, and other related costs continue to be included in the hourly rate.

4. *Services Other Than Inspections.* FGIS is proposing a change in the fee structure for stowage examinations from an hourly fee that recovers all costs to a service-specific fee structure currently funded by the hourly rate. The service-specific fee will be a unit fee and will apply only to stowage examinations.

FGIS is revising Footnote 1 to include provisions for charging for sanitation examinations, pre-inspection conferences, and other related services for which FGIS does not currently charge.

5. *Fees for Laboratory Testing Services.* Fees For Laboratory Test Services, Table 4, Fees for Official Laboratory Test Services Performed At the FGIS Commodity Testing Laboratory at Beltsville, Maryland, For Processed Agricultural Products is revised to read: Table 2—Commodity Testing Laboratory.

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agricultural commodities.

For reasons set out in the preamble, 7 CFR part 868 is proposed to be amended as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

1. The authority citation for part 868 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 et seq.)

2. Section 868.90 is revised to read as follows:

§ 868.90 Fees for certain Federal inspection services.

(a) The fees shown in Table 1 apply to Federal Commodity Inspection Services specified below.

TABLE 1.—HOURLY RATES [1] [3]

[Fees for Inspection of Commodities Other Than Rice]

Hourly Rates (per service representative):	
Monday to Friday—$33.00	
Saturday, Sunday, and Holidays—$42.80	
Miscellaneous Processed Commodities [2]:	
(1) Additional Tests (cost per test, assessed in addition to the hourly rate):	
(i) Aflatoxin Test (Thin Layer Chromatography)	$51.40
(ii) Falling Number	12.00
)iii) Aflatoxin Test Kit	7.50
Graded Commodities (Beans, Peas, Lentils, Hops, and Pulses):	
(1) Additional Tests—Unit Rates (Beans, Peas, Lentils):	
(i) Field run (per lot or sample)	22.70
(ii) Other than field run (per lot or sample)	13.50
(iii) Factor analysis (per factor)	5.50
(2) Additional Tests—Unit Rates (Hops)—(i) Lot or sample (per lot or sample)	29.00
(3) Additional Tests—Unit Rates (Nongraded Nonprocessed Commodities—(i) Factor analysis (per factor)	5.50
(4) Stowage examination (service-on-request) [4]:	
(i) Ship (per stowage space)	50.00 (minimum $250 per ship)
(ii) Subsequent ship examinations (same as original)	(minimum $150 per ship)
(iii) Barge (per examination)	40.00
(iv) All other carriers (per examination)	15.00

[1] Fees for original commodity inspection and appeal inspection services include, but are not limited to, sampling, grading, weighing, stowage examinations, pre-inspection conferences, sanitation inspections, and other services requested by the applicant and that are performed within 25 miles of the field office. Travel and related expenses (commercial transportation costs, mileage and per diem) will be assessed in addition to the hourly rate for service beyond the 25-mile limit. Refer to §§ 868.92, Explanation of service fees and additional fees for all other service fees except travel and per diem.

[2] When performed at a location other than at the commodity testing laboratory.

[3] Faxed and extra copies of certificates will be charged at $3.00 per copy.

[4] If performed outside of normal business, 1½ times the applicable unit fee will be charged.

(b) In addition to the fees, if any, for sampling or other requested service, a fee will be asssessed for each laboratory test (original, retest, or appeal) listed in Table 2.

(c) If a requested test is to be reported on a specified moisture basis, a fee for a moisture test will also be assessed.

VOL 61 ISS 131 JUL 8 1996 UMI

(d) Laboratory tests referenced in Table 2 will be charged at the applicable laboratory fee when performed at field locations other than at the applicant's facility.

TABLE 2.—FEES FOR LABORATORY TEST SERVICES [1]

Laboratory tests	Fees
(1) Alpha monoglycerides	$18.00
(2) Aflatoxin test (other than TLC or Minicolumn method)	22.50
(3) Aflatoxin (TLC)	48.00
(4) Aflatoxin (Minicolumn method)	25.00
(5) Appearance & odor	3.00
(6) Ash	8.50
(7) Bacteria count	10.00
(8) Baking test (cookies)	28.00
(9) Bostwick (cooked)	12.60
(10) Bostwick (uncooked/cook test/dispersibility)	6.50
(11) Brix	8.00
(12) Calcium	12.50
(13) Carotenoid color	12.50
(14) Cold test (oil)	10.00
(15) Color test (syrups)	6.50
(16) Cooking test (other than corn soy blend)	7.00
(17) Crude fat	10.00
(18) Crude fiber	13.00
(19) Dough handling (baking)	8.50
(20) E. coli	19.00
(21) Falling number	12.00
(22) Fat (acid hydrolysis)	14.00
(23) Fat stability (A.O.M.)	27.00
(24) Flash point (open & close cup)	14.00
(25) Free fatty acid	12.00
(26) Hydrogen ion activity (ph)	9.50
(27) Iron enrichment	15.00
(28) Iodine number/value	9.50
(29) Linolenic acid (fatty acid profile)	50.00
(30) Lipid phosphorous	47.00
(31) Livibond color	10.00
(32) Margarine (nonfat solids)	23.60
(33) Moisture	6.00
(34) Moisture average (crackers)	4.00
(35) Moisture & volatile matter	8.50
(36) Performance test (prepared bakery mix)	32.00
(37) Peroxide value	13.50
(38) Phosphorus	14.00
(39) Popcorn kernels (total defects)	19.00
(40) Popping ratio/value popcorn	19.00
(41) Potassium bromate	20.00
(42) Protein	7.50
(43) Rope spore count	31.50
(44) Salmonella	40.00
(45) Salt or sodium content	12.50
(46) Sanitation (filth light)	24.00
(47) Sieve test	5.00
(48) Smoke point	22.00
(49) Solid fat index	85.00
(50) Specific volume (bread)	21.80
(51) Staphylococcus aureus	24.50
(52) Texture	6.50
(53) Tilletia controversa kuhn (TCK) (Qualitative)	25.20
(54) Tilletia controversa kuhn (TCK) (Qualitative)	76.00
(55) Unsaponifiable matter	25.00
(56) Urease activity	12.50
(57) Visual exam (hops pellet)	7.50
(58) Visual exam (insoluble impurities oils & shortenings)	5.00
(59) Visual exam (pasta)	10.50
(60) Visual exam (processed grain products)	12.00
(61) Visual exam (total foreign material other than cereal grains)	6.50
(62) Vitamin enrichment	7.00
(63) Vomitoxim (TLC)	40.00
(64) Vomitoxin (Qualitative)	30.00
(65) Vomitoxin (Quantitative)	40.00
(66) Water activity	20.00
(67) Wiley melting point	12.50

TABLE 2.—FEES FOR LABORATORY TEST SERVICES [1]—Continued

Laboratory tests	Fees
(68) Other laboratory tests	[2]

[1] When laboratory test service is provided for GIPSA by a private laboratory, the applicant will be assessed a fee which, as nearly as practicable, covers the costs to GIPSA for the service provided.
[2] Fees for other laboratory tests not referenced above will be based on the noncontract hourly rate listed in Table 1.

3. Section 868.92 (a)(2) is revised to read as follows:

§ 868.92 Explanation of service fees and additional fees.

(a) * * *

(2) The cost of per diem, subsistence, mileage, or commercial transportation to perform the service for rice inspection only in § 868.91, Table 1, Fees for certain Federal rice inspection services. See § 868.90, Table 1, footnote 1 for Fees for Inspection of Commodities Other Than Rice.

* * * * * *

Dated: June 25, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–16853 Filed 7–5–96; 8:45 am]
BILLING CODE 3410–EN–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–247–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B16 (CL–601–3A and –3R) and CL–600–2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B16 and CL–600–2B19 series airplanes. This proposal would require a one-time inspection of the spring bungee assembly of the nose landing gear (NLG) to ensure proper torque of the collar and correct clearance between the collar and the body of the bungee, and replacement of the spring bungee assembly with a serviceable unit, if necessary. This proposal is prompted by reports of failure of the NLG to extend when the landing gear selector was placed in the "DOWN" position, and failure of the NLG doors to open when the NLG door switch was set in the "SAFETY/DOOR OPEN" position; these conditions may have been caused by a reduced stroke of the spring bungee. The actions specified by the proposed AD are intended to prevent improper operation of the NLG door and consequent inability to extend the NLG due to a reduced stroke of the spring bungee.

DATES: Comments must be received by August 16, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–247–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Danko Kramar, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; telephone (516) 256–7509; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–247–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–247–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B16 (CL–601–3A and –3R), and CL–600–2B19 (Regional Jet Series 100) series airplanes. Transport Canada Aviation advises that it received reports indicating that, during flight of a Model CL–600–2B19 series airplane, the nose landing gear (NLG) did not extend when the landing gear selector was placed in the "DOWN" position. The NLG did extend following cycling of the selector valve. Transport Canada Aviation also advises that it received a report indicating that, during a pre-flight check of a Model CL–600–2B16 series airplane, the NLG doors did not open when the NLG door switch was set in the "SAFETY/DOOR OPEN" position. The cause of these occurrences has been attributed to a defective spring bungee assembly of the NLG door mechanism. Investigation revealed that the spring

VOL 61 ISS 131 JUL 8 1996 UMI

bungee may have a reduced stroke due to incorrect clearance between the collar and the body of the spring bungee. This incorrect clearance was the result of incorrect assembly during manufacture. This condition, if not corrected, could result in improper operation of the NLG door, which could result in inability to extend the NLG.

Explanation of Relevant Service Information

The manufacturer has issued Canadair Regional Jet Alert Service Bulletin A601R–32–037, Revision "A," dated December 2, 1994 (for Model CL–600–2B19 series airplanes), and Canadair Challenger Service Bulletin 601–0454, dated May 15, 1995, as amended by Service Bulletin Information Sheet 601–0454, dated July 14, 1995 (for Model CL–600–2B16 series airplanes). These service bulletins describe procedures for a one-time inspection of the spring bungee assembly of the NLG to ensure proper torque of the collar and correct clearance between the collar and the body of the bungee, and replacement of the spring bungee assembly with a serviceable (new or reworked) unit, if necessary. Transport Canada Aviation classified these service bulletins as mandatory and issued Canadian airworthiness directive CF–95–10, dated June 27, 1995, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require a one-time inspection of the spring bungee assembly of the NLG to ensure proper torque of the collar and correct clearance between the collar and the body of the bungee, and replacement of the spring bungee assembly with a serviceable (new or reworked) unit, if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Explanation of Differences between Service Bulletins and the Proposed Rule

Operators should note that the compliance time specified in this proposed AD (within 90 days after the effective date of the AD) differs from the times recommended in the referenced service bulletins. [The compliance time recommended in Canadair Challenger Service Bulletin 601–0454 for Model CL–600–2B16 series airplanes is "at the next 300-hour check." Canadair Regional Jet Alert Service Bulletin A601R–32–037 (for Model CL–600–2B19 series airplanes) recommends a compliance time of no later than the next "A" check or within the next three months after receipt of the alert service bulletin.] The FAA finds that the compliance time should not differ for each airplane model, since the spring bungee installed on both models has the same part number. In developing an appropriate compliance time for this AD, the FAA also considered not only the degree of urgency associated with addressing the subject unsafe condition, but availability of replacement parts and the maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. The FAA finds 90 days to be an appropriate compliance time for accomplishing these actions.

Cost Impact

The FAA estimates that 101 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $24,240, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly Canadair): Docket 95–NM–247–AD.

Applicability: Model CL–600–2B16 (CL–601–3A and –3R), serial numbers 5100 through 5166 inclusive; and Model CL–600–2B19 (Regional Jet Series 100) series airplanes, serial numbers 7003 through 7048 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent improper operation of the nose landing gear (NLG) door and consequent inability to extend the NLG due to a reduced stroke of the spring bungee, accomplish the following:

(a) Within 90 days after the effective date of this AD: Perform a one-time inspection of the spring bungee assembly of the NLG to ensure proper torque of the collar and correct clearance between the collar and the body of the bungee; in accordance with Canadair Regional Jet Alert Service Bulletin A601R–32–037, Revision 'A,' dated December 2, 1994 (for Model CL–600–2B19 series airplanes); or Canadair Challenger Service Bulletin 601–0454, dated May 15, 1995, as amended by Service Bulletin Information Sheet 601–0454, dated July 14, 1995 (for Model CL–600–2B16 series airplanes); as applicable.

(b) If improper torque of the collar is found, or if incorrect clearance between the collar and the body of the bungee is found: Prior to further flight, replace the spring bungee assembly with a serviceable (new or reworked) unit that has been inspected in accordance with Canadair Regional Jet Alert Service Bulletin A601R–32–037, Revision "A", dated December 2, 1994 (for Model CL–600–2B19 series airplanes); or Canadair Challenger Service Bulletin 601–0454, dated May 15, 1995, as amended by Service Bulletin Information Sheet 601–0454, dated July 14, 1995 (for Model CL–600–2B16 series airplanes); as applicable. Accomplish the replacement in accordance with the applicable service bulletin.

(c) As of the effective date of this AD, no person shall install a spring bungee assembly having part number 600–86115–1 (for Model CL–600–2B16 series airplanes) or 600–86115–5/70 (for Model CL–600–2B19 series airplanes) on any airplane unless that assembly has been inspected and reworked, as necessary, in accordance with paragraph (a) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 1, 1996.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–17218 Filed 7–5–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–CE–103–AD]

Airworthiness Directives; Aerospace Technologies of Australia Pty Ltd. (formerly Government Aircraft Factory) Models N22B, N24A, and N22S Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Aerospace Technologies of Australia Pty Ltd. (ASTA) Models N22B, N24A, and N22S airplanes that are not equipped with a part number (P/N) 1E/N–12–57 fuselage stub fin plate (MOD N759). The proposed action would require replacing the existing fuselage stub fin plate with one of improved design, P/N 1E/N–12–57. Several reports of cracks along the forward flange of the fuselage stub fin plate in the area of Rib Water Line (WL) 138.87 prompted the proposed action. The actions specified by the proposed AD are intended to prevent structural failure of the fuselage area caused by a cracked stub fin plate, which, if not detected and corrected, could result in loss of control of the airplane.

DATES: Comments must be received on or before September 6, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–103–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

ADDRESSES: Service information that applies to the proposed AD may be obtained from Aerospace Technologies of Australia Pty Ltd., ASTA DEFENCE, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–103–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Atmur, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5224; facsimile (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–103–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–103–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Aviation Safety Authority (CASA), which is the airworthiness authority for Australia, recently notified the FAA that an unsafe condition may

VOL
61
ISS
1
31
JL
8
1996
UMI

exist on certain ASTA Models N22B, N24A, and N22S airplanes. The CASA reports several incidents of cracks along the forward flange of the fuselage stub fin plate in the area of Rib Water Line (WL) 138.67. Investigation has revealed fretting and fatigue of this plate, part number (P/N) 1D/N–12–57. These conditions, if not detected and corrected, could result in structural failure of the fuselage area, which could result in loss of control of the airplane.

ASTA has issued Nomad Service Bulletin (SB) ANMD- 53–13, Revision 3, dated October 24, 1995, which specifies procedures for installing a fuselage stub fin plate of improved design, P/N 1E/N–12–57.

The CASA of Australia classified this service bulletin as mandatory and issued FCAA AD/GAF-N22/63, amendment 1, dated July 1994, in order to assure the continued airworthiness of these airplanes in Australia.

This airplane model is manufactured in Australia and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CASA of Australia has kept the FAA informed of the situation described above. The FAA has examined the findings of the CASA of Australia, reviewed all available information including the service information referenced above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other ASTA Models N22B, N24A, and N22S airplanes of the same type design that are registered in the United States and are not equipped with a P/N 1E/N–12–57 fuselage stub fin plate (MOD N759), the proposed AD would require replacing the existing fuselage stub fin plate with one of improved design, P/N 1E/N–12–57. Accomplishment of the proposed installation would be in accordance with Nomad SB ANMD-53–13, Revision 3, dated October 24, 1995.

Cost Impact

The FAA estimates that 15 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 22 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $150 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $22,050 or $1,470 per airplane. This figure is based on the assumption that no affected owner/operator of the affected airplanes has accomplished the proposed replacement.

ASTA has informed the FAA that it has no records of parts distribution. The FAA believes that several of the affected airplanes already have the proposed replacement incorporated, which would reduce the cost impact upon the public.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Aerospace Technologies of Australia PTY Ltd: Docket No. 95–CE–103–AD.

Applicability: Models N22B, N24A, and N22S airplanes (all serial numbers), certificated in any category, that are not equipped with a part number (P/N) 1E/N–12–57 fuselage stub fin plate (MOD N759).

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent structural failure of the fuselage area caused by a cracked stub fin plate, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Replace the fuselage stub fin plate with one of improved design, P/N 1E/N–12–57 (MOD N759), in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Nomad Service Bulletin ANMD–53–13, Revision 3, dated October 24, 1995.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard., Lakewood, California 90712. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Aerospace Technologies of Australia Pty Ltd., ASTA DEFENCE, Private Bag No. 4, Beach Road Lara 3212, Victoria, Australia; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 25, 1996.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–17295 Filed 7–5–96; 8:45 am]

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14 CFR Part 39

[Docket No. 96–CE–30–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Corporation (formerly Beech Aircraft Corporation) Models 1900C, 1900D, and 2000 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Corporation (Raytheon) Models 1900C, 1900D, and 2000 airplanes. The proposed action would require inspecting (one-time) the fuel filter assemblies to detect any bypass valve that is glued shut. If a bypass valve is glued shut, the proposal would require replacing the associated fuel filter assembly. Three in-flight occurrences where the low fuel pressure light illuminated prompted the proposed action. In each of the instances, a bypass valve on the affected engine was glued shut with anaerobic thread lock adhesive and when the fuel filter became clogged, proper fuel flow to the engine was not obtained. The actions specified by the proposed AD are intended to prevent lack of fuel to the engine and eventual engine shutdown caused by a clogged fuel filter and a contaminated fuel filter by-pass valve.

DATES: Comments must be received on or before September 6, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–30–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Raytheon Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Safety Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4146; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–CE–30–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–30–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received three reports of in-flight occurrences involving Ratheon Model 1900 D airplanes, where the low fuel pressure light illuminated. Fortunately, the airplane landed safely in these incidents. In each of the instances, a bypass valve on the affected engine was glued shut with anaerobic thread lock adhesive and when the fuel filter became clogged, proper fuel flow to the engine was not obtained. Further investigation has revealed that some fuel filter assemblies were contaminated with anaerobic thread lock adhesive during the manufacturing process.

Raytheon reports that the following airplane models and serial numbers could have fuel filter assemblies contaminated with anaerobic thread lock adhesive:

Models	Serial numbers
1900C	UC–1 through UC–174
1900C (C–12J)	UD–1 through UD–6
1900D	UE–1 through UE–205
2000	NC–4 through NC–53

Raytheon has issued Service Bulletin (SB) No. 2677 (for Model 2000), dated March, 1996; and Beechcraft SB No. 2678 (for Models 1900C and 1900D), dated May, 1996. These service bulletins specify procedures for (1) inspecting the fuel filter assemblies to detect any bypass valves glued shut; and (2) replacing the fuel filter assembly.

After examining the circumstances and reviewing all available information related to the incidents described above, including the referenced service information, the FAA has determined that AD action should be taken to prevent lack of fuel to the engine and eventual engine shutdown caused by a clogged fuel filter and a contaminated fuel filter by-pass valve.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Raytheon Models 1900C, 1900D, and 2000 airplanes of the same type design that were manufactured during the period when the fuel filter assembly bypass valves were susceptible to anaerobic thread lock adhesive contamination, the FAA is proposing AD action. The proposed AD would require inspecting (one-time) the fuel filter assemblies to detect any bypass valve that is glued shut. If a bypass valve is glued shut, the proposal would require replacing the fuel filter assembly. Accomplishment of the inspection and replacement (if necessary) would be in accordance with Raytheon SB No. 2677 (for Model 2000), dated March, 1996; or Beechcraft SB No. 2678 (for Models 1900C and 1900D), dated May, 1996, as applicable.

Cost Impact

The FAA estimates that 379 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed inspection,

VOL
61
ISS
1
31
JL
8
1996
UMI

and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $45,480. This figure only takes into account the cost of the inspection and does not take into account the cost of replacing any fuel filter assembly found to have a nonfunctional bypass valve. A fuel filter assembly replacement would take approximately 1 workhour (possible two fuel filter assembly replacements per airplane) at approximately $60 per hour. The manufacturer will provide parts at no cost to the owner/operator. The FAA knows of no affected airplane owner/operator that has already accomplished the proposed action.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Raytheon Aircraft Corporation (formerly Beech Aircraft Corporation): Docket No. 96–CE–30–AD.

Applicability: The following airplane model and serial numbers, certificated in any category:

Models	Serial numbers
1900C	UC–1 through UC–174
1900C (C–12J)	UD–1 through UD–6
1900D	UE–1 through UE–205
2000	NC–4 through NC–53

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent lack of fuel to the engine and eventual engine shutdown caused by a clogged fuel filter and a contaminated fuel filter by-pass valve, accomplish the following:

(a) Inspect (one-time) the fuel filter assemblies to detect any bypass valve that is glued shut. If a bypass valve is glued shut, prior to further flight, replace the associated fuel filter assembly. Accomplish the inspection and replacement (if necessary) in accordance with Raytheon Service Bulletin (SB) No. 2677 (for Model 2000), dated March, 1996; and Beechcraft SB No. 2678 (for Models 1900C and 1900D), dated May, 1996.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Raytheon Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 25, 1996.

James E. Jackson,
Acting Manager,
Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–17296 Filed 7–5–96; 8:45 am]
BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–4–95]

RIN 1545–AT41

Allocation of Loss on Disposition of Stock

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed Income Tax Regulations relating to the allocation of loss realized on the disposition of stock. These regulations will affect United States and foreign shareholders of stock in domestic and foreign corporations. The regulations are necessary to modify existing guidance with respect to stock losses. This document also contains a notice of public hearing on the regulations.

DATES: Written comments must be received by October 7, 1996. Outlines of topics to be discussed at the public hearing scheduled for November 6, 1996, at 10 a.m. must be received by October 16, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (INTL–4–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (INTL–4–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Seth B. Goldstein, (202) 622–3850; concerning submissions and the hearing, Evangelista Lee, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by September 6, 1996.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information under section 865(j)(1) is in § 1.865–2(e)(2)(ii). The proposed regulations provide that in order for taxpayers to elect retroactive application of the regulations, taxpayers must comply with the reporting requirements contained in § 1.865–2(e)(2)(ii). This information is required by the IRS as a condition for a taxpayer to elect to apply the rules of § 1.865–2 retroactively. This information will be used to determine whether a taxpayer properly applied the regulations. The respondents generally will be U.S. corporations or individuals that sell or otherwise dispose of stock in a foreign corporation of which the seller owns more than 10% of the vote or value.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Estimated total annual reporting burden: 4,000 hours. The estimated annual burden per respondent varies from 1 hour to 5 hours, depending on individual circumstances, with an estimated average of 2 hours.

Estimated number of respondents: 2,000.

Estimated annual frequency of responses: Once.

Background

This document contains proposed regulations amending the Income Tax Regulations (26 CFR Part 1) under sections 861, 865, and 904 of the Internal Revenue Code. These regulations are also issued under authority contained in section 7805 of the Internal Revenue Code.

Explanation of Provisions

This notice of proposed rulemaking provides rules under section 865(j) relating to the treatment of losses from the sale or other disposition of stock.

Section 1.865–1 provides that the allocation of loss on the disposition of property not governed by § 1.865–2 continues to be governed by the generally applicable rules of § 1.861–8, except as provided in other administrative pronouncements. For example, Notice 89–58 (1989–1 C.B. 699) remains in effect with respect to losses described in that Notice. The treatment of portfolio stock, which is excluded from § 1.865–2, will be reviewed in the context of a broader project dealing with similar portfolio investments, including debt instruments and derivative financial products. Allocation of loss on the disposition of stock of a regulated investment company and stock of an S corporation also will continue to be governed by §§ 1.861–8(e)(7)(i) and (ii).

Section 1.865–2(a) provides the general rule that stock losses are allocated in the same manner as stock gains (determined without regard to sections 1248 and 865(f)). Thus, stock loss generally is allocated to the residence of the seller. Loss recognized by a United States resident on the disposition of stock attributable to a foreign branch is allocated to foreign source income if a gain would have been taxable by the foreign country and the highest marginal rate of tax imposed in that foreign country is at least 10 percent. Loss recognized by a nonresident alien individual or foreign corporation with respect to stock constituting a United States real property interest reduces United States source income, in accordance with section 897.

Section 1.865–2(b) provides exceptions to the general rule. Section 1.865–2(b)(1) provides a dividend recapture rule that applies to losses realized on a disposition of stock within 24 months following the inclusion of a dividend or similar amount. To the extent of the dividend recapture amount, the loss shall be allocated to the same class of income as the dividend. Under a de minimis rule, the recapture rule will not apply if the sum of all dividend recapture amounts is less than 10 percent of the realized loss.

A dividend recapture amount includes an actual dividend, a subpart F or qualified electing fund inclusion attributable to a dividend received by a controlled foreign corporation in a separate limitation category other than that for passive income, and an inclusion attributable to section 956 or 956A. Dividends from foreign corporations, which often are sheltered from United States tax by foreign tax credits and do not reduce the shareholder's basis in the stock, may reduce the selling price of the stock, thereby creating or increasing a loss on sale. Similarly, the identified subpart F inclusions may increase the shareholder's stock basis without substantially affecting the value of the stock, offering similar opportunities to create a tax mismatch from an economic "wash" by pairing tax-sheltered foreign source inclusions and United States source loss.

Section 1.865–2(b)(2) provides a consistency rule requiring generally that loss recognized on the disposition of an 80%-owned foreign affiliate reduces foreign source passive income if, within the past five years, the seller or any member of its consolidated group recognized gain on the disposition of a foreign affiliate that was sourced under section 865(f). In order to provide relief for taxpayers that could have taken steps to avoid section 865(f) treatment on gain sales occurring prior to the publication of these proposed regulations, the five-year lookback period will be phased in so that losses will be tainted only by reason of gains recognized after September 6, 1996.

Section 1.865–2(b)(3) provides anti-abuse rules designed to prevent taxpayers from changing the allocation of a loss with respect to stock or other property by entering into certain transactions.

Section 1.865–2(b) provides rules of general application. Section 1.865–2(c)(1) provides that a partner's distributive share of loss resulting from a disposition of stock by a partnership is allocated as if the partner disposed of the stock. In an appropriate case the loss may be attributable to a fixed place of business of the partnership rather than to the partner's residence.

Section 1.865–2(c)(2) provides that worthlessness shall be treated as a disposition for purposes of the stock loss allocation rules.

Section 1.865–2(d) provides definitions.

VOL
61
ISS
131
JL
8
1996
UMI

Under § 1.865–2(e), the regulations are proposed to be effective for taxable years beginning after 60 days after the date final regulations are published in the **Federal Register**. However, a taxpayer may elect to apply the regulations retroactively to stock losses in all open post-1986 taxable years. A taxpayer generally may make the election by attaching a statement to an original or amended federal income tax return filed after final regulations are published in the **Federal Register**. However, the election will not be effective unless amended returns are filed within 120 days of the date final regulations are published in the **Federal Register**.

Section 1.904–4(c) is proposed to be amended to provide rules specifically addressing the treatment of loss allocated to the section 904(d) separate category for passive income. The proposed amendments provide that, for purposes of the grouping rules relating to the high-tax kick-out described in section 904(d)(2)(F), a passive loss is initially allocated to a group based on the foreign tax that was, or would have been, imposed on the transaction had the sale resulted in a gain under foreign law. If, after allocation and apportionment of all deductions, net income in a group is less than zero, any taxes imposed with respect to the group are considered related to general limitation income. The net loss is not considered related to general limitation income, but proportionately reduces income in the other passive income groups. The determination of whether income in the positive income groups is high-taxed is made after this allocation of loss groups. Any net loss in the section 904(d) separate category for passive income constitutes a separate limitation loss governed by section 904(f)(5).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect U.S. owners of significant interests in foreign corporations, which owners generally are large multinational corporations. This certification is also based upon the fact that, even in cases in which the regulation applies to small entities, the burden imposed by the collection of information in the regulation, which is merely an election to apply the regulation to prior taxable years, is not substantial and, therefore, the collection of information will not impose a significant economic impact on such entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (signed original and eight (8) copies) that are timely submitted to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 6, 1996, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons that wish to present oral comments at the hearing must submit written comments by October 7, 1996 and submit an outline of topics to be discussed and time to be devoted to each topic (signed original and eight (8) copies) by October 16, 1996.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Seth B. Goldstein, of the Office of the Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.865–1 is also issued under 26 U.S.C. 865(j)(1).

Section 1.865–2 is also issued under 26 U.S.C. 865(j)(1).

Par. 2. Section 1.861–8 is amended by adding paragraph (e)(7)(iii) to read as follows:

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(e) * * *

(7) * * *

(iii) *Special rules for allocation of loss from disposition of stock.* See § 1.865–2 for special rules regarding the allocation of loss recognized on certain dispositions of stock in taxable years beginning after December 31, 1986.

Par. 3. Sections 1.865–1 and 1.865–2 are added under the undesignated center heading "Determination of Sources of Income" to read as follows:

§ 1.865–1 Loss from the disposition of personal property.

Allocation of loss on the sale or other disposition of portfolio stock, stock of a regulated investment company (as defined in section 851), stock of an S corporation (as defined in section 1361), and other personal property not governed by § 1.865–2 is governed by § 1.861–8 or other administrative pronouncements. Portfolio stock is, with respect to a taxpayer, stock in a corporation in which the taxpayer owns, or is considered to own under the rules of section 267(c), less than 10 percent of the total combined voting power of all classes of stock entitled to vote of such corporation and less than 10 percent of the total value of the stock of such corporation.

§ 1.865–2 Loss from the disposition of certain stock.

(a) *General rules for allocation of loss on disposition of stock*—(1) *Allocation against gain.* Except as otherwise provided in § 1.865–1 and paragraph (b) of this section, loss recognized on the sale or other disposition of stock shall be allocated to the class of gross income and, if necessary, apportioned between the statutory grouping of gross income (or among the statutory groupings) and the residual grouping of gross income, with respect to which gain (other than gain treated as a dividend under section 1248) from the sale of such stock would give rise in the hands of the seller (without regard to section 865(f)). For purposes of section 904, any such loss shall be allocated to the separate category to which such gain would have been assigned (without regard to section 904(d)(2)(A)(iii)(III)). For purposes of § 1.904–4(c)(2)(ii)(A), any loss allocated to passive income shall be allocated (prior to the application of § 1.904–4(c)(2)(ii)(B)) to the group of passive income to which gain on the sale would have been assigned if the sale of the stock had resulted in the recognition of a gain under the law of the relevant foreign jurisdiction or jurisdictions. See section 904(f)(5) and the regulations under that section for rules regarding the treatment of separate limitation losses.

(2) *Stock attributable to foreign office.* Except as otherwise provided in § 1.865–1 and paragraph (b) of this section, in the case of loss on the sale or other disposition of stock (other than stock constituting inventory) by a United States resident that is attributable to an office or other fixed place of business in a foreign country within the meaning of section 865(e)(3), the loss shall be allocated to reduce foreign source income if a gain would have been taxable by the foreign country and the highest marginal rate of tax imposed in the foreign country is at least 10 percent.

(3) *Stock constituting a United States real property interest.* Loss recognized by a nonresident alien individual or a foreign corporation on the sale or other disposition of stock that constitutes a United States real property interest shall be allocated to reduce United States source income. For additional rules governing the treatment of such loss, see section 897 and the regulations thereunder.

(b) *Exceptions*—(1) *Dividend recapture exception*—(i) *In general.* Except as otherwise provided in § 1.865–1, if a taxpayer realizes a loss on a disposition of stock, and the taxpayer included in income a dividend recapture amount (or amounts) with respect to such stock at any time during the recapture period, then, to the extent of the dividend recapture amount (or amounts), the loss shall be allocated and apportioned on a proportionate basis to the class or classes of gross income or the statutory or residual grouping or groupings of gross income to which the dividend recapture amount was assigned.

(ii) *Exception for de minimis amounts.* Paragraph (b)(1)(i) of this section shall not apply to a loss realized by a taxpayer on the disposition of stock if the sum of all dividend recapture amounts included in income by the taxpayer with respect to such stock during the recapture period is less than 10 percent of the realized loss.

(2) *Consistency exception*—(i) *In general.* Except to the extent provided in paragraph (b)(1) of this section, loss recognized by a taxpayer with respect to the sale or other disposition of stock of a foreign affiliate (or of a corporation that was a foreign affiliate within the five-year period preceding the date of the sale) or a foreign affiliate holding company shall be allocated to reduce foreign source income if the taxpayer (or, in the case of a taxpayer that is a member of a consolidated group (within the meaning of § 1.1502–1(h)) at the time the loss is recognized, the consolidated group) recognized gain on the disposition of any stock that was sourced under section 865(f) within the five-year period ending on the last day of the taxable year in which the loss was recognized. See paragraph (a)(1) of this section for rules relating to the allocation of the loss to separate categories described in section 904(d).

(ii) *Phased-in lookback period.* The rule of paragraph (b)(2)(i) of this section shall apply only if gain sourced under section 865(f) was recognized after September 6, 1996.

(3) *Anti-abuse rules.* If one of the principal purposes of a reorganization within the meaning of section 368(a), liquidation under section 332, transfer to a corporation under section 351, transfer to a partnership under section 721, transfer to a trust, distribution by a partnership, distribution by a trust, or transfer to or from a qualified business unit (within the meaning of section 989(a)) is to change the allocation of a built-in loss on the disposition of stock (or other personal property), the loss shall be allocated as if it were recognized on the disposition of the stock (or other personal property) immediately prior to the reorganization, liquidation, transfer, or distribution. In addition, if a loss recognized by a taxpayer with respect to the sale or other disposition of stock in a corporation is primarily attributable to loss with respect to one or more financial instruments held by the corporation, and one of the taxpayer's principal purposes for holding the financial instrument or instruments through the corporation is to allocate loss under § 1.865–2, the stock loss shall be allocated under § 1.865–1 as if it were recognized on the disposition of such financial instrument or instruments. Whether a taxpayer has a principal purpose to allocate loss under § 1.865–2 shall be determined by taking into account all the facts and circumstances, including whether the corporation engages in business activities (other than trading financial instruments) and whether the taxpayer or any related person or persons (within the meaning of section 267(b) or 954(d)(3)) hold positions that offset loss positions held by the corporation. For purposes of this paragraph (b)(3), positions are offsetting if the risk of loss of holding one or more positions is substantially diminished by holding one or more other positions. A person may have a principal purpose of affecting loss allocation even though this purpose is outweighed by other purposes (taken together or separately).

(4) *Example.* The application of this paragraph (b) may be illustrated by the following example:

Example. (i) *P*, a domestic corporation, is a United States shareholder of *N*, a controlled foreign corporation. *N* has never had any subpart F income and all of its earnings and profits are described in section 959(c)(3). On August 5, 1997, *N* distributes a dividend to *P* in the amount of $100. The dividend gives rise to a $5 foreign withholding tax, and *P* is deemed to have paid an additional $45 of foreign income tax with respect to the dividend under section 902. Under section 904(d)(3) the dividend is general limitation income described in section 904(d)(1)(I).

(ii) On February 6, 1998, *P* sells its shares of *N* and recognizes a $110 loss. In 1998, *P* has the following taxable income, excluding the loss on the sale of *N*:

(A) $1,000 of foreign source income that is general limitation income described in section 904(d)(1)(I), which is subject to foreign taxes of $400;

(B) $1,000 of foreign source capital gain that is passive income described in section 904(d)(1)(A) attributable to gain on the sale of stock in a foreign affiliate that is sourced under section 865(f), which is subject to foreign taxes of $30.

(iii) The $100 dividend paid in 1997 is a dividend recapture amount that was included in *P*'s income within the recapture period preceding the disposition of the *N* stock. The de minimis exception of paragraph (b)(1)(ii) of this section does not apply because the $100 dividend recapture amount exceeds 10 percent of the $110 loss. Therefore, to the extent of the $100 dividend recapture amount, the loss must be allocated under paragraph (b)(1)(i) of this section to the separate limitation category to which the dividend was assigned (general limitation income).

(iv) Because *P* recognized gain on the sale of stock in a foreign affiliate that was sourced under section 865(f) within the period described in paragraph (b)(2)(i) of this section, *P*'s remaining $10 loss on the disposition of the *N* stock is allocated to foreign source passive income under paragraph (b)(2)(i) of this section.

(v) After allocation of the stock loss, *P*'s taxable income in 1998 consists of $900 of foreign source general limitation income and $990 of foreign source passive income.

(c) *Rules of application*—(1) *Loss recognized by partnership.* A partner's

VOL
61
ISS
1
31
JL
8
1996
UMI

distributive share of loss resulting from the sale or other disposition of stock by a partnership shall be allocated and apportioned in accordance with this section as if the partner had disposed of the stock. If a sale of stock is attributable to an office or other fixed place of business of the partnership within the meaning of section 865(e)(3), such office or fixed place of business shall be considered to be an office of the partner for purposes of this section.

(2) *Worthless stock.* For purposes of this section, worthlessness giving rise to a deduction under section 165(g) (including section 165(g)(3)) with respect to stock shall be treated as a disposition.

(d) *Definitions*—(1) *Terms defined in § 1.861–8.* See § 1.861–8 for the meaning of *class of gross income, statutory grouping of gross income,* and *residual grouping of gross income.*

(2) *Dividend recapture amount.* A dividend recapture amount is a dividend (except for an amount treated as a dividend under section 78), an inclusion described in section 951(a)(1)(A)(i) (but only to the extent attributable to a dividend included in the earnings of a controlled foreign corporation that is included in foreign personal holding company income under section 954(c)(1)(A) and that, pursuant to section 904(d)(3)(B), is treated as income in a separate category other than the separate category for passive income described in section 904(d)(2)(A)), an inclusion described in section 951(a)(1)(B) or (C), and an inclusion described in section 1293(a)(1) (but only to the extent attributable to a dividend that is included in the earnings of a qualified electing fund and that, pursuant to section 904(d)(3)(I), is treated as income in a separate category other than the separate category for passive income described in section 904(d)(2)(A)).

(3) *Foreign affiliate.* A foreign affiliate is a foreign corporation that is a member of the affiliated group (within the meaning of section 1504(a) without regard to section 1504(b)) that includes the taxpayer.

(4) *Foreign affiliate holding company.* A foreign affiliate holding company is any corporation, substantially all the assets of which consist of stock of one or more foreign affiliates, held directly or indirectly. For purposes of this paragraph, any assets acquired or held by a corporation with a principal purpose of avoiding foreign affiliate holding company status shall be disregarded.

(5) *Recapture period.* A recapture period is the 24-month period preceding the date on which a taxpayer realizes a loss on a disposition of stock, increased by any period of time in which the taxpayer has diminished its risk of loss in a manner described in section 246(c)(4) and the regulations thereunder.

(6) *Taxpayer.* A taxpayer shall include all predecessors or successors of the taxpayer.

(7) *United States resident.* See section 865(g) and the regulations thereunder for the definition of United States resident.

(e) *Effective date*—(1) *In general.* This section is effective for taxable years beginning after the date that is 60 days after the date these regulations are published as final regulations in the **Federal Register**.

(2) *Prior year election*—(i) *In general.* A taxpayer may elect to apply the rules of this section to all (but not less than all) of its taxable years that begin after December 31, 1986, and on or before the date that is 60 days after the date these regulations are published as final regulations in the **Federal Register**, and with respect to which the statute of limitations expires after the date that is 120 days after the date these regulations are published as final regulations in the **Federal Register**. The election shall be effective only if the taxpayer satisfies all the applicable requirements specified in paragraph (e)(2)(ii) of this section.

(ii) *Requirements for election*—(A) *Statement filed with original or amended return.* For each taxable year subject to the election, a taxpayer shall file an original or amended federal income tax return that reflects the rules of this section and includes the statement described in paragraph (e)(2)(ii)(C) of this section. Amended returns filed pursuant to this section must be filed on or before the date that is 120 days after the date these regulations are published as final regulations in the **Federal Register**.

(B) *Presentation of statement upon audit.* A taxpayer that is under examination with respect to any taxable year subject to the election on the date that is 120 days after the date these regulations are published as final regulations in the **Federal Register** must furnish a copy of the statement described in paragraph (e)(2)(ii)(C) of this section for all years subject to the election to the revenue agent responsible for examining its federal income tax returns on or before the date that is 140 days after the date these regulations are published as final regulations in the **Federal Register**. For purposes of this paragraph (e)(2)(ii)(B), a taxpayer is under examination beginning on the date the taxpayer (or any member of the consolidated group of which the taxpayer is a member) has been contacted in any manner by a representative of the Internal Revenue Service for the purpose of scheduling any type of examination of any of its federal income tax returns and ending on the earliest of the dage: the taxpayer (or consolidated group of which the taxpayer is a member) receives a "no change" letter; the taxpayer (or consolidated group of which the taxpayer is a member) pays the deficiency (or proposed deficiency); or on which a deficiency, jeopardy, termination, bankruptcy, or receivership assessment is made. An electing taxpayer that is not under examination with respect to any taxable year subject to the election on the date that is 120 days after the date these regulations are published as final regulations in the **Federal Register** and is contacted thereafter by a representative of the Internal Revenue Service for the purpose of scheduling any type of examination of any of its federal income tax returns for a year subject to the election must furnish a copy of the statement described in paragraph (e)(2)(ii)(C) of this section for all years subject to the election to the revenue agent responsible for examining its federal income tax returns within 20 days of being contacted.

(C) *Contents of statement.* The statement shall be entitled "ELECTION UNDER § 1.865–2(e)(2) TO APPLY RETROACTIVELY § 1.865–2 STOCK LOSS ALLOCATION RULES." The statement shall identify, for the taxable year subject to the election, each loss from the disposition of stock that is subject to this section and that was incurred by the taxpayer or by any controlled foreign corporation (within the meaning of section 953(c)(1)(B) or 957) with respect to which the taxpayer is a United States shareholder (within the meaning of section 951(b) or 953(c)(1)(A)). For each such loss, the statement shall provide the name and identifying number of the entity that incurred the loss, the amount of the loss, and the paragraph of this section under which the loss is allocated. Each loss subject to paragraph (b)(1) of this section shall be separately identified with a notation stating "Subject to dividend recapture under § 1.865–2(b)(1)." The statement shall also include the following declaration: "No losses, other than those so identified herein, are subject to § 1.865–2(b)(1)." The statement shall indicate whether the taxpayer or any controlled foreign corporation (within the meaning of section 953(c)(1)(B) or 957) with respect to which the taxpayer is a United States

shareholder (within the meaning of section 951(b) or 953(c)(1)(A)) acquired the stock after July 8, 1996 as a result of a transaction described in paragraph (b)(3) of this section (regardless of the purpose or purposes of the transaction). An election shall not be effective unless each statement required by this paragraph (e)(2)(ii) contains all the information specified herein.

PAR. 4. Section 1.904–0 is amended by revising the entry for § 1.904–4(c)(2)(ii) and adding entries for paragraphs (c)(2(ii)(A) and (B) of that section to read as follows:

§ 1.904–0 Outline of regulation provisions for section 904.

* * * * *

§ 1.904–4 Separate application of section 904 with respect to certain categories of income.

* * * * *

(c) * * *

(2) * * *

(ii) Grouping rules.

(A) Initial allocation and apportionment of deductions.

(B) Reallocation of loss groups.

PAR. 5. Section 1.904–4 is amended by revising paragraphs (c)(1) and (c)(2) and adding paragraph (c)(8) *Example 11* and *Example 12* to read as follows:

(c) *High-taxed income*—(1) *In general.* Income received or accrued by a United States person that would otherwise be passive income shall not be treated as passive income if the income is determined to be high-taxed income. Income shall be considered to be high-taxed income if, after allocating expenses, losses and other deductions of the United States person to that income under paragraph (c)(2)(ii) of this section, the sum of the foreign income taxes paid or accrued by the United States person with respect to such income and the foreign taxes deemed paid or accrued by the United States person with respect to such income under section 902 or section 960 exceeds the highest rate of tax specified in section 1 or section 11, whichever applies (and with reference to section 15 if applicable), multiplied by the amount of such income (including the amount treated as a dividend under section 78). If, after application of this paragraph (c), income that would otherwise be passive income is determined to be high-taxed income, such income shall be treated as general limitation income, and any taxes imposed on that income shall be considered related to general limitation income under § 1.904–6. If, after application of this paragraph (c), passive income is less than zero, the loss shall constitute a passive separate limitation loss (subject to the rules of section 904(f)(5) and the regulations under that section), but any taxes imposed on passive income shall be considered related to general limitation income under § 1.904–6. For additional rules regarding losses related to passive income, see paragraph (c)(2) of this section. Income and taxes shall be translated at the appropriate rates, as determined under sections 986, 987 and 989 and the regulations under those sections, before application of this paragraph (c). For purposes of allocating taxes to groups of income, United States source passive income is treated as any other passive income. In making the determination whether income is high-taxed, however, only foreign source income, as determined under United States tax principles, is relevant. See paragraph (c)(8) *Examples* (10), (11) and (12) of this section for examples illustrating the application of this paragraph (c)(1) and paragraph (c)(2) of this section.

(2) *Grouping of items of income in order to determine whether passive income is high-taxed income*—(i) *Effective date.* For purposes of determining whether passive income is high-taxed income, the grouping rules of paragraphs (c)(3), (c)(4), and (c)(5) of this section apply to taxable years beginning after December 31, 1987. See notice 87–6 for the grouping rules applicable to taxable years beginning after December 31, 1986 and before January 1, 1988. Paragraph (2)(ii)(B) of this section is effective for taxable years beginning after the date that is 60 days after the date these regulations are published as final regulations in the **Federal Register**.

(ii) *Grouping rules*—(A) *Initial allocation and apportionment of deductions.* For purposes of determining whether passive income is high-taxed, expenses, losses and other deductions shall be allocated and apportioned initially to each of the groups of passive income (described in paragraphs (c)(3), (4), and (5) of this section) under the rules of §§ 1.861–8 through 1.861–14T, 1.865–1, and 1.865–2. Taxpayers that allocate and apportion interest expense on an asset basis may nevertheless apportion passive interest expense among the groups of passive income on a gross income basis. If loss from the disposition of property gives rise to foreign tax (e.g., the transaction giving rise to the loss is treated under foreign law as having given rise to a gain), the foreign tax shall be allocated to the group of passive income to which the loss is allocated under this paragraph (c)(2)(ii)(A), without regard to paragraph (c)(2)(ii)(B) of this section. A determination of whether passive income is high-taxed shall be made only after application of paragraph (c)(2)(ii)(B) of this section (if applicable).

(B) *Reallocation of loss groups.* If, after allocation and apportionment of expenses, losses and other deductions under paragraph (c)(2)(ii)(A) of this section, the sum of the allocable deductions exceeds the gross income in one or more groups, the excess deductions shall proportionately reduce income in the other groups (but not below zero), and any taxes imposed with respect to such loss group or groups shall be considered related to general limitation income.

* * * * *

(8) * * *

Example 11. P, a domestic corporation, earns the following items of gross income: $100 of foreign source, passive limitation interest income not subject to any foreign tax, $200 of foreign source, passive limitation royalty income subject to a 5 percent foreign withholding tax (foreign tax paid is $10), $1300 of foreign source, passive limitation rental income subject to a 25 percent foreign withholding tax (foreign tax paid is $325), $500 of foreign source, general limitation income that gives rise to a $250 foreign tax, and $2000 of U.S. source capital gain that is not subject to any foreign tax. *P* has a $700 deduction allocable to its passive rental income. *P*'s only other deduction is a $500 capital loss on a sale of stock that is allocated to foreign source passive limitation income under § 1.865–2(b)(2). If *P* had recognized a gain on the stock sale under foreign law, the gain would not have been subject to foreign tax. The $500 capital loss is initially allocated to the group of passive income not subject to any foreign tax, and the $400 amount by which the capital loss exceeds the income in the group must be reapportioned to the other groups under paragraph (c)(2)(ii)(B) of this section. The net royalty income is thus reduced by $100 to $100 ($200 − ($400×(200/800))) and the net rental income is reduced by $300 to $300 ($1300 − $700 − ($400×(600/800))). The $100 net royalty income is not high-taxed and remains passive income. The $300 net rental income is high-taxed because the foreign taxes exceed the highest United States rate of tax on that income. Under the high-tax kick-out, the $300 of net rental income (the gross rental income and expenses allocated and apportioned thereto) and the $325 of associated foreign tax are assigned to the general limitation category.

Example 12. The facts are the same as in *Example 11* except the amount of the capital loss that is allocated under § 1.865–2(b)(2) and paragraph (c)(2) of this section to the group of foreign source passive income subject to no foreign tax is $1100. Under paragraph (c)(2)(ii)(B) of this section, the excess deductions of $1000 must be reapportioned to the $200 of net royalty income subject to a 5% withholding tax and the $600 of net rental income subject to a

VOL 61 ISS 131 JL 8 1996 UMI

25% withholding tax. The income in each of these groups is reduced to zero, and the foreign taxes imposed on the rental and royalty income are considered related to general limitation income. The remaining loss of ($200) constitutes a separate limitation loss with respect to passive income.

* * * * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.

[FR Doc. 96–17004 Filed 7–5–96; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 11–90–03]

RIN–2115–AE47

Drawbridge Operation Regulations; Cerritos Channel, CA

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: At the request of the Port of Los Angeles, the Coast Guard is proposing a temporary change to the regulations for the Henry Ford Avenue Railroad Bridge (Ford Bridge), across Cerritos Channel of Los Angeles/Long Beach Harbor, mile 4.8, at Long Beach, California, to authorize a five month (150 day) closure of the bridge to replace the movable span and erect the support towers. The proposed closure would start November 7, 1996 and conclude on April 7, 1997. If these dates change, the actual 5 month closure dates will be advertised in the Local Notice to Mariners. The bridge, also known as the Badger Avenue Bridge, currently remains open to navigation except for the passage of trains. This proposal is being made because the bridge needs to be replaced to preserve rail access to Terminal Island and to insure reliable service to vessel traffic.

DATES: Comments must be received on or before August 7, 1996.

ADDRESSES: Comments may be mailed to Commander (oan-br), Eleventh Coast Guard District, Building 50–6, Coast Guard Island, Alameda, CA 94501–5100, or may be delivered to the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is number is (510) 437–3514. Commander (oan-br) maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Bldg. 10, Room 214, Coast Guard Island, Alameda.

FOR FURTHER INFORMATION CONTACT: Susan Worden, Bridge Section, Eleventh Coast Guard District, at (501) 437–3461.

SUPPLEMENTARY INFORMATION:

Request for Additional Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 11–90–03) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope. Comments previously submitted have been entered into the record and need not be resubmitted.

The Commander, Eleventh Coast Guard district will evaluate all communications received and determine a final course of action on this proposal. The proposed regulations may be changed in light of the comments received.

The Cost Guard plans no public hearing, but one may be held if written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will add to the rulemaking process.

Discussion of the Proposal

Regulatory History

This supplements a Notice of Proposed Rulemaking dated August 28, 1990 (55 FR 35154), which discussed a six and one-half month closure of the bridge draw for bridge rehabilitation, from February 1, 1991 through August 15, 1991. The Ford Bridge provides the only rail access to port facilities on Terminal Island. The bridge is over 70 years old and no longer meets California seismic standards or Federal Railroad Administration clearance standards. The bridge owner determined that the bridge could not be rehabilitated economically, and in 1993 applied for a permit to replace the bridge. In 1995, the Coast Guard issued a permit for its replacement. The new bridge is currently under construction, and it is anticipated that the work can be accomplished with a slightly shorter closure period. Since more than five years has elapsed since the publication of the NPRM, an additional opportunity for public comment is being provided. The four comments received on the previous NPRM will be considered part of the record.

The Notice of Proposed Rulemaking (NPRM) in 1990 was for the earlier plan to rehabilitate the bridge, a plan that is no longer feasible. That NPRM, which involved a slightly longer closure, generated only four comments: Pacific Towing Company requested one leaf operation of the bridge; Jacobson Pilot Service requested the closure period to be kept to a minimum; Dow Chemical expressed concern about land access during construction; and the Port of Long Beach wrote supporting the proposal.

Because of the change from rehabilitation to reconstruction, it is not possible to have the bridge in partial service during the construction of the towers and lift span for which the closure is necessary. The Coast Guard has reviewed the construction plans and determined that the proposed closure is the shortest feasible time period consistent with safety and good engineering practice. The bridge construction will only cause brief interruptions to rail service or land access to nearby facilities.

The revised bridge plan has been advertised in the Federal Register on three occasions: a Notice of Intent to prepare an Environmental Impact Statement (EIS) (58 F.R. 28087); a Notice of Availability of the Draft EIS (59 F.R. 6639); and a Notice of Availability of the final EIS (59 F.R. 60631).

The circulation of the Coast Guard Environmental Impact Statement for the Ford Bridge Replacement Project provided additional opportunities for public comment on the bridge closure. No comments were received addressing the closure. Because the revised plan has been advertised extensively and no opposition has thus far been expressed, the Coast Guard for good cause believes that a 30 day comment period is adequate to solicit any remaining comments on this supplemental notice of proposed rulemaking.

Current Proposal

The Port of Los Angeles has requested the bridge span closure to allow them to safely construct the replacement bridge. The proposed closure of the span would start November 7, 1996, and conclude on April 7, 1997. If these dates change, the actual 5 month closure dates will be advertised in the Local Notice to Mariners.

The Ford Avenue Railroad Bridge provides vertical clearance of 14 feet above Mean Lower Low Water (9 feet above Mean High Water) when closed. The waterway is a connecting channel in the Los Angeles/Long Beach Harbor complex and is used by oceangoing cargo ships, tugs and barges, tour boats, commercial fishing vessels and recreational boats. The alternate route past the bridge site is through the outer harbor, with a maximum detour of 10 miles.

Regulatory Evaluation

This proposal is not a significant regulatory action under Section 3(f) of Executive Order 12866 and does not require an assessment of costs under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). The draft regulatory evaluation prepared for the NPRM has been superceded by the economic analysis in the Coast Guard Final Environmental Impact Statement (FEIS) for the Ford Bridge Replacement dated November 25, 1994. A copy of the FEIS has been placed in the rulemaking docket, and may be inspected and copied at the address listed under **ADDRESSES.**

Replacement of the existing bridge was determined to be the most feasible and prudent alternative. This replacement cannot be accomplished without closing the bridge span for a period of months. To minimize the impact on the maritime community, the applicant plans to work an accelerated schedule to complete the work requiring the bridge closure in five months. Increased costs to the marine industry are estimated to be $1 million due to detours during a five month closure. The overtime work schedule increases overall project costs approximately $2.2 million. The applicant estimates that if the contractor were required to work only a standard 40 hour work week, they would need a closure of eleven months to complete work. Thus, the impact to the maritime industry has been minimized. On balance, the short term costs due to the detour will be offset by the long-term benefits gained by the operation of a new, more reliable bridge. The new bridge will ensure uninterrupted rail service to Terminal Island, and timely, reliable openings of the bridge for waterborne traffic. Construction of a new bridge will minimize the possibility of congestion or delays in transit times, which would occur if the existing bridge malfunctioned, or was damaged by seismic activity.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). During the environmental review process, the Coast Guard determined that the economic impact to navigation would be approximately $1 million. Almost half of that impact was on the towing and tour boat operations of one company who does not qualify as a "small business concern". The remaining economic impact was on recreational mariners berthed at nearby marinas and two other towing companies. Recreational mariners would have small additional costs to travel as much as 5 miles further to fuel docks, pumpout stations, etc. The cost per recreational vessel is estimated to be less than $100. the towing companies would have additional costs for personnel and fuel to travel as much as 5 miles further to towing assignments. The cost per towing company is estimated to be less than $100 thousand. These companies will all benefit from the reliable operation of the new bridge span for many years to come. Since there are only a few small entities affected by the 5 month closure, and the effect is short-time, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal together with the overall impacts of the replacement project in their FEIS for the Henry Ford (Badger Avenue) Bridge Replacement Project dated November 25, 1994. The principal environmental impact of the project was the loss of the existing, historic bridge. The environmental impacts of this rule were marine transportation disruptions, economic impacts to waterway users, and minor increases in air pollution from detouring marine vessels. The Coast Guard determined that there was no feasible and prudent alternative to the loss of the historic bridge to meet the needs of future transportation and safety. A new bridge will allow for increased carriage of goods to and from the port by rail, rather than by truck, resulting in a net decrease in air pollution. On balance, the short-term impacts to navigation will be offset by long-term benefits to navigation from construction of a new, more reliable bridge. The FEIS supercedes the draft Environmental Assessment prepared for the NPRM. The FEIS is available for review at the address under **ADDRESSES.**

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 33 CFR Part 117

Bridges

Regulation: For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 117 as follows:

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; and 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.147 is amended by suspending paragraph (b) and adding a new paragraph (c) to read as follows:

§ 117.147 Cerritos Channel.

* * * * *

(c) During the period November 7, 1996 through April 7, 1997 the Henry Ford Avenue railroad bridge, mile 4.4 at Long Beach, will be undergoing reconstruction and the draw need not open for the passage of vessels.

Dated: June 20, 1996.

D.D. Polk,
Captain, U.S. Coast Guard, Commander, Eleventh Coast Guard District Acting.

[FR Doc. 96–17301 Filed 7–5–96; 8:45 am]
BILLING CODE 4910–14–M

Coast Guard

33 CFR Part 167

[CGD 96–030]

Port Access Routes; Approaches to the Cape Fear River and Beaufort Inlet, North Carolina

AGENCY: Coast Guard, DOT.

ACTION: Notice of study.

SUMMARY: The Coast Guard is conducting a port access route study to evaluate the need for vessel routing or other traffic management measures in the approaches to the Cape Fear River and Beaufort Inlet, NC. Concerns for the

VOL
61
ISS
131
JL
8
1996
UMI

safety of navigation in these areas have been expressed by the Morehead City Pilots Association and the Coast Guard Marine Safety Office in Wilmington, NC. This port access route study will determine what, if any, vessel routing or other traffic management measures are needed in the approaches to the Cape Fear River and Beaufort Inlet, NC. As a result of the study, vessel routing measures or other vessel operating requirements may be proposed in the **Federal Register**.

DATES: Comments must be received on or before October 7, 1996.

ADDRESSES: Comments should be mailed to Commander (Aow), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704–5004. The comments and other materials referenced in this notice will be available for inspection and copying at 431 Crawford Street, Portsmouth, VA, room 401. Normal office hours are 8 a.m. to 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT Edward Westfall (757) 398–6559 or E.Westfall/LANT5@cgsmtp.uscg.mil (Internet), or Margie Hegy (202) 267–0415 or M.Hegy/G-M11@cgsmtp.uscg.mil (Internet).

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard is interested in receiving information and opinions from persons who have an interest in safe routing of ships in the study area. Vessel owners and operators are specifically invited to comment on any safety concerns they may have when operating in the study area. Negative impacts that may result from the establishment of a routing measure, such as a traffic separation scheme (TSS), or a regulated navigation area (RNA) with vessel operating requirements should be identified and supported with documentation of any costs or benefits.

Commenters should include their names and addresses, identify this notice (CGD 96–030), and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed post card or envelope is enclosed. In addition to the specific questions asked herein, comments from the maritime community, offshore development concerns, environmental groups and any other interested parties are invited. All comments received during the comment period will be considered in the study and in development of any regulatory proposals.

The Fifth Coast Guard District will conduct the study and develop recommendations. LT Edward Westfall, Waterways Management Section, Aids to Navigation and Waterways Management Branch, Fifth Coast Guard District (757) 398–6559, is the project officer responsible for the study.

Background and Purpose

The 1978 amendments to the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1223(c), require that a port access route study be conducted prior to establishing or adjusting fairways or TSS's. The Coast Guard is undertaking a port access route study to determine if a vessel routing system is needed in the study area.

An internationally recognized vessel routing system is one or more routes or routing measures aimed at reducing the risk of casualties. A system may include TSS's, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

A TSS is a routing measure which minimizes the risk of collision by separating vessels into opposing streams of traffic through the establishment of traffic lanes. Vessel use of a TSS is voluntary; however, vessels operating in or near an International Maritime Organization (IMO) approved TSS are subject to Rule 10 of the International Regulations for Prevention of Collisions at Sea, 1972 (72 COLREGS).

A two-way route is a route within defined limits inside which two-way traffic is established, aimed at providing safe passage of ships through waters where navigation is difficult or dangerous.

A recommended track is a route which has been specially examined to ensure so far as possible that it is free of dangers and along which ships are advised to navigate.

An area to be avoided is a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all ships, or certain classes of ships.

An inshore traffic zone comprises a designated area between the landward boundary of a TSS and the adjacent coast and is used in accordance with Rule 10(d) of the 72 COLREGS.

A roundabout is a routing measure comprising a separation point or circular separation zone and a circular traffic lane within defined limits. Traffic within the roundabout is separated by moving in a counterclockwise direction around the separation point or zone.

A precautionary area is a defined area where ships must navigate with particular caution and within which the direction of traffic flow may be recommended.

A deep-water route is a route within defined limits which has been accurately surveyed for clearance of sea bottom and submerged obstacles as indicated on nautical charts.

The approaches to the Cape Fear River and Beaufort Inlet, NC were last studied in 1981, and the final results were published on July 22, 1982 (47 FR 31766). The study concluded that "there is no need to impose new ship routing measures such as TSS's or shipping safety fairways where fixed structures would be prohibited, in any" area off the North Carolina coast. Vessel traffic density and channel depth and width have changed since 1981.

The U.S. Army Corps of Engineers' *Waterborne Commerce of The United States* reports that, from 1981 to 1993, annual trips to and from the Port of Wilmington, NC increased by 128% (from 10,060 to 22,897) and the number of trips to and from Morehead City Harbor, NC decreased by 57% (from 7,842 to 3,385). Since 1981, the actual controlling depth for the Cape Fear River ocean bar channel has increased from 38 feet to 40 feet, the project depth. The project depth for Beaufort Inlet/ Morehead City has recently been increased from 42 to 45 feet.

The Morehead City Pilots Association requested additional aids to navigation in the approach routes commonly used for Beaufort Inlet because a dredge spoil area has shallowed the area. They also report difficulty in distinguishing the range lights on Beaufort Inlet Reach because of background lights from the town of Beaufort; and, the light at the entrance to Gallants Channel is easily confused with the lights marking the Morhead City Channel and could be the cause of an accident. Because of safety concerns associated with the close proximity of shipping lanes to shallow water, the Coast Guard's Marine Safety Office in Wilmington, NC suggested that establishing anchorages and a vessel routing scheme, to include pilot transfer zones, may assist safe navigation in the study area.

Study Area

The study area is bounded by a line connecting the following geographic positions:

Latitude	Longitude
34°40′N	77°00′W
34°40′N	78°15′W
34°10′N	76°15′W

Latitude	Longitude
33°15′N	77°30′W
33°00′N	78°20′W
33°50′N	78°20′W
33°50′N	77°55′W

The study area encompasses the approaches to the Cape Fear River and Beaufort Inlet, as well as the area offshore of North Carolina used by commercial vessels transiting to and between these ports.

Issues

The Coast Guard is trying to determine the scope of any safety problems associated with vessel transit in the study area. It is expected that information will be gathered during the study that will identify the problems and appropriate solutions.

The study may recommend the following:

1. No vessel routing measures are needed.
2. Establish one or more of the following vessel routing measures:
   (a) TSS in the Approach to Cape Fear River;
   (b) TSS in the Approach to Beaufort Inlet;
   (c) TSS Off North Carolina encompassing the routes typically used by merchant and naval vessels transiting the study area;
   (d) Precautionary area(s) near either or both approaches;
   (e) Inshore traffic zone(s) near either or both approaches; and,
   (f) Establish an area to be avoided in shallow areas where the risk of grounding is present.
3. Create anchorage area(s).
4. Establish a regulated navigation area with specific vessel operating requirements to ensure safe navigation in areas near shallow water.

Procedural Requirements

In order to provide safe access routes for movement of vessel traffic proceeding to and from U.S. ports, the PWSA directs that the Secretary designate necessary fairways and TSS's in which the paramount right of navigation over all other uses shall be recognized. Before a designation can be made, the Coast Guard is required to undertake a study of potential traffic density and the need for safe access routes.

During the study, the Coast Guard is directed to consult with federal and state agencies and to consider the views of representatives of the maritime community, port and harbor authorities or associations, environmental groups, and other parties who may be affected by the proposed action.

In accordance with 33 U.S.C. 1223(c), the Coast Guard will, to the extent practicable, reconcile the need for safe access routes with the needs of all other reasonable uses of the area involved. The Coast Guard will also consider previous studies and experience in the areas of vessel traffic management, navigation, shiphandling, the effects of weather, and prior analysis of the traffic density in certain regions.

The results of this study will be published in the **Federal Register**. If the Coast Guard determines that new routing or other regulatory measures are needed, a notice of proposed rulemaking will be published. It is anticipated that the study will be concluded by 31 December 1996.

Dated: June 28, 1996.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Marine Safety and Environmental Protection.

[FR Doc. 96–17302 Filed 7–5–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 425

[FRL–5530–7]

RIN 2040–AC48

Leather Tanning and Finishing Effluent Limitations Guidelines Pretreatment Standards New and Existing Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed regulation.

SUMMARY: EPA is proposing to modify the pretreatment standards for existing and new sources applicable to certain facilities in the leather tanning and finishing point source category that conduct unhairing operations and that discharge process wastewater to publicly owned treatment works ("POTW"). In the final rules section of this **Federal Register**, EPA is promulgating these changes as a "direct" final rule because the Agency does not expect significant adverse or critical comments. EPA also wants to provide prompt implementation of the rule to minimize any potential hazards to worker safety and health that may occur in the absence of this rule.

DATES: Comments on the proposed rules must be received by September 6, 1996.

ADDRESSES: Send comments in triplicate on this proposal to Mr. Ed Terry, Engineering and Analysis Division (4303), U.S. EPA, 401 M St. S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Terry, Engineering and Analysis Division (4303), U.S. EPA, 401 M St., S.W., Washington, DC 20460, or telephone 202–260–7128.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action which is located in the rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 425

Leather, leather tanning and finishing, water pollution control, wastewater treatment and disposal, pretreatment standards for existing and new sources.

Dated: June 26, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96–17024 Filed 7–5–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–137; RM–8823]

Radio Broadcasting Services; Negaunee, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Todd Stuart Noordyk requesting the allotment of Channel 270A to Negaunee, Michigan, with cut-off protection and modification of his application for Channel 258A to specify operation on Channel 270A at Negaunee. The coordinates for Channel 270A at Negaunee are 46–28–18 and 87–36–55. Since Negaunee is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested for this allotment. This proposal would enable the settlement of a mutually exclusive proceeding between two applicants for Channel 258A at Negaunee, Michigan.

DATES: Comments must be filed on or before August 12, 1996, and reply comments on or before August 27, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Cary S. Tepper, Booth, Freret & Imlay, P.C., 1233 - 20th Street, NW., Suite 204, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

VOL
61
ISS
131
JL
8
1996
UMI

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96–137, adopted June 14, 1996, and released June 21, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provision of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–17192 Filed 7–5–96; 8:45 am]

BILLING CODE 6712–01–F

Notices

Federal Register

Vol. 61, No. 131

Monday, July 8, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 28, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Officer, USDA, PACC–IRM, Ag Box 7630, Washington, D.C. 20250–7630. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

Farm Service Agency

Title: Guaranteed Farmer Program Loans 7 CFR 1980—Addendum.

Summary: USDA is amending procedures for reporting collections on accounts where a loss has been paid. The number of years to report is being reduced from five to three and a form has been developed for lender to use.

Need and Use of the Information: USDA is taking this action in response to an audit by the Office of Inspector General. This will help ensure that borrowers who default on guaranteed loans not receive new loans or USDA payments without first considering the failure to repay the guaranteed loans.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 2,233.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 191,585.

Foreign Agricultural Service

Title: FAS/Readership Survey.

Summary: This is a survey of U.S. exporters for the purpose of shaping the content, format and delivery of USDA publications to more effectively meet the needs of readers, to avoid duplication with other USDA reports, and to develop campaigns to extend the outreach of Foreign Agricultural Service information.

Need and Use of the Information: Survey is needed to insure USDA is providing exporters with the information they most need and that this information is presented and delivered in the most effective and efficient manner.

Description of Respondents: Business or other for-profit; Individuals or households; Farms.

Number of Respondents: 2,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 340.

Agricultural Marketing Service

Title: Reporting and Recordkeeping Requirements for Imported Peanuts.

Summary: The Agricultural Act of 1949 has been amended to require that all peanuts imported meet the same quality requirements established for domestically produced peanuts. Importers will be required to file copies of documentation proving compliance with quality and handling requirements.

Need and Use of the Information: The documents submitted will show compliance with handling procedures and quality and food safety requirements established for the import regulation. The intent is to ensure that all peanuts in the domestic market are of good quality.

Description of Respondents: Business or other for-profit.

Number of Respondents: 25.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 425.

Larry Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 96–17205 Filed 7–5–96; 8:45 am]

BILLING CODE 3410–01–M

Food and Consumer Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Determining Eligibility for Free and Reduced Price Meals and Free Milk

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this Notice announces the Food and Consumer Service's (FCS) intention to request Office of Management and Budget (OMB) review of the information collections related to making eligibility determinations in the Child Nutrition Programs.

DATES: To be assured of consideration, comments must be received by September 6, 1996.

ADDRESSES: Send comments and requests for copies of this information collection to: Mr. Terry Hallberg, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1008, Alexandria, Virginia 22302.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this Notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Hallberg at (703) 305–2600.

SUPPLEMENTARY INFORMATION

Title: 7 CFR Part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk

VOL
61
ISS
1
3
1
JL
8
1996

OMB Number: 0584–0026.
Expiration Date: July 31, 1996.
Type of Request: Extension of clearance for existing collection
Abstract: 7 CFR Part 245, "Determining Eligibility for Free and Reduced Price Meals and Free Milk", sets forth policies and procedures for use by State agencies (SA) and local level organizations, administering or operating the child nutrition programs, in providing meals free or at a reduced price to eligible children. Under section 9(b)(1) of the National School Lunch Act (NSLA), (42 U.S.C. 1758(b)), the Secretary prescribes income eligibility guidelines for free and reduced price lunches. Any child who is a member of a household whose income, at the time the application is submitted, is at an annual rate which does not exceed the applicable family-size income level of the income eligibility guidelines for free lunches, shall be served a free lunch. Any child who is a member of a household whose income, at the time the application is submitted, is at an annual rate greater than the income level of the income eligibility guidelines for free lunches, but less than or equal to the applicable family-size income eligibility guidelines for reduced price lunches, shall be served a reduced price lunch. Section 4(e) of the Child Nutrition Act of 1966, (42 U.S.C. 1773(e)) requires that breakfasts served to school children will be served free or at a reduced price under the same terms and conditions as are set forth with respect to the service of lunches free or at a reduced price in section 9 of the NSLA.

Eligibility determinations are to be made by cross-referencing family income with family size. Section 9(b)(2) of the NSLA requires each SA to announce the income guidelines issued by the Secretary, for use by schools under the SA's jurisdiction. The information collection requirements of 7 CFR Part 245 involve the certification and verification of children as meeting these guidelines.

Estimate of Burden: The reporting burden for this collection of information is estimated at 657,743 burden hours. The major areas of the reporting burden are attributed to the completion of applications for benefits by households; and notification to households by school food authorities utilizing direct certification that children are eligible to receive free meals; i.e., 289,717 and 160,521 hours, respectively. The majority of the recordkeeping burden, i.e., 215,332 hours.

Respondents: State agencies, school food authorities, schools, households.
Estimated Number of Respondents: 8,298,688 respondents.
Estimated Number of Responses per Respondent: .863 responses.
Estimated Total Annual Burden on Respondents: 1,027,525 burden hours.

Dated: June 21, 1996.

William E. Ludwig,

Administrator.

[FR Doc. 96–17262 Filed 7–5–96; 8:45 am]
BILLING CODE 3410–30–U

Natural Resources Conservation Service

Red-White Clay Creeks Watershed, Pennsylvania and Delaware

AGENCY: USDA—Natural Resources Conservation Service.

ACTION: "Notice of a Finding of No Significant Impact".

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR, Part 1500); and the Natural Resources Conservation Service (formerly the Soil Conservation Service) Guidelines (7 CFR, Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Red-White Clay Creeks Watershed, Chester County, Pennsylvania and New Castle County, Delaware.

FOR FURTHER INFORMATION CONTACT: Ms. Janet L. Oertly, State Conservationist, Natural Resources Conservation Service, Suite 340, One Credit Union Place, Harrisburg, Pennsylvania 17110–2993, telephone (717) 782–2202.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally-assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Janet L. Oertly, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for water quality improvement. The planned works of improvement involve extensive accelerated land treatment on cropland; restoration of wetlands; establishment of riparian forest buffers; and stabilization of severely eroding streambanks. Conservation easements included perpetual floodplain and wetland easements.

The "Notice of a Finding of No Significant Impact" (FONSI) has been forwarded to the Environmental Protection Agency. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The environmental assessment and basic data may be reviewed by contacting Janet L. Oertly.

No administrative action on implementation of the proposal will be taken until thirty (30) days after the date of this publication in the **Federal Register**.

Janet L. Oertly,

State Conservationist.

"(This activity is listed in the Catalog of Federal Domestic Assistance Program No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)"

[FR Doc. 96–17184 Filed 7–5–96; 8:45 am]
BILLING CODE 3410–16–M

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: The Rural Housing Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of the program for Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received, FmHA Instruction 1951–M.

DATES: Comments on this notice must be received by September 6, 1996 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Betty K. Throne, Realty Specialist, Single Family Housing Servicing and Property Management Division, RHS, U.S. Department of Agriculture, Ag Box 0784, Washington, DC 20250, Telephone (202) 720–1452.

OMB Number: 0575–0105.
Expiration Date of Approval: December 31, 1996.
Type of Request: Extension of a currently approved information collection.

Abstract: The rural housing loan program under Section 502 of the Housing Act of 1949, 42 U.S.C. Section 1472, enables persons of low- to moderate income to purchase adequate but modest dwellings in rural areas. In addition, the program includes borrowers that obtain financing from the RHS under Section 504 of the Housing Act of 1949. The Section 504 program enables very low-income owner-occupants in rural areas to obtain loans to remove unsafe, unhealthy, and hazardous conditions from their homes. RHS has the responsibility, to assure that when it is determined that the borrower or grantee was not eligible for all or part of the financial assistance which they received that appropriate action is taken. The borrower or grantee may be required to repay the unauthorized financial assistance received or establish a repayment schedule for the unauthorized assistance.

RHS will be collecting information on borrowers or grantees who may be recipients of unauthorized assistance. The information is collected and evaluated by the local RHS County Office. The information is needed by the Agency to determine if the borrowers/grantees have received financial assistance for which they are not eligible. The information is collected when RHS becomes aware that the borrowers/grantees may have received unauthorized assistance. If not collected, the borrower/grantee would be unable to provide evidence that they did not receive unauthorized assistance and the Agency would be unable to obtain further information to assist in their determination of unauthorized assistance.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .92 hours per response.

Respondents: Individuals or households.

Estimated Number of Respondents: 2,100

Estimated Number of Responses per Respondent: 1.14

Estimated Total Annual Burden on Respondents: 2,229

Copies of this information collection

COMMENTS: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Johnnie Anderson, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, STOP 0743, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 28, 1996.

Jan Shadburn,

Acting Administrator, Rural Housing Service.

[FR Doc. 96–17088 Filed 7–5–96; 8:45 am]
BILLING CODE 3410–07–U

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement list; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposal(s) to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 7, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This

the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.
3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Binder, Recycled, Slant D-Ring:
7510–01–368–3485
7510–01–368–3486
7510–01–368–3487
7510–01–384–8786
7510–01–384–8788
7510–01–384–8673
7510–01–385–6711
7510–01–417–1876
7510–01–417–1881
7510–01–417–1882
7510–01–417–1883
7510–01–417–1884
7510–01–417–1878
7510–01–417–1879
7510–01–417–1877

7530–00–285–3072
7530–01–037–5556
7530–00–285–3060

NPA: Louisiana Association for the Blind, Shreveport, Louisiana.

Duster, Ostrich Feather and Lambswool:
M.R. 991
M.R. 992

NPA: Industries of the Blind, Inc., Greensboro, North Carolina.

Dustpan:
M.R. 996

NPA: Signature Works, Inc., Hazlehurst, Mississippi.

Mop, Deck Twist and Refill:
M.R. 989
M.R. 969

NPA: Signature Works, Inc., Hazlehurst, Mississippi.

Mop, Chami Twist and Refill:
M.R. 900
M.R. 935

NPA: Signature Works, Inc., Hazlehurst, Mississippi.

Services

Administrative Services, Social Security Administration, 6400 Old Branch Avenue, Camp Springs, MD.

NPA: Anchor Mental Health Association, Washington, DC.

Administrative Services, General Services Administration, Federal Supply Service (3FS), Northeast Distribution Center, Burlington, New Jersey.

NPA: Occupational Training Center of Burlington County, Mt. Holly, New Jersey.

Janitorial/Custodial, Argonne USARC, 10 S 100 S Frontage Road, Darien, Illinois.

NPA: Jewish Vocational Service & Employment Center, Chicago, Illinois.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–17270 Filed 7–5–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received proposal to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 7, 1996.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service has been proposed for addition to Procurement List for production by the nonprofit agency listed: Food Service Attendant, U.S. Coast Guard, Haley Hall Dining Facility, Building 560, Petaluma, California, NPA: North Bay Rehabilitation Services, Inc., San Rafael, California at its facility in Rohnert Park, California.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–17271 Filed 7–5–96; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Technical Advisory Committee To Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure; Notice of Establishment

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR Part 101–6, and after consultation with GSA, the Secretary of Commerce has determined that the establishment of the Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee will advise the Secretary on the development of a draft Federal Information Processing Standard for the Federal Key Management Infrastructure.

The Committee will consist of no more than twenty-four members to be appointed by the Secretary to assure a balanced representation among individuals with established expertise in cryptography and the implementation and use of cryptographic systems.

The Committee will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act. The charter will be filed under the Act, fifteen days from the date of publication of this notice.

Interested persons are invited to submit comments regarding the establishment of this committee to Edward Roback, Computer Security, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone: 301–975–3696.

Dated: June 27, 1996.

Mark Bohannon,

Chief Counsel for the Technology Administration.

[FR Doc. 96–16896 Filed 7–5–96; 8:45 am]

BILLING CODE 3510–13–M

Foreign-Trade Zones Board

[Docket 54–95]

Foreign-Trade Zone 142—Camden, New Jersey Application for Subzone Status Coastal Eagle Point Oil Company (Oil Refinery Complex) Westville, New Jersey

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Jersey Port Commission, grantee of FTZ 142, requesting special-purpose subzone status for the oil refinery complex of Coastal Eagle Point Oil Company (wholly-owned subsidiary of Coastal Corporation), located in Gloucester County (Westville area), New Jersey. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 25, 1996.

The refinery complex (130,000 BPD, 377 employees) is located at a 1,000-acre site on the Delaware River at U.S. Route 130 South, Gloucester County (Westville area), New Jersey, some 10 miles south of Philadelphia.

The refinery produces fuels and petrochemical feedstocks. Fuels produced include gasoline, jet fuel, kerosene, distillates and residual fuels. Petrochemical feedstocks and refinery by-products include butane, propane, benzene, toluene, xylene, propylene, cumene, sulfur, petroleum coke and asphalt. All of the crude oil (85 percent of inputs) and some feedstocks and motor fuel blendstocks used in producing fuel products are sourced abroad.

Zone procedures would exempt the operations involved from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the finished product duty rate (nonprivileged foreign status—NPF) on certain petrochemical feedstocks and refinery by-products (duty-free) instead of the duty rates that would otherwise apply to the foreign-sourced inputs (e.g., crude oil, natural gas condensate). The duty rates on crude oil range from 5.25¢/barrel to 10.5¢/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 6, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to Septmeber 23, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, Bldg. #6, Suite 100, 3131 Princeton Pike, Trenton, New Jersey 08648.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: June 27, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–17280 Filed 7–5–96; 8:45 am]

BILLING CODE 3510–DS–P

Lapse of Authority for Inactive Foreign-Trade Zones

AGENCY: Foreign-Trade Zones Board, International Trade Administration, Commerce.

ACTION: Second notice.

SUMMARY: The information that follows is provided as a follow-up to the notice published on April 1, 1996 (61 FR 14290) regarding § 400.28(a)(5) ("lapse provision") of the regulations of the Foreign-Trade Zones (FTZ) Board (15 CFR Part 400), which goes into effect on November 8, 1996, for certain inactive foreign-trade zones. Based upon an FTZ staff survey and contacts with zone grantees, it appears that some 40 of 210 existing FTZ projects could be initially affected by the lapse provision. In addition, it appears some 50 subzones (out of some 350) could be individually affected notwithstanding the fact that the general-purpose zone with which they are affiliated would not be affected. Since the last notice, 7 projects have taken action to meet the activation requirements, and over 50 percent of the remaining grantees affected are doing so.

This second notice is published to give interested parties a further opportunity to comment on the interpretive guidelines and procedures that are being considered by the Board to implement § 400.28(a)(5). As indicated below, certain changes are being considered after review of the comments received following the first notice.

EFFECTIVE DATES: As indicated in the first notice, the lapse provision first goes into effect for zones approved prior to November 8, 1991, which have not been activated at any time in the past and will not have been activated by November 8, 1996. Thereafter it will have a continuing effect that requires activation within 5 years of approval.

FTZ Activation

The information relating to activation remains essentially as stated in the first notice. A zone grantee which will have reported in its annual report to the FTZ Board the receipt of shipments under FTZ procedures (and under Customs activation approval) at any time in the past prior to November 8, 1996, and thereafter within the applicable time frame, is deemed to have fulfilled the FTZ activation requirement with regard to its general-purpose zone sites, and for any subzones for which shipments have been reported. The grantees of zones so activated after the last annual report period are requested to notify the Executive Secretary with supporting information if they have not yet done so.

A zone project at which no shipments have been actually received under FTZ procedures, but which is active in offering FTZ services to the public, may fulfill the activation requirement as follows: (1) obtain Customs activation approval under § 146.6 of the Customs regulations (19 CFR Part 146) from the Customs Port Director (formerly, District Director) for the area; and, (2) submit a zone schedule to the Executive Secretary of the FTZ Board and to the Customs Port Director pursuant to § 400.42(b) of the FTZ regulations. It is completion of both these requirements that constitutes "FTZ activation".

As indicated in the first notice, zone grantees having no shipments to report and who are completing the requirements to avert a lapse of authority under § 400.28(a)(5), shall notify the Executive Secretary in writing upon completion of the requirements, stating the extent to which the zone is open for business. The Executive Secretary will then, upon review, acknowledge in writing whether FTZ activation has occurred subject to FTZ Board approval of the procedures outlined in this notice.

Review Procedure

As indicated in the first notice, beginning November 8, 1996, and thereafter on October 1 of each Federal fiscal year, the FTZ Staff will conduct periodic reviews with regard to zone projects that appear to be affected by § 400.28(a)(5). Lists will be maintained by the FTZ staff of those zones for which authority has lapsed as well as those for which authority has terminated (after the reinstatement period), and the U.S. Customs Service will be kept advised.

Reinstatement

Upon review of the comments received in response to the first notice,

VOL
61
ISS
131
JUL
8
1996
UMI

the FTZ Staff is considering a recommendation to the FTZ Board which would provide for an 18-month period (instead of 12 months) for possible reinstatement of lapsed grants of authority. This would allow zone grantees to apply for reinstatement of FTZ authority for their general-purpose zone sites, and for subzones on an individual basis, if the FTZ activation requirements are met within 18 months of a lapse of authority. Grantees should notify the Executive Secretary when steps are being taken to qualify for reinstatement.

During the reinstatement period, the authority for the affected zone and any associated subzones is considered lapsed, but termination of authority would not occur until the end of the reinstatement period. During the reinstatement period, the processing of any pending application(s) from the zone project involved will be halted; but, a grantee may request that processing be continued with regard to applications that are related to FTZ activation.

Interpretive Guidelines

Interpretive guidelines 1–3 below remain the same, as published in the first notice, but guideline 4 has been revised.

1. A zone which had been in FTZ activation at any time and for any length of time within the applicable time frame (i.e., prior to the lapse date) is not affected by the lapse provision.

2. The FTZ activation of any part of a general-purpose zone or a subzone will suffice to preserve FTZ authority for all of the general-purpose sites of a zone project, but each subzone is considered separately.

3. The starting time for tolling whether a lapse of authority has occurred will be from the time of the original grant of authority for a zone project, and it will affect all general-purpose zone sites and subzones associated with the project, however recently approved, as well as applications submitted to or pending with the FTZ Board or the FTZ Staff.

4. The FTZ activation of a general-purpose zone or subzone may be determined to extend to separate, but related, general-purpose zones or subzones approved for the same grantee if the projects were approved in the same Board action or if the projects are so interrelated in terms of their administration as an element of state/regional/local economic development programs (in the case of subzones, if the sites are administered as a unit by the subzone company), providing that the Customs Port Directors involved concur.

Authority for Determinations/Decisions

The Executive Secretary would have authority to make determinations and decisions on matters relating to the lapse of authority provision, including FTZ activation and reinstatement. Appeals from such determinations and decisions could be made to the Board by affected zone grantees as provided for in § 400.47 (15 CFR Part 400).

Comments Invited: Further comments are invited in writing until August 7, 1996, from grantees and interested parties as to any of the information, procedures or guidelines outlined in this notice. They should be addressed to: Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: FTZ Staff—Claudia Hausler (202) 482–2862; U.S. Customs—Marcus Sircus (202) 927–6894.

Dated: June 28, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–17281 Filed 7–5–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/355.22 (1993)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than the last day of July 1996, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

	Period
Antidumping Proceeding:	
Armenia: Solid Urea, A–831–801	7/1/95–6/30/96
Azerbaijan: Solid Urea, A–832–801	7/1/95–6/30/96
Belarus: Solid Urea, A–822–801	7/1/95–6/30/96
Brazil: Industrial Nitrocellulose, A–351–806	7/1/95–6/30/96
Brazil: Silicon Metal, A–351–806	7/1/95–6/30/96
Estonia: Solid Urea, A–447–801	7/1/95–6/30/96
Georgia: Solid Urea, A–833–801	7/1/95–6/30/96
Germany: Industrial Nitrocellulose, A–428–803	7/1/95–6/30/96
Germany: Solid Urea, A–429–605	7/1/95–6/30/96
Iran: In-Shell Pistachio Nuts, A–507–502	7/1/95–6/30/96
Japan: Cast Iron Pipe Fittings, A–588–605	7/1/95–6/30/96
Japan: Electric Cutting Tools, A–588–823	7/1/95–6/30/96
Japan: High Power Microwave Amplifiers and Components Thereof, A–588–005	7/1/95–6/30/96
Japan: Industrial Nitrocellulose, A–588–812	7/1/95–6/30/96
Japan: Synthetic Methionine, A–588–041	7/1/95–6/30/96
Kazakhstan: Solid Urea, A–834–801	7/1/95–6/30/96
Kyrgyzstan: Solid Urea, A–835–801	7/1/95–6/30/96
Latvia: Solid Urea, A–449–801	7/1/95–6/30/96
Lithuania: Solid Urea, A–451–801	7/1/95–6/30/96
Moldova: Solid Urea, A–841–801	7/1/95–6/30/96
Romania: Solid Urea, A–485–601	7/1/95–6/30/96
Russia: Ferrovanadium, A–821–807	7/1/95–6/30/96
Russia: Solid Urea, A–821–801	1/4/95–6/30/96
South Korea: Industrial Nitrocellulose, A–580–805	7/1/95–6/30/96
Tajikistan: Solid Urea, A–842–801	7/1/95–6/30/96
Thailand: Butt-Weld Pipe Fittings, A–549–807	7/1/95–6/30/96
Thailand: Canned Pineapple, A–549–813	7/1/95–6/30/96
Thailand: Furfuryl Alcohol, A–549–812	1/11/95–6/30/96
The People's Republic of China: Butt-Weld Pipe Fittings, A–570–814	5/5/95–6/30/96
The People's Republic of China: Industrial Nitrocellulose, A–570–802	7/1/95–6/30/96
The People's Republic of China: Sebacic Acid, A–570–825	7/1/95–6/30/96
The Ukraine: Solid Urea, A–823–801	7/1/95–6/30/96
The United Kingdom: Industrial Nitrocellulose, A–412–803	7/1/95–6/30/96
Turkmenistan: Solid Urea, A–843–801	7/1/95–6/30/96
Uzbekistan: Solid Urea, A–844–801	7/1/95–6/30/96
Countervailing Duty Proceeding:	
European Economic Community: Sugar, C–408–046	1/1/95–12/31/95

In accordance with sections 353.22(a) and 355.22(a) of the regulations, an interested party as defined by section 353.2(k) may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 19 C.F.R. 355.22(a) of the Department's Interim Regulations (60 FR 25137 (May 11, 1995)), an interested party must specify the individual producers or exporters covered by the order for which they are requesting a review. Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: Pamela Woods, in room 3065 of the main Commerce Building. Further, in accordance with section 353.31(g) or 355.31(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by the last day of July 1996. If the Department does not receive, by the last day of July 1996, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: June 28, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–17279 Filed 7–5–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–427–801, A–428–801, A–475–801, A–588–804, A–485–601, A–559–801, A–549–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Thailand and the United Kingdom; Preliminary Results of Antidumping Duty Administrative Reviews, Termination of Administrative Reviews, and Partial Termination of Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Reviews, Termination of Administrative Reviews, and Partial Termination of Administrative Reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Italy, Japan, Singapore and the United Kingdom. The classes or kinds of merchandise covered by these orders are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). The reviews cover 27 manufacturers/exporters. The period of review (the POR) is May 1, 1994, through April 30, 1995.

Although we initiated reviews for seven other manufacturers/exporters, we are terminating the reviews because the requests for these reviews were withdrawn in a timely manner. In addition, the Department is terminating reviews of the orders on BBs from Romania and Thailand. The sole request

VOL
61
ISS
131
JL
8
1996
UMI

we received regarding Romania was withdrawn. Regarding Thailand, on June 21, 1996, we issued the final results of the 1993–1994 administrative review revoking the order on BBs from Thailand, effective May 1, 1994.

We have preliminarily determined that sales have been made below normal value (NV) by various companies subject to these reviews. If these preliminary results are adopted in our final results of these administrative reviews, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the export price (EP) or constructed export price (CEP) and the NV.

We invite interested parties to comment on these preliminary results. Parties who submit comments in these proceedings are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: July 8, 1996.

FOR FURTHER INFORMATION CONTACT: The appropriate case analyst, for the various respondent firms listed below, at the Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

France

Andrea Chu (Intertechnique, SNFA, SNR), Hermes Pinilla (Franke GmbH, Hoesch Rothe Erde, Rollix Defontaine), Matthew Rosenbaum (SKF), or Michael Rill.

Germany

Thomas Barlow (Torrington Nadellager), Davina Hashmi (INA), Chip Hayes (NTN Kugellagerfabrik), Hermes Pinilla (Franke GmbH, Hoesch Rothe Erde and Rollix Defontaine), Matthew Rosenbaum (SKF), Thomas Schauer (FAG), Michael Rill, or Richard Rimlinger.

Italy

Kris Campbell (SKF), Michael Rausher (FAG), Michael Rill, or Richard Rimlinger.

Japan

J. David Dirstine (Koyo Seiko), Chip Hayes (NTN), Michael Panfeld (NPBS), Mark Ross (Asahi Seiko), Thomas Schauer (NSK Ltd.), or Richard Rimlinger.

Singapore

Lyn Johnson (NMB/Pelmec) or Richard Rimlinger.

United Kingdom

Andrea Chu (Hoffman U.K.), Hermes Pinilla (NSK/RHP), Matthew Rosenbaum (Rose Bearing Co., Ltd.), or Michael Rill.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA).

Background

On May 15, 1989, the Department published in the **Federal Register** (54 FR 20909) the antidumping duty orders on BBs, CRBs, and SPBs from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom. Specifically, these orders cover BBs, CRBs, and SPBs from France, Germany, and Japan; BBs and CRBs from Italy, Sweden and the U.K.; and BBs from Romania, Singapore and Thailand. On June 19, 1995, in accordance with 19 CFR 353.22(c), we initiated administrative reviews of certain of these orders for the period May 1, 1994, through April 30, 1995 (60 FR 31952). The Department is now conducting these administrative reviews in accordance with section 751 of the Act.

Subsequent to the initiation of these reviews, we received timely withdrawals of review requests for Fichtel & Sachs AG (Germany), Jidosha Buhin Kogyo Co., Ltd. (Japan), Naiico Spicer Co., Ltd. (Japan), Nissan Trading Co., Ltd. (Japan), Izumoto Seiko Co., Ltd. (Japan), Tehnoimportexport, S.A. (Romania), Barden Corporation (United Kingdom), and Normalair-Garrett Ltd. (United Kingdom). Because there were no other requests for review of these companies from any other interested parties, we are terminating the reviews with respect to these companies in accordance with 19 CFR 353.22(a)(5). We are terminating the review of AFBs from Romania because Tehnoimportexport, S.A. was the only company for which a review of that order was requested.

We are terminating the review of AFBs from Thailand with respect to NMB Thai/Pelmec Thai because subsequent to the initiation of this review we revoked the antidumping duty order (see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Thailand; Final Results of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order*, issued June 21, 1996).

Scope of Reviews

The products covered by these reviews are AFBs and constitute the following classes or kinds of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.10, 8482.99.35, 8482.99.6590, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

2. *Cylindrical Roller Bearings and Parts Thereof:* These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, and housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.35, 8482.99.6530, 8482.99.6560, 8482.99.6590, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.93.5000, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

3. *Spherical Plain Bearings and Parts Thereof:* These products include all spherical plain bearings that employ a spherically shaped sliding element.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.50.10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. For a further discussion of the scope of the orders being reviewed, including recent scope determinations, see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10900 (February 28, 1995) (*AFBs IV*). The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

These reviews cover the following firms and classes or kinds of merchandise:

Name of firm	Class or kind
France	
Franke GmbH	BBs.
Hoesch Rothe-Erde AG	BBs.
Intertechnique	All.
Rollix Defontaine, S.A.	BBs.
SKF France (including all relevant affiliates)	All.
SNFA	BBs, CRBs.
Societe Nouvelle Roulements (SNR)	All.
Germany	
FAG Kugelfischer Georg Schaefer KGaA (FAG Germany)	All.
Franke GmbH	BBs.
Hoesch Rothe Erde AG	BBs.
INA Walzlager Schaeffler KG (INA)	All.
NTN Kugellagerfabrik (Deutschland) GmbH (NTN Germany)	All.
Rollix & Defontaine, S.A.	BBs.
SKF GmbH (including all relevant affiliates) (SKF Germany)	All.
Torrington Nadellager (Torrington/Kuensenbeck)	BBs, CRBs.
Italy	
FAG Italia S.p.A. (including all relevant affiliates) (FAG Italy)	BBs, CRBs.
SKF-Industrie S.p.A. (SKF Italy)	BBs.
Japan	
Asahi Seiko	BBs.
Koyo Seiko Co., Ltd.	All.
Nippon Pillow Block Sales Company, Ltd. (NPBS)	All.
NSK Ltd. (formerly Nippon Seiko K.K.)	All.
NTN Corp. (NTN Japan)	All.
Singapore	
NMB Singapore Ltd./Pelmec Ind. (Pte.) Ltd. (NMB Singapore/Pelmec)	BBs.
United Kingdom	
NSK Bearings Europe, Ltd./RHP Bearings (NSK/RHP)	BBs, CRBs.
Hoffman U.K.	BBs, CRBs.
Rose Bearing Co., Ltd.	BBs, CRBs.
Timken Bearing Co.	BBs, CRBs.

Certain respondents reported no shipments or sales subject to these reviews. One firm, Torrington Nadellager (Torrington/Kuensenbeck), reported entries of merchandise subject to the order on BBs from Germany but no sales to unaffiliated U.S. purchasers. Because this merchandise was consumed by the affiliated importer and not resold in any form, we will liquidate these entries without regard to antidumping duties.

Verification

As provided in section 782(i) of the Act, we verified information provided by certain respondents, using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Use of Facts Available

We preliminarily determine, in accordance with section 776(a) of the Act, that the use of facts available as the basis for the weighted-average dumping margin is appropriate for SNFA, Hoffman U.K., and Rose Bearings, all with respect to BBs and CRBs, for Torrington Nadellager with respect to CRBs only, and for SKF France with respect to SPBs only, because these firms did not respond to our antidumping questionnaire. We find that these firms have withheld "information that has been requested by the administering authority." Furthermore, we determine that, pursuant to section 776(b) of the Act, it is appropriate to make an inference adverse to the interests of these companies because they failed to cooperate by not responding to our questionnaire. For the weighted-average dumping margins of these firms, we have used the highest rate from any prior segment of the respective proceeding as adverse facts available, which is secondary information within the meaning of section 776(c) of the Act.

We also preliminarily determine, in accordance with section 776(a) of the Act, that the use of the facts available as the basis for the weighted-average dumping margin is appropriate for NPBS because, despite the Department's attempts to verify information provided

VOL 61 ISS 131 JL 8 1996 UMI

by NPBS, the Department could not verify the information as required under section 782(i) of the Act. Where a party provides information requested by the Department but the information cannot be verified, section 776(a)(2)(D) of the Act requires the Department to use facts otherwise available. Further, in accordance with section 782(e)(2) of the Act, the Department has declined to consider information submitted by NPBS because the information cannot be verified. Moreover, we preliminarily determine that, pursuant to section 776(b) of the Act, NPBS did not cooperate to the best of its ability and therefore we are required to use adverse facts available.

We found that responses provided by NPBS, as a whole, could not be verified. At our attempted verification, for example, we found the following inaccuracies in the response provided by NPBS which render the response unusable for purposes of margin calculations: unreported home market and United States sales; inability to demonstrate how quantity and value totals were calculated; incorrect reporting of the form of the subject merchandise as entered; incorrect designation of bearings that were further processed in the United States; and failure to provide in its response to the questionnaire the final prices to its largest home market customer. In addition, we found errors in the calculation of the following items: entered customs value, all charges and adjustments allocated by entered value, customer category of U.S. sales, U.S. inland freight, U.S. international freight, U.S. short-term interest rate, export selling expenses incurred in the home market, indirect selling expenses for home market sales, and home market short-term interest income.

NPBS has not cooperated to the best of its ability, as demonstrated by the misreportings, inaccuracies, and omissions we found at our attempted verification which resulted from inconsistencies in data within NPBS's control. Therefore, as facts available for NPBS, we have used the "all others" rate from the less-than-fair-value (LTFV) investigation, which is considered secondary information within the meaning of section 776(c) of the Act.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (see H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike for other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996) (Fresh Cut Flowers) (where the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

In this case, for SKF France, SNFA, Torrington Nadellager, Hoffman U.K. and Rose Bearings, we have used the highest rate from any prior segment of the respective proceeding as adverse facts available. This rate is the highest available rate and no evidence exists in the record that indicates that the selected margin is not appropriate as adverse facts available.

For NPBS, we examined the rates applicable to ball bearings from Japan throughout the course of the proceeding. Given NPBS's level of participation in this segment of the proceeding, we preliminarily determine that 45.83 percent, which is the all others rate from the LTFV investigation, is sufficiently adverse to encourage full cooperation in future segments of the proceeding. Moreover, this rate has probative value because it includes the average of calculated margins from the LTFV investigation. Furthermore, there is no reliable evidence on the record indicating that this selected margin is not appropriate as adverse facts available. (See, *e.g., Fresh Cut Flowers.*)

Export Price and Constructed Export Price

For the price to the United States, we used EP or CEP as defined in sections 772(a) and 772(b) of the Act, as appropriate. Due to the extremely large volume of transactions that occurred during the POR and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled CEP sales in accordance with section 777A of the Act. When a firm made more than 2,000 CEP sales transactions to the United States for a particular class or kind of merchandise, we reviewed CEP sales that occurred during sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks included May 1–7, 1994, August 21–27, 1994, October 2–8, 1994, November 6–12, 1994, January 22–28, 1995, and March 19–25, 1995. We reviewed all EP sales transactions during the POR.

We calculated EP and CEP based on the packed f.o.b., c.i.f., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for discounts and rebates. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the SAA (at 823–824), we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, including commissions, direct selling expenses, expenses assumed on behalf of the buyer and indirect selling expenses, and repacking expenses in the United States. Where appropriate, in accordance with section 772(d)(2) of the Act, we also deducted the cost of any further manufacture or assembly, except where the special rule provided in section 772(e) of the Act was applied (see below). Finally, we made an adjustment for an amount of profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers, *e.g.*, parts of bearings that were imported and further processed into finished bearings by U.S. affiliates of foreign exporters, we determined that the special rule for merchandise with value added after importation under section 772(e) of the Act applied for all firms, except INA, that added value in the United States.

Section 772(e) of the Act provides that, where the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated person. Based on this analysis, we estimated, for all firms except INA that added value in the United States, that the value added was at least 60 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. Therefore, we determined that the value added is likely to exceed substantially the value of the subject merchandise. Accordingly, for purposes of determining dumping margins for these sales, we have used the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons.

No other adjustments to EP or CEP were claimed or allowed.

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales and absent any information that a particular market situation in the exporting country does not permit a proper comparison, we determined that the quantity of foreign like product each respondent sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States pursuant to section 773(a) of the Act, because each company's quantity of sales in its home market was greater than five percent of its sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like products were first sold for consumption in the exporting country.

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate NV in accordance with section 777A of the Act. When a firm had more than 2,000 home market sales transactions for a particular class or kind of merchandise, we used sales in sample months that corresponded to the sample weeks we selected for U.S. sales sampling plus one contemporaneous month prior to the POR and one following the POR. The sample months included April, May, August, October, and November of 1994, and January, March, and May of 1995.

We used sales to affiliated customers only where we determined such sales were made at arm's-length prices, *i.e.*, at prices comparable to prices at which the firm sold identical merchandise to unrelated customers.

Because the Department disregarded sales below the cost of production (COP) in the last completed review with respect to SNR, FAG Germany, FAG Italy, INA, SKF France, SKF Germany, SKF Italy, Asahi Seiko, Koyo, NPBS, NSK, NTN Japan, NMB Singapore/ Pelmec Ind., and NSK/RHP and the classes or kinds of merchandise under review (see *AFBs IV;* concerning Asahi Seiko, see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order,* 58 FR 39729 (July 26, 1993) (*AFBs III*)), we had reasonable grounds to believe or suspect that sales of the foreign product under consideration for the determination of NV in this review may have been made at prices below the COP as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated COP investigations of sales by SNR, FAG Germany, FAG Italy, INA, SKF France, SKF Germany, SKF Italy, Asahi Seiko, Koyo, NPBS, NSK, NTN Japan, NMB Singapore/Pelmec, and NSK/RHP in the home market.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product plus selling, general and administrative (SG&A) expenses and all costs and expenses incidental to placing the foreign like product in condition packed ready for shipment. In our COP analysis, we used the home market sales and COP information provided by each respondent in its questionnaire responses. We did not conduct a COP analysis for respondents which reported no sales or no shipments, nor did we conduct a COP analysis for respondents for which we relied on facts available to determine weighted-average dumping margins.

After calculating COP, we tested whether home market sales of AFBs were made at prices below COP within an extended period of time in substantial quantities and whether such prices permit recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales because they (1) were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2) (B) and (C) of the Act, and (2) based on comparisons of prices to weighted-average COPs for the POR, were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Based on this test, we disregarded below-cost sales with respect to all of the above companies and classes or kinds of merchandise.

We compared U.S. sales with sales of the foreign like product in the home market. We considered all non-identical products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family consists of all bearings within a class or kind of merchandise that are the same in the following physical characteristics: load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, outer diameter, inner diameter, and width.

Home market prices were based on the packed, ex-factory or delivered prices to affiliated or unaffiliated purchasers in the home market. Where applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6) (A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for differences in circumstances of sale

VOL
61
ISS
1
3
1
JL
8
1996
UMI

(COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 C.F.R. 353.56. For comparison to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses except those deducted from the starting price in calculating CEP pursuant to section 772(d) of the Act. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in EP and CEP calculations.

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we based NV on sales at the same level of trade as the EP or CEP. If NV was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with section 773(a)(7) of the Act. (See *Level of Trade* below.)

In accordance with section 773(a)(4) of the Act, we used CV as the basis for NV when there were no usable sales of the foreign like product in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses. To the extent possible, we calculated CV by level of trade, using the selling expenses and profit determined for each level of trade in the comparison market.

Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act and 19 C.F.R. 353.56 for COS differences and level-of-trade differences. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses except those deducted from the starting price in calculating CEP pursuant to section 772(d) of the Act. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in EP and CEP comparisons.

Where possible, we calculated CV at the same level of trade as the EP or CEP. If CV was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with sections 773(a)(7) and 773(a)(8) of the Act. (See *Level of Trade* below.)

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the SAA accompanying the URAA at 829–831, to the extent practicable, the Department will calculate NV based on sales at the same level of trade as the U.S. sales. When the Department is unable to find sales of the foreign like product in the comparison market at the same level of trade as the U.S. sale, the Department may compare the U.S. sale to sales at a different level of trade in the comparison market.

In accordance with section 773(a)(7)(A) of the Act, if sales at allegedly different levels of trade are compared, the Department will adjust the NV to account for the difference in level of trade if two conditions are met. First, there must be differences between the actual selling activities performed by the exporter at the level of trade of the U.S. sale and the level of trade of the comparison market sales used to determine NV. Second, the differences must affect price comparability as evidenced by a pattern of consistent price differences between sales at the different levels of trade in the market in which NV is determined.

Section 773(a)(7)(B) of the Act establishes that a CEP "offset" may be made when two conditions exist: (1) NV is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the CEP; and (2) the data available do not provide an appropriate basis for a level-of-trade adjustment.

In implementing these principles in these reviews, we obtained information about the selling activities of the producers/exporters associated with each channel of distribution. We asked each respondent to establish any claimed levels of trade based on these selling activities.

In order to determine whether separate levels of trade actually existed within or between the U.S. and home markets, we reviewed the selling activities associated with each channel of distribution claimed by the respondents. Pursuant to section 773(a)(1)(B)(i) of the Act and the SAA at 827, in identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. Whenever sales were made by or through an affiliated company or agent, we considered all selling activities of both affiliated parties, except for those selling activities related to the expenses deducted under section 772(d) of the Act in CEP situations.

In reviewing the selling functions reported by the respondents, we considered all types of selling activities that had been performed. In analyzing whether separate levels of trade existed in these reviews, we found that no single selling function in the bearings industry was sufficient to warrant a separate level of trade (see *Notice of Proposed Rulemaking and Request for Public Comments*, 61 FR 7307, 7348 (February 27, 1996) (*Proposed Regulations*)).

In determining whether separate levels of trade existed in or between the U.S. and home markets, the Department considered the level-of-trade claims of each respondent. To test the claimed levels of trade, we analyzed the selling activities associated with the channels of distribution respondents reported. In applying this test, we expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

When we were unable to find sales of the foreign like product in the home market at the same level of trade as that of the EP or CEP, we examined whether a level-of-trade adjustment was appropriate. In these reviews, the same level of trade as that of the CEP did not exist in the home market. For some EP sales, we also did not find the same level of trade in the home market. Therefore, we could not determine whether there was a pattern of consistent price differences between the levels of trade, in accordance with section 773(a)(7)(A) of the Act, based on the respondent's home market sales of merchandise under review. However, the SAA states that "if information on the same product and company is not available, the adjustment may also be based on sales of other products by the same company. In the absence of any sales, including those in recent time periods, to different levels of trade by the exporter or producer under investigation, Commerce may further consider the selling experience of other producers in the foreign market for the same product or other products." *SAA*

at 830. Accordingly, where necessary we examined the alternative methods for calculating a level-of-trade adjustment. In these reviews, we did not have information that would allow us to apply these alternative methods. Thus, in accordance with section 773(a)(7)(b) of the Act, if we established NV at a level of trade which constituted a more advanced stage of distribution, we made a CEP offset.

For some EP sales, the same level of trade did exist in the home market but we could only match the U.S. sale to home market sales at a different level of trade because there were no usable sales of the foreign like product at the same level of trade. Therefore, we determined whether there was a pattern of consistent price differences between these different levels of trade in the home market. To make this determination, we compared the average of the prices of sales made in the ordinary course of trade at the two levels of trade for models sold at both levels. If the average prices were higher at one of the levels of trade for a preponderance of the models, we considered this to demonstrate a pattern of consistent price differences. We also considered whether the average prices were higher at one of the levels of trade for a preponderance of sales, based on the quantities of each model sold, in making this determination.

Respondent *Intertechnique* reported only one channel of distribution in the home market and only EP sales through one channel of distribution to the United States. Because the selling activities in both markets were substantially the same, we considered the home market sales and the EP sales to be at the same level of trade. Therefore, we made no level-of-trade adjustments.

SKF Germany, SKF France, SKF Italy, Koyo, and *SNR* each reported two channels of distribution in the home market. For each of these companies we found that the two home market channels differed significantly with respect to selling activities such as advertising and sales promotion, sales and marketing support, inventory maintenance and, to a lesser degree, other selling activities. Based on these differences, we found that the two home market channels constituted two different levels of trade.

These companies, except SKF France and SKF Italy, reported only CEP sales in the U.S. market. SKF France and SKF Italy also had EP sales. Although the starting price for the CEP sales was based on sales made by the affiliated reseller to unaffiliated customers through two channels of distribution which constituted two different levels of trade, each of these companies reported similar selling activities associated with all sales to the affiliated reseller (*i.e.*, at the level of trade of the CEP). Therefore, we considered the CEP to constitute only one level of trade for each of these companies. We found that there were significant differences between the selling activities associated with the CEP and those associated with each of the home market levels of trade. For example, the level of trade of the CEP involved little or no strategic planning, sales forecasting, advertising or sales promotions, engineering services, technical assistance, or after-sale service. Therefore, we considered the level of trade of the CEP to be different from either home market level of trade and a less advanced stage of distribution than either home market level of trade. Consequently, we could not match to sales at the same level of trade in the home market nor could we determine a level-of-trade adjustment based on each respondent's home market sales of merchandise under review. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. For these respondents, to the extent possible, we determined NV at the same level of trade as the starting price for the CEP, which was the price to the unaffiliated customer, and made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act. SKF France made EP sales of BBs through one channel of distribution. SKF Italy made EP sales of BBs through two channels of distribution. For both SKF France and SKF Italy, the selling activities associated with EP sales were similar to those associated with one of the levels of trade in the home market. Therefore, we considered these channels to constitute one level of trade and this level of trade to be the same as a level of trade in the home market. Where possible we matched EP sales to sales at the same level of trade in the home market and made no level-of-trade adjustment. Where we matched to home market sales at a different level of trade, in accordance with section 773(a)(7)(A) of the Act, we determined whether there was a pattern of consistent price differences between these different levels of trade in the home market. For this class or kind of merchandise, we found that there was such a pattern for both SKF France and SKF Italy and therefore made an adjustment for the differences in level of trade. We therefore adjusted normal value by the weighted-average difference in prices between the two levels of trade in the home market. We calculated the adjustment based on home market sales made in the ordinary course of trade and prices net of billing adjustments, movement expenses, discounts, rebates, commissions, direct selling expenses and packing expenses. For each model sold at both levels of trade in the home market, we calculated the difference between the weighted-average prices at the two levels of trade as a percentage of the weighted-average price at the comparison level of trade. We then calculated a weighted average of these model-specific percentage differences on a class-or-kind basis. We calculated the amount of the level-of-trade adjustment by applying this weighted-average percentage price difference to the NV determined at the different level of trade.

INA reported only one channel of distribution in the home market. Because the selling activities associated with all sales were similar, we considered this channel of distribution to constitute one level of trade. INA reported two channels of distribution in the U.S. market, one represented by its EP sales and one represented by its CEP sales. Because the selling activities associated with the home market level of trade were similar to those associated with EP sales, we made no level-of-trade adjustments for these comparisons. For CEP sales, INA reported similar selling activities associated with all sales to the affiliated reseller. Therefore, we considered the CEP to constitute only one level of trade. We compared the selling activities associated with the sale to the affiliated reseller to those associated with the home market level of trade and found them to be dissimilar. For example, the level of trade of the CEP involved little or no strategic and economic planning, advertising or sales promotion, technical services, technical assistance, inventory maintenance or after-sale service. Therefore, we considered the home market sales to be at a different level of trade and at a more advanced stage of distribution than the CEP. Because the sole home market level of trade was different from the level of trade of the CEP, we could not match to sales at the same level of trade in the home market nor could we determine a level-of-trade adjustment based on INA's home market sales of merchandise under review. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. Accordingly, for INA, we determined NV at the sole

VOL
61
ISS
1
3
1
JL
8
1996
UMI

home market level of trade and made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act.

FAG Germany reported a number of channels of distribution in the home market. We found that four of these channels did not differ significantly with respect to selling activities and constitute one level of trade (level 1). We found that the same is true of three other home market channels (level 2). Finally, we found that another home market channel is not similar to any of the other channels of distribution in the home market (level 3). We found that level 1 differed significantly from level 2 with respect to selling activities such as post-sale services and warranties, technical advice, advertising, strategic and economic planning, market research, research and development, and engineering services. We found that level 1 differed significantly from level 3 with respect to selling activities such as inventory maintenance, advertising, freight and delivery arrangement, strategic and economic planning, market research, personnel training, research and development, and engineering services. We found that level 2 differed significantly from level 3 with respect to selling activities such as inventory maintenance, post-sale services and warranties, technical advice, freight and delivery arrangement, advertising, and personnel training. Based on these differences, we found that the three home market channel groups constitute three different levels of trade.

In the U.S. market, FAG Germany reported CEP sales and EP sales. The CEP sales were made by FAG Germany's U.S. subsidiary to unaffiliated customers through channels of distribution and at levels of trade similar to levels 1 and 2 in the home market. Although we considered FAG Germany's sales to unaffiliated customers to be made at two levels of trade, FAG Germany reported similar selling activities associated with all sales to the affiliated reseller. Therefore, we considered the CEP to constitute only one level of trade. We found that there were significant differences between the selling activities associated with the CEP and those associated with each of the home market levels of trade. For example, the level of trade of the CEP involved little or no strategic planning, sales forecasting, advertising or sales promotions, engineering services, technical assistance, or after-sale service. Therefore, we considered the level of trade of the CEP to be different from all home market levels of trade and at a less advanced stage of distribution than any home market level of trade. Consequently, we could not match to sales at the same level of trade in the home market nor could we determine a level-of-trade adjustment based on FAG Germany's home market sales of merchandise under review. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. For FAG Germany, to the extent possible, we determined NV for CEP sales at the same level of trade as the U.S. sale to the unaffiliated customer and made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act. FAG Germany made EP sales of two classes or kinds of merchandise through channels of distribution similar to those comprising one of the levels of trade in the home market. Therefore, we considered these channels to constitute one level of trade and this level of trade to be the same as one of the levels of trade in the home market. Where possible we matched EP sales to sales at the same level of trade in the home market and made no level-of-trade adjustment. Where we matched to home market sales at a different level of trade, in accordance with section 773(a)(7)(A) of the Act, we determined whether there was a pattern of consistent price differences between these different levels of trade in the home market. For BBs, we found that there was such a pattern and therefore made an adjustment for the differences in level of trade. However, for CRBs we did not find such a pattern and therefore made no level-of-trade adjustment. For BBs, we adjusted normal value by the weighted-average difference in prices between the two levels of trade in the home market. We calculated the adjustment based on home market sales made in the ordinary course of trade and prices net of billing adjustments, movement expenses, discounts, rebates, commissions, direct selling expenses and packing expenses. For each model sold at both levels of trade in the home market, we calculated the difference between the weighted-average prices at the two levels of trade as a percentage of the weighted-average price at the comparison level of trade. We then calculated a weighted-average of these model-specific percentage differences on a class-or-kind basis. We calculated the amount of the level-of-trade adjustment by applying this weighted-average percentage price difference to the NV determined at the different level of trade.

FAG Italy reported two channels of distribution in the home market. We found that the two home market channels differed with respect to selling activities such as after sales services/warranties, technical advice, and research and development. Based on these differences, we found that the two home market channels constituted two different levels of trade.

In the U.S. market, FAG Italy reported only CEP sales. The CEP sales were made by FAG Italy's U.S. subsidiary to unaffiliated customers through channels of distribution and at levels of trade similar to the two levels of trade in the home market. Although we considered FAG Italy's sales to unaffiliated customers to be made at two levels of trade, FAG Italy reported similar selling activities associated with all sales to the affiliated reseller. Therefore, we considered the CEP to constitute only one level of trade. We found that there were significant differences between the selling activities associated with the CEP and those associated with each of the home market levels of trade. For example, the level of trade of the CEP involved little or no strategic planning, sales forecasting, advertising or sales promotions, engineering services, technical assistance, or after-sale service. Therefore, we considered the level of trade of the CEP to be different from either home market level of trade and at a less advanced stage of distribution than either home market level of trade. Consequently, we could not match to sales at the same level of trade in the home market, nor could we determine a level-of-trade adjustment based on FAG Italy's home market sales of merchandise under review. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. For FAG Italy, to the extent possible, we determined NV at the same level of trade as the U.S. sale to the unaffiliated customer and made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act.

NSK reported four channels of distribution in the home market. We found that two of these channels did not differ significantly from each other with respect to selling activities and constitute one level of trade (level 1). We found that the same is true of the other two home market channels (level 2). We found that the selling activities associated with level 1 differed significantly from activities at level 2. For example, we found differences with respect to personnel training, advertising, technical support, price negotiation, and sales calls on the end-user. Based on these differences, we found that the two home market channel groups constituted two different levels of trade.

In the U.S. market, NSK had CEP sales and EP sales. NSK made CEP sales to unaffiliated customers through five channels of distribution, which we considered to be two levels of trade similar to those found in the home market. Though NSK's sales to unaffiliated customers were made at two levels of trade, NSK reported similar selling activities associated with all sales to the affiliated reseller. Therefore, we considered the CEP to constitute only one level of trade. We found that there were significant differences between the selling activities associated with the CEP and those associated with each of the home market levels of trade. For example, the level of trade of the CEP involved little or no strategic planning, sales forecasting, advertising or sales promotions, engineering services, technical assistance, or after-sale service. Therefore, we considered this level of trade to be different from either home market level of trade and at a less advanced stage of distribution than either home market level of trade. Consequently, we could not match to sales at the same level of trade in the home market nor could we determine a level-of-trade adjustment based on NSK's home market sales of merchandise under to review. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. For NSK, to the extent possible, we determined NV for CEP sales at the same level of trade as the U.S. sale to the unaffiliated customer and made a CEP offset adjustment in accordance with section 773(a)(7)(B). NSK made EP sales of one class or kind of merchandise to unaffiliated customers through channels of distribution similar to those comprising channel 1 in the home market. Therefore, we considered these channels to constitute one level of trade and that level of trade to be the same as level 1 in the home market. Where possible we have matched EP sales to sales at the same level of trade in the home market and made no level-of-trade adjustment. Where we matched EP sales to home market sales at a different level of trade, in accordance with section 773(a)(7)(A) of the Act, we determined whether there was a pattern of consistent price differences between these different levels of trade in the home market. For this class or kind of merchandise, we found that there was such a pattern and therefore made an adjustment for the differences in level of trade. We adjusted normal value by the weighted-average difference in prices between the two levels of trade in the home market. We calculated the adjustment based on home market sales made in the ordinary course of trade and prices net of billing adjustments, movement expenses, discounts, rebates, commissions, direct selling expenses and packing expenses. For each model sold at both levels of trade in the home market, we calculated the difference between the weighted-average prices at the two levels of trade as a percentage of the weighted-average price at the comparison level of trade. We then calculated a weighted-average of these model-specific percentage differences on a class-or-kind basis. We calculated the amount of the level-of-trade adjustment by applying this weighted-average percentage price difference to the NV determined at the different level of trade.

NTN Japan reported five channels of distribution in the home market. We found that the degree to which NTN Japan performed functions such as market research, technical services, and sales services such as processing and purchasing arrangements and delivery arrangements varied among the five channels. Based on these differences, we found that the five home market channels constituted three levels of trade. We found that the selling activities for level 1 differed significantly from levels 2 and 3 in terms of strategic economic planning, market research, accounting and business functions, engineering services, types of packing, and types of advertising and sales promotion. The selling activities for level 2 varied from those of level 3 in strategic and economic planning, accounting and business functions, and advertising and sales promotion.

NTN Japan reported both EP and CEP sales in the U.S. market made through two channels of distribution. NTN Japan made CEP sales through its U.S. subsidiary to unaffiliated customers through channels of distribution similar to those in the home market. Though these sales to unaffiliated customers were made at two levels of trade, NTN Japan reported similar selling activities associated with all sales to the affiliated reseller. Therefore, we considered the CEP to constitute only one level of trade. We found that there were significant differences between the selling activities associated with the CEP and those associated with each of the home market levels of trade. For example, at the level of trade of the CEP there was little or no strategic planning, sales forecasting, advertising, or technical assistance. Therefore, we considered this level of trade to be different from the three home market levels of trade and at a less advanced stage of distribution than the home market levels of trade. Consequently, we could not match to sales at the same level of trade in the home market nor could we determine a level-of-trade adjustment based on the respondent's home market sales of merchandise under review. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. For this respondent, to the extent possible, we determined NV at the same level of trade as the U.S. sale to the unaffiliated customer and made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act. We considered all of NTN Japan's EP sales to be at one level of trade. We determined that the selling activities associated with EP sales were essentially the same as those associated with one of the home market levels of trade, and therefore the EP level of trade did exist in the home market. Therefore, where possible we matched EP sales to sales at the same level of trade in the home market and made no level-of-trade adjustment. Where we matched to home market sales at a different level of trade, in accordance with section 773(a)(7)(A) of the Act, we determined whether there was a pattern of consistent price differences between these different levels of trade in the home market. For BBs and CRBs, we found that there was such a pattern and therefore made an adjustment for the differences in level of trade. However, for SPBs we did not find such a pattern and therefore made no level-of-trade adjustment. For BBs and CRBs, we adjusted NV by the weighted-average difference in prices between the two levels of trade in the home market. We calculated the adjustment based on home market sales made in the ordinary course of trade and prices net of billing adjustments, movement expenses, discounts, rebates, commissions, direct selling expenses and packing expenses. For each model sold at both levels of trade in the home market, we calculated the difference between the weighted-average prices at the two levels of trade as a percentage of the weighted-average price at the comparison level of trade. We then calculated a weighted average of these model-specific percentage differences on a class-or-kind basis. We calculated the amount of the level-of-trade adjustment by applying this weighted-average percentage price difference to the NV determined at the different level of trade.

NTN Germany claimed one channel of distribution but two levels of trade in

VOL 61 ISS 131 JL 8 1996 UMI

the home market. We found that the degree to which NTN Germany performed functions such as after sales services, market research, technical services, and sales services such as processing and purchasing arrangements differed by claimed levels of trade. Based on these differences, we found that these claimed levels of trade in fact constitute two levels of trade in the home market.

NTN Germany reported only CEP sales in the U.S. market. Though CEP sales to unaffiliated customers were made at two levels of trade, NTN Germany reported similar selling activities associated with all sales to the affiliated reseller. Therefore, we considered the CEP to constitute only one level of trade. We found that there were significant differences between the selling activities associated with the CEP and those associated with each of the home market levels of trade. For example, at the level of trade of the CEP there was little or no strategic planning, sales forecasting, advertising, or technical assistance. Therefore, we considered this level of trade to be different from the home market levels of trade and at a less advanced stage of distribution than the home market levels of trade. Consequently, we could not match to sales at the same level of trade in the home market nor could we determine a level-of-trade adjustment based on the respondent's home market sales of merchandise under review. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. For this respondent, to the extent possible, we determined NV at the same level of trade as the U.S. sale to the unaffiliated customer and made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act.

NMB Singapore/Pelmec reported two channels of distribution in the home market. We found that these two channels differed significantly with respect to selling activities such as after-sales services/warranties, technical support, engineering services, market research, sales promotion, and advertising. Based on these differences, we found that the two home market channels constituted two different levels of trade.

NMB Singapore/Pelmec reported only CEP sales in the U.S. market. Though sales were made to unaffiliated customers through two channels of distribution, the company reported similar selling activities associated with all sales to the affiliated reseller. Therefore, we considered the CEP to constitute only one level of trade. We found that there were significant differences between the selling activities associated with the CEP and those associated with each of the home market levels of trade. For example, the level of trade of the CEP only involved order processing and some engineering consultation. This level did not include any of the other selling activities associated with either of the home market levels of trade such as inventory maintenance, after-sales services/warranties, technical support, market research, sales promotion, advertising, freight and delivery, packing and accounting. Therefore, we considered the level of trade of the CEP to be different from either home market level of trade and at a less advanced stage of distribution than either home market level of trade. Consequently, we could not match to sales at the same level of trade in the home market nor could we determine a level-of-trade adjustment based on the respondent's home market sales of merchandise under review. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. For this respondent, to the extent possible, we determined NV at the same level of trade as the U.S. sale to the unaffiliated customer and made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act.

Asahi Seiko reported seven channels of distribution in the home market and CEP sales through four channels of distribution in the U.S. market. In comparing selling activities among channels of distribution in the home market, we found that no promotional expenses, sales-support functions, or inventory maintenance activities were performed for the channel of distribution consisting of direct sales to Asahi's affiliated customer while these functions were performed with respect to the other six channels. In addition, the selling activities were substantially the same among the other six channels. Therefore, we found that the seven HM channels constitute two different levels of trade. However, we are not using the level of trade consisting of direct sales to Asahi's affiliated customer as a basis for NV because we could not determine that these sales were made at arm's-length prices. Thus, for NV we could use only one level of trade for comparison purposes.

In the U.S. market Asahi Seiko reported that the CEP sales it made to unaffiliated customers were through four channels of distribution, but the selling activities among all sales to the affiliated reseller were similar. Therefore, we considered the CEP to constitute only one level of trade. We found significant differences between the selling activities associated with the CEP and those associated with the home market level of trade. For example, the level of trade of the CEP involved little or no advertising and sales promotions, engineering services, or after-sales service. Therefore, we considered this level of trade to be different from and at a less advanced stage of distribution than the home market level of trade. Consequently, we could not match to sales at the same level of trade in the home market nor could we determine a level-of-trade adjustment based on Asahi's home market sales of merchandise under review. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. For Asahi Seiko, to the extent possible, we determined NV at the same level of trade as the U.S. sales to the unaffiliated customer and made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act.

NSK/RHP reported five channels of distribution in the home market. The selling activities associated with three of these reported channels did not differ significantly, and therefore we considered sales through these channels to constitute one level of trade (level 1). The selling activities associated with another channel of distribution differed from level 1 in terms of advertising, inventory maintenance, technical support and to a lesser degree other selling activities. Therefore, we consider this channel of distribution to constitute a second level of trade (level 2). The remaining channel of distribution involved only sales to an affiliate. However, we requested, and NSK/RHP reported, the downstream sales to unaffiliated customers which constitute levels 1 and 2. Moreover, we could not determine that these sales were made at arm's length. Therefore, we did not use these sales to determine NV or as the basis of any level-of-trade adjustments.

In the U.S. market, NSK/RHP reported EP and CEP sales. Although NSK/RHP reported that the CEP sales it made to unaffiliated customers were made through two channels of distribution, the selling activities among all sales to the affiliated reseller were similar. Therefore, we considered the CEP to constitute only one level of trade. We compared the selling activities at this level of trade with the selling activities at each home market level of trade and found them to be substantially dissimilar. For example, the level of trade of the CEP involved little or no strategic and economic planning, advertising or sales promotion, technical services, technical assistance, or inventory maintenance. Therefore, we considered the home market sales to be at a different level of trade and at a more advanced stage of distribution than CEP. Because the home market levels of trade were different from the level of trade of the CEP, we could not match to sales at the same level of trade in the home market nor could we determine a level-of-trade adjustment based on NSK-RHP's home market sales of merchandise under review. Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. For NSK-RHP's CEP sales, to the extent possible, we determined NV at the same level of trade as the U.S. sale to the unaffiliated customer and made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act. NSK/RHP made EP sales of two classes or kinds of merchandise to unaffiliated customers through one channel of distribution which we considered to be a level of trade similar to one of the levels of trade in the home market. We were able to match all EP sales to sales at the same level of trade in the home market and therefore made no level-of-trade adjustments.

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the weighted-average dumping margins (in percent) for the period May 1, 1994, through April 30, 1995 to be as follows:

Company	BBs	CRBs	SPBs
France			
Franke GmbH	[1] 66.42	([3])	([3])
Hoesch Rothe Erde	([2])	([3])	([3])
Intertechnique	1.55	([2])	([2])
Rollix Defontaine	([2])	([3])	([3])
SKF	21.39	([2])	42.79
SNFA	56.42	18.37	([2])
SNR	2.10	4.26	([2])
Germany			
FAG	10.22	16.90	9.51
Franke GmbH	[1] 32.25	([3])	([3])
Hoesch Rothe Erde	([2])	([2])	([2])
INA	11.66	12.33	([2])
NTN	23.37	([2])	([2])
Rollix & Defontaine	([2])	([3])	([3])
SKF	2.42	8.11	5.34
Torrington Nadellager	([2])	76.27	([3])
Italy			
FAG	2.43	([2])	([3])
SKF	2.68	([3])	([3])
Japan			
Asahi Seiko	1.96	([3])	([3])
Koyo Seiko	22.32	2.79	0.00 [1]
NPBS	45.83	([2])	([2])
NSK Ltd.	14.24	18.27	([2])
NTN	4.31	10.27	2.50
Singapore			
NMB Singapore/ Pelmec Ind.	0.71	([3])	([3])
United Kingdom			
NSK/RHP	9.60	11.13	([3])
Hoffman U.K.	54.27	48.29	([3])
Rose Bearings ...	54.27	48.29	([3])
Timken Bearings	([2])	([2])	([3])

[1] No shipments or sales subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.
[2] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.
[3] No review requested.

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication of this notice. A general issues hearing, if requested, and any hearings regarding issues related solely to specific countries, if requested, will be held in accordance with the following schedule and at the indicated locations in the main Commerce Department building:

Case	Date	Time	Room No.
General Issues	Aug. 16, 1996	9:00 a.m	#830
Singapore	Aug. 16, 1996	3:00 p.m	#830
United Kingdom	Aug. 19, 1996	10:00 a.m	1412
Japan	Aug. 19, 1996	1:00 p.m	1412
Germany	Aug. 20, 1996	10:00 a.m	1412
France	Aug. 20, 1996	1:00 p.m	1412

Issues raised in hearings will be limited to those raised in the respective briefs and rebuttal briefs. Briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than the dates shown below for general issues and the respective country-specific cases. Parties who submit briefs or rebuttal briefs in these proceedings are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

Case	Briefs	Rebuttals due
General issues.	Aug. 5, 1996	Aug. 12, 1996.
Singapore	Aug. 5, 1996	Aug. 12, 1996.
U.K.	Aug. 6, 1996	Aug. 13, 1996.
Japan	Aug. 6, 1996	Aug. 13, 1996.
Germany	Aug. 7, 1996	Aug. 14, 1996.
France	Aug. 7, 1996	Aug. 14, 1996.

The Department will subsequently publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written briefs or hearings. The Department will issue final results of these reviews within 180 days of publication of these preliminary results.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and the inability to link sales with specific entries prevents calculation of duties on an entry-by-entry basis, we have calculated an importer-specific *ad valorem* duty assessment rate for each class or kind of merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total amount of antidumping duties, which are calculated by taking the difference between statutory NV and statutory EP or CEP, by the total statutory EP or CEP value of the sales compared, and adjusting the result by the average difference between EP or CEP and customs value for all merchandise examined during the POR.)

In some cases, such as EP situations, the respondent does not know the

VOL
61
ISS
1
31
JL
8
1996

entered value of the merchandise. For these situations, we have either calculated an approximate entered value or an average unit dollar amount of antidumping duty based on all sales examined during the POR. (See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review*, 56 FR 31694 (July 11, 1991).) The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be those rates established in the final results of these reviews (except that no deposit will be required for firms with zero or *de minimis* margins, *i.e.*, margins less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate made effective by the final results of the 1991–92 administrative reviews of these orders (see *AFBs III*). As noted in those previous final results, these rates are the "all others" rates from the relevant LTFV investigations. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the

751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: June 27, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–17277 Filed 7–5–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–583–810]

Chrome-Plated Lug Nuts From Taiwan; Preliminary Results of Antidumping Duty Administrative Review and Termination in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review and Termination in Part.

SUMMARY: In response to a request by the petitioner, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on chromeplated lug nuts from Taiwan. The review covers 19 manufacturers/exporters of the subject merchandise to the United States for the period September 1, 1994, through August 31, 1995. The review indicates the existence of margins for all firms.

We have preliminarily determined that sales have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between export price and the NV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with each argument (1) and statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: July 8, 1996.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4195 or 482–3814, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On September 20, 1991, the Department published the antidumping duty order on chrome-plated lug nuts from Taiwan (56 FR 47736). The Department published a notice of "Opportunity to Request Administrative Review" on September 12, 1995 (60 FR 47349). The petitioner, Consolidated International Automotive, Inc. (Consolidated), requested that we conduct an administrative review for the period September 1, 1994, through August 31, 1995. A respondent, Chuen Chao Enterprise Company LTD (Chuen Chao) requested an administrative review of its sales. We published a notice of "Initiation of Antidumping and Countervailing Duty Administrative Review" on October 12, 1995 (60 FR 53164), and sent questionnaires to the following firms: Anmax Industrial Co., Ltd. (Anmax), Buxton International Corporation (Buxton), Chu Fong Metallic Electric Co. (Chu Fong), Everspring Plastic Corp. (Everspring), Gingen Metal Corp. (Gingen), Goldwinate Associates, Inc. (Goldwinate), Gourmet Equipment Corporation (Gourmet), Hwen Hsin Enterprises Co., Ltd. (Hwen), Kwan How Enterprises Co., Ltd. (Kwan How), Kwan Ta Enterprises Co. Ltd (Kwan Ta), Kuang Hong Industries, Ltd. (Kuang), Multigrand Industries Inc. (Multigrand), San Chien Electric Industrial Works, Ltd. (San Chien), San Shing Hardware Works Co., Ltd. (San Shing), Transcend International Co. (Transcend), Trade Union International Inc./Top Line (Top Line), Uniauto, Inc. (Uniauto), Wing Tang Electrical Manufacturing Company, Inc (Wing) and Chuen Chao. On December 11, 1995, Chuen Chao withdrew its request for administrative review. Since Chuen Chao was the only party which requested a review of its sales, we are terminating the review of Chuen Chao and its entries will be liquidated at the rate at which they were entered. Gourmet responded to the questionnaire. Buxton and Uniauto are related parties and so responded to the questionnaire as one respondent.

Questionnaires that were sent to Chu

rate established in the less-than-fair-value (LTFV) investigation, 6.93 percent.

The Department has now conducted the administrative review in accordance with section 751 of the Act.

Scope of the Review

On April 19, 1994, the Department issued its Final Scope Clarifications on Chrome-Plated lug Nuts from Taiwan and the PRC. The scope, as clarified, is described in the subsequent paragraph. All lug nuts covered by this review conform to the April 19, 1994 scope clarification.

Imports covered by this review are shipments of one-piece and two-piece chrome-plated lug nuts, finished or unfinished, more than 11/16 inches (17.45 millimeters) in height and which have a hexagonal (hex) size of at lease 3/4 inches (19.05 millimeters) but not more than on inch (25.4 mm), plus or minus 1/16 of an inch (1.59 mm). The term "unfinished" refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securng wheels to cars, vans, trucks, utility vehicles, and trailers. Zinc-plated lug nuts, finished or unfinished, and stainless-steel capped lug nuts are not in the scope of this review. Chrome-plated lock nuts are also not in the scope of the review.

During the period of review (POR), chrome-plated lug nuts were classifiable under Harmonized Tariff Schedule (HTS) subheading 7318.16.00.00. Although the HTS subheading is provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Use of Facts Otherwise Available

We preliminarily determine that in accordance with section 776(d) of the Act, the use of facts available is appropriate for Anmax, Hwen, San Chien, San Shing, Transcend, Top Line, and Wing because these firms did not respond to the Department's antidumping questionnaire. The Department finds that, in not responding to the questionnaire, these firms failed to cooperate by not acting to the best of their ability to comply with requests for information from the Department. Because necessary information is not available on the record with regard to sales by these firms as a result of their withholding the requested information, we must make our preliminary determination based on facts otherwise available pursuant to

available because that respondent failed to cooperate, section 776(b) authorizes the Department to use an inference adverse to the interests of the respondent in choosing the facts available. Section 776(b) also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. The statute also provides that the facts otherwise available may be based on secondary information. Because information from prior proceedings constitutes secondary information, section 776(c) provides that the Department shall, to the extend practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that corroborate means simply that the Department will satisfy itself that the secondary information to be used has probative value.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review* (60 FR 49567), where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). No such circumstances exist in this case which

percent. This rate was calculated in the *Amendment to the Final Determination of Sales at Less Than Fair Value* (56 FR 47737), covering the period May 1, 1990 through October 31, 1990.

The Department also sent questionnaires to Gourmet and Buxton/Uniauto which provided us with responses to our questionnaires. However, while planning for verification of these two firms, the Department received submissions from each firm stating that a verification would produce the same results as in previous reviews where the Department was unable to reconcile the data Gourmet and Buxton/Uniauto submitted in their responses to our questionnaire with their audited financial statements (*see* Buxton/Uniauto and Gourmet submissions dated March 28, 1996, and May 1, 1996, respectively). Reliance on the accounting system used for the preparation of the audited financial statements is a key and vital part of the Department's determination that a company's sales and constructed value data are credible. Section 776(a)(2)(D) states that the Department "shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title" if an interested party or any other person provides information but the information can not be verified. Because their submissions were unreconcilable to their audited financial statements and thus unverifiable, we have determined to apply facts available to Gourmet and Buxton/Uniauto. However, because these firms cooperated with our request for information, we are not using an adverse inference in selecting from among the facts otherwise available. In this case, we have used Gourmet's and Buxton/Uniauto's highest rates from a prior review which are 6.47 percent and 6.93 percent respectively.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margins exist for the period September 1, 1994, through August 31, 1995:

Manufacturer/Exporter	Percent margin
Gourmet Equipment (Taiwan) Corporation	6.47
Buxton International/Uniauto	6.93
Chu Fong Metallic Electric Co	6.93
Transcend International	10.67
San Chien Industrial Works, Ltd	10.67

VOL 61 ISS 131 JL 8 1996 UMI

Manufacturer/Exporter	Percent margin
Kwan How Enterprises Co., Ltd	6.93
Kwan Ta Enterprises Co., Ltd	6.93
Kuang Hong Industries Ltd	6.93
Multigrand Industries Inc	6.93
San Shing Hardware Works Co., Ltd	10.67
Trade Union International Inc./Top Line	10.67
Utauto, Inc	6.93
Wing Tang Electrical Manufacturing Company	10.67

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice in accordance with 19 CFR 353.22(c)(6). Any interested party may request a hearing within 10 days of the date of publication (19 CFR 353.38(b)). Any hearing, if requested, will be held 44 days after publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days after the date of publication of this notice (19 CFR 353.38(c)). Rebuttal briefs and rebuttal comments, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of review, including the results of its analysis of issues raised in any such written comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and NV may vary from the percentage stated above. Upon completion of this review, the Department will issue appraisement instructions on each manufacturer/exporter directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for the reviewed firms will be those firms' rates established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 6.93 percent, the "all others" rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 1, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–17278 Filed 7–5–96; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications: West Palm Beach, Anaheim, Oxnard, and Cincinnati

AGENCY: Minority Business Development Agency.

ACTION: Amendment.

SUMMARY: The Minority Business Development Agency is revising the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate the West Palm Beach, Anaheim, Oxnard, and Cincinnati MBDCs. The revised closing date for the West Palm Beach MBDC application is July 22, 1996. Anaheim, Oxnard, and Cincinnati closing dates will be July 29, 1996. These solicitations were originally published in the **Federal Register**, Thursday, June 6, 1996, Vol. 61, No. 110, page 28847 and Wednesday, June 12, 1996, Vol. 61, No. 114, pages 29733 and 29735.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: July 1, 1996.

Frances B. Douglas

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 96–17224 Filed 7–5–96; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Charleston, South Carolina

AGENCY: Minority Business Development Agency.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate the Charleston, South Carolina MBDC. This solicitation was originally published in the **Federal Register**, Wednesday, June 12, 1996, Vol. 61, No. 114, 29737.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: July 1, 1996.

Frances B. Douglas,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 96–17223 Filed 7–5–96; 8:45 am]

BILLING CODE 3510–21–P

National Oceanic and Atmospheric Administration

[I.D. 070196B]

Mid-Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Bluefish Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on July 18, 1996 beginning at 10:00 a.m.

ADDRESSES: The meeting will be held at the Days Inn, 4101 Island Avenue, Philadelphia, PA; telephone: (215) 492–0400.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901: telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to make recommendations for the 1997 management measures (possession limit and quota) for bluefish.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 1, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–17274 Filed 7–5–96; 8:45 am]

BILLING CODE 3510–23–F

[I.D. 062895C]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a public meeting.

DATES: The meeting will begin on July 15, at 1 p.m. and may go into the evening until business for the day is completed. The meeting will reconvene on July 16 through July 19, at 8 a.m. The meeting will adjourn on Friday at 5 p.m.

ADDRESSES: The meeting will be held at the Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting is to review the Council's June 1996 instructions to the GMT and prepare reports for the August 1996 Council meeting. The GMT will review several new groundfish stock assessments and prepare initial recommendations for 1997 catch levels; review the rate of groundfish landings through June; review preliminary analyses of the Pacific whiting allocation proposal, a proposal to establish disposition procedures for salmon bycatch in the shore-based whiting fishery, and industry proposals relating to sale of amounts of fish landed in excess of trip limits, restrictions on transfers (including leases) of limited entry permits, allowing vessels to begin their landing periods mid-month, and data collection.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: July 1, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–17273 Filed 7–5–96; 8:45 am]

BILLING CODE 3510–23–F

[I.D. 070196A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearing and extension of comment period.

SUMMARY: Notice is hereby given that a public hearing on an application from the Oregon Department of Fish and Wildlife at La Grande, OR (ODFW) for a scientific research/enhancement permit has been requested and will take place. The public comment period for the permit application is extended.

DATES: The public hearing is scheduled for July 24, 1996 from 6 p.m. - 9:30 p.m., or until all comments have been heard. The comment period for the permit application is extended through July 29, 1996 to allow concerned parties the opportunity to respond to the testimony presented at the public hearing.

ADDRESSES: The public hearing will be held at the Oregon Department of Transportation Building, Region 5, 3012 Island Avenue, La Grande, Oregon, 97850. The permit application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Send written comments to the Chief, Endangered Species Division, Office of Protected Resources at the address above.

SUPPLEMENTARY INFORMATION: Notice was published on May 20, 1996 (61 FR 25208) that an application had been filed by ODFW (P211J) for a scientific research/enhancement permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227). ODFW requests authorization to collect juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a captive broodstock program for three populations of chinook salmon in the Grande Ronde River Basin. The captive broodstock program has been proposed to forestall the possible extinction of the local populations and to preserve the overall stock structure of Snake River spring/summer chinook salmon. ODFW proposes to collect juveniles for the captive broodstock program annually from tributaries of the Lostine River, Catherine Creek, and the upper Grande Ronde River. ODFW proposes to rear and maintain the ESA-listed fish in hatcheries until mature, spawn the fish, rear and raise the resulting progeny to smolts, and release the offspring in their respective parental streams.

During the public comment period for the permit application, NMFS received the request for a public hearing from the Confederated Tribes of the Umatilla Indian Reservation at Pendleton, OR. The Umatilla Tribes are concerned that the issuance of the permit would be premature because of the experimental nature of captive broodstock programs. They also believe that Rapid River hatchery stock, determined not to be an evolutionarily significant unit by NMFS, should not be omitted from recovery efforts.

Anyone wishing to make a presentation at the public hearing should register upon arrival and be prepared to provide a written copy of their testimony at the time of presentation. Depending on the number of persons wishing to speak, a time limit may be imposed. All statements and opinions summarized in this notice are those of the applicant and/or concerned parties and do not necessarily reflect the views of NMFS.

Special Accommodations

The hearing will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Keren Holtz at (503) 230–5424 at least five days prior to the date of the hearing.

VOL
61
ISS
131
JL
8
1996
UMI

Dated: July 1, 1996.
Robert C. Ziobro,
Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.
[FR Doc. 96–17272 Filed 7–5–96; 8:45 am]
BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 9:30 a.m., Tuesday, July 16, 1996.

PLACE: 1155 21st St. N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 96–17488 Filed 7–3–96; 3:57 pm]
BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:30 a.m., Wednesday, July 24, 1996.

PLACE: 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 96–17489 Filed 7–3–96; 3:57 pm]
BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Friday, July 26, 1996.

PLACE: 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 96–17490 Filed 7–3–96; 8:45 am]
BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Monday, July 29, 1996.

PLACE: 1155 21st St. N.W., Washington, D.C. Lobby Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Use of Electronic Media by Commodity Pool Operators and Commodity Trading Advisors.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 96–17491 Filed 7–3–96; 8:45 am]
BILLING CODE 6351–01–M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 1:00 p.m. to 4:00 p.m., August 5, 1996.

PLACE: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

STATUS: Open–under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

1:00 p.m. Meeting—Board of Regents

(1) Approval of Minutes—May 17, 1996
(2) Faculty Matters
(3) Granting of Degrees
(4) Departmental Reports
(5) Financial Report
(6) Report—President, USUHS
(7) Report—Dean, School of Medicine
(8) Report—Dean, Graduate School of Nursing
(9) Comments—Chairman, Board of Regents
(10) New Business

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary of the Board of Regents (301) 295–3116.

Dated: July 3, 1996.
Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 96–17479 Filed 7–3–96; 3:16 pm]
BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Notice of interest rates for the William D. Ford Federal Direct Loan Program for the period July 1, 1996, through June 30, 1997.

SUMMARY: The Assistant Secretary for Postsecondary Education announces the interest rates for variable rate loans made under the William D. Ford Federal Direct Loan (Direct Loan) Program for the period July 1, 1996, through June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Barbara F. Grayson, Program Specialist, William D. Ford Federal Direct Loan Program, Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, Room 3045, ROB–3, 600 Independence Avenue, SW, Washington, DC 20202–5400. Telephone: (202)708–9406. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The formulas for determining the interest rates for Direct Loan Program loans are provided under section 455 of the Higher Education Act of 1965, as amended (the Act) (20 U.S.C. 1087e), and as codified in 34 CFR 685.202(a) and 685.215(g). Section 455(b) of the Act provides that a variable interest rate applies to loans made under the Direct Loan Program and disbursed on or after July 1, 1994. The variable rate is determined annually and applies for each 12-month period beginning July 1 and ending June 30. For Federal Direct Stafford/Ford (Direct Subsidized) and Federal Direct Unsubsidized Stafford/Ford (Direct Unsubsidized) Loans, and Federal Direct Subsidized and Federal Direct Unsubsidized Consolidation Loans, the interest rate may not exceed 8.25 percent. For Federal Direct PLUS and Federal Direct PLUS Consolidation Loans, the interest rate may not exceed 9 percent.

Interest Rates for Direct Subsidized, Direct Unsubsidized, Direct Subsidized Consolidation, and Direct Unsubsidized Consolidation Loans

Loans first disbursed prior to July 1, 1995. Pursuant to section 455(b)(1) of the Act, the Assistant Secretary has determined the interest rate for the period July 1, 1996, through June 30, 1997, to be 8.25 percent.

Loans first disbursed on or after July 1, 1995. (a) During the in-school, grace, and deferment periods. Pursuant to section 455(b)(2) of the Act, the Assistant Secretary has determined the interest rate for the period July 1, 1996, through June 30, 1997, to be 7.66 percent.

(b) During all other periods. Pursuant to section 455(b)(1) of the Act, the Assistant Secretary has determined the interest rate for the period July 1, 1996, through June 30, 1997, to be 8.25 percent.

Interest Rates for Direct PLUS and Direct PLUS Consolidation Loans

Pursuant to section 455(b)(4) of the Act, the Assistant Secretary has determined the interest rate for the period July 1, 1996, through June 30, 1997, to be 8.72 percent. (20 U.S.C. 1087e).

Dated: July 1, 1996.
David A. Longanecker,
Assistant Secretary for Postsecondary Education.
[FR Doc. 96–17243 Filed 7–5–96; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–579–000]

Colorado Interstate Gas Company; Notice of Application

July 1, 1996.

Take notice that on June 18, 1996, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed a request, pursuant to §§ 157.205, 157.212, and 157.216 of the Commission's Regulations, for authorization: (1) to abandon its existing Amoco Delivery Line to Amoco's Wattenberg Plant and (2) to construct new pipeline delivery facilities in Adams County, Colorado, all under CIG's blanket certificate, issued in Docket No. CP83–21–000.

Take notice also that, by letter dated June 28, 1996, CIG requested that its June 18, 1996, request be converted into a combined application: (1) for authorization to abandon its Amoco Delivery Line, pursuant to section 7(b) of the Natural Gas Act; and (2) for a certificate of public convenience and necessity to construct the aforementioned pipeline delivery facilities, pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

The Commission issued a certificate to CIG in an order issued December 8, 1992, in Docket No. CP92–470–000, authorizing it to: (1) Construct the existing Amoco Delivery Line, which consists of approximately 0.8 miles of 16-inch diameter pipeline and connects CIG'S 16-inch diameter 52–A line to Amoco's Wattenberg Plant; (2) construct CIG's Enterprise Lateral, which consists of approximately 21.5 miles of 16-inch diameter pipeline and connects to CIG's 52–A line; and (3) convert that segment of the 52–A line which lies between the Enterprise Lateral and Amoco Delivery Line connections (approximately 23.9 miles of the 52–A line) into a supply lateral.

The affected segment of 52–A had previously been used to transport gas in and out of CIG's Fort Morgan facility and Young Gas Storage Co., Ltd.'s Young Storage Field. In the December 8, 1992 order, the Commission held that lines 52–A and 52–B are facilities required to test, develop or utilize an underground storage field, and that (as such) the 52–A and/or 52–B may not be modified under the automatic authorization provisions of § 157.208 of the regulations. The Commission also stated that 52–A and 52–B are not eligible facilities under § 157.202(b)(2)(ii)(D) of the regulations, and that "CIG may not perform miscellaneous re-arrangement of either line absent case-specific certificate authorization."

CIG now proposes to abandon its 16-inch diameter Amoco Delivery Line and construct approximately 23.9 miles of 10-inch diameter pipeline that would parallel its 52–A and 52–B lines. CIG also proposes to construct a new 0.8 mile, 10-inch diameter delivery line to the Wattenberg Plant to replace the 16-inch Amoco Delivery Line. CIG plans to lay the new 10-inch delivery line in the right-of-way currently occupied by the 16-inch Amoco Delivery Line. CIG also proposes to convert the aforementioned segment of its 52–A line back to its original function. CIG estimates that the proposed facilities will cost $2.9 million.

Any person desiring to be heard, or to make any protest with reference to said application should, on or before July 22, 1996, file with the Federal Energy Regulatory Commission, Washington D.C. 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application, if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment and/or a grant of the certificate are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CIG to appear or be represented at the hearing.

Lois D. Cashell,
Secretary.
[FR Doc. 96–17201 Filed 7–5–96; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP96–596–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

July 1, 1996.

Take notice that on June 25, 1996, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP96–596–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point in Maricopa County, Arizona to permit the transportation and

VOL 61 ISS 131 JL 8 1996 UMI

delivery of natural gas to Southwest Gas Corporation (Southwest), under El Paso's blanket certificate issued in Docket No. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that Southwest seeks to deliver natural gas to its customers from a point of El Paso's 12¾" O.D. Santan Line in Maricopa County, Arizona. The proposed location is approximately at milepost 9.2 on El Paso's 12¾" O.D. Santan Line in the NE/4 of Section 20, Township 1 South, Range 6 East, in Maricopa County, Arizona. El Paso has been advised that Southwest will use the gas to serve the residential, commercial, and industrial requirements of its customers in the Gilbert, Arizona area. El Paso requests authorization to construct and operate the proposed delivery point (known as the Gilbert City Gate Meter Station) on its 12¾" O.D. Santan Line in Maricopa County, Arizona. The estimated cost is $92,100 and Southwest has agreed to reimburse El Paso pursuant to their letter agreement.

El Paso states that the proposed delivery point is not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers. The proposed delivery point will not have an effect on El Paso's peak day and annual deliveries and the total volumes delivered will not exceed total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17202 Filed 7–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–603–000]

Tennessee Gas Pipeline Company; Notice of Application to Abandon Facilities by Sale

July 1, 1996.

Take notice that on June 26, 1996, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam Street, Houston, Texas 77252, filed an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order granting permission and approval to abandon by sale to Chevron U.S.A. Inc. (Chevron), Tennessee's Line 823X–100 and related facilities located Offshore Louisiana. The application is on file with the Commission and open to public inspection.

Tennessee states that on July 18, 1975, the Commission issued Tennessee authorization [1] to, among other things, construct a 0.62 mile, 16-inch diameter pipeline lateral ("Line 823X–100") and Meter No. 9–0033, in East Cameron Block 281 "A" (EC 281 "A"), Offshore Louisiana. The facilities were authorized to permit Tennessee to connect reserves acquired by Tennessee and Texas Eastern Transmission Corporation (Texas Eastern), which in turn connects with the interstate pipeline system of Texas Eastern. Tennessee and Texas Eastern were also authorized to effectuate a gas transmission and exchange agreement under which, among other things, Texas Eastern and Tennessee agreed to transport and exchange gas produced from various offshore locations, including EC 281 "A", to mutually agreeable points on their respective systems.

Tennessee states that the gas purchase and sales agreements under which the EC 281 "A" gas reserves were dedicated to Tennessee have terminated and that, currently, this line is utilized only to transport natural gas volumes produced in the EC 281 area for Chevron. Finally, Tennessee indicates that it no longer requires this facility as a means of obtaining gas reserves and that Chevron will continue to utilize Line 823X–100 to gather and transport gas produced by Chevron or any shippers or working interest owners seeking transportation services in the East Cameron area.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 22, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17203 Filed 7–5–96; 8:45 am]

BILLING CODE 6717–01–M

[1] See, 54 FPC 264 (1975).

[Docket No. CP96–592–000]

Williams Natural Gas Company; Notice of Request Under Blanket Authorization

July 1, 1996.

Take notice that on June 21, 1996, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP96–592–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon by sale to United Cities Gas Company (UCG) approximately 2.0 miles of 6-inch lateral pipeline, measuring, regulating and appurtenant facilities located in Johnson County, Kansas, under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG states that it will abandon by sale to UCG measuring (setting number 15165), regulating, appurtenant facilities, and approximately 2.0 miles of the Olathe Naval Base 6-inch pipeline beginning in the Northwest Quarter (NW/4) of Section 6, Township 14 South, Range 23 East and ending in the Northeast Quarter (NE/4) of Section 18, Township 14 South, Range 23 East, all located in Johnson County, Kansas. WNG and UCG agree that the facilities sought to be abandoned herein will serve a more useful purpose as a part of the UCG distribution system. WNG states that the cost associated with the abandonment of the facilities is estimated to be $729 with a salvage value and sales price of $124,430.

WNG states that this abandonment is not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers. The proposed abandonment will not have an effect on WNG's peak day and annual deliveries and the total volumes delivered will not exceed total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17204 Filed 7–5–96; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval

July 1, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarify of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. The Commission has requested an emergency OMB review of this collection with an approval by June 28, 1996.

DATES: Persons wishing to comment on this information collection should submit comments by August 29, 1996.

ADDRESSEES: Direct all comments to Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3561 or via internet at fain—t@a1.eop.gov, and Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: New Collection.

Title: Supplemental Information Required for Taxpayer Identifying Number for Debt Collection.

Form No.: N/A.

Type of Review: New Collection.

Respondents: Individuals or households; Business or other for-profit; Small businesses or organizations.

Number of Respondents: 10,469,716.

Estimated Time Per Response: .017 hours.

Total Annual Burden: 177,985 hours

Needs and Uses: The information will be used by the Commission to comply with Public Law 104–134, Omnibus Consolidated Recissions and Appropriations Act of 1996. Chapter 10 requires each Federal agency to obtain from each person doing business with it to furnish to it such person's taxpayer identifying number. In the case of an individual that number is the person's social security number (ssn); in the case of a business, it is the employer identification number (ein) as assigned by the Internal Revenue Service, U.S. Department of the Treasury. Effective July 1996, the U.S. Treasury will "flag" (and notify the Commission) any and all payment requests to anyone doing business the U.S. Government, if their taxpayer identifying number has not been furnished.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–17193 Filed 7–5–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1119–DR]

Alaska; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA–1119–DR), dated June 7, 1996, and related determinations.

EFFECTIVE DATE: June 24, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 15, 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–17289 Filed 7–5–96; 8:45 am]

BILLING CODE 6715–02–P

[FEMA–1121–DR]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

VOL
61
ISS
131
JL
8
1996
UMI

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–1121–DR), dated June 24, 1996, and related determinations.

EFFECTIVE DATE: June 24, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 24, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Iowa, resulting from severe storms and flooding on May 8–28, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Melvin Schneider of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Iowa to have been affected adversely by this declared major disaster:

Adair, Des Moines, Henry, Iowa, Johnson, Keokuk, Lee, Louisa, Madison, Mahaska, Muscatine, and Washington Counties for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,
Director.

[FR Doc. 96–17290 Filed 7–5–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1118–DR]

North Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota (FEMA–1118–DR), dated June 5, 1996, and related determinations.

EFFECTIVE DATE: June 21, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 21, 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,
Associate Director, Response and Recovery Directorate.

[FR Doc. 96–17291 Filed 7–5–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1122–DR]

Ohio; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Ohio (FEMA–1122–DR), dated June 24, 1996, and related determinations.

EFFECTIVE DATE: June 24, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 24, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Ohio, resulting from flooding on May 2, 1996 through May 25, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Ohio.

In order to provide Federal assistance; you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ron Sherman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Ohio to have been affected adversely by this declared major disaster:

Adams, Belmont, Brown, Gallia, Hamilton, Jefferson, Meigs, Paulding, Scioto, and Williams Counties for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,
Director.

[FR Doc. 96–17292 Filed 7–5–96; 8:45 am]

BILLING CODE 6718–02–P

Notice of the Federal Emergency Management Agency's Intent To Conduct a Strategic Review of its Radiological Emergency Preparedness Activities

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce FEMA's intent to conduct a strategic review of its Radiological Emergency Preparedness (REP) activities and to request specific suggestions for accomplishing this review.

DATES: Comments from the public on this review of the REP Program are encouraged and invited on or before August 22, 1996.

ADDRESSES: Written comments should be addressed to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, room 840, 500 C Street SW., Washington, DC 20472; (facsimile)(202) 646–4536.

FOR FURTHER INFORMATION CONTACT: O. Megs Hepler, III, Director, Exercises Division, Preparedness, Training, and Exercises Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2867.

SUPPLEMENTARY INFORMATION: The mission of FEMA's REP Program, which was established in 1979, is to protect the health and safety of the public residing in the vicinity of a commercial nuclear power plant by ensuring that all levels of government have planned and prepared for their response to a possible radiological incident at the plant. As the REP Program has matured, a number of REP Program stakeholders have recommended that the program be restructured in order to become more streamlined and efficient. In light of stakeholders' recommendations and the fact that the REP Program has been in existence for over 16 years, FEMA intends to initiate a comprehensive strategic review of the way its offsite radiological emergency planning and preparedness responsibilities are performed.

This comprehensive strategic review will examine the various mechanisms, policies, procedures, guidance documents, and processes now used to carry out FEMA's REP Program, with a view to improving the efficiency and effectiveness of the program by implementing new policies, procedures, processes and guidance, if necessary. The review will further National Performance Review goals, will be closely coordinated with the U.S. Nuclear Regulatory Commission, and will provide for extensive input from all stakeholders in the REP community—States, utilities, Public Interest Research Groups, interested citizens, other Federal agencies, Congress, etc. The strategic review will also ensure that REP activities are consistent with the current requirements of the Government Performance Review Act.

As a first step, FEMA is publishing this **Federal Register** notice announcing its intent to conduct the comprehensive strategic review and requesting comments from any interested parties. FEMA welcomes suggestions as to approaches to take in performing this review, as well as specific suggestions on how to streamline the REP program and make it more cost-effective.

When submitting recommendations, commenters should note that the resulting REP Program must still accomplish the program's original mission, i.e., it must continue to ensure that measures can be taken to protect the health and safety of the public in the vicinity of commercial nuclear power plants in the event of a radiological incident.

Dated: June 28, 1996.

James Lee Witt,
Director.

[FR Doc. 96–17293 Filed 7–5–96; 8:45 am]

BILLING CODE 6718–06–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Foreign Cargo International, Inc., 8420 N.W. 58th Street, Miami, FL 33166, Officer: Enrique E. Ros, Jr., President.

Happy International Corp., 147–48 175th Street, Jamaica, NY 11434, Officer: Gordon Kuo, President.

Air & Ocean Shipping, Inc., 1551 Carmen Drive, Elk Grove Village, IL 60007, Officers: Ingo Wagschal, President, Guenter Fischer, Board of Directors.

Marlins Consolidators, Inc., d/b/a, International Cargo Services, 8333 N.W. 66th Street, Miami, FL 33166, Officers: Sarah E. Dion, President, Carmen I. Garcia, Vice President.

Reliable Van & Storage Co., Inc., 550 Division Street, Elizabeth, NJ 07201, Officers: Pat J. Toscano, President, Peter J. Toscano, CEO.

Dated: July 2, 1996.

Joseph C. Polking,
Secretary.

[FR Doc. 96–17247 Filed 7–5–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 1, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Carolina Fincorp, Inc.*, Rockingham, North Carolina; to become

VOL
61
ISS
131
JL
8
1996
UMI

a bank holding company by acquiring 100 percent of the voting shares of Richmond Savings Bank, SSB, Rockingham, North Carolina.

2. F & M National Corporation, Winchester, Virginia; to merge with Allegiance Banc Corporation, Bethesda, Maryland, and thereby indirectly acquire Allegiance Bank, NA, Bethesda, Maryland.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Alabama National BanCorporation, Birmingham, Alabama; to merge with FIRSTBANC Holding Company, Inc., Robertsdale, Alabama, and thereby indirectly acquire First Bank of Baldwin County, Robertsdale, Alabama.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Lewis Family Partners, L.P., Morris, Illinois; to become a bank holding company by acquiring 19.82 percent of the voting shares of Illinois Valley Bancorp, Inc., Morris, Illinois, and thereby indirectly acquire Grundy County National Bank, Morris, Illinois.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mercantile Bancorporation Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Peoples State Bank, Topeka, Kansas, and Mercantile Bank of Shawnee County, Topeka, Kansas, a *de novo* bank.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. The Ringsmuth Family Limited Partnership, Wakefield, Michigan; to become a bank holding company by acquiring 83.8 percent of the voting shares of Wakefield Bancorporation, Inc., Wakefield, Michigan, and thereby indirectly acquire First National Bank of Wakefield, Wakefield, Michigan.

Board of Governors of the Federal Reserve System, July 1, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–17246 Filed 7–5–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 22, 1996.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Capital Corp of the West, Merced, California; to engage through its newly formed subsidiary Capital West Group, Inc., Merced, California, in furnishing general economic information and advice, general economic statistical forecasting services and industry studies, pursuant to § 225.25(b)(4)(iv) of the Board's Regulation Y, and in providing advice, including rendering fairness opinions and providing valuation services, in connection with mergers, acquisitions, divestitures, joint ventures, leveraged buyouts, recapitalizations, capital structurings, and financing transactions (including private and public financing and loan syndications); and conducting financial feasibility studies, pursuant to § 225.25(b)(4)(vi) of the Board's Regulation Y. These activities, currently limited in geographic scope, will be expanded to nationwide.

In connection with this application Capital Corp of the West, Merced, California, also has applied to engage *de novo* through its subsidiary Capital West Group, Inc., Merced, California, in providing management consulting advice to nonaffiliated financial institutions, and will include, but is not limited to, providing services associated with assisting with organizational planning; assisting with strategic planning and assessments; business plan implementation and monitoring; presenting Board of Director education programs; and facilitating Board of Directors and management retreats, pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 1, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–17245 Filed 7–5–96; 8:45 am]

BILLING CODE 6210–01–F

Consumer Advisory Council; Solicitation of Nominations for Membership

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board is inviting the public to nominate qualified individuals for appointment to its Consumer Advisory Council, whose membership represents consumer and community interests and the financial services industry. Eight new members will be selected for three-year terms that will begin in January 1997. The Board expects to announce the selection of new members by year-end 1996.

DATES: Nominations should be received by August 31, 1996.

ADDRESSES: Nominations should be submitted in writing to Dolores S. Smith, Associate Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FOR FURTHER INFORMATION CONTACT: Deanna Aday-Keller, Secretary to the Council, Division of Consumer and Community Affairs, (202) 452–6470. For Telecommunications Device for the Deaf (TTD) users *only*: Dorothea Thompson, (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Consumer Advisory Council was established in 1976, at the direction of the Congress, to advise the Federal Reserve Board on the exercise of its duties under the Consumer Credit Protection Act and on other consumer-related matters. The Council by law represents the interests both of consumers and of the financial community (15 USC 1691(b)). Under the Rules of Organization and Procedure of the Consumer Advisory Council (12 CFR 267.3), members serve three-year terms that are staggered to provide the Council with continuity.

New members will be selected for terms beginning January 1, 1997, to replace members whose terms expire this year. *Nomination letters should include information about past and present positions held by the nominee; a description of special knowledge, interests or experience related to community reinvestment, consumer credit, or other consumer financial services; and the nominee's address and telephone number.* Individuals may nominate themselves.

The Board is interested in candidates who have some familiarity with community reinvestment or consumer financial services and who are willing to express their viewpoints. Candidates do not have to be experts on all levels of community reinvestment or consumer financial services, but they should possess some basic knowledge of the area. They must be able and willing to make the necessary time commitment to prepare for and attend meetings (usually for two days, including committee meetings) three times a year.

In making the appointments, the Board will seek to complement the background of continuing Council members in terms of affiliation and geographic representation, and to ensure the representation of women and minority groups. The Board expects to announce its selection of new members by year-end.

Council members whose terms end as of December 31, 1996, are:

Katharine W. McKee, Associate Director, Center for Community Self-Help Durham, North Carolina

Alvin J. Cowans, President and CEO, McCoy Federal Credit Union, Orlando, Florida

Elizabeth G. Flores, Consultant, Laredo, Texas

Anne B. Shlay, Associate Director, Institute for Public Policy Studies, Temple University, Philadelphia, Pennsylvania

Reginald J. Smith, President, UMB Mortgage Company, Kansas City, Missouri

John E. Taylor, President and CEO, The National Community, Reinvestment Coalition , Washington, D.C.

Lorraine VanEtten, Vice President and Community, Lending Officer, Standard Federal Bank of Troy, Troy, Michigan

Lily K. Yao, Chairman and CEO, Pioneer Federal Savings Bank, Honolulu, Hawaii

Council members whose terms continue through 1997 or 1998 are:

Richard S. Amador, President and CEO, CHARO Community Development, Corporation, Los Angeles, California—December 31, 1998

Thomas R. Butler, President and Chief Operating Officer, NOVUS Services, Inc., Riverwoods, Illinois—December 31, 1997

Robert A. Cook, Partner, Venable, Baetjer and Howard, Baltimore, Maryland—December 31, 1997

Heriberto Flores, President and CEO, Brightwood Development Corporation, Springfield, Massachusetts—December 31, 1998

Emanuel Freeman, President, Greater Germantown Housing, Development Corporation, Philadelphia, Pennsylvania—December 31, 1997

David C. Fynn, Regulatory Risk Manager, National City Corporation, Cleveland, Ohio—December 31, 1997

Robert G. Greer, Tangleword Corporation, Houston, Texas—December 31, 1997

Kenneth R. Harney, Journalist, Washington Post Writers Group, Chevy Chase, Maryland—December 31, 1997

Gail K. Hillebrand, Litigation Counsel, West Coast Regional Office, Consumers Union of U.S., Inc., San Francisco, California—December 31, 1997

Terry Jorde, President and CEO, Towner County State Bank, Cando, North Dakota—December 31, 1997

Francine Justa, Executive Director, Neighborhood Housing Services, of New York, New York, New York—December 31, 1998

Eugene I. Lehrmann, President, American Association of Retired Persons, Madison, Wisconsin—December 31, 1997

Errol T. Louis, Treasurer/Manager, Central Brooklyn Federal Credit Union, Brooklyn, New York—December 31, 1998

William N. Lund, Acting Director, Office of Consumer Credit, Regulation, State of Maine, Augusta, Maine—December 31, 1998

Ronald A. Prill, Vice President, Credit, Dayton Hudson Corporation, Minneapolis, Minnesota—December 31, 1997

Lisa Rice-Coleman, Executive Director, Fair Housing Center, Toledo, Ohio—December 31, 1997

John R. Rines, President, General Motors, Acceptance Corporation, Detroit, Michigan—December 31, 1997

Margot Saunders, Managing Attorney, National Consumer Law Center, Washington, D.C.—December 31, 1998

Julia M. Seward, Vice President and Corporate Community Reinvestment Officer, Signet Bank, Richmond, Virginia—December 31, 1997

Gregory D. Squires, Department of Sociology, University of Wisconsin-Milwaukee, Milwaukee, Wisconsin—December 31, 1998

George P. Surgeon, President and Chief Executive Officer, Southern Development Bankcorporation, Arkadelphia, Arkansas—December 31, 1998

Theodore J. Wysocki, Jr., Executive Director, CANDO, Chicago, Illinois—December 31, 1998

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–17267 Filed 7–5–96; 8:45 am]

BILLING CODE 6210–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, July 10, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that the items be moved to the discussion agenda.

1. Proposed amendments to Regulation L (Management Official Interlocks) to conform to statutory changes made by the Riegle Community Development and Regulatory Improvement Act of 1994 and to reduce burden (proposed earlier for public comment; Docket No. R–0907).

2. Proposed determination that the Federal National Mortgage Association is a financial institution for purposes of the netting

VOL
61
ISS
131
JL
8
1996
UMI

provisions in the Federal Deposit Insurance Corporation Improvement Act of 1991.

Discussion Agenda

3. Proposed 1997 Federal Reserve Bank budget objective.

4. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: July 3, 1996

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–17402 Filed 7–03–96; 3:16 pm]

BILLING CODE 6210–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 10:30 a.m., Wednesday, July 10, 1996, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 3, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–17403 Filed 7–3–96; 3:16 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR D–238]

Locating Federal Facilities on Historic Properties in Our Nation's Central Cities

1. Purpose. This bulletin announces the policy concerning the location of Federal facilities on historic properties in our central cities.

2. Expiration date. This bulletin contains information of a continuing nature and will remain in effect until canceled.

3. Background. a. On May 21, 1996, President Clinton signed Executive Order 13006, entitled "Locating Federal Facilities on Historic Properties in Our Nation's Central Cities," to encourage "leasing, acquiring, locating, maintaining, or managing" Federal facilities on historic properties in our nation's central cities. So that federal agencies may benefit from GSA's real property management expertise, government-wide policy guidance is being provided concerning the acquisition and use of historic properties to be utilized by federal agencies where operationally appropriate and economically prudent.

b. The Public Buildings Cooperative Use Act of 1976 (40 U.S.C. 601a) directs the Administrator of General Services to "acquire and utilize space in suitable buildings of historic, architectural, or cultural significance, unless use of such space would not prove feasible and prudent compared with available alternatives." In the past, some Federal agencies have successfully promoted the acquisition and use of space in "buildings of historic, architectural, and cultural significance" by extending a 10 percent cost preference for these properties.

4. Action. In accordance with Executive Order 13006, and subject to the requirements of section 601 of title VI of the Rural Development Act of 1972, as amended, (42 U.S.C. 3122), and Executive Order 12072, when locating Federal facilities, Federal agencies shall give first consideration to historic properties within historic districts. If no such property is suitable, then Federal agencies shall consider other developed or undeveloped sites within historic districts. Federal agencies shall then consider historic properties outside of historic districts, if no suitable site within a district exists.

All Federal agencies must use procedures which implement the policy to extend first consideration to locations as prescribed in the Executive order. These implementation procedures should be consistent with the existing policy set forth in Executive Order 12072 (Federal Space Management), which extends first consideration to central business areas (CBAs), and should consider applicable requirements relating to full and open competition under the Competition in Contracting Act, 41 U.S.C. 253 *et seq.*

Federal agencies are encouraged to consider the Government's previous approach extending preference to historic properties. Where operationally appropriate and economically prudent, Federal agencies may extend first consideration to historic properties using various methods, including but not limited to extending a cost preference (similar to GSAR 570.701–4, Historic Preference); limiting competition to historic districts and/or historic properties; conducting market surveys and market analyses to identify historic properties or districts to be included in the area of consideration; providing notice of a requirement and an opportunity to respond to local, state or regional historic preservation officials; or a combination of the foregoing.

Dated: June 28, 1996.

G. Martin Wagner,

Associate Administrator, Office of Policy, Planning and Evaluation.

[FR Doc. 96–17208 Filed 7–5–96; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Specific List for Categorization of Laboratory Test Systems, Assays, and Examinations by Complexity; Notice of Additional Waived Laboratory Test Systems, Assays, and Examinations; and Notice of Announcement of Boards Approved by HHS

AGENCY: Centers for Disease Control and Prevention (CDC), HHS.

ACTION: Notice with comment period.

SUMMARY: Regulations codified at 42 CFR 493.17, implementing the Clinical Laboratory Improvement Amendments of 1988 (CLIA), Public Law 100–578, require that the Secretary provide for the categorization of specific laboratory test systems, assays, and examinations by level of complexity. The criteria for such categorizations also are set forth in those regulations.

This Notice announces the addition of test systems to the waived category, and announces approximately 2400 additional test systems, assays, and examinations that have been categorized and notified between March 15, 1995 and June 7, 1996. These categorizations were effective on the issue date of the notification letter sent to the manufacturer, and are subject to the 30 day comment period for this Notice.

This Notice also announces the waiver of those test systems, assays, and examinations that have met the CDC guidelines reflected in the proposed criteria for waiver as outlined in a Notice of Proposed Rulemaking, 42 CFR Part 493, HSQ–225–P, published September 13, 1995, in the **Federal Register** (60 FR 47534). These test systems and test system instructions may have been revised in order to meet the criteria for waiver. Please contact the manufacturer of the test system regarding this information.

This Notice is published with an opportunity for public comment. PHS reserves the right to reevaluate and recategorize a test based upon the comments it receives in response to the **Federal Register** notice.

In addition, this Notice announces HHS approval of two certification organizations, the American Board of Histocompatibility and Immunogenetics and the American Board of Medical Genetics, for qualifying individuals as laboratory directors and clinical consultants.

DATES: *Effective date:* All categorizations in this Notice were effective on the date of the test categorization notification letter sent to the manufacturer. Written comments on the tests initially categorized in this Notice will be considered if they are received at the address indicated below, by no later than 5 p.m. on August 7, 1996. CDC reserves the right to reevaluate and recategorize tests based on the comments received in response to this Notice.

ADDRESSES: Comments on the categorization of tests in this Notice should be addressed to Public Health Service, Attention: CLIA Federal Register Notice, Centers for Disease Control and Prevention, Mail Stop F–11, 4770 Buford Highway, NE, Atlanta, Georgia 30341–3724.

Requests for test complexity categorization should be submitted to: Attention: Test Categorization/CLIA, Centers for Disease Control and Prevention, Mail Stop F–11, 4770 Buford Highway, NE, Atlanta, Georgia 30341–3724.

Requests for waiver status should be submitted to: Attention: Request for Waiver Status/CLIA, Centers for Disease Control and Prevention, Mail Stop F–11, 4770 Buford Highway, NE, Atlanta, GA 30341–3724.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. Nor can we accept comments by telephone.

FOR FURTHER INFORMATION CONTACT: Rosemary C. Bakes-Martin, (770) 488–7655.

SUPPLEMENTARY INFORMATION: All requests for test categorization should be submitted to the CDC. CDC is reviewing submissions for test categorization concurrently with the FDA's review process for 510(k) clearance or PMA clearance. In order to assure timely review by CDC, manufacturers are requested to submit the package insert and 510(k) number for the product to CDC when the product is submitted to the FDA. However, CDC will not be able to issue the test categorization until the FDA has finished its review process. CDC is currently issuing test categorization notification letters to manufacturers within one week of the FDA 510(k) or Pre-Market Approval (PMA) clearance. Test categorizations are effective as of the date of notification to the applicant. The CDC will publish updates and revisions to the test categorization list periodically in the **Federal Register** with opportunity for comment. The CDC will also maintain an updated list of categorized tests electronically, available to the public via Internet. For further information regarding this capability, please call (770) 488–7655.

Additions to the Waived Category

The CDC is evaluating requests for waiver based on the guidelines for submission of waiver requests that were sent to manufacturers of laboratory testing devices and other interested parties through correspondence dated December 19, 1994. These guidelines reflect the proposed criteria for waiver that are outlined in the Notice of Proposed Rulemaking, 42 CFR Part 493, HSQ–225–P, published September 13, 1995 in the **Federal Register** (60 FR 47534).

The following test systems have been granted waived status based upon meeting these guidelines: (25112) HemoCue B-Glucose System for the analyte (2203) glucose; (10170) Cholestech L*D*X Test System for the analytes (1020) cholesterol, (6118) triglyceride, (2550) HDL cholesterol, and (2203) glucose; (58338) Serim PyloriTek Test Kit for the analyte (2512) Helicobacter pylori; and (52036) Quidel QuickVue In-Line One-Step Strep A Test for the analyte (5828) Streptococcus, group A (from throat only).

This Notice also announces that the (10165) ChemTrak AccuMeter, the (31014) Johnson & Johnson ADVANCED CARE Cholesterol Test, and the (07776) Boehringer Mannheim Accu-Chek InstantPlus Cholesterol for the analyte (1020) Cholesterol have been granted waived status following clearance by the FDA for home use.

In this Notice we also are verifying the complexity of two test system/analyte combinations. The test system, (04542) All Qualitative Color Comparison pH Testing for the analyte (0731) Body fluid (other than blood) pH, is the same as the waived dipstick color comparison products for qualitative pH measurement in urine. Therefore, this test system has been added to the list of waived tests.

The second test system, (58217) SmithKline Gastroccult for the analyte (2211) Gastric Occult Blood, is the same test system as that for fecal occult blood. Therefore, this test system is also now included on the list of waived procedures.

Comments and Responses

On May 15, 1995, a test list of approximately 3,000 additional test systems, assays, and examinations categorized by level of complexity was published in the **Federal Register** (60 FR 25944) with a 30 day comment period. Only one letter containing the following general comments was received in regard to this Notice.

Comment: The commenter expressed concern about the categorization of Growth/No Growth of Bacteria on Solid Culture Media (22167) as a moderate complexity test, and requested that this test system be recategorized as high complexity. The commenter used as an example the primary plating of a normally sterile joint fluid to a selective medium, such as Thayer-Martin, if *Neisseria gonorrhoeae* is suspected. The commenter stated that if *N. gonorrhoeae* were not present, Thayer-Martin may inhibit the growth of other significant organisms. If no other media had been inoculated at the time the Thayer-Martin was set up, the commenter suggested that a "no growth" result could incorrectly be reported.

Response: We disagree with the commenter. In this case, the result that should be reported is "no growth of *N. gonorrhoeae*", since Thayer-Martin media is selective for *Neisseria gonorrhoeae*. Under CLIA, laboratories are required to have protocols for the primary inoculation of cultures from specific sites to appropriate culture media. It is the responsibility of the

laboratory director to review and approve these protocols. A normally sterile joint fluid should be inoculated to a combination of the appropriate enriched, selective, and differential media to permit isolation and enhance the growth of any of a number of possible aerobic or anaerobic organisms that could be present in the fluid. For this culture type, it would not be appropriate to inoculate only Thayer-Martin media.

Primary inoculation of any microbiology culture media, in and of itself, is not considered a complete test system under the CLIA regulations, and is not categorized for complexity. The inoculation of the media becomes part of the test system when the primary media is observed to determine whether growth is present after an incubation period. It is the responsibility of the testing personnel to evaluate the growth or absence of growth. When solid culture media is evaluated, the amount of training, experience, interpretation, and judgment required to determine if any bacterial colonies are present, results in a score that is in the moderate complexity category. If, however, there is any growth that must be interpreted, or the medium being evaluated is a broth or liquid medium, such as thioglycollate, more training, experience, interpretation, and judgment is required, and the examination scores as a high complexity test.

Comment: The commenter requested clarification of the categorization of automated blood culture systems as moderate complexity. This commenter stated that although the loading and monitoring of these automated analyzers might be considered moderate complexity, the analysis of positive bottles detected on these instruments should be categorized as high complexity.

Response: We agree with the commenter. The categorization of automated blood culture systems as moderate complexity includes only the the loading and monitoring of these instruments to detect microbial growth in the bottles or vials. Once a signal for growth is detected, the evaluation of the growth, including Gram stain, and subculturing to isolate and identify the microorganism is the high complexity test system "identification from culture". On an automated blood culture instrument, if a specimen does not signal a positive result for growth, the reporting of a negative result is considered a moderate complexity test, provided no followup testing is performed.

Comment: Concern was expressed by the commenter that an inadequate response was provided in the May 15, 1995 **Federal Register** to a previous comment on the question of recategorization of "large" hematology analyzers and microscopy procedures from high to moderate complexity. The commenter pointed out that the complexity categorization should take into account whether or not the specimen being analyzed is a normal or abnormal sample.

Response: We disagree with the commenter that a "large" hematology analyzer requires a higher complexity categorization when the results of the sample being processed are abnormal rather than normal. The level of technical expertise needed to operate the analyzer does not vary with the results produced as the results are determined automatically by the instrument. If the analyst chooses to repeat those parameters of the hematologic evaluation that are considered to be abnormal, then the repeat testing would be categorized based upon the test methodology/procedure employed.

The categorization of the microscopic examination of a blood smear (differential) does take into account whether or not the cellular elements present in the sample are those found in normal peripheral blood. The manual differential performed on a normal blood smear requires the analyst to have a general knowledge of cellular morphology and maturation and is categorized as moderate complexity, whereas the manual differential performed on an abnormal specimen requires that the analyst have a comprehensive knowledge of normal/abnormal cellular morphology and maturation and is categorized as high complexity. A more detailed explanation of categorization of blood cell differentials can be found on page 39873 of the July 26, 1993 **Federal Register** (58 FR 39873).

Corrections

The test system (07689)Bayer GLUCOMETER ENCORE+ Blood Glucose Meter has been added to the list of waived procedures. This test system was previously categorized as moderate complexity. Recently, the FDA cleared this test system for home use and consequently it is now waived. Please note there has been a change in manufacturer name. This product was formerly listed under Ames.

Test System and Analyte Nomenclature

Due to advances in technology, the analyte (4024)Mycobacteria has been refined, and specific analytes have been designated for test systems that are used to identify specific mycobacterial organisms. These new analytes are: (4008)Mycobacterium avium, (4009)Mycobacterium avium complex, (4011)Mycobacterium gordonae, (4012)Mycobacterium intracellulare, (4014)Mycobacterium kansasii, and (4015)Mycobacterium tuberculosis complex. While these more specific analytes will replace the analyte (4024)Mycobacteria in most instances, the analyte (4024)Mycobacteria will continue to be used with test systems that are not used to identify a specific mycobacterial organism.

Also due to technological advances, a new analyte for thyroid stimulating hormone, (6155)Thyroid Stimulating Hormone (TSH) Third Generation, has been designated for the test systems that are able to detect this analyte.

As a point of clarification, an analyte will be designated specifically as a "urine" analyte when a test procedure requires a modification to the test procedure for the urine analyte as opposed to that required for the "serum" analyte.

Test System and Analyte Modifications

The development of new technology in the specialty of microbiology has necessitated a distinction in the categorization of aerobic/anaerobic culture identification (ID) and the categorization of antimicrobial susceptibility testing (AST). For clarification, we are deleting the test system (04372)All Organism ID and Antimicrobial Susceptibility Testing, and replacing it with two test systems (04636)All Conventional Organism Identification from Culture, and (04637)All Antimicrobial Susceptibility (disk diffusion/dilution) from Culture. These two test systems will be assigned to the analyte (0412)Aerobic &/or Anaerobic Organisms—Unlimited Sources, just as the previous test system (04372) was listed. We realize that there are a number of different techniques used for the conventional methods of identifying aerobic and anaerobic organisms from culture; and that these identification methods can be quite different from the processes used to perform standardized disk diffusion, agar or broth dilution antimicrobial susceptibility testing from culture. Although identification and susceptibility testing from culture are often performed together, they are distinct methods that may be done independently. In an effort to be specific, we are separating the two tests.

Dated: June 28, 1996.

David Satcher,

Director, Centers for Disease Control and Prevention (CDC).

List of Previously Unpublished Categorizations

The test categorization scoring scheme was based on an assessment of the complexity of the operation of the test procedure and not on an evaluation of data documenting the procedure's performance over time. Therefore, the categorization of a test system, assay or examination as moderate or high complexity should not be interpreted as an indication of the acceptability or unacceptability of the accuracy, precision or overall performance of the procedure.

Complexity: Moderate

Speciality/Subspeciality: Bacteriology

Analyte: Aerobic Organisms From Urine Specimens Only (0468)

Test System, Assay, Examination:
- Culture Kits, Inc. Uri-Two (colony count only) (10332)

Analyte: Chlamydia (1016)

Test System, Assay, Examination:
- BioStar Chlamydia OIA (direct antigen/visual) (07641)
- Johnson & Johnson CDI SureCell (direct antigen/visual) (31063)
- Quidel QuickVue Chlamydia Test (direct antigen/visual) (52026)

Analyte: Helicobacter Pylori (2512)

Test System, Assay, Examination:
- GI Supply HP–FAST (22175)

Analyte: Streptococcus, Group A (5810)

Test System, Assay, Examination:
- Abbott TestPack +Plus Strep A with OBC (dir. Ag/visual) (04625)
- Applied Biotech SureStep Strep A Test (dir antigen/visual) (04559)
- Johnson & Johnson CDI SureCell (direct antigen/visual) (31063)

Analyte: Streptococcus, Group A (From Throat Only) (5828)

Test System, Assay, Examination:
- Binax Strep A Test (direct antigen/visual) (07684)
- Henry Schein OneStep Strep A Test (25258)
- Medix Biotech Contrast Strep A (40223)
- Medix Biotech FAStrep A (40225)
- Medix Biotech Rapid Strep A (40222)
- Orion Diagnostica UniStep Strep A (46194)
- Quidel CARDS Q.S. Strep A (52035)
- Quidel Concise Performance Plus Strep A (52034)
- Syntron Bioresearch QuikStrip OneStep Strep A Strip Test (58384)
- Syntron QuikPac II OneStep Strep A (58316)

Analyte: Vibrio cholerae (6716)

Test System, Assay, Examination:
- New Horizons Cholera SMART (43088)

Speciality/Subspeciality: Endocrinology

Analyte: Adrenocorticotropic Hormone (ACTH) (0458)

Test System, Assay, Examination:
- Cirrus Diagnostics Immulite (10159)

Analyte: Cortisol (1032)

Test System, Assay, Examination:
- TOSOH A1A–1200 (61040)
- TOSOH A1A–1200DX (61154)
- TOSOH A1A–600 (61039)

Analyte: Cortisol, Urine (direct procedure) (1033)

Test System, Assay, Examination:
- Ciba Corning ACS 180 (10046)

Analyte: Estradiol (1605)

Test System, Assay, Examination:
- Organon Teknika AuraFlex (46152)
- Technicon Immuno 1 System (61042)

Analyte: HCG, Serum, Qualitative (2501)

Test System, Assay, Examination:
- Boehringer Mannheim AccuStat hCG/Diluent Reagent (07775)
- Excel Scientific OneStep Urine/Serum hCG Preg Module Test (16133)
- Horizon Diagnostics Pregna-Plus hCG (25225)
- Johnson & Johnson CDI SureCell hCG-Urine/Serum (31066)
- Medix Biotech CONTRAST hCG Urine/Serum Test (40215)
- Medix Biotech Rapid hCG (urine/serum) (40224)
- TCPI One Step Pregnancy hCG/Diluent Reagent (61234)
- Worldwide Medical First Check hCG (cassette) (70181)
- Wyntek Diagnostics OSOM hCG-Combo Test (70177)

Analyte: HCG, Total, Serum, Quantitative (2555)

Test System, Assay, Examination:
- Organon Teknika AuraFlex (46152)

Analyte: HCG, Urine, Qualitative (non-waived procedures) (2503)

Test System, Assay, Examination:
- Immunostics immuno/cept-d (28429)
- Immunostics immuno/cept-d Monoclonal Beta (28428)
- Organon Teknika AuraFlex (46152)

Analyte: HCG, Urine, Quantitative (2534)

Test System, Assay, Examination:
- PB Diagnostics Systems OPUS (49001)
- PB Diagnostics Systems OPUS Magnum (49097)
- PB Diagnostics Systems OPUS PLUS (49098)

Analyte: Human Growth Hormone (GH) (2547)

Test System, Assay, Examination:
- Cirrus Diagnostics Immulite (10159)

Analyte: Human Placental Lactogen (hPL) (2533)

Test System, Assay, Examination:
- Cirrus Diagnostics Immulite (10159)

Analyte: Insulin (2812)

Test System, Assay, Examination:
- Sanofi Pasteur Access Immunoassay System (58257)

Analyte: Progesterone (4014)

Test System, Assay, Examination:
- Abbott AxSYM (04532)
- Organon Teknika AuraFlex (46152)
- Sanofi Pasteur Access Immunoassay System (58257)
- Technicon Immuno 1 System (61042)

Analyte: Prolactin (4015)

Test System, Assay, Examination:
- Organon Teknika AuraFlex (46152)

Analyte: Sex Hormone Binding Globulin (5819)

Test System, Assay, Examination:
- Cirrus Diagnostics Immulite (10159)

Analyte: T Uptake (TU) (6156)

Test System, Assay, Examination:
- Boehringer Mannheim Hitachi 704 (07161)
- Boehringer Mannheim Hitachi 717 (07163)
- Boehringer Mannheim Hitachi 736 (07164)
- Boehringer Mannheim Hitachi 737 (07165)
- Boehringer Mannheim Hitachi 747 (07166)
- Boehringer Mannheim Hitachi 911 (07377)
- Boehringer Mannheim Hitachi 914 (07546)
- Boehringer Mannheim Hitachi 917 (07765)
- Ciba Corning 550 Express (10038)
- Olympus AU 600 (46110)
- Olympus Reply (46089)
- Roche Cobas Mira (55044)

Analyte: Thyroid Stimulating Hormone (TSH) (6106)

Test System, Assay, Examination:
- Franklin Diagnostics ThyroChek One-Step Rapid TSH (19025)

Analyte: Thyroid Stimulating Hormone (TSH) Third Generation (6155)

Test System, Assay, Examination:
- Cirrus Diagnostics Immulite (10159)

Analyte: Thyroid Stimulating Hormone—High Sens. (TSH–HS) (6108)

Test System, Assay, Examination:
- Abbott AxSYM (04532)

Analyte: Thyroxine (T4) (6109)

Test System, Assay, Examination:
- Beckman Synchron CX 4 Delta (07762)
- Beckman Synchron CX 5 Delta (07763)
- Beckman Synchron CX 7 Delta (07764)
- Bio-Chem Laboratory Systems ATAC 8000 (07658)
- Bio-Rad RADIAS System (07493)
- Biocircuits IOS (07745)
- Boehringer Mannheim Hitachi 917 (07765)
- Roche Cobas INTEGRA (55179)

Analyte: Thyroxine (T4), Neonatal (6123)

Test System, Assay, Examination:
- Bio-Rad RADIAS System (07493)

Analyte: Thyroxine Binding Globulin (TBG) (6110)

Test System, Assay, Examination:
- Cirrus Diagnostics Immulite (10159)

Analyte: Thyroxine Uptake (T4U) (TU) (6139)

Test System, Assay, Examination:
- Abbott AxSYM (04532)
- Biocircuits IOS (07745)

VOL 61 ISS 131 JL 8 1996 UMI

Analyte: Thyroxine, Free (FT4) (6111)

Test System, Assay, Examination:
PB Diagnostics Systems OPUS Magnum (49097)
PB Diagnostics Systems OPUS PLUS (49095)

Analyte: Triiodothyronine Uptake (T3U) (TU) (6120)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Roche Cobas INTEGRA (55179)

Analyte: Triiodothyronine, Free (FT3) (6121)

Test System, Assay, Examination:
Roche Cobas Core Automated System (55119)
Sanofi Pasteur Access Immunoassay System (58257)

Speciality/Subspeciality: General Chemistry

Analyte: Acid Phosphatase (0407)

Test System, Assay, Examination:
Instrumentation Laboratory ILAB 1800 (28323)
Instrumentation Laboratory ILAB 900 (28322)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT II (31030)

Analyte: Alanine Aminotransferase (ALT) [SGPT) (0404)

Test System, Assay, Examination:
Abaxis Piccolo Portable Blood Analyzer (04608)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT II (31030)
Johnson & Johnson CDI Ektachem DT SC Module (31031)
Roche Cobas INTEGRA (55179)
Select Medical Systems Selecta 20/60 (58349)

Analyte: Albumin (0414)

Test System, Assay, Examination:
Abaxis Piccolo Portable Blood Analyzer (04608)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT II (31030)
Johnson & Johnson CDI Ektachem DT SC Module (31031)
Roche Cobas INTEGRA (55179)
Select Medical Systems Selecta 20/60 (58349)

Analyte: Alkaline Phosphatase (ALP) (0416)

Test System, Assay, Examination:
Abaxis Piccolo Portable Blood Analyzer (04608)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT II (31030)
Johnson & Johnson CDI Ektachem DT SC Module (31031)
Roche Cobas INTEGRA (55179)
Select Medical Systems Selecta 20/60 (58349)

Analyte: Alpha-Hydroxybutyrate Dehydrogenase (HBDH) (0419)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)

Analyte: Ammonia, Plasma/Serum (0427)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT 60 (31029)
Johnson & Johnson CDI Ektachem DT II (31030)
Johnson & Johnson CDI Ektachem DT SC Module (31031)
Roche Cobas INTEGRA (55179)
Select Medical Systems Selecta 20/60 (58349)

Analyte: Amylase (0429)

Test System, Assay, Examination:
Abaxis Piccolo Portable Blood Analyzer (04608)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)

Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT 60 (31029)
Johnson & Johnson CDI Ektachem DT II (31030)
Roche Cobas INTEGRA (55179)
Select Medical Systems Selecta 20/60 (58349)

Analyte: Amylase, Pancreatic Isoenzymes (p-Amylase) (0500)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)

Analyte: Apolipoprotein A1 (0462)

Test System, Assay, Examination:
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Roche Cobas INTEGRA (55179)
Wako Diagnostics 30R (70002)

Analyte: Apolipoprotein B (0457)

Test System, Assay, Examination:
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Roche Cobas INTEGRA (55179)

Analyte: Aspartate Aminotransferase (AST) (SGOT) (0405)

Test System, Assay, Examination:
Abaxis Piccolo Portable Blood Analyzer (04608)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT 60 (31029)
Johnson & Johnson CDI Ektachem DT II (31030)
Johnson & Johnson CDI Ektachem DT SC Module (31031)
Roche Cobas INTEGRA (55179)
Select Medical Systems Selecta 20/60 (58349)

Analyte: Bilirubin, Direct (0704)

Test System, Assay, Examination:
Abaxis Piccolo Portable Blood Analyzer (04608)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT 60 (31029)
Johnson & Johnson CDI Ektachem DT II (31030)
Roche Cobas INTEGRA (55179)

Analyte: Bilirubin, Neonatal (0705)

Test System, Assay, Examination:
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT 60 (31029)
Johnson & Johnson CDI Ektachem DT II (31030)

Analyte: Bilirubin, Total (0706)

Test System, Assay, Examination:
Abaxis Piccolo Portable Blood Analyzer (04608)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT 60 (31029)
Johnson & Johnson CDI Ektachem DT II (31030)
Roche Cobas INTEGRA (55179)

Analyte: Blood Gases With pH (0708)

Test System, Assay, Examination:
AVL OMNI Combi Analyzer (04609)
Instrumentation Laboratory IL BGGE (IL 1660) (28438)
Nova Stat Profile Ultra A (43108)
Nova Stat Profile Ultra B (43109)
Nova Stat Profile Ultra C (43110)
Nova Stat Profile Ultra D (43111)
Nova Stat Profile Ultra E (43112)
Nova Stat Profile Ultra F (43115)
Nova Stat Profile Ultra G (43116)
Nova Stat Profile Ultra H (43117)
Nova Stat Profile Ultra I (43118)
Nova Stat Profile Ultra J (43119)
Nova Stat Profile Ultra K (43120)
Radiometer ABL System 605 (55196)
Radiometer ABL System 615 (55197)
Radiometer ABL System 625 (55198)
SenDx 100 pH, Blood Gas and Electrolyte Analysis System (58390)

Analyte: Blood pH (No Blood Gases) (0721)

Test System, Assay, Examination:
Radiometer BPH5 Blood pH System (55158)

Analyte: C-Peptide (1040)

Test System, Assay, Examination:
Cirrus Diagnostics Immulite (10159)
TOSOH A1A–1200 (61040)
TOSOH A1A–1200DX (61154)
TOSOH A1A–600 (61039)

Analyte: Calcium, Ionized (1004)

Test System, Assay, Examination:
AVL OMNI Combi Analyzer (04609)
Nova Stat Profile Ultra B (43109)
Nova Stat Profile Ultra C (43110)
Nova Stat Profile Ultra I (43118)
Nova Stat Profile Ultra J (43119)
Nova Stat Profile Ultra K (43120)
Radiometer ABL System 605 (55196)
Radiometer ABL System 615 (55197)
Radiometer ABL System 625 (55198)
Radiometer EML 105 (55187)
SenDx 100 pH, Blood Gas and Electrolyte Analysis System (58390)

Analyte: Calcium, Total (1005)

Test System, Assay, Examination:
Abaxis Piccolo Portable Blood Analyzer (04608)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)

Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT II (31030)
Johnson & Johnson CDI Ektachem DT SC Module (31031)
Roche Cobas INTEGRA (55179)

Analyte: Carbon Dioxide, Total (CO_2) (1003)

Test System, Assay, Examination:
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT II (31030)
Johnson & Johnson CDI Ektachem DTE Module (31033)
Roche Cobas INTEGRA (55179)

Analyte: Cerebrospinal Fluid (CSF) Protein (1014)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT II (31030)
Johnson & Johnson CDI Ektachem DTE Module (31033)
Roche Cobas INTEGRA (55179)

AVL OMNI Combi Analyzer (04609)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT II (31030)
Johnson & Johnson CDI Ektachem DTE Module (31033)
Medica EasyStat Na/K/Cl (40249)
Nova Stat Profile Ultra F (43115)
Nova Stat Profile Ultra G (43116)
Nova Stat Profile Ultra H (43117)
Radiometer ABL System 605 (55196)
Radiometer ABL System 615 (55197)
Radiometer ABL System 625 (55198)
Radiometer EML 105 (55187)
Roche Cobas INTEGRA (55179)
Select Medical Systems Selecta 20/60 (58349)

Analyte: Cholesterol (1020)

Test System, Assay, Examination:
Abaxis Piccolo Portable Blood Analyzer (04608)
Actimed Laboratories ENA.C.T Total Cholesterol Test (04573)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Accutrend GC Cholesterol Test (07600)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)

Johnson & Johnson CDI Ektachem DT II (31030)
Roche Cobas INTEGRA (55179)
Select Medical Systems Selecta 20/60 (58349)

Analyte: Cholinesterase (1021)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)
Instrumentation Laboratory ILAB 1800 (28323)
Instrumentation Laboratory ILAB 900 (28322)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT II (31030)
Johnson & Johnson CDI Ektachem DT SC Module (31031)
Roche Cobas INTEGRA (55179)

Analyte: Creatine Kinase (CK) (1034)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT II (31030)
Johnson & Johnson CDI Ektachem DT SC Module (31031)
PrismaSystems PROCHEM (49105)
Roche Cobas INTEGRA (55179)
Select Medical Systems Selecta 20/60 (58349)

Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Instrumentation Laboratory ILAB 1800 (28323)
Instrumentation Laboratory ILAB 900 (28322)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT II (31030)
Johnson & Johnson CDI Ektachem DT SC Module (31031)
Organon Teknika AuraFlex (46152)
Princeton BioMeditech Cardiac STATus CK-MB/Myoglobin (49156)
Roche Cobas INTEGRA (55179)
Technicon Immuno 1 System (61042)

Analyte: Creatinine (1035)

Test System, Assay, Examination:
Abaxis Piccolo Portable Blood Analyzer (04608)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT 60 (31029)
Johnson & Johnson CDI Ektachem DT II (31030)

Analyte: Deoxyhemoglobin (Reduced Hemoglobin) (1318)

Test System, Assay, Examination:
AVL OMNI Combi Analyzer (04609)
Instrumentation Laboratory IL682 CO-Oximeter System (28368)
Nova Co-Oximeter (43114)
Radiometer ABL 520 (55055)
Radiometer ABL 620 (55137)
Radiometer ABL System 625 (55198)

Analyte: Ferritin (1902)

Test System, Assay, Examination:
Behring Nephelometer (07273)
Behring Nephelometer 100 (07272)
Behring Nephelometer II (07563)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Schiapparelli Biosystems ACE (58288)

Analyte: Folate (Folic acid) (1907)

Test System, Assay, Examination:
Abbott IMX (04056)
Schiapparelli Biosystems ACE (58288)
Technicon Immuno 1 System (61042)

Analyte: Folate, Red Blood Cell (RBC Folate) (1930)

Test System, Assay, Examination:
Technicon Immuno 1 (with UIW) (61229)

Analyte: Fructosamine (1914)

Test System, Assay, Examination:
Bio-Chem Laboratory Systems ATAC 6000 (07189)
Boehringer Mannheim Hitachi 917 (07765)
LXN Fructosamine Test System (37106)
Roche Cobas INTEGRA (55179)

Analyte: Gamma Glutamyl Transferase (GGT) (2201)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT II (31030)
Johnson & Johnson CDI Ektachem DT SC Module (31031)
Roche Cobas INTEGRA (55179)

Abaxis Piccolo Portable Blood Analyzer (04608)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Instrumentation Laboratory IL BGGE (IL 1660) (28438)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT 60 (31029)
Johnson & Johnson CDI Ektachem DT II (31030)
Nova Stat Profile Ultra B (43109)
Nova Stat Profile Ultra C (43110)
Nova Stat Profile Ultra G (43116)
Nova Stat Profile Ultra H (43117)
Nova Stat Profile Ultra J (43119)
Nova Stat Profile Ultra K (43120)
Radiometer ABL System 605 (55196)
Radiometer ABL System 615 (55197)
Radiometer ABL System 625 (55198)
Radiometer EML 105 (55187)
Roche Cobas INTEGRA (55179)
Select Medical Systems Selecta 20/60 (58349)

Analyte: Glutaraldehyde (2224)

Test System, Assay, Examination:
Boehringer Mannheim Hitachi 717 (07163)

Analyte: Glycated Hemoglobin, Total (2221)

Test System, Assay, Examination:
Bio-Rad Variant (07498)
Helena Laboratories ColumnMate II (25198)

Analyte: Glycosylated Hemoglobin (Hgb A1C) (2204)

Test System, Assay, Examination:
Boehringer Mannheim Hitachi 917 (07765)

Analyte: HDL Cholesterol (2550)

Test System, Assay, Examination:
Abbott Spectrum (Canyon Cantrol tube) (04610)
Abbott Spectrum (Ref Diag Magnetic HDL Sep) (04595)
Abbott Spectrum (Sigma ISOSPIN) (04632)
Abbott Spectrum EFX (Ref Diag Magnetic HDL Sep) (04596)

VOL
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Baxter Paramax (Ref Diag Magnetic HDL Sep) (07605)
Beckman CX (Canyon Cantrol tube) (07646)
Beckman Synchron CX 4 (Ref Diag Magnetic HDL Sep) (07606)
Beckman Synchron CX 4 (Sigma ISOSPIN) (07698)
Beckman Synchron CX 4 CE (Sigma ISOSPIN) (07699)
Beckman Synchron CX 5 (Ref Diag Magnetic HDL Sep) (07607)
Beckman Synchron CX 5 (Sigma ISOSPIN) (07700)
Beckman Synchron CX 5 CE (Ref Diag Magnetic HDL Sep) (07609)
Beckman Synchron CX 5 CE (Sigma ISOSPIN) (07701)
Beckman Synchron CX 7 (Ref Diag Magnetic HDL Sep) (07608)
Bio-Chem Laboratory Systems ATAC 6000 (Sigma ISOSPIN) (07702)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi (Canyon Cantrol tube) (07647)
Boehringer Mannheim Hitachi 704 (Ref Diag Magnetic HDL Sep) (07610)
Boehringer Mannheim Hitachi 704 (Sigma ISOSPIN) (07703)
Boehringer Mannheim Hitachi 705 (Ref Diag Magnetic HDL Sep) (07611)
Boehringer Mannheim Hitachi 705 (Sigma ISOSPIN) (07704)
Boehringer Mannheim Hitachi 717 (Ref Diag Magnetic HDL Sep) (07612)
Boehringer Mannheim Hitachi 717 (Sigma ISOSPIN) (07705)
Boehringer Mannheim Hitachi 736 (Ref Diag Magnetic HDL Sep) (07613)
Boehringer Mannheim Hitachi 736 (Sigma ISOSPIN) (07706)
Boehringer Mannheim Hitachi 737 (Ref Diag Magnetic HDL Sep) (07614)
Boehringer Mannheim Hitachi 737 (Sigma ISOSPIN) (07707)
Boehringer Mannheim Hitachi 747 (Ref Diag Magnetic HDL Sep) (07615)
Boehringer Mannheim Hitachi 747 (Sigma ISOSPIN) (07708)
Boehringer Mannheim Hitachi 911 (Ref Diag Magnetic HDL Sep) (07616)
Boehringer Mannheim Hitachi 911 (Sigma ISOSPIN) (07709)
Boehringer Mannheim Hitachi 914 (Ref Diag Magnetic HDL Sep) (07617)
ChemTrak AccuMeter HDL Cholesterol Test (10311)
Ciba Corning 550 Express (Ref Diag Magnetic HDL Sep) (10288)
Ciba Corning 550 Express (Sigma ISOSPIN) (10322)
Ciba Corning 570 Alliance (Sigma ISOSPIN) (10323)
Coulter Dacos (Ref Diag Magnetic HDL Sep) (10289)
Coulter Dacos (Sigma ISOSPIN) (10324)
Du Pont ACA (Ref Diag Magnetic HDL Sep) (13360)
Du Pont Dimension (Ref Diag Magnetic HDL Sep) (13361)
EM Diagnostic Systems EPOS (Sigma ISOSPIN) (16113)
Electronucleonics Gem-Profiler (Sigma ISOSPIN) (16114)
Electronucleonics Gemini (Sigma ISOSPIN) (16115)
Electronucleonics Gemstar (Sigma ISOSPIN) (16116)
Electronucleonics Gemstar II (Sigma ISOSPIN) (16117)
Instrumentation Lab. ILAB 900 (Ref Diag Magnetic HDL Sep) (28378)
Instrumentation Lab.IL Monarch 1000 (Ref Diag Magn HDL Sep) (28375)
Instrumentation Lab.IL Monarch 2000 (Ref Diag Magn HDL Sep) (28376)
Instrumentation Lab.IL Monarch Plus (Ref Diag Magn HDL Sep) (28377)
Instrumentation Laboratory IL Monarch 1000 (Sigma ISOSPIN) (28414)
Instrumentation Laboratory IL Monarch 2000 (Sigma ISOSPIN) (28415)
Instrumentation Laboratory IL Monarch Plus (Sigma ISOSPIN) (28416)
Instrumentation Laboratory ILAB 1800 (Sigma ISOSPIN) (28421)
Instrumentation Laboratory ILAB 900 (Sigma ISOSPIN) (28420)
Johnson & Johnson CDI Ektachem (Canyon Cantrol tube) (31034)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 250 (DMA One Shots) (31035)
Johnson & Johnson CDI Ektachem 250 (MHS SPINPRO) (31037)
Johnson & Johnson CDI Ektachem 250 (Ref Diag Magn HDL Sep) (31038)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 400 (DMA One Shots) (31039)
Johnson & Johnson CDI Ektachem 400 (MHS SPINPRO) (31040)
Johnson & Johnson CDI Ektachem 400 (Ref Diag Magn HDL Sep) (31041)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 500 (DMA One Shots) (31042)
Johnson & Johnson CDI Ektachem 500 (MHS SPINPRO) (31044)
Johnson & Johnson CDI Ektachem 500 (Ref Diag Magn HDL Sep) (31045)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 550 XRC Anal (DMA One Shots) (31046)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 (DMA One Shots) (31047)
Johnson & Johnson CDI Ektachem 700 (MHS SPINPRO) (31049)
Johnson & Johnson CDI Ektachem 700 (Ref Diag Magn HDL Sep) (31050)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 C Series (DMA One Shots) (31051)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 P (DMA One Shots) (31052)
Johnson & Johnson CDI Ektachem 700 P (MHS SPINPRO) (31053)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 700 XR (DMA One Shots) (31054)
Johnson & Johnson CDI Ektachem 700 XR (MHS SPINPRO) (31055)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 750 XRC (DMA One Shots) (31056)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT 60 (31029)
Johnson & Johnson CDI Ektachem DT 60 (DMA One Shots) (31057)
Johnson & Johnson CDI Ektachem DT 60 (MHS SPINPRO) (31059)
Johnson & Johnson CDI Ektachem DT 60 (Ref Diag Magn HDL Sep) (31060)
Johnson & Johnson CDI Ektachem DT II (31030)
Johnson & Johnson CDI Ektachem DT II (DMA One Shots) (31061)
Johnson & Johnson CDI Ektachem DT II (Ref Diag Magn HDL Sep) (31062)
Kodak Ektachem (Canyon Cantrol tube) (34088)
Kodak Ektachem 250 (Ref Diag Magnetic HDL Sep) (34072)
Kodak Ektachem 400 (Ref Diag Magnetic HDL Sep) (34073)
Kodak Ektachem 500 (Ref Diag Magnetic HDL Sep) (34074)
Kodak Ektachem 700 (Ref Diag Magnetic HDL Sep) (34075)
Kodak Ektachem DT 60 (Ref Diag Magnetic HDL Sep) (34070)
Kodak Ektachem DT II (Ref Diag Magnetic HDL Sep) (34071)
LSI ASCA Chemistry System (Sigma ISOSPIN) (37103)
Olympus AU 5000 (Ref Diag Magnetic HDL Sep) (46171)
Olympus AU 5000 (Sigma ISOSPIN) (46196)
Olympus AU 5021 (Sigma ISOSPIN) (46197)
Olympus AU 5031 (Sigma ISOSPIN) (46198)
Olympus AU 5041 (Sigma ISOSPIN) (46199)
Olympus AU 5061 (Sigma ISOSPIN) (46200)
Olympus AU 5121 (Sigma ISOSPIN) (46201)
Olympus AU 5131 (Sigma ISOSPIN) (46202)
Olympus AU 5200 (Ref Diag Magnetic HDL Sep) (46172)
Olympus AU 5200 (Sigma ISOSPIN) (46203)
Olympus AU 5211 (Sigma ISOSPIN) (46204)
Olympus AU 5221 (Sigma ISOSPIN) (46205)
Olympus AU 5223 (Sigma ISOSPIN) (46206)
Olympus AU 5231 (Sigma ISOSPIN) (46207)
Olympus AU 800 (Ref Diag Magnetic HDL Sep) (46170)
Olympus AU 800 (Sigma ISOSPIN) (46208)
Olympus Demand (Ref Diag Magnetic HDL Sep) (46169)
Olympus Demand (Sigma ISOSPIN) (46209)
Olympus Reply (Ref Diag Magnetic HDL Sep) (46168)
Olympus Reply (Sigma ISOSPIN) (46210)
Olympus Reply/AU560 (Sigma ISOSPIN) (46211)

Prisma Systems PROCHEM (Ref Diag Magnetic HDL Sep) (49128)
Roche Cobas (Canyon Cantrol tube) (55160)
Roche Cobas Bio (Ref Diag Magnetic HDL Sep) (55148)
Roche Cobas Bio (Sigma ISOSPIN) (55180)
Roche Cobas FARA (Ref Diag Magnetic HDL Sep) (55150)
Roche Cobas FARA (Sigma ISOSPIN) (55181)
Roche Cobas FARA II (Sigma ISOSPIN) (55182)
Roche Cobas INTEGRA (55179)
Roche Cobas Mira (Ref Diag Magnetic HDL Sep) (55149)
Roche Cobas Mira (Sigma ISOSPIN) (55183)
Roche Cobas Mira Plus (Sigma ISOSPIN) (55184)
Roche Cobas Mira S (Sigma ISOSPIN) (55185)
Schiapparelli Biosystems ACE (Ref Diag Magnetic HDL Sep) (58354)
Technicon AXON (Ref Diag Magnetic HDL Sep) (61170)
Technicon AXON (Sigma ISOSPIN) (61214)
Technicon Assist (Sigma ISOSPIN) (61213)
Technicon Chem 1 (Ref Diag Magnetic HDL Sep) (61175)
Technicon DAX 24 (Ref Diag Magnetic HDL Sep) (61171)
Technicon DAX 48 (Ref Diag Magnetic HDL Sep) (61172)
Technicon DAX 72 (Ref Diag Magnetic HDL Sep) (61173)
Technicon DAX 96 (Ref Diag Magnetic HDL Sep) (61174)
Technicon RA 1000 (Ref Diag Magnetic HDL Sep) (61177)
Technicon RA 1000 (Sigma ISOSPIN) (61215)
Technicon RA 2000 (Ref Diag Magnetic HDL Sep) (61178)
Technicon RA 500 (Ref Diag Magnetic HDL Sep) (61176)
Technicon RA 500 (Sigma ISOSPIN) (61216)
Technicon RA XT (Ref Diag Magnetic HDL Sep) (61179)
Technicon RA XT (Sigma ISOSPIN) (61217)
Wako Diagnostics 30R (Ref Diag Magnetic HDL Sep) (70170)
Wako Diagnostics 30R (Sigma ISOSPIN) (70176)

Analyte: Haptoglobin (2511)

Test System, Assay, Examination:
Roche Cobas INTEGRA (55179)

Analyte: Hemoglobin F (2516)

Test System, Assay, Examination:
Radiometer ABL 520 (55055)
Radiometer ABL 620 (55137)
Radiometer ABL System 625 (55198)

Analyte: Hemoglobin Fractions (2544)

Test System, Assay, Examination:
Bio-Rad Variant (07498)
Primus Variant System 99 (49159)

Analyte: Iron (2814)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT SC Module (31031)
Roche Cobas INTEGRA (55179)

Analyte: Iron Binding Capacity, Unsat. (UIBC) No Pretreat. (2823)

Test System, Assay, Examination:
Boehringer Mannheim Hitachi 917 (07765)
Olympus AU 5000 (46001)
Olympus AU 5200 (46143)
Olympus AU 800 (46110)
Roche Cobas INTEGRA (55179)
Roche Cobas Mira (55044)
Roche Cobas Mira Plus (55096)
Roche Cobas Mira S (55045)

Analyte: LDL Cholesterol (3748)

Test System, Assay, Examination:
Abbott Spectrum (Genzyme immunosep tube) (04612)
Abbott Spectrum EPX (Genzyme immunosep tube) (04611)
Abbott Spectrum II (Genzyme immunosep tube) (04613)
Abbott VP (Genzyme immunosep tube) (04614)
Baxter Paramax (Genzyme immunosep tube) (07657)
Beckman Synchron CX 4 (Genzyme immunosep tube) (07659)
Beckman Synchron CX 5 (Genzyme immunosep tube) (07660)
Bio-Chem Lab. Sys. ATAC 2000/2100 (Genzyme immunosep tube) (07656)
Bio-Chem Lab. Sys. ATAC 6000 (Genzyme immunosep tube) (07655)
Boehringer Mannheim Hitachi 704 (Genzyme immunosep tube) (07648)
Boehringer Mannheim Hitachi 705 (Genzyme immunosep tube) (07649)
Boehringer Mannheim Hitachi 717 (Genzyme immunosep tube) (07650)
Boehringer Mannheim Hitachi 736 (Genzyme immunosep tube) (07651)
Boehringer Mannheim Hitachi 737 (Genzyme immunosep tube) (07652)
Boehringer Mannheim Hitachi 747 (Genzyme immunosep tube) (07653)
Boehringer Mannheim Hitachi 911 (Genzyme immunosep tube) (07654)
Ciba Corning 550 Express (Genzyme immunosep tube) (10302)
Coulter Dacos (Genzyme immunosep tube) (10301)
Coulter Optichem 120 (Genzyme immunosep tube) (10303)
DuPont Dimension (Genzyme immunosep tube/Dedicated channel) (13377)
DuPont Dimension AR (Genzyme immunosep tube/Dedicated chan) (13378)
EM Diagnostic Systems EPOS (Genzyme immunosep tube) (16101)
Electronucleonics Gem-Profiler (Genzyme immunosep tube) (16102)
Electronucleonics GemStar (Genzyme immunosep tube) (16103)
Electronucleonics GemStar II (Genzyme immunosep tube) (16104)
Instrumentation Lab.IL Monarch 1000(Genzyme immunosep tube) (28391)
Instrumentation Lab.IL Monarch 2000(Genzyme immunosep tube) (28393)
Instrumentation Lab.IL Monarch Plus(Genzyme immunosep tube) (28392)
Johnson & Johnson CDI Ektachem DT II (31030)
Kodak Ektachem DT II (34057)
LSI ASCA Chemistry System (Genzyme Immunosep tube) (37099)
Olympus AU 5000 (Genzyme immunosep tube) (46189)
Olympus AU 800 (Genzyme immunosep tube) (46190)
Olympus Demand (Genzyme immunosep tube) (46191)
Olympus Reply (Genzyme immunosep tube) (46192)
Roche Cobas Bio (Genzyme immunosep tube) (55161)
Roche Cobas FARA (Genzyme immunosep tube) (55162)
Roche Cobas FARA II (Genzyme immunosep tube) (55163)
Roche Cobas Mira (Genzyme immunosep tube) (55164)
Schiapparelli Biosystems ACE (Genzyme immunosep tube) (58366)
Technicon AXON (Genzyme immunosep tube) (61193)
Technicon Assist (Genzyme immunosep tube) (61188)
Technicon Chem 1 (Genzyme immunosep tube/Dedicated channel) (61189)
Technicon RA 1000 (Genzyme immunosep tube) (61191)
Technicon RA 500 (Genzyme immunosep tube) (61190)
Technicon RA XT (Genzyme immunosep tube) (61192)

Analyte: Lactate Dehydrogenase (LDH) (3701)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)

VOL 61 ISS 131 JL 8 1996 UMI

Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT II (31030)
Johnson & Johnson CDI Ektachem DT SC Module (31031)
Roche Cobas INTEGRA (55179)
Select Medical Systems Selecta 20/60 (58349)

Analyte: Lactate Dehydrogenase Heart Fraction (LDH–1) (3702)

Test System, Assay, Examination:
Boehringer Mannheim Hitachi 917 (07765)
Roche Cobas INTEGRA (55179)

Analyte: Lactic Acid (Lactate) (3704)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Accusport Lactate Monitoring System (07663)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT 60 (31029)
Johnson & Johnson CDI Ektachem DT II (31030)
Nova Stat Profile Ultra A (43108)
Nova Stat Profile Ultra C (43110)
Nova Stat Profile Ultra H (43117)
Nova Stat Profile Ultra K (43120)

Analyte: Leucine Aminopeptidase (LAP) (3706)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)

Analyte: Lipase (3711)

Test System, Assay, Examination:
• Beckman Synchron CX 4 CE (07174)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 CE (07491)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 (07073)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)
Instrumentation Laboratory ILAB 1800 (28323)
Instrumentation Laboratory ILAB 900 (28322)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT 60 (31029)
Johnson & Johnson CDI Ektachem DT II (31030)
Roche Cobas INTEGRA (55179)
Select Medical Systems Selecta 20/60 (58349)

Analyte: Magnesium (4002)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT 60 (31029)
Johnson & Johnson CDI Ektachem DT II (31030)
Roche Cobas INTEGRA (55179)
Select Medical Systems Selecta 20/60 (58349)

Analyte: Magnesium, Ionized (4018)

Test System, Assay, Examination:
Nova Stat Profile Ultra C (43110)

Analyte: Methemoglobin (4032)

Test System, Assay, Examination:
AVL OMNI Combi Analyzer (04609)
Instrumentation Laboratory IL682 CO-Oximeter System (28368)
Nova Co-Oximeter (43114)
Radiometer ABL 520 (55055)
Radiometer ABL 620 (55137)
Radiometer ABL System 625 (55198)
Radiometer OSM 3 (55059)

Analyte: Microprotein, CSF (4026)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)

Analyte: Microprotein, Urine (4027)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)

Analyte: Myoglobin (4023)

Test System, Assay, Examination:
Princeton BioMeditech Cardiac STATus CK–MB/Myoglobin (49156)
Sanofi Pasteur Access Immunoassay System (58257)

Analyte: Oxyhemoglobin/Oxygen Saturation (4804)

Test System, Assay, Examination:
A–VOX Systems AVOXimeter 1000 (04537)
A–VOX Systems AVOXimeter 2000 (04538)
AVL OMNI Combi Analyzer (04609)
Instrumentation Laboratory IL682 CO-Oximeter System (28368)
Nova Co-Oximeter (43114)
Nova Stat Profile Ultra A (43108)
Nova Stat Profile Ultra B (43109)
Nova Stat Profile Ultra C (43110)
Nova Stat Profile Ultra E (43112)
Nova Stat Profile Ultra F (43115)
Nova Stat Profile Ultra G (43116)
Nova Stat Profile Ultra H (43117)
Nova Stat Profile Ultra I (43118)
Nova Stat Profile Ultra J (43119)
Nova Stat Profile Ultra K (43120)
Radiometer ABL 510 (55054)
Radiometer ABL System 615 (55197)
Radiometer ABL System 625 (55198)

Analyte: Phosphorus (4906)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT 60 (31029)
Johnson & Johnson CDI Ektachem DT II (31030)
Roche Cobas INTEGRA (55179)
Select Medical Systems Selecta 20/60 (58349)

Analyte: Potassium (4010)

Test System, Assay, Examination:
AVL OMNI Combi Analyzer (04609)
Abaxis Piccolo Portable Blood Analyzer (04608)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Du Pont Na+K+Plus Analyzer (13394)
Instrumentation Laboratory IL BGGE (IL 1660) (28438)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT II (31030)
Johnson & Johnson CDI Ektachem DTE Module (31033)
Medica EasyStat Na/K (40248)
Medica EasyStat Na/K/Cl (40249)
Nova Stat Profile Ultra B (43109)
Nova Stat Profile Ultra C (43110)
Nova Stat Profile Ultra F (43115)
Nova Stat Profile Ultra G (43116)
Nova Stat Profile Ultra H (43117)
Nova Stat Profile Ultra I (43118)
Nova Stat Profile Ultra J (43119)
Nova Stat Profile Ultra K (43120)
Radiometer ABL System 605 (55196)
Radiometer ABL System 615 (55197)
Radiometer ABL System 625 (55198)
Radiometer EML 105 (55187)
Roche Cobas INTEGRA (55179)
SenDx 100 pH, Blood Gas and Electrolyte Analysis System (58390)

Analyte: Protein, Total (4921)

Test System, Assay, Examination:
Abaxis Piccolo Portable Blood Analyzer (04608)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT 60 (31029)
Johnson & Johnson CDI Ektachem DT II (31030)
Roche Cobas INTEGRA (55179)
Select Medical Systems Selecta 20/60 (58349)

Analyte: Protein, Total (urine) (4972)

Test System, Assay, Examination:
Boehringer Mannheim Hitachi 917 (07765)

Analyte: Reduced Hemoglobin (Deoxyhemoglobin) (5523)

Test System, Assay, Examination:
Radiometer OSM 3 (55059)

Analyte: Sodium (5805)

Test System, Assay, Examination:
AVL OMNI Combi Analyzer (04609)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Du Pont Na+K+Plus Analyzer (13394)
Instrumentation Laboratory IL BGGE (IL 1660) (28438)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT 60 (31029)
Johnson & Johnson CDI Ektachem DT II (31030)
Johnson & Johnson CDI Ektachem DTE Module (31033)
Medica EasyStat Na/K (40248)
Medica EasyStat Na/K/Cl (40249)
Nova Stat Profile Ultra A (43108)
Nova Stat Profile Ultra B (43109)
Nova Stat Profile Ultra C (43110)
Nova Stat Profile Ultra E (43112)
Nova Stat Profile Ultra F (43115)
Nova Stat Profile Ultra G (43116)
Nova Stat Profile Ultra H (43117)
Nova Stat Profile Ultra I (43118)
Nova Stat Profile Ultra J (43119)
Nova Stat Profile Ultra K (43120)
Radiometer ABL System 605 (55196)
Radiometer ABL System 615 (55197)
Radiometer ABL System 625 (55198)
Radiometer EML 105 (55187)
Roche Cobas INTEGRA (55179)
SenDx 100 pH, Blood Gas and Electrolyte Analysis System (58390)

Analyte: Sulfhemoglobin (5836)

Test System, Assay, Examination:
AVL OMNI Combi Analyzer (04609)

Analyte: Transferrin (6114)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)
Roche Cobas INTEGRA (55179)

Analyte: Triglyceride (6118)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT 60 (31029)
Johnson & Johnson CDI Ektachem DT II (31030)
Roche Cobas INTEGRA (55179)
Select Medical Systems Selecta 20/60 (58349)

Analyte: Troponin T, Cardiac (cTnT) (6154)

Test System, Assay, Examination:
Boehringer Mannheim CARDIAC T Rapid Assay (07690)

Analyte: Urea (BUN) (6403)

Test System, Assay, Examination:
Abaxis Piccolo Portable Blood Analyzer (04608)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)

VOL 61 ISS 131 JL 8 1996 UMI

Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT 60 (31029)
Johnson & Johnson CDI Ektachem DT II (31030)
Nova Stat Profile Ultra F (43115)
Nova Stat Profile Ultra G (43116)
Nova Stat Profile Ultra H (43117)
Nova Stat Profile Ultra I (43118)
Nova Stat Profile Ultra J (43119)
Nova Stat Profile Ultra K (43120)
Roche Cobas INTEGRA (55179)
Select Medical Systems Selecta 20/60 (58349)

Analyte: Uric Acid (6404)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT 60 (31029)
Johnson & Johnson CDI Ektachem DT II (31030)
Roche Cobas INTEGRA (55179)
Select Medical Systems Selecta 20/60 (58349)

Analyte: Vitamin B12 (6707)

Test System, Assay, Examination:
Boehringer Mannheim Hitachi 911 (07377)
PB Diagnostics Systems OPUS (49001)
BB Diagnostics Systems OPUS Magnum (49097)
BB Diagnostics Systems OPUS PLUS (49098)
Schiapparelli Biosystems ACE (58288)

Analyte: pH, Urine (4978)

Test System, Assay, Examination:
Boehringer Mannheim Hitachi 704 (DRI pH-Detect) (07750)
Boehringer Mannheim Hitachi 717 (DRI pH-Detect) (07751)
Boehringer Mannheim Hitachi 747 (DRI pH-Detect) (07752)
Boehringer Mannheim Hitachi 747 (STC Auto-Lyte) (07767)
Boehringer Mannheim Hitachi 911 (DRI pH-Detect) (07753)
Olympus AU 5000 (DRI pH-Detect) (46216)

Speciality/Subspeciality: General Immunology

Analyte: Allergen Specific IgE (0417)

Test System, Assay, Examination:
Quidel QuickVue One-Step Allergen Screen (52028)

Analyte: Alpha-1-Acid Glycoprotein (Orosomucoid) (0420)

Test System, Assay, Examination:
Roche Cobas INTEGRA (55179)

Analyte: Alpha-1-Antitrypsin (0421)

Test System, Assay, Examination:
Roche Cobas INTEGRA (55179)

Analyte: Anti-DNA Antibodies (0435)

Test System, Assay, Examination:
Hycor HY-TEC Anti-dsDNA (25251)

Analyte: Anti-DNP Antibodies (0436)

Test System, Assay, Examination:
Immunostics immuno/sle (screening) (28424)
Immunostics immuno/sle (semi-quantitative) (28425)

Analyte: Anti-ENA Antibodies (0507)

Test System, Assay, Examination:
Hycor HY-TEC ENA Screen(6)(SS-A,SS-B,Sm,Sm/RNP,Scl-70,Jo-1) (25248)

Analyte: Anti-Jo-1 (0438)

Test System, Assay, Examination:
Hycor HY-TEC Anti-Jo-1 (25253)

Analyte: Anti-RNP-Sm Antibodies (0502)

Test System, Assay, Examination:
Hycor HY-TEC Anti-Sm/RNP (25255)

Analyte: Anti-SS-A/Ro (0446)

Test System, Assay, Examination:
Hycor HY-TEC Anti-SS-A (25247)

Analyte: Anti-SS-B/La (0447)

Test System, Assay, Examination:
Hycor HY-TEC Anti-SS-B (25249)

Analyte: Anti-Scl-70 (0448)

Test System, Assay, Examination:
Hycor HY-TEC Anti-Scl-70 (25252)

Analyte: Anti-Sm (Smith) (0450)

Test System, Assay, Examination:
Hycor HY-TEC Anti-Sm (25254)

Analyte: Anti-Streptolysin O (ASO) (0452)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Immunostics immuno/aSO (qualitative) (28427)
Immunostics immuno/aSO (semi-quantitative) (28426)
Olympus AU 800 (46110)
Olympus Reply (46089)
Roche Cobas INTEGRA (55179)

Analyte: Anti-Thyroglobulin Antibodies (0453)

Test System, Assay, Examination:
Organon Teknika AuraFlex (46152)

Analyte: Beta-2 microglobulin (0703)

Test System, Assay, Examination:
Instrumentation Laboratory ILAB 1800 (28323)
Instrumentation Laboratory ILAB 900 (28322)
Organon Teknika AuraFlex (46152)

Analyte: Bladder Tumor Associated Analytes (0737)

Test System, Assay, Examination:
Bard BTA Test Kit (07736)

Analyte: C-Reactive Protein (CRP) (1001)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Randox Laboratories CRP Latex Test (55202)
Roche Cobas INTEGRA (55179)

Analyte: CD4 Positive Lymphocytes (1116)

Test System, Assay, Examination:
Biometric Imaging iMAGN 2000 (absolute count) (07599)
Biometric Imaging Volumet 1000 (absolute count) (07735)

Analyte: CD8 Positive Lymphocytes (1118)

Test System, Assay, Examination:
Biometric Imaging iMAGN 2000 (absolute count) (07599)
Biometric Imaging Volumet 1000 (absolute count) (07735)

Analyte: Complement C3 (1029)

Test System, Assay, Examination:
Boehringer Mannheim Hitachi 917 (07765)
Roche Cobas INTEGRA (55179)

Analyte: Complement C4 (1030)

Test System, Assay, Examination:
Boehringer Mannheim Hitachi 917 (07765)
Roche Cobas INTEGRA (55179)

Analyte: Complement, Total (1046)

Test System, Assay, Examination:
Boehringer Mannheim Hitachi 704 (07161)
Boehringer Mannheim Hitachi 717 (07163)
Boehringer Mannheim Hitachi 747 (07166)
Boehringer Mannheim Hitachi 917 (07765)
Instrumentation Laboratory ILAB 1800 (28323)
Instrumentation Laboratory ILAB 900 (28322)
Olympus AU 800 (46110)
Olympus Reply/AU560 (46129)
Roche Cobas FARA II (55041)
Roche Cobas Mira (55044)
Wako Diagnostics 30R (70002)

Analyte: Febrile Agglutinins (1901)

Test System, Assay, Examination:
Immunostics immuno/febrile antigens (rapid slide test) (28430)
Immunostics immuno/febrile antigens (test tube titration) (28431)
SA Scientific SAS Febrile Antigen Set (slide) (58391)
SA Scientific SAS Febrile Antigen Set (tube) (58392)

Analyte: Helicobacter Pylori Antibodies (2513)

Test System, Assay, Examination:
Cortecs Ltd Helisal Rapid Blood Test (10317)
Orion Diagnostica Pyloriset Dry (46157)
Quidel QuickVue One-Step H. pylori Test (52027)
Washington Biotechnology PS II (70172)

Analyte: Hepatitis B Surface Antigen (HBsAg) (2524)

Test System, Assay, Examination:
Abbott IMX (04056)

Analyte: Immunoglobulins IgA (2803)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)
Olympus AU 800 (46110)
Roche Cobas INTEGRA (55179)

Analyte: Immunoglobulins IgE (2805)

Test System, Assay, Examination:
Pharmacia CAP System/AutoCap Phadiatop FEIA (49158)

Analyte: Immunoglobulins IgG (2806)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)
Olympus AU 800 (46110)
Roche Cobas INTEGRA (55179)

Analyte: Immunoglobulins IgM (2808)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)
Olympus AU 800 (46110)
Roche Cobas INTEGRA (55179)

Analyte: Infectious Mononucleosis Antibodies (Mono) (2809)

Test System, Assay, Examination:
Immunostics immuno/color-im Test (28432)
Immunostics immuno/lex-im Test (28433)
Worldwide Medical First Check Mono (70189)

Analyte: Lyme Disease Antibodies (Borrelia Burgdorferi Abs) (3714)

Test System, Assay, Examination:
General Biometrics ImmunoDOT Borrelia DotBlot G Test (22178)
General Biometrics ImmunoDOT Borrelia DotBlot M Test (22177)
Vitek Systems VIDAS Lyme IgG and IgM (LYT) (67097)

Analyte: Mycoplasma pneumoniae Antibodies (4016)

Test System, Assay, Examination:
Shared Systems M. pneumoniae Rapid Latex (qualitative) (58355)
Shared Systems M. pneumoniae Rapid Latex (semi-quant.) (58356)

Analyte: Rheumatoid Factor (RF) (5508)

Test System, Assay, Examination:
Hycor HY–TEC Anti-RF (25250)
Immunostics immuno/ra (screening) (28423)
Immunostics immuno/ra (semi-quantitative) (28422)
Olympus AU 800 (46110)
Olympus Reply (46089)
Polymedco Rheumatoid Factors (RF) Latex Agglutination (49157)
Shared Systems Chromalex Rheumatoid Factor Latex Test Sys. (58382)

Analyte: Rubella Antibodies (5510)

Test System, Assay, Examination:
Abbott AxSYM Rubella IgM (04630)
Abbott IMX Rubella IgM (04638)
Sanofi Pasteur Access Immunoassay System (58257)
Seradyn ColorSlide Rubella (58369)
Technicon Immuno 1 Rubella IgG (61227)
Worldwide Medical First Check Rubella (70183)

Analyte: Thyroid Peroxidase Autoantibodies (TPO) (6135)

Test System, Assay, Examination:
Organon Teknika AuraFlex (46152)

Analyte: Toxoplasma Gondii Antibodies (6113)

Test System, Assay, Examination:
Abbott IMX Toxo IgG (04639)
Abbott IMX Toxo IgM (04593)
Cirrus Diagnostics Immulite (10159)
Sanofi Pasteur Access Immunoassay System Toxo IgG (58376)

Analyte: Troponin-I (Cardiac) (6153)

Test System, Assay, Examination:
Baxter Stratus II (07051)
Baxter Stratus IIntellect (07376)
PB Diagnostics Systems OPUS (49001)
PB Diagnostics Systems OPUS Magnum (49097)
PB Diagnostics Systems OPUS PLUS (49098)

Speciality/Subspeciality: Hematology

Analyte: APTT Factor Substitution (0517)

Test System, Assay, Examination:
Medical Laboratory MLA Electra 1400C (40208)

Analyte: Activated Partial Thromboplastin Time (APTT) (0409)

Test System, Assay, Examination:
Bio/Data Microsample Coagulation Analyzer, MCA 310 (07597)
Cardiovascular Diagnostics TAS Analyzer HMT (10279)
Instrumentation Laboratory IL ACL Futura System (28395)
Medical Laboratory MLA Electra 1400C (40208)

Analyte: Coagulation Index, Native Whole Blood (1130)

Test System, Assay, Examination:
Haemoscope Thromboelastograph 3000S (TEG 3000S) (25257)

Analyte: Fibrinogen (1905)

Test System, Assay, Examination:
Bio/Data Microsample Coagulation Analyzer, MCA 310 (07597)
Instrumentation Laboratory IL ACL Futura System (28395)
Medical Laboratory MLA Electra 1400C (40208)

Analyte: Hematocrit (2514)

Test System, Assay, Examination:
AVL OMNI Combi Analyzer (04609)
Becton Dickinson QBC AccuRead (07747)
BioChem Immunosystems Baker System 9100+ (07711)
BioChem Immunosystems Baker System 9110+ (07712)
BioChem Immunosystems Baker System 9118+ (07713)
BioChem Immunosystems Baker System 9120+ (07714)
Coulter MD II Series Analyzer (10318)
Instrumentation Laboratory IL BGGE (IL 1660) (28438)
Nova Stat Profile Ultra A (43108)
Nova Stat Profile Ultra B (43109)
Nova Stat Profile Ultra C (43110)
Nova Stat Profile Ultra E (43112)
Nova Stat Profile Ultra F (43115)
Nova Stat Profile Ultra G (43116)
Nova Stat Profile Ultra H (43117)
Nova Stat Profile Ultra I (43118)
Nova Stat Profile Ultra J (43119)
Nova Stat Profile Ultra K (43120)
Roche Cobas MICROS CT16 (55175)
Roche Cobas MICROS CT18 (55177)
Roche Cobas MICROS CT5 (55171)
Roche Cobas MICROS CT8 (55173)
Roche Cobas MICROS OT16 (55176)
Roche Cobas MICROS OT18 (55178)
Roche Cobas MICROS OT5 (55172)
Roche Cobas MICROS OT8 (55174)
SenDx 100 pH, Blood Ges and Electrolyte Analysis System (58390)
Sysmex F–520 (58370)
Sysmex F–820 (58371)
Sysmex SF–3000 (58360)
Texas International Laboratories Hematil 18 (61205)

Analyte: Hemoglobin (2515)

Test System, Assay, Examination:
AVL OMNI Combi Analyzer (04609)
American Optical AO Hb-Meter Hemoglobinometer (04620)
Becton Dickinson QBC AccuRead (07747)
BioChem Immunosystems Baker System 9100+ (07711)
BioChem Immunosystems Baker System 9110+ (07712)
BioChem Immunosystems Baker System 9118+ (07713)
BioChem Immunosystems Baker System 9120+ (07714)
Coulter MD II Series Analyzer (10318)
Danam Datacell 18MS (13356)
Instrumentation Laboratory IL682 CO-Oximeter System (28368)
Johnson & Johnson CDI Ektachem DT 60 (31029)
Radiometer ABL 620 (55137)
Radiometer ABL System 615 (55197)
Radiometer ABL System 625 (55198)
Radiometer OSM 3 (55059)
Roche Cobas MICROS CT16 (55175)
Roche Cobas MICROS CT18 (55177)
Roche Cobas MICROS CT5 (55171)
Roche Cobas MICROS CT8 (55173)
Roche Cobas MICROS OT16 (55176)
Roche Cobas MICROS OT18 (55178)
Roche Cobas MICROS OT5 (55172)
Roche Cobas MICROS OT8 (55174)

VOL 61 ISS 131 JL 8 1996 UMI

Sysmex F–520 (58370)
Sysmex F–820 (58371)
Sysmex SF–3000 (58360)
Texas International Laboratories Hematil 18 (61205)

Analyte: Leukocytes, Fecal (3723)

Test System, Assay, Examination:
All Methylene Blue Wet Mount Preps for Fecal Leukocytes (04657)

Analyte: Lupus Anticoagulants (3728)

Test System, Assay, Examination:
Bio/Data Microsample Coagulation Analyzer, MCA 310 (07597)

Analyte: Platelet Aggregation (4828)

Test System, Assay, Examination:
Centocor AggreStat (10328)

Analyte: Platelet Count (4908)

Test System, Assay, Examination:
Becton Dickinson QBC AccuRead (07747)
BioChem Immunosystems Baker System 9100+ (07711)
BioChem Immunosystems Baker System 9110+ (07712)
BioChem Immunosystems Baker System 9118+ (07713)
BioChem Immunosystems Baker System 9120+ (07714)
Coulter MD II Series Analyzer (10318)
Danam Datacell 18MS (13356)
Roche Cobas MICROS CT16 (55175)
Roche Cobas MICROS CT18 (55177)
Roche Cobas MICROS CT8 (55173)
Roche Cobas MICROS OT16 (55176)
Roche Cobas MICROS OT18 (55178)
Roche Cobas MICROS OT8 (55174)
Sysmex F–820 (58371)
Sysmex SF–3000 (58360)
Texas International Laboratories Hematil 18 (61205)

Analyte: Prothrombin Time (PT) (4822)

Test System, Assay, Examination:
Bio/Data Microsample Coagulation Analyzer, MCA 310 (07597)
Instrumentation Laboratory IL ACL Futura System (28395)
International Technidyne Factor VI Pt+ (28360)
International Technidyne Hemochron 400 HNPT (28355)
International Technidyne Hemochron 401 HNPT (28356)
International Technidyne Hemochron 800 HNPT (28357)
International Technidyne Hemochron 8000 HNPT (28359)
International Technidyne Hemochron 801 HNPT (28358)
International Technidyne ProTIME Microcoagulation System (28367)
Medical Laboratory MLA Electra 1400C (40208)

Analyte: Prothrombin Time Factor Substitution (4976)

Test System, Assay, Examination:
Medical Laboratory MLA Electra 1400C (40208)

Analyte: Red Blood Cell Count (Erythrocyte Count) (RBC) (5502)

Test System, Assay, Examination:
BioChem Immunosystems Baker System 9100+ (07711)
BioChem Immunosystems Baker System 9110+ (07712)
BioChem Immunosystems Baker System 9118+ (07713)
BioChem Immunosystems Baker System 9120+ (07714)
Coulter MD II Series Analyzer (10318)
Danam Datacell 18MS (13356)
Roche Cobas MICROS CT16 (55175)
Roche Cobas MICROS CT18 (55177)
Roche Cobas MICROS CT5 (55171)
Roche Cobas MICROS CT8 (55173)
Roche Cobas MICROS OT16 (55176)
Roche Cobas MICROS OT18 (55178)
Roche Cobas MICROS OT5 (55172)
Roche Cobas MICROS OT8 (55174)
Sysmex F–520 (58370)
Sysmex F–820 (58371)
Sysmex SF–3000 (58360)
Texas International Laboratories Hematil 18 (61205)

Analyte: Reticulocyte Count (5506)

Test System, Assay, Examination:
Abbott Cell-Dyn 3500 R (04666)
Becton Dickinson FACSCalibur (with retic count software) (07640)
Becton Dickinson FACSort (with retic count software) (07638)

Analyte: Semen (5822)

Test System, Assay, Examination:
Medical Electronic Systems Sperm Quality Analyzer (40221)

Analyte: Thrombin Time (6105)

Test System, Assay, Examination:
Bio/Data Microsample Coagulation Analyzer, MCA 310 (07597)
Medical Laboratory MLA Electra 1400C (40208)

Analyte: White Blood Cell Count (Leukocyte Count) (WBC) (7002)

Test System, Assay, Examination:
Becton Dickinson QBC AccuRead (07747)
BioChem Immunosystems Baker System 9100+ (07711)
BioChem Immunosystems Baker System 9110+ (07712)
BioChem Immunosystems Baker System 9118+ (07713)
BioChem Immunosystems Baker System 9120+ (07714)
Coulter MD II Series Analyzer (10318)
Danam Datacell 18MS (13356)
Roche Cobas MICROS CT16 (55175)
Roche Cobas MICROS CT18 (55177)
Roche Cobas MICROS CT5 (55171)
Roche Cobas MICROS CT8 (55173)
Roche Cobas MICROS OT16 (55176)
Roche Cobas MICROS OT18 (55178)
Roche Cobas MICROS OT5 (55172)
Roche Cobas MICROS OT8 (55174)
Sysmex F–520 (58370)
Sysmex F–820 (58371)
Sysmex SF–3000 (58360)
Texas International Laboratories Hematil 18 (61205)

Analyte: White Blood Cell Differential (WBC Diff) (7001)

Test System, Assay, Examination:
Becton Dickinson QBC AccuRead (07747)
BioChem Immunosystems Baker System 9100+ (07711)
BioChem Immunosystems Baker System 9110+ (07712)
BioChem Immunosystems Baker System 9118+ (07713)
BioChem Immunosystems Baker System 9120+ (07714)
Coulter MD II Series Analyzer (10318)
Danam Datacell 18MS (13356)
Roche Cobas MICROS CT16 (55175)
Roche Cobas MICROS CT18 (55177)
Roche Cobas MICROS OT16 (55176)
Roche Cobas MICROS OT18 (55178)
Sysmex F–820 (58371)
Sysmex SF–3000 (58360)
Texas International Laboratories Hematil 18 (61205)

Speciality/Subspeciality: Mycology

Analyte: Yeast, C. Albicans Only (7602)

Test System, Assay, Examination:
BioMerieux Vitek Albicans ID (07773)

Speciality/Subspeciality: Toxicology / TDM

Analyte: Acetaminophen (0406)

Test System, Assay, Examination:
Abbott AxSYM (04532)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Roche Cobas INTEGRA (55179)

Analyte: Amikacin (0425)

Test System, Assay, Examination:
Roche Cobas INTEGRA (55179)

Analyte: Amphetamines (0428)

Test System, Assay, Examination:
Beckman Synchron CX 4 (CEDIA DAU/automated curve) (07754)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 (CEDIA DAU/automated curve) (07755)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 (CEDIA DAU/automated curve) (07756)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/automated curve) (07757)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/automated curve) (07758)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/automated curve) (07759)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/automated curve) (07760)
Boehringer Mannheim Hitachi 917 (07765)
Du Pont Dimension AR (13087)
Du Pont Dimension XL (13355)
Fingerprint Biotech FINGERPRINT–DOA Screening Device (19023)
Olympus AU 5000 (CEDIA DAU/automated curve) (46217)
Princeton BioMeditech AbuSign AMP (49150)
Princeton BioMeditech AccuSign AMP (49152)

Princeton BioMeditech BioSign AMP (49153)
Princeton BioMeditech DOA–AMP (49151)
Roche Cobas INTEGRA (55179)
Worldwide Medical First Check AMP (70187)
Worldwide Medical First Check Panel 4 (TCH/OPI/COC/AMP) (70188)

Analyte: Barbiturates (0701)

Test System, Assay, Examination:
Abbott AxSYM (04532)
Beckman Synchron CX 4 (CEDIA DAU/automated curve) (07754)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 (CEDIA DAU/automated curve) (07755)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 (CEDIA DAU/automated curve) (07756)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/automated curve) (07757)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/automated curve) (07758)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/automated curve) (07759)
Boehringer Mannheim Hitachi 911 (07377)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/automated curve) (07760)
Boehringer Mannheim Hitachi 917 (07765)
Du Pont Dimension AR (13087)
Du Pont Dimension XL (13355)
Fingerprint Biotech FINGERPRINT–DOA Screening Device (19023)
Olympus AU 5000 (CEDIA DAU/automated curve) (46217)
Princeton BioMeditech AbuSign DOA 2 (THC/COC) (49160)
Princeton BioMeditech AbuSign DOA 3 (THC/OPI/COC) (49161)
Princeton BioMeditech AbuSign DOA 4 (THC/OPI/COC/MET) (49162)
Roche Cobas INTEGRA (55179)
Sun Biomedical Labs Visualine II Cannabinoids (58364)
Worldwide Medical First Check Panel 2 (THC/COC) (70179)
Worldwide Medical First Check Panel 3 (THC/OPI/COC) (70180)
Worldwide Medical First Check Panel 4 (TCH/OPI/COC/AMP) (70188)
Worldwide Medical First Check Panel 4 (THC/OPI/COC/MET) (70178)
Worldwide Medical First Check THC (70185)

Analyte: Benzodiazepines (0702)

Test System, Assay, Examination:
Beckman Synchron CX 4 (CEDIA DAU/automated curve) (07754)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 (CEDIA DAU/automated curve) (07755)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 (CEDIA DAU/automated curve) (07756)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/automated curve) (07757)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/automated curve) (07758)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/automated curve) (07759)
Boehringer Mannheim Hitachi 911 (07377)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/automated curve) (07760)
Boehringer Mannheim Hitachi 917 (07765)
Du Pont Dimension AR (13087)
Du Pont Dimension XL (13355)
Olympus AU 5000 (CEDIA DAU/automated curve) (46217)
Roche Cobas INTEGRA (55179)
Sun Biomedical Labs Visualine II Benzodiazepines (58389)

Analyte: Cannabinoids (THC) (1009)

Test System, Assay, Examination:
Beckman Synchron CX 4 (CEDIA DAU/automated curve) (07754)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 (CEDIA DAU/automated curve) (07755)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 (CEDIA DAU/automated curve) (07756)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim FRONTLINE CANNABIS (07771)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/automated curve) (07757)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/automated curve) (07758)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/automated curve) (07759)
Boehringer Mannheim Hitachi 911 (07377)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/automated curve) (07760)
Boehringer Mannheim Hitachi 917 (07765)
Du Pont Dimension AR (13087)
Du Pont Dimension XL (13355)
Fingerprint Biotech FINGERPRINT–DOA Screening Device (19023)
Olympus AU 5000 (CEDIA DAU/automated curve) (46217)
Princeton BioMeditech AbuSign DOA 2 (THC/COC) (49160)
Princeton BioMeditech AbuSign DOA 3 (THC/OPI/COC) (49161)
Princeton BioMeditech AbuSign DOA 4 (THC/OPI/COC/MET) (49162)
Roche Cobas INTEGRA (55179)
Sun Biomedical Labs Visualine II Cannabinoids (58364)
Worldwide Medical First Check Panel 2 (THC/COC) (70179)
Worldwide Medical First Check Panel 3 (THC/OPI/COC) (70180)
Worldwide Medical First Check Panel 4 (TCH/OPI/COC/AMP) (70188)
Worldwide Medical First Check Panel 4 (THC/OPI/COC/MET) (70178)
Worldwide Medical First Check THC (70185)

Analyte: Carbamazepine (1010)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 747 (07166)
Boehringer Mannheim Hitachi 917 (07765)
Olympus AU 5000 (46001)
Olympus AU 5200 (46143)
Roche Cobas INTEGRA (55179)

Analyte: Carboxyhemoglobin (1012)

Test System, Assay, Examination:
AVL OMNI Combi Analyzer (04609)
Instrumentation Laboratory IL682 CO-Oximeter System (28368)
Nova Co-Oximeter (43114)
Radiometer ABL System 625 (55198)

Analyte: Cocaine Metabolites (1023)

Test System, Assay, Examination:
Abbott AxSYM (04532)
Applied Biotech SureStep Drug Screen Cocaine Test (04665)
Beckman Synchron CX 4 (CEDIA DAU/automated curve) (07754)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 (CEDIA DAU/automated curve) (07755)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 (CEDIA DAU/automated curve) (07756)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim FRONTLINE COCAINE (07770)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/automated curve) (07757)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/automated curve) (07758)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/automated curve) (07759)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/automated curve) (07760)
Boehringer Mannheim Hitachi 917 (07765)
Du Pont ACA III (DGN A) (13390)
Du Pont ACA IV (DGN A) (13391)
Du Pont ACA Star (DGN A) (13400)
Du Pont ACA V (DGN A) (13392)
Du Pont Dimension AR (13087)
Du Pont Dimension XL (13355)
Fingerprint Biotech FINGERPRINT–DOA Screening Device (19023)
Instrumentation Laboratory IL Monarch 1000(IL Test Digoxin) (28400)
Instrumentation Laboratory IL Monarch 2000(IL Test Digoxin) (28401)
Instrumentation Laboratory IL Monarch Plus(IL Test Digoxin) (28402)
Instrumentation Laboratory ILAB 1600 (28323)
Instrumentation Laboratory ILAB 900 (28322)
Olympus AU 5000 (CEDIA DAU/automated curve) (46217)
Olympus AU 5200 (46143)
Roche Cobas INTEGRA (55179)
Sun Biomedical Labs Visualine II Cocaine (58361)
Technical Chem. & Prod. One Step Urine DoA Cocaine (61208)
Worldwide Medical First Check COC (70184)
Worldwide Medical First Check Panel 2 (THC/COC) (70179)
Worldwide Medical First Check Panel 3 (THC/OPI/COC) (70180)
Worldwide Medical First Check Panel 4 (TCH/OPI/COC/AMP) (70188)
Worldwide Medical First Check Panel 4 (THC/OPI/COC/MET) (70178)

Analyte: Digitoxin (1303)

Test System, Assay, Examination:
Abbott AxSYM (04532)

Analyte: Digoxin (1304)

Test System, Assay, Examination:
Abbott IMX (04056)
Beckman Synchron CX 4 (Emit 2000) (07675)
Beckman Synchron CX 4 CE (Emit 2000) (07677)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 (Emit 2000) (07679)
Beckman Synchron CX 5 CE (Emit 2000) (07681)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 (Emit 2000) (07683)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 704 (Emit 2000) (07669)
Boehringer Mannheim Hitachi 717 (Emit 2000) (07671)
Boehringer Mannheim Hitachi 911 (Emit 2000) (07673)
Boehringer Mannheim Hitachi 917 (07765)
Du Pont ACA III (DGN A) (13390)
Du Pont ACA IV (DGN A) (13391)
Du Pont ACA Star (DGN A) (13400)
Du Pont ACA V (DGN A) (13392)
Instrumentation Laboratory IL Monarch 1000(IL Test Digoxin) (28400)
Instrumentation Laboratory IL Monarch 2000(IL Test Digoxin) (28401)
Instrumentation Laboratory IL Monarch Plus(IL Test Digoxin) (28402)
Instrumentation Laboratory ILAB 1600 (28323)
Instrumentation Laboratory ILAB 900 (28322)

VOL 61 ISS 131 JUL 8 1996 UMI

Jonhson & Johnson CDI Ektachem 250 (31019)
Jonhson & Johnson CDI Ektachem 950 IRC (31028)
Roche Cobas INTEGRA (55179)
Roche Cobas Mira (Emit 2000) (55166)
Roche Cobas Mira Plus (Emit 2000) (55170)
Roche Cobas Mira S (Emit 2000) (55168)
Technicon RA 1000 (Bayer Digoxin DGN) (61200)
Technicon RA 2000 (Bayer Digoxin DGN) (61201)
Technicon RA 500 (Bayer Digoxin DGN) (61202)
Technicon RA XT (Bayer Digoxin DGN) (61203)

Analyte: Ethanol (Alcohol) (1606)

Test System, Assay, Examination:
Abbott AxSYM (04532)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 704 (whole blood) (07738)
Boehringer Mannheim Hitachi 717 (whole blood) (07739)
Boehringer Mannheim Hitachi 737 (whole blood) (07740)
Boehringer Mannheim Hitachi 747 (whole blood) (07741)
Boehringer Mannheim Hitachi 911 (whole blood) (07742)
Boehringer Mannheim Hitachi 914 (whole blood) (07743)
Boehringer Mannheim Hitachi 917 (07765)
Jonhson & Johnson CDI Ektachem 500 (31021)
Jonhson & Johnson CDI Ektachem 700 (31023)
Jonhson & Johnson CDI Ektachem 700 XR (31026)
Jonhson & Johnson CDI Ektachem 950 IRC (31028)
Roche Cobas INTEGRA (55179)

Analyte: Ethanol (Alcohol), Whole Blood (1632)

Test System, Assay, Examination:
Boehringer Mannheim Hitachi 917 (07765)

Analyte: Gentamicin (2202)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)
Ciba Corning ACS 180 (10046)
Roche Cobas INTEGRA (55179)

Analyte: Lidocaine (3710)

Test System, Assay, Examination:
Roche Cobas INTEGRA (55179)

Analyte: Lithium (3712)

Test System, Assay, Examination:
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 P (31025)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT 60 (31029)
Johnson & Johnson CDI Ektachem DT II (31030)
Johnson & Johnson CDI Ektachem DT SC Module (31031)
Johnson & Johnson CDI Ektachem DTE Module (31033)
Roche Cobas INTEGRA (55179)

Analyte: Lysergic Acid Diethylamide (LSD) (3715)

Test System, Assay, Examination:
Boehringer Mannheim Hitachi 911 (CEDIA DAU/automated curve) (07760)

Analyte: Methadone (4003)

Test System, Assay, Examination:
Abbott AxSYM (04532)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/automated curve) (07757)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/automated curve) (07758)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/automated curve) (07759)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/automated curve) (07760)
Boehringer Mannheim Hitachi 917 (07765)
Boehringer Mannheim Hitachi 917 (CEDIA DAU/automated curve) (07769)
Du Pont Dimension AR (13087)
Du Pont Dimension XL (13355)
Roche Cobas INTEGRA (55179)

Analyte: Methamphetamine/Amphetamine (4036)

Test System, Assay, Examination:
Abbott AxSYM (04532)

Analyte: Methamphetamines (4004)

Test System, Assay, Examination:
Princeton BioMeditech AbuSign DOA 4 (THC/OPI/COC/MET) (49162)
Princeton BioMeditech AccuSign MET (49163)
Worldwide Medical First Check Panel 4 (THC/OPI/COC/MET) (70178)

Analyte: Methaqualone (4005)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Roche Cobas INTEGRA (55179)

Analyte: N-Acetylprocainamide (NAPA) (4301)

Test System, Assay, Examination:
Abbott AxSYM (04532)
Roche Cobas INTEGRA (55179)

Analyte: Opiates (4601)

Test System, Assay, Examination:
Abbott AxSYM (04532)
Beckman Synchron CX 4 (CEDIA DAU/automated curve) (07754)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 (CEDIA DAU/automated curve) (07755)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 (CEDIA DAU/automated curve) (07756)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim FRONTLINE OPIATES (07772)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/automated curve) (07757)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/automated curve) (07758)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/automated curve) (07759)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/automated curve) (07760)
Boehringer Mannheim Hitachi 917 (07765)
Du Pont Dimension AR (13087)
Du Pont Dimension XL (13355)
Fingerprint Biotech FINGERPRINT—DOA Screening Device (19023)
Olympus AU 5000 (CEDIA DAU/automated curve) (46217)
Princeton BioMeditech AbuSign DOA 3 (THC/OPI/COC) (49161)
Princeton BioMeditech AbuSign DOA 4 (THC/OPI/COC/MET) (49162)
Roche Cobas INTEGRA (55179)
Technical Chem. & Prod. One Step Urine DoA Opiate (61207)
Worldwide Medical First Check MOP (70186)
Worldwide Medical First Check Panel 3 (THC/OPI/COC) (70180)
Worldwide Medical First Check Panel 4 (TCH/OPI/COC/AMP) (70188)
Worldwide Medical First Check Panel 4 (THC/OPI/COC/MET) (70178)

Analyte: Phencyclidine (PCP) (4901)

Test System, Assay, Examination:
Abbott AxSYM (04532)
Beckman Synchron CX 4 (CEDIA DAU/automated curve) (07754)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 (CEDIA DAU/automated curve) (07755)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 (CEDIA DAU/automated curve) (07756)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/automated curve) (07757)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/automated curve) (07758)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/automated curve) (07759)
Boehringer Mannheim Hitachi 911 (07377)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/automated curve) (07760)
Boehringer Mannheim Hitachi 917 (07765)
Du Pont Dimension AR (13087)
Du Pont Dimension XL (13355)
Fingerprint Biotech FINGERPRINT—DOA Screening Device (19023)
Olympus AU 5000 (CEDIA DAU/automated curve) (46217)
Roche Cobas INTEGRA (55179)

Analyte: Phenobarbital (4902)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)

Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)
Roche Cobas INTEGRA (55179)

Analyte: Phenytoin (4903)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)
Instrumentation Laboratory ILAB 1800 (28323)
Instrumentation Laboratory ILAB 900 (28322)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Roche Cobas INTEGRA (55179)

Analyte: Phenytoin, Free (4904)

Test System, Assay, Examination:
Roche Cobas FARA II (55041)
Roche Cobas INTEGRA (55179)

Analyte: Primidone (4912)

Test System, Assay, Examination:
Roche Cobas INTEGRA (55179)

Analyte: Procainamide (4913)

Test System, Assay, Examination:
Abbott AxSYM (04532)
PB Diagnostics Systems OPUS Magnum (49097)
PB Diagnostics Systems OPUS PLUS (49098)
Roche Cobas INTEGRA (55179)

Analyte: Propoxyphene (4917)

Test System, Assay, Examination:
Beckman Synchron CX 4 (CEDIA DAU/automated curve) (07754)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 (CEDIA DAU/automated curve) (07755)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 (CEDIA DAU/automated curve) (07756)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/automated curve) (07757)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/automated curve) (07758)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/automated curve) (07759)
Boehringer Mannheim Hitachi 911 (07377)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/automated curve) (07760)
Boehringer Mannheim Hitachi 917 (07765)
Roche Cobas INTEGRA (55179)

Analyte: Quinidine (5202)

Test System, Assay, Examination:
Roche Cobas INTEGRA (55179)

Analyte: Salicylates (5801)

Test System, Assay, Examination:
Abbott AxSYM (04532)
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Olympus AU 5000 (46001)
Olympus AU 5200 (46143)
Roche Cobas INTEGRA (55179)

Analyte: Theophylline (6104)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Bio-Chem Laboratory Systems ATAC 8000 (07658)
Boehringer Mannheim Hitachi 917 (07765)
Ciba Corning ACS 180 (10046)
Cirrus Diagnostics Immulite (10159)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)
Johnson & Johnson CDI Ektachem DT II (31030)
Johnson & Johnson CDI Ektachem DT SC Module (31031)
Roche Cobas INTEGRA (55179)

Analyte: Tobramycin (6112)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)

Analyte: Tricyclic Antidepressants (6117)

Test System, Assay, Examination:
Abbott AxSYM (04532)

Analyte: Valproic Acid (6701)

Test System, Assay, Examination:
Boehringer Mannheim Hitachi 917 (07765)
Roche Cobas INTEGRA (55179)

Analyte: Valproic Acid, Free (6702)

Test System, Assay, Examination:
Roche Cobas FARA II (55041)
Roche Cobas INTEGRA (55179)

Analyte: Vancomycin (6703)

Test System, Assay, Examination:
Ciba Corning ACS 180 (10046)
Roche Cobas INTEGRA (55179)

Speciality/Subspeciality: Urinalysis

Analyte: Urinary Sediment Microscopic Elements (6405)

Test System, Assay, Examination:
DAVSTAR Cen-Slide System (13396)
Dia Sys R/S 1000 (13397)
Dia Sys R/S 2000 (13398)

Analyte: Urine Qualitative Dipstick Chemistries (6406)

Test System, Assay, Examination:
Boehringer Mannheim Chemstrip Criterion Urine Analyzer (07716)

Speciality/Subspeciality: Virology

Analyte: Herpes Simplex (2529)

Test System, Assay, Examination:
Johnson & Johnson CDI SureCell (direct antigen/visual) (31063)

Analyte: Rotavirus (5509)

Test System, Assay, Examination:
Vitek Systems Vidas (67038)

Complexity: High

Speciality/Subspeciality: Bacteriology

Analyte: Aerobic &/or Anaerobic Organisms-Unlimited Sources (0412)

Test System, Assay, Examination:
AB Biodisk Etest (including culture) (04592)
All Antimicrobial Suscept. (disk diffusion/dilution) fr cult (04637)
All Conventional Organism Identification (ID) from culture (04636)
Becton Dickinson BBL CRYSTAL ANR ID System (inc. culture) (07561)
Difco DrySlide NEISSERIA (including culture) (13407)

Analyte: Aerobic Organisms From Urine Specimens Only (0468)

Test System, Assay, Examination:
Culture Kits, Inc. Uri-Two (nonconfirmatory ID) (10333)

Analyte: Chlamydia (1016)

Test System, Assay, Examination:
Abbott IMX Select (04229)
Abbott LCx Chlamydia trachomatis Assay (04541)
DAKO IDEIA Chlamydia Blocking Reagents (13322)
Sanofi Pasteur Access Immunoassay System (58257)

Analyte: Enterococcus (1612)

Test System, Assay, Examination:
Becton Dickinson Enterococcus Screening Test (inc. culture) (07715)

Analyte: Escherichia Coli (1604)

Test System, Assay, Examination:
LMD Laboratories E. coli 0157 ELISA Assay (dir. ag/spectro) (37092)
LMD Laboratories E. coli 0157 ELISA Assay (dir. ag/visual) (37091)
Meridian Premier EHEC (spectrophotometric) (40205)
Meridian Premier EHEC (visual) (40204)

Analyte: Haemophilus Influenzae, Type B (2510)

Test System, Assay, Examination:
Becton Dickinson Drtgen Meningitis Combo (inc. culture) (07726)

Analyte: Moraxella Catarrhalis (4037)

Test System, Assay, Examination:

Difco DrySlide CATARRALIS (including culture) (13408)

Analyte: Neisseria Gonorrhoeae (4302)

Test System, Assay, Examination:
Abbott LCx Neisseria gonorrhoeae Assay (04545)

Analyte: Neisseria Meningitidis, Group A (4304)

Test System, Assay, Examination:
Becton Dickinson Drtgen Meningitis Combo (inc. culture) (07726)
Becton Dickinson Drtgen Neisseria Meningitis (inc. culture) (07727)

Analyte: Neisseria Meningitidis, Group B (4306)

Test System, Assay, Examination:
Becton Dickinson Drtgen Meningitis Combo (inc. culture) (07726)

Analyte: Neisseria Meningitidis, Group C (4308)

Test System, Assay, Examination:
Becton Dickinson Drtgen Meningitis Combo (inc. culture) (07726)
Becton Dickinson Drtgen Neisseria Meningitis (inc. culture) (07727)

Analyte: Neisseria Meningitidis, Group W135 (4311)

Test System, Assay, Examination:
Becton Dickinson Drtgen Meningitis Combo (inc. culture) (07726)
Becton Dickinson Drtgen Neisseria Meningitis (inc. culture) (07727)

Analyte: Neisseria Meningitidis, Group Y (4312)

Test System, Assay, Examination:
Becton Dickinson Drtgen Meningitis Combo (inc. culture) (07726)
Becton Dickinson Drtgen Neisseria Meningitis (inc. culture) (07727)

Analyte: Salmonella (5802)

Test System, Assay, Examination:
SA Scientific SAS Salmonella H Antisera (including culture) (58363)

Analyte: Shigella (5804)

Test System, Assay, Examination:
SA Scientific SAS Shigella Antisera (including culture) (58387)

Analyte: Staphylococcus (5807)

Test System, Assay, Examination:
Murex Staphaurex Plus (including culture) (40200)

Analyte: Streptococcus Pneumoniae (5808)

Test System, Assay, Examination:
Becton Dickinson Drtgen Meningitis Combo (inc. culture) (07726)

Analyte: Streptococcus, Group A (5810)

Test System, Assay, Examination:
Abbott TestPack +Plus Strep A with OBC (inc. culture) (04626)
Becton Dickinson Directigen 1–2–3 Group A Strep (inc cult.) (07662)
Johnson & Johnson CDI SureCell (including culture) (31065)

Analyte: Streptococcus, Group B (5811)

Test System, Assay, Examination:
Becton Dickinson Drtgen Meningitis Combo (inc. culture) (07726)

Speciality/Subspeciality: Endocrinology

Analyte: 17 Alpha-OH Progesterone (0109)

Test System, Assay, Examination:
Neometrics ACCUSCREEN 17alpha-hydroxyprogesterone RIA Kit (43105)

Analyte: 5-Hydroxyindolacetic Acid, Urine (5–HIAA) (0101)

Test System, Assay, Examination:
Bio-Rad Urinary 5–HIAA by HPLC (07687)

Analyte: Androstenedione (0480)

Test System, Assay, Examination:
Diagnostic Products Corp. Coat-A-Count Dir. Androstenedione (13411)

Analyte: Angiotensin I (0479)

Test System, Assay, Examination:
Pharmaceutical Discovery A–I Photodiagnostic (49155)

Analyte: Angiotensin II (0520)

Test System, Assay, Examination:
ALPCO Angiotensin II RIA (04631)

Analyte: Calcitonin (1041)

Test System, Assay, Examination:
CIS–US ELSA–hCT (10312)
Nichols Institute Chemiluminescence Calcitonin Assay (43113)

Analyte: Catecholamines, Urine (1055)

Test System, Assay, Examination:
Bio-Rad MDMS/CDMS (07778)

Analyte: Collagen Type I, C-telopeptides (1131)

Test System, Assay, Examination:
Diagnostic Systems DSL 10–1700 ACTIVE CrossLaps ELISA (13416)

Analyte: Collagen Type I, Crosslink Deoxypyridinoline (Dpd) (1127)

Test System, Assay, Examination:
Metra Biosystems PYRILINKS–D (40251)

Analyte: Collagen Type I, Crosslink N-telopeptides (NTx) (1125)

Test System, Assay, Examination:
Ostex International Osteomark (46193)

Analyte: Collagen Type I, Crosslink Pyridinium (Pyd, Dpd) (1128)

Test System, Assay, Examination:
Metra Biosystems PYRILINKS (40250)
Metra Biosystems PYRILINKS Polyclonal (40252)

Analyte: Cortisol, Urine (Extraction Procedure) (1095)

Test System, Assay, Examination:
Ciba Corning ACS 180 (10046)

Analyte: Dehydroepiandrosterone (DHEA) (1300)

Test System, Assay, Examination:
Diagnostic Systems DSL 10–9000 ACTIVE DHEA EIA (13410)

Analyte: Estradiol (1605)

Test System, Assay, Examination:
Diagnostic Systems Ultra Sensitive Estradiol RIA (13412)

Analyte: Estriol-unconjugated (1607)

Test System, Assay, Examination:
Diagnostic Systems ACTIVE Ultra-Sens. Unconjugated Estriol (13409)

Analyte: Follicle Stimulating Hormone (FSH) (1906)

Test System, Assay, Examination:
Johnson & Johnson CDL Amerlite Analyzer (31016)

Analyte: HCG, Beta, Serum, Quantitative (2502)

Test System, Assay, Examination:
Johnson & Johnson CDL Amerlite Analyzer (31016)

Analyte: HCG, Total, Serum, Quantitative (2555)

Test System, Assay, Examination:
Diagnostic Systems DSL 8300 ACTIVE INTACT hCG IRMA (13419)

Analyte: HCG, Urine, Quantitative (2534)

Test System, Assay, Examination:
Johnson & Johnson CDL Amerlite Analyzer (31016)

Analyte: Human Growth Hormone (GH) (2547)

Test System, Assay, Examination:
Diagnostic Systems DSL 10–1900 ACTIVE hGH ELISA (13415)

Analyte: Insulin-like Growth Factor-1 (IGF–1) (2818)

Test System, Assay, Examination:
Diagnostic Systems Active IGF–1 ELISA (13381)
Diagnostic Systems DSL 2800 ACTIVE No-extrac.IGF–1 C–T IRMA (13418)
ImmunoDiagnostic Systems OCTEIA IGF–1 IEMA Kit (28385)
Nichols Institute Insulin-Like Growth Factor I (IGF–I,IRMA) (43106)

Analyte: Insulin-like Growth Factor Bind. Protein3 (IGFBP–3) (2832)

Test System, Assay, Examination:
Diagnostic Systems Active IGFBP–3 ELISA (13382)
Nichols Institute IGFBP–3 Radioimmunoassay Kit (43104)

Analyte: Luteinizing Hormone (LH) (3713)

Test System, Assay, Examination:
Diagnostic Systems DSL 4600 ACTIVE LH Coated-Tube IRMA (13417)
Nichols Institute Chemiluminescence LH Assay (43107)

Analyte: Metanephrines, Urine (4025)

Test System, Assay, Examination:
Bioanalytical Systems Urinary Metanephrine Kit (07686)

Analyte: Parathyroid Hormone—Intact (4924)

Test System, Assay, Examination:
CIS–US ELSA–PTH (10299)
Diagnostic Systems Active I–PTH ELISA Kit (13402)
Scantibodies Laboratory Intact PTH Assay (58348)

Analyte: Prolactin (4915)

Test System, Assay, Examination:
Diagnostic Systems DSL 4500 ACTIVE Prolactin Ctd-Tube IRMA (13414)
Johnson & Johnson CDL Amerlite Analyzer (31016)

Analyte: Testosterone, Free (6122)

Test System, Assay, Examination:
Diagnostic Systems ACTIVE Free Testesterone RIA (13393)

Analyte: Thyroid Stimulating Hormone (TSH) (Neonatal) (6107)

Test System, Assay, Examination:
Diagnostic Products Corp. Coat-A-Count IRMA (13109)

Analyte: Thyroid Stimulating Hormone—High Sens. (TSH–HS) (6108)

Test System, Assay, Examination:
Johnson & Johnson CDL Amerlite Analyzer (31016)

Analyte: Thyroxine (T4) (6109)

Test System, Assay, Examination:
Biomerica T4 Microwell EIA (07635)
Diagnostic Systems DSL–3200 ACTIVE Thyroxine RIA (13406)

Analyte: Thyroxine (T4), Neonatal (6123)

Test System, Assay, Examination:
Wallac Oy DELFIA Neonatal Thyroxine (T4) Kit (70168)

Analyte: Thyroxine Binding Globulin (TBG) (6110)

Test System, Assay, Examination:
Johnson & Johnson CDL Amerlite Analyzer (31016)

Analyte: Thyroxine, Free (FT4) (6111)

Test System, Assay, Examination:
Johnson & Johnson CDL Amerlite Analyzer (31016)

Analyte: Triiodothyronine (T3) (6119)

Test System, Assay, Examination:
Biomerica T3 Microwell EIA (07774)
Diagnostic Systems DSL 3100 ACTIVE T3 Coated-Tube RIA (13413)

Analyte: Triiodothyronine, Free (FT3) (6121)

Test System, Assay, Examination:
Roche Cobas Core Free T3 EIA (manual) (55135)

Speciality/Subspeciality: General Chemistry

Analyte: 1–Methylhistidine (0107)

Test System, Assay, Examination:
Watess Pico-Tag Amino Acid Analysis System (70171)

Analyte: 3–Methylhistidine (0108)

Test System, Assay, Examination:
Waters Pico-Tag Amino Acid Analysis System (70171)

Analyte: Acid Phosphatase (0407)

Test System, Assay, Examination:
Horizon Acid Phosphatase Manual Procedure (25222)

Analyte: Alanine (0511)

Test System, Assay, Examination:
Waters Pico-Tag Amino Acid Analysis System (70171)

Analyte: Alanine Aminotransferase (ALT) (SGPT) (0404)

Test System, Assay, Examination:
HiChem Alanine Transaminase (ALT) Reagent Kit (manual) (25227)
Horizon ALT (SGPT) Manual Procedure (25216)
MeDiTech Alanine Aminotransferase (ALT) (manual) (40216)
Ortho ALT Microwell Test System (manual) (46167)

Analyte: Albumin (0414)

Test System, Assay, Examination:
Horizon Serum Albumin Manual Procedure (25204)

Analyte: Alkaline Phosphatase (ALP) (0416)

Test System, Assay, Examination:
Horizon Alkaline Phosphatase (pNPP Rate) Manual Procedure (25205)
MeDiTech Alkaline Phosphatase (ALP) (manual) (40240)

Analyte: Alkaline Phosphatase Bone Specific (BAP) (0518)

Test System, Assay, Examination:
Metra Biosystems Alkphase-B (40227)

Analyte: Alpha-Amino-n-butyric Acid (0512)

Test System, Assay, Examination:
Waters Pico-Tag Amino Acid Analysis System (70171)

Analyte: Alpha-Hydroxybutyrate Dehydrogenase (HBDH) (0419)

Test System, Assay, Examination:
TECO Diagnostics HBDH Reagent Set (manual) (61152)

Analyte: Ammonia, Plasma/Serum (0427)

Test System, Assay, Examination:
Boehringer Mannheim Ammonia (manual) (07766)

Analyte: Amylase (0429)

Test System, Assay, Examination:
Horizon Amylase Manual Procedure (25207)

Analyte: Anserine (0514)

Test System, Assay, Examination:
Waters Pico-Tag Amino Acid Analysis System (70171)

Analyte: Apolipoprotein A1 (0462)

Test System, Assay, Examination:
Horizon Apolipoprotein A–1 (APO A–1) Manual Procedure (25221)
Randox Laboratories Test Kit (manual) (55106)

Analyte: Apolipoprotein B (0457)

Test System, Assay, Examination:
Horizon Apolipoprotein B (APO B) Manual Procedure (25220)
Randox Laboratories Test Kit (manual) (55106)

Analyte: Arginine (0515)

Test System, Assay, Examination:
Waters Pico-Tag Amino Acid Analysis System (70171)

Analyte: Asparagine (0509)

Test System, Assay, Examination:
Waters Pico-Tag Amino Acid Analysis System (70171)

Analyte: Aspartate Aminotransferase (AST) (SGOT) (0405)

Test System, Assay, Examination:
HiChem Aspartate Transaminase (AST) (manual) (25234)
Horizon AST (SGOT) Manual Procedure (25215)
MeDiTech Aspartate Aminotranspherase (AST) (manual)) (40241)

Analyte: Beta-Alanine (0732)

Test System, Assay, Examination:
Waters Pico-Tag Amino Acid Analysis System (70171)

Analyte: Bilirubin, Total (0706)

Test System, Assay, Examination:
Horizon Total Bilirubin Manual Procedure (25199)

Analyte: Calcium, Total (1005)

Test System, Assay, Examination:
Horizon Calcium (Liquid) Manual Procedure (25208)
Synermed Calcium (manual) (58375)

Analyte: Carbon Dioxide, Total (CO2) (1003)

Test System, Assay, Examination:
Randox Laboratories CO2 (TOTAL) (manual) (55201)
TECO Diagnostics Carbon Dioxide (manual) (61150)
TRACE Scientific CO2–DST (manual) (61212)

Analyte: Cerebrospinal Fluid (CSF) Protein (1014)

Test System, Assay, Examination:
Randox Laboratories Test Kit (manual) (55106)

Analyte: Chloride (1018)

Test System, Assay, Examination:
Horizon Chloride Manual Procedure (25209)

Analyte: Cholesterol (1020)

Test System, Assay, Examination:
Horizon Cholesterol Manual Procedure (25210)

Analyte: Citrulline (1105)

Test System, Assay, Examination:
Waters Pico-Tag Amino Acid Analysis System (70171)

Analyte: Creatine Kinase (CK) (1034)

Test System, Assay, Examination:
Horizon Creatine Kinase Manual Procedure (25211)
MeDiTech Creatine Kinase (CK) (manual) (40220)

Analyte: Creatine Kinase MB Fraction (CKMB) (1002)

Test System, Assay, Examination:
Horizon Creatine Kinase MB Manual Procedure (25203)

Analyte: Creatinine (1035)

Test System, Assay, Examination:
Chimera CR Perfect Urine Creatinine (manual) (10295)
Horizon Creatinine Manual Procedure (25206)

Analyte: Ferritin (1602)

Test System, Assay, Examination:

United Biotech UBI MAGIWEL Ferritin Quantitative (64032)

Analyte: Folate, Red Blood Cell (RBC Folate) (1930)

Test System, Assay, Examination:
Technicon Immuno 1 (manual calculations) (61230)

Analyte: Galactose, Total (2223)

Test System, Assay, Examination:
ICN ImmuChem Galactose Microwell Enzyme Assay (28390)
Isolab Fluorescan II Neonatal Chemistry System (28367)

Analyte: Galactose-1-Phosphate Uridyl Transferase (2215)

Test System, Assay, Examination:
Isolab Fluorescan II Neonatal Chemistry System (28367)

Analyte: Gamma Glutamyl Transferase (GGT) (2201)

Test System, Assay, Examination:
Diagnostic Chemicals GGT Assay Kit (13395)
HiChem Gamma-GT Reagent Kit (manual) (25182)
Horizon Gamma Glutamyl Transpeptidase Manual Procedure (25200)

Analyte: Glucose (2203)

Test System, Assay, Examination:
HiChem Glucose/HK Reagent Kit (manual) (25235)
Horizon Glucose (Hexokinase) Manual Procedure (25219)
Horizon Glucose (Oxidase) Manual Procedure (25218)

Analyte: Glutamine (2218)

Test System, Assay, Examination:
Waters Pico-Tag Amino Acid Analysis System (70171)

Analyte: Glycated Hemoglobin, Total (2221)

Test System, Assay, Examination:
Horizon Glycohemoglobin Manual Procedure (25201)

Analyte: Glycine (2219)

Test System, Assay, Examination:
Waters Pico-Tag Amino Acid Analysis System (70171)

Analyte: Glycosylated Hemoglobin (Hgb A1C) (2204)

Test System, Assay, Examination:
Bio-Rad MDMS/CDMS (07778)

Analyte: HDL Cholesterol (2550)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)
Horizon HDL Cholesterol Manual Procedure (25226)
Sigma Diagnostics HDL ISOSPIN (manual) (58388)

Analyte: Histidine (2563)

Test System, Assay, Examination:
Waters Pico-Tag Amino Acid Analysis System (70171)

Analyte: Human Hemoglobin in Feces (2565)

Test System, Assay, Examination:
SmithKline HemeSelect (58403)

Analyte: Hydroxyproline (2560)

Test System, Assay, Examination:
Waters Pico-Tag Amino Acid Analysis System (70171)

Analyte: Iron (2814)

Test System, Assay, Examination:
Horizon Iron/IBC Manual Procedure (25224)

Analyte: Iron Binding Capacity (Post Saturation/Separation) (2815)

Test System, Assay, Examination:
Beckman Synchron CX 4 Delta (07762)
Beckman Synchron CX 5 Delta (07763)
Beckman Synchron CX 7 Delta (07764)
Boehringer Mannheim Hitachi 917 (07765)
Johnson & Johnson CDI Ektachem 250 (31019)
Johnson & Johnson CDI Ektachem 400 (31020)
Johnson & Johnson CDI Ektachem 500 (31021)
Johnson & Johnson CDI Ektachem 550 XRC (31022)
Johnson & Johnson CDI Ektachem 700 (31023)
Johnson & Johnson CDI Ektachem 700 Analyzer C Series (31024)
Johnson & Johnson CDI Ektachem 700 XR (31026)
Johnson & Johnson CDI Ektachem 750 XRC (31027)
Johnson & Johnson CDI Ektachem 950 IRC (31028)

Analyte: Iron Binding Capacity, Unsat. (UIBC) no pretreat. (2823)

Test System, Assay, Examination:
Horizon Iron/IBC Manual Procedure (25224)
Reagents Applications RAICHEM Test Kit (manual) (55075)

Analyte: Isoleucine (2833)

Test System, Assay, Examination:
Waters Pico-Tag Amino Acid Analysis System (70171)

Analyte: LDL Cholesterol (3748)

Test System, Assay, Examination:
Abbott Vision (Genzyme immunosep tube/HDL channel) (04615)
DuPont Dimension (Genzyme immunosep tube/HDL channel) (13379)
DuPont Dimension AR (Genzyme immunosep tube/HDL channel) (13380)
Johnson & Johnson CDI Ektachem 250 (Genzyme tube/chol slid) (31036)
Johnson & Johnson CDI Ektachem 500 (Genzyme tube/chol slid) (31043)
Johnson & Johnson CDI Ektachem 700 (Genzyme tube/Chol slid) (31048)
Johnson & Johnson CDI Ektachem DT 60 (Genzyme tube/HDLslid) (31058)
Kodak Ektachem 250 (Genzyme immunosep tube/Choles. slide) (34089)
Kodak Ektachem 500 (Genzyme immunosep tube/Choles. slide) (34090)
Kodak Ektachem 700 (Genzyme immunosep tube/Choles. slide) (34091)
Kodak Ektachem DT 60 (Genzyme immunosep tube/HDL slide) (34092)
Technicon Chem 1 (Genzyme immunosep tube/HDL channel) (61194)

Analyte: Lactate Dehydrogenase (LDH) (3701)

Test System, Assay, Examination:
Horizon Lactate Dehydrogenase (LDH) Manual Procedure (25217)
MeDiTech Lactate Dehydrogenase (LD) (manual) (40217)

Analyte: Leucine (3749)

Test System, Assay, Examination:
Waters Pico-Tag Amino Acid Analysis System (70171)

Analyte: Lysine (3750)

Test System, Assay, Examination:
Waters Pico-Tag Amino Acid Analysis System (70171)

Analyte: Methionine (4031)

Test System, Assay, Examination:
Waters Pico-Tag Amino Acid Analysis System (70171)

Analyte: Microalbumin (4019)

Test System, Assay, Examination:
ALPCO ORGenTec Micro-Albumin PIN Assay (04663)
Wako Micro-Albumin B (manual) (70173)

Analyte: Mucopolysaccharides, Urinary (4038)

Test System, Assay, Examination:
Glyco FACE Qualitative Urinary Carbohydrate Analysis Kit (22181)

Analyte: Oligosaccharides, Urinary (4807)

Test System, Assay, Examination:
Glyco FACE Qualitative Urinary Carbohydrate Analysis Kit (22181)

Analyte: Phenylalanine (4942)

Test System, Assay, Examination:
Isolab Fluorescan II Neonatal Chemistry System (28367)
Waters Pico-Tag Amino Acid Analysis System (70171)

Analyte: Phosphorus (4906)

Test System, Assay, Examination:
Horizon Inorganic Phosphorus Manual Procedure (25202)

Analyte: Protein Fractions (4920)

Test System, Assay, Examination:
Sebia Hydragel Protein Kit (manual) (58367)

Analyte: Protein, Total (4921)

Test System, Assay, Examination:
Horizon Total Protein Manual Procedure (25214)

Analyte: Protein, Total (Urine) (4972)

Test System, Assay, Examination:
Randox Laboratories Test Kit (manual) (55106)

Analyte: Taurine (6141)

Test System, Assay, Examination:
Waters Pico-Tag Amino Acid Analysis System (70171)

Analyte: Thyroglobulin (6124)

Test System, Assay, Examination:

ALPCO ORGenTec PIA Thyroglobulin EIA (04618)

Analyte: Triglyceride (6116)

Test System, Assay, Examination:
Horizon Triglyceride (INT) Manual Procedure (25223)
MeDiTech Triglycerides (Glycerol Blk) (manual) (40218)

Analyte: Tyrosine (6143)

Test System, Assay, Examination:
Waters Pico-Tag Amino Acid Analysis System (70171)

Analyte: Urea (BUN) (6403)

Test System, Assay, Examination:
HiChem BUN/Urea Reagent Kit (manual) (25259)
Horizon Blood Urea Nitrogen (BUN) Manual Procedure (25212)
MeDiTech Blood Urea Nitrogen (manual) (40219)
Randox Laboratories Test Kit (manual) (55106)

Analyte: Uric Acid (6404)

Test System, Assay, Examination:
Horizon Uric Acid Manual Procedure (25213)

Analyte: Valine (6717)

Test System, Assay, Examination:
Waters Pico-Tag Amino Acid Analysis System (70171)

Specialty/Subspecialty: General Immunology

Analyte: Allergen Specific IgE (0417)

Test System, Assay, Examination:
Hycor HY–TEC Specific IgE EIA Assay (25175)
Hycor Specific IgE EIA (25230)

Analyte: Anti-Cardiolipin Antibodies (0434)

Test System, Assay, Examination:
INOVA Diagnostics QUANTA Lite ACA Screen (HRP) (28406)
INOVA Diagnostics QUANTA Lite IgA ACA (HRP) (28407)
INOVA Diagnostics QUANTA Lite IgG ACA (HRP) (28403)
INOVA Diagnostics QUANTA Lite IgM ACA (28386)
Immco Diagnostics Anti-Cardiolipin IgA Antibody (ACA) Test (28329)
Immco Diagnostics Anti-Cardiolipin IgG Antibody (ACA) Test (28328)
Immco Diagnostics Anti-Cardiolipin IgM Antibody (ACA) Test (28327)
Immuno Probe Cardiolipin A EIA (28389)
Immuno Probe Cardiolipin G EIA (28437)
Immuno Probe Cardiolipin G,M,A EIA (28405)
Immuno Probe Cardiolipin IgG,M,A EIA Test Kit (28405)
Immuno Probe Cardiolipin M EIA (28388)
MarDx Cardiolipin IgA EIA (40247)
MarDx Cardiolipin IgG EIA (40245)
MarDx Cardiolipin IgG,M,A EIA (40244)
MarDx Cardiolipin IgM EIA (40246)
elias usa Varelisa Cardiolipin Abs Screen (16122)

Analyte: Anti-Centromere Antibodies (0437)

Test System, Assay, Examination:
elias usa Varelisa ANA Profile (16110)

Analyte: Anti-DNA Antibodies (0435)

Test System, Assay, Examination:
ALPCO ORGenTec Anti-dsDNA Elisa Assay (04649)
ALPCO ORGenTec Anti-dsDNA Pin Immuno Assay (04623)
INOVA Diagnostics QUANTA Lite ssDNA SemiQuant. ELISA (28436)
MarDx Anti-dsDNA (Immunoglobulin) EIA (40253)
elias usa Varelisa Combined DNA Antibodies (16107)
elias usa Varelisa dsDNA Antibodies (FARR version) (16100)

Analyte: Anti-ENA Antibodies (0507)

Test System, Assay, Examination:
ALPCO ORGenTec ENAScreen (SS–A,SS–B,Sm,RNP/Sm,Scl-70,Jo1) (04650)
ALPCO ORGenTec ENAscreen PIN Immuno Assay (04656)
Helix Diagnostics ENA+Screen (RNP,Sm,SS–A,SS–B,Scl-70,Jo-1) (25241)
Hemagen ENA Screen 4 Kit (RNP, Sm, SS–A, SS–B) (25228)
Hemagen ENA Screen 6 Kit (RNP, Sm, SS–A, SS–B, Scl-70,Jo-1) (25229)
MarDx ENA EIA Test Kit (40212)

Analyte: Anti-Glomerular Basement Membrane (GBM) Antibodies (0524)

Test System, Assay, Examination:
Scimedx GMB Antibody (computer calculations) (58408)
Scimedx GMB Antibody (manual calculations) (58409)

Analyte: Anti-Histone Antibodies (0437)

Test System, Assay, Examination:
TheraTest Laboratories EL–ANA Profiles Test (61018)
elias usa Varelisa Histone Antibodies (qualitative) (16106)
elias usa Varelisa Histone Antibodies (semi-quantitative) (16105)

Analyte: Anti-Jo-1 (0438)

Test System, Assay, Examination:
ALPCO ORGenTec Anti-JO–1 PIN Immuno Assay (04653)
Helix Diagnostics Anti-Jo–1 EIA Antibody Test (25231)
elias usa Varelisa ANA Profile (16110)

Analyte: Anti-Mitochondrial Antibodies (AMTA) (0439)

Test System, Assay, Examination:
MarDx Mitochondria EIA Test Kit (40211)

Analyte: Anti-Myeloperoxidase (MPO) Antibodies (0505)

Test System, Assay, Examination:
INOVA Diagnostics QUANTA Lite MPO ELISA (28439)
Scimedx MPO Antibody (auto reader w/ data reduction) (58405)
Scimedx MPO Antibody (manual) (58404)
elias usa Varelisa MPO–ANCA EIA (qualitative) (16130)
elias usa Varelisa MPO–ANCA EIA (semi-quantitative) (16129)

Analyte: Anti-Neutrophil Cytoplasm Antibodies (0440)

Test System, Assay, Examination:
Scimedx Anti-PR3 Antibody EIA (computer calculations) (58386)
Scimedx Anti-PR3 Antibody EIA (manual calculations) (58385)
elias usa Varelisa PR3–ANCA EIA (qualitative) (16124)
elias usa Varelisa PR3–ANCA EIA (semi-quantitative) (16123)

Analyte: Anti-Nuclear Antibodies (ANA) (0441)

Test System, Assay, Examination:
Immuno Concepts HEp-2000 Colorzyme ANA–Ro Test System (28396)
Roche Image Titer (RIAS) Antinuclear Antibody (ANA) Kit (55199)
TheraTest Laboratories EL-ANAscr (61220)
elias usa Varelisa ANA-Screen (4) (16111)

Analyte: Anti-Parietal Cell Antibodies (0442)

Test System, Assay, Examination:
elias usa Varelisa Parietal Cell Abs (qualitative) (16109)
elias usa Varelisa Parietal Cell Abs (semi-quantitative) (16108)

Analyte: Anti-Phosphatidylserine Antibodies (0521)

Test System, Assay, Examination:
Reaads Anti-Phosphatidylserine Semi-Quantitative Test Kit (55186)

Analyte: Anti-RNP-Sm Antibodies (0502)

Test System, Assay, Examination:
ALPCO ORGenTec Anti-RNP/Sm Pin Immuno Assay (04647)
Hemagen RNP-Sm ENA Kit (qualitative) (25189)
Hemagen RNP-Sm ENA Kit (semi-quantitative) (25194)
elias usa Varelisa ANA Profile (16110)

Analyte: Anti-SS-A/Ro (0446)

Test System, Assay, Examination:
ALPCO ORGenTec Anti-SS-A(Ro) PIN Immuno Assay (04651)
elias usa Varelisa ANA Profile (16110)

Analyte: Anti-SS-B/La (0447)

Test System, Assay, Examination:
ALPCO ORGenTec Anti-SS-B(La) Pin Immuno Assay (04648)
elias usa Varelisa ANA Profile (16110)

Analyte: Anti-Scl-70 (0448)

Test System, Assay, Examination:
ALPCO ORGenTec Anti-Scl 70 PIN Immuno Assay (04652)
Helix Diagnostics Anti-Scl-70 EIA Antibody Test (25232)
TheraTest Laboratories EL-ANA Profiles Test (61018)

Analyte: Anti-Serine Protease 3 (PR3) Antibodies (0522)

Test System, Assay, Examination:
INOVA Diagnostics QUANTA Lite PR3 ELISA (28440)

Analyte: Anti-Sm (Smith) (0450)

Test System, Assay, Examination:
ALPCO ORGenTec Anti-Sm(Smith) Pin Immuno Assay (04646)
elias usa Varelisa ANA Profile (16110)

Analyte: Anti-Thyroglobulin Antibodies (0455)

Test System, Assay, Examination:

ALPCO ORGenTec Anti-TG Elisa (04621)
ALPCO ORGenTec Anti-TG PIA (04618)
ALPCO ORGenTec Anti-TG/TPO PIA Combikit (04617)
Bayer Serodia-ATG (07695)
Fujirebio Serodia-ATG (19024)
MarDx Thyroglobulin EIA Test Kit (40235)
Sheild Diagnostics DIASTAT Anti-Tg Kit (qualitative) (58373)
Sheild Diagnostics DIASTAT Anti-Tg Kit (quantitative) (58372)

Analyte: Anti-Thyroid Microsomal Antibodies (AMA) (0455)

Test System, Assay, Examination:
Cogent Diagnostics AUTOSTAT II Autoantibody Test Kit (10267)
MarDx Microsomal EIA (40242)
MarDx Microsomal EIA Test Kit (40242)

Analyte: Anti-Trypanosoma Cruzi Antibodies (0503)

Test System, Assay, Examination:
Hemagen Chagas' Kit (25159)

Analyte: Anti-U1-snRNP Antibodies (0501)

Test System, Assay, Examination:
elias usa Varelisa ANA Profile (16110)

Analyte: B1 positive Lymphocytes (0735)

Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)

Analyte: B4 positive Lymphocytes (0736)

Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)

Analyte: Beta-2 Microglobulin (0703)

Test System, Assay, Examination:
The Binding Site B2 Microglobulin RID Kit (61233)

Analyte: C-Reactive Protein (CRP) (1001)

Test System, Assay, Examination:
Hemagen CRP 150 EIA (25256)

Analyte: C1-Esterase Inhibitor (C1INH) (1051)

Test System, Assay, Examination:
Kent Radial Immunodiffusion Test (34010)

Analyte: CD3 (IgG1) Positive Lymphocytes (1111)

Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)

Analyte: CD3 (IgG1)/B4 Positive Lymphocytes (1112)

Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)

Analyte: CD3 (IgG1)/T4 Positive Lymphocytes (1113)

Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)

Analyte: CD3 (IgG1)/T8 Positive Lymphocytes (1114)

Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)

Analyte: CD3/CD19/CD45 Positive Lymphocytes (1120)

Test System, Assay, Examination:
Becton Dickinson FACScan Flow Cytometer (07497)
Becton Dickinson FACSort Flow Cytometer (07637)

Analyte: CD3/CD4/CD45 Positive Lymphocytes (1121)

Test System, Assay, Examination:
Becton Dickinson FACScan Flow Cytometer (07497)
Becton Dickinson FACSort Flow Cytometer (07637)

Analyte: CD3/T4/T8 Positive Lymphocytes (1122)

Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)
Coulter Epics Flow Cytometer (10246)

Analyte: CD4 Protein (1124)

Test System, Assay, Examination:
T Cell Diagnostics TRAx CD4 Test Kit (61195)

Analyte: Complement C1q (1064)

Test System, Assay, Examination:
Kent Radial Immunodiffusion Test (34010)

Analyte: Complement C8 (1031)

Test System, Assay, Examination:
The Binding Site Human Complement C5 RID (61206)

Analyte: Complement, Total (1046)

Test System, Assay, Examination:
Incstar Complement Activation EIA Test System (CAE) (28404)

Analyte: Cytomegalovirus Antibodies (1039)

Test System, Assay, Examination:
Centocor CAPTIA CMV-M (10306)
Centocor CAPTIA CMV-TA (EIA) (10300)
Quest International SeraQuest CMV IgG (52030)

Analyte: Epstein-Barr Virus Antibodies (1603)

Test System, Assay, Examination:
Granbio Inc. EBNA IgG EIA Kit (22180)
Gull Laboratories EBNA IgG (Quantitative) ELISA Test (22168)
Gull Laboratories EBV-EA(D) IgG ELISA (qualitative) (22172)
Gull Laboratories EBV-EA(D) IgG ELISA (quantitative) (22169)
Immuno Probe EBNA IgG ELISA (28411)
Incstar EBNA IgG ELISA (28372)
Incstar EBV VCA IgG ELISA (28371)
Incstar EBV VCA IgM ELISA (28373)
MRL Diagnostics EBNA RIFA Antibody Test (40202)
Zeus EBNA IgG ELISA Test System (79048)
Zeus EBV-VCA IgM ELISA Test System (79046)

Analyte: Helicobacter Pylori Antibodies (2513)

Test System, Assay, Examination:
Enteric Products HM-CAP EIA Test (16076)

Analyte: Hepatitis B Surface Antigen (HBsAg) (2524)

Test System, Assay, Examination:
Abbott IMX HBsAg Confirmatory (04658)

Analyte: Immunoglobulins IgA (2803)

Test System, Assay, Examination:
Randox Laboratories IgA (manual) (55203)

Analyte: Immunoglobulins IgE (2805)

Test System, Assay, Examination:
Hycor HY-TEC Total IgE EIA Assay (25174)

Analyte: Immunoglobulins IgG (2806)

Test System, Assay, Examination:
Randox Laboratories IgG (manual) (55205)

Analyte: Immunoglobulins IgM (2808)

Test System, Assay, Examination:
Randox Laboratories IgM (manual) (55204)

Analyte: Leukocyte Common Antigen (LCA) (3756)

Test System, Assay, Examination:
BioTek Sol'n TechMate/ChemMate Spc. Stain LCA-CD45 (tissue) (07538)

Analyte: MY4 Positive Lymphocytes (4033)

Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)

Analyte: Mo2 Positive Lymphocytes (4034)

Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)

Analyte: Rheumatoid Factor (RF) (5508)

Test System, Assay, Examination:
TheraTest Laboratories EL-RF/3 (IgM-IgG-IgA) Kit (61157)

Analyte: Rubella Antibodies (5510)

Test System, Assay, Examination:
Centocor CAPTIA Rubella-G (10305)
Centocor CAPTIA Rubella-M (10304)

Analyte: T1 Positive Lymphocytes (6157)

Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)

Analyte: T11 Positive Lymphocytes (6146)

Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)

Analyte: T11/B1 Positive Lymphocytes (6147)

Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)

Analyte: T11/B4 Positive Lymphocytes (6148)

Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)

Analyte: T3 Positive Lymphocytes (6149)

Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)

Analyte: T4 Positive Lymphocytes (6150)

Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)

Analyte: T4/T8 Positive Lymphocytes (6151)

Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)

Analyte: T8 Positive Lymphocytes (6152)

Test System, Assay, Examination:
Coulter EPICS Profile (10329)
Coulter EPICS Profile II (10219)
Coulter EPICS XL (10330)
Coulter EPICS XL-MCL (10331)

Analyte: Thyroid Peroxidase Autoantibodies (TPO) (6135)

Test System, Assay, Examination:
ALPCO ORGenTec Anti-TG/TPO PIA Combikit (04617)
ALPCO ORGenTec Anti-TPO Elisa (04622)
ALPCO ORGenTec Anti-TPO PIA (04619)
Biomerica Anti-Thyroid Peroxidase (Anti-TPO) ELISA (07728)
Shield Diagnostics DIASTAT Anti-TPO Kit (qualitative) (58377)
Shield Diagnostics DIASTAT Anti-TPO Kit (semi-quantitative) (58378)

Analyte: Toxoplasma Gondii Antibodies (6113)

Test System, Assay, Examination:
BioWhittaker TOXOSTAT Test (07564)
Centocor CAPTIA Toxo-G (10308)
Centocor CAPTIA Toxo-M (10307)

Analyte: Treponema pallidum Antibodies (Includes Reagin) (6115)

Test System, Assay, Examination:
ADI Visuwell Syphilis Aatibody (04546)
BIOMIRA Diagnostics Visuwell Reagin II (07688)
Centocor CAPTIA Syphilis-G (10310)
Centocor CAPTIA Syphilis-M (10309)

ANALYTE: Varicella-Zoster Virus Antibodies (6704)

Test System, Assay, Examination:
Gull Laboratories VZV IgG ELISA Test (22170)

Speciality/Subspeciality: Hematology

Analyte: Activated Partial Thromboplastin Time (APTT) (0409)

Test System, Assay, Examination:
Behring Pathromtin SL APTT (manual) (07777)
Ortho SynthASil APTT (manual) (46195)

Analyte: Alpha-2-Antiplasmin (0483)

Test System, Assay, Examination:
Medical Laboratory MLA Electra 1400C (40208)

ANALYTE: Antithrombin III (ATIII) (0456)

Test System, Assay, Examination:
Helena Laboratories Chrom Z-AT (manual) (25242)
Helena Laboratories PACKS-4 (25029)
Instrumentation Laboratory IL ACL Futura System (28395)
Medical Laboratory MLA Electra 1400C (40208)

Analyte: Coagulation Factors (1044)

Test System, Assay, Examination:
Behring Fibrintimer A (07516)
Bio/Data Microsample Coagulation Analyzer, MCA 310 (07597)
Helena Laboratories Chrom Z-Factor VIII:C (manual) (25239)
Helena Laboratories PACKS-4 (25029)
Medical Laboratory MLA Electra 1400C (40208)
Pharmacia Hepar Chromogenix Coamatic Factor VIII (49149)

Analyte: Coagulation Index, Modified Whole Blood (1128)

Test System, Assay, Examination:
Haemoscope Thromboelastograph 3000S (TEG 3000S) (25257)

Analyte: Coagulation Index, Modified/ Recalcified PRP/PPP (1129)

Test System, Assay, Examination:
Haemoscope Thromboelastograph 3000S (TEG 3000S) (25257)

Analyte: Fibrin Split Products (Fibrin Degradation) (1904)

Test System, Assay, Examination:
AGEN Dimertest Gold EIA (04580)

Analyte: Fibrinogen (1905)

Test System, Assay, Examination:
Bio/Data MCA 210 (von Clauss Methodology) (07696)
Bio/Data MCA 310 (von Clauss Methodology) (07697)

Analyte: Heparin (2518)

Test System, Assay, Examination:
American Bioproducts ROTACHROM HBPM/LMWH (04583)
American Bioproducts ROTACHROM Heparin (04584)
American Bioproducts STACHROM Heparin Assay (04560)
American Bioproducts STACLOT Heparin (manual) (04582)
Chromogenix COACUTE Heparin (manual) (10313)

Analyte: Lupus Anticoagulants (3728)

Test System, Assay, Examination:
Becton Dickinson BBL Fibrometer (Am.Diag.DDVtest/DVVconfirm) (07691)
Bio/Data MCA 210 (Am. Diagnostica DVVtest/DVVconfirm) (07692)
Bio/Data MCA 310 (Am. Diagnostica DVVtest/DVVconfirm) (07693)
Diagnostica Stago ST4 (Am.Diagnostica DDVtest/DVVconfirm) (13405)
General Diagnostics Coag-A-Mate X2 (Am.Diag.DVVtest/confrm) (22179)
Instrumentation Laboratory IL ACL 300(Am.Diag.DVVtest/cfrm) (28412)
Instrumentation Laboratory IL ACL 300+(Am.Diag.DVVtst/cfrm) (28413)
Medical Laboratory MLA Electra 700 (Am.Diag.DVVtest/confrm) (40228)
Medical Laboratory MLA Electra 800 (Am.Diag.DVVtest/confrm) (40229)
Medical Laboratory MLA Electra 900C(Am.Diag.DVVtest/confrm) (40230)
Medical Laboratory MLA Electra1000C(Am.Diag.DVVtest/confrm) (40231)

Analyte: Plasminogen (4907)

Test System, Assay, Examination:
Helena Laboratories Chrom Z-PLG (manual) (25240)
Helena Laboratories PACKS-4 (25029)
Medical Laboratory MLA Electra 1400C (40208)

Analyte: Plasminogen Activator Inhibitor (PAI) (4936)

Test System, Assay, Examination:
Medical Laboratory MLA Electra 1400C (40208)

Analyte: Platelet Count (4908)

Test System, Assay, Examination:
Coulter Z1 (10325)

Analyte: Protein C (4929)

Test System, Assay, Examination:
Helena Laboratories Chrom Z-Protein C (manual) (25237)
Helena Laboratories PACKS-4 (25029)
Medical Laboratory MLA Electra 1400C (40208)

Analyte: Protein C Resistance (4973)

Test System, Assay, Examination:
Chromogenix COATEST APC Resistance (manual) (10286)

Analyte: Protein S (4930)

Test System, Assay, Examination:
Diagnostica Stago ASSERACHROM Free Protein S (13404)
Diagnostica Stago ASSERACHROM Total Protein S (13403)

Analyte: Prothrombin Time (PT) (4922)

Test System, Assay, Examination:
Helena Laboratories Thromboplastin Reagent-LI (manual) (25244)
Ortho RecombiPlasTin II (manual) (46149)
Pacific Hemostasis ThromboScreen Thromboplastin-DS (manual) (49154)

Analyte: Red Blood Cell Count (Erythrocyte Count) (RBC) (5502)

Test System, Assay, Examination:
Coulter Z1 (10325)

Analyte: Reptilase Time (5521)

Test System, Assay, Examination:
Biopool Venom Time Reagent (manual) (07737)

Analyte: Reticulocyte Count (5606)

Test System, Assay, Examination:
Becton Dickinson FACSCalibur Flow Cytometer (07639)
Becton Dickinson FACSort Flow Cytometer (07637)

Analyte: White Blood Cell Count (Leukocyte Count) (WBC) (7002)

Test System, Assay, Examination:
Coulter Z1 (10325)

Analyte: White Blood Cell Differential (WBC Diff) (7001)

Test System, Assay, Examination:
IRIS The White IRIS Leukocyte Differential Analyzer (28408)

Analyte: von Willebrand Factor (6708)

Test System, Assay, Examination:
American Diagnostica Rellplate vWF EID Kit (04662)

Speciality/Subspeciality: Mycobacteriology

Analyte: Mycobacteria (4024)

Test System, Assay, Examination:
Becton Dickinson BACTEC 9000MB (07746)

Analyte: Mycobacterium Avium (4006)

Test System, Assay, Examination:
Gen-Probe AccuProbe—M. avium specific (including culture) (22129)

Analyte: Mycobacterium Avium Complex (4009)

Test System, Assay, Examination:
DynaGen MycoAKT Kit for M. avium Complex (inc. culture) (13383)
Gen-Probe AccuProbe—M. avium complex (including culture) (22128)
Syngene Snap Culture ID Diagnostic Kit/M. avium complex (58069)

Analyte: Mycobacterium Gordonae (4011)

Test System, Assay, Examination:
Gen-Probe AccuProbe—M. gordonae (including culture) (22130)

Analyte: Mycobacterium Intracellulare (4012)

Test System, Assay, Examination:
Gen-Probe AccuProbe—M. intracellulare specific (inc cult) (22131)

Analyte: Mycobacterium Kansasii (4014)

Test System, Assay, Examination:
DynaGen MycoAKT Kit for M. kansasii (including culture) (13384)
Gen-Probe AccuProbe—M. kansasii (including culture) (22127)

Analyte: Mycobacterium Tuberculosis Complex (4015)

Test System, Assay, Examination:
Becton Dickinson BACTEC TB System (NAP Differentiat. Test) (07084)
Becton Dickinson BACTEC TB System (Susceptibility Test) (07222)
DynaGen MycoAKT Kit for M. tuberculosis Complex (inc. cult) (13385)
Gen-Probe AccuProbe—M. tuberculosis complex (inc culture) (22132)
Syngene Snap Culture ID Diagnostic Kit/M. tuberculosis cplx (58152)

Speciality/Subspeciality: Mycology

Analyte: Fungi—Fungal Elements Only (1910)

Test System, Assay, Examination:
Remel Calcofluor White Stain Kit (55206)

Analyte: Yeast (7001)

Test System, Assay, Examination:
Remel Calcofluor White Stain Kit (55206)

Speciality/Subspeciality: Parasitology

Analyte: Acanthamoeba (0523)

Test System, Assay, Examination:
Remel Calcofluor White Stain Kit (55206)

Analyte: Cryptosporidium (1109)

Test System, Assay, Examination:
Alexon ProSpecT Giardia/Crypto. Microplate (dirAg/spectro) (04655)
Alexon ProSpecT Giardia/Crypto. Microplate (dirAg/visual) (04654)

Analyte: Entamoeba Histolytica (1631)

Test System, Assay, Examination:
TechLab Entamoeba Test (spectrophotometer) (61169)
TechLab Entamoeba Test (visual) (61168)

Analyte: Giardia lamblia (2222)

Test System, Assay, Examination:
Alexon ProSpecT Giardia/Crypto. Microplate (dirAg/spectro) (04655)
Alexon ProSpecT Giardia/Crypto. Microplate (dirAg/visual) (04654)
TechLab CeLLabs Giardia-Cel IF Test (61216)
Trend Scientific Giardia Direct Detection RS Test (61204)

Analyte: Microsporidia (4039)

Test System, Assay, Examination:
Remel Calcofluor White Stain Kit (55206)

Analyte: Pneumocystis (4926)

Test System, Assay, Examination:
DAKO Quick Staining Kit for Pneumocystis carinii (13376)
Remel Calcofluor White Stain Kit (55206)

Speciality/Subspeciality: Toxicology / TDM

Analyte: Amphetamines (0428)

Test System, Assay, Examination:
Beckman Synchron CX 4 (CEDIA DAU/manual curve) (07722)
Beckman Synchron CX 5 (CEDIA DAU/manual curve) (07723)
Beckman Synchron CX 7 (CEDIA DAU/manual curve) (07724)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/manual curve) (07718)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/manual curve) (07719)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/manual curve) (07720)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/manual curve) (07721)
STC Diagnostics Amphetamines M-Plate EIA (Sudormed Patch) (58374)

Analyte: Barbiturates (0701)

Test System, Assay, Examination:
Beckman Synchron CX 4 (CEDIA DAU/manual curve) (07722)
Beckman Synchron CX 5 (CEDIA DAU/manual curve) (07723)
Beckman Synchron CX 7 (CEDIA DAU/manual curve) (07724)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/manual curve) (07718)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/manual curve) (07719)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/manual curve) (07720)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/manual curve) (07721)
Olympus AU 5000 (CEDIA DAU/manual curve) (46212)

Analyte: Benzodiazepines (0702)

Test System, Assay, Examination:
Beckman Synchron CX 4 (CEDIA DAU/manual curve) (07722)
Beckman Synchron CX 5 (CEDIA DAU/manual curve) (07723)
Beckman Synchron CX 7 (CEDIA DAU/manual curve) (07724)
Bio-Rad REMEDi HS-Urine Benzodiazepine Assay (07744)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/manual curve) (07718)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/manual curve) (07719)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/manual curve) (07720)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/manual curve) (07721)
Olympus AU 5000 (CEDIA DAU/manual curve) (46212)

Analyte: Cannabinoids (THC) (1009)

Test System, Assay, Examination:
Beckman Synchron CX 4 (CEDIA DAU/manual curve) (07722)
Beckman Synchron CX 5 (CEDIA DAU/manual curve) (07723)
Beckman Synchron CX 7 (CEDIA DAU/manual curve) (07724)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/manual curve) (07718)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/manual curve) (07719)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/manual curve) (07720)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/manual curve) (07721)
Meco Industries MECTEST Cannabinoid Radioimmunoassay (40234)
Olympus AU 5000 (CEDIA DAU/manual curve) (46212)

Analyte: Cocaine Metabolites (1023)

Test System, Assay, Examination:
Beckman Synchron CX 4 (CEDIA DAU/manual curve) (07722)
Beckman Synchron CX 5 (CEDIA DAU/manual curve) (07723)
Beckman Synchron CX 7 (CEDIA DAU/manual curve) (07724)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/manual curve) (07718)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/manual curve) (07719)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/manual curve) (07720)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/manual curve) (07721)

Meco Industries MECTEST Cocaine Radioimmunoassay (40232)
Olympus AU 5000 (CEDIA DAU/manual curve) (46212)
STC Diagnostics Cocaine M-Plate EIA (Sudormed Patch) (58379)

Analyte: Digoxin (1304)

Test System, Assay, Examination:
Johnson & Johnson CDL Amerlite Analyzer (31016)

Analyte: Drugs of Abuse (1307)

Test System, Assay, Examination:
Bio-Rad REMEDi HS Drug Profiling System (07604)

Analyte: Lysergic Acid Diethylamide (LSD) (3715)

Test System, Assay, Examination:
Boehringer Mannheim Hitachi 911 (CEDIA DAU/manual curve) (07721)
STC Diagnostics LSD Micro-Plate EIA (58395)

Analyte: Methadone (4003)

Test System, Assay, Examination:
Boehringer Mannheim Hitachi 704 (CEDIA DAU/manual curve) (07718)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/manual curve) (07719)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/manual curve) (07720)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/manual curve) (07721)
Boehringer Mannheim Hitachi 917 (CEDIA DAU/manual curve) (07768)

Analyte: Methamphetamine/Amphetamine (4036)

Test System, Assay, Examination:
Sigma SIA Methamphetamine/Amphetamine (58103)

Analyte: Methamphetamines (4004)

Test System, Assay, Examination:
STC Diagnostics Methamphetamine M-Plate EIA (Sudormed Patch) (58381)

Analyte: Opiates (4001)

Test System, Assay, Examination:
Beckman Synchron CX 4 (CEDIA DAU/manual curve) (07722)
Beckman Synchron CX 5 (CEDIA DAU/manual curve) (07723)
Beckman Synchron CX 7 (CEDIA DAU/manual curve) (07724)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/manual curve) (07718)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/manual curve) (07719)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/manual curve) (07720)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/manual curve) (07721)
Meco Industries MECTEST Opiate Radioimmunoassay (40233)
Olympus AU 5000 (CEDIA DAU/manual curve) (46212)
STC Diagnostics Opiates M-Plate EIA (Sudormed Patch) (58380)

Analyte: Phencyclidine (PCP) (4901)

Test System, Assay, Examination:
Beckman Synchron CX 4 (CEDIA DAU/manual curve) (07722)
Beckman Synchron CX 5 (CEDIA DAU/manual curve) (07723)
Beckman Synchron CX 7 (CEDIA DAU/manual curve) (07724)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/manual curve) (07718)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/manual curve) (07719)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/manual curve) (07720)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/manual curve) (07721)
Olympus AU 5000 (CEDIA DAU/manual curve) (46212)
STC Diagnostics PCP M-Plate EIA (Sudormed Patch) (58406)

Analyte: Propoxyphene (4917)

Test System, Assay, Examination:
Beckman Synchron CX 4 (CEDIA DAU/manual curve) (07722)
Beckman Synchron CX 5 (CEDIA DAU/manual curve) (07723)
Beckman Synchron CX 7 (CEDIA DAU/manual curve) (07724)
Boehringer Mannheim Hitachi 704 (CEDIA DAU/manual curve) (07718)
Boehringer Mannheim Hitachi 717 (CEDIA DAU/manual curve) (07719)
Boehringer Mannheim Hitachi 747 (CEDIA DAU/manual curve) (07720)
Boehringer Mannheim Hitachi 911 (CEDIA DAU/manual curve) (07721)

Speciality/Subspeciality: Virology

Analyte: Coxsackie A24 Virus (1098)

Test System, Assay, Examination:
Light Diag. MAb Coxsackie A24 Virus (inc. culture) (37073)

Analyte: Coxsackie A9 Virus (1097)

Test System, Assay, Examination:
Light Diag. MAb Coxsackie A9 Virus (inc. culture) (37072)

Analyte: Coxsackie B1 Virus (1099)

Test System, Assay, Examination:
Light Diag. MAb Coxsackie B Virus Blend (inc. culture) (37087)
Light Diag. MAb Coxsackie B1 Virus (inc. culture) (37074)

Analyte: Coxsackie B2 Virus (1100)

Test System, Assay, Examination:
Light Diag. MAb Coxsackie B Virus Blend (inc. culture) (37087)
Light Diag. MAb Coxsackie B2 Virus (inc. culture) (37075)

Analyte: Coxsackie B3 Virus (1101)

Test System, Assay, Examination:
Light Diag. MAb Coxsackie B Virus Blend (inc. culture) (37087)
Light Diag. MAb Coxsackie B3 Virus (inc. culture) (37076)

Analyte: Coxsackie B4 Virus (1102)

Test System, Assay, Examination:
Light Diag. MAb Coxsackie B Virus Blend (inc. culture) (37087)
Light Diag. MAb Coxsackie B4 Virus (inc. culture) (37077)

Analyte: Coxsackie B5 Virus (1103)

Test System, Assay, Examination:
Light Diag. MAb Coxsackie B Virus Blend (inc. culture) (37087)
Light Diag. MAb Coxsackie B5 Virus (inc. culture) (37078)

Analyte: Coxsackie B6 Virus (1104)

Test System, Assay, Examination:
Light Diag. MAb Coxsackie B Virus Blend (inc. culture) (37087)
Light Diag. MAb Coxsackie B6 Virus (inc. culture) (37079)

Analyte: Cytomegalovirus (1038)

Test System, Assay, Examination:
Biotest Diagnostics CMV Brite (direct antigen) (07661)

Analyte: Enterovirus 70 (1625)

Test System, Assay, Examination:
Light Diag. MAb Enterovirus 70 (inc. culture) (37086)
Light Diag. MAb Enterovirus Blend (inc. culture) (37084)

Analyte: Enterovirus 71 (1626)

Test System, Assay, Examination:
Light Diag. MAb Enterovirus 71 (inc. culture) (37088)
Light Diag. MAb Enterovirus Blend (inc. culture) (37084)

Analyte: Herpes Simplex (2529)

Test System, Assay, Examination:
Diagnostic Hybrids ELVIS HSV Kit (inc. cell culture) (13318)
Johnson & Johnson CDI SureCell (including cell culture) (31064)
Meridian Premier HSV Plus (direct antigen/spectro.) (40238)
Meridian Premier HSV Plus (direct antigen/visual) (40239)
Meridian Premier HSV Plus (inc. cell cult./spectro.) (40237)
Meridian Premier HSV Plus (inc. cell cult./visual) (40236)

Analyte: Poliovirus 1 (4966)

Test System, Assay, Examination:
Light Diag. MAb Poliovirus 1 (inc. culture) (37080)
Light Diag. MAb Poliovirus Blend (inc. culture) (37083)

Analyte: Poliovirus 2 (4967)

Test System, Assay, Examination:
Light Diag. MAb Poliovirus 2 (inc. culture) (37081)
Light Diag. MAb Poliovirus Blend (inc. culture) (37083)

Analyte: Poliovirus 3 (4968)

Test System, Assay, Examination:
Light Diag. MAb Poliovirus 3 (inc. culture) (37082)
Light Diag. MAb Poliovirus Blend (inc. culture) (37083)

Analyte: Varicella-Zoster Viruses (6705)

Test System, Assay, Examination:
Light Diag. Varicella-zoster Virus Direct IFA (direct Ag) (37104)
Light Diag. Varicella-zoster Virus Direct IFA (inc. cult.) (37105)

Complexity: Waived

Speciality/Subspeciality: Bacteriology

Analyte: Helicobacter Pylori (2512)

Test System, Assay, Examination:
Serim PyloriTek Test Kit (58338)

Analyte: Streptococcus, Group A (From Throat Only) (5828)

Test System, Assay, Examination:
Quidel QuickVue In-Line One-Step Strep A Test (25 test kit) (52036)

Speciality/Subspeciality: Endocrinology

Analyte: Ovulation Test (LH) by Visual Color Comparison (9461)

Test System, Assay, Examination:
Quidel Conceive Ovulation Predictor (52029)
Syntron Bioresearch BeSure OneStep Ovulation Predictor Kit (58365)

Analyte: Urine HCG by Visual Color Comparison Tests (9642)

Test System, Assay, Examination:
3C Diagnostics MIT One-Step Immediate Pregnancy Test (01001)
AmeriTek One step dBest Dipstick (04661)
AmeriTek One step dBest Disk (04659)
AmeriTek One step dBest Midstream (04660)
Applied Biotech SureStrip hCG Pregnancy Test (04635)
Bionike A/Q Pregnancy Test (07636)
Boehringer Mannheim Accu-Stat hCG (07710)
Excel Scientific OneStep Urine/Serum hCG Preg Module Test (16133)
Horizon Diagnostics Pregna-Plus hCG (25225)
Immunostics immuno hCG Detector Pregnancy Test (28418)
Immunostics immuno hCG Detector Stix (28417)
International Newtech Develop. MiniStrip HCG ONESTEP (28394)
Johnson & Johnson CDI SureCell hCG-Urine (31067)
Johnson & Johnson CDI SureCell hCG-Urine/Serum (31066)
Medix Biotech CONTRAST hCG Urine/Serum Test (40215)
Medix Biotech Rapid hCG (urine/serum) (40224)
Mizuho USA Quick Checker hCG Pregnancy Test (40207)
Quidel CAMEO Home Pregnancy Test (52031)
Quidel CARDS Q.S. hCG (52032)
Quidel Concise Performance Plus hCG (52033)
Sea-Band Pregnancy Test (58362)
Selfcare early Pregnancy test (test cassett) (58401)
Selfcare early Pregnancy test (test stick) (58400)
Simex Medical DiagnoStrip hCG (58397)
Syntron Platform OneStep Pregnancy Test (58407)
Worldwide Medical First Check hCG (cassette) (70181)
Worldwide Medical First Check hCG (test stick) (70182)
Wyntek Diagnostics OSOM Pregnancy Test for Home Use (70175)
Wyntek Diagnostics OSOM hCG-Combo Test (70177)
Wyntek Diagnostics OSOM hCG-Urine Test (70174)

Speciality/Subspeciality: General Chemistry

Analyte: Body Fluids (Other Than Blood) pH (0731)

Test System, Assay, Examination:
All Qualitative Color Comparison pH Testing (04542)

Analyte: Cholesterol (1020)

Test System, Assay, Examination:
Boehringer Mannheim Accu-Chek InstantPlus Cholesterol (07776)
ChemTrak AccuMeter (10165)
Cholestech L.D.X. (10170)
Johnson & Johnson ADVANCED CARE Cholesterol Test (31014)

Analyte: Fecal Occult Blood (9101)

Test System, Assay, Examination:
Dipro Diagnostics Hemdetect (13308)
Immunostics hema screen (28419)

Analyte: Gastric Occult Blood (2211)

Test System, Assay, Examination:
SmithKline Gastroccult (58217)

Analyte: Glucose (2203)

Test System, Assay, Examination:
Cholestech L.D.X. (10170)
HemoCue B-Glucose System (25112)

Analyte: Glucose Monitoring Devices (FDA Cleared/Home Use) (9221)

Test System, Assay, Examination:
Bayer GLUCOMETER ELITE Blood Glucose Meter (07685)
Bayer GLUCOMETER ENCORE QA+ Blood Glucose Meter (07689)
Chronimed Supreme Blood Glucose Meter (10315)
Chronimed Supreme Blood Glucose Test Strips (10316)
Johnson & Johnson Lifescan ONE TOUCH II Bld Glucose Monitor (31017)
Johnson & Johnson Lifescan ONE TOUCH II Glucose Test Strips (31018)
LifeScan ONE TOUCH Profile Complete Diabetes Tracking Sys. (37101)
Lifescan SureStep Blood Glucose Monitoring System (37090)
MediSense MediSense 2 Blood Glucose Testing System (40214)
MediSense Precision QID Blood Glucose Testing System (40213)

Analyte: HDL Cholesterol (2550)

Test System, Assay, Examination:
Cholestech L.D.X. (10170)

Analyte: Microalbumin (4019)

Test System, Assay, Examination:
Boehringer Mannheim Chemstrip Micral (urine dipstick) (07717)

Analyte: Triglyceride (6118)

Test System, Assay, Examination:
Cholestech L.D.X. (10170)

Speciality/Subspeciality: Hematology

Analyte: Erythrocyte Sedimentation Rate, Nonautomated Waived (9161)

Test System, Assay, Examination:
Becton Dickinson Sedltainer ESR System (07694)

Analyte: Spun Microhematocrit (9581)

Test System, Assay, Examination:
StatSpin Technologies CritSpin (58368)
Vulcon Technologies Microspin 24 (67098)

Speciality/Subspeciality: Urinalysis

Analyte: Urine Dipstick or Tablet Analytes, Nonautomated (9641)

Test System, Assay, Examination:
Chemtech Labs URISTRIP (10294)
Genesis Labs DIA SCREEN Urine Reagent Strips (22176)
TECO Diagnostics Urine Reagent Strips 1 (61151)
TECO Diagnostics Urine Reagent Strips 8 (61187)
TECO Diagnostics Urine Reagent Strips 9 (61219)

Announcement of Boards Approved by HHS

In the personnel regulations at § 493.1443(b)(3)(i), individuals with an earned doctoral degree in a chemical, physical, biological or clinical laboratory science and certification by a board approved by HHS may qualify as a laboratory director. Under § 493.1455(a), individuals who meet the director qualification requirements of § 493.1443(b)(3)(i) may qualify as a clinical consultant. Under these provisions, four boards have been approved by HHS, and HHS has authority to recognize any certification board having comparable requirements. The American Board of Histocompatibility and Immunogenetics (ABHI) and the American Board of Medical Genetics (ABMG) applied for approval and submitted documentation on the education, training and experience required for certification. Both boards were determined to have credentialing requirements comparable to the boards currently approved by HHS, and ABHI and ABMG were subsequently notified that they meet CLIA requirements for board approval.

In this Notice we are announcing HHS approval of ABHI and ABMG certification to qualify individuals as laboratory directors and clinical consultants under the CLIA regulations: Individuals with a doctoral degree in a chemical, physical, biological or clinical laboratory science and certification by ABHI or ABMG meet the CLIA qualification requirements to serve as a laboratory director or clinical consultant.

[FR Doc. 96–17097 Filed 7–5–96; 8:45 am]
BILLING CODE 4163–18–P

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements for STD Faculty Expansion, Program Announcement 616; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

NAME: Disease, Disability, and Injury Prevention and Control SEP: Cooperative Agreements for STD Faculty Expansion, Program Announcement 616.

TIME AND DATE: 8:30 a.m.–5 p.m., August 8, 1996.

PLACE: 11 Corporate Square, Building 11, Conference Room A, Corporate Square Boulevard, Atlanta, Georgia 30329.

STATUS: Closed.

MATTERS TO BE DISCUSSED: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 616.

The meeting will be closed to the public in accordance with provisions set forth in 5 U.S.C. 552b(c) (4) and (6), and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

CONTACT PERSON FOR MORE INFORMATION: John R. Lehnherr, Chief, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, 1600 Clifton Road, NE, M/S E07, Atlanta, Georgia 30333, telephone 404/639–8025.

Dated: July 1, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–17220 Filed 7–5–96; 8:45 am]
BILLING CODE 4163–18–M

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: The Office of Child Support Enforcement OCSE–156 Child Support Enforcement Program Quarterly Data Report and OCSE–158 Child Support Enforcement Program Annual Data Summary Report.

OMB No.: 0970–0057.

Description: The authority to collect and report the information requested on these forms is found in sections 452(a)(4), 452(a)(5), 452(a)(10), and 469 of the Social Security Act. These data are highly aggregated used in a management function to establish the effectiveness and efficiency of State child support programs. The Federal Office of Child Support Enforcement will use the data to carry out its oversight role and submit the Annual Report to Congress.

Respondents: State governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–156	54	4	3.7	799.2
OCSE–158	54	1	1.2	64.8

Estimated Total Annual Burden Hours: 864.0.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden on the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 27, 1996.

Larry Guerrero,

Director, Office of Information Services.

[FR Doc. 96–17190 Filed 7–5–96; 8:45 am]
BILLING CODE 4184–01–M

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: June 1996

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: This notice lists new proposals for welfare reform and combined welfare reform/Medicaid demonstration projects submitted to the Department of Health and Human Services for the month of June, 1996. It includes both those proposals being considered under the standard waiver process and those being considered under the 30 day process. Federal approval for the proposals has been requested pursuant to section 1115 of the Social Security Act. This notice also lists proposals that were previously submitted and are still pending a decision and projects that have been approved since June 1, 1995. The Health Care Financing Administration is publishing a separate notice for Medicaid only demonstration projects.

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove new proposals under the standard application process for at least 30 days after the date of this notice to allow time to receive and consider

comments. Direct comments as indicated below.

ADDRESSES: For specific information or questions on the content of a project contact the State contact listed for that project.

Comments on a proposal or requests for copies of a proposal should be addressed to: Howard Rolston, Administration for Children and Families, 370 L'Enfant Promenade, S.W., Aerospace Building, 7th Floor West, Washington DC 20447. FAX: (202) 205–3598 PHONE: (202) 401–9220.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 1115 of the Social Security Act (the Act), the Secretary of Health and Human Services (HHS) may approve research and demonstration project proposals with a broad range of policy objectives.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principles that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

On August 16, 1995, the Secretary published a notice in the **Federal Register** (60 FR 42574) exercising her discretion to request proposals testing welfare reform strategies in five areas. Since such projects can only incorporate provisions included in that announcement, they are not subject to the Federal notice procedures. The Secretary proposed a 30 day approval process for those provisions. As previously noted, this notice lists all new or pending welfare reform demonstration proposals under section 1115. Where possible, we have identified the proposals being considered under the 30 day process. However, the Secretary reserves the right to exercise her discretion to consider any proposal under the 30 day process if it meets the criteria in the five specified areas and the State requests it or concurs.

II. Listing of New and Pending Proposals for the Month of June, 1996

As part of our procedures, we are publishing a monthly notice in the **Federal Register** of all new and pending proposals. This notice contains proposals for the month of June, 1996.

PROJECT TITLE: California—Work Pays Demonstration Project (Amendment).

DESCRIPTION: Would amend Work Pays Demonstration Project by adding provisions to: reduce benefit levels by 10% (but retaining the need level); reduce benefits an additional 15% after 6 months on assistance for cases with an able-bodied adult; time-limit assistance to able-bodied adults to 24 months, and not increase benefits for children conceived while receiving AFDC.

DATE RECEIVED: 3/14/94.

TYPE: AFDC.

CURRENT STATUS: Pending.

CONTACT PERSON: Glen Brooks, (916) 657–3291.

PROJECT TITLE: California—Work Pays Demonstration Project (Amendment).

DESCRIPTION: Would amend the Work Pays Demonstration Project by adding provisions to not increasing AFDC benefits to families for additional children conceived while receiving AFDC.

DATE RECEIVED: 11/9/94.

TYPE: AFDC.

CURRENT STATUS: Pending.

CONTACT PERSON: Bruce Wagstaff, (916) 657–2367.

PROJECT TITLE: California—Assistance Payments Demonstration Project/California Work Pays Demonstration Project (Amendment).

DESCRIPTION: Would amend the Assistance Payments Demonstration Project/California Work Pays Demonstration Project by adding provisions to California to allow two additional AFDC benefit reductions: (1) reduce the Maximum Aid Payment (MAP) by 4.9 percent across-the-board statewide; and (2) divide California counties into two regions based on housing costs, and reduce both the Need Standard and the MAP in the region with the lower costs. In addition, the State is requesting blanket authority for future reductions in AFDC payment levels in conjunction with welfare reform state law changes.

DATE RECEIVED: 3/13/96.

TYPE: AFDC/Medicaid.

CURRENT STATUS: Pending.

CONTACT PERSON: Bruce Wagstaff, (916) 657–2367.

PROJECT TITLE: California—Assistance Payments Demonstration Project/California Work Pays Demonstration Project (Amendment).

DESCRIPTION: Would amend the Assistance Payments Demonstration Project/California Work Pays Demonstration Project by adding provisions to allow one additional provision: income of a senior parent living in the same household with a minor parent with a dependent child will not be deemed to the minor parent's child.

DATE RECEIVED: 3/13/96.

TYPE: AFDC.

CURRENT STATUS: Pending.

CONTACT PERSON: Bruce Wagstaff, (916) 657–2367.

PROJECT TITLE: Georgia—Jobs First Project.

DESCRIPTION: In ten pilot counties, would replace AFDC payment with paid employment; extend transitional Medicaid to 24 months; eliminate 100 hour employment rule for eligibility determination in AFDC–UP cases.

DATE RECEIVED: 7/5/94.

TYPE: AFDC.

CURRENT STATUS: Pending (not previously published).

CONTACT PERSON: Nancy Meszaros, (404) 657–3608.

PROJECT TITLE: Georgia—Fraud Detection Project.

DESCRIPTION: Would seek to reduce the incidence of fraud in the AFDC and Food Stamps programs by imposing stronger penalties on individuals convicted of committing such fraud. Georgia proposes to change the fraud penalty to one year for the first violation and permanently for the second violation.

DATE RECEIVED: 7/1/96.

TYPE: AFDC.

CURRENT STATUS: New.

CONTACT PERSON: Betty Williams-Kirby, (404) 657–3604.

PROJECT TITLE: Hawaii—Pursuit Of New Opportunities (PONO).

DESCRIPTION: Would, limit benefits to 60 months in a lifetime for all households except those exempt from work requirements; for all non-exempt households, progressively reduce the grant amount, by 20% after 2 months, then in annual stages to 50% in the fifth year of eligibility; exclude the income of dependent, minor student recipients from the 185% Gross Income Test; require all non-high school graduate or non-GED certified minor parent heads of households to participate in educational activities; use a Benefit Reduction Rate formula to allow participants to offset progressive grant reductions by keeping a larger portion of any earned income; eliminate all of AFDC–UP categorical requirements; strengthen JOBS participation requirements by eliminating certain exemptions such as,

remoteness due to excessive travel time, current work activity, the non-principal earner in a two parent household, or full-time VISTA participants, etc.; allow families to retain up to $5,000 in resources; disregard one motor vehicle, regardless of equity value, needed for self-sufficiency purposes; delete the $50 child support pass-through; disregard all student loans, grants and scholarships as income.

DATE RECEIVED: 05/07/96.

TYPE: AFDC.

CURRENT STATUS: Pending.

CONTACT PERSON: Kristine Foster, (808) 586–5729.

PROJECT TITLE: Indiana—Impacting Families Welfare Reform Demonstration—Amendments.

DESCRIPTION: Statewide, proposes expansions and amendments to current demonstration to impose a lifetime 24-month limit on cash assistance and categorical Medicaid eligibility (12 months for resident alien); allow 1 month AFDC credit (to a maximum of 24 at any one time) for each 6 consecutive months full-time employment; count each month of AFDC receipt from another state within the previous 3 years as 1 month against the lifetime limit; restrict permissible "specified relatives" for AFDC children and minor parents; extend AFDC, Medicaid, and food stamp fraud disqualification penalties; establish 3 unexcused absences per year as the statewide definition of unacceptable school attendance; provide a voucher equal to 50% of assistance amount for family cap child for goods and services related to child care; divert AFDC grants to subsidize child care costs; establish an option for an employed AFDC recipient to receive guaranteed child care or an AFDC payment equal to the family's benefit before employment; require a child's mother to establish paternity as a condition of eligibility for the child and the caretaker; establish additional conditions of eligibility for AFDC; impose penalties for illegal drug use; base CWEP hours on the combined value of AFDC and Medicaid assistance; make JOBS volunteers subject to the same sanctions as mandatory participants; continue eligibility for AFDC recipients until countable income reaches 100% of the federal poverty guidelines; expand voluntary quit definition and penalties; impose income limits on transitional Medicaid and child care and limit each to 12 months in a person's lifetime; with some exceptions, deny Medicaid under all coverage provisions to those determined ineligible as a result of AFDC welfare reform provisions; restrict Medicaid payments made to employees with employer's health care benefits to the lesser of the employee's insurance premium or the amount the state would otherwise pay; and require minor parents to live with a legally responsible adult and count the income and resources of non-parent adults. Additional provisions: Food Stamp recipients could be required to participate CWEP and job search; increase AFDC and Food Stamp penalties for non-compliance with CWEP and job search; require cooperation with child support as condition of eligibility for Food Stamps.

DATE RECEIVED: 12/14/95; Amendment received 2/6/96.

TYPE: Combined AFDC/Medicaid.

CURRENT STATUS: Pending.

CONTACT PERSON: James H. Hmurovich, (317) 232–4704.

PROJECT TITLE: Kansas—Actively Creating Tomorrow for Families Demonstration.

DESCRIPTION: Amended pending demonstration to provide that the demonstration would: replace $30 and ⅓ income disregard with continuous 40% disregard; disregard lump sum income, income and resources of children in school and interest income; count income and resources of adults, and at State option children, who receive SSI; exempt one vehicle without regard for equity value; eliminate 100-hour rule and work history requirements for UP cases; expand AFDC eligibility to pregnant women in 1st and 2nd trimesters; eliminate eight week job search limitation; allow alcohol and drug screening and treatment as a JOBS activity; eliminate the 20-hour work requirement limit for parents with children under 6; delay the effective date of changes in household composition; make work requirements in the AFDC and Food Stamp programs more uniform; and increase sanctions for not cooperating with child support enforcement activities and violations of employment and JOBS requirements.

DATE RECEIVED: 7/26/94; amendment received 4/30/96.

TYPE: Combined AFDC/Medicaid.

CURRENT STATUS: Pending.

CONTACT PERSON: Diane Dystra, (913) 296–3028.

PROJECT TITLE: Maryland.

DESCRIPTION: Statewide, would expand, with some modifications, previously approved Family Investment Program (FIP) pilot county provisions to be statewide and introduce new provisions: replace the current $90 and $30-and-one-third exclusions with a flat 20% earned income deduction, 50% for self-employed earned income; limit the child care disregard to $175 in all cases; allow case managers to set AFDC certification periods up to 1 year and require eligibility to be re-established before the end of each certification period; modify JOBS exemption requirements; allow $2,000 in countable resources and exclude one vehicle per household, life insurance, and certain real property; count stepparent income only if it is more than 50% of the poverty level; allow non-custodial parents and stepparents to participate in JOBS; provide welfare avoidance grants of up to 3 months benefit amount (up to 12 months in special circumstances); allow IV-A child care funds in lieu of AFDC for families diverted from cash assistance; impose immediate full-family sanctions for fraud and for failure to cooperate with JOBS or child support enforcement requirements; reduce the adverse notification period to 5 days; eliminate the $50 child support pass-through; allow only 1 assistance unit per family or payee; eliminate deprivation as an eligibility factor; change treatment of lump sums; eliminate JOBS assessment and employability plans; and modify JOBS program requirements.

DATE RECEIVED: 4/26/96.

TYPE: AFDC.

CURRENT STATUS: Pending.

CONTACT PERSON: Kathy Cook, (410) 767–7055.

PROJECT TITLE: To Strengthen Michigan Families (Amendments).

DESCRIPTION: Statewide, would require attendance at a joint orientation held by the Michigan Jobs Commission and the Family Independence Agency for all adult AFDC, Refugee Cash Assistance (RCA), and food stamp applicants and recipients as a condition of eligibility; during the first 2 months of eligibility for benefits, remove full family's AFDC, RCA, and food stamp benefits for non-compliance with JOBS or Food Stamp Program (FSP) employment and training (E&T) requirements, for a minimum of one month; after the first two months of eligibility, reduce grant by 25 percent for noncompliance with work requirements and after 4 months of noncompliance close the case for a minimum of one month or until compliance; after 4 months non-compliance with child support enforcement requirements close the case until compliance; increase the asset limit to $3,000, count only liquid assets, and treat all lump sums as liquid assets rather than income for AFDC and FSP; modify redetermination requirements for AFDC and FSP; deny AFDC benefits to persons who have entered the State

for employment purposes but do not intend to remain in Michigan; provide for the immediate effect of negative actions, allow specific case changes to be reflected in the month following the month of change, and create an agency overpayment standard for recovery purposes of $1,000 for AFDC and FSP; modify existing AFDC assistance unit composition rules to include stepparents, stepsiblings, spouses and certain children age 18–19, and to exclude non-parent caretakers when the parent (except a minor parent) is in the home; allow a dependent child to live with an unrelated caretaker; eliminate the 185 percent of need test and apply the same earned income disregards to applicants and recipients; budget income of mandatory ineligibles; replace the dependent care disregard with vendor payments based on the Child Day Care Services program eligibility requirements; replace the 75th percentile rule for child care costs with reimbursement rates that represent reasonable child care market rates; eliminate deprivation as an eligibility criterion; modify QC review requirements; provide AFDC benefits to a pregnant woman starting at any point in the pregnancy rather than just the last trimester; use 100 percent title IV-A funds to provide advance EITC payments to eligible, employed AFDC recipients; budget the actual sponsor's contribution to a sponsored alien when determining the client's AFDC and food stamp eligibility and treat contribution as unearned income of the sponsored alien when budgeting against the needs of the group; extend AFDC eligibility only to U.S. citizens, legal permanent resident aliens, and certain other legal entrants; apply additional income exclusions for AFDC and FSP for a variety of income types, including inconsequential income, donations based on need, dependent child earnings, adoption subsidies, child support refunds, training payments, etc.; require reposting of gross income changes for AFDC and FSP only if $100 or more; define dependent child as a child who is unemancipated according to state law; provide law enforcement officers with the address of an AFDC or food stamps recipient who is a fugitive felon or who the law enforcement office believes has a fugitive felon living in the home; deny assistance to any AFDC or food stamp applicant or recipient who is identified as a fugitive felon; pay current monthly child support collections directly to the family and budget them against the AFDC grant, after the $50 disregard is applied; revise child support distribution cycle; extend transitional child care to 24 months and eliminate the requirement that a family receive AFDC in at least 3 of the 6 months immediately preceding the first month of AFDC ineligibility; place title IV-E funding (except for adoption subsidy payments) in a block grant; use JOBS funds to pay for transportation and other employment-related expenses; assign an individual to CWEP for 20 hours per week irrespective of the family's AFDC benefit level or receipt of child support; count all mandatory and optional JOBS components toward the AFDC-UP participation rate; expand the JOBS target population; waive employment and training exemptions for RCA participants to match the AFDC waiver granted to Michigan in October 1994; adopt the current AFDC waiver proposal regarding earned income disregards for RCA; limit the groups eligible for Medicaid; provide 12 months transitional Medicaid for AFDC cases that close due to child support payments and eliminate the requirement that a family receive AFDC in at least 3 or the 6 months before ineligibility; allow an age test for children's Medicaid eligibility rather than a birth date test; limit automatic Medicaid coverage to newborns of Medicaid recipients; include blind individuals in the definition of disability for Medicaid eligibility; determine a family's Medicaid eligibility recognizing that it operates as a single economic unit and use income and resource standards based on family composition rather than separate standards for individual members; define countable income and distinguish income from resources for Medicaid to be consistent with AFDC proposal; eliminate the burial fund and burial space exclusions for Medicaid; provide for long-term care through a combination of private insurance and Medicaid; modify Medicaid policy regarding trusts; allow State agency's disability or blindness determination for non-cash Medicaid clients to be final; eliminate advance notice requirement for Medicaid negative actions; and allow Medicaid Buy-In for persons with no employer-based coverage whose transitional Medicaid coverage ends.

DATE RECEIVED: 6/27/96.
TYPE: Combined AFDC/Medicaid.
CURRENT STATUS: New.
CONTACT PERSON: Dan Cleary, (517) 335–0015.

PROJECT TITLE: Minnesota—Work First Program.

DESCRIPTION: In pilot counties, would provide vendor payments in lieu of regular AFDC benefits for applicants' rent and utilities for up to six months; sanction for at least six months job-ready applicants who fail to comply with job search and other applicants who fail to participate in JOBS orientation; and require part-time CWEP of unemployed, nonexempt job-ready individuals who fail to participate in job search for 32 hours/week or who after eight weeks of job search are not employed for at least 32 hours/week or not self-employed with a net income equal to the family's AFDC benefit. Individuals who refuse to participate in CWEP or are terminated from a CWEP job would incur a whole family sanction and become ineligible for AFDC for at least six months. Non-job-ready participants would be assigned appropriate education and training. Post-placement services would be provided for up to 180 days and Transitional Child Care and Medicaid without regard to AFDC receipt in 3 of the 6 months preceding ineligibility.

DATE RECEIVED: 4/4/96.
TYPE: AFDC/Medicaid.
CURRENT STATUS: Pending.
CONTACT PERSON: Gus Avenido, (612) 296–1884.

PROJECT TITLE: Minnesota—AFDC Barrier Removal Project.

DESCRIPTION: Statewide, would expand AFDC-UP eligibility; treat minor parents living with a caretaker parent on AFDC as a separate filing unit and disregard the caretaker parents' earned income up to 200 percent of the federal poverty guideline; disregard earned income of dependent children who are at least half-time students as well as all their savings deposited into an individual development account; increase the auto-equity limit to $4,500; cease recovering overpayments (once every two years per case) due to an individual's new employment resulting in ineligibility; and determine AFDC benefit amount for a family in which all members have resided in the State for less than 12 months based on the payment standard of the state of immediate prior residence if less than Minnesota's. Minnesota has amended this application to include a proposed provision in which families who have resided in the State of Minnesota for less than 30 days would not be eligible for AFDC with the following exceptions: (1) either the child or caretaker relative was born in Minnesota; (2) either the child or caretaker relative has resided in the State for 365 consecutive days in the past; (3) either the child or the caretaker relative went to Minnesota to join a close relative who has resided in the State for at least one year; or (4) the caretaker relative went to Minnesota to accept a bona fide offer of employment for which he or she was eligible. For purposes of the exemption close relative is defined as a parent, grandparent, brother, sister, spouse, or child. The State would allow county agencies to waive the 30 day requirement in cases of emergency or where unusual hardship would result from denial of benefits.

DATE RECEIVED: 4/4/96; amendment received 5/28/96.
TYPE: AFDC.
CURRENT STATUS: Pending.
CONTACT PERSON: Ann Sessoms, (612) 296–0978.

PROJECT TITLE: New York—Learnfare Program.

DESCRIPTION: Would phase in statewide a provision that would require AFDC children in grades 1 through 6 to attend school regularly by mandating a sanction of removal of the child's needs from the budget group for three months in those cases, where after counseling, the child has 5 or more unexcused absences in a quarter. Benefits for parents will be terminated, for failure without good cause, to sign the release form for educational records.

DATE RECEIVED: 5/31/96.
TYPE: AFDC.
CURRENT STATUS: Pending.
CONTACT PERSON: Jeff Gaskell, (518) 486–3415.

PROJECT TITLE: New York—Intentional Program Violation Demonstration.

DESCRIPTION: Statewide would change the sanction for Intentional Program Violations making the period of ineligibility of the person committing the violation dependant on both the number of offenses and the amount of the overpayment incurred as a result of the violation.

DATE RECEIVED: 5/31/96.
TYPE: AFDC.
CURRENT STATUS: Pending.
CONTACT PERSON: Jeff Gaskell, (518) 486–3415.

PROJECT TITLE: Oklahoma—Welfare Self-Sufficiency Initiative.

DESCRIPTION: In four pilots conducted in five counties each, would 1) extend transitional child care to up to 24 months; 2) require that all children through age 18 be immunized and require that responsible adults with preschool age children participate in parent education or enroll the children in Head Start or other preschool program; 3) not increase AFDC benefits after birth of additional children, but provide voucher payment for the increment of cash benefits that would have been received until the child is two years old; and 4) pay lesser of AFDC benefit or previous state of residence or Oklahoma's for 12 months for new residents.

DATE RECEIVED: 10/27/95.
TYPE: AFDC.
CURRENT STATUS: Pending.
CONTACT PERSON: Raymond Haddock, (405) 521–3076.

PROJECT TITLE: Pennsylvania—School Attendance Improvement Program.

DESCRIPTION: In 7 sites, would require school attendance as condition of eligibility..

DATE RECEIVED: 9/12/94.
TYPE: AFDC.
CURRENT STATUS: Pending.
CONTACT PERSON: Patricia H. O'Neal, (717) 787–4081.

PROJECT TITLE: Pennsylvania—Savings for Education Program.

DESCRIPTION: Statewide, would exempt as resources college savings bonds and funds in savings accounts earmarked for vocational or secondary education and disregard interest income earned from such accounts.

DATE RECEIVED: 12/29/94.
TYPE: AFDC.
CURRENT STATUS: Pending.
CONTACT PERSON: Patricia H. O'Neal, (717) 787–4081.

PROJECT TITLE: Tennessee—Families First.

DESCRIPTION: Description: Statewide, would impose 18 month time limit with 60 month lifetime limit on cash assistance for non-exempt families (extensions available under certain circumstances); require full-time (40 hours) work or combination of work and other activities such as education, training, or job search, unless exempt; eliminate many JOBS exemptions including lowering youngest-child exemption to those with a child less than 16 weeks of age; remove limits on periods of job search; impose a family cap with no increase in benefits for additional children; require unmarried teen parents without high school diploma or GED to participate in education or other approved activity; deny AFDC for three months if recipients voluntarily quit job or if applicant voluntarily quits employment within two months of AFDC application; impose whole family sanction for noncompliance with employment, training or work preparation activities; impose sanctions without a prior conciliation period; provide transitional child care and transitional Medicaid for 18 months and without regard to months of AFDC receipt; change earned income disregards; eliminate the 100-hour rule, work history and quarters of work requirements when AFDC recipient marries and disregard new stepparent's income up to set limit; hold harmless child support arrearages owed by the new husband/wife to his/her child in the new family unit as long as the parent continues to reside in the home; require that applicants and recipients sign Personal Responsibility Plan as condition of eligibility and assure that children attend school, receive regular immunizations and health checks, and the caretaker cooperates with child support enforcement; impose significant sanction for failure of children to attend school or obtain immunizations; impose whole family sanction for failure to cooperate with child support enforcement; deny AFDC for 10 years for those convicted of fraudulently receiving benefits from two states simultaneously; allow low-income entrepreneurs to establish special accounts up to $5,000; conform AFDC and Food Stamp rules by increasing resource limit to $2,000 and counting lump sum income as a resource in the month received and after, if retained; and increase auto limit to $4,600. In 12 counties allow individual development accounts up to $5,000 and in 1 county operate a Responsible Fatherhood Demonstration Pilot using IV–D funds.

DATE RECEIVED: 5/1/96.
TYPE: Combined AFDC/Medicaid.
CURRENT STATUS: Pending.
CONTACT PERSON: Glenda Shearon, (615) 313–5652.

PROJECT TITLE: Utah—Single-Parent Employment Demonstration (Amendments).

DESCRIPTION: Would amend the current Single Parent Employment Demonstration (SPED), requiring preschool children to be immunized and other children to attend school; considering as a single filing unit each family with a child in common, including all children in the household related to either parent; permitting parents removed from the grant due to non-cooperation or fraud to remain eligible for JOBS services, including support services; and allowing a "best estimate" of earnings in lieu of actual earnings so long as estimate is within $100 of actual earnings. These amendments would initially be limited to the Kearns office and later expanded to other SPED sites.

DATE RECEIVED: 2/7/96.
TYPE: AFDC.
CURRENT STATUS: Pending.
CONTACT PERSON: Bill Biggs, (801) 538–4337.

PROJECT TITLE: Utah—Single Parent Employment Demonstration (Amendments).

DESCRIPTION: Would amend the current Single Parent Employment Demonstration, establishing a 36 month

lifetime limit on a family's receipt of AFDC, with exceptions; and count toward the time limit months of AFDC receipt in another state.

DATE RECEIVED: July 2, 1996.

TYPE: AFDC.

CURRENT STATUS: New.

CONTACT PERSON: Bill Biggs—(801) 538–4337.

PROJECT TITLE: Virginia—Virginia Independence Program (Amendments).

DESCRIPTION: Would amend the Virginia Independence Program to require AFDC applicants and recipients (including specified relatives other than a parent) to provide information sufficient to identify the non-custodial parent. Failure to provide the required information would result in sanctions. In any case where an applicant/recipient does not claim good cause or good cause does not exist, an affidavit from the custodial parent attesting to the lack of information about the non-custodial parent/putative father, in and of itself, would not meet the definition of cooperation. If the first two genetic tests exclude the named putative fathers, the State will impose a sanction until paternity is established. If a relative other than the parent maintains the he does not know the identity of the child's parent and has no way to help identify the parent, the sanction would not be imposed.

DATE RECEIVED: 5/24/96.

TYPE: AFDC.

CURRENT STATUS: Pending (amended provisions not previously published).

CONTACT PERSON: Barbara Cotter, (804) 692–1811.

PROJECT TITLE: West Virginia—West Virginia Works.

DESCRIPTION: Statewide, would extend transitional child care to 24 months for families who are employed and otherwise eligible. In selected counties, provide a one-time diversion payment in lieu of AFDC; require development of a personal responsibility contract for AFDC applicants and recipients, and non-public assistance cases eligible for Food Stamps, as a condition of eligibility which will outline the assessed needs of the participant; require at least 20 hours of work participation per week by non-exempt parents over age 20, and require parents under age 20 to remain in school until they graduate or obtain a GED, with limited exemptions; work requirements for parents over 20 without a high school diploma or GED would not have to be coupled with education; require child immunization, school attendance and satisfactory progress and community service activities; time limit AFDC benefits based on a time frame for achieving goals not to exceed a 60 month lifetime limit on cash assistance for non-exempt families, with some extensions; impose fiscal sanctions if the adults fail to meet the terms of their personal responsibility contract without good cause or through fraud equal to a one third reduction in AFDC benefits for 3 months for the first sanction, a two thirds reduction in AFDC benefits for 3 months for the second sanction, and case closure until participation occurs for the third sanction; eliminate the JOBS conciliation requirement; increase by 10% the AFDC monthly cash benefit to families where both the husband and wife are living together and caring for her/his children; reduce to 75% the AFDC monthly cash benefit to families where there is another adult present in the household but not eligible for inclusion in the AFDC calculation; eliminate many JOBS exemptions, and make most remaining exemptions temporary, including allowing only a one-time exemption for children under 2 years of age (only 6 month exemptions will be provided for additional children); require minor parents to live at home or in an adult-supervised setting, attend and maintain satisfactory progress in an educational activity to complete high school, GED or vocational training; increase the allowable asset level to $5,000 and exempt one vehicle regardless of value; expand eligibility for transitional child care; allow a family to be eligible for transitional child care for up to 30 days for job search purposes, if they lose a job with good cause; for AFDC/UP, eliminate the requirement that the unemployed parent have a recent attachment to the labor force, and not work more than 100 hours per month; count all income received by any member of the family which can be used at the discretion of the household, including the first $50 of child support and SSI payments; increase earned income disregards to enable families to retain benefits up to 50% of the Federal poverty level; eliminate the 8 week limitation on job search activities; allow the State to extend transitional medical coverage to 24 months; and transfer the cash value of Food Stamp benefits for AFDC recipients to a wage pool for a voluntary subsidized employment activity.

DATE RECEIVED: 7/1/96.

TYPE: Combined AFDC/Medicaid.

CURRENT STATUS: New.

CONTACT PERSON: Sue Buster, (304) 558–3186.

PROJECT TITLE: Wisconsin—Work Not Welfare and Pay for Performance Projects (Amendments).

DESCRIPTION: Statewide, would lower the JOBS exemption from a parent whose youngest child is one year old or younger to a parent whose youngest child is 12 weeks old or younger; require up to 40 hours a week in CWEP regardless of the amount of the family's AFDC grant and require participation in substance abuse and mental health treatment, as appropriate; include intentional failure or voluntary quit in a work component as a failure to cooperate with JOBS and apply JOBS program sanctions to the entire family; and limit AFDC receipt to 60 months in a lifetime, with exemptions and case-by-case extensions. The state would extend child care to families earning up to 165 percent of poverty with graduated co-payments based on the cost of care, and change IV-A cases headed by a non-needy non-legally responsible relative to IV-E cases and provide cases headed by an adult SSI recipient a special child-only grant supplement in lieu of the regular AFDC payment for the child. Both types of cases would be exempt from the time limit and work requirements. Further, the state would require minor parents to live with a parent or in an adult-supervised setting. Also the state would establish a competitive process for selection of contractors to administer county programs.

DATE RECEIVED: 5/8/96; Amendments received 5/17/96.

TYPE: AFDC.

CURRENT STATUS: Pending.

CONTACT PERSON: Jean Sheil, (608) 266–0613.

PROJECT TITLE: Wisconsin—Wisconsin Works (W2).

DESCRIPTION: Statewide, would establish performance standards for the administration of Wisconsin Works (W2) along with a competitive process for selection of contractors to administer county programs. The State would provide—but not guarantee—work positions, child care and health care coverage to families, (as defined by the State,) whose gross income does not exceed 115 percent of the federal poverty level (FPL), whose resources do not exceed $2,500 (excluding a homestead), and whose total auto equity assets do not exceed $10,000, with a 60-day State residency requirement for eligibility. The State would count all earned and unearned income, including child support (which will be paid directly to the custodial parent), except for EITC when determining W2 eligibility. The State would require participation in substance abuse and mental health treatment, as appropriate; exempt from a work requirement parents with a child less than 12 weeks old; and provide for an appeal process for W2 eligibility and benefit decisions. The State would review an individual W2 agency's financial eligibility decision only if the applicant petitions the State within 15 days of the decision and would not pay benefits pending a decision. Applicants would be required to search for unsubsidized employment during eligibility determination, and would be denied eligibility if they refused a bona fide offer of employment in the 180 days prior to application. The State would automatically refer all W2 participants to child support for services. The State would require minor parents to live with a parent or in an adult-supervised setting to receive W2 non-employment/non-cash benefits, e.g., financial planning assistance, case management; but minor parents would not be eligible for W2 employment/cash benefits. Teen children must attend school regularly. The state would provide children whese parents are SSI recipients a payment of $77.

The W2 payment amount would be determined according to job placement: unsubsidized job, trial job (including up to $300 per month wage subsidy to employer), community service job (benefit of $555 per month), and transitional placement (benefit of $518 per month). Community service jobs would require 30 hours per week of work plus 10 hours per week of education and training; transitional placement jobs would require 28 hours per week of work plus 12 hours of education and training. In addition CWEP participation would be increased up to 40 hours per week. The State would sanction individuals $4.25 per each hour of non-participation in work requirements. In addition sanctions would be imposed upon the entire family for refusal to participate, without good cause, in a W2 employment position. Three refusals to participate in any W2 employment category would result in permanent ineligibility for that category. To assist families with one-time expenses, the State would provide Job Access Loans for employment support needs, e.g., car repair, uniforms, etc; and would extend child care to families earning up to 165 percent of poverty with graduated co-payments based on family income and the category of care used. Child care would only be provided to children under 13.

The State would limit participation to 24 months in any one W2 employment position and would limit lifetime eligibility for benefits to 60 months, with extensions on a case-by-case basis; the 60-month limit would apply to certain JOBS participants beginning July 1, 1996. The State would change AFDC cases headed by a non-legally responsible relative to a IV-E case; provide job search assistance and case management to non-custodial parents with a child support order; impose stricter sanctions for non-cooperation with child support; and permanently deny W2 employment after three Intentional Program Violations. Benefit overpayments will be recouped for intentional violations at a rate set by the State. Corrective payments would not be made for underpayments. Eligibility for Emergency Assistance for certain homeless persons would be limited to once in a 36-month period unless the homelessness was caused by domestic abuse, and the State would allow displacement of regular employees by W2 participants in certain cases: i.e., partial displacement (reduction in hours); impairment of existing contracts; infringement upon promotional opportunities; and filling of any established unfilled position.

The State would eliminate transitional Medicaid and expand Medicaid (i.e., the W2 Health Plan) to families with gross income up to 165 of FPL, who would then remain eligible until their income increases to 200 percent of FPL; and would incorporate a mandatory HMO enrollment or primary provider program for W2 participants. Participants would be required to pay a share of W2 Health Plan premiums according to a sliding scale, and the State would impose stricter Medicaid sanctions for non-cooperation with child support. The State would merge the Food Stamps E&T program with the W2 Work Program; modify the Food Stamps work program exemptions; eliminate the Food Stamps gross income test; require nutrition education for Food Stamps recipients; and cash out food stamps.

DATE RECEIVED: 5/29/96.

TYPE: Combined AFDC/Medicaid.

CURRENT STATUS: Pending.

CONTACT PERSON: Jean Sheil, (608) 266–0613.

PROJECT TITLE: Wyoming—New Opportunities and New Responsibilities—Phase II (Amendments).

DESCRIPTION: Proposes expansion of demonstration provisions currently limited to a pilot site statewide and further amendments to the current demonstration to establish a 5-year lifetime limit on cash assistance for adults, beginning with time on AFDC from July 1, 1987 (with limited exemptions and extensions); pursue child support from the absent minor parent's parents; freeze benefits based on household size 10 months after initial qualification; replace existing earnings disregards for recipients (except no disregard will apply for recipients disqualified due to fraud, education time limits, illegal alien) with a maximum earned income disregard of $200 for recipients; expand pay-for-performance from AFDC-UP to the regular AFDC population, with limited exemptions, where failure to perform any item in the self-sufficiency plan would cause disqualification of the parent for AFDC, Food Stamps, and Medicaid; reduce the grant by $40 when a nonexempt child fails to meet the performance requirements; require able-bodied applicants and recipients to do job search for up to 16 weeks unless otherwise exempted; terminate the case when there is loss of contact with the client for 1 month after nonpayment for failure to meet the performance requirements; exclude the earned income and resources of a dependent child who is a full-time high school student; allow payment of the supplied shelter grant for households with a SSI recipient, unmarried minor parents, or recipients disqualified for other reasons (fraud, education time limits, illegal aliens); exclude one licensed vehicle with a fair market value of less than $12,000; increase the resource limit to $2,500 for those in compliance with, or exempted from, the performance requirements; and exclude veteran's service connected disability compensation if the annual income is less than the poverty level.

DATE RECEIVED: 5/13/96.

TYPE: Combined AFDC/Medicaid.

CURRENT STATUS: Pending.

CONTACT PERSON: Marianne Lee, (307) 777–6849.

III. Listing of Approved Proposals Since June 1, 1995

PROJECT TITLE: Florida—Family Responsibility Act.

CONTACT PERSON: Sallie P. Linton, (904) 921–5572.

PROJECT TITLE: Illinois—Six Month Paternity Establishment Demonstration.

CONTACT PERSON: Karan D. Maxson, (217) 785–3300.

PROJECT TITLE: Maine—Welfare to Work Program.

CONTACT PERSON: Susan Dustin, (207) 287–3104.

PROJECT TITLE: Michigan—To Strengthen Michigan Families Demonstration Project (Amendment).

CONTACT PERSON: Dan Cleary, (517) 335–0015.

PROJECT TITLE: New Hampshire—New Hampshire Employment Program.
CONTACT PERSON: Marianne Broshek, (603) 271–4442.

PROJECT TITLE: Wyoming—New Opportunities and New Responsibilities (Amendments—Minor Parent Provisions): approved in accordance with expedited 30-day process.
CONTACT PERSON: Marianne Lee, (307) 777–6849.

IV. Requests for Copies of a Proposal

Requests for copies of an AFDC or combined AFDC/Medicaid proposal should be directed to the Administration for Children and Families (ACF) at the address listed above. Questions concerning the content of a proposal should be directed to the State contact listed for the proposal.

(Catalog of Federal Domestic Assistance Program, No. 93562; Assistance Payments—Research.)

Dated: July 2, 1996.

Karl Koerper,

Director, Division of Economic Independence Office of Planning, Research and Evaluation.

[FR Doc. 96–17282 Filed 7–5–96; 8:45 am]

BILLING CODE 4184–21–P

Administration for Children and Families Office of Family Assistance

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KH, The Office of Family Assistance (OFA) (60 FR 2766), as last amended, January 11, 1995. This Notice reflects the OFA'S new structure, which refocuses efforts to meet performance goals of economic independence for families and healthy development of children. Specifically, delete Chapter KH in its entirety, and replace it with the following:

KH.00 Mission. The Office of Family Assistance (OFA) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to public assistance and economic self-sufficiency programs. The Office provides leadership, direction and technical guidance to the nationwide administration of the following programs: Aid to Families with Dependent Children (AFDC); Aid to the Aged, Blind and Disabled in Guam, Puerto Rico and the Virgin Islands; the Emergency Assistance Program (EA); and the Job Opportunities and Basic Skills Training Program (JOBS). OFA develops, recommends and issues policies, procedures and interpretations to provide direction to these programs. It provides direction and guidance in the collection and dissemination of performance and other valuative data for these programs. The Office provides technical assistance to States, territories, Indian Tribes and Native American organizations, and assesses their performance in administering these programs; reviews state planning for administrative and operational improvements; and recommends actions to improve effectiveness. Reviews, approves and monitors research and demonstration projects to achieve welfare reform; directs reviews; and provides consultations and conducts necessary negotiations to achieve effective public assistance programs.

KH.10 Organization. The Office of Family Assistance is headed by a Director who reports to the Assistant Secretary for Children and Families. The Office is organized as follows:

Office of the Director (KHA)
Division of Self-Sufficiency Programs (KHB)
Division of Performance Measurement (KHC)

KH.20 Functions A. The Office of the Director is directly responsible to the Assistant Secretary for Children and Families for carrying out OFA's mission and providing direction, leadership, guidance and general supervision to the principal components of OFA. The Office is headed by the Director for Family Assistance. The Deputy Director assists the Director in carrying out the responsibilities of the Office. The Executive Officer assists the Director, Deputy Director and OFA Divisions in providing general oversight of management, administrative and personnel activities and in coordinating the formulation and execution of program and administrative budgets.

B. The Division of Self-Sufficiency Programs (DSS) provides direction and guidance in the nationwide administration of the Aid to Families with Dependent Children (AFDC), Aid to the Aged, Blind and Disabled, Emergency Assistance and Job Opportunities and Basic Skills Training (JOBS) Programs under the Social Security Act. The Division proposes legislation and implements national policy, develops regulations to implement new laws and prepares policy interpretations. The Division provides technical assistance to States, territories, Indian Tribes and Native American organizations; assesses their performance in administering these programs; and recommends and promotes improvements in outcomes for clients. The Division develops and implements strategies to assist grantees in implementing and improving their self-sufficiency programs. DSS identifies effective practices and shares information through conferences, technology transfers, publications, the Internet and resource networks. The Division ensures compliance with Federal laws and regulations and promotes cross-program policy initiatives to support work, personal responsibility and family-focused services.

C. The Division of Performance Measurement (DPM) is responsible for the identification, development, collection, and dissemination of a core set of national performance data elements in support of AFDC/JOBS self-sufficiency and other program goals. The Division formulates, develops, and conducts special studies/projects in coordination with States, other grantees and other ACF components and provides evaluations of waivers of program rules as appropriate. Compiles, analyzes, and evaluates program and administrative data on the AFDC/JOBS program. DPM develops and maintains data collection protocols, specifications and procedures including issuing regulations, manuals, guidance, and providing training as necessary.

Dated: July 2, 1996.

Mary Jo Bane,

Assistant Secretary for Children and Families.

[FR Doc. 96–17283 Filed 7–5–96; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

[Docket No. 96F–0223]

Henkel Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Henkel Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of α-sulfo-ω-(dodecyloxy)poly(oxyethylene), sodium salt as an emulsifier in the production of acrylic and vinyl acetate polymer coatings for paper and paperboard.

DATES: Written comments on the petitioner's environmental assessment by August 7, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Elke Jensen, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3109.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6B4506) has been filed by Henkel Corp., 300 Brookside Ave., Ambler, PA 19002. The petition proposes to amend the food additive regulations in part 176 Indirect Food Additives: Paper and Paperboard Components (21 CFR part 176) to provide for the safe use of α-sulfo-ω-(dodecyloxy)poly(oxyethylene), sodium salt as an emulsifier in the production of acrylic and vinyl acetate polymer coatings for paper and paperboard. The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before (insert date 30 days after date of publication in the **Federal Register**), submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 20, 1996.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–17233 Filed 7–5–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0402]

Lonza, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 4B4405) proposing that the food additive regulations be amended to provide for the safe use of decylisononyldimethyl ammonium chloride as a slimicide in the manufacture of paper and paperboard intended to contact food.

FOR FURTHER INFORMATION CONTACT: Mitchell A. Cheeseman, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3083.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 17, 1993 (58 FR 60665), FDA announced that a food additive petition (FAP 4B4405) had been filed by Lonza, Inc., c/o Delta Analytical Corp., 7910 Woodmont Ave., Bethesda, MD 20814 (currently c/o Lewis & Harrison, 122 C St. NW., suite 740, Washington, DC 20001). The petition proposed to amend the food additive regulations to provide for the safe use of decylisononyldimethyl ammonium chloride as a slimicide in the manufacture of paper and paperboard intended to contact food. Lonza, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 25, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–17234 Filed 7–5–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96M–0218]

Adeza Biomedical Corp.; Premarket Approval of Fetal Fibronectin Enzyme Immunoassay Kit

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Adeza Biomedical Corp., Sunnyvale, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Fetal Fibronectin Enzyme Immunoassay Kit. After reviewing the recommendation of the Clinical Chemistry and Clinical Toxicology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 29, 1995, of the approval of the application.

DATES: Petitions for administrative review by August 7, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Cornelia B. Rooks, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243.

SUPPLEMENTARY INFORMATION: On October 31, 1994, Adeza Biomedical Corp., Sunnyvale, CA 94089, submitted to CDRH an application for premarket approval of Fetal Fibronectin Enzyme Immunoassay Kit. The device is to be used as an aid in assessing the risk of preterm delivery in ≤ 7 days or ≤ 14 days from the time of sample collection in pregnant women with signs and symptoms of early preterm labor, intact amniotic membranes, and minimal cervical dilatation (< 3 centimeters), sampled between 24 weeks, 0 days and 34 weeks, 6 days gestation.

The negative predictive values of 99.5 percent and 99.2 percent, for delivery in ≤ 7 and ≤ 14 days respectively, make it highly likely that delivery will not occur in these timeframes. In addition, although the positive predictive values were found to be 12.7 percent and 16.7 percent for delivery in ≤ 7 and ≤ 14 days, respectively, this represents an approximate 4-fold increase over the reliability of predicting delivery given no test information.

On April 6, 1995, the Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application.

On September 29, 1995, CDRH approved the application by a letter to

the applicant from the Director of the office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 7, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 21, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–17235 Filed 7–5–96; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public as indicated below, with attendance by the public limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(9), Title 5, U.S.C. for discussion of future meetings and preparation of the annual report to the President. These discussions could disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed action the Panel may plan to take.

Carole Frank, the Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 630M, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20891–7405 (301–496–5708) will provide a summary of the meeting and the roster of committee members upon request. Other information pertaining to the meetings may be obtained from the contact person indicated below.

Committee Name: President's Cancer Panel.

Date: July 29–30, 1996.

Place: Fred Hutchinson Cancer Center, Stuart Auditorium, First Hill, 1124 Columbia Street, Seattle, WA 98104.

Closed: July 29, 1996—7 p.m. to 10 p.m.

Agenda: Planning session to discuss future meetings and preparation of the mandatory annual report of the Chairman to the President.

Open: July 30, 1996—8:30 a.m. to 5:00 p.m.

Agenda: Managed Care's Role in the War on Cancer. Where are we today? Existing problems for cutting edge clinical research in today's environment.

Contact Person: Dr. Maureen O. Wilson, Executive Secretary, National Cancer Institute, NIH, Building 31, Room 4B43, Bethesda, MD 20892, (301) 496–1148.

(Catalog of Federal Domestic Assistance Program Numbers: 93:393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: July 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–17209 Filed 7–5–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Unsolicited AIDS Related Career Award, Conference and Supplement Applications

Date: July 26, 1996

Time: 8:30 a.m.

Place: Doubletree Hotel; Rockville Room, 1750 Rockville Pike, Rockville, MD 20852, (301) 468–1100.

Contact Person: Dr. Paula Strickland, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C02, Bethesda, MD 20892–7610, (301) 402–0643.

Purpose/Agenda: To evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: July 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–17210 Filed 7–5–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of a Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: The Use of Transgenic Model Systems in Molecular Toxicology.

Date: July 23–24, 1996.

Time: 8:30 a.m.

Place: National Institute of Environmental Health Sciences, South Campus, Building 101, Conference Center 101–C, Research Triangle Park, NC.

Contact Person: Dr. Carol Shreffler, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1445.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health.)

Dated: July 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–17211 Filed 7–5–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: July 17, 1996.

Time: 10:00 a.m.

Place: NIH, Rockledge 2, Room 4214, Telephone Conference.

Contact Person: Dr. Dan McDonald, Scientific Review Administrator, 6701 Rockledge Drive, Room 4214, Bethesda, Maryland 20892, (301) 435–1215.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.

Date: July 22, 1996.

Time: 8:30 a.m.

Place: NIH, Rockledge 2, Room 5142, Telephone Conference.

Contact Person: Dr. Camilla Day, Scientific Review Administrator, 6701 Rockledge Drive, Room 5142, Bethesda, Maryland 20892, (301) 435–1024.

Name of SEP: Biological and Physiological Sciences.

Date: July 22, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 5196.

Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301 453–1257.

Name of SEP: Multidisciplinary Sciences.

Date: July 29–29, 1996.

Time: 7:00 p.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892, (301) 435–1171.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health HHS)

Dated: June 28, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–17212 Filed 7–5–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: July 23, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4112, Telephone Conference.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435–1783.

Name of SEP: Chemistry and Related Sciences.

Date: July 24, 1996.

Time: 10:00 a.m.

Place: NIH, Rockledge 2, Room 4156, Telephone Conference.

Contact Person: Dr. Ron Dubois, Scientific Review Administrator, 6701 Rockledge Drive, Room 4156, Bethesda, Maryland 20892, (301) 435–1722.

Name of SEP: Multidisciplinary Sciences.

Date: August 4–5, 1996.

Time: 7:30 p.m.

Place: Nittany Lion Inn, State College, PA.

Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5208, Bethesda, Maryland 20892, (301) 435–1175.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 12, 1996.

Time: 8:00 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Simi Mayyasi, Scientific Review Administrator, 6701 Rockledge Drive, Room 4194, Bethesda, Maryland 20892, (301) 435–1216.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 13, 1996.

Time: 8:00 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Simi Mayyasi, Scientific Review Administrator, 6701 Rockledge Drive, Room 4194, Bethesda, Maryland 20892, (301) 435–1216.

Name of SEP: Biological and Physiological Sciences.

Date: August 16, 1996.

Time: 10:00 a.m.

Place: Holiday Inn-National Airport, Arlington, VA.

Contact Person: Dr. Everett Sinnett, Scientific Review Administrator, 6701 Rockledge Drive, Room 5124, Bethesda, Maryland 20892, (301) 435–1016.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Clinical Sciences.

Date: July 22, 1996.

Time: 8:00 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435–1783.

Name of SEP: Behavioral and Neurosciences.

Date: August 8, 1996.

Time: 8:30 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5158, Bethesda, Maryland 20892, (301) 435–1245.

Name of SEP: Behavioral and Neurosciences.

Date: August 9, 1996.

Time: 8:30 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5158, Bethesda, Maryland 20892, (301) 435–1245.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure

of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 1, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–17213 Filed 7–5–96; 8:45 am]

BILLING CODE 4140–01–M

Recombinant DNA Research: Notice of Intent To Propose Amendments to the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines) Regarding Enhanced Mechanisms for NIH Oversight of Recombinant DNA Activities

AGENCY: National Institutes of Health (NIH), HHS.

ACTION: Notice of Intent to Propose Amendments.

SUMMARY: The NIH Director intends to propose amendments to the *NIH Guidelines* (59 FR 34496, amended 59 FR 40170, amended 60 FR 20726, amended 61 FR 1482, amended 61 FR 10004) to enhance NIH mechanisms for scientific and ethical oversight of recombinant DNA activities. To accomplish this objective, the NIH Recombinant DNA Advisory Committee (RAC) will be discontinued and all *approval* responsibilities for recombinant DNA experiments involving human gene transfer will be relinquished to the Food and Drug Administration (FDA) which retains statutory authority for such approval. Enhancement of NIH oversight of human gene therapy will be accomplished through three distinct mechanisms: (1) Establishment of the Office of Recombinant DNA Activities (ORDA) Advisory Committee (OAC) to ensure public accountability for recombinant DNA research and relevant data, (2) implementation of Gene Therapy Policy Conferences (GTPC) to augment the quality and efficiency of public discussion of the scientific merit and the ethical issues relevant to gene therapy clinical trials, and (3) continuation of the publicly available, comprehensive NIH database of human gene transfer clinical trials, including adverse event reporting.

Specifically, the NIH Director proposes to realign and extend the current roles and responsibilities of NIH oversight of human gene transfer by establishing OAC. This chartered committee will be comprised of a standing membership of 6 to 10 individuals representing the scientific, legal, ethical, and public advocacy communities. The OAC will meet regularly to: (1) advise ORDA regarding relevant gene therapy issues, (2) identify and prioritize proposed conference topics and participants, and (3) periodically review and analyze data submitted to the NIH gene therapy database. Through ORDA, the OAC will administer, propose modifications, and promulgate amendments to the *NIH Guidelines*. These *NIH Guidelines*, which set forth accepted principles, practices, and procedures under which investigators and institutions may safely conduct recombinant DNA research under a variety of settings, will continue to be the responsibility of the NIH Director. Investigator compliance with the relevant physical and biological containment standards in the *NIH Guidelines* ensures acceptable protection for human health and the environment.

The NIH Director proposes to convene the Gene Therapy Policy Conferences at regular intervals (3–4 times per year). These conferences will offer the unique advantage of assembling numerous participants who possess significant scientific, ethical, and legal expertise and/or interest that is directly applicable to a specific recombinant DNA research issue. In order to enhance the depth and value of scientific and ethical/social discussion, each GTPC will be devoted to a single issue relevant to scientific merit and/or safety as it relates to human gene therapy clinical trials. These may include topics such as basic research on the use of novel gene delivery vehicles and applications to human gene therapy, novel applications of gene transfer, or relevant ethical/societal implications of a particular application of gene transfer technology. Although NIH will no longer be responsible for the approval of gene therapy protocols, these modifications *do not* preclude the use of a novel protocol as a focus for a conference discussion, i.e., a novel protocol captured by the NIH database could be added by OAC, in consultation with ORDA, to a list of potential policy conference topics.

The findings and recommendations of the GTPC will be submitted to the NIH Director and will be made available to multiple Department of Health and Human Services (DHHS) components, including the FDA and the Office for Protection from Research Risks (OPRR). The NIH Director anticipates that this expanded public policy forum will serve as a model for interagency communication and collaboration, concentrated expert discussion of novel scientific issues and their potential societal implications, and enhanced opportunity for public discussion of specific issues and the potential impact of such applications on human health and the environment.

Finally, the NIH Director proposes to maintain the administration of gene therapy clinical trial data management functions through ORDA and in consultation with the OAC. Using current definitions, NIH will continue to capture incoming protocol information, ongoing data (including adverse and significant clinical events), and long-term follow-up data. In compliance with the *NIH Guidelines*, investigators will continue to be required to register human gene transfer experiments with ORDA to ensure continued public access to the comprehensive human gene transfer clinical trial database.

DATES: Written comments must be received by August 7, 1996.

ADDRESSES: Written comments should be submitted to the Office of Recombinant DNA Activities, Office of Science Policy, National Institutes of Health, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland, 20892–7010. Fax transmissions may be sent to (301) 496–9839.

FOR FURTHER INFORMATION CONTACT: Debra Knorr, Office of Recombinant DNA Activities, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland, 20892–7010, (301) 496–9838.

SUPPLEMENTARY INFORMATION:

I. Background

In 1974, the National Academy of Sciences (NAS) established a Committee on Recombinant DNA Molecules which was charged with examining the risks associated with recombinant DNA research and recommending specific actions or guidelines. The NAS Committee report requested: (1) that certain experiments be voluntarily deferred; (2) that plans to construct recombinants with animal DNA should be carefully weighed; (3) that the NIH Director establish a committee to oversee a program to evaluate hypothetical risks, to develop procedures to minimize the spread of recombinant DNA molecules, and to recommend guidelines to be followed by investigators; and (4) that an international meeting be convened to review progress and discuss ways to deal with potential hazards.

In that same year, the Department of Health, Education, and Welfare (currently the Department of Health and Human Services (DHHS)) chartered a committee (later identified as the RAC) in response to the NAS report. In 1975, RAC held its first meeting to establish appropriate biological and physical containment practices and procedures that were later developed into a set of guidelines for the safe conduct of recombinant DNA research (the *NIH Guidelines*). Subsequently, the NIH created ORDA to provide administrative support to the RAC.

In 1982, an in-depth examination of the broad ethical implications of human gene therapy research, *The Social and Ethical Issues of Genetic Engineering with Human Beings (Splicing Life)*, was published by the President—s Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research. *Splicing Life* proposed that, ". . . since laboratory biohazards related to recombinant DNA research were no longer regarded as urgent matters, the NIH should extend its purview over recombinant DNA research beyond environmental issues to human gene therapy."

They recommended that the membership of the RAC should be broadened to include a combination of Federal and non-Federal scientists, lay public participants, and ethicists. In response to *Splicing Life*, the NIH established the RAC Human Gene Therapy Subcommittee which was subsequently merged with the parent committee to become the current RAC.

II. Rationale for Change

In recognition of the committee's critical role in maintaining public accountability for recombinant DNA research, the NIH Director weighed a variety of factors prior to announcing NIH's intent to change and enhance its current oversight responsibilities for recombinant DNA research. In order to clarify the rationale for the proposed changes described herein, a series of questions and answers are provided below.

1. On what basis does the NIH conclude that this is the optimal time to eliminate the RAC and realign NIH's responsibilities to public discussion and data management of human gene therapy clinical trials?

Since its inception, the NIH has continuously relinquished oversight of various elements in the field of recombinant DNA research, as such elements reached maturity. From 1979–1983, several major revisions were made to the *NIH Guidelines* when putative risks to the public did not materialize and the initial restrictions were deemed unnecessary. In 1991, the NIH's oversight of environmental release of genetically modified organisms was relinquished and these responsibilities were ceded to the U.S. Department of Agriculture and the Environmental Protection Agency. These changes were, in part, motivated by the recognition that NIH did not have the statutory authority or the "tools" to function as a regulatory agency.

In 1995, a similar devolution of NIH oversight of human gene therapy occurred. By this time, the RAC had reviewed and approved 113 gene therapy protocols and over 1,000 patients had been enrolled in world-wide trials. The RAC, the scientific community, and the public had a substantial base of information regarding the use and safety of many of the vectors employed in, and target diseases addressed by, human gene therapy. Subsequent analyses revealed that the human health and environmental safety concerns expressed at the inception of gene therapy clinical trials had not materialized. Absent evidence for substantial safety concerns for gene therapy protocols which have been previously tested, on March 6, 1995, the RAC voted to recommend approval of amendments to the *NIH Guidelines* that would eliminate RAC review and approval of human gene therapy experiments not considered to be novel. Under this mechanism, all protocols determined not to represent a novel gene therapy delivery strategy or target disease that could adversely affect human health were considered exempt from RAC review and approval and were forwarded directly to the FDA. This streamlined process, which became known as the NIH and FDA "*Consolidated Review*," eliminated unnecessary and time consuming duplication of effort by the NIH and the FDA. On April 17, 1995, the NIH Director approved these amendments to the *NIH Guidelines*. Once again, the NIH relinquished a portion of its oversight of recombinant DNA research to the agency (FDA) with statutory responsibility to approve such protocols.

Since the implementation of consolidated review in July 1995, only six of the 36 protocols submitted to ORDA required RAC review and approval; and five of those six protocols were already in the system before consolidated review. The consolidated review process proved to be so successful in eliminating the need for RAC review and approval, that NIH canceled both the March and June 1996 RAC meetings due to the lack of novel protocols requiring RAC attention.

The NIH Director has concluded that the current proposal to enhance NIH oversight of recombinant DNA activities is timely and appropriate based on the current base of knowledge, the need for substantial discussion of gene therapy techniques which are not yet being tested in humans, and the duplication of review and approval by the NIH while the FDA holds the statutory authority. Thus, the NIH Director proposes the termination of the RAC, relinquishing of all protocol approval to the FDA and the creation of two new entities to enhance the depth and breadth of public discussion of gene therapy issues.

2. Why does the NIH propose to replace the RAC?

The proposed actions regarding the RAC should not be viewed narrowly as "eliminating" the RAC. Rather, these actions were developed in a timely and appropriate response to a series of publicly debated discussions over a period of several years. The NIH Director maintains that the establishment of the OAC and the convening of the GTPC are effective and innovative responses to this rapidly changing area of biomedical research based on the foundation of scientific knowledge that has been gained over the last six years and overlapping responsibilities of other Federal agencies. This proposal optimizes current Federal resources, maintains public access to information, and facilitates public discussion of novel issues relevant to human gene therapy research. NIH concludes that it is not the RAC per se that is critical for public accountability, but the system by which NIH continues to provide public discussion of the scientific, safety, and ethical/legal issues related to human gene therapy.

As proposed, the OAC will provide a smaller, but fully representational, standing committee with a range of advisory and administrative oversight responsibilities similar, but not identical to, the RAC. In contrast, participation in the proposed GTPC will be subject to recommendations by the OAC and ORDA and, as such, will provide the necessary flexibility to engender in-depth, expert discussion of scientific issues and societal implications that cannot be achieved under current mechanisms. The GTPC will continue to maintain favorable RAC attributes such as continued public access to conference discussions and recommendations, publication of scheduled meeting dates and proposed agendas in the **Federal Register**, and publication of official conference minutes. Eliminating RAC protocol approval reduces duplication of effort with the FDA while enhancing the time and effort devoted to both ongoing and

anticipated gene therapy policy issues deserving of substantial public discussion.

3. Why not continue RAC review and approval of gene therapy protocols?

In 1990, when the RAC first turned its attention to human gene therapy, the NIH was the sole source of the substantial expertise necessary to review the relatively new field of human gene therapy. Since that time, the FDA has created a new Division of Cellular and Gene Therapies and has committed substantial resources to the development of review capabilities in this arena. At its inception, it was critical for the RAC to conduct a case-by-case review of human gene transfer protocols, since each new protocol invariably set a new precedent. Six years later, the RAC has relinquished most of its review and approval activities under the "consolidated" review plan which forwards all but novel protocols directly to the FDA for consideration.

During the six years of RAC review and approval, there has been considerable discussion of the juxtaposition of the NIH mandate to oversee the most meritorious medical research and the RAC mission to approve or disapprove individual protocols based predominantly on issues of safety. By adopting a new model of public discussion that does not require approval, the NIH can, through the proposed policy conferences, engage in substantive critique of the scientific merit of a line of research without having to give an NIH stamp of approval on the basis of limited threat to human health or safety.

4. Did NIH accept the recommendations of the RAC Ad Hoc Advisory Committee (Verma Committee)?

The decision to retire the RAC does not foreclose on the recommendations of the Verma Committee. The NIH Director accepted most of the recommendations of the *RAC Ad Hoc Review Committee*. However, rather than implement the recommendations through the RAC, the Director proposes a new structure for NIH oversight of human gene therapy.

Specifically: (1) The first recommendation calls for continuation of consolidated review by the RAC. Under the proposal contained herein, the RAC is eliminated and consolidated review will not be maintained. (2) A second recommendation calls for an open public forum for discussion of protocols which contain a new technology or novel departures in human gene transfer research. The proposed Gene Therapy Policy Conferences will not only preserve such a forum, but will provide for more in-depth discussion of both the science and the ethical issues related to a specific gene therapy issue. In this manner, it will enhance the type of public access that has been characteristic of the RAC. Although this proposal does not provide for review and approval of individual protocols, it *does not* preclude the use of a novel protocol as a focus for a conference discussion; a novel protocol captured by the NIH database could be raised by the OAC, in consultation with ORDA, to the list of policy conference topics. (3) The recommendation that RAC should develop criteria for consolidated review would not be applicable to the proposed new structure, since this proposal cedes review and approval to the FDA. However, as stated above, the OAC will have the authority to recommend a novel protocol captured by the NIH database for public discussion at a policy conference. (4) The fourth recommendation that the RAC should provide advice on policy matters revolving around gene therapy and other recombinant DNA issues would be fully met by the proposed Gene Therapy Policy Conferences. Because each of these conferences will focus on a single issue, it is the Director's contention that policy advice will be substantially augmented under this new mechanism. The NIH cannot, however, give the RAC, or any other NIH standing or *ad hoc* body, the authority to give policy advice or make recommendations to the FDA. The NIH has had and will continue to have open and frequent dialogue with the FDA about gene therapy policy matters related to safety, scientific and ethical issues and fully expects the FDA to recommend policy conference topics to OAC and ORDA. (5) The proposed maintenance of the NIH gene therapy database fully responds to the recommendation regarding the continued need for data monitoring and adverse event reporting. The Office of Recombinant DNA Activities (ORDA) has retained the services of a contractor to assist in the development of a computer software package that will have sufficient capacity to monitor and evaluate gene transfer protocols.

5. Will there be a mechanism for continuing to review gene therapy informed consent documents?

As needs dictate, both OAC and the GTPC will provide a forum for the oversight of human gene therapy informed consent. It is expected that an entire conference may be devoted to such informed consent issues in the context of gene therapy. The NIH Director will continue, when appropriate, to make amendments to sections of the *NIH Guidelines, Points to Consider* relevant to informed consent procedures during gene therapy clinical trials. Investigators and IRBs engaged in, or reviewing, human gene therapy trials are expected to employ the *NIH Guidelines, Points to Consider* for this purpose. However, under the proposal contained herein, neither the OAC nor the GTPC will engage in protocol-by-protocol review of informed consent documents.

The sixteen Federal agencies that engage in human subjects research reference the Common Rule and, thus, abide by the principle of giving full authority of individual approval of informed consent documents to locally constituted Institutional Review Boards (IRBs). These responsibilities remain solely within the regulatory framework of OPRR through the local IRBs. OPRR oversees implementation of 45 CFR Part 46 in all domestic and foreign institutions or sites receiving DHHS funds. OPRR requires each institution that conducts or supports research involving human subjects to set forth the procedures it will use to protect human subjects in a policy statement called an Assurance of Compliance.

Finally, there is no other disease, disability, or methodology that, at present, requires a Federal review of individual informed consent documents. It is the proposal of the NIH Director that human gene therapy informed consent documents be subject to the same procedures as all other forms of human subject research.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the *NIH Guidelines*. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance are affected*.

Dated: June 28, 1996.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 96–17349 Filed 7–5–96; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR–4032–N–02]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: September 6, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Reports Liaison Officer, Office of Housing, Department of Housing & Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Oliver Walker, Room 9116, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, (202) 708–1694, or, TTY for hearing and speech impaired, (202) 708–4594 (these are not toll-free numbers) for copies of the proposed collection of information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Single Family Mortgage Insurance—Loss Mitigation Procedures

OMB Control Number, if applicable: [N/A—none yet assigned]

Description of the need for the information and proposed use: New section 24 CFR 203.605, "Loss Mitigation Evaluation," requires mortgagees to perform an evaluation of each defaulting mortgagor's circumstances to determine which if any of the available loss mitigation techniques are appropriate in order to assist the mortgagor to:

(a) Reinstate the mortgage and retain ownership of the affected property, or

(b) Avoid foreclosure, and mitigate the losses to the Department by encouraging the mortgagor to sell the property or, if the mortgagor has no equity in the property, to pursue a buyer under the pre-foreclosure ("short") sale procedure or to voluntarily convey the deed in lieu of what would otherwise be the imminent foreclosure of the mortgage.

This evaluation must be performed no later than when three monthly mortgage installments are due and unpaid, and must be performed monthly thereafter while the account is in default and such foreclosure avoidance and loss mitigation options remain under consideration.

This information is needed to ascertain whether adequate and prudent loan servicing was performed by the mortgagee. If a mortgagee submits a claim for FHA insurance benefits, this information will be subject to post-claim review under the Department's lender monitoring activities.

Agency form numbers, if applicable: Documentation simply added to lender's servicing files on HUD–27011 insurance claim form.

Members of affected public: Mortgagees, loan servicing entities.

Estimation of the total numbers of hours needed to prepare the information collection, including:

(a) *Number of respondents:* Each FHA approved lender will be required to respond as part of standard procedures for servicing defaulted loans.

(b) *Frequency of response:* 625,000 (based on 250,000 90-day defaults; 50% self-cure; 125,000 90+ day defaults averaging 3-additional months).

(c) *Hours of response:* 625,000 @ 0.25 hrs = 156,250 hours.

Status of the proposed information collection: Pending approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: June 27, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–17176 Filed 7–5–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket Nos. FR–3903–N–04 and FR–3904–N–05]

Announcement of Funding Awards for Supportive Housing for the Elderly and Persons With Disabilities, FY 1995

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding award decisions made by the Department as a result of competitions for funding under the following two notices of funding availability: Supportive Housing for the Elderly and Supportive Housing for Persons with Disabilities. This announcement contains the names and addresses of the awardees and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Jane Luton, Division Director, New Product Division, Office of Multifamily Housing Division, Department of Housing and Urban Development, Room 6142, 451 Seventh Street SW., Washington, DC 20410–0500; telephone (202) 708–2866. (This is not a toll-free number.) A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Elderly

Section 801 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (Pub. L. 101–625, approved November 28, 1990), amended section 202 of the Housing Act of 1959 (12 U.S.C. 1701q). Section 202 was also amended by the Housing and Community Development Act of 1992 (HCD Act of 1992) (Pub. L. 102–550, approved October 28, 1992). The Secretary is authorized to provide assistance to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. HUD provides the assistance as capital advances and contracts for project rental assistance in accordance with 24 CFR part 889. This assistance may be used to finance the construction or rehabilitation of a structure, or acquisition of a structure from the Resolution Trust Corporation (RTC), to be used as supportive housing for the elderly in accordance with part 889.

For supportive housing for the elderly, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Pub. L. 103–327, approved September 28, 1994) (fiscal year 1995 appropriations act) provides $1,279,000,000 for capital advances, including amendments to capital advance contracts (not procurement contracts), for housing for the elderly as authorized by section 202 of the Housing Act of 1959 (as amended by the NAHA and HCD Act of 1992), and for project rental assistance, and amendments to contracts for project rental assistance, for supportive housing for the elderly under section 202(c)(2) of the Housing Act of 1959, as amended. The fiscal year 1995 appropriations act further provides that $22,000,000 of the above total shall be for service coordinators pursuant to section 202(q) of the Housing Act of 1959, as amended, and subtitle E of title VI of the Housing and Community Development Act of 1992, other than section 676 of such act and section 8(d)(2)(F)(i) of the act. Any unreserved balances provided in prior years for such purposes are to be merged with amounts provided in the fiscal year 1995 appropriations act.

Disabilities

Section 811 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990), as amended by the Housing and Community Development Act of 1992) (HCD Act of 1992) (Pub. L. 102–550, approved October 28, 1992), authorized a new supportive housing program for persons with disabilities, and replaced assistance for persons with disabilities previously covered by section 202 of the Housing Act of 1959 (section 202 continues, as amended by section 801 of the NAHA, and HCD Act of 1992, to authorize supportive housing for the elderly). HUD provides the assistance as capital advances and contracts for project rental assistance in accordance with 24 CFR part 890. Capital advances may be used to finance the construction, rehabilitation, or acquisition with or without rehabilitation, including acquisition from the RTC, of structures to be developed into a variety of housing options ranging from group homes and independent living facilities, to dwelling units in multifamily housing developments, condominium housing, and cooperative housing. Acquisition without rehabilitation is permitted only for group homes or properties acquired from the RTC. This assistance may also cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for persons with disabilities.

For supportive housing for persons with disabilities, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Pub. L. 103–327, approved September 28, 1994) provides $387,000,000 for capital advances for supportive housing for persons with disabilities, as authorized by section 811 of the NAHA, and for project rental assistance, and amendments to contracts for project rental assistance, for supportive housing for persons with disabilities, as authorized by section 811 of the NAHA.

The purpose of the competitions was to (1) provide assistance to private nonprofit organizations and nonprofit consumer cooperatives to expand supportive services to the elderly; and (2) provide assistance to nonprofit organizations to expand the supply or supportive housing for persons with disabilities. The 1995 awards announced in this Notice were selected for funding in competitions announced in the **Federal Register** Notices of Funding Availability published on May 24, 1995 (60 FR 27600 and 27612).

In accordance with section 102(a) (4) (C) of the Department of Housing and Urban Development Reform Act of 1989, the Department is publishing the names, addresses, and the amount of those awards, as set out at Appendixes A and B of this Notice.

Dated: June 28, 1996.

Stephanie A. Smith,

General Deputy Assistance Secretary for Housing—Federal Housing Commissioner.

APPENDIX A—SECTION 202 PROGRAM FOR THE ELDERLY

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Capital advance amount
BOSTON				
Connecticut				
Hartford	017–EE015/CT26–S951–002, New Samaritan Corp., 165 Clintonville Road, North Haven, CT 06473.	North Haven Town, CT	40	3,264,000
Hartford	017–EE018/CT26–S951–005, AHEPA National Housing, 7202 North Shadeland Ave., Indianapolis, IN 46250.	Norwich, CT	42	3,408,600
Subsubtotal			82	6,672,600
Massachusetts				
Boston	023–EE050/MA06–S951–002, Codman Sq. Neighbor, 628 Washington St., Dorchester, MA 02124.	Boston, MA	14	991,200

APPENDIX A—SECTION 202 PROGRAM FOR THE ELDERLY—Continued

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Capital advance amount
Boston	023–EE051/MA06–S951–003, CASCAP, Inc., 678 Massachusetts Ave., Cambridge, MA 02139.	Cambridge, MA	22	1,785,400
Boston	023–EE056/MA06–S951–008, Jewish Community Housing=20 Walling Ford Rd., Boston, MA 02135.	Newton, MA	46	3,733,200
Boston	023–EE057/MA06–S951–009, Cooperative Services, 25900 Greenfield Rd., Oak Park, MI 48327.	South Boston, MA	65	5,275,200
Boston	023–EE058/MA06–S951–010, Mid Cape Church Housing, 61 John Nelson Way, Harwich, MA 02645.	Harwich Town, MA	55	4,621,800
Boston	023–EE059/MA06–S951–001, E. Boston Neighbor, 10 Grove Street, East Boston, MA 02128.	Boston, MA	48	3,595,200
Subsubtotal			380	20,002,000
Maine				
Manchester	024–EE020/ME36–S951–003, VOA, Inc., 3939 N. Causeway Blvd., Metairie, LA 70002.	Augusta, ME	45	2,920,400
Subsubtotal			45	2,920,400
New Hampshire				
Manchester	024–EE017/NH36–S951–001, CAP Belknap-Merrim, PO Box 1016 2 Industria, Concord, NH 03302.	Epsom, NH	50	3,086,500
Manchester	024–EE024/NH36–S951–003, SNHS, Inc., 40 Pine St., Manchester, NH 03108.	Manchester, NH	41	2,551,000
Manchester	024–EE025/NH36–S951–004, SNHS, Inc., 40 Pine St., Manchester, NH 03108.	Raymond, NH	24	1,427,200
Subsubtotal			115	7,064,800
Rhode Island				
Providence	016–EE019/RI43–S951–003, The Bristol Foundation, P.O. Box 449, Bristol, RI 02809.	Bristol, RI	49	3,923,800
Subsubtotal			49	3,923,800
Subtotal			551	40,583,600
NEW YORK				
New Jersey				
Newark	031–EE037/NJ39–S951–006, Catholic Community Services—Newark Archdiocese, 1160 Raymond Blvd., Newark, NJ 07102–4105.	Elizabeth, NJ	71	5,779,700
Newark	035–EE016/NJ39–S951–009, The Presbyterian Homes of NJ, 103 Carnegie Center Suite 102, Princeton Junction, NJ 08543–2184.	East Windsor Twp, NJ	85	6,368,400
Newark	035–EE020/NJ39–S951–013, Lutheran Social Ministries of NJ, 120 Route 156, Yardville, NJ 08620.	Pennsauken Twp, NJ	71	5,322,100
Subsubtotal			227	17,470,200
New York				
New York	012–EE147/NY36–S951–002, St. Simeon Foundation, Inc., 24 Beechwood Ave., Poughkeepsie, NY12601.	Poughkeepsie, NY	70	5,681,000
New York	012–EE149/NY36–S951–004, New York Foundation for Senior Citizens, 150 Nassau St., New York, NY 10038.	New York-Brooklyn, NY	105	8,539,100
New York	012–EE152/NY36–S951–007, Our Lady of Mercy Medical Center, 600 E. 233 St., Bronx, NY 10466.	New York-Bronx, NY	54	4,400,000
New York	012–EE156/NY36–S951–011, Marcus Garvey Nursing Home, 810 St. Marks Ave., Brooklyn, NY 11213.	New York-Brooklyn, NY	48	3,895,500
New York	012–EE157/NY36–S951–012, Hebrew Home for the Aged, 5901 Palisade Ave., Bronx, NY 10471.	New York-Bronx, NY	59	4,805,800
New York	012–EE162/NY36–S951–017, The Education Alliance, 197 E. Broadway, New York, NY 10002.	New York-Manhattan, NY	52	4,165,200

APPENDIX A—SECTION 202 PROGRAM FOR THE ELDERLY—Continued
[Fiscal year 1995 selections]

Office	FHA-and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Capital advance amount
New York	012–EE165/NY36–S951–020, Metro NY Coordinating Council on Jewish Pov, 9 Murray Street, New York, NY 10007.	New York-Queens, NY	124	10,081,100
New York	012–EE166/NY36–S951–021, Aquinas Housing Corp., 975 E. Tremont Ave., Bronx, NY 10460.	New York-Bronx, NY	99	8,052,200
New York	012–EE167/NY36–S951–022, SFDS Development Corp., 135 E. 96th Street, New York, NY 10128.	New York-Manhattan, NY	61	4,968,100
New York	014–EE171/NY36–S951–026, Beth Abraham Hospital, 612 Allerton Avenue, Bronx, NY10467.	White Plains, NY	71	5,645,100
Buffalo	014–EE084/NY06–S951–005, YWCA of Western NY, 190 Franklin St., Buffalo, NY 14202.	Buffalo, NY	72	5,152,700
Buffalo	014–EE093/NY06–S951–014, Cath Char of Syracuse Inc., 1654 W. Onondaga St., Syracuse, NY 13204.	Onondaga, NY	56	3,840,000
Buffalo	014–EE099/NY06–S951–020, The Reformed Ch of Germantown, P.O. Box 115, Germantown, NY 12526.	Germantown, NY	38	2,570,000
Buffalo	014–EE106/NY06–S951–027, Los Tainos Senior Citz. Ctr. Inc., 104 Maryland Ave., Buffalo, NY 14201.	Buffalo, NY	50	3,583,000
Buffalo	014–EE111/NY06–S951–032, 1490 Enterprises I, 1490 Jefferson Ave., Buffalo, NY 14208.	Buffalo, NY	60	4,281,100
Subsubtotal			1019	79,660,000
Subtotal			1245	97,130,200
	PHILADELPHIA			
District of Columbia				
Washington	000–EE033/DC39–S951–003, Allegheny East Con Assc SDA, Pine Forge Road, Pine Forge, PA 19548.	Washington, DC	45	3,104,300
Subsubtotal			45	3,104,300
Delaware				
Philadelphia	032–EE003/DE26–S951–001, Martin Luther Foundation of Dover, 430 Kings Highway, Dover, DE 19901.	Dover, DE	44	2,686,500
Philadelphia	032–EE006/EE26–S952–001, Better Homes of Seaford, P.O. Box 782, Seaford, DE 19973.	Seaford, DE	28	1,768,600
Subsubtotal			72	4,655,100
Maryland				
Baltimore	052–EE015/MD06–S951–003, CHAI, 5721 Park Heights Avenue, Baltimore, MD 21215.	Pikesville, MD	87	5,839,500
Subsubtotal			87	5,839,500
Pennsylvania				
Pittsburgh	033–EE055/PA28–S951–001, NCSC, 1331 F Street, N.W., Washington, DC 20004.	Center Twp, PA	48	3,065,200
Pittsburgh	033–EE058/PA28–S951–004, Alpha HSS and Health Care Inc., 12 Sylvan Heights Drive, New Castle, PA 16101.	Wampum, PA	23	1,475,900
Pittsburgh	033–EE064/PA28–S951–010, National Church Residences, 2335 North Bank Drive, Columbus, OH 43220.	Millcreek TWP, PA	50	3,192,400
Philadelphia	034–EE038/PA26–S952–002, Lutheran Social Services of S. Central PA., 1050 Pennsylvania Avenue, York, PA.	Green Twp, PA	28	1,751,600
Philadelphia	034–EE045/PA26–S951–004, Evangelical Manor, 8401 Roosevelt Boulevard, Philadelphia, PA 19152.	Philadelphia, PA	50	3,635,200
Philadelphia	034–EE046/PA26–S951–005, The Salvation Army, 440 West Nyack Road PO Box C635, West Nyack, NY 10994.	Philadelphia, PA	75	5,458,500

APPENDIX A—SECTION 202 PROGRAM FOR THE ELDERLY—Continued
[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Capital advance amount
Philadelphia	034–EE052/PA26–S951–011, Convent of Sisters of St. Joseph, 9701 Germantown Avenue, Philadelphia, PA 19118.	Mc Sherrystown, PA	40	2,502,400
Philadelphia	034–EE055/PA26–S951–014, Phila Presbyterian Homes—Phila. Sr. Center, P.O. Box 607, Villanova, PA 19085.	Philadelphia, PA	42	3,053,500
Subsubtotal			356	24,144,700
Virginia				
Richmond	051–EE038/VA36–S951–091, United Order of Tents, Southern District #1, 1620 Church Street, Norfolk, VA 23540.	Danville, VA	41	2,186,400
Richmond	051–EE039/VA36–S951–003, John H. Wellons Foundation, P.O. Box 1254, Dunn, NC 28335.	Isle of Wight County, VA	40	2,133,100
Richmond	051–EE044/VA36–S951–008, Northern Neck-Middle Peninsula AAA, Inc., P.O. Box 610, Urbanna, VA 23175.	Colonial Beach, VA	33	1,770,800
Subsubtotal			114	6,090,300
West Virginia				
Charleston	045–EE007/WV15–S951–002, Southwestern, Commu, 540 57th Avenue, Huntington, WV 25701.	Huntington, WV	17	1,006,000
Charleston	045–EE008/WV15–S951–002, Human Resource Dev, 1644 Mileground, Morgantown, WV 26505.	Parkersburg, WV	20	1,182,600
Subsubtotal			37	2,188,600
Subtotal			711	46,022,500
	ATLANTA			
Alabama				
Birmingham	062–EE021/AL09–S951–001, AHEPA National Housing Corporation, 7202 North Shadeland Avenue, Suite 100, Indianapolis, IN 46250.	Mobile, AL	55	3,626,700
Subsubtotal			55	3,626,700
Florida				
Jacksonville	063–EE008/FL29–S951–003, Presbyterian Retir, 50 West Lucerne Circle, Orlando, FL	Pensacola, FL	52	2,672,800
Jacksonville	066–EE041/FL29–S951–001, Allapattah Comm Action, 2257 NW North River Drive, Miami, FL 33125.	Miami, FL	64	4,149,500
Jacksonville	066–EE044/FL29–S951–007, CODEC, Inc., 300 SW 12th Ave., Suite A, Miami, FL 33130.	Miami, FL	80	5,398,000
Jacksonville	066–EE045/FL29–S951–008, CODEC, Inc, 300 SW 12th Ave, Suite A, Miami, FL 33130.	Miami, FL	100	6,743,900
Jacksonville	066–EE046/FL29–S951–011, S. Palm Bch Co Jew Fed, 9901 Donna Klein Blvd., Boca Raton, FL 33428–1788.	West Boca Raton, FL	105	7,115,900
Jacksonville	066–EE047/FL29–S951–012, Diocese of Palm Beach, 9995 N. Military Trail, Palm Beach Gardens, FL 33410.	West Palm Beach, FL	99	6,710,100
Jacksonville	067–EE052/FL29–S951–006, Gulf Coast Community, 14041 Icot Blvd., Clearwater, FL 34260.	Tampa, FL	100	5,693,300
Jacksonville	067–EE054/FL29–S951–013, The Salvation Army, 1424 NE Expressway, Atlanta, GA 30329.	Orlando, FL	125	7,143,600
Subsubtotal			725	45,627,100
Georgia				
Atlanta	061–EE038/GA06–S951–005, Buckingham Place Church of God, 103 Buckingham Place, Brunswick, GA 31525.	Glynn County, GA	20	1,021,300
Atlanta	061EE043/GA06–S951–010, United Church Homes, Inc., 170 East Center Street, P.O. Box 1806, Marion, OH 43301.	Cedartown, GA	54	2,895,900
Atlanta	061–EE044/GA06–S951–011, United Church Homes, Inc., 170 East Center Street, P.O. Box 1806, Marion, OH 43301.	Marietta, GA	51	2,736,400

APPENDIX A—SECTION 202 PROGRAM FOR THE ELDERLY—Continued
[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Capital advance amount
Atlanta	061–EE045/GAO6–S951–012, National Baptist Convention Housing Board, 383 Washington Street, Newark, OH 43055.	Augusta, GA	30	1,614,400
Subsubtotal			155	8,268,000
Kentucky				
Louisville	083–EE044/KY36–S951–003, Volunteers of Amer., 3939 No. Causeway Blvd., Metairie, LA 70002–1784.	Louisville, KY	51	2,996,200
Louisville	083–EE046/KY36–S951–005, Nell Strickland, 3109 Maple Drive NE, Atlanta, GA 30305.	Radcliff, KY	40	2,248,100
Subsubtotal			91	5,244,300
Mississippi				
Jackson	065–EE014/MS26–S951–001, United Church Homes, 170 East Center Street, Marion, OH 43301.	Tupelo, MS	44	2,157,300
Jackson	065–EE015/MS26–S951–002, Catholic Diocese of Bioloxi, 120 Reynoir St., Biloxi, MS 39530.	Biloxi, MS	20	1,034,200
Subsubtotal			64	3,191,500
North Carolina				
Greensboro	053–EE046/NC19–S951–001, St. Joseph of the Pines, 95 Aviemore Drive, Pinehurst, NC 28374.	Aberdeen, NC	24	1,597,900
Greensboro	053–EE047/NC19–S951–002, AHEPA National Housing, 7202 N. Shadeland Ave., Indianapolis, IN 46250.	Wilmington, NC	50	3,652,100
Greensboro	053–EE049/NC19–S951–004, Volunteers of America, 3939 N. Causeway Blvd., Metairie, LA 70002.	New Bern, NC	47	3,219,300
Greensboro	053–EE051/NC19–S951–006, New Covenant Christian Church, PO Box 17266, Chapel Hill, NC 27514.	Chapel Hill, NC	40	2,883,000
Subsubtotal			161	11,352,300
Puerto Rico				
Caribbean	056–EE024/RQ46–S951–003, Ryder Memorial Hospital, Call Box 859, Humacao, PR 00661.	Humacao Municipio, PR	35	2,390,700
Caribbean	056–EE026/RQ46–S951–005, Sociedad Servicios Presby Inc., PO Box 264, Lajas, PR 00667.	Lajas Municipio, PR	17	1,161,200
Subsubtotal			52	3,551,900
South Carolina				
Columbia	054–EE019/SC16–S951–001, The Protestant Episcopal Diocese of SC, PO Box 20127, Charleston, SC 29413.	Charleston, SC	45	2,551,000
Columbia	054–EE022/SC16–S951–004, Anderson-Oconee Council on Aging, PO Box 103, Anderson, SC 29622.	Seneca, SC	16	915,300
Subsubtotal			62	3,466,300
Tennessee				
Nashville	086–EE013/TN43–S951–002, Douglas-Cherokee Economic Authority, Inc., PO Box 1218, Morristown, TN 37816.	Cookeville, TN	25	1,270,800
Nashville	086–EE014/TN43–S951–003, Manor Management, Inc., 100 Trident Place, Hendersonville, TN 37075.	Hendersonville, TN	57	3,018,200
Knoxville	087–EE018/TN37–S951–001, Wood Presbyterian, 322 Old Madisonville Rd., Sweetwater, TN 37874.	Sweetwater, TN	12	605,000
Knoxville	087–EE022/TN37–S951–005, Doug Cherokee Econ, PO Box 1218, Morristown, TN 37816.	White Pine, TN	12	605,000
Knoxville	087–EE023/TN37–S951–006, Doug Cherokee Econ, PO Box 1218, Morristown, TN 37816.	Johnson City, TN	30	1,503,400
Subsubtotal			136	7,002,400
Subtotal			1,511	91,330,500

APPENDIX A—SECTION 202 PROGRAM FOR THE ELDERLY—Continued
[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Capital advance amount
	CHICAGO			
Illinois				
Chicago	071–EE087/IL06–S951–001, St Edmund Redevelopment Corporation, 6105 South Michigan, Chicago, IL 60637.	Chicago, IL	61	4,636,900
Chicago	071–EE092/IL06–S951–006, National Baptist Housing Board, 383 Washington St., Newark, OH 43055.	Chicago, IL	50	4,544,800
Chicago	071–EE098/IL06–S951–012, Catholic Charities, 1571 West Ogden Avenue, Lagrange, IL 60525.	Chicago, IL	100	7,591,100
Chicago	071–EE101/IL06–S951–015, First Assembly of God Church, 5950 Springcreek Rd, Rockford, IL 61114.	Rockford, IL	50	3,915,900
Chicago	072–EE099/IL06–S951–013, Congregation of Immanuel Lutheran Church, 1930 N. Bowman, Danville, IL 61832.	Danville, IL	50	3,229,400
Subsubtotal			331	23,918,100
Indiana				
Indianapolis	073–EE046/IN36–S951–001, Friendship House, 1010 Cumberland Avenue, West Lafayette, IN 47906.	West Lafayette, IN	50	3,060,300
Indianapolis	073–EE049/IN36–S951–004, Holy Cross Care, 105 East Jefferson, South Bend, IN 46601.	South Bend, IN	50	3,078,600
Indianapolis	073–EE053/IN36–S951–008, National Church Re, 2335 North Bank Drive, Columbus, OH 43220.	Richmond, IN	33	1,954,400
Indianapolis	073–EE054/IN36–S951–009, Ahepa National Hou, 10333 N. Meridian St., Indianapolis, IN 46290.	Merrillville, IN	50	3,516,800
Indianapolis	073–EE055/IN36–S951–010, Ancilla Systems In, 1000 Lake Park Avenue, Hobart, IN 46342.	Mishawaka, IN	50	3,464,000
Subsubtotal			233	15,074,100
Michigan				
Detroit	044–EE031/M128–S951–001, Cooperative Servic, 25900 Greenfield Road, Oak Park, MI 48237.	Detroit, MI	75	5,021,600
Detroit	044–EE035/M128–S951–006; Presbyterian Villa, 25300 W. Six Mile, Redford, MI 48240.	Holly, MI	51	3,429,100
Grand Rapids	047–EE015/M133–S951–001, Lutheran Social Services, 4143 South Thirteenth St, Milwaukee, WI 53221.	Marquette, MI	9	499,800
Grand Rapids	047–EE016/M133–S951–002, Harbor Area Housing, 129 E Bliff, Harbor Springs, MI 49740.	Harbor Springs, MI	16	881,900
Grand Rapids	047–EE017/M133–S951–003, Porter Hills Presbyterian Village, 3600 E Fulton, Grand Rapids, MI 49546.	Walker, MI	42	2,387,900
Subsubtotal			193	12,220,300
Minnesota				
Minn/St Paul	092–EE024/MN46–S951–002, Board of Social Ministry, 3881 Highland Avenue, St. Paul, MN 55110.	White Bear Lake, MN	46	3,219,400
Minn/St Paul	092–EE025/MN46–S951–003, Commonbond Communities, 328 West Kellogg Bouleva, St. Paul, MN 55102.	Minnetonka, MN	46	3,219,400
Minn/St Paul	092–EE033/MN46–S951–011, St. Francis Home, 501 Oak Street, Breckenridge, MN 56520.	Breckenridge, MN	20	1,221,700
Minn/St Paul	092–EE034/MN46–S951–012, Three Links Care Center, 815 Forest Avenue, Northfield, MN 55057.	Northfield, MN	21	1,355,900
Subsubtotal			133	9,016,400
Ohio				
Cleveland	042–EE066/OH12–S951–006, NCR of Massillon, 2335 North Bank Drive, Columbus, OH 43220.	Massillon, OH	55	3,547,600
Cleveland	042–EE068/OH12–S951–008, Deaconess Health Systems, 4269 Pearl Road, Cleveland, OH 44109.	North Royalton, OH	64	4,108,900
Cleveland	042–EE069/OH12–S951–009, Famicos Foundation, 7049 Superior Ave, Cleveland, OH 44103.	Cuyahoga County, OH	52	3,481,600

APPENDIX A—SECTION 202 PROGRAM FOR THE ELDERLY—Continued
[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Capital advance amount
Cleveland	042–EE071/OH12–S951–011, Cleveland Chinese Senior Citizens Assoc, 2999 Payne Ave, Cleveland, OH 44114.	Cuyahoga County, OH	43	2,879,000
Columbus	043–EE043/OH16–S951–002, Lutheran Social Services of Central Ohio, 57 East Main Street, Columbus, OH 43215.	Groveport, OH	48	2,889,200
Columbus	043–EE044/OH16–S951–003, MRM-Toap, 452 Annadale Avenue, Mansfield, OH 44905.	Mount Gilead, OH	22	1,244,300
Cincinnati	046–EE027/OH10–S951–003, Clermont Senior Services, 2985–A Front Wheel Drive, Batavia, OH 45103.	Goshen, OH	38	2,166,900
Cincinnati	046–EE030/OH10–S951–006, Warren County Community Services, Inc., 570 North State Route 741, Lebanon, OH 45036.	Lebanon, OH	36	2,166,900
Cincinnati	046–EE033/OH10–S951–009, Adams-Brown Counties Economic Opportunities, 200 South Green Street, Georgetown, OH 45121.	West Union, OH	5	267,600
Subsubtotal			361	22,772,000
Wisconsin				
Milwaukee	075–EE033/WI39–S951–004, Arlington Poynette Area Clergy Assoc, Inc, 514 E Grant St, Poynette, WI 53955.	De Forest, WI	20	1,260,500
Milwaukee	075–EE036/WI39–S951–007, Housing of Limited Income Elderly, Inc, 4195 W College Ave, Milwaukee, WI 53221.	Waukesha, WI	18	1,165,100
Milwaukee	075–EE037/WI39–S951–008, Milwaukee Jewish Federation, Inc, 1360 N Prospect Ave, Milwaukee, WI 53202.	Milwaukee, WI	22	1,421,000
Milwaukee	075–EE038/WI39–S951–009, Council for the Spanish Speaking, Inc., 614 W. National Ave., Milwaukee, WI 53204.	Milwaukee, WI	16	1,037,100
Milwaukee	075–EE039/WI39–S951–010, Eternal Life Church of God In Christ, 200 W. Concordia Ave., Milwaukee, WI 53212.	Milwaukee, WI	20	1,293,000
Milwaukee	075–EE041/WI39–S951–012, Impact Seven Inc., 651 Garfield St., Almena, WI.	Almena, WI 54805	9	499,000
Milwaukee	075–EE042/WI39–S951–013, Impact Seven Inc., 651 Garfield St., Almena, WI 54805.	Tomahawak, WI	32	2,006,900
Subsubtotal			137	8,682,600
Subtotal			1388	91,683,500
FORT WORTH				
Arkansas				
Little Rock	082–EE061/AR37–S951–004, Independent Living Cntr. of Southeast Ark., 714 West Grove, Eldorado, AR 71730.	El Dorado, AR	20	937,300
Little Rock	082–EE072/AR37–S951–015, Area Agency on Aging of Northwest Arkansas, P.O. Box 1795, Harrison, AR 72601.	Siloam Springs, AR	28	1,312,000
Subsubtotal			48	2,249,500
Louisiana				
New Orleans	064–EE045/LA48–S951–005, Rapides Council on Aging & NCSC, 415 Elliott St., Alexandria, LA 71301.	Pineville, LA	78	3,680,700
New Orleans	064–EE046/LA48–S951–006, Mamou Health Resources, Inc., P.O. Box 457, Mamou, LA 70554.	Mamou, LA	20	1,001,900
New Orleans	064–EE050/LA48–S951–010, Ouachita Council on Aging, Inc., 1209 Oliver Rd., Monroe, LA 71201.	Monroe, LA	39	1,878,100
New Orleans	064–EE056/LA48–S951–016, National Bapt. Convention HSG Board, Inc., 383 Washington Street, Newark, OH 43055.	New Orleans, LA	40	20,030,500
Subsubtotal			177	8,591,200

APPENDIX A—SECTION 202 PROGRAM FOR THE ELDERLY—Continued
[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Capital advance amount
New Mexico				
Fort Worth	116–EE010/NM16–S951–001, Evang. Lutheran Good Samaritan Soc., 4500 West 57th St., Sioux Falls, SD 57117.	Grants, NM	24	1,314,300
Fort Worth	116–EE011/NM16–S951–002, AHEPA, 7202 N. Shadeland Ave., Ste. 100, Indianapolis, IN 46250.	Albuquerque, NM	48	2,559,800
Fort Worth	116–EE012/–S951–003, Eastern Plaine Hsg. Dev. Corp., 200 Main St., Clovis, NM.	Clovis, NM	47	2,273,300
Subsubtotal			119	6,147,400
Oklahoma				
Oklahoma City	117–EE017/OK56–S951–002, Church of Christ of Spencer, 8512 N.E. 36th, Spencer, OK 73084.	Spencer, OK	41	2,057,900
Oklahoma City	118–EE016/OK56–S951–003, Senior Citizens Committee, Inc., 201 N. Rowe, Pryor, OK 74361.	Pryor, OK	30	1,512,600
Subsubtotal			71	3,566,500
Texas				
Fort Worth	112–EE016/TX16–S951–001, Plano Community Home Sponsor, 1608–1612 Avenue L, Plano, TX 75074.	Plano, TX	51	3,353,500
Fort Worth	112–EE017/TX16–S951–002, Cliff View Church of Christ, 2424 Simpson Stuart Road, Dallas, TX 75241.	Dallas, TX	28	1,476,800
Houston	114–EE038/TX24–S951–006, AHEPA National Corporation, 7202 North Shadeland Ave, Indianapolis, IN 46250.	Houston, TX	47	2,638,300
San Antonio	115–EE031/TX59–S951–002, American GI Forum, 206 San Pedro, San Antonio, TX 78205–1100.	San Antonio, TX	81	3,197,200
Subsubtotal			197	10,665,800
Subtotal			812	31,220,400
KANSAS CITY				
Iowa				
Des Moines	074–EE020/IA05–S951–001, Sunrise Retirement Community, 5501 Gordon Drive, Sioux City, IA 51106.	Sioux City, IA	20	1,092,400
Subsubtotal			20	1,092,400
Kansas				
Kansas City	084–EE023/KS16–S951–002, Lakeview Village I, 9100 Park, Lenexa, KS 66215.	Olathe, KS	42	2,402,700
Kansas City	102–EE013/KS16–S951–003, Mental Health Assn, 555 N Woodlawn, Wichita, KS 67208.	Wichita, KS	24	1,186,800
Kansas City	102–EE014/KS16–S951–004, Mennonite HSG Reha, 3033 West 2nd Street, Wichita, KS 67203.	Derby, KS	40	2,069,500
Subsubtotal			106	5,659,000
Missouri				
St. Louis	085–EE028/MO36–S951–004, Lutheran Altenheim, 1265 McLaran Ave, St Louis, MO 63147.	Kirkwood, MO	67	4,389,400
Subsubtotal			67	4,389,400
Nebraska				
Omaha	103–EE012/NE26–S951–001, Notre Dame Sisters, 3501 State Street, Omaha, NE 68112.	Omaha, NE	20	1,034,200
Omaha	103–EE013/NE26–S951–002, NAF Multicultural Human Development Corp., 416 East 4th Street, North Platte, NE 69103.	Lexington, NE	18	913,300
Subsubtotal			38	1,947,500

APPENDIX A—SECTION 202 PROGRAM FOR THE ELDERLY—Continued

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Capital advance amount
Subtotal			231	13,088,300
DENVER				
Denver	101–EE021/C099–S951–002, Carbondale Senior, 1250 Hendrick Dr., Carbondale, CO 81623.	Carbondale, CO	16	1,023,900
Denver	101–EE025/C099–S951–006, Franciscan Ministr, 2626 Osceola Street, Denver, CO 80212.	Westminster, CO	40	2,556,400
Denver	101–EE026/C099–S951–007, SRDA (Pueblo), 230 No. Union Ave, Pueblo, CO 81003.	Pueblo, CO	51	3,259,500
Subsubtotal			107	6,839,800
Montana				
Denver	093–EE004/MT99–S951–001, Montana Pioneer MA, 605 North Sheridan Plentywood, MT 59254.	Plentywood, MT	8	457,000
Denver	093–EE005/MT99–S951–002, Human Resources CN, 700 Casey, Butte, MT 59701.	Butte, MT	60	3,366,400
Subsubtotal			68	3,823,400
South Dakota				
Denver	091–EE002/SD99–S951–001, Evangelical Luther, 4800 West 57th Street, Sioux Falls, SD 57117.	Sioux Falls, SD	40	2,042,600
Subsubtotal			40	2,042,600
Utah				
Denver	105–EE005/UT99–S951–001, Comm Hsg Ser, 1059 East 100 South, Salt Lake City, UT 84105.	Moab, UT	35	1,950,000
Subsubtotal			35	1,950,000
Wyoming				
Denver	109–EE003/WY99–S951–001, Senior Citizens Fn, P.O. Box 192, Douglas, WY 82633.	Douglas, WY	24	1,423,500
Subsubtotal			24	1,423,500
Subtotal			274	16,079,300
SAN FRANCISCO				
Arizona				
Phoenix	123–EE040/AZ20–S951–004, Mercy Housing Inc., 550 West Thomas Road, Phoenix, AZ 85013.	Tolleson, AZ	41	2,144,100
Phoenix	123–EE043/AZ20–S951–007, Arizona Baptist Re, P.O. Box 33339, Phoenix, AZ 85067.	Phoenix, AZ	10	520,300
Phoenix	123–EE044/AZ20–S951–008, Christian Care Man, 2002 W. Sunnyside Drive, Phoenix, AZ 85029.	Cottonwood, AZ	9	485,700
Phoenix	123–EE047/AZ20–S951–011, Arizona Baptist Re, P.O. Box 33339, Phoenix, AZ 85067.	Phoenix, AZ	14	728,500
Subsubtotal			74	3,878,600
California				
San Francisco	121–EE067/CA39–S951–001, Mercy Charities Housing, 1028A Howard Street, San Francisco, CA 94103.	San Francisco, CA	93	6,943,700
San Francisco	121–EE069/CA39–S951–003, Bridge Housing Corporation, 1 Hawthorne Street, San Francisco, CA 94105.	San Francisco, CA	54	4,400,000
San Francisco	121–EE075/CA39–S951–009, Burbank Housing Development Corporation, 3432–A, Mendocino Avenue, Santa Rosa, CA 95403.	Windsor, CA	60	3,989,100
San Francisco	121–EE077/CA39–S951–011, Interfaith Housing, Inc., 550 Hillcrest Avenue, Livermore, CA 94550.	Livermore, CA	80	6,091,900
San Francisco	121–EE080/CA39–S951–014, Allen Temple Housing Development Corp., 8135 E. 14th Street, Oakland, CA 94621.	Oakland, CA	50	3,990,500

APPENDIX A—SECTION 202 PROGRAM FOR THE ELDERLY—Continued

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Capital advance amount
Los Angeles	122–EE082/CA16–S951–001, Peoples Self Help, 1411 Marsh St., San Luis Obispo, CA 93401.	Santa Maria, CA	18	1,373,000
Los Angeles	122–EE084/CA16–S951–003, Telacu, 5400 E Olympic Blvd., Los Angeles, CA 90022.	Pacoima, CA	75	5,985,400
Los Angeles	122–EE085/CA16–S591–004, Telacu, 5400 Olympic Blvd., Los Angeles, CA 90022.	Monterey Park, CA	67	5,364,200
Los Angeles	122–EE086/CA16–S951–005, Coop SVCS Inc., 25900 Greenfield Rd., Oak Park, MI 48237.	Gardena, CA	80	6,401,700
Los Angeles	122–EE090/CA16–S951–009, The Sal Army, 30840 Hawthorne BL, Rancho Palos Verde, CA 90274.	Glendale, CA	75	6,002,600
Los Angeles	122–EE096/CA16–S951–015, Comm. Resource tale, 333 W. Florence, Inglewood, CA 90301.	Los Angeles, CA	38	3,049,800
Los Angeles	129–EE007/CA33–S951–002, Rotary Club of Brawley, PO Box 1442, Brawley, CA 92227.	Brawley, CA	5	379,700
Los Angeles	129–EE008/CA33–S951–003, Sal Army, 30840 Hawthorne Bl, Rancho Palos Verde, CA 90274.	Escondido, CA	75	5,977,200
Sacramento	136–EE014/CA30–S951–001, Rogue Valley Manor, 1200 Mira Mar Ave., Medford, Or 97504.	Yreka, CA	10	754,000
Sacramento	136–EE020/CA30–S951–007, Mercy Charities HO, 1028A Howard St., San Francisco, CA 94103.	Sacramento, CA	66	5,105,200
Los Angeles	143–EE014/CA43–S951–005, COOP Svcs Inc., 25900 Greenfield Rd., Oak park, MI 48237.	Beaumont, CA	50	4,007,500
Los Angeles	143–EE018/CA43–S951–009, Southern California, 1111 N. Brand Bl., Glendale, CA 91202.	Norco, CA	40	3,051,100
Subsubtotal			936	72,866,600
Hawaii				
Honolulu	140–EE012/HI10–S951–002, Hale Mahaolu, 200 Hina Avenue, Kahului, HI 96732.	Kaunakakai, HI	5	581,700
Subsubtotal			5	581,700
Subtotal			1015	77,326,900
SEATTLE				
Alaska				
Anchorage	176–EE007/AK06–S951–002, Union Labor Retirement Association, 1625 SE Lafayette Street, Portland, OR 97202.	Anchorage, AK	20	2,434,700
Anchorage	176–EE008/AK06–S951–003, Saint Vincent De Paul Society Diocesan, 8617 Teal Street, Juneau, AK 99801.	Juneau, AK	5	605,700
Subsubtotal			25	3,040,400
Oregon				
Portland	126–EE018/OR16–S951–005, Evangelical Luther, 4800 West 57th Street, Sioux Falls, SD 57117.	Brookings, OR	24	1,435,000
Portland	126–EE020/OR16–S951–007, Rogue Valley Manor, 1200 Mira Mar Avenue, Medford, OR 97504.	Eugene, OR	68	4,300,000
Subsubtotal			92	5,735,000
Washington				
Seattle	127–EE013/WA19–S951–002, Senior Services, 8225 44th Avenue W., Mukilteo, WA 98275.	Everett, WA	39	2,661,000
Seattle	127–EE014/WA19–S951–003, Sisters of Providence, 520 Pike Street, Seattle, WA 98111.	Olympia, WA	60	4,047,500

APPENDIX A—SECTION 202 PROGRAM FOR THE ELDERLY—Continued

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Capital advance amount
Seattle	127–EE016/WA19–S951–005, Korean Women's Assn., 125 East 96th Street, Tacoma, WA 98445.	Tacoma, WA	25	1,710,800
Subsubtotal			124	8,419,300
Subtotal			241	17,194,700
Total			7780	521,659,900

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
Boston					
Connecticut					
Hartford	017–HD014/CT26–Q595–102 Marrakech 566 Whalley Ave New Haven, CT 06511.	New Haven, CT	3	CMI	280,600
Subsubtotal			3		280,600
Massachusetts					
Boston	023–HD072/MA06–Q951–001 Charles River Asso E. Militia Hts, P.O. Box 169 Needham, MA 02192.	Needham, MA	4	WDD	330,500
Boston	023–HD076/MA06–Q951–005 Mental Health Asso 146 Chestnut St. Springfield, MA 01103.	Springfield, MA	3	WDD	288,300
Boston	023–HD077/MA06–Q951–006 Mental Health Asso 146 Chestnut St. Springfield MA 01103.	Holyoke, MA	7	CMI	551,500
Boston	023–HD079/MA06–Q951–007 Community Mental H 45 Summer St. Leominster, MA 01453.	Fitchburg, MA	4	CMI	289,500
Boston	023–HD079/MA06–Q951–008 Newton-Wellesley-W P.O. Box 242 Auburndale, MA 09999.	Newton, MA	4	WDD	330,500
Boston	023–HD080/MA06–Q951–009 Newton-Wellsley-W P.O. Box 242 Auburndale, MA 09999.	Newton, MA	6	WDD	373,800
Boston	023–HD084/MA06–Q851–013 The Arc of Frankli 111 Summer Street Greenfield, MA 01301.	Greenfield Town, MA	4	WDD	308,500
Boston	023–HD094/MA06–Q951–023 The May Institute, 940 Main Street S. Harwich, MA 02661.	Willbraham Town, MA	8	WDD	617,000
Boston	023–HD095/MA06–Q951–024 The May Institute, 940 Main Street S. Harwich, MA 02661.	Boston, MA	8	WDD	661,100
Subsubtotal			48		375,0700
Maine					
Manchester	024–HD017.ME36–Q951–001 Tri-County Mental P.O. Box 2008 1155 Lisbon Lewiston, ME 04220.	Farmington, ME	5	CMI	308,600
Manchester	024–HD030/ME36–Q951–004 Motivational Servi 114 State St., Augusta, ME 04330.	Augusta, ME	3	CMI	189,700
Subsubtotal			8		489,300
Rhode Island					
Providence	016–HD011/R143–Q951–002 Mntl Hlth Svc Cran/Jhnstn/NWRI, 1516 Atwood Avenue Johnston, RI 02919.	Cranston, RI	15	CMI	1,157,500

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
Subsubtotal			15		1,157,000
Vermont					
Manchester	24–HD021/VT36–Q951–001, Howard Center for 300 Flynn Avenue Burlington, VT 05401.	Burlington, VT	6	CMI	277,600
Subsubtotal			6		277,600
Subtotal			80		5,964,700
NEW YORK					
New Jersey					
Newark	031–HD049/NJ39–Q951–005, United Jewish Federation of Metrowest, 901 Route 10, Whippany, NJ 07981.	West Caldwell, NJ	6	WDD	373,800
Newark	031–HD050/NJ39–Q951–006, Spectrum For Living Group Homes, Inc., 210 Rivervale Rd Suite 3, River Vale, NJ 07675.	Ringwood, NJ	9	WDD	875,900
Newark	031–HD053/NJ39–Q951–009, ARC of Essex Co., Inc., 7 Regent Street, Livingston, NJ 07039.	West Caldwell, NJ	5	WDD	352,200
Newark	031–HD054/NJ39–Q951–010, Collaborative Support Programs of NJ, 30 Broad Street, Freehold, NJ 07728.	Maplewood TWP, NJ	3	CMI	298,100
Newark	031–HD056/NJ39–Q951–012, Alternatives Inc., PO Box 338, Somerville, NJ 08876.	Somerville, NJ,	3	CMI	298,100
Newark	031–HD057/NJ39–Q951–013, Community Centers for Mental Health, 2 Park Avenue, Dumont, NJ 07628.	Palisades Park, NJ	5	CMI	335,300
Newark	031–HD058/NJ39–Q951–014, Project Live Inc., 402 Mt Prospect Ave, Newark, NJ 07104.	South Orange Village, NJ	3	DCMI	298,100
Newark	031–HD059/NJ39–Q951–015, Concerned Citizens for Chronic Psychiatric, 139 Metlars Lane, Piscataway, NJ 08854.	Dunellen, NJ	3	DCMI	298,100
Newark	031–HD060/NJ39–Q951–016, Alternatives Inc., PO Box 338, Somerville, NJ 08576.	South Bound Brook, NJ	3	CMI	298,100
Newark	031–HD061/NJ39–Q951–017, Collaborative Supoort Programs of NJ, 30 Broad Street, Freehold, NJ 07728.	South Orange Villa, NJ	3	CMI	298,100
Newark	035–HD020/NJ39–Q951–021, Disabilities Resource Center, 206 Route 50, Corbin City, NJ 08270.	Woodbine, NJ	10	WDD	743,700
Newark	035–HD025/NJ39–Q951–026, ARC of Atlantic Co:, Inc., 101 Shore Rd, Somers Point, NJ 08244.	Hamilton TWP, NJ	4	WDD	344,500
Newark	035–HD026/NJ39–Q951–027, Center for Innovative Family Achievements, 2482 Pennington Road, Trenton, NJ 08538.	Lawrence TWP, NJ	4	WDD	304,300
Newark	035–HD028/NJ39–Q951–29, Cordamore Inc., 7512 N Crescent Blvd, Pennsauken, NJ 08110.	Delran TWP, NJ	6	WDD	344,200
Newark	035–HD031/NJ39–Q951–032, Mercer Alliance for the Mentally Ill, Inc., 404 Market Street, Trenton, NJ 08648.	Princeton, NJ	3	CMI	274,500
Newark	035–HD032/NJ39–Q951–033, Collaborative Support Programs of NJ, 30 Broad Street, Freehold, NJ 07728.	Trenton, NJ	3	CMI	274,500
Subsubtotal			73		5,961,500
New York					
New York	012–HD035/NY36–Q951–001, Options for Community Living, 202 E Main St, Smithtown, NY 11787.	Port Jefferson Sta, NY	0	CMI	1,490,900

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
New York	012–HD038/NJ36–Q951–004, Mercy Haven Inc., 859 Connetquot Ave, Islip Terrace, NY 11751.	Central Islip, NY	0	CMI	1,490,900
New York	012–HD039/NY36–Q951–005, Concern for Mental Health, Inc., P.O. Box 358, Medford, NY 11763.	Coram, NY	0	CMI	1,490,900
New York	012–HD042/NY36–Q951–008, New York Society for the Deaf, 817 Broadway, New York, NY 10003.	New York-Manhattan, NY	21	WPD	1,747,300
New York	012–HD045/NY36–Q951–011, Weston United Community Renewal, 203 W 113 St., New York, NY 10026.	New York-Manhattan, NY	25	CMI	1,904,600
New York	012–HD046/NY36–Q951–012, Postgraduate Center for Mental Health, 124 E 28 St., New York, NY 10016.	New York-Manhattan, NY	51	CMI	3,880,100
Buffalo	014–HD026/NY06–Q951–001, Belmont Shelter Corp., 1195 Main St., Buffalo, NY 14029.	Niagara, NY	24	WPD	1,866,600
Buffalo	014–HD029/NY06–Q951–004, UCPA of WNY, 7 Community Drive, Buffalo, NY 14225.	Lancaster, NY	15	WDD	928,900
Buffalo	014–HD030/NY06–Q951–005, People Svcs to the Devl Dis, 1219 N Forest Rd., Williamsville, NY 14221.	Grand Island, NY	11	WDD	638,200
Buffalo	014–HD031/NY06–Q951–006, Lifetime Assistance Inc., 425 Paul Road, Rochester, NY 14624.	Hamlin, NY	6	WDD	319,300
Buffalo	014–HD032/NY06–Q951–007, Lifetime Assistance Inc., 425 Paul Road, Rochester, NY 14624.	Albion, NY	6	WDD	423,200
Buffalo	014–HD033/NY06–Q951–009, Autistic Svcs Inc., 169 Sheridan-Parkside Dr., Tonawanda, NY 14150.	Amherst Town, NY	7	WDD	562,100
Buffalo	014–HD037/NY06–Q951–012, Utica Comm Action Inc., 214 Rutger St., Utica, NY 13501.	Utica, NY	15	WPD	1,024,600
Subsubtotal			181		17,787,600
Subtotal			254		23,749,100
PHILADELPHIA					
Delaware					
Philadelphia	032–HD012/DE26–Q951–001, The Salvation Army, 440 West Nyack Road, P.O. Box C635, West Nyack, NY 10994.	Milton, DE	3	WDD	249,600
Philadelphia	032–HD013/DE26–Q951–002, Alliance for the Mentally Ill in Delaware, 2500 W. 4th Street, Suite 12, Wilmington, DE 19805.	New Castle County, DE	20	CMI	1,506,600
Philadelphia	032–HD014/DE26–Q951–003, The Arc of Delaware, 240 N. James Street, Wilmington, DE 19804.	Newark, DE	17	WDD	1,108,600
Subsubtotal			40		2,864,800
Maryland					
Washington	000–HD029/MD39–Q951–001, Vesta, Inc., 2340 University Blvd-E, Adelphi, MD 20783.	Suitland, MD	18	CMI	1,431,300
Baltimore	052–HD015/MD06–Q951–001, People Encouraging People, 4201 Primrose Avenue, Baltimore, MD 21215.	Baltimore, MD	11	CMI	848,900
Baltimore	052–HD16/MD06–Q951–002, Orthodox Church of St. Matthew, 10771 Bridlerein Terrace, Columbia, MD 21044.	Columbia, MD	16	WPH	1,071,200

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
Baltimore	052–HD017/MD06–Q951–003, Way Station Inc., P.O. Box 3826, Frederick, MD 21701.	Frederick, MD	8	CMI	581,500
Baltimore	052–HD018/MD006–Q951–004, Community Living Inc., 431 Carrollton Drive, Frederick, MD 21701.	Frederick, MD	12	WDD	1,019,300
Baltimore	052–HD019/MD06–Q951–005, Revisions Inc., 20 Winters Lane, Catonsville, MD 21228.	Catonsville, MD	15	CMI	959,900
Subsubtotal			90		5,912,100
Pennsylvania					
Pittsburgh	033–HD026/PA28–Q951–001, UCIP, 405 Finley Ave., Meadville, PA 16335.	Clarion County, PA	10	CMI	607,600
Pittsburgh	033–HD027/PA28–Q951–002, Skills of Central Pennsylvania, Inc., 805 Chestnut Street, Altoona, PA 16601.	Logan Twp, PA	4	WDD	258,900
Pittsburgh	033–HD028/PA28–Q951–003, Skills of Central Pennsylvania, Inc., 805 Chestnut Street, Altoona, PA 16601.	Patton, PA	4	WDD	258,900
Pittsburgh	033–HD029/PA28–Q951–004, Erie Independence Housing, Inc., 2222 Filmore Avenue, Erie, PA 16506.	Erie, PA	11	WPD	705,900
Philadelphia	034–HD036/PA26–Q951–002, The Salvation Army, 440 West Nayack Road, P.O. Box C 635, West Nayack, NY 10994.	Bensalem Twp, PA	3	WDD	276,700
Philadelphia	034–HD038/PA26–Q951–004, Co-Man's Inc., P.O. Box 7151 Penndel, PA 19047.	Penndel, PA	8	CMI	339,100
Philadelphia	034–HD039/PA26–Q951–005, New Hope Church of Philadelphia, 2640–46 North 15th St., Philadelphia, PA 19132.	Philadelphia, PA	12	WPH	723,200
Philadelphia	034–HD040/PA26–Q951–006, Mercy-Douglass Human Services Corp., 4508–38 Chestnut Street, Philadelphia, PA 19139.	Philadelphia, PA	4	WPH	429,000
Subsubtotal			56		2,599,300
Virginia					
Richmond	051–HD027/VA36–Q951–001, Community Alternative Mgmt. Group, Inc., 3133 Magic Hollow Blvd., Suite 120, Virginia Beach, VA 23456.	Virginia Beach, VA	2	CMI	192,300
Richmond	051–HD028/VA36–Q951–002, Community Alternatives Mgmt. Group, Inc., 3133 Magic Hollow Blvd., Suite 120, Virginia Beach, VA 23456.	Virginia Beach Cit, VA	2	CMI	192,300
Richmond	051–HD030/VA36–Q951–004, Community Alternatives Mgmt. Group, Inc., 3133 Magic Hollow Blvd, Suite 120, Virginia Beach, VA 23456.	Virginia Beach, VA	2	CMI	192,300
Richmond	051–HD032/VA36–Q951–006, Community Alternatives Mgmt. Group, Inc., 3133 Magic Hollow Blvd, Suite 120, Virginia Beach, VA 23456.	Virginia Beach, VA	2	CMI	192,300
Richmond	051–HD036/VA36–Q951–010, Accessible Space, Inc., 2550 University Ave., Suite 330N, St. Paul, MN 55114.	Norfolk, VA	25	WPH	1,467,200
Richmond	051–HD038/VA36–Q951–012, Fauquier Citizens for Handicapped Persons, P.O. Box 611, Warrenton, VA 22186.	Remington, VA	0	WDD	257,000
Subsubtotal			33		2,493,400
West Virginia					
Charleston	045–HD015/WV15–Q951–002, Hancock Co., Shelte, 1100 Pennsylvania Ave., Weirton, WV 26062.	Weirton, WV	9	WDD	307,600

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued
[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
Charleston	045–HD018/WV15–Q951–005, Autism Services CE, 605 Ninth Street, Huntington, WV 25710.	Huntington, WV	6	WDD	258,000
Subsubtotal			15		565,600
Subtotal			224		15,435,200
	ATLANTA				
Alabama					
Birmingham	062–HD026/AL09–Q951–001, VOA of South Alabama, Inc., 600 Azalea Road, Mobile, AL 36609.	Mobile, AL	15	WPD	843,800
Birmingham	062–HD027/AL09–Q951–002, VOA of South Alabama, Inc., 600 Azalea Road, Mobile, AL 36609.	Mobile, AL	21	WDD	1,130,900
Birmingham	062–HD029/AL09–Q951–004, Glenwood Mental Health, 150 Glenwood Lane, Birmingham, AL 35242.	Birmingham, AL	4	WDD	208,500
Birmingham	062–HD030/AL09–Q951–005, Cullman Area Mental Health Authority, Inc., 1909 Commerce Avenue, N.W., Cullman, AL 35055.	Cullman, AL	10	CMI	604,300
Subsubtotal			50		2,787,500
Florida					
Jacksonville	063–HD010/FL29–Q951–018, Mental Health Service, 4300 SW 13th St., Gainesville, FL 32608.	Gainesville, FL	16	CMI	937,300
Jacksonville	066–HD022/FL29–Q951–007, Goodwill Ind. of SW Fla., 4949 Bayline Dr., N. Fort Myers, FL 33917.	N. Ft. Myers, FL	16	WPD	1,044,900
Jacksonville	066–HD023/FL29–Q951–008, David Lawrence Mental Health, 6075 Golden Gate Parkway, Naples, FL 33999.	East Naples, FL	10	CMI	767,800
Jacksonville	066–HD027/FL29–Q951–013, Ann Storck Center, Inc., 1790 SW 43 Way, Ft. Lauderdale, FL 33317.	Plantation, FL	6	WDD	311,500
Jacksonville	066–HD028/FL29–Q951–014, AIDS Help, Inc., PO Box 4374, Key West, FL 33041.	Key West, FL	7	WPD	503,000
Jacksonville	067–HD034/FL29–Q951–003, Professional Therapy Center, P.O. Box 6239, Springhill, FL 34606.	Brooksville, FL	15	CMI	814,400
Jacksonville	067–HD035/FL29–Q951–005, Abilities of Florida, 2735 Whitney Road, Clearwater, FL 34618.	Clearwater, FL	6	WPD	366,100
Jacksonville	067–HD036/FL29–Q951–006, Abilities of Florida, 2735 Whitney Road, Clearwater, FL 34618.	St. Petersburg, FL	10	WPD	591,700
Jacksonville	067–HD037/FL29–Q951–010, Seminole Comm. Mental Health, 417 Whooping Lane, Suite 1721, Altamonte Springs, FL 32701.	Longwood, FL	13	CMI	732,500
Jacksonville	067–HD039/FL29–Q951–016, Mental Health Care, Inc., 5707 N. 22nd St., Tampa, FL 33610.	Tampa, FL	24	CMI	1,363,400
Subsubtotal			123		7,432,600
Georgia					
Atlanta	06–HD039/GA06–Q951–006, Goodwill Ind.,—Big Bend, Inc., 300 Mabry Street, Tallahassee, FL 32304.	Thomasville, GA	20	WPD	1,126,500
Atlanta	061–HD040/GA06–Q951–007, Lynndale, Inc., 1490 Eisenhower Drive, Augusta, GA 30904.	Augusta, GA	11	WDD	561,700

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued
[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
Atlanta	061–HD041/GA06–Q951–008, VOA of South AL., Inc./ VOA of GA., Inc., 600 Azalea Road, Mobile, AL 36609.	Thomaston, GA	13	CMI	563,800
Atlanta	061–HD043/GA06–Q951–010, UCP of Greater Atlanta, Inc., 1776 Peachtree St., Suite 552S, Atlanta, GA 30309.	Marietta, GA	10	WDD	435,200
Atlanta	061–HD044/GA06–Q951–011, VOA of South AL., Inc./ VOA of GA., Inc., 600 Azalea Rd., Mobile, AL 36609.	Douglasville, GA	13	CMI	563,800
Subsubtotal			67		3,451,000
Kentucky					
Louisville	083–HD032/KY36–Q951–001, The Cain Center, 735 East Chestnut Street, Louisville, KY 40202–1605.	Valley Station, KY	10	WPD	559,100
Louisville	083–HD033/KY36–Q951–002, The Cain Center, 735 East Chestnut Street, Louisville, KY 40202–1605.	Buechel, KY	10	WPD	616,700
Louisville	083–HD034/KY36–Q951–003, Lake Cumberland Co, PO Box 968, Somerset, KY 42502–0968.	Columbia, KY	9	CMI	497,400
Louisville	083–HD032/KY36–Q951–004, Communicare Inc., 1311 North Dixie, Elizabethtown, KY 42701.	Bardstown, KY	10	CMI	559,100
Subsubtotal			39		2,232,300
Mississippi					
Jackson	065–HD006/MS26–Q951–001, Singing River MH/Retardation Services, 4507 McArthur St, Pascagoula, MS 39567.	Gautier, MS	9	WDD	269,000
Jackson	065–HD008/MS26–Q951–003, Delta Community Mental Health Services, P.O. Box 5365, Greenville, MS 38704.	Rolling Fork, MS	15	CMI	746,600
Jackson	065–HD009/MS26–Q951–004, Delta Community Mental Health Services, P.O. Box 5365, Greenville, MS 38704.	Boyle, MS	15	CMI	732,000
Jackson	065–HD010/MS26–Q951–005, Reg. Foundation for MH/Retardaton, P.O. Box 1188, Starkville, MS 39759.	Louisville, MS	17	CMI	829,600
Subsubtotal			56		2,577,200
North Carolina					
Greensboro	053–HD102/NC19–Q951–001, The Arc of Mecklenburg, 4801 E. Independence Blvd, Charlotte, NC 28212.	Charlotte, NC	4	WDD	321,100
Greensboro	053–HD103/NC19–Q951–002, The Arc of North Carolina, Inc., PO Box 29594, Greensboro, NC 27429.	Lexington, NC	6	WDD	317,700
Greensboro	053–HD104/NC19–Q951–003, The Arc of North Carolina, Inc., PO Box 29594, Greensboro, NC 27429.	Jefferson, NC	4	WDD	263,700
Greensboro	053–HD105/NC19–Q951–004, The Arc of North Carolina, Inc., PO Box 29594.	Burlington, NC	4	WDD	263,700
Greensboro	053–HD106/NC19–Q951–005, Autism Society of North Carolina, 3300 Womens Club Drive, Raleigh, NC 27612.	Raleigh, NC	6	WDD	347,300
Greensboro	053–HD107/NC19–Q951–006, Autism Society of North Carolina, 3300 Womens Club Drive, Raleigh, NC.	Albemarle, NC	4	WDD	266,300
Greensboro	053–HD110/NC19–Q951–009, Mental Health Association in North Carolina, 3820 Bland Road, Raleigh, NC 27609.	Mount Airy, NC	10	CMI	559,300
Greensboro	053–HD111/NC19–Q951–010, Mental Health Association in North Carolina, 3820 Bland Road, Raleigh, NC 27609.	Warrenton, NC 27609	5	CMI	347,300
Greensboro	053–HD112/NC19–Q951–011, Mental Health Association in North Carolina, 3820 Bland Road, Raleigh, NC 27609.	Charlotte, NC	10	CMI	665,800

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued
[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
Greensboro	053–HD113/NC19–Q951–012, Mental Health Association in North Carolina, 3820 Bland Road, Raleigh, NC 27609.	Rockingham, NC	10	CMI	665,800
Greensboro	053–HD114/NC19–Q951–013, Mental Health Association in North Carolina, 3820 Bland Road, Raleigh, NC 27609.	Newton, NC	10	CMI	665,800
Greensboro	053–HD115/NC19–Q951–014, Mental Health Association in North Carolina, 3820 Bland Road, Raleigh, NC 27609.	Chadbourn, NC	10	CMI	698,100
Greensboro	053–HD118/NC19–Q951–017, Western NC Community Health Services, PO Box 338, Asheville, NC 28802.	Asheville, NC	6	WPD	325,500
Subsubtotal			90		5,807,400
Puerto Rico					
Caribbean	056–HD007/RQ46–Q951–002, Ryder Memorial Hospital, Call Box 859, Humacao, PR 00791.	Humacao Muncipio, PR	41	WPD	2,800,600
Subsubtotal			41		2,800,600
South Carolina					
Columbia	054–HD069/SC16–Q951–001, Sumter County Disabilities & Spec Needs BD., PO Box 2847, Sumter, SC 29151–2847.	Sumter, SC	16	WDD	931,500
Columbia	054–HD070/SC16–Q951–002, Sumter County Disabilities & Spec Needs BD., PO Box 2847, Sumter, SC 29151–2847.	Sumter, SC	12	WDD	636,000
Columbia	054–HD071/SC16–Q951–003, The Charles Lea Center for Rehab. & Spec. Ed. 195 Burdette Street, Spartanburg, SC 29307.	Spartanburg, County, SC	12	WDD	752,300
Columbia	054–HD072/SC16–Q951–004, Laurens County Assoc. for Retarded Citizens, PO Box 735, Laurens, SC 29360.	Joanna, SC	12	WDD	723,400
Columbia	054–HD073/CC16–Q951–005, Tri Development Center of Aiken County, Inc., PO Box 698, Aiken, SC 29802.	Aiken, SC	8	WDD	482,200
Subsubtotal			60		3,525,400
Tennessee					
Nashville	081–HD013/TN40–Q951–001, Accessible Space/Mid-South Head Injury, 550 University Ave., St. Paul, MN 55114.	Memphis, TN	25	WPD	1,404,900
Knoxville	087–HD023/TN37–Q951–004, Hamilton CY MH ASS, PO Box 4755, Chattanooga, TN 37405.	Cleveland, TN	9	CMI	246,000
Knoxville	087–HD024/TN37–Q951–006, Hamilton CY MH ASS, PO Box 4755, Chattanooga, TN 37405.				
Knoxville	087–HD026/TN37–Q951–007, Emory Valley Ctr I, 715 Emory Valley Rd, Oak Ridge, TN 37830.	Oak Ridge, TN	7	WDD	242,900
Knoxville	087–HD28/TN37–Q951–009, Ridgeview Psych HD, 240 W Tyrone Rd, Oak Ridge, TN 37830.	Oak Ridge, TN	9	CMI	400,200
Subsubtotal			59		2,540,000
Subtotal			585		33,154,000
		CHICAGO			
Illinois					
Chicago	071–HD071/IL06–Q951–010, Habilitative Systems, Inc. 415 South Kilpatrick Street, Chicago, IL 60644.	Chicago, IL	5	WDD	1,883,000

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued
[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
Chicago	071–HD080.IL06–Q951–019, Ada S. McKinley, 100 East 34th St., Chicago, IL 60616.	Chicago IL	24	WDD	1,129,800
Chicago	072–HD074/IL06–Q951–013, Bridgeway, Inc., 2323 Windish, Galesburg, IL 61401.	Kewanee, IL	15	CMI	925,900
Chicago	072–HD075/IL06–Q951–014, Bridgeway, Inc., 2323 Windish Drive, Galesburg, IL 61401.	Galesburg, IL	15	CMI	925,900
Chicago	072–HD077/IL06–Q951–016, Peoria Association for Retarded Citizens, 2006 W. Altorfer Drive, Peoria, IL 61612.	East Peoria, IL	16	WDD	1,052,200
Chicago	072–HD079/IL06–Q951–01B, Horizon House of Illinois, 2000 Plank Rd. Peru, IL 61354.	Peru, IL	16	WDD	1,052,200
Subsubtotal			91		6,969,000
INDIANA					
Indianapolis	073–HD035/IN36–Q951–001, So Hills Counselin, 480 Eversman Drive, Jasper, IN 47546.	Jasper, IN	10	CMI	298,900
Indianapolis	073–HD039/IN36–Q951–005, Park Center, Inc., 909 East State Blvd., Fort Wayne, IN 46805.	Fort Wayne, IN	25	CMI	1,486,700
Indianapolis	073–HD040/IN36–Q951–006, Grant-Blackford Mental Health, Inc., 505 Wabash Avenue, Marion, IN 46952.	Marion, IN	10	CMI	298,900
Subsubtotal			45		2,084,500
Michigan					
Detroit	044–HD014/MI28–Q951–005, Rhoades, McKee, Boer, 600 Waters Building, Grand Rapids, MI 49503.	Pontiac, MI	24	CMI	1,529,000
Detroit	044–HD016/MI28–Q951–007, Innovative Housing, 2051 Commerce Drive, Fort Gratiot, MI 48059.	Port Huron, MI	6	WDD	383,900
Detroit	044–HD017/MI28–Q951–009, Innovative Housing, 2051 Commerce Drive, Fort Gratiot, MI 48059.	Port Huron, MI	12	CMI	767,900
Detroit	044–HD018/MI28–Q951–011 Care Group & Assoc, Clair Circle, Ann Arbor, MI 48103.	Ann Arbor, MI	8	WDD	308,400
Grand Rapids	047–HD016/MI33–Q951–003, Hope Network, Box 0141, Grand Rapids, MI 49501.	Big Rapids, MI	19	WDD	1,116,500
Detroit	048–HD005/MI28–Q951–008, Innovative Housing, 3051 Commerce Drive, Fort Gratiot, MI 48059.	Sandusky, MI	16	WDD	962,400
Subsubtotal			83		5,068,100
Minnesota					
Minn/St Paul	092–HD027/MN46–Q951–001, Renville County Co., 831 Grove Avenue, Bird Island, MN 55310.	Bird Island, Olivia, MN	6	WDD	520,600
Minn/St Paul	092–HD028/MN46–Q951–002, Accessible Space Inc., 2550 University Avenue W., St. Paul, MN 55415.	Falcon Heights, MN	8	WPD	567,400
Minn/St Paul	092–HD029/MN46–Q951–003, Accessible Space Inc., 2550 University Avenue W., St. Paul, MN 55114.	Blaine, MN	12	WPD	851,100
Minn/St Paul	092–HD030/MN46–Q951–004, Accessible Space Inc., 2550 University Avenue W., St. Paul, MN 55114.	St. Anthony, MN	4	WPD	283,700
Minn/St Paul	092–HD032/MN46–Q951–006, Fraser Community Services, 400 West 64th Street, Minneapolis, MN 55423.	Minnetonka, MN	24	WDD	1,611,600
Subsubtotal			56		3,834,400

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
Ohio					
Cleveland	042–HD041/OH12–Q951–001, Lutheran Metropolitan Ministry, 1468 West 25 Street, Cleveland, OH 44113.	Avon Lake, OH	24	WPD	1,556,500
Cleveland	042–HD044/OH12–Q951–004, Wood County Mental Health Clinic Inc, 1010 Prospect, Bowling Green, OH 43402.	Bowling Green, OH	12	CMI	767,900
Cleveland	042–HD045/OH12–Q951–005, Ruth Ide Mental Health Center, 1544 East Woodruff, Toledo, OH 43624.	Toledo, OH	18	CMI	1,151,900
Cleveland	042–HD046/OH12–Q951–006, Mansfield-Richland-Morrow City Policy Comm, 452 Annandale Avenue, Mansfield, OH 44905.	Mansfield, OH	24	WPD	1,141,700
Cleveland	042–HD049/OH12–Q951–009, AIDS HSG Council of Greater Cleveland, 1413 West 80th Street, Cleveland, OH 44102.	Cleveland, OH	16	WPD	1,481,800
Cleveland	042–HD052/OH12–Q951–012, Hill House, 11101 Magnolia Drive, Cleveland, OH 44106.	Cleveland, OH	10	CMI	342,600
Columbus	043–HD022/OH16–Q951–001, Tri-Star Community Counseling, Inc., 635 West Spring Street, Lima, OH 45801.	Lima, OH	12	CMI	678,700
Columbus	043–HD025/OH16–Q951–004, Jireh Services, Inc., 1587 Kent Street, Columbus, OH 43205.	Columbus, OH	5	WDD	245,100
Columbus	043–HD026/OH16–Q951–005, Goodwin & Goodwin, Inc., P.O. Box 6986, Columbus, OH 43205.	Columbus, OH	5	WDD	261,200
Cincinnati	046–HD015/OH10–Q951–001, Eastway Corporation, 600 Wayne Avenue, Dayton, OH 45410–1199.	Eaton, OH	7	CMI	402,700
Cincinnati	046–HD016/OH10–Q951–002, First Mental Retardation Corporation, 615 Randolph Street, Dayton, OH 45408.	Dayton, OH	4	WDD	245,100
Cincinnati	046–HD017/OH10–Q951–003, First Mental Retardation Corporation, 615 Randolph Street, Dayton, OH 45408.	Dayton, OH	5	WDD	261,200
Subsubtotal			142		8,536,400
Wisconsin					
Milwaukee	075–HD037/WI39–Q951–003, Catholic Charities Bureau, Inc., 1416 Cumming Ave., Superior, WI 54880.	Washburn, WI	5	CMI	499,000
Milwaukee	075–HD038/WI39–Q951–004, Housing Allowance OFC of Brown County, 1150 Main Street, Green Bay, WI 54301.	Green Bay, WI	4	CMI	241,700
Milwaukee	075–HD040/WI39–Q951–006, Goodwill Industries of South Central WI, Inc., 1302 Mendota St., Madison, WI 53714.	Madison, WI	6	CMI	378,100
Milwaukee	075–HD041/WI39–Q951–007, ARC Housing in Milwaukee, Inc., 1126 S. 70 St., West Allis, WI 53214.	Milwaukee, WI	8	WDD	564,600
Milwaukee	075–HD044/WI39–Q951–010, Goodwill Industries of Southeastern WI, Inc., 6055 N. 91 St., Milwaukee, WI 53225.	Racine, WI	8	CMI	530,400
Subsubtotal			34		2,213,800
Subtotal			451		28,706,200

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
FORT WORTH					
Arkansas					
Little Rock	082–HD037/AR37–Q951–005, Little Rock Community Mental Health Center, 4400 Shuffield Drive, Little Rock, AR 72205.	Little Rock, AR	24	CMI	1,124,700
Subsubtotal			24		1,124,700
Louisiana					
New Orleans	064–HD032/LA48–Q951–003, Seventh District Baptist Association, P.O. Drawer 540, Crowley, LA 70527.	Opelousas, LA	24	WPD	775,700
New Orleans	064–HD034/LA48–Q951–005, Diocese of Lafayette, 1408 Carmel Ave., Lafayette, LA 70501.	Eunice, LA	24	WPD	775,700
Subsubtotal			48		1,551,400
New Mexico					
Fort Worth	116–HD004/NM16–Q951–001, The Life Link, P.O. Box 6094, Santa Fe, NM 87502.	Santa Fe, NM	12	CMI	495,400
Fort Worth	116–HD005/NM16–Q951–002, Tohatchi Special Education & Training, P.O. Box 49, Tohatchi, NM 87325.	Tohatchi, NM	8	WDD	434,300
Fort Worth	116–HD006/NM16–Q951–003, SW New Mexico Services to Handicapped, 907 Pope St., Silver City, NM 88061.	Deming, NM	8	WPD	464,600
Fort Worth	116–HD007/NM16–Q951–004, People Care, Inc., 800 N. Richardson Ave., Roswell, NM 88201.	Roswell, NM	15	CMI	771,900
Subsubtotal			43		2,166,200
Oklahoma					
Oklahoma City	118–HD008/OK56–Q951–001, Home of Hope, Inc., 900 Hope Avenue, Vinita, OK 74301.	Miami, OK	24	WDD	971,900
Subsubtotal			24		971,900
Texas					
Fort Worth	113–HD010/TX21–Q951–002, VOA Northern Texas, PO Box 200276, Arlington, TX 76006–0276.	Fort Worth, TX	8	WDD	502,000
Fort Worth	113–HD011/TX21–Q951–003, VOA Northern Texas, PO Box 200276, Arlington, TX 76006–0276.	Fort Worth, TX	8	WPD	376,500
Fort Worth	113–HD012/TX21–Q951–004, MHMR Concho Valley, 1501 West Beauregard, San Angelo, TX 76901.	San Angelo, TX	12	CMI	593,400
Houston	114–HD006/TX24–Q951–002, MHMR of Harris County, 2850 Fannin, Houston, TX 77002.	Tomball, TX	22	CMI	1,156,500
Houston	114–HD007/TX24–Q951–003, Multifamily Mission, 777 South R, La Porte, TX 77571.	Houston, TX	44	WPD	2,300,400
Houston	114–HD010/TX24–Q951–006, Accessible Space and Bay Area Rehab, 2550 University Ave., St. Paul, MN 55114.	Baytown, TX	25	WPD	1,476,100
San Antonio	115–HD017/TX59–Q951–002, Accessible Space, 2550 University Avenue, St. Paul, MN 55114–1052.	San Antonio, TX	25	WPD	1,378,300
Subsubtotal			142		7,783,200
Subtotal			281		13,597,400

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
KANSAS CITY					
Iowa					
Des Moines	074–HD015/IA05–Q951–001, Mental Health Center of North Iowa, Inc., 235 South Eisenhower, Mason City, IA 50401.	Hampton, IA	12	CMI	574,600
Subsubtotal			12		574,600
Kansas					
Kansas City	102–HD025/KS16–Q951–005, Wichita Comm Clinical AIDS Program, 317 West 11th, Wichita, KS 67203.	Wichita, KS	9	WPD	465,400
Kansas City	102–HD026/KS16–Q951–006, Bert Nash Comm Mental Health, 336 Missouri, Suite 202, Lawrence, KS 66044.	Baldwin City, KS	6	CMI	310,200
Subsubtotal			15		775,600
Missouri					
Kansas City	084–HD017/MO16–Q951–001, Cntr Developmental Disabled, 1010 West 39th Street, Kansas City, MO 64111.	Kansas City, MO	18	WDD	1,029,700
St. Louis	085–HD010/MO36–Q951–002, Cape Girardeau Community Sheltered Workshop, 1330 Southern Expressway, PO Box 831, Cape Girardeau, MO 63702–0831.	Jackson, MO	9	WDD	559,500
St. Louis	085–HD011/MO36–Q951–003, Mid-MO Barrier Fre, 107 North Williams, Columbia, MO 65201.	Columbia, MO	12	WPD	745,900
Subsubtotal			39		2,355,100
Nebraska					
Omaha	103–HD012/NE26–Q951–001 Accessible Space, Inc. 2550 University Avenue, Suite 330N, St. Paul, MN 55114.	Omaha, NE	15	WPD	779,100
Subsubtotal			15		779,100
Subtotal			81		4,564,600
DENVER					
Colorado					
Denver	101–HD014/C099–Q951–003 Arkansas Valley Co 1500 San Juan, La Junta, CO 81050.	La Junta, CO	4	WDD	260,300
Denver	101–HD016/C099–Q951–005 Mercy Housing, Inc 1601 Milwaukee Street, Denver, CO 80211.	Denver, CO	12	CMI	833,700
Subsubtotal			16		1,094,000
Montana					
Denver	093–HD009/MT99–Q951–001 Accessible Space, 2550 University Ave., St. Paul, MN 55114.	Helena, MT	25	WPD	1,538,300
Subsubtotal			25		1,538,300
Utah					
Denver	105–HD004/UT99–Q951–001 Utah Nonprofit Hsg 455 South 300 East, Salt Lake City, UT 84111.	Magna, UT	12	WPD	799,800
Subsubtotal			12		799,800
Subtotal			55		3,432,100

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
SAN FRANCISCO					
Arizona					
Phoenix	123–HD014/AZ20–Q951–003 Valley of the Sun 1142 West Hatcher Road, Phoenix, AZ 85021.	Glendale, AZ	20	WDD	945,000
Subsubtotal			20		945,000
California					
San Francisco	121–HD033/CA39–Q951–002 Mid-Peninsula Hsng Inc/Adult Indep Devel Ctr 658 Bair Island Road, Redwood City, CA 94063.	Palo Alto, CA	24	WDD	1,944,600
San Francisco	121–HD034/CA39–Q951–003 Self-Help for the Elderly 407 Sansome Street, San Francisco, CA 94111.	San Francisco, CA	15	CMI	474,700
San Francisco	121–HD035/CA39–Q951–004 Face-to-Face/Sonoma County AIDS Network 873 Second Street, Santa Rosa, CA 95404.	Santa Rosa, CA	6	WPD	319,300
San Francisco	121–HD036/CA39–Q951–005 Resources for Community Development 2131 University Avenue, Berkeley, CA 94704.	Contra Costa Count, CA	12	WPD	900,800
San Francisco	121–HD038/CA39–Q951–007 Interim, Inc. Post Office Box 3222, Monterey, CA 93942.	Monterey, CA	14	CMI	950,200
San Francisco	121–HD040/CA39–Q951–009 Ecumenical Assn for Hsg/Ind Living Resource 2169 E. Francisco Blvd, San Rafael, CA 94901.	Oakley, CA	24	WPD	1,779,300
Los Angeles	122–HD063/CA16–Q951–001, Partners in HSG Inc, 99 S Glenn Dr, Camarillo, CA 93010.	Camarillo, CA	24	CMI	1,915,300
Los Angeles	122–HD064/CA16–Q951–002, GRTR LA Council on, 2222 Laverna Av, Los Angeles, CA 90041.	Los Angeles, CA	14	WPH	974,600
Los Angeles	122–HD066/CA16–Q951–004, UCP, 7630 Gloria Av, Van Nuys, CA 91406.	Santa Monica, CA	13	WDD	1,106,400
Los Angeles	122–HD067/CA16–Q951–005, UCP, 7630 Gloria Avenue, Van Nuys, CA 91406.	North Hollywood, CA	13	WDD	1,106,400
Los Angeles	122–HD069/CA16–Q951–007, UCP, 7630 Gloria Av, Van Nuys, CA 91406.	Palmdale, CA	13	WDD	1,106,400
Los Angeles	122–HD070/CA16–Q951–008, UCP, 7630 Gloria Avenue, Van Nuys, CA 91406.	Monrovia, CA	13	WDD	1,106,400
Los Angeles	122–HD071/CA16–Q951–009, Home Coastal Dev Sv, 5901 Green Valley Circle, Culver City, CA 90230.	Inglewood, CA	4	WDD	367,900
Los Angeles	122–HD073/CA16–Q951–011, Home Coastal Dev Sv, 5901 Green Valley Circle, Culver City, CA 90230.	Hawthorne, CA	4	WDD	367,900
Los Angeles	122–HD074/CA16–Q951–012, Home Coastal Dev Sv, 5901 Green Valley Circle, Culver City, CA 90230.	Culver City, CA	4	WDD	367,900
Los Angeles	122–HD075/CA16–Q951–013, Home Coastal Dev Sv, 5901 Green Valley Circle, Culver City, CA 90230.	Los Angeles, CA	4	WDD	367,900
Los Angeles	122–HD078/CA16–Q951–016, Crippled Children, 7120 Franklin Av, Los Angeles, CA 90046.	Pasadena, CA	6	WDD	372,500
Los Angeles	122–HD080/CA16–Q951–018, Hope Harbor Regional, PO Box 2930, Torrance, CA 90509.	Redondo Beach, CA	4	WDD	78,400
Los Angeles	122–HD082/CA16–Q951–020, Homes For Life FDN, 8929 S Sepulveda BL, Los Angeles, CA 90045.	Los Angeles, CA	25	CMI	1,995,100

APPENDIX B—SECTION 811 PROGRAM FOR PERSONS WITH DISABILITIES—Continued

[Fiscal year 1995 selections]

Office	FHA and Project Rental Assistance Contract (PRAC) numbers, sponsor name and address	Location	Units	Tenant type	Capital advance amount
Los Angeles	129–HD010/CA33–Q951–005, Big Sister League, 115 Redwood St, San Diego, CA 92103.	San Diego, CA	15	CMI	469,900
Sacramento	136–HD07/CA30–Q951–001, Catholic Char of S, 1733 Oregon St, Redding, CA 96001.	Redding, CA	21	CMI	1,466,700
Subsubtotal			272		20,247,600
Hawaii					
Honolulu	140–HD014/HI10–Q951–003, Rehab Hospital of the Pacific, 226 North Kuakini Street, Honolulu, HI 96817.	Waipahu, HI	15	WPD	1,752,700
Subsubtotal			15		1,752,700
Subtotal			307		229,945,300
SEATTLE					
Alaska					
Anchorage	176–HD009/AK06–Q951–003, Juneau Alliance for the Mentally Ill, 310 2nd Ave St, Juneau, AK 99802.	Juneau, AK	15	CMI	1,752,700
Subsubtotal			15		1,752,700
Oregon					
Portland	126–HD015/OR16–Q951–005, Accessible Space I, 2550 University Avenue, St Paul, MN 55114.	Hillsboro, OR	25	CMI	1,619,600
Portland	126–HD016/OR16–Q951–006, MT Hood Community, 400 NE 7th, Gresham, OR 97030.	Gresham, OR	10	CMI	630,000
Subsubtotal			35		2,249,600
Washington					
Seattle	127–HD016/WA19–Q951–001, Aberdeen Neighborhood, PO Box 407, Aberdeen, WA 98520.	Elma, WA	8	WDD	572,900
Seattle	171–HD08/WA19–Q951–0007, Our Lady of Lourdes, 520 North Fourth Avenue, Pasco, WA 99302.	Pasco, WA	10	CMI	623,200
Subsubtotal			18		1,196,100
Subtotal			68		5,198,400
Total			2,384		156,747,000

[FR Doc. 96–17178 Filed 7–5–96; 8:45 am]

BILLING CODE 4210–27–M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–4104–D–01]

Redelegation of Authority; Waiver of Directives

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Public and Indian Housing redelegates to the Secretary's Representatives for HUD's Field Offices the same waiver authority of directives and handbook provisions pertaining to Public Housing (PH) programs, as provided to the PH Directors in the HUD Field Offices. The Secretary's Representatives may further redelegate the authority to waive directives and handbook provisions to State and Area Coordinators within their geographic area. Offices of Native American Programs are not covered by this redelegation.

EFFECTIVE DATE: June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Cheryl Teninga, Field Operations Staff, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4124, 451 7th Street, SW, Washington, DC 20410, telephone numbers (202) 708–4016 (voice), (202) 708–1455 (TTY). These are not toll-free numbers

SUPPLEMENTARY INFORMATION: The purpose of this redelegation is to provide Secretary's Representatives with the same authority to waive directives, including handbook provisions, redelegate to Public Housing Directors in the Field Offices, and with the authority to further redelegated to State and Area Coordinators. This redelegation does not supersede the Department's Statement of Policy published on April 22, 1991, at 56 FR 16337, entitled "Waiver of Regulations and Directives Issued by HUD."

Department directives mandated by statute, executive order, or regulation, and those related to civil rights compliance and enforcement are not within this redelegation. The Secretary is the ultimate repository of the authority both to issue and to waive the regulations of the Department. Typically the authority to issue regulations is delegated to an Assistant Secretary or official of equivalent rank. Under section 7(q) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q), the Secretary may not delegate the authority to waive a regulation below the Assistant Secretary rank. This prohibition even includes individuals who have been delegated authority concurrent with the Assistant Secretary. Under circumstances prescribed in the policy statement, the General Counsel must concur on proposed waivers of regulations subject to section 7(q) of the HUD Act.

Under HUD's policy statement on waiver of regulations and directives, *Directive* means a Handbook (including a change or supplement), notice, interim notice, special directive, and any other issuance that the Department may classify as a directive. *Handbook* means a directive that communicates information of a permanent nature (including clarification of policies, instructions, guidance, procedures, forms, and reports) for HUD staff or program participants. Its permanent nature distinguishes a Handbook from other temporary HUD directives such as notices.

As part of the Department's continued commitment to empowering communities, the Assistant Secretary for Public and Indian Housing is redelegating in this document additional authority to HUD's Secretary's Representatives. Each Secretary's Representative is redelegated limited authority to issue waivers of Department directives, including handbook provisions, for Public Housing programs for the geographic area for which the Secretary's Representative is responsible. The Secretary's Representative is concurrently redelegated the same authority to waive Department directives concerning Public Housing programs as reside with the Public Housing Directors for the Field Offices in the geographic area. The PH Director and the Secretary's Representative must jointly concur in all requests for waivers, whether the request is granted or denied. If the Secretary's Representative and the PH Director do not agree, the matter will be referred to the Assistant Secretary for PIH for resolution. If the Secretary's Representative further redelegates his or her authority to a State and Area Coordinator, and the PH Director and State and Area Coordinator disagree on a waiver request, the State and Area Coordinator will refer the matter to the Secretary's Representative.

Accordingly, the Assistant Secretary for Public and Indian Housing redelegates as follows:

Section A. Authority Redelegated

The Assistant Secretary for Public and Indian Housing concurrently redelegates to each Secretary's Representative the following authority to waive Department directives, including handbook provisions, concerning Public Housing programs for the geographic area for which the Secretary's Representative is responsible. This authority includes the same authority to waive Public Housing directives as is redelegated to Public Housing Directors in the geographic area. The extent of this waiver authority is currently described within the redelegations at 59 FR 51200 (October 7, 1994) and 60 FR 50635 (September 29, 1994). Each waiver granted shall be in writing, specify the grounds for the waiver, and shall be transmitted in writing to the Assistant Secretary for PIH. The Assistant Secretary for PIH will publish any changes or amendments to these redelegations.

Section B. Authority To Further Redelegate

The authority redelegated pursuant to Section A., above, may be further redelegated to the State and Area Coordinators for the geographic region of the Secretary's Representative. If the Secretary's Representative redelegates this authority to a State and Area Coordinator, the redelegation shall include the requirement that each waiver granted shall be in writing, specify the grounds for the waiver, and shall be transmitted in writing simultaneously to the appropriate Secretary's Representative and to the Assistant Secretary for PIH.

Authority: Sec. 7(d) of the Department of Housing and Urban Development (42 U.S.C. 3535(d)).

Dated: June 28, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–17172 Filed 7–5–96; 8:45 am]

BILLING CODE 4210–33–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR–4107–D–01]

Redelegation of Authority; Waiver of Directives

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Housing redelegates to the Secretary's Representatives for HUD's Field Offices the same waiver authority of directives and handbook provisions pertaining to Housing programs, as provided to the Housing Program Directors in the HUD Field Offices. The Secretary's Representatives may further redelegate the authority to waive directives and handbook provisions to State and Area Coordinators within their geographic area.

EFFECTIVE DATE: June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Robert G. Hunt, Director, Management Services Division, Office of Management, Department of Housing and Urban Development , Room 9116, 451 7th Street, SW, Washington, DC 20410, telephone number (202) 708–0826. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The purpose of this redelegation is to provide Secretary's Representatives with the same authority to waive directives, including handbook provisions, redelegated to Housing Program Directors in the Field Offices, and with the authority to further redelegate to State and Area Coordinators. This redelegation does not supersede the Department's Statement of Policy published on April 22, 1991, at 56 FR 16337, entitled "Waiver of Regulations and Directives Issued by HUD."

Department directives mandated by statute, executive order, or regulation, and those related to civil rights compliance and enforcement are not within this redelegation. The Secretary is the ultimate repositor of the authority both to issue and to waive the regulations of the Department. Typically the authority to issue regulations is delegated to an Assistant Secretary or

official of equivalent rank. Under section 7(q) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q), the Secretary may not delegate the authority to waive a regulation below the Assistant Secretary rank. This prohibition even includes individuals who have been delegated authority concurrent with the Assistant Secretary. Under circumstances prescribed in the policy statement, the General Counsel must concur on proposed waivers of regulations subject to section 7(q) of the HUD Act.

Under HUD's policy statement on waiver of regulations and directives, *Directive* means a Handbook (including a change or supplement), notice, interim notice, special directive, and any other issuance that the Department may classify as a directive. *Handbook* means a directive that communicates information of a permanent nature (including clarification of policies, instructions, guidance, procedures, forms, and reports) for HUD staff or program participates. Its permanent nature distinguishes a Handbook from other temporary HUD directives such as notices.

As part of the Department's continued commitment to empowering communities, the Assistant Secretary for Housing is redelegating in this document additional authority to HUD's Secretary's Representatives. Each Secretary's Representative is redelegated limited authority to issue waivers of Department directives, including handbook provisions, for Housing programs for the geographic area for which the Secretary's Representative is responsible. The Secretary's Representative is concurrently redelegated the same authority to waive Department directives concerning Housing programs as reside with the Housing Program Directors for the Field Offices in the geographic area. The Program Director and the Secretary's Representative must jointly concur in all requests for waivers, whether the request is granted or denied. If the Secretary's Representative and the Program Director do not agree, the matter will be referred to the Assistant Secretary for Housing for resolution. If the Secretary's Representative further redelegates his or her authority to a State and Area Coordinator, and the Program Director and State and Area Coordinator disagree on a waiver request, the State and Area Coordinator will refer the matter to the Secretary's Representative.

Accordingly, the Assistant Secretary for Housing redelegates as follows:

Section A. Authority Redelegated

The Assistant Secretary for Housing concurrently redelegates to each Secretary's Representative the following authority to waive Department directives, including handbook provisions, concerning Housing programs for the geographic area for which the Secretary's Representative is responsible. This authority includes the same authority to waive Housing directives as is redelegated to Housing Program Directors in the geographs area. The extent of this waiver authority is currently described in the Housing field reorganization redelegation at 59 FR 62739 (December 6, 1994.) Each waiver granted shall be in writing, specify the grounds for the waiver, and shall be transmitted in writing to the Assistant Secretary for Housing. The Assistant Secretary for Housing will publish any changes or amendments to this redelegation.

Section B. Authority To Further Redelegate

The authority redelegated pursuant to Section A., above, may be further redelegated to the State and Area Coordinators for the geographic region of the Secretary's Representative. If the Secretary's Representative redelegates this authority to a State and Area Coordinator, the redelegation shall include the requirement that each waiver granted shall be in writing, specify the grounds for waiver, and shall be transmitted in writing simultaneously to the appropriate Secretary's Representative and to the Assistant Secretary for Housing.

Authority: Sec. 7(d) of the Department of Housing and Urban Development (42 U.S.C. 3535(d).

Dated: June 28, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–17173 Filed 7–5–96; 8:45 am]

BILLING CODE 4210–27–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–4096–D–01]

Redelegation of Authority; Waiver of Directives

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Community Planning and Development redelegates to the Secretary's Representatives for HUD's Field Offices the same waiver authority of directives and handbook provisions pertaining to Community Planning and Development (CPD) programs, as provided to the CPD Program Directors in the HUD Field Offices. The Secretary's Representatives may further redelegate the authority to waive directives and handbook provisions to State and Area Coordinators within their geographic area.

EFFECTIVE DATE: June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph F. Smith, Director, Office of Executive Services, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7208, 451 7th Street, SW, Washington, DC 20410, telephone numbers (202) 708–1283 (voice), (202) 708–1455 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The purposes of this redelegation is to provide the Secretary's Representatives with the same authority to waive directives, including handbook provisions, redelegated to CPD Program Directors in the Field Offices, and with the authority to further redelegate to State and Area Coordinators. This redelegation does not supersede the Department's Statement of Policy published on April 22, 1991, at 56 FR 16337, entitled "Waiver of Regulations and Directives Issued by HUD."

Department directives mandated by statute, executive order, or regulation, and those related to civil rights compliance and enforcement are not within this redelegation. The Secretary is the ultimate repository of the authority both to issue and to waive the regulations of the Department. Typically the authority to issue regulations is delegated to an Assistant Secretary or official or equivalent rank. Under section 7(q) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q), the Secretary may not delegate the authority to waive a regulation below the Assistant Secretary rank. This prohibition even includes individuals who have been delegated authority concurrent with the Assistant Secretary. Under circumstances prescribed in the policy statement, the General Counsel must concur on proposed waivers of regulations subject to section 7(q) of the HUD Act.

Under HUD's policy statement on waiver of regulations and directives, Directive means a Handbook (including a change or supplement), notice, interim notice, special directive, and any other issuance that the Department may classify as a directive. *Handbook* means a directive that communicates information of a permanent nature (including clarification of policies, instructions, guidance, procedures, forms, and reports) for HUD staff or program participants. Its permanent nature distinguishes a Handbook from other temporary HUD directives such as notices.

As part of the Department's continued commitment to empowering communities, the Assistant Secretary for Community Planning and Development is redelegating in this document additional authority to HUD's Secretary's Representatives. Each Secretary's Representative is redelegated limited authority to issue waivers of Department directives, including handbook provisions, for CPD program for the geographic area for which the Secretary's Representatives is responsible. The Secretary's Representative is concurrently redelegated the same authority to waive Department directives concerning CPD programs as reside with the Directors of CPD for the Field Offices in the geographic area. The Program Director and the Secretary's Representative must jointly concur in all requests for waivers, whether the request is granted or denied. If the Secretary's Representative and the Program Director do not agree, the matter will be referred to the Assistant Secretary for CPD for resolution. If the Secretary's Representative further redelegates his or her authority to a State and Area Coordinator, and the Program Director and State and Area Coordinator disagree on a waiver request, the State and Area Coordinator will refer the matter to the Secretary's Representative.

Accordingly, the Assistant Secretary for Community Planning and Development redelegates as follows:

Section A. Authority redelegated

The Assistant Secretary for Community Planning and Development concurrently redelegates to each Secretary's Representative the following authority to waive Department directors, including handbook provisions, concerning CPD programs for the geographic area for which the Secretary's Representative is responsible. This authority includes the same authority to waive CPD directives as is redelegated to Field Office Program Directors in the geographic area. The extent of this waiver authority is currently described in the CPD field reorganization redelegation at 59 FR 18280 (April 15, 1994), as amended by the redelegation at 60 FR 30312 (June 8, 1995.) Each waiver granted shall be in writing, specify the grounds for the waiver, and shall be transmitted in writing to the Assistant Secretary for CPD. The Assistant Secretary for CPD will publish any changes or further amendments to these redelegations.

Section B. Authority to further redelegate

The authority redelegated pursuant to Section A., above, may be further redelegated to the State and Area Coordinators for the geographic region of the Secretary's Representative. If the Secretary's Representative redelegates this authority to a State and Area Coordinator, the redelegation shall include the requirement that each waiver granted shall be in writing, specify the grounds for the waiver, and shall be transmitted in writing simultaneously to the appropriate Secretary's Representative and to the Assistant Secretary for CPD.

Authority: Sec. 7(d) of the Department of Housing and Urban Development (42 U.S.C. 3535(d).

Dated: June 28, 1996.

Andrew M. Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–17174 Filed 7–5–96; 8:45 am]

BILLING CODE 4210–29–M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. FR–4102–D–01]

Redelegation of Authority; Waiver of Directives

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Fair Housing and Equal Opportunity redelegates to the Secretary's Representatives for HUD's Field Offices the same waiver authority of directives and handbook provisions pertaining to fair housing and equal opportunity in Department programs, as provided to the FHEO Program Directors in the HUD Field Offices. The Secretary's Representatives may further redelegate the authority to waive directives and handbook provisions to State and Area Coordinators within their geographic area.

EFFECTIVE DATE: June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Susan Forward, Deputy Assistant Secretary for Enforcement and Investigations, Office of FHEO, Department of Housing and Urban Development, Room 5106, 451 7th Street, SW, Washington, DC 20410, telephone numbers (202) 708–4211 (voice), (202) 708–1455 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The purpose of this redelegation is to provide Secretary's Representatives with the same authority to waive directives, including handbook provisions, redelegated to FHEO Program Directors in the Field Offices, and with the authority to further redelegate to State and Area Coordinators. This redelegation does not supersede the Department's Statement of Policy published on April 22, 1991, at 56 FR 16337, entitled "Waiver of Regulations and Directives Issued by HUD."

Department directives mandated by statute, executive order, or regulation, and those related to civil rights compliance and enforcement are not within this redelegation. The Secretary is the ultimate repository of the authority both to issue and to waive the regulations of the Department. Typically the authority to issue regulations is delegated to an Assistant Secretary or official of equivalent rank. Under section 7(q) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(q), the Secretary may not delegate the authority to waive a regulation below the Assistant Secretary rank. This prohibition even includes individuals who have been delegated authority concurrent with the Assistant Secretary. Under circumstances prescribed in the policy statement, the General Counsel must concur on proposed waivers of regulations subject to section 7(q) of the HUD Act.

Under HUD's policy statement on waiver of regulations and directives, *Directive* means a Handbook (including a change or supplement), notice, interim notice, special directive, and any other issuance that the Department may classify as a directive. *Handbook* means a directive that communicates information of a permanent nature (including clarification of policies, instructions, guidance, procedures, forms, and reports) for HUD staff or program participants. Its permanent nature distinguishes a Handbook from other temporary HUD directives such as notices.

As part of the Department's continued commitment to empowering communities, the Assistant Secretary for Fair Housing and Equal Opportunity is redelegating in this document additional authority to the Secretary's

Representatives. Each Secretary's Representative is redelegated limited authority to issue waivers of Department directives, including handbook provisions, concerning fair housing and equal opportunity in Department programs for the geographic area for which the Secretary's Representative is responsible. The Secretary's Representative is concurrently redelegated the same authority to waive Department directives concerning fair housing and equal opportunity in Department programs as resides with the Directors of FHEO for the Field Offices in the geographic area. The Program Director and the Secretary's Representative must jointly concur in all requests for waivers, whether the request is granted or denied. If the Secretary's Representative and the Program Director do not agree, the matter will be referred to the Assistant Secretary for FHEO for resolution. If the Secretary's Representative further redelegates his or her authority to a State and Area Coordinator, and the Program Director and State and Area Coordinator disagree on a waiver request, the State and Area Coordinator will refer the matter to the Secretary's Representative.

Accordingly, the Assistant Secretary for Fair Housing and Equal Opportunity redelegates as follows:

Section A. Authority redelegated

The Assistant Secretary for Fair Housing and Equal Opportunity concurrently redelegates to each Secretary's Representative the following authority to waive Department directives, including handbook provisions, concerning fair housing and equal opportunity in Department programs for the geographic area for which the Secretary's Representative is responsible. This authority includes the same authority to waive directives pertaining to fair housing and equal opportunity in Department programs as is redelegated to Directors of FHEO in the geographic area. Each waiver granted shall be in writing, specify the grounds for the waiver, and shall be transmitted in writing to the Assistant Secretary for FHEO. The Assistant Secretary for FHEO will publish any changes or amendments to its redelegations of authority to Directors of FHEO in the field.

Section B. Authority to further redelegate

The authority redelegated pursuant to Section A., above, may be further redelegated to the State and Area Coordinators for the geographic region of the Secretary's Representative. If the Secretary's Representative redelegates this authority to a State and Area Coordinator, the redelegation shall include the requirement that each waiver granted shall be in writing, specify the grounds for the waiver, and shall be transmitted in writing simultaneously to the appropriate Secretary's Representative and to the Assistant Secretary for FHEO.

Authority: Sec. 7(d) of the Department of Housing and Urban Development (42 U.S.C. 3535(d)).

Dated: June 18, 1996.

Elizabeth K. Julian,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 96–17175 Filed 7–5–96; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Revised Record of Decision on Gull Hazard Reduction Program for John F. Kennedy International Airport

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Port Authority of New York and New Jersey (PA) has applied for a permit to take migratory birds, including several species of gulls at John F. Kennedy International Airport (JFKIA). The Lead Agency for this Final Environmental Impact Statement (FEIS) was Animal Damage Control (ADC). The U.S. Fish and Wildlife Service (Service) was a cooperating agency with jurisdiction by law and actively participated in the scoping, drafting and reviewing of the Draft Environmental Impact Statement (DEIS) and the FEIS. Pursuant to the Council on Environmental Quality Regulations (Part 1506.3, Title 40 CFR) for Implementing Provisions of the National Environmental Policy Act (NEPA), and the Department of the Interior, Departmental Manual at 516 DM 1.1–6.6, the Service adopted the above FEIS as prepared by the U.S. Department of Agriculture in 1994. The Service used the information and analyses in the DEIS and FEIS to make its own independent Record of Decision (ROD) for this project, which was published on June 3, 1994 in the **Federal Register**. Based on its independent evaluation and review, the Service selected an alternative similar to the Integrated Management Program, Department of the Interior Policy (IMP/DOI) as its preferred alternative (FEIS, pp. 6–7 to 6–9). The conditions contained in the IMP/DOI were designed to minimize environmental harms and constitute a viable monitoring and enforcement program.

The PA has not to date fully implemented all of the actions identified in the original ROD, and as a result the Service has been unable to issue the PA a Special Purpose Permit to support the bird hazard reduction program at JFKIA. However, the Service did issue limited permits in 1994, 1995, and 1996 to address emergency conditions associated with gulls during the summer months. These emergency conditions were documented by the Federal Aviation Administration (FAA) and by data collected by ADC biologists in those years. The current environmental situation at JFKIA remains essentially the same as was addressed in the 1994 FEIS. The data collected by ADC biologists since 1994 complements, but does not materially change the analysis of impacts of alternatives bearing on the revised decision. These data are available by contacting the person listed in this notice. Since issuing the original ROD, the Service has been involved in lengthy negotiations with the PA, but has been unable to find the PA in full compliance with the ROD, as published on June 3, 1994. The Service believes that significant bird hazards do occur at JFKIA, as are documented in the FEIS, and that a Special Purpose Permit is needed to address emergencies and to facilitate migratory bird management programs on JFKIA. In addition, the Service recognizes that the PA has implemented many of the actions identified in this ROD, and the Service hereby amends its original ROD to support a limited Special Purpose Permit action for the bird hazard program at JFKIA.

ADDRESSES: Copies of the referenced ADC data, the 1994 ROD and the 1994 FEIS may be obtained from George Haas, 300 Westgate Center Drive, Hadley, Massachusetts 01035 (413/253–8576).

Background

JFKIA is one of three major airports in the New York Metropolitan Region, servicing approximately 28 million passengers per year. It is located at the eastern end of Jamaica Bay, immediately adjacent to the Jamaica Bay National Wildlife Refuge, which is part of Gateway National Recreation Area (GNRA) [administered by the National Park Service (NPS)]. The interaction of birds and aircraft at JFKIA is a serious problem, creating significant hazards to human safety, as well as causing financial losses due to aircraft

destruction, equipment damage, runway closures, and associated personnel costs. The airport is constructed on a filled-wetland within a major estuary on the Atlantic Coast and within a major migratory bird corridor in the Atlantic Flyway. This location has contributed to an unusually high incidence of bird strikes at JFKIA. As early as 1975 a Service study concluded that gulls (herring, ring-billed and great black-backed) constituted the principal bird hazard at JFKIA. This problem was severely exacerbated by the establishment and rapid growth of a breeding colony of laughing gulls on the salt marsh islands in Jamaica Bay located at the southeast end of Runway 22R/4L. As the colony grew from 15 pairs in 1979 to more than 7,000 pairs in 1990, the number of laughing gulls involved in bird strikes increased from 2 to as many as 187 per year, and the percentage of bird strikes involving laughing gulls increased from less than 2 percent to approximately 50 percent. Other gulls accounted for approximately 25 percent of JFKIA's bird strikes. Fifty-eight other bird species have accounted for approximately 23 percent of the air strikes and 25 percent of the damage delays (1979–93).

Throughout the 1960's, 1970's, and 1980's, the PA and Federal, New York State and New York City natural resource management agencies have conducted activities to evaluate, control, and monitor JFKIA's bird strike hazard. These activities have included, but were not limited to the following: experimental laughing gull egg-oiling project; international panel review; ecological studies; non-lethal harassment programs; and interim shooting programs. Despite implementation by the PA of a multi-faceted bird hazard reduction program and closure of nearby landfills, strikes by laughing gulls continued to increase. In response to the increase, a temporary, on-airport gull hazard reduction program was conducted by the ADC unit of the U.S. Department of Agriculture from 1991 through 1993. Between May and August of each year gulls entering JFKIA airspace were shot. ADC biologists killed 14,191 laughing gulls in 1991, 11,847 in 1992, and about 6,500 in 1992. By the third year, this program reduced the number of bird strikes involving laughing gulls by more than 90 percent.

In 1992, the concern for potential cumulative impacts associated with the shooting program demonstrated the need to explore issues involved in reduction of the hazards of gull/aircraft interaction at JFKIA. Consequently, the preparation of an Environmental Impact Statement (EIS) was initiated to explore all reasonable alternatives which might be implemented to reduce the number of gull/aircraft collisions at JFKIA in an effective, safe, environmentally sound manner in compliance with all applicable laws and regulations.

The EIS process, including early public participation, began when a Notice of Intent to prepare the DEIS was published in the December 4, 1992 **Federal Register**. At that time, the Service became a cooperating agency. One scoping meeting and one public meeting were held at JFKIA. The Notice of Availability of the DEIS was published in the February 11, 1994 **Federal Register**. Prior to the release of the DEIS for public review, the Service reviewed several preliminary drafts. The comment period of the DEIS ended April 25, 1994, however, comments were accepted through April 28, 1994. The Service reviewed and commented on a preliminary FEIS, and all substantive comments were incorporated into the FEIS released to the public. The Notice of Availability of the FEIS appeared in the May 6, 1994 **Federal Register**. The Service published its "Record of Decision on Gull Hazard Reduction Program for John F. Kennedy International Airport" in the June 3, 1994 **Federal Register**.

The 1994 Record of Decision

The Service's 1994 ROD closely resembles the IMP/DOI policy, which is set forth in pages 6.6 through 6.9 of the FEIS. The 1994 ROD contains more specific actions and time frames than are found in the FEIS discussion of the IMP, which appears on page 6.11. Specific measures identified in the June 3, 1994 **Federal Register** (taken verbatim from the 1994 ROD and enclosed in quotes) and the Service's evaluation of each measure are as follows:

The 1994 ROD identifies the following specific action:

"The PA will hire a person trained in ornithology, or wildlife biology, or in a related field as the supervisor for the Bird Control Unit (BCU) by August 1, 1994. This supervisor will be trained to the Master of Science level in either ornithology or wildlife biology and will be capable of developing and evaluating the bird hazard management program at JFKIA and developing monitoring programs for birds in the JFKIA area."

The Service's evaluation of this specific action is as follows:

The Service believes that this measure was met, but not according to schedule. This biologist does not directly supervise the BCU. The BCU and biologist report to the Manager, Aeronautical Services Division for JFKIA. The biologist influences BCU activities through his supervisor.

The 1994 ROD identifies the following specific action:

"The PA must apply to the Service for the October 1994 BCU permit by September 15, 1994, and should indicate in its application how it has complied with hiring the BCU supervisory biologist (#1 above) and the reorganization of the Bird Hazard Task Force (BHTF). With this application the PA may include its assessment of the BCU's personnel capabilities and expertise. This assessment, if provided, should address needs for increases in staff size, changes in professional capabilities of staff, and training. It should also identify BCU equipment and support requirements, as well as document how the BCU will conduct the collection of biological field data, surveys and monitoring program described in the IMP/DOI and this document."

The Service's evaluation of this specific action is as follows:

This measure was not accomplished in 1994, and no longer applies to this issue.

The 1994 ROD identifies the following specific action:

"The PA will reorganize the BHTF to serve as an advisory committee to the Port Authority for the evaluation of the BCU program and the gull shooting program by August 1, 1994. The BHTF will suggest improvements to this program, recommend additional research and monitoring needs and establish criteria to be used for initiation of Category 2 measures. The agencies currently composing the BHTF would remain. The chairmanship would be rotated on an annual basis; however, the Service would chair the task force during this reorganization period."

The Service's evaluation of this specific action is as follows:

The Service believes that this measure has been met, but not within the schedule.

The 1994 ROD identifies the following specific action:

"The PA will increase staff size for the BCU to 10 permanent, full-time members by November 1, 1994. All BCU employees will be qualified to consistently and accurately collect biological field data and to conduct surveys and monitoring programs with the minimum professional training of a Bachelors of Science or equivalent substantive course work and field experience. The BCU will include at least one person trained in entomology and pesticides."

The Service's evaluation of this specific action is as follows:

The Service believes that this measure has not been met. There are not 10 permanent, full-time members of the BCU and all members of the BCU do not possess the minimum professional training of a Bachelors of Science degree or equivalent. However, the PA has

provided some training to members of the BCU over the past year relating to bird control, which may improve the ability of the BCU to do its job. The PA has one staff person trained in entomology and pesticides within a separate section and this one staff person is available to the BCU. The Service recognizes that the PA has improved the profession capability of the BCU and that BCU employees currently conduct bird surveys at JFKIA. However, the staff size of the BCU has only been increased by the addition of the biologist, and with the exception of the biologist the Service believes that the other members of the BCU lack the equivalent of a Bachelor of Science training in data collection or population monitoring programs.

The 1994 ROD identifies the following specific action:

"The PA will provide sufficient equipment and vehicles to support the improved BCU by November 15, 1994. This includes equipment to disperse water following rain storms, pyrotechnics, speaker systems in all vehicles, firearms, and safety equipment."

The Service's evaluation of this specific action is as follows:

The PA has assured the Service that this equipment is available to the BCU.

The 1994 ROD identifies the following specific action:

"The PA will train and authorize all BCU employees to conduct all harassment methods, including the firing of firearms for lethal and non-lethal harassment by November 15, 1994. This includes the development of a training plan for all employees."

The Service's evaluation of this specific action is as follows:

The PA provided training to all employees associated with the BCU, but this training was not provided within the above stated schedule. However, the PA does not permit all members of the BCU to conduct all harassment methods. Specifically the use of firearms is restricted to shift supervisors.

The 1994 ROD identifies the following specific action:

"The BCU staff requires 7 people to perform its bird harassment responsibilities (1 supervisor, 2 employees per shift, 2 shifts per day, 7 days a week). In order to increase the capability of the BCU, the Service has determined that three additional people are required, as well as improving the professional training and capabilities of the BCU and assuring that the BCU is adequately equipped to do its job."

The Service's evaluation of this specific action is as follows:

The Service does not believe that the increase in staff size and capability has been accomplished.

The 1994 ROD identifies the following specific action:

"On or before January 31, 1995, the PA will develop and implement monitoring programs to assess the following: (1) Evaluation of the effectiveness of the gull shooting program and JFKIA's bird hazard management program; (2) identification of criteria that could be used to determine when a gull shooting program should begin or end; (3) identification of criteria, with the involvement of the BHTF, that could be used to determine when Category 1 elements have become ineffective; (4) evaluation of off-airport attractants that encourage gulls to fly through JFKIA airspace; and (5) continuing evaluation of potential on-airport attractants."

The Service's evaluation of this specific action is as follows:

The PA provided the Service with a document addressing these issues in February 1995 and provided the Service with information addressing these five issues in a report entitled "Wildlife Management Plan" in 1996. In addition, ADC annually; reviews the effectiveness of the gull shooting program (action 1); the last interagency review of JKFIA's bird hazard management program was in 1994 (action 1); ADC and the Service cooperated in the development of criteria for determining when a gull shooting program should begin in 1994 and 1995 (action 2); NPS has been working on the identification of criteria which could be used to determine when Category 1 elements have become ineffective since 1994 (action 3); the PA collected data on off-airport attractants for gulls in 1995 (action 4); and the PA presented information concerning on-airport attractants in their "Wildlife Management Plan" (action 5).

The 1994 ROD identifies the following specific action:

"3. Prepare written plans for vegetation, insect control, solid waste, water management and other on-airport issues that address bird hazard management.

The PA will produce written management plans for vegetation, insect, water, and solid waste management on JFKIA by December 29, 1994. These plans will document the existing programs and the overall management strategies for these programs."

The Service's evaluation of this specific action is as follows:

The PA has provided the Service with a series of drafts for these management plans, but not within the above stated schedule. The most recent version is dated April 1996 and entitled "Wildlife Management Plan". The Service merely stipulated that these plans be prepared in its ROD and did not stipulate any criteria about plan quality. However, the Service is concerned about the quality of this draft and previous drafts. These concerns are shared by BHTF member agencies. The plan continues to be under development.

The 1994 ROD identifies the following specific action:

"4. As a part of the effort to develop data on bird species contributing to hazards at JFKIA and to a determination of when Category 2 measures may be appropriate, the NPS is committee to participating in seasonal surveys in 1994 to monitor gull populations and distribution in the Jamaica Bay area and will provide these data to the BCU and BHTF."

The Service's evaluation of this specific action is as follows:

The NPS participated in these surveys in 1994, 1995, and 1996.

The Service received assurance that ". . . the Port Authority wishes to reaffirm our commitment and demonstrate the extent of our effort to satisfy the elements of the ROD's scope," in a letter dated August 31, 1994 and signed by Mr. Robert J. Kelly, Chief Operations Officer, Aviation Department, for the PA. The PA did not meet the deadlines identified in the ROD, but has made progress with reaching all but one action. The PA has not met the action entitled "1. Additional enhancement of the profession capability of the BCU". Specifically, the PA has not increased the staff size for the BCU to 10 permanent, full-time members with the minimum professional training of a Bachelors of Science or equivalent substantive course work and field experience. In addition, the BCU is not directly supervised by the wildlife biologist.

Service Actions Following the 1994 ROD

1994 Actions

The Service issued Special Purpose Permits to ADC to allow the 1994 shooting program and to PA to allow the 1994 BCU program. ADC's permit expired on August 20, 1994, and the PA's permit expired on October 1, 1994. The Service took this action on the ADC permit, in consideration of the FAA's determination of a need for emergency actions at JFKIA (letter dated May 24, 1994) and the information presented in the FEIS concerning the hazards presented by gulls at JFKIA. This action was identified in the Service's ROD. The Service authorized ADC personnel to kill no more than 14,500 laughing gulls, 1,500 herring, 200 great black-backed and 200 ring-billed gulls, when found flying into JFKIA airspace and creating a hazard to aircraft. This permit was issued when data collected by ADC personnel demonstrated this emergency existed at JFKIA. In 1994, 3,688 laughing gulls, 184 herring gulls, 73 great black-backed gulls, and 36 ring-billed gulls were taken under these permits. Following release of the ROD, the Service met with the PA on August 22 and November 29 in 1994; attended three related meetings with our governmental agencies; and sent letters to the PA dated June 6, June 14, June 27, August 19 and November 10, 1994, concerning the additional organizational measures identified in the Service's ROD. However, the PA did not fully accomplish these ROD actions in 1994.

1995 Actions

The Service issued a Special Purpose Permit to the PA to allow the 1995 shooting program. The PA was not in full compliance with the Service's ROD at that time. The Service took this action on the PA permit, in consideration of the FAA's determination of a need for emergency actions at JFKIA (letter dated May 12, 1995) and actions taken by the PA to meet the Service's ROD. The Service authorized the PA to kill no more than 14,500 laughing gulls, 1,500 herring, 200 great black-backed, 200 ring-billed gulls and 20 Canada geese, when found flying into JFKIA airspace and creating a hazard to aircraft. This permit was issued when data collected by ADC personnel demonstrated this emergency existed at JFKIA. In 1995, 6,302 laughing gulls, 430 herring gulls, 97 great black-backed gulls, 65 ring-billed gulls and 20 Canada geese were taken under this permit. The Service met with the Port Authority on February 7, February 10, March 15, March 16, May 2, October 5, and November 30 in 1995, attended five related meetings with other governmental agencies; and sent letters to the PA dated February 23, April 24, June 6, and June 7, 1995, concerning the organizational improvements identified in the Service's ROD. However, the PA did not fully accomplish these actions in 1995.

1996 Actions

The Service met with the PA on February 12 and March 19 in 1996; attended one related meeting with other governmental agencies; and sent letters to the PA dated March 19, April 26, May 16, May 17 and June 5, 1996, concerning the actions identified in the Service's ROD. However, the PA did not fully accomplish these actions in 1996. The Service has concluded that the PA will not completely accomplish the actions identified in its 1994 ROD in the foreseeable future. The Service believes that a serious human safety risk exists at JFKIA, given its location in the middle of a major estuary within a major migratory bird corridor, and that a program which includes gull shooting will always be needed. The Service believes that authority to shoot gulls and certain other species of migratory birds is necessary to the overall IMP/DOI.

Given the Service's experiences working with the PA since June 1994, the Service believes that the PA will not fully implement the management measures contained in the ROD, which the Service believes would improve the ability of all interested parties to understand the behavior of gulls entering JFKIA airspace. When it crafted its 1994 ROD, the Service determined that an expanded, full-time, professionally-trained BCU was needed to monitor year-round bird movements and behavior in the JFKIA area, which would allow improved airport safety decisions and reduce the take resulting from the gull shooting program. The Service acknowledges that while some members of the BCU do possess practical experience will gulls gained from their years at JFKIA, the Service does not believe the present staff, both in terms of numbers and training, has the capability to conduct the necessary monitoring programs and studies.

During the preparation of the EIS, the Service and NPS urged the PA and EIS preparers to also analyze the other migratory bird species that frequent JFKIA and the threats that these species pose to aircraft and human safety. JFKIA is located in a major estuary within the Atlantic Flyway and a wide variety of migratory birds breed, winter and/or migrate through this area. Given the unpredictable nature of these species using JFKIA airspace, the Service has vigorously urged the PA to implement these personnel changes needed to properly identify, monitor and respond to new patterns of bird behavior or changing conditions.

The Service has expended over one person-year of staff time working with the PA to implement this program since issuance of its original ROD. Given the Service's limited staff and wide breadth of responsibilities for trust resources, it is an impractical and inefficient expenditures of resources given that no further progress is occurring.

On June 13, 1996 the PA notified the Service that an American Airlines Airbus–300 accident earlier that day had been caused by one laughing gull, and had resulted in damage to the turbo blades in one engine. On June 14 and June 17 the FAA notified the Service by two separate letters concerning the existence of a serious hazard to aircraft at JFKIA. On June 14 the Service requested any relevant data on bird activity from ADC and PA, as had been done in 1994 and 1995 to support an emergency permit action. Data received by June 17 did not suggest increased flights by laughing gulls into JFKIA airspace. Data provided by NPS identified a complete loss of laughing gull nests on the colony near JFKIA due to flooding. Increased flights by laughing gulls into JFKIA airspace and increased risks to aircraft have previously been associated with the care of nestling gulls prior to fledging on the nearby rookery. This was not the case in 1996, where renesting caused by flooding has delayed egg-hatching. The 1996 incident confirms the Service's concern that an expanded, full-time, professionally-trained BCU would improve JFKIA airport safety decisions. However, (1) since the Service intends to issue the PA a Special Purpose Permit as soon as this Revised ROD is published in the **Federal Register**, (2) in normal years increased flights of laughing gulls into JFKIA airspace would occur at this time associated with nestling care, and (3) the American Airlines accident has occurred; the Service has issued the PA an emergency permit covering the June 17–30 period, which allows shooting up to 1,000 laughing gulls and up to 100 other gulls (herring, great blackbacked and ring-billed gulls in any combination). The Service took this emergency action to address a human safety hazard at JFKIA, but notes that improvements to the BCU identified in the 1994 ROD, but not implemented, might have improved the ability of the PA to address this hazard.

Service Authority

Statutory authority for the Service's actions is as follows:

Migratory birds listed in treaties with Great Britain (Canada), Mexico, Japan, and the former Soviet Union are protected and activities involving them are regulated in the United States by the Migratory Bird Treaty Act. The Secretary of the Interior under 16 United States Code (USC) Sections 703–712 has responsibility for management of those migratory birds, including the issuance of permits to take those birds. Criteria for issuance of Special Purpose permits is further defined by regulations found in Title 50 CFR Part 21.

Specifically, 16 U.S.C. 704 provides:

"Subject to the provisions and in order to carry out the purposes of the conventions, the Secretary * * * is authorized and directed from time to time, having due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds, to determine, when, to what extent, if at all, and by what means, it is compatible with the terms of the conventions to allow, * * * taking * * * of any such bird * * *"

Generally, all species of gulls are listed in the treaties and further identified in 50 CFR 10.13, List of Migratory Birds. Prohibited activities involving these listed migratory birds are more clearly identified in 50 CFR 21.11 which provides: "No person shall take * * * any migratory bird * * * except as permitted under the terms of a valid permit * * *."

The regulations then provide for issuance of permits for general standardized activities (import/export, banding and marking, scientific collecting, taxidermy, waterfowl sale and disposal, and falconry activities) utilizing standard form permits. They also provide for issuance of Special Purpose permits which authorize otherwise prohibited activities involving migratory birds, not otherwise covered by the standard form permits, when: "* * * an applicant * * * submits a written application containing the general information and certification required by part 13 [50 CFR 13] and makes a sufficient showing of * * * compelling justification." (50 CFR 21.27)

These Special Purpose Permit regulations give the Service broad authorities to address human safety issues at JFKIA. The Preferred Alternative is compatible with all conventions and treaties and the Service Actions identified within this Preferred Alternative are compatible with the intent of these conventions, treaties, and associated regulations. The compelling justification for these Service Actions is the issue of human safety at JFKIA.

Revised Service Decision

The Service amends its original ROD to allow issuance of a Special Purpose Permit to the PA authorizing the take of no more than 100 herring gulls, 100 great black-backed gulls, 100 ring-billed gulls, 100 laughing gulls, and 50 Canada geese or Canada goose nests each year. This permit will also authorize during the period of June 12th through August of each year the additional shooting of up to 8,000 laughing gulls, 1,400 herring gulls, 200 great black-backed gulls, and 200 ring-billed gulls when posing a threat to airplanes on JFKIA. The Service will issue this permit for a three year period beginning in 1996.

The laughing gull nesting colony near JFKIA has not declined significantly during the course of the shooting program. ADC concluded in its evaluation of the 1991–95 shooting programs that the annual kill of laughing gulls "* * * represented about 1–6% of the estimated adult population in nesting colonies on the Atlantic coast from Virginia to Maine * * *". Takes of other species under this permit represent approximately 1% of the regional adult herring gull population and less than 1% of the regional adult populations for great black-backed gulls, ring-billed gulls, and Canada geese. The program, which is supported by this Revised ROD, will likely result in takes of migratory birds of the following magnitudes: 3,688–8,100 laughing gulls, 184–1,600 herring gulls, 73–300 great black-backed gulls, 36–300 ring-billed gulls, and up to 50 Canada geese or their nests. Given the high productivity of the gull species and the number of gulls taken during the 1991–95 period, the Service believes that the environmental impact of this Revised ROD will be the same as, or less than the impacts discussed in the FEIS.

In April 1996 the PA presented the Service with a proposal to use falconry to reduce the numbers of migratory birds flying through JFKIA airspace by both killing and harassment. Unfortunately, this proposal contains no meaningful evaluation plan, and it will be impossible to judge whether the use of raptors to harass birds at JFKIA will reduce the number of strikes in 1996 without such a plan. However, the Service will incorporate conditions in the 1996 permit that would allow the experimental use of falconry at JFKIA, provided this activity is restricted to only PA property and monitored appropriately. Also, the Service intends to consider future modifications of the PA permit for the JFKIA bird hazard management program to accommodate other experimental approaches that might result in a reduced kill of migratory birds, while maintaining at a minimum the current level of risk at JFKIA to bird strikes.

Having reviewed and considered the FEIS and the 1994 ROD for the gull hazard management program at JFKIA, the Service finds as follows:

1. The requirements of NEPA and implementing regulations have been satisfied; and

2. Consistent with social, economic, programmatic and environmental considerations from among the reasonable alternatives thereto, the Revised ROD is one which minimizes or avoids adverse environmental effects to the maximum extent, practicable, including the effects discussed in the FEIS; and,

3. Consistent with the social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the EIS process will be minimized or avoided by incorporating as conditions those mitigative measures identified in the Preferred Alternative in the FEIS and its supporting appendices; and,

4. The limitations on the numbers of gulls and other migratory bird species which may be taken under this permit are compatible with the terms of the Migratory Bird Conventions and are made with due regard to their distribution, abundance, breeding habits, and migratory patterns; and

5. The compelling necessity for public safety at JFKIA, which is documented in the FEIS, is addressed by the proposed actions; and

6. The PA have made a sufficient showing of compelling justification for these permits; and

7. All improvements to the BCU, BHTF, and JFKIA management programs, as specified in the June 3, 1994 **Federal Register** with the amendments identified above in the Service Actions section are hereby adopted as part of this finding and will be used to guide future migratory bird permit decisions.

Having made the above findings, the Service has decided to proceed with implementation of the Revised Record of Decision as indicated above.

This Revised Record of Decision will serve as the written facts and conclusions relied on in reaching this decision. This Revised Record of Decision was approved by the Regional Director of the Service on June 24, 1996.

Dated: June 24, 1996.

Jaime Geiger,

Acting Regional Director.

[FR Doc. 96–17128 Filed 7–5–96; 8:45 am]

BILLING CODE 4310–55–M

Ruffe Control Committee Meeting

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Ruffe Control Committee, a committee of the Aquatic Nuisance Species Task Force. The Committee will meet to develop action plans to meet three new objectives of the Ruffe Control Program. These are: bait fish management; fish community management; and, Chicago Ship and Sanitary Canal. The meeting is open to the public. Interested persons may make oral statements to the Committee or may file written statements for consideration.

DATES: The Ruffe Control Committee will meet from 1:00 to 5:00 p.m. on Tuesday, July 30, 1996, and 8:00 a.m. to 12:00 p.m. on Wednesday, July 31, 1996.

ADDRESSES: The meeting will be held at the Holiday Inn, 1000 U.S. 23 North, Alpena, Michigan 49707.

FOR FURTHER INFORMATION CONTACT: Tom Busiahn, Ruffe Control Committee Chairperson, U.S. Fish and Wildlife Service, at (715) 682–6185.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Ruffe Control Committee, a committee of the Aquatic Nuisance Species Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (P.L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of meeting will be maintained by Coordinator; Aquatic Nuisance Species Task Force, Room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and the Chairperson, Ruffe Control Committee, U.S. Fish and Wildlife Service, Fishery Resources Office, 2800 Lake Shore Drive East, Ashland, Wisconsin 54806, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: June 21, 1996.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 96–17225 Filed 7–5–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Indian Affairs

Fiscal Year (FY) 1996 Indian Child Welfare Act (ICWA) Grant Program, Availability of Title II ICWA Funds for Off-Reservation Indian Organizations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability of grant funds.

SUMMARY: Title II of the Indian Child Welfare Act of 1978, Public Law 95–608, makes grant funds available to off-reservation Indian organizations from the Bureau of Indian Affairs (BIA), Department of the Interior, for the purpose of establishing and operating off-reservation Indian child and family service programs.

DATES: The closing date for the receipt of applications for all applicants is August 2, 1996.

ADDRESSES: Applications must be mailed or hand-delivered to the appropriate Area Office of the Bureau of Indian Affairs listed in Part IV of this announcement.

FOR FURTHER INFORMATION CONTACT: The Bureau of Indian Affairs' area office nearest to the applicant, or Betty Tippeconnie, BIA Office of Tribal Services, Mail Stop 4603–MIB, 1849 C Street, N.W., Washington, D.C. 20240. Telephone (202) 208–2721.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs (Assistant Secretary) by 209 DM 8. Pursuant to 25 CFR Part 23, the Assistant Secretary hereby announces procedures necessary for eligible off-reservation Indian organizations to compete for a national allocation of $866,000 in FY 1996 Title II ICWA grant funds.

ICWA applications for one year grants will be accepted under this notice. Applications must comply with all applicable requirements and criteria specified in Subpart D, 25 CFR Part 23. Copies of 25 CFR Part 23 ICWA grant regulations may be obtained from the Area Social Workers listed in Part IV of this notice. It is important that applicants carefully review all requirements detailed in this notice relative to application contents, deadlines, and other special instructions. Applications not received by Close of Business on August 2, 1996 will not be considered in the competition.

In accordance with 25 CFR Part 23.42, it is incumbent upon prospective grant applicants to request technical assistance from the appropriate Area Director. The deadline for the receipt of requests for technical assistance is 10 days prior to the close of the application deadline.

Part I. General Information

A. Background

It is the policy of the BIA to emphasize and facilitate the comprehensive design, development and implementation of Indian child and family service programs in coordination with other Federal, state, and local programs which strengthen and preserve Indian families and Indian tribes. Thus, applicants are encouraged to design their ICWA programs/activities to integrate with or complement existing child and family service programs or those administered by the applicant.

Section 202 of the Indian Child Welfare Act of 1978 (Public Law 95–608, 25 U.S.C. 1932) authorizes the Secretary to make grants to off-reservation Indian organizations to establish and operate off-reservation Indian child and family service programs for the purpose of stabilizing and preventing the breakup of Indian families and, in particular, to ensure that the permanent removal of an Indian child from the custody of his/her Indian parent or custodian shall be an action of last resort. These programs are intended to promote the Indian Child Welfare Act of 1978 (25 U.S.C. chapter 21).

This notice provides information on the FY 1996 ICWA grant application process for eligible off-reservation Indian organizations to compete for FY 1996 ICWA grant funds.

B. Eligible Applicants

The Board of Directors of any nonprofit off-reservation Indian organization may apply for a grant under this announcement. A new application for projects of one year's duration may be submitted in response to this announcement. An applicant may not submit more than one application nor be a beneficiary of more than one grant under this or other prior notices.

C. Purpose of Off-Reservation Grants

The purpose of every Indian child and family services program shall be to prevent the breakup of Indian families, and ensure that the permanent removal of an Indian child from the custody of his/her Indian parent or custodian shall be a last resort. Off-reservation Indian child and family service programs may include, but are not limited to:

(1) A system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate state standards of support maintenance and medical needs;

(2) The operation and maintenance of facilities and services for the counseling and treatment of Indian families and Indian foster and adoptive children with the goal of strengthening and stabilizing Indian families;

(3) Family assistance (including homemaker services and home counselors), protective day care and after school care, employment support services, recreational activities, and respite care with the goal of strengthening Indian families and contributing toward family stability; and

(4) Guidance, legal representation and advice to Indian families involved in state child custody proceedings.

Part II

A. Available Funds

In FY 1996, off-reservation Indian organizations will compete for a national allocation of $866,000, which will be evenly distributed to the BIA's twelve area offices in the amount of $72,166.66 per area. Pursuant to 25 CFR 23.34, Area Directors will determine

and award the appropriate grant amounts to approved off-reservation Indian organizations within their respective jurisdictions. The grant amounts awarded shall be based on an applicant's service area population and shall not exceed the funding levels identified in the table below:

Applicant's service area population	Maximum ICWA grant amount
500–1,500	$10,000
1,501–3,000	15,000
3,001–5,000	20,000
5,001–8,000	25,000
8,001–20,000	30,000
20,001–40,000	35,000
40,001–60,000	40,000
60,001–90,000	45,000
90,001–150,000	55,000
150,001–200,000	65,000
over 200,001	72,166.66

Under no circumstances may any off-reservation Indian organization receive Indian Child Welfare Act grant funds greater than the maximum grant amount of $72,168.66 either through a direct grant or through subgranting procedures with approved applicants.

No ICWA grant funds will be withheld at the Central Office for appeals related to off-reservation funding levels; therefore, approved applications will be funded strictly on the basis of funds available to each area office and in accordance with the funding amounts published in this grant notice. The decisions of Area Directors on funding levels are final and are not subject to appeal.

B. Service Eligibility

The service area population is the total number of Indians eligible for services under 25 CFR 23.50(b) in the geographical area to which an off-reservation Indian organization can realistically provide the services proposed in the application. The service area population is used only to determine the maximum grant amount for which an applicant may be eligible.

For purposes of eligibility for services provided under 25 U.S.C. 1932 and 1933 of the Act, any person meeting the definition of Indian, Indian child, Indian custodian, or Indian parent of any unmarried person under the age of 18 as defined in 25 CFR Section 23.2, or the definition of Indian as defined in 25 U.S.C. 1603(c), shall be eligible for ICWA services.

The applicant's service area population figures must be based upon substantiated, identifiable statistical sources. Applicants must submit copies of recent statistical data from sources which support their service area figures, such as off-reservation State/county population figures, U.S. Census data, or off-reservation service area population data maintained by the Indian Health Service for urban Indian populations.

Part III. Application Selection Criteria

A. Statutory Authority

The BIA's Indian ChildWelfare Act grants program is authorized by Title II of Public Law 95–608, the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 *et seq.*; 25 CFR Part 23). All grant applications submitted under this notice shall be scored individually and recommended for grant awards in compliance with the application procedures, mandatory application requirements, and the application selection criteria specified in Subpart D, 25 CFR Part 23.

B. Closing Date for Receipt of Applications for All Applications

The closing date for receipt of applications under this grant notice is Close of Business on August 2, 1996, for all applicants. All applications for off-reservation Indian Child Welfare Act grants must be received by the appropriate BIA Area Director, as specified in 25 CFR 23.31 and 25 CFR 23.11, on or before 5:00 p.m. or the official Close of Business for that office on the closing date of the application period. The names and addresses of all BIA area offices are listed in Part IV of this notice. Hand-delivered applications will be accepted during normal work hours, Monday through Friday. Postmarks *will not* be considered as meeting the deadline. Applications that do not meet the deadline for the receipt of applications will not be considered in the competitive review.

C. Mandatory Application Requirements for All Applicants

Pursuant to 25 CFR 23.33(a), an application for a one-year competitive grant under Subpart D, 25 CFR Part 23, shall be submitted to the appropriate Area Director. All mandatory application requirements for Indian organization applicants specified at 25 CFR 23.33(b) must be met. An application missing any of the mandatory requirements will not be reviewed further.

In addition to the foregoing requirements, existing ICWA grantees must submit a copy of a satisfactory program evaluation for the previous year of operation from the appropriate area office in order to be considered for funding in FY 1996 (25 CFR 23.33(e)).

The grant application shall be no longer than 40 double-spaced pages, excluding the appendix. The table of contents and appendices will not be counted toward the maximum length. It is recommended that the appendix be no longer than 20 pages. If an application is longer than the established page limitation, only the first 40 double-spaced or first 20 single-spaced pages will be reviewed. All applicants must submit one original application and three copies of the complete application to the respective Area Director.

Information included in the appendix should relate specifically to the application. The appendix may include, but is not limited to the following: resolutions, support letters, position descriptions, current or recent fiscal, management, or accounting certification, operational internal monitoring systems, and non-profit status documentation.

In accordance with 25 CFR 23.41, grantees must adhere to and comply with all the general and uniform grant administration provisions and requirements specified at 25 CFR Part 276 and those identified in Subpart E, 25 CFR 23. Failure to meet and comply with these regulatory requirements may result in suspension, cancellation and/or termination of program funds.

D. Competitive Application Selection Criteria

The Area Director or his/her designated representative shall select those proposals which will in his/her judgment best promote the purposes of the Indian Child Welfare Act. Selection shall be made through the area review committee process in which each application will be scored individually and ranked according to score, taking into consideration the mandatory requirements as specified above and the competitive application selection criteria specified at 25 CFR 23.33.

E. Scoring and Grant Application Selection Criteria

Upon receipt of an application for an off-reservation grant under Subpart D, 25 CFR 23, the appropriate Area Director shall comply with the application review and decision making procedures specified at 25 CFR 23.33 and 23.34.

An application shall not receive approval for funding under the area competitive review and scoring process unless a review of the application determines that it:

(1) Contains all the information required in 25 CFR 23.33(b) and which must have been received by the close of the application period. Modifications of the grant application received after the close of the application period shall not be considered in the competitive review process; and

(2) Receives at least a minimum score of 85 points in an area competitive review, using the competitive application selection criteria and scoring process set out in 25 CFR 23.33 and 23.34.

If two or more applications receive the same competitive score, the applicant with the largest service area population will receive priority funding consideration. At least one approved applicant per area will be funded, provided, that the applicants fully meet the competitive selection criteria cited above.

The actual funding amounts awarded for the FY 1996 grant year shall be subject to appropriations available nationwide and the amount of funds available within the respective area office. Final funding decisions for all approved grant applications under Subpart D, 25 CFR 23, rest with respective Area Director and are not subject to appeal.

F. Grant Review and Award Process

The Area Director shall review each application through a competitive process and take the appropriate course of action on all off-reservation ICWA grant applications received in response to this notice in accordance with the established requirements and time frames in 25 CFR Parts 23.33(a) and 23.34, respectively. Grant award documents shall be executed and actual grant amounts awarded as expeditiously as possible by the respective Area Director.

No ICWA grant funds will be withheld at the Central Office for purposes of appeals related to funding levels.

G. Appeals

A grantee or applicant may appeal any decision made or action taken by the Area Director under Subpart D, 25 CFR 23, that is alleged to be in violation of the U.S. Constitution, Federal statutes, or regulations of this part. These appeals shall be filed with the Interior Board of Indian Appeals in accordance with 25 CFR 2.4(e); 43 CFR 4.310 through 4.318 and 43 CFR 4.330 through 4.340. An applicant may not appeal a score assigned to its application or the amount of grant funds awarded.

A notice of appeal must be filed within 30 days of the appellant's receipt of the decision being appealed. The notice must be filed in the office of the official whose decision is being appealed. The date of filing is the date the notice of appeal is postmarked or the date it is personally delivered to the official's immediate office (25 CFR 2.9(a); 25 CFR 2.13(a)). The burden of proof of timely filing is on the appellant. No extension of time will be granted for filing a notice of appeal (25 CFR 2.9(a) and 2.16).

Within 30 days of the filing of the notice of appeal, a statement of reasons must be filed in the office of the official whose decision is being appealed. The statement of reasons may, however, be included in or filed with the notice of appeal (25 CFR 2.10). Appeals will be handled in accordance with the provisions set forth at 25 CFR 2.20.

Part IV. BIA Area Offices—Area Social Workers

All application materials must be submitted in person or mailed to the appropriate Bureau of Indian Affairs' Area Director. The following is a listing of the 12 BIA Area Social Workers designated by the Area Directors to receive ICWA grant applications from off-reservation Indian organizations.

Aberdeen Area Office: Gerald Gallegos; 115 4th Avenue, S.E.; Aberedeen, SD 57401; 605/226–7351.

Albuquerque Area Office: Joseph Naranjo; 615 1st Street N.W.; P.O. Box 26567; Albuquerque, NM 87125–6567; 505/766–3321.

Anadarko Area Office: Retha Murdock; 1½ mile North Highway 281; WCD Office Complex; P.O. Box 368; Anadarko, OK 73005; 405/247–6673 ext. 257.

Billings Area Office: Louise Zokan-Delos Reyes; 316 North 26th Street; Billings, MT 59101; 406/247–7988.

Eastern Area Office: James Sanders; 3701 N. Fairfax Drive; Suite 260; Arlington, VA 22203; 703/235–2353.

Juneau Area Office: Jimmie Clemmons; 709 West 9th Street; Federal Building, Room 301A; Juneau, AK 99801; 907/586–7628.

Minneapolis Area Office: Rosalie Clark; 331 South Second Avenue; 7th floor; MN 55401; 612/373–1182.

Muskogee Area Office: Lafonda Mathews; Federal Courthouse Building; 101 North 5th Street; Muskogee, OK 74401–6206, 918/687–2507.

Navajo Area Office: Vivian Hailstorm; 301 West Hill St.; P.O. Box 1060; MC–440, Gallup, NM 87301; 505/863–8215.

Phoenix Area Office; Evelyn S. Roanhorse; 1 North First Street; P.O. Box 10; Phoenix, AZ 85001; 602/379–6785.

Portland Area Office: Robert C. Carr; 911 N.E. 11th Avenue; Portland, OR 97232–4169; 503/231–6783.

Sacramento Area Office: Kevin Sanders; Federal Office Building; 2800 Cottage Way; Sacramento, CA 95825; 916/978–2545.

Dated: June 28, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–17171 Filed 7–5–96; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[MT–960–1990–00]

Butte District Resource Advisory Council Meeting

AGENCY: Butte District Office, Bureau of Land Management.

ACTION: Notice of Butte District Resource Advisory Council meeting, Butte, Montana.

SUMMARY: The Council will convene at 8 a.m. on July 31, 1996, and will continue through August 1, 1996, if all business is not completed on the 31st. This is a regularly scheduled meeting; topics to be discussed will include Westslope Cutthroat Trout, current cooperative weed management efforts, and a presentation by Montana Fish, Wildlife and Parks personnel on Bighorn Sheep pneumonia and its implications. The meeting will be held at the Copper King Inn, 4655 Harrison Avenue in Butte.

The meeting is open to the public and written comments may be given to the Council. Oral comments may be presented to the Council at 11 a.m. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting; or need special assistance, such as sign language or other reasonable accommodations, should contact the Butte District, 106 North Parkmont (PO Box 3388), Butte Montana 59702; telephone 406–494–5059.

FOR FURTHER INFORMATION CONTACT: Jim Owings at the above address or telephone number.

Dated: June 24, 1996.

James R. Owings,

District Manager.

[FR Doc. 96–17185 Filed 7–5–96; 8:45 am]

BILLING CODE 4310–GN–M

[CO–050–1020–00]

Front Range Resource Advisory Council (Colorado) Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. appendix, notice is hereby given that the next two meetings of the Front Range Resource Advisory Council (Colorado) will be held on July 16, and September 3, 1996 in Canon City, Colorado. Both meetings are scheduled to begin at 9 a.m. at BLM's Canon City District Office, 3170 East Main Street, Canon City, Colorado. The agenda on July 16 will include a discussion of Rangeland Standard and Guidelines implementation and a briefing and discussion of major recreation issues in the Canon City District primarily in the Royal Gorge Resource area. The meeting September 3 will be a continuation of the topics of the previous meeting which are unfinished.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council at 9:15 a.m. or written statements may be submitted for the Council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

DATES: The meetings are scheduled for Tuesday, July 16 and Tuesday, September 3 from 9 a.m. to 4 p.m.

ADDRESSES: Bureau of Land Management (BLM), Canon City District Office, 3170 East Main Street, Canon City Colorado 81212; Telephone (719) 269–8500; TDD (719) 269–8597.

FOR FURTHER INFORMATION CONTACT: Ken Smith at (719) 269–8553.

SUPPLEMENTARY INFORMATION: Summary minutes for the Council meeting will be maintained in the Canon City District Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dennie R. Sparks,

District Manager.

[FR Doc. 96–17186 Filed 7–5–96; 8:45 am]

BILLING CODE 4310–JE–P

[OR–958–0777–54; GP–0193; OR–51517 (WA)]

Order Providing for Opening of Lands; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 5,441.22 acres of lands to such forms of

The Forest Service exchange proposal has been withdrawn in its entirety.

EFFECTIVE DATE: August 8, 1996.

FOR FURTHER INFORMATION CONTACT: Pamela Chappel, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–952–6170.

SUPPLEMENTARY INFORMATION: Under the authority of Section 206 of the Federal Land Policy and Management Act of 1976, as amended by the Federal Land Exchange Facilitation Act of 1988, the following described Federal lands identified in a proposed exchange between the Snoqualmie National Forest and the State of Washington, Department of Natural Resources, has been withdrawn in its entirety:

Willamette Meridian

T. 29 N., R. 8 E.,
- Sec. 22, lot 4 and S1/2SE¼;
- Sec. 23, lot 9;
- Sec. 25, lot 3, and SW¼NW¼,N1/2SW¼, and NW¼SE¼;
- Sec. 26, lot 2 and 3, SW¼NE¼, N1/2NW¼, SE¼NW¼, and NW¼SE¼;
- Sec. 27, lots 1 to 6, inclusive;
- Sec. 28, NE¼, S½NW¼ and SW¼.

T. 28 N., R. 9 E.,
- Sec. 12, S½SE¼;
- Sec. 13, NW¼NE¼, S½NE¼, NW¼, N½SW¼, and NW¼SE¼.

T. 29 N., R. 9 E.,
- Sec. 12, S½SE¼;
- Sec. 13, NW¼NE¼, S½NE¼, NW¼, N½SW¼, and NW¼SE¼.

T. 29 N., R. 9 E.,
- Sec. 30, lots 2, 3, and 4, and S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
- Sec. 31, SE¼NE¼, NE¼SE¼, and S½SE¼;
- Sec. 32, W½NW¼ and NW¼SW¼.

T. 28 N., R. 10 E.,
- Sec. 4, lots 1 and 2, and SW¼NE¼.

T. 29 N., R. 10E.,
- Sec. 4, lot 6 an SW¼SW¼;
- Sec. 5, lots 1, 2, 10, and 11, and SW¼, W½SE¼, and SE¼SE¼;
- Sec. 9, N½, N½S½, and SE¼SE¼;
- Sec. 10, SE¼SW¼SW¼, NE¼SE¼SW¼, S½SE¼SW¼, and W½SW¼SE¼;
- Sec. 15, NW¼NE¼ and N½NW¼;
- Sec. 26, NW¼SW¼;
- Sec. 27, All;
- Sec. 34, N½N½, SW¼NE¼, SE¼NW¼, NE¼SW¼, and N½SE¼;
- Sec. 35, lots 1 to 7, inclusive, and NE¼, S½SW¼, N½SE¼, and SW¼SE½.

The areas described aggregate 5,441.22 acres in Snohomish County, Washington.

At 8:30 a.m., on August 8, 1996, the lands will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of records, and the requirements of

that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on August 8, 1996, the lands will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on August 8, 1996, the lands will be opened to applications and offers under the mineral leasing laws and the Geothermal Steam Act.

Dated: June 24, 1996.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 96–17062 Filed 7–5–96; 8:45 am]

BILLING CODE 4310–33–M

[CO–956–96–1420–00]

Colorado: Filing of Plats of Survey

June 28, 1996.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., June 28, 1996. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

The plat representing the dependent resurvey of portions of the west boundary, subdivisional lines, and subdivision of section 30, and the metes-and-bounds survey of an irregular lot, T. 9 N., R. 74 W, Sixth Principal Meridian, Groups 939 and 1130, Colorado was accepted June 24, 1996.

The plat representing the dependent resurvey of portions of the west and north boundaries and subdivisional lines and the subdivision of section 6, T. 10 N., R. 73 W., Sixth Principal Meridian, Group 1054, Colorado, was accepted June 4, 1996.

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines and the subdivision of section 35, T. 11 N., R. 74 W., Sixth Principal Meridian,

boundary of the Ute Ceded Lands (north boundary), east boundary, the subdivisional lines, and the subdivisional lines of certain sections, and the subdivision of sections 13U and 24, T. 34 N., R. 5 W., South of the Ute Line, New Mexico Principal Meridian, Group 1063, Colorado, was accepted June 14, 1996.

The plat representing the dependent resurvey of a portion of the south boundary (Second Standard Parallel South), a portion of the subdivisional lines, and the dependent resurvey of M.S. No 13566, Ernest G. Lode, and the subdivision of section 32, T. 10 S., R. 72 W., Sixth Principal Meridian, Group 1070, Colorado, was accepted June 10, 1996.

The plat representing the dependent resurvey of portions of certain mineral claims in section 12, T. 4 S., R. 73 W., Sixth Principal Meridian, Group 1075, Colorado was accepted June 5, 1996.

The plat representing the dependent resurvey of portions of the south boundary, subdivisional lines and the subdivision of Section 32, T. 4 S., R. 73 W., Sixth Principal Meridian, Group 1103, Colorado, was approved June 6, 1996.

The plat representing the dependent resurvey of a portion of the east boundary and portions of tracts 37, 42, 44, 46, and 47, T. 9 N., R. 76 W., Sixth Principal Meridian, Group 1104, Colorado, was approved June 13, 1996.

The plat (in 2 sheets) representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 8, and the survey of lots 18 and 19, T. 9 N., R. 84 W., Sixth Principal Meridian, Group 1116, Colorado was approved June 12, 1996.

The plat representing the dependent resurvey of a portion of the south boundary and subdivisional lines in T. 50 N., R. 15 W., New Mexico Principal Meridian, Group 1020, Colorado was accepted May 30, 1996.

The plat representing the dependent resurvey of a portion of the south boundary, the east boundary, portions of the north boundary and subdivisional lines in T. 50 N., R. 16 W., New Mexico Principal Meridian, Group 1020, Colorado was accepted May 30, 1996.

These surveys were made to satisfy certain administrative needs of the USDA, Forest Service.

The plat representing the dependent resurvey of a portion of the west and north boundaries and a portion of the line between sections 5 and 6, and the

The plat (in 3 sheets) representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines and either all or portions of certain mineral claims, and the subdivision of sections 17 and 18, T. 14 S., R. 69 W., Sixth Principal Meridian, Group 1053, Colorado, was accepted May 9, 1996.

The plat representing the dependent resurvey of a portion of the subdivision of section 11, T. 20 S., R. 73 W., Sixth Principal Meridian, Group 1073, Colorado, was accepted May 15, 1996.

The plat representing the dependent resurvey of a portion of the south boundary, and a portion of the subdivisional lines, and the subdivision of section 35, T. 14 S., R 78 W., Sixth Principal Meridian, Group 1077, Colorado, was accepted June 5, 1996.

The plat (in 2 sheets) representing the dependent resurvey of a portion of Tract 39, and a metes and bounds survey to segregate two parcels of public land located in Lots 19 and 20, Section 5, T. 2 S., R. 83 W., Sixth Principal Meridian, Group 1108, Colorado, was approved May 30, 1996.

The plat (in 3 sheets) representing the dependent resurvey of portions of the south boundary and subdivisional lines and the subdivision of certain sections, with a metes-and-bounds survey of certain parcels and public land lots, T 47, N. R. 3 W., New Mexico Principal Meridian, Group 1110, Colorado, was approved May 23, 1996.

This supplemental plat creating new lots 16 and 17 from previous lot 15 in section 27 and creating new lots 27 and 28 from previous lot 15 in section 34, T. 44 N., R 4 W., New Mexico Principal Meridian, Colorado was accepted June 20, 1996.

These surveys were made to satisfy certain administrative needs of this Bureau.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines and the subdivision of certain sections, T. 33 N., R. 13 W., New Mexico Principal Meridian, Group 1062, Colorado, was accepted May 9, 1996.

This survey was requested by the Bureau of Indian Affairs to define the boundaries of the Southern Ute Indian Reservation.

The plat representing the dependent resurvey of a portion of the Third Standard Parallel South (south boundary), and the subdivision of certain sections, T. 15 S., R. 66 W., Sixth Principal Meridian, Group 1092,

Carson, Colorado, to identify boundaries on the Fort Carson Military Reservation.

The plat representing the dependent resurvey of a portion of the Twelfth Standard Parallel North (south boundary), and a portion of the subdivisional lines and the subdivision of section 34, T. 49 N., R 2 W., New Mexico Principal Meridian, Group 1097, Colorado was approved May 23, 1996.

This survey was requested by the Superintendent, Curecanti National Recreation Area, for the purpose of defining National Park and Bureau of Land Management boundaries.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 96–17187 Filed 7–5–96; 8:45 am]

BILLING CODE 4310–JB–P

National Park Service

Gettysburg National Military Park Advisory Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the nineteenth meeting of the Gettysburg National Military Park Advisory Commission.

DATES: The Public meeting will be held on July 18, 1996, from 7:00 p.m.—9:00 p.m.

Location: The meeting will be held at Gettysburg Cyclorama Auditorium, 125 Taneytown Road, Gettysburg, Pennsylvania 17325.

AGENDA: Sub-Committee Reports, Facilities Development Planning Process, Operational Update on Park Activities, and Citizens Open Forum.

FOR FURTHER INFORMATION CONTACT: John A. Latschar, Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the

Dated: June 26, 1996.

Warren D. Beach,

Acting Field Director, Northeast Field Area.

[FR Doc. 96–17181 Filed 7–5–96; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–732 and 733 (Final)]

Circular Welded Nonalloy Steel Pipe From Romania and South Africa

Determinations

On the basis of the record[1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that the industry in the United States producing standard pipe and multiple-stenciled pipe is neither materially injured nor threatened with material injury, and that the establishment of an industry in the United States is not materially retarded, by reason of imports from Romania and South Africa of circular welded nonalloy steel pipe,[3] provided for in subheadings 7306.30.10 and 7306.30.50 of the Harmonized Tariff Schedule (HTS) of the United States, that are sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective November 28, 1995, following preliminary determinations by the Department of Commerce that imports of circular welded nonalloy steel pipe from Romania and South Africa were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 19, 1996 (61 F.R. 1402). The hearing was held in Washington, DC, on May 14, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on June 27, 1996. The views of the Commission are contained in USITC Publication 2973 (July 1996), entitled *Circular Welded Nonalloy Steel Pipe from Romania and South Africa: Investigations Nos. 731–TA–732 and 733 (Final).*

Issued: June 28, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–17189 Filed 7–5–96; 8:45 am]

BILLING CODE 7025–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Newquist dissenting.

[3] For purposes of these investigations, the subject product includes circular welded nonalloy steel pipes and tubes, of circular cross-section, not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), end finish (plain end, beveled end, threaded, or threaded and coupled), or industry specification (ASTM, proprietary, or other), used in standard or structural pipe applications.

The scope specifically includes, but is not limited to, all pipe produced to the ASTM A–53, ASTM A–120, ASTM A–135, ASTM A–795, and BS 1387 specifications, regardless of use. It also includes any pipe multiple- stenciled or multiple-certified to one of the above-listed specifications and to any other specification, if used in a standard or structural pipe application. Pipe which meets the above physical parameters and which is produced to proprietary specifications, the API 5L, the API 5L X–42, or to any other non-listed specification, is included within this scope if used in a standard or structural pipe application, regardless of the HTS category into which it is classified. If the pipe does not meet any of the above-identified ASTM or BS specifications, (i.e., ASTM A–53, ASTM A–120, ASTM A–135, ASTM A–795, and BS 1387) or is multiple-stenciled or multiple-certified to one of these specifications and to any other specification, although it is within the identified physical parameters described above, it will be presumed that such pipe is not used in a standard pipe application.

Standard pipe uses include the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may carry liquids at elevated temperatures but may not be subject to the application of external heat. Standard pipe uses also include load-bearing applications in construction and residential and industrial fence systems. Standard pipe uses also include shells for the production of finished conduit and pipe used for the production of scaffolding.

This scope does not cover mechanical tubing, tube and pipe hollows for redrawing, and finished electrical conduit if such products are not certified to ASTM A–53, ASTM A–120, ASTM A–135, ASTM A–795, or BS 1387 specifications and are not used in standard pipe applications. Additionally, pipe meeting the specifications for oil country tubular goods is not included in these investigations, unless also certified to a listed standard pipe specification or used in a standard pipe application.

[Investigation 332–362]

Second Annual Report on U.S.-Africa Trade Flows and Effects of the Uruguay Round Agreements and U.S. Trade and Development Policy

AGENCY: United States International Trade Commission.

ACTION: Notice of opportunity to submit comments in connection with the second annual report.

EFFECTIVE DATE: June 28, 1996.

SUMMARY: Following receipt on March 31, 1995, of a letter from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–362, U.S.-Africa Trade Flows and Effects of the Uruguay Round Agreements and U.S. Trade and Development Policy (60 FR 24884). The USTR letter requested that the Commission prepare its first annual report under this investigation not later than November 15, 1995, and provide an update of the report annually thereafter for a period of 4 years. A report was submitted on November 15, 1995 (USITC publication 2938 issued in January 1996). The USTR, in a letter received June 11, 1996, set out instructions for the second annual report and requested that it be submitted by October 4, 1996.

FURTHER INFORMATION CONTACT: Cathy Jabara, Office of Industries (202–205–3309) or Jean Harman, Office of Industries (202–205–3313), or William Gearhart, Office of the General Counsel (202–205–3091) for information on legal aspects. The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202- 205–1810).

BACKGROUND: Section 134 of the Uruguay Round Agreements Act (URAA), P.L. 103–465, directs the President to develop a comprehensive trade and development policy for the countries of Africa. The President is also to report to the Congress annually over the next 5 years on the steps taken to carry out that mandate. The Statement of Administrative Action that was approved by the Congress with the URAA states that the President will direct the International Trade Commission to submit within 12 months following enactment of the URAA into law, and annually for the 4 years thereafter, a report providing (1) an analysis of U.S.-Africa trade flows, and (2) an assessment of any effects of the Uruguay Round Agreements, and of U.S. trade and development policy for Africa, on such trade flows.

The USTR requested that the second annual report on U.S.-Africa trade flows and effects of U.S. trade and development policy contain the following information:

1. An update of U.S.-Africa trade and investment flows for the latest year available including both overall trade and in the following major sectors: agriculture, forest products, textiles and apparel, footwear, energy, chemicals, minerals and metals, machinery, transportation equipment, electronics technology, miscellaneous manufacturers, and services. It is also requested that basic trade flow information be provided for U.S. trade with the following regional trade groups:

—The Southern African Customs Union (SACU)

—The Southern African Development Community (SADC)

—Western African Economic and Monetary Union (WAEMU)

—Common Market for Eastern and Southern Africa (COMESA)

2. An identification of major developments in the World Trade Organization and in U.S. trade/economic activities which significantly affect U.S.-Africa trade and investment flows by sector during the latest year. Similarly, to the extent possible, changing trade and economic activities within African countries that have a significant impact should be highlighted.

3. Progress in regional integration in Africa. As requested by the USTR, the Commission will limit its study to the 48 countries in Sub-Saharan Africa.

WRITTEN SUBMISSIONS: The Commission does not plan to hold a public hearing in connection with the second annual report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than August 1, 1996. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: July 1, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–17188 Filed 7–5–96; 8:45 am]

BILLING CODE 7025–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The Appellate Rules Committee public hearing scheduled to be held in Washington, D.C. on July 8, 1996, ha been canceled. [Original notice of hearing appeared in the **Federal Register** of May 24, 1996 (61 FR 26207).]

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: July 1, 1996.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 96–17216 Filed 7–5–96; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; State Criminal Alien Assistance Program (SCAAP).

In accordance with the Code of Federal Regulations (5 CFR Part 1320.13) the Department of Justice is requesting emergency approval by July 5, 1996, from the Office of Management and Budget for this collection of information. Emergency approval is needed to ensure that the Department is able to fully comply with program changes that are in Public Law 104–134, lapse of appropriations for FY 1996, etc.

During the emergency approval period the Department will apply for three year approval under the normal processing procedures contained in 5 CFR 1320.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Linda McKay (202) 514–6638, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 633 Indiana Avenue, NW, Washington, DC 20531.

Overview of this information collection:

(1) Type of Information Collection: Revised collection of information.

(2) Title of the Form/Collection: State Criminal Alien Assistance Program Application Form.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State and Local governments. Other: None. This program is administered under the authority of 8 U.S.C. 1252(j) to reimburse States and localities for costs expended in the incarceration of undocumented criminal aliens. The Application Form will be completed by each eligible State and local applicant and will provide information regarding eligible inmate population and incarceration costs for verification and award processing.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 3500 responses at 60 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: 3,500 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: July 1, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–17195 Filed 7–5–96; 8:45 am]

BILLING CODE 4410–18–M

Drug Enforcement Administration

[Docket No. 96–40]

Rita M. Coleman, M.D. Revocation of Registration

On May 26, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Rita M. Coleman, M.D., (Respondent), of Baldwin, Maryland, notifying her of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration, AC9351026, under 21 U.S.C. 824(a)(3) and deny any pending applications for renewal of her registration as a practitioner under 21 U.S.C. 823(f), for the reason that, on or about August 24, 1994, the Maryland Board of Physician Quality Assurance (Medical Board) ordered the revocation of her state license to practice medicine. Further, the Show Cause Order noted that, in response to having her medical license revoked, the Maryland State Department of Health and Mental Hygiene revoked the Respondent's state controlled substances registration. Therefore, the Respondent was not authorized to handle controlled substances in the State of Maryland.

On June 14, 1995, the Respondent filed a response to the Order to Show Cause, presenting matters in rebuttal to the show cause allegations, but failing to either request or to waive her hearing right. On June 19, 1995, a letter was sent from the Office of the Administrative Law Judges, informing the Respondent that she had until July 17, 1995, to elect a hearing. By letter dated July 3, 1995, the Respondent wrote that she did not wish to waive her rights to an administrative hearing, but she also noted that she was not in a position to attend such a hearing. The Respondent also asked that her June letter be considered a written statement of her position in the matter. In response to the Respondent's July letter, Administrative Law Judge Mary Ellen Bittner issued an order dated August 18, 1995, in which she (1) noted the Respondent's conflicting positions, and (2) determined that the Respondent effectively had provided notice that she would not appear at an administrative hearing. Judge Bittner, citing 21 C.F.R. 1301.54(c) and (d), wrote that "a person who waives a hearing may file a statement of position[,] and that a person who requests a hearing but fails to appear may be deemed to have waived the opportunity for a hearing. Consequently, although [the] Respondent asserts that she does not wish to waive her right to a hearing, I deem her statement that she will not appear, in conjunction with her request that her June 11 letter be considered her statement of position, such a waiver."

Accordingly, Judge Bittner ordered that (1) all proceedings before her in the Respondent's case be terminated, and (2) the matter be submitted to the Deputy Administrator for issuance of a final order. On January 23, 1996, the case was transmitted to the Deputy Administrator for his action.

Therefore, the Deputy Administrator, after reviewing the procedural matters in this case, agrees with Judge Bittner and concludes that the Respondent is deemed to have waived her hearing right. Accordingly, after considering the materials submitted, the Deputy Administrator now enters his final order in this matter without a hearing, pursuant to 21 CFR 1301.54(e) and 1301.57.

The Deputy Administrator finds that, on August 24, 1994, after holding an administrative hearing, the Medical Board revoked the Respondent's license to practice medicine in the State of Maryland. Subsequently, the Division of Drug Control, Maryland State Department of Health and Mental Hygiene, voided the Respondent's State of Maryland Controlled Dangerous Substance Registration Certificate. Thus, the Respondent is not authorized to practice medicine or to prescribe, administer, or dispense controlled substances in the State of Maryland. Further, in her letter filed June 14, 1995, the Respondent has not challenged the authenticity of the Medical Board's revocation order or the order revoking her registration to handle controlled substances. The Respondent has not submitted any evidence contesting the act that her medical license and controlled substances certificate have been revoked.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which she conducts her business. 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. *See Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993); *James H. Nickens, M.D.*, 57 FR 59,847 (1992); *Roy E. Hardman, M.D.*, 57 FR 49,195 (1992); *Myong S. Yi, M.D.*, 54 FR 30,618 (1989); *Bobby Watts, M.D.*, 53 FR 11,919 (1988). Here, it is clear that the Respondent is neither currently authorized to practice medicine nor to dispense controlled substances in the State of Maryland. Therefore, the Respondent currently is not entitled to a DEA registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AC9351026 previously issued to Rita M. Coleman, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration be, and they hereby are, denied. This order is effective August 7, 1996.

Dated: July 1, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–17255 Filed 7–5–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 1, 1996.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley (202 219–5095). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call 202 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 (202 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: JTPA Section 401 General Waiver Regulation.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1205–0366.

Frequency: On occasion.

Affected Public: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 75.

Estimated Time Per Respondent: 3 hours.

Total Burden Hours: 225.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: The Employment and Training Administration requires information on the provisions of the amended Job Training Partnership Act (JTPA), section 401 regulations at 20 CFR 632.70. These provisions allow Indian and Native American JTPA grantees to seek a waiver of the nonstatutory provisions of the current regulations at 20 CFR Parts 632 and 636. This general waiver request capability is already available to the Governors at 20 CFR 627.201, and to those section 401 grantees participating in the demonstration under Public Law 102–477 (Indian Employment, Training and Related Services Demonstration Act of 1992). The information to be collected is in support of any such waiver request(s) submitted by section 401 grantees pursuant to 20 CFR 632.70, and is necessary to allow DOL officials to make intelligent and informed decisions on the waiver requests received. Without such supplementary information, it would be impossible for the Department to grant any waivers to existing regulations. There are no continuing information requirements associated with this collection. Such collection is only mandated when a waiver request is submitted by a grantee, and serves no purpose other than to evaluate the merits of the waiver request.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–17275 Filed 7–5–96; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Committee Management; Notice of Establishment

The Deputy Director of the National Science Foundation has determined that the establishment of a United States Antarctic Program Blue Ribbon Panel, is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 USC 1861 *et seq.* This determination follows consultation with the Office of Management and Budget and with the Committee Management Secretariat, General Services Administration.

NAME OF COMMITTEE: United States Antarctic Program (USAP) Blue Ribbon Panel.

PURPOSE & OBJECTIVE: The objective of the United States Antarctic Program (USAP) Blue Ribbon Panel is to recommend to the National Science Foundation (NSF) promising approaches that NSF can take to realize significant savings in the USAP. The Panel's charge is to:

- examine full range of infrastructure, management, and scientific options of operations, including the eventual replacement of South Pole Station; develop several budget scenarios, including one to correspond to a five to seven year freeze in total USAP funding;
- examine the efficiency and appropriateness of the management of infrastructure, management, and scientific options of operations; and
- evaluate how the science programs are implemented.

BALANCE MEMBERSHIP PLANS: Approximately twelve persons from the external community will serve on the Panel. These members will be experts in a broad range of areas, including infrastructure management in hostile environments, difficult logistics, communications, international collaboration, and research that involves remote operations of facilities or instruments. The members of the Panel will reflect a broad, senior-level perspective on these areas and will be individuals who have made overarching decisions on complex and challenging programs. The Panel will begin its work in late Summer and complete its report by next Spring.

RESPONSIBLE NSF OFFICIALS: Mr. Erick Chiang, Acting Deputy Director, Office of Polar Programs, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 (703 306–1030).

Dated: July 2, 1996.

M. Rebecca Winkler,

Committee Management Office.

[FR Doc. 96–17254 Filed 7–5–96; 8:45 am]

BILLING CODE 7555–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Currently Approved Information Collection: Standard Form 3112

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for extension of a currently approved information collection. Standard Form 3112, CSRS/FERS Documentation in Support of Disability Retirement Application, collects information from applicants for disability retirement so that OPM can determine whether to approve a disability retirement. The applicant will only complete Standard Forms 3112A and 3112C. Standard Forms: 3112B, 3112D, and 3112E will be completed by the immediate supervisor and the employing agency of the applicant.

Approximately 12,100 Standard Form 3112, SF 3112A and SF 3112C will be completed annually. The SF 3112A requires approximately 30 minutes to complete and the SF 3112C requires approximately 60 minutes to complete. The annual burden is 12,775 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3209, or E-mail to jmfarron@mail.opm.gov.

DATES: Comments on this proposal should be received on or before September 6, 1996.

ADDRESS: Send or deliver comments to—Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

U.S. Office of Personnel Management.
Lorraine A. Green,
Deputy Director.

[FR Doc. 96–17238 Filed 7–5–96; 8:45 am]
BILLING CODE 6325–01–M

The National Partnership Council; Notice of Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

TIME AND DATE: 9:15-a.m., July 10, 1996.

PLACE: Thornton Auditorium, Graduate School of Business, University of St. Thomas, 1000 LaSalle Avenue, Minneapolis, Minnesota 55403. Thornton Auditorium is located on the second floor of the Graduate School of Business.

STATUS: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

MATTERS TO BE CONSIDERED: The National Partnership Council (NPC) will receive presentations on cooperative relationships in health care from the Metropolitan Healthcare Council, a labor-management partnership group; and the Veterans Affairs Medical Center in Des Moines, Iowa and the unions representing hospital employees (the American Federation of Government Employees and the Iowa Nurses Association).

CONTACT PERSON FOR MORE INFORMATION: Michael Cushing, Director, Center for Partnership and Labor-Management Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 5554, Washington, DC 20415–0001, (202) 606–0010

SUPPLEMENTARY INFORMATION: We invite interested persons and organizations to submit written comments. Mail or deliver your comments to Michael Cushing at the address shown above. Written comments should be received by July 5 in order to be considered at the July 10 meeting.

Office of Personnel Management.
James B. King,
Director.

[FR Doc. 96–17237 Filed 7–5–96; 8:45 am]
BILLING CODE 6325–01–M

Privacy Act of 1974; Computer Matching Programs—OPM/Social Security Administration

AGENCY: Office of Personnel Management.

ACTION: Publication of notice of computer matching to comply with Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988.

SUMMARY: OPM is publishing notice of its computer matching program with the Social Security Administration (SSA) to meet the reporting and publication requirements of Pub. L. 100–503. The purpose of the computer match is for OPM to verify earnings information provided directly by civil service annuitants based on tax return information disclosed by SSA to OPM.

DATES: The matching program will begin in May 1996, or 40 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, or 30 days after notice of the match is published in the **Federal Register**, whichever is later. The data exchange will begin at a date mutually agreeable between OPM and SSA, unless comments are received which will result in a contrary determination. Subsequent matches will take place annually on a recurring basis until one of the parties advises the other, in writing, of its intention to reevaluate, modify and/or terminate the agreement.

ADDRESSES: Send comment to Kathleen M. McGettigan, Assistant Director for Financial Control and Management, 1900 E Street, NW., Room 4312, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Marc Flaster, (202) 606–2115.

SUPPLEMENTARY INFORMATION: OPM and SSA intend to conduct a computer matching program, as described below. The purposes of this agreement is to establish the conditions under which SSA agrees to the disclosure of tax return information to OPM. The SSA records will be used in a matching program with OPM's records on disability retirees and retirees under the Federal Employees Retirement System who receive annuity supplements. These annuitants have limitations on their earnings which they may not exceed if they are to retain their annuity benefits. OPM will use the SSA data to verify the earnings information provided directly to OPM by the annuitants.

Office of Personnel Management.
James B. King,
Director.

Report of Computer Matching Program Between the Office of Personnel Management and the Social Security Administration

A. Participating Agencies

OPM and SSA.

B. Purpose of the Matching Program

Chapters 83 and 84 of title 5, United States Code (U.S.C.) require OPM to verify earnings data supplied by civil service annuitants. Section 6103(1)(11) of the Internal Revenue Code requires SSA to disclose tax return information to OPM to administer programs under chapters 83 and 84 of title 5, United States Code. The purpose of the computer match is for OPM to verify earnings information provided directly by civil service annuitants based on tax return information disclosed by SSA to OPM.

C. Authority for Conducting the Match Program

Pub. L. 97–253, Chapter 83 and 84, title 5, United States Code and 26 U.S.C. 6103(1)(11).

D. Categories of Records and Individuals Covered by the Match

The SSA records involved in the match are earnings, self-employment and other data which constitute tax return information pursuant to 26 U.S.C. 6103. The Earnings Recording and Self-Employment Income System (last published in the FR at 59 FR 62407, December 5, 1994) maintains records of individuals' wages or self-employment income from employment under Social Security. The OPM records consists of annuity data from its system of records entitled OPM/Central-1—Civil Service Retirement and Insurance Records (last published in the FR at 60 FR 63075, December 8, 1995).

E. Inclusive Date of the Matching Program

This computer matching program is subject to review by the Office of Management and Budget and the Congress. If no objections are raised by either, and the mandatory 30-day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective on the date specified above. By agreement between OPM and SSA, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional moths under the terms set forth in 5 U.S.C. 552a(o)(2)(D).

[FR Doc. 96–17249 Filed 7–5–96; 8:45 am]
BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

[Docket No. A96–20; Order No. 1123]

Eagle Harbor, New York 14442 (Jean Eddy, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

(Issued June 26, 1996).

Docket Number: A96–20.

Name of affected post office: Eagle Harbor, New York 14442.

Name(s) of petitioner(s): Jean Eddy.

Type of determination: Closing.

Date of filing of appeal papers: June 18, 1996.

Categories of issues apparently raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by July 3, 1996.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.
Cyril J. Pittack,
Acting Secretary.

June 18, 1996	Filing of Appeal letter.
June 26, 1996	Commission Notice and Order of Filing of Appeal.
July 12, 1996	Last day of filing of petitions to intervene [see 39 C.F.R. 3001.111(b)].
July 23, 1996	Petitioner's Participant Statement or Initial Brief [see 39 C.F.R. 3001.115(a) and (b)].
August 12, 1996.	Postal Service's Answering Brief [see 39 C.F.R. 3001.115(c)].
August 27, 1996.	Petitioner's Reply Brief should Petitioner choose to file one [see 39 C.F.R. 3001.115(d)].
September 3, 1996.	Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 C.F.R. 3001.116].
October 16, 1996.	Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)].

[FR Doc. 96–17215 Filed 7–5–96; 8:45 am]
BILLING CODE 7710–FW–P

West Rushville, Ohio 43163 (Mary R. Defenbaugh, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued June 26, 1996.

Docket Number: A96–19.

Name of affected post office: West Rushville, Ohio 43163.

Name(s) of petitioner(s): Mary R. Defenbaugh.

Type of determination: Consolidation.

Date of filing of appeal papers: June 19, 1996.

Categories of issues apparently raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by July 5, 1996.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.
Cyril J. Pittack,
Acting Secretary.

June 19, 1996	Filing of Appeal letter.
June 26, 1996	Commission Notice and Order of Filing of Appeal.
July 15, 1996	Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
July 24, 1996	Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)].
August 13, 1996	Postal Service's Answering Brief [*see* 39 CFR 3001.115(c)].
August 28, 1996	Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 CFR 3001.115(d)].
September 4, 1996	Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].
October 17, 1996	Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 96–17214 Filed 7–5–96; 8:45 am]
BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Request for Review of Part B Medicare Claim.
(2) *Form(s) submitted:* G–790, G–791.
(3) *OMB Number:* 3220–0100.
(4) *Expiration date of current OMB clearance:* July 31, 1996.
(5) *Type of request:* Extension of a currently approved collection.
(6) *Respondents:* Individuals or households.
(7) *Estimated annual number of respondents:* 4,000.
(8) *Total annual responses:* 4,100.
(9) *Total annual reporting hours:* 1,025.
(10) *Collection description:* The Railroad Retirement Board administers the Medicare program for persons covered by the railroad retirement system. The request provides the means for obtaining reviews by the MetraHealth Insurance Company on claims for Part B Medicare benefits.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,
Clearance Officer.

[FR Doc. 96–17253 Filed 7–5–96; 8:45 am]
BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22049; 811–5966]

Oppenheimer Global Environment Fund; Notice of Application

July 1, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Oppenheimer Global Environment Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on February 12, 1996, and amended on June 24, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 26, 1996 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, Two World Trade Center, New York, New York 10048–0203.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On November 22, 1989, applicant filed a registration statement on Form N–1A pursuant to section 8(b) of the Act and under the Securities Act of 1933 to register its shares. The registration statement became effective on March 1, 1990, and the initial public offering commenced on or about the same date.

2. On June 16, 1994, applicant's board of trustees adopted an Agreement and Plan of Reorganization (the "Reorganization Plan") whereby applicant would exchange its net assets for shares of Oppenheimer Global Emerging Growth Fund ("OGEGF"), a registered, open-end management investment company, and the OGEGF shares would be distributed *pro rata* to applicant's shareholders.

3. On August 16, 1994, applicant filed a proxy statement with the SEC that was declared effective on September 19, 1994. Applicant's shareholders approved the Reorganization Plan on November 11, 1994.

4. At the close of business on November 17, 1994, immediately preceding effectiveness of the Reorganization Plan, applicant had 2,815,907.520 shares outstanding. As of that date, applicant's aggregate net assets were $27,636,863.83, and the net asset value per share was $9.81. In exchange for 1,540,515.42 shares of OGEGF, applicant transferred to OGEGF its assets less liabilities with respect to: (a) amounts payable for portfolio securities purchased but not yet settled; (b) a cash reserve retained for the payment of the expenses of applicant's dissolution and its liabilities; (c) deferred trustee amounts; and (d) capital stock. Pursuant to the Reorganization Plan, applicant received that number of OGEGF shares having an aggregate net asset value equal to the value of applicant's net assets.

5. On November 18, 1994, the reorganization was consummated. Applicant was subsequently liquidated and applicant's shareholders received *pro rata* the OGEGF shares received by applicant pursuant to the reorganization.

6. The expenses borne by applicant pursuant to the reorganization totalled $46,775. These expenses included the cost of printing and mailing proxies and proxy statements, a portion of the cost of the tax opinion, with the remainder paid by OGEGF, as well as legal, accounting, and transfer agency expenses. Applicant's share of the expenses was paid from its cash reserve.

7. As of the date of the filing of the application, applicant has no assets, and no outstanding debts or liabilities. Applicant has no shareholders and is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs.

8. Applicant filed a termination of trust with Massachusetts authorities on June 26, 1995.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 96–17252 Filed 7–5–96; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–37388; File No. SR–CBOE–96–31]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Operation and Enforcement of the Firm Quote Rule in the OEX Trading Crowd

June 28, 1996.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 15, 1996, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to issue two regulatory circulars pertaining to the administration and enforcement of the firm quote rule in the trading crowd where options on the Standard and Poor's 100 Index ("OEX options") are traded. The text of the regulatory circulars and the proposed rule change are available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is, first, to consolidate and clarify in a single regulatory circular (referred to as "Regulatory Circular 96–xx") the Exchange's policies concerning the administration and enforcement of the firm quote rule (CBOE Rule 8.51) in the OEX trading crowd, and, second, to set forth in a separate regulatory circular (referred to as "Regulatory Circular 96–yy") the specific fines that may be imposed under the Exchange's summary fine procedure for violations of the requirements of the firm quote program in the OEX crowd, as contemplated in CBOE Rule 17.50(g)(6).

Proposed Regulatory Circular 96–xx consolidates without substantial change various requirements applicable to market makers and floor brokers in the OEX trading crowd under CBOE Rule 8.51 (the firm quote rule). These requirements have previously been set forth in a number of different regulatory circulars, two of which (RG 90–09 and RG 96–25) are currently effective. The proposed regulatory circular would take the place of both of these circulars in order to provide in one place a clear and comprehensive statement of how firm quote requirements apply in the OEX crowd.

In addition to restating what is set forth in existing circulars, the proposed circular would amend those circulars to clarify certain aspects of the obligations of market makers and floor brokers under the firm quote rule, and how those obligations are enforced. Specifically, with respect to market makers, proposed Regulatory Circular 96–xx sets forth a mechanism for the enforcement of Rule 8.51 in the OEX trading crowd by providing that if the OEX trading crowd fails to honor a posted quotation in accordance with the firm quote rule, two Floor Officials may designate one or more market makers in the crowd to take the contra side of the order that is entitled to execution. The proposed circular makes it clear that any failure to comply with the Floor Officials' designation is a violation of Rule 8.51, which may subject the violator to summary fine under Rule 17.50 as well as to formal disciplinary proceedings.[1] The circular points out that the fine permitted to be imposed by Floor Officials for such violations can be as high as $5,000, which is the maximum fine authorized under the summary fine rule. It is the Exchange's expectation that the *in terrorem* effect of a substantial fine will cause market makers to comply with Floor Officials' designations, and the fines themselves will rarely if ever have to be imposed.

Proposed Regulatory Circular 96–xx also clarifies the meaning of the due diligence obligation imposed on floor brokers under Rule 6.73(a), as that obligation applies in the OEX trading crowd in light of the operation of the firm quote rule. The circular describes two alternative ways in which public customer orders eligible for execution under the firm quote rule may be represented: The floor broker may either ask for a market and then immediately fill the order for up to the ten contract limit entitled to execution under the firm quote rule at the better of the posted market or the market given in response to his request, or the floor broker may bid or offer on behalf of his customer at a price between the posted bid and offer in an attempt to obtain an execution at a better price than the posted market. Under the second alternative, the floor broker must then immediately fill the public customer order for up to ten contracts at his announced bid or offer if the crowd is willing to trade at that price, or if not, he must immediately fill the order at the originally posted market.

In all other respects, proposed Regulatory Circular 96–xx is substantially the same as the existing circulars that it will replace.

Proposed Regulatory Circular 96–yy is being issued pursuant to CBOE's summary fine rule (Rule 17.50), which authorizes the summary imposition of fines for certain specified "minor rule violations" in lieu of formal disciplinary proceedings. Paragraph (g)(6) of Rule 17.50 covers the imposition of summary

[1] Violations of Rule 8.51 are deemed to be violations of Rule 6.20(b) pursuant to paragraph (vii) of Interpretation and Policy .04 under Rule 6.20. Rule 6.20(b) requires that fines imposed thereunder must be agreed upon by at least two Floor Officials.

fines for violation of trading conduct and decorum policies established under CBOE Rule 6.20, and states that the specific dollar amount that may be imposed as fines thereunder will be distributed to the membership periodically. The Exchange has previously issued Regulatory Circular 95–37, which sets forth fines for most of the trading conduct and decorum policies established under Rule 6.20, but does not include fines for violation of the firm quote requirements of Rule 8.51, which are deemed to be violations of Rule 6.20(b).[2] Proposed Regulatory Circular 96–yy cures this omission for violations of the firm quote rule in the OEX crowd by setting forth the specific dollar amounts that may be imposed as summary fines for such violations. As noted above, the fines that may be imposed for refusal to take the other side of an OEX trade entitled to execution under the firm quote rule when directed to do so by Floor Officials range from $1,000 to $5,000, which places them at the high end of the scale under Rule 17.50. This is intended to remove any economic incentive for a market maker to refuse to obey the directions of Floor Officials to comply with firm quote requirements.

The Exchange believes that by clarifying the obligations of market makers and floor brokers in the OEX crowd under the firm quote rule and by specifying the fines that may be imposed for failure to honor these obligations, the proposed regulatory circulars will serve to promote just and equitable principles of trade and to protect investors and the public interest, in furtherance of the objectives of section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated policy with respect to the meaning, administration, or enforcement of an existing rule, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–96–31 and should be submitted by July 29, 1996.

For Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17251 Filed 7–5–96; 8:45 am]

BILLING CODE 8010–01–M

[2] See *supra* note 1.

[3] 17 CFR 200.30–3(a)(12).

[Release No. 34–37374; File No. SR-NASD–95–61]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Regulation of Cash and Non-Cash Compensation in Connection With the Sale of Investment Company Securities and Variable Contracts

June 26, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 22, 1995,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend NASD Rules 2820 and 2830 (formerly Article III, Sections 29 and 26 of the Rules of Fair Practice) to revise existing rules applicable to the sale of investment company securities and establish new rules applicable to the sale of variable contracts.[2] Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Rules of the Association

Conduct Rules

* * * * *

Variable Contracts of an Insurance Company

Rule 2820.

* * * * *

Definitions

(b)

* * *

(3) The terms "affiliated member", "cash compensation", "non-cash compensation" and "offeror" as used in paragraph (h) shall have the following meanings:

"Affiliated Member" shall mean a member which, directly or indirectly, controls, is controlled by, or is under common control with a non-member company.

"Cash compensation" shall mean any discount, concession, fee, service fee, commission, loan or override received in connection with the sale and distribution of variable contracts. "Non-cash compensation" shall mean any form of compensation received in connection with the sale and distribution of variable contracts that is not cash compensation, including but not limited to merchandise, gifts and prizes, and payment of travel expenses, meals and lodging.

"Offeror" shall mean an insurance company, a separate account of an insurance company, an adviser to a separate account of an insurance company, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities.

* * * * *

Member Compensation

(h) In connection with the sale and distribution of variable contracts:

(1) Except as described below, no associated person of a member shall accept any compensation, cash or non-cash, from anyone other than the member with which the person is associated. This requirement will not prohibit arrangements where a non-member company pays compensation directly to associated persons of the member, provided that:

(a) the arrangement is agreed to by the member;

(b) the member relies on an appropriate rule, regulation, interpretive release, interpretive letter, or "no-action" letter issued by the Securities and Exchange Commission that applies to the specific fact situation of the arrangement;

(c) the receipt by associated persons of such compensation is treated as compensation received by the member for purposes of NASD rules; and

(d) the recordkeeping requirement in subparagraph (h)(2) is satisfied.

(2) Except for items as described in subparagraphs (h)(3)(a) and (b), a member shall maintain records of all compensation, cash and non-cash, received by the member or its associated persons from offerors. The records shall include the names of the offerors, the names of the associated persons, the amount of cash, the nature and, if known, the value of non-cash compensation received.

(3) No member or person associated with a member shall directly or indirectly accept any non-cash compensation offered or provided to such member or its associated persons, except as provided in this provision. Notwithstanding the provisions of subparagraph (h)(1), the following items of non-cash compensation may be accepted:

(a) Gifts to associated persons of members that do not exceed an annual amount per person fixed periodically by the Board of Governors[3] and are not preconditioned on achievement of a sales target.

(b) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment for persons associated with a member and, if appropriate, their guests, which is neither so frequent nor so extensive as to raise any question of impropriety and is not preconditioned on achievement of a sales target.

(c) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(i) the recordkeeping requirement in subparagraph (h)(2) is satisfied;

(ii) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not preconditioned by the member on the achievement of a sales target or any other non-cash compensation arrangement permitted by paragraph (d);

(iii) the location is appropriate to the purpose of the meeting, which shall mean an office of the offeror or the member, or a facility located in the vicinity of such office, or a regional location with respect to regional meetings;

(iv) the payment or reimbursement is not applied to the expenses of guests of the associated person; and

(v) the payment or reimbursement by the offeror is not preconditioned by the offeror on the achievement of a sales target or any other non-cash compensation arrangement permitted by paragraph (d).

(d) Non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that:

(i) the member's or non-member's non-cash compensation arrangement, if it includes variable contracts, is based on the total production of associated persons with respect to all variable contracts distributed by the member;

(ii) the non-cash compensation arrangement requires that the credit received for each variable contract security is equally weighted;

(iii) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and

(iv) the recordkeeping requirement in subparagraph (h)(2) is satisfied.

(e) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in paragraph (d).

(4) No person associated with a member shall accept any cash compensation offered or provided to such person that is preconditioned on such person achieving a sales target, except that the following arrangements are permitted:

(a) Cash compensation arrangements preconditioned on the achievement of a sales target between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that:

(i) the member's or non-member's arrangement, if it includes variable contracts, is based on the total production of associated persons with respect to all variable contracts distributed by the member;

(ii) the arrangement requires that the credit received for each variable contract security is equally weighted;

(iii) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible arrangement; and

(iv) the recordkeeping requirement in subparagraph (h)(2) is satisfied.

(b) Contributions by a non-member company or other member to a cash compensation arrangement preconditioned on the achievement of a sales target between a member and its associated persons, provided that the arrangement meets the criteria in paragraph (a).

Investment Companies

Rule 2830

* * * * *

(b)

[(1) "Associated person of an underwriter," as used in paragraph (l), shall include an issuer for which an underwriter is the sponsor or a principal underwriter, any investment adviser to such issuer, or any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such underwriter, issuer, or investment adviser.] *The terms "affiliated member", "cash compensation", "non-cash compensation", and "offeror" as used in paragraph (l) shall have the following meanings:*

"Affiliated Member" shall mean a member which, directly or indirectly, controls, is controlled by, or is under

[1] On June 14, 1996, the NASD filed Amendment No. 1 with the Commission. Amendment No. 1 addresses the relationship of the proposed rule change to industry initiatives concerning compensation practices, expands the scope of the proposed rule change to govern all sales targets, whether or not previously specified and replaces the term "variable contract securities" with the term "variable contract." *See* Letter from John M. Ramsay, Deputy General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, SEC (June 14, 1996).

[2] *NASD Manual*, Rules of the Association, Conduct Rules (CCH), Rules 2820, 2830.

[3] *The current annual amount fixed by the Board of Governors is $100.*

common control with a non-member company.

"Cash compensation" shall mean any discount, concession, fee, service fee, commission, asset-based sales charge, loan, or override received in connection with the sale and distribution of investment company securities.

"Non-cash compensation" shall mean any form of compensation received in connection with the sale and distribution of investment company securities that is not cash compensation, including but not limited to merchandise, gifts and prizes, and payment of travel expenses, meals and lodging.

"Offeror" shall mean an investment company, an adviser to an investment company, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities.

* * * * *

[Dealer concessions]

[(l)(1) No underwriter or associated person of an underwriter shall offer, pay or arrange for the offer or payment to any other member in connection with retail sales or distribution of investment company securities, any discount, concession, fee or commission (hereinafter referred to as "concession") which:]

[(A) is in the form of securities of any kind, including stock, warrants or options;]

[(B) is in a form other than cash (e.g., merchandise or trips), unless the member earning the concession may elect to receive cash at the equivalent of no less than the underwriter's cost of providing the non-cash concession: or]

[(C) is not disclosed in the prospectus of the investment company. If the concessions are not uniformly paid to all dealers purchasing the same dollar amounts of securities from the underwriter, the disclosure shall include a description of the circumstances of any general variations from the standard schedule of concessions. If special compensation arrangements have been made with individual dealers, which arrangements are not generally available to all dealers, the details of the arrangements, and the identities of the dealers, shall also be disclosed.]

[(2) No underwriter or associated person of an underwriter shall offer or pay any concession to an associated person of another member, but shall pay any concession only to a member. Upon request of the associated person's member, however, the underwriter may pay the concession to the associated person's investment adviser registered as a broker-dealer under the Securities Exchange Act of 1934, if the associated person is a customer of the investment adviser and the investment adviser is not acting as an investment adviser in connection with the purchase of investment company shares. No underwriter or associated person of an underwriter shall offer or pay to any member or associated person, anything of material value, and no member or associated person shall solicit or accept anything of material value, in addition to the concessions disclosed in the prospectus.]

[(B) For purposes of this subparagraph (3), items of material value shall include but not be limited to:]

[(i) gifts amounting in value to more than $50 per person per year.]

[(ii) gifts or payments of any kind which are conditioned on the sale of investment company securities.]

[(iii) loans made or guaranteed to a non-controlled member or person associated with a member.]

[(iv) wholesale overrides (commissions) granted to a member on its own retail sales unless the arrangement, as well as the identity of the member, is set forth in the prospectus of the investment company.]

[(v) payment or reimbursement of travel expenses, including overnight lodging, in excess of $50 per person per year unless such payment or reimbursement is in connection with a business meeting, conference or seminar held by an underwriter for informational purposes relative to the fund or funds of its sponsorship and is not conditioned on sales of shares of an investment company. A meeting, conference or seminar shall not be deemed to be of a business nature unless: the person to whom payment or reimbursement is made is personally present at, or is en route to or from, such meeting in each of the days for which payment or reimbursement is made; the person on whose behalf payment or reimbursement is made is engaged in the securities business; and the location and facilities provided are appropriate to the purpose, which would ordinarily mean the sponsor's office.]

[(C) For purposes of this subparagraph (3), items of material value shall not include:]

[(i) an occasional dinner, a ticket to a sporting event or the theater, or comparable entertainment of one or more registered representatives which is not conditioned on sales of shares of an investment company and is neither so frequent nor so extensive as to raise any question of propriety.]

[(ii) a breakfast, luncheon, dinner, reception or cocktail party given for a group of registered representatives in conjunction with a bona fide business or sales meeting, whether at the underwriter's office, a hotel or restaurant, or elsewhere.]

[(iii) gifts of reasonable value that are not conditioned on the achievement of any sales target or any other non-cash compensation arrangement permitted by paragraph (d).]

[(iv) the payment or reimbursement is not applied to the expenses of guests of the associated person; and]

[(v) the payment or reimbursement by the offeror is not preconditioned by the offeror on the achievement of a sales target or any other non-cash compensation arrangement permitted by paragraph (d).]

[(d) Non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that:]

[(i) the member's or non-member's non-cash compensation arrangement, if it includes investment company securities, is based on the total production of associated persons with respect to all investment company securities distributed by the member;]

[(ii) the non-cash compensation arrangement requires that the credit received for each investment company security is equally weighted;]

[(iii) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and]

[(iv) the recordkeeping requirement in subparagraph (l)(3) is satisfied.]

[(e) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in paragraph (d).]

[(6) No person associated with a member shall accept any cash compensation offered or provided to such person that is preconditioned on such person achieving a sales target, except that the following arrangements are permitted:]

[(a) Cash compensation arrangements preconditioned on the achievement of a sales target between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that:]

[(i) the member's or non-member's arrangement, if it includes investment company securities, is based on the total production of associated persons with respect to all investment company securities distributed by the member;]

[(ii) the arrangement requires that the credit received for each investment company security is equally weighted;]

[(iii) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and]

[(iv) the recordkeeping requirement in subparagraph (l)(3) is satisfied.]

[(b) Contributions by a non-member company or other member to a cash compensation arrangement preconditioned on the achievement of a sales target between a member and its associated persons, provided that the arrangement meets the criteria in paragraph (a).]

* * * * *

Member Compensation

(l) In connection with the sale and distribution of investment company securities:

(1) Except as described below, no associated person of a member shall accept any compensation, cash or non-cash, from anyone other than the member with which the person is associated. This requirement will not prohibit arrangements where a non-member company pays compensation directly to associated persons of the member, provided that:

(a) the arrangement is agreed to by the member;

(b) the member relies on an appropriate rule, regulation, interpretive release, interpretive letter, or "no-action" letter issued by the Securities and Exchange Commission or its staff that applies to the specific fact situation of the arrangement;

(c) the receipt by associated persons of such compensation is treated as compensation received by the member for purposes of NASD rules; and

(d) the recordkeeping requirement in subparagraph (l)(3) is satisfied.

(2) No member or person associated with a member shall accept any compensation from an offeror which is in the form of securities of any kind.

(3) Except for items described in subparagraphs (l)(5)(a) and (b), a member shall maintain records of all compensation, cash and non-cash, received by the member or its associated persons from offerors. The records shall include the names of the offerors, the names of the associated persons, the amount of cash, the nature and, if known, the value of non-cash compensation received.

(4) No member shall accept any cash compensation from an offeror unless such compensation is described in a current prospectus of the investment company securities sold by the offeror.

(5) No member or person associated with a member shall directly or indirectly accept any non-cash compensation offered or provided to such member or its associated persons, except as provided in this provision. Notwithstanding the provisions of subparagraph (l)(1), the following items of non-cash compensation may be accepted:

(a) Gifts to associated persons of members that do not exceed an annual amount per person fixed periodically by the Board of Governors[4] and are not preconditioned on achievement of a sales target.

(b) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment for persons associated with a member and, if appropriate, their guests, which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target.

(c) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(i) the recordkeeping requirement in subparagraph (l)(3) is satisfied;

(ii) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not preconditioned by the member on the achievement of a sales target or any other non-cash compensation arrangement permitted by paragraph (d);

(iii) the location is appropriate to the purpose of the meeting, which shall mean an office of the offeror or the member, or a facility located in the vicinity of such office, or a regional location that is suitable for multiple member firm meetings;

(iv) the payment or reimbursement is not applied to the expenses of guests of the associated person; and

(v) the payment or reimbursement by the offeror is not preconditioned by the offeror on the achievement of a sales target or any other non-cash compensation arrangement permitted by paragraph (d).

(d) Non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that:

(i) the member's or non-member's non-cash compensation arrangement, if it includes investment company securities, is based on the total production of associated persons with respect to all investment company securities distributed by the member;

(ii) the non-cash compensation arrangement requires that the credit received for each investment company security is equally weighted;

(iii) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and

(iv) the recordkeeping requirement in subparagraph (l)(3) is satisfied.

(e) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in paragraph (d).

(6) No person associated with a member shall accept any cash compensation offered or provided to such person that is preconditioned on such person achieving a sales target, except that the following arrangements are permitted:

(a) Cash compensation arrangements preconditioned on the achievement of a sales target between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that:

(i) the member's or non-member's arrangement, if it includes investment company securities, is based on the total production of associated persons with respect to all investment company securities distributed by the member;

(ii) the arrangement requires that the credit received for each investment company security is equally weighted;

(iii) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and

(iv) the recordkeeping requirement in subparagraph (l)(3) is satisfied.

(b) Contributions by a non-member company or other member to a cash compensation arrangement preconditioned on the achievement of a sales target between a member and its associated persons, provided that the arrangement meets the criteria in paragraph (a).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose of Proposed Rule Change

Introduction

The NASD is proposing to amend Rule 2820 ("Variable Contracts Rule") and Rule 2830 ("Investment Company Rule") to establish new rules applicable to the sale of variable contracts and revise existing rules applicable to the sale of investment company securities.

Generally, the proposed rule change would: (1) Adopt definitions of the terms "affiliated member," "cash compensation," "non-cash compensation" and "offeror"; (2) prohibit, except under certain circumstances, associated persons from receiving any compensation, cash or non-cash, from anyone other than the member with which the person is associated; (3) require that members maintain records of compensation received by the member or its associated persons from offerors; (4) with respect to the Investment Company Rule, prohibit receipt by a member of cash compensation from the offeror unless such arrangement is described in the current prospectus; (5) retain the prohibition, only with respect to the Investment Company Rule, against a member or person associated with a member directly or indirectly accepting any non-cash compensation offered or provided to such member or its associated persons, except as provided in this provision; (6) permit, with respect to the Investment Company Rule, the following items of non-cash compensation to be accepted: (a) gifts to associated persons of members that do not exceed an annual amount per person fixed periodically by the Board of Governors[4] and are not preconditioned on achievement of a sales target; (b) an occasional meal, a ticket to a sporting event or the theater, or comparable entertainment for persons associated with a member and, if appropriate, their guests, which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target; (c) payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that: (i) the recordkeeping requirement in subparagraph (l)(3) is satisfied; (ii) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not preconditioned by the member on the achievement of a sales target or any other non-cash compensation arrangement permitted by paragraph (d); (iii) the location is appropriate to the purpose of the meeting, which shall mean an office of the offeror or the member, or a facility located in the vicinity of such office, or a regional location that is suitable for multiple member firm meetings; (iv) the payment or reimbursement is not applied to the expenses of guests of the associated person; and (v) the payment or reimbursement by the offeror is not preconditioned by the offeror on the achievement of a sales target or any other non-cash compensation arrangement permitted by paragraph (d); (d) non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that: (i) the member's or non-member's non-cash compensation arrangement, if it includes investment company securities, is based on the total production of associated persons with respect to all investment company securities distributed by the member; (ii) the non-cash compensation arrangement requires that the credit received for each investment company security is equally weighted; (iii) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and (iv) the recordkeeping requirement in subparagraph (l)(3) is satisfied; (e) contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in paragraph (d); (6) prohibit any person associated with a member from accepting any cash compensation offered or provided to such person that is preconditioned on such person achieving a sales target, except that the following arrangements are permitted: (a) cash compensation arrangements preconditioned on the achievement of a sales target between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that: (i) the member's or non-member's arrangement, if it includes investment company securities, is based on the total production of associated persons with respect to all investment company securities distributed by the member; (ii) the arrangement requires that the credit received for each investment company security is equally weighted; (iii) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and (iv) the recordkeeping requirement in subparagraph (l)(3) is satisfied; (b) contributions by a non-member company or other member to a cash compensation arrangement preconditioned on the achievement of a sales target between a member and its associated persons, provided that the arrangement meets the criteria in paragraph (a).

non-cash compensation in connection with the sale of investment company securities and variable contracts; and (7) prohibit, with certain exceptions, a person associated with a member from accepting, directly or indirectly, any cash compensation in connection with the sale of investment company securities and variable contracts.

The exceptions from the non-cash compensation prohibition would permit: (1) Gifts of up to $100 per associated person annually; (2) an occasional meal, ticket to a sporting event or theater, or entertainment for associated persons and their guests; (3) payment or reimbursement for training and education meetings held by a broker-dealer or a mutual fund or insurance company for associated persons of broker-dealers, as long as certain conditions are met; (4) in-house sales incentive programs of broker-dealers for their own associated persons; (5) sales incentive programs of mutual funds and insurance companies for the associated persons of an affiliated broker-dealer; and (6) contributions by any non-member company or other member to a broker-dealer's permissible in-house sales incentive program.

The exceptions from the cash compensation prohibition would permit: (1) In-house sales incentive programs of broker-dealers for their own associated persons; (2) sales incentive programs of mutual funds and insurance companies for the associated persons of an affiliated broker-dealer; and (3) contributions by any non-member company or other member to a broker-dealer's permissible in-house sales incentive program.

Background

The proposed rule change is the latest in a series of NASD determinations designed to control the use of non-cash compensation in connection with a public offering of securities. Previous rule filings amending the NASD's rules established restrictions on non-cash compensation in connection with transactions in direct participation program securities ("DPPs"), real estate investment trusts ("REITs"), and corporate debt and equity offerings.

When the DPP rule was first proposed, commenters urged that if non-cash incentives were inappropriate in connection with the sale of DPPs, they are also inappropriate in connection with the sale of investment company securities and variable contracts. However, the NASD recognized that DPP and investment company securities are treated differently in many regulatory areas including marketing standards, advertising rules, net capital requirements, fidelity bonding, corporate finance requirements, membership in SIPC, qualification examination requirements and the application of the Investment Company Act of 1940 ("1940 Act"). Similarly, variable contracts are also subject to a separate scheme of regulation under the NASD's advertising rules and corporate financing requirements, net capital requirements, fidelity bonding, membership in SIPC, qualification examination requirements, and are regulated under the 1940 Act. In 1992, the NASD submitted to the SEC proposed rule change SR-NASD–92–36 which proposed recordkeeping and disclosure requirements on the receipt of non-cash compensation in connection with the sale of investment company securities and variable contracts. As a result of SEC staff concerns regarding that proposal, the NASD withdrew SR-NASD–92–36 in April 1994.

In developing the proposed rule change, the Investment Companies and Insurance Affiliated Member Committees of the NASD (the "Committees") have considered the current environment in which investment company securities and variable contracts are sold. The Committees did not find that the manner in which non-cash compensation is offered and paid to members and their associated persons indicates a level of supervisory problems similar to that present in connection with the sale of DPPs which led the NASD to adopt a prohibition on non-cash compensation in connection with such securities in 1988. The Committees believe, however, that the increased use of non-cash compensation for the sale of investment company securities and variable contracts heightens the potential for loss of supervisory control over sales practices and increases the possibility for perception of impropriety, which may result in a loss of investor confidence. The Committees determined, therefore, that the adoption of limitations on non-cash compensation for the sale of investment company securities and variable contracts is appropriate at this time.

The NASD is aware of a broad range of cash compensation practices by which investment company securities and variable contract issuers or their affiliates provide either incentives or rewards to individual broker-dealers and their registered representatives for selling the issuers' products. The NASD believes that the increased use of such practices, which create an incentive to favor one product over another, may compromise the ability of securities salespersons to render advice and services that are in the best interests of customers.

The NASD issued Notice to Members 94–14 (March 1994), reminding members, among other things, of prospectus disclosure obligations regarding their acceptance of cash and non-cash compensation for the sale of investment company products, and Notice to Members 95–80 (September 26, 1995), reminding members, among other things, that recommendations of investment company securities must be suitable given the investor's investment objectives and not based on incentives received by a registered representative.

Given the recent proliferation of such compensation practices and dramatic increase of public interest in the purchase of investment company securities and variable contracts, the NASD believes it is appropriate to adopt limitations on non-cash compensation and certain types of incentive-based cash compensation for the sale of investment company securities and variable contracts.

A complete discussion of the background of the proposed rule change is set forth in NASD Special Notice to Members 94–67 ("NTM 94–67"), attached to this filing as Exhibit 2, and in an addendum containing background information (referenced in NTM 94–67), attached to this filing as Exhibit 3. These documents are available to the public from the NASD's Office of General Counsel.

Description of the Proposed Rule Change

The current requirements of paragraph (l) of the Investment Company Rule regulate the disclosure and form of dealer concessions between principal underwriters and retail dealers of investment company securities. These provisions prohibit dealer concessions in the form of securities, require that members be able to elect to receive cash in lieu of the receipt of non-cash compensation, and prohibit the payment of concessions directly to associated persons of a member. The provisions also set forth requirements with respect to the disclosure of compensation arrangements between underwriters and dealers in the investment company's prospectus.[5]

[5] In Notice to Members 94–14 (March 1994), the NASD clarified the obligations of members in complying with the compensation disclosure requirements for investment companies in Subsection 26(l)(1)(C) to Article III of the Rules of Fair Practice. See also Notice to Members 94–41 (May 1994).

With respect to the regulation of variable contracts, the requirements of Rule 2820 currently do not contain similar provisions regulating dealer concessions. Thus, the proposed amendments to the Investment Company Rule would modify current requirements and the proposed amendments to the Variable Contracts Rule would establish new requirements that address compensation arrangements between an offeror and any member participating in the distribution of the company's securities. The discussion below addresses each proposed provision in the Investment Company Rule and its counterpart in the Variable Contracts Rule.

Definitions

Affiliated Member—The NASD is proposing to adopt a definition of the term "affiliated member" for both the Investment Company and Variable Contracts Rules to include a member which, directly or indirectly, controls, is controlled by, or is under common control with a non-member company. The term is used in the sections of the proposed rule change which address incentive compensation arrangements in order to identify a common type of relationship existing in the investment company securities and variable contracts industries whereby a non-member owns or controls one or more subsidiary broker-dealer member firms used for underwriting and/or wholesale and retail distribution services.

Cash Compensation—As proposed to be defined in the Investment Company Rule, this term would include any discount, concession, fee, service fee, commission, asset-based sales charge, loan or override received in connection with the sale and distribution of investment company securities. This term would encompass compensation arrangements currently covered under the Investment Company Rule in subparagraph (l)(1), as well as asset-based sales charges and service fees as currently defined in subparagraph (b)(9) of the Investment Company Rule. As a result, the proposed new term would apply to all compensation arrangements that would be covered under the current provisions of the Investment Company Rule, with the addition of asset-based sales charges and service fees. The Variable Contracts Rule's proposed definition of cash compensation would have a similar scope with respect to the sale of variable contracts, but does not include asset-based sales charges in recognition of the different structure of compensation arrangements with respect to such products.

Non-Cash Compensation—This definition is proposed to be identical in applicability for both the Investment Company and Variable Contracts Rules and would encompass any form of compensation received by a member in connection with the sale and distribution of investment company securities and variable contracts that is not cash compensation, including, but not limited to, merchandise, gifts and prizes, and payment of travel expenses, meals and lodging. Thus, the definition of "non-cash compensation" encompasses payments of cash to reimburse costs incurred by a member or person associated with a member in connection with travel, meals and lodging. Certain of the proposed rule language is drawn from the current provisions of subparagraph (l)(3)(B) of the Investment Company Rule which identifies items of material value.

Offeror—The NASD is proposing to define the term "offeror" in the Investment Company Rule to include an investment company, an adviser to an investment company, a fund administrator, an underwriter and any affiliated person of such entities, and in the Variable Contract rule to include an insurance company, a separate account of an insurance company, an adviser to a separate account of an insurance company, a fund administrator, an underwriter and any affiliated person of such entities. With the exception of "fund administrator," the enumerated entities included in the proposed definition of "offeror" in the Investment Company Rule are currently included in the definition of "associated person of an underwriter," which is proposed to be deleted.[6] That definition encompasses the issuer, the underwriter, the investment advisor to the issuer, and any affiliated person of such entities.[7] The term "affiliated person" in the proposed definition of "offeror" is defined in accordance with Section 2(a)(3) of the 1940 Act. The term "underwriter" is defined in Section 2(a)(40) of the 1940 Act and is intended to refer to the principal underwriter through which the investment and insurance company distributes securities to participating dealers for sale to the investor.

[6] There are no current similar terms in the Variable Contracts Rule.

[7] The term is significantly different from the term "person associated with a member" as used throughout the NASD's rules and regulations. Any reference to persons associated with an NASD member firm is defined by the definition of "person associated with a member" or "associated person of a member" in Article I, Section (m) to the NASD By-Laws.

The NASD does not believe that the inclusion of "fund administrator" in the definition of "offeror" in the proposed rule is overbroad as a result of the fact that affiliates of fund administrators would now be included in the definition of offeror. Affiliates of fund administrators are most likely entities already specified in the definition of "offeror," the definition of which is further circumscribed by the requirement that payments of cash or non-cash compensation be made in connection with the sale of investment company securities or variable contracts.

The adoption of this new definition of offeror would change the applicability of paragraph (l) of the Investment Company Rule and paragraph (h) of the Variable Contract rule from focusing on the distribution relationship of the principal underwriter to the retail dealers to focusing on the distribution relationship of the offeror to any participating broker-dealer firm.

Regulation of the Receipt of Cash and Non-Cash Compensation

Introduction—The NASD is proposing to adopt as paragraph (l) of the Investment Company Rule (replacing the current provisions of that section) and paragraph (h) of the Variable Contracts Rule new provisions governing the receipt of cash and non-cash compensation by members and associated persons of members. The proposed amendments would apply to both variable annuity and variable life products under the Variable Contracts Rule. With respect to the Investment Company Rule, the proposed amendments would apply to sales of securities of an investment company registered under the 1940 Act. Thus, the proposed rules would apply to sales of securities by a face-amount certificate company, a unit investment trust, and open-end and closed-end management companies.[8]

The preamble to the new rules provides that such compensation must be received "in connection with the sale and distribution" of investment company securities or variable contracts, as applicable. The preamble is intended to clarify that the provisions only relate to cash and non-cash compensation received in connection

[8] Closed-end management companies also are regulated under The Corporate Financing Rule in Rule 2710 and currently are subject to the prohibition on non-cash compensation contained in subparagraph (c)(6)(ix) thereof. Rule 2710(b)(8)(C) provides an exemption from compliance with Section 4c for securities of investment companies registered under the 1940 Act, except for securities of a closed-end management company as defined in Section 5(a)(2) of the 1940 Act.

with the sale and distribution of the security covered by the rule, but not to other forms of payment that are not for sales and distribution activities.

Subparagraphs 2820(h)(1) and 2830(h)(1): Limitation on Receipt of Compensation by Associated Persons, and Exception from Limitations—The NASD is proposing in new subparagraph (l)(1) of the Investment Company Rule and new subparagraph (h)(1) of the Variable Contract rule to generally prohibit a person associated with a member from accepting any compensation from any person other than the member with which the person is associated. The provision is based on current subparagraph (l)(2) of the Investment Company Rule.

An exception from this general prohibition is proposed which would allow the receipt of commissions by an associated person directly from a non-member if the arrangement is agreed to, and the amount of commission determined, by the member, the receipt is treated as compensation received by the member for purposes of NASD rules, the recordkeeping requirement in the proposed rule change is satisfied, and the member relies on an appropriate rule, regulation, interpretive release or applicable "no-action" or exemptive letter issued by the Commission or its staff. It would only be necessary for a member to obtain from the Commission an interpretation or no-action position in the event that no current rule, regulation, interpretive release, or no-action or exemptive letter applied to the member's fact situation. Also, the proposed rule change clarifies that the member must treat such direct payments to associated persons as compensation in order to ensure that the member views such payments in the same manner as payments made directly to the member for purposes of NASD rules and posts such payments to the member's books.

The proposed exception is particularly intended to recognize current practice, commonly referred to as insurance networking, which relies on certain Commission interpretations or staff no-action letters that permit, under limited circumstances, associated persons to receive compensation for the sale of variable annuity products from an insurance company or licensed insurance agency.[9] The exception reflects the view of the Commission in Securities Exchange Act Release No. 8389 (August 29, 1968) that, under certain circumstances, such commission payments to associated persons may be made by an insurance company or insurance agency acting on behalf of a broker-dealer.[10]

Although the need to recognize such direct payments arose in connection with the sale of variable contract products, the Investment Company Rule includes the same exception in order to recognize Commission staff no-action positions that permit direct payments by certain non-members to associated persons of broker-dealers for the sale of investment company shares.[11]

Subparagraph 2830(l)(2): Securities as Compensation—The NASD is proposing to retain as new subparagraph (l)(2) of the Investment Company Rule the provision currently in subparagraph (l)(1)(A) that prohibits members and associated persons of members from receiving compensation in the form of securities of any kind. The Variable Contracts Rule does not contain this prohibition, as the prohibition is intended to reflect circumstances that are limited to the sale of investment company securities.

Subparagraphs 2820(h)(2) and 2830(l)(3): Recordkeeping Requirement—The NASD is proposing to adopt as new subparagraph (l)(3) of the Investment Company Rule and subparagraph (h)(2) of the Variable Contracts Rule the general requirement that members maintain records of all compensation, cash and non-cash, received from offerors. The records must include the names of the offerors, the names of the associated persons, and the amount of cash and the nature and, if known, the value of non-cash compensation received.

With respect to the requirement that the actual value of non-cash compensation be recorded, if it is known, the NASD believes that the value of a non-cash item is usually not known where unaffiliated third parties contribute to a training and education program sponsored by a member. In this case, it would be appropriate to only include a description of the nature of the non-cash item of compensation. In comparison, the value of non-cash items provided by member firms and/or their affiliates is generally readily known or determinable.

The recordkeeping requirement is not applicable to two types of *de minimis* non-cash compensation allowable under subparagraphs (l)(5)(a) and (b) of the Investment Company Rule and subparagraphs (h)(3)(a) and (b) of the Variable Contracts Rule, discussed more fully below under the exceptions to the prohibition on non-cash compensation.

Subparagraph 2830(l)(4): Prospectus Disclosure of Cash Compensation—The NASD is proposing to adopt as new subparagraph (l)(4) in the Investment Company Rule the requirement currently in subparagraph (l)(1)(C) that prohibits the acceptance of cash compensation by a member from an offeror unless such compensation is disclosed in a prospectus. In the case where special cash compensation arrangements are made available by an offeror to a member, which arrangements are not made available on the same terms to all members to distribute the securities, the disclosure shall include the name of the recipient member and the details of the special arrangements. The provision has been modified to reference only "cash compensation" because non-cash compensation is proposed to be prohibited in a manner that would not require disclosure of any such non-cash compensation.[12]

The proposed rule change includes two exceptions from the prospectus disclosure requirement in the Investment Company Rule. The two exceptions in paragraphs (a) and (b) track the language in current subparagraphs (l)(4)(A) and (B) of the Investment Company Rule, with minor language changes for clarification. These two provisions provide an exception from disclosure for compensation arrangements between: (1) Principal underwriters of the same security; and (2) the principal underwriter of a security and the sponsor of a unit investment trust which utilizes such security as its underlying investment. By their terms, these provisions describe arrangements that would not trigger the proposed recordkeeping requirements.

The NASD is not proposing to amend the Variable Contracts Rule to adopt a similar prospectus disclosure requirement. Unlike the Investment Company Rule, there is currently no provision in the Variable Contracts Rule requiring disclosure of compensation received by NASD members in connection with the distribution of variable contracts. Arrangements by insurance companies for compensating salespersons for variable contract sales are generally part of a total compensation package based on the sale of non-securities insurance products as well as variable contracts. Further, the Securities Act of 1933 and rules adopted thereunder do not require such disclosure in the prospectus for variable life and annuity products. As a result, there is no practice for disclosure of any item of compensation in connection with variable life and annuity products, such as commissions and expense reallowances. The NASD believes that insurance companies would be required to make significant modifications to their automated systems in order to separate in some manner compensation for sales of securities products from total compensation for all insurance products. The NASD has determined, therefore, that before proposing new rules to require the disclosure of all cash compensation for the sale of variable contracts, more information should be gathered regarding the different kinds of compensation that are paid to broker-dealers for the sale of variable contracts and the form of any required disclosure. The NASD intends to gather such information in the course of conducting a general study of cash compensation practices in connection with investment company securities and variable contracts, as more fully set forth below.

Subparagraphs 2830(l)(5) and 2820(h)(3): Prohibition on Non-Cash Compensation—The NASD is proposing to adopt as new subparagraph (l)(5) of the Investment Company Rule and new subparagraph (h)(3) of the Variable Contracts Rule a general prohibition, with certain exceptions, on the receipt of non-cash compensation. The new provisions would prohibit a member or person associated with a member from directly or indirectly accepting any non-cash compensation offered or provided to such member or its associated persons unless such non-cash compensation is permitted under the provisions. Implicit in the prohibition on the "acceptance" of non-cash compensation is the requirement that a member may not make a payment of compensation to another member and its associated persons that results in a violation of the rule by the recipients.

The proposed rule change contains several exceptions from the general prohibition on the receipt of non-cash compensation.

Subparagraphs 2820(h)(3)(a) and (b) and 2830(l)(5)(a) and (b): The NASD is proposing to adopt exceptions that would permit an associated person to accept from a person other than its member-employer: (1) Gifts that do not exceed an annual amount per person fixed periodically by the Board of Governors, which is currently $100 per person; and (2) an occasional meal, a ticket to a sporting event or the theater, or comparable entertainment for persons associated with a member and, if appropriate, their guests, which is neither so frequent nor so extensive as to raise any question of propriety. These provisions are based on the current provisions of subparagraph (l)(3)(B) of the Investment Company Rule. The latter exception has been revised from the current language of the Investment Company Rule to reflect that entertainment for associated persons will usually include a spouse or guest of the person and that payment for a guest is permissible, but adds cautionary language that the entertainment should not be "so frequent nor so extensive as to raise any question of propriety." Since such gifts and entertainment are considered non-cash items, they are not required to be disclosed in the prospectus. Additionally, these two forms of non-cash compensation are specifically excepted from the recordkeeping requirement of the proposed rules.

The proposed provisions would require that the receipt of such non-cash items not be preconditioned on the achievement by the associated person of a sales target. This language replaces the current requirement in subparagraph (l)(3)(B)(v) of the Investment Company Rule that entertainment "not be conditioned on sales of shares of investment companies." The revised language is intended to clarify that such gifts and entertainment are permitted to be provided as recognition for past sales or as encouragement for future sales, but shall not be part of an incentive program or plan which requires that the recipient reach a sales goal as a prior condition to receive the entertainment or gift.

The proposed exceptions for $100 gifts and entertainment permits the continuation of long-established, normal business practices, while preventing an investment or insurance company from providing the gift or entertainment as part of a non-cash sales incentive program. The exceptions also recognize that the NASD has not detected or been aware of any history of abuses in connection with the receipt of such items of compensation by associated persons of a member firm in connection with the sale of investment company securities or variable contracts.

Subparagraphs 2820(h)(3)(c) and 2820(l)(5)(c): The NASD is proposing an exception to the prohibition on non-cash compensation for training and education meetings in subparagraph (l)(5)(c) of the Investment Company Rule and subparagraph (h)(3)(c) of the Variable Contracts Rule. The proposed exception would, under certain conditions, permit payment or reimbursement by offerors in connection with meetings held by the offeror or by a member for the purpose of training or education of associated persons of a member.[13] It is not unusual for offerors to pay for such meetings in order to discuss their products and to reimburse certain expenses related to the member's meeting in exchange for the opportunity to make a presentation to the associated persons of the member on a particular training or education topic.

This provision is intended to continue to permit members and offerors to hold training or education meetings for associated persons of one or more members, where an offeror or a number of offerors pay for or reimburse the expenses of the meeting. Because investment company securities and variable contract products are continuously offered, it is particularly important that associated persons receive education opportunities with respect to the investment company securities and variable contract industries generally, updates on any portfolio changes or structural changes to a current product, and explanations of new products.

Since the proposed prospectus disclosure provision requires disclosure of cash compensation only, the proposed exception would not trigger the disclosure requirements because the payment or reimbursement of expenses by an offeror for a member's training and education meeting is considered to be non-cash compensation. The proposed exception would, however, continue to be subject to the prohibition on an associated person accepting any compensation from anyone other than its member-employer.

The NASD anticipates that the agenda of a bona fide training or education

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[9] *See, e.g., Wiley, Rein & Fielding* (Oct. 16, 1991); *Traditional Equinet* (Jan. 8, 1992).

[10] Securities Exchange Act Rel. No. 8389 states that the Commission would not recommend enforcement action where the insurance company makes payments directly to its life insurance agents who are also persons associated with the insurance company's subsidiary broker/dealer, so long as: (1) Such payments are made as a purely ministerial service and properly reflected on the books and records of the broker/dealer; (2) a binding agreement exists between the insurance company and the broker dealer that all books and records are maintained by the insurance company as agent on behalf of the broker/dealer and are preserved in conformity with the requirements of Rules 17a-3 and 17a-4 under the Act; (3) all such books and records are subject to inspection by the Commission in accordance with Section 17(a) of the Act; and (4) the subsidiary broker/dealer has assumed full responsibility for the securities activities of all persons engaged directly or indirectly in the variable annuity operation.

[11] *See Chubb Securities Corporation* (Nov. 24, 1993) (financial institutions were permitted to make commission payments to dual employees of the financial institution and a broker-dealer).

[12] *See supra* n. 5.

[13] A member holding a training or education meeting for its associated persons (in comparison to the associated persons of another member) would not be required to comply with this provision if the member does not receive a payment or reimbursement from an offeror for the expenses of the meeting. In this event, the member would not be prohibited from permitting offerors to make a presentation at the meeting.

meeting will reflect the business purpose of the meeting. In order to establish circumstances that will encourage such a business purpose, the NASD is proposing that the exception for training or education meetings be available only if five conditions are met, which conditions are intended to ensure that the meeting is for the purpose of training and education and is not, in fact, a prohibited non-cash sales incentive trip or entertainment. The first condition is that the payment or reimbursement by offerors in connection with such meetings is subject to the proposed recordkeeping requirement in subparagraph (l)(3) of the Investment Company Rule and subparagraph (h)(2) of the Variable Contracts Rule in order that information on such payments and reimbursements is in the records of the member and, therefore, capable of examination and regulatory oversight by the NASD.

The second condition is that associated persons must obtain the member's prior approval to attend the meeting. It is anticipated that members will establish a procedure so that their records reflect that appropriate approval has been provided to associated persons in connection with such meetings. This provision assists members in maintaining supervisory control over their associated persons. Moreover, the second condition also requires that attendance by the member's associated persons may not be based by the employer-member on the achievement of a sales target or any other non-cash compensation arrangement that is permitted in reliance on paragraph (d) of the proposed rule. That provision would permit non-cash compensation arrangements between a member and its associated persons or between a non-member company and its sales personnel who are associated persons of an affiliated member, as more fully discussed below. This condition is intended to ensure that the member does not treat a training or education meeting as a non-cash incentive item. The provision is not, however, intended to prevent a member from designating persons to attend a meeting held by the member or by an offeror to recognize past performance or encourage future performance, so long as attendance at the meeting is not earned through a member's in-house sales incentive program or through the sales incentive program of the member's non-member affiliate or through the achievement of a sales target.

The third condition is that the location of the meeting must be appropriate to its purpose. A showing of appropriate purpose is demonstrated where the location is the office of the offeror or the member, or a facility located in the vicinity of such office. In order to address meetings where the attendees are from a number of offices in a region of the country, the meeting location may be in a regional location.

The fourth condition is that the payment or reimbursement by an offeror must not be applied to the expenses of guests of the associated person.

The fifth and final condition is that the payment or reimbursement by the offeror must not be conditioned by the offeror on the achievement of a sales target or any other non-cash arrangement permitted by proposed subsection (l)(5)(d) of the Investment Company Rule or proposed subsection (h)(3)(d) of the Variable Contracts Rule. This requirement is intended to ensure that the offeror making the payment or reimbursement does not participate in any manner in a member's decision as to which associated persons will attend a member's or offeror's meeting.

The fifth condition should be compared to the second provision that prohibits a member from basing the associated person's attendance at a training or education meeting on achievement of a sales target or a permissible in-house non-cash incentive arrangement. Taken together, the second and fifth conditions are intended to clarify that attendance at a training or education meeting by an associated person is permitted to be approved by a member as a recognition for past sales or as an encouragement for future sales, but shall not be part of a member's or offeror's incentive program or plan which requires that the recipient or the member reach a sales goal as a prior condition to attending the training or education meeting.

Subparagraphs 2820(h)(3) (d) and (e) and 2830(l)(5) (d) and (e): The NASD is proposing to adopt for the Investment Company Rule and the Variable Contracts Rule exceptions from the prohibition on non-cash compensation that will permit: (1) Non-cash compensation arrangements between a member and its associated persons, (2) non-cash compensation arrangements between a non-member company and its sales personnel who are associated persons of an affiliated member, and (3) contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons.

The three permissible arrangements are subject to four conditions. The conditions that must be met are that: (1) The member's or non-member's non-cash compensation arrangement, if it includes investment company or variable product securities, must be based on the total production of associated persons with respect to all investment company or variable product securities distributed by that member, (2) the credit received for each investment company or variable product security must be equally weighted, (3) no unaffiliated non-member company or other unaffiliated member may directly or indirectly participate in the member's or non-member's organization of a permissible non-cash compensation arrangement; and (4) *the member must, maintain records of all compensation, cash and non-cash, received by the member or its associated persons from offerors.* However, the applicability of the total production and equal weighting requirements to variable contract securities does not require that variable annuity and variable life products be combined in the same incentive arrangement. Because of the substantially different commission structure of each product, the NASD intends that subparagraph (h)(3)(d) of the Variable Contracts Rule apply to each variable contract product type—variable annuity or variable life.

The NASD believes that the proposed rule change distinguishes between non-cash incentives that act at the *point-of-sale* to the investor and those that do not. Point-of-sale non-cash incentive programs reward associated persons only if they sell a certain number of shares of a specific investment company securities or variable contract. Such incentive programs by an offeror or a member will affect the point-of-sale relationship of associated persons with the investor because they influence the salesperson to sell a specific investment company securities or variable contract or the products of only one offeror. In addition, point-of-sale non-cash incentives offered by third-parties to the associated persons of a member firm have the potential to undermine the supervisory control of the member over the sales practices of its associated persons.

The phrase "point-of-sale incentives" is intended to distinguish between different sales incentive structures on the basis of the potential impact of the sales incentive on the recommendation of the associated person at the point of sale to the customer. Where a sales incentive is structured as a "point-of-sales incentive," the associated person's recommendation of a specific product is motivated by the prospect of receiving the sales incentive rather than the desire to match the investment needs of the customer with the most appropriate investment product. An example of this is an incentive program that will provide a trip to an exotic location or a cash bonus to an associated person who sells $X million of ABC mutual fund over a three-month period. Such an incentive would have the effect of influencing an associated person to recommend ABC mutual fund over its competitors to customers. In comparison, an incentive program without a point-of-sale impact would be a program organized by the employer broker-dealer of an associated person that would provide for the same trip to the exotic location or a cash bonus for the sale of $X million of mutual fund products, with the sale of all mutual fund products being equally-weighted. In this case, the incentive program should not impact the point-of-sale recommendation of the associated person, who would focus on matching the appropriate investment needs of the customer in order for the associated person's recommendation to result in a sale.

The NASD's proposed rule change, therefore, limits non-cash sales incentives to situations where such non-cash incentives do not contain the potential to impact the point-of-sale recommendation by an associated person to a customer or to undermine the supervisory control of the member firm with respect to its associated persons.

The NASD is proposing to eliminate the point-of-sale impact of non-cash sales incentives on the sales practices of an associated person with respect to the sale of investment company securities and variable contracts by prohibiting third-party non-cash sales incentive programs and by requiring that all securities of the product type be included in the member's (or its affiliate's) in-house incentive program and be equally weighted. The proposed rule change, therefore, would prohibit a third-party offeror from conducting a non-cash sales incentive program for associated persons of member firms, as such programs only provide incentives that will act at the point-of-sale to influence a salesperson to sell the proprietary products of the offeror and have the potential to undermine the supervisory control of the member with respect to its associated persons, thereby increasing the possibility for a perception of impropriety which may result in a loss of investor confidence. The proposed rule change would, however, continue to permit non-cash incentive programs by a member for its associated persons or by an insurance or investment company for the associated persons of an affiliated member, under the four conditions discussed more fully below. The NASD determined that, in both cases, the non-cash compensation arrangement is internal to the employer-employee relationship and, therefore, does not raise the supervisory concerns that are present in the compensation arrangements between a non-member and the associated persons of unaffiliated broker-dealers selling its product.

The exception permitting a non-member affiliate to grant non-cash incentives to the associated persons of its affiliated broker-dealer for the sale of investment company securities and variable contracts recognizes the practice that is particularly present in the life insurance industry of a non-member insurance company holding a non-cash sales incentive program for its sales personnel who are also associated persons of the non-member's affiliated broker-dealer. Such sales persons are dual-licensed to sell non-securities insurance products and variable contracts. It is particularly a common practice for a member's parent life insurance company to award "points" for the sale of all insurance products—including securities—toward attendance at the insurance company's annual "leadership conference."[14] Moreover, the exception recognizes that, as a practical matter, an insurance company or investment company affiliated with a broker-dealer is in a position through intra-corporate transfers to contribute to and through its relationship to affect the structure of its affiliated broker-dealer's in-house incentive program.

The permissible in-house non-cash arrangements by a member or its affiliate are subject, moreover, to the first two conditions which are intended to ensure that a non-cash sales incentive earned by a member's associated person is on a delayed basis and does not influence the associated person's point-of-sale relationship with the investor. The first two conditions require that a member's or its affiliate's non-cash sales incentive program, if it includes investment company securities or variable contracts, must be based on the total production of associated persons with respect to the sale of all investment company securities or variable contracts distributed by that member and the credit received for the sale of each investment company security or variable contract must be equally weighted.

The NASD believes that the intent of first two conditions, by focusing on total production and equal weighting rather than point-of-sale incentives, is to align the interests of associated persons, broker-dealers and investors. Thus, the proposed provisions would allow for sales incentive programs based on such measures as overall gross production, new accounts opened or assets under management. Such measures are not precluded by the proposed rule language and are based on the same intent to align the interests of associated persons, broker-dealers and investors. The concept of total production, for example, is not necessarily restricted to total sales production, but could include total activity in investment company securities, thus allowing for incentive contests based on assets gathered or assets maintained under management.[15]

In proposing the second condition requiring equal weighting, the NASD recognizes that differential payouts at all levels is common industry practice and that current methods for determining contest credits vary, including measurements based on gross production to the firm or net commissions to the associated person. The NASD believes that either practice, as well as other arrangements, would be acceptable so long as the concept of "equal weighting" is met and not skewed by disparate commission, payout or reallowance structures for individual products. The condition of equal weighting requires a good faith effort by a member to comply and the test of whether a particular equal weighting methodology is acceptable is whether the contest is still skewed toward a particular product or products.

It is believed that these requirements will ensure that members and their affiliates selling proprietary investment company securities and variable contracts products do not structure in-house non-cash arrangements that are biased in favor of their proprietary products or any one specific product.

A member's or its affiliate's non-cash compensation arrangement is also subject to the restriction that no unaffiliated non-member entity (usually an offeror) or another member can participate directly or indirectly in the member's or its affiliate's organization of a permissible non-cash sales incentive program. This provision is intended to ensure that third-party offerors are not involved in and do not influence the organization of a permissible non-cash sales incentive program by a member or a member's affiliate. The restriction on participation is not, however, intended to prevent a

[14] As set forth above, arrangements by insurance companies for compensating salespersons for variable product sales are generally part of a total compensation package based on the sale of non-securities insurance products as well as variable contracts.

[15] *See* Report of the Committee on Compensation Practices, April 10, 1995 ("Tully Report"), at 13.

non-member company from making a presentation on its products at a member's or its affiliate's in-house sales incentive meeting at the member's or affiliate's request.

Finally, the non-cash incentive program of a member or its affiliate for a member's associated persons is also subject to the recordkeeping requirements of the proposed rule. Thus, in the case where the member or its associated persons is in receipt of payments or non-cash sales incentives from its affiliated entity, such payments or non-cash sales incentives must be recorded on the books and records of the member firm.

The NASD is also proposing in subparagraph (l)(5)(e) of the Investment Company Rule and subparagraph (h)(3)(e) of the Variable Contracts Rule that any non-member entity (usually an offeror) or another member continue to be permitted to contribute to any *member's* in-house non-cash sales incentive program, so long as: (1) The in-house program is based on total production of the investment company securities or variable contract products; (2) each sale receives equal weighting; (3) no entity (other than a member's affiliate) directly or indirectly participates in the member's organization of its permissible non-cash incentive compensation program; and (4) the member maintains records of such contributions. This provision is intended to permit third-party offerors, and their affiliates, to contribute to the non-cash incentive program of a member in order to benefit the associated persons of the member that sell the offeror's securities.[16] The proposed rule change does not similarly permit third party entities to make contributions to the non-cash incentive program of an affiliate of a member because such non-member affiliates are not subject to the recordkeeping requirements of the proposed rule change. Thus, contributions by third parties for a non-cash incentive program for associated persons of a member firm may be made only directly to the member.

Relationship of the In-House Non-Cash Incentive Exceptions for Members and Their Affiliates to the Training or Education Exception: The NASD believes that training/education meetings are important to the investment company/variable contract industries and it is, therefore, important that the NASD's rules continue to permit such meetings. The structure of the training or education provision permits members to recognize high producers by attendance at such meetings, but prohibits a member from requiring achievement of a specified sales target or any other in-house non-cash arrangement to attend the meeting. Since the proposed rule change would permit members and their affiliates to have an in-house non-cash incentive program for sales of investment company securities and variable contracts (and offerors may contribute to such in-house incentive programs), it is important to clarify the difference between attending a training/education meeting as a permissible "recognition" and attending it as an impermissible "non-cash sales incentive program." The issue arises only where a member is in receipt of any payment or reimbursement for the costs of a meeting or a third-party offeror (or any of its affiliates) pays for any of the costs of a meeting which is attended by associated persons of a member.[17] One clear demarcation is that any meeting held by a member or its affiliate only for the member's associated persons (where contributions are made by a third-party offeror) may be covered either by the exception for in-house non-cash incentives or the exception for a training and education meeting, whereas any meeting held by a third-party offeror must comply with the training/education requirements (because a *third-party* offeror cannot conduct a non-cash incentive program).

Subparagraphs 2820(h)(4) and 2830(l)(6): Prohibition on Certain Types of Incentive-Based Cash Compensation—The NASD is proposing to adopt as new subparagraph (l)(6) of the Investment Company Rule and new subparagraph (h)(4) of the Variable Contracts Rule a prohibition, with certain exceptions, on the receipt of incentive-based cash compensation. The new provision would prohibit a person associated with a member from directly or indirectly accepting any cash compensation preconditioned on the achievement of a sales target offered or provided to such person or the member with the person is associated, unless such compensation is permitted under the provision. Implicit in the prohibition on the "acceptance" of such incentive-based cash compensation is the requirement that a member may not make a payment of compensation to another member and its associated persons that results in a violation of the rule by the recipients.

The inclusion of this provision for the prohibition of incentive-based cash compensation is intended to ensure that offerors do not circumvent the non-cash incentive prohibition through the offering of cash incentives directly to associated persons. This is consistent with the NASD's intention to prohibit incentives that act as point-of-sale inducements that could influence the advice of a salesperson. The cash incentive prohibition is focused only on cash sales incentive contests that could be used by offerors to reward associated persons of a broker-dealer for the sale of a particular investment company or variable contract security and does not encompass payments at the entity-broker-dealer level that are not passed on to the associated person. Thus, the focus of the prohibition does not include other cash revenue-sharing arrangements intended to be covered by the NASD's study of cash compensation practices, as more fully set forth below. In particular, the proposed provision would not prohibit the practice of paying higher sales charges for reaching increasing sales targets. Also, it is important to note that payments of cash compensation that would be permitted under this provision would not be subject to the proposed disclosure provisions above.

The proposed rule change contains exceptions from the prohibition on the receipt of incentive-based cash compensation.

Subsections 26(l)(6) (a) and (b) and 29(h)(4) (a) and (b): The NASD is proposing to adopt for the Investment Company Rule and the Variable Contracts Rule exceptions from the prohibition on incentive-based cash compensation that, consistent with the non-cash sales incentive prohibition, will permit: (1) Compensation arrangements between a member and its associated persons; (2) compensation arrangements between a non-member company and its sales personnel who are associated persons of an affiliated member; and (3) contributions by a non-member company or other member to a cash compensation arrangement between a member and its associated persons.

The three permissible arrangements are subject to four conditions. The conditions that must be met are that: (1) The member's or non-member's compensation arrangement, if it includes investment company or variable product securities, must be based on the total production of associated persons with respect to all investment company or variable product securities distributed by that member; (2) the credit received for each investment company or variable product security must be equally weighted; (3) no unaffiliated non-member company or other unaffiliated member may directly or indirectly participate in the member's or non-member's organization of a permissible compensation arrangement; and (4) the member must maintain records of all compensation, cash and non-cash, received by the member or its associated persons from offerors.

Finally, as with proposed provisions for non-cash compensation arrangements above, the applicability of the total production and equal weighting requirements to variable contract securities does not require that variable annuity and variable life products be combined in the same cash incentive arrangement. Again, because of the substantially different commission structure of each product, the NASD intends that subparagraph (h)(4)(a) of the Variable Contracts Rule apply to each variable contract product type—variable annuity or variable life.

In order to fully understand the applicability of the proposed rule change with respect to training or education meetings and in-house non-cash incentive programs, a chart and five narrative examples are included as Exhibit 5. Copies of these documents are available to the public from the NASD.

Relationship of the Proposed Rule Change to the Tully Report: The Tully Report reviewed industry compensation practices in connection with the sale of all forms of securities for associated persons of members, identified conflicts of interests inherent in such practices and identified the "best practices" used in the industry to eliminate, reduce, or mitigate such conflicts of interest. The rule change proposed herein is limited to addressing certain compensation issues only in connection with the sale of investment company securities and variable contracts. The NASD believes that the proposed rule change is consistent with the characteristics of "best practices" identified in the Tully Report in that the requirements in the proposed rule for the receipt of non-cash and cash incentives eliminates the point-of-sale impact of such incentives on the sales practices of an associated person, thereby helping to align the interests of associated persons, broker-dealers and investors with respect to the sale of investment company securities and variable contracts.

Separate from the proposed rule change, however, the Board of Directors of NASD Regulation, Inc. ("NASDR") has agreed that NASDR, acting through its standing committees, should review the Tully Report recommendations and determine what initiatives, if any, the organization should undertake. NASDR will be collecting the views of the Committees later this year for consideration by the NASD National Business Conduct Committee ("NBCC").

Proposed Implementation of New Rules

The NASD is proposing that the amendments to the Investment Company and Variable Contracts Rules be implemented in the following manner. The proposed rule change will be effective on the date stated in a Notice to Members announcing Commission approval, which Notice will be issued no later than 60 days after Commission approval. The date stated is the date of the issuance of that Notice. As of that date, members will be required to comply with the proposed rule change. With respect to the non-cash and cash sales incentive provisions, no new sales incentive programs may be commenced after the announced effective date. Sales incentive programs that are currently on-going on the date of effectiveness will be permitted to continue for a period not to exceed six months following the announced effective date. Thus, during the six-month implementation period, no new incentive programs may commence and sales may continue to be applied to existing incentive programs. However, non-cash and cash sales incentives earned by associated persons will be permitted to be received for a period not to exceed twelve months following the expiration of the six-month implementation period in the next calendar year after approval of the amendments by the SEC. Thus, during the calendar year 1996, members and their associated persons would be permitted to receive non-cash sales incentives earned prior to January 1, 1996.

(b) Statutory Basis for Proposed Rule Change

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[18] of the Act, which require that the Association adopt and amend its rules to promote just and equitable principles of fair trade, and generally provide for the protection of investors and the public interest in that the proposed rule change is designed: (1) To adopt new regulations with respect to the sales of variable contracts in Rule 2820 that will regulate the direct payment of compensation to associated persons by persons other than the member with which a person is associated, establish recordkeeping requirements, and regulate the receipt of non-cash compensation by members and their associated persons; (2) amend current regulations with respect to the sale of investment company securities in Rule 2830 that will clarify the circumstances under which associated persons may receive direct payments of compensation from persons other than the member with which a person is associated with, establish recordkeeping requirements, retain current disclosure requirements and a prohibition on the receipt of securities as compensation, and regulate the receipt of non-cash compensation by members and their associated persons and the receipt of cash incentives by associated persons. Moreover, the proposed rule change is designed to minimize the point-of-sale impact of non-cash sales incentives on the recommendations of associated persons to their customers with respect to the sale of investment company securities and variable contracts and eliminate any potential that third party non-cash incentives may undermine the supervisory control of the member with respect to their associated persons, which would increase the possibility for the perception of impropriety which may result in a loss of investor confidence.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Comments received on the proposed rule change in response to NTM 94–67 raised a number of concerns regarding the potential discriminatory impact of the proposed rule change as published for comment on issuers of investment company securities and variable contracts and on members not affiliated with an issuer. Because the rule change proposed for comment in NTM 94–67 has been significantly amended to address the arguments of comments with respect to its discriminatory impact, the NASD's discussion of the proposed rule change's burden on competition is set forth below in connection with the comments received on the proposed rule change. On the basis of the discussion set forth below in connection with the comments received, the NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in NTM 94–67. 43 comments were received in response thereto. Of the 43 comment letters

[16] The provision would also permit a member's affiliate to contribute to the member's in-house non-cash incentive program.

[17] *See supra* note 12.

[18] 15 U.S.C. §78o–3.

received, 25 were supportive of the overall goal of the proposed rule change to more closely regulate incentive compensation arrangements, 8 were opposed, and 10 were neither explicitly for nor against the proposal. The rule change published for comment did not include the proposed prohibition on the receipt of cash incentives by associated persons of a member.

Deferral of Cash Compensation Issues

At the time the non-cash compensation proposal was published for comment company securities and variable contracts, and not with respect to disclosure of various forms of cash compensation. A number of commenters raised issues as to whether the requirements of the current Investment Company Rule and the proposed new Variable Contracts Rule would require disclosure of various forms of cash compensation arrangements (*e.g.*, "revenue sharing" and "soft dollar" arrangements) as "special compensation" or as "cash compensation," that are increasingly being provided to members in connection with the sale of investment company securities and variable contracts. Other commenters expressed concerns regarding the possibility that members may provide a disparate cash payout to representatives with respect to sales of proprietary products.

A connected issue concerning the disclosure of such revenue sharing arrangements is whether such disclosed compensation is subject to the sales charge limitations of paragraph (d) of the Investment Company Rule. In a letter dated November 22, 1994, the Division of Investment Management of the SEC requested advice from the NASD as to whether the current disclosure requirements of the Investment Company Rule apply to such revenue sharing arrangements. Specifically, the SEC asked whether such cash compensation and revenue sharing arrangements are a "discount, commission, fee or concession" for purposes of paragraph (l) that are subject to disclosure and should be limited as "sales charges described in the prospectus" for purposes of paragraph 2830(d). In connection with the SEC's request, the NASD Board of Governors approved the proposed rule change to be filed with the SEC but agreed to defer resolution of the revenue sharing issues until a later date. The NASD believes that it should not attempt to determine the applicability of the proposed amendments to the variety of revenue sharing issues without first gathering information about the scope of revenue sharing payments and also addressing jurisdictional questions. Thus, the NASD has deferred issues regarding revenue sharing arrangements until a study is conducted by NASD staff of members that engage in the sale of investment company securities and variable contracts in order to develop a greater understanding of the different forms of revenue sharing arrangements and to provide information for policy-making by the Committees. It is anticipated that, as a result of the study, the NASD will develop rule proposals with respect to the disclosure of revenue sharing items that will be filed with the SEC and published for comment prior to adoption. Therefore, the NASD will not address at this time issues raised by commenters in response to NTM 94–67 regarding special cash compensation, revenue sharing, soft dollar payments or certain other forms of cash compensation payments made in connection with the sale of investment company securities and variable contracts.

The discussion set forth below of the comments received on the proposed rule change includes the specific comments received with respect to revenue sharing and other cash compensation issues that will be covered by the NASD's study of such arrangements.

Original Proposal

In connection with the sale of investment company securities and variable contracts, the amendments as originally proposed would have: (1) Prohibited, with certain exceptions, members and persons associated with members from accepting any non-cash compensation from an offeror in connection with the sale of investment company securities and variable contracts; (2) prohibited associated persons from receiving any compensation from anyone other than the member with which the person is associated, unless permitted by the rule; (3) prohibited receipt by a member of cash compensation from the offeror unless such arrangement is described in the current prospectus; and (4) required that members maintain records of compensation received from offerors. The amendments also would have retained the prohibition, in connection with the sale of investment company securities, against a member receiving compensation in the form of securities from an offeror.

The exceptions from the non-cash compensation prohibition would have permitted: (1) In-house sales incentive programs of broker-dealers for their own associated persons; (2) sales incentive programs of investment companies and insurance companies for the associated persons of a broker-dealer subsidiary; (3) payment or reimbursement for training and education meetings held by a broker-dealer or an investment or insurance company for associated persons of broker-dealers; (4) gifts of up to $100 per associated person annually; and (5) an occasional meal, ticket to a sporting event or theater, or entertainment for associated persons and their guests.

As a result of member comments, the rule language of the proposed amendments published in NTM 94–67 was significantly modified by the Board of Governors. The following is a discussion of member comments in response to NTM 94–67.

General Comments

Rationale for New Rules. Certain commentators opposed to the proposed rule change questioned the necessity for the proposed rule given that both the Insurance Affiliated Members Committee and the Investment Companies Committee did not find that the manner in which non-cash compensation is offered and paid to members and their associated persons indicates a level of supervisory and compliance problems similar to those experienced by the DPP industry in the late 1980s (Massachusetts Mutual Life Insurance Co. ("MML"), New England Funds ("New England"), Wood Logan). One commentator (MML) requested that any final rules be accompanied by a clear and forthright explanation of the abuses which the proposed rules are attempting to correct. Another commentator stated that the possibility of the perception of impropriety is greater in the sale of investment company securities since such securities, unlike variable products, are not subject to state insurance regulation, and expressed concern about broadening the non-cash compensation rules to include variable products without any evidence of actual or potential abuse (ITT Hartford). The commentator expressed concern about extending non-cash prohibitions to variable products solely on the basis of a perception of impropriety.

There were 25 commentators in support of the proposed rule change that provided specific comments in favor of the proposal (ACLI, A.G. Edwards & Sons ("AG Edwards"), American Funds Distributors, Inc., Bridgeway, Calvert Securities Corp. ("Calvert"), Edwards & Angell, Equity Services, Inc., FNIC, Fidelity Investments, IAFP, ICI, IM&R, ML Stern & Co. ("ML Stern"), Mariner, Merrill Lynch, Mutual Service Corporation ("Mutual Service"),

Nuveen, PNMR, Prudential, Putnam Investments, Raymond James, State of New York, T. Rowe Price, Thornburg Securities ("Thornburg"), Titan). The NASD was urged to adopt a policy regarding the treatment of non-cash compensation that is applied "more or less even-handedly" across businesses within the securities industry. It was stated that the potential is present that the abuses identified by the NASD with respect to DPPs in the 1980s may occur with respect to investment company securities and variable contracts. It was pointed out that in many cases the same registered representatives that sell DPPs also sell investment company securities and variable contracts. It was argued that the perception of impropriety may lead to a loss of investor confidence. In this connection, it was pointed out that there had been recent unfavorable media coverage of non-cash incentives in the sale of investment company securities (Edwards & Angell).

Another commentator stated that the proposal will contribute to ethical business practices among registered representatives, instill a greater disclosure responsibility on sponsors and provide an enhanced regulatory effort for the protection of the consumer (Raymond James) and that the proposal on the whole is excellent and will serve to provide full and fair disclosure of all compensation to the public and necessary guidance to members as to acceptable forms of compensation (AG Edwards).

Other commentators stated that prohibiting non-cash compensation will strengthen the ability of member firms to supervise their registered representatives (Merrill Lynch) and that the entire investment community is best served by removing any incentive a registered representative may have to sell a particular product other than one for the clients' best interests (Thornburg). It was also stated that the proposal will provide NASD members with greater control over compensation offered to their registered representatives (Mutual Service). Finally, commentators stated that the proposal protects and enhances investor confidence (IAFP), and decreases the possibility, as well as the consumer's perception of, representatives' impropriety (Calvert).

Other General Comments. One commentator thought the proposed rules were unduly complicated and might unnecessarily penalize members who have creative compensation approaches (Mutual Service). The commentator stated that a simpler way to accomplish the objectives of the proposed rule change would be to require only that all compensation be disclosed in the prospectus, all cash compensation be paid to the member firm, and all incentive compensation be based on gross production of all products. As set forth above, the NASD will review the current forms of cash compensation received by members in connection with the sale of investment company securities and variable contracts in order to develop rules that will address disclosure of compensation in the prospectus. With respect to the second request that all cash compensation be paid to the member firm, there is a long history of SEC interpretive positions and no-action letters permitting third-parties to make direct payments of cash compensation to associated persons under certain circumstances. The NASD believes it is appropriate that the proposed rule change recognizes these SEC positions. With respect to the third comment, as set forth below, the NASD is revising the proposal published for comment to require that a member's or its affiliate's in-house incentive program must be based on total production of associated persons with respect to sales of investment company securities and variable contracts and that the credit received for the sale of each security is equally weighted. These provisions are discussed more fully below.

Another commentator requested general clarification on the relationship between Rules 2820 and 2830 (Fidelity). As stated in paragraph 2820(a), Rule 2820 applies to member's activities in connection with the sale of variable contracts in lieu of Rule 2830. Thus, variable contracts are regulated solely by Rule 2820—not Rule 2830.

Relationship to Rules for Direct Participation Program Securities. One commentator recommended that if the proposed rule with respect to non-cash sales incentives is adopted that the NASD implement conforming changes with respect to the NASD's rules for direct participation program securities in Rule 2810. It was stated that to regulate the DPP and investment company/variable contracts industries differently would give a competitive advantage to one over another (Edwards & Angell). Another commentator stated that Rule 2810(b)(4)(E) does not contain a similar carve-out for in-house compensation arrangements by affiliates of a broker-dealer and the proposed rule, if adopted, would therefore discriminate against broker-dealers which are not subsidiaries of an investment company or insurance company (Titan II).

The NASD's Direct Participation Programs Committee will review the proposed rule change in light of the current provisions of the non-cash incentive rule of Rule 2810.

Specific Comments

Definitions of Cash and Non-Cash Compensation

Cash Compensation Definition. In the explanation of the provisions of the proposed rule in NTM 94–67, the NASD stated that the proposed definition of "cash compensation" in paragraph (b)(7) of the Investment Company Rule "encompasses cash compensation arrangements covered under the current provisions of the Investment Company Rule." One commentator stated that this description appears to be inconsistent with the proposed new definition of "cash compensation," which includes, among other things, asset-based sales charges (Fidelity). The commentator suggested that the NASD either eliminate asset-based sales charges from the coverage of the definition or explain more clearly the reasons for its inclusion and the scope of its applicability. The commentator suggested that the NASD also explain the scope of the counterpart definition of cash compensation in subparagraph (b)(3) of the Variable Contracts Rule. The NASD believes that the definition of "cash compensation" in the Investment Company Rule should include coverage of "asset based sales charges" and that they are encompassed in the current Investment Company Rule as a "fee." In comparison to the proposed definition in NTM 94–67, the term "asset based sales charge" has been deleted from the definition of "cash compensation" in the Variable Contracts Rule since there is no provision in the current Variable Contracts Rule for such charges.

One commentator urged that although the proposal appropriately places limits on non-cash compensation, the NASD should go further and only allow, with limited exceptions, the reallowed sales charges in the prospectus (Nuveen). The NASD believes it is appropriate to permit different forms of cash compensation, so long as such compensation arrangements are not contrary to the concepts of fairness and reasonableness under Article III, Section 1 of the NASD's Rules of Fair Practice—the NASD's basic ethical rule. In the course of conducting a study of cash compensation arrangements, the fairness and reasonableness of such arrangements will be considered.

Non-Cash Compensation. The definition of "non-cash" compensation in Subparagraphs (b)(7) of the Investment Company Rule and (b)(3) of

the Variable Contracts Rule includes payments of cash to reimburse members for the costs of travel, meals and lodging. One commentator stated that if cash payments are to be included within the term "non-cash compensation," the term "non-cash compensation" should be recharacterized (MML). The NASD believes it is appropriate to treat cash payments for non-cash items as "non-cash compensation," because the receipt of non-cash items of compensation should be regulated in the same manner regardless of whether the item is received or payment is made for the cost of the item.

However, the NASD believes that there is an issue of whether excess cash payments for training and education meetings meet the definition of non-cash compensation and will seek to clarify in its study on cash compensation whether payments exceeding actual reimbursements fit within the definition of non-cash compensation, and whether any such excess is received in connection with sale or distribution practices.

Special Cash Compensation. The proposed change does not contain a definition of the term "special cash compensation" that is used in the current and proposed disclosure provision of the Investment Company Rule (subparagraph (l)(4) of the Investment Company Rule) and the disclosure provision that was originally proposed in subparagraph (h)(3) of the Variable Contracts Rule. One commentator suggested, for purposes of the Variable Contracts Rule, defining the phrase as "any cash compensation that exceeds the maximum compensation disclosed in the prospectus," which would enable a member to accept less than the maximum disclosed commission without having to force the disclosure in the prospectus of all members who were paid no more than the maximum commission (ITT Hartford).

As set forth above, the NASD has amended the proposed rule change to the Variable Contracts Rule to delete the disclosure provision. The NASD intends, nonetheless, to reconsider the definitions in the proposed rule change with respect to the Investment Company Rule and Variable Contracts Rule and the text of the disclosure provision being proposed herein with respect to the Investment Company Rule (including the requirement for disclosure of "special compensation arrangements") as a part of the study of cash compensation arrangements, referenced above.

Preamble—"In Connection With"

The preambles to the proposed rule change in the Investment Company Rule and the Variable Contracts Rule begin with the phrase "In connection with the sale and distribution of investment company securities [variable contracts]." Commentators stated that there is no guidance to illustrate the meaning of the phrase and requested NASD clarification as to the scope of the phrase and whether it applies to in-house non-cash compensation not intended to serve as a sales incentive such as, for example, compensation paid as a reward to phone representatives for a stellar attendance record or exceptional phone demeanor (MML, Nuveen, T. Rowe Price). Another commentator requested that the final rules clearly state what compensation arrangements are acceptable and suggested that language be incorporated in the final rule clarifying what specific types of compensation are unrelated to sales and distribution, and therefore not covered by the rules (New England).

One commentator identified various current investment company "payment" practices which are not tied to specified sales levels of the broker-dealer, but are intended instead to "solidify the relationship between the broker-dealer and the mutual fund complex," such as when a mutual fund complex: (1) Gives "'unrestricted'" funds to some of the broker-dealers in its selling group; (2) Gives books to some of its broker-dealers on "'how to sell mutual funds'" for distribution to its registered representatives; (3) pays for the cost of preparing broker-dealer training materials; (4) pays for advertising in a broker-dealer's internal newsletter (MML). The commentator emphasized that a literal reading of the phrase could cover all of the above examples and, absent clarification, the phrase will be interpreted liberally by some firms and narrowly by others. The commentator recommended that the phrase be deleted in its entirety or clarified to ensure its uniform interpretation and implementation.

The NASD is aware that members and their associated persons receive compensation for the sale of non-securities products from insurance companies and receive other forms of payments from investment and insurance companies that are not for sales and distribution activities. The preamble is not intended to cover compensation and payment arrangements that are clearly not in connection with the sale and distribution of investment company securities or variable contracts. The extent to which any specific cash payments are considered to be made in connection with the sale of securities will be further considered and clarified as a result of the NASD's study of cash compensation arrangements, as set forth above.

Subparagraphs 2820(h)(1) and 2830(l)(1)—The Ministerial Exception

Proposed subparagraph (l)(1) of the Investment Company Rule and proposed subparagraph (h)(1) of the Variable Contracts Rule would codify the so-called "ministerial exception," which permits a non-member, under certain circumstances, to maintain a commission account as a ministerial service for a member and, on behalf of the member, pay commission checks directly to associated persons of the member.

One commentator stated that, contrary to the assertion in NTM 94–67 that the ministerial exception only recognizes either the conditions set forth in Securities Exchange Act Release No. 8389 or no-action positions on how to comply with conflicting requirements of state insurance and securities laws, there are additional no-action letters from the Commission authorizing other direct payment exceptions based on theories wholly different from either the ministerial exception or state law conflict (MML). The commentator requested modification of the proposed rules to explicitly recognize the existence and validity of such no-action letters. The commentator's recommendation was to add rule language to the end of subparagraphs (l)(1) of the Investment Company Rule and (h)(1) of the Variable Contracts Rule published for comment stating "or where such payments are authorized by a no-action letter issued by the staff of the Securities and Exchange Commission."

One commentator requested that the final rule clarify that an NASD member firm can rely on any no-action position or opinion of counsel without having to obtain its own no-action position in order to take advantage of the ministerial exception (NAVA). Another commentator stated that the ministerial exception should be allowed to be used in all states, regardless of whether a state law impediment exists (PNMR).

The NASD agrees that it was not the intention of the ministerial exception to limit the ability of a member to rely on any applicable SEC interpretations or no-action letters that would permit direct payment of commission checks to associated persons. At the same time, the NASD believes it is necessary to ensure that members rely only on SEC positions that are issued (in comparison to telephone advice) and that are applicable to the specific fact situation under which such direct payments will be made. Thus, it should only be necessary for a member to obtain from the SEC an exemptive, interpretive or no-action letter in the event that no current rule, regulation, interpretive release, or no-action position that applies to the member's fact situation. Additionally, the NASD believes it is necessary to ensure that direct payments to associated persons are treated as payments directly to the member for purposes of NASD rules.

Therefore, the rule language set forth in subparagraphs (l)(1) and (h)(1) of the Investment Companies and Variable Contracts Rules, respectively, in NTM 94–67 has been revised to clarify that associated persons may be compensated by certain non-members provided: (1) The arrangement is agreed to and the amount of commission determined by the member; (2) the member relies on an appropriate rule, regulation, interpretation or applicable no-action or exemptive letter issued by the SEC or its staff; (3) the payments are treated as compensation received by the member for purposes of the rules of the NASD; and (4) the payments are subject to the proposed rule's recordkeeping requirements. The NASD also revised rule language to recognize the SEC staff's recent no-action letter to Chubb Securities Corporation that permits commission payments by financial institutions directly to associated persons of member firms under certain circumstances.[19]

The NASD does not believe it is appropriate, as recommended by one commenter, to amend the rule to recognize an opinion of counsel, standing alone, as the basis for a member's reliance on the ministerial exception. This position does not preclude a member from obtaining an opinion of counsel that the member has based its determination to permit direct payments by a third-party to its associated persons on an appropriate rule, regulation, interpretation, or no-action or exemptive letter of the SEC or its staff and that such rule, regulation, interpretation, or no-action or exemptive letter applies to the specific fact situation of the member.

Subparagraphs 2820(h)(2) and 2830(l)(3)—Recordkeeping Requirement

Subparagraph (l)(3) of the Investment Company Rule and subparagraph (h)(2) of the Variable Contracts Rule, proposed in NTM 94–67 require member firms to keep records, with certain exceptions, of all cash and non-cash compensation received from offerors.

One commentator suggested that the NASD should consider requiring member firms to file a brief report to the NASD on a standard form each time a program to provide incentives is adopted (Edwards & Angell). Unless specifically required otherwise by law, the NASD allows members to devise their own specific methods and procedures for maintaining various records required to be kept under the rules and regulations of the Association and the SEC. It is not believed necessary for the NASD to monitor compliance with the proposed rule change through such a filing method. The NASD will review member's compliance with the proposed prohibition on the receipt of non-cash compensation in the course of its normal examination of the records of member firms.

In order to avoid duplicative recordkeeping, another commentator suggested including an additional exception to the record keeping requirement to allow records of compensation to be kept on behalf of a member by a member's control person, such as, for example, the investment adviser of a no-load fund complex (T. Rowe Price). The proposed provision does not address the identity of the entity that maintains the member's records. The recordkeeping requirement proposed by the NASD is applicable to the member, regardless of the entity relied on by the member to maintain its records, and it is the obligation of the member to ensure that its records comply with all applicable rules. Any records maintained by a third-party entity for a member must be maintained in accordance with all applicable law and be immediately accessible for examination and other regulatory purposes.

Another commentator recommended that the NASD add the phrase "by the member or its associated persons" after the word "received" in the first sentence of the recordkeeping requirement subsections so that the requirement applies to compensation received by both members and associated persons (MML). The NASD agrees that the proposed rule should be clarified to indicate that the recordkeeping requirement applies to compensation received by members and associated persons and has modified the rule language in subparagraphs (l)(3) and (h)(2) of the Investment Company and Variable Contracts Rules, respectively, accordingly. This amendment is consistent with the proposed amendments to the "ministerial" exception permitting direct payments to associated persons.

Subparagraph 2830(l)(4)—Disclosure Requirements

The version of the proposed rule change published for comment in NTM 94–67 contained disclosure obligations in both the Investment Company Rule and the Variable Contracts Rule which required that all cash compensation arrangements, including special cash compensation arrangements, be specifically described in the prospectus, with the exception of, among other things, arrangements between a non-member company and its sales personnel who are associated persons of an affiliated member firm.

The Proposed Disclosure Requirement for Variable Contracts. Two commentators stated that any commission/compensation disclosure requirements should be applied equally to both investment company securities and variable annuities since the products are so similar in nature and there is no reasonable basis to do otherwise (Raymond James, New England). Another commentator stated the proposed requirement in the Variable Contracts Rule to disclose non-standard compensation in a variable contract prospectus would result in irrelevant and misleading compensation information and would be financially and functionally burdensome, especially during a period of rapid growth where the daily prospectus amendments could be required (PEN). Another commentator suggested deleting proposed subparagraph (h)(3) of the Variable Contracts Rule (Lincoln National).

Unlike the Investment Company Rule, there is currently no provision in the Variable Contracts Rule requiring disclosure of compensation received by NASD members in connection with the distribution of variable contracts. Arrangements by insurance companies for compensating salespersons for variable product sales are generally part of a total compensation package based on the sale of non-securities insurance products as well as variable contracts. As discussed above, the NASD believes that, before requiring disclosure of all cash compensation for the sale of variable product securities, more information should be gathered regarding the kinds of compensation that are included in payment for the sale of variable products and the form of any required disclosure. Further, regardless of the few comments received opposed to this provision in the Variable Contracts Rule, the NASD believes it is

[19] *Chubb Securities Corporation* (Nov. 24, 1993).

apparent from the lack of discussion in the comments that the full potential impact of the proposed disclosure provision in its entirety on the sale of variable contract products has not been fully understood by industry commenters. Therefore, the NASD has modified the language of the Variable Contracts Rule to delete the requirement for disclosure of cash compensation in subparagraph (h)(3) in the Variable Contracts Rule published for comment in NTM 94–67, pending the gathering of more information and industry input, and the Variable Contracts Rule has been renumbered accordingly.

Discriminatory Impact of Exception for Payments to Sales Personnel. A number of commentators indicated that the exception proposed in subparagraph (l)(4)(c) of the Investment Company Rule and subparagraph (h)(3)(c) of the Variable Contracts Rule in NTM 94–67 to the disclosure obligation requirement for proprietary issuers with captive sales forces was unduly burdensome for, and unfairly discriminatory against, member firms selling only "non-proprietary" products, anti-competitive, and/or misleading to a retail public expecting full disclosure (IM&R, FNIC, AG Edwards, Stern, Associated, Mariner, Mutual Service, Cadaret/Grant, Security Life, IAFP, LPL, Putnam, Titan II, PEN). The commentators emphasized that required disclosures should be the same whether the products are proprietary or non-proprietary, and that failure to require uniform disclosure not only frustrates any attempt to achieve a level playing field but also leads to recommendations to customers which are not objective or suitable. Other commentators stated that non-uniform disclosure requirements increases, rather than decreases, the possibility for the perception of impropriety (American Growth Fund Sponsors, Titan II, State of New York, Wood Logan). It was recommended that the exception be deleted. (IAFP, Titan II).

The NASD believes that the exception to which the commentators object was intended to clarify that, since any payments of cash compensation directly to associated persons under the ministerial exception are required to be disclosed in any event by the member employing the associated persons, such direct payments need not be disclosed twice, i.e., as part of the member's receipt of compensation from its affiliated offeror and separately as direct payments to associated persons by an affiliated offeror. The purpose of the exception was to avoid: (1) Duplicate disclosure of compensation received by members affiliated with an offeror; and (2) disclosure of the member's reallowance to associated persons when it is paid by an offeror affiliated with the member.

Because of the considerable confusion caused by the provision, proposed subparagraph (l)(4) of the Investment Company Rule was revised to delete the exception provision. At the same time, the ministerial exception (as set forth above) is proposed to be revised to make it clear that direct payments to associated persons are treated as compensation received by a member for purposes of NASD rules. Taken together, these changes clarify that direct payments to associated persons must be combined with any other compensation received directly by the member and are subject to the disclosure requirements of the proposed rule.

Revenue Sharing Disclosure. A number of commentators stated there is a growing practice of "revenue sharing" between investment company advisers and retail sellers of investment company shares, whereby the advisers, in either formal or informal agreements with the retailer, agree to pay fees to retailer members—over and above Rule 12b-1 fees—in exchange for, among other things, (1) The placement of the funds onto the retailer's "preferred" list, (2) the retailer agreeing to sell the fund's shares at all, (3) "due diligence" payments for a member's examination of an offeror's products, (4) inclusion of fund data in a member's computerized hypothetical system, and (5) access to a member's E-mail system (Wilmer/Cutler, State of New York, Nuveen).

One of the commentators stated that such practices are required to be disclosed under the proposed *and* existing language of paragraph (l) of the Investment Company Rule, and that the NASD should address this issue directly and immediately by clarifying and affirming that such arrangements must be disclosed in a fund's prospectus (Wilmer/Cutler). The commentator stated that such clarification is essential to fulfill the purpose of paragraph (l) of the Investment Company Rule and the larger goal of investor protection.

Another commentator noted that the NASD's definition of "sales charges" in subparagraphs (d)(1) and (2) of the Investment Company Rule seem sufficiently inclusive to reach and govern revenue sharing practices as well as non-cash compensation (State of New York). The same commentator stated that both principles of agency law and securities anti-fraud statutes and rules provide a basis for requiring brokers to disclose all financial and economic incentives in connection with a securities recommendation (State of New York). Finally, one commentator stated that such "revenue sharing practices" should be prohibited (Nuveen).

As more fully set forth above, the NASD will defer action on issues regarding revenue sharing and other cash compensation arrangements until a study conducted by NASD staff of members that engage in the sale of investment company securities and variable contract products in order to develop a greater understanding of the different forms of revenue sharing arrangements and to provide information to the NASD for policy making.

Disclosure of Special Cash Compensation. One commentator requested that specific details of special cash compensation arrangements, such as member names and amounts, should only be required to be disclosed where the standards for the receipt of such special cash compensation are not uniformly applicable (American Funds Distributors). Another commentator stated that the customers are not harmed by special cash compensation arrangements, since the limit of the customer's costs has already been disclosed in the prospectus, and suggested deleting proposed subparagraph (h)(3) of the Variable Contracts Rule (Lincoln National).

One commentator stated that the prospectus disclosure requirements would force issuers with non-proprietary sales forces to disclose in prospectuses the terms of each new selling agreement signed as soon as the agreement is signed, thus requiring prospectuses to be stickered sometimes as often as every week (Security Life). The commentator stated that the benefits of such a burden would be de minimis, and suggested that the proposed rule be redrafted to only require the disclosure, for both proprietary and non-proprietary firms, of the maximum amount of cash compensation.

As set forth above, the NASD will defer action on issues regarding special compensation arrangements until a study of cash compensation arrangements is conducted in order to develop a greater understanding of the different forms of special cash revenue sharing arrangements and to provide information to the NASD for policy making.

Burden of Compliance. One commentator objected to the proposed rule's disclosure requirements on the basis that it places the burden of compliance oversight for ensuring proper disclosure on individual member firms rather than on the funds and their affiliated underwriter (Merrill Lynch). The commentator stated that this burden places each broker-dealer in the difficult position of having to independently evaluate the quality of fund disclosure, and recommended that the NASD either reaffirm the rule's current prohibition on underwriters and their associated persons from paying cash compensation that is not disclosed in the prospectus or, in the alternative, modify the rule language so that both broker-dealers and underwriters have responsibility for compliance with the proposed rule.

With respect to participating broker-dealers that are not the principal underwriter for an investment company, the language of the provision places the burden of ensuring adequate disclosure on each individual member only with respect to the compensation that the member is receiving.[20] Such a participating member does not have an obligation to ensure disclosure of compensation received by other member firms.

However, the principal underwriter is responsible for the disclosure of compensation with respect to all members with whom they have entered into dealer agreements. This obligation arises as a result of the disclosure requirements of SEC Registration Statement Form N–1A. In Notice to Members 93–12 (February 1993), in Question 35, the NASD stated that investment companies should provide disclosure in a manner sufficient for member firms to prove that they can sell the fund's shares in compliance with NASD rules. Because the principal underwriter enters into all dealer agreements, the principal underwriter must be responsible for ensuring adequate disclosure of the compensation received by all participating dealers.

Treatment of Payments for Training or Education Meetings; Potential Discriminatory Impact. Offerors from time to time hold and pay for training and/or educational meetings with different members to differing degrees, resulting in disparate payment levels to members. One commentator, assuming that such payments could be regarded as special cash compensation, stated that the NASD should clarify that such situations do not require any special prospectus disclosure (Prudential). Other commentators stated that if a non-proprietary fund family's contribution toward an unaffiliated broker-dealer's cost of a public seminar (i.e., training or education meeting) is considered cash compensation requiring prospectus disclosure, then such unaffiliated broker-dealers will be placed at a significant competitive disadvantage when marketing to the public compared to proprietary funds/firms which would not have to disclose such compensation under the proposed rule (FNIC, Stern).

Payments made by offerors for training and education meetings which meet all the requirements for training and education meetings set forth under subparagraphs (l)(5)(c) or (h)(3)(c) of the Investment Company and Variable Contracts Rules, respectively, are not required, as non-cash compensation, to be disclosed in the prospectus. Thus, there is no discriminatory impact on unaffiliated broker-dealers, as such firms are not required to disclose payments received as reimbursements for their costs in conducting a training or education meeting. Such payments will, however, along with other cash payments be reconsidered in connection with the NASD's study of the cash compensation arrangements in connection with the sale of investment company securities and variable contracts.

Other Comments. The proposed rule does not specifically address the payment practice of "overcredits," which is a payment made by an offeror to a member firm over and above the reallowance in a full dealer reallowance offering. One commentator criticized the proposed rule for failing to require that the practice of awarding overcredits be included as a disclosure item (Thornburg). Such payments will, however, along with other cash payments be reconsidered in connection with the NASD's study of the cash compensation arrangements in connection with the sale of investment company securities and variable contracts.

Two commentators stated that the NASD exceeds its authority in mandating disclosure requirements which fall within the jurisdiction of the SEC (Cadaret/Grant, New England Funds). The NASD does not believe it exceeds its authority by imposing rules on its members with respect to disclosure of compensation or any other information to investors, so long as such disclosure requirements are not contrary to the rules and regulations of the SEC. The proposed disclosure requirements do not change, and do not attempt to change, in any way the existing prospectus disclosure requirements under the registration and disclosure provisions of the Securities Act of 1933 or the Investment Company Act of 1940.

[20] The rule language states "No member shall accept any cash compensation from an offeror unless such compensation is described in a current prospectus of the investment company."

Subparagraphs 2820(h)(3) and 2830(l)(5)—Prohibition on Non-Cash Compensation

General Comments on Prohibition. One commentator stated that the proposed prohibition on non-cash compensation as published for comment in NTM 94–67 ought not to prohibit an offeror from reimbursing a member firm for all or a portion of the expenses incurred in conducting a seminar for the benefit of potential investors, because no public policy interest is served by prohibiting such arrangements (AG Edwards). The NASD believes that a "road show" or seminar for investors is not the same as a training or education meeting that is intended only for associated persons of member firms nor is it a non-cash sales incentive trip that was intended to be prohibited by the proposed rule. Thus, it appears appropriate to interpret the proposed rule to not prohibit reimbursements of the expenses of members for road shows for the benefit of investors. Such payments will, however, along with other cash payments be reconsidered in connection with the NASD's study of the cash compensation arrangements in connection with the sale of investment company securities and variable contracts.

Another commentator suggested that an additional exemption be added from the prohibition on non-cash compensation for due diligence meetings sponsored and paid for by an offeror on behalf of selected registered representatives of the offeror's selling group broker-dealer who were invited by the offeror on the basis of the amount of assets generated or procured the reps for the offeror's funds (Thornburg). Such meetings, the commentator stated, are specifically for the purpose of clarifying detailed fund portfolio and investment information so that registered representatives will be able to answer sophisticated client queries concerning such matters. Due diligence meetings, as "due diligence" is referenced in Section 11 of the Securities Act of 1933, are attended by the due diligence personnel of a broker-dealer firm for the sole and narrow purpose of ensuring the adequacy and accuracy of the information in the offering document. Such meetings would be held at a location appropriate to the conduct of due diligence, such as the issuer's offices. NASD staff are not aware of such meetings in the investment company securities or variable contract context. The commenter's description of "due diligence" meetings does not comport with the narrow purpose of ensuring the adequacy and accuracy of

the offering document. Instead, it appears that the meeting being described is a training and education meeting, which would be required to comply with the exception for training or education meetings. To the extent bona fide due diligence meetings are held, as may occur in the case of a new investment company, the proposed prohibition on non-cash sales incentives does not prohibit such meetings and the expenses related to such meetings are considered expenses of the offeror.

De Minimis Exceptions. One commentator stated that the protections contained in proposed subparagraph (l)(5) of the Investment Company Rule, which would prohibit members and their associated persons from accepting any non-cash compensation, are illusory since the proposed rule does not require any recordkeeping and accountability for the acceptance of *de minimis* gifts and entertainment in paragraphs (a) and (b) (State of New York). Another commentator suggested that these exceptions retain the current language of the Investment Company Rule which would require that such gifts and entertainment "conditioned on sales of share" to clarify that, contrary to the explanation in NTM 94–76 (p. 433), such gifts should not even be permitted as rewards, since rewards in effect invariably become a *de facto* sales incentive program (Nuveen).

The NASD agrees with the general premise of the commenters that any item of value given by an offeror to an associated person has some influence on that person. The issue is, however, whether the $100 gift exception and the entertainment exception provide for items of value that are sufficient to influence the sales practices of the recipient associated person. The exemptions for gifts and entertainment have long been in the Investment Company Rule and are particularly appropriate in the context of a continuously-offered security, when it should be anticipated that offerors will want to maintain a business relationship with associated persons of member firms. The NASD is not aware of any abuse of these exemptions and believes that they represent such a *de minimis* activity that they do not have the ability to undermine investor protection. The NASD has, nonetheless, amended the language of the first two exceptions to modify the phrase "not preconditioned on achievement of a specified sales target" to clarify that the sales target cannot be "previously specified." The NASD believes that this requirement as well as the *de minimis* nature of the gift or entertainment proposed in subparagraphs (l)(5)(a) and (b) and (h)(3)(a) and (b) of the proposed rule change are sufficiently restrictive in scope and amounts to allay concerns that such gifts and gratuities may become substantial *de facto* incentive programs that have the potential to undermine investor protection.

Another commentator suggested deleting in its entirety the meals and entertainment exception since such *de minimis* payments have never posed serious non-cash compensation problems and the subjective language of the subsection makes it unenforceable (Titan). The proposed exception for meals and entertainment is drawn from the current language of the Investment Company Rule and has not previously presented an enforcement problem. While the requirement that such meals and entertainment be "neither so frequent nor so extensive as to raise any question of propriety" is subjective, it is believed that such a standard is not inconsistent with and is no more subjective than the Article III, Section 1 standard that members are required to "observe high standards of commercial honor and just and equitable principles of trade" which allows the NASD to take a broad regulatory approach on a case-by-case basis if necessary. It is believed that the proposed rule language provides sufficient specificity to put the membership on notice of the need to exercise appropriate discretion when relying on the exception.

One commentator stated that it is unclear whether the exceptions for $100 gifts and entertainment would be available if a fund sponsor makes such payments available to a broker-dealer in connection with the firm's internal sales campaign, which campaign is based on all of the firm's products during a specific period of time rather than specified sales targets for particular funds (MML). The NASD believes that this comment reflects the proposed structure of the rule change published for comment which would have prohibited third-party offerors from contributing to a member's in-house incentive program. Regardless of how the broker-dealer's in-house compensation program is structured, the exceptions for $100 gifts and entertainment cannot be combined with the member's in-house incentive program because the third-party offeror would be participating in the organization of the member's program which is proposed to be prohibited. As amended, the proposed rule change would permit, however, third-party offerors to make cash contributions to the member's in-house incentive program.

Another commentator suggested that the $100 gift exception be revised to replace the subsection's fixed dollar limitation with the language "neither so frequent nor so extensive as to raise any question of propriety" found in subparagraph (h)(4)(b) of the Variable Contracts Rule (ITT Hartford). The commentator reasoned that the standard of propriety is more appropriate than a fixed dollar limitation in the context of variable contracts. The $100 exemption is consistent with Article III, Section 10 of the Rules of Fair Practice which allows such gifts between a member and the personnel of another firm and with the Corporate Financing and DPP Rules which permit an issuer to provide up to $100 of non-cash sales incentives to associated persons annually in connection with the sale of corporate equities, real estate investment trusts, closed-end funds, debt, and DPP offerings.[21] The NASD believes it appropriate to provide a fixed dollar amount as proposed.

Exception for Training and Education Meetings. It was pointed out by commentators that a discrepancy may exist between the text of proposed subparagraph (l)(5)(c)(v) of the Investment Company Rule (which specifies that sponsors cannot contribute to the training/educational meetings if the payment or reimbursement is conditioned on sales or the promises of sales) and its counterpart in the Variable Contracts Rule, and the explanation of the subsection on page 434 in NTM 94–67, which appears to go further than the actual rule language in saying that members cannot condition attendance at their training meetings through satisfaction of in-house sales incentive requirements, regardless of whether they accept offeror contributions (MML, Mutual Service). Both commentators expect the literal rule language to govern, and one (MML) requested clarification of this expectation in the final release. Similarly, commenters stated that, contrary to the NASD's interpretation, example #4 in NTM 94–67 should *not* be interpreted as preventing a product sponsor from contributing to the expenses a member incurs for awarding a trip based on an in-house, total products sales contest (Calvert, LPL). Such sponsor contributions, one of the commenters argued (LPL), are payments for the opportunity to address and educate registered representatives, not rewards

[21] The SEC approved in Securities Exchange Act Release No. 35862 (June 19, 1995) a change to Rule 2710 that amended its non-cash incentive provision to change the gift exception from $50 to $100.

for product-specific sales performances. Another commenter stated that the proposed rule appears to prohibit certain fact-specific situations that ought not to be prohibited, such as a broker-dealer's incentive offer of a business development conference/meeting/trip to any of its associated persons (and guests) as an award for achieving a specific sales target (measured by either "commissions earned" or "assets raised") where the majority of the costs of the conference/meeting/trip are paid for by invited investment and insurance companies who also help to conduct some of the training and educational presentations (Raymond James). The commenter stated further that such incentive contests and their variants ought to be specifically exempted from the proposed rule's prohibitions since they satisfy the general intent of the proposed rules and help to increase the level of education and training in the fund industry. Finally, other commentators stated that the proposed non-cash restrictions would be detrimental to the variable product marketplace (NAVA) and variable product consumers and urged the NASD to amend its proposal to permit continued product sponsor support of legitimate educational and training seminars, without limitation on the methodology used by insurers to invite agent attendees (PEN).

The NASD believes that training/education meetings are important to the investment company/variable contract industries and it is, therefore, important that the NASD's rules continue to permit such meetings without problems of enforcing the non-cash incentive prohibition. It was anticipated when the training and education meeting exception was developed that members would recognize high producers by attendance at such meetings. Because members are permitted to have an in-house non-cash incentive program for sales of investment company securities and variable contract products (and offerors may contribute to such in-house incentive programs), it is important to appropriately clarify the difference between attending a training/education meeting as a permissible "recognition" and attending it as an impermissible "non-cash sales incentive program." In order to prevent a member from combining a permitted in-house sales incentive program with a training/education meeting held by an offeror, the NASD has revised proposed subparagraphs (l)(5)(c)(ii) of the Investment Company Rule and (h)(3)(c)(ii) of the Variable Contracts Rule to specify that attendance of associated persons at bona fide training/education meetings must not be based by the member on achievement of a sales target or any other non-cash compensation arrangement permitted under paragraph (d) (which permits in-house non-cash arrangements by a member or its affiliate). When this requirement is taken together with the requirement that the offeror cannot condition its payment or reimbursement on sales or the promise of sales, these two requirements clarify that attendance at a training or education meeting by an associated person is permitted to be approved by a member as a recognition for past sales or as an encouragement for future sales, but shall not be part of a member's or offeror's incentive program or plan which requires that the recipient or the member reach a specific sales goal as a prior condition to attending the training or education meeting.

Other commentators suggested that the NASD should make explicit in the proposed rule language for subparagraph (l)(5)(c)(v) of the Investment Company Rule that attendance at a member's training meeting cannot be earned through a member's in-house product-specific sales incentive contest, but only through generic in-house sales criteria (FNIC, Stern). The NASD has, as set forth above, amended the training or education exception to clarify that attendance at any training or education meeting where a member's costs of the meeting are paid for or reimbursed by a third-party offeror cannot be earned through any in-house incentive contest—even though such contest is in compliance with the proposed rule. If a member holds a training or education meeting for its own associated persons and offerors or other third-parties pay or reimburse the costs of the meeting, the meeting must comply with the training or education meeting exception. If no third-party pays or reimburses the expenses of a member in connection with its internal training or education meeting, the meeting need not comply with the training or education exception as the member is not in receipt of non-cash compensation. Further, in the latter instance, the member is not prevented from inviting a third-party offeror to be a speaker at the meeting.

One commentator objected to having any limitations at all imposed on the ability of fund groups and product sponsors to participate, both financially and in terms of product content, in national or regional training, education and compliance meetings, particularly where the right to attendance at the meetings is earned by product sales (IM&R). The NASD disagrees with the position of the commentator and believes that it is appropriate to regulate the manner in which training or education meetings are held to ensure that such meetings are not prohibited non-cash incentive meetings.

Another commentator suggested that the NASD clarify that the limitations imposed for training and education meetings apply to an offering of new funds as well as existing funds (Prudential). The requirements for training or education meetings apply to any meeting considered a training or education meeting with respect to new or existing funds. As set forth above, however, investor seminars and bona fide due diligence meetings (which are more likely to occur in the case of a new fund) are not considered training or education meetings.

A commenter also stated that payment or reimbursement by offerors to members for the cost of educational meetings should be strictly limited to expenses actually incurred by the member in connection with the meeting, and that such payments not exceed the annual amount per person fixed periodically by the Board of Governors under proposed subparagraph (l)(5)(a) of the Investment Company Rule (Nuveen). The NASD is not proposing, at this time, to limit the payments for educational meetings to the expenses actually incurred by the member in connection with the meeting. Payments of a member's meeting expenses that exceed the costs of the meeting will, however, along with other cash payments be considered in connection with the NASD's study of the cash compensation arrangements in connection with the sale of investment company securities and variable contracts.

According to some commenters, the proposed rule's provision regarding the site for training and education meetings is excessively harsh and unrealistic, because it restricts site location to a specific region for non-affiliated broker-dealers while permitting a national brokerage firm to choose any location (Nike, Capital Analysts). Another commenter stated that the proposed rule language should be expanded to state that a national meeting may be held at a national location (Fidelity). Another commenter stated that since every location in the United States, or the world for that matter, could be viewed as a "regional location," it is uncertain what regulatory purpose is served by putting such an ambiguous and virtually limitless requirement in the proposed rules (MML).

With respect to the first comment, without a restriction with respect to the

location of a training/education meeting, it is probable that offerors will compete for sales of their products on the basis of the location of the training/education meeting that they are willing to hold for associated persons of broker-dealers. Members, on the other hand, would be in a position to negotiate with offerors for reimbursement of expenses of training/education meetings in exotic locations on the basis of the sales they have generated. Thus, it appears important that a restriction be included with respect to the location of the meeting.

While the second commenter is correct that members with an international business are not subject to any location limitation, it is important to note that the agenda for such meetings must be appropriately focused on training and education. As a practical matter, certain business structures give a natural advantage to some members. It is believed that if the focus of the meeting is training or education, that the meeting is most likely to be within the 48 contiguous states.

The NASD determined not to include express limits on the location of national training and education meetings. The establishment of objective standards to limit national meetings would require precise definitions of the terms and phrases "office of the offeror or member," "facility located in the vicinity of such office," and "regional location." Because members' business lines and distribution systems are structured in myriad and sometimes substantially dissimilar ways, especially with respect to physical location, precise definitions of such terms may deprive some members of the needed flexibility to structure their meetings. Thus, it would be very difficult to establish any objective geographical standards without avoiding what might appear to be discriminatory effects on certain members. The NASD believes that whether a particular location is appropriate for a training and education meeting will be dependant, to a significant extent, on the facts and circumstances of each situation.

Furthermore, the NASD believes that the limitations proposed for the nature of educational meetings in the proposed rule will discourage sponsors from holding training and education meetings in exotic places. Because the burden is now on members to show that a training and education meeting is bona fide, the NASD anticipates that members will generally avoid excessively expensive and lavish training and education settings that would be difficult to justify under the strictures of the proposed rule.

Another commenter suggested limiting issuer-sponsored trips to the corporate headquarters of the issuer for educational purposes only, and to substantiate the purpose of such trips with records of the meeting agendas (LPL). The NASD agrees with the comment that the purpose of training or education meetings should be substantiated by the member on the basis of the meeting agenda, but does not believe it necessary to limit meetings to the corporate headquarters.

Exception for In-House Sales Incentives. The major comments on the exceptions in the version of the proposed rule change in NTM 94–67 permitting in-house sales incentive arrangements argued that allowing direct payments by an affiliated offeror to a member's permissible in-house program discriminated between members that sell proprietary products and members that do not, and between investment/insurance companies with and without an affiliated broker-dealer. In particular, smaller members were concerned regarding the disparate impact of the sales incentive prohibition because the largest broker-dealers also generally sell proprietary products. Commenters also expressed particular concern regarding the ability of an affiliated investment company or insurance company (or other non-member affiliate, such as a bank) to contribute to a member's in-house incentive program, whereas non-affiliates were prohibited by the proposal from making similar contributions.

Two commentators stated that the reasons offered for the proposed rule change, namely, to prevent the increasing potential for loss of supervisory control and to preempt the possibility of perception of impropriety and loss in investor confidence, were less than compelling justifications for regulation that not only discriminates against certain firms but also encourages the sale of unsuitable products to the investing public (Security Life, Wood Logan). One commentator stated that the exception in NTM 94–67 permitting in-house non-cash compensation eviscerates the goal of aligning the salesperson's interest with the client's interest (State of New York). Commentators stated that proposed subparagraph (h)(5) of the Variable Contracts Rule in NTM 94–67, by allowing non-cash compensation programs for insurance companies with proprietary products and sales forces, creates an uneven playing field in favor of "proprietary providers" over "independent providers" and is anti-competitive (Skandia, Capital Analysts, Security Benefit, American Growth Fund Sponsors). Some commentators suggested either deleting subparagraph (h)(5) of the Variable Contracts Rule entirely or expanding it to allow independent providers to offer non-cash compensation programs on the same basis as proprietary providers (Skandia, PNMR).

The NASD was concerned about the disparate impact of the rule proposal that would result from a member firm with proprietary products conducting an in-house contest which includes direct or indirect economic support and funding through sales of its proprietary products, and was sympathetic to the comments of those members without proprietary products who argued that they would be unable to afford in-house contests without the economic support of outside issuers. In addition, the NASD was concerned regarding the potential disparate impact of the rule proposal on affiliated investment or insurance companies that did not have an affiliated member distributing their products and would not be permitted to contribute to the in-house incentive program of unaffiliated members.

The NASD focused on three provisions in subparagraphs (l)(6) and (h)(5) of the Investment Company and Variable Contracts Rules, respectively, as proposed in NTM 94–67. These are: (1) The language in the introduction which permitted a non-member (including offerors) to provide a sales incentive program for its salespersons that are associated persons of an affiliated broker-dealer; (2) paragraph (a) of subparagraphs (l)(6) and (h)(5) which required that the member's in-house incentive program must be multi-product type oriented or, for single product type firms, based on the gross production of the associated person; and (3) paragraph (b) of subparagraphs (l)(6) and (h)(5) which prohibited an unaffiliated non-member (including offerors) or other member from participating in and contributing to a member's in-house incentive program.

In general, the NASD determined that the goal of prohibiting non-cash incentives for the sale of a particular investment company's securities would not be compromised if non-member entities and other members are allowed to contribute to any member's in-house program, so long as restrictions are imposed on the structure of the in-house program. The NASD believes that the proposal should distinguish between incentives that act at the point-of-sale to influence the salesperson's recommendation to the investor and incentives which do not have such effect. Non-cash incentive programs by an offeror that involve only a single product (regardless of whether the product is proprietary) affect the point-of-sale relationship with the investor and are more likely to influence the salesperson to sell a specific investment company's securities or variable contract. The NASD believes that contributions by a non-member to a member's in-house incentive program that includes all variable annuity or variable life or investment company products does not have the same "incentive" effect because the member's in-house incentive is a reward for total production—not for the sale of a specific variable annuity or variable life contract product or investment company security.[22]

The NASD has modified and restructured the provisions proposed in subparagraphs (l)(6) of the Investment Company Rule and (h)(5) of the Variable Contracts Rule in NTM 94–67. The subparagraphs have been renumbered in the proposed rule change as subparagraphs (l)(5)(d) and (e) and (h)(3)(d) and (e). Subparagraph (d) of the Investment Company Rule and of the Variable Contracts Rule permits all members and non-member affiliates of members to hold in-house incentive programs so long as certain conditions are met which are for the purpose of avoiding the point-of-sale impact of the incentives, and subparagraph (e) permits any non-member company and other member to contribute to, but not to hold or organize, a permissible in-house non-cash sales incentive program between a member and its associated persons so long as the same conditions for subparagraph (d) are met. By its limiting language, permissible contributions under subparagraph (e) may only be given to an in-house non-cash sales incentive program held by a member firm; such contributions may not be given to an in-house non-cash sales incentive program held by a non-member affiliate because the non-member affiliate is not required by NASD rules to maintain records of the receipt of such contributions.

With respect to the second condition on the structure of a member's or affiliate's in-house incentive program proposed in subparagraph (l)(6)(b) of the Investment Company Rule in NTM 94–67, two commentators observed that since almost all proprietary firms have investment company securities and cloned variable products, an incentive program could be based on just two product types, and recommended either deleting the exception for in-house sales entirely or changing the language of the provision to make in-house sales incentive programs available only if based on gross production of all products (FNIC, Stern). Another commentator recommended that the "multi-product type" condition be revised to make clear that the test is not satisfied by selecting one security of each product type, for example, a proprietary investment company and a proprietary variable product (Wood Logan).

The conditions applicable to the member's and its affiliate's permissible non-cash sales incentive programs in subparagraphs (l)(5)(d) and (e) of the Investment Company Rule and (h)(3)(d) and (e) of the Variable Contracts Rule were modified from those proposed in NTM 94–67 in the following manner: (1) The member's in-house non-cash incentive program, when it includes investment company securities or variable contracts, must include the total production of associated persons with respect to all investment company securities and variable annuity or life contracts distributed by the member, which modifies the "multi-product type" rule language in NTM 94–67; (2) the credit received for each variable contract (i.e., variable annuity or variable life) must be equally weighted, which is a new provision that was not included in the language of NTM 94–67; and (3) no non-member company or other member may directly or indirectly participate in the organization of a permissible non-cash compensation arrangement, which modified the corresponding provision in NTM 94–67 by deleting the words "or contributes to" in order to allow contributions to permissible non-cash programs by outside unaffiliated non-members or other members as long as their involvement is limited only to such contributions under new paragraph (e). The fourth requirement, the recordkeeping requirement, was not modified from the language of NTM 94–67.

The NASD believes that these changes to the non-cash compensation provisions proposed in subparagraphs (l)(5)(d) and (e) of the Investment Company Rule and subparagraphs (h)(3)(d) and (e) of the Variable Contracts Rule eliminate the point-of-sale impact of non-cash sales incentives on the sales practices of an associated person with respect to the sale of investment company securities and variable contracts by prohibiting third-party non-cash sales incentive programs and by requiring that all securities of the product type be included in the member's (or its affiliate's) in-house incentive program and be equally weighted. At the same time, the NASD believes that any potential discriminatory impact that is not in furtherance of the Act is addressed by permitting non-members and other members to contribute to a member's in-house incentive program.

[22] *See supra* discussion explaining the NASD's rationale underlying the proposed non-cash compensation provisions in Subsections 26(l)(5) and 29(l)(3) of the Investment Company and Variable Contract Rules, respectively.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. The Commission requests that, in addition to any general comments concerning whether the proposed rule change is consistent with Section 15A(b)(6) of the Act, commentators specifically address the following issues:

1. The proposed rule change would continue to permit an associated person to accept gifts from offerors if the total value of gifts from an offeror to an associated person does not exceed $100 per person per year and if such gifts are not preconditioned on meeting a sales target. Associated persons also could continue to accept an occasional meal, a ticket to a sporting event or the theater, or comparable entertainment from offerors if the entertainment is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on meeting a sales target. The NASD states that it is not aware of any abuse of these exemptions and believes that they represent such a *de minimis* activity that they do not have the ability to undermine investor protection. Should members be required to keep records of such gifts or entertainment to enable the NASD to surveil effectively for abuse?

2. The proposed rule change would permit a member or an associated

person to accept payment or reimbursement from an offeror for expenses incurred in connection with meetings held by the offeror for the purpose of training or educating associated persons of a member. Such meetings can be held at or near an office of the offeror or an office of the member or a regional location with respect to regional meetings)—a third-party offeror with a regional business may not conduct a meeting outside that region unless the member has a more widespread business. The provision would permit offerors to hold training meetings in resort locales if that offeror or the member has an office in that resort locale.

The NASD states that it "believes that the limitations proposed for the nature of educational meetings in the proposed rule will discourage sponsors from holding training and education meetings in exotic places. Because the burden is now on members to show that a training and education meeting is bona fide, the NASD anticipates that members will generally avoid excessively expensive and lavish training and education settings." Are the recordkeeping requirements proposed by the NASD sufficient to support determinations of whether such meetings will be bona fide?

3. The NASD states in its filing that a member holding a training or education meeting for its associated persons would not be required to comply with the conditions imposed with respect to training and education meetings held by offerors or unaffiliated members "if the member does not receive a payment or reimbursement from an offeror for the expenses of the meeting. In any event, the member would not be prohibited from permitting offerors to make a presentation at the meeting." The proposed rule change establishes three separate levels of regulation of training and education meetings depending upon whether a member or an offeror holds a training and education meeting and depending upon whether a member who holds a training and education meeting accepts reimbursement from an offeror.

a. If an offeror holds a training and education meeting, that meeting must comply with the training and education exception.

b. If a member holds training and education meeting, and accepts reimbursement from an offeror for certain expenses, the meeting must comply with either the training and education exception or the in-house sales incentive exception (permitting contributions by offerors).

c. If a member holds a training and education meeting for its own associated persons and accepts no reimbursement from offerors, the proposed rule change does not regulate that meeting because the meeting is not in connection with the sale or distribution of investment company/variable contract securities.

Commenters are asked to address whether a training and education meeting should constitute non-cash compensation subject to the proposed rule change if an offeror participates in organizing the meeting even though an identical meeting would not be subject to the proposed rule change if organized by the member for its own associated persons.

4. The Tully Committee identified the practice of payment of higher commissions to registered representatives for proprietary products than for non-proprietary products as an arrangement that can create conflicts of interest. The proposed rule change would not prohibit or regulate this practice. The NASD has stated that "it has generally not been the practice for the NASD to regulate the internal compensation arrangements between a member and its associated persons." The proposed rule change would, however, prohibit contests granting cash awards if the contest gives greater weight to certain securities than others. Commenters are invited to address whether the proposed rule change should be extended to cover ordinary compensation practices in addition to incentive compensation practices.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 29, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

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SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

Notice is being given that two new chapters are being issued, Chapter TC, Office of the Chief Actuary and Chapter TE, Office of the Deputy Commissioner, Communications and that Chapter TA, Office of the Deputy Commissioner, Programs, Policy, Evaluation and Communications (TA) is being reissued.

Within the Deputy Commissioner, Programs, Policy, Evaluation and Communications notice is given that the Office of the Actuary (TAC); the Office of Communications (TAL); the Resources Management Staff (TAA–1); the Office Automation Support Staff (TAA–2); the Office of Program Coordination and Planning (TAB); the Office of Policy Analysis and Evaluation (TAQ); the Office of Policy (TAK); and the Office of Disclosure Policy (TAG) are abolished. Notice is also given of the establishment of the Office of Policy and Planning (TAR) and the Office of Program Support (TAS) and the retitling of the Office of Research and Statistics (TAN) as the Office of Research, Evaluation and Statistics.

Finally, notice is given that in the Office of Disability (TAE) the Office of Medical Evaluation (TAEA) is being abolished. The functions are being redistributed among the Office of the Associate Commissioner for Disability, the Division of Medical and Vocational Policy (TAEC) and the Federal Disability Determination Services (TAEB).

The new and reissued Chapters read as follows:

ADD new chapter

Chapter TC—Office of the Chief Actuary

TC.00 Mission
TC.10 Organization
TC.20 Functions

Section TC.00 *The Office of the Chief Actuary*—(Mission): The Office of the Chief Actuary (OCACT) plans and directs a program of actuarial estimates and analyses pertaining to the SSA-administered retirement, survivors and disability insurance programs and supplemental security income program and to projected changes in these programs. Evaluates operations of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund; estimates future operations of the trust funds; conducts studies of program financing; performs actuarial and demographic research on social insurance and related program issues; and estimates future workloads. Provides technical and consultative services to the Commissioner, the Board of Trustees of those two Trust Funds, and, as requested, congressional committees. Appears before congressional committees to provide expert testimony on the actuarial aspects of Social Security issues.

Section TC.10 *The Office of the Chief Actuary*—(Organization): The Office of the Chief Actuary under the leadership of the Chief Actuary, includes:

A. The Chief Actuary (TC).

B. The Deputy Chief Actuary (Short-Range) (TC).

C. The Deputy Chief Actuary (Long-Range) (TC).

D. The Immediate Office of the Chief Actuary (TCA).

E. The Office of Short-Range Actuarial Estimates (TCB).

F. The Office of Long-Range Actuarial Estimates (TCC).

Section TC.20 *The Office of the Chief Actuary*—(Functions):

A. The Chief Actuary (TC) is directly responsible to the Commissioner for carrying out OCACT's mission and for providing supervision to the major components of OCACT.

B. The Deputy Chief Actuary (Short-Range) (TC) assists the Chief Actuary in carrying out his/her OCACT-wide responsibilities and performs other duties as prescribed.

C. The Deputy Chief Actuary (Long-Range) (TC) assists the Chief Actuary in carrying out his/her OCACT-wide responsibilities and performs other duties as prescribed.

D. The Immediate Office of the Chief Actuary (TCA) provides the Chief Actuary and his/her Deputies with staff assistance on the full range of their responsibilities; provides liaison and coordination; and conducts special actuarial studies and analyses.

E. The Office of Short-Range Actuarial Estimates (TCB) is responsible for planning, directing and coordinating the development of short-range cost estimates for all Social Security programs both under current provisions and proposed changes in law or regulation. The programs for which estimates are prepared include the retirement, survivors and disability insurance program, and the supplemental security income program. Develops special cost analyses involving technical actuarial issues; projects operations of the Trust Funds; provides a variety of data services including data collection, statistical support; and prepares estimates for general fund and interprogram reimbursement.

F. The Office of Long-Range Actuarial Estimates (TCC) is responsible for planning, directing and coordinating the development of long-range cost estimates for the retirement, survivors and disability program both under current provisions and proposed changes in law or regulation. Provides all revenue estimates in both the near-term and the long-term for the retirement, survivors and disability insurance program and in the near-term for the hospital insurance program. Designs the economic, demographic and programmatic assumptions and the methods needed to develop these estimates; analyzes and publishes actuarial research based on projections and actual program experience; and provides authoritative advice to agency policy makers and congressional staffs relating to the long-range actuarial impact of current law and proposed program changes.

ADD new chapter.

Chapter TE—Office of the Deputy Commissioner, Communications

TE.00 Mission
TE.10 Organization
TE.20 Functions

Section TE.00 *The Office of the Deputy Commissioner, Communications*—(Mission): The Office of the Deputy Commissioner, Communications (ODCCOMM) directs a program to develop and preserve working relationships with a wide variety of national organizations, special interest and advocacy groups, the media, other Federal agencies and State and local governments, for purposes of securing understanding, cooperation and acceptance of SSA programs, policies and procedures and for providing avenues of public participation in the decision making processes of SSA. Plans, directs, coordinates, effects and evaluates SSA's nationwide public communications program and activities. Develops public information programs and materials to ensure public knowledge and understanding of protections, rights and responsibilities under the programs administered by SSA. Plans, directs, implements and evaluates SSA's internal communications programs. Directs SSA's Satellite Communications Network activities. Coordinates the non-English communications activities within SSA. Provides a central receipt, control, acknowledgment, response, and referral program for all public inquiries. Serves as the focal point for conducting Focus Groups and coordinates public relations activities for SSA.

Section TE.10 *The Office of the Deputy Commissioner, Communications*—(Organization): The Office of the Deputy Commissioner, Communications, under the leadership of the Deputy Commissioner, Communications, includes:

A. The Deputy Commissioner, Communications (TE).

B. The Assistant Deputy Commissioner, Communications (TE).

C. The Immediate Office of the Deputy Commissioner, Communications (TEA).

D. The Office of Communications Technology (TEB).

1. The Visual Graphics and Community Affairs Staff (TEB1).

2. The Audiovisual Media Operations Staff (TEB2).

E. The Office of Editorial Policy and Communications (TEC).

1. The Editorial Policy and Communications Staff (TEC1).

2. The Special Communications Staff (TEC2).

F. The Office of National Affairs (TEE).

G. The Office of Regional Affairs and Special Projects (TEG).

H. The Office of Public Inquiries (TEH).

1. The Policy, Procedures and Systems Group (TEH1).

2. The Correspondence Analysis and Response Group (TEH2).

Section TE.20 *The Office of the Deputy Commissioner, Communications*—(Functions):

A. The Deputy Commissioner, Communications (TE) is directly responsible to the Commissioner for carrying out ODCCOMM's mission and providing managerial direction to the major components of ODCCOMM.

B. The Assistant Deputy Commissioner, Communications (TE) assists the Deputy Commissioner in carrying out his/her responsibilities and performs other duties as the Deputy Commissioner may prescribe.

C. The Immediate Office of the Deputy Commissioner, Communications (TEA) provides the Deputy Commissioner and Assistant Deputy Commissioner with staff assistance on the full range of their responsibilities.

D. The Office of Communications Technology (TEB) directs and implements technical information communications for the Agency. Develops the Agency's goals and objectives for using the media to

promote SSA programs and policies. Is responsible for the design and production of audiovisual and graphics materials. Utilizes state-of-the-art technological theories, principles and methodologies in determining and creating the most effective means of communicating the Agency's information.

1. The Visual Graphics and Community Affairs Staff (TEB1).

a. Plans, designs and produces Agency display, presentation, media and photographic materials for internal and external public information programs.

b. Produces materials in various media formats for the observance of special ceremonial events.

c. Plans and implements a program of community liaison in the Baltimore/Washington metropolitan area.

2. The Audiovisual Media Operations Staff (TEB2).

a. Plans, develops and directs electronic systems required for the Agency's television and audiovisual productions and management communications.

b. Coordinates all technical activities related to the Agency's television and audiovisual production system.

c. Plans, writes, directs and edits motion picture and television productions covering all aspects of Social Security for public information, SSA training and management information purposes.

d. Plans, designs and coordinates satellite communication programs for SSA and other agencies nationwide.

E. The Office of Editorial Policy and Communications (TEC) directs SSA's information activities to ensure public knowledge and understanding of programs administered by SSA. Develops and evaluates goals, objectives, policies, standards and guidelines for SSA public information needs, and carries out programs to inform the public of the purposes and provisions of SSA-administered programs, program changes and people's rights and responsibilities under these programs. Prepares and determines distribution of a wide variety of public information materials on all phases of SSA-administered programs, evaluates the quality of informational materials to ensure a high-quality product and helps in public affairs training in SSA.

1. The Editorial Policy and Communications Staff (TEC1).

a. Develops and evaluates goals and objectives, policies, standards and guidelines for SSA public information needs. Prepares public information workplans and SSA's National Communications objectives.

b. Provides direction and quality control of information materials for the administration of SSA public affairs and public information programs.

c. Writes, edits and produces a variety of public information materials. Provides advice and consultation to other components on editorial policy and methods of initiating and developing informational programs.

d. Conducts editorial reviews and approves content, format and style of Social Security information materials for use in all media.

e. Plans and conducts a public information management program. Determines public information strategies for a wide variety of public information materials on all phases of SSA-administered programs.

f. Designs and conducts broad evaluation programs, incorporating and coordinating various evaluation methods, techniques and efforts.

2. The Special Communications Staff (TEC2).

a. Directs the internal communications program in SSA. Publishes a variety of informational materials, including a monthly national employee magazine and Central Office Bulletin. Prepares and edits administrative reports and presentations.

b. Provides assistance to and appraises internal communications activities in SSA field organizations. Identifies weaknesses in communications SSA-wide and recommends improvements.

F. The Office of National Affairs (TEE) implements and directs programs designed to develop and preserve working relationships with a wide variety of national organizations, special interest and advocacy groups, other Federal agencies and State and local governments. Presents, explains, advocates and defends the views and objectives of SSA. Provides the avenue for bringing the views and opinions of influential organizations into the Agency. Is responsible for reviewing and considering the validity of SSA-related issues and concerns raised by a variety of external sources and recommending changes or referring the matter to other SSA components for further study. Facilitates operational dealings between these organizations and other SSA components.

G. The Office of Regional Affairs and Special Projects (TEG) provides onsite leadership and direction to the regional SSA public communications program. Analyzes and evaluates regional public communications activities and issues national public communications policies. Plans and coordinates the development of regional policies, directives and procedures concerning the relationships of SSA programs to public and private welfare and community service programs. Oversees the regional public information program. Prepares and disseminates public information materials. Coordinates the development and implementation of regional information and referral programs. Advises the Regional Public Affairs Officers in carrying out SSA public information policy, plans and activities. Provides guidance and assists in interpreting, analyzing and evaluating public communications/public information needs of the regions. Performs research to assess the public's and SSA employees' reactions to, and perceptions of, policies, products and services through content analysis and other evaluation studies/activities.

H. The Office of Public Inquiries (TEH) provides a central receipt, control, acknowledgment, response and referral program for high priority and other inquiries addressed to SSA Headquarters. Develops correspondence policy and procedure and guide language on recurring topics and issues for use throughout the Agency.

1. The Policy, Procedures and Systems Group (TEH1) develops policy and procedures concerning the style, control, workflow and signature of correspondence and disseminates the information to headquarters components. Performs a pre-release quality review of final replies prepared in the Office of Public Inquiries (OPI) to ensure that they are well-written, accurate and responsive. Designs and administers OPI's electronic correspondence management system and provides support to system users. Directs surveys and analyses to increase the effectiveness of the correspondence workflow process throughout SSA.

2. The Correspondence Analysis and Response Group (TEH2) collects, stores and maintains information needed to respond to congressional, White House and public inquiries. Prepares responses in conformance with SSA standards, policies and procedures. Performs correspondence receipt, screening, imaging, routing and letter-writing functions. Identifies sensitive inquiries and trends and reports them to appropriate officials. Receives and responds to telephone inquiries.

REISSUE chapter.

Chapter TA—Office of the Deputy Commissioner, Programs and Policy

TA.00 Mission

TA.10 Organization
TA.20 Functions

Section TA.00 *The Office of the Deputy Commissioner, Programs and Policy*—(Mission): The Office of the Deputy Commissioner, Programs and Policy (ODCPP) directs the formulation of overall program policy for SSA. Directs the formulation and issuance of program objectives. Directs and manages the planning, development, issuance and evaluation of program and operational policies, standards and instructions for the retirement and survivors insurance, disability insurance and supplemental security income programs. Serves as a focal point for international program policy issues and activities. Oversees Agency hearings and appeals activities. Serves as a focal point for all program-related litigation. Oversees the collection, use and dissemination of both personal and non-personal information to ensure consistency with Agency objectives, law and the expectations of the American public. Provides information on the effects on individuals and the economy of programs operated by SSA and the interactions among these programs, other tax and income-transfer programs and economic and demographic forces. Through an Executive Team, provides executive leadership for unified planning and resource management within ODCPP. Provides leadership to ODCPP's financial, personnel and administrative management programs.

Section TA.10 *The Office of the Deputy Commissioner, Programs and Policy*—(Organization): The Office of the Deputy Commissioner, Programs and Policy under the leadership of the Deputy Commissioner, Programs and Policy includes:

A. The Deputy Commissioner, Programs and Policy (TA).

B. The Assistant Deputy Commissioner, Programs and Policy (TA).

C. The Immediate Office of the Deputy Commissioner, Programs and Policy (TAA).

D. The Office of Policy and Planning (TAR).

E. The Office of Disability (TAE).

F. The Office of Hearings and Appeals (TAH).

G. The Office of International Policy (TAJ).

H. The Office of Research, Evaluation and Statistics (TAN).

I. The Office of Program Benefits Policy (TAP).

J. The Office of Program Support (TAS).

Section TA.20 *The Office of the Deputy Commissioner, Programs and Policy*—(Functions):

A. The Deputy Commissioner, Programs and Policy (TA) is directly responsible to the Commissioner for carrying out the ODCPP mission and for providing general supervision to the major components of ODCPP.

B. The Assistant Deputy Commissioner, Programs and Policy (TA) assists the Deputy Commissioner in carrying out his/her responsibilities and performs other duties as the Deputy Commissioner may prescribe.

C. The Immediate Office of the Deputy Commissioner, Programs and Policy (TAA) provides the Deputy Commissioner with staff assistance on the full range of his/her responsibilities.

D. The Office of Policy and Planning (TAR) provides Agency leadership in the policy-making process and manages all planning activities for the Deputy Commissioner. Serves as Agency liaison with the wider social welfare policy-making community in the public and private sectors, including the Office of Management and Budget, other governmental agencies and private sector committees and groups. In conjunction with the Office of Legislation and Congressional Affairs develops the Agency's legislative program and addresses items of congressional concern. Directs a comprehensive ODCPP program to address policy-related issues. Ensures the integration of the Agency's policy development and analysis activities and its program evaluation and research plans. Conducts broad analyses of major social and economic trends and their impact on social security program policy. Conducts targeted evaluations of the effectiveness and appropriateness of specific current and/or proposed social welfare policy features of programmatic or operational concern. Applies the results of Agency analyses to position the Agency's leaders to participate fully and knowledgeably in various social welfare policy forums (e.g., internal Administration policy debates, congressional hearings and debates, Advisory Board deliberations). Develops and implements the Agency's programmatic litigation strategy and directs the management of all related litigation activities within SSA. Assures programmatic support to legislative planning activities. Provides staff support to the ODCPP Executive Team.

E. The Office of Disability (TAE) develops, coordinates and evaluates the disability program and issues related operational policies, standards and procedures. Develops and issues policies and guidelines for use by State and Federal or private contractor providers which implement the disability provisions of the Social Security Act, as amended. Ensures that interrelated program policy and procedural areas are coordinated.

F. The Office of Hearings and Appeals (TAH) holds hearings and issues decisions as part of the SSA appeals process. Directs a nationwide field organization which conducts impartial hearings and makes decisions on appealed determinations involving retirement, survivors, disability, health insurance, black lung and supplemental security income benefits. Performs central office reviews of decisions.

G. The Office of International Policy (TAJ) serves as SSA's focal point for international program policy matters and for its participation in the international Social Security community. Serves as liaison to international agencies and associations which deal with Social Security matters. Negotiates international Social Security (totalization) agreements with foreign governments and develops policies and procedures to implement the agreements. Develops and implements policies and procedures relating to the operation of the Social Security program outside the United States. Provides training programs and technical consultation on Social Security and related fields to Social Security officials and other experts outside the United States. Serves as liaison with other Federal agencies, such as the Department of State and the Department of the Treasury, on Social Security matters outside the United States.

H. The Office of Research, Evaluation and Statistics (TAN) is responsible for providing information on the effects on individuals and the economy of programs operated by SSA and the interactions among these programs, other tax and income-transfer programs and economic, social and demographic forces. Plans and directs a continuing program of economic and social research to evaluate the effectiveness of national policies in meeting desired program outcomes. Plans and directs studies and surveys to evaluate the effectiveness of policy development, implementation and program outcomes of the disability, retirement and survivors and supplemental security income programs.

I. The Office of Program Benefits Policy (TAP) develops, coordinates and evaluates the retirement and survivors insurance and supplemental security income programs and issues related operational policies, standards and instructions. Develops and issues policies and guidelines for use by State and Federal organizations which implement supplemental security income provisions. Develops

agreements with the States that govern State supplementation programs, Medicaid eligibility, data exchange programs, food stamps and fiscal reporting processes.

J. The Office of Program Support (TAS) provides leadership in overseeing the Agency's system of programmatic instructions, notices to the public and technical documents. Develops and maintains standards governing the translation of policy decisions into operational policies, procedures and notices. Responsible for the Agency's Regulatory Program, including development of SSA's Regulatory Plan and the Agency's portion of the Unified Agenda of Federal Regulations. Oversees the Agency's implementation of policies which utilize technologies in providing service to the public and provides program management of such technological applications. Assures programmatic support to legislative implementation activities. Develops and interprets SSA policy governing requests for disclosure of information from Agency records under the provisions of the Privacy Act and the Freedom of Information Act. Sponsors and supports ODCPP Interdisciplinary Teams established to address cross-cutting policy issues and initiatives. Designs, implements and maintains automated information and communications systems ODCPP-wide.

Subchapter TAR—Office of Policy and Planning

TAR.00 Mission
TAR.10 Organization
TAR.20 Functions

Section TAR.00 *The Office of Policy and Planning*—(Mission): The Office of Policy and Planning provides Agency leadership in the policy-making process and manages all planning activities for the Deputy Commissioner. Serves as Agency liaison with the wider social welfare policy-making community in the public and private sectors, including the Office of Management and Budget, other governmental agencies and private sector committees and groups. In conjunction with the Office of Legislation and Congressional Affairs develops the Agency's legislative program and addresses items of congressional concern. Directs a comprehensive ODCPP program to address policy-related issues. Ensures the integration of the Agency's policy development and analysis activities and its program evaluation and research plans. Conducts broad analyses of major social and economic trends and their impact on social security program policy. Conducts targeted evaluations of the effectiveness and appropriateness of specific current and/or proposed social welfare policy features of programmatic or operational concern. Applies the results of Agency analyses to position the Agency's leaders to participate fully and knowledgeably in various social welfare policy forums (e.g., internal Administration policy debates, congressional hearings and debates, Advisory Board deliberations). Develops and implements the Agency's programmatic litigation strategy and directs the management of all related litigation activities within SSA. Assures programmatic support to legislative planning activities. Provides staff support to the ODCPP Executive Team.

Section TAR.10 *The Office of Policy and Planning*—Organization): The Office of Policy and Planning, under the leadership of the Associate Commissioner for Policy and Planning, includes:

A. The Associate Commissioner for Policy and Planning (TAR).

B. The Deputy Associate Commissioner for Policy and Planning (TAR).

C. The Immediate Office of the Associate Commissioner for Policy and Planning (TAR).

Section TAR .20 *The Office of Policy and Planning*—(Functions):

A. The Associate Commissioner for Policy and Planning (TAR) is directly responsible to the Deputy Commissioner, Programs and Policy for carrying out OPP's mission and providing managerial direction to OPP.

B. The Deputy Associate Commissioner for Policy and Planning assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Policy and Planning (TAR) provides the Associate Commissioner with staff assistance on the full range of his/her responsibilities.

1. Serves as Agency liaison with the wider social welfare policy-making community in the public and private sectors, including the Office of Management and Budget, other governmental agencies and private sector committees and groups.

2. In conjunction with the Office of Legislation and Congressional Affairs develops the Agency's legislative program and addresses items of congressional concern.

3. Directs a comprehensive ODCPP program to address policy-related issues, ensuring the integration of the Agency's policy development and analysis activities and its program evaluation and research plans.

4. Conducts broad analyses of major social and economic trends and their impact on social security program policy.

5. Conducts targeted evaluations of the effectiveness and appropriateness of specific current and/or proposed social welfare policy features of programmatic or operational concern. Applies the results of Agency analyses to position the Agency's leaders to participate fully and knowledgeably in various social welfare policy forums.

6. Develops and implements the Agency's programmatic litigation strategy and directs the management of all related litigation activities within SSA.

7. Assures programmatic support to legislative planning activities.

8. Provides staff support to the ODCPP Executive Team.

Subchapter TAE—Office of Disability

TAE.00 Mission
TAE.10 Organization
TAE.20 Functions

Section TAE.00 *The Office of Disability*—(Mission): The Office of Disability (OD) plans, develops, evaluates and issues the operational and administrative appeals process policies, standards and instructions for the SSA administered disability programs. Develops and promulgates policies and guidelines for use by State, Federal or private contractor providers which implement the disability provisions of the Social Security Act as amended. Provides operational policy advice, technical support and management direction to central office, regional office and field components in the administration of the disability programs. Evaluates the effects of proposed legislation and legislation pending before Congress to determine the impact on the disability programs. Ensures that interrelated policy areas are coordinated. Processes State agency workloads on a temporary or transitional basis.

Section TAE.10 *The Office of Disability*—(Organization): The Office of Disability under the leadership of the Associate Commissioner for Disability, includes:

A. The Associate Commissioner for Disability (TAE).

B. The Deputy Associate Commissioner(s) for Disability (TAE).

C. The Immediate Office of the Associate Commissioner for Disability (TAE).

D. The Federal Disability Determination Services (TAEB).

E. The Division of Medical and Vocational Policy (TAEC).

F. The Division of Field Disability Operations (TAEE).

G. The Division of Disability Process Policy (TAEG).

H. The Division of Disability Program Information and Studies (TAEH).

I. The Division of Employment and Rehabilitation Programs (TAEJ).

Section TAE.20 *The Office of Disability*—(Functions):

A. The Associate Commissioner for Disability (TAE) is directly responsible to the Deputy Commissioner, Programs and Policy for carrying out OD's mission and provides general supervision to the major components of OD.

B. The Deputy Associate Commissioner(s) for Disability (TAE) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Disability (TAE) provides the Associate Commissioner and the Deputy Associate Commissioner(s) with advisory services and staff assistance on the full range of their responsibilities and coordinates the administrative and program activities of OD components.

D. The Federal Disability Determination Services (TAEB):

1. Develops and adjudicates disability determinations either temporarily as help for one or more Disability Determination Services (DDS) or as a transition until a permanent alternative case processing operation is fully operational in the event that SSA must assume the disability determination function for a State because of noncompliance with regulations and guidelines, or voluntary withdrawal.

2. Pilot tests new work processes, procedures and systems prior to nationwide implementation; validates and conducts useability tests on new and/or revised systems processes; evaluates new or revised disability adjudication policies for national consistency and practical application; and conducts special studies and policy reviews required for management purposes.

3. Reviews and makes disability decisions on applications for disability under Title II and Title XVI of the Social Security Act on initial applications, on reconsideration requests and continuing disability.

4. Screens disability applicants for, and makes referrals to, vocational rehabilitation (VR) agencies; develops and evaluates medical/vocational evidence; and arranges for procurement and payment of such evidence, as required.

5. Reviews State hearing officer and Federal hearing officer decisions; prepares decisions on foreign claims and revises hearing officers' determinations in accordance with the regulations at 404.918 and 416.1418; participates in hearing process studies; and prepares statistical and narrative reports and recommendations for training and policy and procedural changes based on case review and analysis or study findings.

6. In conjunction with the Division of Medical and Vocational Policy, provides medical consultation required in the formulation of medical evaluation policies and guides. Conducts medical reviews of evidence for purposes of adjudication of medical aspects of claims, as part of an evaluation of the application of policies and procedures and/or as part of a study to develop new medical policies, guides and training.

E. The Division of Medical and Vocational Policy (TAEC).

1. Develops broad medical concepts and policies for the administration of the Title II and Title XVI programs, and provides consultation for research evaluating impairment severity and disability.

2. Provides leadership and professional direction to Regional Medical Officers and consultants, and to State Disability Determination Services (DDS) medical personnel engaged in Title II and Title XVI related activities.

3. Provides medical consultation required in the formulation of medical evaluation policies and guides and develops orientation and training programs for medical personnel in regional offices and State DDS's.

4. Develops, evaluates, implements and maintains medical policy for deciding disability claims for all body systems to be used at all adjudicative levels.

5. Develops, evaluates, implements and maintains policy for deciding disability claims, including such areas as residual functional capacity, medical improvement review standard and other continuing disability issues, onset, duration, weighing of evidence and other issues affecting disability claims at all adjudicative levels.

6. Develops, evaluates, implements and maintains policy for all vocational issues, such as age, education, work experience the vocational rules and work evaluations which are used to decide disability claims at all adjudicative levels.

7. Develops, evaluates, implements and maintains all policy used to decide disability in childhood disability claims, including the childhood Listings of Impairments, individualized functional assessment and functional equivalency for all adjudicative levels.

8. Coordinates recommendations concerning which court decisions should be appealed; coordinates development of responses to interrogatories and court orders; and ensures that policies and procedures are changed to reflect specific court orders and legal precedents.

F. The Division of Field Disability Operations (TAEE).

1. Provides national guidance for the administrative aspects of the disability determination function whether administered through State DDS, contracted out to the private sector, or accomplished by designated SSA organizational components.

2. Develops pertinent policies, regulations and procedures by establishing standards and guides for performance; monitoring performance; initiating corrective action where needed; coordinating workloads and administering the funds for the DDSs, etc. Conducts such studies and reviews as are necessary to the disability determination function.

3. Works through SSA regional offices, interested national organizations and other SSA central office components to accomplish objectives or, in special situations, works directly with the component performing the disability determination function.

4. Plans, coordinates and manages the Office of Disability systems related activities, including DDS and Federal Disability Determination Services automation, information resource management, expert systems, development of user specifications, and installation and testing of hardware, networks and communications links for DDSs.

5. Analyzes, plans, distributes and monitors all DDS funding on a State-by-State basis. This includes establishing and monitoring workload and productivity targets for each DDS.

G. The Division of Disability Process Policy (TAEL).

1. Develops procedures and instructions for the disability provisions of other programs including certain Title XVI and XVIII provisions unique to the disability programs. Maintains the integrity of the consultative examination process by developing regulations and conducting oversight activities.

2. Develops and issues the policies, procedures and instructions relating to the development of nonmedical evidence and the processing of initial disability claims and fraud situations. Develops policy guidelines and technical procedures for the Continuing Disability Review process and oversees

this process. Prepares Office of Disability positions for response to court suits against SSA on disability cases.

3. Develops the procedures and instructions which define the administrative appeals process, including policies and procedures for the disability hearings process. Develops notice policy and issues language and forms for use in disability claims and notices including foreign language and Braille notices.

4. Carries out professional relations efforts in support of SSA's efforts to gain support from professional medical associations. Maintains liaison and assists with professional relations efforts to gain the support of nonvocational rehabilitation advocacy groups, Federal, State and local agencies and the public and provides guidance and assistance on disability professional relations issues to the SSA regional and Disability Determination Services' field networks.

H. Division of Disability Program Information and Studies (TACH).

1. Conducts studies on the disabled population and recipients relative to specific operational/administrative program issues.

2. Designs evaluation systems for and evaluates demonstration projects.

3. Develops and maintains data bases for statistical activities and program information. Provides recurring and specialized reports, and coordinates information requirements.

I. The Division of Employment and Rehabilitation Programs (TAEJ).

1. Implements the provisions of the Social Security Act which call for the referral of beneficiaries and recipients to the State or alternate vocational rehabilitation (VR) providers, evaluates VR provider services, reimburses VR providers for successful rehabilitations, ensures that client participation in a program is appropriate and meets the requirements of the Act and develops proposals and plans for new VR initiatives.

2. Implements and evaluates test models for delivering rehabilitation, job placement and post-employment services and for making appropriate referrals to public and private agencies. Administers contracts to support projects.

3. Develops initiatives to promote public understanding and use of work incentives through enhanced outreach activities and by building networks with community-based agencies and service providers.

4. Prepares and revises regulations, operating policies and training materials. Develops proposals and plans for new work incentives.

5. Develops procedures and instructions for implementation of the drug addiction and alcoholism referral and monitoring provisions. Administers agreements implementing the provisions.

6. Maintains liaison and assists professional relations efforts to gain the support of private advocacy groups, Federal, State and local agencies and the public and provides guidance and assistance on disability professional relations issues to the SSA regional and Disability Determination Services' field networks.

Subchapter TAH Office of Hearings and Appeals

TAH.00 Mission
TAH.10 Organization
TAH.20 Functions

Section TAH.00 *The Office of Hearings and Appeals*—(Mission): The Office of Hearings and Appeals (OHA) administers the nationwide hearings and appeals program for SSA. Provides the basic mechanisms through which individuals and organizations dissatisfied with determinations affecting their rights to and amounts of benefits or their participation in programs under the Social Security Act may administratively appeal these determinations in accordance with the requirements of the Administrative Procedure and Social Security Acts. OHA includes a nationwide field organization staffed with Administrative Law Judges (ALJs) who conduct impartial hearings and make decisions on appeals filed by claimants, their representatives, providers-of-service institutions and others under the Social Security Act. The Appeals Council of OHA impartially reviews ALJ decisions, either on the Appeals Council's own motion or at the request of the claimant, and renders the Commissioner's final decision when review is taken. Reviews new court cases to determine whether the case should be defended on the record or the Commissioner should seek voluntary remand, and reviews final court decisions in light of the programmatic and administrative implications involved and makes recommendations as to whether appeal should be sought. Provides advice and recommendations on Social Security Administration program policy and related matters, including proposed Social Security Rulings.

Section TAH.10 *The Office of Hearings and Appeals*—(Organization): The Office of Hearings and Appeals, under the leadership of the Associate Commissioner for Hearings and Appeals, includes:

A. The Associate Commissioner for Hearings and Appeals (TAH).

B. The Deputy Associate Commissioner for Hearings and Appeals (TAH).

C. The Immediate Office of the Associate Commissioner for Hearings and Appeals (TAH) which includes:

1. The Executive Secretariat (TAH–1).
2. The Special Counsel Staff (TAH–2).

D. The Office of the Chief Administrative Law Judge (TAHA).

1. The Division of Field Operations and Liaison (TAHA1).
2. The Division of Field Practices and Procedures (TAHA2).
3. The Vocational Expert and Medical Advisor Staff (TAHA3).
4. The Division of Medicare Part B (TAHA4).

E. The Offices of the Regional Chief Administrative Law Judges (TAH–F1—TAH–FX).

F. The Office of Appellate Operations (TAHB), which includes the Executive Director who also serves as Deputy Chair of the Appeals Council, the Appeals Council and its Administrative Appeals Judges, Appeals Officers, a Deputy Director to the Executive Director, and a Director of Operations.

1. The Operations Management, Analysis and Coordination Staff (TAHB1).
2. The Division of Program Support (TAHB2).
3. The Medical Support Staff (TAHB3).
4.–22. The Disability Program Branches 1–19 (TAHB4–9 and TAHBA–Q).
23.–24. The Court Case Preparation and Review Branches 1–2 (TAHBR–S).
25. The Division of Retirement and Survivors Insurance, Supplemental Security Income and Health Insurance (TAHBT).

G. The Office of Policy, Planning and Evaluation (TAHC).

1. The Division of Litigation Analysis and Implementation (TAHC1).
2. The Division of Planning and Evaluation (TAHC2).
3. The Division of Policy (TAHC3).

H. The Office of Management (TAHE).

1. The Equal Employment Opportunity Staff (TAHE1).
2. The Division of Congressional and Public Inquiries (TAHE2).
3. The Division of Budget and Financial Management (TAHE3).
4. The Division of Materiel Resources (TAHE4).
5. The Division of Systems Resources (TAHE5).
6. The Division of Management Analysis and Employee Development (TAHE6).

Section TAH.20. The Office of Hearings and Appeals—(Functions):

A. The Associate Commissioner of Hearings and Appeals (TAH) is directly responsible to the Deputy Commissioner for Programs and Policy for carrying out OHA's mission of holding hearings and rendering decisions on appeals filed under Titles II, XVI, and XVIII of the Social Security Act, as amended, and Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended. The Associate Commissioner is responsible for planning, directing, managing, coordinating and maintaining the integrity of the nationwide SSA hearings and appeals system. As Chair of the Appeals Council, the Associate Commissioner is responsible for the decisions issued at the final administrative level of the Social Security Administration.

B. The Deputy Associate Commissioner for Hearings and Appeals (TAH) assists the Associate Commissioner in carrying out his/her OHA-wide responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Hearings and Appeals (TAH) provides the Associate Commissioner and the Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

1. The Executive Secretariat (TAH–1) is the liaison and coordination point between the Office of the Associate Commissioner and major SSA and OHA components. It serves as the primary point of contact with the Office of the Commissioner, ODCPP, other Deputy and Associate Commissioners and other top SSA staff for sensitive and urgent matters and to ensure OHA support to those officials.

2. The Special Counsel Staff (TAH–2) serves as professional legal advisor to the Associate Commissioner, OHA, and to other members of the OHA Executive Staff on all matters pertaining to the legislative process, labor relations law, ethics and administrative law, with special emphasis on the Administrative Procedure Act.

D. The Office of the Chief Administrative Law Judge (TAHA) serves as the principal consultant and advisor to the Associate Commissioner on all matters concerning the Administrative Law Judge (ALJ) hearing function. Under the executive leadership of the Associate Commissioner, the Chief Administrative Law Judge manages and administers a hearings organization consisting of a nationwide network of hearing offices and supporting regional offices nationwide. The Chief Administrative Law Judge has primary responsibility for maintaining effective channels of communication between the Associate Commissioner and the Regional Chief Administrative Law Judges (RCALJs) and the ALJ corps. Formulates and develops broad policies and objectives and establishes program goals for OHA's ALJ corps. Maintains a continuous review of all aspects of OHA field operations and implements improvements where needed. Is responsible for developing and maintaining the procedures for effective operation of the hearings process. Provides management oversight for all administrative and managerial functions involved in the day-to-day operations of field activities; coordinates regional and hearing office activities; prepares, reviews and drafts decisions and dismissals in Medicare Part B cases; and conducts liaison with other government and private agencies on issues falling within the Office's area of responsibility.

1. The Division of Field Operations and Liaison

(TAHA1) serves as liaison for the field with all headquarters components, and provides advice, guidance and counsel to field units in all areas of identified needs. Assists the Chief Administrative Law Judge in setting field office objectives. Analyzes field resource needs, including staffing, equipment, training and travel and recommends resource allocations to meet those needs. Represents the field on ongoing or ad hoc workgroups, task forces, etc.

2. The Division of Field Practices and Procedures (TAHA2) formulates, develops, communicates and oversees field practices and procedures governing the conduct of the hearing process and other program operations issues in response to the Associate Commissioner, the Chief Administrative Law Judge, or other OHA management officials, as well as a result of court orders and/or changes in the law and regulations.

3. The Vocational Expert and Medical Expert Staff (TAHA3) formulates, develops and oversees the national program for recruitment and use of Vocational Experts and Medical Experts at hearings before Administrative Law Judges. On an ongoing basis, monitors Regional and Hearing Office operations regarding the program and when appropriate provides guidance and makes necessary changes.

4. The Division of Medicare Part B (TAHA4) processes Medicare Part B cases on receipt from Health Care Financing Administration (HCFA) contractors. Researches the law, regulations and relevant policy to resolve case-related issues as necessary. Drafts all decisions where an on-the-record decision is requested and drafts decisions where hearings are held by an Administrative Law Judge who is attached directly to the division. Provides technical and staff assistance to the Chief Administrative Law Judge and all Administrative Law Judges concerning the adjudication of Medicare Part B cases.

E. Each Office of the Regional Chief Administrative Law Judge (TAH–F1—TAH–FX) acts on behalf of the Associate Commissioner and the Chief Administrative Law Judge at the respective regional levels on all matters involving the hearings process and is directly responsible for the effective execution of the hearings process within the region. Provides direction, leadership, management and guidance to the regional office staff and to the hearing offices in the region, including Administrative Law Judges and their staffs. Is responsible for the regional implementation of national policies, goals, objectives, and procedures pertaining to the hearings process, and formulates policies, goals, and objectives for the ALJs and support staff in the region. Develops and recommends OHA action with respect to allegations of unfair hearings within the region. Is responsible for evaluating the effectiveness of regional and hearing office management. Reviews hearing practices and procedures to detect trends, training needs, and operational problems. Investigates allegations of improper employee conduct, and makes recommendations as to necessary corrective action. Has responsibility for the acquisition and distribution of human and materiel resources within the region. Coordinates operational and administrative activities with SSA regional offices, other SSA regional components, State Agencies, and others, as necessary. Establishes a program to maintain ongoing communication with congressional offices on issues of mutual interest and ensures timely and accurate responses to congressional inquiries. Ensures that court remands are processed efficiently within the region, and coordinates with the Office of the Chief Counsel in the region to foster OHA compliance with court requirements. Serves as an expert advisor on substantive issues within the region, and upon request by ALJs, provides advice and guidance in matters relating to adjudicating cases under the provisions of the Social Security Act, as amended. Reviews and analyzes fee petitions from attorneys and representatives of claimants for the provision of services at the hearing level, and authorizes payment of fees in those cases where the fees are beyond

the authority of a hearing office Administrative Law Judge.

F. The Office of Appellate Operations (TAHB) consists of the Appeals Council and its support staff. In accordance with a direct delegation of authority from the Commissioner of Social Security, the Appeals Council is the final level of administrative review under the Administrative Procedure Act for claims filed under Titles II, XVI, and XVIII of the Social Security Act, as amended, and Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended. The Executive Director of the Office of Appellate Operations (OAO) is the Deputy Chair of the Appeals Council and is responsible for the day-to-day operations of a program of administrative review of ALJ decisions issued under the provisions of the Social Security Act. Upon claimant request or on the Appeals Council's own motion, OAO reviews ALJ decisions and dismissals involving claims for benefits filed under Titles II and XVI of the Social Security Act, as amended, health insurance cases under Title XVIII of the Act, including claims for individual enrollment to participate under Parts A and/or B of Title XVIII and claims by hospitals, skilled nursing facilities and independent laboratories seeking certification or continued certification under the Act, and claims under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, to determine if jurisdiction exists, and, if so, takes appropriate action. The Appeals Council identifies cases which represent broad policy matters or have national impact, conducts oral hearings and acts to resolve the issues in such cases, establishing binding adjudicatory standards and decisional principles that govern OHA's adjudicatory process. Tracks and analyzes court case trends and disseminates information to guide adjudicators with respect to case law, to implement an effective appeals strategy, and to identify areas and make recommendations as to policies which need to be developed and/or clarified, new regulations which need to be developed, or clarifying legislation which should be sought.

1. The Operations Management, Analysis and Coordination Staff (TAHB1) provides a comprehensive program of management analysis and evaluative services to assist the Appeals Council in adjudicating cases, to assist the Executive Director of OAO, and to assist the support staff of the Appeals Council in performing their program review function.

2. The Division of Program Support (TAHB2) under the direction of the Director of Operations of OAO, provides support services to the Appeals Council, including reconstruction of lost claim files and receiving and analyzing fee petitions. Provides reprographic services and controls transcription of hearing cassettes in preparation of the official answer to civil actions filed against the Commissioner of SSA.

3. The Medical Support Staff (TAHB3) consists of staff physicians, consulting physicians, and support staff and provides expert professional judgment to the Appeals Council on individual disability and health insurance claims. Provides informational, advisory and consultant services to the Appeals Council and its support staff on matters of interpretation and application of national policy on SSA and OHA disability criteria and regulations. It reviews disability evaluation training manuals for consistency and national uniformity, represents OHA in contacts with appropriate professional affiliations, and coordinates with the Office of Disability and International Operations all matters of joint interest in the area of medical disability evaluation.

4.–22. The Disability Program Branches 1–19 (TAHB4–9 and TAHBA-Q) serve as support staff providing advice to the Appeals Council in its review of ALJ decisions and dismissals involving claims for benefits. Following an analysis of the record and any additional evidence and/or argument submitted, and applying a thorough knowledge of the Act, Regulations, Rulings and applicable case law, the staff in the program review branches examine hearing decisions and other final actions of the Administrative Law Judges, and requests for Appeals Council review, and make recommendations to the Appeals Council as to what action should be taken on cases pending before the Council. Analyze and recommend action on cases remanded by the courts and those referred by the Office of General Counsel for consideration of whether remand should be requested at the Commissioner's motion. Recommend to OGC defense on the record of certain litigated cases if further administrative action is not warranted.

23.–24. The Court Case Preparation and Review Branches 1–2 (TAHBR-S) serve as a support staff to OAO. Prepare remand orders and affidavits and related correspondence on cases in which a complaint has been filed in Federal court. Within published guidelines, recommend to OGC defense on the record for certain litigated cases if further administrative action is not warranted. Analyze and recommend action on cases remanded by the courts. Prepare all court transcripts and control and maintain all certified records of claims at the civil actions level.

25. The Division of Retirement and Survivors Insurance, Supplemental Security Income and Health Insurance (TAHBT) serves as a support staff and provides advice to the Appeals Council in its review of decisions and dismissals involving claims to establish entitlement to Health Insurance benefits under Title XVIII of the Social Security Act, including claims for individual enrollment to participate under Parts A and/or B of Title XVIII and claims by hospitals, skilled nursing facilities and independent laboratories seeking certification under the Social Security Act, decisions and dismissals involving claims to establish entitlement and the amount of benefits in old-age, survivors and disability under Title II of the Social Security Act; and claims to establish eligibility for and benefits payable in Title XVI cases. Following an analysis of the record and any additional evidence and/or argument submitted, and applying a thorough knowledge of the Act, Regulations, Rulings and applicable case law, examines hearing decisions and other final actions of the ALJ, and requests for Appeals Council review, and makes recommendations to the Administrative Appeals Judges as to what action should be taken on cases pending before the Council whether before or after a civil action is filed.

G. The Office of Policy, Planning and Evaluation (TAHC) plans, analyzes and develops OHA-wide policy for the hearings, appeals and civil actions processes. Responsible for SSA policy with respect to claimant representation and fees charged for their services. Manages the overall OHA hearings and appeals process policy communications system. Is responsible for OHA activity with respect to Social Security regulations, including developing an OHA position with respect to program regulations proposed by SSA components. Monitors OHA's implementation of program regulations governing the hearings and appeals process. Plans and conducts a comprehensive OHA-wide evaluation program designed to support OHA policy and regulatory initiatives and measure the overall effectiveness of the nationwide hearings and appeals process. Provides advice and guidance throughout OHA on matters involving program policies, planning and evaluation. Coordinates policy, planning and evaluation matters within OHA, with OGC, other SSA components, with HCFA and with other Federal agencies and private organizations. Develops and coordinates program training in conjunction with appropriate OHA, SSA, HCFA and OGC components. Develops and implements an appeals strategy, in conjunction with other OHA components, that identifies the issues and types of cases which OHA believes should be appealed. Captures court trend information for dissemination to other components to assist in formulating the Agency's litigation strategy and improving the adjudication process.

1. The Division of Litigation Analysis and Implementation (TAHC1) develops and implements, in conjunction with other OHA components, an appeals strategy that identifies the issues and types of cases which OHA believes should be appealed. Captures court trend information for dissemination to other components to assist in formulating the Agency's litigation strategy and improving the adjudication process. Develops and maintains a compendium of circuit court case law with systems-based access. Tracks pending class actions, forecasts potential workload impact, and makes recommendations to workload components regarding workload impact. Uses court trend information to identify and make appropriate recommendations with respect to areas in which policies need to be developed and/or clarified, new regulations need to be developed, or clarifying legislation should be sought. Prepares and updates significant court case requirements used in reviewing court cases. Uses court trend information to identify areas where additional training is needed or other measures are needed to improve defensibility. Advises OHA officials of significant cases and trends and of litigation issues which may require revision of operating instructions, and assists with the preparation of the instructions. Coordinates OHA's views on proposed Social Security Acquiescence Rulings. In response to OHA-identified cases and to requests for appeals recommendations from ODCPP, obtains the views of affected OHA components and formulates an OHA position on appeal. Maintains liaison with OGC and ODCPP to coordinate the settlement of class actions and class action implementation. In coordination with other OHA components, develops instructions for OHA implementation of class action orders, monitors implementation and serves as a focal point for questions from OHA adjudicators. Responds to requests from OGC and ODCPP regarding information about OHA operations requested in the course of litigation. Coordinates OHA's response to discovery requests. Administers and coordinates the Freedom of Information Act and Privacy Act provisions for OHA.

2. The Division of Planning and Evaluation (TAHC2) develops, coordinates and conducts a comprehensive OHA-wide program of studies and analyses of the application of and compliance with SSA and OHA policies and procedures in all phases of OHA's hearings and appeals processes and SSA's claimant representation process and the quality of results achieved. Provides advice and assistance to other OHA components in designing and implementing appropriate systems and procedures for collecting, recording, analyzing and evaluating data to assess the quality of work emanating from the hearings and appeals processes. Conducts studies of policy implementation within OHA. Identifies problem areas and deficiencies in policies. Develops techniques and systems for conducting evaluations of the substantive and technical aspects of claims throughout OHA.

3. The Division of Policy (TAHC3) plans, develops and coordinates the preparation of regulations, policies and guidelines for the hearings, appeals, civil actions and claimant representation processes under Titles II, XVI and XVIII of the Social Security Act, as amended, and under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended. Ensures that operating procedures and instructions developed to implement the hearings and appeals process conform with SSA benefit program policy and OHA hearings and appeals process policy. Provides advisory services, consultation, and staff assistance to other components of OHA. Maintains ongoing liaison with SSA, HCFA, OGC and others with respect to program, legislative and policy matters. Reviews current and developing trends in administrative law and litigation; analyzes and prepares policy recommendations; and develops long-range and short-range plans for hearing and appeals policy matters and OHA's implementation of benefit program policy matters. Develops and coordinates program training in conjunction with other OHA, SSA, and OGC program components.

H. The Office of Management (TAHE) provides administrative support to the Associate Commissioner for all management and systems related activities for OHA. Coordinates with the Chief Administrative Law Judge with respect to management, financial, materiel resources and systems support functions which affect field operations. Has direct line authority for all management and administrative support functions for Headquarters' components of OHA and in coordination with the Chief ALJ, for all field components of OHA including its regional offices (ROs) and hearing offices nationwide. Coordinates and integrates the management programs and administrative planning initiatives of OHA into the long-range goals and objectives of SSA. Monitors OHA's progress toward meeting established Agency goals and makes recommendations for needed adjustments to enable OHA to meet these goals. Plans, directs and implements an Equal Employment Opportunity (EEO) program within OHA. Plans, directs, administers and evaluates the congressional and public inquiries activities for OHA. Plans, directs and administers a comprehensive nationwide management analysis program to identify areas requiring improvement to enhance the quality and effectiveness of management practices and to assess trends in management.

1. The Equal Employment Opportunity Staff (TAHE1) is responsible for OHA's EEO program. Plans, develops, implements and monitors OHA's affirmative action program, and administers the EEO complaint process for OHA headquarters. Provides guidance for, and monitoring of, OHA regional EEO programs.

2. The Division of Congressional and Public Inquiries (TAHE2) formulates policies, procedures and guidelines for use in responding to high priority correspondence from the public and congressional offices. Serves as the correspondence liaison staff with the Commissioner's Office, the Office of Communications and other SSA components.

3. The Division of Budget and Financial Management (TAHE3) plans, develops and coordinates OHA's budget and financial management programs, advising the Director of OM and/or the Associate Commissioner of the financial impact of all decisions which may affect the program and administrative operations of the Agency. Formulates, justifies and presents OHA's annual and multi-year budget submissions. Reviews and analyzes budget requests submitted by OHA components and formulates OHA's financial operating plans and budget projections. Works with SSA budget officials to obtain the resources necessary to meet OHA goals and objectives. Develops all necessary applications for generating budget data

and financial management reports. Executes and administers a financial management system, integrating resource management controls. Ensures that employment ceilings and obligations and expenditures of funds are in conformance with authorized allotments and allowances. Administers the travel and payroll function for all OHA headquarters components and ALJs nationwide.

4. The Division of Materiel Resources (TAHE4) plans, directs and provides administrative support services in the areas of space planning and management; forms and records management; property management; equipment control and maintenance; graphic arts; safety and self-protection, including emergency planning; security; procurement and supply; laboring services; mail and messenger services; motor vehicle operations; and communications systems management. Organizes, controls and coordinates procurement and property management activities, including development of specifications and requisitions for procurement of property, inspections of property owned or leased by the United States Government and property accountability. Administers an occupational health and safety program in compliance with established health and safety concepts, regulations, standards and procedures.

Administers security programs and inspections, and coordinates with local law enforcement officials to ensure protection of OHA property and personnel.

5. The Division of Systems Resources (TAHE5) is the focal point for all OHA systems-related activities. Provides office automation and data processing support to all OHA components. Develops OHA's long-range systems goals and objectives. Provides computer programming and systems support for the planning, design, development and implementation of all OHA automated data processing systems. Serves as liaison with the Office of Systems on all matters pertaining to systems, and ensures that OHA systems efforts are undertaken, that projects underway are carried out successfully and that OHA participates fully in the SSA systems strategy.

6. The Division of Management Analysis and Employee Development (TAHE6) advises the Director of OM and the Associate Commissioner in all management areas involving management practices, management analysis, operational analysis and the resolution of management/employee concerns and problems. Plans, designs and administers evaluation programs and tracking systems to assess the efficiency and effectiveness of OHA operations in the field and headquarters. Serves as the focal point of contact for coordinating the General Accounting Office, the Office of the Inspector General, SSA and other studies of OHA operations. Coordinates, develops and publishes administrative delegations of authority for OHA. Administers OHA's Employee Development Program. Develops and administers an OHA-wide program to identify training needs; develops mechanisms to meet identified training needs; and assesses the effectiveness of the OHA training program in meeting the training needs of managers, supervisors and employees.

Subchapter TAJ—Office of International Policy

TAJ.00 Mission
TAJ.10 Organization
TAJ.20 Functions

Section TAJ.00 *The Office of International Policy*—(Mission): The Office of International Policy serves as SSA's focal point for international program policy matters and for its participation in the international Social Security community. Serves as liaison to international agencies and associations which deal with Social Security matters. Negotiates international Social Security (totalization) agreements with foreign governments, and develops policies and procedures to implement the agreements. Develops and implements policies and procedures relating to the operation of the Social Security program outside the United States. Provides programs of training and technical consultations on Social Security and related fields to Social Security officials and other experts outside the United States. Serves as liaison with other Federal agencies, such as the Department of State and the Department of the Treasury, on Social Security program matters outside the United States.

Section TAJ.10 *The Office of International Policy*—(Organization): The Office of International Policy, under the leadership of the Associate Commissioner of the Office of International Policy includes:

A. The Associate Commissioner for International Policy (TAJ).

B. The Immediate Office of the Associate Commissioner for International Policy (TAJ).

C. The Division of International Program Policy and Agreements (TAJA).

D. The International Activities Staff (TAJB).

Section TAJ.00 *The Office of International Policy*—Functions):

A. The Associate Commissioner for International Policy (TAJ) is directly responsible to the Deputy Commissioner, Programs and Policy for carrying out the OIP mission and provides supervision to the major components of OIP.

B. The Immediate Office of the Associate Commissioner for International Policy (TAJ) provides the Associate Commissioner with staff assistance on the full range of his/her responsibilities, helps coordinate the activities of OIP components, and acts as the SSA or United States Government representative to international organizations and world bodies involved with international social security matters.

C. The Division of International Program Policy and Agreements (TAJA).

1. Plans, develops and evaluates program policies and procedures relating to foreign claims administration, foreign evidence and beneficiaries and modifies policies and procedures to meet program requirements in foreign countries.

2. Negotiates international Social Security (totalization) agreements with foreign governments and takes the actions necessary to secure their approval, develops policies and procedures to implement agreements and administers the coverage provisions of the agreements.

3. Issues certificates of coverage to United States-based workers who are on temporary assignments in countries with which the United States has international totalization agreements to exempt them (and their employers) from foreign social security taxes.

4. Interacts with various SSA components, other Federal agencies and governments of other countries on all foreign program matters, including evaluation of foreign social insurance systems for alien nonpayment purposes, benefit payment delivery and restrictions, acceptability of foreign evidence, program integrity and mutual assistance arrangements with other countries.

5. Conducts legislative and regulatory reviews, studies and analyses of all matters relating to international policy and international Social Security agreements and takes necessary legislative or regulatory action on foreign program and agreement problems requiring such remedy.

D. The International Activities Staff (TAJB).

1. Develops and coordinates individualized programs of consultation and observation for foreign Social Security officials and experts in related fields on the United States Social Security system.

2. Coordinates SSA's technical assistance to foreign countries in designing and/or modernizing existing social security systems.

3. Serves as SSA's focal point in disseminating information about the United States Social Security program to foreign organizations.

4. Plans and coordinates SSA's international travel plan, including providing logistical support and administering all activities relating to control of official passports for SSA staff traveling abroad.

5. Plans, implements and manages SSA-hosted international conferences, meetings and seminars.

Subchapter TAN—Office of Research, Evaluation and Statistics

TAN.00 Mission
TAN.10 Organization
TAN.20 Functions

Section TAN.00 *The Office of Research, Evaluation and Statistics*—(Mission): The Office of Research, Evaluation and Statistics is responsible for providing information on the effects on individuals and the economy of programs operated by SSA and the interactions among these programs, other tax and income-transfer programs and economic, social and demographic forces. Plans and directs a continuing program of economic and social research to evaluate the effectiveness of national policies in meeting desired program outcomes. Plans and directs studies and surveys to evaluate the effectiveness of policy development, implementation and program outcomes of the disability, retirement and survivors and supplemental security income programs.

Section TAN.10 *The Office of Research, Evaluation and Statistics*—(Organization): The Office of Research, Evaluation and Statistics under the leadership of the Associate Commissioner for Research, Evaluation and Statistics, includes:

A. The Associate Commissioner for Research, Evaluation and Statistics (TAN).

B. The Deputy Associate Commissioner for Research, Evaluation and Statistics (TAN).

C. The Immediate Office of the Associate Commissioner for Research, Evaluation and Statistics (TAN).

D. The Publications Staff (TANA).

E. The Division of Program Analysis (TANB).

F. The Division of Economic Research (TANC).

G. The Division of Earnings Statistics and Analysis (TANE).

H. The Division of Retirement, Survivors, Disability Insurance Research Statistics (TANG).

I. The Division of SSI Analysis/ Management Statistical Support (TANH).

J. The Disability Research Staff (TANJ).

Section TAN.20 *The Office of Research, Evaluation and Statistics* (Functions):

A. The Associate Commissioner for Research, Evaluation and Statistics (TAN) is directly responsible to the Deputy Commissioner, Programs and Policy for carrying out ORES' mission, and providing general supervision to the major components of ORES.

B. The Deputy Associate Commissioner for Research, Evaluation and Statistics (TAN) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Research, Evaluation and Statistics (TAN) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities and helps coordinate the activities of ORES components.

D. The Publications Staff (TANA).

1. Advises ORES on the development, organization and presentation of research and statistical studies.

2. Publishes and distributes these studies to national and international audiences.

3. Assesses informational needs of SSA staff, staff in other Government agencies, the social science research community and the public for data and findings from the ORES research program.

E. The Division of Program Analysis (TANB).

1. Plans, designs and conducts surveys of program target groups and performs policy-relevant research.

2. Analyzes the impact of proposed policy options, legislative proposals and special high-priority issues and prepares briefing materials for SSA administrators.

3. Plans, conducts and publishes the results of cross-national research on social security programs worldwide.

F. The Division of Economic Research (TANC).

1. Plans, directs and executes issue-oriented research to provide information about relationships between the Social Security program, the economy and other aspects of society.

2. Interprets changing demographic and economic trends as they relate to the broad field of economic security and to overall economic and social policy.

3. Studies such major areas as: Social Security financing, economic impacts of Social Security, income maintenance, effect of Social Security on lifetime income redistribution, alternative measures of income adequacy, and labor market and retirement behavior.

G. The Division of Earnings Statistics and Analysis (TANE).

1. Plans, coordinates and directs the preparation of statistical and analytical data pertaining to earnings, employment and employer classification. Analyzes these data with emphasis on demographic, economic, social and program characteristics. These data are used to support program and legislative planning and serve as important sources for program evaluation, research and administrative information within SSA, and for research by other Federal and State and local government agencies, universities, and private research organizations.

2. Provides ORES and other SSA researchers with support in the development of social science survey data linked with SSA administrative record data.

H. The Division of Retirement, Survivors and Disability Insurance Research Statistics (TANG).

1. Plans, coordinates and directs the preparation of statistical and analytical data pertaining to RSDI claims and benefits provisions of Title II of the Social Security Act. Analyzes these data with emphasis on demographic, economic, social and program characteristics. These data are used to support program and legislative planning and serve as important sources for program evaluation, research and administrative information within SSA, and for research by other Federal and State and local government agencies, universities and private research organizations.

I. The Division of SSI Analysis/ Management Statistical Support (TANH).

1. Plans, coordinates and directs the preparation of statistical and analytical data pertaining to the Supplemental Security Income provisions of Title XVI of the Social Security Act. Analyzes these data with emphasis on demographic, economic, social and program characteristics. These data are used to support program and legislative planning and serve as important sources for program evaluation, research and administrative information within SSA and for research by other Federal and State and local government agencies,

universities and private research organizations.

2. Provides management statistical services to SSA operating and policy components, including such activities as the development of general purpose and customized field office samples, development of work sampling systems and quality assurance systems, and the design and analysis of operational pilot studies. Provides support for the development and use of mathematical models and statistical methods.

J. The Disability Research Staff (TANJ).

1. Plans, directs and implements a wide range of studies and analyses, utilizing data from surveys and administrative records, on the national disabled population, disability applicants and disability beneficiaries.

2. Develops research in response to DI program issues.

3. Maintains and develops research surveys and administrative data files used in the analysis of disability data.

Subchapter TAP—Office of Program Benefits Policy

TAP.00 Mission
TAP.10 Organization
TAP.20 Functions

Section TAP.00 *The Office of Program Benefits Policy*—(Mission): The Office of Program Benefits Policy provides SSA-wide leadership and direction to the development, coordination and promulgation of RSI and SSI policies and procedures. Develops, coordinates and evaluates the program and issues the operational policies, standards and instructions for the RSI and SSI programs. Develops and issues policies and guidelines for use by State and Federal organizations which implement the SSI provisions. Develops agreements with the States and other agencies that govern State supplementation programs, Medicaid eligibility, data exchange programs, food stamps and fiscal reporting processes.

Section TAP.10 *The Office of Program Benefits Policy*—(Organization): The Office of Program Benefits Policy, under the leadership of the Associate Commissioner for Program Benefits Policy includes:

A. The Associate Commissioner for Program Benefits Policy (TAP).

B. The Deputy Associate Commissioner(s) for Program Benefits Policy (TAP).

C. The Immediate Office of the Associate Commissioner for Program Benefits Policy (TAP).

D. The Division of Benefit Continuity (TAPA).

E. The Division of Coverage (TAPB).

F. The Division of Entitlement (TAPC).

G. The Division of Payment Policy (TAPE).

H. The Division of Program Requirements Policy (TAPG).

I. The Division of Program Management, Research and Demonstration (TAPH).

Section TAP.20 *The Office of Program Benefits Policy*—(Functions):

A. The Associate Commissioner for Program Benefits Policy (TAP) is directly responsible to the Deputy Commissioner, Programs and Policy for carrying out OPBP's mission and provides general supervision to the major components of OPBP.

B. The Deputy Associate Commissioner(s) for Program Benefits Policy (TAP) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Program Benefits Policy (TAP) provides the Associate Commissioner and Deputy Associate Commissioner(s) with staff assistance on the full range of their responsibilities and helps coordinate the activities of OPBP components.

D. The Division of Benefit Continuity (TAPA).

1. Plans, develops and evaluates the operational policies, standards and instructions and provides guidance to field components on issues related to the retirement and survivors insurance program and common to one or more of the other SSA programs in the area of benefit continuity.

2. Develops, issues and evaluates guidelines, directives, instructions and operating procedures for such areas as work notices, annual and monthly earnings tests, suspensions and terminations, governmental pension offset and enforcement and beneficiary compliance, overpayments, underpayments, recovery and waiver, garnishment, payment delivery, onsite review, accounting, representative payee selection, advance notice, capability/incapability and use and misuse.

E. The Division of Coverage (TAPB).

1. Plans, develops and evaluates the operational policies, standards and instructions and provides guidance to field components on issues related to the retirement and survivors insurance program and common to one or more of the other SSA programs in the area of coverage.

2. Develops and issues guidelines, directives, instructions and operating procedures for such coverage and employment subject areas as wages, coverage and exceptions, anti-poverty programs, earnings records and earnings records discrepancies, coverage aspects of international agreements, self-employment status and income, religious exemptions, State and local coverage and statutes of limitations.

F. The Division of Entitlement (TAPC).

1. Plans, develops and evaluates the operational policies, standards and instructions and provides guidance to field components on issues related to the retirement and survivors insurance program and common to one or more of the other SSA programs in the area of entitlement.

2. Develops and issues guidelines, directives, instructions and operating procedures for such entitlement subject areas as applications, insured status, veterans' benefits, railroad employment, family relationships, dependency and support, evidence, school attendance, indexing of earnings, primary insurance amount computation, reduction of benefits for age, family maximums, saving clauses, recomputations and recalculations of benefits, period of disability computations, awards, disallowances and abatements of claims, earnings records, claims application forms, administrative finality, adjudicative standards, evidence, documentation, conspicuous characteristics and social security numbers.

G. The Division of Payment Policy (TAPE).

1. Plans, develops and evaluates the operational policies, standards and instructions and provides guidance to field components on issues related to the supplemental security income program in the area of payment policy.

2. Develops and issues guidelines, directives, instructions and operating procedures for such payment policy subject areas as redeterminations, SSI notices, SSI appeals and overpayments/underpayments matching and interfaces, mandatory and optional State supplemental payments, pass through of rate increases, monitoring of fiscal information systems with the States, maintenance of State agreements, food stamps, Medicaid, State assistance reimbursements, energy assistance, State data exchange systems and postadjudicative issues.

H. The Division of Program Requirements Policy (TAPG).

1. Plans, develops and evaluates the operational policies, standards and instructions and provides guidance to field components on issues related to the supplemental security income program in the area of program requirements policy.

2. Develops and issues guidelines, directives, instructions and operating procedures for such program requirements subject areas as individual/couple/child eligibility status, in-kind income, support and maintenance, in-kind living arrangements, institutionalization, special classifications of income and medical social services, generic income issues, deeming of income and resources, computation of income, certain grandfather clauses, special sponsored alien deeming, color of law alien status, presence in the United States, generic resources issues, trust policy, filing for other benefit requirements and property essential for self-support.

I. The Division of Program Management, Research and Demonstration (TAPH).

1. Designs, manages and conducts studies to measure and evaluate the impact and effectiveness of the supplemental security income and the retirement and survivors insurance program policies, procedures and programs on the population.

2. Establishes, maintains and operates statistical program data base extract systems to provide program information for internal and external use; develops functional specifications and programs; validates output; and assists requestors in verifying final product.

3. Manages demonstration cooperative agreements and initiatives to target special populations and program issues. Evaluates the effectiveness of demonstrations and initiatives and develops new and revised policies and procedures to implement program improvements.

4. Coordinates and directs assignments and projects related to program redesign and systems modernization efforts, including development of program specifications for expert systems. Formulates, plans and implements computer programs and other automation activities in support of program policy, research and administrative needs.

5. Develops and issues guidelines, directives, instructions and operating procedures for SSI applications policy, including protective filing and advance filing and SSI work incentive provisions, including plans for achieving self support and Section 1619 provisions.

Subchapter TAS—Office of Program Support

TAS.00 Mission
TAS.10 Organization
TAS.20 Functions

Section TAS.00 *The Office of Program Support* (Mission): The Office of Program Support provides leadership in overseeing the Agency's system of programmatic instructions, notices to the public and technical documents. Develops and maintains standards governing the translation of strategic policy decisions into operational policies, procedures and notices. Responsible for the Agency's Regulatory Program, including development of SSA's Regulatory Plan and the Agency's portion of the Unified Agenda of Federal Regulations. Oversees the Agency's implementation of policies which utilize technologies in providing service to the public. Assures programmatic support to legislative implementation activities. Develops and interprets SSA policy governing requests for disclosure of information from Agency records under provisions of the Privacy Act and the Freedom of Information Act. Sponsors and supports ODCPP Interdisciplinary Teams established to address cross-cutting policy issues and initiatives. Designs, implements and maintains automated information and communications systems ODCPP-wide. Section TAS.10 *The Office of Program Support* (Organization): The Office of Program Support, under the leadership of the Associate Commissioner for Program Support includes:

A. The Associate Commissioner for Program Support (TAS).

B. The Deputy Associate Commissioner for Program Support (TAS).

C. The Immediate Office of the Associate Commissioner for Program Support (TAS).

Section TAS.20 *The Office of Program Support* (Functions):

A. The Associate Commissioner for Program Support (TAS) is directly responsible to the Deputy Commissioner, Programs and Policy for carrying out OPS's mission and providing managerial direction to OPS.

B. The Deputy Associate Commissioner for Program Support (TAS) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner of the Office of Program Support(TAS) provides the Associate Commissioner with staff assistance on the full range of his/her responsibilities.

1. Provides leadership in overseeing the Agency's system of programmatic instructions, notices to the public and technical documents. Develops and maintains standards governing the translation of strategic policy decisions into operational policies, procedures and notices.

2. Responsible for the Agency's Regulatory Program.

3. Oversees the Agency's implementation of policies which utilize technologies in providing service to the public.

4. Assures programmatic support to legislative implementation activities.

5. Develops and interprets SSA policy governing requests for disclosure of information from Agency records under provisions of the Privacy Act and the Freedom of Information Act.

6. Sponsors and supports ODCPP Interdisciplinary Teams.

7. Designs, implements and maintains automated information and communications systems ODCPP-wide.

Dated: June 19, 1996.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 96–17244 Filed 7–5–96; 8:45 am]

BILLING CODE 4190–29–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–106]

Initiation of Section 302 Investigation and Request for Public Comment: Practices of the Government of India Regarding Patent Protection for Pharmaceuticals and Agricultural Chemicals

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation; request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302(b)(1) of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2412(b)(1)), with respect to certain acts, policies and practices of the Government of India that may result in the denial of patents and exclusive marketing rights to U.S. individuals and firms involved in the development of innovative pharmaceutical and agricultural chemicals products. The United States alleges that these acts, policies and practices are inconsistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement), administered by the World Trade Organization (WTO). USTR

invites written comments from the public on the matters being investigated.

DATES: This investigation was initiated on July 2, 1996. Written comments from the public are due on or before noon on Monday, August 12, 1996.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Joseph Papovich, Deputy Assistant USTR for Intellectual Property, (202) 395–6864, or Thomas Robertson, Assistant General Counsel, (202) 395–6800.

SUPPLEMENTARY INFORMATION: Section 302(b)(1) of the Trade Act authorizes the USTR to initiate an investigation under chapter 1 of Title III of the Trade Act (commonly referred to as "'section 301") with respect to any matter in order to determine whether the matter is actionable under section 301. Matters actionable under section 301 include, *inter alia*, the denial of rights of the United States under a trade agreement, or acts, policies, and practices of a foreign country that violate or are inconsistent with the provisions of, or otherwise deny benefits to the United States under, any trade agreement.

On July 2, 1996, having consulted with the appropriate private sector advisory committees, the USTR determined that an investigation should be initiated to determined whether certain laws and regulations of India affecting the grant of patents and exclusive marketing rights in innovative pharmaceutical and agricultural chemical products are actionable under section 301(a). Article 70 of the TRIPs Agreement requires all countries that do not provide product patent protection for pharmaceuticals and agricultural chemicals on January 1, 1995, to establish by that time a means by which applications for patents for such inventions can be filed, which is commonly referred to as a "mailbox." These applications are to be reviewed when such protection is ultimately provided in accordance with the transitional provisions of the TRIPs Agreement. This provisions allows "mailbox" applicants to preserve their original filing date for the purposes of novelty and nonobviousness considerations in patentability determinations. Article 70 of the TRIPs Agreement also requires those WTO members delaying the grant of pharmaceutical and agricultural chemical product patent protection to grant "mailbox" applications up to five years of marketing exclusivity if such applicants are granted a patent and marketing approval in another WTO member and marketing approval in the member providing marketing exclusivity. India has not yet established a permanent formal "mailbox" system for the filing of pharmaceutical and agricultural chemical product patent applications, nor has it established a system for the grant of exclusive marketing rights. The Indian Government did attempt to establish such systems in early 1995 (although the marketing exclusively system appeared flawed), but the Indian legislature failed to act in the area and they expired. United States Government officials have repeatedly raised this issue with their Indian counterparts, but have received no satisfactory response. Indian's failure to establish such systems permanently in a way that gives legal assurances to the parties that file "mailbox" applications would appear to be inconsistent with the obligations set forth in Article 70 of the TRIPs Agreement.

Investigation and Consultations

As required in section 303(a) of the Trade Act, the USTR has requested consultations with the Government of India regarding the issues under investigation. The request was made pursuant to Article 4 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Article 64 of the TRIPs Agreement (to the extent in incorporates by reference Article XXII of the General Agreements on Tariff and Trade 1994). If the consultations do not result in a satisfactory resolution of the matter, the USTR will request the establishment of a panel pursuant to Article 6 of the DSU.

Under section 304 of the Trade Act, the USTR must determine within 18 months after the date on which this investigation was initiated, or within 30 days after the conclusion of WTO dispute settlement procedures, whichever is earlier, whether any act, policy, or practice or denial of trade agreement rights described in section 301 of the Trade Act exists and, if that determination is affirmative, the USTR must determine what action, if any, to take under section 301 of the Trade Act.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the acts, policies and practices of India which are the subject of this investigation, the amount of burden or restriction on U.S. commerce cause by these acts, policies and practices, and the determinations required under section 304 of the Trade Act. Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and must be filed on or before noon on Monday, August 12, 1996. Comments must be in English and provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, Room 223, Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, D.C. 20508.

Comments will be placed in a file (Docket 301–106) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contresting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection. An appointment to review the docket (Docket No. 301–106) may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 10:00 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 96–17242 Filed 7–5–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waivers of Compliance

In accordance with 49 CFR §§ 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from Thrall Car Manufacturing Company a request for a waiver of compliance with certain requirements of Federal regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Thrall Car Manufacturing Company

[Docket No. SA–96–2]

Thrall Car seeks a waiver of compliance from certain sections of 49 CFR Part 231, Railroad Safety Appliance Standards. Thrall Car is requesting a permanent waiver of the provisions of 49 CFR Part 231 which requires that the bottom side handhold be located not more than (21) inches from top tread of sill step—.

Thrall Car built 629 covered hopper cars beginning in 1995 which have the bottom side handhold located (21–3/8) inches from the top tread of sill step.

Car series:
CCBX 58595 thru 59000 = 406 cars.
FMLX 62001 " 62040 = 40 cars.
OCPX 70901 " 70944 = 44 cars.
UTCX 49148 " 49287 = 139 cars.

49 CFR 231.27(e)(3) requires in part that the bottom side handholds be located not more than (21) inches from top tread of sill step—.

Thrall Car state that this discrepancy originated with the introduction of a new car in June of 1995 and continued until discovery. Design corrections have been made with all subsequent covered hopper cars.

Thrall Car request to continue the use of these subject cars as they do not believe this condition presents a safety concern due to the small variance from the standard.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number—SA–96–2 and must be submitted in triplicate to the Docket Clerk, Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received before August 19, 1996, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street S.W., Washington, D.C. 20590.

Issued in Washington, DC, on July 1, 1996.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 96–17298 Filed 7–5–96; 8:45 am]

BILLING CODE 4910–06–P

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3402

Applicant: Burlington Northern Railroad Company

Mr. William G. Peterson,
Director Signal Engineering,
1900 Continental Plaza,
777 Main Street,
Fort Worth, Texas 76102–5384.

The Burlington Northern Railroad Company seeks approval of the proposed discontinuance and removal of the traffic control system (TCS), associated with the installation of an automatic block signal (ABS) system with track warrant control, on the single main track between Appleton, Minnesota, milepost 578 and Hettinger, South Dakota, milepost 925.9, on the Willmar and Yellowstone Divisions, Appleton, Mobridge, and Hettinger Subdivision, a distance of approximately 348 miles. The proposed changes include: conversion of "Big Stone Power Plant" and "West Aberdeen" Control Points to remote-controlled interlockings, replacement of all power-operated and spring switches with circuit controller monitored hand-operated switches, removal of all switch electric locks, and modification of signal placement and spacing.

The reasons given for the proposed changes are that reduced traffic patterns do not justify the high cost to maintain an aging TCS, and this application will retain the safety of train operations provided by an ABS system while providing economic relief from having to maintain the additional plant associated with TCS.

BS–AP–No. 3403

Applicant: Burlington Northern Railroad Company

Mr. William G. Peterson,
Director Signal Engineering,
1900 Continental Plaza,
777 Main Street,
Fort Worth, Texas 76102–5384.

The Burlington Northern Railroad Company seeks approval of the proposed reduction to the limits of the automatic block signal system, on the single main track, between "P.A. Tower", milepost 109.9 and Grand Forks, milepost 107.6, North Dakota, Fargo Division, Grand Forks Subdivision; consistirig of the discontinuance and removal of automatic block signals 107.9, 107.8, 108.3. 108.4, and 109.2, and conversion of automatic block signal 109.3 to a distant approach signal.

The reasons given for the proposed changes are the reduction in train movements over the trackage and to provide a more efficient operation.

Rules Standards & Instructions Application (RS&I–AP)–No. 1101

Applicant: Florida East Coast Railway Company

Mr. Charles R. Lynch,
Vice President-Maintenance,
One Malaga Street,
P.O. Box 1048,
St. Augustine, Florida 32085–1048.

The Florida East Coast Railway Company (FEC) seeks temporary relief from the requirements of 49 CFR, Part 236, Section 236.566 of the Rules, Standard and Instructions, for a 30 day period, to the extent that FEC be permitted to operate non-operational automatic train control (ATC) equipped locomotives, over FEC's entire ATC territory by way-side signal indications of the traffic control system, to accommodate modifications to both the onboard and roadway ATC equipment.

Applicant's justification for relief: To implement changes to the ATC system code rates in order to enhance and improve the reliability of the system, associated with the designed elimination of cab signal flips.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on July 1, 1996.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 96–17297 Filed 7–5–96; 8:45 am]

BILLING CODE 4910–60–P

Research and Special Programs Administration

[Docket No. P–96–5W; Notice 1]

CNG Transmission Company; Petition for Waiver

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of petition for waiver.

SUMMARY: CNG Transmission Company (CNGT) has petitioned the Research and Special Programs Administration (RSPA) for a waiver from compliance with provisions of 49 CFR 192.611(a) requiring confirmation of the maximum allowable operating pressure (MAOP) by hydrostatic testing. Instead, CNGT requests they be permitted to requalify the MAOP by an alternative approach involving a combination of hydrostatic testing and inspection by an instrumented internal inspection device commonly known as a "smart pig". The need to confirm the MAOP results from a recent increase in the population density along certain segments of a 26-inch diameter gas transmission line in Ohio.

DATES: Written comments submitted in duplicate must be received on or before August 7, 1996. Interested persons should submit as part of their written comments all the material that is considered relevant to any statement of fact or argument made.

ADDRESSES: Comments may be mailed or hand delivered to the Dockets Unit [DHM–20], Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590–0001. Comments should specify the Docket No. stated in the heading of this document; the original and two copies should be submitted. Dockets may be reviewed and copied between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Albert C. Garnett, (202) 366–2036, Office of Pipeline Safety, regarding the subject matter of this notice or the Dockets Unit, (202) 366–5046, for copies of this notice or other materials in the docket.

SUPPLEMENTARY INFORMATION:

Background

By correspondence dated April 23, 1996, CNGT requested a waiver from compliance with the MAOP confirmation or revision provisions of 49 CFR 192.611(a) for pipeline segments where the hoop stress corresponding to the established MAOP is not commensurate with the present class location. The requested waiver applies to ten segments (totaling 10.91 miles) and located on CNGT's transmission line TL–400.

Transmission line TL–400 begins at the Lebanon Compressor Station in Warren County, Ohio, and transports gas eastward to the Gilmore Compressor station in Tuscarawas County, Ohio, a distance of 163.19 miles. The 26-inch diameter transmission line was designed and tested to operate at an MAOP of 850 psig.

The ten line segments that are the subject of this waiver request operate at a hoop stress of greater than 40% of the specified minimum yield strength (SMYS) and are located in areas where a recent increase in population indicated a change in their class location. Accordingly, CNGT complied with the provisions of § 192.609 and completed a study of the subject segments to determine: (a) their present class location; (b) a comparison of their original design, construction, and testing procedures with the provisions required for their present class location; (c) their physical condition ascertained from available records; (d) their operating and maintenance history; (e) their maximum actual operating pressure and corresponding operating hoop stress; and (f) the extent of the area affected by the population increase and other factors which may limit further expansion of the more densely populated area.

CNGT determined from the study required by § 192.609 (a) and (f) that the recent expansion of the population density had changed the subject segments from Class 1 locations to Class 2 locations. CNGT also determined from the study required by § 192.609 (b)–(e) that the ten segments were in good physical condition. Consequently, in accordance with the provisions of § 192.611 (a) and (c), CNGT must confirm or revise the originally established MAOP (850 psig) within the 18-month period ending October 19, 1996.

The hydrostatic test which established the MAOP at 850 psig was performed at a pressure of 953 psig, although a test pressure of 935 psig would have been sufficient under the provisions of § 192.619(a)(2)(ii). After October 19, 1996, these segments may not be operated at an MAOP above 762 psig (a reduction of 88 psig) due to their reclassification as Class 2 locations. However, CNGT seeks to maintain the MAOP at 850 psig in order to meet their gas delivery commitments. Consequently, requalification by hydrostatic testing to a minimum pressure of 1,063 psig would be in accordance with § 192.611(a)(3).

TL–400 is a single long transmission line that transports gas from third parties to local distribution companies and to underground storage facilities. CNGT states that it would be unreasonable to reduce the MAOP and thereby lose gas throughput that would prevent them from meeting their contractual obligations. CNGT also asserts that hydrostatically testing all ten segments would require the line to be taken out of service for a minimum of 16 days. Additionally, CNGT asserts that the acquisition and disposal of the water used in the hydrostatic testing would be burdensome.

Alternative Approach

Instead of hydrostatically testing all ten segments, CNGT requested a waiver permitting an alternative approach which they believe would achieve both an equivalent level of safety in the subject segments and a complete evaluation of the 163.19 mile transmission line. Additionally, CNGT expects the proposed approach to be considerably less costly and to reduce the number of days that the transmission line would be out of service.

CNGT's proposal consists of two alternatives supplemented by a work plan (dated May 14, 1996). Although, not set out as such in the petition, the alternatives are identified for the purposes of this document as *Alternative A* and *Alternative B:*

Alternative A consists of the following:

(A1) Conducting a close interval pipe-to-soil corrosion survey (CIS) of the 163.19 mile line;

(A2) Hydrostatic testing four segments (totaling 4.96 miles). If no leak occurs, or only a *specified minor leak*[1] occurs and is remediated, the hydrostatic testing is completed;

(A3) Inspecting the 163.19 mile line with a geometry pig followed by a high resolution "smart pig." Any defects impacting the MAOP are promptly remediated. All defects detected by the "smart pig" are cross-referenced with the CIS to correct any deficiencies in the cathodic protection system, all before October 19, 1996; and

(A4) Inspecting the 163.19 mile line with a geometry pig followed by a high resolution "smart pig" and remediation of any defects impacting the MAOP, all in the year 2001.

Alternative B would be performed only if, during the implementation of (A2), a leak *other than a specified minor leak*[2] occurs. *Alternative B* consists of the following:

(B1) If a leak, *other than a specified minor leak* occurs during (A2) and is remediated, the hydrostatic testing of the four segments is completed;

(B2) Inspecting the 163.19 mile line with a geometry pig followed by a high resolution "smart pig." Any defects impacting the MAOP are promptly remediated. All before October 19, 1996; and

(B3) The period to qualify the MAOP is extended until (B3) is completed. All defects detected by the "smart pig" are cross-referenced with the CIS to correct any deficiencies in the cathodic protection system. Hydrostatic testing and remediation of any leaks occurring in the remaining six segments (totaling 5.95 miles), all before June 30, 1997.

Basis for the Alternative Approach

CNGT's proposed alternative approach is based on the contention that this transmission line is in good physical condition. In the petition, they supported that assertion by providing information on the line's construction, operation, and maintenance history.

CNGT states that the 26-in diameter line is constructed of submerged-arc welded steel pipe that has been joined by welding. The pipe is internally coated with mill-applied liquid epoxy and externally coated with mill-applied coal tar enamel. The line was hydrostatically tested and commissioned in December 1968. Cathodic protection is provided by impressed current remote groundbeds and assisted with magnesium anode beds. CNGT states that the 21 test stations used to monitor the level of cathodic protection in the subject segments do not show any areas of low potential. CNGT states that, aside from one failure in 1981 due to third party damage, no other leaks have occurred since the line has been in service. Moreover, during the period 1990 through 1996, the MAOP of six other such segments in this line were requalified by hydrostatic testing under § 192.611(a) without a leak or failure.

The proposed alternative approach expresses the petitioner's confidence that the line is in good physical condition. Any leak *other than a specified minor leak* occurring during the hydrostatic testing of (A2) would trigger the requirement to implement the more costly and time consuming *Alternative B*. Under (B1) and (B3), CNGT would need to hydrostatically test all ten segments required by § 192.611(a). Moreover, under (B2), they would need to inspect the 163.19 mile line with a geometry pig and with a high resolution "smart pig."

RSPA Response

Our review of the petition for waiver showed the following:

(1) CNGT's contention that this particular line is in good physical condition is well supported with information on the pipe, internal and external coatings, cathodic protection, and the transmission line's outstanding leak record;

(2) The provisions of § 192.611(a) for requalification would be only partially waived during (A2), because four of the ten segments (representing 4.96 miles or a 45.46% sampling of the total 10.91 miles) would be hydrostatically tested;

(3) If a leak, *other than a specified minor leak* occurs during the hydrostatic testing of (A2), then under (B3) the remaining six segments would be hydrostatically tested. This would result in compliance with § 192.611(a). Additionally, during (B2) there would be an internal inspection of the complete 163.19 mile transmission line;

(4) Otherwise, during (A3) and (A4), the complete transmission line would be internally inspected during 1996 and internally inspected again during the year 2001;

(5) The implementation of either (A3) or (B2) (the in-line inspection in 1996) would be the first time transmission line TL–400 has been inspected by a "smart-pig;" and

(6) A "smart pig" is capable of detecting certain flaws in the pipe wall that (when interpreted) may disclose defects that jeopardize the safe operation of the gas transmission line . CNGT would run a "smart pig" of the high resolution type, which is considered to be state-of-the-art technology for the identification of pipe wall defects.

In view of the foregoing, it appears that neither *Alternative A* nor its back up, *Alternative B,* would be inconsistent with pipeline safety. Instead, we see the implementation of either alternative as contributing to the safety of this 163.19 mile transmission line. Consequently, RSPA proposes to grant the waiver.

Interested persons are invited to comment on the proposed waiver by submitting their views or arguments with supporting data, if available, in the manner described under the heading **ADDRESSES** (above). All comments received before the date shown under **DATES** (above) will be considered before final action is taken. Late filed comments will be considered as far as practicable. No public hearing is contemplated, but one may be held at a time and place set in a notice in the **Federal Register** if requested by an interested person desiring to comment at a public hearing and raising a genuine issue.

Authority: 49 U.S.C. 60118(c); and 49 CFR 1.53.

Issued in Washington, DC, on July 2, 1996.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 96–17300 Filed 7–5–96; 8:45 am]

BILLING CODE 4910–60–P

[1] *Specified minor leak*—A leak from valve packings, gaskets, threaded fittings, or hydrostatic test equipment; and from localized corrosion pitting on the 26-in line pipe.

[2] *Other than a specified minor leak*—A leak from a crack, crack-like defects, general corrosion, or from any other source (except localized corrosion pitting) on the 26-inch line pipe.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Mutual Holding Companies.

DATES: Written comments should be received on or before September 6, 1996 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0071 and 1550–0072. These submissions may be hand delivered to 1700 G Street, NW. From

9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

Requests for additional information should be directed to Teresa Valocchi, Business Transactions Division, Office of Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7299.

FOR FURTHER INFORMATION CONTACT: Teresa Valocchi, Business Transactions Division, Office of Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7299.

SUPPLEMENTARY INFORMATION:

Title: Mutual Holding Company (No Form).

OMB Number: 1550–0071.

Form Number: Not Applicable.

Abstract: The information collections described herein will apply to mutual holdings companies and their subsidiaries. The collections are necessary (i) to facilitate review of transactions that present special risks, and (ii) to monitor activities that present special risks.

Current Actions: OTS is proposing to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 35.

Estimated Time Per Respondent: 102.4 hours average.

Estimated Total Annual Burden Hours: 3,585 hours.

Title: Mutual Holding Company.

OMB Number: 1550–0072.

Form Number: OTS Forms MCH–1 and MCH–2.

Abstract: The information collection applies to mutual holding companies and their subsidiaries. The collection is necessary to facilitate the review of transactions that present special risks and to monitor activities that present special risks.

Current Actions: OTS is proposing to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 14.

Estimated Time Per Respondent: 375 hours average.

Estimated Total Annual Burden Hours: 5,250 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: July 1, 1996.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 96–17180 Filed 7–5–96; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0101.

Title and Form Number: Eligibility Verification Reports.

a. Old Law Eligibility Verification Report (Surviving Spouse), VA Form 21–0511S.

b. Old Law Eligibility Verification Report (Veteran), VA Form 21–0511V.

c. Section 306 Eligibility Verification Report (Surviving Spouse), VA Form 21–0512S.

d. Section 306 Eligibility Verification Report (Veteran), VA Form 21–0512V.

e. Old Law and Section 306 Eligibility Verification Report (Children Only), VA Form 21–0513.

f. DIC Parent's Eligibility Verification Report, VA Form 21–0514.

g. Improved Pension Eligibility Verification Report (Veteran With No Children), VA Form 21–0516.

h. Improved Pension Eligibility Verification Report (Veteran With Children), VA Form 21–0517.

i. Improved Pension Eligibility Verification Report (Surviving Spouse With No Children), VA Form 21–0518.

j. Improved Pension Eligibility Verification Report (Child or Children), VA Form 21–0519C.

k. Improved Pension Eligibility Verification Report (Surviving Spouse With Children), VA Form 21–0519S.

Type of Review: Extension of a currently approved collection.

Need and Uses: These reports are used by VA regional offices to verify continued eligibility for pension and parents' Dependency and Indemnity Compensation (DIC) and to determine whether adjustments in the rate of payment are necessary. These reports are also used for developing supplemental income and estate information from claimants who have previously filed a formal application for pension or parents' DIC. It would be impossible to administer the pension and parents' DIC programs without the collection of information.

Affected Public: Individuals or households.

Estimated Annual Burden: 406,250 hours.

Estimated Average Burden Per Respondent: 30 minutes per report.

Frequency of Response: Semi-annually.

Estimated Number of Respondents: 751,315.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: June 25, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–17206 Filed 7–5–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: None assigned.

Title and Form Number: Direct Deposit Enrollment, VA Form 24–0296 (Test).

Type of Review: New collection.

Need and Uses: The form will be used to gather the necessary information required to enroll VA Compensation and Pension beneficiaries in the Direct Deposit/Electronic Funds Transfer (DD/EFT) program for recurring benefits payments. The information will be used to process the payment data from VA to the beneficiary's designated financial institution.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,800 hours.

Estimated Average Burden Per Respondent: 2 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 84,000.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–4650. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: June 25, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–17207 Filed 7–5–96; 8:45 am]

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Part II

Department of Housing and Urban Development

Notice of Funding Availability (NOFA) for Supportive Housing for the Elderly

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Notice of Funding Availability (NOFA) for Supportive Housing for the Elderly

[Docket No. FR–4052–N–01]

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability for Fiscal Year (FY) 1996.

SUMMARY: This NOFA announces HUD's funding for supportive housing for the elderly. This document describes the following: (a) the purpose of the NOFA, and information regarding eligibility, submission requirements, available amounts, and selection criteria; and (b) application processing, including how to apply and how selections will be made.

APPLICATION PACKAGE: The Application Package can be obtained from the Multifamily Housing Clearinghouse, P.O. Box 6424, Rockville, MD 20850, telephone 1–800–685–8470 (the TTY number is 1–800–483–2209); and from the appropriate HUD Office identified in appendix A to this NOFA. The Application Package includes a checklist of exhibits and steps involved in the application process.

DATES: The deadline for receipt of applications in response to this NOFA is 4:00 p.m. local time on August 19, 1996. The application deadline is firm as to *date* and *hour*. In the interest of fairness to all applicants, HUD will not consider any application that is received after the deadline. Sponsors should take this into account and submit applications as early as possible to avoid the risk of unanticipated delays or delivery-related problems. In particular, Sponsors intending to mail applications must provide sufficient time to permit delivery on or before the deadline date. Acceptance by a Post Office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

ADDRESSES: Applications must be delivered to the Director of the Multifamily Housing Division in the HUD Office for your jurisdiction. A listing of HUD Offices, their addresses, and telephone numbers is attached as appendix A to this NOFA. HUD will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with an acknowledgement of receipt.

FOR FURTHER INFORMATION CONTACT: The HUD Office for your jurisdiction, as listed in appendix A to this NOFA.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB Control Number 2502–0267. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Purpose and Substantive Description

A. Authority

Section 801 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (Pub. L. 101–625, approved November 28, 1990), amended section 202 of the Housing Act of 1959 (12 U.S.C. 1701q). Section 202 was also amended by the Housing and Community Development Act of 1992 (HCD Act of 1992) (Pub. L. 102–550, approved October 28, 1992), and by the Rescissions Act (Pub. L. 104–19, approved July 27, 1995). The Secretary is authorized to provide assistance to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. HUD provides the assistance as capital advances and contracts for project rental assistance in accordance with 24 CFR part 891. This assistance may be used to finance the construction or rehabilitation of a structure, or acquisition of a structure from the Resolution Trust Corporation (now the Federal Deposit Insurance Corporation (RTC/FDIC), to be used as supportive housing for the elderly in accordance with part 891.

Note that on March 22, 1996, HUD published a final rule (61 FR 11948) that consolidated the regulations for the Section 202 Program of Supportive Housing for the Elderly and the Section 811 Program of Supportive Housing for Persons with Disabilities in 24 CFR part 891.

For supportive housing for the elderly, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, approved April 26, 1996)(Act) provides $ 780,190,000 for capital advances, including amendments to capital advance contracts (not procurement contracts), for housing for the elderly as authorized by section 202 of the Housing Act of 1959, (as amended by the NAHA and HCD Act of 1992), and for project rental assistance, and amendments to contracts for project rental assistance, for supportive housing for the elderly under section 202(c)(2) of the Housing Act of 1959, as amended. In accordance with the waiver authority provided in the Act, the Secretary is extending the determinations made in the Notice published in 61 F.R. 3047 to Fiscal Year 1996 funding by waiving the following statutory and regulatory provision: The term of the project rental assistance contract is reduced from 20 years to a minimum term of 5 years and a maximum term which can be supported by funds authorized by the Act. The Department anticipates that at the end of the contract terms, renewals will be approved subject to the availability of funds. In addition to this provision, the Department will reserve project rental assistance contract funds based on 75 percent rather than on 100 percent of the current operating cost standards for approved units in order to take into account the average tenant contribution toward rent.

Please note that the waiver broadening the eligibility of tenants to persons with incomes at 80 percent of the median or below (61 FR 3047, January 30, 1996) is not being extended to the projects funded in accordance with this NOFA. The statutory provision limiting eligibility to persons with incomes at 50 percent of the median or below remains in effect.

In accordance with an agreement between HUD and the Rural Housing Service (RHS), which facilitates the coordination between the two agencies in administering their respective rental assistance programs, HUD is required to notify RHS of applications for housing assistance it receives. This notification gives RHS the opportunity to comment if it has concerns about the demand for additional assisted housing and possible harm to existing projects in the same housing market area. HUD will consider the RHS comments in its review and project selection process.

B. Allocation Amounts

In accordance with 24 CFR part 791, the Assistant Secretary will allocate the amounts available for capital advances for supportive housing for the elderly. HUD reserves project rental assistance funds based upon 75 percent of the current operating cost standards to support the units selected for capital advances sufficient for minimum 5-year project rental assistance contracts.

The allocation formula for Section 202 funds consists of a measure of the number of one- and two-person elderly renter households with incomes at or below the very low income limit (50 percent of area median family income, as determined by HUD, with an adjustment for household size) that have housing deficiencies.

Based on the allocation formula, HUD has allocated the available capital advance funds as shown on the following chart:

FISCAL YEAR 1996 ALLOCATIONS FOR SUPPORTIVE HOUSING FOR THE ELDERLY

[Fiscal Year 1996 Section 202 Allocations]

Offices	Metropolitan capital advance		Nonmetropolitan capital advance		Totals capital advance	
	Authority	Units	Authority	Units	Authority	Units
New England						
Massachusetts	$16,928,076	209	811,584	10	17,739,660	219
Connecticut	8,469,328	104	811,584	10	9,280,912	114
New Hampshire	3,524,494	55	2,337,888	36	5,862,382	91
Rhode Island	5,056,731	62	811,584	10	5,868,315	72
Total	33,978,629	430	4,772,640	66	38,751,269	496
New York/New Jersey						
New York	46,612,243	574	811,584	10	47,423,827	584
Buffalo	11,833,398	161	2,170,874	29	14,004,272	190
New Jersey	19,404,325	239	0	0	19,404,325	239
Total	77,849,986	974	2,982,458	39	80,832,424	1,013
Mid-Atlantic						
Maryland	6,089,477	88	693,228	10	6,782,705	98
West Virginia	1,547,082	25	1,288,313	21	2,835,395	45
Pennsylvania	15,174,384	201	1,846,426	25	17,020,810	226
Pittsburgh	5,927,904	103	1,460,882	22	8,388,786	125
Virginia	4,786,791	83	1,555,627	27	6,342,418	110
D.C.	6,352,868	89	0	0	6,352,868	89
Total	40,878,506	589	6,844,476	105	47,722,982	694
Southeast/Caribbean						
Georgia	5,480,957	94	2,207,076	38	7,688,033	132
Alabama	4,059,898	72	1,598,816	28	5,658,714	100
Caribbean	4,080,160	50	1,497,853	18	5,578,013	68
South Carolina	3,824,585	59	1,352,145	22	4,976,730	81
North Carolina	5,948,455	97	2,867,705	40	9,816,160	137
Mississippi	1,344,186	25	1,764,272	33	3,108,458	58
Jacksonville	17,575,395	281	1,197,782	19	18,773,177	300
Kentucky	3,714,788	62	1,850,921	31	5,565,709	93
Knoxville	2,526,597	47	862,595	16	3,389,192	63
Tennessee	3,601,685	68	1,266,354	23	4,868,039	89
Total	52,956,706	853	16,465,519	268	69,422,225	1,121
Midwest						
Illinois	20,663,241	262	2,817,536	36	23,480,777	298
Cincinnati	4,878,158	79	615,451	10	5,493,609	89
Cleveland	9,025,257	130	1,300,050	19	10,325,307	149
Ohio	3,649,114	80	1,306,088	21	4,955,202	81
Michigan	9,766,665	138	710,136	10	10,476,801	148
Grand Rapids	3,364,612	56	1,348,633	22	4,713,245	78
Indiana	6,206,555	99	1,687,713	27	7,894,268	126
Wisconsin	7,204,475	104	2,337,209	34	9,541,684	138
Minnesota	6,655,168	92	2,264,831	31	8,919,999	123
Total	71,413,245	1,020	14,387,647	210	85,800,892	1,230
Southwest						
Texas/New Mexico	17,008,273	125	1,918,418	34	8,926,691	159
Houston	4,543,462	80	937,853	16	5,481,315	96
Arkansas	2,288,279	45	1,526,086	30	3,814,365	75
Louisiana	4,443,157	82	1,107,452	20	5,550,609	102
Oklahoma	2,971,733	55	1,374,535	25	4,346,268	80
San Antonio	3,705,807	69	903,813	17	4,609,620	86
Total	24,960,711	456	7,768,157	142	32,728,868	598
Great Plains						
Iowa	2,705,698	46	1,814,317	31	4,520,015	77
Kansas/Missouri	4,572,145	77	1,783,825	31	6,355,970	108
Nebraska	1,403,364	25	1,090,587	19	2,493,951	44

FISCAL YEAR 1996 ALLOCATIONS FOR SUPPORTIVE HOUSING FOR THE ELDERLY—Continued
(Fiscal Year 1996 Section 202 Allocations)

Offices	Metropolitan capital advance		Nonmetropolitan capital advance		Totals capital advance	
	Authority	Units	Authority	Units	Authority	Units
St. Louis	4,970,257	74	1,626,892	24	6,597,149	98
Total	13,651,464	222	5,315,621	105	19,967,085	327
Rocky Mountains						
Colorado	6,296,423	98	2,459,438	41	8,755,861	139
Total	6,296,423	98	2,459,438	41	8,755,861	139
Pacific/Hawaii						
Hawaii						
(Guam)	3,043,440	25	1,217,376	10	4,260,816	35
Los Angeles	33,883,830	425	798,058	10	34,681,888	435
Arizona	4,211,257	75	561,345	10	4,772,603	85
Sacramento	5,725,771	73	781,150	10	6,506,921	83
California	18,885,597	238	1,282,883	17	20,168,480	255
Total	65,749,895	836	4,640,813	57	70,390,708	893
Northwest/Alaska						
Alaska	3,043,440	25	1,217,376	10	4,260,816	35
Oregon	4,990,487	74	1,730,664	27	6,721,151	101
Washington	7,168,921	97	1,521,969	21	8,690,890	118
Total	15,202,848	196	4,470,009	58	19,672,857	254
National Total	402,938,393	5,674	71,106,778	1,091	471,370,274	6,726

C. Eligibility

Private, nonprofit organizations and nonprofit consumer cooperatives are the only eligible applicants under this program. Neither a public body nor an instrumentality of a public body is eligible to participate in the program. No organization shall participate as Sponsor or Co-sponsor in the filing of application(s) for a capital advance in a single geographical region in this fiscal year in excess of that necessary to finance the construction, rehabilitation, or acquisition (acquisition permitted only with RTC/FDIC properties) of 200 units of housing and related facilities for the elderly. This limit shall apply to organizations that participate as Co-sponsors regardless of whether the Co-sponsors are affiliated or nonaffiliated entities. In addition, the national limit for any one applicant is 10 percent of the total units allocated in all HUD Offices. Affiliated entities that submit separate applications shall be deemed to be a single entity for the purposes of these limits. No single application may propose more than the number of units allocated to a HUD Office or 125 units, whichever is less. Reservations for projects will not be approved for less than 5 units.

D. Initial Screening, Technical Processing, and Selection Criteria

1. Initial Screening

HUD will review applications for Section 202 capital advances that are received by HUD at the appropriate address by 4:00 p.m. local time on August 19, 1996, to determine if all parts of the application are included. HUD will not review the content of the application as part of initial screening. HUD will send deficiency letters, by certified mail and facsimile, informing Sponsors of any missing parts of the application. Sponsors must correct such deficiencies within 8 calendar days from the date of the deficiency letter. Any document requested as a result of the initial screening may be executed or prepared within the deficiency period, except for Forms HUD–92015–CAs, Articles of Incorporation, IRS exemption rulings, Forms SF–424, Board Resolution committing the minimum capital investment, and site control documents (all of these excepted items must be dated no later than the application deadline date).

2. Technical Processing

All applications will be placed in technical processing upon receipt of the response to the deficiency letter or at the end of the 8-day period. These applications will undergo a complete analysis. If a reviewer finds that clarification is needed to complete the review, or an exhibit is missing that was not requested after initial screening, the reviewer shall immediately advise the Multifamily Housing Representative, who will: (a) request, by telephone, that the Sponsor submit the information within five (5) working days; and (b) follow up by certified letter. Communications must be attached to the technical review and findings memorandum. As part of this analysis, HUD will conduct its environmental review in accordance with 24 CFR part 50.

Examples of reasons for technical processing rejection include an ineligible Sponsor, ineligible population to be served, lack of legal capacity, lack of site control, and unacceptable site based upon a site visit. The Secretary will not reject an application based on technical processing without giving notice of that rejection with all rejection reasons, and affording the applicant an opportunity to appeal. HUD will afford an applicant 10 calendar days from the date of HUD's written notice to appeal a technical rejection to the HUD Office. The HUD Office must respond within five working days to the Sponsor. The HUD Office shall make a determination on an appeal prior to making its selection recommendations. All applications will be either rated or technically rejected at the end of technical processing.

Technical processing will also assure that the Sponsor has complied with the requirements in the civil rights certification in the Application Package. There must not have been an adjudication of a civil rights violation in a civil action brought against the Sponsor by a private individual, unless the Sponsor is operating in compliance with a court order, or implementing a HUD-approved compliance agreement designed to correct the areas of noncompliance. There must be no pending civil rights suits against the Sponsor instituted by the Department of Justice, and no pending administrative actions for civil rights violations instituted by HUD (including a charge of discrimination under the Fair Housing Act). There must be no outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations, as a result of formal administrative proceedings, nor any charges issued by the Secretary against the Sponsor under the Fair Housing Act, unless the Sponsor is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance. Moreover, there must not be a deferral of the processing of applications from the Sponsor imposed by HUD under Title VI of the Civil Rights Act of 1964, HUD's implementing regulations (24 CFR 1.8), procedures (HUD Handbook 8040.1), and the Attorney General's Guidelines (28 CFR 50.3); or under section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations (24 CFR 8.57), and the Americans with Disabilities Act.

Upon completion of technical processing, all acceptable applications will be rated according to the selection criteria in section I.D.3. of this NOFA. Applications, submitted in response to the advertised metropolitan allocations and nonmetropolitan allocations, which have a total score of 60 points or more will be eligible for selection and will be placed in rank order per metropolitan/nonmetropolitan allocation. These applications will be selected based on rank order, to and including the last application that can be funded out of each of the local HUD Office's metropolitan/nonmetropolitan allocations. HUD Offices shall not skip over any applications in order to select one based on the funds remaining. However, after making the initial selections in each allocation area, any residual funds may be utilized to fund the next rank-ordered application by reducing the units by no more than 10 percent rounded to the nearest whole number; provided the reduction will not render the project infeasible. Projects of nine units or less may not be reduced.

Once this process has been completed, HUD Offices may combine their unused metropolitan and nonmetropolitan funds in order to select another application in either category, using the unit reduction policy described above, if necessary.

Funds remaining after these processes are completed will be returned to Headquarters. These funds will be used first to restore units to projects reduced by HUD Offices as a result of the instructions above and, second, for selecting applications on a national rank order. However, no more than one application will be selected per HUD Office from the national residual amount unless there are insufficient approvable applications in other HUD Offices. If funds still remain, additional applications will be selected based on a national rank order, insuring an equitable distribution among HUD Offices.

3. Selection Criteria

Applications for Section 202 capital advances that successfully complete technical processing will be rated using the following selection criteria:

(a) The Sponsor's ability to develop and operate the proposed housing on a long-term basis, considering the following (60 points maximum—55 base points plus 5 bonus points):

(1) The scope, extent, and quality of the Sponsor's experience in providing housing or related services to those proposed to be served by the project, and the scope of the proposed project (i.e., number of units, services, relocation costs, development, and operation) in relationship to the Sponsor's demonstrated development and management capacity. (30 points);

(2) The scope, extent, and quality of the Sponsor's experience in providing housing or related services to minority persons or families (13 points);

(3) The extent of local community support for the project and for the Sponsor's activities, including previous experience in serving the area where the project is to be located, and Sponsor's demonstrated ability to enlist volunteers and raise local funds (12 points); and

(4) The Sponsor's involvement of elderly persons, including minority elderly persons, in the development of the application and its intent to involve elderly persons, including minority elderly persons, in the development of the project (5 bonus points);

(b) The need for supportive housing for the elderly in the area to be served and the suitability of the site, considering the following (30 points maximum—25 base points plus 5 bonus points):

(1) The extent of the need for the project in the area based on a determination by the HUD Office. HUD will make this determination by considering the Sponsor's evidence of need in the area based on the guidelines in the Application Package, as well as other economic, demographic, and housing market data available to the HUD Office. The data could include the availability of existing Federally assisted housing (HUD and RHS) (e.g., considering availability and vacancy rates of public housing) for the elderly and current occupancy in such facilities, Federally assisted housing for the elderly under construction or for which fund reservations have been issued, and in accordance with an agreement between HUD and the RHS, comments from the RHS on the demand for additional assisted housing and the possible harm to existing projects in the same housing market area (8 points).

(2) The proximity or accessibility of the site to shopping, medical facilities, transportation, places of worship, recreational facilities, places of employment, and other necessary services to the intended occupants; adequacy of utilities and streets; freedom of the site from adverse environmental conditions; compliance with site and neighborhood standards (10 points); and

(3) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority elderly persons/families (7 points).

(4) The project will be located within the boundaries of a Place Based Community Revitalization Area defined as a federally-designated Empowerment Zone, Urban Supplemental Empowerment Zone, Enterprise Community, Urban Enhanced Enterprise Community, or a HUD-approved CDBG neighborhood revitalization strategy area (5 bonus points).

(c) Adequacy of the provision of supportive services and of the proposed facility, considering the following (20 points maximum):

(1) The extent to which the proposed design will meet the special physical needs of elderly persons (3 points);

(2) The extent to which the proposed size and unit mix of the housing will enable the Sponsor to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion (4 points);

(3) The extent to which the proposed design of the housing will accommodate the provision of supportive services that

are expected to be needed, initially and over the useful life of the housing, by the category or categories of elderly persons the housing is intended to serve (3 points);

(4) The extent to which the proposed supportive services meet the identified needs of the residents (5 points); and

(5) The extent to which the Sponsor demonstrated that the identified supportive services will be provided on a consistent, long-term basis (5 points).

For the selection criterion in b.(4) above, the Secretary's Representative, or the Secretary's Representative in consultation with the State/Area Coordinator, may assign the 5 bonus points to an application if the site for the proposed project is approvable, is located within the boundaries of a Place Based Community Revitalization Area, as defined above, and the locally developed strategy for the area involves items such as physical improvements, necessary public facilities and services, private investment and citizen self-help activities.

The maximum number of points an application can earn without bonus points is 100. An application can earn an additional 10 bonus points for a maximum total of 110 points.

II. Application Process

All applications for Section 202 capital advances submitted by eligible Sponsors must be filed with the appropriate HUD Office receiving an allocation and must meet the requirements of this NOFA. No application will be accepted after 4:00 p.m. local time on August 19, 1996, unless that date and time is extended by a Notice published in the **Federal Register**. Applications received after that date and time will not be accepted, even if postmarked by the deadline date. Applications submitted by facsimile are not acceptable.

Immediately upon publication of this NOFA, if names have not already been provided to the Multifamily Housing Clearinghouse, HUD Offices shall notify elderly and minority media, all persons and organizations on their mailing lists, minority and other organizations within their jurisdiction involved in housing and community development, and groups with special interest in housing for elderly households.

Organizations interested in applying for a section 202 capital advance should contact the Multifamily Housing Clearinghouse at 1–800–685–8470 (the TTY number is 1–800–483–2209) for a copy of the application package, and advise the HUD Office whether they wish to attend the workshop described below. HUD encourages minority organizations to participate in this program as Sponsors. HUD Offices will advise all organizations on their mailing list of the date, time, and place of workshops at which HUD will explain the Section 202 program.

HUD strongly recommends that prospective applicants attend the local HUD Office workshop. Interested persons with disabilities should contact the HUD Office to assure that any necessary arrangements can be made to enable their attendance and participation in the workshop. While strongly urged to do so, if Sponsors cannot attend a workshop, they can obtain Application Packages from the Multifamily Housing Clearinghouse (see address and telephone number in the "Application Package" section of this NOFA, above). Contact the appropriate HUD Office with any questions regarding the submission of applications.

At the workshops, HUD will explain application procedures and requirements. HUD will also address concerns such as local market conditions, building codes, historic preservation, floodplain management, displacement and relocation, zoning, and housing costs.

III. Application Submission Requirements

A. Application

Each application shall include all of the information, materials, forms, and exhibits listed in section III.B., below (with the exception of applications submitted by Sponsors selected for a Section 202 fund reservation within the last three funding cycles), and must be indexed and tabbed. Such previously selected Section 202 Sponsors are not required to submit the information described in B.2.(a), (b), and (c), below (Exhibits 2.a., b., and c. of the application), which are the articles of incorporation, (or other organizational documents), by-laws, and the IRS tax exemption, respectively. If there has been a change in any of the eligibility documents since its previous HUD approval, the Sponsor must submit the updated information in its application. The local HUD Office will base its determination of the eligibility of a new Sponsor for a reservation of Section 202 capital advance funds on the information provided in the application. HUD Offices will verify a Sponsor's indication of previous HUD approval by checking the project number and approval status with the appropriate HUD Office.

In addition to this relief of paperwork burden in preparing applications, applicants will be able to use information and exhibits previously prepared for prior applications under Section 202, Section 811, or other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include, among others, those on previous participation in the Section 202 or Section 811 programs, applicant experience in provision of housing and services, supportive services plan, community ties, and experience serving minorities.

B. General Application Requirements

1. Form HUD–92015–CA, Application for Section 202 Supportive Housing Capital Advance.

2. Evidence of *each* Sponsor's legal status as a private, nonprofit organization or nonprofit consumer cooperative, including the following:

(a) Articles of Incorporation, constitution, or other organizational documents;

(b) By-laws;

(c) IRS tax exemption ruling (this must be submitted by all Sponsors, including churches). A consumer cooperative that is tax exempt under State law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if it is not eligible for tax exemption.

Note: Sponsors who have received a section 202 fund reservation within the last three funding cycles are not required to submit the documents described in (a), (b), and (c), above. Instead, sponsors must submit the project number of the latest application and the HUD office to which it was submitted. If there have been any modifications or additions to the subject documents, indicate such, and submit the new material.

(d) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation that has or will have a contract with the Owner and that includes a current listing of all duly qualified and sitting officers and directors by title, and the beginning and ending dates of each person's term.

3. Sponsor's purpose, community ties, and experience, including the following:

(a) A description of Sponsor's purposes and activities, ties to the community, and minority support, and how long the Sponsor has been in existence (include any additional related information);

(b) A description of Sponsor's housing and/or supportive services experience. The description should include any rental housing projects and/or medical facilities, sponsored, owned, and operated by the Sponsor, the Sponsor's past or current involvement in any programs other than housing that demonstrates the Sponsor's management capabilities and experience, and the Sponsor's experience in serving the elderly and/or families and minorities;

(c) A description of Sponsor's participation in joint ventures and experience in contracting with minority-owned businesses, women-owned businesses, and small businesses over the last three years, including a description of the joint venture, partners and the Sponsor's involvement and a summary of the total contract amounts awarded in each of the three categories for the preceding three years, and the percentage that amount represents of all contracts awarded by the Sponsor in the relevant time period;

(d) A certified Board Resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage, and provide appropriate services in connection with the proposed project, and that it reflects the will of its membership. Also, evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the estimated start-up expenses, the Minimum Capital Investment (one-half of one percent of the HUD-approved capital advance, not to exceed $10,000, if nonaffiliated with a National Sponsor; one-half of one percent of the HUD-approved capital advance, not to exceed $25,000, for all other Sponsors;), and the estimated cost of any amenities or features (and operating costs related thereto) that would not be covered by the approved capital advance.

(e) Description, if applicable, of the Sponsor's efforts to involve elderly persons, including minority elderly persons, in the development of the application, as well as its intent to involve elderly persons in the development of the project.

4. Project information, including the following:

(a) Evidence of need for supportive housing. Such evidence would include a description of the category or categories of elderly persons the housing is intended to serve and evidence demonstrating sustained effective demand for supportive housing for that population in the market area to be served, taking into consideration the occupancy and vacancy conditions in existing Federally assisted housing for the elderly (HUD and RHS; *e.g.*, public housing); State or local data on the limitations in activities of daily living among the elderly in the area; aging in place in existing assisted rentals; trends in demographic changes in elderly population and households; the numbers of income eligible elderly households by size, tenure, and housing condition; the types of supportive services arrangements currently available in the area and the use of such services as evidenced by data from local social service agencies or agencies on aging.

(b) Description of the project, including the following:

(1) Narrative description of the building design, including a description of any special design features and community space, and how this design will facilitate the delivery of services in an economical fashion and accommodate the changing needs of the residents over the next 10–20 years.

(2) Describe whether and how the project will promote energy efficiency, and, if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(c) Evidence of site control and permissive zoning.

(1) Evidence that the Sponsor has entered into a legally binding option agreement (which extends through the end of the current fiscal year and contains a renewal provision so that the option can be renewed for at least an additional six months) to buy or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold, a request with all supporting documentation, submitted either prior to or with the Application for Capital Advance, for a partial release of a site covered by a mortgage under a HUD program, or other evidence of legal ownership of the site (including properties to be acquired from the RTC/FDIC). The Sponsor must also identify any restrictive covenants, including reverter clauses. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notice of Section 202 capital advance and identification of any restrictive covenants, including reverter clauses. However, in localities where HUD determines the time constraints of the funding round will not permit all of the required official actions (*e.g.*, approval of Community Planning Boards) that are necessary to convey publicly-owned sites, a letter in the application from the mayor or director of the appropriate local agency indicating approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the HUD Office if it has satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and identification of any restrictive covenants, including reverter clauses.

Note: A proposed project site may not be acquired or optioned from a general contractor (or its affiliate) that will construct the section 202 project or from any other development team member.

(2) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for belief that the proposed action will be completed successfully before the submission of the commitment application (e.g., a summary of the results of any requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, etc.).

(3) Narrative description of site and area surrounding the site, characteristics of neighborhood, how the site will promote greater housing opportunities for minorities, and any other information that affects the suitability of the site for the elderly.

(4) A map showing the location of the site and the racial composition of the neighborhood, with the area of racial concentration delineated.

(5) A Transaction Screen Process, in accordance with the American Society for Testing and Material (ASTM) Standards E 1528–93 and E 1527–93, as amended. If the completion of the Transaction Screen Questionnaire results in either a "yes" or "unknown" response, further study is required, and the Sponsor must complete a Phase I Environmental Site Assessment in accordance with the ASTM and submit it with the application. Sponsors may choose to automatically complete a Phase I Environmental Site Assessment in lieu of completing the Transaction Screen Questionnaire. If the Phase I study indicates the possible presence of contamination and/or hazards, further study must be undertaken. At this point, the Sponsor must decide whether to continue with this site or choose another site. Should the Sponsor choose another site, the same environmental site assessment procedure identified above must be followed for that site.

Since all Transaction Screen processes and Phase I studies must be completed and submitted with the application, it is important that the Sponsor start the site assessment process as soon after the publication of this NOFA as possible.

If the Sponsor chooses to continue with the original site, then it must undertake a detailed Phase II Environmental Site Assessment by an appropriate professional.

Note: This could be an expensive undertaking. The cost of the study will be borne by the sponsor if the application is not selected.

If the Phase II Assessment reveals site contamination, the extent of the contamination, and a plan for clean-up of the site must be submitted to the local HUD Office. The plan for clean-up must include a contract for remediation of the problem(s) and an approval letter from the applicable Federal, State, and/or local agency with jurisdiction over the site. In order for the application to be considered for review under this FY 1996 funding, this information would have to be submitted to the local HUD Office *no later than 30 days after the application deadline date.*

Note: For properties to be acquired from the RTC/FDIC, include a copy of the RTC/FDIC prepared Transaction Screen Checklist or Phase I Environmental Site Assessment, and applicable documentation, per the RTC/FDIC Environmental Guidelines.

(6) If applicable, identify whether the site for the proposed project is located within the boundaries of a Place Based Community Revitalization Area, as defined above. If the site is in a Place Based Community Revitalization Area, briefly summarize the locally developed strategy for the area involving items such as physical improvements, necessary public facilities and services, private investment and citizen self-help activities.

(d) Provision of supportive services and proposed facility.

(1) A detailed description of the supportive services proposed to be provided to the anticipated occupancy.

(2) Form HUD 92013E, Supplemental Application Processing Form—Housing for the Elderly. Identify all supportive services, if any, to be provided to the persons occupying such housing.

(3) A description of public or private sources of assistance that reasonably could be expected to fund the proposed services.

(4) The manner in which such services will be provided to such persons (*i.e.*, on or off-site), including whether a service coordinator will facilitate the adequate provision of such services, and how the services will meet the identified needs of the residents.

5. A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other HUD Office in response to this NOFA or the NOFA for Supportive Housing for Persons with Disabilities (published elsewhere in today's **Federal Register**). Indicate by HUD Office, the proposed location by city and State, and the number of units requested for each application. Include a list of all FY 1995 and prior year projects to which the Sponsor(s) is a party, identified by project number and HUD Office, which have not been finally closed.

6. HUD–2880, Applicant/Recipient Disclosure/Update Report, including Social Security Numbers and Employee Identification Numbers.

7. E.O. 12372. A certification that the Sponsor has submitted a copy of its applications, if required, to the State agency (single point of contact) for State review in accordance with Executive Order 12372.

8. A statement that (a) identifies all persons (families, individuals, businesses, and nonprofit organizations), identified by race/minority group, and status as owners or tenants, occupying the property on the date of submission of the application for a capital advance; (b) indicates the estimated cost of relocation payments and other services; and (c) identifies the staff organization that will carry out the relocation activities.

Note: If any of the relocation costs will be funded from sources other than the section 202 capital advance, the sponsor must provide evidence of a firm commitment of these funds. When evaluating applications, HUD will consider the total cost of proposals (*i.e.*, cost of site acquisition, relocation, construction and other project costs).

9. SF–424. A certification on SF–424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

10. Disclosure of Lobbying Activities. If the amount applied for is greater than $100,000, the certification with regard to lobbying required by 24 CFR part 87 must be included. If the amount applied for is greater than $100,000 and the applicant has made or has agreed to make any payment using nonappropriated funds for lobbying activity, as described in 24 CFR part 87, the submission must also include SF LLL, Disclosure of Lobbying Activities. The applicant determines if the submission of the SF LLL form is applicable.

11. Certification of Consistency with the Consolidated Plan (Plan) for the jurisdiction in which the proposed project will be located must be submitted by the Sponsor. The certification must be made by the unit of general local government if it is required to have, or has, a complete Plan. Otherwise the certification may be made by the State, or if the project will be located in a unit of general local government authorized to use an abbreviated strategy, by the unit of general local government if it is willing to prepare such a Plan.

All certifications must be made by the public official responsible for submitting the Plan to HUD. The certifications must be submitted as part of the application by the application submission deadline set forth in this NOFA. The Plan regulations are published in 24 CFR part 91.

12. Sponsor Certifications. (a) A certification of the Sponsor(s)' intent to comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3600–3619) and the implementing regulations at 24 CFR part 100, 108, 109, and 110; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; Executive Order 11246 (as amended) and the implementing regulations at 41 CFR Chapter 60; the regulations implementing Executive Order 11063 (Equal Opportunity in Housing) at 24 CFR part 107; the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) to the extent applicable; the affirmative fair housing marketing requirements of 24 CFR part 200, subpart M and the implementing regulations at 24 CFR part 108; and other applicable Federal, State, and local laws prohibiting discrimination and promoting equal opportunity.

(b) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(c) A certification that the project will comply with HUD's project design and cost standards; the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40; Section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8; and for covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100; and the Americans with Disabilities Act of 1990.

(d) A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), implemented by regulations at 49 CFR part 24, and 24 CFR 891.155(e).

(e) A certification by the Sponsor(s) that it will form an Owner (as defined in 24 CFR 891.305) after the issuance of the capital advance, will cause the Owner to file a request for determination of eligibility and a request for capital advance, and will provide sufficient resources to the Owner to insure the development and long-term operation of the project, including capitalizing the Owner at conditional commitment processing in an amount sufficient to meet its obligations in connection with the project.

IV. Development Cost Limits

(a) The following development cost limits, adjusted by locality as described in (b) below, shall be used to determine the capital advance amount to be reserved for projects for the elderly:

(1) The total development cost of the property or project attributable to dwelling use (less the incremental development cost and the capitalized operating costs associated with any excess amenities and design features to be paid for by the Sponsor) may not exceed:

Non-elevator structures:

$28,032 per family unit without a bedroom;
$32,321 per family unit with one bedroom;
$38,979 per family unit with two bedrooms;

For elevator structures:

$29,500 per family unit without a bedroom;
$33,816 per family unit with one bedroom;
$41,120 per family unit with two bedrooms;

(2) These cost limits reflect those costs reasonable and necessary to develop a project of modest design that complies with HUD minimum property standards; the accessibility requirements of § 891.120(b); and the project design and cost standards of § 891.120.

(b) Increased development cost limits.

(1) HUD may increase the development cost limits set forth in paragraph (a)(1) of this section by up to 140 percent in any geographic area where the cost levels require, and may increase the development cost limits by up to 160 percent on a project-by-project basis.

(2) If HUD finds that high construction costs in Alaska, Guam, Virgin Islands or Hawaii make it infeasible to construct dwellings, without the sacrifice of sound standards of construction, design, and livability, within the development cost limits provided in this paragraph (a), the amount of the capital advances may be increased to compensate for such costs. The increase may not exceed the limits established under this section (including any high cost area adjustment) by more than 50 percent.

V. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. This NOFA only solicits applications for supportive housing for the elderly.

B. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This NOFA merely notifies the public of the availability of capital advances and project rental assistance for supportive housing for the elderly.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this NOFA does not have the potential for significant impact on family formation, maintenance, or general well-being. This NOFA may have a positive though indirect effect on families, to the extent that families will benefit from the provision of supportive housing for elderly persons. Since any effect on families is beneficial, this NOFA is not subject to review under the Order.

D. Accountability in the Provision of HUD Assistance

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). This final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published in the **Federal Register** (57 FR 1942) additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation, public access, and disclosure requirements of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

1. Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

2. Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24

CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

E. Prohibition Against Advance Information on Funding Decisions.

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708–3815 (TTY/Voice). (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

F. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352)(the Byrd Amendment) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

G. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program title and number is 14.157, Housing for the Elderly or Handicapped.

Authority: Section 202, Housing Act of 1959, as amended (12 U.S.C. 1701q), Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 27, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix A—HUD Offices

Note: The first line of the mailing address for all offices is U.S. Department of Housing and Urban Development. Telephone numbers listed are not toll-free.

HUD—New England Area

Connecticut State office

First Floor, 330 Main Street, Hartford, CT 06106–1860, (203) 240–4523

Massachusetts State Office

Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, MA 02222–1092, (617) 565–5234

New Hampshire State Office

Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03101–2487, (603) 666–7681

Rhode Island State Office

Sixth Floor, 10 Weybosset Street, Providence, RI 02903–3234, (401) 528–5351

HUD—New York, New Jersey Area

New Jersey State Office

Thirteenth Floor, One Newark Center, Newark, NJ 07102–5260, (201) 622–7900

New York State Office

26 Federal Plaza, New York, NY 10278–0068, (212) 264–6500

Buffalo Area Office

Fifth Floor, Lafayette Court, 465 Main Street, Buffalo, NY 14203–1780, (716) 551–5755

HUD—Midatlantic Area

District of Columbia Office

820 First Street, NE., Washington, D.C. 20002–4502, (202) 275–9200

Maryland State Office

Fifth Floor, City Crescent Building, 10 South Howard Street, Baltimore, MD 21201–2505, (410) 962–2520

Pennsylvania State Office

The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3390 (215) 656–0500

Virginia State Office

The 3600 Centre, 3600 West Broad Street, P.O. Box 90331, Richmond, VA 23230–0331, (804) 278–4507

West Virginia State Office

Suite 708, 405 Capitol Street, Charleston, WV 25301–1795, (304) 347–7000

Pittsburgh Area Office

339 Sixth Avenue, Sixth Floor, Pittsburgh, PA 15222–2515 (412) 644–6428

HUD—Southeast/Caribbean Area

Alabama State Office

Suite 300,
Beacon Ridge Tower,
600 Beacon Parkway, West,
Birmingham, AL 35209–3144,
(205) 290–7617

Caribbean Office

New San Juan Office Building,
159 Carlos Chardon Avenue,
San Juan, PR 00918–1804,
(809) 766–6121,

Georgia State Office

Richard B. Russell Federal Building,
75 Spring Street, S.W.,
Atlanta, GA 30303–3388,
(404) 331–5136

Kentucky State Office

601 West Broadway,
P.O. Box 1044,
Louisville, KY 40201–1044,
(502) 582–5251

Mississippi State Office

Suite 910,
Doctor A.H. McCoy Federal Building,
100 West Capitol Street,
Jackson, MS 39269–1096,
(601) 965–5308

North Carolina State Office

Koger Building,
2306 West Meadowview Road,
Greensboro, NC 27407–3707,
(919) 547–4001

South Carolina State Office

Strom Thurmond Federal Building,
1835–45 Assembly Street,
Columbia, SC 29201–2480,
(803) 765–5592

Tennessee State Office

Suite 200,
251 Cumberland Bend Drive,
Nashville, TN 37228–1803,
(615) 736–5213

Jacksonville Area Office

Suite 2200,
Southern Bell Tower,
301 West Bay Street,
Jacksonville, FL 32202–5121,
(904) 232–2626

Knoxville Area Office

Third Floor,
John J. Duncan Federal Building,
710 Locust Street,
Knoxville, TN 37902–2526,
(615) 545–4384

HUD—Midwest Area

Illinois State Office

Ralph H. Metcalfe Federal Building,
77 West Jackson Boulevard,
Chicago, IL 60604–3507,
(312) 353–5680

Indiana State Office

151 North Delaware Street,
Indianapolis, IN 46204–2526,

(317) 226–6303

Michigan State Office

Patrick V. McNamara Federal Building,
477 Michigan Avenue,
Detroit, MI 48226–2592,
(313) 226–7900

Minnesota State Office,

220 Second Street, South,
Minneapolis, MN 55401–2195,
(612) 370–3000

Ohio State Office

200 North High Street,
Columbus, OH 43215–2499,
(614) 469–5737

Wisconsin State Office

Suite 1380,
Henry S. Reuss Federal Plaza,
310 West Wisconsin Avenue,
Milwaukee, WI 53203–2289,
(414) 297–3214

Cincinnati Area Office

525 Vine Street,
Seventh Floor,
Cincinnati, OH 45202–3188,
(513) 684–2884

Cleveland Area Office

Fifth Floor,
Renaissance Building,
1350 Euclid Avenue,
Cleveland, OH 44115–1815,
(216) 522–4065

Grand Rapids Area Office

Trade Center Building,
Third Floor,
50 Louis Street, NW,
Grand Rapids, MI 49503–2648,
(616) 456–2100

HUD—Southwest Area

Arkansas State Office

Suite 900,
TCBY Tower,
425 West Capitol Avenue,
Little Rock, AR 72201–3488,
(501) 324–5931

Louisiana State Office

Ninth Floor,
Hale Boggs Federal Building,
501 Magazine Street,
New Orleans, LA 70130–3099,
(504) 589–7200

Oklahoma State Office

500 Main Plaza,
500 West Main Street,
Suite 400,
Oklahoma City, OK 73102–2233,
(405) 553–7400

Texas State Office

1600 Throckmorton Street,
P.O. Box 2905,
Fort Worth, TX 76113–2905,
(817) 885–5401

Houston Area Office

Suite 200,
Norfolk Tower,
2211 Norfolk,
Houston, TX 77098–4096,
(713) 313–2274

San Antonio Area Office

Washington Square,
800 Dolorosa Street,
San Antonio, TX 78207–4563,
(210) 472–6800

HUD—Great Plains

Iowa State Office

Room 239,
Federal Building,
210 Walnut Street,
Des Moines, IA 50309–2155,
(515) 284–4512

Kansas/Missouri State Office

Room 200
Gateway Tower II,
400 State Avenue,
Kansas City, KS 66101–2406,
(913) 551–5462

Nebraska State Office

Executive Tower Centre,
10909 Mill Valley Road,
Omaha, NE 68154–3955,
(402) 492–3100

Saint Louis Area Field Office

Third Floor,
Robert A. Young Federal Building,
1222 Spruce Street,
St. Louis, MO 63103–2836,
(314) 539–6583

HUD—Rocky Mountains Area

Colorado State Office

633 17th Street,
Denver, CO 80202–3607,
(303) 672–5440

HUD—Pacific/Hawaii Area

Arizona State Office

Suite 1600,
Two Arizona Center,
400 North 5th Street,
Phoenix, AZ 85004–2361,
(602) 379–4434

California State Office

Philip Burton Federal Building and U.S. Courthouse,
450 Golden Gate Avenue,
P.O. Box 36003,
San Francisco, CA 94102–3448,
(415) 436–6532

Hawaii State Office

Suite 500,
7 Waterfront Plaza,
500 Ala Moana Boulevard,
Honolulu, HI 96813–4918,
(808) 522–8175

Los Angeles Area Office

1615 West Olympic Boulevard,
Los Angeles, CA 90015–3801,
(213) 251–7122

Sacramento Area Office

Suite 200,
777 12th Street,
Sacramento, CA 95814–1997,
(916) 498–5220

HUD—Northwest/Alaska Area

Alaska State Office

Suite 401,
University Plaza Building,
949 East 36th Avenue,
Anchorage, AK 99508–4399,
(907) 271–4170

Oregon State Office

400 Southwest Sixth Avenue,
Suite 700,
Portland, OR 97204–1632,
(503) 326–2561

Washington State Office

Suite 200,
Seattle Federal Office Building,
909 First Avenue,
Seattle, WA 98104–1000,
(206) 220–5101

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Part III

Department of Housing and Urban Development

Supportive Housing for Persons with Disabilities: Funding Availability; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4053–N–01]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Notice of Funding Availability (NOFA) for Supportive Housing for Persons with Disabilities

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability for Fiscal Year (FY) 1996.

SUMMARY: This NOFA announces HUD's funding for supportive housing for persons with disabilities. This document describes the following: (a) the purpose of the NOFA and information regarding eligibility, submission requirements, available amounts, and selection criteria; and (b) application processing, including how to apply and how selections will be made.

APPLICATION PACKAGE: The Application Package can be obtained from the Multifamily Housing Clearinghouse, P.O. Box 6424, Rockville, MD 20850, telephone 1–800–685–8470 (the TTY number is 1–800–483–2209); and from the appropriate HUD Office identified in appendix A to this NOFA. The Application Package includes a checklist of exhibits and steps involved in the application process.

DATES: The deadline for receipt of applications in response to this NOFA is 4:00 p.m. local time on August 19, 1996. The application deadline is firm as to *date* and *hour*. In the interest of fairness to all applicants, HUD will not consider any application that is received after the deadline. Sponsors should take this into account and submit applications as early as possible to avoid the risk of unanticipated delays or delivery-related problems. In particular, Sponsors intending to mail applications must provide sufficient time to permit delivery on or before the deadline date. Acceptance by a Post Office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

ADDRESSES: Applications must be delivered to the Director of the Multifamily Housing Division in the HUD Office for your jurisdiction. A listing of HUD Offices, their addresses, and telephone numbers is attached as appendix A to this NOFA. HUD will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with an acknowledgement of receipt.

FOR FURTHER INFORMATION CONTACT: The HUD Office for your jurisdiction, as listed in appendix A to this NOFA.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB Control Number 2502–0267. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Purpose and Substantive Description

A. Authority

Section 811 of the Cranston-Gonzalez National Affordable Housing Act (the NAHA) (Pub. L. 101–625, approved November 28, 1990), as amended by the Housing and Community Development Act of 1992) (HCD Act of 1992) (Pub. L. 102–550, approved October 28, 1992), and by the Rescissions Act (Pub. L. 104–19, approved July 27, 1995) authorized a new supportive housing program for persons with disabilities, and replaced assistance for persons with disabilities previously covered by section 202 of the Housing Act of 1959 (section 202 continues, as amended by section 801 of the NAHA, and the HCD Act of 1992, to authorize supportive housing for the elderly). HUD provides the assistance as capital advances and contracts for project rental assistance in accordance with 24 CFR part 891. Capital advances may be used to finance the construction, rehabilitation, or acquisition with or without rehabilitation, including acquisition from the Resolution Trust Corporation, now the Federal Deposit Insurance Corporation (RTC/FDIC), of structures to be developed into a variety of housing options ranging from group homes and independent living facilities, to dwelling units in multifamily housing developments, condominium housing, and cooperative housing. This assistance may also cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for persons with disabilities.

Note that on March 22, 1996, HUD published a final rule (61 FR 11948) that consolidated the regulations for the Section 202 Program of Supportive Housing for the Elderly and the Section 811 Program of Supportive Housing for Persons with Disabilities in 24 CFR part 891.

For supportive housing for persons with disabilities, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, approved April 26, 1996) (Act) provides $233,168,000 for capital advances for supportive housing for persons with disabilities, as authorized by section 811 of the NAHA, and for project rental assistance, and amendments to contracts for project rental assistance, for supportive housing for persons with disabilities, as authorized by section 811 of the NAHA. Twenty-five percent of this amount is being set aside for tenant-based assistance administered through public housing agencies (PHAs) for persons with disabilities and will be announced through a separate Notice in the **Federal Register**.

In accordance with the waiver authority provided in the Act, the Secretary is extending the determinations made in the Notice published in 61 F.R. 3047 to Fiscal Year 1996 funding by waiving the following statutory and regulatory provision: The term of the project rental assistance contract is reduced from 20 years to a minimum term of 5 years and a maximum term which can be supported by funds authorized by the Act. The Department anticipates that at the end of the contract terms, renewals will be approved subject to the availability of funds. In addition to this provision, the Department will reserve project rental assistance contract funds based on 75 percent rather than on 100 percent of the current operating cost standards for approved units in order to take into account the average tenant contribution toward rent. PLEASE NOTE THAT THE WAIVER BROADENING THE ELIGIBILITY OF TENANTS TO PERSONS WITH INCOMES AT 80 PERCENT OF THE MEDIAN OR BELOW (61 F.R. 3047, JANUARY 30, 1996) IS NOT BEING EXTENDED TO THE PROJECTS FUNDED IN ACCORDANCE WITH THIS NOFA. THE STATUTORY PROVISION LIMITING ELIGIBILITY TO PERSONS WITH INCOMES AT 50 PERCENT OF THE MEDIAN OR BELOW REMAINS IN EFFECT.

In accordance with an agreement between HUD and the Rural Housing Service (RHS) (formerly the Administration For Rural Housing and Economic Development Services (ARHEDS)), which facilitates the coordination between the two agencies in administering their respective rental assistance programs, HUD is required to notify RHS of applications for housing assistance it receives. This notification gives RHS the opportunity to comment if it has concern about the demand for additional assisted housing and possible harm to existing projects in the same housing market area. HUD will consider the RHS comments in its review and project selection process.

B. Allocation Amounts

In accordance with 24 CFR part 791, the Assistant Secretary will allocate the amounts available for capital advances for supportive housing for persons with disabilities. HUD reserves project rental assistance funds based upon 75 percent of the current operating cost standards to support the units selected for capital advances sufficient for minimum 5-year project rental assistance contracts.

The allocation formula for Section 811 funds consists of the following two data elements:

1. A measure of the number of persons identified as having a public transportation disability; and

2. A measure of the number of persons identified as having a work disability.

The Section 811 capital advance funds have been allocated, based on the formula above, to 51 HUD Offices as shown on the following chart:

FISCAL YEAR 1996 ALLOCATIONS FOR SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

[Fiscal Year 1996 Section 811 Allocations]

Offices	Capital advance authority	Units
New England:		
Massachusetts	$2,304,347	30
Connecticut	1,775,776	23
New Hampshire	1,272,707	21
Rhode Island	1,163,556	15
Total	5,516,386	89
New York/New Jersey:		
New York	4,621,108	60
Buffalo	1,907,911	27
New Jersey	2,848,274	37
Total	9,377,293	124
Mid-Atlantic:		
Maryland	1,588,274	24
West Virginia	1,275,059	22
Pennsylvania	2,815,166	39
Pittsburgh	1,686,184	26
Virginia	1,443,678	26
D.C	1,644,052	24
Total	10,452,413	161
Southeast/Caribbean:		
Georgia	1,872,307	34
Alabama	1,588,208	29
Caribbean	2,065,136	27
South Carolina	1,548,241	26
North Carolina	2,368,371	35
Mississippi	1,280,439	25
Jacksonville	3,308,152	55
Kentucky	1,544,469	27
Knoxville	1,123,096	22
Tennessee	1,213,784	23
Total	17,910,221	303
Midwest:		
Illinois	3,396,420	45
Cincinnati	1,282,225	22
Cleveland	1,997,821	30
Ohio	1,267,812	22
Michigan	2,292,272	34
Grand Rapids	1,179,163	20
Indiana	1,726,524	29
Wisconsin	1,641,472	25
Minnesota	1,589,090	23
Total	16,372,799	250
Southwest:		
Texas/New Mexico	1,960,498	37
Houston	1,495,930	27
Arkansas	1,135,063	24
Louisiana	1,489,983	29
Oklahoma	1,230,229	24
San Antonio	1,350,583	26
Total	8,662,286	167
Great Plains:		
Iowa	1,178,380	21
Kansas/Missouri	1,426,009	25
Nebraska	804,793	15
St. Louis	1,524,072	24
Total	4,933,254	85
Rocky Mountains:		
Colorado	1,664,893	28
Total	1,664,893	28
Pacific/Hawaii:		
Hawaii (Guam)	1,745,334	15
Los Angeles	4,776,022	63
Arizona	1,258,733	23
Sacramento	1,558,476	21
California	2,972,723	39
Total	12,311,288	161
Northwest/Alaska:		
Alaska	1,745,334	15
Oregon	1,467,167	23
Washington	1,687,959	24
Total	4,900,460	62
National Total	93,101,293	1,430

C. Eligibility

Nonprofit organizations that have a Section 501(c)(3) tax exemption from the Internal Revenue Service are the only eligible applicants under this program. A single Sponsor shall not request more units in a given HUD Office than permitted for that HUD Office in this NOFA.

D. Initial Screening, Technical Processing, and Selection Criteria

1. Initial Screening.

HUD will review applications for section 811 capital advances that HUD receives at the appropriate address by 4:00 p.m. local time on August 19, 1996, to determine if all parts of the application are included. HUD will not review the content of the application as part of initial screening. HUD will send deficiency letters, by certified mail and facsimile, informing Sponsors of any missing parts of the application. Sponsors must correct such deficiencies within 8 calendar days from the date of the deficiency letter. Any document requested as a result of the initial screening may be executed or prepared within the deficiency period, except for Forms HUD–92016–CAs, Articles of Incorporation, IRS exemption rulings, Forms SF–424, Board Resolution committing the minimum capital investment, and site control documents (all of these excepted items must be dated no later than the application deadline date).

2. Technical Processing.

All applications will be placed in technical processing upon receipt of the response to the deficiency letter or at the end of the 8-day period. All applications will undergo a complete analysis. If a reviewer finds that clarification is needed to complete the review or an exhibit is missing that was not requested after initial screening, the reviewer shall immediately advise the Multifamily Housing Representative, who will: (a) request, by telephone, that the Sponsor submit the information within five (5) working days; and (b) follow up by certified letter. Communications must be attached to the technical review and findings memorandum. As part of this analysis, HUD will conduct its environmental review in accordance with 24 CFR part 50 only on those applications containing satisfactory evidence of site control. (Applications selected with sites identified will receive environmental reviews after submission to HUD of satisfactory evidence of site control and prior to approval of the sites.)

Examples of reasons for technical processing rejection include an ineligible Sponsor, ineligible population to be served, lack of legal capacity, insufficient need for the project, insufficient evidence that the Sponsor will obtain control of the identified site

within six months of fund reservation award if the Sponsor did not submit site control evidence with its application, the project will adversely affect other HUD insured and assisted housing or an unsatisfactory Supportive Services Certification by the appropriate State or local agency.

The Secretary will not reject an application based on technical processing without giving notice of that rejection with all rejection reasons and affording the applicant an opportunity to appeal. HUD will afford an applicant 10 calendar days from the date of HUD's written notice to appeal a technical rejection to the HUD Office. The HUD Office must respond within five working days to the Sponsor. The HUD Office shall make a determination on an appeal prior to making its selection recommendations. All applications will be either rated or technically rejected at the end of technical processing.

Technical processing will also assure that the Sponsor has complied with the requirements in the civil rights certification in the Application Package. There must not have been an adjudication of a civil rights violation in a civil action brought against the Sponsor by a private individual, unless the Sponsor is operating in compliance with a court order, or implementing a HUD-approved compliance agreement designed to correct the areas of noncompliance. There must be no pending civil rights suits against the Sponsor instituted by the Department of Justice, and no pending administrative actions for civil rights violations instituted by HUD (including a charge of discrimination under the Fair Housing Act). There must be no outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations, as a result of formal administrative proceedings, nor any charges issued by the Secretary against the Sponsor under the Fair Housing Act, unless the Sponsor is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance. Moreover, there must not be a deferral of the processing of applications from the Sponsor imposed by HUD under Title VI of the Civil Rights Act of 1964, HUD's implementing regulations (24 CFR 1.8), procedures (HUD Handbook 8040.1), and the Attorney General's Guidelines (28 CFR 50.3); or under section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations (24 CFR 8.57), and the Americans with Disabilities Act.

Upon completion of technical processing, all acceptable applications will be rated according to the selection criteria in section I.D.3. below. Applications that have a total score of 60 points or more will be eligible for selection and will be placed in rank order. These applications will be selected based on rank order to and including the last application that can be funded out of the local HUD Office's allocation. Local HUD Offices shall not skip over any applications in order to select one based on the funds remaining. However, after making the initial selections, any residual funds may be utilized to fund the next rank-ordered application by reducing the units by no more than 10 percent rounded to the nearest whole number, provided the reduction will not render the project infeasible. Projects of nine units or less may not be reduced.

Funds remaining after this process is completed will be returned to Headquarters. These funds will be used first to restore units to projects reduced by HUD Offices as a result of the instructions above and, second, for selecting applications on a national rank order. However, no more than one application will be selected per HUD Office from the national residual amount unless there are insufficient approvable applications in other HUD Offices. If funds still remain, additional applications will be selected based on a national rank order, insuring an equitable distribution among HUD Offices.

3. Selection Criteria.

Applications for Section 811 capital advances that successfully complete technical processing will be rated using the following selection criteria:

(a) The Sponsor's ability to develop and operate the proposed housing on a long-term basis, considering the following (70 points maximum—60 base points plus 10 bonus points):

(1) The scope, extent, and quality of the Sponsor's experience in providing housing or related services to those proposed to be served by the project and the scope of the proposed project (*i.e.*, number of units, services, relocation costs, development, and operation) in relationship to the Sponsor's demonstrated development and management capacity. (32 points);

(2) The scope, extent, and quality of the Sponsor's experience in providing housing or related services to minority persons or families (13 points);

(3) Applications submitted by Sponsors whose boards are comprised of at least 51 percent consumers with disabilities (5 bonus points);

(4) The extent of local community support for the project and for the Sponsor's activities, including previous experience in serving the area where the project is to be located, and the Sponsor's demonstrated ability to raise local funds (15 points); and

(5) The Sponsor's involvement of persons with disabilities (including minority persons with disabilities) in the development of the application, and its intent to involve persons with disabilities (including minority persons with disabilities) in the implementation of the program (5 bonus points).

(b) The need for supportive housing for persons with disabilities in the area to be served, the extent to which the Sponsor has site control, suitability of the site, and the design of the project, considering (55 points maximum—40 base points plus 15 bonus points):

(1) The extent of the need for the project in the area based on a determination by the HUD Office. This determination will be made by considering the Sponsor's evidence of need in the area based on the guidelines in the Application Package, as well as other economic, demographic, and housing market data available to the HUD Office. The data could include the availability of existing Federally assisted housing (HUD and RHS) for persons with disabilities and current occupancy in such facilities, Federally assisted housing for persons with disabilities under construction or for which fund reservations have been issued, and, in accordance with an agreement between HUD and RHS, comments from RHS on the demand for additional assisted housing and the possible harm to existing projects in the same housing market area (8 points);

(2) Applications containing acceptable evidence of control of an approvable site (10 bonus points);

(3) The proximity or accessibility of the site to shopping, medical facilities, transportation, places of worship, recreational facilities, places of employment, and other necessary services to the intended tenants; adequacy of utilities and streets, and freedom of the site from adverse environmental conditions (site control projects only); and compliance with the site and neighborhood standards (15 points);

(4) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority persons with disabilities (7 points);

(5) The extent to which the proposed design will meet any special needs of persons with disabilities the housing is intended to serve (10 points); and

(6) The project will be located within the boundaries of a Place Based Community Revitalization Area defined as a Federally-designated Empowerment Zone, Urban Supplemental Empowerment Zone, Enterprise Community, Urban Enhanced Enterprise Community, or a HUD-approved CDBG neighborhood revitalization strategy area (5 bonus points).

For the selection criterion in (6) above, the Secretary's Representative, or the Secretary's Representative in consultation with the State/Area Coordinator, may assign the 5 bonus points to an application if the site under control for the proposed project is approvable, is located within the boundaries of a Place Based Community Revitalization Area, as defined above, and the locally developed strategy for the area involves items such as physical improvements, necessary public facilities and services, private investment and citizen self-help activities.

The maximum number of points an application can earn without bonus points is 100. An application can earn an additional 25 bonus points for a maximum total of 125 points.

II. Application Process

All applications for Section 811 capital advances submitted by eligible Sponsors must be filed with the appropriate HUD Office receiving an allocation and must meet the requirements of this NOFA. No application will be accepted after 4:00 p.m. local time on August 19, 1996, unless that date and time is extended by a Notice published in the **Federal Register**. HUD will not accept applications received after that date and time, even if postmarked by the deadline date. Applications submitted by facsimile are not acceptable.

Immediately upon publication of this NOFA, if names have not already been provided to the Multifamily Housing Clearinghouse, HUD Offices shall notify minority media and media for persons with disabilities, all persons and organizations on their mailing lists, minority and other organizations within their jurisdiction involved in housing and community development, and groups with special interest in housing for disabled households.

Organizations interested in applying for a Section 811 capital advance should contact the Multifamily Housing Clearinghouse at 1–800–685–8470 (the TTY number is 1–800–483–2209) for a copy of the Application Package, and advise the appropriate HUD Office if they wish to attend the workshop described below. HUD encourages minority organizations to participate in this program as Sponsors. HUD Offices will advise all organizations on their mailing list of the date, time, and place of workshops at which HUD will explain the Section 811 program.

HUD strongly recommends that prospective applicants attend the local HUD Office workshop. Interested persons with disabilities should contact the HUD Office to assure that any necessary arrangements can be made to enable their attendance and participation in the workshop. While strongly urged to do so, if Sponsors cannot attend a workshop, Application Packages can also be obtained from the Multifamily Housing Clearinghouse (see address and telephone number in the "Application Package" section, above). However, Sponsors must contact the appropriate HUD Office with any questions regarding the submission of applications and for any additional application requirements.

At the workshops, HUD will distribute Application Packages and will explain application procedures and requirements. Also, HUD will address concerns such as local market conditions, building codes, historic preservation, floodplain management, displacement and relocation, zoning, and housing costs.

III. Application Submission Requirements

A. Application

Each application shall include all of the information, materials, forms, and exhibits listed in section III.B., below, of this NOFA (with the exception of applications submitted by Sponsors selected for a Section 811 fund reservation within the last three funding cycles), and must be indexed and tabbed. Such previously selected Section 811 Sponsors are not required to submit the information described in B.2.(a), (b), and (c), below, of this NOFA (Exhibits 2.a., b., and c. of the application), which are the articles of incorporation (or other organizational documents), by-laws, and the IRS tax exemption, respectively. If there has been a change in any of the eligibility documents since its previous HUD approval, the Sponsor must submit the updated information in its application. The HUD Office will base its determination of the eligibility of a new Sponsor for a reservation of Section 811 capital advance funds on the information provided in the application. HUD Offices will verify a Sponsor's indication of previous HUD approval by checking the project number and approval status with the appropriate HUD Office. In addition to this relief of paperwork burden in preparing applications, applicants will be able to use information and exhibits previously prepared for prior applications under Section 811, Section 202, or other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include, among others, those on previous participation in the Section 202 or Section 811 programs; applicant experience in the provision of housing and services; supportive services plan; community ties; and experience serving minorities.

B. General Application Requirements

1. Form HUD–92016–CA, Application for Section 811 Supportive Housing Capital Advance.

Note: A sponsor may apply for a Scattered site Project in one application.

2. Evidence of *each* Sponsor's legal status as a nonprofit organization, including the following:

(a) Articles of Incorporation, constitution, or other organizational documents;

(b) By-laws;

(c) IRS section 501(c)(3) tax exemption ruling (this must be submitted by all Sponsors, including churches).

Note: Sponsors who have received a section 811 fund reservation within the last three funding cycles are not required to submit the documents described in (a), (b), and (c), above. Instead, sponsors must submit the project number of the latest application submitted and the HUD office to which it was submitted. If there have been any modifications or additions to the subject documents, indicate such, and submit the new material.

(d) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation that has or will have a contract with the Owner and that includes a current listing of all duly qualified and sitting officers and directors by title and the beginning and ending dates of each person's term.

(e) The number of people on the Sponsor's board and the number of those people who are consumers with disabilities.

3. Sponsor's purpose, community ties, and experience, including the following:

(a) Description of Sponsor's purpose and current activities;

(b) Description of Sponsor's ties to the community at large and to the disabled community in particular;

(c) Description of Sponsor's housing and/or supportive services experience. The description should include any rental housing projects (including integrated housing developments) and/

or medical facilities sponsored, owned, and operated by the Sponsor, the Sponsor's past or current involvement in any programs other than housing that demonstrates the Sponsor's management capabilities and experience, and the Sponsor's experience in serving persons with disabilities and minorities.

(d) A description of Sponsor's participation in joint ventures and experience in contracting with minority-owned businesses, women-owned businesses, and small businesses over the last three years, including a description of the joint venture, partners and the Sponsor's involvement and a summary of the total contract amounts awarded in each of the three categories for the preceding three years, and the percentage that amount represents of all contracts awarded by the Sponsor in the relevant time period;

(e) A certified Board Resolution acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage and provide appropriate services in connection with the proposed project, and that it reflects the will of its membership. Also, evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the estimated start-up expenses, the Minimum Capital Investment (one-half of one-percent of the HUD-approved capital advance, not to exceed $10,000), and the estimated cost of any amenities or features (and operating costs related thereto) that would not be covered by the approved capital advance;

(f) Description, if applicable, of the Sponsor's efforts to involve persons with disabilities in the development of the application, as well as its intent to involve persons with disabilities in the implementation of the program.

4. Project information including the following:

(a) Evidence of need for supportive housing. An identification of the proposed population and evidence demonstrating sustained effective demand for the housing for the proposed population in the area to be served, such as a description of market conditions in existing Federally assisted housing for persons with disabilities (occupancy, waiting lists, etc.), State or local needs assessments of persons with disabilities in the area, the types of supportive services arrangements currently available in the area, and the use of such services as evidenced by data from local social service agencies.

(b) Description of the project, including the following:

(1) Number and type of structure(s), number of bedrooms if group home, number of units with bedroom distribution if independent living units (including condos), number of residents with disabilities, and resident staff per structure.

(2) An identification of all community spaces, amenities, or features planned for the housing. A description of how the spaces, amenities, or features will be used, and the extent to which they are necessary to accommodate any special needs of the proposed residents. If these community spaces, amenities, or features would not comply with the project design and cost standards of § 891.120 and the special project standards of § 891.310, the Sponsor must demonstrate its ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, amenities, or features; and

(3) Description of whether and how the project will promote energy efficiency, and, if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(c) A supportive services plan (a copy of which must be sent to the appropriate State or local agency as instructed in section IV.C., below, of this NOFA) that includes:

(1) A detailed description of whether the housing is intended to serve persons with physical, mental, or emotional impairments, developmental disabilities, or chronic mental illness. Include how and from whom/where persons will be referred and admitted to the project. The Sponsor may, with the approval of the Secretary, limit occupancy within housing developed under this part to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment. However, no otherwise qualified individual, regardless of disability, may be denied occupancy if the person can benefit from the housing and/or services provided.

(2) A detailed description of any supportive service needs of the proposed population and the extent to which the supportive services will be needed.

(3) The manner in which such services will be provided, either by residents taking responsibility for acquiring their own services, to the extent needed, on an individual basis, or by a comprehensive service plan organized by the Sponsor.

(4) If services will be organized or provided by the Sponsor, include the following:

(i) The name(s) of the agency(s) (if other than the Sponsor) that will be responsible for providing the supportive services;

(ii) The evidence of each service provider's capability and experience in providing such supportive services;

(iii) A description of how, when, how often, and where (on/off-site) the services will be provided;

(iv) A description of residential staff, if needed;

(v) Identification of the extent of State and local funds to assist in the provision of supportive services;

(vi) Letters of intent from service providers or funding sources, indicating commitments to fund or to provide the supportive services, or indication that a particular service will be available to proposed residents. If the Sponsor will be providing any supportive services or will be coordinating the provision of any of the supportive services, a letter indicating its commitment to either provide the supportive services or ensure their provision for the life of the project;

(vii) If any State or local government funds will be provided, a description of the State or local agency's philosophy/policy concerning residential facilities for the population to be served, and a demonstration by the Sponsor that the application is consistent with State or local plans and policies governing the development and operation of facilities for the same disabled population.

(5) If the proposed residents will be taking responsibility for acquiring their own supportive services, a description of appropriate services in the community from which the residents can choose.

(6) Assurances that the proposed residents will receive supportive services based on their individual needs, and a commitment that accepting supportive services will not be a condition of occupancy.

(7) Form HUD–92013E, Supplemental Application Processing Form—Housing for Persons with Disabilities. Identify all supportive services, if any, to be provided to the persons occupying such housing.

(d) Supportive Services Certification. A certification from the appropriate State or local agency identified in the Application Package that the provision of supportive services is well designed to serve the special needs of persons with disabilities, that the necessary supportive services will be provided on a consistent, long-term basis, and that the proposed facility is consistent with State or local plans and policies governing the development and operation of facilities to serve individuals of the proposed occupancy category. (The name, address, and telephone number of the appropriate agency can be obtained from the appropriate HUD Office.)

(e) Evidence of control of an approvable site, or identification of a site for which the Sponsor provides reasonable assurances that it will obtain control within 6 months from the date of fund reservation (if Sponsor is approved for funding).

(1) If the Sponsor has control of the site, it must submit the following information:

(i) Evidence that the Sponsor has entered into a legally binding option agreement (which extends through the end of the current fiscal year and contains a renewal provision so that the option can be renewed for at least an additional six months) to purchase or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold, a request with all supporting documentation, submitted either prior to or with the Application for Capital Advance, for a partial release of a site covered by a mortgage under a HUD program, or other evidence of legal ownership of the site (including properties to be acquired from the RTC/FDIC). The Sponsor must also identify any restrictive covenants, including reverter clauses. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notice of Section 811 capital advance, and identification of any restrictive covenants, including reverter clauses. However, in localities where HUD determines that the time constraints of the funding round will not permit all of the required official actions (*e.g.*, approval of Community Planning Boards) that are necessary to convey publicly-owned sites, a letter in the application from the mayor or director of the appropriate local agency indicating their approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the HUD Office if it has satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and identification of any restrictive covenants, including reverter clauses.

Note: A proposed project site may not be acquired or optioned from a general contractor (or its affiliate) that will construct the section 811 project or from any other development team member.

(ii) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for belief that the proposed action will be completed successfully before the submission of the commitment application (e.g., a summary of the results of any requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications or acceptability from zoning bodies, etc.).

(iii) Narrative description of site and area surrounding the site, characteristics of neighborhood, how the site will promote greater housing opportunities for minorities, and any other information that affects the suitability of the site for persons with disabilities and including:

(A) A statement that the Sponsor is willing to seek a different site if the preferred site is unapprovable and that site control will be obtained within six months of notification of fund reservation;

(B) A map showing the location of the site and the racial composition of the neighborhood, with the area of racial concentration delineated;

(C) A Transaction Screen Process, in accordance with the American Society for Testing and Material (ASTM) Standards E 1528–93 and E 1527–93, as amended. If the completion of the Transaction Screen Questionnaire results in either a "yes" or "unknown" response, further study is required, and the Sponsor must complete a Phase I Environmental Site Assessment in accordance with the ASTM and submit it with the application. Sponsors may choose to automatically complete a Phase I Environmental Site Assessment in lieu of completing the Transaction Screen Questionnaire. If the Phase I study indicates the possible presence of contamination and/or hazards, further study must be undertaken. At this point, the Sponsor must decide whether to continue with this site or choose another site. Should the Sponsor choose another site, the same environmental site assessment procedure identified above must be followed for that site. Since all Transaction Screen processes and Phase I studies must be completed and submitted with the application, it is important that the Sponsor start the site assessment process as soon after the publication of this NOFA as possible.

If the Sponsor chooses to continue with the original site, then it must undertake a detailed Phase II Environmental Site Assessment by an appropriate professional.

Note: This could be an expensive undertaking. The cost of the study will be borne by the sponsor if the application is not selected.

If the Phase II Assessment reveals site contamination, the extent of the contamination and a plan for clean-up of the site must be submitted to the local HUD Office. The plan for clean-up must include a contract for remediation of the problem(s) and an approval letter from the applicable Federal, State, and/or local agency with jurisdiction over the site. In order for the application to be considered for review under this FY 1996 funding, this information would have to be submitted to the local HUD Office *no later than thirty days after the application submission deadline date.*

Note: For properties to be acquired from the RTC/FDIC, include a copy of the RTC/FDIC prepared Transaction Screen Checklist or Phase I Environmental Site Assessment, and applicable documentation, per the RTC/FDIC Environmental Guidelines.

(D) If an exception to the project size limits found in section IV.D., below, of this NOFA is being requested, describe why the site was selected and demonstrate the following:

(*i*) The increased number of people is necessary for the economic feasibility of the project;

(*ii*) The project is compatible with other residential development and the population density of the area in which the project is to be located;

(*iii*) The increased number of people will not prohibit their successful integration into the community;

(*iv*) The project is marketable in the community;

(*v*) The size of the project is consistent with State and/or local policies governing similar facilities for the proposed population; and

(*vi*) A statement that the Sponsor is willing to have its application processed at the project size limit should HUD not approve the exception.

(D) If applicable, identify whether the site for the proposed project is located within the boundaries of a Place Based Community Revitalization Area, as defined above. If the site is in a Place Based Community Revitalization Area, briefly summarize the locally developed strategy for the area involving items such as physical improvements, necessary public facilities and services, private investment and citizen self-help activities.

(2) If the Sponsor has identified a site, but does not have it under control, it must submit the following information:

(i) A description of the location of the site, including its street address and unit number (if condominium), neighborhood/community characteristics (to include racial and ethnic data), amenities, adjacent housing and/or facilities, how the site will promote greater housing opportunities for minorities, and any other information that affects the suitability of the site for persons with disabilities;

(ii) A description of the activities undertaken to identify the site, as well as what actions must be taken to obtain control of the site, if approved for funding;

(iii) An indication as to whether the site is properly zoned. If it is not, an indication of the actions necessary for proper zoning and whether these can be accomplished within six months of fund reservation award, if approved for funding;

(iv) A status of the sale of the site; and

(v) An indication as to whether the site would involve relocation.

(f) Statements of support for the proposed project from nongovernmental organizations familiar with the needs of the population it would serve, any sources of local funds to serve the project, minority support, and how long the Sponsor has been in existence (include any additional related information).

(g) For group homes to be licensed as intermediate care facilities (in which funding for the intermediate care is provided under Title XIX of the Social Security Act) that serve persons with developmental disabilities, the following must be submitted:

(1) Evidence demonstrating that the proposed project will primarily provide housing rather than medical facilities, and is or will be licensed by appropriate State agencies;

(2) Description of the medical training of the staff of the proposed facility and any nursing services that will be required by the residents on-site;

(3) Description of the services that will be funded by Medicaid for residents of the proposed project, including their nature, frequency, and where the services are to be provided;

(4) Description of any special design features proposed for the group home that are not common to other Section 811 group homes for the proposed population, and the Sponsor's rationale for including them;

(5) Written evidence from the State Medicaid Office that it recognizes the need for a tenant contribution to rent and has agreed to pay the cost of the tenant contribution in the Medicaid payment to the Owner; and

(6) Statement certifying that the Individual Program Plan for each resident will include participation in an out-of-the-home activity program for at least six hours each weekday.

5. A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other HUD Office in response to this NOFA or the NOFA for Supportive Housing for the Elderly (published elsewhere in today's **Federal Register**). Indicate, by HUD Office, the number of units requested and the proposed location by city and State for each application. Also, a list of all FY 1995 and prior year projects to which the Sponsor(s) is a party, identified by project number and HUD Office, which have not been finally closed.

6. HUD–2880, Applicant/Recipient Disclosure/Update Report including Social Security Numbers and Employee Identification Numbers.

7. E.O. 12372. A certification that the Sponsor has submitted a copy of its application, if required, to the State agency (single point of contact) for State review in accordance with Executive Order 12372.

8. A statement that: (a) identifies all persons (families, individuals, businesses, and nonprofit organizations) by race/minority group and status as owners or tenants occupying the property on the date of submission of the application for a capital advance; (b) indicates the estimated cost of relocation payments and other services; and (c) identifies the staff organization that will carry out the relocation activities. (This requirement applies to applications with site control only. Sponsors of applications with identified sites that are selected will be required to submit this information at a later date once they have obtained site control.)

Note: If any of the relocation costs will be funded from sources other than the section 811 capital advance, the sponsor must provide evidence of a firm commitment of these funds. When evaluating applications, HUD will consider the total cost of proposals (*i.e.*, cost of site acquisition, relocation, construction and other project costs).

9. SF–424. A certification on SF–424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

10. Disclosure of Lobbying Activities. If the amount applied for is greater than $100,000, the certification with regard to lobbying required by 24 CFR part 87 must be included. If the amount applied for is greater than $100,000 and the applicant has made or has agreed to make any payment using nonappropriated funds for lobbying activity, as described in 24 CFR part 87, the submission must also include SF LLL, Disclosure of Lobbying Activities. The applicant determines if the submission of the SF LLL is applicable.

11. Certification of Consistency with the Consolidated Plan (Plan) for the jurisdiction in which the proposed project will be located must be submitted by the Sponsor. The certification must be made by the unit of general local government if it is required to have, or has, a complete Plan. Otherwise the certification may be made by the State, or if the project will be located in a unit of general local government authorized to use an abbreviated strategy, by the unit of general local government if it is willing to prepare such a Plan.

All certifications must be made by the public official responsible for submitting the Plan to HUD. The certifications must be submitted as part of the application by the application submission deadline date set forth in this NOFA. The Plan regulations are published in 24 CFR part 91.

12. Sponsor Certifications

(a) A certification of the Sponsor(s)' intent to comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3600–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; Executive Order 11246 (as amended) and the implementing regulations at 41 CFR Chapter 60; the regulations implementing Executive Order 11063 (Equal Opportunity in Housing) at 24 CFR part 107; the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) to the extent applicable; the affirmative fair housing marketing requirements of 24 CFR part 200, subpart M and the implementing regulations at 24 CFR part 108; and other applicable Federal, State, and local laws prohibiting discrimination and promoting equal opportunity.

(b) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(c) A certification that the project will comply with HUD's project design and cost standards and special project standards; the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40; section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8; and for covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100; and the Americans with Disabilities Act of 1990.

(d) A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), implemented by regulations at 49 CFR part 24, and 24 CFR 891.155(e).

(e) A certification by the Sponsor(s) that it will form an Owner (as defined in 24 CFR 891.305) after the issuance of the capital advance, will cause the Owner to file a request for determination of eligibility and a request for capital advance, and will provide sufficient resources to the Owner to insure the development and long-term operation of the project.

(f) A certification that the Sponsor will comply with the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR part 35 (except as superseded in 24 CFR 891.325).

(g) A certification that the Sponsor will not require residents to accept any supportive services as a condition of occupancy.

IV. Additional Information

A. Development Cost Limits

(a) The following development cost limits, adjusted by locality as described in (b) below, shall be used to determine the capital advance amount to be reserved for projects for persons with disabilities:

(1) *For independent living facilities:* The total development cost of the property or project attributable to dwelling use (less the incremental development cost and the capitalized operating costs associated with any excess amenities and design features to be paid for by the Sponsor) may not exceed:

Non-elevator structures:

$28,032 per family unit without a bedroom;
$32,321 per family unit with one bedroom;
$38,979 per family unit with two bedrooms;
$49,893 per family unit with three bedrooms;
$55,583 per family unit with four bedrooms.

For elevator structures:

$29,500 per family unit without a bedroom;
$33,816 per family unit with one bedroom;
$41,120 per family unit with two bedrooms;
$53,195 per family unit with three bedrooms;
$58,392 per family unit with four bedrooms.

(2) *For group homes only:*

Number residents	Type of Disability	
	Physical/developmental	Chronic mental illness
3	$128,710	$124,245
4	137,730	131,980
5	146,750	139,715
6	155,760	147,450
7	162,876	153,576
8	168,126	157,731

These cost limits reflect those costs reasonable and necessary to develop a project of modest design that complies with HUD minimum property standards; the minimum group home requirements of § 891.310(a); the accessibility requirements of §§ 891.120(b) and 891.310(b); and the project design and cost standards of § 891.120.

(b) Increased development cost limits.

(1) HUD may increase the development cost limits set forth in paragraphs (a) (1) and (2) above by up to 140 percent in any geographic area where the cost levels require, and may increase the development cost limits by up to 160 percent on a project-by-project basis.

(2) If HUD finds that high construction costs in Alaska, Guam, Virgin Islands or Hawaii make it infeasible to construct dwellings, without the sacrifice of sound standards of construction, design, and livability, within the development cost limits provided in paragraphs (a) (1) and (2) of this section, the amount of capital advances may be increased to compensate for such costs. The increase may not exceed the limits established under this section (including any high cost area adjustment) by more than 50 percent.

(3) For group homes only, HUD Offices may approve increases in the development cost limits in paragraph (a)(2) above, in areas where Sponsors can provide sufficient documentation that high land costs limit or prohibit project feasibility. An example of acceptable documentation is evidence of at least three land sales which have actually taken place (listed prices for land are not acceptable) within the last two years in the area where the project is to be built. The average cost of the documented sales must exceed seven percent of the development cost limit for which the project in question is eligible in order for an increase to be considered.

B. Sites

The National Affordable Housing Act requires Sponsors submitting applications for Section 811 fund reservations to provide either (a) evidence of site control, or (b) reasonable assurances that it will have control of a site within six months of notification of fund reservation. Accordingly, if a Sponsor has control of a site at the time it submits its application, it must include evidence of such as described in the Application Package. If it does not have site control, it must provide the information required in the application for identified sites as a reasonable assurance that site control will be obtained within six months of fund reservation notification.

Sponsors may select a site different from the one(s) submitted in their original applications if the original site is not approvable. Selection of a different site will require HUD performance of an environmental review on the new site, which could result in rejection of that site. However, if a Sponsor does not have site control for any reason 12 months after notification of fund reservation, the assistance will be recaptured and reallocated.

Sponsors submitting satisfactory evidence of an approvable site (*i.e.*, site control) will have 10 bonus points added to the rating of their applications. Sponsors submitting proper identification of a site will not be eligible for the 10 bonus points.

Applications containing evidence of site control where either the evidence or the site is not approvable will *not* be rejected provided the application indicates the Sponsor's willingness to select another site and an assurance that site control will be obtained within six months of fund reservation notification.

In the case of a scattered site application submitted with evidence of site control for all of the sites, the evidence must be satisfactory for each site, and all the sites must be approvable for the application to receive the 10 bonus points for site control. The same applies to a scattered site application in which the Sponsor has control of some of the sites but has only identified

others. It would also not be eligible for the 10 bonus points for site control.

C. Supportive Services

The National Affordable Housing Act requires Sponsors submitting applications for Section 811 fund reservations to include a supportive services plan and a certification from the appropriate State or local agency that the provision of services identified in the supportive services plan is well designed to serve the special needs of persons with disabilities. Paragraph III.B.4.(c) above outlines the information that must be in the Supportive Services Plan. Sponsors must submit one copy of their Supportive Services Plans to the appropriate State or local agency well in advance of the application submission deadline date in order for the State or local agency to review the Supportive Services Plan and complete the Supportive Services Certification (Paragraph III.B.4(d) above, to be supplied by the Sponsor from the Application Package received from the HUD Office) and return it to the Sponsor for inclusion with the application submission to HUD.

Since the appropriate State or local agency will review the Supportive Services Plan on behalf of HUD, the Supportive Services Certification, in addition to the indication as to whether the provision of supportive services is well designed, will indicate whether the Sponsor demonstrated that necessary supportive services will be provided on a consistent, long-term basis. If HUD receives an application in which the Supportive Services Certification is missing, is received by HUD after the deficiency period, or indicates that either the provision of services is *not* well designed to meet the special needs of persons with disabilities, the proposed facility is not consistent with the agency's plans/policies governing the development and operation of facilities to serve the proposed population and the agency will be a major funding or referral source for the proposed project, or that the Sponsor failed to demonstrate that any necessary services will be provided on a consistent, long-term basis, the application shall be rejected.

HUD recognizes that there will be varying degrees of need for supportive services by the potential residents of Section 811 housing, even to the degree of needing no special services at all. Sponsors must describe this in the application, in Exhibit 4. A Sponsor proposing to serve persons with disabilities who need few, if any, special services will not have its application penalized as a result. In addition, Sponsors may not require residents, as a condition of occupancy, to accept any supportive service.

D. Project Size Limits

1. *Group home*—The minimum number of persons with disabilities that can be housed in a group home is three and the maximum number is eight.

2. *Independent living facility*—The minimum number of units that can be applied for in one application is five. The maximum number of persons with disabilities that can be housed in an independent living facility is 24.

3. *Exceptions*—Sponsors may request an exception to the above project size limits by providing the information required in the Application Package and as outlined in section III. B. 4.(e)(iii)(D) above.

V. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. This NOFA announces the availability of funds for supportive housing for persons with disabilities.

B. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this NOFA does not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This NOFA merely notifies the public of the availability of capital advances for supportive housing for persons with disabilities.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this NOFA does not have the potential for significant impact on family formation, maintenance, or general well-being. This NOFA may have a positive though indirect effect on families, to the extent that families will benefit from the provision of supportive housing for persons with disabilities. Since any effect on families is beneficial, this NOFA is not subject to review under the Order.

D. Accountability in the Provision of HUD Assistance

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). This final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published in the **Federal Register** (57 FR 1942) additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation, public access, and disclosure requirements of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

1. Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

2. Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All report—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

E. Prohibition Against Advance Information on Funding Decisions

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708–3815 (TTY/Voice). (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel, or Headquarters Counsel for the program to which the question pertains.

F. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the Byrd Amendment) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

G. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program title and number are 14.181, Supportive Housing for Persons with Disabilities.

Authority: Section 811, National Affordable Housing Act, as amended (42 U.S.C. 1803), Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 27, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix A—HUD Offices

Note: The first line of the mailing address for all offices is U.S. Department of Housing and Urban Development. Telephone numbers listed are not toll-free.

HUD—New England Area

Connecticut State Office, First Floor, 330 Main Street, Hartford, CT 06106–1860, (203) 240–4523

Massachusetts State Office, Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, MA 02222–1092, (617) 565–5234

New Hampshire State Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03101–2487, (603) 666–7681

Rhode Island State Office, Sixth Floor, 10 Weybosset Street, Providence, RI 02903–3234, (401) 528–5351

HUD—New York, New Jersey Area

New Jersey State Office, Thirteenth Floor, One Newark Center, Newark, NJ 07102–5260, (201) 622–7900

New York State Office, 26 Federal Plaza, New York, NY 10278–0068, (212) 264–6500

Buffalo Area Office, Fifth Floor, Lafayette Court, 465 Main Street, Buffalo, NY 14203–1780, (716) 551–5755

HUD—MIDATLANTIC AREA

District of Columbia Office, 820 First Street, NE, Washington, D.C. 20002–4502, (202) 275–9200

Maryland State Office, Fifth Floor, City Crescent Building, 10 South Howard Street, Baltimore, MD 21201–2505, (410) 962–2520

Pennsylvania State Office, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3390, (215) 656–0600

Virginia State Office, The 3600 Centre, 3600 West Broad Street, P.O. Box 90331, Richmond, VA 23230–0331, (804) 278–4507

West Virginia State Office, Suite 708, 405 Capitol Street, Charleston, WV 25301–1795, (304) 347–7000

Pittsburgh Area Office, 339 Sixth Avenue, Sixth Floor, Pittsburgh, PA 15222–2515, (412) 644–6428

HUD—Southeast/Caribbean Area

Alabama State Office, Suite 300, Beacon Ridge Tower, 600 Beacon Parkway, West, Birmingham, AL 35209–3144, (205) 290–7617

Caribbean Office, New San Juan Office Building, 159 Carlos Chardon Avenue, San Juan, PR 00918–1804, (809) 766–6121

Georgia State Office, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, GA 30303–3388, (404) 331–5136

Kentucky State Office, 601 West Broadway, P.O. Box 1044, Louisville, KY 40201–1044, (502) 582–5251

Mississippi State Office, Suite 910, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, MS 39269–1096, (601) 965–5308

North Carolina State Office, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, (919) 547–4001

South Carolina State Office, Strom Thurmond Federal Building, 1835–45 Assembly Street, Columbia, SC 29201–2480, (803) 765–5592

Tennessee State Office, Suite 200, 251 Cumberland Bend Drive, Nashville, TN 37228–1803, (615) 736–5213

Jacksonville Area Office, Suite 2200, Southern Bell Tower, 301 West Bay Street, Jacksonville, FL 32202–5121, (904) 232–2626

Knoxville Area Office, Third Floor, John J. Duncan Federal Building, 710 Locust Street, Knoxville, TN 37902–2526, (615) 545–4384

HUD—Midwest Area,

Illinois State Office, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 353–5680

Indiana State Office, 151 North Delaware Street, Indianapolis, IN 46204–2526, (317) 226–6303

Michigan State Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, (313) 226–7900

Minnesota State Office, 220 Second Street, South, Minneapolis, MN 55401–2195, (612) 370–3000

Ohio State Office, 200 North High Street, Columbus, OH 43215–2499, (614) 469–5737

Wisconsin State Office, Suite 1380, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2289, (414) 297–3214

Cincinnati Area Office, 525 Vine Street, Seventh Floor, Cincinnati, OH 45202–3188, (513) 684–2884

Cleveland Area Office, Fifth Floor, Renaissance Building, 1350 Euclid Avenue, Cleveland, OH 44115–1815, (216) 522–4065

Grand Rapids Area Office, Trade Center Building, Third Floor, 50 Louis Street, NW, Grand Rapids, MI 49503–2648, (616) 456–2100

HUD—Southwest Area

Arkansas State Office, Suite 900, TCBY Tower, 425 West Capitol Avenue, Little Rock, AR 72201–3488, (501) 324–5931

Louisiana State Office, Ninth Floor, Hale Boggs Federal Building, 501 Magazine

Street, New Orleans, LA 70130–3099, (504) 589–7200
Oklahoma State Office, 500 Main Plaza, 500 West Main Street, Suite 400, Oklahoma City, OK 73102–2233, (405) 553–7400
Texas State Office, 1600 Throckmorton Street, P.O. Box 2905, Fort Worth, TX 76113–2905, (817) 885–5401
Houston Area Office, Suite 200, Norfolk Tower, 2211 Norfolk, Houston, TX 77098–4096, (713) 313–2274
San Antonio Area Office, Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, (210) 472–6800

HUD—Great Plains

Iowa State Office, Room 239, Federal Building, 210 Walnut Street, Des Moines, IA 50309–2155, (515) 284–4512
Kansas/Missouri State Office, Room 200, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, (913) 551–5467
Nebraska State Office, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955, (402) 492–3100
Saint Louis Area Field Office, Third Floor, Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, MO 63103–2836, (314) 539–6583

HUD—Rocky Mountains Area

Colorado State Office, 633 17th Street, Denver, CO 80202–3607, (303) 672–5440

HUD—Pacific/Hawaii Area

Arizona State Office, Suite 1600, Two Arizona Center, 400 North 5th Street, Phoenix, AZ 85004–2361, (602) 379–4434
California State Office, Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102–3448, (415) 436–6532
Hawaii State Office, Suite 500, 7 Waterfront Plaza, 500 Ala Moana Boulevard, Honolulu, HI 96813–4918, (808) 522–8175
Los Angeles Area Office, 1615 West Olympic Boulevard, Los Angeles, CA 90015–3801, (213) 251–7122
Sacramento Area Office, Suite 200, 777 12th Street, Sacramento, CA 95814–1997, (916) 498–5220

HUD—Northwest/Alaska Area

Alaska State Office, Suite 401, University Plaza Building, 949 East 36th Avenue, Anchorage, AK 99508–4399, (907) 271–4170
Oregon State Office, 400 Southwest Sixth Avenue, Suite 700, Portland, OR 97204–1632, (503) 326–2561
Washington State Office, Suite 200, Seattle Federal Office Building, 909 First Avenue, Seattle, WA 98104–1000, (206) 220–5101.

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federal register

Monday
July 8, 1996

Part IV

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Parts 420 and 450
State Energy Conservation Program; Interim Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Parts 420 and 450

[Docket No. EE–RM–96–402]

RIN 1904–AA81

State Energy Conservation Program

AGENCY: Office of Energy Efficiency and Renewable Energy.

ACTION: Interim final rule with opportunity to comment.

SUMMARY: The Department of Energy (Department or DOE) amends the regulations for the State Energy Conservation Program to provide for the consolidation of two formula grant programs—the State Energy Conservation Program (SECP) and the Institutional Conservation Program (ICP). DOE removes prescriptive energy audit procedures that are no longer needed and conflict with the President's regulatory reform program. DOE is also incorporating in this rule provisions for competitively awarded financial assistance for a number of State-oriented special project activities.

DATES: This rule is effective July 8, 1996. Written comments [six copies and, if possible, a computer disk] on the interim final rule must be received by DOE no later than August 7, 1996, to ensure their consideration.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of July 8, 1996.

ADDRESSES: All written comments (six copies) are to be submitted to: Thomas P. Stapp, U.S. Department of Energy, Office of Building Technology, State and Community Programs, EE–44, Docket Number EE–RM–96–402, 1000 Independence Avenue, S.W., Washington, DC, 20585, (202) 586–2096.

Copies of the comments, as well as other parts of the record, will be available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays at the following address: DOE Freedom of Information Reading Room, United States Department of Energy, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–6020.

Copies of the material to be incorporated by reference are available from:

The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), 1791 Tullie Circle, N.E., Atlanta, Georgia 30329, (404) 636–8400;

The Illuminating Engineering Society of North America (IESNA), 345 East 47th Street, New York, New York 10017, (212) 705–7913; and

The Council of American Building Officials (CABO), 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041, (703) 931–4533.

For more information concerning public participation in this rulemaking proceeding, see section IV, "Opportunity for Public Comment."

FOR FURTHER INFORMATION CONTACT: Thomas P. Stapp, Office of Building Technology, State and Community Programs, Department of Energy, Mail Stop 5G–063, EE–44, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–2096.

SUPPLEMENTARY INFORMATION:

I. Introduction and Description of the Program
II. Rationale for Interim Final Rulemaking
III. The Revisions to the Rule
IV. Opportunity for Public Comment
V. Review Under Executive Order 12612
VI. Review Under Executive Order 12866
VII. Review Under Executive Order 12988
VIII. Unfunded Mandate Review
IX. Review Under the Regulatory Flexibility Act
X. Review Under the Paperwork Reduction Act
XI. Review Under the National Environmental Policy Act
XII. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996
XIII. The Catalog of Federal Domestic Assistance

I. Introduction and Description of the Program

The conference report accompanying the Balanced Budget Down Payment Act II of 1996, Public Law 104–134, (H.R. Conf. Rept. No. 537, 104th Cong., 2d Sess. (1996)), provided the Department with the opportunity to consolidate two of its formula grant programs consistent with recommendations made in an earlier conference report (H.R. Conf. Rept. No. 402, 104th Cong., 1st Sess. 60 (1995)), which accompanied the Interior and Related Agencies Appropriations Bill, 1996 (H.R. 1977, 104th Cong., 1st Sess. (1995)). Congress, in that earlier report, recommended such a consolidation to provide a more flexible program to be operated by the States. The Department is hereby following that recommendation by consolidating the State Energy Conservation Program (42 U.S.C. 6321 *et seq.*) and the Institutional Conservation Program (42 U.S.C. 6371 *et seq.*) under the name "State Energy Program (SEP)". These two components will constitute the formula grants part of SEP. In the other part of SEP, DOE is providing for financial assistance for a number of State-oriented competitively awarded special project activities.

The State Energy Program Formula Grants

The approach used to apply for and implement the activities formerly funded under ICP regulations (10 CFR part 455) will be different under SEP. The process for applying for the types of activities formerly funded under SECP will essentially stay the same, and will become the standard approach.

DOE encourages all States to consider including ICP-type activities in their SEP State Plans in 1996 and future years, as appropriate. Following are brief explanations of how the component programs under the formula grants will work in the SEP context.

The State Energy Conservation Program

This program provides grants to States for a wide range of energy-related projects, and such projects will continue to be eligible for funding under SEP, using the same application process, and following the same programmatic requirements. This rulemaking is based on the SECP rule and makes only a few revisions to the SECP process, as discussed further in this document.

The Institutional Conservation Program

This program provides grants both to schools and hospitals for a variety of energy conservation measures and technical audits of buildings, and to States to administer the program and, since 1993, to provide specialized assistance to institutions. States wishing to continue to undertake such activities under SEP will apply to do so under the rule published today. Grants will no longer be issued by DOE to individual schools and hospitals; the activities would now be covered under one or more of the program activities under the SEP grant to the State, and the State would then provide the funding to the institutions using the financial mechanisms specified in its approved State Plan. The State would also specify the requirements it will place on its schools and hospitals applicants. The regulations covering ICP (10 CFR Part 455) will not apply to grants issued under SEP but States are free to adopt any of the requirements in those regulations to cover ICP-type activities under SEP. ICP-type activities also continue to be eligible for funding under the various Petroleum Violation Escrow (PVE) settlements.

For fiscal year 1996 Congress consolidated the funding for ICP and SECP. DOE believes that having these two programs consolidated into the State Energy Program Formula Grants part of SEP will make it easier for States to apply for grants and more efficient for both DOE and the States to manage the grants. It should also simplify the process for the ultimate recipients of assistance, such as schools and hospitals, which will now be able to receive assistance directly from their States, rather than from DOE.

Special Projects Financial Assistance

Financial assistance for the special projects now being provided for in this rulemaking covers a range of State-oriented activities to be offered as options in years when funding is available. States will be invited to apply for any of a range of potential activities announced for the fiscal year concerned. The announcement will be made in special project notices of funding availability published in the **Federal Register**, and in detailed program guidance/solicitation documents.

Activities may include, but may not be limited to, new State-oriented programs based on existing DOE initiatives such as Motor Challenge, Climate Wise, Clean Cities, Rebuild America, and the Federal Energy Management Program, as well as programs for updating State and local government building energy codes.

DOE would then make its selection of projects based on the results of the technical evaluations and on each State's expressed interests/priorities, DOE's priorities, the amount of funding requested, geographical diversity, the responsiveness of the applications to the purposes, requirements and program policy selection factors specified in the special projects guidance/solicitation, and the total funds available for each type of project.

Providing for these projects to be undertaken as part of SEP will result in a more efficient vehicle for funding these more specialized activities, some of which may be new initiatives, and some of which were formerly funded separately. The rationale for covering these projects in a separate part of the rule, and for using a different approach for the application process, is that appropriations for these projects are from a variety of sources different from the source for the formula grants, and the funding must, therefore, be separately tracked. Projects approved for funding will be handled as amendment(s) to the SEP grant.

Energy Audit Procedures and List of Measures

Consistent with section 365(e) of the Energy Policy and Conservation Act (EPCA or the Act), 42 U.S.C. 6325(e), in the late 1970's DOE issued prescriptive regulations, codified at 10 CFR part 450, containing a list of energy conservation measures and detailed energy audit procedures. The list of measures is no longer needed because the programs that utilized them have not been funded for more than 10 years. Prescriptive energy audit procedures are no longer needed for SEP because States are familiar with developing such procedures in light of their particular facts and circumstances. In lieu of prescriptive regulations, DOE will be providing informally energy audit guidance for States to consider and apply as they deem appropriate. This approach is consistent with the President's regulatory reform program which emphasizes removal of unnecessary categorical requirements in State grant programs.

II. Rationale for Interim Final Rulemaking

In ordinary circumstances, DOE provides an opportunity for public comment prior to making significant final changes in the rules for financial assistance programs. Similarly, DOE ordinarily provides for an effective date 30 days or more following the date of publication so that affected entities have an opportunity to learn of changes and prepare to comply. However, the unusual and extended delay in the enactment of the 1996 appropriation for the State energy conservation grants subject to today's interim rule necessitates that DOE make expedited regulatory changes in order to facilitate early completion of necessary pre-award DOE activities and State plan amendments in light of the decrease in Federal funds for FY 1996. If the appropriation had been enacted on or about October 1, 1995 (the beginning of FY 1996) rather than April 25, 1996, then there would have been enough time for DOE to conduct a normal notice and comment rulemaking, to issue annual grant guidance on applying for funds to the States, and to review State plans and award grants. There would also have been ample time for States to develop and submit their plans reflecting a significant downsizing of their programs and for their employees to begin making appropriate personal plans where necessary.

Although the magnitude of the funding reduction has been apparent for some time, DOE had to delay regulatory revisions until an appropriation act became law. It is now so late in FY 1996, which ends on September 30, 1996, that significant delay in changing existing rules could pressure the States into making hasty and ill-considered changes to their programs that would be highly disruptive. DOE has extensively and informally consulted with the States on the content of today's rule and has reason to believe that it will prove broadly acceptable. In any event, adjustments, if warranted, will be made in the notice of final rulemaking that responds to comments on today's notice and will apply to funds for FY 1997 and thereafter. Simultaneous with publication of this rule, DOE is sending a copy of this notice to each State so that they will be aware of the revised regulations in time to comply. On the basis of the foregoing, DOE has decided to waive prior notice and opportunity for public comment because issuance of a notice of proposed rulemaking is impracticable and contrary to the public interest. For the same reasons, DOE is making today's interim final rule effective immediately.

III. The Revisions to the Rule

List of Subparts and Sections

To provide for the different approaches for the State Energy Program Formula Grants and the special projects financial assistance, DOE has divided the rule into three subparts. Subpart A covers the general provisions for all financial assistance under the program, subpart B covers the Formula Grant procedures, and subpart C covers the implementation of special projects financial assistance.

With the exceptions of § 420.1, § 420.2, § 420.3 (formerly § 420.13), § 420.4 (formerly § 420.10), and § 420.5 (formerly § 420.11), now in subpart A, the sections now found under subpart B comprised the entire former rule. Those sections have been rearranged and in some cases revised to improve the organization of the rule and to accommodate the new subpart format. The new arrangement (with former section numbers noted, if there has been a change) is as follows:

Subpart A—General Provisions for State Energy Program Financial Assistance

420.1 Purpose and scope. (same)
420.2 Definitions. (same)
420.3 Administration of financial assistance. (formerly § 420.13)
420.4 Technical assistance. (formerly § 420.10)
420.5 Reports. (formerly § 420.11)
420.6 Reference sources. (new)

Subpart B—State Energy Program Formula Grant Procedures

420.10 Purpose. (new)
420.11 Allocations among the States. (formerly part of § 420.3)
420.12 State matching contribution. (formerly part of § 420.3)
420.13 Annual State applications and State plans. (formerly § 420.4)

420.14 Review and approval of annual State applications and State plans. (formerly § 420.5)
420.15 Minimum criteria for required program activities for plans. (formerly § 420.6)
420.16 Extensions for compliance with required program activities. (formerly § 420.8)
420.17 Optional elements of State Energy Program plans. (formerly § 420.7)
420.18 Expenditure prohibitions and limitations. (formerly § 420.12)
420.19 Administrative review. (formerly § 420.9)

Throughout the rule cross-references have been revised to reflect the new section numbers. Subpart C has been added to the rule to provide for financial assistance for the new special projects. This subpart, with its respective sections, is as follows:

Subpart C—Implementation of Special Projects Financial Assistance

420.30 Purpose and scope.
420.31 Notice of availability.
420.32 Program guidance/solicitation.
420.33 Application requirements.
420.34 Matching contributions or cost sharing.
420.35 Application evaluation.
420.36 Evaluation criteria.
420.37 Selection.

Subpart A—General Provisions for State Energy Program Financial Assistance

Section 420.1 Purpose and scope

This section has been substantially reduced by eliminating the first sentence of paragraph (a) and all of paragraph (b) and moving paragraph (c) to new § 420.13. The second sentence of paragraph (a) is all that remains, modified to add the reduction of dependence on imported oil as a purpose of the program and to refer to the new State Energy Program name. The deleted wording from paragraphs (a) and (b) was essentially redundant. Former paragraph (c) more appropriately belongs under the section on State applications.

Section 420.2 Definitions

A definition for "alternative transportation fuel" has been added to reflect the program's renewed emphasis on reducing dependence on imported oil. The text of the definition is based on the definition of alternative transportation fuel in section 301 of the Energy Policy Act of 1992 (Pub. L. 102–486).

The definition for "ASHRAE 90–75" has been deleted because it is now obsolete.

The definition of "ASHRAE/IESNA 90.1–1989" has been revised to add "NA" after "IES", to add "as amended," to add the Illuminating Engineering Society of North America as co-publisher, and to reference addenda to be used as part of this standard and to cite the authority for incorporation by reference.

The definition of "Assistant Secretary" has been revised to reflect the new name of the organization, Energy Efficiency and Renewable Energy.

The definition of "Btu" has been deleted because it is more completely defined under "British thermal unit."

The definition for "building" has been revised to include the exempted buildings formerly included under the definition of "exempted building" which has been deleted.

The definition of "CABO MEC–89" has been deleted because it is out of date; Model Energy Code, 1993 is the version of this standard that should now be used.

The definition for "Deputy Assistant Secretary" has been revised to reflect a reorganization within DOE whereby the Deputy Assistant Secretary for Building Technology, State and Community Programs has assumed responsibility for SEP.

A definition for "Director, State and Community Programs" has been added to provide for this position which has responsibility for DOE's formula grants to States.

The definition of "energy audit" has been revised primarily to delete the reference to 10 CFR part 450 which has been removed for reasons discussed above, under Energy Audit Procedures and list of measures.

A definition for "energy conservation measure" has been added, to provide for this type of activity which may be more important under SEP now that ICP is included in the program. This definition is based on the one in Section 366 of the Act, 42 U.S.C. 6326 (4). As a conforming change, this term has been substituted for the term "energy conservation building retrofit" wherever that term appeared in the existing rule.

The definition for "exempted building" has been deleted, with types of buildings formerly listed under that definition moved to the definition of "building."

The definition for "Governor" has been revised to conform to the definition of "State."

The definition for "HUD minimum property standards" has been deleted because it is out of date. The Model Energy Code, 1993 should now be used instead.

The definition for "industrial plant" is being revised to "industrial facility" because that is the term now used in the rule.

The definition for "major building type" is being deleted because the term is no longer used in the rule.

A definition for "Model Energy Code, 1993" has been added. This standard replaces the former "CABO MEC–89," which has been deleted, as previously discussed.

The definition for "National energy conservation program" is being deleted because it is no longer used in the rule.

The definition for "petroleum violation escrow funds" has been revised to clarify that the matching requirements referred to are only found in § 420.12 (formerly § 420.3(e)), whereas under § 420.18(b) (formerly § 420.12(b)), there are cost limitations.

The definition of "plan" has been revised to refer to the new State Energy Program.

The definition for "program measure" has been revised to replace the word "measure" with the word "activity." The term "program activity" now covers what were formerly referred to as "program measures" in some parts of the rule and "programs" in other parts of the rule.

Under the definition of "public building," a new subparagraph(e) has been added to include public and private non-profit schools and hospitals, reflecting the consolidation of ICP into SEP.

The definition of "renewable-resource energy measure" has been revised to be a definition of "renewable energy measure" and to provide a more detailed description of such measures. This definition is based on the one in section 366 of the Act, 42 U.S.C. 6326(6). In addition, the reference to subpart D (covering Energy Measures) of 10 CFR part 450, is being deleted, for reasons discussed earlier under Energy Audit Procedures and list of measures.

The definition of "State economic product" has been deleted because the term is no longer used in the rule.

The definition of "Support Office Director" has been revised to reflect the new title "Regional Support Office Director." The new title, and the new Regional Support Office name, are now used throughout the rule wherever the former names appeared.

Section 420.3 Administration of Financial Assistance

Former paragraph (a) (now paragraph (a)(1)) of this section has been revised to provide the current references for the requirement for intergovernmental review and coordination, now found in Executive Order 12372 and its implementing regulations at 10 CFR part 1005.

Paragraphs (b) and (c) of this section were formerly found under § 420.3 as paragraphs (c) and (e), respectively. Paragraph (b) has been revised to specify that budget periods (for both formula grants and special projects) shall be consistent with 10 CFR part 600.

Paragraph (c) has been revised to add the necessity for subawards to be consistent with this part and 10 CFR part 600.

Section 420.4 Technical Assistance

This section was formerly § 420.10.

Section 420.5 Reports

This section was formerly § 420.11. It now covers all SEP financial assistance under both subpart B and subpart C. The requirement for an annual energy savings report has been deleted because of the marginal need for this particular type of report at this time.

Section 420.6 Reference Standards

This is a new section providing information about the incorporation by reference of two standards, ASHRAE/IESNA 90.1–1989 and The Model Energy Code, 1993, which are referred to in § 420.2 and § 420.15.

Subpart B—State Energy Program Formula Grant Procedures

Section 420.10 Purpose

This is a new section to introduce the purpose of subpart B, which is to set forth the procedures that apply to the State Energy Program Formula Grants.

Section 420.11 Allocation of Funds Among the States

This section has been adapted from paragraphs (a) and (b) of former § 420.3. Paragraph (a) remains the same.

DOE has revised the process (specified under § 420.11(b)) by which grant funds are allocated to the States, to accommodate the inclusion of ICP funds which were formerly allocated to States using a formula different from that used for SECP. The only common element in the two formulas was the population of each State. The other two elements in the ICP formula were regional costs of energy and the sum of a State's heating and cooling degree days. The other two elements in the SECP formula were a provision for dividing a portion of the funds equally among all the States, and the State's estimated energy savings from SECP efforts undertaken in calendar year 1980.

The revised process involves an allocation for each State consisting of: a base allocation calculated on the program's $25.5 million available funding for fiscal year 1996 and divided in the same ratio as each State received in fiscal year 1995 in combined funding from appropriations for ICP and SECP, together with a provision that any available funding beyond $25.5 million be allocated based on a new formula. This revised process serves several purposes: (1) it will reflect and incorporate in the base allocation the historical funding of the two distinct major component programs in SEP that formerly used different funding formulas; (2) it will provide for an equitable adjustment in program funding levels; and (3) it will help maintain the organizational capacity of the States to manage the programs.

Base Allocation

To achieve this, DOE is hereby replacing the former SECP formula with the two-step process discussed above. The base allocation reflects elements from the ICP and SECP formulas in such a way that each State will receive, in fiscal year 1996, a base allocation in the same ratio (based on each State's 1995 allocations from 1995 appropriated funds) as it would have received if ICP and SECP were operated as separate programs. This base allocation, which applies to the first $25.5 million of funds available, will remain the same in future years, or be adjusted downward if available funds are less than $25.5 million. Table 1, listing the base allocation by State using the $25.5 million total, is added after § 420.11(b)(1). Funds available above $25.5 million will be allocated based on the new formula described below.

Formula Allocation

Funding available for SEP beyond the base $25.5 million ICP/SECP consolidated funds will be allocated using the new formula based on the following factors: 33⅓ percent divided among the States equally; 33⅓ percent divided on the basis of the population of the participating States; and 33⅓ percent divided on the basis of the energy consumption of the participating States.

The formula for the entire annual allocation is expressed mathematically as (PA)=(BA)+(FA), where (PA) is the total program allocation, (BA) is the base allocation, and (FA) is the formula allocation.

Paragraphs (c) and (e) are now found under new § 420.3, as already discussed under that section.

Paragraph (d) is now found under new § 420.12.

Section 420.12 State Matching Contribution

This section was formerly paragraph (d) of former § 420.3. It has been given a new title, and revised to replace the term "cost sharing" with "match" or "matching" because the Act uses the term "match" in the sense of a percent of the State's Federal allocation, whereas, in this context, a "cost share" would be a percent of the total project cost. To receive financial assistance, each State must contribute a match of no less than 20 percent of the Federal financial assistance allocated to the State. Cash and in-kind contributions may continue to be used to meet this requirement. The sentence in this paragraph requiring that the State's match be identified in the State's application has been moved to § 420.13 where it becomes new § 420.13(b)(4)(ii).

Section 420.13 Annual State Application and State Plans

This section was formerly § 420.4.

The title of this section has been changed to add State plans which must be included with SEP grant applications.

A new paragraph (b)(1) has been added to provide for the submission of an application face page on Standard Form 424.

Former paragraph (b)(1) has been redesignated (b)(2).

Paragraph (b)(3) has been added to this section (it was formerly § 420.1(c)). Since this paragraph refers to a requirement for State plans, DOE felt it was more appropriate to include it in the section covering applications and plans.

Former paragraph (b)(2) has been redesignated (b)(4) to provide for the addition of new paragraphs (b)(1) and (b)(3) and has been revised to add a new (b)(4)(ii) requiring that States include their matching contribution in their applications, as already discussed under § 420.12.

Former subparagraphs (b)(2)(ii), (b)(2)(iii), and (b)(2)(iv) have been redesignated (b)(4)(iii), (b)(4)(iv), and (b)(4)(v), respectively, to allow for new (b)(4)(ii).

Former paragraph (b)(3) has been redesignated (b)(5) to provide for the addition of new paragraphs (b)(1) and (b)(3).

Paragraph (b)(6) (formerly paragraph (b)(4)) of this section, which required States to specify that activities funded under SECP would supplement and not supplant activities funded under ICP or the Weatherization Assistance Program (Weatherization), has been revised by deleting the reference to ICP. Activities

formerly funded under ICP are now being funded under SEP, so supplantation is not an issue.

To continue the renumbering of paragraphs necessitated by the addition of paragraphs (b)(1) and (b)(3), former (b)(5) has been renumbered (b)(7); a new paragraph (b)(8) has been added covering State assurances; and former (b)(6) has been renumbered (b)(9).

Former paragraph (b)(7) has been deleted because it does not relate to the contents of an application.

The wording of a number of paragraphs in this section has been simplified to make the format consistent.

Section 420.14 Review and Approval of Annual State Applications and State Plans

This section was formerly § 420.5

Section 420.15 Minimum Criteria for Required Program Measures for Plans

This section was formerly § 420.6.

Paragraphs (a)(3) and (d)(3) have been revised to refer to ASHRAE/IESNA 90.1–1989 as amended, which is the current citation, as previously discussed under § 420.2, Definitions. Paragraph (d)(4) has been revised to refer to Model Energy Code, 1993 as amended, which is the current citation, as previously discussed under § 420.2, Definitions. The new standards are based upon the requirements of Title III of the Energy Conservation and Production Act, 42 U.S.C. 6831 et seq.

A new paragraph (e)(3) has been added to provide for left turns from one-way streets onto one-way streets at traffic lights (right turns for the Virgin Islands), where appropriate, as required by section 362(c)(5) of EPCA, 42 U.S.C. 6322(c)(5).

Former paragraph (e)(3) has been eliminated. This paragraph provided for a delay in implementing the requirement under paragraph (e)(2) until June 27, 1979. That provision is no longer necessary.

Section 420.16 Extensions for Compliance With Required Program Activities

This section was formerly § 420.8.

Section 420.17 Optional Elements of State Energy Program Plans

This section was formerly § 420.7.

Paragraph (a)(3)(ii) has been revised to add wording at the end to make clear that public and private non-profit schools and hospitals, and local government buildings, which were formerly covered by ICP, are eligible buildings under SEP. It is important to note that local government buildings, which were eligible only for technical audits under ICP, are also eligible for energy conservation measures under SEP.

New paragraphs (a)(10), (a)(11),(a)(12) and (a)(13) are being added to provide for four new examples of optional elements of State plans which were added to EPCA by section 141(b) of the Energy Policy Act of 1992, Pub. L. 102–486 (EPACT). Those new elements are: program activities to provide training to building designers and contractors to promote energy efficiency ((a)(10)); program activities for the development of building retrofit standards ((a)(11)); support for feasibility studies to facilitate access to capital and credit for energy efficiency projects ((a)(12)); and program activities to facilitate the voluntary use of renewable energy technologies in Federal agency programs ((a)(13)).

Former paragraph (a)(10) has been renumbered (a)(14).

Section 420.18 Expenditure Prohibitions and Limitations

This section was formerly § 420.12.

This section has been renamed because the former name, "Prohibited expenditures," did not reflect the fact that a number of the paragraphs under this section cover expenditures that are, under certain circumstances, allowable.

Paragraph (e) has been revised to change the limitation of 33 percent of a State's allocation to 50 percent, and to clarify that, up to that limit, funds may be used for the purchase and installation of energy conservation measures and renewable energy measures, to allow States more flexibility in this regard. With ICP-typed activities now a component of the consolidated SEP, and with energy conservation measures and renewable energy measures the primary purpose of ICP, DOE does not want to limit States to 33 percent for such expenditures, and believes a 50 percent limit is now appropriate because approximately 50 percent of the appropriated funds for FY 1996 are attributable to ICP.

Paragraph (e)(4), which required that funds under this program be used to supplement, but not supplant, ICP or Weatherization funds, has been revised to delete the reference to ICP. The reasons were previously discussed under § 420.13.

Former subparagraphs (e)(6)(i) and (e)(6)(iv) have been deleted because they are no longer necessary, and former subparagraphs (e)(6)(ii) and (e)(6)(iii) have been redesignated new subparagraphs (e)(6)(i) and (e)(6)(ii), respectively.

Former paragraph (e)(7) has been deleted because the same limitation is covered in paragraph (d).

Section 420.19 Administrative Review

This section was formerly § 420.9. It covers decisions made under § 420.14 and does not apply to financial assistance for the special projects in subpart C.

Subpart C—Implementation of Special Projects Financial Assistance

This subpart is being added to specify how DOE will implement financial assistance for these special projects activities under SEP.

Section 420.30 Purpose

This section is being added to provide the purpose of subpart C.

Section 420.31 Notice of Availability

This section is being added to specify the process DOE will use for announcing the availability of funds for special projects financial assistance.

Section 420.32 Program Guidance/Solicitation

This section is being added to provide for the program guidance/solicitation, which will contain the relevant information necessary for States to apply for funding under this subpart.

Section 420.33 Application Requirements

This section is being added to provide general information about applying for financial assistance for these special projects. More detailed application requirements will be provided by DOE in the program guidance/solicitation document.

Section 420.34 Matching Contributions or Cost Sharing

This section is being added to address the possibility of a match or cost share requirement for some, or all, special projects financial assistance, to be specified in the program guidance/solicitation.

Section 420.35 Application Evaluation

This section is being added to provide for the technical evaluations of applications for financial assistance pursuant to this subpart.

Section 420.36 Evaluation Criteria

This section is being added to provide for the evaluation criteria to be applied to applications for financial assistance pursuant to this subpart.

Section 420.37 Selection

This section is being added to provide for program policy factors which may be applied in selecting special projects for funding under this subpart.

IV. Opportunity for Public Comment

Written Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the matters set forth in this notice.

Comments (6 copies and, if possible, a computer disk) should be identified on the outside of the envelope, and on the documents themselves, with the designation: "State Energy Program, Interim Final Rule, Docket Number EE–RM–96–402." In the event any person wishing to submit a written comment cannot provide six copies, alternative arrangements can be made in advance by calling (202) 586–2096.

Any person submitting information which that person believes to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. DOE shall make a determination of any such claim as set forth in 10 CFR 1004.11 (53 FR 15661, May 3, 1988).

V. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987) requires that regulations, legislation and any other policy action be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or on the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires preparation of a federalism assessment to be used in decisions by senior policy-makers in promulgating or implementing the regulation.

Today's regulatory amendments will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government. Preparation of a federalism assessment is therefore unnecessary.

VI. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, October 4, 1993. Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA).

VII. Review Under Executive Order 12988

Section 3 of Executive Order 12988, 61 FR 4729 (February 7, 1996), instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in Section 3(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. The Department has determined that today's regulatory action meets the requirements of Section 3 (a) and (b) of Executive Order 12988.

VIII. Unfunded Mandate Review

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) places a variety of review and consultative obligations on Federal agencies proposing regulatory actions for Federal intergovernmental mandates. Today's rule does not involve such a mandate because the Unfunded Mandates Reform Act excludes from the definition of "Federal intergovernmental mandate" provisions in a regulation that would impose conditions incident to a financial assistance program (not involving an entitlement) or a duty arising from participation in a voluntary Federal program 2 U.S.C. 658(5). This program is a standard non-entitlement financial assistance program and States are not obligated to participate in it.

IX. Review Under the Regulatory Flexibility Act

There is no need to prepare a final regulatory flexibility analysis of today's interim final regulations under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because they are not subject to a legal requirement for a general notice of proposed rulemaking.

X. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed on the public by today's rules.

XI. Review Under the National Environmental Policy Act

A programmatic environmental assessment has been prepared covering the grant program under the interim final regulations published today which was sent to the States for comment on March 27, 1996. No comments were received by the end of the 14-day comment period. This programmatic environmental assessment resulted in a finding of no significant impact (FONSI). A FONSI was issued on June 7, 1996. The documents relating to this programmatic environmental assessment are available in the DOE Freedom of Information Reading Room, United States Department of Energy, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020.

XII. Congressional Notification

The final regulations published today are subject to the Congressional notification requirements of the Small Business Regulatory Enforcement Fairness Act of 1996 (Act), 5 U.S.C. 801. OMB has determined that the final regulations do not constitute a "major rule" under the Act, 5 U.S.C. 804. DOE will report to Congress on the promulgation of the final regulations prior to the effective date set forth at the beginning of this notice.

XIII. The Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the State Energy Program is 81.041.

List of Subjects

10 CFR Part 420

Energy conservation, Grant programs—energy, Reporting and recordkeeping requirements, Technical assistance, Incorporation by reference.

10 CFR Part 450

Buildings, Business and Industry, Energy conservation, Housing, Reporting and recordkeeping requirements.

Issued in Washington, DC, on June 26, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Chapter II of Title 10, Code of Federal Regulations is amended as follows:

1. Part 420 is revised to read as follows:

PART 420—STATE ENERGY PROGRAM

Subpart A—General Provisions for State Energy Program Financial Assistance

Sec.

420.1 Purpose and scope.
420.2 Definitions.
420.3 Administration of financial assistance.

420.4 Technical assistance.
420.5 Reports.
420.6 Reference standards.

Subpart B—Formula Grant Procedures

420.10 Purpose.
420.11 Allocation of funds among the States.
420.12 State matching contribution.
420.13 Annual State applications and State plans.
420.14 Review and approval of annual State applications and State plans.
420.15 Minimum criteria for required program activities for plans.
420.16 Extensions for compliance with required program activities.
420.17 Optional elements of State Energy Program plans.
420.18 Expenditure prohibitions and limitations.
420.19 Administrative review.

Subpart C—Implementation of Special Projects Financial Assistance

420.30 Purpose and scope.
420.31 Notice of availability.
420.32 Program guidance/solicitation.
420.33 Application requirements.
420.34 Matching contributions or cost-sharing.
420.35 Application evaluation.
420.36 Evaluation criteria.
420.37 Selection.

Authority: Title III, part D, as amended, of the Energy Policy and Conservation Act (42 U.S.C. 6321 *et seq.*); Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*)

Subpart A—General Provisions for State Energy Program Financial Assistance

§ 420.1 Purpose and scope.

It is the purpose of this part to promote the conservation of energy, to reduce the rate of growth of energy demand, and to reduce dependence on imported oil through the development and implementation of a comprehensive State Energy Program and the provision of Federal financial and technical assistance to States in support of such program.

§ 420.2 Definitions.

As used in this part:

Act means title III, part D, as amended, of the Energy Policy and Conservation Act, 42 U.S.C. 6321 et seq.

Alternative transportation fuel means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquified petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials (including neat biodiesel); and electricity (including electricity from solar energy).

ASHRAE/IESNA 90.1–1989, as amended means the building design standard published in December 1989 by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, and the Illuminating Engineering Society of North America titled "Energy Efficient Design of New Buildings Except Low-Rise Residential Buildings," with Addenda 90.1b–1992; Addenda 90.1d–1992; Addenda 90.1e–1992; Addenda 90.1g–1993; and Addenda 90.1i–1993, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in § 420.6(b).

Assistant Secretary means the Assistant Secretary for Energy Efficiency and Renewable Energy or any official to whom the Assistant Secretary's functions may be redelegated by the Secretary.

British thermal unit (Btu) means the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit at 39.2 degrees Fahrenheit and at one atmosphere of pressure.

Building means any structure which includes provision for a heating or cooling system, or both, or for a hot water system, except for the following:

(1) Any building whose peak design rate of energy usage for all purposes is less than one watt (3.4 Btu's per hour) per square foot of floor area for all purposes;

(2) Any building with neither a heating nor cooling system;

(3) Any mobile home; or

(4) Any building owned or leased in whole or in part by the United States.

Carpool means the sharing of a ride by two or more people in an automobile.

Carpool matching and promotion campaign means a campaign to coordinate riders with drivers to form carpools and/or vanpools.

Commercial building means any building other than a residential building, including any building constructed for industrial or public purposes.

Commercially available means available for purchase by the general public or target audience in the State.

Deputy Assistant Secretary means the Deputy Assistant Secretary for Building Technology, State and Community Programs or any official to whom the Deputy Assistant Secretary's functions may be redelegated by the Assistant Secretary.

Director, Office of State and Community Programs means the official responsible for DOE's formula grant programs to States, or any official to whom the Director's functions may be redelegated by the Assistant Secretary.

DOE means the Department of Energy.

Energy audit means a determination of the energy consumption characteristics of a building which:

(1) Identifies the type, size, energy use level and the major energy using systems of such building or buildings;

(2) Determines appropriate energy conservation maintenance and operating procedures; and

(3) Indicates the need and the estimated cost and energy cost savings, if any, associated with the acquisition and installation of energy conservation measures.

Energy conservation measure means an installation which modifies any building, building system, energy consuming device associated with the building or industrial facility the construction of which was completed prior to May 1, 1989, if such measure has been determined by means of an energy audit to be likely to maintain or improve the efficiency of energy use and to reduce energy costs in an amount sufficient to enable a person to recover the total cost of purchasing and installing such measure within the lesser of—

(1) The useful life of the modification involved; or

(2) 15 years after the purchase and installation of such measure.

Environmental residual means any pollutant or pollution causing factor which results from any activity.

Exterior envelope physical characteristics means the physical nature of those elements of a building which enclose conditioned spaces through which thermal energy may be transferred to or from the exterior.

Governor means the chief executive officer of a State, the District of Columbia, Puerto Rico, or any territory or possession of the United States, or a person duly designated in writing by the Governor to act upon his or her behalf.

Grantee means the State or other entity named in the notice of grant award as the recipient.

HVAC means heating, ventilating and air-conditioning.

IBR means incorporation by reference.

Industrial facility means any fixed equipment or facility which is used in connection with, or as part of, any process or system for industrial production or output.

Institution of higher education has the same meaning as such term is defined in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

Metropolitan Planning Organization means that organization required by the Department of Transportation, and designated by the Governor as being responsible for coordination within the State, to carry out transportation planning provisions in a Standard Metropolitan Statistical Area.

Model Energy Code, 1993, including Errata, means the model building code published by the Council of American Building Officials, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in § 420.6(b).

Park-and-ride lot means a parking facility generally located at or near the trip origin of carpools, vanpools and/or mass transit.

Petroleum violation escrow funds. For purposes both of exempting petroleum violation escrow funds from the matching requirements of § 420.12 and of applying the limitations specified under § 420.18(b), this term means any funds distributed to the States by the Department of Energy or any court and identified as Alleged Crude Oil Violation funds, together with any interest earned thereon by the States, but excludes any funds designated as "excess funds" under section 3003(d) of the Petroleum Overcharge Distribution and Restitution Act, subtitle A of title III of the Omnibus Budget Reconciliation Act of 1986, Public Law 99–509, and the funds distributed under the "Warner Amendment," section 155 of Public Law 97–377.

Plan means a State Energy Program plan including required program activities in accordance with § 420.15 and otherwise meeting the applicable provisions of this part.

Political subdivision means a unit of government within a State, including a county, municipality, city, town, township, parish, village, local public authority, school district, special district, council of governments, or any other regional or intrastate governmental entity or instrumentality of a local government exclusive of institutions of higher learning and hospitals.

Preferential traffic control means any one of a variety of traffic control techniques used to give carpools, vanpools and public transportation vehicles priority treatment over single occupant vehicles other than bicycles and other two-wheeled motorized vehicles.

Program activity means one or more State actions, in a particular area, designed to promote energy efficiency, renewable energy and alternative transportation fuel.

Public building means any building which is open to the public during normal business hours, including:

(1) Any building which provides facilities or shelter for public assembly, or which is used for educational office or institutional purposes;

(2) Any inn, hotel, motel, sports arena, supermarket, transportation terminal, retail store, restaurant, or other commercial establishment which provides services or retail merchandise;

(3) Any general office space and any portion of an industrial facility used primarily as office space;

(4) Any building owned by a State or political subdivision thereof, including libraries, museums, schools, hospitals, auditoriums, sport arenas, and university buildings; and

(5) Any public or private non-profit school or hospital.

Public transportation means any scheduled or nonscheduled transportation service for public use.

Regional Support Office Director means the director of a DOE Regional Support Office with responsibility for grants administration or any official to whom that function may be redelegated.

Renewable energy means a non-depletable source of energy.

Renewable energy measure means a measure which modifies any building or industrial facility if such measure has been determined by means of an energy audit to—

(1) Involve changing, in whole or in part, the fuel or source of the energy used to meet the requirements of such building or facility from a depletable source of energy to a non-depletable source of energy; and

(2) Be likely to reduce energy costs (as calculated on the basis of energy cost assumptions provided by DOE) in an amount sufficient to enable a person to recover the total cost of purchasing and installing such measure (without regard to any tax benefit or Federal financial assistance applicable thereto) within the lesser of—

(i) The useful life of the modification involved; or

(ii) 25 years after the purchase and installation of such measure.

Residential building means any building which is constructed for residential occupancy.

Secretary mean the Secretary of DOE.

SEP means the State Energy Program under this part.

Small business means a private firm that does not exceed the numerical size standard promulgated by the Small Business Administration under section 3(a) of the Small Business Act (15 U.S.C. 632) for the Standard Industrial Classification (SIC) codes designated by the Secretary of Energy.

Start-up business means a small business which has been in existence for 5 years or less.

State means a State, the District of Columbia, Puerto Rico, or any territory or possession of the United States.

State or local government building means any building owned and primarily occupied by offices or agencies of a State; and any building of a unit of local government or a public care institution which could be covered by part H, title III, of the Energy Policy and Conservation Act, 42 U.S.C. 6372–6372i.

Transit level of service means characteristics of transit service provided which indicate its quantity, geographic area of coverage, frequency and quality (comfort, travel, time, fare and image).

Urban area traffic restriction means a setting aside of certain portions of an urban area as restricted zones where varying degrees of limitation are placed on general traffic usage and/or parking.

Vanpool means a group of riders using a vehicle, with a seating capacity of not less than eight individuals and not more than fifteen individuals, for transportation to and from their residence or other designated locations and their place of employment, provided the vehicle is driven by one of the pool members.

Variable working schedule means a flexible working schedule to facilitate carpool, vanpool and/or public transportation usage.

§ 420.3 Administration of financial assistance.

(a) Financial assistance under this part shall comply with applicable laws and regulations including, but without limitation, the requirements of:

(1) Executive Order 12372, Intergovernmental Review of Federal Programs, as implemented by 10 CFR part 1005.

(2) DOE Financial Assistance Rules (10 CFR part 600); and

(3) Other procedures which DOE may from time to time prescribe for the administration of financial assistance under this part.

(b) The budget period(s) covered by the financial assistance provided to a State according to § 420.11(b) or § 420.33 shall be consistent with 10 CFR part 600.

(c) Subawards are authorized under this part and are subject to the requirements of this part and 10 CFR part 600.

§ 420.4 Technical assistance.

At the request of the Governor of any State to DOE and subject to the

availability of personnel and funds, DOE will provide information and technical assistance to the State in connection with effectuating the purposes of this part.

§ 420.5 Reports.

(a) Each State receiving financial assistance under this part shall submit to the cognizant Regional Support Office Director a quarterly program performance report and a quarterly financial status report.

(b) Reports under this section shall contain such information as the Secretary may prescribe in order to monitor effectively the implementation of a State's activities under this part.

(c) The reports shall be submitted within 30 days following the end of each calendar year quarter.

§ 420.6 Reference standards.

(a) The following standards which are not otherwise set forth in this part are incorporated by reference and made a part of this part. The following standards have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A notice of any change in these materials will be published in the Federal Register. The standards incorporated by reference are available for inspection at the Office of the Federal Register, 800 North Capitol Street, N.W., suite 700, Washington, D.C.

(b) The following standards are incorporated by reference in this part:

(1) The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), 1791 Tullie Circle, N.E., Atlanta, Georgia 30329, (404) 636–8400/The Illuminating Engineering Society of North America (IESNA), 345 East 47th Street, New York, New York 10017, (212) 705–7913: (i) ASHRAE/IESNA 90.1–1989, entitled "Energy Efficient Design of New Buildings Except Low-Rise Residential Buildings," with Addenda 90.1b-1992; Addenda 90.1d-1992; Addenda 90.1e-1992; Addenda 90.1g-1993; and Addenda 90.1i-1993, IBR approved for § 420.2 and § 420.15.

(2) The Council of American Building Officials (CABO), 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041, (703) 931–4533: (i) The Model Energy Code, 1993, including Errata, IBR approved for § 420.2 and § 420.15.

Subpart B—Formula Grant Procedures

§ 420.10 Purpose.

This subpart specifies the procedures that apply to the Formula Grant part of the State Energy Program, which allows States to apply for financial assistance to undertake a wide range of required and optional energy-related activities provided for under § 420.15 and § 420.17. Funding for these activities is allocated to the States based on funds available for any fiscal year, as described under § 420.11.

§ 420.11 Allocation of funds among the States.

(a) The cognizant Regional Support Office Director shall provide financial assistance to each State having an approved annual application from funds available for any fiscal year to develop, modify, or implement a plan.

(b) DOE shall allocate financial assistance to develop, implement or modify plans among the States from funds available for any fiscal year, as follows:

(1) If the available funds equal $25.5 million, such funds shall be allocated to the States according to Table 1 of this section.

(2) The base allocation for each State is listed in Table 1.

TABLE 1.—BASE ALLOCATION BY STATE

State/Territory	
Alabama	$381,000
Alaska	180,000
Arizona	344,000
Arkansas	307,000
California	1,502,000
Colorado	399,000
Connecticut	397,000
Delaware	164,000
District of Columbia	158,000
Florida	831,000
Georgia	534,000
Hawaii	170,000
Idaho	190,000
Illinois	1,150,000
Indiana	531,000
Iowa	373,000
Kansas	327,000
Kentucky	411,000
Louisiana	446,000
Maine	231,000
Maryland	486,000
Massachusetts	617,000
Michigan	973,000
Minnesota	584,000
Mississippi	279,000
Missouri	516,000
Montana	182,000
Nebraska	246,000
Nevada	196,000
New Hampshire	216,000
New Jersey	783,000
New Mexico	219,000
New York	1,633,000
North Carolina	564,000
North Dakota	172,000
Ohio	1,073,000
Oklahoma	352,000
Oregon	325,000
Pennsylvania	1,090,000
Rhode Island	199,000
South Carolina	340,000
South Dakota	168,000
Tennessee	476,000
Texas	1,322,000
Utah	242,000
Vermont	172,000
Virginia	571,000
Washington	438,000
West Virginia	286,000
Wisconsin	604,000
Wyoming	155,000
American Samoa	115,000
Guam	120,000
Northern Marianas	114,000
Puerto Rico	322,000
U.S. Virgin Islands	122,000
Total	25,500,000

(3) If the available funds for any fiscal year are less than $25.5 million, then the base allocation for each State shall be reduced proportionally.

(4) If the available funds exceed $25.5 million, $25.5 million shall be allocated as specified in Table 1 and any in excess of $25.5 million shall be allocated as follows:

(i) One-third of the available funds is divided among the States equally;

(ii) One-third of the available funds is divided on the basis of the population of the participating States as contained in the most recent reliable census data available from the Bureau of the Census, Department of Commerce, for all participating States at the time DOE needs to compute State formula shares; and

(iii) One-third of the available funds is divided on the basis of the energy consumption of the participating States as contained in the most recent State Energy Data Report available from DOE's Energy Information Administration.

(c) The budget period covered by the financial assistance provided to a State according to § 420.11(b) shall be consistent with 10 CFR part 600.

§ 420.12 State matching contribution.

(a) Each State shall provide cash, in kind contributions, or both for SEP activities in an amount totalling not less than 20 percent of the financial assistance allocated to the State under § 420.11(b).

(b) Cash and in-kind contributions used to meet this State matching requirement are subject to the limitations on expenditures described in § 420.18(a), but are not subject to the 20 percent limitation in § 420.18(b).

(c) Nothing in this section shall be read to require a match for petroleum violation escrow funds used under this part.

§ 420.13 Annual State applications and State plans.

(a) To be eligible for financial assistance under subpart B of this part, a State shall submit to the cognizant Regional Support Office Director an original and two copies of the annual application executed by the Governor. The date for submission of the annual State application shall be set by DOE.

(b) An application shall include:

(1) A face sheet containing basic identifying information, on Standard Form (SF) 424;

(2) A description of the energy efficiency, renewable energy, and alternative transportation fuel goals to be achieved, including wherever practicable:

(i) An estimate of the energy to be saved by implementation of the State plan;

(ii) Why the goals were selected;

(iii) How the attainment of the goals will be measured by the State; and

(iv) How the program activities included in the State plan represent a strategy to achieve these goals;

(3) With respect to financial assistance under subpart B of this part, a goal, consisting of an improvement of 10 percent or more in the efficiency of use of energy in the State concerned in the calendar year 2000, as compared to the calendar year 1990, and may contain interim goals;

(4) For the budget period for which financial assistance will be provided:

(i) A total program budget with supporting justification, broken out by object category and by source of funding;

(ii) The source and amount of State matching contribution;

(iii) A narrative statement detailing the nature of amendments and of new program activities;

(iv) For each program activity, a budget and listing of milestones; and

(v) An explanation of how the minimum criteria for required program activities prescribed in § 420.15 shall be satisfied;

(5) A detailed description of the increase or decrease in environmental residuals expected from implementation of a plan defined insofar as possible through the use of information to be provided by DOE and an indication of how these environmental factors were considered in the selection of program activities.

(6) For program activities involving purchase or installation of materials or equipment for weatherization of low-income housing, an explanation of how these activities would supplement and not supplant the existing DOE program under 10 CFR part 440.

(7) A reasonable assurance to DOE that it has established policies and procedures designed to assure that Federal financial assistance under subpart B of this part will be used to supplement, and not to supplant, State and local funds, and to the extent practicable, to increase the amount of such funds that otherwise would be available, in the absence of such Federal financial assistance, for those activities set forth in the State Energy Program plan approved pursuant to this part;

(8) An assurance that the State shall comply with all applicable statutes and regulations in effect with respect to the periods for which it receives grant funding; and

(9) For informational purposes only, and not subject to DOE review, an energy emergency plan for an energy supply disruption, as designed by the State consistent with applicable Federal and State law including an implementation strategy or strategies (including regional coordination) for dealing with energy emergencies.

(c) The Governor may request an extension of the annual submission date by submitting a written request to the cognizant Regional Support Office Director not less than 15 days prior to the annual submission date. The extension shall be granted only if, in the cognizant Regional Support Office Director's judgment, acceptable and substantial justification is shown, and the extension would further objectives of the Act.

§ 420.14 Review and approval of annual State applications and State plans.

(a) After receipt of an application for financial assistance under subpart B of this part, or application for approval of an amendment to a State plan, the cognizant Regional Support Office Director may request the State to submit within a reasonable period of time any revisions necessary to make the application complete and to bring the application into compliance with the requirements of this part. The cognizant Regional Support Office Director shall attempt to resolve any dispute over the application informally and to seek voluntary compliance. If a State fails to submit timely appropriate revisions to complete an application and/or bring it into compliance, the cognizant Regional Support Office Director may reject the application in a written decision, including a statement of reasons, which shall be subject to administrative review under § 420.19 of this part.

(b) On or before 60 days from the date that a timely filed application is complete, the cognizant Regional Support Office Director shall—

(1) Approve the application in whole or in part to the extent that—

(i) The application conforms to the requirements of this part;

(ii) The proposed program activities are consistent with a State's achievement of its energy conservation goals in accordance with § 420.13; and

(iii) The provisions of the application regarding program activities satisfy the minimum requirements prescribed by § 420.15 and § 420.17 as applicable;

(2) Approve the application in whole or in part subject to special conditions designed to ensure compliance with the requirements of this part; or

(3) Disapprove the application if it does not conform to the requirements of this part.

§ 420.15 Minimum criteria for required program activities for plans.

A plan shall satisfy all of the following minimum criteria for required program activities.

(a) Mandatory lighting efficiency standards for public buildings shall:

(1) Be implemented throughout the State, except that the standards shall be adopted by the State as a model code for those local governments of the State for which the State's constitution reserves the exclusive authority to adopt and implement building standards within their jurisdictions;

(2) Apply to all public buildings above a certain size, as determined by the State;

(3) For new public buildings, be no less stringent than the provisions of ASHRAE/IESNA 90.1–1989, and should be updated by enactment of, or support for the enactment into local codes or standards, which, at a minimum, are comparable to provisions of ASHRAE/IESNA 90.1–1989 which is incorporated by reference in accordance with 5 U.S.C. 552 (a) and 1 CFR part 51. The availability of this incorporation by reference is given in § 420.6; and

(4) For existing public buildings, contain the elements deemed appropriate by the State.

(b) Program activities to promote the availability and use of carpools, vanpools, and public transportation shall:

(1) Have at least one of the following actions under implementation in at least one urbanized area with a population of 50,000 or more within the State or in the largest urbanized area within the State if that State does not have an urbanized

area with a population of 50,000 or more:

(i) A carpool/vanpool matching and promotion campaign;

(ii) Park-and-ride lots;

(iii) Preferential traffic control for carpoolers and public transportation patrons;

(iv) Preferential parking for carpools and vanpools;

(v) Variable working schedules;

(vi) Improvement in transit level of service for public transportation;

(vii) Exemption of carpools and vanpools from regulated carrier status;

(viii) Parking taxes, parking fee regulations or surcharge on parking costs;

(ix) Full-cost parking fees for State and/or local government employees;

(x) Urban area traffic restrictions;

(xi) Geographical or time restrictions on automobile use; or

(xii) Area or facility tolls; and

(2) Be coordinated with the relevant Metropolitan Planning Organization, unless no Metropolitan Planning Organization exists in the urbanized area, and not be inconsistent with any applicable Federal requirements.

(c) Mandatory standards and policies affecting the procurement practices of the State and its political subdivisions to improve energy efficiency shall—

(1) With respect to all State procurement and with respect to procurement of political subdivisions to the extent determined feasible by the State, be under implementation; and

(2) Contain the elements deemed appropriate by the State to improve energy efficiency through the procurement practices of the State and its political subdivisions.

(d) Mandatory thermal efficiency standards for new and renovated buildings shall—

(1) Be implemented throughout the State, with respect to all buildings other than exempted buildings, except that the standards shall be adopted by the State as a model code for those local governments of the State for which the State's constitution reserves the exclusive authority to adopt and implement building standards within their jurisdictions;

(2) Take into account the exterior envelope physical characteristics, HVAC system selection and configuration, HVAC equipment performance and service water heating design and equipment selection;

(3) For all new commercial and multifamily high-rise buildings, be no less stringent than provisions of sections 7–12 of ASHRAE/IESNA 90.1–1989, and should be updated by enactment of, or support for the enactment into local codes or standards, which, at a minimum, are comparable to provisions of ASHRAE/IESNA 90.1–1989; and

(4) For all new single-family and multifamily low-rise residential buildings, be no less stringent than the Model Energy Code, 1993, and should be updated by enactment of, or support for the enactment into local codes or standards, which, at a minimum, are comparable to the Model Energy Code, 1993, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in § 420.6;

(5) For renovated buildings:

(i) Apply to those buildings determined by the State to be renovated buildings; and

(ii) Contain the elements deemed appropriate by the State regarding thermal efficiency standards for renovated buildings.

(e) A traffic law or regulation which permits the operator of a motor vehicle to make a turn at a red light after stopping shall:

(1) Be in a State's motor vehicle code and under implementation throughout all political subdivisions of the State;

(2) Permit the operator of a motor vehicle to make a right turn (left turn with respect to the Virgin Islands) at a red traffic light after stopping except where specifically prohibited by a traffic sign for reasons of safety or except where generally prohibited in an urban enclave for reasons of safety; and

(3) Permit the operator of a motor vehicle to make a left turn from a one-way street to a one-way street (right turn with respect to the Virgin Islands) at a red traffic light after stopping except where specifically prohibited by a traffic sign for reasons of safety or except where generally prohibited in an urban enclave for reasons of safety.

(f) Procedures must exist for ensuring effective coordination among various local, State, and Federal energy efficiency, renewable energy and alternative transportation fuel programs within the State, including any program administered within the Office of Building Technology, State and Community Programs of the Department of Energy and the Low Income Home Energy Assistance Program administered by the Department of Health and Human Services.

§ 420.16 Extensions for compliance with required program activities.

An extension of time by which a required program activity must be ready for implementation may be granted if DOE determines that the extension is justified. A written request for an extension, with accompanying justification and an action plan acceptable to DOE for achieving compliance in the shortest reasonable time, shall be made to the cognizant Regional Support Office Director. Any extension shall be only for the shortest reasonable time that DOE determines necessary to achieve compliance. The action plan shall contain a schedule for full compliance and shall identify and make the most reasonable commitment possible to provision of the resources necessary for achieving the scheduled compliance.

§ 420.17 Optional elements of State Energy Program plans.

(a) Other appropriate activities or programs may be included in the State plan. These activities may include, but are not limited to, the following:

(1) Program activities of public education to promote energy efficiency, renewable energy, and alternative transportation fuels;

(2) Program activities to increase transportation energy efficiency, including programs to accelerate the use of alternative transportation fuels for government vehicles, fleet vehicles, taxis, mass transit, and privately owned vehicles;

(3) Program activities for financing energy conservation measures and renewable energy measures—

(i) Which may include loan programs and performance contracting programs for leveraging of additional public and private sector funds and program activities which allow rebates, grants, or other incentives for the purchase of energy conservation measures and renewable energy measures; or

(ii) In addition to or in lieu of program activities described in paragraph (a)(3)(i) of this section, which may be used in connection with public or nonprofit buildings owned and operated by a State, a political subdivision of a State or an agency or instrumentality of a State, or an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 including public and private non-profit schools and hospitals, and local government buildings;

(4) Program activities for encouraging and for carrying out energy audits with respect to buildings and industrial facilities (including industrial processes) within the State;

(5) Program activities to promote the adoption of integrated energy plans which provide for:

(i) Periodic evaluation of a State's energy needs, available energy resources (including greater energy efficiency), and energy costs; and

(ii) Utilization of adequate and reliable energy supplies, including greater energy efficiency, that meet applicable safety, environmental, and policy requirements at the lowest cost;

(6) Program activities to promote energy efficiency in residential housing, such as:

(i) Program activities for development and promotion of energy efficiency rating systems for newly constructed housing and existing housing so that consumers can compare the energy efficiency of different housing; and

(ii) Program activities for the adoption of incentives for builders, utilities, and mortgage lenders to build, service, or finance energy efficient housing;

(7) Program activities to identify unfair or deceptive acts or practices which relate to the implementation of energy conservation measures and renewable energy measures and to educate consumers concerning such acts or practices;

(8) Program activities to modify patterns of energy consumption so as to reduce peak demands for energy and improve the efficiency of energy supply systems, including electricity supply systems;

(9) Program activities to promote energy efficiency as an integral component of economic development planning conducted by State, local, or other governmental entities or by energy utilities;

(10) Program activities (enlisting appropriate trade and professional organizations in the development and financing of such programs) to provide training and education (including, if appropriate, training workshops, practice manuals, and testing for each area of energy efficiency technology) to building designers and contractors involved in building design and construction or in the sale, installation, and maintenance of energy systems and equipment to promote building energy efficiency;

(11) Program activities for the development of building retrofit standards and regulations, including retrofit ordinances enforced at the time of the sale of a building;

(12) Program activities to provide support for prefeasibility and feasibility studies for projects that utilize renewable energy and energy efficiency resource technologies in order to facilitate access to capital and credit for such projects;

(13) Program activities to facilitate and encourage the voluntary use of renewable energy technologies for eligible participants in Federal agency programs, including the Rural Electrification Administration and the Farmers Home Administration; and

(14) In accordance with paragraph (b) of this section, program activities to implement the Energy Technology Commercialization Services Program.

(b) This section prescribes requirements for establishing State-level Energy Technology Commercialization Services Program as an optional element of State plans.

(1) The program activities to implement the functions of the Energy Technology Commercialization Services Program shall:

(i) Aid small and start-up businesses in discovering useful and practical information relating to manufacturing and commercial production techniques and costs associated with new energy technologies;

(ii) Encourage the application of such information in order to solve energy technology product development and manufacturing problems;

(iii) Establish an Energy Technology Commercialization Services Program affiliated with an existing entity in each State;

(iv) Coordinate engineers and manufacturers to aid small and start-up businesses in solving specific technical problems and improving the cost effectiveness of methods for manufacturing new energy technologies;

(v) Assist small and start-up businesses in preparing the technical portions of proposals seeking financial assistance for new energy technology commercialization; and

(vi) Facilitate contract research between university faculty and students and small start-up businesses, in order to improve energy technology product development and independent quality control testing.

(2) Each State Energy Technology Commercialization Services Program shall develop and maintain a data base of engineering and scientific experts in energy technologies and product commercialization interested in participating in the service. Such data base shall, at a minimum, include faculty of institutions of higher education, retired manufacturing experts, and National Laboratory personnel.

(3) The services provided by the Energy Technology Commercialization Services Program established under this part shall be available to any small or start-up business. Such service programs shall charge fees which are affordable to a party eligible for assistance, which shall be determined by examining factors, including the following: the costs of the services received; the need of the recipient for the services; and the ability of the recipient to pay for the services.

§ 420.18 Expenditure prohibitions and limitations.

(a) No financial assistance provided to a State under this part shall be used:

(1) For construction, such as construction of mass transit systems and exclusive bus lanes, or for construction or repair of buildings or structures;

(2) To purchase land, a building or structure or any interest therein;

(3) To subsidize fares for public transportation;

(4) To subsidize utility rate demonstrations or State tax credits for energy conservation measures or renewable energy measures; or

(5) To conduct, or purchase equipment to conduct, research, development or demonstration of energy efficiency or renewable energy techniques and technologies not commercially available.

(b) No more than 20 percent of the financial assistance awarded to the State for this program shall be used to purchase office supplies, library materials, or other equipment whose purchase is not otherwise prohibited by this section. Nothing in this paragraph shall be read to apply this 20 percent limitation to petroleum violation escrow funds used under this part.

(c) Demonstrations of commercially available energy efficiency or renewable energy techniques and technologies are permitted, and are not subject to the prohibitions of § 420.18(a)(1), or to the limitation on equipment purchases of § 420.18(b).

(d) A State may use regular or revolving loan mechanisms to fund SEP services which are consistent with this part and which are included in the State's approved SEP plan. The State may use loan repayments and any interest on the loan funds only for activities which are consistent with this part and which are included in the State's approved SEP plan.

(e) A State may use funds under this part for the purchase and installation of equipment and materials for energy conservation measures and renewable energy measures subject to the following terms and conditions:

(1) Such use must be included in the State's approved plan and, if funded by petroleum violation escrow funds, must be consistent with any judicial or administrative terms and conditions imposed upon State use of such funds;

(2) A State may use for these purposes no more than 50 percent of all funds allocated by the State to SEP in a given year, regardless of source, except that this limitation shall not include regular

and revolving loan programs funded with petroleum violation escrow funds, and is subject to waiver by DOE for good cause. Loan documents shall ensure repayment of principal and interest within a reasonable period of time, and shall not include provisions of loan forgiveness.

(3) Subject to the restrictions of this part, State and local government buildings, as defined in § 420.2, are eligible for energy conservation measures and renewable energy measures under this section;

(4) Funds must be used to supplement and no funds may be used to supplant weatherization activities under the Weatherization Assistance Program for Low-Income Persons, under 10 CFR part 440;

(5) Subject to paragraph (e)(6) of this section, a State may use a variety of financial incentives to fund purchases and installation of materials and equipment under this paragraph including, but not limited to, regular loans, revolving loans, loan buy-downs, performance contracting, rebates, and grants.

(6) The following mechanisms are not allowed for funding the purchase and installation of materials and equipment under this paragraph:

(i) Rebates for more than 50 percent of the total cost of purchasing and installing materials and equipment (States shall set appropriate restrictions and limits to insure the most efficient use of rebates); and

(ii) Loan guarantees.

§ 420.19 Administrative review.

(a) A State shall have 20 days from the date of receipt of a decision under § 420.14 to file a notice requesting administrative review in accordance with paragraph (b) of this section. If an applicant does not timely file such a notice, the decision under § 420.14 shall become final for DOE.

(b) A notice requesting administrative review shall be filed with the cognizant Regional Support Office Director and shall be accompanied by a written statement containing supporting arguments. If the cognizant Regional Support Office Director has disapproved an entire application for financial assistance, the State may request a public hearing.

(c) A notice or any other document shall be deemed filed under this section upon receipt.

(d) On or before 15 days from receipt of a notice requesting administrative review which is timely filed, the cognizant Regional Support Office Director shall forward to the Deputy Assistant Secretary, the notice requesting administrative review, the decision under § 420.14 as to which administrative review is sought, a draft recommended final decision for concurrence, and any other relevant material.

(e) If the State requests a public hearing on the disapproval of an entire application for financial assistance, the Deputy Assistant Secretary, within 15 days, shall give actual notice to the State and **Federal Register** notice of the date, place, time, and procedures which shall apply to the public hearing. Any public hearing under this section shall be informal and legislative in nature.

(f) On or before 45 days from receipt of documents under paragraph (d) of this section or the conclusion of the public hearing, whichever is later, the Deputy Assistant Secretary shall concur in, concur in as modified, or issue a substitute for the recommended decision of the cognizant Regional Support Office Director.

(g) On or before 15 days from the date of receipt of the determination under paragraph (f) of this section, the Governor may file an application for discretionary review by the Assistant Secretary. On or before 15 days from filing, the Assistant Secretary shall send a notice to the Governor stating whether the Deputy Assistant Secretary's determination will be reviewed. If the Assistant Secretary grants a review, a decision shall be issued no later than 60 days from the date review is granted. The Assistant Secretary may not issue a notice or decision under this paragraph without the concurrence of the DOE Office of General Counsel.

(h) A decision under paragraph (f) of this section shall be final for DOE if there is no review under paragraph (g) of this section. If there is review under paragraph (g) of this section, the decision thereunder shall be final for DOE and no appeal shall lie elsewhere in DOE.

(i) Prior to the effective date of the termination or suspension of a grant award for failure to implement an approved State plan in compliance with the requirements of this part, a grantee shall have the right to written notice of the basis for the enforcement action and of the opportunity for public hearing before the DOE Financial Assistance Appeals Board notwithstanding any provisions to the contrary of 10 CFR 600.22, 600.24, 600.25, and 600.243. To obtain a public hearing, the grantee must request an evidentiary hearing, with prior **Federal Register** notice, in the election letter submitted under Rule 2 of 10 CFR 1024.4 and the request shall be granted notwithstanding any provisions to the contrary of Rule 2.

Subpart C—Implementation of Special Projects Financial Assistance

§ 420.30 Purpose and scope.

(a) This subpart sets forth DOE's policies and procedures for implementing special projects financial assistance under this part.

(b) For years in which such funding is available, States may apply for financial assistance to undertake a variety of State-oriented energy-related special projects activities in addition to the funds provided under the regular SEP grants.

(c) The types of funded activities may vary from year to year, and from State to State, depending upon funds available for each type of activity and DOE and State priorities.

(d) A number of end-use sector programs in the Office of Energy Efficiency and Renewable Energy participate in the funding of these activities, and the projects must meet the requirements of those programs.

(e) The purposes of the special project activities are:

(1) To utilize States to accelerate deployment of energy efficiency, renewable energy, and alternative transportation fuel technologies;

(2) To facilitate the commercialization of emerging and underutilized energy efficiency and renewable energy technologies; and

(3) To increase the responsiveness of Federally funded technology development efforts to the needs of the marketplace.

§ 420.31 Notice of availability.

(a) If in any fiscal year DOE has funds available for special projects, DOE shall publish in the **Federal Register** one or more notice(s) of availability of SEP special projects financial assistance.

(b) Each notice of availability shall cite this part and shall include:

(1) Brief descriptions of the activities for which funding is available;

(2) The amount of money DOE has available or estimates it will have available for award for each type of activity, and the total amount available;

(3) The program official to contact for additional information, application forms, and the program guidance/solicitation document; and

(4) The dates when:

(i) The program guidance/solicitation will be available; and

(ii) The applications for financial assistance must be received by DOE.

§ 420.32 Program guidance/solicitation.

After the publication of the notice of availability in the **Federal Register**, DOE shall, upon request, provide States interested in applying for one or more project(s) under the special projects financial assistance with a detailed program guidance/solicitation that will include:

(a) The control number of the program;

(b) The expected duration of DOE support or period of performance;

(c) An application form or the format to be used, location for application submission, and number of copies required;

(d) The name of the DOE program office contact from whom to seek additional information;

(e) Detailed descriptions of each type of program activity for which financial assistance is being offered;

(f) The amount of money available for award, together with any limitations as to maximum or minimum amounts expected to be awarded;

(g) Deadlines for submitting applications;

(h) Evaluation criteria that DOE will apply in the selection and ranking process for applications for each program activity;

(i) The evaluation process to be applied to each type of program activity;

(j) A listing of program policy factors if any that DOE may use in the final selection process, in addition to the results of the evaluations, including:

(1) The importance and relevance of the proposed applications to SEP and the participating programs in the Office of Energy Efficiency and Renewable Energy; and

(2) Geographical diversity;

(k) Reporting requirements;

(l) References to:

(1) Statutory authority for the program;

(2) Applicable rules; and

(3) Other terms and conditions applicable to awards made under the program guidance/solicitation; and

(m) A statement that DOE reserves the right to fund in whole or in part, any, all, or none of the applications submitted.

§ 420.33 Application requirements.

(a) Consistent with § 420.32 of this part, DOE shall set forth general and special project activity-specific requirements for applications for special projects financial assistance in the program guidance/solicitation.

(b) In addition to any other requirements, all applications shall provide:

(1) A detailed description of the proposed project, including the objectives of the project in relationship to DOE's program and the State's plan for carrying it out;

(2) A detailed budget for the entire proposed period of support, with written justification sufficient to evaluate the itemized list of costs provided on the entire project; and

(3) An implementation schedule for carrying out the project.

(c) DOE may, subsequent to receipt of an application, request additional budgetary information from a State when necessary for clarification or to make informed preaward determinations.

(d) DOE may return an application which does not include all information and documentation required by this part, 10 CFR part 600, or the program guidance/solicitation, when the nature of the omission precludes review of the application.

§ 420.34 Matching contributions or cost-sharing.

DOE may require (as set forth in the program guidance/solicitation) States to provide either:

(a) A matching contribution of at least a specified percentage of the Federal financial assistance award; or

(b) A specified share of the total cost of the project for which financial assistance is provided.

§ 420.35 Application evaluation.

(a) DOE staff at the cognizant Regional Support Office shall perform an initial review of all applications to ensure that the State has provided the information required by this part, 10 CFR part 600, and the program guidance/solicitation.

(b) DOE shall group, and technically evaluate according to program activity, all applications determined to be complete and satisfactory.

(c) DOE shall select evaluators on the basis of their professional qualifications and expertise relating to the particular program activity being evaluated.

(1) DOE anticipates that evaluators will primarily be DOE employees; but

(2) If DOE uses non-DOE evaluators, DOE shall require them to comply with all applicable DOE rules or directives concerning the use of outside evaluators.

§ 420.36 Evaluation criteria.

The evaluation criteria, including program activity-specific criteria, will be set forth in the program guidance/solicitation document.

§ 420.37 Selection.

(a) DOE may make selection of applications for award based on:

(1) The findings of the technical evaluations;

(2) The priorities of DOE, SEP, and the participating program offices;

(3) The availability of funds for the various special project activities; and

(4) Any program policy factors set forth in the program guidance/solicitation.

(b) The Director, Office of State and Community Programs makes the final selections of projects to be awarded financial assistance.

PART 450—[REMOVED]

2. Under the authority of 42 U.S.C. 7101 *et seq.* Part 450 is removed.

[FR Doc. 96–17067 Filed 7–5–96; 8:45 am]
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Part V

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

FY 1996 Funding Availability for HUD-Approved Housing Counseling Agencies; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR–4073–N–01]

FY 1996 Funding Availability for HUD-Approved Housing Counseling Agencies

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Fiscal year 1996 notice of funding availability for HUD-approved housing counseling agencies.

SUMMARY: This notice announces the availability of Fiscal Year (FY) 1996 funding from the U.S. Department of Housing and Urban Development (HUD) for HUD-approved housing counseling agencies to provide housing counseling to homebuyers, homeowners, and renters. HUD announces the availability of up to $10.5 million dollars for housing counseling services through this Notice of Funding Availability (NOFA). All housing counseling agencies approved by HUD as of the publication date of this NOFA may apply for FY 1996 funding. This includes: (1) multi-State, regional, or national intermediary organizations, and (2) local housing counseling agencies that do not elect to affiliate with a HUD-approved intermediary organization.

This NOFA contains additional information on the purpose and background of the NOFA and funding levels available to local counseling agencies and intermediary organizations respectively; eligible activities and funding criteria; and application requirements and procedures.

DATES: Completed applications must be submitted no later than 4:00 p.m. local time on August 7, 1996. As further described below, any completed application must be physically *received* by this deadline date and hour at the appropriate local HUD office (for local applicants) *or* at the Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 9282, Washington D.C. 20410 (for national, regional or multi-State applicants). In the interest of fairness to all applicants, late applications will be treated as ineligible for consideration. Applicants should take this requirement into account and make early submission of their applications to avoid loss of eligibility brought about by any unanticipated delays or other delivery-related problems. It is not sufficient for an application to be postmarked within the deadline. Applications sent by facsimile (FAX) will not be accepted. HUD will not waive this submission deadline for any reason.

ADDRESSES: For local housing counseling agency applicants: An original and two copies of the completed application must be submitted to the local HUD office having jurisdiction over the locality or area in which the proposed program is located. These copies should be sent to the attention of the Single Family Division Director, and the envelope should be clearly marked, "FY 1996 Counseling Application". A list of Single Family Division Directors and local HUD Offices appears at the end of this NOFA. Failure to submit an application to the correct office in accordance with the above procedures will result in disqualification of the application.

For national, regional and multi-State housing counseling agencies: An original and two copies of the completed application must be submitted to the person listed below in HUD Headquarters. The envelope should be clearly marked, "FY 1996 Counseling Application."

FOR FURTHER INFORMATION CONTACT: Joan Morgan, Chief, Product Development and Special Projects Branch, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 9272, Washington D.C. 20410; telephone (202) 708–0614, extension 2213 (voice), or (202) 708–4594 (TTY number). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0261. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Purpose and Substantive Description

A. Authority and Purpose

HUD's housing counseling program is authorized under section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x). The purpose of the program is to promote and protect the interests of housing consumers participating in HUD and other housing programs, as well as to help protect the interests of HUD and mortgage lenders. The Housing Counseling program is generally governed by HUD Handbook 7610.1, REV–4, dated August 9, 1995.

Section 106 authorizes HUD to provide counseling and advice to tenants and homeowners with respect to property maintenance, financial management, and such other matters as may be appropriate to assist tenants and homeowners in improving their housing conditions and in meeting the responsibilities of tenancy and homeownership. In addition, HUD-approved counseling agencies are permitted and encouraged by HUD to conduct community outreach activities and provide counseling to individuals with the objective of increasing awareness of homeownership opportunities and improving access of low and moderate income households to sources of mortgage credit. HUD believes that this activity is key to the revitalization and stabilization of low income and minority neighborhoods.

Under the housing counseling program, HUD contracts with qualified public or private nonprofit organizations to provide the services authorized by the statute. When Congress appropriates funds for this purpose, HUD announces the availability of such funds, and invites applications from eligible agencies, through a notice published in the **Federal Register**. Currently there are 705 HUD-approved local housing counseling agencies with 386 Branch Offices and 10 HUD-approved intermediary organizations. Annually, all HUD-approved agencies are eligible to apply for housing counseling grants. However, an agency that is approved by HUD does not automatically receive HUD funding, and HUD expects that all counseling agencies will continually work to develop other funding resources. In FY '95, 240 HUD-approved local housing counseling agencies and 5 HUD-approved national/regional/multi-state housing counseling agencies received funding from HUD.

B. Allocation Amounts

Twelve million dollars ($12 million) has been appropriated from the 1996 Appropriations Act, P. L. 104–134, 110 Stat. 1321, approved April 26, 1996 for this program. Of this amount, $10.5 million is being made available under this NOFA for lump-sum, performance-based grants, as defined at 24 CFR part 84, subpart E. Approximately $4 million is being set aside to fund national, regional and multi-State organizations that apply for funding under this NOFA. No national, regional, or multi-State agency may receive more than $1

million. Approximately $6.5 million has been made available for grants to local HUD approved housing counseling agencies, and it has been allocated to each of the 10 HUD geographical areas (formerly Regions) by a formula that gives equal weight to the percentage of HUD insured single family mortgage defaults within each geographical area as of September 30, 1995, compared to the nationwide total *and* the percentage of first-time homebuyers that were approved for FHA-insured mortgages by geographical area during FY 1995 compared to the nationwide total for that period. This formula reflects the increased emphasis that HUD is placing on the expansion of homeownership opportunities for first-time homebuyers. For FY 1996, no individual local housing counseling agency may be awarded more than $100,000.

Allocations for use in local agency programs, by HUD geographical area, are estimated as follows:

Geographical areas	Default data			First-time Homebuyer Data			
	No. of defaults	Nat'l defaults (Percent)	Allocation amount	No. of 1st timers	Nat'l. 1st timers (Percent)	Allocation amount	Total allocation
New England	2,836	1.95	63,465	11,887	3.26	105,959	169,424
NY/NJ	11,853	8.16	265,252	23,034	6.32	205,322	470,573
Mid-Atlantic	16,502	11.36	369,289	41,427	11.36	369,274	738,563
SE/Caribbean	36,049	24.82	806,721	72,746	19.95	648,447	1,455,168
Midwest	23,087	15.90	516,651	63,812	17.50	568,811	1,085,462
Southwest	19,834	13.66	443,854	40,238	11.04	358,676	802,530
Great Plains	4,102	2.82	91,796	14,671	4.02	130,775	222,572
Rocky Mts	3,607	2.48	80,719	21,014	5.76	187,316	268,035
Pac/Hawaii	24,685	17.00	552,412	62,277	16.25	555,128	1,107,540
NW/Alaska	2,674	1.84	59,840	13,495	3.70	120,292	180,132
Totals	145,229	100	3,250,000	364,601	100	3,250,000	6,500,000

An allocation of $1.5 million in program funding has been set aside for Housing Counseling support which may include: Continuation of the Housing Counseling Clearinghouse, 800 service to provide information to the public regarding local HUD-approved housing counseling agencies, and/or other HUD counseling initiatives.

If funds remain after HUD has funded all approvable grant applications in a HUD geographical area, or if any funds become available due to deobligation, that amount shall be reallocated and used in keeping with the statute and in a manner that will improve the delivery of housing counseling service nationwide.

C. Eligible Applicants

1. *General.* There are two types of HUD-approved organizations that are eligible to submit applications pursuant to this NOFA: (1) national, regional, or multi-State housing counseling organizations (also known as "intermediaries" or "umbrella groups"); and (2) local housing counseling agencies.

National, regional, and multi-State nonprofit, intermediary organizations must identify all their proposed affiliates in their application. These intermediaries must assure that their proposed affiliates are unique to their team and will not undertake a separate application for funds either as an affiliate of another intermediary or directly as a HUD-approved local counseling agency. Should any duplication occur, both the intermediary organization and the local agency involved will automatically be ineligible for further consideration to receive FY 1996 housing counseling funds. In addition, an intermediary-applicant must also assure that it has executed a sub-agreement with its affiliates that clearly delineates their mutual responsibilities for program management, incorporating appropriate timeframes for reporting results to HUD.

Once funded, the national, regional, and multi-State intermediaries will be given broad discretion in implementing their housing counseling programs. On behalf of HUD, the intermediaries will act as managers in the housing counseling process and, as such, may determine funding levels and counseling activity for each of their affiliates, except that no single affiliate may receive more than $100,000. HUD will hold the intermediary organization accountable for the performance of its affiliates.

Local counseling agencies may apply either directly to HUD for funding, or as a part of an affiliated intermediary network. Since continuation of funding for housing counseling activities as a separate and discrete program for FY 1997 and thereafter is not guaranteed, HUD encourages local agencies to consider affiliating with a larger entity as one avenue of possible future funding and support for local programs. Local housing counseling agencies that are not currently HUD-approved may receive FY 1996 funding only as an affiliate of a HUD-approved national, regional, or multi-State intermediary's application for FY 1996 funds. In this instance, the intermediary organization must certify that the quality of services provided will meet, or exceed, standards for local HUD-approved agencies.

2. *Civil Rights Prerequisites.* Applicants that fall into any one of the following categories will be ineligible for funding under this NOFA:

a. The Department of Justice has brought a civil rights suit against the applicant and the suit is pending;

b. There has been an adjudication of a civil rights violation in a civil action brought against the applicant by a private individual, unless the applicant is operating in compliance with a court order, or implementing a HUD-approved compliance agreement designed to correct the areas of noncompliance;

c. There are outstanding findings of noncompliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance; or

d. HUD has deferred application processing by HUD under one of the following authorities:

i. Title VI of the Civil Rights Act of 1964 and the implementing guidelines of the Attorney General (28 CFR 50.3) and the HUD regulations (24 CFR 1.8);

ii. Section 504 of the Rehabilitation Act of 1973 and the HUD section 504 regulations (24 CFR 8.57);

iii. Executive Order 11063, as amended by Executive Order 12892 and HUD regulations (24 CFR Part 107);

iv. Title II of the Americans with Disabilities Act of 1990 and applicable regulations (28 CFR Part 36); or

v. The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations (24 CFR Part 146).

3. *Requirements Applicable to Religious Organizations.* Where the applicant is, or proposes to contract with, a primarily religious organization, or a wholly secular organization established by a primarily religious organization, to provide, manage, or operate a housing counseling program, the organization must undertake its responsibilities under the counseling program in accordance with the following principles:

a. It will not discriminate against any employee or applicant for employment under the program on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

b. It will not discriminate against any person applying for counseling under the program on the basis of religion and will not limit such assistance or give preference to persons on the basis of religion; and

c. It will provide no religious instruction or religious counseling, conduct no religious services or worship, engage in no religious proselytizing, and exert no other religious influence in the provision of assistance under the housing counseling program.

D. Eligible Activities

Eligible activities will vary depending upon whether the applicant is a HUD-approved local counseling agency or a HUD-approved national, regional, or multi-State housing counseling intermediary.

1. *Local Housing Counseling Agencies.* Local housing counseling agencies funded under this NOFA may use HUD funds to deliver comprehensive housing counseling or to specialize in the delivery of particular housing counseling services according to the housing needs they identified for their target area in the plan that was previously approved by HUD. HUD recognizes that local housing counseling agencies may offer a wide range of services, including:

a. Renter assistance, including information about rent subsidy programs, rights and responsibilities of tenants, lease and rental agreements, etc.;

b. Outreach initiatives, including providing general information about housing opportunities within the community and providing appropriate information to persons with disabilities;

c. Pre-purchase homeownership counseling, covering such issues as purchase procedures, mortgage financing, downpayment/closing cost fund accumulation, accessibility requirements of the property—if appropriate, credit improvement, debt consolidation, etc.;

d. Post-purchase counseling, including such issues as property maintenance, personal money management, home equity conversion mortgages, etc.; or

e. Mortgage delinquency and default resolution, including restructuring debt, arrangement of reinstatement plans, loan forbearance, loss mitigation, etc.

HUD-funded local counseling agencies may elect to offer their services to a wide range of clients or may elect to serve a more limited audience. Potential clients include: renters; potential homebuyers; homeowners eligible for and applying for HUD-related, VA, FmHA (or its successor agency), State, local, or conventionally financed housing or housing assistance; or persons who occupy such housing and seek the assistance of a HUD-approved housing counseling agency to resolve a housing need (including the need of a person with a disability for accessible housing) or problem. Local housing counseling agencies may elect to offer this assistance in conjunction with any HUD housing program but must be familiar with FHA's single family and multifamily housing programs.

2. *National, Regional, or Multi-State Counseling Intermediaries.* The primary activity of national, regional, or multi-State nonprofit housing counseling intermediaries will be to manage the use of HUD housing counseling funds, including the distribution of counseling funding to affiliated local housing counseling organizations. Local affiliates of the selected national, regional, or multi-State counseling intermediaries are eligible to undertake any or all of the housing counseling activities outlined above for the HUD-approved local housing counseling agencies. The local affiliates receiving funding through intermediaries do not need to be HUD-approved in order to receive these funds from the intermediary. However, the national, regional, or multi-State intermediary organization must be HUD-approved as of the NOFA publication date.

E. Selection Process

1. *Housing Counseling Agencies.* All applications meeting the requirements of this NOFA will be selected for funding within their competitive category, if sufficient funds are available: (1) in the set aside for National, Regional, or multi-State organizations, or (2) within the HUD geographic allocation area for local housing counseling agency applicants.

a. Criteria/Ranking Factors. All applications will be rated and ranked by staff in the appropriate local HUD Office and by the Secretary's Representative in the appropriate State office. The Secretary's Representative and the local HUD Office staff will use the same criteria and ranking factors, as follows:

i. Capability of the applicant as determined by HUD, including competent delivery of counseling services and timely drawdown of any HUD funds awarded in the prior Fiscal Year—up to 50 points (up to 45 points assigned by HUD's Housing staff; up to 5 points assigned by the Secretary's Representative);

ii. Adequacy of the activities proposed by the applicant in response to housing needs identified in the applicant's housing counseling plan as previously approved by HUD—up to 25 points (up to 20 points assigned by HUD's Housing staff; up to 5 points assigned by the Secretary's Representative);

iii. Evidence of private funding sources contributing to the applicant's operating budget over the past calendar year—up to 15 points assigned by HUD's Housing staff; and

iv. Evidence of current funding support from units of government located within the target area which the applicant intends to serve—up to 10 points.

b. Selection Procedure. National, regional, and multi-State applications will be rated and ranked in Headquarters and selected for funding, in rank order, until all funds for such agencies are depleted. Local agency applications will be reviewed by the Field Office and assigned points under the selection criteria. Then the Field Office will submit its recommendations for funding to HUD Headquarters for final review, to ensure appropriate geographical distribution of program funds and consistent application of the criteria described above. HUD Headquarters will then rank the local agency applications within the geographical areas and select for funding, in rank order, all acceptable applications to the point at which all funds are depleted.

i. Breaking a Tie. If two or more applications receive the same number of points and sufficient funds are not available to fund all such applications, first the application or applications requesting the smallest grants will be selected, if a sufficient amount remains to fund them. If two or more tied applications request the same amount and sufficient funds are not available to fund all such applications, the following system will be used to break the ties:

A. If the tied applications are for programs to be carried out in different jurisdictions, applications with the highest number of points for the rating criterion a.ii. (adequacy of activities) stated above will be selected, if sufficient funds remain.

B. If the tied applications are to be carried out in the same jurisdiction, applications with the highest number of points for the rating criterion a.i. (capability) stated above will be selected, if sufficient funds remain.

ii. Reallocations. Funds remaining after applying the procedures described in paragraph E.1.b. will be reallocated to fund the highest ranking remaining applications without regard to their location.

iii. Procedural Errors. Procedural errors by HUD discovered after initial ratings, but before notification to Congress of selected applicants, will be corrected and rankings will be revised.

iv. Reductions. HUD will approve an application for an amount lower than the amount requested or adjust line items in the proposed budget within the amount requested (or both) if it determines that:

A. The amount requested for one or more eligible activities is unreasonable, unnecessary, or unjustified;

B. An activity proposed for funding does not qualify as an eligible activity;

C. The applicant is not able to carry out all the activities requested; or

D. Insufficient amounts remain in that funding round to fund the full amount requested in the application.

v. Limitation of Geographic Scope. HUD may reduce the geographic scope of the proposed program if it determines that:

A. Two or more fundable applications substantially overlap; or

B. The proposed geographic scope is overly large given the capacity of the organization.

2. *National, Regional, and Multi-State Counseling Organizations.* If more applications are submitted to HUD Headquarters from national, regional, and multi-State organizations that meet all the requirements of this NOFA than can be funded with the amount allocated for this purpose, they will be rated by staff in HUD Headquarters using the above ranking criteria stated in paragraph 1.a., and the top-rated applicants will be selected. Paragraphs 1. c.iii., c.iv., and c.v., above also apply to the selection of national, regional, and multi-State counseling organizations.

3. *Notification of Approval or Disapproval.* After completion of the selection process, but no later than six months after the deadline date for submission of the applications, as stated in this NOFA, HUD will notify, in writing, the applicants that have been selected and the applicants that have not been selected.

F. Funding Levels

Funding levels will be based on the amount authorized by the Congress, geographical distribution as described above, the performance record of each counseling agency as determined by HUD's analysis of prior year counseling workload and results of the most recent biennial performance review, competent delivery of counseling services and timely drawdown of funds awarded, and the agency's needs, as specified in the application according to its housing counseling plan previously approved by HUD. In addition, applicants that can demonstrate successful efforts to obtain non-HUD funding in their applications will receive extra consideration in HUD's rating and ranking process. HUD funding provided *must* be less than the total actual cost of the agency's housing counseling program.

1. *Local Housing Counseling Agencies.* HUD will fund local agencies according to the budget submitted with the application, in an amount not to exceed $100,000. Amounts requested by local housing counseling agencies should reflect anticipated operating needs for housing counseling activities, based upon counseling experience during the last year and existing agency capacity. To the maximum extent possible, local counseling agencies also must seek other private and public sources of funding to supplement HUD funding. HUD never intends for its counseling grant funds to cover all costs incurred by an agency participating in the program.

Local housing counseling agencies may use the HUD grant to undertake any of the eligible counseling activities described in this NOFA and included in their HUD-approved plan. FY 1996 housing counseling grant funds also may be used for "capacity building" as defined in this NOFA. Up to $4,000 of the grant amount may be used to: purchase computer equipment that meets, or exceeds, HUD specifications; enhance existing telephone service, such as purchasing telecommunications equipment for the hearing-impaired (TTY) to serve persons with hearing impairments (as an alternative to using the TTY relay service); and install FAX machines. The Department will require that all grantees funded in 1996 which do not currently have adequate computer systems (and were not funded by HUD under the FY 1995 NOFA) use all or a portion of their $4,000 capacity building portion of the grant to purchase computer hardware according to HUD specifications. Computer training for one staff person also may be paid from the $4,000 set-aside, as may training on how to use a TTY. Title to equipment acquired by a recipient with program funds shall vest in the recipient, subject to the provisions of 24 CFR part 84, subpart E. Agencies funded under the FY 1995 NOFA already received an allocation of capacity building funds and *may not* request additional capacity building funds in 1996.

2. *National, Regional, or Multi-State Counseling Intermediaries.* The intermediary organization will distribute the majority of funds awarded to their proposed local housing counseling affiliates. Intermediaries should budget an amount which reflects their best estimate of cost to oversee and fund these counseling efforts, as well as the funding needs of their affiliates. Note that HUD housing counseling funding is not intended to fully fund either the intermediary's housing counseling program or the housing counseling programs of the local affiliates. To the maximum extent possible, intermediaries and their local affiliates are expected to seek other private and public sources of funding for housing counseling to supplement HUD funding.

An intermediary may use up to $5,000 of its total grant amount for capacity building expenses such as: purchasing computer equipment; enhancing telephone service, such as purchasing telecommunications equipment for the hearing-impaired (TTY) to serve persons with hearing impairments (as an alternative to using TTY relay service); installing FAX machines; and preparing or publishing counseling materials. If the intermediary does not have an adequate computer system and was not funded under the FY 1995 NOFA, the Department will require that the $5,000 capacity building portion of the grant be used to purchase necessary equipment meeting HUD specifications. Title to equipment acquired by a recipient with program funds shall vest in the recipient, subject to the provisions of 24 CFR part 84, subpart E. Intermediaries

funded under the FY 1995 NOFA *may not* request additional capacity building funds in FY 1996.

HUD will give the selected nonprofit intermediaries wide discretion to implement the housing counseling program with their affiliates. The intermediary may decide how to allocate funding among its affiliates and may determine funding levels at or below $100,000 for individual affiliates with the understanding that a written record will be kept of how this determination is made. This record shall be made available to the agencies affiliated with the intermediary.

III. Checklist of Application Submission Requirements

A. General

Contents of an application will differ somewhat for local housing counseling agencies and for national, regional, or multi-State intermediaries; however, all applicants are expected to submit:

1. Standard Form 424, Application for Federal Assistance
2. Standard Form 424B, Assurances—Non-construction Programs
3. Drug-Free Workplace Requirements Certification
4. Applicant/Recipient Disclosure/Update Report, Form HUD–2880
5. Certification and Disclosure of Lobbying Activities, Standard Form LLL, for National Intermediaries only, if applicable
6. Certification Regarding Civil Rights
7. Form HUD–9902, Housing Counseling Agency FISCAL YEAR Activity Report for fiscal year October 1, 1994 through September 30, 1995. Where an applicant did not participate in HUD's Housing Counseling Program during FY 1995, this report should be completed to reflect the agency's counseling workload during that period in any case. This form must be fully completed and submitted by every applicant for FY 1996 HUD funding. HUD will reject any application that does not include this form
8. Computer Equipment Inventory (if applicable)
9. Budget Worksheet. A realistic, proposed budget for use of HUD funds if awarded. This should be broken down into two categories: direct counseling costs and capacity building costs. Note that the budget submitted by a local agency *may not exceed a total of $100,000*, including capacity building costs which may not exceed $4,000. National, regional and multi-State organizations may submit a proposed budget up to $1 million, including capacity building costs which may not exceed $5,000
10. Exhibits for National, regional, multi-State or local housing counseling agencies (as described below in B1–B3 and in the application kit)
11. Evidence of Housing Counseling Funding Sources (required by all applicants)
12. Current Housing Counseling Plan
13. A description of counseling activities to be performed
14. A description of organization capability
15. Direct-labor and Hourly-labor rate and Counseling Time Per Client
16. Congressional District Information

B. National, Regional, and Multi-State Intermediaries

National, regional, and multi-State intermediaries must submit an application which covers both their network organization and their affiliated agencies. This application must include:

1. *Description of affiliated agencies.* For each, list the following information:
   a. Organization name
   b. Address
   c. Director and contact person (if different)
   d. Phone/FAX numbers (including TTY, if appropriate)
   e. Federal tax identification number
   f. ZIP code service areas
   g. Number of staff providing counseling
   h. Type of services offered (defined by renter assistance, outreach initiatives, pre-purchase counseling, post-purchase counseling, and mortgage default and delinquency counseling)
   i. Number of years of housing counseling experience
2. *Relationship with affiliates.* Briefly describe the intermediary's relationship with affiliates (i.e. membership organization, field or branch offices, subsidiary organizations, etc.).
3. *Oversight system.* Describe the process that will be used for determining affiliate funding levels, distributing funds, and monitoring affiliate performance.

IV. Corrections to Deficient Applications

After the submission deadline, applicants may cure only non-substantial, technical deficiencies that surface during HUD screening of their application. Applicants will have a "cure period" to correct such deficiencies that are not integral to HUD's review of the application. Applicants have 14 calendar days from the date HUD notifies them of any problem to submit the appropriate information to HUD. Notification of a technical deficiency may be in writing or by telephone. If the HUD notification is by telephone, a written confirmation will be transmitted by HUD to the applicant. Where HUD determines that an application as initially submitted is fundamentally incomplete, or would require substantial revisions, it will not consider the application further. Note: HUD will not inform applicants regarding application deficiencies other than as described in this section.

V. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332, in connection with the Notice of Funding Availability published in connection with the Housing Counseling program on March 21, 1994 [59 FR 13366]. That Finding is applicable to this NOFA and is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. This NOFA only affects nonprofit or public organizations who seek funding for their housing counseling activities.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this NOFA has potential significant impact on family formation, maintenance, and general well-being only to the extent that the entities who qualify for participation in HUD's housing counseling program under this notice will provide families with the counseling and advice they need to avoid rent delinquencies or mortgage defaults, and to develop competence and responsibility in meeting their housing needs. Since the potential impact on the family is considered beneficial, no further review under the Order is necessary.

Documentation and Public Access Requirements: HUD Reform Act

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1996, for further information on these requirements.)

Prohibition Against Advance Information on Funding Decisions: HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding 4.decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) Hearing or speech-impaired persons may access that number by calling toll-free the Federal Information Relay Service at (800) 877–8339. For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of 24 CFR part 87. That regulation prohibits recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Catalog

The Catalog of Federal Domestic Assistance Program number is 14.169.

Dated: July 1, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix A—HUD Offices

Note: The title of all those listed is: Director, Single Family Division, U.S. Department of Housing and Urban Development. Telephone numbers are not toll-free.

HUD—New England Area

Connecticut state office
Mr. John Ertle
First Floor
330 Main Street
Hartford, CT 06106–1860
(203) 240–4569

Massachusetts State Office
Mr. Edward T. Bernard
Room 375
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street
Boston, MA 02222–1092
(617) 565–5101

New Hampshire State Office
Mr. Loren Cole
Norris Cotton Federal Building
275 Chestnut Street
Manchester, NH 03101–2487
(603) 666–7755

Rhode Island State Office
Mr. Michael Dziok
Sixth Floor
10 Weybosset Street
Providence, RI 02903–2808
(401) 528–5351

HUD—New York, New Jersey Area

New Jersey State Office
Ms. Theresa Arce
Thirteenth Floor
One Newark Center
Newark, NJ 07102–5260
(201) 622–7900 X3500

New York State Office
Mr. Juan Baustista
26 Federal Plaza
New York, NY 10278–0068
(212) 264–0777 X3746

Albany Area Office
Mr. Robert S. Scofield, Jr.
52 Corporate Circle
Albany, NY 12203–5121
(518) 464–4200 EXT. 4205

Buffalo Area Office
Mr. Glenn Ruggles
Lafayette Court
465 Main Street
Buffalo, NY 14203–1780
(716) 846–5732

Camden Area Office
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Federal Register
Vol. 61, No. 131
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FEDERAL REGISTER PAGES AND DATES, JULY

33825–34366	1
34367–34712	2
34713–35082	3
35083–35588	5
35589–35914	8

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6907 35083
6908 35587
Administrative Orders:
Presidential Determinations:
No. 96–36 of June 28, 1996 35075

5 CFR

Ch. XXIII 35085
530 34713
531 34713
534 34713
550 34713
575 34713
581 34713
582 34713
630 34713
2634 35588
734 35088

7 CFR

58 35589
301 ..... 35102, 35107
400 34367
868 34714
946 35109
958 35592
997 35594
998 35594
1106 35596
1230 35597
1493 33825
Proposed Rules:
210 35152
220 35152
225 35152
226 35152
300 34379
319 34379
868 35687
1240 34385

8 CFR

103 35597
217 35598
301 35111

9 CFR

112 33840
113 33840
Proposed Rules:
1 34386
3 ..... 34386, 34389
11 34747
319 35157
381 35157
391 34747

10 CFR

110 35600
205 ..... 35112, 35114
420 35890
450 35890
463 35114
1003 35112
1010 35085

12 CFR

324 33842
367 35115
1750 35607
Proposed Rules:
207 33874
218 34749
220 33874
221 33874
250 34749
327 34751

14 CFR

1 34508
25 34716
29 33963
39 ..... 33874, 34368, 34718, 35122, 35126, 35127
61 34508
71 ..... 33843 33844, 33845, 34720, 34721, 34722, 34723, 35307
73 35623
91 34508
97 ..... 35623, 35624, 35626
119 35628
121 ..... 34508, 34927, 35628
125 34508
135 ..... 34508, 34927, 35628
141 34508
142 34508
211 34724
213 34724
Proposed Rules:
25 35056
39 ..... 34767, 35691, 35693, 35695
71 ..... 34391, 34393, 34394, 34395, 34396, 34397, 34398, 34768

15 CFR

902 ..... 34570, 34930, 34986, 35145, 35548
Proposed Rules:
922 35676

19 CFR

10 33845
12 33845
102 33845
134 33845

21 CFR

177 34370

178.....33948
452.....34726
520.....34727
522.....34727, 35129
529.....34727
558.....34727

22 CFR

41.....35628

23 CFR

630.....35629

24 CFR

203.....35024
206.....35014
901.....35633

25 CFR

10.....34371
211.....35634
212.....35634
700.....35666

Proposed Rules:

11.....35158
12.....35163
21.....33876
45.....34399
152.....34400
171.....35167

26 CFR

Proposed Rules:

1.....35696

28 CFR

42.....34729

Proposed Rules:

31.....34770

29 CFR

Ch. XXVI.....34002
Ch. XL.....34002
2509.....33847
2520.....33847
2550.....33847

Proposed Rules:

Ch. XIV.....34405
101.....35172
102.....35172

30 CFR

256.....34730

33 CFR

164.....35084
165.....35130, 35132
334.....34732

Proposed Rules:

154.....34775
155.....34775
117.....35702
167.....35703

36 CFR

1.....35133
13.....35133

38 CFR

1.....33850

Proposed Rules:

1.....33878

40 CFR

9.....33851, 34202
55.....34202
63.....34140
70.....34733
71.....34202
80.....35310, 35673
180.....34739, 34741
257.....34253
261.....34252
271.....34252
300.....35137
425.....35680

Proposed Rules:

80.....34775
81.....33879
90.....34778
260.....33881
261.....33881
262.....33881
264.....33881
268.....33881
269.....33881
271.....33881
425.....35705

41 CFR

201.....35685

42 CFR

405.....35307
417.....35307
431.....35307
473.....35307
498.....35307

Proposed Rules:

410.....34614
415.....34614

44 CFR

65.....33852, 33854
67.....33856

Proposed Rules:

67.....33882

45 CFR

76.....35138
111.....35927
167.....35138
514.....35685

47 CFR

20.....33859
22.....34375
24.....33850
36.....34375
73.....34368, 34743, 34744, 35139
90.....34375

Proposed Rules:

Ch. I.....34405
73.....34406, 34407, 34784, 34785, 35705
76.....34408, 34409

49 CFR

1.....34745
192.....35139
233.....33871
235.....33871
236.....33871
571.....33891
1300.....35139
1305.....35141

Proposed Rules:

1.....33886
8.....33886
192.....34410, 34413
195.....34410, 34413

50 CFR

Ch. III.....35548
246.....35548
280.....35548
281.....35548
282.....35548
296.....35548
299.....35548
622.....34930
625.....34966
630.....34746
638.....34930
641.....34930
642.....34785
645.....34930
646.....34930
647.....34930
648.....34966, 35142
650.....34966
651.....34966
652.....34966
653.....34930
655.....34966
657.....34966
658.....34930
659.....34930
660.....34570, 35143, 35144
661.....34570
663.....34570
669.....34930
670.....34930
679.....34377
680.....34570
681.....34570, 35145
683.....34570
685.....34570
695.....35548
697.....34746

Proposed Rules:

642.....34785
679.....35174

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Energy conservation:
- State energy program; consolidation of State Energy Conservation Program (SECP) and Institutional Conservation Program (ICP); Federal regulatory reform; published 7-8-96

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control; new motor vehicles and engines:
- New non-road spark-ignition and compression-ignition engines; reduced certification reporting requirements; published 5-8-96

Air programs:
- Fuel and fuel additives--
  - Gasoline containing lead or lead additives for highway use; prohibition; published 6-5-96
  - Reformulated gasoline sold in California; Reid Vapor Pressure lower limit adjustment; published 5-8-96
- Outer Continental Shelf regulations--
  - California; published 6-6-96

Air quality implementation plans; approval and promulgation; various States:
- California; published 5-7-96
- Illinois; published 5-7-96

Superfund program:
- Emergency Planning and Community Right-to-Know Act--
  - Extremely hazardous substances list and reportable quantities; published 5-7-96

FEDERAL COMMUNICATIONS COMMISSION
Radio services; special:
- Family radio service; very short distance two-way radio service; establishment; published 5-6-96

FEDERAL DEPOSIT INSURANCE CORPORATION
Conflict of interests; published 6-6-96

GENERAL SERVICES ADMINISTRATION
Federal Information Resources Management Regulation:
- Federal information processing multiple award schedule contracts; provisions removed; published 7-8-96

INTERIOR DEPARTMENT
Land Management Bureau
Range management:
- Leases; grazing administration; published 5-7-96

INTERIOR DEPARTMENT
National Park Service
Special regulations:
- Cape Lookout National Seashore, NC; aircraft operation; Portsmouth Village Airstrip closing; published 5-6-96

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:
- Visa waiver pilot program--
  - Argentina; published 7-8-96

STATE DEPARTMENT
Visas; nonimmigrant documentation:
- Visa waiver pilot program; Argentina; published 7-8-96

TRANSPORTATION DEPARTMENT
Coast Guard
Regattas and marine parades:
- Harborwalk Boat Race; published 6-7-96

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Highway safety program standards; applicability to Federally administered areas:
- Federal regulatory review; CFR part removed; published 6-6-96

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Highway safety program standards; applicability to Federally administered areas:
- Federal regulatory reform; CFR part removed; published 6-6-96

Motor vehicle safety standards:
- Federal regulatory review--
  - Vehicle identification number (VIN) physical requirements; consolidation; published 6-7-96

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Pipeline safety:
- Gas pipeline safety standards; Federal regulatory reform; published 6-6-96
- Correction; published 6-18-96
- Correction; published 7-5-96

TREASURY DEPARTMENT
Alcohol, Tobacco and Firearms Bureau
Alcoholic beverages:
- Wine; production, cellar treatment, and finishing--
  - Wine treating processes and wine treating material; published 5-9-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Apricots grown in Washington; comments due by 7-17-96; published 6-17-96
Fruits, vegetables, and other products, fresh:
- Inspection, certification, and standards fee schedule; comments due by 7-15-96; published 5-14-96

Hazelnuts grown in Oregon and Washington; comments due by 7-15-96; published 6-13-96
Peanuts, domestically produced; comments due by 7-15-96; published 6-13-96

ARMS CONTROL AND DISARMAMENT AGENCY
Privacy Act; implementation; comments due by 7-16-96; published 6-13-96

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
- Sea turtle conservation; shrimp trawling requirements--
  - Soft turtle excluder devices approval removed, etc.; comments due by 7-15-96; published 6-17-96

Fishery conservation and management:
- Atlantic surf clam and ocean quahog; comments due by 7-19-96; published 6-20-96
- Gulf of Mexico and South Atlantic coastal migratory pelagic resources; comments due by 7-18-96; published 7-3-96
- Ocean salmon off coasts of Washington, Oregon, and California; comments due by 7-15-96; published 7-5-96
- Pacific Coast groundfish; comments due by 7-16-96; published 7-5-96
- Puerto Rico and U.S. Virgin Islands reef fish; comments due by 7-15-96; published 6-17-96
- Summer flounder and scup; comments due by 7-18-96; published 6-3-96

Marine mammals:
- Incidental taking--
  - Naval activities; USS Seawolf submarine shock testing; comments due by 7-15-96; published 6-14-96

COMMERCE DEPARTMENT
National Telecommunications and Information Administration
Public telecommunications facilities program; comments due by 7-15-96; published 5-30-96

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
- Surface coating operations from new or existing shipbuilding and ship repair facilities--
  - Compliance date revision and implementation plan submittal deadline extension; comments due by 7-18-96; published 6-18-96

Air quality implementation plans; approval and promulgation; various States:
- Indiana; comments due by 7-15-96; published 6-13-96
- Louisiana; comments due by 7-15-96; published 6-13-96
- Virginia; comments due by 7-15-96; published 6-13-96

Clean Air Act:
State operating permits programs–
Idaho; comments due by 7-17-96; published 6-17-96
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Chlorothalonil; comments due by 7-19-96; published 6-19-96
Fenarimol; comments due by 7-15-96; published 6-14-96
Quizalofop ethyl; comments due by 7-19-96; published 6-19-96
Quizalofop-p ethyl ester; comments due by 7-15-96; published 6-14-96
Sodium salt of fomesafen; comments due by 7-19-96; published 6-19-96
Triadimefon; comments due by 7-19-96; published 6-19-96
Vinyl pyrrolidone-acrylic acid copolymer; comments due by 7-15-96; published 6-14-96
Superfund program:
National oil and hazardous substances contingency plan–
National priorities list update; comments due by 7-15-96; published 6-14-96

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
Aeronautical services provision via International Maritime Satellite Organization (Inmarsat system); comments due by 7-17-96; published 6-17-96
O+ InterLATA calls; billed party preference; comments due by 7-17-96; published 6-17-96
Satellite communications–
Application and licensing procedures; comments due by 7-15-96; published 6-24-96
Communications equipment:
Radio frequency devices–
Unlicensed NII/SUPERNet operations in 5 GHz frequency range; comments due by 7-15-96; published 5-16-96
Television broadcasting:
Cable television systems–
Video programming delivery; market competition status; annual assessment; comments due by 7-19-96; published 7-2-96

GENERAL SERVICES ADMINISTRATION

Federal property management:
Public buildings and space–
Small purchase authority; comments due by 7-15-96; published 6-13-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

Head Start Fellows Program; comments due by 7-15-96; published 5-15-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:
Food labeling–
Nutrient content claims; general principles and "healthy" definition; fruits, vegetables, etc., inclusion; comments due by 7-18-96; published 3-22-96

INTERIOR DEPARTMENT

Indian Affairs Bureau

Financial activities:
Trust funds; tribal management; comments due by 7-15-96; published 5-16-96

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
Findings on petitions, etc.–
Namibian cheetah; comments due by 7-17-96; published 3-19-96
Least chub; comments due by 7-15-96; published 6-7-96
Importation, exportation, and transportation of wildlife:
Injurious wildlife; Federal regulatory review; comments due by 7-15-96; published 5-14-96

INTERIOR DEPARTMENT

Minerals Management Service

Federal regulatory review; request for comments; comments due by 7-19-96; published 5-20-96

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
Virginia; comments due by 7-19-96; published 6-19-96

JUSTICE DEPARTMENT

Prisons Bureau

Inmate control, custody, care, etc.:
Acts of violence and terrorism prevention; comments due by 7-16-96; published 5-17-96
Drug abuse treatment programs and early release consideration; comments due by 7-16-96; published 5-17-96

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:
Michigan; comments due by 7-15-96; published 5-14-96

TRANSPORTATION DEPARTMENT

Airline oversales signs; Federal regulatory review; comments due by 7-18-96; published 6-3-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Allied Signal Commercial Avionics Systems; comments due by 7-15-96; published 6-5-96
Bell; comments due by 7-15-96; published 5-14-96
Boeing; comments due by 7-19-96; published 6-7-96
H.B. Flugtechnik GmbH; comments due by 7-15-96; published 5-13-96
McDonnell Douglas; comments due by 7-15-96; published 5-14-96
Pilatus Britten-Norman Ltd.; comments due by 7-19-96; published 5-9-96
Airworthiness standards:
Special conditions–
Dassault Aviation, Mystere Falcon 50 airplane; comments due by 7-15-96; published 5-29-96
Class E airspace; comments due by 7-19-96; published 6-12-96

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
Controls and displays; Federal regulatory review; comments due by 7-15-96; published 5-30-96
Seat belt assemblies–
Anchorage of voluntarily installed lap/shoulder belt; certification; comments due by 7-15-96; published 5-14-96

TREASURY DEPARTMENT

Customs Service

Organization and functions; field organization, ports of entry, etc.:
Sanford, FL; port of entry designation; comments due by 7-17-96; published 5-17-96

TREASURY DEPARTMENT

Internal Revenue Service

Estate and gift taxes:
Residence trust, personal or qualified personal; sale of residence; comments due by 7-15-96; published 4-16-96
Procedure and administration:
Taxpayer assistance orders; authority to modify or rescind; comments due by 7-18-96; published 4-19-96

VETERANS AFFAIRS DEPARTMENT

Adjudication, pensions, compensation, dependency, etc.:
Marriage dissolution; birth of child; death of family member; evidence of dependents and age requirements; comments due by 7-16-96; published 5-17-96

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List July 5, 1996

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–028–00001–1)	$4.25	Feb. 1, 1996
3 (1995 Compilation and Parts 100 and 101)	(869–028–00002–9)	22.00	[1] Jan. 1, 1996
4	(869–028–00003–7)	5.50	Jan. 1, 1996
5 Parts:			
1–699	(869–028–00004–5)	26.00	Jan. 1, 1996
700–1199	(869–028–00005–3)	20.00	Jan. 1, 1996
1200–End, 6 (6 Reserved)	(869–028–00006–1)	25.00	Jan. 1, 1996
7 Parts:			
0–26	(869–028–00007–0)	22.00	Jan. 1, 1996
27–45	(869–028–00008–8)	11.00	Jan. 1, 1996
46–51	(869–028–00009–6)	13.00	Jan. 1, 1996
52	(869–028–00010–0)	5.00	Jan. 1, 1996
53–209	(869–028–00011–8)	17.00	Jan. 1, 1996
210–299	(869–028–00012–6)	35.00	Jan. 1, 1996
300–399	(869–028–00013–4)	17.00	Jan. 1, 1996
400–699	(869–028–00014–2)	22.00	Jan. 1, 1996
700–899	(869–028–00015–1)	25.00	Jan. 1, 1996
900–999	(869–028–00016–9)	30.00	Jan. 1, 1996
1000–1199	(869–028–00017–7)	35.00	Jan. 1, 1996
1200–1499	(869–028–00018–5)	29.00	Jan. 1, 1996
1500–1899	(869–028–00019–3)	41.00	Jan. 1, 1996
1900–1939	(869–028–00020–7)	16.00	Jan. 1, 1996
1940–1949	(869–028–00021–5)	31.00	Jan. 1, 1996
1950–1999	(869–028–00022–3)	39.00	Jan. 1, 1996
2000–End	(869–028–00023–1)	15.00	Jan. 1, 1996
8	(869–028–00024–0)	23.00	Jan. 1, 1996
9 Parts:			
1–199	(869–028–00025–8)	30.00	Jan. 1, 1996
200–End	(869–028–00026–6)	25.00	Jan. 1, 1996
10 Parts:			
0–50	(869–028–00027–4)	30.00	Jan. 1, 1996
51–199	(869–028–00028–2)	24.00	Jan. 1, 1996
200–399	(869–028–00029–1)	5.00	Jan. 1, 1996
400–499	(869–028–00030–4)	21.00	Jan. 1, 1996
500–End	(869–028–00031–2)	34.00	Jan. 1, 1996
11	(869–028–00032–1)	15.00	Jan. 1, 1996
12 Parts:			
1–199	(869–028–00033–9)	12.00	Jan. 1, 1996
200–219	(869–028–00034–7)	17.00	Jan. 1, 1996
220–299	(869–028–00035–5)	29.00	Jan. 1, 1996
300–499	(869–028–00036–3)	21.00	Jan. 1, 1996
500–599	(869–028–00037–1)	20.00	Jan. 1, 1996
600–End	(869–028–00038–0)	31.00	Jan. 1, 1996
13	(869–028–00039–8)	18.00	Mar. 1, 1996
14 Parts:			
1–59	(869–028–00040–1)	34.00	Jan. 1, 1996
60–139	(869–028–00041–0)	30.00	Jan. 1, 1996
140–199	(869–028–00042–8)	13.00	Jan. 1, 1996
200–1199	(869–028–00043–6)	23.00	Jan. 1, 1996
1200–End	(869–028–00044–4)	16.00	Jan. 1, 1996
15 Parts:			
0–299	(869–028–00045–2)	16.00	Jan. 1, 1996
300–799	(869–028–00046–1)	26.00	Jan. 1, 1996
800–End	(869–028–00047–9)	18.00	Jan. 1, 1996
16 Parts:			
0–149	(869–028–00048–7)	6.50	Jan. 1, 1996
150–999	(869–028–00049–5)	19.00	Jan. 1, 1996
1000–End	(869–028–00050–9)	26.00	Jan. 1, 1996
17 Parts:			
1–199	(869–028–00052–5)	21.00	Apr. 1, 1996
200–239	(869–028–00053–3)	25.00	Apr. 1, 1996
240–End	(869–026–00056–5)	30.00	Apr. 1, 1995
18 Parts:			
1–149	(869–028–00055–0)	17.00	Apr. 1, 1996
150–279	(869–028–00056–8)	12.00	Apr. 1, 1996
280–399	(869–028–00057–6)	13.00	Apr. 1, 1996
400–End	(869–028–00058–4)	11.00	Apr. 1, 1996
19 Parts:			
1–140	(869–026–00061–1)	25.00	Apr. 1, 1995
141–199	(869–026–00062–0)	21.00	Apr. 1, 1995
200–End	(869–028–00061–4)	12.00	Apr. 1, 1996
20 Parts:			
1–399	(869–026–00064–6)	20.00	Apr. 1, 1995
400–499	(869–026–00065–4)	34.00	Apr. 1, 1995
500–End	(869–028–00064–9)	32.00	Apr. 1, 1996
21 Parts:			
1–99	(869–026–00067–1)	16.00	Apr. 1, 1995
100–169	(869–026–00068–9)	21.00	Apr. 1, 1995
170–199	(869–026–00069–7)	22.00	Apr. 1, 1995
200–299	(869–028–00068–1)	7.00	Apr. 1, 1996
300–499	(869–026–00071–9)	39.00	Apr. 1, 1995
500–599	(869–026–00072–7)	22.00	Apr. 1, 1995
600–799	(869–026–00073–5)	9.50	Apr. 1, 1995
800–1299	(869–026–00074–3)	23.00	Apr. 1, 1995
1300–End	(869–026–00075–1)	13.00	Apr. 1, 1995
22 Parts:			
1–299	(869–026–00076–0)	33.00	Apr. 1, 1995
300–End	(869–028–00075–4)	24.00	Apr. 1, 1996
23	(869–026–00078–6)	22.00	Apr. 1, 1995
24 Parts:			
0–199	(869–026–00079–4)	40.00	Apr. 1, 1995
200–219	(869–026–00080–8)	19.00	Apr. 1, 1995
220–499	(869–026–00081–6)	23.00	Apr. 1, 1995
500–699	(869–026–00082–4)	20.00	Apr. 1, 1995
700–899	(869–026–00083–2)	24.00	Apr. 1, 1995
900–1699	(869–026–00084–1)	24.00	Apr. 1, 1995
1700–End	(869–026–00085–9)	17.00	Apr. 1, 1995
25	(869–026–00086–7)	32.00	Apr. 1, 1995
26 Parts:			
§§ 1.0–1–1.60	(869–028–00085–1)	21.00	Apr. 1, 1996
§§ 1.61–1.169	(869–026–00088–3)	34.00	Apr. 1, 1995
§§ 1.170–1.300	(869–026–00089–1)	24.00	Apr. 1, 1995
§§ 1.301–1.400	(869–028–00088–6)	17.00	Apr. 1, 1996
§§ 1.401–1.440	(869–026–00091–3)	30.00	Apr. 1, 1995
§§ 1.441–1.500	(869–028–00090–8)	22.00	Apr. 1, 1996
§§ 1.501–1.640	(869–028–00091–6)	21.00	Apr. 1, 1996
§§ 1.641–1.850	(869–028–00092–4)	25.00	Apr. 1, 1996
§§ 1.851–1.907	(869–026–00095–6)	26.00	Apr. 1, 1995
§§ 1.908–1.1000	(869–028–00094–1)	26.00	Apr. 1, 1996
§§ 1.1001–1.1400	(869–028–00095–9)	26.00	Apr. 1, 1996
*§§ 1.1401–End	(869–028–00096–7)	35.00	Apr. 1, 1996
2–29	(869–028–00097–5)	28.00	Apr. 1, 1996
30–39	(869–028–00098–3)	20.00	Apr. 1, 1996
40–49	(869–026–00101–4)	14.00	Apr. 1, 1995
50–299	(869–028–00100–9)	14.00	Apr. 1, 1996
*300–499	(869–028–00101–7)	25.00	Apr. 1, 1996

Title	Stock Number	Price	Revision Date
500-599	(869-028-00102-5)	6.00	[4] Apr. 1, 1990
600-End	(569-026-00105-7)	8.00	Apr. 1, 1995
27 Parts:			
1-199	(869-026-00106-5)	37.00	Apr. 1, 1995
*200-End	(869-028-00105-0)	13.00	Apr. 1, 1996
28 Parts:			
1-42	(869-026-00108-1)	27.00	July 1, 1995
43-end	(869-026-00109-0)	22.00	July 1, 1995
29 Parts:			
0-9	(869-026-00110-3)	21.00	July 1, 1995
100-499	(869-026-00111-1)	9.50	July 1, 1995
500-899	(869-026-00112-0)	36.00	July 1, 1995
900-1899	(869-026-00113-8)	17.00	July 1, 1995
1900-1910 (§§ 1901.1 to 1910.999)	(869-026-00114-6)	33.00	July 1, 1995
1910 (§§ 1910.1000 to end)	(869-026-00115-4)	22.00	July 1, 1995
1911-1925	(869-026-00116-2)	27.00	July 1, 1995
1926	(869-026-00117-1)	35.00	July 1, 1995
1927-End	(869-026-00118-9)	36.00	July 1, 1995
30 Parts:			
1-199	(869-026-00119-7)	25.00	July 1, 1995
200-699	(869-026-00120-1)	20.00	July 1, 1995
700-End	(869-026-00121-9)	30.00	July 1, 1995
31 Parts:			
0-199	(869-026-00122-7)	15.00	July 1, 1995
200-End	(569-026-00123-5)	25.00	July 1, 1995
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-026-00124-3)	32.00	July 1, 1995
191-399	(869-026-00125-1)	38.00	July 1, 1995
400-629	(869-026-00126-0)	26.00	July 1, 1995
630-699	(869-026-00127-8)	14.00	[5] July 1, 1991
700-799	(869-026-00128-6)	21.00	July 1, 1995
800-End	(869-026-00129-4)	22.00	July 1, 1995
33 Parts:			
1-124	(869-026-00130-8)	20.00	July 1, 1995
125-199	(869-026-00131-6)	27.00	July 1, 1995
200-End	(869-026-00132-4)	24.00	July 1, 1995
34 Parts:			
1-299	(869-026-00133-2)	25.00	July 1, 1995
300-399	(869-026-00134-1)	21.00	July 1, 1995
400-End	(869-026-00135-9)	37.00	July 5, 1995
35	(869-026-00136-7)	12.00	July 1, 1995
36 Parts			
1-199	(869-026-00137-5)	15.00	July 1, 1995
200-End	(869-026-00138-3)	37.00	July 1, 1995
37	(869-026-00139-1)	20.00	July 1, 1995
38 Parts:			
0-17	(869-026-00140-5)	30.00	July 1, 1995
18-End	(869-026-00141-3)	30.00	July 1, 1995
39	(869-026-00142-1)	17.00	July 1, 1995
40 Parts:			
1-51	(869-026-00143-0)	40.00	July 1, 1995
52	(869-026-00144-8)	39.00	July 1, 1995
53-59	(869-026-00145-6)	11.00	July 1, 1995
60	(869-026-00146-4)	36.00	July 1, 1995
61-71	(869-026-00147-2)	36.00	July 1, 1995
72-85	(869-026-00148-1)	41.00	July 1, 1995
86	(869-026-00149-9)	40.00	July 1, 1995
87-149	(869-026-00150-2)	41.00	July 1, 1995
150-189	(869-026-00151-1)	25.00	July 1, 1995
190-259	(869-026-00152-9)	17.00	July 1, 1995
260-299	(869-026-00153-7)	40.00	July 1, 1995
300-399	(869-026-00154-5)	21.00	July 1, 1995
400-424	(869-026-00155-3)	26.00	July 1, 1995
425-699	(869-026-00156-1)	30.00	July 1, 1995
700-789	(869-026-00157-0)	25.00	July 1, 1995
790-End	(869-026-00158-8)	15.00	July 1, 1995
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-026-00159-6)	9.50	July 1, 1995
101	(869-026-00160-0)	29.00	July 1, 1995
102-200	(869-026-00161-8)	15.00	July 1, 1995
201-End	(869-026-00162-6)	13.00	July 1, 1995
42 Parts:			
1-399	(869-026-00163-4)	26.00	Oct. 1, 1995
400-429	(869-026-00164-2)	26.00	Oct. 1, 1995
430-End	(869-026-00165-1)	39.00	Oct. 1, 1995
43 Parts:			
1-999	(869-026-00166-9)	23.00	Oct. 1, 1995
1000-3999	(869-026-00167-7)	31.00	Oct. 1, 1995
4000-End	(869-026-00168-5)	15.00	Oct. 1, 1995
44	(869-026-00169-3)	24.00	Oct. 1, 1995
45 Parts:			
1-199	(869-022-00170-7)	22.00	Oct. 1, 1995
200-499	(869-026-00171-5)	14.00	Oct. 1, 1995
500-1199	(869-026-00172-3)	23.00	Oct. 1, 1995
1200-End	(869-026-00173-1)	26.00	Oct. 1, 1995
46 Parts:			
1-40	(869-026-00174-0)	21.00	Oct. 1, 1995
41-69	(869-026-00175-8)	17.00	Oct. 1, 1995
70-89	(869-026-00176-6)	8.50	Oct. 1, 1995
90-139	(869-026-00177-4)	15.00	Oct. 1, 1995
140-155	(869-026-00178-2)	12.00	Oct. 1, 1995
156-165	(869-026-00179-1)	17.00	Oct. 1, 1995
166-199	(869-026-00180-4)	17.00	Oct. 1, 1995
200-499	(869-026-00181-2)	19.00	Oct. 1, 1995
500-End	(869-026-00182-1)	13.00	Oct. 1, 1995
47 Parts:			
0-19	(869-026-00183-9)	25.00	Oct. 1, 1995
20-39	(869-026-00184-7)	21.00	Oct. 1, 1995
40-69	(869-026-00185-5)	14.00	Oct. 1, 1995
70-79	(869-026-00186-3)	24.00	Oct. 1, 1995
80-End	(869-026-00187-1)	30.00	Oct. 1, 1995
48 Chapters:			
1 (Parts 1-51)	(869-026-00188-0)	39.00	Oct. 1, 1995
1 (Parts 52-99)	(869-026-00189-8)	24.00	Oct. 1, 1995
2 (Parts 201-251)	(869-026-00190-1)	17.00	Oct. 1, 1995
2 (Parts 252-299)	(869-026-00191-0)	13.00	Oct. 1, 1995
3-6	(869-026-00192-8)	23.00	Oct. 1, 1995
7-14	(869-026-00193-6)	28.00	Oct. 1, 1995
15-28	(869-026-00194-4)	31.00	Oct. 1, 1995
29-End	(869-026-00195-2)	19.00	Oct. 1, 1995
49 Parts:			
1-99	(869-026-00196-1)	25.00	Oct. 1, 1995
100-177	(869-026-00197-9)	34.00	Oct. 1, 1995
178-199	(869-026-00198-7)	22.00	Oct. 1, 1995
200-399	(869-026-00199-5)	30.00	Oct. 1, 1995
400-999	(869-026-00200-2)	40.00	Oct. 1, 1995
1000-1199	(869-026-00201-1)	18.00	Oct. 1, 1995
1200-End	(869-026-00202-9)	15.00	Oct. 1, 1995
50 Parts:			
1-199	(869-026-00203-7)	26.00	Oct. 1, 1995
200-599	(869-026-00204-5)	22.00	Oct. 1, 1995
600-End	(869-026-00205-3)	27.00	Oct. 1, 1995
CFR Index and Findings Aids	(869-028-00051-7)	35.00	Jan. 1, 1996

Title	Stock Number	Price	Revision Date
Complete 1996 CFR set		883.00	1996
Microfiche CFR Edition:			
Subscription (mailed as issued)		264.00	1996
Individual copies		1.00	1996
Complete set (one-time mailing)		264.00	1995
Complete set (one-time mailing)		244.00	1994
Complete set (one-time mailing)		223.00	1993

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

Contents

Federal Register

Vol. 61, No. 129

Wednesday, July 3, 1996

Editorial Note: In the **Federal Register** of July 3, 1996, many of the page numbers were incorrect in the table of contents. A corrected table of contents for the July 3, 1996 issue follows:

Agency for International Development
NOTICES
Grants and cooperative agreements; availability, etc.:
American schools and hospitals abroad, 34862

Agriculture Department
See Animal and Plant Health Inspection Service
See Cooperative State Research, Education, and Extension Service
See Food Safety and Inspection Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See Rural Utilities Service

Animal and Plant Health Inspection Service
PROPOSED RULES
Animal welfare:
Horse protection regulations—
Horse Protection Act; enforcement changes; public meetings, 34747

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
American National Can Co. et al., 34862
AnchorShade, Inc., 34867

Army Department
See Engineers Corps

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 34841–34843
Grants and cooperative agreements; availability, etc.:
State and community nutrition and physical activity intervention programs; evaluation, 34843–34846

Children and Families Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 34846

Coast Guard
RULES
Electrical engineering:
Merchant vessels; electrical engineering requirements Correction, 34927
Ports and waterways safety:
Towing vessels; navigation safety equipment requirements, 35064–35076

PROPOSED RULES
Pollution:
Tank vessel or marine transportation related facility response plans; hazardous substances response equipment
Public meetings, 34775
NOTICES
Agency information collection activities:
Proposed collection; comment request, 34920

Commerce Department
See Economic Development Administration
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 34790–34791

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 34919

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Coffee, Sugar & Cocoa Exchange—
Membership lessees; affiliation with member firms, 34802

Cooperative State Research, Education, and Extension Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Agriculture telecommunications program; correction, 34927

Defense Department
See Engineers Corps
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 34802–34803

Economic Development Administration
NOTICES
Trade adjustment assistance eligibility determination petitions:
Brahmin Leather Works, Inc., et al., 34791

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 34803–34804

Employment and Training Administration
NOTICES
Adjustment assistance:
Boise Cascade Corp., 34876

Leslie Corp. et al., 34876
OshKosh B'Gosh, 34877
Pioneer Balloon et al., 34877–34878
Adjustment assistance and NAFTA transitional adjustment assistance:
Clear Pine Moulding et al., 34874
NAFTA transitional adjustment assistance:
Sara Lee Knit Products, 34878
Stone Ridge Farm, 34878
Weyerhaeuser Co., 34878

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department

Engineers Corps
RULES
Danger zones and restricted areas:
Chesapeake Bay off Fort Monroe, VA, and Canaveral Harbor adjacent to Navy Pier at Fort Canaveral, FL, 34732–34733

Environmental Protection Agency
RULES
Clean Air Act:
State operating permits programs—
Maryland, 34733–34739
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Pentaerythritol stearates, 34741–34743
Potassium citrate, 34739–34741
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Nonhandheld new nonroad phase I small spark-ignition engines, class I and II; carbon monoxide standard, 34778–34784
Air programs; fuels and fuel additives:
Reformulated gasoline program; alternative analytical test methods use, 34775–34778
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 34809–34812
Clean Water Act:
Effluent guidelines plan (biennial), 35042–35054
Pesticide, food, and feed additive petitions:
Griffin Corp. et al., 34811–34812
Reporting and recordkeeping requirements, 34812
Reports; availability, etc.:
Acute toxicity studies conduct; comment request, 34812–34814

Executive Office of the President
See Management and Budget Office

Federal Aviation Administration
RULES
Air carrier certification and operations:
Check airmen and flight instructors in simulators; separate training and qualification requirements Correction, 34927
Airworthiness directives:
Fokker, 34718–34719
Airworthiness standards:
Special conditions—
Cessna 500, 550, and S550 airplanes, 34716–34718
Class D and Class E airspace, 34720
Jet routes, 34720–34722
VOR Federal airways, 34722–34724
PROPOSED RULES
Airworthiness directives:
de Havilland, 34767–34769
Airworthiness standards:
Transport category airplanes—
Hydraulic systems standards revision to harmonize with European standards, 35056–35061
Class E airspace, 34769–34770
NOTICES
Advisory circulars; availability, etc.:
Aircraft—
Hydraulic system certification tests and analysis, 35062
Agency information collection activities:
Proposed collection; comment request, 34921
Committees; establishment, renewal, termination, etc.:
Aviation Rulemaking Advisory Committee, 34922
Environmental statements; availability, etc.:
Blue Grass Airport, KY; parallel runway; correction, 34923
Meetings:
Aviation Rulemaking Advisory Committee, 34923
Aviation Security Advisory Committee, 34923

Federal Communications Commission
RULES
Radio stations; table of assignments:
North Carolina, 34744
South Carolina, 34743–34744
Virginia, 34744
Washington, 34743
Television stations; table of assignments:
Wisconsin, 34744–34745
PROPOSED RULES
Radio stations; table of assignments:
Michigan, 34784–34785
Texas, 34785
NOTICES
Meetings:
Public Safety Wireless Advisory Committee, 34814

Federal Deposit Insurance Corporation
PROPOSED RULES
Assessments:
Oakar institutions; interpretive rules, 34751–34767
NOTICES
Operating insured depository institutions; assistance; policy statement, 34814–34817

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Ruger, William B., Jr., 34807
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 34804
Columbia Gas Transmission Corp., 34805
KO Transmission Co., 34805
Northern Natural Gas Co., 34805
Plant Owners, 34805–34807
Texas Eastern Transmission Corp., 34807
Viking Gas Transmission Co., 34807

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Howell, Livingston County, MI, 34924
St. Paul, MN, 34924

Federal Housing Finance Board
NOTICES
Federal home loan bank system:
Items processing and settlement and other services; prices, 34818–34837

Federal Mediation and Conciliation Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 34837–34839

Federal Reserve System
PROPOSED RULES
Securities:
Relations with dealers in securities under section 32, 1933 Banking Act (Regulation R); and miscellaneous interpretations, 34749–34751

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 34857–34858
Marine mammals permit applications, 34858

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
New drug applications—
Diethylcarbamazine tablets, etc., 34727–34729
Human drugs:
Antibiotic drugs—
Clarithromycin granules for oral suspension, 34726–34727
NOTICES
Agency information collection activities:
Proposed collection; comment request, 34846–34848
Animal drugs, feeds, and related products:
Bayer Corp. et al.; approval withdrawn, 34848–34849
Compounding of drugs for use in animals; compliance policy guide; availability, 34849–34852
Food additive petitions:
Life Technologies, Inc., 34852
Sumitomo Chemical America, Inc., 34853
Medical devices; premarket approval:
Ciba Corning Diagnostics Corp.; ACS AFP (two-site chemiluminescence immuoassay), 34853–34854
Technicon Immuno 1 CEA Assay, 34854
Meetings:
Center for Biologics Evaluation and Research; standing oversight committee to review use of refusal to file practices, 34854–34855

Food Safety and Inspection Service
PROPOSED RULES
Meat and poultry inspection:
Fee increases, 34747–34749

Forest Service
NOTICES
Environmental statements; availability, etc.:
Mt. Baker-Snoqualmie National Forest, WA, 34789
Meetings:
Oregon Coast Provincial Advisory Committee, 34789

Geological Survey
NOTICES
Meetings:
Federal Geographic Data Committee—
Vegetation classification and information standards, 34858

Grain Inspection, Packers and Stockyards Administration
RULES
Fees:
Federal rice inspection services, 34714–34716

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Objectivity in research and investigator financial disclosure policy; responses to questions, 34839–34841

Health Care Financing Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 34855

Health Resources and Services Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Graduate Medical Education Council, 34855–34856

Hearings and Appeals Office, Energy Department
NOTICES
Cases filed, 34807–34808

Housing and Urban Development Department
RULES
Mortgage and loan insurance program:
Single family mortgage insurance; loss mitigation procedures, 35014–35020
NOTICES
Grants and cooperative agreements; availability, etc.:
Public and Indian housing—
Tenant opportunities program, 35022–35040

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 34871–34873
Temporary protected status program designations:
Rwanda; correction, 34927

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See Minerals Management Service

Internal Revenue Service
NOTICES
Bulletin index-digest system; elimination; comment request, 34926

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Antidumping:
High-tenacity rayon filament yarn from—
Germany, 34792–34794
Countervailing duties:
Ball bearings and parts from—
Thailand, 34794–34796

International Trade Commission
NOTICES
Import investigations:
Clad steel plate from—
Japan, 34862
Meetings; Sunshine Act, 34862

Justice Department
See Antitrust Division
See Immigration and Naturalization Service
RULES
Equal employment opportunity, 34729–34730
PROPOSED RULES
Grants:
Juvenile Justice and Delinquency Prevention Office formula grants, 34770–34775

Labor Department
See Employment and Training Administration
See Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 34873

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Santa Fe Pacific Gold Corp., Twin Creeks Mine Consolidation and Expansion Project, NV, 34859
Ward Valley, CA; land transfer to California for low-level radioactive waste disposal facility development, 34859
Meetings:
Green River Basin Advisory Committee, 34859
Southeastern Oregon Resource Advisory Council, 34859–34860
Public land orders:
Idaho, 34860
Realty actions; sales, leases, etc.:
Nevada, 34860
Recreation management restrictions, etc.:
Barstow Resource Area, CA; recreational shooting restrictions; supplemental rule, 34861
Withdrawal and reservation of lands:
Arizona, 34861

Management and Budget Office
NOTICES
Budget rescissions and deferrals, 34909

Maritime Administration
NOTICES
Mortgagees and trustees; applicants approval, disapproval, etc.:
Fifth Third Bank, 34925
Seattle-First National Bank, 34925

Minerals Management Service
RULES
Outer Continental Shelf; oil, gas, and sulphur operations:
Tracts offered for sale; high bids, acceptance or rejection; time period extension, 34730–34732

National Bankruptcy Review Commission
NOTICES
Meetings, 34880

National Foundation on the Arts and the Humanities
NOTICES
Grants and cooperative agreements; availability, etc.:
National Trust for Historic Preservation; Your Town: Designing its Future, 34789
Meetings:
Humanities Panel, 34790

National Institute of Standards and Technology
NOTICES
Voluntary product standards:
American softwood lumber, 34798

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 34856
National Institute of Mental Health, 34856–34857
National Institute on Aging, 34857
National Library of Medicine, 34857

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic Coast weakfish, 34746
Atlantic swordfish; correction, 34746
Caribbean, Gulf of Mexico, and South Atlantic fisheries, 34930–34964
Northeastern United States fisheries, 34966–35011
PROPOSED RULES
Fishery conservation and management:
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 34785–34788
NOTICES
Grants and cooperative agreements; availability, etc.:
Fishing vessel and gear damage compensation fund program, 34798
Meetings:
Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council, 34799
Western Pacific Fishery Management Council, 34799–34800
Permits:
Endangered and threatened species, 34800
Marine mammals, 34801

National Science Foundation
NOTICES
Objectivity in research and investigator financial disclosure policy; responses to questions, 34839–34841

Nuclear Regulatory Commission
NOTICES
Generic letters:
Boraflex degradation in spent fuel pool storage racks, 34882
Meetings:
Reactor Safeguards Advisory Committee, 34882

Operating licenses, amendments; no significant hazards considerations; biweekly notices, 34884
Applications, hearings, determinations, etc.:
Southern Nuclear Operating Co., Inc., 34880

Office of Management and Budget
See Management and Budget Office

Office of the United States Trade Representative
See Trade Representative, Office of the United States

Patent and Trademark Office
NOTICES
Committees; establishment, renewal, termination, etc.:
Trademark Affairs Public Advisory Committee, 34801–34802

Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 34879
Meetings:
Employee Welfare and Pension Benefit Plans Advisory Council, 34880

Personnel Management Office
RULES
Pay under General Schedule:
Locality-based comparability payments—
Interim geographic adjustments; termination, 34713–34714
NOTICES
Meetings:
Federal Salary Council, 34911

Presidential Documents
ADMINISTRATIVE ORDERS
Germany; delegation of authority to identify Germany under title VII and modify or restrict title VII trade action taken against, 35079

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Rural Utilities Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Distance learning and telemedicine program; correction, 34927

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 34911
Government Securities Clearing Corp., 34912
National Association of Securities Dealers, Inc., 34915
Pacific Stock Exchange, Inc., 34917–34918

Small Business Administration
NOTICES
Disaster loan areas:
Indiana, 34919

Surface Transportation Board
NOTICES
Railroad services abandonment:
Burlington Northern Railroad Co., 34925

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of the United States
NOTICES
Determination under section 305 of the Trade Agreements Act of 1979, 35082

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Maritime Administration
See Surface Transportation Board
RULES
Aviation economic regulations:
Technical amendments, 34724–34726
Organization, functions, and authority delegations:
Commandant, Coast Guard, 34745

Treasury Department
See Internal Revenue Service

Separate Parts in This Issue

Part II
Commerce Department, National Oceanic and Atmospheric Administration, 34930–34964

Part III
Commerce Department, National Oceanic and Atmospheric Administration, 34966–35011

Part IV
Housing and Urban Development Department, 35014

Part V
Housing and Urban Development Department, 35022–35040

Part VI
Environmental Protection Agency, 35042–35054

Part VII
Transportation Department, Federal Aviation Administration, 35056–35062

Part VIII
Transportation Department, Coast Guard, 35064–35076

Part IX
The President, 35079

Part X
Office of the United States Trade Representative, 35082

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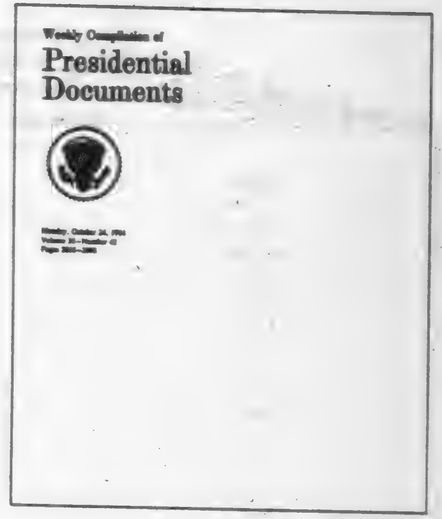

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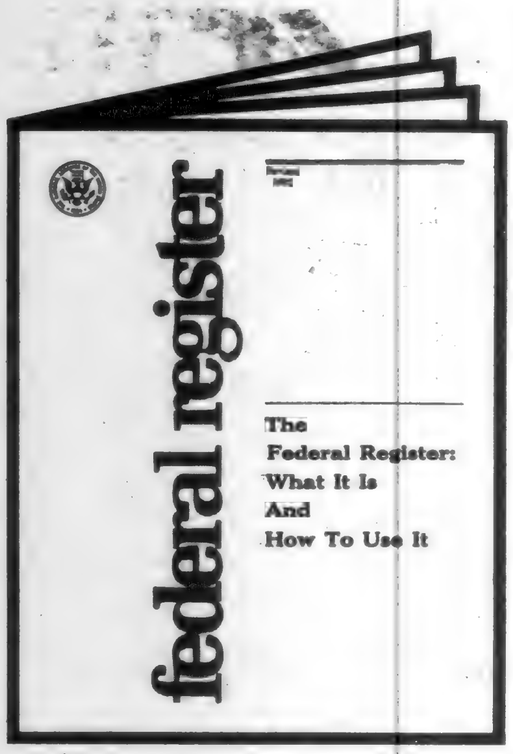

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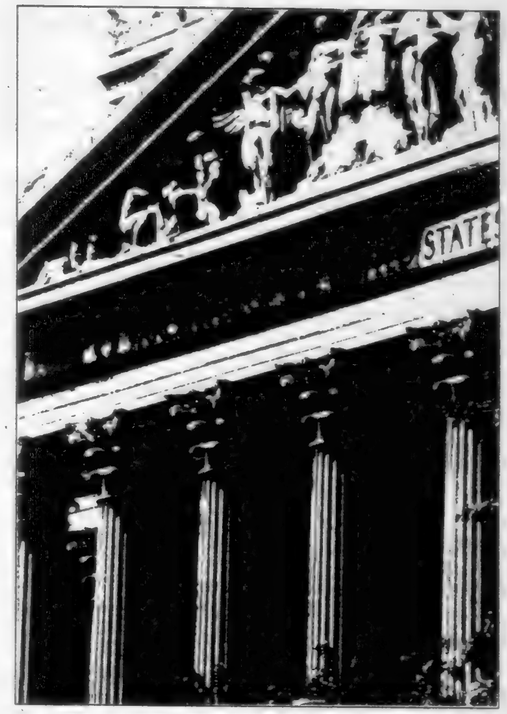

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Contents

Federal Register
Vol. 61, No. 132
Tuesday, July 9, 1996

Agency for Health Care Policy and Research
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36068–36069

Agricultural Marketing Service
PROPOSED RULES
Sheep promotion, research, and consumer information program:
Referendum, 35982–35984

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Farm Service Agency
See Food Safety and Inspection Service
See Forest Service
See Rural Business-Cooperative Service
See Rural Housing Service
See Rural Utilities Service

Animal and Plant Health Inspection Service
PROPOSED RULES
Exportation and importation of animals and animal products:
Rinderpest and foot-and-mouth disease; disease status change—
Czech Republic and Italy, 35987–35990

Army Department
See Engineers Corps
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Ceramic ferroelectric composite material—BSTO-ZRO2, etc., 36038
In-situ sensor method and device, 36038
Method for establishing lethality of high temperature food processing, etc., 36038

Centers for Disease Control and Prevention
NOTICES
Occupational exposure to asphalt during roofing and paving operations; scientific and technical issues; NIOSH meetings, 36069

Coast Guard
RULES
Load lines:
Great Lakes certificate extension, 35963–35964

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36025

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Turkey, 36037

Defense Department
See Army Department
See Engineers Corps
See Navy Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36038

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Med-Pharmex Inc., 36082

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36040–36041
Grants and cooperative agreements; availability, etc.:
National Institute on Disability and Rehabilitation Research—
Health care research; rehabilitation research and training centers, 36270–36275
Rehabilitation research and training center program, 36276
Postsecondary education:
Accrediting agencies and State approval agencies for vocational and nurse education institutions; national recognition, 36041–36042

Employment and Training Administration
NOTICES
Adjustment assistance:
Andover Togs, Inc. et al., 36086
BSW International et al., 36086–36087
Controlled Power Corp., 36087–36088
Hart Schaffner and Marx Hartmarx Corp., 36088
Miller Brewing Co., 36088
Miller Brewing Co. et al., 36088
Oshkosh B'Gosh, Columbia Cutting, 36088–36089
Pabst Brewing Co., 36089
Stevenson Manufacturing, 36089
Vanguard Products Corp. et al., 36089–36090
Adjustment assistance and NAFTA transitional adjustment assistance:
International Paper Co. et al., 36085–36086
Agency information collection activities:
Proposed collection; comment request, 36090–36091
NAFTA transitional adjustment assistance:
Western Energy Co., 36091
NAFTA transitional adjustment assitance:
Blue Chip Products, Inc., 36091

Energy Department
See Federal Energy Regulatory Commission
RULES
National Environmental Policy Act; implementation, 36222–36243
PROPOSED RULES
National Environmental Policy Act; implementation, 35990–35991

NOTICES
Environmental statements; availability, etc.:
Surplus natural and low-enriched uranium sale, 36042–36043
Meetings:
Environmental Management Site-Specific Advisory Board—
Pantex Plant, TX, 36043–36044

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Baltimore County, MD; metropolitan water resources study for Gwynn Falls sub-basin, 36038–36039
King County, WA; Howard Hanson Dam water storage project, 36039–36040

Environmental Protection Agency
RULES
Air programs; fuels and fuel additives:
Reformulated gasoline standards—
Nitrogen oxides, 35960–35962
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 35962–35963
PROPOSED RULES
Air programs:
Outer Continental Shelf regulations—
California, 36012–36016
Air quality implementation plans:
Transportation conformity rule; flexibility and streamlining, 36112–36151
Transportation conformity pilot program; participation, 35994–35998
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Colorado, 36004–36012
Air quality implementation plans; approval and promulgation; various States:
Washington, 35998–36004
NOTICES
Superfund; response and remedial actions, proposed settlements, etc.:
Tulalip Landfill Site, WA, 36058–36059
Superfund program:
Prospective purchaser agreements—
Upper Animas Mining District Site, CO, 36057–36058
Water pollution control:
Clean Water Act—
State water quality standards; approval and disapproval lists and individual control strategies; availability, 36059–36060

Farm Service Agency
RULES
Program regulations:
Loan assessment, market placement, and seasoned direct loan borrowers graduation to loan guarantee program, 35916–35934

Federal Aviation Administration
RULES
Airworthiness directives:
Aviat Aircraft Inc., 35936–35938
Boeing, 35938–35942
Fokker, 35942–35944
McDonnell Douglas, 35944–35949
PROPOSED RULES
Class E airspace, 35991–35992
NOTICES
Advisory circulars; availability, etc.:
Aircraft—
Product inspection and acceptance; statistical quality control use, 36106–36107

Federal Communications Commission
RULES
Telecommunications Act of 1996; implementation:
Out-of-region, domestic, interstate, interexchange services by Bell Operating Companies, 35964–35971

Federal Deposit Insurance Corporation
RULES
Conflict of interests, 35915–35916

Federal Energy Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36044–36045
Electric rate and corporate regulation filings:
New England Power Co. et al., 36046–36048
NRGenerating Holdings (No. 3) B.V. et al., 36048–36051
Environmental statements; availability, etc.:
Algonquin Gas Transmission Co., 36051
Algonquin LNG, Inc., 36051–36052
KN Interstate Gas Transmission Co., 36052–36053
Niagara Mohawk Power Corp., 36053
Hydroelectric applications, 36053–36057
Applications, hearings, determinations, etc.:
El Paso Natural Gas Co., 36045
Granite State Gas Transmission, Inc., 36045–36046
KN Interstate Gas Transmission Co., 36046

Federal Highway Administration
PROPOSED RULES
Motor carrier safety standards:
Hazardous materials transportation—
Uniform forms and procedures for registration; recommendations; report availability, 36016–36020

Federal Labor Relations Authority
NOTICES
Meetings; Sunshine Act, 36060

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 36060–36061

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
3R International, 36107–36108
De Queen & Eastern Railroad Co. et al., 36108

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 36061
Formations, acquisitions, and mergers, 36061
Permissible nonbanking activities, 36061–36062
Meetings; Sunshine Act, 36063

Federal Trade Commission
PROPOSED RULES
Textile Fiber Products Identification Act:
Teijin Ltd.; generic fiber name application, 35992–35994
NOTICES
Prohibited trade practices:
Jordan, McGrath, Case & Taylor, 36063–36065
RustEvader Corp. et al., 36065–36068

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Fat three-ridge, etc. (seven freshwater mussels), 36020–36021
Petitions on findings, etc.—
Santa Ana speckled dace, etc., 36021–36023
NOTICES
Endangered and threatened species:
Petitions received under Endangered Species Act; management guidance availability, 36075
Environmental statements; availability, etc.:
Incidental take permits—
Coconino and Apache-Sitgreaves National Forests, AZ; Mexican spotted owl, 36076
Colorado County et al., TX; Attwater's greater prairie chicken, 36077–36078
Hidalgo County, NM, et al.; lesser long-nosed bats, etc., 36076
McCurtain County, OK; American burying beetle, etc., 36075–36076
Otero County, NM, et al.; Sacramento Mountain thistle, etc., 36076–36077
Pima County, AZ; Mexican spotted owl, 36078
San Marcos National Fish Hatchery and Technology Center, TX; fountain darter, etc., 36077
Texas; Pecos gambusia, etc., 36077

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Chlortetracycline, 35949–35958
PROPOSED RULES
Food for human consumption:
Infant formula; current good manufacturing practice, quality control procedures, etc., 36154–36219

Food Safety and Inspection Service
PROPOSED RULES
Meat and poultry inspection:
Cooked beef products, uncured meat patties, and poultry products production; performance standards, 35990
Establishment drawings and specifications, equipment, and partial quality control programs; prior approval requirements elimination, 35990

Forest Service
RULES
National Forest System timber; sale and disposal:
Federal timber contract payment modification program, 35960
Range management:
Wild free-roaming horses and burros management; correction, 35959–35960
NOTICES
Environmental statements; availability, etc.:
Wasatch-Cache National Forest, UT, 36024

Health and Human Services Department
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Maternal and child health services—
Federal set-aside program, etc., 36069–36071

Housing and Urban Development Department
RULES
Conflict of interests, 36246–36251
Mortgage and loan insurance programs:
Single-family mortgage insurance—
Technical amendments, clarifications, and corrections, 36260–36268
Public and indian Housing:
Public housing units; public/private partnerships for mixed-finance development, 35958
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36071–36075
Grants and cooperative agreements; availability, etc.:
Self-help homeownership opportunity program, 36254–36257

Immigration and Naturalization Service
RULES
Nonimmigrant classes:
Ports of entry accepting applications for direct transit without visa; list additions—
Oakland, CA and Sanford, FL, 35934–35935
PROPOSED RULES
Immigration:
Spouses and unmarried children of refugees/asylees; procedures for filing derivative petitions, 35984–35987
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36082–36083
Submission for OMB review; comment request, 36083

Indian Affairs Bureau
NOTICES
Tribal-State Compacts approval; Class III (casino) gambling:
Eastern Band of Cherokee Indians, NC, 36078

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service

International Development Cooperation Agency
See Overseas Private Investment Corporation

International Trade Administration
NOTICES
Antidumping:
Chrome-plated lug nuts from—
China, 36025–36029
Dynamic random access memory semiconductors of one megabit and above from—
Korea, 36029–36032
Polyethylene terephthalate film from—
Korea, 36032–36035

International Trade Commission
NOTICES
Import investigations:
Engineered process gas turbo-compressor systems from—Japan, 36080–36081
Neodymiun-iron-boron magnets, magnet alloys, and articles containing same, 36081

Justice Department
See Drug Enforcement Administration
See Immigration and Naturalization Service
See Juvenile Justice and Delinquency Prevention Office
NOTICES
Pollution control; consent judgments:
ASARCO Inc., 36081–36082

Juvenile Justice and Delinquency Prevention Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36083–36085

Labor Department
See Employment and Training Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36084

Land Management Bureau
NOTICES
Closure of public lands:
Utah, 36078
Meetings:
Resource advisory councils—
Eastern Washington et al., 36079
Eastern Washington et al.; cancellation, 36078
Public land orders:
North Dakota, 36079
Survey plat filings:
Arizona, 36079–36080
Missouri, 36080

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Aeronautics and Space Administration
NOTICES
Inventions, Government-owned; availability for licensing, 36091–36092
Patent licenses; non-exclusive, exclusive, or partially exclusive:
HITCO Technologies, Inc., et al., 36092–36093

National Communications System
NOTICES
Meetings:
Telecommunications Service Priority System Oversight Committee, 36093

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic swordfish fishery; drift gillnet closure, 35971–35972
NOTICES
Endangered and threatened species:
Petitions received under Endangered Species Act; management guidance availability, 36075
Meetings:
Gulf of Mexico Fishery Management Council, 36035–36036
Mid-Atlantic Fishery Management Council, 36036
Pacific Halibut Commission, International:
Pacific halibut fisheries, 36086
Permits:
Marine mammals, 36036–36037

National Park Service
NOTICES
Meetings:
Acadia National Park Advisory Commission, 36080

National Science Foundation
NOTICES
Meetings; Sunshine Act, 36093

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
USS Seawolf, 35958–35959

Nuclear Regulatory Commission
RULES
Available spent nuclear fuel storage capacity; criteria and procedures for determining adequacy; CFR part removed, 35935–35936
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36093–36094
Meetings; Sunshine Act, 36094

Oversees Private Investment Corporation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36094

Personnel Management Office
PROPOSED RULES
Health benefits, Federal employees:
Opportunities to enroll and change enrollment, 35973–35982

Public Health Service
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration

Rural Business-Cooperative Service
RULES
Program regulations:
Loan assessment, market placement, and seasoned direct loan borrowers graduation to loan guarantee program, 35916–35934

Rural Housing Service
RULES
Program regulations:
Loan assessment, market placement, and seasoned direct loan borrowers graduation to loan guarantee program, 35916–35934

Rural Utilities Service
RULES
Program regulations:
Loan assessment, market placement, and seasoned direct loan borrowers graduation to loan guarantee program, 35916–35934
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36024–36025

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 36094–36095
Delta Clearing Corp., 36095–36096
International Securities Clearing Corp., 36096–36097
National Association of Securities Dealers, Inc., 36098–36099
Pacific Stock Exchange, Inc., 36099–36102
Philadelphia Stock Exchange, Inc., 36102–36104

Small Business Administration
NOTICES
Disaster loan areas:
Pennsylvania, 36104
West Virginia, 36104
Meetings; district and regional advisory councils:
Georgia, 36104

State Department
NOTICES
Meetings:
International Telecommunications Advisory Committee, 36104–36105

Tennessee Valley Authority
NOTICES
Meetings; Sunshine Act, 36105

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
NOTICES
Senior Executive Service:
Performance Review Boards; membership, 36105–36106

Veterans Affairs Department
NOTICES
Meetings:
Veterans' Claims Adjudication Commission, 36109
Vietnam and Other War Veterans Readjustment Advisory Committee, 36109–36110

Separate Parts in This Issue

Part II
Environmental Protection Agency, 36112–36151

Part III
Department of Health and Human Services, Food and Drug Administration, 36154–36219

Part IV
Department of Energy, 36222–36243

Part V
Department of Housing and Urban Development, 36246–36251

Part VI
Department of Housing and Urban Development, 36254–36257

Part VII
Department of Housing and Urban Development, 36260–36268

Part VIII
Department of Education, 36270–36276

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
Ch. LXV 36246
3201 35915
Proposed Rules:
890 35973
7 CFR
1910 35916
1924 35916
1941 35916
1943 35916
1945 35916
1951 35916
1955 35916
1962 35916
1965 35916
1980 35916
Proposed Rules:
1280 35982
8 CFR
214 35934
Proposed Rules:
207 35984
208 35984
9 CFR
Proposed Rules:
94 ..... @35987
301 35990
304 35990
308 35990
318 35990
320 35990
381 (2 documents) 35990
10 CFR
53 35935
1021 36222
Proposed Rules:
1021 35990
14 CFR
39 (6 documents) 35936, 35938, 35940, 35942, 35944, 35946
Proposed Rules:
71 35991
15 CFR
Proposed Rules:
303 35992
21 CFR
510 35949
558 35949
Proposed Rules:
106 36154
107 36154
24 CFR
0 36246
200 36260
201 36260
202 36260
203 36260
206 36260
221 36260
233 36260
234 36260
280 36260
291 36260
941 36260
32 CFR
40 CFR
80 35960
300 35962
Proposed Rules:
51 (2 documents) 35994, 36112
52 (2 documents) 35998, 36004
55 36012
81 36004
93 (2 documents) 35994, 36112
45 CFR
42 35963
47 CFR
Ch. I 35964
49 CFR
Proposed Rules:
397 36016
50 CFR
630 35971
Proposed Rules:
17 (2 documents) 36020, 36021

Rules and Regulations

Federal Register
Vol. 61, No. 132
Tuesday, July 9, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL DEPOSIT INSURANCE CORPORATION

5 CFR Part 3201

RIN 3064–AA08, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Federal Deposit Insurance Corporation

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation, with the concurrence of the Office of Government Ethics (OGE), is amending the Supplemental Standards of Ethical Conduct for Employees of the Federal Deposit Insurance Corporation in order to allow employees' spouses and minor children to acquire otherwise prohibited securities when they are acquired as part of compensation packages in connection with their employment. The amendment is being made retroactively effective as of the effective date of the FDIC's supplemental standards.

EFFECTIVE DATE: May 25, 1995.

FOR FURTHER INFORMATION CONTACT: Richard M. Handy, Assistant Executive Secretary (Ethics), (202) 898–7271, in the Office of the Executive Secretary of the FDIC.

SUPPLEMENTARY INFORMATION:

I. Background

On April 25, 1995, with the concurrence of OGE, the FDIC published as a final rule the Supplemental Standards of Ethical Conduct for Employees of the Federal Deposit Insurance Corporation which were effective May 25, 1995 (codified at 5 CFR part 3201). The final rule was

executive branch employees (effective February 3, 1993, and codified at 5 CFR part 2635).

Upon the determination of the Board of Directors and with the concurrence of OGE, part 3201 is being amended to provide an additional exception to the prohibitions on the ownership of securities of FDIC-insured depository institutions. The amendment allows spouses and minor children of employees to acquire otherwise prohibited securities when they are acquired as part of compensation packages in connection with their employment. The Board of Directors determined that the provision, without the revised language, was unnecessarily restrictive.

This rule is being issued as a final rule since it reduces the restrictions placed on employees and their families by the existing rule. Further, the amended rule will be made retroactively effective to May 25, 1995.

II. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 (a)(2), (b) and (d), the Board of Directors has found that good cause exists for waiving the regular notice of proposed rulemaking and 30-day delayed effective date as to this final rule amendment, and further making it retroactively effective to May 25, 1995, the effective date of the overall part 3201. This action is being taken because it is in the public interest that this rule, which concerns matters of agency organization, practice and procedure and which relieves certain restrictions placed on FDIC employees and their families, become effective retroactively on the effective date of the original final rule.

Regulatory Flexibility Act

The Board of Directors has concluded that the amendment to the rule will not impose a significant economic hardship on small institutions. Therefore, the Board of Directors hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the amended regulation will not have a significant economic impact on

Paperwork Reduction Act

The Board of Directors has determined that the amended regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 5 CFR Part 3201

Administrative practice and procedure, Conflict of interests, Government employees, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation, with the concurrence of the Office of Government Ethics, is amending 5 CFR part 3201 as follows:

PART 3201—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE FEDERAL DEPOSIT INSURANCE CORPORATION

1. The authority citation for part 3201 continues to read as follows:

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 12 U.S.C. 1819(a), 1822; 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403, 2635.502, and 2635.803.

2. In § 3201.103, paragraph (b)(4) is amended by revising the first sentence to read as follows:

§ 3201.103 Prohibitions on ownership of securities of FDIC-insured depository institutions.

* * * * *

(b) * * *

(4) Acquiring, owning, or controlling a security of an FDIC-insured depository institution or the affiliate of an FDIC-insured depository institution where the security was acquired by inheritance, gift, stock split, involuntary stock dividend, merger, acquisition, or other change in corporate ownership, exercise of preemptive right, or otherwise without specific intent to acquire the security, or, by an employee's spouse or minor child as part of a compensation package in connection with his or her employment. * * *

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
Concurred in this 1st day of July 1996.
Stephen D. Potts,
Director, Office of Government Ethics.
[FR Doc. 96–17304 Filed 7–8–96; 8:45 am]
BILLING CODE 6714–01–F

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1910, 1924, 1941, 1943, 1945, 1951, 1955, 1962, 1965, and 1980

RIN 0575–AB45

Loan Assessment, Market Placement, and Graduation of Direct Loan Borrowers

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The issuing USDA agencies are amending the direct and guaranteed farm loan regulations to implement changes to the Consolidated Farm and Rural Development Act (CONACT) as a result of the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Act) and the Agricultural Credit Improvement Act of 1992 (1992 Act). These amendments implement and coordinate "loan assessment," "market placement," and the "graduation of seasoned direct loan borrowers to the loan guarantee program." The intended outcome is to improve the success rate of borrowers receiving Farm Service Agency (FSA) assistance and to facilitate their transitions to commercial credit.

DATES: Effective July 9, 1996. Comments must be submitted by October 7, 1996.

ADDRESSES: Submit written comments to Steven R. Bazzell, Senior Loan Officer, Farm Credit Programs Loan Making Division, Farm Service Agency (FSA) United States Department of Agriculture (USDA), Ag Box Code 0522, Room 5438 South Building, 14th Street and Independence Avenue, SW., Washington, DC. 20250–0522. Written comments made pursuant to this rule will be available for public inspection at the above address between 8:15 am and 4:45 pm, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Bazzell of the Farm Credit Programs Loan Making Division at telephone (202) 720–3889, fax (202) 690–1117, or e-mail sbazzell@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined "not significant" for the purpose of complying with Executive Order 12866, and therefore, it has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

1. For the reasons set forth in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), Farm Ownership Loans, Farm Operating Loans, and Emergency Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to and has complied with the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Federal Assistance Programs

These changes affect the following FSA Farm Credit programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." The issuing agencies have determined that this action does not significantly affect the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the National Appeals Division appeal regulations at 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Paperwork Reduction Act

The information collection or recordkeeping requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 0575–0134, 0575–0061, 0575–0141, 0575–0085, 0575–0083, 0575–0090, 0575–0093, 0575–0079 and 0575–0111 in accordance with the Paperwork Reduction Act of 1995. This interim rule does not revise or impose any new information collection or recordkeeping requirement from those approved by OMB.

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Discussion of the Interim Rule

On December 30, 1993, the Farmers Home Administration (FmHA) published a proposed rule in the **Federal Register** (58 FR 69274–69298) with a comment period that ended February 28, 1994. The purpose of this interim rule is to implement statutory provisions on loan assessment, market placement, and graduation of seasoned direct loan borrowers to the guaranteed loan program. These provisions were contained in the 1990 Act and the 1992 Act and affect former FmHA Farmer Programs. Due to the reorganization of USDA, responsibility for administering FmHA Farmer Programs has been transferred to FSA. Other loan programs formerly administered by FmHA will only be affected by general, conforming administrative revisions made to the regulations on receiving and processing applications and analyzing credit needs and graduation of borrowers. These programs include: Rural Housing loans now administered by the Rural Housing Service (RHS), Water and Waste Facility loans now administered by the Rural Utilities Service (RUS), and Business and Industrial loans and Intermediary Relending Program loans now administered by the Rural Business-Cooperative Service (RBS). FSA, RHS, RUS, and RBS are jointly issuing this interim rule since substantial administrative revisions have been made to regulations affecting their programs in an effort to reduce Agency regulations.

The issuing agencies are publishing these regulations as an interim rule and providing a 90-day comment period. The comment period will provide the public, including Agency field staff, the opportunity to use and evaluate the new processes from a practical standpoint. We expect this will provide the Agency with many more valuable suggestions to consider prior to issuance of the final rule.

Discussion of Comments

In response to the proposed rule, 14 respondents provided 25 specific comments. Since few of the comments addressed the same issue, they have been grouped by the general regulatory areas to which they pertain, as follows: Borrower supervision and planning, chattel loan security, graduation to commercial credit, and guaranteed loans.

Borrower Supervision and Planning

One respondent stated that each borrower should submit the year's actual production and financial information, in addition to the projected budget, when the projected budget is being submitted for review and reclassification purposes only. The Agency has revised the regulations to require that actual production and financial performance information be submitted along with the borrower's projections. FSA agrees with the rationale that actual performance should be obtained whenever financial information is obtained from borrowers in order to monitor their financial progress. This is in line with the practices of commercial lenders and the goals of FSA's borrower training.

One respondent stated that the year-end analysis should ideally be done prior to the beginning of the next production cycle, but not later than 60 days after the end of the previous production cycle. FSA has revised the regulations to state that, whenever possible, the year-end analysis should be scheduled and completed not later than 60 days after the end of the borrower's business year or farm budget planning period. This change was made in recognition of the uncertainties of Agency staffing and the fluctuating nature of the demand for FSA Farm Credit assistance. It is impracticable to mandate that the year-end analysis be completed within the 60-day timeframe, without exception.

One respondent stated that a year-end analysis should be required on all recently serviced loans under subpart S of part 1951. The proposed regulations require that a year-end analysis be completed for all first-time, annual operating, delinquent, and limited resource interest rate borrowers. All other FSA Farm Credit borrowers were to receive a year-end analysis at the discretion of the Agency based upon the "assessment" of the needs and risks associated with each individual farming operation. In response to this comment, the Agency has revised the regulation to broaden coverage to require a year-end analysis the first year after the borrower: (1) Receives a new loan, chattel subordination or restructuring; (2) is determined delinquent or financially distressed; (3) has a loan deferred; or (4) receives limited resources interest rates. This change expands year-end analysis coverage to chattel subordinations and restructurings while mandating that it be performed only the first year when most problems arise. Chattel subordinations and restructurings will trigger a year-end analysis in the first year because of the increased risk to the Government. Thereafter, the Agency has the flexibility to perform the year-end analysis on a case-by-case basis based on the individual needs of each borrower.

One respondent stated that Exhibit A, Attachment 1, of subpart B of part 1924 of this chapter should be modified to inform the farm borrower that budget plans other than the Form FmHA 432–1, "Farm and Home Plan," may be used. This Exhibit A letter is, however, used exclusively to inform borrowers of their rights and responsibilities in regard to the disposition of security. Since Exhibit A does not pertain to farm budgeting, no changes will be made in response to this comment. The Agency plans to remove this exhibit from the regulations in the final rule.

Three respondents made a general statement that there are inadequate staff resources at the county office level to carry out the provisions of these regulations in a timely manner. The Agency has eliminated several regulatory requirements to provide expanded discretion to county office personnel, such as the elimination of mandatory accounting updates and field visits. Such administrative procedures have been removed from the regulations, but will be addressed in internal agency instructions. Additional administrative reductions may be considered for future regulatory revisions, after the Agency has empirical evidence to determine the effectiveness of the current regulatory changes. Therefore, no changes will be made by the Agency at this time.

One respondent stated that FSA should accept an applicant's self-certification with regard to environmental compliance. Currently, Agency personnel, or lenders in the case of guaranteed loans, are required to make a visual inspection of the farming operation as part of the environmental compliance process. Generally, environmental statutes place the burden on the Federal Government for compliance. This responsibility cannot be delegated to individual applicants without statutory authority. No change will be made.

One respondent stated that "production cycle," as the term is used in conducting the year-end analysis under § 1924.55(d)(1) should be defined as the completion of the farm budget planning period. The Agency agrees that this could be potentially confusing and has revised § 1924.55(d)(1) to clarify "production cycle" to mean "farm budget planning period."

Chattel Loan Security

One respondent stated that § 1924.56(b)(5) should be clarified to state that during an appeal, FSA will release normal income security to allow the borrower to pay essential family living and farm operating expenses, except for the expenses which are the subject of the appeal. The Agency agrees that this could be misunderstood and has referenced this paragraph back to subpart A of part 1962.

Three respondents stated that the FSA regulations require that notices be filed (for lien perfection) under both the Uniform Commercial Code (UCC) and Central Filing System (CFS), where implemented, which in their opinion has no significant benefit. The respondents stated that filing under both systems should be used on a discretionary basis for problem accounts only. The most common practice among commercial lenders is to file notices under both the UCC and CFS. FSA will follow this same conventional practice, and no changes will be made in Agency procedure. Section 1962.5, describes which filing procedures for financing statements and other internal procedures for handling security instruments, has been removed but will be covered by internal Agency instructions.

One respondent stated that § 1924.57 should be revised to state that Agency personnel may provide credit counseling rather than will provide credit counseling. This suggestion is not being adopted in internal agency instructions since it is the Agency's responsibility to provide credit counseling as needed by individual farm borrowers. This administrative section has been removed from the regulations.

One respondent stated that the regulations should allow more Agency discretion on conducting field visits, year-end analyses, credit counseling, etc. The Agency has already eliminated required numbers of field visits, collateral inspections (when justified

and documented in the case file), accounting updates, etc., and has directed that these activities be derived directly from the farm assessment. No further changes in this regard will be made until empirical evidence can be examined by the Agency with regard to the effectiveness of the current revisions.

One respondent stated that borrowers who are not required to undergo a year-end analysis should only be required to submit an annual balance sheet and that it is unreasonable to require these borrowers to submit a projected cash flow for the upcoming year for borrower classification purposes. FSA is required by the 1992 Act to reclassify "seasoned direct borrowers" for the purpose of graduation, and the projected cash flow is needed to classify borrowers; therefore, FSA will make no changes with respect to the financial information needed. However, FSA has revised the regulations to require these "classification only" borrowers to submit their full set of financial statements only every 2 years. In intervening years when financial statements are not obtained, the Agency will make a desk review of the borrower's case file and determine whether graduation efforts should be pursued according to internal Agency instructions. Full financial information will be required automatically only every 2 years because based on past experience a borrower's ability to graduate generally does not change significantly from 1 year to the next. This will meet the requirements of the statute, while reducing the burden on field staff resources and borrowers. The Agency expects this approach to actually enable the county offices to graduate more direct borrowers to commercial credit because there will be more time available to perform a more thorough graduation review and to more vigorously pursue graduation through Market Placement.

Two respondents commented that § 1924.56 needs clarification, especially with regard to the derivation and use of production yields. FSA agrees and has revised this regulation to clarify that 5 years of actual production history will be used as a guide when preparing and evaluating a farm business plan. This clarification has been made to stress that, while historical information is extremely useful, the analysis of an agricultural operation's production trends and current capabilities must be considered.

One respondent suggested that the existing Form FmHA 431–2, "Farm and Home Plan," be revised to incorporate Form FmHA 1962–1, "Agreement for Use of Proceeds/Release of Chattel Security." FSA will give this suggestion consideration for future improvements, but no changes will be made at this time. Form FmHA 1962–1 has been removed as an exhibit to part 1962, subpart A, but will be available in any Agency office.

Graduation to Commercial Credit

One respondent stated that only borrowers classified as commercial should be considered candidates for graduation to commercial credit. No change will be made since the Consolidated Farm and Rural Development Act section 333A(f) (7 U.S.C. 1983a(f)) specifies that both commercial and standard classified borrowers be considered for graduation.

One respondent stated that the proposed regulations require all commercial and standard classified borrowers to have an assessment completed or updated. The respondent recommended that an assessment not automatically be required. The respondent suggested that a current balance sheet, actual performance for the most recent year, and a projected farm budget should instead be used to determine graduation potential and for preparation of the prospectus to lenders. FSA agrees with the logic of this recommendation and has revised § 1951.262 and the definition of "prospectus." Many graduation candidates will not need a complete or updated assessment, as described under subpart B of part 1924, when the sole purpose is pursuing graduation to commercial credit.

One respondent stated that the language "reasonable rates and terms" should not be changed to "prevailing rates and terms" in subpart F of part 1951 because the former language is defined by regulation and it is contained in various loan documents, particularly in the Community and Business Programs. FSA agrees and will not delete "reasonable rates and terms" from this regulation.

One respondent stated that farm borrowers should be charged commercial interest rates when it appears that they are able to graduate to commercial credit. Otherwise, the respondent stated, there is no incentive for borrowers to graduate. Subpart A of part 1951 presently requires that direct borrowers be charged FSA's "regular" interest rate when they attain a 10-percent repayment margin. This interest rate is comparable to commercial lending rates, therefore, no change will be made.

Guaranteed Loans

The last respondent stated that under § 1980.113, the term "current balance sheet" should be defined as one that is less than 90 days old on the date the Agency receives a complete application. FSA agrees that this should be clarified and has revised the regulation accordingly.

Miscellaneous Changes

In addition to the changes made as a result of public comments, FSA has made several changes to further streamline or, in some cases, clarify the intent of the regulations as discussed below.

The 5-year budget project projection also is being eliminated as a general requirement for all FCP borrowers and applicants. The 5-year budget will instead be used as a counseling tool by the Agency, as appropriate, under internal Agency instructions. This change is in keeping with the Agency's movement toward fewer regulatory requirements and more discretion for Agency personnel.

Section 1924.55 is being clarified to state that many components of the assessment will be inapplicable to the Youth Loan program since these applicants and borrowers are not conducting farming or ranching operations. Year-end analyses for Youth loans are also being made a discretionary activity for Agency personnel since these loans are used to make small purchases for mainly educational purposes, e.g., raising and selling one pig or cow for a 4–H project.

"Flagged Accounts" are being eliminated as needing mandatory year-end analyses under § 1924.55. Flagged accounts include such accounts as bankruptcies and foreclosure actions pending. In such cases, contact with the borrower may be constrained by a court, or the farming operation may be in some stage of liquidation and, therefore, no longer an ongoing business concern. Therefore, flagged accounts will have a year-end analysis performed only at the discretion of the Agency.

Section 1924.55 also has been revised to state that in the case of existing borrowers, an assessment should be made at the time of the year-end analyses if no assessment has yet been done. An earlier assessment would have been done if the borrower had been found eligible for another loan, for example. The mandatory assessment provision was removed for existing borrowers in order to permit an administrative phase-in of the assessment process over a three year period for most existing borrowers.

Borrowers with flagged accounts would receive assessments only when and if year-end analyses were performed in accordance with this revised section. (The reason for the flagged account exception is discussed above.) This policy is permissible under CONACT section 360 which only requires initial assessments of eligible applicants and follow-up reviews of the new borrowers. The phase-in will promote high quality assessments by field offices and allow them to focus on new borrowers. The Agency is unable because of fiscal constraints to take advantage of its statutory authority to contract out loan assessments.

A minor revision was made with regard to the market placement regulations in the guaranteed loan program. The requirement for the submission of the applicant's or borrower's assessment to the lender was deleted since the Agency will prepare the guaranteed application on the lender's behalf. The Market Placement Application described under § 1980.113 also was revised to make it more concise. Upon further Agency review, it was determined that the individual line items describing the application were unnecessary. This now states Form FmHA 1980–25, which is the guaranteed loan application, along with all other items listed in this section with the exception of the loan or line of credit agreement, are required. The loan assessment is prepared by the Agency as part of the items required in the narrative summary under § 1980.113(a)(12).

Section 1910.4 has been revised to implement a requirement of the Federal Debt Collection Act of 1990. Under this statute, an applicant is ineligible for a loan if the applicant has an outstanding recorded judgment against them by the United States in a Federal Court other than the United States Tax Court.

Section 1910.5 has been revised to clarify how bankruptcy is used in determining the acceptability of an applicant's credit history. The key is not the bankruptcy itself, but rather the circumstances behind it. If they were beyond the borrower's control, then they are not considered an indication of unacceptable credit history.

References to the FmHA County Committee and its certification of a borrower or applicant's farm loan eligibility for five years have been removed. FmHA County Committees and the mandate to make 5 year certifications of eligibility were abolished by section 227(b) of the Department of Agriculture Reorganization Act of 1994. The functions performed by the FmHA County Committee in relation to Farmer Programs loans now will be performed by the Agency. "Agency" has been defined in the regulations to include FSA county or area committees established in accordance with section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)). Loan eligibility will be determined for each loan application.

Regulations being changed to implement loan assessment, market placement, and graduation policies also were substantially revised to remove administrative procedures. These procedures instead will be covered solely by the Agency's internal instructions.

The Agency intends to remove exhibits being revised by this interim rule in the final rule. Any substantive policy will be covered in the regulation text. Forms will remain available in any Agency office.

List of Subjects

7 CFR Part 1910

Agriculture, Applications, Credit, Loan programs—Housing and community development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Housing and community development, Loan programs—Low and moderate income housing.

7 CFR Part 1941

Agriculture, Crops, Livestock, Loan programs—Rural areas, Youth.

7 CFR Part 1943

Agriculture, Credit Loan Programs—Recreation and recreation areas, Water resources.

7 CFR Part 1945

Agriculture, Disaster assistance, Loan programs.

7 CFR Part 1951

Account servicing, Agriculture, Credit, Debt restructuring, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing.

7 CFR Part 1955

Government acquired property, Government property management.

7 CFR Part 1962

Agriculture, Crops, Government property, Livestock, Loan programs—Rural areas.

7 CFR Part 1965

Agriculture, Foreclosure, Loan programs—Rural areas.

7 CFR Part 1980

Agriculture, Loan programs.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1910—GENERAL

1. The authority citation for part 1910 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

Subpart A—Receiving and Processing Applications

2. Section 1910.1 introductory paragraph is amended:

a. by removing the phrase "Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354)" and adding the words "Farm Service Agency (FSA) and Rural Housing Service (RHS)" in its place;

b. by removing the words "Farmer Programs" and adding the words "Farm Credit Programs" in its place;

c. by removing the phrase "FmHA or its successor agency under Public Law 103–354" in paragraph (a) and adding the words "FSA and RHS" in its place; and revising paragraph (c) and adding paragraph (e) to read as follows:

§ 1910.1 General.

* * * * *

(c) FmHA forms are available in any Rural Development (RD) or FSA office.

* * * * *

(e) As used in this subpart in relation to Farm Credit Programs loans, *Agency* means the Farm Service Agency, its county and State committees and their personnel, and any successor agency.

3. In § 1910.3:

a. the introductory text and paragraph (a), introductory text, are amended by removing the phrase "FmHA or its successor agency under Public Law 103–354" and adding the words "FSA or RHS" in their place;

b. all references to "or its successor agency under Public Law 103–354" in paragraphs (a)(1), (a)(2), and (a)(4)(i) are removed; and references to "FmHA or its successor agency under Public Law 103–354" are removed and "RD" is added in their place, the first time it

appears in paragraph (a)(4)(i) and in paragraph (a)(4)(ii).

4. Section 1910.4 is amended by:

a. removing paragraph (h);

b. redesignating paragraphs (c) through (g) as (d) through (h), respectively;

c. removing the words "Farmer Programs" in redesignated paragraphs (d), (k) introductory text and (k)(3) and adding the words "Farm Credit Programs;" in its place;

d. removing the words "FmHA or its successor agency under Public Law in paragraph (k)(4) and adding the words "the Agency" in its place; and

e. removing the language appearing in the parentheticals in redesignated paragraphs (d)(3)(i), introductory text, (d)(3)(iii), introductory text, (d)(3)(v) and (k)(4).

5. Section 1910.4 paragraphs (k)(1), (k)(4) and redesignated (d)(1), (d)(3)(i), (d)(3)(iii), introductory text, and (d)(3)(v) are amended by removing the phrase "or its successor agency under Public Law 103–354."

6. In § 1910.4 paragraph (k)(3) the reference "paragraph (c)" is removed and the reference "paragraph (d)" is added in its place; removing and reserving paragraph (j); revising redesignated paragraphs (e), (f), (g), and (h), and paragraphs (b), (i)(1), (i)(1)(i), (i)(1)(ii)(B), (i)(5) and adding new paragraph (c) to read as follows:

§ 1910.4 Processing applications.

* * * * *

(b) *Completed Farm Credit Programs applications and additional FSA responsibilities.* All persons requesting an application will be provided Exhibit A (available in any office). The County Supervisor will provide assistance as necessary to help applicants complete their applications. Complete applications will be processed in the order of date received, except as outlined in Section 1910.10 of this subpart. If the application is complete when it is first received, a County Office official will stamp the filing date on the front of Form FmHA 410–1 and enter the date in the "Application Received" and "Application Completed" fields in the Application Processing Module of the Management Records Systems (MRS.) On the date all information necessary to process an application is received, a County Office official will send the applicant FmHA Guide Letter 1910–A–3 (available in any office) notifying the applicant that the application is considered complete. The date entered in the "Application Completed" field in the Application Processing Module of MRS will establish the 30-day and 60-day timeframes for determining eligibility and loan approval/disapproval, respectively. The County Supervisor will verify the information furnished by the applicant, and record and assemble additional information needed to properly evaluate the applicant's qualifications and credit needs. Additional information may be obtained and verified by County Office records, personal contacts, and visits to the applicant's operation. A complete Farm Credit Programs application requires fulfillment of both the applicant and FSA responsibilities. Once this information is received and the application is considered complete, FSA has additional responsibilities before loan approval is determined. The various responsibilities are as follows:

Applicant's Responsibilities for a Complete Application

(1) Completed Form FmHA 410–1, "Application for FmHA Services," including a signed Form FmHA 410–9, "Statement Required by the Privacy Act."

(2) If the applicant is a cooperative, corporation, partnership, or joint operation:

(i) A complete list of members, stockholders, partners or joint operators showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the cooperative or corporation, by each, or the percentage of interest held in the partnership or joint operation, by each.

(ii) A current personal financial statement from each of the members of a cooperative, stockholders of a corporation, partners of a partnership, or joint operators of a joint operation.

(iii) A current financial statement from the cooperative, corporation, partnership, or joint operation itself.

(iv) A copy of the cooperative's or corporation's charter, or any partnership or joint operation agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution(s) adopted by the Board of Directors or members or stockholders authorizing specified officers of the cooperative, corporation, partnership, or joint operation to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

(3) A brief written description as to the farm training and/or experience of the applicant and the individual members of an entity applicant (new applicants only). If a waiver from the training required in Section 1924.74 of subpart B of part 1924 of this chapter is requested, provide verification of any courses taken which covered production and/or financial management concepts, and/or a statement explaining how the applicant's proven performance based on 5-year production records demonstrates production ability.

(4) Supporting and documented verification that the applicant (and all members of an entity applicant) cannot obtain credit elsewhere, including a guaranteed loan.

(5) Financial records for the past five years. Income tax records may be provided by the applicant when other financial records are not available.

(6) Five years of production history immediately preceding the year of application, unless the applicant has been farming less than 5 years.

(7) A brief written description of the proposed operation and the proposed size of the operation (required for new applicants and existing borrowers with significant changes in their operations).

(8) Verification of off-farm employment, if any. This will be used only when the applicant is relying on off-farm income to pay part of the applicant's expenses.

(9) Projected production, income and expenses, and loan repayment plan, which may be submitted on Form FmHA 431–2, "Farm and Home Plan," or other similar plans of operation acceptable to FSA.

(10) Applicable items required in Exhibit M of subpart G of part 1940 of this chapter including SCS Form CPA–026, "Highly Erodible Land and Wetland Conservation Determination," Form AD–1026, "Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification," and Form FmHA 1940–20, as required by subpart G of part 1940 of this chapter.

(11) A legal description of farm, real estate property and/or (if applicable) a copy of any lease, contract, option or agreement entered into by the applicant which may be pertinent to consideration of the application, or when a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement.

(12) Form FmHA 440–32, "Request for Statement of Debts and Collateral," when applicable.

(13) Forms FmHA 1945–22, "Certification of Disaster Losses," and FmHA 1940–38, "Request for Lender's Verification of Loan Application," (EM loans only).

FSA's Responsibilities for a Complete Application

(14) Send Form FmHA 410–7, "Notification to Applicant on Use of Financial Information from Financial Institution," to the applicant when applicable.

(15) Form FmHA 1945–26, "Calculation of Actual Losses" (EM loans only).

(16) Credit reports as provided in subparts B and C of this part.

(17) Form FmHA 1945–29, "ASCS Verification of Farm Acreages, Production and Benefits," (EM loans only).

(18) The Current/Past Debt Inquiry and Borrower Cross-Reference Systems. The Current/Past Debt Inquiry System must be reviewed for each application and copies of the screens must be attached to the applicant's file.

(19) For special beginning farmer or rancher operating (OL) loan assistance, a plan of operation will be developed for each of the first 5 years for which such assistance is requested. A projection of the financial status of the operation showing financial viability within the commitment period will also be developed. The 5-year plan and projection will be developed as described in § 1941.15. This information will be presented on reports generated on the automated Farm and Home Plan system, or in other plans or documents consistent and acceptable to the Agency.

Additional FSA Farm Credit Responsibilities

(20) Form FmHA 1924–1, "Development Plan," if necessary.

(21) Form FmHA 1940–22, "Environmental Checklist for Categorical Exclusions," or Class I and Class II assessment, whichever is applicable.

(22) Real estate and chattel appraisal, when applicable.

(23) Completion of the assessment in accordance with § 1924.55.

(c) *Notifying applicants that direct loan eligibility is subject to the unavailability of guaranteed financing.* If the assessment, completed in accordance with § 1924.55 concludes that guaranteed assistance may be available, with or without interest assistance, a prospectus will be sent to area lenders in accordance with § 1951.262 (f) as appropriate. If a lender indicates interest in providing financing with a Farm Credit Programs loan guarantee, refer to § 1980.113 (c) for handling as a market placement application. No direct loan to a current borrower will be approved until the process outlined in this paragraph has been concluded.

* * * * *

(e) *Notifying applicants (including presently indebted borrowers) about Limited Resource loans.* Immediately after an application for OL, FO, SW, or EM assistance is received, the County Supervisor will send a letter similar to Guide Letter 1924–B–1 to the applicant telling the applicant about Limited Resource loans.

(f) *Notifying socially disadvantaged applicants regarding the availability of Direct Farm Ownership (FO) loans and the acquisition/leasing of Agency acquired farmland.* Immediately after an application for FO assistance is received, the County Supervisor will send Exhibit B of this subpart, "Letter to Notify Socially Disadvantaged Applicants/Borrowers Regarding the Availability of Acquired Farmland," to the applicants. Exhibit B will also be presented to all socially disadvantaged individuals at the time they make their initial contact regarding Agency credit services. Socially disadvantaged applicants are defined in Section 1943.4 of subpart A of part 1943 of this chapter.

(g) *Notifying Borrowers about Farm Credit Programs (FCP) Borrower Responsibilities.* When an application for OL, FO, SW or EM assistance is approved, the County Supervisor will provide to the borrower Exhibit C of this subpart, "Letter to Notify Applicant(s)/Borrower(s) of Their Responsibilities in Connection with FmHA Farmer Programs Loans."

(h) *Determining eligibility.* The Agency will determine eligibility of all Farm Credit Programs applicants including those who are already indebted for a Farm Credit Programs loan. The Farm Credit Programs application does not need to be complete before it is reviewed; however, all information relative to the eligibility decision must be received. The Rural Housing Service will determine eligibility for all RH loan applicants.

(1) The Agency will certify whether or not the applicant meets the eligibility requirements and whether or not the applicant is a beginning farmer or rancher, as defined in the applicable Farm Credit Programs loan making regulation. An eligible Operating Loan (OL) or Farm Ownership (FO) Loan applicant, who is considered a beginning farmer or rancher, will have access to targeted funds. An eligible FO applicant requesting to purchase suitable farmland, who is considered a beginning farmer or rancher, will be given priority in accordance with § 1955.107 (f). In addition, it is the responsibility of the Agency to determine whether or not the FO applicant is an operator of not larger than a family size farm, as of the time immediately after the contract of sale or lease is entered into, even though the applicant is not in need of Agency credit assistance on eligible rates and terms to purchase suitable farmland. The loan approval official will determine the applicant's projected repayment ability, the adequacy of collateral equity to secure the requested loan, and the feasibility of the proposed operation.

(2) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible for any loan or grant until the judgment is paid in full or otherwise satisfied. Agency loan or grant funds may not be used to satisfy the judgment.

(i) * * *

(1) *Farm Credit Programs (FCP) applications.* Each application must be approved or disapproved and the applicant notified in writing of the action taken, not later than 60 days after receipt of a complete application. The District Director will monitor the processing of all applications to ensure that each is processed in a timely manner and receives a final disposition (i.e., approval, rejection, or withdrawal) within the timeframes outlined in this section.

(i) Receipt by the applicant of a signed copy of Form FmHA 1940–1, "Request for Obligation of Funds," will be considered written notice of loan approval.

(ii) * * *

(A) * * *

(B) Every week the District Director will generate a report, using the FOCUS Ad-Hoc Reporting System, based on the weekly upload of information from each county office MRS data base. The District Director will note each complete application pending more than 45 calendar days, and immediately take steps to ensure that final disposition on the application is taken no later than 60 calendar days after receipt of the complete application.

* * * * *

(5) *Adverse decisions.* If an applicant is given an adverse decision, the applicant will be given appeal rights as provided in Subpart B of Part 1900 or 7 CFR part 780, as appropriate. The letter will contain the ECOA statement set forth in Section 1910.6(b)(1) of this subpart.

* * * * *

7. Section 1910.5 is amended:

a. by removing the phrase "FmHA or its successor agency under Public Law 103–354" in paragraph (c)(1) and adding the word "Agency," in its place;

b. removing the word "bankruptcy" in paragraph (c)(4) introductory text, and

c. revising paragraph (c)(5) to read as follows:

§ 1910.5 Evaluating applications.

* * * * *

(c) * * *

(5) Non-payment of a debt due to circumstances beyond the applicant's or borrower's control. However, non-payment of a debt due to circumstances within an applicant's or borrower's control may be used as an indication of unacceptable credit history, in accordance with paragraph (c)(1) of this section. The mere fact that an applicant or borrower filed bankruptcy will not be used as an indication of unacceptable credit history. The circumstances causing the nonpayment of debt, i.e., whether nonpayment was beyond the applicant's or borrower's control, however, are proper considerations.

* * * * *

§§ 1910.6 through 1910.9 [Removed and Reserved]

8. In part 1910 §§ 1910.6 through 1910.9 are removed and reserved.

§ 1910.10 [Amended]

9. Section 1910.10(b) is amended by removing the words "Farmer Program" and adding the words "Farm Credit Programs (FCP)" in its place.

10. Section 1910.11 is revised to read as follows:

§ 1910.11 Special requirements.

(a) *Servicemen's Readjustment Act of 1944.* Section 512(a)(D) of the Servicemen's Readjustment Act of 1944, as amended, provides that an applicant for a direct housing loan from the Department of Veterans Affairs (VA) must be "unable to obtain a loan for such purposes from the Secretary of Agriculture under the Consolidated Farm and Rural Development Act, as amended, or the Housing Act of 1949, as amended." Department of Veterans Affairs Loan Guaranty Officers may, therefore, require VA loan applicants to apply to the agency for loan assistance.

(b) *Veterans determined ineligible by the Agency.* If the veteran is unable to obtain a loan, the County Supervisor will, upon request, furnish the applicant with a rejection letter to be presented to the Loan Guaranty Officer. The Loan Guaranty Officer may consult with the County Supervisor regarding the investigation made by the Agency of the veteran's application and the specific reasons for rejection.

PART 1924—CONSTRUCTION AND REPAIR

11. The authority citation for part 1924 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989 and 42 U.S.C. 1480.

Subpart B—Management Advice to Individual Borrowers and Applicants

12. Section 1924.51 is revised and §§ 1924.54 and 55 are added to read as follows:

§ 1924.51 General.

This subpart contains policies for providing management advice to all Farm Credit Programs direct loan applicants and borrowers. Forms and Farm Assessment and Supervision Reference handbooks are available in any Agency county office.

§ 1924.54 Definitions.

As used in this subpart, the following definitions apply:

Agency. This term refers to the Farm Service Agency, its county and State committees and their personnel, and any successor agency.

Commercial classified. The Agency's highest quality Farm Credit programs accounts. The financial condition of the borrowers is strong enough to enable them to absorb the normal adversities of agricultural production and marketing. There is ample security for all loans, there is sufficient cash flow to meet the expenses of the agricultural enterprise and the financial needs of the family, and to service debts. The account is of such quality that commercial lenders would likely view the loans as a profitable investment.

Farm Assessment and Supervision Reference. This reference provides guidance to field staff on conducting assessments, year-end analyses, and general borrower supervision.

Farm business plan. The automated or manual Farm and Home Plan system which contains a projection that accurately reflects the borrower's plan of operation for the production or marketing cycle. The annual plan may cover a period of more or less than 12 months. A normal year's plan, as defined in this section, will be used when the annual plan does not reflect typical income, expenses, and debt payments. The Agency will accept farm business plans other than the Farm and Home Plan if they provide sufficient information to enable Agency officials to render a sound credit decision in accordance with Agency regulations.

Farm Credit Programs loan. Includes Farm Ownership (FO), Soil and Water (SW), Operating (OL), Emergency (EM), Economic Emergency (EE), Recreation (RL), Special Livestock (SL), Economic Opportunity (EO) and Softwood Timber (ST) loans. Also included are Rural Housing loans for farm service buildings (RHF), and Rural Housing (RH) loans where the borrower is also indebted for an Agency direct farm loan that is not a collection only or judgment account. Non-Program loans, which are defined in § 1951.451(a), are excluded.

Financially viable operation. A financially viable operation projects that it can generate sufficient income to meet annual operating expenses and debt payments as they become due, meet basic family living expenses to the extent they are not met by dependable non-farm income, provide for the replacement of capital items, and provide for long-term financial progress to enable the operator to obtain commercial credit.

Individual. The term "individual" is used throughout this subpart to refer to the person receiving Agency supervision and management advice. If an applicant or borrower applies as an individual applicant, the term "individual" means the operator. In the case of an eligible corporation, cooperative, partnership, or joint operation, the term "individual" means the entity members with the primary responsibility for making management decisions and carrying out the day-to-day physical tasks.

Normal year plan. A projected farm business plan most representative, or typical, of an operation's normal income, expenses (including family living expenses), and capital debt payments.

Prospectus. Consists of a transmittal letter similar to FmHA Guide Letter 1951–F–3 with a current balance sheet and projected year's budget attached. The applicant or borrower name and address need not be withheld from the lender. The prospectus is used to determine lender interest in financing or refinancing specific direct loan applicants and borrowers. The prospectus will provide information regarding the availability of Agency loan guarantee and interest assistance.

Standard classified. These loan accounts are fully acceptable by Agency standards. Loan risk and potential loan servicing costs are higher than would be acceptable to other lenders, but all loans are adequately secured. Repayment ability is adequate, and there is a high probability that all loans will be repaid as scheduled and in full.

§ 1924.55 Assessment of the agricultural operation.

Assessments will be completed for direct Farm Credit Programs loan applicants. An assessment is a comprehensive evaluation of the components of an operation, the identification and prioritization of training and supervisory needs, and the resulting plan of supervision to assist the borrower in achieving financial viability. The assessment is the central foundation upon which to build strategies for planning, credit and management counseling, loan controls, analysis, borrower training, and all other needed supervision. An assessment will include thorough inspections of the operation and face-to-face meetings and discussions with all key individuals. At least semi-annual reviews of progress will be performed in accordance with paragraph (e) of this section.

(a) *Agency evaluation.* The Agency will assess each of the areas described in paragraph (b) of this section in close cooperation with the applicant or borrower. As part of that assessment, the Agency will determine whether the proposed budget is feasible on a direct or guaranteed loan basis, the type and nature of any material financial or production management weaknesses in the operation, and the specific strategy needed, including timeframes, to effect improvements and control risks. Material weaknesses are those that have a significant impact on the net income of the operation and need to be corrected to enable the borrower to progress financially and eventually graduate from FSA farm credit programs. Examples of material weaknesses include, but are not limited to: lack of a farm recordkeeping system, obsolete or inadequate facilities, and use of outdated production practices. In the case of Youth loans, it is recognized that most of the component areas will be "Not Applicable" since there is no full-scale farming operation to consider.

(b) *The assessment is an evaluation, conducted with an applicant or borrower, of the following components:*

(1) Type of operation.

(2) Goals.

(3) Real estate, including facilities.

(i) Location and size.

(ii) Proposed and existing improvements.

(iii) Presence of environmental hazards.

(iv) Conservation practices and measures.

(v) Adequacy and continued availability of real estate.

(vi) External factors, such as urban encroachment and zoning changes.

(4) Chattel property used in the operation.

(5) Farm business organization and key personnel.

(6) Historical financial data.

(7) Projected budget.

(8) Planned changes.

(9) Ability to obtain guaranteed credit.

(c) *Supervision and training.* Appropriate supervisory oversight and training recommendations will be developed based on the Agency's evaluation of the strengths and weaknesses of the operation in accordance with paragraphs (a) and (b) of this section and § 1924.59.

(d) *Performing the year-end analysis.* A year-end analysis is required for borrowers (except for Youth loans and loans flagged as having bankruptcy, foreclosure, or other action pending) the first year after an initial or subsequent loan, chattel subordination, or restructuring is received, borrowers who are financially distressed or delinquent, borrowers who have loans deferred, and borrowers who are receiving limited resource interest rates. All other borrowers (including flagged accounts) will receive a year-end analysis at the discretion and judgment of the Agency. However, at least every two years, the borrower will provide upon Agency request, a year-end balance sheet, actual financial performance, and a projected farm budget so that the borrower can be classified for graduation purposes in accordance with subpart F of part 1951. The year-end analysis should coincide with the borrower's farm budget planning period. The borrower will work with the Agency to:

(1) Complete the year-end analysis, whenever possible, within the 60-day period after completion of the borrower's business year or farm budget planning period.

(2) Complete and review the "actual" columns on the farm business plan and Form FmHA 1962–1, "Agreement for the Use of Proceeds/Release of Chattel Security," if applicable.

(3) Develop a farm business plan for the next production cycle in accordance with § 1924.56.

(4) Reach agreement on key management issues. Any such agreements will be documented for the borrower case file and signed by the borrower.

(e) *For all borrowers, the assessment described under this section will be reviewed on at least a semi-annual basis to monitor progress.* The borrower will consult with the Agency official in person, or if that is not possible, by telephone, or in writing. A meeting must be scheduled as soon as practicable to determine corrective options if: the borrower is, or expects to be, delinquent; the borrower is experiencing difficulties; or other significant changes have occurred. The year-end analysis under this section may be treated as one of the required assessment reviews.

13. Sections 1924.56 through 1924.60 are revised to read as follows:

§ 1924.56 Farm business planning.

The automated Farm and Home Plan system is the primary tool used by the Agency to evaluate loan feasibility and prospects for achieving financial viability. Other manual or automated business planning systems may be used with the consent of the Agency.

(a) [Reserved].

(b) *Documentation and revision of plans.* Individuals must submit a farm business plan to the Agency, upon request, for loan approval and servicing purposes. An individual may request the assistance of the Agency official, as needed, in completing the plan. Farm business plans will be based only on accurate, verifiable information. If the Agency official and the individual cannot reach agreement, on the farm business plan, then the Agency will make loan approval and servicing determinations based on the Agency's separate, revised farm business plan. The individual will have the right to appeal any resulting adverse decision.

(1) Historical information will be used as a guide to evaluate the feasibility of projected farm business plans. Individuals must provide the Agency with their previous 5-year production history, if available. Positive and negative trends, mutually agreed upon changes and improvements, and current input prices, will be taken into consideration when arriving at reasonable projections.

(i) For individuals with less than a 5-year history, actual production records from an operation to be taken over by the individual will be considered, whenever available.

(ii) In the absence of the information listed in paragraph (b)(1)(i) of this section, other reliable data sources that may be used include: FSA Farm Programs (formerly Agriculture Stabilization and Conservation Service) actual yield records and county or State averages.

(iii) This paragraph applies when an accurate projection cannot be made because the individual's production history in any or all of the previous 5 years has been substantially affected by a disaster that has been declared by the President or designated by the Secretary of Agriculture. This paragraph also applies to those individuals who would have had a qualifying physical or production loss, as defined in § 1945.154(a), from such a disaster, but who were not located in a designated or declared disaster area.

(A) If the individual's disaster years yields are less than the county average yields, county average yields will be used for those years. If county average

yields are not available, State average yields will be used.

(B) In calculating a baseline average yield, the individual may exclude the production year with the lowest actual or county average yield, providing the individual's yields were affected by disasters during at least 2 of the 5 years.

(2) Unit prices for agricultural commodities as published in the State supplement will generally be used. However, regional or county unit prices may be used when there are transportation costs or other significant factors that cause a difference in commodity prices within the State. Individuals who can provide reliable evidence that they will receive a premium price for a commodity will be allowed to use the higher price for farm planning. The determination of disaster years will be based on the 5-year history of disaster declarations or designations for all counties contained in the State supplement.

(3) When the Agency official and individual revise the farm business plan, the plan will be signed and initialed by both parties. Form FmHA 1962–1 (available in any Agency office) will be revised whenever significant changes occur during the year that will affect repayment ability. It is the individual's responsibility to notify the Agency of any necessary changes. If the changes would result in a major change in the operation, a completely new farm business plan must be developed. The individual and Agency official will initial and date revisions to the Form FmHA 1962–1.

(4) If the borrower and Agency cannot reach an agreement on revisions to the farm plan and an adverse decision results, the borrower may appeal. During an appeal, the Agency will make releases of normal income security for essential family living and farm operating expenses in accordance with § 1962.17. If the borrower refuses to execute Form FmHA 1962–1 as finally determined by the Agency after an appeal, the account will be serviced under § 1962.18. If the borrower does not appeal, the planned releases documented on Form FmHA 1962–1 are binding.

§ 1924.57 [Reserved].

§ 1924.58 Recordkeeping.

(a) All borrowers must have a recordkeeping system, which must be documented as part of the assessment under § 1924.55.

(b) The selected recordkeeping system must provide information similar to that contained in Forms FmHA 431–2, FmHA 432–1, "Farm Family Record Book," and FmHA 432–2, "Five Year Inventory Record." The recordkeeping system must enable borrowers to make informed management decisions and allow the Agency to render loan making and servicing decisions in accordance with Agency program regulations.

(c) Borrowers must maintain accurate records and submit financial information to the Agency when required. Failure to do so will result in the borrower's ineligibility for future Agency financing and loan servicing and may result in acceleration and collection action.

§ 1924.59 Supervision.

The Agency's supervision is based on the information and evaluation resulting from the assessment of the operation. The borrower is required to:

(a) Cooperate with the Agency and comply with all supervisory agreements, farm plans, and all other loan-related requirements.

(b) Promptly notify the Agency of any significant change in the business or family expenses or the development of problem situations.

(c) Maintain and protect the collateral for Agency loans and promptly report to the Agency any losses or other significant changes in the collateral.

(d) Complete any training required by § 1924.74.

§ 1924.60 Nonfarm enterprises.

A nonfarm enterprise is any business enterprise which supplements farm income by providing goods or services for which there is a need and a reasonably reliable market. The same general policies covered in this subpart for giving management assistance to an applicant or borrower on farm loans will be followed in dealing with an applicant or borrower on nonfarm enterprise loans. The appropriate plans and record book will be used for the nonfarm enterprise. The borrower responsibilities in § 1924.59 (a) also apply to nonfarm enterprises.

§§ 1924.61 through 1924.73 [Removed and Reserved.]

14. In part 1924 §§ 1924.61 through 1924.73 are removed and reserved.

§ 1924.74 [Amended]

15. Section 1924.74 is amended by:

a. Removing all references to "FmHA or its successor agency under Public Law 103–354" and adding the word "Agency," it its place;

b. Removing the words "Farmer Programs" and adding the words "Farm Credit Programs" in its place; and

c. Removing the phrase "Form FmHA or its successor agency under Public Law 103–354" wherever it appears and adding the words "Form FmHA" in its place.

16. Section 1924.74 is amended by:

a. removing the ninth and twelfth sentences of introductory paragraph (b)(1) and the second sentence of paragraph (b)(1)(i);

b. removing in the eighth sentence of paragraph (b)(1) the phrase "Form FmHA or its successor agency under Public Law 103–354 1924–23, "

c. removing the words "County Committee," "Committee," in paragraphs (b)(1), (b)(1)(i), (b)(1)(ii) and (b)(2) and adding the word "Agency" in their place; and

d. removing the words "County Committee's" in paragraph (b)(3), introductory text, and paragraph (b)(4) and adding the words "the Agency's" in their place.

17. Section 1924.100 is revised to read as follows:

§ 1924.100 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0560–0154.

18. Exhibit A is amended by redesignating all text following the closure "County Supervisor" as attachment 1 to exhibit A; removing all references to "FmHA or its successor agency under Public Law 103–354" and adding the word "Agency" in its place; by removing the references "Form 1962–1" and adding "Form FmHA 1962–1" in its place; and revising the first paragraph of redesignated attachment 1 to read as follows:

Exhibit A—Letter to Borrower Regarding Releases of Farm Income To Pay Family Living and Farm Operating Expenses

* * * * *

Attachment 1 to Exhibit A

Periodically, you will be asked to complete Form FmHA 1962–1, "Agreement for the Use of Proceeds/ Release of Chattel Security," which will document the agreement between you and the Agency as to how proceeds from the sale of chattel property which serves as security for your Agency loans will be released. You will also need to list those buyers to whom you plan to sell your farm products. This plan will give you and the Agency a clear idea of what income you expect from your operation and how those proceeds will be used. The plan will set forth the amount of money required for paying essential family living, farm operating expenses, and debt service payments. You and the Agency must agree on how much money will be released from your crop proceeds. Such releases must be in accordance with Agency regulations.

* * * * *

PART 1941—OPERATING LOANS

19. The authority citation for part 1941 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

§ 1941.1 [Amended]

20. Section 1941.1 is amended by removing the words "Farmers Home Administration (FmHA)" and adding the words "Farm Service Agency (FSA)" in its place in the fourth sentence and removing "FmHA" and adding the word "Agency" in its place.

§ 1941.4 [Amended]

21. Section 1941.4 is amended by adding the definition for "Agency" after the definition for "Additional security."

* * * * *

Agency. The Farm Service Agency, its county and State committees and their personnel, and any successor agency.

* * * * *

§ 1941.15 [Amended]

22. Section 1941.15 paragraph (e) is amended by:

a. removing the reference to "§ 1924.57" and adding "§ 1924.56" in its place;

b. removing the phrase "for County Committee review";

c. removing the phrase "FmHA or its successor agency under Public Law 103–354" in paragraphs (c), (e)(2), (f)(3), (j), and the heading of paragraph (i) and adding the word "Agency" in its place;

d. by removing the words "FmHA or its successor agency under Public Law 103–354's" in paragraphs (e)(3) and (j) and adding the words "the Agency's" in its place.

23. Section 1941.15 is amended by:

a. removing the second sentence in paragraph (a);

b. removing the phrase "FmHA or its successor agency under Public Law 103–354-assisted" in the first sentence of paragraph (a) and paragraph (h)(2) introductory text;

c. removing the phrase "FmHA or its successor agency under Public Law 103–354 regulations setting forth" in the last sentence of paragraph (f)(2);

d. removing the words "County Committee" and adding the word "Agency" in its place in paragraph (h)(1); and

e. removing the phrase "subpart B of part 1900 of this chapter" and adding "7 CFR part 780" in its place in paragraph (h)(3); and

f. revising paragraph (k) to read as follows:

§ 1941.15 Special beginning farmer or rancher OL loan assistance.

* * * * *

(k) *Agency certification.* A special beginning farmer OL application will only be considered after the applicant submits a complete 5-year plan of operation and a projection of the financial status of the operation as set forth in paragraph (e) of this section. In addition to the requirements of § 1941.30, the following conditions apply:

(1) Agency certifications of eligibility under paragraph (b) of this section are effective throughout the commitment period.

(2) For subsequent loan requests during the commitment period, the Agency will certify as to the applicant meeting the eligibility requirements for the regular direct or guaranteed OL loan programs, as appropriate. Such certification is unnecessary if a 5-year eligibility certification has not yet expired unless the County Supervisor has determined that the applicant's situation has changed such that the eligibility determination would potentially be affected. If recertification is rejected, no subsequent loan will be made under the commitment and the commitment will be revoked in accordance with paragraph (h) of this section.

§ 1941.16 [Amended]

24. Section 1941.16 paragraph (k) is amended by removing the words "Agricultural Stabilization and Conservation Service (ASCS)" and adding the words "FSA Farm Programs (formerly Agricultural Stabilization and Conservation Service)" in its place.

§ 1941.18 [Amended]

25. Section 1941.18 is amended:

a. In paragraph (a), introductory text, by removing "FmHA" and adding the words "the Agency" in its place and

b. In paragraph (a)(2), by removing the reference to "§ 1924.60" and adding "§ 1924.55" in its place.

§ 1941.19 [Amended]

26. Section 1941.19 paragraph (f)(1) is amended:

a. by removing the phrase "FmHA or its successor agency under Public Law 103–354 for any other farmer programs" and adding the phrase "the Agency for any other farm credit programs" in its place and

b. by removing paragraphs (g) through (j).

§ 1941.30 [Removed and Reserved]

27. In part 1941 § 1941.30 is removed and reserved.

§ 1941.33 [Amended]

28. Section 1941.33 is amended:

a. by removing the words "County Committee" in paragraph (b)(1)(i) and adding the word "Agency" in its place,

b. by removing paragraph (b)(1)(ii),

c. by redesignating paragraphs (b)(1)(iii) through (vii) as (b)(1) (ii) through (vi), respectively;

d. by removing the second reference to "FmHA" in paragraph (b)(2)(i), and

e. by removing the words "(see subpart B of part 1900 of this chapter)" from paragraph (c)(2).

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

29. The authority citation for part 1943 is revised to read as follows:

Authority: 5 U.S.C. 301; and 7 U.S.C. 1989.

Subpart A—Direct Farm Ownership Loan Policies, Procedures and Authorizations

§ 1943.1 [Amended]

30. Section 1943.1 is amended by removing the words "Farmers Home Administration (FmHA)" and adding the words "Farm Service Agency (FSA)" in its place and § 1943.2 is amended by removing "FmHA" and adding the word "Agency" in its place.

§ 1943.4 [Amended]

31. Section 1943.4 is amended in the definition of *primary security* by removing "and/or" and adding "and" in its place, and also by adding the following definition after the definition of *additional security.*

* * * * *

Agency. The Farm Service Agency, its county and State committees and their personnel, and any successor agency.

* * * * *

§ 1943.18 [Amended]

32. Section 1943.18(b)(3) is amended by removing the reference to "§ 1924.60" and adding "§ 1924.55" in its place.

§ 1943.29 [Amended]

33. Section 1943.29 (c) is amended by removing the references to "FmHA" and adding the words "the Agency" in its place.

§§ 1943.30 and 1943.32 [Removed and Reserved]

34. In part 1943 §§ 1943.30 and 1943.32 are removed and reserved.

§ 1943.33 [Amended]

35. Section 1943.33 is amended by:

a. removing and reserving paragraph (b)(2);

b. removing paragraph (c);

c. removing the words "County Committee" in paragraph (b)(1)(i) and adding the word "Agency" in its place; and

d. removing paragraph (b)(1)(ii); and redesignating paragraphs (b)(1) (iii) through (vii) as (b)(1) (ii) through (vi) respectively.

Subpart B—Direct Soil and Water Loan Policies, Procedures and Authorizations

§§ 1943.80 and 1943.82 [Removed and Reserved]

36. In part 1943 §§ 1943.80 and 1943.82 are removed and reserved.

§ 1943.83 [Amended]

37. Section 1943.83 is amended by:

a. removing the words "County Committee" in paragraph (b)(1)(i) and adding the word "Agency" in its place;

b. removing paragraph (b)(1)(ii); and redesignating paragraphs (b)(1) (iii) through (vii) as paragraphs (b)(1)(ii) through (vi) respectively; and

c. removing and reserving paragraph (b)(2); and removing paragraph (c).

PART 1945—EMERGENCY

38. The authority citation for part 1945 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1980.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

§§ 1945.151 and 1945.152 [Amended]

39. Sections 1945.151 and 1945.152 are amended by removing the words "Farmers Home Administration (FmHA)" and adding the words "Farm Service Agency (FSA)" in its place and by removing "FmHA" and adding the word "Agency" in its place.

§ 1945.154 [Amended]

40. Section 1945.154 (a) is amended in the definition of *Feasible Plan* by removing words "§ 1924.57(c)(5) of" and also by adding the following definition after the definition of *Additional security.*

* * * * * * *

Agency. The Farm Service Agency, its county and State committees and their personnel, and any successor agency.

* * * * *

41. Section 1945.163 is amended by:

a. removing all references to "Form FmHA or its successor agency under Public Law 103–354 and adding the words "Form FmHA" in their place;

b. removing the reference to "FmHA" in the last sentence of introductory text; and adding the words "the Agency" in its place; and

c. by removing and reserving paragraph (a)(2)(ii) and revising paragraph (a)(1) to read as follows:

§ 1945.163 Determining qualifying losses, eligibility for EM loan(s) and the maximum amount of each.

* * * * *

(a) * * *

(1) The normal year's production will be established by eliminating the poorest year of the 5-year production history immediately preceding the disaster year and averaging the remaining 4 years' production. The applicant must select the year to be eliminated. The year selected to be eliminated must be the same year for all farm enterprises (i.e., all crops, livestock, and livestock products), which constituted a part of the applicant's farming operation during that year. Applicants will identify the production for each commodity that was produced on all farms operated by the applicant in the disaster year. Applicants must use the production record sources for each crop in the order of priority as follows:

(i) *The applicant's actual reliable farm records.* If actual yields are not available for all of the 5 crop years, the applicant will use a combination of actual records and other data as specified in paragraphs (a)(1) (ii) and (iii) of this section.

(ii) *FSA Farm Programs (formerly ASCS) "actual yields."* When this production record source is used, the applicant must obtain the information and submit it with the application. The disaster year actual yield will be used as the yield for those years for which the applicant has no production records to determine the normal year's yields.

(iii) *The county or State average yields.* These average yields are located in the State supplement. However, these production figures can be substituted only when an applicant has insufficient records for certain commodities and years.

(iv) *State Director determination.* When an applicant's production loss is on new land being developed, or to young perennial crops such as fruits and nuts, which have not reached their mature production potential, the Agency will establish the normal yields to be used.

* * * * *

§ 1945.166 [Amended]

42. Section 1945.166 is amended by removing "FmHA" in the last sentence of paragraph (c)(4) and adding the word "Agency" in its place.

§ 1945.167 [Amended]

43. Section 1945.167 is amended by removing paragraph (g); removing paragraph (h); redesignating paragraphs (i) through (k) as (h) through (j), and removing "FmHA" wherever it appears in redesignated paragraph (h) and adding the word "Agency" in its place.

44. Section 1945.167 is amended by:

a. removing the words "crop(s)" and "disaster(s)" in paragraph (a) and adding the words "crop" and "disaster" in their place respectively;

b. removing the words "FmHA or its successor agency under Public Law 103–354" in the heading of paragraph (b) and adding the word "Agency" in its place; and removing the words "FmHA or its successor agency under Public Law 103–354 farmer programs" in paragraph (b) and adding the words "Farm Credit Programs" in its place;

c. removing the word "purpose(s)" in the heading of paragraph (c) and adding the word "purposes" in its place; removing the word "operation(s)" in paragraph (c) and adding the word "operation" in its place.

§ 1945.168 [Amended]

45. Section 1945.168 is amended:

a. by removing "FmHA" in the first sentence of paragraph (a) and adding the words "the Agency" in its place; and

b. by removing the words "loan(s)", "reason(s)" and "lien(s) in paragraphs (b)(1)(i) and (ii) and adding the words "loans", "reasons" and "lien" in their place, respectively.

§ 1945.169 [Amended]

46. Section 1945.169 is amended by removing and reserving paragraphs (n), (o), and removing (p)(3), and (p)(4).

§ 1945.173 [Amended]

47. Section 1945.173 is amended by removing "FmHA" in paragraph (b)(2)(ii) and adding the word "Agency" in its place.

§§ 1945.180 and 1945.182 [Removed and Reserved]

48. In part 1945 §§ 1945.180 and 1945.182 are removed and reserved.

§ 1945.183 [Amended]

49. Section 1945.183 is amended by removing and reserving paragraphs (a)(1) through (3), (a)(4)(i) and (ii); and removing (c) through (e).

50. Section 1945.183 is amended:

a. by removing the words "County Committee" in paragraph (b) introductory text, and paragraph (b)(1) and adding the word "Agency" in its place;

b. by removing the phrase "FmHA or its successor agency under Public Law 103–354" in paragraphs (a)(4)(iii), (b)(7) and (b)(8) and adding the word "Agency" in its place;

c. by removing the word "loan(s)" in paragraphs (b)(4) and (b)(8) and adding the word "loan" in its place;

d. by removing the word "certification(s)" in paragraph (b)(6) and adding the word "certifications" in its place; and

e. by removing the words "Form FmHA or its successor agency under Public Law 103–354" wherever it appears and adding the words "Form FmHA" in its place.

PART 1951—SERVICING AND COLLECTIONS

51. The authority citation for part 1951 is revised to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

52. Sections 1951.251 through 1951.300 are revised to read as follows:

§ 1951.251 Purpose.

This subpart prescribes the policies to be followed when analyzing a direct borrower's needs for continued Agency supervision, further credit, and graduation. All loan accounts will be reviewed for graduation in accordance with this subpart, with the exception of Guaranteed, Watershed, Resource Conservation and Development, Rural Development Loan Funds, and Rural Rental Housing loans made to build or acquire new units pursuant to contracts entered into on or after December 15, 1989, and Intermediary Relending Program loans. The term "Agency" used in this subpart refers to the Farm Service Agency (FSA) including its county and state committees and their personnel), Rural Utilities Service (RUS), Rural Housing Service (RHS), or Rural Business-Cooperative Service (RBS), depending upon the loan program discussed herein.

§ 1951.252 Definitions.

Commercial classified. The Agency's highest quality Farm Credit Programs (FCP) accounts. The financial condition of the borrowers is strong enough to enable them to absorb the normal adversities of agricultural production and marketing. There is ample security for all loans, there is sufficient cash flow to meet the expenses of the agricultural enterprise and the financial needs of the family, and to service debts. The account is of such quality that commercial lenders would likely view the loans as a profitable investment.

Farm Credit Programs (FCP) loans. FSA Farm Ownership (FO), Operating (OL), Soil and Water (SW), Recreation (RL), Emergency (EM), Economic Emergency (EE), Economic Opportunity (EO), Special Livestock (SL), Softwood Timber (ST) loans, and Rural Housing loans for farm service buildings (RHF).

Graduation, FCP. The payment in full of all FCP loans or all FCP loans of one type (i.e., all loans made for chattel purposes or all loans made for real estate purposes) by refinancing with other credit sources either with or without an Agency loan guarantee. A loan made for both chattel and real estate purposes, for example an EM loan, will be classified according to how the majority of the loan's funds were expended. Borrowers must continue with their farming operations to be considered as graduated.

Graduation, other programs. The payment in full of any direct loan for Community and Business Programs, and all direct loans for housing programs, before maturity by refinancing with other credit sources. Graduated housing borrowers must continue to hold title to the property. Graduation, for other than FCP, does not include credit which is guaranteed by the United States.

Prospectus, FCP. Consists of a transmittal letter with a current balance sheet and projected year's budget attached. The applicant's or borrower's name and address need not be withheld from the lender. The prospectus is used to determine lender interest in financing or refinancing specific Agency direct loan applicants and borrowers. The prospectus will provide information regarding the availability of an Agency loan guarantee and interest assistance.

Reasonable rates and terms. Those commercial rates and terms which borrowers are expected to meet when borrowing for similar purposes and similar periods of time. The "similar periods of time" of available commercial loans will be measured against, but need not be the same as, the remaining or original term of the loan. In the case of Multi-Family Housing (MFH) loans, "reasonable rates and terms" would be considered to mean financing that would allow the units to be offered to eligible tenants at rates consistent with other multi-family housing.

Servicing official. The district or county office official responsible for the immediate servicing functions of the borrower.

Standard classified. These loan accounts are fully acceptable by Agency standards. Loan risk and potential loan servicing costs are higher than would be acceptable to other lenders, but all loans are adequately secured. Repayment ability is adequate, and there is a high probability that all loans will be repaid as scheduled and in full.

§ 1951.253 Objectives.

(a) [Reserved]

(b) Borrowers must graduate to other credit at reasonable rates and terms when they are able to do so.

(c) If a borrower refuses to graduate, the account will be liquidated under the following conditions:

(1) The borrower has the legal capacity and financial ability to obtain other credit.

(2) Other credit is available from a commercial lender at reasonable rates and terms. In the case of Labor Housing (LH), Rural Rental Housing (RRH), and Rural Cooperative Housing (RCH) Programs, reasonable rates and terms must also permit the borrowers to continue providing housing for low and moderate income persons at rental rates tenants can afford considering the loss of any subsidy which will be canceled when the loan is paid in full.

(d) The Agency will enforce borrower graduation.

§ 1951.254 [Reserved]

§ 1951.255 Nondiscrimination.

All loan servicing actions described in this subpart will be conducted without regard to race, color, religion, sex, familial status, national origin, age, or physical or mental handicap.

§§ 1951.256—1951.261 [Reserved]

§ 1951.262 Farm Credit Programs—graduation of borrowers.

(a) [Reserved].

(b) [Reserved].

(c) [Reserved].

(d) [Reserved].

(e) *Graduation candidates.* Borrowers who are classified "commercial" or "standard" are graduation candidates. At least every 2 years, all borrowers who have a current classification of commercial or standard must submit a year-end balance sheet, actual financial performance information for the most recent year, and a projected budget for the current year to enable the Agency to reclassify their status and determine their ability to graduate.

(f) *Sending prospectus information to lenders.* (1) The Agency will distribute a borrower's prospectus to local lenders for possible refinancing only with the borrower's written permission. If more than one lender indicates an interest in providing credit, the borrower has the right to select a lender.

(2) If any borrower does not consent to the Agency contacting lenders directly on their behalf, the borrower must make formal application to at least

two local lenders who typically finance operations similar to that of the borrower. The borrower is responsible for any application fees. Letters of denial or rejection from lenders without formal application being made will not be accepted by the Agency. The borrower has 60 days from the date the borrower receives the prospectus information to make application and receive a response from lenders. For good cause, the borrower may be granted a reasonable amount of additional time by the Agency.

§ 1951.263 Graduation of non-Farm Credit programs borrowers.

(a) [Reserved]. .

(b) [Reserved].

(c) *The thorough review.* Borrowers are required to supply such financial information as the Agency deems necessary to determine whether they are able to graduate to other credit. At a minimum, the financial statements requested from the borrower must include a balance sheet and a statement of income and expenses. Ordinarily, the financial statements will be those normally required at the end of the particular borrower's fiscal year. For borrowers who are not requested to furnish audited financial statements, the balance sheet and statement of income and expenses may be of the borrower's own format if the borrower's financial situation is accurately reflected. The borrower has 60 days for group type loans and 30 days for individual type loans to supply the financial information requested.

(d) [Reserved].

(e) *Requesting the borrower to graduate.* (1) The Agency will send written notice to borrowers found able to graduate requesting them to graduate. The borrower must seek a loan only in the amount necessary to repay the unpaid balance.

(2) Borrowers must provide evidence of their ability or inability to graduate within 30 days for RH borrowers, and 90 days for group type berrowers, after the date of the request. The Agency may allow additional time for good cause, for example when a borrower expects to receive income in the near future for the payment of accounts which would substantially reduce the amount required for refinancing, or when a borrower is a public body and must issue bonds to accomplish graduation.

(3) If a borrower is unable to graduate the full amount of the loan, the borrower must furnish evidence to the Agency, showing:

(i) The names of other lenders contacted;

(ii) The amount of loan requested by the borrower and the amount, if any, offered by the lenders;

(iii) The rates and terms offered by the lenders or the specific reasons why other credit is not available; and

(iv) The purpose of the loan request.

(4) The difference in interest rates between the Agency and other lenders will not be sufficient reason for failure to graduate if the other credit is available at rates and terms which the borrower can reasonably be expected to pay. An exception is made where there is an interest rate ceiling imposed by Federal law or contained in the note or mortgage.

(5) The Agency will notify the borrower in writing if it determines that the borrower can graduate. The borrower must take positive steps to graduate within 15 days for individual loans and 60 days for group loans from such notice to avoid legal action. The servicing official may grant a longer period where warranted.

§ 1951.264 Action when borrower fails to cooperate, respond or graduate.

(a) When borrowers with other than FCP loans fail to:

(1) Provide information following receipt of both FmHA Guide Letters 1951–1 and 1951–2 (available in any Agency office), or letters of similar format, they are in default of the terms of their security instruments. The approval official may, when appropriate, accelerate the account based on the borrower's failure to perform as required by this subpart and the loan and security instruments.

(2) Apply for or accept other credit following receipt of both FmHA Guide Letters 1951–F–5 and 1951–6 (available in any Agency office), or letters of similar format, they are in default under the graduation requirement of their security instruments. If the Agency determines the borrower is able to graduate, foreclosure action will be initiated in accordance with § 1955.15(d)(2)(ii). If the borrower's account is accelerated, the borrower may appeal the decision.

(b) If an FCP borrower fails to cooperate after a lender expresses a willingness to consider refinancing the Agency loan, the account will be referred for legal action.

§ 1951.265 Application for subsequent loan, subordination, or consent to additional indebtedness from a borrower who has been requested to graduate.

(a) Any borrower who appears to meet the local commercial lending standards, taking into consideration the Agency's loan guarantee program, will not be considered for a subsequent loan, subordination, or consent to additional indebtedness until the borrower's ability or inability to graduate has been confirmed. An exception may be made where the proposed action is needed to alleviate an emergency situation, such as meeting applicable health or sanitary standards which require immediate attention.

(b) If the borrower has been requested to graduate and has also been denied a request for a subsequent loan, subordination, or consent to additional indebtedness, the borrower may appeal both issues.

§ 1951.266 Special requirements for MFH borrowers.

All requirements of subpart E of part 1965 must be met prior to graduation and acceptance of the full payment from an MFH borrower.

§§ 1951.267–1951.299 [Reserved]

§ 1951.300 OMB control number.

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0093.

Exhibit A of Subpart F—[Removed and Reserved]

53. Exhibit A of subpart F is removed and reserved.

Subpart S—Farmer Program Account Servicing Policies

54. Section 1951.906 is amended by revising the definitions of "Feasible plan," "Financially distressed," and "Good faith" to read as follows:

§ 1951.906 Definitions.

* * * * *

Feasible plan. A feasible plan is a plan based upon the applicant's or borrower's actual records that show the farming operation's actual income, production and expenses. Income tax returns and supporting documents (hereafter called income tax records) must be submitted to verify the actual records. The records, including income tax records, must be for the most recent 5-year period or if the borrower has been farming less than 5 years, the records for the period which the borrower has farmed. For borrowers who have been farming for less than 5 years, the borrower's actual records will be used along with other available records in the order listed in § 1924.56 to complete a 5-year history. Future production yields will be based on a 5-year average of the most recent past 5 years' actual production yields.

Borrowers that have yields affected by disasters in at least 2 of the 5 most recent years' actual production may exclude the crop year with the lowest actual yield. In accordance with § 1924.56, if the applicant's remaining disaster year's yields are less than the county average yield and the borrower's yields were affected by the disaster, county average yields will be used for that year. If county average yields are not available, State average yields will be used. These records will be used along with realistic anticipated prices, including any planned farm program payments, to determine that the income from the farming operation and any reliable off-farm income, will provide the income necessary for an applicant or borrower to at least be able to:

(1) Pay all operating expenses and all taxes which are due during the projected farm business accounting period.

* * * * * *

(3) Meet up to 105 percent, but not less than 100 percent, of the scheduled payments on all debts, except as provided in § 1941.14 for annual production loans or subordinations made to a delinquent borrower submitting a "NEW APPLICATION." The Agency will assume that a borrower needs up to 105 percent of the scheduled payments on all the debts for the business accounting period in order to meet the obligations and continue farming. However, this will not prohibit a borrower from receiving debt restructuring because the projected income is less than 105 percent of the scheduled payments. In no case will a borrower receive restructuring if projected income is less than 100 percent of scheduled payments.

* * * * * *

Financially distressed. A financially distressed borrower is one who will not be able to make payments as planned for the current or next business accounting period. Borrowers will also be considered financially distressed if the borrower will not be able to project a feasible plan of operation for the next business accounting period.

* * * * *

Good faith. An eligibility requirement for Primary Loan Servicing including Net Recovery Buyout, and Leaseback/Buyback. A borrower is considered to have acted in "good faith" if the borrower has demonstrated honesty and sincerity in carrying out the agreements on Form FmHA 1962–1 (available in any Agency office) and any other written agreements with the Agency. Findings of a lack of good faith will be based on violations within the borrower's control. These actions will demonstrate the borrower's intent to violate written agreements with the Agency. The Agency must substantiate any allegations of fraud, waste, or conversion with a written legal opinion by the Office of the General Counsel (OGC) when such allegations are used to deny a servicing request. A borrower will not be considered to lack good faith if the sole basis for such determination was the disposition of normal income security, as defined in § 1962.4, prior to October 14, 1988 without the Agency's consent and the borrower demonstrates that the proceeds were used to pay essential family living and farm operating expenses that the Agency could have approved according to § 1962.17.

* * * * * *

§ 1951.909 [Amended]

55. Section 1951.909 is amended:

a. by removing the reference to "§ 1924.60 of subpart B of part 1924 of this chapter" in paragraph (e)(3)(vii) and adding the reference "§ 1924.55," in its place and;

b. by removing the reference "as set forth in subpart B of part 1900 of this chapter" in paragraph (e)(3)(vii).

56. Section 1951.909 is amended:

a. by removing the phrase "FmHA or its successor agency under Public Law 103–354" in the heading of paragraph (e)(4) and in paragraph (e)(4)(xi) and adding the word "Agency" in its place; and

b. by removing and reserving paragraphs (e)(3)(vi)(B) and (C).

PART 1955—PROPERTY MANAGEMENT

57. The authority citation for part 1955 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart B—Management of Property

§ 1955.66 [Amended]

58. Section 1955.66 is amended:

a. by removing the words "Farmer Program loans" in paragraphs (a)(2)(iii)(A) and adding the words "Farm Credit Programs loans" in their place;

b. by removing the reference "§ 1924.27 of" in paragraph (a)(2)(iii)(B);

c. by removing the phrase "FmHA or its successor agency under Public Law 103–354" in the third sentence of the introductory text and paragraphs (a)(1) and (a)(2)(iii)(C) and adding the words "the Agency" in its place; and

d. by removing the words "Agricultural Stabilization and Conservation Service (ASCS)" in paragraph (a)(2)(iii)(D) and adding the words "the local FSA Farm Programs (formerly ASCS)" in its place.

PART 1962—PERSONAL PROPERTY

59. The authority citation for part 1962 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Servicing and Liquidation of Chattel Security

§ 1962.5 [Removed and Reserved]

60. In part 1962 § 1962.5 is removed and reserved.

61. Section 1962.6 is revised to read as follows:

§ 1962.6 Liens and assignments on chattel property.

(a) *Chattel property not covered by Agency lien.* (1) When additional chattel property not presently covered by an Agency lien is available and needed to protect the Government's interest, the County Supervisor will obtain one or more of the following:

(i) A lien on such property.

(ii) An assignment of the proceeds from the sale of agricultural products when such products are not covered by the lien instruments.

(iii) An assignment of other income, including FSA Farm Programs (formerly ASCS) payments.

(2) When a current loan is not being made to a borrower, a crop lien will be taken as additional security when the County Supervisor determines in individual cases that it is needed to protect the Government's interests. However, a crop lien will not be taken as additional security for Farm Ownership (FO), Rural Housing (RH), Labor Housing (LH), and Soil and Water (SW) loans. When a new security agreement or chattel mortgage is taken, all existing security items will be described on it.

(b) [Reserved]

(c) *Assignments of upland cotton, rice, wheat and feed grain payments.* Borrowers may assign FSA Farm Programs (formerly ASCS) payments under upland cotton, rice, wheat and feed grain programs.

(1) *Obtaining assignments.* Assignments will be obtained as follows:

(i) Only when it appears necessary to collect operating-type loans.

(ii) Only for the crop year for which operating-type loans are made, and

(iii) For only the amount anticipated for payments as indicated on Form FmHA 1962–1, "Agreement for the Use of Proceeds/Release of Chattel

Security," of the applicable upland cotton, rice, wheat and feed grain programs.

(2) *Selecting counties.* The County Supervisor then will:

(i) Determine, at the time of loan processing for indebted borrowers and new applicants, who must give assignments and obtain them no later than loan closing. Special efforts will be made to obtain the bulk of assignments before the sign-up period for enrolling in the annual Feed Grain and Wheat set aside programs.

(ii) Obtain assignments from selected borrowers on Form ASCS–36, "Assignments of Payment," which will be obtained from FSA Farm Programs.

(3) *Releasing assignments and handling checks.* (i) The County Supervisor will inform FSA Farm Programs that releasing its assignment whenever a borrower pays the amount due for the year on the operating-type loan debt or pays the debt in full.

(ii) Checks obtained as a result of an assignment will be made only to the Agency, and the proceeds used as indicated on Form FmHA 1962–1.

§ 1962.8 [Amended]

62. Section 1962.8 is amended by removing and reserving paragraphs (a) and (b).

§ 1962.9 and 1962.12 [Removed and Reserved]

63. In part 1962 §§ 1962.9 and 1962.12 are removed and reserved.

64. Section 1962.13 is revised to read as follows:

§ 1962.13 Notification to potential purchasers.

(a) In States without a Central Filing System (CFS), all Farm Credit Programs borrowers prior to loan closing or prior to any servicing actions which require taking a lien on farm products, such as crops or livestock, must provide the names and addresses of potential purchasers. A written notice will be sent by the Agency, certified mail, return receipt requested, to these potential purchasers to protect the Government's security interest.

(1) The name and address of the debtor, with signature.

(2) The name and address of any secured party.

(3) The Social Security number or tax ID number of the debtor.

(4) A description of the farm products given as security by the debtor, including the amount of such products where applicable, the crop year, the county in which the products are located, and a reasonable description of the farm products.

(5) Any payment obligation imposed on the potential purchaser by the secured party as a condition for waiver or release of lien. The original or a copy of the written notice also must be sent to the purchaser within 1 year before the sale of the farm products. The written notice will lapse on either the expiration period of the Financing Statement or the transmission of a letter signed by the County Supervisor and showing that the statement has lapsed or the borrower has performed all obligations to the Agency.

(b) Lists of borrowers whose chattels or crops are subject to an Agency lien may be made available, upon request, to business firms in a trade area, such as sale barns and warehouses, that buy chattels or crops or sell them for a commission. These lists will exclude those borrowers whose only crops for sale require FSA Farm Programs (formerly ASCS) marketing cards. The list is furnished only as a convenience and may be incomplete or inaccurate as of any particular date.

(1) [Reserved]

(2) [Reserved]

65. In § 1962.14 all references to "FmHA or its successor agency under Public Law 103–354" are removed and the words "the Agency" are added in their place.

66. Section 1962.16, introductory text is added and paragraph (a) is revised to read as follows:

§ 1962.16 Accounting by the borrower.

The Agency will maintain a current record of each borrower's security. Whenever an inspection is performed, the borrower must advise the Agency of any changes in the security and will complete and sign Form FmHA 1962–1 in accordance with § 1924.56 if it has not been previously completed for the year.

(a) *Agency responsibilities.* Chattel security will be inspected annually except in cases where the Agency official has justified in assessment or analysis review that no undue risk exists. An FO borrower who has been current with the Agency and who has provided chattels as additional security is an example of a case where an inspection may not be needed. All inspections will be recorded in the running record of the borrower's file. More frequent inspections should be made for delinquent borrowers or borrowers that have been indebted for less then 1 full crop year. The Agency official will discuss the provisions of §§ 1962.17 and 1962.18 and assist the borrower in completing the form. If a borrower does not plan to dispose of any chattel security, the form should be completed to show this and should be signed. When the Agency official has other contacts with the borrower, the official should also check for dispositions and acquisitions of security. Changes will be recorded on the form, dated and initialed by the borrower and the agency official. The purpose of all inspections is to:

(1) Verify that the borrower possesses all the security,

(2) Determine security is properly maintained, and

(3) Supplement security instruments.

* * * * *

67. Section 1962.17, paragraph (a), is revised to read as follows:

§ 1962.17 Disposal of chattel security, use of proceeds and release of lien.

(a) *General.* (1) The borrower must account for all security. When the borrower sells security, the property and proceeds remain subject to the Agency's lien until the lien is released. All checks, drafts, or money orders which the borrower receives for the sale of collateral listed on Form FmHA 1962–1 (available in any Agency office) must be payable to both the borrower and the Agency unless all Agency loan installments for the period of the form have been paid including any past-due installments. If the borrower disposes of collateral or uses the proceeds in a way not listed on Form FmHA 1962–1, the borrower will have violated the loan agreement, and the Government will not release its security interest in the collateral. Releases of sales proceeds will be terminated when the borrower's accounts are accelerated.

(2) Section 1924.56 requires that there must always be a current Form FmHA 1962–1 in the file of a borrower with a loan secured by chattels. If a borrower asks the Agency to release proceeds from the sale of chattels and there is a current Form FmHA 1962–1 in the file, the request will be approved or disapproved in accordance with paragraph (b) of this section. If the borrower's request for release is denied, the borrower must be given attachment 1 of exhibit A of subpart S of part 1951 of this chapter, a written explanation of the reasons for the denial, and the opportunity for an appeal in accordance with 7 CFR part 780. Immediately upon determining that the borrower does not have a current Form FmHA 1962–1 in the file, the County Supervisor will immediately contact the borrower to develop one.

(3) If the borrower requests a change(s) to Form FmHA 1962–1, and the County Supervisor can approve the change(s), the borrower and the County Supervisor will initial and date each

change in accordance with item (6) in the Forms Manual Insert (FMI) for Form FmHA 1962–1. The form will be marked "Revised" and the borrower will be notified in writing confirming that the change(s) has been approved.

* * * * *

68. Section 1962.17 is amended by:

a. removing the phrase "or its successor agency under Public Law 103–354" wherever it appears;

b. removing the word "FmHA," except when it refers to "Form FmHA," the second time it appears in paragraph (a)(1), in paragraphs (a)(2), (b)(2), (b)(2)(v), the second time it appears in paragraph (b)(2)(vii), in paragraphs (b)(2)(viii)(B), (b)(3), (b)(5), (c)(2)(i), in the first and last sentences of paragraph (d)(2)(ii), and in paragraphs (e)(1)(i) through (e)(1)(iii) and adding the words "the Agency" in its place;

c. removing the word "FmHA," except when it refers to "Form FmHA," in the first and second sentences of paragraphs (b)(1) and in paragraphs (b)(2)(iv), (b)(2)(vi), (b)(2)(vii), (c)(2), (c)(2)(ii), (c)(4), (c)(5), (d), (f) and (g) and adding the word "Agency" in its place;

d. removing the reference to "1924.57(d)" in the last sentence of paragraph (b)(5) and adding the reference "1924.56" in its place;

e. removing the words "Farmer Programs" in paragraph (c)(5) and adding the words "Farm Credit Programs" in its place; and

f. removing the words "Farmers Home Administration" in paragraph (d)(2)(ii).

* * * * *

§ 1962.34 [Amended]

69. Section 1962.34 is amended by:

a. removing paragraphs (f) through (h);

b. removing the phrase "FmHA or its successor agency under Public Law 103–354's" in paragraph (b)(1) and adding the words "the Agency's" in its place;

c. removing the phrase "FmHA or its successor agency under Public Law 103–354" in paragraphs (b)(2), (b)(4), and (d), and the first word at the beginning of the first sentence and the second, fourth, and fifth sentences of paragraph (b)(3) and adding the word "Agency" in its place;

d. removing the phrase "Form FmHA or its successor agency under Public Law 103–354 1964–13" in paragraph (b)(3) and adding the words "Form FmHA 1965–13" in its place;

e. removing the words "Farmer Programs" in paragraphs (b)(3) and (d) and adding the words "Farm Credit Programs" in its place; and

f. by revising paragraph (e) to read as follows:

§ 1962.34 Transfer of chattel security and EO property and assumption of debts.

* * * * *

(e) *Agency actions.*

(1) *Transfer to eligible applicant.* The Agency will determine the transferee's eligibility for the type of loan to be assumed.

(2) *Release from liability.* If the total outstanding debt is not assumed, the Agency must make the following determinations before it releases the transferor from personal liability:

(i) The transferor and any cosigner do not have reasonable ability to pay all or a substantial part of the balance of the debt not assumed after considering their assets and income at the time of transfer,

(ii) The transferor and any cosigner have cooperated in good faith, used due diligence to maintain the security against loss, and have otherwise fulfilled the covenants incident to the loan to the best of their ability, and

(iii) The transferee will assume a portion of the indebtedness at least equal to the present market value of the security.

* * * * *

§ 1962.40 [Amended]

70. Section 1962.40 is amended by:

a. adding the words "subpart A of" immediately preceding the reference "part 1965" in paragraph (c);

b. removing the word "insured" in the heading of paragraph (d) and adding the word "direct" in its place; removing the words "an insured" in the first sentence of paragraph (d) and adding the words "a direct" in its place; and by removing the phrase "to FmHA or its successor agency under Public Law 103–354" in the first sentence of paragraph (d);

c. removing the phrase "FmHA or its successor agency under Public Law 103–354's" in the second sentence of paragraph (d) and in paragraph (e)(1) and adding the word "Government's" in its place;

d. removing all references to "FmHA or its successor agency under Public Law 103–354" in paragraphs (e)(1)(i) and (e)(2) and adding the words "the Agency" in their place; and

e. removing and reserving paragraph (e)(4).

§ 1962.43 [Removed and Reserved]

71. In part 1962 § 1962.43 is removed and reserved.

§ 1962.44 [Amended]

72. Section 1962.44 is amended by removing and reserving paragraphs (a) and (c); and by removing all references to "FmHA or its successor agency under Public Law 103–354" in paragraph (b) and adding the words "the Agency" in their place.

§ 1962.46 [Amended]

73. Section 1962.46 is amended by:

a. removing the words "an insured" in the fourth sentence of the introductory text of paragraph (c) and adding the words "a direct" in its place;

b. removing all references to "FmHA or its successor agency under Public Law 103–354" and adding the words "the Agency" in their place, and

c. by removing all references to "FmHA or its successor agency under Public Law 103–354's" in paragraphs (b) through (d) and adding the words "the Agency's" in their place.

§ 1962.47 [Amended]

74. Section 1962.47 is amended:

a. by removing the words "an insured" in the first sentence of paragraph (b)(2)(iv) and adding the words "a direct" in its place;

b. by removing references to "FmHA or its successor agency under Public Law 103–354" in paragraphs (a)(3)(i), (b), introductory text, (b)(2)(i), (b)(2)(iv), and (c) introductory text, and adding the words "the Agency" in its place; and

c. by removing the phrase "or its successor agency under Public Law 103–354 1965–14" in the first sentence of paragraph (b)(2)(i).

Exhibit F of Subpart A—[Removed and Reserved]

75. Exhibit F of Subpart A is removed and reserved.

PART 1965—REAL PROPERTY

76. The authority citation for part 1965 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Servicing of Real Estate Security for Farm Credit Program Loans and Certain Note—Only Cases

§ 1965.13 [Amended]

77. Section 1965.13 is amended by:

a. removing the phrase "FmHA or its successor agency under Public Law 103–354" in paragraph (f)(4)(ii) and adding the words "FSA Farm Credit Programs" in its place; and

b. removing the references to "§ 1924.57(c)(5)" and § 1924.57(b)" in paragraphs (f)(4)(ii)(A) and (B) and adding "§ 1924.56" in their place.

PART 1980—GENERAL

78. The authority citation for part 1980 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart B—Farm Credit Programs Loans

§ 1980.101 [Amended]

79. Section 1980.101 is amended by:

a. removing the words "Farmers Home Administration or its successor agency under Public Law 103–354" in the first sentence of paragraph (a);

b. removing all references to "FmHA or its successor agency under Public Law 103–354" in paragraphs (a) and (b) and adding the word "Agency" in their place;

c. adding and reserving paragraphs (c)(1) and (c)(2);

d. removing the words "Farmer Programs" in paragraphs (a) and (b) and adding the words "Farm Credit Programs" in its place;

e. removing the phrase "or its successor agency under Public Law 103–354" in paragraph (e)(1), and

f. by revising paragraph (e)(2) to read as follows:

§ 1980.101 Introduction.

* * * * *

(e) * * *

(2) *Contract of Guarantee (Operating Loans—Line of Credit only).* Lenders desiring a guarantee on a "line of credit" will use the method contained in subpart A of this part. Line of credit loans are guaranteed in accordance with Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)." Line of credit notes and agreements may not be sold by the originating lender, but the originating lender may use participating lenders in accordance with § 1980.119. Any amount advanced by the lender in excess of the line of credit ceiling set forth in the contract is not guaranteed by the Agency.

§ 1980.106 [Amended]

80. Section 1980.106(b) is amended by:

a. removing the words "Farmer Programs" in the definition of "Applicant" and adding the words "Farm Credit Programs" in its place;

b. removing the phrase "FmHA or its successor agency under Public Law 103–354" in the definition of *Approval official* and adding the word *Agency* in its place; and

c. adding the definition of *Agency* before the definition of *Applicant.*

* * * * *

Agency. Farm Service Agency, its county and State committees and their personnel, and any successor agency.

* * * * *

§ 1980.108 [Amended]

81. Section 1980.108 is amended by:

a. removing the phrases "FmHA or its successor agency under Public Law 103–354" and "FmHA or its successor agency under Public Law 103–354's" in paragraph (a)(1)(iii) and adding the words "the Agency" and "the Agency's" in their place respectively, and

b. by revising paragraphs (a)(1)(i) and (a)(2)(i) to read as follows:

§ 1980.108 General provisions.

(a) * * *

(1) * * * (i) The lender is responsible for seeing that security is obtained and maintained to protect the interests of the lender and the Agency.

* * * * *

(2) * * * (i) Guarantees of parent, subsidiary, or affiliated companies may be required. Guarantees will be required in an amount which reasonably assures repayment of the loan or line of credit and provides sufficient security. If a review of all credit factors indicates the need for additional security, the lender or the Agency may require additional personal and corporate guarantees. The lender or the Agency also may require that such guarantees be secured.

* * * * *

82. Section 1980.109 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 1980.109 Promissory notes, line of credit agreements, security instruments, and financing statements.

* * * * *

(b) *Financing statements.* Commercial financing statement forms that comply with state laws and regulations may be used. If the financing statement does not already contain the following provisions, they must be inserted to meet Agency requirements:

* * * * *

§ 1980.103 [Amended]

83. Section 1980.110 is amended by:

a. removing the phrase "FmHA or its successor agency under Public Law 103–354" in the introductory text, in the first and last sentences of paragraph (a), the second time it appears in paragraph (b) and in paragraph (c) and adding the words "the Agency" and "The Agency" in their place;

b. removing the phrase "FmHA or its successor agency under Public Law 103–354 Instruction 440.1" in the last sentence of paragraph (a) and adding the words "FmHA Instruction 440.1" in its place; and

c. by removing the phrase "Form FmHA or its successor agency under Public Law 103–354 1980–24" in paragraph (b) and adding the words "Form FmHA 1980–24" in its place.

84. Section 1980.113 is amended by:

a. removing the phrase "FmHA or its successor agency under Public Law 103–354" wherever it appears in the introductory text and adding the word "Agency" in its place;

b. removing the phrase "or its successor agency under Public Law 103–354" in paragraphs (a), introductory text, (a)(1), (a)(2), (a)(5), and (b), introductory text;

c. removing the words "cash flow" in the third sentence in the introductory text of paragraph (a)(7) and adding the words "case file" in its place;

d. removing the phrase "FmHA or its successor agency under Public Law 103–354" in paragraph (a)(7)(ii) and adding the word "Agency" in its place;

e. removing the words "a disaster(s)" in the introductory text of paragraph (a)(7)(ii)(D) and adding the word "disasters" in its place;

f. revising paragraphs (a)(6), (a)(7)(i)(B), (a)(7)(ii)(B) and (C), (a)(7)(ii)(D)(*1*), and (a)(11)(ii) and (iii); and

g. adding new paragraphs (a)(12) and (c) to read as follows:

§ 1980.113 Receiving and processing applications.

* * * * *

(a) * * *

(6) *Proposed loan agreement or line of credit agreements between the applicant and lender.* Loan agreements or line of credit agreements will address at least the following:

(i) Improved management or production practices to be implemented.

(ii) Requirements for accounting, recordkeeping, and financial reporting.

(iii) Limitations on the purchase or sale of capital assets.

(iv) Prohibitions against incurring additional debt or cosigning for the liabilities of others.

(v) Limits on family living expenses.

(vi) Insurance requirements and collateral inspections.

(vii) Purposes for which loan or line of credit funds can be used.

(viii) Interest rates and terms; how and when the rate may fluctuate; term of loan; and conditions related to the repayment, renewal, etc., of loans with balloon payments.

(ix) Credit ceiling, special limitations, and conditions precedent to annual readvancement or continuation of loans or lines of credit.

(x) Limitations on salaries paid to entity members, hired labor, or consultants. Limitations on withdrawals in the case of joint operations and partnerships.

(7) * * *

(i) * * *

(B) Government loan rates, *i.e.,* FSA (formerly ASCS) target prices.

* * * * *

(ii) * * *

(B) For those farmers with less than a 5-year production or yield history, the applicant's available production history will be utilized.

(C) For those farmers whose actual history is insufficient to provide an accurate estimate, consider the use of FSA Farm Programs actual records for specific farms, county averages, State averages, university data, or any other reliable sources of information that are acceptable to the lender, applicant, and the Agency.

(D) * * *

(*1*) County average yields will be used for disaster years in developing an historical base yield. If the applicant's disaster years are less than the county average yields, county average yields will be used for those years. If county average yields are not available, State average yields will be used. Once the yield base has been established, plus or minus adjustments may be made to reflect production trends or changes that will impact expected yields during the projected farm budget period. Adjustments can be made providing there is factual evidence to demonstrate that the yield used in the farm plan is the most reliable.

* * * * *

(11) * * *

(ii) A current, personal balance sheet from all members of a cooperative, joint operators of a joint operation, partners of a partnership, or stockholders of a corporation. To be current, the balance sheet must be no more than 90 days old on the date that the application is completed.

(iii) A current balance sheet of the cooperative, corporation, partnership, or joint operation.

* * * * *

(12) A concise narrative summary of the following items:

(i) The agricultural and nonagricultural enterprises comprising the operation, including any proposed to be added or dropped.

(ii) The real estate used in the operation including significant planned and existing improvements, significant conservation practices in effect, adequacy of facilities, external factors of negative or positive impact.

(iii) Chattel property, including the adequacy of machinery, equipment, and foundation livestock to carry out the existing or proposed operation.

(iv) The farm business organization and key personnel. For example, the legal business structure, roles, functions and backgrounds of key individuals, the accounting and record keeping system, and agreements for transferring or dissolving the business.

(v) Goals. The short-term and long-term business goals of the operation.

(vi) Historical financial data.

(vii) Planned changes. Changes to overcome negative trends or other aspects of the operation. Consider such items as improved production techniques or management practices.

* * * * *

(c) *Market Placement applications.* This paragraph explains the requirements for market placement applications for lenders that have expressed interest in financing or refinancing specific direct loan applicants described under § 1910.4 (c), as well as for "commercial" or "standard" borrowers defined under § 1951.252. If more than one lender is interested in providing financing, the direct loan applicant or borrower will rank the lenders in order of preference, and the Agency will present the market placement applications in that order. A market placement application should be ready for immediate acceptance by the lender and approval by the Agency, subject to the terms and conditions of the Request for Obligation of Funds and Conditional Commitment. The items needed for a market placement application are to be packaged by the Agency and consist of the following:

(1) Form FmHA 1980–25 will be prepared using estimated interest rates and terms. All other items required, with the exception of the loan or line of credit agreement, for a complete application under this section will be attached. The lender will submit the loan or line of credit agreement prior to the Agency's issuance of the Conditional Commitment.

(2) Form FmHA 1940–3, "Request for Obligation of Funds—Guaranteed Loans."

85. Section 1980.114 is amended by:

a. removing the introductory text; by removing and reserving paragraphs (a) and (b);

b. by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively;

c. by removing and reserving the ADMINISTRATIVE section;

d. by revising the section heading;

e. by removing and reserving the redesignated paragraph (d); by revising redesignated paragraph (e); and by adding a new paragraph (c) to read as follows:

§ 1980.114 Evaluation and assessment of applications.

* * * * *

(c) *Agency analysis of complete application.* In addition to other applicable requirements under this part, an application for a guarantee must meet the following conditions:

(1) The proposed loan or line of credit is for authorized purposes, and the amounts of borrowed capital are appropriate to successfully carry on the agricultural operation.

(2) The operation's capital position is adequate taking its strengths and weaknesses into consideration.

(3) The applicant has adequate repayment ability and has a reasonable chance of securing non-guaranteed commercial credit for the operation in the future. Developing an acceptable farm plan is the responsibility of the lender and its borrower.

(4) Security is adequate, values are reasonable, and loan terms are consistent with the useful life of the security and Agency regulations.

(5) The projected budget is reasonable in light of the applicant's stated goals.

* * * * *

(e) *Indication of acceptability.* If the Agency's evaluation indicates that the guarantee may be approved, the Agency will consider the guarantee request for eligibility.

§ 1980.115 [Amended]

86. Section 1980.115 is amended by:

a. revising the heading to read "*Eligibility review.*";

b. removing paragraphs (a) through (d) and the ADMINISTRATIVE section;

c. removing all references in the introductory text to "County Committee" and adding the word "Agency," in their place; and

d. by removing the reference to "FmHA or its successor agency under Public Law 103–354" in the introductory text.

§ 1980.125 [Amended]

87. Section 1980.125 is amended by:

a. removing the phrase "FmHA or its successor agency under Public Law 103–354" in paragraphs (a), introductory text, (b)(3), (c) introductory text, (d)(5), and in the seventh and eighth lines of paragraph (d)(4) and adding the words "the Agency" in its place; and

b. by removing the phrase "or its successor agency under Public Law 103–354" from paragraphs (b)(1)(i), (c)(4), (d)(3), (d)(6) and in the second and third lines of paragraph (d)(4).

§ 1980.126 [Amended]

88. Section 1980.126 is amended by removing the phrase "FmHA or its successor agency under Public Law 103–354" in the last sentence and

adding the words "the Agency" in its place.

§ 1980.129 [Amended]

89. Section 1980.129 is amended by:

a. removing the ADMINISTRATIVE section;

b. removing the phrase "FmHA or its successor agency under Public Law 103–354" in paragraph (a) and adding the words "the Agency" in its place; and

c. revising the introductory text to read as follows:

§ 1980.129 Planning and performing development.

The lender is responsible for seeing that any buildings or other improvements or major land development to be paid for with loan funds are properly completed within a reasonable period of time. The lender is responsible for perfecting the required lien in the security, which includes ensuring that the security property is free of any mechanic's, materialmen's, or other liens which would affect lien priority. All major construction, major re..irs, and major land development must be performed by qualified parties under conditions considered standard and prudent by commercial lenders and their financial regulators. Form FmHA 449–11, "Certificate of Acquisition or Construction," must be completed and submitted to the Agency. In connection with construction, the lender is responsible for:

* * * * *

§ 1980.130 [Amended]

90. Section 1980.130 is amended by removing the ADMINISTRATIVE section.

§ 1980.136 [Amended]

91. Section 1980.136 is amended by:

a. removing the phrase "FmHA or its successor agency under Public Law 103–354" in paragraphs (a) and (b) and adding the words "The Agency's" and "Agency" respectively in their place; and

b. by removing the word "instrument(s)" in paragraph (d) and adding the word "instruments" in its place.

§§ 1980.148, 1980.149 and 1980.153 [Removed and Reserved]

92. In Part 1980 §§ 1980.148, 1980.149, and 1980.153 are removed and reserved.

§ 1980.175 [Amended]

93. Section 1980.175(b) is amended by:

a. removing the phrase "FmHA or its successor agency under Public Law 103–354" in the introductory text and adding the word "Agency" in its place the first time it appears and to read "FmHA" the second time it appears and to read "Agency" in paragraph (b)(1)(i);

b. removing the reference to "§ 1980.106(b)(21)" in the first sentence of paragraph (b)(1)(i) and adding the reference to "§ 1980.106(b)" in its place.

Exhibit A of Subpart B—[Amended]

94. Exhibit A of subpart B is amended by:

a. removing the phrase "FmHA or its successor agency under Public Law 103–354" in paragraph III.A and adding the words "the Agency" in its place in the next to last sentence and to remove the phrase "or its successor agency under Public Law 103–354" everywhere else it appears in that paragraph;

b. removing the phrase "or its successor agency under Public Law 103–354" in paragraph III.C; and

c. by revising paragraph IV to read as follows:

IV. *Agency Actions.* The Agency will complete the evaluation described in § 1980.114 in any case where the approval official determines an independent analysis is needed before approval or denial of a request for guarantee. The Agency may request additional information, review the lender's "complete application" file or make an independent evaluation of the application, if needed, to determine whether the applicant is eligible, the loan or line of credit is for authorized purposes, there is reasonable assurance of repayment ability, and sufficient collateral and equity is available. The Agency will make the final determinations on the eligibility of applicants for a guaranteed OL loan or line of credit, an SW loan, or FO loan, and the purposes and terms of such loans or lines of credit.

A. [Reserved].

B. [Reserved].

Each approved lender who currently has an Approved Lender Agreement executed prior to January 6, 1988, will be required to execute a new Approved Lender Agreement. If liquidation of the account becomes imminent, the Lender will consider the borrower for Interest Assistance and request a determination of the borrower's eligibility by the Agency. The lender may not initiate foreclosure action on the loan until 60 days after a determination has been made on the borrower's eligibility to participate in the Interest Assistance Program.

* * * * *

Signed at Washington, DC, on July 2, 1996.

Eugene Moos,

Under Secretary for Farm and Foreign Agricultural Services.

Jill Long Thompson,

Under Secretary for Rural Development.

[FR Doc. 96–17266 Filed 7–8–96; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1765–96]

RIN 1115–AE40

Adding Oakland, California, and Sanford, Florida, to the List of Ports of Entry Accepting Applications for Direct Transit Without Visa

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (the Service) regulations by adding Oakland, California, and Sanford, Florida, to the list of ports of entry where, except for transit from one part of foreign contiguous territory to another part of the same territory, an alien must make application for admission to the United States for direct transit without visa. This change is necessary to accommodate the increase in international commerce service Oakland, California, and Sanford, Florida.

EFFECTIVE DATE: July 9, 1996.

FOR FURTHER INFORMATION CONTACT: Robert F. Hutnick, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Room 7228, Washington, DC 20536, telephone number (202) 616–7499.

SUPPLEMENTARY INFORMATION: This final rule adds Oakland, California, and Sanford, Florida, to 8 CFR 214.2(c)(1) as ports of entry where, except for transit from one part of foreign contiguous territory to another part of the same territory, application for direct transit without visa must be made. The Orlando Sanford Airport in Sanford, Florida, will be adding additional international passenger service, specifically arrivals transiting between the United Kingdom and Mexico. By allowing this airport to accept applications for direct transit without visa, the Orlando Sanford Airport will be able to accommodate these transit air passengers. The Oakland International Airport has added international passenger service between France and Tahiti. By allowing this airport to accept applications for direct transit without visa, Oakland International Airport will be able to accommodate these transit air passengers.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary as this rule relates to agency management. Since this rule pertains to agency "practice and procedures" it does not require Congressional review necessitated by 5 U.S.C. § 801.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely allows the Oakland, California, and the Sanford, Florida, airports to accommodate international passengers by providing authority to accept applications for direct transit without visa. This rule will facilitate travel for the public.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Passports and visas.

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187,1221, 1281, 1282; 8 CFR part 2.

§ 214.2 [Amended]

2. In § 214.2, paragraph (c)(1) is amended, in the fourth sentence, by adding "Oakland, CA," immediately after "Norfolk, VA," and "Sanford, FL," immediately after "San Diego, CA," to the listing of ports of entry authorized to accept direct transit without visa applications.

Dated: June 25, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–17264 Filed 7–8–96; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 53

RIN 3150–AF47

Removal of 10 CFR Part 53—Criteria and Procedures for Determining the Adequacy of Available Spent Nuclear Fuel Storage Capacity

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to remove provisions concerning the "Criteria and Procedures for Determining the Adequacy of Available Spent Nuclear Fuel Storage Capacity" from the Code of Federal Regulations. This Part of the Commission's regulations is no longer applicable because the statutory timeframe for its implementation has expired.

DATE: This final rule is effective on August 8, 1996.

FOR FURTHER INFORMATION CONTACT: Gordon Gundersen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6195.

SUPPLEMENTARY INFORMATION:

Background

10 CFR Part 53 established procedures for nuclear power plant owners to follow for obtaining a determination from the NRC that the plant can not provide adequate spent nuclear fuel storage capacity. The regulations in this part established procedures and criteria for making the determination required by section 135(b) of the Nuclear Waste Policy Act of 1982 (96 Stat. 2201 and 2233) that an owner or operator of a civilian nuclear power reactor could not reasonably provide adequate spent nuclear fuel storage capacity at the reactor site, or at any other reactor it operates, when needed to ensure the continued orderly operation of the reactor. These regulations also required that the owner or operator diligently pursue licensed alternatives to the use of Federal storage capacity for the storage of spent nuclear fuel expected to be generated in the future.

Civilian nuclear power reactor operators who wanted the Commission to make a determination under 10 CFR Part 53 had to file a request by June 30, 1989. The Commission was to process the request and make a determination before January 1, 1990. Section 53.11(b) placed a time limitation of June 30, 1989 (with an outside date of January 1, 1990 for special circumstances), on the filing of requests for a Commission determination on the adequacy of available spent fuel storage capacity. This was based on the January 1, 1990, limitation in Section 136(a) of the Nuclear Waste Policy Act on the ability of Department of Energy to enter into contracts for the interim storage of spent fuel based on a Commission determination. These dates have long passed and this Part of the Commission's regulations is no longer applicable because the statutory timeframe for its implementation has expired.

The storage of spent nuclear fuel at NRC licensed nuclear power plants is not affected by removing 10 CFR Part 53 because 10 CFR Part 50 provides the regulatory basis for licensing both wet and dry modes of spent fuel storage at nuclear power reactors. 10 CFR Part 72 provides the regulatory basis for licensing spent nuclear fuel storage in Independent Spent Fuel Storage Installations or Monitored Retrievable Storage Installations. These regulations are not affected by the removal of 10 CFR Part 53.

In accordance with 10 CFR 2.804(d)(2) of the Commission's regulations, the Commission is issuing a final rule withdrawing 10 CFR Part 53, rather than using the normal notice and comment process for agency rulemakings. In this case, the Commission finds that there is good cause to dispense with notice and public comment as unnecessary. As noted above, the statutory time period within which Federal interim storage under this rule could be implemented has long passed, and the Commission has no discretion to entertain any requests for Federal interim storage under this rule. Furthermore, little interest has been shown in the interim

storage procedures in 10 CFR Part 53, and the Commission received no requests for interim storage since its promulgation in 1985. Under these circumstances, the Commission believes that public comment is unnecessary. The action will become effective on August 8, 1996.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements, which are being discontinued, were approved by the Office of Management and Budget, approval number 3150–0126.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

A regulatory analysis has not been prepared for this final rule because this final rule is considered a minor, non-substantive amendment and has no economic impact on NRC licensees or the public.

Small Business Regulatory Enforcement Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109 does not apply to this final rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1). Therefore, a backfit analysis is not required for this final rule.

materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Spent fuel, Waste treatment and disposal.

PART 53—[REMOVED]

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954 (42 U.S.C. 2201), as amended; the Energy Reorganization Act of 1974 (42 U.S.C. 5841), as amended; and 5 U.S.C. 552 and 553; the NRC is removing 10 CFR Part 53.

Dated at Rockville, Maryland, this 25th day of June 1996.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 96–17447 Filed 7–8–96; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–101–AD; Amendment 39–9690; AD 96–09–08 R1]

RIN 2120–AA64

Airworthiness Directives; Aviat Aircraft Inc. Models S–2A, S–2B, and S–2S Airplanes (formerly Pitts Models S–2A, S–2B, and S–2S airplanes)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises Airworthiness Directive (AD) 96–09–08, which currently requires inspecting the longerons aft of the rear cabane struts for cracks, and if cracked, prior to further flight, repairing the cracks. The current AD is applicable to Aviat Aircraft Inc. (Aviat), Models S–2A, S–2B, and S–2S airplanes (formerly Pitts Models S–2A, S–2B, and S–2S airplanes). This action requires the same action as AD 96–09–08; however, after AD 96–09–08 was issued, the FAA was notified by the manufacturer that the compliance time in the service bulletin was changed, and as a result, the issue date for the service bulletin was changed. This revision will ensure that the owner and operators are using the most up-to-date service bulletin applicable to the required actions in this AD. The actions specified by this AD are

DATES: Effective July 26, 1996.

The original Aviat Service Bulletin No. 24, dated February 8, 1996 was incorporated by reference and approved by the Director of the Federal Register to become effective May 20, 1996 (61 FR 19540, May 2, 1996). The incorporation by reference of Aviat Service Bulletin No. 24, dated March 20, 1996 that is applicable to this revised AD and listed in the regulations is approved by the Director of the Federal Register as of July 26, 1996.

Comments for inclusion in the Rules Docket must be received on or before August 30, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–101–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Aviat Aircraft Inc., The Airport-Box No. 1240, 672 South Washington Street, Afton, Wyoming, 83110; telephone (307) 886–3151; facsimile (307) 886–9674. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–101–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roger Caldwell, Project Engineer, FAA, Denver Aircraft Certification Office, 5440 Roslyn St., suite 133, Denver, Colorado 80216; telephone (303) 286–5683; facsimile (303) 286–5689.

SUPPLEMENTARY INFORMATION: Airworthiness Directive 96–09–08, Amendment 39–9584, (61 FR 19540, May 2, 1996) is applicable to Aviat Aircraft Inc., Models S–2A, S–2B, and S–2S airplanes (formerly Pitts Models S–2A, S–2B, and S–2S airplanes) and currently requires inspecting the longerons around the rear cabane struts for cracks, and if no cracks are found, continue repetitively inspecting the airplane. If cracks are found during any inspection, prior to further flight, repair any cracks found according to the approved repair scheme provided by the Denver ACO manager.

Accomplishment of the actions of AD 96–09–08 is required in accordance

Explanation of the Need for the Revision

The service bulletin incorporated into AD 96–09–08 contains identical requirements as this revised AD, except for the change in the date to March 20, 1996 and the change to the compliance time.

The FAA determined that the revised service bulletin should be incorporated because the previous service bulletin dated February 8, 1996 was not made available to the owners and operators by the manufacturer until after the service bulletin was changed. The FAA cannot determine if some of the owners/operators of the affected airplanes may have already complied with AD 96–09–08 in accordance with Aviat SB No. 24, dated February 8, 1996.

Since the service bulletin must be available in order for the owners/operators to comply with this action, this AD revises AD 96–09–08 by (1) retaining the initial inspection, the repetitive inspection, and repair required by AD 96–09–08; and (2) incorporating the revised service bulletin to require accomplishment of the actions in accordance with Aviat SB No. 24, dated March 20, 1996.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make AD 96–09–08 effective in less than 30 days to all known U.S. operators of Aviat Models S–2A, S–2B, and S–2S airplanes. These conditions still exist, and the AD revision is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons. The actions are to be done in accordance with the instructions in Aviat SB No. 24, dated March 20, 1996.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on

supports the commenters ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–101–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13, Amendment 39–9584, (61 FR 19540, May 2, 1996), is revised to read as follows:

96–09–08 R1. Aviat Aircraft Inc.: Amendment 39–9690; Docket No. 95–CE–101–AD R1. Revises AD 96–09–08, Amendment 39– 9584.

Applicability: Models S–2A, S–2B, and S–2S Airplanes (formerly Pitts Models S–2A, S–2B, and S–2S airplanes), all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required at the accumulation of 300 hours total time-in-service (TIS), or within the next 25 hours TIS, whichever occurs later, and thereafter at intervals not to exceed 25 hours TIS, unless already accomplished in accordance with AD 96–09–08, effective date May 20, 1996 and corresponding Aviat Service Bulletin (SB) No. 24, dated February 8, 1996.

Note 2: The compliance time of this revised AD takes precedence over the compliance time stated in Aviat SB No. 24, dated March 20, 1996.

To prevent cracking and subsequent failure of the longerons resulting in possible loss of control of the airplane, accomplish the following:

(a) Inspect (using a 10x magnifying glass) the longerons aft of the rear cabane struts for cracks in accordance with paragraphs 1.) through 5.) in the Aviat Service Bulletin (SB) No. 24, dated March 20, 1996. If cracks are found during any inspection required by this AD, prior to further flight, contact the

repair scheme provided by the Denver ACO Manager.

(c) Report the results of the initial inspection to the Manager of the Denver Aircraft Certification Office (ACO), FAA, Denver Aircraft Certification Office, 5440 Roslyn St., suite 133, Denver, Colorado, 80216, within 10 days of the inspection. The information provided should include airplane model number, serial number, registration number, location of cracks found, number of cracks, and total TIS. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety, may be approved by the Manager, Roger Caldwell, Project Engineer, FAA, Denver Aircraft Certification Office, 5440 Roslyn St., suite 133, Denver, Colorado, 80216. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Denver Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Denver Aircraft Certification Office.

(e) The inspections and repairs required by this AD shall be done in accordance with Aviat Aircraft Inc. Service Bulletin No. 24, dated March 20, 1996, or in accordance with Aviat Aircraft Inc. Service Bulletin No. 24, dated February 8, 1996, previously incorporated by reference in the **Federal Register** (61 FR 19540, May 2, 1996) and applicable to AD 96–09–08. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aviat Aircraft Inc., The Airport-Box No. 1240, 672 South Washington Street, Afton, Wyoming, 83110. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–9690) revises AD 96–09–08, Amendment 39–9584.

(g) This amendment (39–9690) becomes effective on July 26, 1996.

Issued in Kansas City, Missouri, on June 25, 1996.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–17294 Filed 7–8–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–NM–124–AD; Amendment 39–9687; AD 96–14–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires an inspection of the control rods of the outboard leading edge slat, and follow-on actions (including repetitive ultrasonic inspections), if necessary. For certain airplanes, that AD also requires replacement of the control rod ends and attach bolts. It also provides for an optional terminating action for follow-on repetitive inspections. That AD was prompted by reports of cracks and worn attach bolts of the control rods of the leading edge outboards slats of the wings due to the high breakout torque in the joint of the control rod end. This amendment requires the installation of the previously optional terminating action. The actions specified by this AD are intended to prevent reduced controllability of the airplane and damage in the slat structure or fixed leading edge of the wing, as a result of cracks and worn attach bolts.

DATES: Effective August 13, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 13, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kristin Larson, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–1760; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 90–20–16, amendment 39–6726 (55 FR 37858, September 14, 1990), which is applicable to certain Boeing Model 767 series airplanes, was published in the **Federal Register** on December 13, 1995 (60 FR 63990). The action proposed to continue to require a one-time visual inspection to determine the date of manufacture of the control rods of the outboard leading edge slat, and follow-on actions (i.e., repetitive ultrasonic inspection), if necessary. The action also proposed to continue to require replacement of the control rod ends and attach bolts, for certain airplanes. For operators accomplishing the (follow-on) repetitive ultrasonic inspections, that action proposed to require replacement of the control rod with a new control rod manufactured after June 1983; this replacement would constitute terminating action for the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Add a Visual Inspection

One commenter requests that the FAA revise paragraph (a)(2)(i) of the proposal to require a visual inspection to detect cracks of the control rods, prior to further flight, rather than the proposed ultrasonic inspection. The commenter suggests that the proposed ultrasonic inspection be accomplished within 300 flight hours following accomplishment of the visual inspection. The commenter points out that the control rods currently are being inspected ultrasonically at 2,000 flight cycles/15-month intervals in accordance with AD 90–20–16. Since the ultrasonic inspections will identify cracks prior to rod failure, the commenter states that it is unnecessary to accomplish an additional ultrasonic inspection.

The FAA finds that clarification is necessary. Paragraph (a)(2)(i) of this AD merely restates the existing requirements of paragraph A.2. of AD 90–20–16. Therefore, for operators who have previously accomplished at least the initial ultrasonic inspection in accordance with AD 90–20–16, paragraph (a)(2)(i) of this AD requires that the next scheduled inspection be performed within 2,000 landings or 15 months, whichever occurs first, after the last inspection performed in accordance with paragraph A.2. of AD 90–20–16. In light of this, the FAA finds that the addition of a visual inspection, as suggested by the commenter, is unnecessary. NOTE 2 has been added to this final rule to clarify the restatement of the existing requirements of AD 90–20–16.

Request To Include Reference to Additional Service Bulletins

Two commenters request that the FAA revise paragraph (a)(2)(ii) of the proposed rule to reference Revision 2 of Boeing Service Bulletin 767–57–0021, dated July 26, 1990, as an additional source of service information for accomplishment of the replacement. One of the commenters points out that this will eliminate unnecessary processing of an alternative method of compliance.

The FAA concurs partially. The FAA has determined that the procedures for replacement of the control rod, specified in Revision 2 of Boeing Service Bulletin 767–57–0021, are identical to those procedures in Revision 5 of the service bulletin (which is referenced in the AD as the appropriate source of service information). In addition, the FAA has determined that Revision 3, dated June 20, 1991, and Revision 4, dated March 19, 1992, of Boeing Service Bulletin 767–57–0021 also contain these identical replacement procedures. The FAA has revised the final rule by adding a new NOTE 2 to clarify that accomplishment of the replacement in accordance with Revision 2, Revision 3, or Revision 4 of Service Bulletin 767–57–0021, is considered acceptable for compliance with paragraph (a)(2)(ii) of the AD. In addition, since paragraph (b) of the final rule also contains these identical replacement procedures, the FAA has also added a similar Note 3 to that paragraph.

Request To Correct Referenced Service Bulletin Number

One commenter notes that the service bulletin number referenced in paragraph (b) of the proposal should be corrected to 767–57–0021. The FAA acknowledges that it inadvertently referenced the incorrect service bulletin number (i.e., 767–57–0221) in paragraph (b) of the proposal. Therefore, the FAA has revised paragraph (b) of the final rule to reference service bulletin number 767–57–0021.

Request for Assurance of Parts Availability

Two commenters support the rule, but question whether the manufacturer of the control rod assemblies can produce the quantity of required parts within the proposed compliance time.

The FAA has contacted to the manufacturer who has advised that ample parts are currently available; therefore, obtaining them within the required compliance time should not pose a problem for any affected operator. However, under the provisions of paragraph (c) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 271 Boeing Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 193 airplanes of U.S. registry will be affected by this proposed AD.

The actions that are currently required by AD 90–20–16 take approximately 21 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $5,500 per airplane. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $1,304,680, or $6,760 per airplane.

For certain affected airplanes, the new replacement (terminating) action that is required by this new AD will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of the required replacement parts is estimated to be $5,500 per airplane. Based on these figures, the cost impact on U.S. operators of the new requirements of this AD is estimated to be $5,560 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6726 (55 FR 37858, September 14, 1990), and by adding a new airworthiness directive (AD), amendment 39–9687, to read as follows:

96–14–05 Boeing: Amendment 39–9687. Docket 95–NM–124–AD. Supersedes AD 90–20–16, Amendment 39–6726.

Applicability: Model 767 series airplanes; as listed in Boeing Service Bulletin 767–57–0021, Revision 1, dated September 14, 1989, or Revision 5, dated June 15, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not

been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

Note 2: Paragraphs (a), (a)(1), (a)(1), (a)(2), and (a)(2)(i) of this AD merely restate the initial and repetitive inspections contained in paragraphs A.1. and A.2. of AD 90–20–16, amendment 39–6726. Therefore, for operators who have previously accomplished at least the initial inspection in accordance with AD 90–20–16, paragraph (a)(2)(i) of this AD requires that the next scheduled inspection be performed within 2,000 landings or within 15 months, whichever occurs first, after the last inspection performed in accordance with paragraph A.2. of AD 90–20–16.

To prevent loss of the pilot's ability to control the affected slat, which could adversely affect the controllability of the airplane, accomplish the following:

(a) For airplanes having line positions 1 through 235 inclusive: Within the next 1,200 landings or 9 months after October 23, 1990 (the effective date of AD 90–20–16, amendment 39–6726), whichever occurs first, unless accomplished within the last 800 landings or 6 months, whichever occurs later, perform a visual inspection to determine the date of manufacture of the control rods of the outboard leading edge slat of the wings, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–57–0021, dated August 25, 1988; Revision 1, dated September 14, 1989; Revision 2, dated July 26, 1990; or Revision 5, dated June 15, 1995.

(1) If the date of manufacture (stamped on the control rod) is June 1983 or later, no further action is required by this paragraph.

(2) If the date of manufacture is illegible or is prior to June 1983, accomplish paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Prior to further flight, perform an ultrasonic inspection to detect cracks of the control rods in accordance with Figure 1 of Boeing Service Bulletin 767–57–0021, dated August 25, 1988, Revision 1, dated September 14, 1989, or Revision 2, dated July 26, 1990. If any crack or fracture is detected, prior to further flight, replace it in accordance with Figure 2 of the service bulletin. Repeat the ultrasonic inspection of the control rods manufactured prior to June 1983 thereafter at intervals not to exceed 2,000 landings or 15 months, whichever occurs first, until the replacement required by paragraph (a)(2)(ii) of this AD is accomplished.

(ii) Within 3,000 flight hours or 15 months after the effective date of this AD, whichever occurs later, replace the control rod with a new rod manufactured June 1983 or later, in accordance with Boeing Service Bulletin 767–57–0021, Revision 5, dated June 15, 1995. Accomplishment of this replacement constitutes terminating action for the repetitive inspection requirement of paragraph (a)(2)(i) of this AD.

Note 3: Replacement accomplished prior to the effective date of this amendment in accordance with Boeing Service Bulletin 767–57–0021, Revision 2, dated July 26, 1990; Revision 3, dated June 20, 1991, or Revision 4, dated March 19, 1992; is considered acceptable for compliance with paragraph (a)(2)(ii) of this AD.

(b) For airplanes having line number 1 through 264 inclusive, and 266 through 273 inclusive: Within the next 2,500 landings or 18 months after October 23, 1990 (the effective date of AD 90–20–16, amendment 39–6726, whichever occurs first, replace the control rod end and attach bolt with a new configuration control rod end and attach bolt on each wing, in accordance with Boeing Service Bulletin 767–57–0021, Revision 1, dated September 14, 1989; Revision 2, dated July 26, 1990; or Revision 5, dated June 15, 1995.

Note 4: Replacement accomplished prior to the effective date of this amendment in accordance with Boeing Service Bulletin 767–57–0021, Revision 3, dated June 20, 1991, or Revision 4, dated March 19, 1992, is considered acceptable for compliance with paragraph (b) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and replacements shall be done in accordance with Boeing Service Bulletin 767–57–0021, dated August 25, 1988; Boeing Service Bulletin 767–57–0021, Revision 1, dated September 14, 1989; Boeing Service Bulletin 767–57–0021, Revision 2, dated July 26, 1990; Boeing Service Bulletin 767–57–0021, Revision 3, dated June 20, 1991; Boeing Service Bulletin 767–57–0021, Revision 4, dated March 19, 1992; or Boeing Service Bulletin 767–57–0021, Revision 5, dated June 15, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 13, 1996.

Issued in Renton, Washington, on June 27, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–16950 Filed 7–8–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 96–NM–134–AD; Amendment 39–9688; AD 96–14–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 777–200 series airplanes. This action requires repetitive inspections for broken lockwires on the bearing retainer nut of the pivot fittings of the horizontal stabilizer. This AD also requires eventual modification of the bearing nut retention means, which, when accomplished, terminates the repetitive inspections. This amendment is prompted by reports of broken lockwires on the bearing retainer nut of the pivot fittings of the horizontal stabilizer due to inadequate torquing of the nut. The actions specified in this AD are intended to prevent failure of the lockwires, which could result in loosening of the retainer nut for the pivot bearing of the horizontal stabilizer, and subsequent migration of the pivot bearing. This condition, if not corrected, could result in reduced controllability of the airplane.

DATES: Effective July 24, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 24, 1996.

Comments for inclusion in the Rules Docket must be received on or before September 9, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–134–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2772; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that broken lockwires were found on the bearing retainer nut of the pivot fittings (bearings) of the horizontal stabilizer on Boeing Model 777–200 series airplanes. In one of these incidents, the retainer nut on the left and right sides of the horizontal stabilizer also was loose. The lockwires may have broken and the retainer nuts may have become loose due to inadequate torquing of the nut. Failure of the lockwire could result in loosening of the retainer nut for the pivot bearing of the horizontal stabilizer. Loss of the retainer nut could result in migration of the pivot bearing. This condition, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–55A0003, Revision 1, dated June 20, 1996, which describes procedures for repetitive visual inspections to detect broken lockwires on the bearing retainer nut of the pivot fittings of the horizontal stabilizer (left and right sides). The alert service bulletin also describes procedures for eventual modification of the bearing nut retention means, which, when accomplished, eliminates the need for the repetitive inspections. The modification involves removing all lockwire on the nut, tightening the nut, and installing a new nut retainer. Accomplishment of the modification will prevent rotation of the bearing retainer nut.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Model 777–200 series airplanes of the same type design, this AD is being issued to prevent reduced controllability of the airplane due to failure of the lockwire on the bearing retainer nut of the pivot fittings of the horizontal stabilizer, loosening of the retainer nut for the pivot bearing, and subsequent migration of the pivot bearing. This AD requires repetitive visual inspections for broken lockwires on the bearing retainer nut of the pivot fittings of the horizontal stabilizer (left and right sides). This AD also requires eventual modification of the bearing nut retention means, which, when accomplished, terminates the repetitive inspections. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–134–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–14–06 Boeing: Amendment 39–9688. Docket 96–NM–134–AD.

Applicability: Model 777–200 series airplanes; line positions 1, 3, 5, 7, 8, 9, 11, 12, 13, 15, 16, 17, 19, 20, 21, 22, and 23; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane due to failure of the lockwire on the bearing retainer nut of the pivot fittings of the horizontal stabilizer, loosening of the retainer nut for the pivot bearing, and subsequent migration of the pivot bearing, accomplish the following:

(a) Within 150 flight cycles after the effective date of this AD: Perform a visual inspection for broken lockwires on the bearing retainer nut of the pivot fittings of the horizontal stabilizer (left and right sides), in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–55A0003, Revision 1, dated June 20, 1996.

(1) If no broken lockwire is found: Repeat the inspection within 500 flight cycles following accomplishment of the initial inspection. Within 1,000 flight cycles after accomplishment of the initial inspection, modify the bearing nut retention means in accordance with Figure 3 of the alert service bulletin. Following accomplishment of the modification, no further action is required by paragraph (a) of this AD.

(2) If only one broken lockwire is found: Repeat the inspection thereafter at intervals not to exceed 150 flight cycles. Within 450 flight cycles after accomplishment of the initial inspection, modify the bearing nut retention means in accordance with Figure 3 of the alert service bulletin. Following accomplishment of the modification, no further action is required by paragraph (a) of this AD.

(3) If two broken lockwires are found: Repeat the inspection and ensure that the bearing retainer nut is tight thereafter at intervals not to exceed 10 flight cycles. Within 100 flight cycles after accomplishment of the initial inspection, modify the bearing nut retention means in accordance with Figure 3 of the alert service bulletin. Following accomplishment of the modification, no further action is required by paragraph (a) of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 777–55A0003, Revision 1, dated June 20, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 24, 1996.

Issued in Renton, Washington, on June 27, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–16949 Filed 7–8–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–132–AD; Amendment 39–9692; AD 96–14–08]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes. This action requires modification of the radio altimeter wiring circuitry associated with the Automatic Flight Control Augmentation System (AFCAS). This amendment is prompted by a report indicating that the AFCAS does not properly monitor the radio altimeter status during automatic landing operations. The actions specified in this AD are intended to prevent erroneous indications and failure of the AFCAS to properly align, flare, and retard the airplane during automatic landing operations if a single radio altimeter were to fail.

DATES: July 24, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 24, 1996.

Comments for inclusion in the Rules Docket must be received on or before September 9, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–132–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that it has received a report indicating that the Automatic Flight Control Augmentation System (AFCAS) on these airplanes does not properly monitor the radio altimeter status during automatic landing ("LAND 2") operations. As a result, an airplane may perform a "LAND 2" operation with only one radio altimeter that is operative. If the remaining altimeter were to fail or to lose track during the "LAND 2" operation, the ALIGN, FLARE, and/or RETARD modes will not be performed, even though the annunciations for these modes would still be indicated on the Electronic Flight Instrument System (EFIS). In this case, the flight crew may accept the EFIS annunciation that these maneuvers (modes) are being executed when, in fact, those maneuvers are not taking place. This condition could result in the flight crew not being aware that the AFCAS has not properly aligned, flared, and retarded the airplane during automatic landing operations.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SBF100–34–015, Revision 2, dated November 27, 1990, which describes procedures for a modification of the radio altimeter wiring circuitry associated with the AFCAS data-control jumper. This wiring change will allow the radio altimeters to remove the data from AFCAS data bus whenever a failure is detected. As a result, "LAND 2" operation is no longer possible with only one radio altimeter operative. The RLD classified this service bulletin as mandatory and issued Netherlands airworthiness directive (BLA) 90–023, Issue 2, dated May 23, 1990, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent erroneous indications and failure of the AFCAS to properly align, flare, and retard the airplane during automatic landing operations when a single radio altimeter fails. This AD requires modification of the radio altimeter wiring circuitry associated with the AFCAS data-control jumper. The actions are required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

None of the Model F28 Mark 0100 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 4.6 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. The cost of required parts would be negligible. Based on these figures, the cost impact of this AD would be $276 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–132–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–14–08 Fokker: Amendment 39–9692. Docket 96–NM–132–AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11256 inclusive, 11259, 11260, and 11268 through 11273 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent erroneous indications and failure of the AFCAS to properly align, flare, and retard the airplane during autoland operations when a single radio altimeter fails, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the radio altimeter wiring circuitry (AFCAS data-control jumper) in accordance with Fokker Service Bulletin SBF100–34–015, Revision 2, dated November 27, 1990.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance or Avionics Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Fokker Service Bulletin SBF100–34–015, Revision 2, dated November 27, 1990, which contains the following list of effective pages:

Page number	Revision level shown on page	Date shown on page
1, 5	2	November 27, 1990
2–4, 6–9	1	May 16, 1990

This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 24,1996.

Issued in Renton, Washington, on July 1, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–17219 Filed 7–8–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–NM–254–AD; Amendment 39–9686; AD 96–14–04]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10 and MD–11 Series Airplanes, and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 and MD–11 series airplanes, and KC–10A (military) airplanes, that requires identifying and replacing certain lock link bolts in the nose landing gear (NLG). This amendment is prompted by a report indicating that certain bolts were improperly heat-treated during manufacturing, which makes them prone to failure. The actions specified by this AD are intended to prevent failure of the lock link bolts in the NLG, which could result in the collapse of the NLG.

DATES: Effective August 13, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 13, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5324; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 and MD–11 series airplanes, and KC–10A (military) airplanes was published in the **Federal Register** on March 18, 1996 (61 FR 10907). That action proposed to require a one-time visual inspection to identify suspect lock link bolts, and the replacement of those bolts with new serviceable bolts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Four commenters support the proposal.

Request To Allow Records Search in Lieu of Inspection

One commenter requests that the proposed rule be revised to allow operators to conduct a records search to determine if airplanes are equipped with the suspect bolt, rather than conduct an inspection of every airplane in order to determine if the bolt is installed. This commenter states that, for some operators, the NLG lock link bolts are required to have a tracking history (i.e., records track the bolt by serial number). For these operators, it would be more economically feasible, and just as productive, to conduct a records search in lieu of an inspection.

The FAA concurs. Paragraph (a) of the final rule has been revised to provide for the option of conducting a records search.

Request To Extend the Compliance Time for Replacement

Several commenters request that the proposed rule be revised to allow operators to replace suspect bolts at a later time. These commenters request that, instead of requiring that a suspect bolt be replaced prior to further flight after the inspection is accomplished, the proposed rule should permit operators to replace the bolt at any time after the inspection, but prior to the end of the 24-month compliance time. These commenters consider that this extension of the replacement time will obtain the same result as intended by the FAA, and will have a less disruptive impact on operators' schedules.

The FAA concurs that the bolts need not be replaced prior to further flight after the inspection (or records search) is accomplished. The FAA makes this finding based on the following data pertinent to the configuration of the suspect bolts themselves:

1. None of the suspect bolts were manufactured prior the initial production of the Model MD–11 series airplanes (in 1991). In light of this, the FAA is confident that none of the suspect bolts was installed as original equipment on any of the affected Model DC–10 series airplanes. (Model DC–10's have been produced since 1971.)

2. The suspect bolts were manufactured using a process that did not affect their static strength requirement, but did reduce their fatigue life. These bolts should have a fatigue life in the range of 58,281 landings; due to the manufacturing process used, however, the fatigue life of the suspect bolts has been reduced to approximately 24,638 landings.

3. A review of the utilization rates of the current worldwide fleet indicates that the highest number of landings accumulated on any Model MD–11 series airplane is approximately 5,000 landings.

4. The average annual utilization rate of the airplanes affected by this AD is between 1,000 and 1,200 landings.

These data indicate that, if any suspect bolt had been installed as original equipment on a Model MD–11 (even those airplanes with the highest number of landings accumulated so far), or installed as a replacement component on a Model DC–10, the fatigue life "remaining" on any suspect bolt is long enough to permit continued use of that bolt for a 24-month period.

Based on these factors, the FAA has determined that a large enough margin of safety exists so that replacement of the suspect bolts may be accomplished within 24 months after the effective date of this AD, regardless of when the inspection (or records search) is performed. Paragraph (c) of the final rule has been revised to specify this.

Request To Permit Replacement With Other Than New Bolts

One commenter, the airframe manufacturer, requests that the proposed rule be revised to delete the requirement that a "new" bolt be used as a replacement bolt. This commenter states that the use of the term "new" excludes the use of refurbished or serviceable bolts that do not have one of the suspect serial numbers.

The FAA concurs. Serviceable (non-suspect) bolts are acceptable as replacement parts. Accordingly, paragraph (c) of the final rule has been revised to delete the word "new" from the description of required replacement bolts.

Request To Ensure Availability of Replacement Parts

One commenter expresses concerns that the replacement bolts will not be available in a timely manner. This commenter states that several service bulletins recently have been released by McDonnell Douglas that recommend inspections and replacement of high-strength landing gear parts that were improperly heat-treated. This commenter is concerned that the bolt suppliers may not be able to meet the concurrent demand for the large quantity of parts needed for the entire affected fleet.

The FAA acknowledges this commenters concerns, and just recently contacted the manufacturer on this very subject. The manufacturer has assured the FAA that its suppliers stand ready to meet the demand for parts for the total fleet.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 565 Model DC–10 and MD–11 series airplanes and KC–10A (military airplanes) of the affected design in the worldwide fleet. The FAA estimates that 334 airplanes of U.S. registry will be affected by this proposed AD.

It will take approximately .5 work hour per airplane to accomplish either a one-time inspection or a commensurate records search, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $10,020, or $30 per airplane.

If a suspect lock link bolt is found to be installed on an airplane, its removal and replacement will take approximately 3 work hours to accomplish, at an average labor rate of $60 per work hour. (For operators of Model MD–11 series airplanes, the manufacturer has indicated that it will reimburse operators for certain of these labor costs as a labor credit allowance.) Replacement parts will be supplied by the manufacture at no charge to operators. Based on these figures, the cost impact of the replacement action on U.S. operators is estimated to be $180 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–14–04 McDonnell Douglas: Amendment 39–9686. Docket 95–NM–254–AD.

Applicability: Model DC–10–10, –15, –30, and –40 series airplanes, and KC–10A airplanes, as listed in McDonnell Douglas Service Bulletin DC10–32–242, dated November 1, 1995; and Model MD–11 series airplanes as listed in McDonnell Douglas Service Bulletin MD11–32–060, dated November 6, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent collapse of the nose landing gear as a result of failure of the lock link bolt, accomplish the following:

(a) Within 24 months after the effective date of this AD, perform either a visual inspection or a records search to determine the serial number of the lock link bolt, part number (P/N) ACG7079–1, installed in the nose landing gear (NLG). If the visual inspection is accomplished, it must be conducted in accordance with procedures specified in McDonnell Douglas Service Bulletin DC10–32–242, dated November 1, 1995, for Model DC–10 series airplanes; or McDonnell Douglas Service Bulletin MD11–32–060, dated November 6, 1995, for Model MD–11 series airplanes.

(b) If the serial number of the lock link bolt is not AP001 through AP036 inclusive, or AP200 through AP344 inclusive: No further action is required by this AD.

(c) If the serial number of the lock link bolt is AP001 through AP036 inclusive, or AP200 through AP344 inclusive: Within 24 months after the effective date of this AD, replace the lock link bolt with a bolt, P/N ACG7079–1, that does not have one of those serial numbers.

(d) As of the effective date of this AD, no person shall install a lock link bolt, part number (P/N) ACG7079–1, having a serial number of AP001 through AP036 inclusive, or AP200 through AP344 inclusive, on any airplane.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspection shall be done in accordance with McDonnell Douglas Service Bulletin DC10–32–242, dated November 1, 1995, for Model DC–10 series airplanes; and McDonnell Douglas Service Bulletin MD11–32–060, dated November 6, 1995, for Model MD–11 series airplanes. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on August 13, 1996.

Issued in Renton, Washington, on June 27, 1906.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–16951 Filed 7–8–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 96–NM–133–AD; Amendment 39–9691; AD 96–14–07]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes, that currently requires repetitive inspections of the tail tank fuel pipe assembly and the associated mounting brackets in the aft fuselage compartment, and follow-on actions, if necessary. That AD also provides for an optional terminating modification for the repetitive inspections. This amendment deletes the optional terminating modification, and expands the applicability of the existing AD to include additional airplanes. This amendment is prompted by reports of cracking or bending of the fuel pipe mounting support and/or attaching bracket in the aft fuselage compartment due to a fuel pressure surge that caused repetitive loading of this area. The actions specified in this AD are intended to prevent such cracking/bending, which could expose the fuel pipe coupling O-ring. An exposed O-ring could lose its sealing effect and could allow a fuel leak in the aft fuselage compartment, which may result in a possible in-flight or ground fire.

DATES: Effective July 24, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 24, 1996.

Comments for inclusion in the Rules Docket must be received on or before September 9, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–133–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond Vakili, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5262; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: On November 4, 1991, the FAA issued AD 91–24–09, amendment 39–8095 (56 FR 61364, December 3, 1991), applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes. That AD requires repetitive visual inspections of the tail tank fuel pipe assembly and the associated mounting brackets located in the aft fuselage compartment to verify the correct position of the pipe flange and to detect damaged brackets. It also requires various follow-on actions, if any discrepancy is detected. That AD also provides for an optional terminating modification for the repetitive inspections. That action was prompted by a report of an uncontained fuel leak in the aft fuselage compartment on an in-service airplane, which was the result of migration of the tail tank fuel pipe assembly, and consequent exposure of the O-ring that provides the seal between the pipe assembly and the coupling shroud assembly. The actions required by that AD are intended to prevent a fuel leak in the aft fuselage compartment area, and the possibility of an in-flight or ground fire.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received several reports of cracking or bending of the fuel pipe mounting support and/or attaching bracket at station Y=2033.750 in the aft

fuselage compartment on McDonnell Douglas Model MD–11 series airplanes. A section of the fuel pipe assembly and support bracket of some of these airplanes had been replaced in accordance with the optional terminating modification specified in AD 91–24–09. Additionally, this replacement had been accomplished during production on certain other airplanes on which these incidents occurred.

Investigation revealed that a fuel pressure surge during transfer of the tail tank fuel caused repetitive loading of the fuel pipe mounting support and/or attaching bracket, which resulted in the subject cracking/bending. Although none of the reported events have resulted in a fuel leak in the aft fuselage compartment, the FAA has determined that severe deformation of the bracket could allow the pipe to migrate, which could also expose the O-ring that provides the seal between the fuel pipe and coupling. If the O-ring is exposed, it could lose its sealing effect, and allow a fuel leak in the aft fuselage compartment, which could result in a possible in-flight or ground fire.

In light of these recent incidents, which are similar to the incident that prompted the issuance of AD 91–24–09, the FAA finds that the optional and on-condition terminating modifications (i.e., replacement of a section of the fuel pipe assembly and support bracket, an FAA-approved repair procedure, and replacement of the shroud assembly) specified in AD 91–24–09 do not adequately preclude the addressed unsafe condition identified as in-flight or ground fire. Therefore, the FAA finds that repetitive visual inspections to detect discrepancies (i.e., cracks, or deformation) of the fuel pipe of the fuel transfer system of the tail tank and associated mounting bracket located in the aft fuselage compartment, and to verify the correct position of the fuel pipe flange are necessary. These actions will ensure that the unsafe condition presented by fuel surge during transfer of tail tank fuel is corrected, and provide an acceptable level of safety.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–28A082, dated May 14, 1996. The alert service bulletin describes procedures for repetitive visual inspections to detect discrepancies (i.e., cracks, or deformation) of the fuel pipe of the fuel transfer system of the tail tank and associated mounting bracket located in the aft fuselage compartment; and to verify the correct position of the fuel pipe flange, and various follow-on actions. These follow-on actions include replacing the O-ring, repositioning the tail tank fuel pipe, and installing a temporary phenolic support block assembly. Installation of a phenolic support block assembly between the tail tank fuel pipe and adjoining structure as a temporary restraint will minimize the possibility of migration of the tail tank fuel pipe.

In addition, the visual inspections and certain of the follow-on actions of Alert Service Bulletin MD11–28A082 are essentially identical to those described in McDonnell Douglas MD–11 Alert Service Bulletin A28–22, Revision 4, dated September 16, 1991 (which was referenced in AD 91–24–09). However, the effectivity listing of Alert Service Bulletin MD11–28A082 includes additional airplanes that were not included in the effectivity listing of Alert Service Bulletin A28–22. These additional airplanes have been found to be subject to the addressed unsafe condition.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 91–24–09 to require repetitive visual inspections to detect discrepancies (i.e., cracks or deformation) of the fuel pipe of the fuel transfer system of the tail tank and associated mounting bracket located in the aft fuselage compartment and to verify the correct position of the fuel pipe flange, and various follow-on actions. This AD also expands the applicability of the existing AD to include additional airplanes.

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–133–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory

Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8095 (56 FR 61364, December 3, 1991), and by adding a new airworthiness directive (AD), amendment 39–9691, to read as follows:

96–14–07 McDonnell Douglas: Amendment 39–9691, Docket 96–NM–133–AD. Supersedes AD 91–24–09, Amendment 39–8095.

Applicability: Model MD–11 and MD–11F series airplanes, manufacturer's fuselage numbers 0447 through 0599 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the possibility of an in-flight or ground fire due to fuel leaking from the fuel pipe coupling, accomplish the following:

(a) Perform a visual inspection to detect discrepancies (i.e., cracks or deformation) of the fuel pipe of the fuel transfer system of the tail tank and associated mounting bracket located in the aft fuselage compartment; and to verify the correct position of the fuel pipe flange, in accordance with McDonnell Douglas Alert Service Bulletin MD11–28A082, dated May 14, 1996; at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes on which the modification specified in McDonnell Douglas Service Bulletin 28–22, dated September 24, 1991, has been accomplished; or that have been repaired in accordance with an FAA-approved repair procedure, as specified in paragraph (a)(3) of AD 91–24–09, amendment 39–8095; or on which the shroud assembly has been replaced with a serviceable part: Prior to the accumulation of 600 flight hours, or within 60 days after the effective date of this AD, whichever occurs later.

(2) For airplanes on which the modification specified in McDonnell Douglas Service Bulletin 28–22, dated September 24, 1991, has not been accomplished: Prior to the accumulation of 600 flight hours, or within 60 days since accomplishment of the last visual inspection in accordance with AD 91–24–09, whichever occurs first.

(b) *CONDITION 1.* If no discrepancy is detected during any visual inspection required by paragraph (a) of this AD, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) *OPTION 1.* Repeat the visual inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 600 flight hours or 60 days, whichever occurs later. Or

(2) *OPTION 2.* Prior to further flight, install a temporary phenolic support block assembly, shim, clamp, and bracket between the tail tank fuel pipe and station Y=2033.750 bulkhead, in accordance with Condition 1, Option 2, of McDonnell Douglas Alert Service Bulletin MD11–28A082, dated May 14, 1996. Within 6 months after accomplishment of this installation, perform a one-time inspection to verify the correct position of the temporary support block assembly installation in accordance with Figure 2 (Sheet 2 of 3) of the alert service bulletin.

(i) If the assembly is found to be positioned properly, repeat the verification of the correct position of the fuel pipe flange, as specified in paragraph (a) of this AD, thereafter at intervals not to exceed 15 months.

(ii) If the assembly is found to be improperly positioned, prior to further flight, reposition the fuel pipe in accordance with Figure 2 (Sheet 2 of 3) of the alert service bulletin. Repeat the verification of the correct position of the fuel pipe flange, as specified in paragraph (a) of this AD, thereafter at intervals not to exceed 15 months.

(c) *CONDITION 2.* If any discrepancy is detected, and the fuel pipe is found to be improperly positioned, but the O-ring is not exposed, during any visual inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) *OPTION 1.* Repeat the visual inspection in paragraph (a) of this AD thereafter at intervals not to exceed 600 flight hours or 60 days, whichever occurs later. Or

(2) *OPTION 2.* Prior to further flight, install a temporary phenolic support block assembly, shim, clamp, and bracket between the tail tank fuel pipe and station Y=2033.750 bulkhead; and reposition the fuel pipe assembly, as applicable; in accordance with Condition 2, Option 2, of McDonnell Douglas Alert Service Bulletin MD11–28A082, dated May 14, 1996. Within 6 months after accomplishment of this installation, perform a one-time inspection to verify the correct position of the temporary support block assembly installation in accordance with Figure 2 (Sheet 2 of 3) of the alert service bulletin.

(i) If the assembly is found to be positioned properly, repeat the verification of the correct position of the fuel pipe flange, as specified in paragraph (a) of this AD, thereafter at intervals not to exceed 15 months.

(ii) If the assembly is found to be improperly positioned, prior to further flight, reposition the fuel pipe in accordance with Figure 2 (Sheet 2 of 3) of the alert service bulletin. Repeat the verification of the correct position of the fuel pipe flange, as specified in paragraph (a) of this AD, thereafter at intervals not to exceed 15 months.

(d) *CONDITION 3.* If any discrepancy is detected, and the fuel pipe is found to be improperly positioned, and the O-ring is exposed, during any visual inspection required by paragraph (a) of this AD, prior to further flight, replace the O-ring with a new O-ring, and install a temporary phenolic support block assembly, shim, clamp, and bracket between the tail tank fuel pipe and station Y=2033.750 bulkhead, in accordance with McDonnell Douglas Alert Service Bulletin MD11–28A082, dated May 14, 1996. Within 6 months after accomplishment of the replacement and installation, perform a one-time inspection to verify the correct position of the temporary support block assembly installation in accordance with Figure 2 (Sheet 2 of 3) of the alert service bulletin.

(1) If the assembly is found to be positioned properly, repeat the verification of the correct position of the fuel pipe flange, as specified in paragraph (a) of this AD, thereafter at intervals not to exceed 15 months.

(2) If the assembly is found to be improperly positioned, prior to further flight, reposition the fuel pipe in accordance with Figure 2 (Sheet 2 of 3) of the alert service bulletin. Repeat the verification of the correct position of the fuel pipe flange, as specified in paragraph (a) of this AD, thereafter at intervals not to exceed 15 months.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–28A082, dated May 14, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on July 24, 1996.

Issued in Renton, Washington, on July 1, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–17217 Filed 7–8–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Chlortetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of five supplemental new animal drug applications (NADA's) filed by Hoffmann-LaRoche, Inc., Pfizer, Inc., ALPHARMA, Inc., ADM Animal Health & Nutrition Div., and PennField Oil Co. The supplemental NADA's provide for the safe and effective use of Type A medicated articles containing chlortetracycline (CTC) in the feed of chickens, turkeys, swine, sheep, and calves, beef and nonlactating dairy cattle for improved production efficiency and for control and treatment of certain bacterial diseases susceptible to CTC. The approvals reflect compliance with results of the National Academy of Sciences/National Research Council (NAS/NRC), Drug Efficacy Study Group's (DESI) evaluation of the drug's effectiveness, and FDA's conclusions concerning that evaluation.

EFFECTIVE DATE: July 9, 1996.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: The following sponsors have submitted supplements to their approved NADA's:

- Hoffmann-LaRoche, Inc., Nutley, NJ 07110 (formerly held by American Cyanamid Co.), to NADA 48–761, which covers the Type A medicated articles: Aureomix® 293 (50 grams of chlortetracycline hydrochloride per pound (g CTC HCl/lb)) and Aureomycin® 50, 70, 80, 90, and 100 (contain CTC calcium complex equivalent to the indicated g/lb concentrations of CTC HCl);
- Pfizer, Inc., 235 East 42d St., New York, NY 10017, to NADA 92–286, which covers the Type A medicated articles CLTC® 10, 20, 30, 50, and 70 (contain CTC calcium complex equivalent to the indicated g/lb concentrations of CTC HCl) and to NADA 92–287, which covers the Type A medicated articles CLTC® 50 MR and 100 MR (contain CTC calcium complex equivalent to the indicated g/lb concentrations of CTC HCl);
- ALPHARMA, Inc. (formerly A. L. Laboratories), One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, to NADA 46–699, which covers the Type A medicated articles: CTC 100 MR (100 g CTC HCl/lb) and CTC 10, CTC 50, CTC 65, CTC 70, and Micro CTC 100 (contains CTC calcium complex equivalent to the indicated g/lb concentrations of CTC HCl);
- ADM Animal Health & Nutrition Div., P.O. Box 2508, Fort Wayne, IN 46801–2508 (formerly Feed Specialties Co., Inc.), to NADA 48–480, which covers the Type A medicated article Chloratet™ 50 (contains CTC calcium complex equivalent to 50 g CTC HCl/lb); and
- PennField Oil Co., 14040 Industrial Rd., Omaha, NE 68137, to NADA 138–935, which covers the Type A medicated articles: Chlortetracycline Premixes 50, 60, 70, 80, 100 (all contain CTC calcium complex equivalent to the indicated g/lb concentrations of CTC HCl), and 100 MR (100 g CTC HCl/lb).

The drug products were the subject of a NAS/NRC DESI evaluation of effectiveness (DESI 0113NV). The findings were published in the **Federal Register** of July 21, 1970 (35 FR 11646). NAS/NRC evaluated the drug products as probably effective for growth promotion and feed efficiency and for the treatment of animal diseases caused by pathogens sensitive to chlortetracycline. NAS/NRC stated that: (1) Claims made regarding "for prevention of" or "to prevent" should be replaced with "as an aid in the control of" or "to aid in the control of"; (2) claims for growth promotion or stimulation are disallowed and claims for faster gains and/or feed efficiency should be stated as "may result in faster gains and/or improved feed efficiency under appropriate conditions"; (3) each disease claim should be properly qualified as "appropriate for use in (name of disease) caused by pathogens sensitive to (name of drug)"; if the disease cannot be so qualified the claim must be dropped; (4) claims pertaining to egg production and hatchability should be changed to "May aid in maintaining egg production and hatchability, under appropriate conditions, by controlling pathogenic microorganisms"; (5) the labels should warn that treated animals must actually be consuming enough medicated water or medicated feed to provide a therapeutic dosage under the conditions that prevail and, as a precaution, state the desired oral dose per unit of animal weight per day for each species as a guide to effective usage of the preparation in drinking water or feed; and (6) effective blood levels are required for each recommended dosage.

FDA concurred with the NAS/NRC findings, interpreting the phrase "* * * cannot be so qualified * * *" in above item (3) to mean "* * * is not supported by adequate data * * *" FDA reviewed all available effectiveness data of products subject to the evaluation and concluded that the data supported effectiveness for the control and treatment of certain bacterial diseases susceptible to CTC in chickens, turkeys, swine, sheep, calves, and cattle.

The NAS/NRC DESI evaluation is concerned only with the drugs' effectiveness and safety to the treated animal. It does not take into account the safety for food use of food derived from drug-treated animals. Nothing herein will constitute a bar to further proceedings with respect to questions of safety of the drugs or their metabolites in food products derived from treated animals.

The five subject sponsors filed supplements that revised the labeling of their products to comply with the findings of the NAS/NRC review and FDA's conclusions concerning those findings. The supplemental NADA's were approved as of February 16, 1996. The revisions to § 558.128 (21 CFR 558.128) list the NAS/NRC and FDA-approved conditions of use for CTC-containing Type A medicated articles.

Products which comply with the NAS/NRC findings and FDA's conclusions regarding those findings are eligible for copying under the Generic Animal Drug and Patent Term Restoration Act (GADPTRA) (see the eighth in a series of policy letters issued to facilitate implementation of GADPTRA that published in the **Federal Register** of August 21, 1991 (56 FR 41561). Accordingly, sponsors may now

obtain approval of abbreviated new animal drug applications (ANADA's) for these CTC Type A medicated articles.

FDA has incorporated within § 558.128 a warning against use of CTC feed in veal calves as part of a general effort to distinguish between ruminating calves and preruminating calves based on information indicating that withdrawal periods established in ruminating calves may not be adequate for preruminating calves.

Also, the agency has removed in § 558.128 the use of the fixed combination for chlortetracycline and sulfamethazine to treat beef cattle. FDA has recodified this approval in a separate section (§ 558.140 (21 CFR 558.140)), as has been done for other fixed combinations. In addition, the agency is using this occasion, of the DESI finalization of the CTC Type A medicated articles, to amend those portions of the regulations containing CTC combination feeds (see list in § 558.128(c)(5)) to revise the CTC claim language to make it consistent with the NAS/NRC and FDA-approved conditions of use.

Furthermore, the agency is deleting the citations for CTC in § 510.515 (21 CFR 510.515). Section 510.515 defines antibiotic drugs permitted in feed that were exempt from the requirement of certification. GADPTRA (Pub. L. 100–670) signed on November 16, 1988, removed the requirement for certification of antibiotic drugs for animal use. In fact, in a final rule published in the **Federal Register** of May 26, 1989 (54 FR 22741), the agency revoked the antibiotic procedural regulations. The published exemption constituted a sanction by the agency for use of the listed antibiotics. With the finalization of the DESI evaluation of the CTC products, the sanction is obsolete. Also, by deleting the CTC listing from § 510.515, the agency is correcting an error introduced when the regulation was published. Our records indicate that concurrent cites to oxytetracycline in § 510.515(b)(7)(i) and (b)(17)(i) were incorrect, as oxytetracycline was not considered a certifiable antibiotic animal drug; therefore, it was incorrectly listed in § 510.515.

In the **Federal Register** of October 21, 1977 (42 FR 56264), the then Bureau of Veterinary Medicine issued a notice of opportunity for a hearing (NOOH) on a proposal to withdraw approval of certain NADA's listed in § 558.15, for most subtherapeutic uses of tetracycline (CTC and oxytetracycline) in animal feed. The NOOH was issued in response to scientific research suggesting that subtherapeutic use of such drugs has contributed to the pool of antibiotic-resistant pathogenic microorganisms in food animals. Furthermore, research indicated that the drug resistance could be transferred to pathogenic organisms in humans. The NOOH is still pending and approval of these supplements to finalize the DESI review process for CTC Type A medicated articles does not constitute a bar to subsequent action to withdraw approval on the grounds cited in the outstanding NOOH.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these approvals for food-producing animals do not qualify for marketing exclusivity because the supplemental applications do not contain reports of new clinical or field investigations (other than bioequivalence or residue studies) and new human food safety studies (other than bioequivalence or residue studies) essential to the approvals and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.515 [Amended]

2. Section 510.515 *Animal feeds bearing or containing new animal drugs subject to the provision of section 512(n) of the act* is amended in paragraph (b) by removing and reserving paragraphs (b)(7), (b)(17), (b)(25), and (b)(29); by redesignating paragraphs (b)(10) and (b)(13) as paragraphs (b)(1) and (b)(2); and in the table in paragraph (c) by removing entries 6, 7, and 8 for "Chlortetracycline."

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

4. Section 558.55 is amended in the table in paragraph (d)(2) under entries (i), (ii), and (iv) by revising the items for "Chlortetracycline 100 to 200" and by adding new items for "Chlortetracycline 200 to 400" to read as follows:

§ 558.55 Amprolium.

* * * * *

(d) * * *

(2) * * *

Amprolium in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) * * *				
	Chlortetracycline 100 to 200.	Chickens; development of active immunity to coccidiosis; control of infectious synovitis caused by *Mycoplasma synoviae* susceptible to chlortetracycline.	Do not feed to chickens producing eggs for human consumption. Feed for 7 to 14 d.	
	Chlortetracycline 200 to 400.	Chickens; development of active immunity to coccidiosis; control of chronic respiratory disease (CRD) and air sac infection caused by *M. gallisepticum* and *E. coli* susceptible to chlortetracycline.	Do not feed to chickens producing eggs for human consumption. Feed for 7 to 14 d.	
(ii) * * *				
	Chlortetracycline 100 to 200.	Chickens; prevention of coccidiosis caused by *E. tenella* only; control of infectious synovitis caused by *M. synoviae* susceptible to chlortetracycline.	Do not feed to chickens producing eggs for human consumption. Feed for 7 to 14 d.	
	Chlortetracycline 200 to 400.	Chickens; prevention of coccidiosis caused by *E. tenella* only; control of chronic respiratory disease (CRD) and air sac infection caused by *M. gallisepticum* and *E. coli* susceptible to chlortetracycline.	Do not feed to chickens producing eggs for human consumption. Feed for 7 to 14 d.	
(iv) * * *				
	Chlortetracycline 100 to 200.	Chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; control of infectious synovitis caused by *M. synoviae* susceptible to chlortetracycline.	Do not feed to chickens producing eggs for human consumption. Feed for 7 to 14 d.	
	Chlortetracycline 200 to 400.	Chickens where immunity to coccidiosis is not desired; control of chronic respiratory disease (CRD) and air sac infection caused by *M. gallisepticum* and *E. coli* susceptible to chlortetracycline.	Do not feed to chickens producing eggs for human consumption. Feed for 7 to 14 d.	

* * * * *

5. Section 558.58 is amended in the table in paragraph (d)(1) by revising entry (iv) for the items "Chlortetracycline 100 to 200" and "Chlortetracycline 200" to read as follows:

§ 558.58 Amprolium and ethopabate.

* * * * *

(d) * * *

(1) * * *

Amprolium and ethopabate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(iv)	Chlortetracycline 100 to 200.	For chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; control of infectious synovitis caused by *Mycoplasma synoviae* susceptible to chlortetracycline.	Do not feed to chickens producing eggs for human consumption. Feed for 7 to 14 d.	
	Chlortetracycline 200 to 400.	For chickens where immunity to coccidiosis is not desired; prevention of coccidiosis; control of chronic respiratory disease (CRD) and air sac infection caused by *M. gallisepticum* and *E. coli* susceptible to chlortetracycline.	In low calcium feed containing 0.8% dietary calcium and 1.5% sodium sulfate; feed continuously as sole ration for 7 to 14 d; do not feed to chickens producing eggs for human consumption.	

6. Section 558.128 is amended by revising paragraphs (a), (b), and (c)(1); by removing paragraphs (c)(2) and (c)(3); and by redesignating paragraphs (c)(4) and (c)(5) as paragraphs (c)(2) and (c)(3), to read as follows:

§ 558.128 Chlortetracycline.

(a) *Approvals.* Type A medicated articles containing the following concentrations of either chlortetracycline calcium complex equivalent to chlortetracycline hydrochloride or, for products intended for use in milk replacer, chlortetracycline hydrochloride:

(1) 50 to 100 grams per pound to 000004 in § 510.600(c) of this chapter.

(2) 50 to 100 grams per pound to 000069.

(3) 50 to 100 grams per pound to 046573.

(4) 50 grams per pound to 012286.

(5) 50 to 100 grams per pound to 053389 .

(b) *Related tolerances.* See § 556.150 of this chapter.

(c)(1) It is used in feeds as follows:

Chlortetracycline amount	Combination	Indications for use	Limitations	Sponsor
(i) 10 to 50 g/ton		1. Chickens; increased rate of weight gain and improved feed efficiency.	Do not feed to chickens producing eggs for human consumption.	000004, 000069, 012286, 046573, 053389
		2. Growing turkeys; increased rate of weight gain and improved feed efficiency.	Do not feed to turkeys producing eggs for human consumption.	do
		3. Growing swine; increased rate of weight gain and improved feed efficiency.		do
(ii) 20 to 50 g/ton		Growing sheep; increased rate of weight gain and improved feed efficiency.		000004, 000069, 046573, 053389
(iii) 50 to 100 g/ton		Swine; reducing the incidence of cervical lymphadenitis (jowl abscesses) caused by Group *E. Streptococci* susceptible to chlortetracycline.		000004, 000069, 012286, 046573, 053389
(iv) 100 to 200 g/ton		Chickens; control of infectious synovitis caused by *Mycoplasma synoviae* susceptible to chlortetracycline.	Feed continuously for 7 to 14 d; do not feed to chickens producing eggs for human consumption.	do

Chlortetracycline amount	Combination	Indications for use	Limitations	Sponsor
(v) 200 g/ton		Turkeys; control of infectious synovitis caused by *M. synoviae* susceptible to chlortetracycline.	Feed continuously for 7 to 14 d; do not feed to turkeys producing eggs for human consumption.	do
(vi) 200 to 400 g/ton		1. Chickens; control of chronic respiratory disease (CRD) and air sac infection caused by *M. gallisepticum* and *E. coli* susceptible to chlortetracycline.	Feed continuously for 7 to 14 d; do not feed to chickens producing eggs for human consumption.	do
		2. Ducks; control and treatment of fowl cholera caused by *Pasteurella multocida* susceptible to chlortetracycline.	Feed in complete ration to provide from 8 to 28 milligrams per pound of body weight per day depending upon age and severity of disease, for not more than 21 d.	000004
(vii) 400 g/ton		1. Turkeys; control of hexamitiasis caused by *Hexamita meleagrides* susceptible to chlortetracycline.	Feed continuously for 7 to 14 d; do not feed to turkeys producing eggs for human consumption.	000004, 000069, 012286, 046573, 053389
		2. Turkey poults not over 4 weeks of age; reduction of mortality due to paratyphoid caused by *Salmonella typhimurium* susceptible to chlortetracycline.		do
		3. Breeding swine; control of leptospirosis (reducing the incidence of abortion and shedding of leptospirae) caused by *Leptospira pomona* susceptible to chlortetracycline.	Feed continuously for not more than 14 d.	do
(viii) 500 g/ton		Chickens; reduction of mortality due to *E. coli* infections susceptible to chlortetracycline.	Feed for 5 d; do not feed to chickens producing eggs for human consumption; withdraw 24 h prior to slaughter.	do
(ix)10 mg/g of finished feed daily.		Psittacine birds (cockatoos, macaws, and parrots) suspected or known to be infected with psittacosis caused by *Chlamydia psittaci* sensitive to chlortetracycline.	Feed continuously for 45 d; each bird should consume daily an amount of medicated feed equal to one fifth of its body weight. *Warning:* "Psittacosis, avian chlamydiosis, or ornithosis is a reportable communicable disease, transmissible between wild and domestic birds, other animals, and man. Contact appropriate public health and regulatory officials."	000004
(x) 0.1 mg/lb of body weight daily.		Calves (up to 250 lb); for increased rate of weight gain and improved feed efficiency.	In milk replacers or starter feed; include on labeling the warning: "A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal."	000004, 000069, 012286, 046573, 053389
(xi) 0.5 mg/lb of body weight daily.		Beef cattle (over 700 lb); control of active infection of anaplasmosis caused by *Anaplasma marginale* susceptible to chlortetracycline.	Withdraw 48 h prior to slaughter.	do
(xii) 10 mg/lb of body weight		1. Calves, beef and nonlactating dairy cattle; treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia caused by *P. multocida* organisms susceptible to chlortetracycline.	Treat for not more than 5 d; in feed excluding milk replacers; withdraw 10 d prior to slaughter except for 24 h for sponsor 046573; include on labeling the warning: "A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal."	do

Chlortetracycline amount	Combination	Indications for use	Limitations	Sponsor
		2. Calves (up to 250 lb); treatment of bacterial enteritis caused by *E. coli* susceptible to chlortetracycline.	In milk replacers or starter feed; include on labeling the warning: "A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal."	
		3. Swine; treatment of bacterial enteritis caused by *E. coli* and *S. choleraesuis* and bacterial pneumonia caused by *P. multocida* susceptible to chlortetracycline.	Feed for not more than 14 d; withdraw 5 d prior to slaughter for sponsor 012286.	000004, 000069, 012286, 046573, 053389
(xiii) 25 mg/lb of body weight		Turkeys; control of complicating bacterial organisms associated with bluecomb (transmissible enteritis; coronaviral enteritis) susceptible to chlortetracycline.	Feed continuously for 7 to 14 d; do not feed to turkeys producing eggs for human consumption.	do
(xiv) 25 to 70 mg/head/day		Calves (250 to 400 lb); increased rate of weight gain and improved feed efficiency.	Include on labeling the warning: "A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal."	000004, 000069, 012286, 046573, 053389
(xv) 70 mg/head/day		Growing cattle (over 400 lb) increased rate of weight gain, improved feed efficiency, and reduction of liver condemnation due to liver abscesses.	do	do
(xvi) 80 mg/head/day		Breeding sheep; reducing the incidence of (vibrionic) abortion caused by *Campylobacter fetus* infection susceptible to chlortetracycline.		000004, 000069, 046573, 053389
(xvii) 350 mg/head/day		1. Cattle (under 700 lb); control of bacterial pneumonia associated with shipping fever complex caused by *Pasteurella* spp. susceptible to chlortetracycline.	Withdraw 48 h prior to slaughter.	000004, 000069, 012286, 046573, 053389
		2. Beef cattle (under 700 lb); control of active infection of anaplasmosis caused by *A. marginale* susceptible to chlortetracycline.	do	do

* * * * *

7. New § 558.140 is added to subpart B to read as follows:

§ 558.140 Chlortetracycline and sulfamethazine.

(a) *Approvals.* Type A medicated articles: 35 grams of chlortetracycline per pound with 7.7 percent (35 grams) of sulfamethazine to 000004 in § 510.600(c) of this chapter.

(b) *Related tolerances.* See §§ 556.150 and 556.670 of this chapter.

(c) It is used in feed for beef cattle as follows:

(1) *Amount per head per day.* Chlortetracycline, 350 milligrams plus sulfamethazine, 350 milligrams.

(2) *Indications for use.* Aid in the maintenance of weight gains in the presence of respiratory disease such as shipping fever.

(3) *Limitations.* Feed for 28 days; withdraw 7 days prior to slaughter.

8. Section 558.175 is amended by revising paragraph (c)(2)(ii) to read as follows:

§ 558.175 Clopidol.

* * * * *

(c) * * *

(2) * * *

(ii) *Amount per ton.* Clopidol, 113.5 grams (0.0125 percent) plus chlortetracycline 100 to 200 grams.

(T3aT1) *Indications for use.* Aid in the prevention of coccidiosis caused by *E. tenella, E. necatrix,* E. *acervulina, E. maxima, E. brunetti,* and *E. mivati*; control of infectious synovitis caused by *Mycoplasma synoviae* susceptible to chlortetracycline.

(T3bT1) *Limitations.* Feed continuously as sole ration from the time chicks are placed in floor pens for 7 to 14 days.

* * * * *

9. Section 558.195 is amended in the table in paragraph (d) in the entry for "27.2 (0.003pct)" by removing the item for "Chlortetracycline 200" and adding in its place an item for "Chlortetracycline 100 to 200" and an item for "Chlortetracycline 200 and 400" to read as follow:

§ 558.195 Decoquinate.

* * * * *

(d) * * *

Decoquinate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
27.2 (0.003pct)				
	Chlortetracycline 100 to 200.	Chickens; for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. mivati, E. acervulina, E. maxima,* and *E. brunetti*; control of infectious synovitis caused by *Mycoplasma synoviae* susceptible to chlortetracycline.	Do not feed to chickens producing eggs for human consumption; in low calcium feed containing 0.8 pct. of calcium; feed continuously 7 to 14 days.	011526
	Chlortetracycline 200 to 400.	Chickens; for the prevention of coccidiosis caused by *E. tenella, E. necatrix, E. mivati , E. acervulina, E. maxima,* and *E. brunetti*; control of chronic respiratory disease (CRD) and air sac infection caused by *M. gallisepticum* and *E. coli* susceptible to chlortetracycline.	do	011526

10. Section 558.274 is amended in the table in paragraph (c)(1) under entry (i) by revising the item for "Chlortetracycline 100 to 200" and by adding a new item for "Chlortetracycline 200 to 400"; and under entry (ii) by removing the item for "Chlortetracycline 100 to 200" and adding in its place an item for "Chlortetracycline 400" to read as follows:

§ 558.274 Hygromycin B.

* * * * *

(c) * * *

(1) * * *

Hygromycin B in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) * * *				
	Chlortetracycline 100 to 200.	Chickens; control of infestation of large roundworms (*Ascaris galli*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*); control of infectious synovitis caused by *Mycoplasma synoviae* susceptible to chlortetracycline.	Do not feed to chickens producing eggs for human consumption; feed for 7 to 14 days; withdraw 3 days before slaughter.	
	Chlortetracycline 200 to 400.	Chickens; control of infestation of large roundworms (*Ascaris galli*), cecal worms (*H. Gallinae*), and capillary worms (*Capillaria obsignata*); control of chronic respiratory disease (CRD) and air sac infection caused by *Mycoplasma gallisepticum* and *Escherichia coli* susceptible to chlortetracycline.	do	
(ii) * * *				

Hygromycin B in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
	Chlortetracycline 400.	Swine; control of infestation of large roundworms (*Ascaris suis*), nodular worms (*Oesophagostomum dentatum*) and whipworms (*Trichuris suis*); treatment of bacterial enteritis caused by *E. coli* and *Salmonella choleraesuis* and bacterial pneumonia caused by *P. multocida* susceptible to chlortetracycline.	Withdraw 15 d before slaughter.	
*	*	*	*	*

* * * * *

11. Section 558.515 is amended by revising paragraphs (d)(1)(iii), (d)(1)(iv), and (d)(1)(v)(*b*) to read as follows:

§ 558.515 Robenidine hydrochloride.

* * * * *

(d) * * *

(1) * * *

(iii) *Amount per ton.* Robenidine hydrochloride, 30 grams (0.0033 percent) plus chlortetracycline, 100 to 200 grams.

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. mivati, E. brunetti, E. tenella, E. acervulina, E. maxima,* and *E. necatrix;* control of infectious synovitis caused by *Mycoplasma synoviae* susceptible to chlortetracycline.

(*b*) *Limitations.* Withdraw 5 days prior to slaughter; do not feed to chickens producing eggs for human consumption; feed continuously as sole ration up to 14 days.

(iv) *Amount per ton.* Robenidine hydrochloride, 30 grams (0.0033 percent) plus chlortetracycline, 200 to 400 grams.

(*a*) *Indications for use.* As an aid in the prevention of coccidiosis caused by *E. mivati, E. brunetti, E. tenella, E. acervulina, E. maxima,* and *E.* necatrix; control of chronic respiratory disease (CRD) and air sac infection caused by *M. gallisepticum* and *E. coli* susceptible to chlortetracycline.

(*b*) *Limitations.* Withdraw 5 days prior to slaughter; do not feed to chickens producing eggs for human consumption; feed continuously as sole ration up to 14 days.

(v) * * *

(*b*) *Limitations.* Withdraw 5 days prior to slaughter; do not feed to chickens producing eggs for human consumption; feed continuously up to 5 days.

* * * * *

12. Section 558.530 is amended by revising paragraph (a); by redesignating paragraphs (d)(2), (d)(3), and (d)(4) as paragraphs (d)(4), (d)(5), and (d)(6), by adding new paragraphs (d)(2) and (d)(3); and by revising newly redesignated paragraph (d)(4) to read as set forth below, and in newly redesignated paragraph (d)(6) by redesignating paragraphs (d)(6)(i)(*a*) through (*d*) as paragraphs (d)(6)(i)(A) through (D).:

§ 558.530 Roxarsone.

(a) *Approvals.* Type A medicated articles: (1) 10, 20, and 50 percent to 011526 in § 510.600(c) of this chapter for use as in paragraph (d)(1) of this section.

(2) 10, 20, 50, and 80 percent to 046573 in § 510.600(c) of this chapter for use as in paragraphs (d)(1), (d)(2), (d)(3), and (d)(4) of this section.

* * * * *

(d) * * *

(2) *Growing chickens*—(i) *Grams per ton.* Roxarsone, 22.7 to 45.4 (0.0025 to 0.005 percent) plus chlortetracycline, 10 to 50.

(A) *Indications for use.* For increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(B) *Limitations.* Do not feed to chickens producing eggs for human consumption; withdraw 5 days before slaughter; as sole source of organic arsenic; drug overdose or lack of water may result in leg weakness; feed continuously throughout growing period.

(ii) *Grams per ton.* Roxarsone 22.7 to 45.4 (0.0025 to 0.005 percent) plus chlortetracycline, 100 to 200.

(A) *Indications for use.* For increased rate of weight gain, improved feed efficiency, and improved pigmentation; control of infectious synovitis caused by *Mycoplasma synoviae* susceptible to chlortetracycline.

(B) *Limitations.* See paragraph (d)(2)(i)(B) of this section except feed continuously for 7 to 14 days.

(iii) *Grams per ton.* Roxarsone 22.7 to 45.4 (0.0025 to 0.005 percent) plus chlortetracycline, 200 to 400.

(A) *Indications for use.* For increased rate of weight gain, improved feed efficiency, and improved pigmentation; control of chronic respiratory disease (CRD) and air sac infection caused by *M. gallisepticum* and *Escherichia coli* susceptible to chlortetracycline.

(B) *Limitations.* See paragraph (d)(2)(i)(B) of this section except feed continuously for 7 to 14 days.

(iv) *Grams per ton.* Roxarsone 22.7 to 45.4 (0.0025 to 0.005 percent) plus chlortetracycline, 500.

(A) *Indications for use.* For increased rate of weight gain, improved feed efficiency, and improved pigmentation; reduction of mortality due to *E. coli* infections susceptible to chlortetracycline.

(B) *Limitations.* See paragraph (d)(2)(i)(B) of this section except feed for 5 days.

(3) *Growing turkeys*—(i) *Grams per ton.* Roxarsone 22.7 to 45.4 (0.0025 to 0.005 percent) plus chlortetracycline, 10 to 50.

(A) *Indications for use.* For increased rate of weight gain, improved feed efficiency, and improved pigmentation.

(B) *Limitations.* Do not feed to turkeys producing eggs for human consumption; withdraw 5 days before slaughter; as sole source of organic arsenic; drug overdose or lack of water may result in leg weakness; feed continuously throughout growing season.

(ii) *Grams per ton.* Roxarsone 22.7 to 45.4 (0.0025 to 0.005 percent) plus chlortetracycline 200.

(A) *Indications for use.* For increased rate of weight gain, improved feed efficiency, and improved pigmentation; control of infectious synovitis caused by *M. synoviae* susceptible to chlortetracycline.

(B) *Limitations.* See paragraph (d)(3)(i)(B) of this section except that the drug should only be fed continuously for 7 to 14 days.

(iii) *Grams per ton.* Roxarsone 22.7 to 45.4 (0.0025 to 0.005 percent) plus chlortetracycline, 400.

(A) *Indications for use.* For increased rate of weight gain, improved feed efficiency, and improved pigmentation; control of hexamitiasis caused by *Hexamita meleagrides* susceptible to chlortetracycline. Turkey poults not over 4 weeks of age: Reduction of mortality due to paratyphoid caused by *Salmonella typhimurium* susceptible to chlortetracycline.

(B) *Limitations.* See paragraph (d)(3)(i)(B) of this section except that the drug should only be fed continuously for 7 to 14 days.

(iv) *Amount.* Roxarsone 22.7 to 45.4 grams per ton (0.0025 to 0.005 percent) plus chlortetracycline, 25 milligrams per pound of body weight daily.

(A) *Indications for use.* For increased rate of weight gain, improved feed efficiency, and improved pigmentation; control of complicating bacterial organisms associated with bluecomb (transmissible enteritis, coronaviral enteritis) susceptible to chlortetracycline.

(B) *Limitations.* See paragraph (d)(3)(i)(B) of this section except that the drug should only be fed continuously for 7 to 14 days.

(4) *Growing-finishing swine*—(i) *Grams per ton.* Roxarsone 22.7 to 34.1 (0.0025 to 0.00375 percent).

(A) *Indications for use.* For increased rate of weight gain and improved feed efficiency.

(B) *Limitations.* Withdraw 5 days before slaughter; as sole source of organic arsenic; feed continuously throughout growing season.

(ii) *Grams per ton.* Roxarsone 22.7 to 34.1 (0.0025 to 0.00375 percent) plus chlortetracycline, 400 (to administer 10 milligrams per pound of body weight).

(A) *Indications for use.* For increased rate of weight gain and improved feed efficiency; treatment of bacterial enteritis caused by *E. coli* and *S. choleraesuis* and bacterial pneumonia caused by *P. multocida* susceptible to chlortetracycline.

(B) *Limitations.* Withdraw 5 days before slaughter; as sole source of organic arsenic; feed for not more than 14 days.

(iii) *Grams per ton.* Roxarsone 181.5 (0.02 percent).

(A) *Indications for use.* For the treatment of swine dysentery.

(B) *Limitations.* Feed for not more than 6 consecutive days; if improvement is not observed, consult a veterinarian; withdraw 5 days before slaughter; as a sole source or organic arsenic; animals must consume enough medicated feed to provide a therapeutic dose.

(iv) *Grams per ton.* Roxarsone, 181.5 (0.02 percent) plus chlortetracycline, 10 to 50.

(A) *Indications for use.* For the treatment of swine dysentery; increased rate of weight gain and improved feed efficiency.

(B) *Limitations.* See paragraph (d)(4)(iii)(B) of this section.

(v) *Grams per ton.* Roxarsone, 181.5 (0.02 percent) plus chlortetracycline, 400.

(A) *Indications for use.* For the treatment of swine dysentery; treatment of bacterial enteritis caused by *E. coli* and *S. choleraesuis* and bacterial pneumonia caused by *P. multocida* susceptible to chlortetracycline.

(B) *Limitations.* See paragraph (d)(4)(iii)(B) of this section.

* * * * *

13. Section 558.680 is amended in the table in paragraph (c)(1) under entries (i) and (ii) by revising the item for "Chlortetracycline 100 to 200"; by removing the item for "Chlortetracycline 200" and adding in its place an item for "Chlortetracycline 200 to 400" to read as follows:

§ 558.680 Zoalene.

* * * * *

(c) * * *

(1) * * *

Zoalene in grams/ton	Combination in grams/ton	Indications for use	Limitations
(i) * * *			
*	*	*	*
	Chlortetracycline 100 to 200.	Replacement chickens; development of active immunity to coccidiosis; control of infectious synovitis caused by *Mycoplasma synoviae* susceptible to chlortetracycline.	Do not feed to chickens producing eggs for human consumption; grower ration not to be fed to birds over 14 weeks of age; feed as in subtable in item (i).
	Chlortetracycline 200 to 400.	Replacement chickens; development of active immunity to coccidiosis; control of chronic respiratory disease (CRD) and air sac infection caused by *M. gallisepticum* and *Escherichia coli* susceptible to chlortetracycline.	Do not feed to chickens producing eggs for human consumption; grower ration not to be fed to birds over 14 weeks of age; feed as in subtable in item (i).
*	*	*	*
(ii) * * *			
*	*	*	*
	Chlortetracycline 100 to 200	Broiler chickens; prevention and control of coccidiosis; control of infectious synovitis caused by *M. synoviae* susceptible to chlortetracycline.	Do not feed to chickens producing eggs for human consumption; feed continuously for 7 to 14 d.

Zoalene in grams/ton	Combination in grams/ton	Indications for use	Limitations
	Chlortetracycline 200 to 400	Broiler chickens; prevention and control of coccidiosis; control of chronic respiratory disease (CRD) and air sac infection caused by *M. gallisepticum* and *E. coli* susceptible to chlortetracycline.	Do not feed to chickens producing eggs for human consumption; feed continuously for 7 to 14 d.

* * * * *

Dated: June 13, 1996.

Andrew J. Beaulieau,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–17169 Filed 7–8–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 941

[Docket No. FR–3919–N–04]

Office of the Assistant Secretary for Public and Indian Housing; Public/Private Partnerships for the Mixed-Finance Development of Public Housing Units Extension of Public Comment Deadline on Interim Rule

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Extension of Public Comment Deadline on Interim Rule.

SUMMARY: On May 2, 1996, HUD published an interim rule that added a new subpart F to the public housing development program at 24 CFR part 941. Under this new subpart, a public housing authority (PHA) was authorized to provide to a non-PHA entity public housing development and operating funds for the development and operation of the resulting public housing units. In addition, the rule clarified that replacement public housing units for public housing units that have been demolished could be built on the original public housing site, or in the same neighborhood, if the number of such replacement units was significantly fewer than the number of units demolished. The May 2, 1996 interim rule provided for the public comment period to expire on July 1, 1996. This notice extends the public comment period to September 15, 1996.

DATES: Comment Due Date: September 15, 1996.

ADDRESSES: Interested persons are invited to submit comments on the interim rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Bill Flood, Office of Capital Improvements, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4134, Washington, DC 20410–0500, telephone (202) 708–1640, ext. 4185; (TTY): (202) 708–9300 or 1–800–877–8339. (Except for the "800" telephone number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On May 2, 1996, HUD published an interim rule (61 FR 19708) that added a new subpart F to the public housing development program at 24 CFR part 941. Under this interim rule, a PHA is authorized to provide a portion of its HUD-awarded development and operating funds to a non-PHA entity for the entity to own, develop and operate the resulting public housing units. The non-PHA entity may develop and operate the public housing units using public and private financing (i.e., as a "mixed-finance" project), and to develop solely public housing units or a combination of public housing, shallow subsidy, and market rate units.

In addition, the May 2, 1996 interim rule added a new paragraph (c)(3) to HUD's existing site and neighborhood standards at § 941.202. This purpose of this provision was to clarify HUD's existing authority to approve the building of replacement public housing units for public housing units that have been demolished on either the original public housing site, or in the same neighborhood, if the number of such replacement public housing units is significantly fewer than the number of public housing units demolished. This authority was affirmed by the passage of section 1002(a)(9) of Pub. L. 104–19 (approved July 27, 1995) which explicitly authorized HUD to approve the building of replacement public housing units under such circumstances.

Extension of Public Comment Period

The May 2, 1996 interim rule provided for a 60-day public comment period which is scheduled to close on July 1, 1996. Because of the significant public interest in this rule, HUD is extending the public comment period to September 15, 1996.

Dated: June 28, 1996.

Michael B. Janis,

General Deputy, Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–17177 Filed 7–8–96; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS). The Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that a prior certification of noncompliance for USS SEAWOLF (SSN 21) should be amended. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: March 4, 1996.

FOR FURTHER INFORMATION CONTACT: Captain R. R. Pixa, JAGC, U.S. Navy; Admiralty Counsel, Office of the Judge Advocate General Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has determined that certain navigation lights on USS SEAWOLF (SSN 21), previously certified as not in compliance with 72 COLREGS, have been relocated. The relocation has resulted in a reduction in the arc of visibility of the side lights of the vessel from 118.3 degrees to 111.5 degrees.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Three of § 706.2 is amended by adding an entry for USS SEAWOLF (SSN 21) to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE 3

Vessel	No.	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters 3(b) annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(K) annex 1	Anchor lights relationship of aft light to forward light in meters 2(K) annex II
USS SEAWOLF	SSN–21	225°	111.5°	205°	5.1	10.7	2.8	1.8 below.

Dated: June 4, 1996.

M.W. Kerns,

Lieutenant, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty), Acting.

[FR Doc. 96–16830 Filed 7–8–96; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 222

Management of Wild Free-Roaming Horses and Burros

AGENCY: Forest Service, USDA.

ACTION: Correction.

SUMMARY: The Forest Service is amending regulations for management of wild free-roaming horses and burros to correct a citation that was redesignated when the agency amended regulations for impoundment and disposal of unauthorized livestock. This rulemaking is identified as an agency action under the USDA Regulatory Reform initiative.

EFFECTIVE DATE: This rule is effective July 9, 1996.

FOR FURTHER INFORMATION CONTACT: Ralph Giffen, Range Management Staff, Forest Service, USDA, P.O. 96090, Washington, D.C. 20090–6090, (202) 205–1460.

SUPPLEMENTARY INFORMATION: While reviewing current regulations as part of the President's Regulatory Reform Initiative, an agency review team identified an incorrect citation in the wild horse and burro management regulations. This technical amendment corrects that citation.

On April 9, 1980, at 45 FR 24135, the Secretary of Agriculture established final regulations for the Management of Wild and Free-Roaming Horses and Burros at 36 CFR Part 222, Subpart B. Section 222.23 of that rule cited § 262.2 of the same Title as the authority for the impoundment and removal of unauthorized livestock on National Forest System lands. By issuance of final regulations on June 9, 1983 (48 FR 26605), § 262.2 was redesignated § 262.10. Currently regulations at § 262.10 of Title 36 provide for impoundment and disposal of unauthorized livestock on National Forest System lands. The Forest Service is correcting this citation by amending Title 36 of the Code of Federal Regulations, Part 222, Subpart B.

As a technical amendment, this final rule is not subject to review under Executive Orders 12630, 12778, or 12866.

List of Subjects in 36 CFR Part 222

Grazing lands, Livestock, National forests, National grasslands, Range management, and Wildlife.

Therefore, for the reasons set forth in the preamble, Part 222 of Title 36 of the Code of Federal Regulations is hereby amended as follows:

PART 222—[AMENDED]

Subpart B—Management of Wild Free-Roaming Horses and Burros

1. The authority citation for Subpart B of Part 222 continues to read as follows:

Authority: 85 Stat. 649, as amended 16 U.S.C. 1331–1340); sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); sec. 32, 50 Stat. 522, as amended (7 U.S.C. 1011); 92 Stat. 1803 (43 U.S.C. 1901 note).

2. Revise section 222.23 to read as follows:

§ 222.23 Removal of other horses and burros.

Horses and burros not within the definition in § 222.20(b)(13) which are

VOL 61 ISS 132 JL 9 1996 UMI

VOL
61
ISS
132
JL
9
1996
UMI

introduced onto Wild Horse and Burro Territories or ranges after December 15, 1971, by accident, negligence, or willful disregard of private ownership, and which do not become intermingled with wild free-roaming horses or burros shall be considered as unauthorized livestock and treated in accordance with provisions in 36 CFR 261.7 and 262.10.

Dated: June 28, 1996.

David G. Unger,

Associate Chief.

[FR Doc. 96–17444 Filed 7–8–96; 8:45 am]

BILLING CODE 3410–11–M

36 CFR Part 223

Sale and Disposal of National Forest System Timber; Subpart E—Federal Timber Contract Payment Modification Program

AGENCY: Forest Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: The Forest Service is amending its regulations on timber sale contracts to remove the subpart on Federal timber contract payment modification program. Originally required to implement the Federal Timber Contract Payment Modification Act of 1984, these regulations were reviewed during the regulatory reform phase II initiative of the National Performance Review and determined to be obsolete.

EFFECTIVE DATE: July 9, 1996.

FOR FURTHER INFORMATION CONTACT: Jim Naylor, Timber Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090, (202) 205–0858.

SUPPLEMENTARY INFORMATION:

Background

The Federal Timber Contract Payment Modification Act of October 16, 1984, (16 U.S.C. 618) authorized and directed the Secretaries of Agriculture and the Interior to release a timber sale purchaser from specified contractual obligations thereby returning to the Government certain timber sale contracts.

Speculative bidding in the early 1980's, followed by a substantial drop in the forest products market, left may timber purchasers in high risk of defaulting timber sale contracts and having to declare bankruptcy.

The Act allowed purchasers of national forest timber to return to the Government a certain number of timber sale contracts upon payment of a "buy-out charge."

The final rule to implement the Federal Timber Contract Payment Modification Act was published in the **Federal Register** on June 27, 1985, at 50 FR 26666. Under this regulation, purchasers were required to apply for contract buyout within 90 days of the published date of the rule. All of the contracts governed by this regulation are closed. Also, the emergency rate redetermination in Alaska rules, which were part of Subpart E, are no longer applicable. Therefore, these rules are no longer needed and by this amendment are removed from the Code of Federal Regulations. Because of the narrow scope and limited effect of this action, the Agency has determined that this amendment is a technical amendment for which notice and comment pursuant to the Administrative Procedures Act (5 U.S.C. 553) is neither practical nor necessary.

Regulatory Impact

This rule is a technical amendment to remove obsolete regulations and, as such, has no substantive effect nor is it subject to review under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. Accordingly, this rule is not subject to OMB review under Executive Order 12866.

Moreover, good cause exists to exempt this rule from notice and comment pursuant to 5 U.S.C. 553 and, therefore, this rule is exempt from further analysis under the Unfunded Mandates Reform Act of 1995; Executive Order 12778, Civil Justice Reform; Executive Order 12630, Takings Implications; or The Paperwork Reduction Act of 1995.

Environmental Impact

This action falls within a category of actions excluded from documentation in an Environmental Impact Statement and an Environmental Assessment. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's assessment is that this final technical rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

List of Subjects in 36 CFR Part 223

Exports, Government contracts, National forests, Reporting requirements, and Timber sales.

Therefore, for the reasons set forth in the preamble, Part 223 of Title 36 of the Code of Federal Regulations is hereby amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation for part 223 continues to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618; 104 Stat. 714–726, 16 U.S.C. 620–620h, unless otherwise noted.

Subpart E—[Removed and Reserved]

2. Remove and reserve Subpart E consisting of sections 223.170–223.183.

Dated: June 28, 1996.

David G. Unger,

Associate Chief.

[FR Doc. 96–17443 Filed 7–8–96; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5532–6]

RIN 2060–AD27

Regulation of Fuels and Fuel Additives; Standards for Reformulated Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Petition for reconsideration; request for comment.

SUMMARY: EPA requests comment on a petition submitted to EPA by the American Petroleum Institute (API). The petition, submitted pursuant to section 553(e) of the Administrative Procedure Act, requests reconsideration of the Phase II reformulated gasoline reduction standard for oxides of nitrogen (NO_X).

DATES: Comments must be received on or before September 9, 1996.

ADDRESSES: Interested parties may submit written comments (in triplicate, if possible) to: EPA Air and Radiation Docket, Attention Docket No. A–96–27, room M–1500 (mail code 6102), 401 M St., SW, Washington, D.C. 20460. The docket may be inspected at this location from 8:30 a.m. until 5:30 p.m. weekdays. The docket may also be reached by telephone at (202) 260–7548. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying.

FOR FURTHER INFORMATION CONTACT: Debbie Wood, Office of Mobile Sources, Fuels and Energy Division, (202) 233–9000.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

On February 16, 1994, EPA published a final rule establishing emission reduction and other performance standards for reformulated gasoline (RFG), including provisions for the certification of RFG and enforcement of RFG standards, and establishing certain requirements regarding unreformulated or conventional gasoline (59 FR 7716). The purpose of the RFG program is to improve air quality by requiring that gasoline be reformulated to reduce emissions from motor vehicles of toxics and tropospheric ozone-forming compounds, as specified by section 211(k)(1) of the Clean Air Act (CAA or the Act). Section 211(k) mandates that RFG be sold in the nine largest metropolitan areas with the most severe summertime ozone levels; RFG must also be sold in other ozone nonattainment areas that choose to participate or "opt in" to the program. The Act further prohibits conventional gasoline sold in the rest of the country from becoming any more polluting than it was in 1990 by requiring that each refiner's and importer's gasoline be as clean, on average, as it was in 1990; this statutory prohibition has resulted in requirements referred to as the "anti-dumping" program.

The Act mandates certain requirements for the RFG program. Section 211(k)(1) directs EPA to issue regulations that:

> * * * require the greatest reduction in emissions of ozone forming volatile organic compounds (during the high ozone season) and emissions of toxic air pollutants (during the entire year) achievable through the reformulation of conventional gasoline, taking into consideration the cost of achieving such emission reductions, any nonair-quality and other air-quality related health and environmental impacts and energy requirements.

Section 211(k)(3) specifies the minimum requirement for reduction of volatile organic compounds (VOC) and toxics for 1995 through 1999, or Phase I of the RFG program; the section specifies that EPA must require the more stringent of a formula fuel or an emission reduction performance standard, measured on a mass basis, equal to 15 percent of baseline emissions. Baseline emissions are the emissions of 1990 model year technology vehicles operated on a specified baseline gasoline. Section 211(k)(2) compositional specifications for RFG include a 2.0 weight percent oxygen minimum and a 1.0 volume percent benzene maximum. Section 211(k)(2) also specifies that NO_X emissions may not increase in RFG.

For the year 2000 and beyond, or Phase II of the RFG program, the Act specifies that the VOC and toxics performance standards must be no less than either a formula fuel or a 25 percent reduction from baseline emissions, whichever is more stringent. EPA can adjust these standards upward or downward taking into account such factors as feasibility and cost, but in no case can they be less than 20 percent.

Shortly after passage of the CAA Amendments in 1990, EPA entered into a regulatory negotiation with interested parties to develop specific proposals for implementing both the RFG and anti-dumping programs. In August 1991, the negotiating committee reached consensus on a program outline, addressing emission content standards for Phase I (1995–2000), emission models, certification, use of averaging and credits, and other important program elements.

The regulatory negotiation conducted by EPA did not, however, address Phase II VOC and toxics standards, nor did it address a reduction in NO_X emissions beyond the statutory cap imposed under section 211(k)(2)(A). The final rule promulgated by EPA closely followed the outline agreed to in the negotiated rulemaking. The final rule also adopted a NO_X reduction performance standard for Phase II RFG, relying on authority under section 211(c)(1)(A).

In proposing and promulgating a NO_X reduction standard, EPA analyzed the costs and benefits, along with other relevant factors, including EPA's view that NO_X reductions are important to achieve attainment of the ozone National Ambient Air Quality Standard (NAAQS) in many nonattainment areas. In the final rule, EPA discussed recent studies which indicate that NO_X control is an effective ozone control strategy for the northeast as well as the Lake Michigan area (59 FR 7751). EPA also noted that there are non-ozone benefits from NO_X control, such as reduced acid rain and improved visibility (59 FR 7751). In considering the feasibility of section 202 motor vehicle controls prior to regulating fuels, EPA cited several reasons for the promulgation of a NO_X reduction standard (59 FR 7752): (1) Significant emission reductions would be achieved right away, in the summer of 2000, with no delay based on fleet turnover time. (2) A NO_X reduction standard for gasoline would act to reduce emissions from all mobile sources that use gasoline, whether on-highway or nonroad. (3) The fuel control is specifically aimed at areas of the country that are in nonattainment for ozone, and is limited in time to that part of the year when ozone is of most concern. (4) The expected increase in vehicle miles traveled over time leads EPA to believe that this fuel control is needed to continue to achieve the in-use NO_X emission reductions necessary for many areas of the country to reach attainment for ozone. (5) The performance standard adopted minimizes any concern that a fuel control could interfere in the production process by directing refiners on how to make their product.

EPA estimates that the Phase II NO_X emission reduction standard of 6.8 percent on average will reduce summertime NO_X emissions from gasoline-powered mobile sources by approximately 22,000 tons annually. Cost-effectiveness is estimated at $5,000 per ton of NO_X reduction.

In December 1995, API submitted a petition to EPA requesting reconsideration of the Phase II RFG NO_X standard or, at a minimum, suspension of the effective date of the standard. API bases its request for reconsideration on three arguments: (1) The standard is inconsistent with the CAA Amendments of 1990 and the 1991 negotiated rulemaking. (2) Air quality benefits of the standard are overstated. (3) The standard is not a cost-effective strategy for ozone control. These arguments were also submitted to EPA by API as comments during the RFG rulemaking; the final rule preamble discusses these arguments and explains EPA's reasons for promulgating the NO_X reduction standard (see 59 FR 7716, 7744–7756).

An initial review of the API petition indicates that it presents no compelling new evidence or argument that would warrant revisiting the decision made in promulgating the Phase II NO_X reduction standard. However, to ensure that our conclusions on the appropriateness of the NO_X reduction standard remain well-founded, EPA will review any relevant and available new information on costs and benefits that has been developed since promulgation of the final rule. EPA solicits comment on the issues raised in the petition. The arguments presented in the API petition are summarized below. A complete copy of the API petition may be found in the docket for this notice.

II. Summary of API Petition

A. Consistency With CAA and Negotiated Rulemaking

API's first argument is that EPA's Phase II RFG NOG5x standard is inconsistent with the CAA Amendments of 1990 and the 1991 negotiated rulemaking. API cites provisions of the Act that specifically require reductions in various pollutants, and contrasts that

VOL 61 ISS 132 JL 9 1996 UMI

with the "no NO_X increase" approach taken toward RFG in section 211(k). API also notes that the 1991 negotiated rulemaking agreement does not address a Phase II NO_X reduction, and that the focus of debate was whether *de minimis* increases in NO_X would satisfy the no NO_X increase standard. For discussion of these arguments in the RFG final rule, see, for example, 59 FR 7744–7745.

B. Air Quality Benefits

API's second argument is that the ozone benefits of the Phase II RFG NO_X standard are overstated. API argues that the primary basis for the Phase II NO_X standard is ozone attainment, and cites data from EPA's Trends Report (U.S. EPA, National Air Quality and Emissions Trends Report 1993, EPA 454/R–94–026, October 1994 at 6.) that progress toward ozone attainment has been made. API also notes that the Act imposes substantial obligations on states to attain ozone standards.

API claims that in promulgating the Phase II RFG NO_X standard, EPA emphasized those parts of studies (such as Rethinking the Ozone Problem in Urban and Regional Air Pollution, National Research Council, National Academy Press, Washington, D.C. 1991) that showed NO_X to be an effective ozone control strategy, while discounting those which indicate that NO_X control can be counterproductive.

API discusses EPA's authority under CAA section 182 to grant waivers from certain CAA local NO_X reduction requirements. The petition states that the section 182(f) waiver requirement recognizes that local NO_X reductions may not be necessary or helpful to attainment of the ozone standard. Although the overwhelming majority of section 182(f) waivers have been granted because additional NO_X reductions are not needed for attainment of the ozone NAAQS, the petition notes that, in a few cases, photochemical modeling has indicated that increased NO_X reductions may exacerbate peak ozone in an urban core. The petition cites three cases where modeling has shown that increased NO_X reductions may exacerbate peak ozone concentrations: Chicago, Milwaukee, and Houston, three of the nine cities required to use RFG. API notes the conditional nature of section 182(f) waivers.

API argues that given continued progress toward ozone NAAQS attainment, imposition of Phase II NO_X reductions applicable in all RFG areas is "plainly incongruous" with the granting of waivers under section 182(f). API also argues that EPA's claim that air quality benefits in addition to reduced ozone will result from the Phase II NO_X standard (e.g., less acid rain, reduced nitrate deposition, and improved visibility), is speculative. These arguments are discussed in the RFG final rule at, for example, 59 FR 7746 and 7751.

C. Cost-effectiveness

API argues that EPA has understated the impact of the Phase II NO_X reduction standard on costs and refiner flexibility. API claims that if more accurate sulfur removal ("desulfurization") costs were employed, EPA's cost per ton of NO_X removed would increase to over $10,000. Moreover, API argues that EPA's cost effectiveness analysis does not take into account that NO_X reductions in some areas do not contribute to ozone attainment; API claims that if the benefit of NO_X reductions in Chicago, Milwaukee and Houston, which have been granted conditional section 182(f) waivers, is reduced to zero or less, EPA's cost-effectiveness estimate would rise from $5,000 to $7,500 per ton.

API also argues that EPA should have included a more extensive array of stationary source NO_X control measures that compare favorably to EPA's cost-effectiveness estimate, particularly if that estimate is changed in light of API's arguments on desulfurization costs and reduced ozone benefits.

Finally, API argues that major stationary sources offer more potential for overall reduction in air pollution, and that the cost-effectiveness of Phase II NO_X controls is higher than stationary combustion sources with lower potential for overall NO_X reduction. API argues that, unlike mobile source control, major stationary source control can be targeted to avoid the cost of NO_X control where it is not needed and any adverse effect on ozone because of atmospheric chemistry. API's arguments are discussed in the RFG final rule at, for example, 59 FR 7752–7754.

III. Request for Comment

EPA requests comment on all the issues raised in API's petition for reconsideration. EPA is also interested in the potential impact of a delay in implementation or elimination of the Phase II RFG NO_X standard on state implementation plans for attaining compliance with the ozone NAAQS. EPA solicits new information on costs and air quality benefits associated with the Phase II RFG NO_X reduction standard, including non-ozone air quality benefits.

IV. Conclusion

After considering all public comments and any other relevant information available to EPA, the agency will make a decision regarding API's petition for reconsideration.

Dated: June 28, 1996.

Mary D. Nichols,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 96–17318 Filed 7–8–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5533–1]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of the Carter Lee Lumber Company Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Carter Lee Lumber Company Site in Indiana from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action is being taken by EPA and the State of Indiana, because it has been determined that Responsible Parties have implemented all appropriate response actions required. Moreover, EPA and the State of Indiana have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: July 9, 1996.

FOR FURTHER INFORMATION CONTACT: Deborah Orr at (312) 886–7576 (SR–6J), Remedial Project Manager, Superfund Division, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at the local information repository located at: Hawthorn Community Center, 2440 West Ohio Street, Indianapolis, IN and the offices of the Indiana Department of Environmental management, 100 N. Senate Avenue, N1255, Indianapolis, IN. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. The contact for the Regional Docket Office is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is Carter Lee Lumber Company Site located in Indianapolis, Indiana. A Notice of Intent to Delete for this site was published May 8, 1996 (61 FR 20785). The closing date for comments on the Notice of Intent to Delete was June 7, 1996. EPA received no comments and therefore no Responsiveness Summary was prepared.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous Waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 24, 1996.

David A. Ullrich,

Acting Regional Administrator, U.S. EPA, Region V.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Site "Carter Lee Lumber Company Site, Indianapolis, Indiana".

[FR Doc. 96–17322 Filed 7–8–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 42

[CGD 96–006]

RIN 2115–AF29

Extension of Great Lakes Load Line Certificate

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule.

SUMMARY: By this direct final rule, the Coast Guard is revising the limit on the number of days that a Great Lakes Load Line Certificate extension may be granted from 90 days to 365 days. This action is taken to extend the Great Lakes load line certificate interval from the current 5 years and 90 days maximum interval to a 6-year maximum interval.

DATES: This rule is effective on October 7, 1996, unless the Coast Guard receives written adverse comments or written notice of intent to submit adverse comments on or before September 9, 1996. If such comments or notice are received, the Coast Guard will withdraw this direct final rule, and a timely notice of withdrawal will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 96–006), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Mark R. DeVries, G–MOC, (202) 267–0009.

SUPPLEMENTARY INFORMATION:

Request for Comments

Any comments must identify the names and address of the person submitting the comment, specify the rulemaking docket (CGD 96–006) and the specific section of this rule to which each comment applies, and give the reason for each specific comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8+ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Regulatory Information

The Coast Guard is publishing a direct final rule, the procedures of which are outlined in 33 CFR 1.05–55, because no adverse comments are anticipated. If no adverse comments or any written notice of intent to submit adverse comment are received within the specified comment period, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days prior to the effective date, the Coast Guard will publish a notice in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if the Coast Guard receives written adverse comment or written notice of intent to submit adverse comment, the Coast Guard will publish a notice in the final rule section of the **Federal Register** to announce withdrawal of all or part of this direct final rule. If adverse comments apply to only part of this rule, and it is possible to remove that part without defeating the purpose of this rule, the Coast Guard may adopt as final those parts of this rule on which no adverse comments were received. The part of this rule that was the subject of adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of adverse comments, a separate notice of proposed rulemaking (NPRM) will be published and a new opportunity for comment provided.

A comment is considered "adverse" if the comment explains why this rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.

Background and Purpose

Before 1973, the load line intervals for vessels operating on the Great Lakes was 6 years in length. In 1973, the load line regulations were revised and the 6-year interval was reduced to 5 years with a provision to allow for a 90-day extension. The reduction in the interval was because of the higher frequency and shorter length of Great Lakes voyages, the presumed safety risks resulting from the increased amount of dockings, and the Great Lakes climatic conditions.

This assumption has proven to be incorrect. The Lake Carriers' Association, whose membership includes the operators of 59 U.S.-Flag freightships on the Great Lakes, has

VOL
61
ISS
1
32
JL
9
1996
UMI

been able to provide 20 years of data to dispute the additional risk assumption. The Coast Guard agrees that the data does not support the presumption of higher safety risks.

Instead, the reduction in the Great Lakes load line certificate interval caused an unnecessary increased financial burden on the industry without the benefit of an increase in the level of safety. It created this increase in costs by causing more frequent drydockings and reducing the number of days available to carry cargo. This rule will avoid unnecessary costs to the industry by providing for extensions of Great Lakes load line certificate intervals up to 365 days for qualifying Great Lakes vessels.

Discussion of Rules

This rule revises 46 CFR Part 42 by changing the limit on the number of days that a Great Lakes load line certificate may be extended from 90 days to 365 days. This expands the Great Lakes load line certificate interval to a maximum interval of 6 years, including allowable extensions.

Regualtory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This rule impacts only vessel owners and operators in possession of a Great Lakes Load Line Certificate, and will result in cost savings to vessels receiving an extension of this certificate by allowing vessel owners and operators greater flexibility in the coordination and scheduling of required examinations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) Small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

This rule will create cost savings for vessel owners and operators in possession of a great Lakes load line certificate without additional costs to other small entities. Therefore, the Coast Guard finds that this rule will not have a significant economic impact on a substantial number of small entities. Any comments submitted in response to this finding will be evaluated under the criteria described earlier in the preamble for comments.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, as revised by 59 FR 38654, July 29, 1994, this rule is categorically excluded from further environmental documentation. Section 2.B.2.e(34)(d) of that instruction excludes "regulations concerning manning, documentation, admeasurement, inspection, and equipping of vessels." A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 42

Penalties, Reporting and record keeping requirements, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 42 as follows:

PART 42—DOMESTIC AND FOREIGN VOYAGES BY SEA

1. The authority citation for part 42 continues to read as follows:

Authority: 46 U.S.C. 2103; 49 CFR 1.45, 1.46; section 42.01–5 also issued under the authority of 44 U.S.C. 3507.

2. In § 42.07–45, paragraph (d)(2) introductory text is revised to read as follows:

§ 42.07–45 Loan line certificates.

* * * * *

(d) * * *

(2) A Great Lakes certificate is issued for 5 years and may be extended by the Commander, Ninth Coast Guard District, up to 365 days from date of the—

* * * * *

Dated: July 2, 1996.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Marine Safety and Environmental Protection.

[FR Doc. 96–17461 Filed 7–8–96; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 96–21, FCC 96–288]

Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services

AGENCY: Federal Communications Commission.

ACTION: Interim rule.

SUMMARY: In this *Report and Order*, the Commission facilitates the efficient and rapid provision of out-of-region, domestic, interstate, interexchange services by the BOCs, as contemplated by the Telecommunications Act of 1996 (1996 Act), while still protecting ratepayers and competition in the interexchange market, by removing dominant regulation for BOCs that provide such services through an affiliate that complies with certain safeguards. These safeguards are the same as those that have applied for more than ten years to affiliates of independent local exchange companies (LECs) (*i.e.*, exchange telephone companies, including GTE, other than the BOCs) that are regulated as non-dominant interexchange carriers under the rules established in the *Competitive Carrier* proceeding. These rules will permit the rapid entry by the BOCs into the provision of out-of-region interstate, interexchange services while providing protection against anticompetitive conduct.

EFFECTIVE DATE: August 8, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Pryor (202) 418–0495 or Melissa Waksman (202) 418–0913, Common Carrier Bureau, Policy and Program Planning Division.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* adopted on June 28, 1996, and released on July 1, 1996, FCC 96–288. The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room

239), 1919 M St., N.W., Washington, DC. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Paperwork Reduction: Public burden for this recordkeeping requirement is estimated to average 6056 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this recordkeeping requirement, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Branch, Paperwork Reduction Project, Washington, D.C. 20554 and to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503.

Synopsis of Notice of Proposed Rulemaking

I. Introduction

1. In enacting the Telecommunications Act of 1996 (1996 Act), Pub. L. No. 104–104, 110 Stat. 56 (1996) *codified at* 47 U.S.C. §§ 151 *et seq*, Congress sought to establish "a pro-competitive, de-regulatory national policy framework" for the United States telecommunications industry. The 1996 Act, among other things, provided that upon enactment the Bell Operating Companies (BOCs) could provide interLATA telecommunications services originating outside of their in-region states. In response to the new legislation, the Commission released, on February 14, 1996, a Notice of Proposed Rulemaking, 61 FR 6607 (Feb. 21, 1996), in which the Commission proposed an interim regime to govern the BOCs' provision of out-of-region domestic, interstate, interexchange service. The Notice addressed all "out-of-region" interstate, interexchange services (including interLATA and intraLATA services). Eighteen parties filed comments and thirteen parties filed reply comments.

2. Under our existing rules, BOC provision of out-of-region, interstate, interexchange services is subject to dominant carrier regulation. In order to facilitate the efficient and rapid provision of out-of-region, domestic, interstate, interexchange services by the BOCs, as contemplated by the 1996 Act, while still protecting ratepayers and competition in the interexchange market, we remove dominant regulation for BOCs that provide out-of-region, interstate, interexchange services through an affiliate that complies with certain safeguards. These safeguards are the same as those that have applied for more than ten years to affiliates of independent local exchange companies (LECs) that are regulated as non-dominant interexchange carriers under the rules established in the *Competitive Carrier* proceeding. The safeguards require that the affiliate: (1) maintain separate books of account from the LEC; (2) not jointly own transmission or switching facilities with the LEC; and (3) take any tariffed services from the affiliated LEC pursuant to the terms and conditions of the LEC's generally applicable tariff. We also conclude that a BOC affiliate providing out-of-region, domestic, interstate, interexchange services should be treated, for purposes of the BOCs' accounting, as a nonregulated affiliate under the Commission's joint cost and affiliate transactions rules, just as independent LEC affiliates are now treated.

3. The regime adopted in this Report and Order is expressly designed as an interim measure to facilitate the BOCs' prompt provision of out-of-region, domestic, interstate, interexchange services. In March 1996, the Commission sought comment in the *Interexchange NPRM*, on whether to modify or eliminate these affiliate requirements as a condition for non-dominant treatment of independent LEC provision of out-of-region, interstate, interexchange services. We also sought comment on whether, if we modify or eliminate these requirements for independent LECs, we should also eliminate or modify our treatment of BOC out-of-region, interstate, interexchange services. We will establish final rules for BOC out-of-region, interstate, interexchange services in that proceeding.

II. Background

A. The Competitive Carrier Proceeding

4. Between 1979 and 1985, the Commission conducted the *Competitive Carrier* proceeding, in which it examined how its regulations should be adapted to reflect and facilitate the increasing competition in telecommunications markets. In a series of orders, the Commission distinguished between carriers with market power (dominant carriers) and those without market power (non-dominant carriers). The Commission gradually relaxed its regulation of non-dominant carriers because it concluded that non-dominant carriers lacked the incentive and ability to engage in conduct that might be anticompetitive or otherwise inconsistent with the public interest.

5. In its *First Report and Order*, 45 FR 52453, November 18, 1980, the Commission classified AT&T and its then-affiliated local exchange companies as well as independent local exchange companies as dominant carriers and concluded that these dominant carriers should be subject to the "full panoply" of Title II regulation. Recently, in light of increasing competition in the interstate, domestic, interexchange telecommunications market, and evidence that AT&T no longer possesses the ability to control prices unilaterally, the Commission reclassified AT&T as a non-dominant carrier in that market.

6. In its *Fourth Report and Order*, 48 FR 52452, November 1983, the Commission considered how it should regulate the provision of interstate, interexchange services by independent LECs. Because the Modification of Final Judgment, *United States* v. *Western Elec. Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd. sub nom., Maryland* v. *United States*, 460 U.S. 1001 (1983), prohibited BOCs from offering interLATA services, the *Fourth Report and Order* addressed only the interstate, interexchange offerings of independent LECs. The Commission determined that interexchange carriers affiliated with independent LECs would be regulated as non-dominant carriers. In the *Fifth Report and Order*, 49 FR 34824, September 4, 1984, the Commission explained its definition of the term "affiliate" as "a carrier that is owned (in whole or in part) or controlled by, or under common ownership (in whole or in part) or control with, an exchange telephone company," and identified three separation requirements that the affiliate must meet in order to qualify for non-dominant treatment. These requirements are that the affiliate: (1) maintain separate books of account; (2) not jointly own transmission or switching facilities with the LEC; and (3) if it uses the LEC's services, it should acquire them via the LEC's tariffs. The Commission further concluded that, if the LEC provided interstate, interexchange services directly, rather than through an affiliate, those services would be subject to dominant carrier regulation.

7. The *Fifth Report and Order* also addressed the regulation of the BOCs' provision of interLATA services:

> The BOCs currently are barred by the [Modification of Final Judgment] from providing interLATA services. . . . If this bar is lifted in the future, we would regulate the BOCs' interstate, interLATA services as dominant until we determined what degree

VOL 61 ISS 132 JL 9 1996 UMI

of separation, if any, would be necessary for the BOCs or their affiliates to qualify for nondominant regulation.

B. The 1996 Act and the BOC Out-of-Region Notice of Proposed Rulemaking

10. Section 271(b)(2), added by the 1996 Act, provides:

> A Bell operating company, or any affiliate of that Bell operating company, may provide interLATA services originating outside its in-region States after the date of enactment of the Telecommunications Act of 1996, subject to subsection (j).

Thus, the 1996 Act does not require a BOC to obtain Commission authorization prior to offering out-of-region, interstate, interLATA services. The 1996 Act, however, does not modify the Commission's determination in the *Fifth Report and Order* that BOC provision of interstate, interLATA services initially would be subject to dominant carrier regulation.

11. Immediately after the 1996 Act became law, we issued the *BOC Out-of-Region NPRM*, in which we proposed, under certain conditions, to remove dominant carrier regulation of the BOCs' provision of out-of-region, interstate, interexchange services. In our Notice, we tentatively concluded that, as an interim measure, if a BOC creates an affiliate to provide out-of-region, interstate, interexchange services (including interLATA and intraLATA services), and if the affiliate satisfies the minimal separation requirements set forth in the *Fifth Report and Order* that apply to the interexchange affiliates of independent LECs, then the BOC affiliate's provision of those interexchange services would be regulated on a non-dominant basis. We also noted that LECs providing interexchange services through affiliates pursuant to the *Fifth Report and Order* treat those affiliates as nonregulated affiliates under the Commission's joint cost rules and affiliate transactions rules for exchange carrier accounting purposes. In our Notice, we sought comment on whether a BOC affiliate providing out-of-region, interstate, interexchange services also should be treated as a nonregulated affiliate for BOC accounting purposes. Finally, we tentatively concluded that, at least for now, if a BOC provides out-of-region, interstate, interexchange services directly, or through an affiliate that fails to comply with these minimal separation requirements, then dominant carrier regulation would be retained for those services.

III. Discussion

A. The Purpose of the Interim Rules

12. This proceeding is necessary to enable the BOCs to begin competing in an out-of-region area in the interexchange market on a non-dominant basis. Currently, BOC provision of interstate, interexchange service is subject to dominant carrier regulation until we determine the degree of separation, if any, necessary for non-dominant treatment. Thus, BOC out-of-region services would be subject to dominant regulation, whether those services were offered directly by the BOC or through another entity, no matter how structurally separate from the BOC. We take no position in this proceeding on whether the structural separation requirements, other safeguards established by the 1996 Act, and our existing regulations that would apply to BOC provision of in-region services are sufficient to allow us to relax dominant carrier regulation for the separate subsidiaries through which the BOCs must provide in-region, interLATA services. *See* 47 U.S.C. § 272. We will address that issue in a separate proceeding.

13. In our Notice, we tentatively concluded that we could remove dominant carrier regulation of BOC out-of-region, interstate, interexchange services by applying to the BOCs the same rules that have worked well for independent LECs. These rules were specifically designed to impose minimal burdens on the smaller, independent LECs, and thus are less stringent than the structural separation required under our *Computer II* regime, and contain fewer restrictions than imposed by the 1996 Act for BOC provision of in-region, interLATA services. At the same time, the Commission found in the *Fifth Report and Order* that these separation requirements provided some protection against anticompetitive abuses that could arise from the LECs' control over local bottleneck facilities.

14. Because we believe that we should move expeditiously in order to advance the goals of the 1996 Act, we specifically stated in the Notice that the actions we take in this proceeding would be interim. By applying the well-established rules applicable to independent LECs as an interim measure, we are able to: remove dominant carrier regulation for BOC out-of-region, interstate, interexchange services, thereby facilitating prompt and competitive entry by the BOCs into those services; have the same level of assurance of protecting competition and ratepayers as we have with independent LECs and their interexchange affiliates; and avoid engaging in a protracted proceeding. We have already issued a Notice in which we initiate a more comprehensive review of the rules that are applicable to both independent LECs and the BOCs in the provision of out-of-region, interstate, interexchange services. In the *Interexchange NPRM*, we sought comment on whether it may be appropriate to modify or eliminate the minimal separation requirements applied to independent LEC affiliates providing interstate, interexchange services originating outside of their local exchange areas. We also sought comment on whether, if we do modify or eliminate such requirements for independent LECs, we should apply the same requirements to BOC provision of out-of-region, interstate, interexchange services. We will finalize our rules governing both BOC and independent LEC provision of out-of-region, interstate, interexchange services in that proceeding.

B. Non-dominant Classification for BOC Affiliates

15. The record does not dissuade us from proceeding on an interim basis as proposed in the Notice. NYNEX and Pactel support, as an interim measure, adoption of the *BOC Out-of-Region NPRM's* tentative conclusions, including use of the Commission's joint cost and affiliate transactions rules. NYNEX contends that the proposed rules are "an excellent first regulatory step that the Commission can take promptly to enable BOC entry into the long distance service markets." Pactel supports the rules as a method of ensuring regulatory parity among all exchange companies, BOCs and independent LECs, even though Pactel disputes that the BOCs have market power in the interexchange market.

16. The remaining BOCs object to removing dominant regulation only for affiliates meeting the *Fifth Report and Order* requirements and contend that out-of-region, interstate, interexchange services should be regulated as non-dominant even if provided on an unseparated basis. These commenters raise essentially three arguments: (1) BOCs do not have market power in the interexchange market under the criteria, such as market share, established in the *Competitive Carrier* proceeding and those applied in reclassifying AT&T as a non-dominant interexchange carrier; (2) BOCs have neither the ability nor the incentive to leverage their control over local facilities to impede competition in the interexchange market, especially given current regulations and the provisions of the 1996 Act that are designed to open the local market to

competition; and (3) the proposed separation requirements for out-of-region interexchange services are inconsistent with the 1996 Act.

17. BellSouth additionally argues that, by proposing to regulate BOCs as dominant if they directly provide out-of-region, interexchange services based on their market power in the provision of local services, we are resurrecting the "all services" approach. BellSouth states that, in the *Competitive Carrier* orders, the Commission adopted an "all services" approach under which a finding that a carrier was dominant in the provision of one service subjected a carrier to dominant regulation of all services. BellSouth argues that, under this "all services" approach, the Commission ruled that bottleneck facilities were prima facie evidence of dominance in all markets. BellSouth maintains that the Commission rejected this approach in the *AT&T Reclassification Order*. We reject this analysis. The "all services" question addressed in the *AT&T Reclassification Order* was whether the Commission could find AT&T non-dominant only if "AT&T lacks the ability to control the price of every tariffed service *in the relevant market.*" A very different question is posed by the BOCs entry into out-of-region, interstate, interexchange services: whether a firm with market power in one relevant market (the local exchange and exchange access market) can leverage that power to gain market power or an unfair advantage in another, related market (the interexchange market).

18. As for the non-BOC commenters, MCI and TRA argue that, given the potential for the BOCs to engage in anticompetitive conduct, the BOC affiliate should be regulated as dominant. Almost all of the other non-BOC commenters support non-dominant regulation of BOC out-of-region services if provided through a separate affiliate, but contend that the safeguards proposed in the Notice are insufficient to protect against abuses by the BOCs. Specifically, these parties claim that without these additional safeguards the BOCs could use their control over local exchange facilities to unfairly discriminate in pricing or service quality against competing interexchange carriers or could cross-subsidize their long distance operations by shifting costs to the local exchange and exchange access operations. They urge the Commission, therefore, to impose full structural separation on the out-of-region affiliate, including the separations imposed by section 272 on the in-region interexchange affiliate. They also seek to bar joint marketing of local and out-of-region services or, at least, require that marketing personnel and operations be separated. Some ask the Commission to require that the BOC provide all Title II services to its affiliate at the generally applicable tariffed rates and that all non-Title II services and access to information obtained by the BOC by virtue of its provision of local exchange service be provided on a non-discriminatory basis or that such information not be shared at all. Finally, non-BOC commenters dispute claims that the Notice's proposals are inconsistent with the 1996 Act.

19. We adopt here the interim rules proposed in the Notice, at least until completion of our broader rulemaking proceeding, the *Interexchange NPRM*. The *Fifth Report and Order* safeguards we adopt herein on an interim basis have worked relatively well since 1984 to protect against potential abuses by the independent LECs in their provision of interexchange services and we believe that they will provide adequate interim protection as the BOCs begin providing out-of-region interexchange services. As the Commission noted in the *Fifth Report and Order*, these safeguards provide some protection against "cost-shifting and anticompetitive conduct." These safeguards have been applied to independent LEC provision of interexchange services originating in and out of their regions and should provide sufficient interim safeguards for BOC provision of solely out-of-region services. Additionally, these safeguards will be supplemented with the application of our cost allocation and affiliate transaction rules, as explained below, which provide further protection against cost misallocations. Moreover, no party has presented persuasive evidence to show that, at this time, these rules will not be effective interim measures.

20. At the same time, we believe that these minimal requirements should be in place pending further analysis of these issues. Not only has the Commission adopted an NPRM to address these specific issues, but we also have launched various proceedings, and are in the process of issuing further rulemakings, relating to the implementation of various aspects of the 1996 Act. These proceedings touch upon issues raised in this proceeding, such as the proper market definition and the scope of various safeguards. We believe it is prudent to assess the record in those proceedings in order to assist us in adopting a comprehensive and cohesive framework that addresses the myriad issues involving BOC provision of services that the BOCs previously have been barred from offering.

21. Thus we reject AT&T's argument that the proposed rules should not be adopted because, AT&T contends, they improperly depart from the use of a single, nationwide, interexchange market without submarkets without providing a reasoned explanation. The Notice proposed to apply, on an interim basis, the same rules to BOC out-of-region services that we apply to independent LECs. We do not find that AT&T has presented persuasive reasons to depart from this prior precedent for purposes of these interim rules. Moreover, in the Notice, we explicitly proposed to address only BOC provision of out-of-region, interstate, interexchange services. At the same time, we made clear that we were planning to adopt these rules on an interim basis, pending a future proceeding to consider more fully the long-term issues raised by BOC entry into out-of-region, interstate, interexchange services. We note that on March 25, 1996, we released the *Interexchange NPRM* initiating that proceeding. In proposing to look only at BOC provision of out-of-region, interstate, interexchange service here, we sought to balance the goal of the 1996 Act to allow swift BOC entry into the interexchange market, subject to interim safeguards, with the need for a comprehensive review of our rules. We believe it is within our discretion to conduct our proceedings in such a manner as to accommodate these twin purposes.

22. We find that our interim plan of removing dominant carrier regulation for BOC affiliates meeting the *Fifth Report and Order* separation requirements and retaining dominant regulation for BOCs that provide out-of-region services directly will not impose an unreasonable burden on the BOCs. Initially, we believe it is important to clarify the scope of the *Fifth Report and Order* separation requirements. Most commenters refer to the *Fifth Report and Order* requirements as structural separation. This is true only in the sense that the BOC or LEC non-dominant interexchange affiliate is a separate legal entity. In no other sense do we require "structural separation." Indeed, in the *Fifth Report and Order*, the Commission specifically rejected arguments that structural separation requirements should be imposed between an independent LEC and its interexchange affiliate because the Commission found that structural separation would impose unreasonable burdens on smaller, independent LECs. The Commission specifically sought to avoid imposing

VOL
61
ISS
1
32
JL
9
1996
UMI

excessive burdens and noted that the LEC affiliate qualifying for nondominant treatment "is not necessarily structurally separated from the exchange telephone company in the sense ordered in the *Second Computer Inquiry* * * * (*e.g.*, fully-separated personnel and marketing are not necessary for nondominant treatment)." Thus, except for the ban on joint ownership of transmission and switching facilities, a restriction which we believe should pose little, if any, burden on the provision of out-of-region, interstate, interexchange services, the BOC and the interexchange affiliate will be able to share personnel and other resources or assets. The affiliate may be staffed by BOC personnel, housed in existing BOC offices, and use BOC marketing or other services. Providing interexchange services through such an affiliate will not impede the BOCs' ability to realize efficiencies gained through the use of joint resources. To help ensure that the BOCs properly allocate the costs of any services provided to the interexchange affiliate, however, we require that the BOC treat this affiliate for accounting purposes as a nonregulated affiliate and therefore subject to our cost allocation and affiliate transactions rules.

23. Additionally, we clarify the separate books of account requirement and the requirement that to the extent the affiliate obtains BOC services it do so under the terms of the BOC's tariff. We do not require that the interexchange affiliate maintain separate books of account that comply with our Part 32 rules. Instead, the separate books of account requirement refers to the fact that, as a separate legal entity, the affiliate must maintain its own books of account as a matter of course. This is consistent with the current accounting treatment of the interexchange affiliates of independent LECs. Books of account refer to the financial accounting system a company uses to record, in monetary terms, the basic transactions of a company. These books of account reflect the company's assets, liabilities, and equity, and the revenues and expenses from operations. Each company has its own separate books of account. The Commission's Part 32 rules, the Uniform System of Accounts (USOA), prescribe the books of account for the telephone companies. The Part 32 USOA, however, is not required to be kept by affiliates of a telephone company. These affiliates maintain their own separate books of account. We note that, if a telephone company decides to conduct out-of-region, interstate, interexchange service within the telephone company without using a separate affiliate, this activity would be reflected in the telephone company's USOA accounts, because the USOA reflects the telephone company's total operations. As to the tariff requirement, we clarify that this provision applies only to services for which the BOC is required to file a tariff, not to detariffed services such as billing and collection. The provision also only applies when the affiliate obtains tariffed services from its affiliated BOC.

24. Parties have offered no credible evidence to support contentions that the *Fifth Report and Order* separation requirements constitute burdensome regulation. Indeed, the entry of interexchange carriers affiliated with independent LECs over the past decade serves as evidence that these conditions will not prevent the BOCs from competing effectively. Moreover, we note that several BOCs have already established, or plan to establish, subsidiaries through which they will provide interexchange services that meet or exceed these separation requirements. We believe that separation requirements designed to accommodate the resources of small independent LECs will not impose an unreasonable burden on the much larger regional Bell companies, particularly on an interim basis.

25. Finally, we conclude, as an interim measure, that if a BOC chooses to offer out-of-region interstate interexchange services directly, it will be subject to dominant carrier regulation and to price cap regulation. Specifically, we require that the BOCs include such services in the price cap Basket for interexchange services. *See* 47 CFR § 61.42(d)(4).

C. Consistency With the 1996 Act

26. Several BOC commenters argue that the separate affiliate requirement, even as an interim measure, is inconsistent with the provisions of the 1996 Act. They contend that the 1996 Act specifically excluded out-of-region services from the separate affiliate requirement contained in new section 272. Some further argue that, because dominant regulation is so onerous, conditioning non-dominant treatment on complying with the separation requirements effectively requires BOCs to establish a separate affiliate to provide out-of-region interstate, interexchange services in contravention of the 1996 Act. They also argue, more generally, that the proposed rules are inconsistent with the overall deregulatory emphasis of the new legislation.

27. Bell Atlantic contends that the proposed separation requirements are inconsistent with the 1996 Act for two reasons: (1) section 272(f) contains a sunset provision for the in-region affiliate whereas the proposed separation requirements are open-ended; and (2) a BOC interexchange affiliate providing out-of-region services would be barred from jointly owning transmission and switching facilities with its operating company affiliate, whereas Section 272 contains no such restriction for the in-region separate affiliate. Bell Atlantic concludes that it would have to establish two subsidiaries, one for in-region and one for out-of-region services.

28. Non-BOC commenters dispute these arguments. Some argue that, because the 1996 Act is silent as to the type of regulatory regime that the Commission should impose on the BOCs' provision of out-of-region interexchange services, the statute contemplates that the Commission may apply its existing dominant/nondominant regulatory regime. These parties further point out that the separate subsidiary provisions of the 1996 Act contain a savings clause which states that "[n]othing in this subsection shall be construed to limit the authority of the Commission under any other section of this Act to prescribe safeguards consistent with the public interest, convenience and necessity." Vanguard contends that the BOCs are essentially arguing that the 1996 Act repealed the Commission's existing statutory authority to apply its dominant carrier rules to BOC interexchange affiliates by implication. Vanguard asserts that a statutory construction that would repeal an agency's authority by implication is "highly disfavored" by the courts except where there is an irreconcilable conflict between the two statutes or where there is compelling evidence that Congress intended to repeal the prior statute. Sprint and others contend that the proposed safeguards are less burdensome than the statutory separate subsidiary requirement and note that, while the 1996 Act mandates a separate subsidiary to provide in-region services, the Commission's proposal permits the BOCs to offer out-of-region services through an affiliate or directly.

29. We reject the contention that section 272(a)(2) prohibits us from retaining the dominant/non-dominant regulatory framework which the Commission has applied to interexchange carriers prior to passage of the 1996 Act for BOC provision of out-of-region, interstate, interexchange services. More specifically, we do not agree that, by excluding out-of-region services from those services that a BOC must provide through a structurally separate affiliate, section 272(a)(2) bars the Commission from according non-dominant regulation of BOC out-of-region, interstate, interexchange services only to BOC affiliates that comply with the separation requirements we adopt in this Order. Section 272(a)(2), relied upon by the BOC commenters, provides in pertinent part that:

> The services for which a separate affiliate is required by paragraph (1) are:
>
> * * * * * *
>
> (B) Origination of interLATA telecommunications services, other than—
>
> * * * * * *
>
> (ii) out-of-region services described in section 271(b)(2).

As noted by MCI, the legislation is silent on the issue of dominant/non-dominant regulation of BOC interLATA services. We conclude that Congress did not intend by implication to repeal our authority to impose dominant or non-dominant regulatory treatment as we deem necessary to protect the public interest consistent with our statutory mandates. To the contrary, Section 601(c) of the 1996 Act provides that we are not to presume that Congress intended to supersede our existing regulations unless expressly so provided.

30. Nor is there any inconsistency between the separation requirements we adopt by this Order as an interim measure and the 1996 Act. We do not mandate that the BOCs provide out-of-region, interstate, interexchange services through a separate affiliate. Instead, this Order concludes that, on an interim basis, BOCs will continue to be subject to dominant carrier treatment if they offer out-of-region interstate, interexchange services directly. The same requirement has applied to all independent LECs since 1984. This order, in effect, offers the BOCs a choice of providing out-of-region, interstate, interexchange services under dominant regulation if they wish to furnish those services directly or under non-dominant regulation if they wish to offer those services through a separate affiliate that meets the separation requirements.

31. We also note that the 1996 Act's provisions for the structurally separate in-region subsidiary contain more restrictions than those that will apply to the BOC affiliates' provision of out-of-region, interstate, interexchange services as a non-dominant carrier. For example, the 1996 Act requires that the separate subsidiary that must be established to provide in-region interLATA services must have separate officers, directors, and employees, and may not obtain credit under any arrangement that would permit recourse to the BOC. *See* 47 U.S.C. § 272(b). None of these requirements applies to the BOCs' out-of-region affiliate.

32. Bell Atlantic contends, however, that our proposed separation conditions are, in fact, more rigorous than those established by the 1996 Act for in-region services because we have not suggested a sunset date and have barred joint ownership of transmission and switching facilities. We are seeking comment in the *Interexchange NPRM* on whether to modify or eliminate the separation requirements for independent LECs in their provision of out-of-region, interstate, interexchange service as a condition for non-dominant treatment. We are also seeking comments on whether, if we modify or eliminate these separation requirements for independent LECs, we should apply the same treatment to BOC provision of out-of-region, interstate, interexchange service. Bell Atlantic's argument is more appropriately addressed in that proceeding. During the interim period that will be covered by the rules we promulgate today, a prohibition on joint ownership of switching and transmission facilities should cause no hardship on the BOC provision of out-of-region services because, as the BOCs maintain, they initially will be using other carriers' facilities and because of the geographic separation of in-region facilities and out-of-region services. Additionally, the fact that the 1996 Act contains a sunset provision for certain restrictions is not a basis for concluding that our interim rules for BOC out-of-region, interstate, interexchange services are inconsistent with the 1996 Act.

D. Proposed Mergers

33. After the record in this proceeding closed, SBC Communications Inc., and Pacific Telesis Group announced, on April 1, 1996, an agreement to merge their operations. Three weeks later, on April 21, 1996, Bell Atlantic and NYNEX announced that they had reached an agreement to merge. We believe that mergers such as these raise concerns with respect to the provision of out-of-region services during the pendency of the merger. Specifically, they raise the concern that, in the period prior to a merger's consummation, one partner to the merger may act in ways to favor those out-of-region services of its merger partner that originate in the first partner's service territory. For example, BOC A may favor BOC B's long distance services originating in BOC A's territory because BOC A may eventually share in BOC B's profits. We do not believe that the record in this proceeding provides an adequate basis on which to address the specific concerns raised by such pending mergers. Accordingly, we exclude from the services covered by this Order, those out-of-region services that originate in the in-region states of a merger partner during the period prior to the consummation of the merger. Given the interim nature of the rules we are establishing in this Order, and the fact that we are not aware of plans by any of the potential merger partners to provide out-of-region services originating in their respective partners' service territories, we believe that this approach likely will not impose any burdens on the affected parties. Should such parties determine, however, to provide such services, those parties should request the Commission, on an individual case basis, for a determination of whether such services can be provided on a non-dominant basis. Because our concern relates to the incentives of one party to favor the operations of the other party during the pendency of the merger, should an announced merger not be consummated, the interim rules established in this Order for out-of-region services shall apply to all out-of-region services provided by the parties to the proposed merger.

34. Nothing in this section on proposed mergers should be construed as indicating the Commission's position with respect to mergers in other sectors of the telecommunications industry or outside of this particular and unusual context. A unique confluence of circumstances lead us to conclude that it is both reasonable and prudent to postpone our determination of the appropriate regulatory treatment for BOC out-of-region services originating in a potential merger partner's territory. These unique circumstances include: (1) The announcement of mergers, following the closure of the record in this proceeding, involving four of the seven regional Bell companies that would be subject to the rules established in this proceeding; (2) the concern that a BOC, through its position in the local telephone exchange market and its bottleneck control over inputs into the interexchange market, may have the ability, along with the incentive, to favor the out-of-region interexchange services operations of a potential merger partner; (3) the interim nature of these rules; and (4) the 1996 Act's authorization for BOCs to begin providing out-of-region services upon enactment. Given these unique circumstances, we emphasize that this

VOL 61 ISS 132 JL 9 1996 UMI

action is limited to the facts and circumstances set forth in this discussion of proposed mergers.

E. Joint Cost and Affiliate Transactions Rules

35. In the *BOC Out-of-Region NPRM*, we stated that independent LECs providing interexchange services through affiliates pursuant to the *Fifth Report and Order* treat those affiliates as nonregulated affiliates under the Commission's joint cost and affiliate transactions rules for exchange carrier accounting purposes. The *BOC Out-of-Region NPRM* sought comment on whether BOC out-of-region, interstate, interexchange services should be treated as nonregulated services for BOC accounting purposes.

36. AT&T, Pactel, NYNEX, Comptel and Vanguard support the treatment of BOC out-of-region affiliates as non-regulated for accounting purposes. AT&T and Comptel believe such rules are necessary to constrain the BOCs' ability to cross-subsidize and to ensure that local monopoly assets are not used unfairly to advantage long distance operations. Vanguard asserts that the rules would not impose a burden because BOCs account for certain services on this basis already and because such treatment would merely entail setting up the initial account for service, not changing existing procedures. NYNEX states that these rules have been effective as applied to independent LECs, and thus would not be unreasonable to apply to BOCs providing similar services. AT&T and Comptel also contend that some type of independent audit should be performed periodically to certify that long distance affiliates retain their financial independence. Pactel supports application of the affiliate transaction rules as an interim measure.

37. Ameritech opposes application of the affiliate transactions rules to BOC interexchange affiliates. It contends that the joint cost and affiliate transactions rules are designed to allocate costs between regulated and nonregulated activities, not between two regulated services and that, in any event, application of those rules would be unnecessary because the Part 69 rules already require BOCs to identify separately interexchange costs. At a minimum, Ameritech argues that the rules should not apply to any BOC subject to pure price cap regulation at the state and federal level. The Public Utilities Commission of Ohio (PUCO) also opposes treating the affiliate as nonregulated because they contend that accounting abuses are better detected by treating the affiliate's services as regulated.

38. Our existing accounting safeguards for affiliate transactions were developed in the *Joint Cost Order* and are codified in Parts 32 and 64 of our Rules. The Part 64 cost allocation rules prescribe how carriers separate the costs of regulated activities from the costs of nonregulated activities, where the nonregulated activities are performed directly by the carrier rather than through an affiliate. The Part 32 affiliate transactions rules prescribe the way costs are recorded, for Title II accounting purposes, when a regulated carrier does business with its nonregulated affiliates. These rules are designed to prevent local exchange carriers from imposing the costs and risks of their competitive ventures on local telephone ratepayers. These rules do not require carriers or their affiliates to charge any particular prices for assets transferred or services provided; rather, they require carriers to use certain specified valuation methods in determining the amounts to record in their Part 32 accounts, regardless of the prices charged.

39. Because the cost allocation and affiliate transactions rules are an important component of our accounting safeguards, we find that these rules should apply to BOCs providing out-of-region, interstate, interexchange services through a separate affiliate. Even though interLATA services are regulated services under Title II, under the rules we adopt herein, the BOCs, for accounting purposes, will treat the services as nonregulated, so as to make applicable our cost allocation and affiliate transaction rules. The fact that interLATA services are regulated services in and of itself does not eliminate the potential for cost misallocation between the BOCs competitive (interLATA) and noncompetitive (local exchange and exchange access) services. Thus, we believe that application of our cost allocation and affiliate transaction rules is necessary to minimize the possibility that a BOC could improperly shift the costs of its interstate, interexchange operations to its regulated local exchange and exchange access ratepayers. We also note that this requirement is consistent with the current practice of independent LECs that treat their affiliates providing interexchange services as nonregulated for exchange carrier accounting purposes.

40. We find that requiring BOCs to treat affiliates providing out-of-region services as nonregulated will not be unduly burdensome. BOCs currently have systems in place to account for transactions between their nonregulated affiliates (*i.e.*, for transactions between a BOC and any of its information services which are not regulated under Title II). Such a requirement will not entail extensive modification of existing company procedures for the provision of interexchange services because, prior to the passage of the 1996 Act, BOCs were prohibited from providing interstate, interexchange services.

IV. Additional Issues

A. Regulation of CMRS-Related InterLATA Services

41. The *BOC Out-of-Region NPRM* stated that "BOC provision to commercial mobile radio service customers, of interstate, interLATA services originating outside any of the BOC's in-region states, is included in the out-of-region services addressed in this proceeding."

42. BellSouth argues that the language in the *Notice* is susceptible to two interpretations. According to BellSouth, it may apply to: (1) The sale of out-of-region, interexchange service by a BOC to unaffiliated commercial mobile radio service (CMRS) customers; or (2) the provision of out-of-region, interexchange CMRS service by a BOC. BellSouth believes that the Commission intended the first of these interpretations—BOCs offering out-of-region long distance to unaffiliated CMRS customers on a stand alone basis, not in conjunction with the BOC's provision of CMRS—and BellSouth opposes applying the Notice's proposed rules to this service for all of the same reasons it opposes any separation requirements for out-of-region services. BellSouth contends that the other interpretation—BOC's offering interexchange, CMRS—constitutes "incidental" CMRS interLATA services and is beyond the scope of this proceeding. To the extent that a CMRS provider offers interexchange services in conjunction with its provision of CMRS, the interexchange service is itself incidental CMRS, and thus exempted from section 272 separate affiliate requirements, according to BellSouth. Bell Atlantic and SBC also oppose any restrictions on BOC provision of incidental interLATA services, including CMRS, because most of these services were excluded from the separate subsidiary requirement of 272.

43. MCI contends that the scope of Section 272 is irrelevant because the 1996 Act does not prevent the Commission from imposing its own separation requirements. Vanguard supports the proposed separation requirements on the assumption that they will be applied to BOC provision of interLATA services to the customers of its affiliated cellular companies. Vanguard argues that the interest that a BOC has in its cellular operations increases the incentives to engage in anticompetitive conduct because such conduct can benefit both its long distance operations and its cellular operations. Comptel urges the Commission to apply to all incidental interLATA services the same rules applied to out-of-region interexchange services because they raise the same concerns about discrimination and cross-subsidization.

44. BellSouth's interpretation of our reference to CMRS in footnote two of the *BOC Out-of-Region NPRM* is correct. Our statement in the *BOC Out-of-Region NPRM* was intended to clarify that a BOC offering out-of-region long distance service to unaffiliated CMRS customers on a stand alone basis would be considered "out-of-region" services for purposes of this rulemaking. BOC provision of interexchange services to its affiliated CMRS customers is beyond the scope of this proceeding. We also reject as beyond the scope of this proceeding Comptel's request to apply the separation requirements to all "incidental" services established under section 272(g).

B. Definition of Certain Services as In-Region Services

45. Section 271(j) provides that certain calls that originate out-of-region will be deemed in-region traffic. Specifically, this section provides that "a [BOC] application to provide 800 service, private line service, or their equivalents that terminate in an in-region State of that [BOC], and allow the called party to determine the interLATA carrier, shall be considered an in-region service subject to the requirements of subsection (b)(1)."

46. Comptel argues that the Commission should declare collect and third party billed calls to numbers terminating in the BOC's region and BOC calling card calls to in-region numbers as "equivalent" services and thus be deemed in-region services. Comptel's rationale is that, like 800 number and private line services, the party paying for the call selects the interLATA carrier and thus is subject to the BOCs' local power. Comptel states that the Commission should therefore prohibit the BOC out-of-region affiliate from completing collect calls, third-party billed calls, or BOC calling card calls to terminating numbers located within the BOC's region. Ameritech opposes Comptel's interpretation, and asserts that calling card, collect and third party calls that are placed from out-of-region do not fall within 271(j) because the calling party, not the called party, determines the long distance carrier. Ameritech states that the calling party decides whether to complete the call on a 0+ basis or use access codes, and if access codes are used, the calling party decides which carrier to use.

47. The key factor in determining whether a service falls within the scope of section 271(j) as "equivalent" to 800 or private line service is whether the *called* party determines the interLATA carrier that is used. As Ameritech notes, calling card, collect and third party billed calls that originate out-of-region and terminate in-region do not fall within the scope of section 271(j) because it is the *calling* party, not the called party, that determines the interLATA carrier. Because the called party does not determine the interLATA carrier that is used, there is no justification for treating such calls as in-region services. Thus, we reject Comptel's proposal that we add calling card, collect and third party calls to those services classified as "in-region" under section 271(j).

V. Procedural Issues

A. Regulatory Flexibility Act Analysis

48. We certify that the Regulatory Flexibility Act is not applicable to the interim rules we are adopting in this proceeding. These interim rules will not result in a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. Entities subject to the rule changes are generally large corporations, affiliates of large corporations, or are dominant in their fields of operation, and, thus, are not "small entities" as defined by the Act. *See* 15 U.S.C. § 632(a)(1). We are nevertheless committed to reducing the regulatory burdens on small communications services companies whenever possible, consistent with our other public interest responsibilities. The Secretary shall send a copy of this Report and Order to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601, *et seq.* (1981).

B. Paperwork Reduction Act

49. The recordkeeping requirements in this item are contingent upon approval of the Office of Management and Budget.

VI. Ordering Clause

50. Accordingly, *it is ordered* that, pursuant to Sections 1, 4, 201–205, 215, 218, 220, and 271 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201–205, 215, 218 and 220, the REPORT AND ORDER is hereby ADOPTED. The requirements adopted in this Report and Order shall be effective 30 days after publication in the **Federal Register**.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–17404 Filed 7–8–96; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[I.D. 062796B]

Atlantic Swordfish Fishery; Drift Gillnet Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the drift gillnet fishery for swordfish in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. NMFS has determined that the adjusted second semiannual subquota for swordfish that may be harvested by drift gillnet will be reached on or before July 17, 1996. This closure is necessary to prevent exceeding the quota of swordfish caught by drift gillnet vessels.

EFFECTIVE DATE: 2330 hours, local time, July 17, 1996, through 2400 hours, local time, November 30, 1996.

FOR FURTHER INFORMATION CONTACT: Ronald G. Rinaldo, 301-713- 2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*).

The implementing regulations at 50 CFR 630.24(b)(3)(ii) establish a quota of swordfish that may be harvested by drift gillnet during the period July 1 through November 30, each year. Under 50 CFR 630.25(a), NMFS is required to close the drift gillnet fishery for swordfish when its quota is reached, or is projected to be reached, by filing a closure

VOL
61
ISS
132
JL
9
1996
UMI

announcement with the Office of the Federal Register at least 14 days before the closure is to become effective.

The 1996 swordfish Total Allowable Catch (TAC) allows for an Atlantic swordfish drift gillnet subquota of 22.5 mt dressed weight (49,603.5 lb) for the January 1 to June 30 period, and a subquota of 23.45 mt dressed weight (51,697.8 lb) for the July 1 to November 30 period. Our estimates indicate that only approximately 18,000 lb (8.164 mt) was caught during the first period subquota. The remaining portion of the first period subquota will be rolled over to the second period, for an adjusted second period subquota of 37.785 mt dressed weight, or 83,301.3 lb.

Based on the current level of swordfish catch by drift gillnets and historic data on catch per set for July, NMFS has determined that the drift gillnet quota for the July 1 through November 30 period will be reached on or before July 17, 1996. Hence, the drift gillnet fishery for Atlantic swordfish is closed effective 2330 hours, local time, July 17, 1996, through 2400 hours, local time, November 30, 1996.

During this closure of the drift gillnet fishery: 1) no one aboard a vessel using or having onboard a drift gillnet may fish for swordfish from the North Atlantic swordfish stock; 2) no more than two swordfish per trip may be possessed on board vessel using or having onboard a drift gill net in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat., or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

Classification

This action is required by 50 CFR 630.25(a) and is exempt from review under E.O. 12866.

Dated: July 2, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–17350 Filed 7–03–96; 11:47 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 61, No. 132

Tuesday, July 9, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AH45

Federal Employees Health Benefits Program: Opportunities to Enroll and Change Enrollment

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to simplify and clarify the existing Federal Employees Health Benefits (FEHB) Program regulations concerning opportunities to enroll and change enrollment. The proposed regulations would make it easier for employing offices to determine whether circumstances permit individuals to enroll or change enrollment, and would result in a reduced potential for error and improved customer service.

DATE: We must receive comments on or before September 9, 1996.

ADDRESSES: Send written comments to Lucretia F. Myers, Assistant Director for Insurance Programs, Retirement and Insurance Service, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or deliver to OPM, Room 3451, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Myers (202) 606–0004.

SUPPLEMENTARY INFORMATION: The events that permit individuals to enroll for FEHB coverage or change enrollment are specified in regulation. When the FEHB Program first began over thirty years ago, there were few events that permitted individuals to enroll or change their enrollment. Since then, additional events have been added to accommodate changes to FEHB law, establishment of other Federal programs that affected Federal employees and retirees, and changes in the personal circumstances of employees and annuitants.

Among the changes to FEHB law have been (1) extending FEHB coverage to certain former spouses and temporary employees, (2) providing temporary continuation of coverage (TCC) for enrollees and family members who lose coverage under certain conditions, and (3) prorating of premiums for part-time employees. Some other Federal programs that have been established since the FEHB Program began that affect Federal employees and retirees are Medicare and the Federal Employees Retirement System (FERS). Also, to adapt to changes in the personal circumstances of employees and annuitants, FEHB regulations now permit enrollment upon loss of non-Federal coverage under certain conditions.

The inquiries we receive from the White House, Members of Congress, Federal agencies, employees, and other individuals indicate that it is becoming increasingly difficult for employing offices to locate and interpret the appropriate regulation when an individual request to enroll or change his or her enrollment. In addition, when an employing office denies a request because they do not believe the circumstances comply with the regulations, the individual usually asks for reconsideration of that decision.

OPM has issued final regulations (59 FR 66434, December 27, 1994) that delegate to Federal agencies the authority to reconsider disputes over coverage and enrollment and to make retroactive as well as prospective corrections of administrative errors. Our proposed regulations would also give agencies the authority to correct enrollee errors under certain circumstances. We believe that these proposed regulations would help to reduce both the number of agency denial of enrollee requests and the volume of reconsideration requests.

More specifically, we believe these proposed regulations would improve administration of the FEHB Program by:

1. Organizing the opportunities to enroll and change enrollment into separate sections for employees, annuitants, former spouses, and those on Temporary Continuation of Coverage. This would reduce the time it takes for the employing office to locate the regulation applicable to the individual that is being assisted.

2. Grouping several of the enrollment opportunities within each section by similar characteristics, such as opportunities based on a change in employment status, or a loss of health benefits coverage. This further organization of the events would make it easier for the reader to locate the event that is needed.

3. Standardizing as much as possible the timeframes for individuals to enroll or change enrollment. In some cases the existing timeframe will increase from 31 to 60 days after the event. In other situations the timeframe will be extended to include a period before the event as well as after. This standardization would reduce the number of belated enrollment requests the employing offices receive, and help to assure continuous coverage for employees and family members whose eligibility to enroll in FEHB or change enrollment is based on a loss of other coverage.

4. Locating effective date information within the paragraph that describes the enrollment or change opportunity. Current regulations provide information on enrollment opportunities in one section and their corresponding effective dates in another. This revision would improve processing by making it easier for the reader to determine the appropriate effective date for a specific enrollment or change opportunity.

5. Clarifying some of the opportunities by removing certain hard to define requirements that individuals must meet to become eligible to enroll or change enrollment. This increased flexibility would make it easier for employees to provide FEHB coverage for their eligible children. It would also make it easier for agencies to make enrollment decisions, and reduce the number of agency denials of requests to enroll or change enrollment. Several examples of the clarified opportunities include:

a. Under current regulations (paragraph 890.301(y)), an employee may enroll, and an employee or annuitant may change enrollment when the employee or a family member involuntarily loses coverage under a non-Federal health plan. This requirement has generated numerous questions, denials, and reconsideration request about whether the loss of non-Federal coverage in a specific situation is voluntary or involuntary. To make it

VOL 61 ISS 132 JL 9 1996 UMI

easier for families to continue their health insurance protection upon loss of non-Federal coverage, we are no longer requiring agencies to determine what constitutes an involuntary loss of non-Federal coverage. We also are extending to enrollees covered under the former spouse and TCC provisions the opportunity to change from a self-only to self and family enrollment when an eligible family member loses non-Federal coverage.

b. Current regulations (paragraph 890.301(e)) permit an employee to enroll upon a change in marital status, but not upon any other change in family status. We recognize that in some situations an employee may have a change in family status without a change in marital status. Such situations may include (1) birth or acquisition of a child; (2) issuance of a court order specifically requiring an employee to enroll for his or her children or provide health benefits protection for them; (3) issuance or termination of a court order granting interlocutory divorce, limited divorce, legal separation, or separate maintenance to the enrollee or spouse; (4) entry into or discharge from military service of a spouse or of a child under age 22. Therefore, we are expanding this regulation to also permit an employee to enroll upon any other change in family status.

Under current regulations, a new enrollment takes effect at the beginning of the pay period after the enrollment request is received by the employing office and that follows a pay period during any part of which the employee is in pay status. We recognize that in some situations, the birth or acquisition of a child may occur while an employee is in a leave without pay status. Therefore, in this situation only, we are allowing the enrollment to take effect on the first day of the pay period in which the child is born or becomes an eligible family member, regardless of whether the enrollee was in a pay status the previous pay period.

c. Under current regulations (paragraph 890.301(g)(4)), an employee, annuitant, or former spouse who qualifies for FEHB coverage under section 890.803, who loses coverage because of cancellation of the covering enrollment must enroll in the same plan and option as that from which coverage was lost. We recognize that there may be situations in which the individual enrolled for self and family cancels the enrollment but the family member who loses coverage does not want to enroll in the same plan; or the enrollee of a prepaid plan cancels the enrollment but the family member who loses coverage lives in a different geographic location. As part of our effort to accommodate the complex family situations that can occur, we are eliminating this requirement and permitting enrollment in any plan or option when coverage is lost because the covering enrollment has been cancelled.

d. Current regulations (paragraph 890.301(t)) permit an employee to enroll if his or her coverage under the Medicaid program (State program of medical assistance for the needy) should terminate. They also permit an employee who is enrolled for self only to change to a self and family enrollment if a family member loses Medicaid coverage. Under our proposed regulations, an employee who is not enrolled may enroll if a family member should lose Medicaid coverage. Enrollees covered under the former spouse and TCC provisions may change from self only to self and family if an eligible family member loses Medicaid coverage. We also are extending to annuitants and former spouses who cancel their enrollment because they qualify for Medicaid coverage the opportunity to reenroll in the FEHB Program upon loss of the Medicaid coverage.

e. Under current regulations (paragraph 890.301(h)), an enrollee in a comprehensive medical plan who loses coverage or access to health services because of a change of address or place of employment may change enrollment. The enrollee must provide the employing office with written notification of his or her move or employment change or "satisfactory" evidence of a family member's move. To accommodate alternative and more automated systems of processing enrollment changes, and to make it easier for agencies to process enrollment changes under this event, we are removing the written notification requirement and no longer requiring agencies to determine what constitutes "satisfactory" evidence.

As part of our continuing effort to improve service to FEHB enrollees, we are revising paragraph 890.302(f) concerning determinations of incapacity for children over age 22. Under FEHB law, a child's coverage ends at age 22 unless the child is determined incapable of self-support because of a physical or mental disability that existed before age 22. Since current regulations require the employing office (the retirement system is the employing office for annuitants) to make determinations of incapacity, enrollees who contact their insurance carrier to request continued coverage for a disabled child are referred back to the employing office. There are certain medical conditions that would cause children to be incapable of self-support during adulthood, and if a child has one of these conditions, we believe that carriers should be able to extend coverage without going back to the employing agency. Therefore, we are revising the regulations to permit either the employing office or the carrier to make determinations of incapacity in such cases. We will provide an up-to-date list of these medical conditions in a Benefits Administration Letter and an FEHBP Letter to All Carriers; if we need to add or delete a condition in the future, we will notify employing offices and carriers promptly by means of these publications. If a child has a medical condition that is not on the list, the employing office will continue to make the determination.

We also will be adding the term "appropriate request" to our definitions. This new definition will allow for alternative and more automated methods of processing enrollments. These methods, which include Employee Express, should result in faster enrollment processing and improved customer service.

Finally, we will be making a conforming change to paragraph 890.803(a)(3)(i) to correct a reference to § 831.606, which has been redesignated as § 831.613.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily effect Federal employees, annuitants, and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended.

2. In § 890.101, paragraph (a), the definitions for *Enrolled* and *Enrollee* are revised, the definitions for *Cancellation, Change of enrollment, Register,* and *Register to enroll* are removed, and the definitions for *Appropriate request, Cancel, Change the enrollment,* and *Enroll* are added in alphabetical order to read as follows:

§ 890.101 Definitions; time computations.

(a) * * *

Appropriate request means a properly completed health benefits registration form or an alternative method acceptable to both the employing office and OPM. Alternative methods must be capable of transmitting to the health benefits plans the information they require before accepting an enrollment. In addition, for an enrollment or cancellation to be valid, the signature of the requesting individual must be on the request, or on a form from the employing office that notifies the requesting individual of the enrollment or cancellation and requests his or her confirmation. For changes of enrollments, the signature of the requesting individual is not required but the employing office must promptly give the requesting individual notice of the change of enrollment. For purposes of § 890.301, electronic signatures, including the use of Personal Identification Numbers (PIN), have the same validity as a written signature.

* * * * *

Cancel means to submit to the employing office an appropriate request electing not to be enrolled by an enrollee who is eligible to continue enrollment.

Change the enrollment means to submit to the employing office an appropriate request electing a change of enrollment to a different plan or option, or to a different type of coverage (self only or self and family).

* * * * *

Enroll means to submit to the employing office an appropriate request electing to be enrolled in a health benefits plan.

Enrolled means an appropriate request has been accepted by the employing office and the enrollment in a health benefits plan approved by OPM under this part has not been terminated or canceled.

Enrollee means the individual in whose name the enrollment is carried. The term includes employees, annuitants, former employees, former spouses, or children who are enrolled after completing an appropriate request under the provisions of §§ 890.301, 890.306, 890.601, 890.803, or 890.1103 or have continued an enrollment as an annuitant or survivor annuitant under 5 U.S.C. 8905(b) or § 890.303.

* * * * *

3. In § 890.103, paragraphs (c) and (d) are redesignated as (d) and (e), and a new paragraph (c) is added to read as follows:

§ 890.103 Correction of errors.

* * * * *

(c) The employing office may make retroactive correction of enrollee enrollment code errors if the enrollee reports the error by the end of the pay period following the one in which he or she received the first written documentation (i.e. pay statement or enrollment change confirmation) indicating the error.

* * * * *

4. Section 890.301 is revised to read as follows:

§ 890.301 Opportunities for employees to enroll or change enrollment; effective dates.

(a) *Initial opportunity to enroll.* An employee who becomes eligible may elect to enroll or not to enroll within 60 days after becoming eligible.

(b) *Effective date—generally.* Except as otherwise provided, an enrollment or change of enrollment takes effect on the first day of the first day period that begins after the date the employing office receives an appropriate request to enroll or change the enrollment and that follows a pay period during any part of which the employee is in pay status.

(c) *Belated enrollment.* When an employing office determines that an employee was unable, for cause beyond his or her control, to enroll or change the enrollment within the time limits prescribed by this section, the employee may enroll or change the enrollment within 60 days after the employing office advises the employee of its determination.

(d) *Enrollment by proxy.* Subject to the discretion of the employing office, an employee's representative, having written authorization to do so, may enroll or change the enrollment for the employee.

(e) *Change to self only.* (1) An employee may change the enrollment from self and family to self only at any time.

(2) A change of enrollment to self only takes effect on the first day of the first pay period after the employing office receives an appropriate request to change the enrollment, except that at the request of the employee and upon a showing satisfactory to the employing office that there was no family member eligible for coverage by the family enrollment, the employing office may make the change effective on the first day of the pay period following the one in which there was no family member.

(f) *Open season.* (1) An open season will be held each year from the Monday of the second full workweek in November through the Monday of the second full workweek in December.

(2) The Director of OPM may modify the dates specified in paragraph (f)(1) of this section or hold additional open seasons.

(3) During an open season, an eligible employee may enroll and an enrolled employee may change the enrollment from self only to self and family, from one plan or option to another, or make any combination of these changes.

(4)(i) An open season new enrollment takes effect on the first day of the first pay period that begins in the next following year and which follows a pay period during any part of which the employee is in a pay status.

(ii) An open season change of enrollment takes effect on the first day of the first pay period which begins in January of the next following year.

(5) When a belated open season enrollment or change of enrollment is accepted by the employing office under paragraph (c) of this section, it takes effect as required by paragraph (f)(4) of this section.

(g) *Change in family status.* (1) An eligible employee may enroll and an enrolled employee may change the enrollment from self only to self and family, from one plan or option to another, or make any combination of these changes when the employee's family status changes, including a change in marital status or any other change in family status. The employee must enroll or change the enrollment within the period beginning 31 days before the date of the change in family status, and ending 60 days after the date of the change in family status.

(2) An enrollment or change of enrollment made in conjunction with the birth of a child, or the addition of a child as a new family member in some other manner, takes effect on the first day of the pay period in which the child is born or becomes an eligible family member.

(h) *Change in employment status.* An eligible employee may enroll and an enrolled employee may change the enrollment from self only to self and family, from one plan or option to another, or make any combination of these changes when the employee's employment status changes. Except as otherwise provided, an employee must enroll or change the enrollment within 60 days after the change in employment status. Employment status changes include, but are not limited to—

VOL
61
ISS
132
JUL
9
1996
UMI

(1) A return to pay status following loss of coverage under § 890.304(a)(1)(v) due to the expiration of 365 days in leave without pay (LWOP) status.

(2) Reemployment after a break in service of more than 3 days.

(3) Restoration to a civilian position under part 353 of this chapter or other similar authority after being ordered to duty in a uniformed service for 31 days or more.

(4) A change from a temporary appointment in which the employee is eligible to enroll under 5 U.S.C. 8906a, which requires payment of the full premium with no Government contribution, to an appointment that entitles the employee to receive the Government contribution.

(5) Separation from Federal employment when the employee or the employee's spouse is pregnant and the employee supplies medical documentation of the pregnancy. An employee who enrolls or changes the enrollment under this paragraph (h)(5) must do so during his or her final pay period. The effective date of an enrollment or a change of enrollment under this paragraph is the first day of the pay period in which the employing office receives an appropriate request to enroll or change the enrollment.

(6) A transfer from a post of duty within a State of the United States or the District of Columbia to a post of duty outside a State of the United States or the District of Columbia, or the reverse. An employee enrolling under this paragraph (h)(6) must enroll or change the enrollment within the period beginning 31 days before leaving the old post of duty and ending 60 days after arriving at the new post of duty.

(7) A change, without a break in service or after a separation of 3 days or less, to part-time career employment as defined in 5 U.S.C. 3401(2) and 5 CFR part 340, subpart B, or a change from such part-time career employment to full-time employment that entitles the employee to the full Government contribution.

(i) *Loss of coverage under this part or under another group insurance plan.* An eligible employee may enroll and an enrolled employee may change the enrollment from self only to self and family, from one plan or option to another, or make any combination of these changes when the employee or an eligible family member of the employee loses coverage under this part or another group health benefits plan. Except as otherwise provided, an employee must enroll or change the enrollment within the period beginning 31 days before the date of loss of coverage, and ending 60 days after the date of loss of coverage. Losses of coverage include, but are not limited to—

(1) Loss of coverage under another FEHB enrollment due to the termination, cancellation, or a change to self only, of the covering enrollment.

(2) Loss of coverage under another federally-sponsored health benefits program.

(3) Loss of coverage or loss of access to health services because the employee or a covered family member in a comprehensive medical plan moves or becomes employed outside the enrollment or service area, or, if already outside the enrollment or service area, moves or becomes employed further from the enrollment or service area. The employee may change the enrollment upon notifying the employing office of the move or change of place of employment. The change of enrollment takes effect on the first day of the pay period that begins after the employing office receives an appropriate request.

(4) Loss of coverage due to the termination of membership in an employee organization sponsoring or underwriting an FEHB plan.

(5) Loss of coverage due to the discontinuance of an FEHB plan in whole or in part. For an employee who loses coverage under this paragraph (i)(5):

(i) If the discontinuance is at the end of a contract year, the employee must change the enrollment during the open season, unless OPM establishes a different time. If the discontinuance is at a time other than the end of the contract year, OPM must establish a time and effective date for the employee to change the enrollment.

(ii) If the whole plan is discontinued, an employee who does not change the enrollment within the time set is considered to have cancelled the plan in which enrolled.

(iii) If one option of a plan that has two options is discontinued, an employee who does not change the enrollment is considered to be enrolled in the remaining option of the plan.

(6) Loss of coverage under the Medicaid program (State program of medical assistance for the needy).

(7) Loss of coverage under a non-Federal health plan because an employee moves out of the commuting area to accept another position and the employee's non-federally employed spouse terminates employment to accompany the employee. An employee may enroll or change the enrollment within the period beginning 31 days before the date the employee leaves employment in the old commuting area and ending 180 days after entry on duty at place of employment in the new commuting area.

(8) Loss of coverage under a non-Federal health plan.

(j) *On becoming eligible for Medicare.* An employee may change the enrollment from one plan or option to another at any time beginning on the 30th day before becoming eligible for coverage under title XVIII of the Social Security Act (Medicare). A change of enrollment based on becoming eligible for Medicare may be made only once.

(k) *Salary of temporary employee insufficient to pay withholdings.* If the salary of a temporary employee eligible under 5 U.S.C. 8906a is not sufficient to pay the withholdings for the plan in which the employee is enrolled, the employing office shall notify the employee of the plans available at a cost that does not exceed the employee's salary. The employee may enroll in another plan whose cost is no greater than his or her salary within 60 days after receiving such notification from the employing office. The change of enrollment takes effect immediately upon termination of the prior enrollment.

5. In § 890.302, paragraph (f) is revised to read as follows:

§ 890.302 Coverage of family members.

* * * * *

(f) *Determination of incapacity.* (1) Except as provided in paragraph (f)(2) of this section, the employing office shall make determinations of incapacity.

(2) Either the employing office or the carrier may make a determination of incapacity if a medical condition, as specified by OPM, exists that would cause a child to be incapable of self-support during adulthood.

* * * * *

6. In § 890.303, paragraph (a)(1) is amended by removing "registration" and adding in its place "enrollment", and paragraph (a)(3) is revised to read as follows:

§ 890.303 Continuation of enrollment.

(a) * * *

(3) For the purpose of this part, an employee is considered to have enrolled at his or her first opportunity if the employee enrolled during the first of the periods set forth in § 890.301 in which he or she was eligible to enroll or was covered at that time by the enrollment of another employee or annuitant, or whose enrollment was effective not later than December 31, 1964.

* * * * *

(7) In § 890.304, paragraph (a)(2) is amended by removing "§ 890.301(ee)" and adding in its place "§ 890.301 (k)", paragraph (b)(1) is amended by removing "§ 890.301 (q)" and adding in its place "§ 890.306 (o)", and the first two sentences of paragraph (d) are revised to read as follows:

§ 890.304 Termination of enrollment.

* * * * *

(d) *Cancellation.* Except an provided in "§ 890.807(e), an enrollee may cancel his or her enrollment at any time by filing an appropriate request with the employing office. The cancellation takes effect on the last day of the pay period in which the appropriate request canceling the enrollment is received by the employing office, except that the cancellation of an enrollee having a monthly or 4-weekly pay period takes effect at the end of the pay period in which the appropriate request is received if the request is received between the first and fifteenth day of the pay period.* * *

* * * * *

8. Section 890.306 is revised to read as follows:

§ 890.306 Opportunities for annuitants to change enrollment or to reenroll; effective dates.

(a) *Requirements to continue coverage.* (1) To be eligible to continue coverage in a plan under this part, a former employee in receipt of an annuity must meet the statutory requirements under 5 U.S.C. 8905(b) of having retired on an immediate annuity and having been covered by a plan under this part for the 5 years of service immediately before retirements, or if less than 5 years, for all service since his or her first opportunity to enroll, unless OPM waives the requirement under § 890.108.

(2) To be eligible to continue coverage in a plan under this part, a survivor annuitant must be covered as a family member when the employee or annuitant dies.

(b) *Effective date—generally.* Except as otherwise provided, an annuitant's change of enrollment takes effect on the first day of the first pay period that begins after the date the employing office receives an appropriate request to change the enrollment.

(c) *Belated enrollment.* When an employing office determines that an annuitant was unable, for clause beyond his or her control, to continue coverage by enrolling in his or her own name or change the enrollment within the time limits prescribed by this section, the annuitant may do so within 60 days after the employing office advises the annuitant of its determination.

(d) *Enrollment by proxy.* Subject to the discretion of the empoloying office, an annuitant's representative, having written authorization to do so, may continue the annuitant's coverage by enrolling in the annuitant's own name, or change the enrollment for the annuitant.

(e) *Change to self only.* (1) An annuitant may change the enrollment from self and family to self only at any time.

(2) A change of enrollment to self only takes effect on the first day of the first pay period after the employing office receives an appropriate request to change the enrollment, except that at the request of the annuitant and upon a showing satisfactory to the employing office that there was no family member eligible for coverage under the family enrollment, the employing office may make the change effective on the first day of the pay period following the one in which was no family member.

(f) *Open season.* (1) During an open season as provided by § 890.301(f)—

(i) An enrolled annuitant may change the enrollment from self only to self and family, from one plan or option to another, or make any combination of these changes.

(ii) An annuitant who cancelled the enrollment under this part for the purpose of enrolling in a prepaid health plan under sections 1833 or 1876 of the Social Security Act, and who subsequently voluntarily disenrolls from the prepaid health plan, may reenroll.

(iii) An annuitant who cancelled the enrollment under this part because he or she furnished proof of eligibility for coverage under the Medicaid program (State program of medical assistance for the needy), and who wishes to reenroll in a plan under this part for reasons other than an involuntary loss of Medicaid coverage, may do so.

(2) An open season reenrollment or change of enrollment takes effect on the first day of the first pay period that begins in January of the next following year.

(3) When a belated open season reenrollment or change of enrollment is accepted by the employing office under paragraph (c) of this section, it takes effect as required by paragraph (f)(2) of this section.

(g) *Change in family status.* (1) An enrolled former employee in receipt of an annuity may change the enrollment from self only to self and family, from one plan or option to another, or make any combination of these changes when the annuitant's family status changes, including a change in marital status or any other change in family status. In the case of an enrolled survivor annuitant, a change in family status based on additional family members occurs only if the additional family members are family members of the deceased employee or annuitant. The annuitant must change the enrollment within the period beginning 31 days before the date of the change in family status, and ending 60 days after the date of the change in family status.

(2) A change of enrollment made in conjunction with the birth of a child, or the addition of a child as a new family member in some other manner, takes effect on the first day of the pay period in which the child is born or becomes an eligible family member.

(h) *Reenrollment of annuitants who cancelled enrollment to enroll in a Medicare-sponsored Coordinated Care Plan.* (1) An annuitant who had been enrolled (or was otherwise eligible to enroll) for coverage under this part and cancelled the enrollment for the purpose of enrolling in a prepaid health plan under sections 1833 or 1876 of the Social Security Act (as provided by § 890.304(d)), and who is subsequently involuntarily disenrolled from the prepaid health plan, may immediately reenroll in any available plan under this part at any time beginning 31 days before and ending 60 days after the disenrollment. A reenrollment under this paragraph (h) takes effect on the date following the effective date of the disenrollment as shown on the documentation from the prepaid health plan.

(2) An annuitant who voluntarily disenrolls from the prepaid health plan must do so in conjunction with reenrolling in a plan under this part during the next available open season (as provided by paragraph (f) of this section) to assure continuing uninterrupted health plan coverage.

(i) *Reenrollment of annuitants who cancelled enrollment because of eligibility under the Medicaid program.* (1) An annuitant who had been enrolled (or was otherwise eligible to enroll) for coverage under this part and cancelled the enrollment because he or she furnished proof of eligibility for coverage under the Medicaid program (State program of medical assistance for the needy), and who involuntarily loses coverage under Medicaid, may reenroll in any available plan under this part at any time beginning 31 days before and ending 60 days after the loss of Medicaid coverage. A reenrollment under this paragraph (i) takes effect on the date following the date of loss of Medicaid coverage.

(2) An annuitant who cancelled his or her enrollment because he or she furnished proof of eligibility for Medicaid coverage, and who wishes to reenroll in a plan under this part for

VOL 61 ISS 132 JL 9 1996 UMI

reasons other than an involuntary loss of Medicaid coverage, may do so during the next available open season as provided by paragraph (f) of this section.

(j) *Annuitants who apply for postponed minimum retirement age plus 10 years of service (MRA plus 10) annuity.* (1) A former employee who meets the requirements for an immediate annuity under 5 U.S.C. 8412(g) and for continuation of coverage under 5 U.S.C. 8905(b) at the time of separation, and whose enrollment is terminated under § 890.304(a)(1)(ii) may enroll in a health benefits plan under this part within 60 days after OPM mails the former employee a notice of eligibility. If such former employee dies before the end of this 60-day election period, a survivor who is entitled to a survivor annuity may enroll in a health benefits plan under this part within 60 days after OPM mails the survivor a notice of eligibility.

(2) The former employee's enrollment takes effect on the first day of the month following the month in which OPM receives the appropriate request or on the commencing date of annuity, whichever is later. A survivor's enrollment takes effect on the first day of the month following the month in which OPM receives the appropriate request.

(k) *Restoration of annuity or compensation payments.* (1) A disability annuitant who was enrolled in a health benefits plan under this part immediately before his or her disability annuity was terminated because of restoration to earning capacity or recovery from disability, and whose disability annuity is restored under 5 U.S.C. 8337(e) after December 31, 1983, or 8455(b), may enroll in a health benefits plan under this part within 60 days after OPM mails a notice of insurance eligibility. The enrollment takes effect on the first day of the month after the date OPM receives the appropriate request.

(2) An annuitant who was enrolled in a health benefits plan under this part immediately before his or her compensation was terminated because the OWCP determined that he or she had recovered from the job-related injury or disease, and whose compensation is restored due to a recurrence of disability, may enroll in a health benefits plan under this part within 60 days after OWCP mails a notice of insurance eligibility. The enrollment takes effect on the first day of the pay period after the date OWCP receives the appropriate request.

(3) A surviving spouse who was covered by a health benefits enrollment under this part immediately before his or her survivor annuity was terminated because of remarriage, and whose survivor annuity is later restored, may enroll in a health benefits plan under this part within 60 days after OPM mails a notice of eligibility. The enrollment takes effect on either—

(i) The first day of the month after the date OPM receives the appropriate request; or

(ii) The date of restoration of the survivor annuity or October 1, 1976, whichever is later.

(4) A surviving child who was covered by a health benefits enrollment under this part immediately before his or her survivor annuity was terminated because he or she ceased being a student, and whose survivor annuity is later restored, may enroll in a health benefits plan under this part within 60 days after OPM mails a notice of eligibility. The enrollment takes effect on the first day of the month after the date OPM receives the appropriate request or the date of restoration of the survivor annuity, whichever is later.

(5) A surviving spouse who received a basic employee death benefit under 5 U.S.C. 8442(b)(1)(A) and who was covered by a health benefits enrollment under this part immediately before remarriage prior to age 55, may enroll in a health benefits plan under this part upon termination of the remarriage. The survivor must provide OPM with a certified copy of the notice of death or the court order terminating the marriage. The surviving spouse must enroll within 60 days after OPM mails a notice of eligibility. The enrollment takes effect on the first day of the month after the date OPM receives the appropriate request and the notice of death or court order terminating the remarriage.

(l) *Loss of coverage under this part or under another group insurance plan.* An annuitant who meets the requirements of paragraph (a) of this section, and who is not enrolled but is covered by another enrollment under this part may continue coverage by enrolling in his or her own name when the annuitant loses coverage under the other enrollment under this part. An enrolled annuitant may change the enrollment from self only to self and family, from one plan or option to another, or make any combination of these changes when the annuitant or an eligible family member of the annuitant losses coverage under this part or under another group health benefits plan. Except as otherwise provided, an annuitant must enroll or change the enrollment within the period beginning 31 days before the date of loss of coverage and ending 60 days after the date of loss of coverage. Losses of coverage include, but are not limited to—

(1) Loss of coverage under another FEHB enrollment due to the termination, cancellation, or a change to self only, of the covering enrollment;

(2) Loss of coverage under another federally-sponsored health benefits program;

(3) Loss of coverage or loss of access to health services because the annuitant or a covered family member in a comprehensive medical plan moves or becomes employed outside the enrollment or service area, or, if already outside the enrollment or service area, moves or becomes employed further from the enrollment or service area. The annuitant may change the enrollment upon notifying the employing office of the move or change of place of employment. The change of enrollment takes effect on the first day of the pay period that begins after the employing office receives an appropriate request.

(4) Loss of coverage due to the termination of membership in an employee organization sponsoring or underwriting an FEHB plan;

(5) Loss of coverage due to the discontinuance of an FEHB plan in whole or in part. For an annuitant who loses coverage under this paragraph (l)(5)—

(i) If the discontinuance is at the end of a contract year, the annuitant must change the enrollment during the open season, unless OPM establishes a different time. If the discontinuance is at a time other than the end of the contract year, OPM must establish a time and effective date for the annuitant to change the enrollment;

(ii) If a plan has only one option and is discontinued, an annuitant who does not change the enrollment is deemed to have enrolled in the standard option of the Blue Cross and Blue Shield Service Benefit Plan.

(iii) If a plan has two options, and one option of the plan is discontinued, an annuitant who does not change the enrollment is considered to be enrolled in the remaining option of the plan.

(iii) If a plan has two options and both options are discontinued, an annuitant who does not change the enrollment is deemed to have enrolled in the corresponding option of the Blue Cross and Blue Shield Service Benefit Plan. If the annuitant is enrolled in a high option and his or her annuity is insufficient to pay the withholding for the high option, the annuitant is deemed to have enrolled in the standard option of the Blue Cross and Blue Shield Service Benefit Plan. The exemptions from debt collection procedures that are provided under sections 831.1305(d)(2) and 845.205(d)(2) of this chapter apply to elections under this paragraph;

(6) Loss of coverage under the Medicaid program (State program of medical assistance for the needy).

(7) Loss of coverage under a non-Federal health plan.

(m) *Overseas post of duty.* An annuitant may change the enrollment from self only to self and family, from one plan or option to another, or make any combination of these changes within 60 days after the retirement or death of the employee on whose service title to annuity is based, if the employee was stationed at a post of duty outside a State of the United States or the District of Columbia at the time of retirement or death.

(n) *On return from a uniformed service.* An enrolled annuitant who enters on duty in a uniformed service for 31 days or more may change the enrollment within 60 days after separation from the uniformed service.

(o) *On becoming eligible for Medicare.* An annuitant may change the enrollment from one plan or option to another at any time beginning on the 30th day before becoming eligible for coverage under title XVIII of the Social Security Act (Medicare). A change of enrollment based on becoming eligible for Medicare may be made only once.

(p) *Annuity insufficient to pay withholdings.* (1) If an annuity is sufficient to pay the withholdings for the plan that the annuitant is enrolled in, the retirement system must provide the annuitant with information regarding the available plans and written notification of the opportunity to either—

(i) Pay the premium directly to the retirement system in accordance with § 890.502(f); or

(ii) Enroll in any plan in which the annuitant's share of the premium is less than that amount of annuity. If the annuitant elects to change to a lower cost enrollment, the change takes effect immediately upon loss of coverage under the prior enrollment.

(2) If the annuitant is enrolled in the high option of a plan that has two options, and does not change the enrollment to a plan in which the annuitant's share of the premium is less than the amount of annuity or does not elect to pay premiums directly, the annuitant is deemed to have enrolled in the standard option of the same plan, unless the annuity is insufficient to pay the withholdings for the standard option.

(3) An annuitant whose enrollment was terminated because the amount of annuity was insufficient to cover the enrollee's share of the premium may apply to be reinstated in any available plan or option.

(4) An annuitant who can show evidence that he or she previously changed to a lower cost option, plan, or to a self only enrollment prior to May 29, 1990, because the annuity was insufficient to cover the withholdings for the plan in which he or she was enrolled, may apply to change the enrollment to any available plan or option in which the enrollee's share of the total premium exceeds his or her monthly annuity.

(5) The effective date of the reinstatement of enrollment of an annuitant whose enrollment was terminated, or the change of enrollment of an annuitant who previously changed enrollment because his or her annuity was insufficient to cover the annuitant's share of the total premium, and who elects to pay premiums directly to the retirement system in accordance with § 890.502(f) is either—

(i) The first day of the first pay period that begins after the appropriate request is received by the retirement system; or,

(ii) The later of the date the enrollment was terminated or changed, or May 29, 1990.

(6) Retroactive reinstatement or change of enrollment is contingent upon payment of appropriate contributions retroactive to the effective date of the reinstatement or the change of enrollment. For the purpose of this paragraph (p)(6), a previous cancellation of enrollment because of insufficient annuity to cover the full amount of the withholdings is deemed to be a termination of enrollment.

(q) *Sole survivor.* When an employee or annuitant enrolled for self and family dies, leaving a survivor annuitant who is entitled to continue the enrollment, and it is apparent from available records that the survivor annuitant is the sole survivor entitled to continue the enrollment, the office of the retirement system which is acting as employing office must change the enrollment from self and family to self only, effective on the commencing date of the survivor annuity. On request of the survivor annuitant made within 31 days after the first installment of annuity is paid, the office of the retirement system which is acting as employing office must rescind the action retroactive to the effective date of the change to self only, with corresponding adjustment in withholdings and contributions.

(r) *Election between survivor annuities.* A surviving spouse, irrespective of whether his or her survivor annuity continued or was terminated upon remarriage, who was covered by an enrollment under this part immediately before the remarriage, may elect to continue an enrollment under this part acquired as a dependent by virtue of the remarriage or to enroll in his or her own right (by virtue of entitlement to the original survivor annuity) in any plan or option under this part within 60 days after the termination of the remarriage and entitlement to a survivor annuity.

§ 890.602 [Amended]

9. Section 890.602 is amended by removing "register" and adding in its place "elect to enroll".

§ 890.803 [Amended]

10. In § 890.803, paragraph (a)(3)(i) is amended by removing "5 CFR 831.606(a) and (b) and 842.605(a) and (b)" and adding in its place "§§ 831.613(a) and (b) and 842.605(a) and (b) of this chapter".

11. Section 890.806 is revised to read as follows:

§ 890.806 Opportunities for former spouses to enroll and change enrollment; effective dates of enrollment.

(a) *Initial opportunity to enroll.* A former spouse who has met the eligibility requirements of § 890.803 and the application time limitation requirements of § 890.805 may enroll at any time after the employing office establishes that these requirements have been met.

(b) *Effective date—generally.* (1) Except as otherwise provided, an enrollment takes effect on the first day of the first pay period that begins after the date the employing office receives an appropriate request and satisfactory proof of eligibility as required by paragraph (a) of this section. If a former spouse requests immediate coverage, and the employing office receives an appropriate request and satisfactory proof of eligibility within 60 days after the date of divorce, the enrollment may be made effective on the same day that temporary continuation of coverage under subpart K of this part would otherwise take effect.

(2) A change of enrollment takes effect on the first day of the first pay period that begins after the employing office receives the appropriate request.

(c) *Belated enrollment.* When an employing office determines that a former spouse was unable, for cause beyond his or her control, to enroll or change the enrollment within the time limits prescribed by this section, the former spouse may do so within 60 days after the employing office advises the former spouse of its determination.

VOL 61 ISS 132 JL 9 1996 UMI

(d) *Enrollment by proxy.* Subject to the discretion of the employing office, a former spouse's representative, having written authorization to do so, may enroll or change the enrollment for the former spouse.

(e) *Change to self only.* (1) A former spouse may change the enrollment from self and family to self only at any time.

(2) A change of enrollment to self only takes effect on the first day of the first pay period after the employing office receives an appropriate request to change the enrollment, except that at the request of the former spouse and upon a showing satisfactory to the employing office that there was no family member eligible for coverage under the family enrollment, the employing office may make the change take effect on the first day of the pay period following the one in which there was no family member.

(f) *Open season.* (1) During an open season as provided by § 890.301(f)—

(i) An enrolled former spouse may change the enrollment from self only to self and family provided the family member(s) is eligible for coverage under § 890.804, from one plan or option to another, or make any combination of these changes.

(ii) A former spouse who cancelled the enrollment under this part for the purpose of enrolling in a prepaid health plan under sections 1833 or 1876 of the Social Security Act, and who subsequently voluntarily disenrolls from the prepaid health plan, may reenroll.

(iii) A former spouse who canceled the enrollment under this part because he or she furnished proof of eligibility for coverage under the Medicaid program (State program of medical assistance for the needy), and who wishes to reenroll in a plan under this part for reasons other than an involuntary loss of Medicaid coverage, may do so.

(2) An open season reenrollment or change of enrollment takes effect on the first day of the first pay period that begins in January of the next following year.

(3) When a belated open season reenrollment or change of enrollment is accepted by the employing office under paragraph (c) of this section, it takes effect as required by paragraph (f)(2) of this section.

(g) *Change in family status.* (1) An enrolled former spouse may change the enrollment from self only to self and family, from one plan or option to another, or make any combination of these changes within the period beginning 31 days before and ending 60 days after the birth or acquisition of a child who meets the eligibility requirements of § 890.804.

(2) A change in enrollment under paragraph (g)(1) of this section takes effect on the first day of the pay period in which the child is born or becomes an eligible family member.

(h) *Reenrollment of former spouses who canceled enrollment to enroll in a Medicare-sponsored Coordinated Care Plan.* (1) A former spouse who had been enrolled for coverage under this part and canceled enrollment for the purpose of enrolling in a prepaid health plan under sections 1833 or 1876 of the Social Security Act, and who is subsequently involuntarily disenrolled from the prepaid health plan, may immediately reenroll in any available plan under this part at any time beginning 31 days before and ending 60 days after the disenrollment. A reenrollment under this paragraph (h) takes effect on the date following the effective date of the disenrollment as shown on the documentation from the prepaid health plan.

(2) A former spouse who voluntarily disenrolls from the prepaid health plan must do so in conjunction with reenrolling in a plan under this part during the next available open season as provided by paragraph (f) of this section to assure continuing uninterrupted health plan coverage.

(i) *Reenrollment of former spouses who canceled enrollment because of eligibility under the Medicaid program.* (1) A former spouse who had been enrolled (or was otherwise eligible to enroll) for coverage under this part and canceled the enrollment because he or she furnished proof of eligibility for coverage under the Medicaid program (State program of medical assistance for the needy), and who involuntarily loses coverage under Medicaid, may reenroll in any available plan under this part at any time beginning 31 days before and ending 60 days after the loss of Medicaid coverage. A reenrollment under this paragraph (i) takes effect on the date following the date of loss of Medicaid coverage.

(2) A former spouse who canceled his or her enrollment because he or she furnished proof of eligibility for Medicaid coverage, and who wishes to reenroll in a plan under this part for reasons other than an involuntary loss of Medicaid coverage, may do so during the next available open season as provided by paragraph (f) of this section.

(j) *Loss of coverage under this part or under another group insurance plan.* A former spouse who has established eligibility for health benefits under § 890.803 and met the application time limitations of § 890.805, and who is not enrolled as a former spouse but is covered by another enrollment under this part or under another group health benefits plan, may enroll upon loss of the other coverage. An enrolled former spouse may change the enrollment from self only to self and family, from one plan or option to another or make any combination of these changes when the former spouse or a child who meets the eligibility requirements under § 890.804 loses coverage under another enrollment under this part or under another group health benefits plan. Except as otherwise provided, the former spouse must enroll or change the enrollment within the period beginning 31 days before and ending 60 days after the loss of coverage, provided he or she continues to meet the eligibility requirements under § 890.803. Losses of coverage include but are not limited to—

(1) Loss of coverage under another FEHB enrollment due to the termination, cancellation, or a change to self only, of the covering enrollment;

(2) Loss of coverage under another federally sponsored health benefits program;

(3) Loss of coverage or access to health services because the former spouse or a covered family member in a comprehensive medical plan moves or becomes employed outside the enrollment or service area, or, if already outside the enrollment or service area, moves or becomes employed further from the enrollment or service area. The former spouse may change the enrollment upon notifying the employing office of the move or change of place of employment. The change of enrollment takes effect on the first day of the pay period that begins after the employing office receives an appropriate request.

(4) Loss of coverage due to the termination of membership in an employee organization sponsoring or underwriting an FEHB plan;

(5) Loss of coverage due to the discontinuance of an FEHB plan in whole or in part. For a former spouse who loses coverage under this paragraph (j)(5)—

(i) If the discontinuance is at the end of a contract year, the former spouse must change the enrollment during the open season, unless OPM establishes a different time. If the discontinuance is at a time other than the end of the contract year, OPM must establish a time and effective date for the former spouse to change the enrollment;

(ii) If the whole plan is discontinued, a former spouse who does not change the enrollment within the time set is considered to have cancelled the plan in which enrolled.

(iii) If one option of a plan that has two options is discontinued, a former spouse who does not change the enrollment is considered to be enrolled in the remaining option of the plan.

(6) Loss of coverage under the Medicaid program (State program of Medical assistance for the needy).

(7) Loss of coverage under a non-Federal health plan.

(k) *On becoming eligible for Medicare.* A former spouse may change the enrollment from one plan or option to another at any time beginning on the 30th day before becoming eligible for coverage under title XVIII of the Social Security Act (Medicare). A change of enrollment based on becoming eligible for Medicare may be made only once.

(l) *Annuity insufficient to pay withholdings.* (1) If the annuity of a former spouse is insufficient to pay the full subscription charge for the plan in which he or she is enrolled, the retirement system must provide the former spouse with information regarding the available plans and written notification of the opportunity to either—

(i) Pay the premium directly to the retirement system in accordance with § 890.808(d); or

(ii) Enroll in any plan with a full premium that is less than the amount of annuity. If the former spouse elects to change to a lower cost enrollment, the change takes effect immediately upon loss of coverage under the prior enrollment.

(2) If the former spouse is enrolled in the high option of a plan that has two options, and does not elect a plan with a full premium that is less than the annuity or does not elect to pay premiums directly, he or she is deemed to have enrolled in the standard option of the same plan unless the annuity is insufficient to pay the full subscription charge for the standard option.

(3) A former spouse who is enrolled in a plan with only one option, who fails to make the election required by this paragraph will be subject to the provisions of section 890.807(c).

(12) Section 890.807 is amended by revising the heading for paragraph (c) and revising paragraph (c)(1) to read as follows:

§ 890.807 Termination of enrollment.

* * * * *

(c) *Failure to make an election under § 890.806(l).* (1) If the annuity is insufficient to pay the full subscription charge due for the plan in which the former spouse is enrolled, the former spouse may elect one of the two opportunities offered under § 890.806(l) (electing a plan with a full subscription charge that is less than the annuity; or paying premiums directly to the retirement system in accordance with § 890.808(d). Except as provided in paragraph (c)(3) of this section the enrollment of a former spouse who fails to make an election within the specified time frame will be terminated.

* * * * *

13. In section 890.808, paragraph (e) is revised to read as follows:

§ 890.808 Employing office responsibilities.

* * * * *

(e) *Withholding from annuity.* The retirement system acting as employing office for a former spouse will establish a method for withholding the full subscription charge from the former spouse's annuity check. When the annuity is insufficient to cover the full subscription charge, the retirement system will follow the procedures specified in section 890.806(l).

14. Section 890.1105 is amended by revising the section heading and adding headings for paragraphs (b), (c), (d), and (f), by revising paragraphs (d) and (f), and by adding a new paragraph (g) to read as follows:

§ 890.11.05 Initial election of temporary continuation of coverage; application time limitations and effective dates.

* * * * *

(b) Former employees. * * *

(c) Children. * * *

(d) Former spouses. (a) A former spouse's election must be received by the employing office within 60 days after the later of—

(i) The date of the qualifying event; or

(ii) The date coverage under subpart H of this part was lost because of remarriage or loss of qualifying court order, if the loss of coverage under subpart H occurred before the expiration of the 36-month period specified in § 890.1107(c); or

(iii) If the employee or former spouse notified the agency of the termination of the marriage within the time period specified in § 890.1104(c)(1), the date the former spouse received the notice from the agency described in § 890.1104(c)(2). If neither the employee nor the former spouse notified the agency within the specified time period, the former spouse's opportunity to elect continued coverage ends 60 days after the qualifying event.

(2) The effective date of former spouse coverage is the later of—

(i) The date determined under paragraph (g) of this section; or

(ii) The date of the divorce or annulment.

* * * * *

(f) *Belated elections.* Except as provided in paragraphs (c)(2) and (d)(1)(iii) of this section, when an employing office determines that an eligible individual was unable, for cause beyond his or her control, to elect temporary continuation of coverage within the time limits prescribed by this section, that office must accept the election within 60 days after it advises the individual of that determination.

(g) *Effective date of coverage.* Except as provided in paragraph (d)(2)(ii) of this section, the effective date of temporary continuation of coverage is the day after other coverage under this part expires, including the 31-day temporary extension of coverage under § 890.401. If an individual elects temporary continuation of coverage after the 31-day temporary extension of coverage expires, but before the expiration of the applicable election period specified in this section, coverage is restored retroactively, with appropriate contributions and claims, to the same extent and effect as though no break in coverage occurred.

15. Section 890.1108 is revised to read as follows:

§ 890.1106 Opportunities to change enrollment; effective dates.

(a) *Effective date—generally.* Except as otherwise provided, a change of enrollment takes effect on the first day of the first pay period that begins after the employing office receives an appropriate request to change the enrollment.

(b) *Belated change of enrollment.* When an employing office determines that an enrollee was unable, for cause beyond his or her control, to change the enrollment within the time limits prescribed by this section, the enrollee may do so within 60 days after the employing office advises the enrollee of its determination.

(c) *Change of enrollment by proxy.* Subject to the discretion of the employing office, an enrollee's representative, having written authorization to do so, may change the enrollment for the enrollee.

(d) *Change to self only.* (1) An enrollee may change the enrollment from self and family to self only at any time.

(2) A change of enrollment to self only takes effect on the first day of the first pay period after the employing office receives an appropriate request to change the enrollment, except that at the request of the enrollee and upon a showing satisfactory to the employing office that there was no family member eligible for coverage under the family enrollment, the employing office may make the change effective on the first

VOL 61 ISS 132 JL 9 1996 UMI

day of the pay period following the one in which there was no family member.

(e) *Open season.* (1) During the open season as provided by § 890.301(f), an enrollee (except for a former spouse who is eligible for continued coverage under § 890.1103(3)) may change the enrollment from self only to self and family, from one plan or option to another, or make any combination of these changes. A former spouse who is eligible for continued coverage under § 890.1103(3) may change from one plan or option to another, but may not change from self only to self and family unless the individual to be covered under the family enrollment qualifies as a family member under § 890.1106(a)(2).

(2) An open season change of enrollment takes effect on the first day of the first pay period that begins in January of the next following year.

(3) When a belated open season change of enrollment is accepted by the employing office under paragraph (b) of this section, it takes effect as required by paragraph (e)(2) of this section.

(f) *Change in family status.* (1) Except for a former spouse, an enrollee may change the enrollment from self only to self and family, from one plan or option to another, or make any combination of these changes when the enrollee's family status changes, including a change in marital status or any other change in family status. The enrollee must change the enrollment within the period beginning 31 days before the date of the change in family status, and ending 60 days after the date of the change in family status.

(2) A former spouse who is covered under this section may change the enrollment from self alone to self and family, from one plan or option to another, or make any combination of these changes within the period beginning 31 days before and ending 60 days after the birth or acquisition of a child who qualifies as a covered family member under § 890.1106(a)(2).

(3) A change of enrollment made in conjunction with the birth of a child, or the addition of a child as a new family member in some other manner, takes effect on the first day of the pay period in which the child is born or becomes an eligible family member.

(g) *Reenrollment of individuals who lose other coverage under this part.* An individual whose continued coverage under this section terminates because of the provisions of § 890.1110(a)(3) (termination due to other coverage under another provision of this part) may reenroll if the coverage that terminated the enrollment under this part ends, but not later than the expiration of the period described in § 890.1107. Coverage does not extend beyond the expiration of the period described in § 890.1107. The effective date of the reenrollment is the day following the termination of the coverage described in § 890.1110(a)(3).

(h) *Loss of coverage under this part or under another group insurance plan.* An enrollee may change the enrollment from self only to self and family, from one plan or option to another, or make any combination of these changes when the enrollee loses coverage under this part or a qualified family member of the enrollee loses coverage under this part or under another group health benefits plan. Except as otherwise provided, an enrollee must change the enrollment within the period beginning 31 days before the date of loss of coverage and ending 60 days after the date of loss of coverage. Losses of coverage include, but are not limited to—

(1) Loss of coverage under another FEHB enrollment due to the termination, cancellation, or change to self only, of the covering enrollment.

(2) Loss of coverage under another federally-sponsored health benefits program.

(3) Loss of coverage or loss of access to health services because the enrollee or a covered family member in a comprehensive medical plan moves or becomes employed outside the enrollment or service area, or, if already outside the enrollment or service area, moves or becomes employed further from the enrollment or service area. The enrollee may change the enrollment upon notifying the employing office of the move or change of place of employment. The change of enrollment takes effect on the first day of the pay period that begins after the employing office receives an appropriate request.

(4) Loss of coverage due to the termination of membership in an employee organization sponsoring or underwriting an FEHB plan.

(5) Loss of coverage due to the discontinuance of an FEHB plan, in whole or in part. For an enrollee who loses coverage under this paragraph (h)(5)—

(i) If the discontinuance is at the end of a contract year, the enrollee must change the enrollment during the open season, unless OPM establishes a different time. If the discontinuance is at a time other than the end of the contract year, OPM must establish a time and effective date for the enrollee to change the enrollment.

(ii) If the whole plan is discontinued, an enrollee who does not change the enrollment within the time set is considered to have cancelled the plan in which enrolled;

(iii) If a plan has two options, and one option of the plan is discontinued, an enrollee who does not change the enrollment is considered to be enrolled in the remaining option of the plan.

(6) Loss of coverage under the Medicaid Program (State program of medical assistance for the needy).

(7) Loss of coverage under a non-Federal health plan.

(i) *On becoming eligible for Medicare.* An enrollee may change the enrollment from one plan or option to another at any time beginning on the 30th day before becoming eligible for coverage under title XVIII of the Social Security Act (Medicare). A change of enrollment based on becoming eligible for Medicare may be made only once.

[FR Doc. 96–17248 Filed 7–8–96; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1280

[Docket Number LS–96–006]

Sheep Promotion, Research, and Information Program

AGENCY: Agricultural Marketing Service; USDA.

ACTION: Notice of Referendum; Referendum Order.

SUMMARY: The Agricultural Marketing Service (AMS) is announcing that a second referendum will be conducted among eligible sheep producers, sheep feeders, and importers of sheep and sheep products to determine whether the Sheep and Wool Promotion, Research, Education, and Information Order (Order) will become effective as authorized under the Sheep Promotion, Research, and Information Act of 1994 (Act). This action is a result of a review conducted by the Department of Agriculture (Department) that revealed that the referendum rules were applied inconsistently at the official polling places during the February 6, 1996, nationwide referendum. Consequently, the results of the February 6, 1996, nationwide referendum were voided.

DATES: Referendum Dates: In-person voting in the referendum will be conducted on October 1, 1996, by county Cooperative Extension Service (CES) offices. Absentee ballots will be available at county CES offices from August 26, 1996, through September 17, 1996. The representative period to establish voter eligibility will be the period from January 1, 1994, through December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, Livestock and Seed Division, AMS, USDA, Room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456. Telephone number 202/720–1115.

SUPPLEMENTARY INFORMATION: The Act (7 U.S.C. 7101–7111), enacted October 22, 1994, provides for the establishment of a national sheep and wool promotion, research, education, and information program, designed to strengthen the sheep industry's position in the marketplace, maintain and expand existing markets, and develop new markets and uses for sheep and sheep products.

The program will be funded by a mandatory assessment on domestic sheep producers, sheep feeders, and exporters of live sheep and greasy wool of 1 cent per pound on live sheep sold and 2 cents per pound on greasy wool sold. Importers will be assessed 1 cent per pound on live sheep imported and the equivalent of 1 cent per pound of live sheep for sheep products imported and 2 cents per pound of degreased wool or the equivalent of degreased wool for wool and wool products imported. Imported raw wool will be exempt from assessments. Each person who processes or causes to be processed sheep or sheep products of that person's own production, and who markets the processed products, will be assessed the equivalent of 1 cent per pound of live sheep sold and 2 cents per pound of greasy wool sold. All assessment rates may be adjusted in accordance with applicable provisions of the Act.

The Act requires that a referendum be conducted after an Order is issued to determine whether the Order will go into effect. An Order was published in the **Federal Register** on December 5, 1995 (60 FR 62298). The referendum is to be conducted among persons who were sheep producers, sheep feeders, or importers of sheep and sheep products during a representative period specified by the Secretary. Importers who import only raw wool are not eligible to participate in the referendum because raw wool is exempt from assessments under the Act. The Order would become operational only if it is approved by a majority of the producers, feeders, and importers voting in the referendum, or by producers, feeders, and importers voting in the referendum who account for at least two-thirds of the production represented by persons voting in the referendum. If the Order is not approved by persons voting in the referendum, the program will not become operational.

To vote in the referendum, eligible persons will complete the registration and certification form, mark their ballots and, if they want to vote according to their volume of production, record that number on the ballot. Producers, feeders, and importers who vote their volume of production must determine that number before they register and vote in the referendum. For producers and feeders, the volume of production is the largest number of head of domestic sheep owned for any single, consecutive, 30-day period during the representative period. For importers, the volume of production is the number of live sheep or live sheep equivalents imported during the representative period. The final referendum rules published in the **Federal Register** on December 15, 1995 (60 FR 64297), provide guidance for calculating import volume of production in sheep equivalents.

As required by the Act, the Department conducted an up-front referendum among eligible domestic sheep producers and sheep feeders, as well as importers of sheep and sheep products, to determine if the Order would become operational. To become effective, the Order had to be approved either by a majority of producers, feeders, and importers voting in the referendum or by voters who accounted for at least two-thirds of the production represented by all persons voting in the referendum. Of the 19,801 valid ballots cast in the February 6, 1996, referendum, 10,707 (54 percent) favored implementation of the Order and 9,094 (46 percent) opposed implementation of the Order.

AMS published the final Order (61 FR 19514) on May 2, 1996, to implement a national sheep and wool, promotion, research, education, and information program, designed to strengthen the position of sheep and sheep products in the marketplace, as provided for under the Act. The effective date of the Order was May 3, 1996, except that the collection and remittance sections of the Order—§ 1280.224–§ 1280.228—were scheduled to become effective on July 1, 1996. The final Rules and Regulations (61 FR 21053), which set forth the collection and remittance procedures to be used beginning July 1, 1996, and the Certification and Nomination procedures (61 FR 21049), which outline eligibility criteria and the nomination process used to obtain nominations for appointment to the National Sheep Promotion, Research, and Information Board which would administer the program, were both published on May 9, 1996.

After the referendum was held, however, the Department received voter complaints of alleged inconsistencies in the application of the referendum rules in conducting the referendum. The Department initiated a review of these allegations. Based on findings of the review which revealed that the referendum rules were applied inconsistently, the Department voided the results of the February 6, 1996, referendum, suspended the Order and the Certification and Nomination Regulations and postponed indefinitely the announced July 1, 1996, effective date of (1) the implementing Rules and Regulations, (2) the collection of assessments, and (3) the collection and remittance sections of the Order—§ 1280.224–§ 1280.228. The second referendum will be conducted under the final referendum rules published December 15, 1995 (60 FR 64297), in the **Federal Register**.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Management and Budget (OMB) has approved the information collection requirements concerning the conduct of a referendum including ballots and other voting materials. The control number assigned to the information collection requirements by OMB is OMB 0581–0093. It is estimated that it will take an average of 6.5 minutes for each of the approximately 87,350 domestic sheep producers and sheep feeders and the approximately 9,000 importers of sheep and sheep products to cast a ballot.

Referendum Order

It is hereby directed that a referendum be conducted among eligible sheep producers, sheep feeders, and importers of sheep and sheep products to determine whether an Order will become effective if approved by those eligible persons voting in the referendum. In-person voting in the referendum will be conducted on October 1, 1996, by the county CES offices. Absentee ballots will be available at the county CES offices from August 26, 1996, through September 17, 1996. The representative period to establish voter eligibility will be the period from January 1, 1994, through December 31, 1994.

List of Subjects in 7 CFR Part 1280

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Sheep and sheep products, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 7101–7111.

VOL
61
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Dated: July 3, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–17478 Filed 7–3–96; 3:48 pm]

BILLING CODE 4410–25–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 207 and 208

[INS No. 1639–93]

RIN 1115–AD59

Procedures for Filing a Derivative Petition (Form I–730) for a Spouse and Unmarried Children of a Refugee/Asylee

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service (Service) regulations by providing procedures which must be followed by a refugee to bring his/her spouse and unmarried, minor child(ren) (derivatives) into the United States. This proposed rule is intended to respond to the family reunification needs of refugees by establishing an equitable and consistent following-to-join policy for refugees which parallels the current following-to-join procedures for asylees. This rule also proposes to amend asylum regulations by removing from the definition of qualifying relationship child(ren) born to or legally adopted by the principal alien and spouse after approval of the principal alien's asylum application.

DATES: Written comments must be submitted on or before September 9, 1996.

ADDRESSES: Please submit written comments, in triplicate, to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536, Attention: Public Comment Clerk. To ensure proper handling, please reference INS No. 1639–93 on your correspondence. Comments will be available for public inspection at this location by calling (202) 514–3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Ramonia Law-Hill, Senior Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

A. Background

The United States refugee program places strong emphasis on family reunification and assigns priority for interviews to those refugee applicants who have immediate family members already in the United States. This emphasis on reunifying families also extends to those refugees who have been resettled in the United States, but who remain separated from their spouse and/or child(ren). In such cases, refugees may file to have their spouse and/or child(ren) "follow-to-join" them in the United States. The following-to-join provisions for refugees is found in section 207(c)(2) of the Immigration and Nationality Act (Act).

To apply for such benefits, refugees file Form I–730, Refugee/Asylee Relative Petition, with the designated Service office. Such designation will be through separate action in the **Federal Register**. Spouses and unmarried, minor children (derivatives) who follow-to-join a refugee already in this country are admitted as refugees.

B. Need for Procedural Review and Revised Regulation

Over the past year, it has become apparent that existing Service procedures regarding following-to-join benefits for refugees is inadequate and has resulted in confusion for the general public. Regulations are necessary to clarify procedures and to establish an equitable and consistent following-to-join policy for refugees which parallels that found in the current following-to-join regulations for asylees, who are also eligible to file Form I–730.

In recent months the Service has received numerous telephone inquiries from members of Congress, the general public, voluntary agencies, and attorneys representing clients concerning the application of the following-to-join provisions found in section 207(c)(2) of the Act. Of primary concern has been the Service's requirement that the refugee's relationship to the spouse and/or child predates the date on which the refugee was granted refugee status. A Service memorandum issued on January 8, 1987, defined this date as the date of tentative approval, which has been interpreted by some as being the day of the refugee's interview. That interpretation, however, has not received Servicewide acceptance.

The Service's recent initiative to combine the Form I–730 with the revised Form I–130 (Petition for Alien Relative), revealed differing practices for processing following-to-join petitions filed by refugees and those filed by asylees. It was, therefore, determined that rather than consolidate the forms, the Service needed to review and, if necessary, revise existing policies relating to refugees and asylees.

C. Following-to-Join Issue

In the absence of a time limit on the following-to-join regulations, individuals who entered the United States as conditional entrants in the late 1970s and refugees in the early 1980s are filing Form I–730 petitions for a spouse and/or child(ren). Following-to-join benefits are available to help refugees make the difficult transition to a new life with the support of their immediate family members. Forms I–730 filed ten or more years after admission no longer serve the purpose for which they were originally intended. Instead, they deplete limited refugee admission numbers and refugee resettlement monies needed for emerging refugee populations. The proposed regulations are intended to respond more fully to the family reunification needs of refugees, while establishing specific guidelines on the following-to-join process.

Current interpretations of the following-to-join benefits for refugees have created confusion for Service officers, attorneys, refugees, and the general public. While some interpret following-to-join eligibility based on the refugee's date of admission, current practice requires the relationship to exist prior to the tentative approval date of the principal's application for refugee status. The Service determined that the current interpretation of following-to-join for refugees is too restrictive since it requires a refugee to meet a heavier burden for establishing a relationship with his/her spouse and unmarried, minor child(ren), than is required by regulation for a spouse and unmarried minor child(ren) of a citizen or lawful permanent resident of the United States. To resolve this disparity, the Service is adopting a more generous interpretation of the point at which a qualifying relationship exists for following-to-join benefits. This rule proposes that the refugee's date of admission be used to determine following-to-join eligibility. A refugee will then be able to file a separate Form I–730 for his/her spouse and/or each individual child if the relationship predates the refugee's date of admission to the United States, rather than the date of interview. The Service believes this proposal reflects the intent of Congress to reunite refugees with their families. Further, it alleviates inconsistencies in determining eligibility as is currently encountered because of the difficulty in determining the date of tentative approval.

Additionally, the Service has found that the benefit accorded asylees regarding children is too broad in that current asylum regulations extend following-to-join benefits to children born to, or adopted by, asylees at any point after the date of their approval. As a result, this rule will amend existing asylum regulations by requiring that, for purposes of filing a Form I–730, the asylee's relationship to a child exists on the date the asylee is granted asylum.

Only refugees who entered the United States as principal aliens will be eligible to file the Form I–730 for following-to-join benefits for a spouse and/or each individual unmarried, minor child under this proposed rule. Those individuals who have derived their refugee status from the principal alien will not be eligible to file Form I–730.

Past practice has allowed for the adjudication of Form I–730 filed by a son or daughter who claimed to be single in order to qualify as a member of a parent's refugee case, and who then petitioned for his/her spouse after arrival to the United States. As the proposed rule does not permit the filing of a Form I–730 by derivatives, this type of misrepresentation should be reduced. Only the spouse and unmarried, minor child(ren) of a refugee may benefit under the proposed following-to-join regulation.

Currently there is no established time to file for and receive following-to-join benefits, either for asylees or refugees. The proposed regulation will impose a 1-year time limit from the date of the principal's admission, within which a refugee or asylee must file a separate Form I–730 for each individual qualifying family member, unless it is clearly established that compelling circumstances preclude the timely filing of the application. Refugees or asylees who have resided in the United States for more than 1 year when this regulation becomes effective will be granted 1 year from the effective date of the final regulation in which to file Form I–730 for following-to-join benefits for their spouse and unmarried, minor child(ren). The Service may, however, waive the 1-year limit when it is determined that humanitarian reasons for extending the filing period exist. The 1-year limit refers only to the filing of the Form I–730. Such limit is not imposed on family members' travel to the United States, as the Service is aware of the impediments which may delay family members' travel for years following the refugee's arrival in the United States. The filing of the Form I–730 will serve to notify the Service of a refugee's or asylee's intent to have his/her spouse and/or child(ren) join him/her in the United States. The approval of the Form I–730 shall remain valid for the duration of the relationship to the refugee or asylee, and in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked.

The Service has established what it believes to be a reasonable time limit on the filing of the Form I–730. It is further believed that derivative benefits for spouses and children of refugees was intended for the purpose of reuniting families and to avoid lengthy delays due to visa quotas. Timely filings will expedite the reunification of refugee families and ensure the removal of spouses and children of refugees from a country subjecting them to persecution on the basis of that relationship. Thus, refugees must file following-to-join petitions within 1 year of the date of their admissions; asylees within 1 year of being granted asylum status.

While the rule proposes necessary bounds, such as adding eligibility requirements and establishing a filing period for following-to-join benefits, it is liberal in defining the point at which a qualifying relationship exists for this benefit. The proposed rule will clarify the Service's following-to-join policy for Service officers and the general public by standardizing refugee and asylee following-to-join procedures.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities because it is administrative in nature and merely imposes specific regulatory restraints, which parallel procedures currently found in asylum regulations.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget and waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation will enhance family well-being by establishing an equitable and consistent following-to-join policy for refugees which parallels the current following-to-join policy for asylees.

Paperwork Reduction Act

The information collection requirement (Form I–730) contained in this rule is being revised by the Immigration and Naturalization Service. In accordance with the Paperwork Reduction Act, the Service published a notice in the **Federal Register** on May 3, 1996, at 61 FR 19958, notifying the public of the revision to the Form I–730.

List of Subjects

8 CFR Part 207

Immigration, Refugees, Reporting and recordkeeping requirements.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 207—ADMISSION OF REFUGEES

1. The authority citation for part 207 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1157, 1159; 8 CFR Part 2.

§ 207.1 [Amended]

2. Section 207.1 is amended by removing paragraph (e).

§§ 207.7 and 207.8 [Redesignated as § 207.8 and § 207.9]

3. Sections 207.7 and 207.8 are redesignated as § 207.8 and 207.9 respectively.

4. A new § 207.7 is added to read as follows:

§ 207.7 Derivatives of refugees.

(a) *Eligibility.* A spouse, as defined in section 101(a)(35) of the Act, and/or child(ren), as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the

VOL
61
ISS
1
32
JL
9
1996
UMI

Act, may be granted refugee status if accompanying or following-to-join the principal alien. An accompanying derivative is a spouse or child of a refugee who is in the physical company of the principal refugee when he or she is admitted to the United States, or a spouse or child of a refugee who is admitted within 4 months of the principal refugee's admission. A following-to-join derivative, on the other hand, is a spouse or child of a refugee who seeks admission more than 4 months after the principal refugee's admission to the United States.

(b) *Ineligibility.* The following relatives of refugees are ineligible for accompanying or following-to-join benefits:

(1) A spouse or child who has previously been granted asylee or refugee status;

(2) An adopted child, if the adoption took place after the child became 16 years old, or if the child has not been in the legal custody and living with the parent(s) for at least 2 years;

(3) A stepchild, if the marriage that created this relationship took place after the child became 18 years old;

(4) A husband or wife if each/both were not physically present at the marriage ceremony, and the marriage was not consummated;

(5) A husband or wife if the U.S. Attorney General has determined that such alien has attempted or conspired to enter into a marriage for the purpose of evading immigration laws;

(6) A parent, sister, brother, grandparent, grandchild, nephew, niece, uncle, aunt, cousin or in-law.

(c) *Relationship.* The relationship of a spouse and child as defined in sections 101(a)(35) and 101(b)(1)(A), (B), (C), (D), or (E), respectively, of the Act, must have existed prior to the refugee's admission to the United States and must continue to exist at the time of filing for following-to-join benefits and admission to the United States. If the refugee proves that the refugee is the parent of a child who was born after the refugee's admission as a refugee, but who was *in utero* on the date of the refugee's admission as a refugee, the child shall be eligible to follow-to-join the refugee. The child's mother, if not the principal refugee shall not be eligible to follow-to-join the principal refugee unless the child's mother was the principal refugee's spouse on the date of the principal refugee's admission as a refugee.

(d) *Filing.* A refugee may request following-to-join benefits for his/her spouse and unmarried, minor child(ren) (whether the spouse and children are in or outside the United States) by filing a separate Form I–730, Refugee/Asylee Relative Petition, for each qualifying family member with the designated Service office. Persons who derive their refugee status from the principal applicant are not eligible to file Form I–730. The Form I–730 may only be filed by the principal applicant. Family members, such as unmarried sons and daughters who derived their refugee status, are not eligible to file the Form I–730 on behalf of their spouse and child(ren). A separate Form I–730 must be filed for each qualifying family member within 1 year of the refugee's admission to the United States, unless the Service determines that the filing period should be extended for humanitarian reasons. There is, however, no time limit imposed on family members' travel to the United States once the Form I–730 for following-to-join benefits has been approved, provided approval of the Form I–730 petition has not been subsequently revoked. There is no fee for filing this petition.

(e) *Evidence.* Documentary evidence consists of those documents which establish that the petitioner is a refugee, and evidence of the claimed relationship of the petitioner to the beneficiary. The burden of proof is on the petitioner to establish by a preponderance of the evidence that any person on whose behalf he/she is making a request under this section is an eligible spouse or unmarried, minor child. Evidence to establish the claimed relationship for a spouse or unmarried, minor child as set forth in 8 CFR part 204 must be submitted with the request for following-to-join benefits. Where possible this will consist of the documents specified in § 204.2(a)(1)(i)(B), (a)(1)(iii)(E), (a)(2), (d)(2), and (d)(5) of this chapter. In addition, a recent photograph of each derivative must accompany the Form I–730. Although the photograph need not meet Alien Documentation Identification and Telecommunication System (ADIT) specifications, it must clearly identify the derivative. The photograph will be made part of the derivative's immigration record for identification purposes.

(f) *Approvals.* (1) *Spouse or child in the United States.* When a spouse or child of a refugee is in the United States and the Form I–730 is approved, the Service will notify the refugee of such approval on Form I–797, Notice of Action. Employment will be authorized incident to status.

(2) *Spouse or child outside the United States.* When a spouse or child of a refugee is outside the United States and the Form I–730 is approved, the Service will notify the refugee of such approval on Form I–797. The approved Form I–730 will be sent by the Service to the Department of State for forwarding to the American Embassy or Consulate having jurisdiction over the area in which the refugee's spouse or child is located.

(3) *Benefits.* The approval of the Form I–730 shall remain valid for the duration of the relationship to the refugee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Form I–730 will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of a refugee. To demonstrate employment authorization, the Service will issue a Form I–94, Arrival-Departure Record, which also reflects the derivative's current status as a refugee, or the derivative may apply under § 274a.12(a) of this chapter, using Form I–765, Application for Employment Authorization, and a copy of the Form I–797.

(g) *Denials.* If the spouse or child of a refugee is found to be ineligible for derivative status, a written notice explaining the basis for denial shall be forwarded to the refugee. There shall be no appeal from this decision. However, the denial shall be without prejudice to the consideration of a new petition or motion to reopen the refugee and asylee relative petition proceedings, if the refugee establishes eligibility for the following-to-join benefits contained in this part.

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF DEPORTATION

5. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 31 U.S.C. 9701; 8 CFR part 2.

6. In § 208.21, paragraphs (b), (c), (d), and (f) are revised to read as follows:

§ 208.21 Admission of asylee's spouse and children.

* * * * *

(b) *Relationship.* The relationship of spouse and child as defined in sections 101(a)(35) and 101(b)(1) of the Act must have existed at the time the principal alien's asylum application was approved. If the asylee proves that the asylee is the parent of a child who was born after asylum was granted, but who was *in utero* on the date of the asylum grant, the child shall be eligible to follow-to-join the asylee. The child's mother, if not the principal asylee, shall not be eligible to follow-to-join the principal asylee unless the child's mother was the principal asylee's spouse on the date of the principal asylee's grant as an asylee.

(c) *Spouse or child in the United States.* When a spouse or child of an alien granted asylum is in the United States, but was not included in the asylee's application, the asylee may request following-to-join benefits for his/her spouse or child by filing for each qualifying family member a separate Form I–730, Refugee/Asylee Relative Petition, and supporting evidence, with the designated Service office, regardless of the status of that spouse or child in the United States. The Form I–730 must also be accompanied by a recent, clear non-ADIT style photograph for each derivative. The photograph will be used for identification purposes and will be placed in the derivative's immigration record. Additionally, a separate Form I–730 must be filed by the asylee for each qualifying family member within 1 year of the date in which he/she was granted asylum status, unless it is determined by the Service that this period should be extended for humanitarian reasons. Upon approval of the Form I–730, the Service will notify the asylee of such approval on Form I–797 "Notice of Action." Employment will be authorized incident to status. To demonstrate employment authorization, the Service will issue a Form I–94, Arrival-Departure Record, which also reflects the derivative's current status as an asylee, or the derivative may apply under § 274a.12(a) of this chapter, using Form I–765, Application for Employment Authorization, and a copy of the Form I–797. The approval of the Form I–730 shall remain valid for the duration of the relationship to the asylee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Form I–730 will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of an asylee.

(d) *Spouse or child outside the United States.* When a spouse or child of an alien granted asylum is outside the United States, the asylee may request following-to-join benefits for his/her spouse or child(ren) by filing a separate Form I–730 for each qualifying family member with the designated Service office, setting forth the full name, relationship, date and place of birth, and current location of each such person. The Form I–730 must be accompanied by a recent, clear non-ADIT style photograph for each derivative. A separate Form I–730 for each qualifying family member must be filed within 1 year of the date in which the asylee was granted asylum status, unless the Service determines that the filing period should be extended for humanitarian reasons. When the Form I–730 is approved, the Service will notify the asylee of such approval on Form I–797. The approved Form I–730 shall be forwarded by the Service to Department of State for delivery to the American Embassy or Consulate having jurisdiction over the area in which the asylee's spouse or child is located. The approval of the Form I–730 shall remain valid for the duration of the relationship to the asylee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Form I–730 will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of an asylee.

* * * * *

(f) *Burden of proof.* To establish the claimed relationship of spouse or child as defined in sections 101(a)(35) and 101(b)(1) of the Act, evidence must be submitted with the request as set forth in part 204 of this chapter. Where possible this will consist of the documents specified in § 204.2 (a)(1)(i)(B), (a)(1)(iii)(E), (a)(2), (d)(2) and (d)(5) of this chapter. The burden of proof is on the principal alien to establish by a preponderance of the evidence that any person on whose behalf he or she is making a request under this section is an eligible spouse or child.

* * * * *

Dated: May 7, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–17265 Filed 7–8–96; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 96–027–1]

Change in Disease Status of the Czech Republic and Italy Because of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to declare the Czech Republic and Italy free of rinderpest and foot-and-mouth disease and to add these two countries to the list of countries that, although declared free of rinderpest and foot-and-mouth disease, are subject to special restrictions on the importation of their meat and other animal products into the United States. This proposed rule would remove the prohibition on the importation into the United States, from the Czech Republic and Italy, of live ruminants and fresh, chilled, and frozen meat from ruminants and would relieve restrictions on the importation of milk and milk products from ruminants from these two countries. However, because the Czech Republic and Italy are not declared to be free of certain diseases of swine, including hog cholera and swine vesicular disease, the importation from these countries of swine and fresh, chilled, and frozen meat from swine would continue to be restricted.

DATES: Consideration will be given only to comments received on or before September 9, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–027–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–027–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1228, (301) 734–3399.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy, African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine.

VOL
61
ISS
132
JL
9
1996
UMI

Section 94.1(a)(1) of the regulations provides that rinderpest or FMD exists in all countries of the world except those listed in § 94.1(a)(2), which have been declared to be free of these diseases. We will consider declaring a country to be free of rinderpest and FMD if, among other things, there have been no cases of these diseases reported there for at least the previous 1-year period and no vaccinations for rinderpest or FMD have been administered to swine or ruminants in that country for at least the previous 1-year period.

Rinderpest has not existed in the Czech Republic since 1881, and vaccination for rinderpest has never occurred in the Czech Republic. The last diagnosed case of FMD in the Czech Republic occurred in 1974, and the government of the Czech Republic has prohibited vaccinations for FMD since 1991. The last case of rinderpest in Italy occurred in 1949, and Italy has never used vaccinations for rinderpest. The last outbreak of FMD in Italy occurred in 1993, and vaccinations for FMD in that country ceased in 1991.

The Czech Republic and Italy have individually applied to the U.S. Department of Agriculture (USDA) to be recognized as free of rinderpest and FMD. The Animal and Plant Health Inspection Service (APHIS) has reviewed the documentation submitted by the governments of the Czech Republic and Italy in support of their requests. The documentation supplied separately by the Czech Republic and Italy included, among other things, information about the capability of each country's veterinary services, laboratory and diagnostic procedures, vaccination practices, and the administration of laws and regulations to ensure against the introduction into the Czech Republic and Italy of rinderpest and FMD through the importation of live animals, meats, and animal products.

Based on the information discussed above, we believe that the Czech Republic and Italy qualify to be designated as free of rinderpest and FMD. Therefore, we are proposing to add the Czech Republic and Italy to the list in § 94.1(a)(2) of countries declared free of rinderpest and FMD. This action would remove the prohibition on the importation, from the Czech Republic and Italy, of live ruminants and fresh, chilled, or frozen meat from ruminants and would relieve restrictions on the importation, from these two countries, of milk and milk products from ruminants. The importation, from the Czech Republic and Italy, of live swine and fresh, chilled, or frozen meat from swine would continue to be restricted under 9 CFR part 94 because these countries have not been declared free of hog cholera and swine vesicular disease, and also because Italy has not been declared free of African swine fever.

Special Restrictions

We also propose to add the Czech Republic and Italy to the list in § 94.11(a) of countries declared free of rinderpest and FMD that are subject to special restrictions on the importation of their meat and other animal products into the United States. The countries listed in § 94.11(a) are subject to these special restrictions because they: (1) Supplement their national meat supply by importing fresh, chilled, or frozen meat of ruminants or swine from countries that are designated in § 94.1(a) as infected with rinderpest or FMD; or (2) have a common land border with countries designated as infected with rinderpest or FMD; or (3) import ruminants or swine from countries designated as infected with rinderpest or FMD under conditions less restrictive than would be acceptable for importation into the United States.

Both the Czech Republic and Italy supplement their national meat supplies by the importation of fresh, chilled, and frozen meat of ruminants and swine from countries designated in § 94.1(a)(1) as countries in which rinderpest or FMD exists. In addition, the Czech Republic shares a common land border with Russia, and Italy shares a common land border with Yugoslavia. Both Russia and Yugoslavia are designated in § 94.1(a)(1) as being countries in which rinderpest or FMD exists. Furthermore, both Italy, as a member of the European Union, and the Czech Republic import live ruminants and swine from countries not recognized as being free of FMD under conditions less restrictive than would be acceptable for importation into the United States. As a result, even though we propose to designate the Czech Republic and Italy as being free of rinderpest and FMD, the meat and other animal products produced in these countries may be commingled with the fresh, chilled, or frozen meat of animals from a country in which rinderpest and FMD exists, resulting in an undue risk of introducing rinderpest or FMD into the United States.

Therefore, we are proposing that meat and other animal products of ruminants and swine and the ship stores, airplane meals, and baggage containing these meat or animal products imported into the United States from the Czech Republic and Italy be subject to the restrictions specified in § 94.11 of the regulations, in addition to other applicable requirements of the USDA's Food Safety and Inspection Service at 9 CFR Chapter III. Section 94.11 generally requires that the meat and other animal products of ruminants and swine be: (1) Prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; and (2) accompanied by an additional certificate, issued by a full-time salaried veterinary official of the national government of the exporting country, assuring that the meat or other animal products have not been commingled with or exposed to meat or other animal products originating in, imported from, or transported through a country infected with rinderpest or FMD.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This proposed rule would alter the restrictions placed upon imports of live ruminants and meat, meat products, and dairy products derived from ruminants from the Czech Republic and Italy. The regulations in 9 CFR part 94 describe prohibited and restricted importations due to rinderpest, FMD, and other animal diseases. APHIS believes that the Czech Republic and Italy meet the criteria for being recognized as free of rinderpest and FMD. However, because the Czech Republic and Italy share land borders and maintain trading relationships with FMD-affected countries, imports into the United States of live ruminants and meat, meat products, and dairy products derived from ruminants from the Czech Republic and Italy would still be restricted under this proposed rule. The proposed rule would not relieve any restrictions imposed on the importation of swine and pork products because the Czech Republic and Italy are still considered to be affected with hog cholera and swine vesicular disease, and Italy is also considered to be affected with African swine fever.

We anticipate that the quantity of imports of live cattle, sheep, and goats from the Czech Republic and Italy into the United States would be minimally affected by the proposed rule. Live cattle imports would still be restricted due to the trade practices of the Czech Republic and Italy and the fact that these countries share land borders with FMD-affected countries. In addition, the cattle industries in the Czech Republic and Italy are small relative to the enormous domestic market. Cattle inventories for 1994 were estimated to be 2.5 million head for the Czech Republic, 7.5 million head for Italy, and over 100 million head for the United States. Also, of the 2.5 million cattle and calves imported into the United States in 1994, more than 99 percent were from Canada and Mexico.

The population of sheep and goats in the Czech Republic is also very small relative to that of the United States (less than 2.5 percent of the size of the U.S. population in 1993). Italy has a sheep population that is slightly higher than that of the United States (11.7 million head in Italy and 10.9 million head in the United States in 1993). However, Italy is a strong net importer of sheep and goats (190,556 head imported and only 1,450 exported in 1993), while the United States is a strong net exporter of sheep and goats (28,420 head imported and 894,100 head exported in 1993). Of the few sheep that the United States does import, more than 99 percent are from Canada and Mexico.

The Czech Republic exports few live ruminants to the United States. In 1994, less than 0.0001 percent of the total value of total U.S. imports of live ruminants were from the Czech Republic. Italy exported no live ruminants to the United States in 1994. In fact, the United States did not import any cattle or sheep from the European Union in 1994. Neither Eastern nor Western Europe are usual sources of live ruminants for the United States, and any increase in ruminant importations from the Czech Republic or Italy prompted by this proposed rule would likely be negligible. Therefore, the impact on small domestic farmers of cattle, sheep, and goats would likely be minimal.

Czech production of beef, veal, mutton, and goat meat in 1994 was about 2 percent of the size of U.S. production. Italian production of beef, veal, mutton, and goat meat in 1994 was about 1.2 million metric tons, or about 11 percent of the U.S. production of 11.3 million metric tons. The United States imports very little in the way of ruminant meat and ruminant meat products from Eastern or Western Europe in general. Moreover, more than 88 percent of the imports of ruminant meat and ruminant meat products that come into the United States are from Australia, Canada, and New Zealand. It is unlikely that either the Czech Republic or Italy would be willing or able to redirect a significant portion of its ruminant meat production for export exclusively to the United States as a result of the proposed rule, given that restrictions would remain in place for imports into the United States. Even if the Czech Republic were able to redirect its entire production of these products for export to the United States, this production was only one-fifth the size of total U.S. imports of these products in 1994. Moreover, Italy is a significant net importer of beef, veal, mutton, and other products such as offal and meat extracts. Therefore, any effect of the proposed rule on domestic prices or supplies would likely be negligible, and thus the impact on small domestic producers would be minimal.

We also anticipate that the effect of the proposed rule on the importation of dairy products from the Czech Republic and Italy would be minimal. Czech production of dairy products is small relative to that of the United States. In 1993, Czech dairy product production was about 5 percent of the value of U.S. production. The United States imports little in the way of dairy products from the Czech Republic or from Eastern Europe in general. In 1994, U.S. imports of dairy products were valued at $963.4 million; of this total, less than 5 percent originated in Eastern Europe and less than 0.1 percent in the Czech Republic. The Czech Republic is a significant producer and exporter of butter. However, butter is already exempt from the provisions of 9 CFR part 94 and thus would be unaffected by the proposed rule. For dairy products in general, Italy is a significant net importer and not likely to be willing or able to redirect a significant portion of its production exclusively to the United States, which is a significant net exporter. Italy's major dairy export to the United States is cheese. Because solid cheeses are already exempt from the provisions of 9 CFR part 94, there is no reason to believe that imports of cheese would increase significantly due to this proposal. For these reasons and given the fact that restrictions will remain in place, it is unlikely that the proposed rule would significantly alter imports of dairy products into the United States. Therefore, the impact on small domestic dairy producers should be minimal.

Any effects of the proposed rule on importers of embryos, semen, other genetic material, or breeding animals would also likely be minimal. We anticipate that, if the proposal is made final for the Czech Republic and Italy, there could be an initial increase in the volume of these products flowing into the United States to diversify the genetic composition of domestic cattle. (In particular, there has been a great deal of interest expressed in obtaining genetic material of beef cattle from Italy.) However, any temporary increase in volume would most likely be small relative to total U.S. imports of these products. The United States is a net exporter of both bovine semen and cattle embryos. In 1994, the value of U.S. bovine semen and cattle embryo imports was $4.3 million and $266,000, respectively, while U.S. exports of bovine semen and cattle embryos were valued at $7.9 million and $6.4 million, respectively. Given this trade balance and the size differences between the U.S. and Czech and Italian cattle industries, the amount imported of each type of genetic material would be minimal and have a minimal impact on small domestic cattle producers.

In conclusion, declaring the Czech Republic and Italy free of rinderpest and FMD would likely have a negligible impact on domestic small entities. Imports from the Czech Republic and Italy of ruminants and ruminant products would continue to be restricted. In addition, the U.S. markets for these products are large relative to the Czech and Italian markets, and Italy is a net importer of most of these products. Under these conditions, it is unlikely that either the Czech Republic or Italy would be willing or able to redirect a significant portion of the production of these products exclusively to the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB). The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 would be amended as follows:

VOL
61
ISS
132
JL
9
1996
UMI

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) would be amended by adding the words "Czech Republic," immediately after the words "Costa Rica," and by adding the word "Italy," immediately after the word "Ireland,".

§ 94.11 [Amended]

3. In § 94.11, the first sentence in paragraph (a) would be amended by adding the words "Czech Republic," immediately after the word "Chile," and by adding the word "Italy," immediately after the word "Hungary,".

Done in Washington, DC, this 2nd day of July 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–17440 Filed 7–8–96; 8:45 am]

BILLING CODE 3410–34–P

Food Safety and Inspection Service

9 CFR Parts 301, 318, 320, and 381

[Docket No. 95–033E]

RIN 0583–AB94

Performance Standards for the Production of Certain Cooked Meat and Poultry Products—Reopening of Comment Period

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Reopening of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is extending the comment period for the proposed rule, "Performance Standards for the Production of Certain Cooked Meat and Poultry Products" (61 FR 19564, May 2, 1996) for 60 days.

DATES: Comments must be received on or before September 9, 1996.

ADDRESSES: Submit one original and two copies of written comments to: FSIS Docket Clerk, DOCKET #95–033P, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 4352, 1400 Independence Ave., SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Associate Deputy Administrator, Science and Technology; (202) 205–0699.

Done in Washington, DC, July 2, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–17360 Filed 7–8–96; 8:45 am]

BILLING CODE 3410–DM–P

9 CFR Parts 304, 308, and 381

[Docket No. 95–032E]

RIN 0583–AB93

Elimination of Prior Approval Requirements for Establishment Drawings and Specifications, Equipment, and Certain Partial Quality Control Programs—Reopening of Comment Period

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Reopening of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is extending the comment period for the proposed rule, "Elimination of Prior Approval Requirements for Establishment Drawings and Specifications, Equipment, and Certain Partial Quality Control Programs" (61 FR 19578, May 2, 1996) for 60 days.

DATES: Comments must be received on or before September 9, 1996.

ADDRESSES: Submit one original and two copies of written comments to: FSIS Docket Clerk, DOCKET #95–032P, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 4352, 1400 Independence Ave., SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Associate Deputy Administrator, Science and Technology; (202) 205–0699.

Done in Washington, DC, July 2, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–17361 Filed 7–8–96; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF ENERGY

10 CFR Part 1021

RIN 1901–AA67

National Environmental Policy Act Implementing Procedures

AGENCY: Department of Energy.

ACTION: Proposed rule; limited reopening of the comment period.

SUMMARY: This Notice announces a limited reopening of the comment period with respect to the proposed rule on implementation of the National Environmental Policy Act (NEPA). DOE has decided to solicit further input on certain proposed amendments that pertain primarily to Federal power marketing activities. In a related document published elsewhere in this issue, DOE is publishing final amendments to 10 CFR 1021 not affected by this limited reopening of the comment period.

DATES: The limited reopening of the comment period will end August 8, 1996. Comments must be received by that date to ensure consideration. Late comments will be considered to the extent practicable.

ADDRESSES: Comments should be addressed to Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0119. Comments may be hand-delivered to room 3E–080 at the Forrestal Building on workdays between the hours of 8:00 a.m. and 4:30 p.m. Comments may also be sent by facsimile to (202) 586–7031 or by electronic mail to the following Internet address: neparule@spok.eh.doe.gov. All comments will be available for public inspection at the U.S. Department of Energy Freedom of Information Reading room, 1E–110 Forrestal Building, 1000 Independence Avenue S.W., Washington, D.C. 20585–0119, phone (202) 586–6020.

FOR FURTHER INFORMATION CONTACT: John Pulliam, Office of NEPA Policy and Assistance, at the above address, or telephone (202) 586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION: On February 20, 1996 (61 FR 6414), the Department of Energy (DOE) published a Notice of Proposed Rulemaking to amend its implementing procedures under the National Environmental Policy Act (NEPA) (10 CFR part 1021). Publication of the proposed rulemaking began a 45-day public comment period that originally ended on April 5, 1996.

In response to public requests, the comment period was reopened on April 19 and extended until May 10, 1996. A public hearing was also held in Washington, D.C. on May 6, 1996. DOE has decided to solicit further input, especially from state and Federal agencies that have responsibility for environmental review of comparable non-Federal utility projects in the Pacific Northwest, on the following proposed amendments to Subpart D, typical Classes of Action primarily affecting power marketing activities: B4.1, Contracts/marketing plans/policies for excess electric power; B4.2, Export of electric energy; B4.3, Electric power marketing rate changes; B4.6, Additions/modifications to electric power transmission facilities within previously developed area; B4.10, Deactivation, dismantling and removal of electric powerlines and substations; B4.11, Construction or modification of electric power substations; B4.12, Construction of electric powerlines (generally less than 10 miles in length), not integrating major new sources; B4.13, Reconstruction and minor relocation of existing electric powerlines (generally less than 20 miles in length); C4, Upgrading and constructing electric powerlines; C7, Allocation of electric power, no major new generation resource/major changes in operation of generation resources/major new loads; and D7, Allocation of electric power, major new generation resources/major changes in operation of generation resources/major loads. DOE is reopening the comment period on these proposed amendments only. The final rule on all of the proposed amendments other than those that pertain to power marketing activities is being published separately.

In response to a request, DOE is providing further clarification of the rationale for two of the proposed amendments: B4.1, Contracts/marketing plans/policies for excess electric power, and B4.3, Electric power marketing rate changes. For ease of comparison, the current B4.1 and B4.3 as they now appear in the DOE NEPA regulations (57 FR 15122, 1992) are reprinted below, followed by the amended language from the February 1996 proposed rule, and the clarified rationale for the amendment.

Current B4.1

Establishment and implementation of short-term contracts, marketing plans, policies, annual operating plans, allocation plans or acquisition of excess power, the terms of any of which do not exceed five years and would not cause changes in the normal operating limits of generating projects, and if transmission would occur over existing transmission systems.

Proposed B4.1

Establishment and implementation of contracts, marketing plans, policies, allocation plans or acquisition of excess electric power that does not involve: (1) The integration of a new generation resource, (2) physical changes in the transmission system beyond the previously developed facility area, unless the changes are themselves categorically excluded, or (3) changes in the normal operating limits of generation resources.

Rationale for Amendment

The existing five-year term limit was proposed for elimination from this categorical exclusion because past experience has demonstrated that the mere length of a contract, policy, or plan does not have the potential for environmental impacts. Rather, the development or integration of new generating resources, changes in the operation of existing generation resources, or construction of transmission facilities, are the types of activities that have shown the potential for environmental impacts. By not allowing these changes in generation, operation or transmission, the proposed categorical exclusion would ensure that only those actions which have no potential for environmental impact would be categorically excluded. Those contracts, plans, and policies that do not satisfy the proposed criteria would require further NEPA analysis to ascertain the associated environmental impacts.

Current B4.3

Changes in rates for electric power, power transmission, and other products or services provided by a Power Marketing Administration that are based on a change in revenue requirements that does not exceed the change in the overall price level in the economy (inflation), as measured by the GNP fixed weight price index published by the Department of Commerce, during the period since the last rate adjustment for that product or service or, if the rate change does exceed the change in the GNP fixed weight price index, the rate change would have no potential for affecting the operation of power generation resources.

Proposed B4.3

Changes in rates for electric power, power transmission, and other products or services provided by a Power Marketing Administration that are based on a change in revenue requirements if the operations of generation projects would remain within the normal operating limits.

Rationale for Amendment

The proposed change would eliminate the existing restriction that, in order to be categorically excluded, a proposed rate change must not exceed the rate of inflation, a condition that DOE has found is not relevant to the action's potential for environmental impacts. Any environmental impacts resulting from rate changes would be caused only if the rate change involved associated changes in generation resources. This categorical exclusion would only apply to those rate changes that would not affect the operation of generation projects. Those rate changes that could affect the operation of generation projects would require further NEPA analysis.

Issued in Washington, D.C., June 28, 1996.

Tara O'Toole,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 96–17286 Filed 7–8–96; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASW–13]

Proposed Revision of Class E Airspace; Russellville, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL) at Russellville, AR. A new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 25 at Russellville Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 25 at Russellville Municipal Airport, Russellville, AR.

DATES: Comments must be received on or before September 6, 1996.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96–ASW–13, Fort Worth, TX 76193–0530. The official docket may be examined in

VOL 61 ISS 132 JL 9 1996 UMI

the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 96–ASW–13." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Russellville Municipal Airport, Russellville, AR. A new GPS SIAP to RWY 25 has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to RWY 25 at Russellville Municipal Airport, Russellville, AR.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedure (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, *Airspace Designations and Reporting Points,* dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW AR E5 Russellville, AR [Revised]

Russellville, Russellville Municipal Airport, AR
(lat. 35°18′33″N., long. 93°05′38″W.)
Russellville NDB
(lat. 35°18′28″N., long. 93°05′40″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Russellville Municipal Airport, and within 2.4 miles each side of the 184° bearing from the Russellville NDB extending from the 6.4-mile radius to 6.8 miles south of the airport, and within 4 miles each side of the 075° bearing from the airport extending from the 6.4-mile radius to 18 miles northeast of the airport, excluding that airspace which overlies the Morrilton, AR, Class E airspace area.

* * * * *

Issued in Fort Worth, TX on June 17, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–17418 Filed 7–8–96; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 303

Rules and Regulations Under the Textile Fiber Products Identification Act

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On October 30, 1992. Teijin Limited ("Teijin") filed an application with the Federal Trade Commission ("Commission") requesting the establishment of a new generic fiber name and definition. The application was filed pursuant to Rule 8 of the Rules and Regulations Under the Textile Fiber Products Identification Act (the "Textile Act"—15 U.S.C. 70; implementing regulations at 16 CFR part 303). The application maintains that its new fiber, "manufactured from poly tetramethylene ether/poly butylene glycol terephthalate copolymer," has a unique chemical composition and distinctive physical characteristics such that it cannot be identified by any of the generic names already established by the Commission in Rule 7 (16 CFR 303.7). The application also states that Teijin intends to market the fiber commercially, and subsequent information from the applicant states that the fiber is now being used in the U.S. Teijin recommends that the new fiber be given one of the following generic names, in descending order of preference: (1) "Polyetherester," (2) "Elastoester," or (3) "Estelast." The Teijin application includes a proposed definition for the new fiber.

The Commission now solicits comments as to whether Rule 7 should be amended to include a new generic name and definition covering Teijin's fiber.

DATES: Written comments will be accepted through September 9, 1996.

ADDRESSES: Submit written comments and other submissions to: Secretary, Federal Trade Commission, Room H–159, Sixth & Pennsylvania Avenue, N.W., Washington, D.C. 20580. Submissions should be marked: "Rule 7 Under the Textile Act—Comment."

FOR FURTHER INFORMATION CONTACT: Bret S. Smart, Program Advisor, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Boulevard, #13209, Los Angeles, CA 90024, (310) 235–4040.

SUPPLEMENTARY INFORMATION:

I. Background

Rule 6 (16 CFR 303.6) of the Rules and Regulations under the Textile Fiber Products Identification Act requires manufacturers to use the generic names of the fibers contained in their textile fiber products in making required disclosures of the fiber content of the products. Rule 7 (16 CFR 303.7) sets forth the generic names and definitions that the Commission has established or synthetic fibers. Rule 8 (16 CFR 303.8) sets forth the procedures for establishing new generic names.

Teijin submitted its initial application in this matter to the Commission on October 30, 1992, and subsequently submitted additional information. The application and related materials have been placed on the rulemaking record. After an initial analysis, the Commission, on December 29, 1992, issued the designation "TL 0001" for temporary use in identifying the Teijin fiber until a final determination can be made as to the merits of the application for a new generic name.

II. Chemical Composition, Physical and Chemical Properties

In its application, Teijin describes the fiber, its composition, and its physical and chemical properties, as follows:

The general formula of the chemical composition of poly tetramethylene ether/poly butylene glycol terephthalate copolymer, $-[(CH_2CH_2CH_2CH_2O)m]-(COC_6H_4COOCH_2CH_2CH_2CH_2O)n-$, consists of:

Poly tetramethylene ether $(CH_2CH_2CH_2CH_2O)$m: 60% by weight
Poly butylene glycol terephthalate $(COC_6H_4COOCH_2CH_2CH_2CH_2O)$n: 40% by weight

* * * * *

Assuming that poly(tetramethylene ether) glycol is considered a part of glycol components, then Applicant's fiber is somewhat similar to polyester. Nonetheless, Applicant's fiber is not "composed of at least 85% by weight of an ester of a substituted aromatic carboxylic acid" since poly tetramethylene ether is only 60%. Thus Applicant's fiber manufactured from poly tetramethylene ether/poly butylene glycol terephthalate copolymer does not fall under the Commission's definition of polyester fiber found in 16 CFR 303.7(c).

* * * * *

The physical and chemical characteristics of Applicant's fiber. . .are distinctively different from the characteristics of those fibers identified by generic names listed in 16 CFR 303.7.

The physical properties of Applicant's fiber are shown in [the following Table:]

	Applicant's fiber	Polyester fiber	Spandex fiber
Tenacity (g/de)	1.0	3.0–5.0	0.6–1.2
Elongation (%)	650	20–40	450–800
Elastic recovery (%) 200% extension	78	Break	90

As shown in the table, physical properties of Applicant's fiber are quite different from those of polyester but similar to those of the spandex fiber.

* * * * *

Applicant provides additional information, specifically technical data, which may be pertinent to this application. Typical properties of Applicant's fiber manufactured from poly tetramethylene ether/poly butylene glycol terephthalate copolymer include:

1. Physical Properties

Melting point	180–210 C
Specific gravity	1.1–1.2
Tenacity	1.0 g/de
Elongation	650%
Elastic recovery	78%
Boiling water shrinkage	14%

2. Resistance to Chemicals

Solubility at room temperature	
70% H_2SO_4	Insoluble for 3 minutes.
20% HCL	Do.
Conc. HNO_3	Do.
Acetic Acid	Do.
5% NaOH	Do.
Acetone	Do.
Toluene	Do.
Ethyl acetate	Do.
Methyl alcohol	Do.
Chloroform	Soluble.
m–Cresol	Do.
Solubility at boiling temperature	
Dioxane	Soluble.
Xylene	Do.
Nitrobenzene	Do.
Chlorobenzene	Do.
Dimethylformamide	Do.

Additionally, information submitted by Teijin indicates that, relative to spandex, REXE has the ability to withstand high temperatures when wet. This is particularly important with respect to dyeing. Teijin further states that REXE's tolerance of high temperature will allow the development of elastic fabrics with many of the properties of polyester. For example, fabrics made of REXE and polyester should have excellent washability. Finally, fabrics made of REXE and polyester are, according to Teijin, less discolored or adversely affected by chlorine than, for example, swimming suits made of nylon and spandex.

III. Suggested Generic Names

Applicant suggests the following generic names, in descending order of preference, for its new fiber:

1. "Polyetherester"
2. "Elastoester"

VOL
61
ISS
132
JL
9
1996
UMI

3. "Estelast"

IV. Proposed Definition

The Commission proposes the following definition for Teijin's new fiber:

A manufactured fiber in which the fiber-forming substance is a long-chain synthetic polymer composed of at least 50% by weight of aliphatic polyether and at least 35% by weight of polyester, as defined in 16 CFR 303.7(c).

V. Invitation to Comment

The Commission is soliciting comment on Teijin's application generally, but is especially interested in comments on whether the application meets the following criteria, which the Commission has identified as grounds for granting applications for new generic names:

[T]he Commission, in the interest of elucidating the grounds on which it has based this decision and shall base future decisions as to the grant of generic names for textile fibers, sets out the following criteria for grant of such generic names.

1. The fiber for which a generic name is requested must have a chemical composition radically different from other fibers, and that distinctive chemical composition must result in distinctive physical properties of significance to the general public.

2. The fiber must be in active commercial use or such use must be immediately foreseen.

3. The grant of the generic name must be of importance to the consuming public at large, rather than to a small group of knowledgeable professionals such as purchasing officers for large Government agencies.

The Commission believes it is in the public interest to prevent the proliferation of generic names, and will adhere to a stringent application of the above-mentioned criteria in consideration of any future applications for generic names and in a systematic review of any generic names previously granted which no longer meet these criteria.

* * * * *

In addition, [the Commission] notes that where appropriate, in considering applications for new generic names for fibers that are of the same general chemical composition as those for which a generic name already has been established, rather than of a chemical composition that is radically different, but that have distinctive properties of importance to the general public as a result of a new method of manufacture of their substantially differentiated physical characteristics, such as their fiber structure, it may allow such fiber to be designated in required information disclosures by either its generic name, or alternatively, by its "subclass" name. The Commission will consider this disposition when the distinctive feature or features of the subclass fiber make it suitable for uses for which other fibers under the established generic name would not be suited or would be significantly less well suited.

60 FR 62352, 62353 (Dec. 6, 1995) (reaffirming and clarifying criteria first announced at 38 FR 34114 (Nov. 12, 1973)).

The Commission additionally requests comments on the suggested names and proposed definition, set out above.

Before deciding whether to amend Rule 7, the Commission will consider any written comments submitted to the Secretary of the Commission within the above-mentioned comment period. Comments that are submitted will be available for public inspection, in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission Regulation, 16 CFR 4, on normal business days between the hours of 8:30 a.m. and 5:00 p.m. at the Public Reference Room, Room 130, Federal Trade Commission, 6th & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

VI. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial regulatory analysis (5 U.S.C. 603–604) are not applicable to this proposal because the Commission believes that the amendment, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Commission has tentatively reached this conclusion with respect to the proposed amendment because the amendment would impose no additional obligations, penalties, or costs. The amendment would simply allow covered companies to use a new generic name for a new fiber that may not appropriately fit within current generic names and definitions. The amendment would impose no additional labeling requirements.

To ensure, however, that no substantial economic impact is being overlooked, public comment is requested on the effect of the proposed amendment on costs, profits, and competitiveness of, and employment in small entities. Subsequent to the receipt of public comments, the Commission will decide whether the preparation of a final regulatory flexibility analysis is warranted. Accordingly, based on available information, the Commission hereby certifies, pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the proposed amendment, if promulgated, would not have a significant economic impact on a substantial number of small entities.

VII. Paperwork Reduction Act

This proposed amendment does not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 109 Stat. 163) and its implementing regulations (5 CFR part 1320).

The collection of information imposed by the procedures for establishing generic names (Rule 8, 16 CFR 303.8) has been submitted to OMB and has been assigned a control number of 3084–0101.

List of Subjects in 16 CFR Part 303

Labeling, Textile, Trade practices.

Authority: Sec. 7(c) of the Textile Fiber Products Identification Act (15 U.S.C. 70e(c)).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–17468 Filed 7–8–96; 8:45 am]

BILLING CODE 6750–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 93

[FRL–5527–9]

RIN 2060–AG16

Transportation Conformity Rule Amendment and Solicitation for Participation in the Transportation Conformity Pilot Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the transportation conformity rule to allow EPA to create and implement a conformity pilot program. The conformity rule requires that transportation activities conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to an air quality plan means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of national ambient air quality standards.

The pilot program would exempt up to six areas from some of the existing rule's requirements. After EPA approval, the areas will experiment with alternative conformity procedures for the three-year duration of the program. Today's notice invites applications for participation in the pilot program and presents the application and selection process, which will be finalized in the final rule.

Along with recent amendments to the conformity rule, the pilot program is part of an EPA strategy to provide states and localities greater flexibility in meeting federal transportation conformity requirements while reinforcing Clean Air Act commitments.

This strategy results from experience gained in implementing the conformity rule.

The conformity pilot program would allow state and local transportation and air quality agencies the additional flexibility to seek out and test the conformity procedures that work best in their area. Participating areas' experiences will be evaluated and it is possible that successful pilot programs may ultimately lead to further changes in the conformity rule.

DATES: Comments on this action must be received by August 8, 1996. Applications may be submitted beginning July 9, 1996. EPA requests expressions of interest by August 23, 1996.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Attention: Docket No. A–95–55, 401 M. Street, S.W., Washington, DC 20460.

Materials relevant to this proposal have been placed in Public Docket A–95–55 by EPA. The docket is located at the above address in room M–1500 Waterside Mall (ground floor) and may be inspected from 8 a.m. to 4 p.m., Monday through Friday, including all non-governmental holidays.

For informational purposes, areas which submit expressions of interest and applications will be listed on the EPA's Technology Transfer Network (TTN) bulletin board, on the Office of Mobile Sources (OMS) bulletin board under the Rulemaking: Transportation: Conformity file area. TTN files can be accessed on the first call to (919) 541–5742 or through the internet at TELNET ttnbbs.rtpnc.epa.gov. TTN is off-line every Monday from 8:00 a.m.–12 Noon, and the TTN voice help line is (919) 541–5384.

FOR FURTHER INFORMATION CONTACT: Elizabeth Cummings, Transportation and Market Incentives Group, Regional and State Programs Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 741–7857 or Lucy Garliauskas, Environmental Analysis Division, Office of Environment and Planning, Federal Highway Administration, 400 Seventh Street S.W., Washington, DC 20590, (202) 366–2068.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by the conformity rule are those which adopt, approve, or fund transportation plans, programs, or projects under the Intermodal Surface Transportation Efficiency Act or Federal Transit Laws. Regulated categories and entities include:

Category	Examples of regulated entities
Local government	Local transportation and air quality agencies.
State government	State transportation and air quality agencies.
Federal government	EPA and Department of Transportation (Federal Highway Administration and Federal Transit Administration).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by the conformity rule. Other types of entities not listed in the table could also be affected. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The contents of today's preamble are listed in the following outline:

I. Background of Transportation Conformity
II. Transportation Conformity Pilot Program
  A. Program Objective
  B. Exemptions from Certain Conformity Requirements
  C. Eligibility
  D. Submission of Applications
  E. Selection Criteria
  F. Selection Process
III. Conformity SIPs
IV. Administrative Requirements
  A. Administrative Designation
  B. Reporting and Recordkeeping Requirements
  C. Regulatory Flexibility Act
  D. Unfunded Mandates

I. Background of Transportation Conformity

The transportation conformity rule, "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," was published November 24, 1993 (58 FR 62188) and amended 40 CFR Parts 51 and 93. It was subsequently amended on August 7, 1995 (60 FR 40098) and November 14, 1995 (60 FR 57179). In addition, EPA is proposing a third set of conformity amendments to further streamline and simplify the conformity rule.

Required under section 176(c) of the Clean Air Act, as amended in 1990, the transportation conformity rule established the criteria and procedures by which the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and metropolitan planning organizations (MPOs) determine the conformity of federally funded or approved highway and transit plans, programs, and projects to state implementation plans (SIPs). The Clean Air Act requires that federally supported activities conform to the implementation plan's purpose of expeditiously attaining and of maintaining the national ambient air quality standards.

Since publication of the transportation conformity rule in November 1993, EPA, the Department of Transportation (DOT), and state and local air and transportation officials have had considerable experience implementing the criteria and procedures in the rule. It is that mutual experience which has lead EPA and DOT to undertake a number of initiatives to streamline the transportation conformity rule. In addition to significant revisions of the conformity rule through three sets of amendments, today's proposal would provide further flexibility through the creation and implementation of a transportation conformity pilot program.

II. Conformity Pilot Program

The purpose of this notice is to propose an amendment to 40 CFR Parts 51 and 93 to create a transportation conformity pilot program. This amendment would allow EPA and DOT to select up to six areas to participate in the program and would allow EPA to exempt the selected areas from certain provisions of the transportation conformity regulation for a period of three years. This notice also describes the pilot program's objectives, application and selection process, and participation requirements, and solicits applications for the program.

A. Conformity Pilot Program Objective

The overall objective of the conformity pilot program would be to seek out and test innovative methods of streamlining regulatory requirements while ensuring that Clean Air Act objectives and requirements are met. EPA and DOT are committed to continuing to encourage procedures which improve the conformity process. Under the pilot program, state and local air and transportation agencies could identify the conformity processes and procedures that work best for their area, and EPA and DOT would select the applications expected to lead to a more effective conformity process. It is

VOL
61
ISS
132
JL
9
1996
UMI

possible that successful pilot projects may ultimately lead to further changes in the federal transportation conformity regulation.

The pilot program would enable as many as six areas to exercise flexibility in meeting certain requirements of the conformity regulation in three areas: modeling, consultation, and coordination of the Intermodal Surface Transportation Efficiency Act (ISTEA) schedules and procedures with conformity deadlines and schedules. EPA would also consider proposals from applicants to extend this flexibility to other aspects of the conformity requirements.

During the third year of the pilot program, EPA and DOT would conduct a national evaluation to see if transportation policy, project selection and investment choices changed as a result of a more flexible approach to meeting the Clean Air Act conformity requirements; if interagency consultation and public participation improved as a result of new procedures; and if Clean Air Act compliance costs were reduced and efficiencies implemented while still ensuring that Clean Air Act goals and requirements were met. Pilot program areas would also propose methods for self-evaluation of their conformity pilot program and cooperate with the national evaluation.

B. Exemption From Certain Conformity Requirements

This proposal would allow EPA and DOT to exempt no more than six areas for no more than three years from certain requirements of 40 CFR Parts 51 and 93, if these areas are selected to participate in this conformity pilot program. EPA and DOT approval of the alternative requirements developed by the applicant areas would be required for selection to participate in the pilot program. In order to obtain EPA and DOT approval, each area would be required to provide an opportunity for public comment on its proposed alternative conformity requirements. The alternative conformity requirements would be proposed to achieve results equivalent to or better than the requirements of 176(c) of the Clean Air Act. Areas selected to participate in the pilot program must comply with their final project agreements. After the three-year duration of the pilot program has expired, the selected areas would again be subject to all of the requirements of 40 CFR Parts 51 and 93. However, EPA may revise 40 CFR Parts 51 and 93 to incorporate elements of effective pilot programs based on results from evaluating the first two years of program implementation.

C. Eligibility

Up to six areas currently subject to the requirements of the transportation conformity regulation would be selected by EPA and DOT to participate in the pilot program. Applications may be submitted by either an MPO, a local air quality agency, a state air quality agency, or a state department of transportation acting as a lead contact for purposes of the pilot program. When submitting its application, the lead agency must demonstrate that its proposal is endorsed by all state and local air and transportation agencies that participate in the area's interagency consultation process. In certain cases, for example, an MPO that covers more than one nonattainment area or a nonattainment area that covers more than one state, EPA and DOT may subsequently request further endorsement from additional agencies affected by the proposal.

D. Submission of Applications

Applications may be submitted to Elizabeth Cummings, Transportation and Market Incentives Group, Regional and State Programs Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. Applications will be accepted beginning July 9, 1996. EPA will begin accepting applications prior to final action on this rule amendment. If the final rule is different than this proposal, due to public comment received, areas that have already submitted applications may be asked to supplement their application materials.

EPA requests that areas considering applying to the pilot program submit a non-binding "expression of interest" before August 23, 1996. The "expression of interest" letter could be submitted by the lead agency and would not need to include any preliminary description or endorsement of the application. This would provide EPA and DOT with an approximate number of applications to expect. EPA would list the areas that have submitted expressions of interest and applications on EPA's Technology Transfer Network (TTN) bulletin board. EPA would also place copies of the submitted applications in the public docket. (See **ADDRESSES** for information on the TTN bulletin board and the public docket.)

Once EPA has taken final action on this proposal, EPA and DOT would be able to jointly select up to six pilot program participants on a rolling basis until six participants are selected, unless the agencies decide to select fewer than six participants. If fewer than six participants are selected in the first iteration of the selection process, EPA and DOT would continue to process applications on a rolling basis.

The following information will enable EPA and DOT to consider an application: (1) A particular proposal for flexibility in applying elements of the conformity regulation; (2) the rationale for change, including: (i) The particular problems in the existing requirements that the proposal intends to address, and (ii) the benefits that the alternative proposal would create (e.g., air quality benefits, resource savings); (3) a description of the alternative methods and/or procedures to be used in meeting conformity requirements; (4) the proposed schedule for making conformity determinations during the pilot program (for a period of up to three years); (5) evidence that sufficient resources to conduct the pilot program will be available (e.g., some of the pilot program activities may be eligible for title 23 State Planning and Research Funds (SPR) or Planning (PL) funds); (6) discussion of any potential implementation issues that must be overcome for the pilot program to be successful; (7) suggestions for self-evaluation of the pilot program; (8) evidence that the proposal is endorsed by all the state and local air and transportation agencies; and (9) evidence that key stakeholders have been or will be consulted and that appropriate public participation procedures will be undertaken, which may be incorporated into the area's normal interagency consultation process.

Applications should be in narrative form and should be concise while still containing sufficient information to fully describe the proposal. It is EPA and DOT's intent to use the application to conduct preliminary reviews. Further details of the proposal would be incorporated during the consultation stage of the selection process and would be subject to the project agreement, as described below. The extent to which the application addresses the information requested and the application length will depend upon the proposal's complexity.

E. Selection Criteria

Applications would be assessed according to the following criteria: (1) Whether the proposed flexibilities fulfill all the statutory requirements for transportation conformity; (2) the degree to which the application fulfills the pilot program's goals of testing innovative methods and streamlining the regulatory process, including, but not limited to, the specified areas of modeling, interagency/public consultation, and coordination of ISTEA and Clean Air Act requirements; (3) the degree of key stakeholder and public support in the geographic area covered by the proposal; (4) whether the applicant has the resources necessary to effectively implement and evaluate the proposed conformity pilot program; (5) whether the area has adequately demonstrated its intent to comply with Clean Air Act objectives; and (6) the degree to which data and analysis will be provided to help assess air quality, resource savings, public participation, and other program benefits.

In order to assure that the pilot program provides an opportunity to test innovative approaches to conformity in a broad range of circumstances, EPA and DOT would attempt to select a group of participants that is diverse in terms of geographic distribution, nonattainment pollutants, nonattainment classifications, and rural and urban development.

F. Selection Process

The selection process would have three stages: application review, applicant consultation, and project agreement finalization. First, EPA and DOT will review submitted applications. Applications not selected by the agencies during the initial application review will be notified; all other applications will proceed to the consultation stage.

In the consultation stage, EPA and DOT will schedule a conference call with each applicant to clarify any questions about the applicant's proposal, permit the federal agencies to clarify their understanding of what the proposed conformity pilot program would entail, and to evaluate further the suitability of the proposal for inclusion in the pilot program. Then EPA and DOT will arrange for a subset of these applicants to present their proposals in a review session with federal agency staff. Representatives of the lead agency submitting the pilot program application and other public agencies involved in the applicant's geographic area would participate in the presentation. Based upon the information presented in the application and consultation stages, EPA and DOT could select up to six applicants to participate in the pilot program.

In the final stage, and following finalization of this rule amendment, EPA, DOT and the applicant agencies would negotiate the final project agreement, which would formalize each area's selection as a pilot program participant. Before EPA and DOT approve the final project agreement, the lead agency would be required to demonstrate that it has provided a public comment period of not less than 30 days on its proposed alternative conformity requirements. The lead agency would also be required to demonstrate how it solicited and took into account any public comments during the public comment period. Upon finalization, the project agreement would be fully enforceable under the Clean Air Act.

III. Conformity SIPs

Although this proposal would exempt pilot program participants from certain conformity rule requirements, it could not exempt a pilot program participant from requirements in its approved conformity SIP. Once EPA has approved the conformity SIP, the federal conformity rule no longer applies to those subjects covered by the conformity SIP, and the requirements in the conformity SIP have the force of federal and state law. Therefore, if an area's submitted conformity SIP has already been approved by EPA, a new SIP would need to be submitted and approved in order for an area to participate in the pilot program and be relieved of certain of its conformity SIP requirements. The area's final project agreement under the pilot program could be submitted as its new conformity SIP.

If a pilot program participant has already submitted a conformity SIP which EPA has not yet approved, then the conformity SIP (or certain portions of the conformity SIP applicable to the particular area) would need to be withdrawn for the duration of the pilot program in order to ensure that the area could be governed by the final project agreement.

Areas that are selected to participate in the pilot program and have not yet submitted a conformity SIP would be exempted from the requirements of § 51.396 ("Implementation plan revision") so that they would not be required to submit a conformity SIP for the area for the duration of participation in the pilot program. In addition, areas that are selected to participate in the pilot program would be exempted for the duration of the pilot program from the requirement to submit a SIP revision in response to conformity rule amendments.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or otherwise adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact or entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Reporting and Recordkeeping Requirements

This rule does not contain any information collection requirements from EPA which require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA).

EPA has determined that today's regulations will not have a significant impact on a substantial number of small entities. This regulation affects federal agencies and metropolitan planning organizations, which by definition are designated only for metropolitan areas with a population of at least 50,000. These organizations do not constitute small entities.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this regulation does not have a significant impact on a substantial number of small entities.

VOL
61
ISS
1
3
2
JL
9
1996
UMI

D. Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

EPA has determined that to the extent this rule imposes any mandate within the meaning of the Unfunded Mandates Act, this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector. Therefore, EPA has not prepared a statement with respect to budgetary impacts.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 93

Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Ozone.

Dated: June 21, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, Parts 51 and 93 of the Code of Federal Regulations are proposed to be amended as follows.

PARTS 51 AND 93—[AMENDED]

1. The authority citation for parts 51 and 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Parts 51 and 93 are proposed to be amended by adding identical §§ 51.446 and 93.137 to read as follows:

§ . Special exemptions from conformity requirements for pilot program areas.

EPA and DOT may exempt no more than six areas for no more than three years from certain requirements of this subpart if these areas are selected to participate in a conformity pilot program and have developed alternative requirements that have been approved by EPA and DOT. In order to obtain EPA and DOT approval on its final project agreement, each area must provide a 30-day public comment period and address comments received on its proposed alternative conformity requirements. The alternative conformity requirements must be proposed to fulfill all of the requirements of and achieve results equivalent to or better than section 176(c) of the Clean Air Act. Areas selected to participate in the pilot program must comply with their final project agreements. After the three-year duration of the pilot program has expired, areas will be subject to the requirements of this subpart.

[FR Doc. 96–16591 Filed 7–8–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[WA3–1–5479; FRL–5534–9]

Approval and Promulgation of State Implementation Plans: Washington

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this action, Environmental Protection Agency (EPA) invites public comment on its proposed approval of certain elements of the Spokane PM–10 attainment plan, including control measures, and the granting of a temporary waiver of the attainment date for the Spokane, Washington particulate nonattainment area. This is based on EPA's review of the State implementation plan (SIP) revision submitted by the State of Washington for the purpose of attaining the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). The implementation plan was submitted by the State to satisfy certain federal Clean Air Act requirements for an approvable moderate nonattainment area PM–10 SIP for Spokane, Washington due on November 15, 1991.

DATES: Comments on this proposed action must be postmarked by August 8, 1996.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, United States Environmental Protection Agency, Office of Air Quality (OAQ 107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's submittals and other information supporting this proposed action are available for inspection during normal business hours at the following locations: United States Environmental Protection Agency, Office of Air Quality, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and the State of Washington Department of Ecology, 300 Desmond Drive, Lacey, Washington 98503.

FOR FURTHER INFORMATION CONTACT: George Lauderdale, Office of Air Quality (OAQ 107), US Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–6511.

SUPPLEMENTARY INFORMATION:

I. Background

The Spokane, Washington, area was designated nonattainment for PM–10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, by operation of law upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (Nov. 6, 1991)(official designation codified at 40 CFR 81.348). The air quality planning requirements for moderate PM–10 nonattainment areas are set out in subparts 1 and 4 of Part D, Title I of the Act.[2] The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under Title I of the Act, including those State submittals containing provisions to implement the moderate PM–10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this proposal and the supporting rationale. In this rulemaking action on the Washington moderate area PM–10 SIP revision for the Spokane nonattainment area, EPA is proposing to apply its interpretations, taking into consideration the specific factual issues presented. Additional information supporting EPA's action on this particular area is available for inspection at the address indicated above. EPA will consider any timely

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. sections 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM–10 nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

submitted comments before taking final action on today's proposal.

Those States containing initial moderate PM–10 nonattainment areas (those areas designated nonattainment under section 107(d)(4)(B)) were required to submit an implementation plan that includes, among other things, the following by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions were due at a date later than November 15, 1991. States with initial moderate PM–10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM–10 by June 30, 1992 (see section 189(a)). Such States also were to submit contingency measures by November 15, 1993, which become effective without further action by the State or EPA upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543–44).

II. Today's Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–66). For PM–10 nonattainment areas, Section 188(f), Waivers for Certain Areas, can apply as well.

In this action, EPA is proposing to approve portions of the PM–10 nonattainment area plan for Spokane, Washington that apply to sources of PM–10 other than windblown dust. For PM–10 24-hour exceedences caused primarily by windblown dust sources EPA is proposing to grant a temporary waiver of the attainment date for the Spokane area. Discussion of EPA's requirements for a temporary waiver are detailed in 59 FR 41998–42017 (August 16, 1994). In this guidance EPA provides certain flexibility for areas where the relative significance of anthropogenic and nonanthropogenic sources is unknown. The Washington Department of Ecology (Ecology) has presented preliminary data, based on an analysis of the relative contributions of anthropogenic and nonanthropogenic sources of PM–10 contributing to eastern Washington exceedences, indicating that nonanthropogenic sources may be significant in the Spokane nonattainment area during windblown dust events. EPA proposes to accept this preliminary information and grant a temporary waiver of the moderate area attainment date to December 31, 1997. This temporary waiver allows Ecology and EPA to evaluate further the windblown dust PM–10 problems in the Spokane PM–10 nonattainment area. Once the evaluation is completed and reviewed, and/or the temporary waiver expires, EPA will make a final determination on the designation and classification for the Spokane nonattainment area.

In order to move forward with consideration of the temporary waiver, a Memorandum of Agreement was signed in August 1995, by Chuck Clarke, Regional Administrator EPA, Region 10, and Mary Riveland, Director, Washington State Department of Ecology. This agreement outlines the approach each agency will take in completing work on the PM–10 problems in both the Spokane and Wallula nonattainment areas. The agreement contains commitments and conclusions including:

EPA will propose and, subject to public comment, grant a conditional, temporary, waiver of the attainment date for 24-hour PM–10 exceedances during windblown dust events for Spokane and Wallula until the end of 1997 (12/31/97). The waiver would expire on 12/31/97, and throughout its effective period, will apply only where windblown dust (both anthropogenic and nonanthropogenic) is an important contributor to the exceedances.

The Spokane and Wallula nonattainment areas will retain the classification of a moderate PM–10 nonattainment area, until 12/31/97 unless PM–10 air quality data indicates that the area has failed to attain the 24-hour health standard because of exceedances that cannot be primarily attributed to windblown dust.

As required in the EPA guidance, Ecology and EPA are proceeding under written agreements which include a protocol for both technical analysis (emission inventory, emission factor development, dispersion modeling, receptor modeling, etc.) and evaluation of alternative control measures, including Best Available Control Measures. The activities required under the protocol are generally referred to as the Columbia Plateau PM–10 Project funded by EPA, Ecology, and the U.S. Department of Agriculture (USDA). Cooperating agencies include USDA's Agricultural Research Service and Natural Resources Conservation Service, as well as several local conservation districts, Washington State University, the University of Idaho, and others.

The temporary waiver of the attainment date, if finalized by EPA, will defer approval/disapproval actions on several otherwise required elements of the moderate area plan for Spokane. Since the purpose of the above described MOA is to have control measures in place that assure that the PM–10 NAAQS will not be violated from sources that are primarily urban in nature, the submission of an attainment demonstration, emission inventory, and contingency measures for such urban sources are necessary and required. However, if the temporary waiver is finalized, the attainment demonstration, emission inventory, control measures and contingency measures for windblown dust sources (e.g. agriculture and natural sources) will be deferred. EPA will take final action on the windblown dust elements after the Columbia Plateau analysis is completed and/or the expiration of the temporary waiver. EPA's reasoning for this approach is described in more detail under the various SIP element headings of this notice.

In this action EPA is also proposing to approve regulatory orders for the Kaiser, Trentwood facility that will allow use of alternative opacity standards under certain very specific conditions. These orders will lower the allowable emissions from the facility and thus would not have an adverse impact on the attainment demonstration for other than windblown dust sources in the Spokane area.

EPA is also proposing to approve the exclusion from precursor controls as described in part II. 5 below. EPA invites public comment on the proposed action described in this section.

This action is EPA's response to Washington State Implementation Plan revision submitted for the Spokane PM–10 nonattainment area on November 15, 1991, January 31, 1992, and December 9,

VOL 61 ISS 132 JL 9 1996 UMI

1994. In addition, supplemental information was submitted by Ecology on May 18, 1995.

A. Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[3] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V (1992). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

Ecology held a public hearing to receive public comment on the November 15, 1991, Spokane PM–10 SIP revision on October 23, 1991. WDOE adopted the SIP revision for the area on November 14, 1991, and the plan was submitted to EPA on November 15, 1991. Ecology submitted an addendum to the November SIP revision that contained a regulatory order on January 31, 1992. The SIP revision submittals were reviewed by EPA to determine completeness in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V. A letter dated May 5, 1992, was forwarded to the WDOE indicating the completeness of the submittals and the next steps to be taken in the review process. On December 9, 1994, Ecology submitted another SIP revision for the Spokane PM–10 nonattainment area. This 1994 revision contained additional control measures, a more detailed technical analysis of the problem, and other improvements to the November 15, 1991 submittal.

2. PM–10 Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants for the base year in the nonattainment area. Because the submission of the emissions inventory is a necessary adjunct to an area's attainment demonstration (or demonstration that the area cannot practicably attain) the emissions inventory must be received with the demonstration (see 57 FR 13539).

In the December 9, 1994, Spokane plan Ecology submitted an emissions inventory of all PM–10 sources, except windblown dust, which estimated actual annual emissions for the base year of 1990, allowable emissions for the attainment year of 1994 and allowable emissions for the 3-year maintenance year of 1997. Ecology concluded that, after excluding windblown dust, Spokane has three very different emission scenarios that could cause PM–10 short-term, 24-hour standard violations. Each scenario occurs at a different time of the year, has different meteorological conditions, and each has one source that dominates the source mix. Ecology illustrated the three scenarios by presenting separate 24 hour emission inventories for the following worst case days: an October 21, 1987 inventory for conditions where unpaved roads were the major source, a March 12, 1993 inventory where paved roads were the dominant source, and a January 21, 1987 analysis for residential wood combustion exceedences.

For windblown dust, Ecology prepared and submitted as an appendix to the Spokane plan, a report titled "An Analysis of the Impact of Biogenic PM–10 Sources on the Spokane PM–10 Nonattainment Area", February 1992, which presented the most recent information on the emission sources in the Columbia Plateau region of eastern Washington. The report estimates gross annual emissions from anthropogenic and nonanthropogenic sources of PM–10 from a large area. Preliminary information is presented indicating that about 40% of the annual emissions in eastern Washington are from anthropogenic sources and 60% from nonanthropogenic sources. No attempt was made to estimate the highest 24-hour emissions which, depending on the location, is expected to vary greatly. This information suggests, but does not conclusively show, that nonanthropogenic sources contribute significantly to the Spokane nonattainment area.

In summary, the 1994 annual emission inventory, excluding windblown dust, indicated that the largest sources of PM–10 were: unpaved roads (43%), paved roads (20%), residential wood combustion (18%) and industrial (14%). The SIP revision also includes 24-hour emission inventories for each of the three scenarios mentioned above.

The emissions inventory estimating actual emissions for all significant sources except for windblown dust sources appears to be accurate and comprehensive consistent with the requirements of section 172(c)(3) of the Clean Air Act and national guidance.[4] Recent information from the Columbia Plateau study indicates that the emission factors used for the windblown dust report may be inappropriate. However, EPA thinks that the assumptions used were the best available at the time the Spokane plan was prepared. The Columbia Plateau PM–10 Project will include the development of emission factors specifically for eastern Washington and preparation of regional emission inventories that will be used to update the Spokane plan.

One final emission inventory issue relates to the use of actual emission estimates from two major stationary (stack) PM–10 sources. Ecology appropriately used allowable emissions for most of the stationary sources that had allowable emission limits. However, Ecology underestimated the allowable emissions for the two major stationary PM–10 sources, the Kaiser primary aluminum smelter at Mead, and the Kaiser aluminum rolling mill facility at Trentwood. Supplemental information submitted on May 18, 1995, concludes that the allowable emissions for those facilities are greater (by a factor of 2 for Kaiser-Trentwood) than the emissions used in the plan. The Spokane County Air Pollution Control Agency (SCAPCA) has corrected this problem for the Kaiser-Trentwood facility by issuing new regulatory orders which specifically limit the PM–10 emissions from the facility. The allowable emissions from the Kaiser-Mead facility are not significantly greater than the original allowable emission estimates used by Ecology and would not adversely impact the attainment demonstration for sources considered in the plan.

EPA proposes to approve the emission inventories, excluding windblown dust, at this time. The windblown dust inventory is being prepared as part of the Columbia Plateau project. When the project is completed the detailed emission inventory will be used for analysis of windblown dust. Therefore EPA proposes to defer action on the windblown dust emission inventory until after the temporary waiver expires.

[3] Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[4] The EPA issued guidance on PM–10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 *PM–10 SIP Development Guideline*. The guidance provided in this document is consistent with the Act.

3. RACM (Including RACT)

As noted above, the initial moderate PM–10 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–45 and 13560–61).

The Spokane annual emission inventory identified four urban (non windblown dust) sources as major contributors of PM–10 emissions; paved roads, unpaved roads, residential wood combustion and industrial sources. However, analysis of the 24-hour PM–10 problems conclude that industrial sources are not a major contributor. Ecology prepared RACM evaluations for paved and unpaved roads and residential wood combustion sources. Ecology did not present an evaluation of the controls that are currently being applied to agricultural sources likely impacting the Spokane PM–10 problem. For unpaved roads, the City of Spokane has spent more than six million dollars to pave over 16 miles of roads. Road paving is estimated to result in a PM–10 reduction of at least 90% from an unpaved road surface.

SCAPCA also adopted an unpaved road control regulation which requires that the City of Spokane, Spokane County, and the Town of Millwood submit emission reduction and control plans for unpaved surfaces in their respective jurisdiction. SCAPCA approves the plans and the respective jurisdictions are required to implement the plans. In addition, to address the paved road emissions the City of Spokane adopted resolutions committing to conduct additional (more frequent and earlier) street sweeping to better control PM–10. The City also committed to reduce the use of sand for traction material by 50%, increase the use of liquid deicers, plow major arterials more frequently, and sweep the arterial as soon as practical after sanding.

EPA proposes to accept Ecology's RACM analysis for paved and unpaved roads and concludes that reasonable measures are being implemented.

Residential wood combustion is regulated by SCAPCA through a comprehensive regulation that is based on state statute. The program contains limitations on opacity, curtails wood burning on days of poor air quality, prohibits the burning of inappropriate fuels, and other emission reducing measures. Curtailment of uncertified woodstoves and fireplaces is initiated when PM–10 levels are estimated to be 75 ug/m3. Ecology estimates an 80% reduction in emissions for the program. EPA proposes to determine that Spokane is implementing RACM for residential wood combustion sources.

The only two major (greater than 100 tons per year) stationary source facilities within the nonattainment area, the Kaiser aluminum facilities at Trentwood and Mead, were not evaluated specifically for RACT by either Ecology or SCAPCA. However, attainment is demonstrated for the PM–10 sources other than windblown dust, using allowable emissions from the facilities. Therefore a RACT determination is not necessary and the SIP revision does not include any additional emission reductions from any stationary sources. It is important to note that the Kaiser Trentwood facility is under a federal consent decree and final judgement which will reduce PM–10 emissions from the facility in the future.

The final source of PM–10 impacting the Spokane nonattainment area is windblown dust. There are two principal sources of windblown dust: undisturbed land and agricultural fields. Ecology did not perform a RACM analysis for agricultural sources in the Spokane nonattainment plan. However, Ecology had previously submitted an analysis of RACM for agricultural sources for the Wallula, Washington, PM–10 nonattainment area which has similar windblown dust issues. In that SIP revision Ecology concluded that RACM is being applied for agriculture sources of PM–10 based on soil conservation measures required by the federal government's implementation of the United States Department of Agriculture's (USDA) Food Security Act (FSA) of 1985. EPA Title I preamble guidance suggests states "rely upon the soil conservation requirements (e.g. conservation plans, conservation reserve) of the Food Security Act to reduce emissions from agricultural operations" (see 57 FR 18072).

EPA proposes to determine that RACM is being applied to agricultural sources not only in the Spokane nonattainment area but throughout the region surrounding Spokane. Ecology did not evaluate the application of reasonable controls on undisturbed lands. This analysis will be accomplished after completion of the Columbia Plateau PM–10 Project.

Where sources of PM–10 contribute insignificantly to the PM–10 problem in the area, EPA's policy is that it would be unreasonable (and would not constitute RACM) to require the implementation of potentially available control measures. 57 FR 13540. Further, EPA has indicated that for some sources in areas which demonstrate attainment, RACM does not require the implementation of otherwise available control measures that are not "reasonably" available because their implementation would not expedite attainment (See 57 FR 13543).

EPA is proposing to grant a temporary waiver of the attainment date to December 31, 1997, which will allow Ecology and EPA to determine conclusively the significance of anthropogenic and nonanthropogenic sources impacting Spokane. This action does not relieve the area from the requirement to implement RACM. In the Spokane situation EPA is proposing to determine that the major sources of PM–10 have been reasonably controlled. Thus, EPA thinks it would not be reasonable to require other smaller sources of PM–10 in the area to implement reasonably available control measures or technology. Further, EPA believes implementation of such additional controls in this area would not expedite attainment.

A more detailed discussion of the individual source contributions, their associated control measures and an explanation as to why certain available control measures were not implemented, can be found in the Spokane SIP revision. EPA has reviewed the State's explanation and associated documentation and is proposing to conclude that it adequately justifies the control measures being implemented.

4. Demonstration

As noted, the initial moderate PM–10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see section 189(a)(1)(B) of the Act). The General Preamble sets out EPA's guidance on the use of modeling for moderate area attainment demonstrations (57 FR 13539). Alternatively, if the State does not submit a demonstration of attainment, the State must show that attainment by December 31, 1994 is impracticable (section 189(a)(1)(B)(ii).

The SIP utilized dispersion modeling for demonstrating attainment for all major sources of PM–10 except windblown dust. As mentioned in the emission inventory discussion above, Spokane has different sources that are major contributors at different times of

VOL
61
ISS
132
JL
9
1996
UMI

the year. Ecology provided an attainment demonstration which included each of the three source scenarios. The attainment demonstration included days when residential wood combustion emissions dominated the area, also days when unpaved roads were the major source, and days dominated by paved road emissions. The dispersion modeling analysis demonstrated attainment of the 24-hour standard. EPA proposes to find the attainment demonstration for the major PM–10 sources, except for windblown dust, is adequate.

The attainment evaluation does not address the windblown dust issue including the anthropogenic and nonanthropogenic mix. In the 1994, Spokane SIP submittal, Ecology demonstrated attainment of the annual and 24-hour PM–10 standards for all sources of PM–10 except windblown dust by December 31, 1994. Ecology did not address exceedences of the 24-hour standard that were primarily due to windblown dust. As mentioned previously, EPA is proposing to temporarily set aside certain SIP requirements for windblown dust sources, including the attainment demonstration.

Since EPA is proposing to grant a temporary, three year waiver of the attainment date, EPA is also proposing that the approval or disapproval of the attainment demonstration for windblown dust PM–10 exceedences, be deferred until after expira-tion of the temporary waiver. EPA proposes to make a final decision on the attainment status and classification of the area after the temporary waiver expires on December 31, 1997. The alternative decisions include, but are not limited to, reclassi-fying the area to a serious PM–10 nonattainment area; applying the May 30, 1996, Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, regarding "Areas Affected by PM–10 Natural Events; or granting the area a permanent waiver. EPA invites comments on these possible approaches.

5. PM–10 Precursors

The control requirements which are applicable to major stationary sources of PM–10, also apply to major stationary sources of PM–10 precursors unless EPA determines such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in that area (see section 189(e) of the Act). The General Preamble contains guidance addressing how EPA intends to implement section 189(e) (see 57 FR 13539–40 and 13541–42).

The relatively small contribution of stationary sources in the Spokane nonattainment area suggests that stationary sources of precursors provide an insignificant contribution to the Spokane ambient PM–10 concentration. This conclusion is also supported by limited receptor analysis conducted in 1993. Based on that information Ecology concluded that the only major stationary source of PM–10 precursors, Kaiser-Mead, does not contribute significantly to PM–10 levels.

EPA is proposing to grant the area an exclusion from PM–10 precursor control requirements authorized under section 189(e) of the act. Note that while EPA is proposing to make a general finding for this area, this proposed finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. EPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Quantitative Milestones and Reasonable Further Progress (RFP)

The PM–10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every three (3) years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act). Reasonable further progress is defined in section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by Part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

In the Spokane situation, EPA is proposing to approve the reasonable further progress requirement for all significant sources of PM–10 except windblown dust. The dispersion modeling conducted by Ecology indicates that the 24-hour standard was attained in 1994 and air quality will be maintained below the standard until at least 1997 (except for windblown dust). As stated previously, EPA is proposing to grant a temporary waiver of the attainment date for the Spokane area for windblown dust sources. If granted, the area would not be required to meet RFP for windblown dust sources. In 1998 EPA will determine the designation and classification of the Spokane area.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by Ecology and EPA (see sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). EPA criteria addressing the enforceability of SIP's and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

Ecology's and SCAPCA's control measures and regulations for control of particulate matter, which are contained in the SIP, are addressed above under the section headed "RACM (including RACT)." These control measures apply to the types of activities identified in that discussion including, for example, fugitive emissions from unpaved roads. The SIP provides that the affected activities will be controlled throughout the entire nonattainment area.

The Clean Air Act requires that all the applicable RACM provisions be implemented by December 10, 1993 (section 189(a)(1)(C). In addition to the applicable control measures, this includes the applicable record-keeping requirements which are addressed in the supporting technical information document (TSD).

EPA is proposing to approve a December 12, 1991, SCAPCA Order No. 91–01. This order provides for the use of an alternate opacity limit for the Kaiser-Trentwood aluminum facility. EPA has evaluated information presented in the 1994 SIP revision for Spokane and other information and has concluded that the order will not have a significant impact on the ambient air quality in Spokane. EPA is further proposing to approve SCAPCA Order #96–03, Order #96–04, Order #96–05, and Order #96–06, for the Kaiser-Trentwood facility which will significantly lower the allowable emissions from the facility. The new allowable emission totals are the same as the amount used by Ecology in the attainment demonstration. Upon final approval by EPA as part of the SIP, the orders will be federally enforceable.

The TSD contains further information on enforceability requirements including enforceable emission limitations; a description of the rules contained in the SIP and the source types subject to them; test methods and compliance schedules; malfunction provisions; excess emission provisions; correctly cited references of

incorporated methods/rules; and reporting and recordkeeping requirements. Ecology and SCAPCA have the primary responsibility for implementing the measures in the plan. Ecology and SCAPCA have compliance inspectors and EPA considers the staffing level adequate to assure that the RACM provision in the Spokane attainment plan are fully implemented. As a necessary adjunct of its enforcement program, Ecology and SCAPCA also have broad powers to adopt rules and regulations, issue orders, require access to records and information, and receive and disburse funds.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIP's that demonstrate attainment must include contingency measures (see generally 57 FR 13543–44). Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM–10 NAAQS by the applicable statutory deadline.

Ecology submitted several measures that were identified as contingency measures. As with their control measures necessary to demonstrate attainment, Ecology and SCAPCA, adopted contingency measures for each of the three significant sources of PM–10 other than windblown dust. The contingency measures include additional treatment of unpaved roads, early implementation of paved road controls (additional reductions from what is included in the attainment program) and banning the use of uncertified stoves if an exceedence is primarily due to residential wood combustion sources.

The plan does not contain a contingency measure for windblown dust. Since the action proposed in this **Federal Register** notice would allow for a temporary extension of the attainment date for windblown dust sources, EPA proposes to take no action on a contingency measure for windblown dust until after the temporary waiver has elapsed.

III. Implications of Today's Action

EPA is proposing to approve those portions of the 1994 PM–10 attainment plan for Spokane submitted by Ecology to control significant sources of PM–10 except for windblown dust, as meeting RACM and demonstrating attainment of the 24-hour standard by the statutory deadline of December 31, 1994. EPA is further proposing to grant a temporary waiver of the December 31, 1994, attainment date to December 31, 1997 for windblown dust-caused exceedences of the PM–10 24-hour standard. If this action is finalized, Ecology and SCAPCA will continue to implement the adopted control measures and Ecology will determine the significance of anthropogenic and nonanthropogenic windblown dust sources impacting the Spokane PM–10 nonattainment area. If any of the non-windblown dust sources cause any exceedences of the PM–10 24-hour standard the area could be reclassified to a serious PM–10 nonattainment area. When Ecology has completed its analysis on windblown dust, and/or the temporary waiver expires, EPA will make a final determination of the nonattainment status of the Spokane area. EPA is also proposing to approve several SCAPCA orders, including an alternate opacity order for the Kaiser-Trentwood facility in Spokane. Finally, EPA is proposing to grant an exclusion from precursor control requirements as described in part II. 5 of this notice.

IV. Request for Public Comments

EPA is requesting comments on all aspects of today's proposal. As indicated at the beginning of this notice, EPA will consider any comments postmarked by August 8, 1996.

V. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2224), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Authority: 42 U.S.C. 7401–7671q.

VOL
61
ISS
1
3
2
JL
9
1996
UMI

Dated: June 27, 1996.

Jane S. Moore,

Acting Regional Administrator.

[FR Doc. 96–17459 Filed 7–8–96; 8:45 am]

BILLING CODE 6560–60–P

40 CFR Parts 52 and 81

[CO43–2–6665; CO43–1–6631; FRL–5532–07]

Clean Air Act Approval and Promulgation of State Implementation Plan for Colorado; Carbon Monoxide Attainment Demonstrations and Related SIP Elements for Denver and Longmont; Clean Air Act Reclassification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Environmental Protection Agency today proposes approval of the State Implementation Plan (SIP) revisions submitted by the State of Colorado for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for carbon monoxide (CO). The implementation plan revisions were submitted by the State to satisfy certain Federal requirements for an approvable nonattainment area CO SIP for Denver and Longmont. This action includes proposed approval of revisions to Colorado Regulations 11 (vehicle inspection and maintenance) and 13 (oxygenated fuels) submitted to satisfy conditions in the SIP. It also includes proposed reclassification of the Denver CO nonattainment area from Moderate to Serious. The rationale for the approvals and reclassification are set forth in this document. Additional information is available at the address indicated below.

DATES: Comments on this proposed action must be received in writing by August 8, 1996.

ADDRESSES: Comments should be addressed to: Richard R. Long, Director of Air Programs (8P2–A), Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

Copies of the State's submittals and other information are available for inspection during normal business hours at the following locations: Environmental Protection Agency, Region VIII, Air Programs, 999 18th Street, 3rd Floor, South Terrace, Denver, Colorado 80202–2466; and Colorado Air Pollution Control Division, 4300 Cherry Creek Dr. South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Jeff Houk at (303) 312–6446.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning requirements for moderate CO nonattainment areas are set out in sections 186–187 of the Clean Air Act (Act) Amendments of 1990 (CAAA) which pertain to the classification of CO nonattainment areas and to the submission requirements of the SIP's for these areas, respectively. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under Title I of the Act, [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's proposal and the supporting rationale. In today's rulemaking action on the Denver and Longmont CO SIPs, EPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Thus, EPA will consider any timely submitted comments before taking final action on today's proposal.

This **Federal Register** document specifically addresses several requirements of the 1990 CAAA which were required to be submitted no later than November 15, 1992, and which the State did not submit by that date. These requirements include an attainment demonstration, contingency measures and, for Denver, a vehicle miles travelled forecasting and tracking program and transportation control measures. EPA made a formal finding that the State had failed to submit these SIP revisions in a letter to Governor Roy Romer dated January 15, 1993. This **Federal Register** document also addresses revisions to Regulations 11 and 13, submitted by the State of Colorado to implement portions of the control strategy relied upon by the attainment demonstration.

Section 187(a)(7) required those States containing CO nonattainment areas with design values greater than 12.7 parts per million (ppm) to submit, among other things, an attainment demonstration by November 15, 1992, demonstrating that the plan will provide for attainment by December 31, 1995 for moderate CO nonattainment areas and December 31, 2000 for serious CO nonattainment areas. The attainment demonstration must include a SIP control strategy, which is also due by November 15, 1992. The SIP control strategy for a given nonattainment area must be designed to ensure that the area meets the specific annual emissions reductions necessary for reaching attainment by the deadline. In addition, section 187(a)(3) requires these areas to implement contingency measures if any estimate of actual vehicle miles travelled (VMT) or any updated VMT forecast for the area contained in an annual report for any year prior to attainment exceeds the number predicted in the most recent VMT forecast. Contingency measures are also triggered by failure to attain the NAAQS for CO by the attainment deadline. Contingency measures must be submitted with the CO SIP by November 15, 1992. Finally, a vehicle miles travelled forecasting and tracking program is required by Section 187(a)(2)(A), and transportation control measures are required for Denver by Section 187(a)(2)(B). These requirements are discussed in more detail below and in the Technical Support Document for this proposed action.

Longmont had been designated as unclassifiable/attainment prior to passage of the 1990 CAAA. However, a special monitoring study in 1988–89 recorded an exceedance of the NAAQS in Longmont. As a result, EPA Region VIII recommended that the Governor designate this area nonattainment, and on March 15, 1991, the Governor submitted a nonattainment designation for this area that was later codified by EPA at 40 CFR Part 81. Since this area had never had a SIP, EPA interpreted Section 172 of the Act to require an attainment demonstration for Longmont. Contingency measures under Section 172(c)(9) were also required. On January 15, 1993, EPA made a formal finding that the State had failed to submit these SIP revisions for Longmont.

On July 11, 1994 and July 13, 1994, Governor Roy Romer submitted comprehensive revisions to the Colorado SIP. The carbon monoxide SIP element submittals for Denver and Longmont addressed the outstanding CAA requirements discussed above, as well as other CAA mandates. The July 11, 1994 CO SIP revision for Denver was developed primarily by the Colorado Department of Health's Air Pollution Control Division (APCD), the Colorado Air Quality Control Commission (AQCC), and the Regional Air Quality Council (RAQC), which represents local government and citizen interests. The July 13, 1994 CO SIP revision for Longmont was developed primarily by the APCD, in consultation with the City of Longmont.

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action [see section 110(k)(1) and 57 FR 13565]. The EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA within six months after receipt of the submission.

The AQCC held a public hearing on June 16, 1994 to entertain public comment on the implementation plan revisions for Denver and Longmont. Following the public hearing, the SIP revisions were adopted by the AQCC, and forwarded to the Colorado Legislative Council for review. (Under Colorado law, SIP revisions imposing new or revised controls on mobile sources must be reviewed and accepted by the Colorado Legislative Council.) The AQCC held an emergency hearing on July 7, 1994, to address concerns with the Denver SIP raised by the Legislative Council, and on July 11 and July 13, 1994, the SIP revisions were submitted to EPA by the Governor for approval.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete, and a letter dated July 14, 1994 was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. The applicable Clean Air Act requirements and EPA's rationale for its proposed actions are discussed below.

[1] Also, Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

Denver

A. Attainment Demonstration and Control Strategies

(1) Attainment Demonstration

As noted, CO nonattainment areas with design values greater than 12.7 ppm were required to submit a demonstration by November 15, 1992, that the plan will provide for attainment by December 31, 1995 for moderate CO nonattainment areas and December 31, 2000 for serious CO nonattainment areas. APCD conducted an attainment demonstration using urban areawide modeling in conjunction with intersection modeling for a modeling region encompassing the Denver nonattainment area.

The CO NAAQS are for 1-hour and 8-hour periods and are not to be exceeded more than once per year. The 1-hour CO NAAQS is 35 ppm (40 mg/m^3) and the 8-hour CO NAAQS is 9 ppm (10 mg/m^3). The demonstration predicted that the highest 8-hour design concentration as of the attainment date will be 8.91 ppm, thus demonstrating attainment of the 8-hour CO NAAQS. No demonstration was required to be carried out for the 1-hour NAAQS, as Denver has not violated this NAAQS since before the 1990 CAAA were enacted. The same strategies which bring the area into attainment with the 8-hour NAAQS will also contribute to reduced 1-hour concentrations. The modeled attainment demonstration is discussed in greater detail below.

(a) Policy Issues: Reclassification to Serious and Applicability of Serious Area SIP Requirements

(i) Reclassification to Serious. During the SIP development process, the RAQC conducted an exhaustive review of control strategies for use in demonstrating attainment of the CO NAAQS by the Clean Air Act-mandated deadline for moderate areas of December 31, 1995. Even with the oxygenated fuels program and an enhanced I/M program in place, the RAQC and APCD determined that a 30% reduction in emissions would still be needed to attain the NAAQS by this date. Any measures would need to be implemented in the 18-month period between SIP adoption (in June 1994) and the attainment date, ruling out many potential strategies with longer implementation horizons. The RAQC considered several aggressive strategies, including a mandatory no-drive day for high emitting vehicles, but was unable to identify a package of strategies that would provide the necessary emission reductions by December 31, 1995.

As a result, the RAQC recommended to the AQCC that the Denver area seek reclassification to serious. If Denver were reclassified to serious, the applicable attainment date would become December 31, 2000 (CAA Section 186(a)(1)). The AQCC adopted this recommendation, and the Governor formally requested reclassification to serious in his July 11, 1994 letter submitting the SIP. As part of this **Federal Register** document, EPA is proposing to reclassify the Denver-Boulder nonattainment area to serious.

EPA had originally intended to rely upon the authority for reclassification provided by Section 110(k)(6) of the Clean Air Act. This paragraph provides broad authority for EPA to correct previous approvals, disapprovals, designations, and classifications based on new information. However, air quality data collected during calendar year 1995 show that the Denver area experienced two exceedances of the CO NAAQS in 1995 at the CAMP monitor. Because of this, Denver cannot demonstrate attainment of the NAAQS by the statutory December 31, 1995 attainment date for moderate areas, and must be reclassified, by operation of law, to serious. Under Section 186(b)(2)(A), a moderate carbon monoxide nonattainment area must be reclassified as serious by operation of law if the Administrator finds that the area has failed to attain the CO NAAQS. Pursuant to Section 186(b)(2)(B), EPA must publish a document in the **Federal Register** identifying those areas that failed to attain the NAAQS and the resulting classifications. In this document, EPA is proposing to find that the Denver/Boulder carbon monoxide nonattainment area did not attain the NAAQS by the required attainment date of December 31, 1995, and to revise the area's classification for carbon monoxide in 40 CFR Part 81 from moderate to serious.

(ii) Impacts of Reclassification to Serious. Areas classified as serious are required to attain the CO NAAQS no later than December 31, 2000. In addition, the following additional requirements of CAA Section 187 apply:

Gasoline sold during the winter months must contain a level of oxygen necessary to attain the NAAQS. (CAA Section 187(b)(3))

A mandatory employer-based trip reduction program must be adopted and implemented, unless it can be shown that such a program is not necessary to demonstrate attainment of the NAAQS. (CAA Section 187(b)(2), referencing CAA Section 182(d)(1)(B))

A December 31, 1995 milestone must be identified, and an economic

VOL
61
ISS
1
3
2
JL
9
1996
UMI

incentive program must be adopted and implemented if the milestone is not achieved or if the area fails to attain the CO NAAQS by December 31, 2000. (CAA Section 187(d))

Vehicle miles travelled forecasts must be submitted for the period 1996–2000 (submittal of vehicle miles traveled forecasts for 1993–1995 is required for moderate areas). (CAA Section 187(a)(2)(A))

Additional requirements for the content and analysis of transportation plans, programs and projects apply under the EPA/DOT transportation conformity regulations (58 FR 62215, November 24, 1993).

The oxygenated gasoline, VMT forecast, and conformity requirements are discussed elsewhere in this document.

(iii) December 31, 1995 milestone demonstration. CAA Section 187(d) requires areas classified as serious to submit a demonstration no later than March 31, 1996, that the area has achieved CO emission reductions equivalent to the total of the specified annual emission reductions required by December 31, 1995. The Act does not provide further guidance on the form or content of the milestone itself, the specified annual emission reductions, or the nature of the milestone demonstration. EPA has not issued guidance on this matter.

Since the Act does not prescribe a methodology for determining a milestone and EPA has not issued guidance for this purpose, the State has chosen to use its 1995 base case emission inventory as the milestone (Section XII–D of the SIP). The milestone level is 1396 tons per day in the nonattainment area; this level represents progress toward attainment from the 1988 level of 1709 tons per day.

(iv) Employer-based trip reduction program (the ECO program). CAA Section 187(b)(2) requires areas classified as serious to adopt the measures required by Section 182(d)(1). These measures consist of transportation control measures (CAA Section 182(d)(1)(A)) and a mandatory employer-based travel reduction program (commonly known as the Employee Commute Options, or ECO, program) (CAA Section 182(d)(1)(B)). Section 187(b)(2) also provides that, in any area defined as a "covered area" under the Clean Fuel Fleet Program requirements of Section 246(a)(2)(B) (the Denver area meets this definition), a SIP may exclude any of the Section 182(d)(1) measures if (1) the SIP includes an explanation of why any measure was not adopted and what emission reduction measure was adopted to provide comparable reduction in emissions, or (2) the SIP contains reasons why such reduction is not necessary to attain the national primary ambient air quality standard for CO. (As a moderate area, Denver was already required by the "Special Rule for Denver," Section 187(a)(2)(B), to address the transportation control measure requirements of Section 182(d)(1)(A). These requirements are discussed in Chapter X of the SIP.)

The SIP demonstrates that no TCMs are necessary to provide for attainment of the NAAQS by December 31, 2000 (attainment demonstration, Tables XII–1 and XII–2). However, several TCMs were adopted as part of the SIP, including transportation management associations to encourage and provide technical support for voluntary employer-based trip reduction activities; financial incentives for subsidized employee transit passes and other travel reduction strategies for downtown Denver employees; transit passes for students at the Auraria campus in downtown Denver; high-occupancy vehicle lanes on Broadway and Lincoln, two major arterials providing access to the central business district; and improved traffic signalization in the central business district and elsewhere in the nonattainment area. Appendix X–A of the SIP also discusses several other TCMs that were adopted and implemented as part of the 1979 and 1982 SIPs for Denver and remain in effect.

Section X.F. of the SIP provides the formal justification for exclusion of the ECO program from the Denver SIP. However, on December 23, 1995, the President signed revisions to the ECO requirements of the Clean Air Act. These revisions amended the Act to make submittal of a SIP revision providing for the ECO program voluntary for areas which are bumped up to a higher classification (and thus, newly made subject to the requirement). Thus, the State would have no longer been required to submit such program, even if EPA had initially interpreted the Act to require this program for Denver.

(b) Technical Evaluation of Attainment Demonstration

EPA is proposing to approve the State's attainment demenstration for Denver. EPA has determined that the State correctly applied national guidance in conducting modeling of the entire region and of six intersections that could potentially cause violations of the CO NAAQS. In addition, the State complied with a Region VIII request to conduct modeling of downtown intersections above and beyond the six required by national guidance. However, due to the factors described below, the model could not be properly applied to two high-traffic downtown intersections: Speer/Auraria and Broadway/Colfax. Model predictions at these two sites were affected by uncertainties in meteorological and motor vehicle emissions inputs. In addition, the modeled predictions of high ambient values at these intersections were not supported by saturation monitoring data obtained at the same locations. Thus, the attainment demonstration is based on modeled and monitored values at a third downtown intersection, CAMP, which has historically recorded the highest CO concentrations in the Denver metro area. These issues are discussed in greater detail below.

A variety of specialized models were used to model the Denver area carbon monoxide concentrations in accordance with EPA guidance. The Urban Airshed Model (UAM) was used to simulate regional concentrations during two historical episodes when very high carbon monoxide levels occurred. During these same episodes the CAL3QHC model was used to simulate concentrations from local streets and roadways. The outputs from both models were added together so that total predicted concentrations could be compared with values actually measured at the monitoring sites during these episodes. These comparisons determine if the modeling meets the performance criteria prescribed in the UAM guidance document, and in the modeling protocol. For both episodes there was a tendency for the UAM/CAL3QHC model to underpredict concentrations. However, the degree of underprediction was within the limits specified in EPA UAM Guidance documents, and in the modeling protocol.

The validated UAM/CAL3QHC model was then applied in the attainment year (2000) to determine whether proposed control strategies are sufficient to meet the 8-hour ambient air quality standard (9.0 ppm). The same meteorological conditions used in the model validation runs were used in the 2000 model runs. However, the 2000 runs were modeled with revised emission input files to examine the benefits of the various control strategies. The 2000 attainment runs showed that the control strategies in the SIP are sufficient to reduce carbon monoxide concentrations to less than 9.0 ppm at all locations in the nonattainment area.

The Denver CO modeling protocol was approved by EPA Region VIII in May 1992. Specific intersections to be modeled were not identified in the protocol. The State showed attainment on each of the six highest ranked intersections selected for modeling, following screening criteria contained in "Guideline for Modeling CO from Roadway Intersections", EPA–454/R–92–005. The State subsequently found that the six busiest intersections for traffic congestion were located in the suburban areas, where background air quality levels are relatively low. Application of CAL3QHC at these six locations, combined with UAM predicted background levels, showed the year 2000 concentrations at levels well within the CO NAAQS. The Region requested the State to model an additional intersection in the central business district, to ensure that control strategies provide for attainment at hot spot locations in the urban core area, not just at suburban locations exposed to significantly lower background concentrations.

The State performed preliminary CAL3QHC modeling at three additional intersections in the Downtown area: Speer & Auraria; Broadway & Colfax; and Broadway & Champa. These preliminary 1995 results showed predicted concentrations at Speer/Auraria and Broadway/Colfax up to 6 ppm higher than concentrations modeled at the CAMP monitor (Broadway & Champa). Because of uncertainties related to the validity of meteorological inputs used in the model, the State opted not to include the CAL3QHC modeling results for the two higher intersections in the current SIP, deferring consideration of these locations until additional saturation monitoring studies could be conducted at these intersections. The State selected Broadway and Champa as the intersection to use in the SIP attainment demonstration because the on-site air quality and meteorology monitoring data available at this location provided more confidence in the results, i.e., produced modelled concentrations that were in good agreement with concentrations actually monitored at the site. There are significant and unique micro-meteorological effects influencing each of the three central business district intersections, including: high-rise office buildings, channeling of the wind down "urban street canyons", and urban heat island effects. Since the Diagnostic Wind Model (DWM) used with UAM does not include any of these effects, the State did not consider the meteorological outputs from DWM appropriate for use in microscale modeling.

The State's intersection analysis is consistent with national policy and other recent UAM/CAL3QHC modeling applications. Additional information on the attainment demonstration modeling is included in the Technical Support Document for this action.

(2) Control Strategies

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of RACM (including RACT) as expeditiously as practicable and to provide for attainment of the NAAQS. The EPA interprets this requirement to impose a duty on all nonattainment areas to consider the available control measures, and to adopt and implement such measures as are reasonably available for implementation in the area and necessary for attainment of the NAAQS as components of the area's attainment demonstration. The EPA has reviewed the State's explanation and associated documentation and concluded that it adequately justifies the control measures to be implemented. EPA is proposing to approve several of the control strategies. The exact nature of EPA's proposed approvals is discussed in more detail below and in the Technical Support Document for today's action.

The Denver CO SIP takes credit for several control programs in the attainment demonstration. Those identified in Chapter V of the SIP as "baseline strategies" are measures which were in existence at the time of CO SIP development, and for which no further State regulatory action was required. EPA is not taking action on these control strategies through this SIP revision, as these are strategies which have been adopted through previous SIP revisions and have been or are being acted on in other **Federal Register** documents. Those identified as "additional control strategies" are measures which were newly-considered and adopted for the attainment demonstration, and which are being acted on in this SIP revision.

The baseline strategies include the Federal motor vehicle control program, the 2.7% oxygenated fuels program (approved in the **Federal Register** on July 25, 1994 (59 FR 37698)), the Enhanced inspection and maintenance (I/M) program (conditionally approved in the **Federal Register** on November 8, 1994 (59 FR 55584)), various transportation system improvements, and the woodburning control measures adopted as part of the Denver PM10 SIP (approved in the **Federal Register** on July 25, 1994 (59 FR 37698)).

In addition, Section 246 of the Clean Air Act requires that the State adopt and implement the Clean Fuels Fleet Program, an alternative fuels program for certain commercial and governmental fleet operations. AQCC Regulation 17, the Clean Fuels Fleet Program regulation, was adopted by the AQCC on May 5, 1994, and submitted with the Denver CO SIP. (The full Clean Fuels Fleet Program SIP was submitted to EPA on October 17, 1994.) A wide variety of non-mandated alternative fuels programs are also underway in the Denver area. No credit is taken for Regulation 17 or any of the other programs in the attainment demonstration, and EPA will act on the Clean Fuels Fleet Program in the **Federal Register** at a later date.

Several additional control strategies have been formally incorporated into or committed to in the Denver CO SIP to provide for attainment of the CO NAAQS by December 31, 2000. These measures are described in Chapter VI of the SIP and are discussed below.

(a) 3.1% oxygenated fuels program. In the CO SIP, the State made a commitment, which has since been met, to implement and adopt a 3.1% oxygenated fuels program, providing additional benefit over the 2.7% program already required of the area by Section 211(m) of the Act. The program is being implemented in two phases. In the winter of 1994–95, a "maximum blending" program took effect, which requires gasoline suppliers using methyl tert-butyl ether as an oxygenate to blend at the 2.7% oxygen level (the maximum allowed by Federal regulations), and suppliers using ethanol as an oxygenate to blend at the 3.5% oxygen level (also the maximum allowed by Federal regulations). The market share of ethanol in the Denver area has exceeded 50% in recent years, and this approach is expected to result in at least a 3.1% oxygen content during each winter season. If the maximum blending approach should fail to provide for at least a 3.1% oxygen content, the SIP provides that in subsequent winter seasons an averaging program, pursuant to EPA guidance for such programs, will take effect.

AQCC Regulation 13 governs the oxygenated fuels program. The SIP committed to revise this regulation in two steps. Reg 13 was revised to incorporate the maximum blending approach for the winter of 1994–95 by the AQCC on July 19, 1994. Reg 13 was revised to incorporate the more complex 3.1% averaging program on October 20, 1994. Both sets of regulation revisions were submitted by the Governor for EPA approval on September 29, 1995. The

VOL 61 ISS 132 JL 9 1996 UMI

September 29, 1995 submittal was determined complete on November 30, 1995.

(b) Increased I/M failure rate for pre-1982 vehicles. The SIP includes a commitment, which has since been met, to revise Regulation 11, which governs the I/M program, to incorporate more stringent emissions cutpoints which will increase the failure rate for pre-1982 vehicles from the current 14–26% to approximately 40%. Pre-1982 vehicles have less advanced emission control system technology, resulting in higher CO emission levels, and the more stringent cutpoints for these vehicles will result in the identification and repair of a greater number of high-emitting vehicles than are captured by the present I/M program (an increase of approximately 70,000 vehicles per year). These regulation revisions were adopted by the AQCC on September 22, 1994, and submitted by the Governor for EPA approval on September 29, 1995. The September 29, 1995 submittal was determined complete on November 30, 1995.

(c) Prohibition on the re-registration of abandoned and impounded pre-1982 vehicles sold at auction. This element of the SIP requires local governments in the Denver area to modify their ordinances or procedures for disposing of pre-1982 abandoned and impounded vehicles to prohibit purchasers from obtaining any form of title to the vehicles. These vehicles may be sold for scrappage or dismantling only. This measure will accelerate the normal rate of removal of vehicles of this age from the fleet, by preventing up to 5,000 vehicles of this type from being re-registered. Elimination of this many pre-1982 vehicles could reduce regional CO emissions by up to 5 tons per day. However, because of the difficulty of defining a concise emission reduction, the State does not take credit for this strategy in the attainment demonstration.

B. Transportation Control Measures

Section 187(a)(2)(B) (Special Rule for Denver) requires the State to submit a SIP revision that includes the TCMs as required in Section 182(d)(1)(A) of the Act, for the purpose of reducing CO emissions. The SIP may exclude any of the Section 182(d)(1)(A) measures if 1) the SIP includes an explanation of why any measure was not adopted and what emission reduction measure was adopted to provide comparable reduction in emissions, or 2) the SIP contains reasons why such reduction is not necessary to attain the national primary ambient air quality standard for CO.

The TCM SIP revision is contained in Chapter X of the Denver CO SIP. The TCMs adopted as part of the SIP are listed below. See the Technical Support Document for today's document and the SIP itself for a more detailed description of these measures.

(1) Employer-based transportation emission management programs promoted and encouraged by transportation management associations and financial incentives.

(2) Auraria transit pass.

(3) Conversion of Broadway/Lincoln Bus Lanes to Bus/HOV.

(4) Improved Traffic Signalization.

(5) Other Measures.

Appendix X–A contains the State's assessment of the measures listed in Section 108(f), including a comprehensive description of strategies already in place in Denver and the newly-adopted measures. Several TCMs have already been adopted as part of the SIP in previous ozone and CO SIP revisions, and have been approved by EPA (45 FR 51199, August 1, 1980, and 48 FR 55284, December 12, 1983). Appendix X–A also describes projects and programs which are not being included in the SIP but nevertheless provide some emission reduction benefit.

EPA is proposing to approve this element of the Denver CO SIP. The SIP satisfies the requirement of Section 187(a)(2)(B) to either include the TCMs or provide a justification for not including them. The attainment demonstration for the SIP does not include credit for any of the TCMs; however, the above measures were adopted as enforceable provisions of the SIP.

C. Vehicle Miles Traveled Forecasting and Tracking

Section 187(a)(2)(A) of the Clean Air Act Amendments of 1990 required EPA, in consultation with the U.S. Department of Transportation (DOT), to develop guidance for states to use in complying with the VMT forecasting and tracking provisions of Section 187. A Notice of Availability for the resulting *Section 187 VMT Forecasting and Tracking Guidance* was published in the **Federal Register** on March 19, 1992. Section 187(a)(2)(A) requires Denver to submit a SIP revision providing for a VMT forecasting and tracking program, and contingency measures for implementation in the event that a VMT forecast is exceeded. The specific requirements are discussed in detail in the Technical Support Document for today's action.

The State of Colorado has submitted a SIP revision to EPA in order to satisfy the requirements of Section 187(a)(2)(A) and Section 187(a)(3). In order to gain approval, the State submittal must provide for each of the following mandatory elements: (1) a forecast of VMT in the non-attainment area for each year prior to the attainment year; (2) a provision for annual updates of the forecasts along with a provision for annual reports describing the extent to which the forecasts proved to be accurate; these reports shall provide estimates of actual VMT in each year for which a forecast was required; (3) adopted and enforceable contingency measures to be implemented without further action by the State or the Administrator if actual annual VMT or an updated forecast exceeds the most recent prior forecast or if the area fails to attain the CO NAAQS by the attainment date.

(1) VMT Forecasts

Section 187(a)(2)(A) requires that the State include in its SIP submittal a forecast of VMT in the non-attainment area for each year before the year in which the SIP projects the National Ambient Air Quality Standard for CO will be attained. The forecasts are to be based on guidance developed by EPA in consultation with DOT, i.e., the *Section 187 VMT Forecasting and Tracking Guidance*. Table XIV–2 of the SIP contains the required forecasts of annual VMT for the years 1993–2001.

(2) Annual VMT Updates/Reports

Section 187(a)(2)(A) specifies that the SIP revision provide for annual updates of the VMT forecasts and annual reports that describe the accuracy of the forecasts and that provide estimates of actual VMT in each year for which a forecast was required. The *Section 187 VMT Forecasting and Tracking Guidance* specifies that annual reports should be submitted to EPA by September 30 of the year following the year for which the VMT estimate is made. The SIP commits to the submission of these annual reports and identifies responsibilities among the various transportation agencies in Denver to develop the reports.

(3) Contingency Measures

Section 187(a)(3) specifies that the State, in its SIP revision, adopt specific, enforceable contingency measures to be implemented if the annual estimate of actual VMT or a subsequent VMT forecast exceeds the most recent prior forecast of VMT or if the area fails to attain the CO NAAQS by the attainment date. Implementation of the identified contingency measures must not require further rulemaking activities by the State or EPA. Certain actions, such as notification of sources, would probably be needed before a measure could be implemented effectively. The State has met this requirement, as discussed in Section D. below. The State of Colorado has submitted a SIP revision implementing each of the required elements required by Section 187(a)(2)(A) and Section 187(a)(3) of the CAAA.

D. Contingency Measures

The Clean Air Act requires each CO nonattainment area with a design value above 12.7 ppm at the time of classification to adopt contingency measures that will take effect without further action by the State or EPA upon a determination by EPA that an area failed to make reasonable further progress or to attain the standards, as described in § 172(c)(9), or that actual or forecasted VMT exceeded a previous forecast. Section 187(a)(3) requires the State to submit a SIP revision containing contingency measures no later than November 15, 1992. The State submitted these measures as part of the Denver CO SIP on July 11, 1994.

States may implement contingency measures early to obtain additional emission reductions, without being required to adopt replacement contingency measures to put in place should one of the triggering events for implementation of contingency measures occur. This policy is described in a memorandum from Tom Helms, Chief of the OAQPS Ozone Policy and Strategies Group entitled "Early Implementation of Contingency Measures for Ozone and Carbon Monoxide Nonattainment Areas," August 13, 1993.

As noted above, the State did not take credit in the attainment demonstration for the TCMs adopted to meet the requirements of Section 187(a)(2)(B). Because these measures are surplus to the reductions needed for attainment, the State has adopted these as the required contingency measures as well. The Denver region is proceeding with early implementation of these measures to obtain the additional emission reductions they provide.

If a triggering event for contingency measures occurs, EPA will review the status of implementation of the TCMs adopted in Chapter X of the SIP. Each of the TCMs must be fully implemented in order to satisy the contingency measures requirements of Sections 172 and 187. In addition, the EPA/DOT transportation conformity regulation (58 FR 62235, November 24, 1993) requires DRCOG and USDOT to demonstrate that SIP TCMs are being implemented or are on schedule for implementation before making a conformity determination for transportation plans or TIPs. This provides an extra degree of assurance that the contingency measures will be implemented if needed.

Section XIII.C. of the SIP defines the target emissions reduction level for contingency measures. Based on average projected annual VMT growth between 1995 and 2000 and the modeled fleet emission factors for those years, the State determined that minimum emission reductions of 26 tons per day in 1995 and 16 tons per day in 2000 represented the minimum emission reduction levels for contingency measures pursuant to EPA guidance. The TCMs, when fully implemented, are projected to produce an emission reduction of 34 tons per day in the year 2000. The emission reductions would be higher in earlier years, since the baseline fleet emission factors to which the contingency measure effectiveness would be applied are higher. Thus, the submittal satisfies EPA's minimum criteria for contingency measure effectiveness.

E. Mobile Source Emissions Budgets and Transportation Conformity

Section 176(c)(1) of the Act directs that no department, agency, or instrumentality of the federal government may permit any activity that does not conform to a SIP. Section 176(c)(2) further specifies that federally funded transportation improvement programs (TIPs), regional transportation plans, and projects must conform to the SIP in order to be adopted by the metropolitan planning organization. EPA and DOT promulgated implementing regulations for this CAA provision on November 24, 1993 (58 FR 62235).

One key provision of the conformity regulations requires a demonstration that emissions from the transportation plan and TIP are consistent with the emissions budget in the SIP (Sections 93.118 and 93.119 of the conformity rule). The emissions budget is defined as the level of mobile source emissions relied upon in the attainment and/or maintenance demonstration to achieve compliance with the NAAQS in the nonattainment area. The rule's requirements and EPA's policy on emissions budgets are found in the Preamble to the transportation conformity rule (58 FR 62193–96) and in the sections of the rule referenced above. The SIP defines emissions budgets for the 1995 milestone year and the 2000 attainment year.

The 1995 budget is consistent with the mobile source emissions estimate for the milestone year and is 1125 tons per day in the nonattainment area. This budget no longer applies for conformity, since that date has passed. For the year 2000, the SIP includes modeling for scenarios with and without TCMs. The RAQC recommended that the AQCC adopt the emissions budget for the scenario without TCMs as the budget to be used for conformity (825 tons per day in the nonattainment area). However, the AQCC adopted (and the Governor submitted) an emission budget of 808 tons per day in the nonattainment area. This lower budget reflected some (not all) of the emissions reductions associated with the implementation of the TCMs. The AQCC felt that this lower budget would provide a margin of safety for attainment and would provide an extra incentive (through the conformity requirements) for implementation of the TCMs.

Subsequent to submittal of the SIP, DRCOG completed an initial conformity analysis for the 2015 transportation plan and the 1995–2000 TIP, and found that the plan and TIP could not conform to the lower budget adopted by the AQCC and submitted to EPA. In response, the RAQC adopted a resolution requesting that the AQCC revise the SIP to raise the emission budget to the attainment level of 825 tons per day. The AQCC adopted this SIP revision after a public hearing on February 16, 1995, and the Governor submitted this SIP revision on July 18, 1995.

The Governor's July 18, 1995 letter withdraws the 808 ton per day emission budget submitted on July 11, 1994. This leaves the default budget of 825 tons per day from the attainment demonstration as the applicable budget under EPA's conformity rule. Since EPA is proposing to approve the attainment demonstration, the 825 ton per day budget that the attainment demonstration is based on would be approved by default, and no separate action is necessary on the July 18, 1995 submittal of this budget.

Section 93.106(b) of the conformity rule requires that the transportation plans in moderate nonattainment areas reclassified to serious meet certain content and analysis requirements. These new requirements would affect plans adopted two years after reclassification to serious. Once EPA reclassifies the Denver area to serious, these requirements will take effect two years thereafter. DRCOG's transportation planning methodologies already meet many of these requirements.

VOL 61 ISS 132 JL 9 1996 UMI

Longmont

A. Background of Sip Revision

Pursuant to the requirements of the 1990 Clean Air Act Amendments, each State was required to identify its nonattainment areas and submit descriptions of these areas for EPA promulgation in 40 CFR Part 81. Longmont had been designated as unclassifiable/attainment prior to passage of the 1990 Amendments. However, a special monitoring study in 1988–89 recorded an exceedance of the NAAQS in Longmont. (This study is described in Chapter II of the Longmont SIP.) As a result, EPA Region VIII recommended that the Governor designate this area nonattainment in a letter dated January 15, 1991. In a letter dated March 15, 1991, Governor Roy Romer submitted a request that Longmont be designated a moderate nonattainment area, and submitted boundaries for the new area. The designation, classification and boundaries were promulgated by EPA in the **Federal Register** on November 6, 1991 (56 FR 56733).

Since this area had never had a SIP, EPA interpreted Section 172 of the Act to require an attainment demonstration for Longmont. As a moderate area, the applicable attainment date for Longmont is December 31, 1995. Contingency measures under Section 172(b)(9) were also required. On January 15, 1993, EPA made a formal finding that the State had failed to submit these SIP revisions for Longmont.

On July 13, 1994, Governor Roy Romer submitted comprehensive revisions to the Colorado SIP. The carbon monoxide SIP element submittal for Longmont addressed the outstanding CAA requirements discussed above, as well as other CAA mandates. EPA found this SIP element complete on July 14, 1994. The CO SIP revision for Longmont was developed primarily by APCD, in consultation with the City of Longmont. The SIP development process is discussed in Chapter I of the SIP.

Throughout the remainder of this **Federal Register** document, references are made to the "Longmont area." This is a matter of convenience; these references apply to the Longmont CO nonattainment area as defined in 40 CFR Part 81 unless otherwise noted.

B. Attainment Demonstration and Control Strategies; Longmont

(1) Attainment Demonstration

A different approach was used for demonstrating attainment in Longmont than the methodology used in Denver. Originally, the State planned to develop the attainment demonstration for Longmont as part of the modeling for Denver. However, it was discovered that the ambient conditions which led to exceedances of the CO NAAQS in Denver were not directly applicable to Longmont. After reviewing the results of the 1988–89 special monitoring studies, which suggested that exceedances occur due to emissions on a neighborhood scale, and in consideration of Longmont's small size and low traffic counts relative to conditions in Denver, EPA concluded that the complex UAM/CAL3QHC modeling methodology used in Denver was not necessary for demonstrating attainment in Longmont. EPA recommended that a simple rollforward analysis, similar to that used in attainment demonstrations for Colorado's smaller PM10 nonattainment areas, be used for Longmont. This decision is documented in a July 26, 1993 letter from EPA to APCD.

The methodology used and the results are presented in Chapter IV of the SIP. The SIP projects a second maximum concentration of 6.97 ppm at the end of 1995, well below the 9.0 ppm NAAQS.

(2) Control Strategies

Section 172(c)(1) of the Act requires the plans for all nonattainment areas to provide for the implementation of RACM (including RACT) as expeditiously as practicable and to provide for attainment of the NAAQS. EPA interprets this requirement to impose a duty on all nonattainment areas to consider the available control measures, and to adopt and implement such measures as are reasonably available and necessary for attainment of the NAAQS as components of the area's attainment demonstration. EPA has reviewed the State's explanation and associated documentation and concluded that it adequately justifies the control measures being implemented.

The Longmont CO SIP takes credit for several control programs in the attainment demonstration. These control strategies, identified in Table III.3 and discussed in Chapter V of the SIP, are measures which were in existence at the time of CO SIP development, and for which no further State regulatory action was required. EPA is not taking action on these control strategies in this **Federal Register** document, as these are strategies which have been adopted through previous SIP revisions and have been or are being acted on in other **Federal Register** documents. The attainment demonstration does not take credit for any newly-adopted control strategies, nor are any such strategies included in the SIP. In addition, Chapter V discusses several other activities underway in the Longmont area that have emission reduction benefits. However, these activities are not identified as control strategies and are not reflected in the 1995 attainment emission inventory, and thus, EPA is not incorporating these measures into the SIP.

The control strategies relied upon for the Longmont attainment demonstration include the Federal motor vehicle control program, the 2.7% oxygenated fuels program (approved in the **Federal Register** on July 25, 1994 (59 FR 37698)), the enhanced inspection and maintenance (I/M) program (conditionally approved in the **Federal Register** on November 8, 1994 (59 FR 55594)), various ongoing travel reduction strategies and transportation system improvements, and woodburning control measures from the Denver PM10 SIP (the woodburning program was approved in the **Federal Register** on July 25, 1995 (59 FR 37698)).

The package of strategies incorporated in the attainment demonstration is expected to reduce emissions from 55.070 tons per day in 1988 to 37.292 tons per day in 1995, for an overall reduction of approximately 32%. The strategies result in a 1995 projected second maximum concentration of 6.97 ppm.

C. Contingency Measures: Longmont

EPA's requirements for contingency measures are described above. Unlike Denver, Longmont is not subject to the CAA Section 187(a)(2)(A) requirement for a VMT forecasting and tracking program, and thus is not required to implement contingency measures in the event that a VMT forecast is exceeded. Contingency measures for Longmont were submitted as part of the July 13, 1994 SIP.

The 3.1% oxygenated fuels program, adopted as part of the Denver CO SIP, has been adopted as the contingency measure for Longmont. This measure is being implemented in the entire six-county Denver metropolitan area as required by the Clean Air Act, and thus is being implemented in Longmont, even though it is not credited in the attainment demonstration. EPA considers this to be early implementation of the contingency measure, as provided for in the August 13, 1993 Tom Helms memorandum referenced above.

Section V.C. of the SIP defines the target emissions reduction level for contingency measures. VMT growth in Longmont was estimated at 3.1% per year, which equates to CO emissions growth of 0.92 tons per year. The 3.1% oxygenated fuels program gives Longmont an additional incremental emission reduction over the 2.7% program of 1.01 tons per year, which exceeds the minimum emission reduction level. Thus, EPA's minimum requirements for contingency measures are satisfied by the State's submittal.

II. Implications of This Action

In today's action, EPA is proposing to approve SIP revisions submitted by the Governor on July 11, 1994, July 13, 1994, and September 29, 1995. Specifically, EPA is proposing to (1) approve the July 11, 1994 attainment demonstration, VMT tracking and forecasting program, TCM, and contingency measures submittals for Denver; (2) approve the July 13, 1994 attainment demonstration and contingency measures submittals for Longmont; and (3) approve the control strategies for Denver, including the September 29, 1995 submittal of revisions to Regulations 11 and 13 (I/M and oxygenated fuels).

In this document, EPA is also proposing to find that the Denver/Boulder carbon monoxide nonattainment area did not attain the NAAQS by the required attainment date of December 31, 1995, and to revise the area's classification for carbon monoxide in 40 CFR Part 81 from moderate to serious. This proposed finding is based on air quality data revealing more than one exceedance of the CO NAAQS during calendar year 1995, resulting in a design value higher than the NAAQS for the period 1994–95. By action dated December 20, 1994, the EPA Administrator delegated to the Regional Administrators the authority to determine whether CO nonattainment areas attained the NAAQS, and to reclassify those that did not.

III. Request for Public Comments

EPA is requesting comments on all aspects of today's proposal. As indicated at the outset of this document, EPA will consider any comments received by August 8, 1996.

IV. Executive Order (EO) 12866

Under EO 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the EO. The EO defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f) of the EO, including, under paragraph (1), that the rule may "have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities."

The SIP-related actions proposed today have been classified as Table 3 actions for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted these regulatory actions from EO 12866 review.

Likewise, EPA has determined that the finding of failure to attain proposed today would result in none of the effects identified in section 3(f) of the EO. Under Section 186(b)(2) of the Clean Air Act, findings of failure to attain and reclassification of nonattainment areas are based upon air quality considerations and must occur by operation of law in light of certain air quality conditions. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities.

V. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. sections 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisidiction over populations that are less than 50,000.

SIP revision approvals under Section 110 and Subchapter I, Part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval process does not impose any new requirements, EPA certifies that this proposed rule would not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonebleness of State actions. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–266 (S. Ct. 1976); 42 U.S.C. section 7410(a)(2).

As discussed in section IV. of this document, findings of failure to attain and reclassification of nonattainment areas under Section 186(b)(2) of the CAA do not, in and of themselves, create any new requirements. Therefore, I certify that today's proposal does not have a significant impact on small entities.

VI. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the SIP approval actions proposed today do not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. These Federal actions approve pre-existing requirements under State or local law, and impose no new Federal requirements. Accordingly, no additional costs to State, local or tribal governments, or to the private sector, result from these actions.

Likewise, EPA believes, as discussed in section IV of this document, that the proposed finding of failure to attain and reclassification to serious are factual determinations based upon air quality data and must occur by operation of law and, hence, do not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

VOL 61 ISS 132 JL 9 1996 UMI

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting recordkeeping requirements.

40 CFR Part 81

Air pollution control.

Authority: U.S.C. 7401–7671q.

Dated: June 24, 1996.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 96–17319 Filed 7–8–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 55

[FRL–5534–7]

Outer Continental Shelf Air Regulations; Consistency Update for California

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of proposed rulemaking; consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act ("the Act"), the Clean Air Act Amendments of 1990. The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the South Coast Air Quality Management District (South Coast AQMD) and the Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. The OCS requirements for the above Districts, contained in the Technical Support Document, are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations. Proposed changes to the existing requirements are discussed below.

DATES: Comments on the proposed update must be received on or before August 8, 1996.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (A–5), Attn: Docket No. A–93–16 Section XII, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Supporting information used in developing the proposed notice and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 Section XII. This docket is available for public inspection and copying Monday–Friday during regular business hours at the following locations:

EPA Air Docket (A–5), Attn: Docket No. A–93–16 Section XII, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–131), Attn: Air Docket No. A–93–16 Section XII, Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air and Toxics Division (A–5–3), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1992, EPA promulgated 40 CFR part 55[1], which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This notice of proposed rulemaking is being promulgated in response to the submittal of rules by two local air pollution control agencies. Public comments received in writing within 30 days of publication of this notice will be considered by EPA before publishing a notice of final rulemaking.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

EPA Evaluation and Proposed Action

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12 (e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

A. After review of the rules submitted by South Coast AQMD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which the South Coast AQMD is designated as the COA.

1. *The following rules were submitted as revisions to existing requirements:*

Rule 102 Definition of Terms (Adopted 11/17/95)

Rule 212 Standards for Approving Permits and Proposed Amended Regulation XIII—New Source Review (Adopted 12/7/95) except (e)

Rule 301 Permit Fees (Adopted 10/13/95)

Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 11/17/95)

Rule 701 Air Pollution Emergency Contingency Actions (Renamed) (Adopted 9/8/95)

Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 12/7/95)

Rule 1149 Storage Tank Degassing (Adopted 7/14/95)

Rule 1301 General (Adopted 12/7/95)

Rule 1302 Definitions (Adopted 12/7/95)

Rule 1303 Requirements (Adopted 12/7/95)

Rule 1304 Exemptions (Adopted 12/7/95)

Rule 1306 Emission Calculations (Adopted 12/7/95)

Rule 1313 Permit to Operate (Adopted 12/7/95)

Rule 1610 Old-Vehicle Scrapping (Adopted 10/13/95)

Rule 1612 Credits for Clean On-Road Vehicles (Adopted 9/8/95)

Rule 1620 Credits for Clean Off-Road Mobile Equipment (Adopted 9/8/95)

Rule 2000 General (Adopted 12/7/95)

Rule 2001 Applicability (Adopted 12/7/95)

Rule 2002 Allocations for Oxides of Nitrogen (NOx) and Oxides of Sulfur (SOx) (Adopted 12/7/95)

Rule 2004 Requirements (Adopted 12/7/95)

Rule 2005 New Source Review for RECLAIM (Adopted 12/7/95) except (i)

Rule 2006 Permits (Adopted 12/7/95)

Rule 2007 Trading Requirements (Adopted 12/7/95)

Rule 2015 Backstop Provisions (Adopted 12/7/95) except (b)(1)(G) and (b)(3)(B)

Appendix A Volume IV—(Protocol for oxides of sulfur) (Adopted 9/8/95)

Appendix A Volume V—(Protocol for oxides of nitrogen) (Adopted 9/8/95)

Rule 2100 Registration of Portable Equipment (adopted 12/8/95)

2. *The following rule was submitted to be added as a new requirement:*

Rule 118 Emergencies (Adopted 12/8/95)

3. *The following rules were submitted but will not be included because they are Administrative and/or Procedural:*

Rule 301.2 Annual Operating Permit Fee-Reduced Penalty for Underpayment (Adopted 8/11/95)

Rule 310 Amnesty for Unpermitted Equipment (Adopted 10/13/95)

Rule 1309 Emission Reduction Credits (Adopted 12/7/95)

Rule 1309.1 Priority Reserve (Adopted 12/7/95)

Rule 1310 Analysis and Reporting (Adopted 12/7/95)

Rule 1501 Work Trip Reduction Plans (Adopted 12/8/95)

Rule 1501.1 Alternatives to Work Trip Reduction Plans (Adopted 12/8/95)

Rule 2202 On-Road Motor Vehicle Mitigation Options (Adopted 12/8/95)

4. *The following rules were submitted but will not be included until the District submits the resolution for these rules:*

Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SOx) Emissions (Adopted 12/7/95)

Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NOx) Emissions (Adopted 12/7/95)

5. *The following rules were submitted but will not be included until the District's Title V Operating Permits program has been approved:*

Rule 518 Variance Procedures for Title V Facilities (Adopted 8/11/95)

Rule 518.1 Permit Appeal Procedures for Title V Facilities (Adopted 8/11/95)

Rule 518.2 Federal Alternative Operating Conditions (Adopted 1/12/96)

Rule XXX Title V Permits (Adopted 8/11/95)

6. *The following rules were submitted but will not be included because they do not apply to OCS Sources:*

Rule 461 Gasoline Transfer and Dispensing (Adopted 9/8/95)

Rule 462 Organic Liquid Loading (Adopted 6/9/95)

Rule 1130 Graphic Arts (Adopted 9/8/95)

Rule 1166 Volatile Organic Compound Emissions from Decontamination of Soil (Adopted 7/14/95)

B. After review of the rules submitted by Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which Ventura County APCD is designated as the COA.

1. *The following rules were submitted as revisions to existing requirements:*

Rule 26.1 New Source Review—Definitions (Adopted 2/13/96)

Rule 26.2 New Source Review—Requirements (Adopted 2/13/96)

Rule 26.3 New Source Review—Exemptions (Adopted 2/13/96)

Rule 42 Permit Fees (Adopted 3/12/96)

Rule 44 Exemption Evaluation Fee (Adopted 10/10/95)

Rule 74.7 Fugitive Emissions of Reactive Organic Compounds (ROC) at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)

Rule 74.23 Stationary Gas Turbines (Adopted 10/10/95)

2. *The following rule was submitted but will not be included because they are Administrative and/or Procedural:*

Rule 9 Arrest Authority (Adopted 3/12/96)

Rule 26.4 New Source Review—Emission Banking (Adopted 2/13/96)

Rule 26.5 New Source Review—Community Bank (Adopted 2/13/96)

3. *The following is a new rule to be included:*

Rule 76 Federally Enforceable Limits on Potential to Emit (Adopted 10/10/95)

Executive Order 12291 (Regulatory Impact Analysis)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291. This exemption continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." Small entities include small businesses, organizations, and governmental jurisdictions.

As was stated in the final regulation, the OCS rule does not apply to any small entities, and the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore requirements into the OCS rule to maintain consistency with onshore regulations as required by section 328 of the Act and does not alter the structure of the rule.

The EPA certifies that this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons,

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

[2] After delegation, each COA will use its administrative and procedural rules as onshore. In those instances where EPA does not delegate authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14 (c)(4).

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Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 30, 1996.

Felicia Marcus,

Regional Administrator.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. § 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is proposed to be amended by revising paragraphs (e)(3)(ii)(G), and (e)(3)(ii)(H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Part I and Part II).

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

3. Appendix A to CFR Part 55 is proposed to be amended by revising paragraph (b)(7) and (8) under the heading "California" to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

* * * * *

(b) * * *

* * * * *

(7) The following requirements are contained in *South Coast Air Quality Management District Requirements Applicable to OCS Sources:*

Rule 102 Definition of Terms (Adopted 11/17/95)
Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 3/6/92)
Rule 118 Emergencies (Adopted 12/8/95)
Rule 201 Permit to Construct (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 3/6/92)
Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit for Open Burning (Adopted 1/5/90)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications (Adopted 1/5/90)
Rule 212 Standards for Approving Permits (Adopted 12/7/95) except (e)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Stack Monitoring (Adopted 8/7/81)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 8/12/94)
Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 10/13/95)
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 6/10/94)
Rule 304.1 Analyses Fees (Adopted 6/10/94)
Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
Rule 306 Plan Fees (Adopted 6/10/94)
Rule 309 Fees for Regulation XVI (Adopted 6/10/94)
Rule 401 Visible Emissions (Adopted 4/7/89)
Rule 403 Fugitive Dust (Adopted 7/9/93)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions,(a)and e)only (Adopted 5/5/78)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 11/17/95)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 5/4/90)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 3/5/82)
Rule 444 Open Fires (Adopted 10/2/87)
Rule 463 Organic Liquid Storage (Adopted 3/11/94)
Rule 465 Vacuum Producing Devices or Systems (Adopted 11/1/91)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474 Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77) Addendum to Regulation IV (Effective 1977)
Rule 701 Air Pollution Emergency Contingency Actions (Adopted 9/8/95)
Rule 702 Definitions (Adopted 7/11/80)
Rule 704 Episode Declaration (Adopted 7/9/82)
Rule 707 Radio—Communication System (Adopted 7/11/80)
Rule 708 Plans (Adopted 7/9/82)
Rule 708.1 Stationary Sources Required to File Plans (Adopted 4/4/80)
Rule 708.2 Content of Stationary Source Curtailment Plans (Adopted 4/4/80)
Rule 708.4 Procedural Requirements for Plans (Adopted 7/11/80)
Rule 709 First Stage Episode Actions (Adopted 7/11/80)
Rule 710 Second Stage Episode Actions (Adopted 7/11/80)
Rule 711 Third Stage Episode Actions (Adopted 7/11/80)
Rule 712 Sulfate Episode Actions (Adopted 7/11/80)
Rule 715 Burning of Fossil Fuel on Episode Days (Adopted 8/24/77) Regulation IX—New Source Performance Standards (Adopted 4/8/94)
Rule 1106 Marine Coatings Operations (Adopted 1/13/95)
Rule 1107 Coating of Metal Parts and Products (Adopted 5/12/95)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/6/81)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous and Liquid-Fueled Internal Combustion Engines (Adopted 12/9/94)
Rule 1113 Architectural Coatings (Adopted 9/6/91)
Rule 1116.1 Lightering Vessel Operations-Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 3/10/95)
Rule 1122 Solvent Cleaners (Degreasers) (Adopted 4/5/91)
Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1129 Aerosol Coatings (Adopted 11/2/90)

Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 12/7/95)
Rule 1136 Wood Products Coatings (Adopted 9/8/95)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 7/14/95)
Rule 1168 Control of Volatile Organic Compound Emissions from Adhesive Application (Adopted 12/10/93)
Rule 1171 Solvent Cleaning Operations (Adopted 5/12/95)
Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 5/13/94)
Rule 1176 Sumps and Wastewater Separators (Adopted 5/13/94)
Rule 1301 General (Adopted 12/7/95)
Rule 1302 Definitions (Adopted 12/7/95)
Rule 1303 Requirements (Adopted 12/7/95)
Rule 1304 Exemptions (Adopted 12/7/95)
Rule 1306 Emission Calculations (Adopted 12/7/95)
Rule 1313 Permit to Operate (Adopted 12/7/95)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 4/8/94)
Rule 1610 Old-Vehicle Scrapping (Adopted 10/13/95)
Rule 1612 Credits for Clean On-Road Vehicles (Adopted 9/8/95)
Rule 1620 Credits for Clean Off-Road Mobile Equipment (Adopted 9/8/95)
Rule 1701 General (Adopted 1/6/89)
Rule 1702 Definitions (Adopted 1/6/89)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 1/6/89)
Rule 1706 Emission Calculations (Adopted 1/6/89)
Rule 1713 Source Obligation (Adopted 10/7/88)
Regulation XVII Appendix (effective 1977)
Rule 1901 General Conformity (Adopted 9/9/94)
Rule 2000 General (Adopted 12/7/95)
Rule 2001 Applicability (Adopted 12/7/95)
Rule 2002 Allocations for oxides of nitrogen (NO_X) and oxides of sulfur (SO_X) Emissions (Adopted 12/7/95)
Rule 2004 Requirements (Adopted 12/7/95)
Rule 2005 New Source Review for RECLAIM (Adopted 12/7/95) except (i)
Rule 2006 Permits (Adopted 12/7/95)
Rule 2007 Trading Requirements (Adopted 12/7/95)
Rule 2008 Mobiles Source Credits (Adopted 10/15/93)
Rule 2010 Administrative Remedies and Sanctions (Adopted 10/15/93)
Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SOx) Emissions (Adopted 10/15/93)
Appendix A Volume IV—(Protocol for oxides of sulfur) (Adopted 9/8/95)
Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NOx) Emissions (Adopted 10/13/93)
Appendix A Volume V—(Protocol for oxides of nitrogen) (Adopted 9/8/95)
Rule 2015 Backstop Provisions (Adopted 12/7/95) except (b)(1)(G) and (b)(3)(B)
Rule 2100 Registration of Portable Equipment (Adopted 12/7/95)
XXXI Acid Rain Permit Program (Adopted 2/10/95)

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 2 Definitions (Adopted 12/15/92)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 6/13/95)
Rule 11 Definition for Regulation II (Adopted 6/13/95)
Rule 12 Application for Permits (Adopted 6/13/95)
Rule 13 Action on Applications for an Authority to Construct (Adopted 6/13/95)
Rule 14 Action on Applications for a Permit to Operate (Adopted 6/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 6/13/95)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 23 Exemptions from Permits (Adopted 12/13/94)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 2/13/96)
Rule 26.2 New Source Review—Requirements (Adopted 2/13/96)
Rule 26.3 New Source Review—Exemptions (Adopted 2/13/96)
Rule 26.6 New Source Review—Calculations (Adopted 10/22/91)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 10/22/91)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Rule 33 Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1 Part 70 Permits—Definitions (Adopted 10/12/93)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 10/12/93)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 10/12/93)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 10/12/93)
Rule 33.5 Part 70 Permits—Timeframes for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 10/12/93)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 10/12/93)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 3/14/95)
Appendix II–B Best Available Control Technology (BACT) Tables (Adopted 12/56)
Rule 42 Permit Fees (Adopted 3/12/96)
Rule 44 Exemption Evaluation Fee (Adopted 10/10/95)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 6/14/94)
Rule 56 Open Fires (Adopted 3/29/94)
Rule 57 Combustion Contaminants-Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 6/14/94)
Rule 66 Organic Solvents (Adopted 11/24/87)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 6/28/94)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 08/11/92)

Rule 74.6 Surface Cleaning and Degreasing (Adopted 5/8/90)
Rule 74.6.1 Cold Cleaning Operations (Adopted 9/12/89)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 9/12/89)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds (ROC) at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/21/93)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 6/16/92)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NO_X (Adopted 4/9/85)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 12/13/94)
Rule 74.15 Boilers, Steam Generators and Process Heaters (5MM BTUs and greater) (Adopted 11/8/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (1–5MM BTUs)(Adopted 6/13/95)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 6/8/93)
Rule 74.23 Stationary Gas Turbines (Adopted 10/10/95)
Rule 74.24 Marine Coating Operations (Adopted 3/8/94)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 5/10/94)
Rule 74.30 Wood Products Coatings (Adopted 5/17/94)
Rule 75 Circumvention (Adopted 11/27/78)
Rule 76 Federally Enforceable Limits on Potential to Emit (Adopted 10/10/95)
Appendix IV–A Soap Bubble Tests (Adopted 12/86)
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Stack Monitoring (Adopted 6/4/91)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)
Rule 220 General Conformity (Adopted 5/9/95)

* * * * *

[FR Doc. 96–17458 Filed 7–8–96; 8:45 am]
BILLING CODE 6050–30–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 397

[FHWA Docket No. MC–96–10]

Recommendations on Uniform Forms and Procedures for the Transportation of Hazardous Materials

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of report availability; request for comments.

SUMMARY: The FHWA is requesting public comment on the final report and recommendations of the Alliance for Uniform HazMat Transportation Procedures (the Alliance) concerning the implementation of 49 U.S.C. 5119—formerly referred to as section 22 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA). Section 5119 requires the Secretary of Transportation (the Secretary) to establish a working group of State and local government officials to establish uniform forms and procedures for the registration of persons that transport hazardous materials by motor vehicle, and to decide whether to limit the filing of State registration and permit forms and the collection of filing fees. The Alliance is the working group created to fulfill the requirements of the HMTUSA, and accordingly, has published its final report with recommendations which is now available to the public.

DATES: Written comments must be received on or before November 6, 1996.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–96–10, room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, D. C. 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, (202) 366–4009; Mr. James D. McCauley, Office of Motor Carrier Safety and Technology, (202) 366–9579; or Mr. Raymond W. Cuprill, Office of Chief Counsel, (202) 366–0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, D. C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 5119 of Title 49, United States Code, requires that the Secretary establish a working group of State and local government officials to develop recommendations on uniform forms and procedures that the States can use to register and permit persons that transport, or cause the transportation of, hazardous materials by motor vehicle. The working group is also required to make recommendations as to whether the filing of registration and permit forms, and the collection of related fees, should be limited to the State in which a person resides or has its principal place of business. In developing its recommendations, the group is required to consult with persons who are subject to these registration and permit requirements. The recommendations of the working group are to be included in a final report to the Secretary of Transportation.[1] Finally, section 5119 requires the issuance of regulations implementing those recommendations with which the Secretary agrees.

Section 5119 was originally enacted as section 22 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101–615, 104 Stat. 3244; November 16, 1990). The HMTUSA amended the Hazardous Materials Transportation Act of 1974 (HMTA), Public Law 93–633, 88 Stat. 2156, which granted regulatory and enforcement authority to the Secretary to provide adequate protection against the risks to life and property inherent in the transportation of hazardous materials in commerce. The HMTA was designed to replace a patchwork of State and Federal laws and regulations concerning hazardous materials transportation with a scheme of uniform, national regulations. The HMTA and HMTUSA were repealed by Public Law 103–272 (108 Stat. 745, 1379; July 5, 1994) with the statutory provisions applicable to the transportation of hazardous materials recodified at 49 U.S.C. 5101 *et seq.*

Implementation of Section 5119

A. Creation of the Alliance for Uniform HazMat Transportation Procedures

In 1991, the National Governors' Association (NGA) and the National Conference of State Legislatures (NCSL) were awarded a contract to coordinate the staffing and operations of the working group. The NGA and NCSL presented recommendations to the Secretary for the establishment of a panel to carry out the tasks of the working group. The panel was approved by the Secretary and held its first meeting in January 1992, at which time it selected the title "the Alliance for Uniform HazMat Transportation Procedures" or "the Alliance."

The Alliance authorized the formation of four subgroups to address specific areas of State hazardous materials transportation regulation. Industry representatives were invited to participate in the subgroups. The subgroups were:

1. Shipper and Carrier Registration Subgroup;
2. Shipper and Carrier Permitting and Licensing Subgroup;
3. Operational Issues Subgroup; and,
4. Audit and Enforcement Subgroup.

Each subgroup was asked to examine current State practices, identify the extent to which State practices are uniform, identify barriers to uniformity, and make recommendations for criteria on which a uniform State program would be based.

One of the key decisions to come out of the registration subgroup concerned shippers. After reviewing results from surveys of the States, the subgroup decided not to recommend a shipper registration program separate from the Federal program operated by the Research and Special Programs Administration (RSPA).[2] (The RSPA's hazardous materials registration and fee assessment program are discussed later in this document.) Therefore, the following discussion of the Alliance's program only pertains to motor carriers.

B. Pilot Study

In May of 1992, the Alliance proceeded with the design and implementation of a two-year pilot project. The project was based upon the following assumptions/recommendations:

1. Base-state system for registration and collection of fees;
2. Reciprocity between states that require permits;
3. Additional information for hazardous waste transporters;
4. Individual state enforcement authority;
5. Participation by localities; and,
6. Establishment of a governing board to manage the pilot project.

Based upon the Alliance's recommendations, the FHWA funded a two-year demonstration program for four States. During the first year, each State would develop the internal administrative procedures and organization to conduct a test of the Alliance's recommended program. During the second year, the States would implement the program for motor carriers involved in the transportation of hazardous materials.

In November of 1992, the Alliance contacted State hazardous materials transportation program administrators to solicit participation in the pilot study. The States of Minnesota, Nevada, Ohio, and West Virginia were chosen based upon the following criteria established by the Alliance:

1. The Governor and State legislature were committed to taking the necessary legislative and administrative actions to conduct the State's hazardous materials transportation programs under the principles and operating procedures of the Alliance's recommendations;
2. The regulated community within the State was committed to supporting participation in the program;
3. The State had experience in the registration and permitting of hazardous materials, and/or in the transportation of radioactive materials;
4. The group of States chosen reflected "geographic diversity;"
5. At least one pilot State had a "major locality" with a hazardous materials transportation registration or permitting program.

On July 1, 1993, the pilot States began registering and permitting motor carriers in accordance with the Alliance's recommendations. Each participating State was given the opportunity to select one of the following three options for implementing the Alliance's Uniform Program:

1. The State could apply the requirements of the Uniform Program to all motor carriers (interstate and intrastate); or
2. The State could apply the requirements only to domiciled, interstate motor carriers that operate in two or more of the pilot States; or,
3. The State could select an even smaller sample of interstate motor carriers.

Minnesota, Ohio, and West Virginia used option one while Nevada selected option two for the first round of registration and permitting with the intent of expanding the program to all motor carriers during the second program year.

C. The Alliance's Findings and Conclusions

On March 15, 1996, the Alliance submitted its final report and recommendations to the FHWA. The Alliance concluded that the pilot study met the uniformity mandate of 49 U.S.C. 5119. The report states that all of the pilot States support the program and believe that other States should join the program to increase the benefits provided by this uniform program and to spread the administrative load presented by multi-state carriers. The report claims that industry participants also support making the program uniform in all States, although the industry believes that a shorter application form and a simplified formula for calculating fees should be used.

The Alliance recommends that the Secretary:

1. Explore options for the consolidation of Federal and State registration programs;
2. Consider waiving the Federal requirement for motor carriers that have obtained a permit under the Uniform Program; and
3. Promote a one-stop repository for up-to-date information on hazardous materials routing designations.

In addition, the Alliance's Governing Board, which was responsible for managing the pilot program, recommends that the Congress amend section 5119 to require that any jurisdiction that elects to register and/or permit motor carriers to transport hazardous materials, must do so in conformity with the Alliance's Uniform Program. The Board recommends that the Secretary retain the authority to preempt any State program or program provision that the Secretary determines is inconsistent with the uniformity mandate. Additionally, the Board recommends that the Congress establish a deadline (not less than three years) for compliance with the mandate and provide financial support to the Alliance to facilitate State entry into the Uniform Program.

Other Federal and State Initiatives

There are several major activities underway which may have an impact or may be related to the State hazardous materials transportation registration and permitting processes. These activities include: (1) The FHWA's motor carrier safety permits and inspection rulemaking; (2) the Research and Special Program Administration's (RSPA) Hazardous Materials Registration and Fee Assessment Program; (3) the Commercial Vehicle Information System (CVIS) feasibility study; and (4) the elimination of the Interstate Commerce Commission (ICC) and the transfer of the ICC's registration (operating authority) and insurance programs to the FHWA. All of these

[1] The report is to be also submitted to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Public Works and Transportation of the House of Representatives.

[2] *Alliance Phase One Subgroup Reports*, National Governors' Association-National Conference of State Legislatures, June 1992. A copy of this document is included in the docket file.

VOL
61
ISS
132
JL
9
1996
UMI

initiatives, as well as the FHWA's motor carrier registration requirement—the motor carrier identification report (Form MCS–150) required by 49 CFR 385.21 and used by the FHWA to assign USDOT numbers—and the registration and insurance filings of for-hire motor carriers required by many States (Single State Registration System), are very similar or related. However, these programs are commonly administered as separate functions by several agencies within a State.

These activities may have a significant bearing on the public comments offered in response to this notice and on the ultimate direction of any resulting rulemaking actions affecting Federal and State registration and permitting of transporters and shippers of hazardous materials. The FHWA encourages comments on the relationship between the recommendations of the Alliance and the activities discussed in this notice.

FHWA Rulemaking on Motor Carrier Safety Permits and the Inspection of Vehicles Transporting Highway-Route-Controlled Quantities of Radioactive Materials [49 U.S.C. 5109(a) and 5105(e)]

Section 5109(a), Motor Carrier Safety Permits (originally enacted as one of the provisions of section 8 of the HMTUSA), provides that a motor carrier shall only transport, or cause the transportation of, hazardous materials in commerce if the carrier holds a safety permit issued by the Secretary and keeps a copy of the permit, or other proof of its existence, in the vehicle. The Secretary is required to prescribe by regulation the hazardous materials and amounts to which the permit requirement applies. However, the list of hazardous materials must include, at a minimum and in amounts established by the Secretary, the following:

(1) Division 1.1, 1.2, and 1.3 (class A or B explosives);

(2) liquefied natural gas;

(3) hazardous material the Secretary designates as extremely toxic by inhalation; and

(4) a highway-route-controlled quantity of radioactive material, as defined by the Secretary.

Section 5105(e), Inspections of Motor Vehicles Transporting Certain Material (originally enacted as section 15 of the HMTUSA), directs the Secretary to issue regulations requiring that each motor vehicle transporting a highway-route-controlled quantity of Class 7 (radioactive) material in commerce be inspected and certified as complying with the Federal hazardous materials and motor carrier safety laws and regulations. The Secretary may require the inspections to be conducted by Federal inspectors or in accordance with appropriate State procedures. The Secretary may allow self-certification by motor carriers using employees that meet minimum qualifications set by the Secretary.

On June 17, 1993, the FHWA published a notice of proposed rulemaking (NPRM) to implement the requirements of 49 U.S.C. 5109 and 5105 (58 FR 33418). The FHWA proposed to amend part 397 of the Federal Motor Carrier Safety Regulations (FMCSRs) by adding a new subpart B, Motor Carrier Safety Permits. The notice proposed to initially limit the safety permit program to the transportation of the four classes of hazardous materials set forth in the statute, with phase-in periods for Division 1.1, 1.2 and 1.3 materials (Class A and B explosives)[3] and limiting the materials considered extremely toxic by inhalation to those that meet the criteria of Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A (see 49 CFR 173.115 and 173.132) and are transported in quantities of more than 1 liter (1.06 quarts). The proposed permit procedures made extensive use of existing FHWA programs, forms and procedures, and as a result, the agency proposed not to assess permit fees. To obtain a permit, a motor carrier would be required to submit a revised MCS–150 (Motor Carrier Identification Report) to the Regional Director, Office of Motor Carriers, for the region in which the motor carrier has its principal place of business. Determinations on safety permit applications would be based upon a safety fitness finding made pursuant to 49 CFR part 385. A "satisfactory" safety rating would be a prerequisite to the granting of a safety permit. A less than "satisfactory" safety rating would result in a denial of the permit application. The FHWA would have the discretion to issue a temporary safety permit (120 days) to an unrated motor carrier pending a safety fitness determination. Safety permits would be valid for three years and would be renewable. Reviews of the FHWA's determinations on permit issuance would be handled pursuant to the existing procedures applicable to safety rating reviews (49 CFR 385.15 and 385.17). The current safety rating notification letter would be modified to serve as the safety permit. The letter would bear a safety permit number, which would be the motor carrier's identification or census number assigned by the FHWA when the motor carrier submits the MCS–150 required by § 385.21. Motor carriers would be required to display this permit number on the shipping papers and on the commercial motor vehicles used.

With regard to the inspection requirements of 49 U.S.C. 5105, the FHWA proposed that motor carriers transporting highway-route-controlled quantities of Class 7 (radioactive) materials be required to inspect each commercial motor vehicle used before each trip and that a written certification by a qualified inspector be maintained. It was proposed that these vehicles be inspected through the use of the general inspection requirements contained in 49 CFR part 396, "Inspection, Repair, and Maintenance," and the more detailed inspection standards found in appendix G to 49 CFR subchapter B, "Minimum Periodic Inspection Standards." The inspector qualification requirements for the periodic inspection (specified in 49 CFR 396.19) would be used to ensure that inspectors are qualified to perform the vehicle inspections.

The FHWA carefully reviewed the various registration and permitting requirements of the Federal law and decided not to proceed with further rulemaking action to implement the requirements of 49 U.S.C. 5109 and 5105 until it had considered the final report and recommendations of the Alliance for implementing section 5119. This was considered the most effective way to satisfy all of these related statutory requirements, as the Alliance's recommendations would have a significant bearing on the implementation of the Federal safety permit and inspection requirements.

Federal Hazardous Materials Registration and Fee Assessment Program and the Hazardous Materials Emergency Preparedness Grant Program

Section 5108(a)(1) (originally enacted as one of the provisions of section 8 of the HMTUSA) requires that each person transporting or causing to be transported in commerce the following hazardous materials must file a "registration statement" with the Secretary:

(1) Highway-route-controlled quantities of Class 7 (radioactive) materials;

(2) more than 25 kilograms of Division 1.1, 1.2 and 1.3 (explosives) materials;

[3] The proposed phase-in period was to be implemented as follows:

Effective date and covered quantities of class A and/or B explosives:

Nov. 16, 1993—454 kilograms (1,000 pounds) or more.

Nov. 16, 1994—227 kilograms (500 pounds) or more.

Nov. 16, 1995—25 kilograms (55 pounds) or more.

(3) more than 1 liter in each package of a hazardous material which has been designated by the Secretary as extremely toxic by inhalation;

(4) hazardous material in a bulk package, container, or tank as defined by the Secretary if the package, container, or tank has a capacity of 13,249 or more liters (3,500 or more gallons) or has a volume greater than 13.25 cubic meters (468 cubic feet);

(5) a shipment of at least 2,268 kg (5,000 pounds) (except in a bulk packaging) of a class of hazardous material requiring a placard.

In addition, section 5108(a)(2) provides the Secretary with discretionary authority to require any of the following persons to file a registration statement:

(1) A person transporting or causing to be transported hazardous materials in commerce and not covered by section 5108(a)(1);

(2) a person manufacturing, fabricating, marking, maintaining, reconditioning, repairing, or testing a package or container the person represents, marks or certifies, or sells for use in transporting in commerce hazardous material the Secretary designates.

Paragraph (g) of section 5108 authorizes the Secretary to establish, impose, and collect a fee for the processing of the registration statement as well as an annual fee.

Implementation of these requirements was delegated by the Secretary to the RSPA. Federal registration of hazardous materials offerors and transporters began in 1992 (57 FR 30620, July 9, 1992). Federal registration is required of persons engaged in certain activities that involve the offering or transporting of hazardous materials in interstate, intrastate, or foreign commerce by highway, rail, air, or water. Less than half of the current registrants have identified themselves as highway carriers. The Federal registration program has no preemptive effect upon State and local hazardous materials registration programs.

The annual fee is used to fund grants to State and Indian tribal governments for hazardous materials planning and training purposes. The funds are allocated through the RSPA's Federal Hazardous Materials Emergency Preparedness (HMEP) Grant Program with the first grants awarded to qualifying State and Indian tribal governments in 1993.

In cooperation with the Alliance's pilot program, the concept of "one-stop shopping" for Federal and State registration of motor carriers was tested by the Public Utilities Commission of Ohio (PUCO) and the RSPA. Motor carriers required to register with the State of Ohio were provided with the option of also submitting the Federal registration statement and fee to the PUCO for transmittal to the RSPA. For the 1994–95 registration year (from July 1, 1994 to June 30, 1995), approximately 200 persons registered in the Federal program through the PUCO. During the 1995–96 registration year, the number of persons choosing this option decreased sharply to 76 persons. Only 16 of the participants in the 1994–95 registration year elected to use this process for the 1995–96 registration year.

The Alliance's report, discussed above, recommends that the Secretary explore the consolidation of Federal and State registration programs. The FHWA notes, however, that there are substantial differences between the existing Federal registration program and the program recommended by the Alliance. Commenters should familiarize themselves thoroughly with the purpose and scope of coverage of each program in preparation for providing comments regarding this recommendation by the Alliance.

The Commercial Vehicle Information System (CVIS)

The CVIS project is a feasibility study mandated by 49 U.S.C. 31106, which was originally enacted by section 4003 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914, 2144; December 8, 1991). Specifically, the CVIS ties commercial motor vehicle registration privileges to a motor carrier's safety performance. For the first time, chronically unsafe motor carriers risk losing their vehicle registration privileges if they prove unable or unwilling to improve their operational safety levels after a designated period. The project is a cooperative effort involving the FHWA and five pilot States: Iowa (the lead State), Oregon, Colorado, Minnesota, and Indiana.

Motor carriers are identified for inclusion in the CVIS improvement process (MCSIP—Motor Carrier Safety Improvement Process) through the application of a carrier identification and prioritization algorithm referred to as the Safestat Identification Algorithm (Safestat). Safestat identifies "At Risk" motor carriers by producing a safety score for every interstate motor carrier. Motor carriers are ranked on a worst-first basis. Motor carriers with the lowest scores are considered to be "At Risk" and are scheduled for a compliance review (on-site visit), while motor carriers with less severe safety scores receive "warning letters." Once a motor carrier has been identified for entry into the MCSIP, its safety performance is monitored using a second algorithm called the Safestat Monitoring Algorithm. The MCSIP process has been designed to provide numerous opportunities for motor carriers to improve their safety performance. Failure to improve safety performance, however, will result in progressively more severe penalties leading eventually to suspension or revocation of vehicle registration privileges.

The CVIS could be used to identify hazardous materials (HM) carriers that are "At Risk" by modifying the Safestat Identification Algorithm to include additional information about HM motor carriers. In fact, it has been suggested that a separate safety evaluation area relating to HM be included in the Safestat Identification Algorithm. Under this proposal, HM carriers that have been identified for entry into the MCSIP process and continue to score poorly may have their HM permits denied or suspended.

Interstate Commerce Commission's (ICC) Carrier Registration and Insurance Requirements

On December 29, 1995, the President signed the ICC Termination Act of 1995 (the Act) (Pub.L. 104–88, 109 Stat. 803), which eliminates the ICC and transfers certain motor carrier regulatory functions from the ICC to the FHWA. The principal functions being transferred are the licensing/registration activities, insurance tracking, Mexican motor carrier oversight, and responsibilities for brokers, freight forwarders, and household goods carriers. All past operating authority licenses and financial responsibility filings will remain valid, and all pending applications and financial responsibility filings will be processed by the FHWA. Future applications and insurance filings will continue to be accepted by the FHWA. The Act provides that registration generally remains in effect for up to five years unless it is suspended, amended, or revoked. Reasons for suspension or revocation may include unsafe operations, lack of the required financial responsibility coverage, or failure to comply with regulatory requirements.

The ICC and the FHWA motor carrier programs have the common goal of ensuring that motor carriers are properly identified, have adequate levels of financial responsibility, and operate in a safe manner. Under the present programs, for-hire motor carriers are registered and must show proof of

VOL
61
ISS
1
32
JL
9
1996
UMI

financial responsibility and familiarity with the FHWA's safety regulations. The financial responsibility coverage of for-hire motor carriers is continuously monitored. Policy pre-expiration notices obtained from the insurance companies as well as internal audits are used to determine compliance. Prior to an insurance policy lapsing, the carrier is contacted. Enforcement action, including litigation, can be used to stop the carrier from operating without financial responsibility. A carrier's operating authority can be revoked if financial responsibility is not obtained. A similar procedure applies to motor carriers that have been authorized to self-insure.

The Single State Registration System (SSRS) program was created to succeed the "bingo card" program administered by the ICC. The SSRS program is a base-State system whereby a motor carrier registers its interstate operating authority with and provides proof of financial responsibility coverage to one State (a base-State) instead of multiple States. The base State then distributes the collected fees to other participating States in which the motor carrier's vehicles operate. State participation in the System was limited to those States participating in the bingo card program prior to January 1991. Fee amounts were limited to those imposed prior to November 1991, not to exceed $10 per vehicle.

Under the Act, the SSRS will continue to operate. However, the Department is required to consolidate the current USDOT identification number system, the SSRS, the ICC registration system (including financial responsibility registration) into a single, on-line Federal system. The new system will contain information on, and identification of, all foreign and domestic motor carriers, brokers, and freight forwarders (as well as others required to register with the Department of Transportation) as well as information on safety fitness and compliance with the required levels of financial responsibility coverage. The Secretary may establish fees to fully operate the system, including any personnel to support the overall registration and financial responsibility filing system.

Request for Comments

The FHWA requests comments on the Alliance's final report and recommendations, as outlined in this notice. As discussed above, several major activities related to the hazardous materials transportation registration and permitting processes are also underway. The FHWA encourages commenters to consider these activities and their relationship to the final report and recommendations of the Alliance. Based upon the comments received, the FHWA may hold public meetings to further discuss these issues.

Copies of the report ("Final Report: Uniform Program Pilot Project," March 15, 1996) may be ordered at no charge from the National Governors' Association. Requests should be addressed to: National Governors' Association, c/o Mr. Kyle Winston, Hall of the States, 444 North Capitol Street, Suite 267, NW., Washington, D.C. 20001–1512. Request for copies may also be made by calling the NGA at (202) 624–5300 or via fax (202) 624–5395.

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practical. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the closing date. Interested persons should continue to examine the docket for new material.

List of Subjects in 49 CFR Part 397

Hazardous materials transportation, Highway safety, Motor carriers.

Issued on: July 2, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–17420 Filed 7–8–96; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC83

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Endangered Status for Five Freshwater Mussels and Proposed Threatened Status for Two Freshwater Mussels From Eastern Gulf Slope Drainages of Alabama, Florida, and Georgia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Fish and Wildlife Service provides notice that the comment period is reopened on a proposal to list the fat three-ridge, shiny-rayed pocketbook, Gulf moccasinshell, Ochlockonee moccasinshell, and oval pigtoe as endangered, and the Chipola slabshell and purple bankclimber as threatened, pursuant to the Endangered Species Act of 1973 (Act), as amended. The Service is reopening the comment period on this proposal to allow members of the public to submit comments on these proposals.

DATES: The comment period on this proposal is extended until July 26, 1996.

ADDRESSES: Written comments and materials concerning the proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida, 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert S. Butler at the above address (telephone: 904/232–2580, fax 904/232–2404).

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1994, the Service proposed to add seven freshwater mussels (fat three-ridge, shiny-rayed pocketbook, Gulf moccasinshell, Ochlockonee moccasinshell, oval pigtoe, Chipola slabshell, and purple bankclimber) to the list of endangered and threatened animals (59 FR 39524). These seven species are endemic to the Apalachicolan Region of the eastern Gulf Slope, defined as the rivers from the Escambia River in the west to the Suwannee River in the east. These drainages comprise southeast Alabama, southwest Georgia, and north Florida.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. By September 19, 1994, the Service had received 12 public hearing requests on the proposal to list these seven mussels. The Service conducted five public informational meetings and five public hearings in January 1995. A notice of the public informational meetings, public hearings, and reopening of the comment period until February 10, 1995, was published in the **Federal Register** on December 12, 1994 (59 FR 63987). In a **Federal Register** notice appearing on April 24, 1995 (60 FR 20072), the Service extended the open comment period until May 5, 1995.

A moratorium on listing actions (Public Law 104–6) took effect April 10, 1995, and prevented the Service from making a final decision on these proposals by the August 1995 administrative deadline. The moratorium was lifted on April 26, 1996, when the appropriation for the Department of the Interior for the remainder of fiscal year 1996 was enacted into law. In a **Federal Register** document published on May 16, 1996 (61 FR 24722), the Service outlined in detail the history of the moratorium and indicated the priorities it would follow in eliminating the listing program backlog resulting from the moratorium. Preparation of final rules for these proposed species is considered a Tier 2 priority—processing final decisions on proposed listings. For more information on the moratorium and the priority for backlogged listing actions, refer to the May 15, 1996, **Federal Register** notice.

The Service hereby announces another reopening of the comment period until July 26, 1996. Reopening of the comment period will allow the Service to accept information on scientific studies conducted since the comment period last closed on May 5, 1995. Any other comments from the interested public will also be solicited concerning these proposals.

Author

The primary author of this notice is Robert S. Butler, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216 (904/232–2580 or fax 904/232–2404).

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted).

Dated: July 1, 1996.

Noreen K. Clough,

Regional Director, Southeast Region, Fish and Wildlife Service.

[FR Doc. 96–17222 Filed 7–8–96; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants: 90-day Finding on a Petition to List the Santa Ana Speckled Dace, Santa Ana Sucker, and the Shay Creek Threespine Stickleback as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The U. S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to list three fish as endangered, pursuant to the Endangered Species Act of 1973, as amended. The Service finds that the petition did not present substantial scientific or commercial information indicating the petitioned action may be warranted for two of the three species because it does not substantiate that the Santa Ana speckled dace and Shay Creek threespine stickleback are described subspecies or distinct vertebrate population segments as described in the Service's vertebrate population policy. Furthermore, the Service presently regards the Shay Creek threespine stickleback as a population of the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*), a species that is already listed as endangered. Regarding the third fish species, the Service finds that substantial information exists to support a decision that listing may be warranted for the Santa Ana sucker.

DATES: The finding announced in this notice was made on June 28, 1996. Comments and materials may be submitted until further notice.

ADDRESSES: Data, information, comments, or questions concerning the finding should be submitted to the Field Supervisor, Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul J. Barrett (see **ADDRESSES** above), telephone (619) 431–9440.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*) requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. This finding is based on information contained in the petition, supporting information submitted with the petition, and otherwise available to the Service at the time the finding is made. If the Service determines that the petitioned action may be warranted, the Service will commence a review of the status of the involved species. Status reviews will be commenced in accordance with priorities established by the Service pursuant to the May 16, 1996, Final Listing Priority Guidance (61 Fed Reg 24722).

On September 8, 1994, the Service received a petition dated September 2, 1994, to list the Santa Ana speckled dace (*Rhinichthys osculus* ssp.), Santa Ana sucker (*Catostomus santaanae*), and the Shay Creek threespine stickleback (*Gasterosteus aculeatus* ssp.) as endangered species. The petition was submitted by the Sierra Club Legal Defense Fund, Inc., on behalf of seven groups. The seven groups are the California-Nevada Chapter of the American Fisheries Society, The Nature School, The California Sportfishing Protection Alliance, Friends of the River, Izaak Walton League of America, California Trout, and Trout Unlimited. The letter clearly identified itself as a petition and contained the names, signatures, and addresses of the petitioners. Accompanying the petition was supporting information relating to taxonomy, ecology, and past and present distribution of all three species.

The petition, supporting documentation, and other information available in the Service files has been reviewed to determine if substantial information is available to indicate that the requested actions may be warranted. On the basis of the best scientific and commercial information available, the Service finds the petitioned action may be warranted for the Santa Ana sucker because of the threats to low population numbers, and is not warranted for the Santa Ana speckled dace based on taxonomic uncertainty. While the petitioners failed to present substantial information indicating that the Shay Creek threespine stickleback should be listed as a subspecies or distinct vertebrate population segment, the Shay Creek threespine stickleback is presently regarded as a population of the unarmored threespine stickleback and already receives the protections of the Act. A status review will be commenced in accordance with the Final Listing Priority Guidance for the Santa Ana sucker.

Santa Ana Sucker

The Santa Ana sucker (*Catostomus santaanae*) is a member of the sucker family (Catostomidae). The Santa Ana sucker was originally described as *Pantosteus santa-anae* by Snyder (1908, as in Moyle 1976). The genus *Pantosteus* was reduced to a subgenus of *Catostomus* and the hyphen omitted from the specific name in a subsequent revision of the nomenclature (Smith 1966). The American Fisheries Society

VOL
61
ISS
1
32
JL
9
1996
UMI

recognizes the Santa Ana sucker as the full species, *C. santaanae* (Robins et al. 1991).

The Santa Ana sucker's historical range includes the Los Angeles, San Gabriel, and Santa Ana River drainage systems located in southern California (Smith 1966). An introduced population also occurs in the Santa Clara River drainage system in southern California (Moyle 1976). Moyle and Yoshiyama (1992) state that only the San Gabriel River population can be considered relatively viable and self-sustaining within the native range.

Although the Santa Ana sucker was described as common in the 1970s (Moyle 1976), the species has experienced dramatic declines throughout most of its range (Moyle and Yoshiyama 1992). Santa Ana suckers have adaptations such as short generation time, high fecundity and a relatively prolonged spawning period that presumably allows them to rapidly repopulate streams after severe flooding events (Greenfield et al. 1970). Nevertheless, they are intolerant of polluted or highly modified streams (Moyle and Yoshiyama 1992).

This apparent, overall decline is of concern given this species' high fecundity and apparent broad habitat tolerances. Urbanization, water diversions, dams, pollution, heavy recreational use, gold mining wastes, gravel extraction, and introduced competitors and or predators have probably contributed in the decline of the species (Moyle and Yoshiyama 1992, Swift et al, 1993).

Swift (in Moyle and Yoshiyama 1992) summarized the status and threats facing each of the populations in their native range.

- Los Angeles River (Big Tujunga Creek below Big Tujunga Dam)—Extreme fluctuations in water quality pose problems for all fishes in this reach. The Santa Ana sucker is very rare and may already be lost here.
- San Gabriel River (contiguous West, North, and East forks about 40 km below Cogswell Dam)—The West Fork is threatened by accidental high flows from Cogswell Reservoir that have devastated this reach in the past. The Cattle Canyon tributary of the East Fork is impacted by increased gold mining (suction dredging) and the population has been much reduced or may be absent in Cattle Canyon.
- Santa Ana River—Several hundred fish were observed below Prado Dam in 1986 and 1987, although sampling above the dam in 1987 yielded only five Santa Ana suckers. Water quality is threatened by many and various local inputs, such as runoffs from light industry and surrounding farmed lands (T. Haglund, personal communication).

Subsequent to the receipt of the petition, a general fish survey of the Santa Ana River below Prado Dam yielded only 5 suckers from a total of approximately 150 fishes captured (Mike Guisti, California Game and Fish Department, pers. comm.). A survey of the East Fork of the San Gabriel River above the confluence with Cattle Canyon found the sucker to be relatively common, 125 of 382 fish captured (Paul Barrett, pers. obs., Fish and Wildlife Service files). The Santa Ana sucker's present status in the Los Angeles River is unknown.

The Service finds that the petitioners provided substantial evidence that the petitioned action may be warranted for the Santa Ana sucker.

Santa Ana Speckled Dace

The Santa Ana speckled dace is found in the headwaters of the Santa Ana and San Gabriel river drainages, often in isolated stocks. The petitioners presented a variety of information suggesting that the Santa Ana speckled dace is an undescribed subspecies of *Rhinichthys osculus*, member of the Cyprinidae family. While the petitioners assert that the Santa Ana speckled dace is a valid subspecies, they did not provide a peer-reviewed paper supporting that conclusion, nor did they provide a draft manuscript that the Service could subject to peer review. In fact, citing Moyle (1976), the petitioners actually point out difficulties with speckled dace systematics, "Although systematists now seem to have little trouble placing the many forms into *Rhinichtys osculus* (Hubbs, Miller, and Hubbs, 1974), the status of the many described (and undescribed) subspecies can only be called chaotic." The primary support for subspecific status includes reference to a Master's thesis (Cornelius 1969) which was not included with the petition, and reference to unpublished genetic data. Other, anecdotal evidence supporting subspecific status includes a species account written by C.C. Swift that was included as pages 207–212 in a document entitled Fishes, Aquatic Diversity Management Areas, and Endangered Species: A Plan to Protect California's native Aquatic Biota, edited by Moyle and Yoshiyama (1992). This account cites a paper by Hubbs et al. (1979) that includes the Santa Ana speckled dace as an unnamed subspecies, but a copy of the paper was not provided and the literature cited section of the account did not include a citation that would allow the Service to identify the paper.

Shay Creek Threespine Stickleback

The petitioners indicated that the Shay Creek threespine stickleback is an undescribed form of the threespine stickleback (*Gasterosteus aculeatus*) that should be listed separately from the endangered unarmored threespine stickleback. The Service regards the Shay Creek threespine stickleback as a population of the Federally listed unarmored threespine stickleback and the petitioners failed to present substantiated scientific information indicating that the petitioned action may be warranted. Specifically, the petitioners did not present peer-reviewed information supporting their claim that the Shay Creek threespine stickleback is a separate subspecies or distinct vertebrate population. In light of this decision and until the Service is presented with substantiated information to the contrary, the Shay Creek threespine stickleback remains a population of the Federally endangered unarmored threespine stickleback.

It is Service policy to issue not-substantial 90-day findings on petitions for species or subspecies if that designation has not passed scientific peer review either as part of acceptance for publication or through some other equivalent review. The Santa Ana speckled dace and Shay Creek threespine stickleback are not so named. Should the Santa Ana speckled dace or Shay Creek threespine stickleback be determined to be a valid subspecies as evidenced by a description in a peer-reviewed scientific journal, or a distinct population segment in accord with the February 7, 1996, "Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act " (61 FR 4722), the Service may consider a proposal to list this species in accordance with the Service's listing priority guidance. In addition to taxonomic information, any new petition should clearly identify threats to the taxa, including estimates of the probability of catastrophic events to the populations.

The Service will continue to seek information regarding the Santa Ana speckled dace. As additional data becomes available in the future, the Service may reassess the need for preparing a proposal to list this species, in accordance with the final Listing Priority Guidance.

Conformance with Listing Priority Guidance

On May 16, 1996 the Service published a description of how it will prioritize the various listing actions for the remainder of fiscal year 1996 (61 FR 24722–24728). Based on the listing priority guidance, the subject finding would characteristically have been assigned to tier 3 and processing would have been delayed until a later date. Despite requests for deference to the listing priority guidance, however, the Service has received no relief and is compelled by court order to issue this finding.

References Cited

Buth, D. G. and C. B. Crabtree. 1982. Genetic variability and population structure of *Catostomus santaanae* in the Santa Clara drainage. Copeia, 1982:439–444.

Greenfield, D. W., S. T. Ross, and G. D. Deckert. 1970. Some aspects of the life history of the Santa Ana sucker, Catostomus (Pantosteus) santaanae (Snyder). California Fish and Game 56:166–179.

Haglund, T. A. and D. G. Buth. 1988. Allozymes of the unarmored threespine stickleback (Gasterosteus aculeatus williamsoni) and identification of the Shay Creek population. Isozyme Bulletin, 21:196.

Hubbs, W. I. Follett, and L. C. Hubbs. 1979. List of fishes of California. Occasional Papers of the California Academy of Sciences, No. 133, 51 pp.

Moyle, P. B. 1976. Inland Fishes of California. University of California Press, 405 pp.

Moyle, P. B. and R. M. Yoshiyama. 1992. Fishes, aquatic diversity management areas, and endangered species: Plan to protect California's native aquatic biota. The California Policy Seminar, University of California.

Robins, C. R., R. M. Baily, C. E. Bond, J. R. Brooker, E. A. Lachner, R. N. Lea, and W. B. Scott. 1991. Common and scientific names of fishes of the United States and Canada. American Fisheries Society Special Publication 20. Bethesda, Maryland.

Swift, C. C., T. R. Haglund, M. Ruiz, and R. N. Fisher. 1993. The status and distribution of the freshwater fishes of southern California. Bulletin of the Southern California Academy of Sciences, 92:1–67.

Author

This notice was prepared by Paul J. Barrett, Carlsbad Field Office (see **ADDRESSES** section above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: June 28, 1996.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 96–17390 Filed 7–8–96; 8:45 am]

BILLING CODE 4310–55–P

VOL 61 ISS 132 JUL 9 1996 UMI

Notices

Federal Register
Vol. 61, No. 132
Tuesday, July 9, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent to prepare an Environmental Impact Statement (EIS)

SUMMARY: The Salt Lake Ranger District, of the Wasatch-Cache National Forest, will prepare an EIS on Brighton Ski Resort's (Brighton) proposal to update their Master Development Plan.

DATES: Comments concerning the scope of the analysis should be received in writing by August 9, 1996.

ADDRESSES: Send written comments to Michael Sieg, District Ranger, 3000 East 6944 South, Salt Lake City, Utah 84121.

FOR FURTHER INFORMATION CONTACT: Steve Scheid, Environmental Analyst, (801) 943–9483.

SUPPLEMENTARY INFORMATION: Brighton is proposing to update their Master Development Plan. This update includes the following elements: upgrade the Snake Creek lift to a high-speed detachable Quad, construct a new transportation lift between Solitude Ski Resort and Brighton, modify existing ski trails, which include rock and stump removal and terrain grading, expand night skiing opportunities, construct new mid-mountain lodge at the base of the Snake Creek Lift, expand current snowmaking facilities, and expand the existing hiking and biking trail systems. A complete description of the proposal and its elements is available from the Salt Lake Ranger District.

Brighton will be required to obtain an amendment of water supply permit agreement from Salt Lake City Department of Public Utilities and a Water Change Application from the Utah Department of Natural Resources, Division of Water Rights, State Engineer. They will also be required to obtain all necessary building and construction permits from Salt Lake County.

A scoping document has been sent to more than 600 individuals, organizations and government agencies, detailing Brighton's proposal for the next planning period. Preliminary issues identified by the interdisciplinary team include effects of the proposed action on: visual quality, run quality, year-round recreation experiences, wetland and riparian areas, water quality and quantity, vegetation, fish and wildlife, traffic and parking in Big Cottonwood Canyon, and threatened, endangered and sensitive species.

Two preliminary alternatives have been identified: (1) the proposed action which would permit the aforementioned projects and require Brighton to convert to a new Ski Area Term Special Use Permit, and (2) the No Action alternative which would continue the use as currently permitted with no new improvements.

The public is invited to submit comments or suggestions to the address above. This public comment period does not replace the initial public comment period. All comments received to date will be included in the EIS. We are seeking new issues, comments and suggestions. The responsible official is Bernie Weingardt, Forest Supervisor. A draft EIS is expected to be filed in May, 1997 and the final EIS filed in September 1997.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviews' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: July 2, 1996.

Steven W. Scheid,

District Environmental Analyst.

[FR Doc. 96–17445 Filed 7–8–96; 8:45 am]

BILLING CODE 3410–11–M

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service's (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by September 9, 1996.

FOR FURTHER INFORMATION CONTACT: Billy J. Chapman, Loan Specialist, Processing Division, Water and Waste Disposal, Rural Utilities Service, U.S. Department of Agriculture, 14th & Independence Ave., SW., AG Box 3223, Washington, DC 20250–1500. Telephone: (202) 690–3789. FAX: (202) 690–0649.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1942–I, Resources Conservation and Development.

OMB Control Number: 0572–0111.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: This program would provide loan assistance to sponsoring local organizations (public and nonprofit) in authorized watershed areas for the local share of cost for works of improvement. RUS will assist the local sponsors and the Soil Conservation Service (SCS) in making loans for the development of future water supplies or for site preservation.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3.5 hours per response.

Respondents: State or local governments, small business or organizations, and non-profit institutions.

Estimated Number of Respondents: 2.

Estimated Number of Responses per Respondent: 8.

Estimated Total Annual Burden on Respondents: 56.

Copies of this information collection, and related form and instructions, can be obtained from Dawn Wolfgang, Program Support and Regulatory Analysis Group, at (202) 720–0812.

Comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis Group, Rural Utilities Service, U.S. Department of Agriculture, AG Box 1522, 14th & Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record:

Dated: June 28, 1996.

John P. Romano,

Acting Administrator, Rural Utilities Service.

[FR Doc. 96–17363 Filed 7–8–96; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Admittance to Practice and Roster of Registered Patent Attorneys and Agents Admitted to Practice Before the Patent and Trademark Office.

Agency Approval Number: 0651–0012.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 3,500 hours.

Number of Respondents: 10,500.

Avg. Hours Per Response: ⅓ hour.

Needs and Uses: Information is required to determine the qualifications of individuals entitled to represent applicants before the Patent and Trademark Office in the preparation and prosecution of applications for a patent, and to administer and maintain the roster of attorneys registered to practice before the Patent and Trademark Office.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein, (202) 395–4816.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Maya A. Bernstein, OMB Desk Officer, Room 10236, New Executive Office building, Washington, D.C. 20503.

Dated: July 3, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–17449 Filed 7–08–96; 8:45 am]

BILLING CODE 3510–16–P

International Trade Administration

[A–570–806]

Chrome-Plated Lug Nuts From The People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Preliminary Results of the Antidumping Duty Administrative Review of Chrome-Plated Lug Nuts from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on chrome-plated lug nuts (lug nuts) from the People's Republic of China (PRC) in response to a request by petitioner, Consolidated International Automotive, Inc. (Consolidated). This review covers shipments of this merchandise to the United States during the period September 1, 1994, through August 31, 1995.

We have preliminarily determined that sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between export price and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: July 9, 1996.

FOR FURTHER INFORMATION CONTACT: Donald Little, Elisabeth Urfer, or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

The Department published in the **Federal Register** an antidumping duty order on lug nuts from the PRC on April 24, 1992 (57 FR 15052). On September 12, 1995, the Department published in the **Federal Register** (60 FR 47349) a notice of opportunity to request an administrative review of the antidumping duty order on lug nuts from the PRC covering the period September 1, 1994, through August 31, 1995.

On September 28, 1995, in accordance with 19 CFR 353.22(a), Consolidated requested that we conduct an administrative review of China National Automotive Industry I/E Corp., Nantong

VOL
61
ISS
1
3
2
1996
JL
9
UMI

Branch (Nantong); China National Automobile Import and Export Corp., Yangzhou Branch (Yangzhou); Jiangsu Rudong Grease-Gun Factory, also known as JiangSu Huanghai Auto Parts Share Co., Ltd. (Rudong); Ningbo Knives & Scissors Factory (Ningbo); Shanghai Automobile Import & Export Corp. (Shanghai Automobile); Tianjin Automotive Import and Export Co. (Tianjin); China National Machinery & Equipment Import & Export Corp., Jiangsu Branch (Jiangsu); and China National Automotive Industry I/E Corp. (China National). We published a notice of initiation of this antidumping duty administrative review on October 12, 1995 (60 FR 53165). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

On April 19, 1994, the Department issued its "Final Scope Clarifications on Chrome-Plated Lug Nuts from Taiwan and the PRC." The scope, as clarified, is described in the subsequent paragraph. All lug nuts covered by this review conform to the April 19, 1994 scope clarification.

Imports covered by this review are one-piece and two-piece chrome-plated lug nuts, finished or unfinished. The subject merchandise includes chrome-plated lug nuts, finished or unfinished, which are more than 11/16 inches (17.45 millimeters) in height and which have a hexagonal (hx) size of at least 3/4 inches (19.05 millimeters) but not over one inch (25.4 millimeters), plus or minus 1/16 of an inch (1.59 millimeters). The term "unfinished" refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Zinc-plated lug nuts, finished or unfinished, and stainless-steel capped lug nuts are not included in the scope of this review. Chrome-plated lock nuts are also not subject to this review.

Chrome-plated lug nuts are currently classified under subheading 7318.16.00.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

This review covers the period September 1, 1994, through August 31, 1995, and eight producers/exporters of Chinese lug nuts.

Market-Oriented Industry

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (NME) country. Pursuant to section 771(18)(c)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Information presented in this review has not caused the Department to change that determination.

Rudong submitted, with its January 25, 1996 questionnaire response, a request that we treat the lug nuts industry as a market-oriented industry (MOI). Rudong claims that its material inputs are acquired at market prices and that, accordingly, we should find that the Chinese lug nuts industry is an MOI, and use Rudong's home market sales and/or costs as the basis of NV.

The criteria for determining whether an MOI exists are: 1) for the merchandise under review, there must be virtually no government involvement in setting prices or amounts to be produced; 2) the industry producing the merchandise under review should be characterized by private or collective ownership; and 3) market-determined prices must be paid for all significant inputs, whether material or non-material (*e.g.*, labor and overhead), and for all but an insignificant portion of all the inputs accounting for the total value of the merchandise under review. (*See Amendment to Final Determination of Sales at Less than Fair Value and Amendment to Antidumping Duty Order: Chrome-Plated Lug Nuts from the People's Republic of China* (57 FR 15054, April 24, 1992) (*Lug Nuts Redetermination*).)

We find preliminarily in this review that the PRC lug nut industry does not meet these three criteria. With respect to the first and second criteria, Rudong has stated that it is the only producer of lug nuts, that it is a collectively-owned public enterprise, and that it independently negotiates prices. However, we did not receive a PRC government response to our questionnaire requesting the names of all lug nut producers in the PRC. We were unable, therefore, to determine whether the first and second criteria are met for the industry as a whole. With respect to the third criterion, Rudong did not submit any information on supply and demand factors indicating that it pays market-determined prices for steel, a major input in lug nut production, or that the steel industry is not subject to significant state control. Further, Rudong has not placed on the record any information on supply and demand factors indicating that it pays market-determined prices for chemical inputs, or that the chemicals industry is not subject to significant state control. Based on the foregoing, we preliminarily determine that Rudong has not demonstrated the lug nut industry is an MOI and accordingly have calculated NV in accordance with section 773(c) of the Act. For a further discussion of the Department's preliminary determination that the lug nuts industry does not constitute an MOI, see *Decision Memorandum to Holly A. Kuga, Director of the Office of Antidumping Compliance*, dated June 18, 1996, "Market Oriented Industry Request in the Third Administrative Review of Chrome-Plated Lug Nuts from the People's Republic of China," which is on file in the Central Records Unit (room B099 of the Main Commerce Building).

Facts Available

We preliminarily determine that, in accordance with section 776(a) of the Act, the use of facts available is appropriate for Nantong, Yangzhou, Ningbo, Jiangsu, China National, Tianjin, and Shanghai Automobile because these firms did not respond to the Department's antidumping questionnaire. The Department finds that, in not responding to the questionnaire, these seven firms failed to cooperate by not acting to the best of their ability to comply with requests for information from the Department. Because necessary information is not available on the record with regard to sales by these firms as a result of their withholding the requested information, we must make our preliminary determination based on facts otherwise available pursuant to section 776(a) of the Act.

Where the Department must base the entire dumping margin for a respondent in an administrative review on the facts available because that respondent failed to cooperate, section 776(b) authorizes the Department to use an inference adverse to the interests of that respondent in choosing the facts available. Section 776(b) also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Because information from prior proceedings constitutes secondary information, section 776(c) provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review* (60 FR 49567, September 26, 1995), where the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). In this case, we have used the highest rate from any prior segment of the proceeding, 44.99 percent. There is no indication that this rate is not appropriate. This rate was calculated in the review covering the period September 1, 1992 through August 31, 1993 (1992–1993 review).

Separate Rates

To establish whether a company operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) (*Sparklers*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994) (*Silicon Carbide*). Under this policy, exporters in non-market economies (NMEs) are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: 1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the government regarding the selection of management.

In the administrative review covering the period from September 1, 1992 through August 31, 1993 (1992–93 review), we determined that Nantong merited a separate rate, and in the 1993–94 review we preliminary determined that Rudong merited a separate rate. Because we made a final determination, under the criteria set forth in *Sparklers* and *Silicon Carbide*, that Nantong merited a separate rate, and therefore did not request that Nantong respond to the separate rates section of the questionnaire, and because no evidence was put on the record of this review demonstrating that Nantong did not merit a separate rate, for this review we continue to assign Nantong a separate rate. (As noted above, this rate is based on facts available.) Because the results from the 1993–94 review are not final, we analyzed Rudong's submission in this review to determine whether Rudong merits a separate rate. We have made the determination of whether Rudong should receive a separate rate under the policy set forth in *Silicon Carbide* and *Sparklers*. No other company in this review was previously determined to merit a separate rate under the *Sparklers* and *Silicon Carbide* criteria, or responded to our request for information regarding separate rates; therefore, we are assigning the PRC rate to these remaining companies.

With respect to the absence of *de jure* government control, evidence on the record indicates that Rudong is a collectively-owned enterprise. The "Regulations on Rural Collective Enterprises" identify rules and regulations pertaining to collectively-owned enterprises which give rural collective enterprises such rights as the right to act on their own, adopt independent accounting, and assume the sole responsibility for their profits and losses. (*See* May 31, 1996 memorandum to the file, with attachments, "Chrome-Plated Lug Nuts from the People's Republic of China: laws and regulations governing various categories of companies in the PRC.")

Further, several PRC laws establish that the responsibility for managing entities has been transferred from the central government to the enterprise. (*See* July 18, 1995 memorandum to the file, with attachments, "Chrome-Plated Lug Nuts from the People's Republic of China: laws and regulations governing various categories of companies in the PRC.") Additionally, lug nuts do not appear on the "Temporary Provisions for Administration of Export Commodities," approved on December 21, 1992, and are not, therefore, subject to the constraints of this provision.

With respect to the absence of *de facto* control, Rudong's management is elected by Rudong's staff, and is responsible for all decisions such as the determination of its export prices, profit distribution, employment policy, and marketing strategy, and for negotiating contracts.

We have found that the evidence on the record demonstrates an absence of government control, both in law and in fact, with respect to Rudong according to the criteria identified in *Sparklers* and *Silicon Carbide*. For further discussion of the Department's preliminary determination that Rudong is entitled to a separate rate, *see Decision Memorandum to Holly A. Kuga, Director of the Office of Antidumping Compliance*, dated June 18, 1996, "Separate Rate for Jiangsu Rudong Grease-Gun Factory in the Fourth Administrative Review of Chrome-Plated Lug Nuts from the People's Republic of China," which is on file in the Central Records Unit (room B099 of the Main Commerce Building).

Export Price

For sales made by Rudong we used export price, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States.

We calculated export price based on the price to unrelated purchasers. We deducted an amount for foreign inland freight. We valued foreign inland freight using surrogate data based on Indian freight costs. We selected India as the

VOL
61
ISS
1
32
JL
9
1996
UMI

surrogate country for the reasons explained in the "Normal Value" section of this notice.

Normal Value

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In the amendment to the final determination of sales at less than fair value (LTFV), the Department treated the PRC as an NME country, and determined that the lug nuts industry is not an MOI (*see Lug Nuts Redetermination*). Rudong has argued that the lug nut industry is an MOI; however, as discussed above, we have preliminarily determined the lug nut industry not to be market-oriented. Accordingly, we are not able to determine NV on the basis of Rudong's costs and prices, and have applied surrogate values to the factors of production to determine NV.

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 353.52(c) of our regulations. We determined that India (1) is comparable to the PRC in terms of level of economic development, and (2) is a significant producer of comparable merchandise. Therefore, for this review, we have used publicly available information relating to India to value the various factors of production. (*See Memorandum to Laurie Parkhill from David Mueller*, dated March 15, 1996, "Chrome-Plated Lug Nuts from the People's Republic of China: Non-market Economy Status and Surrogate Country Selection," and *Memorandum to the File from Elisabeth Urfer*, dated June 14, 1996, "India: Significant Production of Comparable Merchandise," which are on file in the Central Records Unit (room B099 of the Main Commerce Building).)

We valued the factors of production as follows:

- For steel wire rods, we used a per kilogram value obtained from the *Monthly Statistics of Foreign Trade of India* (*Indian Import Statistics*). Using wholesale price indices (WPI) obtained from the *International Financial Statistics*, published by the International Monetary Fund (IMF), we adjusted these values to reflect inflation through the period of review (POR). We made further adjustments to include freight costs incurred between the supplier and Rudong.
- For chemicals used in the production and plating of lug nuts, we used per kilogram values obtained from the Indian publication *Chemical Weekly* and the *Indian Import Statistics*. We adjusted the *Indian Import Statistics* rates to reflect inflation through the POR using WPI published by the IMF. We made further adjustments to include freight costs incurred between the supplier and Rudong.
- For hydrochloric acid, we based the value on an Indian price quote used in the *Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China* (59 FR 66895, December 28, 1994) (*Coumarin*), because data in the *Indian Import Statistics* for hydrochloric acid has been found to be aberrational (*see Coumarin*). We adjusted the value used in *Coumarin* to reflect inflation through the POR using WPI published by the IMF.
- For direct labor, we used the labor rates reported in the Economic Intelligence Unit report *Investing, Licensing & Trading Conditions Abroad: India*, released November 1994. This source breaks out labor rates between skilled and unskilled labor for 1994 and provides information on the number of labor hours worked per week. We adjusted these rates to reflect inflation through the POR using WPI published by the IMF.
- For factory overhead, we used information reported in the April 1995 *Reserve Bank of India Bulletin* for the Indian metals and chemicals industries. From this information, we were able to determine factory overhead as a percentage of the total cost of manufacture.
- For selling, general and administrative (SG&A) expenses, we used information obtained from the April 1995 *Reserve Bank of India Bulletin* for the Indian metals and chemicals industries. We calculated an SG&A rate by dividing SG&A expenses by the cost of manufacture.
- To calculate a profit rate, we used information obtained from the April 1995 *Reserve Bank of India Bulletin* for the Indian metals and chemicals industries. We calculated a profit rate by dividing the before-tax profit by the cost of manufacturing plus SG&A.
- For packing materials, we used per kilogram values obtained from the *Indian Import Statistics*. We adjusted these values to reflect inflation through the POR using WPI published by the IMF.
- To value electricity, we used the average price of electricity as of March 1995 published in the *Current Energy Scene in India*. We adjusted the value of electricity to reflect inflation through the POR using WPI published by the IMF.
- To value truck freight, we used the rates reported in an August 1993 cable from the U.S. Consulate in India submitted for the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers From the People's Republic of China* (58 FR 48833, September 20, 1993). We adjusted the rates to reflect inflation through the POR using WPI published by the IMF.

Currency Conversion

We made currency conversions pursuant to section 353.60 of the Department's regulations at the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/exporter	Time period	Margin (percent)
Jiangsu Rudong Grease-Gun Factory, also known as JiangSu Huanghai Auto Parts Share Co., Ltd.	09/01/94–08/31/95	20.11
China National Automotive Industry I/E Corp., Nantong Branch	09/01/94–08/31/95	44.99
PRC rate	09/01/94–08/31/95	44.99

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice in accordance with 19 CFR 353.22(c)(6). Any interested party may request a hearing within 10 days of publication in accordance with 19 CFR 353.38(b). Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter.

Interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 353.38(c). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and NV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of lug nuts from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for Rudong, which has a separate rate, the cash deposit rate will be the company-specific rate established in the final results of this administrative review; (2) for Nantong, which has a separate rate, the cash deposit rate will be the highest margin ever in the LTFV investigation or in this or prior administrative reviews; (3) for the companies named above which have not been found to have separate rates, China National, Jiangsu, Yangzhou, Ningbo, Shanghai Automobile, and Tianjin, as well as for all other PRC exporters, the cash deposit rate will be the PRC rate; and (4) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 1, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–17463 Filed 7–8–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from three respondents and one U.S. producer, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on dynamic random access memory semiconductors of one megabit or above from the Republic of Korea. The review covers two manufacturers/exporters of the subject merchandise to the United States for the period of May 1, 1994 through April 30, 1995. The review indicates that there are no dumping margins for either manufacturer/exporter during this period of review.

If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between the United States price and the normal value (NV). Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: July 9, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–3814.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On May 10, 1993, the Department published in the **Federal Register** (58 FR 27250) the antidumping duty order on dynamic random access memory semiconductors (DRAMS) from the Republic of Korea. On May 10, 1995, the Department published a notice of "Opportunity to Request an Administrative Review" of this antidumping duty order for the period of May 1, 1994, through April 30, 1995 (60 FR 24831). We received timely requests for review from three manufacturers/exporters of subject merchandise to the United States: Hyundai Electronics Industries Co. (Hyundai), LG Semicon Co., Ltd. (LGS, formerly Goldstar Electron Co., Ltd.), and Samsung Electronics Co. (Samsung). The petitioner, Micron Technologies Inc., requested an administrative review of these same three Korean manufacturers of DRAMS. On June 15, 1995, the Department initiated a review of the above Korean manufacturers (60 FR 31447). The period of review (POR) for all respondents was May 1, 1994, through April 30, 1995. The Department has now conducted this review in accordance with section 751 of the Act.

In addition, on June 26, 1995, we automatically initiated an investigation to determine if Hyundai and LGS made sales of subject merchandise below the cost of production (COP) during the POR based upon the fact that we disregarded sales found to have been made below the COP in the original less-than-fair-value (LTFV) investigation, which was the most recent period for which a review had been completed.

Samsung Electronics Co., Ltd. (Samsung), formerly a respondent in this administrative review, was excluded from the antidumping duty order on DRAMS from Korea on February 8, 1996. *See Final Court Decision and Partial Amended Final Determination: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea*, 61 FR 4765 (February 8, 1996). Accordingly, we terminated this review with respect to Samsung.

VOL 61 ISS 132 JL 9 1996 UMI

Scope of the Review

Imports covered by the review are shipments of DRAMs of one megabit or above from the Republic of Korea (Korea). For purposes of this review, DRAMS are all one megabit and above DRAMS, whether assembled or unassembled. Assembled DRAMS include all package types. Unassembled DRAMS include processed wafers, uncut die and cut die. Processed wafers produced in Korea, but packaged, or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope.

The scope of this review includes memory modules. A memory module is a collection of DRAMS, the sole function of which is memory. Modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), or other collections of DRAMS, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (VGA) boards and cards, are not included in the scope.

The scope of this review also includes video random access memory semiconductors (VRAMS), as well as any future packaging and assembling of DRAMS.

The scope of this review also includes removable memory modules placed on motherboards, with or without a central processing unit (CPU), unless the importer of motherboards certifies with the Customs Service that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this review does not include DRAMS or memory modules that are reimported for repair or replacement.

The DRAMS subject to this review are classifiable under subheadings 8542.11.0001, 8542.11.0024, 8542.11.0026, and 8542.11.0034 of the Harmonized Tariff Schedule of the United States (HTSUS). Also included in the scope are those removable Korean DRAMS contained on or within products classifiable under subheadings 8471.91.0000 and 8473.30.4000 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review remains dispositive. The POR is May 1, 1994, through April 30, 1995.

United States Price

In calculating U.S. price, the Department used constructed export price (CEP), as defined in section 772(b) of the Act, when the merchandise was first sold to an unaffiliated U.S. purchaser after importation.

We calculated CEP based on packed, ex-U.S. warehouse prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, rebates, foreign brokerage and handling, foreign inland insurance, air freight, air insurance, U.S. duties, credit expenses, warranty expenses, royalty payments, U.S. commissions, advertising and promotion expenses, foreign banking charges, U.S. subsidiary packing, and U.S. and Korean indirect selling expenses, including inventory carrying costs in accordance with sections 772(c)(2) and 772(d)(1) of the Act. The U.S. price was increased for packing expense in accordance with section 772(c)(1) of the Act. We added duty drawback, where applicable, pursuant to section 772(c)(1)(B) of the Act. Pursuant to section 772(d)(3) of the Act, we reduced the United States price by the amount of profit to derive the CEP.

For DRAMS that were further manufactured into memory modules after importation, we deducted all value added in the United States, pursuant to section 772(e) of the Act. The value added consists of the costs of the materials, fabrication, and general expenses associated with the portion of the merchandise further manufactured in the United States, as well as a proportional amount of profit or loss attributable to the value added. Profit or loss was calculated by deducting from the sales price of the memory module all production and selling costs incurred by the company for the memory module. The total profit or loss was then allocated proportionately to all components of cost. Only the profit or loss attributable to the value added was deducted. In determining the costs incurred to produce the memory module, we included materials, fabrication, and general expenses, including selling expenses and interest expenses. No other adjustments were claimed or allowed.

Normal Value

In order to determine whether there was a sufficient volume of sales of DRAMS in the home market to serve as a viable basis for calculating NV, we compared respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because the aggregate volume of home market sales of the foreign like products for all respondents was greater than five percent of the respective aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provides a viable basis for calculating NV for all respondents, in accordance with section 773(a)(1)(C) of the Act.

Because LGS made some home market sales to related parties during the POR, we tested these sales to ensure that, on average, the related party sales were at "arms-length". To conduct this test, we compared the gross unit prices of sales to related and unrelated customers net of all movement charges, direct and indirect selling expenses, value-added tax and packing. Based on the results of that test, we discarded from LGS' home market database all sales made to a related party where that related party failed the "arm's-length" test.

We disregarded many of Hyundai's and LGS' sales found to have been made below the COP during the original LTFV investigation, the most recent period for which a review had been completed. Accordingly, the Department, pursuant to section 773(b) of the Act, initiated COP investigations of both respondents for purposes of this administrative review.

We calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general, and administrative expenses (SG&A), and the cost of all expenses incidental to placing the foreign like product in condition packed ready for shipment, in accordance with section 773(b)(3) of the Act. We relied on the home market sales and COP information provided by respondents in the questionnaire responses.

In accordance with section 773(b)(1) of the Act, in order to determine whether to disregard home market sales made at prices below the COP, we examined whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which permit the recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of home market sales of a given model were at prices less than the COP, we did not disregard any below-cost sales of that model because the below-cost sales were not made in "substantial quantities." Where 20 percent or more of home market sales of a given model were at prices less than the COP, we found that sales of that model were made in "substantial quantities," in accordance with section 773(b)(2)(B) of the Act. We then determined whether the below-cost sales of a given product are at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. If we found that sales had been made in "substantial quantities" and were not at prices which would permit recovery within a reasonable period of time, we disregarded the below-cost sales, in accordance with section 773(b)(1) of the Act, and based normal value on constructed value (CV).

In accordance with section 773(e) of the Act, we calculated CV based on respondents' cost of materials and fabrication employed in producing the subject merchandise, SG&A and profit incurred and realized in connection with the production and sale of the foreign like product, and U.S. packing costs. We used the costs of materials, fabrication, and G&A as reported in the CV portion of the questionnaire response. We used the U.S. packing costs as reported in the U.S. sales portion of respondents' questionnaire responses. We based selling expenses and profit on the information reported in the home market sales portion of respondents' questionnaire responses. See Certain Pasta from Italy; Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 61 FR 1344, 1349 (January 19, 1996). For selling expenses, we used the average of above-cost per-unit HM selling expenses weighted by the total quantity of home market sales sold. For actual profit, we first calculated the difference between the home market sales value and home market COP, and divided the difference by the home market COP. We then multiplied this percentage by the COP for each U.S. model to derive an actual profit.

For both respondents, the Department relied on the submitted COP and CV information. There were no adjustments to respondents' reported COP and CV data.

For price-to-price comparisons, we based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade, and to the extent practicable, at the same level of trade, as defined by section 773(a)(1)(B)(i) of the Act. We compared the U.S. prices of individual transactions to the monthly weighted-average price of sales of the foreign like product. We calculated NV based on delivered prices to unrelated customers and, where appropriate, to related customers in the home market. In calculating NV, we made adjustments, where appropriate, for inland freight, inland insurance, discounts, rebates, and Korean brokerage and handling charges.

Both respondents only had CEP sales during the POR. For comparisons to CEP sales, we reduced NV, where appropriate, for home market credit expenses, advertising expenses, royalty expenses, and bank charges in accordance with section 773(a)(6) of the Act, due to differences in circumstances of sale. We also reduced NV by packing costs incurred in the home market, in accordance with section 773(a)(6)(B)(i) of the Act. In addition, we increased NV for U.S. packing costs, in accordance with section 773(a)(6)(A) of the Act. We also made further adjustments, when applicable, to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57 of the Department's regulations.

Level of Trade and CEP Offset

As set forth in section 773(a)(2)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, at 829–831, to the extent practicable, the Department will calculate NV based on sales at the same level of trade as the U.S. sale. When the Department is unable to find sale(s) in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at a different level of trade.

In accordance with section 773(a)(7)(A) of the Act, if we compare a U.S. sale at one level of trade to normal value sales at a different level of trade, the Department will adjust the NV to account for the difference in level of trade if two conditions are met. First, in order to determine that there are distinct levels of trade, there must be differences between the actual selling functions performed by the seller at the level of trade of the U.S. sale and at the level of trade of the NV sale. Second, the differences must affect price comparability as evidenced by a pattern of consistent price differences between sales at the different levels of trade in the market in which normal value is determined. When constructed export price is applicable, section 773(a)(7)(B) of the Act establishes the procedures for making a constructed export price offset when: (1) NV is at a different level of trade, and (2) the data available do not provide an appropriate basis for a level of trade adjustment. Also, in accordance with section 773(a)(7)(B), to qualify for a CEP offset, the level of trade in the home market must constitute a more advanced stage of distribution than the level of trade of the CEP sales.

In order to identify levels of trade, the Department must review information concerning selling functions of the manufacturer/exporter. We reviewed the questionnaire responses of both respondents to establish whether there were sales at different levels of trade based on selling functions performed and services offered to each customer or customer class. For both respondents, we identified one level of trade in the home market with direct sales by the parent corporation to the domestic customer. These direct sales were made by both respondents to original equipment manufacturers (OEMs) and to distributors. In addition, all sales, whether made to OEM customers or to distributors, included the same selling functions. For the U.S. market, all sales for both respondents were reported as CEP sales. The level of trade of the U.S. sales is determined for the sale to the affiliated importer rather than the resale to the unaffiliated customer. We examined the selling functions performed by the Korean companies for U.S. CEP sales and preliminarily determine that they are at a different level of trade from the Korean companies' home market sales because the Korean companies engaged in fewer selling functions for the adjusted CEP sales than for their home market sales. For instance, the Korean companies did not engage in any general promotion, marketing activities, or price negotiations for U.S. sales.

Because we compared CEP sales to home market sales at a different level of trade, we examined whether a level of trade adjustment may be appropriate. In this case, both respondents only sold at one level of trade in the home market; therefore, there is no basis upon which either respondent can demonstrate a consistent pattern of price differences between levels of trade. Further, we do not have information which would allow us to examine pricing patterns based on the respondents' sales of other products and there is no other record information on which such an analysis could be based. Because the data available do not provide an appropriate basis for making a level of trade adjustment but the level of trade in the HM is a more advanced stage of distribution than the level of trade of the CEP sales, a CEP offset is appropriate. Both respondents claimed a CEP offset. We applied the CEP offset to normal value or constructed value, as appropriate. The level of trade

VOL
61
ISS
1
32
JL
9
1996
UMI

methodology employed by the Department in these preliminary results of review is based on the facts particular to this review. The Department will continue to examine its policy for making level of trade comparisons and adjustments for its final results of review.

Because both respondents made sales at differing levels of trade in the home market and in the United States, and because we determined it was not possible to quantify the price differences resulting from the differing levels of trade, we made a CEP offset to NV for both respondents pursuant to section 773(a)(7)(B) of the Act. The CEP offset consisted of an amount equal to the lesser of the weighted-average U.S. indirect selling expenses and U.S. commissions or home market indirect selling expenses. No other adjustments were claimed or allowed.

Fair Value Comparisons

To determine whether sales of DRAMS by respondents to the United States were made at less than fair value, we compared the CEP to the NV, as described in the "United States Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2), we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for the POR:

Manufacturer/exporter	Percent margin
Hyundai Electronic Industries, Inc.	0.00
LG Semicon Co., Ltd	0.00

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties.

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of DRAMs from Korea entered, or withdrawn from warehouse, for consumption on or after publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for Hyundai and LGS, because their weighted-average margins were de minimis, will be zero percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, a previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of the most recent review, or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 3.85 percent, the "all-others" rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within five days of the date of publication of this notice, and may request a hearing within ten days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first work day thereafter. Case briefs or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26(b) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

DATED: June 27, 1996/

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–17462 Filed 7–8–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–807]

Polyethylene Terephthalate Film from Korea: Preliminary Results of Antidumping Duty Administrative Review, Intent to Revoke the Order in Part, and Termination in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review, Intent to Revoke the Order in Part, and Termination in Part.

SUMMARY: In response to a request from two respondents and three U.S. producers, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea. The review covers three manufacturers/exporters of the subject merchandise to the United States and the period June 1, 1994 through May 31, 1995. The review indicates the existence of sales below normal value for certain manufacturers/exporters during the period of review.

We preliminarily determine the dumping margin for Kolon Industries (Kolon) to be [zero or de minimis] percent during the period June 1, 1994 through May 31, 1995. Based on three years of sales at not less than normal value (NV), we intend to revoke the order with respect to Kolon if the preliminary results of this review are affirmed in our final results.

If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between the United States Price and NV.

On June 28, 1996, in accordance with 19 CFR 353.25, we issued a revocation of the order with respect to Cheil Synthetics Inc. (Cheil). Accordingly, we are terminating this review of Cheil.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument (no longer than five pages, including footnotes).

EFFECTIVE DATE: July 9, 1996.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone (202) 482–4475/0649.

APPLICABLE STATUTE: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping duty order on PET film from the Republic of Korea on June 5, 1991 (56 FR 25660). The Department published a notice of "Opportunity To Request Administrative Review" of the antidumping duty order for the 1994/1995 review period on June 6, 1995 (60 FR 29821). On June 26, 1995, Cheil requested that the Department conduct an administrative review of the antidumping duty order on PET film from the Republic of Korea. On June 29, 1995, the petitioners, E.I. DuPont Nemours & Co., Inc., Hoescht Celanese Corporation, and ICI Americas, Inc. requested reviews of Cheil, Kolon, SKC Limited (SKC), and STC corperation (STC). SKC and Kolon filed requests for review on June 29, 1995 and June 30, 1995, respectively. We initiated the review on July 14, 1995 (60 FR 36260).

The Department extended the time limits for completion of the preliminary and final results of review. *See Antidumping Duty Administrative Reviews: Time Limits*, 61 FR 8911 (March 6, 1996).

On June xx, 1996, the Department revoked the order in part with respect to Cheil. Accordingly, we are terminating this review with respect to Cheil.

Intent to Revoke

In its submission of June 30, 1995, Kolon requested, pursuant to 19 CFR 353.25(b), revocation of the order with respect to its sales of PET film. Kolon certified in its June 30, 1995 submission that (1) it sold the subject merchandise at not less than NV during the relevant review period, and (2) that in the future it will not see the subject merchandise at less than NV. Kolon indicated in its June 30, 1995 submission that it did not believe that the agreement required under 19 CFR 353.25(a)(2)(iii) was applicable to its request because there had not been any finding that its sales were sold at less than NV.

On February 12, 1996, the Department issued an amended final results of the first review of the antidumping duty order on PET film from Korea (61 FR 5375). In this amended final, we determined that Kolon made sales at less than NV during the relevant period. Therefore, we permitted Kolon to perfect its timely request for revocation. On June 25, 1996, Kolon amended its request to include, in accordance with 19 CFR 353.25(a)(2)(iii), an agreement to immediate reinstatement in the order if any producer or reseller is subject to the order and the Department concludes that Kolon sold below NV under section 353.22(f) subsequent to revocation. Based on the final results of the two preceding reviews and the preliminary results of this review, Kolon has demonstrated three consecutive years of sales at not less than NV.

If the final results of this review demonstrate that Kolon sold the merchandise at not less than NV, and if the Department determines that it is not likely that Kolon will sell the subject merchandise at less than NV in the future, we intend to revoke the order with respect to merchandise produced and exported by Kolon.

Scope of the Review

Imports covered by this review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of it's surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The review covers the period June 1, 1994 through May 31, 1995. The Department is conducting this review in accordance with section 751 of the Act, as amended.

Verification

As provided in section 782(i) of the Act, we verified information provided by Kolon using standard verification procedures, including onsite inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the Kolon verification report.

United States Price (USP)

In calculating USP, the Department treated respondents' sales as export price (EP) sales, as defined in section 772(a) of the Act, when the merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation. The Department treated respondents' sales as constructed export price (CEP) sales, as defined in section 772(b) of the Act, when the merchandise was sold to unrelated U.S. purchasers after importation.

EP was based on the ex-factory, f.o.b. Korean port, f.o.b. customer's specific delivery point, c.i.f. U.S. port, or delivered, packed prices to unrelated purchasers in the United States. We made adjustments, where applicable, for Korean and U.S. brokerage charges, terminal handling charges, truck loading charges, containerization charges, Korean and U.S. inland freight, ocean freight, wharfage expenses, U.S. duties, and rebated in accordance with section 772(c) of the Act.

CEP was based on ex-warehouse, f.o.b. customer's specific delivery point, or delivered, packed prices to unrelated purchasers in the United States. We made adjustments, where applicable, for Korean and U.S. brokerage charges, terminal handling charges, containerization charges, Korean and U.S. inland freight, ocean freight, rebates, wharfage expenses, and U.S. duties, in accordance with section 772(c) of the Act. In accordance with section 772(d)(1) of the Act, we made deductions for selling expenses associated with economic activities in the United States, including warranties, credit, commissions, postage expenses, bank charges and indirect selling expenses. Pursuant to section 772(d)(3) of the Act, the price was further reduced by an amount for profit to arrive at the CEP.

VOL 61 ISS 132 JL 9 1996

For SKC, we made an offset to interest expense for interest revenue, and for post-sale cost and quantity adjustments that were not reflected in the gross price. With respect to subject merchandise to which value was added in the United States by SKC prior to sale to unrelated customers, we deducted any increased value in accordance with section 772(d)(2) of the Act.

Normal Value

In order to determine whether there were sufficient sales of PET film in the home market (HM) to serve as a viable basis for calculating NV, we compared the volume of home market sales of PET film to the volume of PET film sold in the United States, in accordance with section 773(a)(1)(B) of the Act. Each respondent's aggregate volume of HM sales of the foreign like product was greater than five percent of its respective aggregate volume of U.S. sales of the subject merchandise. Therefore, we have based NV on HM sales.

Based on the fact that the Department had disregarded sales in the first administrative review because they were made below the cost of production (COP), the Department initiated a sales-below-cost of production (COP) investigation for each of the respondents in accordance with section 773(b) of the Act. (The first administrative review was the most recently completed review at the time that we issued our antidumping questionnaire.)

We performed a model-specific COP test in which we examined whether each HM sale was priced below the merchandise's COP. We calculated the COP of the merchandise using Kolon's, SKC's, and STC's cost of materials and fabrication for the foreign like product, plus amounts for home market general expenses and packing costs in accordance with section 773(b)(3) of the Act.

In accordance with section 773(b)(1) of the Act, in determining whether to disregard home market sales made at prices below COP, we examined whether such sales were made within an extended period of time in substantial quantities, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that cost prices. Where 20 percent or more of a respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because such sales were found to be made (1) in substantial quantities within the POR (*i.e.*, within an extended period of time) and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act (*i.e.*, the sales were made at prices below the weighted-average per unit COP for the POR). We used the remaining above-cost sales as the basis of determining NV if such sales existed, in accordance with section 773(b)(1). For those models of the subject merchandise for which there were no above-cost sales available for matching purposes, we compared U.S. price to constructed value (CV).

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, and general expenses. In accordance with section 773(e)(2)(A) of the Act, we based selling, general, and administrative (SG&A) expenses and profit on the amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses we used the weighted-average HM selling expenses. Pursuant to section 773(e)(3) of the Act, we included U.S. packing.

In accordance with section 773(a)(6), we adjusted NV, where appropriate, by deducting home market packing expenses and adding U.S. Packing expenses. We also adjusted NV to reflect deductions for HM inland freight, loading charges, and credit expenses. For comparisons to EP, we made an addition to NV for differences in warranty and credit expenses as circumstance-of-sale adjustments pursuant to section 773(a)(6)(C) of the Act.

Level of Trade and CEP Offset

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the URAA, *reprinted in* H.R. Doc. No. 316, 103d Cong., 2d Session 829–831 (1994), to the extent practicable, the Department will calculate NV based on sales at the same level of trade as the U.S. sale. When the Department is unable to find sale(s) in

In accordance with section 773(a)(7)(A) of the Act, if we compare a U.S. sale at one level of trade to NV sales at a different level of trade, the Department will adjust the NV to account for differences in level of trade if two conditions are met. First there must be differences between the actual selling functions performed by the seller at the level of trade of the U.S. sale and at the level of trade of the comparison market sale used to determine NV. Second, the differences must affect price comparability as evidenced by a pattern of consistent price differences between sales at the different levels of trade in the market in which NV is determined. When CEP is applicable, section 773(a)(7)(B) of the Act establishes the procedures for making a CEP "offset" when two conditions exist: (1) NV is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the CEP; and (2) the data available do not provide an appropriate basis for a level-of-trade adjustment.

In order to implement these principles, each of the respondents provided information with respect to its selling activities associated with each channel of distribution. All of the respondents identified two channels of distribution in the home market: (1) wholesalers/distributors and (2) end-users. For both channels, all of the respondents perform similar selling functions such as market research and after sales warranty services. Because channels of distribution do not qualify as separate levels of trade when the selling functions performed for each customer class are sufficiently similar, we determined that there exists one level of trade for each of the respondents' home market sales.

Each of the respondents made CEP and EP sales to the United States market and claimed either a level of trade adjustment for its CEP sales, or a CEP offset. The level of trade of the U.S. sale is determined by the adjusted price of the CEP sale. Based on each of the respondents' questionnaire responses to our requests for supplemental information, we determined a difference between the actual selling functions performed by respondents at the level of trade of the CEP sale and the level of trade of the HM sale. The adjusted CEP sales do not reflect the selling functions performed for end-users or distributors in the Korean market.

Kolon provides inventory

engineering services, inventory maintenance, and delivery services on its HM sales. SKC does not provide these services on its CEP sales. STC provides inventory maintenance, after sales-services and warranty assistance, entertainment of customers, and marketing research on its HM sales. STC does not provide these services on its CEP sales. Therefore, the selling functions performed by each of the respondents for CEP sales are sufficiently different than for HM sales so as to establish different levels of trade.

Because we compared these CEP sales to HM sales at a different level of trade, we examined whether a level-of-trade adjustment may be appropriate. In this case each of the respondents only sold at one level of trade in the home market; therefore, there is no basis upon which any of the respondents has demonstrated a consistent pattern of price differences between levels of trade. Further, we do not have the information which would allow us to examine pricing patterns of respondents' sales of other similar products, and there is no other respondent's or other information on the record to analyze whether the adjustment is appropriate.

Because the data available do not provide an appropriate basis for making a level-of-trade adjustment but the level of trade in Korea for each respondent is at a more advanced stage than the level of trade of the CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Act. Each respondent claimed a CEP offset, which we applied to NV. We based the CEP offset amount on the amount of home market indirect selling expenses, and limited the deduction for HM indirect selling expenses to the amount of indirect selling expenses incurred on sales in the United States, in accordance with section 772(d)(1)(D) of the Act. The level-of-trade methodology used in this review is based on the facts particular to this review. The Department will continue to examine its policy for making level-of-trade comparisons and adjustments for the final results of this review.

Fair Value Comparisons

To determine whether sales of PET film in the United States were made at less than fair value, we compared USP to the NV, as described in the "United

Preliminary Results of Review

We preliminarily determine that the following margins exist for the period June 1, 1994 through May 31, 1995:

Manufacturer/exporter	Margin
Kolon	0.14
SKC	1.91
STC	4.98

Parties to this proceeding may request disclosure within five days of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Individual differences between USP and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties.

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of PET film from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for reviewed firms will be the rate established in the final results of administrative review; (2) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in the original less-than-fair value (LTFV) investigation or a previous review, the or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews, or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews, the cash deposit rate will be 4.82%, the "all others" rate established in the LTFV investigation.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26(b) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with Section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1).

Dated: July 1, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–17464 Filed 7–8–96; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[I.D. 070296B]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Red Drum Stock Assessment Panel (Panel).

DATES: This meeting will begin at 1:00 p.m. on July 29, 1996, and will conclude at 5:00 p.m. on July 31, 1996.

ADDRESSES: The meeting will be held at the National Marine Fisheries Service Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Executive Director, 5401 West Kennedy Boulevard, Suite

VOL 61 ISS 132 JL 9 1996 UMI

stock has been restored to a level above the overfishing threshold. If the stock has been restored, the Panel will develop an estimate of the range of acceptable biological catch (ABC) for the stock. The Council will review the Panel's report at its September meeting and may specify a total allowable catch (TAC) within the range of ABC for the fishery. Implementation of a TAC will, however, require an amendment to the fishery management plan for red drum. The amendment action would require approximately 9 months for implementation.

The red drum stock was classified as overfished in 1986 and harvest and possession of red drum in Federal waters was prohibited in 1987. Most actions to restore the stock have been taken by the individual Gulf states.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by July 22, 1996.

Dated: July 2, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–17439 Filed 7–8–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 070296A]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Bluefish Advisory Panel (together with the Atlantic States Marine Fisheries Commission's Bluefish Advisory Panel) will hold a public meeting.

DATES: The meeting will be held on July 24, 1996, from 1:30 p.m. until 5:30 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn at the Crossings, 801 Greenwich Avenue, Warwick, RI; telephone: (401) 732–6000.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for discussion of technical/assessment report, Amendment #1 overfishing definition, and Amendment #1 management measures.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 2, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–17438 Filed 7–8–96; 8:45 am]

BILLING CODE 3510–22–F

[Docket No. 960111003–6068–03; I.D. 070296C]

Pacific Halibut Fisheries; 1996 Halibut Landing Report No. 4

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes these inseason actions pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. These actions are intended to enhance the conservation of the Pacific halibut stock.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907–586–7221; William W. Stelle, Jr., 206–526–6140; or Donald McCaughran, 206–634–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995, and amended at 61 FR 11337, March 20, 1996). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1996 Halibut Landing Report No. 4

Area 2B Commercial Fishery Update

Halibut landings from Area 2B total 4.45 million pounds (2,018.50 metric tons (mt)) through June 17, leaving 5.07 million pounds (2,299.73 mt) of the catch limit to be caught. The fishery will continue until all Individual Vessel Quotas (IFQ) have been filled, or November 15, whichever is earlier. Annette Island Reserve Fishery in Area 2C.

The Metlakatla Indian community has been authorized by the U.S. Government to conduct a commercial halibut fishery within the Annette Island Reserve. Four 48-hour fishing periods occurred between April 27 and June 10, producing a total catch of 21,400 pounds (9.70 mt).

Alaskan Commercial Fishery Update

It is estimated that the following catches and number of landings were made in the Alaskan IFQ and Community Development Quota (CDQ) fisheries through June 12, 1996.

Area	Catch limit (000's pounds)	Catch (000's pounds)	Number of landings
2C	9,000	4,803	1,334
3A	20,000	8,196	1,139
3B	3,700	806	131
4A	1,950	268	40
4B	2,310	314	16
4C	770	1	2
4D	770	157	7
4E	20	34	45
Total	38,520	14,579	2,714

During the same time period in 1995, March 15 through June 9, 8.0 million pounds (3,628.77 mt) were landed in the Alaskan IFQ and CDQ fisheries.

Dated: July 2, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–17437 Filed 7–8–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 070196F]

Marine Mammals; Scientific Research Permits (P607 and P614)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications.

SUMMARY: Notice is hereby given that Cynthia K. Riseling, 12659 16th Street, Chino, CA 91710 (P607), and Dr. David R. Young, Oregon State University College of Oceanography, Hatfield Marine Science Center, Newport, OR 97365–5260 (P614), have applied in due form for a permit to take marine mammals for purposes of scientific research.

DATES: Written comments must be received on or before August 8, 1996.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment in the following office(s):

(P607 and 614): Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

(P607 and 614): Director, Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4001); and

(P614): Director, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg., 1, Seattle, WA 98115–0070.

Written data or views, or requests for a public hearing on these requests, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Cynthia Riseling (P607) requests authority to sample up to 35 juvenile California sea lions (*Zalophus californianus*) annually for three years. Animals sampled will be from stranded rehabilitated stocks at marine mammal stranding centers in California. Three cultures will be taken from the skin, throat, and vaginal/urethral area to study the normal bacteria flora of this animal. If fecal samples are available, they will be collected. The question the applicant seeks to answer is are normal bacterial flora of these animals causing disease in humans?

David R. Young (P614) requests authority to import from Russia blubber, liver, muscle and composited seal blubber oil taken from Baikal seals (*Phoca sibirica*). Samples will be taken from eight carcasses which were either beached, stranded, or hunted under Russia's legal culling system from areas of Lake Baikal. The researchers seek to establish the level of toxic contaminants [PCBs; DDTs; PAHs; Organic Mercury; Trace Metals] in indicator tissues of the Baikal seal, and also components of the animal's food web.

Date: July 1, 1996.

Ann Hochman,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–17362 Filed 7–8–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

July 2, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 3, 1996.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Category 611 is being increased for swing and carryover, reducing the Fabric Group limit to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 57576, published on November 16, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 2, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 9, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Turkey and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on July 3, 1996, you are directed to adjust the limits for the following categories, as provided for in the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Fabric Group 219, 313, 314, 315, 317, 326, 617, 625/626/627/628/629, as a group.	148,042,490 square meters.
Limit not in a group 611	53,998,884 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–17453 Filed 7–8–96; 8:45 am]

BILLING CODE 3510–DR–F

VOL
61
ISS
1
3
2
JL
9
1996
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DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review; Notice

The Department of Defense has submitted to OMB for a clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: Acquisition Management Systems and Data Requirements Control List (AMSDL); OMB Number 0704–0188.

Type of Request: Revision.

Number of Respondents: 1,300.

Responses per Respondent: 540.

Annual Responses: 702,000.

Average Burden per Response: 110 hours.

Annual Burden Hours: 77,220,000.

Needs and Uses: The AMSDL is a list of data requirements used in Department of Defense contracts. The information collected hereby, is used to support the design, test, manufacture, training, operation and maintenance of procured items.

Affected Public: Business or other for profit; Not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 2, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–17338 Filed 7–8–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Availability of Non-Exclusive, Exclusive, or Partially-Exclusive Licensing Ferroelectric Materials Technology

AGENCY: U.S. Army Research Laboratory, Maryland.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive Licenses under patents U.S. Patent No. 5,486,491, issued 23 Jan 1996, entitled "Ceramic Ferroelectric Composite Material—BSTO–ZR02"; U.S. Patent No. 5,312,790, issued 17 May 1994, entitled "Ceramic Ferroelectric Material"; and U.S. Patent No. 5,427,998, issued 27 Jun 1995, entitled "Ceramic Ferroelectric Composite Material—BSTO–MGO" Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Rausa, Technology Transfer Office (APG Site), AMSRL–TT–TA, U.S. Army Research Laboratory, Aberdeen Proving Ground, MD 21005–5425, telephone number (410) 278–5028.

SUPPLEMENTARY INFORMATION: Written objections must be filed within 3 months from the date of publication of this notice in the **Federal Register**.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–17415 Filed 7–8–96; 8:45 am]

BILLING CODE 3710–08–M

Availability of Non-Exclusive, Exclusive, or Partially-Exclusive Licensing Composite Materials Manufacturing Technology

AGENCY: U.S. Army Research Laboratory, Maryland.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive Licenses under patent 5,210,499, issued 11 May 1993, entitled "In-Situ Sensor Method and Device". Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Rausa, Technology Transfer Office (APG Site), AMSRL–TT–TA, U.S. Army Research Laboratory, Aberdeen Proving Ground, MD 21005–5425, telephone number (410) 278–5028.

SUPPLEMENTARY INFORMATION: Written objections must be filed within 3 months from the date of publication of this notice in the **Federal Register**.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–17414 Filed 7–8–96; 8:45 am]

BILLING CODE 3710–08–M

Availability of Exclusive, Partially Exclusive, or Nonexclusive Licenses

AGENCY: U.S. Army Soldier Systems Command.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or nonexclusive licenses under the following patents. Any licenses granted shall comply with 35 USC 209 and 37 CFR 404.

Issued Patent: 5,521,094.

Title: Method for Establishing Lethality of High Temperature Food Processing.

Issue Date: 5/28/96.

Issued Patent: 5,517,981.

Title: Water-Activated Chemical Heater with Suppressed Hydrogen.

Issue Date: 5/21/96.

Issued Patent: 5,458,896.

Title: Technique for Determining the Oxidative Status of Packaged Dry or Intermediate Moisture Foods.

Issue Date: 10/17/95.

Issued Patent: 5,438,192.

Title: Photodynamic Protein-Based Photodetector and Photodetector System for Image Detection and Processing.

Issue Date: 08/01/95.

Issued Patent: 5,402,362.

Title: Method to Utilize Trail Dyeings to Improve Color Formulations.

Issue Date: 03/28/95.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of one of the listed patents, please contact either Mr. Vincent Ranucci, Patent Counsel at 508–233–4510 or Ms. Jessica M. Niro, Paralegal Specialist at 508–233–4513 or by fax at 508–233–5167 or by writing to the U.S. Army Soldier Systems Command, Office of Chief Counsel, ATTN: Patents, Natrick, MA 01760–5035.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–17413 Filed 7–8–96; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Baltimore Metropolitan Water Resources Study-Gwynns Falls in Baltimore County, Maryland

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Baltimore District, U.S. Army Corps of Engineers is initiating the Baltimore Metropolitan Water Resources Feasibility Study for the Gwynns Falls sub-basin of the Patapsco River watershed. The riparian and aquatic environmental integrity of the Gwynns Falls sub-basin has been severely degraded by urbanization, inadequate infrastructure and industrial encroachment. Potential environmental restoration of streambanks, wetlands and forest buffers could restore and/or create up to 150 acres of riparian and aquatic habitat, in addition to improving water quality, low base flows, stream channel erosion, and sedimentation. A DEIS will be integrated into the feasibility study to document existing conditions, projects actions, and project effects and products. Baltimore County, Baltimore City and the State of Maryland's Department of the Environment (MDE) are the non-Federal sponsors for the project.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be addressed to Mr. Richard Starr, Study Manager, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB–PL–RP, P.O. Box 1715, Baltimore, Maryland 21203–1715, telephone (410) 962–4633. E-mail address: richard.r.starr@ccmail.nab.usace.army.mil

SUPPLEMENTARY INFORMATION: 1. The U.S. House of Representatives, Committee on Public Works and Transportation, authorized the Baltimore Metropolitan Water Resources Study-Gwynns Falls in a resolution adopted April 30, 1992.

2. The study area is located in northern Maryland. The area proposed for environmental restoration is known as the Gwynns Falls watershed and is located in highly developed portions of Baltimore County and Baltimore City. The most significant problem in the Gwynns Falls watershed is the instability of the steam channels and the loss of aquatic habitat. Due to the extensive urbanization along the narrow corridor between the Chesapeake Bay and the Fall Line within a short period of time, environmental resources and aquatic habitats have become degraded. This excessive degradation includes: flashy stormwater flows that cause streambank erosion and sedimentation, residential and industrial encroachment has limited riparian habitat and wetlands, and polluted runoff has contributed to poor water quality. These factors negatively impact the aquatic environment in the present and the future.

3. An ecosystem framework has been developed to restore the habitat and environmental integrity of Gwynns Falls. It allows potential restoration projects to be identified, evaluated, and selected on a watershed basis. Study goals and characterizations will be made of the broad Gwynns Falls watershed. Sub-basins, or hydrologic unit areas (HUAs), will then be identified, delineated and prioritized within the broad watershed. Based on the study objectives, high priority HUAs will be further characterized and problem statements for these areas will be developed. Upon the identification and characterization of the high priority HUAs, specific problem areas within them will be identified and prioritized. Preliminary conceptual restoration measures which could address the problem areas within Gwynns Falls, developing ecosystem based alternative plans for the high priority HUAs, and incrementally analyzing each alternative will follow. The final evaluation will focus on which combination of problem area restoration solutions provide the most environmental benefits, at the least cost, for a HUA ecosystem.

4. This proposed HUA restoration plan would potentially include stormwater detention measures, such as the restoration of floodplains, creation of wetlands, and conversion of existing stormwater facilities. Habitat structures would also be installed to restore aquatic habitat and provide added cover for spawning. Stream restoration would include stabilization techniques, such as rootwads, plantings and geotubes. Where feasible, fish blockages would be removed to allow for residential and migratory passage. In the Middle Branch tidal area, alternatives to create islands and restore a vegetative wetland buffer around the Harbor area will be investigated.

5. The decision to implement these actions will be based on an evaluation of the probable impact of the proposed activities on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal will be balanced against its reasonably foreseeable detriments. The Baltimore District is preparing a DEIS which will describe the impacts of the proposed projects on environmental and cultural resources in the study area and the overall public interest. The DEIS will be in accordance with NEPA and will document all factors which may be relevant to the proposal, including the cumulative effects thereof. Among these factors are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, recreation, water supply and conservation, water quality, energy needs, safety, and the general needs and welfare of the people. If applicable, the DEIS will also apply guidelines issued by the Environmental Protection Agency, under the authority of Section 404(b)(1) of the Clean Water Act of 1977 (Pub. L. 95–217).

6. The public involvement program will include workshops, meetings, and other coordination with interested private individuals and organizations, as well as with concerned Federal, state and local agencies. Coordination letters and newsletters have been sent to appropriate agencies, organizations, and individuals on an extensive mailing list. Additional public information will be provided through print media, mailings, radio and television announcements.

7. In addition to the Corps, the Maryland Department of the Environment, Baltimore County and Baltimore City, other participants that will be involved in the study and DEIS process include, but are not limited to the following: U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service; U.S. Forest Service; U.S. Geological Survey; Natural Resource Conservation Service; and the U.S. National Park Service. The Baltimore District invites potentially affected Federal, state, and local agencies, and other organizations and entities to participate in this study.

8. The DEIS is tentatively scheduled to be available for public review in July 1998.

Harold L. Nelson,

Assistant Chief, Planning Division.

[FR Doc. 96–17411 Filed 7–8–96; 8:45 am]

BILLING CODE 3710–41–M

Intent To Prepare a Draft Environmental Impact Statement (EIS) For Howard Hanson Dam Additional Water Storage Project Feasibility Study

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent.

SUMMARY: Seattle District, US Army Corps of Engineers is proposing an Environmental Impact Statement (EIS) for a study of alternatives for restoration of anadromous fisheries and wildlife habitat and for municipal water supply

VOL
61
ISS
132
JL
9
1996
UMI

at the Howard Hanson Dam on the Green River, King County, Washington.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Mike McNeely, Seattle District, U.S. Army Corps of Engineers, Planning Branch, PO Box 3755, Seattle, Washington 98124–2255, Telephone (206) 764–3624; fax (206) 764–4470.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

Howard A Hanson Dam was originally authorized as the Eagle Gorge Dam and Reservoir by the Flood Control Act of 1950. Construction was completed in 1962. It is an earthfill and rockfill structure which provides winter flood control and summer low flow augmentation. The dam is located at river mile 64.5 on the Green River, King County, Washington, 35 miles southeast of Seattle, and 35 miles northeast of Tacoma. The dam and reservoir provide approximately 106,000 acre feet of winter flood control storage reservoir and 26,000 acre feet of summer conservation storage (seasonally from March through September). This 26,000 acre feet of conservation storage provides a minimum instream flow of 110 cubic feet per second (cfs) at 98 percent reliability. The Additional Water Storage Project Feasibility Study purposes are water supply and environmental restoration. Potential benefits are: municipal and industrial (M&I) water supply and downstream low flow augmentation through added storage; and higher fish and wildlife survival through improved downstream fish passage at the dam and improved habitat.

2. Alternatives

The Corps of Engineers is currently examining four alternatives.

a. No action.

b. Water supply only via pool raise to elevation 1169.

c. Water supply/restoration via pool raise to elevation 1177.

d. Adaptive management water supply/restoration via phased pool raise to maximum elevation 1177.

3. Scoping and Public Involvement

Public involvement will be sought during the scoping process and throughout the course of the project in accordance with NEPA procedures. A public scoping process has been begun to clarify issues of major concern, identify any information sources that might be available to analyze and evaluate impact, and obtain public input on the range and acceptability of alternatives. This Notice of Intent formally commences the scoping process under NEPA. As part of the scoping process, all affected Federal, state and local agencies, Indian Tribes, general public and other interested private organizations, including environmental interest groups, are invited to comment on the scope of the EIS. Comments are requested concerning project alternatives, mitigation measures, probable significant environmental impacts, and permits or other approvals that may be required.

The following key areas have been identified to be analyzed in depth in the draft EIS:

(1) Geology and Engineering Design.
(2) Water Management.
(3) Water Quality.
(4) Fisheries.
(5) Wildlife.
(6) Wetlands.
(7) Cultural Resources.
(8) Socioeconomic Resources.

A scoping meeting has been scheduled for: July 18, 1996, in Auburn City Hall Council Chambers, 25 West Main Street, Auburn, Washington at 6 p.m.

4. Schedule

The draft EIS is scheduled for release on April 1, 1997.

Donald T. Wynn,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 96–17412 Filed 7–8–96; 8:45 am]

BILLING CODE 3710–ER–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 9, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 2, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Revision.

Title: Training Assessment Form—Title IV Student Financial Assistance Programs.

Frequency: One Time.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Annual Reporting and Recordkeeping Hour Burden: Responses: 25,000; Burden Hours: 2,000.

Abstract: The information collected will aid in the monitoring of contractors and non-Federal trainers. It will also measure the effectiveness of training offered to financial aid administrators, counselors, fiscal officers, and other administrators participating in student financial aid and other Federal programs.

[FR Doc. 96–17357 Filed 7–8–96; 8:45 am]

BILLING CODE 4000–01–P

Recognition of Accrediting Agencies, State Agencies for Approval of Public Postsecondary Vocational Education, and State Agencies for Approval of Nurse Education

AGENCY: Department of Education.

ACTION: Request for Comments on Agencies applying to the Secretary for Initial Recognition or Renewal of Recognition.

DATES: Commentors should submit their written comments by August 23, 1996, to the address below.

FOR FURTHER INFORMATION CONTACT: Karen W. Kershenstein, Director, Accreditation and State Liaison Division, U.S. Department of Education, 600 Independence Avenue, SW., Room 3915 ROB–3, Washington, DC 20202–5244, telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m., Eastern time, Monday through Friday.

SUBMISSION OF THIRD-PARTY COMMENTS: The Secretary of Education recognizes, as reliable authorities as to the qualify of education offered by institutions or programs within their scope, accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education that meet certain criteria for recognition. The purpose of this notice is to invite interested third parties to present written comments on the agencies listed in this notice that have applied for initial or continued recognition. All comments received in response to this notice will be reviewed by Department staff as part of its evaluation of the agencies' compliance with the criteria for recognition. In order for Department staff to give full consideration to the comments received, the comments must arrive at the address listed above not later than August 23 1996. Comments must relate to the Secretary's Criteria for the Recognition of Accrediting Agencies. Comments pertaining to agencies whose Interim Reports will be reviewed must be restricted to the concerns raised in the Secretary's letter for which the report is requested.

The National Advisory Committee on Institutional Quality and Integrity (the "Advisory Committee") advises the Secretary of Education on the recognition of accrediting agencies and State approval agencies. The Advisory Committee is scheduled to meet November 20–22, 1996 in Washington, DC. All written comments received by the Department in response to this notice will be considered by both the Advisory Committee and the Secretary. A subsequent Federal Register notice will announce the meeting and invite individuals and/or groups to submit requests for oral presentation before the Advisory Committee on the agencies being reviewed. That notice, however, does not constitute another call for written comment. This notice is the only call for written comment.

The following agencies will be reviewed during the November 1996 meeting of the Advisory Committee:

Nationally Recognized Accrediting Agencies and Associations

Petitions for Renewal of Recognition

1. Accrediting Association of Bible Colleges (requested scope of recognition: the accreditation of bible colleges and institutes offering undergraduate programs)
2. American Association of Nurse Anesthetists (requested scope of recognition: the accreditation of generic nurse anesthesia educational programs/schools)
3. Accrediting Council on Education in Journalism and Mass Communications (requested scope of recognition: the accreditation of units within institutions offering professional undergraduate and graduate (master's) degree programs)
4. The American Dietetic Association (requested scope of recognition: The accreditation of coordinated undergraduate programs in dietetics and post-baccalaureate dietetics internships)
5. American Physical Therapy Association (requested scope of recognition: the accreditation of professional programs for the physical therapist and programs for the physical therapy assistant)
6. Distance Education and Training Council (requested scope of recognition: the accreditation of home study schools, including associate, baccalaureate, or master's degree-granting home study schools)
7. Liaison Committee on Medical Education (requested scope of recognition: the accreditation programs leading to the M.D. degree)
8. Middle States Association of Colleges and Schools, Commission on Higher Education (requested scope of recognition: the accreditation of higher education institutions in Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico and the Virgin Islands)
9. National Environmental Health Science and Protection Accreditation Council (requested scope of recognition: the accreditation of baccalaureate programs in environmental health science and protection)
10. Transnational Association of Christian Colleges and Schools (requested scope of recognition: The accreditation of Christian postsecondary institutions that offer certificates, diplomas and associate, baccalaureate, and graduate degrees)

Interim Reports (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted recognition to the agency)—

1. American Academy for Liberal Education
2. American Association for Marriage and Family Therapy
3. American Bar Association, Council of the Section of Legal Education and Admission to the Bar
4. American Optometric Association
5. American Podiatric Medical Association
6. Council on Naturopathic Medical Education
7. Montessori Accreditation Council for Teacher Education
8. National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine
9. National Accrediting Commission of Cosmetology Arts and Sciences
10. National Association of Schools of Dance
11. National Council for Accreditation of Teacher Education
12. New York State Board of Regents

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petition for Renewal of Recognition

1. Oklahoma State Board of Regents for Higher Education

Interim Report

1. New York State Board of Regents (Vocational Education Unit)

VOL
61
ISS
132
JL
9
1996
UMI

State Agencies Recognized for the Approval of Nurse Education

Interim Report

1. New York State Board of Regents (Nursing Education Unit)

In accordance with the Federal policy governing the granting of academic degrees by Federal agencies (approved by letter from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare, dated December 23, 1954), the Secretary of Education is required to establish a review committee to advise the Secretary concerning any legislation that may be proposed which would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation to the Office of Management and Budget for review and transmittal to the Congress. The Secretary uses the Advisory Committee as the review committee required for this purpose. Accordingly, the Advisory Committee will review the following institution at its November meeting:

Proposed Bachelor's Degree-Granting Authority

1. Joint Military Intelligence College, Bolling Air Force Base (for Bachelor of Science in Intelligence)

Public Inspection of Petitions and Third-Party Comments

All petitions and interim reports, and those third-party comments received in advance of this meeting, will be available for public inspection and copying at the U.S. Department of Education, ROB–3, Room 3915, 7th and D Streets, SW., Washington, DC 20202–5244, telephone (202) 708–7417 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. It is preferred that an appointment be made in advance of such inspection or copying.

Dated: July 2, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96–17348 Filed 7–8–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice of Intent to Prepare an Environmental Assessment on the Proposed Sale of Surplus Natural and Low-Enriched Uranium

AGENCY: Department of Energy.

ACTION: Notice of Intent.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare an Environmental Assessment (EA) on the sale of natural uranium and low-enriched uranium located at the gaseous diffusion plants in Portsmouth, Ohio, and Paducah, Kentucky. DOE will prepare the EA pursuant to the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's NEPA regulations, and the Department's NEPA regulations. The EA will describe: (1) the purpose and need for action by the Department; (2) the Department's proposed action; (3) alternatives (including a no-action alternative) to the proposed action; and (4) the potential impacts of the proposed action and alternatives.

ADDRESSES: Questions regarding this Environmental Assessment should be addressed to: Mr. John Kotek, Office of Nuclear Energy, Science and Technology, NE–1, Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585. Requests to receive copies of the draft EA, when available for review, should also be directed to Mr. Kotek. Mr. Kotek may be contacted by telephone at (202) 586–6823, or by facsimile at (202) 586–0698.

DATES: DOE anticipates that it will issue a draft EA by July 30, 1996, which it will forward for review by affected states, Indian tribes, and other parties who have expressed an interest in the proposed action or requested a copy of the draft for review. The Department will accept comments on the EA for 30 days following issuance of the draft EA.

FOR FURTHER INFORMATION CONTACT: For general information on DOE's NEPA process, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585. Ms. Borgstrom may be contacted by leaving a message at (800) 472–2756 or by calling (202) 586–4600.

SUPPLEMENTARY INFORMATION:

Background

DOE owns substantial amounts of natural uranium and low-enriched uranium (LEU) in excess of the Department's current needs. The Department has declared about 21.5 million pounds of these materials to be surplus. About 20.3 million pounds of these materials contain the uranium isotope U-235 in concentrations (0.711 percent) equivalent to natural uranium; about 1.2 million pounds contain U-235 concentration of 4.5 percent, and are therefore classified as LEU. The LEU is stored at the gaseous diffusion plant in Portsmouth, Ohio; the 20.3 million pounds of natural uranium are stored at Paducah, Kentucky. In addition to these 21.5 million pounds, the Department will receive title to another 14.2 million pounds of natural uranium associated with the United States/Russia Highly Enriched Uranium Purchase Agreement (Russian HEU Agreement).[1] These 14.2 million pounds are located at the Paducah gaseous diffusion plant and will remain under the control and ownership of the United States Enrichment Corporation (USEC) until ownership is transferred to DOE before the end of 1996.

Congress has imposed a number of requirements on the sale and use of these materials. Section 3112(b)(1) of the United States Enrichment Corporation Privatization Act of 1996 (USEC Privatization Act, Public Law 104–134) requires that DOE sell within seven years the 14.2 million pounds of natural uranium associated with the U.S./Russia HEU Agreement. Under section 3112(b)(2), DOE may sell this natural uranium: (1) for overfeeding of enrichment operations in the United States at any time; (2) for end use outside of the United States at any time; (3) to the Russian Executive Agent in 1995 and 1996 for use in matched sales pursuant to the Suspension Agreement;[2] or (4) in 2001 for end use in the United States beginning in 2002 in amounts not to exceed 3 million pounds annually.

As to the 21.5 million pounds of natural uranium and low-enriched uranium DOE already has in its inventory, Congress did not mandate

[1] In the U.S./Russia HEU Agreement, the United States and Russia agreed that USEC, as the United States' Executive Agent, would purchase low-enriched uranium derived from 500 metric tons of highly enriched uranium extracted from nuclear weapons dismantled in Russia.

[2] The Suspension Agreement, also referred to as the "Agreement to Suspend Investigation on Uranium from the Russia Federation, as amended," settled an investigation into whether Russia was dumping uranium into the United States market. It established a mechanism known as "matched sales arrangements" in which imports of Russian uranium are linked with sales of uranium newly produced in the United States. In a matched sale, one-half of the uranium sold is Russian and the other one-half is new domestic production. There are annual quotas on the amount of matched sales through 2004, when the Suspension Agreement expires.

that the Department sell these materials within a particular period of time. However, Congress anticipated in the Energy and Water Development Appropriations Act of 1996 that DOE would sell about $35 million worth of these materials in fiscal year 1996 and use the proceeds to offset some of the costs of maintaining and improving the gaseous diffusion plants. The Department believes that it will need to sell additional amounts of these materials beginning in 1996 in order to continue financing maintenance and other activities at the gaseous diffusion plants.

Congress imposed three conditions on the sale of material from DOE's inventory in section 3112(d) of the USEC Privatization Act; two of these conditions are relevant to the 21.5 million pounds of inventory material considered in this Environmental Assessment. Before selling materials from DOE's inventory, the Secretary of Energy must make a determination that: (1) the sale will not have an "adverse material impact" on the domestic uranium industry and (2) the Department will receive a price that is at least equal to the fair market value of the materials.

Proposed Action

DOE proposes to sell the 21.5 million pounds of surplus material in its inventory and the 14.2 million pounds of material associated with the Russian HEU Agreement that the Department will receive from USEC. All of the 35.7 million pounds are in the form of uranium hexafluoride (UF_6). DOE proposes to sell these 35.7 million pounds of uranium over six or more years beginning in 1996. The potential buyers are entities that already purchase or manage inventories of uranium for use in commercial applications: USEC, utilities, convertors, brokers and uranium producers. Accordingly, the proposed action would not result in new or different uses of uranium.

DOE would comply with sections 3112 (b) and (d) of the USEC Privatization Act in making the sales it is proposing. In 1996, DOE proposes to sell some of the 14.2 million pounds it will receive under the Russian HEU Agreement to the Russian Executive Agent, or the Agent's representative, for use in matched sales pursuant to the Suspension Agreement. The Department would sell, to the extent practical, the remainder of this 14.2 million pounds for end use outside the United States or for overfeeding the gaseous diffusion plants during the period 1997 through 2000. Any remaining material would be sold in 2001 for consumption by domestic end users beginning in 2002 at a rate not to exceed 3 million pounds per year. As to the 21.5 million pounds from DOE's inventory, the Department proposes to sell the one million pounds of LEU in 1996 in order to obtain the revenue Congress anticipated DOE would receive in the Energy and Water Development Appropriations Act of 1996. DOE would sell the remaining 20.3 million pounds of inventory materials during the period 1997 through 2002 in order to continue financing maintenance and other activities at the gaseous diffusion plants. All sales of inventory materials would be contingent on the Secretary making the determinations required by section 3112(d)(2) of the USEC Privatization Act.

The sales proposed and evaluated in this Environmental Assessment would be in addition to sales evaluated in two other NEPA analyses: (1) the Disposition of Surplus Highly Enriched Uranium Final EIS (DOE/EIS—0240, June 1996), and (2) the Environmental Assessment for the Purchase of Russian Low Enriched Uranium Derived from the Dismantlement of Nuclear Weapons in the Countries of the Former Soviet Union (USEC/EA—94001, DOE/EA—0837, January 1994). The Department will analyze the cumulative effects of the sales proposed in this environmental assessment, those proposed in the two other NEPA analyses, and those scheduled under the Russian HEU Agreement and the Suspension Agreement.

Alternatives

DOE has identified alternatives to its proposed sale of these materials, and may identify others during the preparation of the EA. All alternatives will be evaluated against the purpose and need for action by the Department, and those that are reasonable and meet the need for action by the Department will be evaluated in the EA.

No Action

The Council on Environmental Quality's NEPA regulations require that federal agencies analyze the impacts of not taking the proposed action (the "No Action Alternative"). In this case, the No Action Alternative would be that DOE would continue to store the 35.7 million pounds of uranium at Portsmouth and Paducah rather than selling it.

Alternatives that Satisfy the Need for Department Action

Alternatives that are under consideration for evaluation in the EA include:

(1) Different schedules for the sale of this uranium; and

(2) Selling amounts other than 21.5 million pounds of inventory material.

Preliminary Identification of Potential Environmental Impacts

The Department has tentatively identified the following potential impacts for evaluation in the EA. This list is not intended to be all-inclusive or to predetermine the potential impacts of any of the alternatives.

(1) Potential health and safety impacts to on-site workers and to the public from storage, handling, and transport of uranium, including accidents;

(2) Socioeconomic impacts on the uranium industry in the United States;

(3) Potential cumulative impacts of these and other sales; and

(4) Considerations of environmental justice.

DOE anticipates that it will issue a draft EA by July 30, 1996, which it will forward for review by affected states, Indian tribes, and other parties who have expressed an interest in the proposed action or requested a copy of the draft for review. The Department will accept comments on the EA for 30 days following issuance of the draft EA. Based on the EA and any comments it receives, DOE will then determine whether it will prepare an environmental impact statement or issue a finding of no significant impact.

Issued in Washington, D.C., this 1st day of July, 1996, for the United States Department of Energy.

Ray A. Hunter,

Deputy Director, Office of Nuclear Energy, Science and Technology.

[FR Doc. 96–17432 Filed 7–8–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Pantex Plant; Meeting

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant.

DATE AND TIME: Tuesday, July 23, 1996: 10:00 a.m.–2:00 p.m.

ADDRESSES: Carson County Square House Museum, 5th and Elsie, Panhandle, Texas.

FOR FURTHER INFORMATION CONTACT: Tom Williams, Program Manager,

Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120, (806)477–3121.

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* The Board provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda:

10:00 am Welcome—Agenda Review—Approval of Minutes
10:15 am Co-Chairs' Comments
10:45 am Subcommittee Reports
Community Outreach
Budget and Finance
Nominations
Program and Training
Policy and Personnel
11:15 am Updates
Occurrence Reports—DOE
Gerald Johnson Update
Pantex Fatality Update, Paul Sowa
12:00 pm Lunch
12:30 pm Presentation
1:30 pm Task Force Reports
Site-wide Environmental Impact Statement
Environmental Restoration
2:00 pm Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Williams' office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 pm, Monday through Thursday; 7:45 am to 5:00 pm on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 pm to 6:00 pm on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Tom Williams at the address or telephone number listed above.

Issued at Washington, DC on July 3, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–17433 Filed 7–08–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

Information Collection Submitted for Review and Request for Comments (FERC–598)

July 2, 1996.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: In compliance with the requirements of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is submitting a collection of information listed in this notice to OMB for review under the provisions of the Act.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Copies of the collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, D.C. 20426. Comments should also be addressed to: Desk Officer, Federal Energy Regulatory Commission, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Abstract

The information collected under the requirements of FERC–598 "Determinations for Entities Seeking Exempt Wholesale Generator Status" OMB No. 1902–0166) is used by the Commission to implement the statutory provisions of Section 711 of the Energy Policy Act of 1992 (EPAct), Public Law 102–46 which amended the Public Utility Holding Company Act of 1935 (PUHCA) to create a category of power producers. Section 2(a)(11)(B) define an EWG as an entity engaged directly, or indirectly through one or more affiliates in the business exclusively of owning and/or operating all or part of one or more eligible facilities, and selling electric energy at wholesale. The Commission implements these filing requirements in the code of Federal Regulations (CFR) under 18 CFR Part 365.

Action

The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data. The Commission did not receive any comments in response to the public notice published in the Federal Register, April 12, 1996 (61 FR, 16904–05).

Burden Statement

Public reporting burden for this collection is estimated as

No. of respondents annually (1)	No. of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
280	1	6 hours	1,680 hours.

Estimated cost burden to respondents: 1,680 hours/2,087 hours per year × $102,000 per year = $82,108.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17405 Filed 7–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–595–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

July 2, 1996.

Take notice that on June 25, 1996, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP96–595–000, a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to upgrade and relocate the existing Chandler No. 3 Meter Station (meter station) located in Maricopa, Arizona, under Northern's blanket certificate issued in Docket No. CP82–432–000 and Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso proposes to upgrade and relocate a meter station to make additional firm deliveries of natural gas to Southwest Gas Corporation (Southwest) for service to Chandler, Arizona, and environs. El Paso asserts that Southwest has requested additional firm service and that the present meter station is unable to accommodate such delivery. It is further asserted that, by letter agreement dated November 22, 1994, El Paso and Southwest have agreed that El Paso would therefore upgrade the existing meter station. El Paso states that, in order to facilitate ease of maintenance and to eliminate a potentially hazardous situation, El Paso has elected to relocate the existing meter station approximately 53 feet north on the Tucson-Phoenix Line and the Tucson-Phoenix Loop Line.

It is indicated that the proposed quantity of natural gas to be transported on a firm basis to the upgraded meter station is estimated to be 511,636 Mcf annually during the third full year of operation. It is further indicated that the estimated maximum peak day gas requirement at the meter station during the third calendar year of service is 13,680 Mcf. El Paso asserts the gas will be used by Southwest to satisfy the residential, residential space heating, commercial, commercial space heating, and the industrial requirements of customers in Chandler, Arizona, and environs. El Paso states that the proposed firm transportation of gas to Southwest at the meter station will have a negligible effect on El Paso's 1995 peak day and total annual transportation quantities. El Paso further states that estimated cost of the proposed facilities is $101,500, which Southwest has agreed to reimburse El Paso.

Any person or the Commission Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17346 Filed 7–8–96; 8:45 am]

BILLING CODE 6717–01M

[Docket No. CP96–610–000]

Granite State Gas Transmission, Inc.; Notice of Application

July 2, 1996.

Take notice that on July 1, 1996, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581, filed in Docket No. CP96–610–000, an application pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the construction and operation of a liquefied natural gas (LNG) facility in Wells, Maine, to serve Northern Utilities, Inc. (Northern Utilities), pursuant to new Rate Schedule LNG–1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Granite State submits that the LNG facility proposed in this application is identical to the one proposed in Docket No. CP–95–52–000, that was dismissed without prejudice to resubmitting the proposal changing its use from baseload to peakshaving service. According to Granite State, this resubmitted filing reflects a change in the nature of the service to be provided by such facility from winter baseload to peakshaving.

Granite State further states that the LNG facility is necessary to replace Northern Utilities' volumes currently flowing using capacity leased on the Portland Pipe Line Corporation's oil line that has been converted to natural gas use. According to Granite State, the lease is set to expire on April 30, 1998, and Granite State proposes an in-service date of November 1, 1998 for the proposed LNG facility, the first day of the first heating season after the lease expires.

Granite State states that Northern Utilities has contracted for transportation service on the Portland Natural Gas Transmission System (PNGTS) which also has a proposed in-service date of November 1, 1998. However, Granite State maintains that the LNG facility may be necessary for winter baseload service for Northern Utilities if PNGTS is not in service by that date. After PNGTS is in service, the LNG facility would provide peakshaving service to Northern Utilities.

According to information contained in the application, once the LNG facility is functioning as a peakshaver it would be operated in a fashion that would allow deliverability from the facility to increase by almost 150%. Accordingly, Granite State's resubmitted filing contains a revised precedent agreement

VOL 61 ISS 132 JL 9 1996 UMI

with Northern Utilities which provides for a maximum daily deliverability from the LNG facility of 54,640 Dth per day prior to PNGTS, and 134,000 Dth per day thereafter. Although not explicitly stated by Granite State in its proposal, based upon the volumetric determinants contained in Exhibit P of the application, these maximum withdrawal levels would translate to a 52-day service prior to PNGTS, and 12–13 days of service afterwards.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 23, 1996 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Granite State to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17410 Filed 7–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG96–13–001]

K N Interstate Gas Transmission Company; Notice of Filing

July 2, 1996.

Take notice that on June 27, 1996, K N Interstate Gas Transmission Company (K N Interstate) submitted a "Motion of K N Interstate Gas Transmission Company for Authorization to Withdraw and Substitute Revised Statement on Standard of Conduct." K N Interstate states that it "inadvertently filed an earlier, incorrect version of the Revised Standards with the Commission." K N Interstate states that it is filing the revised standards of conduct in compliance with Order Nos. 497 *et seq.*[1] and Order Nos. 566, *et seq.*[2]

K N Interstate states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before July 17, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17347 Filed 7–8–96; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶30, 997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶61,044 (October 14, 1994), Order No. 566–B, *order on rehearing*, 59 FR 65707 (December 21, 1994); 69 FERC ¶61,334 (December 14, 1994).

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. ER96–2223–000, et al.]

New England Power Company, et al. Electric Rate and Corporate Regulation Filings

July 1, 1996.

Take notice that the following filings have been made with the Commission:

1. New England Power Company

[Docket No. ER96–2223–000]

Take notice that on June 25, 1996, New England Power Company, filed a Service Agreement and Certificate of Concurrence with TransCanada Power Corp. under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: July 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER96–2224–000]

Take notice that on June 25, 1996, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and AIG Trading Corporation (AIG), dated June 18, 1996. This Service Agreement specifies that AIG has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and AIG to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of June 18, 1996 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: July 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Portland General Electric Company

[Docket No. ER96–2225–000]

Take notice that on June 25, 1996, Portland General Electric Company (PGE), tendered for filing an Amendment No. 1 to the Power Sales Agreement between PGE and the Canby Utility Board (PGE Rate Schedule FERC No. 192). The Amendment deletes certain definition in the original agreement pertaining to price determinations, changes the termination date of the original agreement and sets forth pricing for each Billing Month effective August 1, 1996 until September 30, 2001.

Pursuant to 18 CFR 35.11, PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow Amendment No. 1 to PGE Rate Schedule FERC No. 192 to become effective August 1, 1996.

Copies of this filing were served upon the names listed in the filing letter.

Comment date: July 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Tampa Electric Company

[Docket No. ER96–2226–000]

Take notice that on June 25, 1996, Tampa Electric Company (Tampa Electric), tendered for filing an amendment to its contract for the sale and purchase of capacity and energy with Georgia Power Company (Georgia Power).

Tampa Electric proposes that the amendment be made effective on July 9, 1996, and therefore requests a waiver of the Commission's notice requirement.

Copies of the filing have been served on Georgia Power and the Florida and Georgia Public Service Commission.

Comment date: July 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Tampa Electric Company

[Docket No. ER96–2227–000]

Take notice that on June 25, 1996, Tampa Electric Company (Tampa Electric), tendered for filing a Letter Agreement that amends the existing Letter of Commitment between Tampa Electric and the Utilities Commission, City of New Smyrna Beach, Florida (New Smyrna Beach) under interchange Service Schedule D.

Tampa Electric proposes that the Letter Agreement be made effective on July 9, 1996, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on New Smyrna Beach and the Florida Public Service Commission.

Comment date: July 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–2228–000]

Take notice that on June 25, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an agreement to provide interruptible transmission service for DuPont Power Marketing, Inc. (DuPont).

Con Edison states that a copy of this filing has been served by mail upon DuPont.

Comment date: July 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–2229–000]

Take notice that on June 25, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an agreement to provide interruptible transmission service for AIG Trading Corporation (AIG).

Con Edison states that a copy of this filing has been served by mail upon AIG.

Comment date: July 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. ER96–2230–000]

Take notice that on June 25, 1996, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between NMPC and The Cleveland Electric Illuminating Company, and The Toledo Edison Company (Cleveland and Toledo). These Service Agreements specify that Cleveland and Toledo have signed on to and have agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and Cleveland and Toledo to enter into separately scheduled transactions under which NMPC will sell to Cleveland and Toledo capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchasers.

NMPC has served copies of the filing upon the New York State Public Service Commission and Cleveland and Toledo.

Comment date: July 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER96–2231–000]

Take notice that on June 25, 1996, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission, an executed Service Agreement between NMPC and Duke/Louis Dreyfus LLC (D/LD). This Service Agreement specifies that D/LD has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and D/LD to enter into separately scheduled transactions under which NMPC will sell to D/LD capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of June 17, 1996. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and D/LD.

Comment date: July 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER96–2232–000]

Take notice that on June 25, 1996, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission, an executed Service Agreement between NMPC and AIG Trading Corporation (AIG). This Service Agreement specifies that AIG has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and AIG to enter into separately scheduled transactions under which NMPC will

VOL 61 ISS 132 JL 9 1996 UMI

sell to AIG capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of June 17, 1996. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and AIG.

Comment date: July 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corporation

[Docket No. ER96–2233–000]

Take notice that on June 25, 1996, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission, an executed Service Agreement between NMPC and Coral Power, LLC (Coral). This Service Agreement specifies that Coral has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and Coral to enter into separately scheduled transactions under which NMPC will sell to Coral capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of June 17, 1996. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Coral.

Comment date: July 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Niagara Mohawk Power Corporation

[Docket No. ER96–2234–000]

Take notice that on June 25, 1996, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission, an executed Service Agreement between NMPC and MidCon Power Services Corporation (MidCon). This Service Agreement specifies that MidCon has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and MidCon to enter into separately scheduled transactions under which NMPC will sell to MidCon capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of June 17, 1996. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and MidCon.

Comment date: July 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation

[Docket No. ER96–2235–000]

Take notice that on June 25, 1996, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission, an executed Service Agreement between NMPC and TransCanada Power Corporation (TransCanada). This Service Agreement specifies that TransCanada has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and TransCanada to enter into separately scheduled transactions under which NMPC will sell to TransCanada capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of June 17, 1996. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and TransCanada.

Comment date: July 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17406 Filed 7–8–96; 8:45 am]

BILLING CODE 6717–01–P

Federal Energy Regulatory Commission

[Docket No. EG96–77–000, et al.]

NRGenerating Holdings (No. 3) B.V., et al; Electric Rate and Corporate Regulation Filings

June 28, 1996.

Take notice that the following filings have been made with the Commission:

1. NRGenerating Holdings (No. 3) B.V.

[Docket No. EG96–77–000]

On June 19, 1996, NRGenerating Holdings (No. 3) B.V. ("Applicant"), with its principal office at c/o NRG Energy, Inc., Level 50, Rialto South Tower, 525 Collins Street, Melbourne Victoria 3000, Australia, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant states that it holds an interest in an unincorporated joint venture to be formed under the laws of Australia to acquire, own and operate a 1,600 megawatt brown coal-fired electric generating facility and adjacent brown coal open cut mine located in Victoria, Australia (the "Facility"). Electric energy produced by the Facility will be sold at wholesale to the Victoria Power Exchange. In no event will any electric energy be sold to consumers in the United States.

Comment date: July 15, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. NRGenerating Holdings (No. 4) B.V.

[Docket No. EG96–78–000]

On June 19, 1996, NRGenerating Holdings (No. 4) B.V. ("Applicant"), with its principal office at c/o NRG Energy, Inc., Level 50, Rialto South Tower, 525 Collins Street, Melbourne Victoria 3000, Australia, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant states that it holds an interest in an unincorporated joint venture to be formed under the laws of Australia to acquire, own and operate a 1,600 megawatt brown coal-fired electric generating facility and adjacent brown coal open cut mine located in Victoria, Australia (the "Facility"). Electric energy produced by the Facility will be sold at wholesale to the Victoria Power Exchange. In no event will any electric energy be sold to consumers in the United States.

Comment date: July 15, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Public Service Company of New Mexico

[Docket No. EL96–16–000]

Take notice that on May 28, 1996, Public Service Company of New Mexico tendered for filing an amendment in the above-referenced docket.

Comment date: July 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. North Carolina Utilities Commission

[Docket No. EL96–58–000]

Take notice that on June 11, 1996, the North Carolina Utilities Commission tendered for filing a Petition for Waiver on behalf of Nantahala Power and Light Company (Nantahala) pursuant to Section 292.402 of the Commission's Regulations, to request that the Commission grant to Nantahala a waiver of the application of Section 292.303(a) of the Commission's Regulations, concerning purchases from qualifying facilities under the Public Utility Regulatory Policies Act of 1978.

Comment date: July 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas & Electric Company

[Docket No. ER96–1853–000]

Take notice that on June 11, 1996, Louisville Gas & Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: July 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Delmarva Power & Light Company

[Docket No. ER96–1962–000]

Take notice that on June 25, 1996, Delmarva Power & Light Company (Delmarva) tendered for filing a Revised Supplement to its FERC Rate Schedule No. 99, with respect to Delmarva's partial requirements service agreement with the City of Seaford. The Revised Supplement corrects an error in its application filed May 31, 1996. The Revised Supplement proposes a rate change that would increase base demand and energy rates by 1.19%, or about $17,000 annually.

Delmarva proposes an effective date of June 1, 1996. Delmarva asserts that the increase and the proposed effective date is in accord with the service agreement with the City of Seaford as accepted for filing as Rate Schedule No. 99 and eight supplements in Docket No. ER95–1039–000, which service agreement provides for changes in rates that correspond to the level of changes in rates approved by the Delaware Public Service Commission for Delmarva's non-residential retail customers.

Copies of the filing were served on the City of Seaford and the Delaware Public Service Commission.

Comment date: July 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power & Light Company

[Docket No. ER96–1001–000]

Take notice that on June 12, 1996, Florida Power & Light Company tendered for filing an amendment in the above referenced docket.

Comment date: July 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER96–2179–000]

Take notice that on June 19, 1996, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively the "Southern Companies") filed a Short-Term Transaction Service Agreement by and among itself, as agent for the Southern Companies and Saluda River Electric Cooperative, Inc. pursuant to which Southern Companies will make wholesale power sales for transactions of less than one (1) year in duration.

Comment date: July 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Illinois Power Company

[Docket No. ER96–2186–000]

Take notice that on May 31, 1996, Illinois Power Company tendered for filing a summary of its activity for April 1996, under its Market Based Rate Tariff, FERC Electric Tariff, Original Volume No. 7 (Original Sheet Nos. 1–11).

Comment date: July 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Midwest Energy Inc.

[Docket No. ER96–2187–000]

Take notice that on June 19, 1996, Midwest Energy Inc. tendered for filing a Service Agreement for Firm Transmission Service with the City of Hill City, Kansas.

Comment date: July 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. American Electric Power Service Corporation

[Docket No. ER96–2213–000]

Take notice that on June 24, 1996, American Electric Power Service Corporation, on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, and Ohio Power company, (the AEP Companies) tendered for filing an amendment to the AEP System Interim Allowance Agreement. The purpose of the amendment to the Agreement is to establish the allocation of costs and revenues related to the sale or purchase of allowances to or from non-affiliated companies.

The AEP Companies request an effective date of September 1, 1996, but the Amendment relates back to the effective date of the Agreement.

Copies have been served upon the state regulatory commissions in Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: July 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. The Cleveland Electric Illuminating Company

[Docket No. ER96–2214–000]

Take notice that on June 24, 1996, The Cleveland Electric Illuminating Company (CEI), filed pursuant to § 205 of the Federal Power Act and Part 35 of the Commissions Regulations, thereunder electric power service agreements between CEI and Rainbow Energy Marketing Corporation, LG&E Power Marketing, Inc. and Central Illinois Public Service Company. CEI

VOL
61
ISS
1
32
JL
9
1996
UMI

requests an effective date of the agreements of June 24, 1996.

Comment date: July 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Duke Power Company

[Docket No. ER96–2215–000]

Take notice that on June 24, 1996, Duke Power Company (Duke), tendered for filing an unexecuted Service Agreement for Market Rate (Schedule MR) Sales between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Enron Power Marketing, Inc. and a Schedule MR Transaction Sheet thereunder.

Comment date: July 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Louisville Gas and Electric Company

[Docket No. ER96–2216–000]

Take notice that on June 24, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Transmission Agreement between Louisville Gas and Electric Company and Tennessee Valley Authority (TVA) under Rate TS.

Comment date: July 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Kentucky Utilities Company

[Docket No. ER96–2217–000]

Take notice that on June 24, 1996, Kentucky Utilities Company (KU), tendered for filing a service agreement between KU and PECO Energy Company under its Power Services (PS) Tariff. KU requests an effective date of May 22, 1996.

Comment date: July 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Kansas City Power & Light Company

[Docket No. ER96–2218–000]

Take notice that on June 24, 1996, Kansas City Power & Light Company (KCPL); tendered for filing Amendatory Agreement No. 3 to Municipal Agreement between KCPL and the City of Osawatomic, Kansas, dated June 19, 1996, and associated Service Schedule. KCPL states that the Amendatory Agreement revises the Agreement pursuant to KCPL's Open Season.

KCPL requests waiver of the Commission's notice requirements.

Comment date: July 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Northern Indiana Public Service Company

[Docket No. ER96–2219–000]

Take notice that on June 25, 1996, Northern Indiana Public Service Company, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Delhi Energy Services, Inc.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Delhi Energy Services, Inc. under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and Delhi Energy Services, Inc. request waiver of the Commission's sixty-day notice requirement to permit an effective date of July 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: July 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Northern Indiana Public Service Company

[Docket No. ER96–2220–000]

Take notice that on June 25, 1996, Northern Indiana Public Service Company, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Commonwealth Edison Company.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Commonwealth Edison Company under Northern Indiana Public Service Company's Power Sales Tariff, which was accepted for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and Commonwealth Edison Company request waiver of the Commission's sixty-day notice requirement to permit an effective date of July 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: July 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Power and Light Company

[Dpcket No. ER96–2221–000]

Take notice that on June 24, 1996, Wisconsin Power and Light Company (WP&L), tendered for filing an Agreement dated June 14, 1996, establishing Eastex Power Marketing, Inc. as a customer under the terms of WP&L's Point-to-Point Transmission Tariff.

WP&L requests an effective date of June 14, 1996 and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: July 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Pennsylvania Power & Light Co.

[Docket No. ER96–2222–000]

Take notice that on June 25, 1996, Pennsylvania Power & Light Company (PP&L), tendered for filing with the Federal Energy Regulatory Commission Service Agreements (the Agreements) between PP&L and DuPont Power Marketing, Inc., dated May 21, 1996, between PP&L and VASTAR Power Marketing, Inc., dated June 10, 1996, between PP&L and Delmarva Power & Light Company dated June 3, 1996, and between PP&L and AIG Trading Corporation dated June 18, 1996.

The Agreements supplement a Short Term Capacity and Energy Sales umbrella tariff approved by the Commission in Docket No. ER95–732–000 on June 21, 1995.

In accordance with the policy announced in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified and reh'g granted in part and denied in part*, 65 FERC ¶ 61,081 (1993), PP&L requests the Commission to make the Agreements effective as of June 24, 1996, because service will be provided under an umbrella tariff and each service agreement is filed within 30 days after the commencement of service. In accordance with 18 CFR 35.11, PP&L also requested waiver of certain filing requirements for information previously filed with the Commission in Docket No. ER95–732–000.

PP&L states that a copy of its filing was provided to the customers involved and to the Pennsylvania Public Utility Commission.

Comment date: July 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Texas-New Mexico Power Company

[Docket No. ES96–35–000]

Take notice that on June 26, 1996, Texas-New Mexico Power Company (TNP) filed an application, under § 204 of the Federal Power Act, requesting that the Commission:

(1) authorize TNP to enter into a secured bank syndicated credit agreement in an amount up to $100 million and to issue up to $100 million of New Bonds to secure the credit agreement; and

(2) grant any other authority that the Commission deems necessary to authorize TNP to participate in the proposed transaction.

Comment date: July 17, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Old Dominion Electric Cooperative

[Docket No. ES96–36–000]

Take notice that on June 27, 1996, Old Dominion Electric Cooperative (ODEC) filed an application, under § 204 of the Federal Power Act, seeking authorization to issue up to and including $110 million of zero coupon First Mortgage Bonds which will be used to secure ODEC's obligations under the equity security deposit provisions of its lease/lease-back of the Clover Power Station Unit 1 which was authorized by the Commission in Docket No. ES96–1–000.[1]

Comment date: July 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determiaing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17343 Filed 7–8–96; 8:45 am]

BILLING CODE 6717–01–P

[1] 73 FERC § 62,120 (1995).

[Docket No. CP96–201–000]

Algonquin Gas Transmission Company; Notice of Availability of the Environmental Assessment for the Proposed Middletown Lateral Project

July 2, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Algonquin Gas Transmission Company (Algonquin) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed pipeline facilities including:

- 8.4 miles of 20-inch-diameter pipeline (the Middletown Lateral) from Algonquin's existing mainline system in Glastonbury, Hartford County, Connecticut to The Connecticut Light and Power Company's (CL&P) electric generating station in Middletown, Middlesex County, Connecticut (Middletown Plant);
- A meter station; and.
- A tap value site and appurtenant facilities.

CL&P would construct nonjurisdictional facilities consisting of approximately 1,500 feet of piping, a regulator station, and burner conversion equipment. All of CL&P's facilities would be constructed within its plant site.

The purpose of the proposed facilities would be to provide up to 82,500 million British thermal units of gas per day to CL&P for use as an alternate fuel for Unit Nos. 2 and 3 at its Middletown Plant.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Mr. John Wisniewski, Environmental Project Manager, Environmental Review and Compliance Branch II, Office of Pipeline Regulation, PR–11.2, 888 First Street, N.E., Washington, DC 20426, (202) 208–0896.

Any person wishing to comment on the EA may do so. Written comments must reference Docket No. CP96–201–000, and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Comments should be filed as soon as possible, but must be received no later than August 1, 1996, to ensure consideration prior to a Commission decision on this proposal. A copy of any comments should also be sent to Mr. John Wisniewski, Environmental Project Manager, PR–11.2, at the above address.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file later interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about this project is available from Mr. John Wisniewski, Environmental Project Manager.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17407 Filed 7–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–517–000]

Algonquin LNG, Inc.; Notice of Public Scoping Meeting and Site Inspection, Algonquin LNG Modifications Project

July 2, 1996.

On July 15, 1996, at 7:00 p.m., the Office of Pipeline Regulation environmental staff will conduct a public scoping meeting for the facilities proposed in the Algonquin LNG Modification's Project in Providence, Rhode Island. The meeting will be held at the Rhode Island Public Utilities Commission, Third Floor Hearing Room, 100 Orange Street, Providence, Rhode Island.

The public meeting will be designed to give more detailed information and

VOL
61
ISS
132
JL
9
1996
UMI

another opportunity to offer comments on the proposed project. Those wanting to speak at the meeting can call the Environmental Assessment (EA) Project Manager to preregister their names on the speaker list. Individuals on the speaker list before the date of the meeting will be allowed to speak first. A second speaker list will be developed at the meeting. Priority will be given to people representing groups. A transcript of each meeting will be made so that your comments will be accurately recorded.

In addition to the public meeting, the environmental staff will inspect the proposed project sites on the afternoon of July 15, 1996. Those planning to attend must provide their own transportation. For further information, call Chris Zerby, EA Project Manager, at (202) 208–0111.

Kevin P. Madden,

Director, Office of Pipeline Regulation.

[FR Doc. 96–17408 Filed 7–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–477–000]

K N Interstate Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Pony Express Pipeline Project and Request for Comments on Environmental Issues

July 2, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Pony Express Pipeline Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

K N Interstate Gas Transmission Company (KN) proposes to convert an existing crude oil pipeline owned by Amoco Pipeline Company (Amoco) to natural gas service. The oil pipeline crosses portions of five states and extends between Lost Cabin, Wyoming and Freeman, Missouri. Together with several smaller components, the project would have the capacity to transport natural gas with an energy content of up to 255 billion Btus per day from the Wind River Basin in central Wyoming and major gas producing areas of southwest Wyoming. It will also interconnect with or cross a number of other interstate gas transportation systems, including KN's existing system (8 locations), ANR Pipeline Company, Natural Gas Pipeline Company of America, Northern Natural Gas Company, Panhandle Eastern Pipeline Company, Trailblazer Pipeline Company, and Williams Natural Gas Company.

The proposed project would include the following components:

- Conversion of the 914-mile-long Amoco oil pipeline to natural gas service (of which an 804-mile-long segment would be acquired by KN);
- Construction of approximately 65 miles of 16-inch-diameter pipeline between Rockport (Weld County), Colorado and an interconnection with the converted Amoco pipeline near Kimball (Kimball County), Nebraska;
- Construction of approximately 7.6 miles of 12-inch-diameter pipeline to reroute the converted Amoco pipeline around a portion of Casper, Wyoming;
- Construction of approximately 0.3 mile of 24-inch-diameter pipeline to reroute the converted Amoco pipeline around a congested area near Appanoose School (Franklin County), Kansas;
- Construction of approximately 1.6 miles of 20-inch-diameter inlet and 1.6 miles of 20-inch-diameter outlet pipeline between the converted Amoco pipeline and KN's existing Casper Compressor Station (Natrona County), Wyoming;
- Construction/installation of 50,500 horsepower of compression at five compressor stations;
- Upgrade 58 miles of existing 12-inch-diameter pipeline extending from the Huntsman Compressor Station (Cheyenne County), Nebraska to the Weld County, Colorado interconnect;
- Construction of two interconnects in Natrona County, Wyoming consisting of two 2,000-foot-long sections of 12-inch-diameter pipeline; and construction of one interconnect in Madden, Wyoming consisting of 0.1 mile of 10-inch-diameter; and
- Upgrade 0.2 mile of 20-inch-diameter pipeline in Platt County, Wyoming.
- In addition, about 114 miles of 12-inch-diameter oil pipeline would be constructed for Amoco between Amoco's storage facilities in Casper, Wyoming to an interconnect with the existing Amoco pipeline system at Fort Laramie, Wyoming. This oil pipeline would be constructed by KN Energy, KN Interstate's non-jurisdictional parent company.

The general location of the project facilities and specific locations for facilities on new sites are shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 717 acres of land. Following construction, about 108 acres would be maintained as new aboveground facility sites and new permanent right-of-way. The remaining 609 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- public safety
- land use
- cultural resources
- air quality and noise
- hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

[1] K N Interstate Gas Transmission Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by KN. This preliminary list of issues may be changed based on your comments and our analysis.

- Nine federally listed endangered and threatened species and two candidate species may be present in the project area.
- Four perennial waterbodies would be crossed by the proposed facilities, including the North Platte River in Wyoming.
- The site of the proposed North Platte River crossing is adjacent to the Brookhurst Superfund site near Casper, Wyoming.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional KN Energy facilities discussed on page 2. We will briefly describe their location and status in the EA.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Washington, DC 20426;
- Reference Docket No. CP96–477–000;
- Send a *copy* of your letter to: Ms. Elizabeth J. Secrest, EA Project Manager, Federal Energy Regulatory Commission, 888 First St., NE., PR–11.1, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC, on or before August 1, 1996.

If you wish to receive a copy of the EA, you should request one from Ms. Secrest at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor." Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Elizabeth J. Secrest, EA Project Manager, at (202) 208–0918.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17344 Filed 7–8–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2482–021]

Niagara Mohawk Power Corporation; Notice of Availability of Final Environmental Assessment

July 2, 1996.

A final environmental assessment (FEA) is available for public review. The FEA was prepared for an application filed by Niagara Mohawk Power Corporation (licensee) to remove polychlorinated biphenyls (PCBs) from lands within the boundary of the Hudson River Hydroelectric Project. The licensee proposes to remove PCBs at the Queensbury site in accordance with a record of decision issued March 1995 by the New York State Department of Environmental Conservation. In summary, the licensee proposes to excavate and remove all surface soil (1 foot from surface) on the upland portion of the site with total PCB concentrations in excess of 1 ppm and subsurface soil with concentrations in excess of 10 ppm. Further, the licensee proposes to excavate and remove to a depth of 2 feet near-shore river sediments. The Queensbury site is located on Corinth Road, Town of Queensbury, Warren County, New York, on the north bank of the Hudson River, about 5 miles west of Glens Falls, New York.

The FEA finds that the licensee's remediation plan is not a major federal action significantly affecting the quality of the human environment. The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17409 Filed 7–8–96; 8:45 am]

BILLING CODE 6717–01–M

Hydroelectric Applications [Idaho Power Company, et al.]; Notice of Applications

[Project Nos. 1975–014, et al.]

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* Major New License.

b. *Project No.:* 1975–014.

c. *Date filed:* December 20, 1995.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Bliss.

f. *Location:* On the Snake River, at river mile 560 from the confluence with the Columbia River in Gooding, Twin Falls, and Elmore Counties, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Robert W. Stahman, Idaho Power Company, 1221 West Idaho Street, P.O. Box 70, Boise, ID 83707, (208) 388–2676.

i. *FERC Contact:* Héctor M. Pérez, (202) 219–2843.

j. *Deadline for filing interventions and protests:* August 29, 1996.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E.

l. *Brief Description of Project:* The project consists of: (1) an 84-foot-high, 364-foot-long concrete dam with a crest elevation of 2,655 feet mean sea level (msl); (2) a 216-foot-long concrete ogee spillway with a crest elevation of 2,624 feet and four bays equipped with 30-foot-high tainter gates; (3) Bliss

VOL 61 ISS 132 JUL 9 1996 UMI

Reservoir with a normal maximum surface area of 255 acres at a normal maximum water surface elevation of 2,654 feet msl; (4) four intakes and four 22-foot-diameter penstocks included as an integral part of the dam; (5) a concrete powerhouse at the base of the dam containing three turbine-generator units with a total installed capacity of 75,000 kilowatts and a skeleton bay for installation of a fourth unit; (6) a 10.5-mile-long, 138-kilovolt transmission line; and (7) other appurtenances.

m. *This notice also consists of the following standard paragraph:* B1, and E.

n. Requests for additional studies have been filed in accordance with section 4.32(b)(7) of the Commission's regulations. These study requests will be addressed in the additional information request to be issued later in the licensing proceeding.

2a. *Type of Application:* Major New License.

b. *Project No.:* 2061–004.

c. *Date filed:* December 20, 1995.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Lower Salmon Falls.

f. *Location:* On the Snake River, at river mile 573 from the confluence with the Columbia River in Gooding and Twin Falls Counties, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Robert W. Stahman, Idaho Power Company, 1221 West Idaho Street, P.O. Box 70, Boise, ID 83707, (208) 388–2676.

i. *FERC Contact:* Héctor M. Pérez, (202) 219–2843.

j. *Deadline for filing interventions and protests:* August 29, 1996.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E.

l. *Brief Description of Project:* The project consists of: (1) the Lower Falls Reservoir with a surface area of 750 acres at a normal maximum surface elevation of 2,798 feet; (2) a concrete dam with a 314-foot-long powerhouse at the right bank with four generating units with a total installed capacity of 60,000 kilowatts, a 97-foot-long bulkhead with 22-foot-diameter penstock (sealed) and a fishladder intake, a 312-foot-long spillway with eight bays equipped with 14.5-foot-high steel tainter gates, a 180-foot-long overflow section, and an 80-foot-long left abutment; (3) two 138-kilovolt short transmission lines; and (4) other appurtenances.

m. *This notice also consists of the following standard paragraph:* B1, and E.

n. Requests for additional studies have been filed in accordance with section 4.32(b)(7) of the Commission's regulations. These study requests will be addressed in the additional information request to be issued later in the licensing proceeding.

3a. *Type of Application:* Major New License.

b. *Project No.:* 2777–007.

c. *Date filed:* December 20, 1995.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Upper Salmon Falls.

f. *Location:* On the Snake River, at river mile 580 from the confluence with the Columbia River in Gooding and Twin Falls Counties, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Robert W. Stahman, Idaho Power Company, 1221 West Idaho Street, P.O. Box 70, Boise, ID 83707, (208) 388–2676.

i. *FERC Contact: Héctor M. Pérez, (202) 219–2843.*

j. *Deadline for filing interventions and protests:* August 29, 1996.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E.

l. *Brief Description of Project:* The project consists of: (1) the 1,620-foot-long concrete Upper Salmon Falls Dam comprised of a 240-foot-long gated spillway section adjacent to the north (right) abutment with a crest elevation of 2,865.4 feet mean sea level (msl), a 610-foot-long section with flashboards with a crest elevation of 2,876.4 feet msl, a 275-foot-long intake structure adjacent to the south abutment (to feed the power canal for Plant B) and 420 feet of left and right abutment gravity sections with crest elevations of 2,889.5 feet; (2) the Upper Salmon Falls Reservoir with a normal maximum elevation of 2,878.2 feet; (3) a 3,200-foot-long concrete-lined canal conducting water to Plant B; (4) a powerhouse (Plant B) with an installed capacity of 16,560 kilowatts; (5) a tailrace that forms the upstream part of the approximately 1,580-foot-long power canal to Plant A; (6) Plant A with an installed capacity of 18,000 kilowatts; and (7) other appurtenances.

m. *This notice also consists of the following standard paragraph:* B1, and E.

n. Requests for additional studies have been filed in accordance with section 4.32(b)(7) of the Commission's regulations. These study requests will be addressed in the additional information request to be issued later in the licensing proceeding.

4a. *Type of Application:* Minor New License.

b. *Project No.:* 1994–004.

c. *Date filed:* November 2, 1995.

d. *Applicant:* Heber Light and Power Company.

e. *Name of Project:* Snake Creek.

f. *Location:* Partially within Uintah National Forest, on Snake Creek, in Wasatch County, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Alden C. Robinson, Sunrise Engineering, Inc., 25 East 500 North, P.O. Box 186, Fillmore, UT 84631, (801) 743–6151.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Deadline Date for Protests and Interventions: September 6, 1996.*

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E1.

l. *Brief Description of Project:* The exiting project consists of: (1) a grated penstock inlet; (2) a 16,417-foot-long, 16-inch-diameter penstock; (3) a powerhouse containing one generating unit with a capacity of 800 kW and an average anntal generation of 4.3 GWh; and (4) a 12.4 kV transmission line.

m. *Purpose of Project:* All project energy generated is utilized by the licensee.

n. *This notice also consists of the following standard paragraphs:* B1, and E1.

5a. *Type of Application:* Major License.

b. *Project No.:* 11175–002.

c. *Date filed:* January 3, 1995.

d. *Applicant:* Crown Hydro Company.

e. *Name of Project:* Crown Mill.

f. *Location:* On the Mississippi River, in the City of Minneapolis, Hennepin County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas R. Griffin, Crown Hydro Company, 5436 Columbus Avenue South, Minneapolis, MN 55417, (612) 825–1043.

i. *FERC Contact:* Charles T. Raabe (202) 219–2811.

j. *Deadline Date:* September 2, 1996.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Upper St. Anthony Falls dam and reservoir and would consist of: (1) a reconstructed upper canal and intake tunnel; (2) a proposed powerhouse room, to be constructed on the lower level of Crown Mill, containing two hydropower units with a total capacity of 3,400-kW; (3) an existing tailrace tunnel and a reconstructed tailrace canal; (4) a proposed underground transmission line; and (5) appurtenant facilities.

The estimated annual energy production would be 16,650 MWh. Project power would be sold to Northern States Power Company.

m. *This notice also consists of the following standard paragraphs:* A4 and D9.

n. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E. Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Crown Hydro Company, 5436 Columbus Avenue South, Minneapolis, MN 55417.

6a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11578–000.

c. *Date filed:* April 24, 1996.

d. *Applicant:* Powerwheel Corporation.

e. *Name of Project:* Oroville Fish Barrier Dam.

f. *Location:* At Oroville Fish Barrier Dam, on the Feather River, near the town of Oroville, in Butte County, California.

g. *Filed Pursuant to:* Federal Power Act 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Kenneth R. Broome, 100 Rocky Creek Road, Woodside, CA 94062, (915) 529–1810.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Comment Date:* September 6, 1996.

k. *Description of Project:* The proposed project would utilize the State of California's Oroville Fish Barrier Dam and consist of: (1) the existing 91-foot-high concrete gravity dam; (2) the reservoir, which has a surface area of 25 acres and 250 acre-feet of storage capacity; (3) a proposed powerhouse containing one generating unit with a capacity of 436 kW and an average annual generation of 3.4 GWh; and (4) a 1,000-foot-long underground transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $15,000.

l. *Purpose of Project:* Project power would be sold.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

7a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11581–000.

c. *Date Filed:* June 12, 1996.

d. *Applicant:* Augusta-Richmond County, Georgia.

e. *Name of Project:* Augusta Canal Water Power Project.

f. *Location:* On the Savannah River, Augusta-Richmond County, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Charles T. Dillard, 803 Municipal Building, Augusta, GA 30911, (404) 821–1714.

i. *FERC Contact:* Michael Dees (202) 219–2807.

j. *Comment Date:* September 2, 1996.

k. *Competing Application:* Project No. 11490–000; Date Filed: July 11, 1994; Competition Due Date: May 17, 1996.

l. *Description of Project:* The applicant proposes to study three different configurations for the proposed hydropower facility. The proposed project would consist of: (1) the existing stone-masonry Augusta Diversion dam, which is approximately 1,600 feet long; (2) the existing Augusta Diversion Dam impoundment; (3) the existing Augusta Canal; (4) a proposed intake structure; (5) a proposed powerhouse located at one of three possible sites, containing from two to four hydropower units with a total capacity ranging from 5,600 kW to 12,000 kW; (6) a proposed tailrace structure; (7) a proposed transmission line from the powerhouse to the municipal raw water pumping station; and (8) appurtenant facilities. The applicant estimates that the annual energy generation would range from 23,000 MWh to 65,000 MWh and that the cost of the studies to be performed under the permit would be $315,000. Project energy would be used by the applicant to operate its raw water pumping station. The dam and canal are owned by the applicant.

m. *This notice also consists of the following standard paragraphs:* A8, A10, B, C, and D2.

8a. *Type of Application:* Petition for Declaratory Order.

b. *Docket No:* DI96–7–000.

c. *Date Filed:* 06/03/96.

d. *Applicant:* Pacificorp.

e. *Name of Project:* Powerdale Hydroelectric Project.

f. *Location:* On the Hood River in Hood River County, Oregon.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. §§ 817(b).

h. *Applicant Contact:* S. A. deSousa, Director Hydro Resources, 920 S.W. Sixth Avenue, Portland, OR 97204–1256, (503) 464–5000.

i. *FERC Contact:* Diane M. Murray, (202) 219–2682.

j. *Comment Date:* August 9, 1996.

k. *Description of Project:* (1) a reservoir with a surface area of about 5 acres and a gross storage capacity of about 10 acre-feet; a 10-foot-high, 206-feet-long concrete diversion dam; (2) a 604-foot-long power canal; (3) a 980-foot-long wood flume; (4) a 14,354-foot-long pipeline; (5) a powerhouse with a 6,000 kW generating unit; (6) and appurtenant facilities.

When a Petition for Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* To produce power.

m. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

9a. *Type of Application:* Amendment of exemption.

b. *Project No:* 5637–003.

c. *Date Filed:* April 22, 1996.

d. *Applicant:* Pancheri, Inc.

e. *Name of Project:* Pancheri Project.

f. *Location:* Butte County, Howe, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jerry Pancheri, HC 65 Box 2104, Howe, Idaho 83244, (208) 767–3419.

i. *FERC Contact:* Susan Tseng, (202) 219–2798.

j. *Comment Date:* August 9, 1996.

k. *Description of Project:* Sorenson Engineering, P.A., on behalf of the exemptee, Pancheri, Inc., has filed an application to amend project features for the Pancheri Project. The exemptee currently has a 300-foot long, 10-inch diameter pipe connection with the Telford Irrigation Pipeline. The exemptee proposes to repair deteriorated portions of the Telford Pipeline by replacing 172 feet of the 10-inch diameter steel pipe with a 20-inch

VOL
61
ISS
132
JL
9
1996
UMI

diameter steel pipe, and also portions of the associated ditches. The exemptee also proposes to construct a new powerhouse to be located within approximately 30 feet from the existing powerhouse. Construction of a new powerhouse would require approximately 30 feet of new 12.2 KVA line to be connected to the existing 12.2 KVA transmission system.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (August 26, 1996 for Project No. 11175–002). All reply comments must be filed with the Commission within 105 days from the date of this notice (October 8, 1996 for Project No. 11175–002).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

E. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will notify all persons on the service list and affected resource agencies and Indian tribes. If any person wishes to be placed on the service list, a motion to intervene must be filed by the specified deadline date herein for such motions. All resource agencies and Indian tribes that have official responsibilities that may be affected by the issues addressed in this proceeding, and persons on the service list will be able to file comments, terms and conditions, and prescriptions within 60 days of the date the Commission issues a notification letter that the application is ready for an environmental analysis. All reply comments must be filed with the Commission within 105 days from the date of that letter.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: June 28, 1996, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17345 Filed 7–8–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5530–6]

Notice of Proposed Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Request for public comment.

SUMMARY: Notice is hereby given that a proposed prospective purchaser agreement associated with the Upper Animas Mining District Site, at the Mayflower Mill property (the "Mill") located near Silverton, in San Juan County, Colorado, was executed by the Agency on May 6, 1996 and executed by the United States Department of Justice on June 18, 1996. This agreement is subject to final approval after the comment period. The Prospective Purchaser Agreement would resolve certain potential EPA claims under Sections 107 and 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), against the non-profit San Juan County Historical Society, Inc., the prospective purchaser ("the Society"). The settlement would require the Society to clean the Mill, to use the Mill in a manner consistent with the goals of the Society, as stated in the Agreement, and to provide EPA access to the Mill.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement. The Agency's response to any comments

VOL 61 ISS 132 JL 9 1996 UMI

received will be available for public inspection at the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202.

DATES: Comments must be submitted on or before August 8, 1996.

AVAILABILITY: The proposed agreement is available for public inspection at the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202. A copy of the proposed agreement may be obtained from Richard L. Sisk (8ENF–L), Compliance Attorney, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202, (303) 312–6638. Comments should reference the "San Juan County Historical Society Prospective Purchaser Agreement" and should be forwarded to Richard L. Sisk at the above address.

FOR FURTHER INFORMATION CONTACT: Richard L. Sisk (8ENF–L), Compliance Attorney, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202, (303) 312–6638.

Dated: June 24, 1996.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 96–17320 Filed 7–8–96; 8:45 am]

BILLING CODE 6560–60–P

[FRL–5533–6]

Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act; Tulalip Landfill Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency ("EPA") is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"). Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve past and estimated future liabilities of 187 *de minimis* parties for costs incurred, or to be incurred, by EPA at the Tulalip Landfill Superfund Site in Marysville, Washington.

DATES: Comments must be provided on or before August 8, 1996.

ADDRESSES: Comments should be addressed to Docket Clerk, U.S. Environmental Protection Agency, Region 10, ORC–158, 1200 Sixth Avenue, Seattle, Washington 98101, and should refer to In Re Tulalip Landfill Superfund Site, Marysville, Washington, U.S. EPA Docket No. 1093–08–01–104/122.

FOR FURTHER INFORMATION CONTACT: Cindy Colgate, Office of Environmental Cleanup (ECL–113), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1815.

SUPPLEMENTARY INFORMATION: In accordance with Section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Tulalip Landfill hazardous waste site located on Ebey Island between Steamboat Slough and Ebey Slough in the Snohomish River delta system between Everett and Marysville, Washington. The Site was listed on the National Priorities List ("NPL") on April 25, 1995. 60 FR 20350 (April 25, 1995). Subject to review by the public pursuant to this Notice, the agreement has been approved by the United States Department of Justice. Below are listed the 184 parties who have executed the proposed Administrative Order on Consent.

Ace Galvanizing; Alaskan Copper & Brass; Albertson Food Center/ Albertson's Inc.; All City Fence Company/All City Fence Co., Inc.; American Building Maintenance (ABM); American Can Company/MCR Holdings, Inc.; American President Lines/ American Mail Line; Arden Farms Co./ Arden-Mayfair, Inc.; Art's Food Center; Auto Warehousing; Baugh Construction Co.; Bayless Bindery, Inc.; Bayley Construction/ Robert E. Bayley Construction, Inc.; Bethlehem Steel ; Boise Cascade Office Supply/Boise Cascade Office Products; Bon Marche/ The Bon, Inc./Federated Department Stores, Inc.; Brandrud Manufacturing; Broadmoor Golf Club; Buffalo Sanitary Wipers/Buffalo Industries, Inc.; Burlington Northern Railroad/ Burlington Northern, Inc.; Canteen Service, Inc.; Capital Industries, Inc.; Cases Inc./Flight Form Cases Inc.; Champion Bldg. Products/St. Regis/ Champion International Corporation; Chemithon Corp.; Children's Orthopedic Hospital/Children's Hospital and Medical Center; City of Kirkland; City of Seattle; Commercial Warehouse; Consolidated Freightways/ Consolidated Freightways Corporation of Delaware; Contour Laminates, Inc./ Radeke Corporation; Craftsman Press, Inc.; Cree Construction; Crosby & Overton; Crow Roofing; CX Processing/ Gretag Imaging, Inc.; Darigold, Inc.; David A. Mowat Co.; Deeny Construction Co., Inc.; E & E Meats; Eagle Metals Co./Alcan Aluminum Corporation; Ellstrom Manufacturing; Everett Community College; Everett Herald; Fabricators Inc./Furon Company; Fentron Industries/Fentron Building Products, Inc.; Firestone Store; Fisher Flour Mills/Fisher Mills Inc.; Fishermen's Boat Shop, Inc.; Ford Motor Company; Foss Maritime Company; Foster & Kleiser/Ackerley Communications, Inc.; Fred Meyer; Gall & Landau Construction/Gall Landau Young Construction Co., Inc. ; General Construction/Fletcher General, Inc.; General-Haskell-Amelco/Fletcher General, Inc./Haskell Corporation/ Amelco Industries; General Hospital/ Providence General Medical Center; General Services Administration; General Telephone (GTE)/GTE Northwest Inc.; Gordon Brown, Inc.; Group Health; Haight Roofing; Hardwood's Inc.; Henry Bacon Building Materials/CCD Enterprises; Hensel Phelps Construction; Herr Lumber Inc.; Hillis Homes, Inc./Centex Real Estate Corporation; Honeywell Inc./Alliant Techsystems Inc.; Howard S. Wright Construction/Fletcher Wright, Inc.; Hurlen Construction; Hussmann Corporation; Impression NW/K/P Corporation; Independent Paper/ Jefferson Smurfit Recycling Company; Industrial Transfer; Ivar's, Inc.; J. C. Penney Company, Inc.; Jacobson Brothers/Jacobson Terminals, Inc.; John Fluke Manufacturing Company/Fluke Corporation; K & N Meats; Keller Supply; Kenworth/PACCAR Inc.; King County; Kohkoku USA Inc./Achilles USA, Inc.; Lake Union Drydock Co.; Lake Union Terminal/Wards Cove Packing Company; Lakeside School; Lucks, Oscar; Lucky Stores, Inc.; Manson Construction; Marketime Drugs Inc.; Maust Corporation; Meltec; Meridian Excavating & Wrecking; Metro; Morel Foundry/Morel Industries; National Oceanic and Atmospheric Administration; NC Machinery/SC Distribution Corp.; New Richmond Laundry; Newell, C. A.; Nordstrom Inc.; North Seattle Community College; North Shore; Northwest Home Furniture Mart; Northwest Hospital; Nuclear Pacific Inc./VIOX Corporation; NW Glass/TBG Inc.; NW Tank Service/NW Environmental Services; Oberto Sausage; Olson's Market Foods/Quality Food Centers, Inc.; Olympic Hotel/Four Seasons Hotel/Westin Hotel Company; Olympic Stained Products/Clorox Company/PPG Industries, Inc.; Owens-Corning Fiberglas Corp.; Pacific Fishermen, Inc.; Pacific Iron & Metal; Pacific Multiform; Pacific Northwest Bell/US West Communications, Inc.; Pacific Partitions; Pampco Construction/ Constructors-Pacific Company; Payless Drugs/Pay N Save/Thrifty Payless, Inc.; Pepsi/Seven-Up Bottling/Glaser Beverage/Alpec Corporation; Peter Pan Seafoods, Inc.; Petschl's Meats; Pike Place Market Authority; Pirates Plunder/Great Western Pacific, Inc.; Plaza 600/The Vance Corporation; Providence Hospital; PSF Industries; Purdy Company; QFC/Quality Food Centers, Inc.; R. C. Hedreen Company; Recreational Equipment, Inc. (REI); Red Dot Corporation; Reynolds Aluminum Corp.; Richardson & Holland/Bunge Foods Corporation; Richmark Printing; Riches & Adams/Adams News Co., Inc.; Rubatino Refuse Removal, Inc.; SAFECO Insurance Company of America; Salmon Terminal/Olympic Steamship Co., Inc.; Sanitary Service Company, Inc./City of Bellingham; Scott Paper Company/ Kimberly Clark Corporation; Scougal Rubber Corporation; Seaboard Lumber; Sealand Service Inc.; Seattle Central Community College; Seattle Community College District; Seattle District Corps of Engineers; Seattle First National Bank/ Seafirst; Seattle Golf & Country Club; Seattle Iron & Metals Corporation; Seattle Post-Intelligencer; Seattle Seafood/Washington Fish & Oyster Company/Ocean Beauty Seafoods, Inc.; Seattle Times; Seattle Trade Center; Seattle University; Sellen Construction Co, Inc.; Skyway Luggage Company; Snohomish County PUD; South Seattle Community College; SQI Roofing/SQI, Inc.; Star Machinery Co.; State of Washington Military Department; Swedish Hospital/Doctors Hospital; Texaco Inc./Texaco Refining & Marketing, Inc.; Thurman Electric & Plumbing Supply; Tiz's Door Sales; Trident Imports; Tullus Gordon Construction/Gordon Tullus Construction; Turner & Pease; U.S. Coast Guard; U.S. Postal Service; United Parcel Service; V.A. Hospitals/U.S. Department of Veterans Affairs; Virginia Mason Hospital; W. G. Clark Construction Co.; W. W. Wells Millworks; Wall & Ceiling Supply; Washington Chain & Supply; Washington Natural Gas Company; Washington Plaza/Seattle Westin Hotel Company/Westin Hotel Company/ Benjamin Franklin Hotel, Inc.; Washington State Ferry; Washington State Liquor Warehouse; Welco Lumber Co.; West Coast Construction; West Waterway Lumber; Western Gear/ Bucyrus-Erie Company; Weyerhaeuser.

The EPA is entering into this agreement under the authority of sections 122(g), 106 and 107 of CERCLA, 42 U.S.C. 9622(g), 9606 and 9607. Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. Under this authority, the agreement proposes to settle with parties in the Tulalip Landfill case who each are responsible for less than 0.6% of the volume of hazardous substances at the site.

In February and March 1988, EPA contractor Ecology & Environment, Inc. (E&E) performed a site inspection of the landfill for NPL evaluation. The inspection revealed groundwater contamination with unacceptably high levels of arsenic, barium, cadmium, chromium, lead, mercury, and silver. Water samples taken in the wetlands adjacent to the site showed exceedences of marine chronic criteria for cadmium, chromium, and lead as well as exceedences in marine acute criteria for copper, nickel and zinc. In addition, a variety of metals were found in on-site pools and leachate. The study concluded that contamination was migrating off site. On July 29, 1991, EPA proposed adding the Tulalip Landfill to the NPL, and on April 25, 1995, with the support of the Governor of the State of Washington and the Tulalip Tribes of Washington, EPA published the final rule adding the Site to the NPL.

EPA is currently performing a Remedial Investigation ("RI") and Feasibility Study ("FS") pursuant to an Administrative Order on Consent with several potentially responsible parties. The FS is being conducted in two parts. The first part, which has been completed, evaluates various containment alternatives for the landfill source area, which includes approximately 147 acres in which waste was deposited. The second part will evaluate the off-source areas, which includes the wetlands and tidal channels that surround the landfill source area. On March 1, 1996, EPA issued a Record of Decision that selected an interim remedial action for the source area. The selected interim remedy requires installation of an engineered, low permeability cover over the source area of the landfill, at an estimated cost of $25.1 million. For purposes of this settlement, EPA estimates that the expected future response costs at the Site will be $33,543,628, including EPA's oversight costs.

The proposed settlement requires each settling party to pay a fixed sum of money representing their volumetric share of EPA's past costs and the estimated costs of future response actions, plus a premium. The total amount that may be recovered from the proposed settlement is $8,130,610. Of the amount paid, $270,905 will reimburse a share of response costs incurred by EPA at the Site, and $7,859,705 will be deposited in the Tulalip Landfill Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site. Upon full payment, each settling party will receive a release from further civil or administrative liabilities for the Site and statutory contribution protection under Section 122(g)(5), 42 U.S.C. 9622(g)(5).

EPA will receive written comments relating to this proposed settlement for a period of thirty (30) days from the date of this publication.

The proposed agreement may be obtained from Cindy Colgate, Office of Environmental Cleanup (ECL–113), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1815. The Administrative Record for this settlement may be examined at the EPA's Region 10 office located at 1200 Sixth Avenue, Seattle, Washington 98101 by contacting Lynn M. Williams, Superfund Records Manager, Office of Environmental Cleanup (ECL–113), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–2121.

Authority: The Comprehensive Environmental Response, Compensation and Liability Act, as amended, 41 U.S.C. Sections 9601–9675.

Jane S. Moore,

Acting Regional Administrator.

[FR Doc. 96–17325 Filed 7–8–96; 8:45 am]

BILLING CODE 6560–60–P

[FRL–5532–8]

Clean Water Act Section 303(d): Availability of List Submissions and Proposed Decisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability.

SUMMARY: This notice announces the availability of lists submitted to EPA by California and Hawaii pursuant to Clean Water Act Section 303(d)(2) as well as EPA's proposed decisions regarding these submissions, and requests public comment. Section 303(d)(2) requires that states submit and EPA approve or disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

On June 14, 1996, EPA partially approved California's submittal.

VOL 61 ISS 132 JUL 9 1996 UMI

Specifically, EPA approved California's listing of waters except for waters listed in the Santa Ana Region of California. Today, EPA is proposing to:

(1) approve California's 303(d) submission of waters in the Santa Ana Region,

(2) disapprove California's decisions not to list Ten Mile River for sediment and Navarro River, which is already listed for sediment, for temperature,

(3) add the Ten Mile River for sediment and the Navarro River for temperature to California's 1996 303(d) list, and

(4) approve Hawaii's 303(d) submission.

EPA is providing the public the opportunity to review these proposed decisions as required by Public Participation regulations [40 CFR Part 25]. EPA will consider public comments in reaching its final decisions on California and Hawaii's final lists.

DATES: Comments must be submitted to EPA on or before August 8, 1996.

ADDRESSES: Comments on the proposed decisions should be sent to David Smith, TMDL Coordinator, Water Division, U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 744–2012, facsimile (415) 744–1078. Copies of the proposed decisions concerning California and Hawaii which explain the rationale for EPA's proposed decisions can be obtained by writing or calling Mr. Smith at the above address. Underlying documentation comprising the record for this decision is available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: David Smith at (415) 744–2012.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish TMDLs according to a priority ranking.

On January 11, 1985, EPA published the Water Quality Planning and Management regulations [50 FR 1775]. These regulations included requirements related to the implementation of Section 303(d) of the CWA [40 CFR 130.7]. The regulations did not specify dates for state compliance with the Section 303(d) requirements, but reiterated the statutory provisions calling for submissions from time to time. On July 24, 1992, EPA published a final rule [57 FR 143] that amended 40 CFR 130.7 to establish that, for the purposes of identifying water quality-limited waters still requiring TMDLs, "from time to time" means once every two years. The list of waters still needing TMDLs must also include a priority ranking and must identify the waters targeted for TMDL development during the next two years [40 CFR 130.7].

Consistent with EPA's revised regulations, California submitted to EPA for its approval its listing decisions under Section 303(d)(2). EPA today proposes to:

(1) decline to make a final decision to approve the listings and priority rankings for the Santa Ana RWQCB (Region 8) because that Regional Board provided insufficient opportunity for public participation, and instead propose to approve the listings and priority rankings, with EPA's final decision to approve or disapprove to be issued after consideration of public comment, (2) propose disapproval of the State's decision not to list Ten Mile River for sediment and Navarro River for temperature, and (3) propose a final decision to add Ten Mile River for sediment and Navarro River for temperature to the State's 1996 list and establish appropriate priority rankings.

EPA solicits public comment on California's list of waters in the Santa Ana Region and EPA's proposed decision to approve these listings, EPA's proposed decision to disapprove California's decisions concerning Ten Mile River and Navarro River, and EPA's proposed decision to add the Ten Mile River for sediment and the Navarro River for temperature to California's final 1996 Section 303(d) list.

Hawaii also submitted to EPA for its approval its listing decisions under Section 303(d)(2). EPA today proposes to fully approve Hawaii's list of waters needing TMDLs, priority rankings, and list of waters targeted for TMDL development during the next two years. EPA solicits public comment on Hawaii's lists and EPA's proposed approval decision.

EPA notes that it does not normally solicit public comment on its decisions to approve state Section 303(d) lists. Pursuant to the public participation requirements of 40 CFR 25, EPA is providing this opportunity for public review and comment on its proposed approval decisions because California provided inadequate opportunity for public comment during development of its lists for the Santa Ana Region, and Hawaii provided no opportunity for public comment during the development of its lists. In the future, EPA expects that states will provide adequate opportunities for public comment during development of the state lists.

Dated: June 14, 1996.

John Ong,

Acting Director, Water Management Division.

[FR Doc. 96–17321 Filed 7–8–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL LABOR RELATIONS AUTHORITY

Sunshine Act Meeting

TIME AND DATES: 2:00 p.m., Tuesday, July 16, 1996.

PLACE: Second Floor Agenda Room, 607 14th Street, N.W., Washington, D.C. 20424.

STATUS: Open. Attendance at the meeting will be limited because of space constraints. Persons interested in attending the meeting should notify the Office of Case Control. Telephone: FTS or Commercial (202) 482–6540.

MATTERS TO BE CONSIDERED: The Federal Labor Relations Authority is holding oral argument in *Social Security Administration, Baltimore, Maryland,* Case No. 3–CA–10859. The proceeding concerns the extent to which an agency is obligated to furnish facilities and services, under 5 U.S.C. § 7116(a)(1) and (3), to a labor organization that is seeking to represent the agency's employees.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Notice of Oral Argument and Opportunity to Submit Amicus Curiae Briefs, 61 FR 25871, May 23, 1996.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Wednesday, July 10, 1996.

CONTACT PERSON FOR MORE INFORMATION: James H. Adams, Acting Director, Case Control Office, Federal Labor Relations Authority, 607 14th Street, N.W., Suite 415, Washington, D.C. 20424. Telephone: FTS or Commercial (202) 482–6540.

Dated: July 5, 1996.

For the FLRA.

James H. Adams,

Acting Director, Case Control Office.

[FR Doc. 96–17583 Filed 7–5–96; 1:18 pm]

BILLING CODE 6727–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

July 3, 1996.

TIME AND DATE: 10:00 a.m., Thursday, July 11, 1996.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *C.W. Mining Co.*, Docket No. WEST 92–204. (Issues include whether the Secretary of Labor followed his regulations, criteria, and guidelines in revoking the operator's roof control plan; whether the Secretary consulted in good faith over the roof control plan; and whether the operator's roof control plan was no longer suitable for the mine, the new plan was suitable, and the operator violated 30 C.F.R. § 75.220(a) by operating without an approved plan.)

2. *D.H. Blattner & Sons, Inc.*, Docket Nos. WEST 93–123–M, WEST 93–286–M, and WEST 94–5–RM. (Whether the independent contractor violated 30 C.F.R. § 41.20 by failing to file an operator legal identity report.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen—(202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 96–17608 Filed 7–5–96; 3:52 pm]

BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 29, 1996.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Mercedes Bancorp, Inc. Employee Stock Ownership Plan*, Mercedes, Texas; and Trust Company of Texas, trustee, Dallas, Texas, to acquire an additional 7.49 percent, for a total of 20.37 percent, of the voting shares of Mercedes Bancorp, Inc., Mercedes, Texas, and thereby indirectly acquire Mercedes National Bank, Mercedes, Texas.

2. *Sarah Blaffer Hrdy*, Davis, California; to acquire an additional 4.59 percent, for a total of 19.44 percent, of the voting shares of Texas Gulf Bancshares, Freeport, Texas, and thereby indirectly acquire Texas Gulf Bank, N.A., Freeport, Texas.

Board of Governors of the Federal Reserve System, July 3, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–17451 Filed 7–8–96; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 1, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *ONB Financial Services, Inc.*, Ocala, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Ocala National Bank, Ocala, Florida.

2. *South Alabama Bancorporation, Inc.*, Mobile, Alabama; to merge with First Menco Bancshares, Inc., Monroeville, Alabama, and thereby indirectly acquire The Monroe County Bank, Monroeville, Alabama.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Community Holdings Corporation*, Palos Hills, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of First State Bank and Trust Company of Palos Hills, Palos Hills, Illinois.

Board of Governors of the Federal Reserve System, July 2, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–17422 Filed 7–08–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely

related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 22, 1996.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Cambridge Bancorp*, Cambridge, Massachusetts; to engage *de novo* through its subsidiary, Cambridge Investment Services of NH, Inc., Cambridge, Massachusetts, in investment advisory activities pursuant to § 225.25(b)(4) of the Board's Regulation Y.

B. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. *Deutsche Bank AG*, Frankfurt (Main), Federal Republic of Germany; to engage *de novo* through its indirect subsidiary, Deutsche Morgan Grenfell Financial Products Corporation, New York, New York, in trading for its own account, for purposes other than hedging, in U.S. government securities and Eurodollars and options on futures on U.S. government securities and Eurodollars. Notificant proposes to engage in the proposed activities worldwide. The Board previously has determined, by order, that the proposed activities are "so closely related to banking or managing or controlling banks as to be proper incident thereto." *See Swiss Bank Corporation*, 77 Federal Reserve Bulletin 759 (1991). Notificant has stated that Company will conduct the proposed activities subject to the limitations established by the Board in its previous orders.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Zions Bancorporation*, Salt Lake City, Utah; to engage *de novo* through its subsidiary, Cash Access, Inc., Salt Lake City, Utah, a *de novo*, wholly-owned subsidiary, in data processing and data transmission services through the installation and operation of automatic teller machines, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 2, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–17423 Filed 7–08–96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 23, 1996.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. *Arrow Financial Corporation*, Glens Falls, New York; and Arrow Vermont Corporation, Rutland, Vermont, to engage *de novo* in trust activities, pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Wachovia Corporation*, Winston-Salem, North Carolina; to engage *de novo* through it subsidiary, Wachovia Capital Markets, Inc., Atlanta, Georgia, in providing tax planning and preparation services pursuant to § 225.25(b)(21) of the Board's Regulation Y.

C. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *NBN Corp.*, Newport, Tennessee; to engage *de novo* through it subsidiary, Smoky Mountain Financial Services, Inc., Jefferson City, Tennessee, in consumer finance activities pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted throughout Tennessee.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Century Bancshares, Inc.*, Gainesville, Missouri; to engage *de novo* in securities brokerage activities, pursuant to § 225.25(b)(15)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 3, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–17452 Filed 7–8–96; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, July 15, 1996.

PLACE: Marriner S. Eccles, Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 5, 1996.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 96–17568 Filed 7–5–96; 11:54 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 962–3053]

Jordan, McGrath, Case & Taylor; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the New York City-based advertising agency from making advertising claims regarding the efficacy, safety, benefits, or performance of any over-the-counter internal analgesics unless they have competent and reliable scientific evidence supporting the claims. The consent agreement settles allegations stemming from Jordan, McGrath's advertising campaign for Doan's pills, an over-the-counter back-pain relief medication marketed by Ciba-Geigy Corporation.

DATES: Comments must be received on or before September 9, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston, Federal Trade Commission, S–4002, 6th and Pennsylvania Ave. NW., Washington, DC 20580. (202) 326–3153; Loren Thompson, Federal Trade Commission, S–4002, 6th and Pennsylvania Ave. NW., Washington, DC 20580. (202) 326–2049.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b) (6) (ii) of the Commission's Rules of Practice (16 CFR 4.9(b) (6) (ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission, having initiated an investigation of certain acts and practices of Jordan, McGrath, Case & Taylor, Inc., a corporation (hereinafter sometimes referred to as "proposed respondent"), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Jordan, McGrath, Case & Taylor, Inc., by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Jordan, McGrath, Case & Taylor, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its office and principal place of business at 445 Park Avenue, New York, New York 10022.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of this proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (1) issue its complaint corresponding in form and substance with the draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any rights it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully

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complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this Order:

1. "Doan's" shall mean any over-the-counter internal analgesic drug, as "drug" is defined in the Federal Trade Commission Act, bearing the Doan's brand name, including, but not limited to, Regular Strength Doan's analgesic, Extra Strength Doan's analgesic, and Extra Strength Doan's P.M. analgesic.

2. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I

It is ordered that respondent Jordan, McGrath, Case & Taylor, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of Doan's or any other over-the-counter analgesic drug, in or affecting commerce, as "drug" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, that such product is more effective than other over-the-counter analgesic drugs for relieving back pain or any other particular kind of pain, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. For purposes of Part I of this order, "competent and reliable scientific evidence" shall include at least two adequate and well-controlled, double-blinded clinical studies which conform to acceptable designs and protocols and are conducted by different persons, each of whom is qualified by training and experience to conduct such studies, independently of each other.

II

It is further ordered that respondent Jordan, McGrath, Case & Taylor, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of Doan's or any other over-the-counter internal analgesic drug, in or affecting commerce, as "drug" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, regarding such product's efficacy, safety, benefits, or performance, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Provided, however, that it shall be a defense hereunder that the respondent neither knew nor had reason to know of an inadequacy of substantiation for the representation.

III

Nothing in this order shall prohibit respondent from making any representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

IV

It is further ordered that for a period of five (5) years after the last date of dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V

It is further ordered that respondent shall:

A. Within thirty (30) days from the date of entry of this order, provide a copy of this order to each of its current principals, officers, directors and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order; and

B. For a period of ten (10) years from the date of entry of this order, provide a copy of this order to each of its future principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order who are associated with them or any subsidiary, successor, or assign, within three (3) days after the person assumes his or her position.

VI

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure, including, but not limited to, dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other corporate change that may affect compliance obligations arising out of this order.

VII

It is further ordered that this order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

VIII

It is further ordered that respondent shall, within sixty (60) days from the date of entry of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a consent order from Jordan, McGrath, Case & Taylor, Inc. ("Jordan, McGrath"), an advertising agency.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns Doan's, an analgesic for which Jordan, McGrath created and disseminated advertisements. The Commission's proposed complaint alleges that the respondent represented without a reasonable basis in its advertisements that Doan's analgesic products are more effective than other analgesics, including Bayer, Advil, Tylenol, and Aleve, for relieving back pain. The complaint alleges that respondent knew or should have known that the representation lacked a reasonable basis.

The proposed consent order contains provisions designed to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits respondent from making any representation that Doan's or any other over-the-counter analgesic drug is more effective than any other such drug for relieving back pain or any other particular kind of pain, unless it possesses competent and reliable scientific evidence, consisting of at least two adequate and well-controlled, double-blinded clinical studies, that substantiates the representation.

Part II of the proposed order prohibits respondent from making any representation about the efficacy, safety, benefits, or performance of any over-the-counter internal analgesic drug, unless it possesses competent and reliable scientific evidence that substantiates the representation. This Part further provides that it shall be a defense under this Part that respondent neither knew nor had reason to know of an inadequacy of substantiation for a representation.

Part III of the order is a safe harbor provision allowing representations for any drug that are permitted in the labeling for that drug under any tentative final or final standard promulgated by the Food and Drug Administration ("FDA") or by an approved new drug application.

Parts IV, V, VI, and VII of the order relate to respondent's obligation to maintain records, distribute the order to current and future officers and employees, notify the Commission of changes in corporate structure, and file compliance reports with the Commission. Part VIII provides that the order will terminate after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–17466 Filed 7–8–96; 8:45 am]

BILLING CODE 6750–01–P

[File No. D–9274]

RustEvader Corporation; David F. McCready; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Altoona, Pennsylvania-based former owner and president of RustEvader Corporation to pay $200,000 in consumer redress and would prohibit him from using the names "Rust Evader" or "Rust Buster" for any device that he markets as reducing corrosion in motor vehicle bodies. McCready is also prohibited from making any claims about the performance, efficacy, or attributes of any product for use in motor vehicles without having appropriate substantiation to back up the claim and from misrepresenting the existence or results of any test or study. The consent agreement settles allegations stemming from advertising for RustEvader's "Rust Evader" device that purportedly reduced corrosion in motor vehicle bodies.

DATES: Comments must be received on or before September 9, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Milgrom, Federal Trade Commission, Cleveland Regional Office, 668 Euclid Avenue, Suite 520–A, Cleveland, OH 44114. (216) 522–4210.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b) (6) (ii) of the Commission's Rules of Practice (16 CFR 4.9(b) (6) (ii)).

AGREEMENT WITH DAVID F. McCready Containing Consent Order to Cease and Desist

The agreement herein, by and between David F. McCready, individually and as an officer of RustEvader Corporation, a/k/a Rust Evader Corporation, sometimes d/b/a/ REC Technologies, a corporation, hereinafter sometimes referred to as respondent, and his attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. RustEvader Corporation, a/k/a Rust Evader Corporation, sometimes d/b/a REC Technologies (REC)is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1513 Eleventh Avenue, Altoona, Pennsylvania 16603.

Respondent David F. McCready has been an owner, officer and director of said corporation. At times material to the complaint herein, he formulated, directed, and controlled the policies, acts, and practices of said corporation. His address is RD 4 Box 92 B, Altoona, Pennsylvania 16601.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging him with violations of Section 5(a) of the Federal Trade Commission Act (15 U.S.C. § 45(a)) and of Section 102(c) of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (15 U.S.C. § 2302(c)), and has filed an

VOL 61 ISS 132 JL 9 1996 UMI

answer to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint, or that the facts as alleged in the complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 3.25(f) of the Commission's Rules, the Commission may without further notice to respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right he might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. He understands that once the order has been issued, he will be required to file one or more compliance reports showing that he has fully complied with the order. Respondent further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

* * * * *

Definitions

For the purposes of this Order, the following definitions shall apply:

A. "Electronic corrosion control device" shall mean any device or mechanism that is intended, through the use of electricity, static or current, to control, retard, inhibit or reduce corrosion in motor vehicles.

B. "Rust Evader" shall mean the electronic corrosion control device sold under the trade names Rust Evader, Rust Buster, Electro-Image, Eco-Guard, and any other substantially similar product sold under any trade name.

C. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence, based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I

It is ordered that respondent David F. McCready, individually and as an officer of RustEvader Corporation, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of the Rust Evader, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from representing, in any manner, directly or by implication, that such product is effective in preventing or substantially reducing corrosion in motor vehicle bodies.

II

It is further ordered that respondent David F. McCready, individually and as an officer of RustEvader Corporation, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of any product for use in motor vehicles in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from making any representation, directly or by implication, concerning the performance, efficacy or attributes of such product unless such representation is true and, at the time such representation is made, respondent possesses and relies upon competent and reliable evidence, which, when appropriate, must be competent and reliable scientific evidence, that substantiates the representation.

III

It is further ordered that respondent David F. McCready, individually and as an officer of RustEvader Corporation, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of any product for use in motor vehicles in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, interpretations or purpose of any test, study, or survey.

IV

It is further ordered that respondent David F. McCready, individually and as an officer of RustEvader Corporation, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of any product for use in motor vehicles in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from misrepresenting, in any manner, directly or by implication, that any demonstration, picture, experiment or test proves, demonstrates or confirms any material quality, feature or merit of such product.

V

It is further ordered that respondent David F. McCready, individually and as an officer of RustEvader Corporation, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of the Rust Evader in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from employing the terms Rust Evader or Rust Buster in conjunction with or as part of the name for such product or the product logo.

VI

It is further ordered that respondent David F. McCready, individually and as an officer of RustEvader Corporation, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of any consumer product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act and actually costing the consumer more than five dollars ($5.00), shall forthwith cease and desist from conditioning any written or implied warranty of such product on the consumer's purchase or use, in connection with such product, of any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name.

VII

It is further ordered that respondent David F. McCready, individually and as an officer of RustEvader Corporation, his successors and assigns, shall be liable for consumer redress in the amount of two hundred thousand dollars ($200,000.00) as provided herein:

A. Not later than five (5) days from the date this Order becomes final, respondent shall deposit into an escrow account to be established by the Commission for the purpose of receiving payment due under this Order ("Commission escrow account"), the sum of two hundred thousand dollars ($200,000.00).

B. Provided however, that if, at the time this Order becomes final, respondent has not completed the sale of respondent's property known as RD 4 Box 92B, Altoona, Pennsylvania 16601, then respondent shall deposit, into the Commission escrow account, not later than five (5)days from the date this Order becomes final, the sum of forty thousand dollars ($40,000.00). Respondent shall deposit the remaining one hundred sixty thousand dollars ($160,000.00) into the Commission escrow account upon the sale of respondent's property known as RD 4 Box 92B, Altoona, Pennsylvania 16601 at the time of the sale of said property or six months from the date that this Order becomes final, whichever first occurs. Respondent shall provide security for the one hundred sixty thousand dollars ($160,000.00) by means of a mortgage on the property known as RD 4 Box 92B, Altoona, Pennsylvania 16601. Such mortgage shall be in a form, and shall be entered into by such date as agreed to by the parties, but no later than five (5) days from the date this Order becomes final.

C. In the event of any default in payment to the Commission escrow account, which default continues for more than ten (10) days beyond the date of payment, respondent shall also pay interest as computed under 28 U.S.C. Section 1961, which shall accrue on the unpaid balance from the date of default until the date the balance is fully paid.

D. The funds deposited by respondent in the Commission escrow account, together with accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of the Rust Evader in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. If the Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury. Respondent shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty, or punitive assessment.

E. At any time after this Order becomes final, the Commission may direct the agent for the Commission escrow account to transfer funds from the escrow account, including accrued interest, to the Commission to be distributed as herein provided. The Commission, or its representative, shall, in its sole discretion, select the escrow agent.

F. Respondent relinquishes all dominion, control and title to the funds paid into the Commission escrow account, and all legal and equitable title to the funds vests in the Treasurer of the United States and in the designated consumers. Respondent shall make no claim to or demand for return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondent, respondent acknowledges that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

VIII

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent David F. McCready, or his successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

I. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IX

It is further ordered that respondent David F. McCready shall, for a period of ten (10) years from the date of issuance of this Order, notify the Federal Trade Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include the respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

X

It is further ordered that this Order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty (20) years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the

VOL 61 ISS 132 JL 9 1996 UMI

Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

XI

It is further ordered that respondent David F. McCready shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order from David F. McCready (McCready).

On August 30, 1995, the Commission issued an administrative complaint in this matter (described below). The administrative complaint was withdrawn from adjudication, with respect to McCready, on April 11, 1996, for the purpose of considering the proposed consent agreement.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns advertisements and other promotional practices by Rust Evader Corporation (REC) in connection with the promotion and sale of the Rust Evader, a device purported to reduce corrosion in motor vehicle bodies. The complaint alleges that McCready directed, formulated and controlled the acts and practices of REC during the period when the violations occurred.

The complaint alleges that REC and McCready engaged in deceptive advertising in violation of Section 5 of the Federal Trade Commission Act by falsely claiming that the Rust Evader is effective to substantially reduce corrosion in motor vehicle bodies. The complaint also alleges that the advertising implied, falsely, that REC and McCready had scientific substantiation for this claim.

The complaint also alleges that REC and McCready used a product demonstration of the Rust Evader that was deceptive because it used conditions that an automobile would not encounter in practice and that improved the operation of the device. The complaint also alleges that the respondents used test results to promote the Rust Evader with the representation that such test results constituted scientific proof of the efficacy of the device. In fact, according to the complaint, the test results did not constitute such proof.

The complaint also alleged that REC and McCready violated Section 102(c) of the Magnuson-Moss Warranty Act by using a warranty that was conditioned on the consumer having the Rust Evader inspected every two years and that required the consumer to pay for the inspection.

Finally, the complaint alleged that REC and McCready provided the means and instrumentalities for others to violate Section 5 of the Federal Trade Commission Act.

The proposed consent order contains provisions designed to prevent misrepresentations related to these specific matters and others. Part I of the order prohibits McCready from representing that the Rust Evader is effective in preventing or substantially reducing corrosion in motor vehicle bodies.

Part II prohibits McCready from making any representation concerning the performance, efficacy or attributes of a product intended for use with motor vehicles unless there is competent and reliable evidence to substantiate the representation.

Part III prohibits McCready from misrepresenting the existence, contents, validity, results, conclusions, interpretations or purpose of any test, study, or survey in connection with the sale or advertising of any product for use in motor vehicles.

Part IV prohibits McCready from misrepresenting, in connection with the sale of any product for use in motor vehicles, that any demonstration, picture, experiment or test proves, demonstrates or confirms any material quality, feature or merit of such product.

Part V prohibits McCready from using the names Rust Evader and Rust Buster in connection with future sale of the Rust Evader or any substantially similar product.

Part VI prohibits future violations of Section 102(c) of the Magnuson-Moss Warranty Act.

Part VII requires McCready to pay the sum of $200,000 to provide a fund for redress of consumers who purchased the Rust Evader. McCready will pay $40,000 within five days of final issuance of the order by the Commission, and will pay the remaining $160,000 no later than six months after final issuance of the order. His obligation to pay the latter sum will be secured by a mortgage on real estate he now owns.

Parts VIII, IX, and XI are compliance and reporting provisions that require McCready to: retain all records that would bear on his compliance with the order, notify the Commission of any changes in his business affiliation, and report to the Commission his compliance with the terms of the order.

Part X provides that the order will terminate automatically twenty years from the date it becomes final unless the Commission has brought an action in federal court alleging a violation of the order. In that case, the order will terminate twenty years from the date that the federal court action is filed.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–17465 Filed 7–8–96; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice.

SUMMARY: This notice announces the Agency for Health Care Policy and Research's (AHCPR) intention to request the Office of Management and Budget (OMB) review of a proposed data collection project. In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3507(a)(1)(D)), the AHCPR invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by August 8, 1996.

ADDRESSES: Written comments should be submitted to: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 10235; Washington, D.C.

All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Carole Dillard, AHCPR Reports Clearance Officer, (301) 594–1357.

SUPPLEMENTARY INFORMATION:

Proposed Project

Evaluation of the kiosk-based ChoiceCard. The purpose of the ChoiceCard project is to develop a kiosk-based automated application to assist Medicaid recipients in selecting and enrolling in a health plan. The proposed data collection will provide an assessment of the usability of the kiosk-based automated application in Medicaid eligibility offices and provide an assessment of the application by Medicaid recipients. The application will be assessed in terms of its effectiveness in helping the recipient identify/select a personal doctor (PCP/OB/Gyn), learn with which plan(s) a particular doctor is affiliated, understand benefits coverage, understand managed care concept and requirements, identify/select a plan that meets their needs, and enroll in a plan. Burden estimates follow:

	Consumer
No. of respondents	200.
No. of surveys per respondent	1.
Average burden/response	.25 hours.
Estimated total burden/response	50 hours.

Copies of these data collection plans and instruments can be obtained from the AHCPR Reports Clearance Officer (see above for details).

Dated: June 28, 1996.

Clifton R. Gaus,

Administrator.

[FR Doc. 96–17316 Filed 7–8–96; 8:45 am]

BILLING CODE 4160–90–M

Centers for Disease Control and Prevention

The National Institute for Occupational Safety and Health (NIOSH) Scientific and Technical Meetings on Occupational Exposure to Asphalt During Roofing and Paving Operations: Correction

Federal Register Citations of Previous Announcements: 61 FR 28590–28591—dated June 5, 1996, and 61 FR 30242—dated June 14, 1996.

SUMMARY: Notice is given that the purpose of these meetings on July 8–10, 1996, and July 22–24, 1996, has been restructured to address only those issues relevant to the control of asphalt exposures (e.g., engineering controls, work practices). The draft NIOSH "Working Paper on Occupational Exposure to Asphalt" will not be discussed at these meetings. The meeting times, dates, place, and status remain unchanged.

CONTACT PERSON FOR MORE INFORMATION: Diane Manning, NIOSH Docket Office, 4676 Columbia Parkway, M/S C–34, Cincinnati, Ohio 45226.

Dated: July 2, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–17389 Filed 7–8–96; 8:45 am]

BILLING CODE 4163–19–M

Health Resources and Services Administration

Maternal and Child Health Bureau; Special Project Grants; Maternal and Child Health (MCH) Services; Community Integrated Service Systems (CISS) Set-Aside Program; Community-Based Intervention Research Grants

AGENCY: Health Resources and Services Administration (HRSA).

ACTION: Notice of availability of funds.

SUMMARY: The HRSA announces that applications will be accepted for fiscal year (FY) 1996 funds for Maternal and Child Health (MCH) Community Integrated Service Systems (CISS) grants to support community-based intervention research. The purpose of these projects is to support research on CISS-sponsored early intervention services programs in the context of developing and expanding local service delivery systems. Awards are made under the program authority of Section 502(b)(1)(A) of the Social Security Act, the CISS Federal Set-Aside Program. Within the HRSA, CISS projects are administered by the Maternal and Child Health Bureau (MCHB).

About $900,000 will be available to support up to 3 new projects at an average of about $300,000 per award per year. The actual amounts available for awards and their allocation may vary, depending on the volume and quality of applications. Awards are made for grant periods of not more than 4 years in duration. Funds are appropriated by Public Law 104–134.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The CISS Federal Set-Aside Program addresses issues related to the *Healthy People 2000* objectives of improving maternal, infant, child and adolescent health and developing service systems for children with special health care needs. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report: Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone: 202 783–3238).

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

ADDRESSES: Grant applications for MCH research and training grants must be obtained from and submitted to: Chief, Grants Management Branch, Office of Operations and Management, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1440. Applicants for these projects will use application Form PHS 398 (Rev. 5/95), approved by the Office of Management and Budget (OMB) 0925–0001. An MCHB supplement, with instructions specifically applicable to Community-Based Intervention Research Grants, is included in the application package, which can be obtained from the address given above. You must obtain application materials in the mail.

Federal Register notices and application guidance for MCHB programs are available on the World Wide Web via the Internet at address: http://www.os.dhhs.gov/hrsa/mchb. Click on the file name you want to download to your computer. It will be saved as a self-extracting (Macintosh or) Wordperfect 5.1 file. To decompress the file once it is downloaded, type in the file name followed by a <return>. The file will expand to a Wordperfect 5.1 file. If you have difficulty accessing the MCHB Home Page via the Internet and need technical assistance, please contact Linda L. Schneider at 301–443–0767 or "lschneider@hrsa.ssw.dhhs.gov".

DATES: Potential applicants are invited to request application packages and to submit their applications for funding consideration. The application deadline is August 26, 1996.

VOL
61
ISS
1
32
JL
9
1996
UMI

Applications will be considered to have met the deadline if they are either: (1) received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated receipt from a commercial carrier or the U.S. Postal Service, or obtain a legibly dated U.S. Postal Service postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications or those sent to an address other than specified in the ADDRESS section will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: For programmatic or technical information, contact Dr. Gontran Lamberty, Director, MCH Research Program, Research and Training Branch, MCHB, 5600 Fishers Lane, Room 18A–55, Rockville, MD 20857, telephone: 301 443–2190. For information concerning business management issues, contact Ms. Constance Davenport, Grants Management Branch, MCHB, Room 18–12, 5600 Fishers Lane, Rockville, MD, telephone 301 443–1440.

SUPPLEMENTARY INFORMATION:

1. Program Background and Objectives

The purpose of the Community-Based Intervention Research Grant projects covered by this announcement is to generate new knowledge on early intervention services models and on how to integrate these models into existing systems of care at the community level while sustaining the essential nature and demonstrated effectiveness of the original prototypes.

Intervention is the name given to a variety of programs and clinical management approaches designed to improve adverse conditions in individuals and groups or prevent or limit these conditions. From the standpoint of research, interventions are scientific experiments in which an investigator, through a particular effort, treatment, or program, seeks to purposively influence an outcome or outcomes in an individual or group under controlled conditions. Intervention studies may also be viewed as prospective, formal investigations of prototypes of programs or subcomponents of programs (e.g., outreach, one-stop shopping or home visiting). These prototypes, if proven effective under controlled conditions, are then ready for further testing and refinement in real-life settings.

2. Special Concerns

In its administration of the MCH Services Block Grant, the MCHB places special emphasis on improving service delivery to women and children from racial and ethnic minority populations who have had limited access to accessible care. This means that CISS projects are expected to serve and appropriately involve in project activities individuals from the populations to be served, unless there are compelling programmatic or other justifications for not doing so. The MCHB's intent is to ensure that project interventions are responsive to the cultural and linguistic needs of special populations, that services are accessible to consumers, and that the broadest possible representation of culturally distinct and historically underrepresented groups is supported through programs and projects sponsored by the MCHB. This same special emphasis applies to improving service delivery to children with special health care needs.

In keeping with the goals of advancing the development of human potential, strengthening the Nation's capacity to provide high quality education by broadening participation in MCHB programs of institutions that may have perspectives uniquely reflecting the Nation's cultural and linguistic diversity, and increasing opportunities for all Americans to participate in and benefit from Federal public health programs, a funding priority will be placed on projects from Historically Black Colleges and Universities (HBCU) or Hispanic Serving Institutions (HSI) in all categories and subcategories in this notice for which applications from academic institutions are encouraged. An approved proposal from a HBCU or HSI will receive a 0.5 point favorable adjustment of the priority score in a 5=point range before funding decisions are made.

3. Project Review and Funding

Within the limit of funds determined by the Secretary to be available for the activities described in this announcement, the Secretary will review applications for funds as competing applications and may award Federal funding for projects which will, in her judgment, best promote the purpose of title V of the Social Security Act, with special emphasis on improving service delivery to women and children from culturally distinct populations; best address achievement of *Healthy People 2000* objectives related to maternal, infant, child and adolescent health and service systems for children at risk of chronic and disabling conditions; and otherwise best promote improvements in maternal and child health.

4. Criteria for Review

The criteria which follow are used, as pertinent, to review and evaluate applications for CISS awards announced in this notice. Further guidance in this regard is supplied in application guidance materials, which may specify other criteria.

—The quality of the project plan or methodology.
—The need for the research or training.
—The extent to which the project will contribute to the advancement of maternal and child health and/or improvement of the health of children with special health care needs;
—The extent to which the project is responsive to policy concerns applicable to MCH grants and to program objectives, requirements, priorities and/or review criteria for specific project categories, as published in program announcements or guidance materials.
—The extent to which the estimated cost to the Government of the project is reasonable, considering the anticipated results.
—The extent to which the project personnel are well qualified by training and experience for their roles in the project and the applicant organization has adequate facilities and personnel.
—The extent to which, insofar as practicable, the proposed activities, if well executed, are capable of attaining project objectives.
—The strength of the project's plans for evaluation.
—The extent to which the project will be integrated with the administration of the MCH Block Grant, State primary care plans, public health, and prevention programs, and other related programs in the respective State(s).
—The extent to which the application is responsive to the special concerns and program priorities specified in this notice.

Comments on this notice which members of the public wish to make are welcome at any time and may be submitted to: Director, MCHB, at the address listed in the **ADDRESSES** section. Suggestions will be considered when priorities are developed for the next solicitation.

5. Grants/Amounts

A total of about $900,000 per year will be available to support a maximum of 3 projects. The project period will not exceed 4 years.

6. Eligible Applicants

Applicants eligible to compete are public or nonprofit institutions of higher learning and public or nonprofit private agencies and organizations engaged in research or in maternal and child health or children with special health care needs programs.

7. Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to state and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions. Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt date: (1) A copy of the face page of the application (PHS–398 (Rev. 5/95); (2) a summmary of the project PHSIS, not to exceed one page, which provides a description of the population to be served, a summary of the services to be provided, and a description of the coordination planned with the appropriate State and local health agencies.

8. Executive Order 12372

The CISS Federal Set-Aside Program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

The OMB Catalog of Federal Domestic Assistance number is 93.110.

Dated: July 1, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–17317 Filed 7–8–96; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4066–N–01]

Office of Administration; Submission for OMB Review Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: August 8, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 25, 1996.

David S. Cristy,

Acting Director, Information Resources, Management Policy and Management Division.

Title of Proposal: Conveyance (Acquisition) and Disposition Information Collections contained in Handbook 4310.5 entitled "Property Disposition Handbook, One-to-Four Family Properties".

Office: Housing.

OMB Approval Number: 2502–0306.

Description of the Need for the Information and Its Proposed Use: These information collections are needed to determine the condition of the property upon conveyance, to determine the results of the repair contracts, and to monitor the contractor's performance in maintaining the properties. The sales contracts will be used as binding contracts between the purchaser and HUD. Respondents are potential contractors, contractors who work for HUD, and potential and actual purchasers of HUD-owned properties.

Form Number: HUD–9516A, 9519, 9519A, 9544, 9548, and 9733.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions, and the Federal Government.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collections	45,550		Varies		.50		336,550

Total Estimated Burden Hours: 336,550.

Status: Reinstatement with changes.

Contact: Rose Donnelly/Art Orton, HUD, (202) 708–4767; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 25, 1996.

[FR Doc. 96–17367 Filed 7–8–96; 8:45 am]

BILLING CODE 4210–01–M

VOL
61
ISS
132
JL
9
1996
UMI

[Docket No. FR–4086–N–02]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: August 8, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 21, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Title of Proposal: Title I Property Improvement and Manufactured Home Loans.

Office: Housing.

OMB Approval Number: 2502–0328.

Description of the Need for the Information and Its Proposed Use: Title I loans are made by private lenders, and HUD insures the lender against loss from borrower defaults. The information collections are needed by HUD to evaluate program and individual lender performance and to determine whether claims are eligible for payment.

Form Number: HUD–637, 27029, 27030, 55013, 55014, 56001, 56001–MH, 56004, and 92802.

Respondents: Individuals or households and business or other for-profit.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	445,525		varies		varies		156,897

Total Estimated Burden Hours: 156,897.

Status: Reinstatement with changes.

Contact: Robert Coyle, HUD, (202) 755–7400 x103, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 21, 1996.

[FR Doc. 96–17368 Filed 7–8–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4086–N–03]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: August 8, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 21, 1996.

David S. Cristy,

Acting Director, Information Resources, Management Policy and Management Division.

Title of Proposal: HUD Conditional Commitment/Direct Endorsement Statement of Appraised Value.

Office: Housing.

OMB Approval Number: 2502–0494.

Description of the Need for the Information and its Proposed Use: The form is used by HUD and HUD approved lenders. This form puts forth the value, terms and conditions of a property for mortgage insurance purposes and is mandatory for Housing Programs.

Form Number: HUD–92800.5B.

Respondents: Business or other for-profit and the Federal Government.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD–92800.5B	1,200,000		1		.14		168,000

Total Estimated Burden Hours: 168,000.

Status: Reinstatement without changes.

Contact: David Dwyer, HUD, (202) 708–2121; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 21, 1996.

[FR Doc. 96–17369 Filed 7–8–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4086–N–04]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: August 8, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 21, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Title of Proposal: Survey of Market Absorption of New Apartment Buildings (SOMA).

Office: Policy Development and Research.

OMB Approval Number: 2528–0013.

Description of the Need for the Information and its Proposed Use: The survey measures the rate at which different types of new rental and condominium apartments are absorbed, i.e., taken off the market. It provides a basis for analyzing the degree to which apartment building activity is meeting present and future needs.

Form Number: H–31 and SOMA–1.

Respondents: Business or other for-profit.

Frequency of Submission: On occasion and quarterly.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	12,000		1		.3		3,600

Total Estimated Burden Hours: 3,600.

Status: Extension without changes.

Contact: Ronald J. Sepanik, HUD, (202) 708–1060 x134 Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 21, 1996.

[FR Doc. 96–17370 Filed 7–8–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4086–N–05]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* August 8, 1996.

VOL
61
ISS
132
JL
9
1996

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 25, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Title of Proposal: Information Request to owners of HUD-assisted Multifamily Housing in Boston, pursuant to Section III.A of Consent Decree in *NAACP, Boston Chapter* v. *Cisneros.*

Office: General Counsel.

OMB Approval Number: 2510–0008.

Description of the Need for the Information and its Proposd Use: Pursuant to Section III.A of the Consent Decree in NAACP, Boston Chapter v. *Cisneros,* HUD is required to submit semi-annual reports to the Court setting forth the current racial makeup, family composition, and vacancy rate of HUD-assisted multifamily rental housing located in the City of Boston. The information collection is required in order to prepare these reports. The reports are used to determine if there has been any progress toward achieving the goals of the Consent Decree. Respondents are owners and managers of HUD-assisted housing.

Form Number: HUD–23001.

Respondents: Business for other for-profit and not-for-profit institutions.

Frequency of Submission: Semi-annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	213		2		1		426

Total Estimated Burden Hours: 426.

Status: Extension without changes.

Contact: Linda G. Katz, HUD, (617) 565–5126; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 25, 1996.

[FR Doc. 96–17371 Filed 7–8–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4086–N–06]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: August 8, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 25, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Title of Proposal: Request for Credit Approval of a Substitute Mortgagor.

HUD–92210 is an application form to approve the credit of a substitute mortgagor who desires to assume an insured mortgage loan. The form will also be used as a notification to document the file that the substitute mortgage is financially accepted.

Form Number: HUD–92210.

Respondents: Individuals or households.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD–92210	1,000		10		1		10,000

Total Estimated Burden Hours: 10,000.

Status: Reinstatement without changes.

Contact: Katherine Winbach, HUD, (202) 708–1719 Joseph F.Lackey, Jr., OMB, (202) 395–7316.

Dated: June 25, 1996.

[FR Doc. 96–17372 Filed 7–8–96; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of Petition Management Guidance for Petitions Received Under the Endangered Species Act

AGENCY: Fish and Wildlife Service, Interior, and National Marine Fisheries Service, National Oceanic and Atmospheric Administration Commerce.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service and National Marine Fisheries Service (Services) announce the availability of Petition Management Guidance. This document provides internal guidance for the management of petitions submitted to the Fish and Wildlife Service and the National Marine Fisheries Service under the Endangered Species Act of 1973, as amended (Act). Its purpose is to provide policy and guidance for managing petitions to promote efficiency and nationwide consistency within the Services. The Services previously sought public comment on a draft of this guidance document.

DATES: The guidance became effective

SUPPLEMENTARY INFORMATION:

Background

Section 4(b) of the Act allows any interested individual to petition the Services to list, delist, or reclassify species, or to revise a listed species' critical habitat. The Petition Management Guidance provides specific guidance for the Services on petition identification, data/information submission standards, lead Region responsibilities, time frames for internal review of 90-day and 12-month findings, petition tracking, preparation of administrative findings and notices, and petitioner notification. The guidance differentiates among petitions requesting (1) actions petitionable under the provisions of section 4(b)(3) of the Endangered Species Act. (2) actions encompassed by other provisions of the Endangered Species Act, and (3) actions petitionable only under the Administrative Procedure Act.

The Petition Management Guidance identifies three petition categories under section 4(b)(3) of the Act as follows:

(1) Petitions to list species,

(2) Petitions to reclassify or delist species, and

(3) Petitions to revise critical habitat.

Under each of these three categories, situations are described to assist Service employees and ensure consistency in the determination of 90-day and 12-

Drive, Room 452, Arlington, Virginia 22203 or the Division of Endangered Species, U.S. National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, at the above address (703/358–2171), or Robert Ziobro, Acting Chief, Division of Endangered Species, U.S. National Marine Fisheries Service, at the above address (301/703–1401).

in biological status of species that would justify rulemaking under section 4 of the Act. In this manner, the petition process will operate consistently with the Services' own listing priority systems.

Public Comments

The Services made available a draft of the petition management guidance through a notice published in the **Federal Register** on December 21, 1994 (59 FR 65781). Comments received in response to that notice have been considered in formulating the final guidance document.

Author/Editor

The editors of the final document are Dr. John J. Fay, U.S. Fish and Wildlife Service, Division of Endangered Species (see **ADDRESSES** section) and Marta Nammack, U.S. National Marine Fisheries Service, Division of Endangered Species (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 25, 1996.

John G. Rogers,

Director, Fish and Wildlife Service.

Dated: June 24, 1996.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–17221 Filed 7–8–96; 8:45 am]

BILLING CODE 4310–55–M

Application for Incidental Take Permit for American Burying Beetle, etc.; McCurtain County, OK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Receipt of Application for Incidental Take Permit for Surveying the Species Listed Below for the McCurtain County Wilderness area in

VOL 61 ISS 132 JL 9 1996 UMI

Section 10(A)(1)(a) of the Endangered Species Act, for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents. The applicant has been assigned permit number PRT–814829. The requested permit, which is for a period of 2 years, would authorize incidental take of the following endangered species:

1. American burying beetle (Nicrophorus americanus)
2. Bald eagle (Haliaeetus leucocephalus)
3. Interior least tern (Sterna antillarum)
4. Red-cockaded woodpecker (Picoides borealis)

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. The request must be received by the Assistant Regional Director within 30 days of the date of this publication. Please refer to permit number PRT–814829 when submitting comments.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice.

Lynn B. Starnes,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 96–17391 Filed 7–8–96; 8:45 am]

BILLING CODE 4510–55–P

Application for Incidental Take Permit for Mexican Spotted Owl; Coconino and Apache-Sitgreaves National Forests, AZ

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Receipt of Application for Incidental Take Permit for Surveying the Species Listed Below for the Coconino and Apache-Sitgreaves National Forests in Arizona.

APPLICANT: Dr. Joseph L. Ganey, Flagstaff, Arizona.

SUMMARY: Dr. Joseph L. Ganey has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(A)1(a) of the Endangered Species Act, for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents. The applicant has been assigned permit number PRT–814833. The requested permit, which is for a period of 2 years, would authorize incidental take of the Mexican spotted owl (*Strix occidentalis lucida*).

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. The request must be received by the Assistant Regional Director within 30 days of the date of this publication. Please refer to permit number PRT–814833 when submitting comments.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice.

Lynn B. Starnes,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 96–17392 Filed 7–8–96; 8:45 am]

BILLING CODE 4510–55–P

Application for Incidental Take Permit for Tessu Long-Nosed Bats, etc.; Hidalgo County, NM, et al.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Receipt of Application for Incidental Take Permit for Surveying the Species Listed Below at Previously Undocumented Locations including Hidalgo County, New Mexico (Peloncillo and Animas Mountains) and Cochise County, Arizona.

APPLICANT: Andrew T. Holycross, Tempe, Arizona.

SUMMARY: Andrew T. Holycross has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(A)1(a) of the Endangered Species Act, for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents. The applicant has been assigned permit number PRT–814837. The requested permit, which is for a period of 2 years, would authorize incidental take of the following endangered species:

1. Lesser Long-nosed bats (*Leptonycteris curasoae yerbabuena*).
2. New Mexico ridge-nosed rattlesnakes (*Crotalus willardi obscurus*).

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. The request must be received by the Assistant Regional Director within 30 days of the date of this publication. Please refer to permit number PRT–814837 when submitting comments.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice.

Lynn B. Starnes,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 96–17393 Filed 7–8–96; 8:45 am]

BILLING CODE 4510–55–P

Application for Incidental Take Permit for Sacramento Mountain Thistle; Otero County, NM, et al.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Receipt of Application for Incidental Take Permit for Surveying the Species Listed Below for Otero County, New Mexico; Brewster County, Texas (to include Big Bend National Park and the Terlingua Creek Area); Cochise County, Arizona (San Bernadino Valley); Pima County, Arizona, and Marathon, Texas.

APPLICANT: Carolyn O'Malley, Phoenix, Arizona.

SUMMARY: Carolyn O'Malley has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(A)1(a) of the Endangered Species Act, for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents. The applicant has been assigned permit number PRT–814841. The requested permit, which is for a period of 2 years, would authorize incidental take of the following endangered species:

1. Sacramento Mountain thistle (*Cirsium vinaceum*)
2. Nichol's Turk's head cactus (*Echinocereus horizonthalonius v. nicholii*)
3. Davis' green pitaya (*Echinocereus viridflorus v. davisii*)
4. bunched cory cactus (*Coryphantha ramillosa*)
5. Terlingua Creek cat's eye (*Cryptantha crassipes*)
6. Sacramento prickly poppy (*Argemone pleicantha ssp. pinnatisecta*)
7. Cochise pincushion cactus (*Coryphantha robbinsorum*)
8. Lloyd's mariposa cactus (*Neolloydia mariposensis*)

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. The request must be received by the Assistant Regional Director within 30 days of the date of this publication. Please refer to permit number PRT–814841 when submitting comments.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice.

Lynn B. Starnes,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 96–17394 Filed 7–8–96; 8:45 am]

BILLING CODE 4510–55–P

Application for Incidental Take Permit for Pecos Gambusia, etc.; Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Receipt of Application for Incidental Take Permit for Surveying the Species Listed Below within the State of Texas.

APPLICANT: Andrew Sansom, Austin, Texas.

SUMMARY: Andrew Sansom has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(A)1(a) of the Endangered Species Act, for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents. The applicant has been assigned permit number PRT–814933. The requested permit, which is for a period of 2 years, would authorize incidental take of the following endangered species:

1. Pecos gambusia (*Gambusia nobilis*)
2. Houston toad (*Bufo Houstonensis*)
3. Golden-cheekod warbler (*Dendroica chrysoparia*)
4. Red-cockaded woodpecker (*Picoides borealis*)
5. Louisiana black bear (*Ursus americanus luteolus*)
6. Ocelot (*Felis pardalis*)
7. Jaguarundi (*Felis yagouaroundi cacomitli*)
8. One flowering plant within the State

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. The request must be received by the Assistant Regional Director within 30 days of the date of this publication. Please refer to permit number PRT–814933 when submitting comments.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice.

Lynn B. Starnes,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 96–17395 Filed 7–8–96; 8:45 am]

BILLING CODE 4510–55–P

Application for Incidental Take Permit for Fountain Darter, etc.; San Marcos National Fish Hatchery and Technology Center, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Receipt of Application for Incidental Take Permit for Surveying the Species Listed Below from San Marcos National Fish Hatchery and Technology Center.

APPLICANT: William M. Seawell, San Marcos, Texas.

SUMMARY: William M. Seawell has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(A)1(a) of the Endangered Species Act, for the purpose of scientific research and enhancement of propagation and survival of the species as prescribed by Service recovery documents. The applicant has been assigned permit number PRT–814863. The requested permit, which is for a period of 2 years, would authorize incidental take of the following endangered species:

1. Fountain darters (*Etheostoma fonticola*)
2. Texas blind salamanders (*Typhlomolge rathbuni*)
3. San Marcos Gambusia (*Gambusia georgei*)
4. Texas wild rice (*Zizania texana*)

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. The request must be received by the Assistant Regional Director within 30 days of the date of this publication. Please refer to permit number PRT–814863 when submitting comments.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice.

Lynn B. Starnes,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 96–17396 Filed 7–8–96; 8:45 am]

BILLING CODE 4510–55–P

Application for Incidental Take Permit for Attwater's Greater Prairie Chicken; Colorado County et al., TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Receipt of Application for Incidental Take Permit for Surveying Attwater's Greater Prairie Chicken in Colorado, Galveston, and Refugio Counties; Glen Rose, College Station, Houston, and San Antonio, Texas.

APPLICANT: Terry Rossignal, Eagle Lake, Texas.

SUMMARY: Terry Rossignal has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(A)1(a) of the Endangered Species Act, for the purpose of scientific research and enhancement of propagation and survival of Attwater's greater prairie chicken (*Tympanuchus cupido attwateri*) as prescribed by Service recovery documents. The applicant has been assigned permit number PRT–814917. The requested permit, which is for a period of 2 years, would authorize incidental take of Attwater's greater prairie chicken.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. The request must be received by the Assistant Regional Director within 30 days of the date of this publication. Please refer to permit number PRT–814917 when submitting comments.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above

VOL 61 ISS 132 JL 9 1996 UMI

office within 30 days of the date of publication of this notice.

Lynn B. Starnes,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 96–17397 Filed 7–8–96; 8:45 am]

BILLING CODE 4310–55–P

Application for Incidental Take Permit for Mexican Spotted Owl, Pima County, AZ

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Receipt of Application for Incidental Take Permit for Surveying the Mexican Spotted Owl for the Rincon Mountains, East District of Saguaro National Park, Pima County, Arizona.

APPLICANT: Dr. Charles Van Riper, Flagstaff, Arizona.

SUMMARY: Dr. Charles Van Riper has applied to the Fish and Wildlife Service for an incidental take permit pursuant to Section 10(A)1(a) of the Endangered Species Act, for the purpose of scientific research and enhancement of propogation and survival of the Mexican spotted owl (*Strix occidentalis lucida*) as prescribed by Service recovery documents. The applicant has been assigned permit number PRT–812832. The requested permit, which is for a period of 1 year, would authorize incidental take of the species.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. The request must be received by the Assistant Regional Director within 30 days of the date of this publication. Please refer to permit number PRT–812832 when submitting comments.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice.

Lynn B. Starnes,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 96–17398 Filed 7–8–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Amendment to Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Amendment to the Tribal-State Compact Between the Eastern Band of Cherokee Indians and the State of North Carolina, which was executed on May 28, 1996.

DATES: This action is effective July 9, 1996.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: June 28, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–17429 Filed 7–8–96; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[UT–040–06–1220–00]

Utah; Closure of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency Closure of Public Lands.

NOTICE: Utah, Washington County, Cedar City District Office, Dixie Resource Area.

SUMMARY: Notice is hereby given that effective immediately all public lands in the north half of Section 1, Township 42 South, Range 11 West of the Salt Lake Baseline and Meridian, including the unauthorized Slickrock Swamp Trail, are closed to mountain bike use and motorized vehicles with the exception of fire and emergency vehicles, law enforcement, government officials in the conduct of official business, and authorized permittees of the Bureau of Land Management. This closure is in accordance with the provisions of 43 CFR 8341.2.

The purpose of the closure is to protect the City of Rockville municipal watershed and to reduce soil erosion on the Rockville Bench. The fragile soils and watershed are threatened because of the creation and use of an unauthorized mountain bike trail. The closure will also curtail trespass problems that are occurring on surrounding private property as a result of mountain bike use on the trail. The closure will remain in effect until specific land use planning is completed for the parcel.

ADDRESSES: More information can be obtained from R.J. Hughes at the Dixie Resource Area, 345 E. Riverside Drive, St. George, Utah 84790, (801) 673–4654.

Dated: June 26, 1996.

G. Von Swain,

Acting District Manager, Cedar City District.

[FR Doc. 96–17435 Filed 7–8–96; 8:45 am]

BILLING CODE 4310–DQ–P–M

[OR–130–1020–00; GP6–0207]

Cancellation of Meetings of the Interior Columbia Basin Ecosystem Management Project Subgroup of the Eastern Washington Resource Advisory Council; and of the Eastern Washington Resource Advisory Council

AGENCY: Bureau of Land Management, Spokane District.

ACTION: Cancellation of meetings of the Interior Columbia Basin Ecosystem Management Project Subgroup of the Eastern Washington Resource Advisory Council; July 18, 1996, in Spokane, Washington; and the cancellation of the meeting of the Eastern Washington Resource Advisory Council; July 19, 1996, in Spokane, Washington.

SUMMARY: The meeting of the Interior Columbia Basin Ecosystem Management Project Subgroup of the Eastern Washington Resource Advisory Council scheduled for July 18, 1996; is cancelled. The meeting of the Eastern Washington Resource Advisory Council scheduled for July 19, 1996 is cancelled.

FOR FURTHER INFORMATION CONTACT: Richard Hubbard, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212; or call 509–536–1200.

Dated: July 3, 1996.

Joseph K. Buesing,

District Manager.

[FR Doc. 96–17530 Filed 7–8–96; 8:45 am]

BILLING CODE 4310–33–P

[OR–130–1020–00; GP6–0208]

Meetings of the Interior Columbia Basin Ecosystem Management Project and the Eastern Washington Resource Advisory Council

AGENCY: Bureau of Land Management, Spokane District.

ACTION: The meeting of the Interior Columbia Basin Ecosystem Management Project Subgroup of the Eastern Washington Resource Advisory Council is scheduled for August 8, 1996, in Spokane, Washington. The meeting of the Eastern Washington Resource Advisory Council is scheduled August 9, 1996, in Spokane, Washington.

SUMMARY: The meeting of the Interior Columbia Basin Ecosystem Management Project Subgroup of the Eastern Washington Resource Advisory Council August 8, 1996, will convene at 9:00 a.m., at the Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212–1275. The meeting will adjourn at approximately 4:00 p.m. or upon completion of business. At an appropriate time, the meeting will recess for approximately one hour for lunch. Public comments will be received from 10:00 a.m. until 10:30 a.m. The purpose of the Interior Columbia Basin Ecosystem Management Project (ICBEMP) Subgroup meeting is to discuss ICBEMP Alternatives.

A meeting of the Eastern Washington Resource Advisory Council will be held on August 9, 1996. The meeting will convene at 9:00 a.m. at The Red Lion Inn, South "C" Ballroom, N. 322 Spokane Falls Ct., Spokane, Washington, 99201; (509) 455–9600. The meeting will adjourn upon completion of business, but no later than 4:00 p.m. At an appropriate time, the meeting will recess for approximately one hour for lunch.

Public comments will be received from 10:00 a.m. until 10:30 a.m. The purpose of meeting is to address the Interior Columbia Basin Ecosystem Management Project and to address for Standards for Rangeland Health and Livestock Grazing Guidelines.

FOR FURTHER INFORMATION CONTACT: Richard Hubbard, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212; or call 509–536–1200.

Dated: July 3, 1996.

Joseph K. Buesing,

District Manager.

[FR Doc. 96–17531 Filed 7–8–96; 8:45 am]

BILLING CODE 4310–33–P

[MT–924–1430–01; NDM 83168]

Public Land Order No. 7206; Withdrawal of Public Lands for Waterfowl Production Areas; North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 1,108.60 acres of public lands from surface entry and mining for a period of 50 years for the Fish and Wildlife Service to protect waterfowl production areas. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: July 9, 1996.

FOR FURTHER INFORMATION CONTACT: Dick Thompson, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2829.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect waterfowl production areas:

Fifth Principal Meridian

T. 130 N., R. 68 W.,
Sec. 24, lot 6, SW¼NE¼, and NW¼SE¼.
T. 132 N., R. 68 W.,
Sec. 20, NE¼NE¼.
T. 135 N., R. 69 W.,
Sec. 28. N½NE¼.
T. 135 N., R. 70 W.,
Sec. 8, NE¼SW¼SW¼SW¼.
T. 141 N., R. 81 W.,
Sec. 26, lots 1 and 2, NE¼SE¼, and SW¼SE¼.
T. 142 N., R. 75 W.,
Sec. 12, S½SW¼;
Sec. 14, S½SW¼ and E¼SE¼;
Sec. 22, N½NE¼;
Sec. 26, NW¼NE¼ and NE¼NW¼.
T. 143 N., R. 81 W.,
Sec. 6, lots 1 and 2;
Sec. 18, lot 3.
T. 144 N., R. 83 W.,
Sec. 30, lot 4.
T. 144 N., R. 84 W.,
Sec. 6, lots 1, 2, and 3.
T. 145 N., R. 84 W.,
Sec. 34, lots 3 and 4.
T. 146 N., R. 84 W.,
Sec. 32, lots 1, 4, 5, and 8.
T. 153 N., R. 75 W.,
Sec. 31, lots 2 and 4.

The areas described aggregate 1,108.60 acres in Burleigh, Logan, McHenry, McIntosh, and McLean Counties.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining law.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: June 24, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–17341 Filed 7–8–96; 8:45 am]

BILLING CODE 4310–DN–P

[AZ–942–06–1420–00]

Arizona; Notice of Filing of Plats of Survey

Date: July 1, 1996.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 17, and a metes-and-bounds survey, in Township 1 North, Range 4 East, Gila and Salt River Meridian, Arizona, was approved April, 1996, and officially filed April 18, 1996.

A supplemental plat showing amended lottings of fractional areas created by the segregation of patented mineral surveys and the cancellation of Mineral Surveys 1909, 2242, 3167, and 3236, in section 10, Township 23 South, Range 24 East, Gila and Salt River Meridian, Arizona, was approved April 29, 1996, and officially filed May 7, 1996.

A supplemental plat showing amended lottings of fractional areas created by the segregation of patented mineral surveys and the cancellation of Mineral Survey 2555, Section 11, Township 23 South Range 24 East, Gila and Salt River Meridian, Arizona, was approved April 29, 1996, and officially filed May 7, 1996.

A plat, in 3 sheets, representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 22 and 27, the metes-and-bounds surveys of Tracts 37, 38 and 39, and the segregation of unpatented Mineral Survey No. 4722, Township 4 South, Range 15 East, Gila and Salt River Meridian, Arizona, was approved May 6, 1996, and officially filed May 9, 1996.

VOL 61 ISS 132 9 JUL 1996 UMI

A plat representing the dependent resurvey of a portion of the Fifth Guide Meridian East (east boundary), the subdivision of section 12, a metes-and-bounds survey in section 12 and an Informative Traverse of the Right Bank of the San Francisco River in Section 12, Township 5 South, Range 29 East, Gila and Salt River Meridian, Arizona, was approved May 13, 1996, and officially filed May 21, 1996.

A plat representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines; and metes-and-bounds surveys in Sections 19 and 30, Township 14 North, Range 11 West, Gila and Salt River Meridian, Arizona, was approved June 26, 1996, and officially filed July 3, 1996.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

Dennis K. McKay,

Acting Chief Cadastral Surveyor of Arizona.

[FR Doc. 96–17399 Filed 7–8–96; 8:45 am]

BILLING CODE 4310–31–M

[ES–960–1420–00; ES–48108, Group 29, Missouri]

Notice of Filing of Plat of Survey; Missouri

The plat of the dependent resurvey of the north, east, and west boundaries; a portion of the south boundary, and a portion of the subdivisional lines, and the subdivision of certain sections, Township 32 North, Range 5 East, Fifth Principal Meridian, Missouri, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., August 12, 1996.

The survey was requested by the U.S. Forest Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., August 12, 1996.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: June 27, 1996.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 96–17340 Filed 7–8–96; 8:45 am]

BILLING CODE 4310–05–M

National Park Service

Acadia National Park Bar Harbor, MA; Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770, 5 U.S.C. Ap. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, August 5, 1996.

The Commission was established pursuant to Public Law 99–420, Sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at park headquarters, Acadia National Park, Rt. 233, Bar Harbor, Maine, at 1:00 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held May 13, 1996.
2. Report of the following subcommittees:
   A. Conservation Easement
   B. Acquisition
   C. Planning
3. Bylaw changes.
4. Superintendent's report: Tour of park facilities; i.e., carriage roads, gatehouse exteriors, Jordan Pond House and trails.
5. Public comments.
6. Proposed agenda and date of next Commission meeting to be held jointly with Friends of Acadia leaders and Board, and League of Towns members.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting to: Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609–0177, tel: (207) 288–3338.

Dated: June 26, 1996.

Paul F. Haertel,

Superintendent, Acadia National Park.

[FR Doc. 96–17424 Filed 7–8–96; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–748 (Preliminary)]

Engineered Process Gas Turbo-Compressor Systems From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Japan of engineered process gas turbo-compressor systems, provided for in subheadings 8414.80.20, 8419.60.50, 8414.90.40, 8406.81.10, 8406.82.10, 8406.90.20 through 8406.90.45, 9032.89.80, 8501.53.40, 8501.53.60, 8501.53.80, and 8483.40.50, of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On May 8, 1996, a petition was filed with the Commission and the Department of Commerce by Dresser-Rand Co., Corning, NY, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of engineered process gas turbo-compressor systems from Japan. Accordingly, effective May 8, 1996, the Commission instituted antidumping investigation No. 731–TA–748 (Preliminary). On May 24, 1996, The United Steelworkers of America (USW), Pittsburgh, PA, which represents the production workers at the petitioner's and two other U.S. producers' facilities, filed a letter with the Commission and Commerce indicating that it was joining Dresser-Rand as a co-petitioner.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 17, 1996 (61 FR 24952). The conference was held in Washington, DC, on May 29, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 24, 1996. The views of the Commission are contained in USITC Publication 2976 (July 1996) entitled "Engineered Process Gas Turbo-Compressor Systems from Japan: Investigation No. 731–TA–748 (Preliminary)."

By order of the Commission.

Issued: July 1, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–17427 Filed 7–8–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–372 Enforcement Proceeding]

Certain Neodymium-Iron-Boron Magnets, Magnet Alloys, and Articles Containing Same; Notice of Referral of Formal Enforcement Proceeding to an Administrative Law Judge for Issuance of a Recommended Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has referred the formal enforcement proceeding instituted on April 25, 1996, in the above-captioned investigation to an administrative law judge for appropriate proceedings and the issuance of a recommended determination.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–3116.

SUPPLEMENTARY INFORMATION: On October 10, 1995, the Commission issued a notice that it had determined not to review an initial determination (Order No. 29) of the presiding administrative law judge in the above-captioned investigation granting a motion to terminate the investigation as to respondents San Huan New Materials High Tech, Inc., Ningbo Konit Industries, Inc., and Tridus International, Inc. (the "San Huan respondents") on the basis of a Consent Order, and subsequently issued the Consent Order. The Consent Order provides that the San Huan respondents:

shall not sell for importation, import into the United States or sell in the United States after importation or knowingly aid, abet, encourage, participate in, or induce the sale for importation, importation into the United States or sale in the United States after importation of neodymium-iron-boron magnets which infringe any of claims 1–3 of the '439 patent, or articles or products which contain such magnets, except under consent or license from Crucible.

On March 4, 1996, complainant Crucible Materials Corporation filed a complaint alleging that the San Huan respondents had violated the Consent Order and seeking institution of a formal enforcement proceeding. Crucible requested that the Commission enforce the Consent Order, impose civil penalties, assess reasonable attorney's fees, and impose such other remedies and sanctions as are appropriate. On March 12 and 28, 1996, the San Huan respondents filed letters objecting, *inter alia*, to a formal enforcement proceeding and requesting that an informal enforcement proceeding instead be instituted.

On April 25, 1996, the Commission issued an Order instituting a formal enforcement proceeding and instructing the Secretary to transmit the enforcement proceeding complaint to the San Huan respondents through counsel for a response. On June 4, 1996, the San Huan respondents filed a response to the complaint, denying violation of the Consent Order and infringement of the patent claims at issue and requesting that the Commission deny all relief sought and terminate the enforcement proceeding with prejudice.

Having examined the San Huan respondents' response to the formal enforcement proceeding complaint filed by Crucible, and having found that issues concerning possible violation of the Commission's Consent Order remain, the Commission determined to refer the enforcement proceeding to Judge Paul J. Luckern for issuance of a recommended determination concerning whether San Huan New Materials High Tech, Inc., Ningbo Konit Industries, Inc., and/or Tridus International, Inc. are in violation of the Commission's Consent Order. The recommended determination is to be issued within six (6) months of the Commission Order referring the enforcement proceeding to the administrative law judge.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75).

Copies of the Commission's Order and all other nonconfidential documents filed in connection with this enforcement proceeding are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: July 1, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–17426 Filed 7–8–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

In accordance with Department of Justice Policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. § 9622(d), notice is hereby given that on June 24, 1996, a proposed Consent Decree was lodged with the United States District Court for the Western District of Washington, *United States* v. *ASARCO Inc.*, Civil Action No. C91–6528B. The proposed Consent Decree settles claims asserted by the United States at the request of the United States Environmental Protection Agency (EPA) for releases of hazardous substances at the Asarco Smelter Operable Unit of the Commencement Bay Nearshore/Tideflats Superfund Site in Ruston and Tacoma, Washington. The defendant in the action is ASARCO Incorporated (Asarco). The claims of the United States on behalf of EPA are based upon contamination of the Asarco Smelter Site. The Asarco Smelter Site is comprised of the Asarco smelter facility, which is approximately sixty-seven acres in size, and the adjacent twenty-three acre slag peninsula.

In its amended complaint, the United States asserted claims against Asarco pursuant to Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6973, for injunctive relief to abate an imminent and substantial endangerment to public health or welfare or the environment due to the release or threatened release of hazardous substances at the Asarco Smelter Site. The United States also sought recovery of costs that have been and will be incurred in response to releases and

VOL
61
ISS
1
32
JL
9
1996
UMI

threatened releases of hazardous substances at the Asarco Smelter Site, and a declaration that Asarco is liable for such costs.

In the Consent Decree, Asarco agrees to implement the remedy set forth in EPA's Record of Decision (ROD) for the Asarco Smelter Site dated March 24, 1995. Asarco agrees to: (1) excavate approximately 160,000 cubic yards of soil and slag contaminated above action levels; (2) dispose of the contaminated soil and demolition debris designated as hazardous waste in an on-site containment facility (OCF) which meets or exceeds regulatory standards for hazardous waste landfills; (3) cap the entire Site with a low-permeability cap composed of layers of clean soils, gravel and clay; (4) demolish the remaining buildings and structures on the Site; (5) replace the entire surface water drainage system; (6) armor portions of the plant site and slag peninsula shoreline; (7) continue to monitor the sediments and groundwater under an Administrative Order on Consent currently in effect; and (8) develop and implement an enforceable program of restrictions and guidelines to supplement the actual cleanup activities to ensure that the remedial action remains protective and that development activities do not impact the long-term effectiveness of the cleanup. Asarco will also reimburse the United States for $3,081,510.00 in past response costs that the United States has incurred relating to the Asarco Smelter Site and will reimburse the United States for all of its future response costs at the Site.

In exchange, Asarco will receive a covenant not to sue from the United States with respect to the Asarco Smelter Site for claims pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *ASARCO Inc.*, D.J. Ref. No. 90–11–2–698A. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003 of RCRA.

The proposed Consent Decree and exhibits may be examined at the following locations: the Region 10 Office of EPA, 7th Floor Records Center, 1200 Sixth Avenue, Seattle, WA 98101; ASARCO Information Center, 5311 North Commercial, Ruston, Washington 98407; the Tacoma Public Library, Main Branch, 1102 Tacoma Avenue South, Northwest Room, Tacoma, WA 98402; and Citizens for a Healthy Bay, 771 Broadway, Tacoma, WA 98402. The complete Administrative Record for the Asarco Smelter Site may be reviewed at the EPA Region 10 office in Seattle and at the Main Branch of the Tacoma Public Library.

A copy of the Consent Decree and exhibits (if requested) may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. In requesting copies, please enclose a check in the amount of $22.75 (without exhibits) or $297.00 (with exhibits) (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Bruce Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–17311 Filed 7–8–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 23, 1996, Med-Pharmex Inc., 2727 Thompson Creek Road, Pomona, California 91767, made application to the Drug Enforcement Administration to be registered as an importer of pentobarbital (2270) a basic class of controlled substance listed Schedule II.

The firm plans to import pentobarbital to manufacture an euthanasia product for animals.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 8, 1996.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 1, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–17337 Filed 7–8–96; 8:45 am]

BILLING CODE 4410–09–M

Immigration and Naturalization Service

Agency Information Collection Activities: Revision of Existing Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Guam Visa Waiver Information.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" from the date listed at the top of this page in the **Federal Register**.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Overview of this information collection.

(1) Type of Information Collection: *Revision of a currently approved collection.*

(2) Title of the Form/Collection: Guam Visa Waiver Information.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–736. Office of Examinations, Inspections Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households, and business or other for-profit. The information collection is used to record an alien's application for a waiver of the non-immigrant visa requirement for entry into Guam in compliance with 8 CFR 212.1(e).

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 170,000 responses at 5 minutes (.083) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 14,110 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street NW., Washington, DC 20530.

Dated: July 2, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–17313 Filed 7–8–96; 8:45 am]

BILLING CODE 4410–18–M

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Application to Replace Alien Registration Card.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 22, 1996, at 61 FR 17728–17729, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with 5 CFR Part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. The proposed collection is listed below:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection.* Application to Replace Alien Registration Card.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–90. Office of Examinations, Adjudications, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected will be used by the INS to determine eligibility for an initial Alien Registration Card, or to Replace a previously issued card.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,300,000 responses at 55 minutes (.90) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,170,000 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: July 2, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–17312 Filed 7–8–96; 8:45 am]

BILLING CODE 4410–18–M

Office of Juvenile Justice and Delinquency Prevention

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Juveniles Taken Into Custody Reporting Program.

Office of Management and Budget (OMB) approval is being sought for the

VOL
61
ISS
1
3
2
JL
9
1996
UMI

information collection listed below. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with 5 Code of Federal Regulations, Part 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534. Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of information collection: Revision of a currently approved collection.

(2) The title of the form/collection: Edward Byrne Memorial State and Local Law Enforcement Assistance Program.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form: None. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State and Local governments. Other: None. To enumerate and describe annual movements of juvenile offenders through state correctional systems. It will be used by the Department of Justice for planning and policy affecting states. Providers of data are personnel in state departments of corrections and juvenile services.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 51 respondents with an average 12 hours per respondent.

(6) An estimate of the total public burden (in hours) associated with the collection: 628 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: July 2, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–17314 Filed 7–8–96; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review, Comment Request

July 1, 1996.

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by July 10, 1996. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5095).

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316).

The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection technique or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Department of Labor, Bureau of International Labor Affairs.

Title: International Child Labor Study Company Questionnaire.

OMB Number: 1225-Onew.

Frequency: One time.

Affected Public: Business or other profit.

Number of Respondents: 48.

Estimated Time Per Respondent: 5 hours.

Total Burden Hours: 240.

Total Burden Cost (Capital/startup): 0.

Description: The Department of Labor (DOL) requires the requested information in order to complete a Congressionally-mandated report on international child labor (pursuant to the 1996 Omnibus Appropriations Act, P.L. 104–134). Congress has requested that DOL's report include an examination of the top 20 importers of garments, their contractors and subcontractors, and their codes of conduct and those of their contractors and subcontractors regarding the use of exploitative child labor in the production of goods imported to the United States. DOL requests that the top U.S. retailers and manufacturers furnish information regarding their garment imports and codes of conduct in order to fulfill the Congressional mandate. DOL has requested an emergency review so as to be able to provide Congress with the completed study by September 30, 1996.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–17374 Filed 7–8–96; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of June, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivison have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,220; International Paper Co., Reedsport, OR

TA–W–32,282; Karl Schmidt UNISIA, Inc., Bohn Piston, South Haven, MI

TA–W–32, 309; Cominco American, Inc., Trentwood Warehouse, Spokane, WA

TA–W–32,254; CHF Industries, New Bedford, MA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–32,389; Snapp Tool & Die, Inc., El Paso, TX

TA–W–32,280; Alstyle Apparel, Lebanon, KY

TA–W–32,455; Arco International Oil & Gas Co., Plano, TX

Increase imports did not contribute importantly to worker separations at the firm.

TA–W–32,226; Spencer Industries, Inc., Gainesville, GA

TA–W–32,338, TA–W–32,339, TA–W–32,340; Highland Aritificial Lift, Enid, OK, Oklahoma City, OK, Garden City, KS

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–32,470; United Sports Apparel, Inc., Pelham, TN: June 5, 1995.

TA–W–32,185; Bugle Boy Industries, North Little Rock, AR: March 4, 1995.

TA–W–32,434; Todd's Sportswear, Inc., Smighville, TN: May 25, 1995.

TA–W–32,393; Todd Uniforms, Maury City, TN: May 7, 1995.

TA–W–32,195; CTS Corp., Bentonville, AR: February 28, 1995.

TA–W–32,287; Crown Vantage (Formerly James River Corp), Parchment, MI: October 23, 1994.

TA–W–32,261; United Technologies Automotive Wiring Systems Div. Plant #80, & #92, Plymouth, Inc: April 9, 1995.

TA–W–32,285; Alcoa Fujikura Ltd—Prototype Plant, Dearborn Heights, MI: April 12, 1995.

TA–W–32,291; Swanknit, Inc., Cohoes, NY: April 26, 1995.

TA–W–32,305; LTNY, Inc., Miami, FL: April 17, 1995.

TA–W–32,322; Footwear By Julius/Indian Footwear, Bronx, NY: April 29, 1995.

TA–W–32,368; Champion Products, Fitzgerald, GA: May 8, 1995.

TA–W–32,329; Elf Atochem North America, Inc, Buffalo, NY: March 22, 1995.

TA–W–32,417; Maybex Universal Corp., San Diego, CA: May 20, 1995.

TA–W–32,244; Style Sportswear, Inc., Paterson, NJ: April 11, 1995. W–32,293; A.H. Schreiber Co., Inc., Cinnaminson, NJ: April 22, 1995.

TA–W–32,394; Leslie Corp., Anniston, AL: June 3, 1995.

TA–W–32,300; Mallory & Church Corp., Chula Vista, CA: April 24, 1995.

TA–W–32,313; Thermo-o-Disc Co., Inc., Midwest Components Product Group, Newaygo, MI: March 20, 1995

TA–W–32,373; Flexitallic Gasket Co., Pennsauken, NJ: May 10, 1995.

TA–W–32,251; Trout Creek Lumber, Trout Creek, MT: March 26, 1995.

TA–W–32,326; VDO Yazaki Corp., Winchester, VA: April 30, 1995.

TA–W–32,332; Greenfield Research, Inc., Greenfield, OH: May 6, 1995.

TA–W–32,325; ERA Coat, Paterson, NJ: April 26, 1995.

TA–W–32,173; Exxon Co. USA, Midland Div., Midland, TX: October 6, 1996. Including Various Operations in the Following States: A; CA, B; MT, CV; ND, D; NM, E; WY, F; TX: March 26, 1995.

TA–W–32,173G; Exxon Co. USA, New Orleans Div., New Orleans, LA: November 8, 1996. Including Various Operations in the Following States: H; AL, I; FL, J; MS, K: TX: March 26, 1995.

TA–W–32,173L; Exxon Co. USA, Santa Ynez Div., Thousand Oaks, CA: December 15, 1995. Including various Operations in the Following State: M; CA; March 26, 1995.

TA–W–32,173N; Exxon Co., USA, Houston Div., Houston, TX: December 15, 1996. Including Various Operations in the Following States: O; AL, P; AR, O; KS, R; S; TX: March 26, 1995.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of June, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultuiral firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

VOL
61
ISS
132
JL
9
1996
UMI

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–00941; International Paper, Western Region Land and Timber, Reedsport, OR
NAFTA–TAA–01041; Scrock Cabinet Co., Quaker Main Div., Leesport, PA
NAFTA–TAA–01066; Oneita Industries, Inc., Fingerville Textile Plant, Fingerville, SC

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–01084; Forsyth Public School District, Forsyth, MT

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–00987; American Olean Title Co., Jackson, TN: April 22, 1995.
NAFTA–TAA–00994; North American Communications, Inc., Dancansville, PA: April 23, 1995.
NAFTA–TAA–01042: SMK Manufacturing, Inc., Placentia, CA: May 16, 1995.
NAFTA–TAA–00998: A.H. Schreiber Co., Inc., Cinnaminson, NJ: April 17, 1995.
NAFTA–TAA–01022; Alcatel Wire & Cable, Inc., Chester, NY: May 7, 1995.
NAFTA–TAA–01074: Alden Electronics, Inc., Westboro, MA: June 7, 1995.
NAFTA–TAA–01079; Yakima Products, Inc., Arcata, CA: May 17, 1995.
NAFTA–TAA–01073; Therm-O-Disc, Inc., Subsidiary of Emerson Electric, Midwest Components products Group, Newaygo, MI: March 2, 1995.
NAFTA–TAA–1050; Motor Coach Industries, International, North American Coach, Inc., Roswell, NM: May 14, 1995.
NAFTA–TAA–1034; IDE Corp., Ideassociates, Bedford, MA: May 14, 1995.
NAFTA–TAA–1098; Daniels McCray Lumber Co., Custom Wood Products Div., St. Joseph, MO: June 6, 1995.
NAFTA–TAA–1097; ROL Manufacturng of America, Inc., Brownsville, TX: June 10, 1995.
NAFTA–TAA–01096; Clevemont Mills, Kings Mountain, NC: May 23, 1995.
NAFTA–TAA–01090; Eaton Corp., Golf Grip Div., Laurinburg, NC: June 13, 1995.
NAFTA–TAA–01013; Greenfield Research, Inc., Greenfield, OH: May 7, 1995.
NAFTA–TAA–01037; Eagle-Picher Industries, Inc., Plastics Div., Huntington, IN: May 14, 1995.
NAFTA–TAA–01051; Robertshaw Controls Co., Columbus Plant, Appliance Controls Div., Grove City, OH: May 28, 1995.
NAFTA–TAA–01046; Pioneer Balloon Co., Willard Operations, Willard, OH: June 3, 1995.
NAFTA–TAA–01056; Triangle Auto Spring Co., Columbia, TN: May 22, 1995.
NAFTA–TAA–01067; Wallace & Tiernan, Inc., Belleville, NJ: June 4, 1995.
NAFTA–TAA–00993; Manhattan Shirt Co., n Div. of Salant Corp., Americus, GA: April 16, 1995.

I hereby certify that the aforementioned determinations were issued during the month of June 1996. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 1, 1996.

Curtis K. Kooser,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–17386 Filed 7–8–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,500, TA–W–31, 500C]

Andover Togs, Incorporated, South Boston, VA, and Stevenson Manufacturing, Stevenson, AL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 18, 1995, applicable to all workers of Andover Togs, Incorporated located in South Boston, Virginia. The notice was published in the **Federal Register** on November 9, 1995 (60 FR 56619). The certification was subsequently amended to include workers at Andover Togs, Incorporated facilities in Pisgah, Alabama and New York, New York. Those amendments were issued March 7 and May 1, 1996, and published in the **Federal Register** on March 25, 1996 (61 FR 12103) and May 16, 1996 (61 FR 24816), respectively.

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations have occurred at the subject firms' Stevenson Manufacturing production facility in Stevenson, Alabama. The workers are engaged in the production of children's apparel.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of apparel. Accordingly, the Department is again amending the certification to cover the workers of Andover Togs, Incorporated, Stevenson Manufacturing, Stevenson, Alabama.

The amended notice applicable to TA–W–31,500 is hereby issued as follows:

All workers of Andover Togs, Incorporated, South Boston, Virginia (TA–W–31,500), and Stevenson Manufacturing, Stevenson, Alabama (TA–W–31, 500C) engaged in employment related to the production of children's apparel who became totally or partially seperated from employment on or after September 15, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of June 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–17376 Filed 7–8–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than July 19, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than July 19, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 17th day of June, 1996.

Russell T. Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 06/17/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,447	BSW International (Wkrs)	Tulsa, OK	04/18/96	Architectural and Engineering.
32,448	General Electric (UE)	Erie, PA	05/07/96	Electric Motors.
32,449	Glencraft Lingerie, Inc. (Wkrs)	New York, NY	05/28/96	Lingerie.
32,450	Texaco Trading & Trans. (Wkrs)	Glendive, MT	05/28/96	Crude Oil Pipeline Transportation.
32,451	Clevemont Mills (Wkrs)	Kings Mountain, NC	05/23/96	Sweat Shirts and Sweat Pants.
32,452	Spartan Mills (Co.)	Spartanburg, SC	03/19/96	Yarn.
32,453	E.I. Du Pont (Co.)	Parlin, NJ	06/03/96	Graphic Arts Film.
32,454	Basic Engineers, Inc. (Wkrs)	Johnstown, PA	06/03/96	Pipe Supports and Hangers.
32,455	ARCO International Oil (Wkrs)	Plano, TX	05/23/96	Administration of Overseas Oil and Gas.
32,456	Lexington Fabrics, Inc. (Wkrs)	Corinth, MS	06/06/96	T-Shirts.
32,457	Sara Lee Knit Products (Co.)	Lumberton, NC	06/04/96	Men's & Boys' Cotton T-Shirts.
32,458	Sara Lee Knit Products (Co.)	Jefferson, NC	06/04/96	Men's and Boy's Cotton T-Shirts.
32,459	Warner's (Wkrs)	Dothan, AL	06/04/96	Ladies' Intimate Apparel.
32,460	UGG Holding Corp. (Wkrs)	Portland, OR	05/20/96	Sheepskin Slippers.
32,461	Oxford of Burgaw (Co.)	Burgaw, NC	06/05/96	Ladies Dresses and Sportswear.
32,462	Prescott Garment Mfg (Wkrs)	Prescott, AR	06/03/96	Men's and Boys' Pajamas.
32,463	Pine River Lumber Co. (Wkrs)	Kenton, MI	05/09/96	Nardwood Lumber.
32,464	Airshield Corp. (Wkrs)	Brownsville, TX	06/04/96	Fiberglass Truck Parts.
32,465	Keystone Thermometrics (Wkrs)	St. Marys, PA	06/05/96	Thermistors, Diodes for Autos.
32,466	Dyna-Safe of Wyoming (Wkrs)	Mountain View, WY	05/31/96	Safety Supervision—Petroleum Industry.
32,467	Rissler and McMurry Co. (Wkrs)	Casper, WY	06/03/96	Truck Bodies.
32,468	Dover Elevator Systems (Wkrs)	Walnut, MS	06/06/96	Programable Controls for Elevators.
32,469	Wallace & Tiernan, Inc. (Co.)	Belleville, NJ	05/29/96	Water and Waste Water Equipment.
32,470	United Sports Apparel (Co.)	Pelham, TN	06/05/96	Athletic Sportswear.
32,471	Lee Thomas, Inc. (CO.)	Los Angeles, CA	05/29/96	Apparel.
32,472	Eaton Corporation (Wkrs)	Glasgow, KY	06/06/96	Axle Components (Ring Gears and Pinions).
32,473	The G & O Manufacturing (UAW)	New Haven, CT	06/03/96	Radiators—Truck, Heavy Equipment.
32,474	Varsity Manufacturing Co (Co.)	Susquehanna, PA	06/05/96	Ladies' Sleepwear.
32,475	Miss Elaine, Inc. (UNITE)	Centralia, IL	06/06/96	Lingerie, Gowns and Sleepwear.

[FR Doc. 96–17378 Filed 7–8–96; 8:45 am]

BILLING CODE 4510–30–M

[TA-W–31,718]

Controlled Power Corporation, Canton, OH; Notice of Revised Determination On Reconsideration

On May 29, 1996, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on June 19, 1996 (FR 61 31165).

Investigation findings show that the workers produced low, medium and high voltage metal clad switchgears. The workers were denied TAA because the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. This test is generally determined through a survey of the workers' firm's major declining customers.

Findings on reconsideration show that the major domestic firms which were awarded the contract used foreign suppliers located in Italy, Switzerland, Germany and England for production.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers of Controlled Power Corporation of Canton, Ohio were adversely affected by increased imports of articles like or directly competitive with low, medium and high voltage metal clad switchgears produced at the subject firm.

All workers of Controlled Power Corporation, Canton, Ohio who became totally or partially separated from employment on or after November 26, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

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Signed at Washington, D.C., this 24th day of June 1996.

Russell R. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–17379 Filed 7–8–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,301, TA–W–32,301A]

Hart Schaffner and Marx, Hartmarx Corporation, Chaffee, MO; and Cape Girardeau, MO; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 12, 1996, applicable to all workers of Hart Schaffner and Marx/Hartmarx Corporation in Chaffee, Missouri. The certification notice will soon be published in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations have occurred at the subject firms' Hart Schaffner and Marx/Hartmarx Corporation in Cape Girardeau, Missouri. The workers are engaged in the administrative, clerical and management services for Schaffner and Marx manufacturing facilities which are under existing certification.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of men's dress slacks and dress pants. Accordingly, the Department is amending the certification to cover the workers of Hart Schaffner and Marx/ Hartmarx Corporation in Cape Girardeau, Missouri.

The amended notice applicable to TA–W–32,301 is hereby issued as follows:

All workers of Hart Schaffner and Marx/ Hartmarx Corporation in Chaffee, Missouri (TA–W–32,301) and Hart Schaffner and Marx/Hartmarx Corporation in Cape Girardeau, Missouri (TA–W–32,301A) who became totally or partially separated from employment on or after April 24, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 24th day of June 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–17380 Filed 7–8–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,799]

Miller Brewing Company, Milwaukee Brewery, Milwaukee, WI; Notice of Revised Determination on Reconsideration

On April 29, 1996, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. The notice was published in the **Federal Register** on May 16, 1996 (61 FR 24816).

The findings show that the Milwaukee, Wisconsin, plant experienced a decline in employment in January of 1996.

New findings on reconsideration show that United States imports of beer increased both absolutely and as a percentage of U.S. production in 1995 compared with 1994 and also increased absolutely and relatively in April through March, 1995–1996, compared with the same period one year earlier, and that these imports contributed importantly to separations at the subject firms.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers at Miller Brewing Company, Milwaukee Brewery, Milwaukee, Wisconsin, were adversely affected by increased imports of articles like or directly competitive with beer produced at the subject firm. In accordance with the provisions of the Act, I make the following revised determination:

All workers of Miller Brewing Company, Milwaukee Brewery, Milwaukee, Wisconsin, who became totally or partially separated from employment on or after December 18, 1994, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C., this 26th day of June, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–17381 Filed 7–8–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00739, 00739A]

Miller Brewing Company, Milwaukee Brewery, and Pabst Brewing Company, Milwaukee, WI; Notice of Revised Determination on Reconsideration

On April 29, 1996, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. The notice was published in the **Federal Register** on May 16, 1996 (61 FR 24816).

The findings show that the Milwaukee, Wisconsin, plants experienced declines in employment in January of 1996.

New findings on reconsideration show that United States imports of beer increased both absolutely and as a percentage of U.S. production in 1995 compared with 1994 and also increased absolutely and relatively in April through March, 1995–1996, compared with the same period one year earlier. United States imports from Canada and Mexico were lower but show the same patterns.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers at Miller Brewing Company, Milwaukee Brewery, and Pabst Brewing Company, both of Milwaukee, Wisconsin, were adversely affected by increased imports from Mexico and Canada of articles like or directly competitive with beer produced at the subject firms. In accordance with the provisions of the Act, I make the following revised determination.

All workers of Miller Brewing Company, Milwaukee Brewery (NAFTA–00739), and Pabst Brewing Company (NAFTA–00739A), both of Milwaukee, Wisconsin, who became totally or partially separated from employment on or after December 18, 1994, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C., this 26th day of June 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–17387 Filed 7–8–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,099]

Oshkosh B'Gosh, Columbia Cutting, Columbia, KY; Notice of Revised Determination on Reopening

On April 22, 1996, the Department issued a Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance,

applicable to all workers of Oshkosh B'Gosh, located in Albemarle, North Carolina. The notice was published in the **Federal Register** on May 16, 1996 (FR 61 24814).

Based on a petitioner inquiry, the Department, on its own motion, reviewed the findings of the investigation. New findings show that the fabric cutting operations performed by workers of the subject firm supported production of apparel at other Oshkosh B'Gosh plants. TAA certifications have been issued for workers of Oshkosh B'Gosh production facilities in various States.

Conclusion

After careful review of the additional facts obtained on reopening, I conclude that increased imports of articles like or directly competitive with apparel contributed importantly to the declines in sales or production and to the total or partial separation of workers of Oshkosh B'Gosh, Columbia Cutting, Columbia, Kentucky. In accordance with the provisions of the Act, I make the following certification:

All workers of Oshkosh B'Gosh, Columbia Cutting, Columbia, Kentucky, who became totally or partially separated from employment on or after March 11, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 21st day of June 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–17382 Filed 7–8–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,799]

Pabst Brewing Company, Milwaukee, WI; Notice of Revised Determination on Reconsideration

On April 29, 1996, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. The notice was published in the **Federal Register** on May 16, 1996 (61 FR 24816).

The findings show that the Milwaukee, Wisconsin, plant experienced a decline in employment in January of 1996.

New findings on reconsideration show that United States imports of beer increased both absolutely and as a percentage of U.S. production in 1995 compared with 1994 and also increased absolutely and relatively in April through March, 1995–1996, compared with the same period one year earlier, and that these imports contributed importantly to separations at the subject firms.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers at Pabst Brewing Company, Milwaukee, Wisconsin, were adversely affected by increased imports of articles like or directly competitive with beer produced at the subject firm. In accordance with the provisions of the Act, I make the following revised determination.

All workers of Pabst Brewing Company, Milwaukee, Wisconsin, who became totally or partially separated from employment on or after December 18, 1944, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C., this 26th day of June 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–17383 Filed 7–8–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,273]

Stevenson Manufacturing, Stevenson, AL: Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 29, 1996 in response to a worker petition which was filed April 16, 1996 on behalf of workers at Stevenson Manufacturing, Stevenson, Alabama (TA–W–32,273).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA-W-31, 500C). Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 27th day of June 1996.

Linda G. Poole,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–17384 Filed 7–8–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than July 19, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than July 19, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 24th day of June, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 06/24/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,476	Vanguard Products Corp. (Wkrs)	Berkeley Spring, WV	06/11/96	Golf Bags.
32,477	The Dial Corp. (Wkrs)	Omaha, NE	06/10/96	Bar Soap.
32,478	Canal Wire (Wkrs)	Canal Winchester OH	06/12/96	Compact Dishwasher Racks.
32,479	Taylored Clothing Co. (UNITE)	Taylor, PA	06/12/96	Suits and Sport Jackets.
32,480	Beaufab Mills, Inc., (Wkrs)	Stroudsburg, PA	06/10/96	Knit Fabric.
32,481	Chase Ergonomic (Co.)	Albuquerque, NM	06/07/96	Back Support Belts.
32,482	Team 95 (Co.)	Jamestown, TN	06/10/96	Men's Cargo Pants & Shorts.
32,483	Wundies (Co.)	Wellsboro, PA	06/10/96	Ladies' and Girls' Lingerie.
32,484	Wyeth-Ayerst Labs (UFCW)	Mason, MI	06/10/96	Infants Formula.
32,485	Paramount Headwear, Inc (Wkrs)	Advance, MO	5/10/96	Baseball Caps.

[FR Doc. 96–17385 Filed 7–8–96; 8:45 am]

BILLING CODE 4510–30–M

Trade Adjustment Assistance/NAFTA Financial Status Report/Request for Funds; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the Trade Adjustment Assistance/North American Free Trade Agreement (NAFTA) Transitional Adjustment Assistance program Financial Status Report/Request for Funds. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSEE** section below on or.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Jess Aragon or Joseph Nelson, 200 Constitution Avenue, N.W. Washington D.C. 20210, 202–219–7979 (this is not a toll free number). FAX number 202–219–6564.

SUPPLEMENTARY INFORMATION:

I. Background

The amendments to the Trade Act contained in the Omnibus Trade and Competitiveness Act (OTCA) of 1988 (P.L. 100–418) and Title 5 of the North American Free Trade Agreement Implementation Act (P.L. 103–182) of 1993 made some significant changes which affect the way the Trade Adjustment Assistance and North American Free Trade Agreement (NAFTA) Adjustment Assistance programs are funded and administered. These changes made enrollment in training programs an entitlement for workers adversely affected by imports (Trade program) or by imports from Canada or Mexico (NAFTA program). Thus, the Trade program and NAFTA trade program consists of entitlements for trade readjustment allowances, job search allowances, job relocation allowances and training. In order for workers to continue to receive entitlement to trade adjustment allowances, they must be enrolled in a training program approved by the Secretary of Labor (1423 of OTCA) for the trade program and (section 250 of the NAFTA Implementation Act) for the NAFTA program.

Although training becomes an entitlement under both programs, the OTCA imposed a training cap in section 236 for the Trade program and under subchapter D for the NAFTA program. The statutory cap is $80 million for the Trade program and $30 million for the NAFTA program. The purpose of the collection of this information on the Form ETA–9023 is to be able to monitor expenditures for both programs to ensure that the statutory ceilings are not exceeded.

Additionally, the Secretary of Labor is responsible for ensuring that resources are equitably distributed to the States. This form allows the ETA the ability to evaluate a State's need for resources and to redistribute resources among States as necessary.

II. Current Actions

The ETA–9023 has been successfully utilized by the ETA and the States with only minor modifications since FY 1989. The **Federal Register** Notice requests an extension of the ETA–9023 for both the TAA and NAFTA programs. Overall, States have done a commendable job in completing the form with relatively minor problems or questions raised by the States on the form. The ETA–9023 has been extremely important to the ETA over the last several years because the entire $80 million available, under the statutory cap for the Trade program for training was allocated to the States. The ETA–9023 report was critical in allowing ETA to be able to redistribute resources equitably among States so training activity would not be discontinued in some States.

Type of Review: Revision.

Title: Trade Adjustment Assistance/ NAFTA Financial Status Report/Request for Funds.

OMB Number: 1205–0275.

Agency Number: ETA–9023.

Affected Public: State Government, State Employment Security Agencies.

Cite/Reference/Form/etc: See below.

Cite/reference	Total respondents	Frequency	Total responses	Average time per responses (hours)	Burden
TAA Rptg	50	5	250	2	500
NAFTA Rptg	50	5	250	2	500
Totals			500		1,000

The total cost is $26.00×100 hours=$26,000.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 2, 1996.

Jack H. Rapport,

Deputy Comptroller, Employment and Training Administration.

[FR Doc. 96–17375 Filed 7–8–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–001033]

Western Energy Company, Colstrip, MT; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on May 16, 1996 in response to a petition filed on behalf of workers at Western Energy Company in Colstrip, Montana.

The petitioning worker group is already covered under an amended active certification (NAFTA–00946A). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 27th day of June 1996.

Linda G. Poole,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–17388 Filed 7–8–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,962]

Blue Chip Products, Incorporated, Morrisville, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 4, 1996 in response to a worker petition which was filed on March 4, 1996 on behalf of workers at Blue Chip Products, Incorporated, Morrisville, Pennsylvania.

The petitioning group of workers is subject to a previous investigation for which a negative determination has been issued (NAFTA–00837). In the North American Free Trade Agreement-Trade Adjustment Assistance investigation it was determined that based on the facts in the case, there was no evidence of adverse import impact from countries other than Canada or Mexico. At that time, the case was reviewed and it was determined that a certification with respect to that petition couldn't be issued in accordance with the requirements of Section 222 of the Trade Act. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 26th day of June 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–17377 Filed 7–8–96; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–066]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

Copies of patent applications cited are available from the Office of Patent Counsel, Jet Propulsion Laboratory, Mail Code SPJ, Pasadena, CA 91109. Claims are deleted from the patent applications to avoid premature disclosure.

DATES: July 9, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas H. Jones, Patent Counsel, Mail Code SPJ, NASA Management Office-JPL, Pasadena, CA 91109; telephone (818) 354–5179, fax (818) 354–6051.

NASA Case No. NPO–19,143–2: Long-Wavelength PtSi Infrared Detectors and Method of Fabrication Thereof;

NASA Case No. NPO–18,414–3: Synchronous Parallel System for Emulation and Discrete Event Simulation;

NASA Case No. NPO–18,518–1: Solid-State Image Sensor with Focal-Plane Digital Photon-Counting Pixel-Array;

NASA Case No. NPO–18,983–2: Scalable Wrap-Around Shuffle Exchange Network with Deflection Routing;

NASA Case No. NPO–18,836–2: Method of Producing Buried Porous Silicon-Germanium Layers in Monocrystalline Silicon Lattices;

NASA Case No. NPO–19,098–1: Resonant Attachment Method for Low Level Trace Oxygen Contaminant Detection;

NASA Case No. NPO–19,428–1: Varying Potential Silicon Carbide Gas Sensor;

NASA Case No. NPO–19,423–1: Parallel Promimity Detection for Computer Simulation;

NASA Case No. NPO–19,002–1: Analysis of Supercritical-Extracted Chelated Metal Ions from Mixed Organic-Inorganic Samples;

NASA Case No. NPO–18,756–1: Point Relay Scanner Utilizing Ellipsoidal Mirrors;

NASA Case No. NPO–19,108–2: Digital Camera with Apparatus for Authentication of Images Produced from an Image File;

VOL 61 ISS 132 JL 9 1996 UMI

NASA Case No. NPO–19,414–1: Temperature Compensated Sapphire Resonator for Ultrastable Oscillator Operating at Temperatures Near 77 degrees Kelvin;

NASA Case No. NPO–19,418–1: Modulated Source Interferometry;

NASA Case No. NPO–19,442–1: Composite Material Switches;

NASA Case No. NPO–19,430–1: Polarization Independent Electro-Optic Modulator;

Dated: June 25, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–17306 Filed 7–8–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–067]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

Copies of patent applications cited are available from the Office of Patent Counsel, Johnson Space Center, Mail Code HA, Houston, TX 77058. Claims are deleted from the patent applications to avoid premature disclosure.

DATES: July 9, 1996.

FOR FURTHER INFORMATION CONTACT: Ed Fein, Patent Counsel, Lyndon B. Johnson Space Center, Mail Code HA, Houston, TX 77058; telephone (713) 483–0837, fax (713) 244–8452.

NASA Case No. MSC–22,540–1: High Performance Zinc Anode for Battery;

NASA Case No. MSC–22,746–1: Method and Apparatus for Modulating Light Using;

NASA Case No. MSC–22,483–1: Microwave Treatment for Cardiac Arthythmias;

NASA Case No. MSC–22,360–2: Absorbent Pads for Containment, Neutralization, and Clean-Up of Environmental Spills Containing;

NASA Case No. MSC–22,745–1: Method and Apparatus for Coupling Space Vehicles;

NASA Case No. MSC–22,424–3: Rotary Blood Pump;

Dated: June 25, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–17307 Filed 7–8–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–068]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

Copies of patent applications cited are available from the Office of Patent Counsel, Kennedy Space Center, Mail Code DE–TPO, Kennedy Space Center, FL 32899. Claims are deleted from the patent applications to avoid premature disclosure.

DATES: July 9, 1996.

FOR FURTHER INFORMATION CONTACT: William J. Sheehan, Patent Counsel, Mail Code DE–TPO, Kennedy Space Center, FL 32899; telephone (407) 867–2544, fax (407) 867–2050.

NASA Case No. KSC–11,694: Balanced Rotating Spray Tank and Pipe Cleaning and Cleanliness Verification System;

NASA Case No. KSC–11,685: Portable Light Source Unit for Simulating Fires;

NASA Case No. KSC–11,722: Optical Detector Calibrator System;

NASA Case No. KSC–11,775: Flame Detector;

Dated: June 27, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–17308 Filed 7–8–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–072]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

Copies of patent applications cited are available from the Office of Patent Counsel, Lewis Research Center, Mail Code LE–LAW, Cleveland, OH 44135. Claims are deleted from the patent applications to avoid premature disclosure.

DATE: July 9, 1996.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Counsel, Mail Code LE–LAW, Lewis Research Center, Cleveland, OH 44135; telephone (216) 433–2320, fax (216) 433–6790.

NASA Case No. LEW–15; 956–2: Method and Apparatus for the Detection of Hydrogen Using a PdTi Metal Alloy;

NASA Case No. LEW–15, 665–2: Method and Apparatus for Pressure Pulse Arcjet Starting;

NASA Case No. LEW–16, 228–1: Precision Thickness Variation Mapping Via One-Transducer Ultrasonic High Resolution Profilometry for Sample with Irregular or Rough Surfaces.

Dated: July 1, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–17441 Filed 7–8–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–069]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that HITCO Technologies, Inc., of Gardena, California 90249, Materials and Electrochemical Research Corporation (MER), of Tucson, Arizona 85706, P&P Machine Tool, Inc., of Fort Wayne, Indiana 46803, have each applied for partially exclusive licenses to practice the following patented inventions: U.S. Patent No. 4,683,809, "LIGHTWEIGHT PISTON"; U.S. Patent No. 4,736,676, "COMPOSITE PISTON"; U.S. Patent No. 4,909,133, "LIGHTWEIGHT PISTON ARCHITECTURE"; and for the following inventions: NASA Case LAR–15,094–1, entitled "CONCEPT FOR A RINGLESS CARBON-CARBON PISTON IN INTERNAL COMBUSTION ENGINES"; NASA Case No. LAR–15,462–1, entitled "INTEGRAL RING CARBON-CARBON PISTON"; NASA Case No. LAR–15,492–1, entitled "CARBON-CARBON PISTON ARCHITECTURES"; and NASA Case No. LAR–15,493–1, entitled "PISTON AND CYLINDERS MADE OF CARBON-CARBON COMPOSITE." Written objections to the prospective grant of a license should be sent to George F. Helfrich, Patent Counsel, Langley Research Center.

DATES: Responses to this notice must be received by Sept. 9, 1996.

FOR FURTHER INFORMATION CONTACT: George F. Helfrich, Patent Counsel, Langley Research Center, Mail Code 212, Hampton, VA 23681; telephone (804) 864–9260.

Dated: June 27, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–17309 Filed 7–8–96; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COMMUNICATIONS SYSTEM

Telecommunications Service Priority System Oversight Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

A meeting of the Telecommunications Service Priority (TSP) System Oversight Committee will convene Tuesday, August 13, 1996 from 9 a.m. to 4:30 p.m. The meeting will be held at the SeaTac Marriott, 3201 S. 176th Street, Seattle, WA.

—Opening/Administrative Remarks
—Review Action Items from March meeting
—TSP Program Office Activities
—Cellular Priority Access Service Update
—TSP & DISN
—Vendor Reconciliation Status
—User Revalidation & User Reconciliation
—Migration to Client Server Platform Status
—Old Business/New Business

Anyone interested in attending or presenting additional information to the Committee, please contact LCDR Angela Abrahamson, Manager, TSP Program Office, (703) 607–4930, or Betty Hoskin (703) 607–4932 by August 1, 1996.

Dennis Bodson,

Federal Register Liaison Officer, National Communications System.

[FR Doc. 96–17342 Filed 7–8–96; 8:45 am]

BILLING CODE 3610–05–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board.

DATE AND TIME: July 17, 1996—1:00 p.m.—Closed Session; July 18, 1996—2:00 p.m.—Closed Session; July 19, 1996—9:30 a.m.—Open Session.

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, Virginia 22230.

STATUS: Part of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Wednesday, July 17, 1996

Closed session (1:00 p.m.–2:00 p.m.)
—NSF Budget

Thursday, July 18, 1996

Closed session (2:00 p.m.–5:30 p.m.)
—Minutes, May 1996 Meeting
—Awards and Agreements
—NSF Budget

Friday, July 19, 1996

Open session (9:30 a.m.–10:30 a.m.)
—Minutes, May 1996 Meeting
—Closed Session Agenda Items—August 1996 Meeting
—Chairman's Report
—Director's Report
—Reports from Committees
—Other Business
—Adjourn

Marta Cehelsky,

Executive Officer.

[FR Doc. 96–17584 Filed 7–5–96; 1:21 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission: Revision.

2. The title of the information collection: 10 CFR Part 35, "Medical Use of Byproduct Material."

3. The form number: Not applicable.

4. How often the collection is required: Required reports are collected and evaluated on a continuing basis as needed due to a change in programs or as events occur.

5. Who will be required or asked to report: Physicians and medical institutions who are applicants for, or hold, an NRC license authorizing the administration of byproduct material, or its radiation, to humans for medical use.

6. An estimate of the number of responses: 1,882,283 responses from NRC licensees and 4,705,852 responses from Agreement State licensees.

7. The estimated number of annual respondents: 1,982 NRC licensees and 4,955 Agreement State licensees.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 376,407 hours for NRC licensees and 942,820 hours for Agreement State licensees.

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: 10 CFR Part 35, "Medical Use of Byproduct Material," contains requirements that apply to NRC licensees who are authorized to administer byproduct material, or its radiation, to humans for medical use. The information in the required reports and records is used by the NRC to ensure that public health and safety is protected, and that the licensee possession and use of byproduct material is in compliance with license and regulatory requirements. The revision is a net increase adjustment in burden resulting from an increase in the number of affected licensees, a reevaluation of the time required to perform individual activities and the number of times those activities are performed, and an addition of burden associated with three sections, two of which are a result of rulemaking, and one which was inadvertently omitted during the last evaluation of burden.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by August 8, 1996: Peter Francis, Office of Information and Regulatory Affairs (3150–0010), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

VOL
61
ISS
1
32
9
1996
JL
UMI

Dated at Rockville, Maryland, this 1st day of July 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–17446 Filed 7–8–96; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of July 8, 15, 22, and 29, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 8

Wednesday, July 10

11:30 a.m.—Affirmation Session (PUBLIC MEETING) (if needed)

Week of July 15—Tentative

There are no meetings scheduled for the Week of July 15.

Week of July 22—Tentative

There are no meetings scheduled for the Week of July 22.

Week of July 29—Tentative

Monday, July 29

10:00 a.m.—Briefing on Uranium Recovery Program (PUBLIC MEETING); (Contact: Joe Holonich, 301–415–6643).

Tuesday, July 30

10:00 a.m.—Briefing by Nuclear Waste Technical Review Board (PUBLIC MEETING).

2:00 p.m.—Briefing on Status of Staff Actions on Industry Restructuring and Deregulation; (PUBLIC MEETING); (Contact: Scott Newberry, 301–415–1183).

Wednesday, July 31

2:00 p.m.—Briefing on EEO Program (PUBLIC MEETING); (Contact: Ed Tucker, 301–415–7382).

Thursday, August 1

10:00 a.m.—Briefing on Spent Fuel Pool Cooling Issues (PUBLIC MEETING); (Contact: George Hubbard, 301–415–2870).

11:30 a.m.—Affirmation Session (PUBLIC MEETING); (if needed).

THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or dkw@nrc.gov.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96–17553 Filed 7–5–96; 10:52 am]

BILLING CODE 7590–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a notice in the **Federal Register** notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received by no later than September 9, 1996.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Lena Paulsen, Manager, Information Center, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527; 202/336–8565.

Summary of Form Under Review

Type of Request: Renewal of an existing form.

Title: Foreign Shareholder Disclosure Report—In Support of an Application for Financing.

Form Number: OPIC 139.

Frequency of Use: Once per each non-U.S. sponsor per project.

Type of Respondents: Individuals, Business, or other institutions.

Standard Industrial Classification Codes: All.

Description of Affected Public: Non-U.S. Companies or Individuals investing in any project financing by OPIC.

Reporting Hours: two hours per response

Number of Responses: 70 per year.

Federal Cost: $2,625

Authority for Information Collection: Sections 231 and 234 (b) and (c) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The Foreign Shareholder Disclosure Report—In Support of an Application for Financing, requests information as required per OPIC's governing legislation. Such information is needed to determine whether a project and its non-U.S. sponsor meet eligibility criteria for OPIC financing, specifically with regard to effects on the U.S. economy.

Dated: July 2, 1996.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 96–17366 Filed 7–8–96; 8:45 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–37384; File No. SR–Amex–96–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Fee Changes

June 28, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on June 25, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to waive its equity transaction charges on proprietary equity trades in paired securities effected on the Exchange floor by options specialists and registered options traders ("ROTs").

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 1991, the Exchange imposed transaction charges on proprietary equity trades by members and member organizations, while maintaining an exemption for proprietary trades of equity specialists in view of the market making function they perform.[1] Subsequently, in 1995, the Exchange waived such charges on proprietary equity trades effected by Registered Equity Market Markers ("REMMs") in order to facilitate their market making function as set forth in Exchange Rule 114 and place them on an equal footing with Exchange equity specialists.[2]

When option specialists and ROTs[3] that trade "paired securities" (*i.e.*, where both the option and underlying equity security are traded on the Amex) hedge an option position by trading in the underlying Amex listed security, they are currently subject to the Exchange's transaction charge on proprietary equity trades. The Exchange is now waiving its equity transaction charge imposed on proprietary equity trades by option specialists and ROTs hedging in paired securities. Option specialists and ROTs, like equity specialists and REMMs, perform a market making function in their assigned securities and the Exchange believes it is equitable that they be treated the same with respect to transaction charges on proprietary equity trades used for hedging purposes.

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(4) in particular in that they provide for the equitable allocation of reasonable dues, fees, and other charges among Amex members, issuers, and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The fee change has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e)(2) of Rule 19b–4. At any time within 60 days of the filing of such fee change, the Commission may summarily abrogate such fee change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–96–22 and should be submitted by July 30, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17354 Filed 7–8–96; 8:45 am]

BILLING CODE 8010–01–M

[1] *See* Securities Exchange Act Release No. 28794 (Jan. 17, 1991), 56 FR 2964 (Jan. 25, 1991).

[2] *See* Securities Exchange Act Release No. 36061 (Aug. 10, 1995), 60 FR 42635 (Aug. 16, 1995).

[3] ROTs are members that trade on a proprietary basis on the Floor in one or more designated classes of options. Exchange Rule 958 sets forth the obligations and requirements under which ROTs are permitted to conduct such proprietary trading on the Floor. When trading in their designated options, ROTs are required under the Rule to contribute to the maintenance of a fair and orderly market in such options, engaging in dealings in such options which contribute to price continuity or depth or minimize the effects of a temporary disparity between the supply and demand for such options. Thus, while not subject to an option specialist's continuous market making obligation, when ROTs effect proprietary equity trades on the Floor, they are required to comply with the same market making obligations as option specialists.

[4] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[Release No. 34–37392; File No. SR–DCC–96–01]

Self Regulatory Organizations; Delta Clearing Corp.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Addition of Patriot Securities, Inc. as an Interdealer Broker for Delta Clearing Corp.'s Repurchase Agreement Clearance System

July 1, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 12, 1996, Delta Clearing Corp. ("DCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to give notice that DCC has authorized Patriot Securities, Inc. ("Patriot") to act as an interdealer broker in DCC's over-the-counter clearance and settlement system for repurchase agreement and reverse repurchase agreement ("repos") transactions involving U.S. Treasury securities.

[4] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

VOL
61
ISS
132
JL
9
1996
UMI

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Through its repo clearing system, DCC clears repo transactions that have been agreed to by DCC participants through the facilities of interdealer brokers that have been specially authorized by DCC ("authorized brokers") to offer their services to DCC participants.[3] Currently, Liberty Brokerage, Inc., RMJ Special Brokerage Inc., Euro Brokers Maxcor Inc., Tullet and Tokyo Securities Inc., and Tradition (Government Securities), Inc., are authorized brokers.[4] The purpose of the proposed rule change is to give notice that DCC has authorized Patriot to act as a broker in DCC's clearance and settlement system for repo trades.

The proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions, and therefore, the proposed rule change is consistent with the requirements of the Act, specifically Section 17A of the Act, and the rules and regulations thereunder.[5]

(B) Self-Regulatory Organization's Statement on Burden on Competition

DCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[2] The Commission has modified parts of these statements.

[3] For a complete description of the DCC's repo clearance system, see Securities Exchange Act Release No. 36367 (October 13, 1995), 60 FR 54095.

[4] Securities Exchange Act Release Nos. 36367 (October 13, 1994), 60 FR 54059; 36901 (February 28, 1996), 61 FR 8991; 37212 (May 14, 1996), 61 FR 25722; and 37235 (May 20, 1996), 61 FR 26942.

[5] 15 U.S.C. 78q–1 (1988).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(e)(4) thereunder[7] in that the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at DCC. All submissions should refer to File No. SR–DCC–96–08 and should be submitted by July 30, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

[6] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[7] 17 CFR 240.19b–4(e)(4) (1995).

[8] 17 CFR 200.30–3(a)(12) (1995).

Jonathan G. Katz,
Secretary.
[FR Doc. 96–17352 Filed 7–8–96; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–37390; International Series Release No. 999; File No. SR–ISCC–96–03]

Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Clearing Fund Formula

July 1, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 16, 1996, the International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–ISCC–96–03) as described in Items I, II, and III below, which items have been prepared primarily by ISCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

ISCC is filing the proposed rule change to extend approval of its clearing fund formula.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, ISCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] The Commission temporarily approved two previous ISCC proposed rule changes amending ISCC's clearing fund formula. Securities Exchange Act Release No. 35970 (July 13, 1995), 60 FR 37666 [File No. SR–ISCC–95–03] (notice of filing and order granting accelerated approval on a temporary basis of ISCC's clearing fund formula) and Securities Exchange Act Release No. 34392 (July 15, 1994), 59 FR 37798 [File No. SR–ISCC–94–1] (order temporarily approving on an accelerated basis ISCC's clearing fund formula).

[3] The Commission has modified these summaries.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule is to extend approval of ISCC's clearing fund formula.[4] ISCC is obligated to the London Stock Exchange ("LSE") to pay for all securities delivered to ISCC through the ISCC–LSE link. ISCC has no responsibility to complete open pending trades (*i.e.*, once a member fails, ISCC no longer accepts delivery of securities for such member through the link). To adequately cover ISCC's exposure, each member's clearing fund deposit requirement is calculated and collected on a weekly basis. Each member is required to deposit the greater of (a) the largest deposit requirement imposed over the last 365 day period or (b) the deposit that would be required based on the clearing fund calculation using trades due to settle over the next week. Calculations are made each Tuesday, and members are required to deposit additional clearing fund amounts within three days.[5]

ISCC's clearing fund formula is: (Gross Debit Value) x (Market Risk Factor) + (Foreign Exchange Factor).[6] The Gross Debit Value is a member's largest single daily gross debit value based on debit values for five consecutive business days including the day on which the calculation is performed less 15% of the Institutional Net Settlement ("INS") receive value for that same day.[7] The Market Risk Factor is based on the largest calculated percentage change in the Financial Times Index over a six day period over a minimum of 365 days.[8] The Market Risk Factor will continue to be set at 7%. The Foreign Exchange Factor is based in part on the Estimated Foreign Exchange Volatility, which is an amount that is equal to the largest one day percentage change in the U.S. dollar/British pound foreign exchange rate over a minimum of 365 days.[9] The Estimated Foreign Exchange Volatility will continue to be set at 4%.[10] The Market Risk Factor and Foreign Exchange Risk Factor for members on surveillance can be increased in the discretion of ISCC by 3%, 5%, and 7% for members on Advisory, Class A, and Class B surveillance, respectively.

The proposed rule change will permit ISCC to safeguard securities and funds in its custody or control and is therefore consistent with Section 17A of the Act[11] and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

ISCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

ISCC will notify the Commission of any written comments received by ISCC.

[4] In 1986, ISCC and the London Stock Exchange ("LSE") entered into a linkage agreement which allows ISCC to obtain comparison and settlement services in the United Kingdom from the LSE on behalf of ISCC members. At that time, the LSE settled trades on a fornightly basis with all trades that occurred during a two week period settling on the same day. On July 18, 1994, the LSE moved to a ten day rolling settlement cycle with trades settling ten days after trade date. On June 26, 1995, the LSE moved to a five day rolling settlement period. In response to the change to a rolling settlement cycle, ISCC adjusted its method of calculating its clearing fund requirements.

[5] For example, ISCC calculates a member's clearing fund requirement on Tuesday, August 2, based on trades due to settle on Tuesday, August 2, through Monday, August 8 (*i.e.*, trades conducted on Tuesday, July 26, through Monday, August 1). Because an ISCC member has three business days after the calculation to make additional deposits, under the five day rolling settlement cycle, ISCC generally is calculating and collecting clearing fund contributions based on trades which already have settled. Under the prior ten day rolling settlement system, the clearing fund formula was based on the actual largest daily obligation of a member during the relevant time period, and the clearing fund deposit could be calculated and collected prior to the settlement day.

[6] Members will continue to be required to contribute a minimum of $50,000 to the clearing fund.

[7] Under the INS system, redeliveries of securities from ISCC members to institutional participants can occur automatically through the LSE. Therefore, ISCC generally is not required to pay the LSE for these securities. The debits arising from these redeliveries may be offset only partially because these securities may be reclaimed (*i.e.*, returned) by the receiver, and in such circumstances, ISCC is liable to the LSE for the full value of the reclamation.

[8] ISCC bases its clearing fund calculations on the assumption that it will take one day to sell all of a defaulting participant's positions. Under a five day settlement period, this results in a six day exposure for market risk with five days between trade date and settlement date and one day between settlement date and close out of positions. There also is a one day exposure for foreign exchange risk because ISCC converts U.S. dollars to British pounds on the settlement date and converts the proceeds from the sale of the positions to U.S. dollars the following day.

[9] The Foreign Exchange Factor is the product of the Gross Debit Value and the Estimated Foreign Exchange Volatility less the produce of the Gross Debit Value times the Market Risk Factor times the Estimated Foreign Exchange Volatility.

[10] During the period from 1989 to 1992, the maximum fluctuation in the U.S. dollar-British pound exchange rate was 4.445%. ISCC will continue to review annually the foreign exchange risk factor.

[11] 15 U.S.C. § 78q–1 (1988).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which ISCC consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of ISCC. All submissions should refer to the file number (ISCC–96–03) and should be submitted by: July 30, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,
Secretary.
[FR Doc. 96–17356 Filed 7–8–96; 8:45 am]
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[12] 17 CFR 200.30–3(a)(12) (1995).

VOL
61
ISS
1
3
2
JL
9
1996
UMI

[Release No. 34–37387; File No. SR–NASD–96–27]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Interim Extension of the OTC Bulletin Board® Service through December 31, 1996

June 28, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 28, 1996 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I. II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 1, 1990, the NASD, through a subsidiary corporation, initiated operation of the OTC Bulletin Board Service ("OTCBB Service"[1] or "Service") in accord with the Commission's approval of File No. SR–NASD–88–19, as amended.[1] The OTCBB Service provides a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for securities traded over-the-counter that are not listed on The Nasdaq Stock Market℠ nor on a registered national securities exchange (collectively referred to as "OTC Equities").[2] Essentially, the Service supports NASD members' market making in OTC Equities through authorized Nasdaq Workstation® units. Real-time access to quotation information captured in the Service is available to subscribers of Level 2/3 Nasdaq service as well as subscribers of vendor-sponsored services that now carry OTCBB Service data. The Service is currently operating under an interim approval that expires on June 30, 1996.[3]

The NASD hereby files this proposed rule change, pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder, to obtain authorization for an interim extension of the Service through December 31, 1996. During this interval, there will be no material change in the OTCBB Service's operational features, absent Commission approval of a corresponding Rule 19b-4 filing.

II. Self-Regulatory Organization's Statement of the Purpose of And Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments is received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose.

The purpose of this filing is to ensure continuity in the operation of the OTCBB Service while the Commission considers an earlier NASD rule filing (File No. SR–NASD–92–7 that requested permanent approval of the Service.[4] For the month ending May, 1996, the Service reflected the market positions of 407 NASD member firms displaying quotations/indications of interest in approximately 5,514, OTC Equities.

During the proposed extension, unregistered foreign securities and American Depositary Receipts (collectively, "Foreign Equity Securities") will remain subject to the twice-daily, update limitation that traces back to the Commission's original approval of the OTCBB Service's operation. As a result, all priced bids/offers displayed in the Service for unregistered Foreign Equity Securities will remain indicative.

In conjunction with the launch of the Service in 1990, the NASD implemented a filing requirement (currently under NASD Rule 6740) and review procedures to verify member firms' compliance with Rule 15c2–11 under the Act. During the proposed extension, this review process will continue to be an important component of the NSAD's self-regulatory oversight of broker-dealers' market making in OTC Equities. The NASD also expects to work closely with the Commission staff in developing further enhancements to the Service, including those related to the market structure requirements mandated by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Reform Act"), particularly Section 17B of the Act.[5] The NASD notes that implementation of the Reform Act entails Commission rulemaking in several areas, including the development of mechanisms for gathering and disseminating reliable quotation/transaction information for "penny stocks."

2. Statutory Basis

The NASD believes that this proposed rule change is consistent with Sections 11A(a)(1), 15A(b)(6) and (11), and Section 17B of the Act. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, and foster competition among market participants. Section 15A(b)(6) requires, among other things, that the NADS's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations. Finally, Section 17B contains Congressional findings and directives respecting the collection and distribution of quotation information on low-priced equity securities that are neither Nasdaq nor exchange-listed.

The NASD believes the extension of the Service through December 31, 1996 is fully consistent with the foregoing provisions of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register** to avoid any interruption of the Service. The current authorization for the Service extends through June 30, 1996. Hence, it is imperative that the Commission approve the instant filing on or before that date. Otherwise, the NASD will be required to suspend operation of the Service pending Commission action on the proposed extension.

The NASD believes that accelerated approval is appropriate to ensure continuity in the Service's operation pending a determination on permanent status for the Service, as requested in File No. SR–NASD–92–7. Continued operation of the Service will ensure the availability of an electronic quotation medium to support member firms' market making in approximately 5,514 OTC Equities and the widespread dissemination of quotation information on these securities. The Service's operation also expedites price discovery and facilitates the execution of customer orders at the best available price. From a regulatory standpoint, the NASD's capture of quotation data from participing market makers supplements the transctional data now reported by member firms pursuant to NASD Rule 6600.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by: July 30, 1996.

V. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that approval of the proposed rule change is consistent with the Act and the rules and regulations thereunder, and in particular with the requirements of Section 15A(b)(11) of the Act, which provides that the rules of the NASD relating to quotations must be designed to produce fair and informative quotations, prevent ficititious or misleading quotations and promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing thereof. The Commission finds that approval of this proposed rule change to continue operation of the pilot program is customers' orders at the best available price. Additionally, continued operation of the Service will materially assist the NASD's surveillance of trading in OTC Equities that are quoted in the Service, including certain non-Tape B securities that are listed on regional exchanges and quoted in the Service.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for an interim period through December 31, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17351 Filed 7–8–96; 8:45 am]

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[1] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124.

[2] With the Commission's approval of File No. SR–NASD–93–24, the universe of securities eligible for quotation in the OTCBB now includes certain equities listed on regional stock exchanges that do not qualify of dissemination of transaction reports via the facilities of the Consolidated Tape Association.

[3] Securities Exchange Act Release No. 36292 (September 28, 1995), 60 FR 52241.

[4] Securities Exchange Act Release No. 30766 (June 1, 1992), 57 FR 24281.

[5] On November 24, 1992, the NASD filed an application with the Commission for interim designation of the Service as an automated quotation system for penny stocks, pursuant to Section 17B(b) of the Act. On December 30, 1992, the Commission granted Qualifying Electronic Quotation System ("QEQS") status for the Service for purposes of certain penny stock rules that become effective on January 1, 1993. On August 26, 1993, the Commission granted the NASD's request for an extension of QEQS status until such time as the OTCBB meets the statutory requirements of Section 17B(b)(2).

[6] 17 CFR 200.30–3(a)(12).

[Release No. 34–37385; File No. SR–PSE–96–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Listing and Trading Guidelines for Municipal Bonds

June 28, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on June 5, 1996, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to adopt on a permanent basis rules for the listing and trading of municipal bonds.

The text of the proposed rule change is available at the Office of the Secretary, PSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 7, 1994, the Commission approved an Exchange pilot program providing for the listing and trading of "municipal securities," as defined in Section 3(a)(29) of the Act ("pilot program")[1] The Exchange now

[1] See Securities Exchange Act Release No. 33721 (March 7, 1994), 59 FR 11636 (March 11, 1994). On July 5, 1994, the Commission approved a 120-day extension to the Exchange's Municipal Bond Trading Pilot Program. See Securities Exchange Act Release No. 34317 (July 5, 1994), 59 FR 35546 (July

Continued

VOL
61
ISS
1
32
JL
9
1996
UMI

proposes to adopt this municipal securities pilot program on a permanent basis.

Under the pilot program, a municipal security may be eligible for Exchange listing provided it is rated as investment grade by at least one nationally recognized rating service, and satisfies the Exchange's distribution criteria for bonds of issuers whose corporate securities are not listed on the Exchange, *i.e.*, the size of issue must be at least $20 million principal amount/aggregate market value, with at least 100 holders. In addition, the Exchange may consider such other information as it deems necessary to evaluate the appropriateness of the issue for exchange trading, including the financing structure and/or arrangement of the issuer.

Any municipal securities listed by the Exchange must be assigned to a specialist and traded in accordance with all PSE regulations otherwise applicable to the trading of securities listed on the Exchange. As with corporate bonds, trade reports and quotation information for municipal securities will be disseminated over Network B. However, to ensure uniformity of practice within the securities industry, proposed Rule 5.13(i) provides that all aspects of the trade reconciliation process, including comparison, settlement and clearing will be governed by the applicable requirements of the Municipal Securities Rulemaking Board ("MSRB").[2]

Under the pilot program, any purchase or sale of a municipal security shall be exempt from the provisions of the Exchange's off-board trading rules.[3] In addition pilot program is not intended to otherwise alter the existing regulatory framework and oversight applicable to municipal securities trading.[4] Finally, a municipal security would be subject to delisting in the event it were no longer rated as investment grade by a nationally recognized rating service.

To accommodate the listing of municipal securities, the PSE proposes to apply the same rules and conditions of the pilot program, as noted above, on a permanent basis. In addition, the Exchange proposes to adopt the following rules on a permanent basis: Rule 3.2(e)(3) (basic listing requirements); Rule 3.5(d)(5) (maintenance requirements); Rule 5.13(i) (comparance, settlement, and clearance); and Rule 5.46(xv) (exemption to offboard trading requirements). The Exchange proposes that any municipal security that it lists be assigned to a specialist and traded in accordance with all PSE regulations otherwise applicable to the trading of securities on the Equity Floors of the Exchange.[5] Finally, the Exchange represents that it will require that its members who trade municipal bonds listed on the Exchange will have an adequate understanding of the tax implication of the trading of such bonds.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–96–16 and should be submitted by: July 30, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17353 Filed 7–8–96; 8:45 am]

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[Release No. 34–37391; File No. SR–PSE–96–21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Liability of the Exchange and its Governors, Officers, and Agents

July 1, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 17, 1996, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to Rule 19b–4 of the Act, proposes to adopt new provisions pertaining to the liability of the Exchange and to amend an existing provision. Specifically, the PSE proposes to adopt: new Rule 13.2, *Liability of Exchange*, which clarifies and broadens the existing limitations on the Exchange's liability; new Rule 13.3, *Legal Proceedings Against Exchange Governors, Officers, Employees or Agents*, which prohibits members from instituting certain types of legal proceedings against Exchange officials; and new Rule 13.4, *Exchange's Cost of Defending Legal Proceedings*, which provides for the recovery of the Exchange's defense costs in certain circumstances. In addition, the PSE proposes to amend Rule 6.59, *Liability of Exchange for Actions of Order Book Officials*, to clarify its purposes and to provide a reference to the new provisions in Rule 13.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Liability of Exchange

The principal rule concerning Exchange liability is contained in Article VI, Section 6 of the PSE Constitution. Article VI, Section 6 provides that the Exchange is not liable to members for damages arising out of the use or enjoyment of Exchange facilities in the conduct of their business.

New Rule 13.2(a)[3] clarifies that, except as otherwise expressly provided in the rules of the Exchange, neither the Exchange nor its Governors, officers, committee members, employees, or agents shall be liable to members or their associated persons except where the Exchange's liability is attributable to willful misconduct, gross negligence, bad faith, fraud, or criminal acts. In addition, new Rule 13.2(a) clarifies that the limitation of the Exchange's liability includes interruption, failure or unavailability of Exchange facilities or services.

New Rule 13.2(a)[4] also adds language which limits the Exchange's liability for errors, omissions, or delays in calculating or disseminating various kinds of data relating to current or closing index values, reports of transactions or quotations for options or other securities, and further provides that the Exchange does not warrant the results obtained by any person or entity relying on data transmitted by or on behalf of the Exchange or any designated reporting authority. New Rule 13.2(a)[5] states that its provisions are in addition to, and do not limit, the provisions of the PSE Constitution, Article VI, Section 6. Lastly, paragraphs (b) and (c) of new Rule 13.2[6] describe the monetary limits on the Exchange's liability with respect to the Exchange's order routing systems, electronic book, and automatic execution systems.[7]

Legal Proceedings Against Exchange Governors, Officers, Employees or Agents

New Rule 13.3[8] prohibits a member or associated person from instituting a lawsuit or any other type of legal proceeding against any Governor, officer, employee, agent, or other official of the Exchange or any of its subsidiaries based on actions taken or omitted to be taken while such person is acting on Exchange business or the business of any of its subsidiaries. Rule 13.3, however, does not apply where private rights of action under the federal securities laws exist, to appeals of disciplinary actions, to other actions by the Exchange as provided for in its rules, and, with respect to the Governors of the Exchange, to the extent such action or omission is inconsistent with the Exchange's Certificate of Incorporation.

The Exchange notes that new Rule 13.3 does not prohibit a member from suing the Exchange as a result of the actions of these individuals; rather it merely prohibits suits against the person in his or her individual capacity. According to the PSE, the purpose of disallowing lawsuits or other legal proceedings against Exchange officials or agents when they are acting on Exchange business is to eliminate the potential exposure to personal liability of such persons which impairs their ability to perform their duties.

Exchange's Costs of Defending Legal Proceedings

New Rule 13.4[9] requires a member or associated person who fails to prevail in a legal proceeding instituted by that person against the Exchange or other specified persons, and related to the business of the Exchange, to pay to the Exchange all reasonable expenses, including attorney's fees, incurred by the Exchange in its defense of such proceeding. The requirement would apply only where the costs exceed fifty thousand dollars ($50,000).

According to the PSE, this provision is intended to discourage unfounded, vexatious litigation against the Exchange where the Exchange's costs are significant, without having an undue chilling effect on legitimate claims of members. The proposed rule would

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12, 1994). The pilot program expired in November 1994.

[2] MSRB Rule G–3 provides specific qualification requirements for municipal securities principals and representatives. In light of the PSE's qualification requirements for specialists, the Exchange believes it is appropriate for the PSE to rely on these requirements for its specialists in lieu of the Rule G–3 standards. It is important, however, that any specialist selected by the PSE for a listed municipal security be familiar with the characteristics of municipal securities.

[3] *See* Rule 5.46.

[4] The National Association of Securities Dealers ("NASD") has the authority to enforce the MSRB rules. The Exchange notes that it will also be responsible for enforcing MSRB rules for the listed municipal securities. The PSE's enforcement in this regard will not preempt or limit in any manner the NASD's authority to act in this area.

[5] To date, the Exchange has not listed or traded any municipal securities under the pilot program.

[6] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4

[3] The PSE notes that new Rule 13.2(a) is based on Chicago Stock Exchange ("CHX") Article I, Rule 18(a) and the proposed rule changes filed by the Chicago Board Options Exchange ("CBOE") to Rule 6.7(a). *See* Securities Exchange Act Release No. 36863 (February 20, 1996), 61 FR 7285 (February 27, 1996) (File No. SR–CBOE–96–02).

[4] The PSE notes that this language to new Rule 13.2(a) is based on CBOE Rule 24.12

[5] The PSE notes that this aspect of new rule 13.2(a) is based on CHX Article 1, Rule 18(b).

[6] The PSE notes that new Rules 13.2(b) and (c) are based on CBOE Rules 6.7(b) and (c).

[7] Under new Rule 13.2(b), the PSE's liability with respect to the Exchange's order routing systems, electronic book, and automatic execution systems is limited to the larger of any recovery obtained by the Exchange under any applicable insurance or: (i) $100,000 as to any claim or series of claims made by a single member on a single day; (ii) $250,000 as to all claims by all members on any single trading day; and (iii) $500,000 as to all claims, in the aggregate, by all members in any calendar month.

Under new Rule 13.2(c), if all of the claims arising out of the use or enjoyment of the facilities afforded by the Exchange cannot be fully satisfied because in the aggregate they exceed the applicable maximum amount of liability provided for in paragraph (b), the maximum amount will be allocated based on the proportion that each claim bears to the sum of all such claims.

[8] The PSE notes that new Rule 13.3 is based on CHX Article I, Rule 17 and the proposed rule changes filed by the CBOE to Rule 6.7A. *See* Securities Exchange Act Release No. 36863, *supra* note 3.

[9] The PSE notes that new Rule 13.4 is based on CHX Article 1, Rule 18(c) and the proposed rule changes filed by the CBOE to Rule 2.24. *See* Securities Exchange Act Release No. 36863, *supra* note 3.

apply to lawsuits or other legal proceedings that might be instituted by members against the Exchange or to any of its Governors, officers, committee members, employees, or agents. This provision, however, would not apply to disciplinary actions, to administrative appeals of Exchange actions, or to any specific instance where the Board of Governors has granted a waiver of this rule.

Liability of Exchange for Actions of Order Book Officials

Current Rule 6.59(a) and (g) are being amended for clarification purposes.[10] Rule 6.59 is also adding a reference to the new provisions in Rule 13.

2. Statutory Basis

The PSE believes that the proposed rule changes are consistent with Section 6(b)(5) of the Act in that, by limiting the liability of the Exchange and its Governors, officers, employees, and agents, by precluding certain types of legal actions by members against such persons individually, and by discouraging frivolous lawsuits against the Exchange, it will reduce the costs of the Exchange in responding to claims and lawsuits, thereby permitting the resources of the Exchange to be better utilized for promoting just and equitable principles of trade and for protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The self-regulatory organization does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–96–21 and should be submitted by July 30, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17448 Filed 7–8–96; 8:45 am]

BILLING CODE 8010–01–M

[10] The PSE notes that the amendments are based on CBOE Rules 7.11(b)(1) and 7.11(e), respectively.

[11] 17 CFR 200.30–3(a)(12).

[Release No. 34–37389; File No. SR–Phlx–96–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to an Amendment to the PHLX's Schedule of Fees and Charges

July 1, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 24, 1996 the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On June 24, 1996, the PHLX filed Amendment No. 1 to its proposal.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to Rule 19b–4 of the Act, submits a proposed rule change amending the PHLX's Schedule of Fees and Charges respecting the charges for non-exchange sponsored securities execution equipment[3] operated by the PHLX members on the PHLX equity floor. The proposal would rescind the existing monthly fee of $250.00 assessed each member or member organization for each non-exchange sponsored securities execution machine operated by the member or member organization on the PHLX equity trading floor as well as the credits previously offered against such fees, and substitutes a securities execution equipment registration fee of $300.00 per machine for the period July 1, 1996 through December 31, 1996.[4] Deletions are in brackets:

Membership Dues or Foreign Currency User Fees*—$1,000.00 semiannually.

Application Fee—$200.00.

Initiation Fee—Members, Participants, and Approved Lessors—$1500.00.

Transfer Fee—$300.00.

Trading Post/Booth—$375.00 quarterly.

Floor Facility Fees—$187.50 quarterly.

Direct Wire to Floor—$60.00 quarterly.

Telephone System Line Extensions—$22.50 monthly/per extension.

Execution Services/Communication Charge—$200.00 monthly.

[Stock Execution Machine*** (Equity Floor)—$250.00 monthly].

Stock Execution Machine Registration Fee [(Option Floor)]—$300.00 per unit.

Equity, Option or FCO Transmission charge—$750.00 monthly.

Quotron Equipment—$225.00 monthly.

Instinet, Reuters Eqiupment—cost pass thru.

FCO pricing tape—$600.00.

Option Report service: New York—$600.00; Chicago—$800.00.

Examinations Fee**—$1,000.00 monthly.

Registered Representative Registration:

Initial—$10.00.

Maintenance—$10.00 annual.

Transfer—$10.00.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PHLX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Since 1990, the Exchange has imposed on each member or member organization a monthly fee of $250.00 for each non-exchange sponsored securities execution machine the member or member organization operates on the PHLX equity trading floor.[5] Since April 1994, the PHLX has provided a monthly credit equal to 50% of the fees charged members and member organizations for each of these machines for every 2,500 trades executed by such member on the PHLX equity floor in a non-specialist account.[6] This credit was not authorized to exceed 50% of the total securities execution machine billing charges per member operating such machine.[7] Subsequently, however, the credit was authorized to offset up to 100% of such fees.[8]

This proposal rescinds the existing monthly fee of $250.00 assessed on each PHLX member of member organization for each non-exchange sponsored securities execution machine on the PHLX equity trading floor and the related credit scheme, and imposes on each PHLX member of member organization, for the period July 1, 1996 through December 31, 1996, a registration fee of $300.00[9] for each non-exchange sponsored securities execution machine operated on the PHLX equity trading floor.[10]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[11] in general and furthers the objectives of Section 6(b)(4)[12] in particular in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and subparagraph (e) of Rule 19b–4 thereunder.[14]

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W.,

[1] 15 U.S.C. 78s(b)(1).

[2] In Amendment No. 1, the PHLX deleted language that the fee imposed on PHLX members or member organizations for non-exchange sponsored securities execution equipment used on the PHLX equity trading floor conforms to the fee charged for such equipment used on the equity options trading floor; clarified that trades previously counted towards eligibility for credits against the previously imposed monthly charges for securities execution equipment need not have been cleared through SCCP to have qualified for the credit, only executed on the PHLX; and clarified that PHLX members or member organizations will be assessed $300.00 for the period July 1, 1996 through December 31, 1996 for each non-exchange sponsored securities execution machine operated on the PHLX equity trading floor. *See* Letter from Murray L. Ross, Vice President and Secretary, PHLX, to George A. Villasana, Attorney , Division of Market Regulation, SEC, dated June 21, 1996.

[3] Securities execution equipment refers to machines that route order flow to other marketplaces, such as Designated Order Turnaround ("DOT") machines, Instinet terminals, and other computers configured for securities execution and order delivery capabilities.

[4] *See* Amendment No. 1, *supra* note 2.

According to the Exchange, its Board of Governors has not yet determined the amount of fees to be charged for such equipment after December 31, 1996. Telephone conversation on June 19, 1996 between Murray L. Ross, Vice President and Secretary, PHLX, and George A. Villasana, Attorney, Division of Market Regulation, SEC.

* An exemption from foreign currency user fees is extended to PHLX members also holding title to a foreign currency options participation.

*** [$250 credit on fees charged on each stock execution machine by any member firm for each 2,500 trades such member executed on the PHLX equity floor in a non-specialist account is applicable.]

** This fee is applicable to member/participant organizations for which the PHLX is the DEA. The following organizations are exempt: (1) inactive organizations; (2) organizations operating from the PHLX trading floor; (3) organizations for any month where they incur transaction or clearing fees charges directly by the Exchange or by its registered subsidiary, provided that the fees exceed the examinations fee for that month; and (4) organizations affiliated with an organization exempt from this fee due to the second or third category. Affiliation includes an organization that is a wholly owned subsidiary of, or by under common control with, an "exempt" member or participant organization. An inactive organization is one which had no securities transaction revenue, as determined by semi-annual FOCUS reports, as long as the organization continues to have no such revenue each month.

[5] *See* Securities Exchange Act Release No. 28212 (July 17, 1990), 55 FR 30065 (July 24, 1990) (order approving File No. SR–PHLX–90–15).

[6] *See* Securities Exchange Act Release No. 33954 (Apr. 21, 1994), 59 FR 22191 (Apr. 29, 1994) (order approving File No. SR–PHLX–94–19).

[7] *Id.*

[8] *See* Securities Exchange Act Release No. 36682 (Jan. 4, 1996), 61 FR 1200 (Jan. 17, 1996) (order approving File No. SR–PHLX–95–89).

The Exchange advised the Commission that trades previously counted towards eligibility for credits against the previously imposed monthly charges for such stock execution equipment need not have been cleared through SCCP to have qualified for the credit; the trades needed-merely to be executed on the PHLX. *See* Amendment No. 1, *supra* note 2.

[9] A registration fee of $300 is presently imposed on member or member organizations for no-change sponsored securities execution equipment operated by a PHLX member of member organization on the PHLX equity options trading floor for the period Sept. 1, 1995 through Dec. 31, 1996. Securities Exchange Act Release No. 36198 (Sept. 7, 1995), 60 FR 47639 (Sept. 13, 1995) (order approving File No. SR–PHLX–95–64).

[10] *See infra* note 3.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4.

VOL 61 ISS 132 JL 9 1996 UMI

Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Philadelphia Stock Exchange. All submissions should refer to File No. SR–PHLX–96–15 and should be submitted by July 30, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17355 Filed 7–8–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2867]

Pennsylvania; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on June 18, 1996, I find that Bucks County in the State of Pennsylvania constitutes a disaster area due to damages caused by flooding which occurred on June 12, 1996. Applications for loans for physical damages may be filed until the close of business on August 17, 1996, and for loans for economic injury until the close of business on March 18, 1997 at the address listed below:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Fl., Niagara Falls, NY 14303 or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Lehigh, Montgomery, Northampton, and Philadelphia Counties in Pennsylvania, and Burlington, Hunterdon, Mercer, and Warren Counties in New Jersey. Interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.875
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

[15] 17 CFR 200.30–3(a)(12).

The number assigned to this disaster for physical damage is 286706. For economic injury the numbers are 894700 for Pennsylvania, and 894800 for New Jersey.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: June 27, 1996.

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 96–17401 Filed 7–8–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2859; Amendment #2]

West Virginia; Declaration of Disaster Loan Area

In accordance with a notice from the Federal Emergency Management Agency, effective June 10, 1996, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on May 15, 1996 and continuing through June 10, 1996.

All other information remains the same, i.e., the termination date for filing applications for physical damage is July 22, 1996, and for loans for economic injury the deadline is February 24, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: June 28, 1996.

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 96–17400 Filed 7–8–96; 8:45 am]

BILLING CODE 8025–01–P

U.S. SMALL BUSINESS ADMINISTRATION

Atlanta District Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Atlanta District Advisory Council will hold a public meeting on Friday, July 12, 1996 at 7:30 a.m. at the Wyndham Garden Hotels, 125 10th Street, NE., Atlanta, GA 30309 to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Ms. Laura A. Brown, District Director, U.S. Small Business Administration, 1720 Peachtree Road, NE., Suite 600, Atlanta, GA 30309, (404) 347–4147 extension 46.

Dated: July 1, 1996.

Michael P. Novelli,

Director, Office of Advisory Council.

[FR Doc. 96–17335 Filed 7–8–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice #2411]

United States International Telecommunications Advisory Committee Telecommunications Development Sector (ITAC–D) Group; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC) Telecommunications Development Sector (ITAC–D) Group will meet over the next two months to prepare for the upcoming ITU–D Working Parties of Study Groups 1 and 2 to be held in Geneva, September 10–19, 1966. The dates, times and room number of the meetings are outlined below:

Friday, July 26, 10:00–12:00 noon, Room 2533A.

Thursday, August 1, 10:00–12:00 noon, Room 2533A.

Friday, August 9, 10:00–12:00 noon, Room 2533A.

Friday, August 30, 10:00–12:00 noon, Room 2533A.

Friday, September 6, 10:00–12:00 noon, Room 2533A.

The agenda for the ITAC–D Group meeting will include (1) U.S. preparations for the Working Parties meetings of ITU–D Study Group 1 (Telecommunication Development Strategies and Policies) and Study Group 2 (Development, Harmonization, Management and Maintenance of Telecommunication Networks and Services), and (2) a review of U.S. contributions for that meeting.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled.

Questions regarding the meeting may be addressed to Ms. Doreen McGirr at 202–647–0201. If you wish to attend please send a fax to 202–647–7407 no later than 5 days before the scheduled meetings. Please include your name, Social Security number and date of birth. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the "C" Street Main Lobby.

Dated: July 2, 1996.

Doreen F. McGirr,

Chair, U.S. ITAC for Telecommunications Development.

[FR Doc. 96–17336 Filed 7–8–96; 8:45 am]

BILLING CODE 4710–45–M

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1486).

TIME AND DATE: 9 a.m. (CDT), July 11, 1996.

PLACE: Choctaw County Courthouse, East Quinn Street, Ackerman, Mississippi.

STATUS: Open.

Agenda

Approval of minutes of meeting held on June 19, 1996.

New Business

C—Energy

C1. Delegation of Authority to the Senior Vice President, Transmission/Power Supply Group, or a designated representative, to purchase the output of approximately 400 megawatts of base load power, under long term arrangements from the Mississippi Lignite Project, which is being developed by CRSS Inc. and Phillips Coal Company.

FOR MORE INFORMATION: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: July 3, 1996

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 96–17538 Filed 7–5–96; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice 96–20]

Senior Executive Service Performance Review Boards (PRB) Membership

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental Performance Review Boards (PRB) established by DOT under the Civil Service Reform Act.

FOR FURTHER INFORMATION CONTACT: Glenda M. Tate, Director of Personnel and Executive Secretary, DOT Executive Resources Board, (202) 366–4088.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 4312 requires that each agency implement a performance appraisal system making senior executives accountable for organizational and individual goal accomplishment. As part of this system, 5 U.S.C. 4314(c) requires each agency to establish one or more PRBs, the function of which is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the final rating authority relative to the performance of the senior executive.

The persons named below have been selected to serve on one or more Departmental PRBs.

Issued in Washington, D.C., on July 2, 1996.

Melissa J. Spillenkothen,

Assistant Secretary for Administration.

Department of Transportation Nominations for Performance Review Boards Fiscal Year 1996 Performance Appraisal Cycle

Office of the Secretary

John Taylor, Director, Office of Security and Administrative Management, Office of the Secretary.

Richard B. Chapman, Director, Information Technology Operations, Transportation Administrative Service Center.

Patricia A. Prosperi, Director, Information Services, Transportation Administrative Service Center.

Douglas Leister, Executive Assistant, Office of the Secretary.

Donald Trilling, Director, Office of Environment, Energy, & Safety, Office of the Secretary.

Eileen T. Powell, Director, Office of Financial Management, Office of the Secretary.

Paul Geier, Assistant General Counsel for Litigation, Office of the Secretary.

Thomas Herlihy, Assistant General Counsel for Legislation, Office of the Secretary.

Samuel Podberesky, Assistant General Counsel for Aviation Enforcement and Proceedings, Office of the Secretary.

Dorrie Y. Aldrich, Associate Administrator for Administration (proposed), Federal Transit Administration.

Luz A. Hopewell, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary.

Office of Inspector General

Eileen Boyd, Assistant Inspector General for Civil & Administrative Remedies, Department of Health and Human Services.

John J. Connors, Deputy Inspector General, Department of Housing and Urban Development.

Judith J. Gordon, Assistant Inspector General for Systems Evaluation, Department of Commerce.

Nancy Hendricks, Assistant Inspector General for Audits, Department of Energy.

Donald Mancuso, Assistant Inspector General for Investigations, Department of Defense.

Steve A. McNamara, Assistant Inspector General for Audit, Department of Education.

Everett Mosley, Deputy Inspector General, Agency for International Development.

Robert S. Terjesen, Assistant Inspector General for Investigations, Department of State.

Joseph R. Willever, Deputy Inspector General, Office of Personnel Management.

United States Coast Guard

RADM William C. Donnell, Chief of Human Resources, United States Coast Guard.

RADM Norman T. Saunders, Chief of Operations, United States Coast Guard.

RADM Alan M. Steinman, Director, Health and Safety Directorate, United States Coast Guard.

RADM Edward J. Barrett, Chief of Systems, United States Coast Guard.

RADM Robert C. North, Director of Acquisition, United States Coast Guard.

RADM John T. Tozzi, Director of Information and Technology, United States Coast Guard.

RADM Paul J. Pluta, Director, Office of Intelligence and Security, United States Coast Guard.

Jerry A. Hawkins, Director, Office of Personnel and Training, Federal Highway Administration.

Diana Zeidel, Deputy Associate Administrator for Administration, Federal Highway Administration.

Richard Chapman, Director, Information Technology Operations, Transportation Administrative Service Center.

Kay Frances Dolan, Director of Human Resource Management, Federal Aviation Administration.

Joan M. Bondareff, Chief Counsel, Maritime Administration.

VOL
61
ISS
1
32
JL
9
1996
UMI

Federal Highway Administration

George S. Moore, Jr., Associate Administrator for Administration, Federal Highway Administration.

Arthur E. Hamilton, Regional Administrator, Region 7, Kansas City, Missouri, Federal Highway Administration.

Dennis C. Judycki, Associate Administrator for Safety and System Applications, Federal Highway Administration.

Andrew M. Paven, Director of External Communications, Federal Highway Administration.

Christine M. Johnson, Director, ITS Joint Program Office, Federal Highway Administration.

Patricia D. Parrish, Director, Customer Service, Transportation Administrative Service Center.

Federal Railroad Administration

S. Mark Lindsey, Chief Counsel, Federal Railroad Administration.

Sally Hill Cooper, Associate Administrator for Policy and Program Development, Federal Railroad Administration.

Ray Rogers, Associate Administrator for Administration and Finance, Federal Railroad Administration.

James T. McQueen, Associate Administrator for Railroad Development, Federal Railroad Administration.

Philip Olekszyk, Associate Administrator for Safety, Federal Railroad Administration.

Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary.

Judith Burrell, Director, Executive Secretariat, Office of the Secretary.

National Highway Traffic Safety Administration

Donald Bischoff, Associate Administrator for Plans and Policy, National Highway Traffic Safety Administration.

Samuel Dubbin, Chief Counsel, National Highway Traffic Safety Administration.

James Hedlund, Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety Administration.

Dennis Judycki, Associate Administrator for Safety and System Application, Federal Highway Administration.

Jerry Hawkins, Director, Office of Personnel and Training, Federal Highway Administration.

Luz Hopewell, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary.

Federal Transit Administration

Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary.

Peter G. Halpin, Director, Office of Congressional Affairs, Office of the Secretary.

James T. McQueen, Associate Administrator for Railroad Development, Federal Railroad Administration.

Charlotte M. Adams, Associate Administrator for Planning, Federal Transit Administration.

Gloria J. Jeff, Associate Administrator for Policy, Federal Highway Administration.

Jerry A. Hawkins, Director, Office of Personnel and Training, Federal Highway Administration.

Kevin E. Heanue, Director, Office of Environment and Planning, Federal Highway Administration.

Maritime Administration

Bruce J. Carlton, Associate Administrator for Policy and International Affairs, Maritime Administration.

James J. Zok, Associate Administrator for Ship Financial Assistance Cargo Preference, Maritime Administration.

Margaret D. Blum, Associate Administrator for Port, Intermodal and Environmental Activities, Maritime Administration.

John L. Mann, Jr., Associate Administrator for Administration, Maritime Administration.

James E. Caponiti, Associate Administrator for National Security, Maritime Administration.

Joan M. Bondareff, Chief Counsel, Maritime Administration.

Sharon (Cher) Brooks, Director, Office of Congressional and Public Affairs, Maritime Administration.

Jerry Hawkins, Director, Office of Personnel and Training, Federal Highway Administration.

Research and Special Programs Administration

Sally Hill Cooper, Associate Administrator for Policy, Federal Railroad Administration.

Beverly Pheto, Director, Office of Budget and Program Performance, Office of the Secretary.

Philip S. Coonley, Director, Office of Administration, Volpe National Transportation Systems Center, Research and Special Programs Administration.

Jane F. Garvey, Deputy Administrator, Federal Highway Administration.

David J. Litman, Director, Acquisition and Grant Management, Office of the Secretary.

Rose A. McMurray, Associate Administrator for Management and Administration, Research and Special Programs Administration.

Patricia D. Parrish, Director, Customer Service, Transportation Administrative Service Center.

Richard Felder, Associate Administrator for Pipeline Safety, Research and Special Programs Administration.

Joseph Kanianthra, Director, Office of Crash Avoidance Research, National Highway Traffic Safety Administration.

Frank F.C. Tung, Deputy Director, Volpe National Transportation Systems Center, Research and Special Programs Administration.

[FR Doc. 96–17416 Filed 7–3–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Proposed Advisory Circular 21–SQC, Use of Statistical Quality Control for Product Inspection and Acceptance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 21–SQC, Use of Statistical Quality Control for Product Inspection and Acceptance, for review and comments. The proposed AC 21–SQC provides information and guidance concerning an acceptable means, but not the only means, of demonstrating compliance with the requirements of the Federal Aviation Regulations Part 21, Certification Procedures for Products and Parts.

DATES: Comments submitted must identify the proposed AC 21–SQC project number, 94–034, and be received by September 6, 1996.

ADDRESSES: Copies of the proposed AC 21–SQC can be obtained from and comments may be returned to the following: Federal Aviation Administration, Policy, Evaluation, and Analysis Branch, AIR–230, Production and Airworthiness Certification Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Policy, Evaluation, and Analysis Branch, AIR–230, Production and Airworthiness Certification Division, Room 815, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, (202) 267–8361.

SUPPLEMENTARY INFORMATION:

Background

The proposed AC 21–SQC provides information and guidance to FAA production approval applicants or holders concerning the use of statistical quality control (SQC).

Comments Invited

Interested persons are invited to comment on the proposed AC 21–SQC listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned specified address. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 21–SQC may be examined before and after the comment closing date in Room 815, FAA headquarters building (FOB–10A), 800 Independence Avenue SW, Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC, on July 3, 1996.

Frank P. Paskiewicz,

Acting Manager, Production and Airworthiness Certification Division.

[FR Doc. 96–17419 Filed 7–8–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Petition for Waivers of Compliance

In accordance with 49 CFR Sections 211.9, 211.41 and 211.45, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of the Federal safety laws and regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

3R International

[Docket Numbers F–96–3, RSGM–96–6, LI–96–1, SA–96–3 and PB–96–4]

3R International (3R) requests waivers of compliance with certain provisions of the Federal Railroad Administration (FRA) railroad safety regulations. It is seeking relief from sections of the Railroad Freight Car Safety Standards (49 CFR Part 215) Docket number F–96–1, Railroad Safety Glazing Standards (49 CFR Part 223) Docket number RSGM–96–1, Railroad Locomotive Safety Standards (49 CFR Part 229) Docket number LI–96–1, Railroad Safety Appliance Standards (49 CFR Part 231) Docket number SA–96–3, and Railroad Power Brake and Drawbar Regulations (49 CFR Part 213) Docket number PB–96–4. The relief is being sought in order to place in service what the petitioner describes as the 3R road/rail system. The 3R system was developed and two 3R trains have been operated by the Canadian National Railway in revenue service without incident in Canada for the previous two years.

The 3R road/rail system provides the means to transform a common semi-trailer at little cost for use in a convoy on railway tracks. This adaptation is made by adding at the rear of a semi-trailer or container carrying chassis a second king-pin similar to that used at the front of a semi-trailer. The 3R road/rail system is composed of a control cab unit which is used as a crew station at the front end of the convoy and contains all the electronic controls for the intermodal train, but has no propulsion capability, nor does it have an air compressor. The control cab has a console type control stand with computer screens. Air is supplied by the power units through the main air reservoir pipe which runs through the train and into the cab control unit, where it is supplied to the brake pipe through the 26 L feed valve. A 26 L type air brake with a 30CW controller is located on the console. The control cab unit does have an engine/generator set to provide power for the control system and battery charging. The control cab unit controls the power units remotely by radio, but a hard wire capability is available. It is equipped with two non-driving rail wheel/axle sets and a set of retractable rubber tires for off rail movement. The control cab unit contains a fifth wheel which engages and locks the kingpin of the first semi-trailer in the convoy or a power unit. Subsequent semi-trailers are transported on bogies which contains two rail wheel sets and two fifth wheels for securing the kingpin of the semi-trailers. A power unit is incorporated in the convoy at intervals of eight to ten semi-trailers. For intermodal operation, each power unit can haul seven to eight trailers of 93,500 pounds at 65 mph.

The 3R system allows the assembly of a convoy directly in the yard of a customer and such convoy remains intact until it reaches its destination. Assembling is made on a rail siding which can be accessed by a highway tractor. The train is made up by placing a semi-trailer upon a bogie and locking onto the kingpin, raising the highway wheels and moving the assembled portion of the train a distance sufficient to place each subsequent semi-trailer in the train. A power unit is placed between two semi-trailers and connected by a kingpin at one end to the adjacent bogie's fifth wheel and to the kingpin of the semi-trailer with the power units fifth. A dead weight unit, which contains a standard automatic coupler, is placed as a counter weight at the back end of the last bogie in the train. The coupler allows hauling from the back end with a maximum tractive effort of 50,000 pounds.

3R request for a waiver from the requirements of 49 CFR Part 215 is based upon the fact that the semi-trailer is not a rail car. However, all those parts of the train that are referenced in the regulation, i.e., wheels, trucks, springs, etc. are required to be in compliance, and are contained within the bogies. The bogies are fabricated of steel elements arranged to encompass 2–AAR 6 by 11 cartridge roller bearings and wheel sets. A sub assembly contains 2-fifth wheels which engage the kingpin of the semi-trailers. The sub-assembly is raised by 12 air bags which lift the tires off the ground after the semi-trailer is connected to the bogie. The bogie is equipped with an ABD air brake.

3R request for a waiver from 49 CFR part 223 is related to the glazing material of the control cab. The glazing material is in compliance with the Canadian Transport Commission (CTC) Railway Safety Glazing Regulations. 3R indicates that the front and side facing glazing is in conformity with CTC regulations. It may not be in compliance with FRA glazing standards.

3R request for a waiver from 49 CFR Part 229 is for the control cab and the power units within the train, which are defined in the Locomotive Safety Standard, 49 CFR 229.5(k) as *Locomotives*. The control cab has no propelling motors but has a control stand and the power units have propelling motors designed to move other equipment. The control cab is designed with two front collision posts which will withstand 500,000 pounds each at a height of 30 inches above the underframe. It can also withstand 200,000 pound load compression between front coupler and kingpin without permanent deformation. The power units are placed in the train to provide traction power through a 40 inch wheel set and an axle mounted traction motor. The power unit is designed so that one end rides on and is connected to the adjacent bogie by the kingpin and the other end connects to the king-pin of an adjacent semi-trailer. The power unit contains a 12 cylinder Caterpillar diesel engine driving a Kato traction alternator. The engine is rated at 730 horsepower and the traction

VOL
61
ISS
1
32
JL
9
1996
UMI

alternator has a continuous capacity 1250 amps, and a 15 minute rating of 1700 amps at a maximum voltage rating of 1250 direct current. The power unit is self contained encompassing all the accessories necessary for a locomotive. The power units also contain a hydraulic driven 2-stage air compressor which provides air for the air brake system and train air for the balloon suspension system of the bogies.

3R request for a waiver from 49 CFR Part 231 and 232 is for the lack of safety appliances and handholds on the bogies, rear counter weight, or semi-trailers in the train. The cab control unit has an automatic front coupler and some safety appliances. Some handholds are applied to the power units. The semi-trailers are connected to the bogies by use of kingpins and fifth wheels commonly found in highway tractor/semi-trailer service. The cab control unit, power units and bogies have no hand brakes per se, but are equipped with a spring loaded parking brake.

The 3R rail system has not been used in the United States. A consist of a cab control unit, a power unit, three containers on chassis (semi-trailers), one dead weight unit, and sufficient bogies to assemble the train was tested by the Association of American Railroads (AAR) at the Transportation Technology Center (TTC) in Pueblo, Colorado, from December 1994 to April 1995. The train was tested according to the specifications of Chapter XI, of the AAR's M–1001, *Manual of Standards and Recommended Practices*. The 3R train performed within Chapter XI performance standards, and indicate the likelihood of safe car performance.

3R's objective in the United States is to allow short line operators to benefit from their value added road/rail transportation system, by transporting on rail, the freight that would be destined to an alternate and less desirable mode of transportation. When the waiver petition was submitted by 3R, two United States short line railroads had shown a strong interest in its road/rail system. Rail America, one of the short lines, would like to operate two road/rail convoys of six power units each with sixty containers. The equipment will operate at approximately 45 mph and haul domestic waste in 82,500 pound containers from inner-city points to suburban waste dumps.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number LI–96–1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of publication of this notice will be considered before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

Issued in Washington, D.C. on July 2, 1996.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 96–17455 Filed 7–8–96; 8:45 am]

BILLING CODE 4910–06–P

Petition for Waivers of Compliance

In accordance with 49 CFR Sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from the De Queen & Eastern Railroad Company, Texas, Oklahoma & Eastern Railroad Company a request for a waiver of compliance with certain requirements of Federal regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

De Queen & Eastern Railroad Company

Texas, Oklahoma & Eastern Railroad Company

[Docket Number SA–96–4]

The De Queen & Eastern Railroad Company; Texas, Oklahoma & Eastern Railroad Company (DQE–TOE) seeks a waiver of compliance from certain sections of 49 CFR Part 231, Railroad Safety Appliance Standards. The DQE–TOE is requesting a permanent waiver of the provisions of 49 CFR Part 231 which requires end ladders. The DQE–TOE wish to remove the end ladders on the subject cars.

The DQE–TOE has 300 high side open top cars for hauling wood chips. Two hundred of these cars are end dump cars, in that the ends when unlocked swing upwards permitting easier unloading of the wood chips.

49 CFR 231.1(e)(3) requires one ". . . [ladder] on each side, not more than 8 inches from left side of car ". . ."

The DQE–TOE states that the end ladder ladders serve no useful purpose and are costly to maintain. The end doors are opened by machinery and are constantly being damaged.

The DQE–TOE operates freight service from Perkins, Arkansas to Valliant, Oklahoma, a distance of eighty-six miles one way. Two trains are operated daily for the movement of approximately thirty (30) cars of wood chips in each train.

The DQE–TOE further state that company policy prohibits employees from using these ladders and that the removal of the end ladders would not have an adverse effect on safety.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number–SA–96–4 and must be submitted in triplicate to the Docket Clerk, Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received before August 19, 1996, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street S.W., Washington, D.C. 20590.

Issued in Washington, D.C. on July 2, 1996.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 96–17454 Filed 7–8–96; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Claims Adjudication Commission; Notice of Public Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463, gives notice that the Veterans' Claims Adjudication Commission will conduct its eighth public meeting on Tuesday, July 16, and Wednesday, July 17, 1996, at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Room 230, Washington, DC. The Commission will meet from 8:30 a.m. to 4:30 p.m. on both days.

This public meeting will focus mainly on discussion and consideration of proposed findings, conclusions, and recommendations, which have originated from the Commission's new areas of pursuit.

On July 16, the Commission will begin to discuss and consider proposed findings, conclusions, and recommendations generated from new areas of pursuit including:

- *Strategic Management Planning*—Setting strategic goals and embracing the accelerated development and integrated strategic management process;
- *Adjudication and Appeals Issues*—Redesigning the adjudication and appeals process to make it more functional, fair, and efficient;
- *Disability Compensation Advisory Committee*—Establishing an Advisory Committee which reports to the Secretary of Veterans Affairs regarding disability compensation issues;
- *Annual Report on VA's Disability Compensation Program*—Developing an annual report which provides comprehensive information to be used in the long-term management of the program; and
- *Medical Examinations*—Assessing the military separation examination test to effect changes that will benefit servicemembers and veterans.

At the end of the day, the Commission will receive an update from the Veterans Benefits Administration's Business Process Reengineering (BPR) Team.

On Wednesday, July 17, the Commission will continue to discuss and consider proposed findings, conclusions, and recommendations from new areas of pursuit including:

- *VA Disability Compensation and Commercial Disability Insurance Comparisons*—Consideration of program and administrative practices of commercial insurers for possible adoption or adaptation by VA;
- *Lump Sum Compensation Benefits at Lower Disability Levels*—Revising the payment system to "free-up" time and resources so that the needs of more severely disabled veterans could be better served;
- *VA Pension Program/Supplemental Security Income Program Relationship*—Determining the relationship between the VA Pension Program and the Supplemental Security Income Program;
- *VA Pension Reform*—Reform and streamline the Pension Program to reduce the confusion and burden on the veteran and VA;
- *Claims Intake Issues*—Simplifying the application form and claims filing procedures, in addition to developing cooperative strategies with Veterans Service Organizations to encourage the submission of fully supported claims; and
- *Other Relevant Issues*—Issues on which the Commission *will not* take a formal position/make a formal recommendation, such as the lack of closure for VA compensation claims, and reevaluating the purpose of the rating schedule.

The meeting is open to the public; however, no time is allocated for the purpose of receiving oral presentations from the public. The Commission will accept appropriate written comments from interested parties on the subject matter addressed during the meeting. Such comments may be referred to the Commission at the following address: Veterans' Claims Adjudication Commission (20C), U.S. Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420.

Additional information concerning this meeting may be obtained by contacting the Commission at (202) 275–2142.

Dated: June 26, 1996.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–17365 Filed 7–8–96; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on the Readjustment of Vietnam and Other War Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 that a meeting of the Advisory Committee on the Readjustment of Vietnam and Other War Veterans will be held July 25 and 26, 1996. This meeting will be a field meeting conducted primarily at VA facilities in Tacoma and Seattle, Washington. The Committee will also visit the Colville, Lumni and Tulalip Indian Reservations in eastern and central Washington to review the availability of services for area rural and minority veterans. The purpose of the meeting is to provide the Committee a first hand opportunity to review the provision and coordination of VA services for war-related post-traumatic stress disorder (PTSD) and other readjustment difficulties specific to war veterans. For this purpose the Committee will tour facilities, and engage in discussions with VA service providers and veteran consumers.

The meeting on July 25 will begin at 8: a.m. and conclude at 5 p.m. The day's agenda will be conducted concurrently at two different locations. Specifically the Committee will visit the American Lake VA Medical Center and the Tacoma Vet Center. The day's agenda will consist of direct observations of VA readjustment counseling and mental health services with particular attention to the PTSD Clinical Team at the American Lake VA Medical Center. An additional focus for the meeting is continuity of care and clinical follow-up between area VA medical centers and Vet Centers. A separate Committee group will visit the Colville Indian Reservation in Nespelem, Washington to review available services and meet with area veterans.

The meeting on July 26 will begin at 8 a.m. and conclude at 4 p.m. The second day's agenda will also be conducted concurrently at two different locations. The regular agenda will consist of a continuation of direct observations of VA programs and facilities at the Seattle VA Medical Center and Vet Center. Concurrently a separate Committee subgroup will be visiting with local veterans at the Lumni and Tulalip Indian Reservations in Bellingham and Marysville, Washington. In addition to the regular agenda the Committee will conduct a local community forum meeting and group discussion with VA and non-VA officials and service providers, and local veteran representatives regarding the post-war readjustment and service needs of area war veterans. The meeting will be conducted from 5 p.m. to 7 p.m. at the Seattle Vet Center, 2230 Eighth Avenue, Seattle, Washington 98121.

The meeting will be closed from 8 a.m. to 5 p.m. on Thursday, July 25, and from 8 a.m. to 4 p.m. on Friday, July 26, in accordance with the provisions cited in 5 U.S.C. 522b(c)(6) pursuant to subsection 10(d) of the Federal Advisory Committee Act. During this portion of the meeting the Committee will be engaging in discussions with VA clinical service providers and veteran

VOL
61
ISS
1
32
JL
9
1996
UMI

consumers. The discussions will disclose information of a personal nature for veteran patients which would constitute a clearly unwarranted invasion of personal privacy. The meeting on July 26 from 5 p.m. to 7 p.m. will be open to the public to the seating capacity of the facility.

Anyone having questions concerning the meeting may contact Alfonso R. Batres, Ph.D., M.S.S.W., Director, Readjustment Counseling Service, Department of Veterans Affairs Central Office at (202) 273–8967.

Dated: June 26, 1996.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–17364 Filed 7–8–96; 8:45 am]

BILLING CODE 8320–01–M

federal register

Tuesday
July 9, 1996

Part II

Environmental Protection Agency

40 CFR Parts 51 and 93
Transportation Conformity Rule Amendments: Flexibility and Streamlining; Proposed Rule

VOL
61
ISS
132
JL
9
1996
UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 93

[FRL–5527–8]

RIN 2060–AG16

Transportation Conformity Rule Amendments: Flexibility and Streamlining

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a more streamlined and flexible transportation conformity rule. The conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of national ambient air quality standards.

Since publication of the original rule in November 1993, EPA, the Department of Transportation (DOT), and state and local air and transportation officials have had considerable experience implementing the criteria and procedures in the rule. The changes proposed today are a result of this experience and are intended to make the conformity rule less complex and make it a more effective planning tool. The proposed changes will not result in any change in health and environmental benefits.

This proposed rule would give state and local governments more authority in setting the performance measures used as tests of conformity and more discretion when a transportation plan does not conform to a SIP. The proposal would allow motor vehicle emissions budgets in a submitted SIP to be used to determine conformity instead of the "build/no-build" test. Modeling requirements would be tailored for different types of areas, and rural areas would be able to choose among several conformity tests.

DATES: Comments on this action must be submitted on or before September 9, 1996. EPA will conduct one public hearing on this proposal beginning at 10 a.m. on Tuesday, August 6, 1996, in Washington, DC. As described in section XVI. of today's action, the hearing will continue throughout the day until all testimony has been presented.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Attention: Docket No. A–96–05, 401 M Street, SW., Washington, DC 20460. (Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.)

The public hearing will be held in Washington, DC, at the Holiday Inn Capitol Hill, 550 C Street, SW., Washington, DC 20024, (202) 479–4000.

Materials relevant to this rulemaking are contained in Public Docket A–96–05 by EPA. The docket is located at the above EPA address in room M–1500 Waterside Mall (ground floor) and may be inspected from 8 a.m. to 5:30 p.m., Monday through Friday, including all non-government holidays.

FOR FURTHER INFORMATION CONTACT: Kathryn Sargeant, Transportation and Market Incentives Group, Regional and State Programs Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668–4441.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by the conformity rule are those which adopt, approve, or fund transportation plans, programs, or projects under the Intermodal Surface Transportation Efficiency Act or Federal Transit Laws. Regulated categories and entities include:

Category	Examples of regulated entities
Local government	Local transportation and air quality agencies.
State government	State transportation and air quality agencies.
Federal government.	EPA and Department of Transportation (Federal Highway Administration and Federal Transit Administration).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by the conformity rule. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability in § 51.394/§ 93.102 of the conformity rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The contents of this preamble are listed in the following outline:

I. Background on Transportation Conformity Rule
II. Applicability of the Budget Test and Emission Reduction Tests
III. Implementation of the Budget Test
IV. Non-federal Projects
V. Rural Nonattainment and Maintenance Areas
VI. Modeling Requirements
VII. Consequences of SIP Disapproval
VIII. Mismatch in SIP/Transportation Plan Timeframe
IX. Public Participation
X. Interagency Consultation
XI. Streamlining and Clarification
XII. TCM Flexibility
XIII. PM_{10} Hot Spots
XIV. Signalization Projects
XV. Conformity SIPs
XVI. Public Hearing
XVII. Administrative Requirements

I. Background on Transportation Conformity Rule

Today's action proposes to amend the transportation conformity rule, "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act" (58 FR 62188, November 24, 1993). Required under section 176(c) of the Clean Air Act, as amended in 1990, the transportation conformity rule established the criteria and procedures by which the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and metropolitan planning organizations (MPOs) determine the conformity of federally funded or approved highway and transit plans, programs, and projects to state implementation plans (SIPs). Conformity ensures that transportation plans, programs, and projects do not produce new air quality violations, worsen existing violations, or delay timely attainment of national ambient air quality standards (NAAQS). According to the Clean Air Act, federally supported activities must conform to the implementation plan's purpose of attaining and maintaining these standards.

Since publication of the transportation conformity rule in November 1993, EPA, the Department of Transportation (DOT), and state and local air and transportation officials have had considerable experience implementing the criteria and procedures in the rule. It is that mutual

experience which leads to today's proposal, which is the third of a series of three anticipated amendments to the transportation conformity rule. In each case, the amendments were needed to clarify ambiguities, correct errors, or make the conformity process more logical and feasible. The first set of amendments was published as an interim final rule on February 8, 1995 (60 FR 7449), and was finalized on August 7, 1995 (60 FR 40098). The first set of amendments aligned the dates of conformity lapses (i.e., halting of new federally funded highway/transit projects) due to SIP failures with the application of Clean Air Act highway sanctions for certain ozone areas and all areas with disapproved SIPs with a protective finding.

The second set of amendments was proposed on August 29, 1995 (60 FR 44790), and was finalized on November 14, 1995 (60 FR 57179). The second set of amendments allowed any transportation control measure (TCM) from an approved SIP to proceed during a conformity lapse; aligned the date of conformity lapses with the date of application of Clean Air Act highway sanctions for any failure to submit or submission of an incomplete control strategy SIP; extended the grace period before which areas must determine conformity to a submitted control strategy SIP; established a grace period before which transportation plan and program conformity must be determined in newly designated nonattainment areas; and corrected the nitrogen oxides (NO_x) provisions of the transportation conformity rule consistent with the Clean Air Act and previous commitments made by EPA.

Today's proposal would further amend the conformity rule in response to several issues raised by conformity implementers and other interested parties. EPA has worked closely with these conformity stakeholders to develop this proposal. In March 1995, the National Governors' Association (NGA) and the Environmental Council of States (ECOS) hosted a meeting of state DOTs, environmental agencies, EPA, and DOT to discuss the conformity rule. At this meeting, ECOS presented nine specific proposals to change the conformity rule. EPA and DOT committed to address all nine issues. EPA requested that state workgroups prepare white papers examining four issues in greater depth: the build/no-build test, non-federal projects, rural nonattainment areas, and adding non-exempt projects to the transportation plan and transportation improvement program (TIP) without full regional analysis. The remaining five issues are being addressed administratively.

In April 1995, EPA hosted in Washington, DC a conformity stakeholder meeting of state DOTs, state environmental agencies, MPOs, environmentalists, industry groups, and other public interest groups. EPA substantially shaped the meeting's agenda around NGA's four white papers in order to provide groundwork for stakeholder discussion on these issues. On June 30, 1995, EPA distributed to conformity stakeholders draft regulatory language addressing the issues discussed at the April meeting. EPA received written comments and followed up with a series of four conference calls in July 1995 to solicit additional reaction to the June draft language. The draft language and comments are available in the public docket.

On September 1, 1995, EPA distributed a letter to conformity stakeholders indicating what EPA and DOT intended to propose regarding key conformity issues. Today's proposal is based substantially on the approach described in the September letter.

II. Applicability of the Budget Test and Emission Reduction Tests

A. Description of Proposal

The proposal would change the time periods during which the budget test and the "emission reduction tests," commonly known as the "build/no-build test," are required. The proposal would eliminate the requirements for the emission reduction tests once a control strategy SIP or maintenance plan has been submitted to EPA and EPA has had 45 days to review the adequacy of the SIP submission and its motor vehicle emissions budget(s). The budget test would replace the emission reduction tests 45 days after the control strategy SIP or maintenance plan was submitted to EPA (provided EPA has not found the submission inadequate), or earlier if EPA has found the submission adequate.

Under the existing transportation conformity rule, both the emission reduction tests and the budget test are required until EPA's final approval of the control strategy SIP (or maintenance plan, where control strategy SIPs are not required). In addition, under the existing rule EPA has a review period of 90 days before the motor vehicle emissions budget in a newly submitted SIP may replace a previously submitted motor vehicle emissions budget.

The proposal would streamline the conformity process by eliminating the existing transportation conformity rule's reliance on the classification system of "Phase II interim period," "transitional period," "control strategy period," and "maintenance period" to determine whether the budget test and/or emission reduction tests apply.

1. Applicability of Nitrogen Oxides (NO_x) Emission Reduction Tests and Budget Tests in Ozone Areas

Under the proposal, the budget test would replace the emission reduction tests only for those pollutants for which the submitted SIP establishes a motor vehicle emissions budget. For example, 15% SIPs for ozone areas are only required to address volatile organic compounds (VOC), and as a result, most will not address NO_x or establish a NO_x emissions budget. In these areas, the VOC emission reduction tests ("build/no-build" and less-than-1990 tests) would no longer be required, but the NO_x emission reduction tests would continue to be required until a NO_x budget is established in a submitted SIP (unless the area had received a NO_x waiver). In ozone nonattainment areas, Phase II attainment SIPs will establish NO_x motor vehicle emissions budgets.

A submitted 15% or Phase I attainment SIP would be considered to establish a NO_x motor vehicle emissions budget if the submitted SIP contains an explicit NO_x budget that is intended to act as a ceiling on future NO_x emissions and if the NO_x budget represents a net reduction from 1990 NO_x emissions levels. A submitted SIP that achieves 15% or reasonable further progress reductions by substituting some NO_x reductions for the required VOC reductions would establish a NO_x motor vehicle emissions budget.

2. EPA 45-Day Review Period

This proposal would allow conformity to be determined based on consistency with a submitted SIP's motor vehicle emissions budget(s), once the submitted SIP had been reviewed by EPA. (Of course, the submitted SIP cannot override the motor vehicle emissions budgets in an approved SIP for the years addressed by the approved SIP. See Section III.A.1.) The submitted SIP budget(s) would be used for conformity purposes beginning 45 days after the SIP's submission to EPA, provided EPA had not found the SIP and its budget(s) inadequate. The submitted SIP budget(s) would be used for determining conformity before EPA's 45-day review period expires if EPA finds the SIP and its budget(s) adequate before expiration of such 45-day period.

If EPA finds the submitted SIP and its budget(s) to be inadequate, they could not be used for conformity purposes, and conformity would have to be

VOL
61
ISS
1
3
2
JL
9
1996
UMI

determined using the previously established SIP budget(s), or the emission reduction tests, if there are no previously established SIP budgets. If EPA finds the submitted SIP and its budget(s) to be inadequate after EPA's 45-day review period and after conformity had already been determined using the submitted SIP, the conformity determination would still be valid. However, that submitted SIP and budget(s) could not be used for future conformity determinations. Projects would still be considered to come from a conforming plan and TIP if they were included in the transportation plan and TIP that were found to conform to a budget that was later declared inadequate.

In order for EPA to consider a submitted SIP's motor vehicle emissions budget(s) adequate for transportation conformity purposes, the submitted SIP must have been endorsed by the Governor (or his or her designee) and have been subject to a public hearing. The emissions budget(s) would have to be clearly identified and precisely quantified. Each emissions budget would have to be consistent with reasonable further progress, attainment, or maintenance, based upon a consideration of all emissions sources. The emissions budget(s) would have to be consistent with the area's emissions inventory and modeling assumptions for all sources and show a clear relationship between the control measures, the emissions reductions, and the resulting budgets. Each revision to a previously submitted SIP would have to identify the impacts on point, area, and mobile source emissions, as well as changes to any established safety margins. Changes to previously submitted budgets and the reasons for the changes would have to be explained and documented, including the basis for any changes related to emission factors or estimates of vehicle miles traveled (VMT), and what those changes imply for control strategies. If the revised emissions budget requires additional emission control strategies to demonstrate attainment or maintenance, such new strategies would have to be specified in the SIP submission. The SIP submission would have to contain a quantification of the emissions impacts of such new strategies and, at a minimum, commitments by appropriate agencies to a schedule for adoption and implementation, and the draft regulations or other relevant documents. Consultation among federal, state, and local agencies would have to occur and full documentation and justifications would have to be provided to EPA before the SIP is submitted. Any EPA concerns would have to be addressed before submission if the SIP and its budget(s) are to be found adequate for conformity purposes. If a SIP submission does not satisfy these conditions, EPA may find it inadequate for conformity purposes.

EPA's review of the adequacy of a SIP submission for transportation conformity purposes is separate from EPA's completeness review. EPA may find a SIP incomplete after 45 days or after finding the SIP submission adequate for transportation conformity purposes. An incomplete SIP may still have appropriate motor vehicle emissions budgets for use in the conformity process, as recognized by EPA's use of "protective findings" under the November 1993 transportation conformity rule. If the SIP submission is both incomplete and inadequate for transportation conformity purposes, EPA would have to declare the submission inadequate for conformity purposes in addition to finding it incomplete.

3. Areas That Are Not Required to Submit Control Strategy SIPs

Background. Under the existing transportation conformity rule, areas that are not required to submit control strategy SIPs have two options for demonstrating conformity. The first option is to satisfy the "build/no-build" and less-than-1990 emission reduction tests; the second is to submit a SIP that demonstrates attainment and use the budget test to determine conformity. In the latter option, such an area would be required under the existing rule to satisfy both of the emission reduction tests until the SIP is approved by EPA.

Areas affected by proposal. Marginal and below ozone nonattainment areas, not classified carbon monoxide (CO) nonattainment areas, and moderate CO nonattainment areas with a design value of 12.7 ppm or less are not required by the Clean Air Act to submit control strategy SIPs. These classifications are listed in §§ 51.464 and 93.136 of the existing transportation conformity rule.

In addition, some moderate and above ozone nonattainment areas that are meeting the ozone NAAQS are not required to submit control strategy SIPs (see May 10, 1995, memorandum from John S. Seitz, Director of the Office of Air Quality Planning and Standards, to Regional Air Division Directors, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard").

Through today's action, EPA is proposing alternatives for demonstrating conformity for particular pollutants if areas are not required to submit control strategy SIPs for that pollutant. The first alternative is currently allowed under the existing transportation conformity rule and would continue to be available under this proposal with some additional flexibilities. The second and third options would provide new alternatives to these areas for demonstrating conformity. EPA would require these areas to satisfy only one of the alternatives described below in order to demonstrate conformity.

Create a budget through the SIP process and use the budget test. As stated above, the existing transportation conformity rule and this proposal would allow these areas to submit a SIP that establishes a motor vehicle emissions budget consistent with attainment or maintenance. These areas would then be required to satisfy the budget test for each emissions budget. However, unlike the existing rule, this proposal would allow the SIP budget to be used after the SIP has been submitted to EPA and before EPA approval. The emission reduction tests would not be required once a SIP is submitted and EPA's 45-day review period has occurred (as described above).

Default budget for clean data areas. This proposal would provide another alternative for demonstrating conformity in areas that are not required to submit control strategy SIPs, and have monitoring data indicating attainment of the standard ("clean data"), but have not yet submitted a maintenance plan. These clean data areas could demonstrate conformity using the budget test instead of the emission reduction tests, using as a "motor vehicle emissions budget" the motor vehicle emissions levels in the most recent year of clean data. The motor vehicle emissions levels in the most recent year of clean data would be determined by the state air quality agency through the interagency consultation process. This default "budget" would not have to be submitted as a SIP revision and would not require special public participation in addition to that otherwise required by the transportation conformity rule. If a clean data area wishes to use a budget other than emissions levels in the most recent year of clean data, the area could submit that budget through the SIP process as described above.

Emission reduction test flexibility. Today's action would allow areas that are not required to submit control strategy SIPs another alternative when demonstrating conformity. If these areas do not have a SIP with a motor vehicle emissions budget, this proposal would allow these areas a choice of emission reduction tests. Specifically, this proposal would allow them to demonstrate conformity by either satisfying the build/no-build test or demonstrating that annual motor vehicle emissions will not be greater than 1990 levels (i.e., the "1990 test").

Under the existing transportation conformity rule, these areas are required to satisfy both the build/no-build and less-than-1990 emission reduction tests in the absence of a budget. For the reasons explained below, this proposal would offer CO and ozone areas not required to submit control strategy SIPs the same flexibility currently available to PM_{10} (particles with an aerodynamic diameter of less than or equal to a nominal 10 micrometers) and nitrogen dioxide (NO_2) nonattainment areas, which are required to satisfy either the build/no-build emission reduction test or ensure that annual motor vehicle emissions will not be greater than 1990 levels.

B. Rationale

1. Elimination of the Emission Reduction Tests

A broad consensus of conformity implementers and interested parties have advised EPA that the "build/no-build test" has limited value in demonstrating contribution to emission reductions, or serving as the primary criterion on which conformity is based. Because of the limitations of currently available modeling tools, the build/no-build test may yield only slight differences in emissions, well within the range of modeling error. The parties have indicated that when motor vehicle emissions budget(s) have been established in submitted SIPs, they provide a more relevant basis for conformity determinations.

EPA agrees with this assessment by the transportation conformity stakeholders. EPA originally created the "build/no build test" and less-than-1990 tests (required by §§ 51.436–51.446 of the November 1993 transportation conformity rule) in order to implement the emission reduction requirements of Clean Air Act section 176(c)(3)(A)(iii) (for ozone and CO nonattainment areas), and to ensure that transportation activities would not increase the frequency or severity of existing violations (for PM_{10} and NO_2 nonattainment areas), as required by Clean Air Act section 176(c)(1)(B)(ii). In light of the stakeholders' input, EPA now believes that consistency with the motor vehicle emissions budget(s) in a submitted control strategy SIP or maintenance plan is sufficient to satisfy these Clean Air Act requirements.

Clean Air Act section 176(c)(3)(A)(iii) requires transportation plans, TIPs, and projects in ozone and CO nonattainment areas to contribute to annual emissions reductions consistent with sections 182(b)(1) and 187(a)(7). EPA believes that consistency with the motor vehicle emissions budgets in a submitted ozone or CO attainment SIP satisfies Clean Air Act section 176(c)(3)(A)(iii), because these budgets are intended to represent the emissions reductions necessary to attain the ozone or CO standard, as required by sections 182(b)(1) and 187(a)(7). Similarly, consistency with a submitted maintenance plan's emissions budgets fulfills the requirement to contribute to emissions reductions necessary to attain the standard, because the maintenance plan's emissions budgets represent emission levels consistent with attainment.

EPA carefully considered whether the motor vehicle emissions budget(s) established by an ozone area's submitted 15% SIP or post-1996 reasonable further progress SIP are sufficient to satisfy the requirements of Clean Air Act section 176(c)(3)(a)(iii), because such budgets do not necessarily represent the full emissions reductions necessary to attain the ozone standard. However, the motor vehicle emissions budgets in these SIPs do represent VOC emission reductions from 1990 levels. As a result, EPA believes that consistency with such a VOC budget is sufficient to satisfy the requirement of Clean Air Act section 176(c)(3)(A)(iii) for contribution to necessary emissions reductions.

EPA considered not allowing a submitted 15% SIP or post-1996 reasonable further progress SIP to establish a NO_X motor vehicle emissions budget that would be used for determining conformity instead of the NO_X emission reduction tests. The Clean Air Act does not require such SIPs to address NO_X, so a NO_X emissions budget in such a SIP could be unconstrained and would not necessarily be sufficient to satisfy section 176(c)(3)(A)(iii)'s requirement to contribute to annual emissions reductions. However, if a state establishes a NO_X emissions budget that it intends to constrain future emissions and that does represent emissions reductions from 1990 levels, EPA now believes this budget would be a better basis for determining conformity than the "build/no-build test." As a result, EPA is proposing that a 15% SIP or post-1996 reasonable further progress SIP (Phase I attainment SIP) that addresses NO_X would be considered to establish a NO_X emissions budget for the purposes of transportation conformity only if that budget represented net emission reductions from 1990. Whether or not a SIP establishes a NO_X motor vehicle emissions budget should be determined in consultation with the SIP agency and the EPA Region.

For PM_{10} and NO_2 nonattainment areas, the "build/no-build test" and the less-than-1990 test were intended to satisfy the general definition of conformity in section 176(c)(1)(B)(ii) that transportation activities not increase the frequency or severity of any existing violation. EPA believes that consistency with the motor vehicle emissions budget(s) established in the submitted attainment SIP or maintenance plan ensures that existing violations will not be worsened by transportation projects, because these budgets represent emissions levels that are consistent with attainment of the standards.

2. Adequacy of Submitted (But Not Approved) Budgets

The November 1993 transportation conformity rule requires emission reduction tests as well as budget tests until EPA approves the submitted SIP, because EPA believed it could not be certain that submitted emissions budgets are consistent with Clean Air Act requirements for reasonable further progress, attainment, and maintenance until EPA approves the SIP. In contrast, this proposal would allow the motor vehicle emissions budgets established by submitted SIPs to be the basis of conformity determinations. (Of course, the submitted SIP cannot override the motor vehicle emissions budgets in an approved SIP for the years addressed by the approved SIP. See Section III.A.1.)

EPA now believes this is appropriate because a submitted SIP is a product of a state's interagency consultation process, which encourages discussion among state and local air quality and transportation agencies, and is ultimately endorsed by the Governor (or his/her designee). During the SIP process, states also gather information and comment from environmental groups and other interested parties at public hearings. EPA believes that these processes would ensure the credibility of a submitted SIP (and its motor vehicle emissions budgets) for the purposes of transportation conformity especially where the only alternative conformity test is the emission reduction tests. Given the limitations to the usefulness of the emission reduction tests, a submitted SIP's motor vehicle

VOL 61 ISS 132 JUL 9 1996 UMI

emissions budgets are likely to be at least as good a basis for making conformity determinations, even if they are not yet approved by EPA.

EPA's proposed 45-day review period for newly submitted SIPs is intended to prevent conformity from being based on motor vehicle emissions budgets that are clearly not consistent with attainment, maintenance, or reasonable further progress. If EPA was not consulted, given sufficient information, or EPA's concerns were not satisfied prior to SIP submission sufficient for EPA to determine that the motor vehicle emissions budgets are adequate for conformity purposes during this 45-day review period, EPA could declare the motor vehicle emissions budgets inadequate and prevent their use for conformity purposes. In addition, if EPA finds the motor vehicle emissions budgets inadequate even after the 45-day review period, further conformity determinations may not be based on those budgets.

EPA considered a range of review periods after which submitted motor vehicle emissions budgets could replace emission reduction tests for determining conformity. Under the November 1993 transportation conformity rule, EPA has used a 90-day review period before a newly submitted SIP budget could replace a previously submitted budget. Many conformity stakeholders suggested a 30-day review period. EPA is proposing a 45-day review period as a compromise to balance the conflicting goals of using submitted SIP budgets as quickly as possible and preventing transportation investments from being made based on budgets that are not consistent with attainment, maintenance, or reasonable further progress. If budgets are found inadequate after conformity has already been determined, future plans and TIPs would have to offset the emissions from grandfathered projects that may have been inappropriately allowed under the inadequate budgets. This disruption could be avoided by allowing EPA enough time initially to determine the adequacy of budgets and prevent the use of inadequate budgets.

Regardless of the 45-day review period, EPA cannot ultimately ensure that a submitted SIP's motor vehicle emissions budget is consistent with reasonable further progress, attainment, or maintenance—and thus adequate to fulfill the conformity requirements of Clean Air Act section 176(c)—until EPA fully approves the SIP through notice-and-comment rulemaking. As a result, the proposal provides that reliance on a submitted SIP's motor vehicle emissions budgets for determining conformity is deemed to be a statement by the MPO and DOT that they are not aware of any information that would indicate that emissions consistent with such budgets would cause or contribute to any new violation of the relevant standard(s); increase the frequency or severity of any existing violation of the relevant standard(s); or delay timely attainment of the relevant standards or any required interim emissions reductions or other milestones. (This provision clarifies that, in the absence of EPA approval of the SIP, the MPO and DOT may not base conformity determinations on submitted SIPs that they have reason to believe do not satisfy Clean Air Act requirements.)

3. Areas Not Required to Submit Control Strategy SIPs

EPA has received public comment to extend certain flexibilities to areas that are not required to submit control strategy SIPs. The existing transportation conformity rule requires these areas to either satisfy the "build/no-build" and less-than-1990 emission reduction tests or submit a control strategy SIP or maintenance plan and satisfy the budget test. Today's action proposes additional flexibilities for areas that are not required to submit control strategy SIPs, including marginal and below ozone nonattainment areas, not classified CO nonattainment areas, moderate CO nonattainment areas with a design value of 12.7 ppm or less, and some moderate and above ozone areas that are meeting the ozone standard. Please refer to section II.A.3. for additional background material.

Create a budget through the SIP process and use the budget test. Although the areas discussed in this section are not required by the Clean Air Act to submit control strategy SIPs, these areas could choose to submit a control strategy SIP or maintenance plan (which contains a motor vehicle emissions budget) and demonstrate conformity by using the budget test. The existing transportation conformity rule requires consistency with the SIP's motor vehicle emissions budget as stipulated in Clean Air Act section 176(c)(2)(A). This option is available both in the existing transportation conformity rule and this proposal.

Default budget for clean data areas. This proposal would allow areas with clean monitoring data but no submitted or approved budget to determine conformity using the budget test, with the motor vehicle emissions levels in the most recent year of clean data serving as the "budget." In order for data to be considered "clean," it must meet EPA's requirements and guidance for acceptable monitoring. EPA is also proposing this second option because many areas would prefer to determine conformity using a budget test rather than the emission reduction tests, but are nevertheless unwilling to devote resources to creating a motor vehicle emissions budget through the SIP process. The motor vehicle emissions in the most recent year with clean data is an adequate "default budget" that can be determined without using the formal SIP process. This level of motor vehicle emissions does not automatically demonstrate attainment, because it does not consider the levels of emissions from other sources. However, these areas are not required by the Clean Air Act to submit attainment demonstrations. Furthermore, this level of motor vehicle emissions does produce clean data. Therefore, EPA believes that requiring consistency with the level of motor vehicle emissions in the most recent year of clean data is a reasonable test, and one that is likely to be more meaningful than the emission reduction test (for the reasons discussed earlier).

Emission reduction test flexibility. This proposed alternative would allow areas that are not required to submit control strategy SIPs that do not choose the other two options in this section to satisfy either the build/no-build test or demonstrate that annual motor vehicle emissions will not be greater than 1990 levels (i.e., the "1990 test"), provided these areas do not have an approved budget in a control strategy SIP or maintenance plan. EPA is proposing this flexibility because conformity stakeholders have indicated that, like PM_{10} and NO_2 areas, the ozone and CO classifications listed in §§ 51.464 and 93.136 of the transportation conformity rule and moderate and above ozone nonattainment areas that are affected by the May 10, 1995, EPA memorandum (see section II.A.3. for more information) are not subject to sections 182(b)(1) and 187(a)(7) of the Clean Air Act.

The existing transportation conformity rule requires that areas without motor vehicle emissions budgets must satisfy both the build/no-build and less-than-1990 emission reduction tests in order to demonstrate conformity. EPA originally created these tests in order to implement the emission reduction provisions of Clean Air Act section 176(c)(3)(A)(iii), which requires ozone and CO areas to contribute to annual emission reductions consistent with sections 182(b)(1) and 187(a)(7). However, sections 182(b)(1) and 187(a)(7) only apply to moderate and above ozone nonattainment areas and

CO nonattainment areas that are moderate greater than 12.7 ppm.

PM_{10} and NO_2 areas are similarly not required to satisfy the annual emission reduction provisions of Clean Air Act section 176(c)(3)(A)(iii). The existing transportation conformity rule and this proposal require PM_{10} and NO_2 areas to satisfy either the build/no-build or 1990 test in order to demonstrate conformity.

EPA originally required both the build/no-build and less-than-1990 tests for all ozone and CO areas in order to ensure that transportation planning does not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS, as required by Clean Air Act section 176(c)(1)(B). However, EPA now believes that, for these areas which were never subject to the emission reduction mandate of section 176(c)(3)(A)(iii), either the build/no-build test or the 1990 test is sufficient to satisfy the requirements of the Clean Air Act.

III. Implementation of the Budget Test

A. Which Budgets Apply?

1. Approved SIPs Versus Submitted SIPs

Years that are directly addressed by the approved SIP. Motor vehicle emissions budgets in an approved SIP (i.e., the applicable implementation plan) must always be used for demonstrating satisfaction of the budget test for those years in the timeframe of the transportation plan that are addressed by the approved SIP. That is, if the approved SIP establishes a motor vehicle emissions budget for a year in the timeframe of the transportation plan, consistency with that budget must be demonstrated for that year. A submitted SIP cannot override the motor vehicle emissions budgets in an approved SIP for the years addressed by the approved SIP.

Clean Air Act section 176(c) specifically requires conformity to approved implementation plans. The provisions of an implementation plan that EPA has approved under Clean Air Act section 110 are enforceable and cannot be changed on the basis of a submission. As a result, although some conformity implementers and interested parties requested that they be permitted to replace approved SIP budgets with submitted SIP budgets, EPA believes that this cannot be legally allowed. In addition, approved SIP budgets have been subject to full technical review and public comment and should not be replaced by budgets that have not yet been fully analyzed and reviewed.

Years that are not directly addressed by the approved SIP. However, this proposal would allow a submitted SIP's motor vehicle emissions budgets to be used instead of the approved SIP's budgets for those years not directly addressed by the approved SIP. For example, for a serious ozone nonattainment area, the approved 15% SIP's VOC budget would have to be used to demonstrate the budget test for 1996, but the submitted attainment SIP's budget would be used to demonstrate the budget test for the attainment year (1999).

Similarly, this proposal would allow a submitted maintenance plan's motor vehicle emissions budgets to be used for the years after the attainment year, instead of continuing to use the approved attainment year budget for those subsequent years. Under the existing transportation conformity rule, a submitted maintenance plan's motor vehicle emissions budget(s) may not be used for transportation conformity purposes until the maintenance plan has been approved.

EPA believes this flexibility is appropriate because any given approved SIP is only intended to address a certain period of time. In general, attainment SIPs address only the period through the attainment year, and maintenance plans address at a minimum a ten-year period. EPA believes that the Clean Air Act's reference to conformity to "approved implementation plans" applies to the years which the approved SIP addresses, and that this language should not prohibit using as the relevant test of conformity subsequent SIP submissions that address later years. EPA believes that the submitted maintenance plan's motor vehicle emissions budgets are more relevant to the years after the attainment year than the attainment year budget in the approved attainment SIP. Similarly, a submitted attainment SIP's budget is more relevant for the attainment year than an approved post-1996 SIP budget. EPA had previously required use of the last budget in the approved SIP for all subsequent years only because there was no other budget against which to determine conformity. Once such a budget is submitted, it provides the most relevant basis for testing conformity.

If no SIP is submitted that addresses the years after the approved SIP, the approved SIP's budget(s) would continue to apply for the future years in the timeframe of the transportation plan.

Changes to approved SIPs. This proposal would not alter the fact that proposed changes to an approved SIP cannot be used for the purposes of transportation conformity until those changes are approved. For example, if an area submits a proposed revision to a SIP with an attainment year budget to replace the approved attainment SIP, that SIP submission cannot be used until it is approved by EPA.

2. Multiple SIP Submissions

How soon can a newly submitted SIP replace a previously submitted SIP? Under this proposal, the most recent SIP submissions would replace other prior SIP submissions that have not yet been approved. If an area submits a SIP to revise motor vehicle emissions budgets in a SIP that has not yet been approved, the most recent SIP submission would be used for demonstrating the budget test beginning 45 days after submission to EPA (provided EPA has not found the submission inadequate), or earlier, if EPA has found the submission to be adequate.

Under the existing transportation conformity rule, a newly submitted SIP is not permitted to replace a complete SIP submission for 90 days. If EPA found the newly submitted SIP complete in less than 90 days, either SIP submission could be used for conformity determinations made during the first 90 days after SIP submission. This proposal would require the most recent SIP submission to be used for conformity purposes after 45 days (if it has not been found inadequate), or as soon as it has been found adequate, if this occurs in less than 45 days after submission to EPA.

EPA is proposing this change for several reasons. First, due to conformity stakeholder suggestions that submitted SIPs should be used sooner for conformity purposes, EPA is proposing to shorten the existing transportation conformity rule's 90-day grace period to 45 days. In addition, EPA is interested in streamlining the transportation conformity rule and reducing ambiguity in its implementation. There has been substantial confusion in implementation of the existing transportation conformity rule regarding which submitted SIP's budgets should be used for conformity purposes, and at which times. EPA believes that it is simpler and truer to the spirit of conformity to require the most recently submitted SIP (that has undergone 45-day EPA review) to be used for determining conformity.

EPA believes that the simplicity gained from this change outweighs any potential limitation to the flexibility of areas to choose among SIP submissions in the first few weeks after submission. In many instances, SIP submissions intended to replace previous SIP submissions were either inspired by conformity considerations or represent a more accurate basis for conformity. As

VOL 61 ISS 132 JL 9 1996 UMI

a result, most areas would not choose to use the previous SIP submission even if given the opportunity.

In addition, the protection EPA originally intended the 90-day grace period to provide is under the state's control. EPA did not originally require newly submitted SIPs to be used in the first 90 days, because EPA did not want conformity determinations that were underway at the time of the SIP submission to be disrupted. However, this protection is not necessary in the conformity rule itself, because the state controls when it submits a SIP, and the interagency consultation process gives state and local agencies an opportunity to coordinate conformity determinations and SIP submissions to avoid disruption of the conformity process. EPA believes that the ambiguity regarding which SIP submission is used for conformity is more problematic than the remote possibility that a SIP submission would interfere with a conformity determination that was underway.

When should different submitted SIPs be used? When a series of control strategy SIPs have been submitted to fulfill different Clean Air Act requirements for a particular pollutant, the budget test would be demonstrated using each relevant submitted SIP that is adequate for conformity purposes. For example, the proposal would require the submitted post-1996 reasonable further progress SIP's motor vehicle emissions budgets to be used for demonstrating the budget test for milestone years, and would require the submitted attainment demonstration's budget(s) to be used for demonstrating the budget test for the attainment year. SIP budget(s) that address the latest future year would apply for all subsequent years in the timeframe of the transportation plan.

B. Control Strategy SIPs and Maintenance Plans That Do Not Establish Motor Vehicle Emissions Budgets

This proposal would clarify that the emissions budget test must be satisfied only for those pollutants and pollutant precursors for which a motor vehicle emissions budget is established. Normally, a control strategy SIP or maintenance plan would by its nature include a motor vehicle emissions budget for each pollutant and pollutant precursor for which the area was designated nonattainment. These budgets are created by the control strategy SIP or maintenance plan even if they are not clearly identified, and failure to clearly identify a motor vehicle emissions budget does not relieve the requirement to satisfy the budget test. However, as explained further below, there are some cases in which a SIP could specifically provide that no motor vehicle emissions budget was established for transportation conformity purposes, and in such cases, the budget test would not have to be satisfied for that pollutant or precursor.

Certain nonclassifiable ozone areas have the option to submit a "limited maintenance plan," which would not establish motor vehicle emissions budgets. According to the November 16, 1994, memorandum from Sally Shaver, Director of EPA's Air Quality Strategies and Standards Division, to EPA Regional Air Division Directors, entitled "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas," nonclassifiable ozone areas whose design values are at or below 0.106 ppm (85% of exceedance levels of the ozone standard) at the time of redesignation may choose to submit a less rigorous maintenance plan than required for other areas. This "limited maintenance plan" would not be required to project emissions over the maintenance period, and as a result, no motor vehicle emissions budget would be established. There are similar policies for CO and PM_{10} areas that may also result in no motor vehicle emissions budgets being established.

In other cases, the control strategy SIP or maintenance plan could explicitly demonstrate that motor vehicle emissions are not a significant contributor to the nonattainment problem, and the SIP could explicitly state that it is not establishing a motor vehicle emissions budget for transportation conformity purposes. This could occur, for example, in CO and PM_{10} areas that are dominated by stationary sources. In order for EPA to approve or find adequate for conformity purposes a SIP that makes a claim of insignificance, the SIP would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth for a violation to occur. Such a demonstration would have to be based on a number of factors, including the percentage of the inventory comprised by motor vehicle-related emissions currently and in the future, how close the monitoring data is to the standard, the absence of SIP motor vehicle control measures, historical trends in the growth of motor vehicle emissions and VMT, and projections of motor vehicle emissions and VMT.

If EPA's 45-day review period expires without EPA finding the SIP either adequate or inadequate for conformity purposes, the submitted SIP's claim of insignificance may be used to justify not demonstrating satisfaction of the budget test (unless or until EPA finds the SIP inadequate).

When a control strategy SIP or maintenance plan does not establish motor vehicle emissions budgets, no regional emissions tests would be required to be satisfied. That is, neither the emissions budget test nor the emission reduction tests would be required to be satisfied.

C. For Which Years Would the Budget Test Be Demonstrated?

This proposal would clarify (without changing the substance of) the existing transportation conformity rule's requirements regarding the years for which the budget test must be demonstrated. The proposal would explicitly require the budget test to be demonstrated for each year for which the SIP establishes a motor vehicle emissions budget. For example, the attainment SIP generally establishes a budget for the attainment year, and the 15% SIP establishes a VOC budget for 1996. SIPs may explicitly include motor vehicle emissions budgets for other years not specifically required to be addressed by the Clean Air Act. For example, an attainment SIP or a maintenance plan may address more years than required by the Clean Air Act and explicitly include motor vehicle emissions budgets for those years. In such cases, the budget test would have to be demonstrated for the years for which a budget was specifically established.

The budget test must be demonstrated for the last year of the maintenance plan and any other years for which the maintenance plan establishes motor vehicle emissions budgets. An area may choose to explicitly establish motor vehicle emissions budgets for years in the timeframe of the maintenance plan other than the last year. In such cases, compliance with the budget test would have to be demonstrated for those years. Some maintenance plans may include specific motor vehicle emissions projections for some or all years in the timeframe of the maintenance plan, without intending that such projections operate as limitations on emissions. The budget test would not be required to be demonstrated for these years unless it was the intent of the maintenance plan to establish a budget for these years. Such issues should be addressed when developing the control strategy SIP or maintenance plan. For control strategy SIPs and maintenance plans that have already been submitted, the state's intent regarding the use of motor vehicle emissions budgets may be clarified through the interagency consultation process.

In addition to the years for which the SIP establishes a motor vehicle emissions budget, the budget test must be demonstrated for the last year of the transportation plan's forecast period. If there are more than ten years between the years for which the SIP specifically establishes motor vehicle emissions budgets, the budget test must also be demonstrated for some intermediate years so that the budget test is demonstrated at ten-year (or shorter) intervals.

Regional emissions analysis. Satisfaction of the budget test requires comparison of the motor vehicle emissions budget with regional emissions predicted for a given year. A regional emissions analysis must be performed for each pollutant and precursor for the last year of the transportation plan's forecast period and the attainment year (if it is in the timeframe of the transportation plan). For the other years for which the budget test is required to be demonstrated, the estimate of regional emissions does not necessarily need to be based on a regional emissions analysis performed for that specific year; the estimate of regional emissions may be based on an interpolation between the years for which the regional emissions analysis was performed. However, the years for which the regional emissions analysis is performed must be no more than ten years apart.

D. Maintenance Plans

The proposal would require that if the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emissions budget(s) must be accompanied by a qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan.

Because the maintenance plan is required by the Clean Air Act to demonstrate maintenance of the standards over a 10-year period, general consistency between the latest planning assumptions and the maintenance plan's assumptions and projections is a basis for finding that there will not be new or worsened violations during that period. Each maintenance plan will have different assumptions and projections, so the specific basis for an area's qualitative finding will need to be determined through the interagency consultation process. The qualitative finding would be contained in the documentation that demonstrates that the budget test has been satisfied.

EPA believes a qualitative finding is necessary if the budget only addresses the last year of the maintenance plan, because the budget test alone is not sufficient to determine, as required by the Clean Air Act, that the transportation action will not cause a new violation. The emissions impacts in the initial ten years of the maintenance plan must be considered in some manner in order to determine conformity.

EPA believes that requiring a qualitative finding is preferable to requiring maintenance plans to establish motor vehicle emissions budgets for specific years. Although maintenance plans contain projections for intermediate years that could be used as motor vehicle emissions budgets, EPA believes that the years for which budgets are established should be decided by the state. EPA is willing to allow states to establish budgets only for the last year of the maintenance plan, provided conformity determinations are accompanied by a qualitative finding addressing the intermediate years. Alternatively, states could choose to establish motor vehicle emissions budgets for intermediate years in the maintenance plan, which would then be used to determine conformity.

IV. Non-federal Projects

A. Description of Proposal

This proposal would allow regionally significant transportation projects that are funded or approved by a recipient of federal funds designated under title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53) which do not rely at all on any FHWA/FTA funding or approvals (i.e., "non-federal projects") to be adopted or approved during a transportation plan/TIP conformity lapse, provided the project was included in the regional emissions analysis supporting the most recent transportation plan and TIP conformity determination. Also, the project's design concept and scope could not have changed significantly from that included in the previous emissions analysis.

The existing transportation conformity rule requires a currently conforming transportation plan and TIP to be in place at the time a recipient of federal funds adopts or approves a regionally significant non-federal project. As a result, no regionally significant non-federal projects can be adopted or approved during a transportation plan/TIP conformity lapse.

Under both this proposal and the existing transportation conformity rule, adoption or approval of non-federal projects that are not regionally significant is not subject to any transportation conformity requirements. In addition, under both this proposal and the existing transportation conformity rule, there is a provision for regionally significant non-federal projects to be added to the existing transportation plan and TIP's regional emissions analysis, if the transportation plan and TIP are currently conforming. That is, if a regionally significant non-federal project has not previously been included in the regional emissions analysis supporting the transportation plan and TIP conformity determinations, another regional emissions analysis could be performed including the transportation plan and TIP projects and the additional regionally significant non-federal project. If this analysis demonstrates that the currently conforming transportation plan and TIP would still conform if the non-federal project were implemented, the non-federal project could be adopted or approved.

Some commenters have suggested that if certain non-federal projects are to be permitted to be adopted or approved during a transportation conformity lapse as EPA is currently proposing, each such project should be approved by the Governor. This provision would provide greater assurance that the emissions consequences of proceeding with projects during a conformity lapse are consciously accepted. However, EPA is not proposing this limitation at this time because such a limitation is not explicitly required by the Clean Air Act, and it is not clear which state and local government officials should have the authority to adopt or approve non-federal projects during a conformity lapse. EPA is interested in receiving comment on this subject.

B. Rationale

EPA is proposing to allow some regionally significant non-federal projects to be adopted or approved during a conformity lapse in response to comments from conformity implementers. These comments stated that state and local governments should have the discretion to accept the emissions consequences of projects that are under their control to fund and approve, even when there was not a conforming transportation plan and TIP. Future transportation plans and TIPs are required to consider the emissions from regionally significant non-federal

VOL
61
ISS
1
3
2
JL
9
1996
UMI

projects, so any necessary offsets would ultimately be achieved.

EPA believes this proposal is consistent with the requirements of Clean Air Act section 176(c). Section 176(c)(2)(C) requires transportation projects to "come from a conforming plan and TIP." EPA has interpreted this in the existing conformity rule to mean that a conforming transportation plan and TIP must be in place at the time of project adoption or approval, and that the project must be included in the transportation plan and TIP (or regional emissions analysis supporting the conformity determination for the transportation plan and TIP). EPA now believes that because non-federal projects are not federally funded or approved, it is not necessary for a conforming transportation plan and TIP to be in place at the time of project adoption or approval. The transportation plan and TIP are not relevant as a funding mechanism for non-federal projects. The crucial requirement for non-federal projects is previous inclusion in the regional emissions analysis supporting a conforming transportation plan and TIP. That is, the area had previously considered the emissions of the non-federal project and concluded that they could be accommodated in the planned transportation network without adversely affecting air quality.

The option provided in section 176(c)(2)(D) for new projects that were not previously included in a transportation plan/TIP or supporting regional emissions analysis to demonstrate conformity cannot apply during a transportation plan/TIP conformity lapse, because it requires a demonstration that "conforming transportation plans and TIPs" would still conform when the emissions of the new project are considered. Without a conforming transportation plan and TIP in place, this cannot be demonstrated.

This proposal would require that a regionally significant non-federal project be included in the regional emissions analysis supporting the most recent transportation plan and TIP conformity determinations, rather than any previous conformity determination. This is because each regional emissions analysis must include all regionally significant transportation projects in the timeframe of the transportation plan. Therefore, even if there is no current activity on a particular non-federal project at the time of the most recent transportation plan/TIP conformity determination, it still will have been included in the regional emissions analysis. If a non-federal project were included in the regional emissions analysis from an older transportation plan/TIP conformity determination and not from the most recent, this would indicate that the project is no longer expected to occur in the timeframe of the transportation plan and TIP. As a result, it could no longer be assumed that implementation of the project could be accommodated with no adverse air quality impact.

EPA has received comment opposing the adoption or approval of non-federal projects during a transportation conformity lapse. Commenters believe that building new projects during a time when a conforming transportation plan and TIP has not been developed would only increase the difficulty of plan/TIP development in the future. However, as described above, EPA believes that this proposal is consistent with the Clean Air Act. In addition, the limitation that regionally significant non-federal projects must have been part of the most recent prior regional emissions analysis supporting the most recent conforming transportation plan and TIP ensures that the emissions consequences of the projects have been considered, and the decision to proceed with such projects during a conformity lapse could be made with full knowledge of the possible emissions implications. These non-federal projects would then have been considered as part of the transportation planning process, and because these projects are not able to avoid the scrutiny of the metropolitan planning process during a conformity lapse, there would not be unequal requirements that would provide an incentive to shift the funding of projects from federal to non-federal sources.

EPA has also received comment that any non-federal project, whether or not it has previously been included in a regional emissions analysis supporting a transportation plan/TIP conformity determination, should be allowed to proceed during a transportation plan/TIP conformity lapse. However, EPA continues to believe, as described in the preamble to the November 24, 1993, transportation conformity rule, that Clean Air Act section 176(c)(2)(C)'s requirements for "transportation projects" refer to any highway or transit projects, not just those that are federally funded or approved. Thus, EPA believes that regionally significant non-federal projects must have been considered in a previously conforming emissions analysis in order to be adopted or approved.

V. Rural Nonattainment and Maintenance Areas

A. Description of Proposal

Isolated rural nonattainment and maintenance areas with submitted or approved control strategy SIPs or maintenance plans would be allowed, under this proposal, to choose among several tests for demonstrating conformity for years after the time period addressed by the SIP (e.g., years after the attainment year or the last year of the maintenance plan).

These areas could either (1) demonstrate consistency with the most recent motor vehicle emissions budget(s), as normally required; (2) satisfy the emission reduction tests ("build/no-build test" and/or less-than-1990 test, depending upon classification); or (3) demonstrate through air quality dispersion modeling that the FHWA/FTA project, in combination with all other regionally significant projects expected in the area in the timeframe of the statewide transportation plan, satisfies the general definition of conformity in Clean Air Act section 176(c)(1) (i.e., the project will not cause or contribute to any new violations; increase the frequency or severity of any existing violation; or delay timely attainment or required interim emission reductions).

The choice among these conformity tests and the methodology for air quality dispersion modeling would be determined through the interagency consultation process and reflect the consensus of the state and local air and transportation agencies and the project sponsor. EPA and DOT would also have to be consulted through the usual interagency consultation process.

Isolated rural areas would be defined as nonattainment and maintenance areas (or portions thereof) that do not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's transportation plan or TIP. This would not include "donut" areas that are outside the metropolitan planning boundary and inside the nonattainment/maintenance area boundary, because these projects must be considered in the context of the MPO's transportation plan and TIP, even if the MPO does not specifically include them in the transportation plan/TIP or the MPO's own regional emissions analysis.

Because air quality dispersion modeling for ozone is often complex and resource-intensive, EPA does not expect that this particular option will be viable for isolated rural ozone nonattainment and maintenance areas. However, this is a more realistic option for such CO and PM_{10} nonattainment and maintenance areas and is being considered at the request of several commenters.

This proposal differs from the existing transportation conformity rule by offering several options for demonstrating conformity in years after the time period addressed by the SIP. The existing transportation conformity rule would require the motor vehicle emissions budget established for the most recent prior year to be used for the purpose of demonstrating transportation conformity for all subsequent years in the timeframe of the transportation plan.

B. Rationale

In response to comments from those implementing conformity as well as from other interested parties, EPA is proposing flexibility for isolated rural nonattainment and maintenance areas. The general issue of conformity for years outside the timeframe of the SIP is explained below in section VIII., "Mismatch in SIP/Transportation Plan Timeframe." EPA is here proposing flexibility for isolated rural nonattainment and maintenance areas, and not for other areas, because isolated rural areas face unique challenges in addressing this issue.

Isolated rural areas generally do not have a metropolitan transportation planning process that could serve as a forum for identifying and addressing long-term growth issues in years not addressed by the SIP. In addition, regionally significant, federally funded or approved projects usually occur infrequently in isolated rural areas. Conformity demonstrations for such areas as required by the existing conformity rule would place the burden of long-term planning on a few or even a single transportation project.

EPA believes this places an inappropriately large burden on sponsors of such federally funded or approved transportation projects. Although conformity is intended to assure long-term planning, EPA believes it is appropriate to impose conformity requirements involving less rigorous long-term planning in areas where comprehensive planning processes including land use and other issues do not otherwise exist or are not otherwise required.

Some conformity implementers suggested that the flexibility for isolated rural areas should apply for "donut" areas that are outside MPO planning boundaries but within urbanized nonattainment areas. EPA does not believe this is appropriate because donut areas do not face the same challenges as truly isolated rural areas. Conformity determinations by the MPO must consider motor vehicle emissions from all projects in the nonattainment or maintenance area, including emissions from projects in the donut area. Thus, there is a planning process that in some manner addresses the donut area. The Intermodal Surface Transportation Efficiency Act (ISTEA) envisioned that in most cases, the MPO planning boundary would be consistent with the nonattainment area boundary. To the extent that conformity poses a burden on the donut area because the area does not have long-term planning capabilities, arrangements could be made with the adjacent MPO.

EPA believes that providing some flexibility for the years not addressed by the SIP is consistent with the Clean Air Act (see section VIII. below). The Clean Air Act requirement for consistency with the SIP's emissions reduction goals could be construed to apply only for the years that an individual SIP revision addresses. The time period later than that addressed by SIPs is in some ways analogous to the time period before SIPs are developed, and as such the emission reduction tests ("build/no-build" and less-than-1990 tests) may also be appropriate for the time period after that addressed by SIPs. Air dispersion modeling that directly demonstrates satisfaction of the general definition of conformity is clearly also consistent with Clean Air Act section 176(c).

EPA is proposing that the choice of conformity tests for isolated rural areas for years not addressed by a SIP should be made with the agreement of relevant state and local agencies. EPA believes this is necessary because MPOs are authorized by the Clean Air Act to determine conformity and there are no MPOs in isolated rural areas; thus, there is no single state or local agency with authority for determining conformity. Various state and local agencies may have differing perspectives on the practicality and benefits of the different conformity tests. As a result, EPA believes the method for demonstrating conformity should be a consensual decision by all relevant state and local agencies, so that all relevant actors in an area can weigh the advantages and disadvantages of each method of demonstrating conformity.

EPA also believes that the methodology for performing air quality dispersion modeling should have the agreement of all relevant state and local agencies. The air agency traditionally has responsibility for performing air quality dispersion modeling, but some other agency may take responsibility for such modeling with respect to a given project for the purposes of transportation conformity in rural areas. Therefore, EPA believes that all agencies should agree on the methodology to be used.

EPA considered requiring EPA approval of the modeling methodology used in isolated rural areas, because air quality dispersion modeling used in SIPs is traditionally governed by EPA guidance and regulations. If air quality dispersion modeling that is used to demonstrate conformity with the purpose of the SIP is based on different assumptions than the SIP itself used, the determination of conformity could be suspect. However, commenters convincingly argued that requiring concurrence of the state air agency accomplishes the goal of assuring consistency with the SIP's air quality dispersion modeling methodology, and that further concurrence by EPA would be an unnecessary administrative burden for isolated rural areas.

The option to demonstrate conformity using air quality dispersion modeling in certain cases was specifically requested by conformity implementers. Because EPA believes using air quality dispersion modeling for conformity demonstrations for years not addressed by SIPs would be consistent with Clean Air Act section 176(c) requirements (see above), EPA is proposing this additional flexibility for all isolated rural areas. Areas for which air quality dispersion modeling is too resource-intensive may of course choose one of the other methods of demonstrating conformity.

EPA considered allowing isolated rural areas to include non-federal projects in either the "build" or "no-build" case when performing the "build/no-build test," at the discretion of state and local air and transportation agencies. Conformity implementers and interested parties had noted that because regionally significant federally funded or approved transportation projects occur relatively infrequently in isolated rural areas, considering (and potentially offsetting) the emissions impacts of non-federal projects posed an unfair burden on the few federal projects. However, EPA believes that despite the differing practical considerations for urban and rural areas, there is no legally defensible distinction between what constitutes a contribution to emissions reductions in rural vs. urban areas. Because EPA believes that the "build/no-build" test demonstrates contribution to emissions reductions only when new non-federal projects are included in the "build" case, EPA is not proposing to alter the build/no-build test's treatment of non-federal projects in rural areas.

VOL
61
ISS
1
32
JL
9
1996
UMI

Some conformity implementers suggested to EPA that conformity in isolated rural areas be demonstrated using a project-level "build/no-build test." Although it is true that isolated rural areas do not have local transportation plans and TIPs as referred to in Clean Air Act section 176(c)(2) (C) and (D), EPA believes that it is the intent of the Clean Air Act for the regional emissions impacts of transportation projects to be considered in the context of other transportation projects in the nonattainment or maintenance area. Furthermore, EPA questions whether it is possible for areas concerned with regional pollutants to determine whether a project will cause or contribute to new violations or exacerbate existing violations without considering other transportation projects planned for the area. Therefore, EPA is not proposing the option to use a project-level analysis for the build/no-build test in rural areas.

VI. Modeling Requirements

A. Network Modeling Requirements

1. Deadline for Use of Network Models

This proposal would require that serious CO and serious, severe, and extreme ozone areas use network models to support conformity determinations by January 1, 1997. This requirement would apply only to those metropolitan planning areas with an urbanized area population over 200,000. Areas that are already using accepted network modeling practices would be required to continue using them for conformity analyses performed before January 1, 1997. Areas would continue to be required to have a consultation process to select regional models and assumptions.

The existing transportation conformity rule required that all serious CO and serious and above ozone areas use network modeling for conformity analyses by January 1, 1995. This proposal extends the deadline to January 1, 1997. EPA received several comments related to the ambitious nature of the 1995 deadline, and it has become increasingly apparent that the original deadline is creating difficulties for several areas that have been unable to comply by that date. Based on comments received, EPA has determined that January 1, 1997, would be a reasonable extension of the deadline. EPA believes that this deadline would allow areas experiencing difficulties to improve and implement their network models, while requiring that areas currently using network modeling continue to do so prior to that date.

In serious CO areas and serious and above ozone areas, conformity determinations may be made after January 1, 1997, based on regional emissions analysis that does not use network modeling only if that regional emissions analysis was performed in support of the proposed conformity determination before January 1, 1997. It is not necessary for the MPO or DOT to complete its determination process before January 1, 1997, if the regional emissions analysis supporting the determination was completed before January 1, 1997. It is also permissible for a proposed transportation plan or TIP, and/or the regional emissions analysis associated with it, to be modified to a reasonable degree after January 1, 1997, as a result of the public participation process.

This interpretation of the deadline for modeling improvements is described in a December 30, 1994, letter from Philip A. Lorang, EPA's Director of Emission Planning and Strategies Division, to Cynthia Burbank, FHWA's Environmental Analysis Division Chief, and Samuel Zimmerman, FTA's Director of the Office of Planning.

2. Areas Subject to Deadline for Use of Network Models

This proposal would limit the requirement to use network modeling to metropolitan planning areas with an urbanized area population over 200,000, whereas the existing rule's requirements apply to all nonattainment areas in these classifications, regardless of population or urbanization. The proposed limitation results from a general concern that the modeling requirements are overly burdensome for small and rural areas within serious ozone nonattainment areas, such as Martha's Vineyard Island, Massachusetts. EPA considered but is not proposing a three-tiered scenario in which an area's modeling requirements would have varying specificity based on its population and whether it was urban or rural. Commenters believed that such a detailed proposal would unnecessarily increase the rule's complexity. As a result, EPA decided to specify requirements only for those serious, severe and extreme areas with an urbanized area population over 200,000. The 200,000 population level was chosen because it is also the population level used to delineate transportation management areas (TMAs). EPA believes that these limitations would ensure that smaller areas no longer are required to use unnecessarily stringent network modeling procedures and methods.

EPA received a comment that suggested a specific, two-part process for network model improvements in serious CO and serious and above ozone nonattainment areas. The first part recommended an expanded, tiered set of deadlines based on nonattainment status, population, and growth rate, with added flexibility through a waiver provision if mobile sources were clearly not a factor in an area's nonattainment problem. The second part suggested that the MPO prepare a strategic plan for the area's modeling improvements. The MPO would also be responsible for encouraging public participation in this process and making available for public comment the documentation of conformity determinations and information relevant to improving the regional analysis systems.

EPA decided not to propose this approach for several reasons. First, the tiered deadline concept would expand the modeling requirements to areas not currently affected under the existing rule. EPA believes that these modeling requirements are not necessary in all nonattainment areas and that this concept would further increase the rule's complexity. Second, although EPA agrees with the importance of strategic planning in modeling improvements, the Agency believes that the existing interagency consultation process provides areas with the necessary flexibility in planning for modeling improvements.

3. Content of Modeling Requirements: Request for Comment

In today's proposal, EPA is proposing regulatory text that would amend the requirements addressing the characteristics of network models. Under § 51.452(b)(93.130(b)) of the November 1993 conformity rule, network-based models used in serious and above CO and ozone areas for conformity analyses are required to possess eleven specific modeling attributes. EPA originally developed these eleven attributes in consultation with conformity stakeholders and with the understanding that they represented modeling procedures that are currently available and in practice. EPA continues to believe that these modeling attributes would encourage improved network-based modeling.

However, stakeholders have since suggested that the modeling requirements in the existing rule create too much complexity and rigidity in the conformity rule. As a result, EPA is proposing regulatory text today that would remove these eleven modeling attributes from the rule and replace them with modeling guidance

periodically issued by EPA and DOT. Today's proposal is described below as Option 1.

Since several stakeholders have expressed concern over the primary option EPA is proposing today (Option 1), two alternative options are also described below. All three of the options described below would apply to nonattainment areas with urbanized population over 200,000, as described above. EPA requests comment on all of these options, and depending on the public comment received, EPA may finalize one of these alternative approaches, instead of the primary option EPA is proposing today.

EPA believes that the conformity rule would still be consistent with the letter and intent of Clean Air Act section 176(c) if any of the proposed changes to the modeling requirements are adopted. Since the statute does not specifically address modeling requirements, EPA believes that so long as the modeling requirements continue to ensure that conformity determinations are based on sound quantitative analysis, EPA has the discretion to determine appropriate methods for implementing those requirements.

Option 1: Address Network Modeling Attributes in Guidance. EPA proposes today that the specific attributes of network models that are required under the existing transportation conformity rule be removed from the regulatory text and instead be addressed in guidance documentation. EPA believes that this proposal will simplify the conformity rule and ensure that areas will be able to choose the modeling procedures that best match their current modeling and air quality planning needs, resource constraints, and technical expertise capability.

In order to ensure that appropriate modeling tools are employed, EPA and DOT will periodically issue modeling guidance comprised of technical documentation and other references describing available modeling procedures. This guidance is likely to be a combination of existing and new documents or references to technical information taken from a variety of sources. Many of the detailed attributes required under the existing transportation conformity rule will be referenced in this guidance. By issuing technical guidance documents on a regular basis, EPA and DOT will be able to communicate new modeling practices and encourage continuous improvement over time.

EPA is aware that removing the regulatory requirements governing network model performance may be perceived by some to be an endorsement of less rigorous modeling practices. However, EPA and DOT remain committed to developing and encouraging improved transportation models and to ensuring that areas continue to employ good modeling practices. Today's proposal is intended as a streamlining measure, not a relaxation of standards for acceptable modeling. EPA believes that guidance regarding available modeling techniques will facilitate model improvement at least as well as including specific modeling requirements in the conformity rule, while responding to local needs for flexibility. The agencies believe that agreement regarding appropriate modeling techniques and improvements for each area should be an important focus of the interagency consultation process as currently required by § 51.402 (c)(1)(i) and (c)(6) and § 93.105 (c)(1)(i) and (c)(6).

Option 2: Retain Network Model Performance Requirements in Existing Conformity Rule. This option would retain all of the eleven characteristics of network models that are required in the November 1993 conformity rule. For example, network models in these areas would continue to be required to meet performance-based standards such as capacity-sensitive assignment and reasonable agreement between travel times used in trip distribution and resulting from assignment. EPA continues to believe that these modeling attributes reflect the current consensus in the transportation and air quality planning professions on minimum acceptable modeling practices.

Option 3: Streamline Existing Modeling Attributes and Address Additional Attributes in Guidance. This option would streamline the existing conformity rule, but retain certain requirements that provide for minimum acceptable model performance.

The streamlined requirements would be as follows: (1) Network-based models must be validated against observed peak and off-peak ground counts for a base year that is not more than 10 years prior to the date of the conformity determination; (2) land use, population, employment, and other network-based modeling inputs must be based on the best available information and must be appropriate to the validation base year; (3) peak and off-peak travel demand and travel times must be provided, and a capacity-sensitive assignment methodology must be used; (4) the model(s) must use and document a logical correspondence between the assumed scenario of land development and use and the future transportation system for which emissions are being estimated; and (5) network-based models must be reasonably sensitive to trip-making changes due to changes in the cost, travel time, capacity, and quality of all travel choices, if the necessary information is available.

EPA would address the remaining attributes in modeling guidance that would be jointly issued and regularly updated by EPA and DOT. Conformity stakeholders would be involved in the development of this modeling guidance to encourage a wide exchange of ideas about current and available modeling practices. EPA believes that this process itself would ensure that the modeling guidance is a useful, effective tool in informing areas about available modeling improvements.

B. Adding Non-exempt Projects to the Plan/TIP Without Regional Analysis

1. Description of Proposal

This proposal would, under some circumstances, allow a transportation plan and TIP to be amended to include additional non-exempt projects without a full-scale regional emissions analysis based on network modeling. The alternate emissions analysis procedure would require the concurrence of the federal, state, and local air and transportation agencies. This flexibility would not become effective until EPA and DOT have completed their review and evaluation of alternate procedures that are suggested during the public comment period (see "Request for Information for Guidance," below) and made this documentation publicly available. This proposal would still require a conformity determination for the plan/TIP amendment, including public participation, interagency consultation, and other relevant requirements of the transportation conformity rule. This proposal would only change the rigor of the supporting regional emissions analysis.

Under the existing rule, every plan/TIP and plan/TIP amendment requires a conformity determination based on a regional emissions analysis that meets the requirements of § 51.452/§ 93.130. The regional emissions analysis, which includes projects in the plan/TIP and all other regionally significant projects in the nonattainment or maintenance area, is used to demonstrate that the budget test and/or emission reduction tests are satisfied. Under § 51.452, certain areas are required to use network modeling to perform this regional emissions analysis.

This proposal would allow less rigorous analysis to demonstrate that the plan/TIP as amended satisfies the budget test and/or emission reduction tests. Subsequent plan/TIP conformity

VOL 61 ISS 132 JL 9 1996 UMI

determinations based on full regional emissions analysis would, of course, include the recently added projects, because regional emissions analysis must include all regionally significant projects that are planned or underway. Any plan/TIP conformity determination based on less rigorous analysis would not be considered a conformity determination for the purposes of § 51.400/§ 93.104, "Frequency of Conformity Determinations," which require that conformity determinations be made no less frequently than every three years. The less rigorous analysis would not provide a complete consideration of projects in the transportation plan and TIP using the latest emissions projections and assumptions. The transportation plan and TIP would therefore have to be found to conform based on a full-scale regional emissions analysis (including network modeling, where required) at least every three years.

2. Rationale

EPA is proposing this change in response to stakeholder requests for this flexibility. Some stakeholders commented that it may be costly and resource-intensive to perform a full-scale regional emissions analysis to add a regionally significant project to a transportation plan and TIP. These stakeholders proposed that the conformity rule allow areas the flexibility to establish alternative procedures for regional emissions analysis that would demonstrate that an additional project, when considered with emissions projected for the conforming transportation plan and TIP, does not cause the plan/TIP to exceed the motor vehicle emissions budget and/or fail to satisfy the emission reduction tests. Stakeholders supporting this flexibility suggested that it is necessary only in extraordinary circumstances and would not be used on a routine basis. Other stakeholders expressed concern that such flexibility could be used to advance significant projects without the full scrutiny of the conformity process.

EPA agrees that there may be limited instances where the impact of regionally significant non-exempt projects on emissions from the currently conforming transportation plan and TIP could be determined without full-scale regional analysis, and that exceptional circumstances may arise where such flexibility is appropriate. However, this flexibility is to be exercised as an exception and not on a regular basis.

EPA would allow this flexibility to be used only after a review and evaluation of types of alternate procedures has been documented, because of the potential for this flexibility to undermine the integrity of the conformity process if improperly used. Conformity's purpose is to consider the long-term impacts of projects and to make transportation planning decisions within the context of all proposed projects, instead of on a project-by-project basis. In almost all cases, regional emissions impacts cannot be determined on a project-by-project basis or without considering the aggregate of projects in an area and the interactions among them. The conformity provisions were in part a response to the difficulty of assessing air quality impacts on a project-by-project basis. As a result, it is not clear what type of limited analysis would be appropriate and under what circumstances. Areas will need guidance to address these issues. This guidance will be provided in the review, evaluation, and documentation of alternate procedures that are suggested during the public comment period, through periodic updates of reasonable and available measures, and through the interagency consultation process.

Stakeholders proposed that the federal, state, and local transportation and air agencies should concur on each use of this flexibility. EPA agrees with such a concurrence requirement since there are not well-established, existing alternatives and because the transportation planning process and the conformity process should not be compromised if there is not agreement among all of the agencies that the existing circumstances warrant the use of this flexibility. As described in the conformity rule's consultation requirements, conflicts among state agencies or between state agencies and an MPO shall be escalated to the Governor if they cannot be resolved by the heads of the involved agencies.

EPA foresees instances where use of this flexibility would not be appropriate. For example, it would not be appropriate if planning assumptions have changed, or if other information indicates that the regional emissions analysis supporting the currently conforming transportation plan and TIP is not adequate to determine that the budget test and/or the emission reduction tests would be satisfied. It would also be inappropriate if the transportation plan and TIP amendment is not only adding projects, but deleting other projects and changing implementation dates in order to remain fiscally constrained. In this case, the plan/TIP amendment's scope would be too broad to justify a limited emissions analysis.

3. Request for Information for Guidance

EPA and DOT recognize that there may be some alternate procedures for determining the impact projects would have on regional transportation-related emissions that are more expeditious and less costly than a network-based analysis. As a result, EPA and DOT are requesting suggestions for procedures to add non-exempt projects to the plan/TIP without a complete network-based analysis. If documentation is available for these procedures, please provide it if possible.

Reasonable methods or approaches may be included in guidance. However, EPA and DOT believe that the flexibility for non-exempt projects (as described above) should not be finalized if reasonable alternate approaches have not been identified for determining the regional emissions impacts from individual transportation projects. Therefore, this flexibility would not be offered unless EPA and DOT receive comment that identifies such alternate methods or approaches.

Some stakeholders commented about the resources needed to perform a full-scale regional emissions analysis to add a regionally significant project. EPA and DOT are therefore requesting information in the following areas: (1) How often the need arises to add non-exempt projects between TIP update cycles; (2) the number of projects that may be delayed without this flexibility; (3) the full-scale network modeling process currently used for the regional emissions analysis to support conformity determinations (including number of model runs, number of emissions model runs, etc.); (4) the difference in effort required to add a single or limited number of projects as compared to a full-scale conformity analysis; and (5) which agencies are responsible for socioeconomic data development, travel modeling, and emissions modeling, including the percentage of each agency's involvement in conducting the conformity analysis.

VII. Consequences of SIP Disapproval

A. Description of Proposal

In today's action EPA proposes as a primary alternative regulatory language that specifies that following a 120-day grace period after final EPA disapproval of a control strategy SIP or maintenance plan without a protective finding, the only transportation projects that could be approved (and thus grandfathered from future conformity lapses) would be those included in the first three years of the currently conforming transportation plan and TIP (and exempt projects). No new transportation plans, TIPs, plan/TIP amendments or projects (or projects in the out-years of the transportation plan and TIP) could be approved. If any single phase of a transportation project is included in the first three years of the transportation plan/TIP, all phases of the project would be able to proceed following a disapproval, provided that all phases of the project were included in the transportation plan/TIP conformity analysis. Conformity determinations are required to analyze entire projects rather than individual phases.

The "freeze" on new transportation plans, TIPs, and projects would be removed once an area submits another control strategy SIP or maintenance plan to replace the disapproved SIP, provided EPA does not find the motor vehicle emissions budgets inadequate during its 45-day review period. If such a replacement SIP does not become applicable to conformity determinations by the time Clean Air Act highway sanctions are imposed (two years after EPA's final disapproval), conformity would lapse, and no new project- level conformity determinations could be made, even for projects in the first three years of the currently conforming plan and TIP.

During the 120-day grace period, transportation plans, TIPs, and projects could be found to conform using the disapproved budgets (if no replacement SIP applies for transportation conformity purposes). This 120-day grace period is intended to allow areas to complete conformity determinations that were in process at the time of EPA's final disapproval.

Under both today's proposal and the existing conformity rule, consequences would occur following any EPA final disapproval action on a control strategy SIP or maintenance plan without a protective finding, even if the disapproval is limited or partial. The motor vehicle emissions budget is sufficient only if the SIP as a whole satisfies the Clean Air Act requirements for reasonable further progress, attainment, or maintenance. If one part of a SIP is disapproved without a protective finding (even if that part does not address mobile sources), then there is no overall strategy for reasonable further progress, attainment, or maintenance, and it is not possible to determine whether consistency with the motor vehicle emissions budget will result in a level of emissions consistent with reasonable further progress, attainment, or maintenance.

B. Request for Comment

Pending the opportunity to consider thoughtful comments from all interested parties, EPA is proposing today as a primary alternative the regulatory text discussed above because EPA believes it balances the conflicting goals articulated by stakeholders. EPA requests comment on how this proposal addresses stakeholder issues and concerns identified below. EPA also requests comment on whether other approaches are preferable, such as aligning the conformity lapse timeframe with the highway sanctions time clocks for SIP disapprovals without protective findings to make this process consistent with the conformity lapse process for other SIP failures. Alternatives to the primary option EPA is proposing today are described below. Depending on the public comment received, EPA may finalize one of these alternative approaches, instead of the primary alternative.

C. Discussion of Issue

Conformity stakeholders have raised the issue of the appropriate conformity consequences when EPA disapproves a control strategy SIP without making a protective finding. EPA disapproval of a SIP without a protective finding is essentially a finding that the SIP does not have identified strategies to reach attainment (or reasonable further progress or maintenance), and the motor vehicle emissions budget is not adequate to satisfy Clean Air Act requirements. Final EPA SIP disapprovals require full notice-and-comment rulemaking.

The November 1993 transportation conformity rule states that after a 120-day grace period following final EPA SIP disapproval, no new transportation plans, TIPs, or projects may be approved. Only previously approved projects ("grandfathered" projects) and exempt projects may proceed. In other words, transportation plan/TIP conformity lapses. The lapse is removed when a new control strategy SIP or maintenance plan (including motor vehicle emissions budgets) is submitted to EPA.

Some stakeholders have suggested that conformity should never lapse as a result of a SIP failure before Clean Air Act highway sanctions are imposed, because highway sanctions (not transportation conformity) are the Clean Air Act mechanism for addressing SIP failures. To a considerable degree EPA agrees with this reasoning, and EPA has amended the conformity rule to align conformity lapse with highway sanctions imposition in the case of all SIP failures except disapproval without a protective finding.

However, there are substantive conformity issues with respect to SIP disapproval without a protective finding. If an area does not have sufficient adopted control strategies to attain the standards or make reasonable further progress towards attainment, should the area be committing funds to new transportation projects? If so, on what basis? Should it proceed with projects that already have been planned and upon which businesses and the public may already be relying in their own future plans, but stop creating new plans and expectations? In these cases, how would an area demonstrate that the transportation plan, TIP, or project would not increase the frequency or severity of existing violations, or contribute to new violations, or delay attainment?

These issues are particularly important in the context of the conformity flexibilities in today's proposal. As described in sections II. and III. of today's action, EPA is proposing that consistency with submitted SIP budgets would become the sole emissions-related conformity test for transportation plans and TIPs, even before EPA approves the SIP and confirms that consistency with its motor vehicle emissions budget is sufficient to achieve reasonable further progress, attainment, or maintenance. Some stakeholders are concerned that because a significant amount of time is likely to elapse between initial submission of the control strategy SIP and any subsequent EPA disapproval, a significant number of transportation projects could be found to conform (and thus grandfathered) on the basis of an ultimately unacceptable motor vehicle emissions budget before final EPA disapproval actually occurs. These stakeholders are concerned about irreversible commitments that might make Clean Air Act requirements increasingly difficult to meet.

Other stakeholders emphasize that the disruption to the ongoing transportation planning process should be minimized. They believe that people and businesses begin to rely on projects in an approved plan and TIP even though project-level conformity findings have not been made, and conformity lapse immediately upon EPA's final disapproval is unduly disruptive.

D. Discussion of Options

Stakeholders have identified a number of options to address the consequences of EPA SIP disapproval without a protective finding. These options address the concerns described

VOL 61 ISS 132 JUL 9 1996 UMI

above to varying degrees. EPA is interested in receiving comments on the alternative options described below and may finalize one of these options, instead of the primary option described above.

1. No Project Approvals (Conformity Lapse) Beginning Immediately Upon EPA Final Disapproval Without a Protective Finding

Some stakeholders have suggested that no more projects should be approved (grandfathered) once EPA issues a final disapproval. However, these stakeholders generally accept that projects found to conform between submission and final disapproval should not be halted, even once the SIP has been disapproved. This option would minimize commitments that could ultimately be inconsistent with attainment or maintenance, until another SIP that would be a better basis for determining conformity is submitted to EPA.

2. Retain Existing Conformity Rule

As described above, the November 1993 transportation conformity rule allows transportation plans, TIPs, and projects to be approved for 120 days following EPA's final disapproval of a SIP without a protective finding. Following the 120-day grace period, no transportation plans, TIPs, or projects can be approved. This approach is similar to option 1 above, but the 120-day grace period helps reduce disruption to approvals that are underway at the time of EPA's final disapproval.

3. Allow Approval of Projects in the First Two Years of the Transportation Plan/TIP

Some stakeholders advocate allowing previously planned transportation projects to be approved and grandfathered, but not approving new transportation plans, TIPs, or projects until a new SIP has been submitted to EPA. For example, some stakeholders endorsed a proposal that no transportation plans, TIPs, or amendments should be found to conform after EPA's final disapproval of a SIP, and only those projects scheduled for implementation during the first two years of the TIP, and projects found by the MPO and the state air agency to contribute to emissions reductions, should be allowed to proceed.

This option is similar to that being proposed by EPA today as the primary alternative. This option prevents new commitments from being made, but allows projects previously planned to occur in the short term to proceed, in order to minimize disruption to the transportation planning process.

4. No Consequences Until Clean Air Act Highway Sanctions Are Applied

Other stakeholders advocate allowing new transportation plans, TIPs, and projects to be approved and grandfathered using the build/no-build test or the disapproved motor vehicle emissions budget until Clean Air Act highway sanctions are imposed. Highway sanctions under section 179 would be imposed two years following EPA's final disapproval unless the deficiency leading to the disapproval has been corrected prior to that time. These stakeholders believe that it is more consistent with the Clean Air Act to have Clean Air Act section 179 highway funding sanctions being the trigger for consequences of a SIP disapproval. This change would also simplify the conformity rule by having all conformity lapses associated with SIP failures occur when highway sanctions are imposed.

E. Rationale for Primary Option Being Proposed

EPA believes that the primary option it is proposing today (as described in section VII.A.) best balances the concerns expressed by stakeholders. EPA is proposing to allow projects in the first three years of the transportation plan/TIP to proceed, instead of those in the first two years, as suggested in option 3. Some conformity stakeholders expressed concern that restricting the "grandfathering" to the first two years of the transportation plan/TIP would be unduly disruptive to the transportation planning process, especially because the TIP normally addresses a minimum of three years. EPA believes that the primary option provides a better balance between the competing objectives of minimizing new commitments and minimizing disruption to the transportation planning process.

VIII. Mismatch in SIP/Transportation Plan Timeframe

A. Description of the Issue

The existing transportation conformity rule requires the conformity of transportation plans and TIPs to be demonstrated for the entire 20-year timeframe of the transportation plan. However, control strategy SIPs and maintenance plans generally address a significantly shorter timeframe. For example, attainment demonstrations are only required to address the years through the attainment year, and maintenance plans are only required to initially address a 10-year period (with a provision for a second 10-year appraisal).

For the years in the timeframe of the transportation plan that are not addressed specifically by a SIP, the existing conformity rule requires emissions to be consistent with the SIP motor vehicle emissions budget(s) for the last year for which the SIP defines control strategies and budgets. For example, before a maintenance plan has been submitted, emissions predicted for the years after the attainment year must be consistent with the attainment year budget(s). Emissions in years after the first maintenance plan must be consistent with the motor vehicle emissions budget(s) for the last year of that maintenance plan.

Several conformity implementers have commented that there should be a more flexible conformity test for the years that are not specifically addressed by the SIP. Conformity implementers have pointed out several difficulties caused by the existing transportation conformity rule's requirements for the "out-years" of the transportation plan.

First, there are generally no adopted control measures to address VMT growth in years that are not specifically addressed by the SIP. As a result, it becomes the burden of the conformity process—and potentially the MPO alone—to address long-term growth issues and offset emissions increases. Placing the burden on the MPO to offset emissions from long-term growth can be problematic because MPOs generally lack the authority to adopt and enforce areawide emission controls. In areas such as PM_{10} areas this problem is particularly acute, because motor-vehicle-related PM_{10} emissions are directly related to VMT. Technological improvements in the motor vehicle fleet over time do not significantly reduce motor vehicle PM_{10} emissions related to reentrained dust.

In addition, the existing conformity rule's requirement to use the budget established for the last year of the maintenance plan for all subsequent years poses special difficulties. In many areas, the motor vehicle emissions budget will decline over the 10 years of the first maintenance plan. This is generally because newer, cleaner cars will be added to the motor vehicle fleet as older cars are retired, so the emissions per VMT decrease. At the same time, emissions from stationary sources are often related to economic and population growth, and are thus projected to increase over time. As a result, many areas demonstrate maintenance of air quality standards with declining motor vehicle emissions budgets and increasing stationary source emissions.

However, over time the effect of fleet turnover decreases, because all cars in the fleet eventually meet applicable standards. In addition, increases in VMT may begin to offset the emissions decreases resulting from fleet turnover. Thus, motor vehicle emissions generally are projected to increase in the years after the first 10-year maintenance plan, and the motor vehicle emissions budget established for the last year of that maintenance plan may in fact represent a low point in the motor vehicle emissions projected for the 20-year maintenance period. Requiring motor vehicle emissions in the years after the first maintenance plan to be consistent with the budget for the last year of that maintenance plan may be difficult without additional control measures for stationary or mobile sources.

B. Request for Comment

EPA is not proposing specific regulatory text to address this "mismatch" issue at this time. However, EPA requests comment on three options, and EPA proposes to include one of the options in the regulatory text of the final rule.

1. Existing Transportation Conformity Rule

The first option is to continue the existing conformity rule's requirements. According to the Clean Air Act, one of the purposes of conformity is to ensure that transportation improvements do not cause or contribute to new violations. The motor vehicle emissions budget for the attainment year represents the level of motor vehicle emissions that is consistent with attainment of the standard. Therefore, keeping motor vehicle emissions in future years equal to or less than that budget should ensure that motor vehicles will not cause or contribute to a new violation. If motor vehicle emissions increase above levels that the SIP identifies as necessary for attainment, it may be difficult to state that a new violation would not result, as conformity requires.

Regarding the comments that the existing conformity rule inappropriately places the burden on the MPO to address long-term growth issues, it is in fact an important goal of conformity to focus attention on the long-term impacts of transportation investments and policies. To the extent that an area has not reconciled the impacts of growth and transportation policy with air quality goals, it is appropriate that conformity provide the forum and impetus for state and local governments to do so. Although the MPO may not itself have the authority to adopt and enforce necessary measures, conformity is determined through an interagency process which includes the state and local governments which do have that authority. It is appropriate that the long-term growth issues affecting a local area be addressed through the cooperation of state and local air and transportation agencies. The fact that the MPO has legal responsibility to determine conformity does not mean it alone must develop and implement the additional control measures that are necessary. The state also shares an interest in developing conforming metropolitan transportation plans and TIPs and would be expected to share responsibility for facilitating conformity.

Maintaining the existing conformity rule's requirements regarding the applicability of motor vehicle emissions budgets for future years would also encourage the SIP process to address longer timeframes, which is ultimately the preferable solution. Doing so should avoid costs and burdens of not addressing long-term issues now. The difficulties associated with demonstrating conformity in years that are not addressed by the SIP would be reduced if the SIP established acceptable motor vehicle emission levels for such future years. This has already occurred in some areas.

The existing conformity rule already has some provisions to address the difficulties associated with using the budget for the last year of the maintenance plan for subsequent years. For example, the maintenance plan could establish larger motor vehicle emissions budgets for years after the last year of the maintenance plan by projecting motor vehicle emissions and emissions from other source categories in future years. Provided the projected total emissions are less than the total emissions in a previous year with clean data, the motor vehicle emissions projections could be used to establish a motor vehicle emissions budget. If the projected total emissions are less than the total emissions in a previous year with clean data, the difference ("safety margin") could also be applied to the motor vehicle emissions budget.

2. Emission Reduction Tests

A second option would be to require the emission reduction tests ("build/no-build test" and less-than-1990 test) for demonstrating conformity in years not addressed by submitted or approved control strategy SIPs or maintenance plans. Demonstrating conformity for years later than those addressed by SIPs is in some ways analogous to the situation of demonstrating conformity for years before SIPs are submitted, that is, no budget has been specifically developed for assessing conformity in such years. The Clean Air Act allows for "contribution to annual emission reductions" to serve as the test of conformity in the latter case, so by extension, it could be argued that such a test is also appropriate for years later than those addressed by SIPs. The Clean Air Act requirement for consistency with emissions in SIPs could be argued to apply only for those years that are specifically addressed by the SIP.

Although this option provides more flexibility than the existing rule for emissions increases due to population and economic growth, it has several disadvantages. First, satisfying the emission reduction tests would not ensure that motor vehicle emissions are at a level consistent with attainment or maintenance. Although the conformity test would ensure that motor vehicle emissions are no greater than they would have been without further transportation improvements, the focus is not on attainment or maintenance of air quality standards. As a result, the impact of long-term growth on attainment and maintenance will not necessarily be addressed.

The Clean Air Act requires a second 10-year maintenance plan to be submitted eight years after an area's redesignation to attainment, so the SIP process in redesignated areas will ultimately address the emissions in the years after the first 10-year maintenance plan. In the case of areas that have not yet been redesignated, however, allowing motor vehicle emissions to increase above the attainment year budget may make it increasingly difficult to develop a SIP demonstrating maintenance, and thus may delay or complicate redesignation of such areas to attainment.

Finally, conformity implementers and other interested parties have commented that the emission reduction tests are not meaningful indicators of air quality impacts, particularly because transportation modeling and emission factor modeling are often not sufficiently precise to determine significant differences between "build" and "no-build" scenarios. Experience to date has found that the emission reduction tests are frustrating and difficult to explain because they do not address the performance-oriented goals of attainment and maintenance. Although practical alternatives have not been identified for use during the period before SIPs have been developed, for years later than those addressed by SIPs,

VOL
61
ISS
1
32
JL
9
1996
UMI

the previously established motor vehicle emissions budgets are available.

3. Default Motor Vehicle Emissions Budget

A third option is to maintain the existing rule's requirements for the years after the attainment deadline and before a maintenance plan has been submitted, but to allow a default motor vehicle emissions budget for the years outside the maintenance plan's timeframe. Instead of requiring the motor vehicle emissions budget for the last year of the maintenance plan to continue to apply for subsequent years, the motor vehicle emissions budget for subsequent years could be the motor vehicle emissions in the year of redesignation.

Like the emission reduction tests option, this option would not ensure that motor vehicle emissions are consistent with maintenance of air quality standards. Without considering emissions from sources other than motor vehicles, there is no assurance that the motor vehicle emissions in the year of redesignation will also be consistent with continued maintenance of the standard in future years. However, this problem could be at least somewhat reduced with additional features to this option. For example, the rule could require the default budget to be established in the maintenance plan and accompanied by some type of demonstration that when the default motor vehicle emissions budget is considered together with expected growth in area and stationary source emissions, the standard will be maintained.

The default emissions budget option may be preferable to the emission reduction tests option for the years after those addressed by maintenance plans for two reasons. First, conformity implementers have expressed a preference for budget tests instead of the more abstract emission reduction tests. Second, unlike the emission reduction tests option, this option would provide a cap on motor vehicle emissions growth. Although the cap is not necessarily tied to maintenance, it does not allow emissions due to population and economic growth to revert back to 1990 levels, as the emission reduction tests allow. As a result, the conformity process could still provide significant protection for the public while providing the impetus for serious consideration of long-term growth effects.

Unlike the emission reduction tests option, this option would maintain the existing rule's requirements (i.e., the attainment budget would continue to apply for the years after the attainment deadline) until a maintenance plan is submitted. This will help prevent delays in attainment and/or redesignation.

Allowing conformity to be demonstrated using a default emissions budget that is not part of an overall maintenance strategy that addresses all emissions sources could be considered inconsistent with the Clean Air Act section 176(c) and the conformity rule's other interpretations of those provisions. However, it is also possible to argue that such an allowance is reasonable and defensible in the special circumstance of demonstrating conformity for years that have not yet been addressed by the maintenance plan.

For example, the legislative history of the Clean Air Act reveals a specific choice to require maintenance plans to address 10-year increments rather than an entire 20-year period. It could therefore be argued that it is not conformity's responsibility to ensure maintenance over a 20-year period; provided the transportation community keeps motor vehicle emissions constrained to some level previously associated with maintenance, future maintenance plans could address emissions from other sources and revise motor vehicle emissions budgets as necessary for an overall maintenance strategy. It could also be argued that the Clean Air Act's Prevention of Significant Deterioration requirements are intended to address growth in non-mobile source emissions in years not addressed by maintenance plans, and that EPA can issue SIP calls if growth in non-mobile source emissions threatens maintenance.

IX. Public Participation

A. Description of the Proposal

This proposal would clarify the timeframe within which information must be provided for public access under the public participation requirements in the existing conformity rule. The proposal would specify that affected agencies must provide public access to information considered by the agency in making transportation plan and TIP conformity determinations at the beginning of the designated public comment period and prior to taking formal action on conformity determinations. This proposal would define the information to include all technical and policy information considered by the agency in supporting conformity determinations.

This proposal would continue to reference and be consistent with DOT's metropolitan planning regulation (23 CFR 450.316(b)), which, among other things, requires at least a 30-day comment period in serious and above nonattainment areas. Agencies affected by this proposal would be referred to DOT's January 1995 guidance, "Public Involvement and Questions and Answers" (60 FR 5508–5512), for specific identification of the types of information to be provided to the public. EPA expects that affected agencies would refer to this guidance in providing information for public comment. The guidance specifies input assumptions such as population projections, land use projections, fares, tolls, levels of service, the structure and specifications of travel demand and other evaluation tools.

Since information supporting conformity determinations is stored in many forms, EPA interprets that this proposal's requirement would apply to information in written, graphic, and electronic form. Under this proposal, any charges imposed by affected agencies for public inspection and copying would be required to be consistent with the fee schedule in 49 CFR 7.95, which EPA believes would ensure reasonable public access to the information. EPA also notes that under the DOT metropolitan planning regulations, each MPO conducts public involvement under its own custom-tailored public involvement procedures. These procedures describe how the MPO intends to meet the performance standards of the conformity rule and metropolitan planning regulations.

B. Discussion of Proposal

EPA is proposing this clarification to address stakeholder concerns that public participation is hindered when public access to information relied on for conformity determinations is not provided in enough time to allow for adequate public involvement. EPA agrees that public access to all of the information considered by the agency at the beginning of the public comment period is critical to ensuring effective public participation in the conformity process.

In its "Public Involvement and Questions and Answers" guidance, DOT emphasizes that an effective public involvement process should provide for an open exchange of information and ideas between the public and transportation decisionmakers, and as an overall objective, an area's public involvement process should be proactive, provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement. EPA believes that this proposal would not only be consistent with these objectives, but that it would further the purposes emphasized in the guidance.

EPA does not believe that this proposal would be burdensome for affected agencies since it would only require that agencies provide public access to information already in their possession. This proposal would not require the affected agencies to edit, summarize existing files, or to compile new files beyond those already prepared as a part of the plan and TIP development process.

X. Interagency Consultation

This proposal includes several new provisions which require interagency consultation, including the choice of conformity tests and modeling methodology for rural areas; the establishment of a "default budget" in clean data areas; and the addition of non-exempt projects to the transportation plan/TIP without full regional emissions analysis. EPA is not proposing to amend § 51.402/§ 93.105 ("Consultation") to add these consultation needs to the list of specific processes that must be included in the conformity SIP's consultation procedures. EPA believes that it is clear that consultation procedures must be developed in order to use these new provisions. As a result, EPA does not believe that the complexity resulting from adding items to § 51.402 is justified. Furthermore, the proposed provisions involving additional consultation procedures are for the most part optional flexibilities for unique situations, so consultation procedures to implement these flexibilities will not be relevant for all conformity SIPs.

However, EPA emphasizes that interagency consultation on these specific provisions is a necessary part of their implementation. EPA recommends that in order to facilitate future conformity determinations, areas should develop appropriate consultation procedures as soon as possible if they expect to use these provisions.

XI. Streamlining and Clarification

This proposal includes numerous wording and organizational changes that would streamline and clarify the existing transportation conformity rule. Although these changes affect most sections of the existing transportation conformity rule, highlights are discussed below.

A. Frequency of Conformity Determinations

1. Three-year Requirement

This proposal would clarify that both the MPO and DOT must redetermine conformity of transportation plans/TIPs within three years of DOT's transportation plan/TIP conformity determination. The existing transportation conformity rule is not explicit regarding the start of the three-year clock and which agencies' conformity determinations must be completed before expiration of that clock. This clarification is consistent with implementation practice to date and would help reduce confusion and ambiguity for future implementers.

2. Triggers for Redetermination

This proposal would streamline the paragraph that describes which events trigger an 18-month clock for redetermination of conformity. This proposal would also move § 51.448(a)(1)/§ 93.128(a)(1), as amended on November 14, 1995, so that the requirement to determine conformity within 18 months of the initial submission of a control strategy SIP or maintenance plan is in the frequency section with the other triggers for conformity redetermination. Although the substance of the requirement is unchanged, the restructuring improves the flow and clarity of the rule.

The relocation of § 51.448(a)(1) highlights the fact that a conformity determination is required within 18 months of both the initial submission and final EPA approval of a control strategy SIP or maintenance plan. Both submission and approval trigger a redetermination of conformity, because it is not uncommon for the SIP to change between initial submission and final approval. If conformity was determined to the initial SIP submission and the SIP did not change between initial submission and final approval, the requirement to determine conformity after final approval could be satisfied without new regional emissions analysis.

3. Requirement for TIP Conformity Within Six Months of Transportation Plan Conformity

This proposal would clarify existing § 51.400(a)(3)/§ 93.104(a)(3) by specifying that the TIP must be determined by DOT to conform within six months of DOT's conformity determination on a new or revised transportation plan. The existing requirement starts the six-month clock with the date of adoption of the plan.

EPA received comment suggesting that the six-month limit between transportation plan and TIP conformity determinations is not necessary and should be removed. EPA believes that this requirement should be retained because of ISTEA's (and hence, conformity's) expectation that the TIP will flow from, and be consistent with, the transportation plan. The conformity rule requires TIP conformity to be based on a consideration of all projects in the 20-year timeframe of the transportation plan. As a result, changes to the transportation plan should be reflected in the TIP's conformity determination in a timely manner.

EPA expects that in almost all cases, the plan and TIP will be developed concurrently and one regional emissions analysis will be performed to support both conformity determinations. In cases where the transportation plan and TIP are not developed concurrently, EPA believes the six-month requirement is critical to ensure that, given the changes to the transportation plan, projects from the TIP would still result in a level of regional emissions in 20 years that would not cause a new violation, worsen existing violations, or delay timely attainment.

B. Criteria and Procedures for Determining Conformity of Transportation Plans, Programs, and Projects: General

This proposal would consolidate several parts of the existing transportation conformity rule into § 51.410/§ 93.109 in order to create a section that provides a comprehensive overview of when and in what circumstances the budget test, emission reduction tests, and hot-spot tests are required. The section would have separate paragraphs for ozone, CO, PM_{10}, and NO_2 areas and isolated rural areas so that the rule is easier to use and so that the conformity implications of Clean Air Act requirements and classifications that are unique to each pollutant are specifically addressed.

This consolidation would allow the elimination of existing § 51.464/§ 93.136 ("Special provisions for nonattainment areas which are not required to demonstrate reasonable further progress and attainment") and § 51.452(d)/§ 93.130(d) ("Projects not from a conforming plan and TIP in isolated rural nonattainment and maintenance areas"). The provisions for special situations would be discussed in the same place as provisions for other areas, thus making these provisions easier to locate and improving the clarity and user-friendliness of the rule.

VOL
61
ISS
1
3
2
JL
9
1996
UMI

As discussed in section II., the existing rule's classification system of "Phase II interim period," "transitional period," and "control strategy period" would be eliminated.

C. Latest Planning Assumptions

This proposal would clarify that conformity determinations must use the latest existing information regarding the effectiveness of all relevant SIP control measures, including TCMs, that have already been implemented. This would reduce confusion regarding what emission reduction credit should be assumed from vehicle inspection and maintenance programs that are included in approved SIPs and that are already being implemented.

D. Consultation Criterion

This proposal would clarify § 51.416/§ 93.112 ("Criteria and procedures: Consultation"), which is the section requiring conformity to be determined according to the consultation procedures of the rule, the conformity SIP, and DOT's planning regulations.

This proposal would remove the reference to the MPO so that it is clear that rural areas must also abide by interagency and public consultation requirements. In addition, this proposal removes ambiguous language that could imply that areas are not required to comply with public participation procedures after the conformity SIP is approved.

E. Hot-spot Tests

This proposal would consolidate and streamline existing §§ 51.424 and 51.434 (§§ 93.116 and 93.121), which address localized CO and PM_{10} violations (hot spots). The two sections would be combined, and paragraph (c) of each of these sections would be moved to the section addressing procedures for determining localized CO and PM_{10} concentrations (hot-spot analysis). This would reduce confusion regarding the distinction between the two hot-spot tests and streamline the discussion of both the conformity tests and the methodological requirements.

F. Compliance With PM_{10} Control Measures

This proposal would clarify the existing requirement of § 51.426/§ 93.117 for SIP PM_{10} control measures to be included in the project's final plans, specifications, and estimates. Because the final plans, specifications, and estimates are generally not developed until after the project's conformity determination, it is problematic for the existing rule to make the plans, specifications, and estimates a condition of the project-level conformity determination. This proposal would require the conformity determination to include a written commitment to include SIP PM_{10} control measures in the project's plans, specifications, and estimates. Such commitments would be enforceable, as required by existing § 51.458/§ 93.133 ("Enforceability of design concept and scope and project-level mitigation and control measures").

G. Budget Test

This proposal would combine existing §§ 51.428–51.432 (§§ 93.118–93.120) into one streamlined section that describes the budget test for the transportation plan, TIP, and project not from a conforming plan and TIP. As described in section III. of this preamble, the implementation of the budget test and the years for which budgets apply would be clarified.

H. Emission Reduction Tests

This proposal would combine existing §§ 51.436–51.446 (§§ 93.122–93.127), which describe the tests for emission reductions in the interim period for ozone, CO, PM_{10}, and NO_2 areas, into one streamlined section that addresses all pollutants and the transportation plan, TIP, and project not from a conforming plan and TIP. This would avoid the repetition of the definitions of the "Baseline" and "Action" scenarios and improve the readability of the transportation conformity rule.

This proposal would provide that the first analysis year shall be no more than five years beyond the year in which the conformity determination is being made. The existing conformity rule requires the first analysis year to be 1995 in CO nonattainment areas and 1996 in ozone nonattainment areas. This requirement is obviously no longer appropriate, because conformity is not intended to be assessed retrospectively.

This proposal would also modify the definition of the "Baseline" scenario so that only projects that come from the first year of the previously conforming transportation plan/TIP are required to be included in the "Baseline" scenario. The existing conformity rule requires projects from the first three years of the previously conforming transportation plan/TIP to be included in the "Baseline" scenario. The proposed modification is intended to correct the perverse incentive that the existing requirement creates for areas to withhold projects with air quality benefits. Some stakeholders have commented that because the air quality benefits of projects in the second and third year of the TIP are included in the "Baseline" after the initial TIP conformity determination, areas are holding back some projects for use in future "Action"/"Baseline" comparisons.

I. Transition From the Interim Period to the Control Strategy Period

Because the proposal would no longer use the terms "interim period" and "control strategy period," this proposal would consolidate and streamline existing § 51.448/§ 93.128 and better integrate its provisions into the rest of the transportation conformity rule.

Under the proposal, this section would address only the conformity consequences of various SIP failures. This section would streamline the existing requirements regarding conformity lapse resulting from SIP failures, as amended August 7, 1995, and November 14, 1995. The term "protective finding" would be included in the definitions section in order to decrease the wordiness of the requirements and improve the readability of the rule.

Some of the existing requirements of § 51.448 would be incorporated in the frequency section, the general overview of the criteria and procedures, and the budget test. Existing paragraphs (e) through (i) would be eliminated. Existing § 51.448(e) requires consultation on individual capacity-increasing projects in areas that have not yet submitted control strategy SIPs. Because all areas that are already required to submit control strategy SIPs have made such submissions, EPA believes that the requirements of paragraph (e) are no longer necessary.

Existing § 51.448(f) describes conditions under which new regional emissions analysis is not necessary in order to determine conformity to a newly submitted control strategy SIP. EPA continues to believe that new regional emissions analysis would not be necessary under the conditions described in paragraph (f). However, EPA does not believe that this provision needs to be included in the regulatory text, because the provision is not commonly used and EPA believes the provision is sufficiently well understood.

Existing paragraphs 51.448 (g) through (i) are no longer relevant given the other changes to the transportation conformity rule proposed in this notice.

J. Procedures for Determining Regional Transportation-Related Emissions

This proposal would generally streamline and clarify existing § 51.452/§ 93.130. Some of the clarifications are highlighted below.

1. Credit for Delayed Measures

This proposal would clarify that if TCMs or any other measures in the approved SIP are delayed beyond the scheduled date, emission reduction credit may not be included in the emissions analysis until implementation is assured. This clarification would ensure that the requirements for latest planning assumptions and restrictions on assuming credit for regulatory measures are logically and consistently applied. As described in the discussion of the clarification to the "Latest planning assumptions" section, broadening discussion of TCMs to include other SIP measures would reduce confusion regarding emission reduction credit for vehicle inspection and maintenance programs.

2. Credit for Future Measures

This proposal would streamline and clarify the conditions under which emission reduction credit from future regulatory measures could be assumed. In addition, the proposal would add language regarding control measures that do not need a regulation in order to be implemented, but are not included in the transportation plan/TIP or the SIP. This language is intended to address measures such as increased street sweeping or street sanding specifications, which are external to the usual transportation planning process and which require some form of commitment that may not be explicitly regulatory or included in the SIP.

This proposal would allow emission reduction credit from such measures to be assumed if the conformity determination includes written commitments to implementation of the measures by appropriate entities (e.g., government agencies, private project sponsors). The conformity SIP would have to provide that written commitments that are included in conformity determinations are enforceable under the SIP. This language regarding enforceability is similar to that in existing § 51.458/§ 93.133 ("Enforceability of design concept and scope and project-level mitigation and control measures") and that included in the general conformity rule (58 FR 63214, November 30, 1993).

The proposed additional language would reduce confusion regarding these types of control measures and would allow more explicit flexibility for these measures to be developed and credited in the conformity process. The proposal would require written commitments to be included as part of the conformity determination, but would not require the commitments to be specifically included in the SIP. By making such commitments enforceable under the SIP as a general matter, the SIP would not have to be revised to include each specific commitment.

The proposal would also allow regional emissions analyses to include emission reductions from projects, programs, or activities that are committed to in the control strategy SIP submission or the maintenance plan submission, similar to the existing conformity rule's § 51.452(a)(4). Consistent with EPA's SIP policy, SIP commitments must include a demonstration that the agency making the commitment has authority to implement the measure and that adequate personnel and funding are available for implementation.

3. Highway Performance Monitoring System (HPMS)

This proposal would clarify existing § 51.452(b)(2)/§ 93.130(b)(2) to specify that although HPMS estimates of VMT shall be considered the primary measure of VMT in certain cases, locally developed count-based programs and other variations from the procedure described in the conformity rule are permitted subject to the interagency consultation process. This paragraph applies to serious, severe, and extreme ozone nonattainment areas and serious CO nonattainment areas with an urbanized area population over than 200,000.

In its experience implementing the transportation conformity rule since 1993, EPA has received several questions regarding what should be used as the measure of VMT in areas that are not serious or above ozone or CO areas. These areas may use HPMS (including the factoring procedure described in existing § 51.452(b)(2)/§ 93.130(b)(2)) or other locally developed programs and procedures, subject to the interagency consultation process.

4. Reliance on Previous Regional Emissions Analysis

This proposal would consolidate in the section on procedures for regional emissions analysis the discussion of circumstances under which new regional emissions analysis may not be necessary. This discussion is currently included in the description of the budget test for TIPs and projects not from a conforming plan and TIP (§ 51.430/§ 93.119 and § 51.432/§ 93.120). This change would streamline these budget test sections and allow a simpler discussion of what must be demonstrated in order to satisfy the budget test.

K. Procedures for Determining Localized CO and PM_{10} Concentrations (Hot-spot Analysis)

This proposal would restructure the procedural requirements for hot-spot analysis in order to clarify that the hot-spot tests should be satisfied using EPA "Guideline" models in specified cases and in other cases may be satisfied using other quantitative or qualitative methods. This proposal would retain the existing rule's description of what projects should have hot-spot analysis according to EPA's "Guideline" models, but would clarify that other methods may be agreed upon through the interagency consultation process and with the approval of the EPA Regional Administrator.

EPA is willing to consider methods that identify different thresholds for determining which projects would require EPA "Guideline" models. For example, although the existing rule requires all projects affecting intersections at Level-of-Service D, E, or F to be quantitatively modeled using EPA "Guideline" models, an area may develop other thresholds for quantitative analysis based on delay times, traffic volume, queue lengths, background CO levels, and/or receptor locations. EPA will consider alternative methods for thresholds provided they are sufficient to determine that projects will not cause or contribute to new CO violations or increase the frequency or severity of existing CO violations (as described by the hot-spot criterion).

In addition, if an individual project affects multiple intersections, EPA is willing to approve procedures that require quantitative modeling initially only for those intersections with the greatest potential for CO violations. If quantitative modeling of those intersections does not predict CO violations, the other intersections affected by the project would not have to be quantitatively modeled.

L. Enforceability of Design Concept and Scope and Project-Level Mitigation and Control Measures

This proposal would clarify existing § 51.458/§ 93.133 by stating that a waiver of mitigation measures is subject to the conformity rule's public participation requirements for project-level conformity determinations. The conformity rule requires public involvement in conformity determinations for projects where otherwise required by law (e.g., the National Environmental Policy Act (NEPA)). This clarification is consistent with EPA's original intent for a waiver of mitigation measures to be permitted

VOL 61 ISS 132 JL 9 1996 UMI

through a process similar to the original conformity determination. This clarification is in response to the May 26, 1994, Petition for Reconsideration by the Environmental Defense Fund, the Natural Resources Defense Council, and the Sierra Club Legal Defense Fund.

M. Exempt Projects

This proposal would clarify Table 2 of existing § 51.460/§ 93.134 by specifying that the advance land acquisitions that are exempt are those emergency/hardship acquisitions provided for by 23 CFR 712.204(d).

As described in the preamble to the November 1993 conformity rule (58 FR 62213), the advance land acquisitions referred to in Table 2 are those "parcels that are acquired to protect a property from imminent development and increased costs which would tend to limit a choice of transportation alternatives, or are acquired to alleviate particular hardship to a property owner at his or her request. This is only allowed in emergency or extraordinary cases, and only after the state department of transportation has given official notice to the public that a preferred highway or transit location has been selected, held a public hearing, or provided an opportunity for a public hearing."

This proposal would make this intention clearer in the rule by providing the specific citation that enables this type of hardship acquisition and protective buying.

XII. TCM Flexibility

During the 1995 spring stakeholder meetings, EPA made a commitment to provide sample language for a SIP mechanism that would allow substitution of TCMs in a previously approved SIP without additional EPA approvals. As EPA indicated at that time, EPA believes that such a substitution mechanism is possible under existing EPA SIP policy, and no conformity rule amendment is necessary. As a result, EPA is not proposing language addressing TCM flexibility in today's action.

EPA will be drafting model SIP language and distributing it to conformity stakeholders for comment.

XIII. PM_{10} Hot Spots

Section 51.454(d) (93.131(d)) of the existing conformity rule requires quantitative PM_{10} hot-spot analysis in certain cases, but states that the requirements will not take effect until EPA releases modeling guidance and announces in the **Federal Register** that the requirements are in effect.

EPA has not yet released guidance on dispersion modeling for PM_{10} hot spots due to transportation projects. As a result, the requirements for quantitative PM_{10} hot-spot analysis are not currently in effect.

EPA has received comment requesting that these requirements should continue to be deferred until research that is underway by other organizations has been completed. For example, several PM_{10} studies are being sponsored by the California Air Resources Board and the California Department of Transportation.

EPA hereby announces its intention to delay the further development and issuance of its PM_{10} hot-spot modeling guidance pending the completion of research by organizations external to EPA. EPA does not intend to issue PM_{10} hot-spot modeling guidance before 1998. As a result, the requirements of existing § 51.454(d)/§ 93.131(d) will continue to be deferred until such time as EPA releases modeling guidance and announces in the **Federal Register** that the requirements are in effect.

XIV. Signalization Projects

EPA has received several comments suggesting that signalization projects, including areawide traffic signal synchronization projects and automated traffic surveillance and control projects, should be exempt from transportation conformity requirements. However, for the reasons described below, EPA is not proposing to change the exempt project lists (Tables 2 and 3 of the conformity rule) to exempt signalization projects.

A. Background

The transportation conformity rule does not require conformity determinations for certain types of projects. These "exempt" projects are listed in Table 2 of the conformity rule. In contrast to other transportation projects, exempt projects can proceed toward implementation even if a currently conforming transportation plan or TIP is not in place. These projects are exempt from conformity requirements because EPA considers them to have a neutral or de minimis impact on air quality. EPA does not exempt projects that could have regional impacts—even if those impacts may be positive—because EPA believes that regionally significant projects must be analyzed together, in the context of all other regionally significant projects. In this way, the interactions among projects may be considered, and there is a meaningful estimate of regional emissions that can be compared to the SIP's motor vehicle emissions budget.

In addition to the Table 2 projects that are exempt from conformity requirements, the transportation conformity rule also exempts certain projects from regional emissions analysis. These projects, which are listed in Table 3 of the conformity rule, are not required to be included in the regional emissions analysis for the transportation plan and TIP, and can proceed toward implementation even if a currently conforming transportation plan or TIP is not in place. However, conformity determinations are required for these projects, and the local effects of these projects on CO and PM_{10} concentrations must be considered in CO and PM_{10} nonattainment and maintenance areas.

The existing transportation conformity rule exempts intersection signalization projects at individual intersections from regional emissions analysis, as indicated in Table 2.

B. Comments Supporting Exemption of Signalization Projects

EPA has received comments that advocate the exemption of signalization projects because of positive air quality and congestion mitigation impacts of signalization projects and because of the implementation delays that may result from conformity requirements.

For example, some commenters state that signalization projects decrease emissions by reducing acceleration, deceleration, and idling. They cite studies of certain signalization efforts that indicate significant reductions in CO, VOC, and NO_x emissions. In addition, they state that improved efficiency of the roadway network benefits buses and high occupancy vehicle (HOV) users.

In addition, some commenters support exempting signalization projects in order to avoid delays that could result from the requirement for these projects to be included in the transportation plan and TIP's regional emissions analysis. Some commenters expressed concern that signalization projects could be delayed for up to a year while going through conformity analysis.

C. Rationale For Decision Not To Exempt Signalization Projects

EPA is not proposing to exempt signalization projects from conformity requirements because some of the projects may be complex, regionally significant projects whose emissions impacts must be assessed in the context of all regionally significant projects. For signalization projects that are not regionally significant, options exist to decrease the analysis burden and potential delay of the conformity requirements, as described below.

As described above, EPA's list of exempt projects is intended to include only those projects with neutral or de minimis emissions impacts. The types of signalization projects that commenters suggest exempting are clearly not de minimis. For example, some signalization projects are areawide synchronizations that affect hundreds of intersections. Even the more limited signalization projects are often complex projects associated with roadway construction and improvement. Traffic signalization projects are not always limited to simple upgrades of hardware or installation of new signals.

In addition, signalization projects cannot generally be considered de minimis because they may affect traffic flow on a regional level. The emissions impacts may be positive or negative depending on the pollutant of concern, the speeds on the affected roads, and the effects on other roads in the network. For example, improved traffic flow and corresponding increases in traffic speed may reduce CO emissions, but may increase NO_x emissions in certain speed ranges. PM_{10} emissions may also increase. Significant changes in travel time may redistribute travel on other roads and affect mode choice. These effects need to be considered at a regional level, and the cumulative emissions impacts cannot be qualitatively determined.

EPA recognizes that not all signalization projects at multiple intersections are regionally significant, particularly if they affect a small number of miles in a large metropolitan area, or if an area's modeling capabilities are not sensitive to the more subtle regional effects of signalization projects. The existing conformity rule allows projects that are not regionally significant to be amended into the transportation plan and TIP without a new regional emissions analysis, if the regional emissions analysis supporting the currently transportation plan and TIP is still valid (e.g., planning assumptions have not changed). As a result, EPA believes that there are already sufficient opportunities to minimize the analysis burden and potential project implementation delays in cases where the signalization projects are relatively simple.

EPA considered trying to identify a threshold for determining which signalization projects at multiple intersections would not be considered regionally significant, so that these projects could be included in Table 3's list of projects that are exempt from regional emissions analysis. However, EPA decided that this approach would be unnecessarily complex and unlikely to provide a threshold that was appropriate for all areas. Areas currently have the discretion to determine which projects are regionally significant through the interagency consultation process, and thus have sufficient flexibility to minimize the analysis burden associated with signalization projects where appropriate.

Finally, although EPA agrees that the conformity process should minimize project implementation delays as much as possible, EPA does not believe the delays associated with regionally significant signalization projects are unreasonable. If signalization projects are identified at the time the transportation plan and TIP are being developed, they can be included in the transportation plan and TIP's regional emissions analysis initially, and implementation delays should not occur. In many instances TIPs are developed annually. If transportation plan/TIP amendments between TIP cycles can be avoided with improved planning, implementation delays could be reduced.

XV. Conformity SIPs

Section 51.396(a) of the existing conformity rule (as amended November 14, 1995) requires conformity SIP revisions to be submitted to EPA within 12 months after the date of publication of final amendments to the conformity rule. As a result, when EPA takes final action on today's proposal, conformity SIP revisions consistent with that final action will be due to EPA within 12 months.

As specified in § 51.396(b) of the conformity rule, after EPA approves a conformity SIP revision, the federal conformity rule does not govern conformity determinations. Therefore, for areas whose conformity SIP revision has already been approved by EPA, the final amendments that will result from today's proposal will not be effective until they are included in the conformity SIP revision and EPA approves that SIP revision.

XVI. Public Hearing

Anyone who wants to present testimony about this proposal at the public hearing (see **DATES**) should, if possible, notify the contact person (see **FOR FURTHER INFORMATION CONTACT**) at least seven days prior to the day of the hearing. The contact person should be given an estimate of the time required for the presentation of testimony and notification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the contact earlier. This testimony will be scheduled on a first-come,first-serve basis to follow the previously scheduled testimony.

EPA requests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing at least one week before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Such advance copies should be submitted to the contact person listed.

The official records of the hearing will be kept open until the close of the comment period to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the Air Docket, Docket A–96–05 (see **ADDRESSES**). The hearing will be conducted informally, and technical rules of evidence will not apply. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceeding.

XVII. Administrative Requirements

A. Administrative Designation

Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or otherwise adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined

VOL 61 ISS 132 JL 9 1996 UMI

that this rule is a "significant regulatory action" because this action raises novel legal or policy issues arising out of legal mandates, the President's priorities, and the principles set forth in the Executive Order. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Reporting and Recordkeeping Requirements

This rule does not contain any information collection requirements from EPA which require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The information collection requirements of EPA's Transportation Conformity Rule and these amendments to it are covered under the Information Collection Request of the Department of Transportation entitled "Metropolitan and Statewide Transportation Planning", approved by OMB under the Paperwork Reduction Act through 11/96, with OMB Control Number 2132–0529. Send any comments on the recordkeeping and reporting requirements of Transportation Conformity to:

Mr. Sean Libberton, US Department of Transportation, TPL11, 400 7th Street, SW., Washington, DC 20590,
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA/OAR, Room 10202, 725 17th Street, NW., Washington, DC 20503.

In any correspondence please refer to OMB Control Number 2132–0529.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA).

EPA has determined that today's regulations will not have a significant impact on a substantial number of small entities. This regulation affects federal agencies and metropolitan planning organizations, which by definition are designated only for metropolitan areas with a population of at least 50,000. These organizations do not constitute small entities.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this regulation does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

EPA has determined that to the extent this rule imposes any mandate within the meaning of the Unfunded Mandates Act, this final action does not include a mandate that may result in estimated costs of $100 million or more to state, local, or tribal governments in the aggregate or to the private sector. Therefore, EPA has not prepared a statement with respect to budgetary impacts.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 93

Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Ozone.

Dated: June 21, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR parts 51 and 93 are proposed to be amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Subpart T is amended by removing §§ 51.392 through 51.464 and by revising § 51.390 to read as follows:

Subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws

§ 51.390 Implementation plan revision.

(a) States with areas subject to this rule must submit to the EPA and DOT a revision to their implementation plan which contains criteria and procedures for DOT, MPOs and other State or local agencies to assess the conformity of transportation plans, programs, and projects, consistent with these regulations. This revision is to be submitted by November 25, 1994 (or within 12 months of an area's redesignation from attainment to nonattainment, if the State has not previously submitted such a revision). Further revisions to the implementation plan required by amendments to part 93, subpart A of this chapter must be submitted within 12 months of the date of publication of such final amendments. EPA will provide DOT with a 30-day comment period before taking action to approve or disapprove the submission. A State's conformity provisions may contain criteria and procedures more stringent than the requirements described in these regulations only if the State's conformity provisions apply equally to non-federal as well as Federal entities.

(b) The Federal conformity rules under this subpart and part 93 of this chapter, in addition to any existing applicable State requirements, establish the conformity criteria and procedures necessary to meet the requirements of Clean Air Act section 176(c) until such time as EPA approves the required conformity implementation plan revision. Following EPA approval of the State conformity provisions (or a portion thereof) in a revision to the applicable implementation plan, conformity determinations would be governed by the approved (or approved portion of the) State criteria and procedures. The Federal conformity regulations contained in part 93 of this chapter would apply only for the portion, if any, of the State's conformity provisions that is not approved by EPA. In addition, any previously applicable implementation plan conformity requirements remain enforceable until the State revises its applicable implementation plan to specifically remove them and that revision is approved by EPA.

(c) The implementation plan revision required by this section must meet all of the requirements of part 93, subpart A of this chapter.

(d) In order for EPA to approve the implementation plan revision submitted to EPA and DOT under this section, the plan must address all requirements of this subpart in a manner which gives them full legal effect. In particular, the revision shall incorporate the provisions of the following sections of this subpart in verbatim form, except insofar as needed to clarify or to give effect to a stated intent in the revision to establish criteria and procedures more stringent than the requirements stated in these sections of this chapter: §§ 93.101, 93.102, 93.103, 93.104, 93.106, 93.109, 93.110, 93.111, 93.112, 93.113, 93.114, 93.115, 93.116, 93.117, 93.118, 93.119, 93.120, 93.121, 93.126, and 93.127 of this chapter.

PART 93—[AMENDED]

3. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

4. Subpart A is revised to read as follows:

Subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws

Sec.

93.100 Purpose.
93.101 Definitions.
93.102 Applicability.
93.103 Priority.
93.104 Frequency of conformity determinations.
93.105 Consultation.
93.106 Content of transportation plans.
93.107 Relationship of transportation plan and TIP conformity with the NEPA process.
93.108 Fiscal constraints for transportation plans and TIPs.
93.109 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.
93.110 Criteria and procedures: Latest planning assumptions.
93.111 Criteria and procedures: Latest emissions model.
93.112 Criteria and procedures: Consultation.
93.113 Criteria and procedures: Timely implementation of TCMs.
93.114 Criteria and procedures: Currently conforming transportation plan and TIP.
93.115 Criteria and procedures: Projects from a plan and TIP.
93.116 Criteria and procedures: Localized CO and PM_{10} violations (hot spots).
93.117 Criteria and procedures: Compliance with PM_{10} control measures.
93.118 Criteria and procedures: Motor vehicle emissions budget.
93.119 Criteria and procedures: Emission reductions in areas without motor vehicle emissions budgets.
93.120 Consequences of control strategy implementation plan failures.
93.121 Requirements for adoption or approval of projects by other recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws.
93.122 Procedures for determining regional transportation-related emissions.
93.123 Procedures for determining localized CO and PM_{10} concentrations (hot-spot analysis).
93.124 Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).
93.125 Enforceability of design concept and scope and project-level mitigation and control measures.
93.126 Exempt projects.
93.127 Projects exempt from regional emissions analyses.

§ 93.100 Purpose.

The purpose of this subpart is to implement § 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.), and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). This subpart sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to an applicable implementation plan developed pursuant to section 110 and Part D of the CAA.

§ 93.101 Definitions.

Terms used but not defined in this subpart shall have the meaning given them by the CAA, titles 23 and 49 U.S.C., other Environmental Protection Agency (EPA) regulations, or other DOT regulations, in that order of priority.

Applicable implementation plan is defined in section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA.

CAA means the Clean Air Act, as amended.

Cause or contribute to a new violation for a project means:

(1) To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented, or

(2) To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

Clean data means air quality monitoring data determined by EPA to meet the requirements of 40 CFR part 58 that indicate attainment of the national ambient air quality standard.

Control strategy implementation plan revision is the implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA sections 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide).

Design concept means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

Design scope means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

DOT means the United States Department of Transportation.

EPA means the Environmental Protection Agency.

FHWA means the Federal Highway Administration of DOT.

FHWA/FTA project, for the purpose of this subpart, is any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the Federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

FTA means the Federal Transit Administration of DOT.

Forecast period with respect to a transportation plan is the period covered by the transportation plan pursuant to 23 CFR part 450.

Highway project is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no

VOL 61 ISS 132 JL 9 1996 UMI

additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Horizon year is a year for which the transportation plan describes the envisioned transportation system according to § 93.106 of this subpart.

Hot-spot analysis is an estimation of likely future localized CO and PM_{10} pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

Increase the frequency or severity means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

ISTEA means the Intermodal Surface Transportation Efficiency Act of 1991.

Maintenance area means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the CAA, as amended.

Maintenance plan means an implementation plan under section 175A of the CAA, as amended.

Metropolitan planning organization (MPO) is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607. It is the forum for cooperative transportation decision-making.

Milestone has the meaning given in sections 182(g)(1) and 189(c) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.

Motor vehicle emissions budget is that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.

National ambient air quality standards (NAAQS) are those standards established pursuant to section 109 of the CAA.

NEPA means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

NEPA process completion, for the purposes of this subpart, with respect to FHWA or FTA, means the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.

Nonattainment area means any geographic region of the United States which has been designated as nonattainment under § 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

Project means a highway project or transit project.

Protective finding means a determination by EPA that the control strategy contained in a submitted control strategy implementation plan revision would have been considered approvable with respect to requirements for emissions reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110 (a)(2)(A).

Recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws means any agency at any level of State, county, city, or regional government that routinely receives title 23 U.S.C. or Federal Transit Laws funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

Regionally significant project means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

Standard means a national ambient air quality standard.

Transit is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

Transit project is an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Transportation control measure (TCM) is any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this subpart.

Transportation improvement program (TIP) means a staged, multiyear, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR part 450.

Transportation plan means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450.

Transportation project is a highway project or a transit project.

§ 93.102 Applicability.

(a) *Action applicability.* (1) Except as provided for in paragraph (c) of this section or § 93.126, conformity determinations are required for:

(i) The adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT;

(ii) The adoption, acceptance, approval or support of TIPs and TIP amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT; and

(iii) The approval, funding, or implementation of FHWA/FTA projects.

(2) Conformity determinations are not required under this rule for individual projects which are not FHWA/FTA projects. However, § 93.121 applies to such projects if they are regionally significant.

(b) *Geographic Applicability.* The provisions of this subpart shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

(1) The provisions of this subpart apply with respect to emissions of the following criteria pollutants: Ozone, carbon monoxide (CO), nitrogen dioxide (NO_2), and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}).

(2) The provisions of this subpart apply with respect to emissions of the following precursor pollutants:

(i) Volatile organic compounds (VOC) and nitrogen oxides (NO_X) in ozone areas;

(ii) NO_X in NO_2 areas; and

(iii) VOC, NO_X, and PM_{10} in PM_{10} areas if the EPA Regional Administrator or the director of the State air agency has made a finding that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) establishes a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(3) The provisions of this subpart apply to maintenance areas for 20 years from the date EPA approves the area's request under section 107(d) of the CAA for redesignation to attainment, unless the applicable implementation plan specifies that the provisions of this subpart shall apply for more than 20 years.

(c) Limitations. (1) Projects subject to this regulation for which the NEPA process and a conformity determination have been completed by DOT may proceed toward implementation without further conformity determinations unless more than three years have elapsed since the most recent major step (NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates) occurred. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding, final design, right-of-way acquisition, construction, or any combination of these phases.

(2) A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if three years have elapsed since the most recent major step to advance the project occurred.

(d) *Grace period for new nonattainment areas.* For areas or portions of areas which have been designated attainment for either ozone, CO, PM_{10} or NO_2 since 1990 and are subsequently redesignated to nonattainment for any of these pollutants, the provisions of this subpart shall not apply for 12 months following the date of final designation to nonattainment for such pollutant.

§ 93.103 Priority.

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among States or other jurisdictions.

§ 93.104 Frequency of conformity determinations.

(a) Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA/FTA projects must be made according to the requirements of this section and the applicable implementation plan.

(b) Frequency of conformity determinations for transportation plans.

(1) Each new transportation plan must be demonstrated to conform before the transportation plan is approved by the MPO or accepted by DOT.

(2) All transportation plan revisions must be found to conform before the transportation plan revisions are approved by the MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in § 93.126 or § 93.127. The conformity determination must be based on the transportation plan and the revision taken as a whole.

(3) The MPO and DOT must determine the conformity of the transportation plan no less frequently than every three years. If more than three years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the transportation plan, the existing conformity determination will lapse.

(c) Frequency of conformity determinations for transportation improvement programs.

(1) A new TIP must be demonstrated to conform before the TIP is approved by the MPO or accepted by DOT.

(2) A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in § 93.126 or § 93.127.

(3) The MPO and DOT must determine the conformity of the TIP no less frequently than every three years. If more than three years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the TIP, the existing conformity determination will lapse.

(4) After an MPO adopts a new or revised transportation plan, conformity of the TIP must be redetermined by the MPO and DOT within six months from the date of DOT's conformity determination for the transportation plan, unless the new or revised plan merely adds or deletes exempt projects listed in §§ 93.126 and 93.127. Otherwise, the existing conformity determination for the TIP will lapse.

(d) Projects. FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA project if three years have elapsed since the most recent major step to advance the project (NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates) occurred.

(e) Triggers for transportation plan and TIP conformity determinations. Conformity of existing transportation plans and TIPs must be redetermined within 18 months of the following, or the existing conformity determination will lapse, and no new project-level conformity determinations may be made

VOL
61
ISS
1
32
JL
9
1996
UMI

until conformity of the transportation plan and TIP has been determined by the MPO and DOT:

(1) November 24, 1993;

(2) The date of the State's initial submission to EPA of each control strategy implementation plan or maintenance plan establishing a motor vehicle emissions budget;

(3) EPA approval of a control strategy implementation plan revision or maintenance plan which establishes or revises a motor vehicle emissions budget;

(4) EPA approval of an implementation plan revision that adds, deletes, or changes TCMs; and

(5) EPA promulgation of an implementation plan which establishes or revises a motor vehicle emissions budget or adds, deletes, or changes TCMs.

§ 93.105 Consultation.

(a) *General.* The implementation plan revision required under § 51.390 of this chapter shall include procedures for interagency consultation (Federal, State, and local) and resolution of conflicts.

(1) The implementation plan revision shall include procedures to be undertaken by MPOs, State departments of transportation, and DOT with State and local air quality agencies and EPA before making conformity determinations, and by State and local air agencies and EPA with MPOs, State departments of transportation, and DOT in developing applicable implementation plans.

(2) Before EPA approves the conformity implementation plan revision required by § 51.390 of this chapter, MPOs and State departments of transportation must provide reasonable opportunity for consultation with State air agencies, local air quality and transportation agencies, DOT, and EPA, including consultation on the issues described in paragraph (c)(1) of this section, before making conformity determinations.

(b) *Interagency consultation procedures: General factors.* (1) States shall provide well-defined consultation procedures in the implementation plan whereby representatives of the MPOs, State and local air quality planning agencies, State and local transportation agencies, and other organizations with responsibilities for developing, submitting, or implementing provisions of an implementation plan required by the CAA must consult with each other and with local or regional offices of EPA, FHWA, and FTA on the development of the implementation plan, the transportation plan, the TIP, and associated conformity determinations.

(2) Interagency consultation procedures shall include at a minimum the general factors listed below and the specific processes in paragraph (c) of this section:

(i) The roles and responsibilities assigned to each agency at each stage in the implementation plan development process and the transportation planning process, including technical meetings;

(ii) The organizational level of regular consultation;

(iii) A process for circulating (or providing ready access to) draft documents and supporting materials for comment before formal adoption or publication;

(iv) The frequency of, or process for convening, consultation meetings and responsibilities for establishing meeting agendas;

(v) A process for responding to the significant comments of involved agencies; and

(vi) A process for the development of a list of the TCMs which are in the applicable implementation plan.

(c) *Interagency consultation procedures: Specific processes.* Interagency consultation procedures shall also include the following specific processes:

(1) A process involving the MPO, State and local air quality planning agencies, State and local transportation agencies, EPA, and DOT for the following:

(i) Evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;

(ii) Determining which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP;

(iii) Evaluating whether projects otherwise exempted from meeting the requirements of this subpart (see §§ 93.126 and 93.127) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason;

(iv) Making a determination, as required by § 93.113(c)(1), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

(v) Identifying, as required by § 93.123(d), projects located at sites in PM_{10} nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM_{10} hot-spot analysis; and

(vi) Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in § 93.126.

(2) A process involving the MPO and State and local air quality planning agencies and transportation agencies for the following:

(i) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in § 93.104; and

(ii) Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins.

(3) Where the metropolitan planning area does not include the entire nonattainment or maintenance area, a process involving the MPO and the State department of transportation for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area.

(4) A process to ensure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including those by recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws, are disclosed to the MPO on a regular basis, and to ensure that any changes to those plans are immediately disclosed;

(5) A process involving the MPO and other recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by paragraph (c)(4) of this section but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis according to the requirements of § 93.122.

(6) A process for consulting on the design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO (e.g., household/travel transportation surveys).

(7) A process for providing final documents (including applicable implementation plans and implementation plan revisions) and supporting information to each agency after approval or adoption. This process is applicable to all agencies described in paragraph (a)(1) of this section, including Federal agencies.

(d) *Resolving conflicts.* Conflicts among State agencies or between State agencies and an MPO shall be escalated to the Governor if they cannot be resolved by the heads of the involved agencies. The State air agency has 14 calendar days to appeal to the Governor after the State DOT or MPO has notified the State air agency head of the resolution of his or her comments. The implementation plan revision required by § 51.390 of this chapter shall define the procedures for starting the 14-day clock. If the State air agency appeals to the Governor, the final conformity determination must have the concurrence of the Governor. If the State air agency does not appeal to the Governor within 14 days, the MPO or State department of transportation may proceed with the final conformity determination. The Governor may delegate his or her role in this process, but not to the head or staff of the State or local air agency, State department of transportation, State transportation commission or board, or an MPO.

(e) *Public consultation procedures.* Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with these requirements and those of 23 CFR 450.316(b). Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR 7.95. In addition, these agencies must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

§ 93.106 Content of transportation plans.

(a) *Transportation plans adopted after January 1, 1997 in serious, severe, or extreme ozone nonattainment areas and in serious CO nonattainment areas.* If the metropolitan planning area contains an urbanized area population greater than 200,000, the transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

(1) The agency or organization developing the transportation plan may choose any years to be horizon years, subject to the following restrictions:

(i) Horizon years may be no more than 10 years apart.

(ii) The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model.

(iii) If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year.

(iv) The last horizon year must be the last year of the transportation plan's forecast period.

(2) For these horizon years:

(i) The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and the consultation requirements specified by § 93.105;

(ii) The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies that are sufficient for modeling of their transit ridership. Additions and modifications to the transportation network shall be described sufficiently to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

(iii) Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.

(b) *Moderate areas reclassified to serious* Ozone or CO nonattainment areas which are reclassified from moderate to serious must meet the requirements of paragraph (a) of this section within two years from the date of reclassification.

(c) *Transportation plans for other areas* Transportation plans for other areas must meet the requirements of paragraph (a) of this section at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, the transportation system envisioned for the future must be sufficiently described within the transportation plans so that a conformity determination can be made according to the criteria and procedures of §§ 93.109—93.119.

(d) *Savings* The requirements of this section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

§ 93.107 Relationship of transportation plan and TIP conformity with the NEPA process.

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project must meet the criteria in §§ 93.109—93.119 for projects not from a TIP before NEPA process completion.

§ 93.108 Fiscal constraints for transportation plans and TIPs.

Transportation plans and TIPs must be fiscally constrained consistent with DOT's metropolitan planning regulations at 23 CFR part 450 in order to be found in conformity.

VOL 61 ISS 132 JL 9 1996 UMI

§ 93.109 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.

(a) In order for each transportation plan, program, and FHWA/FTA project to be found to conform, the MPO and DOT must demonstrate that the applicable criteria and procedures in this subpart are satisfied, and the MPO and DOT must comply with all applicable conformity requirements of implementation plans and of court orders for the area which pertain specifically to conformity. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA/FTA projects), the relevant pollutant(s), and the status of the implementation plan.

(b) The following table indicates the criteria and procedures in §§ 93.110–93.119 which apply for transportation plans, TIPs, and FHWA/FTA projects. Paragraphs (c) through (f) of this section explain when the budget, emission reduction, and hot spot tests are required for each pollutant. Paragraph (g) of this section addresses isolated rural nonattainment and maintenance areas.

TABLE 1.—CONFORMITY CRITERIA

All Actions at All Times	
§ 93.110	Latest planning assumptions.
§ 93.111	Latest emissions model.
§ 93.112	Consultation.
Transportation Plan	
§ 93.113(b)	TCMs.
§ 93.118 OR § 93.119.	Emissions budget OR Emission reduction.
TIP	
§ 93.113(c)	TCMs.
§ 93.118 OR § 93.119.	Emissions budget OR Emission reduction.
Project (From a Conforming Plan and TIP)	
§ 93.114	Currently conforming plan and TIP.
§ 93.115	Project from a conforming plan and TIP.
§ 93.116	CO and PM_{10} hot spots.
§ 93.117	PM_{10} control measures.
Project (Not From a Conforming Plan and TIP)	
§ 93.113(d)	TCMs.
§ 93.114	Currently conforming plan and TIP.
§ 93.116	CO and PM_{10} hot spots.
§ 93.117	PM_{10} control measures.

TABLE 1.—CONFORMITY CRITERIA—Continued

§ 93.118 OR § 93.119.	Emissions budget OR Emission reduction.

(c) *Ozone nonattainment and maintenance areas.* In addition to the criteria listed in Table 1 that are required to be satisfied at all times, in ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or emission reduction tests are satisfied as described in the following paragraphs.

(1) In ozone areas the budget test must be satisfied as required by § 93.118 for conformity determinations made:

(i) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(2) In moderate and above ozone nonattainment areas the emission reduction tests must be satisfied as required by § 93.119 for conformity determinations made:

(i) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

(ii) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved SIP or a previously submitted control strategy implementation plan revision or maintenance plan.

(3) An ozone nonattainment area must satisfy the emission reduction test for NO_X, as required by § 93.119, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% SIP or Phase I attainment demonstration that does not include a motor vehicle emissions budget for NO_X. The implementation plan will be considered to establish a motor vehicle emissions budget for NO_X if the implementation plan or plan submission contains an explicit NO_X motor vehicle emissions budget that is intended to act as a ceiling on future NO_X emissions, and the NO_X motor vehicle emissions budget is a net reduction from NO_X emissions levels in 1990.

(4) Marginal and below ozone nonattainment areas that have three consecutive years of clean data and that have not submitted a maintenance plan must satisfy one of the following requirements:

(i) The emission reduction tests as required by § 93.119;

(ii) The State air quality agency shall determine (subject to the interagency consultation process required by § 93.105) the motor vehicle emissions of ozone precursors in the most recent year of clean data. The budget test required by § 93.118 must be satisfied, with these motor vehicle emission levels serving as the motor vehicle emissions budget; or

(iii) The State shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment or maintenance demonstration, and the budget test required by § 93.118 must be satisfied using the submitted motor vehicle emissions budget(s) (as described in paragraph (c)(1) of this section).

(5) Marginal and below ozone nonattainment areas that do not have three consecutive years of clean data must satisfy one of the following requirements:

(i) The emission reduction tests required by § 93.119; or

(ii) The State shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by § 93.118 must be satisfied using the submitted motor vehicle emissions budget(s) (as described in paragraph (c)(1) of this section).

(6) Notwithstanding paragraphs (c)(1) and (c)(2) of this section, moderate and above ozone nonattainment areas with three years of clean data that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements must satisfy one of the following requirements:

(i) The emission reduction tests as required by § 93.119;

(ii) The budget test as required by § 93.118, using the motor vehicle emissions budgets in the submitted control strategy implementation plan (subject to the timing requirements of paragraph (c)(1) of this section); or

(iii) The State air quality agency shall determine (subject to the interagency consultation process required by

§ 93.105) the motor vehicle emissions of ozone precursors in the most recent year of clean data. The budget test required by § 93.118 must be satisfied, with these motor vehicle emission levels serving as the motor vehicle emissions budget.

(d) *CO nonattainment and maintenance areas.* In addition to the criteria listed in Table 1 that are required to be satisfied at all times, in CO nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or emission reduction tests are satisfied as described in the following paragraphs.

(1) FHWA/FTA projects in CO nonattainment or maintenance areas must satisfy the hot spot test required by § 93.116 at all times. Until a CO attainment demonstration or maintenance plan is approved by EPA, FHWA/FTA projects must also satisfy the hot spot test required by § 93.116(b).

(2) In CO areas the budget test must be satisfied as required by § 93.118 for conformity determinations made:

(i) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(3) In moderate CO nonattainment areas with a design value greater than 12.7 ppm and serious CO nonattainment areas the emission reduction tests must be satisfied as required by § 93.119 for conformity determinations made:

(i) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

(ii) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved SIP or a previously submitted control strategy implementation plan revision or maintenance plan.

(4) If a moderate CO nonattainment area with a design value of 12.7 ppm or less or a not classified CO nonattainment area has two consecutive years of clean data and has not submitted a maintenance plan, one of the following requirements must be satisfied:

(i) The emission reduction tests as required by § 93.119;

(ii) The State air quality agency shall determine (subject to the interagency consultation process required by § 93.105) the motor vehicle emissions of CO in the most recent year of clean data. The budget test required by § 93.118 must be satisfied, with these motor vehicle emission levels serving as the motor vehicle emissions budget; or

(iii) The State shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment or maintenance demonstration, and the budget test required by § 93.118 must be satisfied using the submitted motor vehicle emissions budget(s) (as described in paragraph (d)(1) of this section).

(5) If a moderate CO nonattainment area with a design value of 12.7 ppm or less or a not classified CO nonattainment area does not have two consecutive years of clean data, one of the following requirements must be satisfied:

(i) The emission reduction tests required by § 93.119; or

(ii) The State shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by § 93.118 must be satisfied using the submitted motor vehicle emissions budget(s) (as described in paragraph (d)(1) of this section).

(e) *PM_{10} nonattainment and maintenance areas.* In addition to the criteria listed in Table 1 that are required to be satisfied at all times, in PM_{10} nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or emission reduction tests are satisfied as described in the following paragraphs.

(1) FHWA/FTA projects in PM_{10} nonattainment or maintenance areas must satisfy the hot spot test required by § 93.116.

(2) In PM_{10} areas the budget test must be satisfied as required by § 93.118 for conformity determinations made:

(i) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(3) In PM_{10} nonattainment areas the emission reduction tests must be satisfied as required by § 93.119 for conformity determinations made:

(i) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes;

(ii) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved SIP or a previously submitted control strategy implementation plan revision or maintenance plan; or

(iii) The submitted implementation plan revision is a demonstration of impracticability under CAA section 189(a)(1)(B)(ii) and does not demonstrate attainment.

(f) *NO_2 nonattainment and maintenance areas.* In addition to the criteria listed in Table 1 that are required to be satisfied at all times, in NO_2 nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or emission reduction tests are satisfied as described in the following paragraphs.

(1) In NO_2 areas the budget test must be satisfied as required by § 93.118 for conformity determinations made:

(i) 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared the motor vehicle emissions budget inadequate for transportation conformity purposes; or

(ii) After EPA has declared that the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes.

(2) In NO_2 areas the emission reduction tests must be satisfied as required by § 93.119 for conformity determinations made:

(i) During the first 45 days after a control strategy implementation plan revision or maintenance plan has been submitted to EPA, unless EPA has declared a motor vehicle emissions budget adequate for transportation conformity purposes; or

(ii) If EPA has declared the motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan

VOL 61 ISS 132 JL 9 1996 UMI

inadequate for transportation conformity purposes, and there is no previously established motor vehicle emissions budget in the approved SIP or a previously submitted control strategy implementation plan revision or maintenance plan.

(g) *Isolated rural nonattainment and maintenance areas.* This paragraph applies to any nonattainment or maintenance area (or portion thereof) which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. This paragraph does not apply to "donut" areas which are outside the metropolitan planning boundary and inside the nonattainment/maintenance area boundary.

(1) FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the requirements of §§ 93.110, 93.111, 93.112, 93.113(d), 93.116, and 93.117. Until EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects must also satisfy the requirements of § 93.116(b) ("Localized CO and PM_{10} violations (hot spots)").

(2) Isolated rural nonattainment and maintenance areas are subject to the budget and/or emission reduction tests as described in paragraphs (c)–(f) of this section, with the following modifications:

(i) When the requirements of §§ 93.118 and 93.119 apply to isolated rural nonattainment and maintenance areas, references to "transportation plan" or "TIP" should be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the rural nonattainment or maintenance area.

(ii) In isolated rural nonattainment and maintenance areas that are subject to § 93.118, FHWA/FTA projects must be consistent with motor vehicle emissions budget(s) for the years in the timeframe of the attainment demonstration or maintenance plan. For years after the attainment year (if a maintenance plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects must satisfy one of the following requirements:

(A) § 93.118;

(B) § 93.119 (Emission reductions in areas without motor vehicle emissions budgets); or

(C) Air quality dispersion modeling must demonstrate that the FHWA/FTA project, in combination with all other regionally significant projects expected in the area in the timeframe of the statewide transportation plan, will not cause or contribute to any new violation of any standard in any areas; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. Control measures assumed in the analysis must be enforceable.

(iii) The choice of requirements in paragraph (g)(2)(ii) of this section and the methodology used to meet the requirements of paragraph (g)(2)(ii)(C) of this section must be determined through the interagency consultation process required in § 93.105 through which the relevant recipients of title 23 U.S.C. or Federal Transit Laws funds, the local air quality agency, the State air quality agency, and the State DOT should reach consensus about the option and methodology selected. EPA and DOT must be consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the Governor consistent with the procedure in § 93.105(d), which applies for any State air agency comments on a conformity determination.

§ 93.110 Criteria and procedures: Latest planning assumptions.

(a) The conformity determination, with respect to all other applicable criteria in §§ 93.111–93.119, must be based upon the most recent planning assumptions in force at the time of the conformity determination. The conformity determination must satisfy the requirements of paragraphs (b) through (f) of this section.

(b) Assumptions must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO. The conformity determination must also be based on the latest assumptions about current and future background concentrations.

(c) The conformity determination for each transportation plan and TIP must discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.

(d) The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.

(e) The conformity determination must use the latest existing information regarding the effectiveness of the TCMs and other implementation plan measures which have already been implemented.

(f) Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by § 93.105.

§ 93.111 Criteria and procedures: Latest emissions model.

(a) The conformity determination must be based on the latest emission estimation model available. This criterion is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in that State or area is used for the conformity analysis. Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions must be approved by EPA before they are used in the conformity analysis.

(b) EPA will consult with DOT to establish a grace period following the specification of any new model.

(1) The grace period will be no less than three months and no more than 24 months after notice of availability is published in the **Federal Register**.

(2) The length of the grace period will depend on the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity. If the grace period will be longer than three months, EPA will announce the appropriate grace period in the **Federal Register**.

(c) Transportation plan and TIP conformity analyses for which the emissions analysis was begun during the grace period or before the **Federal Register** notice of availability of the latest emission model may continue to use the previous version of the model. Conformity determinations for projects may also be based on the previous model if the analysis was begun during the grace period or before the **Federal Register** notice of availability, and if the final environmental document for the project is issued no more than three years after the issuance of the draft environmental document.

§ 93.112 Criteria and procedures: Consultation.

Conformity must be determined according to the consultation procedures in this rule and in the applicable implementation plan, and according to the public involvement procedures established in compliance with 23 CFR part 450. Until the implementation plan revision required by § 51.390 of this chapter is fully approved by EPA, the conformity determination must be made according to § 93.105(a)(2) and § 93.105(e) and the requirements of 23 CFR part 450.

§ 93.113 Criteria and procedures: Timely implementation of TCMs.

(a) The transportation plan, TIP, or any FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan.

(b) For transportation plans, this criterion is satisfied if the following two conditions are met:

(1) The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan which are eligible for funding under title 23 U.S.C. or the Federal Transit Laws, consistent with schedules included in the applicable implementation plan.

(2) Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

(c) For TIPs, this criterion is satisfied if the following conditions are met:

(1) An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs which are eligible for funding under title 23 U.S.C. or the Federal Transit Laws are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area.

(2) If TCMs in the applicable implementation plan have previously been programmed for Federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for Federal funding intended for air quality improvement projects, e.g., the Congestion Mitigation and Air Quality Improvement Program.

(3) Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.

(d) For FHWA/FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

§ 93.114 Criteria and procedures: Currently conforming transportation plan and TIP.

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.

(a) Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements specified in § 93.104.

(b) This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the applicable implementation plan, provided that all other relevant criteria of this subpart are satisfied.

§ 93.115 Criteria and procedures: Projects from a plan and TIP.

(a) The project must come from a conforming plan and program. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of paragraph (b) of this section and from a conforming program if it meets the requirements of paragraph (c) of this section. Special provisions for TCMs in an applicable implementation plan are provided in paragraph (d) of this section.

(b) A project is considered to be from a conforming transportation plan if one of the following conditions applies:

(1) For projects which are required to be identified in the transportation plan in order to satisfy § 93.106 ("Content of transportation plans"), the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

(2) For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.

(c) A project is considered to be from a conforming program if the following conditions are met:

(1) The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions, and the project design concept and scope have not changed significantly from those which were described in the TIP; and

(2) If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, written commitments to implement such measures must be obtained from the project sponsor and/or operator as required by § 93.125(a) in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

(d) *TCMs.* This criterion is not required to be satisfied for TCMs specifically included in an applicable implementation plan.

§ 93.116 Criteria and procedures: Localized CO and PM_{10} violations (hot spots).

(a) This paragraph applies at all times. The FHWA/FTA project must not cause or contribute to any new localized CO or PM_{10} violations or increase the frequency or severity of any existing CO or PM_{10} violations in CO and PM_{10} nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project. The demonstration must be performed according to the consultation requirements of § 93.105(c)(1)(i) and the methodology requirements of § 93.123.

(b) This paragraph applies for CO nonattainment areas as described in § 93.109(d)(1). Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas).

This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project. The demonstration must be performed according to the consultation requirements of § 93.105(c)(1)(i) and the methodology requirements of § 93.123.

§ 93.117 Criteria and procedures: Compliance with PM_{10} control measures.

The FHWA/FTA project must comply with PM_{10} control measures in the applicable implementation plan. This criterion is satisfied if the project-level conformity determination contains a written commitment from the project sponsor to include in the final plans, specifications, and estimates for the project those control measures (for the purpose of limiting PM_{10} emissions from the construction activities and/or normal use and operation associated with the project) that are contained in the applicable implementation plan.

§ 93.118 Criteria and procedures: Motor vehicle emissions budget.

(a) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies as described in § 93.109 (c)–(g). This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors described in paragraph (c) of this section are less than or equal to the motor vehicle emissions budget(s) established in the applicable implementation plan or implementation plan submission.

(b) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each year for which the applicable (and/or submitted) implementation plan specifically establishes motor vehicle emissions budget(s), for the last year of the transportation plan's forecast period, and for any intermediate years as necessary so that the years for which consistency is demonstrated are no more than ten years apart, as follows:

(1) Until a maintenance plan is submitted:

(i) Emissions in each year (such as milestone years and the attainment year) for which the control strategy implementation plan revision establishes motor vehicle emissions budget(s) must be less than or equal to that year's motor vehicle emissions budget(s); and

(ii) Emissions in years for which no motor vehicle emissions budget(s) are specifically established must be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year. For example, emissions in years after the attainment year for which the SIP does not establish a budget must be less than or equal to the motor vehicle emissions budget(s) for the attainment year.

(2) When a maintenance plan has been submitted:

(i) Emissions must be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets. If the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emissions budget(s) must be accompanied by a qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan. The interagency consultation process required by § 93.105 shall determine what must be considered in order to make such a finding;

(ii) For years after the last year of the maintenance plan, emissions must be less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the maintenance plan; and

(iii) If an approved control strategy implementation plan has established motor vehicle emissions budgets for years in the timeframe of the transportation plan, emissions in these years must be less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years.

(c) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each pollutant or pollutant precursor in § 93.102(b)(3) for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes a motor vehicle emissions budget.

(d) Consistency with the motor vehicle emissions budget(s) must be demonstrated by including emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan.

(1) Consistency with the motor vehicle emissions budget(s) must be demonstrated with a regional emissions analysis that meets the requirements of §§ 93.122 and 93.105(c)(1)(i).

(2) The regional emissions analysis may be performed for any years in the timeframe of the transportation plan provided they are not more than ten years apart and provided the analysis is performed for the attainment year (if it is in the timeframe of the transportation plan) and the last year of the plan's forecast period. Emissions in years for which consistency with motor vehicle emissions budgets must be demonstrated, as required in paragraph (b) of this section, may be determined by interpolating between the years for which the regional emissions analysis is performed.

(e) Motor vehicle emissions budgets in submitted control strategy implementation plan revisions and submitted maintenance plans.

(1) Consistency with the motor vehicle emissions budgets in submitted control strategy implementation plan revisions or maintenance plans must be demonstrated if EPA has declared the motor vehicle emissions budget(s) adequate for transportation conformity purposes, or beginning 45 days after the control strategy implementation plan revision or maintenance plan has been submitted (unless EPA has declared the motor vehicle emissions budget(s) inadequate for transportation conformity purposes). However, submitted implementation plans do not supersede the motor vehicle emissions budgets in approved implementation plans for the years addressed by the approved implementation plan.

(2) If EPA has declared an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes, the inadequate budget(s) shall not be used to satisfy the requirements of this section. Consistency with the previously established motor vehicle emissions budget(s) must be demonstrated. If there are no previous approved implementation plans or implementation plan submissions with motor vehicle emissions budgets, the emission reduction tests required by § 93.119 must be satisfied.

(3) If EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes more than 45 days after its submission to EPA, and conformity of a transportation plan or TIP has already been determined by DOT using the budget(s), the conformity determination will remain valid. Projects included in that transportation plan or TIP could still satisfy §§ 93.114 and 93.115, which require a currently conforming transportation plan and TIP to be in place at the time of a project's conformity determination and that projects come from a conforming transportation plan and TIP.

(4) When the motor vehicle emissions budget(s) used to satisfy the requirements of this section are established by an implementation plan submittal that has not yet been approved or disapproved by EPA, the MPO and DOT's conformity determination will be deemed to be a statement that the MPO and DOT are not aware of any information that would indicate that emissions consistent with the motor vehicle emissions budget will cause or contribute to any new violation of any standard; increase the frequency or severity of any existing violation of any standard; or delay timely attainment of any standard or any required interim emission reductions or other milestones.

§ 93.119 Criteria and procedures: Emission reductions in areas without motor vehicle emissions budgets.

(a) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must contribute to emissions reductions. This criterion applies as described in § 93.109 (c)–(g). It applies to the net effect of the action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) on motor vehicle emissions from the entire transportation system.

(b) This criterion may be met in moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of Clean Air Act section 182(b)(1) and in moderate with design value greater than 12.7 ppm and serious CO nonattainment areas if a regional emissions analysis that satisfies the requirements of § 93.12 2 and paragraphs (e) through (h) of this section demonstrates that for each analysis year and for each of the pollutants described in paragraph (d) of this section:

(1) The emissions predicted in the "Action" scenario are less than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

(2) The emissions predicted in the "Action" scenario are lower than 1990 emissions by any nonzero amount.

(c) This criterion may be met in PM_{10} and NO_2 nonattainment areas; marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of Clean Air Act section 182(b)(1), and moderate with design value less than 12.7 ppm and below CO nonattainment areas if a regional emissions analysis that satisfies the requirements of § 93.122 and paragraphs (e) through (h) of this section demonstrates that for each analysis year and for each of the pollutants described in paragraph (d) of this section, one of the following requirements is met:

(1) The emissions predicted in the "Action" scenario are less than the emissions predicted in the "Baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(2) The emissions predicted in the "Action" scenario are not greater than baseline emissions. Baseline emissions are those estimated to have occurred during calendar year 1990, unless the conformity implementation plan revision required by § 51.390 of this chapter defines the baseline emissions for a PM_{10} area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

(d) Pollutants. The regional emissions analysis must be performed for the following pollutants:

(1) VOC in ozone nonattainment areas;

(2) NO_X in ozone nonattainment areas, unless the EPA Administrator determines that additional reductions of NO_X would not contribute to attainment;

(3) CO in CO nonattainment areas;

(4) PM_{10} in PM_{10} areas;

(5) Transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT; and

(6) NO_X in NO_2 nonattainment areas.

(e) Analysis years. The regional emissions analysis must be performed for analysis years that are no more than ten years apart. The first analysis year must be no more than five years beyond the year in which the conformity determination is being made. The last year of transportation plan's forecast period must also be an analysis year.

(f) "Baseline" scenario. The regional emissions analysis required by paragraphs (b) and (c)(1) of this section must estimate the emissions that would result from the "Baseline" scenario in each analysis year. The "Baseline" scenario must be defined for each of the analysis years. The "Baseline" scenario is the future transportation system that will result from current programs, including the following (except that exempt projects listed in § 93.126 and projects exempt from regional emissions analysis as listed in § 93.127 need not be explicitly considered):

(1) All in-place regionally significant highway and transit facilities, services and activities;

(2) All ongoing travel demand management or transportation system management activities; and

(3) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first year of the previously conforming transportation plan and/or TIP; or have completed the NEPA process.

(g) "Action" scenario. The regional emissions analysis must estimate the emissions that would result from the "Action" scenario in each analysis year. The "Action" scenario must be defined for each of the analysis years. The "Action" scenario is the transportation system that would result from the implementation of the proposed action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) and all other expected regionally significant projects in the nonattainment area. The "Action" scenario must include the following (except that exempt projects listed in § 93.126 and projects exempt from regional emissions analysis as listed in § 93.127 need not be explicitly considered):

(1) All facilities, services, and activities in the "Baseline" scenario;

(2) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;

(3) All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or

VOL 61 ISS 132 JL 9 1996 UMI

VOL
61
ISS
1
3
2
JL
9
1996
UMI

sponsoring agency since the last conformity determination;

(4) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination, but which have been modified since then to be more stringent or effective;

(5) Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

(h) Projects not from a conforming transportation plan and TIP. For the regional emissions analysis required by paragraphs (b) and (c)(1) of this section, if the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the "Baseline" scenario must include the project with its original design concept and scope, and the "Action" scenario must include the project with its new design concept and scope.

§ 93.120 Consequences of control strategy implementation plan failures.

(a) *Disapprovals.* (1) If EPA disapproves any submitted control strategy implementation plan revision (with or without a protective finding), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the Clean Air Act. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted and conformity to this submission is determined.

(2) If EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, then beginning 120 days after such disapproval, only projects in the first three years of the currently conforming transportation plan and TIP may be found to conform. This means that beginning 120 days after disapproval without a protective finding, no transportation plan, TIP, or project not in the first three years of the currently conforming plan and TIP may be found to conform until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted and conformity to this submission is determined. During the first 120 days following EPA's disapproval without a protective finding, transportation plan, TIP, and project conformity determinations shall be made using the motor vehicle emissions budget in the disapproved control strategy implementation plan, unless another control strategy implementation plan revision has been submitted and its motor vehicle emissions budget applies for transportation conformity purposes, pursuant to § 93.109.

(b) *Failure to submit and incompleteness.* In areas where EPA notifies the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan or submission of an incomplete control strategy implementation plan revision (either of which initiates the sanction process under Clean Air Act sections 179 or 110(m)), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under section 179(b)(1) of the Clean Air Act, unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator.

(c) *Federal implementation plans.* If EPA promulgates a Federal implementation plan that contains motor vehicle emissions budget(s) as a result of a State failure, the conformity lapse imposed by this section because of that State failure is removed.

§ 93.121 Requirements for adoption or approval of projects by other recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws.

(a) Except as provided in paragraph (b) of this section, no recipient of Federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following paragraphs are met:

(1) The project was included in the regional emissions analysis supporting the most recent transportation plan and TIP conformity determination (even if conformity status is currently lapsed), and the project's design concept and scope has not changed significantly from those analyses; or

(2) There is a currently conforming transportation plan and TIP, and a new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of §§ 93.118 and/or 93.119 for a project not from a conforming transportation plan and TIP).

(b) In isolated rural nonattainment and maintenance areas subject to § 93.109(g), no recipient of Federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following paragraphs are met:

(1) The project was included in the regional emissions analysis supporting the most recent conformity determination for the portion of the statewide transportation plan and TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has not changed significantly; or

(2) A new regional emissions analysis including the project and all other regionally significant projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the project were implemented (consistent with the requirements of §§ 93.118 and/or 93.119 for projects not from a conforming transportation plan and TIP).

§ 93.122 Procedures for determining regional transportation-related emissions.

(a) General requirements. (1) The regional emissions analysis required by §§ 93.118 and 93.119 for the transportation plan, TIP, or project not from a conforming plan and TIP must include all regionally significant projects expected in the nonattainment or maintenance area. The analysis shall include FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by § 93.105. Projects which are not regionally significant are not required to be explicitly modeled, but vehicles miles traveled (VMT) from such projects must be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.

(2) The emissions analysis may not include for emissions reduction credit any TCMs or other measures in the applicable implementation plan which have been delayed beyond the scheduled date(s) until such time as their implementation has been assured. If the measure has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.

(3) Emissions reduction credit from projects, programs, or activities which require a regulatory action in order to be implemented may not be included in the emissions analysis unless:

(i) The regulatory action is already adopted by the enforcing jurisdiction;

(ii) The project, program, or activity is included in the applicable implementation plan;

(iii) The control strategy implementation plan submission or maintenance plan submission that establishes the motor vehicle emissions budget(s) for the purposes of § 93.118 contains a commitment to the project, program, or activity by the agency with authority to implement it; or

(iv) EPA has approved an opt-in to a Federally enforced program, EPA has promulgated the program (if the control program is a Federal responsibility, such as vehicle tailpipe standards), or the Clean Air Act requires the program without need for individual State action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.

(4) Emissions reduction credit from control measures that are not included in the transportation plan and TIP and that do not require a regulatory action in order to be implemented may not be included in the emissions analysis unless the conformity determination includes written commitments to implementation from the appropriate entities.

(i) Persons or entities voluntarily committing to control measures must comply with the obligations of such commitments.

(ii) The conformity implementation plan revision required in § 51.390 of this chapter must provide that written commitments to control measures that are not included in the transportation plan and TIP must be obtained prior to a conformity determination and that such commitments must be fulfilled.

(5) A regional emissions analysis for the purpose of satisfying the requirements of § 93.119 must make the same assumptions in both the "Baseline" and "Action" scenarios regarding control measures that are external to the transportation system itself, such as vehicle tailpipe or evaporative emission standards, limits on gasoline volatility, vehicle inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel.

(6) The ambient temperatures used for the regional emissions analysis shall be consistent with those used to establish the emissions budget in the applicable implementation plan. All other factors, for example the fraction of travel in a hot stabilized engine mode, must be consistent with the applicable implementation plan, unless modified after interagency consultation according to § 93.105(c)(1)(i) to incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

(7) Reasonable methods shall be used to estimate nonattainment area vehicle miles traveled on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

(b) Regional emissions analysis in serious, severe, and extreme ozone nonattainment areas and serious CO nonattainment areas must meet the requirements of paragraphs (b) (1) and (2) of this section if their metropolitan planning area contains an urbanized area population over 200,000.

(1) By January 1, 1997, estimates of regional transportation-related emissions used to support conformity determinations must be made at a minimum using network modeling according to procedures and methods that are available and in practice and supported by current and available documentation. These procedures, methods, and practices are available from DOT and will be updated periodically. Areas performing network modeling with some or all procedures and methods that are available and in practice elsewhere as of January 1, 1995, must continue to do so.

(2) Reasonable methods in accordance with good practice must be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network model.

(3) Highway Performance Monitoring System (HPMS) estimates of VMT shall be considered the primary measure of VMT within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. For areas with network models, a factor (or factors) may be developed to reconcile and calibrate the network-based model estimates of VMT in the base year of its validation to the HPMS estimates for the same period. These factors may then be applied to model estimates of future VMT. In this factoring process, consideration will be given to differences in the facility coverage of the HPMS and the modeled network description. Locally developed count-based programs and other departures from these procedures are permitted subject to the interagency consultation procedures of § 93.105(c)(1)(i).

(4) A transportation plan and TIP may satisfy the requirements of §§ 93.118 and 93.119 based on an alternate emissions analysis that does not use network modeling, if Federal, State, and local air and transportation agencies concur in the emissions analysis approach, and if the transportation plan and TIP in question is a revision of the previously conforming transportation plan and TIP to include a limited number of additional projects. This paragraph will not be effective until EPA and DOT review and evaluate suggested alternate methods and approaches for determining the regional emissions impact of projects and make documentation of this review and evaluation publicly available.

(5) A conformity determination based on an alternate emissions analysis as described in paragraph (b)(4) of this section would not fulfill the requirements of § 93.104(b)(3) and § 93.104(c)(3) regarding frequency of conformity determinations. Conformity must be determined according to all the otherwise applicable criteria and procedures of this subpart within three years of the last determination which did not rely on paragraph (b)(4) of this section.

(c) In all areas not otherwise subject to paragraph (b) of this section, regional emissions analyses must use those procedures described in paragraph (b) of this section if the use of those procedures has been the previous practice of the MPO. Otherwise, areas not subject to paragraph (b) of this section may estimate regional emissions using any appropriate methods that account for VMT growth by, for example, extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for vehicle miles traveled per person. These methods must also consider future economic activity, transit alternatives, and transportation system policies.

VOL
61
ISS
1
3
2
JL
9
1996
UMI

(d) PM_{10} from construction-related fugitive dust.

(1) For areas in which the implementation plan does not identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the fugitive PM_{10} emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In PM_{10} nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the regional PM_{10} emissions analysis shall consider construction-related fugitive PM_{10} and shall account for the level of construction activity, the fugitive PM_{10} control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

(e) Reliance on previous regional emissions analysis. (1) The TIP may be demonstrated to satisfy the requirements of § 93.118 ("Motor vehicle emissions budget") or § 93.119 ("Emission reductions in areas without motor vehicle emissions budgets") without new regional emissions analysis if the regional emissions analysis already performed for the plan also applies to the TIP. This requires a demonstration that:

(i) The TIP contains all projects which must be started in the TIP's timeframe in order to achieve the highway and transit system envisioned by the transportation plan;

(ii) All TIP projects which are regionally significant are included in the transportation plan with design concept and scope adequate to determine their contribution to the transportation plan's regional emissions at the time of the transportation plan's conformity determination; and

(iii) The design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan.

(2) A project which is not from a conforming transportation plan and a conforming TIP may be demonstrated to satisfy the requirements of § 93.118 or § 93.119 without additional regional emissions analysis if allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan, and if the project is either:

(i) Not regionally significant; or

(ii) Included in the conforming transportation plan (even if it is not specifically included in the latest conforming TIP) with design concept and scope adequate to determine its contribution to the transportation plan's regional emissions at the time of the transportation plan's conformity determination, and the design concept and scope of the project is not significantly different from that described in the transportation plan.

§ 93.123 Procedures for determining localized CO and PM_{10} concentrations (hot-spot analysis).

(a) *CO hot-spot analysis.* (1) The demonstrations required by § 93.116 ("Localized CO and PM_{10} violations") must be based on quantitative analysis using the applicable air quality models, data bases, and other requirements specified in 40 CFR part 51 Appendix W ("Guideline on Air Quality Models (Revised)" (1988), supplement A (1987) and supplement B (1993), EPA publication no. 450/2–78–027R). These procedures shall be used in the following cases, unless different procedures are developed through the interagency consultation process required in § 93.105 and approved by the EPA Regional Administrator:

(i) For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of violation or possible violation;

(ii) For projects affecting intersections that are at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to the project;

(iii) For any project affecting one or more of the top three intersections in the nonattainment or maintenance area with highest traffic volumes, as identified in the applicable implementation plan; and

(iv) For any project affecting one or more of the top three intersections in the nonattainment or maintenance area with the worst level of service, as identified in the applicable implementation plan.

(2) In cases other than those described in paragraph (a)(1) of this section, the demonstrations required by § 93.116 may be based on either:

(i) Quantitative methods that represent reasonable and common professional practice; or

(ii) A qualitative consideration of local factors, if this can provide a clear demonstration that the requirements of § 93.116 are met.

(b) *PM_{10} hot-spot analysis:* (1) The hot-spot demonstration required by § 93.116 must be based on quantitative analysis methods for the following types of projects:

(i) Projects which are located at sites at which violations have been verified by monitoring;

(ii) Projects which are located at sites which have vehicle and roadway emission and dispersion characteristics that are essentially identical to those of sites with verified violations (including sites near one at which a violation has been monitored); and

(iii) New or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location require hot-spot analysis.

(2) Where quantitative analysis methods are not required, the demonstration required by § 93.116 may be based on a qualitative consideration of local factors.

(3) The identification of the sites described in paragraph (b)(1) (i) and (ii) of this section, and other cases where quantitative methods are appropriate, shall be determined through the interagency consultation process required in § 93.105. DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels.

(4) The requirements for quantitative analysis contained in paragraph (b) of this section will not take effect until EPA releases modeling guidance on this subject and announces in the **Federal Register** that these requirements are in effect.

(c) *General requirements.* (1) Estimated pollutant concentrations must be based on the total emissions burden which may result from the implementation of the project, summed together with future background concentrations. The total concentration must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project.

(2) Hot-spot analyses must include the entire project, and may be performed only after the major design features which will significantly impact concentrations have been identified. The future background concentration should be estimated by multiplying current background by the ratio of future to current traffic and the ratio of future to current emission factors.

(3) Hot-spot analysis assumptions must be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.

(4) PM_{10} or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor and/or operator to implement such measures, as required by § 93.125(a).

(5) CO and PM_{10} hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

§ 93.124 Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).

(a) In interpreting an applicable implementation plan (or implementation plan submission) with respect to its motor vehicle emissions budget(s), the MPO and DOT may not infer additions to the budget(s) that are not explicitly intended by the implementation plan (or submission). Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to the MPO and DOT in the emissions budget for conformity purposes, the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans (or submissions) which demonstrate that after implementation of control measures in the implementation plan:

(1) Emissions from all sources will be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;

(2) Emissions from all sources will result in achieving attainment prior to the attainment deadline and/or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment; or

(3) Emissions will be lower than needed to provide for continued maintenance.

(b) If an applicable implementation plan submitted before November 24, 1993, demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that "safety margin," the State may submit a SIP revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such a SIP revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.

(c) A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, without a SIP revision or a SIP which establishes mechanisms for such trades.

(d) If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

(e) If a nonattainment area includes more than one MPO, the SIP may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire nonattainment area.

§ 93.125 Enforceability of design concept and scope and project-level mitigation and control measures.

(a) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws, FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM_{10} or CO impacts. Before a conformity determination is made, written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and are included in the project design concept and scope which is used in the regional emissions analysis required by §§ 93.118 ("Motor vehicle emissions budget") and 93.119 ("Emission reductions in areas without motor vehicle emissions budgets") or used in the project-level hot-spot analysis required by § 93.116.

(b) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(c) The implementation plan revision required in § 51.390 of this chapter shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.

(d) If the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the applicable hot-spot requirements of § 93.116, emission budget requirements of § 93.118, and emission reduction requirements of § 93.119 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under § 93.105. The MPO and DOT must find that the transportation plan and TIP still satisfy the applicable requirements of §§ 93.118 and/or 93.119 and that the project still satisfies the requirements of § 93.116, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid. This finding is subject to the applicable public consultation requirements in § 93.105(e) for conformity determinations for projects.

§ 93.126 Exempt projects.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 2 are exempt from the requirement to determine conformity. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if the MPO in consultation with other agencies (see § 93.105(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs must ensure that exempt projects do not interfere with TCM implementation.

VOL 61 ISS 132 JL 9 1996 UMI

TABLE 2.—EXEMPT PROJECTS

Safety
Railroad/highway crossing.
Hazard elimination program.
Safer non-Federal-aid system roads.
Shoulder improvements.
Increasing sight distance.
Safety improvement program.
Traffic control devices and operating assistance other than signalization projects.
Railroad/highway crossing warning devices.
Guardrails, median barriers, crash cushions.
Pavement resurfacing and/or rehabilitation.
Pavement marking demonstration.
Emergency relief (23 U.S.C. 125).
Fencing.
Skid treatments.
Safety roadside rest areas.
Adding medians.
Truck climbing lanes outside the urbanized area.
Lighting improvements.
Widening narrow pavements or reconstructing bridges (no additional travel lanes).
Emergency truck pullovers.
Mass Transit
Operating assistance to transit agencies.
Purchase of support vehicles.
Rehabilitation of transit vehicles.[1]
Purchase of office, shop, and operating equipment for existing facilities.
Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.).
Construction or renovation of power, signal, and communications systems.
Construction of small passenger shelters and information kiosks.
Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures).
Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way.
Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet.[1]
Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR part 771.
Air Quality
Continuation of ride-sharing and van-pooling promotion activities at current levels.
Bicycle and pedestrian facilities.
Other
Specific activities which do not involve or lead directly to construction, such as:
Planning and technical studies.
Grants for training and research programs.
Planning activities conducted pursuant to titles 23 and 49 U.S.C.
Federal-aid systems revisions.
Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action.
Noise attenuation.
Emergency or hardship advance land acquisitions (23 CFR 712.204(d)).
Acquisition of scenic easements.
Plantings, landscaping, etc.
Sign removal.
Directional and informational signs.
Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).
Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes.

[1] In PM_{10} nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

§ 93.127 Projects exempt from regional emissions analyses.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM_{10} concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see § 93.105(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

TABLE 3.—PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES

Intersection channelization projects.
Intersection signalization projects at individual intersections.
Interchange reconfiguration projects.
Changes in vertical and horizontal alignment.
Truck size and weight inspection stations.
Bus terminals and transfer points.

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61

ISS
132

JL
9

1996

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Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 106 and 107

Current Good Manufacturing Practice, Quality Control Procedures, Quality Factors, Notification Requirements, and Records and Reports, for the Production of Infant Formula; Proposed Rule

VOL 61 ISS 132 JL 9 1996 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 106 and 107

[Docket No. 95N–0309]

RIN 0910–AA04

Current Good Manufacturing Practice, Quality Control Procedures, Quality Factors, Notification Requirements, and Records and Reports, for the Production of Infant Formula

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise its infant formula regulations to establish requirements for quality factors and current good manufacturing practice (CGMP); to amend its quality control procedure, notification, and records and report requirements for infant formulas; to require that infant formulas contain, and be tested for, required nutrients and for any nutrient added by the manufacturer throughout their shelf life, and that they be produced under strict microbiological controls; and to require that manufacturers implement the CGMP and quality control procedure requirements by establishing a production and in-process control system of their own design. This action is being taken to improve the protection of infants that use infant formula products.

DATES: Comments by October 7, 1996, except that comments regarding information collection should be submitted by August 8, 1996. The agency proposes that any final rule that may issue based on this proposal become effective 120 days after its date of publication.

ADDRESSES: Submit written comments, data, or information to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Comments regarding information collection to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, ATTN: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Carolyn W. Miles, Center for Food Safety and Applied Nutrition (HFS–456), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–401–9858.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Infant Formula Act of 1980

In 1978, a major manufacturer of infant formula reformulated two of its soy products by discontinuing the addition of salt. This reformulation resulted in infant formula products that contained an inadequate amount of chloride, an essential nutrient for growth and development in infants. By mid-1979, a substantial number of infants had been diagnosed with hypochloremic metabolic alkalosis, a syndrome associated with chloride deficiency. Development of this syndrome in these infants was found to be associated with prolonged exclusive use of chloride-deficient soy formulas.

After reviewing the matter, Congress determined that, to improve protection of infants using infant formula products, greater regulatory control over the formulation and production of infant formula was needed, including modifications of industry's and FDA's recall procedures. Accordingly, Congress passed, and the President signed into law on September 26, 1980, the Infant Formula Act of 1980 (the 1980 act) (Pub. L. 96–359). This law amended the act to include section 412 (21 U.S.C. 350a).

In 1982, FDA adopted infant formula recall procedures, establishing subpart D of part 107 of its regulations (21 CFR part 107) (47 FR 18832, April 30, 1982), and infant formula quality control procedures (21 CFR part 106 (47 FR 17016, April 20, 1982)). In 1985, FDA further implemented the 1980 act by establishing subparts B, C, and D in 21 CFR part 107 regarding the labeling of infant formula, exempt infant formulas, and nutrient requirements for infant formula, respectively (50 FR 1833, January 14, 1985; 50 FR 48183, November 22, 1985; and 50 FR 45106, October 30, 1985).

B. The 1986 Amendments to the Infant Formula Act

In 1986, Congress, as part of the Drug Enforcement, Education, and Control Act of 1986 (the 1986 amendments) (Pub. L. 99–570) completely revamped section 412 of the act to address concerns that had been expressed by Congress and consumers about the 1980 act and FDA's implementation of that statute. These concerns included whether the quality control testing, CGMP, recordkeeping, and recall requirements that FDA had adopted would prevent children "from ever again being threatened by defective baby formula" (Ref. 1). The 1986 amendments: (1) State that an infant formula is deemed to be adulterated unless it provides certain required nutrients, meets the quality factor requirements established by the Secretary of Health and Human Services (the Secretary) (and, by delegation, FDA), and is manufactured in accordance with CGMP and quality control procedures established by the Secretary; (2) require that the Secretary issue regulations establishing requirements for quality factors and CGMP, including quality control procedures; (3) require that infant formula manufacturers regularly audit their operations to ensure that those operations comply with CGMP and quality control procedure regulations; (4) expand the circumstances in which manufacturers must make a submission to the agency to include when a manufacturer makes major changes in an infant formula, and when a manufacturer makes changes that may affect whether the formula is adulterated; (5) specify the nutrient quality control testing that must be done on each batch of infant formula; (6) modify the infant formula recall requirements; and (7) give the Secretary authority to establish requirements for retention of records, including records necessary to demonstrate compliance with CGMP and quality control procedures.

In 1989, the agency responded to the provisions of the 1986 amendments on recalls (sections 412(f) and (g) of the act) by establishing subpart E in part 107 (54 FR 4006, January 27, 1989). In 1991, the agency adopted infant formula record and record retention requirements that implemented the 1986 amendments by revising § 106.100 (56 FR 66566, December 24, 1991).

Although the agency has adopted regulations that respond to a number of the provisions of the 1986 amendments, it has not issued regulations on infant formula CGMP and quality factors or revised the notification procedures and quality control procedures to reflect the 1986 amendments. Since the passage of the 1986 amendments, agency representatives have visited infant formula plants to observe the manufacturing practice and quality control procedures that they employ, and the agency has solicited and received recommendations on CGMP from the Infant Formula Council. In addition, FDA has contracted with the Committee on Nutrition of the American Academy of Pediatrics (CON/AAP) to obtain expert advice on clinical testing of infant formulas with respect to the quality factor requirements. Moreover, both industry and the agency have

increased experience with the quantity and quality of information that should be submitted to meet the notification requirements of section 412(c) and (d) of the act.

This proposal addresses CGMP, quality control procedures, quality factors, and notification procedures and incorporates information resulting from the interactions between FDA and industry and between FDA and AAP. This proposal updates the language in part 107 to reflect the 1986 amendments and the November 1992 reorganization of the Center for Food Safety and Applied Nutrition (CFSAN).

C. FDA's Regulations on Nutrient Requirements

Section 412(i) of the act includes a table that lists nutrients that every infant formula must contain. This section also establishes a minimum level for each of the listed nutrients and a maximum level for eight of the listed nutrients. In addition, section 412(i)(2) of the act grants the Secretary (and by delegation FDA) the authority to revise the list of nutrients in section 412(i), and the minimum and maximum levels of those nutrients, by regulation. In the **Federal Register** of October 30, 1995, FDA established the nutrient requirements for infant formulas in § 107.100 (50 FR 45106). For the purpose of this document, the nutrients that are required to be in infant formula under § 107.100 will be referred to as "required nutrients," and the levels of these required nutrients established in § 107.100 will be referred to as "required levels."

II. The Need for Regulation

Relative to per unit of body weight, nutrient requirements are generally greater in infancy than at any other time during life. During the first year, the rate of growth is at its maximum, with birth weight typically doubling by 4 months of age and tripling by 1 year (Refs. 2 and 3). Moreover, the metabolic rate in infants is greater, and the turnover of nutrients is more rapid, than in adults (Ref. 4). Thus, infants must ingest adequate nutrients to support a rapid rate of growth and of developmental changes and to supply maintenance needs. Without adequate nutrition, infants would be unable to achieve their genetic potential for growth and development.

These nutritional needs must be met in early infancy by food in liquid form. Sucking and involuntary swallow reflexes are the mechanisms by which very young infants ingest food until teeth and motor coordination develop. Consequently, for infants who are not fed breast milk, infant formula often serves as the sole source, or the major source, of nutrition during this time of rapid growth and development.

Therefore, the importance of proper infant formula manufacture, composition, and nutrient levels cannot be overstated. Senator Metzenbaum explained why infant formula needs more regulation than other foods when he stated "there is simply no margin for error in the production of baby formula. An infant relies on the formula to sustain life and provide the proper nourishment at a time of rapid physical and mental development" (Ref. 1). The requirements contained in this proposal are designed to ensure that the formula fed to American infants fulfills its important function.

The CGMP and quality control procedures that FDA is proposing are designed to prevent the production of an adulterated infant formula. Defining CGMP will help to ensure that all of the required nutrients are included at appropriate levels in the formula, and that the formula is not contaminated with microorganisms or other materials that may be harmful to the infant.

Quality control procedures are designed to ensure that an infant formula contains the nutrients that are necessary to support growth and development, at the appropriate levels, not only when it enters into commerce but throughout its shelf life. FDA is proposing that each batch of infant formula be tested for all required nutrients and any nutrient added by the manufacturer, and that finished batches be periodically sampled and tested for nutrients throughout the shelf life of the product.

Quality factors are designed to ensure that the required nutrients and any nutrient added by the manufacturer actually reach the infant in a useable form. Quality factors "pertain to the bioavailability of a nutrient and the maintenance of level or potency of nutrients during the expected shelf life of the product" (Ref. 5). The 1986 amendments directed that the Secretary, by regulation, "establish requirements for quality factors for infant formulas to the extent possible consistent with current scientific knowledge, including quality factor requirements for the nutrients required by (section 412(i) of the act)."

In 1986, FDA advised Congress that the technology and science with respect to quality factors was still evolving, and that it was only possible to establish a quality factor for one nutrient. The agency said that it had already done so. However, in the 1986 Congressional Record (Ref. 1), Senator Metzenbaum stated that "the legislation contemplates that the Secretary will move to promptly develop and issue appropriate quality factor standards for different nutrients as the state of the science progresses." Since that time, as stated above, FDA has contracted with CON/AAP to obtain expert advice on quality factors; i.e., on the clinical testing of infant formula with respect to its nutritional safety and suitability for term infants.

In 1988, CON/AAP submitted a report (Ref. 6) under the contract that identified and discussed the types of clinical studies that might be considered for evaluation of the nutritional suitability of a formula for normal term infants. FDA has reviewed this report and the available scientific literature and has identified quality factors for protein and for complete infant formulas. The agency is proposing to adopt these quality factors as part of these regulations.

FDA has received numerous inquiries from industry for specific guidance on what information must be submitted to meet the requirements of sections 412(c) and (d) of the act, which state when a manufacturer must register with, submit to, or notify the agency about a new or changed infant formula, and what must be in the registration, submission, or notification. The agency is responding to these requests in this proposal. The agency is providing this information not only in response to these inquiries but also to facilitate more consistent registrations, submissions, and notifications. The lack of consistency in the format and content of registrations, submissions, and notifications has caused inefficiencies and delays in the agency's review. Accordingly, the agency is proposing to establish a consistent format and content for infant formula registrations, submissions, and notifications.

Within the past year, FDA has investigated a number of instances in which infant formula manufactured in the United States has been diverted from normal distribution channels and relabeled, sometimes with counterfeit labels for the same brand of infant formula but in other instances with counterfeit labels for different formulations. Infant formula bearing counterfeit labels is a potentially serious public health problem. It could cause infant formula that is past the use by date to enter the marketplace if the counterfeit label bears an incorrect use by date. The more serious consequence of this practice, however, is that it could cause infants that are intolerant to certain infant formula ingredients to be fed an incorrect formula, with serious consequences to the health of the infant,

VOL 61 ISS 132 JL 9 1996 UMI

if an infant formula has been relabeled with an incorrect label (e.g., a milk-based infant formula relabeled to indicate that it is a soy-based infant formula). Therefore, as part of this proposed regulation, the agency is requesting comments on new or modified procedures or controls that could be instituted during the labeling, packaging, or distribution of infant formula and that would be effective in preventing or reducing the potential for the diversion of infant formula from normal distribution channels and its relabeling with counterfeit labels.

III. Scope of this Document

To implement the 1986 amendments, the agency is proposing to amend its regulations by adding new subparts B, D, and E to part 106 and by redesignating existing subparts B, C, and D as subparts C, F, and G. Table 1 sets out the current and proposed subpart designations.

TABLE 1

Subparts	Current regulation	Proposed regulation
A	General Provisions	General Provisions.
B	Quality Control Procedures for Assuring Nutrient Content of Infant Formulas.	Current Good Manufacturing Practice.
C	Records and Reports	Quality Control Procedures.
D	Notification Requirements	Conduct of Audits.
E	None	Quality Factors for Infant Formulas.
F	None	Records and Reports.
G	None	Registration, Submission, and Notification Requirements.

The proposed regulation adds a new § 107.1 and will amend § 107.10(a)(2) by requiring that "any nutrient added by the manufacturer" be listed on the label. The proposed regulation amends §§ 107.240 and 107.250 by changing the reference to the Division of Regulatory Guidance to the Division of Enforcement to reflect the November 1992 reorganization of CFSAN.

IV. The Proposed Regulations

A. General Provisions

To reflect the expanded scope of the proposed regulations, FDA is revising the heading of part 106 to read, "Infant Formula-Requirements Pertaining to Current Good Manufacturing Practice, Quality Control Procedures, Quality Factors, Records and Reports, and Notifications."

1. Status and Applicability of the Regulations in Part 106

Proposed § 106.1 sets out the authority for each of the proposed subparts and the consequences under the act of failure to comply with any of the regulations in the proposed subparts. FDA is including proposed § 106.1 because it is important for manufacturers to be aware of the legal consequences of failure to comply with these regulations, which are being issued to implement specific sections of the act.

2. Definitions

The agency is proposing to amend § 106.3 by adding several definitions that are needed to explain activities that specifically concern the infant formula industry. It is important whenever possible to maintain consistent terminology throughout the agency's regulations. Therefore, as described in detail below, FDA has relied, where possible, on existing definitions in 21 CFR parts 105, 110, and 210 in arriving at these proposed definitions. Other definitions were derived from specific provisions in the act.

Proposed § 106.3(a), (g), (h), and (p) incorporate into part 106 the definitions for "batch," "lot," "lof number, control number, or batch number," and "representative sample" derived from 21 CFR 210.3(b)(2), (b)(10), (b)(11), and (b)(21), respectively. In addition to promoting consistency in the agency's regulations, FDA has tentatively determined that use of these definitions in part 106 is appropriate because they permit the agency to refer to the product in terms that reflect the fact that it is produced in bulk rather than on a unit-by-unit basis.

Proposed § 106.3(k), (q), and (r) incorporate into part 106 the definitions for "microorganisms," "shall," and "should" from 21 CFR 110.3(i), (p), and (q), respectively. In addition to promoting consistency, these definitions reflect the generally recognized scientific or legal meaning of these terms.

Proposed § 106.3(c), (f), (j), and (n) incorporate into part 106 the definitions for "indicator nutrient," "in-process batch," "manufacturer," and "nutrient premix" from current § 106.3. The definition of "manufacturer" in proposed § 106.3(j) warrants particular note. In the past there has been some confusion about who is and who is not a manufacturer of infant formula. This definition makes clear that a manufacturer is not only a person who combines raw ingredients together to produce an infant formula but also is a person who reconstitutes or otherwise changes the physical or chemical characteristics of an infant formula or who packages or labels the product in a container for distribution. For example, the agency is aware of a firm that reconstitutes powdered infant formulas and puts the reconstituted formula in bottles to sell to hospitals. This definition makes clear that this firm is a "manufacturer."

Proposed § 106.3(d) incorporates into part 106 the definition for "infant" from 21 CFR 105.3(e).

In addition to the definitions derived from FDA's existing regulations, the agency is proposing to amend § 106.3 by adding definitions that are derived from the definitions provided by Congress in the act.

Proposed § 106.3(e) and (l) incorporate into part 106 the definitions for "infant formula" and "new infant formula" from sections 201(aa) (21 U.S.C. 321(aa)) and 412(c)(2), respectively.

Proposed § 106.3(e) defines "infant formula" as a food that purports to be or is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk. The phrase "solely as a food for infants" is somewhat ambiguous. Where there is an ambiguity in a statutory provision, it is appropriate to look to the legislative history to determine the appropriate interpretation. In the legislative history of the Infant Formula Act, whenever the words "sole" or "solely" are used, they appear in the context of describing infant formula as the "sole" or primary source of nutrition for infants or babies. For example, in explaining how the

1980 act would change existing laws, then-Congressman Gore stated: "First it would require that any infant formula marketed in the United States as the sole source of nutrition for normal babies include minimum amounts of all essential nutrients." (Ref. 7.) Congressman Mottl stated that the 1980 act "is concerned with human lives at their most vulnerable stage. We are talking about food that may be the sole source of nourishment for infants." (Ref. 7.) This language and other similar language in the legislative history evidence that Congress intended the act to apply to any food that purports to be or that is represented as an infant formula, regardless of whether other possible uses of the product are suggested in its labeling. If the law only applied to foods that are represented only for use as infant formula, then manufacturers could easily evade the requirements of the act for infant formula by representing their products for a second purpose. Such an interpretation would be inconsistent with the remedial purposes of the infant formula provisions of the act.

Proposed § 106.3(b) incorporates into part 106 the definition for "final-product-stage" derived from section 412(b)(3)(E) of the act. FDA has modified the definition, however, by adding the phrase "due to processing" at the end of the definition to clarify that the final-product-stage is when the infant formula "is homogeneous and is not subject to further degradation due to processing" and to distinguish the point in time after which the formula is subject to further degradation during the shelf life of the product.

Proposed § 106.3(i) incorporates into part 106 a definition of "major change" that is derived from section 412(c)(2)(B) of the act, which states that "* * * the term 'major change' has the meaning given to such term in section 106.30(c)(2) of title 21, Code of Federal Regulations (as in effect on August 1, 1986), and guidelines issued thereunder" (Ref. 8). Proposed § 106.3(i) defines "major change" as it is defined in current § 106.30(c)(2). It also provides a number of examples of infant formulas deemed to differ fundamentally in processing or in composition. These examples are derived from the guidelines that were issued by the agency and were incorporated into the definition of "major change" in section 412(c) of the act by the 1986 amendments.

Proposed § 106.3(m) revises the definition for "nutrient" in current § 106.3(d) to reflect changes to the act made by the 1986 amendments. As stated above, the 1986 amendments moved the nutrient table from section 412(g) to section 412(i)(1) and moved the provision on promulgation of standards for nutrients from section 412(a)(2)(A) to section 412(i)(2). The proposed regulation references the new section numbers. Proposed § 106.3(m) also includes the statement that nutrients are substances determined to be essential by the Food and Nutrition Board of the National Research Council or by FDA. The agency is including this statement in the proposed definition to provide consistency with § 107.10(b)(5) on labeling nutrient information. This paragraph allows such information to include any vitamin or mineral in the formula, provided that the nutrient has been identified as essential by the National Academy of Sciences through its development of a recommended dietary allowance or an estimated safe and adequate daily dietary intake range, or the nutrient has been identified as essential by FDA through a **Federal Register** publication.

Proposed § 106.3(o) defines "quality factors." The definition that FDA is proposing derives from the language of the act and its legislative history. Section 412(b)(1) of the act states that the Secretary shall "establish requirements for quality factors for infant formulas * * *, including quality factor requirements for the nutrients required by subsection (i)." House Report 98–936 (Ref. 5) states that quality factors "pertain to the bioavailability of a nutrient and the maintenance of level or potency of nutrients during the expected shelf life of the product." The language of the act and the House report show that Congress intended that infant formulas marketed in the United States should not only be safe, and contain all of the nutrients required to support infant growth and health, but should provide those nutrients in a bioavailable form that will mean that, throughout its shelf life, the formula will support optimal infant growth and health.

Thus, quality factors encompass something different than the analyzable nutrient content of the finished infant formula. Quality factor requirements not only ensure that the nutrient potency and biological effectiveness of a formula, as formulated, are adequate to support healthy growth, but also that subsequent processing, ingredient interactions, and time do not reduce the biological effectiveness of a formula. Quality factor requirements also ensure that unsafe nutrient "super potencies" or by-products are not created from ingredient breakdowns or interactions caused by processing or time.

B. CGMP

1. Introduction

The agency is proposing to adopt a new subpart B to implement the CGMP requirements in section 412(b)(2) of the act. Proposed § 106.5 is introductory. It reflects FDA's tentative view that the CGMP requirements set out in subpart B are the minimum necessary to ensure that the infant formula that is produced contains all the requisite nutrients and is not otherwise adulterated.

To develop the proposed CGMP regulations, as stated above, agency representatives visited infant formula plants to observe the manufacturing practice that they employ, and the agency has solicited and received recommendations on CGMP from the infant formula industry through the Infant Formula Council (Ref. 9). The agency also is relying on its knowledge of industry manufacturing practices gained through inspections of infant formula manufacturing establishments, review of infant formula submissions received from industry since 1986, and monitoring of infant formula recalls.

The proposed CGMP regulations also are based in part on FDA's existing regulations concerning CGMP for foods (21 CFR part 110) and for drugs (21 CFR part 211). Because infant formulas are foods, they should, at a minimum, be manufactured in a manner that is consistent with CGMP for all foods under section 402(a)(4) of the act (21 U.S.C. 342(a)(4)). Moreover, infant formulas are often the sole source of nutrition for infants during a period of rapid growth and development and, hence, are used during a period of nutritional vulnerability. Thus, if the formula is to promote optimal infant health and growth, each batch of infant formula must provide the nutrients prescribed under section 412(i) of the act at the levels specified in that section, much like each batch of drugs must meet compositional requirements for active ingredients if they are to have their intended effect. Therefore, FDA has tentatively concluded that some of the manufacturing practices required of drug manufacturers are relevant to infant formula manufacturers.

2. Production and In-Process Control System

Section 412(b)(2)(B)(iii) of the act states that CGMP and quality control procedures shall include requirements for "in-process controls including, where necessary, testing required by CGMP designed to prevent adulteration of each batch of infant formula." In the past, manufacturers of infant formula have referred to production and in-

VOL 61 ISS 132 JL 9 1996

process control systems intended to ensure that required nutrients are included in the formula and to prevent adulteration by such terms as "quality control plans," "standard operating procedures," or "master manufacturing procedures." Infant formula manufacturers also have investigated adopting a system, known as the ISO.9000 series, developed by the International Organization for Standardization (ISO).

The agency is proposing to establish a framework in which decisions about the production of infant formula are left to the manufacturer but that charges the manufacturer with incorporating into its production process measures that are designed to ensure the safety and nutritional quality of the formula.

For example, proposed § 106.10(a) requires that there be sufficient personnel, qualified by training and experience, to perform all operations, including all required recordkeeping, in the manufacture, processing, packing, and holding of each infant formula and to supervise such operations to ensure that they are correctly and fully performed. This provision is a performance standard for determining how many employees are necessary, i.e., that there be enough to achieve, maintain, and document CGMP. FDA is not proposing to provide the specific number of employees required, the specific type of training that they must have, the specific task they are to perform, or the specific method by which records are to be kept.

In another example, proposed § 106.35(b)(4) requires that infant formula manufacturers ensure that automatic (mechanical or electronic) systems are validated before their first use to manufacture commercial product. However, in this provision, the agency is not stipulating any standards or specifications for the validation process because the extent of the validation that is necessary is related to the level of risk that each component of the system presents. These decisions about the validation necessary are left to the infant formula manufacturer to make.

As a third example, proposed § 106.91(b) requires that the manufacturer conduct nutrient stability testing at the beginning, midpoint, and end of the shelf life of the infant formula and with sufficient frequency to ensure that the formula complies with § 107.100 throughout its shelf life. Because manufacturers have experience with the nutrient stability of the infant formula they produce, FDA has decided to propose testing "with sufficient frequency," instead of specifying what frequency is required.

Proposed § 106.6(a) requires that infant formula manufacturers comply with the requirements of subpart B of part 106 by implementing a system of production and in-process controls that covers all stages of processing, from receipt and acceptance of raw materials, ingredients, and components through storage and distribution of finished product, and that is designed to ensure that all requirements of subpart B of part 106 are met.

Infant formula manufacturing requires a degree of sophistication (e.g., in research and development, production equipment and procedures, and analytical equipment and methodology) that a vast majority of companies in the food processing industry do not have. A manufacturer must maintain constant control because a seemingly innocuous change in formulation or in a preparation method, or exposure to an unanticipated environmental condition, could create a health hazard. Moreover, infant formula manufacturers must be concerned not only that something is present in the formula that may adulterate that formula, such as a contaminant or a level of a required nutrient that exceeds the maximum level allowed by § 107.100, but also that something is absent from the formula, such as the lack or unavailability of a required nutrient. For example, the lack of a nutrient or the unavailability of an added nutrient has been responsible for a number of documented problems that have occurred in infant formulas (Ref. 1). Thus, FDA has tentatively concluded that the use of a production and in-process control system covering all stages of processing is necessary to ensure that the infant formula is manufactured in a manner that will prevent adulteration of the infant formula.

Proposed § 106.6(b) requires that the production and in-process control system be set out in a written plan, or set of procedures, that is designed to ensure that the infant formula is manufactured in a manner that will prevent adulteration of the formula. FDA has tentatively concluded that requiring that the production and in-process control system be set out in a written plan or a set of procedures is necessary to provide consistency in production of different batches of infant formula and to facilitate the preparation of each batch of infant formula. The plan also facilitates preparation of the formula because, given the sophistication of the infant formula manufacturing process, a written plan to which ready and easy reference can be had is essential. The importance of a written plan is well-recognized by industry. The use of a written plan or set of procedures for production of a batch of infant formula is already a wide-spread practice.

The agency has sought to develop a basic list of items that a firm would need to consider in developing its plan or procedures, but the agency is reluctant to offer such a list at this stage of the rulemaking, before it has received comments on the proposed good manufacturing practice regulations. The agency requests comments on whether such a basic list, over and above the provisions of Subpart B itself, is possible or desirable, and if it is, what such a list should include.

The agency would conceive of such a list, at a minimum, as consisting of a number of items. It would need to direct the manufacturer to establish the safeguards that it will rely upon to protect against the foreseeable sources of adulteration in the production of infant formula. It would also need to direct the manufacturer to establish procedures for ensuring that the manufacturing process functions properly. Several of the procedures that would have to be established to do so are defined in the proposed regulations, including: (1) Procedures, in accordance with proposed § 106.35(b)(2), to calibrate, inspect, and check hardware; (2) specifications, in accordance with proposed § 106.40(d), for the acceptance or rejection of ingredients, containers, and closures used in infant formula manufacture; (3) the master manufacturing orders in accordance with proposed § 106.50(a)(1); and (4) testing procedures, under proposed § 106.55(b), to ensure that powdered infant formula complies with the microbiological quality standards. Other items that would also seem to be appropriately included on such a list would be procedures for controlling the release of product, for ensuring its traceability, and for conducting GMP audits. However, FDA requests comments on whether these items provide an adequate checklist for the development of the type of written plan that is necessary under these proposed regulations.

For now, FDA is leaving the specific content of the procedures that are in the

procedures that are part of the written plan.

Proposed § 106.6(c) specifies requirements for a manufacturer's handling of any point, step, or stage in its production process where control of the process is necessary to prevent adulteration of the formula. These in-process control points, steps, or stages may include retorting or other heating steps, cooling steps, points where specific sanitation procedures are needed, product formulation control steps, points where cross contamination may occur, and steps where employee and environmental hygiene are necessary to prevent adulteration of the product.

Proposed § 106.6(c)(1) requires that infant formula manufacturers establish standards or specifications to be met at such points, steps, or stages. These standards or specifications establish the boundaries of safety at the point, step, or stage. Such standards or specifications may include, for example, upper and lower limits for parameters such as temperature, time, pH, visual appearance, and moisture level as well as chemical, nutrient, and microbiological specifications for raw materials. These standards or specifications can be set based on published or unpublished studies, on regulatory levels established by FDA, or on consultation with experts in infant formula production. As discussed in more detail below, FDA is proposing (see proposed § 106.100(e)(3)(i)) that manufacturers make and retain a list of the standards and specifications that they establish under proposed § 106.6(c)(1) including documentation of the scientific basis for each standard or specification. Maintaining such a list will mean that these standards and specifications are readily available for comparison to the actual values obtained in monitoring (i.e., making a planned sequence of observations or measurements) the production and in-process control system.

Proposed § 106.6(c)(2) requires that infant formula manufacturers monitor the points, steps, or stages in their production process where control is necessary to prevent adulteration of the infant formula. Regular monitoring of these points is necessary to ensure that the product meets the standards and specifications set under proposed § 106.6(c)(1) and to ensure that any trend toward loss of control is quickly taken to remove adulterated product from the system.

For many standards or specifications, continuous monitoring is possible. For example, temperature and time for a scheduled thermal process can be recorded continuously on temperature-recording charts. When it is not possible to monitor a particular point, step, or stage on a continuous basis, monitoring intervals need to be reliable enough to permit the manufacturer to determine whether the production control point is under control.

Monitoring involves not only making observations at an appropriate frequency but also ensuring that the instruments and equipment, such as thermometers, temperature-recording devices, and computer software, that the manufacturer relies on to make its observations are accurate and reliable (see proposed § 106.30(d)).

Proposed § 106.6(c)(3) requires that infant formula manufacturers establish corrective action plans for use when a standard or specification established in accordance with proposed § 106.6(c)(1) is not met. FDA has tentatively concluded that this requirement is necessary because a manufacturer will often need to take corrective action quickly, and the best way to ensure that a corrective action is appropriate is to determine the action in advance. The corrective action plans should provide, for example, for the disposition of any infant formula or of any partially manufactured infant formula that was produced when a deviation was occurring.

Proposed § 106.6(c)(4) requires that infant formula manufacturers review the results of the monitoring required under proposed § 106.6(c)(2). This review will reveal whether the monitoring is actually being done and being done correctly, and whether standards and specifications are being met.

Proposed § 106.6(c)(4) further requires that infant formula manufacturers review, and evaluate the public health significance of, any deviations from standards or specifications established in accordance with proposed § 106.6(c)(1). This proposed requirement is necessary to ensure that products that may have been affected by a deviation do not enter commerce if they are likely to be unsafe. It also will ensure that the disruption of a manufacturer's business is minimized when a deviation does occur. For example, if review of monitoring records reveals that an

If the monitoring records are not reviewed, a product made with a deficient premix may be placed on the market, and a costly and embarrassing recall may be required.

Proposed § 106.6(c)(4) also requires that this review be conducted by an individual qualified by training and experience to conduct such reviews. This proposed requirement is necessary to ensure that the review is conducted by a person who understands the production and in-process control system, understands the significance of a processing deviation, and knows how to respond to a deviation. Such understanding and knowledge will ensure that the review is appropriately conducted, and that the response to any deviation is measured and appropriate.

Proposed § 106.6(c)(5) requires that infant formula manufacturers establish recordkeeping procedures, in accordance with proposed § 106.100(e)(3), that ensure that compliance with the requirements of proposed § 106.6(c) is documented. As discussed below in the description of the proposed revisions to subpart F of part 106, FDA has authority to require that these records be made and retained under section 412(b)(4)(A)(i) of the act. FDA is proposing to provide a complete description of all recordkeeping requirements in subpart F. When applicable, FDA is including cross-references to these recordkeeping requirements in the regulations in subparts B, C, and D. These records will allow manufacturers to discern trends or to pinpoint the onset of a problem if a standard or specification is not being met at a point where control is deemed necessary to prevent adulteration, or if a batch of infant formula is associated with an adverse event.

3. Controls to Prevent Adulteration by Workers

Proposed § 106.10(a) requires that there be sufficient personnel, qualified by training and experience, to perform all operations, including all required recordkeeping, in the manufacture, processing, packing, and holding of each infant formula and to supervise such operations to ensure that they are correctly and fully performed. Proposed § 106.10(a) is consistent with existing regulations concerning CGMP for foods (§ 110.10(c)) and drugs (§ 211.25). In this provision, FDA is proposing a general standard for determining how many employees are necessary, i.e., that there

VOL
61
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Proposed § 106.10(a) also requires that such personnel be qualified by training and experience. Training is necessary to ensure that employees know how to correctly and fully perform the operations in question and to ensure that employees are competent to produce a safe and clean infant formula. The extent and frequency of training is left to the manufacturer's discretion.

Proposed § 106.10(b) requires that personnel working directly with infant formula, infant formula raw materials, infant formula packaging, or infant formula equipment or utensil contact surfaces practice good personal hygiene to protect the product against contamination. Proposed § 106.10(b) is consistent with existing regulations concerning CGMP for foods (§ 110.10(b)) and drugs (§ 211.28(a) and (b)). FDA has tentatively concluded that it is necessary that these employees practice good hygiene so that they will not transmit disease to others in the workforce, and so that they will not transmit filth or pathogenic microorganisms to the infant formula.

In addition, proposed § 106.10(b) enumerates the basic elements of good personal hygiene. Proposed § 106.10(b)(1) lists clean outer garments and protective apparel as one element. To be "clean," clothing must be free of filth or microorganisms that may contaminate the infant formula. Protective apparel, such as head, face, hand, and arm coverings, will help to ensure that the infant formula is protected from contaminants such as hair.

Proposed § 106.10(b)(2) states that good personal hygiene includes workers washing their hands thoroughly in a hand washing facility with soap and running water at a suitable temperature before starting work, after each absence from the work station, and at any other time when hands may become soiled or contaminated. Filth and pathogenic microorganisms can be brought into the processing environment on the employee's hands from outside areas, restrooms, contaminated raw materials, waste or waste receptacles, and other insanitary objects (Refs. 10, 11, and 12). FDA has tentatively concluded that requiring workers to practice good personal hygiene by washing their hands at the times specified will help to prevent the introduction of this type of contamination into infant formula.

Proposed § 106.10(c) requires that any person who reports that he or she has, or appears by medical examination or supervisory observation to have, an illness, open lesion, including boils, sores, or infected wounds, or any other source of microbial contamination that creates a reasonable possibility that the safety of the formula may be adversely affected, be excluded from direct contact with ingredients, containers, closures, in-process materials, equipment, utensils, and infant formula product until the condition is corrected or determined by competent medical personnel not to jeopardize the safety of the infant formula. Proposed § 106.10(c) is consistent with existing regulations concerning CGMP for foods (§ 110.10(a)) and drugs (§ 211.28(d)). Employees can transmit the organisms responsible for diseases, such as salmonellosis, shigellosis, and hepatitis, to the infant formula. Additionally, open sores, boils, or infected wounds present the potential for contamination of the infant formula with such pathogenic microorganisms as *Staphylococcus aureus* (Refs. 14 and 15). Thus, proposed § 106.10(c) will exclude employees who carry potential microbial contamination that may adversely affect the safety of the formula from direct contact with the infant formula and from direct contact with materials and surfaces that come in contact with the infant formula and thus will minimize the potential for employees to transmit microorganisms to the infant formula that may cause the infant formula to pose a health hazard to the infant.

4. Controls to Prevent Adulteration Caused by Facilities

Proposed § 106.20(a) requires that buildings used in the manufacture, processing, packing, or holding of infant formula be maintained in a clean and sanitary condition. This proposed requirement is necessary to prevent contamination of the infant formula. It is consistent with FDA's existing regulations concerning CGMP for foods (§§ 110.20(b) and 110.35(a)) and drugs (§ 211.42). Trash, litter, and waste must be disposed of to avoid creating conditions that attract and harbor potentially pathogenic microorganisms and attract and harbor pests, such as rodents or insects. Such pests can carry a variety of human disease agents, including microorganisms that are potentially pathogenic in infants, and introduce them into the manufacturing environment (Refs. 10 and 12). They are also sources of feces and hair that can contaminate infant formula.

Proposed § 106.20(a) also requires that buildings used in the manufacture of infant formula have space for the separation of incompatible operations, such as the handling of raw materials, the manufacture of the product, and packaging and labeling operations. If raw materials are not separated from the site of product manufacture, there is a significant possibility that they will be used in infant formula manufacture before they have been tested and found acceptable for use in infant formula. Therefore, FDA has tentatively concluded that the separation of incompatible operations is necessary to ensure that infant formula is manufactured in a manner designed to prevent adulteration. The proposed requirement that incompatible operations be separated is consistent with FDA's existing regulations concerning CGMP for foods (§ 110.20(b)(2)) and drugs (§ 211.42(c)) and is consistent with the recommendations made to FDA by the Infant Formula Council (Ref. 9).

Proposed § 106.20(b) requires separate holding areas to protect against mixups that could lead to contamination of infant formula. Failure to separate raw materials or in-process materials that have not been released, or that have been rejected but not disposed of, from those that have been released creates the potential for the use of ingredients that do not meet the applicable specifications and thereby can lead to the production of finished infant formula that is adulterated. Similar types of problems can develop if final product that has not been released, or that has been rejected but not disposed of, is not separated from final product that has been released. Proposed § 106.20(b) is consistent with FDA's existing regulations concerning CGMP for drugs (§ 211.42(c)).

Proposed § 106.20(c) defines a standard for adequate lighting and allows the manufacturer to exercise discretion in determining the precise level of lighting that is sufficient to meet that standard. Adequate lighting is important. Inadequate lighting may make it difficult to read a label or an instrument, and as a result incorrect ingredients may be used in infant formula production, or instruments may be read incorrectly, which increases the risk of producing an adulterated infant formula.

Proposed § 106.20(c) also requires that any lighting fixtures directly over or adjacent to exposed raw materials, in-process materials, or bulk (unpackaged) finished product be protected to prevent glass from contaminating the product in the event of breakage. Glass in an infant formula may be a safety hazard and would render the formula adulterated (Ref. 14). Proposed § 106.20(c) is consistent with FDA's existing regulations concerning CGMP's for food (§ 110.20(b)(5)) and drugs (§ 211.44).

FDA is proposing a requirement in § 106.20(d) for air filtration systems to improve air quality in production areas

and thus reduce the potential for contamination by air-borne sources (Ref. 15). This proposed requirement is consistent with FDA's existing regulations concerning CGMP for drugs (§ 211.46(c)).

Proposed new requirements in § 106.20(e) protect against the contamination of infant formula by pest control agents and cleaning agents. The agency recognizes that these agents are needed in infant formula facilities. However, because many of them are toxic, they must be handled and stored in a manner that prevents contamination of the infant formula. Proposed § 106.20(e) is consistent with FDA's existing regulations concerning CGMP for food (§ 110.35(b)(2)) and drugs (§ 211.56(c)).

Proposed § 106.20(f)(1) states that potable water used in the manufacturer of infant formula must meet the Environmental Protection Agency's (EPA's) Primary Drinking Water Regulations (40 CFR part 141) (with the one exception that the fluoride level be as low as possible, as discussed below). This proposed regulation is consistent with FDA's existing regulations concerning CGMP for drugs (§ 211.48(a)).

The Safe Drinking Water Act gives EPA the responsibility for establishing standards for public drinking water. Therefore, FDA is proposing to use EPA's standards for water used in the production of infant formulas. Application of these standards will ensure that the water used in infant formula is safe. The agency is proposing to require that water from both municipal sources and the firm's own wells meet these standards.

The safety and sanitary quality of water from public water systems is generally ensured through public water treatment, chlorination, or monitoring and control by local health authorities. Private sources of water, however, particularly surface waters or water from shallow wells, may be subject to microbiological, chemical, or radiological contamination attributable to the source itself or to surface contamination at the well head or intake. Private sources are also frequently untreated or minimally treated. Thus, under the proposed regulation, when a manufacturer uses a private source of water, it will need to take steps to ensure that the water is safe and sanitary. These steps may include ensuring that the well design has been approved by the local health authority, ensuring that the well meets coliform test standards, performing periodic inspections of the sanitary condition of the well head and source intake, and performing and monitoring appropriate water treatment procedures, including filtration, sedimentation, and chlorination. The type and frequency of controls exercised by the manufacturer will be based upon the type of source water and its historic safety and sanitary quality.

Proposed § 106.20(f)(1) makes one exception to the use of EPA standards for drinking water. On April 2, 1986, EPA issued a maximum contaminant level (MCL) for fluoride in drinking water of 4 milligrams per liter (mg/L) (51 FR 11396) and reaffirmed this level on December 29, 1993 (58 FR 68826). The National Academy of Sciences (NAS) recommends 0.1 to 0.5 mg/day as the safe and adequate intake for infants from 0 to 6 months of age. Mottling of teeth in children has been observed at 2 to 8 milligrams/kilogram (mg/kg) concentration of fluoride in diet and drinking water (Ref. 16). Thus, if 4 mg of fluoride/L of water was allowed in the water used in infant formula manufacture, infants consuming ready-to-feed infant formula could receive enough fluoride to adversely affect their teeth. Currently, no infant formulas are manufactured with fluoridated water (Ref. 17), so that the pediatrician or other health care provider is able to decide whether a fluoride supplement is appropriate for formula-fed infants, principally by considering whether the formula was diluted with fluoridated water (Ref. 18).

NAS has established a safe and adequate daily dietary intake of fluoride for infants (Ref. 19). The agency is considering proposing to revise the infant formula nutrient requirements in § 107.100 to include fluoride and other nutrients that NAS has determined are essential for infants. FDA will consider fluoride levels for infant formulas at that time. FDA has tentatively concluded that, until it has revised the levels of required nutrients, manufacturers should continue their practice of not using fluoridated water in the manufacture of infant formula.

Proposed § 106.20(f)(1) also requires that the water be supplied under continuous positive pressure in a plumbing system that is free of defects that could contaminate an infant formula. FDA has tentatively concluded that this requirement is necessary to ensure that all potable water coming into the plant is not adversely affected by the in-plant plumbing. Contaminated water can serve as a vehicle for contamination of infant formula, both when used as an ingredient in the infant formula and when allowed to enter the product indirectly, as can occur, for example, when water is used to cool the product after retorting. Thus, FDA tentatively concludes that it is appropriate to include this positive requirement in this regulation.

Proposed § 106.20(f)(2), which sets forth requirements for testing representative samples of potable water used in infant formula manufacturing, is necessary to provide assurance that the water used in infant formula manufacturing meets EPA's standards. Proposed § 106.20(f)(3) requires that manufacturers conduct these tests with appropriate frequency. The regulation allows manufacturers some discretion in determining the testing frequency necessary to ensure that EPA standards are met, but it requires a minimum frequency of testing for certain contaminants (i.e., chemical contaminants, radiological contaminants, and bacteriological contaminants). FDA is basing these proposed minimum frequencies on those adopted by EPA for primary drinking water. This frequency of testing is consistent with FDA's own regulations concerning processing and bottling of bottled drinking water (§ 129.35(a)(3)).

Proposed § 106.20(f)(4) requires that manufacturers make and retain records of the frequency and the results of the testing that they do on the water used in the production of infant formula. These records will document that the manufacturer is complying with the potable water testing requirements of § 106.20(f)(2) and (f)(3), and that the water complies with EPA standards. They will identify any trend toward loss of compliance with these standards, so that the manufacturer can take corrective actions before the water becomes inappropriate for use in infant formula. As discussed below in the description of the proposed revisions to subpart F, FDA has authority to require the creation and retention of these records under section 412(b)(4)(A)(i) of the act.

In proposed § 106.20(g), FDA sets out requirements regarding piping systems to prevent a source of contamination (i.e., waste water) from coming in contact with the infant formula. Cross connections could allow back siphonage into a potable system from a nonpotable system under negative pressure conditions and thus could result in the chemical or microbiological contamination of the potable water system (Ref. 20). Proposed § 106.20(g) is consistent with FDA's regulations concerning CGMP for food (§ 110.37(b)(5)) and drugs (§ 211.48(b)).

Proposed § 106.20(h) requires that steam that comes in direct contact with infant formula be safe and free of rust

VOL 61 ISS 132 JL 9 1996 UMI

and other particulate matter that could contaminate the formula. Steam comes in direct contact with infant formula when the steam is injected into the head space of a can of infant formula to create a vacuum. Thus, this proposed requirement is necessary to ensure that the steam does not adulterate the infant formula.

Proposed § 106.20(h) also requires that boiler water additives in the steam meet safety standards set forth in FDA regulations at 21 CFR 173.310 which lists boiler water additives that may be safely used in the preparation of steam that will contact food and the conditions for the safe use of those boiler water additives. This proposed requirement is necessary because boiler water additives dissolve in water and can be carried over as a residue in the steam. A proposed requirement that boiler water additives in the steam comply with § 173.310 will ensure that any residue is safe to come in contact with the infant formula.

Proposed § 106.20(i) requires that each infant formula manufacturing site provide its employees with readily accessible toilet and hand washing facilities. This proposed requirement is consistent with good sanitary practice common to all food-processing facilities and is consistent with FDA's CGMP regulations for foods (§ 110.37(d) and (e)) and drugs (§ 211.52). The requirement is also a necessary adjunct to the requirement in proposed § 106.10(b)(2) that employees wash their hands before starting work, after each absence from the work station, and at any other time when the hands may become soiled or contaminated. Hand-washing facilities are not likely to be used in an appropriate manner by employees if the facilities are not conveniently located.

Proposed § 106.20(i) also requires that these facilities be equipped with hot and cold water, ordinary soap or detergent, and single-service towels to ensure that microbiological contamination does not occur through the repeated use of the same towel by several individuals.

In addition, proposed § 106.20(i) requires that toilet facilities be maintained in good repair and in a sanitary condition at all times, and that these facilities provide for proper disposal of sewage, so that the processing environment is protected against pathogenic microorganisms shed in fecal material. Restroom floors and the grounds around the processing facility can become contaminated with pathogens if fecal material is not removed by an adequate sewage system. Foot traffic over the affected areas can introduce pathogens into the processing room and cause product contamination. Insanitary toilet facilities can also increase the potential for contamination of employees' hands and, ultimately, of the product itself (Refs. 10 and 11). Proposed § 106.20(i) further protects against potential microbiological contamination by setting forth requirements for the positioning of toilet facility doors.

5. Controls to Prevent Adulteration Caused by Equipment or Utensils

Equipment used in infant formula manufacture, packaging, or holding that is of an inappropriate design or an inadequate size, or that is installed improperly, can result in a variety of problems. For example, a mixer for the blending of powdered ingredients will not properly perform its function if the blade is too small relative to the size of the mixer, or if the mixer blade or auger is not properly positioned in the inside of the mixer. Such a mixer may produce infant formula that is not uniform in composition throughout a batch and that is, consequently, adulterated because the required nutrients are not provided at the required levels throughout the batch.

Installing equipment in a manner that will facilitate its cleaning and maintenance is also important in preventing adulteration. Equipment that is not properly cleaned can be the source of contaminants that adulterate the infant formula. Equipment that is not properly maintained can result in a variety of problems. For example, improper maintenance of equipment such as a mixer may result in inadequate compositional uniformity in a batch of formula. Improper maintenance of equipment used to measure a parameter such as temperature may result in the processing of the infant formula at a temperature that can adversely affect the product. In either case, the product would be adulterated. Design and installation of equipment also needs to be checked when the equipment is modified or repaired to ensure that the equipment is still designed and installed to function as intended as part of the manufacturing process. Thus, proposed § 106.30(a) requires that equipment be appropriately designed and installed. This proposed requirement is consistent with FDA's CGMP regulations for foods (§ 110.40(a)) and drugs (§ 211.63).

If a food-contact surface is constructed of toxic material, the product may be directly contaminated with that material (Ref. 11). Therefore, FDA is proposing to require in § 106.30(b) that equipment and utensils be made of materials that are not reactive or absorptive, so that the equipment and utensil materials do not contaminate the infant formula and cause it to be adulterated. Proposed § 106.30(b) also requires that such equipment and utensils be designed to be easily cleanable because they can be vehicles for microbial contamination of both raw and finished products. Utensils, equipment, and other food-contact surfaces that are made of corrosive material, or that contain breaks, pits, cuts, or grooves, are difficult to clean because the pores and crevices shield the microorganisms from the action of cleaning and sanitizing agents (Ref. 21). In addition proposed § 106.30(b) requires that equipment and utensils be designed to withstand the environment in which they are used. This requirement will ensure that equipment and utensils are constructed of materials that will not corrode or undergo other types of chemical or physical degeneration resulting from their use in infant formula production. Degeneration of the equipment and utensils may introduce contaminants into the formula and thereby lead to adulteration. Surfaces that are not adequately cleaned and sanitized can be a source of filth, an attractant for vermin, and a reservoir for microorganisms.

Proposed § 106.30(b) requires regular, effective cleaning and sanitizing of all food-contact surfaces to minimize the probability of contamination of the infant formula (Ref. 21) and prescribes requirements for effective sanitizing agents. An effective sanitizing agent is one that has a good bactericidal effect on the types of microorganisms normally present in the plant environment and that is safe, stable, and convenient for use (Ref. 22). Sanitizing agents are indirect food additives and must be used in accordance with 21 CFR 178.1010, which prescribes their conditions of safe use. Examples of sanitizing agents that comply with § 178.1010 include hypochlorites, iodophors, and quaternary ammonium compounds. However, sanitizers can achieve their intended effect only if they are applied to a surface that has been thoroughly cleaned, and if they are applied at a proper concentration (Ref. 22).

Thus, it is important that effective cleaning compounds be used. An effective cleaning compound is one that will lower the surface tension of water so that spills can be lifted and flushed away (Ref. 23). Ordinary soap has a limited ability to solubilize fats, oils, and proteins, and inorganic alkaline detergents can dissolve food solids such as fats and proteins, but mineral deposits will frequently require the use of acid cleaners (Ref. 23).

In order to ensure that infant formula is not contaminated with unsafe substances that are a part of the manufacturing process, FDA is proposing requirements in § 106.30(c) regarding substances necessary for the operation of equipment, such as lubricants or coolants.

Proposed § 106.30(d)(1) sets forth requirements for maintaining the accuracy of instruments, since an instrument that is not easily read, or that is not properly calibrated, may not provide accurate measurements. If an instrument is not properly maintained, it may not be reliable over time, and the readings obtained from it may lead to adulteration of the infant formula during processing. This proposed regulation also requires that such instruments be sufficient in number for their intended use. For example, if the temperature of a large piece of equipment needs to be monitored, several temperature-indicating devices may be needed to accurately monitor the temperature in all parts of the equipment. Also, instruments and controls must be tested for accuracy (i.e., calibrated) against a known reference standard before first use and at routine intervals thereafter, as specified in writing by the manufacturer of the instrument or control, or as otherwise deemed necessary to ensure the accuracy of the instrument. FDA has tentatively concluded that this requirement is necessary because equipment used to manufacture infant formula must operate properly to ensure production of a safe, uniform product with a consistent nutrient content throughout a lot or a batch.

The accuracy of an instrument is the degree to which it produces a correct result. The instruments used to measure parameters such as temperature or pressure at points where control is deemed necessary to prevent adulteration must reflect the true measurement so that, for example, a manufacturer can have confidence that when a thermometer indicates that the temperature is 240 °F, the temperature really is 240 °F. FDA's experience is that calibration of the instrument using a reference standard is the most reliable method to ensure accuracy. FDA is proposing to require that this test for accuracy be done before first use to provide assurance that the instruments and controls will perform as intended and at routine intervals afterward to ensure that the instruments and controls continue to perform as intended.

Reliability is the instrument's accuracy over time. The reliability of the instrument will determine the length of time that it can be used before it begins to lose accuracy. The manufacturer of the instrument is in the best position to establish how frequently recalibration is needed because that manufacturer is responsible for putting together the technology by which the instrument operates. However, if the infant formula manufacturer's experience with the instrument demonstrates that the instrument needs to be calibrated more frequently than the instrument manufacturer suggests, FDA has tentatively concluded that the infant formula manufacturer must act on its own experience with the instrument and calibrate it as often as necessary to ensure the accuracy of the instrument.

Proposed § 106.30(d)(1) further requires that the known reference standard be certified for accuracy at routine intervals specified in writing by the manufacturer of the instrument, or as otherwise deemed necessary. Known reference standard devices are accompanied by certificates of accuracy, but these certificates do not preclude the possibility that these instruments will go out of calibration. Just as a calibration routine needs to be established for the process instrumentation, a recertification of the known reference standard needs to be established in accordance with the equipment manufacturer's recommendations. For example, the length of time that a certified thermometer can be considered reliable will depend on the materials used in its manufacture, the degree of control exercised in its manufacture, and its use, as would be the case for the indicating thermometer used in the production line. The accuracy of a calibrated thermometer is only going to be as good as the accuracy of the known reference standard that is used during its calibration.

Proposed § 106.30(d)(1) also requires that manufacturers make and retain records of accuracy checks in accordance with the provisions of proposed § 106.100(f)(2). As discussed below in the description of the proposed revisions to subpart F of part 106, FDA has authority to require these records under section 412(b)(4)(A)(i) of the act. These records will enable the manufacturer to establish the historical performance of the instrument to determine whether the calibration schedule is sufficient to ensure the accuracy of the instrument and will provide information on when and how the instruments were calibrated to assist the manufacturer in identifying the cause of a problem that may arise with a batch of infant formula.

Proposed § 106.30(d)(2) requires that instruments and controls that cannot be adjusted to agree with the reference standard be repaired or replaced. FDA is proposing this requirement because an instrument or control cannot be trusted for use in infant formula production if it cannot be adjusted to agree with the reference standard. Adjustments made to reach agreement with a known accurate or reference standard must also be done in accordance with any adjustment range limitations specified by the vender of the instrument.

Proposed § 106.30(d)(3) provides that if calibration of an instrument (testing for accuracy against a known reference standard) shows that a specification or standard has not been met at a point where control is deemed necessary to prevent adulteration, a written evaluation must be made of all affected product and of any actions that need to be taken. FDA has tentatively concluded that this written evaluation is necessary because if an instrument has been giving inaccurate readings, all infant formula produced subject to such inaccuracies must be identified and evaluated for the possibility that the inaccuracies resulted in the production of adulterated formula. If the manufacturer determines that adulterated formula has been produced, the firm must decide what actions, if any, need to be taken to prevent such formula from reaching infants.

FDA is also requiring that this written evaluation needs to be maintained in the firm's records. FDA tentatively concludes that this record is necessary to demonstrate that the firm has complied with CGMP. As discussed below in the description of the proposed revisions to subpart F of part 106, FDA has authority to require that these records be retained under section 412(b)(4)(A)(i) of the act.

Proposed § 106.30(e)(1) requires that the temperature in cold storage compartments used to store raw materials, in-process materials, or final product, as well as the temperature of thermal processing equipment used at points where temperature control is necessary to prevent adulteration, be monitored with such frequency as is necessary to ensure that temperature control is maintained. The frequency of the monitoring is left to the manufacturer to determine. Growth of microorganisms can occur and cause spoilage if materials that should be kept in cold storage compartments are not maintained at the proper temperature. Infant formula may also be adulterated if thermal processing equipment is not

VOL 61 ISS 132 JL 9 1996 UMI

operated at the proper temperature, and the final liquid infant formula product is not commercially sterile. Therefore, FDA tentatively concludes that their requirement is appropriate.

In addition, FDA is proposing that a temperature of 40 °F (4.4 °C) is appropriate in cold storage compartments to minimize the growth of pathogens (Ref. 24) and the deterioration of liquid ingredients, nutrients, and the formulated product before canning (proposed § 106.30(e)(2)).

Proposed § 106.30(e)(3)(i) requires that cold storage compartments and thermal processing equipment be equipped with easily readable, accurate temperature-indicating devices. These devices are necessary to ensure that the manufacturer can monitor the temperatures where materials are stored or where product is processed. Proposed § 106.30(e)(3)(ii) requires that thermal processing equipment be equipped with temperature-recording devices that reflect the true temperature on a continuing basis, so that the manufacturer will be able to determine whether the product was thermally processed at a minimum temperature for an appropriate period of time. Two factors, temperature and time, are relevant in ensuring that thermal processing is conducted in a manner that will produce commercially sterile infant formula after retorting. Thus, recording the temperature that is maintained during the time period used will show whether the thermal process is conducted properly.

Proposed § 106.30(e)(3)(ii) also requires that cold storage compartments be equipped with either a temperature-recording device that will reflect the true temperature within the compartment on a continuing basis, or a high-temperature alarm or a maximum-indicating thermometer that has been verified to function properly. These temperature records will show whether the materials were stored at an appropriate temperature to minimize the growth of pathogens and the deterioration of ingredients and formulated product. If the manufacturer does not wish to equip cold storage compartments with such temperature-recording devices, FDA is proposing to require that it maintain a temperature log in which the temperature in the compartment is noted with such frequency as is necessary to achieve control. The agency is leaving it to the manufacturer's discretion to determine what frequency of temperature notation is necessary to achieve control.

The agency has tentatively concluded that it is not necessary for the manufacturer to record the temperature of the cold storage compartment on a continuous basis as long as the manufacturer can determine that the temperature of the cold storage compartment has gone above 40 °F. A high-temperature alarm set to go off when the cold storage compartment goes above 40 °F will allow the manufacturer to make this determination. Likewise, a maximum-indicating thermometer will remain at the highest temperature that it ever reaches. If the maximum indicating thermometer indicates a temperature above 40 °F, the infant formula manufacturer must assume that the temperature has been above 40 °F since the last check of the thermometer. Thus, FDA has tentatively concluded that either a high-temperature alarm or a maximum-indicating thermometer are acceptable alternatives for determining whether the cold storage compartment has gone above 40 °F.

In some cases, the actual location of the sensors may be an important factor in ensuring the accurate representation of temperature. For example, one sensor located at the end of a large piece of thermal processing equipment may not accurately represent the temperature in the whole piece of equipment. In addition, these temperature devices must often be read under less than ideal plant conditions, so they should be installed in a location that facilitates easy reading. Temperature-recording devices can be easily jarred and rendered inaccurate. They can be recalibrated against a reference temperature-indicating device (e.g., a thermometer) quite easily, however. Manufacturers should do so at least at the beginning and end of each production day in order to determine whether the instrument was accurate throughout the day's production. For thermal processing equipment used to produce commercially sterile liquid infant formula, the mandatory and recommended procedures of 21 CFR part 113 apply.

FDA is also proposing that manufacturers make and retain records, in accordance with the provisions of proposed § 106.100(f)(3), of the temperatures indicated or recorded by these devices (see § 106.30(e)(3)). As discussed below in the description of the proposed revisions to subpart F of part 106, FDA has authority to require these records under section 412(b)(4)(A)(i) of the act. They are needed to show that the thermal processing equipment or cold storage compartments are being maintained at the correct temperatures to prevent adulteration of the product. They also will enable the manufacturer to identify trends in temperature fluctuations that can signal the need to perform nonscheduled maintenance.

Proposed § 106.30(e)(4) requires that for thermal processing, the temperature-recording device not read higher than the calibrated temperature-indicating device because it is important to ensure that the infant formula is processed at a minimum temperature for a continual period of time. A temperature-recording device reading higher than the reference temperature-indicating device for thermal processing equipment would show that the product had been processed at a temperature higher than the true processing temperature. Because thermal processing is used to destroy microorganisms, a temperature-recording device reading higher than the true processing temperature may mean that the product has not been processed at a temperature that is high enough to destroy all microorganisms.

For cold storage compartments, the temperature-recording device must not read lower than the temperature-indicating device because when raw materials, in-process materials, or finished product must be stored at a cold temperature, it is important to ensure that the infant formula was not exposed to a temperature above the maximum temperature. A temperature-recording device reading lower than the reference temperature-indicating device for cold storage equipment would show the materials in the compartment as having been held at a lower temperature than the true temperature. Because cold storage is used to prevent microbiological growth, a temperature-recording device reading lower than the reference temperature-indicating device would mean that the material was actually being stored at a higher temperature than the recorded temperature, and that, as a result, microbial growth may have occurred.

Proposed § 106.30(f) requires that all equipment and utensils used in the manufacture of infant formula be cleaned, sanitized, and maintained at regular intervals to prevent adulteration of the infant formula. Any equipment or utensil that is not cleaned and maintained properly can be a source of contamination. FDA is therefore proposing to require that cleaning, sanitizing, and maintaining be done at regular intervals. The details of sanitation procedures e.g., equipment cleaning, can differ from plant to plant depending upon the type of operation and other conditions. In one plant, it may be necessary to disassemble all or part of the equipment to clean it. In other plants, breaking down the

equipment may not be necessary. Likewise, different cleaning compounds may be needed from one plant to another to solve specialized problems such as buildups of mineral deposits. Each manufacturer should study its own plant and develop a procedure that is tailored to that plant's needs and circumstances.

FDA considers that cleaning, sanitizing, and maintaining equipment and utensils is so important for ensuring that adulterated infant formula is not produced that it is proposing to require that the cleaning, sanitizing, and maintenance be checked for satisfactory completion by an individual qualified to conduct such a review. Such an individual will understand the importance of ensuring that cleaning, sanitizing, and maintenance is properly done, so that equipment and utensils do not contribute to the adulteration of the infant formula. Also, the agency has tentatively concluded that this requirement will ensure that there is accountability for proper performance of this function.

In addition, proposed § 106.30(f) requires that manufacturers make and retain records on equipment cleaning, sanitizing, and maintenance in accordance with proposed § 106.100(f)(4). As discussed below in the description of the proposed revisions to subpart F, FDA has authority to require these records under section 412(b)(4)(A)(i) of the act. These records will document when the cleaning, sanitizing, and maintenance of equipment occurs and will allow the manufacturer to trace all formula that may be affected if cleaning, sanitizing, or maintenance is not properly performed.

In order to ensure that compressed air or other gases will not contaminate the infant formula with unlawful indirect food additives or other chemical, physical, or microbiological contaminants, FDA is proposing to require in § 106.30(g) that they be appropriately treated. Air or other gases that are not properly treated and filtered, or air that is not of the proper purity, can introduce contaminants into the infant formula that may render it adulterated. Also, compressed gases can be contaminated with oil from the compressor or with filth or microbiological contaminants from the compression, storage, or distribution equipment. Filtration at the air intake and after compression, storage, and distribution is an effective means of reducing the risk that such contaminants will enter the gases and, thereby, the food. Therefore, FDA is also proposing in § 106.30(g) to require the use of a filter when compressed gases are used at product filling machines to replace air removed from the headspace of containers. The filter will prevent contaminants from entering the infant formula during that operation (Ref. 25).

6. Controls to Prevent Adulteration Due to Automatic (Mechanical or Electronic) Equipment

Manufacturers of infant formula are increasingly relying on automatic equipment (including mechanical and electronic equipment) in production and quality control. In some cases, manufacturers are replacing manually initiated processing procedures with automated process control systems to ensure proper formulation (addition of ingredients and premixes), mixing, or processing of an infant formula or to test a batch of infant formula. Such automated process control systems frequently consist of a computer or system of computers that controls many or all stages of production, in-process sampling, and testing. In other cases, manufacturers are relying on programmable equipment (such as an autoanalyzer) to perform a critical function, such as testing a batch of infant formula to ensure that the batch meets the nutrient requirements of the act. In all cases, it is important that such systems and equipment function as expected to ensure that the infant formula contains the required nutrients at the required levels and is manufactured according to the CGMP and quality control procedures prescribed under section 412(b)(2) of the act and therefore is not adulterated under section 412(a)(1) or (a)(3) of the act.

FDA is proposing to define "hardware," "software," "system," and "validation" in § 106.35 because the use of these terms will simplify the language of the proposed regulations and will clarify which sections of the proposed regulations apply to hardware only, to software only, or to systems consisting of both hardware and software.

The definition of "hardware" in proposed § 106.35(a)(1) is based on common usage of the term and makes clear that the regulations in proposed § 106.35 apply to all automatic equipment, whether the equipment is mechanical or electronic in nature. Proposed § 106.35(a)(1) also makes clear that electronic equipment includes, but is not limited to, computers. This definition of "hardware" distinguishes those elements of equipment that have a physical form from the elements considered to be intellectual property that may be encoded on a physical element such as a diskette, tape, or microprocessing chip.

Software may be developed by an infant formula manufacturer, by a manufacturer of equipment purchased by the infant formula manufacturer, or by a third party vendor (such as the vendor of a computer operating system). The definition of "software" in proposed § 106.35(a)(2) derives from the ISO International Guideline ISO–9000–3 [1] (Ref. 26) and the Institute for Electrical and Electronics Engineers, Inc. (IEEE) Standard 610–12–1990 [2] (Ref. 27) and is consistent with the definition of software in FDA's "Glossary of Computerized Systems and Software Development Terminology (Ref. 28). FDA is proposing to incorporate this definition into the agency's infant formula regulations because the definition is derived from internationally accepted definitions, includes documentation, applies to the operation of all types of hardware (rather than the narrowly defined "data processing system" or "computer system" included in the definitions from the ISO and IEEE, respectively), and is consistent with current FDA terminology. Software documentation consists of the instructions on how to use the software. FDA has tentatively concluded that such instructions need to be included in the definition of "software" to ensure the proper operation of the software.

The definition of "system" in proposed § 106.35(a)(3) derives from the IEEE Standard 610.12–1990 (Ref. 27). FDA is proposing to incorporate this definition because many of the requirements in proposed § 106.35 cannot be related to software or hardware alone but rather to systems in which software is used in conjunction with hardware. For example, testing software under simulated conditions of use may be beneficial during the early and middle stages of software development, but validation of the software must be performed in conjunction with the relevant hardware in the operational environment it is

[1] ISO is a world-wide federation of national standards bodies that set quality assurance guidelines for products that will enter international commerce. The ISO defines software as an "intellectual creation comprising the programs, procedures, rules and any associated documentation pertaining to the operation of a data processing system" (Ref. 26).

[2] IEEE is a trade organization comprised of several societies. IEEE standards are developed within the technical committees of the IEEE societies and represent a consensus opinion of experts from within IEEE as well as experts who are not members of IEEE. IEEE defines software as "computer programs, procedures, and possibly associated documentation and data pertaining to the operation of a computer system" (Ref. 27).

VOL 61 ISS 132 JUL 9 1996 UMI

intended to be used in. Therefore in proposed § 106.35(b)(4), FDA is proposing that all systems be validated "before their first use to manufacture commercial product."

Proposed § 106.35(a)(4) defines "validation" as establishing documented evidence that provides a high degree of assurance that a system will consistently produce a product meeting its predetermined specifications and quality characteristics. It is important that a process control system comply with specified requirements each time it operates. The proposed definition is derived from the ISO International Guideline ISO–9000–3, (which defines "validation" as "the process of evaluating software to ensure compliance with specified requirements" (Ref. 26)); the IEEE Standard 610.12–1990, which (defines it as "the process of evaluating a system or component during or at the end of the development process to determine whether it satisfies specified requirements" (Ref. 27)); and FDA's "Glossary of Computerized System and Software Development Terminology," which defines it as "establishing documented evidence which provides a high degree of assurance that a specific process will consistently produce a product meeting its predetermined specifications and quality characteristics" (Ref. 28). FDA is proposing to incorporate these definitions into its regulations because they are applicable to the types of systems used in infant formula manufacture, are derived from internationally accepted definitions, are consistent with existing FDA terminology, make clear that the process of evaluation includes the complete system (i.e., the hardware used in conjunction with the software), and include the concept of consistency.

Proposed § 106.35(b)(1) sets forth requirements for designing, installing, testing, and maintaining all systems so that they function as intended. Some systems may work properly only within a narrow range of environmental conditions, such as temperature and humidity, and some might be particularly sensitive to electromagnetic interference. The actual conditions of use of a system should be considered as early as possible in its design and development. Systems need to be installed in a manner that takes into account the inherent limitations of the system, tested under conditions that reflect actual conditions of use, and properly maintained to ensure that they continue to function as expected during their lifetime.

Proposed § 106.35(b)(2) requires that the manufacturer ensure that all hardware is routinely calibrated, inspected, and checked according to written procedures. FDA has tentatively concluded that this provision is necessary to ensure that any infant formula manufactured under the control of automatic equipment meets the requirements of the act and is manufactured in a manner designed to prevent adulteration. For example, a batch of infant formula may lack the required levels of nutrients if equipment used for the automatic dispensing of a nutrient premix is out of calibration or has a clogged delivery line. The routine calibration, inspection, and checking of hardware will ensure that it continues to perform as intended, and that its operation will not result in a process that deviates from established specifications. The establishment of written procedures for the calibration, inspection, and checking of hardware will ensure that these procedures are performed consistently and in an appropriate way.

The incorporation of software into the operation of automatic equipment has not only increased the complexity of such equipment but also has resulted in a process that may operate differently for each execution because a software-based control system can be configured at will by the operator or by the system itself. Therefore, proposed § 106.35(b)(3), (b)(4), and (b)(5) require that manufacturers exercise appropriate controls over systems and, in particular, over the software used in the systems.

Proposed § 106.35(b)(3) prescribes procedures for ensuring that systems are checked for input and output errors resulting from faulty data entry, faulty programming, or equipment malfunction. Such errors can result in serious production or quality control errors leading to a contaminated or adulterated infant formula. For example, a faulty position sensor on a downstream valve that improperly indicates that it is closed may result in a post-sterilization contamination. An improperly installed (or empty) ink cartridge in a color printer or multi-pen recorder may cause portions of a record to not be printed. FDA has tentatively concluded that the regulation is necessary to ensure that the infant formula produced or analyzed using the system is not adulterated. However, proposed § 106.35(b)(3) also provides that the degree and frequency of input/output checks are to be based on the complexity and reliability of the system and the level of risk associated with the safe operation of the system.

Proposed § 106.35(b)(4) requires that manufacturers ensure that all systems are validated before their first use to manufacture commercial product. FDA has tentatively concluded that it is necessary that software programs that are used in a process control system to monitor and control established points deemed necessary to prevent adulteration (such as the speed of a pump, temperature of a heat exchanger, addition of vital nutrients, and air overpressure in an aseptic storage tank) be validated to ensure that use of the process control system will produce compliance with the specifications or standards at each control point. For example, if a continuous flow process is designed to heat an in-process batch of infant formula in a plate-to-plate heat exchanger to a specification of 271 °F, as indicated by the temperature at the end of the hold tube, and the system is mistakenly programmed to divert the product to the raw (unsterilized) surge tank only if the temperature drops below 261 °F, an in-process batch of infant formula heated to 261 °F would not be diverted to the raw surge tank but rather would be handled by the computer as if it were adequately processed. Such an underprocessed batch of infant formula would likely pose a foodborne biological hazard. Thus, FDA has tentatively concluded that the validation required under proposed § 106.35(b)(4) is necessary to ensure that infant formula that is produced or analyzed using the system is not adulterated.

The validation of software ordinarily includes the following elements: Requirements development, design, coding, debugging, testing (with the hardware), and maintenance (Refs. 29, 30, and 31). Software validation also includes a review for correctness of the software documentation to ensure that the instructions prompt the input of the proper commands or data by the user. However, depending on the nature of the software and the hardware that it controls, some or all of these aspects of the validation process may be done by the infant formula manufacturer, by the manufacturer of equipment that is purchased by the infant formula manufacturer, or by a third party vendor.

Proposed § 106.35(b)(4) leaves the identity of the person that does the validation to the discretion of the infant formula manufacturer but makes clear that the infant formula manufacturer is responsible for ensuring that the system is validated. The proposal does not stipulate any standards or specifications for the validation process because the extent of the validation necessary is

related to the level of risk that each component of the system presents.

More emphasis should be placed on validating portions of the system that represent major risk than on those that confer moderate or minor risk. A major risk is associated with systems that control or monitor a point where such control or monitoring is deemed necessary to prevent adulteration of the infant formula; for example, systems that control or monitor nutrient addition or processing temperature present a major risk. A moderate risk is associated with systems that influence, but that do not control or monitor, a point where control or monitoring is deemed necessary to prevent adulteration of the infant formula. For example, the speed of computer processing presents a moderate risk if software that is designed to be used on a high-speed computer is used on a slower computer. A minor risk is associated with systems that do not involve a point where control or monitoring is deemed necessary to prevent adulteration. For example, systems that control pallet stacking or product conveying present a low risk.

Proposed § 106.35(b)(5) requires that any system that is modified be revalidated after any modification and before use of the modified system to manufacture commercial product. FDA has tentatively concluded that revalidation is necessary to ensure that no errors are introduced into the system during the modification and to ensure that a modification in one aspect of a process control system does not, unknowingly but adversely, affect other aspects of the process control system, particularly those operations that follow the modified aspect of the system.

Under § 106.35(b)(5), FDA is also proposing that a specific individual (or group of individuals) is designated to modify software to prevent the indiscriminate modification of software and to ensure that all modifications are made consistently. The designated individual may be employed by the infant formula manufacturer, the manufacturer of equipment purchased by the infant formula manufacturer, or by a third party. The regulation states, however, that the infant formula manufacturer is responsible for ensuring that modified software is retested or revalidated regardless of who does the modification.

Proposed § 106.35(c)requires that infant formula manufacturers make and retain records concerning automatic (mechanical or electronic) equipment. FDA is proposing this requirement under the authority of section 412(b)(4)(A)(i) of the act, which requires the retention of all records necessary to demonstrate compliance with the CGMP and quality control procedures prescribed under section 412(b)(2) of the act, including the results of all testing required under section 412(b)(2)(B) of the act. These records will allow manufacturers to readily determine whether this crucial equipment is being appropriately operated and maintained. They will allow manufacturers to troubleshoot and to operate these systems with a minimum of downtime when problems occur because the records will include a copy of all software used and a backup file of data entered into the computer or related system which can be used to reload the system. The records will also provide information that the manufacturer can use in trying to determine why a problem with the system is occurring or why the system is not producing an infant formula that complies with the manufacturer's specifications for the product.

7. Controls to Prevent Adulteration Caused by Ingredients, Containers, and Closures

Proposed § 106.40(a) specifies that the only substances that may be used in infant formulas are food ingredients that are generally recognized as safe (GRAS) for use in infant formula, that are used in accordance with the agency's food additive regulations, or that are authorized by a prior sanction issued by FDA. Under section 412(b)(2)(A) of the act, FDA is to establish CGMP's that it determines are necessary to ensure that the infant formula is manufactured in a way that is designed to prevent adulteration of the formula. Unless the safety of the ingredients of an infant formula has been established, the formula is adulterated under section 402(a)(1) and (a)(2)(C) of the act. Thus, the agency has tentatively concluded that CGMP requires that the manufacturer ensure that the ingredients that it uses in its formula are safe and suitable.

Proposed § 106.40(b) requires that infant formula containers and closures not be reactive or absorptive so as to affect the safety of the infant formula, and that all packaging material that comes in contact with an infant formula be composed of authorized substances and be used in accordance with any prescribed limitations. Various regulations that authorize the use of a material in contact with the food product also set conditions and limitations on that use. Thus, the agency proposes to require that the manufacturer not only use only materials specified in proposed § 106.40(b), but also that the materials be used as specified in the regulations authorizing their use. This provision will ensure that the food contact surface of containers and closures will not adulterate the infant formula.

In order for the manufacturer to maintain a complete record of how each ingredient, container, or closure was used and to determine which lots of infant formula are adulterated if a problem is ultimately identified with a particular lot of ingredients, containers, or closures, FDA is proposing, in § 106.40(c), that they be identified with batch or lot numbers. This batch or lot number can be used to identify ingredients, containers, or closures that have been released for use in infant formula or rejected for use in infant formula manufacture. It also can be used to track the ingredients, containers, or closures that were used in the manufacture of each batch of infant formula.

Proposed § 106.40(d) requires that infant formula manufacturers develop written specifications that stipulate the standards for acceptance or rejection of ingredients, containers, and closures. Stipulating the standards for acceptance or rejection of ingredients used to supply nutrients is important to ensure that all the required nutrients are present in the formula at the required levels. For example, the level of endogenous nutrients that a manufacturer expects will be supplied by an ingredient should be stipulated as a standard for acceptance or rejection of that ingredient. Endogenous nutrients are nutrients provided as a part of other nutrients, such as minerals provided as a part of the protein source. Sodium, for example, is frequently provided as part of the protein ingredient "caseinate."

To ensure that the mineral is provided in the infant formula at at least the minimal level, and not above the maximum level, required by § 107.100, the infant formula manufacturer must know what amount of a mineral is provided to the formula by all ingredients that are sources of the mineral. Thus, a standard for the level of the endogenous nutrient that is to be provided by an ingredient is an appropriate specification for the manufacturer to develop. If the level of the mineral is too high in the ingredient, it may cause the formula to exceed the maximum established in § 107.100. Similarly, if the level is too low, the formula may not meet the required minimal level.

Developing standards for acceptance or rejection of ingredients used in infant formula manufacture is also important to ensure that contaminants in the

VOL 61 ISS 132 JL 9 1996 UMI

ingredients that may lead to adulteration of the product are not present in the formula. Examples of contaminants that may lead to adulteration of an infant formula include certain heavy metals, such as lead. Infant formula manufacturers are currently setting standards for the lead in the ingredients that they use in infant formula to ensure that the lead level in infant formulas is at or below the quantification limit of the method used for lead determination (Ref. 32).

Stipulating the standards for acceptance or rejection of containers or closures used in infant formula manufacture is important to ensure that the integrity of the container and of the closure is maintained to prevent leakage of the formula and to prevent an infant formula from becoming adulterated, which can occur if the container or closure is not impenetrable to air (which can cause nutrient degradation), or if the container or closure allows outside contaminants to get into the infant formula.

Proposed § 106.40(d) also requires that manufacturers establish written specifications that stipulate the procedures for determining whether the ingredients, containers, and closures meet the standards. Examples of procedures manufacturers may use to determine whether they meet the standards are acceptance of a supplier's guarantee or certification and testing conducted by the infant formula manufacturer. In some cases, manufacturers must conduct their own testing to ensure that the standards for acceptance or rejection of the ingredient are met. For example, section 412(b)(3)(B) of the act requires that manufacturers test each nutrient premix for each relied-upon nutrient to ensure that the premix complies with its specifications or certifications by a premix supplier, but the act does not require testing of individual nutrient ingredients when such nutrients are not supplied as a nutrient premix. However, a manufacturer may find through experience that the best way to ensure that the final product will meet all specifications is to test certain nutrient ingredients for identity, purity, and potency before using them in the infant formula.

In addition, manufacturers should have controls in place to ensure that any ingredients, containers, or closures that do not meet any of their specifications are not used in production of a batch of infant formula. However, if these controls fail, and any such ingredients, containers, or closures are used in a batch of formula, FDA is proposing under § 106.40(d) that an individual qualified by training or experience conduct an investigation to ensure that the failure does not lead to release into the marketplace of an adulterated product.

Proposed § 106.40(e) requires that ingredients, containers, and closures be stored in areas clearly designated for materials pending release for use, materials released for use, or materials rejected for use in infant formula production in order to prevent mixups in using materials that are inappropriate for infant formula manufacturing. FDA is further proposing to require that any lot of ingredients, containers, or closures that does not meet the manufacturer's specifications be rejected and controlled under a quarantine system designed to prevent its use in the manufacture of infant formula. Failure to protect against the use of these materials would significantly increase the likelihood that an adulterated product will be produced.

Some ingredients used in infant formula are vulnerable to degradation when they are exposed to heat or air. Moreover, containers or closures may be exposed to air containing dust and dirt and become contaminated. Thus, the ingredients, containers, and closures may need to be reexamined after they are exposed to air, heat, or other conditions that may adversely affect them to ensure that they still meet the manufacturer's specifications. Thus, FDA is proposing, in § 106.40(f), to require retesting or reexamination after approved materials have been exposed to conditions that may adversely affect them.

Proposed § 106.40(g) requires that manufacturers make and retain records on ingredients, containers, and closures used in the manufacture of infant formula so that if adulteration of formula occurs, the manufacturer will be able to determine the source of the material, so that its use can be halted. In addition, the records will show the basis on which each ingredient, container, and closure was released for use in infant formula production, if questions about such release later arise. FDA has authority to require these records, under section 412(b)(4)(A)(i) of the act.

8. Controls to Prevent Adulteration During Manufacturing

The infant formula manufacturing process involves a number of complicated processes that may cause adulterated formula to be produced if the processes are not properly conducted or monitored. Therefore, FDA is proposing, under section § 106.50, to require that manufacturers establish controls to minimize the risk that manufacturing process errors will produce an adulterated or unsafe formula. The proposed requirements reflect many of the practices currently used by infant formula manufacturers and manufacturers of other commodities that require strict production controls to prevent product adulteration (e.g., Ref. 9 and 21 CFR 211.100 through 211.115).

Proposed § 106.50(a)(1) carries forward and amends the requirement in current § 106.25(a) that a master manufacturing order be prepared and followed. A master manufacturing order is necessary to ensure that the manufacturer will produce each batch of a particular infant formula the same way. If the master manufacturing order is not followed, all necessary ingredients may not be added to the formula in the appropriate concentrations and in the appropriate manner.

FDA is also proposing that manufacturers make and retain records that include complete information relating to the production and control of the batch at the time each manufacturing operation is performed (see proposed § 106.50(a)(2)). This proposed requirement will ensure that the complete history of each batch of infant formula is available for review in the event that a problem arises with a particular batch.

Proposed § 106.50(a)(2) also requires that an individual qualified by training or experience conduct an investigation of any deviations from the master manufacturing order and any corrective actions taken. This investigation is necessary to ensure that any deviations from the master manufacturing order do not lead to an adulterated product.

If any changes are made to the master manufacturing order, proposed § 106.50(a)(3) requires that they be drafted, reviewed, and approved by a responsible official and include an evaluation of the effect of the change on the nutrient content and the suitability of the formula for infants. This process is necessary to prevent unintended adverse effects that could result from changes to the master manufacturing order made by persons not qualified to assess their impact. The production of infant formula is a sophisticated process, and all organizational units that are involved in critical formulation and production steps, such as production, engineering, research, and regulatory affairs, should review and approve changes to the master manufacturing order. FDA has tentatively concluded, however, that all changes to the master manufacturing order need to be reviewed by at least one responsible official, and that this official will need to evaluate how the change will affect the nutrient content and the suitability of the product for infants, to ensure that the infant formula is not adulterated.

A significant change in the master manufacturing order without proper approval may result in the production of an infant formula that lacks a required nutrient or that is not manufactured in an appropriate way. For example, homogenization of an infant formula is done to ensure a uniform dispersion throughout the formula of the lipid ingredients as well as the fat-soluble nutrients. If the master manufacturing order were changed, and the homogenization process done before the fat source was added, the fat-soluble nutrients would not be uniformly dispersed in the formula, and the formula would be adulterated. The system of review and approval required by proposed § 106.50(a)(3) will minimize the possibility that a significant change could result in an adulterated product.

In order to ensure that the appropriate ingredients are added during the manufacturing process, and that the formula contains all of the nutrients required by § 107.100 and therefore is not adulterated, FDA is proposing in § 106.50(b) that each raw or in-process ingredient required by the master manufacturing order be examined by one person and checked by a second person or system. This requirement will ensure that there will be a check to prevent mixups in the use of ingredients and to prevent the use of unapproved ingredients. Confirmation that the master manufacturing order is being followed, and that ingredients are being properly added, is particularly important because these matters are fundamental to ensuring that the formula is manufactured correctly, and that it contains the nutrients required by § 107.100 but not unapproved ingredients that might adulterate the formula.

In proposed § 106.50(c), FDA is requiring the identification of all compounding and storage containers, processing lines, and major equipment used during the production of a batch of infant formula. Identification of these items will enable the manufacturer to accurately determine the status of all batches of infant formula during all stages of the manufacturing process, will help to prevent mixups in the addition of ingredients to the formula, and will facilitate prompt action by the manufacturer if any problems in processing are identified. For example, identifying that a particular storage container contains a batch of formula that has not yet had all ingredients added to it will prevent a manufacturer from inadvertently final-stage packaging the product and thus will help to ensure that adulterated product is not introduced into interstate commerce. The presence of the lot or batch number will help to identify the product if a problem does occur.

Proposed § 106.50(d) requires that manufacturers establish controls to ensure that required nutrient levels are maintained in the formula, and that the formula is not contaminated with microorganisms or other contaminants and thereby adulterated. In addition, the agency is proposing to require establishment of controls for mixing time, speed, temperature, and flow rate of product and other critical parameters necessary to ensure the addition of required ingredients to, and the homogeneity of, the formula. These parameters are determined by the manufacturer according to its experience and knowledge of what will result in a homogeneous, safe, and uniform product. It is essential that controls be established for each of these parameters, or the likelihood that there will be inconsistencies in production from batch to batch will be greatly increased. For example, if processing temperatures are not specified, the formula could be processed at high temperatures that can destroy vitamins or other essential nutrients, resulting in a product that is adulterated because it does not meet the nutrient requirements specified in section 412(i) of the act. Similarly, without established procedures for mixing time and speed, the product may be produced using processing parameters that will not result in formula that is uniformly mixed and thus does not contain all nutrients at the required levels.

FDA is proposing to require that manufacturers establish controls for the spray-drying process for powdered infant formula to prevent microbial and other contamination (§ 106.50(d)(2)). Although spray drying involves a heat treatment, the temperature is not sufficient to sterilize the formula. Consequently, powdered infant formulas are vulnerable to microbial contamination during the spray-drying process. Even if the equipment and the formula are free of microbial and other forms of contamination initially, the spray-drying process may permit contamination of the product as a result of dust or other air-borne gross particulates in the intake air. Thus, FDA has tentatively concluded that it is important that the manufacturer establish controls for the spray-drying process that will ensure that the powdered formula does not become contaminated with microorganisms or other contaminants.

The controls that manufacturers should consider include: (1) Using equipment constructed to ensure that static accumulation of particulate matter is controlled; (2) using and maintaining equipment constructed to protect the product from dust and environmental contamination; (3) controlling condensation, moisture, and temperature conditions throughout the plant to prevent *Salmonella* and *Listeria* growth in static materials; (4) controlling condenser cooling water to prevent potential *Salmonella* and other bacterial contamination; (5) controlling sampling and cleanout ports on the evaporator for buildup of static material and avenues for airborne contaminants; and (6) controlling product flow through the plant to prevent unnecessary product movement between areas that may increase the likelihood of cross-contamination.

As stated above, contaminants may enter the product in the air introduced into the spray-drying equipment during the spray- drying process. Air can contain free microorganisms or particulate material that is contaminated with microorganisms. Controls to prevent microbial contamination of the formula by airborne sources must address not only the presence of microorganisms themselves but also the sources of dust, moisture, and other airborne contaminants that may be sources of microbial contamination. Therefore, proposed § 106.50(d)(2) requires that manufacturers filter the intake air before heating to remove dust or other air-borne gross particulates that can result in the production of adulterated formula.

FDA is proposing to require that manufacturers control the removal of air from finished product containers (proposed § 106.50(d)(3)) and ensure that containers of finished products are properly sealed (proposed § 106.50(d)(4)), that visible closure and seal defects are detected (proposed § 106.50(d)(4)(i)), and that destructive tests are performed to determine closure strength (proposed § 106.50(d)(4)(ii)). These requirements are necessary to prevent oxidation and deterioration of nutrients in the formula caused by air or contaminants during the product's shelf life. FDA is also proposing that equipment that is used to prevent adulteration be monitored, either by personnel or monitoring equipment, to alert the manufacturer to malfunctions (see § 106.50(e)). As a result of such monitoring, the manufacturer will be

VOL 61 ISS 132 JL 9 1996 UMI

able to minimize the amount of product produced subject to a malfunction that may develop and to take prompt corrective actions.

In order to prevent rejected in-process materials from being inadvertently commingled with acceptable materials, FDA is proposing that manufacturers establish controls that ensure that the rejected materials are clearly identified and quarantined, and that reprocessed materials will not produce adulterated formula (see § 106.50(f)).

9. Controls to Prevent Adulteration from Microorganisms

An infant formula that is contaminated with microorganisms may, depending on the characteristics of the microorganisms, raise a safety concern that would cause the infant formula to be adulterated under section 402(a)(1) of the act. For example, all serotypes of the genus *Salmonella* can cause illness (often gastrointestinal) in infants and adults (Refs. 33 and 34) and the infectious dose is low (Ref. 35). Moreover, microorganisms that are generally harmless in older children and adults can cause serious bacterial infections in infants because the immune systems of infants are still developing (Ref. 36). For example, newborns and infants are susceptible to infection with *Listeria monocytogenes* that may cause severe illness or death (Ref. 37) and, as in the case of *Salmonella*, the infectious dose is believed to be low (Ref. 38).

Likewise, *Staphylococcus aureus* is harmful to infants because some strains of this microorganism produce an enterotoxin that causes acute gastrointestinal illness (nausea, vomiting, cramps) soon after the food is ingested (Ref. 39). *Bacillus cereus* can produce diarrhea and vomiting in adult humans (Ref. 40) when food contaminated with at least 10^5 *B. cereus* cells is consumed. The infectious dose of *B. cereus* for infants is not known; however, as already noted, infants are more susceptible to bacterial infections than are healthy adults and older children because the immune systems of infants are not fully developed.

FDA has long held that health concerns may arise due to the presence of any detectable *Salmonella*, *Listeria*, or *S. aureus* bacteria in infant formula or due to levels of *B. cereus* that exceed 1,000 "colony forming units" (CFU's) per gram (g) of a powdered infant formula. Such health concerns would cause the agency to consider an infant formula that is so contaminated to be adulterated under section 402(a)(1) of the act (see 54 FR 3783, Jan. 26, 1989, and 56 FR 66566, Dec. 24, 1991).

Moreover, the presence of microorganisms in an infant formula reflects that the formula was prepared, packed, or held under insanitary conditions whereby it may have been rendered injurious to health and therefore is adulterated under sections 402(a)(4) and 412 of the act. For example, the presence of *Escherichia coli* in a sample of infant formula is an indicator of fecal contamination, implying that the infant formula has been contaminated by manufacturing practices conducted under insanitary conditions and therefore is adulterated under sections 402(a)(4) and 412 of the act. In addition, consistent with the standard adopted by the International Commission on Microbiological Specifications for Foods (ICMSF) of the Food and Agricultural Organization of the United Nations and the World Health Organization (WHO) and based on the results from FDA and Canadian Surveys (Refs. 41, 42, and 43), an aerobic plate count (APC) (i.e., the number of microorganisms that will grow under certain specified conditions) that is greater than 10,000 CFU's per g of a powdered infant formula evidences that the formula has been prepared, packed, or held under insanitary conditions.

Illnesses from the use of microbiologically contaminated infant formulas have occurred (Ref. 33). Moreover, as recently as May 1993, infant formula contaminated with *Salmonella* bacteria was the subject of a recall (Ref. 44). Thus, contamination of infant formula with microorganisms of public health significance is more than a theoretical possibility. Therefore, FDA has tentatively concluded that manufacturers need to have in place controls to ensure that formulas are not microbiologically contaminated at levels of public health significance, and that, if they are, those formulas do not enter interstate commerce. Proposed § 106.55 requires manufacturers to establish such controls.

Proposed § 106.55(a) requires that manufacturers of liquid infant formula comply with the procedures specified in part 113. These products are thermally-processed low-acid foods that are packaged in hermetically sealed containers that are heated to achieve commercial sterility. Therefore, they are appropriately subject to the requirements of part 113.

Proposed § 106.55(b) requires that manufacturers of powdered infant formula test representative samples of every batch of the formula at the final product stage, before distribution, to ensure that the infant formula meets the microbiological quality standards specified in proposed § 106.55(c). This proposed requirement is necessary because although powdered infant formulas are heat treated during processing, they are not thermally processed to achieve commercial sterility. Proposed § 106.55(b) requires testing at the final product stage because microbiological contamination can be inadvertently introduced by ingredients at any time during production or through improper processing or holding procedures (Ref. 45).

Proposed § 106.55(c) establishes that any powdered infant formula that contains any microorganism at levels that exceed the microbiological quality standards for that microorganism as listed in this section will be deemed to be adulterated under sections 402 and 412 of the act. Proposed § 106.55(c) defines microbiological quality standards as the maximum allowable number of microorganisms present in 1 g of dry formula, expressed as CFU/g or "most probable number" (MPN)/g, and herein designated the "M value" for the specific microorganism.

The microorganisms for which FDA is proposing M values are those that are of known public health significance or that are indicators that the formula have been prepared, packed, or held under insanitary conditions. The microorganisms and each proposed M value listed in proposed § 106.55(c) are adapted from guidelines previously published and discussed in the proposed and final rules on infant formula record and record retention requirements (see 54 FR 3783, Jan. 26, 1989, and 56 FR 66566, Dec. 24, 1991, respectively). The agency notes, however, that microorganisms that must be tested for in infant formula and the proposed M values for each microorganism listed in this proposed rule represent minimum requirements for the microbiological quality of an infant formula based on standards and methods currently available.

a. *Aerobic plate count (APC).* Proposed § 106.55(c) establishes an APC M value of 10,000 CFU/g as the maximum level that is consistent with sanitary conditions in the facility in which a powdered infant formula is produced. An APC M value greater than the proposed standard indicates that the formula was produced under insanitary conditions whereby it may have been rendered injurious to health and thus is adulterated under sections 402(a)(4) and 412 of the act.

The APC is the number of microorganisms that will grow on the APC nutrient medium, incubated at 35 °C for 24 hours in air (Ref. 46). "Microorganisms" (as defined in proposed § 106.3(k)) include yeasts, molds, bacteria, and viruses. The APC medium supports the growth of most microorganisms, including yeasts, molds, and all bacteria required to be tested for under proposed § 106.55(c); however, the APC medium does not support the growth of viruses. The APC count is expressed in CFU's because multiple microorganisms may adhere together or attach to the same location on an agar plate, and microbiologists cannot determine whether one or several individual microorganisms initiated the colony that they detect growing on the plate.

This M value for the APC proposed in § 106.55(c) is consistent with the standard adopted by the ICMSF and the WHO and the results from FDA and Canadian Surveys (Refs. 41, 42, and 43). The ICMSF based its standards on the degree of health hazard the microorganisms present and conditions of use of the product (Ref. 41).

FDA has tentatively arrived at this APC M value because the microbial quality of products consumed by infants is of primary concern (Ref. 43). When infant formulas are produced under good commercial processing, the available evidence shows that the APC will be below this M value (Refs. 42 and 43). The agency is notaware of adverse events occurring in infants who consumed products with an APC below this M value.

b. *Coliforms, fecal coliforms, and E. coli. E. colli* are bacteria, including some strains that are pathogenic for infants, that thrive in the human intestinal tract. The presence of *E. coli* in a sample of powdered infant formula is an indicator that the infant formula has been contaminated by manufacturing practices conducted under insanitary conditions and therefore is adulterated under sections 402(a)(4) and 412 of the act.

E. coli bacteria are a subset of a more diverse group of bacteria known collectively as fecal coliforms, which also thrive in the human intestinal tract and therefore are also indicators of fecal contamination. Fecal coliforms are destroyed by pasteurization, and the presence of these microorganisms in a pasteurized product evidences that there has been post-process contamination of the formula (Ref. 47). Fecal coliforms in turn are a subset of a still further diverse group of bacteria known as coliforms, which include bacteria that may or may not be indicators of fecal contamination. However, contamination with coliforms is a reliable indicator of post-process contamination of the formula, even if the source of the contamination is not fecal.

In previously issued guidelines, the agency recommended that powdered infant formulas be tested for the presence of *E. coli* (54 FR 3783); however, one comment on this recommendation suggested that, to allow greater flexibility and reduce the cost for manufacturers, the manufacturer should be given the option of testing for coliforms, fecal coliforms, or *E. coli*. Specific tests for contamination with *E. coli* provide the most definitive evidence of fecal contamination, but tests for specific bacteria are more cumbersome than general tests for a group of bacteria such as fecal coliforms. Similarly, general tests for fecal coliforms are more cumbersome than universal tests for an even more diverse group of bacteria such as coliforms.

The agency is proposing in § 106.55(c) that manufacturers screen their samples of powdered infant formula for evidence of contamination with *E. coli* using sequential tests for detecting and enumerating coliforms and fecal coliforms. Under the proposal, manufacturers ordinarily would only perform the simplest test (i.e., the test for coliforms) using a test sample of the infant formula. The results of the coliform test determine whether the manufacturer needs to followup with a more specific test for fecal coliforms using as the test sample cultured bacteria prepared during the coliform test. As discussed below, the agency is not proposing that manufacturers followup a positive result in the fecal coliform test with a more specific test for *E. coli* but rather is proposing that a violative sample in the fecal coliforms test will represent conclusive evidence that the infant formula is adulterated.

The general test for coliforms is an example of an MPN test. MPN counts are estimates of the number of organisms present in a sample. Methods resulting in an MPN require inoculation of multiple tubes of liquid culture medium with multiple dilutions of the sample. The method specified in FDA's Bacteriological Analytical Manual (BAM) (Ref. 46) requires inoculation of 3 replicate tubes of culture medium with each of 3 sample dilutions, for a total of 9 tubes. The tubes contain culture medium selective for the microorganism of interest. After appropriate incubation (time, temperature, and atmosphere), each tube is scored as positive or negative for the presence of the organism. Examples of a positive result include the presence of growth, a biochemical color change, and the production of gas.

A mathematical formula is used to calculate the MPN of microorganisms present based on the number of positive tubes in each of the three separate dilutions. Since the calculation in question involves a repetitious process, the mathematical formula used to calculate the MPN has been employed to create easy-to-use tables that are available in the BAM and in other books of statistical tables. Most tables present both a value for the MPN and confidence limits for that value. The calculated table values for the MPN, using BAM methods, are dependent on the level of the dilution in which a positive result is found. The following table values are based on an inoculation series of 0.1, 0.01 g, and 0.001 g (or mL) of the infant formula. When no tubes in any dilution produce a positive result, the calculated MPN value is zero.[3] When a single tube in the greatest dilution (least concentrated) produces a positive result, the calculated MPN value is equal to 3.01.[4] When a single tube in the middle dilution produces a positive result, the calculated MPN value is equal to 3.05.[5] In all other situations in which there is a positive result in at least one tube (including a single positive tube in the lowest dilution (greatest concentration)), the calculated MPN value is greater than 3.05.

If no tubes in any dilution produce a positive result in a test for bacterial contamination of a powdered infant formula (i.e., if the MPN is zero), such contamination is unlikely. If a single tube in any dilution produces a positive result in a test for bacterial contamination of the product, such contamination is a possibility. However, there are two situations in which a single positive tube is generally considered to reflect a false positive test result: (1) When no tube in the lowest dilution (greatest concentration) produces a positive result, but a single tube in the middle dilution produces a

[3] The calculated MPN value of zero when no tubes in any dilution produce a positive result is a recent change that appears in the MPN tables of the 8th ed. of the BAM. In previous editions of the BAM, the calculated MPN value when no tubes in any dilution produce a positive result was "less than 3."

[4] The calculated MPN value of 3.01 when a single tube in the greatest dilution produces a positive result is a recent change that appears in the MPN tables of the 8th ed. of the BAM. In previous editions of the BAM, the calculated MPN value when a single tube in the greatest dilution produces a positive result was 3.

[5] The calculated MPN value of 3.05 when a single tube in the middle dilution produces a positive result is a recent change that appears in the MPN tables of the 8th ed. of the BAM. In previous editions of the BAM, the calculated MPN value when a single tube in the middle dilution produces a positive result was 3.

VOL 61 ISS 132 JL 9 1996 UMI

positive result (i.e., the calculated MPN value is equal to 3.01); or (2) when no tube in the lowest dilution produces a positive result, but a single tube in the greatest dilution (least concentration) produces a positive result (i.e., the calculated MPN value is equal to 3.05). FDA considers that if a sample of a powdered infant formula produces positive test results that reflect one of these two situations, bacterial contamination also is unlikely.

However, in all other situations (e.g., if a single tube in the lowest dilution (greatest concentration) produces a positive result, or if two or more tubes in any dilution produce a positive result), bacterial contamination of a powdered infant formula is likely. Therefore, when the calculated MPN value in a test for bacterial contamination is greater than 3.05, that is if a sample of powdered infant formula produces positive test results in which a single tube in the lowest dilution produces a positive result or in which two or more tubes in any dilution produce a positive result, the powdered infant formula likely is contaminated with bacteria.

FDA is proposing to use the calculated MPN values in the BAM as a means of setting a numerical specification because these tables are generally available, represent standard practice in the industry, and provide a simple way to classify samples as violative or nonviolative. Based on the above discussion of calculated MPN values, FDA is proposing in § 106.55(c) that powdered infant formula be classified as nonviolative for coliforms in all situations in which the calculated MPN value is less than or equal to 3.05 and classified as presumptively violative for coliforms in all situations in which the calculated MPN value is greater than 3.05. In other words, FDA is proposing that an MPN value of 3.05 represents the maximum allowable number of coliforms present in 1 g of dry infant formula. This proposal is consistent with current FDA infant formula microbiological guidelines. The agency requests comment on the specification of 3.05 MPN/g as the maximum allowable number of coliforms in dry infant formula.

FDA has stated that infant formula with a calculated MPN value of greater than 3.05 in the coliform test is presumptively violative because, under proposed § 106.55(c), the manufacturer may either consider the sample violative without further testing or may conduct an additional test, the fecal coliform test. Although an MPN value of greater than 3.05 MPN/g is a valid quality indicator of microbial contamination, coliform contamination may not be fecal in origin, and it may not reflect the presence of infant pathogenic microorganisms. Therefore, FDA has tentatively concluded that an infant formula for which an MPN value of greater than 3.05 MPN/g is found in the coliform test need not be considered violative if a negative result is found in a more specific test for fecal coliforms.

If the coliform test using powdered infant formula samples results in an M value greater than 3.05 MPN/g, the manufacturer may use the cultured bacteria from one or more of the tubes producing the positive result as a sample inoculum for the fecal coliform test. A sample inoculum producing an MPN value in the fecal coliform test of less than or equal to 3.05 would indicate that the coliform contamination is not fecal in origin, because under incubation conditions that are specific for fecal coliforms, the bacteria were not detected. The testing would effectively screen out coliforms that are not of concern, which is not possible with the more general test. Therefore, FDA has tentatively concluded that an MPN value less than or equal to 3.05 in the fecal coliform test be classified as nonviolative. FDA also has tentatively concluded that an MPN value greater than 3.05 in the fecal coliform test is a valid quality indicator demonstrating that the formula contains fecal coliforms such as *E. coli* and, therefore, is adulterated under sections 402(a)(4) and 412 of the act. The agency is proposing that powdered infant formula that results in an MPN value greater than 3.05 in the fecal coliform test be classified as violative.

If the *E. coli* test was performed, the sample inoculum would be the cultured bacteria from positive tubes in the fecal coliforms test. However, the agency is not proposing to require specific testing for the presence of *E. coli*, or to set a specification for an M value for *E. coli*, because the specification of less than or equal to 3.05 MPN/g in the fecal coliforms test is sufficient to ensure that nonviolative samples do not contain *E. coli* since *E. coli* is a type of fecal coliform. Moreover, FDA has tentatively concluded that an MPN value greater than 3.05 in the fecal coliform test is a sufficient quality indicator of fecal contamination that the agency need not propose, as an option, that a manufacturer may conduct an additional specific test for the presence of *E. coli*. The agency requests comments on the proposed requirements for sequential testing for coliforms and fecal coliforms, with no testing for *E. coli*.

c. *Salmonella*. Tests for the presence of *Salmonella* involve the enrichment in a broth of the entire analytical unit followed by plating onto culture plates rather than the culture of a series of dilutions that is performed in tests for coliforms. A positive result in a test for *Salmonella* is based on the detectable presence of the microorganism on the culture plate rather than on the mathematical calculations that result in a MPN.

Proposed § 106.55(c) requires that powdered infant formula be tested for *Salmonella* and provides that the formula is adulterated if any *Salmonella* is found. All serotypes of this genus of bacteria can cause illness (often gastrointestinal) in infants and adults (Refs. 33 and 34). The presence of any *Salmonella* in infant formula could render it injurious to an infant who consumes it because the infectious dose of these bacteria is low (Ref. 35). Therefore, FDA has tentatively concluded that the risk from *Salmonella* is of such significance that an M value of zero (i.e., none detectable) for *Salmonella* in infant formula is necessary to protect the health of infants.

d. *Listeria monocytogenes*. Tests for the presence of *L. monocytogenes* are similar to those for *Salmonella* and a positive result is based on the detectable presence of the microorganism on the culture plate rather than on the mathematical calculations that result in a MPN.

Proposed § 106.55(c) requires that powdered infant formula be tested for *L. monocytogenes* and provides that the formula is adulterated if any *L. monocytogenes* is found. Individuals with immune systems that make them susceptible to infections, such as newborns and infants with incompletely developed immune systems, are susceptible to infection with *L. monocytogenes* which may cause severe illness or death (Ref. 37). The infectious dose of this bacterium is believed to be low (Ref. 38). Because the specific dose of this bacterium that may cause illness is not known but is believed to be low, FDA has tentatively concluded that the risk from *L. moncytogenes* is of such significance that an M value of zero (i.e., none detectable) for *L. monocytogenes* in powdered infant formula is necessary to protect the health of infants. The agency requests comment on this proposed specification for *L. monocytogenes*.

e. *Staphylococcus aureus*. *S. aureus* is harmful to infants because some strains of this microorganism produce an enterotoxin that causes acute gastrointestinal illness (nausea, vomiting, cramps) soon after the food is ingested (Ref. 39). Tests for *S. aureus* involve liquid culture of series of dilutions as was discussed previously in reference to coliform and fecal coliform testing and results are calculated as MPN based on tables in the BAM. Proposed § 106.55(c) requires that powdered infant formula be tested for *S. aureus* and establishes an M value of 3.05 for this microorganism. FDA has tentatively concluded that the risk from *S. aureus* is of such significance that an M value of 3.05 is necessary to protect the health of infants.

f. *Bacillus cereus*. Tests for *B. cereus* involve liquid culture of a series of dilutions as was discussed previously in reference to coliform and fecal coliform testing and results are calculated as MPN based on tables in the BAM. Proposed § 106.55(c) requires that powdered infant formula be tested for *B. cereus* when the APC exceeds 100 CFU/g and establishes an M value for *B. cereus* of 100 MPN/g or 100 CFU/g. This proposed M value for *B. cereus* is lower than the M value of 1,000 MPN/g or 1,000 CFU/g in the current recommended infant formula microbiological guidelines (54 FR 3783). *B. cereus* can produce diarrhea and vomiting in adult humans (Ref. 40) when food contaminated with at least 10^5 *B. cereus* cells is consumed. The infectious dose of *B. cereus* for infants is not known; however, because the immune systems of infants are not fully developed, infants are more susceptible to bacterial infections than are healthy adults and older children. In the absence of data on the dose of *B. cereus* capable of causing disease in infants, the agency is concerned that a safety standard of 1,000 MPN/g or 1,000 CFU/g poses a potential risk to infants who consume rehydrated formula because *B. cereus* in rehydrated powdered infant formula is capable of rapid growth and can reach 4.9×10^6 cells/g within 24 hours at 26 °C (Ref. 48), a level sufficient to cause disease. Therefore, FDA has tentatively concluded that the risk from *B. cereus* is of such significance that an M valve that is lower than the current standard of 1,000 MPN/g or 1,000 CFU/g is necessary to protect the health of infants.

Powdered infant formulas and similar products (e.g., powdered milk) produced under CGMP contain less than 100 MPN/g or 100 CFU/g of *B. cereus* (Refs. 43 and 48). Additionally, an FDA survey of different production lots of milk-, soy-, and protein hydrolysate-based powdered infant formulas (Ref. 49) showed that the maximum APC was 103 CFU/g, and that the proportion of *B. cereus* in the samples ranged from 1.2 to 63.9 percent of the APC. Therefore, FDA has tentatively concluded that an M value of 100 MPN/g or 100 CFU/g for *B. cereus* will adequately protect the health of infants. Moreover, because this M value is higher than the *B. cereus* levels typically found in infant formula currently being produced (Refs. 43, 48, and 49), the proposed M value of 100 MPN/g or 100 CFU/g will not be overly burdensome.

g. *Methods*. Proposed § 106.55(c) states that the agency intends to determine compliance with the proposed M values using the methods in the BAM. These methods provide reproducible, consistent, and accurate results at different laboratories. The agency proposes to incorporate the BAM by reference in § 106.55(c) in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. While manufacturers may use other equivalent methods, a manufacturer who uses methods that do not provide results that are consistent with the results obtained by methods approved by FDA will bear the risk that the firm's product is not in compliance with the law.

The agency intends to test for *Salmonella* using the method described in Chapter 5, BAM, including the sample preparation procedures described in section C, paragraph 1 and the sampling plan described in Chapter 1, BAM; for *L. monocytogenes* using the method described in Chapter 10, BAM and the sampling plan described in Chapter 1, BAM; for coliforms, fecal coliforms, and *E. coli* using the MPN method described in Chapter 4, BAM; for *S. aureus* using the MPN method described in Chapter 12, BAM; for *B. cereus* using the MPN or plate count method described in Chapter 14, BAM. The agency intends to determine the APC using the method described in Chapter 3, BAM. All chapter references are to the 8th ed. BAM. FDA intends to update the reference to reflect the most recent edition of the BAM at the time the final rule based on this proposed rule is issued.

h. *Records*. Proposed § 106.55(d) requires that manufacturers make and retain records, in accordance with proposed § 106.100 (e)(5)(ii) and (f)(7) on the testing of infant formula for microorganisms. As discussed in the description of the revisions to proposed subpart F of part 106, FDA has the authority to require such records under section 412(b)(4)(A)(i) of the act. These records will document whether the batch of powdered infant formula meets the microbiological quality standards of proposed § 106.55(c) and is therefore not adulterated. Records that describe the full methodology for testing powdered infant formula for microbiological quality will provide consistency in the testing of the microbiological quality of the formula, even if different laboratory personnel conduct the tests. The accuracy and reproducibility of microbiological quality testing depend on the procedure used to conduct the test. In addition, the records will provide the manufacturer with data to evaluate any complaints received associated with a particular batch of infant formula by showing whether microbiological contamination could have contributed to the adverse event.

10. Controls to Prevent Adulteration During Packaging and Labeling of Infant Formula

Because consumers rely on correct labels to select a formula to meet their childrens' individual needs and to have proper instructions for the use of the formula, FDA is proposing § 106.60(a) which requires manufacturers examine packaged and labeled infant formula to ensure that containers and packages bear the correct labels, use-by dates, and traceability codes. The proposal also requires that labels be designed, printed, and applied so that they remain attached and legible during processing, handling, storage, and use (proposed § 106.60(b)), and that all formula held in a single package be the same product bearing the same traceability code, and that the package carry the product name, name of the manufacturer, and the code (proposed § 106.60(c)).

These proposed requirements will ensure that infants who have allergies will not be placed at risk by consuming formula containing ingredients to which they are allergic, and that consumers will be aware of the date when the product may no longer be appropriate for use. In addition, the traceability codes will show the origin of the product if there were a recall, and the packaging requirements will make it more difficult for counterfeit formula, or formula with counterfeit labels, to be shipped in interstate commerce. There have been cases of counterfeit shipments in which a single package held more than one product, or held a single product which bore more than one code. The proposed regulations are not only intended to reduce the incidence of counterfeit activities, but to ensure that firms that receive the formula are aware that only one product should be in the packaging, and that all containers should be identified with the code shown on the package. This requirement will not impose an additional burden on industry because manufacturers routinely package a

VOL
61
ISS
1
3
2
JL
9
1996
UMI

single infant formula product bearing the same code.

11. Controls on the Release of Finished Infant Formula

Proposed § 106.70(a) requires that the manufacturer determine that each batch of formula meets all of the manufacturer's specifications before releasing the batch for distribution. Specifically, each batch must meet the requirements of § 106.55 on microbiological contamination to ensure that the infant formula does not contain microorganisms at levels that may be injurious to the health of infants and render the formula adulterated and must meet the requirements of § 106.91(a) on quality control procedures to ensure that the infant formula provides the required nutrients at the required levels, and that it provides any nutrient added by the manufacturer. Proposed § 106.70(a) is designed to ensure that any infant formula that fails to meet the manufacturer's specifications, or that is adulterated for any reason, will not be introduced into interstate commerce.

Proposed § 106.70(b) requires that each batch of infant formula that fails to meet the manufacturer's specifications be rejected. Although proposed § 106.70(b) recognizes that the formula may be reprocessed, it requires that the reprocessed product be shown to meet the requirements of § 106.70(a) before the product is released. FDA has tentatively concluded that this proposed requirement is necessary to ensure that any defect that caused a batch of infant formula to be rejected is corrected before the formula is released into commerce.

Proposed § 106.70(c) requires that an individual qualified by training or experience conduct an investigation of a finding that a batch of infant formula fails to meet any manufacturer's specifications. This investigation is necessary to determine why such a failure occurred and to assist the manufacturer in developing controls to ensure that such a failure does not reoccur. FDA has proposed to require that the individual who conducts the investigation be qualified to ensure that the investigation is properly conducted.

12. Traceability

Section 412(g)(1) of the act requires that each manufacturer make and retain such distribution records as may be necessary to effect and monitor recalls of the formula, and section 412(b)(4)(A)(vi) requires that each manufacturer retain all complaints concerning infant formulas that may reveal the possible existence of a hazard to health. Therefore, infant formulas must be traceable to permit identification of the product that is the subject of a complaint and to make it possible to determine whether that batch of infant formula presents a possible hazard to health. Traceability of an infant formula is also necessary so that the recall requirements of the act can be met.

The agency's view, based on its experience, is that coding is the most effective method for ensuring traceability. It provides a uniform system that is able to identify large numbers of batches of infant formula with a distinctive code that is easily understood and that can be used by manufacturers, retailers, and consumers. A code also allows a large amount of information to be presented on the container of infant formula in a very small space. Therefore, the agency is proposing, under sections 412 (b)(4)(A)(vi) and (g)(1) and 701(a) of the act that batches of infant formula be identified with a distinctive code that will allow the traceability of an infant formula.

Current § 106.90 requires that manufacturers ensure traceability by coding all infant formulas in conformity with the coding requirements in § 113.60(c) for thermally processed low-acid foods packaged in hermetically sealed containers. Section 113.60(c) requires that the code identify the establishment where the product is packed, the product contained therein, the year packed, the day packed, and the period during which packed, and that the packing period code be changed with sufficient frequency to permit ready identification of lots during their sale and distribution. FDA is proposing to carry the requirement that manufacturers code their product in accordance with § 113.60(c) forward in proposed § 106.80(a).

FDA has tentatively determined that it is appropriate to code liquid infant formulas in this manner because they are thermally processed low-acid foods, and a batch is produced in a relatively short period of time, usually a day. It also may be appropriate for coding some powdered infant formulas in this manner if they are processed in a short enough time to make the day packed and the period during which packed meaningful information.

Proposed § 106.80(b) allows for alternative coding of batches of powdered infant formula. Powdered infant formula is usually manufactured in stages over a longer period of time than liquid infant formula. Some powdered infant formulas are dry mixed in a number of stages over an extended period of time. In other cases, powdered infant formula is mixed in liquid form at one manufacturing facility and shipped to a second site for spray drying and packaging. Powdered infant formula manufacturing is often not completed in a short enough period of time for coding based on the date packed or the period of time in which it was packed to be meaningful information. Therefore, under the alternate method that FDA is proposing, a sequential code would be assigned so that all the essential information needed to track any problems with the infant formula could be determined.

13. Audits of CGMP

Proposed § 106.90 requires that manufacturers (or their agents) conduct regularly scheduled audits to determine whether they are complying with CGMP. This provision derives from section 412(b)(2)(B)(iv) of the act, which requires that the CGMP include "the conduct by the manufacturer of an infant formula or an agent of such manufacturer of regularly scheduled audits to determine that such manufacturer has complied with the regulations prescribed under" section 412(b)(2)(A) of the act. Section 412(b)(2)(A) requires that the Secretary (and by delegation FDA) establish CGMP's by regulation.

FDA is proposing to require that regularly scheduled audits be part of CGMP because such audits are the best way to ensure overall compliance with CGMP and to identify recurring problems that may dictate an alteration in the master manufacturing order. For example, regularly scheduled audits of all deviations from the manufacturer's specifications or procedures will accentuate deviations that occur repeatedly and will enable the manufacturer to identify specifications or procedures that should be reassessed.

Section 412(b)(2)(B)(iv) of the act also specifies that such audits are to "be conducted by appropriately trained individuals who do not have any direct responsibility for the manufacture or production of infant formula." FDA is therefore proposing that an individual be knowledgeable in all aspects of infant formula production perform the audit. Without such broad knowledge, the individual conducting the audit will not be able to adequately evaluate the manufacturer's production and in-process control procedures. In addition, because the purpose of the audit is to determine whether the manufacturer is complying with the CGMP regulations issued under section 412(b)(2)(A) of the act, the agency has tentatively concluded that the person conducting the audit needs to be knowledgeable in these regulations. Without such knowledge, the person would be unable to make the determinations that are the very purpose of the audit.

The requirement that the audit be performed by an individual who has no direct responsibility for the matters being audited is one way to ensure the objectiveness of the audit process. The person should be free of any past involvement in the activities being audited because the audit is intended to uncover any problems or shortcomings in the manufacturer's procedures. A person who has been involved may feel that finding problems will reflect poorly on his or her work. Therefore, FDA has tentatively concluded that the audit must be conducted by someone who has no direct interest in the outcome of the audit.

C. Quality Control Procedures

1. Introduction

FDA is proposing to redesignate and revise subpart B of part 106 as subpart C of part 106. Under this proposal, several sections of the current regulations will be revoked, and several sections will be redesignated without change. The latter sections are being recodified, however, to fit the organization of the proposed regulations. Table II describes the current and proposed regulations as follows:

TABLE II

Current regulation	Proposed regulation
INGREDIENT CONTROL	
§ 106.20(a), § 106.20(b)(1), § 106.20(b)(2).	Changed by §§ 106.91(a)(1) and 106.40(d).
IN-PROCESS CONTROL	
§ 106.25(a)	§ 106.50(a)(1).
§ 106.25(b)(1)	Omitted.
§ 106.25(b)(2)	§ 106.91(a)(4).
§ 106.25(b)(3)	§ 106.91(a)(2).
§ 106.25(b)(4)	§ 106.91(a)(4) with modification.
§ 106.25(b)(5)	§ 106.91(a)(3) with modification.
FINISHED PRODUCT EVALUATION	
§ 106.30(a)	§ 106.91(a).
§ 106.30(b)(1)(i)	§ 106.91(a)(3).
§ 106.30(b)(1)(ii)	§ 106.91(a) with modification.
§ 106.30(b)(2), § 106.30(b)(3).	§ 106.91(b) with modification.
§ 106.30(c)(1)	Omitted.
§ 106.30(c)(2)	§ 106.3(i) §§ 106.91(b)(1) and 106.97(b)(1) with elimination of the osmolality and vitamin D assay.
§ 106.30(d)	Omitted.

FDA is proposing quality control procedures under the authority granted by section 412(b)(2), (b)(3), and (b)(4) of the act, which direct the Secretary (and by delegation, FDA) to establish by regulation the quality control procedures that he or she determines are necessary to ensure that an infant formula provides the required nutrients at the required levels. In the Congressional Record of September 27, 1986, Senator Metzenbaum stated: "The most important provision of this amendment is the simple requirement that each batch of formula must be tested for each essential nutrient that must be contained in the formula" (Ref. 1). The quality control procedures in proposed subpart C of part 106 are the minimum practices that manufacturers must implement to ensure that the infant formula that they produce contains the required nutrients at the required levels throughout the shelf life of the product. Under section 412(a)(3) of the act, an infant formula is deemed to be adulterated if the processing of the formula does not comply with quality control procedures prescribed by the Secretary.

2. Nutrient Testing

Proposed § 106.91(a) describes the testing that FDA has tentatively concluded each manufacturer must conduct on each batch of infant formula to ensure that it provides the required nutrients at the required levels and provides any nutrient added by the manufacturer. FDA is proposing these requirements under the authority of two sections of the act. Section 412(b)(2)(B)(i) of the act provides that the quality control procedures shall include requirements for testing, in accordance with section 412(b)(3), of each batch of infant formula for each required nutrient, before distribution of such batch. Section 412(b)(3)(D) of the act states that if the Secretary adds a required nutrient, the Secretary must require that the manufacturer of the infant formula test each batch of such formula for that nutrient in accordance with section 412(b)(3)(A), (b)(3)(B), and (b)(3)(C) of the act.

Current § 106.20(a) and (b)(2), which FDA is proposing to replace with § 106.91(a)(1), do not require that manufacturers analyze nutrient premixes if the premixes come with a supplier's guarantee or certification. Proposed § 106.91(a)(1), however, requires that each nutrient premix used in the manufacture of an infant formula be tested by the formula manufacturer for each nutrient that the manufacturer is relying on the premix to provide to ensure that the premix complies with the manufacturer's specification. This change is required by section 412(b)(3)(B) of the act. Section 412(b)(3)(B) was included in the 1986 amendments because infant formula manufacturers were increasingly relying on the use of formula premixes, and Congress felt that relying on a premix supplier's written assurance that its premix product was properly tested was inadequate (Ref. 1). In 1985, the Department of Justice sought an injunction against a premix supplier because, "as a result of inadequate quality control, numerous * * * vitamin and mineral mixes—used in infant formula—have been misbranded and adulterated" (Ref. 3). The premix supplier entered into a consent decree of permanent injunction that enjoined it from shipping any of its vitamin/mineral premixes for use in infant formulas until it completed a number of specific acts that were designed to improve its quality control (Ref. 50).

FDA is proposing to redesignate current § 106.25(b)(3) as § 106.91(a)(2), which requires that after the addition of the premix, or at the final-product stage but before distribution, each batch of infant formula be tested to confirm that the nutrients contained in any nutrient premix used in such infant formula are present in each batch of infant formula in the proper concentration. This requirement implements section 412(b)(3)(C)(ii) of the act, which requires that infant formula be tested to ensure that any nutrient premixes used by the manufacturer are actually included in the batch of infant formula in the proper amount. Without this check, inadvertent failure to include the premix could go undetected, and infant formula that is deficient in the nutrients that were to be provided by the premix would be introduced into the market.

Current § 106.30(b)(1)(i) requires that the manufacturer analyze representative samples of each batch of finished infant formula for specific nutrients to assess process degradation. FDA is carrying forward a modified version of this requirement in proposed § 106.91(a)(3), which requires that each batch of infant formula be tested for vitamins A, C, and

VOL 61 ISS 132 JL 9 1996 UMI

E and thiamin at the final-product stage, before distribution. This regulation is proposed under section 412(b)(3)(A) of the act, which states: "At the final product stage, each batch of infant formula shall be tested for vitamin A, vitamin B1, vitamin C, and vitamin E * * *." In the Congressional Record; Senator Metzenbaum stated that testing for these vitamins is required at the final-product stage because they are vulnerable to degradation (Ref. 1). Testing at the final-product stage will ensure that these nutrients are present in the infant formula at the end of all the processing steps that may destroy them.

Proposed § 106.91(a)(4) requires that, before distribution, each batch of infant formula be tested for all nutrients required to be included, and any others that have been included, but for which testing to comply with § 106.91(a)(1) or (a)(3) was not conducted. This proposed provision takes a markedly different tack than current § 106.30(b)(1)(ii), which states that no analyses are needed for linoleic acid, vitamin D, vitamin K, choline, inositol, and biotin before release of a batch of infant formula for commercial or charitable distribution. This change in approach is necessary because section 412(b)(3)(C) of the act, which was added by the 1986 amendments, states that each batch of formula must be tested for each nutrient required by the law to be present in an infant formula. Also, manufacturers are adding nutrients not required by § 107.100, such as selenium, to infant formulas. These nutrients meet the definition for "nutrient" in proposed § 106.3(m) because they have been identified as essential for infants by NAS through its development of a Recommended Dietary Allowance or an Estimated Safe and Adequate Daily Dietary Intake range. The agency has not objected to the addition of nutrients not required by § 107.100 to infant formulas. However, it is important that the level of these added nutrients be controlled, and that the level of the added nutrient be consistent from batch to batch and be uniform throughout the batch of infant formula.

The level of a nutrient needs to be controlled because some nutrients can be toxic to an infant if given at too high a level. Controlling the level of the added nutrient for consistency from batch to batch and in a particular batch of infant formula will ensure that the infant receives the essential nutrient on a consistent basis and will also ensure that the infant does not receive too high, or too low, a level of the nutrient because the nutrient was not uniform throughout the batch of infant formula.

3. Stability Testing

Current § 106.30(c) requires that the manufacturer, using representative samples collected from finished product batches, conduct stability analysis for selected nutrients with sufficient frequency to substantiate the maintenance of nutrient content throughout the shelf life of the product. The 1986 amendments added subsection 412(b)(2)(B)(ii) to the act, which requires "regularly scheduled testing, by the manufacturer of an infant formula or an agent of such manufacturer, of samples of infant formula during the shelf life of such formula to ensure that such formulas are in compliance with" section 412 of the act. To implement this section of the act, the agency is redesignating and revising current § 106.30(b)(3) as proposed § 106.91(b), which requires quarterly collection of samples of infant formula for stability testing to provide a check on nutrient stability. This periodic check will alert the manufacturer if nutrient stability has changed in some unpredicted way so that the formula no longer complies with section 412 of the act. Quarterly testing of infant formulas for nutrient stability is currently conducted by the industry (Refs. 51 and 52), and the agency is not aware of any problems that have resulted from this frequency of testing. The agency requests comment on whether this proposed frequency of sample collection for stability testing is appropriate.

The agency has tentatively concluded that this periodic sample collection to check on nutrient stability must be performed on a batch of each physical form (powder, ready-to-feed, or concentrate) of each infant formula, at each different manufacturing facility, because different forms of the product may contain different ingredients, and different forms of infant formula are subjected to different processing procedures. Therefore, ensuring the nutrient stability of one form of the product, such as the powder, will not answer questions about the nutrient stability of other forms of the product. Thus, the agency has tentatively concluded that each form of the infant formula must be sampled on a periodic basis for nutrient stability. Also, the agency has tentatively concluded that the sampling of one batch of each physical form of each infant formula must be conducted at each manufacturing facility. This proposed requirement is necessary because manufacturers may produce the same infant formula at more than one facility, and the manufacturing conditions at one facility may not be the same as the conditions at another facility. The differences in conditions cannot be allowed to affect the quality of the formula.

Proposed § 106.91(b) further requires testing at the beginning, midpoint, and end of the shelf life of the infant formula. Testing at the beginning of the shelf life shows that the formula is in compliance with the nutrient requirements of the act when it is released for distribution. Testing at the midpoint of the shelf life will alert the manufacturer if any nutrient is deteriorating at a rate different from that predicted, so that the nutrient may not be in the formula at a level to comply with the act throughout the formula's shelf life. Testing at the end of shelf life will ensure that the formula contained all the nutrients needed to comply with the act throughout its shelf life and will provide continued justification for the predicted shelf life.

Additional testing may be necessary to ensure that a formula complies with section 412 of the act throughout its shelf life. Such testing is likely to focus on a particular nutrient and its stability within the matrix of the formulation. This additional testing will ensure that, if there is a significant deterioration in the level of the nutrient in the formula, the manufacturer will be aware of this fact and will be able to take steps promptly to have the product removed from the market, before a significant number of infants are exposed to a deficient product.

The agency is not proposing to specify what frequency is required because manufacturers have experience with the nutrient stability of the infant formula matrices that they produce and are thus in a position to determine how frequently testing is necessary. For example, the manufacturer is in a position to know whether the nutrient levels of a milk-based infant formula need to be tested on a different basis than that of a soy-based product, or whether the nutrient levels of an infant formula that contains hydrolyzed protein needs to be tested more frequently than that of an infant formula that contains non-hydrolyzed protein. Manufacturers will be able to comply with section 412(b)(2)(B)(ii) of the act by testing different nutrients at different frequencies. For example, unstable nutrients, such as vitamins, may require testing on a more frequent basis than more stable nutrients, such as minerals. Proposed § 106.91(b) allows the manufacturers the discretion to determine the necessary frequency of testing to ensure that their infant formula complies with the nutrient

requirements of the act, as long as the minimum testing (i.e., at the beginning, middle, and end of the shelf life) required by proposed § 106.91(b) is accomplished.

Proposed § 106.91(b)(1) provides for an addition to the stability testing required under § 106.91(b). FDA is proposing that the first batch of each form of a new infant formula be subjected to such testing to ensure that the product complies with the nutrient requirements of section 412 of the act throughout its shelf life.

Proposed § 106.91(b)(2) requires the sampling of the first batch of an infant formula in which there has been a change in formulation or in processing that could affect whether the formula is adulterated under section 412(a) of the act and requires testing of these samples for each nutrient that has been, or may have been, affected by the change. The change in formulation or processing referred to here would not be a "major change" because a "major change" would mean that the formula is a "new infant formula." Examples of the types of changes that are subject to proposed § 106.91(b)(2) are: (1) Reducing a "required nutrient" in a minor way or increasing a "required nutrient" that is subject to maximum limits in § 107.100 in a minor way; (2) replacing one nutrient form with another form, such as replacing vitamin A acetate with vitamin A palmitate or replacing calcium carbonate with tricalcium phosphate; (3) changing a time-temperature condition of preheating, handling, mixing, or sterilizing an in-process product; or (4) changing the oxygen content of a packaged product that might have a minimal effect on the level of nutrients. Requiring sample collection for stability testing when a manufacturer makes changes such as these in the manufacture of the product will ensure that the manufacturer can verify the predicted shelf life of the changed formula.

Proposed § 106.91(b)(2) requires that the manufacturer ensure that the infant formula meets all the nutrient requirements of section 412 of the act. This provision is proposed under the authority of section 412(b)(2)(A) of the act, which provides for the establishment of CGMP's for infant formulas, including quality control procedures that are necessary to assure that the infant formula provides nutrients in accordance with section 412 (b) and (i) of the act, as well as section 412(b)(2)(B)(ii). If the formulation or processing of the infant formula has been changed, the manufacturer must consider what nutrients may have been affected by the change and test for each of these nutrients in the final-product stage of the first batch of the changed formula. For example, if the manufacturer makes a change in the amount of a protein source used in the infant formula, the firm must test the formula for protein content and for any nutrients provided endogenously to the formula by the protein, such as minerals like calcium and phosphorus. The manufacturer is aware of how much of each mineral it is relying on the protein source to provide to the formula. When the amount of the protein source used in the formula is changed, the manufacturer must test for the level of all nutrients it relies on the protein source to provide to the formula to ensure that all nutrients in the formula meet the requirement of § 107.100.

4. Quality Control Records

Proposed § 106.91(c) requires that manufacturers make and retain records of the results of all testing performed on the batch of infant formula in accordance with proposed § 106.100(e)(5)(i) and a full description of the methodology used in accordance with proposed § 106.100(f)(7). As discussed in the description of the proposed revisions to subpart F of part 106, FDA has authority to require these records under section 412(b)(4)(A)(i) of the act. Providing a record of the results of quality control testing will verify that each nutrient required by § 107.100 is present in each batch of infant formula at the required level, and that any nutrients added by the manufacturer are present at the appropriate level. These records will show the levels of nutrients in the formula and will provide data needed to evaluate a batch of infant formula if problems, such as adverse events in infants, occur later with that particular batch. Records that describe the full methodology used to conduct the quality control testing will provide consistency in the procedure that the manufacturer is using to test for the nutrients in each batch of infant formula, even when different laboratory personnel are conducting the testing. The accuracy and reproducibility of quality control testing depend on the procedure used to conduct the test.

5. Audits of Quality Control Procedures

Proposed § 106.92 requires that the manufacturer of an infant formula, or an agent of such a manufacturer, conduct regularly scheduled quality control audits to ensure that an infant formula provides required nutrients and has been manufactured in a manner designed to prevent adulteration. Proposed § 106.92 derives from section 412(b)(2)(B)(iv) of the act, which requires that the quality control procedures prescribed by the Secretary include "the conduct by the manufacturer of an infant formula or an agent of such manufacturer of regularly scheduled audits to determine that such manufacturer has complied with the regulations prescribed under" section 412(b)(2)(A) of the act (stating that the Secretary (and FDA by delegation) establish by regulation "quality control procedures that the Secretary determines are necessary to assure that an infant formula provides nutrients in accordance with" section 412 (b) and (i) and "is manufactured in a manner designed to prevent adulteration of the formula". FDA is proposing to require that regularly scheduled audits be part of quality control procedures because such audits will document compliance with the quality control procedures and will identify recurring problems that may dictate an alteration in the master manufacturing order. For example, regularly scheduled audits of the results of tests of nutrient levels in infant formulas and of any deviations from the manufacturer's specifications or procedures for acceptable nutrient levels will reveal deviations that occur on a repeated basis and will enable the manufacturer to identify specifications or procedures that should be reassessed.

Proposed § 106.92 further requires that the audits be performed by an individual who, as a result of education, training, and experience, is knowledgeable in all aspects of infant formula production and of the agency's regulations concerning quality control procedures, but who has no direct responsibilities for the matters being audited. The legal authority for this provision, the importance of the responsible individual's knowledge in all aspects of infant formula production and the agency's regulations, and the need for the audit to be performed by an individual who has no direct responsibility for the matters being audited were discussed previously under the proposed CGMP regulations in § 106.90.

By proposing different regulations (proposed §§ 106.90 and 106.92) that require audits of CGMP and of quality control procedures, the agency is not suggesting that it will require that separate audits be conducted. These regulations are being proposed separately to make clear that the regularly scheduled audits required by section 412(b)(2)(B)(iv) of the act are an aspect both of CGMP and of quality control procedures. The agency would have no objection to a combined audit

VOL 61 ISS 132 JL 9 1996 UMI

of CGMP and of quality control procedures.

6. Revocation of the Requirement for Determination of Vitamin D by the Rat Bioassay Method

FDA is proposing to revoke the requirement in current § 106.30(c)(2) for the determination of vitamin D by a rat bioassay method. This rat bioassay for vitamin D is no longer a viable assay because appropriate animals for conducting this test are difficult to acquire (Ref. 53), and an alternate analytical method for the determination of vitamin D in infant formulas has been approved by the Association of Official Analytical Chemists (Ref. 54).

D. Conduct of Audits

Section 412(b)(2)(B)(iv) of the act provides that CGMP and quality control procedures include regularly scheduled audits to determine whether the manufacturer is complying with CGMP, including following the quality control procedures that are necessary to ensure that an infant formula provides the required nutrients at the required levels, and whether it is operating in a manner designed to prevent adulteration of the formula. FDA is proposing to require in § 106.94(a) that manufacturers develop and follow a written audit plan that is available at the manufacturing facility for FDA inspection. A written audit plan is necessary to provide consistency in how audits are conducted and to ensure that the auditor can determine whether the facility is operating in compliance with the applicable procedures.

Proposed § 106.94(b) requires that the audit plan include the procedures that the manufacturer uses to determine whether the facility is operating in accordance with CGMP, with the applicable quality control procedures, and in a manner designed to prevent adulteration of the infant formula it produces. This proposed requirement derives from current § 106.100(j), which defines audit procedures as the methods used to review the manufacturing and quality control procedures and is intended to direct the manufacturer's attention to the fundamental goals of the manufacturing process in formulating its audit plan.

Proposed § 106.94(c) sets out the minimum requirements for the audit procedures that are to be employed by manufacturers. Under proposed § 106.94(c)(1) these procedures are to include a review of how the production and in-process control system established under § 106.6(b) is operating. In particular, proposed § 106.94(c)(1)(i) specifies that the evaluation of the production and in-process control system include observation of the production of infant formula and a comparison of the observed process to the written production and in-process control plan required under proposed § 106.6(b). FDA has tentatively concluded that such observations will show whether the production and in-process control system is being followed appropriately, and, if not, they will identify any deviations from the production and in-process control system, so that the manufacturer can take corrective actions to ensure that infant formula is produced in compliance with the production and in-process control system.

Proposed § 106.94(c)(1)(ii) requires that the evaluation of the production and in-process control system include a review of records of the monitoring of points, steps, or stages where control is deemed necessary to prevent adulteration. As discussed below, proposed § 106.100(e)(3) requires that the batch production and control records document the monitoring of all points where control is deemed necessary to prevent adulteration in the manufacturing of the batch. FDA has tentatively concluded that proposed § 106.94(c)(1)(ii) is necessary because the auditor can observe the production of only a limited number of batches of infant formula. A review of the production and in-process control records of all batches produced in a given period of time will ensure that the production and in-process control system is working appropriately on a continuous basis, will identify any point that monitoring reveals is out of control on a recurring basis, and will identify where the production and in-process control system needs improvement.

Proposed § 106.94(c)(1)(iii) requires that the evaluation of the production and in-process control system include a review of records of how deviations from any standard or specification at points, steps, or stages where control is deemed necessary to prevent adulteration were handled. As discussed below, proposed § 106.100(e)(4)(iii) requires that the batch records include the conclusions and followup of an investigation of the failure to meet any specification or standard at any point where control is deemed necessary to prevent adulteration. A review of these records as a part of the audit will identify failures that occur on a repeated basis and will show how these failures are handled by the manufacturer. The auditor will be able to evaluate whether the conclusions and followup of these investigations are appropriate for each failure to meet the specification or standard.

Proposed § 106.94(c)(2) requires that the audit procedures include a review of a representative sample of all records maintained in accordance with proposed § 106.100 (e) and (f). As discussed below, proposed § 106.100(e) sets out the requirements for the batch production and control records, and proposed § 106.100(f) sets out the requirements for records related to observance of CGMP. A review of a representative sample of these records will show the auditor whether there has been compliance with the appropriate regulations in producing the batches of product so that the formula is not adulterated. Section 412(b)(2)(B)(iv) of the act states that the audit is conducted to determine whether the manufacturer has complied with the regulations establishing CGMP for infant formulas, including quality control procedures. FDA has tentatively concluded that review of a representative sample of the records maintained in accordance with § 106.100 (e) and (f) is necessary to determine whether the manufacturer is complying with these regulations.

E. Quality Factors for Infant Formulas

1. What Are Quality Factors?

The agency is proposing to create a new subpart E to implement the quality factor requirements of sections 412 (a)(2) and (b)(1) of the act. Section 412(a)(2) of the act states that an infant formula is adulterated unless it meets the quality factor requirements that are established under section 412(b)(1). Section 412(b)(1) of the act states that the Secretary shall by regulation establish requirements for quality factors, including quality factor requirements for required nutrients for infant formulas to the extent possible consistent with current scientific knowledge. Therefore, it is incumbent on manufacturers to establish that the infant formula that they produce meets the minimum quality factor requirements that FDA adopts.

What Congress meant by "quality factors" is discussed in the report of the House Committee on Interstate and Foreign Commerce that accompanied the 1980 act. The report states that quality factors "pertain to the bioavailability of a nutrient and the maintenance of levels or potency of nutrients during the expected shelf life of the product" (Ref. 5). FDA, in proposed § 106.3(o), has defined "quality factors" in a manner that encompasses several basic concepts, including the concepts of

"bioavailability" and of "healthy growth."

The concept of "healthy growth" was discussed in the report of the House Committee on Interstate and Foreign Commerce that accompanied the 1980 act. The report states that infant formulas are often the sole source of nutrition for infants, and that "the growth of infants during the first few months of life often determines the pattern of development and quality of health in adult life" (Ref. 5). FDA considers the concept of "healthy growth" to be broad, encompassing all aspects of physical growth and normal maturational development, including maturation of organ systems and achievement of normal functional development of motor, neurocognitive, and immune systems. All of these growth and maturational developmental processes are major determinants of an infant's ability to achieve his/her biological potential, and all can be affected by the nutritional status of an infant.

"Bioavailability" of a nutrient for an infant means that the nutrient is physiologically available in sufficient quantities to perform its metabolic functions (Ref. 55). In a formula product, bioavailability of individual nutrients is affected by the net effect of the formulation and processing of the product on the chemical form of the nutrient. These processes are influenced by such factors as the chemical form of the nutrient in the ingredient source, the chemical form of the nutrient after processing, and the net effect of various inhibitors and enhancers in a food or meal on the chemical form of the nutrient and its ability to be absorbed and utilized by the infant. In the infant, the bioavailability of a nutrient is determined by the net effect of the amount of nutrient that is converted during digestion to an absorbable form, the proportion of the nutrient that is absorbed into the bloodstream, the proportion of the absorbed nutrient that is converted to its biologically useful form, and the proportion that is lost through excretory processes (Ref. 55). Bioavailability varies among nutrients within a given food product and, for a given nutrient, among foods. The factors affecting nutrient bioavailability are complex and can be difficult to predict based on analyzed nutrient values alone.

Bioavailability issues are particularly critical for infants during the first few months of life, where a single food (infant formula) serves as the sole source of all nutrients at a period when rapid physical growth and development and maturation of various organ systems makes the infant particularly vulnerable to harm by nutritional insults. Unlike the mixed diet of persons beyond infancy where poor bioavailability in one food can be compensated for by other foods in the diet, a problem with bioavailability in an infant formula affects the total amount of nutrient available to that infant for several months after birth. Furthermore, requirements for nutrients are higher per kilogram body weight during early infancy than at any other time during the life cycle. Because numerous critical developmental milestones (e.g., neurocognitive or immune functions) must be achieved by young infants, a nutrient insufficiency during infancy can quickly develop into serious, and in some cases, permanent adverse effects on a range of developmental processes, including physical growth and organ maturation. Thus, a problem with bioavailability is far more critical for a food such as infant formula than it is for foods that are used as part of a mixed diet by the general population.

Furthermore, the rapidly changing and increasingly complex physical, chemical, and biologically significant characteristics of ingredients used in new and reformulated infant formulas make it important to continually ensure that quality factor requirements are met. Changes in formulation of infant formulas are made by manufacturers for a variety of reasons, including enhancing the functional characteristics of the formula (e.g., to prevent separation of ingredients or to prevent clumping that will plug nipples on bottles), to enhance digestibility of the formula (e.g., different sources or blends of fats), or to improve the nutritional quality (e.g., a different source of protein or of a vitamin or mineral, or adding a nonrequired nutrient such as selenium). For example, in some formulas, novel sources of vegetable oils (e.g., fractions of plant oils that are particularly rich in certain types of fatty acids) have partially or fully replaced cow's milk fat as the fat source (Refs. 56 and 57). Whey proteins or highly processed proteins (e.g., hydrolyzed proteins) are now frequently used as partial or complete replacements for more traditional cow's milk protein sources. In other cases, nutrient/nutrient interactions (e.g., high iron inhibiting absorption of zinc) or nutrient/ingredient interactions (e.g., phytates from soy protein isolates inhibiting absorption of zinc, or the replacing of the milk sugar (lactose) that enhances absorption of calcium with a sugar source that does not have this ability) can adversely affect nutrient availability.

New processing methods may also have unintended consequences when used with established ingredients or formulations. For example, a new processing method that subjects the formula to conditions that are less denaturing to cow's milk proteins than traditional heat treatments could produce a formula that is less digestible and that causes reactivity of the gastrointestinal wall, such as has been seen with whole cow's milk (Ref. 58).

In summary, consideration of quality factors goes beyond analytical measures of the presence or absence of a nutrient in the formula product and is needed to provide assurance that adverse effects on the nutritional value of the formula for the infant do not unintentionally or unknowingly occur as a result of the formulation or the processing of an infant formula. Chemical analysis of the formula product to define its nutrient composition often overestimates the amount of nutrient that is bioavailable for physiological use by the infant. The quality factors, therefore, provide a means of evaluating whether a nutrient has become less bioavailable than would be expected, so that it is not sufficiently effective to meet its normal nutritive functions, or whether its bioavailability has been enhanced to a level that raises safety concerns.

Quality factor requirements are distinctly different from quality control procedures. While "quality control procedures are intended to insure that the safety and nutritional potency of a formula is built into the manufacturing process" (Ref. 5), quality factors are intended to ensure that an infant formula contains an adequate amount of each nutrient in a form that can be digested, absorbed, and utilized so that the infant's physiological needs for these nutrients will be met (Ref. 5). Changes in ingredient sources and processing can affect the chemical forms of nutrients in the formula product. Such changes can affect the digestion and absorption of food nutrients such that: (1) Absorption is incomplete, (2) absorbed nutrients are not in a form that allows use by metabolic pathways, or (3) the nutrient may interact with other dietary substances to cause excessive excretion. Thus, the amount of nutrients (i.e., the analyzable amounts) in formulas must generally be higher than the physiological requirements of infants (i.e., the amounts of nutrients needed by the body to meet metabolic and growth needs of infants). Although these inefficiencies are generally taken into account when recommending nutrient levels for infant formulas, there

VOL 61 ISS 132 JL 9 1996 UMI

is always the potential for affecting nutrient bioavailabilities in unexpected ways.

In summary, a demonstration that both the quantitative and quality factor requirements for essential nutrients in an infant formula are met is necessary to ensure that the infant formula is likely to meet all of the known physiological nutritional needs of infants and to ensure that healthy growth and nutritional well-being will be achieved by an infant consuming the infant formula as the sole source of nutrition.

2. Identification of Quality Factors

In testimony before the passage of the 1986 amendments, the agency informed the Senate that the state of knowledge and science with respect to quality factors was still evolving, and that, therefore, there was a basis for only one quality factor for a nutrient. (Although the testimony to the Senate does not specify the identity of the nutrient for which there was a basis for a quality factor, the quality factor was the protein efficiency ratio used for assessing protein quality (Ref. 1).) Senator Metzenbaum stressed that the amendments contemplated that additional quality factors would emerge, and that the Secretary should implement requirements for such factors as quickly as scientific advances would allow.

The agency subsequently took a major step toward establishing quality factors through a contract in 1986 with the CON/AAP. The AAP earlier had published recommendations regarding the quantities of nutrients needed in infant formulas (Ref. 59). These recommendations were relied upon during the development of the nutrient specifications of the act (Ref. 60). In its report to FDA, "Clinical Testing of Infant Formulas with Respect to Nutritional Suitability for Term Infants" (Ref. 6), the CON/AAP identified those conditions in which changes in formula composition warranted clinical testing. The CON/AAP stated that "clinical testing is primarily useful for determining (1) acceptability of the formula, (2) ability of the formula to support normal growth, and (3) availability of selected nutrients." The CON/AAP also discussed the limitations of the available measurements, providing an assessment of the limits of scientific knowledge.

The agency has considered the CON/AAP report carefully and has also considered new scientific information published since the release of that report to determine what quality factors are appropriate for nutrients in infant formula. Based on its consideration, FDA is proposing to adopt § 106.96. This section, if adopted, will require that all infant formula be of sufficient quality that it meets the nutritional requirements of infants for healthy growth when fed as the sole source of nutrition, as indicated by a general quality factor for physical growth, assessed using anthropometric measures of infants consuming the formula, and by a nutrient-specific quality factor for protein biological quality, assessed by an animal bioassay using the formula.

The agency is not proposing to require that manufacturers measure, individually, the absorption, metabolism, metabolic transformation, or utilization of any of the other essential nutrients. These measures are often technically difficult or unavailable, difficult to interpret, or invasive, thus causing unnecessary testing of infants without potential for providing meaningful results. Rather, the agency has tentatively concluded that current scientific knowledge and ethical and practical considerations are supportive only of requiring two quality factor measures: (1) Physical growth of infants consuming the formula as an integrative indicator of the net effect of the overall nutritional quality of the formula, and (2) a rat bioassay of protein quality in the formula product to ensure that the infant's needs for individual amino acids will be met.

The agency has tentatively determined that these are minimum requirements. The agency recognizes that, on a case-by-case basis as warranted by the formulation and intended use of a particular infant formula, demonstration of additional quality factors may be necessary. For example, a formula intended for use by premature infants who are at a particularly vulnerable developmental stage relative to nutritional needs to support neurocognitive development may need to be subject to testing that includes measurement of this endpoint to ensure that the formula supports healthy growth. In addition, a formula in which a novel fatty acid has been added to enhance the formula's ability to meet nutritional needs for supporting visual development may need to be evaluated to determine whether it has adverse nutritional effects on other aspects of healthy growth (e.g., on development of immune function).

3. The Regulation

Proposed § 106.96(a) sets forth quality factor requirements that reflect the minimum measures needed to evaluate the nutritional quality of an infant formula product, taking into account current scientific knowledge and the usefulness of the outcome measures for evaluating quality factors, while minimizing unnecessary testing of infants serving as subjects in clinical trials. Infant formula is defined in the act as a complete or partial substitute for human milk (section 201(aa) of the act). Obviously, the greatest need for a nutritionally complete formula that meets all quality factors is when the formula is used as a complete substitute for human milk. When no other form of nutriture is available to the infant, the formula must provide all of the nutrients needed for the healthy growth of the infant. There is no room for error or miscalculation. The absence or an inadequate level of an essential nutrient will be evidenced by growth failure and other signs or symptoms resulting from nutritional insufficiencies. FDA has tentatively concluded, therefore, that an evaluation of the ability of a formula to support healthy growth must be made under its most demanding conditions of use, i.e., when it is used as the sole source of nutrition, because other foods may mask or compensate for deficiencies in the formula that would occur if the formula were used as a complete substitute for human milk, which would produce results that cannot be meaningfully interpreted.

Proposed § 106.96(b) identifies "normal physical growth" as a quality factor. This quality factor reflects the CON/AAP recommendation that the determination of physical growth rate is the most valuable component of the clinical evaluation of an infant formula (Ref. 6). Physical measures of growth such as weight gain are the most widely accepted and used markers of a young infant's overall ability to digest and utilize those nutrients provided by the formula. The very rapid rate of growth in early infancy means that abnormalities in growth rate can be detected in a few months, providing an easily measured and sensitive, although nonspecific, indication of nutritional insufficiencies (Ref. 4). Physical measures of growth rate are easily done, are familiar to both parents and health professionals, and are a normal part of routine office visits. They are noninvasive and pose little or no risk to infants and provide meaningful results for evaluating the ability of an infant formula to support physical growth in very young infants. Thus, the agency has tentatively concluded that the ability of the formula, when fed as a sole source of nutrition, to meet the nutritional requirements of young infants for normal physical growth is a necessary indicator of the overall nutritional quality of the formula.

Proposed § 106.96(c) requires that the protein in infant formulas be of sufficient biological quality to meet the protein nutritional requirements of infants. Protein, while generally discussed as a single nutrient, depends for its nutritive value on the inclusion of all essential amino acids at levels and relative proportions needed to support healthy growth. The protein requirement is really the sum of different requirements for 10 essential amino acids that occur at different levels and proportions in various food protein sources. Protein quality is also affected by differences in digestibility of different protein sources, by factors that modify digestion, and by chemical reactions that affect the ability of enzymes in the infant's gastrointestinal tract to digest and absorb the amino acids in the protein source. Once absorbed, the relative proportions of the amino acids can affect their uptake by body tissues because of competition for receptors and transport systems. Thus, protein quality depends on a number of complex interactions and conditions that can be difficult to predict.

Chemical analysis of foods generally only measures the amount of total protein present and does not identify specific amino acids or their ability to meet the physiological needs of infants for the essential amino acids. Chemical analysis alone, therefore, is not capable of predicting whether adequate amounts of all essential amino acids are present, or whether the amino acids present are able to support healthy growth in infants. Yet ensuring that the protein in an infant formula's is of high biological value is critical to an infant's health. For example, during the first year of life, the protein content of an infant's body increases from 11 to 15 percent at the same time that the infant's body weight increases by 7 kg. The average increase in body protein is about 3.5 g/day for the first 4 months of life and about 3.1 g/day for the next 8 months. These protein requirements must be met by a formula that not only contains adequate protein but also contains protein of high biological quality in a form that can be utilized by the infant. Because biological quality varies among protein sources and may be adversely affected by processing methods and other constituents present in the formula, the agency has tentatively concluded that the biological quality of the protein in an infant formula is a necessary quality factor. This quality factor will require an evaluation of whether the formula contains the essential amino acids and total nitrogen in the amounts and proportions necessary to permit normal tissue and organ growth and development. As discussed later in this document, the agency is proposing in § 106.97(b) that the biological quality of the test protein be measured by the Protein Efficiency Ratio (PER) rat bioassay and be comparable to the biological quality of the milk protein casein.

Proposed § 106.96 does not include quality factor requirements for all nutrients required by infants because methods to determine whether these requirements are met are not available or are not practical for most nutrients (e.g., results cannot be meaningfully interpreted, or methods are invasive, thus causing unnecessary testing of infants). Nonetheless, FDA has tentatively concluded that, as the science evolves, establishing quality factor requirements for other nutrients needed by infants would provide assurance, beyond that provided by the general quality factor of physical growth in proposed § 106.96(b) and the specific protein quality factor in § 106.96(c), that a formula will meet the overall nutritional needs of infants. As the science evolves, FDA anticipates being able to progress beyond generalized, nonspecific indicators of overall nutritional intakes (e.g., measures of physical growth), to more specific and sensitive measures of biochemical and functional nutritional status. FDA also has tentatively concluded that, on a case-by-case basis, additional quality factors may be needed for a specific formula product if formulation or processing concerns raise sufficient quality factor questions such that additional measures are necessary to adequately ensure that the nutritional quality of the formula supports healthy growth. FDA asks for comment on criteria as to when such measures are required.

4. Request for Comment on Need for Establishing Requirements for Other Quality Factors

Proposed § 106.96(b) and (c) set forth minimum requirements for quality factors (physical growth and protein quality) that all infant formulas should meet. FDA has tentatively concluded that these quality factors are consistent with current state-of- the-art science and provide significant information on the nutritional quality of the infant formula without requiring unnecessary or meaningless testing of infant enrollees in studies.

As discussed above, the 1986 amendments contemplated that when scientific research identified criteria that could be used to establish quality factors for specific nutrients in infant formula, the agency would establish quality factor requirements for those nutrients. Proposed § 106.96 will establish two quality factors (physical growth and protein quality) because the agency has tentatively concluded that there is sufficient scientific evidence of the importance of these quality factors, and because adequate methods exist to meaningfully and ethically measure these factors.

However, the CON/AAP report discussed other nutrients necessary for healthy growth of infants and for which the report recommended establishing quality factor requirements (Ref. 6). The agency has studied the evidence supporting the establishment of quality factor requirements for these other nutrients, and the methods available for determining whether an infant formula meets quality factor requirements for these nutrients. FDA has tentatively concluded that establishing quality factor requirements for the three additional nutrients recommended by CON/AAP (i.e., (a) fat, as measured by fat balance; (b) calcium and phosphorus, as measured by calcium and phosphorus balance; and (c) iron as measured by iron bioavailability) is not warranted at this time. FDA, however, solicits additional information that it will consider before reaching a final decision on whether the scientific evidence and usefulness of results are sufficient to support establishing these additional quality factor requirements. Therefore, the agency requests comments and information on: (1) The scientific evidence on the importance of the amount, type, and sources of fat, calcium and phosphorus, and iron in infant formula, and (2) the appropriate methods and interpretative criteria to determine whether an infant formula meets the nutritional requirements for fat, calcium and phosphorus, and iron of infants consuming the formula as the sole source of nutrition. The basis upon which the agency is considering establishing quality factor requirements for these nutrients is discussed below.

a. *Fat.* The agency requests comment on a quality factor for fat balance that would require that all infant formulas be formulated and manufactured to provide fat in a manner that allows the fat to be absorbed and retained by infants at a level that the energy and other nutritional requirements of the infant are not adversely affected (Ref. 6). Normal, healthy, full-term infants fed various mixtures of the fats traditionally used in infant formulas in the United States rarely excrete more than 15 percent of their fat intake (Ref. 6). This level of fat excretion is an indication

VOL 61 ISS 132 JL 9 1996 UMI

that the fat is highly digestible. The use of a fat with lower digestibility would adversely affect energy balance, could reduce the absorption of fat-soluble vitamins and other nutrients, and could have a negative impact on healthy growth of the infants.

b. *Iron.* The agency solicits comment on a quality factor that would require that all infant formula be formulated and manufactured such that the iron used is bioavailable and meets the iron requirements of the growing infant. The maintenance of adequate iron status in the infant is important because iron is required to transport oxygen in the red blood cells to body tissues (as a component of hemoglobin), to supply oxygen to muscle tissue (as a component of myoglobin), and to support normal mental development. Full-term infants are generally born with adequate iron stores to meet their iron needs for the first few months of life, but the iron needs of premature infants and older infants must be met by the diet.

Iron bioavailability from infant formulas is low compared to the iron bioavailability from human milk (Refs. 61 and 62).

Nutrient sources and other ingredients, such as protein sources, can affect the chemical form of iron, thus interfering with its potential for absorption (Ref. 63). Furthermore, factors that enhance iron bioavailability from human breast milk are poorly understood and currently are not present in commercial formulas. Consequently, infant formulas are fortified with up to 10 times the amount of iron found in human milk. If, however, the bioavailability of the iron in the infant formula is substantially improved by a change in the formulation or processing of the formula, then reductions in the amounts of iron added to the infant formula may be necessary to prevent the infant from absorbing excessive amounts of iron which could be unsafe because high dietary intakes of iron can adversely interfere with the bioavailabilities of other nutrients (59 FR 51030, October 6, 1994). If, however, the iron was bound to another ingredient such that it interfered with absorption, the infant's physiological needs for iron might not be met. Infant formula iron levels and iron bioavailability, thus, represent a delicate balance between effectiveness and safety that cannot be adequately predicted by chemical analysis of the iron content of the formula, but can best be assessed by measurement of clinical indicators of iron status.

Early changes in iron nutritional status are not likely to be detected by the general quality factor of physical growth. Therefore, a quality factor requirement for an infant formula to meet the iron requirements of infants, and to contain sufficient bioavailable iron for this purpose, may be needed. The agency, however, is concerned that clinical studies, as described in proposed § 106.97(a), in which selection criteria include requirements that enrollees be healthy, full-term infants aged 0 to 4 and 5 months, may not be sensitive enough to detect significant differences in iron bioavailability of a formula product. Healthy, full-term infants are usually born with adequate iron stores to maintain normal iron status for the first 3 to 4 months of life—the period of time that a clinical trial would be conducted. Without assurance that the test results are meaningful, the agency has tentatively decided not to require a specific quality factor for iron bioavailability.

c. *Calcium and phosphorus.* The agency also requests comment on a quality factor that would require that all infant formulas be formulated and manufactured such that the calcium and phosphorus are bioavailable and meet the calcium and phosphorus needs of infants. Calcium and phosphorus are essential for healthy bone mineralization and growth in infants. Calcium bioavailability is of particular concern because inadequate intakes of calcium impair bone mineralization and can cause rickets in severe cases (Refs. 64 and 65).

Interactions with other ingredients and manufacturing processes can reduce calcium and phosphorus bioavailability. High concentrations of calcium and phosphorus can interact to form insoluble complexes that may be unavailable (Ref. 66). Calcium can interact with free fatty acids and form soaps that are not absorbed (Ref. 66). Lactose-free formulas have been found to have lower calcium absorption than formulas containing this sugar (Refs. 67 and 68).

Some phosphorus compounds, such as the phytates found in plant protein sources, may not be readily digested and absorbed by infants (Ref. 69). Inadequate dietary phosphorus can cause a loss of calcium from the body as a result of bone resorption (i.e., loss of bone mass) (Ref. 70). Formulation or processing changes that affect other formula ingredients that influence calcium and phosphorus absorption require careful consideration of their potential effects on calcium and phosphorus bioavailability and the calcium and phosphorus status of the infant.

A dietary insufficiency of calcium and phosphorus of a magnitude that decreases bone formation may not be detected by physical measures of growth (Ref. 71). Therefore, a quality factor requirement for an infant formula to ensure that it meets the calcium and phosphorous requirements of infants, and to ensure that it contains sufficient bioavailable calcium and phosphorus for this purpose, may be needed. FDA is concerned, however, that meaningful measures for assessing the bioavailability of calcium and phosphorus may not be available.

d. *Summary.* FDA has tentatively concluded that the clinical and nutritional sciences have not reached a state where specific tests are available that would permit manufacturers to establish that they meet quality factors for each of the essential nutrients listed in § 107.100, except for protein. Therefore, except for the quality factor requirements for physical growth and protein quality discussed above and set forth in proposed § 106.96 (b) and (c), the agency has tentatively concluded that it is not useful to propose quality factor requirements for specific nutrients at this time.

Thus, to meet the nutritional needs of infants consuming formula, manufacturers must use forms or sources of essential nutrients that are bioavailable. The agency is concerned that manufacturers could unintentionally or unknowingly use forms of nutrients that have a relatively low bioavailability or ingredients or processing methods that will produce interactions that adversely affect the bioavailability of nutrients, thereby adulterating the formula because it no longer meets the nutritional needs of the infant. However, at this time, FDA is not aware of a means to systematically identify those circumstances that could adversely affect all nutrient bioavailabilities. FDA does not believe that it is ethical to unnecessarily subject infants to testing protocols when meaningful results cannot be assured. However, because of the potential seriousness of the public health impact of not meeting quality factors, FDA also believes that it is desirable to establish additional quality factors, as soon as they are warranted by evolving scientific knowledge, to ensure adequate nutrient bioavailability.

FDA, therefore, requests comment on the: (a) Need for routine testing of quality factors, in addition to measures of physical growth and protein quality; (b) criteria to be used in determining that such a need can be meaningfully implemented, and (c) if a need is established, the type of qualitative and quantitative measurements that could be used by manufacturers to demonstrate that an infant formula meets with those quality factors. If FDA receives information demonstrating the need for additional quality factors, it will consider including them in any final rule that results from this proceeding.

5. Assurances for Quality Factors

a. *Quality factor—physical growth of infants.* Proposed § 106.97(a)(1) requires that the manufacturer conduct an adequate and well-controlled clinical study to determine whether the formula supports normal physical growth in infants when it is fed as the sole source of nutrition. The CON/AAP Task Force on Clinical Testing of Infant Formulas (Ref. 6) concluded that the capability to support physical growth is the most widely accepted and used measurement available of the nutritional adequacy of an infant formula. Gains in weight and length of young infants reflect the long-term, integrative physiological processes that can only be achieved if the infant's nutritional needs are met.

A randomized, controlled study represents the most sensitive type of study to measure the nutritional adequacy of infant formula. The use of concurrent treatment and control groups is in agreement with the CON/AAP Task Force recommendations (Ref. 6) and with the agency's recommendations for human bioavailability studies of drugs (21 CFR 320.25). Although comparisons to historical controls (e.g., population reference standards) have been used by some investigators to evaluate growth of infants consuming a particular formula product, this type of study lends itself to misleading results because population reference standards are generally for the total population of infants (regardless of birth weight, health status, socioeconomic status, or other factors that can affect growth unrelated to nutritional components). In a study to evaluate the nutritional adequacy of a formula, on the other hand, selection criteria are usually used to limit enrollment to healthy, full-term infants. Thus, differences or similarities in growth between study infants and population reference standards cannot be meaningfully interpreted. Therefore, the agency is proposing to require that adequate and well-controlled clinical studies be conducted to collect the data needed to determine whether a formula satisfies the quality factor requirements for physical growth. To assist manufacturers in understanding the general principles for adequate and well-controlled clinical studies, FDA has prepared the "Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications," U.S. Department of Health and Human Services, July, 1988 (Ref. 72).

FDA has tentatively concluded that it is necessary to enroll infants into a clinical study shortly after birth, and that the studies be at least 4 months in duration (see proposed § 106.97(a)(1)(i)(A)), to ensure that the study focuses on the period during which infant formula generally serves as the sole source of nutrition, and, thus, the infant is most vulnerable to a problem with a formula since the infant is not consuming other foods that could mask or compensate for a deficiency in the formula. Also, the sensitivity of growth studies for identifying nutritional problems with an infant formula is highest during early infancy. Young infants, those less than 4 to 5 months, allocate a substantially higher percentage of the intakes of energy, protein, and other nutrients for growth than do older infants. After this early period of rapid growth, the rate of physical growth slows, and the allocation of nutrient intakes for growth is lower. Thus, early infancy is the period of greatest nutritional risk and is the age associated with the most sensitive growth phase.

Because of the rapid rate of growth in infants less than 4 months of age, adverse nutritional impacts that affect growth rate can be detected within a few months (Ref. 4). Growth studies in older infants, where growth rates are of smaller magnitude and where solid foods are also consumed, are not sensitive enough to provide a meaningful evaluation of the ability of the formula to support healthy growth.

The CON/AAP Task Force (Ref. 6) also recommended that clinical studies be conducted for a period of 3 to 4 months, and that growth be examined at least during the first 8 weeks of life, because nutrient requirements per kg body weight are greatest during this period. It also pointed out that such a study will cover a period when the infant is not consuming solid foods, and the infant formula is fed as a sole source of nutrition.

Therefore, FDA has tentatively concluded that a clinical trial that lasts at least 4 months will be long enough to detect adverse effects of nutritional inadequacies on growth rate. FDA also has tentatively concluded that a clinical trial must be conducted with infants less than 1 month of age at the time of their entry into the study (see proposed § 106.97(a)(1)(i)(A)) to ensure that the formula is tested during the period of time when growth rate and nutrient requirements are proportionately greatest, and when the infant formula serves as the sole source of nutrition. These requirements are intended to ensure that the study assesses the nutritional adequacy of the formula for supporting normal physical growth in the young infant.

Under proposed § 106.97(a)(1)(i)(B), the manufacturer will be required to collect and maintain individual and group summary data on anthropometric measures of physical growth and plot the data on National Center for Health Statistics (NCHS) reference percentile body weight and body length curves, which are standard measurements of infant physical growth (Refs. 73, 74, and 75) and provide the most widely accepted assessment of infant growth (Ref. 6).

Plotting each infant's anthropometric data on NCHS reference percentile body weight and body length curves, and providing individual data on increments of weight gain, provide a means to make a quantitative assessment of the growth pattern over the 4 months duration of the study for individual infants. There is normally wide variation in body weights and lengths among healthy infants, with some being smaller than average and others average or above average. Single point measures of weight or length are difficult to interpret relative to a given infant because one does not know whether, for example, a smaller than average weight is attributable to inadequate nutrition or to a healthy and thriving infant whose body size is smaller than average.

Over time, young infants tend to individualize their track within a given percentile on population reference growth standards. An infant at the 25th percentile level for weight shortly after birth tends to stay at or near the 25th percentile for weight throughout the first few months of life. When multiple longitudinal measures of weight (or length) of an infant are plotted on a weight-for-age reference chart, a reviewer can make a quick assessment as to whether an infant's pattern of weight or length gain is similar to that expected for healthy infants of the same age, taking into account the range of normal individual variation in body weights and lengths and that infant's percentile track. Similar comparisons can be made with a given infant's weight or length incremental gain data relative to population reference standards. These data allow for identification of infants with unusually slow or rapid growth, an observation that is masked by grouped data.

Thus, plots of changes in individual infant's weight and length in conjunction with comparisons of increments per unit time of weight or length gains against population

VOL 61 ISS 132 JL 9 1996 UMI

reference standards allow researchers and reviewers to identify those infants whose growth is not following expected longitudinal patterns and, therefore, for whom a more thorough review of their medical and dietary histories is necessary to assess the possibility that the infant formula is responsible for reduced growth rates in a subgroup of infants. This careful review of individual infant growth patterns in addition to group summary data is particularly important because studies, while adequate to evaluate differences in group means between test and control formulas, often lack the statistical power to detect subgroups of infants whose growth patterns deviate from normal. These data will also provide useful information on possible trends towards failure to thrive or obesity, or on catchup growth in infants who experienced transient adverse effects relative to expected growth rates.

FDA has tentatively concluded that a comparison of a manufacturer's data to well-established population reference standards can provide the basis for an evaluation of the growth patterns of individual infants to identify, and to provide the basis for an investigation of, possible causes of unusually slow or fast rates of gain. Thus, the agency is proposing that the NCHS growth charts for individuals and for grouped data be incorporated by reference into the regulation (proposed § 106.97(a)(1)(i)(B)).

Proposed § 106.97(a)(1)(i)(C) requires that the manufacturer collect the anthropometric measurements at the beginning of the clinical study, at 2 weeks and at 4 weeks of the study, at least monthly thereafter, and at the conclusion of the study. These measurements will permit the calculation of incremental gains in the different measurements. Incremental gains, such as weight gain per unit of time, are generally considered the most sensitive indicator of the ability of a formula to support the physical growth of individual infants over time (Ref. 4). Also, because growth rate and nutritional requirements are curvilinear rather than linear during early infancy, multiple measurements help in assessing whether the formula meets the nutritional needs throughout the period of the clinical study and aids in more accurately placing infants in their "correct" reference percentile tract, particularly since age of enrollment varies somewhat among infants (although, if adopted, this regulation should serve to minimize that variation). Additionally, measures of an infant's body weight, the most critical anthropometric measure, are subject to a number of measurement errors unrelated to the nutritional value of the formula (e.g., timing of weighing of infant relative to feeding or defecation or urination).

For these reasons, multiple measures over a relatively long period (e.g., 4 months) provide a more accurate picture of the pattern of growth of infants than do one or two point measures. The agency has tentatively concluded that the requirement of four measurements taken 1 month apart will provide a sufficient number of measurements to permit evaluation of whether the formula meets the nutritional needs for physical growth of the infant throughout the study period. However, the agency requests comment, supported by data, on which measurements are needed to provide evidence that the formula meets the nutritional needs for physical growth of infants.

FDA has tentatively concluded that more frequent measurements are needed during the early stages of the study because variations in measured body weight that are a result of factors unrelated to the nutritional quality of the formula can be particularly serious in early infancy. For example, during the first week of life, there is a normal loss of body weight by the infant because of fluid loss that may reach 6 to 10 percent of body weight (Ref. 76). This weight loss will reduce the apparent growth of the infant as measured by body weight. This reduction may affect the ability to evaluate and interpret the weight gain data collected early in the study. FDA has tentatively concluded that requiring more frequent anthropometric measurements, especially for weight, early in the study, increases the ability to accurately place individual infants in the correct percentile track for monitoring their growth patterns in relation to the population reference curves and for monitoring physical growth during the most sensitive part of their growth phase.

To minimize the burdens of this regulation, FDA has not proposed to require that blood samples obtained from infants during the time period of their enrollment in the clinical study, or at completion of the study, be analyzed for biochemical and clinical indicators of nutritional and growth status. However, the CON/AAP Task Force (Ref. 6) recommended that some blood tests be conducted at the conclusion of required clinical studies to provide a more comprehensive evaluation of the nutritional adequacy of a formula. Thus, the agency requests comments on whether it would be useful for the manufacturer to collect and maintain data on standard laboratory measures, including complete blood count (white blood cell count and red blood cell count), hemoglobin concentration or hematocrit percentage, and serum or plasma concentrations of albumin, urea nitrogen, electrolytes (sodium, potassium, and chloride), alkaline phosphatase, and creatinine. These measurements are standard practice when infants are seen clinically and can be made with very small quantities of blood. The maintenance of these indicators within normal limits at the end of the study provides additional assurance over and above measures of physical growth that the infant's general state of well-being is healthy and "normal," particularly because changes in biochemical measures may occur before detectable differences in physical growth are identified or may not be detected by measures of physical growth. General anthropometric measurements of physical growth provide indirect, although very important, evidence that the formula is able to help the infant maintain overall good health, but they are not as specific, and may not be as sensitive, as are biochemical indicators of health.

FDA also requests comment on whether requiring some, or all, of the biochemical and clinical tests described above would provide useful and necessary information for determining whether a formula causes adverse consequences that may not be reflected in the quality factor requirements for measurements of physical growth in proposed § 106.97(a)(1)(i).

The identification of deviations from expected values for these biochemical and clinical measurements, throughout the duration of the clinical study, could serve as an early warning of unexpected risk to infants enrolled in the study and, therefore, result in early actions to prevent undue risk to infant enrollees in the study. Conversely, collection of blood samples throughout the study could discourage parents from continuing their infants in the study, thus causing a high attrition rate and producing final study results that are difficult to interpret.

Proposed § 106.97(a)(1)(ii) sets forth guidelines for the design of clinical study protocols. A comprehensive clinical study protocol will ensure that individual investigators understand and follow generally accepted scientific principles for the design and conduct of clinical trials, thus enhancing the likelihood of interpretable results while maintaining minimal or no risk to infants enrolled in the studies. In the conduct of all studies, manufacturers should use the general principles,

described in § 314.126 (21 CFR 314.126) for adequate and well-controlled clinical studies to ensure that the design and conduct of the study are adequate to permit scientific review and interpretation of the study's results. Studies that cannot produce meaningful results because of poor or inadequate study design and conduct mean that infants will be subjected to unnecessary testing. Such a situation places infant enrollees at undue risk and is clearly unethical.

In this section, FDA is not establishing mandatory elements for inclusion in a protocol, nor requiring that manufacturers provide the agency with the protocol used for a study intended to provide data to show that an infant formula meets the quality factor requirements. However, as discussed above, a protocol is an essential part of the design and execution of a well-controlled scientific study. Furthermore, a protocol often provides invaluable information that assists in the analysis and interpretation of the study data. Consequently, the agency strongly encourages manufacturers to develop and use protocols that incorporate the specific elements in proposed § 106.97(a)(1)(ii) in all research studies using infants because these elements will ensure that the study is designed and conducted in a manner that will produce results that will permit meaningful evaluation of the usefulness of the infant formula.

The steps outlined in proposed § 106.97(a)(1)(ii)(A) represent standard practice in the design and conduct of clinical studies (Ref. 72). Proposed § 106.97(a)(1)(ii)(B) states that the clinical study protocol should describe the necessary qualifications and experience of the investigators. It is essential that clinical studies be conducted by personnel with sufficient experience and training to ensure that their work will yield interpretable and meaningful results. If a study is conducted by an investigator who is not qualified, it increases the likelihood that the study will have to be redone, and that more infants will be exposed to risk. Therefore, it is important that in the protocol, the manufacturer define the requisite qualifications to conduct the study it is designing.

Proposed § 106.97(a)(1)(ii)(C) states that the protocol should be reviewed and approved by an Institutional Review Board (IRB) in accordance with part 56 (21 CFR part 56), and that the manufacturer should establish procedures to obtain written informed consent from the parents or legal representatives of the infants enrolled in the study in accordance with part 50 (21 CFR part 50). These steps are necessary to protect the rights and safety of subjects involved in the studies.

Proposed § 106.97(a)(1)(ii)(D) states that the clinical study protocol should explain how the study population represents the population for which the new infant formula is intended. FDA has tentatively concluded that such an explanation is necessary so that if questions about the relevance of the study population arise, the answer is readily available and free of any taint that it is a post hoc rationalization. For example, FDA has recently had questions about a study that involved hospitalized infants that were offered to support use of the product on post-discharge infants. If there had been the type of explanation available that FDA is proposing in this guideline, it would have greatly minimized the questions about this product.

Proposed § 106.97(a)(1)(ii)(D) also states that the clinical study protocol should explain how the study addresses the intended conditions of use of the formula. FDA has tentatively concluded that, by having manufacturers consider this question before the study is conducted, this guideline will prevent clinical studies that are conducted under conditions of use that do not accurately reflect the proposed conditions of use. For example, a clinical study protocol for testing a formula designed to be used by premature infants throughout infancy should explain how the study design will provide information to support the claim that the formula supports healthy growth under these conditions.

Proposed § 106.97(a)(1)(ii)(E) states that the clinical study protocol should describe the sample size calculations and the power calculations and the basis for selecting the sample size and study design. This information is necessary to establish the likelihood that the study will not fail to detect a real difference, should there be a difference for the measurements of interest, between the infant formula being tested and the control. For example, a study might not find a difference in incremental rate of weight gain between infants consuming two formulas because too few infants were enrolled in the study to provide sufficient statistical power to detect this difference. Inadequate statistical power could mask the nutritional inferiority of a product and could result in the marketing of a formula that does not meet the quality factor requirements and, therefore, is not safe for its intended use. Therefore, FDA has tentatively concluded that this guideline is needed to ensure that manufacturers design their growth studies to be capable of detecting biologically meaningful differences for the endpoints of interest between the two formulas. Identification of differences would raise safety concerns or serious questions of nutritional quality of the test formula product.

Proposed § 106.97(a)(1)(ii)(F) states that the clinical study protocol should include a plan to identify and evaluate any adverse events. This proposed guideline is necessary to document that appropriate attention is given to the systematic evaluation and recording of any adverse events that may occur during the course of the study. Inadequate planning for and conduct of the monitoring of adverse events may result in an erroneous conclusion that the formula is safe and suitable, when in fact the formula is not safe and suitable for infants under intended conditions of use.

Proposed § 106.97(a)(1)(ii)(G) states that the clinical study protocol should describe the quality control procedures that the investigator will use to ensure the validity and reliability of the measurements collected. This proposed guideline represents standard practice in the design and conduct of clinical studies and is necessary to allow a meaningful interpretation of study results. Data obtained with unreliable measures, or with indicators that do not accurately or meaningfully measure identified endpoints, may produce misleading study results that are uninterpretable and that suggest that a formula is safe and suitable, when more valid or reliable measures would not have supported this conclusion. The institution of adequate quality control procedures before beginning a study provides a mechanism for manufacturers to ensure that the data collected are reliable, and that the study provides interpretable results.

Proposed § 106.97(a)(1)(ii)(H) states that the clinical study protocol should describe and compare the composition of the control and test formulas. These descriptions of the control and the test formulas are necessary to establish that the formula used as the control provides an adequate comparison for evaluating the quality factors of the test formula. If the control formula is not comparable to (i.e., bioequivalent to) formulas in current use, differences between the test and control formulas have no meaning. They cannot be generalized to projected conditions of use. For example, comparable or enhanced physical growth in infants consuming a test formula as compared to infants consuming a control formula when the control formula does not meet

VOL 61 ISS 132 JL 9 1996 UMI

requirements in § 107.100 for nutrients, or is not bioequivalent relative to quality factors to currently marketed formulas in the United States, cannot be interpreted as supporting healthy growth because it is not possible to determine whether the apparent "equal" or "enhanced" physical growth is attributable to the fact that the formula is nutritionally adequate, or whether the formula looks adequate because it is being compared to a nutritionally inadequate formula. The nature of the differences between control and test formulas will also affect sample size and measurement (endpoint) considerations.

FDA's experience in reviewing clinical data submitted with 90-day notifications has been that the absence of information on control formulas is not uncommon. Thus, FDA has tentatively concluded that a guideline on the information that needs to be considered in selecting a control formula is necessary to ensure that study results are meaningful and interpretable.

If the test formula used in a study is not identical to the formula that is intended to be marketed in the United States, proposed § 106.97(a)(1)(ii)(I) states that the clinical protocol should describe the basis upon which the manufacturer has decided that the test formula is appropriate for use in the study. This proposed guideline is necessary to ensure that the manufacturer considers such factors as the bioequivalence of the studied (test) formula relative to the formula that is to be marketed in this country and can document why its choice of test formulas is appropriate. Without this documentation, it would not be possible to determine whether the marketed formula meets the quality factor requirement in proposed § 106.96(b).

FDA has had experience under the 1986 amendments in which manufacturers have submitted data on test formulas that were significantly different (e.g., in calorie levels) from the formula that they intended to market as evidence of the safety and suitability of the latter formula. In these instances, the agency has had considerable difficulty in interpreting study results. Therefore, if the guidance in proposed § 106.97(a)(1)(ii)(I) is followed, this significant study design issue will be critically reviewed by manufacturers before they initiate their studies, and, as a result, they will be more likely to design and conduct a study that will produce data that can be meaningfully interpreted as evidence that an infant formula is safe, and that it supports healthy growth.

As provided in proposed § 106.97(a)(2), however, FDA recognizes, that while changes in ingredients or in the processes used in the manufacture of infant formulas can have a significant adverse impact on the levels or availability of nutrients that affect healthy growth of infants, other changes may not be likely to do so. In the latter circumstances, it may be possible to demonstrate that the quality factor requirements are met by means of measures or data that do not involve the use of clinical trials. If such assurances can be provided without clinical trials, then infants will not be subjected to unnecessary testing. Therefore, FDA sets out in proposed § 106.97(a)(2), the circumstances in which a manufacturer can request an exemption from the clinical study requirement.

Proposed § 106.97(a)(2)(i) provides for an exemption if the manufacturer can cite experience that shows that the ingredient, ingredient mixture, or processing method has been used to make an infant formula that meets the quality factor requirements in proposed § 106.96(a). For example, if the manufacturer has previously submitted information to FDA in response to the quality factor requirements of the act that showed that an infant formula that contains the ingredient or ingredient mixture, or that was produced by the processing method, in question supported adequate physical growth, this information could form the basis on which the new infant formula could qualify for an exemption from this quality factor requirement. Under this provision, FDA will evaluate the experience cited in support of an exemption on a case-by-case basis. FDA requests comment on this proposed provision.

Proposed § 106.97(a)(2)(ii) provides for an exemption if a manufacturer that markets a formulation in more than one form (such as liquid and powdered forms) can demonstrate that the quality factor requirements are met by the form of the formula that is processed using the method that has the greater potential for adversely affecting the formula's nutrient content and bioavailability. For example, the temperatures used to retort liquid formulas during processing can cause a loss of protein quality compared to powdered forms processed at lower temperatures (Refs. 77 and 78). Thus, if the liquid formula is tested and shown to meet the quality factors requirements, it will provide reasonable assurance that the powdered form of the formula, that is, the less processed form is of appropriate nutritional quality. Thus, FDA tentatively concludes that it would be unnecessary to test the less processed form.

Proposed § 106.97(a)(2)(iii) provides for an exemption if the manufacturer can demonstrate that the requirements of proposed § 106.97(a)(1) are not appropriate for the formula, and an alternative method or study design for showing that the formula supports healthy growth in infants fed the formula as a sole source of nutrition is available. As stated above, double-blind, well-controlled, clinical studies are generally the most powerful and sensitive method for demonstrating that an infant formula will support physical growth. Nonetheless, the agency anticipates that there will be circumstances in which a clinical study of a new infant formula would not be appropriate. For example, double-blind clinical studies would not be appropriate in situations such as those involving some exempt infant formulas in which they would cause withholding of conventional treatment and, therefore, would be unethical. Other situations that may not be amenable to double-blind clinical trials are those in which it would be difficult to enroll an adequate number of infants (e.g., for exempt infant formulas where the formula is intended for a rare disease). Alternative study designs may also be appropriate in situations in which a manufacturer has access to extensive reference data, such as a database on many similarly conducted clinical studies using infants from the same potential study population, provided that the manufacturer can demonstrate that the reference data apply to the new infant formula, its intended use, and its study population. FDA has tentatively concluded that such an exemption will permit flexibility in the design of suitable experimental protocols but still provide reasonable and documentable assurance that the study design can demonstrate the safety and suitability of the infant formula.

b. *Specific quality factors.* Proposed § 106.97(b) establishes requirements for demonstrating that a formula meets the protein quality factor requirement in proposed § 106.96(c) and requires that the manufacturer collect and maintain data that establish that the biological quality of protein in an infant formula is sufficient to meet the protein requirements of infants by demonstrating that the protein source supports adequate growth using the PER rat bioassay, which the agency proposes to incorporate by reference. The PER provides an estimate of the bioavailability and relative proportion of the essential amino acids in the protein-containing ingredient.

A chemical analysis of the protein can identify the amino acids contained in a protein source but does not measure their bioavailability. A protein source may contain the necessary amino acids, but they may be in a form that the infant cannot digest and absorb. Furthermore, processing methods may alter the chemical nature of the protein source, possibly making the protein more resistant to digestion by the infant. FDA has tentatively concluded that the rat bioassay is necessary to establish that the amino acids in a protein source are present, and that adequate amounts and proportions of all essential amino acids are capable of being digested by an infant. Such a showing is particularly important when a manufacturer is using a novel protein source (e.g., a hydrolyzed protein), a new protein mixture, a new processing method that could affect the chemical form or bonding of amino acids, or a formulation that provides an amount of protein near the minimum required level (<2.0 g/100 kilocalorie (kcal)) specified in § 107.100.

Proposed § 106.97(b)(1) also provides that if the manufacturer is unable to conduct a PER rat bioassay, it must demonstrate that the amino acid composition of the protein meets the known amino acid requirements of infants for whom the formula is intended. For example, FDA is aware that a PER would not provide useful data for an exempt infant formula intended for use in infants that cannot metabolize a specific amino acid and from which that amino acid has been purposefully omitted or is limited to a level inadequate to support healthy growth. The lack of that amino acid is necessary for the dietary management of the intended infant population but would result in an incomplete protein and would reduce the growth rate of the rat, invalidating the conditions upon which the PER rat bioassay is based. FDA is not aware of alternative methods for ensuring bioavailability of such a protein source. In these circumstances, proposed § 106.97(b)(1) will provide an alternate means of evaluating whether the protein at least contains adequate amounts of essential amino acids to meet the known amino acid requirements of the infant, even though the bioavailability of these amino acids cannot be assured using available methods.

Proposed § 106.97(b)(2) establishes the circumstances in which a manufacturer may request an exemption from the requirements of proposed § 106.97(b)(1). Proposed § 106.97(b)(2)(i) provides that if the protein source (including the processing method used to produce it) is already used in another of the infant formulas marketed by its manufacturer in the United States, the manufacturer may request an exemption if it can demonstrate that such other infant formula meets the quality factor requirements prescribed in § 106.96(b)(1). The purpose of the PER or amino acid analyses is to estimate the quality of the protein in the proposed formula. Once a manufacturer has established standard sources and processing of protein in a formula, and has demonstrated that the technology is effective, in its hands, in producing a formula that meets the quality factor requirement for protein, other formulation changes would not be expected to markedly affect protein quality. Thus, the quality of the processed protein would be retained in other formulas. However, under proposed 106.97(b)(2)(i), it will be incumbent on the manufacturer to demonstrate that the quality of the protein is not affected.

Proposed § 106.97(b)(2)(ii) provides for an exemption if the protein source, or the processing method used to produce the protein source, in the infant formula does not constitute a major change from the infant formula that it replaces, and the manufacturer can demonstrate that the infant formula that it replaces meets the quality factor requirements prescribed in § 106.96(b). FDA is proposing to allow this exemption because it is unlikely that the methods for assessing protein quality prescribed are sensitive enough to measure any change in protein quality that is not a major change.

Because FDA has, as a matter of policy, been requesting that infant formula manufacturers submit data from a PER or amino acid analysis as part of their submission 90 days prior to marketing infant formula, many infant formulas that are on the market have been shown to meet the proposed quality factor requirement for protein. Therefore, if the proposed exemption criteria in § 106.97(b)(2) are adopted, those formulas that contain protein sources, or proteins which were produced using processing methods, that were the subject of a submission to FDA in response to the quality factor requirements of the act may qualify for an exemption.

6. Request for Comment on Establishing Assurances for Other Quality Factors

As discussed above, FDA has solicited comment on whether to establish quality factor requirements for fat, iron, and calcium and phosphorus. If such quality factors are adopted, appropriate methods will be needed to provide assurance that an infant formula meets these nutrient-specific quality factors. Therefore, FDA discusses below measurements of fat balance and of calcium and phosphorus balance, as well as measurements that reflect iron bioavailability. The agency requests comments and information on these or other methods for these three quality factors:

a. *Apparent fat absorption.* Apparent digestibility and apparent absorption measure the amount of fat that was able to be digested and absorbed by the infant. Apparent digestibility is expressed as a percentage of intake, while apparent absorption is expressed in units of fat (e.g., g) absorbed per day. If a quality factor for fat were established, manufacturers would be required to collect and maintain data establishing that the apparent digestibility or apparent absorption by the infant of the fat in an infant formula is adequate to meet the infant's energy requirements. These data would be necessary because fat represents the major dietary source of energy for the infant and must be readily digested and absorbed if the formula is to support healthy growth.

The CON/AAP Task Force (Ref. 6) recommended that studies that are conducted to determine whether a formula meets the quality factor for fat should use a cross-over experimental design. This type of study requires that the manufacturer compare apparent fat absorption of infants fed the test formula at one time and a currently marketed formula at another time. An experiment using this design would enable a manufacturer to make measurements of apparent fat absorption using a small number of infants, since the variance in fat excretion of infants fed most fat sources currently available is less than 5 percent. Furthermore, the method is noninvasive, is easily implemented, and does not require costly or sophisticated equipment to conduct. Other experimental designs could be used but would require larger numbers of infants and would be more expensive. Thus, FDA asks for comments on whether there should be a specific requirement that manufacturers measure apparent fat absorption using cross-over studies.

The CON/AAP Task Force (Ref. 6) recommended that studies that are conducted to determine the apparent absorption of fat be conducted such that measurements are made using infants fed each formula for at least 72 hours. The Task Force report suggested that measurements of apparent fat absorption for this length of time would accurately reflect the apparent

VOL 61 ISS 132 JUL 9 1996 UMI

absorption of the fat in the formula being tested. FDA is considering requiring that a study of at least 72 hours for each formula tested be conducted and requests comment on what duration would be appropriate. FDA also is considering whether to require that the manufacturer document the method that it used to analyze for fat and explain the reason for choosing that method. The agency believes that this information is important because the method used to analyze the excreted fat must be appropriate for the specific type of fat in the formula.

FDA also is considering whether circumstances exist that would justify establishing an exemption from the requirements to measure fat balance. FDA has tentatively concluded that the reasons and justification for such an exemption are essentially those set forth above in the discussion of proposed § 106.97(b)(2). FDA requests comment on whether, if the agency adopts a quality factor for fat, it should provide for exemptions from testing, to show that the formula meets that quality factor, such as those set forth in proposed § 106.97(b)(2), and to allow manufacturers to assure the agency that their products meet that quality factor requirement without subjecting infants to unnecessary testing.

b. *Calcium and phosphorus balance.* If FDA were to establish a quality factor for calcium and phosphorus, manufacturers would be required to collect and maintain data from clinical studies conducted in infants to show that the calcium and phosphorus contained in the infant formula are sufficient to meet the infant's requirements. There are currently no satisfactory clinical laboratory measurements that are practical for directly assessing calcium and phosphorus nutritional status in infants (Ref. 79). Furthermore, there are no accurate indirect measurements that could be made on the infant formula itself that would be useful in predicting how effective the amount and the sources of calcium and phosphorus in the formula would be in meeting the needs of infants consuming that formula. Therefore, FDA is considering requiring that manufacturers implement the recommendations of the CON/AAP Task Force and make a measurement that provides a reasonable estimate of the amount of calcium and phosphorus that is capable of being absorbed and retained for use by infants (i.e., calcium and phosphorus balance) from the formula.

FDA asks for comment concerning the appropriateness and usefulness of a measurement of calcium and phosphorus balance as one that reflects both the bioavailability of the calcium and phosphorus in the formula and how well the diet meets the metabolic requirements for these two minerals. As discussed above with regard to the conduct of trials to measure apparent fat absorption, FDA requests comment on whether it is necessary to require that a cross-over study design be used for clinical studies to measure calcium and phosphorus balance.

FDA also requests comment on what would be an appropriate duration for studies to measure calcium and phosphorus balance. The CON/AAP task force suggested that calcium and phosphorus balance studies be conducted for a 72-hour balance period after an 11-day adaptation period. FDA requests comment on whether these time periods are appropriate, both to minimize the effects of previous dietary intake on the availability of calcium from the formula being tested (Ref. 6) and to ensure that the results of the balance study are reliable and interpretable, and on whether they provide a meaningful basis on which to determine that a formula meets the quality factor requirement for calcium and phosphorus.

FDA is considering requiring that the formula used as the control in any clinical studies to measure calcium and phosphorus balance contain approximately the same calcium and phosphorus levels as the test formula because the absolute amounts of these nutrients absorbed and retained by infants may be different between formulas with different calcium and phosphorus levels. FDA is asking for comment on requirements for appropriate control formulas for calcium and phosphorus balance studies.

Amounts of calcium and phosphorus in urine and feces, along with calculated amounts absorbed and retained expressed in milligrams per kilogram and as percentages of intake, provide evidence of the rates of absorption and retention of these nutrients but do not specifically measure the ability of the formula to provide adequate calcium and phosphorus for proper bone mineralization, the most important need for these minerals in the infant. FDA is considering requiring that serum alkaline phosphatase be measured in situations in which calcium and phosphorus balance studies are required in order to assess the adequacy of formula minerals to support normal bone mineralization. Alkaline phosphatase is an enzyme involved in bone remodeling and in maintaining serum calcium concentration (Ref. 64). Increased serum alkaline phosphatase activity may be a marker of reduced bone mineralization (Ref. 80) and therefore may be useful in determining whether a formula meets a quality factor requirement for calcium and phosphorus.

Because of the limits of metabolic balance studies, including short duration, dependence on previous diet, and expense, the agency is considering the appropriateness of alternative methods for the assessment of bone mineral accretion. The agency is aware that sophisticated instruments, such as single-photon absorptiometry and dual-energy x-ray absorptiometry, have been tested for measuring bone mineral content in infants (Refs. 81 through 84), and that some authorities recommend them for determining bone mineralization in infants (Ref. 85). These types of measurements have the potential to provide an accurate measure of bone mineral accretion over the duration of use of the formula, while at the same time reducing many sources of variation inherent in balance studies. The agency is concerned, however, that these methods have not been adequately validated in infants, and that reference standards for mineralization in infants have not been established to support a requirement for manufacturers to measure bone mineralization in order to provide assurance that a formula satisfies a quality factor requirement for calcium and phosphorus. The agency asks for comment on the usefulness of these methods of analysis of bone mineral accretion in infants, and on whether they should be used in lieu of calcium and phosphorus balance studies as measurements of whether an infant formula meets the quality factor requirements for calcium and phosphorus assuming that the agency adopts such a quality factor. The agency also asks for comment on the criteria that it should use, on a case-by-case basis, in deciding whether to require these types of measures when there is particular reason to be concerned that calcium and phosphorus bioavailability may be problematic.

FDA also is considering whether circumstances exist that would justify establishing an exemption from a requirement to measure calcium and phosphorus balance. FDA has tentatively concluded that the reasons and justification for such an exemption are essentially those set forth above in the discussion of proposed § 106.97(b)(2), and requests comment on whether, if it adopts a quality factor for calcium and phosphorus, it should provide for exemptions from testing to show that the formula meets the quality factor similar to those in proposed § 106.97(b)(2) and allow manufacturers to assure the agency that their products meet that requirement without requiring redundant testing.

c. *Iron status.* If FDA were to adopt a quality factor for iron, manufacturers would be required to collect and maintain data that establish that the iron in an infant formula is bioavailable and maintains the iron status of infants that consume the formula. These data would be necessary to demonstrate that an infant formula provides enough iron to prevent iron deficiency and anemia.

Alterations in a number of biochemical measurements are useful signs associated with inadequate iron intake or the development of iron deficiency. Early signs of inadequate iron intake, which reflect the depletion of iron storage sites, are reductions in serum ferritin concentration and transferrin saturation (Ref. 86). If the dietary intake of iron remains inadequate, impaired erythropoiesis (i.e., the process whereby the body produces new red blood cells) may be reflected in alterations in erythrocyte maturation and increases in erythrocyte size, erythrocyte protoporphyrin concentration, or serum transferrin receptor levels. If the period of inadequate iron intake continues, erythropoiesis is further impaired, and hemoglobin concentration, hematocrit, and mean corpuscular volume decrease.

Iron deficiency without anemia should be considered to be a risk factor for iron-deficiency anemia, which may be associated with long-lasting, adverse effects in infants (Ref. 86). Therefore, FDA is considering requiring one measurement of iron status that is sensitive to each of the three stages of inadequate iron intake (stage 1, decreased stores, normal erythropoiesis; stage 2, decreased stores and early stage impaired erythropoiesis; and stage 3, decreased stores and late stage impaired erythropoiesis). For example, FDA is considering requiring that manufacturers measure: (1) Serum ferritin concentration, because such a measurement is sensitive to decreased iron stores and normal erythropoiesis; (2) transferrin saturation or erythrocyte protoporphyrin concentration, because such measures are sensitive to decreased iron stores and early stage impaired erythropoiesis; and (3) hematocrit percentage, hemoglobin concentration, or mean corpuscular volume, because such measurements are sensitive to decreased iron stores and late stage impaired erythropoiesis. This approach would be consistent with the recommendations of the CON/AAP Task Force (Ref. 6). It would also provide reasonable assurance that low iron availability in an infant formula would be detected, and that an infant formula that does not provide sufficient iron to meet the infant's requirement, and thereby does not meet the quality factor requirement for iron, will not be marketed.

FDA also is considering whether circumstances exist that would justify establishing an exemption from the requirements to determine iron status. FDA has tentatively concluded that the reasons and justification for such an exemption are essentially those set forth above in the discussion of proposed § 106.97(b)(2). FDA requests comment on whether, if it adopts a quality factor for iron, it should provide for exemptions from testing similar to those set forth in proposed § 106.97(b)(2) to show that the formula meets that factor and allow manufacturers to assure the agency that their products meet that quality factor requirement without requiring redundant testing.

F. Records and Reports

1. Introduction

Under subpart C of part 106, FDA is proposing to revise the requirements on the records that must be made and retained. FDA is proposing requirements on batch records; records on CGMP and quality control procedures; maintenance of distribution records on formulas for export only; audits; and notifications to FDA. These proposed changes to current § 106.100 are outlined in Table III below:

TABLE III

Current Regulation	Proposed Regulation
§ 106.100(a)	No Change.
§ 106.100(b)	No Change.
§ 106.100(c)	No Change.
§ 106.100(d)	No Change.
§ 106.100(e), (f), and (h).	Current § 106.100(e), (f), and (h) will be incorporated into proposed § 106.100(e). New § 106.100(f) will codify the records required for the CGMP regulations found in proposed subpart B.
§ 106.100(g)	Current § 106.100(g) with modification.
§ 106.100(h)	Current § 106.100(h) is incorporated into § 106.100(e). § 106.100(h) Reserved.
§ 106.100(i)	No Change.
§ 106.100(j)	Current § 106.100(j) with modification.
§ 106.100(k)	Current § 106.100(k) with modification.
§ 106.100(l)	No Change.
§ 106.100(m)	No Change.
§ 106.100(n)	No Change.
§ 106.100(o)	No Change.

2. Batch Production and Control Records

Proposed § 106.100(e) requires that manufacturers make and retain records (hereafter referred to as "batch records") that include complete information relating to the production and control of each batch of infant formula. Section 412(b)(4)(A)(i) of the act requires the establishment, by regulation, of requirements for the retention of all records, including records containing the results of all testing required under section 412(b)(2)(B) of the act, necessary to demonstrate compliance with the CGMP requirements and quality control procedures prescribed under section 412(b)(2). In proposed § 106.100(e) FDA is proposing to require that manufacturers prepare and maintain records that include complete information relating to the production and control of the batch to ensure that the complete history of each batch of infant formula is available for review in the event that a problem arises with a particular batch.

Proposed § 106.100(e)(1) requires that the batch records include the appropriate master manufacturing order. As discussed above, proposed § 106.50(a) requires that manufacturers produce each infant formula in accordance with a master manufacturing order that has been approved by a responsible official of the company. The master manufacturing order thus provides fundamental information about the batch. Having all the information concerning the production of a batch of infant formula, including the master manufacturing order, in one place as a part of a batch record will ensure that there is a document available that makes readily apparent whether a batch was properly produced. It will also ensure that all the information needed to evaluate the cause of any problem that may develop with a batch of infant formula is readily available. Thus, FDA has tentatively concluded that the master manufacturing order is an essential part of the batch record.

Proposed § 106.100(e)(1)(i) requires that the master manufacturing order include the significant steps in the production of the batch of infant formula and the date on which each

VOL 61 ISS 132 JL 9 1996 UMI

significant step occurred. Thus, the master manufacturing order will include a list of the significant steps for the production of each infant formula and a space to write in the date the step was performed. Thus, it will provide both a check that the step was performed and a record of when it was performed. FDA has tentatively concluded that this information is necessary because all production activities for a specific batch of infant formula may not be accomplished in one day but may occur over a number of days, and people who begin work the second day will know what work has been completed, and what has not been. Moreover, each date is needed so that a batch of formula can be traced if, at a later date, a problem that may adversely affect an infant formula is identified at a specific production stage. Having the date available will allow the manufacturer to identify all batches that may have been affected by the problem.

Proposed § 106.100(e)(1)(ii) requires that, if the manufacturer has more than one line or set of equipment in the plant in which the formula is made, the master manufacturing order include the identity of equipment and processing lines used in producing the batch of infant formula. This information will allow the manufacturer to ensure that the equipment on which the formula was produced met the requirements of § 106.30. This information also will facilitate the identification of all batches of formula that may be affected by equipment malfunctions or that were produced on the same equipment as a batch that is discovered to be microbiologically contaminated.

Proposed § 106.100(e)(1)(iii) requires that the master manufacturing order include the identity of each batch or lot of ingredients, containers, and closures used in producing the batch of infant formula. All materials used in infant formula will have to meet the specifications of proposed § 106.40(d) and be identified by a batch or lot number as specified in proposed § 106.40(c). FDA has tentatively concluded that it is necessary to propose that the identity of each batch or lot of ingredients, containers, and closures used in producing the batch of infant formula be recorded in the master manufacturing order to enable the manufacturer to ensure that all of those materials met the requirements of § 106.40, particularly the standards for acceptance or rejection of the materials. Recording this information also will allow the manufacturer to evaluate the contribution of specific ingredients, containers, and closures to any problem with a batch of infant formula that may develop.

FDA is not proposing to require that the batch records contain the results of any tests conducted on ingredients, containers, and closures in accordance with proposed § 106.40(d) because the same lot of raw materials may be used in multiple batches. The identification of the batch or lot of all ingredients, containers, and closures in the master manufacturing order should be sufficient to allow the manufacturer to locate and review relevant test results if problems arise with a particular batch of infant formula.

Proposed § 106.100(e)(1)(iv) requires that the master manufacturing order include the amount of each ingredient to be added to the batch of infant formula and a check (verification) that the correct amount was added. As discussed above, proposed § 106.50(b) requires that the manufacturer establish controls to ensure that raw and in-process ingredients required by the master manufacturing order are examined by one person and checked by a second person or system to ensure that the correct weight or measure of the ingredient is added to the batch. The agency has tentatively concluded that recording in the master manufacturing order the amount of each ingredient added to the batch of formula, and a check (verification) that the correct amount was added, are appropriate controls to ensure that the correct weight or measure of the ingredient is added to the batch. This proposed requirement is necessary to ensure that there is compliance with proposed § 106.50(b), to provide a record that the batch of infant formula includes all of the ingredients in the amounts specified in the master manufacturing order, and to provide assurance that the product contains all of the required nutrients.

Proposed § 106.100(e)(1)(v) requires that the master manufacturing order include copies of all labeling used and the results of the examinations conducted during the finishing operations to ensure that containers and packages in the batch are correctly labeled. (The importance of ensuring that containers are correctly labeled was discussed in conjunction with proposed § 106.60(b).) The inclusion in the batch records of copies of the labeling used on each batch of infant formula will provide a record of such labeling and will document that the finishing operation examinations, required by proposed § 106.60(b), are conducted.

Proposed § 106.100(e)(2) requires that the batch record include any deviations from the master manufacturing order and any corrective actions taken. While the manufacturer's goal should be to produce the infant formula in accordance with the master manufacturing order, on occasion deviations may occur. On these occasions, the deviations, and any corrective actions taken because of the deviations, should become a part of the batch record. For example, if a batch of liquid infant formula was thermally processed at a different temperature than the temperature specified in the master manufacturing order, the batch record would state the actual processing temperature. The record would also state any corrective actions taken because of this processing temperature, such as a change in processing time. A record of deviations from the master manufacturing order and of the corrective actions taken by the manufacturer will allow the manufacturer to quickly determine whether all deviations have been appropriately addressed, and if they have not been, whether the actions needed to correct the deviations have been identified. It will also provide relevant information if a problem arises with that batch of infant formula.

Proposed § 106.100(e)(3) requires that the batch records include documentation of the monitoring at any production and in-process control point, step, or stage where control is deemed necessary to prevent adulteration. As discussed above, proposed § 106.6(c)(2) requires this monitoring. FDA is proposing that the documentation that the monitoring required by proposed § 106.6(c)(2) is occurring be included in the batch records to ensure that a measurement or observation made at one particular point in time can be related to a particular batch. The linkage of the record to the batch is especially important when a standard or specification is not met. It will enable the manufacturer to determine what batches may have been affected by a deviation and to take appropriate action, such as withholding a batch from distribution.

Proposed § 106.100(e)(3)(i) requires that the batch records include a list of the standards or specifications established at each point, step, or stage in the production process where control is deemed necessary to prevent adulteration, and that it include documentation of the scientific basis for each standard or specification. As discussed above, proposed § 106.6(c)(1) requires the establishment of such standards or specifications. The agency has tentatively concluded that a list of these standards or specifications must be a part of the batch record so that the manufacturer will have them readily

available to compare to the actual values obtained during the monitoring operation of the production and in-process control system. Also, the documentation of the scientific basis for each standard or specification will verify that each was established by trained and experienced sources. Such documentation will summarize the work performed to establish the standard or specification and will establish the source used. If changes to the standard or specification become necessary, this documentation of the scientific basis for each standard or specification will assist the manufacturer in making such changes.

Proposed § 106.100(e)(3)(ii) requires that the batch records include the actual values obtained during the monitoring (such as the actual temperatures and actual times that the measurements were taken), any deviations from the established standards or specifications, and any corrective actions taken. For example, notations that refrigeration temperatures are satisfactory or unsatisfactory, without a record of the actual temperatures, are subject to varying interpretation and thus will not ensure that preventive controls are working. It is important that the actual values be recorded. In addition, actual values are necessary to discern trends or to pinpoint the onset of a problem. The record of any corrective actions taken will show what the manufacturer did when a standard or specification was violated, and how the manufacturer is ensuring that the infant formula is not adulterated. Entry of information on the records at the time of the monitoring ensures that the record does not rely on the memory of the observer and thus is as accurate and valid as possible.

Proposed § 106.100(e)(3)(iii) requires that the batch records identify the person monitoring each point where control is deemed necessary to prevent adulteration. FDA has tentatively concluded that it is important that the responsible individuals be identified in the batch record so that the manufacturer can check that a qualified person is actually monitoring the point, step, or stage where control is deemed necessary to prevent adulteration, and so that such individual can be contacted if a problem with a batch of infant formula is identified at a later date. These individuals are in the best position to know of any other information that may not have seemed pertinent at the time but, in retrospect, could be important in identifying the cause of the problem and initiating actions to prevent it from recurring.

Proposed § 106.100(e)(4) requires that the batch records include the conclusions and followup, along with the identity, of the qualified individual who investigated any deviations, or failures to meet specifications, that occurred during the production of the batch. Under these proposed regulations, individuals qualified by training or experience must conduct an investigation of any deviation from the master manufacturing order and of the corrective actions taken (§ 106.50(a)(2)); conduct an investigation of a finding that a batch or any of its ingredients failed to meet any manufacturer's specifications (§§ 106.40(d) and 106.70(c)); and conduct an investigation of a failure to meet any specification or standard at any point where control is deemed necessary to prevent adulteration (§ 106.6(c)(4)).

FDA has tentatively concluded that the record of the conclusions and followup of these investigations is necessary to enable the manufacturer to ensure that it has complied with proposed §§ 106.6(c)(4), 106.40(d), 106.50(a)(2), and 106.70(c). Such records will provide information on how the production of the batch of infant formula deviated from established standards or specifications and on the cause of any problem with the formula, if infants are reported to have been adversely affected by the product at a later date. Identification of the qualified individual who conducted the investigations will ensure that there is responsibility and accountability for the investigation and will allow the responsible individuals to be contacted, if necessary. These individuals will be in the best position to provide information if additional details about the record are needed.

Proposed § 106.100(e)(5) requires that the batch records include the results of all testing performed on the batch of infant formula, including testing on the in-process batch, at the final-product stage, and on finished product throughout the shelf life of the product. Section 412(b)(2)(B) of the act requires that manufacturers conduct such testing. FDA has tentatively concluded that the assembly of such records in one place will enable the manufacturer to ensure that the batch of infant formula complies with proposed §§ 106.55 and 106.91 and will facilitate the review of the test results in the event that a problem arises with the batch.

Proposed § 106.100(e)(5)(i) states that the batch records are to include the results of any quality control testing conducted, in accordance with proposed § 106.91(a) and (b), to verify that each nutrient required by § 107.100 is present at the required level, and that any nutrient added by the manufacturer is present at the appropriate level. Including the results of this testing in the batch records will provide data needed to evaluate compliance of the batch of infant formula with proposed § 106.91, and provide data needed to evaluate a batch of infant formula if problems, such as adverse events in infants, occur later with that particular batch. These records will show the levels of nutrients in the formula and will provide information to help the manufacturer determine whether any problems associated with the formula are attributable to the nutrient levels in the product.

Proposed § 106.100(e)(5)(i)(A) requires that manufacturers maintain a summary table in the batch record that identifies the stages of the manufacturing process at which the nutrient analysis is conducted for each nutrient, in accordance with proposed § 106.91(a). As discussed above, proposed § 106.91(a) provides flexibility in the stage at which many of the nutrients are tested. A summary table will facilitate the manufacturer's compliance with quality control procedures because it will allow a manufacturer to quickly verify that it has tested for all the nutrients required by § 107.100 during the production of the infant formula.

Proposed § 106.100(e)(5)(i)(B) requires that the quality control records in the batch record include a summary table on the stability testing program, conducted in accordance with proposed § 106.91(b), including the nutrients tested and the frequency of testing of nutrients throughout the shelf life of the product. As discussed above, proposed § 106.91(b) requires that manufacturers test infant formula at the beginning, midpoint, and end of the shelf life, and with sufficient frequency to ensure that the manufacturer is aware if there is a significant deterioration in the required level of a nutrient. Therefore, proposed § 106.91(b) provides flexibility in the testing frequency, depending on the shelf life and the characteristics of the product. A summary table will facilitate the manufacturer's compliance with quality control procedures because it will allow a manufacturer to quickly determine whether it has tested for all the nutrients required by § 107.100 with sufficient frequency to verify that the "use by" date on the formula is appropriate.

Proposed § 106.100(e)(5)(ii) requires that the batch records for powdered infant formula include the results of any testing conducted in accordance with proposed § 106.55(b) to document that the tests were done and to verify compliance with the microbiological

VOL 61 ISS 132 JL 9 1996 UMI

quality standards in proposed § 106.55(c). As discussed above, proposed § 106.55(b) requires that manufacturers test representative samples of each batch of powdered infant formula to ensure that the batch meets the microbiological quality standards in proposed § 106.55(c) and therefore is not adulterated. This record will also provide the manufacturer with data to evaluate adverse events that infants may have experienced after consuming this batch of infant formula by showing whether microbiological contamination could have contributed to the adverse event.

3. CGMP Records

Proposed § 106.100(f) identifies the records that manufacturers must make and retain pertaining to CGMP described in proposed subpart B of part 106. Section 412(b)(4)(A)(i) of the act requires the establishment by regulation of requirements for the retention of all records necessary to demonstrate compliance with the CGMP, including testing designed to prevent the adulteration of infant formula. FDA has already discussed proposed regulations (proposed § 106.100(e)) respecting the retention of records relating to each batch of infant formula. FDA also is proposing regulations respecting the retention of records relating to the overall operation of the plant and the maintenance of equipment, because these records are necessary to demonstrate that the infant formula was manufactured in a manner designed to prevent adulteration. Maintenance of these records will help manufacturers identify trends in the processing of the infant formula, in particular trends that show when the process is breaking down in a way that will lead to the production of adulterated product. These records also will provide information to assist the manufacturer in tracking the cause of adverse events to a formula, if such events are reported.

Proposed § 106.100(f)(1) requires that manufacturers make and retain records of the frequency and results of the testing of water used in the production of infant formula. These records will show if problems are starting to develop with the water supply so that manufacturers can take corrective actions before the water is inappropriate for use in infant formula.

Proposed § 106.100(f)(2) requires that manufacturers make and retain records, in accordance with § 106.30(d), of accuracy checks on instruments and controls. Under this proposal, these records must include a certification of the accuracy of any known reference standard used and a history of its recertification. As discussed previously, the accuracy of the reference standard must be ensured before it can be used to ensure that the production instruments are properly calibrated. These records also will provide information to assist the manufacturer in tracing the source of a problem, if one arises, with a batch of infant formula. For example, if infants have adverse events to a batch of infant formula, records containing a certification of accuracy of the reference standards used and a history of their recertification would assist the manufacturer in determining whether the problem was created because a production instrument was calibrated with an inaccurate reference instrument.

FDA is proposing to require that, at a minimum, the records specify the instrument or control being checked, the date of the accuracy check, the standard used, the calibration method used, the results found, any actions taken if the instrument is found to be out of calibration, and the initials or name of the individual performing the test. These records will enable the manufacturer to determine, based on the performance of the instrument, whether the calibration schedule is sufficient to ensure the accuracy of the instrument. These records also will provide information on when and how the instruments were calibrated to assist the manufacturer in identifying the cause of a problem, if one arises, with a batch of infant formula.

Including the date of the accuracy check in the record will permit a determination of the accuracy of the instrument or control over time; including the standard used will allow the manufacturer to verify that the standard was properly calibrated; and including the calibration method used will ensure that the instrument is being calibrated free from the variability that can occur when different laboratory personnel perform the same calibration. The results of the accuracy check in the record will show whether the instrument or control is accurate, or whether a correction was necessary. Documenting the actions taken if the instrument is found to be out of calibration will enable the manufacturer to ensure that a correction was made. Requiring that the individual performing the test note his or her initials or name in the record will document who was last responsible for ensuring the accuracy of the instrument or control and will allow the manufacturer to discuss questions that may arise about the record with the person in the best position to know additional, but unrecorded, details about the record.

If calibration of an instrument shows that a specification or standard, at a point, step, or stage in the production process where control is deemed necessary to prevent adulteration, has not been met, a written evaluation of all affected product, and of any actions that need to be taken with respect to that product, needs to be made. For example, if the manufacturer is monitoring temperature to ensure that a specification or standard of 250 °F is maintained as a minimum temperature, and calibration of the temperature indicating instruments against a reference standard reveals that it was reading a true temperature of 248 °F, an evaluation of the health hazard significance of this temperature deviation must be made. This proposed requirement is necessary because, if an instrument is found to have been giving inaccurate readings, all infant formula produced subject to such inaccuracies must be identified and evaluated for the possibility that the inaccuracies caused the formula to be adulterated. In identifying the effected product to ensure that the health of potentially affected infants is fully protected, in the absence of evidence to the contrary, such evaluation would cover all product manufactured since the last time the instrument was calibrated and found to be accurate.

Proposed § 106.100(f)(3) requires that manufacturers make and retain records, in accordance with proposed § 106.30(e)(3)(ii), of the temperatures monitored for cold storage compartments and thermal processing equipment. These records are needed to show that the thermal processing equipment or cold storage compartments are being maintained at the correct temperatures to prevent adulteration of the product. The records of these temperatures will enable the manufacturer to identify trends in temperature fluctuations that can signal the need to perform nonscheduled maintenance.

FDA is proposing in § 106.100(f)(4) that equipment cleaning, sanitizing, and maintenance records, showing the date and time of maintenance, as well as the lot number of each batch of infant formula processed between equipment startup and shutdown for cleaning, sanitizing, and maintenance, be made and maintained. These records will allow the manufacturer to ensure that equipment and utensils are being cleaned and maintained regularly and to check that the frequency of such cleaning, sanitizing, and maintenance is appropriate in light of the actual, as opposed to planned, use of the equipment. For example, a manufacturer may need to increase the frequency of cleaning, sanitizing, and maintenance if actual rate of production consistently exceeds the predicted rate of production. These records also will allow the manufacturer to trace all formula that may be affected if evidence becomes available that a particular cleaning, sanitizing, or maintenance was improperly performed.

Proposed § 106.100(f)(4) also requires that the person performing and checking the cleaning, sanitizing, or maintenance date and sign or initial the record indicating that the work was performed. Identification of the person performing and checking the cleaning, sanitizing, or maintenance will allow the manufacturer to ensure that a qualified person is doing these tasks and to discuss questions that may arise about the record with the person in the best position to know additional, but unrecorded, details about the record.

Proposed § 106.100(f)(5) requires that manufacturers make and retain records, in accordance with § 106.35(c), on all automatic (mechanical or electronic) equipment used in the production or quality control of infant formula. Proposed § 106.100(f)(5)(i) requires that the automatic equipment records include a list of all systems used, with a description of computer files and of the inherent limitations of each system. The manufacturer cannot effectively operate the system, and correct problems that arise, if it does not understand the system. It is not always possible for the individuals who developed and best understand the system to be present when the system is operating. Therefore, these records will enable the manufacturer to operate and troubleshoot the systems even when the individuals who best know the system are not available.

Proposed § 106.100(f)(5)(ii) requires that the automatic equipment records include a copy of all software used. Having a copy of all software used will minimize the manufacturer's down time if problems occur, and parts of the software are lost from the system. For example, if a computer virus is found in the software used to run the processing lines, having a copy of the software to reload into the hardware will minimize the time lost. Likewise, if there is a problem with the software used to perform quality control testing, having copies of this software will ensure that the testing can continue with a minimum amount of time lost.

Proposed § 106.100(f)(5)(iii) further requires that the automatic equipment records document installation, calibration, testing or validation, and maintenance of the systems used. These requirements are necessary for compliance with section 412(b)(4)(A)(i) of the act. As discussed more fully above with respect to proposed § 106.35 (b)(1), (b)(2), and (b)(4) CGMP requires that all systems be installed, calibrated, and maintained in a manner necessary to ensure that they are capable of performing their intended function and of producing or analyzing infant formula as intended, and that all systems be validated before their first use to manufacture commercial product. In addition to documenting that the manufacturer is complying with CGMP, records documenting installation, calibration, testing or validation, and maintenance of systems are necessary to provide information if the manufacturer later tries to determine why a problem with the system is occurring or tries to determine why the system is not producing an infant formula that complies with the manufacturer's specifications for the product.

Proposed § 106.100(f)(5)(iv) requires that the automatic equipment records include a list of all persons authorized to create or modify software. This record will help to minimize delays when the name of a person with those skills is needed quickly.

Proposed § 106.100(f)(5)(v) requires that the automatic equipment records document modifications to software, including the identity of the person who modified it. This documentation will ensure that the manufacturer is aware of any changes made to the software, and that it has a record of how the changed system works, so that it can continue to operate the system even in the absence of the responsible individual who made the modification to the system. A record of the identity of the person who modified the software will show who was responsible for modifying the software if problems arise with the operation of the system and will identify the person in the best position to know additional, but unrecorded, details about the software modification to help in troubleshooting the software problems.

Proposed § 106.100(f)(5)(vi) requires that the automatic equipment records include documentation of retesting or revalidation of modified systems. This proposed requirement is necessary for compliance with section 412(b)(4)(A)(i) of the act. As discussed more fully above in the section on proposed § 106.35(b)(5), CGMP requires that all modifications to software be made by a designated individual, and that all systems be revalidated after any modification to ensure that infant formula produced or analyzed using the modified software complies with subparts B and C. FDA has tentatively concluded that records on retesting or revalidation of the modified systems, just like records on the initial testing or validation of the system (§ 106.100(f)(5)(iii)), are necessary to document that the work has been done properly and to provide information if the manufacturer later tries to determine why a problem with the system is occurring or tries to determine why the system isnot producing an infant formula that complies with the manufacturer's specifications for the product.

Proposed § 106.100(f)(5)(vii) requires that the manufacturer make and retain a backup file of data entered into a computer or related system. It also requires that this backup file consist of a hard copy or alternative system, such as duplicate diskettes, tapes, or microfilm, designed to ensure that backup data are exact and complete, and that they are secure from alteration, inadvertent erasures, or loss. This proposed requirement is necessary to ensure compliance with CGMP because computer files can be easily altered or erased. Backup files of data will allow the manufacturer to readily reload the files of data if problems occur in the operation of the computer or related system, so that the manufacturer's down time is minimized, and so that the data entered into the system will be an exact copy of the data previously used in the system.

Proposed § 106.100(f)(6) requires that manufacturers make and retain records on ingredients, containers, and closures, including the identity and quantity of each lot, the name of the supplier, the supplier's lot number, the name and location of the manufacturer (if different from the supplier), the date of receipt, and the receiving code as specified (proposed § 106.100(f)(6) (i) through (vi)). These records will enable the manufacturer to document that it is complying with proposed § 106.40(g). Moreover, this information is needed to enable the manufacturer to track the source of each ingredient, container, or closure used in infant formula if a problem arises. If an ingredient, container, or closure is found to cause adulteration of the formula, it is important to be able to determine the source of the material, so that use of such materials can be halted and prevented in the future.

Proposed § 106.100(f)(6)(vii) requires that the records on ingredients, containers, and closures include the results and conclusions of any test or examination, including retesting and

VOL 61 ISS 132 JL 9 1996 UMI

reexamination, performed on them and their disposition. These records will document that appropriate testing is being conducted to ensure that the ingredients will not adulterate the infant formula, and that the containers and closures will protect the infant formula against adulteration. Further, these records will show the basis on which each ingredient, container, and closure was released for use in infant formula production if questions about such release later arise. Individual lots of ingredients, containers, and closures are likely to be used in a number of different batches of infant formula; therefore, the agency is proposing that the records on ingredients, containers, and closures be a part of the records pertaining to CGMP. Retaining such records in the CGMP records, rather than in each batch record, will eliminate the duplication of records and simplify the recordkeeping. The disposition of the ingredients, containers, and closures will show which materials were destroyed because they did not meet the manufacturers specifications (and not used in manufacture in compliance with § 106.40(d)), and which batches of infant formula were made using each lot of ingredients, containers, or closures. Thus, the manufacturer will know which lots of ingredients, containers, or closures were used in making infant formula and will be able to confirm that those lots complied with proposed § 106.40(d). Moreover, if a batch of formula is shown to be adulterated, these records will help the manufacturer to identify the source of the adulteration.

Proposed § 106.100(f)(7) requires that manufacturers make and retain records that include a full description of the methodology used to test powdered infant formulas to verify compliance with proposed § 106.55(c) and the methodology used to conduct quality control testing in accordance with § 106.91 (a) and (b). The agency has not specified in these regulations the methodologies that must be used to conduct microbiological and quality control testing. Thus, FDA has tentatively concluded that a manufacturer needs to maintain a record that fully describes the methodology that it has decided to use to test powdered infant formula for microorganisms and for quality control testing. Such a record is necessary if there is to be consistency in the procedure that the manufacturer follows in testing each batch of infant formula, particularly in light of the fact that the laboratory personnel conducting the testing are likely to vary. The accuracy and reproducibility of microbiological and quality control testing depend on the procedure used to conduct the test.

FDA is proposing that the full description of the methodology be retained as part of the CGMP records, rather than in the batch record provided for in proposed § 106.100(e)(5), because these methods will be used to test multiple batches of infant formula. Retaining such records in the CGMP records, rather than in each batch record, will mean that the manufacturer has to maintain only one document, rather than having to reproduce it each time that it runs a batch of formula. Thus, the proposed approach will eliminate duplication of records and simplify recordkeeping.

4. Records on Distribution of Infant Formulas

Proposed § 106.100(g) adds to current § 106.100(g) a requirement that records pertaining to distribution of the infant formula show that products intended for export only are in fact exported. It has recently come to the attention of the agency that infant formulas produced for export have been diverted and sold in the United States. All persons introducing any new infant formula into interstate commerce, which includes persons exporting an infant formula to a foreign country, are required by section 412(c) of the act to register and make a submission to the agency 90 days before marketing the formula. (See discussion of proposed §§ 106.110 and 106.120.)

As discussed in the section of this preamble on proposed § 106.120(c), the agency has tentatively concluded that it will not require manufacturers who produce infant formula for export only to submit the same information that would be required for products intended or offered for sale in the United States. In lieu of the information required by § 106.120(b), FDA is proposing to allow manufacturers of products for export only to give assurances that the infant formula will not be sold or offered for sale in domestic commerce. This provision is based, in part, on section 801(e) of the act, which states that a food will not be deemed to be adulterated or misbranded under the act if, among other things, it is not sold or offered for sale in domestic commerce. Thus, the agency has tentatively concluded that the additional recordkeeping requirement on distribution of infant formulas for export only in proposed § 106.100(g) is necessary so that verification that the infant formula was not in fact sold or offered for sale in domestic commerce will be readily available in the manufacturer's records.

5. Audit Records

Proposed § 106.100(j) carries forward the requirement in current § 106.100(j) that the manufacturer make and retain records, which include the audit plans and procedures, that pertain to regularly scheduled audits. As discussed above, the written audit plan, which includes audit procedures, is required under proposed § 106.94(a) and (b). The proposed section further requires that records of audits include the findings of the audit and a listing of any changes made in response to these findings. This requirement is proposed under the authority of section 412(b)(4)(A)(v) of the act, which requires that manufacturers retain all records of the results of regularly scheduled audits conducted under the requirements prescribed by the Secretary (and by delegation, FDA) under the authority of section 412(b)(2)(B)(iv).

Proposed § 106.100(j) also requires that the manufacturer make readily available for authorized inspection the audit plans and procedures and a statement of assurance that the regularly scheduled audits are being conducted. This provision implements section 412(b)(4)(B)(ii) of the act, which requires that the manufacturer provide written assurance that the regularly scheduled audits are being conducted by the manufacturer. However, proposed § 106.100(j) also provides that the findings of the audit and any changes made in response to these findings need not be made available to FDA. This provision is brought forward from current § 106.100(j) and reflects section 412(b)(4)(B)(ii) of the act, which states that a "manufacturer need only provide written assurances to the Secretary that the regularly scheduled audits required by" section 412(b)(2)(B)(iv) of the act "are being conducted by the manufacturer, and need not make available to the Secretary the actual written reports of such audits."

6. Modification of Current § 106.100(k)(3)

The agency also is revising current § 106.100(k)(3) to reflect the numbering changes in the regulations on notifying the agency of a causal relationship between the consumption of an infant formula and an infant's death. The agency is moving the requirements of current § 106.120(b) to § 106.150 to reflect the changes it is proposing in subpart G. Thus, the reference to § 106.120 in § 106.100 (k)(3) will be changed to read "§ 106.150," if the agency adopts the relevant proposed changes.

G. Registration, Submission, and Notification Requirements

1. Introduction

The act provides for three types of notices that manufacturers of infant formula must provide to FDA and sets forth the general information that must be included in each type of notice. First, manufacturers of a new infant formula must register with FDA, in accordance with section 412(c)(1)(A) of the act, providing the name and address of the firm and all establishments that will manufacture the new infant formula. Second, manufacturers must submit to FDA, in accordance with section 412(d) of the act, certain information concerning a new infant formula or an infant formula in which there is a change in formulation or processing that may affect whether the formula is adulterated under section 412(a) of the act. Third, manufacturers must notify FDA, in accordance with section 412(e) of the act, of any adulterated or misbranded infant formula that has left their control.

The agency has not specified the information that must be included in an infant formula registration, submission, or notification. While firms have been able to function under these requirements since the 1986 amendments were enacted with respect to the notice that manufacturers must provide to the agency under section 412(c) and (d) of the act, inquiries from industry suggest that manufacturers are uncertain about the information that they must provide. Some manufacturers have needed to make multiple submissions for a new infant formula because of deficiencies in the initial submission. For example, some submissions have contained information concerning more than one formula without clearly identifying which information applied to which formula. Some submissions have not contained the information required by section 412(d)(1) of the act. Therefore, FDA recognizes that it will be useful both to manufacturers and to the agency to issue regulations to ensure that registrations and submissions required by the act follow a consistent format and contain the necessary information for the agency to determine whether there is a basis to object to the marketing of a new infant formula. Such regulations will facilitate the manufacturer's preparation of the notice and also will facilitate the agency's review of the notice once FDA receives it.

These proposed regulations also will make clear when a registration, notification, or submission to the agency is needed. For example, as stated above, it has recently come to the attention of the agency that some firms that manufacture infant formula intended only for export are not aware of their registration and submission responsibilities. Section 412(c)(1) of the act requires that a person introducing a new infant formula into interstate commerce (which includes export to a foreign country) must register the infant formula and make the proper submission 90 days before marketing it. These proposed regulations make clear that registration and submission requirements apply to infant formulas intended only for export as well as to infant formula intended for the domestic market.

Finally, for completeness, FDA has decided that it would be useful to both manufacturers and the agency, to carry forward current § 106.240, concerning notification of a violative infant formula, as § 106.150. Doing so will consolidate in one place in the agency's regulations all requirements concerning notice to the agency to meet the requirements of section 412(c), (d), and (e) of the act.

2. New Infant Formula Registration

Proposed § 106.110(a) requires that a manufacturer of a new infant formula register with FDA before introducing the formula, or delivering it for introduction, into interstate commerce. Because "interstate commerce" is defined in section 201(b) of the act as "(1) commerce between any State or Territory and any place outside thereof, and (2) commerce within the District of Columbia or within any other Territory not organized with a legislative body," under this provision, a manufacturer is required to register with FDA before introducing a new infant formula into the United States market or before beginning exporting the formula. Proposed § 106.110(a) sets out how to comply with section 412(c)(1)(A) of the act. Failure to provide the notice required by section 412(c)(1)(A) of the act is a prohibited act under section 301(s).

Under section 412(c)(1)(A) of the act, proposed § 106.110(b) sets out the information required in a new infant formula registration. While manufacturers may register at any time before introducing a new formula into interstate commerce, FDA urges that they do so at the same time that they submit notice of their intent to market a new infant formula in accordance with section 412(c)(1)(B) and (d)(1) of the act. Receiving registration and the 90 day submission at the same time will facilitate the agency's review.

3. New Infant Formula Submission

Section 412(c)(1)(B) of the act requires that manufacturers of a new infant formula submit to FDA a notice of their intent to market the new formula that complies with section 412(d)(1) of the act. The notice must be submitted at least 90 days before the infant formula is introduced or delivered for introduction into interstate commerce[6]. Proposed § 106.120 implements this requirement.

Proposed § 106.120(a) sets out the requirement that a manufacturer submit a notice of its intent to market a new infant formula and provides the address to which such notices are to be submitted.

Proposed § 106.120(b) sets forth the information that manufacturers must include in their new infant formula submission. This proposed regulation implements and specifies the information called for in section 412(d)(1) of the act.

a. *General information required in a 90-day submission.* Because the registration of a new infant formula (proposed § 106.110) need not accompany the new infant formula submission (proposed § 106.120), and because a third submission on a newinfant formula that verifies that the new infant formula, as produced, contains all required nutrients (see proposed § 106.130) will be submitted separately, FDA has tentatively concluded that the name of the infant formula is needed to ensure that all information on a particular infant formula is filed together and is available to determine whether the agency should object to the marketing of the formula. Information on the form of the product is necessary for an accurate evaluation of the product because different

[6] While section 412(c)(1) and (c)(1)(B) of the act state "No person shall introduce or deliver for introduction into interstate commerce any new infant formula unless—such person has at least 90 days before marketing such new infant formula, made the submission to the Secretary required by" section 412(c)(1) of the act, FDA has recognized since 1986 that this citation is in error (see "Requirements for Infant Formulas" published by FDA's Industry Programs Branch, CFSAN), and that the correct citation is section 412(d)(1). This correction agrees with the language of section 412(d)(1) of the act, which states what a submission about any infant formula subject to section 412(c) of the act should include. It is also consistent with the rules of statutory construction. See *Colonial Life & Accident Insurance Co.* v. *American Family Life Assurance Co.*, 846 F. Supp. 454, 463 n. 14(D.S.C. 1994) (where the legislature has made a mistake in reference, and its intent is manifest, the statute may be read as corrected in order to give effect to the legislative intent).

VOL 61 ISS 132 JUL 9 1996 UMI

requirements may apply to different forms of a formula. For example, powdered infant formula must meet the microbiological quality requirements in proposed § 106.55, whereas liquid forms of a formula do not. Therefore, FDA is proposing to require this information in § 106.120(b)(1), under the authority of sections 412(d)(1) and 701(a) of the act, even though it is not explicitly required in section 412(d)(1).

Proposed § 106.120(b)(2) requires that the submission include an explanation of why the formula is a new infant formula to facilitate a determination by the agency as to the type of evaluation the new infant formula requires. For example, if the formula is a new infant formula because a new manufacturing plant will be used to produce it, but the formulation of the product is not changed, FDA will evaluate the processing and arrange to inspect the new facility but may conclude that testing to provide assurance that quality factor requirements have been met is not necessary. Thus, FDA is proposing to require the submission of this information, even though, like the information required under proposed § 106.120(b)(1), submission of this information is not specifically provided for in the act. The agency tentatively concludes that this information is necessary for the efficient enforcement of sections 412(c)(1)(B) and (d)(1) of the act.

b. *Formulation and processing information required in a 90-day submission.* Pursuant to section 412(d)(1)(A) of the act, proposed § 106.120(b)(3) requires that the submission include the quantitative formulation of the infant formula. The agency is proposing that, if the notice concerns more than one form of the formula, the submission include quantitative information on each form of the formula that is the subject of the notice. FDA is proposing to require that manufacturers submit the formulation in units per volume (for liquid formulas) or units per dry weight (for powdered formulas) because formulations expressed in these units will facilitate agency understanding of the formula. Manufacturers already will have the formulation available in these units as a part of the master manufacturing order, and submitting the formulations in these units should not require additional calculations by the manufacturer.

Proposed § 106.120(b)(3) also requires, under section 412(d)(1)(B) of the act, that the submission include a description of any reformulation of the infant formula, including a listing of each new or changed ingredient and a discussion of the effect of such changes on the nutrient levels in the formulation. For example, if the protein source in an infant formula is replaced with a protein source that contains a different amount of protein (e.g., from casein to a mixture of casein and whey), it is important to ensure that the amount of the new protein source used will provide the amount of protein required by § 107.100. As another example, if an ingredient such as sodium selenite is added to the formula for the first time, it is important to ensure that the level of the ingredient provides selenium (in the form of selenite) at a level that is consistent with the infant's needs and yet within the safe range of selenium intake.

Proposed § 106.120(b)(4) requires that the submission include a description, when applicable, of any change in processing of the infant formula, and that such description identify the specific change in processing, including side-by-side, detailed schematic diagrams comparing the new processing to the previous processing (including processing times and temperatures). This proposed requirement implements section 412(d)(1)(B) of the act, which states that the submission must include a description of any change in the processing of an infant formula. FDA is proposing that the description of the change in processing include detailed schematic diagrams comparing the new processing to the previous processing because schematic diagrams are efficient tools for identifying the nature and significance of changes in processing.

c. *Assurance that the infant formula will not be marketed unless it meets quality factor and nutrient requirements of the act.* Pursuant to section 412(d)(1)(C) of the act, proposed § 106.120(b)(5) requires that the submission include an assurance that the infant formula will not be marketed unless it meets the quality factor requirements of section 412(b)(1) of the act and the nutrient content requirements of section 412(i) of the act.

Proposed § 106.120(b)(5)(i) requires that the assurance that the formula meets the quality factor requirements, which are set forth in subpart E of part 106, be provided by a submission that complies with § 106.121. Section 412(d)(1)(C) of the act requires that, 90 days before marketing a new infant formula, a manufacturer submit assurances that the infant formula will not be marketed unless it meets the quality factor requirements established by regulations under section 412(b)(1). Section 412(d)(2) of the act requires that, after the first production of a new infant formula and before introduction into interstate commerce of such formula, the manufacturer submit a written verification that summarizes test results and records demonstrating that such formula complies with the quality factor requirements. However, FDA has tentatively concluded that to implement sections 412 (d)(1) and (d)(2) of the act in a way that ensures that the statutory goals are achieved—that is, to ensure that the agency has all the relevant information for a sufficient period of time to conduct a meaningful review of the nutritional adequacy of the formula while enabling the infant formula manufacturer to market its product as expeditiously as possible—it is appropriate to require that the assurances that the quality factors will be met be provided by means of data that would otherwise be required as part of the verification submission. FDA notes that such a requirement would only codify current practice. Since passage of the 1986 amendments, infant formula manufacturers have been providing data demonstrating that a new infant formula meets the quality factor requirements as a part of the submission made 90 days before marketing.

Proposed § 106.120(b)(5)(ii) requires that the assurance that the formula complies with the nutrient content requirements, which are set forth in § 107.100, be provided by a statement assuring that the formula will not be marketed unless it meets the nutrient requirements of § 107.100, as demonstrated by testing required under subpart C of part 106.

The agency acknowledges that there is an apparent inconsistency in how it interprets the word "assurance" in section 412(d)(1)(C) of the act as it relates to assurance that the infant formula meets the quality factor requirements and assurance that the infant formula meets nutrient content requirements. FDA has tentatively concluded, however, that assurance that the formula will meet the quality factor requirements is a threshold question that must be answered affirmatively before the effort in setting up the line for first production of the infant formula would be justified. Therefore, the agency is proposing to require that the assurance that the infant formula will meet the quality factor requirements be provided by data submitted 90 days before marketing the formula.

On the other hand, the agency is proposing that the assurance that the formula will not be marketed unless it meets the nutrient requirements of § 107.100 can be provided by a statement to that effect (as opposed to data) submitted 90 days before marketing of the formula because the data and records demonstrating that the formula complies with the nutrient requirements of § 107.100 will not be available until the production line is set up, and the first production of the infant formula has occurred. FDA will receive verification that the formula meets the nutrient requirements as a part of the submission required by section 412(d)(2) of the act (see proposed § 106.130(b)(3), below). Therefore, FDA has tentatively concluded that it is adequate to receive a commitment from the manufacturer, 90 days before marketing, that the infant formula will not be marketed unless it meets the nutrient requirements of § 107.100.

d. *Assurance that the processing of the infant formula complies with the CGMP and quality control procedures of the act.* Under section 412(d)(1)(D) of the act, proposed § 106.120(b)(6) requires that the submission include assurance that the processing of the infant formula complies with section 412(b)(2) of the act (CGMP, including quality control procedures).

Proposed § 106.120(b)(6)(i) requires that the assurance that the processing of the infant formula complies with section 412(b)(2) of the act include a statement that the formula will be produced in accordance with subparts B and C of part 106. This proposed requirement is a necessary element of the assurance required by section 412(d)(1)(D) of the act because the requirements for CGMP are set forth in subpart B and the requirements for quality control procedures are set forth in subpart C. In the Congressional Record (Ref. 1), Senator Metzenbaum stated that the amendments to the Infant Formula Act set up requirements "which will prevent our Nation's Children from ever again being threatened by defective baby formula. The most important provision of this amendment is the simple requirement that each batch of formula must be tested for each essential nutrient that must be contained in the formula" (Ref. 1).

Proposed § 106.120(b)(6)(ii) requires that the assurance that the processing of the infant formula complies with section 412(b)(2) of the act include the basis on which the manufacturer has concluded that each ingredient meets the requirement of proposed § 106.40(a), i.e., that the ingredient is an approved food additive, is authorized by a prior sanction issued by the agency, or is GRAS for its intended use. The statute provides that the manufacturer submit, 90 days before marketing a new infant formula, assurance that the processing of the formula complies with the CGMP regulations, and that the formula is manufactured in a way that is designed to prevent its adulteration. FDA has tentatively concluded that, to implement the act in a way that will ensure that the statutory goals are achieved, that is, to ensure that the agency has all the relevant information for a sufficient period of time to conduct a meaningful review of the formula while enabling the manufacturer to market its product as expeditiously as possible, it is appropriate to require that the assurance that none of the ingredients will adulterate the formula be provided by an explanation of how each ingredient meets proposed § 106.40(a). FDA has tentatively concluded that this approach is appropriate because, like the evidence that the formula meets the quality factors, evidence that all the ingredients in the infant formula are safe goes to a threshold question that must be answered affirmatively before the effort in setting up the production line for the first production of the infant formula would be justified. Moreover, an infant formula manufacturer would want to have information demonstrating that each of the ingredients in the formula is safe before marketing the formula, because without such information, a responsible manufacturer would not include the ingredient in its product.

FDA will review the new infant formula submission to ensure that a safe product will be produced (sections 201(s), 402(a)(1) and (a)(2), and 409 of the act). If the agency is not presented with basis on which it can be satisfied that the use of an ingredient in an infant formula will be safe, FDA will not be able to acquiesce in the marketing of the formula. The legislative history of the 1986 amendments supports that Congress anticipated that FDA would provide this type of review. In the Congressional Record of September 27, 1986, Senator Metzenbaum stated:

> I continue to be concerned, however, that our food and drug laws do not differentiate between foods and infant formulas. But they are fundamentally different. An infant formula is designed as the sole source of nutrition for a baby. An infant formula is used daily. A baby must thrive from its content for the first and most formative months of his or her life. I expect the Secretary to look closely at whether or not our standards in this area for foods are adequate standards for infant formula. I have no reason at this time to suspect that there is a problem here. But I continue to urge the Secretary to give thorough consideration to the important distinctions between infant formula and other foods, as well as food additives which may be used with infant formulas. (Ref. 1)

One way for a manufacturer to satisfy the agency that proposed § 106.40(a) is met would be for the manufacturer to use only ingredients that are: (1) Listed as GRAS for such use in 21 CFR part 182 or affirmed as GRAS for such use in 21 CFR part 184 or otherwise GRAS for such use under the regulations included in those parts; (2) approved for such use by a food additive regulation; or (3) authorized by a prior sanction issued by FDA.

Alternatively, the requirements of proposed § 106.40(a) can be met by a showing that the substance is GRAS within the meaning of § 170.30 (21 CFR 170.30), which states that "general recognition of safety may be based only on the view of experts qualified by scientific training and experience to evaluate the safety of substances directly or indirectly added to foods" (§ 170.30(a)). To clarify this point, § 170.30(a) states that "[g]eneral recognition of safety requires common knowledge about the substance throughout the scientific community knowledgeable about the safety of substances directly or indirectly added to food." The qualified experts can base their views on either: (1) Scientific procedures, or (2) in the case of a substance used in food prior to January 1, 1958, through experience based on common use in food (section 201(s) of the act).

Under § 170.30(b), general recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of the ingredient as a food additive, and it must ordinarily be based on published studies, which may be corroborated by unpublished studies and other data and information. If the manufacturer of an infant formula wishes to use an ingredient because there is general recognition of safety based upon scientific procedures, FDA is proposing to require in § 106.120(b)(6)(ii) that the manufacturer include as a part of its new infant formula 90-day submission the rationale for why the ingredient is GRAS and the evidence that demonstrates that there is common knowledge about the safety of the substance throughout the scientific community knowledgeable about the safety of such substance. FDA is proposing that this evidence include a bibliography of published studies, copies of those scientific publications about the substance, and an explanation as to why, based on the published studies, the use of the substance in infant formula is GRAS.

Under § 170.30(c)(1), if a substance is GRAS based on common use in food prior to January 1, 1958, this determination must be based solely on

food use of the substance before January 1, 1958, and must ordinarily be based upon generally available data and information. Thus, GRAS based on common use in food prior to January 1, 1958, may be determined without the quantity or quality of scientific procedures required for approval of a food additive regulation. If the manufacturer of an infant formula wishes to use an ingredient based solely on food use of the substance prior to January 1, 1958, it should provide as a part of the new infant formula 90-day submission the evidence supporting that the ingredient was in common use in infant formula prior to January 1, 1958, and an explanation of why that use provides the basis for general recognition of the safety of the substance.

FDA has recognized that it is impractical to list all substances that are GRAS for their intended use based on their common use in food prior to 1958 (see 21 CFR 182.1(a)). The agency regards such common food ingredients as salt, pepper, vinegar, and baking powder as safe for their intended use. Also, current § 170.30(d) provides that a "food ingredient of natural biological origin that has been widely consumed for its nutrient properties in the United States prior to January 1, 1958, without known detrimental effects, which is subject only to conventional processing as practiced prior to January 1, 1958, and for which no known safety hazard exists, will ordinarily be regarded as GRAS * * *." Some ingredients are used in infant formulas even though they are not listed or affirmed as GRAS by the agency for their intended use. Vitamin K, for example, is required to be a part of an infant formula under section 412(i) of the act and, in the form of phylloquinone, is considered to be safe and suitable for infant formulas when used in accordance with prescribed levels in § 107.100, although no source of vitamin K, such as phytonadione or phylloquinone, has been listed or affirmed as GRAS by the agency. Likewise, sodium selenite has been added to infant formulas to provide the amount of selenium that has been determined to be essential for infants by NAS (Ref. 19). Published experimental and clinical data provide a basis upon which experts qualified by scientific training and experience could evaluate the safety of sodium selenite as a source of selenium for use in infant formula and could conclude that it is safe. The agency anticipates that other ingredients may be shown to be GRAS because they are generally accepted sources of substances that are established as essential for infants by an authoritative body such as NAS. However, manufacturers should not take this acknowledgment to mean that they are free to declare that the use of any ingredient they want to use is GRAS. Any ingredient that cannot meet the standard of § 170.30 for a GRAS determination will be viewed by the agency as a food additive, and any infant formula that contains a food additive that the agency has not approved for use in infant formula is subject to being acted against by the agency.

If the safety of an ingredient is not expressly recognized in an FDA regulation, the burden will rest on the manufacturer of the infant formula to include in its new infant formula submission an explanation of why the substance is GRAS under § 170.30, along with the published and other information that provides the basis for that explanation, in accordance with proposed § 106.120(b)(6)(ii). If the agency adopts this approach, a failure of the agency to object to a manufacturer's determination that an ingredient is GRAS in a new infant formula submission will not constitute a GRAS affirmation by the agency. However, if FDA knows of no reason to question the safety of an ingredient to be used in infant formula, the agency will not object to the manufacturer's relying on its own determination that use of the substance is GRAS.

e. *Submission 90 days before marketing a new infant formula intended only for export.* When a new infant formula is intended only for export, proposed § 106.120(c) provides that manufacturers may submit, in lieu of the information required under proposed § 106.120(b), a statement that the infant formula meets the specifications of the foreign purchaser, does not conflict with the laws of the country to which it is to be exported, is labeled on the outside of the shipping package to indicate that it is intended for export only, and will not be sold or offered for sale in domestic commerce. This proposed requirement recognizes that under section 801(e) of the act, in certain limited circumstances, manufacturers may lawfully export products that are adulterated or misbranded. The information required under proposed § 106.120(c) will demonstrate that those limited circumstances exist. FDA has tentatively concluded that proposed § 106.120(c) will provide manufacturers with the flexibility allowed under section 801(e) of the act while meeting the requirements of sections 412(c) and (d) of the act.

f. *Submission 90 days before marketing—administrative procedures.* Proposed § 106.120(d) states that the submission will not constitute notice under section 412 of the act unless it complies fully with § 106.120(b), and the information that it contains is set forth in a manner that is readily understandable, so that FDA can complete its review in a timely manner and advise the manufacturer if it has any concerns about the marketing of the formula before the 90 days is up. Proposed § 106.120(d) makes clear that the agency will notify the submitter if the notice is not adequate because it does not meet the requirements of sections 412(c) and (d) of the act.

Proposed § 106.120(e) provides that if a new infant formula submission contains all the information required by proposed § 106.120(b), FDA will acknowledge its receipt and notify the manufacturer of the date of receipt, which will be the filing date for the submission (and the manufacturer will be able to plan those actions necessary to begin marketing the new formula in reliance on that date). Further, pursuant to section 412(c)(1)(B) of the act, proposed § 106.120(e) also requires that the manufacturer not market the new infant formula until 90 days after the filing date. Congress provided for 90-day notice so that the agency would have sufficient time to examine all of the material submitted and decide whether there is any basis for concern about the marketing of the formula.

Proposed § 106.120(f) makes clear that if the manufacturer provides additional information in support of a new infant formula submission, FDA will determine whether it represents a substantive amendment to the submission, and that, if it does, FDA will assign the new infant formula submission a new filing date. FDA is proposing to adopt § 106.120(f) to clarify how it will treat amendments to infant formula notifications. In the 9 years since the passage of the 1986 amendments, the treatment of additional submissions has been the source of some confusion. FDA has tentatively concluded that it is necessary to give a new filing date to a new infant formula submission when a substantive amendment is made to it so that the agency has time to examine all of the material submitted and to determine whether there is any basis for concern about the marketing of the formula.

4. Quality Factor Submission

Proposed § 106.121 sets forth the requirements for specific information that a manufacturer must submit to FDA, in accordance with proposed § 106.120(b)(5), to provide assurance that the infant formula meets the quality factor requirements set forth in subpart E of part 106. FDA has tentatively concluded that agency access to study records and data are necessary so that it can ensure that study results are meaningfully interpretable, and that the manufacturer's conclusion that the infant formula meets the quality factor requirements withstands scientific scrutiny and evaluation. Failure to adequately document study results and interpretation raises questions as to the validity of conclusions and could mean that infants have been unnecessarily subjected to testing procedures.

Proposed § 106.121(a) requires that the manufacturer submit an explanation, in narrative form, setting forth its conclusions on how all quality factor requirements of subpart E of part 106 have been met. This narrative will facilitate the agency's review by summarizing the results, and their interpretation, that provide the basis on which the manufacturer has concluded that the quality factor requirements have been met, or that the subject infant formula is eligible for the exemptions described in proposed § 106.97(a)(2) and (b)(2).

Proposed § 106.121(b) requires that the manufacturer submit records that contain the information collected during the study for each infant enrolled in the study. The measurements and information collected for each infant enrolled in the study are necessary to an evaluation of whether the infant formula supported healthy growth. Proper identification of the records is necessary for proper use and analysis of the records.

Proposed § 106.121(c)(1) requires that the manufacturer submit a statistical evaluation of the data from the clinical study, including group means, group standard deviations, and measures of statistical significance for all measurements for each feeding group at the beginning of the study and at every point where measurements were made throughout the study. This evaluation forms the basis for the manufacturer's conclusion as to whether the formula meets the quality factor requirements. Without knowledge of the statistical basis upon which the manufacturer drew its conclusions, FDA would not have sufficient information to evaluate the conclusions reported by the manufacturer.

Proposed § 106.121(c)(2) requires that the manufacturer submit a calculation of the statistical power of the study at its completion. Proposed § 106.97(a)(1)(ii)(E) recommends that the power calculation used to design the study be included in the study protocol. FDA is aware that circumstances (e.g., attrition, difficulty in recruiting sufficient numbers of infants, unexpectedly high measurement error in a particular variable) may unintentionally result in sample sizes and feeding group assignments that lack adequate statistical power for detecting differences between treatment and control groups, regardless of the apparent adequacy in planning for the study protocol. Reviewers must be aware of changes in the statistical power of a study so that they do not inadvertently misinterpret the absence of differences that occur between different formulas as meaning there are no differences. Failure to detect differences, if they are real, could result in erroneously concluding that a formula is safe and suitable for its intended use when, in fact, it is not. The agency is proposing to require that the manufacturer submit this calculation to FDA so that the agency can meaningfully review and interpret the data and study results contained in the submission.

Proposed § 106.121(d) requires that the manufacturer submit reports on attrition and on all occurrences of adverse events during the study.

FDA has tentatively found that information on the occurrence of adverse events is a critical element of the data that must be evaluated to determine whether a formula meets quality factor requirements and is safe and suitable for infants. Adverse events associated with the use of an infant formula, although unexpected, can be a sign or symptom of a nutritional inadequacy or of a safety problem with the infant formula, and failure to use these results could result in inadvertent release of an unsafe product. Conversely, adverse events can be unrelated to a formula product (e.g., flu), but their occurrence can affect the way in which results are interpreted and used. For example, illnesses can influence the interpretation of growth data and of the laboratory measurements collected to evaluate the infant formula.

For these reasons, FDA has tentatively concluded that complete reports, including the results of followup investigations, on the occurrence of all adverse events during the study, regardless of whether the adverse events are attributable to the use of the new infant formula or to some other illnesses, are necessary to properly evaluate the conclusions drawn from a clinical study (proposed § 106.121(d)(1)). FDA has tentatively concluded that a complete report on the occurrence of an adverse event must include identification of the infant by subject number to permit evaluation of infant growth measurements; identification of the feeding group to show whether there is a pattern of adverse events in one feeding group versus another; and a complete description of the adverse event, including comparisons of the frequency of occurrence in each feeding group and information on the health of the infants during the course of the study, including the occurrence and duration of any illness, that occurred during the trial, so that it is possible to evaluate the significance of the illness.

As discussed above, it is very important to be able to evaluate whether the adverse event is a result of a nutritional quality factor problem with the formula product. The results and evaluation of the infant's clinical status are essential to make this evaluation, and the health of the infant is also relevant to interpreting study endpoints, for example, growth data. Therefore, knowledge of the infant's health status is an essential piece of information in evaluating the circumstances surrounding an observed adverse event associated with use of a formula product. Thus, FDA has tentatively concluded that evaluations by a health care professional are necessary to provide the agency with relevant information on the circumstances surrounding the adverse event (see § 106.121(d)(2)) to assist the agency in evaluating the nutritional adequacy and safety of the formula product for supporting healthy growth in infants. In some cases, this clinical assessment may be carried out by the infant's health care provider, rather than the investigators conducting this clinical study, because some parents will contact the infant's health care provider if the infant experiences any adverse event during the course of the study. The agency expects that the study investigators will take sufficient measures to obtain all available information to enhance the likelihood of being able to meaningfully interpret the likely relationship of the adverse event to the formula product and its impact on study conclusions.

Attrition of infants from a study can result not only from adverse events and illnesses but also from a variety of reasons having no bearing on whether the new infant formula meets the quality factor requirements. For example, an infant enrolled in the study may be withdrawn from the study because the parents moved from the area. The effect of attrition on study results, however, must be evaluated in order to be able to meaningfully

interpret those results. To properly

interpret those results. To properly evaluate the impact of attrition on study results, FDA must have information that permits it to evaluate the likely cause of the attrition and its relationship to product use and study measurements. Therefore, the agency is proposing to require the submission of this information on attrition under § 106.121(d)(3).

Proposed § 106.121(e) requires that the manufacturer submit the results of the Protein Efficiency Ratio. This proposed submission requirement is necessary to provide assurance that the manufacturer has complied with proposed § 106.97(b) and to provide assurance that the infant formula meets the specific quality factor for protein quality.

Under proposed § 106.121(f), the manufacturer is required to submit a statement certifying that it has collected and considered all information and data on the ability of the infant formula to meet the quality factor requirements, and that it is not aware of anything that would show that the formula does not meet the quality factors. This proposed requirement is necessary to provide assurance that the manufacturer has complied with the regulations and considered all information and data of which it is aware, and that it has not made a selective submission of information that gives a false impression of the degree or extent to which a formula meets the quality factor requirements.

5. Verification Submissions

Proposed § 106.130(a) requires that manufacturers, after the first production, but before the introduction into interstate commerce, of a new infant formula, verify in a written submission that the infant formula complies with the requirements of the act and is not adulterated. This proposed requirement implements section 412(d)(2) of the act, which requires the submission of a written verification that summarizes test results and records demonstrating that a formula meets the requirements of section 412(b)(1), (b)(2)(A), (b)(2)(B)(i), (b)(2)(B)(iii), (b)(3)(A), (b)(3)(C), and (i) of the act. The failure to provide the notice required by section 412(d) of the act is a prohibited act under section 301(s) of the act.

Proposed § 106.130(b)(1) requires that the verification submission include the name of the new infant formula, the filing date for the new infant formula submission required under proposed § 106.120, and the identification number assigned by FDA to the new infant formula submission, so that FDA is able to match the verification submission with the appropriate new infant formula submission.

Proposed § 106.130(b)(2) requires that the verification submission include a statement that the infant formula to be introduced into interstate commerce is the same as that which was the subject of the new infant formula submission and for which the manufacturer provided assurances in accordance with the requirements of proposed § 106.120. FDA has tentatively concluded that if this statement can be made by the manufacturer, it means that the assurances that the manufacturer provided in the new infant formula submission with respect to the quality factor requirements and the safety of the ingredients remain relevant and applicable to the product. Thus, no additional information need be included in the verification to demonstrate compliance, in accordance with section 412(d)(2) of the act, with section 412(b)(1) or with this aspect of section 412(b)(2)(A).

Proposed § 106.130(b)(3) requires a summary of test results that show the levels of each nutrient required by § 107.100 in the formula and of any nutrient added by the manufacturer. This proposed requirement is necessary to demonstrate compliance with section 412(i) of the act. Section 412(i) of the act sets forth those nutrients that an infant formula must contain in order not to be adulterated, and the submission of a summary of test results as required by section 412(d)(2), and implemented by § 106.130(b)(3), is necessary to show that an infant formula, after the first production, contains all of the required nutrients at the required levels.

FDA has tentatively concluded that it is not necessary to require that the verification submission summarize test results or records demonstrating compliance with sections 412(b)(2)(A) and (b)(2)(B)(iii) of the act because the underlying records will be available for inspection by FDA. FDA has tentatively concluded that to require the manufacturer to create a report based on these records would be to require an unnecessary expenditure of effort. However, the agency is proposing to require (under § 106.130(b)(4)) that the manufacturer certify as a part of its verification submission that it has established procedures that comply with sections 412(b)(2)(A) and (b)(2)(B)(iii) of the act.

FDA has tentatively concluded that requiring additional test results or records demonstrating compliance with section 412(b)(2)(B)(i), (b)(3)(A), and (b)(3)(C) of the act would be unnecessary because such showings would be subsumed in the testing to show whether the formula meets the requirements of § 107.100 (under § 106.130(b)(3)).

Proposed § 106.130(c) makes clear the consequences of failing to comply with § 106.130 and that in such circumstances, the agency will notify the submitter that the notice is not adequate, and that the manufacturer has not met the requirements of section 412(d)(2) of the act.

6. Submissions Concerning a Change in Infant Formula That May Adulterate the Product

Proposed § 106.140(a) provides that, when a manufacturer makes a change in the formulation or processing of the formula that may affect whether the formula is adulterated under section 412(a) of the act, it shall make a submission to FDA before the first processing of such formula. This proposed requirement implements section 412(d)(3) of the act, which requires that manufacturers make the submission to FDA required by section 412(d)(1) of the act before first processing when they determine that a change in formulation or in the processing of an infant formula may affect whether the formula is adulterated under section 412(a) of the act. Examples of changes that may affect whether a formula is adulterated under section 412(a) of the act include, but are not limited to:

(1) A change in the level of an ingredient that does not constitute a major change but that may affect whether the formula meets the requirements of section 412(i) of the act (for example, decreasing the amount of an ingredient such as sodium chloride could affect whether the formula provides two nutrients required by § 107.100);

(2) A change in an ingredient in an infant formula that does not constitute a major change but that may affect whether the formula meets the quality factor requirements of subpart E of part 106 (for example, a change in the level of an emulsifier could result in a change in the bioavailability of fat because the emulsifier may interfere with fat digestion); or

(3) A change in the processing of the infant formula that does not constitute a major change but that may affect whether the CGMP requirements or the quality control procedures of subparts B and C of part 106 are met (for example, a change in the processing of the infant formula may affect whether a specification or a standard for a particular point in the manufacturing process where control is deemed necessary to prevent adulteration is met; a change in a processing temperature or holding time may allow microorganisms to develop in violation of § 106.55; or a change in a processing temperature may affect the level of a labile (temperature sensitive) nutrient in the formula).

Proposed § 106.140(b)(1) requires that the submission include information on the name and physical form of the product, so that the change in the formula can be evaluated with other information that the agency has received on the formula, and so that an accurate evaluation of the product can be made because different requirements may apply to different forms of a formula.

Proposed § 106.140(b)(2) requires an explanation of why the change in formulation or processing may affect whether the formula is adulterated, so that the agency can determine what type of evaluation the submission requires. For example, if a change in formulation may affect nutrient levels, the agency needs to evaluate the nutrient content of the formula to be assured that this formulation change will not lead to production of a formula that will not provide a required nutrient at the required amount. Likewise, if a change in processing may affect whether the formula is adulterated, the agency will need to evaluate the formula's processing to be assured that the processing of the formula will still comply with the CGMP regulations in subpart B of part 106.

Proposed § 106.140(b)(3) requires that the submission comply with § 106.120(b)(3), (b)(4), (b)(5), and (b)(6). This proposed requirement implements section 412(d)(3) of the act, which provides that manufacturers make the submission required by section 412(d)(1). FDA has tentatively concluded that requiring that the submission comply with these aspects of § 106.120(b) will promote consistency in the form and substance of the information that industry must submit, and FDA must review. If the information required on processing by § 106.120(b)(4) has already been provided in compliance with § 106.140(b)(2) as a part of the explanation of why the change in processing may affect whether the formula is adulterated, the same information does not need to be repeated in the submission. To avoid redundant submissions, proposed § 106.140(b)(3) further provides that if the information required by § 106.120(b)(3), (b)(4), (b)(5), or (b)(6) has been provided to the agency previously, and that information is not affected by the change that is the subject of the submission, a statement to that effect, together with the identification number assigned by the agency to the relevant infant formula submission, can be provided in lieu of a new submission.

Proposed § 106.140(b)(3) requires inclusion of the identification number assigned by the agency to the infant formula submission so that the agency can have ready access to the relevant information that was previously submitted. For example, if the manufacturer makes a submission as a result of a change in processing, but the formulation will remain the same, the manufacturer need not provide the information required by § 106.120(b)(3). Likewise, if the manufacturer makes a submission as a result of a change in formulation, but the processing of the formula remains the same, the manufacturer need not submit the information required by § 106.120(b)(4).

A determination of whether the assurances required by § 106.120(b)(5) and (b)(6) need to be given is based on the manufacturer's reason for providing the submission. For example, if the submission is provided because a change in formulation or processing may affect whether the formula is adulterated because it does not meet the quality factors set forth in subpart E of part 106, the assurance required by § 106.120(b)(5)(i) would have to be provided. Likewise, if the submission is provided because a change in formulation or processing may affect whether the formula is adulterated because it does not meet the nutrient requirements of § 107.100, the assurance required by § 106.120(b)(5)(ii) would have to be provided. Further, if the submission is provided because a change in processing may affect whether the formula is adulterated because the processing of such formula may no longer be in compliance with CGMP or with appropriate quality control, as set forth in subparts B and C of part 106, or whether the formula is manufactured in a manner designed to prevent adulteration, the assurance required by § 106.120(b)(6) would have to be provided.

In proposed § 106.140(c), the agency sets forth requirements necessary to ensure that the data and other information provided in the submission are in a form that will allow FDA to complete its review in a timely manner and to advise the manufacturer if the agency has any concerns about the marketing of the formula. Proposed § 106.140(c) also makes clear that the agency will notify the submitter if the notice is not adequate because it does not meet the requirements of section 412(d)(3) of the act.

7. Notification of an Adulterated or Misbranded Infant Formula

If FDA adopts the other regulations that it has proposed, it will redesignate current §§ 107.240(a) and (b) as § 106.150 so that all notification requirements on infant formulas can be found in one place in the agency's regulations. In § 106.150(b), FDA has revised the address to reflect the reorganization of CFSAN.

H. Conforming and Editorial Changes to Part 107—Infant Formula

The agency is making conforming and editorial changes to part 107 to reflect the changes made by the 1986 amendments and the regulations that FDA is proposing to adopt in part 106. The references in part 107 to the Division of Regulatory Guidance are being changed to the Division of Enforcement to reflect the reorganization of CFSAN in November 1992.

1. Changes in Subpart A

The agency is proposing to add a new § 107.1 which will parallel proposed § 106.1. Proposed § 107.1 describes the authority for each of the proposed subparts and the consequences under the act of failure to comply with any of the regulations in the proposed subparts.

2. Changes in Subpart B of Part 107—Labeling

The agency is proposing to amend § 107.10 to require a statement of the amount, supplied by 100 kcal, of each of any nutrient added by the manufacturer as well as of the listed nutrients. As discussed previously in the quality control section of this document, infant formula manufacturers are adding ingredients to infant formula to provide nutrients, such as selenium, that are not required by § 107.100 to be in infant formulas. The proposed change to § 107.10 requires that the amount of the added nutrients supplied by 100 kcal of the formula be declared on the label of the infant formula. This proposed requirement is necessary to inform the consumer on a consistent basis of the level of all nutrients included in an infant formula.

3. Subpart C of Part 107—Exempt Infant Formulas

At this time the agency is not proposing to revise the regulations in § 107.50 pertaining to infant formulas that are subject to section 412(h) of the act. These regulations were finalized in 1985 (50 FR 48183), before passage of the 1986 amendments. In the near future, the agency intends to reevaluate

the exempt infant formula regulations and the effect of the 1986 amendments on exempt infant formulas and to issue a proposed rule to reflect the results of this reevaluation. The agency also plans to evaluate the effect of the Nutrition Labeling and Education Act of 1990 (Pub. L. 101–535) (the 1990 amendments) on the regulations for exempt infant formulas. Exempt infant formulas are specifically exempted from requirements for health claims and nutrient content claims by section 403(r)(5)(A) of the act. The basis for being an exempt infant formula, according to section 412(h)(1) of the act, is how the product is represented and labeled for use. This category of infant formula recognizes that infants who suffer from special medical disorders, such as maldigestion and malabsorption, inborn errors of metabolism such as phenylketonuria or maple syrup urine disease, or severe kidney disease, require formulas tailored specifically to their medical needs. Therefore, it is important that any claims made for these products be truthful, not misleading, and adequately substantiated because these infants make up a vulnerable population and must receive the appropriate nutrients for their medical condition. Because these formulas are exempt from the regulations governing claims that were developed under the 1990 amendments, the agency plans to evaluate how claims for these products need to be substantiated to ensure that infants with special nutritional needs are receiving appropriate infant formulas.

4. Subpart E—Infant Formula Recalls

Current § 107.240(a) sets out the requirements for notification of a violative infant formula, and current § 107.240(b) sets out the method of notification. As stated above, the agency is moving the provisions of current § 107.240(a) and (b) to § 106.150, so that all of the agency's notification requirements are in one place. The agency is renumbering current § 107.240(c)(1), (c)(2), and (c)(3) as § 107.240(a), (b), and (c).

Section 107.250 gives directions on the termination of an infant formula recall. The agency is changing the reference to the Division of Regulatory Guidance to the Division of Enforcement in § 107.250 to reflect the 1992 reorganization of CFSAN.

V. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "economically significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs. A regulation is considered "significant" under Executive Order 12866 if it raises novel legal or policy issues.

The Regulatory Flexibility Act requires Federal agencies to minimize the economic impact of their regulations on small businesses. FDA finds that this proposed rule is neither an economically significant nor a significant regulatory action as defined by Executive Order 12866. In compliance with the Regulatory Flexibility Act, the agency certifies that this proposed rule, if issued, will not have a significant impact on a substantial number of small businesses. Therefore, under the Regulatory Flexibility Act, no further analysis is required. The agency examined three options in determining the economic impact of this proposed regulations. A summary of the options follow:

A. Options

FDA has three primary options: (1) Adopt regulations with more stringent requirements than the proposed regulations; (2) adopt the proposed regulations; or (3) adopt regulations with less stringent requirements than the proposed regulations.

1. Option 1—Adopt Regulations More Stringent Than the Proposed Regulations

FDA believes infant formula manufacturers already comply with most of the requirements of this proposed rule. One option would be to add provisions to this proposed rule that would require activity beyond that which is currently engaged in by infant formula manufacturers or that is likely to be engaged in by manufacturers entering the infant formula industry. Potential requirements of this type include specific production and in-process control systems, specific equipment or types of personnel, and additional testing and recordkeeping.

Under this option, incumbent manufacturers would face higher production costs and would pass most of the costs on to consumers of infant formula. In addition, the startup and operating costs would increase, and thus discourage entry into the infant formula industry. The ability of new firms to enter an industry is an important element in promoting price competition and innovation. These additional requirements would reduce price competition in the infant formula industry.

The price of infant formula is probably linked to certain risky infant feeding practices. With very high infant formula prices, some consumers may increase risks to infants by improperly diluting formula with water or other substances; using inappropriate substitutes for formula or breast milk; or prematurely switching from formula to cow's milk. For example, preliminary results of an FDA study on infant formula feeding practices showed that approximately 20 percent of infants (younger than 2 months) had their formula diluted by cereal, which is cheaper than infant formula.

2. Option 2—Adopt the Proposed Regulations

There are two types of costs associated with this option: precluded future cost cutting behavior and direct compliance costs.

a. *Future cost cutting behavior.* This type of cost may arise because the proposed rule precludes cost cutting behavior by either incumbent firms or firms entering the infant formula industry. Infant formula manufacturers currently undertake a considerable amount of activity, such as infant growth studies, that is designed to ensure the safety of infant formula but is not explicitly required by either current law or regulation. In the absence of this regulation, which mandates this activity, either incumbent or future manufacturers may choose not to undertake this activity in the future. However, because of reputation effects and liability laws, these costs are likely to be low.

b. *Direct compliance costs.* (i). *CGMP.* FDA believes that infant formula manufacturers already comply with most of the proposed CGMP's. These CGMP's include those dealing with: (1) Production and in-process control systems, including the evaluation of any deviation from these procedures or from established standards or specifications; (2) controls designed to prevent adulteration of infant formula by workers, by facilities, and during packaging and labeling; (3) controls to prevent adulteration during manufacturing, including recording and justifying deviations from the master manufacturing order and evaluating deviations from processing times; (4) controls on the release and storage of finished infant formula; (5) all requirements relating to batch production and control records, and to coding; and (6) all requirements dealing with general quality control procedures, including the testing of one batch of each physical form of infant formula at least once every 3 months.

If all manufacturers already comply with these proposed CGMP's, then no compliance costs will result from them. FDA requests comments on whether all infant formula manufacturers are already in compliance with the proposed CGMP's listed above.

FDA believes that all infant formula manufacturers already comply with the proposed CGMP's dealing with controls to prevent adulteration caused by ingredients, containers, and closures. The provision that FDA may object to the use of a particular substance in an infant formula during its prenotification review of ingredients used in a formula because it believes that the substance is not safe and suitable for that use does not represent a change in the way FDA reviews infant formula ingredients. This provision recognizes the fact that manufacturers may make independent GRAS determinations about ingredients. When a manufacturer makes such a determination, that manufacturer is not necessarily required to have the relevant ingredient affirmed as GRAS by FDA. However, FDA is reserving the right to review infant formula ingredient lists and documentation concerning whether particular ingredients are safe and suitable for use in infant formula. Theoretically, this provision could lead to a reduction in the number of ingredients that are independently determined to be GRAS and a corresponding increase in the number of ingredients for which food additive petitions are required. Petitions for direct food additives can take between 1 to 6 years to complete and cost approximately $1 million per year. However, because manufacturers of infant formula generally obtain FDA concurrence on the safety and suitability of ingredients used in infant formula before making these determinations, FDA believes no additional compliance costs will be generated by this provision.

FDA also believes that infant formula manufacturers already comply with many of the other proposed CGMP's. Provisions of CGMP's that some infant formula manufacturers may not currently be in compliance include the following:

(1) Controls to prevent adulteration caused by equipment or utensils. Some manufacturers may not repair or replace instruments and controls when those instruments and controls cannot be adjusted to within essential agreement with the reference standard. In addition, most manufacturers probably do not perform a written evaluation of all affected product, or of actions taken when calibration results indicate that a specification or standard for a point where control is deemed necessary to prevent adulteration has not been met. FDA cannot estimate the repair or replacement costs of instruments and controls at this time. Written evaluations will take a supervising technician an estimated 2 hours to complete, which will generate some small compliance costs.

(2) Controls to prevent adulteration because of automatic, mechanical, and electronic equipment. Most manufacturers will probably have to perform additional analysis of software modifications. FDA preliminarily estimates this analysis will add approximately 1 month to the time required to analyze programming and software modifications. One or two software modifications are probably made each year at each of the fifteen plants that produce infant formula. Assuming that a single computer scientist works on the additional activity required, compliance costs are estimated to be about $100,000 per year.

ii. *Audits, Quality factors, registration and notification requirements, and infant formula recalls.* FDA believes that infant formula manufacturers already comply with the following provisions: (1) Regularly scheduled audits to determine compliance with CGMP's and Quality Control Procedures (QCP's), (2) growth and development studies to be submitted under certain conditions and new notification requirements (FDA already requests and receives these quality factor growth and development studies and notification material based on FDA's interpretation of the language of the 1986 amendments), and (3) all provisions involving registration and notification requirements.

If infant formula manufacturers are already complying with these provisions, then no compliance costs will be generated by these provisions.

FDA requests information on whether all infant formula manufacturers already comply with all provisions listed above, particularly those provisions dealing with quality factors.

iii. *Records.* Under the current proposal, the records produced and maintained by infant formula manufacturers to establish compliance with FDA regulations will have to be expanded to include all new CGMP's and QCP's. FDA believes most of the specified records are already being kept by all firms; however, some records may not be. A plausible assumption is that current annual industry expenditures on recordkeeping may increase by about 10 percent, or $450,000 per year based on information received from industry on current recordkeeping costs. FDA requests information on the cost of increased recordkeeping.

iv. *Administrative costs.* Interpreting and implementing changes in CGMP and QCP regulations generate administrative costs even when all activity required in those CGMP's and QCP's is already being done. FDA does not have information on the administrative costs involved in interpreting and implementing changes in CGMP and QCP regulations; however, it is plausible to suppose that 20 percent of the total compliance costs other than administrative costs may be used to reflect administrative costs.

Administrative costs under this assumption would be approximately $100,000 and would accrue in the first year only. FDA requests information on administrative costs.

3. Option 3—Adopt Regulations Less Stringent Than the Proposed Regulations

Another option is to limit the activity required by this proposed rule to activity already engaged in by all incumbent infant formula manufacturers. In this case, there would be no compliance costs based on current behavior. However, in the absence of this proposed rule, incumbent or new manufacturers might choose not to undertake all activity specified in this proposed rule. Therefore, the only costs associated with this option are the costs associated with precluded potential future behavior on the part of incumbent or new manufacturers.

B. Benefits

1. Option 1—Adopt Regulations More Stringent Than the Proposed Regulations

More stringent regulations for infant formula would cause infant formula manufacturers to undertake further activity to ensure the safety of infant formula. If there were identifiable risks from infant formula that were not addressed by this proposal, then this additional activity might decrease those health risks. However, FDA is not aware of identifiable health risks from infant formula that are not addressed by this proposal.

2. Option 2—Adopt the Proposed Regulations

The proposed regulation has two primary benefits: A potential direct reduction in the health risks posed by infant formula, and a potential reduction in the cost of entering the infant formula industry. The latter effect could lead to an increase in the competitiveness of the infant formula industry, resulting in lower infant formula prices and a reduction in the incidence of risky infant feeding practices linked to high infant formula prices.

One example of a current activity that can be linked to a direct reduction in health risks but that is not explicitly required by current law or regulation is the performance of growth studies for new infant formulas. FDA currently requests and receives these studies to demonstrate that the infant formula meets the quality factor requirements of section 412(b)(1) of the act. However, because section 412(b)(1) of the act does not list specific quality factors that infant formulas must meet, a quality factor for healthy growth currently is not expressly stipulated. In the absence of this proposed rule, manufacturers could decline to perform these growth studies in the future with a potential consequence that products that do not support normal growth would be marketed. Low growth rates would not be detected by existing regulatory and legal requirements that measure only the levels of required nutrients because the required nutrients may be present but not be bioavailable, and there is no mechanism for testing bioavailability other than the proposed studies.

An example of a formula associated with low growth rates that would not have been detected in the absence of growth studies was an experimental formula that contained a source of fatty acids not previously used in infant formula. Because only a small amount of the new fat source was added to a commercial formula, it is reasonable to assume that all required nutrients were present within legal specifications. Consequently, it would likely have met all current regulations. Nonetheless, this formula was found to result in low infant growth rates (Ref. 87). In this case, the manufacturer undertook the necessary growth studies and detected the problem on its own. However, manufacturers might not undertake these studies on their own in the future. In addition, even if manufacturers continue to undertake these studies in the absence of this regulation, they may not do these studies correctly.

In general, low rates of infant growth are associated with higher than normal levels of infant morbidity. If a problem of this type were to occur, a large number of infants could potentially be affected.

Other types of current activity can also be linked to a direct reduction in health risks and also are not explicitly required by current law or regulation. In the absence of this regulation, incumbent or new manufacturers may not undertake this activity in the future. However, as explained earlier, because of reputation effects and legal liability, such a refusal seems unlikely.

An example of a health risk from infant formula is the 1978 incident, discussed elsewhere in this document, in which a required nutrient was missing from an infant formula. Recurrence of this particular problem is unlikely because section 412(d)(1)(A) of the act already explicitly requires the submission of the quantitative formulation of an infant formula as part of the mandatory FDA notification of a new infant formula. Recurrence of this problem is also made unlikely because section 412(b)(2) of the act already explicitly requires the testing of infant formula for all required nutrients. However, the risk of a formula being sold without a required nutrient is minimized to the extent possible by specifically clarifying this part of the infant formula law in the regulation.

Another example of a health risk associated with infant formula is an incident in which infant formula was found to contain *Salmonella*. It appears that the manufacturer was testing for *Salmonella* in a manner consistent with the testing requirements of this proposed rule, and therefore it is not clear that this particular incident would have been avoided if the proposed rule had been in effect. This proposed rule will reduce the risk of microbiological contamination, however, because it requires manufactures to institute a production and in-process control system. The production and in-process control system establishes standards or specifications to be met throughout the production of their product. Other provisions of the proposed regulation that will also help to prevent microbiological contamination of infant formulas are controls to prevent adulteration by workers (proposed § 106.10), controls on the required temperature of cold storage compartments used for storing ingredients and uncanned infant formula (proposed § 106.30(e)(2)), controls on the monitoring of the temperature of both cold storage and thermal processing equipment (proposed § 106.30(e)), controls on the spray-drying process for powdered infant formula including the filtering of the intake air before heating to prevent microbial growth (proposed § 106.50(d)(2)), and controls to ensure that each container of finished product is properly sealed (proposed § 106.50(d)(4)).

The incident in which infant formula was found to contain *Salmonella* resulted in two reported cases of salmonellosis in infants. The average value of preventing a single case of salmonellosis is estimated to be about $2,000 (Ref. 88). If an incident like this is avoided in the future because of this proposed rule, the value of the adverse health effects avoided would be a benefit of this proposed rule.

This incident also resulted in two recalls. FDA estimates a combined cost, including costs that accrued to both the manufacturer and FDA of approximately $0.7 million per recall. If an incident like this is avoided in the future because of this proposed rule, the recall costs that would otherwise have been associated with this incident would also be a benefit of this proposed rule.

Another benefit of the proposed regulations is a potential reduction in the administrative and time costs of entering the infant formula industry. Currently, infant formula manufacturers must analyze and interpret the relevant laws to determine the legal requirements involved in the manufacture of infant formula. Incumbent firms have tended to accept FDA's interpretations of these laws and have received information on this interpretation incrementally over time, chiefly through direct contact with FDA on various issues.

It is reasonable to expect that potential entrants into the infant formula industry would also prefer to rely on FDA's interpretations of the relevant laws. However, considerable time and administrative costs are involved in obtaining this information because there is no established mechanism by which manufacturers can obtain this information other than direct communication with FDA on various particular issues. By providing an explicit specification of the activities that are required by the relevant laws, the proposed regulations, if adopted, will reduce the time and administrative costs involved in entering this industry.

In order to determine the net effect of the proposed rule on the cost of entering the infant formula industry, the reduction in time and administrative costs must be weighed against the additional compliance costs imposed by this proposed rule on new firms. These countervailing compliance costs are probably low because new firms will probably undertake voluntarily the same activity that is currently undertaken voluntarily by incumbent manufacturers. Therefore, the net effect of this proposed rule is likely to be the reduction in the cost of entering the infant formula industry. Publication of the proposed and final regulations will provide a means of expedited entry for new firms into the infant formula market.

A reduction in the cost of entering the infant formula industry will promote both price competition and innovation in this industry. Increased price competition may lead to health benefits because, as stated above, high infant formula prices may encourage some consumers to: (1) Improperly dilute infant formula to reduce the cost per serving; (2) prematurely switch from infant formula to cow's milk; or (3) use inappropriate substitutes for breast milk and infant formula.

A final benefit of this proposed rule is the cost savings generated by the elimination of the current FDA requirement that a vitamin D rat bioassay be performed for all major changes in infant formula. In 1992, there were approximately 50 major changes. The cost of a rat bioassay for vitamin D for infant formula at a private lab is about $1,070 (Ref. 89). Infant formula manufacturers should therefore save approximately $54,000 in testing costs per year.

3. Option 3—Adopt Regulations Less Stringent than the Proposed Regulations

Except for the value of the risk reductions resulting from requirements that go beyond activity currently undertaken by infant formula manufacturers the benefits of this option are identical to those of Option 2.

C. Conclusions

In accordance with Executive Order 12286, FDA has analyzed the economic effects of this proposed rule and has determined that this rule, if issued, will not be a significant rule as defined by that order. In accordance with the Regulatory Flexibility Act, FDA certifies that the proposed rule will not have a significant impact on a substantial number of small businesses.

The primary compliance costs of Option 2 include both direct costs of new requirements and precluded production cost reductions which may occur without this regulation. FDA has estimated direct costs to incumbent manufacturers to be approximately $0.7 million in the first year and $0.6 million each additional year. An additional cost to incumbent manufacturers is the cost of repairing or replacing instruments and controls when those instruments and controls cannot be adjusted to agreement with the reference standard. FDA has insufficient information to estimate this cost. FDA does not expect compliance with the proposed regulations to cause any significant increase in the price of infant formula products. However, the agency requests comments about any potential effects of the proposed regulations on the price of infant formula products.

The primary benefit of Option 2 is the reduction in the risk that defective infant formula will be produced, go undetected, and reach the market. FDA has insufficient information to estimate this potential benefit. In addition, this proposed rule is also expected to reduce the time and administrative costs of entering the infant formula industry. This benefit may increase price competition in the infant formula industry and reduce the health risks associated with high infant formula prices. FDA also has insufficient information to estimate these benefits.

Except for the costs and benefits associated with activity required by this proposed rule that some incumbent manufacturers do not currently undertake, the costs and benefits of Option 3 are identical to those of Option 2. FDA has insufficient information to estimate either the costs or benefits of this option.

Option 1 is expected to have higher costs and lower benefits than either Option 2 or Option 3.

VII. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description for the proposed collection of information are shown below, along with an estimate of the annual recordkeeping and periodic reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the necessary information, and completing and submitting the registrations, notifications, and other submissions that would be required under the proposed regulations.

FDA solicits public comment in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, where appropriate or other forms of information technology.

Title: Current Good Manufacturing Practice, Quality Control Procedures, Quality Factors, Notification Requirements, and Records and Reports, for the Production of Infant Formula.

Description: FDA is proposing regulations on recordkeeping requirements that include: (1) Records pertaining to batch production and control; (2) records pertaining to current good manufacturing practice and quality control; (3) records pertaining to distribution of the infant formula; and (4) records pertaining to regularly scheduled audits. FDA is also proposing regulations on reporting requirements pertaining to: (1) Registration of a new infant formula; (2) submission requirements for a new infant formula; (3) submission requirements to provide assurance that an infant formula meets the quality factor requirements; (4) submission requirements when there is a change in the formulation or processing of the formula that may affect whether the formula is adulterated; and (5) submission requirements to provide assurance that the infant formula complies with the requirements of the Federal Food, Drug, and Cosmetic Act and is not adulterated.

Description of Respondents: Infant Formula Manufacturers.

ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR	No. of recordkeepers	Annual frequency of recordkeeping	Total annual records	Hours per recordkeeping	Total hours
106.6	5	1	5	200	1,000
106.20(f)(4) and 106.100(f)(1)	5	52	260	3	780
106.30(d) and 106.100(f)(2)	5	25	125	4	500
106.30(e)(3)(ii) and 106.100(f)(3)	5	365	1,825	2	3,650
106.30(f) and 106.100(f)(4)	5	365	1,825	3	5,475
106.35(c) and 106.100(f)(5)	5	2	10	500	5,000
106.40(d)	5	20	100	30	3,000
106.40(g) and 106.100(f)(6)	5	122	610	4	2,440
106.50	5	1	5	200	1,000
106.55(d) 106.100(e)(5)(ii), and 106.100(f)(7)	5	182	910	3	2,730
106.60(c)	5	1	5	40	200
106.91(c), 106.100(e)(5)(i), and 106.100(f)(7)	5	365	1,825	4	7,300
106.94	5	1	5	88	440
106.97	5	0.6	3	225	675
106.100(e)	5	365	1,825	9	16,425
Total					50,815

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR	No of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
106.110	3	NA	20	1	20
106.120	3	NA	20	49	980
106.121	3	NA	10	50	500
106.130	3	NA	20	2	40
106.140	3	NA	25	5–10	125–250
Total					1,790
Total Recordkeeping and Reporting Burden	52,405				

FDA tentatively concludes that there are no capital costs or operating and maintenance costs associated with the reporting and recordkeeping provisions of this proposed rule. However, the agency welcomes comments on any such anticipated costs.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, FDA has submitted a copy of this proposed rule to OMB for its review of the information collection requirements. Other organizations and individuals interested in submitting comments regarding this burden estimate or any aspect of these information collection requirements, including suggestions for reducing the burden, should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, ATTN: Desk Officer for FDA. Written comments on the information collection should be submitted by August 8, 1996.

VIII. Requests for Comments

Interested persons may, on or before October 7, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Congressional Record—Senate S 14042–14047, September 27, 1986.
2. Hamill, P. V. V., T. A. Drizd, C. L. Johnson, R. B. Reed, A. F. Roche, W. M. Moore, "Physical Growth: National Center for Health Statistics Percentiles," *American Journal of Clinical Nutrition*, 32:607–629, 1979.
3. Chumlea, W. C. "Growth and Development" Chapter 1 in *Handbook of Pediatric Nutrition*, edited by Queen, P. M., and C. E. Lang, ASPEN Publication Gaithersburg, MD, 1993.
4. Fomon, S. J., and S. E. Nelson, Chapter 4, Size and growth in *Nutrition of Normal Infants*, edited by Fomon, S. J., Mosby-Year Book, Inc., St. Louis, MO, 1993.
5. House of Representatives, House Report 96–936 "Infant Formula Act of 1980 (H.R. 6940)," May 12, 1980.
6. Committee on Nutrition, American Academy of Pediatrics, "Clinical Testing of Infant Formulas With Respect to Nutritional Suitability for Term Infants," Elk Grove Village, IL, June 1988 (under contract to FDA, Contract No. 223–86–2117, June 1988).
7. Congressional Record, vol. 126, House H11787–11793, May 20, 1980.
8. FDA, Guidelines Concerning Notification and Testing of Infant Formulas, 1987.
9. Infant Formula Council, "Recommended Current Good Manufacturing Practice for Infant Formula," July 1992.
10. FDA, DHHS, "FDA Fact Sheet: Shigella in Food," December 1969.
11. Bryan, F. L., "Emerging Foodborne Diseases: II. Factors that Contribute to Outbreaks and Their Control," *Journal of Milk and Food Technology*, 35(11):632–638, November 1972.
12. Bryan, F. L., "Emerging Foodborne Diseases: I. Their Surveillance and Epidemiology," *Journal of Milk and Food Technology*, 35(10):618–625, October 1972.
13. Bryan, F. L., "What the Sanitarian Should Know About Staphylococci and Salmonellae in Non-Dairy Products: I. Staphylococci," *Journal of Milk and Food Technology*, 31(4); 110–116, April 1968.
14. William F. Hooten, Warning Letter, November 9, 1993.

15. Placencia, A. M., and G. S. Oxborrow, "Use of the Reuter Centrifugal Air Sampler in Good Manufacturing Practices Inspections," U.S. Food and Drug Administration, Sterility Research Center, Minneapolis Center of Microbiological Investigations, Minneapolis, MN, December 1984.
16. Committee on Biologic Effects of Atmospheric Pollutants, Division of Medical Sciences, National Research Council, Chapter 9 "Effects of Fluoride on Human Health" in *Fluorides*. National Academy of Sciences, Washington, DC, pp. 163–221, 1971.
17. Committee on Nutrition of American Academy of Pediatrics, Fluoride Supplementation: Revised Dosage Schedule, *Pediatrics*, 63:150–152, 1979.
18. Barness, L. A., "Fluoride in Infant Formulas and Fluoride Supplementation," Letter to the Editor, *Pediatrics*, 67:582–583, 1981.
19. Subcommittee on the 10th Edition of the Recommended Dietary Allowances, Food and Nutrition Board, Commission on Life Sciences, National Research Council. "Recommended Dietary Allowances, 10th ed.," Washington, DC, National Academy Press, 1989.
20. Cross Connection Control Committee, Pacific Northwest Section, American Water Works Associations, With the Assistance of EPA, "Cross Connection Control Manual Accepted Procedures and Practice," 5th ed., May 1990.
21. Food Service Sanitation Manual including A Model Food Service Sanitation Ordinance, U.S. Department of Health, Education, and Welfare, Washington, DC 20204.
22. Lentsch, S., "Sanitizers for an Effective Cleaning Program," Klenzade Division, Economics Laboratories, St. Paul, MN.
23. Moody, M. W., "How Cleaning Compounds Do the Job," Seafood Technology Cooperative Extension Service, Louisiana State University, undated.
24. Refrigerated Foods and Microbiological Criteria Committee, National Food Processors Association, "Factors to be Considered in Establishing Good Manufacturing Practices for the Production of Refrigerated Foods," *Dairy and Food Sanitation*, 8(6):288–291, June 1988.
25. Center for Drugs and Biologics and Office of Regulatory Affairs, Food and Drug Administration "Guideline on Sterile Drug Products Produced by Aseptic Processing" Division of Manufacturing and Product Quality, Office of Compliance, Center for Drugs and Biologics, Food and Drug Administration, Rockville, MD 20857, June 1987.
26. The American National Standards Institute, International Standard, Quality Management and Quality Assurance Standards—Part 3 Guidelines for the Application of ISO 9001 to the Development, Supply and Maintenance of Software, pp. 1–2.
27. Institute for Electrical and Electronics Engineers, Inc. (IEEE), IEEE Standard Glossary of Software Engineering Terminology IEEE Std 610.12—1990.
28. Glossary of Computerized Systems and Software Development Terminology. Division of Field Investigations, Office of Regional Operations, Office of Regulatory Affairs, U.S. Food and Drug Administration, August 1995.
29. Tetzlaff, R. F., "GMP Documentation Requirements for Automated Systems: Part I," *Pharmaceutical Technology*, March 1992.
30. Tetzlaff, R. F., "GMP Documentation Requirements for Automated Systems: Part II," *Pharmaceutical Technology*, April 1992. 31. Tetzlaff, R. F., "GMP Documentation Requirements for Automated Systems: Part III," *Pharmaceutical Technology*, May 1992.
32. Letters from the Infant Formula Council on the Lead Level in Infant Formulas.
33. Rowe, B., D. H. Hutchinson, R. J. Gilbert, B. H. Hales, N. T. Begg, H. C. Dawkins, M. Jacob, F. A. Rae, and M. Jepson, "*Salmonella ealing* Infections Associated with the Consumption of Infant Dried Milk," *The Lancet*, 2(8564):900–903, 1987.
34. Poelma, P. L., W. H. Andrews, J. H. Silliker, "Salmonella" in *Compendium of Methods for the Microbiological Examination of Foods*, 2d ed., edited by Marvin L. Speck, American Public Health Association, Washington, DC, 1984.
35. D'Aoust, J. Y., Salmonella, Chapter 9 in *Foodborne Bacterial Pathogens*, edited by Doyle, M. P., Marcel Dekker, Inc., New York, NY, 1989.
36. Quie, P. G. "Antimicrobial Defenses in the Neonate," *Seminars in Perinatology*, 14:2–9, 1990.
37. Farber, J. M., P. I. Peterkin, "*Listeria Monocytogenes*, a Food-borne Patogen," *Microbiological Reviews*, 55:476–511, 1991.
38. National Advisory Committee on Microbiological Criteria for Foods, "*Listeria monocytogenes*," *International Journal of Food Microbiology*, 14:185–246, 1991.
39. Benenson, A. S., ed., "Control of Communicable Diseases in Man," 15th ed., American Public Health Association, pp. 170–177, 1991.
40. Bennett, R. W., and S. M. Harmon, "*Bacillus cereus* Food Poisoning" in *Laboratory Diagnosis of Infectious Diseases: Principles and Practice*; vol. 1, Bacterial, Mycotic, and Parasitic Diseases; edited by Balows, A., W. J. Hausler, Jr., M. Ohashi, and A. Turano, vol. 1, pp. 83–93, Springer-Verlag, New York, 1988.
41. The International Commission on Microbiological Specifications for Foods (ICMSF) of the International Association of Microbiological Societies, Chapter 12: Sampling Plans for Milk and Milk Products in *Microorganisms in Foods 2. Sampling for Microbiological Analysis: Principles and Specific Applications*, University of Toronto Press, Toronto, Canada; 1974.
42. Schwab, A. H., A. Swartzentruber, B. A. Wentz, R. B. Read, Jr., "Microbiological Quality of Dry-milk Mixes and Milk Substitute Infant Formulas," *Applied and Environmental Microbiology*, 43:389–391, 1982.
43. Collins-Thompson, D. L., K. F. Weiss, G. W. Riedel, and S. Charbonneau, "Microbiological Guidelines and Sampling Plans for Dried Infant Cereals and Powdered Infant Formula from a Canadian National Microbiological Survey," *Journal of Food Protection*, 43(8):613–616, 1980.
44. FDA Enforcement Report, July 14, 1993.
45. Jackson, G. J., C. F. Langford, and D. L. Archer, "Control of Salmonellosis and Similar Foodborne Infections," *Food Control*, 2(1), pp. 26–34, 1991.
46. Food and Drug Administration *Bacteriological Analytical Manual*, 7th ed., AOAC International, Gaithersburg, MD, 1992.
47. Flowers, R. S., W. Andrews, C. W. Donnelly, and E. Koenig, "Pathogens in Milk and Milk Products" in *Standard Methods for the Examination of Dairy Products*, 16th ed., edited by Marshall, R. T., American Public Health Association, Washington, DC 20005, 1992.
48. Harmon, S. M., D. A. Kautter, "Incidence and Growth Potential of *Bacillus cereus* in Ready-to-Serve Foods," *Journal of Food Protection*, 54(5):372–374, 1991.
49. Golden, D. A., "Microbiological Evaluation of Powdered Infant Formula," Report submitted to the U.S. Food and Drug Administration, Center for Food Safety and Applied Nutrition.
50. FDA Consumer, Defendants: Watson Foods Co., Inc., Civil No. CV–85–4659, p. 40, October 1988.
51. Memorandum of Records from Nicholas Dvy, FDA, dated June 25, 1996.
52. Establishment Inspection Report, 1992.
53. Memo from Alan J. Sheppard to Carolyn W. Miles, on Status of Vitamin D Rat Bioassay, May 12, 1994.
54. Tanner, J. T., S. A. Barnett, and M. K. Mountford, "Analysis of Milk-based Infant Formula," Phase IV. Iodine, Linoleic Acid, and Vitamins D and K: U.S. Food and Drug Administration-Infant Formula Council: Collaborative Study, *Journal of the Association of Official Analytical Chemists International*, 76:1042–1056, 1993.
55. Southgate, D. A. T., "Conceptual Issues Concerning the Assessment of Nutrient Bioavailability," in *Nutrient Availability: Chemical and Biological Aspects*, edited by Southgate, D., I. Johnson, and G. R. Fenwick, Royal Society of Chemistry, 1989.
56. Jensen, R. G., M. M. Hagerty, and K.E. McMahon, "Lipids of Human Milk and Infant Formulas: A Review," *American Journal of Clinical Nutrition*, 31:990–1016, 1978.
57. Jenson, R. G., and G. L. Jensen, "Specialty Lipids for Infant Nutrition, I. Milks and Formulas," *Journal of Pediatric Gastroenterology and Nutrition*, 15:232–245, 1992.

58. Ziegler, E. E., S. J. Fomon, S. E. Nelson et al., "Cow Milk Feeding in Infancy: Further Observations on Blood Loss From the Gastrointestinal Tract," *Journal of Pediatrics*, 116:11–16, 1990.
59. American Academy of Pediatrics, "Commentary on Breast-Feeding and Infant Formulas, with Proposed Standards for Formulas," *Pediatrics*, 57:278–285, 1976.
60. Committee on Labor and Human Resources Report (Senate) August 26, 1960.
61. Saarinen, U. M., M. A. Siimes, P. R. Dallman, "Iron Absorption in Infants: High Bioavailability of Breast Milk Iron as Indicated by the Extrinsic Tag Method of Iron Absorption and by the Concentration of Serum Ferritin," *Journal of Pediatrics*, 91:36–39, 1977.
62. Hallberg, L., L. Rossander-Hulten, M. Brune, A. Gleerup, "Bioavailability in Man of Iron in Human Milk and Cow's Milk in Relation to Their Calcium Contents," *Pediatric Research*, 31:524–527, 1992.
63. Derman, D. P., D. Ballot, T. H. Bothwell, B. J. MacFarlane, R. D. Baynes, A. P. MacPhail, M. Gillooly, J. E. Bothwell, and W. R. Bezwoda, "Factors Influencing the Absorption of Iron From Soya-Bean Protein Products," *British Journal of Nutrition*, 57:345–353. 1987.
64. Koo, W. W. K., and R. G. Tsang, "Calcium, Magnesium, Phosphorus, and Vitamin D," In *Nutrition Needs of the Preterm Infant*, edited by Tsang, R. C., et al., Academic Press, 1993
65. Steichen, J. J., T. L. Gratton, and R. C. Tsang, "Osteopenia of Prematurity: The Cause and Possible Treatment," *Journal of Pediatrics*, 96:528–34, 1980.
66. Koletzko, B., R. Tangerman, R. Von Kries, et al. "Intestinal Milk-Bolus Obstruction in Formula-Fed Premature Infants Given High Doses of Calcium," *Journal of Pediatric Gastroenterology and Nutrition* 7:548–553, 1988.
67. Ziegler, E. E., and S. J. Fomon, "Lactose Enhances Mineral Absorption in Infancy," *Journal of Pediatric Gastroenterology and Nutrition*, 2:288–294, 1983.
68. Moya, M., E. Cortes, M. I. Ballester et al., "Short-term Polycose Substitution for Lactose Reduces Calcium Absorption in Healthy Term Babies," *Journal of Pediatric Gastroenterology and Nutrition*, 14:57–61, 1992.
69. Shenai, J. P., B. M. Jhaveri, J. W. Reynolds et al., "Nutritional Balance Studies in Very Low Birth Weight Infants: Role of Soy Formula," *Pediatrics*, 67:631–637, 1981.
70. Lindroth, M., U. Westgren, and S. Laurin, "Rickets in Very Low Birth Weight Infants; Influence of Supplementation with Vitamin D, Phosphorus, and Calcium," *Acta Pediatrica Scandinavica*, 75:927–931, 1986.
71. Chan, G. M., and L. J. Mileur, "Posthospitalization Growth and Bone Mineral Status of Normal Preterm Infants," *American Journal of Diseases in Childhood*, 139:896–8, 1985.
72. Food and Drug Administration, Public Health Service, U.S. Department of Health and Human Services, Guidelines for the Format and Content of the Clinical and Statistical Sections of New Drug Applications July, 1988.
73. American Academy of Pediatrics. Pediatric Nutrition Handbook, 3d ed., 1993.
74. Roche, A. F., S. Guo, and W. M. Moore, "Weight and Recumbent Length From 1 to 12 Mo of Age: Reference Data for 1–Mo Increments," *American Journal of Clinical Nutrition*, 49:599–607, 1989.
75. Moore, W. M., and A. F. Roche, "Pediatric Anthropometry," Ross Laboratories.
76. Behrman, R. E., *Nelson Textbook of Pediatrics*, 14th ed., W. B. Saunders Co., Philadelphia, 1992.
77. Sarwar, G., R. W. Peace, and H. G. Botting, "Differences in Protein Digestibility and Quality of Liquid Concentrate and Powder Forms of Milk-Based Infant Formulas Fed to Rats," *American Journal of Clinical Nutrition*, 49:806–13, 1989.
78. Rudloff, S., and B. Lonnerdal, "Solubility and Digestibility of Milk Proteins in Infant Formulas Exposed to Different Heat Treatments," *Journal of Pediatric and Gastroenterology and Nutrition*, 15:25–32, 1992.
79. Fomon, S. J., and S. E. Nelson, Chapter 11, Calcium, Phosphorus, Magnesium, and Sulfur in *Nutrition of Normal Infants*, edited by Fomon, S. J., Mosby-Year Book, Inc., St. Louis, MO, 1993.
80. Ryan, S. A., J. Truscott, M. Simpson, and J. James, "Phosphate, Alkaline Phosphatase and Bone Mineralization in Preterm Neonates," *Acta Pediatrica*, 82:518–521, 1993.
81. Minton, S. D., J. J. Steichen, and R. C. Tsang, "Bone Mineral Content in Term and Preterm Appropriate-for-Gestational-Age Infants," *Journal of Pediatrics*, 95:1037–1042, 1979.
82. Steichen, J. J., P. A. Steichen Asch, and R. C. Tsang, "Bone Mineral Content Measurement in Small Infants by Single-photon Absorptiometry: Current Methodologic Issues," *Journal of Pediatrics*, 113 (suppl): 181–187, 1988.
83. Chan, G. M., "Performance of Dual-Energy X-ray Absorptiometry in Evaluating Bone, Lean Body Mass, and Fat in Pediatric Subjects," *Journal of Bone and Mineral Research*, 7:369–374, 1992.
84. Braillon, P. M., B. L. Salle, J. Brunet, F. H. Glorieux, P. D. Delmas, and P. J. Meunier, "Dual Energy X-ray Absorptiometry Measurement of Bone Mineral Content in Newborns: Validation of the Technique," *Pediatric Research*, 32:77–80, 1992.
85. Salle, B. L., and F. H. Glorieux, "Assessment of Bone Mineral Content in Infants: The New Age," *Acta Pediatrica*, 82:709–10, 1993.
86. Fomon, S. J., Chapter 14, Iron in *Nutrition of Normal Infants*, edited by Fomon, S. J., Mosby-Year Book, Inc., St. Louis, MO, 1993.
87. Carlson, S. E., R. J. Cooke, S. H. Werkman, and E. A. Tolley, "First Year Growth of Preterm Infants Fed Standard Compared to Marine Oil n-3 Supplemented Formulas," *Lipids*, 27:901–907, 1992.
88. Memorandum of telephone conversation between Marty Hudtloff, FDA, and Ed Puro, FDA, March 15, 1994; cost of Maple Island recalls note, memorandum from Robert Fish, March 7, 1994; memorandum from Martin Hudtloff, February 28, 1994; Establishment History Report on B2110076.
89. Memorandum of telephone conversation between Hazleton Labs and Ed Puro, FDA, March 17, 1993.

List of Subjects

21 CFR Part 106

Food grades and standards, Infants and children, Nutrition, Reporting and recordkeeping requirements, Incorporation by reference.

21 CFR Part 107

Food labeling, Infants and children, Nutrition, Reporting and recordkeeping requirements, Signs and symbols.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to Commissioner of Food and Drugs, it is proposed that 21 CFR parts 106 and 107 be amended as follows:

PART 106—INFANT FORMULA—REQUIREMENTS PERTAINING TO CURRENT GOOD MANUFACTURING PRACTICE, QUALITY CONTROL PROCEDURES, QUALITY FACTORS, RECORDS AND REPORTS, AND NOTIFICATIONS

1. The authority citation for 21 CFR part 106 continues to read as follows:

Authority: Secs. 201, 412, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 350a, 371).

2. The heading for part 106 is revised to read as set forth above.

3. Section 106.1 is revised to read as follows:

§ 106.1 Status and applicability of the regulations in part 106.

(a) The criteria set forth in subparts B, C, and D of this part prescribe the steps that manufacturers must take under section 412(b)(2) and (b)(3) of the Federal Food, Drug, and Cosmetic Act (the act) in processing infant formula. If the processing of the formula does not comply with any regulation in subparts B, C, or D of this part, the formula will be deemed to be adulterated under section 412(a)(3) of the act.

(b) The criteria set forth in subpart E of this part prescribe the quality factor requirements that infant formula must meet under section 412(b)(1) of the act. If the formula fails to comply with any regulation in subpart E of this part, it will be deemed to be adulterated under section 412(a)(2) of the act.

(c) The criteria set forth in subpart F of this part implement the record retention requirements established in section 412(b)(4) of the act. Failure to comply with any regulation in subpart F of this part is a violation of section 301(e) of the act.

(d) The criteria set forth in subpart G of this part describe the circumstances in which infant formula manufacturers are required to register with, submit to, or notify the Food and Drug Administration, and the content of those registrations, submissions, or notifications, under section 412(c), (d), and (e) of the act. Failure to comply with any regulation in subpart G of this part is a violation of section 301(s) of the act.

4. Section 106.3 is revised to read as follows:

§ 106.3 Definitions.

The definitions in this section and the definitions contained in section 201 of the Federal, Food, Drug, and Cosmetic Act (the act) shall apply to infant formula requirements in 21 CFR part 106 and part 107 of this chapter.

(a) *Batch* means a specific quantity of an infant formula or other material that is intended to have uniform character and quality, within specified limits, and is produced according to a single manufacturing order during the same cycle of manufacture.

(b) *Final-product-stage* means the point in the manufacturing process, before distribution of an infant formula, at which the infant formula is homogeneous and is not subject to further degradation due to processing.

(c) *Indicator nutrient* means a nutrient whose concentration is measured during the manufacture of an infant formula to confirm complete addition and uniform distribution of a premix or other substance of which the indicator nutrient is a part.

(d) *Infant* means a person not more than 12 months of age.

(e) *Infant formula* means a food which purports to be or is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk.

(f) *In-process batch* means a combination of ingredients at any point in the manufacturing process before packaging.

(g) *Lot* means a batch, or a specifically identified portion of a batch, having uniform character and quality within specified limits; or, in the case of an infant formula produced by continuous process, it is a specific identified amount produced in a unit of time or quantity in a manner that assures its having uniform character and quality within specified limits.

(h) *Lot number, control number, or batch number* means any distinctive combination of letters, numbers, symbols, or any combination of them, from which the complete history of the manufacture, processing, packing, holding, and distribution of a batch or lot of infant formula or other material can be determined.

(i) *Major change* in an infant formula means any new formulation, or any change of ingredients or processes where experience or theory would predict a possible significant adverse impact on levels of nutrients or bioavailability of nutrients, or any change that causes an infant formula to differ fundamentally in processing or in composition from any previous formulation produced by the manufacturer. Examples of infant formulas deemed to differ fundamentally in processing or in composition include:

(1) Any infant formula produced by a manufacturer who is entering the U.S. market;

(2) Any infant formula powder processed and introduced for commercial or charitable distribution by a manufacturer who previously only produced liquids (or vice versa);

(3) Any infant formula having a significant revision, addition, or substitution of a macronutrient (i.e., protein, fat, or carbohydrate), with which the manufacturer has not had previous experience;

(4) Any infant formula manufactured on a new processing line or in a new plant;

(5) Any infant formula manufactured containing a new constituent not listed in section 412(i) of the act, such as taurine or L-carnitine;

(6) Any infant formula processed by a manufacturer on new equipment that utilizes a new technology or principle (e.g., a change from terminal sterilization to aseptic processing); and

(7) An infant formula for which there has been a fundamental change in the type of packaging used (e.g., changing from metal cans to plastic pouches).

(j) *Manufacturer* means a person who prepares, reconstitutes, or otherwise changes the physical or chemical characteristics of an infant formula or packages or labels the product in a container for distribution.

(k) *Microorganisms* means yeasts, molds, bacteria, and viruses and includes, but is not limited to, species having public health significance.

(l) *New infant formula* means:

(1) An infant formula manufactured by a person that has not previously manufactured an infant formula for the U.S. market, and

(2) An infant formula manufactured by a person that has previously manufactured infant formula and in which there is a major change in processing or formulation from a current or any previous formulation produced by such manufacturer.

(m) *Nutrient* means any vitamin, mineral, or other substance or ingredient that is required in accordance with the table set out in section 412(i)(1) of the act or by regulations issued under section 412(i)(2) or that is identified as essential for infants by the Food and Nutrition Board of the National Research Council through its development of a Recommended Dietary Allowance or an Estimated Safe and Adequate Daily Dietary Intake range, or that has been identified as essential for infants by the Food and Drug Administration through a **Federal Register** publication.

(n) *Nutrient premix* means a combination of ingredients containing two or more nutrients received from a supplier or prepared by an infant formula manufacturer.

(o) *Quality factors* mean those factors necessary to demonstrate that the infant formula, as prepared for market, provides nutrients in a form that is bioavailable and safe as shown by evidence that demonstrates that the formula supports healthy growth when fed as a sole source of nutrition.

(p) *Representative sample* means a sample that consists of a number of units that are drawn based on rational criteria, such as random sampling, and intended to ensure that the sample accurately portrays the material being sampled.

(q) *Shall* is used to state mandatory requirements.

(r) *Should* is used to state recommended or advisory procedures or to identify recommended equipment.

5. Part 106 is amended by redesignating subparts B, C, and D as subparts C, F, and G, respectively, and adding new subparts B, D, and E; and by revising newly redesignated subparts C and G to read as follows:

* * * * *

Subpart B—Current Good Manufacturing Practice

Sec.
106.5 Current good manufacturing practice.
106.6 Production and in-process control system.
106.10 Controls to prevent adulteration by workers.
106.20 Controls to prevent adulteration caused by facilities.
106.30 Controls to prevent adulteration caused by equipment or utensils.
106.35 Controls to prevent adulteration due to automatic (mechanical or electronic) equipment.
106.40 Controls to prevent adulteration caused by ingredients containers, and closures.
106.50 Controls to prevent adulteration during manufacturing.
106.55 Controls to prevent adulteration from microorganisms.
106.60 Controls to prevent adulteration during packaging and labeling of infant formula.
106.70 Controls on the release of finished infant formula.
106.80 Traceability.
106.90 Audits of current good manufacturing practice.

Subpart C—Quality Control Procedures

106.91 General quality control.
106.92 Audits of quality control procedures.

Subpart D—Conduct of Audits

106.94 Audit plans and procedures.

Subpart E—Quality Factors for Infant Formulas

106.96 Quality factors in infant formulas.
106.97 Assurances for quality factors.
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Subpart G—Registration, Submission, and Notification Requirements

106.110 New infant formula registration.
106.120 New infant formula submission.
106.121 Quality factor submission.
106.130 Verification submission.
106.140 Submission concerning a change in infant formula that may adulterated the product.
106.150 Notification of an adulterated or misbranded infant formula.
* * * * *

Subpart B—Current Good Manufacturing Practice

§ 106.5 Current good manufacturing practice.

(a) The regulations set forth in this subpart and, for liquid infant formulas, in part 113 of this chapter define the minimum current good manufacturing practices that are to be used in, and the facilities or controls that are to be used for, the manufacture, processing, packing, or holding of an infant formula. Compliance with these provisions is necessary to ensure that such infant formula provides the nutrients required under § 107.100 of this chapter and is manufactured in a manner designed to prevent its adulteration.

(b) The failure to comply with any regulation set forth in this subpart or, for liquid infant formulas, in part 113 of this chapter in the manufacture, processing, packing, or holding of an infant formula shall render such infant formula adulterated under section 412(a)(3) of the Federal Food, Drug, and Cosmetic Act (the act).

§ 106.6 Production and in-process control system.

(a) Manufacturers shall conform to the requirements of this subpart by implementing a system of production and in-process controls. This production and in-process control system shall cover all stages of processing, from the receipt and acceptance of the raw materials, ingredients, and components through the storage and distribution of the finished product and shall be designed to ensure that all the requirements of this subpart are met.

(b) The production and in-process control system shall be set out in a written plan, or set of procedures, that is designed to ensure that an infant formula is manufactured in a manner that will prevent adulteration of the infant formula.

(c) At any point, step, or stage in the production process where control is necessary to prevent adulteration, the manufacturer shall:

(1) Establish standards or specifications to be met;

(2) Monitor the production and in-process control point, step, or stage;

(3) Establish corrective action plans for use when a standard or specification established in accordance with paragraph (b)(1) of this section is not met;

(4) Review the results of the monitoring required by paragraph (c)(2) of this section, and review and evaluate the public health significance of any deviations from standards or specifications that have been established in accordance with paragraph (c)(1) of this section. This review shall be conducted by an individual qualified by training and experience to conduct such reviews; and

(5) Establish recordkeeping procedures, in accordance with § 106.100(e)(3), that ensure that compliance with the requirements of this section is documented.

§ 106.10 Controls to prevent adulteration by workers.

(a) There shall be sufficient personnel, qualified by training and experience, to perform all operations, including all required recordkeeping, in the manufacture, processing, packing, and holding of each infant formula and to supervise such operations to ensure that they are correctly and fully performed.

(b) Personnel working directly with infant formula, infant formula raw materials, infant formula packaging, or infant formula equipment or utensil contact surfaces shall practice good personal hygiene to protect the infant formula against contamination. Good personal hygiene includes, but is not limited to:

(1) Wearing clean outer garments and, as necessary, protective apparel such as head, face, hands, and arm coverings; and

(2) Washing hands thoroughly in a hand washing facility with soap and running water at a suitable temperature before starting work, after each absence from the work station, and at any other time when the hands may become soiled or contaminated.

(c) Any person who reports that he or she has, or appears by medical examination or supervisory observation to have, an illness, open lesion, including boils, sores, or infected wounds, or any other source of microbial contamination that creates a reasonable possibility that the safety of an infant formula may be adversely affected, shall be excluded from direct contact with ingredients, containers, closures, in-process materials, equipment, utensils, and infant formula product until the condition is corrected or determined by competent medical personnel not to jeopardize the safety of the infant formula.

§ 106.20 Controls to prevent adulteration caused by facilities.

(a) Buildings used in the manufacture, processing, packing, or holding of infant formula shall be maintained in a clean and sanitary condition and shall have space for the separation of incompatible operations, such as the handling of raw materials, the manufacture of the product, and packaging and labeling operations.

(b) Separate areas shall be designated for holding raw materials, in-processing materials, and final product infant formula:

(1) Pending release for use in infant formula production or pending release of the final product,

(2) After rejection for use in infant formula and before disposition, and

(3) After release for use in infant formula production or after release of the final product.

(c) Lighting shall allow easy identification of raw materials, packaging, labeling, in-process materials, and finished products that have been released for use in infant formula production and shall permit the easy reading of instruments and controls necessary in processing, packaging, and laboratory analysis. Any lighting fixtures directly over or adjacent to exposed raw materials, in-process materials, or bulk (unpackaged) finished product shall be protected to prevent glass from contaminating the product in the event of breakage.

(d) Air filtration systems, including prefilters and particulate matter air filters, shall be used on air supplies to production areas where ingredients or infant formula are directly exposed to the atmosphere.

(e) All rodenticides, insecticides, fungicides, fumigating agents, and cleaning and sanitizing agents shall be stored and used in a manner that protects against contamination of infant formula.

(f)(1) Potable water used in the manufacture of infant formula shall meet the standards prescribed in the Environmental Protection Agency's (EPA's) Primary Drinking Water Regulations set forth in 40 CFR part 141, except that the fluoride level of the water used in infant formula manufacturing shall be as low as possible. The water shall be supplied under continuous positive pressure in a plumbing system that is free of defects that could contaminate an infant formula.

(2) Manufacturers shall test representative samples of the potable water drawn at a point in the system at which the water is in the same condition that it will be when it is used in infant formula manufacturing.

(3) Manufacturers shall conduct the tests required by paragraph (f)(2) of this section with sufficient frequency to ensure that the water meets the EPA's Primary Drinking Water Regulations but shall not conduct these tests less frequently than annually for chemical contaminants, every 4 years for radiological contaminants, and weekly for bacteriological contaminants.

(4) Manufacturers shall make and retain records, in accordance with § 106.100(f)(1), of the frequency and results of testing of the water used in the production of infant formula.

(g) There shall be no backflow from, or cross-connection between, piping systems that discharge waste water or sewage and piping systems that carry water for infant formula manufacturing.

(h) When steam comes in direct contact with infant formula, it shall be safe and free of rust and other particulate matter that may contaminate the formula. Boiler water additives in the steam shall be used in accordance with § 173.310 of this chapter.

(i) Each infant formula manufacturing site shall provide its employees with readily accessible toilet facilities and hand washing facilities that include hot and cold water, soap or detergent, and single-service towels and that are maintained in good repair and in a sanitary condition at all times, and that these facilities provide for proper disposal of the sewage. Doors to the toilet facility shall not open into areas where infant formula ingredients, containers, or closures are stored, or where infant formula is processed or stored.

§ 106.30 Controls to prevent adulteration caused by equipment or utensils.

(a) Equipment used in the manufacture, processing, packing or holding of an infant formula shall be of appropriate design and shall be installed to facilitate its intended function and its cleaning and maintenance.

(b) Equipment and utensils used in the manufacture, processing, packing, or holding of an infant formula shall be constructed so that surfaces that contact ingredients, in-process materials, or infant formula are made of nontoxic materials and are not reactive or absorptive. Such equipment and utensils shall be designed to be easily cleanable and to withstand the environment of their intended use. All surfaces that contact ingredients, in-process materials, or infant formula shall be cleaned, sanitized, and maintained to protect infant formula from being contaminated by any source. Sanitizing agents used on food-contact surfaces must comply with § 178.1010 of this chapter.

(c) Manufacturers shall ensure that substances, such as lubricants or coolants, that are required for operation of infant formula manufacturing equipment, but that would render the infant formula adulterated if they contaminated the formula, do not come in contact with formula ingredients, containers, closures, or in-process materials or with infant formula itself.

(d)(1) Manufacturers shall ensure that instruments used for measuring, regulating, or controlling mixing time and speed, temperature, pressure, moisture, water activity, or other parameters at points where control is deemed necessary to prevent adulteration in the processing of an infant formula are accurate, easily read, properly maintained, and present in sufficient number for their intended use. The instruments and controls shall be tested for accuracy (calibrated) against a known reference standard before first use and thereafter at routine intervals, as specified in writing by the manufacturer of the instrument or control, or as otherwise deemed necessary to ensure the accuracy of the instrument. The known reference standard shall be certified for accuracy at routine intervals specified in writing by the manufacturer of the instrument, or as otherwise deemed necessary to ensure the accuracy of the instrument. Manufacturers shall make and retain records of the accuracy checks in accordance with § 106.100(f)(2).

(2) Instruments and controls that cannot be adjusted to agree with the reference standard shall be repaired or replaced.

(3) If calibration of an instrument (testing for accuracy against a known reference standard) shows that a specification or standard for a point where control is deemed necessary to prevent adulteration has not been met, a written evaluation of all affected product, and of any actions that need to be taken with respect to that product, shall be made, in accordance with § 106.100(f)(2).

(e)(1) The temperature in cold storage compartments that are used to store raw materials, in-process materials, or final product, and in thermal processing equipment used at points where temperature control is necessary to prevent adulteration, shall be monitored with such frequency as is necessary to ensure that temperature control is maintained.

(2) Cold storage compartments shall be maintained at a temperature of 40 °F (4.4 °C) or below.

(3)(i) Cold storage compartments and thermal processing equipment shall be equipped with easily readable, accurate temperature-indicating devices.

(ii) Thermal processing equipment shall be equipped with temperature-recording devices that will reflect the true temperature on a continuing basis. Cold storage compartments shall be equipped with either temperature-recording devices that will reflect the true temperature, on a continuing basis, within the compartment or, in lieu of a temperature-recording device, a high temperature alarm or a maximum-indicating thermometer that has been verified to function properly. If the manufacturer uses either of the latter options, it shall maintain a temperature log in which it notes temperature with such frequency as is necessary to achieve control. Manufacturers shall make and retain records, in accordance with § 106.100(f)(3), of the temperatures indicated or recorded by these devices.

(4) When a temperature-recording device is used, such device shall not read higher than the calibrated temperature-indicating device for thermal processing equipment or lower than the reference temperature-indicating device for cold storage compartments.

(f) Equipment and utensils used in the manufacture of infant formula shall be cleaned, sanitized, and maintained at regular intervals to prevent adulteration of the infant formula. An individual qualified by training or experience to conduct such a review shall check all cleaning, sanitizing, and maintenance to ensure that it has been satisfactorily completed. Manufacturers shall make and retain records on equipment cleaning, sanitizing, and maintenance, in accordance with § 106.100(f)(4).

(g) Compressed air or other gases that are mechanically introduced into infant formula, that are used to clean any equipment, or that come into contact with any other surface that contacts ingredients, in-process materials, or infant formula shall be treated in such a way that their use will not contaminate the infant formula with unlawful indirect food additives or other chemical, physical, or microbiological contaminants. When compressed gases are used at product filling machines to replace air removed from the headspace of containers, the manufacturer shall install a 0.5 micrometer or smaller filter as close to the end of the gas line that feeds gas into the space, as practical.

§ 106.35 Controls to prevent adulteration due to automatic (mechanical or electronic) equipment.

(a)(1) For the purposes of this section, "hardware" means all automatic equipment, including mechanical and electronic equipment (including computers), that is used in production or quality control of a infant formula.

(2) For the purposes of this section, "software" means any programs, procedures, rules, and associated documentation used in the operation of a system.

(3) For the purposes of this section, "system" means a collection of components (including software and hardware) organized to accomplish a specific function or set of functions in a specified environment.

(4) For the purposes of this section, "validation" means establishing documented evidence that provides a high degree of assurance that a system will consistently produce a product meeting its predetermined specifications and quality characteristics.

(b)(1) All systems shall be designed, installed, tested, and maintained in a manner that will ensure that they are capable of performing their intended function and of producing or analyzing infant formula in accordance with this subpart and subpart C of this part.

(2) The infant formula manufacturer shall ensure that hardware is routinely calibrated, inspected, and checked according to written procedures.

(3) The infant formula manufacturer shall check and document the accuracy of input into, and output generated by, any system used in the production or quality control of an infant formula. The degree and frequency of input/output verification shall be based on the complexity and reliability of the system and the level of risk associated with the safe operation of the system.

(4) The infant formula manufacturer shall ensure that all systems are validated before their first use to manufacture commercial product.

(5) The infant formula manufacturer shall ensure that any system that is modified is revalidated after the modification and before use of the modified system to manufacture commercial product. All modifications to software shall be made by a designated individual and shall be checked by the infant formula manufacturer to ensure that infant formula that is produced or analyzed using the modified software complies with this subpart and with subpart C of this part.

(c) The infant formula manufacturer shall make and retain records, in accordance with § 106.100(f)(5), concerning automatic (mechanical or electronic) equipment.

§ 106.40 Controls to prevent adulteration caused by ingredients, containers, and closures.

(a) The only substances that may be used in infant formulas are food ingredients whose use in infant formula is safe and suitable under the applicable food safety provisions of the Federal Food, Drug, and Cosmetic Act; that is, the substance is generally recognized as safe (GRAS) for such use, is used in accordance with the agency's food additive regulations, or is authorized by a prior sanction.

(b) Infant formula containers and closures shall not be reactive or absorptive so as to affect the safety of the infant formula, and all packaging material that comes in contact with infant formula shall be composed of substances that are GRAS for use in or on food, GRAS for their intended use in food packaging, authorized by a prior sanction issued by the agency, or authorized for use as an indirect food additive. Any packaging material that comes in contact with infant formula shall be used in accordance with any prescribed limitations.

(c) Ingredients, containers, and closures used in the manufacture of infant formula shall be identified with a batch or lot number to be used in recording their disposition.

(d) Infant formula manufacturers shall develop written specifications for their acceptance or rejection of ingredients, containers, and closures used in infant formula manufacture. These specifications shall stipulate the standards for acceptance or rejection of such ingredients, containers, and closures as well as the procedures for determining whether the ingredients, containers, and closures meet that standard. An individual qualified by training or experience shall conduct an investigation of a finding that any ingredients, containers, or closures used in a batch of infant formula failed to meet any of the manufacturer's specifications.

(e) Ingredients, containers and closures shall be stored in areas clearly designated for:

(1) Materials pending release for use,

(2) Materials released for use, or

(3) Materials rejected for use in infant formula production. Any lot of ingredients, containers, or closures that does not meet the manufacturer's specifications shall be rejected and controlled under a quarantine system designed to prevent its use in the manufacture of infant formula.

(f) If an ingredient, a container, or a closure that has been tested and examined is exposed to air, heat, or other conditions that may adversely affect it, the ingredient, container, or closure shall be retested or reexamined to ensure that it still meets the manufacturer's specifications.

(g) Manufacturers shall make and retain records, in accordance with § 106.100(f)(6), on the ingredients, containers, and closures used in the manufacture of infant formula.

§ 106.50 Controls to prevent adulteration during manufacturing.

(a)(1) Manufacturers shall prepare and follow a written master manufacturing order that establishes controls and procedures for the production of an infant formula.

(2) The manufacturer shall make and retain records, in accordance with § 106.100(e), that include complete information relating to the production and control of the batch. An individual qualified by training or experience shall conduct an investigation of any deviations from the master manufacturing order and any corrective actions taken.

(3) Changes made to the master manufacturing order shall be drafted, reviewed, and approved by a responsible official and include an evaluation of the effect of the change on the nutrient content and the suitability of the formula for infants.

(b) The manufacturer shall establish controls to ensure that each raw or in-process ingredient required by the master manufacturing order is examined by one person and checked by a second person or system. This checking will ensure that the correct ingredient is added during the manufacturing process, that the ingredient has been released for use in infant formula, and that the correct weight or measure of the ingredient is added to the batch.

(c) The manufacturer shall identify the contents, including the processing stage and the lot or batch number of a batch of infant formula, of all compounding and storage containers, processing lines, and major equipment used during the production of a batch of an infant formula.

(d) The manufacturer shall establish controls to ensure that the nutrient levels required by § 107.100 of this chapter are maintained in the formula, and that the formula is not contaminated with microorganisms or other contaminants. Such controls shall include but not be limited to:

(1) The mixing time; the speed, temperature, and flow rate of product; and other critical parameters necessary to ensure the addition of required ingredients to, and the homogeneity of, the formula;

(2) The spray-drying process for powdered infant formula, including the filtering of the intake air before heating, to prevent microbial and other contamination;

(3) The removal of air from the finished product to ensure that nutrient deterioration does not occur;

(4) Ensuring that each container of finished product is properly sealed. Such controls shall involve use of established procedures, specifications, and intervals of examination that are designed by qualified individuals and are sufficient to:

(i) Detect visible closure or seal defects, and

(ii) Determine closure strength through destructive testing. Manufacturers of liquid infant formulas, which are thermally processed low-acid foods packaged in hermetically sealed containers, shall perform such closure integrity testing in accordance with § 113.60(a) of this chapter.

(e) The manufacturer shall establish controls that ensure that the equipment used at points where control is deemed necessary to prevent adulteration is monitored, so that personnel will be alerted to malfunctions.

(f) The manufacturer shall establish controls that ensure that rejected in-process materials:

(1) Are clearly identified as having been rejected for use in an infant formula;

(2) Are controlled under a quarantine system designed to prevent their use in manufacturing or processing operations for which they are unsuitable;

(3) Meet the appropriate specifications, if reprocessed, before being released for use in infant formula.

§ 106.55 Controls to prevent adulteration from microorganisms.

(a) Manufacturers of liquid infant formula shall comply with the procedures specified in part 113 of this chapter for liquid infant formula.

(b) Manufacturers of powdered infant formula shall test representative samples of every batch of the formula at the final product stage, before distribution, to ensure that the infant formula meets the microbiological quality standards listed in paragraph (c) of this section.

(c) Any powdered infant formula that contains any microorganism that exceeds the M value listed for that microorganism in Table 1 of this section will be deemed to be adulterated under sections 402 and 412 of the Federal Food, Drug, and Cosmetic Act (the act). FDA will determine compliance with the M values listed below using the *Bacteriological Analytical Manual* (BAM), 8th ed. (1995), published by the AOAC International Association of Official Analytical Chemists, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Association of Official Analytical Chemists, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or may be examined at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

Microorganism	M value [1]
Aerobic Plate Count (APC).	10,000 CFU/gram (g). [2]
Coliforms [3]	3.05 MPN/g. [4,5]
Fecal coliforms [6]	3.05 MPN/g.
Salmonella	0. [7]
Listeria monocytogenes.	0. [7]
Staphylococcus aureus.	3.05 MPN/g.
Bacillus cereus [8]	100 MPN/g or CFU/g.

[1] The M value is the maximum allowable number of microorganisms present in 1 g of dry infant formula.

[2] CFU/g, colony forming units per g.

[3] M values for coliforms greater than 3.05 are not violative if testing for fecal coliforms results in an M value equal to or less than 3.05.

[4] MPN/g, most probable number per g.

[5] The MPN value of 3.05 in this table is derived from the tables of calculated MPN values that appear in the 8th ed. of the BAM when using an inoculation series of 0.1, 0.01, and 0.001g (or ml) of the infant formula sample.

[6] No testing for fecal coliforms is required when the M value for coliforms is less than or equal to 3.05.

[7] None detected.

[8] *B. cereus* testing must be performed only if the APC exceeds 100 CFU/g.

(d) Manufacturers shall make and retain records, in accordance with § 106.100(e)(5)(ii) and (f)(7), on the testing of infant formulas for microorganisms.

§ 106.60 Controls to prevent adulteration during packaging and labeling of infant formula.

(a) Manufacturers shall examine packaged and labeled infant formula during finishing operations to ensure that containers and packages in the lot have the correct label, the correct use-by date, and the correct code established under § 106.80.

(b) Labels shall be designed, printed, and applied so that the labels remain legible and attached during the conditions of processing, storage, handling, distribution, and use.

(c) All infant formula held in a single package shall be the same product bearing the same code, established under § 106.80. Packaging used to hold multiple containers of infant formula shall be labeled with the product name, the name of the manufacturer or shipper, and the code.

§ 106.70 Controls on the release of finished infant formula.

(a) The manufacturer shall hold, or maintain under its control, each batch of infant formula until it determines that the batch meets all of its specifications, including those adopted to meet the requirements of § 106.55 on microbiological contamination and § 106.91(a) on quality control procedures, and releases the batch for distribution.

(b) Each batch of infant formula that fails to meet the manufacturer's specifications shall be rejected. Although the batch may be reprocessed, any batch of infant formula that is reprocessed shall be shown to meet the

requirements of § 106.70(a) before it is released.

(c) An individual qualified by training or experience shall conduct an investigation of a finding that a batch of infant formula fails to meet any manufacturer's specifications.

§ 106.80 Traceability.

(a) Manufacturers shall ensure traceability by coding infant formulas in conformity with the coding requirements prescribed in § 113.60(c) of this chapter for thermally processed low-acid foods packaged in hermetically-sealed containers, except as provided in paragraph (b) of this section.

(b) Batches of powdered infant formula that are manufactured in stages over more than 1 day, in lieu of being coded in accordance with § 113.60(c) of this chapter, may be coded with a sequential number that identifies the product and the establishment where the product was packed and that permits tracing of all stages of manufacture of that batch, including the year, the days of the year, and the period during those days that the product was packed, and the receipt and handling of raw materials used.

§ 106.90 Audits of current good manufacturing practice.

Manufacturers of an infant formula, or an agent of such manufacturers, shall conduct regularly scheduled audits to determine whether the manufacturer has complied with the current good manufacturing practice regulations in this subpart. These audits shall be performed by an individual who, as a result of education, training, and experience, is knowledgeable in all aspects of infant formula production and of the agency's regulations concerning current good manufacturing practice but who has no direct responsibility for the matters being audited.

Subpart C—Quality Control Procedures

§ 106.91 General quality control.

(a) *Nutrient testing to ensure that each batch of infant formula provides nutrients in accordance with § 107.100.* Manufacturers shall test each batch as follows:

(1) Each nutrient premix used in the manufacture of an infant formula shall be tested for each nutrient that the manufacturer is relying on the premix to provide to ensure that the premix is in compliance with the manufacturer's specifications;

(2) During the manufacturing process, after the addition of the premix, or at the final-product-stage but before distribution, each batch of infant formula shall be tested for at least one indicator nutrient for each of the nutrient premixes used in the infant formula to confirm that the nutrients supplied by each of the premixes are present, in the proper concentration, in the batch of infant formula.

(3) At the final-product-stage, before distribution of an infant formula, each batch shall be tested for vitamins A, C, E, and thiamin.

(4) During the manufacturing process or at the final-product-stage, before distribution, each batch shall be tested for all nutrients required to be included in such formula under § 107.100 of this chapter and for any nutrient added by the manufacturer for which testing is not conducted for compliance with paragraphs (a)(1) or (a)(3) of this section.

(b) *Stability testing.* Every 3 months, manufacturers shall collect representative samples from the final-product-stage of one batch of each physical form (powder, ready-to-feed, or concentrate) of each infant formula, at each manufacturing facility. The manufacturer shall test these samples for each nutrient required under § 107.100 of this chapter and for any nutrient added by the manufacturer. The frequency of such testing shall be at the beginning, midpoint, and end of the shelf life of the infant formula and, depending on the nutrient and its stability within the matrix of the formulation, with additional frequency as is necessary to ensure that such formula complies with section 412 of the Federal Food, Drug, and Cosmetic Act (the act) throughout the shelf life of the infant formula; except that:

(1) If the infant formula is a new infant formula, manufacturers shall collect a representative sample from the final-product-stage of each physical form (powder, ready-to-feed, or concentrate) of the first batch of the new infant formula and test these samples according to the requirements of this section; and

(2) If an infant formula has been changed in formulation or in processing in a way that does not make it a new infant formula but that may affect whether it is adulterated under section 412(a) of the act, the manufacturer shall collect a representative sample from the final-product-stage of each physical form (powder, ready-to-feed, or concentrate) of the first batch of the infant formula and shall test these samples according to the frequency required by this section for each nutrient that has been or may have been affected by the change.

(c) *Quality control records.* Manufacturers shall make and retain quality control records in accordance with § 106.100(e)(5)(i) and (f)(7).

§ 106.92 Audits of quality control procedures.

A manufacturer of an infant formula, or an agent of such a manufacturer, shall conduct regularly scheduled audits to determine whether the manufacturer has complied with the quality control procedures that are necessary to ensure that an infant formula provides nutrients in accordance with section 412(b) and (i) of the Federal Food, Drug, and Cosmetic Act and is manufactured in a manner designed to prevent adulteration of the infant formula under section 412(a)(1) and (a)(3) of the Federal Food, Drug, and Cosmetic Act. These audits shall be performed by an individual who, as a result of education, training, and experience, is knowledgeable in all aspects of infant formula production and of the agency's regulations concerning quality control procedures but who has no direct responsibility for the matters being audited.

Subpart D—Conduct of Audits

§ 106.94 Audit plans and procedures.

(a) Manufacturers shall develop and follow a written audit plan that is available at the manufacturing facility for FDA inspection.

(b) The audit plan shall include audit procedures that set out the methods the manufacturer uses to determine whether the facility is operating in accordance with current good manufacturing practice, with the quality control procedures that are necessary to assure that an infant formula provides nutrients in accordance with section 412(b) and (i) of the Federal Food, Drug, and Cosmetic Act, and in a manner designed to prevent adulteration of the infant formula.

(c) The audit procedures shall include, but not be limited to:

(1) An evaluation of the production and in-process control system established under § 106.6(b) by:

(i) Observing the production of infant formula and comparing the observed process to the written production and in-process control plan required under § 106.6(b);

(ii) Reviewing records of the monitoring of points, steps, or stages where control is deemed necessary to prevent adulteration; and

(iii) Reviewing records of how deviations from any standard or specification at points, steps, or stages where control is deemed necessary to prevent adulteration were handled; and

(2) A review of a representative sample of all records maintained in accordance with § 106.100(e) and (f).

Subpart E—Quality Factors for Infant Formulas

§ 106.96 Quality factors in infant formulas.

(a) All infant formulas shall, when fed to infants as a sole source of nutrition, be of sufficient quality to meet the nutritional requirements for healthy growth. The regulations set forth in this subpart define the minimum quality factors for infant formulas.

(b) All infant formulas shall be capable of supporting normal physical growth of infants.

(c) All infant formulas shall be formulated and manufactured such that the protein is of sufficient biological quality to meet the protein requirements of infants.

§ 106.97 Assurances for quality factors.

(a) *General quality factor of normal physical growth.* (1) The manufacturer shall conduct an adequate and well-controlled clinical study, in accordance with good clinical practice, to determine whether an infant formula supports normal physical growth in infants when the formula is fed as the sole source of nutrition.

(i) The manufacturer shall:

(A) Conduct a clinical study that is no less than 4 months in duration, enrolling infants no more than 1 month old at time of entry into the study.

(B) Collect and maintain data in the study on anthropometric measures of physical growth, including body weight, recumbent length, head circumference, and average daily weight increment, and plot the data on National Center for Health Statistics (NCHS) reference percentile body weight and body length curves. The NCHS growth charts are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Office of Constituent Operations (HFS–565), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, may be examined at the Office of Special Nutritionals (HFS–456), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(C) Collect anthropometric measurements at the beginning of the clinical study, at 2 weeks, at 4 weeks, at least monthly thereafter, and at the conclusion of the study.

(ii) The clinical study protocol should:

(A) Describe the scientific basis and objectives of the study, the planned control and treatment feeding regimens, the entrance criteria used to enroll infants in the study, the method of randomization used for the assignment of infants to feeding groups, the collection of specific measurements and other data, the methods used to limit sources of bias, and the planned methods of statistical analysis;

(B) Describe the necessary qualifications and experience of investigators;

(C) Be reviewed and approved by an Institutional Review Board (IRB) in accordance with part 56 of this chapter. The manufacturer shall establish procedures to obtain written informed consent from parents or legal representatives of the infants enrolled in the study in accordance with part 50 of this chapter;

(D) Explain how the study population represents the population for which the new infant formula is intended and how the study addresses the intended conditions of use of the formula.

(E) Describe the sample size calculations and the power calculations and the basis for selecting the sample size and study design;

(F) Describe the plan to identify and evaluate any adverse effects;

(G) Describe the quality control procedures used to ensure the validity and reliability of the measurements collected.

(H) Describe and compare the composition of the test and control formulas.

(I) Describe the basis upon which the test formula is appropriate for use in evaluating the formula that the manufacturer intends to market, if the test formula used in a study is not identical to the formula that is intended to be marketed in the United States.

(2) The manufacturer may request an exemption from the requirements of paragraph (a)(1) of this section if:

(i) The manufacturer has similar experience using an ingredient, an ingredient mixture, or a processing method in the production of an infant formula marketed in the United States and can demonstrate that infant formula made with that ingredient, ingredient mixture, or processing method meets the quality factor requirements in § 106.96;

(ii) The manufacturer markets a formulation in more than one form (e.g., liquid and powdered forms) and can demonstrate that the quality factor requirements are met by the form of the formula that is processed using the method that has the greatest potential for adversely affecting nutrient content and bioavailability;

(iii) The manufacturer can demonstrate that the requirements of paragraph (a)(1) of this section are not appropriate for evaluation of a specific infant formula, and that an alternative method or study design for showing that the formula supports healthy growth in infants fed it as their sole source of nutrition is available.

(b) *Specific quality factor for protein quality of infant formula.* (1) The manufacturer shall collect and maintain data that establish that the biological quality of protein in an infant formula is sufficient to meet the protein requirements of infants. The manufacturer shall establish the biological quality of the protein in its infant formula by demonstrating that the protein source supports adequate growth using the Protein Efficiency Ratio (PER) rat bioassay described in the "Official Methods of Analysis of the Association of Official Analytical Chemists," 16th ed., sections 43.3.04 and 43.3.05, "AOAC Official Method 960.48 Protein Efficiency Ratio Rat Bioassay" which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Association of Official Analytical Chemists, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20857, or the Office of Special Nutritionals (HFS–456), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or may be examined at the Office of the Federal Register, 800 North Capitol St. NW., Washington, DC. If the manufacturer is unable to conduct a PER rat bioassay because of the composition of the protein in the formula, then it shall demonstrate that the amino acid composition of the protein meets the known amino acid requirements of infants for whom the formula is intended.

(2) The manufacturer may request an exemption from the requirements of paragraph (b)(1) of this section if:

(i) The protein source, including any processing method used to produce the protein source, is already used in another infant formula marketed in the United States, manufactured by the same manufacturer, and the manufacturer can demonstrate that such infant formula meets the quality factor requirements prescribed in § 106.96;

(ii) The protein source, including any processing methods used to produce the protein source, is not a major change from the infant formula it replaces, and the manufacturer can demonstrate that the infant formula it replaces meets the

quality factor requirements prescribed in § 106.96.

6. In newly redesignated subpart F, § 106.100 is amended by revising paragraphs (e), (f), (g), (j), and (k)(3), and by removing and reserving paragraph (h) to read as follows:

§ 106.100 Records.

* * * * *

(e) *Batch production and control records.* For each batch of infant formula, manufacturers shall prepare and maintain records that include complete information relating to the production and control of the batch. These records shall include but are not limited to:

(1) The master manufacturing order. The master manufacturing order shall include but is not limited to:

(i) The significant steps in the production of the batch and the date on which each significant step occurred;

(ii) The identity of equipment and processing lines used in producing the batch, if the plant in which the formula is made includes more than one set of equipment or more than one processing line;

(iii) The identity of each batch or lot of ingredients, containers, and closures used in producing the batch of formula;

(iv) The amount of each ingredient to be added to the batch of infant formula and a check (verification) that the correct amount was added; and

(v) Copies of all labeling used and the results of examinations conducted during the finishing operations to provide assurance that containers and packages in the lot have the correct label.

(2) Any deviations from the master manufacturing order and any corrective actions taken because of the deviations.

(3) Documentation, in accordance with § 106.6(c), of the monitoring at any point, step, or stage in their production process where control is deemed necessary to prevent adulteration. These records shall include, but not be limited to:

(i) A list of the standards or specifications established at each point, step, or stage in their production process where control is deemed necessary to prevent adulteration including documentation of the scientific basis for each standard or specification;

(ii) The actual values obtained during the monitoring operation, any deviations from established standards or specifications, and any corrective actions taken;

(iii) Identification of the person monitoring each point, step, or stage in their production process where control is deemed necessary to prevent adulteration.

(4) The conclusions and followup, along with the identity, of the individual qualified by training or experience who investigated:

(i) Any deviation from the master manufacturing order and any corrective actions taken;

(ii) A finding that a batch or any of its ingredients failed to meet the infant formula manufacturer's specifications; and

(iii) A failure to meet any specification or standard at any point, step, or stage in the production process where control is deemed necessary to prevent adulteration.

(5) The results of all testing performed on the batch of infant formula, including testing on the in-process batch, at the final-product stage, and on finished product throughout the shelf life of the product. The results recorded shall include but are not limited to:

(i) The results of all quality control testing conducted, in accordance with § 106.91(a) and (b), to verify that each nutrient required by § 107.100 of this chapter is present in each batch of infant formula at the level required by § 107.100, and that any nutrient added by the manufacturer is present at the appropriate level with:

(A) A summary table identifying the stages of the manufacturing process at which the nutrient analysis for each required nutrient under § 106.91(a) is conducted, and

(B) A summary table on the stability testing program, including the nutrients tested and the frequency of testing of nutrients throughout the shelf life of the product under § 106.91(b); and

(ii) For powdered infant formula, the results of any testing conducted in accordance with § 106.55(b) to verify compliance with the microbiological quality standards in § 106.55(c).

(f) Manufacturers shall make and retain all records pertaining to current good manufacturing practice as described in subpart B of this part, including but not limited to:

(1) Records, in accordance with § 106.20(b)(3), of the frequency and results of testing of the water used in the production of infant formula;

(2) Records, in accordance with § 106.30(d), of accuracy checks of instruments and controls. A certification of accuracy of any known reference standard used and a history of recertification shall be maintained. At a minimum, such records shall specify the instrument or control being checked, the date of the accuracy check, the standard used, the calibration method used, the results found, any actions taken if the instrument is found to be out of calibration, and the initials or name of the individual performing the test. If calibration of an instrument (testing for accuracy against a known reference standard) shows that a specification or standard at a point, step, or stage in the production process where control is deemed necessary to prevent adulteration has not been met, a written evaluation of all affected product, and any actions that need to be taken with respect to that product, shall be made.

(3) Records, in accordance with § 106.30(e)(3)(ii), of the temperatures monitored for cold storage compartments and thermal processing equipment.

(4) Records, in accordance with § 106.30(f), on equipment cleaning, sanitizing, and maintenance that show the date and time of such cleaning, sanitizing, and maintenance and the lot number of each batch of infant formula processed between equipment startup and shutdown for cleaning, sanitizing, and maintenance. The person performing and checking the cleaning, sanitizing, and maintenance shall date and sign or initial the record indicating that the work was performed.

(5) Records, in accordance with § 106.35(c), on all automatic (mechanical or electronic) equipment used in the production or quality control of infant formula. These records shall include but not be limited to:

(i) A list of all systems used with a description of computer files and the inherent limitations of each system;

(ii) A copy of all software used;

(iii) Records that document installation, calibration, testing or validation, and maintenance of the systems used;

(iv) A list of all persons authorized to create or modify software;

(v) Records that document modifications to software, including the identity of the person who modified the software;

(vi) Records that document retesting or revalidation of modified systems; and

(vii) A backup file of data entered into a computer or related system. The backup file shall consist of a hard copy or alternative system, such as duplicate diskettes, tapes, or microfilm, designed to ensure that backup data are exact and complete, and that they are secure from alteration, inadvertent erasures, or loss.

(6) Records, in accordance with § 106.40(g), on ingredients, containers, and closures used in the manufacture of infant formula. These records shall include, but are not limited to:

(i) The identity and quantity of each lot of ingredients, containers, and closures;

(ii) The name of the supplier;

(iii) The supplier's lot numbers;

(iv) The name and location of the manufacturer of the ingredient, container, and closure, if different from the supplier;

(v) The date of receipt;

(vi) The receiving code as specified; and

(vii) The results of any test or examination (including retesting and reexamination) performed on the ingredients, containers, and closures and the conclusions derived therefrom and the disposition of all ingredients, containers, or closures.

(7) A full description of the methodology used to test powdered infant formula to verify compliance with the microbiological quality standards of § 106.55(c) and the methodology used to do quality control testing, in accordance with § 106.91(a) and (b).

(g) The manufacturer shall maintain all records pertaining to distribution of the infant formula, including records that show that products produced for export only are exported. Such records shall include, but not be limited to, all information and data necessary to effect and monitor recalls of the manufacturer's infant formula products in accordance with subpart E of part 107 of this chapter.

(h) [Reserved]

* * * * *

(j) The manufacturer shall make and retain records pertaining to regularly scheduled audits, including the audit plans and procedures, the findings of the audit, and a listing of any changes made in response to these findings. The manufacturer shall make readily available for authorized inspection the audit plans and procedures and a statement of assurance that the regularly scheduled audits are being conducted. The findings of the audit and any changes made in response to these findings shall be maintained for the time period required under § 106.100(n), but need not be made available to FDA.

(k) * * *

(3) When there is a reasonable possibility of a causal relationship between the consumption of an infant formula and an infant's death, the manufacturer shall, within 15 days of receiving such information, conduct an investigation and notify the agency as required in § 106.150.

* * * * *

Subpart G—Registration, Submission, and Notification Requirements

§ 106.110 New infant formula registration.

(a) Before a new infant formula may be introduced or delivered for introduction into interstate commerce, the manufacturer of such formula shall register with the Food and Drug Administration, Center for Food Safety and Applied Nutrition, Office of Special Nutritionals, Division of Programs and Policy Enforcement (HFS–455), Infant Formula Coordinator, 200 C St. SW., Washington, DC 20204. An original and two copies of this registration shall be submitted.

(b) The new infant formula registration shall include:

(1) The name of the new infant formula,

(2) The name of the manufacturer,

(3) The place of business of the manufacturer, and

(4) All establishments at which the manufacturer intends to manufacture such new infant formula.

§ 106.120 New infant formula submission.

(a) At least 90 days before a new infant formula is introduced or delivered for introduction into interstate commerce, a manufacturer shall submit notice of its intent to do so to the Food and Drug Administration at the address given in § 106.110(a). An original and two copies of the notice of its intent to do so shall be submitted.

(b) The new infant formula submission shall include:

(1) The name and physical form (e.g., powder, ready-to feed, or concentrate) of the infant formula;

(2) An explanation of why the formula is a new infant formula;

(3) The quantitative formulation of each form of the infant formula that is the subject of the notice in units per volume (for liquid formulas) or units per dry weight (for powdered formulas). When applicable, the submission shall include a description of any reformulation of the infant formula, including a listing of each new or changed ingredient and a discussion of the effect of such changes on the nutrient levels in the formulation;

(4) A description, when applicable, of any change in processing of the infant formula. Such description shall identify the specific change in processing, including side-by-side, detailed schematic diagrams comparing the new processing to the previous processing (including processing times and temperatures);

(5) Assurance that the infant formula will not be marketed unless the formula meets the quality factor requirements of section 412(b)(1) of the Federal Food, Drug, and Cosmetic Act (the act) and the nutrient content requirements of section 412(i) of the act.

(i) Assurance that the formula meets the quality factor requirements, which are set forth in subpart E of this part, shall be provided by a submission that complies with § 106.121.

(ii) Assurance that the formula complies with the nutrient content requirements, which are set forth in § 107.100 of this chapter, shall be provided by a statement assuring that the formula will not be marketed unless it meets the nutrient requirements of § 107.100 of this chapter, as demonstrated by testing required under subpart C of this part;

(6) Assurance that the processing of the infant formula complies with section 412(b)(2) of the act. Such assurance shall include but not be limited to:

(i) A statement that the formula will be produced in accordance with subparts B and C of this part;

(ii) The basis on which each ingredient meets the requirements of § 106.40(a), e.g., that it is an approved food additive, that it is authorized by a prior sanction issued by the agency, or that it is GRAS for its intended use. Any claim that an ingredient is GRAS shall be supported by a citation to the agency's regulations or by an explanation, including a list of published studies and a copy of those publications, for why, based on the published studies, there is general recognition of the safety of the use of the ingredient in infant formula.

(c) For products for export only, a manufacturer may submit, in lieu of the information required under paragraph (b) of this section, a statement that the infant formula meets the specifications of the foreign purchaser, does not conflict with the laws of the country to which it is intended for export, is labeled on the outside of the shipping package to indicate that it is intended for export only, and will not be sold or offered for sale in domestic commerce.

(d) The submission will not constitute notice under section 412 of the act unless it complies fully with paragraph (b) of this section, and the information that it contains is set forth in a manner that is readily understandable. The agency will notify the submitter if the notice is not adequate because it does not meet the requirements of section 412(c) and (d) of the act.

(e) If a new infant formula submission is adequate, FDA will acknowledge its receipt and notify the manufacturer of the date of receipt. The date that the agency receives the new infant formula

submission is the filing date for the submission. The manufacturer shall not market the new infant formula before the date that is 90 days after the filing date.

(f) If the manufacturer provides additional information in support of a new infant formula submission, the agency will determine whether the additional information is a substantive amendment to the new infant formula submission. If the agency determines that the new submission is a substantive amendment, FDA will assign the new infant formula submission a new filing date. FDA will acknowledge receipt of the additional information and, when applicable, notify the manufacturer of the new filing date, which is the date of receipt by FDA of the information that constitutes the substantive amendment to the new infant formula submission.

§ 106.121 Quality factor submission.

To provide assurance that an infant formula meets the quality factor requirements set forth in subpart E of this part, the manufacturer shall submit the following data and information:

(a) An explanation, in narrative form, setting forth how all quality factor requirements of subpart E of this part have been met.

(b) Records that contain the information required by proposed § 106.97 (a)(1)(i) and (a)(1)(ii) collected during the study for each infant enrolled in the study. The records shall be identified by subject number, age, feeding group, gender, and study day of collection.

(c)(1) Statistical evaluation for all measurements, including: Group means, group standard deviations, and measures of statistical significance for all measurements for each feeding group at the beginning of the study and at every point where measurements were made throughout the study.

(2) Calculation of the statistical power of the study at its completion.

(d) A report on attrition and on all occurrences of adverse events during the study, which shall include:

(1) Identification of the infant by subject number and feeding group and a complete description of the adverse event, including comparisons of the frequency and nature of occurrence in each feeding group and information on the health of the infant during the course of the study, including the occurrence and duration of any illness;

(2) A clinical assessment, by a health care provider, of the infant's health during each suspected adverse event;

(3) A complete listing of all infants who did not complete the study, including the infant's subject number and the reason that each infant left the study.

(e) The results of the Protein Efficiency Ratio, in accordance with § 106.97(b).

(f) A statement certifying that the manufacturer has collected and considered all information and data concerning the ability of the infant formula to meet the quality factor requirements, and that the manufacturer is not aware of any information or data that would show that the formula does not meet the quality factors requirements.

§ 106.130 Verification submission.

(a) Manufacturers shall, after the first production and before the introduction into interstate commerce of the new infant formula, verify in a written submission to FDA at the address given in § 106.110(a), that the infant formula complies with the requirements of the Federal Food, Drug, and Cosmetic Act (the act) and is not adulterated. An original and two copies of this verification shall be submitted.

(b) The verification submission shall include the following information:

(1) The name of the new infant formula; the filing date for the new infant formula submission, in accordance with § 106.120, for the subject formula; and the identification number assigned by the agency to the new infant formula submission;

(2) A statement that the infant formula to be introduced into interstate commerce is the same as the infant formula that was the subject of the new infant formula notification and for which the manufacturer provided assurances in accordance with the requirements of § 106.120;

(3) A summary of test results of the level of each nutrient required by § 107.100 of this chapter and any nutrient added by the manufacturer in the formula, presented in units per 100 kilocalories at the final-product-stage.

(4) A certification that the manufacturer has established current good manufacturing practices including quality control procedures and in-process controls, including testing required by current good manufacturing practice, designed to prevent adulteration of this formula in accordance with subparts B and C of this part.

(c) The submission will not constitute written verification under section 412(d)(2) of the act when any data prescribed in paragraph (b) of this section are lacking or are not set forth so as to be readily understood. In such circumstances the agency will notify the submitter that the notice is not adequate.

§ 106.140 Submission concerning a change in infant formula that may adulterate the product.

(a) When a manufacturer makes a change in the formulation or processing of the formula that may affect whether the formula is adulterated under section 412(a) of the Federal Food, Drug, and Cosmetic Act (the act), it shall, before the first processing of such formula, make a submission to the Food and Drug Administration at the address given in § 106.110(a). An original and two copies shall be submitted.

(b) The submission shall include:

(1) The name and physical form of the infant formula (i.e., powder, ready-to-feed, or concentrate);

(2) An explanation of why the change in formulation or processing may affect whether the formula is adulterated; and

(3) A submission that complies with § 106.120(b)(3), (b)(4), (b)(5), and (b)(6). When appropriate, a statement to the effect that the information required by § 106.120(b)(3), (b)(4), (b)(5), or (b)(6) has been provided to the agency previously and has not been affected by the changes that is the subject of this submission, together with the identification number assigned by the agency to the relevant infant formula submission, may be provided in lieu of such submission.

(c) The submission will not constitute notice under section 412 of the act unless it complies fully with paragraph (b) of this section, and the information that it contains is set forth in a manner that is readily understandable. The agency will notify the submitter if the notice is not adequate because it does not meet the requirements of section 412(d)(3) of the act.

§ 106.150 Notification of an adulterated or misbranded infant formula.

(a) A manufacturer shall promptly notify FDA in accordance with paragraph (b) of this section, when the manufacturer has knowledge (that is, the actual knowledge that the manufacturer had, or the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care) that reasonably supports the conclusion that an infant formula that has been processed by the manufacturer and that has left an establishment subject to the control of the manufacturer:

(1) May not provide the nutrients required by section 412(i) of the act or by regulations issued under section 412(i)(2); or

(2) May be otherwise adulterated or misbranded.

(b) The notification made according to paragraph (a) of this section shall be made by telephone, to the Director of the appropriate Food and Drug Administration district office. After normal business hours (8 a.m. to 4:30 p.m.), FDA's emergency number, 202–857–8400, shall be used. The manufacturer shall send written confirmation of the notification to the Food and Drug Administration, Center for Food Safety and Applied Nutrition, Office of Special Nutritionals, Division of Programs and Policy Enforcement (HFS–455), Infant Formula Coordinator, 200 C St. SW., Washington, DC 20204, and to the appropriate Food and Drug Administration district office specified in § 5.115 of this chapter.

PART 107—INFANT FORMULA

7. The authority citation for 21 CFR part 107 continues to read as follows:

Authority: Secs. 201, 403, 412, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 343, 350a, 371).

8. Section 107.1 is added to subpart A to read as follows:

§ 107.1 Status and applicability of the regulations in part 107.

(a) The criteria set forth in subpart B of this part describes the labeling requirements applicable to infant formula under section 403 of the Federal Food, Drug, and Cosmetic Act (the act). Failure to comply with any regulation in subpart B of this part will render an infant formula misbranded under that section of the act.

(b) The criteria set forth in subpart C of this part describes the terms and conditions for the exemption of an infant formula from the requirements of section 412(a), (b), and (c) of the act. Failure to comply with any regulations in subpart C of this part will result in the withdrawal of the exemption given under section 412(h)(1) of the act.

(c) Subpart D of this part sets forth the nutrient requirements for infant formula under section 412(i) of the act. Failure to comply with any regulation in subpart D of this part will render an infant formula adulterated under section 412(a)(1) of the act.

9. Section 107.10 is amended by revising the introductory text of paragraph (a)(2) to read as follows:

§ 107.10 Nutrient information.

(a) * * *

(2) A statement of the amount, supplied by 100 kilocalories, of each of the following nutrients and of any nutrient added by the manufacturer:

* * * * *

10. Section 107.240 is revised to read as follows:

§ 107.240 Notification requirements.

(a) *Telephone report.* When a determination is made that an infant formula is to be recalled, the recalling firm shall telephone within 24 hours the appropriate Food and Drug Administration district office listed in § 5.115 of this chapter and shall provide relevant information about the infant formula that is to be recalled.

(b) *Initial written report.* Within 14 days after the recall has begun, the recalling firm shall provide a written report to the appropriate Food and Drug Administration district office. The report shall contain relevant information, including the following cumulative information concerning the infant formula that is being recalled:

(1) Number of consignees notified of the recall and date and method of notification, including recalls required by § 107.200, information about the notice provided for retail display and the request for its display.

(2) Number of consignees responding to the recall communication and quantity of recalled infant formula on hand at the time it was received.

(3) Quantity of recalled infant formula returned or corrected by each consignee contacted and the quantity of recalled infant formula accounted for.

(4) Number and results of effectiveness checks that were made.

(5) Estimated timeframes for completion of the recall.

(c) *Status reports.* The recalling firm shall submit to the appropriate Food and Drug Administration district office a written status report on the recall at least every 14 days until the recall is terminated. The status report shall describe the steps taken by the recalling firm to carry out the recall since the last report and the results of these steps.

11. Section 107.250 is amended by revising the introductory text to read as follows:

§ 107.250 Termination of an infant formula recall.

The recalling firm may submit a recommendation for termination of the recall to the appropriate Food and Drug Administration district office listed in § 5.115 of this chapter for transmittal to the Division of Enforcement (HFS–605), Office of Field Programs, Center for Food Safety and Applied Nutrition, for action. Any such recommendation shall contain information supporting a conclusion that the recall strategy has been effective. The agency will respond within 15 days of receipt by the Division of Enforcement (HFS–605), Office of Field Programs, Center for Food Safety and Applied Nutrition, of the request for termination. The recalling firm shall continue to implement the recall strategy until it receives final written notification from the agency that the recall has been terminated. The agency will send such notification, unless it has information, from FDA's own audits or from other sources demonstrating the recall has not been effective. The agency may conclude that a recall has not been effective if:

* * * * *

Dated: April 19, 1996.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 96–17058 Filed 7–8–96; 8:45 am]

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July 9, 1996

Part IV

Department of Energy

10 CFR Part 1021
National Environmental Policy Act
Implementing Procedures; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 1021

RIN 1901–AA67

National Environmental Policy Act Implementing Procedures

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its existing regulations governing compliance with the National Environmental Policy Act (NEPA). The amendments incorporate changes that improve DOE's efficiency in implementing NEPA requirements by reducing costs and preparation time while maintaining quality, consistent with the DOE Secretarial Policy Statement on NEPA issued in June 1994. These amendments also incorporate changes necessary to conform to recent changes in DOE's missions, programs, and policies that have evolved in response to changing national priorities since the current regulations were issued in 1992.

EFFECTIVE DATE: These amendments to the rule will become effective August 8, 1996.

FOR FURTHER INFORMATION CONTACT: Carol Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, (202) 586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

The National Environmental Policy Act of 1969 (42 USC 4321 *et seq.*) requires that Federal agencies prepare environmental impact statements for major Federal actions that may "significantly affect the quality of the human environment." NEPA also created the President's Council on Environmental Quality (CEQ), which issued regulations in 1978 implementing the procedural provisions of NEPA. Among other requirements, the CEQ NEPA regulations (40 CFR parts 1500–1508) require Federal agencies to adopt their own implementing procedures to supplement the Council's regulations. DOE's current NEPA implementing regulations were promulgated in 1992 (57 FR 15122, April 24, 1992) and are codified at 10 CFR part 1021.

On February 20, 1996, DOE published a proposed rulemaking that would revise its existing NEPA implementing regulations (61 FR 6414). Publication of the Notice of Proposed Rulemaking began a 45-day public comment period that originally ended on April 5, 1996. In response to requests, the comment period was subsequently reopened on April 19, 1996 (61 FR 17257), and extended until May 10, 1996. As part of the notice and comment process and also in response to requests, DOE held a public hearing on the proposed amendments on May 6, 1996. Comments were received from approximately 39 sources, including Federal and state agencies, public interest groups, other organizations, and individuals. Seven commenters also spoke at the public hearing. Copies of all written comments and the transcript of the public hearing have been provided to CEQ and are available for public inspection at the DOE Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020.

The amendments revise subparts A, C and D of the existing regulations. Among the changes are various revisions to the lists of "typical classes of actions" (appendices A, B, C, and D to subpart D), including the addition of new categorical exclusions, modifications that expand or remove existing categorical exclusions, and clarifications. Other changes pertain to the DOE requirement for an implementation plan for each environmental impact statement and DOE's required content for findings of no significant impact. DOE is also clarifying its public notification requirements for records of decisions.

DOE is continuing to consider its proposed amendments to subpart D that relate to the Federal power marketing administrations. Accordingly, as described in a separate Notice published elsewhere in this issue, DOE will reopen the public comment period on the proposed amendments to subpart D that apply primarily to power marketing activities (B4.1, B4.2, B4.3, B4.6, B4.10, B4.11, B4.12, B4.13, C4, C7, and D7). This final rule addresses the remainder of the proposed amendments.

This Notice adopts the amendments proposed in the Notice of Proposed Rulemaking (except for the power marketing classes of actions listed above), with certain changes discussed below, and amends the existing regulations at 10 CFR Part 1021. Copies of the final amendments to the rule are available upon request from the information contact listed above.

In accordance with the CEQ NEPA regulations, 40 CFR 1507.3, DOE has consulted with CEQ regarding these final amendments to the DOE NEPA rule. CEQ has found that the amendments conform with NEPA and the CEQ regulations and has no objection to their promulgation.

II. Statement of Purpose

The amendments to the DOE NEPA regulations are intended to improve the efficiency of DOE's implementation of NEPA by clarifying and streamlining certain DOE requirements, thereby reducing implementation costs and time. This goal is consistent with the DOE Secretarial Policy Statement on NEPA (June 1994), which encourages actions to streamline the NEPA process without sacrificing quality and to make the process more useful to decision makers and the public. Full compliance with the letter and spirit of NEPA is an essential priority for DOE. In addition, DOE's missions, programs, and policies have evolved in response to changing national priorities since the current DOE NEPA regulations were issued in 1992, and DOE needs to make conforming changes in its NEPA regulations, e.g., to provide efficient NEPA procedures for waste management and property transfer actions, which are occurring with increasing frequency.

III. Comments Received and DOE's Responses

DOE has considered and evaluated the comments received during the public comment period. Many revisions suggested in these comments have been incorporated into the final amendments to the rule. The following discussion describes the comments received, provides DOE's responses to the comments, and describes any resulting changes to the proposed amendments. As a result of changes made in response to comments, several number designations of classes of actions have been changed in the final rule; section references, unless otherwise indicated, are to those in the proposed amendments.

Several commenters expressed overall support for DOE's efforts to increase efficiency and reduce NEPA compliance costs. One Federal agency (the Food and Drug Administration) and one state agency (the Virginia Department of Environmental Quality) stated that they had no objections to DOE's proposed amendments. No comments or only positive comments were received on the following proposed amendments to subpart D of the rule: Integral element B(1), B1.8, B1.18, B1.21, B1.31, B3.3, and D1. These proposed amendments, therefore, remain unchanged in the final rulemaking, and are not discussed further.

A. Procedural Comments

A few commenters addressed procedural aspects of this rulemaking. Specifically, one commenter stated that public Notice of Proposed Rulemaking was inadequate. DOE notes that the Notice of Proposed Rulemaking was published in the **Federal Register** on February 20, 1996. In addition, the Notice was mailed to more than 400 stakeholders and was made available for review and comment through the World Wide Web at DOE's NEPA Web Site. DOE believes that its effort to notify the public of its proposed rulemaking was sufficient.

In addition, two commenters requested that DOE hold public hearings on the proposed rulemaking at locations in close proximity to various DOE facilities and a reopening of the comment period until 90 days after publication of the schedule for public hearings. Other commenters also asked that the comment period be reopened.

In response, DOE reopened the comment period from April 19, 1996, through May 10, 1996. Further, as described in a separate Notice published elsewhere in this issue, DOE will again reopen the comment period, but only on the proposals to modify the typical classes of actions pertaining primarily to power marketing activities. DOE also held a public hearing in Washington, DC., on May 6, 1996, with accommodations for commenters who wished to present their views by conference telephone call from DOE regional offices throughout the United States.

DOE has fully considered all oral and written comments received through May 10, 1996. DOE believes that it has provided sufficient and appropriate public participation opportunities in its proposed rulemaking, and does not believe that additional hearings or an additional 90-day comment period on the entire proposed rulemaking is necessary.

Two commenters questioned the procedures DOE followed in determining that the proposed new and modified categorical exclusions would result in no significant impact, and indicated the need for documentation of this finding for each categorical exclusion in addition to the statement that appears in the preamble to the proposed rulemaking. In accordance with the CEQ regulations (40 CFR 1508.4), DOE initiated this rulemaking, in part, to define those classes of actions that DOE has found to have no significant effect on the human environment, either individually or cumulatively. DOE is not required by the CEQ regulations to set forth in the preamble a detailed, individualized explanation for its finding of no significant impact for each of the classes of actions in appendices A and B, but provides an overall finding in Section III.F, below.

One commenter requested that DOE prepare an environmental impact statement addressing the cumulative impacts of the proposed amendments. Two other commenters stated that an environmental assessment was necessary to determine whether the proposed amendments constituted a major Federal action.

DOE believes that its proposal to amend its NEPA implementing regulations falls within the categorical exclusion for procedural rulemaking (10 CFR part 1021, appendix A to subpart D, categorical exclusion A6). DOE's NEPA regulations prescribe the process under which the Department examines the environmental impacts of its proposed actions. The regulations do not set out substantive criteria for reaching a decision on a particular action, and thus are procedural only. For this reason, these amendments to the DOE NEPA regulations are properly excluded from NEPA documentation requirements. See also Section IV.A.

One commenter requested that DOE impose a moratorium on privatization pending completion of public hearings and an environmental impact statement on the proposed amendments. This request is outside the scope of this rulemaking, and DOE does not believe that the scope, which is restricted to DOE's proposed changes to 10 CFR part 1021, should be expanded. Any moratorium on privatization activities should be determined on the basis of the particular facts and circumstances and not in this rulemaking.

A commenter disagreed with DOE's statement in the preamble to the proposed rule that a review under the Unfunded Mandates Reform Act was not required because the DOE NEPA regulations affect only DOE. The commenter stated that many DOE facilities and actions have profound effects on other government agencies and the private sector. While DOE recognizes that its activities do affect other government agencies and the private sector, its regulations to implement the procedural provisions of NEPA impose obligations only on DOE, not on any state, local, or tribal government or on the private sector. Thus, further review by DOE under the Unfunded Mandates Reform Act is not required, and DOE is reiterating in this final rule its previous finding in the proposed rule. See Section IV.G.

B. General Comments on Proposed Amendments

Comments on Public Involvement Opportunities

Many commenters stated that the proposals regarding implementation plans, records of decision, and additions and modifications to the list of categorical exclusions would have the effect of reducing the public's knowledge of, and opportunities to participate in, DOE's decision making process. One commenter expressed concern that new and modified categorical exclusions would reduce the range of DOE actions subject to meaningful environmental review.

In proposing certain streamlining amendments to subpart C, DOE carefully weighed the benefits of improved efficiency against the acknowledged reduction in public information. DOE has reconsidered each such proposal in light of public comments and made some adjustments, as described below in Section III.D.

However, with regard to categorical exclusions, while the CEQ regulations encourage public participation in the NEPA process, they also direct agencies to use categorical exclusions (which, by definition, have no significant impact on the environment, either individually or cumulatively) to reduce paperwork (40 CFR 1500.4(p)) and delays (40 CFR 1500.5(k)). Consistent with this streamlining approach, the CEQ regulations do not provide for public participation in an agency's determination that a particular proposed action is categorically excluded.

DOE is amending its list of categorical exclusions by adding certain DOE classes of actions and modifying or clarifying other classes of actions currently on its list of categorical exclusions. In doing so, DOE has determined that these classes of actions do not have significant impacts on the environment, either individually or cumulatively. See Section III.F below. Thus, for these particular classes of actions, the environmental review that the commenter requested would not be meaningful in terms of evaluating significant impacts to the environment. DOE believes that it will serve environmental concerns and the public's interest best by focusing its efforts on the careful analysis of those actions that actually have the potential for significant impact.

DOE has considered comments on the merits of each proposed categorical exclusion amendment as discussed in Section III.F, but has decided generally to proceed with listing and modifying categorical exclusions, with the

knowledge that in some respects doing so would diminish opportunities for public involvement or information sharing.

Comments Outside the Scope of Proposed Rulemaking

DOE proposed changes to specific sections of its NEPA implementing procedures. DOE considers any comments received regarding the proposed changes to be within the scope of this rulemaking and has addressed such comments in this final rulemaking.

DOE received several comments that it considers to be outside the scope of this rulemaking. These include suggested modifications to provisions of the existing DOE NEPA regulations other than those DOE is proposing to modify or expand, suggestions for additional categorical exclusions, suggestions for broad changes to the DOE NEPA process, and comments on particular DOE proposed actions and DOE policies or procedures not related to DOE's NEPA regulations. Such comments are briefly discussed below.

Suggested Changes to Other Provisions of Existing DOE NEPA Regulations

Some commenters suggested changes to provisions of existing DOE NEPA regulations in addition to provisions that DOE proposed to modify or expand. These commenters sought changes to §§ 1021.216 (Procurement, financial assistance, and joint ventures), 1021.301 (Agency review and public participation), 1021.410 (Application of categorical exclusions (classes of actions that normally do not require EAs or EISs)), and B3.11 (Outdoor tests and experiments on materials and equipment components). While DOE is not considering such changes to its NEPA regulations at this time, DOE is taking these suggestions under advisement and may address them in a future rulemaking.

Suggestions for Additional Categorical Exclusions

A few commenters offered suggestions for additional categorical exclusions to cover facility deactivation activities; onsite transportation of packaged spent nuclear fuel or transuranic waste; onsite transportation of hazardous, mixed, and radioactive waste; relocation or reconfiguration of existing facilities, buildings, and operations within and between DOE sites; replacement of existing facilities in kind and in place; and treatment or disposal of hazardous waste at an existing offsite permitted facility. To the extent that these suggestions were not addressed in DOE's proposed additions and modifications to its list of typical classes of action, DOE considers them to be outside the scope of this rulemaking. DOE is taking these suggestions under advisement and may address them in a future rulemaking.

Suggested Changes to DOE's NEPA Process

Other commenters offered general suggestions for what they considered to be improvements to the DOE NEPA process; topics included the codification of DOE's enhanced public involvement procedures, improvement of DOE's notification procedures, the timing of NEPA actions, page limits for DOE environmental impact statements, coordination with state historic preservation officers, actions taken under consent orders, defining when the choice of reasonable alternatives becomes limited, use of "worst case" scenarios in NEPA documents, and delegation of decision making authority. One commenter requested that DOE ensure that its implementing rules and related policies, orders, and procedures are not applied unnecessarily to actions that are not "major Federal actions." Although these comments are outside the scope of DOE's proposed rulemaking, DOE may consider these suggestions in a future rulemaking.

Comments Not Related to NEPA Regulations

A few commenters offered comments that are related to particular DOE proposed actions or other DOE policies and procedures. These include comments regarding whistleblower protection, privatization of DOE facilities, hearings on the Multi-Purpose Canister Environmental Impact Statement, management of spent nuclear fuel, cleanup of contaminated sites, Federal Acquisition Regulations, the Waste Management Programmatic Environmental Impact Statement, and contractor oversight. Because these comments relate to specific DOE actions and not to DOE's procedures for NEPA compliance, DOE finds these comments to be outside the scope of this rulemaking. Accordingly, they were not considered in developing the final rule.

Other Comments

One commenter stated that DOE should provide language in the rule that requires all DOE NEPA documents to substantiate compliance with all applicable environmental laws, Executive Orders, and other similar requirements. DOE notes that it must comply with all applicable environmental laws, Executive Orders, and similar requirements. With respect to the application of the categorical exclusions in appendix B to subpart D, DOE's NEPA regulations currently require that a proposed action must be one that would not "[t]hreaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health" in order to fit within a categorical exclusion (appendix B to subpart D, integral element B(1)).

One commenter objected to documenting the application of categorical exclusions to each and every activity that DOE undertakes; on the other hand, several commenters suggested the need for documentation to ensure that the integral elements (appendix B, B (1) through B(4) to subpart D of DOE's NEPA regulations) were properly considered and cumulative impacts would not result. DOE notes that neither the CEQ nor DOE NEPA regulations, nor DOE's internal NEPA procedures, require documenting the application of categorical exclusions (DOE Order 451.1, Section 5(d)(2)). The appropriate NEPA Compliance Officer is responsible for the proper application of categorical exclusions.

Another commenter stated that DOE should regularly prepare a list of the actions to which categorical exclusions were applied and make that list available to the public. DOE recognizes the value in informing the interested and affected public around DOE sites of its activities at those sites. However, a requirement for the periodic publication of a list of activities that have been categorically excluded would tend to undermine CEQ's strategy of using categorical exclusions to streamline the NEPA process.

One commenter stated that DOE's environmental review processes for compliance with NEPA and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) should be integrated. Another commenter expressed concern that the proposed amendments did not adequately address DOE's current policy on compliance with NEPA for CERCLA actions, as set forth in the Secretarial Policy Statement on NEPA (June 1994).

Under the current policy, DOE will rely on the CERCLA process for review of actions to be taken under CERCLA and will address NEPA values and public involvement procedures in its CERCLA processes to the extent practicable. DOE may choose, however, after consultation with stakeholders and as a matter of policy, to integrate the NEPA and CERCLA processes for specific proposed actions. The CERCLA/NEPA policy is applied on a case-by-case basis, and DOE is satisfied that the new approach is clear and working adequately as a matter of policy that does not warrant codification in the regulations.

One commenter asked whether DOE should consider NEPA to be sufficiently specific and detailed to warrant the commitment to the "letter" of NEPA that DOE stated in its preamble to the proposed amendments. The commenter stated that such a commitment can create unnecessary concerns about the degree to which the responsibility for decision making can be delegated and justify unnecessarily restrictive and arbitrary decisions. While DOE agrees that the statute itself imposes few specific requirements, DOE believes that it is important to stress its commitment to complying with the express requirements, as well as with the intent of the statute to preserve, protect, and enhance the environment.

C. Comments on Amendments to Subpart A—General

Section 1021.105 Oversight of Agency NEPA Activities

One commenter expressed concern that the Office of NEPA Policy and Assistance was being eliminated and that the amendment proposed that oversight of DOE NEPA activities would be assumed by the Assistant Secretary for Environment, Safety and Health.

The oversight of DOE's NEPA activities has been and continues to be conducted by the Assistant Secretary for Environment, Safety and Health. On December 18, 1994, the office under the Assistant Secretary with specific responsibility for NEPA activities was renamed the Office of NEPA Policy and Assistance (formerly the Office of NEPA Oversight). The only modification to this section is a conforming change to incorporate the new name for the office.

D. Comments on Amendments to Subpart C—Implementing Procedures

Section 1021.312 EIS Implementation Plan

DOE received several comments supporting and several comments opposing the proposal to eliminate the requirement to prepare an implementation plan for every environmental impact statement.

Several commenters expressed concern that the public's opportunity for involvement would be reduced if an implementation plan were not prepared for every environmental impact statement. They stated that implementation plans provide an opportunity for the public to see how scoping comments will be addressed in the environmental impact statement, to formulate options and comments, to review contractor disclosure statements, and to keep the environmental impact statement on track. One commenter stated that the public has valuable insight to provide. Another commenter suggested that implementation plans are useful educational tools and an excellent introduction to the DOE NEPA process.

As discussed above in Section III.B, DOE weighed the benefits of improved efficiency from eliminating the implementation plan requirement against the acknowledged reduction in publicly available information. After considering all the comments received, DOE determined that because the public has the opportunity to provide comments on the scope of an environmental impact statement and can see how scoping comments were addressed and considered in the draft environmental impact statement, the value to the public and DOE of continuing the requirement for an implementation plan does not justify the cost, time, and resources required in preparing an implementation plan for every environmental impact statement.

With respect to contractor disclosure statements, DOE stated in the preamble to the proposed amendments that it would continue to prepare and require the execution of such statements by contractors, as required by 40 CFR 1506.5(c) of the CEQ regulations. In response to comments, however, DOE will include the contractor disclosure statements in draft and final environmental impact statements, and has modified 10 CFR 1021.310 accordingly.

One commenter stated that eliminating the implementation plan requirement will preclude requests from interested parties for environmental assessments and environmental impact statements before the agency proceeds with actions. Because an implementation plan is prepared after a decision has been made to prepare an environmental impact statement, and is not prepared at all for environmental assessments, DOE believes that eliminating the implementation plan requirement will not have any effect on the public's ability to request an environmental impact statement or an environmental assessment.

While some commenters supported eliminating the implementation plan requirement, they requested that notes from public scoping meetings be made available in public reading rooms or that DOE prepare a detailed administrative record of the disposition of public scoping comments and make it available to the public upon request. Another commenter, although supportive of the proposed amendment, suggested that DOE include a response to public scoping comments in the draft environmental impact statement.

DOE believes that the purpose in eliminating the implementation plan requirement (i.e., to achieve cost and time savings without meaningfully reducing public involvement in the DOE environmental impact statement process) would not be served by adopting the alternative suggestions (preparing a detailed administrative record or including a response to public scoping comments in a draft environmental impact statement) in place of the implementation plan requirement. The public scoping process under DOE's amended rule fully complies with the CEQ NEPA regulations, which require only that draft environmental impact statements be prepared in accordance with the scope decided upon in the scoping process (40 CFR 1502.9(a)).

One commenter stated that the environmental impact statement implementation plan should be optional. DOE agrees and intends for the elimination of the implementation plan requirement to have the effect of making such plans optional.

Finally, in its proposal to eliminate the requirement to prepare an implementation plan for an environmental impact statement, DOE inadvertently omitted making a corresponding change to § 1021.311(f), which included a reference to the EIS implementation plan. Section 1021.311(f) has now been removed from the final rule; paragraph (g) has been redesignated accordingly.

Section 1021.315 Records of Decision

Section 1021.315(c). Commenters opposed two aspects of this proposed amendment. First, some commenters expressed concern that DOE's proposal to allow publication in the **Federal Register** of a brief summary and notice of availability of a record of decision, rather than the full text, would shift to the public the cost of obtaining copies of a record of decision, and would not assure timely availability of the record of decision. Another commenter suggested that any savings achieved from not publishing the full text of a record of decision in the **Federal Register** would not be sufficient to justify the public's increased burden in seeking a record of decision. DOE has reconsidered the proposal in light of the commenters' concerns, and has decided that the cost-savings do not justify the burden associated with the proposed

change. Therefore, DOE will continue to publish the full text of records of decision in the **Federal Register**.

Second, commenters also expressed concern about the proposed clarification to § 1021.315(c) that, if a decision has been publicized by other means (e.g., press release or announcement in local media), DOE need not defer taking action until its record of decision has been published in the **Federal Register**. The commenters suggested that these other means of communication were not as reliable, accurate, easily available, or effective as the **Federal Register**.

This amendment is a clarification, not a substantive change, to DOE's regulations. Section 1021.315(b) currently states that "No action shall be taken until the decision has been made public." One way to make a decision public is to publish the record of decision in the **Federal Register**, but decisions can be made public in other ways, such as through press releases or announcements in local media. DOE's proposed amendment merely clarifies the practice that DOE has followed previously under which DOE may proceed with an action after its decision has been made public but before that decision is published in the **Federal Register**. DOE needs to retain the ability to implement an action after making the record of decision public, but before publication of that decision in the **Federal Register**, in those instances when timing is critical.

One commenter questioned whether DOE was proposing to implement an action before the decision is articulated in writing and signed. DOE is not making such a proposal. To clarify this point, DOE has modified the final language in a new § 1021.315(d) by indicating that DOE may implement a decision if the record of decision has been signed and the decision and the availability of the record of decision have been made public.

Another commenter indicated confusion over DOE's proposal to modify § 1021.315(c) rather than § 1021.315(b). In response, and to provide further clarification, DOE has moved the second sentence from current § 1021.315(b) to begin a new § 1021.315(d), and added to the new subsection (d) the language previously proposed for § 1021.315(c), as modified above. Section 1021.315(c) remains as in the current regulation, and current § 1021.315(d) is now § 1021.315(e). Pertinent sections of § 1021.315 are now changed as follows:

(a) (no change)

(b) If DOE decides to take action on a proposal covered by an EIS, a ROD shall be prepared as provided at 40 CFR 1505.2 (except as provided at 40 CFR 1506.1 and § 1021.211 of this part).

(c) (no change)

(d) No action shall be taken until the decision has been made public. DOE may implement the decision before the ROD is published in the **Federal Register** if the ROD has been signed and the decision and the availability of the ROD have been made public by other means (e.g., press release, announcement in local media).

(e) DOE may revise a ROD at any time, so long as the revised decision is adequately supported by an existing EIS. A revised ROD is subject to the provisions of paragraphs (b), (c), and (d) of this section.

Section 1021.322 Findings of No Significant Impact

Section 1021.322(b)(1). Under the proposed amendment, and in accordance with 40 CFR 1508.13, DOE would either incorporate the environmental assessment by reference in a finding of no significant impact and attach the environmental assessment, or summarize the environmental assessment in the finding. A few commenters supported the proposal to remove the requirement to summarize the environmental assessment in the finding of no significant impact in all cases. Others expressed concern that DOE was proposing to eliminate information that is currently being provided to the public.

This proposal is intended to eliminate redundancy by requiring either the attachment of an environmental assessment to the related finding of no significant impact or the inclusion of a summary of an environmental assessment in the related finding of no significant impact, but not both. This would change DOE's current practice of summarizing the environmental assessment in each finding of no significant impact and also attaching the environmental assessment to the finding of no significant impact. For a finding of no significant impact published in the **Federal Register**, it would be necessary to summarize the environmental assessment in the finding of no significant impact, because the environmental assessment would not be published in the **Federal Register**.

E. General Comments on Subpart D—Typical Classes of Actions

Many of the commenters suggested, both generally and with regard to specific proposed amendments to classes of actions in subpart D, that DOE's terminology was too vague or subjective to adequately define classes of actions. For example, commenters objected to DOE's use of such terms as "small-scale," "short-term," "minor," and "generally," among others, as being too imprecise. On the other hand, where DOE had proposed using specific quantities to aid in defining a class of actions (e.g., 50,000 square feet of area and 100 MeV (million electron-volts) of energy), commenters asked why DOE had picked the proposed value rather than any other, and how DOE could justify such apparent precision.

DOE has considered all such comments in the context of the individual proposed amendments to subpart D classes of actions presented in Section III.F, below. To provide additional information and to simplify the more specific discussions, DOE is providing the following general response.

DOE formulates subpart D classes of actions based on DOE's experience, other agencies' experience as reflected in their NEPA procedures, technical judgments regarding impacts from actions, and public comments on a proposed rule. To minimize subjectivity in interpretation, DOE uses both numerical values of quantities (which have clear meaning) and descriptive words such as "minor" and "small-scale," which suggest the smaller actions in a class, not the larger. DOE also uses examples, both to clarify that the class of actions includes the specific examples cited, and to suggest the nature of actions that may be included.

With regard to DOE's use of specific quantities in several of the proposed classes of actions, commenters had two general objections. First, they noted correctly that using "generally" in defining a class of actions (e.g., proposed B1.26 and B3.10) could allow the class to be applied to proposed actions that would otherwise not even approximately fit the definition. Second, commenters questioned the justification for the specific quantity values chosen and even whether any specific value could be justified.

DOE's intention with respect to both issues is better expressed by the concept of "approximately" rather than "generally," and the classes of actions in the final rule have been changed accordingly. By using "approximately," DOE is indicating that the numerical values used in defining classes of actions are to be interpreted flexibly rather than with unwarranted precision. For example, DOE proposed to categorically exclude construction of small accelerators and decided that it could express the class of actions as including accelerators less than 100 MeV in energy. DOE acknowledges that judgment is involved and that it could have chosen numbers somewhat greater than 100 MeV to limit the categorical exclusion. DOE believes, however, that the phrase "less than approximately 100 MeV in energy" provides appropriate flexibility and represents the best overall resolution of the matter.

One commenter expressed concern that DOE had not taken the opportunity to decrease the level of prescription and detail in the DOE NEPA regulations. The commenter expressed particular concern that DOE had proposed 17 new classes of actions, many of which the commenter believed would add little or no value to DOE's NEPA process. Similarly, another commenter stated that DOE should make existing categorical exclusions more comprehensive whenever possible, rather than simply expand the list of categorical exclusions.

In proposing amendments to the DOE NEPA rule, DOE considered making the list of categorical exclusions shorter by combining certain actions and making the list more comprehensive by broadening the categories. DOE declined to pursue such a course of action generally in this rulemaking, although it proposed to combine two classes of actions. DOE's extensive list of categorical exclusions results primarily from the fact that DOE is engaged in many different types of activities.

One commenter requested that DOE define the phrase "already developed area" that is used in several proposed new or amended categorical exclusions (e.g., B1.15, B1.22, B3.6, B3.10, B3.12, and B6.4). The commenter expressed concern that DOE may consider portions of wildlife management areas surrounding DOE facilities to be "developed" merely because of DOE ownership or because of the existence of abandoned DOE facilities. In the existing and proposed regulations, DOE used the parenthetical phrase "where site utilities and roads are available" to help define "an already developed area" in the classes of actions in the final rule. For further clarity, DOE has modified the parenthetical phrase to read "where active utilities and currently used roads are readily accessible." DOE does not intend to include wildlife areas and abandoned facilities in its definition of "an already developed area."

Finally, several commenters noted that DOE defined categorical exclusions as classes of actions that "normally" do not require environmental assessments or environmental impact statements. One of these commenters suggested that "normally" should mean 99 percent of the time, and this commenter and others stated that there should be provisions for extraordinary circumstances under which a proposed action listed in appendices A or B should not be categorically excluded.

DOE's use of the term "normally" in the context of categorical exclusions is consistent with the use of this term in the CEQ regulations, which state that an agency's NEPA implementing procedures for categorical exclusions "shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect" (40 CFR 1508.4). See also 40 CFR 1507.3(b)(2)(ii), in which CEQ directs agencies to identify classes of actions "which normally do not require either an environmental impact statement or an environmental assessment." DOE believes that its categorical exclusions comply with CEQ's regulations, i.e., to be eligible for categorical exclusion, a class of actions must not have significant effects on the human environment except in extraordinary circumstances that may affect the significance of the environmental effects of a specific proposed action. DOE's existing regulations (10 CFR 1021.410(b)(2)) describe the nature of extraordinary circumstances under which a categorical exclusion should not be applied, and explicitly require (§ 1021.400(d)) an environmental assessment or environmental impact statement for a proposed action that presents such circumstances. Therefore, DOE does not believe any changes are needed to address the use or interpretation of the word "normally" in DOE's description of categorical exclusions or the manner in which DOE provides for extraordinary circumstances.

F. Comments on Appendices of Subpart D—Typical Classes of Actions

Several commenters objected to many categorical exclusions on the grounds of cumulative effects, connected actions, or extraordinary circumstances, but without explanation as to their specific objection. A categorical exclusion is a class of actions that, individually or cumulatively, do not have significant environmental impacts. If there are extraordinary circumstances associated with a proposed action, or if the proposal is connected to other actions with potentially significant impacts or related to other proposed actions with cumulatively significant impacts, then a categorical exclusion would not apply under § 1021.410(b).

Another commenter noted that several of the proposed categorical exclusions referred to "siting, construction, operation, and decommissioning" of various DOE activities and questioned whether such activities would also need state permits. DOE notes that while new construction could require state or local permits, one of the integral elements for all appendix B categorical exclusions is that the proposed action "does not threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health." Any DOE action would be required to comply with applicable state and local requirements, independent of the level of NEPA review appropriate under DOE's NEPA regulations.

In general, the following responses to comments regarding specific categorical exclusions should be read in the full context of the DOE regulations for categorical exclusions. Under the current regulations, before a proposed action may be categorically excluded, DOE must determine in accordance with § 1021.410(b) that (1) the proposed action fits within a class of actions listed in appendix A or B to subpart D, (2) there are no extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the action, and (3) there are no connected or related actions with cumulatively significant impacts and, where appropriate, the proposed action is a permissible interim action. In addition, to fit within a class of actions that is normally categorically excluded under appendix B, a proposed action must include certain integral elements (appendix B, paragraphs B (1) through (4)). These conditions ensure that an excluded action will not threaten a violation of applicable requirements, require siting and construction of waste management facilities, disturb hazardous substances such that there would be uncontrolled or unpermitted releases, or adversely affect environmentally sensitive resources.

The headings below are those used in the table of contents of the appendices in the proposed amendments. The conversion table below shows which classes of actions have been included in the final amendments to the rule. There were a few numbering changes between the proposed and final amendments because some classes of actions were added or removed. Specifically, the proposed B1.32 was removed, and the proposed B1.33 was renumbered as B1.32; existing B6.4, which had been proposed for revision, was retained without change, and a new B6.10 was added to incorporate some of the changes proposed for B6.4; and the proposed modification to C9 was withdrawn. These changes are explained more fully in the following discussion.

CONVERSION TABLE

Existing rule	Final amendments	
A.7	A.7	Clarified.
B(1)	B(1)	Modified.
B(2)	B(2)	Do.
B1.3	B1.3	Clarified.
B1.8	B1.8	Modified.
B1.13	B1.13	Do.
B1.15	B1.15	Do.
B1.18	B1.18	Do.
B1.21	B1.21	Do.
B1.22	B1.22 & B1.23	Clarified.
	B1.24—B1.32	Added.
	B2.6	Do.
B3.1	B3.1	Clarified.
B3.3	B3.3	Do.
B3.6	B3.6	Modified.
B3.10	B3.6	Do.
	B3.10	Added.
	B3.12–B3.13	Do.
B5.3	B5.3	Modified.
B5.5	B5.5	Do.
B5.9–B5.11	B5.9–B5.11	Clarified.
B5.12–B5.16	Removed.	
	B5.12	Added.
B6.1	B6.1	Modified.
B6.5	B6.5	Clarified.
	B6.9–B6.10	Added.
C1	C1	Reserved.
C10	C10	Do.
C11	C11	Modified.
C14	C14	Do.
C16	C16	Do.
D1	D1	Do.
D10	D10	Do.

Finally, after considering all public comments on the proposed amendments, DOE has determined that the final amendments to appendices A and B constitute classes of actions that do not individually or cumulatively have a significant effect on the human environment, and are covered by a finding to that effect in § 1021.410(a). In making this finding, DOE has considered, among other things, its own experience with these classes of actions, other agencies' experience as reflected in their NEPA procedures, DOE's technical judgment, and the comments received on the proposed amendments.

• Proposed Clarification A7 Transfer of property, use unchanged.

One commenter stated that DOE cannot assume that transfer of property will not result in short- and long-term changes in impacts. DOE proposed to amend paragraph A7 only to clarify the meaning of property by explicitly including both personal property (e.g., equipment and material) and real property (e.g., permanent structures and land). DOE did not propose to amend the requirement regarding property use remaining unchanged. The categorical exclusion may only be applied when the impacts would remain essentially the same after the transfer as before. See also the discussion of B1.24 and B1.25.

Classes of Actions Listed in Appendix B

• Proposed Modification to Integral Element B(2).

DOE proposed to modify integral element B(2)—which sets the condition that a categorically excluded action may not require siting, construction, or major expansion of waste storage, disposal, recovery, or treatment facilities—to provide an exception for such actions that are themselves categorically excluded. DOE proposed this change to conform to simultaneously proposed changes (B1.26, B1.29, B6.4, and B6.9) that would categorically exclude certain water treatment and waste storage facilities.

Two commenters objected to the change, apparently as an extension of their objections to the proposed categorical exclusion amendments that prompted DOE's proposal to modify B(2). Another commenter expressed concern that the proposed B(2) would imply that "major" expansion of waste facilities might be categorically excluded. This interpretation was unintended and the language has been modified. In other respects, however, DOE has retained the B(2) amendment as necessary to conform to certain final categorical exclusions (B1.26, B1.29, B6.9, and B6.10). As finally revised, B(2) reads as follows: "To fit within the classes of actions (in appendix B), a proposal must be one that would not . . . require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions."

• Proposed Modification to Integral Element B(4)(iii).

DOE intended to modify this integral element to allow the categorical exclusion of actions listed in appendix B despite their having an adverse impact on small, low quality wetlands. DOE anticipated that activities in such areas would not have a significant environmental impact, either individually or cumulatively. While several commenters supported the proposed change, others expressed concern about the potential cumulative impacts, the institution of a threshold size, the meaning of "covered" by a general permit, and the difference between a "general" permit and a "Nationwide" permit.

In consideration of the comments and after consultation with staff of the U.S. Army Corps of Engineers (Corps), DOE has revised B(4)(iii) to allow the categorical exclusion of actions in wetland areas not considered waters of the United States and thus not regulated under the Clean Water Act. This includes certain drainage and irrigation ditches, artificial lakes and ponds, and borrow pits, as discussed below.

The Corps generally does not consider the following areas to be waters of the United States: (a) Non-tidal drainage and irrigation ditches excavated on dry land; (b) artificially irrigated areas which would revert to upland if the irrigation ceased (for DOE this would include areas "irrigated" by leaking pipes, tanks, or ditches); (c) artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing; (d) artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons; (e) waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States under 33 CFR 328.3(a). See 51 FR 41206, 41217 (November 13, 1986). The Corps reserves the right, however, on a case-by-case basis to determine that a particular water body within these categories fits within the definition of waters of the United States. The U.S. Environmental Protection Agency (EPA) also has the right to determine on a case-by-case basis if any of these areas are waters of the United States. Note that some of these areas could become waters of the United States and subject to regulation. This may occur if the area no longer meets the above criteria, e.g., the area is no longer used for the purpose for which it was constructed or is abandoned. In such cases, a categorical exclusion could not be applied.

The wording of B(4)(iii) has been modified from the proposed rule as follows: "Wetlands regulated under the Clean Water Act (33 USC 1344) and floodplains."

• Proposed Clarification B1.3 Routine maintenance/custodial services for buildings, structures, infrastructures, equipment.

One commenter asked for clarification of "in kind replacement." The commenter stated that, with regard to older facilities, certain equipment used in the facilities is no longer made or its installation at this time would be

contrary to code or good management practices. The commenter asked if replacing equipment in older facilities with modern components is considered "in kind replacement."

DOE recognizes that the equipment used in many of its facilities cannot be replaced literally "in kind" for the reasons the commenter states. DOE believes, however, that the description of "in kind replacement" presented in the proposed clarification for B1.3 (i.e., in kind replacement includes installation of new components to replace outmoded components if the replacement does not result in a significant change in the expected useful life, design capacity, or function of the facility) adequately addresses the commenter's request.

B1.3(n). One commenter suggested that instead of adding additional examples of testing and calibration of facility components to B1.3, that the word "maintenance" be added to B3.1. DOE has chosen to address routine maintenance under a separate categorical exclusion rather than adding it to other categorical exclusions where it might apply.

B1.3(o). One commenter thought that the term "routine decontamination" needed additional clarification. DOE uses "routine" to mean a recurring action that is done easily and is well understood, such as wiping with rags, using strippable latex, and minor vacuuming. B1.3(o) is intended to categorically exclude contamination-cleanup activities of a routine nature.

• Proposed Modification B1.13 Construction/acquisition/relocation of onsite pathways, spur or access roads/railroads.

DOE proposed to expand existing B1.13 (Acquisition or minor relocation of existing access roads serving existing facilities if the traffic they are to carry will not change substantially) by adding construction and spur roads, pathways and railroads, and by deleting the phrase "serving existing facilities if the traffic they will carry will not change substantially." One commenter questioned the definition of "spur" and "access" roads. Another commenter suggested more restrictive language for B1.13 so that it would be applied only in instances to improve safety, and only if the total traffic volume would not substantially change. A third commenter expressed concern that applying the categorical exclusion could eliminate valuable input from natural resource agencies and cause potential significant impacts to wildlife, including loss of habitat, habitat fragmentation, and degradation of adjacent habitat. Another commenter stated that the actions proposed to be categorically excluded should be subject to public review.

In response to the concerns raised by these commenters, DOE has made two changes to the proposed modification to B1.13. First, DOE has deleted the reference to "spur roads" because the term "access roads" adequately encompasses the intended purpose. Second, DOE has revised the categorical exclusion to apply only to the construction of "short" access roads and access railroads. DOE acknowledges that the construction of onsite access roads could result in adverse environmental impacts. DOE believes, however, that the general restrictions on the application of categorical exclusions, particularly at § 1021.410 and the integral elements at appendix B, B(1)–B(4), will provide adequate safeguards to ensure that this class of actions is not applied to activities that could result in significant effects. Also, it is DOE's intention that the inclusion of the term "short" will further clarify the length of access roads and railroads that DOE intended to be constructed under this categorical exclusion (i.e., no more than a few miles in length). The categorical exclusion B1.13 now reads:

"Construction, acquisition, and relocation of onsite pathways and short onsite access roads and railroads." DOE does not believe that actions qualifying under this categorical exclusion warrant public review. See Section III.B, above.

• Proposed Modification B1.15 Siting/construction/operation of support buildings/support structures.

One commenter suggested that the categorical exclusion be expanded to include deactivation and demolition of the same structures. Such expansion is not necessary because these activities are included under proposed categorical exclusion B1.23.

Two commenters suggested that the phrase "but not limited to" be inserted between "including" and "prefabricated buildings and trailers." DOE has incorporated the suggestion, as well as reversing the order of "prefabricated buildings" and "trailers," to be consistent with B1.22.

One commenter stated that actions covered by this categorical exclusion should be subject to public review. For the reasons stated in Section III.B, DOE believes that public review is not appropriate.

One commenter asked for a definition of an "already developed area," a phrase used in the existing regulations. The phrase in the proposed B1.15, "where site utilities and roads are available," was intended to define the term. For clarification, DOE has modified this phrase to read "where active utilities and currently used roads are readily accessible." See the discussion of "already developed area" in Section III.E.

• Proposed Clarification B1.23 Demolition/disposal of buildings.

DOE proposed to divide the existing categorical exclusion B1.22 into two categorical exclusions to clarify that the two actions included in the existing class of actions—relocation of buildings (proposed B1.22) and demolition and subsequent disposal of buildings, equipment, and support structures (proposed B1.23)—are not connected actions (i.e., actions that are closely related and therefore needed to be considered in the same NEPA review).

DOE received three comments on B1.23, none of which directly related to the proposed clarification. One commenter suggested that the categorical exclusion should be applicable to contaminated buildings that, after demolition, could be entombed in place. Another commenter questioned whether DOE was mandating disposal of construction debris in landfills. Apparently, this commenter's concern is based on DOE's intended clarification that building relocation actions are separate from building demolition and disposal. In any event, DOE is not mandating the disposal of construction debris in landfills. The third commenter objected to the categorical exclusion on the grounds of cumulative effects, connected actions, or extraordinary circumstances. DOE has responded to this objection, which was also expressed by other commenters in regard to other categorical exclusions, in Section III.F.

DOE does not intend for proposed categorical exclusion B1.23 to apply to in-place entombment of demolished structures. However, this categorical exclusion could be applied to the demolition and disposal of contaminated structures if releases are controlled or permitted and other conditions for application of the categorical exclusion are met.

• Proposed B1.24 Transfer of property/residential, commercial, industrial use; and

• Proposed B1.25 Transfer of property/habitat preservation, wildlife management.

DOE received several comments on these two proposed categorical exclusions. One commenter, noting that proposed B1.24 and B1.25 were similar, suggested combining them. Based on this comment and other comments that expressed concern about the broad scope of the categorical exclusions as proposed, DOE has retained both

categorical exclusions, but changed their wording to clarify DOE's intentions for their scopes and the differences between them. Categorical exclusion B1.24 as now revised refers to transfer, lease, disposition, or acquisition of interests in structures and equipment, and only land that is necessary for use of the transferred structures and equipment. Proposed B1.25 as revised refers to transfer of interests in land for purposes of habitat preservation or wildlife management, and only buildings that support those purposes.

One commenter questioned the meaning of "uncontaminated." DOE has added a definition to each of these two proposed categorical exclusions that states that "uncontaminated means that there would be no potential for release of substances at a level, or in a form, that would pose a threat to public health or the environment." This definition is based on the definition of contaminant in CERCLA § 101(33). DOE already has defined "contaminant" in § 1021.104 of its existing NEPA regulations as "a substance identified within the definition of contaminant in Section 101(33) of CERCLA (42 USC 9601.101(33))."

Several commenters questioned the feasibility of making a determination about potential releases and impacts that could occur after the transfer, as required by the categorical exclusions, without some formal environmental analysis (e.g., an environmental assessment). With regard to proposed B1.24, one of the commenters questioned how DOE would know if contaminant releases increase after transfer, stating that private operators, unlike DOE, are under no obligation to provide records of types, volumes, and pathways of contaminants released into the environment. In applying these two categorical exclusions (as in applying any other categorical exclusion), DOE will consider reasonably foreseeable circumstances, but will not attempt to speculate on all possible circumstances that the future could present. DOE believes that it will be able to determine whether a proposed post-transfer use is similar enough to the existing use to meet the conditions of the categorical exclusion, i.e., no decrease in environmental quality, no increased discharges, and generally similar environmental impacts. If DOE cannot make these judgments without environmental analysis, DOE will prepare at least an environmental assessment.

One commenter stated that the proposed categorical exclusion B1.24 was a positive step, but thought DOE had unduly limited its application. Another commenter stated that proposed categorical exclusion B1.24 was an improvement in that property transfers that could be categorically excluded would not be limited to those where use remains the same. This commenter wanted to expand the proposed categorical exclusion B1.24 to include transfers to other Federal agencies without restrictions on environmental parameters, because other Federal agencies must conduct their own NEPA review for future uses of the property. DOE believes that it must conduct the proper level of NEPA review for its actions, and that a NEPA review for the transfer, lease, disposition, or acquisition of property must consider reasonably foreseeable uses and conditions of those uses, regardless of whether the transfer would be to another Federal agency.

Two commenters expressed concern about eliminating community involvement in DOE's decisions about future land use. One commenter stated that the transfer of potentially contaminated land without environmental analysis would be inconsistent with DOE's openness policy. DOE does not intend to categorically exclude the transfer of contaminated property. However, DOE recognizes that in listing these classes of actions as categorical exclusions, the sharing of public information will be diminished in some instances, as discussed in Section III.B.

One commenter questioned whether categorical exclusion B1.24 would apply to a facility that had been idle (and thus not discharging any pollutants into the environment), allowing the facility to resume operations and resulting in pollutant discharges. If the facility to be transferred has not been in operation and transfer of the facility would result in the resumption of operation, then greater environmental discharges would result, making this proposed activity ineligible for this categorical exclusion.

With regard to proposed B1.25, one commenter suggested that the preamble was unclear because the categorical exclusion deals with the transfer, lease, and disposition of habitat lands and not a change to the habitat. The commenter also stated that a habitat improvement that supported the existing species of plants and animals, although a change, would not have the potential for significant impact and therefore could be categorically excluded.

There are three categorical exclusions related to the transfer of property: A7, where the use will remain the same; B1.24, where the use may change but the environmental impacts are similar; and B1.25, where the use will be habitat preservation or wildlife management. Small-scale improvements to fish and wildlife habitat are included under existing categorical exclusion B1.20. A large-scale habitat improvement project may have significant environmental effects, albeit beneficial, and would not be categorically excluded.

A commenter suggested that DOE should not assume that significant environmental and socioeconomic impacts will not result from the transfer of uncontaminated lands for habitat preservation and wildlife management, because DOE cannot reasonably predict the types of uses that private interests, conservation groups, or local and state agencies might allow for these lands. DOE agrees that it cannot project with certainty all future activities that might be allowed on any land that it transfers, leases, or disposes. However, categorical exclusion B1.25 is intended for application in those cases where the circumstances of the property transaction create a reasonable expectation that the property will be used for habitat preservation and wildlife management for the reasonably foreseeable future.

• Proposed B1.26 Siting/construction/operation/decommissioning of small water treatment facilities, generally less than 250,000 gallons per day capacity.

Several commenters recommended that DOE not categorically exclude water treatment facilities that would involve highly toxic substances, regardless of the limited rate at which water could be processed. Some commenters stated that the 250,000 gallon criterion was not necessarily the relevant factor regarding environmental impacts. The commenters also expressed concern that cumulatively significant effects would occur from repeated applications of this proposed categorical exclusion. DOE believes that the adverse environmental effects of concern to many of the commenters are highly unlikely. DOE chose to categorically exclude treatment facilities with less than about 250,000 gallons capacity because such small plants have little potential for significant impacts, especially in light of the safeguards afforded by the integral elements. For example, a DOE categorical exclusion may not be applied where the proposed action could adversely affect an environmentally sensitive resource (10 CFR part 1021, subpart D, appendix B, B(4)). Regarding cumulative effects, appendix B listings are not applicable to a proposed action that is connected to other actions with potentially significant impacts or related to other proposed actions with cumulatively significant impacts (10 CFR 1021.410(b)(3)). Nevertheless, DOE has modified the proposal as one commenter suggested, so that, in addition to small potable water and sewer facilities, only those small wastewater and surface water treatment facilities whose liquid discharges are subject to external regulation would be categorically excluded. See also the discussion regarding the use of the word "generally" and numerical values in Section III.B.

• Proposed B1.27 Facility deactivation.

One commenter expressed concern that the categorical exclusion would apply to any facility and that deactivation is not clearly defined. The commenter suggested that if DOE intended the categorical exclusion to apply only to the disconnection of utilities, then it should be rewritten as: "The disconnection of utilities such as water, steam, telecommunications, and electrical power after it has been determined that the continued operation of these systems is not needed for safety." DOE agrees and has rewritten the categorical exclusion as suggested. The term deactivation is no longer included in the categorical exclusion.

Another commenter suggested that the categorical exclusion be clarified to include provisions for partial disconnections and utility modifications where equipment may be required to remain operational at a reduced level. DOE believes that this categorical exclusion encompasses such disconnections and modifications.

One commenter stated that the risk posed by surplus facilities varies greatly and that DOE should be cautious in presuming NEPA documentation is not required. DOE agrees that the risks posed by particular facilities can vary, but believes that merely disconnecting the utilities of such facilities will not cause significant environmental impacts.

Another commenter questioned whether DOE intended to deactivate nuclear electrical utility facilities under this categorical exclusion, and suggested that such activities would require consultation and cooperation with other state and federal agencies and full public notice and participation. The proposed categorical exclusion would apply only to DOE facilities and not to the commercial nuclear power industry or other commercial powerplants.

• Proposed B1.28 Minor activities to place a facility in an environmentally safe condition, no proposed uses.

Several commenters questioned the scope of the categorical exclusion and generally expressed concern with the use of the word "minor." Several commenters suggested that DOE more narrowly define what it intended to cover in this categorical exclusion (e.g., the meaning of "adequate treatment, storage, or disposal facilities" and "no proposed use"). Other commenters stated that such activities could be carried out on a large scale at a particular site and that there could be cumulative impacts associated with waste management activities.

As discussed in Section III.E, DOE believes that the word "minor" is useful in describing the types of activities contemplated by the categorical exclusion, particularly when combined with examples and exclusions. DOE intends this categorical exclusion to apply to activities needed to place a surplus facility (one that will no longer be used by DOE for any purpose, including storage) in an environmentally safe condition, where there are existing treatment, storage, or disposal facilities with existing capacity to manage the resulting waste (including low-level radioactive waste). These activities include the final defueling of a reactor, as stated in the example in the proposed rule. DOE emphasizes that this categorical exclusion, like all other categorical exclusions, may not be applied in situations involving extraordinary circumstances (such as uncertain effects or effects involving unique or unknown risks) or where the proposal is connected to other actions with potentially significant impacts (see § 1021.410(b) (2) and (3)). Thus, if a proposal involved a mode of decontamination with potentially significant environmental effects or if it posed serious potential risks to workers, the public, or the environment, then the proposed activity would not be eligible for a categorical exclusion. DOE believes that the language of the proposed categorical exclusion, together with the general restrictions on the application of categorical exclusions, particularly at § 1021.410 and the integral elements at appendix B, B(1)–B(4), provide adequate safeguards to ensure that this categorical exclusion is not applied to activities that could result in significant environmental effects.

One commenter asked that the relationship of this categorical exclusion to CERCLA and the Resource Conservation and Recovery Act (RCRA) procedures be clarified. DOE's CERCLA/NEPA policy is discussed in Section III.B. Although DOE's RCRA procedures are outside the scope of this rulemaking, DOE notes that its application of this categorical exclusion would have no effect on its compliance with RCRA.

Another commenter recommended that the categorical exclusion be broadened to include removal of contaminated equipment, material, and waste and include activities such as size reduction and placement of wastes in storage containers if done in the same building. DOE intends the categorical exclusion, as proposed, to include these activities.

• Proposed B1.29 Siting/construction/operation/decommissioning of onsite disposal facility for construction and demolition waste.

Several commenters objected to this categorical exclusion. One commenter expressed concern that new disposal facilities for construction and demolition waste could be sited and constructed in environmentally sensitive areas, such as priority shrub steppe habitat, with adverse impacts on wildlife. This commenter also expressed concern about cumulative impacts from multiple facilities. DOE believes that integral element B(4), which states that an action proposed for categorical exclusion must not adversely affect environmentally sensitive areas, would preclude use of the proposed categorical exclusion for construction of disposal facilities in priority shrub steppe habitat. Also, under § 1021.410(b)(3) of its NEPA implementing regulations, DOE may not categorically exclude a proposed action that may be connected to other actions with potentially significant impacts, or related to other proposed actions with cumulatively significant impacts.

Another commenter expressed concern that a 10-acre disposal facility could pose major health and safety risks to workers and members of the public in adjacent communities, noting in particular the potential for adverse impacts on air quality. By limiting this categorical exclusion to disposal of uncontaminated materials, DOE believes there would be no harmful releases of contaminants and no increased health impact to workers or the nearby public. DOE has revised the language in this categorical exclusion in the final amendments by inserting the phrase "which would not release substances at a level, or in a form, that would pose a threat to public health or the environment" to explain the term "uncontaminated." This new language corresponds to the definition of "contaminant" in DOE's NEPA regulations, which in turn is based on CERCLA § 101(33). In addition, DOE employs standard industrial practices, such as water spraying to control dust, in operating any of its facilities, and DOE believes that any particulate

emissions would be adequately controlled to protect workers and the public. To correspond to other changes in the final amendments, DOE has changed the phrase "generally less than 10 acres in area," to "less than approximately 10 acres." See also the discussion in Section III.E.

Another commenter stated that the scope of the categorical exclusion was so broad that the host community, state and local officials, and interested citizens could be excluded from participating in decisions that may have significant environmental and socioeconomic impacts. DOE believes that this class of actions normally does not have potential for significant impacts and has decided to list it as a categorical exclusion in the final amendments. See also the discussion of public involvement and information sharing opportunities in Section III.B.

One commenter requested that the proposed categorical exclusion be expanded to include on-site disposal facilities for all uncontaminated waste, including office and cafeteria waste. This comment is outside the scope of this rulemaking, but DOE may consider the suggestion in a future rulemaking.

• Proposed B1.30 Transfer actions.

Several commenters objected to this proposed categorical exclusion as too broad and open ended, some noting potential for adverse impacts. Some commenters requested that it be deleted; others requested that limits be provided on the quantity and types of materials and wastes that could be transported. Other commenters sought additional clarification.

In contrast, two commenters stated that the proposed categorical exclusion was too limited in scope and suggested broadening the categorical exclusion to include routine transportation of materials, equipment, and wastes that are managed in accordance with regulatory requirements. One of these commenters noted DOE's statement in the preamble to the proposed rulemaking that "transportation activities under DOE's standard practices pose no potential for significant impacts."

All DOE proposed actions must comply with applicable regulatory requirements, although some actions nevertheless may have significant impacts. DOE will continue to include analysis of transportation impacts in environmental assessments and environmental impact statements where the scope of the proposed actions presents potential for significant impact.

DOE has revised the language of the categorical exclusion to characterize the amount of materials, equipment, or waste to be transferred as "small" in addition to being incidental to the amount at the receiving site. This revision addresses the concerns expressed by several commenters that DOE had proposed to limit the amount of material or waste that could be transported, not by the impacts that might occur by transport of the material or waste, but by the amount of material or waste at the receiving site.

One of these commenters stated that the proposed categorical exclusion could be applied to the transport of thousands of containers of materials or waste to a site that had yet larger amounts. Another commenter stated that the baseline for determining the amount of waste or material that could be received at a site, under the proposed categorical exclusion, would continually increase as waste or materials were transferred to the site. The revision reinforces DOE's intention that use of the categorical exclusion should not add significantly to what may already be significant amounts of waste or materials at a site.

Several commenters stated that transportation of radioactive materials and waste is likely to be a key or controversial issue to local communities. One commenter stated that unscheduled transportation of waste would generate considerable community interest, and another expressed concern that the host community, state and local officials, and interested citizens could be excluded from participating in decisions that may result in significant environmental and socioeconomic impacts. DOE believes that this class of actions normally does not have potential for significant impacts and has decided to list it, as revised, as a categorical exclusion in the final amendment. See also the discussion of public involvement opportunities in Section III.B.

One commenter suggested that the proposed categorical exclusion would be more appropriately placed as a clarifying statement elsewhere in the regulations, to note that transportation may be an implicit part of any action that is eligible for a categorical exclusion or to require, as an integral element of any categorical exclusion, that transportation be conducted in accordance with applicable regulatory requirements. Other commenters stated that transportation is a connected activity and should not be considered independently.

DOE's NEPA regulations currently state that a categorically excluded class of actions includes activities foreseeably necessary to proposals encompassed within the class of actions and provides "associated transportation activities" as one of two examples (§ 1021.410(d)). Categorical exclusion B1.30, however, applies to transfer actions where the predominant activity is transportation.

DOE's existing NEPA regulations (appendix B(1)) also contain an integral element for categorical exclusions requiring that, in order to be categorically excluded, an action not threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, including requirements of DOE orders.

One commenter asked DOE to clarify whether this categorical exclusion could be applied to the transfer of waste from a DOE site to an offsite, non-DOE facility that treats that type of waste. DOE believes that B1.30 does cover these types of transfer actions, as long as all the conditions of the categorical exclusion, including the integral elements, are satisfied and there are no extraordinary circumstances.

• Proposed B1.32 Restoration, creation, or enhancement of small wetlands.

One commenter supported DOE's strategy, stated in the preamble to the proposed rule, to coordinate activities in wetlands with state and federal agencies to assure compliance with other land use plans. The commenter suggested that wetland creation should address the impacts of attracting migratory wildlife, especially types of wildlife that are likely to be hunted for human consumption. Other commenters questioned how the terms "small" and "large" were defined and how size would be used to determine whether wetland restoration, creation, or enhancement would have significant impacts. Other commenters stated that this categorical exclusion should include compliance with all appropriate Federal environmental laws and regulations and that DOE should consider limiting the number of such projects to reduce the potential for cumulative adverse impacts.

DOE has reconsidered its proposal to categorically exclude restoration, creation, or enhancement of a small wetland. Actions typically taken by DOE to restore, enhance, or create a wetland normally would be performed as mitigation to compensate for loss or degradation of other wetlands as a result of a DOE proposed action. As such, wetland mitigation is not a separate or distinct action and should be considered as an integral part of the proposed action. Further, in those rare situations where DOE would undertake specific actions to restore, enhance, or create wetlands (e.g., development of wetlands as part of wetland banking), the existing class of actions C9, which normally requires preparation of an environmental assessment, provides opportunity for other agency and public review and input into decisions regarding how the action should be undertaken. Accordingly, DOE is withdrawing its proposal to categorically exclude restoration, creation, or enhancement of a small wetland, as well as its proposal to make a conforming language change in C9.

• Proposed B1.33 (Final B1.32). Traffic flow adjustments, existing roads.

One commenter questioned whether DOE would extend the categorical exclusion to include road adjustments. This categorical exclusion is limited to DOE sites and applies only to adjustments of traffic flow, such as installation of traffic signs, signal lights, and turning lanes. It does not apply to general road adjustments, such as road widening and realignment. In order to clarify this point, DOE has modified this categorical exclusion to include turning lanes as an example of a categorically excluded action, and to specifically exclude general road adjustments.

The commenter also stated that increased traffic flow could result in increased risk of exposure to the public. DOE believes traffic flow adjustments could not, by their nature, alter traffic patterns in such a manner as to produce significantly increased public exposures. In response to a comment that commercial trucking terminals should be excluded, DOE notes that it does not operate commercial trucking terminals.

One commenter suggested adding this activity to B1.3 on routine maintenance. DOE does not consider traffic flow adjustments to constitute routine maintenance.

• Proposed B2.6 Packaging/transportation/storage of radioactive sources upon request by the Nuclear Regulatory Commission or other cognizant agency.

In response to several comments, DOE has clarified that "other cognizant agency" would include a state that regulates radioactive materials under an agreement with the Nuclear Regulatory Commission (Commission). In addition, DOE intends to include other agencies that may, under perhaps unusual circumstances, have responsibilities regarding the materials that are included in the categorical exclusion.

One commenter expressed concern that this categorical exclusion could apply to a wide variety of actions that private parties might conduct. DOE's NEPA implementing procedures, however, apply only to actions that DOE would conduct.

Another commenter expressed concern about cumulative effects from applying this categorical exclusion repeatedly. Because DOE is requested to perform the actions covered under B2.6 only occasionally—e.g., when a Commission licensee cannot or will not safely manage the material—DOE does not expect these activities to have significant cumulative effects. This commenter also stated that the justification for one of the examples cited in the proposed categorical exclusion—"packaged radioactive waste not exceeding 50 curies"—was not apparent and undefined as to impact. DOE possesses all the skills and equipment required to handle, transport, and store such materials safely, and would be involved in such activities only occasionally. Moreover, the Commission has found that its licensees normally possess and manage such materials without significant impacts. For these reasons, DOE believes it is appropriate to categorically exclude its activities regarding all of the materials the Commission has listed in 10 CFR 51.22(14).

Finally, a commenter suggested that DOE should apply the categorical exclusion to packaging, transportation, and storage of DOE's own radioactive materials that are the same kind as listed in the Commission's categorical exclusion. DOE is taking this suggestion under advisement and may consider it in a future rulemaking.

• Proposed Modification B3.6 Siting/construction/operation/decommissioning of facilities for bench-scale research, conventional laboratory operations, small-scale research and development and pilot projects.

DOE proposed to modify B3.6 (indoor bench-scale research projects) by combining it with B3.10 (small-scale research and development projects and small-scale pilot projects) and to include the siting, construction, operation, and decommissioning of facilities to house such projects. DOE also proposed to delete the descriptive phrase "for generally less than two years" in reference to the length of time a categorically excluded pilot project typically could be conducted.

One commenter stated that this categorical exclusion as proposed may be susceptible to abuse, e.g., by permitting a pilot project to evolve into a full-scale operation without public environmental review. DOE believes that this example would be a misapplication of the categorical exclusion. To clarify the meaning of "pilot project," DOE is inserting the descriptive phrase "generally less than two years." Thus, as revised, the only modification DOE is making to the existing categorical exclusions is combining B3.6 and B3.10, and expanding the combined categorical exclusion to include the siting, construction, operation, and decommissioning of facilities that would house the indoor bench-scale research, conventional laboratory operations, small-scale research and development, and small-scale pilot projects. DOE received no comments on these aspects of the proposed modification.

Several commenters questioned the definition of "small-scale" and "pilot projects." One commenter questioned whether "bench-scale" includes the use of large pieces of equipment. The meaning of these terms is not changing from the existing regulations. DOE notes, however, that scale refers to the magnitude of the activity, e.g., the amount of materials consumed, waste produced, air emissions, and effluents. Further, the size of the equipment would be relevant in this context only if it affected the input of material and output of waste, so as to produce potentially significant physical impacts. See also the discussion of "small-scale" in Section III.E.

Another commenter expressed concern that the nature of research activities could involve new and untried processes. If a proposed research action had the potential to involve unique or unknown risks, then it would trigger the "extraordinary circumstances" provision in § 1021.410(b)(2), and thus would not be eligible for a categorical exclusion.

One commenter stated that there is an apparent conflict between B3.6 and C12. DOE notes that B3.6 specifically covers "small-scale pilot projects (generally less than two years)," constructed in an already developed area. C12, however, refers to larger scale, longer term projects that are not restricted to an already developed area. DOE is adding a specific reference to C12 in B3.6 to call attention to the differences between them.

• Proposed B3.10 Siting/construction/operation/decommissioning of particle accelerators, including electron beam accelerators, primary beam energy generally less than 100 MeV.

Two commenters recommended that DOE remove the word "generally" from the phrase "generally less than 100 MeV," stating that the proposed language would permit categorically excluding much higher energy machines than 100 MeV (million electron-volts).

DOE has restated the condition to read "less than approximately 100 MeV," which better reflects DOE's intention and addresses the commenters' concerns. See also the discussion in Section III.E.

Another commenter welcomed the proposed amendment and recommended adding to this proposed categorical exclusion "maintenance and remedial actions [involving particle and electron beam accelerators] which have the incidental effect of improving machine performance within design criteria." DOE intends that the language of B3.10, as proposed, covers such actions as long as there is no increase in primary beam energy or current.

Finally, a commenter requested that the proposed categorical exclusion be restated in terms that relate to impacts such as land requirements and radioactive emissions rather than beam energy (i.e., 100 MeV) as proposed, stating that the proposed formulation would not be very meaningful to the public. Accelerators fitting this class of actions typically are room-size and often are installed in existing buildings at hospitals and universities. On the basis of its experience, the language of this proposed amendment, and the general restrictions on the application for categorical exclusions, particularly at § 1021.410 and the integral elements at appendix B, B(1)–B(4), DOE believes that the covered actions will not present any significant land use or radiation effects issues.

• Proposed B3.12 Siting/construction/operation/decommissioning of microbiological and biomedical facilities.

Several commenters expressed concern about the potential environmental, health, and socioeconomic impacts of microbiological and biomedical facilities and the lack of opportunity for public involvement. One commenter sought clarification regarding DOE's statement in the preamble to the proposed rulemaking that these facilities generally do not handle "extremely dangerous materials." Another commenter urged DOE not to categorically exclude laboratories that are rated Biosafety Level 1 through 4.

All microbiological laboratories are rated Biosafety Level 1 through 4. Level 1 handles the least dangerous agents. To clarify what is intended by Biosafety Levels 1 and 2, the following definitions were extracted from Biosafety in Microbiological and Biomedical Laboratories, 3rd Edition, May 1993, U.S. Department of Health and Human Services Public Health Service, Centers for Disease Control and Prevention, and the National Institutes of Health: Publication No. (CDC) 93–8395. Biosafety Level 1 is assigned to facilities in which work is done with defined and characterized strains of viable microorganisms not known to cause disease in healthy adult humans (e.g., *Bacillus subtilis, Naeleria gruberi*, and infectious canine hepatitis). This designation represents a basic level of containment that relies on standard microbiological practices with no special primary or secondary barriers recommended, other than a sink for handwashing. Biosafety Level 2 is assigned to facilities in which work is done with the broad spectrum of indigenous moderate-risk agents present in the community and associated with human disease of varying severity (e.g., Hepatitis B virus, salmonellae and *Toxaplasma* spp.). This designation requires the use of splash shields, face protection, gowns and gloves, as appropriate, and the availability of secondary barriers such as handwashing facilities and laboratory waste decontamination facilities. Given these controls, DOE believes that it is appropriate to categorically exclude Biosafety Level 1 and 2 laboratories from further NEPA review, provided that all of the integral elements of a categorical exclusion (appendix B, B(1)–B(4)) are met.

Another commenter asked for a clarification of "an already developed area." In particular, this commenter asked if it referred to a metropolitan area, residential area, commercially developed area, or existing biomedical facility. As discussed previously, "an already developed area" refers to an area "where active utilities and currently used roads are readily accessible." DOE has clarified the categorical exclusion accordingly. Facilities that would be eligible for this categorical exclusion could be sited in a metropolitan, residential, or commercially developed area or in an existing biomedical facility, as long as the area is already developed.

• Proposed B3.13 Magnetic fusion experiments, no tritium fuel use.

A commenter asked whether DOE intends to conduct new magnetic fusion experiments at existing facilities under this proposed categorical exclusion, and indicated that an environmental assessment or environmental impact statement is required to protect the public and worker health and safety in light of impacts from exposure to electromagnetic fields. DOE intends to categorically exclude such experiments at existing facilities. Based on its experience with such activities, DOE believes that magnetic fusion experiments do not pose an electromagnetic field or other hazard to the public. DOE routinely provides workers with adequate training and controlled conditions to conduct such work safely.

• Proposed Modification B5.3 Modification (not expansion)/abandonment of oil storage access/brine injection/gas/geothermal wells, not part of site closure.

DOE proposed to add gas wells to this categorical exclusion, and one commenter stated that DOE should consider possible risks to public health and safety before doing so. This categorical exclusion applies only to the modification (e.g., installation of different chokes and other wellhead equipment) or abandonment of existing wells and does not include workover (see proposed B5.12) or expansion. Therefore, the inclusion of gas will not result in any significant impacts.

• Proposed Modification B5.5 Construction/operation of short crude oil/gas/steam/geothermal pipeline segments.

DOE proposed to add natural gas and steam pipelines and to remove references to the specific existing facilities to which the pipelines would be connected. One commenter expressed concern about the end point facilities of the pipeline segments and how such facilities would affect the impacts. The commenter stated that connecting pipeline segments without regard to the impacts of the end point facilities is comparable to approval of a sewer pipe without knowledge of the discharge point. DOE notes that this categorical exclusion applies to the construction and operation of short segments of pipelines between existing DOE facilities and existing transportation, storage, or refining facilities within a single industrial complex and within existing rights-of-way. Because both end points must be existing facilities, DOE believes that the potential impacts of constructing and operating short pipeline segments between such facilities do not depend on the type of facility and will not cause significant environmental impacts. There would be no discharges to the environment from these pipelines.

• Proposed Clarification B5.9. Temporary exemption for any electric powerplant;

• Proposed Clarification B5.10 Certain permanent exemptions for any existing electric powerplant;

• Proposed Clarification B5.11 Permanent exemption for mixed natural gas and petroleum;

• Proposed Modification (Removal) B5.12 Permanent exemption for new peakload powerplant;

• Proposed Modification (Removal) B5.13 Permanent exemption for emergency operations;

• Proposed Modification (Removal) B5.14 Permanent exemption for meeting scheduled equipment outages;

• Proposed Modification (Removal) B5.15 Permanent exemption due to lack of alternative fuel supply; and

• Proposed Modification (Removal) B5.16 Permanent exemption for new cogeneration powerplant.

DOE proposed to clarify or modify (i.e., remove) these categorical exclusions because they involve the grant or denial by DOE of certain exemptions under the Power Plant and Industrial Fuel Use Act of 1978 (PIFUA), which was amended by Congress and now applies only to base load power plants. It no longer applies to other types of power plants or to major fuel-burning installations. Some commenters opposed the retention of B5.9, B5.10, and B5.11 in their modified state on the basis that they appear to exempt multiple actions from an environmental assessment or environmental impact statement under the guise of energy conservation or expressed concerns about cumulative impacts, connected actions, or extraordinary circumstances. DOE believes that the original rationale for these categorical exclusions, based on experience with actual cases, remains valid and thus believes that they should be retained for situations where the law provides for exemptions (i.e., base load power plants). Another commenter expressed concern regarding the proposed removal of existing B5.12 through B5.16. While DOE acknowledges this concern, it is nonetheless appropriate for DOE to conform its NEPA regulations to changes in the law. These categorical exclusions are being clarified or removed from appendix B because under PIFUA, as amended, DOE no longer has authority to grant or deny PIFUA exemptions except in cases involving base load power plants.

• Proposed B5.12 Workover of existing oil/gas/geothermal well.

DOE proposed a new categorical exclusion covering the workover of existing oil, gas, or geothermal wells on existing wellpads where the work "would not disturb adjacent habitat." One commenter requested that the word "endanger" be included in the proposed categorical exclusion. DOE believes that the words "disturb" and "endanger" are both subject to various interpretations. DOE is therefore modifying the categorical exclusion to use instead "adversely affect," which reflects DOE's original intent and is consistent with language elsewhere in the DOE NEPA rule.

• Proposed Modification B6.1 Small-scale, short-term cleanup actions under RCRA, Atomic Energy Act, or other authorities.

DOE proposed to change the way in which it defines the scope of the categorical exclusion from "removal actions under CERCLA * * * and removal-type actions similar in scope" to "small-scale, short-term cleanup actions under RCRA, the Atomic Energy Act, or other authorities" without naming CERCLA. This proposal reflects DOE's policy (see Section III.B) of relying on the CERCLA process for review of actions to be taken under CERCLA. DOE believes that the reference in the current regulations to CERCLA removal actions is confusing in the context of this policy. DOE also proposed to expand the limits of the categorical exclusion to actions generally costing up to $5 million over as many as 5 years.

One commenter supported the modification to clarify application to RCRA cleanup actions and to increase the cost and time limitations. Another commenter stated that DOE should integrate the CERCLA and NEPA processes. As discussed in Section III.B, DOE's CERCLA/NEPA policy allows for case-by-case integration of the CERCLA and NEPA processes. Therefore, although CERCLA is not referenced in the new categorical exclusion, DOE may apply categorical exclusion B6.1 to certain CERCLA actions. DOE has not changed its proposed modification to the categorical exclusion based on this comment.

This commenter also requested that DOE retain the time and cost limits in the existing categorical exclusion (i.e., the CERCLA regulatory cost and time limits of $2 million and 12 months), but requested that if DOE does expand the limits to $5 million and 5 years as proposed, the language of the categorical exclusion should read "expand the limits to" and that the categorical exclusion's limits be stated as maximum cut off points. As discussed in Section III.E, DOE's use of numerical quantities are intended to provide a reasonable degree of flexibility and should not be applied as absolute limits. DOE has retained the proposed cost and time factors in the final categorical exclusion.

Another commenter stated that the applicability of a categorical exclusion to an action should be based on the site-specific conditions of the action, not on its cost or duration. The cost and time descriptions in the proposed categorical exclusion are simply indicators of the size and type of actions DOE intends to categorically exclude, not definitions of the actions themselves. Categorical exclusions listed in appendix B include integral elements that are site specific, and categorical exclusions will be applied based on site-specific factors, such as the existence of any extraordinary circumstances, rather than on the cost or duration of the action.

One commenter expressed concern that the use of terms "small-scale," "short-term," and "generally" are too subjective. The use of such descriptive terms is discussed in Section III.E.

One commenter requested that DOE state in example B6.1(b) that it would use the definition of hazardous waste from whichever regulatory agency (e.g., EPA or a state agency) provided the more protective definition for purposes of protecting public health and safety, or had greater authority to regulate hazardous waste. DOE proposed to revise the example to reflect the fact that hazardous waste is defined under one of two possible regulatory authorities, either 40 CFR Part 261 or applicable state requirements, depending on whether EPA or a state exercises primary regulatory authority. DOE does not have a choice as to which definition it must abide by. DOE is retaining the proposed language in the final categorical exclusion.

This commenter also stated that DOE did not specifically exempt high-level radioactive waste, transuranic waste, spent nuclear fuel, waste from reprocessing spent nuclear fuel, and uranium mill tailings in its language pertaining to waste cleanup and storage and requested clarification on the scope of the categorical exclusions in this regard. DOE agrees that it should clarify the scope of the categorical exclusion and has added the phrase "other than high-level radioactive waste and spent nuclear fuel" to the categorical exclusion. DOE believes that it can appropriately apply the categorical exclusion to cleanup activities involving transuranic waste and uranium mill tailings.

This commenter also expressed concern that this categorical exclusion allowed more discretionary authority to DOE for its waste management actions with less public notification, involvement, and accountability. DOE's response to comments relating to the reduction of public involvement opportunities is in Section III.B.

See also the discussion of categorical exclusion B6.9 for a modification of example B6.1(g).

• Proposed Modification (Removal) B6.4 Siting/construction/operation/decommissioning of facility for storing packaged hazardous waste for 90 days or less.

DOE proposed to replace the existing B6.4, which covers a very narrow class of waste storage actions, with a new and broader B6.4 that would have encompassed the activities to which the existing B6.4 applies. In response to comments on the proposed new B6.4, however, DOE has decided to narrow its scope in such a manner that retaining the existing B6.4 is necessary. Therefore, DOE is retaining the existing B6.4, and will list a new class of actions covering waste storage facilities (i.e., a "reduced-scope" version of the proposed B6.4) as B6.10. See the further discussion below.

• Proposed B6.4 (FinalB6.10) Siting/construction/operation/decommissioning of small waste storage facilities (not high-level radioactive waste, spent nuclear fuel).

Several commenters expressed concern that this proposed categorical exclusion could apply to actions that individually may have significant impacts and especially would have significant cumulative impacts if a number of such facilities were built. Commenters also expressed concern regarding the location of the facility, type of waste, and the nature of the surrounding environment. On the other hand, a commenter who supported the proposal suggested that DOE clarify that an unlimited number of 50,000 square-foot facilities could be built under the categorical exclusion.

DOE generally agrees with the commenters who stated that the proposal was too broad. However, DOE notes that significant new waste-producing activities and significant transfers of waste among sites are subject to NEPA analysis and would not be categorically excluded. Provisions for storing such waste would be within the scope of such analyses (or reviewed under CERCLA, if the waste would result from CERCLA environmental restoration activities), and storage impacts and alternatives would be appropriately assessed.

In light of the comments, DOE has decided to limit the applicability of proposed categorical exclusion B6.4 (final B6.10) to upgrades or replacement of storage facilities for waste that is already present at a DOE site at the time the storage capacity is to be provided. Providing new or upgraded storage facilities for existing wastes under this categorical exclusion would only improve upon previous storage conditions. Further, because the storage changes would not be associated with changes in waste type or waste quantity, providing new storage facilities or upgrades would not likely have cumulatively significant impacts. Storage facilities for newly generated waste from ongoing operations would not be categorically excluded, and any associated cumulative impacts would be considered in an appropriate NEPA analysis.

Several commenters questioned the basis for DOE's proposal to categorically exclude a particular size of storage facility, namely approximately 50,000 square feet or less. In recent years DOE has evaluated and constructed a variety of new waste storage facilities. These are typically uncomplicated light-weight buildings on a concrete pad floor that provide open floor storage space for waste packages. They are designed, and waste is emplaced, with safety as a priority. DOE chose 50,000 square feet as a representative size of such facilities, intending not to categorically exclude facilities that might be unusually large.

In response to commenters' objections regarding the word "generally" in the proposed phrase "generally not to exceed an area of 50,000 square feet," DOE has changed the phrase to read "less than approximately 50,000 square feet in area," which more accurately conveys DOE's original intent. See also the discussion in Section III.E.

As proposed, the categorical exclusion would not apply to storage of high-level radioactive waste or spent nuclear fuel. Several commenters questioned whether the categorical exclusion would apply to other types of waste. One commenter suggested that DOE not apply this categorical exclusion to transuranic wastes, fissile materials, and all other materials for which DOE is largely self-regulating. The commenter did not explain why self-regulation would be important to the determination at issue, and DOE believes that it is not. DOE has concluded, however, that storage facilities for wastes that require special precautions to prevent nuclear criticality should not be categorically excluded, and DOE is modifying the proposed categorical exclusion accordingly. For example, certain transuranic wastes that contain fissile materials may pose such concerns.

Finally, DOE has clarified its original intent to include under this categorical exclusion only storage facilities located at DOE sites, and also has deleted reference to "activities connected to site operations," as commenters requested.

• Proposed Clarification B6.5 Siting/construction/operation/decommissioning of facility for characterizing/sorting packaged waste, overpacking waste (not high-level radioactive waste, spent nuclear fuel).

DOE proposed to clarify the existing B6.5 merely by adding cross-references to B6.4 and B6.6, not to change it substantively. A commenter, however, suggested that B6.5 should be expanded to include activities in which waste would be unpacked for purposes of characterization. DOE considers the comment to be outside the scope of this rulemaking, but may consider the suggestion in an appropriate future rulemaking.

• Proposed B6.9 Small-scale temporary measures to reduce migration of contaminated groundwater.

Several commenters expressed concern that, in effect, this categorical exclusion would reduce opportunities for review by other agencies and the public, and that it might be applied to actions that could have adverse effects on public health and the environment. One commenter stated that contamination of groundwater is a potentially significant risk to public health and that DOE should not exclude such contamination issues from public participation opportunities and NEPA documentation requirements. One commenter expressed concern that application of this categorical exclusion would eliminate valuable input from natural resource agencies regarding effects from actions of this type on state-designated priority habitats. A related comment expressed concern that actions categorically excluded under B6.9 could be detrimental to valuable habitat or cultural resources.

As noted in the preamble to the proposed rulemaking, DOE has found that these actions normally have very local and environmentally beneficial effects and pose no potential for significant environmental impacts. With regard to potential impacts to sensitive environmental resources (such as priority habitat and cultural resources), DOE believes that integral condition B(4) in appendix B, which states that an action proposed for categorical exclusion must not adversely affect environmentally sensitive areas, would preclude use of this categorical exclusion when priority habitat and cultural resources may be adversely affected. Public involvement opportunities are discussed in Section III.B.

One commenter stated that it was unclear why the proposed categorical exclusion was not within the scope of B6.1, an existing categorical exclusion for small-scale cleanup actions (see modification of B6.1 above). DOE believes that certain groundwater

cleanup actions could indeed be categorically excluded under B6.1, if the proposed actions met the conditions of that categorical exclusion, i.e., there were existing facilities to treat the water and the proposed activities were to be completed in about 5 years or less. DOE believes it is also appropriate, however, to categorically exclude the siting, construction, and longer term operation of groundwater treatment and containment facilities and therefore proposed a separate categorical exclusion (i.e., B6.9) to define and cover those activities. DOE intends that the categorical exclusion would include mobile pumping and treatment facilities or pumping and treatment facilities that might be built and then removed when the action was stopped, and DOE used the phrase "small-scale temporary measure" to characterize these possibilities. DOE has added these facility descriptions to the examples in the final categorical exclusion. DOE agrees that the example of "installing underground barriers" in the proposed categorical exclusion is more appropriately considered as an action under B6.1. For this reason, DOE is adding "underground barriers" to the existing example B6.1(g) and is deleting it from proposed B6.9.

Another commenter stated that the meaning of "small-scale temporary measure" was vague. DOE's use of terms such as "small-scale" is discussed in Section III.E.

Classes of Actions Listed in Appendix C

• Proposed Modification (Removal) C1 Major projects.

One commenter expressed concern that DOE's proposal to remove "Major Projects, as designated by DOE Order 4240.1" from appendix C would result in the categorical exclusion of proposed actions currently requiring an environmental assessment or environmental impact statement.

The term "Major Project" was defined in DOE Order 4240.1, based primarily on cost characteristics. DOE no longer uses the term "Major Project," and thus the existing C1 is no longer meaningful. Accordingly, DOE is removing C1. DOE will continue to prepare environmental impact statements, however, for "major Federal actions significantly affecting the quality of the human environment" as required under NEPA § 102(2)(C). Also, although DOE has eliminated the designation of "Major Projects" from the proposed actions for which an environmental assessment would normally be prepared, DOE will continue to prepare environmental assessments for the types of proposed actions formerly included within the definition of "Major Projects."

• Proposed Modification C9 Restoration, creation, or enhancement of large wetlands.

DOE originally proposed to amend this category to conform to proposed B1.32, i.e., to distinguish NEPA review for large versus small wetlands. As noted in the discussion on B1.32, DOE is withdrawing its proposal to categorically exclude restoration, creation, or enhancement of a small wetland. Similarly, DOE is also withdrawing its proposal to make a conforming language change in C9.

• Proposed Modification (Removal) C10 Siting/construction/operation/decommissioning of synchrotron radiation accelerator facility; and

• Proposed Modification C11 Siting/construction/operation/decommissioning of low- or medium-energy particle acceleration facility with primary beam energy generally greater than 100 MeV.

DOE proposed to consolidate the existing C10 and C11 into C11 (reserving C10), and make the resulting C11 applicable for low to medium energy particle accelerators, consistent with the proposed categorical exclusion B3.10 for accelerators with energy less than approximately 100 MeV. One commenter stated that the existing regulations would have required an environmental impact statement under existing C1, which covers "Major Projects," and DOE proposed to eliminate C1. The commenter is mistaken because "Major Projects" would normally have required an environmental assessment under C1, not an environmental impact statement. As noted above, DOE is removing C1. See previous discussion under C1.

• Proposed Modification C14 Siting/construction/operation of water treatment facilities generally greater than 250,000 gallons per day capacity.

DOE proposed to modify C14 to conform to proposed B1.26. A commenter objected to use of the word "generally" in both listings. DOE has replaced the phrase "generally exceeding" with "greater than approximately," which reduces the agency's discretion, as the commenter requested, conforms with changes to proposed B1.26 discussed above, and better expresses DOE's original intent. DOE also revised C14 to include small wastewater and surface water treatment facilities, whose liquid discharges are not subject to external regulation, to conform with changes to proposed B1.26 made in response to comments. See also the discussion in Section III.E.

• Proposed Modification C16 Siting/construction/operation/decommissioning of large waste storage facilities (not high-level radioactive waste, spent nuclear fuel).

DOE's proposed amendments were intended to clarify the meaning of "onsite" in the existing C16, and to make C16 consistent with proposed B6.4 (now final B6.10), under which a subset of small-scale actions included in existing C16 would be categorically excluded. DOE does not agree with a commenter's statements to the effect that this proposal would eliminate public participation for the siting of centralized and regional treatment and storage facilities and protect its contractors and itself at the expense of the public. DOE provides for appropriate public involvement in its environmental assessment process. In accordance with another commenter's suggestion, DOE is providing clearer direction by replacing the phrase "generally greater than" with "greater than approximately," which also better expresses DOE's original intent. See also the discussion in Section III.E.

Classes of Actions Listed in Appendix D

• Proposed Modification D10 Siting/construction/operation/decommissioning of major treatment, storage, and disposal facilities for high-level waste and spent nuclear fuel.

DOE proposed to amend D10 so that there would be no presumption that an EIS would be prepared for siting, constructing, operating, and decommissioning of onsite replacement storage facilities or upgrading storage facilities for spent nuclear fuel. DOE proposals for these types of facilities have varied too widely to support a general conclusion that such proposed actions normally require the preparation of an environmental impact statement. Thus, under DOE's proposal, onsite replacement or upgrade of storage facilities for spent nuclear fuel would no longer require the preparation of an environmental impact statement; rather, DOE would decide on a case-by-case basis (i.e., based on the particular project, site, and circumstances) whether to prepare an environmental assessment or an environmental impact statement. Contrary to one commenter's presumption, DOE's decision not to assign a particular level of NEPA documentation to onsite replacement or upgrading of storage facilities for spent nuclear fuel would never result in such activities being categorically excluded.

While one commenter supported the proposed modification, several others opposed it. Some commenters stated

that the use of the term "major" in D10 already provided DOE with the flexibility to prepare an environmental assessment in certain circumstances. In response, DOE notes that the term "major" refers to the size and/or cost of a particular project, not to whether its impacts will be significant. Thus, it is possible to have a large, costly DOE project that, because of its location or technical characteristics, is not likely to have significant environmental effects. In that case (such as replacement or upgrade of a spent nuclear fuel storage facility), DOE believes it is more appropriate to prepare an environmental assessment. Two commenters expressed concern that replacement or upgrade of spent nuclear fuel storage facilities could result in expanded spent nuclear fuel storage capacity and that existing storage sites may become long-term storage sites in the absence of a permanent repository. DOE did not intend to permit expanded storage under this exclusion and has modified its proposal to add "where such replacement or upgrade will not result in increased storage capacity." Whether the storage of spent nuclear fuel may in fact become long-term storage is outside the scope of this rulemaking.

Another commenter stated that D10 must not be replaced by any less stringent process for public input and involvement. DOE will prepare either an environmental assessment or an environmental impact statement for replacement or upgrades of spent nuclear fuel storage facilities, depending on the circumstances. DOE provides for public involvement in both its environmental assessment and environmental impact statement processes.

Other commenters contended that DOE had proposed that an environmental assessment would be applicable for handling high-level waste. DOE's proposed modification deals with replacement and upgrades of storage facilities for spent nuclear fuel, not high-level waste. Under the original D10 and as amended, DOE would normally prepare an environmental impact statement for the siting, construction, operation, and decommissioning of major treatment, storage, and disposal facilities for high-level waste.

One commenter questioned why replacement or upgrades of high-level waste storage facilities are not treated the same as similar facilities for spent nuclear fuel, and whether DOE's proposed modification was designed to justify the preparation of an environmental assessment for a particular spent nuclear fuel facility at the Idaho National Engineering Laboratory, rather than an environmental impact statement. DOE's approach to formulating typical classes of actions for listing in subpart D is described in Section III.E, above. DOE does not formulate such classes of actions, or proposed additions and modifications, with the intention of securing coverage for a specific future or past action under a particular class of actions.

IV. Procedural Review Requirements

A. Environmental Review Under the National Environmental Policy Act

These amendments to the DOE NEPA rule establish, modify, and clarify procedures for considering the environmental effects of DOE actions within the Department's decision making process. Implementation of this rule will not affect the substantive requirements imposed on DOE or on applicants for DOE licenses, permits, and financial assistance, and this rule will not result in environmental impacts. Therefore, DOE has determined that this rule is covered by the categorical exclusion found at paragraph A6 of appendix A to subpart D, 10 CFR part 1021, which applies to procedural rulemaking. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 USC 601 et seq.) requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. This requirement does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities" (5 USC 603). The rule modifies existing policies and procedural requirements for DOE compliance with NEPA. The rule makes no substantive changes to requirements imposed on applicants for DOE licenses, permits, financial assistance, and similar actions as related to NEPA compliance. Therefore, DOE certifies that the rule will not have a "significant economic impact on a substantial number of small entities."

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by these amendments. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act of 1980 (44 USC 3501 et seq.).

D. Review Under Executive Order 12612

Executive Order 12612, "Federalism," 52 FR 41685 (October 30, 1987) requires that regulations be reviewed for Federalism effects on the institutional interest of states and local governments, and, if the effects are sufficiently substantial, preparation of a Federalism assessment is required to assist senior policymakers. These amendments will affect Federal NEPA compliance procedures, which are not subject to state regulation. The amendments will not have any substantial direct effects on states and local governments within the meaning of the Executive Order. Therefore, no Federalism assessment is required.

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, "Civil Justice Reform" 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final rule meets the relevant standards of Executive Order 12988.

F. Review Under Executive Order 12866

The final amendments were reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993), which requires a Federal agency to prepare a regulatory assessment, including the potential costs and benefits, of any "significant regulatory action." The order defines "significant regulatory action" as any regulatory action that may have an annual effect on the economy of $100 million or more and may adversely affect the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments in a material way; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; or raise novel legal or policy issues arising out of legal mandates (section 3(f)).

These amendments will modify already existing policies and procedures for compliance with NEPA. The amendments contain no substantive changes in the requirements imposed on applicants for a DOE license, financial assistance, permit, or similar actions. Therefore, DOE has determined that the incremental effect of these amendments to the DOE NEPA regulations will not have the magnitude of effects on the economy, or any other adverse effects, to bring this proposal within the definition of a "significant regulatory action."

G. Review Under the Unfunded Mandates Reform Act

Under section 205 of the Unfunded Mandates Reform Act of 1995 (2 USC 1533), Federal agencies are required to prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Because the DOE NEPA regulations affect only DOE and do not create obligations on the part of any other person or government agency, neither state, local or tribal governments nor the private sector will be affected by amendments to these regulations. Therefore, DOE has determined that further review under the Unfunded Mandates Reform Act is not required.

H. Congressional Notification

The final regulations published today are subject to the Congressional notification requirements of Small Business Regulatory Enforcement Fairness Act of 1996 (Act) (5 USC 801). The Office of Management and Budget has determined that the final regulations do not constitute a "major rule" under the Act (5 USC 804). DOE will report to Congress on the promulgation of the final regulations prior to the effective date set forth at the beginning of this notice.

List of Subjects in 10 CFR Part 1021

Environmental impact statement.

Issued in Washington, DC, June 28, 1996.

Tara O'Toole,

Assistant Secretary, Environment, Safety and Health.

For reasons set out in the preamble, 10 CFR part 1021 is amended as follows:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

1. The authority citation for part 1021 continues to read as follows:

Authority: 42 U.S.C. 7254; 42 U.S.C. 4321 et seq.

§ 1021.104 [Amended]

2. In § 1021.104(b), the definition for *EIS Implementation Plan* is removed.

3. Section 1021.105 is revised to read as follows:

§ 1021.105 Oversight of Agency NEPA activities.

The Assistant Secretary for Environment, Safety and Health, or his/her designee, is responsible for overall review of DOE NEPA compliance. Further information on DOE's NEPA process and the status of individual NEPA reviews may be obtained upon request from the Office of NEPA Policy and Assistance, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0119.

4. Section 1021.310 is revised to read as follows:

§ 1021.310 Environmental impact statements.

DOE shall prepare and circulate EISs and related RODs in accordance with the requirements of the CEQ Regulations, as supplemented by this subpart. DOE shall include in draft and final EISs a disclosure statement executed by any contractor (or subcontractor) under contract with DOE to prepare the EIS document, in accordance with 40 CFR 1506.5(c).

§ 1021.311 [Amended]

5. Section 1021.311 is amended by removing paragraph (f) and redesignating paragraph (g) as paragraph (f).

* * * * *

§ 1021.312 [Removed and reserved]

6. Section 1021.312 is removed and reserved.

7. In § 1021.315 paragraphs (b) and (d) are revised and (e) is added to read as follows:

§ 1021.315 Records of decision.

* * * * *

(b) If DOE decides to take action on a proposal covered by an EIS, a ROD shall be prepared as provided at 40 CFR 1505.2 (except as provided at 40 CFR 1506.1 and § 1021.211 of this part).

* * * * *

(d) No action shall be taken until the decision has been made public. DOE may implement the decision before the ROD is published in the **Federal Register** if the ROD has been signed and the decision and the availability of the ROD have been made public by other means (e.g., press release, announcement in local media).

(e) DOE may revise a ROD at any time, so long as the revised decision is adequately supported by an existing EIS. A revised ROD is subject to the provisions of paragraphs (b), (c), and (d) of this section.

§ 1021.322 [Amended]

8. Section 1021.322 is amended by removing paragraph (b)(1), and redesignating paragraphs (b)(2) through (b)(5) as paragraphs (b)(1) through (b)(4).

9. Appendix A to Subpart D, paragraph A7, is revised to read as follows:

Appendix A to Subpart D to Part 1021—Categorical Exclusions Applicable to General Agency Actions

* * * * *

A7 Transfer, lease, disposition, or acquisition of interests in personal property (e.g., equipment and materials) or real property (e.g., permanent structures and land), if property use is to remain unchanged; i.e., the type and magnitude of impacts would remain essentially the same.

* * * * *

10. Appendix B to Subpart D, is amended to revise the Table of Contents entries for B1.8, B1.13, B1.22, B3.6, B3.10, B5.3, B5.5, B5.9, B5.10, B5.12, B6.1, and B6.5; add B1.23 through B1.32, B2.6, B3.12, B3.13, B6.9, and B6.10; and remove B5.13 through B5.16, to read as follows:

Appendix B to Subpart D to Part 1021–Categorical Exclusions Applicable to Specific Agency Actions

Table of Contents

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B1.8 Modifications to screened water intake/outflow structures

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B1.13 Construction/acquisition/relocation of onsite pathways, short onsite access roads/railroads

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B1.22 Relocation of buildings

B1.23 Demolition/disposal of buildings

B1.24 Transfer of structures/residential, commercial, industrial use

B1.25 Transfer of land/habitat preservation, wildlife management

B1.26 Siting/construction/operation/decommissioning of small water treatment facilities, less than approximately 250,000 gallons per day capacity

B1.27 Disconnection of utilities

B1,28 Minor activities to place a facility in an environmentally safe condition, no proposed uses

B1.29 Siting/construction/operation/decommissioning of small onsite disposal facility for construction and demolition waste

B1.30 Transfer actions

B1.31 Relocation/operation of machinery and equipment

B1.32 Traffic flow adjustments, existing roads

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B2.6 Packaging/transportation/storage of radioactive sources upon request by the Nuclear Regulatory Commission or other cognizant agency

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B3.6 Siting/construction/operation/decommissioning of facilities for bench-scale research, conventional laboratory operations, small-scale research and development and pilot projects

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B3.10 Siting/construction/operation/decommissioning of particle accelerators, including electron beam accelerators, primary beam energy less than approximately 100 MeV

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B3.12 Siting/construction/operation/decommissioning of microbiological and biomedical facilities

B3.13 Magnetic fusion experiments, no tritium fuel use

* * * * *

B5.3 Modification (not expansion)/abandonment of oil storage access/brine injection/gas/geothermal wells, not part of site closure

* * * * *

B5.5 Construction/operation of short crude oil/gas/steam/geothermal pipeline segments

* * * * *

B5.9 Temporary exemption for any electric powerplant

B5.10 Certain permanent exemptions for any existing electric powerplant

* * * * *

B5.12 Workover of existing oil/gas/geothermal well

* * * * *

B6.1 Small-scale, short-term cleanup actions under RCRA, Atomic Energy Act, or other authorities

* * * * *

B6.5 Siting/construction/operation/decommissioning of facility for characterizing/sorting packaged waste, overpacking waste

* * * * *

B6.9 Small-scale temporary measures to reduce migration of contaminated groundwater

B6.10 Siting/construction/operation/decommissioning of small upgraded or replacement waste storage facilities

* * * * *

11. Appendix B to Subpart D, section B is amended by revising paragraphs B(1), B(2), and B(4)(iii) to read as follows:

B. Conditions That are Integral Elements of the Classes of Actions in Appendix B

* * * * *

(1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, including requirements of DOE and/or Executive Orders.

(2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions.

* * * * *

(4) * * *

(iii) Wetlands regulated under the Clean Water Act (33 U.S.C. 1344) and floodplains;

* * * * *

12. Appendix B to Subpart D, section B1, is amended by revising the introductory text to paragraph B1.3, paragraphs B1.3(n) and (o), B1.8, B1.13, B1.15, B1.18, B1.21, and B1.22, and adding paragraphs B1.23 through B1.32, to read as follows:

B1. Categorical Exclusions Applicable to Facility Operation

* * * * *

B1.3 Routine maintenance activities and custodial services for buildings, structures, rights-of-way, infrastructures (e.g., pathways, roads, and railroads), vehicles and equipment, and localized vegetation and pest control, during which operations may be suspended and resumed. Custodial services are activities to preserve facility appearance, working conditions, and sanitation, such as cleaning, window washing, lawn mowing, trash collection, painting, and snow removal. Routine maintenance activities, corrective (that is, repair), preventive, and predictive, are required to maintain and preserve buildings, structures, infrastructures, and equipment in a condition suitable for a facility to be used for its designated purpose. Routine maintenance may result in replacement to the extent that replacement is in kind and is not a substantial upgrade or improvement. In kind replacement includes installation of new components to replace outmoded components if the replacement does not result in a significant change in the expected useful life, design capacity, or function of the facility. Routine maintenance does not include replacement of a major component that significantly extends the originally intended useful life of a facility (for example, it does not include the replacement of a reactor vessel near the end of its useful life). Routine maintenance activities include, but are not limited to:

* * * * *

(n) Routine testing and calibration of facility components, subsystems, or portable equipment (including but not limited to, control valves, in-core monitoring devices, transformers, capacitors, monitoring wells, lysimeters, weather stations, and flumes); and

(o) Routine decontamination of the surfaces of equipment, rooms, hot cells, or other interior surfaces of buildings (by such activities as wiping with rags, using strippable latex, and minor vacuuming), including removal of contaminated intact equipment and other materials (other than spent nuclear fuel or special nuclear material in nuclear reactors).

* * * * *

B1.8 Modifications to screened water intake and outflow structures such that intake velocities and volumes and water effluent quality and volumes are consistent with existing permit limits.

* * * * *

B1.13 Construction, acquisition, and relocation of onsite pathways and short onsite access roads and railroads.

* * * * *

B1.15 Siting, construction (or modification), and operation of support buildings and support structures (including, but not limited to, trailers and prefabricated buildings) within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible). Covered support buildings and structures include those for office purposes; parking; cafeteria services; education and training; visitor reception; computer and data processing services; employee health services or recreation activities; routine maintenance activities; storage of supplies and equipment for administrative services and routine maintenance activities; security (including security posts); fire protection; and similar support purposes, but excluding facilities for waste storage activities, except as provided in other parts of this appendix.

* * * * *

B1.18 Siting, construction, and operation of additional water supply wells (or replacement wells) within an existing well field, or modification of an existing water supply well to restore production, if there would be no drawdown other than in the immediate vicinity of the pumping well, no resulting long-term decline of the water table, and no degradation of the aquifer from the new or replacement well.

* * * * *

B1.21 Noise abatement measures, such as construction of noise barriers and installation of noise control materials.

B1.22 Relocation of buildings (including, but not limited to, trailers and prefabricated buildings) to an already developed area (where active utilities and currently used roads are readily accessible).

B1.23 Demolition and subsequent disposal of buildings, equipment, and support structures (including, but not limited to, smoke stacks and parking lot surfaces).

B1.24 Transfer, lease, disposition or acquisition of interests in uncontaminated permanent or temporary structures, equipment therein, and only land that is necessary for use of the transferred structures and equipment, for residential, commercial, or industrial uses (including, but not limited to, office space, warehouses, equipment storage facilities) where, under reasonably foreseeable uses, there would not be any lessening in quality, or increases in volumes, concentrations, or discharge rates, of wastes, air emissions, or water effluents, and environmental impacts would generally be similar to those before the transfer, lease, disposition, or acquisition of interests. Uncontaminated means that there would be no potential for release of substances at a level, or in a form, that would pose a threat to public health or the environment.

B1.25 Transfer, lease, disposition or acquisition of interests in uncontaminated land for habitat preservation or wildlife management, and only associated buildings that support these purposes. Uncontaminated means that there would be no potential for release of substances at a level, or in a form, that would pose a threat to public health or the environment.

B1.26 Siting, construction (or expansion, modification, or replacement), operation, and decommissioning of small (total capacity less than approximately 250,000 gallons per day) wastewater and surface water treatment facilities whose liquid discharges are externally regulated, and small potable water and sewage treatment facilities.

B1.27 Activities that are required for the disconnection of utility services such as water, steam, telecommunications, and electrical power after it has been determined that the continued operation of these systems is not needed for safety.

B1.28 Minor activities that are required to place a facility in an environmentally safe condition where there is no proposed use for the facility. These activities would include, but are not limited to, reducing surface contamination, and removing materials, equipment or waste, such as final defueling of a reactor, where there are adequate existing facilities for the treatment, storage, or disposal of the materials, equipment or waste. These activities would not include conditioning, treatment, or processing of spent nuclear fuel, high-level waste, or special nuclear materials.

B1.29 Siting, construction, operation, and decommissioning of a small (less than approximately 10 acres) onsite disposal facility for construction and demolition waste which would not release substances at a level, or in a form, that would pose a threat to public health or the environment. These wastes, as defined in the Environmental Protection Agency's regulations under the Resource Conservation and Recovery Act, specifically 40 CFR 243.101, include building materials, packaging, and rubble.

B1.30 Transfer actions, in which the predominant activity is transportation, and in which the amount and type of materials, equipment or waste to be moved is small and incidental to the amount of such materials, equipment, or waste that is already a part of ongoing operations at the receiving site. Such transfers are not regularly scheduled as part of ongoing routine operations.

B1.31 Relocation of machinery and equipment, such as analytical laboratory apparatus, electronic hardware, maintenance equipment, and health and safety equipment, including minor construction necessary for removal and installation, where uses of the relocated items will be similar to their former uses and consistent with the general missions of the receiving structure.

B1.32 Traffic flow adjustments to existing roads at DOE sites (including, but not limited to, stop sign or traffic light installation, adjusting direction of traffic flow, and adding turning lanes). Road adjustments such as widening or realignment are not included.

13. Appendix B to Subpart D, section B2, is amended by adding B2.6, to read as follows:

B2. Categorical Exclusions Applicable to Safety and Health

* * * * *

B2.6 Packaging, transportation, and storage of radioactive materials from the public domain, in accordance with the Atomic Energy Act upon a request by the Nuclear Regulatory Commission or other cognizant agency, which would include a State that regulates radioactive materials under an agreement with the Nuclear Regulatory Commission or other agencies that may, under unusual circumstances, have responsibilities regarding the materials that are included in the categorical exclusion. Covered materials are those for which possession and use by Nuclear Regulatory Commission licensees has been categorically excluded under 10 CFR 51.22(14) or its successors. Examples of these radioactive materials (which may contain source, byproduct or special nuclear materials) are density gauges, therapeutic medical devices, generators, reagent kits, irradiators, analytical instruments, well monitoring equipment, uranium shielding material, depleted uranium military munitions, and packaged radioactive waste not exceeding 50 curies.

14. Appendix B to Subpart D, section B3, is amended by revising the introductory text to paragraph B3.1, B3.3, B3.6, and B3.10, and adding new paragraphs B3.12 and B3.13, to read as follows:

B3. Categorical Exclusions Applicable to Site Characterization, Monitoring, and General Research

B3.1 Onsite and offsite site characterization and environmental monitoring, including siting, construction (or modification), operation, and dismantlement or closing (abandonment) of characterization and monitoring devices and siting, construction, and associated operation of a small-scale laboratory building or renovation of a room in an existing building for sample analysis. Activities covered include, but are not limited to, site characterization and environmental monitoring under CERCLA and RCRA. Specific activities include, but are not limited to:

* * * * *

B3.3 Field and laboratory research, inventory, and information collection activities that are directly related to the conservation of fish or wildlife resources and that involve only negligible habitat destruction or population reduction.

* * * * *

B3.6 Siting, construction (or modification), operation, and decommissioning of facilities for indoor bench-scale research projects and conventional laboratory operations (for example, preparation of chemical standards and sample analysis); small-scale research and development projects; and small-scale pilot projects (generally less than two years) conducted to verify a concept before demonstration actions. Construction (or modification) will be within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible). See also C12.

* * * * *

B3.10 Siting, construction, operation, and decommissioning of a particle accelerator, including electron beam accelerator with primary beam energy less than approximately 100 MeV, and associated beamlines, storage rings, colliders, and detectors for research and medical purposes, within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible), or internal modification of any accelerator facility regardless of energy that does not increase primary beam energy or current.

* * * * *

B3.12 Siting, construction (or modification), operation, and decommissioning of microbiological and biomedical diagnostic, treatment and research facilities (excluding Biosafety Level-3 and Biosafety Level-4; reference: Biosafety in Microbiological and Biomedical Laboratories, 3rd Edition, May 1993, U.S. Department of Health and Human Services Public Health Service, Centers of Disease Control and Prevention, and the National Institutes of Health (HHS Publication No. (CDC) 93–8395)) including, but not limited to, laboratories, treatment areas, offices, and storage areas, within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible). Operation may include the purchase, installation, and operation of biomedical equipment, such as commercially

available cyclotrons that are used to generate radioisotopes and radiopharmaceuticals, and commercially available biomedical imaging and spectroscopy instrumentation.

B3.13 Performing magnetic fusion experiments that do not use tritium as fuel, with existing facilities (including necessary modifications).

15. Appendix B to Subpart D, section B5, is amended by revising paragraphs B5.3, B5.5 and B5.9 through B5.12 and removing B5.13 through B5.16, to read as follows:

B5. Categorical Exclusions Applicable to Conservation, Fossil, and Renewable Energy Activities

* * * * *

B5.3 Modification (but not expansion) or abandonment (including plugging), which is not part of site closure, of crude oil storage access wells, brine injection wells, geothermal wells, and gas wells.

* * * * *

B5.5 Construction and subsequent operation of short crude oil, steam, geothermal, or natural gas pipeline segments between DOE facilities and existing transportation, storage, or refining facilities within a single industrial complex, if the pipeline segments are within existing rights-of-way.

* * * * *

B5.9 The grant or denial of any temporary exemption under the Powerplant and Industrial Fuel Use Act of 1978 for any electric powerplant.

B5.10 The grant or denial of any permanent exemption under the Powerplant and Industrial Fuel Use Act of 1978 of any existing electric powerplant other than an exemption under (1) section 312(c) relating to cogeneration, (2) section 312(l) relating to scheduled equipment outages, (3) section 312(b) relating to certain state or local requirements, and (4) section 312(g) relating to certain intermediate load powerplants.

B5.11 The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 for any new electric powerplant to permit the use of certain fuel mixtures containing natural gas or petroleum.

B5.12 Workover (operations to restore production, such as deepening, plugging back, pulling and resetting lines, and squeeze cementing) of an existing oil, gas, or geothermal well to restore production when workover operations will be restricted to the existing wellpad and not involve any new site preparation or earth work that would adversely affect adjacent habitat.

16. Appendix B to Subpart D, section B6, is amended by revising the introductory text to paragraph B6.1, paragraph B6.1 (b), (g), and (j), B6.5, and adding paragraphs B6.9 and B6.10, to read as follows:

B6. Categorical Exclusions Applicable to Environmental Restoration and Waste Management Activities

B6.1 Small-scale, short-term cleanup actions, under RCRA, Atomic Energy Act, or other authorities, less than approximately 5 million dollars in cost and 5 years duration, to reduce risk to human health or the environment from the release or threat of release of a hazardous substance other than high-level radioactive waste and spent nuclear fuel, including treatment (e.g., incineration), recovery, storage, or disposal of wastes at existing facilities currently handling the type of waste involved in the action. These actions include, but are not limited to:

* * * * *

(b) Removal of bulk containers (for example, drums, barrels) that contain or may contain hazardous substances, pollutants, contaminants, CERCLA-excluded petroleum or natural gas products, or hazardous wastes (designated in 40 CFR part 261 or applicable state requirements), if such actions would reduce the likelihood of spillage, leakage, fire, explosion, or exposure to humans, animals, or the food chain;

* * * * *

(g) Confinement or perimeter protection using dikes, trenches, ditches, diversions, or installing underground barriers, if needed to reduce the spread of, or direct contact with, the contamination;

* * * * *

(j) Segregation of wastes that may react with one another or form a mixture that could result in adverse environmental impacts;

* * * * *

B6.5 Siting, construction (or modification or expansion), operation, and decommissioning of an onsite facility for characterizing and sorting previously packaged waste or for overpacking waste, other than high-level radioactive waste, if operations do not involve unpacking waste. These actions do not include waste storage (covered under B6.4, B6.6, B6.10, and C16) or the handling of spent nuclear fuel.

* * * * *

B6.9 Small-scale temporary measures to reduce migration of contaminated groundwater, including the siting, construction, operation, and decommissioning of necessary facilities. These measures include, but are not limited to, pumping, treating, storing, and reinjecting water, by mobile units or facilities that are built and then removed at the end of the action.

B6.10 Siting, construction (or modification), operation, and decommissioning of a small upgraded or replacement facility (less than approximately 50,000 square feet in area) at a DOE site within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible) for storage of waste that is already at the site at the time the storage capacity is to be provided. These actions do not include the storage of high-level radioactive waste, spent nuclear fuel or any waste that requires special precautions to prevent nuclear criticality. See also B6.4, B6.5, B6.6, and C16.

17. Appendix C to Subpart D is amended in the Table of Contents by removing and reserving the entries for C1 and C10 and by revising the entries for C11, C14 and C16 to read as follows:

Appendix C to Subpart D to Part 1021—Classes of Actions That Normally Require EAs But Not Necessarily EISs

Table of Contents

C1 [Removed and Reserved]

* * * * *

C10 [Removed and Reserved]

C11 Siting/construction/operation/decommissioning of low- or medium-energy particle acceleration facility with primary beam energy greater than approximately 100 MeV

* * * * *

C14 Siting/construction/operation of water treatment facilities greater than approximately 250,000 gallons per day capacity

* * * * *

C16 Siting/construction/operation/decommissioning of large waste storage facilities

18. Appendix C to Subpart D to Part 1021 is amended by removing and reserving paragraphs C1 and C10 and by revising C11, C14 and C16, to read as follows:

C1 [Removed and reserved].

* * * * *

C10 [Removed and reserved].

C11 Siting, construction (or modification), operation, and decommissioning of a low- or medium-energy (but greater than approximately 100 MeV primary beam energy) particle acceleration facility, including electron beam acceleration facilities, and associated beamlines, storage rings, colliders, and detectors for research and medical purposes, within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible).

* * * * *

C14 Siting, construction (or expansion), operation, and decommissioning of wastewater, surface water, potable water, and sewage treatment facilities with a total capacity greater than approximately 250,000 gallons per day, and of lower capacity wastewater and surface water treatment facilities whose liquid discharges are not subject to external regulation.

* * * * *

C16 Siting, construction (or modification to increase capacity), operation, and decommissioning of packaging and unpacking facilities (that may include characterization operations) and large storage facilities (greater than approximately 50,000 square feet in area) for waste, except high-level radioactive waste, generated onsite or resulting from activities connected to site operations. These actions do not include storage, packaging, or unpacking of spent nuclear fuel. See also B6.4, B6.5, B6.6, and B6.10.

19. Appendix D to Subpart D is amended to revise the Table of Contents entries for D1 and D10 to read as follows:

Appendix D to Subpart D to Part 1021—Classes of Actions That Normally Require EISs

Table of Contents

D1 Strategic Systems

* * * * *

D10 Siting/construction/operation/decommissioning of major treatment, storage, and disposal facilities for high-level waste and spent nuclear fuel

* * * * *

20. Appendix D to subpart D to part 1021 is amended by revising paragraphs D1 and D10, to read as follows:

D1 Strategic Systems, as defined in DOE Order 430.1, "Life-Cycle Asset Management," and designated by the Secretary.

* * * * *

D10 Siting, construction, operation, and decommissioning of major treatment, storage, and disposal facilities for high-level waste and spent nuclear fuel, including geologic repositories, but not including onsite replacement or upgrades of storage facilities for spent nuclear fuel at DOE sites where such replacement or upgrade will not result in increased storage capacity.

* * * * *

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Part V

Department of Housing and Urban Development

5 CFR Chapter LXV
24 CFR Part 0
Supplemental Standards of Ethical Conduct for Employees of the Department of Housing and Urban Development; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

5 CFR Chapter LXV

24 CFR Part 0

[Docket No. FR–3331–F–01]

RIN 2501–AB55, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of Housing and Urban Development

AGENCY: Office of the Secretary, Department of Housing and Urban Development (HUD or Department).

ACTION: Final rule.

SUMMARY: The Department of Housing and Urban Development, with the concurrence of the Office of Government Ethics (OGE), is issuing a final rule establishing uniform standards of ethical conduct for employees of the Department to supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The final rule is a necessary supplement to the executive branch-wide Standards because it addresses ethical issues unique to the Department. The final rule will become effective 30 days after the date of publication, and will establish regulations prohibiting certain financial interests and restricting certain outside employment.

EFFECTIVE DATE: This rule is effective on August 8, 1996.

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Assistant General Counsel, Ethics Law Division, 202–708–3815; or Sam E. Hutchinson, Associate General Counsel, Office of Human Resources Law, 202–708–0888. Hearing or speech-impaired individuals may call HUD's TDD number 202–708–3259. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

On June 30, 1995, the Department, with OGE's concurrence, published for comment a proposed rule to establish supplemental standards of ethical conduct for HUD employees (60 FR 34420–34426). The proposed rule was intended to supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) published by OGE on August 7, 1992, and effective February 3, 1993 (57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52583, and 60 FR 51667, with additional grace period extensions for certain exisiting agency standards of conduct at 59 FR 4779–4780, 60 FR 6390–6891, and 60 FR 66857–66858). The executive branch-wide Standards, codified at 5 CFR part 2635, establish uniform standards of ethical conduct for executive branch employees. The proposed rule was issued pursuant to 5 CFR 2635.105, which authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The Department, with OGE's concurrence, determined that the supplemental regulations contained in the proposed rule were necessary to implement the Department's ethics program successfully, in light of the Department's unique programs and operations.

The proposed rule prescribed a 60-day comment period and invited comments from all interested parties. The Department received one public comment, and after careful consideration of it, has made appropriate modifications to the rule. In addition, the Department has made appropriate modifications to the rule based on various intra-departmental comments. The Department, with OGE's concurrence, is now publishing as a final rule the Supplemental Standards of Ethical Conduct for Employees of the Department of Housing and Urban Development, to be codified in a new chapter LXV of 5 CFR, consisting of part 7501.

II. Summary of the Comments

The Department received one public comment; it was from the Federal Home Loan Mortgage Corporation ("Freddie Mac"). The Department also received six intra-departmental comments. Freddie Mac's comments focused primarily on three distinct areas under the proposed rule: scope of coverage, ownership interests, and outside employment. The intra-departmental comments contained both requests for substantive changes and for additional clarification regarding the application of the rule in general or specific sections.

III. Analysis of the Comments

Section 7501.102 Definitions

One commenter within the Department recommended that one portion of the definition of "security" be modified to read that the term "includes" any right to acquire or dispose of any long or short term position in securites. The Department agrees that the suggested language is more reflective of the Department's intent than the originally proposed language and has, therefore, implemented this revision to the definition of "security" in § 7501.102 of the final rule.

Freddie Mac suggested that the Department include definitions for "employee" and "special Government employee." The Department has not adopted this recommendation because the definitions of those terms in the executive branch-wide Standards, at 5 CFR 2635.102 (h) and (l), apply to supplemental regulations unless otherwise specified.

Section 7501.104 Prohibited Financial Interests

One commenter within the Department recommended that special Government employees assigned to work in one of the program offices listed in § 7501.106(b)(1) not be excluded from the coverage of the financial interest prohibitions in § 7501.104 of the rule, since such employees would have access to the same types of confidential information as would other employees in those officies. The Department has adopted this recommendation to protect against the appearance that any HUD employee is using confidential information for private gain. The proposed exclusion of special Government employees from the coverage of this section has been eliminated.

Another commenter within the Department recommended that the first sentence of the description of prohibited financial interests in real estate, at § 7501.104(a)(4), be amended to read: "Stock or another financial interest in a multifamily project or single family dwelling, cooperative unit or condominium unit, which is owned or subsidized by the Department, or which is subject to a note and mortgage or other security instrument insured by the Secretary, except to the extent that the stock or other interest represents the employee's principal residence." The Department has decided to adopt this language as a better characterization of the Department's interest in various real estate interests covered by the final rule.

Section 7501.105 Outside Employment

One commenter within the Department recommended that the Department include a provision regarding an employee's service on the board of a non-Federal organization in an official capacity, similar to prior 24 CFR 0.735–210 of HUD's old departmental standards of conduct. In response, a Note has been added to this section to clarify that while service in an official capacity on the Board of a non-Federal organization is not outside employment or other activity subject to this section, employees need to be aware that such service is subject to other applicable laws.

While generally supportive of the outside employment provisions in this section, Freddie Mac wanted the requirements in the section to extend to any type of writing by employees. The Department has included within the coverage of this section those types of outside employment which the Department believes pose the greatest potential for employees to engage in conduct which might violate applicable laws or regulations, and is not convinced that the suggested extension of coverage is warranted.

In addition, Freddie Mac suggested that the public impact of an outside activity in relation to the employee's official position be taken into consideration when deciding whether to grant a waiver, under § 7501.103 of the rule, from the prohibitions in this section. The specific inclusion of the suggested factors in the final rule is uncalled for, because the factors are largely covered by the terms of the waiver standard at § 7501.103, i.e., that application of the prohibition is not necessary to ensure public confidence in the impartiality and objectivity with which the Department's programs are administered.

Section 7501.106 Additional Rules for Certain Department Employees Involved in the Regulation or Oversight of Government Sponsored Enterprises

Freddie Mac noted that the supplemental regulation is not specifically applicable to individuals who serve pursuant to a consulting agreement with the Department. The Department has decided not to make the regulation specifically applicable to consultants, since the generic term "consultants" may include individuals who are independent contractors as well as those who are deemed employees of the Department. Whether a consultant will be deemed an employee of the Department for these purposes depends on various factors, including the type of functions or activities being performed by the consultant for the Department, and the extent of the consultant's supervision by an officer or employee of the Department. A consultant deemed an employee of the Department would be subject to the executive branch-wide Standards and these rules.

Freddie Mac also recommended that the description of prohibited financial interests in § 7501.106(c)(ii) be amended to parallel the description of prohibited financial interests in § 7501.104(a), by adding the terms "issued" and "collateralized" in the description of prohibited securities in a mortgage institution, a certain percentage of whose originated mortgages involve the Federal National Mortgage Association or Freddie Mac in various specified capacities. This recommendation was adopted to attain uniformity.

A commenter within the Department suggested that employees of the Office of Inspector General and all employees of the Office of Federal Housing Enterprise Oversight be included in the list at § 7501.106(b)(1) of employees covered by the prohibition in this section. The Department has adopted this recommendation to make the prohibitions contained in § 7501.106 uniformly applicable to all employees whose official duties require that they have access to information regarding a Government sponsored enterprise (GSE). Similarly, another commenter within the Department recommended that the Department's Office of Lead-Based Paint and Poisoning Prevention be excluded from coverage under § 7501.106(b)(1), since it is not involved in the regulation or oversight of GSEs. This recommendation was adopted for the reason asserted by the commenter.

This same commenter also recommended that the definition of mortgage institution be amended to include entities that insure mortgages. The Department has adopted this recommendation as a more specific reflection of its intent. In addition, the Department has adopted this commenter's recommendation that an institution's most recent annual financial statement be used to determine whether it exceeds the thresholds contained in § 7501.106(c)(1).

This same commenter also expressed concern that the definition of covered employee in § 7501.106(b)(1), which encompasses only employees who are required to file financial disclosure reports, excludes many employees whose primary job responsibilities significantly include the regulation or oversight of GSEs. To address this concern, the Department has modified proposed § 7501.106(b)(1)(viii) to include the DAEO in the list of those individuals who may designate an employee as a "covered employee" to ensure compliance with the principles set forth in 5 CFR 2635.403. To ensure that the prohibition in this section is not unnecessarily burdensome, the Department has also added a new § 7501.106(b)(2) (the prior proposed paragraph (b)(2) has been redesignated paragraph (b)(3)), which permits the DAEO, upon recommendation of the appropriate individual of Assistant Secretary rank, to exclude in writing an employee otherwise designated as a "covered employee" if the employee's official duties do not substantially involve the regulation or oversight of GSEs and ownership of the interests prohibited by § 7501.106(c) would not cause a reasonable person to question the impartiality and objectivity with which the Department's programs are administered.

In response to another comment from within the Department, the Department has specifically included the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation under § 7501.106(e) to make clear that special Government employees who are covered employees under § 7501.106(b)(1) cannot be employed by any of these organizations or their affiliates. This modification is required to ensure compliance with 5 CFR 2635.403 and because special Government employees are not otherwise subject to the outside employment and other activities provisions of § 7501.105.

IV. Other Changes

An exception is being added to the prohibition in § 7501.104(a)(5) against an employee receiving any Department subsidy provided pursuant to Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437f). Under new § 7501.104(a)(5)(iii), an employee may receive such a subsidy if the tenant of the subsidized unit is the parent, child, grandchild, or sibling of the employee, but only if there is no increase in that tenant's rent upon the commencement of subsidy payments other than normal annual adjustments. This change from the proposed rule reflects current Departmental practice.

In addition, the Department has decided to exclude special Government employees (SGEs) from the prior approval requirement at § 7501.105(c) of the final rule. Proposed § 7501.105(c)(1) would have required all employees of the Department to obtain approval before engaging in certain types of outside employment or activities. Special Government Employees have been subject to this requirement because they are included within the meaning of "employee," as used in the supplemental regulation. However, SGEs were not required to obtain prior approval for outside employment under the Department's old Standards of Conduct. Moreover, SGEs are excluded from the outside employment prohibitions at § 7501.105(a) of the final rule. Accordingly, the Department has concluded that it would be unreasonable to apply the prior approval requirement to SGEs, and is providing in § 7501.103(c)(1) of the final

rule that the prior approval requirement therein applies to employees of the Department, "except special Government employees."

Finally, the Department has decided not to exclude employees who file public or confidential financial disclosure reports in the Office of Housing's Office of Deputy Assistant Secretary for Operations from the list of "covered employees" in § 7501.106(b)(1). Section 7501.106 sets forth additional rules for certain employees involved in the regulation or oversight of the Government sponsored enterprises. The reason for this change is that the Office of Housing has been reorganized since the publication of the proposed rule to give the Deputy Assistant Secretary for Operations programmatic responsibility over matters that affect the Government sponsored enterprises. Accordingly, the exclusionary clause "with the exception of the Office of Deputy Assistant Secretary for Operations" has been deleted from paragraph (b)(1)(ii) containing the definition of "covered employee" for purposes of § 7501.106.

V. Removal of Old Department Standards of Conduct Regulations and Revision of the Residual Cross-Reference Provision

On April 5, 1996, the Department published a final rule that provided for removal of all of the then existing provisions in the Department's old Standards of Conduct regulation at 24 CFR part 0, and their replacement with a single section that provides a cross-reference to 5 CFR parts 2634 and 2635, effective May 6, 1996 (61 FR 15350). To prevent an untimely lapse in enforcement authority for the two sections of 24 CFR part 0 that had temporarily remained in effect pursuant to the extended grace periods in the Standards—§ 0.735–203 regarding outside employment and other activities, and § 0.735–204 regarding financial interests—the Department published a correction to the final rule on May 1, 1996, effective May 6, 1996, preserving those two sections at 24 CFR 0.2 and 0.3. (61 FR 19187–19188). Upon the effective date of the Department's supplemental standards of ethical conduct as a final rule, the Department is amending 24 CFR part 0 to remove the temporarily preserved sections regarding outside employment and financial interests, and to include in the residual cross-reference provision a notation of the Department's newly issued supplemental standards of ethical conduct at 5 CFR part 7501.

VI. Matters of Regulatory Procedure

Regulatory Flexibility Act

It is hereby certified that this rule will not have significant economic impact on a substantial number of small entities. This rule affects only Federal employees and their immediate families.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas or building sites, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, this rule is only directed toward Federal employees and would not alter the established roles of HUD and the States and local governments. As a result, the rule is not subject to review under the order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs would result from promulgation of this rule, as those policies and programs relate to family concerns.

List of Subjects

5 CFR Part 7501

Conflict of interests, Government employees.

24 CFR Part 0

Administrative practice and procedure, Conflict of interests.

Dated: July 2, 1996.

Henry G. Cisneros,

Secretary of the Department of Housing and Urban Development.

Approved: July 2, 1996.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Department of Housing and Urban Development, with the concurrence of the Office of Government Ethics, is amending title 5 and title 24, subtitle A, of the Code of Federal Regulations as follows:

TITLE 5—[AMENDED]

1. A new chapter LXV, consisting of part 7501, is added to 5 CFR to read as follows:

CHAPTER LXV—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 7501—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sec.

7501.101 Purpose.
7501.102 Definitions.
7501.103 Waivers.
7501.104 Prohibited financial interests.
7501.105 Outside employment.
7501.106 Additional rules for certain Department employees involved in the regulation or oversight of Government sponsored enterprises.

Authority: 5 U.S.C. 301, 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.803, 2635.807.

§ 7501.101 Purpose.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Housing and Urban Development (HUD or Department) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. Employees are required to comply with 5 CFR part 2635, this part, and any additional rules of conduct that the Department is authorized to issue.

§ 7501.102 Definitions.

For purposes of this part, and otherwise as indicated, the following definitions shall apply:

Affiliate means any entity that controls, is controlled by, or is under common control with another entity.

Agency designee, as used also in 5 CFR part 2635, means the Associate General Counsel for Human Resources Law, the Assistant General Counsel, Ethics Law Division, and the HUD Field Office Assistant General Counsels; the Inspector General, for employees assigned to the Office of the Inspector General; and the General Counsel, Office of Federal Housing Enterprise Oversight, for employees assigned to the Office of Federal Housing Enterprise Oversight.

Agency ethics official, as used also in 5 CFR part 2635, means the agency designees as specified above.

Assistance means any contract, grant, loan, subsidy, guarantee, cooperative agreement or other financial assistance under a program administered by the HUD Secretary, and includes "assistance" awarded by the Department that is competitively redistributed to a second tier of applicants or awardees. The term does not include single family mortgage insurance provided under a program administered by the Secretary.

Designated Agency Ethics Official (DAEO) means the General Counsel of HUD or the Deputy General Counsel (Operations) in the absence of the General Counsel.

Employment means any compensated or uncompensated form of non-Federal employment or business relationship, including self employment, involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product.

Security means all interests in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper including loans securitized by mortgages or deeds of trust and securities backed by such instruments, as well as all types of preferred and common stock. The term encompasses current and contingent ownership interests including any beneficial or legal interest derived from a trust. Such interest includes any right to acquire or dispose of any long or short position in such securities and also includes, without limit, interests convertible into such securities, as well as options, rights, warrants, puts, calls and straddles with respect thereto. The term shall not, however, be construed to include deposit accounts.

§ 7501.103 Waivers.

The Designated Agency Ethics Official may waive any provision of this part upon finding that the waiver will not result in conduct inconsistent with 5 CFR part 2635 or otherwise prohibited by law and that application of the provision is not necessary to ensure public confidence in the impartiality and objectivity with which the Department's programs are administered. Each waiver shall be in writing and supported by a statement of the facts and findings upon which it is based and may impose appropriate conditions, such as requiring the employee's execution of a written disqualification statement.

§ 7501.104 Prohibited financial interests.

(a) *General requirement.* This section applies to all HUD employees except special Government employees who are not "covered employees" as defined in § 7501.106(b)(1) of this part. Except as provided in paragraph (b) of this section, an employee, or an employee's spouse or minor child, shall not directly or indirectly receive, acquire or own:

(1) Securities issued by the Federal National Mortgage Association (FNMA) or securities collateralized by FNMA securities;

(2) Securities issued by the Federal Home Loan Mortgage Corporation (FHLMC) or securities collateralized by FHLMC securities;

(3) Federal Housing Administration debentures or certificates of claim;

(4) Stock or another financial interest in a multifamily project or single family dwelling, cooperative unit, or condominium unit, which is owned or subsidized by the Department, or which is subject to a note or mortgage or other security interest insured by the Department, except to the extent that the stock or other interest represents the employee's principal residence. Employees who wish to purchase a Department-held property as a principal residence must adhere to the procedures established by the Assistant Secretary for Housing for the administration of the property disposition program set forth in HUD Handbook 4310.5;

(5) Any Department subsidy provided pursuant to Section 8 of the United States Housing Act of 1937, as amended, (42 U.S.C. 1437f) to or on behalf of a tenant of property owned by the employee. However, an employee may receive such a subsidy when:

(i) The employee acquires without specific intent, as through gift or inheritance, a property which at the time of acquisition has a tenant receiving such a subsidy, but only as long as that tenant continues to reside in the property;

(ii) An incumbent tenant who has not previously received such a subsidy becomes the beneficiary thereof, but only if there is no increase in that tenant's rent upon the commencement of subsidy payments other than normal annual adjustments; or

(iii) The tenant is the parent, child, grandchild, or sibling of the employee, but only if there is no increase in that tenant's rent upon the commencement of subsidy payments other than normal annual adjustments; or

(6) Any direct creditor interest in a mortgage insured by the Department.

(b) *Exception to prohibition for certain interests.* Nothing in this section prohibits an employee, or the spouse or minor child of an employee, from acquiring, owning, or controlling:

(1) An interest in a publicly traded or publicly available investment fund which, in its prospectus, does not indicate the objective or practice of concentrating its investments in residential mortgages or securities backed by residential mortgages, except those of the Government National Mortgage Association (GNMA), and the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund;

(2) A limited partnership interest in a partnership which has at least 5,000 partnership interests, and no more than 25% of the gross value of the partnership interest constitutes projects subject to HUD held or insured mortgages or projects currently receiving the benefit of HUD subsidies; or

(3) Mortgage insurance provided pursuant to section 203 of the National Housing Act (12 U.S.C. 1709) on the employee's principal residence and any one other single family residence.

(c) *Reporting and divestiture.* An employee must report, in writing, to the appropriate agency ethics official, any interest prohibited under paragraph (a) of this section acquired prior to the commencement of employment with the Department or without specific intent, as through gift, inheritance, or marriage, within 30 days from the start of employment or acquisition of such interest. Such interest must be divested within 90 days from the date reported unless waived by the Designated Agency Ethics Official in accordance with § 7501.103.

§ 7501.105 Outside employment.

(a) *Prohibited outside employment.* Subject to the exceptions set forth in paragraph (b) of this section, HUD employees, except special Government employees, shall not engage in:

(1) Employment involving active participation in a business dealing with or related to real estate or manufactured

housing including but not limited to real estate brokerage, management and sales, architecture, engineering, mortgage lending, property insurance, appraisal services, construction, construction financing, land planning, or real estate development;

(2) Employment with a person, other than a State or local government, who engages in lobbying activities concerning Department programs or who is required to report expenditures for lobbying activities or register as a lobbyist under 42 U.S.C. 3537b or similar statutes which require the registration of persons who attempt to influence the decisions of officers or employees of the Department;

(3) Employment as an officer or director of a person who is a Department-approved mortgagee, a lending institution or an organization which services securities for the Department; or

(4) Employment with the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Bank System or any affiliate thereof.

(b) *Exceptions to employment prohibitions.* The prohibitions set forth in paragraph (a) of this section do not apply to serving as an officer or a member of the Board of Directors of:

(1) A Federal Credit Union;

(2) A cooperative or condominium association for a housing project which is not subject to regulation by the Department or, if so regulated, in which the employee personally resides; or

(3) An entity designated in writing by the Designated Agency Ethics Official.

(c) *Prior approval requirement.* (1) Employees, except special Government employees, shall obtain the prior written approval of an Agency Ethics Official before accepting compensated or uncompensated employment:

(i) As an officer, director, trustee, or general partner of, or in any other position of authority with, either a for-profit or non profit organization which directly or indirectly receives assistance from the Department.

(ii) With a State or local government; or

(iii) In the same professional field as that of the employee's official position.

(2) Approval shall be granted unless the conduct is inconsisent with 5 CFR part 2635 or this part.

(d) *Voluntary services.* Subject to the restrictions and requirements contained in the conflict of interest laws, 5 CFR part 2635, and this part, employees are encouraged to volunteer their personal time to nonprofit organizations.

Note to § 75.105: An employee assigned to serve in an official capacity as the Department's liaison representative to an outside organization is not engaged in an outside activity to which this section applies. Notwithstanding, an employee may be assigned to serve as the Department's liaison representative only as authorized by law, and as approved by the Department under applicable procedures.

§ 7501.106 Additional rules for certain Department employees involved in the regulation or oversight of Government sponsored enterprises.

(a) The following rules apply to certain Department employees whose duties involve the regulation or oversight of Government Sponsored Enterprises, specifically the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC). This section is in addition to §§ 7501.101 to 7501.105.

(b) *Definitions.* For purposes of this section, the following definitions are applicable:

(1) Except as provided in paragraph (b)(2) of this section, "covered employee" means all employees in the Office of Federal Housing Enterprise Oversight and employees required to file a public or confidential financial disclosure report under 5 CFR part 2634 in:

(i) The Office of the HUD Secretary, with the exception of the Office of Lead-Based Paint Abatement and Poisoning Prevention;

(ii) The Office of the Assistant Secretary for Housing—Federal Housing Commissioner;

(iii) The Office of Financial Institutions Regulation in the Office of the Assistant Secretary for Policy Development and Research;

(iv) The Offices of Investigation, Program Standards and Evaluation, and Regulatory Initiatives and Federal Coordination within the Office of the Assistant Secretary for Fair Housing and Equal Opportunity;

(v) The Office of General Counsel's Offices of Insured Housing, Government Sponsored Enterprises/Real Estate Settlement and Procedures Act Division in Finance and Regulatory Enforcement, Legislation and Regulations, and the Fair Housing Enforcement Division;'

(vi) The Office of Inspector General;

(vii) The official superiors of the employees listed in paragraphs (b)(1)(iii), (b)(1)(iv) and (b)(1)(v) of this section;

(viii) Any other employee who is designated in writing by the Secretary, the Designated Agency Ethics Official, or the appropriate individual of Assistant Secretary rank, or his or her designee, to ensure compliance with the principles set forth in 5 CFR 2635.403 and who receives notice of such designation.

(2) The DAEO, upon recommendation of the appropriate individual of Assistant Secretary rank, may exclude in writing an employee otherwise designated as a "covered employee" under § 7501.106(b)(1)(i)–(vii) of this part if the employee's official duties do not substantially involve the regulation or oversight of Government sponsored enterprises and ownership of interests prohibited by § 7501.106(c) would not cause a reasonable person to question the impartiality and objectivity with which the Department's programs are administered.

(3) *Mortgage institution* means mortgage bankers, mortgage brokers, banks, savings and loans, and other institutions or entities that originate, insure, or service mortgages that are owned or guaranteed by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC).

(c) *Prohibited financial interests.* (1) Except as provided in paragraph (c)(2) of this section, a covered employee, or a spouse or minor child of a covered employee, shall not receive, acquire, or own securities of:

(i) A mortgage institution if more than 20 percent of the institution's assets consist of mortgages;

(ii) A mortgage institution in which 20 percent or less of the institution's assets consist of mortgages and more than 40 percent of the mortgages originated by the institution are issued, collateralized, sold or guaranteed by FNMA and/or FHLMC; or

(iii) A mortgage institution which services or insures mortgages if more than 20 percent of the gross income of such institution is derived from either or both of these activities.

(2) The prohibitions in paragraph (c)(1) of this section do not apply to ownership of securities held in a publicly traded or publicly available investment fund, or profit-sharing, retirement, or similar plan which in its prospectus or governing documents does not indicate the objective or practice of concentrating its investments in the financial services sector, and the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund.

(3) The mortgage institution's most recent annual financial statement shall be used in determining the applicability of the prohibitions in paragraph (c)(1) of this section.

(d) *Restrictions arising from third party relationships.* If any of the entities listed below has securities that a covered employee would be prohibited from owning by paragraph (c) of this section, the employee shall report such interest to the appropriate Agency Ethics Official. The Agency Ethics Official may require the employee to terminate the third party relationship, undertake an appropriate disqualification, or take other appropriate action determined to be necessary consistent with 5 CFR part 2635 and this part. This paragraph applies to a:

(1) Partnership in which the covered employee, or a spouse or minor child of the employee is a general partner;

(2) Partnership in which the covered employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent limited partnership interest;

(3) Closely held corporation in which the covered employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent equity interest;

(4) Trust in which the covered employee, or spouse or minor child of the employee, has a legal or beneficial interest;

(5) Investment club or similar informal investment arrangement between the covered employee, or spouse or minor child of the employee, and others; or

(6) Other entity in which the covered employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent equity interest.

(e) *Prohibited outside employment.* Covered employees shall not engage in employment with or on behalf of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a mortgage institution, or any of their affiliates.

(f) *Prohibited recommendations.* Covered employees shall not make any recommendation or suggestion, directly or indirectly, concerning the acquisition, sale, or divestiture of securities of FHLMC or FNMA.

(g) *Prohibited purchase of assets.* Covered employees, their spouses or minor children shall not purchase, directly or indirectly, any real or personal property from FHLMC or FNMA, unless it is sold at public auction or by other means which would assure that the selling price is the asset's fair market value.

(h) *Pre-existing interests.* Covered employees must report, in writing, to the appropriate Agency Ethics Official, any interest prohibited under paragraph (c) of this section acquired prior to either the commencement of employment as a covered employee or the effective date of this part, or acquired without specific intent, as through gift, inheritance, or marriage, within 30 days from the start of covered employment or acquisition of such interest. Such interest must be divested within 90 days from the date it is reported unless waived by the Designated Agency Ethics Official in accordance with § 7501.103.

TITLE 24—[AMENDED]

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 0—STANDARDS OF CONDUCT

2. In Part 0 of 24 CFR subtitle A, § 0.1 is revised to read as follows:

§ 0.1 Cross-reference to employees ethical conduct standards and financial disclosure regulations.

Employees of the Department of Housing and Urban Development (Department) are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635, the Department's regulation at 5 CFR part 7501 which supplements the executive branch-wide standards, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

Authority: 5 U.S.C. 301, 7301; 42 U.S.C. 3535(d).

[FR Doc. 96–17450 Filed 7–8–96; 8:45 am]
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Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development: Self-Help Homeownership Opportunity Program, Funding Availability and Guidelines; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4062–N–01]

Office of the Assistant Secretary for Community Planning and Development; Self-Help Homeownership Opportunity Program (SHOP) Notice of Funding Availability and Guidelines

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability for fiscal year 1996.

SUMMARY: This NOFA announces the availability of $15 million in funding for the Self-Help Homeownership Opportunity Program (SHOP), and contains information concerning basic program requirements, eligible applicants, funding available for grants, and application requirements and procedures. The NOFA is issued under section 11 of the Housing Opportunity Program Extension Act of 1996 (the "Extension Act"). The program is being implemented through this NOFA and no application materials or forms are required other than as set out in this NOFA. No separate implementing regulations will be issued. Applicants are advised to consult section 11 of the Extension Act in order to prepare an application that is consistent with its requirements, some of which may not be repeated in this NOFA. Failure to follow the instructions and procedures contained in this NOFA or lack of adherence to the program requirements found in section 11 of the Extension Act will result in an application being rejected by HUD.

DATES: Completed applications for SHOP grants must be physically received by 4:30 p.m. Eastern Daylight Time on August 8, 1996. It is not sufficient for an application to bear a postmark within the deadline. *Applications sent by facsimile (FAX) will not be accepted.* HUD will not waive this deadline for actual submission for any reason. The application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this policy into account and consider early submission to avoid any risk of loss of eligibility brought about by any unanticipated or delivery-related problems.

ADDRESSES: An original and two copies of the completed application must be submitted to HUD Headquarters, Office of Community Planning and Development, Processing and Control Unit, Room 7251, 451 Seventh Street, SW, Washington, DC 20410, ATTN: Self-Help Program. (A 3.5≥ computer diskette containing the complete application may be substituted for one of the paper copies.)

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Office of Affordable Housing Programs, Department of Housing and Urban Development, room 7168, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–3226 EXT. 4589; (TTY (202) 708–2565). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA (FR–4062) have been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and 5 CFR 1320.13, and have been assigned OMB control number 2506–0157, expires September 30, 1996. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

This information collection is required in connection with the issuance of this NOFA, announcing the availability of $15 million for grants to encourage innovative homeownership opportunities through the provision of self-help housing where the homeowner contributes a significant amount of sweat equity toward construction of the dwellings. The information collection is needed so that HUD staff may determine the eligibility, qualifications and capability of applicants to carry out self-help and volunteer labor homeownership programs. HUD will review the information provided by the applicants against the selection criteria contained in the NOFA in order to rate and rank the applications and select the best and most qualified individual applications for funding. The selection criteria are: (1) Operational capability and experience; (2) financial capability and experience; (3) quality of program design; (4) leveraging of public/private resources; and (5) Empowerment Zone/Enterprise Community support.

The information is public information and is not subject to any confidentiality requirements other than the prohibition against advance information on funding decisions (see section III of this NOFA).

The estimates of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response are as follows:

	Number of respondents	Frequency of responses	Hours per response	Burden hours
Application Development	10	1	80	800

Total Estimated Burden Hours: 800

The public is requested to send any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden to: Kay Weaver, Departmental Reports Liaison Officer, Office of Administration, Department of Housing & Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410.

I. Purpose and Substantive Description

A. Authority

The funding made available under this NOFA is authorized by Section 11 of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104–120, 110 Stat 834, approved March 28, 1996). No separate implementing regulations will be issued. HUD may issue additional guidance containing more detailed policy than provided in this NOFA with respect to various aspects of the program, the management of funds, the environmental clearance process and similar matters, as necessary.

B. Purpose and Program Requirements

The Self-Help Homeownership Opportunity Program is intended to facilitate and encourage innovative homeownership opportunities through the provision of self-help housing where the homebuyer contributes a significant amount of sweat-equity toward the construction of the new dwelling. This program will increase homeownership levels and is in furtherance of the National Homeownership Strategy. The strategy is a five-year blueprint for cooperative actions identified by 56 private and public organizations that is intended to achieve an all-time high level of homeownership by the year 2000. The National Homeownership Strategy, "Partners in the American Dream" was prepared by the Department and its Partners in response to a request from President Clinton in 1995. These decent, safe, and sanitary nonluxury dwellings must be made available to eligible homebuyers at prices below the prevailing market prices. Eligible homebuyers are low-income families (families whose annual incomes do not exceed 80 percent of the median income for the area, as determined by HUD) who are unable to otherwise afford to purchase a dwelling. Activities to develop housing assisted under this NOFA must involve community participation, by providing for the utilization of volunteers in the construction of dwellings or by other activities designed to involve the community in the project. The only eligible expenses for program funds are land acquisition (including financing and closing costs) and infrastructure improvement (installing, extending, constructing, rehabilitating, or otherwise improving utilities and other infrastructure). Administrative expenses and costs associated with the rehabilitation, improvement, or construction of dwellings are not eligible uses of program funds. Among the program requirements contained in section 11 of the Extension Act that the applicant's proposed program design must meet in order to be considered as eligible are the following: (1) to provide for development, through significant amounts of sweat-equity and volunteer labor, of at least 30 dwellings at an average cost of no more than $10,000 per unit in SHOP funds; (2) to use the grant in a manner that leverages other sources of funding, including private or other public funds; (3) to construct quality dwellings that comply with local building and safety codes and standards and are available at prices below the prevailing market price; and (4) to schedule activities so as to substantially fulfill the obligations under the grant agreement within 24 months after grant amounts are first made available to the organization or consortia. HUD will recapture undisbursed amounts from the grantees who fail to substantially fulfill these obligations within 24 months.

C. Other Federal Requirements

Grantees awarded funds under this NOFA are subject to the following requirements: The administrative requirements of 24 CFR part 84, OMB Circular A–122 and the audit requirements in 24 CFR part 45 (implementing OMB Circular A–133); the Equal Opportunity requirements referred to in 24 CFR 5.105(a) (61 FR 5198, 5202, published February 9, 1996); the provisions contained in Section 305 of the Multifamily Housing Property Disposition Reform Act of 1994, Environmental Review, codified in the Environmental Review regulations at 24 CFR part 58, are applicable to properties assisted with SHOP funds (see next paragraph); the requirements of the Uniform Relocation Act, as implemented by 49 CFR part 24; the lead-based paint requirements set out in 24 CFR part 35; the requirements of section 3 of the Housing and Urban Development Act of 1968 concerning infrastructure improvements funded with SHOP funds; restrictions on participation by ineligible, debarred or suspended persons or entities referred to in 24 CFR 5.105(c); and the Drug-Free Workplace authorities referred to in 24 CFR part 24.

Use of SHOP funds is subject to the environmental review requirements that apply to HUD Special Projects in accordance with Section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994, as implemented in 24 CFR part 58 (final rule published on April 30, 1996, 61 FR 19120, effective May 30, 1996). Recipients are cautioned that they may not commit either SHOP or non-HUD funds for most activities until a Federal environmental review is performed by a unit of general local government, tribe or State, and until HUD approves a recipient's request for release of funds under part 58.

D. Allocation Amounts

This NOFA makes available $15 million in SHOP grants, in accordance with sections 11(c)(2) and 12(b)(1) of the Housing Opportunity Program Extension Act of 1996.

E. Unused Funds

If funds remain after HUD has approved all approvable grant applications, the excess will be provided to Habitat for Humanity International for use in accordance with the requirements of section 11 of the Extension Act.

F. Eligible Applicants

Except as noted below, eligible applicants are nonprofit national or regional organizations or consortia that have experience in providing or facilitating self-help housing homeownership opportunities, and that have standards of financial accountability that conform to 24 CFR 84.21, "Standards for Financial Management Systems". Applicants receiving awards are required to have audits conducted in accordance with the provisions of 24 CFR part 45 (OMB Circular A–133) or a program-specific financial audit, as appropriate. Where the applicant is a consortium, one organization must be chosen as the lead applicant. The lead applicant will execute the application documents and, if the application is selected for funding, will execute the grant agreement and assume primary responsibility for carrying out the grant activities in compliance with all program requirements. Other participants in the consortium should be listed in the narrative section of the application addressing rating criteria numbers (1) ("Operational Capability and Experience of the Applicant"); and (2) ("Financial Capability and Experience of the Applicant"). Affiliates of Habitat for Humanity International are not eligible for funding under this NOFA since SHOP funds are being made available to them separately under section 11 of the Extension Act.

II. Grant Applications

A. Application Submission

Only timely applications received at HUD Headquarters will be considered for funding (see "Addresses" at the beginning of this NOFA). Applications (original and two copies) must be physically received no later than 4:30 p.m. Eastern Daylight Time on the deadline (see "Dates" at the beginning of this NOFA). It is not sufficient for an application to bear a postmark within the deadline. Applications sent by facsimile (FAX) will not be accepted.

B. Application Requirements

All applicants must submit applications on 8½" by 11" paper which are bound in loose leaf binders for easy copying. All pages and attachments must be numbered consecutively. Applications must contain the following items: (1) OMB *Standard Form 424*, Request for Federal Assistance, *Standard Form 424B*, Non-Construction Assurances, *Certification Concerning Use of Federal Funds for Lobbying*, and *Certification Concerning Drug-Free Workplace* signed by a person legally authorized to enter into an agreement with HUD; and (2) a detailed narrative statement and program

description which addresses each of the five Rating Criteria in Section II.E of this NOFA. Requests for copies of the standard forms and certifications can be made by calling Community Connections at 1–800–998–9999 or by fax to HUD, ATTN: Cliff Taffet, at (202) 708–1744. (This is not a toll-free number.) Please refer to the "Self-Help Program" in your request. The application will become part of the grant agreement to be entered into by successful applicants.

C. Selection Process

The selection process for grants under SHOP consists of a screening review, and then, for those applications meeting all screening requirements, rating and ranking under substantive rating criteria. However, rating and ranking will only occur if there are more funds requested in applications that meet screening requirements than are available under this NOFA.

D. Screening Process/Corrections to Deficient Applications

(1) HUD will screen each application submitted on or before the deadline to determine if it is complete, is internally consistent, contains correct computations, and complies with all requirements of section 11 of the Extension Act and this NOFA.

(2) Where HUD determines that an application as initially submitted is fundamentally incomplete or would require substantial revisions, it will not consider the application further.

(3) Where HUD determines an application is deficient in one or more of the areas in paragraph D(1) of this section but is not fundamentally incomplete and does not require substantial revisions, it will notify the applicant in writing and give it an opportunity to correct the technical deficiencies that do not pertain to the merits of its submission. HUD will not notify the applicant of any deficiencies in material that is to be evaluated under the rating criteria.

(4) The notification will require the applicant to submit additional or corrected items so that they are received in HUD Headquarters by no later than 4:30 p.m. Eastern Daylight Time on the 14th calendar day after the date of the written notification to the applicant giving it an opportunity to correct the deficiency. HUD may not extend this deadline for actual receipt of the material for any reason. After review of all additional or corrected materials, HUD will not consider further any applications that do not comply with the requirements of the NOFA and section 11 of the Extension Act.

E. Rating Criteria

All applications meeting the screening requirements in section D will be rated and ranked, using the following substantive rating criteria:

(1) Operational Capability and Experience of the Applicant—(up to 30 points). The applicant will be rated on its ability to develop and carry out the proposed program in a reasonable time and successful manner. In assigning points for this criterion, HUD will consider evidence demonstrating previous experience of the applicant, the participating members of consortia, other co-applicants and the key staff of these organizations in managing self-help housing and volunteer labor projects involving acquisition, construction, real estate financing, counseling and training or other relevant activities. The applicant must identify in its application the key staff who will be responsible for implementing the program and describe their qualifications. In addition, the applicant must provide, as evidence of its nonprofit status, a copy of a current Internal Revenue Service ruling that the applicant is exempt from taxation under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986. Where an IRS ruling is unavailable, an applicant may submit a certified copy of its approved charter, articles of incorporation or bylaws, demonstrating that the applicant is established as a nonprofit organization under state law. Where the applicant is a consortium, each participant in the consortium must be a nonprofit organization, but only the lead applicant should submit evidence of its nonprofit status. However, the lead applicant must maintain a copy of the above-described documentation for each participant in the consortium.

(2) Financial Capability and Experience of the Applicant—(up to 20 points). The applicant will be rated on its capability to handle financial resources and follow procedures for effective control. In assigning points for this criterion, HUD will consider evidence demonstrating previous experience of the applicant, the participating members of consortia, other co-applicants, and the key staff of these organizations, and the adequacy of existing financial control procedures. Applicants must include in their narrative statement a description of the financial control system, and provide supporting documentation, including a copy of their most recent audit.

(3) Quality of Program Design—(up to 30 points). In assigning points for this criterion, HUD will consider the extent to which the proposed program is complete, feasible, innovative, geographically diverse, and likely to substantially fulfill the obligations of the applicant under the program within 24 months. Applicants must include in their narrative a program schedule and performance benchmarks for the initial 24 month period of the grant agreement (including the number of units to be developed and occupied) that constitute substantial fulfillment of programmatic obligations. The applicant must also present a budget which includes the sources and uses of all funds, including program income and accrued interest, and provide a description of the applicant's cash management system and proposed distribution of funds among participating organizations. The program design narrative must be detailed and describe other aspects of the program including, but not limited to: the administrative structure and program monitoring; the procedures to be followed in selecting properties, meeting environmental review requirements, and choosing homebuyers; the sweat-equity and community participation volunteer requirements; the size and design of the new dwellings, including features to allow entrance and passage through the house by people who use wheelchairs and to promote energy efficiency; the use of cost reducing innovations in construction technologies and land planning; the counseling and training components; the terms of sale to homebuyers; and the identification of participating lenders. This section of the application should contain sufficient information to determine that the applicant understands and intends to comply with other requirements of the Extension Act and the NOFA, such as the requirements that the homes developed will be sold to eligible homebuyers at prices below prevailing market prices, and that all local building and safety codes and standards will be complied with.

(4) Leveraging of Public/Private Resources—(up to 20 points). In assigning points for this criterion, HUD will consider the extent and firmness of commitments by the public and private sector in support of the program, such as the donation of labor or materials, interest rate reductions or other financing subsidies, volunteer assistance, tax abatements, public works improvements, waivers of fees or taxes, expedited processing of permits and applications, removal of regulatory barriers to affordable housing, and supportive services (including counseling and training). Applicants should provide letters or other documentation evidencing the extent and firmness of these commitments.

(5) Empowerment Zone/Enterprise Community Support—(up to 5 points). In assigning points for this criterion, HUD will consider the extent to which the applicant's program design provides for the selection of sites for development located in Federally designated urban or rural Empowerment Zones, Enterprise Communities or Supplemental Empowerment Zones, as selected by the Secretaries of HUD and USDA.

Rating of the "applicant" or the "applicant's organization and staff" will include any members of the national and regional organization or consortium participating in the application. Irrespective of final scores, HUD may make selections out of rank order to achieve a national geographic diversity. Additionally, HUD reserves the right to reduce the amount of funding for an application below that which was requested.

F. Ranking and Selection

After assigning points under the selection criteria, HUD shall examine the rankings and, where it determines that applications falling below a certain point total are not suitable or not feasible for funding, it may establish a minimum number of points for applications to qualify to be selected for funding. HUD shall select for funding in rank order all fundable applications, if any. Once these selections have been made (within 6 months of the publication of this NOFA), HUD will provide excess funds remaining from the $15 million allocation to Habitat for Humanity International to be used as provided for under section 11 of the Extension Act.

III. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made for the program in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Federalism Executive Order

The General Counsel, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions in this NOFA are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. This NOFA does not affect the relationship between the Federal Government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has also determined that some of the policies in this NOFA will have a potential significant impact on the formation, maintenance, and general well-being of the family. Achievement of homeownership by low-income families in the program can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe and sanitary housing; and by giving them the skills and means to live independently in mainstream American society. Since the impact on the family is beneficial, no further review is necessary.

Section 102 of the HUD Reform Act—Accountability in the Provision of HUD Assistance

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) in HUD's implementing regulations at 24 CFR part 15. In addition, HUD will publish a **Federal Register** notice of all recipients awarded assistance under this NOFA. (See 24 CFR part 4, subpart A (61 FR 14448, 14449 published April 1, 1996).)

Section 103 of the HUD Reform Act—Prohibition against Advance Information on Funding Decisions.

HUD's regulation implementing section 103 of the Department of Housing and Urban Development's Reform Act of 1989, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4, subpart B (61 FR 14448, 14451, published April 1, 1996).

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel or Headquarters Counsel for the program to which the question pertains.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) ("Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Dated: June 27, 1996.

Henry G. Cisneros,

Secretary.

[FR Doc. 96–17373 Filed 7–8–96; 8:45 am]

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Part VII

Department of Housing and Urban Development

24 CFR Part 200, et al.
Single Family Miscellaneous Amendments, Clarifications, and Corrections; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 200, 201, 202, 203, 206, 221, 233, 234, 280 and 291

[Docket No. FR–3977–F–01]

RIN 2501–AG61

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Single Family Miscellaneous Amendments, Clarifications, and Corrections

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule makes a variety of technical amendments, clarifications and corrections to regulations for the single family mortgage insurance programs. None of the amendments or clarifications add to the regulatory burden for mortgagors or mortgagees.

EFFECTIVE DATE: August 8, 1996.

FOR FURTHER INFORMATION CONTACT: John J. Coonts, Director, Office of Insured Single Family Housing, Department of Housing and Urban Development, Room 9266, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708–3046; TTY: (202) 4594. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: This rule is designed to make a large number of technical improvements to the regulations for single family programs. The changes will not add to the regulatory burden for mortgagors or mortgagees. Some of the changes are corrections of small errors in the current regulations that will have no substantive change on the way the rules have been applied in practice. Other changes will offer relief from unnecessary requirements.

Following is an explanation of changes made by the rule.

Part 200

A technical change is made to part 200 to remove a reference to part 267 which has been removed from the Code of Federal Regulations.

Part 201

The rule makes a typographical correction to the table of contents and to § 201.18.

Part 202

Section 202.3 is amended to revise paragraph (j) to provide that the Secretary may identify classes or groups of lenders that are exempt from one or more of these fees. This provides more flexibility to the program by allowing additional groups to be exempted.

"Origination approval agreement" is included in the heading of § 202.11.

The rule deletes § 202.12(d). That paragraph indicates that approval of a supervised mortgagee that is a banking institution or a trust company included approval of the mortgagee when acting in a fiduciary capacity. The Department considers that the paragraph may be misleading by implying that only supervised mortgagees that are banking institutions or trust companies may hold mortgages in a trust or other fiduciary capacity. Subject to any limitations that may appear in regulations for particular programs, such as § 203.434, regarding a declaration of trust for a pool of single family mortgages, the Department does not restrict mortgagees from holding mortgages in a trust or other fiduciary capacity. The Department eliminated trusts as eligible mortgagees through a 1992 revision of part 202 but there was no intent to prevent FHA-insured mortgages from being held as trust assets by an approved mortgagee. The Department will deal only with the mortgagee, rather than others who may have interests in the mortgages, and will hold the mortgagee solely responsible for complying with obligations imposed on mortgagees.

The provisions regarding approval and recertification fees for Title I lenders and Title II mortgagees are amended by adding a new sentence permitting the Secretary to identify classes or groups of lenders or mortgagees that are exempt from one or more of the fees. The current exemption for governmental lenders and mortgagees is left intact.

Part 203

The rule eliminates the requirement in § 203.17(b) (and corresponding requirements in §§ 221.45 and 234.25(b)) that mortgages involve a principal obligation in multiples of $50 if the mortgage does not include financing of a one-time mortgage insurance premium (MIP) payable pursuant to § 203.280. One time MIP has been replaced by the up-front segment of risk-based mortgage insurance premiums under §§ 203.284 and 203.285. Rather than substitute the up-front segment of risk-based MIP for the one time MIP, however, the Department has determined that there is no longer any reason for the general requirement that other mortgages without a financed premium be in multiples of $50. All mortgages may now be in multiples of $1. Corresponding changes are made to §§ 221.45 and 234.52.

Two changes are made to § 203.18 which explain how the maximum mortgage amount is calculated. A parenthetical phrase is removed from § 203.18(a)(1)(ii) to reflect the 1994 legislative change that set the maximum dollar amount for an area at 75% of the *current* Freddie Mac limit, instead of 75% of the *1992* Freddie Mac limit. A new § 203.18(i) is added to recognize that the maximum mortgage amount for an energy efficient mortgage may exceed the area dollar limit that would otherwise apply, under conditions prescribed by the Secretary in accordance with section 106 of the Energy Policy Act of 1992.

Section 203.19(c) which applied to the now-repealed section 203(m) program for mortgage insurance for seasonal homes is deleted as obsolete.

Language is added in § 203.22(a) to clarify that the mortgage provision providing for payment of mortgage insurance premium installments by the mortgagor does not require payment for any longer than the period during which mortgage insurance premiums are payable by the mortgagee to HUD. Obsolete language regarding payment of annual charges on "open-end" advances is deleted.

Sections 203.24(a)(i) and 203.44, and related provisions in other parts such as 234.70, are amended by deleting references to open-end advances.

Section 203.30 is amended to add a new paragraph (d) regarding compliance, for buildings having four (4) or more units which were built for first occupancy after March 13, 1991, with the Fair Housing Act new contruction requirements at 24 CFR 100.205.

Sections 203.66 and 234.67 are deleted as unnecessary. See sections 203.16 and 234.15 regarding the use of a dwelling for transient or hotel purposes.

The language in section 203.38 is amended by changing the two references to "unit" to "one or more dwellings."

In §§ 203.40, 203.251(s), and 234.1(n), "Commonwealth of the Northern Mariana Islands" is substituted for the "Trust Territory of the Pacific Islands" because the Commonwealth of the Northern Mariana Islands is the only portion of the former Trust Territory of the Pacific Islands in which FHA single family programs are currently authorized.

The "rule of seven" in § 203.42 currently prohibits mortgage insurance when a mortgagor is purchasing a property to be rented that is "part of, or adjacent or contiguous to, a project, subdivision or group of similar rental properties" in which the mortgagor will have a financial interest in more than seven dwelling units. This rule removes "subdivision" from the quoted language. Denial of mortgage insurance simply because a mortgagor has a financial interest in eight units in a very large subdivision does not further the purpose of the "rule of seven," which is to avoid insuring single family mortgages on rental units that are in such close geographical proximity with other similar rental units that they could logically be considered part of one multifamily project rather than unrelated single family units. In practice, current departmental policy in applying the "rule of seven" has been directed to properties within a two-block radius from one another. Continued reference to a subdivision would cause confusion regarding the intent of § 203.42.

Section 203.43(c)(3) and the corresponding § 234.52(c) are amended to permit a $50 increase in the monthly payment for refinancing to a shorter term, to reflect the prevailing policy that has been applied to date on a waiver basis.

Section 203.43b regarding mortgage insurance on seasonal occupancy homes under now-repealed section 203(m) is deleted as obsolete.

Section 203.43f(b) is amended by deleting the last sentence which refers to section 203.17(e). Section 203.17(e) was completely revised and the current cross-reference is not meaningful.

The introductory paragraph of § 203.43h is revised to clarify that a mortgage covering a one- to four-family residence located on Indian land is eligible for insurance pursuant to section 248 of the National Housing Act, if the mortgage is made (1) by an Indian Tribe or (2) on a leasehold estate, by an Indian who will occupy it as a principal residence. Tribes are already recognized as eligible non-occupant mortgagors under § 203.18(f)(3). This amendment to § 203.43h reconciles the two sections. In addition, a statement has been added to the definition of an "Indian tribe," in § 203.43h(g), to note that, for purposes of engaging in section 248 insured mortgage transactions, an Indian tribe may act through its duly authorized representative.

The reference to § 203.50 contained in § 203.43i is deleted to allow rehabilitation loan mortgages under section 203(k) on section 247 Hawaiian home lands. This would have been permitted by a proposed rule published on July 23, 1986, but the provision was omitted from a final rule on the Hawaiian home lands program published on March 16, 1987, because of the difficulty of operating the Hawaiian home lands program for the General Insurance Fund (as required for section 203(k) loans) in addition to the Mutual Mortgage Fund. This difficulty no longer exists as a result of a subsequent statutory change that provides for all Hawaiian home land mortgages to be in the General Insurance Fund.

Section 225 of the National Housing Act authorizes FHA insurance for open-end mortgages under which the mortgagee could advance additional funds under the mortgage to finance later improvements or repairs that would substantially protect or improve the basic livability or utility of the property. Although mentioned in the regulations, FHA does not have administrative procedures for the processing of open-end mortgages; they are not provided for in HUD's instructions for mortgage forms, and GNMA has no programs for the pooling of open-end mortgages. Various provisions in parts 203 and 234, including §§ 203.44 and 234.70, are amended to make clear that FHA is not insuring open-end mortgages.

The introductory paragraph of § 203.49 is amended by including a reference to section 203(h) in the second sentence to permit adjustable rate mortgages (ARMs) in disaster situations. Section 203(h) mortgages generally meet all requirements of section 203(b) mortgages except that a higher loan-to-value ratio is permitted. The Department has determined that ARMs should be available on the same terms as for section 203(b) mortgages.

Some issuers of 10-year warranty plans that have been approved by HUD and used to support high-ratio mortgages for new construction have read HUD's warranty plan requirements as permitting plans that impose the requirement that homeowners submit warranty claims to arbitration. This has never been HUD's intention under the warranty plan final rule. Although arbitration must be available to a dissatisfied homeowner, judicial resolution of disputes must also be available to homeowners. HUD has modified the wording of § 203.204(g) to make this clear.

Section 203.255(b)(2) is amended by replacing "upon a form" with "in a form" since application information may now be collected electronically through CHUMS.

Section 203.281(b)(1) is amended by deleting the language following the first comma to simplify the procedures for calculating the MIP amount for the small number of cases for which one-time MIP is still used.

Sections 203.356 and 203.402 regarding the notice of foreclosure are amended to provide a more consistent application of the rules for curtailment of debenture interest included in insurance benefits paid to mortgagees. Section 203.356 is divided into subsection (a) for the requirements to provide the notice of foreclosure, and subsection (b) for exercising reasonable diligence in prosecuting the foreclosure. Section 203.402(k)(1) is also subdivided. New subsection 203.402(k)(1)(ii) limits the amount of debenture interest that the Secretary may curtail if the mortgagee does not provide the Secretary the notice of foreclosure. This change will reduce the debenture interest curtailment when the mortgagee proceeded to foreclose with reasonable diligence, despite its failure to forward the initial notice of foreclosure. The specific cap on debenture interest curtailment will be set by administrative issuances, but the curtailment will not exceed what is currently being assessed.

Sections 203.378, 203.379, and 203.380 regarding property condition and adjustments for damage are amended to clarify that tornado damage includes damage by hurricanes. Both storm systems are defined as violent whirlwinds and historically have been treated the same by the Department in this regard.

Section 203.502(b) regarding notification of transfer of servicing is amended to change the responsibility for notifying the Secretary from the transferor mortgagee to the transferee. This change will enhance HUD's ability to coordinate the change in servicer with the collection of mortgage insurance premiums from the new servicer.

Section 203.670 addresses conveyance of occupied property. Paragraph (a) states HUD's property disposition policy, which is also stated in § 291.1 in part 291, Disposition of HUD-Acquired Single Family Property. However, § 291.1 was amended to reflect a revised policy in a September 20, 1993 Interim Rule, made final on September 22, 1994. Therefore, § 203.670(a) is being amended to reflect the revised policy.

Section 203.685 is removed. It authorized waivers of single family servicing regulations, but such waivers are now authorized by the Department-wide waiver authority in 24 CFR 5.100.

Part 206

Section 206.13 is removed because it addresses the terminated single family co-insurance program. Section 206.17 is amended to recognize that the basic payment term and tenure payment

options for HECMs can be combined with lines of credit.

Part 234

Sections 234.11 and 234.54 are added to conform to corresponding provisions in part 203.

Section 234.16 is amended to add a new paragraph (d) regarding compliance, for buildings having four (4) or more units which were built for first occupancy after March 13, 1991, with the Fair Housing Act new construction requirements at 24 CFR 100.205.

Part 280

Section 280.330(c)(2) is amended by adding the following language: ". . . remaining balance of the . . .". The way this section is currently written, it appears that the entire original mortgage amount is cancelled. In addition, the spelling of "cancelled" is corrected.

Part 291

Section 291.105(h)(2) is amended to give the Secretary more flexibility in determining what form of cash equivalents will be acceptable for earnest money deposits in the sale of HUD-acquired single family properties, given rapidly changing banking industry practices. For example, the amendment permits HUD to accept teller's checks that are currently excluded.

Section 291.115(b)(2) of the regulations on HUD property disposition is amended to clarify that section 203(k) insured financing for investors is available for eligible properties without increased down-payment requirements. Section 291.110(e) already provides for section 203(k) financing in property disposition sales. As a general rule, investors are precluded from obtaining FHA-insured mortgage financing. HUD-acquired properties may be sold to investors with FHA-insured financing but, in order to protect the insurance funds, based upon past experiences, the property disposition regulations were drafted to require higher down-payments for investors. A 25 percent down-payment is required for investors who purchase a one-unit single family dwelling with insured mortgage financing.

The section 203(k) program specifically makes investors eligible to obtain mortgage financing with a 15 percent down-payment based upon the lesser of the estimated value of the property plus the cost of rehabilitation, or 110 percent of the estimate of value after rehabilitation. The availability of the section 203(k) program for property disposition sales, as provided by § 291.110(e), incorporates the 15 percent down-payment requirement for investors through the regulations that implement section 203(k). In order to make it clear that the 25 percent down-payment provision of § 291.115(b)(2) does not apply to section 203(k) investor mortgages, a technical amendment is being made to that section.

Typographical and Technical Errors, and Cross Reference Corrections

This rule corrects several typographical and technical errors and also corrects and adds cross references and removes cross references that are no longer applicable. Also, § 203.390 is amended to insert language inadvertently omitted when that section was last amended on July 1, 1993, at 58 FR 35369.

Other Matters

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1) The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary and contrary to public interest because the amendments made by this rule give greater clarity and accuracy to the provisions. They do not substantively affect the rights and duties of participants in the programs.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule makes a variety of technical amendments, clarifications and corrections to regulations for the single family mortgage insurance programs. None of the amendments or clarifications add to the regulatory burden for mortgagors or mortgagees.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 233

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 280

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

Accordingly, in title 24 of the Code of Federal Regulations, parts 200, 201, 202, 203, 206, 221, 233, 234, 280, and 291 are amended as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

§ 200.810 [Amended]

2. Section 200.810(b) is amended to remove the phrase ", who shall be listed on the HUD Appraiser Roster under § 267.8(d)(2) of the chapter,".

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

3. The authority citation for 24 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 1703; 42 U.S.C. 1436a and 3535(d).

§ 201.18 [Amended]

4. Section 201.18 is amended by revising the section heading to read, "Modification agreement or repayment plan."

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

5. The authority citation for 24 CFR part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

6. Section 202.3(j) is amended to add at the end the following sentence:

§ 202.3 General approval requirements.

* * * * *

(j) * * * The Secretary may identify classes or groups of lenders that are exempt from one or more of these fees.

* * * * *

7. Section 202.11 is amended by revising the section heading to read as follows:

§ 202.11 Approval, origination approval agreement, recertification, withdrawal of approval and termination of approval agreement.

* * * * *

8. Section 202.12(k) is amended to add at the end the following sentence:

§ 202.12 General approval requirements.

* * * * *

(k) * * * The Secretary may identify classes or groups of mortgagees that are exempt from one or more of these fees.

* * * * *

§ 202.13 [Amended]

9. Section 202.13 is amended by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

10. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

11. Section 203.5 is amended by revising paragraph (e) to read as follows:

§ 203.5 Direct Endorsement process.

* * * * *

(e) *Appraisal.* (1) A mortgagee shall have the property appraised in accordance with such standards and requirements as the Secretary may prescribe.

(2) The mortgagee shall not discriminate on the basis of race, color, religion, national origin, sex, age, or disability in the selection of an appraiser.

12. Section 203.17 is amended by revising paragraph (b) to read as follows:

§ 203.17 Mortgage provisions.

* * * * *

(b) *Mortgage multiples.* A mortgage shall involve a principal obligation in a multiple of $1.

* * * * *

13. Section 203.18 is amended to remove the parenthetical phrase "(as in effect on September 30, 1992)" in paragraph (a)(1)(ii) and to add a new paragraph (i) to read as follows:

§ 203.18 Maximum mortgage amounts.

* * * * *

(i) *Energy efficient mortgages.* The principal amount of energy efficient mortgages may exceed the maximum amounts determined under paragraph (a)(1) of this section under conditions prescribed by the Secretary in accordance with section 106 of the Energy Policy Act of 1992.

§ 203.19 [Amended]

§ 203.19 [Amended]

14. Section 203.19 is amended by removing paragraph (c).

15. Section 203.22 is amended by revising paragraph (a) to read as follows:

§ 203.22 Payment of insurance premiums or charges; prepayment privileges.

(a) *Payment of periodic insurance premiums or charges.* Except with respect to mortgages for which a one-time mortgage insurance premium is paid pursuant to § 203.280, the mortgage may provide for monthly payments by the mortgagor to the mortgagee of an amount equal to one-twelfth of the annual mortgage insurance premium payable by the mortgagee to the Commissioner. Such payments continue only so long as the contract of insurance shall remain in effect or for such shorter period as mortgage insurance premiums are payable by the mortgagee to the Commissioner.

* * * * *

16. Section 203.24 is amended by revising paragraph (a)(1) to read as follows:

§ 203.24 Application of payments.

(a) * * *

(1) Premium charges under the contract of insurance (other than a one-time or up-front mortgage insurance

premium paid in accordance with §§ 203.280, 203.284 and 203.285), charges for ground rents, taxes, special assessments, flood insurance premiums, if required, and fire and other hazard insurance premiums;

* * * * *

17. Section 203.30 is amended by adding a new paragraph (d) to read as follows:

§ 203.30 Certificate of nondiscrimination by the mortgagor.

* * * * *

(d) That buildings having four (4) or more units, which were built for first occupancy after March 13, 1991, were constructed in compliance with the Fair Housing Act new construction requirements in 24 CFR 100.205.

§ 203.36 [Removed and reserved]

18. Section 203.36 is removed and reserved.

19. Section 203.38 is revised to read as follows:

§ 203.38 Location of dwelling.

At the time a mortgage is insured there must be located on the mortgaged property one or more dwellings designed principally for residential use for not more than four families.

20. Section 203.40 is amended by revising the first sentence to read as follows:

§ 203.40 Location of property.

The mortgaged property shall be located within the United States, Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa. * * *

21. Section 203.42 is amended by revising paragraph (a) to read as follows:

§ 203.42 Rental properties.

(a) A mortgage on property upon which there is a dwelling to be rented by the mortgagor shall not be eligible for insurance if the property is a part of, or adjacent or contiguous to, a project, or group of similar rental properties, in which the mortgagor has a financial interest in eight or more dwelling units.

* * * * *

22. Section 203.43 is amended by revising paragraph (c)(3) to read as follows:

§ 203.43 Eligibility of miscellaneous type mortgages.

* * * * *

(c) * * *

(3) The mortgage must result in a reduction in regular monthly payments by the mortgagor, except:

(i) When a fixed rate mortgage is given to refinance an adjustable rate mortgage held by a mortgagor who is to occupy the dwelling as a principal residence or secondary residence, as these terms are defined in § 203.18(f); or

(ii) When refinancing a mortgage for a shorter term will result in an increase in the mortgagor's regular monthly payments of no more than $50. In the case of a graduated payment mortgage, the reduction in regular monthly payments means a reduction from the payment due under the existing mortgage for the month in which the refinancing mortgage is executed.

* * * * *

§ 203.43b [Removed and reserved]

23. Section 203.43b is removed and reserved.

§ 203.43f [Amended]

24. Section 203.43f(b) is amended to remove the last sentence.

25. Section 203.43h is amended by revising the introductory text, revising paragraph (b), and revising paragraph (g)(3), to read as follows:

§ 203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.

A mortgage covering a one- to four-family residence located on Indian land shall be eligible for insurance pursuant to section 248 of the National Housing Act (12 U.S.C. 1715z–13), notwithstanding otherwise applicable requirements related to marketability of title, if the mortgage meets the requirements of this subpart as modified by this section and is made by an Indian Tribe or on a leasehold estate, by an Indian who will occupy it as a principal residence. Mortgage insurance on cooperative shares is not authorized under this section.

* * * * * *

(b) *Eviction procedures.* Before HUD will insure a mortgage on Indian land, the tribe having jurisdiction over such property must certify to the HUD Field Office that it has adopted and will enforce procedures for eviction of defaulted mortgagors where the insured mortgage has been foreclosed.

* * * * * *

(g) * * *

(3) "Indian tribe" means any Indian or Alaska native tribe, band, nation, or other organized group or community of Indians or Alaskan natives recognized as eligible for the services provided to Indians or Alaska natives by the Secretary of the Interior because of its status as such an entity, or that is an eligible recipient under chapter 67 of title 31, United States Code. For purposes of engaging in section 248 insured mortgage transactions under this section, an Indian tribe may act through its duly authorized representative.

* * * * *

26. Section 203.43i is amended by revising paragraph (a) to read as follows:

§ 203.43i Eligibility of mortgages on Hawaiian Home Lands insured pursuant to section 247 of the National Housing Act.

(a) *Eligibility.* A mortgage on a homestead lease granted by the Department of Hawaiian Home Lands covering a one- to four-family residence located on Hawaiian home lands is eligible for insurance pursuant to section 247 of the National Housing Act (12 U.S.C. 1715z–12) if the mortgagor is a native Hawaiian who will occupy it as a principal residence, and if the mortgage meets the requirements of this subpart as modified by this section. Mortgage insurance on cooperative shares under § 203.43c on homes in federally impacted areas under § 203.43e is not authorized under this section.

* * * * *

27. Section 203.44 is revised to read as follows:

§ 203.44 Eligibility of advances.

Mortgagees may not make open-end advances under section 225 of the National Housing Act (12 U.S.C. 1715p) in connection with the mortgages insured under this chapter.

28. Section 203.49 is amended by revising the second sentence of the introductory text and by removing the second sentence of paragraph (a) beginning with "The weekly average * * *", to read as follows:

§ 203.49 Eligibility of adjustable rate mortgages.

* * * This section shall apply only to mortgage loans described under sections 203(b), 203(h) and 203(k) of the National Housing Act.

* * * * *

29. Section 203.204 is amended by revising paragraph (a) and by revising the third sentence of paragraph (g), to read as follows:

§ 203.204 Requirements and limitations of a plan.

(a) A Plan must assure timely resolution of homeowners' complaints or claims covered under § 203.205. Warranties set forth in a Plan must comply with section 2301(a)(1)–(13) of the Magnuson-Mass Warranty-Federal Trade Commission Improvement Act (15 U.S.C. 2301–2312) along with the requirements and criteria set out in this section.

* * * * *

(g) * * * A Plan must contain pre-arbitration conciliation provisions at no cost to the homeowner, and provision for judicial resolution of disputes, but arbitration, which must be available to a homeowner during the entire term of the coverage contract, must be an assured recourse for a dissatisfied homeowner.

* * * * *

30. Section 203.251 is amended by revising paragraph (s) to read as follows:

§ 203.251 Definitions.

* * * * *

(s) *State* includes the several States, Puerto Rico, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, and the Virgin Islands.

* * * * *

31. Section 203.255 is amended by revising paragraph (b)(2) to read as follows:

§ 203.255 Insurance of mortgage.

(b) * * *

(2) An application for insurance of the mortgage in a form prescribed by the Secretary;

* * * * *

§ 203.265 [Amended]

32. Section 203.265(b) is amended in the last sentence to remove the phrase "Treasury Fiscal Requirements Manual" and add in its place the phrase "Treasury Financial Manual."

33. Section 203.281 is amended by revising paragraph (b)(1) to read as follows:

§ 203.281 Calculation of one-time MIP.

* * * * *

(b)(1) The Commissioner shall determine the applicable premium percentage in accordance with sound financial and actuarial practice.

* * * * *

§ 203.284 [Amended]

34. Section 203.284 is amended by:

a. Removing the second sentence in paragraph (a)(1);

b. Removing the phrase "pursuant to paragraph (b)(1)(i) or (b)(2)(i) of this section," in paragraph (c); and

c. Removing the phrase "Treasury Fiscal Requirements Manual" in the last sentence of paragaph (e), and adding in its place the phrase "Treasury Financial Manual."

35. Section 203.285 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 203.285 Fifteen-year mortgages: Calculation of up-front and annual MIP on or after December 26, 1992.

* * * * *

(c) *Applicability of certain provisions.* * * * The provisions of paragraphs (c), (d), (e), and (g) of § 203.284 also shall be applicable to mortgages subject to premiums under this section.

* * * * *

36. Section 203.346 is amended by revising the first sentence to read as follows:

§ 203.346 Postponement of foreclosure—mortgagors in military service.

If at any time during default the mortgagor is a "Person in military service," as such term is defined in the Soldiers' and Sailors' Civil Relief Act of 1940, the period during which the mortgagor is in such service shall be excluded in computing the period within which the mortgagee shall commence foreclosure or acquire the property by other means as provided in § 203.355 of this subpart. * * *

37. Section 203.356 is revised to read as follows:

§ 203.356 Notice of foreclosure and pre-foreclosure sale; reasonable diligence requirements.

(a) *Notice of foreclosure and pre-foreclosure sale.* The mortgagee must give notice to the Secretary, in a format prescribed by the Secretary, within 30 days after the institution of foreclosure proceedings. The mortgagee must give notice to the Secretary, in a format prescribed by the Secretary, within the time-frame prescribed by the Secretary, of the acceptance of any mortgagor into the pre-foreclosure sale procedure.

(b) *Reasonable diligence.* The mortgagee must exercise reasonable diligence in prosecuting the foreclosure proceedings to completion and in acquiring title to and possession of the property. A time frame that is determined by the Secretary to constitute "reasonable diligence" for each State is made available to mortgagees.

38. Section 203.378 is amended by revising paragraph (c)(1) to read as follows:

§ 203.378 Property condition.

* * * * *

(c) * * *

(1) Damage by fire, flood, earthquake, hurricane, or tornado;

* * * * *

39. Section 203.379 is amended by revising paragraph (a), introductory text, and paragraph (b), introductory text, to read as follows:

§ 203.379 Adjustment for damage or neglect.

(a) If the property has been damaged by fire, flood, earthquake, hurricane, or tornado, or, for mortgages insured on or after January 1, 1977, the property has suffered damage because of the mortgagee's failure to take action as required by § 203.377, the damage must be repaired before conveyance of the property or assignment of the mortgage to the Secretary, except under the following conditions:

* * * * *

(b) For mortgages insured under firm commitments issued on or after November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's underwriter on or after November 19, 1992, the provisions of paragraph (a) of this section apply and, in addition, if the property has been damaged during the time of the mortgagee's possession by events other than fire, flood, earthquake, hurricane, or tornado, or if it was damaged notwithstanding reasonable action by the mortgagee as required by § 203.377 of this part, the mortgagee must provide notice of such damage to the Secretary and may not convey until directed to do so by the Secretary. The Secretary will either:

* * * * *

40. Section 203.380 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 203.380 Certificate of property condition.

(a) * * *

(1) * * *

(i) Undamaged by fire, flood, earthquake, hurricane or tornado; and

* * * * *

41. Section 203.390 is amended by revising paragraph (b)(1) to read as follows:

§ 203.390 Waiver of title—mortgages or property formerly held by the Secretary.

* * * * *

(b) * * *

(1) If a property held by the Secretary is sold by the Secretary who also insures a mortgage financing the sale, and the mortgage is later reassigned to the Secretary or the property covered by the mortgage is later conveyed to the Secretary, the Secretary will not object to title by reason of any lien or other adverse interest that was senior to the mortgage on the date the mortgage was filed for record, except where the lien or other adverse interest arose from a lien or interest that had already been recorded against the mortgagor.

* * * * *

42. Section 203.402 is amended by revising paragraphs (b), (c) and (k)(1) to read as follows:

§ 203.402 Items included in payment—conveyed and non-conveyed properties.

* * * * *

(b) Special assessments, which are noted on the application for insurance or which become liens after the insurance of the mortgage.

(c) Hazard insurance premiums on the mortgaged property not in excess of a *reasonable rate* as defined in § 203.379(a)(4).

* * * * *

(k)(1) For properties conveyed to the Secretary, an amount equivalent to the debenture interest which would have been earned, as of the date such payment is made, on the portion of the insurance benefits paid in cash, if such portion had been paid in debentures, except that:

(i) When the mortgagee fails to meet any one of the applicable requirements of §§ 203.355, 203.356(b), 203.359, 203.360, 203.365, 203.606(b)(1), or 203.366 within the specified time and in a manner satisfactory to the Secretary (or within such further time as the Secretary may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended;

(ii) When the mortgagee fails to meet the requirements of § 203.356(a) of this part within the specified time and in a manner satisfactory to the Secretary (or within such further time as the Secretary may approve in writing), the interest allowance in such cash payment shall be computed to a date set administratively by the Secretary.

* * * * *

43. An undesignated center heading "GRADUATED PAYMENT MORTGAGES" is added after § 203.435 and before § 203.436.

44. Section 203.502 is amended to revise the first sentence of paragraph (a) and all of paragraph (b) to read as follows:

§ 203.502 Responsibility for servicing.

(a) After January 10, 1994, servicing of insured mortgages must be performed by a mortgagee that is approved by HUD to service insured mortgages. * * *

* * * * *

(b) Whenever servicing of any mortgage is transferred from one mortgagee or servicer to another, notice of the transfer of service shall be delivered:

(1) By the transferor mortgagee or servicer to the mortgagor. The notification shall be delivered not less than 15 days before the effective date of the transfer and shall contain the information required in § 3500.21(e)(2) of this title; and

(2) By the transferee mortgagee or servicer:

(i) To the mortgagor. The notification shall be delivered not less than 15 days before the effective date of the transfer and shall contain the information required in § 3500.21(e)(2) of this title; and

(ii) To the Secretary. This notification shall be delivered within 15 days of the transfer, in a format prescribed by the Secretary.

* * * * *

45. Section 203.604 is amended by revising the second sentence of paragraph (b) to read as follows:

§ 203.604 Contact with the mortgagor.

* * * * *

(b) * * * If default occurs in a repayment plan arranged other than during a personal interview, the mortgagee must have a face-to-face meeting with the mortgagor, or make a reasonable attempt to arrange such a meeting within 30 days after such default and at least 30 days before foreclosure is commenced, or at least 30 days before assignment is requested if the mortgage is insured on Hawaiian home land pursuant to section 247 or Indian land pursuant to section 248 or if assignment is requested under § 203.350(d) for mortgages authorized by section 203(q) of the National Housing Act.

* * * * *

46. Section 203.670 is amended by revising paragraph (a) to read as follows:

§ 203.670 Conveyance of occupied property.

(a) It is HUD's policy to reduce the inventory of acquired properties in a manner that expands homeownership opportunities, strengthens neighborhoods and communities, and ensures a maximum return to the mortgage insurance fund.

* * * * *

47. Section 203.679 is amended by revising paragraph (b)(4) to read as follows:

§ 203.679 Continued occupancy after conveyance.

* * * * *

(b) * * *

(4) Assignment of the property by the Secretary to a different use or program.

§ 203.685 [Removed]

48. Section 203.685 is removed.

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

49. The authority citation for 24 CFR part 206 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–1720; 42 U.S.C. 3535(d).

§ 206.3 [Amended]

50. Section 206.3 is amended by removing the last sentence of the definition of "*Maximum claim amount*".

51. Section 206.9 is amended by revising the paragraph heading of paragraph (b) to read as follows:

§ 206.9 Eligible mortgagees.

* * * * *

(b) *HUD approved mortgagees.*

§ 206.13 [Removed and reserved]

52. Section 206.13 is removed and reserved.

53. Section 206.17 is amended by revising paragraph (a) to read as follows:

§ 206.17 General.

(a) *Payment options.* A mortgage shall initially provide for the tenure payment option (§ 206.19(a)), the term payment option (§ 206.19(b)), or the line of credit payment option (§ 206.19(c)), or a combination as provided in § 206.25(d), subject to later change in accordance with § 206.26.

* * * * *

§ 206.45 [Amended]

54. Section 206.45(b) is amended to remove the second sentence.

§ 206.121 [Amended]

55. Section 206.121(c) is amended to remove the citation "§ 206.27(e)" and to add in its place the citation "§ 206.27(d)."

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

56. The authority citation for part 221 continues to read as follows:

Authority: 12 U.S.C. 1707(a), 1715b, and 1715*l*; 42 U.S.C. 3535(d).

57. Section 221.45 is revised to read as follows:

§ 221.45 Mortgage obligation in multiples.

The mortgage shall involve a principal obligation in multiples of $1.

PART 233—EXPERIMENTAL HOUSING MORTGAGE INSURANCE

58. The authority citation for part 233 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715x; 42 U.S.C. 3535(d).

59. Section 233.5 is amended by revising paragraph (a) introductory text and paragraph (b) to read as follows:

§ 233.5 Cross-reference.

(a) To be eligible for insurance under this subpart, a mortgage or home improvement loan shall meet the eligibility requirements for insurance under § 203.1 *et seq.* (part 203, subpart A); § 213.501 *et seq.* (part 213, subpart C); § 220.1 *et seq.* (part 220, subpart A); § 221.1 *et seq.* (part 221, subpart A); § 226.1 *et seq.* (part 226, subpart A); § 234.1 *et seq.* (part 234, subpart A); § 235.1 *et seq.* (part 235, subpart A); or § 237.1 *et seq.* (part 237, subpart A) of this chapter, except that:

* * * * *

(b) For the purposes of this subpart, all references in parts 203, 213, 220, 221, 226, 234, 235, and 237 of this chapter to sections 203, 213, 220, 221, 809, 234, 235, and 237 of the National Housing Act shall be construed to refer to section 233 of the Act.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

60. The authority for part 234 continues to read as follows:

Authority: 12 U.S.C. 1715qb and 1715y; 42 U.S.C. 3535(d). Section 234.520(a)(2)(ii) is also issued under 12 U.S.C. 1707(a).

61. Section 234.1 is amended by revising paragraph (n) to read as follows:

§ 234.1 Definitions used in this subpart.

* * * * *

(n) *State* includes the several States, Puerto Rico, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, and the Virgin Islands.

* * * * *

62. Section 234.11 is added to read as follows:

§ 234.11 Disclosure regarding interest due upon mortgage prepayment.

Each mortgagee with respect to a mortgage under this part shall, at or before closing with respect to any such mortgage, provide the mortgagor with written notice in a form prescribed by the Commissioner describing any requirements the mortgagor must fulfill upon prepayment of the principal amount of the mortgage to prevent the accrual of any interest on the principal amount after the date of such prepayment.

63. Section 234.16 is amended by adding a new paragraph (d) to read as follows:

§ 234.16 Certificate of nondiscrimination by mortgagor.

* * * * *

(d) That buildings having four (4) or more units, which were built for first occupancy after March 13, 1991, were constructed in compliance with the Fair Housing Act new construction requirements in 24 CFR 100.205.

64. Section 234.25 is amended by revising paragraph (b) to read as follows:

§ 234.25 Mortgage provisions.

* * * * *

(b) *Mortgage multiples.* The mortgage shall involve a principal obligation in a multiple of $1.

* * * * *

65. Section 234.52 is amended by revising paragraph (c) to read as follows:

§ 234.52 Refinancing of existing mortgages.

* * * * *

(c) The mortgage must result in a reduction in regular monthly payments by the mortgagor, except:

(1) When a fixed rate mortgage is given to refinance an adjustable rate mortgage held by a mortgagor who is to occupy the dwelling as a principal residence or secondary residence, as these terms are defined in § 237.27(e); or

(2) When refinancing a mortgage for a shorter term will result in an increase in the mortgagor's regular monthly payments of no more than $50. In the case of a graduated payment mortgage, the reduction in regular monthly payments means a reduction from the payment due under the existing mortgage for the month in which the refinancing mortgage is executed;

* * * * *

66. Section 234.54 is added, under the undesignated center heading "ELIGIBLE MORTGAGES," to read as follows:

§ 234.54 Eligibility of assigned mortgages and mortgages covering acquired property.

The Commissioner may insure under this part, without regard to any limitation upon eligibility contained in this subpart, any mortgage assigned to the Commissioner in connection with payment under a contract of mortgage insurance, or executed in connection with a sale by the Commissioner of any property acquired in the settlement of an insurance claim under any section or title of the National Housing Act.

§ 234.67 [Removed and reserved]

67. Section 234.67 is removed and reserved.

68. The undesignated center heading "OPEN-END ADVANCES" immediately preceding § 234.70 is removed.

69. Section 234.70 is revised to read as follows:

§ 234.70 Eligibility of open-end advances.

Mortgagees may not make open-end advances under section 255 of the National Housing Act in connection with mortgages insured under this chapter.

PART 280—NEHEMIAH HOUSING OPPORTUNITY GRANTS PROGRAM

70. The authority citation for 24 CFR part 280 continues to read as follows:

Authority: 12 U.S.C. 1715*l* note; 42 U.S.C. 3535(d).

71. Section 280.330 is amended by revising the section heading and paragraph (c)(2) to read as follows:

§ 280.330 Loan and Profit.

* * * * *

(c) * * *

(2) Loan and Profit—Any amounts remaining after distribution of the down payment shall be shared equally between the Secretary and the family, but only to the extent that the Secretary recovers an amount equal to the amount of the loan originally made to the family under this section. If such remaining amounts are insufficient for the Secretary to recover the full amount of the loan made under this section, the remaining balance of the second mortgage shall be cancelled and shall not be transferred to a subsequent purchaser.

* * * * *

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

72. The authority for 24 CFR part 291 continues to read as follows:

Authority: 12 U.S.C. 1790 and 1715(b); 42 U.S.C. 1441, 1441a, 1551a, and 3535(d).

73. Section 291.100 is amended by revising the first sentence of paragraph (a)(3) and the introductory text in paragraph (a)(4) to read as follows:

§ 291.100 General policy.

(a) * * *

(3) Except as provided in paragraph (a)(4) of this section, tenants in occupancy will not be offered the right of first refusal to purchase the property. * * *

(4) HUD tenants in occupancy will be offered the right of first refusal to purchase property where:

* * * * *

74. Section 291.105 is amended by revising the first sentence of paragraph (e) and the first sentence of paragraph (h)(2), to read as follows:

§ 291.105 Competitive sales procedure.

* * * * *

(e) *Full price offers.* HUD field offices that operate under a "full price offer" program open offers at specified times during the 10-day bidding period. * * *

* * * * *

(h) * * *

(2) All bids must be accompanied by earnest money deposits in the form of a cash equivalent as prescribed by the Secretary, or a certification from the real estate broker that the earnest money has been deposited in the broker's escrow account. * * *

* * * * *

75. Section 291.110 is amended by revising the first sentence of paragraph (b)(1) to read as follows:

§ 291.110 Other sales procedures.

* * * * *

(b) *Direct sales to displaced persons.* (1) At the discretion of the Field Office, properties eligible for insured financing are offered for direct sale, at a discount of 10 percent off the list price, to displaced persons who will occupy the properties. * * *

* * * * *

76. Section 291.115 is amended by revising paragraph (b)(2) to read as follows:

§ 291.115 Insured sales.

* * * * *

(b) * * *

(2) For an owner-occupant purchaser, the mortgage amount is based on the bid price plus any allowable pre-paids (e.g., taxes) and financing or closing costs, up to local maximum mortgage amounts. For investor purchasers without rehabilitation loans insured under § 203.50 of this chapter, the mortgage amount is limited to 75 percent of the bid price for one-unit properties, and 85 percent for two- to four-unit properties, up to local maximum mortgage amounts. Pre-paids, financing or closing costs may not be included in the mortgage amount for such investor purchasers. For investor purchasers with rehabilitation loans insured under § 203.50 of this chapter, the mortgage amount is calculated as provided in § 203.50(f) of this chapter and the bid price is used as the Commissioner's estimate of the value of the property before rehabilitation.

Dated: June 13, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–17305 Filed 7–8–96; 8:45 am]

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federal register

Tuesday
July 9, 1996

Part VIII

Department of Education

Final Funding Priority for Fiscal Years 1996–1997 for a Rehabilitation Research and Training Center; Inviting Applications for a New Award Under the Rehabilitation Research and Training Center Program for Fiscal Year 1997; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of a Final Funding Priority for Fiscal Years 1996–1997 for a Rehabilitation Research and Training Center

AGENCY: Department of Education.

SUMMARY: The Secretary announces a final funding priority for the Rehabilitation Research and Training Center (RRTC) Program under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1996–1997. The Secretary takes this action to focus research attention on areas of national need. This priority is intended to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: This priority takes effect on August 8, 1996.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 3424, Washington, D.C. 20202–2601. Telephone: (202) 205–9739. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8133. Internet: Betty-Jo-Berland@ed.gov.

SUPPLEMENTARY INFORMATION: This notice contains a final funding priority to establish an RRTC for research related to managed health care for individuals with disabilities.

NIDRR is in the process of developing a revised long-range plan. The final funding priority in this notice is consistent with the long-range planning process. This final funding priority supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Note: This notice of final funding priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

On April 22, 1996, the Secretary published a notice of proposed priority in the **Federal Register** (61 FR 17818–17821). The Department of Education received nineteen letters commenting on the notice of proposed priority by the deadline date. Three additional comments were received after the deadline date and were not considered in this response. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under statutory authority—are not addressed. All of the comments supported the need for the proposed RRTC, and some made suggestions for modifications to the Rehabilitation Research and Training Center (RRTC) in managed care.

Analysis of Comments and Changes

The following paragraphs first discuss those comments that pertain to the priority as a whole, and then discuss those that address the specific activities, or "bullets", within the priority.

General Comments

Comment: One commenter suggested that the center grant be awarded to an institution that specializes in serving the health care needs of children, and another suggested that the health care of children with disabilities should be a central focus of the RRTC.

Discussion: The Secretary cannot limit the field of eligible applicants beyond that authorized by the statute and program regulations, which permit any organization operating in affiliation with an institution of higher education or a provider of rehabilitation or other appropriate services to apply for the Center grant. Furthermore, because the Bureau of Maternal and Child Health in the Department of Health and Human Services (HHS) has developed an extensive agenda for research on managed health care for children with disabilities, the Center to be funded under this priority is directed toward health care needs of adults.

Changes: None.

Comment: A number of commenters urged that the priority require the Center to include a focus on certain subpopulations of individuals with disabilities, such as children or adolescents, the elderly, residents of rural areas, or persons with specific types of disabling conditions.

Discussion: The Secretary believes that this should be a cross-disability study, with a unique emphasis on working age adults. Applicants are not precluded from addressing the health care needs of any groups of individuals with disabilities, but due to the scope and complexity of the issue of managed care, and the need to respond to unanticipated developments in health care delivery, the Secretary elects not to require all applicants to structure research programs that focus on particular subgroups.

Changes: None.

Comment: Several commenters suggested the addition or further specification of various requirements to the work scope of the Center, including: studies of specific health care services; educational programs for specific categories of professional service providers; focus on rural health care delivery; models for services to individuals with comorbidities; transition from pediatric to adult care; and examination of comparable benefits between health care and vocational rehabilitation funding streams.

Discussion: The Secretary believes that many of the suggested additional requirements are important studies, but points out that this RRTC will not have unlimited resources, and that researchers should have flexibility to choose the optimum approach to addressing the general challenges of the priority, as well as addressing the other specific requirements of the priority. The Secretary believes that many of these specific suggestions could be addressed by an applicant in responding to this priority, but the Secretary declines to require them of all applicants.

There is a growing body of research on issues of managed health care for persons with disabilities being conducted by various Federal agencies, and there are other ongoing or planned studies that may provide appropriate venues for addressing many of these additional questions. The Secretary reminds potential applicants that some of these problems may be addressed, with appropriate coordination with the RRTC, in discrete studies under NIDRR's Field-Initiated Research program.

Changes: None.

Comment: One commenter suggested that the proposed RRTC should be a resource for disseminating new health policy analysis methods from other medical specialties into the rehabilitation medicine specialty.

Discussion: The Secretary does endorse the use of the best and most appropriate methods of health care analysis in the field of medical rehabilitation. However, the Secretary points out that the primary purpose of this Center is not the improvement of medical rehabilitation, but rather the improvement of the managed care delivery system, with a focus on primary care, acute care, and long-term care, as well as on rehabilitative care. NIDRR currently funds an RRTC on medical rehabilitation research and expects to announce a competitive priority to continue research in this area in fiscal year 1997. Therefore, the Secretary believes that this activity would not be an appropriate use of resources in this Center.

Changes: None.

Comment: One commenter suggested that NIDRR use the term "significant disability" and the definition of that term contained in the Americans with Disabilities Act to define the target population of this Center.

Discussion: NIDRR is authorized and funded under the Rehabilitation Act of 1973, as amended and therefore must relate its activities to persons who have disabilities as defined by the Rehabilitation Act.

Changes: None.

Comment: Two commenters expressed the opinion that the Background statement did not make it clear that physiatrists provided primary care by default, and not because of a professional mission or obligation to do so.

Discussion: The Secretary intended that the priority convey the relationship between the lack of informed primary care for individuals with disabilities and the demand for rehabilitation medicine professionals to fill this void. Provision of primary care by rehabilitation medicine providers, including physiatrists, has been, at least to date, by default rather than by design. However, because the information was contained in the Background statement as descriptive information, and would not affect directly the activities to be performed under the grant, no changes are made.

Changes: None.

Comment: One commenter suggested that the priority should focus on older as well as working age adults with disabilities, because of the similarity of health care concerns in areas such as prevention of secondary conditions and quality of life.

Discussion: The Secretary agrees that managed care for older individuals with disabilities is an important area. However, as the priority states, there is considerable research supported by HHS on managed care in elderly populations, most of whom are enrolled in Medicare. Working age individuals with disabilities have some unique concerns with the health care delivery system, for example, the availability of coverage and the scope of services covered by commercial insurance. These individuals are more likely to need family coverage or support for technologies and services related to employment. Thus, the Secretary believes that the needs of working age disabled persons should be the primary focus of this Center. The health care needs of working age disabled persons under managed care is an area that is not adequately addressed at present. In addition, this is an area in which NIDRR has unique responsibilities and the ability to make a significant contribution to the overall managed health care policy debate.

Changes: None.

Comment: Several commenters discussed the significance of the ways in which "auxiliary" services such as technology, personal assistance services (PAS) or long-term care, transportation, and housing are handled in a health services plan, and urged focus on this issue.

Discussion: The proposed priority does reference the continuum of care, PAS, and access to technology as components of a health care system for individuals with disabilities. The Secretary believes that the priority is explicit in requiring attention to a comprehensive continuum of care.

Changes: None.

Comments: One commenter, representing the Administration on Aging (AoA), stated that the AoA sponsored only a limited amount of research on managed care, rather than the "significant program" referred to in the Background statement.

Discussion: The Secretary agrees to describe the research program of the AoA in the terms suggested by that agency.

Changes: The AoA has been dropped from the listing of agencies that are establishing significant programs of research into managed care, and a separate sentence has been added stating that "managed care research also is being conducted by the Administration on Aging.

Comments on the First Required Activity

Comment: Two commenters expressed the opinion that the first prescribed activity of developing a method to identify individuals whose health care needs require special approaches under managed care would be difficult to accomplish. At the same time, several commenters suggested that the priority could be strengthened by adding an evaluation of the experiences of individuals with diverse types of disabilities under various models of managed care and fee-for-service care. Another commenter suggested that coordination with the National Committee on Vital and Health Statistics (NCVHS), which is leading an effort to develop voluntary standardized sets of disability descriptors for health encounters, would be useful to the Center in its efforts to develop methods to identify individuals with disabilities who need special health care approaches.

Discussion: The Secretary believes that a prerequisite to designing a comprehensive health care system is an understanding of what populations of disabled individuals are likely to need special arrangements under managed health care, and to have some parameters for describing and identifying that population. The Secretary agrees with the commenters that a definitive understanding of the pertinent experiences of individuals with disabilities under various types of managed care as well as under traditional approaches would be useful to the Center in determining the characteristics of persons likely to need special managed care arrangements.

Changes: The first bullet has been revised to encompass an assessment of managed care and fee-for-service care experiences of individuals with disabilities, and to include coordination with the NCVHS and other large-scale efforts to routinize the collection of disability-related information in health care records.

Comments on the Second Required Activity

Comment: One commenter stated that the requirement in the second bullet to use existing data may be unrealistic, due to the absence or unavailability of the types of data that might be needed. The commenter suggested a revision to require the use of existing data only "where possible." One commenter suggested that the priority should require the center, working with other researchers and government agencies, to develop both qualitative and quantitative research examining the impact of managed care arrangements on quality of care, cost of care, and access to specialty providers, and to identify gaps in training as well as gaps in research, as currently required.

Discussion: The Secretary suggested the use of existing data as a means of achieving economy and efficiency. The Secretary agrees that applicants should not be restricted in their approach to answering important research questions, as long as they demonstrate that they are using the most efficient means. The Secretary believes that the parameters of quality, cost, and access to specialists are critical elements in assessing the impact of managed care on individuals with disabilities, and that coordinated activity is desirable in studying these factors.

Changes: The second bullet has been revised to include the words "where possible", and to stress coordinated qualitative and quantitative research on the impact of managed care.

Comments related to the third required activity

Comment: Several commenters suggested a stronger emphasis on the involvement of consumers, particularly in the development of quality indicators

for managed health care programs and providers. Two commenters also pointed out that there are current efforts of the National Committee for Quality Assurance (NCQA), the Robert Wood Johnson Foundation (RWJ), and the Assistant Secretary for Planning and Evaluation (ASPE) in the Department of Health and Human Services (ASPE) in this area, and urged that the Center be required to coordinate with those efforts.

Discussion: The Secretary agrees that individuals with disabilities and their families, where appropriate, must be involved in all phases of the Center's activities and further agrees to emphasize the need for this involvement in the development of quality indicators, and also that coordination with other national efforts is essential.

Changes: The third priority requirement has been revised to include an emphasis on consumer involvement and also coordination with other national efforts in the development of standards.

Comments on the fourth required activity

Comment: One commenter suggested that this activity should emphasize the involvement of consumer and organizations representing consumers in the development of these educational programs, while another commenter stated that the priority should state explicitly that the educational programs should also be implemented. A third commenter suggested that the training programs should be based on an evaluation of the factors likely to influence health plan decision-making by individuals with disabilities. One commenter suggested that the Center should work with NIDRR and other Federal planning and demonstration offices in designing consumer education programs.

Discussion: The Secretary agrees that consumers must be involved in the development of the educational programs, as in all phases of the Center's activities, and also that they should be involved in the implementation. The Secretary also agrees that the educational program should be knowledge-based, but declines to specify what type of research should be conducted to ascertain the necessary knowledge. The Secretary emphasizes that the Center will be required to work with NIDRR and with a range of Federal planning agencies and their grantees on all phases of the Center's activities, and does not want to suggest that it is more important on this particular bullet.

Changes: The fourth bullet is revised to note the need to involve consumers and their organizations in the development of the training, and the need to implement the training with their involvement. The bullet also requires that the educational programs be based on a knowledge of consumer training needs.

Comments on the sixth required activity

Comment: One commenter suggested that the Center be required to attend the two-day National Conference on Managed Care and People with Disabilities that will be sponsored by the Department of Health and Human Services, and integrate the conference's research and training recommendations into its goals and directions. One commenter suggested that the Department of Veterans Affairs be added to the list of coordinating agencies, while others recommended coordination with the Robert Wood Johnson (RWJ) foundation and with offices of HHS is addition to those named in the priority. A commenter suggested that the Center be required to coordinate with NIDRR's Model Systems in Spinal Cord Injury, Traumatic Brain Injury, and Burns to make use of information available from those systems. One commenter suggested that parents and family care givers should be represented on the Advisory Board.

Discussion: The Secretary agrees that all of these are excellent suggestions. The Secretary has the flexibility to address the issue of attendance at the National Conference in the negotiation of the grant award. However, the Secretary does not want to prescribe the ways in which the Center must meet the requirements to represent consumers on the advisory board, and prefers to permit each applicant to propose how it will meet that requirement. With respect to other Federal agencies, the Secretary believes that the Department of Veterans Affairs will be a source of information, as will many units of HHS in addition to those named in the priority. Among private sector sponsors of health care research, the RWJ Foundation merits special inclusion because of its extensive body of research on managed care and disability and on consumer directed activities of personal assistance services and independent living. However, the Secretary believes that the priority as written, along with this discussion, provides sufficient guidance to applicants on the need to develop a substantial advisory committee with a wide scope of interests. The Secretary believes that each applicant should have the freedom within that framework to propose and defend an Advisory Committee on its own choosing.

Changes: None.

Rehabilitation Research and Training Centers (RRTCs)

Authority for the RRTC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide such training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Under the regulations for this program (see 34 CFR 352.32) the Secretary may establish research priorities by reserving funds to support particular research activities.

Description of the Rehabilitation Research and Training Center Program

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disabling conditions, and promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serves as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

NIDRR encourages all Centers to involve individuals with disabilities and minorities as recipients in research training, as well as clinical training.

Applicants have considerable latitude in proposing the specific research and related projects they will undertake to achieve the designated outcomes; however, the regulatory selection criteria for the program (34 CFR 352.31) state that the Secretary reviews the extent to which applicants justify their choice of research projects in terms of the relevance to the priority and to the needs of individuals with disabilities. The Secretary also reviews the extent to which applicants present a scientific methodology that includes reasonable hypothese, methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

General

The following requirements apply to this RRTC pursuant to the priority unless noted otherwise:

Each RRTC must conduct an integrated program of research to develop solutions to problems confronted by individuals with disabilities.

Each RRTC must conduct a coordinated and advanced program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research.

Each Center must disseminate and encourage the use of new rehabilitation knowledge. They must publish all materials for dissemination or training in alternate formats to make them accessible to individuals with a range of disabling conditions.

Each RRTC must involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority:

Priority: Health Care for Individuals with Disabilities—Issues in Managed Health Care

Background

Individuals with disabilities have a vital interest in high quality health care, and important interests in the reshaping of the health care delivery system. To begin, they are higher than average users of health services (NMES, 1987), and are more likely to be dependent on quality health care services to prevent secondary disabilities and maintain quality of life. Individuals with disabilities are more likely to be insured under public programs—Medicare and Medicaid—and thus are particularly concerned with the directions of public policy in these programs (LaPlante, 1996). Individuals with disabilities are more likely to be dependent on their health care programs for a wide range of services intended to assure their quality of life and independence, particularly as health care insurers usually control access to funding for personal assistance services and assistive technology.

The central health care issue for individuals with disabilities is access to appropriate, high quality health care. Appropriate care must be timely, of high quality, in sufficient quantity, and accessible both physically and programmatically. For individuals with disabilities, appropriate care also generally implies an integrated continuum of care as necessary, and consumer involvement in the care decisions and implementation. A comprehensive continuum of care, including primary care, acute care, rehabilitation, and long-term care, is key to any health care delivery system for individuals with disabilities.

The health care needs of individuals with disabilities differ from those of the general population in many important aspects (DeJong, 1995). They are at greater risk of acquiring certain medical conditions, often experience these conditions differently, and may require a more extensive therapeutic intervention. Individuals with disabilities often are vulnerable to secondary conditions that may exacerbate the original disability. For this reason, as well as for costs related to the original impairment, persons with disabilities are likely to need more health care and thus to be particularly affected by cost constraints that may affect the volume or quality of services available.

In recent years there has been a significant change in the way health care is delivered and reimbursed. Historically, most of the insured population (including individuals with disabilities) received their health care through fee-for-service health care plans. However, various forms of managed care increasingly are the typical mode of organizing and delivering health care in the private sector, and segments of the Medicaid and Medicare populations have been enrolled in managed care plans. There are many varieties of managed care, ranging from the model of a case manager in a fee-for-service system, through preferred provider arrangements, to the HMO. Regardless of how managed care is operationalized, the essential features are that it is a cost-driven model paid for by a capitation method with strict controls on the volume and costliness of services to be provided to an individual with a given diagnosis. While traditional fee-for-service systems were said to reward the provider in direct proportion to the amount of services rendered, i.e., more services given equals more fees collected, managed care operates with an opposite set of incentives, often rewarding the provider for such things as low average costs, or fewer than average patient visits per diagnostic category. The provider in turn manages the care of the patient through gatekeeping practices that individuals with disabilities fear may limit access to specialists or higher-cost services. One challenge in improving health care for all individuals is to change the incentive-reward systems for gatekeepers, and all providers, from those based on cost savings to those based on quality of outcomes achieved.

A managed care system, particularly one without the funding constraints typically imposed by capitated managed care, has ideal elements of a system of

care for individuals with disabilities. These elements include case management, with an opportunity for the primary care provider or case manager to become familiar with the needs of the individual consumer; coordination of interventions of a variety of specialists; often a single location that increases the physical accessibility of a variety of services and specialists; preventive health care; health education; coordination of medications; a frequent preference for alternative or holistic therapies (such as stress reduction, nutritional education, or exercise) over more invasive procedures that many consumers resent; and a central focus for quality assurance and consumer input.

The American Hospital Association has stated that, managed care is based on the premise that the majority of the health care services delivered in the United States are most appropriately delivered and managed by primary care physicians (HIAA, 1993). While this is not an exact description of the existing practices, it is an indicator of the importance of the primary care provider in the managed care model. The primary care physician (or nurse, physicians' assistant, or other triage personnel) determines the need for primary care and makes referrals as specialized care or hospitalization are needed, and thus controls not only the delivery of primary care but entry into other services.

However, individuals with disabilities have long been concerned about a lack of appropriate primary care, and are increasingly apprehensive about effects of capitated systems on the quantity and quality of care that will be available to them. As managed care becomes more frequent as a mechanism for delivering health care, primary care providers become even more critical to the disabled individual because of their typical roles in the managed care system, determining referrals to specialists as well as delivering primary care.

Batavia and others have written about the practice of individuals with disabilities educating primary care providers in the medical implications of their impairments, and have discussed the generally unsatisfactory nature of the primary care available to individuals with disabilities (Batavia, DeJong, Halstead, and Smith, 1989). The role of the gatekeeper—usually the primary care provider—in managed care is a critical one for individuals with disabilities. That manager not only may have an incentive to limit access to services, but also may lack competence in assessing the needs of disabled individuals with various impairments or chronic conditions.

At present, most insured individuals with disabilities are enrolled—under Medicaid or Medicare—in fee-for-service programs, where they have some latitude in choosing providers and may often elect to see rehabilitation specialists for routine and preventive care. Within this market system, it has become common for rehabilitation medicine specialists, and rehabilitation hospitals, to provide primary care. Many disabled individuals choose to return to rehabilitation specialists who are familiar with their conditions and have wide experience in the treatment of individuals with similar conditions for both routine preventive care and for treatment of occasional illnesses or injuries. Of course, not all disabled individuals seek primary care from rehabilitation specialists and teaching hospitals.

Similarly, it must be noted that not all individuals with disabilities require special health care arrangements different from those of the general population. It is also probable that special requirements of many groups of disabled individuals can be met by accommodations and attention to accessibility with mainstream programs. At present, there is no satisfactory method for identifying, or even accurately estimating the numbers of, those disabled individuals in the total population whose health care needs cannot be met through standard managed health care plans. Most studies of managed care for individuals with disabilities are based on SSI or SSDI recipients who are enrolled in Medicaid. However, Medicaid eligibility is not a satisfactory proxy for the target population of this Center, which is addressing all individuals with disabilities who require alternative health care delivery approaches. Identifying the target population based on high volume service usage is also unsatisfactory because many individuals with disabilities may use few medical services, but still require special knowledge or accommodations when they do access the health care system.

Individuals with disabilities, as potential plan enrollees, are concerned about cost containment strategies such as capitation, which have the financial incentive to deliver fewer services. There are also incentives to avoid high-risk enrollees, and to establish policies and practices that discourage the enrollment of high users. Examples of these practices discussed by Kronick (1995) in his concise description of this problem include: screening for pre-existing conditions, designing service packages to discourage potential enrollees with certain conditions, terminating of subscribers, discouraging service use by making access difficult, and encouraging disenrollment. Kronick proceeds to list a series of strategies designated to compensate for the intensely risk aversive nature of managed care programs, and these techniques are deserving of thorough evaluation in a variety of settings.

There are at present a number of alternative models for the delivery of health care services to populations with special health care needs other than the traditional fee-for-service approach. These include the social HMOs; managed care carve outs; centers of excellence and university-based medical centers; special demonstration programs that may be conducted in connection with centers for independent living or other disability organizations; designation of rehabilitation medicine specialists as primary care providers or care managers; so-called disease management models designating special elements of care based on diagnostic category; model systems of comprehensive care; special education efforts directed at primary care providers; and more traditional limited risk models based on principles of reinsurance. The suitability of these alternative models may vary by the type of impairment, age of the consumer, geographic location, and many other factors. In recent years there have been many innovative delivery models tested (Community Medical Alliance in Boston, extensively documented by Alan Meyers and Robert Masters; the On Loc project in San Francisco for elderly medically fragile and chronically ill persons; and the PACE project, for example). However, more needs to be done to investigate the applicability of a variety of models to a range of populations, especially to working age adults, to disabled individuals who are employed, and to those covered by private health insurance.

Finally, individuals with disabilities are concerned about the physical and programmatic accessibility of health care and with their own roles in maintaining health. Individuals with disabilities, and their organizations, are learning to take an active role in the choice and management of the services they receive. Health care is one of the most critical areas for individuals with disabilities to be informed consumers. In some cases, individuals with disabilities will have a choice among benefit plans or service providers under managed care. In all cases they need the option of an informed and active role in their individual health care, including understanding of risks and benefits, choice of optional treatments, and an opportunity to provide care systems. A second focus group identified a number of issues in managed care from the perspective of individuals with disabilities.

The primary Federal responsibility for health care services and research is with the Department of Health and Human Services (HHS). Several units of HHS, particularly the Public Health Service, the Health Care Financing Administration, and the Office of the Assistant Secretary for Planning and Evaluation (ASPE), are establishing significant programs of research into managed care for vulnerable populations. The Administration on Aging also conducts research on managed care: NIDRR plans to continue collaboration with HHS, and expects any Center funded under this priority to work closely with HHS grantees.

However, NIDRR also has had a long history of support for medical rehabilitation research and demonstrations of model systems of care. In addressing its research mission, NIDRR has been impressed by the importance of health care to rehabilitation and independence, as well as by the high value of individuals with disabilities attach to access to comprehensive, high-quality, consumer-responsive health care. In 1991, NIDRR supported a planning conference to set a long-term agenda for medical and health research in NIDRR. The conferees recommended four areas of focus: trauma care; medical rehabilitation; primary care; and long-term care.

Consistent with this agenda, NIDRR is supporting a number of RRTCs that address research issues related to trauma care, medical rehabilitation, and long-term care. In order to identify significant research issues related to primary care for individuals with disabilities, NIDRR convened a focus group of researchers, consumers, and service providers. Within the context of primary care, the group's most significant area of concern was managed care, including the role of primary care and of medical rehabilitation in the managed care system. A second focus group identified a number of issues in managed care from the perspective of individuals with disabilities.

NIDRR's funding priority on issues in managed care focuses on accessibility, consumer-responsiveness, the role of consumers and consumer organizations (e.g., Independent Living programs) in health maintenance and in the evaluation of managed care plans, and the role of rehabilitation medicine. In addition, the priority expands the target population of related research efforts that focus primarily on publicly financed systems to include individuals covered by private health plans and individuals without health care coverage. The research undertaken by this Center is expected to complement, supplement, or confirm studies sponsored by HHS.

The Secretary is interested in research that will identify the characteristics of a managed health care system that is responsive to the needs of individuals with disabilities, including research on the effects of managed care on individuals with disabilities. For the purposes of this funding priority, an individual with a disability is defined as one who has a physical or mental impairment that substantially limits one or more major life activities (Rehabilitation Act of 1973, section 7(8)(B)). One function of the funding RRTC will be to develop a definition and parameters to identify those individuals whose disabilities necessitate special health care arrangements in a managed care system.

Priority

The Secretary intends to establish an RRTC to conduct research that will contribute to the development of consumer-responsive managed health care that encompasses the continuum of care needed by individuals with disabilities whose health care needs require special attention under managed care and will provide information and training to service providers and individuals with disabilities on new developments in managed care systems and their implications for individuals with disabilities.

In addition to carrying out activities to fulfill this general purpose, the RRTC shall:

- Conduct a study assessing the impact of managed care on individuals with disabilities, by type of disability and social and demographic characteristics, examining such factors as quality of care, costs of care, access to specialty providers, service utilization, and preventive care, and develop, using the findings of this study, a method for identifying those individuals with disabilities whose health care needs require special approaches under managed care;
- Using existing data where possible, analyze alternative health delivery approaches, including carve out models, disease management models, and models combining acute and long-term services in order to: (1) identify critical elements (such as capitation formulas, incentive-rewards, or service packages) that enhance the application of traditional managed care models to individuals with disabilities; and (2) identify gaps in the data to be addressed by future research;
- Review, in cooperation with efforts sponsored by the NCQA, ASPE, and the Robert Woods Johnson Foundation, existing or emerging industry quality assurance standards in relation to the needs of individuals with disabilities, and develop and recommended quality indicators for this population, involving individuals with disabilities in this effort;
- Design, based on new or existing research about consumer training needs, and with the involvement of individuals with disabilities, programs to prepare individuals with disabilities to be educated consumers of health care, and implement these training programs, using consumer organizations in this effort;
- Serve as a center of information for policy makers, researchers, and individuals with disabilities about new developments in managed care, integrating the perspective of individuals with disabilities into the national discussion of managed care, and conduct at least two national conferences on emerging issues in research on managed care for individuals with disabilities, researchers, and service providers; and
- Establish and work with an Advisory Committee whose members include relevant Federal and other public agencies (e.g., relevant units of the Department of Health and Human Services, including ASPE, HCFA, AoA, and the Public Health Service, and the Department of Veteran's Affairs), foundations such as RWJ, key managed care representatives from the private sector, individuals with disabilities, and other NIDRR centers and projects addressing related issues.

Program Regulations: 34 CFR Parts 350 and 352.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number: 84.133B, Rehabilitation Research and Training Center Program)

Dated: July 3, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–17456 Filed 7–8–96; 8:45 am]

BILLING CODE 4000–01–P–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133B]

Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for a New Award Under the Rehabilitation Research and Training Center Program for Fiscal Year 1997

Purpose of Program: Rehabilitation Research and Training Centers (RRTCs) conduct coordinated and advanced programs of research on disability and rehabilitation that will produce new knowledge that will improve rehabilitation methods and service delivery systems, alleviate or stabilize disabling conditions, and promote maximum social and economic independence for individuals with disabilities. RRTCs provide training to service providers at the pre-service, in-service training, undergraduate, and graduate levels to improve the quality and effectiveness of rehabilitation services. They also provide advanced research training to individuals with disabilities and those from minority backgrounds, engaged in research on disability and rehabilitation. RRTCs serve as national and regional technical assistance resources, and provide training for service providers, individuals with disabilities and families and representatives, and rehabilitation researchers.

This notice supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: Institutions of higher education and public or private agencies and organizations collaborating with institutions of higher education, including Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Deadline for Transmittal of Applications: 9/17/96.

Application Available: 7/19/96.

Maximum Award Amount Per Year: $500,000.

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount. (See 34 CFR 75.104(b) published in the **Federal Register** on 3/4/96 (61 FR 8454)).

Estimated Number of Awards: 1.

Note: The estimate of funding level and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants.

Project Period: 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, 86; (b) the regulations for this program in 34 CFR Parts 350 and 352; and (c) The priority in the notice of final priority for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition.

For Applications Contact: William H. Whalen, U.S. Department of Education, 600 Independence Avenue SW., Switzer Building, Room 3411, Washington, D.C. 20202. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, U.S. Department of Education, 600 Independence Avenue S.W., Switzer Building, Room 3422, Washington, D.C. 20202. Telephone: (202) 205–97391. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516. Internet: Betty—Jo—Berland@ed.gov

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web at http://www.ed.gov/money.html

However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 761a and 762.

Dated: July 3, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–17457 Filed 7–8–96; 8:45 am]

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Vol. 61, No. 132

Tuesday, July 9, 1996

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TDD for the hearing impaired	523–5229

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FEDERAL REGISTER PAGES AND DATES, JULY

33825–34366	1
34367–34712	2
34713–35082	3
35083–35588	5
35589–35914	8
35915–36276	9

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6907 35083
6908 35587
Administrative Orders:
Presidential Determinations:
No. 96–36 of June 28, 1996 35075

5 CFR

Ch. XXIII 35085
Ch. LXV 36246
530 34713
531 34713
534 34713
550 34713
575 34713
581 34713
582 34713
630 34713
734 35088
2634 35589
3201 35915
Proposed Rules:
890 35973

7 CFR

58 35589
301 ..... 35102, 35107
400 34367
868 34714
946 35109
958 35592
997 35594
998 35594
1106 35596
1230 35597
1493 33825
1910 35916
1924 35916
1941 35916
1943 35916
1945 35916
1951 35916
1955 35916
1962 35916
1965 35916
1980 35916
Proposed Rules:
210 35152
220 35152
225 35152
226 35152
300 34379
319 34379
868 35687
1240 34385
1280 35982

8 CFR

103 35597
214 35934
217 35598
301 35111
Proposed Rules:
207 35984
208 35984

9 CFR

112 33840
113 33840
Proposed Rules:
1 34386
3 ..... 34386, 34389
11 34747
94 35987
301 35990
304 35990
308 35990
318 35992
319 35157
320 35990
381 ..... 35157, 35990
391 34747

10 CFR

53 35935
110 35600
205 3511
420 35890
450 35890
463 35114
1003 35112
1010 35085
1021 36222
Proposed Rules:
1021 35990

12 CFR

324 33842
367 35115
1750 35607
Proposed Rules:
207 33874
218 34749
220 33874
221 33874
250 34749
327 34751

14 CFR

1 34508
25 34716
29 33963
39 ..... 33874, 34368, 34718, 35122, 35126, 35127, 35936, 35938, 35940, 35942, 35944, 35946
61 34508
71 ..... 33843 33844, 33845, 34720, 34721, 34722, 34723, 35907
73 35623
91 34508

97 ..... 35623, 35624, 35626
119 35628
121 ..... 34508, 34927, 35628
125 34508
135 ..... 34508, 34927, 35628
141 34508
142 34508
211 34724
213 34724

Proposed Rules:
25 35056
39 ..... 34767, 35691, 35693, 35695
71 ..... 34391, 34393, 34394, 34395, 34396, 34397, 34398, 34769, 35991

15 CFR
902 ..... 34570, 34930, 34966, 35145, 35548

Proposed Rules:
922 33876

18 CFR

Proposed Rules:
303 35992

19 CFR
10 33845
12 33845
102 33845
134 33845

21 CFR
177 34370
178 33846
452 34726
510 35949
520 34727
522 ..... 34727, 35129
529 34727
558 ..... 34727, 35949

Proposed Rules:
106 36154
107 36154

22 CFR
41 35628

23 CFR
630 35629

24 CFR
0 36246
200 36260
201 36260
202 36260
203 ..... 35024, 36260
206 ..... 35014, 36260
221 36260
233 36260
234 36260
280 36260
291 36260
901 35633
941 35958

25 CFR
10 34371
211 35634
212 35634
700 35665

Proposed Rules:
11 35158
12 35163
21 33876
45 34399
152 34400
171 35167

26 CFR

Proposed Rules:
1 35696

28 CFR
42 34729

Proposed Rules:
31 34770

29 CFR
Ch. XXVI 34002
Ch. XL 34002
2509 33847
2520 33847
2550 33847

Proposed Rules:
Ch. XIV 34405
101 35172
102 35172

30 CFR
256 34730

32 CFR
706 35958

33 CFR
164 35064
165 ..... 35130, 35132
334 34732

Proposed Rules:
117 35702
154 34775
155 34775
167 35703

36 CFR
1 35133
13 35133
222 35959
223 35960

38 CFR
1 33850

Proposed Rules:
1 33878

40 CFR
9 ..... 33851, 34202
55 34202
63 34140
70 34733
71 34202
80 ..... 35310, 35673, 35960
180 ..... 34739, 34741
257 34253
261 34252
271 34252
300 ..... 35137, 35962
425 35680

Proposed Rules:
51 ..... 35994, 36112
52 ..... 35998, 36004
55 36012
80 34775
81 ..... 33879, 36004
90 34778
93 ..... 35994, 36112
260 33881
261 33881
262 33881
264 33881
268 33881
269 33881
271 33881
425 35705

41 CFR
201 35685

42 CFR
405 35307
417 35307
431 35307
473 35307
498 35307

Proposed Rules:
410 34614
415 34614

44 CFR
65 ..... 33852, 33854
67 33856

Proposed Rules:
67 33882

46 CFR
42 35963
76 35138
111 35927
167 35138
514 35685

47 CFR
Ch. I 35964
20 33859
22 34375
24 33850
36 34375
73 ..... 34368, 34743, 34744, 35139
90 34375

Proposed Rules:
Ch. I 34405
73 ..... 34406, 34407, 34784, 34785, 35705
76 ..... 34408, 34409

49 CFR
1 34745
192 35139
233 33871
235 33871
236 33871
571 33891
1300 35139
1305 35141

Proposed Rules:
1 33886
8 33886
192 ..... 34410, 34413
195 ..... 34410, 34413
397 36016

50 CFR
Ch. III 35548
246 35548
280 35548
281 35548
282 35548
298 35548
299 35548
622 34930
625 34966
630 ..... 34746, 35971
638 34930
641 34930
642 34785
645 34930
646 34930
647 34930
648 ..... 34966, 35142
650 34966
651 34966
652 34966
653 34930
655 34966
657 34966
658 34930
659 34930
660 ..... 34570, 35143, 35144
661 34570
663 34570
669 34930
670 34930
679 34377
680 34570
681 ..... 34570, 35145
683 34570
685 34570
695 35548
697 34746

Proposed Rules:
17 ..... 36020, 36021
642 34785
679 35174

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT
Forest Service
National Forest System timber; sale and disposal:
Federal timber contract payment modification program; published 7-9-96
Range management:
Wild free-roaming horses and burros management; correction; published 7-9-96

AGRICULTURE DEPARTMENT
Farm Service Agency
Program regulations:
Loan assessment, market placement, and seasoned direct loan borrowers graduation to loan guarantee program; published 7-9-96

AGRICULTURE DEPARTMENT
Rural Business-Cooperative Service
Program regulations:
Loan assessment, market placement, and seasoned direct loan borrowers graduation to loan guarantee program; published 7-9-96

AGRICULTURE DEPARTMENT
Rural Housing Service
Program regulations:
Loan assessment, market placement, and seasoned direct loan borrowers graduation to loan guarantee program; published 7-9-96

AGRICULTURE DEPARTMENT
Rural Utilities Service
Program regulations:
Loan assessment, market placement, and seasoned direct loan borrowers graduation to loan guarantee program; published 7-9-96

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric utilities (Federal Power Act):
Open access non-discriminatory transmission services provided by public utilities--
Wholesale competition promotion; stranded costs recovery by public and transmitting utilities; published 5-10-96

ENVIRONMENTAL PROTECTION AGENCY
Superfund program:
National oil and hazardous substances contingency plan--
National priorities list update; published 7-9-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Chlortetracycline; published 7-9-96

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Nonimmigrant classes:
Ports of entry accepting applications for direct transit without visa; list additions--
Oakland, CA and Sanford, FL; published 7-9-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Beech; published 6-4-96
McDonnell Douglas; published 6-4-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Apricots grown in Washington; comments due by 7-17-96; published 6-17-96
Fruits, vegetables, and other products, fresh:
Inspection, certification, and standards fee schedule; comments due by 7-15-96; published 5-14-96
Hazelnuts grown in Oregon and Washington; comments due by 7-15-96; published 6-13-96
Peanuts, domestically produced; comments due by 7-15-96; published 6-13-96

ARMS CONTROL AND DISARMAMENT AGENCY
Privacy Act; implementation; comments due by 7-16-96; published 6-13-96

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Sea turtle conservation; shrimp trawling requirements--
Soft turtle excluder devices approval removed, etc.; comments due by 7-15-96; published 6-17-96
Fishery conservation and management:
Atlantic surf clam and ocean quahog; comments due by 7-19-96; published 6-20-96
Gulf of Mexico and South Atlantic coastal migratory pelagic resources; comments due by 7-18-96; published 7-3-96
Ocean salmon off coasts of Washington, Oregon, and California; comments due by 7-15-96; published 7-5-96
Pacific Coast groundfish; comments due by 7-16-96; published 7-5-96
Puerto Rico and U.S. Virgin Islands reef fish; comments due by 7-15-96; published 6-17-96
Summer flounder and scup; comments due by 7-18-96; published 6-3-96
Marine mammals:
Incidental taking--
Naval activities; USS Seawolf submarine shock testing; comments due by 7-15-96; published 6-14-96

COMMERCE DEPARTMENT
National Telecommunications and Information Administration
Public telecommunications facilities program; comments due by 7-15-96; published 5-30-96

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Surface coating operations from new or existing shipbuilding and ship repair facilities--
Compliance date revision and implementation plan submittal deadline extension; comments due by 7-18-96; published 6-18-96
Air quality implementation plans; approval and promulgation; various States:
Indiana; comments due by 7-15-96; published 6-13-96
Louisiana; comments due by 7-15-96; published 6-13-96
Virginia; comments due by 7-15-96; published 6-13-96
Clean Air Act:
State operating permits programs--
Idaho; comments due by 7-17-96; published 6-17-96
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Chlorothalonil; comments due by 7-19-96; published 6-19-96
Fenarimol; comments due by 7-15-96; published 6-14-96
Quizalofop ethyl; comments due by 7-19-96; published 6-19-96
Quizalofop-p ethyl ester; comments due by 7-15-96; published 6-14-96
Sodium salt of fomesafen; comments due by 7-19-96; published 6-19-96
Triadimefon; comments due by 7-19-96; published 6-18-96
Vinyl pyrrolidone-acrylic acid copolymer; comments due by 7-15-96; published 6-14-96
Superfund program:
National oil and hazardous substances contingency plan--
National priorities list update; comments due by 7-15-96; published 6-14-96

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Aeronautical services provision via International Maritime Satellite Organization (Inmarsat system); comments due by 7-17-96; published 6-17-96
O+ InterLATA calls; billed party preference; comments due by 7-17-96; published 6-17-96
Satellite communications--
Application and licensing procedures; comments due by 7-15-96; published 6-24-96
Communications equipment:
Radio frequency devices--
Unlicensed NII/SUPERNet operations in 5 GHz

frequency range; comments due by 7-15-96; published 5-16-96
Television broadcasting:
Cable television systems–
Video programming delivery; market competition status; annual assessment; comments due by 7-19-96; published 7-2-96
GENERAL SERVICES ADMINISTRATION
Federal property management:
Public buildings and space–
Small purchase authority; comments due by 7-15-96; published 6-13-96
HEALTH AND HUMAN SERVICES DEPARTMENT
Children and Families Administration
Head Start Fellows Program; comments due by 7-15-96; published 5-15-96
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Food labeling–
Nutrient content claims; general principles and "healthy" definition; fruits, vegetables, etc., inclusion; comments due by 7-18-96; published 3-22-96
INTERIOR DEPARTMENT
Indian Affairs Bureau
Financial activities:
Trust funds; tribal management; comments due by 7-15-96; published 5-16-96
INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Findings on petitions, etc.–
Namibian cheetah; comments due by 7-17-96; published 3-19-96
Least chub; comments due by 7-15-96; published 6-7-96
Importation, exportation, and transportation of wildlife:
Injurious wildlife; Federal regulatory review; comments due by 7-15-96; published 5-14-96
INTERIOR DEPARTMENT
Minerals Management Service
Federal regulatory review; request for comments; comments due by 7-19-96; published 5-20-96
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Virginia; comments due by 7-19-96; published 6-19-96
JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Acts of violence and terrorism prevention; comments due by 7-16-96; published 5-17-96
Drug abuse treatment programs and early release consideration; comments due by 7-16-96; published 5-17-96
TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
Michigan; comments due by 7-15-96; published 5-14-96
TRANSPORTATION DEPARTMENT
Airline oversales signs; Federal regulatory review; comments due by 7-18-96; published 6-3-96
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Allied Signal Commercial Avionics Systems; comments due by 7-15-96; published 6-5-96
Bell; comments due by 7-15-96; published 5-14-96
Boeing; comments due by 7-19-96; published 6-7-96
H.B. Flugtechnik GmbH; comments due by 7-15-96; published 5-13-96
McDonnell Douglas; comments due by 7-15-96; published 5-14-96
Pilatus Britten-Norman Ltd.; comments due by 7-19-96; published 5-9-96
Airworthiness standards:
Special conditions–
Dassault Aviation, Mystere Falcon 50 airplane; comments due by 7-15-96; published 5-29-96
Class E airspace; comments due by 7-19-96; published 6-12-96
TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Controls and displays; Federal regulatory review; comments due by 7-15-96; published 5-30-96
Seat belt assemblies–
Anchorage of voluntarily installed lap/shoulder belt; certification; comments due by 7-15-96; published 5-14-96
TREASURY DEPARTMENT
Customs Service
Organization and functions; field organization, ports of entry, etc.:
Sanford, FL; port of entry designation; comments due by 7-17-96; published 6-17-96
TREASURY DEPARTMENT
Internal Revenue Service
Estate and gift taxes:
Residence trust, personal or qualified personal; sale of residence; comments due by 7-15-96; published 4-16-96
Procedure and administration:
Taxpayer assistance orders; authority to modify or rescind; comments due by 7-18-96; published 4-19-96
VETERANS AFFAIRS DEPARTMENT
Adjudication, pensions, compensation, dependency, etc.:
Marriage dissolution; birth of child; death of family member; evidence of dependents and age requirements; comments due by 7-16-96; published 5-17-96

LIST OF PUBLIC LAWS

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H.R. 2803/P.L. 104–152

Anti-Car Theft Improvements Act of 1996 (July 2, 1996; 110 Stat. 1384)

S. 1136/P.L. 104–153

Anticounterfeiting Consumer Protection Act of 1996 (July 2, 1996; 110 Stat. 1386)

S. 1903/P.L. 104–154

To designate the bridge, estimated to be completed in the year 2000, that replaces the bridge on Missouri highway 74 spanning from East Cape Girardeau, Illinois, to Cape Girardeau, Missouri, as the "Bill Emerson Memorial Bridge", and for other purposes. (July 2, 1996; 110 Stat. 1391)

H.R. 3525/P.L. 104–155

Church Arson Prevention Act of 1996 (July 3, 1996; 110 Stat. 1392)

S. 1579/P.L. 104–156

Single Audit Act Amendments of 1996 (July 5, 1996; 110 Stat. 1396)

Last List July 3, 1996

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Wednesday
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Contents

Federal Register
Vol. 61, No. 133
Wednesday, July 10, 1996

Agriculture Department
See Food and Consumer Service
See Grain Inspection, Packers and Stockyards Administration

Army Department
See Engineers Corps
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Motion sensor, 36350

Census Bureau
PROPOSED RULES
Foreign trade statistics:
Customs entry records; collection of Canadian Province of Origin information, 36318–36320
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36349

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
DOE nuclear weapons facilities; environmental health research; community education and training, 36380–36382
Gonorrhea, populations at high risk for; interventions to increase health-seeking behaviors and health care; development and feasibility testing; correction, 36382
Maternal and child health epidemiology programs, 36382–36384
Meetings:
Disease, Disability, and Injury Prevention and Control special emphasis panel, 36384–36385
Public Health Service Activities and Research at DOE Sites Citizens Advisory Committee, 36385

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Adoption opportunities program, 36424–36449

Coast Guard
RULES
Regattas and marine parades:
Events requiring permits, written notices, or neither; identification
Correction, 36292

Commerce Department
See Census Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Department
See Army Department
See Engineers Corps
See Navy Department
RULES
Acquisition regulations:
Allowable individual compensation, 36305–36306

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Rutgard, Jeffrey, M.D., 36395–36396
Shah, Mukesh H., M.D., 36396

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Postsecondary education—
Drug and violence prevention program; institution-wide program, 36351–36352
Meetings:
Federal Interagency Coordinating Council, 36352

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Hanford Site, WA—
Plutonium finishing plant stabilization, 36352–36359

Engineers Corps
NOTICES
Committees; establishment, renewal, termination, etc.:
Inland Waterways Users Board, 36350–36351

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
State programs approval and Federal authorities delegation, 36295–36298
Air quality implementation plans; approval and promulgation; various States:
Findings of failure to submit required State implementation plans for nonattainment areas for ozone, 36292–36295
Hazardous Waste:
Land disposal restrictions—
Decharacterized wastewaters, carbamate wastes, and spent potliners (Phase III); partial withdrawal and amendment; correction, 36419–36421
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
1-[[2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole, 36299–36302
Triphenyltin hydroxide, 36298–36299
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Radon emissions from phosphogypsum stacks; comment period reopening, 36326
State programs approval and Federal authorities delegation, 36326–36328
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 36320–36326
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Maleic anhydride-diisobutylene copolymer, sodium salt, 36329–36331
Polyvinylpyrrolidone butylated polymer, 36331–36333

Water pollution control:
Clean Water Act—
Pollutant analysis; analytical methods flexibility and approval, 36328–36329
NOTICES
Meetings:
Environmental Policy and Technology National Advisory Council, 36367–36368
State FIFRA Issues Research and Evaluation Group, 36368
Pesticide applicator certification; Federal and State plans:
Nebraska, 36368–36369
Pesticide, food, and feed additive petitions:
Ciba-Geigy Corp. et al., 36373–36375
Entek Corp., 36375–36376
Pesticide registration, cancellation, etc.:
Ecoval Technologies Inc., 36369
Ethylene Oxide 100%, etc., 36369–36372
Merck Research Co., 36372–36373
Pesticides; emergency exemptions, etc.:
Carbofuran, 36376–36377
Pesticides; experimental use permits, etc.:
Ciba Plant Protection et al., 36377
Superfund program:
Prospective purchaser agreements—
National Mine Tailings Site, MO, 36378
Toxic and hazardous substances control:
Chemical testing—
Data receipt, 36378

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 36378–36379

Federal Aviation Administration
RULES
Class E airspace, 36283–36286
Jet routes, 36286
Organization, functions, and authority delegations:
Southern Region; Regional Administrator, 36286–36287
PROPOSED RULES
Airworthiness directives:
AlliedSignal Inc., 36310–36311
Jetstream, 36308–36310
McDonnell Douglas, 36307–36308
Class E airspace, 36311–36317
Restricted areas, 36317–36318
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36412
Meetings:
RTCA, Inc., 36412–36413
Passenger facility charges; applications, etc.:
Savannah Airport Commission, GA, et al., 36413–36415

Federal Bureau of Investigation
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36396–36397

Federal Communications Commission
RULES
Television broadcasting:
Ancillary digital data transmission within active video portion of NTSC signals, 36302–36305
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36379
Rulemaking proceedings; petitions filed, granted, denied, etc., 36379

Federal Energy Regulatory Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36359–36360
Electric rate and corporate regulation filings:
Morgan Stanley Capital Group Inc. et al., 36364–36367
Electric utilities (Federal Power Act):
Open access non-discriminatory transmission services and same-time information system, etc.; new docket prefix "OA" for filings, 36367
Environmental statements; availability, etc.:
Pacific Gas and Electric Co., 36367
Applications, hearings, determinations, etc.:
CPS Capital, Ltd., 36360
GDK Corp., 36360–36361
Hydro-Power Inc., 36361
ICC Energy Corp., 36361
Michigan Gas Storage Co., 36361–36362
NE Hub Partners, L.P., 36362
Northwest Pipeline Corp., 36362–36363
Total Peaking Services, L.L.C., 36363–36364

Federal Railroad Administration
NOTICES
Meetings:
Railroad Safety Advisory Committee, 36415

Fish and Wildlife Service
NOTICES
Endangered Species Convention:
Trade in animal species from Thailand and Greek tortoises from Turkey; prohibition rescinded, etc., 36388–36390
Environmental statements; availability, etc.:
Incidental take permits—
Osceola County, FL; bald eagle, 36391–36392
Pender County, NC; red-cockaded woodpecker, 36390–36391

Food and Consumer Service
NOTICES
Child nutrition programs:
Child and adult care food program and national school lunch program—
Donated foods national average minimum value (July 1, 1996-June 30, 1997), 36348–36349

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Chlortetracycline, 36291
New drug applications—
Oxytetracycline injection, 36290–36291
GRAS or prior-sanctioned ingredients:
Cocoa butter substitute derived from high-oleic safflower or sunflower oil, 36287–36290
NOTICES
Harmonisation International Conference; guidelines availability:
Biotechnological/biological pharmaceutical products; stability testing, 36466–36469
Human drugs:
Drug products discontinued from sale for reasons other than safety or effectiveness—
Acetaminophen and codeine tablets USP, 325 mg/45mg, 36385–36386

Medical devices; premarket approval:
BARD BTA Test, 36386–36387
Res-Q ACD (Arrhythmia Control Device) Epicardial Patch and Non-thoracotomy Lead Systems, 36387

General Services Administration
NOTICES
Environmental statements; availability, etc.:
Union Township, OH; Voice of America Bethany Relay Station, 36379–36380

Government Printing Office
NOTICES
Meetings:
Online access to the Federal Register and other Federal databases; demonstration, 36380, 36380

Grain Inspection, Packers and Stockyards Administration
RULES
Packers and Stockyards Act:
Federal regulatory reform, 36277–36283

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration

Health Resources and Services Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36387–36388

Housing and Urban Development Department
RULES
Community development block grants:
Community development work study program, 36456–36460
Human subjects protection; Federal regulatory reform, 36462–36463
Mortgage and loan insurance programs:
Mortgagee requirements; streamlining, 36452–36453
NOTICES
Grants and cooperative agreements; availability, etc.:
Public and Indian housing—
Drug elimination program, 36472–36492

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36397–36398

Intergovernmental Relations Advisory Commission
NOTICES
Meeting, 36388

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
PROPOSED RULES
Endangered and threatened species:
Coastal dunes milkvetch, etc. (five plants and lizard from Monterey County, CA), 36346–36347

Internal Revenue Service
PROPOSED RULES
Income taxes and employment taxes and collection of income taxes at source:
Federal tax deposits by electronic funds transfer
Hearing cancellation, 36320
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36417–36418

International Trade Administration
NOTICES
Export trade certificates of review, 36349–36350

Justice Department
See Drug Enforcement Administration
See Federal Bureau of Investigation
See Immigration and Naturalization Service
See National Institute of Justice
NOTICES
Pollution control; consent judgments:
Billings, MT, 36393
GNB Industrial Battery, Inc., 36393–36394
Greenberg, Noreen, et al., 36394
Invincible Metal Furniture Co., Inc., et al., 36394–36395
Melroe Co., 36395

Land Management Bureau
PROPOSED RULES
Range management:
Wild free-roaming horses and burros; adoption fees, 36333–36334
NOTICES
Closure of public lands:
Washington, 36392
Meetings:
Resource advisory councils—
Arizona, 36392

Maritime Administration
NOTICES
Applications, hearings, determinations, etc.:
Farrel Lines Inc., 36415–36416

National Aeronautics and Space Administration
NOTICES
Meetings:
Advisory Council, 36398–36399

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Lamps, reflective devices, and associated equipment—
Headlamp aimability, 36334–36346
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 36416–36417

National Institute of Justice
NOTICES
Grants and cooperative agreements; availability, etc.:
Violence against women; research and evaluation, 36398

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 36306

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 36392–36393

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
USS Kingfisher, 36291–36292

Nuclear Regulatory Commission
NOTICES
Meetings:
Nuclear Waste Advisory Committee, 36399

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration

Railroad Retirement Board
NOTICES
Meetings; Sunshine Act, 36399

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Philadelphia Stock Exchange, Inc., 36410–36412
Applications, hearings, determinations, etc.:
T. Rowe Price International Funds, Inc. et al., 36400–36410

Small Business Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36412

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Northern Central Railway, Inc., et al., 36417

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service

Separate Parts In This Issue

Part II
Department of Health and Human Services, Children and Families Administration, 36424–36449

Part III
Department of Housing and Urban Development, 36452–36453

Part IV
Department of Housing and Urban Development, 36456–36460

Part V
Department of Housing and Urban Development, 36462–36463

Part VI
Department of Health and Human Services, Food and Drug Administration, 36466–36469

Part VII
Department of Housing and Urban Development, 36472–36492

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

9 CFR
201 (2 documents) 36277, 36279

14 CFR
71 (5 documents) 36283, 36284, 36285, 36286
91 36286
Proposed Rules:
39 (3 documents) 36307, 36308, 36310
71 (7 documents) 36311, 36312, 36313, 36314, 36314, 36315, 35316, 36317

15 CFR
Proposed Rules:
30 36318

21 CFR
184 36287
522 36290
558 36291

24 CFR
60 36462
202 36452
203 36452
221 36452
234 36452
570 36456

26 CFR
Proposed Rules:
1 36320
31 36320

32 CFR
706 36291

33 CFR
100 36292

40 CFR
52 36292
63 36295
180 (2 documents) 36298, 36299
Proposed Rules:
52 36320
61 36326
63 36326
136 36328
180 (2 documents) 36329, 36331

43 CFR
Proposed Rules:
4700 36333

47 CFR
73 36302

48 CFR
231 36305

49 CFR
Proposed Rules:
571 36334

50 CFR
679 36306
Proposed Rules:
17 36346

Rules and Regulations

Federal Register
Vol. 61, No. 133
Wednesday, July 10, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN 0580–AA45

Regulations Issued Under the Packers and Stockyards Act

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Final rule.

SUMMARY: As part of GIPSA's efforts to review and streamline its regulations, proposed amendments to rules issued under the Packers and Stockyards (P&S) Act were published in the **Federal Register** on August 21, 1995, and identified as Group III. This document adopts proposed changes which modify two regulations, to provide uniform termination procedures for all bonds and bond equivalents and to change the requirement that funds pledged to secure bond equivalents be maintained in FDIC-insured accounts to permit their deposit in any Federally-insured account, and retains seven regulations in their present form.

EFFECTIVE DATE: August 9, 1996.

FOR FURTHER INFORMATION CONTACT: Dan Van Ackeren, Director, Livestock Marketing Division, 202–720–6951, or Tommy Morris, Director, Packer and Poultry Division, 202–720–7363.

SUPPLEMENTARY INFORMATION: In response to the proposed rule published in the **Federal Register** (60 FR 43411), the Agency received comments from two marketing associations, one livestock selling agency, a State department of agriculture, and a law firm representing livestock marketing interests.

Two comments were received regarding the modification of § 201.27. This regulation provides for approved sureties, authorizes bond equivalents, and requires bond or bond equivalents to be on forms approved by the Administrator. Both comments generally supported the proposed modification of § 201.27(b)(1) and (b)(2), but urged the Agency to assure that funds pledged under bond equivalents be provided the same degree of protection as those insured by the Federal Deposit Insurance Corporation (FDIC). As long as funds are actually deposited or invested in fully negotiable obligations of the United States, deposited in Federally-insured accounts, or letters of credit are issued by Federally-insured institutions, then bond equivalents will continue to have the same degree of protection as those insured by the FDIC.

As proposed, § 201.27(b)(1) and (b)(2) will be modified to broaden these subsections to permit funds pledged under bond equivalents to be on deposit or in accounts that are Federally-insured and not limited to only deposits or accounts insured by the FDIC. This modification would also permit all Federally-insured banks or other institutions to issue letters of credit, not just those banks or institutions insured by FDIC. The primary benefit accrues to persons choosing to meet bonding requirements with bond equivalents by permitting all Federally-insured deposits and letters of credit (not just FDIC) and would expand the number of banks or other institutions available to those seeking bond equivalents without increasing the risk to livestock sellers.

No comments were received concerning § 201.34. This regulation sets forth procedures for termination of market agency, dealer, and packer bonds and trust fund agreements. As proposed, the Agency will amend § 201.34(c) to include termination procedures for trust agreements. This will provide uniform termination for all bonds and bond equivalents.

As proposed, each of the following regulations will be retained in its present form:

§ 201.10 Requirements and procedures for registration.

§ 201.28 Duplicates of bonds or equivalents to be filed with regional supervisor.

§ 201.29 Market agencies, packers and dealers required to file and maintain bonds.

§ 201.30 Amount of market agency, dealer and packer bonds.

§ 201.31 Conditions in market agency, dealer and packer bonds.

§ 201.32 Trustee in market agency, dealer and packer bonds.

§ 201.33 Persons damaged may maintain suit; filing and notification of claims; time limitation; legal expenses.

In the process of reviewing these regulations, it was determined that they were necessary to the efficient and effective enforcement of the P&S Act and to the orderly conduct of the marketing system. The absence of any of the regulations would result in increased litigation.

Three comments were received concerning § 201.10, which specifies the requirements and procedures for registration for those persons desiring to operate as market agencies or dealers as defined in § 301 of the P&S Act. One comment suggested modifying § 201.10 by prohibiting market agencies, dealers, and packers from operating subject to the P&S Act, under their bond or anyone else's bond, until all debts owed approved livestock auction markets had been paid, regardless of whether such debt had been dismissed in bankruptcy. The Agency believes that such a modification would not be in the best interest of all livestock sellers since the comment referred to only debts owed to approved livestock auction markets. The Agency could also be in conflict with Federal bankruptcy statutes if a registration was denied based on a debt dismissed in bankruptcy. Under the provisions of the P&S Act, all market agencies and dealers are required, as a condition for registration, to be solvent. That is, current assets must be equal to or exceed current liabilities.

Two other comments received regarding § 201.10 suggested the regulation lacks specificity as to what circumstances or past activities are deemed actionable in denying the registration of an applicant. They also suggested serious violations of the Act, such as fraud, theft, and embezzlement, should warrant denial of registration unless the applicant can show just cause why registration should not be denied. The Agency believes this concern is sufficiently addressed in § 201.10(b) which specifies that if the Administrator has reason to believe the applicant is unfit to engage in the activity for which application has been made, the applicant will be afforded an opportunity for a full hearing for the

purpose of showing cause why the application should not be denied. This paragraph gives the Agency authority to review each application and to deny registration to those believed unfit to engage in the business of a market agency or dealer. It is believed § 201.10(b) can be enforced more effectively if this regulation is not narrowed to specified violations of the P&S Act. After considering the comments, the Agency has concluded this regulation should be retained in its present form.

One comment was received regarding § 201.29, which requires market agencies, packers and dealers to file and maintain bonds. The comment indicated no particular concern regarding the language in § 201.29, but suggested the P&S Act should be changed to insure that all major buyers of livestock, including feedlots, be required to maintain a reasonable bond. Those feedlots operating as dealers or market agencies as defined under the P&S Act, are subject to the registration and bonding provisions. Broader coverage to all major buyers would require a change in the statute. Therefore, the Agency has concluded this regulation should be retained in its present form.

All five comments to the proposal addressed § 201.30. This regulation sets forth the formulae for computing bonds for market agencies, dealers, and packers. It also provides the Administrator the authority to adjust the level of bond required whenever he/she determines a bond is not adequate to secure the obligations of the person or firm.

Two comments generally supported the Agency's proposal to retain § 201.30 in its present form and believed that even a modest increase in bond levels would not appreciably improve the financial protection afforded livestock sellers and may exclude smaller reputable businesses from operating altogether. The Agency was also urged to give serious consideration to establishing alternatives to the current bonds and bond equivalents such as the financial security funds used in several Canadian provinces.

One comment suggested changing the formulae for determining bond size for market agencies buying on commission and dealers (Clause 2 bond) to one half of an average week's gross purchases from the prior year (52 weeks). Another comment suggested the Agency eliminate the 10 percent threshold on dealer bonds over $75,000 because the threshold is unfair to smaller dealers and the default of a larger dealer could have a greater impact on the livestock industry than a smaller dealer. One comment recommended increasing the minimum requirement for dealers and market agencies buying on commission from the current $10,000 to $25,000. The comment also stated that an increase in the minimum bond from $10,000 to $25,000 may discourage potential dealers, who may not be financially secure or responsible, from becoming a livestock dealer.

After considering these comments, the Agency has concluded § 201.30 will be retained in its present form. The Agency does not believe it is necessary to increase the minimum bond level of Clause 2 bonds or to remove the threshold on bonds over $75,000 at this time. The cost to the industry of increasing minimum bond levels would far outweigh the increased protection that would be gained by such an increase. Small dealers and market agencies buying on commission, which include 48 percent of all dealers or market agencies, would be hardest hit by an increase in bond levels and may find it difficult to remain in business. The Agency also believes that the cost to the industry of removing the 10 percent threshold on Clause 2 bonds over $75,000 would far outweigh the benefit to livestock sellers and cause an undue hardship on larger dealers and market agencies buying on commission since many would likely be unable to obtain the required bond coverage. However, the Agency will continue to review the levels of bonds and to study alternative methods of providing financial protection to livestock sellers. In addition, the Department is supporting proposed legislation to amend the P&S Act to establish a dealer trust for the benefit of sellers of livestock to dealers and market agencies buying on commission. If the proposed legislation is passed, livestock sellers will benefit from additional protection under the Act.

Two comments were received regarding § 201.32 which refers to trustees named in market agency, dealer, and packer bonds. Both comments suggested § 201.32 be amended to show that whenever multiple trustees are listed on a bond, the Agency should designate a "lead" trustee to represent those who filed claims against the bond. Both comments further suggested that whenever trust agreements or trust fund agreements (bond equivalents) are used in lieu of a bond, the bank issuing collateral for a trust fund agreement or an irrevocable letter of credit should not be permitted to act as trustee. They believe an inherent conflict of interest exists whenever the bank holding the collateral for a bond equivalent (or issued a letter of credit) is also named as trustee.

After reviewing these comments, the Agency has decided to retain § 201.32 in its present form. The Agency does not accept bonds or bond equivalents with multiple trustees listed, therefore, does not believe it is necessary to amend the regulation to designate a "lead" trustee. Trustees on bond equivalents have a fiduciary responsibility to carry out their duty as trustee when bond claims are filed. Whenever a trustee fails to carry out their fiduciary responsibility on behalf of the claimants, the Agency has the authority to appoint a new trustee to carry out the trustee's responsibility.

Three comments were received concerning § 201.33, which pertains to filing and notification of bond claims, time limitations, and the filing of civil suit to recover on the bond or bond equivalent.

One comment suggested the number of days to file a claim stay at 60 days, but to pay only those claims that are filed within 21 days of the first unpaid debt. The comment further stated that this is sufficient time for those following the prompt pay laws and they should not be penalized by dividing bond proceeds with those who have given buyers credit. The Agency believes this suggestion would give livestock sellers insufficient time to file the bond claims. Some sellers of livestock may not have specifically extended credit to the buyer, yet may be classified as a credit seller if a bond claim is not filed within 21 days of the date of the transaction and therefore, not included in the payout of bond proceeds. We believe there is insufficient basis to warrant this change in the bond requirements at this time.

Two other comments suggested two changes to this regulation. They suggested that the Agency clarify the term "date of transaction." They state that it has been assumed for years that the term "date of transaction" meant the date of the sale or, at most, the date payment was due after the sale. The comment also accurately states that § 201.33(d) requires that a claim must be filed within 60 days from the date of the transaction on which the claim is based and, if for some reason the claim is not paid or acknowledged as a valid claim, the claimant can then file suit on that claim alleging as a cause of action that the claimant has a valid claim but the surety has denied liability or failed to pay the claim. In other words, filing a claim within 60 days from the date of the transaction is a condition precedent which must be met in order to file suit. They believe this paragraph should be clarified to avoid confusion and keep persons from filing suit against a surety company 15 or 18 months after a transaction when no claim was ever filed against the bond.

The Agency believes that the language in § 201.33 is sufficiently clear and does not believe it is necessary to define "date of transaction" or to modify paragraph (d). In addition, § 409 of the P&S Act provides a basis for when payment is due in subject transactions. Under § 409, payment must be made by the close of the next business day following the purchase of livestock and transfer of possession thereof. After considering these comments, the Agency has decided to retain § 201.33 in its present form.

The proposed changes in § 201.27(b)(1) and (b)(2) and in § 201.34(c) do not impose or change any recordkeeping or information collection requirements. Existing requirements in these regulations have been previously approved by OMB under control No. 0590–0001.

As provided by the Regulatory Flexibility Act, it is hereby certified that these amended rules will not have significant economic impact on a substantial number of small entities and a statement explaining the reasons for the certification is set forth in the following paragraph and is being provided to the Chief Counsel for Advocacy of the Small Business Administration.

While these proposed amended rules impact small entities, they will not have a significant economic impact on any entity, large or small. The primary effect of the changes in rules § 201.27(b)(1) and (b)(2) is to permit funds pledged under bond equivalents to be on deposit or in accounts that are Federally insured and to permit Federally-insured banks and other institutions to issue letters of credit. Eligible institutions would no longer be restricted to those banks or institutions insured by FDIC. The primary effect of the rule change in § 201.34(c) is to include the termination of trust agreements.

These rules have been determined to be not significant for purposes of Executive Order 12866 and, therefore, have not been reviewed by OMB. These amendments do not impose any new paperwork requirements and do not have implications for Federalism under the criteria for E.O. 12612.

This final rule has been reviewed under E.O. 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule does not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

List of Subjects in 9 CFR Part 201

Bonding, Dealer, Market Agency, Packer, Registration.

Done at Washington, D.C., on this 1st day of July 1996.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

For the reasons set forth in the preamble, the Grain Inspection, Packers and Stockyards Administration will amend 9 CFR part 201 as follows:

PART 201—[AMENDED]

1. The authority citation for part 201 continues to read as follows:

Authority: 7 U.S.C. 204, 228: 7 CFR 2.17(e), 2.56.

2. Revise § 201.27(b) to read as follows:

§ 201.27 Underwriter: equivalent in lieu of bonds; standard forms.

* * * * *

(b) Any packer, market agency, or dealer required to maintain a surety bond under these regulations may elect to maintain, in whole or partial substitution for such surety bond, a bond equivalent, or combination thereof, must be the total amount of the surety bond otherwise required under these regulations. Any such bond equivalent must be in the form of:

(1) A trust fund agreement governing funds actually deposited or invested in fully negotiable obligations of the United States or Federally-insured deposits or accounts in the name of and readily convertible to currency by a trustee as provided in § 201.32, or

(2) A trust agreement governing funds which may be drawn by a trustee as provided in § 201.32, under one or more irrevocable, transferrable, standby letters of credit, issued by a Federally-insured bank or institution and physically received and retained by such trustee.

* * * * *

3. Revise § 201.34(c) as follows:

§ 201.34 Termination of market agency, dealer and packer bonds.

* * * * *

(c) Each trust fund agreement and trust agreement shall contain a provision requiring that, prior to terminating such agreement, at least 30 days notice in writing shall be given to the Administrator, Grain Inspection, Packers and Stockyards Administration, U.S. Department of Agriculture, Washington, D.C. 20250, by the party terminating the agreement. Such provision shall state that in the event the principal named therein files an acceptable bond or bond equivalent to replace the agreement, the 30-day notice requirement may be waived and the agreement will be terminated as of the effective date of the replacement bond or bond equivalent.

* * * * *

[FR Doc. 96–17358 Filed 7–9–96; 8:45 am]
BILLING CODE 3410–EN–P

9 CFR Part 201

RIN 0580–AA44

Regulations and Statements of General Policy Issued Under the Packers and Stockyards Act

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Final rule.

SUMMARY: As part of GIPSA's efforts to review and streamline its regulations, proposed amendments to rules issued under the Packers and Stockyards Act (7 U.S.C. 181 *et seq.*) were published in the **Federal Register** (60 FR 29506) on June 5, 1995, and identified as Group II. This document adopts proposed changes which modify six trade practice regulations and retains seven regulations and seven statements of general policy in their present form.

EFFECTIVE DATE: August 9, 1996.

FOR FURTHER INFORMATION CONTACT: Daniel Van Ackeren, Director, Livestock Marketing Division, 202–720–6951, or Tommy Morris, Director, Packer and Poultry Division, 202–720–7363.

SUPPLEMENTARY INFORMATION: In response to the proposed rule published in the **Federal Register** (60 FR 29506), the Agency received comments from four organizations and two companies.

Although the Agency did not propose any changes to § 201.43, a poultry growers association suggested that a new paragraph be added to § 201.43 to require live poultry dealers to maintain certain records for flock placements. After considering the comment, the Agency has concluded that this regulation will be retained in its present form. The Agency believes that § 401 of the P&S Act adequately addresses the issue of record maintenance.

The Agency received three comments regarding § 201.49. A livestock trade association agrees with the proposed amendment. A major hog slaughterer suggests that records be retained for lot summaries instead of individual

weights. They feel that the volume of the records for the individual weights would be too impractical to maintain. A cattle producers association stated that this regulation is consistent with its policy.

As proposed, § 201.49 (a) will be amended to specifically state that all scales used to purchase livestock on a dressed weight basis be equipped with printing devices. The Agency will amend subsection (b) of § 201.49 to require weighmaster identification on executed poultry scale tickets that is uniform with identification required by livestock weighers.

The cattle producers association suggested that the Agency closely monitor § 201.53 and help to ensure that information released to the beef industry is accurate and timely. After considering the comment, the Agency has concluded that this regulation will be retained in its present form. The Agency believes this regulation adequately addresses the importance of accurate information.

No comments were received regarding the proposed amendment to § 201.55 to include the purchase, sale, acquisition and settlement of live poultry.

The Agency received two comments regarding § 201.71. One livestock trade association and a livestock producers association agreed with the proposed amendment. As proposed, § 201.71(a) will be amended to incorporate by reference the 1996 edition of the National Institute of Standards and Technology (NIST) Handbook 44. Section 201.71(b) will be amended to require that scales used to purchase livestock on a carcass weight basis be equipped with printing devices.

The Agency received a comment regarding § 201.73–1 from a livestock trade association agreeing with the technical change to this section. The Agency will change § 201.73–1 to more accurately reflect where forms are available and where they are to be filed.

One hog slaughterer suggested that § 201.76 be clarified to state that any reweighing of livestock be requested immediately. They also pointed out that the reweighing of dressed livestock would be impossible after carcasses have cleared the hot scale and entered the cooler. After considering the comment, the Agency has concluded that this regulation will be retained in its present form. The Agency believes immediate reweighing can be accomplished using other packer-owned monorail scales installed before, after or in rail-around areas near the kill floor scale. Where other scales are not available, reweighing can be accomplished by using an Agency-owned portable monorail scale.

The Agency received a comment from a livestock trade association regarding § 201.98 agreeing with the proposed amendment. As proposed, § 201.98 will be amended by adding the wording, "unless the charge is for services mandated by law or statute."

The Agency received two comments regarding § 201.100. A poultry growers association suggested that paragraph (d) be amended by adding a clause prohibiting persons who are employees and raise poultry under a poultry growing arrangement for the same live poultry dealer that employs them from being included in a grouping or ranking of non-employee growers. A farm association commented that this section is badly needed to make contract growing fair for all growers. After considering the comments, the Agency concluded that this regulation will be retained in its present form. Inclusion of employee growers in a grouping or ranking of all growers is not a violation of the P&S Act unless they are treated favorably over non-employee growers. The Agency has authority to address preferential or discriminatory treatment under section 202 of the P&S Act.

No comments were received regarding the proposed amendment to § 201.108–1. As proposed, § 201.108–1 will be amended by incorporating instructions for weighing live poultry on electronic scales with digital readouts.

As proposed, each of the following regulations and statements of general policy will be retained in its present form:

Sec.
201.53 Persons subject to the Act not to circulate misleading reports about market conditions or prices.
201.69 Furishing information to competitor buyers.
201.70 Restriction or limitation of competition between packers and dealers prohibited.
201.73 Scale operators to be qualified.
201.76 Reweighing.
201.100 Records to be furnished poultry growers and sellers.
201.200 Sale of livestock to a packer on credit.
203.2 Statement of general policy with respect to the giving by meat packers of meat and other gifts to Government employees.
203.4 Statement with respect to the disposition of records by packers, live poultry dealers, stockyard owners, market agencies and dealers.
203.7 Statement with respect to meat packer sales and purchase contracts.
203.15 Trust benefits under sections 206 and 207 of the Act.
203.16 Mailing of checks in payment for livestock purchased for slaughter, for cash and not on credit.
203.18 Statement with respect to packers engaging in the business of custom feeding livestock.
203.19 Statement with respect to packers engaging in the business of livestock dealers or buying agencies.

In the process of reviewing these regulations, it was determined that they were necessary for the efficient and effective enforcement of the P&S Act and for the orderly conduct of the marketing system. The absence of any of the regulations would be detrimental to the industry and could result in increased litigation.

The Agency received a comment from a farm association regarding § 203.4. This policy statement notifies persons subject to the P&S Act that certain records may be disposed of after a specific period of time. It also states that the Deputy Administrator may require that records be retained for a longer period pending completion of an investigation. The policy statement advises that if records are disposed of before the specified periods, the Agency will consider taking formal action. The farm association suggested that records be retained for three (3) years or more. After considering the comment, the Agency has concluded that this policy will be retained in its present form. The two year retention schedule provided in this section has not caused problems in administering the provisions of the P&S Act. Further, the Agency has the authority to require that records be retained for longer periods when deemed necessary.

The Agency received a comment from a cattle producers association regarding § 203.18. This policy statement notifies packers that ownership or operation of custom feedlots may, under certain circumstances, result in a conflict of interest or anticompetitive violations. It suggests packers consult with the Agency before commencing such activity. The association urges the Agency to closely scrutinize this policy statement. Current authority under the P&S Act is sufficient to allow the Agency to review any arrangement that may result in an unfair practice or advantage. A *per se* prohibition of these type of arrangements can only be achieved by legislative action to amend the P&S Act. For these reasons, no changes are being made in § 203.18. The Agency will continue to evaluate these types of arrangements on a case-by-case basis.

The Agency received a comment regarding § 203.19 from a livestock trade association. The association proposed that this section be amended to prohibit packers and their employees or agents engaged in the business of a buying agency from purchasing and reselling classes or species of livestock which are not part of their main business activity as a packer. The Agency will not make changes to § 203.19 at this time, but will continue to evaluate each such arrangement on a case-by-case basis. As a practical matter, most packers consult with the Agency before entering into such arrangements. Amending this rule to require such consultation does not appear necessary. Attempting to shift the burden of proof that the arrangement does not restrain trade would not relieve the Agency of the responsibility to investigate and make a factual determination.

The changes in §§ 201.49, 201.55, 201.71, 201.73–1, 201.98, and 201.108–1 do not impose or change any recordkeeping or information collection requirements. Existing requirements in these regulations have been previously approved by OMB under Control No. 0590–0001.

As provided by the Regulatory Flexibility Act, it is hereby certified that these amended rules will not have a significant economic impact on a substantial number of small entities and a statement explaining the reasons for the certification is set forth in the following paragraph and is being provided to the Chief Counsel for Advocacy of the Small Business Administration.

While these amended rules impact small entities, they will not have a significant economic impact on any entity, large or small. The primary effect of the changes in §§ 201.49 and 201.71 is to require that when livestock is purchased on the basis of carcass weight, the scale used on such purchases be equipped with a printer. The primary effect of the change in § 201.55 is to require that when poultry is bought, sold, acquired, or settled on a weight basis, the actual weight on the scale ticket be used for such purposes, as is currently required for livestock. The primary effect of the change in § 201.73–1 is to make a technical change in the name of the Agency pursuant to Public Law 103–354, the Federal Crop Insurance Reform and the Department of Agriculture's Reorganization Act of 1994. The primary effect of the change in § 201.98 is to allow packers and dealers to charge for services that are mandated by law or statute. The primary effect of the change in § 201.108–1 is to update the regulation.

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB. These amendments do not impose any new paperwork requirements and do not have implications of Federalism under the criteria of E.O. 12612.

These amendments have been reviewed under E.O. 12778, Civil Justice Reform, and are not intended to have retroactive effect. These amendments will not pre-empt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this amendment. Prior to judicial challenge of the amendment to rule, a party must first be found by the Secretary to be in violation of the P&S Act and in violation of the accompanying regulations. Second, the party must appeal that finding and the validity of the regulation to the Secretary in the course of the administrative proceeding. Only after taking these steps, may the party challenge the regulation in a court of competent jurisdiction.

List of Subjects in 9 CFR Part 201

Reporting and recordkeeping requirements, Stockyards, Trade practices, Incorporation by reference.

Done at Washington, D.C., this 1st day of July 1996.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

For the reasons set forth in the preamble, 9 CFR Part 201 is amended to read as follows:

1. The authority citation for Part 201 continues to read as follows:

Authority: 7 U.S.C. 204, 228; 7 CFR 2.17(e), 2.56.

2. Section 201.49 is revised to read as follows:

§ 201.49 Requirements regarding scale tickets evidencing weighing of livestock and live poultry.

(a) *Livestock.* When livestock is weighed for the purpose of purchase or sale, a scale ticket shall be issued which shall be serially numbered and used in numerical sequence. Sufficient copies shall be executed to provide a copy to all parties to the transaction. In instances where the weight values are automatically recorded directly on the account of purchase, account of sale or other basic record, this record may serve in lieu of a scale ticket. When livestock is purchased on a carcass weight or carcass grade and weight basis, the hot carcass weights shall be recorded using a scale equipped with a printing device, and such printed weights shall be retained as part of the person or firm's business records to substantiate settlement on each transaction. Scale tickets issued under this section shall show:

(1) The names and location of the agency performing the weighing service,
(2) The date of the weighing;
(3) The name of the buyer and seller or consignor, or a designation by which they may be readily identified;
(4) The number of head;
(5) Kind of livestock;
(6) Actual weight of each draft of livestock; and
(7) The name, initials, or number of the person who weighed the livestock, or if required by State law, the signature of the weigher.

(b) *Poultry.* When live poultry is weighed for the purpose of purchase, sale, acquisition, or settlement by a live poultry dealer, a scale ticket shall be issued which shall show:

(1) The name of the agency performing the weighing service;
(2) The name of the live poultry dealer;
(3) The name and address of the grower, purchaser, or seller;
(4) The name or initials or number of the person who weighed the poultry, or if required by State law, the signature of the weigher;
(5) The location of the scale;
(6) The gross weight, tare weight, and net weight;
(7) The date and time gross weight and tare weight are determined;
(8) The number of poultry weighed;
(9) The weather conditions;
(10) Whether the driver was on or off the truck at the time of weighing; and
(11) The license number of the truck or the truck number; *provided,* that when live poultry is weighed on a scale other than a vehicle scale, the scale ticket need not show the information specified in paragraphs (b)(9)–(11) of this section. Scale tickets issued under this paragraph shall be at least in duplicate form and shall be serially numbered and used in numerical sequence. One copy shall be furnished to the grower, purchaser, or seller, and one copy shall be furnished to or retained by the live poultry dealer.

(Approved by the Office of Management and Budget under control number 0590–0001.)

3. Section 201.55 is revised to read as follows:

§ 201.55 Purchases, sales, acquisitions, and settlements to be made on actual weights.

When livestock or live poultry is bought, sold, acquired, or settled on a weight basis, settlement therefor shall be on the basis of the actual weight on the scale ticket. If the actual weight used is not obtained on the date and at the

place of transfer of possession, this information shall be disclosed with the date and location of the weighing on the accountings, bills, or statement issued. Any adjustment to the actual weights shall be fully and accurately explained on the accountings, bills, or statements issued and records shall be maintained to support such adjustment.

(Approved by the Office of Management and Budget under control number 0590–0001.)

4. Section § 201.71 (a) and (b) is revised to read as follows:

§ 201.71 Scales, accurate weights, repairs, adjustments or replacements after inspection.

(a) All scales used by stockyard owners, market agencies, dealers, packers, and live poultry dealers to weigh livestock, livestock carcasses, or live poultry for the purpose of purchase, sale, acquisition, or settlement shall be installed, maintained, and operated to insure accurate weights. Such scales shall meet applicable requirements contained in the General Code, Scale Code, and Weights Code of the 1996 edition of National Institute of Standards and Technology Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," which is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register on January 11, 1989. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. This handbook is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. It is also available for inspection at the Office of the Federal Register Information Center, 800 North Capitol Street, N.W., suite 700, Washington, D.C. 20408.

(b) All scales used by stockyard owners, market agencies dealers, packers, and live poultry dealers to weigh livestock or live poultry for the purpose of purchase, sale, acquisition, or settlement and all scales used for the purchase, sale, acquisition, or settlement of livestock on a carcass weight basis shall be equipped with a printing device which shall be used for recording weight values on a scale ticket or other document used for this purpose.

5. Section § 201.73–1 introductory text is revised to read as follows:

§ 201.73–1 Instructions for weighing livestock.

Stockyard operators, market agencies, dealers, and packers who operate scales on which livestock is weighed in purchase or sales transactions are responsible for the accurate weighing of such livestock. They shall supply copies of the instructions in this section to all persons who perform weighing operations for them and direct such person to familiarize themselves with the instructions and to comply with them at all times. This section shall also apply to any additional weighers who are employed at any time. Weighers must acknowledge their receipt of these instructions and agree to comply with them, by signing in duplicate, P&SA Form 215 provided by the Packers and Stockyards Programs. One copy of the form is to be filed with a regional office of the Packers and Stockyards Programs and the other retained by the agency employing the weighers.

6. Section § 201.98 is revised to read as follows:

§ 201.98 Packers and dealers not to charge, demand, or collect commission, yardage, or other service charges.

No packer or dealer shall, in connection with the purchase of livestock in commerce, charge, demand, or collect from the seller of the livestock any compensation in the form of commission, yardage, or other service charge unless the charge is for services mandated by law or statute and is not inconsistent with the provisions of the Act.

7. Section § 201.108–1 introductory paragraph and paragraphs, (a) and (c)–(f) are revised to read as follows:

§ 201.108–1 Instructions for weighing live poultry.

Live poultry dealers who operate scales on which live poultry is weighed for purposes of purchase, sale, acquisition, or settlement are responsible for the accurate weighing of such poultry. They shall supply copies of the instructions in this section to all persons who perform weighing operations for them and direct such persons to familiarize themselves with the instructions and to comply with them at all times. This section shall also apply to any additional weighers who are employed at any time. Weighers must acknowledge their receipt of these instructions and agree to comply with them by signing in duplicate, a form provided by the Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration. One copy of this form is to be filed with a regional office of the Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration and the other copy retained by the Agency employing the weighers. The following instructions shall be applicable to the weighing of live poultry on all scales, except that paragraph (c)(1) of this section is only applicable to the weighing of live poultry on vehicle scales.

(a) Balancing the empty scale. (1) The scale shall be maintained in zero balance at all times. The empty scale shall be balanced each day before weighing begins and thereafter its zero balance shall be verified before any poultry is weighed. In addition, the zero balance of the scale shall be verified whenever a weigher resumes weighing duties after an absence from the scale.

(2) Before balancing the empty scale, the weigher shall notify parties outside the scale house of his/her intention and shall be assured that no persons or vehicles are in contact with the platform. When the empty scale is balanced and ready for weighing, the weigher shall so indicate by appropriate signal.

(3) Weighbeam scales shall be balanced by first seating each poise securely in its zero notch and then moving the balance ball to such position that a correct zero balance is obtained. A scale equipped with a balance indicator is correctly balanced when the indicator comes to rest in the center of the target area. A scale not equipped with a balance indicator is correctly balanced if the weighbeam, when released at the top or bottom of the trig loop, swings freely in the trig loop in such manner that it will come to rest at the center of the trig loop.

(4) Dial scales shall be balanced by releasing all drop weights and operating the balance ball or other balancing device to obtain a correct zero balance. The indicator must visibly indicate zero on the dial reading face and the ticket printer must record a correct zero balance. "Balance tickets" shall be filed with other scale tickets issued on that date.

(5) Electronic digital scales should be properly warmed up before use. In most cases it is advisable to leave the electric power on continuously. The zero balance shall be verified by recording the zero balance on a scale ticket. The main indicating element and the remote visual weight display shall indicate zero when the balance is verified. The proper procedure for balancing this type of scale will vary according to the manufacturer. Refer to the operator's manual for specific instructions.

(6) A balance ball or other balancing device shall be operated only when balancing the empty scale and shall not be operated at any time or for any other purpose.

(7) The time at which the empty scale is balanced or its zero balance verified shall be marked on scale tickets or other permanent records.

* * * * *

(c) Weighing the load. (1) Vehicle scales used to weigh live poultry shall be of sufficient length and capacity to weigh an entire vehicle as a unit; provided, that a trailer may be uncoupled from a tractor and weighed as a single unit. Before weighing a vehicle, either coupled or uncoupled, the weigher shall be assured that the entire vehicle is on the scale platform and that no persons are on the scale platform.

(i) On a weighbeam scale with a balance indicator the weight of a vehicle shall be determined by moving the poises to such positions that the indicator will come to rest within the central target area.

(ii) On a weighbeam scale without a balance indicator the weight shall be determined by moving the poises to such positions that the weighbeam, when released from the top or bottom of the trig loop, will swing freely in the trig loop and come to rest at the approximate center of the trig loop.

(iii) On a dial scale the weight of a vehicle is indicated automatically when the indicator revolves around the dial face and comes to rest.

(iv) On an electronic digital scale the weight of a vehicle is indicated automatically when the weight value indicated is stable.

(2) The correct weight is the value in pounds indicated by a weighbeam, dial or digital scale when a stable load balance is obtained. In any case, the weigher should concentrate on the beam tip, balance indicator, dial or digital indicator while weighing and not be concerned with reading the visible weight indications until a stable load balance is obtained. On electronic digital scales, the weigher should concentrate on the pulsing or flickering of weight values to assure that the unit indicates a stable weight before activating the print button.

(d) Recording the weight. (1) The gross or tare weight shall be recorded immediately after the load balance is obtained and before any poises are moved or load removed from the scale platform. The weigher shall make certain that the printed weight record agrees with the weight value visibly indicated on the weighbeam, dial or digital indicator when correct load balance is obtained. The weigher shall also assure that the printed weight value is sufficiently distinct and legible.

(2) The weight printing device on a scale shall be operated only to produce a printed or impressed record of the weight while the load is on the scale and correctly balanced. If the weight is not printed clearly and correctly, the ticket shall be marked void and a new one printed before the load is removed from the scale.

(e) Weigher's responsibilities. (1) The primary responsibility of a weigher is to determine and record the true weight of live poultry without prejudice or favor to any person or agency and without regard for poultry ownership, price, condition, shrink, or other considerations. A weigher shall not permit the representations or attitudes of any persons or agencies to influence their judgment or action in performing his/her duties.

(2) Scale tickets issued shall be serially numbered and used in numerical sequence. Sufficient copies shall be executed to provide a copy to all parties to the transaction. Unused scale tickets or those which are partially executed shall not be left exposed or accessible to other parties. All such tickets shall be kept under lock when the weigher is not at his duty station.

(3) Accurate weighing and weight recording require that a weigher shall not permit operations to be hurried to the extent that inaccurate weights or incorrect weight records may result. The gross, tare and net weights must be determined accurately to the nearest minimum graduation. Manual operations connected with balancing, weighing, and recording shall be performed with the care necessary to prevent damage to the accurately machined and adjusted parts of weighbeams, poises, and printing devices. Rough handling of these parts shall be avoided.

(4) Poultry growers, live poultry dealers, sellers, or others having legitimate interest in a load of poultry are entitled to observe the balancing, weighing, and recording procedures. A weigher shall not deny such persons that right or withhold from them any information pertaining to the weight. The weigher shall check the zero balance of the scale or reweigh a load of poultry when requested by such parties or duly authorized representatives of the administrator.

(f) General precautions. (1) The poises of weighbeam scales are carefully adjusted and sealed to a definite weight at the factory and any change in that weight seriously affects weighing accuracy. A weigher, therefore, shall observe if poise parts are broken, loose or lost or if material is added to a poise and shall report any such condition to his/her superior or employer. Balancing or weighing shall not be performed while a scale ticket is in the slot of a weighbeam poise.

(2) Stops are provided on scale weighbeams to prevent movement of poises back of the zero graduation when balancing or weighing. When the stops become worn or broken and allow a poise to be set behind the zero position, this condition must be reported by the weigher to their superior or employer and corrected without delay.

(3) Motion detection circuits are a part of electronic scales. They are designed to prevent the printing of weight values if the load has not stabilized within prescribed limits. The weighmaster's duty is to print the actual weight of the load within these limits. This requires printing the actual weight of the load, not one of the other weights that may be within the motion detection limits.

(4) Foreign objects or loose material in the form of nuts, bolts, washers, or other material on any part of the weighbeam assembly, including the counter-balance hanger or counter-balance weights, are potential sources of weighing error. Loose balancing material must be enclosed in the shot cup of the counter-balance hanger and counter-balance weights must not be of the slotted type which can readily be removed.

(5) Whenever, for any reason, a weigher has reason to believe that a scale is not functioning properly or not yielding correct weight values, the weigher shall discontinue weighing, report the facts to the parties responsible for scale maintenance and request inspection, test or repair of the scale.

(6) When a scale has been adjusted, modified, or repaired in any manner which can affect the accuracy of weighing or weight recording, the weigher shall not use the scale until it has been tested and inspected and found to be accurate.

[FR Doc. 96–17359 Filed 7–9–96; 8:45 am]
BILLING CODE 3410–EN–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ANE–12]

Amendment to Class E Airspace; Pittsfield, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of a rule, published on

May 29, 1996, which revised the Class E airspace area at Pittsfield, MA (PSF) to provide for adequate controlled airspace for those aircraft using the GPS RWY 8 Instrument Approach Procedure to Pittsfield Municipal Airport.

EFFECTIVE DATE: The rule published at 61 FR 26781 is effective on 0901 UTC, August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph A. Bellabona, Operations Branch, ANE–530.6, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (617) 238–7536; fax (617) 238–7596.

The FAA published a direct final rule with a request for comments in the **Federal Register** on May 29, 1996 (61 FR 26781), The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. The direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 15, 1996. No adverse comments were received, and thus this document confirms that the final rule will become effective on that date.

Issued in Burlington, MA, on July 1, 1996.

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 96–17417 7–9–96; 8:45 am]

BILLING CODE 4910–13–m

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14 CFR Part 71

[Airspace Docket No. 96–AGL–6]

Revision of Class E Airspace; La Porte, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at La Porte Municipal Airport, La Porte, IN, to accommodate a localizer (LOC) Instrument Approach Procedure to Runway 2. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, May 2, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to accommodate a localizer (LOC) Instrument Approach Procedure to Runway 2, La Porte Municipal Airport, La Porte, IN (61 FR 19591). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises Class E airspace at La Porte Municipal Airport, La Porte, IN, to accommodate a localizer (LOC) Instrument Approach Procedure to Runway 2. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulating action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 La Porte, IN [Revised]

La Port Municipal Airport, IN
(lat. 41°34′22″ N., long. 86°44′03″W.)

La Porte NDB
(lat. 41°29′56″N., long. 86°46′17″W.)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of the La Porte Municipal Airport and within 2.5 miles each side of the 201° bearing from the La Porte NDB extending from the 7.3-mile radius to 11.4 miles south of the airport, excluding that airspace within the Michigan City, IN, Valparaiso, IN, and Knox, IN Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on June 20, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96–17594 Filed 7–9–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AGL–4]

Establishment of Class E Airspace; Menomonie, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Score Field, Menomonie, WI, to accommodate a Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) for Runway 27. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, August 24, 1996.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On May 2, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 at Score Field, Menomonie, WI (61 FR 19592). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E5 airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E5 airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E5 airspace at Score Field, Menomonie, WI, to accommodate a Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) for Runway 27. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Menomonie, WI [New]

Menomonie, Score Field, WI
(lat. 44°53′29″N, long. 91°52′00″W)

That airspace extending upward from 700 feet above the surface within a 6.4 mile radius of Score Field.

* * * * *

Issued in Des Plaines, Illinois on June 24, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96–17592 Filed 7–9–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–AGL–5]

Establishment of Class E Airspace; Sturgis, SD

AGENCY: Federal Aviation Administration; Sturgis, SD.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Sturgis, SD. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 29 has been developed for the Sturgis Municipal Airport. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On May 2, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Sturgis, SD (61 FR 19590). The proposal was to add controlled airspace extending upward from 700 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for areas extending upward from 700 feet or more above the surface

of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Sturgis, SD to accommodate aircraft executing the GPS Runway 29 SIAP at Sturgis Municipal Airport. Controlled airspace extending upward from 700 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL SD E5 Sturgis, SD [New]

Sturgis Municipal Airport, SD
(lat. 44°26'06" N, long. 103°22'38" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Sturgis Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on June 20, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96–17591 Filed 7–9–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–AWP–4]

Alteration of Jet Routes J–86 and J–92; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on June 13, 1996 (Airspace Docket No. 93–AWP–4). In the airspace designation of Jet Route 86 (J–86), effective August 15, 1996, erroneously showed "Miami, FL" as the ending point for J–86. This action corrects the definition of J–86 by changing the ending point to read "Dolphin, FL."

EFFECTIVE DATE: 0901 UTC, August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Bill Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: Federal Register Document 96–15062, Airspace Docket No. 93–AWP–4, published on June 13, 1996 (61 FR 29938), extended J–86 and realigned J–92 to enhance traffic flows and reduce controller workload. However, in the June 13 publication the description for J–86 erroneously indicated Miami, FL as the ending point for J–86. This action corrects that error.

Correction of Final Rule

§ 71.1 [Corrected]

Accordingly, pursuant to the authority delegated to me, the airspace designation for J–86, published in the **Federal Register** on June 13, 1996 (61 FR 29939); **Federal Register** Document 96–15062, Column 1) is corrected to read as follows:

* * * * *

J–86 [Revised]

From Beatty, NV; INT Beatty 131° and Boulder City, NV, 264° radials; Boulder City; Peach Springs, AZ; Winslow, AZ; El Paso, TX; Fort Stockton, TX; Junction, TX; Austin, TX; Humble, TX; Leeville, LA; INT Leeville 104° and Sarasota, FL, 286° radials; Sarasota; INT Sarasota 103° and La Belle, FL, 313° radials; La Belle; to Dolphin, FL.

* * * * *

Issued in Washington, DC, on June 28, 1996.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 96–17230 Filed 7–9–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 91

Delegation of Authority

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of delegation of authority.

SUMMARY: The Administrator of the FAA is delegating the authority to administer certain provisions of Special Aviation Regulation (SFAR) No. 74—Airspace and Flight Operations Requirements for the 1996 Summer Olympic Games, Atlanta, GA, to the Regional Administrator for the Southern Region. This delegation will enable the FAA to respond to the immediate needs of the Olympic Committee, local and Federal law enforcement officials and other safety personnel during the Olympic Games.

EFFECTIVE DATE: July 10, 1996.

FOR FURTHER INFORMATION CONTACT: Steve Alogna, Olympic Project Manager, Federal Aviation Administration, 1701 Columbia Ave., College Park, Georgia 30337; (404) 305–5051.

SUPPLEMENTARY INFORMATION: On February 12, 1996, the FAA published SFAR No. 74 in the **Federal Register** (61 FR 5492), which establishes airspace and flight operations requirements for the XXVI Olympic Games. This regulation is to provide for security of the venues, safe operations, and efficient management of air traffic to, within, and from these areas, and to prevent an unsafe congestion of sightseeing and other aircraft over the various games sites. Paragraph A.3 of SFAR No. 74 contains provisions to provide flexible and efficient management and control of air traffic, such as the authority to give priority to or exclude from certain requirements of the SFAR flight operations dealing with essential military, medical and rescue, essential public health and welfare, Presidential and Vice Presidential delegations, visiting heads of state, the Olympic Committee and media whose planned activities have been coordinated with and accredited by the Atlanta Committee for the Olympic Games and law enforcement and security officials.

As circumstances may warrant, it may be necessary for the appropriate Regional Administrator to exercise the authority as stated above and provided for in paragraph A.3 of SFAR No. 74. This delegation will enable the Regional Administrator for the Southern Region to administer the provisions of paragraph A.3. of SFAR No. 74.

Delegation

Accordingly, I hereby delegate my authority to administer paragraph A.3. of SFAR No. 74 to the Regional Administrator of the Southern Region.

Issued in Washington, DC on June 3, 1996.

David R. Hinson,

Administrator.

[FR Doc. 96–17588 Filed 7–9–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 88G–0388]

Direct Food Substances Affirmed as Generally Recognized as Safe; Cocoa Butter Substitute Derived From High-Oleic Safflower or Sunflower Oil

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to affirm that cocoa butter substitute manufactured from high-oleic safflower or sunflower oil is generally recognized as safe (GRAS). This action is in response to a petition filed by Fuji Oil Co., Ltd. (Fuji).

DATES: Effective July 10, 1996.

FOR FURTHER INFORMATION CONTACT: Nega Beru, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW.,Washington, DC 20204, 202–418–3097.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the procedures described in § 170.35 (21 CFR 170.35), Fuji Oil Co., Ltd., 6–1, Hachiman-cho, Minami-ku, Osaka 542, Japan, submitted a petition (GRASP 8G0348) requesting that § 184.1259 (21 CFR 184.1259) be amended to affirm that the use of safflower or sunflower oil in the manufacture of cocoa butter substitute is GRAS.

In the **Federal Register** of January 26, 1989 (54 FR 3853), FDA published a notice of filing of Fuji's petition and gave interested parties an opportunity to submit comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. FDA received three comments in response to that notice. These comments are discussed below.

In the filing notice, the agency gave notice that the petition had requested that § 184.1259 be amended to permit the use of safflower or sunflower oil in the manufacture of cocoa butter substitute. However, the petition requested, and the agency evaluated, the use of high-oleic safflower or sunflower oil in the manufacture of cocoa butter substitute. Therefore, because the filing notice did not make clear that the proposed starting materials for the manufacture of the petitioner's cocoa butter substitute are high-oleic rather than the typical high-linoleic safflower and sunflower oils, the agency published an amended filing notice in the **Federal Register** of April 28, 1995 (60 FR 20998), to give interested persons an opportunity to comment with respect to the above-mentioned change. No comments were received in response to the amended filing notice.

II. Standards for GRAS Affirmation

Pursuant to § 170.30 (21 CFR 170.30), general recognition of safety may be based only on the views of experts qualified by scientific training and experience to evaluate the safety of substances added to food. The basis of such views may be either: (1) Scientific procedures, or (2) in the case of a substance used in food prior to January 1, 1958, experience based on common use in food (§ 170.30(a)). General recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of a food additive and ordinarily is to be based upon published studies, which may be corroborated by unpublished studies and other data and information (§ 170.30(b)). General recognition of safety through experience based on common use in food prior to January 1, 1958, may be determined without the quantity or quality of scientific procedures required for approval of a food additive, and ordinarily is to be based upon generally available data and information concerning the pre-1958 history of use of the substance in food (§ 170.30(c)(1)).

Cocoa butter substitute from high-oleic safflower or sunflower oil was not used in food prior to 1958, and therefore cannot qualify for GRAS status based on a history of common use in food (§ 170.30(c)). Accordingly, FDA has evaluated the ingredient on the basis of scientific procedures (§ 170.30(b)).

In evaluating this petition, the agency reviewed data and information concerning: (1) The chemical composition of the cocoa butter substitute; (2) the process used to manufacture it; (3) the functional equivalence of the cocoa butter substitute to cocoa butter substitute made from palm oil; (4) use of the cocoa butter substitute in food; and (5) information regarding the safety of the cocoa butter substitute.

III. Identity, Specifications, and Manufacturing Process

The common or usual name of the petitioned substance is "cocoa butter substitute primarily from high-oleic safflower or sunflower oil." Its chemical name is 1,3-distearoyl-2-olein (CAS Reg. No. 2846–04–0). The petitioner provided evidence to demonstrate that the specifications for cocoa butter substitute primarily from high-oleic safflower or sunflower oil conform to those for cocoa butter substitute primarily from palm oil, 1-palmitoyl-2-oleoyl-3-stearin, which are set forth in § 184.1259(b)(1) through (b)(9).

Traditional safflower and sunflower oils typically contain high levels of linoleic acid and low levels of oleic acid. However, in the manufacture of its cocoa butter substitute, Fuji uses high-oleic acid-containing safflower or sunflower oil. The high-oleic acid varieties of safflower and sunflower were obtained through common breeding techniques and are the subjects of several published articles (Refs. 1 through 7).

According to Fuji, its cocoa butter substitute is manufactured by reacting ethyl stearate (obtained from food-grade stearic acid) with high-oleic safflower oil or sunflower oil under nitrogen gas in the presence of a catalyst (lipase enzyme preparation adsorbed onto granular celite (diatomaceous earth)) at 37 to 47 °C for 48 hours. After completion of the reaction, the catalyst

is removed by filtration. The remaining free fatty acids and ethyl esters of fatty acids are distilled off at high temperature under vacuum. The reaction product is fractionated with hexane to remove high- and low-melting point fractions and refined by the ordinary refining process for edible fats and oils (deacidification, bleaching, deodorization).

IV. Functional Equivalence to Cocoa Butter Substitute Primarily from Palm Oil

Cocoa butter substitutes have been described as nonhydrogenated vegetable oils that contain a monounsaturated fatty acid at the 2 position and saturated fatty acids at the 1 and 3 positions (Ref. 8).

Cocoa butter substitute derived from palm oil is a mixture of triglycerides containing oleic acid at the 2 position and saturated fatty acids (mostly palmitic and stearic acids) at the 1 and 3 positions. Cocoa butter substitute from high-oleic safflower or sunflower oil is a mixture of triglycerides containing oleic acid at the 2 position and mostly stearic acid at the 1 and 3 positions.

Although the fatty acid composition of cocoa butter substitute from high-oleic safflower or sunflower oil is different from that of cocoa butter substitute derived from palm oil (higher in stearic acid and lower in palmitic acid content), this difference in composition does not affect the function of this cocoa butter substitute in food (Ref. 9). The petitioner provided a published study by Feuge, et al. (Ref. 10), who tested three mixtures (one consisting essentially of oleopalmitostearin, another consisting essentially of oleostearin, and a third consisting mostly of oleopalmitin) for their ability to function as cocoa butter substitutes. The results showed that all three products, when mixed with cocoa butter, had melting properties closely resembling those of cocoa butter and therefore could be satisfactory cocoa butter substitutes. Further, the petitioner stated that although cocoa butter substitute from high-oleic safflower or sunflower oil by itself can be used to make chocolate, it can also be blended with other approved triglycerides to produce a cocoa butter substitute that is similar in chemical composition to natural cocoa butter and to cocoa butter substitute primarily from palm oil.

V. Use in Food

The petitioned use of the ingredient is in the following food categories: confections and frostings as defined in § 170.3(n)(9) (21 CFR 170.3(n)(9)); in coatings of soft candy as defined in § 170.3(n)(38); and in sweet sauces and toppings as defined in § 170.3(n)(43). The petition proposes that use of the ingredient in food be limited to levels consistent with current good manufacturing practice (CGMP).

VI. Safety Information

The petition relies in part on the data developed to establish the safety of cocoa butter substitute derived from palm oil. Section 184.1259 provides for the interesterification of partially saturated 1,2,3-triglycerides (derived from palm oil) with ethyl stearate in the presence of a suitable lipase enzyme preparation. This is also used in the manufacture of the cocoa butter substitute derived from high-oleic safflower or sunflower oil.

Cocoa butter substitute made from high-oleic safflower or sunflower oil consists predominantly of the triglyceride 1,3-distearoyl-2-oleine. The components of this cocoa butter substitute are glycerol and oleic and stearic acids. These components are naturally found as part of glycerides, lipids, lipoproteins, and membranes of both plants and animals. Moreover, they are the same fatty acids and glycerol components as are found in a broad range of edible fats and oils that are GRAS. The synthesis and metabolism of these substances are well understood and are documented in biochemistry textbooks (for example, Ref. 11).

The only difference between cocoa butter substitute derived from high-oleic safflower or sunflower oil, on the one hand, and cocoa butter substitute derived from palm oil, on the other hand, is a difference in fatty acid composition, specifically, the ratio of stearic acid to palmitic acid. The agency finds that this difference does not pose a safety concern. Both of these fatty acids have been safely consumed as common, naturally-occurring compounds in foods (Ref. 12), and the proposed use will not change dietary consumption significantly. Therefore, the agency concludes that cocoa butter substitute prepared from high-oleic safflower or sunflower oil is equivalent to cocoa butter substitute prepared from palm oil with respect to safety, provided it meets the specifications for the similar palm oil-derived product.

Further, the petitioner submitted three published studies to support its contention that cocoa butter substitute made from high-oleic safflower or sunflower oil is safe (Refs. 13 through 15). The studies included an acute oral toxicity study in rats, a subchronic (90-day) oral toxicity study in rats, and a study to assess mutagenicity in bacteria. The bacterial study showed that cocoa butter substitute derived from high-oleic safflower or sunflower oil is not mutagenic; no significant effects from consumption of the cocoa butter substitute were found in the acute and subchronic toxicity studies.

VII. Response to Comments

FDA received three comments in response to the notice announcing the filing of the petition. All of the comments supported the proposed GRAS affirmation of cocoa butter substitute derived from high-oleic safflower or sunflower oil.

Two comments stated that the GRAS affirmation regulation should provide for the use of food-grade stearic acid as an alternative to ethyl stearate as a starting material in manufacturing the petitioned cocoa butter substitute. The comments asserted that it was common industry practice to use both ethyl stearate and stearic acid in interesterification reactions. In addition, the comments pointed out that not only is stearic acid a natural metabolite, but food-grade stearic acid is affirmed as GRAS (21 CFR 184.1090), and FDA permits the use of stearic acid as a raw material to produce various substances approved as food additives, including polysorbate 60, polysorbate 65, sorbitan monostearate, and calcium stearoyl-2-lactylate (21 CFR 172.836, 172.838, 172.842, and 172.844, respectively). Moreover, the comments asserted that stearic acid is a more desirable starting material than ethyl stearate because an end product cocoa butter substitute devoid of residual fatty acid ethyl esters can be produced.

The agency finds that, although the petitioner stated that ethyl stearate would be used as a starting material in the interesterification reaction during the manufacturing of its cocoa butter substitute, it is also common industry practice to use stearic acid in the manufacturing process (Ref. 16). Further, the agency notes that ethyl stearate is itself made from the GRAS substance stearic acid. In essence, direct use of stearic acid in the interesterification reaction bypasses the intermediate step of first converting stearic acid to ethyl stearate. The resulting cocoa butter substitute is the same regardless of whether ethyl stearate or stearic acid is used in the manufacturing process. Therefore, the agency agrees that the direct use of stearic acid as a starting material, without first converting it to ethyl stearate, does not affect the GRAS status of the petitioned cocoa butter substitute. Moreover, the agency concludes that an opportunity for public comment on the direct use of stearic acid as a starting material is not necessary because the two substances are so closely related. Therefore, in amending § 184.1259, the agency is including stearic acid as an alternative raw material in the manufacture of cocoa butter substitute from high-oleic safflower or sunflower oil.

One of the comments also stated that acetone should be allowed as a solvent in the fractional crystallization of the petitioned cocoa butter substitute during the manufacturing process and suggested a residual acetone specification of not more than 5 parts per million. The comment stated that acetone is a well-recognized solvent in the edible oils industry and cited a number of FDA regulations that permit its use as a solvent. Indeed, acetone is approved as an extractant for annatto extract (21 CFR 73.30(a)(1)(ii)), as a diluent for color additive mixtures made with D&C Red No. 39 (21 CFR 74.1339(a)(2)), as an optional bleaching ingredient with flour (21 CFR 137.105(a)(6)), as a processing solvent in the manufacture of the food additive *N*-acetyl-L-methionine (21 CFR 172.372(a)(4)) and in the extraction of spice (21 CFR 173.210). The agency notes that the safety of the use of acetone as a solvent is well recognized in the food oil industry. However, the agency has no basis to set a specification for residual acetone because it did not evaluate the use of acetone as a solvent in manufacturing cocoa butter substitute. The agency also notes that, as always, any residual solvent that becomes or may reasonably be expected to become a functional component of food must be an approved food additive or GRAS for use in that food.

The third comment consisted of a report by a panel of scientific experts who evaluated evening primrose oil as a dietary supplement and concluded that it was safe. The comment stated that the report on the safety of evening primrose oil should aid FDA in determining the GRAS status of Fuji's product because evening primrose oil is chemically related to both safflower and sunflower oils in that the primary constituent of all these oils is the GRAS substance linoleic acid. The comment stated that it was submitted because FDA must consider chemically and pharmacologically related substances in the diet when considering the GRAS status of any substance (§ 170.3(i)(2)).

The safflower and sunflower oils the petitioner proposed to use as raw material for the production of cocoa butter substitute are derived from high-oleic variant seeds containing approximately 75 percent oleic acid in their triglycerides instead of linoleic acid, which is the major fatty acid in evening primrose oil and in oils derived from traditional safflower and sunflower. Thus, the assertion that evening primrose oil is similar to high-oleic safflower and sunflower oils based on fatty acid content is erroneous.

More importantly, the petition does not seek to affirm the GRAS status of safflower oil and sunflower oil, both of which are common food items, but rather cocoa butter substitute derived by chemical processes from high-oleic safflower or sunflower oil. For these reasons, the agency finds this comment not relevant to the question of whether cocoa butter substitute derived from high-oleic safflower or sunflower oil is GRAS.

VIII. Conclusions

Based on the published literature about the petitioned cocoa butter substitute and the data supporting the safety of cocoa butter substitute from palm oil, corroborated by widely available information about the safe consumption of glycerol and of oleic and stearic acids, the agency concludes that cocoa butter substitute from high-oleic safflower or sunflower oil is GRAS when used in accordance with CGMP (21 CFR 184.1(b)(1)).

IX. Environmental Effects

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

X. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is significant if it meets any one of a number of specific conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or raising novel legal or policy issues. The Regulatory Flexibility Act requires agencies to minimize the economic impact of their regulations on small businesses.

FDA finds that this final rule is not a significant regulatory action as defined by Executive Order 12866. The rule does not raise novel legal or policy issues. The compliance cost to firms currently in the industry is zero because the rule prohibits no current activity. Potential benefits of the rule include the wider use of this cocoa butter substitute because of reduced uncertainty concerning its regulatory status, and any resources saved by eliminating the need to prepare further petitions to affirm the GRAS status of the use of this cocoa butter substitute.

Finally, in compliance with the Regulatory Flexibility Act, FDA certifies that the final rule will not have a significant economic impact on a substantial number of small businesses. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

XI. Effective Date

As this rule recognizes an exemption from the food additive definition in the Federal Food, Drug, and Cosmetic Act, and from the approval requirements applicable to food additives, no delay in effective date is required by the Administrative Procedure Act (5 U.S.C 553(d)). The rule will therefore be effective immediately (5 U.S.C. 553(d)(1)).

XII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Winter, G., "A New Safflower Oil with a Low Iodine Value," *Nature*, 179:582–583, 1957.

2. Knowles, P. F., A. B. Hill, and J. E. Ruckman, "High Oleic Acid Content in New Safflower, UC–1," *California Agriculture*, p. 15, 1965.

3. Fick, G. N., "Genetics and Breeding of Sunflower," *Journal of the American Oil Chemists' Society*, 60:1252–1253, 1983.

4. Purdy, R. H., "Oxidative Stability of High Oleic Sunflower and Safflower Oils," *Journal of the American Oil Chemists' Society*, 62:523–525, 1985.

5. Smith, J. R., "Safflower: Due for a Rebound," *Journal of the American Oil Chemists' Society*, 62:1286–1291, 1985.

6. Purdy, R. H., "High Oleic Sunflower: Physical and Chemical Characteristics," *Journal of the American Oil Chemists' Society*, 63:1062–1066, 1986.

7. Anonymous, "U. S. Sun Crop: Potential Still not Realized," *Journal of the American Oil Chemists' Society*, 63:1218–1224, 1986.
8. Faulkner, R. W., "Cocoa Butter Equivalents are Truly Specialty Vegetable Fats," *The Manufacturing Confectioner*, pp. 56–61, 1981.
9. Memorandum from M. DiNovi, FDA to L. Lin, FDA, November 2, 1988.
10. Feuge, R. O. et al., "Cocoa Butter-Like Fats from Domestic Oils," *Journal of the American Oil Chemists' Society*, 35:194–199, 1958.
11. Lehninger, A. L., *Principles of Biochemistry*, Worth Publishers, Inc., New York, NY, 1982.
12. Memorandum from J. C. Griffiths, FDA to L. Lin, FDA, July 14, 1989.
13. Shimoda, T. et al., "Safety Studies of a Transesterified Fat Produced by an Immobilized Lipase: I. Acute Oral Toxicity Study in Rats," *Journal of the American College of Toxicology*, 13 (Suppl. 1):10–18, 1994.
14. Shimoda, T. et al., "Safety Studies of a Transesterified Fat Produced by an Immobilized Lipase: II. Subchronic Oral Toxicity and Recovery Studies in Rats," *Journal of the American College of Toxicology*, 13 (Suppl. 1):19–37, 1994.
15. Shimoda, T. et al., "Safety Studies of a Transesterified Fat Produced by an Immobilized Lipase: III. Bacterial Reversion Test," *Journal of the American College of Toxicology*, 13 (Suppl. 1):38–45, 1994.
16. MacRae, A. R., "Lipase-Catalysed Interesterification of Oils and Fats," *Journal of the American Oil Chemists' Society*, 60:291–294, 1983.

List of Subjects in 21 CFR Part 184

Food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. Section 184.1259 is amended by revising the section heading and paragraph (a) to read as follows:

§ 184.1259 Cocoa butter substitute.

(a) The common or usual name for the triglyceride 1-palmitoyl-2-oleoyl-3-stearin is "cocoa butter substitute primarily from palm oil." The common or usual name for the triglyceride 1-3-distearoyl-2-olein is "cocoa butter substitute primarily from high-oleic safflower or sunflower oil."

(1) The ingredient 1-palmitoyl-2-oleoyl-3-stearin is manufactured by:

(i) Directed esterification of fully saturated 1,3-diglycerides (derived from palm oil) with the anhydride of food-grade oleic acid in the presence of the catalyst trifluoromethane sulfonic acid (§ 173.395 of this chapter), or

(ii) By interesterification of partially saturated 1,2,3-triglycerides (derived from palm oil) with ethyl stearate in the presence of a suitable lipase enzyme preparation that is either generally recognized as safe (GRAS) or has food additive approval for such use.

(2) The ingredient 1-3-distearoyl-2-olein is manufactured by interesterification of partially unsaturated 1,2,3-triglycerides (derived from high-oleic safflower or sunflower oil) with ethyl stearate or stearic acid in the presence of a suitable lipase enzyme preparation that is either GRAS or has food additive approval for such use.

* * * * * *

Dated: June 13, 1996.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–17542 Filed 7–9–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Oxytetracycline Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Boehringer Ingelheim Animal Health, Inc. The supplemental ANADA provides for the subcutaneous use of oxytetracycline injection in cattle for treatment of diseases caused by oxytetracycline susceptible organisms.

EFFECTIVE DATE: July 10, 1996.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Boehringer Ingelheim Animal Health, Inc., 2621 North Belt Hwy., St. Joseph, MO 64506, has filed supplemental ANADA 200–008, which provides for subcutaneous use of oxytetracycline injection in addition to the approved intravenous and intramuscular use in beef and nonlactating dairy cattle for the treatment of pneumonia and shipping fever associated with *Pasteurella* spp. and *Hemophilus* spp.; infectious bovine keratoconjunctivitis (pinkeye) caused by *Moraxella bovis*; foot rot and diphtheria caused by *Fusobacterium necrophorum*; bacterial enteritis (scours) caused by *Escherichia coli*; wooden tongue caused by *Actinobacillus lignieresi*; leptospirosis caused by *Leptospira pomona*; and wound infections and acute metritis caused by strains of staphylococci and streptococci organisms sensitive to oxytetracycline. The product is also approved for intramuscular use in swine.

Boehringer Ingelheim's supplemental ANADA 200–008 for subcutaneous use of oxytetracycline injection (OXY–TET 200/BIO–MYCIN 200) in cattle is approved as of May 22, 1996, and the regulations are amended in 21 CFR 522.1660 (c)(1)(iii) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.1660 [Amended]

2. Section 522.1660 *Oxytetracycline injection* is amended in paragraph (c)(1)(iii) by revising the first sentence to read "Administer intramuscularly, intravenously, or subcutaneously at 3 to 5 milligrams level, intramuscularly or subcutaneously at 9 milligrams level." * * *

Dated: June 25, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–17541 Filed 7–9–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Chlortetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-La Roche, Inc. The supplemental NADA provides for use of a free-choice, mineral, Type C cattle feed containing chlortetracycline (CTC) for grazing beef cattle weighing over 700 pounds (lb) for control of active anaplasmosis infections.

EFFECTIVE DATE: July 10, 1996.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0217.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., 340 Kingsland St., Nutley, NJ 07110, filed a supplement to NADA 48–761, Aureomycin® (chlortetracycline) mineral, Type C cattle feed containing 4 grams CTC per lb. The supplement provides for free-choice feeding to grazing beef cattle weighing over 700 lb at 0.0125 to 0.05 lb of Type C feed per 100 lb of body weight per day (0.5 to 2.0 milligrams (mg) CTC per lb of body weight per day) for control of active infections of anaplasmosis caused by *Anaplasma marginale* susceptible to chlortetracycline. The supplement is approved as of July 10, 1996, and the regulations are amended in 21 CFR 558.128(c)(4) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

With approval of this supplement, cattle may be fed 0.5 to 2.0 mg CTC per head per day. To provide for safe use at the upper limit, a withdrawal time of 4 days prior to slaughter is provided.

Use of Type A medicated articles to make free-choice CTC Type C medicated feeds requires an approved Form FDA 1900 as in 21 CFR 510.455.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning July 10, 1996, because the supplemental application contains reports of new clinical or field investigations (other than bioequivalence or residue studies) or human food safety studies (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to the new claim for which the supplement was approved.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.128 [Amended]

2. Section 558.128 *Chlortetracycline* is amended in paragraph (c)(4) by removing the phrase "daily minimum intake of 0.5 milligram of chlortetracycline per pound of body weight to aid in the prevention of anaplasmosis" and adding in its place "daily intake of 0.5 to 2.0 milligrams of chlortetracycline per pound of body weight to aid in the control of active infection of anaplasmosis caused by *Anaplasma marginale* susceptible to chlortetracycline; discontinue use 4 days prior to slaughter".

Dated: May 31, 1996.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–17315 Filed 7–9–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS KINGFISHER (MHC 56) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: June 25, 1996.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Pixa, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, Virginia, 22332–2400, Telephone Number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under

authority delegated by the Secretary of the Navy, has certified that USS KINGFISHER (MHC 56) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 27(f), pertaining to the display of all-round lights by a vessel engaged in mineclearance operations; and Annex I, paragraph 9(b), prescribing that all-round lights be located as not to be obscured by masts, topmasts or structures within angular sectors of more than six degrees. The Deputy Assistant Judge Advocate General (Admiralty) of the Navy has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Section 706.2 is amended by adding the following ship to Table Four, paragraph 18:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obscured angles relative to ship's heading	
		Port	STBD
Kingfisher.	MHC 56	59.5° to 78.3°.	281.7° to 300.5°.

Dated: June 25, 1996.

Approved.

R.R. Pixa,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 96–17498 Filed 7–9–96; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 95–054]

RIN 2115–AF17

Regattas and Marine Parades; Correction

AGENCY: Coast Guard, DOT.

ACTION: Correction to interim rule.

SUMMARY: This notice contains corrections to the interim rule (CGD 95–054) revising Coast Guard marine event regulations that was published Wednesday, June 26, 1996, (61 FR 33027).

EFFECTIVE DATE: July 10, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, Office of Boating Safety, (202) 267–0979.

SUPPLEMENTARY INFORMATION: In § 100.19, Chief, Operations, is incorrectly referred to as "the Chief, Office of Operations."

Accordingly, the publication on June 26, 1996, of the interim rule (CGD 95–054) that is the subject of FR Doc. 96–16319 is corrected as follows:

§ 100.19 [Corrected]

1. On page 33033, in the second and third columns, remove the words "the Chief, Office of Operations" wherever they appear and add, in their place, the words "Chief, Operations,".

J. A. Creech,

Captain, U.S. Coast Guard, Director, Operations Policy.

[FR Doc. 96–17565 Filed 7–9–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5534–1]

Final Rule Making Findings of Failure To Submit Required State Implementation Plans for Nonattainment Areas for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action in making findings, under the Clean Air Act (CAA or Act), that 10 states and the District of Columbia failed to make complete ozone nonattainment state implementation plans (SIP) submittals required for 9 nonattainment areas under the Act. Under certain provisions of the Act, as implemented consistent with a memorandum issued by EPA Assistant Administrator Mary D. Nichols, on March 2, 1995, these states are required to submit SIP measures providing for certain percentage reductions in emissions of ozone precursors, termed "rate of progress" reductions, as well as SIP commitments to submit SIP measures providing for the remaining required rate-of-progress reductions as well as any additional emissions reductions needed for attainment of the ozone ambient air quality standards in the affected nonattainment areas.

This action triggers the 18-month time clock for mandatory application of sanctions in theses states under the Act. This action is consistent with the CAA mechanism for assuring SIP submission.

EFFECTIVE DATE: This action is effective as of July 3, 1996.

FOR FURTHER INFORMATION CONTACT: General questions concerning this notice should be addressed to Kimber Scavo, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711; tel. (919) 541–5534. For questions related to a specific area, please contact the appropriate regional office:

Dave Conroy, Manager, Air Quality Planning Unit, EPA Region I (CAQ), JFK Federal Building, Boston, Massachusetts 02203–2211, tel. (617) 565–3255 (Connecticut, New Hampshire)

William S. Baker, Chief, Air Programs Branch, EPA Region II (2AWM–AP); 290 Broadway, New York, New York 10007–1866, tel. (212) 637–4249 (New York, New Jersey)

Marcia Spink, Associate Director, Air, Toxics and Radiation Division, EPA Region III (3AT00), 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, tel. (215) 566–2104 (Delaware, Maryland, Virginia, District of Columbia)

Steven Rothblatt, Branch Chief, Air Programs Branch, EPA Region V (AR–18J); 77 West Jackson Blvd., Chicago, IL 60604–3590, tel. (312) 353–2211 (Illinois, Indiana, Wisconsin)

SUPPLEMENTARY INFORMATION:

I. Background

In 1990, Congress amended the Clean Air Act to address, among other things, continued nonattainment of the ozone national ambient air quality standard (NAAQS). Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C., 7401–7671q (1991). The Amendments divide ozone nonattainment areas into, in general, five classifications based on air quality

design value; and establish specific requirements, including new attainment dates, for each classification. CAA §§ 107(d)(1)(C) and 181.

The 1990 Amendments required states containing the highest classified ozone nonattainment areas—those classified as serious, severe, or extreme—to submit SIPs providing for periodic reductions in ozone precursors of a rate of 9% averaged over every three-year period, beginning after 1996 and ending with the area's attainment date. CAA § 182(c)(2)(B). This SIP submission may be referred to as the Rate-of-Progress, or ROP, SIP. The 1990 Amendments further required these states to submit a demonstration of attainment (including air quality modeling) for the nonattainment area, as well as SIP measures containing any additional reductions that may be necessary to attain by the attainment date. CAA § 182(c)(2)(A). This SIP submission may be referred to as the Attainment Demonstration. These CAA provisions established November 15, 1994, as the required date for these SIP submittals.

Notwithstanding significant efforts, the states generally were not able to meet this November 15, 1994 deadline for the required SIP submissions.

On March 2, 1995, EPA Assistant Administrator Mary D. Nichols sent a memorandum to EPA Regional Administrators (the March 2, 1995 Memorandum, or Memorandum) recognizing the efforts made by states and the remaining difficulties in making the ROP and Attainment Demonstration SIP submittals. The March 2, 1995 Memorandum recognized that in general, many States have been unable to complete these SIP requirements within the deadlines prescribed by the Act due to circumstances beyond their control. These states were hampered by unavoidable delays in developing the underlying technical information needed for the required SIP submittals. The Memorandum recognized that development of the necessary technical information, as well as the control measures necessary to achieve the large level of reductions likely to be required, is particularly difficult for the many states affected by ozone transport.

Accordingly, as an administrative remedial matter, the March 2, 1995 Memorandum indicated that EPA would establish new time-frames for SIP submittals. The Memorandum called for States seeking to avail themselves of the new policy to submit, by May 1995, a letter committing to the new time-frames.

The Memorandum further indicated that EPA would divide the required SIP submittals into two phases. The Phase I submittals generally consisted of (i) SIP measures providing for ROP reductions due by the end of 1999 (the first 9% of ROP reductions); (ii) a SIP commitment (sometimes referred to as an enforceable commitment) to submit any remaining required ROP reductions on a specified schedule after 1996 (with submission no later than the end of 1999); and (iii) a SIP commitment to submit the Attainment Demonstration by mid-1997 (with submission by no later than the end of 1999 of any additional rules needed to attain).[1] The Memorandum indicated that EPA would establish the end of 1995 as the due date for the Phase I submittals. States could have proposed a schedule for making the submissions in 1996 if necessary due to administrative scheduling imperatives (such as the schedule for legislative sessions).

The Phase II submittals were due at specified times after 1996, and primarily consisted of the remaining ROP SIP measures, the Attainment Demonstration and required additional rules, and any regional controls necessary for attainment by all areas in the region.

In addition, the March 2, 1995 Memorandum called for a collaborative process among the States in the eastern half of the country to evaluate and address transport of ozone and its precursors. The Memorandum lead to the formation of the Ozone Transport Assessment Group (OTAG), which includes representatives of those states; EPA officials; and interested members of the public, including environmental groups and industry. As indicated in the Memorandum, EPA has envisioned that OTAG would complete its work by the end of 1996.

The March 2, 1995 Memorandum was widely circulated, and by June 1995, states opting for the time-frames it described had submitted letters to EPA generally committing to submit the SIP measures called for under the Memorandum.

OTAG's first meetings were on May 18, 1995, in Reston, Virginia, and June 19, 1995, in Washington, D.C. OTAG has continued to meet regularly since then.

By the first few months of 1996, some states appeared to be lagging in their compliance efforts with the Phase I deadlines. By memorandum dated April 19, 1996, Assistant Administrator Nichols directed the Regional Administrators to determine the status of the state planning efforts to allow EPA to determine which states were or were not in substantial compliance with the Phase I deadlines. By letters dated in May 1996, EPA Regional Administrators informed the states that it was important that they complete the Phase I submittals as soon as possible, and requested that they provide EPA with a schedule for completing these submittals. These letters cautioned that EPA would, within the near future, evaluate the states' schedule; and that if EPA considered the schedule insufficiently expeditious, EPA would consider beginning the process under CAA section 179(a)(1), described below, of sanctioning states that fail to make required submittals.

The EPA regional offices and state officials discussed the states' progress, and the states generally developed schedules for completing the Phase I requirements.

Although EPA recognizes the continued progress states are making in developing the required SIPs, EPA believes that in most cases, the schedules presented by the states are not sufficiently expeditious for the states to be considered in substantial compliance with the Phase I deadlines.

The 1990 Amendments establish specific consequences if EPA finds that a State has failed to meet certain requirements of the CAA. Of particular relevance here is CAA section 179(a)(1), the mandatory sanctions provision. Section 179(a) sets forth four findings that form the basis for application of a sanction. The first finding, that a State has failed to submit a plan or one or more elements of a plan required under the CAA, is the finding relevant to this rulemaking.

Today, EPA is finding that 10 States and the District of Columbia have failed to make required SIP submissions for 9 nonattainment areas.

If these States have not made the required complete submittals within 18 months of the effective date of today's rulemaking, pursuant to CAA section 179(a) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in the affected areas. If the States have still not made a complete submission 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected areas, in accordance with 40 CFR 52.31. In addition, CAA section 110(c) provides that EPA promulgate a federal implementation plan (FIP) no later than 2 years after a finding under section 179(a).

[1] The March 2, 1995 Memorandum established other requirements, and somewhat different requirements for states other than the Northeast states. These are described in greater detail in the enclosures to the findings letters, discussed below, which are included in the docket to this rulemaking.

The 18-month clock will stop and the sanctions will not take effect if, within 18 months after the date of the finding, EPA finds that the State has made a complete submittal as to each of the SIP elements for which these findings are made. In addition, EPA will not promulgate a FIP if the State makes the required SIP submittal and EPA takes final action to approve the submittal within 2 years of EPA's finding.

At approximately the same time as the signing of this notice, EPA Regional Administrators are sending letters to the 11 States describing the status of the states' effort and these findings in more detail. These letters, and the enclosures that they include, are included in the docket to this rulemaking.

I. Final Action

A. Rule

Today, EPA is making findings of failure to submit for 9 nonattainment areas in 10 states and the District of Columbia, due to failure to submit complete SIP revisions consisting of the following three items: (i) A SIP provision requiring emission reductions of 9% in ozone precursors from the end of 1996 to 1999; (ii) SIP commitments to adopt an Attainment Demonstration; and (iii) SIP commitments to adopt any additional rules needed to complete the requirements for ROP reductions after 1999, and until the attainment date.

The states, nonattainment areas (and classification of the nonattainment areas) that are receiving these findings are listed below. Each state is receiving all three findings for each of its areas, except that states with areas classified as serious are receiving only the first two findings. Serious areas have an attainment date of 1999, and thus are not required to submit ROP SIPs after 1999.

Connecticut: Greater CT Area (serious); New York-Northern New Jersey-Long Island, NY–NJ–CT, Area (severe).
New Hampshire: Boston-Lawrence-Worcester, MA–NH, Area (serious); Portsmouth-Dover-Rochester, NH, Area (serious).
New Jersey: New York-Northern New Jersey-Long Island, NY–NJ–CT, Area (severe); Philadelphia-Wilmington-Trenton, PA–NJ–DE–MD, Area (severe).
New York: New York-Northern New Jersey-Long Island, NY–NJ–CT, Area (severe).
Delaware: Philadelphia-Wilmington-Trenton, PA–NJ–DE–MD, Area (severe).
Maryland: Baltimore Area (severe); Philadelphia-Wilmington-Trenton, PA–NJ–DE–MD, Area (severe); Washington, DC–MD–VA, Area (serious).
Virginia: Washington, DC–MD–VA, Area (serious).
District of Columbia: Washington, DC–MD–VA, Area (serious).
Illinois: Chicago-Gary-Lake County, IL–IN, Area (severe).
Indiana: Chicago-Gary-Lake County, IL–IN, Area (severe).
Wisconsin: Milwaukee-Racine, Area (severe).

B. Effective Date Under the Administrative Procedures Act

EPA has issued this action as a rulemaking because EPA has treated this type of action as rulemaking in the past. However, EPA believes that it would have the authority to issue this action in as an informal adjudication, and is considering which administrative process—rulemaking or informal adjudication—is appropriate for future actions of this kind.

Because EPA is issuing this action as a rulemaking, the Administrative Procedures Act (APA) applies.

Today's action will be effective on July 3, 1996. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if the agency has good cause to mandate an earlier effective date. Today's action concerns SIP submissions that are already overdue; and EPA previously cautioned the affected states that the SIP submissions were overdue and that EPA was considering the action it is taking today. In addition, today's action simply starts a "clock" that will not result in sanctions against the states for 18 months, and that the states may "turn off" through the submission of complete SIP submittals. These reasons support an effective date prior to 30 days after the date of publication.

C. Notice-and-Comment Under the Administrative Procedures Act

This notice is a final agency action, but is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). EPA believes that because of the limited time provided to make findings of failure to submit and findings of incompleteness regarding SIP submissions or elements of SIP submission requirements, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit elements of SIP submissions required by the Clean Air Act. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert agency resources from the critical substantive review of complete SIPs. See 58 FR 51270, 51272, n.17 (Oct. 1, 1993); 59 FR 39832, 39853 (Aug. 4, 1994).

D. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

E. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector; or to State, local, or tribal governments in the aggregate.

In addition, under the Unfunded Mandates Act, before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must have developed, under section 203 of the UMRA, a small government agency plan.

EPA has determined that today's action is not a Federal mandate. The various CAA provisions discussed in this notice require the states to submit SIPs. This notice merely provides a finding that the states have not met those requirements. This notice does not, by itself, require any particular action by any State, local, or tribal government; or by the private sector.

For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact on small entities of any rule subject to the notice-and-comment rulemaking requirements. Because this action is exempt from such requirements, as described above, it is not subject to the RFA.

G. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the APA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), EPA submitted, by the effective date of this rule, a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office. This rule is not a "major rule" as defined by APA § 804(2), as amended.

As noted above, EPA is issuing this action as rulemaking. There is a question as to whether this action is a rule of "particular applicability", under section 804(3)(A) of APA as amended by SBREFA—and thus exempt from the congressional submission requirements—because this rule applies only to named states. In this case, EPA has decided to err on the side of submitting this rule to Congress, but will continue to consider this issue of the scope of the exemption for rules of "particular applicability".

H. Paperwork Reduction Act

This rule does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

I. Judicial Review

Under CAA Section 307(b)(1), a petition to review today's action may be filed in the Court of Appeals for the District of Columbia within 60 days of July 10, 1996.

Dated: July 3, 1996.

Mary D. Nichols,

Assistant Administrator.

[FR Doc. 96–17545 Filed 7–9–96; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 63

[AD–FRL–5531–3]

Approval of State Programs and Delegation of Federal Authorities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action revises the "Approval of State Programs and Delegation of Federal Authorities" (subpart E). The amendments are being made to clarify regulatory text, reduce administrative burden and provide more flexibility to States using this rulemaking. Additionally, today's action does not have any environmental impact. As a result, the Agency does not anticipate receiving adverse comments. Consequently, the amendments are being issued as a direct final rule.

DATES: The direct final rule will be effective August 19, 1996 unless significant, adverse comments are received by August 9, 1996. If significant, timely adverse comments are received on the direct final rule, the direct final rule will be withdrawn.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–96–09, Room M–1500, U.S. EPA, 401 M Street, SW., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert Wood at (919) 541–5272 or Ms. Sheila Q. Milliken at (919) 541–2625, Integrated Implementation Group, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected by this action are State, local, or tribal governments that voluntarily implement Clean Air Act (Act) section 112 rules, emission standards, or requirements. This action does not regulate emission sources directly. Regulated categories and entities include:

Category	Examples of regulated entities
State, local, tribal governments.	State, local, or tribal governments that voluntarily request approval of rules or programs to be implemented in place of Act section 112 rules, emission standards or requirements or voluntarily request delegation of unchanged section 112 rules.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. The existing procedures and criteria for requesting and receiving approval of these State, local, or tribal government rules or programs or voluntarily requesting delegation of unchanged section 112 rules are in sections 63.90 through 63.95 of this subpart.

On November 26, 1993 (58 FR 62262), the EPA promulgated in the **Federal Register** guidance relating to the approval of State programs and delegation of Federal authorities under the authority of section 112(l) of the Act. Section 112(l)(2) of the Act requires the EPA to publish guidance useful to States in developing programs for implementing and enforcing emission standards and other requirements for hazardous air pollutants (HAP). The use of delegation under section 112(l) is voluntary on the part of the States. The regulations were promulgated as subpart E in 40 CFR part 63.

Today's action modifies the subpart E final regulation to improve clarity of administrative procedures and eliminate unnecessary and, in some cases, impractical requirements imposed on the States. Today's changes do not significantly modify the requirements of the regulation. The revisions are discussed in the order in which they appear in the subpart E regulation. If timely significant adverse comments are received on any amendment of this direct final rule, that amendment of the direct final rule will be withdrawn and all such comments will be addressed in a subsequent final rule based on the proposed rule contained in the proposed rules section of this **Federal Register** that addresses issues in this direct final rule. If no timely significant adverse comments are received on this direct final rule, then the direct final rule will become effective August 19, 1996 and no further action is contemplated on the parallel proposal published today.

Preamble Outline

The following outline is provided to aid in locating information in this preamble.

I. Description of Changes
  A. Approval of State Mechanism to Receive Delegation of Existing and Future Unchanged Federal Section 112 Standards and Requirements
  B. Deletion of 6-month Reporting Requirement
  C. Additional Language Regarding Implementation of Chemical Safety Hazard Investigation Board Requirement
  D. Approval of State Rules and Programs Designed to Limit Potential to Emit (PTE)
II. Unfunded Mandates Reform Act
III. Administrative
  A. Paperwork Reduction Act
  B. Executive Order 12866 Review
  C. Regulatory Flexibility Act
  D. Submission to Congress and the General Accounting Office

I. Description of Changes

A. Approval of State Mechanism to Receive Delegation of Existing and Future Unchanged Federal Section 112 Standards and Requirements

Section 63.91 of the subpart E rule establishes a process for straight delegation of individual maximum achievable control technology (MACT) standards after they are promulgated, but it does not include a process for approving a program for delegation of all future MACT standards through a single, advance program approval. State and local agencies have asked for a more streamlined method for taking delegation of future and existing unchanged Federal section 112 standards and requirements.

The EPA agrees with the merit of a program that will allow State and local agencies to receive upfront approval of the mechanism with which they would take delegation of existing and future unchanged Federal section 112 standards. Such a program would eliminate the need for State and local agencies to submit individual requests for delegation of unchanged Federal section 112 standards on a rule-by-rule basis. Regional Offices would benefit by receiving early identification of States' intentions for receiving delegation. State and local agencies would have minimal administrative burden in submitting their requests for approval.

The EPA established policy for such a process for sources subject to part 70 permitting through a memorandum entitled, "Straight Delegations Issues Concerning Sections 111 and 112 Requirements and Title V," dated December 10, 1993, from John Seitz, Director, Office of Air Quality Planning and Standards, U.S. EPA. A similar program for sources not subject to part 70 is detailed in the revised enabling guidance for subpart E ("Interim Enabling Guidance for the Implementation of 40 CFR part 63, subpart E," dated November 1993, EPA–453/R–93–040). The EPA intends to codify the policy described in the memorandum and guidance in this direct final rulemaking. Therefore, EPA is making the necessary revisions to the subpart E rule to include a process of approving State mechanisms for receiving delegation of existing and future unchanged Federal section 112 standards and requirements consistent with its current policy. Submittals previously approved before today's action will not be affected. Revisions are being made to sections 63.90 and 63.91 which specifically indicate that States can request upfront EPA approval of the State's mechanism for taking delegation of future unchanged Federal section 112 standards and requirements.

B. Deletion of 6-Month Reporting Requirement

The subpart E rule currently contains a provision which requires 6-month reporting by sources of all required monitoring or testing for the State rule which replaces a Federal rule (§ 63.93(b)(4)(iv)). This requirement was originally placed in the subpart E rule to be consistent with requirements in the part 70 operating permit rule at 40 CFR part 70, § 70.6(a)(3)(iii)(A).

State and local agencies believe that the 6-month reporting requirement for regulated sources is duplicative of reporting requirements already included in individual MACT standards and the title V permit program regulations. They feel that this requirement is unnecessary and creates paperwork with little or no benefit.

An example of where this requirement could adversely affect a source is in the case where the MACT rule only requires yearly reporting. If a State wanted to substitute their rule for the Federal MACT rule, the source would be required to report every 6 months due to the existing subpart E requirement. Area sources do not trigger the 6-month reporting requirement of title V, and thus, should only be required to report yearly. Nonetheless, subpart E currently mandates 6-month reporting. Consequently, it imposes, an unnecessary additional burden on sources in States with delegated air toxics programs.

In this scenario, the EPA feels that there would be no value added in increasing the reporting requirement to a mandatory minimum of 6-months because EPA has already determined the frequency of reporting necessary to assure compliance in each MACT standard or in the General Provisions. In addition, since section 112(l) is voluntary, the 6-month reporting provision imposes an increased burden on sources whose States submit equivalent State rules or programs for EPA approval, and discourages States from accepting delegation of the Federal rule.

The EPA agrees that this requirement is not necessary as a general requirement and is revising section 63.93 by deleting § 63.93(b)(4)(iv).

C. Additional Language Regarding Implementation of Chemical Safety and Hazard Investigation Board Requirement

Section 112(r)(7)(B)(iii) requires coordination with the Chemical Safety and Hazard Investigation Board (CSHIB) on accident investigations. For consistency, the subpart E rule (section 63.95 (b)(4)(i)) reiterates this requirement. State and local agencies believe this language should be deleted because the CSHIB has not yet been established. Continued inclusion of this provision imposes a meaningless requirement. It should be noted, however, that the CSHIB may be convened at some later date. The EPA agrees that it is appropriate that the requirement not take effect until the CSHIB is convened. Consequently, section 63.95(b)(4)(i) is being revised to add the sentence, "This requirement will not take effect until the Chemical Safety and Hazard Investigation Board is convened."

D. Approval of State Rules and Programs Designed to Limit Potential to Emit (PTE)

Currently, a number of States are submitting, for EPA approval into the State Implementation Plan, rules and programs such as prohibitory rules and federally enforceable State operating permit programs (FESOP). There are a few hazardous air pollutants (for example methylene chloride) which are not regulated by the criteria pollutant program. Accordingly, when a State seeks Federal approval of these rules and programs, as they relate to such pollutants, the EPA approval will be given pursuant to section 112(l) of the Act.

The current subpart E rule does not expressly provide for approval of programs designed to limit sources' potential to emit hazardous air pollutants. As explained in various recent notices approving PTE programs for section 112 purposes, EPA believes the authority exists under section 112(l) of the statute to approve PTE programs. Promulgation of a rule expressly providing for such approvals is consistent with this statutory authority. Thus, the EPA is today revising subpart E to clarify that it may be used to approve State PTE programs for section 112 purposes, in order to ensure that an unintended "gap" does not exist for pollutants such as methylene chloride.

The EPA notes that it is currently reexamining its policy on PTE for the section 112, title V, and new source review programs. One possible outcome of this reexamination is that PTE limits will no longer have to be federally enforceable. However, EPA believes that today's revision to subpart E is neutral with respect to this issue. The revision to subpart E merely clarifies that the rule may be used as a pathway for approval of State PTE programs. It does not in and of itself establish a requirement that limits on PTE must be issued pursuant to a program approved by EPA. In other words, today's revision clarifies that subpart E may be used to approve a PTE program that a State chooses to submit, without addressing whether or why a State would make this choice.

II. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year.

Today's rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or tribal governments or the private sector. The UMRA generally excludes from the definition of "Federal intergovernmental mandate" duties that arise from participation in a voluntary Federal program. The EPA has also determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

III. Administrative

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated subpart E rulemaking were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (with an OMB approval control number 2060–0264) may be obtained from the Regulatory Information Division (2136), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, or by calling (202) 260–2740.

Today's changes to the rulemaking may slightly reduce the information collection burden estimates made previously. Since the expected reduction will not be significant, the ICR has not been revised.

B. Executive Order 12866 Review

The subpart E rulemaking, promulgated on November 26, 1993 was considered a "significant regulatory action" under Executive Order 12866 (58 FR 5173, dated October 4, 1993) and submitted to OMB for review. According to the Executive Order, a "significant regulatory action is one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, of State, local or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Today's action is not considered a "significant regulatory action" within the meaning of this Executive Order. The amendments issued today clarify the rule and change certain administrative requirements to increase the flexibility to States in terms of gaining approval of their respective State programs. Therefore, the EPA concludes these amendments do not need to undergo OMB review.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. This rule will not increase, and is likely to reduce, regulatory burdens on small businesses. EPA has determined that this rule will have no adverse effect on small businesses.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 26, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.90 is amended by adding a sentence after the third sentence and a sentence at the end of the introductory text to read as follows:

§ 63.90 Program overview.

* * * In this process, States may seek approval of a State mechanism for receiving delegation of existing and future unchanged Federal section 112 standards. * * * This subpart also establishes procedures for the approval of State rules or programs to establish limitations on the potential to emit pollutants listed in or pursuant to section 112(b) of the Act.

* * * * *

2. Section 63.91 is amended by revising paragraph (a) introductory text to read as follows:

§ 63.91 Criteria common to all approval options.

(a) Approval process. To obtain approval under this subpart of a rule or program that is different from the Federal rule, the criteria of this section and the criteria of either § 63.92, § 63.93 or § 63.94 must be met. For approval of State programs to implement and enforce Federal section 112 rules as promulgated without changes (except for accidental release programs), only the criteria of this section must be met. This includes State requests for upfront approval of their mechanism for taking delegation of future unchanged Federal section 112 standards and requirements as well as approval to implement and enforce unchanged Federal section 112 standards and requirements on a rule-by rule basis. For approval of State rules or programs to implement and enforce the Federal accidental release prevention program as promulgated without

changes, the requirements of this section and section § 63.95 must be met. In the case of accidental release prevention programs which differ from the Federal accidental release prevention program, the requirements of this section, § 63.95, and either § 63.92 or § 63.93 must be met. The Administrator may, under the authority of Section 112(l) and this subpart, also approve a State program designed to establish limits on the potential to emit of pollutants listed pursuant to Section 112(b) of the Clean Air Act. For a State's initial request for approval of any rule or program under this subpart, and except as otherwise specified under § 63.92, § 63.93, or § 63.94 for a State's subsequent requests for approval, the approval process will be the following:

* * * * *

§ 63.93 [Amended]

3. Section 63.93 is amended by removing paragraph (b)(4)(iv).

4. Section 63.95 is amended by revising paragraph (b)(4)(i) to read as follows:

§ 63.95 Additional approval criteria for accidental release prevention programs.

* * * * *

(b) * * *

(4) * * *

(i) The Chemical Safety and Hazard Investigation Board, particularly during accident investigation. This requirement will not take effect until the Chemical Safety and Hazard Investigation Board is convened; and

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[FR Doc. 96–17323 Filed 7–9–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[OPP–300414A; FRL–5381–4]

RIN 2070–AB78

Triphenyltin Hydroxide; Tolerance Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final tolerance rule for triphenyltin hydroxide. All domestic registrations of triphenyltin hydroxide for use on carrots, peanuts and peanut hulls have been cancelled and EPA is revoking these tolerances.

EFFECTIVE DATES: This regulation is effective August 9, 1996.

ADDRESSES: Written objections and hearing requests, identified by the docket number, [OPP–300414A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to:opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and data in electronic form must be identified by the docket number [OPP–300414A]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: Jude Andreasen, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone: (703) 308–8016; e-mail: andreasen.jude@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 6, 1996 (61 FR 8901)(FRL–5347–7), EPA issued a proposed rule that gave notice that EPA intended to revoke tolerances for triphenyltin hydroxide on carrots, peanuts and peanut hulls. There were no comments or requests for referral to an advisory committee received in response to the proposed rule. The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances are not needed to protect the public health. Therefore, the tolerances are being removed as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number OPP–300414A [including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement explaining the factual basis for this determination was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

This final rule does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 24, 1996.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.236 is revised to read as follows:

§ 180.236 Triphenyltin hydroxide; tolerances for residues.

Tolerances are established for residues of the fungicide triphenyltin hydroxide in or on raw agricultural commodities as follows:

Commodity	Parts per million
Cattle, goats, hogs, horses and sheep, kidney and liver	0.05
Pecans	0.05
Potatoes	0.05
Sugar beet, roots	0.1

[FR Doc. 96–17571 Filed 7–9–96; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 180

[PP 4F4321/R2251; FRL–5381–7]

RIN 2070–AB78

Pesticide Tolerance for 1-[[2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for combined residues of the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound in or on the raw agricultural commodity stonefruit group at 1.0 part per million (ppm). The regulation to establish a maximum permissible level for residues of the fungicide was requested in a petition submitted by the Ciba-Geigy Corp.

EFFECTIVE DATE: This regulation becomes effective July 10, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 4F4321/R2251], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the

docket number [PP 4F4321/R2251] . No "Confidential Business Information" (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703) 305-6226; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice (FRL–4971–5), published in the **Federal Register** of November 15, 1995 (60 FR 57421), which announced that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419 had submitted pesticide petition (PP) 4F4321 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish a tolerance for combined residues of the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole in or on the raw agricultural commodity stonefruit group at 1.0 ppm part per million (ppm). There were no comments received in response to the notice of filing.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. Plant and animal metabolism studies.
2. Residue data for crop and livestock commodities.
3. Two enforcement methods and multiresidue method testing data.
4. A 90–day rat feeding study with a no-observable-effect level (NOEL) of 12 mg/kg/day.
5. A 90–day dog feeding study with a NOEL of 1.25 mg/kg/day.
6. A rabbit developmental toxicity study with a maternal NOEL of 100 mg/kg/day and a developmental toxicity NOEL of greater than 400 mg/kg/day (highest dose tested) (HDT)).
7. A rat teratology study with a maternal NOEL of 30 mg/kg/day and a developmental toxicity NOEL of 30 mg/kg/day.
8. A two-generation rat reproduction study with a reproductive NOEL of 125 mg/kg/day (HDT) and a developmental toxicity NOEL of 25 mg/kg/day.
9. A 1–year dog feeding study with a NOEL of 1.25 mg/kg/day.
10. A 2–year rat chronic feeding/carcinogenicity study with a NOEL of 5 mg/kg/day with no carcinogenic potential under the conditions of the study up to and including approximately 125 mg/kg/day, the highest dose tested.
11. A 2–year mouse chronic feeding/carcinogenicity study with a NOEL of 15 mg/kg/day and with a statistically significant increase in combined adenomas and carcinomas of the liver in male mice at approximately 375 mg/kg/day, the highest dose tested.
12. Ames test with and without activation, negative.
13. A mouse dominant-lethal assay, negative.
14. Chinese hamster nucleus anomaly, negative.
15. Cell transformation assay, negative.

Ciba-Geigy submitted information which resolved the previously outstanding concerns about the nature of the residue in ruminants, an explanation of recovery calculations, and an explanation of the crop field trial protocol. Data gaps exist concerning dosing in the mouse carcinogenicity study. These data requirements were required under reregistration, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq.

As part of EPA's evaluation of potential human health risks, 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole has been the subject of five Peer Reviews and one Scientific Advisory Panel (SAP) meeting. 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole was originally evaluated by the Peer Review Committee on January 15, 1987, and classified as a Group C (possible human) carcinogen with a recommendation made for the quantification of estimated potential human risk using a linearized low-dose extrapolation. The method resulted in the establishment of a Q^* of 7.9×10^{-2} $(mg/kg/day)^{-1}$.

The Peer Review Committee's decision was presented to the FIFRA Scientific Advisory Panel on March 2, 1988. The Panel did not concur with the committee's overall assessment of the weight-of-evidence on the carcinogenicity of 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole. The Panel recommended placing the chemical in Group D, indicating that the Group C classification was based on minimal evidence. The Panel's determination that EPA's Group C classification was based on minimal evidence was due to the fact that the incidence of liver tumors in male mice only occurred when the mice were given an excessive chemical dose.

As part of a fifth Peer Review, EPA considered additional information provided by the registrant in support of the registrant's argument that the high dose was excessively toxic in the mouse carcinogenicity study. It further argued that the data from the high dose (2,500 ppm) should not be included in the evaluation of carcinogenic potential of 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole. In support of these arguments, the registrant provided two subchronic oral toxicity studies in mice. Ciba-Geigy also provided a reread of the pathology slides from a mouse oncogenicity study which it felt indicated sufficient concurrent liver toxicity at 2,500 ppm to document that this dose was excessive. These findings were not present in the original pathology report. Owing to the inconsistency in Ciba-Geigy's report and the original report, the Agency requested that an independent (third) evaluation of the pathology slides be made to determine if the pathology reported could be confirmed. The results of this (third) pathology evaluation were used in the fifth Peer Review in place of data resulting from the earlier evaluations provided by Ciba-Geigy.

The Peer Review Committee considered the following facts regarding the toxicology data on 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole in a weight-of-evidence determination of carcinogenic potential:

1. Increased numbers of adenomas (increased trend and pairwise comparison) were found in the livers of male CD1 mice given 2,500 ppm of 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole in their diet.
2. The treated animals had earlier fatalities than the controls.
3. The numbers of carcinomas were increased (trend only) in male mice only at the 2,500 ppm dose level. Tumors were not significantly increased at the 500 ppm dose level. Adenomas observed in the treated animals were larger and more numerous than those in controls; however, the tumor type (adenoma) was the same.
4. No excessive number of tumors was found in female mice.
5. In a rat study conducted with acceptable doses of 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole, no excessive numbers of tumors were found.

The Peer Review Committee determined, based on the additional information submitted by Ciba-Geigy from two 90–day subchronic studies in mice that the 2,500 ppm dose used in the 2-year chronic study exceeded the maximum tolerated dose (MTD) based on the endpoint of hepatic necrosis, and the 500 ppm dose used in the chronic study was inadequate to assess the carcinogenicity of 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole. Based on the third pathology evaluation of the chronic study, the Peer Review Committee disagreed with Ciba-Geigy's argument that the study showed excessive toxicity at the 2,500 ppm dose. However, the Peer Review Committee concluded that the 90–day subchronic studies are a better measure of what would be an MTD.

Based upon these findings, the Peer Review Committee agreed that the classification for 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole should remain a Group C (possible human) carcinogen and recommended against the previously used Q^* (viz. 0.079) for risk assessment purposes. For the purpose of risk characterization the Peer Review Committee recommended that the reference dose (RfD) approach should be used for quantification of human risk. This decision was based on the disqualification of the high dose (2,500 ppm), making the data inappropriate for the calculation of Q^*. Because the middle dose (500 ppm) was not considered sufficiently high enough for assessing the carcinogenic potential of 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole, EPA has requested an additional mouse study at intermediate dose levels in male mice only. EPA does not expect that these data will significantly change the above cancer assessment that 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole poses a negligible risk to humans.

The reference dose for 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole is 0.013 mg/kg/day, and based on a NOEL of 1.25 mg/kg/day and an uncertainty factor of 100. The NOEL is taken from a 1–year dog feeding study that demonstrated irritation of the stomach in males as an endpoint effect. The Anticipated Residue Contribution (ARC) from the current action is estimated at 0.000673 mg/kg/day and utilizes 5 percent of the RfD of the general population of the 48 states. The ARC for the most highly exposed subgroup, non-nursing infants < 1 year is 0.002203 mg/kg/day (17 percent of the RfD).

The nature of the residue in plants and animals is adequately understood and adequate analytical methods (gas chromatography) are available for enforcement purposes. Adequate animal tissue, milk, and egg tolerances exist to cover secondary residues incurred in those commodities from the proposed uses.

The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Volume II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703) 305-5232.

There are presently no actions pending against the continued registration of this chemical. The pesticide is considered useful for the purpose for which the tolerance is sought.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under the docket number [PP 4F4321/R2251] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rule-making record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Viginia address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of 100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3)

materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

This action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 2, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.434, the table in paragraph (a) is amended by adding alphabetically an entry for stonefruit group to read a follows:

§ 180.434 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole; tolerances for residues.

* * * * *

(a) * * *

Commodity	Parts per million
Stonefruit group	1.0

* * * * *

[FR Doc. 96–17576 Filed 7–9–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 73

[MM Docket No. 95–42; FCC 96–274]

Digital Data Transmission Within the Video Portion of TV Broadcast Station Transmissions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends the Commission's Rules to allow broadcast television licensees to use approved methods of ancillary data transmission without prior Commission authorization. The methods approved in this Report and Order are two "overscan" systems, as proposed by Yes! Entertainment Corporation and A.C. Nielsen Company, and two "sub-video" systems, as proposed by Digideck, Incorporated and WavePhore, Inc. The intended effect of this rule is to permit the transmission of data streams in the NTSC television signal for a variety of uses, such as software and business data downloading, activation of interactive toys, and program identifying and tracking.

EFFECTIVE DATE: July 10, 1996.

FOR FURTHER INFORMATION CONTACT: Jim McNally, Gordon Godfrey, or Paul Gordon, Mass Media Bureau, Policy and Rules Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 96–274, adopted June 21, 1996 and released June 28, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, DC 20037.

Synopsis of Order

1. This Report and Order amends the Commission's Rules to allow broadcast television licensees to use approved methods of ancillary data transmission without prior Commission authorization. Examination of this issue was raised in the *Notice of Proposed Rule Making* in this proceeding.[1] Two of the newly approved types of systems involve "overscan" methods, and the other two use a "sub-video" method. These methods, as well as a "signal substitution" method proposed by En Technology Corporation (En), will be further described below. We do not have a basis for imposing a government-imposed standard for digital data at this time.

Background

2. 47 CFR 73.646 allows the transmission, without prior Commission consent, of ancillary telecommunications services within the Vertical Blanking Interval (VBI) (Line 1 through Line 21) of television broadcast signals. The VBI precedes the active video portion of the standard NTSC television signal. In contrast, data transmission systems operating within the active video portion of the television picture have been authorized only on a case-by-case basis, in order to protect the public's ability to receive high-quality over-the-air video broadcast transmissions. Various parties have now asked the Commission to permit broadcasters to employ new data transmission systems utilizing the active video portion of the television picture.

3. *Overscan.* Ancillary data transmitting systems using the "overscan" method function by replacing the transmitted video signal with digitally encoded information in an area on the perimeter of the picture, not normally seen by viewers because it is masked off by the television cabinet. Line 22, the first line of active video, has traditionally been used for this purpose and Yes! proposes to use the extreme left edge of the picture

[1] 60 FR 24666, May 9, 1995.

similarly. Nielsen has been using line 22 since 1989, under temporary, conditional authority, to transmit the Nielsen Automated Measurement of Lineup (AMOL) system signal identification codes, and is seeking permanent authority for this use.

4. *Sub-video.* Sub-video systems distribute the ancillary signals throughout the visible picture. The amplitudes of these signals are kept sufficiently low (or are confined to such a limited part of the normally emitted video spectrum bandwidth) that they are supposed to be imperceptible to the viewer. WavePhore and Digideck have developed different sub-video systems. Both systems continue to be examined by the National Data Broadcasting Committee (the Committee), an entity formed in 1993 by the National Association of Broadcasters and the Consumer Electronics Group of the Electronic Industries Association.

Authorizing Ancillary Services

5. The Commission approves the use of the Yes!, Nielsen, Digideck and WavePhore signal transmission systems, as presented in this proceeding, by all television broadcast stations, including low power TV stations. It retains the authority to direct licensees to take corrective action should the ancillary transmissions unacceptably harm picture quality or cause interference to other stations. According to the Commission, this action is not inconsistent with others' ongoing efforts to develop a coherent national standard recommendation for certain data services.

Authorization of Specific Systems

6. The problem-free operation of previous overscan systems verifies the inherently innocuous nature of their use and prompts the Commission to approve the use of the Yes! system and to grant permanent authority to Nielsen for its AMOL system to be used on line 22 on a non-exclusive basis. Further, the Commission does not set a technical standard or sharing criteria for Line 22 overscan systems, as had been requested by Airtrax in a related petition.

7. The Commission found that sub-video systems, apparently also can operate as proposed without causing material picture degradation or increasing the host station's potential for causing interference. Approval of the use of these systems is based on the favorable results of the National Data Broadcasting Committee's laboratory testing and on the Commission reliance that broadcasters will continue to exercise full technical control over their signals and will be responsible for operating in a manner that does not increase their stations' potential for causing interference or degrade picture quality.

8. The Commission decided not to delay the deployment of these systems in order to set a mandatory standard or standards, given that they will be directed, at least initially, either to subscribers of a particular service or to viewers who have purchased special equipment to receive the signals. Should more general-consumer oriented services be developed in the future, it can reexamine the issue of standards in that context.

9. Data insertion systems must protect the integrity of closed captioning signals on line 21. Any data insertion must be accomplished in a manner that leaves the licensee with the capability to modify, reduce, or eliminate the data insertion if necessary to terminate any interference caused, or to restore the quality of a degraded picture.

Licensees' Rights and Obligations

10. Ancillary signals may be analog or digital, and they can be used to provide broadcast, point-to-point, or point-to-multipoint services. Services that are common carrier in nature are subject to common carrier regulation. Licensees that desire to operate in a common carrier mode must apply to the Commission for the appropriate authorization and comply with all policies and rules applicable to the particular service. Each licensee must retain ultimate control over the content of any inserted data and retain the ability to remove ancillary information from the signal when it deems necessary, unless the ancillary services are common carrier in nature.

11. Signals that are intended for an audience needing special equipment or who must subscribe to the service do not constitute "broadcasting." For example, the rule addressing the lowest unit charge for political candidates does not apply to these transmissions. At the same time, however, if significant public interest uses of this ancillary transmission technology suggest themselves, the Commission may consider means by which to advance or ensure such usage of the broadcast spectrum.

Miscellaneous Issues

12. Comsat expressed concern about sub-video data insertion causing problems where analog video is converted to digital video for program distribution, which may also be a concern for possible future consumer digital VCRs. Because industry participants have sufficient interest and the greatest expertise to resolve these issues, the Commission does not see a specific role for it to play at this point.

13. A proposal by Radio Telecom and Technology, Inc. to include its "reverse VBI" technology in this proceeding is beyond the proper scope of this proceeding and is not included in the instant consideration.

14. One commenting party, En Technology, submitted information regarding its "Malachi" system. The Malachi system would typically replace many lines, or portions of lines, and thus be quite perceptible to the viewer. Such a system raises additional issues regarding spectrum allocation and use that have not been addressed in this proceeding, and it would appear to go beyond the scope of the operational flexibility proposed in the *NPRM*. Accordingly, the Commission does not authorize use of the En system in this *Report and Order*.

Ordering Clause

15. Therefore, *it is ordered that,* pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, that Part 73 of the Commission' Rules and Regulations IS AMENDED as set forth below.

16. *It is further ordere that* the requests of A.C. Nielsen Company and Yes! Entertainment Corporation for the Commission to allow television broadcast licensees to use their respective overscan ancillary data transmission systems without prior Commission authorization ARE GRANTED to the extent indicated above, and in all other aspects ARE DENIED.

17. *It is further ordered that* the requests of WavePhore, Inc. and Digideck, Inc. for the Commission to allow television broadcast licensees to use their respective sub-video ancillary data transmission systems without prior Commission authorization ARE GRANTED to the extent indicated above, and in all other aspects ARE DENIED.

18. *It is further ordered that* the petition for Rule Making filed by Airtrax is dismissed.

Final Regulatory Flexibility Act Analysis

I. Reason for Action

In recent years, several new methods of embedding data within television video signals have been developed. These methods degrade television video by varying degrees, but only one of the methods is by design intended to be perceived by viewers. The Commission is acting to provide for such services

that do not significantly degrade the television picture because it believes its broadcast licensees have the qualifications and experience to determine which of the new systems are maximally compatible with their primary broadcast obligations and may yet be used to provide additional information services to segments of the public.

II. Objectives

The action taken herein provides an interim standard for the use of the above-described data transmission technologies and is intended to benefit broadcasters and the generally small entities which are believed to be the most likely providers of ancillary data services.

III. Legal Basis

The action taken is authorized by Sections 4 (i) and (j), 302, 303 and 403 of the Communications Act of 1934, as amended.

IV. Description, Potential Impact and Number of Small Entities Affected

Many broadcasters are considered to be small business entities. Thus, several thousand licensees of television broadcast facilities of all types (commercial and educational VHF and UHF stations, translators, boosters and Low Power TV stations) could benefit from the rule amendments herein adopted. Most providers of the data services envisioned herein are also expected to fall within the classification of a "small business entity," at least initially. Their number is unknown, but may amount to several hundred over the next few years.

V. Recording, Record Keeping and Other Compliance Requirements

No comments specifically addressed the Initial Regulatory Flexibility Analysis. No new record-keeping or compliance requirements are imposed by the new rules.

VI. Federal Rules which Overlap, Duplicate or Conflict With this Rule

None.

VII. Any Significant Alternative Minimizing Impact on Small Entities and Consistent With the Stated Objectives

None.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations Part 73 is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334.

2. Section 73.621 is amended by revising paragraph (f) to read as follows:

§ 73.621 Noncommercial educational TV stations.

* * * * *

(f) Telecommunications Service on the Vertical Blanking Interval and in the Visual Signal. The provisions governing VBI and visual signal telecommunications service in § 73.646 are applicable to noncommercial educational TV stations.

* * * * *

3. Section 73.646 is amended by revising the section heading and paragraphs (a), (b), (d), (e) and (f) to read as follows:

§ 73.646 Telecommunications Service on the Vertical Blanking Interval and in the Visual Signal.

(a) Telecommunications services permitted on the vertical blanking interval (VBI) and in the visual signal include the transmission of data, processed information, or any other communication in either a digital or analog mode.

(b) Telecommunications service on the VBI and in the visual signal is of an ancillary nature and as such is an elective, subsidiary activity. No service guidelines, limitations, or performance standards are applied to it. The kinds of service that may be provided include, but are not limited to, teletext, paging, computer software and bulk data distribution, and aural messages. Such services may be provided on a broadcast, point-to-point, or point to multipoint basis.

* * * * *

(d) Television licensees are authorized to lease their VBI and visual signal telecommunications facilities to outside parties. In all arrangements entered into with outside parties affecting telecommunications service operation, the licensee or permittee must retain control over all material transmitted in a broadcast mode via the station's facilities, with the right to reject any material that it deems inappropriate or undesirable. The licensee or permittee is also responsible for all aspects of technical operation involving such telecommunications services.

(e) The grant or renewal of a TV station license or permit will not be furthered or promoted by proposed or past VBI or visual signal telecommunications service operation; the licensee must establish that its broadcast operation serves the public interest wholly apart from such telecommunications service activities. (Violation of rules applicable to VBI and visual signal telecommunications services could, of course, reflect on a licensee's qualifications to hold its license or permit.)

(f) TV broadcast stations are authorized to transmit VBI and visual telecommunications service signals during any time period, including portions of the day when normal programming is not broadcast. Such transmissions must be in accordance with the technical provisions of § 73.682.

4. Section 73.682 is amended by adding paragraph (a)(24) to read as follows:

§ 73.682 TV transmission standards.

(a) * * *

(24) Licensees and permittees of TV broadcast and low power TV stations may insert non-video data into the active video portion of their TV transmission, subject to certain conditions:

(i) The active video portion of the visual signal begins with line 22 and continues through the end of each field, except it does not include that portion of each line devoted to horizontal blanking. Figures 6 and 7 of § 73.699 identify the numbered line referred to in this paragraph;

(ii) Inserted non-video data may be used for the purpose of transmitting a telecommunications service in accordance with § 73.646. In addition to a telecommunications service, non-video data can be used to enhance the station's broadcast program service or for purposes related to station operations. Signals relating to the operation of TV stations include, but are not limited to program or source identification, relay of broadcast materials to other stations, remote cueing and order messages, and control and telemetry signals for the transmitting system; and

(iii) A station may only use systems for inserting non-video information that have been approved in advance by the Commission. The criteria for advance approval of systems are as follows:

(A) The use of such signals shall not result in significant degradation to any portion of the visual, aural, or program-related data (closed captioning) signals of the television broadcast station;

(B) No increase in width of the television broadcast channel (6 MHz) is permitted. Emissions outside the authorized television channel must not exceed the limitations given in § 73.687(e). Interference to reception of television service either of co-channel or adjacent channel stations must not increase over that resulting from the transmission of programming without inserted data; and

(C) Where required, system receiving or decoding devices must meet the TV interface device provisions of Part 15, Subpart H of this chapter.

(iv) No protection from interference of any kind will be afforded to reception of inserted non-video data.

(v) Upon request by an authorized representative of the Commission, the licensee of a TV station transmitting encoded programming must make available a receiving decoder to the Commission to carry out its regulatory responsibilities.

* * * * *

5. Section 73.1207 is amended by revising paragraph (b)(2) to read as follows:

§ 73.1207 Rebroadcasts.

* * * * *

(b) * * *

(2) Permission must be obtained from the originating station to rebroadcast any subsidiary communications transmitted by means of a multiplex subcarrier or telecommunications service on the vertical blanking interval or in the visual signal of a television signal.

* * * * *

6. Section 73.3613 is amended by revising paragraph (e) to read as follows:

§ 73.3613 Filing of contracts.

* * * * *

(e) The following contracts, agreements or understandings need not be filed but shall be kept at the station and made available for inspection upon request by the FCC: contracts relating to the sale of television broadcast time to "time brokers" for resale; subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the TV vertical blanking interval and in the visual signal; time sales contracts with the same sponsor for 4 or more hours per day, except where the length of the events (such as athletic contests, musical programs and special events) broadcast pursuant to the contract is not under control of the station; and contracts with chief operators.

[FR Doc. 96–17562 Filed 7–9–96; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 231

[DFARS Case 96–D314]

Defense Federal Acquisition Regulation Supplement; Individual Compensation

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8086 of Public Law 104–61 by placing a ceiling on allowable individual compensation under DoD contracts that are awarded after July 1, 1996, when payments are from funds appropriated in fiscal year 1996.

DATES: *Effective date:* July 10, 1996.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before September 9, 1996, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D314 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberlin, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

Section 8086 of the National Defense Appropriations Act for Fiscal Year 1996 (Pub. L. 104–61) limits allowable costs for individual compensation to $200,000 per year unless the Office of Federal Procurement Policy (OFPP) establishes in the Federal Acquisition Regulations guidance governing the allowability of individual compensation. On June 10, 1996, OFPP advised that it has determined that it will not alter the $200,000 ceiling on allowable individual compensation costs contained in the Public Law. This restriction applies to DoD contracts awarded after July 1, 1996, when payments are from funds appropriated in fiscal year 1996.

The interim DFARS rule amends DFARS Subpart 231.2, Contracts with Commercial Organizations; Subpart 231.3, Contracts with Educational Institutions; Subpart 231.6, Contracts with State, Local, and Federally Recognized Indian Tribal Governments; and Subpart 231.7, Contracts with Nonprofit Organizations, to implement the statutory ceiling on allowable individual compensation costs. In supplementing the cost principle at FAR 31.205–6, this DFARS rule relies upon the definition of compensation found in the FAR cost principle.

B. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Compelling reasons exist to promulgate this rule without prior opportunity for public comment. This rule implements Section 8086 of the National Defense Appropriations Act for Fiscal Year 1996 (Pub. L. 104–61) and applies to all DoD contracts issued after July 1, 1996. An interim rule is necessary to ensure that DoD contracting activities become aware of the statutory ceiling on allowable individual compensation costs when forward pricing contracts which will be awarded after July 1, 1996, using fiscal year 1996 funds. However, comments received in response to the publication of this interim rule will be considered in formulating the final rule.

C. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and therefore the cost principles do not apply. In addition, this interim DFARS rule applies only to DoD contractors who incur individual compensation costs in excess of $200,000 per year in performing new contracts awarded after July 1, 1996, using funds appropriated in fiscal year 1996. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts will also be considered in accordance with Section 610 of the Act. Such comments must be submitted

separately and cite 5 U.S.C. 601, *et seq.* (DFARS Case 96–D314), in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. 104–13) does not apply because the interim rule does not impose any additional reporting or recordkeeping requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 231

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 231 is amended as follows:

1. The authority citation for 48 CFR Part 231 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 231.205–6 is amended by revising paragraph (a)(2) to read as follows:

231.205–6 Compensation for personal services.

(a)(2)(i) Costs for individual compensation in excess of $250,000 per year are unallowable under DOD contracts that are awarded after April 15, 1995, and are funded by fiscal year 1995 appropriations (Section 8117 of Pub. L. 103–335).

(ii) Costs for individual compensation in excess of $200,000 per year are unallowable under DOD contracts that are awarded after July 1, 1996, and are funded by fiscal year 1996 appropriations (Section 8086 of Pub. L. 104–61).

* * * * *

3. Section 231.303 is amended by revising paragraph (3) to read as follows:

231.303 Requirements.

* * * * *

(3) The limitations on allowable individual compensation at 231.205–6(a)(2) (i) and (ii) also apply to this subpart.

4. Section 231.603 is revised to read as follows:

231.603 Requirements.

The limitations on allowable individual compensation at 231.205–6(a)(2) (i) and (ii) also apply to this subpart.

5. Section 201.703 is revised to read as follows:

231.703 Requirements.

The limitations on allowable individual compensation at 231.205–6(a)(2) (i) and (ii) also apply to this subpart.

[FR Doc. 96–17469 Filed 7–9–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960129019–6019–01; I.D. 070396A]

Fisheries of the Exclusive Economic Zone off Alaska; Atka Mackerel in the Eastern Aleutian District and Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Atka mackerel in the Eastern Aleutian District and Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the total allowable catch of Atka mackerel in this area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), July 8, 1996, until 2400 hrs, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR part 679 and at subpart H of 50 CFR part 600.

The total allowable catch of Atka mackerel for the Eastern Aleutian District and Bering Sea subarea was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) for the BSAI and subsequent reserve apportionment (61 FR 16085, April 11, 1996) as 26,700 metric tons (mt). (See § 679.20(c)(3)(iii).) As of June 8, 1996, 6,014 mt remain. The directed fishery for Atka mackerel in the Eastern Aleutian District and Bering Sea subarea was closed under § 679.20(d)(iii) on February 14, 1996, (61 FR 6323, February 20, 1996); see also § 679.20(d)(1) and opened on July 1, 1996 (61 FR 33046, June 26, 1996; see also § 679.25(a).)

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 679.20(d)(1)(iii), that the Atka mackerel total allowable catch in the Eastern Aleutian District and Bering Sea subarea soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 26,200 mt after determining that 500 mt will be taken as incidental catch in directed fishing for other species in the Eastern Aleutian District and Bering Sea subarea. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and Bering Sea subarea.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e).

Classification

This action is taken under § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 5, 1996.

Donald J. Leedy,

Acting Office Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–17585 Filed 7–5–96; 4:19 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 61, No. 133

Wednesday, July 10, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–91–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9 series airplanes and C–9 (military) airplanes. This proposal would require either replacement or modification of the hydraulic damper assembly. This proposal is prompted by reports indicating that insufficient damping of the hydraulic shimmy damper in the main landing gear (MLG) can allow high torsional vibration to occur. The actions specified by the proposed AD are intended to prevent such vibration, which can damage the MLG assembly and lead to its collapse.

DATES: Comments must be received by August 19, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–91–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5336; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–91–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–91–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports of incidents in which components of the main landing gear (MLG) on McDonnell Douglas Model DC–9 series airplanes have been damaged. In one incident, the MLG torque link was broken; in another incident, the nut was stripped off of the torque link apex bolt. Investigation has revealed that, under maximum loading of the hydraulic damper assembly, which occurs during landing, the metal-to-metal seal between the cap and damper assembly housing can leak (hydraulic fluid) internally. Such leakage can reduce the effectiveness of the damper.

Insufficient damping of the MLG hydraulic shimmy damper allows torsional vibration to occur in the MLG. High torsional vibration can damage the MLG, which can result in collapse of the MLG and can cause additional damage to other parts of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–32–289, dated March 7, 1996, which describes procedures for either replacing or modifying the hydraulic damper assembly. The replacement entails replacing the current assembly with an improved assembly. The modification involves removing shims located between the cap and damper assembly housing, increasing the torque on damper housing assembly bolts, and incorporating changes to increase the volume of fluid passing between the two damper chambers. These actions will enhance the performance of the shimmy damper and reduce the potential for torsional vibration in the MLG.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require either replacing or modifying the hydraulic damper assembly. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Other Relevant Rulemaking

The FAA previously issued AD 96–01–09, amendment 39–9485 (61 FR 2407, January 26, 1996), which addresses a similar problem found on McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes.

Cost Impact

There are approximately 878 Model DC–9 series airplanes and C–9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 590 airplanes of U.S. registry would be affected by this proposed AD.

To accomplish the proposed replacement would take approximately 5.9 work hours per airplane, at an average labor rate of $60 per work hour. Required parts would cost approximately $11,139 per airplane (two assemblies at $5,569 each). Based on these figures, the cost impact of the proposed replacement action on U.S. operators is estimated to be $11,492 per airplane.

To accomplish the proposed modification would take approximately 10.9 work hours per airplane, at an average labor rate of $60 per work hour. Required parts would cost approximately $2,907 per airplane. Based on these figures, the cost impact of the proposed modification action on U.S. operators is estimated to be $3,561 per airplane.

Based on the figures discussed above, the cost impact of this proposed AD on the U.S. fleet would be between $2,400,990 and $6,780,280. These cost impact figures are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 96–NM–91–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes; as listed in McDonnell Douglas Service Bulletin DC9–32–289, dated March 7, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent high torsional vibration from occurring, which can damage the main landing gear (MLG) assembly and lead to its collapse, accomplish the following:

(a) Within 24 months after the effective date of this AD, either replace or modify the MLG hydraulic damper assembly, in accordance with the procedures specified as either Option 1 or Option 2, respectively, in McDonnell Douglas Service Bulletin DC9–32–289, dated March 7, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 3, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–17537 Filed 7–9–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–271–AD]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 series airplanes. This proposal would require a high frequency eddy current inspection to detect cracks of the boundary angle and joint angle of the rear pressure bulkhead, and repair, if necessary. This proposal also would require modification of the rear pressure bulkhead of the fuselage. This proposal is prompted by a report of fatigue cracking in the rear pressure bulkhead of the fuselage. The actions specified by the proposed AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the fuselage and, consequently, lead to the rapid decompression of the pressurized area of the airplane.

DATES: Comments must be received by August 19, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–271–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–271–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–271–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model 4101 airplanes. The CAA advises that, during fatigue tests on a Model 4101 test article, cracking was found in the rear pressure bulkhead of the fuselage. Such cracking is attributed to fatigue-related stress. Fatigue-related cracking in the rear pressure bulkhead, if not detected and correct in a timely manner, could result in reduced structural integrity of fuselage and, consequently, lead to the rapid decompression of the pressurized area of the airplane.

Explanation of Relevant Service Information

Jetstream has issued Service Bulletin J41–53–020–41382A, dated September 28, 1995, as revised by Erratum No. 1, dated October 11, 1995, which describes procedures for a high frequency eddy current inspection to detect cracks of the boundary angle and joint angle of the rear pressure bulkhead. The service bulletin also describes procedures for modification of the rear pressure bulkhead of the fuselage. The modification involves installing shear cleats, angles, brackets, and stiffeners; and removing and replacing the brackets with new brackets. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusion

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require a high frequency eddy current inspection to detect cracks of the boundary angle and joint angle of the rear pressure bulkhead, and repair, if necessary. The proposed AD also would require modification of the rear pressure bulkhead of the fuselage. The actions would be required to be accomplished in accordance with the service bulletin described previously. If any boundary angle or joint angle is cracked, the repair would be required to be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 26 Model 4101 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 40 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $62,400, or $2,400 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Jetstream Aircraft Limited: Docket 95–NM–271–AD.

Applicability: Model 4101 airplanes, constructors numbers 41004 through 41060 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue-related cracking in the rear pressure bulkhead, which could result in reduced structural integrity of the fuselage and, consequently, lead to the rapid decompression of the pressurized area of the airplane; accomplish the following:

(a) Prior to the accumulation of 10,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, accomplish paragraphs (a)(1) and (a)(2) of this AD, in accordance Jetstream Service Bulletin J41–53–020–41382A, dated September 28, 1995, as revised by Erratum No. 1, dated October 11, 1995.

(1) Perform a high frequency eddy current inspection to detect cracks of the boundary angle and joint angle of the rear pressure bulkhead, in accordance with the service bulletin. If any crack is detected, prior to further flight, repair it in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) Modify the rear pressure bulkhead of the fuselage (Jetstream Modification 41382A), in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 3, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–17536 Filed 7–9–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–ANE–06]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. TFE731 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to AlliedSignal Inc. TFE731 series turbofan engines. This proposal would require removal from service of certain low pressure turbine (LPT) seal plates prior to accumulating the new, reduced cyclic life limit, and replacement with serviceable LPT seal plates. This proposal is prompted by a report that the machined LPT seal plate geometry did not meet the design intent due to drawing ambiguity. The actions specified by the proposed AD are intended to prevent fatigue cracking and subsequent uncontained failure of an LPT seal plate.

DATES: Comments must be received by September 9, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–08, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address: "epd-adcomments@mail.hq.faa.gov". Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (310) 627–5246; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–ANE–08." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–08, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received a report that on certain AlliedSignal Inc. TFE731–2A, –3C and –3CR series turbofan engines the machined low pressure turbine (LPT) seal plate geometry did not meet the design intent due to drawing ambiguity. This drawing ambiguity affected all seal plates, Part Number (P/N) 3073552–2 and P/N 3074053–1. Stress analysis of these seal plates indicated that a reduction in the FAA-approved low cycle fatigue (LCF) life limit was necessary. This condition, if not corrected, could result in fatigue cracking and subsequent uncontained failure of an LPT seal plate.

The FAA has reviewed and approved the technical contents of AlliedSignal Inc. Service Bulletin (SB) No. TFE731–72–3573, dated August 15, 1995, that describes procedures for removal from service of certain part numbered LPT seal plates and replacement with serviceable parts.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require removal from service LPT seal plates, Part Number (P/N) 3073552–2 and P/N 3074053–1, prior to accumulating the new, reduced cyclic life limit of 3,700 cycles since new (CSN), and replacement with serviceable parts. The actions would be required to be accomplished in accordance with the SB described previously.

The FAA estimates that 268 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour during scheduled maintenance to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $5,000 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,356,080.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AlliedSignal Inc.: Docket No. 96–ANE–08.

Applicability: AlliedSignal Inc. Models TFE731–2A, –3C and –3CR series turbofan engines, with low pressure turbine (LPT) seal plates, Part Number (P/N) 3073552–2 and P/N 3074053–1, installed. These aircraft are installed on but not limited to Cessna Model 650 Citation III and Israel Aircraft Industries Model 1125 Westwind Astra aircraft.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking and subsequent uncontained failure of an LPT seal plate, accomplish the following:

(a) Prior to accumulating 3,700 cycles since new (CSN) on LPT seal plates, P/N 3073552–2 and 3074053–1, remove from service these LPT seal plates, and replace with serviceable parts, in accordance with the Accomplishment Instructions of AlliedSignal Inc. Service Bulletin (SB) No. TFE731–72–3573, dated August 15, 1995.

(b) This action establishes a new, reduced cyclic life limit of 3,700 CSN for LPT seal plates, P/N 3073552–2 and P/N 3074053–1.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on June 11, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–17534 Filed 7–9–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 96–ASO–13]

Proposed Amendment to Class E Airspace; Bowling Green, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E2 airspace area at Bowling Green, KY. An automated weather observing system has been installed at the Bowling Green-Warren County Regional Airport. This system transmits the required weather observations continuously to the Memphis Air Route Traffic Control

Center, which is the controlling facility for the airport. Therefore, the Class E2 surface area is amended from part time to continuous.

DATES: Comments must be received on or before August 24, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 96–ASO–13, Manager, Operations Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–ASO–13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Operations Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E2 airspace area at Bowling Green, KY. An automated weather observing system has been installed at the Bowling Green-Warren County Regional Airport. This system transmits the required weather observations continuously to the Memphis Air Route Traffic Control Center, which is the controlling facility for the airport. Therefore, the Class E2 surface area is amended from part time to continuous. Class E airspace areas designated as a surface area for an airport are published in Paragraph 6002 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[Amended]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport Docket No. 96–ASO–13

* * * * *

ASO KY E2 Bowling Green, KY [Revised]

Bowling Green-Warren County Regional Airport, KY
(lat. 36°57′52″ N, long. 81°12′08″ W)
Bowling Green VORTAC
(lat. 36°55′43″ N, long. 86°26′36″ W)

Within a 4.2-mile radius of Bowling Green-Warren County Regional Airport and within 3.5 miles each side of Bowling Green VORTAC 206° radial, extending from the 4.2-mile radius to 7 miles southwest of the VORTAC.

* * * * *

Issued in College Park, Georgia, on June 26, 1996.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 96–17599 Filed 7–9–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASO–16]

Proposed Establishment of Class E Airspace; Currituck, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Currituck, NC. A GPS RWY 22 Standard Instrument Approach Procedure (SIAP) has been developed for Currituck County Airport. Controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at Currituck County Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP.

DATES: Comments must be received on or before August 26, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 96–ASO–16, Manager, Operations Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–ASO–16." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Operations Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Currituck, NC. A GPS RWY 22 SIAP has been developed for Currituck County Airport. Controlled airspace extending upward from 700 feet AGL is needed to accommodate this SIAP and for IFR operations at Currituck County Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposed to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth

* * * * *

ASO GA E5 Currituck, NC [New]

Currituck County Airport, NC
(lat. 36°23′56″N, long. 76°00′59″W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Currituck County Airport.

* * * * *

Issued in College Park, Georgia, on June 28, 1996.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 96–17598 Filed 7–9–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASO–14]

Proposed Amendment to Class E Airspace; London, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E2 airspace area at London, KY. An automated weather observing system is being installed at the London-Corbin Airport-Magee Field. This system will transmit the required weather observations continuously to the Indianapolis Air Route Traffic Control Center, which is the controlling facility for the airport. Therefore, the Class E2 surface area will be amended from part time to continuous.

DATES: Comments must be received on or before August 24, 1996.

ADDRESSES: Send comments on the proposal in triplicate: Federal Aviation

Administration, Docket No. 96–ASO–14, Manager, Operations Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–ASO–14." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Operations Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Administration (14 CFR Part 71) to amend the Class E2 airspace area at London, KY. An automated weather observing system is being installed at the London-Corbin Airport-Magee Field. This system will transmit the required weather observations continuously to the Indianapolis Air Route Traffic Control Center, which is the controlling facility for the airport. Therefore, the Class E2 surface area will be amended from part time to continuous. Class E airspace areas designated as a surface area for an airport are published in Paragraph 6002 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

ASO KY E2 London, KY [Revised]

London-Corbin Airport-Magee Field, KY
(lat. 37°05'14" N, long. 84°04'37" W)

Within a 6-mile radius of London-Corbin airport-Magee Field.

* * * * *

Issued in College Park, Georgia, on June 26, 1996.

Benny L. McGlamery,
Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 96–17596 Filed 7–9–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASO–11]

Proposed Amendment to Class E Airspace; Smithfield, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Smithfield, NC. An amendment to the LOC/DME RWY 3 Standard Instrument Approach Procedure (SIAP) has been developed for the Smithfield/Johnston County Airport. An airspace review revealed that less controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP amendment, the current NDB or GPS RWY 22 SIAP and for IFR operations at the airport.

DATES: Comments must be received on or before August 12, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 96–ASO–11, Manager, Operations Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5588.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia Division, Federal Aviation Administration, P.O. Box 20636, Atlanta Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–ASO–11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Operations Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace area at Smithfield, NC. This proposal also makes a technical correction to the airport name, changing it from the Johnston County Airport to the Smithfield/Johnston County Airport. An airspace review revealed that less controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate a proposed amendment to the LOC/DME RWY 3 SIAP, the current NDB or GPS RWY 22 SIAP and for IFR operations at the Smithfield/Johnston County Airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO NC E5 Smithfield, NC [Revised]

Smithfield/Johnston Airport, NC
(lat. 35°32'27" N., long. 78°23'25" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Smithfield/Johnston County Airport.

* * * * *

Issued in College Park, Georgia, on June 21, 1996.

Benny L. McGlamery,
Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 96–17595 Filed 7–9–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AGL–8]

Proposed Establishment of Class E Airspace; Grafton, ND, Grafton Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Grafton, North Dakota. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 35 has been developed for the Grafton Municipal Airport. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before August 10, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 96–AGL–8, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation

Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.
Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AGL–8." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Grafton, ND; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 35 SIAP at Grafton Municipal Airport. Controlled airspace extending upward from 700 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Grafton, ND [New]

Grafton Municipal Airport, ND
(lat. 48°24'17" N, long. 97°22'15" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Grafton Municipal Airport.

* * * * * *

Issued in Des Plaines, Illinois on June 20, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96–17590 Filed 7–9–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ANM–017]

Proposed Amendment of Class E Airspace; Torrington, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposed rule would amend the Torrington, Wyoming, Class E airspace to provide additional controlled airspace to accommodate a Nondirectional Beacon (NDB) standard instrument approach procedure (SIAP) at the Torrington Municipal Airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before August 30, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, ANM–530, Federal Aviation Administration, Docket No. 96–ANM–017, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James C. Frala, ANM–532.4, Federal Aviation Administration, Docket No. 96–ANM–017, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal.
Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–ANM–017." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations Branch, ANM–530, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Torrington, Wyoming, to provide additional controlled airspace for a NDB SIAP at the Torrington Municipal Airport. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * * *

ANM WY E5 Torrington, WY
Torrington Municipal Airport, WY
(lat. 42°03'52"N, long. 104°09'10"W)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of the Torrington Municipal Airport.

* * * * * *

Issued in Seattle, Washington, on June 25, 1996.

Richard E. Prang,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–17589 Filed 7–9–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ANM–3]

Proposed Establishment of Temporary Restricted Area R–3203D, Orchard, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on April 22, 1996. The NPRM proposed to establish a temporary restricted area at Orchard, ID, to support the Idaho National Guard's increased training requirements. The FAA has determined that withdrawal of the proposal is warranted because insufficient time exists to complete the required rulemaking action for the additional restricted airspace prior to the exercise start date.

DATES: The proposed rule is withdrawn July 10, 1996.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3075.

SUPPLEMENTARY INFORMATION: On April 22, 1996, an NPRM was published in the **Federal Register** to amend Title 14 of the Code of Federal Regulations part 73 (14 CFR part 73) to establish a temporary restricted area at Orchard, ID, to support the Idaho National Guard's increased training requirements (61 FR 17608). No comments were received on the proposal.

The FAA has decided to withdraw the proposal at this time because insufficient time exists to complete the required rulemaking action for the additional restricted airspace prior to the exercise start date.

List of Subjects in 14 CFR Part 73

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

In consideration of the foregoing, the Notice of Proposed Rulemaking, Airspace Docket No. 96–ANM–3, as published in the **Federal Register** on April 22, 1996 (61 FR 17608), is hereby withdrawn.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

Issued in Washington, DC, on June 25, 1996.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 96–17164 Filed 7–9–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket No. 960606162–6162]

RIN 0607–AA21

Collection of Canadian Province of Origin Information on Customs Entry Records

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Bureau of the Census (Census) intends to direct the U.S. Customs Service (Customs) to begin collecting information on Canadian Province of Origin for imports from Canada. This information would be required for all U.S. imports that originate in Canada, except for imports of softwood lumber products that already require information on Canadian Province of Manufacture. This action is taken to fulfill the requirements of the 1987 agreement between the United States and Canada under which the countries agreed to replace their requirements for reporting export data by substituting exchanged import information.

DATES: Written comments must be submitted on or before September 9, 1996.

ADDRESSES: Direct all written comments on this proposed rulemaking to the Director, Bureau of the Census, Room 2049, Federal Building 3, Washington, D.C. 20233. Direct all written comments on the paperwork burden of the collection of information contained in this proposed rule to the Office of Information and Regulatory Affairs of OMB, Washington, D.C. 20503 Attention: Desk Officer for Customs.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to C. Harvey Monk, Jr., Bureau of the Census, Washington, D.C. 20233, by telephone on (301) 457–2255 or by fax on (301) 457–2645. For information on the specific Customs reporting requirements contact: J. Edgar Nichols, U.S. Customs Service, Room 6216, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, by telephone on(202) 927–1426 or by fax on (202) 927–0165.

SUPPLEMENTARY INFORMATION:

Background

Effective in January 1990, the United States and Canada each replaced their requirements for reporting export data by agreeing to substitute exchanged import information. This substitution of exchanged import information allowed the countries to eliminate the requirements that exporters in both countries provide separate export information on the millions of shipments crossing the U.S./Canada border each year. A Memorandum of Understanding (MOU) implementing the exchange was signed by the United States and Canada on July 29, 1987.

Under the terms of the MOU, the United States and Canada agreed to collect several new data elements on their respective import records. These elements while improving both countries' statistical data and allowing elimination of export reporting are also essential to the administration of the North American Free Trade Agreement. One of the data elements that the United States agreed to collect is the Canadian Province of Origin where the specific goods exported to the United States were produced. Census has attempted in the past to derive this information from related information now reported on Customs entry records as part of the required Identification of the Foreign Manufacturer. The quality of this derived information, however, has proven unsatisfactory. In many cases the Province currently reported does not identify the location where the goods were manufactured/assembled, mined, grown, or otherwise produced. Instead, it represents a corporate headquarters or the location of the Canadian vendor.

Proposed Requirement

In order to comply with the MOU, Census asks Customs to require the two-letter designation of the Canadian Province of Origin to be reported on U.S. entry summary records in lieu of the Country of Origin. The Province of Origin is defined as the province where the exported goods were originally manufactured/assembled, grown, mined, or otherwise produced. For goods manufactured/assembled in Canada, with the exception of softwood lumber, the Province of Origin would be that in which the final manufacture/assembly is performed prior to exporting that product to the United States. In cases where the Province in which the merchandise was manufactured/assembled, grown, mined, or produced is unknown, the Province in which the Canadian vendor is located may be reported.

For all shipments of softwood lumber products classified under U.S. Harmonized System tariff items 4407.1000, 4409.1010, 4409.1090, or 4409.1020, the Census Bureau began, effective April 5, 1996, to require information on Canadian Province of Manufacture. This requirement was made to allow the United States to carry out the requirements of an agreement concluded with Canada on the amount of softwood lumber exported to the United States annually. Since Canadian Province of Manufacture is already required for these softwood lumber products, the requirements proposed in this notice do not apply.

The reporting of the Province of Origin will apply to the paper as well as Automated Broker Interface (ABI) entry summaries. For those reporting on paper forms, the Province of Origin code is to replace the Country of Origin on the Customs Form (CF) 7501 Summary Entry form. This requirement would apply only for imports with Country of Origin from Canada.

All electronic ABI Entry Summaries for imports originating in Canada would also require the new Canadian Province of Origin code to be reported in lieu of the Country of Origin. Currently the Country of Origin is transmitted for each entry summary line item in the A40 record positions 6–7.

Proposed Collection

For imports from Canada only, the Province of Origin Code replaces Country of Origin on the CF 7501, Summary Entry form and in positions 6–7 of the ABI A40 electronic record.

Valid Canadian Province/Territory Codes are:

XA—Alberta
XB—New Brunswick
XC—British Columbia
XM—Manitoba
XN—Nova Scotia
XO—Ontario
XP—Prince Edward Island
XQ—Quebec
XS—Saskatchewan
XT—Northwest Territories
XW—Newfoundland
XY—Yukon Territory

The authority to collect this information is provided under Title 13, United States Code, Section 301 (13 U.S.C. 301). This legislation authorizes the Secretary of Commerce to collect from persons importing into or exporting from the United States necessary or appropriate information to foster, promote, develop, and further the commerce, domestic and foreign, of the United States.

Paperwork Reduction Act

The collection of information on Canadian Province of Origin supplements information currently required on the Customs paper form CF 7501 and the ABI automated electronic reporting form A40 for specific softwood lumber imports from Canada. The new collection contained in this Notice of Proposed Rulemaking has been submitted to the OMB by Customs for review under Section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). For copies of the OMB submission, contact J. Edgar Nichols, U.S. Customs Service, Room 6216, 1301 Constitution Avenue, N.W., Washington, D.C. 20229–0001, by telephone on (202) 927–1426 or by fax (202) 927–0165.

Title: Customs Form 7501 Summary Entry Form and the Electronic ABI Entry Summaries A40 Record.

OMB Number: 1515–0065.

Form Numbers: CF 7501 and CF 7501A and the automated counterpart, the A40 record.

Type of Review: Regular Submission.

Affected Public: Approximately 150 Northern Border entry filers with imports from Canada.

Estimated Time Per Response: We anticipate no increase in the current 22-minute estimate to prepare the CF 7501 and 7501A Entry Summary forms or the electronic counterpart, the Automated Commercial System (ACS) A40 record. Province of Origin is currently available to importers and the Province of Origin codes will replace the Country of Origin code currently being collected.

Estimated Total Annual Burden Hour Increase: None.

Estimated Record Keeping Time Increase: None.

Estimated Total Annual Cost Increase: None.

Comments are solicited on Customs' need for this information, the accuracy of the provided burden estimate, ways to enhance the quality of the information to be collected and any suggested methods for minimizing respondents' burden. Persons wishing to comment on this collection of information should direct their comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Customs. Comments must be filed with OMB within 60 days after this notice is published in the **Federal Register**.

Rulemaking Requirements

This rule is exempt from all requirements of section 553 of the Administrative Procedure Act because it deals with a foreign affairs function (5 U.S.C. 553 (a)(1)). However, this rule is being published as a proposed rule with an opportunity for public comment because of the importance of the issues raised by this rulemaking.

Because a notice of proposed rulemaking is not required by 5 U.S.C. 553 or any other law, a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603 (a)).

This rule is exempt from the requirements of Executive Order 12866.

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 30

Economic statistics, Foreign trade, Imports, Reporting and record keeping requirements.

For the reasons set out in the preamble, it is proposed that Part 30 be amended as follows:

PART 30—FOREIGN TRADE STATISTICS REGULATIONS

1. The authority citation for 15 CFR Part 30 continues to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization Plan No. 5 of 1950 (3 CFR 1949–1953 Camp., 1004); Department of Commerce Organization Order No. 35–2A. August 4, 1975, 40 CFR 42765

Subpart F—Special Provisions for Particular Types of Import Transactions

2. Section 30.80 is revised to read as follows:

§ 30.80 Imports from Canada.

(a) When certain softwood lumber products described under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 4407.1000, 4409.1010, 4409.1090, and 4409.1020 are imported from Canada, import entry records are required to show a valid Canadian Province of Manufacture Code. The Canadian Province of Manufacture is determined on a first mill basis (the point at which the item was first manufactured into a covered lumber product). For purposes of determination, Province of Manufacture is the first province where the subject merchandise underwent a change in tariff classification to the tariff classes cited above. The Province of Manufacture Code should replace the Country of Origin on the CF 7501 Summary Entry form. For ACS entry summaries, the Canadian Province Code should be transmitted in lieu of the Country of Origin in positions 6–7 of the A40 records. These requirements would apply only for imports of softwood products with Country of Origin Canada.

(b) All other imports from Canada, including softwood lumber products not covered in paragraph (a) of this section, will require the two-letter designation of the Canadian Province of Origin to be reported on U.S. entry summary records. The Province of Origin is defined as the Province where the exported goods were originally manufactured/assembled, grown, mined, or otherwise produced. For goods manufactured/assembled in Canada with the exception of the softwood lumber described in paragraph (a) of this section, the Province of Origin is that in which the final manufacture/assembly is performed prior to exporting that product to the United States. In cases where the province in which the merchandise was manufactured/assembled, grown, mined, or produced is unknown, the province in which the Canadian vendor is located can be reported. For those reporting on paper forms the Province of Origin code is proposed to replace the country of origin on the CF 7501 Summary Entry form.

(c) All electronic ABI Entry Summaries for imports originating in Canada would also require the new Canadian Province of Origin code to be reported in lieu of the Country of Origin. Currently, the Country of Origin is transmitted for each entry summary line item in the A 40 record positions 6–7.

(d) The Province of Origin code replaces Country of Origin only for imports from Canada.

Valid Canadian Province/Territory Codes are:

XA—Alberta
XB—New Brunswick
XC—British Columbia
XM—Manitoba
XN—Nova Scotia
XO—Ontario
XP—Prince Edward Island
XQ—Quebec
XS—Saskatchewan
XT—Northwest Territories
XW—Newfoundland
XY—Yukon Territory

Dated: July 3, 1996.

Bryant Benton,

Deputy Director, Bureau of the Census

[FR Doc. 96–17485 Filed 7–9–96; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[IA–03–94]

Federal Tax Deposits by Electronic Funds Transfer; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed Income Tax Regulations relating to the deposit of Federal taxes by electronic funds.

DATES: The public hearing originally scheduled for Tuesday, July 16, 1996, beginning at 10:00 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 6302 of the Internal Revenue Code. A notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing appearing in the **Federal Register** on Thursday, March 21, 1996 (61 FR 11595), announced that the public hearing on proposed regulations under section 6302 of the Internal Revenue Code would be held on Tuesday, July 16, 1996, beginning at 10:00 a.m., in the Commissioner's Conference Room, Room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW. Washington, D.C.

The public hearing scheduled for Tuesday, July 16, 1996, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–17520 Filed 7–9–96; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 04–9–4028; FRL–5535–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Disapproval of 15 Percent Reasonable-Further-Progress Plan for the Philadelphia Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to disapprove the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania (for the Philadelphia ozone nonattainment area) to meet the 15 percent reasonable further progress (RFP, or 15% plan), also known as rate-of-progress (ROP) requirements of the Clean Air Act. EPA is proposing disapproval because the 15 percent plan submitted by Pennsylvania for the Philadelphia area assumes credit towards ROP for numerous control strategies which are either not fully adopted, are not creditable towards ROP under the Clean Air Act, or have not been adequately quantified. EPA cannot approve these reductions towards the 15% plan, thus causing a "shortfall" towards Pennsylvania's RFP demonstration. Therefore, the Commonwealth has not demonstrated sufficient reductions of volatile organic compounds (VOC) to meet the RFP requirements of the Clean Air Act. Finally, the 1990 emissions inventory estimates used in the 15% plan as the baseline for reasonable further progress differs substantially from Pennsylvania's separate 1990 base year emission inventory SIP submittal. Without justification of these differences, EPA cannot approve the revised inventory estimates.

DATES: Comments on this proposed action must be postmarked by September 9, 1996..

ADDRESSES: Written comments may be mailed to Kathleen Henry, Acting Chief, Ozone/Carbon Monoxide, and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Persons interested in examining these documents should schedule an appointment with the contact person (listed below) at least 24 hours before the visiting day. Copies of the documents relevant to this action are also available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian K. Rehn, Ozone/Carbon Monoxide and Mobile Sources Section (3AT21), USEPA—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at: (215)566–2176. Questions may also be addressed via e-mail, at the following address: Rehn.Brian@epamail.epa.gov [Please note that only written comments can be accepted for inclusion in the docket.]

SUPPLEMENTARY INFORMATION:

Background

Section 182(b)(1) of the Clean Air Act (the Act), as amended in 1990, requires ozone nonattainment areas classified as moderate or above to develop plans to reduce VOC emissions by fifteen percent from the 1990 baseline inventory for the area. These "15% plans" were due to be submitted to EPA by November 15, 1993, with the reductions to occur within 6 years of enactment (i.e. November 15, 1996). Furthermore, the Clean Air Act sets limitations on the creditability of certain control measures towards reasonable further progress. Specifically, States cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (e.g. new car emissions standards) promulgated prior to 1990; or for reductions stemming from regulations promulgated prior to 1990 to lower the volatility (i.e., Reid Vapor Pressure) of gasoline. Furthermore, the Act does not allow credit towards RFP for post-1990 corrections to existing motor vehicle inspection and maintenance (I/M) programs or corrections to reasonably available control technology (RACT) rules, since these programs were required to be in-place prior to 1990. Additionally, section 172(c)(9) of the Clean Air Act requires "contingency measures" to be included in the plan revision. These measures are required to be implemented immediately if reasonable further progress is not achieved, or if the NAAQS standard is not attained under the deadlines set forth in the Clean Air Act.

In Pennsylvania, three nonattainment areas are subject to the Clean Air Act 15 Percent rate-of-progress requirements. These are the Philadelphia severe nonattainment area, the Pittsburgh moderate nonattainment area, and the Reading moderate nonattainment area. On July, 19, 1995, EPA published, in the **Federal Register**, a final rule waiving the 15% rate-of-progress requirements for the Pittsburgh and Reading moderate ozone nonattainment areas. The basis for that action was a May 10, 1995, EPA policy memo allowing such "waivers" for areas having ambient monitoring data which demonstrated compliance with the ozone standard. On June 4, 1996, EPA revoked the waiver for the Pittsburgh area, and reinstated the 15% plan requirement. Pennsylvania submitted separate SIP revisions for Philadelphia and Pittsburgh. The 15% plan for the Philadelphia area (Philadelphia 15% plan) was submitted by Pennsylvania on November 15, 1994, and was re-submitted on January 18, 1995. The Philadelphia metropolitan area includes counties in New Jersey, Delaware, and Maryland, as well as Pennsylvania, all of which must demonstrate reasonable further progress. However, Pennsylvania is only responsible for achieving RFP within the Pennsylvania portion of that metropolitan area. The Commonwealth did not enter an agreement with the other states which comprise the metro Philadelphia area to do a multi-state 15% plan, and submitted only a plan to reduce Pennsylvania's contribution by fifteen percent. EPA is taking action today only on Pennsylvania's 15% plan submittal, which addresses only the Pennsylvania portion of the Philadelphia metropolitan area. EPA will act separately on the Pittsburgh 15% plan, at a later date.

EPA has reviewed the January 18, 1995 Philadelphia area 15% plan submittal and has identified several significant deficiencies, which prohibit approval of this SIP, per section 110 of the Clean Air Act. A detailed discussion of these deficiencies is included below, in the "Analysis" portion of this rulemaking action, and also in the technical support document (TSD) for this action. Due to these deficiencies, the 15 percent plan, and the associated contingency measure plan, will not achieve the total reductions required by the rate-of-progress requirements of the Act. Therefore, EPA is proposing disapproval of the plan. This action in no way implies disapproval, or any other action, with respect to the individual control measures utilized in the 15% plan or the contingency plan.

Today's action addresses only the approvability of measures towards the reasonable further progress requirement of the Act, and does not address whether the control measures or inventories included in the 15% plan comply with any specific underlying requirements of the Act. For further information regarding EPA's analysis of the Commonwealth's submittal, please refer to the TSD for this action (found in the official docket). A summary of the EPA's findings follows.

Analysis of the SIP Revision

Base Year Emission Inventory

The baseline from which states must determine the required reductions for 15 percent planning is the 1990 base year emission inventory. The inventory is broken down into several emissions source categories: stationary, area, on-road mobile sources, and off-road mobile sources. Pennsylvania submitted a formal SIP revision containing their official 1990 base year emission inventory on November 12, 1992. EPA has not yet taken rulemaking action on that inventory submittal. There are significant differences between the source categories in the officially submitted 1990 base year inventory and those contained in the 1990 base year inventory in the Philadelphia 15% plan, although total VOC emissions do not substantially vary. The Commonwealth did not acknowledge the inconsistencies in the 15% plan inventory, nor did the Commonwealth attempt to substantiate these differences. Furthermore, the base year inventory in the 15% plan lacks sufficient detail for EPA to accept it as a replacement for the official 1990 base year inventory SIP revision. Nor has Pennsylvania requested EPA to do so. Refer to the TSD for a specific comparison of the inventories. EPA intends to conduct separate rulemaking action on Pennsylvania's 1990 inventory submittal, at a later date.

Growth in Emissions Between 1990 and 1996

EPA has interpreted the Clean Air Act to require that reasonable further progress towards attainment of the ozone standard must be obtained after offsetting any growth expected to occur over that period. Therefore, to meet the 15% RFP requirement, a state must enact measures achieving sufficient emissions reductions to offset projected growth in emissions, in addition to a 15 percent reduction of VOC emissions. Thus, an estimate of emissions growth from 1990 to 1996 is necessary for demonstrating reasonable further progress. Growth is calculated by multiplying the 1990 base year inventory by acceptable forecasting indicators. Growth must be determined separately for each source, or by source category, since sources typically grow at different rates. EPA's inventory preparation guidance recommends the following indicators, in order of preference: product output, value added, earnings, and employment. Population can also serve as a surrogate indicator.

Pennsylvania's 15% plan contains growth projections for point, area, on-road motor vehicle, and non-road vehicle source categories. For a detailed description of the growth methodologies used by the Commonwealth, please refer to the TSD for this action. In general, EPA approves the Commonwealth's 1990–1996 emissions growth projections, with one exception.

EPA disagrees with the growth projections for the on-road vehicle category. The Commonwealth's 15% plan indicates that highway vehicle emissions growth is based on growth in total vehicle miles of travel (VMT) for the region, which the Commonwealth expects to increase by 7.7 million miles per day, and that on-road emissions are projected to decrease by 11.9 tons/day. Since emissions from on-highway emissions control measures are calculated separately in the plan (including reductions associated with fleet turnover and the pre-1990 motor vehicle standards) and Pennsylvania indicates that this growth is based solely upon increasing VMT growth, it is unclear how motor vehicle emissions are declining. Therefore, EPA cannot approve the Commonwealth's on-road motor vehicle growth projection. Growth in highway emissions should be determined independently of mobile source control strategies. Additionally, the 15% plan should indicate what, if any, other factors effect highway emissions growth, other than the previously identified VMT influence.

Calculation of Target Level Emissions

Pennsylvania calculated a "target level" of 1996 VOC emissions, per EPA guidance. First, the Commonwealth calculated the non-creditable reductions from the FMVCP program and subtracted those emissions from the 15 percent plans's 1990 inventory estimate. This yields the 1990 "adjusted inventory". The emission reduction required to meet the 15 percent rate-of-progress requirement equals the sum of 15 percent of the adjusted inventory and

any reductions necessary to offset emissions growth projected to occur between 1990 and 1996, plus reductions that resulted from corrections to the I/M or VOC RACT rules that were required to be in-place before 1990. Table 1 summarizes the calculations for the five-county Philadelphia area's [1] VOC target level.

Table 1.—Calculation of Required Reductions for the Philadelphia Nonattainment Area's 15% Plan

[Tons/day]

1990 Base Year Emission Inventory [15% plan version]	629.27
Adjustments for FMVCP/RVP programs in-place (prior to 1990)	−32.95
1990 Adjusted Inventory	596.32
15% of the 1990 Adjusted Inventory	89.45
Reductions from Previously Required RACT Rule Corrections	0.84
Projected 1990–1996 Emissions Growth	8.12
1996 Target Level	506.03
1996 [2] Projection Inventory	637.39
Required Reduction	131.36

[2] 1996 forecast emissions (projected from 1990), reflecting only emissions growth and in-place (or, pre-1990) controls.

Control Strategies in the 15% Plan

The specific measures adopted (either through state or federal rules) for the Philadelphia area are addressed, in detail, in the Commonwealth's 15% plan. The following is a brief description of each control measure Pennsylvania has claimed credit for in the submitted 15% plan, as well as the results of EPA's review of the use of that strategy towards the Clean Air Act rate-of-progress requirement.

Creditable Emission Control Strategies

The control measures described below are creditable towards the rate-of-progress requirements of the Act. However, the Commonwealth has in many cases failed to fully document the claimed reductions, particularly in the case of mobile source measures, which Pennsylvania estimates using a Post-Processor for Air Quality (PPAQ) computer model. This model uses MOBILE modeling information as input, and determines total reductions for mobile source control strategies. The Commonwealth provided no documentation from this modeling, with the exception of sample MOBILE input and output files and modeling assumptions which are used as input to the PPAQ. Therefore, for nearly every mobile source control strategy utilized, the 15% plan lacks detailed documentation to support the claimed reductions. EPA is not disapproving these measures, or the creditability of such measures. However, EPA cannot fully approve the reductions from the measures without additional documentation to verify the emissions estimates. For further details regarding EPA's review of the Commonwealth's control measures, please refer to EPA's TSD for this action, located in the docket.

Stage II Vapor Recovery

This state-adopted regulation requires the installation and operation of vapor recovery equipment on gasoline dispensing pumps to reduce vehicle refueling emissions. The state regulation for this program is codified in 25 PA Code § 129.75. EPA approved the Commonwealth's Stage II program on June 13, 1994 (59 FR 112). EPA supports the Commonwealth's use of this measure towards the rate-of-progress requirement. However, EPA is unable to fully verify the 17.0 tons/day credit estimate claimed by the Commonwealth for this program, due to a lack of detail regarding the methodology used to quantify Stage II reductions for the 15% plan.

Automobile Refinishing

EPA is in the process of adopting a national rule to control VOC emissions from solvent evaporation through reformulation of coatings used in auto body refinishing processes. These coatings are typically used by small businesses, or by vehicle owners. VOC emissions emanate from the evaporation of solvents used in the coating process. Pennsylvania's 15% plan claims reductions from EPA's national rule.

Use of emissions reductions from EPA's expected national rule is acceptable towards the 15% plan target. Pennsylvania claims a 35% reduction, or 6.8 tons/day from their 1996 projected uncontrolled autobody refinishing emissions. Due to inventory documentation deficiencies in the 15% plan, EPA cannot verify the claimed reduction.

Reformulated Gasoline

Section 211(k) of the Clean Air Act requires that, beginning January 1, 1995, only reformulated gasoline be sold or dispensed in ozone nonattainment areas classified as severe, or worse. This gasoline is reformulated to reduce combustion by-products and to produce fewer evaporative emissions. As a severe area, Philadelphia benefits from the emission reductions from this program. However, EPA again cannot verify the reductions from this program, based on the documentation provided by the Commonwealth in the 15% plan.

Transportation, Storage, and Disposal Facilities (TSDFs) Rule

TSDFs are private facilities that manage dilute wastewater, organic/inorganic sludges, and organic/inorganic solids. Waste disposal can be done by various means including: incineration, treatment, or underground injection or landfilling. EPA promulgated a national rule on June 21, 1990 for the control of TSDF emissions. Pennsylvania claims an expected VOC reduction of 3.13 tons/day from this national rule. This measure is creditable towards the rate-of-progress requirements of the Act. However, due to conflicts between the 1990 base and 1996 projected uncontrolled emissions from this emissions category, EPA cannot verify this claimed reduction.

Rule Effectiveness (RE) Improvements

Rule effectiveness is a means of enhancing rule compliance or implementation by industrial sources, and is expressed as a percentage of total available reductions from a control measure. The default assumption level for rule effectiveness is 80%. Pennsylvania claims RE improvements from the 80% default level to a level of 90% in their 15% plan SIP revision for Philadelphia, based upon improvements to RACT regulations for twenty-nine facilities in the 5-county Philadelphia area. The applicable RACT rules pertain to surface coating operations (PA Code § 129.52) and offset printing operations (PA Code § 129.67).

Pennsylvania followed EPA policy to quantify emissions reductions from specific RE improvements for two categories, in the absence of quantifiable compliance or emissions data. The RE measures Pennsylvania claims toward the 15% plan include facility improvements, as well as improved state oversight. Facility measures include: Improved operator training, better operation and maintenance of process equipment, improved source monitoring/reporting. State oversight improvements include: More inspector training, stringent compliance inspections of all RE improvement facilities. If the final facility inspections identify a shortfall from the projected RE emission improvements, Pennsylvania will utilize the "surplus" projected emissions reductions (i.e., the RE improvement from 90%–94%) to alleviate the shortfall. The state also claimed this four percent RE improvement as a contingency measure in the plan. In the event that these contingency reductions are needed to satisfy the 15% reduction requirement, Pennsylvania must substitute another contingency measure in place of this RE measure. For EPA's detailed analysis of this measure, please refer to the appropriate section of the TSD for this action. RE improvements are creditable toward the 15% plan requirement of the Clean Air Act, and EPA supports Pennsylvania's emissions projections for this measure. Therefore, Pennsylvania's claimed RE improvements are approvable towards the 15% requirement of the Act.

Permanent VOC Source/Facility Shutdowns

Several industrial VOC sources that were operational in 1990 (i.e. included in the base year inventory) have since shut down either processes or entire facilities. Pennsylvania has adopted a banking rule (25 Pa Code § 127.208), which requires that sources wishing to bank emission reduction credits, or ERCs, must do so within one year of initiation of the shutdown. If not, the Commonwealth can claim credit for the reductions as permanent and enforceable emissions reductions.

Pennsylvania's 15% plan claims partial credit for shutdowns for which the source "banked" emissions reductions, and the Commonwealth claimed the entire shutdown credit for sources that did not bank their emissions within the one year deadline set forth in Pennsylvania's banking rule. The 15% plan reflects shutdowns from twenty-one VOC sources in the Philadelphia nonattainment area. These credits are ineligible for use as future ERCs, or to offset emissions from new sources under the Commonwealth's new source review regulation.

Reductions from this measure are both permanent and enforceable, since the shutdowns are reflected in RACT permit conditions for the facility. EPA is approving the use of these reductions.

Architectural and Industrial Maintenance Coatings (AIM)

Emission reductions have been projected for AIM coatings due to the expected promulgation by the EPA of a national rule. In a memo dated March 22, 1995, EPA allowed states to claim a 20% reduction of total AIM emissions from the national rule. Pennsylvania claimed a 15% reduction in AIM emissions under its 15% plan. However, due to deficiencies in the documentation of this portion of the underlying emissions inventory, EPA cannot verify the claimed reduction.

Tier I Federal Motor Vehicle Control Program

EPA promulgated a national rule establishing "new car" standards for 1994 and newer model year light-duty vehicles and light-duty trucks on June 5, 1991 (56 FR 25724). Since the standards were adopted after the Clean Air Act was amended in 1990, the resulting emission reductions are creditable toward the 15 percent reduction goal. The EPA agrees with the State's projected emission reductions. Due to the three-year phase-in period for this program, and the associated benefits stemming from fleet turnover, the reductions prior to 1996 are somewhat limited. Pennsylvania claimed a reduction of 4.5 tons/day from this post-1990 Federal Motor Vehicle Control Program. As with other on-highway mobile source control measures, the reductions from this program cannot be verified without further information.

Off-Road Use of Reformulated Gasoline

The use of reformulated gasoline will also result in reduced emissions from off-road engines such as outboard motors for boats and lawn mower engines. The EPA agrees with the 0.59 ton/day reduction projected in the 15% plan for off-road engines utilizing reformulated gasoline.

Non-creditable Emissions Control Measures

The following control measure is not creditable towards meeting the rate-of-progress requirements of the Clean Air Act. This measure, as it is described in the submitted 15% plan, is no longer in-place. Therefore, the emission reduction projected for this program is invalid.

Enhanced Vehicle Inspection and Maintenance (I/M) Program

The I/M program described in the Commonwealth's 15% plan is a contractor-operated, centralized, IM240 inspection program. This program was conditionally approved by EPA in August of 1994. However, since that time, Pennsylvania suspended operation of this program, terminated the test inspector contract, and began the rule adoption process for a decentralized program as a replacement for the centralized program. Pennsylvania submitted a new I/M program SIP to EPA, under authority provided by the National Highway Systems Designation Act of 1995, on March 22, 1996. However, Pennsylvania has not revised the 15% plan for Philadelphia to reflect differences in the I/M program description and projected emissions reductions.

Reasonable Further Progress Shortfall

Table 2 summarizes the proposed creditable and non-creditable reductions from Pennsylvania's 15% plan for the Philadelphia area. While the reductions listed as "creditable" in this table can be used to satisfy the Clean Air Act's reasonable further progress requirements, the measures in many cases are not approvable because of deficiencies related to quantification, lack of detailed emission inventory information, and documentation deficiencies (particularly related to mobile source control strategies).

Summary of Creditable and Non-creditable Emission Reductions for the Philadelphia Ozone Nonattainment Area

[Tons/day]

Required Reduction for the Philadelphia area	131.36
Creditable Reductions	
Stage II [1]	117.02
FMVCP (Tier I) [1]	4.51
Auto Refinishing [1]	6.79
Rule Effectiveness Improvements (80%–90%)	21.55
Reformulated Gasoline—Highway [1].	
Non-road vehicle use of RFG [1]	0.59
Industrial Facility Shutdowns	3.24
AIM Coatings Rules [1]	5.96
TSDF Controls [1]	3.13
Total	85.85
Reductions not Approvable: Inspection & Maintenance Program [1]	45.64
Total not approved	45.64
Shortfall (from target level)	45.51

[1] Pennsylvania's claimed reduction. This estimate cannot be verified based on the supporting documentation (e.g. supporting modeling, sample calculations, base year inventory references, etc.) Per specific deficiencies related to an individual category, refer to the applicable portion of section III of EPA's technical support document entitled "Evaluation of the Commonwealth's 15% Plan Control Measures", located in the official docket for this action.

Contingency Measures

Per section 172(c)(9) of the Act, for ozone nonattainment areas classified as moderate or above, states must include contingency measures in their 15% plan submittals. These are measures which are to be immediately implemented if reasonable further progress (RFP) is not achieved, or if the areas do not attain the NAAQS standard by the applicable date mandated by the Act. EPA's interpretation of this Clean Air Act requirement is set forth in The General Preamble to Title I (57 FR 13498), which requires that the contingency measures should, at a minimum, ensure that emissions reductions continue to be made if RFP (or attainment) is not

[1] The five-county Philadelphia area is comprised of the following counties: Bucks, Chester, Delaware, Montgomery, and Philadelphia.

achieved in a timely manner, and additional planning by the state is needed. EPA interprets the Act to require States with moderate and above ozone nonattainment areas to include sufficient contingency measures in the 15% plan SIP submittal, such that upon implementation of those measures, additional emissions reductions of up to three percent of the adjusted base year inventory (or a lesser percentage that will make up the identified shortfall) would be achieved in the year after the failure has been identified. States must show that their contingency measures can be implemented with minimal further action on their part, and with no additional rulemaking actions (e.g. public hearings, legislative review, etc.). EPA has further interpreted the Act to allow states to substitute NO_x control measures to achieve a portion of the required contingency measure reductions.

Analysis of Specific Contingency Measures

The following is a discussion of each of the contingency measures that have been included in the SIP submittals and an analysis of their approvability.

VOC Reasonably Available Control Technology (RACT)

The CAA requires states to adopt regulatory programs mandating RACT control strategies for major sources located in ozone nonattainment areas. Since Philadelphia is a severe ozone nonattainment area, the CAA threshold for major sources is 25 tons/year. Pennsylvania determined reductions from certain classes of major source complying with RACT (on a case-by-case basis) within the Philadelphia area, and claimed a 1.02 ton/day reduction from VOC RACT, for use as a contingency measure. However, EPA interprets the Act to prohibit the use of mandatory measures (i.e. those specified under the Clean Air Act for an applicable nonattainment area) as contingency measures, unless such a measure is in place to reduce another pollutant, and additionally provides VOC or NO_x reductions. Therefore, Pennsylvania's VOC RACT reduction is not creditable as a contingency measure, since VOC RACT is required to be implemented, prior to 1996, under section 182 of the Act.

Employee Commute Options Program

The Clean Air Act required severe nonattainment areas to adopt an employee trip reduction (ETR) program, providing a 25% reduction in average vehicle occupancy levels during the summer morning "rush hour" period. In a letter of February 27, 1995 from Pennsylvania Governor Tom Ridge, Pennsylvania announced the suspension of implementation and enforcement of the Commonwealth's adopted ETR program. However, the Commonwealth has not removed the ETR regulation from the Pennsylvania Code of Regulations, but has encouraged voluntary "trip reduction" efforts. Since then, Congress has removed the requirement for this program and EPA has issued guidance interpreting Congress's revised legislation. This guidance indicates that ETR need not be implemented if a state undertakes additional measures to make up the "emissions shortfall" caused by suspension of the program.

Pennsylvania's 15% plan SIP claims credit for early implementation of ETR as a contingency measure, based on the assumption that the program would be implemented in 1996 and would achieve the predicted emissions benefits at that time. The 15% plan claims "full" credit for the program, not accounting for its voluntary nature. EPA cannot approve the Commonwealth's ETR program, as claimed within the 15% plan. However, this measure would be approvable if the Commonwealth amended the 15% plan to provide for reimplementation of the ETR regulation to require a future mandatory ETR program.

NO_x Source/Process Shutdowns

Pennsylvania is claiming credit, as a contingency measure, for emissions reductions credits from four facilities that banked emissions reduction credits from permanent NO_x process shutdowns, under the state's banking rule. These shutdowns occurred after 1990, but before 1996. Pennsylvania's banking regulation is found at 25 Pa. Code § 127.210. The sources for which the Commonwealth claims contingency measure credit include: U.S. Steel—Fairless Hills, Martin Marietta Astro Space, Wyeth-Ayerst Labs, and Marck Co., Inc.

These reductions are permanent, since the shutdowns are to be reflected as RACT permit conditions in the facilities' revised permits. EPA interprets section 182(b)(1) of the Act to require that for the period from 1990 to 1996, only VOC reductions are creditable towards the 15% plan requirement. Furthermore, any contingency measure implemented early (i.e., before 1997) must also be a VOC measure, in order to be creditable as a contingency measure for failure to reach the 15% RFP milestone. Since the claimed shutdowns are NO_x reductions that occurred prior to 1996, the reductions are not approvable as a contingency measure to meet the reasonable further progress requirements of the Clean Air Act. Additionally, in order for a NO_x measure to be creditable as a contingency measure (i.e. reductions occur after 1996), the state must demonstrate that total NO_x reduction from all combined NO_x control strategies does not exceed 2.7% of the adjusted 1990 base year NO_x inventory. Pennsylvania did not submit a 1990 baseline NO_x inventory, nor attempt to make the above demonstration.

Improved Rule Effectiveness (90%–94% Level)

Pennsylvania credits rule effectiveness (RE) improvements from the 80% default level to a level of 90% toward the 15% plan SIP obligation. However, the Commonwealth maintains that the actual RE improvement is 94%, and is utilizing the improvements from the 90% to 94% level as a contingency measure. These RE improvements are obtained from VOC RACT regulations (for the Philadelphia area) pertaining to two categories—surface coating operations (PA Code § 129.52) and offset printing operations (PA Code § 129.67). Table 5.2 of the 15% plan lists those facilities from which the Commonwealth assumes increased RE credits. These are the same facilities listed for RE improvements towards the 15% rate-of-progress plan. If the Commonwealth identifies a shortfall in their rule effectiveness claim (the 80–90% level) in the 15% plan, then the Commonwealth will utilize the reductions from the 90–94% RE level to make up a shortfall in their 15% plan. In that event, another contingency measure must be adopted to make up any shortfall thereby created in the Commonwealth's contingency measure portion of the SIP. EPA approves Pennsylvania's use of this measure, and the credits claimed for its use as a contingency measure. The reductions occurring from this measure will be in place prior to 1996, the earliest time by which reductions for a contingency measure would be needed. However, EPA has issued policy allowing states to implement contingency measures early (without penalty), assuming that such a measure is not a mandatory Part D requirement under the Act.

Consumer and Commercial Products Reformulation

Section 183(e) of the Clean Air Act required EPA to conduct a study of VOC emissions from consumer and commercial products and to compile a regulatory priority list. EPA is then required to regulate those categories that account for 80% of the consumer product emissions in ozone nonattainment areas. Group I of EPA's regulatory schedule lists 24 categories of consumer products to be regulated by national rule, including personal, household, and automotive products. EPA intends to issue a final rule covering these products in the near future. EPA policy allows states to claim up to a 20% reduction of total consumer product emissions towards the reasonable further progress requirement. Pennsylvania determined reductions from implementation of this national rule, but claimed credit for the program as a contingency measure. However, EPA has interpreted the Clean Air Act to disallow the use of mandatory measures, i.e. those required by the Act to be implemented in an ozone nonattainment area, as contingency measures. Therefore, for the same reason that Pennsylvania cannot utilize VOC RACT as a contingency measure, the state cannot use the consumer products national rule as a contingency measure.

Table 3.—Summary of Contingency Measures and Associated Reductions (tons/day) for the Philadelphia Nonattainment Area

Required Contingency	17.68
Creditable Reductions:	
Traffic Line Paint Reformulation	1.56
Rule Effectiveness Improvement (90%—94%)	8.63
Total Creditable Reductions	10.19
Reductions not Creditable:	
VOC RACT reductions	1.02
Consumer/Commercial Products (National Rule)	6.68
NO_x Source/Facility Shutdowns (post-1990)	[1] 1.46
Employer Trip Reduction Program	0.93
Total non-creditable reductions	10.09
Shortfall	7.69

[1] NO_x reduction is listed as a VOC equivalent reduction, based on a NO_x/VOC conversion factor (see discussion of measure in the TSD).

Highway Marking Paints

This measure requires, through a memorandum of understanding with the Pennsylvania Department of Transportation (PennDOT), a conversion from solvent-based to low- or non-VOC paints when painting traffic lines on highway surfaces in the Philadelphia area. EPA considers highway paints as a subset of the AIM coating emissions category, for which Pennsylvania has already claimed emissions reduction in the 15% plan. However, Pennsylvania claims that highway markings are a separately inventoried category. PennDOT estimates for traffic line painting VOC emissions are based on the solvent formulation and usage estimates based on population, and assume a total annual reduction of 58%–73%, compared to solvent-based paints. Pennsylvania claims a VOC reduction in 1996 of 1.56 tons/day. The 15% plan SIP revision does not indicate whether Pennsylvania has executed a memorandum of understanding, the implementation mechanism for this program. This contingency measure involves product reformulations, which are presently commercially available, and utilizes a non-regulatory, yet binding, mechanism for the state to require this measure. EPA assumes that this measure could be enacted within 60 days of the Commonwealth's failure to achieve the RFP requirements of the Clean Air Act, and is therefore an approvable contingency measure.

III. Proposed Action

The EPA has evaluated this submittal for consistency with the Clean Air Act, applicable EPA regulations, and EPA policy. Pennsylvania's 15 percent plan for Philadelphia will not achieve sufficient reductions to meet the 15 percent rate-of-progress requirements of section 182(b)(1) of the Act. In addition, the contingency plans in these SIP submittals would not achieve sufficient emission reductions to meet the three percent reduction requirement, under 172(c)(9) of the Act. Additionally, there are measures included in the plan, which are creditable towards the Act requirement, but which are insufficiently documented to qualify for Clean Air Act approval. EPA has not included these measures as part of the 15% plan or contingency measure shortfall, although the reductions from these measures are not fully approvable towards the RFP requirement. Finally, the baseline 1990 emissions inventory contained in the Commonwealth's 15% plan varies from the state's officially submitted 1990 emissions inventory SIP revision, without justification or documentation.

In light of the above deficiencies, EPA is proposing to disapprove this SIP revision under section 110(k)(3) and section 301(a) of the Act. The submittal does not satisfy the requirements of section 182(b)(1) of the Act regarding the 15 percent reasonable further progress plan, nor the requirement of section 172(c)(9) of the Clean Air Act regarding contingency measures.

EPA is aware that Pennsylvania is currently revising the 15% plan, which the Commonwealth intends to submit in the near future. Since Congress passed the National Highway Systems Designation Act of 1995, which amended federal I/M program requirements and granted states authority to revise their I/M programs, and Pennsylvania has utilized that authority to revise its I/M program, revision of the 15% plan to reflect the I/M program changes is expected. When the Commonwealth submits a revised 15% plan, EPA expects they will withdraw the SIP revision which is the subject of today's action. Upon receipt of the revised 15% plan submittal, EPA will undertake a separate review of that plan for compliance with the requirements of the Clean Air Act. If the deficiencies cited in today's action are remedied by the revised submittal, EPA will withdraw this proposed disapproval and propose approval of that submittal.

Nothing in today's action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

EPA's proposed disapproval of the State request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new federal requirement. Therefore, EPA certifies that this proposed disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing

requirements and impose any new federal requirements.

Under section 179(a)(2), if the EPA Administrator takes final disapproval action on a submission under section 110(k) for an area designated nonattainment based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) of the Act (unless the deficiency has been corrected within 18 months of such disapproval). Section 179(b) provides two sanctions available to the Administrator: revocation of highway funding and the imposition of emission offset requirements. The 18-month period referred to in section 179(a) will begin on the effective date established in the final disapproval action. If the deficiency is not corrected within 6 months of the imposition of the first sanction, the second sanction will apply. This sanctions process is set forth in 40 CFR 52.31. Today's action serves only to propose disapproval of the Commonwealth's SIP revision, and does not constitute final agency action. Thus, the sanctions process described above does not commence with today's action.

Also, 40 CFR 51.448(b) of the federal transportation conformity rules (40 CFR 51.448(b)) state that if the EPA disapproves a submitted control strategy implementation plan revision which initiates the sanction process under Act section 179, the conformity status of the transportation plan and transportation improvement plan shall lapse 120 days after the EPA's disapproval.

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

This disapproval action for the Pennsylvania 15% plan for Philadelphia has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The Regional Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Parts 52 and 81

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental regulations, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Dated: July 1, 1996.

W. T. Wisniewski,

Acting Regional Administrator.

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40 CFR Part 61

[FRL 5536–2]

National Emission Standards for Hazardous Air Pollutants: National Emission Standard for Radon Emissions From Phosphogypsum Stacks

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of Public Comment Period.

SUMMARY: The Environmental Protection Agency (EPA)is extending the comment period for the rulemaking to reconsider 40 CFR 61.205 and 40 CFR 61.207 which appeared in the **Federal Register** on May 8, 1996 (61 FR 20775). The extension of the comment period is provided in response to a request by a trade association representing the affected industry. The public comment period for this proposed rule was to end on July 8, 1996. The comment period is extended to July 26, 1996.

DATES: EPA will continue to accept public comments on this proposed rule until July 26, 1996. In addition, pursuant to Section 307(d)(5) of the Clean Air Act, the public may submit rebuttal and supplemental information to the docket for thirty (30) days after the August 1, 1996 public hearing. For more information on the public hearing, see 61 FR 33053 (June 26, 1996).

ADDRESSES: Comments must be submitted, in duplicate, to: Central Docket Section (6101), Environmental Protection Agency, ATTN: Air Docket No. 94–57, Washington, D.C. 20460. The docket is available for public inspection between the hours of 8:00 am and 5:30 pm, Monday through Friday, in Room M1500 of Waterside Mall, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying. The FAX number is (202) 260–4400.

FOR FURTHER INFORMATION CONTACT: Eleanor Thornton, or for technical information, Rita Cestaric, at: Office of Radiation and Indoor Air (6602J), Environmental Protection Agency, Washington, DC 20460, (202) 233–9677. The proposed rule and supplementary information are located in Air Docket No. 94–57.

SUPPLEMENTARY INFORMATION: On March 24, 1994, EPA announced its decision concerning a petition by The Fertilizer Institute (TFI) seeking reconsideration of a June 3, 1992 final rule revising the National Emission Standard for Radon Emissions from Phosphogypsum Stacks, 40 CFR Part 61, Subpart R. EPA partially granted and partially denied the TFI petition. Pursuant to that decision, EPA convened a rulemaking to reconsider 40 CFR 61.205, the provision of the final rule which governs distribution and use of phosphogypsum for research and development, and the methodology used under 40 CFR 61.207 to establish the average radium-226 concentration for phosphogypsum to be removed from the phosphogypsum stack. See 61 FR 20775 (May 8, 1996) for a more detailed description of the proposed rule.

Reopening of comment period: The Comment Period for this proposed rule was scheduled to end on July 8, 1996. EPA received a request to extend the period to submit comments from TFI. After considering this request, EPA has decided to extend the comment period for this rulemaking to July 26, 1996.

Dated: July 5, 1996.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 96–17578 Filed 7–8–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 63

[AD–FRL–5531–2]

Approval of State Programs and Delegation of Federal Authorities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action revises the "Approval of State Programs and Delegation of Federal Authorities" (subpart E). These amendments are being made to improve the clarity of subpart E. Because the amendments clarify regulatory text and serve to minimize administrative burden and provide more flexibility to States using this rulemaking, the Agency does not anticipate receiving adverse comments. Consequently the amendments are also being issued as a direct final rule. If no significant, timely adverse comments are received, no further activity is contemplated in relation to this proposed rule and the direct final rule in the final rules section of this **Federal Register** will automatically go into effect on the date specified in this rule. If significant timely comments are received on any amendment, that amendment of the direct final rule will be withdrawn and all public comments received on that amendment will be addressed in a subsequent final rule based on the relevant portions of this proposed rule. Because the Agency will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

DATES: *Comments.* Comments must be received on or before August 9, 1996, unless a public hearing is requested by July 22, 1996. If a hearing is requested, written comments must be received by August 26, 1996.

Public hearing. Anyone requesting a public hearing must contact the EPA no later than July 22, 1996. If a hearing is held, it will take place on July 25, 1996, beginning at 10 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–96–09 (see docket section below), Room M–1500, U.S. EPA, 401 M Street, SW., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

Public hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Pamela J. Smith, U.S. EPA, Research Triangle Park, North Carolina, 27711, telephone (919) 541–5319.

Docket. Docket No. A–96–09, containing supporting information, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, First Floor, 401 M Street SW., Washington, DC 20460, or by calling (202) 260–7548 or 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gil Wood at (919) 541–5272 or Ms. Sheila Q. Milliken at (919) 541–2625 Integrated Implementation Group, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: For further supplemental information, the detailed rationale, and the rule amendments, see the information provided in the direct final rule in the final rules section of this **Federal Register**.

Paperwork Reduction Act

The information collection requirements of the previously promulgated rulemaking on subpart E were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (with an OMB approval control number 2060–0264) may be obtained from the Regulatory Information Division (Code 2136), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or by calling (202) 260–2740.

Today's changes to the rulemaking will have no significant impact on the information collection burden estimates made previously. Actually, the burden will be reduced slightly. Consequently, the Information Collection Request has not been revised.

Executive Order 12866 Review

The subpart E rulemaking, promulgated on December 26, 1993 was considered a "significant regulatory action" under Executive Order 12866 [58 FR 5173, dated October 4, 1993] and submitted to the OMB for review. According to the executive order, a "significant regulatory action is one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, of State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This action is not considered a "significant regulatory action" within the meaning of this Executive Order. The amendments issued today clarify the rule and add administrative requirements which increase the flexibility to States in terms of gaining approval of their respective State programs. The EPA concludes these amendments would have no adverse impact and therefore, do not need to undergo OMB review.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a regulatory flexibility analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a regulatory flexibility analysis has not been prepared.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Today's rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or tribal governments or the private sector. The UMRA generally excludes from the definition of "Federal intergovernmental mandate" duties that arise from participation in a voluntary Federal program. The EPA has also determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 26, 1996.
Carol M. Browner,
Administrator.
[FR Doc. 96–17324 Filed 7–9–96; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 136

[FRL–5535–4]

A Public Meeting on Method Flexibility and Streamlining Approval of Analytical Methods at 40 CFR Part 136

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Office of Science and Technology within EPA's Office of Water is conducting a public meeting on approaches to method flexibility and streamlining the proposal and promulgation of analytical methods at 40 CFR Part 136 under Section 304(h) of the Clean Water Act and at 40 CFR Part 141 under Sections 1401 and 1445 of the Safe Drinking Water Act. This public meeting on streamlining EPA's water methods approval programs will be held in conjunction with the Trace Metals Workshop announced concurrently in the **Federal Register**.

This public meeting follows a series of three public meetings on streamlining held in Seattle, Washington on September 28, 1995, in Boston, Massachusetts on January 25, 1996, and in Chicago, Illinois on February 14, 1996. The Seattle meeting was announced in an FR notice titled, "A Public Meeting and Availability of Documents on Streamlining Approval of Analytical Methods at 40 CFR Part 136 and flexibility in Existing Test Methods" [FRL–5294–6] published in the **Federal Register** on September 12, 1995 at 60 FR 47325. This FR notice provided extensive supplementary information regarding the 304(h) streamlining effort and made available several supporting documents. The supporting documents and summaries of the Seattle, Boston, and Chicago public meetings can be obtained through the contact identified in this notice.

DATES: EPA will conduct the public meeting on 304(h) streamlining on Wednesday, July 24, 1996, in Denver, Colorado. Registration for the meeting will begin at 8 a.m. The meeting will be held from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in the USGS Lecture Hall, Building 25, Denver Federal Center, 6th & Kipling, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice can be directed to Marion Thompson by phone at (202) 260–7117 or by facsimile at (202) 260–7185.

SUPPLEMENTARY INFORMATION: Meeting arrangements are being coordinated by DynCorp, Inc. For information on registration, contact Cindy Simbanin, 300 N. Lee Street, Suite 500, Alexandria, VA 22314. Phone: (703) 519–1386. Facsimile number: (703) 684–0610. Space is limited and reservations are being taken on a first come, first served basis. No fees will be charged to attend.

Hotel reservations may be made by contacting the Comfort Suites in Lakewood, Colorado at (303) 231–9929. The hotel address is 11909 W. 6th Avenue, Lakewood, Colorado 80033. Single occupancy guest rates are $83.55, including tax. When making reservations, you must specify that you are affiliated with the EPA Meeting to qualify for the quoted rate.

Accommodations are limited, so please make your reservations early. The Comfort Suites does not provide transportation to/from the airport or to the Federal Center. Guests should take the Airport shuttle to/from the airport and use taxi service to the Federal Center. The Federal Center is within walking distance of the Comfort Suites, but it is not an easy walk due to the location of the main gate into the Federal Center.

Title: A Public Meeting on Method Flexibility and Streamlining Approval of Analytical Methods at 40 CFR Part 136

Abstract

Under Section 304(h) of the Clean Water Act, EPA is responsible for promulgating analytical methods at 40 CFR Part 136 for use in monitoring pollutant discharges. EPA uses these methods to support development of effluent guidelines promulgated at 40 CFR Parts 400–499, and both EPA and the regulated community use the methods for establishing compliance with National Pollutant Discharge Elimination System (NPDES) permits and other monitoring purposes. The methods approved for use at 40 CFR Part 136 have been developed by EPA, by industrial associations such as the American Society for Testing Materials, and by other governmental agencies such as the U.S. Geological Survey. In the past, the methods proposal and promulgation process has been cumbersome, and has not provided the flexibility to take advantage of new analytical technologies in a timely manner. In response to the Administration's Environmental Technology Initiative, EPA is proposing a comprehensive Section 304(h) streamlining initiative to increase method flexibility to allow use of emerging technologies and to expedite the method approval process, to encourage development of new methods and technologies by organizations outside of EPA.

The Office of Ground Water and Drinking Water within EPA's Office of Water is also developing approaches to increasing method flexibility and streamlining the approval of analytical methods at 40 CFR Part 141 under Sections 1401 and 1445 of the Safe Drinking Water Act. EPA is coordinating these efforts with the CWA Section 304(h) streamlining effort in an overall initiative to streamline its water methods approval programs.

EPA has held three public meetings to outline plans for method flexibility and for streamlining proposal and promulgation of new methods, and to elicit stakeholder views regarding these plans. EPA had compiled and evaluated stakeholder input received at the public meetings and has revised its approach to streamlining accordingly.

Agenda Topics

The purpose of the public meetings on 304(h) streamlining is to outline plans for method flexibility and for streamlining proposal and promulgation of new methods at 40 CFR Part 136 under Section 304(h) of the Clean Water Act, and to elicit stakeholder views regarding these plans. The following topics will be addressed at the public meetings:

- Increasing method flexibility to allow use of new technologies and to identify modifications that are acceptable within the scope of existing methods and do not require proposal of an alternate method
  - —Interpretation of flexibility in existing 40 CFR Part 136 methods
  - —Advantages and disadvantages of method flexibility (no flexibility, limited flexibility, and unlimited flexibility)
  - —Proposal to allow nearly unlimited "front-end" method modifications as long as the determinative technique is not changed and method performance is demonstrated to be equivalent
- Establishing standardized quality control (QC) and QC acceptance criteria to support determination of method equivalency
- Streamlining the method proposal process to take advantage of emerging analytical technologies in a timely manner
  - —Standardized format for preparing new methods
  - —Three-tiered method validation process based on method use
  - —OST coordination of method submission and approval
- Harmonization of 40 CFR Part 136 methods with other EPA methods to allow standardization of methods across EPA programs
- Other streamlining issues
  - —Standardized data elements for reporting, to allow access to Agency databases in a standardized data format
  - —Withdrawal of 40 CFR Part 136 methods that contain outdated technologies
  - —Incorporating new methods into the **Federal Register** by reference and making them available through other suitable venues, to reduce publication expense

Dated: July 3, 1996.
James Hanlon,
Deputy Director, Office of Science and Technology.
[FR Doc. 96–17551 Filed 7–9–96; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 180

[OPP–300425; FRL–5374–3]

RIN 2070–AC18

Maleic Anhydride-Diisobutylene Copolymer, Sodium Salt; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish an exemption from the requirement of a tolerance for residues of maleic anhydride-diisobutylene copolymer, sodium salt when used as an inert ingredient (suspending agent and dispersing agent) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and applied to animals. This proposed regulation was requested by Rhone-Poulenc North America Chemicals, Inc.

DATES: Written comments, identified by the docket number [OPP–300425], must be received on or before August 9, 1996.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–300425]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Bipin Gandhi, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, Arlington, VA 22202, (703) 308–8380, e-mail: gandhi.bipin@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Rhone-Poulenc North America Chemicals, Inc., CN 5255, Princeton, NJ 08543–5255 submitted pesticide petition (PP) 6E04665 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346 a(e)), propose to amend 40 CFR 180.1001(c), (d) and (e) by establishing an exemption from the requirement of a tolerance without limitation for residues of maleic anhydride-diisobutylene copolymer, sodium salt (CAS Reg. No. 37199–81–1), when used as an inert ingredient (suspending agent and dispersing agent) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest, under 40 CFR 180.1001(c) and applied to animals under 40 CFR 180.1001(e), and deleting the current exemption from the requirement of a tolerance with a use limitation of 3 percent under 40 CFR 1001(d) for application to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for maleic anhydride-diisobutylene copolymer, sodium salt will need to be submitted. The rationale for this decision is described below.

In the case of certain chemical substances that are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Maleic anhydride-diisobutylene copolymer, sodium salt conforms to the definition of polymer given in 40 CFR 723.250(b) and meets the following

criteria that are used to identify low risk polymers:

1. Maleic anhydride-diisobutylene copolymer, sodium salt is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. Maleic anhydride-diisobutylene copolymer, sodium salt contains as an integral part of its composition the atomic elements carbon, hydrogen, oxygen, and sodium.

3. Maleic anhydride-diisobutylene copolymer, sodium salt does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(2)(ii).

4. Maleic anhydride-diisobutylene copolymer, sodium salt is not designed, nor it is reasonably anticipated to substantially degrade, decompose or depolymerize.

5. Maleic anhydride-diisobutylene copolymer, sodium salt is not manufactured or imported from monomers and/or other reactants that are not already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. Maleic anhydride-diisobutylene copolymer, sodium salt is not water absorbing polymer.

7. The minimum number-average molecular weight of maleic anhydride-diisobutylene copolymer, sodium salt is 20,900 daltons. Substances with molecular weights (MW) greater than 400 generally are not absorbed through the intact skin, and substances with MW greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) track. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

8. Maleic anhydride-diisobutylene copolymer, sodium salt has a number average molecular weight of 20,900 and an oligomer content less than 2 percent below MW 500 and less than 5 percent MW 1000.

Based on the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemptions from the requirement of a tolerance be established for this polymer as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, that contains any of the ingredients listed herein, may request within 30 days after the publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the docket number, [OPP–300425].

A record has been established for this rulemaking under docket number [OPP–300425] (including comments and data submitted electronically as described below). A public version of this record, including printed paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in the "ADDRESSES" at the beginning of this document.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

This action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirement of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have an economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subject in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Processed foods, Reporting and recordkeeping requirements.

Dated: July 1, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1001, paragraphs (c) and (e), the table in each paragraph is amended by adding alphabetically the inert ingredient "Maleic anhydride-dissobutylene copolymer, sodium salt (CAS Reg. No. 37199–81–8), average molecular weight (in amu) 18,000," to read as set forth below, and the table in paragraph (d) is amended by removing the entry for "Maleic anhydride dissobutylene copolymer, sodium salt."

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert Ingredient	Limits	Uses
. . . . .		
Maleic anhydride-dissobutylene copolymer, sodium salt (CAS Reg. No. 37199–81–8), average molecular weight (in amu) 18,000..		Suspending agent and dispersing agent.
. . . . .		

* * * * * (e) * * *

Inert Ingredient	Limits	Uses
. . . . .		
Maleic anhydride-dissobutylene copolymer, sodium salt (CAS Reg. No. 37199–81–8), average molecular weight (in amu) 18,000.		Suspending agent and dispersing agent.
. . . . .		

[FR Doc. 96–17575 Filed 7–9–96; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[PP 6E4644/P668; FRL–5380–5]

RIN 2070–AC18

Polyvinylpyrrolidone Butylated Polymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish an exemption from the requirement of a tolerance for residues of polyvinylpyrrolidone butylated polymer when used as an inert ingredient (surfactants, related adjuvant of surfactants and binder) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and applied to animals. This proposed regulation was requested by International Specialty Products.

DATES: Written comments, identified by the document control number [PP 6E4644/P668], must be received on or before August 9, 1996.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 6E4644/P668]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: By mail: Bipin Gandhi, Registration Support Branch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, Arlington, VA 22202, 703–308–8380, e-mail: gandhi.bipin@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: International Specialty Products, 1361 Alps Road, Wayne, NJ 07470, submitted pesticide petition (PP) 6E4644 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346 a(e)), propose to amend 40 CFR 180.1001(c) and (e) by exempting polyvinylpyrrolidone butylated polymer (CAS No. 26160–96–3) when used as an inert ingredient (surfactants, related adjuvant of surfactants and binder) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest, under 40 CFR 180.1001(c) and applied to animals under 40 CFR 180.1001(e) and deleting the current exemption from the requirement of a tolerance under 40 CFR 180.1001(d) for application to growing crops only. Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency

generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for polyvinylpyrrolidone butylated polymer will need to be submitted. The rationale for this decision is described below.

In the case of certain chemical substances that are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Polyvinylpyrrolidone, butylated polymer conforms to the definition of polymer given in 40 CFR 723(b) and meets the following criteria that are used to identify low risk polymers:

1. Polyvinylpyrrolidone, butylated polymer is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. Polyvinylpyrrolidone, butylated polymer contains as an integral part of its composition the atomic elements carbon, hydrogen, oxygen, and nitrogen.

3. Polyvinylpyrrolidone, butylated polymer does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(2)(ii).

4. Polyvinylpyrrolidone, butylated polymer is not designed, nor it is reasonably anticipated to substantially degrade, decompose or depolymerize.

5. Polyvinylpyrrolidone, butylated polymer is not manufactured or imported from monomers and /or other reactants that are not already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The minimum number-average molecular weight of polyvinylpyrrolidone, butylated polymer is listed as 9,569 daltons. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

7. Polyvinylpyrrolidone, butylated polymer has a number average molecular weight of 9,569 and contains less than 10 percent oligomeric material below molecular weight 500 and less than 25 percent oligomeric material below 1,000 molecular weight.

8. Polyvinylpyrrolidone, butylated polymer does not contain reactive functional groups that are intended or reasonably anticipated to undergo further reaction. Based on the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and tolerance is not necessary to protect the public health and to reclassify this product from 40 CFR 180.1001(d) to 40 CFR 180.1001(c) and (e). Therefore, EPA proposes that the exemptions from the requirement of a tolerance be established for this polymer as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, that contains any of the ingredients listed herein, may request within 30 days after the publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6E4644/P668].

A record has been established for this rulemaking under docket number [PP 6E4644/P668] (including comments and data submitted electronically as described below). A public version of this record, including printed paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall ι2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will be placed in the paper copies of the official rulemaking record which also will include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in the "ADDRESSES" at the beginning of this document.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

This action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is (is not) a "major rule" asdefined by 5 U.S.C. 804(2) of the APA as amended.

Pursuant to the requirement of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have an economic impact on a substantial number of small entities. A certification statement explaining the basis for this determination was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subject in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Processed foods, Reporting and recordkeeping requirements.

Dated: July 2, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1001 the table in paragraph (c) and (e) is amended by adding alphabetically the inert ingredient, to read as set forth below, and the table in paragraph (d) is amended by removing the entry for "Polyvinylpyrrolidone butylated," follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert Ingredient	Limits	Uses
Polyvinylpyrrolidone butylated polymer, minimum number-average molecular weight (in amu) 9,500.		Surfactants, related adjuvant of surfactants and binder.

(e) * * *

Inert Ingredient	Limits	Uses
Polyvinylpyrrolidone butylated polymer, minimum number-average molecular weight (in amu) 9,500.		Surfactants, related adjuvant of surfactants and binder.

[FR Doc. 96–17577 Filed 7–9–96; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4700

[NV–960–1060–00–24 1A]

RIN 1004–AC61

Adoption Fee for Wild Free-Roaming Horses and Burros

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to revise the procedure used to set adoption fees for Wild Horses and Burros to allow use of competitive methods. The purpose of the amendment is to allow BLM more flexibility in establishing adoption fees and to recover a higher proportion of the associated cost.

DATES: You must submit comments by September 9, 1996. Comments received or postmarked after this date may not be considered in the decision making process on the issuance of the final rule.

ADDRESSES: You must submit comments or suggestions to: Director (420), Bureau of Land Management, 1849 C Street NW, 401 LS, Washington, DC 20240. Comments can also be sent to Internet: WOComment@WO0033wp.wo.blm.gov. Please include "attn: AC61" and your name and address in your internet message. Comments will be available for public review at 1620 L Street NW, Room 401, Washington, DC 20036, during regular business hours (7:45 am to 4:15 pm), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lili Thomas, Wild Horse and Burro National Program Office (702) 785–6457 or Bob Barbour, Regulatory Management Team (202) 452–7785.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Rule

In the 1950's a group concerned with the welfare of America's diminishing wild horse herds formed under the leadership of Velma Bronn Johnson. Better known as "Wild Horse Annie," this woman from Nevada, along with many others, worked to ensure a place for wild horses and burros on Federal rangelands.

In 1971, Congress passed The Wild Free Roaming Horse and Burro Act recognizing these animals as an integral part of the natural system they inhabited at the time of passage. In 1973, BLM began a program that offered animals for "adoption" to qualified private individuals who agree to provide them humane treatment. The Adopt a Horse or Burro Program has placed over 141,000 animals in private care.

The existing adoption fee of $125 for wild horses and $75 for wild burros was implemented in 1982 to recapture a portion of the adoption cost, limit adoption to individuals with financial ability to care for the adopted animal, and assure that every animal was adopted as quickly as practical after its removal from public lands. The adoption fee was originally set using the market price of horses in 1982. In the early 1980's the value of horses and burros was low because of an overabundance of these animals in the market. Currently the market value of the lowest quality domestic horse is about $300, well above the fee BLM charges. Additionally since 1982 the cost BLM incurs to feed, provide veterinary care and transport wild horses and burros has increased significantly.

Because of the low adoption fee, there is a significant economic incentive for adopters to sell their animals when they receive title. In addition, the low fee encourages adoption by individuals who are not financially able to provide proper care. Placement of wild horses and burros to these individuals often results in animals not receiving proper care and later having to be repossessed.

As explained within, BLM is proposing a more flexible approach to adoption fees to deal with this situation. Under this adoption system horses and burros would be offered to the public at

competitive adoptions. Animals not selected by the public through a competitive adoption, would be available at the base fee $125.00. BLM is not changing the qualification requirements for adoption of a wild horse or burro. Adopters must meet the requirements of 43 CFR 4750 before they are allowed to participate in an adoption event.

An increased adoption fee would also shift some of the cost of the adoption from the general taxpayer to the individuals who benefit directly from this program. Future adoption fees would reflect market value of the animals and strike a balance between supply and demand.

Prior to each adoption event BLM will provide information on how the adoption will be conducted and the method to be used for establishing adoption fees.

II. Procedural Matters

National Environmental Policy Act

The BLM has determined that this rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the proposal would not meet any of the 10 criteria for exceptions to categorical exclusion listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Executive Order 12866 and Regulatory Flexibility Act

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866. The cost of complying with the requirements of the rule is indistinguishable from the requirements imposed by the existing adoption fee regulations. Further, for the same reasons, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the rule will not have a significant economic impact on a substantial number of small entities. The rule does not distinguish between entities based on size.

Federal Paperwork Reduction Act

The provisions for collection of information contained at 43 CFR Part 4710 have previously been approved by the Office of Management and Budget and assigned clearance numbers 1004–0042.

This rule does not contain additional information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Executive Order 12630

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

Unfunded Mandates Reform Act

The BLM has determined that this regulation is not significant under the Unfunded Mandates Reform Act of 1995, because it will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Further, this rule will not significantly or uniquely affect small governments.

Executive Order 12988

The Department has determined that these final regulations *et the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.*

Authors: The principal authors of this proposed rule are Lili Thomas of the Wild Horse and Burro National Program Office and Bob Barbour of the Regulatory Management Team, BLM, assisted by Kim Fondren of the Office of the Solicitor, Department of the Interior.

List of Subjects 43 CFR Part 4700

Animal Welfare, Horses, Penalties, Public Lands, Range Management, Reporting and recordkeeping requirements, Wildlife.

Accordingly, BLM proposes to amend Subpart 4750 as follows:

PART 4700—[AMENDED]

1. The authority citation for Part 4700 continues to read as follows:

Authority: 16 U.S.C. 1331–1340; 18 U.S.C. 47; 43 U.S.C. 315 and 1740.

2. Section 4750.4–2 is revised to read as follows:

§ 4750.4–2 Adoption Fee

(a) Does BLM charge an adoption fee for wild horses and burros?

You must pay a base adoption fee of $125 for each wild horse or burro you adopt. You will not be charged an adoption fee for orphan foals.

(b) Can the adoption fee be increased?

Yes, BLM may choose to hold a competitive adoption for particular wild horses or burros. At competitive adoptions, qualified adopters under 43 CFR part 4750 set adoption fees through competitive bidding. Horses or burros remaining at the end of a competitive adoption will be available for adoption at the base fee.

(c) Can the adoption fee be reduced or waived?

(1) The BLM Director may reduce or waive the fee when wild horses or burros are un-adoptable at the base adoption fee.

(2) A reduction or waiver of the adoption fee is available only if you are willing to comply with all regulations relating to wild horses and burros.

Dated: June 24, 1996.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 96–17487 Filed 7–09–96; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–28; Notice 8]

RIN 2127–AF73

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend Standard No. 108, the Federal motor vehicle safety standard on lighting, to afford an option to existing headlamp aiming specifications which is intended to improve the objectivity and accuracy of motor vehicle headlamp aim when headlamps are aimed visually and/or optically. The proposal reflects the consensus of NHTSA's Advisory Committee on Regulatory Negotiation concerning the improvement of headlamp aimability performance and visual/optical headlamp aiming. The Committee was composed of representatives of government, industry, and consumer interest groups.

DATES: Comments are due October 8, 1996.

ADDRESSES: Comments should refer to Docket No. 95–28; Notice 8 and must be submitted to: Docket Section, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4:00 p.m.). Do not send originals of comments to any person named below.

FOR FURTHER INFORMATION CONTACT: (NHTSA Advisory Committee representative) Steve Kratzke, Office of Safety Performance Standards, NHTSA (Phone: 202–366–5203; FAX: 202–366–4329); (technical information) Rich Van Iderstine, Office of Safety Performance Standards, NHTSA (Phone: 202–366–5275; FAX: 202–366–4329); (legal information) Taylor Vinson, Office of Chief Counsel, NHTSA (Phone: 202–366–5263; FAX: 202–366–3820).

SUPPLEMENTARY INFORMATION:

Background

On June 9, 1995, at 60 FR 30506, the National Highway Traffic Safety Administration (NHTSA) published a notice of intent to establish an advisory committee ("the Committee") for regulatory negotiation to develop recommended specifications for altering the lower beam patterns of Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices and Associated Equipment* to be more sharply defined. Such a pattern would facilitate visual aimability of headlamps. The notice requested comment on membership, the interests affected by the rulemaking, the issues the Committee should address, and the procedures it should follow. The notice also announced that NHTSA had procured the services of the Federal Mediation and Conciliation Service to facilitate the negotiations. The reader is referred to the notice of June 9, 1995, for further information on these issues.

On the basis of comments received to the notice, NHTSA determined that establishing an advisory committee on this subject would be advantageous and in the public interest. In accordance with Section 9(c) of the Federal Advisory Committee Act, 5 U.S.C. App. I sec. 9(c), NHTSA prepared a Charter for the establishment of a Negotiated Rulemaking Advisory Committee. On April 17, 1995, the Office of Management and Budget approved the Department's Advisory Committee Plan for FY 1995 which included this advisory committee, and on July 6, 1995, the Secretary approved the Charter, authorizing the Committee to begin negotiating the recommended changes.

Membership

In addition to a representative from NHTSA, the Committee consisted of representatives from the following organizations:

Advocates for Highway and Auto Safety
American Association of Motor Vehicle Administrators
American Association of State Highway and Transportation Officials
American Automobile Manufacturers Association
Association of International Automobile Manufacturers, Inc.
Automotive Service Association
Groupe de Travail "Bruxelles 1952"
Hopkins Manufacturing Corporation
Japanese Automobile Standards Internationalization Center
Liaison Committee for the Manufacturers of Automobile Equipment and Spare Parts
National Automobile Dealers Association
National Committee on Uniform Traffic Control Devices
Society of Automotive Engineers, Road Illumination Devices Standards Committee
Traffic Control Materials Division, 3M Corporation
Wagner Lighting Division of Cooper Industries

In accordance with the directives for negotiated rulemaking, these participants represent all "interests" identified by NHTSA as affected by a final rule on headlamp aimability: the consumer; Federal and State governments; American, European, and Asian manufacturers of motor vehicles and headlamps; the automobile service industry; and manufacturers of headlamp aiming equipment and traffic control devices.

Meetings

Utilizing the services of the Federal Mediation and Conciliation Service (FMCS) as facilitators/mediators, NHTSA convened the first Committee on July 25, 1995. The Committee held an additional series of meetings in September, October, and November 1995, and in January, March, April, and May 1996. Under the direction of the FMCS mediators the Committee received training in the interest-based negotiation process. The Committee used the interest-based negotiation process to fulfill its charter. At its final meeting prior to publication, on May 29, 1996, the Committee reached a consensus on the rationale and proposed regulatory text for this NPRM. The Committee meetings were open to the public, and NHTSA placed the minutes into a public docket (Docket No. 95–28).

NHTSA's Perspective of Headlamp Aimability

At its simplest expression, proper aim is required to ensure that headlamps installed on motor vehicles fulfill the functions intended by their designers. There are three principal methods of aiming headlamps. The first is visual: project the beam upon a vertical surface and adjust the headlamp as determined by an observer; the second is optical: project the beam into a device that is placed in front of the headlamp and adjust the headlamp until the beam conforms to the parameters of the device; the third is mechanical: without activation of the headlamp, determine proper aim through the use of equipment external to the headlamp. Mechanical aim was introduced in 1955 by the automotive industry in response to aiming concerns expressed by the states. These concerns were related to visual and optical and involved ease of use, repeatability, and accuracy of aim.

A constant requirement of Standard No. 108 from its effective date on January 1, 1968, has been the ability of motor vehicle headlamps to be mechanically aimed. Mechanical aiming was necessary because visual/optical aim of the lower beam pattern in use in the United States was difficult. Sealed beam headlamps, the only type of headlamps permitted until 1983, are required to have one of four aiming-pad patterns on the lens. These patterns consist of three raised aiming pads arranged as a triangle at specified points on the lens which provide a precise interface between the headlamp and a mechanical aiming device attached to the headlamp during the aiming verification process. The mechanical aiming device provides information so that the aiming planes of the headlamps, defined by the three aiming pads, can be adjusted to be parallel with each other and perpendicular to the road surface. Because a headlamp's beam pattern is designed to be correctly aimed when the aiming plane is oriented as stated, the beam pattern can be aimed without the need for illuminating the headlamp.

With the advent of replaceable bulb headlamps in 1983, restrictions on the size and shape of headlamps were no longer required, and two additional configurations of mechanical aiming pads were permitted. This necessitated new adapters and also adjustable adapters for mechanical aiming devices used with replaceable bulb headlamps. Initially, NHTSA required that vehicles with replaceable bulb headlamps also be equipped with aim adapters until the adapters could be supplied to the service industry. However, this design

freedom resulted in a proliferation of headlamp aimer adapters, adding complexity and error to the previously simple and accurate process of mechanical headlamp aim. In addition, headlamps became smaller, and it became increasingly difficult for the traditional type of mechanical aiming device to measure aim.

In response to this problem, since June 8, 1989, NHTSA has allowed a method of mechanical aim that is no longer dependent upon an external applied mechanical aiming device but one which is accomplished by mechanical aiming equipment on the vehicle itself. NHTSA terms this a "vehicle headlamp aiming device" or "VHAD". A VHAD is equipment installed on the vehicle which is used for determining headlamp aim mechanically. In its most common form, these are bubble vials on the headlamp housing which have a closely specified geometric (mechanical) relationship to a beam's vertical location. When the bubble is within a specific area indicated on the housing, the headlamp's vertical aim is correct. A similar mechanical reference marking system is used for correct horizontal aim. One attractive feature of VHADs is that they provide a simple way for anyone to determine proper aim and to correct misaim. But, in the event of damage involving the headlamp, VHADs may have to be replaced, with recalibration by a person other than the vehicle manufacturer who initially installed them. NHTSA believes, and the Committee concurred, that distributors, dealers, and service facilities do not have the ability to recalibrate replacement equipment to the same accuracy as the manufacturer. VHADs add to vehicle costs, and not all vehicles are equipped with them; therefore visual aim and optical aim remain important.

As NHTSA understands it, state inspection stations and private repair shops are less likely today to use mechanical aiming devices and, for the most part, choose to aim headlamps either visually or with optical aimers. Given the lack of sharply defined visual cues in the lower beam pattern in headlamps that are designed to conform to Standard No. 108, aiming visually or with an optical aiming device yields variable results. As a consequence, there are increasing numbers of misaimed headlamps in the nation's vehicle fleet, with a higher risk of glare and inadequate illumination of the roadway including traffic control devices.

When NHTSA published a general notice asking for candidates for regulatory negotiation, the American Automobile Manufacturers Association (AAMA) identified headlamp aimability as its first choice. NHTSA agreed with this recommendation. The NPRM that is published today is the result of negotiated rulemaking. The anticipated result is a final rule that specifies an option to mechanical aiming for easy, accurate headlamp aiming.

The Process Followed by the Committee and Its Recommendations

As part of the interest-based negotiation process, the Committee first defined issues for the regulatory negotiation. The Committee then identified its interests and finally reached consensus on criteria for the regulatory standards.

The Committee used the interest-based process to identify the basic issue as "what standard will permit the visual/optical aiming of lower beam headlamps". Subsequently the visual/optical aimability of the upper beam was added.

The Committee-defined interests were divided into three main themes: "Safety", "Service Sector and Manufacturer Needs", and "Visual/Optical". A summary of each issue is as follows:

A. Safety: Any method of ensuring visual and or optical aim of low beam headlamps that involves the proposed adoption of a new Federal standard for lower beam headlamp photometry must not degrade , and desirably will enhance, the safety performance of the existing traffic control nighttime driving environment. A visually/optically aimable headlamp beam pattern shall ensure adequate driver control and avoidance of hazardous features (pedestrians, roadside objects, etc.), in the nighttime driving environment, without creating disabling glare.

B. Service Sector and Manufacturing Needs: Implementation of a visual aim standard must consider the following service sector (dealers, repair garages, service stations, state inspection stations, body shops) and manufacturing (vehicles, headlamps, and aiming equipment) needs: simplicity, user friendliness, repeatability, reliability, cost effectiveness, equipment, compatible aiming methods.

C. Visual/Optical: The development of the aiming standard should consider other established aiming standards.

The Committee then developed six criteria as critical for the development of a consensus standard for visual/optical aim. These criteria are:

1. Accuracy: proper placement of beam pattern.
2. Repeatability: repeatable aimability.
3. Simplicity: performable by operators of varying skill levels.
4. Reasonable cost: no unreasonable costs for manufacturers, the service and inspection industry, or consumers.
5. Critical beam characteristics: preservation of beam characteristics for driver control, avoidance of road hazards and pedestrians, detection and legibility of traffic control devices, and restriction of disabling glare.
6. Ambient light conditions: achievement of acceptable aim within a range of ambient light conditions at manufacturer and service facilities.

The Committee then determined that the new visual/optical aim standard should be an option to current mechanical and VHAD aim specifications in Standard No. 108, and usable with all headlamps: sealed beam, integral beam, replaceable bulb, and combination-type headlamps. Therefore, the Committee developed an outline to be used by NHTSA for the NPRM.

To achieve its goals, the Committee decided that:

A. the lower beam pattern must have a wider illumination,

B. a horizontal visual cue must be added to either the left or right side of the lower beam,

C. the basic characteristics of the lower beam pattern must not be changed,

D. all lenses for visually/optically aimable headlamps must be marked to ensure that persons aiming the headlamps know that the headlamp can be correctly aimed using a visual or optical aiming procedure, and

E. existing requirements for VHADs must be amended to add a specification currently missing which results in aim error.

Proposed Requirements and Their Rationales

The Committee recommends and NHTSA proposes that the visually/optically aimable lower beam of a headlamp meet the following criteria:

A. *Vertical Aim of Lower Beam.* A visual cue (cutoff) is required in the lower beam pattern to permit accurate aiming. The cutoff marks a transition between the areas of higher and lower luminous intensities. The cutoff in the lower beam pattern is a horizontal line composed of maximum vertical logarithmic gradients of the illumination of the aiming screen.

Vertical aim requires both a laboratory specification for headlamps before installation and a field specification for headlamps after installation. This notice proposes that the laboratory specifications be incorporated into Standard No. 108. The field specifications represent the Committee's recommendations to all persons who perform visual/optical headlamp aiming in the field.#

1. *Laboratory Specification for the Vertical Visual Aim of the Lower Beam.* The Committee, in establishing and recommending to NHTSA a laboratory specification for visual aim of the lower beam, agreed that several factors must be considered to ensure accurate and repeatable results that would also relate to the requirements for field aimability. Accuracy for laboratory aim was specified to be within ± 0.1 degree. This was based on the test equipment positioning capability of± 0.01 degree along with the associated lamp-to-lamp and laboratory-to-laboratory variances. The Committee agreed that the specification for the gradient in the proposal be based on a required ± 0.1 degree laboratory aim accuracy and a 0.25 degree field aim accuracy with confidence limits of ± 2 sigma (95% of all aims will be in the range).

A University of Michigan Transportation Research Institute (UMTRI) study titled "Visual Aiming of European and U.S. Low-Beam Headlamps" (Report No. UMTRI–91–34, by Sivak, Flannagan, Chandra, and Gellatly) provided information which led to the establishment of the necessary gradient level. In the study by UMTRI, a wide range of lamps were tested, some of which were not designed for visual aiming. A subsequent study of visually aimable headlamps conducted at GE by the Society of Automotive Engineers' (SAE) Beam Pattern Task Force (in developing SAE J1735 "Harmonized Vehicle Headlamp Performance Requirements") found the standard deviation of vertical aim to be smaller than the standard deviation in the UMTRI study. Based on that study, SAE J1735 specifies a design value of 80% contrast based on 0.2 degree spacing of test points which corresponds to a value of 0.13 in log units with a 0.1 degree spacing of test points. The Committee concluded that a gradient of 0.13 would satisfy its goal for field aim accuracy.

Measurement of the specific gradients may be carried out using traditional photometric measurement equipment; however, photometric distance may vary between companies. It was decided that a procedure which has been developed by the Groupe de Travail "Bruxelles 1952" (GTB) Short-term Scientific Studies Working Group (SSST WG) would provide a baseline system for this test. This may be found in "Draft Minutes of the Meeting held at Budapest 1995 October 3" on file in the docket as attachment 3–9 to the Committee's minutes of Meeting No. 3.

The cutoff can be on either the right or left side of the lower beam pattern. When so located, it provides the necessary reference for placing the beam in the appropriate vertical location for correct aim. In order to achieve a cutoff in a beam, there must be a distinct difference in illumination levels above and below the cutoff. This may be achieved by numerous methods in the design of a headlamp. For the purposes defined by the Committee, a horizontally-oriented cutoff is necessary. Based on work done by the SAE Beam Pattern Task Force, UMTRI, Commision Internationale de l'Eclairage Working Group on Vehicle Lighting (CIE TC4.10) ("Definition of the Vertical Cut-off of Vehicle Headlights" draft 1993–3–15), and the GTB SSST WG, and reviewed by the Committee, the method for describing the cutoff is as follows.

Scientific studies by Blackwell, Olson, Forbes, Sivak, Flannigan, et al., have shown that the human eye responds to the logarithm (to base 10) of the gradient of screen luminance. This mathematical expression simulates in the laboratory where human vision perceives the cutoff on a screen during field aiming. A vertical scan of the lower beam pattern at a specified number of degrees to the right or left of the headlamp beam pattern's vertical axis, where the cutoff is located, is taken to gather data on the intensity values. Thes data are then analyzed using the mathematical expression to determine where the greatest rate of change of illumination occurs; the vertical location of the cutoff is thus defined. For example, a person could use a goniophotometer to record data in small vertical increments at the locations at 2.5 degrees left or 2.0 degrees right in order to determine the cutoff location.

For effective field aiming, the cutoff needs to be finitely long so that the person looking at the cutoff has a sufficient cue to find it. This range should extend at least one degree on each side of the specified measurement point of the cutoff and should be approximately straight and horizontal.

The cutoff on the left side of the beam pattern can be achieved by putting more light below the horizontal on the left rather than reducing the intensity of light above the cutoff. This added light provides more illumination to detect objects on the left side of the beam pattern and more uniformity of the total light output from the vehicle. The light above the horizontal would not be decreased. The right side of the beam needs no such enhancement to achieve an adequate gradient for the cutoff. In addition to the above, these changes cause small effects in other areas of the beam that will be addressed below.

The Committee recommends and NHTSA proposes the following changes to the existing photometric figures in Standard No. 108 for all headlamps designed for visual/optical aiming:

(a) elimination of the 0.5 deg. D–1.5 deg. L to L test points,

(b) elimination of the 1.0 deg. D–6.0 deg. L test point,

(c) addition of an 0.86 deg. D–3.5 deg. L test point with intensity requirements of 1800 cd. minimum, and 12000 cd. maximum, and

(d) addition of an 0.86 deg D–V test point with intensity requirements of 4500 cd minimum,

(e) addition of an 0.6 deg D–1.3 deg R test point replacing the current test point at 0.5 deg D–1.5 deg R with intensity requirements shown below:

Proposed test point: 0.6 deg. D–1.3 deg. R (cd minimum)	Proposed Source of requirement (Std. No. 108)	Replaced Test Point: 0.5 deg. D–1.5 deg. R		Source of requirement (Std. No. 108)
		cd minimum	cd maximum	
10000	new Fig. 15va & 17va.	10000	20000	Fig. 15A & 17A.
10000	new Fig. 27va & 28va.	8000	20000	Fig. 27 & 28.

(f) and modification of the 4 degree D–V test point in the Figure 15va lower beam maximum candela column from 7000 cd to 10000 cd.

In Figures 27 and 28 of Standard No. 108 the maximum value at 0.5 degree D–1.5 degrees L is 2500 cd. In Figures

15A and 17A, the maximum value at 0.5 degree D–1.5 degrees L is 3000 cd. The value of the 1.0 degree D–6.0 degrees L test point is 750 cd minimum, and it becomes superfluous because of the additional illumination provided by the new test point specified at 0.86 degree D–3.5 degrees L.

The three test points: 0.86 degree D–3.5 degrees L; 0.86 degree D–V; and 0.6 degree D–1.3 degree R; have all been the subject of lower beam headlamp harmonization activities with GTB, GRE, JASIC, and SAE. A research study, UMTRI Report 94–27 "Evaluation of the SAE J1735 Draft Proposal for a Harmonized Low-Beam Headlighting Pattern" reports that these three test points contribute to better performance of the lower beam headlamp.

In the past there has been one "seeing light" test point at 0.5 degree D–1.5 degree R. This is being replaced by three new "seeing light" test points: 0.6 degree D–1.3 degrees R; 0.86 degree D–V; and 0.86 degree D–3.5 degree L. The new 0.86 degree D–V test point with the 4500 cd minimum will increase uniformity of the beam pattern below the horizontal line between the high intensity zones on the left and right. The new 0.6 degree D–1.3 degree R test point represents a relocation of a current test point by 0.1 degree D (from 0.5 degree D to 0.6 degree D) and 0.2 degree L (from 1.5 degree R to 1.3 degree R). These changes represent a significant improvement in providing more light to the left side of the beam pattern.

There is a maximum (20000 cd) requirement at the 0.5 degree D–1.5 degree R test point. Because of significantly greater control of minimum and maximum illumination above the horizontal axis, there is no continuing need for a maximum at this location.

The recommendation to modify the test point value at 4D–V in Fig. 15va from 7000 cd maximum to 10000 cd maximum is based on the substantial increase of light resulting from the test point modifications discussed above which extend the high intensity zone on the right side of the beam pattern to the left side of the beam. The previous test point value at 0.5 degree D–1.5 degrees L to L limited not only the light to the left region of the roadway, but also to the foreground area. Directing more light to the left will increase foreground light levels. Studies performed by UMTRI have shown that very high levels of foreground light can depreciate the driver's seeing-distance performance. A modest increase in the maximum candela level at this test point from 7000 to 10000 will allow the additional left-lane light yet not create undue foreground illumination.

The Committee believes that the compromise between "seeing light" and glare protection requires an asymmetric beam pattern. The beam pattern should be lower on the left to protect oncoming drivers from glare. This is consistent with both the current U.S. and European beam pattern design. Therefore the Committee recommends and NHTSA proposes that the cutoff location be positioned at 0.4 degree below the H–H line for headlamps designed to be aimed using the left side of the beam pattern and at the H–H line for headlamps designed to be aimed using the right side of the beam pattern. The 0.4 degree down aim on the left side would cause the top edge of the main part of the beam pattern on the left to intersect the road surface at approximately 90 m. (300 feet) from the vehicle with headlamps mounted at 635 mm. (25 inches) above the road surface. This distance is increased from present headlamps that are limited by the 0.5 degree D–1.5 degrees L to L test point that exists today. The H–H line was selected for the right side location of the cutoff so that the high intensity zone of the beam is properly placed for adequate seeing distance and because glare is less of a concern on the right side.

The specific mathematical expression for identifying the cutoff is: $G = \log E(\alpha) - \log E(\alpha+0.1)$, where "G" is the gradient, "E" is illumination and "α" is the vertical angular position. The maximum value of the gradient "G" determines the angular location of the cutoff.

2. *Field Specification for Visual Aim of Lower Beam.* As noted above, the field specification will not be incorporated into Standard No. 108 but represents the Committee's recommendation that should be used by persons in the field who will be aiming visually/optically aimable headlamps. The goal of this specification is to assure that a procedure for accurately aiming visually/optically aimable headlamps is available for use by people who need to aim headlamps. The intent of the Committee for this specification is to make it as similar to existing practices as possible. To this end, the practice in SAE J599 "Lighting Inspection Code" and the AAMVA "Vehicle Inspection Handbook", as well as studies done by NHTSA, UMTRI and JASIC, were used to develop the specification. The Committee made decisions about the field specification that are incorporated below.

a. *Distance.*

(i) Visual aim shall be performed at not less than 7.5 m. (this value is a rounded down conversion from the 25-foot distance typical of field aim using a screen). The 7.5 m. distance is measured from the front of the headlamp lens to the viewing screen.

(ii) Optical aim shall be performed at the distance specified by the manufacturer of the optical aiming device.

b. *Accuracy.* The field aiming procedure shall be capable of placing the cutoff within ±0.25 degree.

c. *Ambient Light.* The ambient light level during the aiming process affects the accuracy of aiming headlamps installed on motor vehicles. The ambient light level should be not more than 110 lux (10 foot-candle) measured vertically at the screen surface around the H–V point for each lamp.

d.-*Floor.* The surface upon which the vehicle rests is flat and approximately level.

e. *Screen.* The screen upon which headlamp beams are projected is perpendicular to the floor and the vehicle's longitudinal axis, flat, uniformly light in color, unobstructed, and wide and high enough to accommodate the vehicle beam patterns to be aimed. The screen should be wide enough to provide at least 1 m. of space outboard of the vehicle's headlamp spacing.

(i) Placement of the horizontal reference line on the screen for lower beam headlamps marked "VOL" (the symbol is explained later in this notice): 52 mm. with a screen at 7.5 m. (2.1 inches at 24.6 feet) below the height of the optical axis of the headlamp (this represents approximately 0.4 degree down coincident with the laboratory specification).

(ii) Placement of the horizontal reference line on the screen for lower beam headlamps marked "VOR": at the height of the optical axis of the headlamp (coincident with the laboratory specification).

(iii) Placement of each of the two vertical reference lines on the screen for lower beam headlamps marked either "VOL" or "VOR": at the vertical centerline of each lower beam headlamp.

f. *Aim Procedure.* Aim the cutoff vertically so that it is centered on the horizontal reference line. This is correct aim. Aim inspection limits are ± 100 mm. (4 in.). Note: only headlamps with a VHAD will be horizontally adjustable. (When horizontal aim is non-adjustable, horizontal aim will not be compromised because most state laws require that headlamps be correctly aimed at the time of the first sale of the vehicle. Further, proper repair of collision-damaged vehicles will assure correct placement of headlamps and thus maintain proper horizontal aim.)

g. *Reduction in Vertical Aim Inspection Limits.* The Committee believes that an improved beam cutoff allows some reduction in the vertical inspection limits. For instance, many state aim inspection requirements prescribe tolerances for mechanically aimed headlamps which allow the beam to vary ±4 inches at 25 feet measuring distance (±0.76 degree) as stated in f. above. The Committee believes that a reduction of this tolerance range is feasible for lower beam headlamps marked "VOR" and "VOL" and urges the SAE and the states to investigate and implement a uniformly reduced vertical aim inspection limit for these types of headlamps.

B. *Horizontal Aim of Lower Beam.*

1. *Eliminating Horizontal Aim Adjustability.* Horizontal aimability is mandatory for mechanically-aimed headlamps under Standard No. 108. Because the lower beam of a headlamp designed to conform to Standard No. 108 does not have any visual cues for achieving correct horizontal aim when aimed visually or optically, and because it is not possible to add such visual features without damaging the beam pattern, horizontal aim should be either fixed and non-adjustable, or have a horizontal VHAD.

When horizontal aim is non-adjustable, horizontal aim will not be compromised because most state laws require that headlamps be correctly aimed at the time of the first sale of the vehicle. Generally, the vehicle's manufacturer accepts the responsibility for assuring correct aim of headlamps on new motor vehicles. Further, proper realignment of front-end components of collision-damaged vehicles will assure correct placement of headlamps and thus maintain proper horizontal aim. Thus, no further specifications are necessary for field use, except to note that horizontal aim may not be adjustable on some lamps marked "VOR" or "VOL" on the lens.

Standard No. 108 specifies for the lower beam, test points at 15 and 9 degrees left and right, with minimum candela of 850 and 1000 (test points 15 and 9 degrees, Figures 15A and 17A) and 700 and 750 (test points 15 and 9 degrees, Figures 27 and 28). NHTSA proposes new Figures 15va, 17va, 27va, and 28va in which these values are increased. New test points to be added at 20 degrees left and right further widen the beam. In addition to the substitution of the above mentioned 0.86D–3.5L test point for the 0.5D–1.5L to L, to facilitate the cutoff, these changes make the new beam pattern less sensitive to horizontal positioning. The proposed modifications and additions are:

9 deg L&R–2 deg D	1250 cd. min.
15 deg L&R–2 deg D	1000 cd. min.
20 deg L&R–4 deg D	300 cd. min.

These locations and values were taken from SAE J1735 which achieves a wider beam pattern as a result of these test points.

2. *Horizontal Aim of Lower Beam for Laboratory Photometry tests.* The headlamp shall be mounted onto a fixture which simulates its actual design orientation on any vehicle for which the headlamp is intended. The fixture, with the headlamp installed, shall be attached to the goniometer table in such a way that the fixture alignment axes are coincident with the goniometer axes. Shimming or adjustment of the headlamp's attachment to the test fixture to comply with the photometric requirements is not allowed. If there is a VHAD, the aim of the headlamp shall be adjusted, using the headlamp's horizontal aiming adjusters so that the VHAD reads zero. When the headlamp has been aimed vertically, the lamp is ready to be tested for photometric compliance.

C. *Vertical Aim of Upper Beam.* As with vertical aim of the lower beam, vertical aim of the upper beam requires both a laboratory specification for headlamps before installation and a field specification for headlamps after installation; however, the aim of the upper beam is not nearly as critical as it is for the lower beam. The notice proposes that the laboratory specification be incorporated into Standard No. 108 for visually/optically aimable headlamps. For a headlamp that incorporates both a lower beam and an upper beam, the laboratory procedure and the field procedure for upper beam are not applicable, because the headlamp must be aimed using the lower beam, and, by design, both beams are photometered in that position.

For a headlamp that has only an upper beam, the following apply:

1. *Laboratory Specification for Vertical Visual Aim of Upper Beam.* The vertical aim of the upper beam shall be adjusted so that the maximum beam intensity is located on the H-H axis.

2. *Laboratory Specification for Horizontal Visual Aim of Upper Beam.* The horizontal aim of the upper beam shall be adjusted so that the maximum beam intensity is located on the V-V axis unless the headlamp has fixed horizontal aim or a VHAD. In these cases, it shall be mounted onto a fixture which simulates its actual design orientation on any vehicle for which the headlamp is intended. The fixture, with the headlamp installed, shall be attached to the goniometer table in such a way that the fixture alignment axes are coincident with the goniometer axes. Shimming or adjustment of the headlamp's attachment to the test fixture to comply with the photometric requirements is not allowed. If there is a VHAD, the aim of the headlamp shall be adjusted, using the headlamp's horizontal aiming adjusters so that the VHAD reads zero. When the headlamp has been aimed vertically, the lamp is ready to be tested for photometric compliance.

3. *Field Specification for Visual Aim of Upper Beam.* As noted above, the field specification will not be incorporated into Standard No. 108 but represents the Committee's recommendation that should be used by persons in the field who will be aiming visually/optically aimable headlamps. The goal of this specification is to assure that a procedure for accurately aiming visually/optically aimable headlamps is available for use by people who need to aim headlamps. The intent of the Committee for this specification is to make it as similar to existing practices as possible. To this end, the practice in SAE J599 "Lighting Inspection Code" and the AAMVA "Vehicle Inspection Handbook", were used to develop the specification. The Committee made decisions about the field specification that are incorporated below.

a. *Distance.*

(i) Visual aim shall be performed at not less than 7.5 m. (this value is a rounded down conversion from the 25-foot distance typical of field aim using a screen). The 7.5 m. distance is measured from the front of the headlamp lens to the viewing screen.

(ii) Optical aim shall be performed at the distance specified by the manufacturer of the optical aiming device.

b. *Accuracy.* The field aiming procedure shall be capable of placing the high intensity zone of the upper beam within ±0.3 degree vertically and ±0.6 degree horizontally.

c. *Ambient Light.* The ambient light level during the aiming process affects the accuracy of aiming headlamps installed on motor vehicles. The ambient light level adequate for visually/optically aiming the lower beam is amply low enough for accurate aiming of the upper beam.

d. *Floor.* The surface upon which the vehicle rests is flat and approximately level.

e. *Screen.* The screen upon which headlamp beams are projected is perpendicular to the floor and the

vehicle's longitudinal axis, flat, uniformly light in color, unobstructed, and wide and high enough to accommodate the vehicle beam patterns to be aimed. The screen should be wide enough to provide at least 1 m. of space outboard of the vehicle's headlamp spacing.

(i) Placement of the horizontal reference lines on the screen for upper beam headlamps marked "VO": at the height of the optical axis of the headlamp.

(ii) Placement of the vertical reference lines on the screen for upper beam headlamps marked "VO": each reference line separated horizontally from the point of projection of the vehicle's longitudinal axis on the screen, by one half the distance separating the optical axes of the upper beam headlamps on the vehicle.

I. Aim Procedure. Adjust the aiming screws so that the high intensity zone is centered at the intersection of the horizontal and vertical reference lines on the screen and within the allowable tolerances of ±100mm (4 in.). Note: only headlamps with a VHAD will be horizontally adjustable. (When horizontal aim is non-adjustable, horizontal aim will not be compromised because most state laws require that headlamps be correctly aimed at the time of the first sale of the vehicle. Further, proper repair of collision damaged vehicles will assure correct placement of headlamps and thus maintain proper horizontal aim.)

D. *Movable Reflector Headlamps.* Movable reflector headlamps have a lens and headlamp housing that does not move with respect to the surrounding car structure when headlamps are aimed. Therefore the range of headlamp aim limits does not need to be as large to cover repairs from vehicle collisions. Requirements for the aiming of movable reflector headlamps have been clarified and expanded to cover headlamps which are visually/optically aimable. The vertical aim range limits will now cover only the full range of pitch on the vehicle on which the headlamp system is installed. (Full range of pitch on the vehicle is defined in S7.8.3 of Standard No. 108.) When horizontal aim is incorporated in a headlamp the horizontal aim range limits will remain 2.5 degrees. Photometry will then be done over the applicable aim limits used for the headlamp system.

E. *Marking Requirements*

1. *Headlamp Optical Axis Mark.* The accuracy and reliability of headlamp aim depends upon the correct placement of aiming equipment in front of the vehicle and its headlamps. To assure that this placement is correct and precise, it is necessary for the headlamps to have an indication of the optical axis to act as a geometric reference for measuring distances to the floor and between the headlamps and the vehicle's longitudinal axis. This may be done by a mark on the interior or exterior of the lens, or by a mark or central structure on the interior or exterior of the headlamp. Thus, Standard No. 108 should be changed to require that a headlamp have this mark.

While this is necessary for visual/optical aim headlamps, it is also desirable for all headlamps because people who aim headlamps use visual/optical aim even though today's headlamps are not designed to be aimed by this method. In the interest of promoting correct aim, this optical axis mark is recommended for all future headlamp designs. This proposal may require changes in headlamps for existing production vehicles, however it is not intended to be a retroactive requirement. Adequate leadtime is required for this proposal. Commenters are invited to discuss leadtime concerns.

2. *Visual/Optical Aimability Identification mark.* Marking of headlamps would indicate that the lamp is visually/optically aimable according to the means specified in the final rule. Thus, Standard No. 108 would require that the visible part of the lens of each original and replacement equipment headlamp and headlamp lens, and of each original equipment and replacement equipment beam contributor, designed to be visually/optically aimable, manufactured on or after the effective date of the final rule, be marked with the symbols "VOL", "VOR", or "VO" either horizontally or vertically. The Committee determined that "VOR" and "VO" respectively should be the only marking used for all lower beam and upper beam sealed beam and integral beam headlamp types existing before the effective date of the final rule resulting from this NPRM if these types are ever redesigned to be visually/optically aimable. This will ensure that replacement headlamps are identically marked.

NHTSA proposes that manufacturers which introduce new visually/optically aimed headlamp types after the effective date be required to determine the aim method and apply the required marking. This aim method and marking must be followed by all subsequent manufacturers of this headlamp type.

A lower beam headlamp would be marked "VOL" if the manufacturer designs it to be visually/optically aimed using the left side of the lower beam pattern, and "VOR" if using the right side. If a sealed beam or an integral beam headlamp system is in production before the publication of the final rule, the lens of any lamp in such system that is manufactured on or after the effective date of the final rule would be marked "VOR", and would have the gradient on the right side, if the system is ever redesigned so that its lamps are visually/optically aimable. A headlamp would be marked "VO" if it is solely an upper beam headlamp and intended to be visually/optically aimed.

In accordance with other marking requirements of Standard No. 108, the letters would be not less than 3 mm high.

Allowing Existing Headlamps to Use the New Photometrics

The Committee also decided that the improved photometrics represented by Figures 15va, 17va, 27va or 28va should be available to manufacturers of headlamps that are not visually/optically aimable within the meaning of this rulemaking action, but which presently are designed to meet the photometrics of Figures 15A, 17A, 27 or 28. This raises no safety issues regarding glare or compatibility of replacement equipment, and NHTSA is proposing amendments to the text and Figure 26 appropriate to implement the Committee's decision.

Other Issues

Independent of the recommendations of the Committee to NHTSA, the agency would like to have comment regarding the costs, benefits and other impacts associated with the following issues.

(1) For the express purpose of simplifying the requirements of the Standard No. 108 to reduce the burden on regulated persons, please comment on the possibility and timing of an eventual mandatory requirement for having only visually/optically aimable headlamps. Such an action would eliminate at least four Figures (15A, 17A, 27 and 28) and significant text associated with mechanical and VHAD aiming.

(2) For additional significant gains toward simplification and burden reduction that could be achieved, please comment on the possibility and timing of using only Figures 15va and 17va as the only allowed photometric performance at sometime in the future. This can eliminate another three Figures (26, 27va and 28va) and many pages of text associated with explanations of how to select the correct photometric performance.

Proposed Effective Dates

The amendments that allow headlamps to be visually/optically aimable as an alternative to existing aimability requirements would be effective 60 days after publication of the final rule in the **Federal Register**.

The amendments to S7.8.1 amending the fiducial marking to require an optical axis mark for headlamps that are not visually/optically aimable would become effective September 1 of the year following one year after publication of the final rule. For example, if the final rule is published after September 1, 1996 and before September 1, 1997, the effective date of the rule would be September 1, 1998. There would be no retroactive effect on existing headlamps or their replacements. The amendments to S7.8.5.2(c) amending the calibration requirements for the VHAD also would become effective September 1 of the year following one year after publication of the final rule. There would be no retroactive effect on existing headlamps or their replacements.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under Executive Order 12866. Further, it has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The purpose of the rulemaking action is to provide an alternative and more objective means of determining the accuracy of headlamp aim. As an alternative, the provisions would not be mandatory unless a manufacturer chose to install visually/optically aimable headlamps on a motor vehicle that it intends to sell. Because of offsetting benefits to vehicle manufacturers when choosing this option, it is likely that greater benefits than costs will occur. The costs of the final rule would be so minimal as not to warrant preparation of a full regulatory evaluation.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. It is not anticipated that a final rule based on this proposal would have a significant effect upon the environment. The composition of headlamps would not change from those presently in production.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act. For the reasons stated above and below, I certify that this rulemaking action would not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and motor vehicle equipment, those affected by the rulemaking action, are generally not small businesses within the meaning of the Regulatory Flexibility Act.

Executive Order 12612 (Federalism)

This rulemaking action has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice

A final rule based on this proposal would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Tires.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR Part 571 would be amended as follows:

1. The authority citation for Part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.108 would be amended by:

a. amending Section S4 to add new definitions: "Cutoff" and "Visually/optically aimable headlamp" in alphabetical order to read as set forth below;

b. revising the definition in S4 of "Vehicle headlamp aiming device", to read as set forth below;

c. revising S7.3.2(a)(3); 7.3.3(a); S7.3.4; S7.3.5(a); S7.3.6(a); the first sentence of S7.3.7(b); S7.3.7(d); S7.3.7(h)(1); the last sentence of S7.3.8(b); S7.4(a)(1)(i); S7.4(a)(1)(ii); S7.4(a)(1)(iii); S7.4(a)(2)(i); S7.4(a)(2)(ii); the first sentence of S7.4 (a)(3); S7.5(d)(2)(i)(A)(*1*); S7.5(d)(2)(i)(A)(*2*), S7.5(d)(2)(ii)(A)(*1*), S7.5(d)(2)(ii)(A)(*2*), S7.5(d)(3)(i)(A); S7.5(d)(3)(i)(B); S7.5(d)(3)(ii)(A); S7.5(d)(3)(ii)(B); S7.5(e)(2)(i)(A); S7.5(e)(2)(i)(B); S7.5(e)(2)(ii)(A); S7.5(e)(2)(ii)(B); the

first sentences of S7.5(e)(3)(i) and S7.5(e)(3)(ii); S7.6.2; S7.6.3; and S7.8.1; S7.8.2; S7.8.2.2; and S7.8.5, to read as set forth below;

d. redesignating paragraph S7.8.5.2(c) as S7.8.5.2(d);

e. adding new S7.8.5.2(c) and S7.8.5.3 to read as set forth below;

f. revising the fourth sentence of S10 (a) and the third sentence of S10(b) to read as set forth below;

g. adding new Figures 15B, 17B, 27A, and 28A, to read as set forth below; and

h. revising Figure 26 to read as set forth below:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S4 *Definitions.*

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Cutoff means a generally horizontal, visual/optical aiming cue in the lower beam that marks a separation between areas of higher and lower luminance.

* * * * *

Vehicle headlamp aiming device or VHAD means motor vehicle equipment, installed either on a vehicle or headlamp, which is used for determining the horizontal or vertical aim, or both the vertical and horizontal aim of the headlamp.

Visually/optically aimable headlamp means a headlamp which is designed to be visually/optically aimable in accordance with the requirements of S7.8.5.3 of this standard.

S7.3.2 *Type A headlighting system.* * * *

(a) * * *

(3) In S4.5.2 and S5.1.6, the words "Figure 28 or 28A of Motor Vehicle Safety Standard No. 108 are substituted for "Table 3."

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S7.3.3 *Type B headlighting system.* * * *

(a) The requirements of S7.3.2(a) through (c), except that Figure 27 or Figure 27A is substituted for Table 3 in S7.3.2(a)(3).

* * * * *

S7.3.4 *Type C headlighting system.* A Type C headlighting system consists of two Type 1C1 and two Type 2C1 headlamps and associated hardware, which are designed to conform to the requirements of S7.3.2(a) through (d), except that Figure 28 or 28A is substituted for Table 3 in S7.3.2(a)(3).

S7.3.5 *Type D headlighting system.* (a) A Type D headlighting system consists of two Type 2D1 headlamps and associated hardware, which are designed to conform to the requirements of S7.3.2(a) through (c), except that Figure 27 or 27A is substituted for Table 3 in S7.3.2(a)(3).

* * * * *

S7.3.6 *Type E headlighting system.* (a) A Type E headlighting system consists of two Type 2E1 headlamps and associated hardware, which are designed to conform to the requirements of S7.3.2(a) through (c), except that Figure 27 or 27A is substituted for Table 3 in S7.3.2(a)(3).

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S7.3.7 *Type F headlighting system.* * * *

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(b) The photometric requirements of Figure 15A or 15B of this standard. * * *

* * * * *

(d) When tested in accordance with paragraph (c) of this section, the mounted assembly (either Type UF or Type LF headlamps, respective mounting ring, aiming ring, and aim adjustment mechanism) shall be designed to conform to the requirements of Figure 15A or 15B for upper or lower beams respectively without reaim when any conforming Type UF or LF headlamp is tested and replaced by another conforming headlamp of the same Type.

* * * * *

(h) * * *

(1) The assembly (consisting of the Type UF and LF headlamps, mounting rings, the aiming/seating rings, and aim adjustment mechanism) shall be designed to conform to the test points of Figure 15A or 15B.

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S7.3.8 Type G headlighting system. * * *

* * * * *

(b) * * * In S4.5.2, the words "either Figure 28 or 28A" are substituted for the words "Table 3".

* * * * *

S7.4 *Integral beam headlighting systems.* * * *

(a) * * *

(1) * * *

(i) Figure 15A or 15B; or

(ii) Figure 15A or 15B, except that the upper beam test value at 2.5D-V and 2.5D–12R and 12L, shall apply to the lower beam headlamp and not to the upper beam headlamp, and the upper beam test point value at 1.5D–9R and 9L shall be 1000; or

(iii) Figure 28 or 28A.

(2) * * *

(i) Figure 17 or 17B; or

(ii) Figure 27 or 27A.

(3) In a system in which there is more than one beam contributor providing a lower beam, and/or more than one beam contributor providing an upper beam, each beam contributor in the system shall be designed to meet only the photometric performance requirements of Figure 15A or 15B based upon the following mathematical expression: conforming test point value = 2 (Figure 15A or 15B test point value)/total number of lower or upper beam contributors for the vehicle, as appropriate. * * *

* * * * *

S7.5 *Replaceable bulb headlighting systems.* * * *

* * * * *

(d) * * *

(2) * * *

(i) * * *

(A) * * *

(*1*) The lower beam requirements of Figure 27 or 27A or Figure 17A or 17B if the light sources in the headlamp system are any combination of dual filament replaceable light sources other than Type HB2; or

(*2*) The lower beam requirements of Figure 17A or 17B if the light sources are Type HB2, or any dual filament replaceable light sources that include Type HB2; or

(B) * * *

(ii) * * *

(A) * * *

(*1*) The upper beam requirements of Figure 27 or 27A, or Figure 17A or 17B if the light sources in the headlamp system are any combination of dual filament replaceable light sources that include Type HB2, or

(*2*) The upper beam requirements of Figure 17A or 17B if the light sources are Type HB2, or any combination of replaceable light sources that include Type HB2; or

* * * * *

(3) * * *

(i) * * *

(A) The lower beam requirements of Figure 27 or 27A, or Figure 15A or 15B if the light sources in the headlamp system are any combination of dual filament light sources other than Type HB2; or

(B) The lower beam requirements of Figure 15A or 15B if the light sources are Type HB2, or dual filament light sources other than Type HB1 and Type HB5. * * *

(ii) * * *

(A) The upper beam requirements of Figure 27 or 27A or Figure 15A or 15B if the light sources in the headlamp system are any combination of dual filament light sources other than Type HB2; or

(B) The upper beam requirements of Figure 15A or 15B if the light sources are Type HB2, or dual filament light sources other than Type HB1 and Type HB5. * * *

(e) * * *

* * * * *

(2) * * *

(i) * * *

(A) By the outboard light source (or the uppermost if arranged vertically) designed to conform to the lower beam requirements of Figure 17A or 17B; or

(B) By both light sources, designed to conform to the lower beam requirements of Figure 17A or 17B.

(ii) * * *

(A) By the inboard light source (or the lower one if arranged vertically) designed to conform to the upper beam requirements of Figure 17A or 17B; or

(B) By both light sources, designed to conform to the upper beam requirements of Figure 17A or 17B.

(3) * * *

(i) The lower beam shall be produced by the outboard lamp (or upper one if arranged vertically), designed to conform to the lower beam requirements of Figure 15A or 15 B. * * *

(ii) The upper beam shall be produced by the inboard lamp (or lower one if arranged vertically), designed to conform to the upper beam requirements of Figure 15A or 15B.

* * *

* * * * *

S7.6.2 In a combination headlighting system consisting of two headlamps, each headlamp shall be designed to conform to Figure 17A or 17B and shall be a combination of two different headlamps chosen from the following types: a Type F headlamp, an integral beam headlamp, and a replaceable bulb headlamp.

* * * * *

S7.6.3 In a combination headlighting system consisting of four headlamps, each headlamp shall be designed to conform to Figure 15A or 15B, or if an integral beam headlamp in which there is more than one beam contributor, designed to conform to Figure 15A or 15B in the manner required by S7.4(a)(3) of this standard.

* * * * *

S7.8.1 (a) Each headlamp or beam contributor that is not visually/optically aimable in accordance with S7.8.5.3 of this standard shall be equipped with fiducial marks, aiming pads, or similar references of sufficient detail and accuracy, for determination of an appropriate vehicle plane to be used with the photometric procedures of SAE J1383 APR85 for correct alignment with the photometer axis when being tested for photometric compliance, and to serve for the aiming reference when the headlamp or beam contributor is installed on a motor vehicle. The fiducial marks, aiming pads, or similar references are protrusions, bubble vials, holes, indentations, ridges, scribed lines, or other readily identifiable marks established and described by the vehicle or headlamp manufacturer.

(b) Each motor vehicle manufactured on and after September 1 [of the year following one year after publication of the final rule] shall be equipped with headlamps or beam contributors which have a mark or markings that are visible from the front of the headlamp to identify the optical axis of the headlamp to assure proper horizontal and vertical alignment of the aiming screen or optical aiming equipment. The manufacturer is free to choose the design of the mark or markings. The mark or markings may be on the interior or exterior of the lens or indicated by a mark or central structure on the interior or exterior of the headlamp.

(c) Each headlamp that is visually/optically aimable in accordance with S7.8.5.3 of this standard shall be marked in accordance with S7.8.5.3(f).

S7.8.2 Except as provided in this section, each headlamp shall be installed on a motor vehicle with a mounting and aiming mechanism that allows aim inspection and adjustment of both vertical and horizontal aim, and is accessible for those purposes without removal of any vehicle parts, except for protective covers removable without the use of tools. A visually/optically aimable headlamp that has a lower beam shall not have a horizontal adjustment mechanism unless such mechanism meets the requirements of S7.8.5.2 of this standard.

* * * * *

S7.8.2.2 If the headlamp is aimed by moving the reflector relative to the lens and headlamp housing, or vice versa, it shall:

(a) Allow movement of the headlamp system, when tested in the laboratory, to be not less than the full range of pitch on the vehicle on which the headlamp system is installed and for the horizontal aim range limits of S7.8.4,

(b) Conform with the photometrics applicable to it with the lens at any position relative to the reflector within the range limits as specified in paragraph (a) of this section,

(c) Be exempted from the aim range limits for testing in a laboratory as specified in S7.8.3, and

(d) Be exempted from S7.8.4 if it is visually/optically aimable and has fixed horizontal aim.

* * * * *

S7.8.5 When activated in a steady-burning state, headlamps shall not have any styling ornament or other feature, such as a translucent cover or grill, in front of the lens. Headlamp wipers may be used in front of the lens provided that the headlamp system is designed to conform with all applicable photometric requirements with the wiper stopped in any position in front of the lens. When a headlamp system is installed on a motor vehicle, it shall be aimable with at least one of the following:

(a) An externally applied aiming device, as specified in S7.8.5.1;

(b) An on-vehicle headlamp aiming device installed by the vehicle or lamp manufacturer, as specified in S7.8.5.2; or

(c) By visual/optical means, as specified in S7.8.5.3.

* * * * *

S7.8.5.2(c) Each headlamp equipped with a VHAD that is manufactured for use on motor vehicles manufactured on or after September 1 [of the year following one year after publication of the final rule] shall be manufactured with its calibration permanently fixed by its manufacturer. Calibration in this case means the process of accurately aligning the geometry of the VHAD devices with the beam pattern for the purposes of compliance with the standard.

* * * * *

S7.8.5.3 *Visual/optical aiming.* Each visually/optically aimable headlamp shall be designed to conform to the following requirements:

(a) *Vertical aim, lower beam.* Each lower beam headlamp shall have a cutoff in the beam pattern. It may be either on the left side or the right side of the optical axis, but once chosen for a particular headlamp system's design, the side chosen for the cutoff shall not be changed for any headlamps intended to be used as replacements for those system's headlamps.

(1) *Vertical position of cutoff.* The headlamp shall be aimed vertically so that the cutoff is on the left side, at 0.4 degree down from the H–H line, or on the right side, at the H–H line.

(2) *Vertical gradient.* The gradient of the cutoff measured at either 2.5 degrees L or 2.0 degrees R shall be not less than 0.13 based on the procedure of paragraph (a)(5) of this section.

(3) *Horizontal position of the cutoff.* The width shall be not less than two degrees, with not less than two degrees of its actual width centered at either 2.5 degrees L, or 2.0 degrees R.

(4) *Maximum inclination of cutoff.* The vertical location of the highest gradient at the ends of the minimum width shall be within ±0.2 degree of the vertical location of the maximum

gradient measured at the appropriate vertical line (at either 2.5 degrees L for a left side cutoff, or 2.0 degrees R for a right side cutoff.)

(5) *Measuring the cutoff parameters.* (i) The headlamp shall be mounted on a fixture which simulates its actual design location on any vehicle for which the headlamp is intended. The fixture, with the headlamp installed shall be attached to the goniometer table in such a way that the fixture alignment axes are coincident with the goniometer axes. The headlamp shall be energized at the specified test voltage.

(ii) The headlamp beam pattern shall be aimed with the cutoff at the H–H axis. There shall be no adjustment, shimming, or modification of the horizontal axis of the headlamp or test fixture, unless the headlamp is equipped with a VHAD. In this case the VHAD shall be adjusted to zero.

(iii) A vertical scan of the beam pattern shall be conducted for a headlamp with a left side gradient by aligning the goniometer on a vertical line at 2.5 degrees L and scanning from 1.5 degrees U to 1.5 degrees D. For a headlamp with a right side gradient, a vertical scan of the beam pattern shall be conducted by aligning the goniometer on a vertical line at 2.0 degrees R and scanning from 1.5 degrees U to 1.5 degrees D.

(iv) Determine the maximum gradient within the range of the scan by using the formula: $G=\log E(\alpha)-\log E(\alpha+0.1)$, where "G" is the gradient, "E" is illumination and "α" is vertical angular position. The maximum value of the gradient "G" determines the vertical angular location of the cutoff. Perform vertical scans at 1.0 degree L&R of the measurement point of the maximum gradient to determine the inclination.

(b) *Horizontal aim, lower beam.* There shall be no adjustment of horizontal aim unless the headlamp is equipped with a horizontal VHAD. If the headlamp has a VHAD, it shall be set at zero.

(c) *Vertical aim, upper beam.* (1) If the upper beam is combined in a headlamp with a lower beam, the vertical aim of the upper beam shall not be changed from the aim set using the procedures of S7.8.5.3 (a) and (b) used for the lower beam.

(2) If the upper beam is not combined in a headlamp with a lower beam, the vertical aim of the upper beam shall be adjusted so that the maximum beam intensity is located on the H–H axis.

(d) *Horizontal aim, upper beam.* (1) If the upper beam is combined in a headlamp with a lower beam, the horizontal aim of the upper beam shall not be changed from the aim set using the procedures of S7.8.5.3 (a) and (b) used for the lower beam.

(2) If the upper beam is not combined in a headlamp with the lower beam and has fixed horizontal aim or has a horizontal VHAD, then the headlamp shall be mounted on a fixture which simulates its actual design location on any vehicle for which the headlamp is intended. The fixture, with the headlamp installed shall be attached to the goniometer table in such a way that the fixture alignment axes are coincident with the goniometer axes. The headlamp shall be energized at 12.8±0.20 mV. There shall be no adjustment, shimming, or modification of the horizontal axis of the headlamp or test fixture, unless the headlamp is equipped with a VHAD. In this case the VHAD shall be adjusted to zero.

(3) If the upper beam is not combined in a headlamp with a lower beam, and it does not have a VHAD, the horizontal aim of the upper beam shall be adjusted so that the maximum beam intensity is located on the V–V axis.

(e) *Photometric requirements and measurements.* (1) Instead of being designed to conform to the photometric requirements of Figures 15A, 17A, 27 or 28, a visually/optically aimable headlamp shall be designed to conform to the requirements of Figures 15B, 17B, 27A or 28A when tested in accordance with paragraph (e)(2) of this section and SAE J575 DEC88, with the distance from the photometer to the headlamp no less than 18.3 m.

(2) If the lower beam has a left side cutoff, reaim the headlamp vertically to place the maximum gradient found in S7.8.5.3 at 0.4 degree below the H–H line. For a headlamp with a lower beam right side cutoff, place the maximum gradient found in S7.8.5.3 at the H–H line. For an upper beam, the headlamp would already be aimed at the end of the procedure found in S7.8.5.3. A 0.25 degree reaim is permitted in any direction at any test point.

(f) *Marking.* (1) *Headlamp optical axis mark.* There shall be a mark or markings identifying the optical axis of the headlamp visible from the front of the headlamp, to assure proper horizontal and vertical alignment of the aiming screen or optical aiming equipment with the headlamp being aimed. The manufacturer is free to choose the design of the mark or markings. The mark or markings may be on the interior or exterior of the lens or indicated by a mark or central structure on the interior or exterior of the headlamp.

(2) *Visual/optical aimability identification marks.* (i) The lens of a lower beam headlamp shall be marked "VOL" if the headlamp is intended to be visually/optically aimed using the left side of the lower beam pattern.

(ii) The lens of a lower beam headlamp shall be marked "VOR" if the headlamp is intended to be visually/optically aimed using the right side of the lower beam pattern.

(iii) The lens of each sealed beam or integral beam headlamp shall be marked "VOR" if the headlamp is of a type that was manufactured before [the effective date of the final rule] and if such headlamp type has been redesigned since then to be visually/optically aimable.

(iv) The lens of a headlamp that is solely an upper beam headlamp and intended to be visually/optically aimed using the upper beam shall be marked "VO".

(v) Each letter used in marking according to this paragraph shall be not less than 3 mm. high.

* * * * *

S10. *Simultaneous aim photometry tests.*

(a) *Type F headlamp systems.* * * * Photometry measurements of the UF photometry unit shall be completed using the aiming plane so established, and the procedures of section 4.1 and 4.1.4 Standard J1383 APR85, and Figure 15A or 15Ba. * * *

(b) *Integral beam headlamp systems.* * * * Photometric compliance of the lower beam shall be determined with all lower beam contributors illuminated and in accordance with sections 4.1 and 4.1.6 of SAE Standard J1383 APR85, and Figure 15A or 15B. * * *

* * * * *

FIGURE 15B.—PHOTOMETRIC TEST POINT VALUES

Test points (degrees)	Candela maximum	Candela minimum
Upper Beam		
2U–V	—	1,500
1U–3L and 3R	—	5,000
H–V	70,000	40,000
H–3L and 3R	—	15,000
H–6L and 6R	—	5,000
H–9L and 9R	—	3,000
H–12L and 12R	—	1,500
1.5D–V	—	5,000
1.5D–9L and 9R	—	2,000
2.5D–V	—	2,500
2.5D–12L and 12R	—	1,000
4D–V	5,000	—
Lower Beam		
10U–90U	125	—
4U–8L and 8R	—	64
2U–4L	—	135
1.5U–1R to 3R	—	200

FIGURE 15B.—PHOTOMETRIC TEST POINT VALUES—Continued

Test points (degrees)	Candela maximum	Candela minimum
1.5U–1R to R	1,400	—
1U–1.5L to L	700	—
0.5U–1.5L to L	1,000	—
0.5U–1R to 3R	2,700	500
H–V	5,000	—
H–4L	—	135
H–8L	—	64
0.6D–1.3R	—	10,000
0.86D–V	—	4,500
0.86D–3.5L	12,000	1,800
1.5D–2R	—	15,000
2D–9L and 9R	—	1,250
2D–15L and 15R	—	1,000
4D–V	10,000	—
4D–4R	12,500	—
4D–20L and 20R	—	300

FIGURE 17B.—PHOTOMETRIC TEST POINT VALUES

Test Points (degrees)	Candela maximum	Candela minimum
Upper Beam		
2U–V	—	1,500
1U–3L and 3R	—	5,000
H–V	75,000	40,000
H–3L and 3R	—	15,000
H–6L and 6R	—	5,000
H–9L and 9R	—	3,000
H–12L and 12R	—	1,500
1.5D–V	—	5,000
1.5D–9L and 9R	—	2,000
2.5D–V	—	2,500
2.5D–12L and 12R	—	1,000
4D–V	12,000	—
Lower Beam		
10U–90U	125	—

FIGURE 17B.—PHOTOMETRIC TEST POINT VALUES—Continued

Test Points (degrees)	Candela maximum	Candela minimum
4U–8L and 8R	—	64
2U–4L	—	135
1.5U–1R to 3R	—	200
1.5U–1R to R	1,400	—
1U–1.5L to L	700	—
0.5U–1.5L to L	1,000	—
0.5U–1R to 3R	2,700	500
H–4L	—	135
H–8L	—	64
0.6D–1.3R	—	10,000
0.86D–V	—	4,500
0.86D–3.5L	12,000	1,800
1.5D–2R	—	15,000
2D–9L and 9R	—	1,250
2D–15L and 15R	—	1,000
4D–4R	12,500	—
4D–20L and 20R	—	300

FIGURE 26.—TABLE FOR DETERMINING THE PHOTOMETRIC REQUIREMENTS OF REPLACEABLE BULB HEADLAMP SYSTEMS

	Any dual filament type other than HB2 used alone or with another dual filament type other than HB2, filed in Docket No. 93–11	HB2 or any single filament type used alone or with any other single or dual filament type, filed in Docket No. 93–11
Four-Headlamp Systems	Fig. 27 or 27A, Fig. 15 or 15B.	Fig. 15 or 15B.
Two-Headlamp Systems	Fig. 27 or 27A, Fig. 17 or 17B.	Fig. 17 or 17B.

FIGURE 27A.—PHOTOMETRIC TEST POINT VALUES

Test points (degrees)	Candela maximum	Candela minimum
Upper Beam		
2U–V	—	1,000
1U–3L and 3R	—	2,000
H–V	75,000	20,000
H–3L and 3R	—	10,000
H–6L and 6R	—	3,250
H–9L and 9R	—	1,500
H–12L and 12R	—	750
1.5D–V	—	5,000
1.5D–9L and 9R	—	1,500
2.5D–V	—	2,500

FIGURE 27A.—PHOTOMETRIC TEST POINT VALUES—Continued

Test points (degrees)	Candela maximum	Candela minimum
2.5D–12L and 12R	—	750
4D–V	5,000	—
Lower Beam		
10U–90U	125	—
4U–8L and 8R	—	64
2U–4L	—	135
1.5U–1R to 3R	—	200
1.5U–1R to R	1,400	—
1U–1.5L to L	700	—

FIGURE 27A.—PHOTOMETRIC TEST POINT VALUES—Continued

Test points (degrees)	Candela maximum	Candela minimum
0.5U–1.5L to L	1,000	—
0.5U–1R to 3R	2,700	500
H–4L	—	135
H–8L	—	64
0.6D–1.3R	—	10,000
0.86D–V	—	4,500
0.86D–3.5L	12,000	1,800
1.5D–2R	—	15,000
2D–9L and 9R	—	1,250
2D–15L and 15R	—	1,000
4D–4R	12,500	—
4D–20L and 20R	—	300

FIGURE 28A.—PHOTOMETRIC TEST POINT VALUES

Headlamp type	1A1, 1C1, and 1G1		2A1, 2C1, and 2G1	
Test points (degrees)	Candela maximum	Candela minimum	Candela maximum	Candela minimum
Upper Beam				
2U–V		750		750
1U–3L and 3R		3,000		2,000
H–V	60,000	18,000	15,000	7,000
H–3L and 3R		12,000		3,000
H–6L and 6R		5,000		2,000

FIGURE 28A.—PHOTOMETRIC TEST POINT VALUES—Continued

Headlamp type	1A1, 1C1, and 1G1		2A1, 2C1, and 2G1	
Test points (degrees)	Candela maximum	Candela minimum	Candela maximum	Candela minimum
H–9L and 9R		2,000		1,000
H–12L and 12R		750		750
1.5D–V		3,000		2,000
1.5D–9L and 9R		1,250		750
2.5D–V		1,500		1,000
2.5D–12L and 12R		600		400
4D–V	5,000		2,500	

Headlamp type	2A1, 2C1, and 2G1	
Test points (degrees)	Candela maximum	Candela minimum
Lower Beam		
10U–90U	125	
4U–8L and 8R		64
2U–4L		135
1.5U–1R to 3R		200
1.5U–1R to R	1,400	
1U–1.5L to L	700	
0.5U–1.5L to L	1,000	
0.5U–1R to 3R	2,700	500
H–4L		135
H–8L		64
0.6D–1.3R		10,000
0.86D–V		4,500
0.86D–3.5L	12,000	1,800
1.5D–2R		15,000
2D–9L and 9R		1,250
2D–15L and 15R		1,000
4D–4R	12,500	
4D–20L and 20R		300

Issued on July 2, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–17299 Filed 7–9–96; 8:45 am]

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DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Rescheduled Public Hearing on Proposed Threatened and Endangered Status for Five Plants and a Lizard From Monterey County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, notice of rescheduled public hearing.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of rescheduling of a public hearing on the proposed endangered status for coastal dunes milkvetch (*Astragalus tener* var. *titi*), Yadon's piperia (*Piperia yadonii*), Hickman's potentilla (*Potentilla hickmanii*), Monterey clover (*Trifolium trichocalyx*) and the black legless lizard (*Anniella pulchra nigra*); and threatened status for Gowen cypress (*Cupressus goveniana* ssp. *goveniana*). All parties are invited to submit comments on this proposal.

DATES: A public hearing was originally scheduled for Wednesday, July 17, 1996, in Monterey, California. The hearing has been rescheduled to be held on Tuesday, August 20, 1996, from 6:00 p.m. to 8:00 p.m. in Monterey, California. Any comments received by August 30, 1996, will be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held at the Hyatt Regency Hotel, One Golf Course Road, Monterey, California. Written comments and materials concerning this proposal may be submitted at the hearing or sent directly to the Field Supervisor, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California 93003. Comments and materials will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Connie Rutherford (see **ADDRESSES** section) or at 805/644–1766.

SUPPLEMENTARY INFORMATION:

Background

Most of the habitat for the plants and lizard is found in coastal habitats in northern Monterey County. Coastal dunes milk-vetch and Monterey clover are restricted to private lands on the Monterey Peninsula. Hickman's potentilla is restricted to two populations: one on the Monterey Peninsula, and one recently discovered near Devil's Slide in San Mateo County. Gowen cypress stands occur on the Monterey Peninsula, and at Point Lobos State Reserve five miles to the south. Yadon's piperia occurs primarily on private lands on the Monterey Peninsula, with other populations extending as far south as Palo Colorado Canyon, and as far north as Blohm Ranch north of Prunedale. The black legless lizard occurs on private and State Park lands between the Salinas and Carmel Rivers, on the Monterey Peninsula, and along Monterey Bay. A few populations of Yadon's piperia and the black legless lizard occur on Federal lands at Fort Ord.

The five plant taxa and the lizard are threatened by one or more of the following: alteration, destruction, and fragmentation of habitat resulting from urban and golf course development; recreational activities; highway widening; military activities; competition with non-native species; and alteration of natural fire cycles. All taxa are also threatened with stochastic extinction due to the small numbers of populations or individuals.

On August 2, 1995, the Service published a proposed rule on proposed endangered status for *Astragalus tener* var. *titi*, *Piperia yadonii*, *Potentilla hickmanii*, *Trifolium trichocalyx*, and the black legless lizard (*Anniella pulchra nigra*); and threatened status for Gowen cypress (*Cupressus goveniana* ssp. *goveniana* (60 FR 39326). Section 4(b)(5)(E) of the Act requires that a public hearing be held if one is requested within 45 days of the publication of the proposed rule in the **Federal Register**. A public hearing request was received within the allotted time period from Robert D. Thornton of Nossaman, Guthner, Knox & Elliott in Irvine, California. On June 26, 1996, the Service announced that a public hearing was scheduled to be held on July 17, 1996 (61 FR 33082). The hearing has been rescheduled to be held on August 20, 1996, at the Hyatt Regency Hotel, One Golf Course Road, Monterey, California.

Anyone wishing to make statements for the record should bring a written copy of their statements to the hearing. Oral statements may be limited in length if the number of parties present at the hearing necessitates such a limitation. Oral and written comments receive equal consideration. The Service places no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Legal notices announcing the date, time, and location of the hearing are being published in local newspapers. Written comments may be submitted until August 30, 1996, to the Service office in the **ADDRESSES** section.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)

Dated: July 3, 1996.

Don Weathers,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 96–17523 Filed 7–9–96; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register

Vol. 61, No. 133

Wednesday, July 10, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Food Distribution Program: Value of Donated Foods From July 1, 1996 to June 30, 1997

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the value of donated foods or, where applicable, cash in lieu thereof to be provided in the 1997 school year for each lunch served by schools participating in the National School Lunch Program (NSLP) or by commodity only schools and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ellen Henigan, Chief, Schools and Institutions Branch, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302 or telephone (703) 305–2660.

SUPPLEMENTARY INFORMATION:

Classification

These programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.550, 10.555, and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

National Average Minimum Value of Donated Foods for the Period July 1, 1996 through June 30, 1997.

This notice implements mandatory provisions of sections 6(e), 14(f) and 17(h)(1) of the National School Lunch Act (the Act) (42 U.S.C. 1755(e), 1762a(f), and 1766(h)(1)). Section 6(e)(1)(A) of the Act establishes the national average value of donated food assistance to be given to States for each lunch served in NSLP at 11.00 cents per meal. Pursuant to section 6(e)(1)(B), this amount is subject to annual adjustments as of July 1 of each year to reflect changes in a three-month average value of the Price Index for Food Used in Schools and Institutions for March, April, and May of each year. Section 17(h)(1) of the Act provides that the same value of assistance in donated foods for school lunches shall also be established for lunches and suppers served in the Child and Adult Care Food Program. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under NSLP (7 CFR Part 210) and per lunch and supper under the Child and Adult Care Food Program (7 CFR Part 226) shall be 14.50 cents for the period July 1, 1996 through June 30, 1997.

The Price Index for Food Used in Schools and Institutions is computed using five major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products; meats, poultry and fish; dairy products; processed fruits and vegetables; and fats and oils). Each component is weighed using the same relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month average value of the Price Index for March, April and May. The three-month average of the Price Index increased by 2.50 percent from 124.29 for March, April and May of 1995 to 127.40 for the same three months in 1996. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 1996 through June 30, 1997 will be 14.50 cents per meal. This is an increase of 0.25 cents from the school year 1996 rate.

Section 14(f) of the Act provides that commodity only schools shall be eligible to receive donated foods equal in value to the sum of the national average value of donated foods established under section 6(e) of the Act and the national average payment established under section 4 of the Act (42 U.S.C. 1753). Such schools are eligible to receive up to 5 cents per meal of this value in cash for processing and handling expenses related to the use of such commodities.

Commodity only schools are defined in section 12(d)(7) of the Act (42 U.S.C. 1760(d)(7)) as "schools that do not participate in the school lunch program under this Act, but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs."

For the 1997 school year, commodity only schools shall be eligible to receive donated food assistance valued at 32.25 cents for each lunch served. This amount is based on the sum of the section 6(e) level of assistance announced in this notice and the adjusted section 4 minimum national average payment factor for school year 1997. The section 4 factor for commodity only schools does not include the two cents per lunch increase for schools where 60 percent of the lunches served in the school lunch program in the second preceding school year were served free or at reduced prices, since that increase is applicable only to schools participating in the National School Lunch Program.

Section 103 of the Healthy Meals for Healthy Americans Act of 1994, (Public Law 103–448) amended section 6 of the National School Lunch Act by adding a new paragraph (g), which mandates that not less than 12 percent of the assistance provided under sections 4, 6, and 11 of the Act be in the form of commodity assistance, including cash in lieu of commodities and administrative costs for commodity procurement of commodities under section 6. In school year 1996, the announced rate generated commodity assistance at a level that exceeded the 12-percent mandate. In the event that the rate of $.1450 announced in this Notice fails to meet the 12-percent requirement, the rate will be retroactively adjusted upward, and the additional commodities will be delivered to States during the first quarter of the next school year.

Authority: Sections 6(e)(1) (A) and (B), 14(f) and 17(h)(1) of the National School Lunch Act, as amended (42 U.S.C. 1755(e)(1) (A) and (B), 1762a(f), and 1766(h)(1)).

Dated: July 2, 1996.

William E. Ludwig,

Administrator.

[FR Doc. 96–17519 Filed 7–9–96; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Cost Study for Single-Family Value-in-Place (VIP)

ACTION: Proposed Agency Information Collection Activity; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 9, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Masato Asanuma, Bureau of the Census, Manufacturing and Construction Division, Room 2136, FOB 4, Washington, DC 20233–6900, (301) 457–1241.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau produces a monthly data series on the value of private single-family residential construction put in place. Estimates for the series are derived from the Bureau's Survey of Construction (SOC) by using a mathematical model and construction progress patterns. The application of the mathematical model requires us to subtract out nonconstruction costs from sales price or contract value that we collect for the SOC and add construction costs not normally included in the contract value. The factors representing these corrections to the cost need to be updated in order to bring them up to date with today's housing market and recent innovations in construction. The factors currently in use were derived from two studies conducted in the early 1980's. The Census Bureau will conduct a special one-time study to re-estimate these factors based on current single-family construction data.

II. Method of Collection

A subset of the SOC respondents for single-family housing completions will be asked to provide the Census Bureau with up to nine construction cost items. The sample will be drawn from the single family units in the SOC that have been completed. The sample of 7,600 SOC respondents will be spread over a period of 13 months. The study is a mailout/mailback survey with telephone followups for nonresponse and data review. The respondents will be initially contacted within two months of the reported completion of the SOC.

III. Data

OMB Number: Not available.

Form Number: C–702(S) and C–702(C).

Type of Review: Regular.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 7,600.

Estimated Time Per Response: 12 minutes.

Estimated Total Annual Burden Hours: 1,520.

Estimated Total Annual Cost: $12,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 3, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–17543 Filed 7–9–96; 8:45 am]

BILLING CODE 3510–07–P

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Export Trade Certificate of Review No. 88–00016 was issued to Wood Machinery Manufacturers of America ("WMMA") on February 3, 1989 (54 FR 6312, February 9, 1989) and previously amended on June 22, 1990 (55 FR 27292, July 2, 1990); August 20, 1991 (56 FR 42596, August 28, 1991); December 20, 1993 (58 FR 66344, December 20, 1993); and August 23, 1994 (59 FR 44408, August 29, 1994).

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice

to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88–6A016."

Summary of the Application:

Applicant: Wood Machinery Manufacturers of America, 1900 Arch Street, Philadelphia, Pennsylvania 19103–1498.

Contact: Harold R. Zassenhaus, Export Director, Telephone: (301) 652–0693.

Application No.: 88–6A016.

Date Deemed Submitted: June 25, 1996.

Proposed Amendment: WMMA seeks to amend its Certificate to:

1. Add as "Members" the following companies: Alexander Dodds Company of Grand Rapids, Michigan; Mereen-Johnson Machine Company of Minneapolis, Minnesota; North American Products Corporation of Jasper, Indiana; and Wood-Mizer Products of Indianapolis, Indiana.

2. Delete as "Members" the following companies: Ken Hazledine Machine Company, Inc. of Terre Haute, Indiana; Kimwood Corporation of Cottage Grove, Oregon; Medalist Automated Machinery of Oshkosh, Wisconsin (currently doing business as Wisconsin Automated Machine Corp.); and VETS, Inc. of Fridley, Minnesota.

Dated: July 3, 1996.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 96–17500 Filed 7–9–96; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive, or Partially-Exclusive Licensing of Motion Sensor Technology

AGENCY: Picatinny Arsenal, New Jersey.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive Licenses under patent application Serial Number 08/596,396 filed February 12, 1996, Docket No: DAR–18–94 by Mark Johnson and Thomas Simkins entitled "Motion Sensor". Licenses shall comply with 35 U.S.C. 209 and 37 CFR part 404.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Goldberg, Chief, Intellectual Property Law Division, AMSTA–AR–GCL, U.S. Army ARDEC, Picatinny Arsenal, NJ 07806–5000, telephone (201) 724–6950.

SUPPLEMENTARY INFORMATION: Written objections must be filed within 3 months from the date of publication of this notice in the **Federal Register**.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–17616 Filed 7–9–96; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Inland Waterways Users Board

AGENCY: Department of the Army, DOD.

ACTION: Notice of request for nominations.

SUMMARY: Section 302 of Public Law (PL) 99–662 established the Inland Waterways Users Board. The Board is an independent Federal advisory committee. Its 11 members are appointed by the Secretary of the Army. This notice is to solicit nominations for five (5) appointments or reappointments to two-year terms that will begin January 1, 1997.

ADDRESSES: Office of the Assistant Secretary of the Army (Civil Works), Department of the Army, Washington, D.C. 20310–0103. Attention: Inland Waterways Users Board Nominations Committee.

FOR FURTHER INFORMATION CONTACT: Honorable H. Martin Lancaster, Assistant Secretary of the Army (Civil Works) (703) 697–4671.

SUPPLEMENTARY INFORMATION: The selection, service, and appointment of Board members are covered by provisions of Section 302 of PL 99–662. The substance of those provisions is as follows:

a. Selection

Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracoastal waterways, to represent geographical regions, and to be representative of waterway commerce as determined by commodity ton-miles statistics.

b. Service

The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterways construction and rehabilitation priorities and spending levels for commercial navigation improvements, and report its recommendations annually to the Secretary and Congress.

c. Appointment

The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (PL 92–463, as amended) and departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable. The considerations specified in section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows:

(1) Carriers and Shippers

The law uses the terms "primary users and shippers." Primary users has been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers has been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper or primary user.

(2) Geographical Representation

The law specifies "various" regions. For the purpose of selecting Board members, the waterways subjected to fuel taxes and described in PL 95–502, as amended, have been aggregated into six regions. They are (1) the Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lower Mississippi River and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) the Ohio River and its tributaries; (4) the Gulf Intracoastal Waterway in Louisiana and Texas; (5) the Gulf Intracoastal Waterway east of New Orleans and associated fuel-taxed waterways including the Tennessee-Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake River System and Upper Willamette. The intent is that each region shall be represented by at least one Board member, with that representation determined by the regional concentration of the individual's traffic on the waterways.

(3) Commodity Representation

Waterway commerce has been aggregated into six commodity categories based on "inland" ton-miles shown in Waterborne Commerce of the United States. In rank order they are (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum, Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All other. A consideration in the selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

d. Nomination

Reflecting preceding selection criteria, the current representation by the five (5) Board members whose terms expire December 31, 1996, is as follows: One member representing the Upper Mississippi River (Region 1), one member representing the Lower Mississippi River (Region 2), one member representing the Ohio River (Region 3), one member representing the Gulf Intracoastal Waterway in Louisiana and Texas (Region 4), and one member representing the Columbia-Snake River System and Upper Willamette (Region 6). Also, these Board members represent one shipper, three carriers and one representing both.

Three (3) of the five members whose terms expire December 31, 1996, are eligible for reappointment.

Nominations to replace Board members whose terms expire December 31, 1996, may be made by individuals, firms or associations. Nomination will:

(1) state the region to be represented;

(2) state whether the nominee is representing carriers, shippers or both;

(3) provide information on the nominee's personal qualifications;

(4) include the commercial operations of the carrier and/or shipper with whom the nominee is affiliated. This commercial operations information will show the actual or estimated ton-miles of each commodity carried or shipped on the inland waterways system in a recent year (or years) using the waterway regions and commodity categories previously listed.

Nominations received in response to last year's Federal Register notice published on July 31, 1995 have been retained for consideration for reappointment along with nominations received in response to this Federal Register notice. Renomination is not required but may be desirable.

e. Deadline for Nominations

All nominations must be received at the address shown above no later than August 31, 1996.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–17539 Filed 7–9–96; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.183A]

Drug and Violence Prevention Program in Higher Education—Institution-Wide Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996

Purpose of Program: To provide grants to develop, implement, validate, and disseminate model programs and strategies to promote the safety of students attending institutions of higher education (IHEs) by preventing the illegal use of alcohol and other drugs and by preventing violent behavior.

Eligible Applicants: IHEs, and consortia of IHEs.

Deadline for Transmittal of Applications: August 12, 1996.

Deadline for Intergovernmental Review: September 11, 1996.

Applications Available: June 25, 1996.

Available Funds: $2,750,000.

Estimated Range of Awards: Up to $65,000.

Estimated Average Size of Awards: $45,000.

Estimated Number of Awards: 25 to 75.

Note: The Department is not bound by any estimates in this notice.

Project Period: 28 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the regulations for this program in 34 CFR Part 612.

SUPPLEMENTARY INFORMATION: This program is authorized under Title IV, section 4122 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, P. L. 103–382 (October 20, 1994) (to be codified at 20 U.S.C. 7132, formerly at 20 U.S.C. 3211). This FY 1996 competition supports the tenth cohort of grants under the program.

The 1994 amendment of the statute modified the scope of authorized programs. Projects may now address violence prevention, in addition to alcohol and other drug abuse. Such projects may also serve as models for the field. The amendment also modified the definition of a qualifying IHE by adopting the definition of an IHE in Sec. 1201(a) of the Higher Education Act of 1965. This competition is covered by the scope of the amended statute and the application procedures in the 34 CFR part 612. In the case of any inconsistency between program regulations and the new statutory provisions, the statute will control.

Priorities

Absolute Priority

Under 34 CFR 75.105(c)(3) and 34 CFR 612.21(b) the Secretary gives an absolute preference to applications that meet the following priority.

The Secretary funds under this Institution-Wide competition only applications that meet this absolute priority:

Projects designed to develop, implement, validate, or disseminate model programs or strategies that concentrate on specific approaches to the prevention of illegal use of alcohol and other drugs and the prevention of violent behavior by students.

Invitational Priority

Within the absolute priority in this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive absolute or competitive preference over other applications:

Applications that in addressing the absolute priority propose projects addressed at prevention of violence towards women on campus, particularly as may be influenced by drug and alcohol abuse.

Selection Criteria

In evaluating applications for grants under this competition, the Secretary uses the applicable selection criteria in 34 CFR 612.23(c)(1).

The program regulations in 34 CFR 612.22(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Design (34 CFR 612.23(c)(2)(ii). Ten points are added to this criterion for a possible total of 30 points.

Organizational Commitment (34 CFR 612.23(c)(2)(vii). Five points are added to this criterion for a possible total of 20 points.

For Applications or Information Contact

FIPSE, FY 1996—A Competition, U.S. Department of Education, 600 Independence Avenue, S.W., Washington, D.C. 20202–5175. Telephone: (202) 708–5750 to order applications or for information.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday thru Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web at (http://www.ed.gov/money.html). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 7132.

Dated: July 5, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96–17564 Filed 7–9–96; 8:45 am]

BILLING CODE 4000–01–P

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council. Notice of this meeting is required under section 685(c) of the Individuals with Disabilities Education Act, as amended, and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATE AND TIME: August 22, 1996, from 1 p.m. to 4:30 p.m.

ADDRESSES: Hubert H. Humphrey Building, Room 503A/529A, 200 Independence Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Connie Garner, U.S. Department of Education, 600 Independence Avenue, SW., Room 3127, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–8124. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–8170.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 685 of the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

At this meeting the FICC plans to: (1) Update the membership on the reauthorization of the Individuals with Disabilities Education Act; and (2) discuss issues related to dispute resolution and the Part H program.

The meeting of the FICC is open to the public. Written public comment will be accepted at the conclusion of the meeting. These comments will be included in the summary minutes of the meeting. The meeting will be physically accessible with meeting materials provided in both braille and large print. Interpreters for persons who are hearing impaired will be available. Individuals with disabilities who plan to attend and need other reasonable accommodations should contact the contact person named above in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 600 Independence Avenue, SW., Room 3127, Switzer Building, Washington, DC 20202–2644, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal Holidays.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–17570 Filed 7–9–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Record of Decision for Plutonium Finishing Plant Stabilization Final Environmental Impact Statement, Hanford Site, Richland, WA

AGENCY: U.S. Department of Energy.

ACTION: Notice of record of decision.

SUMMARY: The U.S. Department of Energy (DOE) has prepared this Record of Decision (ROD) pursuant to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA) (40 Code of Federal Regulations [CFR] 1500–1508) and the DOE NEPA regulations (10 CFR 1021). The ROD is based on the analyses of environmental impacts identified in the *Plutonium Finishing Plant Stabilization Final Environmental Impact Statement* (DOE/EIS–0244–F); consideration of project costs; compliance requirements for systems involved in stabilizing plutonium-bearing material; and public and agency comments.

DOE has prepared the Final Environmental Impact Statement (EIS) to provide an objective technical basis for evaluating alternatives to: (1) Convert the plutonium-bearing materials at the Plutonium Finishing Plant (PFP) Facility into a more stable, safer form; (2) reduce radiation exposure to PFP Facility workers; and (3) reduce the cost of maintaining the PFP Facility and its contents at the Hanford Site, Benton County, Washington. The actions evaluated in the Final EIS would stabilize PFP Facility materials that represent environmental, safety, or health vulnerabilities in their current condition. Existing vulnerabilities are the result of discontinuing nuclear material production and processing operations following the end of the Cold War. Although DOE has initiated programmatic environmental evaluations on the ultimate disposition of nuclear materials in the DOE complex which are now surplus to national defense requirements, the implementation of decisions regarding ultimate disposition will take several years. In the interim, DOE wants to eliminate vulnerabilities associated with certain current nuclear material storage configurations in order to protect the environment and the health and safety of workers and the public.

Reviews by DOE and the Defense Nuclear Facilities Safety Board (DNFSB) have identified environmental, safety, and health vulnerabilities associated with the continued storage of certain nuclear materials at the PFP Facility in their current location and physical condition. The Final EIS evaluates alternatives for managing these materials. In making the decisions announced in this ROD, DOE considered environmental and health impacts, costs, engineering feasibility, technology availability, and, to the greatest possible extent, stakeholder concerns and preferences.

After careful consideration of environmental impacts, costs, engineering evaluations, and public and agency comments, DOE has decided to implement a select group of stabilization alternatives identified in the Final EIS. These include three out of four of the preferred stabilization alternatives supplemented by other stabilization and immobilization processes analyzed in the final EIS. DOE is documenting this determination in this ROD. The action will involve the removal of readily retrievable plutonium-bearing material in hold-up at the PFP Facility, and the stabilization of this and other plutonium-bearing material at the PFP Facility. Following stabilization, plutonium-bearing material will be in a form suitable for interim storage in existing vaults at the PFP Facility. Plutonium-bearing material having low plutonium content (less than 50 weight percent) and meeting criteria established by DOE may be immobilized through a cementation process at the PFP Facility. All immobilized material will be transferred to solid waste management facilities at the Hanford Site and, as a consequence, will be removed from safeguards control. In selecting these alternatives, DOE has identified the most suitable strategy for reducing the long-term risk to the public, workers, and the environment.

EFFECTIVE DATE: The actions set forth in this ROD are effective upon being made public on June 28, 1996, in accordance with DOE's NEPA implementation regulations (10 CFR 1021.315).

ADDRESSES: For further information on the stabilization of material at the PFP Facility or this ROD or to receive a copy of the Final EIS, please contact: Mr. Ben F. Burton, U.S. Department of Energy, Richland Operations Office, Attn: PFP–EIS, P.O. Box 550, MSIN B1–42, Richland, Washington 99352, (509) 946–3700.

For further information on DOE's NEPA process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–4600 or (800) 472–2756.

The ROD, Final EIS, and reference documents are available in the public reading rooms and libraries identified in the **Federal Register** Notice that announced the availability of the Final EIS (61 FR 26178) or by calling (509) 946–3700.

I. Background

In 1943, the federal government selected the Hanford Site as part of the Manhattan Project to produce plutonium for national defense needs. Metallic uranium fuel was irradiated in nuclear reactors at the Hanford Site to produce plutonium. Chemical processing separated the irradiated plutonium from the other elements in the irradiated fuel. The product was plutonium nitrate, which needed further processing to produce the metallic form used in nuclear weapons. Initially, the plutonium nitrate was shipped offsite for this additional processing. The post-war construction of the PFP Facility at the Hanford Site's 200 West Area eliminated this necessity.

Located approximately 51 kilometers (32 miles) northwest of Richland, Washington, the PFP Facility includes production and recovery areas, laboratories for routine analysis and research, and secure vaults for storage of plutonium. Currently, about 240 employees are physically located within the fenced area of the PFP Facility. Additional staff is located outside the fenceline, bringing the total number of employees to 592 people.

When PFP Facility production operations stopped in 1989, most of the processing residues remained either in storage containers or on surfaces in enclosed process areas as hold-up. DOE has recognized the need for a plan that would result in the:

- Stabilization of plutonium-bearing materials at the PFP Facility to a form suitable for interim storage;
- Removal of readily retrievable, plutonium-bearing materials left behind in process equipment, process areas, and air and liquid waste management systems as a result of historic uses; and
- Placement of stabilized fissile material in existing vaults at the PFP Facility for interim storage.

In June 1993, DOE announced its proposal to operate certain processes in the PFP Facility to stabilize plutonium-bearing materials and to prepare an Environmental Assessment (EA) pursuant to NEPA. As part of the NEPA process for the EA, DOE conducted public meetings in the summer and fall of 1993 to discuss the proposal to stabilize the plutonium-bearing materials. As a result of the public comments received, DOE decided that an EIS would be the appropriate level of NEPA review.

On October 27, 1994, a Notice of Intent was published in the **Federal Register** (59 FR 53969) that identified the purpose, scope, and preliminary alternatives for the Draft EIS and invited the public to participate in the scoping process. Public meetings on the EIS scope were conducted in six Washington and Oregon cities. The public scoping process ended on December 12, 1994. Both oral and written comments were received during the Draft EIS scoping process.

The Draft EIS (DOE/EIS–0244–D) was issued in November 1995. The Draft EIS presented alternatives that would achieve the purpose and need of the program and included analyses of the potential environmental impacts that would result.

On December 5, 1995, a Notice of Availability was published in the **Federal Register** (60 FR 62244) which formally announced the release and availability of the Draft EIS. The public hearing date, time, and location were also published and public comments on the Draft EIS were requested. A public meeting on the Draft EIS was held in Pasco, Washington, on January 11, 1996. While the comment period officially ended on January 23, 1996, DOE decided to accommodate comments received through February 15, 1996. Both oral and written comments were received during the comment period.

Based on existing and draft DOE policy on plutonium disposition, and a comment received during the public hearing, DOE decided to evaluate another alternative not contained in the Draft EIS. This alternative would involve the immobilization of materials that have a low associated plutonium content and thus do not warrant stabilization measures and vault storage as do the other plutonium-bearing materials analyzed in this EIS. These materials would be immobilized through a cementation process, packaged, and transported to a Hanford Site solid waste management facility.

The plan to include this alternative in the Final EIS was announced in the **Federal Register** on May 2, 1996. The announcement also opened the alternative for public comment during a

21-day comment period. Comments received are considered in this ROD.

The Final EIS was issued in May 1996. In addition to the analysis presented in the Draft EIS, the Final EIS contained responses to comments received on the Draft. On May 24, 1996, a Notice of Availability was published in the **Federal Register** (61 FR 26178) which formally announced the release and availability of the Final EIS.

II. Alternatives Evaluated in EIS

Preferred Alternative: The plutonium-bearing materials at the PFP Facility can be separated into two categories: (1) Materials that are stored in vaults or gloveboxes; and (2) materials referred to as hold-up. The preferred alternative identified in the Final EIS would involve the removal of readily retrievable plutonium-bearing material in hold-up and the stabilization of this and plutonium-bearing materials in vaults and gloveboxes.

The PFP Facility contains a variety of reactive plutonium-bearing materials that are chemically and physically dissimilar. These materials have been grouped into four inventory categories. The preferred alternative includes the following stabilization process for the four inventory groups:

(1) Plutonium-bearing solutions
—Ion exchange, vertical calcination, and thermal stabilization;
(2) Oxides, fluorides, and process residues
—Thermal stabilization using a continuous furnace;
(3) Metals and alloys
—Repackaging; and
(4) Polycubes and combustibles
—Pyrolysis.

The preferred alternative for stabilization would involve processing the plutonium-bearing materials at the PFP Facility into a form suitable for interim storage in existing PFP Facility vaults. When stabilized, the material would have minimal chemical reactivity and would remain in solid form with a low water and organic content.

The preferred alternative would also involve removing and stabilizing plutonium-bearing material currently in hold-up at the PFP Facility. Hold-up is material that has accumulated or been retained in PFP Facility gloveboxes, hoods, process equipment, piping, exhaust and ventilation systems, and canyons as a result of 40 years of plutonium-processing operations at the Facility. The removal activities would be limited to substantive quantities of readily retrievable plutonium-bearing material currently in hold-up. Due to the nature and location of the material in hold-up, various technologies would be employed to remove the material for subsequent stabilization. The removal methods would include chemical and mechanical processes and disassembly. No exterior construction or major internal modification to the PFP Facility is planned for facility stabilization.

Alternatives: In addition to the preferred alternative, alternative stabilization processes and an immobilization process have been analyzed. These alternatives include:

- Plutonium-bearing solutions
  —Hydroxide precipitation followed by thermal stabilization;
- Oxides, fluorides, and process residues
  —Batch thermal stabilization using muffle furnaces and
  —Immobilization;
- Metals and alloys
  —Batch thermal stabilization using muffle furnaces; and
- Polycubes and combustibles
  —Batch thermal stabilization,
  —Molten salt oxidation, and
  —Immobilization.

No Action Alternative: Under the no action alternative, actions would be limited to ongoing maintenance and security activities necessary for safe and secure management of the PFP Facility. DOE would not install processes to stabilize the plutonium-bearing materials at the PFP Facility. However, plutonium-bearing materials stored in the PFP Facility vaults that constitute an immediate safety hazard would continue to be repackaged as necessary for interim storage. In addition, the DOE would not remove plutonium-bearing materials in hold-up at the PFP Facility. The plutonium-bearing materials would remain within or on PFP Facility systems.

III. Environmental Impacts of Alternatives

In the Final EIS, DOE evaluated each alternative to assess the full range of potential environmental impacts.

The impact analysis showed that there would be no measurable impacts to geology, seismology, and soils; water resources and hydrology; air quality; noise and sound levels; ecosystems; transportation; land use; or archaeological resources. No income or population group would experience disproportionate health or environmental effects under any of the alternatives. Environmental categories where potential impacts were identified include population and socioeconomics, historic resources, and anticipated health effects.

Preferred Alternative: Environmental effects identified under the preferred alternative are primarily related to health, population and socioeconomics, cost, and historic resources.

For the preferred alternative, the total PFP Facility worker radiation dose for stabilization and removal would be 930 person-rem. The total radiation dose to offsite individuals would be 14 person-rem. Based on commonly accepted dose to risk conversion factors, the probability of latent cancer fatalities to these affected groups would be 0.37 and 0.0070, respectively. Therefore, no latent cancer fatalities would be anticipated.

Population and socioeconomic effects resulting from the preferred alternative would be small. The estimated staff of 592 at the PFP Facility would be temporarily increased by approximately 10 percent. Following the completion of the preferred alternative, staff levels would be reduced to approximately 250. There would be less than a 1 percent change to the area's population or economics from this alternative. The anticipated change from the preferred alternative would be too small to meaningfully influence the Benton and Franklin County economies or impact the existing infrastructure.

The removal activities under the preferred alternative would be intrusive and destructive, and would involve equipment removal. Impacts to the Remote Mechanical A Line, the Plutonium Reclamation Facility, and any of the PFP facilities currently eligible for the National Register of Historic Places would require mitigation to preserve the history of these historic resources. These mitigation measures have been agreed to in a Memorandum of Agreement between DOE and the Washington State Historic Preservation Officer.

Alternatives: Environmental effects identified under the alternative stabilization processes are primarily related to health, population and socioeconomics, and historic resources. The environmental effects associated with these alternative stabilization processes to population and socioeconomics and historic resources are similar to those discussed for the preferred alternative.

Environmental effects from implementing an immobilization process are primarily related to waste storage capacity. It is anticipated that the immobilization alternative would generate up to 1,600 drums of transuranic waste, with each drum containing approximately 170 grams of plutonium. Hanford Site solid waste management facilities would manage all transuranic waste generated by this process over the six-year period. There is currently space for approximately 500 drums at the Transuranic Waste Storage and Assay Facility. Additional space would become available when existing drums at the facility are transferred to other Hanford Site solid waste management facilities.

No Action Alternative: For the no action alternative, the total PFP Facility worker radiation dose would be 53 person-rem per year. The total radiation dose to offsite individuals would be 0.26 person-rem per year. Based on commonly accepted dose to risk conversion factors, the probability of latent cancer fatalities to these affected groups during an assumed 30 years operational life of the no action alternative would be 0.64 and 0.0039, respectively.

Population and socioeconomic effects resulting from the no action alternative would be small. The existing staff at the PFP Facility would be reduced by approximately 100 because ongoing cleanup and stabilization activities would cease. The decrease in staff would be too small to meaningfully influence the Benton and Franklin County economies or impact the existing infrastructure. However, the PFP Facility would be required to maintain this work force indefinitely.

Selected Alternatives: As with the preferred alternatives, the environmental effects identified under the selected alternatives are primarily related to health, population and socioeconomics, cost, and historic resources.

For the selected alternative, the total PFP Facility worker radiation dose for stabilization and removal would be 1,120 person-rem. The total radiation dose to offsite individuals would be 25 person-rem. Based on commonly accepted dose to risk conversion factors, the probability of latent cancer fatalities to these affected groups would be 0.45 and 0.013, respectively. Therefore, no latent cancer fatalities would be anticipated.

Population and socioeconomic effects would be the same as the preferred alternative. Impacts on historic resources and proposed mitigations would also be the same.

IV. Environmentally Preferred Alternative

To determine the environmentally preferred alternative, the short-term (six years or the time required to implement the selected alternatives) and long-term (greater than six years) time frames are considered.

Over the short-term, the no action alternative would not result in increased PFP Facility worker or public radiation exposure, costs, or loss of historic resources. These impacts would occur under all other alternatives analyzed. Therefore, in the short-term, the no action alternative could be considered preferable to the other alternatives. However, implementation of the no action alternative would not resolve the long-term health risks associated with the current form of the plutonium-bearing material within the PFP Facility.

Implementation of the preferred alternative, identified in the Final EIS, or the alternatives selected by this ROD would result in increased exposure to Hanford Site workers and the public during the anticipated six-year period of operation. However, following completion of all proposed activities the radiation exposure to in-facility workers would drop to 45 percent of its current level. Continued exposure following the completion of stabilization and immobilization would be the result of facility transition until final disposition of the facility. Under the no action alternative the high background radiation levels would continue indefinitely. In about 30 years the radiation exposure to workers from the no action alternative would exceed the radiation exposure from the preferred or selected alternatives and would correspondingly result in greater health risk. Therefore in the long-term, the environmentally preferred alternative would be to stabilize and immobilize reactive plutonium-bearing material in the facility.

The no action alternative does not address the continued degradation of the PFP Facility and the containers in which the plutonium-bearing materials are stored. Since the PFP Facility is over 40 years old, there is a higher likelihood in the long-term of a release to the environment under accident conditions than would be anticipated under the preferred alternative, other stabilization alternatives, or the immobilization alternative.

V. Other Considerations

In addition to the assessment of environmental impacts provided by the Final EIS, DOE considered the plutonium disposition criteria, costs, the recommendations of the DNFSB, the *Storage and Disposition of Weapons-Usable Fissile Material Draft EIS* (DOE/EIS–0229–D), and comments received on the immobilization alternative and Final EIS in determining a course of action to meet the need for interim management of the plutonium-bearing material. Comments received on the immobilization alternative and the Final EIS are discussed in Section VI.

Plutonium Disposition Criteria: In January 1996, A DOE office internally circulated for review and comment a draft policy for the disposition of excess plutonium-bearing residues containing less than 50 weight percent plutonium. Under this draft policy, plutonium-bearing material would be processed to one of two end-states: (1) Plutonium packaged for storage in accordance with DOE storage standard; or (2) waste suitable for disposal at the Waste Isolation Pilot Plant. This policy would require that a determination of which end-state is more cost-effective be made by the responsible field office and approved by the appropriate DOE Secretarial Officer. As a result, the Final EIS included an alternative to immobilize candidate plutonium-bearing material through cementation.

The cementation process was favored for immobilization because: (1) The ingredients are inexpensive, safe, and readily available; (2) the equipment needs are simple; (3) the final waste form has proven stability; (4) it meets the safeguards and security requirements; and (5) it meets the Hanford Site solid waste acceptance criteria and has been used extensively at the Hanford Site for immobilizing wastes. In contrast, immobilizing of materials in a glass (i.e., vitrification) or a ceramic matrix was not considered desirable because of the cost, specialized equipment required, lack of such equipment on the Hanford Site, and lack of site experience. These factors would result in delays in implementing these alternatives and additional health and safety risks. Another alternative would be to mix the plutonium with uranium to produce a mixed oxide fuel suitable for energy production in a nuclear power reactor. Because of the relatively small quantity of plutonium material being considered, it was not considered reasonable to develop the technology at the Hanford Site to support this alternative.

The Final EIS contains the statement, "The * * * Record of Decision will not include a decision on the immobilization alternative unless this draft policy or a comparable policy has been finalized." This policy has not been finalized, therefore decisions to immobilize plutonium-bearing materials will continue to be made in accordance with factors and provisions contained in the April 1994 DOE memorandum from Mr. C. Halsted, then Acting Director, Office of Nuclear Weapons Management.

The Halsted memorandum provides evaluation factors for discard decisions for plutonium-bearing material. These factors are: worker safety, minimizing

environmental impact, regulatory concerns, waste minimization, disposal technical factors, technical risk, stakeholder interest, risk assessment, implementation time and feasibility, proliferation potential, cost, and interim storage feasibility. These factors will be applied to the categories of plutonium-bearing material potentially suitable for immobilization. Future policies of this nature will be evaluated in connection with decisions to immobilize low concentration materials.

Costs: In the long-term, cost savings would be achieved by removing, stabilizing, and/or immobilizing the plutonium-bearing material at the PFP Facility versus continuing to operate the Facility in its current condition.

Implementation of the preferred alternative would result in a ten percent increase in expenditures from the estimated fiscal year 1995 level of $80 million to approximately $89 million. Following completion of stabilization and removal activities in about six years, the expenditures at the PFP Facility would decline to approximately $34 million per year.

The cost of implementing the other alternatives would be comparable to the cost of the preferred alternative.

Under the no action alternative, the cost of operating the Facility would drop by approximately 17 percent from the fiscal year 1995 level of $80 million to approximately $67 million in fiscal year 1997. This reduction would result from a cessation of ongoing interim actions. This expenditure would go on indefinitely and may increase as the Facility ages and needs additional maintenance. In approximately 10 years, the cost of continuing to maintain the PFP Facility would exceed the cost of stabilization.

Defense Nuclear Facilities Safety Board (DNFSB): The DNFSB is chartered by Congress to review and evaluate the content and implementation of the standards relating to the design, construction, operation, and decommissioning of DOE's defense nuclear facilities (including applicable DOE Orders, regulations, and requirements). The DNFSB recommended to the Secretary of Energy those specific measures that should be adopted to ensure that public health and safety are adequately protected. In *Recommendation 94–1*, the DNFSB noted that it was concerned that the halt in production of materials to be used in nuclear weapons froze the manufacturing pipeline in a state that, for safety reasons, should not be allowed to persist unremediated.

In *Recommendation 94–1*, the DNFSB specifically advised: "that an integrated program plan be formulated on a high priority basis, to convert within two to three years the materials" plutonium metal that is in contact with, or in proximity to, plastic "to forms or conditions suitable for safe interim storage;" that the plan "will require attention to limiting worker exposure and minimizing generation of additional waste and emission of effluents to the environment;" and finally, that the plan "should include a provision that, within a reasonable period of time (such as eight years), all storage of plutonium metal and oxide should be in conformance with the DOE standard on storage of plutonium."

All alternatives evaluated in the Final EIS, with the exception of the no action alternative would achieve the recommendation of the DNFSB.

Fissile Material Programmatic EIS: The *Storage and Disposition of Weapons-Usable Fissile Material Programmatic Draft EIS* (DOE/EIS–0229–D) evaluates alternatives for the long-term storage and disposition of plutonium and other special nuclear material. None of the alternatives considered in the *Plutonium Finishing Plant Stabilization Final EIS* would preclude alternatives considered in the programmatic EIS.

VI. Comment on Immobilization Alternative and Final EIS

DOE received three comments from individuals and organizations on the Immobilization Alternative and the Final EIS.

1. *Comment:* Gordon Rogers provided the following comment:

I have no objection to the alternative for immobilization in general. However, DOE should consider the additional security costs associated with the relatively large amount of plutonium-bearing material to be sent to the solid waste management facilities. The security provisions in place at the PFP Facility are more stringent than at the Hanford Site solid waste management facilities.

Response: According to DOE Order 5632.1C, *Protection and Control of Safeguards and Security Interests*, protection and control shall be provided in a graded, cost-effective fashion in accordance with the potential risks to the national security and/or health and safety of DOE and contractor employees, the public, and the environment. By a graded approach, the DOE intends that the level-of-effort and magnitude of resources expended for the protection of a particular security interest are commensurate with the security interest's importance or the impact of its loss, destruction, or misuse.

DOE Order 5633.3B, *Control and Accountability of Nuclear Materials*, defines materials attractiveness levels for the purpose of applying safeguards and security requirements. Prior to implementing the immobilization of plutonium residues, DOE will ensure that the material in its final form is placed in a category which will not impose additional safeguards and security requirements upon the Hanford Site solid waste facilities.

2. *Comment:* The following comment was received from the Washington State Department of Ecology, Nuclear Waste Program:

The fact that U.S. Department of Energy has not made a decision on whether this material has beneficial use seems inconsistent with the proposal to immobilize and transfer it to the Hanford Site Solid Waste Management Facilities. The new alternative addendum should fully describe the applicability of the State of Washington Hazardous Waste Management Act (HWMA) to the immobilization of the plutonium bearing material being considered. The addendum should provide a regulatory rationale that supports this new alternative. Please refer to our letter to Mr. James E. Mecca, dated April 7, 1996, where we clearly state the materials which contain Special Nuclear Material (SNM) at PFP are regulated wastes under the HWMA, so long as 1) they classify as a solid waste, 2) they classify as a mixed waste, and 3) they designate pursuant to Chapter 173.303.070 WAC.

Response: The DOE has not classified any special nuclear material (SNM) currently in storage at the PFP Facility as waste. The materials stored at the PFP Facility have been determined to be excess to the nuclear weapons program needs, but an ultimate disposition for the material has not been determined.

There is currently existing guidance contained in a 1994 DOE memorandum from Mr. C. Halsted, then Acting Director, Office of Nuclear Weapons Management, providing evaluation criteria for the economic and other discard related approaches for these materials. Lacking updated policy for these materials, the Final EIS provides an approach to utilize the existing guidance to evaluate the SNM inventory at the PFP Facility.

Before proceeding with the alternative to immobilize residues, DOE recognizes that agreement upon an acceptable regulatory strategy will need to be reached with the Washington State Department of Ecology (Ecology). In the event that a regulatory path cannot be achieved, then the economic factors in the evaluation of candidate residues will likely drive the residues to be thermally stabilized for storage or result in a further evaluation of the alternatives for recovery of the plutonium rather than it being immobilized for discard. The discussion below assumes that a path forward can be achieved.

As the total inventory of material is evaluated, those items that are determined to be suitable for discard will be immobilized to the current Waste Isolation Pilot Project (WIPP) criteria and the Nuclear Safeguards and Security criteria. The SNM material would be removed from the PFP Facility inventory and transferred to a Hanford Site solid waste management facility for future shipment to the WIPP disposal area. The material would be defined as a waste at the point where the DOE requirements for discard are met; i.e., the material form and plutonium quantity are such that non-proliferation protection (safeguards) are no longer required. At the point of solid waste generation, DOE would designate the wastes as applicable under Washington Administrative Code (WAC) 173–303–070, and would implement any applicable requirements of WAC 173–303 for dangerous waste accumulation, transportation, and storage to the extent that non-SNM components are present which would require designation as dangerous waste.

As discussed above, DOE is currently working with Ecology to develop a regulatory path forward. Resolution of this issue will be needed before DOE can implement plans to immobilize plutonium-bearing material in vault storage and hold-up.

3. *Comment:* The following comment was received from the Washington State Department of Ecology, Nuclear Waste Program:

The new alternative does not clearly compare or contrast the difference between the description and quantities of plutonium-bearing materials potentially suitable for immobilization under Section 3.1.3 of the PFP-EIS and the new alternative. Please provide further clarification of the description and quantities between the two.

Response: The description and quantity of plutonium-bearing materials potentially suitable for immobilization, discussed in Section 3.1.3 and Appendix E of the Final EIS, are equivalent. Because the inventory of the plutonium-bearing material at the PFP Facility is of a varied nature, the material was grouped into inventory categories. These categories correspond to the inventory categories presented for stabilization.

Up to 272 kg (599 lbs) of plutonium are candidates for immobilization. This number includes approximately 222 kg (489 lbs) of plutonium contained in 1,500 items that are currently stored in PFP Facility vaults and 50 kg (110 lbs) of plutonium in hold-up. The plutonium-bearing material in vault storage includes approximately 91 kg (200 lbs) of oxides with less than 50 weight percent of plutonium, 81 kg (178 lbs) of ash residues, 43 kg (95 lbs) of slag and crucible residues, and 7 kg (15 lbs) of miscellaneous plutonium-bearing material. The plutonium-bearing material in hold-up includes up to 4.5 kg (10 lbs) of plutonium from the E–4 ventilation system ductwork; up to 4.3 kg (9.5 lbs) of plutonium from vacuum process piping; up to 28 kg of plutonium from gloveboxes and hoods; and up to 12.5 kg (27.5 lbs) of plutonium from the Plutonium Reclamation Facility canyon.

VII. Decision

DOE prepared the Draft and Final EIS to evaluate environmental and human health impacts associated with operation of systems to continue the safe management of plutonium-bearing material at the PFP Facility. After careful consideration of environmental impacts, costs, engineering evaluations, and public and agency comments, DOE has decided to implement a select group of stabilization alternatives identified in the Final EIS. These include three out of four of the preferred stabilization alternatives supplemented by other stabilization and immobilization processes analyzed in the Final EIS. The action will also involve the removal of readily retrievable plutonium-bearing material in hold-up at the PFP Facility and the stabilization of this and other plutonium-bearing material at the PFP Facility. Following stabilization, plutonium-bearing material will be in a form suitable for interim storage in existing vaults at the PFP Facility. Plutonium-bearing material having low plutonium content and meeting criteria established by DOE may be immobilized through a cementation process at the PFP Facility and transferred to a Hanford Site solid waste management facility for storage. By selecting a suite of alternatives, DOE anticipates that health impacts to workers, and the cost to implement the action will be reduced. DOE is documenting this determination in this ROD.

This action will reduce radiation exposure and risk to workers and the public, and future resources needed to safely manage the PFP Facility.

Since the PFP Facility contains a variety of reactive plutonium-bearing materials that are chemically and physically dissimilar, various processes will be required to stabilize these materials. The primary means to accomplish this will be through the implementation of the stabilization processes described under the preferred alternative in the Final EIS. However, stabilization of some portion of the plutonium-bearing materials may be better accomplished through one of the alternative stabilization processes analyzed in the Final EIS. For this reason, DOE may implement these alternative processes on a case-by-case basis. The primary stabilization processes which will be implemented for each inventory category are:

(1) *Plutonium-bearing solutions:* For Plutonium-bearing solutions two alternatives are selected.

—Ion exchange, vertical calcination, and thermal stabilization. Most plutonium-bearing solutions will be stabilized by thermal treatment using a vertical calciner. For this application, the feed material will include plutonium nitrate solutions, solutions containing chlorides, caustic solutions, and dissolved plutonium fluoride.

In order to utilize the vertical calcination process, some of the plutonium-bearing solutions will require pretreatment by ion exchange to remove chemical constituents that are not compatible with the vertical calcination process or the process equipment. In addition, the calciner product may require further thermal stabilization in order to meet DOE's "Criteria for Safe Storage of Plutonium Metals and Oxides" (DOE–STD–3013–94).

The combined ion exchange/vertical calciner/thermal treatment process will be capable of processing most of the inventory of plutonium nitrate and chloride solutions. It also will be able to process the plutonium fluoride solids if they are first dissolved and converted to the nitrate form using an acid dissolution pretreatment operation. This will increase the quantity of material to be stabilized from 335 kg (738 lb) plutonium to 338 kg (745 lb) of plutonium associated with approximately 4,800 l (1,268 gal) of solution.

—Hydroxide precipitation followed by thermal stabilization. Plutonium-bearing solutions could be alternatively treated by a relatively simple hydroxide precipitation process. The resultant plutonium precipitate will then be thermally stabilized to an oxide form capable of meeting DOE's "Criteria for Safe

Storage of Plutonium Metals and Oxides," (DOE–STD–3013–94). This alternative would be applied to the portion of the plutonium-bearing solutions that are determined to be unsuited for vertical calcination. An example would be material that could create a resinous residue or cause corrosion within the vertical calciner. No more than 20 percent of the plutonium solutions are anticipated to fall into this category.

Caustic or other hydroxide-forming reagents will be added to the solution, gradually increasing the pH until insoluble plutonium hydroxide is formed. The plutonium hydroxide and other metal impurities, such as nickel, chromium, and iron, will precipitate out and be filtered from solution. The filtered solids will then be thermally processed into a stable oxide form.

(2) *Oxides, fluorides, and process residues:* For oxides, fluorides, and process residues one alternative was selected.

—Batch thermal stabilization using muffle furnaces. Although it would result in additional radiation exposure to the PFP Facility worker, over the preferred alternative, this alternative was selected because development of the continuous process furnace has not proceeded as anticipated and the continuous furnace may not be capable of producing product that meets DOE's "Criteria for Safe Storage of Plutonium Metals and Oxides" (DOE–STD–3013–94). In addition, some of the materials are not amenable to continuous process furnace due to their size, moisture content, or high organic content. These materials, however, can be processed through a batch thermal stabilization process.

Under the batch thermal stabilization using muffle furnaces process, the plutonium-bearing solids will be fed into a muffle furnace which is elevated to a temperature of approximately 1,000°C (1,832°F). The high temperature air environment lowers the residual moisture level and facilitates conversion of incompletely oxidized plutonium to plutonium oxides.

Material that meets the DOE storage standard would not require any additional thermal stabilization and will be directly repackaged. Plutonium fluorides will pose problems in the muffle furnace due to the corrosive nature of fluoride-bearing gases that could be liberated. The plutonium fluorides may be pretreated using an acid dissolution process and blended with the plutonium-bearing solutions. Alternately, a corrosion control program may be established and the fluorides sent through the muffle furnace.

This process may stabilize 2,417 kg (5,329 lb) of plutonium. The resultant plutonium oxides will be tested in accordance with the DOE storage standard. Product deemed acceptable may be packaged using existing capabilities at the Hanford Site and placed in the vault(s) at the PFP Facility for storage. Product not meeting the DOE storage standard will be recycled through the muffle furnace. The product may be retrieved and repackaged at a later date to meet the DOE storage standard specifying organic-free containers when a bagless transfer system becomes available at the Hanford Site. Alternatively, the material may go directly to an organic free container.

(3) *Metals and alloys:* For metals and alloys two alternatives are selected.

—Batch thermal stabilization using muffle furnaces. The plutonium-bearing solids will be fed into a muffle furnace and elevated to a final temperature of approximately 1,000°C (1,832°F). The high temperature air environment facilitates conversion of the metal and alloys to metal oxides (i.e., plutonium oxides).

A total of 770 kg (1,698 lb) of plutonium may be stabilized using this process. The resultant product will be tested in accordance with the DOE storage standard. Product deemed acceptable will be packaged using existing capabilities at the Hanford Site and placed in the vault(s) at the PFP Facility for storage. It is assumed that the metals and alloys may require more than one thermal processing cycle to achieve the desired oxide product. The product may be retrieved and repackaged at a later date to meet the DOE storage standard specifying organic-free containers once a bagless transfer system becomes available at the Hanford Site. Alternatively, the material may go directly to an organic-free container.

—Repackaging. Non-destructive testing could indicate that some plutonium metals and alloys may safely be repackaged without thermal stabilization. These materials would be repackaged using methods that do not rely upon organic seals or plastic bags. The repackaged materials will be stored in the vault(s) at the PFP Facility and routinely monitored until final disposition.

(4) *Polycubes and combustibles:* For polycubes and combustibles, because of technical uncertainties associated with the preferred alternative, two alternatives are selected.

—Pyrolysis. This alternative is a thermal process involving distillation and decarbonization, that separates the plutonium oxides from the polystyrene. The product, stable plutonium oxides, will be packaged and returned to the vaults at the PFP Facility.

The pyrolysis process has the capability for processing other combustibles such as rags and polyethylene. If part of the inventory of combustibles is not suitable for pyrolysis, those combustibles may be sent to the Hanford Site solid waste management facilities for storage.

A total of 35 kg (77 lb) of plutonium may be stabilized by this alternative. The resultant plutonium oxide will be thermally tested in accordance with DOE's "Criteria for Safe Storage of Plutonium Metals and Oxides" (DOE–STD–3013–94). Product determined to be acceptable will be packaged using existing packaging capabilities and placed in the vault(s) at the PFP Facility for storage. Product not meeting the DOE storage standard will be run through additional thermal stabilization processes.

—Batch thermal stabilization.

Alternatively, a process involving batch thermal stabilization of the plutonium-bearing polycubes and combustibles could be used. Although the thermal stabilization method used for the two types of materials is the same, each type of material will be processed separately. The polycubes or combustibles will be fed into a muffle furnace, which is elevated to a temperature of approximately 300°C (572°F). Initially, the furnace will be purged with nitrogen gas to maintain an inert environment and prevent combustion of the organic component. At 300°C (572°F), the organic component of the feed will be driven off into a secondary combustion chamber. The plutonium-bearing material remaining in the muffle furnace will be exposed to air and elevated to approximately 1,000°C (1,832°F). The high temperature environment facilitates conversion of incompletely oxidized plutonium to plutonium oxides.

(5) *Removal of holdup:* This ROD will also implement the preferred alternative for removal. The removal activities will be limited to plutonium-bearing materials that are readily retrievable. Plutonium-bearing material with a high quantity of plutonium will be stabilized as described above. Material with a low plutonium content may be immobilized and sent to a Hanford Site solid waste management facility for storage. Due to the nature and location of the material in hold-up, various technologies will be employed to remove the material for subsequent stabilization. All technologies analyzed in the Final EIS will be utilized to some degree. Four areas of the PFP Facility have been identified for removal of readily retrievable hold-up material: ductwork, vacuum system piping, gloveboxes and hoods, and the Plutonium Reclamation Facility canyon floor. These areas represent locations where a high quantity of plutonium-bearing material exists as hold-up and where removal actions will be beneficial in reducing the exposure risk. Non-readily retrievable plutonium-bearing material with a low quantity of plutonium will remain in hold-up at the PFP Facility. This material will be addressed when DOE makes a decision to decontaminate and decommission the PFP Facility.

(6) *Immobilization:* Candidate plutonium-bearing material with low plutonium content may be immobilized and discarded. The plutonium-bearing material will include: (1) Materials that are containerized and stored in vaults or gloveboxes; and (2) hold-up material.

The immobilization process will be applicable for up to 272 kg (599 lbs) of plutonium from selected quantities of the following plutonium-bearing materials:

Oxides, fluorides, and process residues (not applicable for any fluorides or for oxides greater than 50 weight percent plutonium)
—Immobilization of candidate materials
Polycubes and combustibles (not applicable for polycubes)
—Immobilization of candidate materials
Low plutonium content material removed from hold-up (less than 50 weight percent plutonium)

The immobilization process will include a cementation step which will fix the plutonium-bearing material into a solid matrix, packaging the cemented materials into appropriate shipping containers, and transporting the containers to a Hanford Site solid waste management facility for storage.

VIII. Mitigation

Since land use and water resources would not be impacted by the preferred alternative or other stabilization alternatives analyzed in the Final EIS, no mitigation measures would need to be taken in regard to these resources. Mitigation measures in place for the PFP Facility have been discussed in the Final EIS (e.g., High-efficiency particulate air filtration of exhaust pathways).

To ensure that activities and consequences (e.g., radiological dose to PFP Facility workers) for normal/routine activities would remain within established requirements, and to ensure that the risk of accidents would be minimized, numerous measures would be taken in association with the preferred alternative. These measures include adequate (engineered) design features for gloveboxes, systems, and components; the development of safety analyses consistent with the process established by DOE; and the implementation of numerous programs that already exist at the Hanford Site. Examples of these programs are as follows:

- Maintenance program—Ensures that hardware performs as expected when demanded
- Fire protection program—Mitigates property loss and minimizes human health impacts due to fire
- Criticality prevention program—Mitigates potential human health impacts of an inadvertent criticality
- Radiological controls program—Mitigates routine and accident-related doses
- Industrial hygiene program—Mitigates routine and accident-related chemical exposure
- Training program—Minimizes and mitigates adverse impacts to personnel by training them in proper ways to perform their job and to respond during emergency events.

Certain removal activities will substantially alter or demolish existing equipment and facilities at the PFP Facility which have been found to be eligible for inclusion in the National Register of Historic Places. A Memorandum of Agreement between DOE and the Washington State Historic Preservation Officer has been accepted by the Advisory Council on Historic Preservation. This agreement addresses the measures that will be required to mitigate these adverse impacts. Because all practical means to avoid or mitigate environmental impacts from this removal action are incorporated in the PFP Facility and practices, DOE has determined that there is no need to prepare a Mitigation Action Plan in accordance with Section 1021.331(a) of DOE's regulations implementing NEPA (10 CFR 1021).

Issued: This ROD for PFP Stabilization EIS is issued by DOE, Richland Operations Office, Richland, Washington on June 25, 1996.

John D. Wagoner,

Manager, Richland Operations Office.

[FR Doc. 96–17561 Filed 7–10–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[FERC–716A]

Proposed Information Collection and Request for Comments

July 3, 1996.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before September 9, 1996.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–716A "Application for Transmission Services Under Section 211 of the Federal Power Act" (OMB No 1902–0168) is used by the Commission to implement the statutory provisions of Section 211 of the Federal Power Act (FPA), 16 U.S.C. 824j as amended by the Energy Policy Act of 1992 (Pub. L. 102–486) 106 Stat. 2776. Under Section 211, the Commission may order transmission services if it finds that such action would be in the public interest and would not unreasonably impair the continued reliability of systems affected by the order. Section 211 allows any electric utility, Federal power marketing agency or any other person generating electric energy for sale or resale to apply for an order requiring a transmitting utility to provide transmission services to the applicant. The applicant is required to provide a form of notice suitable for publication in the **Federal Register**, and notify the affected parties. The Commission uses the information to carry out its responsibilities under Part II of the Federal Power Act. The Commission implements these filing

requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 36.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
20	1	5	100

Estimated cost burden to respondents: 100 hours/2,087 hours per year×$102,000 per year=$4,887.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technologies collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17505 Filed 7–9–96; 8:45 am]

BILLING CODE 6717–01–M

CPS Capital, Ltd.; Notice of Issuance of Order

[Docket No. ER96–1796–000]

July 5, 1996.

CPS Capital, Ltd. (CPS) submitted for filing a rate schedule under which CPS will engage in wholesale electric power and energy transactions as a marketer. CPS also requested waiver of various Commission regulations. In particular, CPS requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by CPS.

On July 27, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by CPS should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, CPS is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such proposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of CPS's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 29, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17555 Filed 7–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1735–000]

GDK Corporation; Notice of Issuance of Order

July 5, 1996.

GDK Corporation (GDK) submitted for filing a rate schedule under which GDK will engage in wholesale electric power and energy transactions as a marketer. GDK also requested waiver of various Commission regulations. In particular, GDK requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by GDK.

On June 26, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by GDK should file a motion to intervene or protest with Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, GDK is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of GDK's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 26, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17554 Filed 7–9–96; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Tendered for Filing With the Commission

June 28, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* P–2487–003.

c. *Date Filed:* June 10, 1996.

d. *Applicant:* Hydro-Power Inc.

e. *Name of Project:* Hoosick Falls Hydro Project.

f. *Location:* On the Hoosick River in Rensselaer County, near Hoosick, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. sections 791(a)–825(r).

h. *Applicant Contact:* Mr. John M. Skorupski, 71 River Road, Hoosick Falls, NY 12090, (518) 686–0062.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* Within 60 days of the filing date.

k. *Description of Project: The existing project would consist of:* (1) an existing 16-foot-high and 149.5-foot-long dam; (2) an existing 16-acre reservoir; (3) a powerhouse containing two generating units for a total installed capacity of 830 kW; (4) a 500-foot-long transmission line; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 3,700 MWh for the project.

l. With this notice, we are initiating consultation with the New York State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17507 Filed 7–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1819–000]

ICC Energy Corporation; Notice of Issuance of Order

July 5, 1996.

ICC Energy Corporation (ICC) submitted for filing a rate schedule under which ICC will engage in wholesale electric power and energy transactions as a marketer. ICC also requested waiver of various Commission regulations. In particular, ICC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by ICC.

On June 27, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by ICC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, ICC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of ICC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 29, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17556 Filed 7–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–290–000]

Michigan Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

July 3, 1996.

Take notice that on June 28, 1996, Michigan Gas Storage Company (MGS) tendered for filing as part of its FERC Gas Tariff, Volume No. 1, the following tariff sheets, to become effective August 1, 1996: the title page and Sheet Nos. 1 through 8, 13, 14, 15, 20, 21, 22, 27, 28, 29, 33, 34, 35, 41, 52, 56 through 64, 67, 68, 70, and 71. The proposed changes would increase revenues from jurisdictional service by approximately $5.5 million based on the 12-month period ending March 31, 1996, as adjusted. Various other tariff sheet changes are also included, notably adding an ACA clause and changes in nomination procedures.

MGS states that the filed tariff sheets implement a general cost of service increase from that approved by the Commission in MGS' last rate filing (RP93–159–000). MGS states that the reasons for the filing are to avoid a revenue deficiency caused by increasing operating and maintenance expenses (including the amortization of certain environmental cleanup costs), to include in cost of service the costs of additional pipeline facilities that are to be constructed by MGS and in service by the end of the test period, and to satisfy a filing requirement included in the settlement of its previous rate case.

Copies of the filing were served upon MGS's jurisdictional customers and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17506 Filed 7–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–53–000]

NE Hub Partners, L.P.; Notice of Technical Conference

July 3, 1996.

Take notice that a technical conference will be convened in the above-docketed proceedings on Thursday, August 1, 1996, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

The purpose of the technical conference is to allow the project proponent, intervenors, and other interested parties to ascertain whether the above-docketed project will serve the public interest. The proponent of this project and all parties interested in the project should attend and be prepared to answer questions relating to the engineering, safety, and environmental impact of the project.

Specifically, all of the parties should be prepared to discuss the following:

- Will drilling through the Tioga Gas Storage Pool located in the Oriskany Sandstone damage CNG's and Penn Fuel's Tioga Storage Complex?
- Will leaching natural gas storage salt caverns in the Salina salt layer under the existing Tioga Gas Storage Complex damage CNG's and Penn Fuel's storage complex?
- Will fracturing and failure in the sediments underlying the Tioga reservoir, around the cavern wells, cause gas migration between the storage caverns and the Oriskany, loss of producing wells in the Oriskany, and catastrophic loss of existing storage reservoirs?
- Will disposal of brine produced by solution mining the salt caverns into the Oriskany Sandstone and other formations adjacent to the Tioga Gas Storage Complex at pressures greater than the fracture gradient result in significant impact to the Tioga Storage Complex and fresh water supplies due to brine encroachment?

Any party, as defined in 18 CFR 385.214, and any participant, as defined in 18 CFR 385.102(b), in the above-docketed proceedings are invited to participate in the technical conference. Topics other than those listed above will only be considered if directly relevant to the subject issues. For additional information, please contact Whit Holden, (202) 208–1118 or James New, (202) 208–2162, at the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17512 Filed 7–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT96–16–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 3, 1996.

Take notice that on June 28, 1996, Northwest Pipeline Corporation ("Northwest") tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to become effective July 29, 1996:

Third Revised Volume No. 1

Fifth Revised Sheet No. 239
Fourth Revised Sheet No. 297

Northwest states that the purpose of this filing is to update its tariff in compliance with the directives of the Commission in 18 CFR 250.16(b)(1), which requires an interstate natural gas pipeline to report any changes which occur to the list of operating personnel and facilities shared by the interstate natural gas pipeline and its marketing or brokering affiliates.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17509 Filed 7–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–611–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

July 3, 1996.

Take notice that on June 28, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP96–611–000 a request pursuant to Sections 157.205, 157.216 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216 and 157.211) for approval to upgrade its Burley No. 2 Meter Station in Cassia County, Idaho by abandoning certain facilities and constructing and operating upgraded replacement facilities to accommodate a request by Intermountain Gas Company, a local distribution company, for additional delivery capacity and delivery pressure at the Burley No. 2 delivery point under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to upgrade the Burley No. 2 Meter Station by replacing the two existing 2-inch regulators and appurtenances with two new 4-inch regulators and appurtenances. Northwest states that with this proposed upgrade the maximum design capacity of the meter station would increase from approximately 10,933 Dth per day at 300 psig to approximately 24,405 Dth per day at 475 psig. Northwest estimates that the total cost of the proposed facility replacement at the Burley No. 2 Meter Station to be approximately $41,500.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17510 Filed 7–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–339–000]

Total Peaking Services, L.L.C.; Notice of Application

July 3, 1996.

Take notice that on April 22, 1996, as supplemented on June 24, 1996, and July 1, 1996, Total Peaking Services, L.L.C. (TPS), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP96–339–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing TPS to employ and operate in interstate commerce an existing LNG peak-shaving facility located in Milford, Connecticut presently used by Southern Connecticut Gas Company (Southern Connecticut) for its Connecticut operations, for the purpose of making sales, with pregranted abandonment, of gas revaporized at the plant pursuant to the blanket certificate issued under Part 284, Subpart L of the Commission's regulations, at negotiated rates for resale and for sale to end-use customers, including sales to Southern Connecticut to replace the volumes which Southern Connecticut has in the past made available to itself from the Milford LNG plant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

TPS indicates that it is a limited liability company whose members are CNE Energy Services Group, Inc. (CNE), a wholly-owned subsidiary of Connecticut Energy Corporation and an affiliate of Southern Connecticut and PanEnergy Plus Milford Ventures Company (PEPMV), a wholly-owned subsidiary of EnergyPlus Ventures Company, which in turn is a wholly-owned subsidiary of PanEnergy Corp. TPS indicates that initially CNE would hold a 95 percent membership interest and PEPMV would hold a 5 percent membership interest. It is stated that, upon receipt of all regulatory authorizations, PEPMV will acquire an additional 44 percent interest from CNE in accordance with the terms of the TPS Limited Liability Company Agreement.

TPS states that its proposal is designed to satisfy the growing demand for peaking gas in the Northeast, where, it is indicated, gas consumers need reliable gas supplies to meet their needs on the coldest winter days. It is stated that, by virtue of the Milford LNG Plant's location within the Northeast consumption area, and through access to the Northeast's elaborate pipeline grid, TPS states that its customers will be able to purchase gas from TPS on peak days and receive it virtually instantaneously.

Specifically, TPS states that, upon receipt of the requested authorizations and other necessary state regulatory approvals, TPS will acquire a leasehold interest in the Milford LNG Plant from CNE and will employ and operate the Milford LNG Plant for the purpose of receiving, liquefying, storing for TPS' benefit, regasifying, and selling pursuant to a Part 284, Subpart L blanket certificate quantities of natural gas, to be purchased and owned by TPS, on a winter peak day basis to customers in the northeastern region of the United States, at negotiated rates. According to TPS, the Milford LNG Plant will be operated by Southern Connecticut on behalf of TPS. It is further stated that base gas purchases as well as sales of revaporized gas will be arranged on behalf of TPS by PanEnergy Trading and Market Services, Inc., an affiliate of PEPMV, as agent for TPS. Further, it is stated that Southern Connecticut has capacity on certain third party pipelines, and that Southern Connecticut will make sales of gas to TPS at points of delivery on such third party pipelines in order to enable TPS to make peak day sales and to optimize the use of the Milford LNG Plant. It is stated that TPS will sell to Southern Connecticut equivalent volumes from the Milford LNG Plant or at Southern Connecticut's gas stations.

TPS states that there are four open-access interstate pipelines immediately approximate to the Milford LNG plant with the capacity of transporting peak gas from the Plant to customers throughout the region, and that the extensive pipeline grid that exists in the Northeast will enable consumers virtually anywhere in the region to purchase gas from TPS on peak days and receive it on a timely basis. TPS goes on to state that the pervasiveness of other LNG and gas storage facilities throughout the Northeast, the wide availability of alternate fuels, the intense competition between and among those many suppliers, and the fact that the sales or storage rates of most of those suppliers are subject to state utility regulatory jurisdiction, will ensure that the price of gas available from TPS will at all times be low enough to compete aggressively with those alternatives.

By seeking the rights to charge competitive, negotiated rates for its sales of peaking gas, TPS states that it is willing to forego traditional cost of service rates designed to insure recovery of its costs. As a result, TPS states that it, and not its customers, will be at risk for any underrecovery of costs generated by these rates. Also, TPS states that as a new entrant in this market, it obviously will be required to price its services aggressively in order to attract customers from the many other alternatives available.

TPS further states that it has designed the type of service—sales at negotiated rates—to meet the desire of the market for sales services, backed up by assets, and to more efficiently utilize the Milford LNG Plant given the integrally related replacement service for Southern Connecticut.

TPS states that because, among other reasons, it proposes to use the Milford LNG Plant for its own benefit and does not propose to perform any transportation or storage services for third parties, the sales service it proposes *is* the equivalent in all respects of sales being made currently by other similarly situated marketers at negotiated, market-based rates under automatic blanket certificates issued pursuant to Order No. 547 (III FERC Stats and Refs, Preamble ¶ 30,957).

Any person desiring to be heard or to make any protest with reference to said application should on or before July 24, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission

by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for TPS to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17511 Filed 7–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1384–009, et al.]

Morgan Stanley Capital Group Inc., et al.; Electric Rate and Corporate Regulation Filings

July 2, 1996.

Take notice that the following filings have been made with the Commission:

1. Morgan Stanley Capital Group Inc. Industrial Gas & Electric Services Company

[Docket No. ER94–1384–009 and Docket No. ER95–257–006 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On June 13, 1996, Morgan Stanley Capital Group Inc. filed certain information as required by the Commission's November 8, 1994, order in Docket No. ER94–1384–000.

On June 24, 1996, Industrial Gas & Electric Services Company filed certain information as required by the Commission's February 1, 1995, order in Docket No. ER95–257–000.

2. Gelber Group, Inc.

[Docket No. ER96–1933–000]

Take notice that on June 21, 1996, Gelber Group, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: July 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Commonwealth Edison Company

[Docket No. ER96–2236–000]

Take notice that on June 25, 1996, Commonwealth Edison Company (ComEd), submitted for filing six Service Agreements, establishing DuPont Power (DuPont), Illinova Power Marketing, Inc. (Illinova), Pennsylvania Power & Light Co. (PP&L), Minnesota Power & Light (MP&L), Southern Energy Marketing, Inc. (Southern), and Morgan Stanley Capital Group Inc. (MSCGI), as customers under the terms of ComEd's Power Sales Tariff PS–1 (PS–1 Tariff). ComEd also submitted for filing three Service Agreements, establishing WPS Energy Services, Inc. (ESI), DuPont Power Marketing, Inc. (DuPont), and Morgan Stanley Capital Group Inc. (MSCGI), as customers under the terms of ComEd's Flexible Transmission Service Tariff (FTS–1 Tariff). The Commission has previously designated the PS–1 Tariff as FERC Electric Tariff, Original Volume No. 2, and the FTS–1 Tariff as FERC Electric Tariff, Second Revised Volume No. 3.

ComEd requests an effective date of May 26, 1996 for the six PS–1 Service Agreements, an effective date of May 26, 1996 for the FTS–1 Service Agreement between ComEd and ESI, June 4, 1996 for the FTS–1 Service Agreement between ComEd and DuPont, and June 11, 1996 for the FTS–1 Service Agreement between ComEd and MSCGI, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon DuPont, Illinova, PP&L, MP&L, Southern, MSCGI, ESI and the Illinois Commerce Commission.

Comment date: July 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Arizona Public Service Company

[Docket No. ER96–2237–000]

Take notice that on June 25, 1996, as Operating Agent for the Navajo Project Southern Transmission System, Arizona Public Service Company (APS), tendered for filing on behalf of the Navajo Project Participants the following Agreements:

1. Amendment No. 2 to the Navajo Project Co-Tenancy Agreement
2. Amendment No. 3 to the Navajo Project Southern Transmission System Operating Agreement

As a result of the United States Bureau of Reclamation's (USBR) construction of the Waddell 230 kV line requiring interconnection with the Westwing 230 kV Switchyard which is part of the Navajo Southern Transmission System, revisions to both the Navajo Project Co-Tenancy Agreement and the Navajo Project Southern Transmission System Operating Agreement were necessary to reflect the USBR's increased use of facilities at the Westwing Switchyard.

APS requests waiver of the Commission's Notice Requirements in 18 CFR 35.11 to allow for an effective date of November 22, 1991 as provided for in both Amendments.

A copy of this filing has been served on the Arizona Corporation Commission, the Nevada Public Service Commission, Salt River Project Agricultural Improvement & Power District, Tucson Electric Power Company, the United States Bureau of Reclamation, and Nevada Power Company.

Comment date: July 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Central Vermont Public Service Corporation

[Docket No. ER96–2238–000]

Take notice that on June 26, 1996, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with CNG Power Services Corporation under its FERC Electric Tariff No. 5. The tariff provides for the sale by Central Vermont of power and energy at or below Central Vermont's fully allocated costs.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective according to its terms.

Comment date: July 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Electric Power Company

[Docket No. ER96–2239–000]

Take notice that on June 26, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Transmission Service Agreement between itself and Duke/Louis Dreyfus L.L.C. (D/LD). The Transmission Service Agreement allows D/LD to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 5, under Docket No. ER95–1474, Rate Schedule STNF.

Wisconsin Electric requests an effective date of June 30, 1996 and waiver of the Commission's notice requirements to allow for economic transactions. Copies of the filing have been served on D/LD, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: July 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric Company

[Docket No. ER96–2240–000]

Take notice that on June 26, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Transmission Agreement between Louisville Gas and Electric Company and Enron Power Marketing Inc. under Rate TS.

Comment date: July 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power & Light Company

[Docket No. ER96–2242–000]

Take notice that on June 26, 1996, Florida Power & Light Company (FPL), filed the Contract for Purchases and Sales of Power and Energy between FPL and Coastal Electric Services Company. FPL requests an effective date of July 1, 1996.

Comment date: July 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER96–2243–000]

Take notice that on June 26, 1996, Florida Power & Light Company (FPL), filed the Contract for Purchases and Sales of Power and Energy between FPL and Duke/Louis Dreyfus L.L.C. FPL requests an effective date of July 1, 1996.

Comment date: July 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Northern States Power Company (Minnesota Company)

[Docket No. ER96–2244–000]

Take notice that on June 26, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing an Agreement dated June 11, 1996, between NSP and the City of Shakopee (City). In a previous agreement dated December 20, 1995, between the two parties, City agreed to continue paying NSP the current wholesale distribution substation rate of $0.47/kW-month until June 30, 1996. Since the December 20, 1995, agreement has terminated, this new Agreement has been executed to continue the current wholesale distribution substation rate of $0.47/kW-month until December 31, 1996.

NSP requests the Agreement be accepted for filing effective June 27, 1996, and requests waiver of the Commission's notice requirements in order for the Agreement to be accepted for filing on the date requested.

Comment date: July 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Louisville Gas and Electric Company

[Docket No. ER96–2245–000]

Take notice that on June 26, 1996, Louisville Gas and Electric Company, tendered for filing copies of a Purchase and Sales Agreement between Louisville Gas and Electric Company and NorAm Energy Services, Inc. under Rate GSS.

Comment date: July 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Electric and Gas Company

[Docket No. ER96–2246–000]

Take notice that on June 26, 1996, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Sonat Power Marketing Inc. (Sonat), pursuant the PSE&G Bulk Power Service Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations and that the agreement can be made effective as of July 1, 1996.

Copies of the filing have been served upon Sonat and the New Jersey Board of Public Utilities.

Comment date: July 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Kentucky Utilities Company

[Docket No. ER96–2247–000]

Take notice that on June 26, 1996, Kentucky Utilities Company (KU), tendered for filing service agreement between KU and Cinergy Services, Inc. under its Power Services (PS) and Transmission Services (TS) Tariffs. KU requests an effective date of June 13, 1996.

Comment date: July 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER96–2248–000]

Take notice that on June 27, 1996, PECO Energy Company (PECO), filed a Service Agreement dated June 21, 1996 with Braintree Electric Light Department (BRAINTREE) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds BRAINTREE as a customer under the Tariff.

PECO requests an effective date of June 21, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to BRAINTREE and to the Pennsylvania Public Utility Commission.

Comment date: July 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. ER96–2249–000]

Take notice that on June 27, 1996, PECO Energy Company (PECO), filed a Service Agreement dated June 21, 1996 with AIG Trading Corporation (AIG) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds AIG as a customer under the Tariff.

PECO requests an effective date of June 21, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to AIG and to the Pennsylvania Public Utility Commission.

Comment date: July 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER96–2250–000]

Take notice that on June 27, 1996, PECO Energy Company (PECO), filed a Service Agreement dated June 21, 1996 with Duke/Louis Dreyfus L.L.C. (D/LD) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds D/LD as a customer under the Tariff.

PECO requests an effective date of June 21, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to D/LD and to the Pennsylvania Public Utility Commission.

Comment date: July 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Atmos Energy Services, Inc.

[Docket No. ER96–2251–000]

Take notice that on June 27, 1996, Atmos Energy Services, Inc. (AESI), tendered for filing pursuant to 18 CFR 35.12, an application for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule FERC No. 1, to be effective on and after August 12, 1996, or such earlier date set by the Commission.

AESI intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where AESI purchases power, including capacity and related services from electric utilities, qualifying facilities and independent power producers, and resells such power to other purchasers, AESI will be functioning as a marketer. In AESI's marketing transactions, AESI

proposes to charge rates mutually agreed upon by the parties. All sales will be at arms-length, and no sales will be made to affiliated entities. In transactions where AESI does not take title to the electric power and/or energy, AESI will be limited to the role of a broker and charge a fee for its services. AESI is not in the business of producing or transmitting electric power. AESI does not currently have or contemplate acquiring title to any electric power transmission or generation facilities.

Rate Schedule FERC No. 1 provides for the sale of energy and capacity at agreed upon prices. Rate Schedule FERC No. 1 also provides that no sales may be made to affiliates.

Comment date: July 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. New York State Electric & Gas Corporation

[Docket No. ER96–2252–000]

Take notice that on June 27, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12 (1995), as an initial rate schedule, an agreement with AIG Trading Corporation (AIG). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to AIG and AIG will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on June 28, 1996, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and AIG.

Comment date: July 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER96–2253–000]

Take notice that on June 27, 1996, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Companies), filed an amendment to the GPU Power Pooling Agreement. This amendment sets forth the monthly charges for the transmission of capacity and associated energy from the service area of one GPU Company to another. GPU requests waiver of the Commission's notice requirements for good cause shown and an effective date of June 1, 1996, for the proposed amendment. GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: July 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Portland General Electric Company

[Docket No. ER96–2254–000]

Take notice that on June 27, 1996, Portland General Electric Company (PGE), tendered for filing its Average System Cost (ASC) as calculated by PGE and determined by the Bonneville Power Administration under the revised ASC Methodology which became effective on October 1, 1984. This filing includes PGE's revised Appendix 1 of the Residential Purchase and Sale Agreement.

PGE states that the revised Appendix 1 shows the ASC to be 35.29 mills/kWh effective November 8, 1995. The Bonneville Power Administration determined the ASC rate for PGE to be 25.29 mills/kWh.

Copies of the filing have been served on the persons named in the transmittal letter as included in the filing.

Comment date: July 16, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. New York State Electric & Gas Corporation

[Docket No. ER96–2255–000]

Take notice that on June 27, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12 (1995), as an initial rate schedule, an agreement with PanEnergy Power Service, Inc. (PanEnergy). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to PanEnergy and PanEnergy will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on June 28, 1996, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and PanEnergy.

Comment date: July 17, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Central Vermont Public Service Corporation

[Docket No. ER96–2256–000]

Take notice that on June 27, 1996, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement in the above-mentioned docket.

Central Vermont requests the Commission to waive its notice of filing requirement to permit the amendment to become effective according to its terms. In support of its requests Central Vermont states that allowing the Service Agreement to become effective as provided will enable the Company and its customers to achieve mutual benefits.

Comment date: July 17, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Central Illinois Public Service Company

[Docket No. ER96–2257–000]

Take notice that on June 27, 1996, Central Illinois Public Service Company (CIPS), submitted Service Agreements establishing Duke/Louis Dreyfus L.L.C., JPower Inc., Old Dominion Electric Cooperative and TransCanada Power Corp., as new customers under the terms of CIPS' Coordination Sales Tariff CST–1 (CST–1 Tariff).

CIPS requests effective dates coincident with the dates of execution for the four service agreements and an effective date of June 17, 1996, for the revised Index of Customers. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon the four customers and the Illinois Commerce Commission.

Comment date: July 17, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. MidAmerican Energy Company

[Docket No. ER96–2258–000]

Take notice that on June 28, 1996, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801, tendered for filing Assignments for Capacity Schedule dated March 14, 1994 (Assignments) and entered into by Iowa-Illinois Gas and Electric Company (Iowa-Illinois), Midwest Power Systems Inc. (Midwest Power), and IES Utilities Inc. (IES), as Assignors, pursuant to the Operating Agreement/Neal 3 Transmission (MidAmerican Rate Schedule FERC No. 11) dated January 2, 1978, with each of City of Algoma, Iowa, City of Bancroft, Iowa, City of Coon Rapids, Iowa, Corn Belt Power Cooperative, City of Graettinger, Iowa, City of Laurens, Iowa, City of Milford, Iowa, City of Spencer, Iowa, and City of Webster City, Iowa, as Assignees. MidAmerican is successor by merger to Iowa-Illinois and Midwest Power. A certificate of concurrence by IES has been filed.

The Assignments reflect an assignment of certain transmission capacity schedule rights in the existing Neal 3 Transmission Line (running from the Raun Substation to the Lehigh Substation) from the Assignors to each of the nine part-owners who are the Assignees. The Neal 3 Transmission Line is used by the owners of the Neal 4 Generating Station for transmission of the power and energy generated by the unit. The Neal 4 generating unit's accredited capacity was increased on June 20, 1991, and again on August 28, 1993. The Assignees are part-owners of Neal 4. Accordingly, each Assignee required additional transmission capacity scheduling.

MidAmerican proposes to make the Assignments effective on July 1, 1996.

Copies of the filing were served upon Cooperative, the Iowa Utilities Board, the Illinois Commerce Commission, the South Dakota Public Utilities Commission and each of the Assignees.

Comment date: July 17, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17503 Filed 7–9–96; 8:45 am]

BILLING CODE 6717–01–P

Notice of New Docket Prefix "OA"

July 3, 1996.

Take notice that a new docket prefix has been established for filings made pursuant to Order Nos. 888[1] and 889.[2] In its Order Clarifying Order Nos. 888 and 889, issued July 2, 1996, the Commission directed the use of the docket prefix "OA" on filings by all entities submitting:

(1) compliance filings required by Order No. 888 due on or before July 9, 1996 and on or before December 31, 1996;
(2) compliance filings required by Order No. 889 due on or before November 1, 1996; and
(3) requests for waivers of all or part of the requirements of Order Nos. 888 and 889.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17504 Filed 7–9–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 184–050 California]

Pacific Gas and Electric Company; Notice of Availability of Environmental Assessment

July 3, 1996.

An environmental assessment (EA) is available for public review. The EA is for an application to divert water (up to 500 acre-feet per year) from Caples Lake for snow making purposes at the Kirkwood Ski Resort. Caples Lake is a project reservoir of the El Dorado Project. The proposal is part of the Kirkwood Water Rights and Snowmaking Project previously reviewed by the U.S. Forest Service, Alpine County, and other federal, state, and local agencies. The EA finds that approval of the application would not constitute a major federal action significantly affecting the human environment. The El Dorado Project is located on the South Fork American River in El Dorado and Alpine Counties, California.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA are available for review at the Commission's Reference and Information Center, Room 2–A, 888 First Street, NE, Washington, D.C. 20426. Copies can also be obtained by calling the project manager, Jon Cofrancesco at (202) 219–0079.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17508 Filed 7–9–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–55–35–7]

National Advisory Council for Environmental Policy and Technology Information Impacts Committee; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL 92463, EPA gives notice of a two-day meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT) Information Impacts Committee (IIC). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. The IIC has been asked to review information requirements, and provide recommendations on how to effectively position information resources to support new, comprehensive and long-term Agency initiatives. This meeting is being held to provide the IIC with Industry and Federal InterAgency perspectives through panel discussions with members of both of those sectors. Additionally, the Committee intends to put into perspective the input received at this session and the input received at the July 11–12, 1996 session where State, Local Government, Community, Tribal, and EPA Regional views were presented.

DATES: The two-day public meeting will be held on Tuesday, September 10, 1996 from 9 am to 5 pm and on Wednesday, September 11, 1996 from 9 am to 3 pm. The meeting will be held at the Dupont Plaza Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

ADDRESSES: Although time will be limited, there will be opportunity for

[1] Docket Nos. RM95–8–000 and RM94–7–001; Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities, and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, 61 FR 21540 (May 10, 1996); FERC Stats. & Regs. ¶ 31,036 (1996).

[2] Docket No. RM95–9–000; Open Access Same-Time Information System (formerly Real-Time Information Networks) and Standards of Conduct, 61 FR 21737 (May 10, 1996); FERC Stats. & Regs. ¶ 31,037 (1996).

public comment. Interested parties may submit written materials or comments, or may choose to address the committee directly. In either case, requests for participation must be submitted no later than August 30, 1996, to Joe Sierra, Designated Federal Official, NACEPT/IIC, U.S. EPA, Office of Cooperative Environmental Management (1601–F), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Joseph Sierra, Designated Federal Official for the Information Impacts Committee at 202–260–6839.

Dated: July 2, 1996.

Joseph A. Sierra,

Designated Federal Official.

[FR Doc. 96–17548 Filed 7–9–96; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00442; FRL–5383–6]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a 2-day meeting, beginning on Monday, July 15, 1996 and ending on Tuesday, July 16, 1996. This notice announces the location and times for this meeting and sets forth tentative agenda topics. The meetings are open to the public.

DATES: The SFIREG will meet on Monday, July 15, 1996, from 8:30 a.m. to 4:30 p.m. and Tuesday, July 16, 1996 from 8:30 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at the DoubleTree Hotel, 300 Army-Navy Drive, Crystal City-Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Shirley M. Howard, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location and telephone number: Rm. 1100, Crystal Mall #2, 1921 Jefferson-Davis Highway, Arlington, VA, (703) 305–5306 (phone), (703) 308–3259 (fax) and e:mail address: howard.shirleym@epamail.gov.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG includes the following:

1. Discussion regarding "co-pack" products.
2. FIFRA section 25(b) exemptions discussion.
3. Discussion of State Management Plans for ground water protection and the Office of Pesticide Programs' National Workshop.
4. Discussion of laboratory support for pesticide regulatory programs.
5. Demonstration of potential, and discussion of endangered species Internet Home Page.
6. Discussion of potential changes to SFIREG structure and function.
7. Presentation of SFIREG issues status report.
8. Regional SFIREG representatives' reports.
9. Pesticide resistence.
11. Discussion of Silver Platter subscriptions.
10. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: June 28, 1996.

William L. Jordan,

Acting Director, Field Operations Division, Office of Pesticide Programs.

[FR Doc. 96–17329 Filed 7–9–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–42076A; FRL–5369–9]

State of Nebraska Plan for Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Approval of Certification Plan.

SUMMARY: On March 20, 1996, EPA announced its intention to approve the Nebraska Certification Plan for restricted use pesticide applicators. Nebraska had been certifying restricted use pesticide applicators under a Certification Plan approved on a contingency basis. The March 20, 1996 Notice solicited comments on a revised Nebraska Certification Plan. The revised Plan incorporates the changes needed to remove the contingency approval and to fully comply with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the regulations at 40 CFR part 171. No comments were received and EPA therefore approves the Nebraska Certification Plan.

FOR FURTHER INFORMATION CONTACT: Richard O. Jacobson, U.S. Environmental Protection Agency, Lincoln Field Office, 100 Centennial Mall North, Rm. 289, Lincoln, NE 68508, Telephone: (402) 437-5080, e-mail: jacobson.jake@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 21, 1994 (59 FR 19010), notice was published of the intent of the Regional Administrator, EPA Region 7 to approve, on a contingency basis, the State of Nebraska Plan for the Certification of Pesticide Applicators. After an appropriate comment period, a notice of approval, on a contingent basis, was published in the **Federal Register** of July 20, 1994 (59 FR 37038). The **Federal Register** notice of July 20, 1994, also addressed comments which had been submitted.

The July 20, 1994 Notice of Contingent Approval stated that final approval of the Nebraska Certification Plan would be granted upon development of appropriate regulations, completion of cooperative agreements with other State agencies, and revision of competency standards for one commercial applicator category. These conditions have been met. Appropriate regulations are contained in Title 25 Nebraska Administrative Code Chapter 2 and are incorporated in the revised Nebraska Certification Plan. The Nebraska Department of Agriculture is responsible for the overall administration of the plan. The cooperative agreements between the Nebraska Department of Agriculture, the University of Nebraska, and the Nebraska Department of Aeronautics assure the coordination and cooperation of the various State agencies. These cooperative agreements are contained in the revised Nebraska Certification Plan. The revised Nebraska competency standards for Nebraska category 8, Structural/Health Related Pest Control, meet the requirements contained in the corresponding EPA standards at 40 CFR 171.4(c) (7). EPA announced its intention to approve this revised plan in the **Federal Register** of March 20, 1996 (61 FR 11405) (FRL-4989-3), and solicited comments. No comments were received and EPA therefore approves the revised plan.

Copies of the approved plan are available for review at the following locations during normal business hours:

1. U.S. Environmental Protection Agency, Lincoln Field Office, 100 Centennial Mall North, Rm. 289, Lincoln, NE 68508. Contact: Richard O. Jacobson, (402) 437-5080, e-mail: jacobson.jake@epamail.epa.gov.
2. Nebraska Department of Agriculture, Bureau of Plant Industry, 301 Centennial Mall South, Lincoln, NE 68509. Contact: Geir Friisoe (402) 471-2394.
3. U.S. Environmental Protection Agency, Office of Pesticide Programs (7506C), 1921 Jefferson Davis Highway, Crystal Mall #2, Rm. 1121, Arlington, VA 22202. Contact: John MacDonald (703) 305-7370.

List of Subjects

Environmental protection.

Dated: June 24, 1996.

Dennis Grams,

Regional Administrator, Region 7.

[FR Doc. 96–17333 Filed 7–9–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30416; FRL–5383–5]

Ecoval Technologies Inc.; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing an active ingredient not included in any currently registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by August 9, 1996.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30416] and the file symbol (069836–R) to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30416]. No "Confidential Business Information" (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joan Karrie, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8699; e-mail: karrie.joan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received an application from Ecoval Technologies Inc., 3600, boul. du Tricentenaire Pointe-aux-Tembles, Quebec H1B 5M8, to register the pesticide product ECO-N SELECT 1.6 (EPA File Symbol 069836–R), containing the active ingredient acetic acid: ethanoic acid [$C_2H_4O_2$] at 25 percent, an active ingredient not included in any currently registered product pursuant to the provisions of section 3(c)(4) of FIFRA. The product is classified for general use for non-selective control of herbaceous broadleaf and grass weeds in noncrop, right-of-way, and industrial land sites. Notice of receipt of the application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30416] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: July 1, 1996.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–17574 Filed 7–9–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66227; FRL 5375–3]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by October 8, 1996, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This notice announces receipt by the Agency of requests to cancel some 50 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000087–00010	Ethylene Oxide 100%	Ethylene oxide
000241 MT–90–0004	Pursuit Herbicide	Ammonium salt of (+/-)-2-(4,5-dihydro-4-methyl-4-(1-methylethyl)-5-
000241 PR–94–0002	Pursuit Herbicide	Ammonium salt of (+/-)-2-(4,5-dihydro-4-methyl-4-(1-methylethyl)-5-
000241 UT–91–0003	Pursuit Herbicide	Ammonium salt of (+/-)-2-(4,5-dihydro-4-methyl-4-(1-methylethyl)-5-
000241 WA–90–0007	Pursuit Herbicide	Ammonium salt of (+/-)-2-(4,5-dihydro-4-methyl-4-(1-methylethyl)-5-
000241 WY–90–0002	Pursuit Herbicide	Ammonium salt of (+/-)-2-(4,5-dihydro-4-methyl-4-(1-methylethyl)-5-
000264 FL–87–0009	Temik Aldicarb Pesticide	2-Methyl-2-(methylthio)propionaldehyde *O*-(methylcarbamoyl)oxime
000264 MD–78–0009	Temik 10G Aldicarb Pesticide	2-Methyl-2-(methylthio)propionaldehyde *O*-(methylcarbamoyl)oxime
000264 MO–84–0001	Temik Aldicarb Pesticide	2-Methyl-2-(methylthio)propionaldehyde *O*-(methylcarbamoyl)oxime
000264 OK–84–0005	Union Carbide Temik Aldicarb Pesticide	2-Methyl-2-(methylthio)propionaldehyde *O*-(methylcarbamoyl)oxime
000264 PA–78–0005	Temik 10G Aldicarb Pesticide	2-Methyl-2-(methylthio)propionaldehyde *O*-(methylcarbamoyl)oxime
000264 WV–78–0013	Union Carbide Temik Aldicarb Pesticide	2-Methyl-2-(methylthio)propionaldehyde *O*-(methylcarbamoyl)oxime
000352 CA–80–0167	Vydate L Insecticide Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-methyl ester
000352 CA–90–0051	Du Pont "Vydate" L Insecticide/nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-methyl ester
000352 ID–83–0019	Vydate L Insecticide Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-methyl ester
000400 CA–88–0012	Omite 6E Agricultural Miticide	2-(*p*-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite
000400 IL–94–0002	Omite 6E	2-(*p*-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite
000400 IN–88–0003	Omite 6E Agricultural Miticide	2-(*p*-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite
000400 MA–82–0005	Omite 6E	2-(*p*-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite
000400 ME–78–0006	Omite 6E Agricultural Miticide	2-(*p*-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite
000400 MO–88–0002	Omite 6E Agricultural Miticide	2-(*p*-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite
000400 NY–95–0003	Omite 6E	2-(*p*-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite
000400 OH–87–0001	Omite 6E Agricultural Miticide	2-(*p*-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite
000400 OR–88–0008	Omite 6E Agricultural Miticide	2-(*p*-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite
000400 PA–88–0003	Omite 6E Agricultural Miticide	2-(*p*-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite
000400 VA–88–0003	Omite 6E Agricultural Miticide	2-(*p*-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite
000400 VT–78–0001	Omite 6E Agricultural Miticide	2-(*p*-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite
000400 WA–85–0007	Omite 6E	2-(*p*-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite
000400 WV–87–0001	Omite 6E Agricultural Miticide	2-(*p*-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite
000524–00444	Greensweep Lawn Insecticide with Sevin Spray-On Liquid	1-Naphthyl-*N*-methylcarbamate
000655–00600	Prentox Insecticide Dust Rotenone 1%	Rotenone Cube Resins other than rotenone
000655–00704	Prentox Insect Dust	Rotenone Cube Resins other than rotenone
000655–00767	Rotenox 5 EC	Rotenone Cube Resins other than rotenone
000769–00832	Miller V-75 A Dust containing Rotenone 0.75%	Rotenone Cube Resins other than rotenone

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000769–00889	Agriseet Rotenone Dust 1%	Rotenone Cube Resins other than rotenone
000875–00150	Oxford Roach n Ant Killer	*N*-Octyl bicycloheptene dicarboximide *O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
003282–20204	D-Con Roach Powder	Boric acid
004758–00130	Pest Control Products Two Metered Insecticide	*N*-Octyl bicycloheptene dicarboximide Aliphatic petroleum hydrocarbons (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
004758–00132	Pest Control Products Flying Insect Killer	Aliphatic petroleum hydrocarbons (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
004758–00133	Pest Control Products Dairy Aerosol Insecticide	*N*-Octyl bicycloheptene dicarboximide Aliphatic petroleum hydrocarbons (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
004822–00094	Virex 69/70 Disinfectant Spray	Ethanol Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12}) Alkyl* dimethyl ethylbenzyl ammonium chloride *(50%C_{12}, 30%C_{14}, 17%C_{16}, 3%C_{18}) Triethylene glycol
004822–00120	Johnson End Bac II Pressurized Disinfectant Spray	Ethanol Isopropanol Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12}) Alkyl* dimethyl ethylbenzyl ammonium chloride *(50%C_{12}, 30%C_{14}, 17%C_{16}, 3%C_{18})
004822–00158	Johnson Wax End Bac II Liquid Disinfectant Spray	Ethanol Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12}) Alkyl* dimethyl ethylbenzyl ammonium chloride *(50%C_{12}, 30%C_{14}, 17%C_{16}, 3%C_{18})
005602–00150	Secret Treatment	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate Xylene range aromatic solvent
008590–00443	Agway Lawn and Garden Insect Control with Diazinon	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
008590–00502	Agway Greenlawn Plus 21–5–7 Fertilizer with Diazinon In	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
011556–00032	Neguvon Brand of Trichlorfon Cattle Insecticide Pour on	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
046515–00014	Weco Weed Killer 111	6,7-Dihydrodipyrido(1,2-a: 2',1'-c)pyrazinediium dibromide
046515–00015	Weco Weed Killer 112	6,7-Dihydrodipyrido(1,2-a: 2',1'-c)pyrazinediium dibromide
052200–00006	Greensward Premium Fertilizer Plus Diazinon	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000087	Pennsylvania Engineering Co., 1119-21 N. Howard St., Philadelphia, PA 19123.
000241	American Cyanamid Co., Agri Research Div-U.S. Regulatory Affair, Box 400, Princeton, NJ 08543.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000352	E. I. Du Pont De Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000400	Uniroyal Chemical Co., Inc., 74 Amity Rd, Bethany, CT 06524.
000524	Monsanto Co., 700 14th St., N.W. Suite 1100, Washington, DC 20005.
000655	Prentiss Inc., 21 Vernon Street, C.B. 2000, Floral Park, NY 11001.
000769	Sureco Inc., 10012 N. Dale Mabry, Suite 221, Tampa, FL 33618.
000875	Diversey Corp., 12025 Tech Center Dr., Livonia, MI 48150.
003282	Reckitt & Colman Inc., Household Products Division, Attn: EPA Regulatory Dept, 225 Summitt Ave, Montvale, NJ 07645.
004758	Pet Chemicals, 4242 BF Goodrich Blvd., Box 18993, Memphis, TN 38181.
004822	S.C. Johnson & Son Inc., 1525 Howe Street, Racine, WI 53403.
005602	Hub States Corp., 8455 Keystone Crossing, Suite 150, Indianapolis, IN 46240.
008590	Universal Cooperatives Inc., Agent For: Agway Inc., Box 460, Minneapolis, MN 55440.
011556	Bayer Corp., Agriculture Division, Animal Health, Box 390, Shawnee Mission, KS 66201.
046515	Celex, Division of United Industries Corp., Box 15842, St Louis, MO 63114.
052200	Tyler Enterprises Inc., Rt 53, South Box 365, Melwood, IL 60421.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before October 8, 1996. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: June 12, 1996.

Frank Sanders,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 96–17332 Filed 7–9–96; 8:45 am]

BILLING CODE [illegible]

[OPP–30414; FRL–5377–9]

Merck Research Company; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by August 9, 1996.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30414] and the file symbol to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30414]. No "Confidential Business Information" (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager (PM 13), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703) 305–6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications to register pesticide products containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 618–RNI. Applicant: Merck Research Laboratories, P.O. Box 450 Hillsborough Rd., Three Bridges, NJ 0887–0450. Product name: Emamectin Benzoate Technical. Insecticide/Miticide. Active ingredient: Emamectin Benzoate: 4″-epi-methylamino-4″-deoxyavermectin B1 benzoate [A mixture of a minimum of 90% 4″-epi-methylamino-4″-deoxyavermectin B_1a and a maximum of 10% 4″-epi-methylamino-4″-deoxyavermectin B_1b benzoate] at 95 percent with 4 percent related compounds. Proposed classification/Use: None. For formulation use only.

2. File Symbol: 618–RNT. Applicant: Merck Research. Product name: Proclaim 0.16 EC Insecticide. Insecticide/Miticide. Active ingredient: Emamectin Benzoate: 4″-epi-methylamino-4″-deoxyavermectin B1 benzoate [A mixture of a minimum of 90% 4″-epi-methylamino-4″-deoxyavermectin B_1a and a maximum of 10% 4″-epi-methylamino-4″-deoxyavermectin B_1b benzoate] at 2.15 percent. Proposed classification/Use: Restricted. For use on cole crops, celery, and head lettuce.

3. File Symbol: 618–RNA. Applicant: Merck Research. Product name: Proclaim 5 SG Insecticide. Insecticide/Miticide. Active ingredient: Emamectin Benzoate: 4″-epi-methylamino-4″-deoxyavermectin B1 benzoate [A mixture of a minimum of 90% 4″-epi-methylamino-4″-deoxyavermectin B_1a and a maximum of 10% 4″-epi-methylamino-4″-deoxyavermectin B_1b benzoate] at 5 percent. Proposed classification/Use: Restricted. For use on cole crops, celery, and head lettuce.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30414] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: June 25, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–17334 Filed 7–9–96; 8:45 am]

BILLING CODE [illegible]

[PF–661; FRL–5380–7]

Pesticide Tolerance Petitions; Notice of Filings and Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filings and amendment of pesticide petitions (PP) and a food additive petition (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

DATES: Comments, identified by the docket number [PF–661], must be received on or before August 9, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an

ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–661]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Rick Keigwin (PM 10)	Rm. 210, CM #2, 703–305–6788, e-mail:keigwin.richard@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA.
George LaRocca (PM 13).	Rm. 204, CM #2, 703–305–6100, e-mail: larocca.george@epamail.epa.gov.	Do.
Dennis Edwards (PM 19).	Rm. 207, CM #2, 703–305–6386, e-mail: edwards.dennis@epamail.epa.gov.	Do.
Robert J. Taylor (PM 25).	Rm. 245, CM #2, 703–305–6027, e-mail: taylor.robert@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various raw agricultural commodities.

Initial Filings

1. *PP 6F4616.* Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419–8300 proposes to amend 40 CFR part 180 by establishing a tolerance for residues of the insecticide fenoxycarb; (ethyl[2-(4-phenoxyphenoxy)ethyl] carbamate in or on the raw agricultural commodities fat of cattle, goats, hogs, horses, and sheep at 0.05 ppm, grass forage at 0.6 ppm, grass hay 0.5 ppm, milk, meat and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.01 ppm. The proposed analytical method for determining residues is column switching high performance liquid chromatography. (PM 10)

2. *FAP 6H5748.* McLaughlin Gormley King Company, 8810 Tenth Avenue North, Minneapolis, MN 55427–4372 proposes to amend 40 CFR part 180 by establishing a tolerance for residues of the insecticide pyripoxyfen [2-[1-methyl-2-(4-phenoxyphenoxy) ethoxy] pyridine] in or on the following types of stored food commodities; fruits, meats, sugar, vegetables, flours, candy, dairy and baked goods at 0.5 ppm. (PM 10)

3. *PP 6F4735.* DowElanco, 9330 Zionville Road, Indianapolis, IN 46268–1054, proposes to amended 40 CFR part 180 by establishing a tolerance for residues of the insecticide spinosad 2-[(6-deoxy-2,3,4-tri-*O*-methyl-alpha-*L*-mannopyranosyl)oxy]-13-[[5-(dimethylamino)tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,,16a,16b-tetradecahydro-14-methyl-1*H*-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione, [2R-[2R*,3aS*,5aR*, 5bR*,9S*,13S* (2R*,5S*,6R*),14R*,16aS*, 16bR*]](9CI) and 2-[(6-deoxy-2,3,4-tri-*O*-methyl-alpha-*L*-mannopyranosyl)oxy]-13-[[5-(dimethylamino)tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,,16a,16b-tetradecahydro-4-14-dimethyl-1*H*-as-Indaceno[3,2-d]oxacyxlododecin-7,15-dione, [2S-[2R*,3aS*,5aR*, 9R*,13R*(2S*,5R*,6S*), 14S*,16aR*,16bR*]](9CI) in or on the raw agricultural commodity cottenseed at 0.02 ppm. (PM 13).

4. *PP 6F3429.* DowElanco, 9330 Zionville Road, Indianapolis, IN 46268–1054, proposes to amend 40 CFR 180.419 by establishing tolerances for residues of the insecticide chlorpyrifos-methyl [*O,O*-dimethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate], *per se*, in or on the raw agricultural commodities barley, corn, oats, rice, sorghum, and wheat at 6.0 ppm and aspirated corn grain fractions at 500 ppm; in meat and meat by-products of cattle, goats, hogs, horses, and sheep at 0.05 ppm; in fat of cattle, goats, hogs, horses, and sheep at 1.0 ppm; in milk, fat at 1.25 ppm (reflecting 0.05 ppm in whole milk); in meat, meat byproducts, and eggs of poultry at 0.05 ppm; and in fat of poultry at 0.10 ppm. (PM 19)

5. *PP 6F4706.* E.I. duPont de Nemours & Company, Agricultural Products, P.O. Box 80038, Wilmington, DE 19880–0038, proposes to amend 40 CFR 180.478 by establishing tolerances for residues of the herbicide rimsulfuron, *N*-((4,6-dimethoxypyridin-2-yl)aminocarbonly)-3-(ethylsulfonyl)-2-pyridinesulfonamide, in or on the raw agricultural commodity tomato, fruit at 0.1 ppm. The proposed analytical method for determining residues is high performance liquid chromatography with an Ultraviolet detefctor. (PM 25)

Amended Filings

PP 8F2128. In the **Federal Register** of November 7, 1978 (43 FR 53816) EPA issued a notice that the Monsanto Company, 700 14th Street, Suite 1100, Washington, DC 200025, had proposed to amend 40 CFR 180.314 by establishing a tolerance for the combined residues of the herbicide triallate (*S*-(2,3,3-trichloroallyl) diisopropylthiocarbamate) in or on raw agricultural commodities sugarbeets, sugarbeet tops, soybeans, soybean forage, and hay all at 0.05 ppm. In the **Federal Register** of September 13, 1995 (60 FR 47579) (FRL–4975–3), EPA issued an amended notice of filing amending the petition to propose that tolerances with regional registration be established for triallate and its metabolites 2,3,3-trichloro-2-propene sulfonic acid and expressed as parent equivalent in or on the raw agricultural commodities sugarbeet roots at 0.05 ppm and sugarbeet foliage at 0.5 ppm. Monsanto is amending this petition to propose that tolerances with regional restriction be established for residues of *S*-2,3,3-trichloroallyl diisopropylthiocarbamate and its metabolite, 2,3,3,-trichloro-2-propene sulfonic acid, expressed as parent equivalent, in or on the following raw agricultural commodities sugarbeet roots at 0.1 ppm and sugarbeet foliage at 0.5 ppm. Also proposed is the establishment of a maximum residue limit (MRL) of 0.2 ppm for dried sugarbeet pulp under section 701 of the Federal Food, Drug and Cosmetic Act for residues of *S*-2,3,3-trichloroallyl diisopropylthiocarbamate and its metabolite, 2,3,3-trichloro-2-propene sulfonic acid. (PM 25)

A record has been established for this notice under docket number [PF–661] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Authority: 21 U.S.C. 346a and 348.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 25, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–17331 Filed 7–9–96; 8:45 am]

BILLING CODE 6560–50–F

[PF–662; FRL–5381–6]

Entek Corporation; Notice of Filing of a Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a pesticide petition establishing tolerances for the nematicide, insecticide, and fungicide carbon disulfide from the application of sodium tetrathiocarbonate in or on certain agricultural commodities.

DATES: Written comments, identified by the docket control number [PF–662], must be submitted to EPA by August 9, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by docket number [PF–662]. No CBI should be submitted through e-mail. Electronic comments on this notice of filing may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in the SUPPLEMENTARY INFORMATION section of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Cynthia Giles-Parker, Product Manager (PM) 22, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460. Office location and telephone number: Rm. 229, CM #2, Jefferson Davis Hwy, Arlington, VA, 703–305–5540; e-mail address: giles-parker.cynthis@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received from Entek Corporation, P.O. Box 458, Brea, CA 92622–0458 a notice of filing under section 408 of the Federal Food, Drug, and Cosmetic Act 21 (U.S.C. 346a) for pesticide petition (PP) *PP 5E4482* by amending 40 CFR part 180.467 by establishing tolerances for the residues of the nematicide, insecticide, and fungicide carbon disulfide from the application of sodium tetrathiocarbonate in or on the following agricultural commodities: almond nut meats, almond hulls, peaches, and plums (fresh prunes) all at 0.1 part per million (ppm). The proposed analytical method for determining residues is gas chromatography.

A record has been established for this notice of filing under docket number [PF–662] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice of filing, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Authority: 21 U.S.C. 346a and 348.

List of Subjects

Environmental Protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 24, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–17330 Filed 7–9–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–181015; FRL 5379–1]

Carbofuran, Receipt of Application for Emergency Exemption; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Tennessee Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide flowable Carbofuran (Furadan 4F Insecticide/Nematicide) (EPA Reg. No. 279–2876) to treat up to 50,000 acres of cotton to control cotton aphids.

The Applicant proposes the use of a chemical which has been the subject of a Special Review within EPA's Office of Pesticide Programs, and the proposed use could pose a risk similar to the risk assessed by EPA under the Special Review of granular carbofuran. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before July 25, 1996.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–181015," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181015]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8327; e-mail: deegan.dave@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of carbofuran on cotton to control aphids.

Information in accordance with 40 CFR part 166 was submitted as part of this request. As part of this request, the Applicant asserts that the state of Tennessee is likely to experience a non-routine infestation of aphids during the 1996 cotton growing season. The applicant further claims that, without a specific exemption of FIFRA for the use of flowable carbofuran on cotton to control cotton aphids, cotton growers in much of the state will suffer significant economic losses. The applicant also details a use program designed to minimize risks to pesticide handlers and applicators, non-target organisms (both Federally-listed endangered species, and non-listed species), and to reduce the possibility of drift and runoff.

The applicant proposes to make no more than two applications on older cotton (bloom to finish) at the rate of 0.25 lb. active ingredient [(a.i.)], (8 fluid oz.) in a minimum of 2 gallons of finished spray per acre by air, or 10 gallons of finished spray per acre by ground application. The total maximum proposed use during the 1996 growing season (June 1, 1996 until September 30, 1996) in Tennessee would be 0.5 lb. a.i. (16 fluid oz.) per acre. The applicant proposes that the maximum acreage which could be treated under the requested exemption would be 50,000 acres. If all acres were treated at the maximum proposed rates, then 25,000 lbs. a.i. (6,250 gallons Furadan 4F Insecticide/Nematicide) would be used.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a chemical (i.e., an active ingredient) which has been the subject of a Special Review within EPA's Office of Pesticide Programs, and the proposed use could pose a risk similar to the risk assessed by EPA under the previous Special Review. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number OPP–181015 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Tennessee Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pest, Crisis exemptions.

Dated: June 12, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–17326 Filed 7–9–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50820; FRL–5369–3]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location, telephone number, or e-mail address cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

100–EUP–101. Issuance. Ciba Plant Protection, P.O. Box 18300, Greensboro, NC 27419-8300. This experimental use permit allows the use of 328.04 pounds of the herbicide 2-[[[[(4,6-dimethyl-2-pyrimidinyl)-amino]carbonyl]amino]sulfonyl]benzoic acid, 3-oxetanyl ester on 4,000 acres of soybeans to evaluate the control of various weeds. The program is authorized only in the States of Alabama, Arkansas, Delaware, Georgia, Illinois, Iowa, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from April 30, 1996 to December 21, 1997. (Robert Taylor, PM 25, Rm. 245, CM #2, 703–305–6800, e-mail: taylor.robert@epamail.epa.gov)

69006–EUP–1. Issuance. Earthgro, Inc., Route 207, P.O. Box 143, Lebanon, CT 06249. This experimental use permit allows the use of 5,697 pounds of the microbial pesticides *Flavobacterium balustinum* strain 299 and *Trichoderma hamatum* isolate 382 on 226 acres of selected ornamentals and vegetable bedding plants to evaluate the control of *Rhizoctonia, Fusarium, Pythium,* and *Phytophthora.* The program is authorized only in the States of California, Connecticut, Florida, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Texas. The experimental use permit is effective from January 1, 1996 to January 1, 1998. (Diana Horne, CS #1 5th floor, 703–308–8367, e-mail: horne.diana@epamail.epa.gov)

4581–EUP–43. Renewal. Elf Atochem North America, Inc., 2000 Market St., 21st Floor, Philadelphia, PA 19103. This experimental use permit allows the use of 128 pounds of the herbicide mono(N,N-dimethylalkylamine) salt of endothall on 50 acres of cotton to evaluate the enhancement of cotton boll opening. The program is authorized only in the States of Alabama, Arkansas, Georgia, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from May 16, 1996 to May 16, 1997. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only. (Joanne Miller, PM 23, Rm. 237, CM #2, 703-305-6224, e-mail: miller.joanne@epamail.epa.gov)

68173–EUP–1. Extension. Kaken Pharmaceutical Co., Ltd. of Japan, c/o Stewart Pesticide Registration Associates, Inc., Suite 603, 1901 North Moore St., Arlington, VA 22209. This experimental use permit allows the use of 30.2 pounds of the fungicide polyoxorim-zinc (1:1)[1], zinc 5-[[2-amino-5-O-(aminocarbonyl)-2-deoxy-L-xylonoyl]amino]-1-(5-carboxy-3,4-dihydro-2,4-dioxo-1(2*H*)-pyrimidinyl)-1,5-dideoxy-beta-D-allofuranuronate on 28 acres of ornamental turf grass to evaluate the control of brown patch and large patch. The program is authorized only in the States of Delaware, Georgia, Kansas, Maryland, Missouri, New Jersey, North Carolina, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from April 16, 1996 to November 1, 1996. (Denise Greenway, CS #1 5th floor, 703–308–8263, e-mail: greenway.denise@epamail.epa.gov)

10182–EUP–59. Issuance. Zeneca Ag Products, Inc., 1800 Concord Pike Wilmington, DE 19897. This experimental use permit allows the use of 2,250 pounds of the herbicide 2-cyclohexen-1-one, 2-[1-ethoxyimino)propyl]-3-hydroxy-5-(2,4,6-trimethylphenyl)-(9Cl) on 5,000 acres of wheat and barley to evaluate the control of green foxtail, persian darnel, yellow foxtail, and wild oats. The program is authorized only in the States of Idaho, Minnesota, Montana, North Dakota, South Dakota, and Washington. The experimental use permit is effective from April 23, 1996 to April 19, 1998. A temporary tolerance for residues of the active ingredient in or on barley and wheat has been established. (Robert Taylor, PM 25, Rm. 245, CM #2, 703–305–6800, e-mail: taylor.robert@epamail.epa.gov)

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: June 18, 1996.

Stephen L. Johnson.

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–17328 Filed 7–9–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5535–8]

Notice of Proposed Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, As Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; Request for public comment.

SUMMARY: Notice is hereby given that a proposed prospective purchaser agreement associated with the National Mine Tailings Superfund Site, located in St. Francois County, Missouri, was executed by the Agency on May 15, 1996 and concurred upon by the United States Department of Justice on May 30, 1996. This agreement is subject to final approval after the comment period. The Prospective Purchaser Agreement would resolve certain potential EPA claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), against Airtech, Inc., the prospective purchaser ("the purchaser").

The settlement would require the purchaser to perform cleanup actions at the property which include establishing and maintaining a protective cover over potentially contaminated soil on-site. The purchaser must record a deed restriction limiting use of the property to industrial and commercial uses and must provide EPA access to the Site.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

DATES: Comments must be submitted on or before August 9, 1996.

AVAILABILITY: The proposed settlement is available for public inspection at the U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the proposed agreement may be obtained from Jack Generaux, Remedial Project Manager, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. Comments should reference the "National Mine Tailings Superfund Site Prospective Purchaser Agreement" and should be forwarded to Jack Generaux, Remedial Project Manager, at the above address.

FOR FURTHER INFORMATION CONTACT: David Cozad, Senior Associate Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7587.

Dated: June 28, 1996.

William Rice,

Acting Regional Administrator.

[FR Doc. 96–17547 Filed 7–9–96; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–44628; FRL–5383–1]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on the diglycidyl ether of bisphenol A (DGEBPA) (CAS No. 1675–54–3) and tetrahydrofuran (THF) (CAS No. 109–99–9). These data were submitted pursuant to enforceable testing consent agreements/orders issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail:TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR Part 790.60, all TSCA section 4 enforceable testing consent agreements/orders must contain a statement that results of testing conducted pursuant to enforceable testing consent agreements/orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for DGEBPA were submitted by The Society of the Plastics Industry Epoxy Resin Systems DGEBPA Task Force pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR Part 799.5000 and were received by EPA on June 3, 1996. The submission includes two final reports entitled (1) "DGEBPA: 13-Week Dermal Toxicity Study in the Fischer 344 Rat," and (2) "DGEBPA: 13-Week Dermal Neurotoxicity Study in Fischer 344 Rats." This chemical is used primarily as the principal component in expoxy resins.

Test data for Tetrahydrofuran were submitted by the Tetrahydrofuran Task Force pursuant to a TSCA section 4 enforceable testing consent agreement/order at 40 CFR Part 799.5000 and were received by EPA on June 7, 1996. The submission includes a final report entitled "Acute Inhalation Neurotoxicity Study of Tetrahydrofuran in Rats." This chemical is widely used as a solvent.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of these submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44628). This record includes copies of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center (also kown as the TSCA Public Docket Office), Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: July 1, 1996.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 96–17572 Filed 7–9–96; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 11, 1996, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. Reports

Dated: July 8, 1996.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 96–17669 Filed 7–8–96; 3:48 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget (OMB) For Review

July 3, 1996.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10236, NEOB, Washington, D.C. 20503, (202) 396–0651. For further information, contact Dorothy Conway, Federal Communications Commission, (202) 418–0217.

Please note: The Commission has requested emergency review of this collection by July 16, 1996, under the provisions of 5 C.F.R. Section 1320.13.

Title: Bell Operating Company Provision of Out-of-Region, Interstate, Interexchange Services, Report and Order, CC Docket No. 96–21, (Affiliated Company Recordkeeping Requirement).

Form No.: N/A

OMB Control No.: None.

Action: New Collection.

Respondents: Business or other for-profit entities.

Estimated Annual Burden: 7 respondents; 6056 hours per response; 42,394 hours total annual burden.

Needs and Uses: In the Report and Order issued in CC Docket No. 96–21, the Commission removed dominant regulation for BOCs that provide out-of-region, interstate, interexchange services through an affiliate that complies with certain safeguards, in order to facilitate the efficient and rapid provisions of out-of-region, domestic, interstate, interexchange services by the BOCs, as contemplated by the 1996 Act, while still protecting ratepayers and competition in the interexchange market. These safeguards require that the affiliate: (1) maintain separate books of account from the LEC; (2) not jointly own transmission or switching facilities with the LEC; and (3) take any tariffed services from the affiliated LEC pursuant to the terms and conditions of the LEC's generally applicable tariff. This recordkeeping requirement will not impose any significant burden on BOC interexchange affiliates because we do not require that the interexchange affiliate maintain separate books of account that comply with our Part 32 rules. Instead, these affiliates must maintain separate books as would any separate corporation, as a matter of course.

The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the burden estimates or any other aspect of the collection of information including suggestions for reducing the burden to the Federal Communications Commission, Records Management Division, Paperwork Reduction Project, Washington, D.C. 20554.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–17563 Filed 7–9–96; 8:45 am]

BILLING CODE 6712–01–P

[Report No. 2141]

Petition for Reconsideration of Action in a Rulemaking Proceeding

July 8, 1996.

A Petition for reconsideration has been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800. Opposition to this petition must be filed July 25, 1996. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), FM Broadcast Stations, Table of Allotments. (Denison-Sherman, Paris, Jacksboro, Texas and Madill, Oklahoma) (MM Docket No. 95–126, RM–8671)

Number of Petitions Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–17477 Filed 7–9–96; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

Notice of Intent To Prepare an Environmental Impact Statement; Disposal of Voice of America Bethany Relay Station, Union Township, OH

ACTION: Proposed disposal of the property known as the Voice of America Relay Station located in Union Township, Butler County, Ohio.

The U.S. General Services Administration has identified a property known as the Voice of America Bethany Relay Station site for disposal and possible future development. The station property consists of approximately 625 acres located within Union Township (Butler County), Ohio. The property is bounded on the north by Hamilton Mason Road, on the south by Tylersville Road, on the west by Cox Road, and on the east by Butler-Warren County Line Road. Union Township is located approximately 20 miles north of Cincinnati, Ohio.

The Environmental Impact Statement will evaluate alternative uses for the property as well as the No-Action Alternative. Topics to be studied as part of the Environmental Impact Statement include, but are not limited to: topography, geology/soils, hydrology, biological resources, utility services, transportation services, cultural resources, land uses, socio-economics, community services, hazardous materials, air and noise quality, among others.

A Public Scoping Meeting will be held on July 25, 1996 at 7:30 p.m. at the Union Township Administrative Offices, Union Township, Ohio.

For further information contact William A. Costa, U.S. General Services Administration, Property Disposal Division, 10 Causeway Street, Room 1079, Boston, Massachusetts 02222 or on (617) 565–5700.

Dated: June 27, 1996.

Paul M. Lynch,

Director.

[FR Doc. 96–17492 Filed 7–9–96; 8:45 am]

BILLING CODE 8820–25–M

GOVERNMENT PRINTING OFFICE

The Federal Register Online Via GPO Access; Meeting and Demonstration

The United States Government Printing Office (GPO) will hold a meeting for Federal agencies, businesses, non-profit organizations and the public interested in an overview and demonstration of the Government Printing Office's award-winning online service, *GPO Access*, provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103–40).

The demonstration will be held in the auditorium of the Public Library of Charlotte and Mecklenberg County, 310 North Tryon Street, Charlotte, North Carolina, 28202 on Wednesday, July 31, from 2 p.m. to 4 p.m. There is no charge to attend.

The online **Federal Register** service offers access to the daily issues of the **Federal Register** by 6 a.m. on the day of publication at no charge to the user. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and reader aids are included in the database. Documents are available as ASCII text files and in typeset form as Adobe Acrobat Portable Document Format (PDF) files. Graphics are included in the PDF files and are also available as separate files in the TIFF format for the 1994 (Volume 59) **Federal Register.** The online **Federal Register** is available via the Internet (URL: http://www.access.gpo.gov/su_docs/aces/aces140.html) or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through *GPO Access* include the *Government Manual; GILS Records; The Budget of the United States Government, Fiscal Year 1997; Congressional Record; Congressional Record Index*, including the *History of Bills; Congressional Bills; Public Laws; U.S. Code;* and *GAO Reports;* and a growing list of important Government documents available on the same day of publication.

Individuals interested in attending may reserve a space by contacting John R. Berger, Marketing Specialist, at the GPO's Office of Electronic Information Dissemination Services, by Internet e-mail at jberger@gpo.gov; by telephone: 202–512–1525; or by fax: 202–512–1262. Seating reservations will be accepted through Friday, July 26, 1996.

Michael F. DiMario,

Public Printer.

[FR Doc. 96–17513 Filed 7–9–96; 8:45 am]

BILLING CODE 1505–02–P

The Federal Register Online Via GPO Access; Meeting and Demonstration

The United States Government Printing Office (GPO) will hold a meeting for Federal agencies, businesses, non-profit organizations and the public interested in an overview and demonstration of the Government Printing Office's award-winning online service, *GPO Access*, provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103–40).

The demonstration will be held in the auditorium (Room 120), Computing Commons, Arizona State University, Tempe, Arizona, on Thursday, August 15, from 1:30 p.m. to 3:30 p.m. There is no charge to attend.

The online **Federal Register** service offers access to the daily issues of the **Federal Register** by 6 a.m. on the day of publication at no charge to the user. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and reader aids are included in the database. Documents are available as ASCII text files and in typeset form as Adobe Acrobat Portable Document Format (PDF) files. Graphics are included in the PDF files and are also available as separate files in the TIFF format for the 1994 (Volume 59) **Federal Register.** The online **Federal Register** is available via the Internet (URL: http://www.access.gpo.gov/su_docs/aces/aces140.html) or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through *GPO Access* include the *Government Manual; GILS Records; The Budget of the United States Government, Fiscal Year 1997; Congressional Record; Congressional Record Index*, including the *History of Bills; Congressional Bills; Public Laws; U.S. Code;* and *GAO Reports;* and a growing list of important Government documents available on the same day of publication.

Individuals interested in attending may reserve a space by contacting John R. Berger, Marketing Specialist, at the GPO's Office of Electronic Information Dissemination Services, by Internet e-mail at jberger@gpo.gov; by telephone: 202–512–1525; or by fax: 202–512–1262. Seating reservations will be accepted through Friday, August 9, 1996.

Michael F. DiMario,

Public Printer.

[FR Doc. 96–17514 Filed 7–9–96; 8:45 am]

BILLING CODE 1505–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 656]

Community Education and Training To Address Environmental Health Research; Near Department of Energy Nuclear Weapons Facilities

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of funds in fiscal year (FY) 1996 for a cooperative agreement program to develop community education and training for environmental health research near Department of Energy (DOE) nuclear weapons facilities. The CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the Section "WHERE TO OBTAIN ADDITIONAL INFORMATION.")

Authority

This program is authorized under sections 301(a) and 317 [42 U.S.C. 241(a) and 247b] of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants are State and local health departments, or their bona fide agents or instrumentalities. This includes federally recognized Indian tribal governments.

Note: Eligible applicants may enter into contractual agreements, as necessary, to meet the requirements of the program and to strengthen the overall application. The intent to use such mechanisms must be stated in the application and the nature and scope of work of these mechanisms require the approval of CDC. Recipient(s) must maintain the primary responsibility for conduct of the cooperative agreement.

Availability of Funds

Approximately $300,000 will be available in FY 1996 (for both direct and indirect costs) to fund approximately one or more awards. The amount of each award will be dependent upon the number of awards made. It is expected that the awards will begin on or about September 30, 1996, for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Purpose

The purpose of this program is to support a health education effort for communities in proximity to DOE nuclear weapons facilities sites to increase understanding of environmental health research. A key focus is to increase community understanding of issues associated with potential health effects of radionuclide and chemical exposures from releases from DOE nuclear weapons facilities near the community. Another key focus will be to address community understanding of environmental health research related to past operations of nuclear weapons facilities. CDC is presently conducting dose reconstruction and health studies in communities. Increasingly, communities desire educational and health communication activities that address their need to understand the conduct of studies and interpretation of results.

Applications must focus on the following sites, listed by facility/city and State (only one award will be made per site): (1) Fernald, Ohio; (2) Hanford Nuclear Reservation, Washington; (3) Idaho National Engineering Laboratory, Idaho; (4) Los Alamos, New Mexico; and (5) Savannah River Site, Georgia/South Carolina.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities:

1. Develop and implement a pilot health education program on potential health effects of radionuclide and chemical exposures in communities near DOE nuclear weapons facilities. The education program should include information that promotes a basic understanding of the scientific methods used to estimate these exposures and conduct health studies, and, at a minimum, the following:

a. Assessment of community needs and development of an educational plan to address the identified needs.

b. Production and distribution of educational materials such as brochures, fact sheets, and posters.

c. Involvement of and outreach to community members, including the youth of the community.

d. Development of workshops designed to communicate the concepts depicted in the educational materials.

2. Develop and implement a parallel evaluation program focusing on the effectiveness of every aspect of the education program in the community in the vicinity of the DOE site.

3. Develop a guidebook, based on lessons learned during the community education process, for use at the local health department level regarding education efforts for the DOE site.

4. As a follow-up to the education process, develop a report on the types of education materials/information, either generic or specific to the DOE site, that were unavailable and still need to be developed.

5. Meet with representatives of other education/community outreach project representatives at least once a year. These meetings will be coordinated by CDC.

6. Develop protocol for a community education and training program cooperatively with CDC.

7. Explore the use of distance-based learning methods for community health education.

B. CDC Activities:

1. Provide scientific assistance needed to produce the educational materials to educate the community members.

2. Provide technical assistance in regard to assessment and evaluation activities, the use of distance based learning methods, and other activities associated with the project.

3. Coordinate annual meetings.

4. Provide information regarding CDC environmental health research projects.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

1. The extent to which the applicant's proposal addresses: (a) a plan for developing a health education program for diverse communities, including the youth of these communities; (b) a plan for providing information support and liaison services to other State, local, and tribal health organizations on radiation-related health studies and; (c) plans and methods by which collaboration with other agencies will take place. The applicant must demonstrate a cultural competency for the proposed site of the education and training. (35%)

2. The extent to which the proposal has described: (a) the qualifications and commitment of the applicant; (b) detailed allocations of time and effort of staff devoted to the project, and; (c) the qualifications of the support staff. (35%)

3. The applicant's ability to collaborate with other agencies for conduct of the project, including the degree of commitment and cooperation of collaborating parties. (30%)

4. The proposed budget on the basis of its reasonableness, concise and clear justification, and consistency with the intended use of cooperative agreement funds. The application will also be reviewed as to the adequacy of existing and proposed facilities and resources for conducting project activities. (Not Scored)

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and are funded by the cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

An original and two copies of the application PHS Form 5161–1 (OMB Number 0937–0189) must be submitted to Ron Van Duyne, Grants Management Officer, Attention: David Elswick, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, on or before August 5, 1996.

1. Deadline

The application shall be considered as meeting the deadline if it is either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission to the objective review group. Applicant must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications

Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from David Elswick, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6521, Internet address: DCE1@opspgo1.em.cdc.gov.

Programmatic technical assistance may be obtained from Art Robinson, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, Mailstop F–35, Atlanta, GA 30341, telephone (770) 488–7630.

Please refer to Announcement 656 when requesting information and submitting an application.

A copy of "Healthy People 2000" (Full Report; Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report; Stock No. 017–001–00473–1) referenced in the "INTRODUCTION" may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Atlanta, Georgia, will be the host of the 1996 Summer Olympics Games (July 19 through August 4, 1996). As a result of this event, it is likely that the Procurement and Grants Office (PGO) may experience delays in the receipt of both regular and overnight mail deliveries. Contacting PGO employees during this time frame may also be hindered due to the possible telephone disruptions.

To the extent authorized, please consider the use of voice mail, e-mail, and facsimile transmissions to the maximum extent practicable. Please do not fax lengthy documents, contract proposals or grant applications.

Dated: July 3, 1996.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–17526 Filed 7–9–96; 8:45 am]

BILLING CODE 4163–18–P

Development and Feasibility Testing of Interventions to Increase Health-Seeking Behaviors in, and Health Care for, Populations at High Risk for Gonorrhea; Correction

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Correction.

SUMMARY: In the notice document Announcement 638 beginning on page 29386, Vol. 61, No. 112, Monday, June 10, 1996, make the following correction:

On page 29389 in the first column, the application due date was previously listed as August 5, 1996. This should be changed to read August 8, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Boyd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E15, Atlanta, GA 30305, telephone (404) 842–6592, Facsimile (404) 842–6513, or Internet at <KPT0@OPSPGO1.em.cdc.gov>.

Dated: July 3, 1996.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–17527 Filed 7–9–96; 8:45 am]

BILLING CODE 4163–18–P

[Announcement 661]

Maternal and Child Health Epidemiology Programs

Introduction

The Centers for Disease Control and Prevention (CDC), announces the availability of fiscal year (FY) 1996 funds for a cooperative agreement program to provide assistance to official public health agencies to expand and strengthen existing maternal and child health (MCH) programs in epidemiology and surveillance capacity building. All States have epidemiologic skills or activities; however, many lack MCH specific analytical capability.

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Maternal and Infant Health. (For ordering a copy of "Healthy People 2000," see the section "Where to Obtain Additional Information.")

Authority

This program is authorized under section 317(a) [42 U.S.C. 247b(a)] of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants are the official public health agencies of States and their bona fide agents. This includes the District of Columbia, New York City, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized American Indian tribal governments.

Availability of Funds

Approximately $900,000 is available in FY 1996 to fund approximately 10 awards. It is expected that the average award will be $75,000, ranging from $25,000 to $150,000. It is expected that the awards will begin on or about September 27, 1996, for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

If requested, Federal personnel may be assigned to a project in lieu of a portion of the financial assistance.

Purpose

The purpose of this program is to provide an opportunity for State and local health departments to: (1) use epidemiologic and surveillance data to address health problems affecting women, infants, and children; and (2) build their maternal and child health epidemiology skills to conduct surveillance, research, analysis, interpretation, and translation using their own resources.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities listed under B. (CDC Activities).

A. Recipient Activities:

1. Using the "Healthy People 2000" objectives as a guide, develop measurable pregnancy and infant health objectives appropriate for the State.

2. Identify existing MCH activities in the State carried out by Federal, State, academic, and private organizations; develop procedures for collaborating with these organizations.

3. Identify populations at risks for poor pregnancy outcomes.

4. Conduct analysis of MCH data and use information to direct program activities and evaluate the effectiveness of new and existing interventions in achieving established objectives. If needed data is not available, conduct research/surveillance to collect needed data.

5. Attend CDC-sponsored annual MCH Epidemiology Workshop.

B. CDC Activities:

1. Collaborate with the recipient agency in the operational development of various programs.

2. Assist recipients in defining training needs and methods, and identifying the resources necessary for training personnel.

3. Assist recipient agency in training their staff in epidemiologic analytic techniques.

4. Participate with recipient agencies in workshops to exchange findings among States.

5. Participate with States in identifying and designing data collection methods for information that is vital to programmatic decision making and evaluation.

6. Provide information and advice regarding strategies, interventions, and approaches and coordinate collaboration between recipients and CDC staff.

7. Participate in the design and implementation of surveillance systems and other epidemiologic research. This includes collaboration in the development of protocols for special studies.

8. Participate in analysis and interpretation of existing data.

9. Provide technical support in vital record linkage.

10. Participate with each recipient in evaluating the achievement of stated MCH outcome objectives.

11. Assist recipients in the evaluation of their maternal and child health epidemiology program (MCHEP) activities.

Evaluation Criteria (Total 100 Points)

Applications will be reviewed and evaluated according to the following criteria:

A. Background and Need (30 Points).

1. Background: Extent to which the scope and severity of the problem in relation to the "Healthy People 2000" objectives are described; and evidence that potential benefits of improving MCH epidemiologic expertise are understood.

2. Need: The extent to which the applicant needs support in reducing maternal and infant morbidity and mortality.

B. Surveillance and Risk Factor Identification (20 Points).

1. The quality of proposed surveillance and data collection activities, and the process for the application data collection findings for program planning and evaluation.

2. Evidence of commitment of State resources to support proposed MCHEP activity as demonstrated by the appropriateness of committed resources and the extent to which existing resources are directed toward data collection, analysis, program planning, and evaluation activities.

C. Plan of Operation (40 Points).

1. The quality and feasibility of plans to develop and implement the proposed recipient activities.

2. The feasibility of plans to meet staffing needs by hiring, training, or reassigning existing staff, the appropriateness of proposed organizational structure, and the appropriateness of the background and experience of the individuals responsible for carrying out proposed program activities.

3. The extent, nature, and appropriateness of collaborative relationships.

4. Appropriateness, quality, and feasibility of the plan and timetable for MCH capacity building.

D. Timetable (10 Points).

Extent to which timetable incorporates major MCHEP activities and milestones and is specific, measurable, and realistic.

E. Budget (Not Scored).

Extent to which budget appears reasonable to accomplish objectives as proposed.

F. Human Subjects (Not Scored).

Whether or not exempt from the DHHS regulations, are procedures adequate for the protection of human subjects? Recommendations on the adequacy of protections include: (1) Protections appear adequate and there are no comments to make or concerns to raise; (2) protections appear adequate, but there are comments regarding the protocol; (3) protections appear inadequate and there are concerns related to human subjects; or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

Funding Priorities

Priority consideration may be given to applicants with communities that have the highest infant mortality and lowest birthweight rates.

Public comments are not being solicited regarding the funding priority because time does not permit solicitation and review prior to the funding date.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 30 days after the application deadline date (the appropriation for this financial assistance program was received late in the fiscal year and would not allow for an application receipt date which would accommodate the 60-day State recommendation process period). The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Women, Racial, and Ethnic Minorities

It is the policy of the CDC and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. In conducting review for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment of scoring.

This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, Friday, September 15, 1995.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, on or before August 9, 1996.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Glynnis D. Taylor, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, telephone (404) 842–6593, fax (404) 842–6513, or Internet or CDC WONDER electronic mail at <gld1@opspgo1.em.cdc.gov>. Programmatic technical assistance may be obtained from Hani Atrash, Division of Reproductive Health, Pregnancy and Infant Health Branch, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–23, Atlanta, GA 30341, telephone (770) 488–5187, fax (770) 488–5628, or Internet or CDC WONDER electronic mail at <hka1@ccddrh1.em.cdc.gov>.

Please refer to Announcement 661 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

There may be delays in mail delivery and difficulty in reaching the CDC Atlanta offices during the 1996 Summer Olympics. Therefore, CDC suggests applicants use Internet, follow all instructions in this announcement and leave messages on the contact person's voice mail for more timely responses to any questions.

Dated: July 3, 1996.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–17528 Filed 7–9–96; 8:45 am]

BILLING CODE 4163–18–P

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): International Training and Research in Environmental and Occupational Health, Program Announcement TW–96–003: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Disease, Disability, and Injury Prevention and Control SEP: International Training and Research in Environmental and Occupational Health, Program Announcement TW–96–003.

Time and Date: 8 a.m.–5 p.m., July 25–26, 1996.

Place: The Lawton Chiles International House (Building 16) National Institutes of Health Campus, 31 Center Drive, Bethesda, Maryland 20892.

Status: Closed.

Matters to be Discussed: The Special Emphasis Panel will review and evaluate all responsive applications received under Program Announcement TW–96–003. The intent of announcement TW–96–003 is to support the development of international training and research programs related to environmental and occupational health for foreign scientists, clinicians, and other allied health workers from developing countries and emerging democracies. It is anticipated that this training and research program will have significant benefits globally, as well as in the United States (US) and the collaborating countries. Research collaboration may include other industrialized nations in addition to the US. Substantial emphasis will be placed upon chronic disease prevention and the control of injuries. A successful program will allow the accumulated knowledge and experience of US environmental and occupational health experts to be available to assist and work with their colleagues on a global basis in order to address common global problems.

The meeting will be closed to the public in accordance with provisions set forth in 5 U.S.C. 552b(c) (4) and (6), and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Contact Person for More Information: Pervis C. Major, Ph.D., Health Science Administrator, Office of Extramural Coordination and Special Projects, Office of the Director, National Institute for Occupational Safety and Health; CDC, 1095 Willowdale Road, Morgantown, West Virginia 26505, telephone 304/285–5979 or 404/639–2535.

Dated: July 3, 1996.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–17525 Filed 7–9–96; 8:45 am]

BILLING CODE 4163–18–M

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee and Savannah River Site Environmental Dose Reconstruction Project—Phase II Public Workshop: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC), announce the following meetings.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Savannah River Site Health Effects Subcommittee (SRS).

Times and Dates: 8:30 a.m.–5:15 p.m., July 25, 1996. 8:30 a.m.–12 noon, July 26, 1996.

Place: Holiday Inn Coliseum, 630 Assembly Street, Columbia, South Carolina 29201, telephone 803/799–7800, FAX 803/252–5909.

Status: Open to the pubic, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ASTDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's ATSDR's public health activities and research at respective DOE sites. Activities shall focus on providing a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include: presentations from the National Center for Environmental Health (NCEH), the National Institute for Occupational Safety and Health, and the Agency for Toxic Substances and Disease Registry on the progress of current studies; presentation on environmental monitoring; an update from the Radiological Assessments Corporation; and updates on the membership and the workgroup report.

Agenda items are subject to change as priorities dictate.

Name: Savannah River Site Environmental Dose Reconstruction Project—Phase II: Public Workshop.

Time and Date: 7 p.m.–9 p.m., July 25, 1996.

Place: Holiday Inn Coliseum, 630 Assembly Street, Columbia, South Carolina 29201, telephone 803/799–7800, FAX 803/252–5909.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The Savannah River Site (SRS) Dose Reconstruction Project supports research which evaluates past releases of radioactive materials and chemicals from the SRS to the surrounding environment. The Project has already undergone a first phase. Phase I involved searching the site to identify and retrieve important documents to be used for dose reconstruction. Phase II will use this information to calculate chemical and radiological source terms and identify possible intake pathways (eating, drinking, and inhalation) for people who have lived in the SRS area. This workshop will focus on the identification and evaluation of environmental data to support dose reconstruction. Public input and the promise to provide clear and easily obtained sources of information are important parts of this study. Individuals with information of possible value to the study are encouraged to attend.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Paul G. Renard or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Due to difficulty in location of meeting facility, this notice is being published less than 15 days prior to the meeting.

Dated: July 3, 1996.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–17524 Filed 7–9–96; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 96P–0083]

Determination that Acetaminophen and Codeine Tablets USP, 325 Milligrams (mg)/45 mg, was not Withdrawn from Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that acetaminophen and codeine phosphate tablets USP, 325 mg/45 mg, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow abbreviated new drug applications (ANDA's) for acetaminophen and codeine phosphate tablets USP, 325 mg/45 mg to be approved.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress passed into law the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions,

show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the listed drug, which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDA's do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments included what is now section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(6)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)). Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (§ 314.161(a)(1) (21 CFR 314.161(a)(1))). FDA may not approve an ANDA that does not refer to a listed drug.

Mikart Inc. (Mikart) submitted a citizen petition dated February 27, 1996 (Docket No. 96P–0083/CP1), under 21 CFR 10.30(b) and 314.122(a), requesting that the agency determine whether acetaminophen and codeine phosphate tablets USP, 325 mg/45 mg, was withdrawn from sale for reasons of safety or effectiveness and, if the agency determines that the drug was not withdrawn from sale for reasons of safety or effectiveness, to keep the drug in the "Approved Drug Products with Therapeutic Equivalence Evaluations." Acetaminophen and codeine phosphate tablets USP, 325 mg/45 mg, is the subject of approved ANDA 85–363 held by KV Pharmaceuticals (KV). KV obtained approval of the ANDA on August 23, 1977, but has never marketed the product. FDA has determined, for purposes of §§ 314.161 and 314.162(c), that never marketing an approved drug product is equivalent to withdrawing the drug for sale.

FDA has reviewed its records and, under § § 314.161 and 314.162(c), has determined that acetaminophen and codeine phosphate tablets USP, 325 mg/45 mg, was not withdrawn from sale for reasons of safety or effectiveness and will continue to list acetaminophen and codeine phosphate tablets USP, 325 mg/45 mg, in the "Discontinued Drug Product List" contained in the "Approved Drug Products with Therapeutic Equivalence Evaluations." The "Discontinued Drug Product List" lists, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDA's that refer to acetaminophen and codeine phosphate tablets USP, 325 mg/45 mg, may be approved by the agency.

Dated: July 2, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–17472 Filed 7–9–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96M–0201]

BARD Diagnostic Sciences, Inc.; Premarket Approval of BARD® BTA® Test

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by BARD Diagnostic Sciences, Inc., Redmond, WA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the BARD® BTA® Test. After reviewing the recommendation of the Immunology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of November 29, 1995, of the approval of the application.

DATES: Petitions for administrative review by August 9, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293.

SUPPLEMENTARY INFORMATION: On June 6, 1994, BARD Diagnostic Sciences, Inc., Redmond, WA 98052, submitted to CDRH an application for premarket approval of BARD® BTA® Test. The BARD® BTA® rapid latex agglutination test is an in vitro device intended for the qualitative measurement of Bladder Tumor Associated Analytes in human urine to aid in the management of bladder cancer patients.

On September 21, 1995, the Immunology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On November 29, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b)(21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 9, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 9, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–17474 Filed 7–9–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96M–0202]

Intermedics, Inc.; Premarket Approval of Res-Q™ ACD (Arrhythmia Control Device) Epicardial Patch and Non-thoracotomy Lead (NTL) Systems

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Intermedics, Inc., Angleton, TX, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Res-Q™ ACD (Arrhythmia Control Device) Epicardial Patch and NTL Systems. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of November 28, 1995, of the approval of the application.

DATES: Petitions for administrative review by August 9, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carole C. Carey, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609.

SUPPLEMENTARY INFORMATION: On March 17, 1994, Intermedics, Inc., Angleton, TX 77515, submitted to CDRH an application for premarket approval of Res-Q™ ACD Epicardial Patch and NTL Systems which consists of the following: Model 101–01 and 101–01R Res-Q™ implantable arrhythmia control device; model 531–30 Rx2000 GRAPHICS program module to be used with Intermedics commercially available model 522–06 Rx2000 GRAPHICS programmer; models 497–05, 497–06, and 497–09 right ventricular (RV) defibrillation/pacing leads; model 497–15 subcutaneous patch lead; model 49716 superior vena cava (SVC) leads; models 497–01, 497–02, 497–11, and 497–12 epicardial patch leads; models A67 and L67 commercially available CPI® epicardial patch leads; model 370–01 adapter; model 370–21 Y-adapter; model 370–04 Test Box; models 370–03 and 370–23 Patient Cables; model 370–05 Test Load; model 370–02 Accessory Kit; model 370–10 Lead Caps; and models 370–11, 370–12, 370–13, 370–14, 370–15, 370–16, 370–48, and 370–49 Stylets. The device is an automatic, implantable cardioverter-defibrillator (ICD) system and is indicated for use in patients who are at high risk of sudden death due to ventricular arrhythmias and have experienced one of the following situations: (1) Survival of at least one episode of cardiac arrest (manifested by a loss of consciousness) due to a ventricular tachyrhythmia; or (2) recurrent, poorly tolerated sustained ventricular tachycardia (VT).

Note: The clinical outcome for hemodynamically stable, sustained-VT patients is not fully known. Safety and effectiveness studies have not been conducted.

On August 21, 1995, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, review and recommended approval of the application. On November 28, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 9, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 9, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–17473 Filed 7–9–96; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Faculty Loan Repayment Program (FLRP) Application (0915–0150)

Extension and Revision—Under the HRSA FLRP program, disadvantaged graduates from certain health professions schools may enter into a contract under which HRSA with the Department of Health and Human Services will make payments on eligible graduate educational loans in exchange for a minimum of two years of service as a full-time faculty member of a health professions school. Applicants must complete an application and provide information on all eligible education loans. Once HRSA has selected the participants, HRSA will request verification from their lenders of loan balances and terms of their outstanding educational loans.

Estimated annual response burden is as follows:

Type of respondent	Number of respondents	Responses per respondent	Hours per response	Total annual hour burden
Applicants	75	1	1	75
Lenders	100	1	.5	50
Total	175			125

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: July 1, 1996.

J. Henry Montes,

Associate Administrator for Policy Coordination.

[FR Doc. 96–17470 Filed 7–9–96; 8:45 am]

BILLING CODE 4160–15–P

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Notice of Meeting of the Advisory Commission on Intergovernmental Relations (ACIR)

SUMMARY: The Advisory Commission on Intergovernmental Relations (ACIR) will hold a meeting on Tuesday, July 23, 1996, beginning at 10:00 AM and concluding at 2:00 PM in the Hall of the States, Room #383/385, 444 North Capitol Street, NW, Washington, DC. The ACIR meeting agenda will focus on two items: (1) Discussion and action on release of the ACIR final report, The Role of Federal Mandates in Intergovernmental Relations, to the President and the U.S. Congress; and (2) discussion of ACIR's programs, products, and services after September 30, 1996.

FOR FURTHER INFORMATION CONTACT: Advisory Commission on Intergovernmental Relations, 800 K Street, NW, Suite 450, South Tower, Washington, DC 20575, Phone: (202) 653–5540/FAX: (202) 653–5429, Internet:ir002529@interramp.com.

SUPPLEMENTARY INFORMATION: As directed by Section 302 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Advisory Commission on Intergovernmental Relations (ACIR) was "to investigate and review the role of federal mandates in intergovernmental relations" and to make a final report to the President and Congress on the findings, conclusions, and recommendations of the Commission. During this meeting, the Commission will discuss and take action on the release of the final report and recommendations to the President and the Congress. Also, in response to the 1996 Treasury, Postal Service and General Government Appropriations Act calling for the "prompt and orderly termination" of ACIR, the Commission will discuss ACIR's programs, products, and services after September 30, 1996.

The ACIR meeting will be held in Tuesday, July 23, 1996, in the Hall of the States, Room 383/385, 444 North Capitol Street, NW, Washington, DC. The meeting will begin at 10:00 AM and conclude at 2:00 PM.

Dated: July 3, 1996.

William E. Davis,

Executive Director.

[FR Doc. 96–17516 Filed 7–9–96; 8:45 am]

BILLING CODE 5520–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Convention on International Trade in Endangered Species (CITES) Notification; Rescinding of Prohibition of Trade in CITES Listed Species With Thailand and Recommendation From CITES Secretariat on Prohibition of Trade in Greek Tortoises From Turkey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Information No. 26.

SUMMARY: This Notice of Information (NOI) is an update from the prohibitions identified in NOI 22 and NOI 25. Specifically, this NOI removes the prohibition on trade in CITES listed species and their products with Thailand identified in NOI 22, published on July 15, 1991 (56 FR 32260) and, removes the prohibition on imports of Greek tortoises from Turkey identified in NOI 25, published on January 23, 1996 (61 FR 1780). This Notice includes a revised Summary Of U.S. Prohibitions Pursuant To Notices Of Information (NOI).

DATES: This notice is effective on July 10, 1996 and will be effective until further notice.

ADDRESSES: U.S. Fish and Wildlife Service, Office of Management Authority, Mail Stop 430 ARLSQ, 1849 C Street NW, Washington, DC 20240 regarding Notifications to the Parties, or U.S. Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 3247, Arlington, VA 22203–3247, regarding enforcement actions.

FOR FURTHER INFORMATION CONTACT: Dr. Susan S. Lieberman, U.S. Fish and Wildlife Service, Office of Management Authority, telephone (703) 358–2095, regarding Notifications to the Parties, or Thomas L. Striegler, Special Agent in Charge, Investigations, U.S. Fish and Wildlife Service, Division of Law Enforcement, telephone (703) 358–1949, for enforcement actions.

SUPPLEMENTARY INFORMATION: On April 22, 1991, the CITES Secretariat issued Notification to the Parties No. 636, which recommended that all Parties prohibit trade with Thailand in any specimens of species included in the CITES Appendices. On April 2, 1992, the CITES Secretariat issued Notification to the Parties No. 673, which recommended to the Parties that the prohibition of trade with Thailand on specimens of species included in the CITES Appendices be lifted. The Government of Thailand instituted the Wild Animal Reservation and Protection Act on March 13, 1992, and this legislation was deemed by the CITES Secretariat to be sufficient to effectively implement CITES within Thailand. However, the Service requested additional assurances from the Government of Thailand that CITES would be effectively implemented within that country. Such assurances were provided when the Government of Thailand instituted Ministerial Regulation No. 2 and Ministerial Regulation No. 4 in 1994, which established the list of protected species and the procedures for obtaining permits for those protected species pursuant to the Wild Animal Reservation and Protection Act. These Ministerial Regulations were formally transmitted to the Service through diplomatic channels on November 20, 1995.

NOI 25 (61 FR 1780) contains the background on the concern by the CITES Parties for species designated as being subject to significant levels of international trade and the remedial measures instituted by the CITES Secretariat for those species.

The subjects of this notice are as follows:

A. Subject: Thailand: ban on imports and exports of specimens of species included in the CITES Appendices from Thailand.

Source of Foreign Law Information: Thailand's Wild Animal Reservation and Protection Act of 1992 and, two Ministerial Regulations of 1994, to implement this Act.

Action by the Fish and Wildlife Service: Since the publication of Notice of Information No. 22 (56 FR 32260), the Government of Thailand instituted the Wild Animal Reservation and Protection Act in order to effectively implement the provisions of CITES within Thailand. In 1994, the Government of Thailand instituted Ministerial Regulations No. 2 and No. 4 the clarify the implementation of the Wild Animal Reservation and Protection Act.

The Service is satisfied that Thailand has initiated the action necessary to sufficiently implement the provisions of CITES within Thailand. Therefore, the prohibition on trade in specimens of species included on the CITES Appendices with Thailand is hereby withdrawn.

B. Subject: Turkey: ban on imports of specimens of Greek tortoise (*Testudo graeca*).

Source of Foreign Law Information: CITES Secretariat Notification to the Parties No. 887, issued on November 30, 1995, calls on Parties to lift the suspension of imports of *Testudo graeca* specimens from Turkey.

Action by the Fish and Wildlife Service: Since the publication of Notice of Information No. 25 (61 FR 1780), the Secretariat has received information from the Management Authority of Turkey relating to its implementation of the recommendations of the Animals Committee on significant levels of trade in *Testudo graeca*. The Secretariat is satisfied that Turkey, by indicating that no exports of specimens of *Testudo graeca* would be authorized, has initiated the action necessary to implement these recommendations. Therefore, the Standing Committee's recommendation to the Parties to suspend imports of specimens of *Testudo graeca* is hereby withdrawn. However, since Turkey does not allow the export of specimens of *Testudo graeca*, imports of specimens of *Testudo graeca* from Turkey continue to be prohibited under CITES.

Summary of U.S. Prohibitions Pursuant to Notices of Information (NOI)

NOI22: Effective July 30, 1991.
NOI23: Effective December 22, 1994.
NOI24: Effective June 3, 1995.
NOI25: Effective January 23, 1996.

Country	NOI No.	Species
Argentina	23	*Lama guanicoe.*
Azerbaijan	23	*Felis lynx.*
China	23	*Ptyas mucosus.*
Ghana	25	*Kinixys belliana, K. erosa, K. homeana.*
India	23	*Rana tigerina.*
		Rana hexadactyla.
Indonesia	23	*Cacatua sulphurea.*
		Pytas mucosus.
Latvia	23	*Felis lynx.*
Lithuania	23	*Felis lynx.*
Madagascar	24	*Coracopsis vasa.*
		Chamaeleo spp. (except *Chameleo lateralis, C. oustaleti, C. pardalis, C. verrucosus).*
		Phelsuma spp. (except *Phelsuma laticauda, P. lineata, P. madagascariensis, P. quadriocellata).*
Moldova	23	*Felis lynx.*
Peru	23	*Aratinga erythrogenys.*
Solomon Is	24	*Ornithoptera urvillianus.*
		Ornithoptera victoriae.
Tanzania	23 & 24	*Agapornis fischeri.*
		Eryx colubrinus.
		Geochelone pardalis.
		Malacochersus tornieri.
		Poicephalus crytoxanthus.
		Poicephalus meyeri.
		Poicephalus rufiventris.
		Taurnico fischeri.
Ukraine	23	*Felis lynx.*

Dated: July 1, 1996.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–17421 Filed 7–9–96; 8:45 am]

BILLING CODE 4310–55–P

Availability of an Environmental Assessment and Receipt of an Application Submitted by Mr. Ben Cone, Jr., for an Incidental Take Permit for Red-cockaded Woodpeckers in Association with Management Activities on his Property in Pender County, North Carolina

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Mr. Ben Cone, Jr., (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The proposed permit would authorize the incidental take of a federally endangered species, the red-cockaded woodpecker *Picoides borealis* (RCW) known to occur on property owned by the Applicant in Pender County, North Carolina. The Applicant is requesting an incidental take permit in order to ensure complete flexibility in managing his property, which will include timber management activities and prescribed burning. The Applicant's property, known as Cone's Folly, is located in west-central Pender County between the Black River and the Town of Atkinson. Cone's Folly consists of approximately 7,200 acres on the main tract and an additional 800 acres on another separate tract. The proposed permit would authorize incidental take of RCWs on Cone's Folly in exchange for mitigation elsewhere as described further in the **SUPPLEMENTARY INFORMATION** Section below.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10© of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before August 9, 1996.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or at the following Field Offices: Field Supervisor, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801, (telephone 704/258–3939); Red-cockaded Woodpecker Recovery Coordinator, U.S. Fish and Wildlife Service, College of Forest and Recreational Resources, 261 Lehotsky Hall, Box 341003, Clemson, South Carolina 29634–1003 (telephone 864/656–2432); or Sandhills Red-cockaded Woodpecker Recovery Biologist, U.S. Fish and Wildlife Service, 225 N. Bennett Street, Southern Pines, North Carolina 28388 (telephone 910/695–3323). Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments must be submitted in writing to be processed. Please reference permit under PRT–*816491* in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7110; or Ms. Janice Nicholls, Biologist, Asheville Field Office, (see **ADDRESSES** above), telephone: 704/258–3939.

SUPPLEMENTARY INFORMATION: The RCW is a territorial, non-migratory cooperative breeding bird species. RCWs live in social units called groups which generally consist of a breeding pair, the current year's offspring, and one or more helpers (normally adult male offspring of the breeding pair from previous years). Groups maintain year-round territories near their roost and nest trees. The RCW is unique among the North American woodpeckers in that it is the only woodpecker that excavates its roost and nest cavities in living pine trees. Each group member has its own cavity, although there may be multiple cavities in a single pine tree. The aggregate of cavity trees is called a cluster. RCWs forage almost exclusively on pine trees and they generally prefer pines greater than 10 inches diameter at breast height. Foraging habitat is contiguous with the cluster. The number of acres required to supply adequate foraging habitat depends on the quantity and quality of the pine stems available.

The RCW is endemic to the pine forests of the Southeastern United States and was once widely distributed across 16 States. The species evolved in a mature fire-maintained ecosystem. The RCW has declined primarily due to the conversion of mature pine forests to young pine plantations, agricultural fields, and residential and commercial developments, and to hardwood encroachment in existing pine forests due to fire suppression. The species is still widely distributed (presently occurs in 13 southeastern States), but remaining populations are highly fragmented and isolated. Presently, the largest known populations occur on federally owned lands such as military installations and national forests.

In North Carolina, there are an estimated 733 active RCW clusters as of 1994; 56 percent are on Federal lands, 22 percent are on State lands, and 22 percent are on private lands. There has not been a complete inventory of RCWs in North Carolina so it is difficult to precisely assess the species' overall status in the State. However, the known populations on public lands are regularly monitored and generally considered stable. The population trend on private lands in North Carolina is less clear. While several new active RCW clusters have been discovered on private lands over the past few years, many previously documented RCW clusters have been lost. Most of the RCW clusters on private lands are in relatively small populations (i.e., 1–5 groups), and aside from the Sandhills Region, few are protected through any type of conservation agreement.

The population of RCWs on Cone's Folly presently consists of 29 individuals at 12 active clusters. The nearest known RCW group(s) to the population at Cone's Folly is approximately 1–2 miles away at Colly Swamp, which consists of several privately-owned tracts across the Black River in Bladen County. The extensive Colly Swamp area extends from the Black River west to near Singletary Lake State Park (approximately 10 miles west), which also hosts at least two active RCW clusters. The nearest known RCW concentration on the east side of Cone's Folly is Holly Shelter Game Lands, owned and managed by the North Carolina Wildlife Resources Commission. Holly Shelter Game Lands hosts approximately 30 active RCW clusters and is located approximately 20 to 25 miles away in Pender County.

The Applicant proposes to continue traditional timber management activities and prescribed burning on his property as has been carried out over the past 60 years. Cone's Folly is currently managed as a wildlife preserve for several game species and as well as for forest products such as saw timber, pulpwood, pine straw, and firewood. Some timber harvesting activities may result in death of, or harm to, RCWs through the loss of nesting and foraging habitat.

The EA considers the environmental consequences of four alternatives, including the proposed action. The proposed action alternative is issuance of the incidental take permit and implementation of the HCP as submitted by the Applicant. The HCP provides for an off-site mitigation strategy for the existing 12 groups on Cone's Folly. The goal of this strategy is to create 12 new RCW groups through habitat enhancement activities—artificial cavity provisioning and hardwood midstory removal—at selected sites on private, State and/or Federal lands in North Carolina. The Service will select the candidate sites and will specifically select sites that will be managed and protected in perpetuity and that have the greatest likelihood of success in the shortest time period. The HCP will involve monitoring each of the 12 mitigation clusters for a specified time period to determine success of the habitat enhancement efforts. Finally, the Applicant will allow the Service to capture and translocate juveniles produced on Cone's Folly either to the mitigation sites or other sites selected by the Service. The HCP provides a funding source for the above-mentioned mitigation measures.

Dated: July 2, 1996.

Noreen K. Clough,

Regional Director.

[FR Doc. 96–17521 Filed 7–9–96; 8:45 am]

BILLING CODE 4310–55–P

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for a Residential Subdivision, Located near the City of St. Cloud, Osceola County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Mr. Nick Gross, Jr., (Applicant) is seeking an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), (Act) as amended. The ITP would authorize the one time take, through harassment, of two adult bald eagles (*Haliaeetus leucocephalus*) and up to four bald eagle eggs or chicks, in Osceola County, Florida for a period 5 years. The proposed taking is incidental to construction of a residential housing project called Ashley Reserve and Woods At Kings Crest (Project), including the necessary infrastructure, on approximately 12 acres. Within the Project area, bald eagles constructed a nest during the 1995–1996 nesting season. Construction and subsequent occupancy of the Project is anticipated to result in nest site abandonment at some time in the future. The Project is located just west of Macy Island Road, approximately one-half mile south of the intersection of Macy Island Road and State Road 525, Section 31, Township 25 South, Range 31 East, Osceola County, Florida. Additional information on the Project and the HCP is described further in the **SUPPLEMENTARY INFORMATION** section below.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, (NEPA) as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the application, EA and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before August 9, 1996.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or at the South Florida Ecosystem Office, Post Office Box 2676, Vero Beach, Florida 32961–2676. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments must be submitted in writing to be processed. Please reference permit under PRT–816732 in such comments, or in requests of the documents discussed herein. Requests for the documents must be in writing to be adequately processed.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional Permit Coordinator, Atlanta, Georgia (see **ADDRESSES** above), telephone: 404/679–7110; or Thomas E. Grahl, Assistant Field Supervisor, South Florida Ecosystem Office, (see **ADDRESSES** above), telephone: 407/562–3909.

SUPPLEMENTARY INFORMATION: Bald eagles are found throughout the United States, but are most abundant in the Northwest and Southeast. Nationwide, the number of eagles has increased since listed as endangered under the Act. Sufficient protection and expanding populations resulted in the reclassification of eagles from endangered to threatened in 1995. In Florida, eagles have rebounded from a low of about 100 nesting pairs in 1973 to 831 nesting pairs in 1995. Eagle productivity has also increased over this time period. Fifty-five successful nests were documented in 1973, whereas 621 successful nests were identified in 1995. Osceola County, Florida, has also experienced substantial increases in the number of bald eagles and nests. In 1996, 130 bald eagle nests were located during surveys in Osceola County, one of which was built on the Project site. Construction of the Project's infrastructure and subsequent construction of 30 single family homes will likely result in abandonment of this nest site and may result in the death of eggs or chicks if abandonment occurs after egg laying. The take of eagles is considered incidental to the carrying out of the Project's otherwise lawful construction activities.

The EA considers the environmental consequences of three alternatives. The no action alternative may result in: (1) Maintenance of the Applicant's property in an undeveloped condition, or (2) development of the property by the Applicant or future owner without protective coverage of an ITP. The latter situation would result in the loss of

buffer area surrounding the bald eagle nest site, exposing the property owner to potential Section 9 violation. Alternative 2 would issue an ITP and result in construction of 30 houses with mitigation occurring on-site, including phased development over a 3- to 4-year period and funding for educational materials and bald eagle monitoring. Alternative 3 is identical to Alternative 2 except that both on- and off-site mitigation would be required. Two other alternatives were examined but not forwarded for further evaluation. These include: (1) Decreasing the lot sizes within the Project area to provide a greater buffer area surrounding the bald eagle nest and (2) construction of the 30 homes within a 1-year period without phasing of construction.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

1. Issuance of an ITP would not have significant effects on the human environment in the project area.

2. The proposed take is incidental to an otherwise lawful activity.

3. The Applicant has ensured that adequate funding will be provided to implement the measures proposed in the submitted HCP.

4. Other than impacts to endangered and threatened species as outlined in the documentation of this decision, the indirect impacts which may result from issuance of the ITP are addressed by other regulations and statutes under the jurisdiction of other government entities. The validity of the Service's ITP is contingent upon the Applicant's compliance with the terms of the permit and all other laws and regulations under the control of State, local, and other Federal governmental entities.

The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: July 3, 1996.

Noreen K. Clough,

Regional Director.

[FR Doc. 96–17522 Filed 7–9–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[OR–130–1040–00; GP6–0211]

Notice of Public Land Closure in the Juniper Forest Management Area, Franklin County, WA

AGENCY: Bureau of Land Management, Spokane District.

ACTION: Due to continuing fire danger and to aid in ongoing suppression efforts, all public lands under the jurisdiction of the Bureau of Land Management (BLM) within the Juniper Forest Management Area are hereby closed to all public use. This closure is being conducted pursuant to 43 CFR 8364.1. The public lands closed by this order include both the Juniper Dunes Wilderness Area and all public lands under BLM jurisdiction in Townships 10 and 11 North, Ranges 31 and 32 East, W.M.

SUMMARY: This closure is effective immediately and shall continue until further notice. Personnel of the Bureau of Land Management (BLM) engaged in official business, authorized fire patrol and suppression personnel, and law enforcement personnel are exempt from this closure.

FOR FURTHER INFORMATION CONTACT: Ann B. Aldrich, Border Resource Area Manager, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, WA 99212; or call 509–536–1200.

Dated: July 3, 1996.

Kevin R. Devitt,

Acting Border Resource Area Manager, Acting.

[FR Doc. 96–17532 Filed 7–9–96; 8:45 am]

BILLING CODE 4310–33–P

[AZ–910–0777–61–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting, notice of meeting.

SUMMARY: This notice announces the sixth meeting of the Arizona Resource Advisory Council. The meeting will be held August 9, 1996, beginning at 8:30 a.m. in the Washington Room at the Bureau of Land Management National Training Center, 9828 N. 31st Avenue, Phoenix, Arizona. The agenda items to be covered at the business meeting include review of previous meeting minutes, report to the Council on the Standards and Guidelines statewide plan amendment, update on the call for RAC nominations on the elected official position, discussion on the RAC chairperson selection, update of proposed field organization strategy comment analysis, update on recreation initiatives and issues, report on BLM administrative issues, and reports from the Public Relations and Recreation working groups. A public comment period will take place at 11:30 a.m., August 9, 1996, for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens or Ken Mahoney, Bureau of Land Management, Arizona State Office, 3707 N. 7th St., Phoenix, Arizona 85014, (602) 650–0512.

Michael A. Ferguson,

Deputy State Director, Resource Planning, Use and Protection Division.

[FR Doc. 96–17529 Filed 7–9–96; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 29, 1996. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by July 25, 1996.

Carol D. Shull,

Keeper of the National Register.

CALIFORNIA

Los Angeles County

Town House, The, 2959—2973 Wilshire Blvd. and 607—643 S. Commonwealth Ave., Los Angeles, 96000821

CONNECTICUT

New London County

Lighthouse Inn, 6 Guthrie Pl., New London, 96000822

FLORIDA

Dade County

Bow, Lily Lawrence, Library (Homestead MPS), 212 N.W. 1st Ave., Homestead, 96000823

KENTUCKY

Morgan County

Cooper, Judge John E., House, 709 N. Main St., West Liberty, 96000824

MASSACHUSETTS

Worcester County

East Main Street—Cherry Street Historic District, 215—270 and 35—73 Main, 2—16 Linden, 3—24 Ash, 26—73 Cherry, 6—19 May, and 8 Park Sts., Spencer, 96000826

MISSISSIPPI

Bolivar County

Taborian Hospital, US 61, jct. of McGinnis St., Mound Bayou, 96000827

N. MARIANA ISLANDS

Saipan Municipality

Unai Achugao Archaeological Site, Address Restricted, Punton Achugao vicinity, 96000825

NEW YORK

St. Lawrence County

Fine Town Hall, 91 NY 58, Fine, 96000829

Saratoga County

CATAWISSA (tugboat), Lock 3, NY State Barge Canal, Erie Div., Waterford, 96000828

NORTH CAROLINA

Gaston County

Mount Holly Cotton Mill, 250 N. Main St., Mount Holly, 96000830

OHIO

Lucas County

Birmingham Historic District (East Toledo MPS), Roughly bounded by Genesee, York, Esther, Magyar, Consaul, and Conrail Tracks Toledo, 96000834

East Toledo Historic District (East Toledo MPS), Roughly bounded by Front, Platt, Starr, and Spring Grove Toledo, 96000831

Spring Grove Historic District (East Toledo MPS), Roughly bounded by Mason, Spring Grove, Greenwood, and Conrail Tracks, Toledo, 96000832

Yondota Historic District (East Toledo MPS), Roughly bounded by Oak, 2nd, Euclid, Starr, White, Delence, and Nevada, Toledo, 96000833

SOUTH CAROLINA

Orangeburg County

All Star Bowling Lane (Civil Rights Movement in Orangeburg County MPS), 559 E. Russell St., Orangeburg, 96000837

Stroman, William P., House (Orangeburg MRA), 1017 N. Boulevard, Orangeburg, 96000836

Union County

Union Community Hospital (Union MPS), 213 W. Main St., Union, 96000835

WASHINGTON

Grays Harbor County

Old McCleary Hotel, 42 Summit Rd., McCleary, 96000842

Lewis County

Hillside Historic District, Roughly bounded by Jefferson Ave., Hill St., Washington Ave., and 9th St., Chehalis, 96000841

Pierce County

Parkland Lutheran Children's Home (Norwegian Settlement in Parkland MPS), 12123 A St., Tacoma, 96000838

Smith, Ward T. and Bjug Harstad House (Norwegian Settlement in Parkland MPS), 12204 S. A St., Tacoma, 96000839

Spokane County

Littlebrook, 16704 N. Dartford Dr., Spokane, 96000840

Yakima County

Edgar Rock Lodge, 380 Old Naches Rd., Naches, 96000843

[FR Doc. 96–17484 Filed 7–9–96; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Pursuant to 28 CFR § 50.7, notice is hereby given that a Consent Decree in *United States and the State of Montana* v. *City of Billings*, Civil Action No. CV 94–168–BLG–RWA (D. Mont.), entered into by the United States on behalf of the United States Environmental Protection Agency, the State of Montana on behalf of the Department of Environmental Quality, and the City of Billings ("the City"), was lodged on May 29, 1996 with the United States District Court for the District of Montana. The proposed Consent Decree resolves claims of the United States against the City under Section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), and of the State of Montana against the City under Mont. Code Ann. § 75–5–631, relating to the bypass of secondary treatment facilities at the City's wastewater treatment plant in June, 1993. The Consent Decree provides for the payment of a total of $74,600 in civil penalty amounts to the United States and the State of Montana, and the performance of three Supplemental Environmental Projects at a cost to the City of no less than $543,600.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and the State of Montana* v. *City of Billings*, Civil Action No. CV 94–168–BLG–RWA (D. Mont.), D.J. Ref. No. 90–5–1–1–4143. The proposed Consent Decree may be examined at the Office of the United States Attorney for the District of Montana, Suite 400, 2929 Third Avenue North, Billings, Montana 59103, at the Montana Operations Office of U.S. Environmental Protection Agency Region VIII, 301 S. Park, Helena, Montana 59626–0096, and the Office of the United States Department of Justice, Environment and Natural Resources Division, 999 18th Street, Suite 945N, Denver, CO 80209. Copies can also be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $8.25, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–17493 Filed 7–9–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 U.S.C. 50.7, and pursuant to 42 U.S.C. 7413(g), notice is hereby given that a proposed Consent Decree in *United States* v. *GNB Industrial Battery, Inc.*, Civil Action No. *96–2129*, was lodged on June 18, 1996, with the United States District Court for the Western District of Arkansas.

The Consent Decree settles an action brought under Section 113 of the Clean Air Act ("the Act"), 42 U.S.C. 7413, and the Standards of Performance for New Stationary Sources ("NSPS"), 40 CFR Part 60, Subpart KK—Standards of Performance for Lead-Acid Battery Manufacturing Plants. The Consent Decree provides for GNB's payment of a civil penalty to the United States in the amount of $63,177.00, and requires GNB to implement and complete a Supplemental Environmental Project ("SEP") at a cost of approximately $385,000.00.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *GNB Industrial Battery, Inc.*, DOJ Ref. #90–5–2–1–1706.

The proposed Consent Decree may be examined at the office of the United

States Attorney, 6th and Rogers, Room 216, Ft. Smith, Arkansas; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of *$12.25* (25 cents per page reproduction costs), for the Consent Decree or *$19.25*. for the Consent Decree with attachments, payable to the Consent Decree Library.

Bruce Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–17496 Filed 7–9–96; 8:45 am]

BILLING CODE 4410–01–M

Department of Justice Notice of Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that a proposed Consent Decree in *United States* v. *Noreen Greenberg, Marvin Greenberg, and The Property Addressed at 120 Osage Avenue, located in Kansas City, Kansas,* Civil Action No. 96–2289–JWL, was lodged on June 17, 1996, with the United States District Court for the District of Kansas.

The complaint alleges that Noreen and Marvin Greenberg are jointly and severally liable for the United States' approximately $1.1 million in response costs at the Osage Metals Superfund Site, located in Kansas City, Kansas, pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). The complaint also includes an *in rem* action to recover these costs, which are secured by a CERCLA lien against the Site, pursuant to Section 107(l) of CERCLA, 42 U.S.C. 9607(l).

The proposed agreement concerns the 1.7-acre Osage Metals Superfund Site ("Site"), located at 120 Osage Avenue in Kansas City, Kansas. The Site was the location of metals salvage and reclamation facilities between 1948 and 1993. The United States Environmental Protection Agency ("EPA") conducted a removal action at the Site in 1995. As of October 31, 1995, EPA had incurred costs in excess of $1.1 million exclusive of interest. On June 28, 1995, EPA perfected a CERCLA lien on the Site to secure its $1.1 million in response costs.

Under the proposed consent decree, the owners will transfer ownership of the Site to a developer who will, in turn, pay the United States $80,000 in reimbursement of the United States' past response costs. The W.W. Land Company, which had no part in the activities that gave rise to the United States' response costs of the Site, plans to build and operate a commercial warehouse on the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Noreen Greenberg, Marvin Greenberg, and The Property Addressed at 120 Osage Avenue, located in Kansas City, Kansas,* DOJ Ref. #90–11–3–1617.

The proposed consent decree may be examined at the office of the United States Attorney, District of Kansas, 500 State Avenue, Suite 360, Kansas City, Kansas, 66101, (913) 551–6730; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, KS 66101 (913) 551–7010; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.00 for the consent decree only, or $10.25 for the consent decree and attachments (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–17497 Filed 7–9–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decrees Relating to the Lemberger Superfund Sites in Manitowoc County, WI, Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that three proposed consent decrees in *United States* v. *Invincible Metal Furniture Company, Inc.*, Civil Action No. 96–C–740, *United States* v. *A & P (Whitehouse Division), et al.*, Civil Action No. 96–C–738, and *United States* v. *A.C.E. Building Service, Inc., et al.*, Civil Action No. 96–C–739 (and related cases–*Lemberger Sites Remediation Group* v. *Amoco Corp., et al.*, Civil Action No. 95–C–1064 and *Lemberger Sites Remediation Group* v. *A.M. Richter & Sons, Co., et al.*, Civil Action No. 95–C–1065) were lodged with the United States District Court for the Eastern District of Wisconsin, on June 21, 1996. All of these actions were commenced pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601, *et seq.* in connection with the Lemberger Landfill Superfund Site (#5–3E), and the Lemberger Transport & Recycling Superfund Site (#5–J4) (See the National Priorities List in 40 CFR Part 300, Appendix B) which are located near the intersection of Hempton Lake and Sunnyslope Roads, near the town of Whitelaw, in Manitowoc County, Wisconsin.

The Operable Unit 1 and Operable Unit 2 remedial and removal actions at the two Lemberger Sites are being performed by a group of potentially responsible parties (the Lemberger Sites Remediation Group or the "LSRG") who signed a Consent Decree in 1992 and an Administrative Order in 1993 with the United States. In the first proposed consent decree with Invincible Metal Furniture Company, Invincible, which following the signing of the 1993 Administrative Order joined the LSRG, is now committing to the United States to perform the Operable Units 1 and 2 remedial and removal actions for the two Lemberger Sites, to pay the United States' and the State of Wisconsin's future response costs for the Sites, and to pay $600,000 towards the United States' past response costs incurred and paid in connection with the two Lemberger Sites.

The United States is also lodging two proposed consent decrees with parties who contributed "de minimis" amounts of waste to the Lemberger Sites: a "global decree" which is a settlement among the signatories, the LSRG and the United States, and a "partial decree" which is a settlement between the signatories and the United States only. Under the proposed "Global De Minimis Consent Decree" with A.C.E. Building Services, Inc., et al., if all signatories to the consent decree meet their commitments, the LSRG will be paid approximately $1,183,000 toward the costs it has incurred and will continue to incur in remediating the Lemberger Sites, and the United States will be paid approximately $287,000 towards the costs it has incurred and paid in connection with the Lemberger Sites. Under the proposed "partial" consent decree with A & P (Whitehouse Division), et al., if all signatories to that decree meet their commitments, the United States will be paid approximately $126,000 towards the costs it has incurred and paid in connection with the Sites.

The Department of Justice will receive comments relating to the proposed consent decrees for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530 (attention: Lisa Cherup). All comments should refer to "*United States* v. *Invincible Metal Furniture Company, Inc., United States* v. *A.C.E. Building Service, Inc., et al.*, and *United States* v. *A & P (Whitehouse Division), et al.* (Lemberger Superfund Sites) DJ # # 90–11–2–712B & E."

The proposed consent decrees may be examined at the Office of the United States Attorney for the Eastern District of Wisconsin, 517 E. Wisconsin Ave., Room 530, Milwaukee, WI 53202 (c/o William Lipscomb); the Region V Office of the U.S. Environmental Protection Agency, 77 West Jackson Street, Seventh Floor, Chicago, Illinois 60604; at the Department of Justice Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 20005 (202) 624–0892 or at the Manitowoc Public Library, 808 Hamilton Street, Manitowoc, Wisconsin (414) 683–4862. A copy of any one or more of the proposed consent decrees may be obtained in person or by mail from the Department of Justice Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the above-referenced DJ numbers, and enclose a check in the amount of $25.50 (twenty-five cents per page reproduction costs) for the entire Global De Minimis Consent Decree *with all signature pages* (102 pages total), $10.00 for the Global De Minimis Consent Decree *without all signature pages* (40 pages), $8.00 for the Partial De Minimis Consent Decree (32 pages), and $5.00 for the Invincible Consent Decree (20 pages), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 96–17494 Filed 7–9–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Stipulation of Settlement Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Stipulation of Settlement in *United States* v. *Clark Equipment Company, d/b/a Melroe Company*, Civil Action No. A3–94–51, was lodged on June 17, 1996, with the United States District Court for the District of North Dakota Southeastern Division. The Stipulation resolves the United States' claims for civil penalties against Clark Equipment Company, for violations of Section 307(d) of the Clean Water Act, 33 U.S.C. 1317(d), and the pretreatment regulations promulgated thereunder as a result of discharges from its facility in Gwinner, North Dakota. Under the terms of this Stipulation Clark must pay a civil penalty in the amount of $250,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Stipulation of Settlement. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Clark Equipment Company, d/b/a Melroe Company*, Civil Action No. A3–94–51, DOJ Ref. #90–5–1–1–4054.

The proposed Stipulation of Settlement may be examined at the office of the United States Attorney, 219 Federal Building & U.S. Courthouse, Fargo, North Dakota, the Region VIII Office of the Environmental Protection Agency, 999 18th St., Suite 500, Denver Colorado; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Stipulation of Settlement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $2.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–17495 Filed 7–9–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Jeffrey Rutgard, M.D., Revocation of Registration

On November 21, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jeffrey Rutgard, M.D., (Respondent), of La Jolla, California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AR9688194, under 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of his registration as a practitioner under 21 U.S.C. 823(f), for the reason that, effective June 24, 1994, the California Medical Board (Medical Board) ordered the revocation of his state license to practice medicine. Further, the Show Cause Order noted that, lacking a medical license, the Respondent was no longer authorized to handle controlled substances in the State of California. The order also notified the Respondent that, should no request for a hearing be filed within 30 days, the hearing right would be deemed waived.

The DEA mailed the show cause order to the Respondent at two locations of record with the DEA in La Jolla, California, and also mailed a copy to an attorney known by DEA to have represented the Respondent in a criminal matter. Subsequently, the DEA received three signed receipts from the United States Postal Service, showing that the orders had been delivered. The attorney also wrote a letter, stating that she did not represent the Respondent in this matter, but that she would forward the show cause order to the Respondent at the Federal Correctional Institution at Fort Dix, New Jersey. However, no request for a hearing or any other substantive reply was received by the DEA from the Respondent or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator, finding that (1) thirty days have passed since the issuance of the Order to Show Cause, and (2) no request for a hearing was received, concludes that the Respondent is deemed to have waived his hearing right. After considering relevant material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.54(e) and 1301.57.

The Deputy Administrator finds that, on May 18, 1994, the Medical Board revoked the Respondent's license to practice medicine in the State of California, effective June 24, 1994. From

this fact, the Deputy Administrator infers that, since the Respondent is not authorized to practice medicine in California, he also lacks authorization to handle controlled substances in that state.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Dominick A. Ricci, M.D., 58 FR 51,104 (1993); James H. Nickens, M.D., 57 FR 59,847 (1992); Roy E. Hardman, M.D., 57 FR 49,195 (1992); Myong S. Yi, M.D., 54 FR 30,618 (1989); Bobby Watts, M.D., 53 FR 11,919 (1988). Here, it is clear that the Respondent is neither currently authorized to practice medicine nor to dispense controlled substances in the State of California. Therefore, the Respondent currently is not entitled to a DEA registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AR9688194 previously issued to Jeffrey Rutgard, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration be, and they hereby are, denied. This order is effective August 9, 1996.

Dated: July 3, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–17476 Filed 7–9–96; 8:45 am]

BILLING CODE 4410–09–M

Mukesh H. Shah, M.D.; Revocation of Registration

On May 23, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Mukesh H. Shah, M.D., (Respondent), of Cerritos, California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BS0619885, under 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of his registration as a practitioner under 21 U.S.C. 823(f), for the reason that, by order dated April 5, 1994, the Medical Board of California (Medical Board) ordered the revocation of his state license to practice medicine, effective May 5, 1994. Further, the Show Cause Order noted that, lacking a medical license, the Respondent was no longer authorized to handle controlled substances in the State of California. The order also notified the Respondent that, should no request for a hearing be filed within 30 days, the hearing right would be deemed waived.

The DEA mailed the show cause order to the Respondent at two locations of record with the DEA, one in Cerritos, California, and a second in Brea, California. Subsequently, the DEA received two signed receipts from the United States Postal Service, showing that the orders had been delivered. However, no request for a hearing or any other reply was received by the DEA from the Respondent or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator, finding that (1) thirty days have passed since the issuance of the Order to Show Cause, and (2) no request for a hearing was received, concludes that the Respondent is deemed to have waived his hearing right. After considering relevant material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.54(e) and 1301.57.

The Deputy Administrator finds that, on April 5, 1994, the Medical Board revoked the Respondent's license to practice medicine in the State of California, effective May 4, 1994. This order was upheld by the Los Angeles County Superior Court. From these facts, the Deputy Administrator infers that, since the Respondent is not authorized to practice medicine in California, he also lacks authorization to handle controlled substances in that state.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Dominick A. Ricci, M.D., 58 FR 51,104 (1993); James H. Nickens, M.D., 57 FR 59,847 (1992); Roy E. Hardman, M.D., 57 FR 49,195 (1992); Myong S. Yi, M.D., 54 FR 30,618 (1989); Bobby Watts, M.D., 53 FR 11,919 (1988). Here, it is clear that the Respondent is neither currently authorized to practice medicine nor to dispense controlled substances in the State of California. Therefore, the Respondent currently is not entitled to a DEA registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BS0619885, previously issued to Mukesh H. Shah, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration be, and they hereby are, denied. This order is effective August 9, 1996.

Dated: July 3, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–17475 Filed 7–9–96; 8:45 am]

BILLING CODE 4410–09–M

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; application for employment/Federal Bureau of Investigation. Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534. Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of information collection: Revision of a currently approved collection.

(2) The title of the form/collection: Application for Employment/Federal Bureau of Investigation.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form: FD–140. Federal Bureau of Investigation, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Individuals seeking employment with the FBI will be required to complete the FD–140. The information collected is used to address suitability, trustworthiness, and other security issues beyond the seven year scope of Standard Form 86.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 50,000 annual respondents; 1.5 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 75,000 hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: July 3, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–17480 Filed 7–9–96; 8:45 am]

BILLING CODE 4410–02–M

Immigration and Naturalization Service

Agency Information Collection Activities: New Collection; Comment Request

ACTION: Notice of information collection under review; physical presence of grandparent.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" from the date listed at the top of this page in the **Federal Register**.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan at, 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Overview of this information collection:

(1) Type of Information Collection: New Collection.

(2) Title of the Form/Collection: Physical Presence of Grandparent.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form N–600/N–643, Supplement A. Office of Examinations, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. This form is required so that information on a grandparent's residence may be collected to establish a child's eligibility for naturalization.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 4,000 respondents at 30 minutes (.500) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 2,000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: July 3, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–17481 Filed 7–9–96; 8:45 am]

BILLING CODE 4410–18–M

Agency Information Collection Activities: Revision of Existing Collection; Comment Request

ACTION: Notice of information collection under review; application for posthumous citizenship.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" from the date listed at the top of this page in the **Federal Register**.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Overview of this information collection:

(1) Type of Information Collection: Revision of a currently approved collection.

(2) Title of the Form/Collection: Application for Posthumous Citizenship.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form N–644. Office of Examinations, Adjudications, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as brief abstract: Primary: Individuals or Households. The information collected will be used to determine an applicant's eligibility to request posthumous citizenship status for a decedent and to determine the decedent's eligibility for such status.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 50 responses at 1 hour and 50 minutes (1.83) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 92 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: July 3, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–17482 Filed 7–9–96; 8:45 am]

BILLING CODE 4410–18–M

Office of Justice Programs

National Institute of Justice

[OJP (NIJ) No. 1068]

RIN 1121–ZA40

National Institute of Justice Solicitation for Research and Evaluation on Violence Against Women: Fiscal Year 1996

AGENCY: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Announcement of the availability of the National Institute of Justice Solicitation for Research and Evaluation on Violence Against Women: Fiscal Year 1996.

DATES: The deadline for receipt of proposals is close of business on July 26, 1996.

ADDRESSES: National Institute of Justice, 633 Indiana Avenue, NW., Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: Tawana Waugh, U.S. Department of Justice Response Center, at 800–421–6770 (in Metropolitan Washington, DC, 202–307–1480).

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1988).

Background

The National Institute of Justice is soliciting a second year of research and evaluation proposals responsive to the evaluation and research requirements related to the Violence Against Women Act—Title IV of the Violent Crime Control and Law Enforcement Act of 1994, and related violence against women issues.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Solicitation for Research and Evaluation on Violence Against Women" (refer to document No. SL000144). The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via Internet. Telnet to ncjrsbbs.aspensys.com, or gopher to ncjrs.aspensys.com 71. For World Wide Web access, connect to the Justice Information Center at http://www.ncjrs.org. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set modem at 9600 baud, 8–N–1.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 96–17567 Filed 7–9–96; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–070]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

DATES: July 24, 1996, 9 a.m. to 2 p.m.; and July 25, 1996, 9 a.m. to 3 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 9H40, 300 E Street, SW., Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Anne L. Accola, Code Z, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–0682.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Update on NASA Activities
—Cross-fertilization between Codes S and Y
—Bion Task Force
—Evolved Expendable Launch Vehicle Program
—Reusable Launch Vehicle Program
—Cassini Environmental Assessment
—Summary of Air Force Science Advisory Board New Vistas Report
—Committee/Task Force Reports
—Discussion of Issues Regarding NASA Questions
—Discussion of Findings and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register. Due to unavoidable circumstances, this **Federal Register** notice is being published less than 15 days prior to the date of the meeting.

Dated: July 2, 1996.

Alan M. Ladwig,

Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–17442 Filed 7–9–96; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 85th meeting on August 21–23, 1996, Room T–2B3, at 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, December 6, 1995 (60 FR 62485).

The entire meeting will be open to public attendance.

The agenda for this meeting shall be as follows:

Wednesday, August 21, 1996—8:30 a.m. until 6:00 p.m.
Thursday, August 22, 1996—8:30 a.m. until 6:00 p.m.
Friday, August 23, 1996—8:30 a.m. until 4:00 p.m.

During this meeting, the Committee plans to consider the following:

A. *Thermal-Mechanical-Hydrological-Chemical Coupled Processes*—The Committee will devote an entire day to a study of the Department of Energy and NRC staff plans to develop and use coupled process models in evaluating various aspects of repository performance. The Committee will investigate how thermal input to the host rock and ground water system will effect the hydrolic, mechanical, and chemical characteristics and processes of the geologic systems.

B. *Meeting with the Director, NRC's Division of Waste Management, Office of Nuclear Materials Safety and Safeguards*—The Director will discuss items of current interest related to the Division of Waste Management programs which may include: progress at the Yucca Mountain site, the status of EPA's Yucca Mountain standards and NRC's high-level waste regulations, and the status of a branch technical position on low-level waste performance assessment.

C. *Preparation of ACNW Reports*—The Committee will discuss proposed reports, including: specifying a critical group and reference biosphere to be used in a performance assessment of a nuclear waste disposal facility, the consideration of coupled processes (Thermal-Mechanical-Hydrological-Chemical) in the design of a high-level waste repository, and comments on a Branch Technical Position on the use of Expert Elicitation.

D. *Technical Guidance on Expert Elicitation*—The Committee will review the NRC staff's draft technical position on the use of expert elicitation in the licensing of a nuclear waste disposal facility.

E. *Time of Compliance in Low-Level Waste Disposal*—The Committee will discuss options for setting a regulatory time of compliance for a low-level waste disposal facility. Participation by representatives of individual states is anticipated.

F. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

G. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 27, 1995 (60 FR 49924). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief, Nuclear Waste Branch prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. Major if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415–7366), between 8:00 a.m. and 5:00 p.m. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the "NRC MAIN MENU." Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: July 3, 1996.

Andrew L. Bates,

Advisory Committee Management Office.

[FR Doc. 96–17552 Filed 7–9–96; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on July 17, 1996, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Draft Legislation to Enhance Debt Collection Efforts: Section 12(o) Lien Authority.
(2) Legislative Program for Fiscal Year 1996.
(3) Administrative Circular REF(IRM)–1. Custon Tailored Information Services.
(4) Coverage Determinations:
A. WCL Railcars, Inc.
B. Contract Rail Service Company.
(5) Regulations—Part 211, Pay for Time Lost.
(6) Medicare Part B Services (Contract No. 92RRB006) and Update on Status Of Medicare Transaction System (MTS) and Of Meetings with MetraHealth and Health Care Financing Administration (HCFA).
(7) Labor Member Truth in Budgeting Status Report.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: July 5, 1996.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 96–17642 Filed 7–9–96; 9:03 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22051; International Series Release No. 1000/812–9698]

The T. Rowe Price International Funds, Inc., et al.; Notice of Application

July 2, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: T. Rowe Price International Funds, Inc., T. Rowe Price International Series, Inc., Institutional International Fund, Inc., and Rowe Price-Fleming International, Inc. ("Price-Fleming").

RELEVANT ACT SECTIONS: Order requested under section 10(f) granting an exemption from that section.

SUMMARY OF APPLICATION: Applicants request an order to permit T. Rowe Price International Funds, Inc., T. Rowe Price International Series, Inc., and Institutional International Fund, Inc. to purchase securities that are not registered under the Securities Act of 1933 (the "Securities Act") from an underwriting syndicate when the funds' investment adviser is an affiliated person of a principal underwriter in the syndicate.

FILING DATE: The application was filed on December 15, 1995 and amended on May 3, 1996. Applicants have agreed to file an amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 29, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 100 East Pratt Street, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, at (202) 942–0571, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

I. Background

1. T. Rowe Price International Funds, Inc., T. Rowe Price International Series, Inc., and Institutional International Fund, Inc. are open-end management investment companies registered under the Act. Each fund was organized as a Maryland corporation, and each fund invests primarily in foreign equity and fixed income securities.

2. Applicants request that any exemptive order issued pursuant to the application also apply to any other registered investment company, or separate investment series thereof, which in the future is advised or managed by Price-Fleming, or an entity controlling, controlled by or under common control with Price-Fleming, and which is a member of the T. Rowe Price "group of investment companies," as defined in rule 11a–3(a)(5) under the Act (each, a "Future International Fund"). In addition, applicants request that any exemptive order issued pursuant to the application also apply to any other registered investment company, or separate investment series thereof, to which Price-Fleming currently or in the future acts as sub-adviser (each, a "Sub-Advised Fund") (together, with T. Rowe Price International Funds, Inc., T. Rowe Price International Series, Inc., Institutional International Fund, Inc., and the Future International Funds, the "International Funds").

3. Price-Fleming is a registered investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). Price-Fleming is adviser or sub-adviser, as the case may be, to each of the International Funds. Price-Fleming is one of America's largest international mutual fund managers with approximately $20 billion under management in its offices in Baltimore, London, Tokyo and Hong Kong. Price-Fleming was incorporated in Maryland in 1979 as a joint venture between T. Rowe Price and Robert Fleming Holdings Limited ("Fleming Holdings"). The common stock of Price-Fleming is 50% owned by a wholly-owned subsidiary of T. Rowe Price Associates, Inc. ("T. Rowe Price"), 25% owned by a subsidiary of Fleming Holdings and 25% owned by Jardine Fleming Group Limited ("Jardine Fleming"). Half of Jardine Fleming is owned by Fleming Holdings and half is owned by Jardine Matheson Holdings Limited. T. Rowe Price has the right to elect a majority of the board of directors of Price-Fleming, and Fleming Holdings has the right to elect the remaining directors, one of whom will be nominated by Jardine Fleming.

4. Fleming Holdings is a diversified investment organization which participates in a global network of regional investment offices. Currently, the following direct or indirect subsidiaries of Fleming Holdings may participate as principal underwriters in international securities offerings in which the International Funds may invest (the location of each such underwriter's principal office(s) is set forth in parenthesis following its name): Robert Fleming Securities Limited (London), Jardine Fleming Securities Limited (Hong Kong, Tokyo, Seoul), Jardine Fleming Taiwan Limited (Taipei), PT Jardine Fleming Nusantara (Jakarta), Jardine Fleming Thanakom Securities Limited (Thailand), Ord Minnett Securities Ltd. (Melbourne, Wellington), Fleming Martin Ltd. (London), Jardine Fleming Australia Securities Ltd. (Sydney), Jardine Fleming Australia Management Ltd. (Melbourne), Jardine Fleming New Zealand Limited (Wellington), Jardine Fleming India Limited (Bombay) and Pesaka Jardine Fleming SDN, BHD (Kuala Lumpur) (together with any additional entities existing or created in the future which are direct or indirect subsidiaries of Flemings Holdings and which may participate as principal underwriters in international underwritings in which the International Funds participate, the "Affiliated Syndicate"). The entities in the Affiliated Syndicate and Price-Fleming are or may be deemed to be "affiliated persons" of each other within the meaning of section 2(a)(3) of the Act.

5. To the extent any of the entities in the Affiliated Syndicate participates as principal underwriter in an international securities offering, the International Funds would be prohibited from purchasing securities in such offering, absent the relief requested herein. Applicants request that the International Funds be permitted to purchase, through the Affiliated Syndicate, foreign securities which are not registered under the Securities Act. Foreign securities purchased pursuant to the exemptive relief being sought will be issued in public offerings conducted in accordance with the applicable laws of Australia, Brazil, France, India, Indonesia, Ireland, Japan, Mexico, the Philippines, South Africa, Sweden, Taiwan, and Thailand (the "Countries"), and the applicable rules and regulations of the stock exchanges and regulated unlisted market(s), if any, in such Countries.

II. Information About the Countries

A. Australia

1. Securities regulation throughout Australia derives its authority from the Corporations Law 1991 (the "Australia Corporations Law"). The legislation covers a wide range of issues, including raising capital, preparation of prospectuses, and personal liability for false or misleading statements and omissions. The Australian Stock Exchange Limited (the "ASX") operates in the capital cities of each of the six states in Australia. The Australia Corporations Law is administered by the Australian Securities Commission (the "ASC"), which is accountable and responsible to the Commonwealth Attorney General and the Commonwealth Parliament. All securities purchased in offerings in Australia by the International Funds pursuant to the requested relief will be listed or approved for listing on the ASX.

2. The Listing Rules of the ASX impose various reporting and other obligations on listed companies, in addition to the obligations imposed by the Australia Corporations Law. Companies wishing to list their securities with the ASX must be of a sufficient size and their prospectuses, articles of association, share certificates, annual accounts, and other published documents must conform to the requirements of the Australia Corporations Law and the ASX. Among other things, the ASX Listing Rules require listed companies to promptly announce the declaration of dividends and new issues of capital, to provide semi-annual financial reports and to disclose other information which may have an important bearing on market value. The ASX Listing Rules also require disclosure of all material information on an ongoing basis. The other requirements of the ASX to obtain a listing relate to minimum capitalization, shareholder distributions, and size of operation or net tangible assets. In order to list, a company must have an initial minimum capitalization of $AUD 1,000,000 (approximately US $787,402 at current exchange rates). Further, the company must have at least 500 shareholders, each of whom holds shares with a market value of at least $AUD 2,000 (approximately US $1,575 at current exchange rates).

3. Under the Australia Corporations Law, issuers that intend to make public offerings of securities are required to file with the ASC a prospectus or a sale notice which complies with statutory requirements intended to ensure full and fair disclosure. In almost all cases where an initial public offering is involved, the practical effect of the provisions will be that similar information and disclosure will be required to be made, irrespective of the form of document legally required.

4. The Australia Corporations Law provides only in general terms the kind of information required to appear in a prospectus; it does not provide a statutory checklist of information required. A prospectus is required to contain "all such information as investors and their professional advisers would reasonably require, and reasonably expect to find in a prospectus, for the purpose of making an informed assessment of: (i) the assets and liabilities, financial position, profits and losses, and prospects of the corporation; and (ii) the rights attaching to the securities." There is no legal requirement that financial statements be included in the prospectus. However, as a matter of practice, where a company which issues a prospectus has a track record, it is usual for a summary of historical financial information to be included. In many cases, this period extends to the last three financial years. In other prospectuses, however, only a summary of financial information for the most recent year is included together with a summary of pro forma financial information assuming the securities offered under the prospectus are actually issued. It is unusual for the actual financial statements themselves to be included in the prospectus. In addition, a prospectus usually includes directors' forecasts of future profits for the forthcoming year or two, and an independent accountant's report reviewing both historical and forecast financial information.

5. An underwriting commitment in Australia typically proceeds by way of bookbuilding with soft underwriting. The underwriter only takes up that portion of the public offering which is not subscribed for within a specified time (public offerings generally stay open for one month). This process has partly arisen due to market practice, and also because of tax (stamp duty) savings. Generally, no stamp duty is payable on the issue of shares. Stamp duty is usually payable on the transfer of shares listed on the ASX at the rate of 3% of the value of the shares and the rate of 6% of the value of the shares where the shares are not listed on the ASX. An underwriter will often engage sub-underwriters, or seek to place shares with institutional investors.

B. Brazil

1. All securities purchased by the International Funds in offerings in Brazil pursuant to the requested relief will be admitted for trading or listed or approved for listing on one or more of the following exchanges or markets: Bolsa de Valores de Sao Paulo, Bolsa de Valores do Rio de Janeiro, Bolsa de Valores do Paraná, Bolsa de Valores de Santos, Bolsa de Valores de Pernambuco e Paraiba, Bolsa de Valores do Extremo Sul, Bolsa de Valores de Minas Gerais, Brasilia e Espirito Santo, Bolsa de Valores da Bahia, Sergipe e Alagoas, and Bolsa de Valores Regional.

2. Companies wishing to become public companies must register as such with the Brazilian securities commission, the Commissos de Valores Mobiliários (the "CVM"), and must apply with the CVM for registration of particular securities before issuing and selling them to the public. Among other items, the application for registering an issue of securities must contain information concerning the company, a copy of the agreement concerning the distribution of the securities, a draft of the subscription documents and the prospectus, and, in some cases, a study of the economic and financial feasibility of the issue. The CVM reviews the foregoing materials and has authority to deny the registration on the grounds that the proposed issuance is unfeasible or otherwise not advisable. The CVM may also suspend a registration and the public offering after the registration has been granted if it uncovers fraud or determines that the offering is not being conducted in compliance with the materials approved or the Brazilian securities laws and regulations.

3. The public offering may commence only after the registration has been granted, the lead distributor has made the public announcement required by the CVM regulations, and the final prospectus has been made available to the public. The public offering of equity securities requires the prior approval of the company shareholders, or, if the company has authorized capital and the amount of securities to be offered are within its limit, of the company's board of directors. The issue price to the public and a justification therefor must be set in accordance with the applicable law by the company's shareholders at a shareholders' meeting even if the company has adequate authorized capital, although the shareholders may

delegate this authority to the company's board of directors.

4. Under Brazilian law, shareholders have preemptive rights to subscribe for equity securities to be issued in connection with any capital increase of the company in proportion to their current equity participation. Such preemptive rights may be eliminated only if the company has authorized capital, the securities will be issued though a public offering, and the company's by-laws expressly waive the preemptive rights. If there are no preemptive rights, a company may first offer the securities to existing shareholders, giving them a priority to subscribe for them rather than a preemptive right. In such a case, the period to exercise the priority is usually two to five days. At the end of the period for the exercise of the preemptive rights or priority, if any, the unsubscribed securities are offered to the public for subscription.

5. The offering and distribution of the securities must be made through the intermediation of distributors, which may be investment banks, brokerage firms, and securities dealers, all of whom must be registered with the CVM. The distributor may either work as an intermediary, or agent, between the issuing company and the purchasers on a best efforts basis, or acquire, partially or wholly, the securities issued for resale through a firm commitment, or standby firm commitment, underwriting. The CVM has prescribed certain terms and provisions that all distribution and underwriting contracts must contain as a minimum. In a firm commitment underwriting, any securities that are not subscribed for by the public or existing shareholders by the end of the subscription period will be subscribed for by members of the underwriting consortium in the proportion established by the consortium agreement. Applicants are seeking relief with respect to participation in underwritings in Brazil only to the extent necessary to purchase securities that are the subject of firm commitment underwritings.

C. France

1. The seven securities exchanges in France—Paris, Lyon, Nancy, Marseille, Lille, Nantes, and Bordeaux (together, the "French Stock Exchanges")—are all governed by the same stock exchange authorities and are subject to uniform rules and regulations. All securities purchased by the International Funds in offerings in France pursuant to the requested relief will be admitted for trading or listed, or approved for listing, on one or more of the French Stock Exchanges. Three regulatory agencies supervise the operations of the French Stock Exchanges: (i) the Counseil des Bourses de Valeurs, or Stock Exchange Council, which has general regulatory and supervisory authority over the French Stock Exchanges; (ii) the Société des Bourses Françaises, or French Securities Exchange Company ("SBF"), which implements the rules, regulations and policies established by the Stock Exchange Council; and (iii) the Commission des Opérations de Bourse, or Commission on Securities Exchange Operations ("COB"), an autonomous administrative body that performs market regulator functions. Each of the French Stock Exchanges is comprised of three markets—the Cote Officielle or "Official Market," the Second Marché or "Second Market," and the Marché Hôrs-Côte or over-the-counter market.

2. French law requires any company making a public offering of securities, prior to such offering, to "publish a public information document describing the structure, financial condition and development of the activities of such company." Varying levels of detail are required for the information contained in such a prospectus, depending on whether the issuer is seeking to list its securities on the Official or Second Market and on the extent of information about the issuer that is already available to the investing public. In general, COB regulations require that the prospectus must contain information necessary to inform investors as to the assets, financial condition, results of operations, and prospects of the issuer, as well as the terms of the securities being offered.

3. In addition to SBF and Stock Exchange Council oversight, an issuer seeking to list its securities on the Official Market must obtain the advance written approval for its prospectus from the COB. A Second Market prospectus does not require such COB approval, but must be filed with the COB at least three months prior to the expected admission date. The regulatory authorities' review of the listing file and prospectus typically involves a comment procedure pursuant to which the authorities seek to ensure that appropriate disclosure is being made by the issuer. The prospectus in final form must be delivered or addressed to all offerees.

4. Initial public offerings in France are made in conjunction with an initial listing of the issuer's shares on the French Stock Exchanges. In both initial and subsequent public offerings, all shares of the same class included in the offering are offered to all potential investors at a single offering price and, except for the preferential or priority subscription rights granted to existing shareholders, on the same other terms and conditions.

5. Initial public offerings and subsequent public offerings of equity securities, equity-related debt securities, and straight debt securities in France are generally underwritten by banks and certain other financial institutions authorized to underwrite securities and regulated by the Bank of France. Underwriting practices are identical for initial and subsequent public offerings. Generally, stock offerings are underwritten pursuant to a practice known as the garantie de bonne fin (literally, "guarantee of successful result") and equity-related debt securities and straight debt securities are underwritten "prise ferme" (literally, "firm taking").

6. All public offerings in France involving the issuance of shares that result in a capital increase are underwritten pursuant to an agreement between the issuer and an underwriting syndicate providing for a garantie de bonne fin. The agreement allots to each underwriter a specified number of the shares being offered, and each underwriter severally commits to subscribe to, of procure subscribers for, its pro rata portion (based on such respective underwriting allotments) of the number of offered shares that are not subscribed for by existing shareholders or the public pursuant to subscription rights or otherwise during a stated subscription period. The garantie de bonne fin constitutes a binding contractual obligation by the underwriters to purchase all shares in the offering that are not otherwise sold to the public and, therefore, constitutes bookbuilding with soft underwriting or standby firm commitment underwriting. The price payable by the underwriters pursuant to their standby firm commitment under the garantie de bonne fin is the same as the subscription price at which the shares are offered to the public.

7. French public offerings of equity-related debt securities, such as convertible bonds or debentures with warrants, as well as straight debt securities, are underwritten pursuant to the prise ferme method. Pursuant to the agreement between the underwriters and the issuer, each underwriter severally commits to purchase from the issuer a specific number of the newly issued securities before they are listed for trading on an exchange. In practice, the prise ferme method operates similarly to the garantie de bonne fin. Securities that have not been placed with the public or with existing security holders are purchased by the underwriters pro rata on the basis of their respective commitments, and then are resold on the markets by the underwriters for their own accounts.

D. India

1. India's stock exchanges, while mainly self-regulating, are subject to the supervision of the Securities Exchange Board of India ("SEBI") under the Securities Contract (Regulation) Act of 1956 (the "SCRA") and Rules, 1957 (the "SCRA") and Rules, 1957 (the "SCRA Rules"). Currently, 24 stock exchanges in India are recognized under the SCRA Rules. All securities purchased by the International Funds in offerings in India pursuant to the requested relief will be admitted for trading or listed, or approved for listing, on one or more of the following exchanges or markets: The Stock Exchange, The Bombay Stock Exchange, The Calcutta Stock Exchange Association Ltd., Madras Stock Exchange Ltd., The Delhi Stock Exchange Association Ltd., The Hyderabad Stock Exchange Ltd., Madhya Pradesh Stock Exchange Ltd., Bangalore Stock Exchange Ltd., Cochin Stock Exchange Ltd., The Uttar Pradesh Stock Exchange Association Ltd., Pune Stock Exchange Ltd., The Ludhiana Stock Exchange Association Ltd., The Guahati Stock Exchange Ltd., Mangalore Stock Exchange Ltd., The Magadh Stock Exchange Ltd., Jaipur Stock Exchange Ltd., Bhubaneshwar Stock Exchange Association Ltd., Saurashtra Kutch Stock Exchange Ltd., The Vadodara Stock Exchange Ltd., The Coimbatore Stock Exchange Ltd., OTC Exchange of India (the "OTCEI"), and National Stock Exchange of India Ltd.

2. SCRA Rules provide that only companies whose issued share capital par value is more than Rs 50 million (approximately US $1,464,987 at current exchange rates) and whose shares are widely held may list their shares on existing recognized stock exchanges. OTCEI was incorporated in 1990 to enable trading in securities of companies which do not meet such minimum capital requirements. Recently, OTCEI announced that certain "main board" securities will be eligible to trade on OTCEI. Although listing of a company's shares is generally optional, the Government may compel public companies to list their securities on the stock exchanges if such a listing is deemed to be in the public interest or in the interest of the securities market. A minimum of 25% of the ordinary shares of a company seeking a listing are required to be offered to the public.

3. A public offering of securities is generally required to be made by means of a prospectus, which must contain the information specified in the Companies Act, 1956 (the "India Companies Act") including, but not limited to, a description of the entire history of the company, its main objectives, the number and classes of its shares, information regarding the directors and their remuneration, and statements regarding the purpose of the raising of funds. The International Funds will not purchase securities in public offerings in India unless a prospectus relating to such securities is available.

4. The prospectus must be accompanied by an auditors report for the previous five years of the company and its subsidiaries and an expert consent. A company's directors and promoter are subject to civil and criminal liability for misstatements in a prospectus and SEBI has been delegated with the power and the authority for this purpose.

5. A public offering also requires that the company enter into a listing agreement with the relevant stock exchange. The listing agreement is statutorily prescribed and requires disclosure of information about the company prior to listing as well as, among other things, reporting of unaudited results at six month intervals with explanations of differences with audited results, providing information about material changes, changes in management and auditors once trading has commenced.

6. Underwriting is no longer mandatory. It is left to the issuer whether to have the issue partially or totally underwritten. In an underwritten offering, an underwriter enters into an underwriting agreement with the issuer and is required to commit to purchase a certain number of shares. Applications for shares received directly by the underwriter from its clients, as well as applications received by the issuer from the public independently, may serve to reduce an underwriter's obligation under the underwriting agreement based on the allocation methodology set forth in the agreement. To the extent such applications are insufficient to meet the underwriter's full obligation under the underwriting agreement, the underwriter is required to purchase the remainder of the shares. There are only two circumstances in which an underwriter may be relieved of its obligations under the underwriting agreement: (i) the issue fails to keep the subscription list for public issuer open for the maximum 10 day period (unless the issue is oversubscribed, in which case the subscription list may be kept open for less than 10 days), and (ii) the issuer fails to receive subscriptions for 90% of the issue (in which case all amounts paid in satisfaction of underwriting obligations are refunded).

7. If there is no underwriting, since all issues are conditional upon a minimum subscription requirement of 90% of the securities being issued, any deficit will result in the entire amount raised being refunded. Promoters are required to retain specified minimum holdings of equity capital, and, as a consequence, promoters can be required to purchase a portion of public issues. Shares purchased by promoters to maintain their minimum required holdings are subject to a lockup of five years, and the full subscription amount must be paid in advance before the public issue is made. Bonus issues to security holders are prohibited for 12 months following any public offering or rights issue.

E. Indonesia

1. There are currently two stock exchanges in Indonesia, the Bursa Efek Indonesia, comprised of the Jakarta Stock Exchange ("JSE") and the Surabaya Stock Exchange ("SSE") (together, the "Bursa Efek"). All securities purchased by the International Funds in offerings in Indonesia pursuant to the requested relief will be admitted for trading or listed, or approved for listing, on the JSE and/or the SSE.

2. In 1976, the government established Badan Pelaksana Pasar Modal ("BAPEPAM"), the Capital Market Executive Agency. Initially, BAPEPAM was created to, among other things, establish and regulate the stock market, and evaluate and approve listings of new companies. In 1990, however, BAPEPAM's responsibilities were modified to include monitoring and regulating a market in which securities can be issued and traded regularly, fairly, and efficiently, and protecting the interests of investors and the public. Consistent with its new responsibilities, the BAPEPAM's official name was changed to the "Capital Market Supervisory Agency."

3. Listing requirements differ for the JSE and the SSE. Companies desiring to list shares on any exchange must be organized with limited liability. The JSE requires as conditions to listing that issuers have paid-up capital of at least Rp 2 billion (approximately US $856,714 at current exchange rates), have an operating profit and positive net income for the prior two fiscal years, and have audited financial statements for the prior year accompanied by an unqualified auditor's report. The SSE requires issuers desiring a listing to have at least Rp 1 billion (approximately US $428,357 at current exchange rates) in paid-up capital, a par value of at least

Rp 1,000 (approximately US $0.43 at current exchange rates) per share, positive net income in its most recent fiscal year, and audited financial statements accompanied by an unqualified auditor's report, provided, however, that a qualification in the auditor's report respecting financial statements for the most recent year will be acceptable.

4. Public offerings of securities in Indonesia are subject to BAPEPAM regulation and supervision. In order to conduct a public offering in Indonesia, BAPEPAM requires that issuers have been in existence for three years and have three years of profitable operations. An offering must be made by a prospectus which includes information regarding the company's history, business, operations, management, share ownership, and financial condition. The prospectus must include three years of audited financial statements, including three years of income statements, balance sheets, statements of cash flow (or equivalent), and statements of changes in stockholders' equity. Companies may have only one class of capital stock unless special permission is received from the BAPEPAM. Shareholders have preemptive rights.

5. The offering prospectus forms part of a registration statement which, together with related documents (e.g., an underwriting agreement and articles of association), must be submitted to the Chairman of the BAPEPAM for possible review. Prior to effectiveness of the registration statement, the underwriters meet with the issuer to fix the public offering price, the underwriters' compensation, and the size of the offering. Once agreed, a firm commitment underwriting agreement is entered into, and thereafter the offering period which must last at least three days begins. During this period, the prospectus must be publicly distributed. Given the possibility of a short offering period and in order to ensure knowledge of the impending offering, a prospectus summary must be published in an Indonesian newspaper at least three business days before the beginning of the offering period. Pursuant to the terms of the underwriting agreement, the underwriters are required to purchase all of the securities in the offering, notwithstanding the fact that they may not have been able to resell all of them.

F. Ireland

1. Irish securities laws, comprised principally of the Companies Acts 1963–1990 (together, the "Irish Companies Act"), generally provide for self-regulation, and there is no central agency other than the Irish Stock Exchange having authority over listed companies. The Irish Stock Exchange supervises listed companies in accordance with its rules. In particular, a provision of the Irish Companies Act allows a listed company to issue an invitation to the public to subscribe for shares without following many of the provisions of the Irish Companies Act provided that the invitation is accompanied by a document which has been approved by the Irish Stock Exchange. Typically such a document issued by a listed company will have been scrutinized several times by the Irish Stock Exchange before it is publicly disseminated.

2. If a company is not seeking any form of stock exchange listing or trading facility, the securities laws are entirely self-regulating. However, all issuers also are subject to civil claims and criminal prosecutions, including criminal prosecutions by the Director of Public Prosecutions (akin to the U.S. Attorney General). In addition, issuers whose securities are officially listed on the Irish Stock Exchange are subject to regulation by the exchange and may be the subject of sanctions, such as suspension of trading or de-listing.

3. All securities purchased in Ireland by the International Funds pursuant to the requested order will be purchased in public offerings which are (i) subject to Irish law and listed (or seeking listing) on the Official List of the Irish Stock Exchange,[1] and/or (ii) listed approved for listing on the London Stock Exchange Limited. Securities of Irish issuers listed on the London Stock Exchange Limited are subject to the regulations of such Exchange, which may be in addition to and more stringent than those of the Irish Stock Exchange and the Irish Companies Act.

4. To be listed on the Official List on the Irish Stock Exchange, a company must have capitalization of 700,000 Irish Pounds (approximately US $1,092,555 based on current exchange rates), must have published three years of financial results, and must have at least 25 percent of its shares in public hands, i.e., held by others who are not affiliates of such company. In addition to the above requirements, companies seeking to list on the Irish Stock Exchange must provide the exchange with a formal statement (known as "listing particulars") describing the company's business, management, and financial condition.

5. Irish law also requires, with certain exceptions, any invitation to subscribe or purchase shares in a public offering be accompanied by a prospectus meeting the disclosure requirements set forth in the Third Schedule to the Irish Companies Act. Among other things, the Irish Companies Act requires any company conducting a public offering to disclose its dividend record, profits, and losses for the preceding three years. Under the Irish Companies Act, the listing particulars for companies on the Official List are deemed to be a "prospectus" and, therefore, the requirement to make a separate Third Schedule disclosure does not apply. The disclosure required under the Irish Stock Exchange rules for a company on the Official List, however, is generally more onerous than that required under the Irish Companies Act.

6. The public offering price is fixed at the time of initial issuance and published in the offering prospectus, and the securities offered to and purchased by affiliates of underwriters as part of a public offering are offered and sold under the same terms as to the general public. With respect to a rights issue, the subscription price is generally fixed and is at a discount to the prevailing market price or at the market price. Applicants are aware of at least one instance when the price was fixed at a premium to the market price. The International Funds, however, will not purchase securities in underwritten offerings at a public offering price that is set at a premium to the current market price.

7. A public offering in Ireland is often underwritten pursuant to an underwriting agreement in which the primary underwriters (as opposed to the sub-underwriters) commit to purchase any of the offered securities that are not taken up by existing shareholders (after a stated subscription period) or by the market generally. Typically, sub-underwriters irrevocably contract with the underwriter to subscribe for a minimum portion of the issue at a fixed price.

8. The number of subscribers participating in a public offering will vary depending on the nature of the existing trading market for an issuer's securities and other circumstances, either related to the status of the issuer or to general economic conditions. The International Funds will only participate in underwritten offerings in which it is likely that the securities will be widely disseminated.

[1] The Irish Stock Exchange is comprised of four markets—the main market or the "First Market" or, more commonly, the "Official List," the Unlisted Securities Market, the Exploration Securities Market, and the Small Companies Market.

G. Japan

1. There are eight securities exchanges in Japan and one over-the-counter market. The securities exchanges and the over-the-counter market are regulated by the Minister of Finance (the "MOF"), and there is strong emphasis on self-regulation. All securities purchased by the International Funds in offerings in Japan pursuant to the requested relief will be admitted for trading or listed, or approved for listing, on one or more of the eight Japanese securities exchanges: the Tokyo Stock Exchange, the Osaka Securities Exchange, the Nagoya Stock Exchange, the Sapporo Stock Exchange, the Ni'igata Stock Exchange, the Kyoto Stock Exchange, the Hiroshima Stock Exchange, and the Fukuoka Stock Exchange.

2. The basic listing requirements are governed by the Securities and Exchange Law of 1948 (the "Japan Securities and Exchange Law"), while detailed matters such as listing eligibility criteria and reporting procedures are dealt with in the listing regulations of each exchange. A company wishing to list its equity securities on the Tokyo Stock Exchange (the "TSE") is required to file an application for listing with the TSE, which is examined by the exchange, placing emphasis on the public interest and investor protection. If the TSE considers a listing of the relevant instrument to be appropriate, it may authorizing listing subject to approval of the MOF. Assuming approval of the MOF is then obtained, the company is required to enter into a listing agreement with the TSE whereby the company agrees that it will abide by the Japan Securities and Exchange Law and the TSE's rules and regulations, including Business Regulations, Listing Regulations, and Regulations for Supervision of Listed Securities.

3. Issuers that intend to make public offerings of securities are required to file with the MOF a registration statement for the securities accompanied by supplemental materials that adequately disclose pertinent information concerning the offering and the issuer. Issuers are required to include financial statements for their last five business periods (ten business periods if the business period is half a year) in their registration statements.

4. A preliminary prospectus corresponding to a "red herring" in the United States can be circulated for the purpose of soliciting offers during the period between the initial filing and effective dates so that the public can learn the essential facts relating to a proposed issue. The use of prospectuses that do not meet the statutory requirements is prohibited and a prospectus must be delivered at the time of sale.

5. The nature of the underwriting commitment is determined by contract and may differ from transaction to transaction. In general, however, one of two types of commitments is made, roughly equivalent to firm commitment underwriting and bookbuilding with soft underwriting. Under the first method, the underwriting syndicate buys as principal all of the securities of the issuer and assigns them to its members. If any underwriter or any assignee is unable to place any of the securities which it has purchased, those securities remain in that underwriter's or assignee's inventory. Under the second method, an underwriting syndicate seeks to market the securities, and members of the syndicate must purchase for their own accounts any securities of the issuer which they are unable to place. In either of the two methods, the syndicate is responsible for placing all the securities of the issuer, but it is rare that any securities are not placed because the conditions of issuance are determined in accordance with market conditions.

6. Only licensed securities companies may act as underwriters. A company that intends to issue securities generally enters into an underwriting agreement with a primary managing underwriter which will form a syndicate for the floatation of the securities. The terms and conditions on which the primary managing underwriter is required to purchase any shortfall are a matter for contract between the issuer of the securities and the primary managing underwriter. The relationship between an underwriter and its parent or its subsidiary is regulated by rules known as "fire-walls." In the sphere of underwriting, an underwriter must not (within 6 months of becoming an underwriter) sell underwritten securities to a customer which the underwriter knows has received financing for the purchase from the parent or a subsidiary of the underwriter. In addition, an underwriter is prohibited from selling underwritten securities to its parent or subsidiary within 6 months of becoming an underwriter for such securities.

H. Mexico

1. Securities legislation, Ley del Mercado de Valores ("Securities Market Law"), passed in 1975, contains the regulatory framework for the Mexican securities industry and strengthened the regulatory powers of the Mexican Banking and Securities Commission, or Comisión Nacional Bancaria y de Valores ("CNBV"). The CNBV is responsible in general for monitoring the Mexican securities market and, among other things, regulates the registration and subsequent trading of all new issues of shares, bonds and commercial paper, and other securities, and regulates the activities of brokers and of securities depositories and Mexico's only stock exchange, the Bolsa Mexicana de Valores, S.A. de C.V. (the "Mexican Stock Exchange"), a private corporation, the shares of which are owned solely by authorized brokers. All securities purchased by the International Funds in offerings in Mexico pursuant to the requested relief will be admitted for trading or listed, or approved for listing, on the Mexican Stock Exchange.

2. In order to offer securities to the public in Mexico, an issuer must meet certain requirements set forth in the Securities Market Law and by the CNBV as to assets, operating history, management, and other matters, and only securities approved by the CNBV may be listed on the Mexican Stock Exchange. In order to obtain and maintain registration to offer securities in the Mexican Stock Exchange, an issuer must file an application for registration with the securities section of the Registro Nacional de Valores e Intermediarios, the National Registry of Securities and Securities Brokers, which is part of the CNBV. The issuer seeking approval must comply, to the satisfaction of the CNBV, among others, with the following requirements: (i) The characteristics of the securities and the terms of the offering are such that the securities will have significant circulation and will cause no dislocation of the market, (ii) the securities possess, or have the potential for, broad circulation in relation to the size of the market or the issuer; and (iii) the issuer is solvent and has liquidity. Although the Securities Market Law does not set any specific quantitative standards regarding the size of the offering, it does require that every public offering be large enough, in the opinion of the CNBV, to assure investors of secondary market liquidity. As a result, securities must be issued in sufficient quantity to be available to a wide group of offerees.

3. Once the offering price for a security is set, it is disclosed in the prospectus and CNBV circulars require the underwriters to offer the securities to the public at that set price. As a result, publicly offered securities are offered to and purchased by the public investors on the same terms. Although

Mexican law does permit, under certain circumstances, securities to be publicly offered at a premium to market price, the situation rarely occurs. The International Funds will not purchase securities in underwritten offerings at a public offering price that is set at a premium to the current market price.

4. In firm commitment public offerings in Mexico, the obligations of the various underwriters are in practice several and not joint, and each underwriter is obligated to purchase shares from the issuer at a fixed price regardless of the marketing results of the underwriting group. The CNBV, however, can object to the price set by the issuer and underwriters.

I. The Philippines

1. Public offerings of securities in the Philippines are conducted in accordance with regulations promulgated by the Securities and Exchange Commission of the Philippines (the "Philippine SEC") and rules promulgated by the Philippine Stock Exchange. These rules and regulations are intended to ensure that a wide group of offerees will take part in each offering, that the price offered to each of the offerees is the same, and that the securities will be offered to and purchased by unaffiliated persons on the same terms as the other participants in the offering. In particular, the Philippine Stock Exchange requires an issuer to have at least 500 shareholders (subject to certain modifications), have 400 million pesos (about US $15.3 million at current exchange rates) in authorized capital stock, and 100 million pesos (about US $3.8 million at current exchange rates) in subscribed capital stock, all of which subscribed capital stock must be fully paid-up, before its securities may be listed on the Philippine Stock Exchange. No single stockholder should own or control more than 75% of the subscribed capital stock of the issuer. All securities purchased by the International Funds in offerings in the Philippines pursuant to the requested relief will be admitted for trading or listed, or approved for listing, on the Philippine Stock Exchange—Ayala and/or the Philippine Stock Exchange—Pektite.

2. A company wishing to issue securities to the public is required to file a registration statement with the Philippine SEC setting forth information about the company, its business, and its management. Registration statements must be prepared in accordance with principles of full and fair disclosure. The registration statement (which includes the offering prospectus) is required to contain a provision stating the price at which the security is to be sold. A registration statement becomes effective upon the issuance by the Philippine SEC of an order to that effect. Once such an order is issued, the issuer and the underwriter cannot modify the offering price set forth in the registration statement and prospectus and the securities may only be offered pursuant to the stated terms of the prospectus. Accordingly, any securities issued in connection with a public offering in the Philippines will be offered to unaffiliated persons on the same terms as any other participant in the offering.

3. Public offerings are underwritten by investment houses and commercial banks with expanded commercial banking authority. If the securities to be publicly offered are to be listed on the Philippine Stock Exchange, approximately 50% of the company's subscribed shares (or shares offered to be subscribed through an underwriter) are offered to the public through the Philippine Stock Exchange for distribution to the public. This ensures that each Philippine offering to be listed on the Philippine Stock Exchange is made available publicly to a wide group of offerees.

4. Although underwriting commitments differ from issue to issue in the Philippines, generally all of Philippine public offerings are conducted on a bookbuilding with soft underwriting basis. Under this type of commitment, the issuer is responsible for selling the shares (through the underwriting syndicate), but the lead underwriter or underwriters commit to purchase any unsold shares at the completion of the initial offering period. The Philippine Stock Exchange requires such a commitment by the underwriter as a condition to listing on the Philippine Stock Exchange.

J. South Africa

1. There are three exchanges in South Africa, namely, the Bond Market Exchanges ("BME"), the South African Futures Exchange ("Safex") and the Johannesburg Stock Exchange ("JSE"). Each is self-regulating within the parameters of the relevant acts. Securities purchased by the International Funds in securities offerings in South Africa pursuant to the requested relief will be admitted for trading or listed, or approved for listing, on the BME or the JSE.

2. There are three possible listings on the JSE: the Main Board, the Development Capital Market ("DCM") or the Venture Capital Market ("VCM"). The DCM was created in 1984 and designed to encourage the growth of small businesses. Companies listed on the DCM, and particularly the VCM, are subject to less stringent requirements for listing, and accordingly, a higher degree of risk is normally associated with such companies. Once DCM and VCM companies achieve the requirements for a Main Board listing, they may apply for a transfer. Both the DCM and the VCM require a shorter or no profit history, a smaller and narrower distribution of shares to the public, and a lower minimum initial price of shares. The requirements for listing equity securities on the Main Board of the JSE include (i) a minimum subscribed capital, excluding revaluations of assets, of at least R2 million (approximately US $459,242 at current exchange rates) in the form of not less than one million shares in issue; (ii) a satisfactory profit history for the preceding three years, with a current audited level of earnings of at least R1 million (approximately US $229,621 at current exchange rates), before taxation; (iii) 30% of the first million shares (and an agreed percentage of the balance) to be held by the public; (iv) the number of public shareholders to be at least 300; and (v) the minimum initial price of shares to be no less than 100 cents per share. Despite the requirement for a three-year history of trading for a Main Board listing, mining ventures generally go directly to the Main Board upon delivery to the JSE of a satisfactory geological report, evidence of proven reserves, and appropriate undertakings relating to minimum capital structure.

3. The JSE introduced a new rule in July 1995 to promote broader public ownership of shares. It is now a continuing obligation that at least 10% of a company's shares be held by the public (other than institutions) at the time of listing.

4. New equity shares are generally underwritten in South Africa by insurance companies, large pension funds, or merchant banks. Typically, underwriters in public offerings of securities will commit to subscribe for any shares not purchased in the offering. When a public issue is underwritten, the structure and mechanics thereof usually take the following form. The potential issuer will first approach a financial institution such as a merchant bank which will act as agent on behalf of the issuer (the "Agent"). The Agent itself may arrange for the underwriting of the issue in total or in part. Pursuant to an underwriting agreement, the primary underwriters will be obligated to purchase at a fixed price all of the securities being offered and which are not taken up by others under the offering. A broker is usually engaged to arrange for the sub-underwriting of the primary underwriting. Typically, the sub-underwriters will irrevocably subscribe for a minimum portion of the issue at a fixed price. The primary underwriters and sub-underwriters commitments will be subject to certain conditions precedent typically related to the delivery by the issuer of appropriate offering documents, the admission of the securities to listing on the JSE (if the issuer is a listed company), and the compliance by the issuer with The South Africa Companies Act, 1973 provisions relating to offering prospectuses. The primary underwriters fully assume risk of the Agent of finding sufficient sub-underwriters for the securities underwritten. As compensation, the primary underwriters and sub-underwriters receive a fee which is defined as a percentage of the offering price to the public of the securities purchased thereby. The Agent will also receive a fee directly from the issuer. Such "firm commitment" underwriting is the most common structure used by companies listed on the JSE.

K. Sweden

1. To qualify for a listing on the Swedish Stock Exchange's ("SSE's") "A" list (comprising the officially listed companies), a company must (i) have at least 3 years of audited financial statements; (ii) meet the SSE's requirements concerning financial stability, organization and dissemination of information; (iii) must publish an SSE listing prospectus; and (iv) at least 25% of the share capital and no less than 10% of the voting power must be distributed in the market among no fewer than 1,000 investors, each with a holding the market value of which is half a base amount (equivalent to approximately SEK 17,850 or US $2,644 at current exchange rates).

2. The SSE also provides an over-the-counter quotation facility for unlisted securities known as the "OTC" or "O" list. To qualify for quotation on O lists, a company must (i) publish a listing prospectus; (ii) have a share capital of at least SEK 2 million (approximately US $296,222 at current exchange rates) and total equity of at least SEK 4 million (approximately US $592,443 at current exchange rates); and (iii) at least 10% of the share capital must be distributed to the market among no less than 300 investors, each with a holding of at least one quarter of a base amount in market value but not exceeding 10% of the total equity.

3. The Swedish Companies Act (1975:1385) (the "Swedish Companies Act") requires that companies which publicly offer or otherwise invite a substantial number of persons to acquire shares of subscription rights in the company must prepare a prospectus, if the sum total of the amounts payable under the offer amounts to SEK 300,000 (approximately US $44,443 at current exchange rates) or more. In addition, the contents of prospectuses are subject to recommendations of the Swedish Industry and Commerce Stock Exchange Committee and to detailed regulations issued by the Financial Supervisory Authority.

4. Under the Swedish Companies Act, a prospectus must contain, among other things, the balance sheets, the income statements, and a summary of the management reports for the last three financial years for which annual reports and auditor's reports have been rendered; a description of the company's and any group's operations, supply or raw materials, products, and places of business as well as its position in the industry; and a description of the distribution of ownership of shares and voting power in the company.

5. In general, securities of Swedish companies have historically traded immediately after their public offering at substantial premiums over the initial offering price. One consequence of this pattern is that offerings for such securities are typically oversubscribed during a "red herring" offering phase. As a result, the practice in Sweden is that underwriting commitments are not firm since all of the securities offered will have been already placed. Applicants have no reason to believe that securities of companies in Sweden will not in the future trade at a premium over the initial offering price. In addition, offerings in Sweden that are not oversubscribed are rare, and applicants have no reason to believe that oversubscribed securities offerings will not continue in the future.

L. Taiwan

1. All securities purchased by the International Funds in offerings in Taiwan pursuant to the requested relief will be admitted for trading or listed, or approved for listing, on the Taiwan Stock Exchange (the "TSE") and/or the Republic of China OTC Securities Exchange.

2. Securities traded on the TSE are divided into three categories: "A", "B" and "C", depending on years of establishment of the issuer, capital, profitability and the extent of share distribution. To meet Category A listing criteria, a company must, among other things, have minimum paid-up share capital of at least TWD 600 million (approximately US $22,081,555 at current exchange rates) for the two most recent fiscal years, and have at least 2,000 registered shareholders of which more than 1,000 hold 1,000 to 50,000 shares and the total holdings of such shareholders is more than 20% of the total issued and outstanding shares of 10,000,000 shares. To meet Category B listing criteria, a company must, among other things, have minimum paid-up share capital of at least TWD 300 million (approximately US $11,040,777 at current exchange rates) for the two most recent fiscal years, and have at least 1,000 registered shareholders of which more than 500 hold 1,000 to 50,000 shares and the total holdings of such shareholders is more than 20% of the total issued and outstanding shares or 10,000,000 shares. To meet Category C listing criteria, a company must, among other things, obtain classification from the relevant central competent authority as a "qualified science technology company," and have paid-up share capital of at least TWD 200 million (approximately US $7,360,518 at current exchange rates).

3. The Taiwan Securities and Exchange Commission (the "Taiwan SEC") supervises and controls all aspects of securities market operations. In general, listed companies are required to submit to the Taiwan SEC a prospectus in a standard format prescribed by the Taiwan SEC on commencement of an initial public offering and upon an increase of capital stock. The International Funds will not purchase securities in public offerings in Taiwan unless a prospectus relating to such securities is available. A prospectus must include, among other information, company history, organization, business scope and facilities available, capital structure and share-distribution, records of corporate bond issues, plans and business prospects, and audited financial statements for the five most recent years.

4. All listed companies on the TSE must enter into a listing agreement with the TSE, which is a standard form agreement adopted by the TSE and approved by the Taiwan SEC. Listed companies are required to report promptly any material events which may affect the business or affairs of the company, such as a corporate reorganization. In addition,the Taiwan SEC may require issuers to make financial and business reports at any time after the public issuance of securities, and the Taiwan SEC may, if deemed necessary, conduct direct investigations on the issuers' financial or business conditions.

5. Underwriting can be done by securities companies, banks, and trust and investment companies that have obtained an underwriter license from the Taiwan SEC. Because of the recently implemented rules, underwriting can be conducted only on firm commitment basis.[2] The underwriter and issuer must enter into an underwriting agreement which sets forth, among other things, the underwriting period, the number of securities to be underwritten and their price, and the underwriting fees and disbursements. The underwriter must ensure that the prospectus prepared in accordance with the regulations of the Taiwan SEC be delivered to each subscriber. The subscription price may not be changed during the underwriting period, and the subscription price must be paid in full in one lump sum payment. Upon expiration of the underwriting period, the underwriter must report to the Taiwan SEC the status of the underwriting, including the number of securities which have been sold in the underwriting period and the number of securities which have been acquired by the underwriter, if any.

M. Thailand

1. The Stock Exchange of Thailand ("SET") is the only official stock exchange in Thailand. Shares which are not listed on the SET are sometimes traded on the informal over-the-counter ("OTC") market (the "Bangkok Stock Dealing Centre"). Currently, the Bangkok Stock Dealing Center is principally used for the trading of unlisted shares which are expected to be quoted on the SET in the near future. All securities purchased by the International Funds in offerings in Thailand pursuant to the requested relief will be admitted for trading or listed, or approved for listing, on the SET and/or the Bangkok Stock Dealing Center.

2. The Thailand SEC is charged with formulating policies to promote and develop, as well as to supervise, matters concerning securities, securities businesses, the securities exchange, OTC centers and related businesses, organizations related to the securities business, the issue or offer of securities for sale to the public, acquisition of securities for business takeovers, and prevention of unfair securities trading practices. Under The Securities and Exchange Act B.E. 2535 (A.D. 1992) (the "SEC Act"), a public offering of newly issued securities is permitted only when the issuer has received approval from the Thailand SEC to make the offering and a registration statement in the prescribed form, together with a draft prospectus, has become effective. Upon effectiveness, sales activities and distribution of the prospectus may begin. Sales activities must be completed within six months. In addition, the issuer must meet qualitative standards under Thailand SEC regulations.

3. While primary responsibility for the regulation of new securities issues has shifted to the Thailand SEC, the SET continues to operate the stock exchange as an exchange authorized under the SEC Act and is responsible for listing approvals, once the SEC public offering approval, prospectus, and related requirements have been met and the paid-up capital reflecting the shares offered in the relevant offering has been registered with the Ministry of Commerce. The SET is responsible, among other things, for processing all listing applications, for ensuring that disclosure requirements for listed companies are met and for monitoring all trading activities in respect of listed securities.

4. The SEC Act provides for only one category of securities to be listed and traded on the SET ("listed securities"). Under the regulations promulgated by the SET, existing publicly traded securities must be converted into listed securities and listed companies must comply with the listing requirements within three to five years, depending on the nature and locality of such company. Under the current SET listing regulations, the applicant must have a main business which is economically and socially beneficial to the country. Approval for listing of shares is granted after the public offering thereof is approved by the Thailand SEC and the shares are distributed to a specified number of small shareholders. The applicant must also be able to show that its business operations are sound and consistent with the nature and type of business, and that it is in a stable and healthy financial condition with sufficient working capital. The business of the applicant must have operated continuously under substantially the same management for not less than three years prior to the submission of the listing application. The applicant must also have the net profit after tax of Baht 50,000,000 (approximately US $1,981,493 at current exchange rates) is aggregate for the last three years prior to the submission of the listing application.

5. Underwriting of securities may be conducted either on a firm commitment or best efforts basis. In practice, however, substantially all underwritings are done on a firm commitment basis. Under the Thailand SEC notification, issuers of shares shall arrange for the securities underwriter to underwrite all shares of the issue. Generally, one or more securities underwriters will enter into an underwriting agreement with an issuer to underwrite the securities issue on a several basis. In rare cases, securities may be underwritten on a non-several (or joint) basis. Applicants submit that a firm commitment underwriting conducted on such a basis is still a firm commitment underwriting for purposes of rule 10f–3(a)(3), the only difference being that an underwriter may be liable for the entire amount of the offering, not just its own share.

Applicants' Legal Analysis

1. Section 10(f) of the Act prohibits a registered investment company from purchasing securities from an underwriting syndicate if, as relevant here, the investment company's investment adviser is an affiliated person of a principal underwriter in the syndicate.

2. Section 2(a)(3) of the Act defines the term "affiliated person" to include, among other things, any entity directly or indirectly controlling, controlled by, or under common control with another entity. Section 2(a)(9) of the Act generally defines the term "control" to mean the power to exercise a controlling influence over the management or policies of a company. Section 2(a)(9) further provides that any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control the company. Based on the complex ownership structure of the various direct and indirect subsidiaries of Fleming Holdings which may participate as principal underwriters in international underwritings, each such subsidiary is or may be deemed to be controlled by or under common control with Fleming Holdings for purposes of section 2(a)(3). Price-Fleming also may be deemed to be controlled by Fleming Holdings for purposes of section 2(a)(3) of the Act. As a result, the entities that make up the Affiliated Syndicate and Price-Fleming may be deemed to be under the common control of Fleming Holdings, making the Affiliated Syndicate entities and Price-Fleming affiliated persons of each other. Thus, the International Funds, which are advised or sub-advised by Price-Fleming, are prohibited from purchasing securities from any underwriting syndicate in which one or more of the entities in the Affiliated Syndicate participates as principal underwriter.[3]

3. Notwithstanding the section 10(f) prohibition, the section provides that the SEC may exempt conditionally or unconditionally any transaction or classes of transactions from any of the provisions of section 10(f) if and to the extent that the exemption is consistent with the protection of investors. Applicants believe that the granting of the requested exemption is consistent with the protection of investors.

4. Rule 10f–3 under the Act provides that purchases of securities by a registered investment company otherwise prohibited by section 10(f) are exempt from such section if certain specified conditions are met. Applicants represent that purchases of foreign securities which would not be permitted but for the requested relief will be made in accordance with all the terms of rule 10f–3, except paragraph (a)(1) of the rule.

5. Applicants state that the Securities Act registration requirement set forth in rule 10f–3 was imposed to ensure that investment companies purchased marketable securities, at the public offering price (which ordinarily would not exist absent registration), that the securities were issued more or less in the ordinary course of business, and that adequate disclosure is made with respect to the securities to be purchased. Applicants believe that the effect of the exemption sought is to substitute for the Securities Act registration requirement (i) a condition requiring that the securities at issue be purchased in public offerings conducted in accordance with the laws of the Countries, (ii) a condition requiring that the securities at issue will be either (a) admitted for trading on one or more of the official stock exchange(s) or regulated unlisted market(s) in the relevant Country, or (b) approved for admission to one or more of the relevant Country's official exchange(s) or regulated unlisted market(s), but not yet admitted or listed, and (iii) a condition requiring that an issuer's audited financial statements for two years prior to the offering will be available to prospective purchasers. Applicants believe that the availability of such financial statements, as well as other disclosure provided by issuers in accordance with the various securities laws of each Country (including listing or admission requirements), would provide Price-Fleming with sufficient information to make informed decisions on behalf of the International Funds. The audited financial statements, together with the public offering and listing (or admission) requirements, also would provide some assurance that the securities being purchased are issued more or less in the "ordinary course" of business. Similarly, the financial statements and public offering and listing (or admission) requirements assure investors that the securities being purchased are issued in compliance with regulatory requirements substantially similar to those imposed by United States securities laws.

6. Applicants represent that the International Funds will only participate in underwritings in Countries in which (i) it is likely that a wide group of offerees will participate; (ii) the price offered to such offerees will consist of a single price (except for any discounted price offered to certain specified groups within a particular locality or jurisdiction (i.e., employees of the issuer or the government, citizens of the issuer's home country)); and (iii) the securities will be offered to and purchased by unaffiliated persons on the same terms as other participants in the offerings. Moreover, applicants represent that the International Funds will not purchase securities in underwritten offerings in which the public offering price is set at a premium to the current market price.[4] Applicants believe that the foregoing limitations will further address the SEC's concern that securities purchased by the International Funds will be purchased at the public offering price and more or less in the ordinary course of business.

7. Applicants represent that they will comply with the firm commitment underwriting requirement of paragraph (a)(3) of rule 10f–3. Accordingly, the types of underwritings in which the International Funds will be permitted to invest will be firm commitment underwritings and certain other types of underwriting arrangements specific to a particular Country, the practical realities of which effectively satisfy the firm commitment underwriting requirement.

8. The typical underwriting arrangements involved in securities underwritings in India, Indonesia, Mexico, South Africa, and Taiwan, as well as all underwriting commitments in Japan other than bookbuilding with soft underwriting, are firm commitment. Underwriting arrangements in Brazil and Thailand may be either firm commitment or a variation of best efforts underwritings; however, applicants are seeking relief with respect to participation in underwritings in Brazil and Thailand only to the extent necessary to purchase securities that are the subject of firm commitment underwritings.

9. The public offerings in Australia, France, Ireland and the Philippines, as well as certain public offerings in Japan, are underwritten using "bookbuilding with soft underwriting" or "standby firm commitment underwriting," which is a form of underwriting in which the underwriter makes a firm commitment to purchase or procure purchasers for any portion of the offered securities that remains unsold to the public after a stated subscription period. Applicants believe that the practical realities of bookbuilding with soft underwriting as conducted in the securities markets of Australia, France, Ireland, the Philippines, and Japan effectively satisfy the firm commitment underwriting requirement of paragraph (a)(3) of rule 10f–3 since the primary underwriters are contractually committed, on a firm basis, to purchase all the securities being offered, and this obligation is reduced only to the extent that the securities which the primary underwriters are required to purchase pursuant to the underwriting agreement are actually sold to others.

10. In Sweden, there is no mechanism by which underwriters bind themselves to purchase all of the securities offered as in a firm commitment underwriting in the United States. In practice, however, underwritings in Sweden are not undertaken unless all of the offered securities are placed. Typically, offerings of securities of companies

[2] Article 76 of the Securities and Exchange Law of Taiwan (the "SEL") provides that underwriters may choose to conduct underwritings on either a firm commitment or best efforts basis. Pursuant to its rulemaking authority, the Taiwan SEC has promulgated a rule which provides that underwriters can only offer securities to the public through firm commitment underwritings. The inconsistency between the SEL and the recently adopted rules will be resolved when the Taiwan legislature amends the SEL to limit public underwritings to firm commitment underwritings. The amendment is expected to be passed in the near future. In practice, the result has already been obtained since underwritings are conducted only on a firm commitment basis.

[3] T. Rowe Price, rather than by Price-Fleming, advises certain funds in the T. Rowe Price group of funds (the "Domestic Funds"). T. Rowe Price is an affiliated person of Price-Fleming and, in turn, is or may be deemed to be an affiliated person of an affiliated person of each of the Affiliated Syndicate entities (a "second-tier affiliate"). Accordingly, purchases of securities by the Domestic Funds during the existence of an underwriting syndicate in which one or more of the Affiliated Syndicate entities serves as principal underwriter are not prohibited by section 10(f), and, therefore, relief is not requested herein in connection with such transactions.

[4] As noted above, securities in foreign underwritings may be offered at a discount to certain specified groups within a particular locality or jurisdiction. The International Funds typically would not be eligible to purchase securities at the discounted price. As a result, the Funds would purchase securities in the offering at a separate fixed public offering price which is higher than the discounted price but which does not constitute a premium.

based in Sweden are oversubscribed. Applicants state that with respect to oversold offerings, a reasonable inference may be drawn that the underwriter is unlikely to have any improper incentive to cause an affiliated company to purchase the securities that are the subject of such offerings.[5] Applicants submit that the practical realities of oversold offerings in Sweden effectively satisfy the firm commitment requirement of paragraph (a)(3) of rule 10f–3.

11. Applicants represent that the board of each International Fund will adopt internal procedures which are reasonably designed to provide that the conditions of the requested order are complied with with respect to the purchase of securities subject to section 10(f). In addition, the boards will determine, at least quarterly, that all purchases made during the preceding quarter were made in compliance with such procedures and will approve such changes to the procedures as such boards deem necessary.

12. Applicants believe that the representations and conditions of the requested order are at least as protective of the interests of investors in the International Funds as are the provisions of paragraph (a)(1) of Rule 10f–3 which require Securities Act registration. Furthermore, applicants believe that the representations and conditions will act to ensure that purchases of foreign securities by the International Funds through the Affiliated Syndicate are made in a manner consistent with the underlying policies of section 10(f) and rule 10f–3.

Applicants' Conditions

Applicants agree that any order granting the requested exemptive relief will be subject to the following conditions:

1. Applicants will comply with rule 10f–3, except for paragraph (a)(1).

2. All foreign securities purchased under circumstances otherwise subject to section 10(f) will be purchased in public offerings conducted in accordance with the applicable laws of the relevant Country and with the rules and regulations of the stock exchanges and regulated unlisted market(s), if any, in such Country, as applicable.

3. All foreign securities purchased under circumstances otherwise subject to section 10(f) will be either (i) admitted for trading on one or more of the official stock exchange(s) or regulated unlisted market(s) in the relevant Country, or (ii) approved for admission to one or more of the relevant Country's official exchange(s) or regulated unlisted market(s) but not yet admitted or listed.

4. All subject foreign issuers will make available to prospective purchasers financial statements, audited in accordance with the accounting standards of the relevant Country, for at least the two years prior to purchase.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17502 Filed 7–0–96; 8:45 am]

BILLING CODE 8010–01–M

[5] *See Investment Company Acquisition of Securities Underwritten by an Affiliate of that Company*, Investment Company Act Release No. 14924 (Jan. 29, 1986).

[Release No. 34–37398; File No. SR–Phlx–96–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., To Establish a Firm Facilitation Exemption

July 2, 1996.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 3, 1996, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx is proposing to adopt a firm facilitation exemption from position and exercise limits applicable to both index and equity options for up to two times above the existing limits.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx is proposing to establish a firm facilitation exemption[3] for all non-multiply-listed Exchange options by adding new Commentary .08 to Exchange Rule 1001 and new Commentary .02 to Exchange Rule 1001A.[4] The exemption would be available to equity and index options, including customized options.[5]

Under the proposal, the procedures in Exchange Rule 1064(b) for crossing a customer order with a firm facilitation order must be followed. Moreover, only after all market participants in the trading crowd have been given a reasonable opportunity to accept the terms, may the representing Floor Broker cross all or any remaining part of such order in accordance with the rule. According to the Phlx, the purpose of this procedure is to ensure that the trading crowd cannot first facilitate the order before resorting to a position limit exemption for the facilitating firm. Thus, only after it is determined that the trading crowd will not fill the order may the firm's customer order be crossed with the firm's facilitation order pursuant to the exemption.

The Phlx notes that the firm facilitation provision will be in addition to and separate from the standard limit, as well as other exemptions available under Exchange position limit rules. For example, if a member organization decides to facilitate customer orders in ABC options, which is assumed not to be multiply-listed and also assumed to have a 10,500 contract standard position limit, the member organization may qualify for a firm facilitation exemption of up to twice that limit (21,000 contracts), as well as an equity hedge exemption of up to twice the standard limit (21,000 contracts), in addition to the 10,500 contract standard limit. If both exemptions are allowed, the facilitation firm may hold or control a combined position of up to 52,500 ABC contracts on the same-side of the market.[6]

The Phlx notes, however, that the firm facilitation exemption would not presently extend to all options listed on the Exchange. Rather, until coordinated intermarket procedures are developed, the firm facilitation exemption will be extended only to non-multiply-listed options.

Under the proposal, the facilitation exemption requires prior approval from two Floor Officials and submission of a Firm Facilitation Form.[7] Although approval may be granted on the basis of verbal representations, the facilitation firm is required to furnish to the Market Surveillance Department, within two business days or such other time period designated by the Exchange,[8] appropriate forms substantiating the basis for the exemption.

The Exchange notes, however, that the facilitation firm need not have the customer order in hand when requesting the exemption, as long as the exemption is properly used to facilitate a customer order pursuant to the rule. Because the provision states the position "will facilitate" a customer order, a firm approaching the limit may request an exemption prior to receiving an order, in response to customer interest.

Within five business days after the execution of a facilitation exemption order, a facilitation firm must hedge all exempt option positions that have not previously been liquidated, and furnish to the Market Surveillance Department documentation reflecting the resulting hedged positions. In meeting this requirement, and to ensure fair and orderly markets, the facilitation firm must establish and liquidate its own as well as its customer's option and stock positions (or their equivalent) in an orderly fashion, and not in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes.

In addition, a facilitation firm is not permitted to use the facilitation exemption with a view toward taking advantage of any differential in the price between a group of securities and an overlying stock index option. According to the Phlx, this prohibition against index arbitrage should prevent undue market impact on the options or any underlying stock positions by preventing the increased positions from being used in a leveraged manner. Moreover, to facilitate surveillance and to ensure an accurate audit trail, the facilitation firm is required to promptly provide to the Exchange any information or documents requested concerning the exempted and hedged positions, to furnish copies of the relevant order tickets to the market Surveillance Department on the day of execution, and to notify the Exchange of any material change in the exempted option position or the hedge.

The Exchange is also proposing several minor changes to its rules. First, the introductory paragraph to Exchange Rule 1001 is to be amended to list the 20,000 and 25,000 contract position limit tiers, which were inadvertently omitted when Commentary .05(a) was amended to adopt these limits.[9] Second, Exchange Rule 1064(b) is to be amended to eliminate the incorrect limitation to "equity" options, as this provision applies to index options as well. Third, the equity option hedge exemption contained in Commentary .07 to Exchange Rule 1001 is to be amended to state that the exemption is available up to "two times above" existing limits, as opposed to "three times" the limits, as currently stated. The maximum size of the exemption is not being changed, just rephrased in terms of the excess number of contracts above the applicable position limit. In this manner, the provision will be consistent with the index option hedge exemption of the Phlx as well as other exchanges.[10] Fourth, the equity option hedge exemption is to be amended to state that it is separate from any other exemption available under Exchange rules.

2. Statutory Basis

For these reasons, the Phlx believes that the proposed rule change is consistent with Section 6(b) of the Act in general, and with Section 6(b)(5) in particular,[11] in that it is designed to facilitate transactions in securities, to protect investors and the public interest, and will accommodate the needs of investors and other market participants without substantially increasing concerns regarding manipulation and other trading abuses.

B. Self-Regulatory Organization's Statement on Burden on Competition

The self-regulatory organization does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that a facilitation trade is defined as a transaction that involves crossing an order of a member firm's public customer with an order for the member firm's proprietary account.

[4] The Exchange notes that its rule filing is similar to proposals which the Commission has recently approved for other options exchanges. *See* Securities Exchange Act Release Nos. 36964 (March 13, 1996), 61 FR 11453 (March 20, 1996) (File No. SR–CBOE–95–58); 37178 (May 8, 1996), 61 FR 24523 (May 15, 1996) (File No. SR–PSE–96–10); 37179 (May 8, 1996), 61 FR 24520 (May 15, 1996) (File No. SR–Amex–96–11).

[5] *See* Securities Exchange Act Release No. 37048 (March 29, 1996), 61 FR 15549 (April 8, 1996) (File No. SR–Phlx–96–06).

[6] In addition, exercise limits will continue to correspond to position limits, such that investors may exercise the number of contracts set forth as the position limit as well as those contracts exempted by this proposal, during five consecutive business days. *See* Exchange Rules 1002 and 1001A.

[7] According to the Phlx, the purpose of the Firm Facilitation Form is to detail the terms of the customer order and the resulting facilitation, as well as to ensure compliance with the exemption. In addition, pursuant to the existing requirements of Exchange Rule 1064(b), facilitation orders must be marked with an "F" prior to executing facilitating trades. Lastly, Firm Facilitation Forms will be made available at the Exchange's Surveillance Post.

[8] Telephone Conversation between Edith Hallahan, Special Counsel, Regulatory Services, Phlx, and Matthew S. Morris, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on June 19, 1996.

[9] *See* Securities Exchange Act Release No. 36409 (October 23, 1995), 60 FR 55399 (October 31, 1995) (File No. SR–Phlx–95–71).

[10] *See* Phlx Rule 1001A, Commentary .01. *See also* CBOE Rule 4.11, Interpretations and Policies .04(b).

[11] 15 U.S.C. 78f(b)(5) (1988).

available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–96–19 and should be submitted by July 29, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17501 Filed 7–9–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before September 9, 1996.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S.W. Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: "Disaster Business Loan Application".

Type of Request: Extension of a Currently Approved Collection.

Description of Respondents: Small Business.

Annual Responses: 10,500.

Annual Burden: 31,500.

Comments: Send all comments regarding this information collection to Bridget Dusenbury, Disaster Resource Specialist, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, S.W. Suite 6050 Washington, D.C. 20416. Phone No.: 202–205–6734.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 96–17518 Filed 7–9–96; 8:45 am]

BILLING CODE 8025–01–M

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Interested persons are invited to submit comments on or before August 4, 1996.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to the Office of Management and Budget, New Executive Office Building, Room 10202, Attention DOT/FAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, S.W.; Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1995, requires that agencies prepare a notice for publication in the **Federal Register**, listing information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 8, 1996 [FR 61, page 15557].

Title: Indirect Air Carrier Security, FAR 14 Part 109

OMB Control Number: 2120–0505

Abstract: FAR 14 Part 109 sets forth procedures to be used by indirect air carriers in carrying out their responsibilities involving the protection of persons and property against acts of criminal violence, aircraft piracy, and terrorist activities in the forwarding of package cargo by passenger aircraft. *Need:* FAR 109 prescribes aviation security rules governing each person (including freight forwarder and any cooperatives shippers' association) engaged, or who intends to be engaged indirectly in the air transportation of package cargo that is intended for carriage aboard a passenger-carrying air carrier aircraft inside the United States.

Respondents: The respondents are an estimated 2,500 indirect air carriers.

Frequency: On occasion.

Burden: Total annual burden hours requested: 641.

Issued in Washington, DC on July 3, 1996.

Phillip A. Leach,

Information Clearance Officer, United States Department of Transportation.

[FR Doc. 96–17569 Filed 7–9–96; 8:45 am]

BILLING CODE 4910–13–P

RTCA, Inc., Special Committee 184; Minimum Performance and Installation Standards for Runway Guard Lights

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. Appendix 2), notice is hereby given that the Special Committee 184 meeting, announced at 61 FR 32473 (June 24, 1996), has been changed from July 10 to July 30, 1996. The meeting, starting at 9:30 a.m., will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Administrative Announcements; (2) Chairman's Introductory Remarks; (3) Review and Approval of Meeting Agenda; (4) Review and Approval of Minutes of the Previous Meeting; (5) Review Comments Received from Proposed Final Draft; (6) Complete Editorial and Comment Cleanup on Proposed Final Draft; (7) Other Business; (8) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 5, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–17597 Filed 7–9–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In June 1996, there were five applications approved. Additionally, three approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of 49 U.S.C. 40117 (Pub. L. 103–272) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Savannah Airport Commission, Savannah, Georgia.

Application Number: 96–02–C–00–SAV.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total Net PFC Revenue Approved in This Application: $1,439,445.

Estimated Charge Effective Date: December 1, 2015.

Estimated Charge Expiration Date: June 1, 2016.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Savannah International Airport.

Brief Description of Projects Approved for Collection and Use: Helipad, Reconstruct runway 9/27 and Category II lights, North and south perimeter fences.

Brief Description of Withdrawn Project: Revise master plan.

Determination: The public agency withdrew this project by letter dated May 31, 1996.

Decision Date: June 4, 1996.

FOR FURTHER INFORMATION CONTACT: Catherine M. Nelmes, Atlanta Airports District Office, (404) 305–7148.

Public Agency: City of Eugene, Oregon.

Application Number: 96–02–U–00–EUG.

Application Type: Use PFC revenue.

PFC Level: $3.00.

PFC Revenue Approved for Use in This Application: $1,850,000.

Charge Effective Date: November 1, 1993.

Estimated Charge Expiration Date: December 1, 1998.

Class of Air Carriers Not Required To Collect PFC's: No change from previous approval.

Brief Description of Project Approved for Use: Land acquisition, phase I.

Date: June 25, 1996.

FOR FURTHER INFORMATION CONTACT: Carolyn Read, Seattle Airports District Office, (206) 227–2661.

Public Agency: Port of Port Angeles, Port Angeles, Washington.

Application Number: 96–03–C–00–CLM.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total Net PFC Revenue Approved in This Application: $83,058.

Estimated Charge Effective Date: September 1, 1996.

Estimated Charge Expiration Date: June 1, 1998.

Class of Air Carriers Not Required to Collect PFC's: Air taxis.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at William B. Fairchild International Airport.

Brief Description of Projects Approved for Collection and Use: Rehabilitation of the east end of runway 8/26, Index A aircraft rescue and firefighting (ARFF) truck.

Brief Description of Disapproved Project: Airport access road.

Determination: Disapproved. The public agency received authorization from the FAA to impose a PFC for use on the design and construction of an airport access road in the public agency's first PFC application. In a letter dated November 9, 1994, the public agency withdrew the construction of the airport access road from the first PFC because the schedule for construction showed that the construction would not begin within the regulatory timeframe. In that letter, the public agency acknowledged that the FAA would consider the airport access road construction project for inclusion in another PFC decision until the project had been implemented. The schedule submitted with the public agency's 96–03–C–00–CLM application shows that the project has not been implemented, therefore, the FAA disapproved the project.

Decision Date: June 25, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Vargas, Seattle Airports District Office, (206) 227–2660.

Public Agency: City of La Crosse, Wisconsin.

Application Number: 96–02–00–LSE.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total Net PFC Revenue Approved in this Application: $605,000.

Estimated Charge Effective Date: July 1, 1997.

Estimated Charge Expiration Date: October 1, 1999.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Concurrent Authority To Impose and Use: ARFF vehicle replacement, PFC administrative costs.

Brief Description of Withdrawn Project: Runway 13/31 safety improvements.

Determination: The public agency withdrew this project by letter dated June 7, 1996.

Decision Date: June 25, 1996.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Minneapolis Airports District Office, (612) 725–4366.

Public Agency: City of Chicago, Department of Aviation, Chicago, Illinois.

Application Number: 96–05–C–00–ORD.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Application: $386,444,323.

Estimated Charge Effective Date: July 1, 1999.

Estimated Charge Expiration Date: January 1, 2004.

Class of Air Carriers Not Required To Collect PFC's: Air taxi operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Chicago O'Hare International Airport.

Brief Description of Projects Approved for Use of PFC Revenue:

Taxiway 14L/32R rehabilitation, Terminal apron pavement rehabilitation—common,

Taxiway-north/south rehabilitation,
Airfield drainage improvements,
Taxiway-inner bridge rehabilitation,
Taxiway-9L/27R rehabilitation,
Taxiway-14R/32L rehabilitation,
Taxiway-4R/22L rehabilitation,
Taxiway-9R/27L rehabilitation,
Terminal #2 upgrade,
Terminal #3 upgrade,
Terminals #2 and #3 upper level and elevator extension,
Heating and refrigeration emergency turbine generators,
Heating and refrigeration domestic hot water converters replacement,
Heating and refrigeration water pressure study implement,
Roadway-Zemke/Coleman improvements.

Brief Description of Projects Approved for Collection and Use:

Elevated parking structure (EPS) basement corridors,
Public toilets rehabilitation,
Interior signage,
Terminal road signage,
Additional signage,
East-west baggage roadway,
Retaining wall replacement,
Safety and security system,
Terminal 2 security,
Guard Post 11 relocation,
Relocate road control system,
Cargo taxiway rehabilitation,
Airside access service road-north,
Guard Post #1 expansion,
Rehabilitation of ditchbridge,
Old Mannheim Road improvements,
Road signs-phase 4,
Terminal 5 roadway,
Airport transit system station,
Airfield emergency power-south vault,
Runway weather sensors,
Runway 14L/32R in-pavement light replacement,
Runway 14R/32L fillet,
Centerline lights for 27R high speed taxiway,
Hold pad runway 27L,
Runway 4R/22L rehabilitation,
Taxiway guidance signs,
Service water system,
Taxiway 3 security,
Terrazzo floor replacement,
Fire door delayed egress security,
EPS pedestrian corridors/escalator rehabilitation,
North-south pumping stations and tunnels,
Airfield emergency power-north vault,
In-pavement runway edge lights,
Terrazzo floor repair-Concourse E/F stem,
Radio trunking system,
Ground run-up enclosure,
High Temperature water system improvements,
Runway 14L/32R shoulder and edge lighting reconstruction,
Hangar area service road rehabilitation,
Acquisition of four tow trucks,
Upgrade airside perimeter guard posts,
Acquisition of miscellaneous equipment,
Acquisition of 100-foot tower ladder vehicle,
Residential insulation.

Brief Description of Projects Approved in Part for Collection and Use: Noise planning.

Determination: Approved in part. Three elements of this project are eligible under Airport Improvement Program (AIP) criteria, paragraph 401(f) of FAA Order 5100.38A, AIP Handbook, and are approved. The remaining three elements have been determined ineligible under AIP criteria and, therefore, are also PFC ineligible.

School soundproofing.

Determination: Approved in part. This project is eligible under specific PFC criteria, § 158.15(b)(5). However, the public agency has not submitted sufficient documentation to support eligibility for inclusion of the following three elementary schools in the school soundproofing program: Edison, Field, and Medinah. Therefore, these three schools are not PFC eligible at this time. Also, the following schools have been included in a 1996 AIP grant for school soundproofing: St. Paul Lutheran and St. John Vianney. Therefore, these two schools are not eligible for full PFC participation.

Brief Description of Disapproved Projects: Alert hangar demolition.

Determination: Disapproved. The public agency indicated, in their justification for this project, the demolition allowed the parcel to be used as a staging area for the runway 14L/32R project. FAA review of the runway 14L/32R project indicates other areas were available for use as a staging area and, therefore, demoliation of the alert hangar was not justified. Further, the public agency indicated in the "Attachment B" that the demolition project would preserve capacity of the national air transportation system. The FAA was unable to concur with this statement; therefore, the project does not meet the requirements of § 158.15(a).

Facilities information management system implementation.

Determination: Disapproved. This project is not considered AIP eligible under paragraph 500 of FAA Order 5100.38A, AIP Handbook, and, therefore, is not PFC eligible. The FAA considers this project to be a maintenance and management tool and, under paragraph 501 of FAA Order 5100.38A, maintenance projects are specifically AIP and PFC ineligible. Therefore, a project supporting maintenance functions is also considered ineligible.

Underground storage tank removal.

Determination: Disapproved. This project is not considered AIP eligible under Appendix 2, Item 1 of FAA Order 5100.38A, AIP Handbook, and, therefore, is not PFC eligible.

Brief Description of Withdrawn Project: O'Hare ALP update.

Determination: The public agency withdrew this project by letter dated June 26, 1996.

Decision Date: June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Louis H. Yates, Chicago Airports District Office, (847) 294–7335.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Amended approved net PFC revenue	Previous approved net PFC revenue	Previous estimated charge exp. date	Amended estimated charge exp. date
92–01–I–01–RFD, Rockford, IL	05/06/96	$640,286	$1,168,936	10/01/96	10/01/96
93–02–U–01–RFD, Rockford, IL	05/06/96			10/01/96	10/01/96
93–01–C–02–DAB, Daytona Beach, FL	05/09/96	8,702,230	13,020,901	03/01/04	02/01/01

Issued in Washington, D.C. on July 2, 1996.

Donna P. Taylor,

Manager, Passenger Facility Charge Branch.

[FR Doc. 96–17587 Filed 7–9–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

[Docket No. RSAC–96–1, Notice No. 2]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Railroad Safety Advisory Committee ("RSAC") Meeting.

SUMMARY: As required by Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and 41 CFR 101–6.1015(b), the Federal Railroad Administration (FRA) gives notice of a meeting of the Railroad Safety Advisory Committee ("RSAC"). The purpose of the meeting is threefold: (1) to task the RSAC with the revision of 49 CFR Part 230, Locomotive Inspection for Steam Powered Locomotives; (2) to receive progress reports from existing working groups; and (3) to engage in exploratory discussions regarding several issues that may be tasked to the RSAC in the future.

DATES: The meeting of the RSAC is scheduled to commence at 8:30 a.m. on Wednesday, July 24th and to conclude at 12:00 p.m. on Thursday, July 25th.

ADDRESSES: The meeting of the RSAC will be held at Loew's L'EnFant Plaza Hotel, S.W., Washington, D.C. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Sign language interpreters will be available for individuals with hearing impediments.

FOR FURTHER INFORMATION CONTACT: Vicky McCully, FRA, 400 7th Street, S.W. Washington, D.C. 20590, (202) 366–6569, Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 400 7th Street, S.W., Washington, D.C. 20590, (202)–366–0897, or Lisa Levine, Office of Chief Counsel, FRA, 400 7th Street, S.W., Washington, D.C. 20590, (202)–366–0621.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee ("RSAC"). The meeting is scheduled to begin at 8:30 a.m. on both Wednesday, July 24, 1996 and Thursday, July 25, 1996 and will be held at the Loew's L'EnFant Plaza Hotel, S.W., Washington D.C. All times noted are Eastern Standard Time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual representatives, drawn from among 27 organizations representing various rail industry perspectives, and 2 associate non-voting representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico.

During this meeting, the RSAC will receive progress reports from all working groups currently operational, specifically those working groups concerned with—

- Revision of the power brake regulations applicable to freight service and related topics (see 49 CFR Parts 215, 229, 232);
- Revision of the Track Safety Standards (49 CFR Part 213);
- Revision of the Radio Standards and Procedures (49 CFR Part 220) and development of additional standards related to railroad communications; and
- Review of existing and proposed regulations to determine appropriate applicability to tourist and historic railroads and examination of FRA's policy with respect to exercise of jurisdiction over railroads off the general system of rail transportation.

The Committee will also consider a proposed task regarding examination and possible revision of existing steam locomotive inspection standards (see 49 CFR Part 230). In addition, the agency will engage in exploratory discussion with the RSAC regarding the following issues, which may be tasked to the RSAC in the future:

(1) Accident survivability standards for locomotive event recorder data (see 49 CFR § 229.135) (may be proposed for tasking at this meeting);

(2) Review of locomotive engineer certification standards (49 CFR Part 240); and

(3) Blue signal protection vis-a-vis single engineers working alone and contractors (49 CFR Part 218).

FRA will brief the RSAC regarding recent developments in the regulatory program, including plans for revision of the accident/incident reporting guide following amendments to 49 CFR Part 225 published on June 18, 1996 (61 FR 30940). Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 F.R. 9740) for more information about the RSAC.

Philip Olekszyk,

Acting Associate Administrator for Safety.

[FR Doc. 96–17586 Filed 7–9–96; 8:45 am]

BILLING CODE 4910–06–P

Maritime Administration

[Docket S–838]

Farrell Lines Incorporated; Notice of Application for Waiver of Section 804(a) of the Merchant Marine Act, 1936, As Amended

Farrell Lines Incorporated (Farrell), by application dated June 27, 1996, requests a waiver of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended, so as to permit Farrell to charter and operate a foreign-flag vessel for a one-way U.S. east coast to Mediterranean voyage commencing in early August 1996 in place of the ARGONAUT, one of the vessels assigned regularly to that trade, which is being drydocked in the United States from August 7 to August 31, 1996.

Farrell agrees to carry on the foreign-flag voyage not more than the capacity (1,070 TEUs) of the ships it currently operates in the Mediterranean trade. The United States and foreign ports of call are: New York, Norfolk, Charleston, Cadiz, Livorno, Naples, Haifa, Alexandria, Izmir, and Piraeus.

Further, Farrell states that the substitute vessel is needed to: (1) Support its existing American-flag service and maintain its operating schedule integrity; (2) meet the service requirements of customers; (3) attract cargo which would otherwise move on foreign-flag vessels; and (4) generate revenues during the absence of the ARGONAUT.

Farrell believes, as demonstrated above, there are special circumstances and good cause for it to use a foreign-flag vessel in support of its U.S.-flag service, and that there will be no detrimental effect on the operations of any other operator.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7210, 400 Seventh Street SW., Washington, D.C. 20590. Comments must be received no later than 5:00 p.m. on July 16, 1996. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

Dated: July 3, 1996.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 96–17517 Filed 7–9–96; 8:45 am]

BILLING CODE 4910–81–P

National Highway Traffic Safety Administration

[Docket No. 96–069; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1993 Ferrari 512 TR Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993 Ferrari 512 TR passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1993 Ferrari 512 TR that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 9, 1996.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1993 Ferrari 512 TR passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1993 Ferrari 512 TR that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1993 Ferrari 512 TR to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1993 Ferrari 512 TR, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1993 Ferrari 512 TR is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 112 *Headlamp Concealment Devices*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, *124 Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) inscription of the word "Brake" on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.- model taillamp assemblies; (d) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the convex passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number*: installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems*: rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) installation of a U.S.-model seat belt at the driver's seating position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) installation of motorized seat belt assemblies at both front outboard seating positions. These assemblies will be comprised of components with identical part numbers to those found on the U.S. certified 1993 Ferrari 512 TR. The petitioner states that knee bolsters were not installed on the U.S. certified 1993 Ferrari 512 TR and that the lower dash panels on that vehicle, which Ferrari designates as "lower lateral inserts," are identical to those found on the non-U.S. certified version of the vehicle.

Standard No. 214 *Side Impact Protection*: installation of reinforcing door beams.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1993 Ferrari 512 TR must be reinforced to comply with the Bumper Standard found in 49 CFR Part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 3, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–17582 Filed 7–9–96; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board [1]

[STB Finance Docket No. 32966]

Northern Central Railway, Incorporated—Lease and Operation Exemption—County of York, PA

Northern Central Railway, Incorporated (Northern Central) and the County of York, PA (York), have filed a joint verified notice of exemption under 49 CFR 1150.31 for Northern Central, a noncarrier, to lease and operate approximately 18.5 miles of rail line owned by York [2] between milepost 35.67 at New Freedom, PA, and milepost 54.17 at Hyde Siding, PA (approximately 3 miles south of the city of York). The proposed transaction was to be consummated on or after June 26, 1996, the effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32966, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Francis G. McKenna, Anderson & Pendleton, 1700 K Street, N.W., Suite 1107, Washington, DC 20006.

Decided: July 2, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–17515 Filed 7–9–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

[2] York states that the trackage was acquired from the Commonwealth of Pennsylvania by agreement on March 28, 1990.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8823

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance.

DATES: Written comments should be received on or before September 9, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit Agencies Report of Noncompliance.

OMB Number: 1545–1204

Form Number: 8823

Abstract: Under Internal Revenue Code section 42(m)(1)(B)(iii), state housing credit agencies are required to notify the IRS of noncompliance with the low-income housing tax credit provisions. A separate form must be filed for each building that is not in compliance. The IRS uses this information to determine whether the low-income housing credit is being correctly claimed and whether there is any credit recapture.

Current Actions: The format of Form 8823 is being redesigned so that it can be processed using an optical scanner. Checkboxes are being added in item 4 for the filer to indicate whether the taxpayer identification number entered is an employer identification number (EIN) or a social security number (SSN). Both numbers have 9 digits and sometimes the hyphen(s) are not entered correctly. Four new entries are being added to new item 6 showing information about the buildng. Item 7, which asked for a description of noncompliance, is being replaced by new item 9 which contains checkboxes for the 10 most common reasons for noncompliance and checkboxes for those issues that have been corrected. New item 10 is a checkbox to indicate if additional information about noncompliance is attached.

Type of Review: Revision of a currently approved collection.

Affected Public: State or local government housing credit agencies.

Estimated Number of Respondents: 56.

Estimated Time Per Respondent: 1,271 hrs. 26 min.

Estimated Total Annual Burden Hours: 71,200.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 25, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–17573 Filed 7–9–96; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 61, No. 133

Wednesday, July 10, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[EPA #530-Z-96-002; FRL-5438-3]

RIN 2050-AD38

Land Disposal Restrictions Phase III-Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners

Correction

In rule document 96–7597 beginning on page 15566 in the issue of Monday, April 8, 1996 make the following corrections:

§268.40 [Corrected]

1. Beginning on page 15601, in the table **Treatment Standards for Hazardous Wastes**, the following entries are reprinted to correct typographical errors.

* * * * *

TREATMENT STANDARDS FOR HAZARDOUS WASTES

(Note: NA means not applicable.)

Waste code	Waste description and treatment/regulatory subcategory[1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS[2] No.	Concentration in mg/l[3]; or technology code[4]	Concentration in mg/kg[5] unless noted as "mg/l TCLP"; or technology code
F001, F002, F003, F004, & F005	F001, F002, F003, F004, and/or F005 solvent wastes that contain any combination of one or more of the following spent solvents: acetone, benzene, n-butyl alcohol, carbon disulfide, carbon tetrachloride, chlorinated fluorocarbons, chlorobenzene, o-cresol, m-cresol, p-cresol, cyclohexanone, o-dichlorobenzene, 2-ethoxyethanol, ethyl acetate, ethyl benzene, ethyl ether, isobutyl alcohol, methanol, methylene chloride, methyl ethyl ketone, methyl isobutyl ketone, nitrobenzene, 2-nitropropane, pyridine, tetrachloroethylene, toluene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, 1,1,2-trichloro-1,2,2-trifluorethane, trichloroethylene, trichloromonofluoromethane, and/or xylenes [except as specifically noted in other subcategories]. See further details of these listings in §261.31.	Acetone	67–64–1	0.28	160
F007	Spent cyanide plating bath solutions from electroplating operations.	Cadmium	7440–43–9	0.69	0.19 mg/l TCLP
F025	Condensed light ends from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution F025 - Light Ends Subcategory.	Carbon tetrachloride	56–23–5	0.057	6.0
F039	Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under subpart D of this part. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.).	Acenaphthylene [6]	208–96–8	0.059	3.4
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene.	207–08–9	0.11	6.8
		1,2-Dibromo-3-chloropropane	96–12–8	0.11	15
		o,p'-DDD	53–19–0	0.023	0.087
		N-Nitrosopyrrolidine	930–55–2	0.013	35
		1,1,2,2-Tetrachloroethane	79–34–6	0.057	6.0
K015	Still bottoms from the distillation of benzyl chloride.	Anthracene	120–12–7	0.059	3.4
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production..	bis(2-Chloroethyl)ether	111–44–4	0.033	6.0
		Chloroform	67–66–3	0.046	6.0
K110	Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	CMBST; or CHOXD fb CARBN; or BIODG fb CARBN	CMBST
K142	Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal.	Benzene	71–43–2	0.14	10
		Benz(a)anthracene	56–55–3	0.059	3.4
P007	5-Aminomethyl 3-isoxazolol	5-Aminomethyl 3-isoxazolol	2763–96–4	(WETOX or CHOXD) fb CARBN; or CBMST	CMBST
P010	Arsenic acid	Arsenic	7440–38–2	1.4	5.0 mg/l TCLP
P011	Arsenic pentoxide	Arsenic	7440–38–2	1.4	5.0 mg/l TCLP
P012	Arsenic trioxide	Arsenic	7440–38–2	1.4	5.0 mg/l TCLP
P038	Diethylarine	Arsenic	7440–38–2	1.4	5.0 mg/l TCLP
P074	Nickel cyanide	Cyanides (Total)[7]	57–12–5	1.2	590
		Cyanides (Amenable)[7]	57–12–5	0.86	30
P087	Osmium tetroxide	Osmium tetroxide	20816–12–0	RMETL; or RTHRM	RMETL; or RTHRM
P099		Cyanides (Amenable)[7]	57–12–5	0.86	30
		Silver	7440–22–4	.043	0.30 mg/l TCLP
U099	1,2-Dimethylhydrazine	1,2-Dimethylhydrazine	540–73–8	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U107	Di-n-octyl phthalate	Di-n-octyl phthalate	117–84–0	0.017	28
U172	N-Nitrosodi-n-butylamine	N-Nitrosodi-n-butylamine	924–16–3	0.40	17
U173	N-Nitrosodiethanolamine	N-Nitrosodiethylamine	1116–54–7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U174	N-Nitrosodiethylamine	N-Nitrosodiethanolamine	55–18–5	0.40	28

BILLING CODE 1505–01–D

federal register

Wednesday
July 10, 1996

Part II

Department of Health and Human Services

Administration for Children and Families

Adoption Opportunities Program: Availability of Financial Assistance and Request for Applications; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

parts. Part I provides information on the

adoption has emphasized overcoming

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF/CB/AO–96–1]

Adoption Opportunities Program; Announcement of Availability of Financial Assistance and Request for Applications

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Announcement of the Availability of Financial Assistance and Request for Applications to Conduct Demonstration Projects Funded Under the Adoption Opportunities Program in the Children's Bureau, Administration on Children, Youth and Families.

SUMMARY: The Children's Bureau (CB) within the Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) announces the availability of fiscal year (FY) 1996 funds from the Adoption Opportunities Program for demonstration grants to State child welfare agencies, public or private nonprofit child welfare and adoption agencies, organizations and adoptive parents' groups for projects aimed at: (a) Increasing the placements in adoptive families of children, especially minority children, who are in foster care and have the goal of adoption; (b) fostering model collaboration for the adoption of children with developmental disabilities; (c) increasing practice options to secure permanency for children; (d) developing resource materials assisting transcultural and transracial adoptions; and (e) allowing leaders in the adoption field to propose innovative endeavors.

This announcement contains forms and instructions for submitting an application.

PAPERWORK REDUCTION ACT OF 1995: Under the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements or program announcements. This program announcement meets all information collection requirements approved for ACF grant applications under OMB Control Number 0970–0139.

SUPPLEMENTARY INFORMATION: This program announcement consists of three parts. Part I provides information on the Children's Bureau and general information on the application procedures. Part II describes the review process, additional requirements for the grant applications, the criteria for the review and evaluation of applications, and the programmatic priorities for which applications are being solicited. Part III provides information and instructions for the development and submission of applications.

The forms to be used for submitting an application follow Part III. Please copy as single-sided forms and use in submitting an application under this announcement. No additional application materials are available or needed to submit an application.

Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds.

Part I—General Information

A. Background

The Administration on Children, Youth and Families (ACYF) administers national programs for children and youth, works with States and local communities to develop services which support and strengthen family life, seeks out joint ventures with the private sector to enhance the lives of children and their families, and provides information and other assistance to parents.

The concerns of ACYF extend to all children from birth through adolescence. Many of the programs administered by the agency focus on children from low-income families; children and youth in need of foster care, adoption or other child welfare services; preschool children; children with disabilities; abused and neglected children; runaway and homeless youth; and children from American Indian and migrant families.

Within ACYF, the Children's Bureau plans, manages, coordinates and supports child welfare services programs. It administers the Foster Care and Adoption Assistance Program, the Child Welfare Services State Grants Program, the Child Welfare Services Research, Demonstration and Training Programs, the Independent Living Initiatives Program, the Adoption Opportunities Program, the Temporary Child Care for Children With Disabilities and Crisis Nurseries Program, the Abandoned Infants Assistance Program, and the Family Preservation and Support Services Program.

The federal statutory, regulatory, policy and program framework for adoption has emphasized overcoming numerous complexities in order to facilitate the completion of adoptions, creating financial incentives for the adoption of certain children for whom it would be difficult to secure an adoptive placement, requiring each State to establish a pool of adoptive families reflecting the ethnic and racial diversity of children for whom adoptive homes are needed, and promoting a vision of and guidance for permanence by forging a National Adoption Strategic Plan and stimulating communication and collaboration among foster care, adoption and court professionals.

The Adoption Opportunities Program, originally enacted in title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Public Law 95–266, and most recently amended by the Child Abuse, Domestic Violence, Adoption, and Family Services Act of 1992, Public Law 102–295, works to eliminate barriers to adoption and provide permanent homes for children who would benefit from adoption. The Adoption Opportunities Program facilitates the elimination of barriers to adoption by: (1) promoting adoption legislation and procedures in the States and territories of the United States in order to eliminate jurisdictional and legal obstacles to adoption; (2) promoting quality standards for adoption services, pre-placement, post-placement, and post-legal adoption counseling, and standards to protect the rights of the children in need of adoption; and (3) demonstrating expeditious ways to free children for adoption for whom it has been determined that adoption is the appropriate plan. This discretionary program awards grants and contracts to public and private non-profit agencies.

The passage of the Adoption Assistance and Child Welfare Act of 1980, Public Law 96–272, resulted in the establishment of the title IV–E adoption assistance program. This entitlement provides funds to States to assist in paying costs associated with the adoption of children who are AFDC or SSI eligible and have special needs, such as being older or disabled. The adoption assistance program encourages and supports permanence for children with special needs in adoptive homes, thereby preventing their inappropriate and excessive stays in foster care.

Another major legislative initiative in the area of adoptions, the Multiethnic Placement Act (MEPA), was passed in 1994. The purposes of MEPA are to decrease the length of time that children wait to be adopted; to prevent discrimination in the placement of children on the basis of race, color, or national origin; and to increase the identification and recruitment of foster and adoptive parents who can meet the children's needs. MEPA does three things:

- prohibits an agency or entity that receives Federal financial assistance and is involved in adoption or foster care placements from delaying or denying the placement of a child based solely on the race, color or national origin of the foster or adoptive parent or the child involved;
- allows for the consideration of race, color, or national origin, along with other factors, in making a placement decision only when a child placement agency has made a narrowly tailored, individualized determination that the consideration of such factors is in the best interests of a particular child; and
- requires that agencies engage in diligent recruitment efforts to develop a pool of foster and adoptive families who reflect the racial, ethnic or national origin of the children in care, and/or who can meet the needs of the children.

In response to MEPA, States have been required to devise comprehensive recruitment plans and to enlist potential foster and adoptive families who reflect the ethnic and racial diversity of the children for whom foster and adoptive homes are needed. These recruitment plans must be included in each State's title IV–B child and family services plan.

The Children's Bureau has provided policy and program guidance to the adoption field by fostering the development of the National Adoption Strategic Plan in December 1995, based on recommendations from the Adoption Program Network. The Strategic Plan specifies goals and objectives and defines measures of success. It identifies what should be accomplished, while affording States the flexibility to determine how to accomplish the goals and objectives. The Children's Bureau has also sanctioned collaboration among child welfare professionals by convening a Permanency Partnership Forum in March 1996 which brought together State adoption, foster care, and court professionals from around the country to share and gain knowledge and ideas on a variety of key cross-cutting issues that impact on permanence for children.

This FY 1996 Adoption Opportunities Program Announcement maintains the emphasis on permanence and collaboration and encourages demonstration and innovation efforts which target various groups of children and specific types of activities.

B. Statutory Authority Covering This Announcement Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Public Law 95–266, as amended

Availability and Allocation of Funds

The Administration for Children, Youth and Families proposes to award appropriately 15 new grants in fiscal year 1996 in varying amounts. The total combined funding for the Priority Areas 1.01, 1.02, 1.03, 1.04, 1.05 and 1.06 for fiscal year 1996 competitive grants is approximately $2.1 million.

Part II. The Review Process and Priority Areas

A. Eligible Applicants

Each priority area description contains information about the types of agencies and organizations which are eligible to apply under that priority area. Because eligibility varies depending on statutory provisions, it is critical that the "Eligible Applicants" section of each priority area be reviewed carefully.

Before review, each application will be screened for applicant organization eligibility as specified under the selected priority area. Applicants from ineligible organizations will not be considered or reviewed in the competition, and the applicants will be so informed.

Only agencies and organizations, not individuals, are eligible to apply under this Announcement. All applications developed jointly by more than one agency or organization, must identify only one lead organization and official applicant. Participating agencies and organizations can be included as co-participants, subgrantees or subcontractors. For-profit organizations are eligible to participate as subgrantees or subcontractors with eligible non-profit organizations under all priority areas.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

B. Review Process and Funding Decisions

The closing time and date for the receipt of the applications is 4:30 p.m. (Eastern Time Zone) on August 26, 1996. Applications received after 4:30 p.m. will be classified as late. Timely applications received by the deadline date which are from eligible applicants will be reviewed and scored competitively. Experts in the field, generally persons outside the Federal government, will use the appropriate evaluation criteria listed later in this section to review and score the applications. The results of this review are a primary factor in making funding decisions.

The ACYF reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is in the best interest of the Federal government or the applicants. ACYF may also solicit comments from ACF Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by ACYF in making funding decisions.

In making decisions on awards, ACYF may give preference to applications which focus on or feature: overrepresented populations; a substantially innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations that administer or deliver human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and/or substantial involvement in the proposed project by national or community foundations.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, ACYF may also take into account the need to avoid unnecessary duplication of effort.

C. Evaluation Criteria

A panel of reviewers (primarily experts from outside the Federal

government) will review the

will work on the project, along with a

Project Duration: This section

government) will review the applications. To facilitate this review, applicants should ensure that they address each minimum requirement in the priority area description under the appropriate section of the Program Narrative Statement.

The reviewers will determine the strengths and weaknesses of each application using the evaluation criteria listed below, provide comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight.

All applications will be evaluated against the following criteria.

(1) Objective and Need for Assistance (20 points). The extent to which the application pinpoints any relevant physical, economic, social, financial, institutional or other problems requiring a solution; demonstrates the need for the assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant; and includes and/or footnotes relevant data based on the results of planning studies. The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids may be attached.

(2) Approach (35 points). The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project, and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved. The Approach section should include a listing of the activities to be carried out in chronological order, showing a reasonable schedule of accomplishments and target dates.

The extent to which, when appropriate, the application identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and successes of the project. The extent to which the application describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution.

(3) Results or Benefits Expected (20 points). The extent to which the application identifies the results and benefits to be derived, the extent to which they are consistent with the objectives of the application, and the extent to which the application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs are reasonable in view of the expected results.

(4) Staff Background and Organization Experience (25 points). The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer the project. The application describes the relationships between the proposed project and other work planned, anticipated or underway by the applicant with Federal assistance.

D. Structure of Priority Area Descriptions

Each priority area description is composed of the following sections:

Eligible Applicants: This section specifies the type of organization eligible to apply under the particular priority area. Specific restrictions are also noted, where applicable.

Purpose: This section presents the basic focus and/or broad goal(s) of the priority area.

Background Information: This section briefly discusses the legislative background as well as the current state-of-the-art and/or current state-of-practice that supports the need for the particular priority area activity. Relevant information on projects previously funded by ACYF and/or others, and State models are noted, where applicable.

Minimum Requirements for Project Design: This section presents the basic set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. Inclusion and discussion of these items is important, since they will be used by the reviewers in evaluating the applications against the evaluation criteria. Project products, continuation of the project effort after the Federal support ceases, and dissemination/utilization activities, if appropriate, are also addressed.

Project Duration: This section specifies the maximum allowable length of time for the project period and refers to the amount of time for which Federal funding is available.

Federal Share of Project Cost: This section specifies the maximum amount of Federal support for the project for the first budget period.

Matching Requirement: This section specifies the minimum non-Federal contribution, either through cash or in-kind match, required in relation to the maximum Federal funds requested for the project. Grantees must provide at least 10 percent of the total cost of the project. The total cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet the match requirements through cash contributions. Therefore, a project requesting $150,000 in Federal funds (based on an award of $150,000 per budget period) must include a match of at least $16,667 (10 percent of total project cost).

Anticipated Number of Projects To Be Funded: This section specifies the number of projects that ACYF anticipates it will fund under the priority area.

Please note that applications that do not comply with the specific priority area requirements in the section on "Eligible Applicants" will not be reviewed. Applicants should also note that non-responsiveness to the section "Minimum Requirements for the Project Design" will result in a low evaluation score by the reviewers. Applicants must clearly identify the specific priority area under which they wish to have their applications considered, and tailor their applications accordingly. Previous experience has shown that an application which is broader and more general in concept than outlined in the priority area description scores lower than one more clearly focused on, and directly responsive to, that specific priority area.

E. Available Funds

The ACYF intends to award new grants resulting from this announcement during the fourth quarter of fiscal year 1996, subject to the availability of funds.

Each priority area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

The term "budget period" refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term "project period" refers to the total time a project is approved for support, including any extensions.

Where appropriate, applicants may propose project periods which are shorter than the maximums specified in the various priority areas. Non-Federal share contributions may exceed the minimums specified in the various priority areas when the applicant is able to do so. However, if the proposed match exceeds the minimum requirement, the grantee must maintain its proposed level of match support throughout the entire project period unless a waiver is approved to reduce it. Applicants should propose only that non-Federal share they can realistically provide, since any unmatched Federal funds will be disallowed by ACF.

For multi-year projects, continued Federal funding beyond the first budget period is dependent upon satisfactory performance by the grantee, availability of funds from future appropriations and a determination that continued funding is in the best interest of the Government.

F. Grantee Share of Project Costs

Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $150,000 in Federal funds (based on an award of $150,000 per budget period) must include a match of at least $16,667 (10 percent of the total project cost). If approved for funding, the grantee will be held accountable for commitments of non-Federal resources, and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

G. Priority Areas Included in This Announcement

1.01 Achieving Increased Adoptive Placement of Children in Foster Care
1.02 Innovations Increasing Adoptive Placements of Minority Children
1.03 Strategic Collaboration for Completing and Sustaining Adoptions of Children with Developmental Disabilities
1.04 Expanding Options for Permanency
1.05 Developing Resource Materials to Assess and Prepare Foster and Adoptive Parents to meet the Needs of Children of a Different Race, Color, or National Origin
1.06 Operation of a National Adoption Information Exchange System

H. Priority Area Descriptions and Requirements

1.01 Achieving Increased Adoptive Placement of Children in Foster Care

Eligible Applicants: Eligibility is limited to State social service agencies.

Purpose: To develop demonstration projects to increase the placement of children, who are in foster care and are legally free for adoption, with adoptive families.

Background Information: Children in foster care who are free for adoption, especially young people with special needs, often have difficulty attaining permanence through placement with an adoptive family. There are multiple reasons for this. Increasingly, children entering foster care have more complex problems which require more intensive services. Permanent families must be continuously recruited and prepared to parent the growing population of children who cannot return to their birth families. Supportive services must be added or improved so that the children in foster care who are legally free for adoption can move into an adoptive placement in a timely manner. This requires collaborative efforts with the court system to terminate parental rights. In addition, agencies must commit resources for the ongoing support of adoptive families from recruitment through the post-legal phase.

The Adoption Opportunities Program has provided demonstration grants to States to improve adoption services for the placement of children with special needs who are legally free for adoption. States have received awards to make systemic changes in their adoption programs in areas such as: acquiring computer hardware, software and membership in the National Adoption Exchange's Network; developing a consortium of nine States with large numbers of children in care in order to share knowledge to improve and enhance their special needs adoption programs; and forming a seven State national consortium on post-legal adoption services to develop and share model programs and promising practices of post legal adoption services for the adoption community.

These projects have demonstrated that improvements in placing children with adoptive families are achieved when permanent plans are made and carried out very early in the placement; when there are sufficiently trained and experienced staff; and when there are available resources and administrative commitments to adoption and to coordinated community-based efforts.

Even though more than half of the States have received grants to improve adoption services, only a small number have been able to sustain these efforts because of limited funds, staffing problems, and because adoption services are often not viewed as a priority.

This priority area is designed to provide incentives for States to craft innovative initiatives to secure and sustain permanence for children who are free for adoption.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

Identify and verify the number of children in foster care to be served by the project who are legally free and waiting for adoptive placement.

Provide and verify the proportion of placement of children in foster care placed in adoption in the year preceding the application (the proportion of placement is the number of children placed divided by the number of children waiting for adoption).

Describe the measurable improvements to be achieved during the period of the grant and the methods to be employed to increase the proportion of placement of legally-free children in foster care with adoptive families. Improvements should be specified as goals and objectives which are measurable and represent an increase over previous years.

Describe how the proposed improvements, if successful, would be continued beyond the period of Federal support under this grant as part of the agency's ongoing program and describe the specific steps which would be taken to accomplish this.

Propose and describe an evaluation plan which will focus on the innovations used to improve the placement of children who are legally free for adoption and which is capable of identifying the successes and failures of the initiative.

The evaluation plan should include the collection and analysis of data to determine placement rates and the types of clients served (e.g., waiting children, prospective adoptive families). Statistics should be collected to determine the availability of adoptive families during the program period. The evaluation should also include descriptive information on the processes and procedures used in implementing the project.

Discuss plans for disseminating information on the strategies utilized and the outcomes achieved. Identify audiences who will benefit from receiving the information and specify

mechanisms and forums which will be used to convey the information and support replication by other interested agencies.

Provide assurances that at least one key person from the project will attend an annual 3 to 5 day Child Welfare Conference in the Washington, D.C. metropolitan area hosted by the Children's Bureau. The Conference brings together child welfare professionals, including Adoption Opportunities and other Children's Bureau discretionary program grantees, to exchange information and address current child welfare issues.

Project Duration: The length of the project must not exceed 12 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $100,000 per 12-month budget period.

Matching or Cost Sharing Requirement: Grantees must provide at least 10 percent of the total cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. Therefore, a project requesting $100,000 in Federal funds (based upon an award of $100,000 per budget period) must include a match of at least $11,111 (10 percent of the total project cost). The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that two projects will be funded.

CFDA: 93.652 Adoption Opportunities Grants: title II of the Child Abuse Prevention and Treatment Adoption Reform Act of 1978 Public Law, 95–266, as amended.

1.02 Innovations Increasing Adoptive Placements of Minority Children

Eligible Applicants: States, local government entities, federally recognized Indian Tribes and Indian Tribal Organizations, public or private non-profit licensed child welfare or adoption agencies, and adoption exchanges with experience in working with minority populations.

Purpose: To implement innovative programs designed to increase the adoptive placement of minority children who are in foster care and have the goal of adoption, with an emphasis on the recruitment, retention and utilization of minority families and adoptive placements for minority children who are over the age of ten and/or a part of *sibling groups.*

Background Information: According to the Voluntary Cooperative Information System administered by the American Public Welfare Association (VCIS/APWA), in 1993 almost 1,200 children in the U.S. were separated from their biological parents every day and placed in an unfamiliar setting. VCIS/APWA also estimates the number of "waiting" children in the U.S. at approximately 86,000, and concludes that adoptive families for roughly 21,000 of these children are still actively being sought. These are children for whom it is difficult to find an adoptive placement because they are not the young people families generally seek. It is estimated that approximately 44% of the 21,000 children seeking an adoptive placement are 10 years and older, and approximately 55% are members of a minority group.

There continues to be an insufficient pool of adoptive families, especially for older minority children and sibling groups for whom adoption has been deemed the preferred means of accomplishing permanence. The Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Public Law 95–266, places an emphasis upon the recruitment of minority families and provides funds for demonstration projects emphasizing the recruitment of families to adopt waiting minority children. The purpose of this priority area is to be responsive to this legislative intent.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

Identify and describe existing barriers to minority adoption in the locale where the project would be implemented; the number of families who would be recruited; and the number of children who would be placed.

Describe the innovative methods that would be employed to recruit, retain and prepare minority families for adoption, making sure to include individuals who are single.

Provide assurances that the project would not require the payment of fees by families for the adoption process.

Describe how training in cultural competence would be provided to all relevant staff to increase their effectiveness in serving minority children and families.

Present an evaluation plan for assessing the project's effectiveness in achieving its stated goals and objectives, and its ability to provide services to prospective adoptive families through the completion of the adoption.

Document how the project would be continued beyond Federal funding as part of the agency's ongoing program and describe the specific steps which would be taken to accomplish this.

If the applicant is a private non-profit adoption agency, it must provide evidence of licensure by submitting a copy of its license with the application.

Discuss plans for disseminating information on the innovations utilized. Identify audiences who will benefit from receiving the information and specify mechanisms and forums which will be used to convey the information and support replication by other interested agencies.

Provide assurances that at least one key person from the project will attend an annual 3 to 5 day Child Welfare Conference in the Washington, D.C. metropolitan area hosted by the Children's Bureau. The Conference brings together child welfare professionals, including Adoption Opportunities and other Children's Bureau discretionary program grantees, to exchange information and address current child welfare issues.

Provide assurances and document that the project would be staffed and implemented within 90 days of the notification of the grant award.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $100,000 per 12-month budget period.

Matching or Cost Sharing Requirement: Grantees must provide at least 10 percent of the total cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. Therefore, a project requesting $100,000 in Federal funds (based on an award of $100,000 per budget period) must include a match of at least $11,111 (10 percent of the total project cost). The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that four projects will be funded.

CFDA: 93.652 Adoption Opportunities Grants: title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Public Law 95–266, as amended.

1.03 Strategic Collaboration for Completing and Sustaining Adoptions of Children with Developmental Disabilities

Eligible Applicants: Agencies administering any of the following public programs: Child Welfare; Developmental Disability Councils; Protection and Advocacy Systems; or University Affiliated Programs. Joint applications may be developed by consortiums at the regional, State, Tribal, or local level which bring complementary expertise to bear on the adoption of children with developmental disabilities. All applications, even those developed by two or more organizations, must identify a single lead agency to be the primary administrator of the grant and the official recipient of the award.

Purpose: To increase and successfully maintain the number of adoptions of children with developmental disabilities through the creation of effective collaboration strategies and models for the provision of adoption services to developmentally disabled children and their families in the public child welfare system.

Background Information: Children with special needs constitute the overwhelming percentage of young people waiting for an adoptive placement, residing in non-finalized adoptive homes, or benefiting from finalized adoptions. According to VCIS/APWA 1993, almost 82% of the children waiting for an adoptive placement in 12 States, had one or more special needs. Moreover, data from the same 12 States on finalized adoptions, showed that approximately 82% of the children also had one or more special needs. In addition, VCIS/APWA data illustrates that in 11 States, almost 76% had one or more special needs. Not all of the children identified above as having one or more special needs are actually developmentally disabled, because in the adoption field, special needs can also include such characteristics as being older or membership in a minority or sibling group. However, the sheer magnitude of the special needs percentages suggests there are significant numbers of young people in the adoption stream who have a developmental disability.

Relevant public agencies have a responsibility to facilitate adoptions, and provide support and resources to families formed by adoption. In terms of responding to the needs of children with developmental disabilities and families who are motivated to and/or actually adopt them, interagency work is especially vital. While there are examples of effective cooperation between Child Welfare Agencies (CW), Developmental Disabilities Councils (DDC), Protection and Advocacy Systems or University Affiliated Programs (UAP), very little has been done in the way of establishing exemplary collaborative strategies and models. In States with an "umbrella agency," wherein CW and DDC are part of the same Statewide department, there is a need for delineating and implementing collaborative procedures to facilitate work with children with developmental disabilities in need of adoption and families adopting these children. In States with separate departments, there is even greater need to develop such procedures.

This priority area provides the field with the opportunity to develop collaboration strategies and models to increase the number of adoptees with developmental disabilities and to provide services to strengthen families who have adopted children with disabilities.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

Demonstrate knowledge of current issues in public agency adoption and other issues related to children with developmental disabilities in the child welfare system.

Describe the process that will be use to identify the needs of children and families to be served by the project. Discuss how individuals with disabilities and potential and actual adoptive families will be involved in the process.

Describe the current system the applicant is addressing at the State, regional or local level. Identify, policy, program and interagency issues which either serve to support or hinder/prevent the adoption of children with developmental disabilities.

Describe the measurable goals and objectives to be achieved that will lead to increasing and successfully maintaining the adoptions of children with developmental disabilities.

Describe the development and plans for the institutionalization of the proposed collaborative strategies or model on either a statewide, regional or local basis that will increase and sustain adoptions of children with developmental disabilities.

Document that the staff to be involved in the project are knowledgeable of relevant policies, federal regulations, laws and cultural issues that impact children with developmental disabilities and their adoptive families.

Present an evaluation plan for assessing the project's effectiveness in achieving its stated goals and objectives, and its ability to provide services to adoptive families through the completion of the adoption.

Provide a plan for how individuals with disabilities and potential and actual adoptive families will be involved in the evaluation process.

Provide specific written commitments from collaborating agencies conveying their role and the work they will perform.

Discuss plans for disseminating essential information on the strategies and/or model utilized. Identify audiences who will benefit from receiving the information and specify mechanisms and forums which will be used to convey the information and support replication by other interested collaborative groups of agencies.

Provide assurances that at least one key person from the project will attend an annual 3 to 5 day Child Welfare Conference in the Washington, D.C. metropolitan area hosted by the Children's Bureau. The Conference brings together child welfare professionals, including Adoption Opportunities and other Children's Bureau discretionary program grantees, to exchange information and address current child welfare issues.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $100,000 per 12-month budget period.

Matching or Cost Sharing Requirement: Grantee must provide at least 10 percent of the total cost of the project. The total cost of the project is the sum of the ACF share and the non-Federal share. Therefore, a project requesting $100,000 in Federal funds must include a total match of at least $11,111 (10 percent of the total project cost). The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that two projects will be funded.

CFDA: 93.652 Adoption Opportunities Grants: title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Public Law 95–266, as amended.

1.04 Expanding Options for Permanency

Eligible Applicants: States, local government entities, federally recognized Indian Tribes and Indian Tribal Organizations, public or private non-profit licensed child welfare or adoption agencies that currently serve children in the public child welfare system.

Purpose: To develop a system reform project that incorporates or strengthens the practice of one or more of the following non-adversarial options for permanency: voluntary relinquishment, concurrent planning and/or mediation.

Background Information: The Adoption Assistance and Child Welfare Act of 1980, Public Law 96–272, mandates securing a safe, permanent home for every child. The child welfare system continues to struggle with meeting this goal in a timely fashion. The practice base for achieving permanency for children is too often based on adversarial or involuntary methods. The major practice is to seek involuntary termination of parental rights (TPR) for children for whom adoption is considered the best permanency plan. Involuntary termination of parental rights can be a lengthy and expensive process which may involve court appeals. The procedure can also be emotionally stressful for birth, foster and prospective adoptive parents and the child. Frequently this practice is insensitive to the need of some children to maintain connections with their birth families. Although necessary in some cases, TPR and other practices of a similar tone, have failed to significantly reduce the large number of children in the foster care system waiting to be freed for adoption, to be adopted, or for other permanent arrangements.

Alternatively, the child welfare system is encouraged to focus on approaches which set a different tone and emphasize non-adversarial front-end practices and procedures and strengthen the agency's capacity to achieve earlier and better outcomes for children and their families. Expanding options for permanency, which encourage cooperative processes and early decision making among all parties involved, are essential to achieving child, family, and system well-being.

The demonstration projects funded under this priority area should be designed to inform the field about the efficacy of these non-adversarial approaches in achieving permanency earlier, more quickly and more sensitively for these children. Permanency is broadly conceptualized to include adoption, guardianship to a relative or non-relative and parental consent to relative or non-relative adoption. One or a combination of the following approaches can be included in the demonstration: voluntary relinquishment, mediation or concurrent planning.

Mediation is the voluntary, non-coercive process of negotiation with the assistance of a neutral, impartial third party. The aim of mediation in child welfare and permanency is to encourage birth parents, extended relatives and foster and/or adoptive parents to cooperate in making decisions that reflect the best interest of the child.

Concurrent Planning is the process of workers' developing alternative permanent plans for children during their initial contact with the child welfare system. Concurrent planning involves enacting a plan for family preservation or reunification with the child's birth family, while simultaneously engaging in planning for alternative permanency placements such as adoption and kinship care.

Relinquishment is a voluntary process of transferring parental rights to an authorized child welfare agency. It is often utilized at the request of the parent and can be provided at any point along the child welfare service continuum. In recent years it has been underutilized by child welfare workers, and the professional skills associated with counseling parents on the issues of voluntary relinquishment have eroded.

This priority area encourages child welfare system reform by incorporating and/or strengthening non-adversarial approaches into practice to achieve permanency for children in the child welfare system.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

Demonstrate knowledge of current issues in adoption and permanency for children in the public child welfare field.

Describe the project and explain why a particular system reform approach or set of approaches is being selected. Demonstrate knowledge and understanding of the reform approach or approaches selected. If more than one approach is selected, describe how they are linked.

Describe how the approach(es) to be used in this demonstration differ from current agency practice and how this project's reform approaches will be institutionalized.

Describe the measurable goals and objectives of the project to be used to determine if the approach selected led to an increase in achieving permanency earlier.

Describe the process and criteria that will be used to identify children and families in need of these services.

Describe how the birth families and extended families will be involved in the permanency planning process.

Provide assurances that project staff are knowledgeable of policies, federal regulations, laws and cultural issues that impact on permanency for children.

Describe the training/staff development components of the project which will be implemented.

If the project involves coordination with other agencies, present a plan clarifying how these agencies will work with the applicant to accomplish project goals and objectives.

Describe an evaluation plan which will focus on the reform approaches and which is capable of identifying the successes and failures of the approaches.

The evaluation plan should be outcome oriented and include the collection and analysis of data to ascertain the effectiveness of the non-adversarial options for permanency. The evaluation should also include descriptive information on the processes and procedures used in implementing the project.

Discuss strategies for disseminating information on the reform approaches utilized. Identify audiences who will benefit from receiving the information and specify mechanisms and forums which will be used to convey the information and support replication by other interested agencies.

If the applicant is a non-profit private agency, it must provide assurance that the children to be served through this demonstration are public agency children.

Provide assurances that at least one key person from the project will attend an annual 3 to 5 day Child Welfare Conference in the Washington, D.C. metropolitan area hosted by the Children's Bureau. The Conference brings together child welfare professionals, including Adoption Opportunities and other Children's Bureau discretionary program grantees to exchange information and address current child welfare issues.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Cost: The maximum Federal share of the project is $100,000 per 12-month budget period.

Matching Requirement: Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. Therefore, a project requesting $100,000 in Federal funds (based upon an award of $100,000 per budget period) must include a match of at least $11,111 (10 percent of the total project cost). The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that two projects will be funded.

CFDA: 93.652 Adoption Opportunities Grants : title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Public Law 95–266, as amended.

1.05 Developing Resource Materials for Foster and Adoptive Parents To Meet the Needs of Children of a Different Race, Color, or National Origin

Eligible Applicants: States, local government entities, public and private non-profit licensed child welfare and adoption agencies, adoption organizations, university-based institutes and incorporated adoptive parents' groups with materials development expertise.

Purpose: To develop resource materials capable of assisting foster and adoptive parents in meeting the needs of children of a racial and ethnic group different from their own.

Background: Many children in foster care are currently being cared for by parents of a different race, color or national origin, and if adopted, are more than likely to be adopted by their foster parents. With the passage of MEPA barriers to transracial and transcultural placements are being eliminated. At times, parents in these circumstances have received little or no assistance in looking at how these differences can affect themselves, their own family and the child(ren). Additionally, they may not have been prepared to deal with the racism and bias their foster or adoptive child(ren) and their newly formed family may encounter.

To meet the needs of all waiting children both minority foster and adoptive parents and transracial and transcultural families will be formed. Agencies involved in foster or adoptive parent recruitment, parent preparation and/or child placement may need assistance in appropriately assessing the capacity of those applicants to deal with the differences, and providing them with suitable training and education. How parents value, respect, appreciate and educate the child regarding his or her racial and/or ethnic background are among the most critical factors in the child's healthy development.

The Multiethnic Placement Act (MEPA) Guidance published in April 1995 identifies the following factors as being among those that agencies need to consider in assessing a prospective parent's suitability to care for a particular child. They are:

- the ability to form relationships and to bond with the specific child;
- the ability to help the child integrate into the family;
- the ability to accept the child's background and to help the child cope with his/her past;
- the ability to accept the behavior and personality of the specific child;
- the ability to validate the child's cultural, racial and ethnic background; and
- the ability to meet the child's particular educational, developmental or psychological needs.

To facilitate the implementation of MEPA, child placement agencies have been looking for new resource materials to use in assessing and preparing families to provide permanence for children who are culturally, ethnically, and racially different. This priority area promotes the development of resources responsive to this need.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

Describe applicant's understanding of the placement of public sector children in foster care and adoption, as well as an understanding of issues in assessing and preparing prospective foster and adoptive parents for children who have been in foster care.

Demonstrate knowledge of all factors to be considered in determining a child's placement needs and of factors to be considered in helping a family make a decision to parent or not to parent a child of a different race, color or national origin.

Demonstrate knowledge of the role that culture and ethnicity play in the development of a child's self esteem.

Demonstrate knowledge of the current issues in transracial/transcultural placements.

Identify resource deficiencies that currently exist and demonstrate how the proposed resource materials respond to the deficiencies identified.

Develop a Panel of Advisors from diverse backgrounds and disciplines, to assist in the content development and design of the resource materials.

Demonstrate that staff to be utilized in the project are culturally competent and have experience working with families and children from diverse backgrounds and racial and ethnic groups.

Provide assurance that draft and final content of the resource materials will be submitted for review by federal staff to confirm legal and policy accuracy.

Describe how the resource materials developed will be field-tested and evaluated prior to submission as a final product.

Discuss strategies for disseminating and/or marketing the resource materials. Identify audiences who will benefit from receiving the materials and specify mechanisms and forums which will be used to convey information about the materials and support utilization by other child welfare agencies.

Provide assurances that at least one key person from the project will attend an annual 3 to 5 day Child Welfare Conference in the Washington, D.C. metropolitan area hosted by the Children's Bureau. The Conference brings together child welfare professionals, including Adoption Opportunities and other Children's Bureau discretionary program grantees, to exchange information and address current child welfare issues.

Project Duration: The length of the project should not exceed 24 months.

Federal Share of Project Cost: The maximum Federal share of the project is not to exceed $75,000 per 12-month budget period.

Matching Requirements: Grantees must provide at least 10 percent of the total cost of the project. The total cost of the project is the sum of the ACF share and the non-Federal share. Therefore, a project requesting $75,000 in Federal funds (based on an award of $75,000 per budget period) must include a match of at least $8,333 (10 percent of total project cost). The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirement through cash contributions.

Anticipated Number of Projects To Be Funded: It is anticipated that two projects will be funded.

CFDA: 93.652 Adoption Opportunities Grant: title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Public Law 95–266, as amended.

1.06 Operation of a National Adoption Information Exchange System

Eligible Applicants: State or local governments, public or private non-profit agencies, organizations or universities with expertise in adoption and the ability to maintain a National Adoption Information Exchange System.

Purpose: To maintain a National Adoption Information Exchange System to bring together children who would benefit from adoption and qualified prospective adoptive parents who are seeking such children, and conduct national recruitment efforts in order to reach prospective parents for children waiting to be adopted.

Background information: The Adoption Opportunities statute spells out the intent of the Congress to facilitate the elimination of barriers to adoption and to provide permanent and loving home environments for children who would benefit from adoption, particularly children with special needs, including disabled infants with life threatening conditions.

The statute requires the

includes public and private agencies,

circumstances should a national search

The statute requires the Administration on Children, Youth and Families (ACYF) to conduct directly or by grant or contract with public or private non-profit agencies or organizations, ongoing, extensive recruitment efforts on a national level, to develop national public awareness efforts to unite children in need of adoption with appropriate adoptive parents, and to establish a coordinated referral system of recruited families with appropriate State or Regional adoption resources to ensure that families are served in a timely fashion.

In 1979, the North American Center on Adoption, a unit of the Child Welfare League of America, Inc. was awarded a three year contract by the Children Bureau for the National Adoption Information Exchange System project. This project focused on three areas: Designing, developing and operating a National Adoption Exchange system; providing and coordinating training and technical assistance to the State and Regional exchanges to enhance their ability to participate in the national exchange system; and publishing a significant quantity of materials needed to facilitate the adoption of waiting children. The contract was replaced with a competitive grant awarded to the Adoption Center of Delaware Valley in 1983, to operate the National Adoption Information Exchange System for two years. The grant was to provide six major services: information and referral, computerized listing of children and families, match/referral, recruitment and public education, training and technical consultation and development of the national adoption network. During the second year of the grant, there was an increased emphasis on telecommunications as a result of input provided by members of the Corporate Advisory Board and Child Welfare Advisory Board.

In September 1986 ACYF funded 44 States, including Puerto Rico and the District of Columbia, with small grants so that they could purchase hardware and software to join the national adoption telecommunications network, and to communicate with each other around concerns in the field of adoption. In 1985, the National Adoption Center (NAC), formerly the Adoption Center of Delaware Valley, received a grant to continue the development and implementation of the national adoption telecommunication network and to provide coordination and support services to manage the network and to provide technical consultation to States to continue building and implementing the network. The membership of the network includes public and private agencies, and other child welfare organizations, parent groups, independent or non-affiliated social workers and researchers.

In 1990, a new five year grant was competitively awarded to the NAC to continue the National Adoption Information Exchange System. The NAC increased usage of the system by providing training and technical assistance to its members and by providing national outreach and public education to recruit adoptive families for children who wait. In September 1995 an additional short-term grant was awarded to the National Adoption Center.

During its years of operation under various auspices, the National Adoption Information Exchange System, also known as the NAE has increased the visibility of waiting children and enabled approved families to register and gain maximum access to children waiting for adoptive families. The new computer system put into effect in July 1992 has considerably improved the ability of NAE members to access and utilize the information on the exchange. NAE members use the exchange to list children in the child database and to search for adoptive parents for the children whom they list.

However, there continues to be an insufficient number of families listed on the NAE to meet the needs of these children. State and local agencies are reluctant to list families on the NAE whom they believe are potential resources for children in their own States. The agency's preference to find families for children within the State or within close proximity to the State has prompted the development of State and Regional exchanges.

We have reached a critical point in the development of the National Adoption Information Exchange System. Previously, the NAE focused on the following areas: (1) Registration of waiting children and waiting families; (2) the development of a computer database which made this information available to members of the exchange electronically; (3) the number of matches made on behalf of listed waiting children; and (4) the development of national recruitment activities aimed at finding potential adoptive families interested in adoption of special needs children.

In order to remain effective, the NAE must refocus its priorities to emphasize assisting States and localities to build the capacity within their own jurisdictions to meet the needs of waiting children. This priority is based on the premise that only in unusual circumstances should a national search for an adoptive family be undertaken and that the activity is most effective when carried out at the local, State and regional levels. The NAE should be viewed as an extension of State and Regional exchanges, not as their competitor.

The NAE should be able to develop linkages with a variety of national media organizations in order to educate large segments of the population about the needs of waiting children and on how to access the adoption system. The NAE should be in the position to: (1) Provide training and technical assistance in the development and management of State and Regional exchanges and to provide consultation to exchanges on recruitment strategies for potential adoptive families; (2) facilitate the development of a network of exchanges that connect urban, rural, small and large child welfare service providers in their efforts to bring families and children together; (3) serve as the central receiver of all adoption inquiries generated during national and other recruitment campaigns and disseminate these resources to the Regional and State exchanges; (4) collaborate with organizations such as the Interstate Compact for the Placement of Children (ICPC), the Interstate Compact on Adoption and Medical Assistance (ICAMA), and other relevant agencies to assist with the identification of, and the possible removal of barriers that prevent "necessary" interstate placements which serve the best interest of the child.

The Federal government is in the process of redefining its relationship with States and other child welfare agencies. A new partnership is being forged based upon a vision wherein all concerned agencies will collaborate and cooperate to provide a continuum of services to meet the needs of children. In light of the current opportunity to revitalize child welfare, the role and responsibilities of NAE must be focused on assisting States to improve their ability to meet the needs of the rising numbers of children waiting for permanent families.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

Demonstrate knowledge of adoption and the current challenges faced by the field.

Demonstrate knowledge of the issues and problems related to the maintenance of a national adoption information exchange system and provide documentation of the applicant's plan to address them.

Describe a plan for establishing a 24 hour, 7 day a week, toll-free national adoption exchange telephone number which can be used for national recruitment initiatives, local recruitment initiatives and incoming adoption inquiries generated by these recruitment initiatives.

Develop performance measures that can be used to assess the strengths, weaknesses and successes of the NAE as well as State and Regional exchanges.

Describe a plan for providing training and technical assistance to States and Regions in the following areas: (1) Development of a State or Regional exchange, (2) development of State or Regional recruitment strategies, and (3) use of NAE's telecommunications resources.

Describe a strategy for the development of a network of exchanges which includes linkages between Regional exchanges, State Exchanges, and the NAE in order to maximize the placement options for children.

Describe a plan for enhancing, maintaining and continuing technological and telecommunications access to the national listing of waiting children and waiting families for exchange members.

Demonstrate knowledge of current technologies/programs such as the Internet and the Statewide Automated Child Welfare Information System (SACWIS) which could be used to access information on children in the child welfare system.

Provide documentation of the commitment to assist States in incorporating the exchange system into their computer systems as these systems are fully developed and implemented at the State level.

Describe a plan for periodic national recruitment activities, using a range of media sources, on behalf of waiting children on an annual basis (a minimum of 4 separate events per year, including National Adoption Month Activities).

Develop a media strategy which includes partnerships with State and local agencies in planning, implementing and the follow-up of recruitment activities.

Describe a plan for the production and dissemination of materials for general recruitment activities.

Provide assurances that the staff is knowledgeable of policies, regulations, laws and racial and cultural issues that impact the children who are waiting for an adoptive placement.

Describe a strategy for facilitating linkages and partnerships among (at a minimum) the State adoption specialists, the Interstate Compact on the Placement of Children (ICPC) Administrators, the Interstate Compact on Adoption and Medical Assistance (ICAMA) Administrators and the NAE to address the issues and problems of interstate placement.

Describe the efforts that will be made to coordinate with the National Adoption Information Clearinghouse (NAIC) and the National Resource Center for Special Needs Adoption (NRCSNA) to assure effective utilization of resources and to avoid duplication of effort and provide assurance that funds from this grant will not be used to support activities that are being conducted by NAIC and NRCSNA.

Describe how the proposed budget reflects the priorities for activities for the NAE described in this program announcement.

Describe a plan for developing a national network of State professionals in the field to serve as an advisory group on the operation of the exchange to address the needs of States.

Provide an assurance that at least one key person from the project will attend an annual 3 to 5 day Child Welfare Conference in the Washington, D.C. metropolitan area hosted by the Children's Bureau.

Provide assurances that at least one key staff member will attend annually four, one to two day meetings convened by the Children's Bureau in Washington, D.C.

Provide an assurance that key staff will meet with their Federal project officer and other Children's Bureau staff in Washington, D.C. within sixty days of receiving the award.

Agree to enter into a Cooperative Agreement which will require the grantee to submit to the Children's Bureau for review and approval: Work plans, including as appropriate, activities involving Headquarters and Regional Office staff; lists of topics to be covered in technical assistance resources, syntheses, summaries and literature reviews; topics, times and places for conferences; topics for any collection of original data; and draft reports, conference agendas and other materials prior to their finalization and dissemination by the grantee. (A cooperative agreement is Federal assistance in which substantial Federal involvement is anticipated. The respective responsibilities of Federal staff and the awardee are negotiated prior to award.) The grantee shall also cooperate, to the extent that its budget will allow, with the Children's Bureau in meetings, briefings, or other forums to disseminate knowledge gained from its work with States and local communities around adoption issues.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Cost: The maximum Federal share of the project is $500,000 per budget period.

Matching Requirement: Grantees must provide at least 25 percent of the total approved project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. Therefore, a project requesting $500,000 in Federal funds (based on an award of $500,000 per budget period) must include a match of at least $166,666 (25 percent of the total project cost). The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that 1 project will be funded.

CFDA: 93.652 Adoption Opportunities Grants: title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Public Law 95–266, as amended.

Part III. Instructions for the Development and Submission of Applications

This part contains information and instructions for submitting applications in response to this announcement. Application forms are provided, along with a checklist, for assembling an application package. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information contained within the specific priority area under which the application is to be submitted. The priority area descriptions are in Part II.

A. Required Notification of the State Single Point of Contact The Adoption Opportunities Program is not covered under Executive Order 12372, Intergovernmental Review of Federal Programs.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW, 6th Floor East, OFM/DDG, Washington, D.C. 20047.

B. Deadline for Submission of Applications

The closing time and date for the receipt of applications is 4:30 p.m. (Eastern Time Zone) on August 26, 1996. Applications received after 4:30 p.m. will be classified as late.

Deadline: Mailed applications shall be

Please prepare your application in

Catalog of Federal

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW, Washington, DC 20447, (Reference Announcement Number and Priority Area). Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date. Applications hand-carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m. at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW, Washington, D.C. 20024 between Monday and Friday (excluding Federal Holidays). Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications faxed to ACF will not be accepted regardless of date or time of submission and time of receipt.

Late Applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines: ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

C. Instructions for Preparing the Application and Completing Application Forms.

The SF 424, 424A, 424B, and certifications have been reprinted for your convenience in preparing the application. See Appendix A. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page.

Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet. Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Enter the single priority area number under which the application is being submitted under only one priority area.

Item 1. Type of submission—Preprinted on the form.

Item 2. Date Submitted and Applicant Identifier—Date application is submitted to ACYF and applicant's own internal control number, if applicable.

Item 3. Date Received By State—State use only (if applicable).

Item 4. Date Received by Federal Agency—Leave blank.

Item 5. Applicant Information Legal Name—Enter the legal name of the applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

Organizational Unit—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

Address—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

Name and telephone number of the person to be contacted on matters involving this application (give area code)—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. Employer Identification Number (EIN)—Enter the employer identification number of the applicant organization, only provide the prefix and suffix assigned by the DHHS Central Registry System.

Item 7. Type of Applicant—Self-explanatory.

Item 8. Type of Application—Preprinted on the form.

Item 9. Name of Federal Agency—Preprinted on the form.

Item 10. Catalog of Federal Domestic Assistance Number and Title—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title, as indicated in the relevant priority area description.

Item 11. Descriptive Title of Applicant's Project—Enter the project title. The title is generally short and is descriptive of the project, not the priority area title. Place the priority area number in parenthesis after the main program title.

Item 12. Areas Affected by Project—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. Proposed Project—Enter the desired start date for the project and projected completion date.

Item 14. Congressional District of Applicant/Project—Enter the number of the Congressional District where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If statewide, a multi-State effort, or nationwide, enter 00.

Items 15. Estimated Funding Levels: In completing 15a through 15f, the dollar amounts entered should reflect, for a 12 month budget period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 months of the proposed project.

Item 15a. Enter the amount of ACF funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Item 15b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b–e are considered cost-sharing or matching funds. The value of third party in-kind contributions should be included on appropriate lines as applicable.

Items 15f. Enter the estimated amount of income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a–15e.

Item 16a. Is Application Subject to Review By State Executive Order 12372 Process? Yes. —Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part III. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application. If there is a discrepancy in dates, the SPOC may request that the Federal agency delay any proposed funding.

Item 16b. Is Application Subject to Review By State Executive Order 12372 process? No. —Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. Is the Applicant Delinquent on any Federal Debt? —Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded. —To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. Typed Name of Authorized Representative, Title, Telephone Number—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. Signature of Authorized Representative—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. Date Signed—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs. This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering the first year budget period.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers the first year budget period if the proposed project period exceeds 12 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate itemized budget justification for each line item is required. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, Other.

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total cost of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, Other.

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. Equipment means an article as non-expendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including (1) Procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, other.

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements. Applicants who anticipate procurement that will exceed $5,000 (non-governmental entities) or $25,000 (governmental entities) and are requesting an award without competition should include a sole source justification in the proposal which at a minimum should include the basis for contractor's selection, justification for lack of competition when competitive bids or offers are not obtained and basis for award cost or price.

Note: Previous or past experience with a contractor is not sufficient justification for sole source.)

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: Insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local

transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as miscellaneous and honoraria are not allowable.

Justification: Specify the costs included.

Total Direct Charge—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter none. Generally, this line should be used when the applicant has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with DHHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant.

Justification: Enclose a copy of the indirect cost rate agreement.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12, entitled "Totals". In-kind contributions are defined in 45 CFR, Part 74.51 and 45 CFR Part 92.3, as property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant.

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs, Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 12 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column (b) "First". If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under (c) "Second". Columns (d) would be used in the case of a 48 month project period. Column (e) would not apply.

Section F—Other Budget Information

Direct Charges—Line 21, Not applicable.

Indirect Charges—Line 22, Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 12 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. Project Summary Description. Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the application. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project abstract. It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

At the bottom of the page, following the summary description, type up to 10 key words which best describe the proposed project, the service(s) involved and the target population(s) to be covered. These key words will be used for computerized information retrieval for specific types of funded projects.

4. Program Narrative Statement. The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in Part II.

The narrative should provide information concerning how the application meets the evaluation criteria using the following headings:

(a) Objectives and Need for Assistance;

(b) Results and Benefits Expected;

(c) Approach; and

(d) Staff Background and Organization's Experience.

The narrative should be typed double-spaced on a single-side of an 8½" x 11" plain white paper, with 1" margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance", as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

A page is a single side of an 8½" X 11" sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose xeroxing difficulties. These materials, if submitted, will not be included in the review process if they exceed the page limit criteria. Each page of the application will be counted to determine the total length.

5. Organizational Capability Statement. The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

6. Part IV—Assurances/Certifications. Applicants requesting financial assistance for a non-construction project must file the Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B with their applications.

Applicants must provide a certification concerning Lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certificate with their applications. Applicants must sign and return the certification with their applications.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications.

Copies of the certification and assurances are located at the end of this announcement.

D. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application, plus two copies. Applications for different priority areas are packaged separately;

—Application is from an organization which is eligible under the eligibility requirements defined in the priority area description (screening requirement);

—Application for Federal Assistance (SF 424, REV 4–88);

—Budget Information-Non-Construction Programs (SF 424A, REV 4–88);

—Budget justification for Section B-Budget Categories;

—Table of Contents;

—Letter from the Internal Revenue Service to prove non-profit status, if necessary;

—Copy of the applicant's approved indirect cost rate agreement, if appropriate;

—Project summary description and listing of key words;

—Program Narrative Statement (See Part III, Section C);

—Organizational capability statement, including an organization chart;

—Any appendices/attachments;

—Assurances-Non-Construction Programs (Standard Form 424B, REV 4–88);

—Certification Regarding Lobbying; and

—Certification of Protection of Human Subjects, if necessary;

—Certification Regarding Environmental Tobacco Smoke.

E. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

Do not include a self-addressed, stamped acknowledgement card. All applicants will be notified automatically about the receipt of their application. If acknowledgement of receipt of your application is not received within eight weeks after the deadlines date, please notify the ACYF Operations Center by telephone at 1–800–351–2293.

Dated: June 26, 1996.

Olivia A. Golden,

Commissioner, Administration on Children, Youth and Families.

BILLING CODE 4184–01–P

Appendix A

Instructions for the SF 424

7. Enter the appropriate letter in the space

15. Amount requested or to be contributed

Appendix A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐☐☐

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration

D Decrease Duration Other (specify):

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M Profit Organization
G Special District N. Other (Specify) _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4154-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employee Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   —"New" means a new assistance award.
   —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4154-01-P

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the *new* total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function, or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Line 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a) Section A. A breakdown by functions or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount of Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Line 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. § § 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. § § 1271 et seq.), related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § § 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official _____

Title _____

Applicant Organization _____

Date Submitted _____

BILLING CODE 4184–01–P

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government-wide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"**Controlled substance**" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"**Conviction**" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"**Criminal drug statute**" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"**Employee**" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying—Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form To Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the require statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature _____
Title _____
Organization _____
Date _____

BILLING CODE 4184-01-P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	**2. Status of Federal Action:** ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	**3. Report Type:** ☐ a. initial filing ☐ b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known:* **Congressional District,** *if known:*	**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable:* _____	
8. Federal Action Number, *if known:*	**9. Award Amount,** *if known:* $	
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*	
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
11. Amount of Payment *(check all that apply):* $ _____ ☐ actual ☐ planned	**13. Type of Payment** *(check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____	
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*		
15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____	
Federal Use Only:		**Authorized for Local Reproduction Standard Form – LLL**

BILLING CODE 4184-01-C

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all subgrantees shall certify accordingly.

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Part III

Department of Housing and Urban Development

24 CFR Part 202, et al.
Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Streamlining Mortgagee Requirements; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 202, 203, 221, and 234

[Docket No. FR–3957–F–02]

RIN 2502–AG57

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Streamlining Mortgagee Requirements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final the January 26, 1996 interim rule which revised FHA's mortgagee requirements to streamline and make the FHA process more flexible for mortgagees and FHA's customers and clients.

EFFECTIVE DATE: August 9, 1996.

FOR FURTHER INFORMATION CONTACT: William M. Heyman, Director, Office of Lender Activities and Land Sales Registration, Room 9156, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (voice) (202) 708–1515, (TTY) (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Early in 1995 the FHA Single Family Business Practices Working Group was established to develop recommendations to streamline the FHA process, reduce or eliminate unnecessary requirements, promote greater opportunities for first-time homebuyers and minorities, and maintain a responsible risk management program. The Working Group was comprised of representatives of mortgage lenders, State and local governments, trade associations, realtors, government-sponsored enterprises, and other interested parties.

On January 26, 1996, at 61 FR 2650, the Department published an interim rule on Streamlining Mortgagee Requirements. The revisions made by the interim rule resulted from the efforts and recommendations made by the Working Group. They were designed to make the FHA process more flexible for mortgagees, and for State and local governments and nonprofit associations, and also to expand homeownership opportunities. They were also intended to assist in making the FHA a more effective organization to serve the needs of our customers and clients. In addition, the revisions were intended to minimize the differences between FHA and conventional loan processing and to place greater reliance and accountability on mortgagees.

The interim rule made the following changes:

—Section 202.11(a)(5) was revised to establish uniform requirements on the use of authorized agents by supervised and nonsupervised mortgagees. For conforming reasons, §§ 202.13(e) and 202.17(d) were removed.

—Section 202.12(m) was revised to eliminate the requirement that a branch office of a mortgagee must be approved by FHA to originate FHA mortgages. A branch registry process is permitted. However, a nonsupervised loan correspondent is required to provide evidence that it complies with the net worth requirements for itself and all of its branches, as set forth in § 202.12(n)(3).

—Section 202.15(c)(1) was revised to eliminate the requirement that loans must be closed in the name of the Loan Correspondent, and to permit such mortgages to be closed in either the name of the Loan Correspondent or its Sponsor(s).

—Section 202.15(c)(5) was revised to eliminate the compliance report and the report on internal control from Loan Correspondents' annual audited financial statements.

—Section 203.3(b)(2) was revised to eliminate the requirement that FHA individually approve mortgagees' Direct Endorsement underwriters and to establish a registry process for the underwriter. Also, the requirement that the technical staff utilized by the mortgagee be approved by the Secretary was removed. For conforming reasons, §§ 203.3(b)(3) and (c) were eliminated.

Public Comments

The public was afforded a 60-day comment period on the January 26, 1996 interim rule. Two commenters responded: one certified public accountant firm and one national association of certified public accountants. Below is a listing of the comments presented, and the Department's response follows each comment.

Comment: The commenter questions (1) Whether the auditor needs to meet GAO Yellow Book general requirements for education, etc., given the lower level of scope, and (2) is the auditor required to communicate indications of illegal acts to HUD if such indications are present?

Response: (1) Unless engaged in other GAO Yellow Book audits, the auditor of a loan correspondent mortgagee would no longer have to meet the GAO Yellow Book education requirements. The Department notes, however, that Professional Standards provide that an auditor should obtain a level of knowledge of the auditee's business that will enable the auditor to plan and perform the audit in accordance with Generally Accepted Auditing Standards. (2) The auditor will still be required to report illegal acts as set forth in Handbook 2000.04 REV–1, Consolidated Audit Guide for Audits of HUD Programs.

Comment: The commenter urges the issuance by the Office of the Inspector General of a supplement to Handbook 2000.04 REV–1, Consolidated Audit Guide for Audits of HUD Programs. Otherwise, the commenter believes there will be confusion among both loan correspondents and their auditors since the Consolidated Audit Guide is in conflict with the interim rule.

Response: The Department is revising the Consolidated Audit Guide to reflect this and other changes. In the meantime, loan correspondent mortgagees and auditors may refer to Mortgagee Letter 96–12 for guidance.

Comment: Another commenter requests that the final rule state whether the financial statement audits of Loan Correspondents should be performed in accordance with Government Auditing Standards or in accordance with Generally Accepted Auditing Standards (GAAS).

Response: The Department will no longer require that financial statement audits of loan correspondent mortgagees be performed in accordance with Government Auditing Standards. Such audits, however, must be performed according to Generally Accepted Auditing Standards. Although this will not be incorporated into the final rule, it will be specified in the Consolidated Audit Guide and in Mortgagee Approval Handbook 4060.1 REV–1, both of which are being revised by the Department.

This Rule

No changes are needed to the regulatory text as a result of the public comments received on the January 26, 1996 interim rule. Therefore, this final rule adopts the interim rule without substantive change. In addition, this final rule makes conforming changes to parts 202, 203, 221, and 234.

Other Matters

Environmental Finding

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, for the January 26, 1996 interim rule. Since this final rule makes no changes to the interim rule, the Finding of No Significant Impact for the interim rule shall serve as the finding for the final rule. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. Specifically, the requirements of this rule are directed to insuring mortgages and do not impinge upon the relationship between the Federal government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order because it revises mortgagee requirements.

The Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Secretary by his approval of this rule hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because the changes made by this rule are primarily procedural and will not have a significant economic impact.

List of Subjects

24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, under the authority of 42 U.S.C. 3535(d), chapter II of title 24 of the Code of Federal Regulations is amended by adopting as final, without change, the interim rule for "Parts 202 and 203, Streamling Mortgagee Requirements", published in the **Federal Register** on January 26, 1996 (61 FR 2650). Chapter II is also amended by further amending part 203, and by amending parts 221 and 234 as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

§§ 203.51, 203.258, 203.259a, 203.359, 203.363, 203.366, 203.366, 203.369, 203.378, 203.379, 203.380, 203.402, and 203.423 [Amended]

2. Part 203 is amended by removing the word "approved" wherever it appears before the word "underwriter" in the following sections: §§ 203.51(2), 203.258(c)(2), 203.259a(a)(2)(ii)(B), 203.359(b) introductory text, 203.363(b) paragraph heading, 203.366(b)(1), 203.368(a)(1)(ii), 203.369(a)(1), 203.369(b), 203.378(c)(3), 203.379(b), 203.380(a)(1)(iii), 203.402(g)(1) paragraph heading, 203.402(g)(2) paragraph heading, and 203.423(a)(1).

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

3. The authority citation for part 221 continues to read as follows:

Authority: 12 U.S.C. 1707(a), 1715b, and 1715l; 42 U.S.C. 3535(d).

§ 221.70 [Amended]

7. In § 221.70(a)(2), the reference to "approved underwriter" is revised to read "underwriter".

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

8. The authority for part 234 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715y; 42 U.S.C. 3535(d). Section 234.520(a)(2)(ii) is also issued under 12 U.S.C. 1707(a).

234.85 [Amended]

9. In § 234.85(a)(2), the reference to "approved underwriter" is revised to read "underwriter".

Dated: July 2, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

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Part IV

Department of Housing and Urban Development

24 CFR Part 570
Office of the Assistant Secretary for Policy Development and Research; Community Development Work Study Program; Amendments; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–3902–F–02]

RIN 2528–AA05

Office of the Assistant Secretary for Policy Development and Research; Community Development Work Study Program; Amendments; Final Rule

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Final rule.

SUMMARY: On November 6, 1995 (60 FR 56104), HUD published for public comment a rule proposing to revise HUD's regulations governing the Community Development Work Study Program (CDWSP). Under the CDWSP, HUD awards grants to institutions of higher education, either directly or through areawide planning organizations (APOS), or States, for the purpose of providing assistance to economically disadvantaged and minority full-time students who participate in a community development work-study program. The November 6, 1995 rule proposed to make several revisions to the CDWSP so that it would more effectively and efficiently meet its program objectives. This rule finalizes the policies and procedures of the November 6, 1995 proposed rule and considers the public comments submitted on the proposed rule.

EFFECTIVE DATE: August 9, 1996.

FOR FURTHER INFORMATION CONTACT: John Hartung, Office of University Partnerships, Department of Housing and Urban Development, Room 8130, 425 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 708–1537. (This telephone number is not toll-free.) Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2528–0175. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

II. The November 6, 1995 Proposed Rule

On November 6, 1995 (60 FR 56104), HUD published for public comment a rule proposing to revise its regulations at 24 CFR 570.415, which govern the Community Development Work Study Program (CDWSP). Section 501(b)(2) of the Housing and Community Development Act of 1987 (Pub.L. 100–242, approved February 5, 1988), added a new section 107(c) to the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) creating the CDWSP. Under the CDWSP, HUD is authorized to award grants to institutions of higher education, either directly, or through areawide planning organizations (APOs) or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in a community development work study program while enrolled in a full-time community development academic program.

The November 6, 1995 rule proposed to make several revisions to § 570.415 so that it would more effectively and efficiently meet the objectives of the CDWSP. HUD has determined that these changes are necessary as a result of its experience in administering the CDWSP. Among other revisions, the November 6, 1995 rule proposed to: (1) limit the number of students assisted under the CDWSP to five students per participating institution of higher education; (2) limit the CDWSP to graduate level programs; and (3) permit institutions of higher learning to apply individually or through APOs. The November 6, 1995 proposed rule described in detail the amendments to 24 CFR 570.415.

III. Changes to the November 6, 1995 Proposed Rule

This rule clarifies the definition of "areawide planning organization (APO)" set forth in the November 6, 1995 proposed rule. Language in the current definition referencing the "nonmetropolitan area" served by an APO is confusing since no specific "nonmetropolitan" areas are delineated for census purposes. The November 6, 1995 rule proposed to establish a revised definition, clarifying the relevant geographic area for purposes of an APO. Upon further consideration, HUD has determined that this proposed definition did not adequately address the ambiguity present in the current definition. This final rule clarifies that in order for an organization operating in a nonmetropolitan area to be considered an APO, its jurisdiction must cover at least one county.

This final rule also makes one revision to the November 6, 1995 proposed rule as a result of public comment. Specifically, HUD has decided to amend 24 CFR 570.415 by combining the per-student limit on CDWSP tuition assistance with the per-student limit on "additional support." The public comment period on the November 6, 1995 proposed rule expired on January 5, 1996. Ten public comments were received. The following section of the preamble presents a summary of the significant issues raised by the public commenters on the proposed rule, and HUD's responses to these comments.

IV. Discussion of Public Comments on the November 6, 1996 Proposed Rule

1. Support for the CDWSP and the Elimination of the Repayment Requirements.

Comment. Several commenters expressed their strong support for the CDWSP. These commenters believe the CDWSP is a valuable resource for providing assistance to qualified minority and disadvantaged students pursuing graduate level studies in the field of community planning. Further, the majority of commenters applauded the proposed rule's elimination of the repayment requirements currently found at 24 CFR 570.415(g)(3)(i) and (k)(3)(ii). As one of the commenters, a university, wrote:

> [W]e are delighted with the proposed amendments to 24 CFR 570.415(g) and 24 CFR 570.415(k), which eliminate the program's repayment requirements. The university agrees that this requirement is both unnecessary as an incentive to highly motivated students and onerous to the recipient institution.

2. CDWSP Should Not be Limited to Graduate Programs

Comment. Four of the commenters opposed the proposed amendment to paragraph (a) of § 570.415, which would have limited the CDWSP to graduate-level programs. These commenters believed the proposed amendment would unfairly restrict CDWSP participation, and deny the community the valuable contributions made by certain undergraduate students. One commenter felt that this would especially be true for "nontraditional" undergraduate students, such as older, working, and minority students. The commenter noted that these students often possess valuable work and life experiences that they bring to their work study assignments, greatly benefiting the community organizations for whom they work.

HUD Response. HUD does not agree with these commenters. While HUD appreciates the value of undergraduate participation in the CDWSP, the program has long emphasized a curriculum that leads directly and immediately to careers in community and economic development or a related field. The masters degree has in recent years become the accepted credential for professional positions in these fields. Moreover, although CDWSP funding addresses a critical need for highly qualified professionals, it is insufficient to fully meet that need in an era when the community and economic development field is increasingly complex. Accordingly, HUD finds it prudent to concentrate the funding in graduate programs, where it can be of the greatest and most immediate overall benefit to communities.

3. Five Student Limit Would Adversely Impact Minority Students

Four commenters were concerned about the potential negative impact of proposed 24 CFR 570.415(c)(2), which would have limited CDWSP assistance to five students per participating institution of higher education. These commenters believed that the proposed amendment would discourage the recruitment of minority students. The commenters wrote that the proposed amendment would increase competition for the small pool of minority students. This increased competition might lead many colleges and universities to conclude that the available funding does not warrant the extensive expenditures of time and resources traditionally needed to identify and recruit qualified minority students.

HUD Response. HUD disagrees. HUD's practice in recent years has been to fund five or fewer students per college or university, despite the authority to fund up to ten students per institution of higher learning. Although the proposed amendment may reduce HUD's discretion, it is not a divergence from existing practice. Moreover, HUD believes the amendment will *improve* opportunities for qualifying minorities to participate in the CDWSP. The amendment allows more institutions to participate in the program and thus more interested students to apply.

4. Participation Through APOs Should be Encouraged

Proposed 24 CFR 570.415(d)(1)(iii) would have permitted institutions of higher education to apply for participation in the CDWSP independently of an APO. One commenter wrote that partnerships between universities and APOs are essential to the success of the CDWSP. This commenter noted that APOs have strong ties with many area local governments and nonprofit organizations that serve as excellent placement agencies. These strong relations enable APOs to provide a variety of diverse internship opportunities.

The commenter also believed that it is more cost effective if APOs administer CDWSP participation. The commenter noted that without APO coordination, HUD staff must handle the administrative costs and paperwork for each individual participating college or university. This commenter believed that APO participation in the CDWSP dramatically decreases the administrative burden for HUD staff and assists in preserving limited Federal resources. The commenter suggested that HUD revise the November 6, 1995 proposed rule to include language strongly encouraging work partnerships between APOs and universities, especially in metropolitan areas.

HUD Response. HUD has not adopted the suggestion made by the commenter. HUD agrees that in some circumstances the participation of an APO may lead to a stronger application, but this is not necessarily always the case. HUD believes the matter is best left to the discretion of the institutions of higher education and the APOS. Further HUD believes that institutions of higher education should not be penalized for choosing to submit an individual application. While the administrative burden for either HUD or the institutions of higher education may be less when an APO is involved, this is not necessarily always the case. The comparative advantage of an APO on these matters depends on how effectively it communicates with HUD and monitors the activities of the institutions of higher education involved.

5. HUD Should Consolidate Tuition and "Additional Support" Cost Categories

Comment. One commenter suggested that HUD combine the per-student limit on CDWSP tuition assistance with the per-student limit on "additional support," a category that includes books and travel. The commenter, director of the CDWSP at a private institution of higher education, indicated that the institution would likely utilize this greater flexibility to provide the entire combined amount to the students as tuition assistance.

HUD Response. HUD agrees with the suggestion made by the commenter. Tuition at private institutions now generally exceeds by far the existing $3,500 annual per-student limit on CDWSP tuition assistance. The additional flexibility would help economically disadvantaged and minority students better afford to complete their degree. In particular, students may find that they can minimize travel expense by attending locally sponsored conferences, rather than travelling to distant locations, and thus direct additional funds to meeting their tuition obligations. Likewise, some students may be able to purchase books at less than $500 per year, leaving more funds for meeting tuition requirements.

Although this amendment was not part of the November 6, 1995 proposed rule, it falls squarely within the spirit of that rule. The November 6, 1995 rule proposed an across-the-board streamlining of the CDWSP in order to increase program efficiency, eliminate unnecessary procedures, and clarify the existing regulations. The change suggested by the commenter will increase the flexibility provided to CDWSP participants, thus permitting the program to more effectively meet its objective of assisting qualified minority and disadvantaged students. Accordingly, this final rule adopts the commenter's recommendation and amends 24 CFR 570.415 to consolidate the per-student limit on tuition assistance with the per-student limit on additional support.

V. Other Matters

Environmental Impact. A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This Finding of No Significant Impact remains applicable to this final rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Regulatory Flexibility. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This rule makes several streamlining changes to the CDWSP. The amendments made by this rule are designed to clarify the existing regulations, increase program

efficiency, and eliminate unnecessary procedures. This final rule only affects applicants and participants in the CDWSP, and will not have any meaningful economic impact on any entity.

Federalism Impact. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this final rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this final rule are directed toward applicants and participants in HUD's Community Development Work Study Program (CDWSP). It effects no changes in the current relationships between the Federal government, the States and their political subdivisions in connection with CDWSP.

Family Impact. The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this final rule does not have the potential for significant impact on family formation, maintenance and general well-being, and, thus, is not subject to review under the Order. No significant changes in existing HUD policies or programs will result from promulgation of this final rule, as those policies and programs relate to family concerns.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

(The catalog of Federal domestic assistance program number is 14.234)

Accordingly, 24 CFR part 570 is amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

Subpart E—Special Purpose Grants

2. Section 570.415 is amended by:
a. Revising paragraph (a);
b. Revising paragraph (b);
c. Revising paragraphs (c)(1)(i) (A) and (B), d. Removing paragraph (c)(1)(i)(C);
e. Revising paragraph (c)(2);
f. Revising paragraphs (d)(1)(i) (A) and (B), (d)(1)(ii), and (d)(1)(iii);
g. Revising paragraph (d)(2)(i)(A);
h. Removing paragraph (d)(2)(i)(D) and redesignating paragraphs (d)(2)(i) (E) through (I) as paragraphs (d)(2)(i) (D) through (H), respectively;
i. Revising newly designated (d)(2)(i)(E);
j. Revising paragraphs (f)(1) and (f)(2)(i);
k. Revising paragraphs (g)(1) (ii) and (iii), (g)(2)(ii), and (g)(3) (i) and (ii);
l. Revising paragraphs (i)(1)(iii) and (i)(2);
m. Revising paragraph (k)(3)(ii); and
n. Removing paragraph (k)(3)(iii) and redesignating paragraph (k)(3)(iv) as paragraph (k)(3)(iii), to read as follows:

§ 570.415 Community Development Work Study Program.

(a) *Applicability and objectives.* HUD makes grants under CDWSP to institutions of higher education, either directly or through areawide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in a work study program while enrolled in full-time graduate programs in community and economic development, community planning, and community management. The primary objectives of the program are to attract economically disadvantaged and minority students to careers in community and economic development, community planning, and community management, and to provide a cadre of well-qualified professionals to plan, implement and administer local community development programs.

(b) *Definitions.* The following definitions apply to CDWSP:

Applicant means an institution of higher education, a State, or an areawide planning organization that submits an application for assistance under CDWSP.

Areawide planning organization (APO) means an organization authorized by law or by interlocal agreement to undertake planning and other activities for a metropolitan or nonmetropolitan area. For an organization operating in a nonmetropolitan area to be considered an APO, its jurisdiction must cover at least one county.

CDWSP means the Community Development Work Study Program.

Community building means community and economic development, community planning, community management, land use and housing activities.

Community building academic program or academic program means a graduate degree program whose purpose and focus is to educate students in community building. "Community building academic program" or "academic program" includes but is not limited to graduate degree programs in community and economic development, community planning, community management, public administration, public policy, urban economics, urban management, and urban planning. "Community building academic program" or "academic program" excludes social and humanistic fields such as law, economics (except for urban economics), education and history. "Community building academic program" or "academic program" excludes joint degree programs except where both joint degree fields have the purpose and focus of educating students in community building.

Economically disadvantaged and minority students means students who satisfy all applicable guidelines established at the participating institution of higher education to measure financial need for academic scholarship or loan assistance, including, but not limited to, students who are Black, American Indian/Alaskan Native, Hispanic, or Asian/Pacific Island, and including students with disabilities.

Institution of higher education means a public or private educational institution that offers a community building academic program and that is accredited by an accrediting agency or association recognized by the Secretary of Education under 34 CFR part 602.

Recipient means an approved applicant that executes a grant agreement with HUD.

Student means a student enrolled in an eligible full-time academic program. He/she must be a first-year student in a two-year graduate program. Students enrolled in Ph.D. programs are ineligible.

Student with disabilities means a student who meets the definition of "person with disabilities" in the Americans with Disabilities Act of 1990.

(c) * * *
(1) * * *
(i) * * *

(A) *Student stipend.* The amount of the student stipend is based upon the prevailing hourly rate for initial entry positions in community building and the number of hours worked by the student at the work placement assignment, except that the hourly rate used should be sufficiently high to allow a student to earn the full stipend without working over 20 hours per week during the school year and 40 hours per week during the summer. The amount of the stipend the student receives may not exceed the actual amount earned, up to $9,000 per year.

(B) *Tuition support and additional support.* The amount of support for tuition, fees, books, and travel related to the academic program, workplace assignment or conferences may not exceed actual costs incurred or $5,000 per year, whichever is higher. The conferences are limited to those dealing with community building, sponsored by professional organizations.

* * * * *

(2) *Number of students assisted.* The minimum number of students that may be assisted is three students per participating institution of higher education. If an APO or State receives assistance for a program that is conducted by two or more institutions of higher education, each participating institution must have a minimum of three students in the program. The maximum number of students that may be assisted under CDWSP is five students per participating institution of higher education.

(d) * * *
(1) * * *
(i) * * *

(A) *Institutions of higher education.* Institutions of higher education offering a community building academic program are eligible for assistance under CDWSP.

(B) *Areawide planning organizations and States.* An APO or a State may apply for assistance for a program to be conducted by two or more institutions of higher education. Institutions participating in an APO program must be located within the particular area that is served by the APO and is identified by the State law or interlocal agreement creating the APO. Institutions of higher education participating in a State program must be located within the State.

(ii) To be eligible in future funding competitions for CDWSP, recipients are required to maintain a 50-percent rate of graduation from a CDWSP-funded academic program.

(iii) If an institution of higher education that submits an individual application is also included in the application of an APO or State, then the separate individual application of the institution of higher education will be disregarded. Additionally, if an institution of higher education is included in the application of both an APO and a State, then the references to the institution in the application of the State will be stricken. The State's application will then be ineligible if fewer than two institutions of higher education remain as participants in the State's application.

(2) * * *
(i) * * *

(A) Recruit and select students for participation in CDWSP. The recipient shall establish recruitment procedures that identify economically disadvantaged and minority students pursuing careers in community building, and make such students aware of the availability of assistance opportunities. Students must be selected before the beginning of the semester for which funding has been provided.

* * * * *

(E) Encourage participating students to obtain employment for a minimum of two years after graduation with a unit of State or local government, Indian tribe or nonprofit organization engaged in community building.

* * * * *

(f) *Work placement agencies eligibility and responsibilities.* (1) *Eligibility.* To be eligible to participate in the CDWSP, the work placement agencies must be involved in community building and must be an agency of a State or unit of local government, an APO, an Indian tribe, or a nonprofit organization.

(2) * * *

(i) Provide practical experience and training in community building.

* * * * *

(g) * * *
(1) * * *

(ii) Must be a full-time student enrolled in the first year of graduate study in a community building academic program at the participating institution of higher education. Individuals enrolled in doctoral programs are ineligible.

(iii) Must demonstrate an ability to maintain a satisfactory level of performance in the community building academic program and in work placement assignments, and to comply with the professional standards set by the recipient and the work placement agencies.

* * * * *

(2) * * *

(ii) An interest in, and commitment to, a professional career in community building.

* * * * *

(3) * * *

(i) Enroll in a two-year program. A student's academic and work placement responsibilities include: Full-time enrollment in an approved academic program; maintenance of a satisfactory level of performance in the community building academic program and in work placement assignments; and compliance with the professional conduct standards set by the recipient and the work placement agency. A satisfactory level of academic performance consists of maintaining a B average. A student's participation in CDWSP shall be terminated for failure to meet these responsibilities and standards. If a student's participation is terminated, the student is ineligible for further CDWSP assistance.

(ii) Agree to make a good-faith effort to obtain employment in community building with a unit of State or local government, an Indian tribe, or a nonprofit organization. The term of employment should be for at least two consecutive years following graduation from the academic program. If the student does not obtain such employment, the student is not required to repay the assistance received.

* * * * *

(i) * * *
(1) * * *

(iii) The applicant must demonstrate that each institution of higher education participating in the program as a recipient has the required academic programs and faculty to carry out its activities under CDWSP. Each work placement agency must have the required staff and community building work study program to carry out its activities under CDWSP.

(2) *Rating.* All applications that meet the threshold requirements for applicant eligibility will be rated based on the following selection criteria:

(i) *Quality of academic program.* The quality of the academic program offered by the institution of higher education, including without limitation the:

(A) Quality of course offerings;

(B) Appropriateness of course offerings for preparing students for careers in community building; and

(C) Qualifications of faculty and percentage of their time devoted to teaching and research in community building.

(ii) *Rates of graduation.* The rates of graduation of students previously enrolled in a community building academic program at the institution of higher education, specifically including (where applicable) graduation rates from any previously funded CDWSP academic programs or similar programs.

(iii) *Extent of financial commitment.* The commitment and ability of the institution of higher education to assure that CDWSP students will receive sufficient financial assistance (including loans, where necessary) above and beyond the CDWSP funding to complete

their academic program in a timely manner and without working in excess of 20 hours per week during the school year.

(iv) *Quality of work placement assignments.* The extent to which the participating students will receive a sufficient number and variety of work placement assignments, the assignments will provide practical and useful experience to students participating in the program, and the assignments will further the participating students' preparation for professional careers in community building.

(v) *Likelihood of fostering students' permanent employment in community building.* The extent to which the proposed program will lead participating students directly and immediately to permanent employment in community building, as indicated by, without limitation:

(A) The past success of the institution of higher education in placing its graduates (particularly CDWSP-funded and similar program graduates where applicable) in permanent employment in community building; and

(B) The amount of faculty and staff time and institutional resources devoted to assisting students (particularly students in CDWSP-funded and similar programs where applicable) in finding permanent employment in community building.

(vi) *Effectiveness of program administration.* The degree to which an applicant will be able effectively to coordinate and administer the program. HUD will allocate the maximum points available under this criterion equally among the following considerations set forth in paragraphs (i)(2)(vi) (A), (B), and (C) of this section, except that the maximum points available under this criterion will be allocated equally between the considerations set forth in paragraphs (i)(2)(vi) (A) and (B) of this section only where the applicant has not previously administered a CDWSP-funded program.

(A) The strength and clarity of the applicant's plan for placing CDWSP students on rotating work placement assignments and monitoring CDWSP students' progress both academically and in their work placement assignments;

(B) The degree to which the individual who will coordinate and administer the program has clear responsibility, ample available time, and sufficient authority to do so; and

(C) The effectiveness of the applicant's prior coordination and administration of a CDWSP-funded program, where applicable (including the timeliness and completeness of the applicant's compliance with CDWSP reporting requirements).

(vii) *Commitment to meeting economically disadvantaged and minority students' needs.* The applicant's commitment to meeting the needs of economically disadvantaged and minority students as demonstrated by policies and plans regarding, and past effort and success in, recruiting, enrolling and financially assisting economically disadvantaged and minority students. If the applicant is an APO or State, then HUD will consider the demonstrated commitment of each institution of higher education on whose behalf the APO or State is applying; HUD will then also consider the demonstrated commitment of the APO or State to recruit and hire economically disadvantaged and minority students.

* * * * *

(k) * * *

(3) * * *

(ii) If a student's participation in CDWSP is terminated before the completion of the two-year term of the student's program, the recipient may substitute another student to complete the two-year term of a student whose participation has terminated. The substituted student must have a sufficient number of academic credits to complete the degree program within the remaining portion of the terminated student's two-year term.

* * * * *

Dated: June 28, 1996.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research.

[FR Doc. 96–17558 Filed 7–9–96; 8:45 am]

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federal register

Wednesday
July 10, 1996

Part V

Department of Housing and Urban Development

24 CFR Part 60

Office of the Secretary: Streamlining of HUD Regulations Governing the Protection of Human Subjects; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 60

[Docket No. FR–4069–F–01]

RIN 2501–AC25

Office of the Secretary; Streamlining of HUD Regulations Governing the Protection of Human Subjects

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: HUD's regulations at 24 CFR part 60 govern the protection of human subjects involved in research conducted or sponsored by HUD. These regulations are identical to those set forth by the Department of Health and Human Services (HHS). This final rule, which is part of HUD's continuing efforts to implement the President's regulatory reform initiative, amends part 60 to simply cross-reference to the HHS regulations, rather than repeating these identical provisions.

EFFECTIVE DATE: August 9, 1996.

FOR FURTHER INFORMATION CONTACT: Camille E. Acevedo, Assistant General Counsel for Regulations, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3055. (This is not a toll-free number.) Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On June 18, 1991 (56 FR 28003), HUD and fifteen other Federal Departments and Agencies published a common rule establishing guidelines for the protection of human subjects involved in research conducted or funded by these Departments and Agencies. Adoption of these common requirements implemented a recommendation made by the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research (the President's Commission), which was established by 42 U.S.C. 300v. HUD has codified these requirements at 24 CFR part 60.

The President's Commission is directed by 42 U.S.C. 300v–1(c) to report biennially to the President, the Congress, and appropriate Federal Departments and Agencies on the protection of human research subjects involved in biomedical or behavioral research. In carrying out that charge, the President's Commission must conduct a review of "the rules, policies, guidelines, and regulations of all Federal agencies regarding the protection of human subjects of biomedical or behavioral research which such agencies conduct or sponsor." Further, the review "may include such recommendations for legislation and administrative action as the [President's] Commission deems appropriate." (See 42 U.S.C. 300v–1(c).)

In December 1981, the President's Commission issued its first biennial report. Each Department or Agency receiving recommendations from the President's Commission with respect to its rules, policies, guidelines or regulations, is required by 42 U.S.C. 300v–1(b)(1) to publish the recommendations for public comment. On March 29, 1982 (47 FR 13272), the Department of Health and Human Services (HHS) published the recommendations on behalf of all affected Departments and Agencies. Among other suggestions, the President's Commission recommended that:

> The President should, through appropriate action, require that all federal departments and agencies adopt as a common core the regulations governing research with human subjects issued by the Department of Health and Human Services (codified at 45 CFR part 46), as periodically amended or revised, while permitting additions needed by any department or agency that are not inconsistent with these core provisions. (47 FR 13272, 13294)

In May 1982, the affected Federal Departments and Agencies formed a committee, chaired by an HHS representative, to consider the recommendations made by the President's Commission and the public comments submitted on these recommendations. On June 3, 1986 (51 FR 20204), the committee published for public comment a proposed model policy for the protection of human subjects. In accordance with the recommendation made by the President's Commission, the proposed model policy was based on subpart A of the HHS regulations at 45 CFR part 46. The June 18, 1991 rule finalized the requirements set forth in the June 3, 1986 proposed model policy and considered the public comments submitted on the proposed policy.

HUD's regulations at 24 CFR part 60, which implement the model policy, are identical to the HHS regulations at 45 CFR part 46, subpart A. One of the goals of President's Clinton's regulatory reform initiative is the elimination of repetitious regulatory provisions. Accordingly, this final rule amends 24 CFR part 60 to simply cross-reference to the HHS requirements, rather than repeating these identical provisions. Elimination of these redundant provisions will assist in HUD's goal of streamlining the content of title 24.

II. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule merely eliminates unnecessary repetition by reducing HUD's regulations at 24 CFR part 60 to a single section which cross-references the identical HHS requirements at 45 CFR part 46, subpart A. It does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

III. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this final rule will not have federalism implications and, thus, are not subject to review under that Order. This final rule eliminates unnecessary repetition by amending 24 CFR part 60 to merely cross-reference to the identical HHS regulatory provisions. The final rule will not impinge upon the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this final rule does not have a potential for significant impact on family formation, maintenance, and general well-being. This rule, as part of HUD's continuing efforts to implement the President's regulatory reform initiative, eliminates redundant regulatory provisions from title 24 of the CFR. No substantial change in existing HUD policies or programs will result from promulgation of this rule.

Regulatory Flexibility Act.

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this final rule, and in so doing certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule eliminates unnecessary repetition from title 24 of the CFR. The rule reduces HUD's regulations at 24 CFR part 60 to a single section which simply cross-references to the identical HHS requirements at 45 CFR part 46, subpart A. Elimination of these redundant provisions will assist in HUD's continuing efforts to implement the President's regulatory reform initiative. This rule does not establish or affect substantive policy, and will not have any meaningful economic impact on any entity.

List of Subjects in 24 CFR Part 60

Human research subjects, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 60 is amended as follows:

PART 60—PROTECTION OF HUMAN SUBJECTS

1. The authority citation for 24 CFR part 60 is revised to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b) and 3535(d).

2. Section 60.101 is revised to read as follows:

§ 60.101 Cross-reference.

The provisions set forth at 45 CFR part 46, subpart A, concerning the protection of human research subjects, apply to all research conducted, supported, or otherwise subject to regulation by HUD.

§§ 60.102 through 60.124 [Removed]

3. Sections 60.102 through 60.124 are removed.

Dated: June 28, 1996.

Henry G. Cisneros,

Secretary.

[FR Doc. 96–17557 Filed 7–9–96; 8:45 am]

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Wednesday
July 10, 1996

Part VI

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Final Guidelines on Stability Testing of Biotechnological/ Biological Products; Availability; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93D–0139]

International Conference on Harmonisation; Final Guideline on Stability Testing of Biotechnological/Biological Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a final guideline entitled "Quality of Biotechnological Products: Stability Testing of Biotechnological/Biological Products." The guideline was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guideline is intended to provide guidance to applicants regarding the type of stability studies that should be provided in support of marketing applications for biotechnological/biological products.

DATES: Effective July 10, 1996. Submit written comments at any time.

ADDRESSES: Submit written comments on the guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the guideline are available from the Division of Communications Management (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1012. An electronic version of this guideline is also available via Internet by connecting to the CDER file transfer protocol (FTP) server (CDVS2.CDER.FDA.GOV).

FOR FURTHER INFORMATION CONTACT:
Regarding the guideline: Nga Y. Nguyen, Center for Biologics Evaluation and Research (HFM–18), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–402–4996.
Regarding ICH: Janet Jenkins-Showalter, Office of Health Affairs (HFY–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0865.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of August 21, 1995 (60 FR 43501), FDA published a draft tripartite guideline entitled "Quality of Biotechnological Products: Stability Testing of Biotechnological/Biological Products." The notice gave interested persons an opportunity to submit comments by October 5, 1995.

After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies at the ICH meeting held on November 29, 1995.

The guideline is intended to supplement the tripartite ICH guideline entitled "Stability Testing of New Drug Substances and Products" published in the **Federal Register** of September 22, 1994 (59 FR 48754). Biotechnological/biological products have distinguishing characteristics to which consideration should be given in any well-defined testing program designed to confirm their stability during the intended storage period. For such products, in which the active components are typically proteins and/or polypeptides, maintenance of molecular conformation and biological activity is dependent on noncovalent as well as covalent forces. The products are particularly sensitive to environmental factors such as temperature changes, oxidation, light, ionic content, shear, and so forth. In order to ensure maintenance of biological activity and to avoid degradation, stringent conditions for their storage are usually necessary. This guideline is intended to assist the applicant in developing appropriate supporting stability data for a biotechnological/biological product.

In the past, guidelines have generally been issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Although this guideline does not create or confer any rights for or on any person, and does not operate to bind FDA, it does represent the agency's current thinking on stability testing of biotechnological/biological products.

As with all of FDA's guidelines, the public is encouraged to submit written comments with new data or other new information pertinent to this guideline. The comments in the docket will be periodically review, and, where appropriate, the guideline will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the final guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the guideline follows:

Quality of Biotechnological Products: Stability Testing of Biotechnological/Biological Products

1. Preamble

The guidance stated in the ICH harmonized tripartite guideline entitled "Stability Testing of New Drug Substances and Products" (issued by ICH on October 27, 1993) applies in general to biotechnological/biological products. However, biotechnological/biological products have distinguishing characteristics to which consideration should be given in any well-defined testing program designed to confirm their stability during the intended storage period. For such products in which the active components are typically proteins and/or polypeptides, maintenance of molecular conformation and, hence, of biological activity, is dependent on noncovalent as well as covalent forces. The products are particularly sensitive to environmental factors such as temperature changes, oxidation, light, ionic content, and shear. To ensure maintenance of biological activity and to avoid degradation, stringent conditions for their storage are usually necessary.

The evaluation of stability may necessitate complex analytical methodologies. Assays for biological activity, where applicable, should be part of the pivotal stability studies. Appropriate physicochemical, biochemical, and immunochemical methods for the analysis of the molecular entity and the quantitative detection of degradation products should also be part of the stability program whenever purity and molecular characteristics of the product permit use of these methodologies.

With these concerns in mind, the applicant should develop the proper supporting stability data for a biotechnological/biological product and consider many external conditions that can affect the product's potency, purity, and quality. Primary data to support a requested storage period for either drug substance or drug product should be based on long-term, real-time, real-condition stability studies. Thus, the development of a proper long-term stability program becomes critical to the successful development of a commercial product. The purpose of this document is to give guidance to applicants regarding the type of stability studies that should be provided in support of marketing applications. It is understood that during the review and evaluation process, continuing updates of initial stability data may occur.

2. Scope of the Annex

The guidance stated in this annex to "Stability Testing of New Drug Substances and Products" applies to well-characterized proteins and polypeptides, their derivatives and products of which they are components, and which are isolated from tissues, body fluids, cell cultures, or produced using recombinant deoxyribonucleic acid (r-DNA) technology. Thus, the document covers the generation and submission of stability data for products such as cytokines (interferons, interleukins, colony-stimulating factors, tumor necrosis factors), erythropoietins, plasminogen activators, blood plasma factors, growth hormones and growth factors, insulins, monoclonal antibodies, and vaccines consisting of well-characterized proteins or polypeptides. In addition, the guidance outlined in the following sections may apply to other types of products, such as conventional vaccines, after consultation with the appropriate regulatory authorities. The document does not cover antibiotics, allergenic extracts, heparins, vitamins, whole blood, or cellular blood components.

3. Terminology

For the basic terms used in this annex, the reader is referred to the "Glossary" in "Stability Testing of New Drug Substances and Products." However, because manufacturers of biotechnological/biological products sometimes use traditional terminology, traditional terms are specified in parentheses to assist the reader. A supplemental glossary is also included that explains certain terms used in the production of biotechnological/biological products.

4. Selection of Batches

3.1 Drug Substance (Bulk Material)

Where bulk material is to be stored after manufacture, but before formulation and final manufacturing, stability data should be provided on at least three batches for which manufacture and storage are representative of the manufacturing scale of production. A minimum of 6 months stability data at the time of submission should be submitted in cases where storage periods greater than 6 months are requested. For drug substances with storage periods of less than 6 months, the minimum amount of stability data in the initial submission should be determined on a case-by-case basis. Data from pilot-plant scale batches of drug substance produced at a reduced scale of fermentation and purification may be provided at the time the dossier is submitted to the regulatory agencies with a commitment to place the first three manufacturing scale batches into the long-term stability program after approval.

The quality of the batches of drug substance placed into the stability program should be representative of the quality of the material used in preclinical and clinical studies and of the quality of the material to be made at manufacturing scale. In addition, the drug substance (bulk material) made at pilot-plant scale should be produced by a process and stored under conditions representative of that used for the manufacturing scale. The drug substance entered into the stability program should be stored in containers that properly represent the actual holding containers used during manufacture. Containers of reduced size may be acceptable for drug substance stability testing provided that they are constructed of the same material and use the same type of container/closure system that is intended to be used during manufacture.

3.2 Intermediates

During manufacture of biotechnological/biological products, the quality and control of certain intermediates may be critical to the production of the final product. In general, the manufacturer should identify intermediates and generate in-house data and process limits that assure their stability within the bounds of the developed process. Although the use of pilot-plant scale data is permissible, the manufacturer should establish the suitability of such data using the manufacturing scale process.

3.3 Drug Product (Final Container Product)

Stability information should be provided on at least three batches of final container product representative of that which will be used at manufacturing scale. Where possible, batches of final container product included in stability testing should be derived from different batches of bulk material. A minimum of 6 months data at the time of submission should be submitted in cases where storage periods greater than 6 months are requested. For drug products with storage periods of less than 6 months, the minimum amount of stability data in the initial submission should be determined on a case-by-case basis. Product expiration dating should be based upon the actual data submitted in support of the application. Because dating is based upon the real-time/real-temperature data submitted for review, continuing updates of initial stability data should occur during the review and evaluation process. The quality of the final container product placed on stability studies should be representative of the quality of the material used in the preclinical and clinical studies. Data from pilot-plant scale batches of drug product may be provided at the time the dossier is submitted to the regulatory agencies with a commitment to place the first three manufacturing scale batches into the long-term stability program after approval. Where pilot-plant scale batches were submitted to establish the dating for a product and, in the event that the product produced at manufacturing scale does not meet those long-term stability specifications throughout the dating period or is not representative of the material used in preclinical and clinical studies, the applicant should notify the appropriate regulatory authorities to determine a suitable course of action.

4.4 Sample Selection

Where one product is distributed in batches differing in fill volume (e.g., 1 milliliter (mL), 2 mL, or 10 mL), unitage (e.g., 10 units, 20 units, or 50 units), or mass (e.g., 1 milligram (mg), 2 mg, or 5 mg), samples to be entered into the stability program may be selected on the basis of a matrix system and/or by bracketing.

Matrixing, i.e., the statistical design of a stability study in which different fractions of samples are tested at different sampling points, should only be applied when appropriate documentation is provided that confirms that the stability of the samples tested represents the stability of all samples. The differences in the samples for the same drug product should be identified as, for example, covering different batches, different strengths, different sizes of the same closure, and, possibly, in some cases, different container/closure systems. Matrixing should not be applied to samples with differences that may affect stability, such as different strengths and different containers/closures, where it cannot be confirmed that the products respond similarly under storage conditions.

Where the same strength and exact container/closure system is used for three or more fill contents, the manufacturer may elect to place only the smallest and largest container size into the stability program, i.e., bracketing. The design of a protocol that incorporates bracketing assumes that the stability of the intermediate condition samples are represented by those at the

extremes. In certain cases, data may be needed to demonstrate that all samples are properly represented by data collected for the extremes.

5. Stability-Indicating Profile

On the whole, there is no single stability-indicating assay or parameter that profiles the stability characteristics of a biotechnological/biological product. Consequently, the manufacturer should propose a stability-indicating profile that provides assurance that changes in the identity, purity, and potency of the product will be detected.

At the time of submission, applicants should have validated the methods that comprise the stability-indicating profile, and the data should be available for review. The determination of which tests should be included will be product-specific. The items emphasized in the following subsections are not intended to be all-inclusive, but represent product characteristics that should typically be documented to demonstrate product stability adequately.

5.1 Protocol

The dossier accompanying the application for marketing authorization should include a detailed protocol for the assessment of the stability of both drug substance and drug product in support of the proposed storage conditions and expiration dating periods. The protocol should include all necessary information that demonstrates the stability of the biotechnological/biological product throughout the proposed expiration dating period including, for example, well-defined specifications and test intervals. The statistical methods that should be used are described in the tripartite guideline on stability.

5.2 Potency

When the intended use of a product is linked to a definable and measurable biological activity, testing for potency should be part of the stability studies. For the purpose of stability testing of the products described in this guideline, potency is the specific ability or capacity of a product to achieve its intended effect. It is based on the measurement of some attribute of the product and is determined by a suitable in vivo or in vitro quantitative method. In general, potencies of biotechnological/biological products tested by different laboratories can be compared in a meaningful way only if expressed in relation to that of an appropriate reference material. For that purpose, a reference material calibrated directly or indirectly against the corresponding national or international reference material should be included in the assay.

Potency studies should be performed at appropriate intervals as defined in the stability protocol and the results should be reported in units of biological activity calibrated, whenever possible, against nationally or internationally recognized standards. Where no national or international reference standards exist, the assay results may be reported in in-house derived units using a characterized reference material.

In some biotechnological/biological products, potency is dependent upon the conjugation of the active ingredient(s) to a second moiety or binding to an adjuvant. Dissociation of the active ingredient(s) from the carrier used in conjugates or adjuvants should be examined in real-time/real-temperature studies (including conditions encountered during shipment). The assessment of the stability of such products may be difficult because, in some cases, in vitro tests for biological activity and physicochemical characterization are impractical or provide inaccurate results. Appropriate strategies (e.g., testing the product before conjugation/binding, assessing the release of the active compound from the second moiety, in vivo assays) or the use of an appropriate surrogate test should be considered to overcome the inadequacies of in vitro testing.

5.3 Purity and Molecular Characterization

For the purpose of stability testing of the products described in this guideline, purity is a relative term. Because of the effect of glycosylation, deamidation, or other heterogeneities, the absolute purity of a biotechnological/biological product is extremely difficult to determine. Thus, the purity of a biotechnological/biological product should be typically assessed by more than one method and the purity value derived is method-dependent. For the purpose of stability testing, tests for purity should focus on methods for determination of degradation products.

The degree of purity, as well as the individual and total amounts of degradation products of the biotechnological/biological product entered into the stability studies, should be reported and documented whenever possible. Limits of acceptable degradation should be derived from the analytical profiles of batches of the drug substance and drug product used in the preclinical and clinical studies.

The use of relevant physicochemical, biochemical, and immunochemical analytical methodologies should permit a comprehensive characterization of the drug substance and/or drug product (e.g., molecular size, charge, hydrophobicity) and the accurate detection of degradation changes that may result from deamidation, oxidation, sulfoxidation, aggregation, or fragmentation during storage. As examples, methods that may contribute to this include electrophoresis (SDS–PAGE, immunoelectrophoresis, Western blot, isoelectrofocusing), high-resolution chromatography (e.g., reversed-phase chromatography, gel filtration, ion exchange, affinity chromatography), and peptide mapping.

Wherever significant qualitative or quantitative changes indicative of degradation product formation are detected during long-term, accelerated, and/or stress stability studies, consideration should be given to potential hazards and to the need for characterization and quantification of degradation products within the long-term stability program. Acceptable limits should be proposed and justified, taking into account the levels observed in material used in preclinical and clinical studies.

For substances that cannot be properly characterized or products for which an exact analysis of the purity cannot be determined through routine analytical methods, the applicant should propose and justify alternative testing procedures.

5.4 Other Product Characteristics

The following product characteristics, though not specifically relating to biotechnological/biological products, should be monitored and reported for the drug product in its final container:

Visual appearance of the product (color and opacity for solutions/suspensions; color, texture, and dissolution time for powders), visible particulates in solutions or after the reconstitution of powders or lyophilized cakes, pH, and moisture level of powders and lyophilized products.

Sterility testing or alternatives (e.g., container/closure integrity testing) should be performed at a minimum initially and at the end of the proposed shelf life.

Additives (e.g., stabilizers, preservatives) or excipients may degrade during the dating period of the drug product. If there is any indication during preliminary stability studies that reaction or degradation of such materials adversely affect the quality of the drug product, these items may need to be monitored during the stability program.

The container/closure has the potential to affect the product adversely and should be carefully evaluated (see below).

6. Storage Conditions

6.1 Temperature

Because most finished biotechnological/biological products need precisely defined storage temperatures, the storage conditions for the real-time/real-temperature stability studies may be confined to the proposed storage temperature.

6.2 Humidity

Biotechnological/biological products are generally distributed in containers protecting them against humidity. Therefore, where it can be demonstrated that the proposed containers (and conditions of storage) afford sufficient protection against high and low humidity, stability tests at different relative humidities can usually be omitted. Where humidity-protecting containers are not used, appropriate stability data should be provided.

6.3 Accelerated and Stress Conditions

As previously noted, the expiration dating should be based on real-time/real-temperature data. However, it is strongly suggested that studies be conducted on the drug substance and drug product under accelerated and stress conditions. Studies under accelerated conditions may provide useful support data for establishing the expiration date, provide product stability information or future product development (e.g., preliminary assessment of proposed manufacturing changes such as change in formulation; scale-up), assist in validation of analytical methods for the stability program, or generate information that may help elucidate the degradation profile of the drug substance or drug product. Studies under stress conditions may be useful in determining whether accidental exposures to conditions other than those proposed (e.g., during transportation) are deleterious to the product and also for evaluating which specific test parameters may be the best indicators of product stability. Studies of the exposure of the drug substance or drug product to extreme conditions may help to reveal patterns of degradation; if so, such changes should be monitored under proposed storage conditions. Although the tripartite guideline on stability describes the conditions of the accelerated and stress study, the applicant should note that those conditions may not be appropriate for biotechnological/biological products. Conditions should be carefully selected on a case-by-case basis.

6.4 Light

Applicants should consult the appropriate regulatory authorities on a case-by-case basis to determine guidance for testing.

6.5 Container/Closure

Changes in the quality of the product may occur due to the interactions between the formulated biotechnological/biological product and container/closure. Where the lack of interactions cannot be excluded in liquid products (other than sealed ampules), stability studies should include samples maintained in the inverted or horizontal position (i.e., in contact with the closure), as well as in the upright position, to determine the effects of the closure on product quality. Data should be supplied for all different container/closure combinations that will be marketed.

In addition to the standard data necessary for a conventional single-use vial, the applicant should demonstrate that the closure used with a multiple-dose vial is capable of withstanding the conditions of repeated insertions and withdrawals so that the product retains its full potency, purity, and quality for the maximum period specified in the instructions-for-use on containers, packages, and/or package inserts. Such labeling should be in accordance with relevant national/regional requirements.

6.6 Stability after Reconstitution of Freeze-Dried Product

The stability of freeze-dried products after their reconstitution should be demonstrated for the conditions and the maximum storage period specified on containers, packages, and/or package inserts. Such labeling should be in accordance with relevant national/regional requirements.

7. Testing Frequency

The shelf lives of biotechnological/biological products may vary from days to several years. Thus, it is difficult to draft uniform guidelines regarding the stability study duration and testing frequency that would be applicable to all types of biotechnological/biological products. With only a few exceptions, however, the shelf lives for existing products and potential future products will be within the range of 0.5 to 5 years. Therefore, the guidance is based upon expected shelf lives in that range. This takes into account the fact that degradation of biotechnological/biological products may not be governed by the same factors during different intervals of a long storage period.

When shelf lives of 1 year or less are proposed, the real-time stability studies should be conducted monthly for the first 3 months and at 3 month intervals thereafter.

For products with proposed shelf lives of greater than 1 year, the studies should be conducted every 3 months during the first year of storage, every 6 months during the second year, and annually thereafter.

While the testing intervals listed above may be appropriate in the preapproval or prelicense stage, reduced testing may be appropriate after approval or licensure where data are available that demonstrate adequate stability. Where data exist that indicate the stability of a product is not compromised, the applicant is encouraged to submit a protocol that supports elimination of specific test intervals (e.g., 9-month testing) for postapproval/postlicensure, long-term studies.

8. Specifications

Although biotechnological/biological products may be subject to significant losses of activity, physicochemical changes, or degradation during storage, international and national regulations have provided little guidance with respect to distinct release and end of shelf life specifications. Recommendations for maximum acceptable losses of activity, limits for physicochemical changes, or degradation during the proposed shelf life have not been developed for individual types or groups of biotechnological/biological products but are considered on a case-by-case basis. Each product should retain its specifications within established limits for safety, purity, and potency throughout its proposed shelf life. These specifications and limits should be derived from all available information using the appropriate statistical methods. The use of different specifications for release and expiration should be supported by sufficient data to demonstrate that the clinical performance is not affected, as discussed in the tripartite guideline on stability.

9. Labeling

For most biotechnological/biological drug substances and drug products, precisely defined storage temperatures are recommended. Specific recommendations should be stated, particularly for drug substances and drug products that cannot tolerate freezing. These conditions, and where appropriate, recommendations for protection against light and/or humidity, should appear on containers, packages, and/or package inserts. Such labeling should be in accordance with relevant national and regional requirements.

10. Glossary

Conjugated Product

A conjugated product is made up of an active ingredient (e.g., peptide, carbohydrate) bound covalently or noncovalently to a carrier (e.g., protein, peptide, inorganic mineral) with the objective of improving the efficacy or stability of the product.

Degradation Product

A molecule resulting from a change in the drug substance (bulk material) brought about over time. For the purpose of stability testing of the products described in this guideline, such changes could occur as a result of processing or storage (e.g., by deamidation, oxidation, aggregation, proteolysis). For biotechnological/biological products, some degradation products may be active.

Impurity

Any component of the drug substance (bulk material) or drug product (final container product) that is not the chemical entity defined as the drug substance, an excipient, or other additives to the drug product.

Intermediate

For biotechnological/biological products, a material produced during a manufacturing process that is not the drug substance or the drug product but for which manufacture is critical to the successful production of the drug substance or the drug product. Generally, an intermediate will be quantifiable and specifications will be established to determine the successful completion of the manufacturing step before continuation of the manufacturing process. This includes material that may undergo further molecular modification or be held for an extended period before further processing.

Manufacturing Scale Production

Manufacture at the scale typically encountered in a facility intended for product production for marketing.

Pilot-Plant Scale

The production of the drug substance or drug product by a procedure fully representative of and simulating that to be applied at manufacturing scale. The methods of cell expansion, harvest, and product purification should be identical except for the scale of production.

Dated: July 1, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

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Part VII

Department of Housing and Urban Development

Public and Indian Housing Drug Elimination Program Funding Availability, Fiscal Year 1996; Amendment and Reopening of Application Period; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4003–N–02]

Office of the Assistant Secretary for Public and Indian Housing; Public and Indian Housing Drug Elimination Program Notice of Funding Availability—FY 1996; Amendment and reopening of application period

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1996; Amendment and Reopening of Application Period.

SUMMARY: On April 8, 1996 (61 FR 15674), HUD published a notice announcing the availability of fiscal year (FY) 1996 funding for its Public and Indian Housing Drug Elimination Program. This notice, published in today's **Federal Register** makes two amendments to the April 8, 1996 NOFA, and reopens the application period for a period of 30 days. This notice amends the April 8, 1996 NOFA to provide for the final FY 1996 funding amount. This notice also amends the FY 1996 NOFA to revise the grant award limit for the largest category of housing authorities (50,000 units or more). For the convenience of the reader, the entire NOFA is being republished.

Note: All eligible housing authorities are invited to submit applications under this NOFA.

Housing authorities whose applications were submitted by the application deadline (June 14, 1996) under the April 8, 1996 NOFA are not required to resubmit applications under this amended NOFA. However, a housing authority whose application was timely filed under the April 8, 1996 NOFA, may submit an amended application or a replacement application during the 30-day application period. If submitting an amended or replacement application, the housing authority must clearly identify that its previous application filed under the April 8, 1996 NOFA is being amended or replaced in its entirety by the new submission.

Housing authorities whose applications were not filed by the June 14, 1996 deadline under the April 8, 1996 NOFA are considered timely filed under this NOFA, and need not reapply under this NOFA.

Housing authorities whose applications were timely filed under the April 8, 1996 but rejected will be notified of the rejection and may reapply under this NOFA published in today's **Federal Register**.

Again, all eligible housing authorities are eligible to apply under this NOFA.

This amended NOFA provides for HUD's final FY 1996 funding amount ($259,000,487) under the Public and Indian Housing Drug Elimination Program (PHDEP) for use in eliminating drug-related crime and other criminal activities associated with drug-related problems. Funded programs must be part of a comprehensive plan for addressing the problem of drug-related crime and other criminal activities associated with drug-related problems.

In the body of this document is information concerning the purpose of the NOFA, applicant eligibility, available amounts, selection criteria, financial requirements, management, and application processing, including how to apply, how selections will be made, and how applicants will be notified of results. HEREAFTER, the term housing authority (HA) shall include public housing agencies (PHAs) and Indian housing authorities (IHAs).

DATES: Applications must be received at the local HUD Field Office on or before August 9, 1996 AT 3:00 PM, LOCAL TIME. THIS APPLICATION DEADLINE IS FIRM AS TO DATE AND HOUR. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by any unanticipated or delivery-related problems. A FAX is not acceptable.

ADDRESSES: (a) APPLICATION KIT: An application kit may be obtained, and assistance provided, from the local HUD Field Office with delegated public housing responsibilities over an applying public housing authority, or from the Area Offices of Native American Programs (AONAP) having jurisdiction over an Indian housing authority making an application, or by calling HUD's Drug Information and Strategy Clearinghouse, telephone (800) 578–3472. The application kit contains information on all exhibits and certifications required under this NOFA.

(b) APPLICATION SUBMISSION: An applicant may submit only one application per housing authority under each Notice of Funding Availability (NOFA). Joint applications ARE NOT PERMITTED under this program with the following EXCEPTION: HAs under a single administration (such as HAs managing another HA under contract or HAs sharing a common executive director) may submit a single application, even though each HA has its own operating budget. Applications (original and two identical copies of the original application) must be received by the deadline at the local HUD Field Office with responsibilities over the applying public housing authorities, Attention: Director, Office of Public Housing or, in the case of Indian housing authorities, at the local HUD AONAP (with jurisdiction over the applying Indian housing authorities, as appropriate) Attention: Administrator, AONAP. A complete listing of these offices is provided in Appendix "A" of this NOFA. It is not sufficient for an application to bear a postage date within the submission time period. Applications submitted by facsimile are not acceptable. APPLICATIONS RECEIVED AFTER THE DEADLINE DATE OF AUGUST 9, 1996, AT 3:00 PM, LOCAL TIME, WILL NOT BE CONSIDERED.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Public Housing Drug Elimination Program (PHDEP) contact: the local HUD Field Office, Director, Office of Public Housing (Appendix "A" of this NOFA), HUD's Drug Information and Strategy Clearinghouse, telephone (800) 578–3472 or Malcolm E. (Mike) Main, Crime Prevention and Security Division, Office of Community Relations and Involvement, Office of Public and Indian Housing, Room 4112, telephone (202) 708–1197, ext. 4232.

For questions concerning Native Americans programs contact: the local HUD Field Office Administrator, AONAP (Appendix "A" of this NOFA), HUD's Drug Information and Strategy Clearinghouse, telephone (800) 578–3472 or Tracy Outlaw, Office of Native American Programs, Room B–133, telephone (202) 755–0088.

For questions concerning the Assisted Housing Drug Elimination Program (AHDEP) contact: Michael E. Diggs, Office of Multifamily Housing Programs, Office of Housing, Room 6130, telephone (202) 708–0614, ext. 2514.

The address for the above Headquarters persons is: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Hearing-or-speech impaired persons may call (800) 877–8339. (Federal Information Relay Service TTY.) Except for the "800" number, these telephone numbers are not toll-free.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Changes to the April 8, 1996 NOFA

Final Funding Amount. On April 8, 1996 (61 FR 15674), HUD published a NOFA announcing the approximate FY 1996 funding for the Public and Indian Housing Drug Elimination Program (PHDEP). At the time of publication of the April 8, 1996 NOFA, Congress had not yet enacted a FY 1996 appropriation for HUD. Accordingly, the April 8, 1996 NOFA set forth HUD's estimate of the FY 1996 funding that the Congress would make available. HUD published the NOFA in order to give potential applicants adequate time to prepare applications.

On April 26, 1996, the President signed the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134) ("FY 1996 Appropriations Act"). The amount available (to remain available until expended) for funding under the FY 1996 PHDEP NOFA is $259,000,487. The FY 1996 Appropriations Act appropriated $290 million for the Drug Elimination Program. Of the total $290 million appropriated, $1.5 million will fund drug information clearinghouse services; $10 million will fund drug elimination technical assistance, contracts and other assistance training, program assessments, and execution for or on behalf of public housing agencies and resident organizations (including the cost of necessary travel for participants in such training); $2.5 million shall be used in connection with efforts to combat violent crime in public and assisted housing under the Operation Safe Home Program administered by the Inspector General of HUD; and $17,343,750 is for funding the Assisted Housing Drug Elimination Program.

No FY 1996 Funding for the Youth Sports Program. As stated in a notice published by HUD on June 12, 1996 (61 FR 29884), HUD is not funding the Youth Sports Program for FY 1996. However, following an appeal from the Lexington-Fayette Urban County Housing Authority for reconsideration of its FY 1994 Youth Sports Program NOFA score, HUD has determined that this application qualified for funding. Because all FY 1994 and FY 1995 funds have already been awarded, HUD has decided to correct this error by awarding the Lexington-Fayette Urban County Housing Authority $125,000 of FY 1996 funds. In addition, $469,237 of carryover/recovery program funds will be made available under the April 8, 1996 NOFA. Accordingly, the total FY 1996 funding available under the April 1996 PHDEP NOFA is $259,000,487.

Revision to the Maximum Grant Award Amount for the Largest Category of HAs. This NOFA revises the grant amount cap for the largest category of HAs (50,000 units or more). The cap is increased from $25,000,000 to $35,000,000 as a matter of allocational equity. This change will permit an HA with a high number of units to compete for an amount that more fairly represents its share of public housing unit responsibility.

The entire NOFA, as amended by the changes discussed above, is set forth below.

I. Purpose and Substantive Description

(a) Authority

These grants are authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*), as amended by section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101–625, and section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992), and the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, approved April 26, 1996).

(b) Allocation Amounts

(1) Federal Fiscal Year 1996 Funding. The amount available, to remain available until expended, for funding under this NOFA in FY 1996 is $259,000,487.

(2) Maximum Grant Award Amounts. HUD is distributing grant funds under this NOFA on a national competition basis. Maximum grant award amounts are computed on a sliding scale, using an overall maximum cap, depending upon the number of public housing agency (PHA) or Indian housing authority (IHA) units. The unit count includes rental, Turnkey III Homeownership, Mutual Help Homeownership and Section 23 leased housing bond-financed projects. Units in the Turnkey III Homeownership, Mutual Help Homeownership and Section 23 bond-financed programs are counted IF they have not been conveyed. Eligible projects must be covered by an annual contributions contract (ACC) or annual operating agreement (AOA) during the period of the grant award.

(i) Public housing agencies.

(A) PHA-Owned Rental Housing Program. In accordance with Notice 94–66 (PHA), Low Rent Public Housing Program—Streamlined Operating Budget and Financial Reporting Procedures, PHAs with fiscal years beginning January 1, 1995 and after, ARE NOT REQUIRED to submit an Operating Budget (Form HUD–52564) IF they have been determined, by HUD, to be High or Standard performers under Public Housing Management Assessment Program (PHMAP) and HAVE NOT FAILED the PHMAP financial indicators. Those requesting subsidy must, however, submit Form HUD–52723, Calculation of Performance Funding System (PFS) Operating Subsidy and units are in the header (which is the top of the form).

(B) PHAs (rental program) that are NOT REQUIRED to submit a budget under the PHMAP criteria in Section I.(b)(2)(ii)(A), above, of this NOFA AND are not requesting operating subsidy ARE NOT REQUIRED to submit Form HUD–52723. Unit counts MUST be confirmed with the local Field Office prior to submission of the PHDEP application.

(C) For PHA-Owned Turnkey III Homeownership Program and Section 23 Leased Housing Programs, PHAs ARE REQUIRED to submit Form HUD–52564, in accordance with Notice PIH 94–66 (PHA), and units in the header (which is the top of the form).

(D) For purposes of this NOFA, PHAs ARE REQUIRED to validate their unit counts with the local Field Office as of April 1, 1996. Units identified after this date will not be accepted.

(ii) Indian housing authorities.

(A) As of January 1, 1995 Indian housing authorities ARE NOT REQUIRED to submit Form HUD–52564, UNLESS a corrective action order has been issued in accordance with Notice PIH 94–72 (IHA) extended by Notice PIH 95–65.

(B) For purposes of this NOFA, Indian housing authorities ARE REQUIRED to validate their unit counts with the local AONAP, prior to submission of the PHDEP application, to ensure the unit count matches the data in the Management Information Retrieval System (MIRS) for units in management as of April 1, 1996. Units identified after this date will not be accepted.

(iii) The amount computed in this way MUST be compared with the dollar amount requested in the PHA/IHA application to make certain the amount requested does not exceed the maximum grant award. BASED UPON THE REQUIREMENTS OF SECTIONS I.(B)(2)(i) THROUGH (iii) OF THIS NOFA, APPLICANTS THAT REQUEST FUNDING THAT EXCEEDS THE ESTIMATED MAXIMUM GRANT AWARD AMOUNT PERMITTED WILL BE REJECTED AND WILL NOT BE ELIGIBLE FOR ANY FUNDING.

Amendments to the PHDEP made by the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), permit grants, under certain conditions as given in Section (c)(9) of this NOFA, below, to be used to eliminate drug-related crime and other criminal activities associated with drug-related crime in housing owned by PHAs that is not housing assisted under the United States Housing Act of 1937 and is not otherwise federally assisted. Where an application is submitted for this category of housing, the amount of eligible funding will be determined on the same per-unit basis as for federally assisted housing units, above.

The maximum grant awards are estimated to be as follows, although, as discussed below, in Section I.(b)(4) of this NOFA (Reduction of Requested Grant Amounts and Special Conditions), the Department may adjust the amount of any grant award. These estimates of the maximum grant awards are based on the amount of funds available in FY 1995. The maximum grant awards may be further adjusted based on the enacted 1996 appropriation.

(i) For housing authorities with 1–499 units: The maximum grant award is either a maximum grant award cap of $500.00 per unit, or a TOTAL MINIMUM grant award of $50,000, WHICHEVER IS GREATER;

(ii) For housing authorities with 500–1,249 units: The maximum grant award is either a maximum grant award cap of $300.00 per unit, or a TOTAL MINIMUM grant award of $250,000, WHICHEVER IS GREATER;

(iii) For housing authorities with 1,250–49,999 units: The maximum grant award is either a maximum grant award cap of $250.00 per unit, or a TOTAL MINIMUM grant award of $375,000 WHICHEVER IS GREATER;

(iv) For housing authorities with 50,000 or more units: The maximum grant award is a maximum cap of $200.00 per unit OR A TOTAL MAXIMUM GRANT AWARD OF $35 MILLION.

An applicant shall not apply for more funding than is permitted in accordance with the estimated maximum grant award amount as described above. Any application requesting funding that exceeds the estimated maximum grant award amount permitted will be rejected and will not be eligible for any funding UNLESS A COMPUTATIONAL ERROR WAS INVOLVED IN THE FUNDING REQUEST. Section IV of this NOFA provides guidance regarding application curable and noncurable deficiencies.

Such a computational error will be considered a curable deficiency in the application. Section III.(d) (Checklist of Application Requirements) of this NOFA requires applicants to compute the maximum grant award amount for which they are eligible. In accordance with Sections I.(b)(2)(i) through (iii) of this NOFA, applicants are required to confirm the unit count with the local HUD Field Office and/or AONAP prior to submission of the application. The amount computed in this way must be compared with the dollar amount requested in the application to make certain the amount requested does not exceed the maximum grant award.

(3) Reallocation. All awards will be made to fund fully an application, except as provided in Section I.(b)(4) of this NOFA (Reduction of Requested Grant Amounts and Special Conditions) below.

(4) Reduction of Requested Grant Amounts and Special Conditions. HUD may approve an application for an amount lower than the amount requested, withhold funds after approval, and/or the grantee will be required to comply with special conditions added to the grant agreement, in accordance with 24 CFR 85.12 (PHAs), and 24 CFR 950.135 (IHAs) as applicable, and the requirements of this NOFA, or where:

(i) HUD determines the amount requested for one or more eligible activities is unreasonable or unnecessary;

(ii) The application does not otherwise meet applicable cost limitations established for the program;

(iii) The applicant has requested an ineligible activity;

(iv) Insufficient amounts remain in that funding round to fund the full amount requested in the application and HUD determines that partial funding is a viable option;

(v) The applicant fails to implement the program in its plan and/or fails to submit required reports;

(vi) The applicant has demonstrated an inability to manage HUD grants, particularly PHDEP grants; or

(vii) For any other reason where good cause exists.

(c) Eligibility

Funding under this NOFA is available only for HAs. Although section 161 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) makes public housing resident management corporations (RMCs) eligible for PHDEP funding, the FY 1996 Appropriations Act limited the funds appropriated "for grants to public and Indian housing agencies." Because RMCs, unlike IHAs, constitute a separate entity from PHAs under the authorizing statute, no funds are appropriated for RMCs. However, RMCs may continue to receive funding from housing authority grantees, as sub-grantees, to develop security and drug abuse prevention programs involving site residents as they have in the past. The Department has determined that the term "in or around" means within, or adjacent to, the physical boundaries of a public or Indian housing development. This effect of this definition is appropriate to make certain that program funds and program activities are targeted to benefit, as directly as possible, public and Indian housing developments, the intended beneficiaries of the program under the authorizing statute. An application for funding under this program may be for one or more of the eligible activities. The following is a listing of eligible activities under this program and guidance as to their parameters:

(1) Employment of Security Guard Personnel. Employment of security personnel IS PERMITTED under this section. Employment of contracted security personnel is divided into two categories; contracted security personnel services and equipment for and employment of HA police departments.

(i) CONTRACTED SECURITY GUARD PERSONNEL SERVICES. Contracting for or direct HA employment of security personnel services in HAs/development(s) IS PERMITTED under this program. Contracting for security personnel services is defined as a competitive process in which individual companies and/or individuals participate.

(A) Contracted security personnel funded by this program must perform services not usually performed by local law enforcement agencies on a routine basis, such as, patrolling inside buildings, providing personnel services at building entrances to check for proper identification or patrolling and checking car parking lots for appropriate parking decals.

(B) Contracted security personnel funded by this program must meet and demonstrate compliance with all relevant Federal, Tribal, State or local government insurance, licensing, certification, training, bonding, or other similar requirements relating to security services.

(C) The HA, the cooperating local law enforcement agency, and the provider (contractor) of the security personnel services are required to enter into and execute a security personnel service contract that includes (but is not limited to) the following:

(*1*) The activities to be performed by security personnel employed by the contractor; the scope of authority, written policies, procedures, and practices that will govern security personnel performance (i.e., a Policy Manual as described in Section I.(c)) of this NOFA; and how the security personnel contractor shall coordinate activities with the local law enforcement agency;

(*2*) The types of activities that the approved security personnel contractor(s) are expressly prohibited from undertaking.

(D) Expenditures for activities under this section will not be incurred by the HA (grantee) and/or funds released by the local HUD Field Office until the HA has executed a contract for security personnel services.

(E) Security personnel services funded under this program shall be guided by a contract for services that includes a policy manual (see below) that regulates, directs, controls, and monitors the conduct and activities of its personnel. The HA shall ensure all contracted security personnel are trained at a minimum in the areas described in this section.

(*1*) An up-to-date policy manual, which contains the security personnel contractor's policies, procedures, and general orders that regulate conduct and describe in detail how jobs are to be performed, must exist before a contract for services can be executed.

(*2*) Areas that MUST BE COVERED IN THE CONTRACTOR'S SECURITY PERSONNEL MANUAL INCLUDE BUT ARE NOT LIMITED TO: use of force, resident contacts, enforcement of HA rules, response criteria to calls, pursuits, arrest procedures, reporting of crimes and workload, feedback procedures to victims, citizens' complaint procedures, internal affairs investigations, towing of vehicles, authorized weapons and other equipment, radio procedures internally and with local police, training requirements, patrol procedures, scheduling of meetings with residents, reports to be completed, record keeping and position descriptions on all personnel, post assignments, monitoring and self evaluation program.

(F) The security personnel contractor shall complete a daily activity form/incident complaint report for the HA. The contractor shall use a HA approved activity form for the collection, analysis and reporting of these activities by personnel funded under this section. Computers, software, and associated equipment ARE PERMITTED as eligible items in support of crime workload data collection activities to support the HA's crime prevention and security mission.

(ii) EQUIPMENT FOR AND EMPLOYMENT OF PERSONNEL FOR HOUSING AUTHORITY POLICE DEPARTMENTS. Funding for equipment and employment of HA police department personnel IS PERMITTED by HAs that already have their own public housing authority police department. The below listed eleven (11) HAs have public housing police departments:

Baltimore Housing Authority and Community Development, Baltimore, MD
Boston Housing Authority, Boston, MA
Buffalo Housing Authority, Buffalo, NY
Chicago Housing Authority, Chicago, IL
Cuyahoga Metropolitan Housing Authority, Cleveland, OH
Housing Authority of the City of Los Angeles, Los Angeles, CA
Housing Authority of the City of Oakland, Oakland, CA
Philadelphia Housing Authority, Philadelphia, PA
Housing Authority of the City of Pittsburgh, Pittsburgh, PA
Waterbury Housing Authority, Waterbury, CT
Virgin Islands Housing Authority, Virgin Islands

(A) On September 22, 1995, the Department issued Notice PIH 95–58 (Guidelines for Creating, Implementing and Managing Public Housing Authority Police Departments in Public Housing Authorities). This Notice identifies the prerequisites for creating public housing police departments and provides guidance regarding technical assistance to HAs to assist in making decisions regarding public housing security, analysis of security needs and performance measures.

(B) HAs that have established their own public housing authority police departments, but are not included on this list, may file a request to be recognized as a HA police department by contacting Malcolm E. (Mike) Main of the Crime Prevention and Security Division (CPSD), Office of Community Relations and Involvement (OCRI), Public and Indian Housing, Department of Housing and Urban Development, Room 4112, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–1197, ext 4232. THIS REQUEST MUST BE APPROVED PRIOR TO THE SUBMISSION OF THE FY 1996 PHDEP APPLICATION. Hearing-or-speech impaired persons may call (800) 877–8339. (Federal Information Relay Service TTY.) Except for the "800" number, this telephone number is not toll-free.

(C) An applicant seeking funding for this activity must describe the current level of local law enforcement agency baseline services being provided to the HA/development(s) proposed for assistance. The baseline services are defined as ordinary and routine services provided to the residents as a part of the overall city and county-wide deployment of police resources, to respond to crime and other public safety incidents, including 911 communications, processing calls for service, routine patrol, police officer response to calls for service and investigative follow-up of criminal activity.

(D) Public housing authority police departments funded by this program must meet, and demonstrate compliance with, all relevant Federal, State, Tribal or local government insurance, licensing, certification, training, bonding, or other similar law enforcement requirements.

(E) Before approval of the grant agreement (Form HUD–1044), and funding by HUD, the applicant and the cooperating local law enforcement agency are required to enter into and execute a law enforcement service agreement, in addition to the HA's cooperation agreement, between the HA and the local law enforcement agency, that describes the following:

(*1*) The activities to be performed by the public housing authority police department, their scope of authority, established policies, procedures, and practices that will govern their performance (i.e., a public housing police department policy manual as described in Section I.(c) of this NOFA), and how they will coordinate their activities with the Federal, State, Tribal, and local law enforcement agencies;

(*2*) The types of activities that the public housing authority police departments are expressly prohibited from undertaking.

(F) Public housing authority police departments funded under this program shall be guided by an up-to-date policy manual (see paragraph (*1*) below) that regulates, directs, and controls the conduct and activities of its personnel.

All HA police officers must be trained at a minimum in the areas described in paragraph (2), below.

(1) An up-to-date public housing police department policy manual, which contains the policies, procedures, and general orders that regulate conduct and describe in detail how jobs are to be performed must exist prior to execution of the grant agreement. Applicants must submit a plan and timetable for the implementation of training for staff.

(2) Areas that MUST BE COVERED IN THE PUBLIC HOUSING POLICE DEPARTMENT MANUAL INCLUDE BUT ARE NOT LIMITED TO: use of force, resident contacts, enforcement of HA rules, response criteria to calls, pursuits, arrest procedures, prisoner transport procedures, reporting of crimes and workload, feedback procedures to victims, citizens complaint procedures, internal affairs investigations, towing of vehicles, authorized weapons and other equipment, radio procedures internally and with local police, training requirements, patrol procedures, scheduling of meetings with residents, reports to be completed, record keeping, evidence and drug seizures, position descriptions on every class of personnel, post and assignments, and integration of HA police and security personnel with local police as part of the HA's comprehensive security and safety strategy.

(G) Public housing authority police departments shall collect information on drug-related crime and other criminal activities as defined by the Uniform Crime Reporting (UCR) system (any Part I or Part II crimes that occur). For purposes of this section, HA police departments shall establish, implement and maintain a system of records management that ensures confidentially of criminal records and information. A HA approved daily activity/incident complaint form must be used for the collection, analysis, workload, response to service calls, reporting of activities/crime by officers within the HA/development(s) funded under this section. Computers, software, and associated equipment ARE PERMITTED AS ELIGIBLE ITEMS in support of the HA crime and workload data collection activities to support the overall HA's comprehensive crime prevention, security and safety mission.

(H) Applicants for funding of HA public housing authority police department officers must have car-to-car (or other vehicles) and portable-to-portable radio communications links between public housing authority police officers and local law enforcement officers to assure a coordinated and safe response to crimes or calls for services. The use of scanners (radio monitors) is not sufficient to meet the requirements of this section. Applicants that do not have such links must submit a plan and timetable for the implementation of such communications links.

(I) Public housing authority police departments funded under this program that are not employing a community policing concept must submit a plan and timetable for the implementation of community policing. An HA funded under the FY 1994/1995 PHDEP for public housing police departments should demonstrate in its plan what progress has been made in implementing its community policing program. The Department will monitor results of the HA's plan and timetable.

(1) Community policing has a variety of definitions; however, for the purposes of this program, it is defined as follows: Community policing is a method of providing law enforcement services that stresses a partnership among residents, police, schools, churches, government services, the private sector, and other local, State, Tribal, and Federal law enforcement agencies to prevent crime by addressing the conditions and problems that lead to crime and the fear of crime.

(2) This method of policing involves a philosophy of proactive measures, such as foot patrols, bicycle patrols and citizen contacts. This concept empowers police officers at the beat and zone level and residents in neighborhoods in an effort to: reduce crime and fear of crime; assure the maintenance of order; provide referrals of residents, victims, and the homeless to social services and government agencies; assure feedback of police actions to victims of crime; and promote a law enforcement value system on the needs and rights of residents.

(J) HA police departments funded under this program that are not nationally or State accredited must submit a plan and timetable for such accreditation. HAs may use either their State accreditation program, if one exists, or the Commission on Accreditation for Law Enforcement Agencies (CALEA) for this purpose.

(1) The law enforcement community developed a body of standards in 1981 against which law enforcement agencies could be evaluated. While some States have their own law enforcement accreditation program, the nationwide accreditation program is managed by the CALEA, which is located in Fairfax, VA. The purpose of accreditation is to reduce liability exposure of agencies and personnel, and to assure that law enforcement agencies meet a uniform body of standards.

(2) The accreditation concept emphasizes a voluntary, self-motivated approach by which organizations seek to achieve and maintain objectively verified high quality operations through periodic evaluations conducted by an independent, non-governmental body that has established standards for its "clientele". In simple terms, "to accredit" means to recognize or vouch for an agency as conforming to a body of standards related to a specific discipline—in this instance, law enforcement.

(3) The process for CALEA consists of formal application, mutual aid contract, an in-depth self-assessment, an on-site assessment by Commission-selected practitioner assessors from outside the State of the requesting agency, and final Commission review and decision. Self-assessment enables an agency to establish proofs of compliance with standards specific to the agency to review its organization, management, operations, and administrative activities to determine if it believes it meets the requirements. Certain standards are mandatory based on health, life, safety, and importance to the community and the agency.

(4) Use of grant funds for public housing police department accreditation activities IS PERMITTED. HAs under Section I.(c)(1)(ii) of this NOFA (public housing police departments) ARE PERMITTED to hire a public housing police department accreditation specialist to manage the accreditation program. HA police departments must submit a plan and timetable in order to be funded for this activity. Any public housing police department funded under the FY 1994/1995 PHDEP should demonstrate in its plan what progress has been made in implementing its accreditation program. The Department will monitor outcomes of the HA's plan and timetable.

(5) FUNDING IS PERMITTED. HAs that have been identified by HUD in Section I.(c)(1)(ii), above, of this NOFA as having authorized public housing police departments ARE PERMITTED to use PHDEP funds to purchase or lease any law enforcement clothing or equipment, such as, vehicles, uniforms, ammunition, firearms/weapons, police vehicles; including cars, vans, buses, and protective vests, or any other supportive equipment, etc. that supports the HA's crime prevention and security mission. HAs NOT IDENTIFIED by HUD in Section I.(c)(1)(ii), above, of this NOFA as having an authorized public housing police department ARE NOT PERMITTED to use PHDEP funds to directly purchase such clothing or equipment for use by local police departments.

(K) Expenditures for activities under this section will not be incurred by the HA (grantee) and/or funds released by the local HUD Field Office until the grantee has met all the above requirements.

(L) In order to assist HAs to develop and administer relevant, fair, and productive law enforcement service contracts with local police departments for the delivery of effective security services to the HA/residents, a sample contract for law enforcement services is provided with the application kit. A sample contract may be obtained by calling HUD's Drug Information and Strategy Clearinghouse, telephone: 1–800–578–3472.

(2) REIMBURSEMENT OF LOCAL LAW ENFORCEMENT AGENCIES FOR ADDITIONAL SECURITY AND PROTECTIVE SERVICES.

(i) For HAs THAT DO NOT HAVE an authorized public housing police department as defined in Section I.(c)(1)(ii) of this NOFA, additional security and protective services ARE PERMITTED under this program but must be over and above the local police department's current level of baseline services. Local police department baseline services are defined as ordinary and routine services provided to residents as a part of the overall, city and county-wide deployment of police resources, to respond to crime and other public safety incidents, including 911 communications, processing calls for service, routine patrol, police officer response to calls for service and investigative follow-up of criminal activity.

(ii) An applicant seeking funding for this activity must first define the current local police department's level of baseline services to the HA/residents (which should be the same city/county-wide) to include the number of officers and equipment and the actual percent of their time assigned to the HA/development(s) proposed for funding and then demonstrate in its plan to what extent the funded activity will represent an increase over and above these baseline services.

(iii) Reimbursement of local law enfotcement agencies for additional protective services for communications and security equipment to improve collection, analysis, and use of information about drug-related crime and other criminal activities associated with drug-related problems in HAs/development(s), such as surveillance equipment (e.g., Closed Circuit Television (CCTV), software, cameras, monitors, components and supporting equipment), computers accessing national, Tribal, State or local government security networks and databases, facsimile machines, telephone equipment, bicycles, and motor scooters is permitted IF USED EXCLUSIVELY for the HA/development's crime prevention and comprehensive security efforts, AND in connection with the establishment of a law enforcement substation/presence on the funded premises or scattered site developments of the HA. The reimbursement shall be provided in accordance with a contractual agreement between the grantee and the local law enforcement agency.

(iv) The local law enforcement agency shall collect police officer activity (not just hours of work) information for the HA. The agency must use a HA approved activity form for the collection, analysis and reporting of activities by officers funded under this section. Reimbursement of local law enforcement agencies for additional protective services for computers, software, and associated equipment ARE PERMITTED AS ELIGIBLE ITEMS in support of HA crime and workload data collection activities to support its comprehensive crime prevention, security and safety mission.

(v) FUNDING THAT IS NOT PERMITTED. HAs not identified by HUD in Section I.(c)(1)(ii) of this NOFA as having an authorized public housing police department ARE NOT PERMITTED to use PHDEP funds to directly purchase or lease any military or law enforcement clothing or equipment, such as vehicles, uniforms, ammunition, firearms/weapons, military or police vehicles; including cars, vans, buses, protective vests, and any other supportive equipment, etc.

(vi) Expenditures for activities under this section will not be incurred by the HA (grantee) and/or funds released by the local HUD Field Office until the grantee and the local law enforcement agency execute a contract for the additional law enforcement services.

(vii) In order to assist HAs to develop and administer relevant, fair, and productive protective services or law enforcement contracts with local police departments for the delivery of effective services to HAs and residents, a sample contract for law enforcement services is provided with the application kit. A sample contract may be obtained by calling HUD's Drug Information and Strategy Clearinghouse, telephone (800) 578–3472.

(viii) The Department ENCOURAGES local community collaborations, between HAs and local police departments, regarding elimination of drug-related crime and other criminal activities associated with drug-related problems to improve safety and security for residents in HAs. This strategy should include implementation of community policing programs. For additional background on community policing, see the discussion at Section I.(c) of this NOFA.

(ix) The Department ENCOURAGES HAs to work closely with local police departments to permit the admission to public housing of police officers and other security personnel, whose visible presence may serve as a deterrent to drug-related crime and other criminal activities associated with drug-related problems. Section 519 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 1437a–1) permits HAs to allow police officers and other security personnel not otherwise eligible for occupancy to reside in public or Indian housing dwelling units under a plan that will increase security for residents while minimizing both the reduction of available dwelling units and loss of HA income. HUD's final rule implementing section 519 was published on August 2, 1994 (59 FR 39402). For assistance regarding this program contact the local HUD Field Office or AONAP.

(3) Physical Improvements to Enhance Security.

(i) Physical improvements that are specifically designed to enhance security ARE PERMITTED under this program. These improvements may include (but are not limited to) the installation of barriers, lighting systems, fences, surveillance equipment (e.g., Closed Circuit Television (CCTV), speed bumps, software, fax, cameras, monitors, components and supporting equipment etc.) bolts, locks; the landscaping or reconfiguration of common areas so as to discourage drug-related crime and other criminal activities associated with drug-related problems in the HA and development(s) proposed for funding.

(ii) An activity that is funded under any other HUD program, such as the modernization program at 24 CFR part 968, shall not also be funded by this program.

(iii) FUNDING IS NOT PERMITTED for physical improvements that involve the demolition of any units in a development.

(iv) FUNDING IS NOT PERMITTED for any physical improvements that would result in the displacement of persons.

(v) FUNDING IS NOT PERMITTED for the acquisition of real property.

(vi) All physical improvements must also be accessible to persons with

disabilities. For example, some types of locks, buzzer systems, doors, etc., are not accessible to persons with limited strength, mobility, or to persons who are hearing impaired. All physical improvements must meet the accessibility requirements of 24 CFR part 8.

(4) Employment of Investigators.

(i) Employment of and equipment for one or more individuals IS PERMITTED under this program to:

(A) Investigate drug-related crime and other criminal activities associated with drug-related problems "in or around" the real property comprising any HA/development(s); and

(B) Provide evidence relating to any such crime in any administrative or judicial proceedings.

(ii) HAs that employ investigators funded by this program must meet and demonstrate compliance with all relevant Federal, Tribal, State or local government insurance, licensing, certification, training, bonding, or other similar law enforcement requirements.

(iii) The HA (Grantee), and cooperating local law enforcement agency are required to enter into and execute a written agreement that describes the following:

(A) The nature of the activities to be performed by the HA investigators, their scope of authority, reports to be completed, established policies, procedures, and practices that will govern their performance (i.e., a Policy Manual as described in Section I.(c)(1)(ii) of this NOFA) and how HA investigators will coordinate their activities with the local, State, Tribal, and Federal law enforcement agencies; and

(B) The types of activities that the HA investigators are expressly prohibited from undertaking.

(iv) Under this section, reimbursable costs associated with the investigation of drug-related crime and other criminal activities associated with drug-related problems (e.g., travel directly related to the investigator's activities, or costs associated with the investigator's testimony at judicial or administrative proceedings) may only be those incurred by the investigator.

(v) HA investigators funded under this program shall be guided by a policy manual that regulates, directs, and controls their conduct and activities. All HA investigators must be trained at a minimum in the areas described below in paragraph (B) of this section.

(A) An up-to-date policy manual, which contains the policies, procedures, and general orders that regulate conduct and describe in detail must exist prior to execution of this agreement.

(B) Areas that MUST BE COVERED IN THE MANUAL INCLUDE BUT ARE NOT LIMITED TO: use of force, resident contacts, enforcement of HA rules, response criteria to calls, pursuits, arrest procedures, reporting of crimes and workload, feedback procedures to victims, citizens complaint procedures, internal affairs investigations, towing of vehicles, authorized weapons and other equipment, radio procedures internally and with local police, training requirements, patrol procedures, scheduling of meetings with residents, daily activity reports to be completed, record keeping and position descriptions on every class of personnel, post and assignments.

(vi) HA investigator(s) shall report on drug-related crime and other criminal activities associated with drug-related problems in the HA/developments. HAs shall establish, implement and maintain a system of records management that ensures confidentiality of criminal records and information. HA approved activity forms must be used for the collection, analysis and reporting of activities by HA investigators funded under this section. Computers, software, and associated equipment ARE ELIGIBLE ITEMS in support of HA crime and workload data collection activity and its crime prevention and security mission.

(vii) FUNDING IS PERMITTED for HAs to use PHDEP funds for investigator activities to purchase or lease any law enforcement clothing or equipment, such as vehicles, uniforms, ammunition, firearms/weapons, or vehicles; including cars, vans, buses, protective vests, and any other supportive equipment, etc., to support the mission of the HA's investigator activities.

(viii) Expenditures for activities under this section will not be incurred by the HA (grantee) and/or funds released by the local HUD Field Office until the grantee has met all the above requirements.

(5) Voluntary Tenant Patrols. Active voluntary tenant patrols activities to include purchase of uniforms, equipment and related training ARE PERMITTED under this section. For the purposes of this section, the elimination of drug-related crime and other criminal activities associated with drug-related problems within the HA/developments requires the active involvement and commitment of residents and their organizations.

(i) The provision of training and equipment (including all season uniforms and equipment) for use by active voluntary tenant patrols acting in cooperation with officials of local law enforcement agencies IS PERMITTED under this program. Members must be volunteers and must be tenants/residents of the HA/development(s). Voluntary tenant patrols established under this program are expected to patrol in the HA/development(s) proposed for assistance, and to report illegal activities to appropriate HA staff, and local, State, Tribal, and Federal law enforcement agencies, as appropriate. HAs are required to obtain liability insurance to protect themselves and the members of the voluntary tenant patrol against potential liability for the activities of the patrol under this program. The cost of this insurance is an eligible program expense.

(ii) The HA (Grantee) and cooperating local law enforcement agency, and the members of the voluntary tenant patrol are required, prior to expending any grant funds, to enter into and execute a written HA/local police department agreement that describes the following:

(A) The nature of the activities to be performed by the voluntary tenant patrol, the patrol's scope of authority, assignment, the established policies, procedures, and practices that will govern the voluntary tenant patrol's performance and how the patrol will coordinate its activities with the local law enforcement agency;

(B) The types of activities that a voluntary tenant patrol is expressly prohibited from undertaking including, but not limited to, the carrying or use of firearms or other weapons, nightstick, clubs, handcuffs, or mace in the course of their duties under this program;

(C) The initial and follow-up voluntary tenant patrol training the members receive from the local law enforcement agency (training by the local law enforcement agency is required before putting the voluntary tenant patrol into effect); and

(D) Voluntary tenant patrol members must be advised that they may be subject to individual or collective liability for any actions undertaken outside the scope of their authority and that such acts are not covered under a HA's liability insurance.

(iii) Uniforms, communication and related equipment eligible for funding under this program shall be reasonable, necessary, justified and related to the operation of the voluntary tenant patrol and that is otherwise permissible under local, State, Tribal, or Federal law.

(iv) Under this program, bicycles, motor scooters, all season uniforms and associated equipment (voluntary tenant patrol uniforms and equipment must be identified with specific HA/development identification/markings) to be used, exclusively, by the members of the HA/development(s) voluntary tenant patrol ARE ELIGIBLE ITEMS.

(v) PHDEP grant funds may not be used for any type of financial compensation, such as any full-time wages or salaries for voluntary tenant patrol participants. Funding for HA personnel or resident(s) to be hired to coordinate this activity IS PERMITTED.

(6) Programs (Drug Prevention, Intervention and Drug Treatment) to Reduce the Use of Illegal Drugs. Programs that eliminate the use and distribution of illegal drugs "in or around" the premises of the HA/development(s), including drug abuse prevention, intervention, referral and treatment programs, ARE PERMITTED under this program. For purposes of this section, the goals of this program are best served by focusing resources directly upon HA resident/families. The program should facilitate drug prevention, intervention and treatment efforts, to include outreach to community resources and youth activities, and facilitate bringing these resources onto the premises, or providing resident referrals to treatment programs or transportation to out-patient treatment programs away from the premises. FUNDING IS PERMITTED for reasonable, necessary and justified purchasing or leasing of vehicles (whichever can be documented as the most cost effective) for grant administration, resident youth, adult education and training activities directly related to "programs to reduce the use of illegal drugs" under this section. Alcohol-related activities/programs ARE NOT ELIGIBLE for funding under this program. FUNDING IS PERMITTED for reasonable, necessary and justified program costs, such as meals, beverages and transportation, incurred only for training and education activities directly related to "drug prevention programs to reduce/eliminate the use of illegal drugs." Activities that should be included in these programs are:

(i) DRUG CRIME PREVENTION. Drug crime prevention programs that will be considered for funding under this part must provide a comprehensive drug prevention approach for the HA/residents that will address the individual resident and his or her relationship to family, peers, and the community. Prevention programs must include activities designed to identify and change the factors present in HAs that lead to drug-related crime and other criminal activities associated with drug-related problems, and thereby lower the risk of drug usage. Many components of a comprehensive approach, such as refusal and restraint skills training programs or drug-related family counseling, may already be available in the community of the applicant's housing developments, and the applicant must act to bring those available program components onto the premises.

(A) DRUG EDUCATION OPPORTUNITIES. The causes and effects of illegal drug usage must be discussed in a formal setting to provide both young people and adults the working knowledge and skills they need to make informed decisions to confront the potential and immediate dangers of illegal drugs. Grantees may contract (in accordance with 24 CFR 85.36) with professionals to provide appropriate training or workshops. The professionals contracted to provide these services shall be required to base their services upon the needs assessment and program plan of the grantee. These educational opportunities may be a part of resident meetings, youth activities, or other gatherings of public and Indian housing residents.

(B) FAMILY AND OTHER SUPPORT SERVICES. For purposes of this section, the term "supportive services" means new or significantly expanded services to provide HA families with access to educational and employment opportunities such as, child care; employment training; literacy training; computer skills training; remedial education; drug abuse counseling; assistance in the attainment of certification of high school equivalency; and other appropriate services. In addition, drug and other prevention programs must demonstrate that they will provide directly or otherwise make available services designed to distribute drug education information, to foster effective parenting skills, and to provide referrals for treatment and other available support services in the development or the community for HA families.

(C) YOUTH SERVICES. Drug and other crime prevention programs must demonstrate that they have included groups composed of young people as a part of their prevention programs. These groups must be coordinated by adults with the active participation of youth to organize youth leadership, sports, recreational, cultural and other activities involving HA youth. The dissemination of drug education information, the development of peer leadership skills and other drug prevention activities must be a component of youth services.

(D) ECONOMIC AND EDUCATIONAL OPPORTUNITIES FOR RESIDENTS AND YOUTH. Prevention programs must demonstrate a capacity to provide HA/development(s) residents the opportunities for interaction with or referral to established higher education or vocational institutions with the goal of developing or building on the residents' skills to pursue educational, vocational and economic goals. The program must also demonstrate the ability to provide HA residents the opportunity to interact with private sector businesses in their immediate community for the same desired goals.

(ii) INTERVENTION. The aim of intervention is to identify HA resident drug users and assist them in modifying their behavior and in obtaining early treatment, if necessary. The applicant must establish a program with the goal of preventing drug-related crime and other criminal activities associated with drug-related problems once detected.

(iii) DRUG TREATMENT.

(A) Treatment funded under this program shall be "in or around" the premises of the HA/development(s) proposed for funding. The Department has determined that the term "in or around" means within, or adjacent to, the physical boundaries of a public or Indian housing development. The intent of this definition is to make certain that program funds and program activities are targeted to benefit, as directly as possible, public and Indian housing developments, the intended beneficiaries of the program under the authorizing statute. The goals of this program are best served by focusing its resources directly upon HAs/development(s).

(B) Funds awarded under this program shall be targeted towards the development and implementation of drug referral treatment services and long range aftercare, or the improvement of, or expansion of such program services for HA residents.

(C) Each proposed drug program must address but is not limited to the following goals:

(*1*) Increase resident accessibility to drug treatment services;

(*2*) Decrease drug-related crime and other criminal activity associated with drug-related problems "in or around" the HA/development(s) by reducing illicit drug use among residents; and

(*3*) Provide services designed for youth and/or maternal drug abusers, e.g., prenatal and postpartum care, specialized counseling in women's issues, parenting classes, or other drug supportive services.

(D) Approaches that have proven effective with similar populations will be considered for funding. Programs should meet the following criteria:

(1) Applicants may provide the service of formal referral arrangements to other treatment programs where the resident is able to obtain treatment costs from sources other than this program.

(2) Provide family and collateral counseling.

(3) Provide linkages to educational and vocational counseling.

(4) Provide coordination of services from/to appropriate Tribal or local drug agencies, HIV-related service agencies, and mental health and public health programs.

(E) Applicants must demonstrate a working partnership with the Single State Agency or current Tribal or State license provider or authority with drug/prevention program coordination responsibilities to coordinate, develop and implement the drug treatment proposal.

(F) The Single State Agency or authority with drug/prevention program coordination responsibilities must certify that the drug/prevention treatment proposal is consistent with the State treatment plan; and that the treatment service meets all local and State licensing requirements.

(G) FUNDING IS NOT PERMITTED for treatment of residents at any in-patient medical treatment program and facility.

(H) FUNDING IS NOT PERMITTED for detoxification procedures, short term or long term, designed to reduce or eliminate the presence of toxic substances in the body tissues of a patient.

(I) FUNDING IS NOT PERMITTED for maintenance drug programs. Maintenance drugs are medications that are prescribed regularly for a short/long period of supportive therapy (e.g. methadone maintenance), rather than for immediate control of a disorder.

(7) Resident Management Corporations (RMCs), Resident Councils (RCs), and Resident Organizations (ROs). Funding under this program IS PERMITTED for HAs to contract with RMCs and incorporated RCs and ROs to develop security and drug abuse prevention programs involving site residents. Such programs may include (but are not limited to) voluntary tenant patrol activities, drug education, drug intervention, youth programs, referral, and outreach efforts. For the purposes of this section, the elimination of drug-related crime and other criminal activities associated with drug-related problems within HAs/developments requires the active involvement and commitment of public housing residents and their organizations. To enhance the ability of HAs to combat drug-related crime and other criminal activity associated with drug-related problems within their developments, Resident Councils (RCs), Resident Management Corporations (RMCs), and Resident Organizations (ROs) will be permitted to undertake management functions specified in this part, notwithstanding the otherwise applicable requirements of 24 CFR parts 950 and 964. In order to implement the activity, the HA must enter into a sub-contract with the RMC/RC/RO setting forth the amount of funds, applicable terms, conditions, financial controls, payment mechanism, schedule, and special conditions, including sanctions for violation of the agreement. Expenditures for activities under this section will not be incurred by the HA (grantee) and/or funds released by the local HUD Field Office until the grantee has met all the above requirements.

(8) Program Performance. HUD will evaluate an applicant's performance under any previous Drug Elimination Program grants. Subject to evaluation and review are the applicant's financial and program performance; reporting and special condition compliance; accomplishment of stated goals and objectives under the previous grant; and program adjustments made in response to previous ineffective performance. If the evaluation discloses a pattern under past grants of ineffective performance with no corrective measures attempted, it will result in a deduction of points from the current application. Since this is a competitive program, HUD does not guarantee continued funding of any previously funded Drug Elimination Program grant.

(9) PHA-Owned Housing. Funding may be used for the activities described in Sections I.(c)(1) through (7) (eligible activities) of this NOFA, to eliminate drug-related crime and other criminal activities associated with drug-related problems in housing owned by public housing agencies that is not public housing that is assisted under the United States Housing Act of 1937 and is not otherwise federally assisted (for example, housing that receives tenant subsidies under Section 8 is federally assisted and would not qualify, but housing that receives only State, Tribal or local assistance would qualify), but only if they meet all of the following:

(i) The housing is located in a high intensity drug trafficking area designated pursuant to section 1005 of the Anti-Drug Abuse Act of 1988; and

(ii) The PHA owning the housing demonstrates, on the basis of information submitted in accordance with the requirements of Sections I.(d)(1), below, of this NOFA, that drug-related crime and other criminal activities associated with drug-related problems at the housing has a detrimental affect on or about the housing.

The High Intensity Drug Trafficking Areas (HIDTA) are areas identified as having the most critical drug trafficking problems that adversely impact the rest of the country. These areas are designed as HIDTA by the Director, Office of National Drug Control Policy pursuant to the Anti-Drug Abuse Act of 1988. As of February 1996 the following areas were confirmed by the Office of National Drug Control Policy Office, as designated high intensity drug trafficking areas:

—Washington, DC—Baltimore, MD which includes: Washington, DC, Alexandria, Arlington County (Cty), Fairfax Cty, Montgomery Cty, Prince George's Cty, Charles Cty, Anne Arundel Cty, Howard Cty, Baltimore Cty, and Baltimore, MD.

—New York City (and a surrounding area that includes Nassau Cty, Suffolk County, and Westchester Cty, New York, and all municipalities therein; and Union Cty, Hudson Cty, and Essex Cty, New Jersey, and all municipalities therein).

—Los Angeles (and a surrounding area that includes Los Angeles Cty, Orange Cty, Riverside Cty, and San Bernadino Cty, and all municipalities therein).

—Miami (and a surrounding area that includes Broward Cty, Dade County, and Monroe Cty, and all municipalities therein).

—Houston (and a surrounding area that includes Harris Cty, Galveston Cty, and all municipalities therein).

—The Southwest Border (and adjacent areas that include San Diego and Imperial Cty, California, and all municipalities therein; Yuma Cty, Maricopa Cty, Pinal Cty, Pima Cty, Santa Cruz Cty, and Cochise Cty, Arizona, and all municipalities therein; Hidalgo Cty, Grant County, Luna County, Dona Ana Cty, Eddy Cty, Lea Cty, and Otero Cty, New Mexico, and all municipalities therein; El Paso Cty, Hudspeth Cty, Culberson Cty, Jeff Davis Cty, Presidio County, Brewster Cty, Pecos Cty, Terrell Cty, Crockett Cty, Val Verde Cty, Kinney Cty, Maverick Cty, Zavala Cty, Dimmit Cty, La Salle Cty, Webb County, Zapata County, Jim Hogg County, Starr County, Hildago Cty, Willacy Cty, and Cameron Cty, Texas, and all municipalities therein).

—U. S. Virgin Islands and Puerto Rico.

For further information on high intensity drug trafficking areas contact Rich Yamamoto, at the Office of National Drug Control Policy (ONDCP), Executive Office of the President, Washington, DC 20500. He may be reached on (202) 395–6755.

(10) Ineligible Activities. PHDEP funding IS NOT PERMITTED for any of the activities listed below, UNLESS OTHERWISE SPECIFIED IN THIS NOFA.

(i) FUNDING IS NOT PERMITTED under this NOFA for costs incurred before the effective date of the grant agreement (Form HUD–1044), including, but not limited to, consultant fees related to the development of an application or the actual writing of the application.

(ii) FUNDING IS NOT PERMITTED under this NOFA for the purchase of controlled substances for any purpose. Controlled substance shall have the meaning provided in section 102 of the Controlled Substance Act (21 U.S.C. 802).

(iii) FUNDING IS NOT PERMITTED under this NOFA for compensating informants, including confidential informants.

(iv) FUNDING IS NOT PERMITTED under this NOFA for the direct purchase of any law enforcement or military clothing or equipment, including cars, vans, buses, and motorcycles etc. Exceptions are set forth in Section I.(c) of this NOFA.

(v) FUNDING IS NOT PERMITTED under this NOFA for any wages or salaries for voluntary tenant patrol participants. HAs ARE PERMITTED to fund HA/resident coordinators to be hired for this activity.

(vi) FUNDING IS NOT PERMITTED under this NOFA for the costs of leasing, acquiring, or constructing any facility space in a building or unit.

(vii) FUNDING IS NOT PERMITTED under this NOFA for organized fund raising, advertising, financial campaigns, endowment drives, solicitation of gifts and bequests, rallies, marches, community celebrations and similar expenses.

(viii) FUNDING IS NOT PERMITTED under this NOFA for the costs of entertainment, amusements, or social activities and for the expenses of items such as meals, beverages, lodgings, rentals, transportation, and gratuities related to these ineligible activities. However, under Section I.(c)(6) of this NOFA, funding IS PERMITTED for reasonable, necessary and justified program costs, such as meals, beverages and transportation, incurred only for training, and education activities directly related to "drug prevention programs."

(ix) FUNDING IS NOT PERMITTED under this NOFA for the costs (court costs, attorneys fees, etc.) related to screening or evicting residents for drug-related crime and other criminal activities associated with drug-related problems. However, HA investigators funded under this program may participate in judicial and administrative proceedings as provided in Section I.(c)(4) (Employment of Investigators) of this NOFA.

(x) Although participation in activities with Federal drug interdiction or drug enforcement agencies is encouraged, the transfer of PHDEP grant funds to any Federal agency IS NOT PERMITTED under this NOFA.

(xi) Alcohol-related activities and programs ARE NOT ELIGIBLE for funding under this program. Controlled substance shall have the meaning provided in Section 102 of the Controlled Substance Act (21 U.S.C. 802). Since this definition of controlled substance does not include alcohol, alcohol-related activities are not eligible.

(xii) FUNDING IS NOT PERMITTED under this NOFA for establishing councils, resident associations, resident organizations, and resident corporations since HUD funds these activities under a separate NOFA.

(xiii) Indirect costs as defined in OMB Circular A–87 ARE NOT PERMITTED under this program. Only direct costs are permitted.

(xiv) FUNDING IS NOT PERMITTED under this NOFA for any cash awards.

(xv) Grant funds under this NOFA SHALL NOT BE USED to supplant existing positions or programs.

(d) Selection Criteria

HUD will review each application that it determines meets the requirements of this NOFA and evaluate it by assigning points in accordance with the selection criteria. An application for funding under this program may be for one or more eligible activities.

An applicant may submit only one application under each Notice of Funding Availability (NOFA). Joint applications ARE NOT PERMITTED under this program with the following EXCEPTION: HAs under a single administration (such as HAs managing another HA under contract or HAs sharing a common executive director) may submit a single application, even through each HA has its own operating budget.

The number of points that an application receives will depend on the extent to which the application is responsive to the information requested in the selection criteria. An application must receive a score of at least 70 points out of the maximum of 100 points that may be awarded under this competition to be eligible for funding.

After applications have been scored, Headquarters will rank the applications on a national basis. Awards will be made in ranked order until all funds are expended. HUD will select the highest ranking applications that can be fully funded. Applications with tie scores will be selected in accordance with the procedures in Section I.(e) (Ranking Factors). The terms "housing" and "development(s)" as used in the application selection criteria and submission requirements may include, as appropriate, housing described in Section I.(c)(9) (PHA-Owned Housing), above, of this NOFA. Each application submitted for a grant under this NOFA will be evaluated on the basis of the following selection criteria:

(1) *First Criterion:* The Extent of The Drug-Related Crime Associated With Drug-Related Crime Problems in the Applicant's Development or Developments Proposed for Assistance. (MAXIMUM POINTS: 40) To permit HUD to make an evaluation on the basis of this criterion, an application must include a description of the extent and nature of drug-related crime and other criminal activities associated with drug-related problems, "in or around" the HA/development(s) proposed for funding. An applicant must explain, in the application, in what way a problem claimed to be associated with drug-related crime and other criminal activities associated with drug-related problems is a result of drug-related crime and those other criminal activities. The description should provide the following information:

(i) OBJECTIVE DATA. The best available objective data on the nature, source, and frequency of the problem of drug-related crime and other criminal activities associated with drug-related problems. This data may include (but not necessarily be limited to):

(A) The nature and frequency of drug-related crime and other criminal activities associated with drug-related problems as reflected by crime statistics and other data from Federal, State, Tribal, or local law enforcement agencies.

(B) Information from records on the types and sources of drug-related crime and other criminal activities associated with drug-related problems in the HA/development(s) proposed for assistance.

(C) Descriptive data as to the types of offenders committing drug-related crime and other criminal activities associated with drug-related problems in the applicant's HA/development(s) (e.g., age, residence, etc.).

(D) The number of lease terminations or evictions for drug-related crime or arrests and other criminal activities associated with drug-related problems.

(E) The number of emergency room admissions for drug use or that result from drug-related crime and other criminal activities associated with drug-related problems. Such information may be obtained from police departments and/or fire departments, emergency medical services agencies and hospitals.

(F) The number of police calls for service from HAs (not just drug-related crime) such as resident initiated calls, officer-initiated calls, domestic violence calls, drug distribution complaints, found drug paraphernalia, gang activity, graffiti that reflects drugs or gang-related activity, vandalism, drug arrests, and abandoned vehicles.

(G) The number of residents placed in treatment for drug-related substance abuse, the number of residents that successfully completed treatment, and number of residents that successfully completed short or long range after-care treatment for substance abuse.

(H) Where appropriate, the statistics should be reported both in real numbers and as an annual percentage of the residents in each development (e.g., 20 arrests in a two-year for distribution of heroin in a development with 100 residents reflects a 20% occurrence rate). The data should cover the most recent two-year period. If the data from the most recent two-year period is not used, an explanation must be provided. To the extent feasible, the data provided should be compared with data from a prior two year period to show whether the current data reflects a percentage increase or decrease in drug-related crime and other criminal activities associated with drug-related problems during that prior period of time within HAs.

(I) A reduction in drug-related crime and other criminal activities associated with drug-related problems in the HA/development(s) where previous PHDEP grants have been in effect will not be considered a disadvantage to the applicant.

(J) If funding is being sought for housing owned by public housing agencies that is not public housing assisted under the United States Housing Act of 1937 and is not otherwise federally assisted, the application must demonstrate that the housing is located in a high intensity drug trafficking area designated pursuant to section 1005 of the Anti-Drug Abuse Act of 1988, and the application must demonstrate that drug-related activity and other criminal activities associated with drug-related problems at the housing has a detrimental affect on or about the real property comprising the public or other federally assisted low-income housing. For the purposes of this NOFA "in or around" means: on the premises or immediately adjacent to the premises of the real property comprising the public or other Federally-assisted housing.

(ii) OTHER DATA on the extent of drug-related crime and other criminal activities associated with drug-related problems. To the extent that objective data as described above may not be available, or to complement that data, the assessment may use data from other sources that have a direct bearing on drug-related crime and other criminal activities associated with drug-related problems in the developments proposed for assistance under this program. However, if other relevant information is to be used in place of, rather than to complement, objective data, the application must indicate the reasons why objective data could not be obtained and what efforts were made to obtain it. Examples of these data include (but are not necessarily limited to):

(A) Resident and staff surveys on drug-related crime and other criminal activities associated with drug-related problems or on-site reviews to determine drug activity; and local government or scholarly studies or other research in the past year that analyze drug activity in the targeted developments.

(B) Vandalism cost, to include elevator vandalism (where appropriate) and other vandalism attributable to drug-related crime and other criminal activities associated with drug-related problems.

(C) Information from schools, health service providers, residents and Federal, State, and Tribal officials, and the opinions and observations of individuals having direct knowledge of drug-related crime and other criminal activities associated with drug-related problems concerning the nature and frequency of these problems in the developments proposed for assistance. (These individuals may include Federal, State, Tribal, and local government law enforcement officials, resident or community leaders, school officials, community medical officials, drug treatment or counseling professionals, or other social service providers.)

(D) The school dropout rate and level of absenteeism for youth that the applicant can relate to drug-related crime and other criminal activities associated with drug-related problems. If crime or other statistics are not available at the development or precinct level the applicant may use other reliable, objective data.

(iii) In awarding points, HUD will evaluate the extent to which the applicant has provided the above data that reflects drug-related crime and other criminal activities associated with drug-related problems, both in terms of the frequency and nature of the drug-related crime and other criminal activities associated with drug-related problems in the HA/development(s) proposed for funding as reflected by information submitted under paragraphs (1)(i) (objective data), and (ii) (other data) of this section; and the extent to which such data reflects an increase in drug-related crime and other criminal activities associated with drug-related problems over a period of two year(s) in the HA/development(s) proposed for assistance. (MAXIMUM POINTS UNDER PARAGRAPHS (i) AND (ii) OF THIS SECTION: 15)

(iv) In awarding points, HUD will evaluate the extent to which the applicant has analyzed the data compiled under paragraphs (1) (i) and (ii) of this section, and has clearly articulated its needs, performance measurements, and strategies for reducing drug-related crime and other criminal activities associated with drug-related problems in the HA/development(s) proposed for assistance. (MAXIMUM POINTS: 5)

(v) In awarding points, HUD will evaluate and assign points according to the extent and availability of standardized data on the following specific Part I crime activities as defined by the Uniform Crime Reporting (UCR) system: (1) Criminal homicide, (2) forcible rape, (3) robbery, and (4) aggravated assault. This data must cover both the frequency and nature of the crime in the HA/development(s) proposed for assistance. The community data will be taken from current Uniform Crime Reports (UCRs) of the U.S. Department of Justice (FBI crime data) and will be at the HA/city/county level, when available. The crime data and the point values will be computed by HUD. (MAXIMUM TOTAL POINTS: 10)

(vi) In awarding points, HUD will evaluate and assign points according to the extent and availability of standardized data on the Part II crime activity of drug abuse violations [State, Tribal and local offenses relating to the unlawful possession, sale, use, growing, and manufacturing of narcotic drugs], as defined by the Uniform Crime Reporting (UCR) system. This data must cover both the frequency and nature of the crime in the HA/development(s) proposed for assistance. The community data will be taken from current Uniform Crime Reports (UCRs) of the U.S. Department of Justice (FBI crime data) and will be at the HA/city/county level, when available. The crime data and the point values will be computed by HUD. (MAXIMUM POINTS: 10)

(2) *Second Criterion:* The Quality of the Plan To Address the Crime Problem in the Public or Indian Housing Developments Proposed for Assistance, Including the Extent to Which the Plan Includes Initiatives that Can Be Sustained Over a Period of Several Years. (MAXIMUM POINTS: 35) In assessing this criterion, HUD will consider the following factors:

(i) To permit HUD to make an evaluation on the basis of this criterion, an application must include the applicant's plan for addressing drug-related crime and other criminal activities associated with drug-related problems. This means a narrative description of the applicant's activities for addressing (solutions/prevention) drug-related crime and other criminal activities associated with drug-related problems in each of the developments proposed for assistance under this part must be included in the application. The activities eligible for funding under this program are listed in Section I.(c) of this NOFA, above, although the applicant's plan must include all of the activities that will be undertaken to address the problem, whether or not they are funded under this program. If the same activities are proposed for all of the developments that will be covered by the plan, the activities do not need to be described separately for each development. Where different activities are proposed for different developments, these activities and the developments where they will take place must be separately described.

The description of the plan in the application must include (but not necessarily be limited to) the following information:

(A) A narrative describing each activity proposed for PHDEP funding in the applicant's plan, any additional relevant activities being undertaken by the applicant (e.g., a drug treatment program for residents funded by an agency other than HUD), and how all of these activities interrelate. The applicant should specifically address whether it plans to implement a comprehensive strategy relating to illegal drug activities, drug-related crime and other criminal activities associated with drug-related problems. The strategy must include (as applicable) management practices, enforcement/law enforcement techniques (such as community policing), and a combination of drug abuse prevention, intervention, referral, and treatment programs. In addition, the applicant must indicate how its proposed activities will complement, and be coordinated with, current activities.

(B) If grant amounts are to be used for contracting for/or employment of security guard personnel services in HAs/development(s), the application must describe how the requirements of Section I.(c)(1)(i) (Employment of Security Personnel) of this NOFA will be met.

(C) If grant amounts are to be used for HA police department equipment and personnel, the application must describe how the requirements of Section I.(c)(1)(ii) (Housing Authority Police Departments) of this NOFA will be met.

(D) If grant amounts are to be used for reimbursement of local law enforcement agencies for additional security and protective services, the application must describe how the requirements of Section I.(c)(2) (Reimbursement of Local Law Enforcement Agencies) of this NOFA will be met.

(E) If grant amounts are to be used for physical improvements in HA/developments proposed for funding under Section I.(c)(3) (Physical Improvements) of this NOFA, the application must describe how these improvements will be coordinated with the applicant's modernization program, if any, under 24 CFR part 950, subpart I, or 24 CFR part 968.

(F) If grant amounts are to be used for employment of investigators, the application must describe how the requirements of Section I.(c)(4) (Employment of Investigators) of the NOFA will be met.

(G) If grant amounts are to be used for voluntary tenant patrols, the application must describe how the requirements of Section I.(c)(5) (Voluntary Tenant Patrol) of this NOFA will be met.

(H) If grant amounts are to be used for a "Program to reduce illegal drugs" i.e.; prevention, intervention or treatment programs to eliminate the use of illegal drugs "in or around" the premises of the HA/development(s) as provided in Section I.(c)(6) of this NOFA, the application must discuss the nature of the program, how the program represents a prevention or intervention strategy, and how the program will further the HA's strategy to eliminate drug-related crime and other criminal activities associated with drug-related problems in the HA/development(s) proposed for assistance in the plan, a description of how funding decisions were reached (specifically how costs were determined for each element of each activity in the same format as shown in the application kit) and financial and other resources (including funding under this program, and from other resources) that may reasonably be expected to be available to carry out each activity.

(I) Implementation timetable that includes tasks, deadlines, budget cost, expected outcomes, desired results, and persons responsible for implementing (beginning, achieving identified milestones, and completing) each activity in the plan.

(J) The resources that the applicant may reasonably expect to be available at the end of the grant term to continue the plan, and how they will be allocated to plan activities that can be sustained over a period of years.

(K) A discussion of how the applicant's plan will serve to provide training and employment or business opportunities for lower income persons and businesses located in, or substantially owned by persons residing within the area of the section 3 covered project (as defined in 24 CFR part 135) in accordance with 24 CFR 761.40 and 24 CFR part 5, subpart A. HAs are encouraged to hire qualified residents in all positions.

(L) Program evaluation. The plan must specifically demonstrate how the activities funded under this program will be evaluated by the applicant, so that the program's progress can be measured. Performance measurements must be developed to demonstrate the relationship between the extent of the crime detailed in Selection Criterion 1, Section I(d)(1) of this NOFA, and the comprehensive crime reduction/elimination described in the implementation of the plan. The evaluation shall also be used to modify activities to make them more successful or to identify unsuccessful strategies. The evaluation must identify the types of information the applicant will use to measure the plan's success (e.g. tracking changes in identified crime statistics); and indicate the method the applicant will use to gather and analyze this information.

(ii) In assessing this criterion, HUD will consider the quality and thoroughness of an applicant's plan in terms of the information requested in Section I.(d)(2)(i), "Quality of the plan," of this NOFA, including the extent to which:

(A) The applicant's plan clearly describes the activities that are being proposed by the applicant, including those activities to be funded under this program and those to be funded from other sources, and indicates how these proposed activities provide for a

comprehensive approach to reduce/eliminate drug-related crime and other criminal activities associated with drug-related problems (as described under selection criterion 1, Section I.(d)(1), "The extent of the drug-related crime associated with drug-related crime problems" of this NOFA, above) in the HA/development(s) proposed for funding. (MAXIMUM POINTS: 10)

(B) The applicant's plan provides a budget narrative with supporting documentation (specifically how costs were determined for each element of each activity in the same format as shown in the application kit) for each activity and describes the financial and other resources (under this program and other sources) that may reasonably be expected to be available to carry out each activity. (MAXIMUM POINTS: 5)

(C) The applicant's plan is realistic in terms of time, personnel, and other resources, considering the applicant's timetable for beginning and completing each component of the plan and the amount of funding requested under this program and other identified resources available to the applicant. (MAXIMUM POINTS: 2)

(D) As described in the plan, other entities (e.g., Tribal, local and State governments and community organizations) are involved in planning and carrying out the applicant's plan. (MAXIMUM POINTS: 2)

(E) The plan includes activities that can be sustained over a period of years and identifies resources that the applicant may reasonably expect to be available for the continuation of the activities at the end of the grant term. (MAXIMUM POINTS: 2)

(F) The applicant's plan will serve to provide training and employment or business opportunities for lower income persons and businesses located in, or substantially owned by persons residing within the area of the section 3 covered project (as defined in 24 CFR part 135) in accordance with 24 CFR 761.40 and 24 CFR part 5, subpart A. (MAXIMUM POINTS: 2)

(G) The applicant's plan contains a clear description of its process to collect, maintain and analyze specific drug-related crime and other criminal activities associated with drug-related problems and workload as defined by the Uniform Crime Reporting (UCR) system in specific Part I/II crimes as detailed in selection criterion 1, Sections I.(d)(1)(v) and (vi) of this NOFA, as well as other police workload data to include all calls for service on the HA/development(s) proposed for funding. (MAXIMUM POINTS: 5)

(H) The applicant's plan includes an evaluation process with specific performance measurements that demonstrate results relative to crime workload detailed in Selection Criterion 1, Section I.(d)(1) of this NOFA, in the HA/development(s) proposed for funding. (MAXIMUM POINTS: 7)

(3) *Third Criterion:* The Capability of the Applicant to Carry Out the Plan. (MAXIMUM POINTS: 15) In assessing this criterion, HUD will consider the following factors:

(i) The extent of the applicant's successful and effective administrative capability to manage its HA, as measured by its performance with respect to operative HUD requirements under the ACC or ACA and the Public Housing Management Assessment Program at 24 CFR part 901. In evaluating administrative capability under this factor, HUD will also consider, and the application must include in the form of a narrative discussion, the following information:

(A) Whether there are any unresolved findings from prior HUD reports (e.g., performance or finance), reviews or audits undertaken by HUD, the Office of the Inspector General, the General Accounting Office, or independent public accountants;

(B) Whether the applicant is operating under court order. (MAXIMUM POINTS UNDER PARAGRAPH (3)(I) (A) AND (B) OF THIS SECTION: 2)

(ii) The application must demonstrate, as authorized by applicable local, State, Tribal, and Federal law, the extent to which the applicant has formed a collaboration with the local, State, Tribal, and Federal law enforcement officials and courts to gain access regarding the criminal conviction records of applicants for, or tenants of, HAs regarding applicant screening, lease enforcement, and eviction. The application must demonstrate the extent to which the applicant has implemented effective screening procedures to determine an individual's suitability for public housing (consistent with the requirements of 42 U.S.C. 3604(f), 24 CFR 100.202, 29 U.S.C. 794 and 24 CFR 8.4 which deal with individuals with disabilities); implemented a plan to reduce vacancies; implemented eviction and lease enforcement procedures in accordance with 24 CFR part 966, subpart B, 25 CFR 950.340 and Section 503 of NAHA; or undertaken other management actions to eliminate drug-related crime and other criminal activities associated with drug-related problems in its developments. (MAXIMUM POINTS: 2)

(iii) The application must identify the applicant's participation in HUD grant programs (such as CGP, CIAP, youth sports, child care, resident management, PHDEP, HOPE VI, Tenant Opportunities Program (TOP), Family Investment Centers (FIC) grants, etc.) within the preceding three years, and discuss the degree of the applicant's success in implementing and managing these grant programs. (MAXIMUM POINTS: 4)

(iv) The local HUD Field Office/AONAP shall evaluate the extent of the applicant's success or failure in implementing and managing an effective program under previous PHDEP grants and/or other grants (preceding three years). This evaluation will be based upon (but not limited to) HUD's Line of Credit Control System (LOCCS) reports, PHDEP and/or other HUD program performance and financial reports, audits, and HUD reviews. (MAXIMUM POINTS: 7)

(4) *Fourth Criterion:* The Extent to Which Tenants, the Local Government and the Local Community Support and Participate in the Design and Implementation of the Activities Proposed to be Funded under the Application. (MAXIMUM POINTS: 10) In assessing this criterion, HUD will consider the following factors:

(i) The application must include a discussion of the extent to which community representatives and Tribal, local, State and Federal government officials are actively involved in the design and implementation of the applicant's plan, as evidenced by descriptions of planning meetings held with community representatives and local government officials, letters of commitment to provide funding, staff, or in-kind resources, or written comments on the applicant's planned activities. (MAXIMUM POINTS: 3)

(ii) The application must discuss the extent to which the relevant governmental jurisdiction has met its law enforcement obligations under the Cooperation Agreement with the applicant (as required by the grantee's Annual Contributions Contract with HUD). The application must also include a certification by the Chief Executive Officer (CEO) of a State or a unit of general local government in which the developments proposed for assistance are located that the locality is meeting its obligations under the Cooperation Agreement with the HA, particularly with regard to the current level of baseline law enforcement services. If the jurisdiction is not meeting its obligations under the Cooperation Agreement, the CEO should identify any special circumstances relating to its failure to do so. Whether or not a locality is meeting its obligations under the Cooperation Agreement with the applicant, the applicant must describe the current level of baseline law enforcement services being provided to the HA/development(s) proposed for assistance. (MAXIMUM POINTS: 3)

(iii) The extent to which HA/development residents, and an RMC, RC or RO, where they exist, are involved in the planning and development of the grant application and plan strategy, and support and participate in the design and implementation of the activities proposed to be funded under the application. The application must include a summary of written resident and resident organization meetings, with supporting documentation that addresses (but is not limited to) subject matter, names of residents on committees, copies of resident surveys and evaluations etc., as required by 24 CFR 761.25, and the applicant's response to and action on these comments. If there are no resident or resident organization comments, the applicant must provide an explanation of the steps taken to encourage participation, even though they were not successful. (MAXIMUM POINTS: 2)

(iv) The extent to which the applicant is already undertaking, or has undertaken, participation in local, State, Tribal or Federal anti-drug related crime efforts, such as Operation Weed and Seed, and Operation Safe Home, and/or has successfully coordinated its law enforcement activities with local, State, Tribal or Federal law enforcement agencies. (MAXIMUM POINTS: 2)

(e) Ranking Factors

(1) Each application for a grant award that is submitted in a timely manner to the local HUD Field Office with delegated public housing responsibilities or, in the case of IHAs, to the appropriate AONAP, that otherwise meets the requirements of this NOFA, will be evaluated in accordance with the selection criteria specified above.

(2) An application must receive a score of AT LEAST 70 POINTS OUT OF THE MAXIMUM OF 100 POINTS that may be awarded under this competition to be eligible for funding.

(3) After applications have been scored, Headquarters will rank the applications on a national basis.

(4) In the event that two eligible applications receive the same score, and both cannot be funded because of insufficient funds, the application with the highest score in SELECTION CRITERION 3 "THE CAPABILITY OF THE APPLICANT TO CARRY OUT THE PLAN" will be selected. If Selection Criterion 3 is scored identically for both applications, the scores in Selection Criteria 1, 2, and 4 will be compared in this order, one at a time, until one application scores higher in one of the factors and is selected. If the applications score identically in all factors, the application that requests less funding will be selected.

(5) All awards will be made to fund fully an application, except as provided in Section I.(b)(4) of this NOFA (Reduction of Requested Grant Amounts and Special Conditions).

(f) General Grant Requirements

(1) Each grantee is responsible for ensuring that grant funds are administered in accordance with the requirements of 24 CFR part 761, any specific Notices of Funding Availability (NOFAs) issued for these programs, 24 CFR part 85 (as applicable), applicable laws and regulations, applicable OMB circulars, HUD fiscal and audit controls, grant agreements, grant special conditions, the grantee's approved budget (SF–424A), and supporting budget narrative, plan, and activity timetable.

(2) Applicability of OMB Circulars and HUD fiscal and audit controls. The policies, guidelines, and requirements of this NOFA, 24 CFR part 761, 24 CFR part 85, 24 CFR part 84, and OMB Circular A–87 apply to the acceptance and use of assistance by grantees under this program; and OMB Circular Nos. A–110 and A–122 apply to the acceptance and use of assistance by private nonprofit organizations (including RMCs, RCs and ROs). In addition, grantees and sub-grantees must comply with fiscal and audit controls and reporting requirements prescribed by HUD, including the system and audit requirements under the Single Audit Act, OMB Circular No. A–128 and HUD's implementing regulations at 24 CFR part 44; and OMB Circular No. A–133.

(3) Cost Principles. Specific guidance in this NOFA, 24 CFR part 761, 24 CFR part 85, 24 CFR part 84, OMB Circular A–87, other applicable OMB cost principles, HUD program regulations, Notices, HUD Handbooks, and the terms of grant/special conditions and subgrant agreements will be followed in determining the reasonableness and allocability of costs. All costs must be reasonable, necessary and justified with cost analysis. PHDEP Funds must be disbursed by the grantee within SEVEN CALENDAR DAYS AFTER RECEIPT OF DRAWDOWN. Grant funds must be used only for Drug Elimination Program purposes. Direct costs are those that can be identified specifically with a particular activity or function in this NOFA and cost objectives in OMB Circular A–87. Indirect cost ARE NOT PERMITTED in this program. Administrative requirements for the Public Housing Drug Elimination Program grants will be in accordance with 24 CFR part 85. Acquisition of property or services shall be in accordance with 24 CFR 85.36. All equipment acquisitions will remain the property of the grantee in accordance with 24 CFR 85.32. ONAP procurement standards are in 24 CFR part 950.

(4) Grant Staff Personnel.

(i) All persons or entities compensated by the grantee for services provided under a PHDEP grant must meet all applicable personnel or procurement requirements and shall be required as a condition of employment to meet all relevant State, local and Tribal government, insurance, training, licensing, or other similar standards and requirements.

(ii) Compensation for personnel relative to grant administrative support (including supervisory personnel, such as a grant administrator(s), public housing police department accreditation specialist under Section I.(c)(1)(ii) of this NOFA, drug/sports/voluntary tenant patrol program coordinators, and support staff (such as counselors and clerical staff) hired for grant activities IS PERMITTED and may include wages, salaries, and fringe benefits.

(iii) All grant personnel must be necessary, reasonable and justified. Job descriptions must be provided, in the application, for all grant personnel. Excessive staffing IS NOT PERMITTED.

(iv) HA staff responsible for management/coordination of PHDEP programs shall be compensated with grant funds only for work performed directly for PHDEP grant-related activities and shall document the time and activity involved in accordance with 24 CFR 85.20.

(5) Grant Agreement. After an application has been approved, HUD and the applicant shall enter into a grant agreement (Form HUD–1044) setting forth the amount of the grant and its applicable terms, conditions, financial controls, payment mechanism, schedule, and special conditions, including sanctions for violation of the agreement. The grant agreement will be effective upon execution of Form HUD–1044 by the Director, Office of Public Housing or Administrator, AONAP.

(6) Term of Grant Agreement. Terms of the grant agreement may not exceed 24 months, unless an extension (Form HUD–1044) is approved by the local HUD Field Office or AONAP. Any funds not expended at the end of the grant term shall be remitted to HUD. Once the award is executed, HUD Field Offices or AONAP, using Form HUD–1044, may

approve a PHDEP grant extension for any project up to and including a maximum period of 6 months beyond the original grant agreement. Grantees desiring an extension beyond 6 months must make a request through the local HUD Field Office or AONAP to the Assistant Secretary for Public and Indian Housing (ATTN: Office of Community Relations and Involvement, Crime Prevention and Security Division) for a waiver of 24 CFR part 761. Any funds not expended at the end of the grant term, unless an extension has been approved, shall be remitted to HUD.

(7) Grant extension. Local HUD Field Offices or AONAP may grant an extension of the grant term in response to a written request for an extension stating the need for the extension and indicating the additional time required. Local HUD Field Offices or AONAP will not consider requests for retroactive extension of program periods. HUD will permit only one extension. Local HUD Field Offices or AONAP will only consider extensions if the grantee meets the extension criteria of paragraph (b)(3) of this section at the time the grantee submits for approval the request for the extension. The maximum extension allowable for any PHDEP grant period is 6 months.

(i) Receipt. The request must be received by the local HUD Field Office or AONAP prior to the termination of the grant, and requires approval by the local HUD Office or AONAP with jurisdiction over the grantee.

(ii) Extension criteria. The following criteria must be met by the grantee when submitting a request to extend the expenditure deadline for a program or set of programs.

(iii) Performance and Financial Status Reports. There must be on file with the local HUD Field Office or AONAP current and acceptable Performance and Financial Status Reports, SF–269As.

(iv) Grant agreement special conditions. The grantee must have satisfied all grant agreement special conditions except those conditions that the grantee must fulfill in the remaining period of the grant. This also includes the performance and resolution of audit findings in a timely manner.

(v) Justification. The grantee must submit a narrative justification with the program extension request. The justification must provide complete details, including the circumstances that require the proposed extension, and an explanation of the impact of denying the request.

(vi) HUD action. The local HUD Field Office or AONAP will attempt to take action on any proposed extension request within 15 days after receipt of the request.

(8) Duplication of funds. To prevent duplicate funding of any activity, the grantee must establish controls to assure that an activity or program that is funded by other HUD programs, or programs of other Federal agencies, shall not also be funded by the Drug Elimination Program. The grantee must establish an auditable system to provide adequate accountability for funds that it has been awarded. The grantee is responsible for ensuring that there is no duplication of funds.

(9) Insurance. Each grantee shall obtain adequate insurance coverage to protect itself against any potential liability arising out of the eligible activities under this part. In particular, applicants shall assess their potential liability arising out of the employment or contracting of security personnel, law enforcement personnel, investigators, and drug treatment providers, and the establishment of voluntary tenant patrols; evaluate the qualifications and training of the individuals or firms undertaking these functions; and consider any limitations on liability under Tribal, State, or local law. Grantees shall obtain liability insurance to protect the members of the voluntary tenant patrol against potential liability as a result of the patrol's activities under § 761.15(b)(5). Voluntary tenant patrol liability insurance costs are eligible program expenses. Subgrantees shall obtain their own liability insurance.

(10) Failure to implement program(s). If the grant plan, approved budget, and timetable, as described in the approved application, are not operational within 90 days of the grant agreement date, the grantee must report by letter to the local HUD Field Office or the local AONAP the steps being taken to initiate the plan and timetable, the reason for the delay, and the expected starting date. Any timetable revisions that resulted from the delay must be included. The local HUD Field Office or AONAP will determine if the delay is acceptable, approve/disapprove the revised plan and timetable, and take any additional appropriate action.

(11) Sanctions. (1) HUD may impose sanctions if the grantee:

(i) Is not complying with the requirements of this part or of other applicable Federal law;

(ii) Fails to make satisfactory progress toward its drug elimination goals, as specified in its plan and as reflected in its performance and financial status reports;

(iii) Does not establish procedures that will minimize the time elapsing between drawdowns and disbursements;

(iv) Does not adhere to grant agreement requirements or special conditions;

(v) Proposes substantial plan changes to the extent that, if originally submitted, the applications would not have been selected for funding;

(vi) Engages in the improper award or administration of grant subcontracts;

(vii) Does not submit reports; or

(viii) Files a false certification.

(12) HUD may impose the following sanctions:

(i) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee;

(ii) Disallow all or part of the cost of the activity or action not in compliance;

(iii) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program;

(iv) Require that some or all of the grant amounts be remitted to HUD;

(v) Condition a future grant and elect not to provide future grant funds to the grantee until appropriate actions are taken to ensure compliance;

(vi) Withhold further awards for the program; or

(vii) Take other remedies that may be legally available.

(g) Periodic Reports

In accordance with 24 CFR part 85, grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity of the grant or subgrant.

(1) Semiannual grant performance status reporting requirements. Grantees are required to provide the local HUD Field Office or AONAP with a semiannual performance report that evaluates the grantee's overall performance against its plan. This report shall include in summary form (but is not limited to) the following: any change or lack of change in crime statistics or other indicators drawn from the applicant's plan assessment (such as vandalism, etc.) and an explanation of any difference; successful completion of any of the strategy components identified in the applicant's plan; a discussion of any problems encountered in implementing the plan and how they were addressed; an evaluation of whether the rate of progress meets expectations; a discussion of the grantee's efforts in encouraging resident participation; a description of any other programs that may have been initiated, expanded or deleted as a result of the plan, with an identification of the resources and the number of people involved in the programs and their relation to the plan.

(2) Semiannual grant financial status reporting requirements. The grantee shall submit a semiannual financial status report to the local HUD Field Office or AONAP. The grantee shall use the SF–269A to report the status of funds for nonconstruction programs. The grantee shall use SF–269A, Block 12, "Remarks," to report on the status of programs, functions, or activities within the program.

(3) Semiannual grant performance and financial status reporting period and due dates. The semiannual performance and financial status report shall cover the periods ending June 30 and December 31, and must be submitted to the local HUD Field Office or AONAP by July 30 and January 31 of each year.

(4) Final grant performance status report. Grantees are required to provide the local HUD Field Office or AONAP with a final cumulative performance report that evaluates the grantee's overall performance against its plan. This report shall include in summary form (but is not limited to) the following:

(i) Any change or lack of change in crime statistics or other indicators drawn from the applicant's plan assessment (such as vandalism, etc.) and an explanation of any difference;

(ii) Successful completion of any of the strategy components identified in the applicant's plan;

(iii) A discussion of any problems encountered in implementing the plan and how they were addressed;

(iv) An evaluation of whether the rate of progress meets expectations;

(v) A discussion of the grantee's efforts in encouraging resident participation; and

(vi) A description of any other programs that may have been initiated, expanded or deleted as a result of the plan, with an identification of the resources and the number of people involved in the programs and their relation to the plan.

(5) Final financial status report (SF–269A). The final report will be a cumulative summary of expenditures to date and must indicate the exact balance of unexpended funds. The grantee shall remit all Drug Elimination Program funds, including any unexpended funds, owed to HUD within 90 days after the termination of the grant agreement.

(6) Final grant performance status report and financial status report (SF–269A) reporting period. The final performance and financial status report shall cover the period from the date of the grant agreement, to include any extensions, to the termination date of the grant agreement. The report is due to the local HUD Field Office or AONAP within 90 days after the termination of the grant agreement.

(7) Report submission. The grantee shall submit all required reports to the local HUD Field Office or AONAP as required.

II. Application Process

(a) APPLICATION KIT: An application kit may be obtained, and assistance provided, from the local HUD Field Office with delegated public housing responsibilities over an applying public housing agency, or from the AONAP having jurisdiction over the Indian housing authority making an application, or by calling HUD's Community Relations and Involvement Clearinghouse, telephone (800) 578–3472. The application kit contains information on all exhibits and certifications required under this NOFA.

(b) APPLICATION SUBMISSION: Applications are due on or before August 9, 1996, AT 3:00 PM, LOCAL TIME. Applications (original and two identical copies of the original application) must be received by the deadline at the local HUD Field Office or AONAP with responsibilities over the applying public housing authorities. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

Applications (original and two identical copies of the original application) must be physically received by the deadline at the local HUD Field Office with delegated public housing responsibilities. Attention: Director, Office of Public Housing, or, in the case of IHAs, to the local HUD AONAP. Attention: Administrator, AONAP, as appropriate. It is not sufficient for an application to bear a postage date within the submission time period. Applications submitted by facsimile are not acceptable. APPLICATIONS RECEIVED AFTER AUGUST 9, 1996, AT 3:00 PM, LOCAL TIME, WILL NOT BE CONSIDERED.

III. Checklist of Application Submission Requirements

To qualify for a grant under this program, the application submitted to HUD shall include, in addition to those requirements listed under Section I.(d) (Selection Criteria) of this NOFA, including the plan to address the problem of drug-related crime and other criminal activities associated with drug-related problems in the developments proposed for funding, at least the following items:

(a) Applicant Grant Data Form. The applicant must complete the form for HUD's application database entry. The form, with example, is provided in the application kit.

(b) Application for Federal Assistance, Standard Form SF–424. The SF–424 is the face sheet for the application. The applicant must complete and sign the form. The form, with example, is provided in the application kit.

(c) Standard Form SF–424A Budget Information (non-construction programs), with attached budget narrative(s) with supporting justification and documentation (specifically showing how costs were determined for each element of each activity in the same format as shown in the application kit). The SF–424A, with attached budget narrative, must be completed and the applicant must describe each major activity proposed for funding, e.g., employment of security personnel (contracted security personnel services and housing authority police departments), reimbursement of local law enforcement services, physical improvements, employment of investigators, voluntary tenant (resident) patrols, programs to reduce the use of drugs i.e. drug prevention, intervention, and treatment programs. The form, with example, is provided in the application kit.

(d) Applicants must verify their unit count with the local HUD Field Office/AONAP prior to submitting the application. In accordance with Sections I.(b)(2)(i) through (iii) of this NOFA, applicants must compute the maximum grant award amount for which they are eligible (eligible dollar amount per unit × (times) number of units and compare it with the dollar amount requested in the application to make certain the amount requested does not exceed the permitted maximum grant award.

(e) Standard Form SF–424B, Assurances, (non-construction programs) for pre-award assurances. The applicant must complete and sign the

form. The form and example are provided in the application kit.

(f) Certifications. Applications must include the following certifications (certifications are provided in the application kit):

(1) A certification that the applicant will maintain a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1988, 24 CFR part 24, subpart F. (Applicants may submit a copy of their most recent drug-free workplace certification, which must be dated within the past year.)

(2) A certification and disclosure in accordance with the requirements of section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities generally prohibit recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. INDIAN HOUSING AUTHORITIES ESTABLISHED BY AN INDIAN TRIBE AS A RESULT OF THE EXERCISE OF THEIR SOVEREIGN POWER ARE EXCLUDED FROM COVERAGE, BUT INDIAN HAs ESTABLISHED UNDER STATE LAW ARE NOT EXCLUDED FROM COVERAGE.

(3) If applying for drug treatment program funding, a certification by the applicant that the applicant has notified and consulted with the relevant local Tribal commission, Single State Agency or other local authority with drug program coordination responsibilities concerning its application; and that the proposed drug prevention/treatment program has been reviewed by the relevant local Tribal commission, Single State Agency or other local authority and is consistent with the Tribal or State treatment plan.

(4) A certification (provided in the application kit) by the Chief Executive Officer (CEO) of a State, Tribe, or a unit of general local government in which the developments proposed for assistance are located that:

(i) Grant funds provided under this program will not substitute for activities currently being undertaken on behalf of the applicant by the jurisdiction to address drug-related crime and other criminal activities associated with drug-related problems;

(ii) Any reimbursement of local law enforcement agencies for additional security and protective services to be provided under Section I.(c)(2) of this NOFA meets the requirements of that section.

(5) A certification, (An example is provided in the application kit), from the chief of the local law enforcement agency:

(i) *If* the application is for employment of security services, that the law enforcement agency has entered into, or will enter into, an agreement with the applicant and the provider of the security services in accordance with the requirements of Section I.(c)(1) (Employment of security personnel) of this NOFA;

(ii) *If* the application is for employment of investigators, that the law enforcement agency has entered into, or will enter into, an agreement with the applicant and the investigators, in accordance with the requirements of Section I.(c)(4) (Employment of investigators) of this NOFA;

(iii) *If* the application is for voluntary tenant (resident) patrol funding, that the law enforcement agency has entered into, or will enter into, an agreement with the applicant and the voluntary tenant patrol, in accordance with the requirements of Section I.(c)(5) (voluntary tenant (resident) patrol) of this NOFA.

(6) A certification (An example is provided in the application kit) by the RMC, RC or RO, or other involved resident group where an RMC, RC or RO does not exist, that the residents participated in the preparation of the grant application with the applicant, and that the applicant's description of the activities and program evaluation that the resident group will implement under the program is accurate and complete.

(g) HUD Form 2880, Applicant Disclosures. The form, with example, is provided in the application kit.

IV. Corrections to Deficient Applications

(a) HUD will notify an applicant, in writing, of any curable technical deficiencies in the application. The applicant must submit corrections in accordance with the information specified in HUD's letter within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency.

(b) Curable technical deficiencies relate to items that:

(i) Are not necessary for HUD review under selection criteria/ranking factors; and

(ii) Would not improve the quality of the applicant's program proposal.

(c) An example of a curable technical deficiency would be the failure of an applicant to submit a required assurance, budget narrative, certification, applicant data form, summaries of written resident comments, incomplete forms such as the SF–424 or lack of required signatures, appendixes and documentation referenced in the application or a computational error based on the use of an incorrect number(s) such as incorrect unit counts. These items are discussed in the application kit and samples, as appropriate, are provided.

(d) An example of a non-curable defect or deficiency would be a missing SF–424A (Budget Information).

V. Other Matters

(a) NONDISCRIMINATION AND EQUAL OPPORTUNITY. The following nondiscrimination and equal opportunity requirements apply:

(1) The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600–20 (Fair Housing Act) and implementing regulations issued at subchapter A of title 24 of the Code of Federal Regulations, as amended by 54 FR 3232 (published January 23, 1989); Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part l;

(2) The Indian Civil Rights Act (ICRA) (Title II of the Civil Rights Act of 1968, 25 U.S.C. 1301–1303) provides, among other things, that "no Indian tribe in exercising powers of self-government shall * * * deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law." The Indian Civil Rights Act applies to any Tribe, band, or other group of Indians subject to the jurisdiction of the United States in the exercise of recognized powers of self-government. The ICRA is applicable in all cases where an IHA has been established by exercise of Tribal powers of self-government.

(3) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(4) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;

(5) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(b) ENVIRONMENTAL IMPACT. Grants under this program are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA) in accordance with 24 CFR 50.20(p). However, prior to an award of grant funds, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

(c) FEDERALISM IMPACT. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government and, therefore, the provisions of this NOFA do not have "Federalism implications" within the meaning of the Order. The NOFA implements a program that encourages housing authorities to develop a plan for addressing the problem of drug-related crime and other criminal activities associated with drug-related problems, and makes available grants to housing authorities to help them carry out their plans. As such, the program would help housing authorities combat serious drug-related crime problems in their developments, thereby strengthening their role as instrumentalities of the States. In addition, further review under the Order is unnecessary, since the NOFA generally tracks the statute and involves little implementing discretion.

(d) FAMILY IMPACT. The General Counsel, as the Designated Official for Executive Order 12606, The Family, has determined that the provisions of this NOFA have the potential for a positive, although indirect, impact on family formation, maintenance and general well-being within the meaning of the Order. This NOFA would implement a program that would encourage HAs to develop a plan for addressing the problem of drug-related crime and other criminal activities associated with drug-related problems, and to make available grants to help housing authorities to carry out this plan. As such, the program is intended to improve the quality of life of public and Indian housing development residents, including families, by reducing the incidence of drug-related crime.

(e) SECTION 102 HUD REFORM ACT—DOCUMENTATION AND PUBLIC ACCESS REQUIREMENTS; APPLICANT/RECIPIENT DISCLOSURES.

DOCUMENTATION AND PUBLIC ACCESS. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 24 CFR 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

DISCLOSURES. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(f) SECTION 103 HUD REFORM ACT. HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel or Headquarters Counsel for the program to which the question pertains.

(g) SECTION 112 HUD REFORM ACT. Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

(h) PROHIBITION AGAINST LOBBYING ACTIVITIES. The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the

recipient has made an acceptable certification regarding lobbying.

Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance. Indian Housing Authorities established by an Indian Tribe as a result of the exercise of their sovereign power are excluded from coverage, but has established under State law are not excluded from coverage.

Authority: Sec. 5127, Public Housing Drug Elimination Act of 1988 (42 U.S.C. 11901 *et seq.*); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 3, 1996.

Kevin E. Marchman,

Acting Assistant Secretary for Public and Indian Housing.

Appendix A: Local HUD Office Addresses and Phone Numbers

HUD—New England: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Massachusetts State Office

Office of Public Housing, DHUD—Massachusetts State Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 553, Boston, MA 02222–1092, (617) 565–5196, TTY Number: (617) 565–5453, Office hours: 8:30am–5:00pm local time

Connecticut State Office

Office of Public Housing, DHUD—Connecticut State Office, 330 Main Street, Hartford, Connecticut 06106–1860, (860) 240–4522, TTY Number: (203) 240–4665, Office hours: 8:00am–4:30pm local time

New Hampshire State Office

Office of Public Housing, DHUD—New Hampshire State Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, New Hampshire 03101–2487, (603) 666–7681, TTY Number: (603) 666–7518, Office hours: 8:00am–4:30pm local time

Rhode Island State Office

Office of Public Housing, DHUD—Rhode Island State Office, 10 Weybosset Street, Sixth Floor, Providence, Rhode Island 02903–2808, (401) 528–5351, TTY Number: (401) 528–5364, Office hours: 8:00am–4:30pm local time

HUD—New York, New Jersey

New York State Office

Office of Public Housing, DHUD—New York State Office, 26 Federal Plaza, Suite 3237, New York, New York 10278–0068, (212) 264–6500, TTY Number: (212) 264–0927, Office hours: 8:30am–5:00pm local time

Buffalo State Office

Office of Public Housing, DHUD—Buffalo State Office, Lafayette Court, 5th Floor, 465 Main Street, Buffalo, New York 14203–1780, (551) 846–5755, TTY Number: (716) 551–5787, Office hours: 8:00am–4:30pm local time

New Jersey State Office

Office of Public Housing, DHUD—New Jersey State Office, One Newark Center—12th Floor, Newark, New Jersey 07102–5260, (201) 622–7900, TTY Number: (201) 645–6649, Office hours: 8:30am–5:00pm local time

HUD—Midatlantic: Pennsylvania, District of Columbia, Maryland, Delaware, Virginia, West Virginia

Pennsylvania State Office

Office of Public Housing, DHUD—Pennsylvania State Office, The Wanamaker Building, 100 Penn Square East, Philadelphia, Pennsylvania 19107–3390, (215) 597–2560, TTY Number: (215) 597–5564, Office hours: 8:00am–4:30pm local time

District of Columbia Office (Washington, D.C.)

Office of Public Housing, DHUD—District of Columbia Office, 820 First Street N.E., Washington, D.C. 20002–4502, (202) 275–9200, TTY Number: (202) 275–0967, Office hours: 8:00am–4:30pm local time

Maryland State Office

Office of Public Housing, DHUD—Maryland State Office, City Crescent Building, 10 South Howard Street, 5th Floor, Baltimore, Maryland 21201–2505, (401) 962–2520, TTY Number: (410) 962–0106, Office hours: 8:00am—4:30pm local time

Pittsburgh Area Office

Office of Public Housing, DHUD—Pittsburgh Area Office, 339 Sixth Avenue, Sixth floor, Pittsburgh, Pennsylvania 15222–2515, (412) 644–6428, TTY Number: (412) 644–5747, Office hours: 8:00am—4:30pm local time

Virginia State Office

Office of Public Housing, DHUD—Virginia State Office, The 3600 Centre, 3600 West Broad Street, P.O. Box 90331, Richmond, Virginia 23230–0331, (804) 278–4507, TTY Number: (804) 278–4501, Office hours: 8:00am–4:30pm local time

West Virginia State Office

Office of Public Housing, DHUD—West Virginia State Office, 405 Capitol Street, Suite 708, Charleston, West Virginia 25301–1795, (304) 347–7000, TTY Number: (304) 347–5332, Office hours: 8:00am–4:30pm local time

HUD—Southeast: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Caribbean, Virgin Islands

Georgia State Office

Office of Public Housing, DHUD—Georgia State Office, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303–3388, (404) 331–5136, TTY Number: (404) 730–2654, Office hours: 8:00am–4:30pm local time

Alabama State Office

Office of Public Housing, DHUD—Alabama State Office, 800 Beacon Parkway West, Suite 300, Birmingham, Alabama 35209–3144, (205) 290–7601, TTY Number: (205) 290–7624, Office hours: 8:00am–4:30pm local time

Kentucky State Office

Office of Public Housing, DHUD—Kentucky State Office, 601 West Broadway, P.O. Box 1044, Louisville, Kentucky 40201–1044, (502) 582–6161, TTY Number: (502) 582–5139

Mississippi State Office

Office of Public Housing, DHUD—Mississippi State Office, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, Room 910, Jackson, Mississippi 39269–1096, (601) 975–4746, TTY Number: (601) 975–4717, Office hours: 8:00am–4:45pm local time

North Carolina State Office

Office of Public Housing, DHUD—North Carolina State Office, 2306 West Meadowview Road, Greensboro, North Carolina 27407–3707, (919) 547–4000, TTY Number: 919–547–4055, Office hours: 8:00am–4:45pm local time

Caribbean Office

Office of Public Housing,DHUD—Caribbean Office, New San Office Building, 159 Carlos East Chardon Avenue, Room 305, San Juan, Puerto Rico 00918–1804, (809) 766–6121, TTY Number: Number not available, Office hours: 8:00am–4:30pm local time

South Carolina State Office

Office of Public Housing, DHUD—South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, South Carolina 29201–2480, (803) 765–5831, TTY Number: Number not available, Office hours: 8:00am–4:45pm local time

Tennessee State Office

Office of Public Housing, DHUD—Tennessee State Office, John J. Duncan Federal Building, 710 Locust Street, S.W., Third Floor, Knoxville, Tennessee 37902–2526, (423) 545–4389, TTY Number: (615) 545–4379, Office hours: 7:30am–4:15pm local time

Nashville, Tennessee Area Office

Office of Public Housing, DHUD—Tennessee Area Office, 251 Cumberland Bend Drive, Suite 200, Nashville, Tennessee 37228–1803, (615) 736–5213, TTY Number: (615) 736–2886, Office hours: 7:45am–4:15pm local time

Florida Area Office

Office of Public Housing, DHUD—Florida Area Office, Southern Bell Towers, 301 West Bay Street, Suite 2200, Jacksonville, Florida 32202–5121, (904) 232–2626, TTY Number: (904) 232–2357, Office hours: 7:45am–4:30pm local time

HUD—Midwest: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Illinois State Office

Office of Public Housing, DHUD—Illinois State Office, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 353–5680, TTY Number: (312) 353–7143, Office hours: 8:15am–4:45pm local time

Michigan State Office

Office of Public Housing, DHUD—Michigan State Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan 48226–2592, (313) 226–6880, TTY Number: (313) 226–7812, Office hours: 8:00am–4:30pm local time

Indiana State Office

Office of Public Housing, DHUD—Indiana State Office, 151 North Delaware Street, Suite 1200, Indianapolis, Indiana 46204–2526, (317) 226–6303, TTY Number: (317)226–7081, Office hours: 8:00am–4:45pm local time

Grand Rapids, Michigan Area Office

Office of Public Housing, DHUD—Grand Rapids Area Office, Trade Center Building, 50 Louis, N.W., Grand Rapids, Michigan 49503–2648, (616) 456–2127, TTY Number: Number not available, Office hours: 8:00am–4:45pm local time

Minnesota State Office

Office of Public Housing, DHUD—Minnesota State Office, Bridge Place Building, 220 South Second Street, Minneapolis, Minnesota 55401–2195 (612) 370–3000, TTY Number: (612) 370–3186, Office hours: 8:00am–4:30pm local time

Cincinnati, Ohio Area Office

Office of Public Housing, DHUD—Cincinnati Area Office, 525 Vine Street, Suite 700, Cincinnati, Ohio 45202–3188, (513) 684–2884, TTY Number: (513) 684–6180, Office hours: 8:00am–4:45pm local time

Cleveland, Ohio Area Office

Office of Public Housing, DHUD—Cleveland Area Office, Renaissance Building, 1350 Euclid Avenue, 500, Cleveland, Ohio 44115–1815, (216) 522–4065, TTY Number: Number not available, Office hours: 8:00am–4:40pm local time

Ohio State Office

Office of Public Housing, DHUD—Ohio State Office, 200 North High Street, Columbus, Ohio 43215–2499, (614) 469–5737, TTY Number: Number not available, Office hours: 8:30am–4:45pm local time

Wisconsin State Office

Office of Public Housing, DHUD—Wisconsin State Office, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 1380, Milwaukee, Wisconsin 53203–2289, (414) 291–3214, TTY Number: Number not available, Office hours: 8:00am–4:30pm local time

HUD—Southwest: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Texas State Office

Office of Public Housing, DHUD—Texas State Office, 1600 Throckmorton Street, Room 304, P.O. Box 2905, Fort Worth, Texas 76113–2905, (817) 885–5934, TTY Number: (817) 885–5447, Office hours: 8:00am–4:30pm local time

Houston, Texas Area Office

Office of Public Housing, DHUD—Houston Area Office, Norfolk Tower, 2211 Norfolk, Suite 200, Houston, Texas 77098–4096, (713) 834–3235, TTY Number: Number not available, Office hours: 7:45am–4:30pm local time

San Antonio, Texas Area Office

Office of Public Housing, DHUD—San Antonio Area Office, Washington Square, 800 Dolorosa Street, San Antonio, Texas 78207–4563, (512) 229–6783, TTY Number: (512) 229–6783, Office hours: 8:00am–4:30pm local time

Arkansas State Office

Office of Public Housing, DHUD—Arkansas State Office, TCBY Tower, 425 West Capitol Avenue, Room 900, Little Rock, Arkansas 72201–3488, (501) 324–5935, TTY Number: (501) 324–5931, Office hours: 8:00am–4:30pm local time

Louisiana State Office

Office of Public Housing, DHUD—Louisiana State Office, 501 Magazine Street, Ninth Floor, New Orleans, Louisiana 70130, (504) 589–7251, TTY Number: Number not available, Office hours: 8:00am–4:30pm local time

Oklahoma State Office

Office of Public Housing, DHUD—Oklahoma State Office, 500 West Main Street, Oklahoma City, Oklahoma 73102, (504) 589–7233, TTY Number: None, Office hours: 8:00am–4:30pm local time

New Mexico State Office

Office of Public Housing, DHUD—New Mexico State Office, 625 Truman Street N.E., Albuquerque, NM 87110–6472, (505) 262–6463, TTY Number: (505) 262–6463, Office hours: 7:45am–4:30pm local time

Great Plains: Iowa, Kansas, Missouri, Nebraska

Kansas/Missouri State Office

Office of Public Housing, DHUD—Kansas/Missouri State Office, Gateway Tower II, 400 State Avenue, Kansas City, Kansas 66101–2406, (913) 551–5488, TTY Number: (913) 551–5815, Office hours: 8:00am–4:30pm local time

Nebraska State Office

Office of Public Housing, DHUD—Nebraska State Office, Executive Tower Centre, 10909 Mill Valley Road, Omaha, Nebraska 68154–3955, (402) 492–3100, TTY Number: (402) 492–3183, Office hours: 8:00am–4:30pm local time

St. Louis, Missouri Area Office

Office of Public Housing, DHUD—St. Louis Area Office, Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, Missouri 63103–2836, (314) 539–6503, TTY Number: (314) 539–6331, Office hours: 8:00am–4:30pm local time

Iowa State Office

Office of Public Housing, DHUD—Iowa State Office, Federal Building, 210 Walnut Street, Des Moines, Iowa 50309–2155, (515) 284–4512, TTY Number: (515) 284–4728, Office hours: 8:00am–4:30pm local time

HUD—Rocky Mountains: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Colorado State Office

Office of Public Housing, DHUD—Colorado State Office, First Interstate Tower North, 633 17th Street, Denver, CO 80202–3607, (303) 672–5376, TTY Number: (303) 672–5248, Office hours: 8:00am–4:30pm local time

HUD—Pacific/Hawaii: Arizona, California, Hawaii, Nevada, Guam, American Samoa

California State Office

Office of Public Housing, DHUD—California State Office, Philip Burton Federal Building/Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102–3448, (415) 436–6532, TTY Number: (415) 436–6594, Office hours: 8:15am–4:45pm local time

Los Angeles, California Area Office

Office of Public Housing, DHUD—Los Angeles Area Office, 1615 West Olympic Boulevard, Los Angeles, California 90015–3801, (213) 251–7122, TTY Number: (213) 251–7038, Office hours: 8:00am–4:30pm local time

Sacramento, California Area Office

Office of Public Housing, DHUD—Sacramento Area Office, 777 12th Avenue, Suite 200, P.O. Box 1278, Sacramento, California 95814–1997, (916) 498–5270, TTY Number: (916) 498–5220, Office hours: 8:00am–4:30pm local time

Arizona State Office

Office of Public Housing, DHUD—Arizona State Office, Two Arizona Center, 400 North 5th Street, Suite 1600, Phoenix, Arizona 85004–2361, (602) 261–4434, TTY Number: (602) 379–4461, Office hours: 8:00am–4:30pm local time

HUD—Northwest/Alaska: Alaska, Idaho, Oregon, Washington

Washington State Office

Office of Public Housing, DHUD—Washington State Office, Seattle Federal Office Building, 909 First Avenue, Suite 200, Seattle, WA 98104–1000, (206) 220–5292, TTY Number: (206) 220–5185, Office hours: 8:00am–4:30pm local time

Oregon State Office

Office of Public Housing, DHUD—Oregon State Office, 520 Southwest Sixth Avenue,

Portland, Oregon 97203–1596, (503) 326–2561, TTY Number: (503) 326–3656, Office hours: 8:00am–4:30pm local time

DHUD AREA OFFICES OF NATIVE AMERICAN PROGRAMS

Eastern/Woodlands—Tribes and IHAs: East of the Mississippi River, Including All of Minnesota and Iowa

Eastern/Woodlands HUD Area Office of Native American Programs

Eastern/Woodlands Office of Native American Programs, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Room 2400, Chicago, IL 60604, (312) 353–1282 or (800) 735–3239, TTY Number: (312) 886–3741 or (800) 927–9275, Office hours: 8:15am–4:45pm local time

Southern Plains—Tribes and IHAs: Louisiana, Missouri, Kansas, Oklahoma, and Texas, except for Isleta Del Sur in Texas

DHUD Area Office of Native American Programs

Southern Plains Office of Native American Programs, 500 West Main Street, Oklahoma City, Oklahoma 73102, (405) 553–7428, TTY Number: (405) 231–4891 or (405) 231–4181, Office hours: 8:00am–4:30pm local time

Northern Plains—Tribes and IHAS: Colorado, Montana, Nebraska, North Dakota, South Dakota, and Wyoming

DHUD Area Office of Native American Programs

Northern Plains Office of Native American Programs, First Interstate Tower North, 633 17th Street, 14th Floor, Denver, CO 80202–3607, (303) 672–5462, TTY Number: (303) 844–6158, Office hours: 8:00am–4:30pm local time

Southwest—Tribes and IHAS: Arizona, California, New Mexico, Nevada, and Isleta Del Sur in Texas

DHUD Area Office of Native American Programs

Southwest Office of Native American Programs, Two Arizona Center, 400 North 5th Street, Suite 1650, Phoenix, Arizona 85004–2361, (602) 379–4156, TTY Number: (602) 379–4461, Office hours: 8:15am–4:45pm local time
or
Albuquerque Office of Native American Programs, Albuquerque Plaza, 201 3rd Street, NW, Suite 1830, Albuquerque, New Mexico 87102–3368, (505) 766–1372, TTY Number: None available, Office hours: 7:45am–4:30pm local time
or
Northern California Office of Native American Programs, 450 Golden Gate Avenue, 8th Floor, Box 36003, San Francisco, CA 94102–3448, (415) 436–8121, TTY Number: (415) 556–8357

Northwest—Tribes and IHAs: Idaho, Oregon, and Washington

DHUD Area Office of Native American Programs

Northwest Office of Native American Programs, Seattle Federal Office Building, 909 First Avenue, Suite 300, Seattle, WA 98104–1000, (206) 220–5270, TTY Number: (206) 220–5185, Office hours: 8:00am–4:30pm local time

Alaska—Tribes and IHAs: Alaska

DHUD Area Office of Native American Programs

Alaska Office of Native American Programs, University Plaza Building, 949 East 36th Avenue, Suite 401, Anchorage, Alaska 99508–4399, (907) 271–4633, TTY Number: (907) 271–4328

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Federal Register

Vol. 61, No. 133

Wednesday, July 10, 1996

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FEDERAL REGISTER PAGES AND DATES, JULY

33825–34366	1
34367–34712	2
34713–35082	3
35083–35588	5
35589–35914	8
35915–36276	9
36277–36492	10

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6907 35083
6908 35587
Administrative Orders:
Presidential Determinations:
No. 96–36 of June 28, 1996 35075

5 CFR

Ch. XXIII 35085
Ch. LXV 36246
530 34713
531 34713
534 34713
550 34713
575 34713
581 34713
582 34713
630 34713
734 35088
2634 35589
3201 35915
Proposed Rules:
890 35973

7 CFR

58 35589
301 ..... 35102, 35107
400 34367
868 34714
946 35109
958 35592
997 35594
998 35594
1106 35596
1230 35597
1493 33825
1910 35916
1924 35916
1941 35916
1943 35916
1945 35916
1951 35916
1955 35916
1962 35916
1965 35916
1980 35916
Proposed Rules:
210 35152
220 35152
225 35152
226 35152
300 34379
319 34379
868 35687
1240 34385
1280 35982

8 CFR

103 35597
214 35934
217 35596
301 35111
Proposed Rules:
207 35984
208 35984

9 CFR

112 33840
113 33840
201 ..... 36277, 36279
Proposed Rules:
1 34386
3 ..... 34386, 34389
11 34747
94 35987
301 35990
304 35990
308 35990
318 35992
319 35157
320 35990
381 ..... 35157, 35990
391 34747

10 CFR

53 35935
110 35600
205 3511
420 35890
450 35890
463 35114
1003 35112
1010 35085
1021 36222
Proposed Rules:
1021 35990

12 CFR

324 33842
367 35115
1750 35607
Proposed Rules:
207 33874
218 34749
220 33874
221 33874
250 34749
327 34751

14 CFR

1 34508
25 34716
29 33963
39 ..... 33874, 34368, 34718, 35122, 35126, 35127, 35936, 35938, 35940, 35942, 35944, 35945
61 34508
71 ..... 33843 33844, 33845, 34720, 34721, 34722, 34723, 35307, 36283, 36284, 36285, 36286

73 35623
91 ..... 34508, 36286
97 ..... 35623, 35624, 35626
119 35628
121 ..... 34508, 34927, 35628
125 34508
135 ..... 34508, 34927, 35628
141 34508
142 34508
211 34724
213 34724

Proposed Rules:
25 35056
39 ..... 34767, 35691, 35693, 35695, 36307, 36308, 36310
71 ..... 34391, 34393, 34394, 34395, 34396, 34397, 34398, 34769, 35991, 36311, 36312, 36313, 36314, 36315, 36316, 36317

15 CFR
902 ..... 34570, 34930, 34966, 35145, 35548

Proposed Rules:
30 36318
922 33876

16 CFR

Proposed Rules:
303 35992

19 CFR
10 33845
12 33845
102 33845
134 33845

21 CFR
177 34370
178 33846
184 36287
452 34726
510 35949
520 34727
522 ..... 34727, 35129, 36290
529 34727
558 ..... 34727, 35949, 36291

Proposed Rules:
106 36154
107 36154

22 CFR
41 35628

23 CFR
630 35629

24 CFR
0 36246
60 36462
200 36260
201 36260
202 ..... 36260, 36452
203 ..... 35024, 36260, 36452
206 ..... 35014, 36260
221 ..... 36260, 36452
233 36260
234 ..... 36260, 36452
280 36260
291 36260
570 36456
901 35633
941 35958

25 CFR
10 34371
211 35634
212 35634
700 35686

Proposed Rules:
11 35158
12 35163
21 33876
45 34399
152 34400
171 35167

26 CFR

Proposed Rules:
1 ..... 35696, 36320
31 36320

28 CFR
42 34729

Proposed Rules:
31 34770

29 CFR
Ch. XXVI 34002
Ch. XL 34002
2509 33847
2520 33847
2550 33847

Proposed Rules:
Ch. XIV 34405
101 35172
102 35172

30 CFR
256 34730

32 CFR
706 ..... 35958, 36291

33 CFR
100 36292
164 35064
165 ..... 35130, 35132
334 34732

Proposed Rules:
117 35702
154 34775
155 34775
167 35703

36 CFR
1 35133
13 35133
222 35959
223 35960

38 CFR
1 33850

Proposed Rules:
1 33878

40 CFR
9 ..... 33851, 34202
52 36292
55 34202
63 ..... 34140, 36295
70 34733
71 34202
80 ..... 35310, 35673, 35960
180 ..... 34739, 34741, 36298, 36299
257 34253
261 34252
271 34252
300 ..... 35137, 35962
425 35680

Proposed Rules:
51 ..... 35994, 36112
52 ..... 35998, 36004, 36320
55 36012
61 36326
63 36326
80 34775
81 ..... 33879, 36004
90 34778
93 ..... 35994, 36112
136 36328
180 ..... 36329, 36331
260 33881
261 33881
262 33881
264 33881
268 33881
269 33881
271 33881
425 35705

41 CFR
201 35685

42 CFR
405 35307
417 35307
431 35307
473 35307
498 35307

Proposed Rules:
410 34614
415 34614

43 CFR

Proposed Rules:
4700 36333

44 CFR
65 ..... 33852, 33854
67 33856

Proposed Rules:
67 33882

45 CFR
42 35963
76 35138
111 35927
167 35138
514 35685

47 CFR
Ch. I 35964
20 33859
22 34375
24 33850
36 34375
73 ..... 34368, 34743, 34744, 35139, 36302
90 34375

Proposed Rules:
Ch. I 34405
73 ..... 34406, 34407, 34784, 34785, 35705
76 ..... 34408, 34409

48 CFR
231 36305

49 CFR
1 34745
192 35139
233 33871
235 33871
236 33871
571 33891
1300 35139
1305 35141

Proposed Rules:
1 33886
8 33886
192 ..... 34410, 34413
195 ..... 34410, 34413
397 36016
571 36334

50 CFR
Ch. III 35548
246 35548
280 35548
281 35548
282 35548
298 35548
299 35548
622 34930
625 34966
630 ..... 34746, 35971
638 34930
641 34930
642 34785
645 34930
646 34930
647 34930
648 ..... 34966, 35142
650 34966
651 34966
652 34965
653 34930
655 34966
657 34966
658 34930
659 34930
660 ..... 34570, 35143, 35144
661 34570
663 34570
669 34930
670 34930
679 ..... 34377, 36306
680 34570
681 ..... 34570, 35145
683 34570
685 34570
695 35548
697 34746

Proposed Rules:
17 ..... 36020, 36021, 36346
642 34785
679 35174

REMINDERS

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RULES GOING INTO EFFECT TODAY

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Pacific Halibut Commission, International:
Pacific halibut fisheries; published 5-30-96

DEFENSE DEPARTMENT
Acquisition regulations:
Allowable individual compensation; published 7-10-96

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
1-[[2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole; published 7-10-96

FEDERAL COMMUNICATIONS COMMISSION
Television broadcasting:
Ancillary digital data transmission within active video portion of NTSC signals; published 7-10-96
Cable television systems--
Local market definition for purposes of must-carry rules; published 6-10-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Chlortetracycline; published 7-10-96
New drug applications--
Oxytetracycline injection; published 7-10-96
GRAS or prior-sanctioned ingredients:
Cocoa butter substitute derived from high-oleic safflower or sunflower oil; published 7-10-96

TRANSPORTATION DEPARTMENT
Coast Guard
Regattas and marine parades:
Events requiring permits, written notices, or neither; identification Correction; published 7-10-96

TRANSPORTATION DEPARTMENT
Equal Access to Justice Act; implementation; CFR part removed; Federal regulatory reform; published 6-10-96
Procedural regulations:
Office of the Secretary; document filing requirements; revision; published 6-10-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; published 6-5-96
Fokker; published 6-4-96
Jetstream; published 6-5-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Apricots grown in Washington; comments due by 7-17-96; published 6-17-96
Fruits, vegetables, and other products, fresh:
Inspection, certification, and standards fee schedule; comments due by 7-15-96; published 5-14-96
Hazelnuts grown in Oregon and Washington; comments due by 7-15-96; published 6-13-96
Peanuts, domestically produced; comments due by 7-15-96; published 6-13-96

ARMS CONTROL AND DISARMAMENT AGENCY
Privacy Act; implementation; comments due by 7-16-96; published 6-13-96

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Sea turtle conservation; shrimp trawling requirements--
Soft turtle excluder devices approval removed, etc.; comments due by 7-15-96; published 6-17-96
Fishery conservation and management:
Atlantic surf clam and ocean quahog; comments due by 7-19-96; published 6-20-96
Gulf of Mexico and South Atlantic coastal migratory pelagic resources; comments due by 7-18-96; published 7-3-96
Ocean salmon off coasts of Washington, Oregon, and California; comments due by 7-15-96; published 7-5-96
Pacific Coast groundfish; comments due by 7-16-96; published 7-5-96
Puerto Rico and U.S. Virgin Islands reef fish; comments due by 7-15-96; published 6-17-96
Summer flounder and scup; comments due by 7-18-96; published 6-3-96
Marine mammals:
Incidental taking--
Naval activities; USS Seawolf submarine shock testing; comments due by 7-15-96; published 6-14-96

COMMERCE DEPARTMENT
National Telecommunications and Information Administration
Public telecommunications facilities program; comments due by 7-15-96; published 5-30-96

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Surface coating operations from new or existing shipbuilding and ship repair facilities--
Compliance date revision and implementation plan submittal deadline extension; comments due by 7-18-96; published 6-18-96
Air quality implementation plans; approval and promulgation; various States:
Indiana; comments due by 7-15-96; published 6-13-96
Louisiana; comments due by 7-15-96; published 6-13-96
Virginia; comments due by 7-15-96; published 6-13-96
Clean Air Act:
State operating permits programs-
Idaho; comments due by 7-17-96; published 6-17-96
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Chlorothalonil; comments due by 7-19-96; published 5-19-96
Fenarimol; comments due by 7-15-96; published 6-14-96
Quizalofop ethyl; comments due by 7-19-96; published 5-19-96
Quizalofop-p ethyl ester; comments due by 7-15-96; published 6-14-96
Sodium salt of fomesafen; comments due by 7-19-96; published 6-19-96
Triadimefon; comments due by 7-19-96; published 6-19-96
Vinyl pyrrolidone-acrylic acid copolymer; comments due by 7-15-96; published 6-14-96
Superfund program:
National oil and hazardous substances contingency plan--
National priorities list update; comments due by 7-15-96; published 6-14-96

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Aeronautical services provision via International Maritime Satellite Organization (Inmarsat system); comments due by 7-17-96; published 6-17-96
O+ InterLATA calls; billed party preference; comments due by 7-17-96; published 6-17-96
Satellite communications--
Application and licensing procedures; comments due by 7-15-96; published 6-24-96
Communications equipment:
Radio frequency devices--
Unlicensed NII/SUPERNet operations in 5 GHz frequency range; comments due by 7-15-96; published 5-16-96
Television broadcasting:
Cable television systems--
Video programming delivery; market competition status; annual assessment; comments due by 7-19-96; published 7-2-96

GENERAL SERVICES ADMINISTRATION
Federal property management:
Public buildings and space--
Small purchase authority; comments due by 7-15-96; published 6-13-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Children and Families Administration
Head Start Fellows Program; comments due by 7-15-96; published 5-15-96
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Food labeling--
Nutrient content claims; general principles and "healthy" definition; fruits, vegetables, etc., inclusion; comments due by 7-18-96; published 3-22-96
INTERIOR DEPARTMENT
Indian Affairs Bureau
Financial activities:
Trust funds; tribal management; comments due by 7-15-96; published 5-16-96
INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Findings on petitions, etc.--
Namibian cheetah; comments due by 7-17-96; published 3-19-96
Least chub; comments due by 7-15-96; published 6-7-96
Importation, exportation, and transportation of wildlife:
Injurious wildlife; Federal regulatory review; comments due by 7-15-96; published 5-14-96
INTERIOR DEPARTMENT
Minerals Management Service
Federal regulatory review; request for comments; comments due by 7-19-96; published 5-20-96
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Virginia; comments due by 7-19-96; published 6-19-96
JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Acts of violence and terrorism prevention; comments due by 7-16-96; published 5-17-96
Drug abuse treatment programs and early release consideration; comments due by 7-16-96; published 5-17-96
TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
Michigan; comments due by 7-15-96; published 5-14-96
TRANSPORTATION DEPARTMENT
Airline oversales signs; Federal regulatory review; comments due by 7-18-96; published 6-3-96
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Allied Signal Commercial Avionics Systems; comments due by 7-15-96; published 6-5-96
Bell; comments due by 7-15-96; published 5-14-96
Boeing; comments due by 7-19-96; published 6-7-96
H.B. Flugtechnik GmbH; comments due by 7-15-96; published 5-13-96
McDonnell Douglas; comments due by 7-15-96; published 5-14-96
Pilatus Britten-Norman Ltd.; comments due by 7-19-96; published 5-9-96
Airworthiness standards:
Special conditions--
Dassault Aviation, Mystere Falcon 50 airplane; comments due by 7-15-96; published 5-29-96
Class E airspace; comments due by 7-19-96; published 5-12-96
TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Controls and displays; Federal regulatory review; comments due by 7-15-96; published 5-30-96
Seat belt assemblies--
Anchorage of voluntarily installed lap/shoulder belt; certification; comments due by 7-15-96; published 5-14-96
TREASURY DEPARTMENT
Customs Service
Organization and functions; field organization, ports of entry, etc.:
Sanford, FL; port of entry designation; comments due by 7-17-96; published 6-17-96
TREASURY DEPARTMENT
Internal Revenue Service
Estate and gift taxes:
Residence trust, personal or qualified personal; sale of residence; comments due by 7-15-96; published 4-16-96
Procedure and administration:
Taxpayer assistance orders; authority to modify or rescind; comments due by 7-18-96; published 4-19-96
VETERANS AFFAIRS DEPARTMENT
Adjudication, pensions, compensation, dependency, etc.:
Marriage dissolution; birth of child; death of family member; evidence of dependents and age requirements; comments due by 7-16-96; published 5-17-96

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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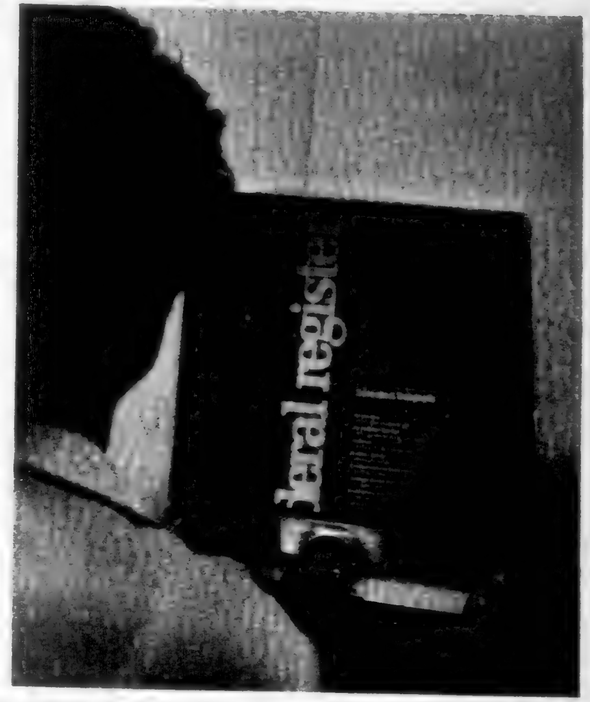

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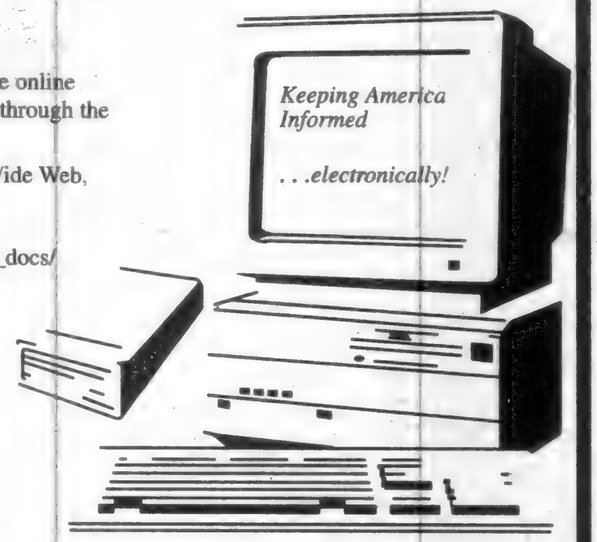

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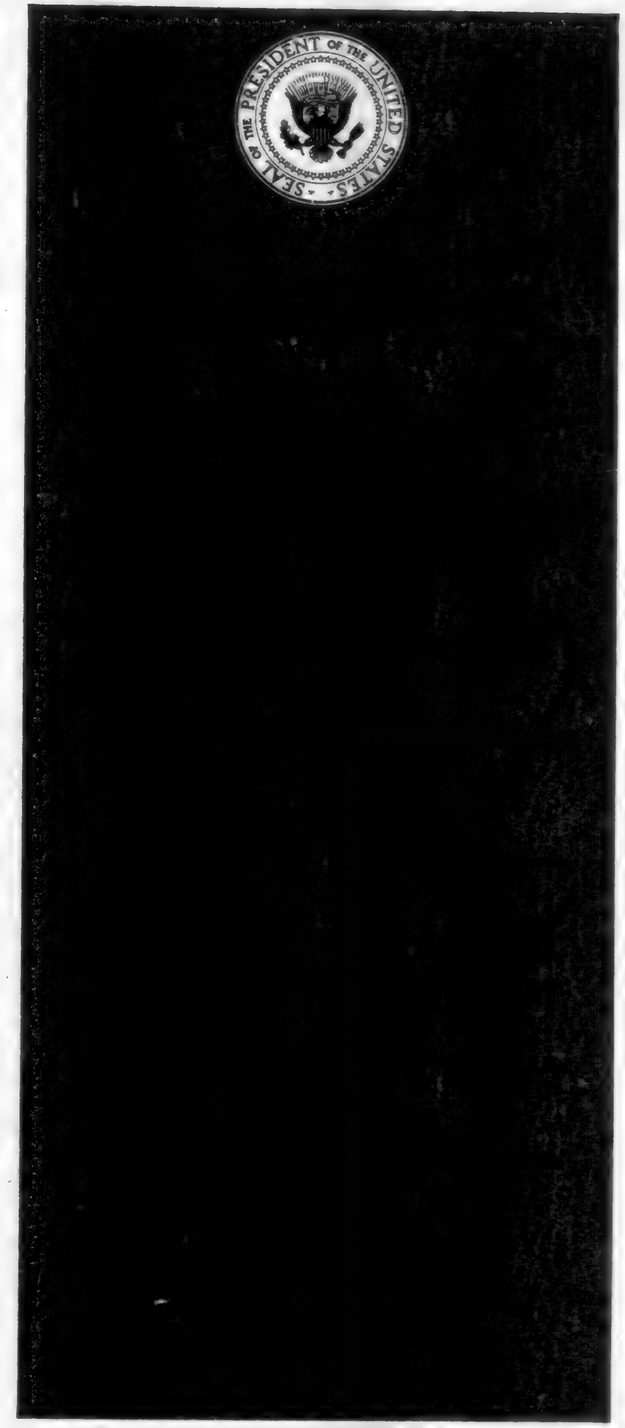

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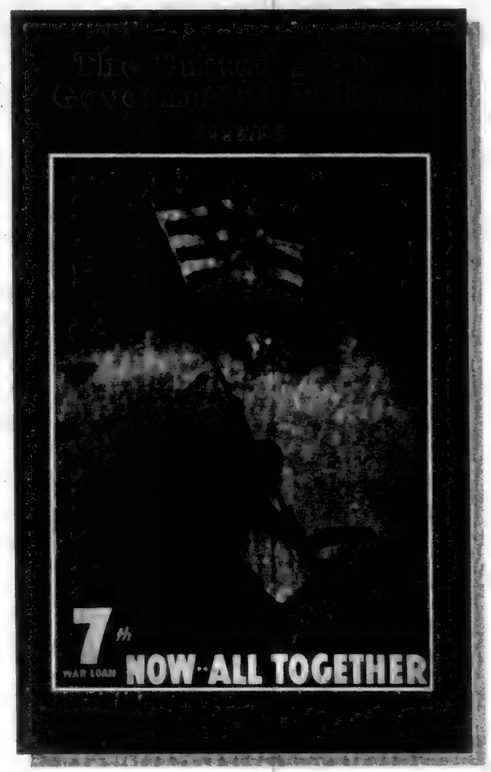

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Contents

Federal Register
Vol. 61, No. 134
Thursday, July 11, 1996

Agency for International Development
See International Development Cooperation Agency

Agriculture Department
See Animal and Plant Health Inspection Service
See Food and Consumer Service
See Rural Housing Service

Air Force Department
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Giner Inc., 36554

Animal and Plant Health Inspection Service
PROPOSED RULES
Exportation and importation of animals and animal products:
Foreign "regions" criteria based on risk class levels, etc., 36520

Army Department
NOTICES
Environmental statements; availability, etc.:
Base realignment and closure—
Defense Personnel Support Center, Philadelphia, PA; correction, 36608

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Coast Guard
RULES
Electrical engineering:
Merchant vessels; electrical engineering requirements Correction, 36608
PROPOSED RULES
Merchant marine officers and seamen:
Towing vessels; manning and licensing for officers Correction, 36543–36544, 36608

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Department
See Air Force Department
See Army Department
See Navy Department

Employment and Training Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36568–36572

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Atomic energy agreements: subsequent arrangements, 36554
Environmental statements; availability, etc.:
Surplus highly enriched uranium; disposition; correction, 36608

Environmental Protection Agency
RULES
Air programs; fuels and fuel additives:
Health-effects testing requirements for registration; minor changes, 36506–36513
Air quality implementation plans; approval and promulgation; various States:
California, 36501–36502
Clean Air Act:
State operating permits programs—
Tennessee, 36502–36506
PROPOSED RULES
Air programs; fuels and fuel additives:
Registration requirements changes, and applicability to blenders of deposit control gasoline additives, 36535–36543
Air quality implementation plans; approval and promulgation; various States:
Tennessee, 36534–36535
NOTICES
Air pollution control; new motor vehicles and engines:
Light-duty vehicle voluntary emission standards; report availability, 36559–36560

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Federal Aviation Administration
PROPOSED RULES
Class E airspace, 36520–36521

Federal Communications Commission
RULES
Common carrier services:
Toll free 888 service access codes, 36515–36516

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 36560

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
New Jersey et al., 36514–36515
Flood insurance program:
Write-your-own program—
Allocated loss adjustment expense fee schedule, 36513–36514

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
CNG Transmission Corp., 36554–36555
Florida Gas Transmission Co., 36555
Kentucky West Virginia Gas Co., 36555
Mid Louisiana Gas Co., 36555–36556
National Fuel Gas Supply Corp., 36556
Southern Natural Gas Co., 36557
Tennessee Gas Pipeline Co., 36557
Texas Eastern Transmission Corp., 36557–36558
Transcontinental Gas Pipe Line Corp., 36558, 36558
Trunkline Gas Co., 36558–36559

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 36560

Federal Maritime Commission
NOTICES
Agreements filed, etc., 36560
Casualty and nonperformance certificates:
Costa Cruise Lines N.V. et al., 36560–36561
Holland America Line et al., 36561
Freight forwarder licenses:
Air & Ocean International, Inc., et al., 36561

Food and Consumer Service
NOTICES
Child nutrition programs:
Child and adult care food program—
National average payment rates; day care home food service payment rates, etc., 36545–36547
National school lunch, special milk, and school breakfast programs—
National average payments/maximum reimbursement rates, 36547–36549

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Louisiana
Murphy Oil, USA; oil refinery complex, 36550–36551

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36561–36563

Interior Department
See Land Management Bureau
See Minerals Management Service
See National Park Service

International Development Cooperation Agency
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36545

International Trade Administration
NOTICES
Antidumping:
Cold-rolled carbon steel flat products from—
Netherlands, 36551
Grain-oriented electrical steel from—
Italy, 36551–36553

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Closure of public lands:
Nevada, 36563
Meetings:
Resource advisory councils—
New Mexico, 36563–36564
Public land orders:
California, 36564
Washington, 36564
Survey plat filings:
Idaho, 36564–36565

Minerals Management Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36565–36566
Outer Continental Shelf operations:
Official protraction diagrams; availability, 36566

National Aeronautics and Space Administration
NOTICES
Inventions, Government-owned; availability for licensing, 36572–36573

National Archives and Records Administration
NOTICES
Privacy Act:
Records transfer, 36573–36581

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities National Council, 36550

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Air brake systems—
Long-stroke brake chambers, 36516–36519

National Oceanic and Atmospheric Administration
NOTICES
National Weather Service; modernization and restructuring:
Weather Service and Forecast Offices; consolidations, 36553–36554

National Park Service
NOTICES
Meetings:
Dayton Aviation Heritage Commission, 36566–36567
Keweenaw National Historical Park Advisory Commission, 36567
Manzanar National Historic Site Advisory Commission, 36567
Realty actions; sales, leases, etc.:
Ohio, 36567–36568

National Science Foundation
NOTICES
Meetings:
Design, Manufacture, and Industrial Innovation Special Emphasis Panel, 36582
Education and Human Resources Advisory Committee, 36582
Geosciences Special Emphasis Panel, 36582
Science and Technology Infrastructure Special Emphasis Panel, 36582–36583

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
USS Mitscher, 36497

Nuclear Regulatory Commission
NOTICES
Site decommissioning management plan; sites:
Removals from list—
Aberdeen Proving Ground Site, MD, 36586
RTI Inc. Site, NJ, 36585
Applications, hearings, determinations, etc.:
Northeast Utilities Service Co., 36583–36585

Office of United States Trade Representative
See Trade Representative, Office of United States

Panama Canal Commission
RULES
Health, sanitation, and communicable disease surveillance; and radio communication:
Technical amendments, 36497–36498

Postal Service
RULES
Conflict of interests and Sunshine Act, 36498–36500
International Mail Manual:
International package consignment service implementation, 36500–36501
NOTICES
Meetings; Sunshine Act, 36586–36587

Presidential Documents
ADMINISTRATIVE ORDERS
Bosnia and Herzegovina
Compliance on withdrawal of foreign forces and terminating intelligence cooperation with Iran (Presidential Determination No. 96-34 of June 26, 1966), 36493–36494
China
Export-Import Bank loan for Nantong II power plant in Jiangsu Province (Presidential Determination No. 96-35 of June 26, 1996), 36495

Rural Housing Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36549–36550

Securities and Exchange Commission
PROPOSED RULES
Securities:
Beneficial ownership reporting requirements, 36521–36534
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36587
Submission for OMB review; comment request, 36587
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 36592–36593
Depository Trust Co., 36593–36594
Municipal Securities Rulemaking Board, 36594–36595
National Association of Securities Dealers, Inc., 36595–36596
New York Stock Exchange, Inc., 36596–36599
Options Clearing Corp., 36599–36601
Participants Trust Co., 36601–36602
Applications, hearings, determinations, etc.:
Institutional Series Trust, 36587–36588
Lincoln National Variable Annuity Fund B, 36588–36589
Public utility holding company filings, 36588–36590
Wyly, Samuel Evans, et al., 36590–36592

Social Security Administration
NOTICES
Organization, functions, and authority delegations:
Inspector General Office, 36602–36605

State Justice Institute
NOTICES
Meetings; Sunshine Act, 36605

Trade Representative, Office of United States
NOTICES
Meetings:
Agricultural Policy Advisory Committee for Trade, 36605–36606
World Trade Organization:
General Agreement on Trade in Services (GATS), telecommunications services negotiations; comment request, 36606–36607

Transportation Department
See Coast Guard
See Federal Aviation Administration
See National Highway Traffic Safety Administration

Treasury Department
NOTICES
Meetings:
Customs Service Commercial Operations Advisory Committee, 36607

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Presidential Determinations:
No. 96-34 of June 26, 1996 36493
No. 96-35 of June 26, 1996 36495

5 CFR
Proposed Rules:
92 36520
93 36520
94 36520
95 36520
96 36520
98 36520

14 CFR
Proposed Rules:
71 36520

17 CFR
Proposed Rules:
240 36521

32 CFR
706 36497

35 CFR
61 36497
123 36497

39 CFR
5 36498
7 36498
10 36498
20 36500

40 CFR
52 (2 documents) 36501, 36502
79 36506
Proposed Rules:
52 36534
79 36535

44 CFR
62 36513
64 36514

45 CFR
111 36608
Proposed Rules:
10 (2 documents) 36543, 36608
15 (2 documents) 36543, 36608

47 CFR
61 36515

49 CFR
571 36516

Federal Register
Vol. 61, No. 134
Thursday, July 11, 1996

Presidential Documents

Title 3—

The President

Presidential Determination No. 96–34 of June 26, 1996

Bosnian Compliance on Withdrawal of Foreign Forces and Terminating Intelligence Cooperation with Iran

Memorandum for the Secretary of State

Pursuant to Public Law 104–122, I hereby determine and certify that:

- the Federation of Bosnia and Herzegovina has complied with Article III of Annex 1–A of the General Framework Agreement for Peace in Bosnia and Herzegovina concerning the withdrawal of foreign forces; and that
- intelligence cooperation on training, investigations and related activities between Iranian officials and Bosnian officials has been terminated.

You are authorized and directed to report this determination and certification to the appropriate committees of the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 26, 1996.

Memorandum of Justification

On June 26, 1996, pursuant to Public Law 104–122, the President determined and certified that:

- the Federation of Bosnia and Herzegovina has complied with Article III of Annex 1–A of the General Framework Agreement for Peace in Bosnia and Herzegovina concerning the withdrawal of foreign forces; and that
- intelligence cooperation on training, investigations, and related activities between Iranian officials and Bosnian officials has been terminated.

The President reached this determination on the basis of all available information. We have also received explicit assurances from the Bosnian Government that foreign forces have been withdrawn and that the intelligence and military relationship with Iran has ended.

With respect to foreign forces, while some individuals have assimilated into Bosnian society and assumed civilian roles, there is no evidence of any remaining organized military units of Mujahedin or other foreign forces in Bosnia. With respect to the Iranians, the Bosnian government has assured that all IRGC personnel we identified to them have left Bosnia. We have no evidence that those IRGC remain. The Bosnian government has also assured us that none of the Iranians can be brought back to Bosnia without its knowledge and that, should any of them return, they would be expelled.

Although we have insisted that the Bosnian government end bilateral intelligence cooperation in such operational areas as training and investigations, and end all military ties, we have never demanded that all Iranian nationals depart Bosnia or that Bosnia terminate diplomatic or economic relations with Tehran. The Bosnian government has moved to end the operational

military and intelligence relationship with Iran. It has removed from positions of authority key officials that were heavily engaged in intelligence cooperation with Iran, including the former head of the Bosnian intelligence agency.

We will continue to monitor compliance and will work with the Bosnian Government through a Joint Commission established in Sarajevo to resolve future allegations of non-compliance.

[FR Doc. 96–17728
Filed 7–10–96; 8:45 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 96–35 of June 26, 1996

Determination Under Section 2(b)(2)(D) of the Export-Import Bank Act of 1945, as Amended: People's Republic of China

Memorandum for the Secretary of State

Pursuant to section 2(b)(2)(D) of the Export-Import Bank Act of 1945, as amended, I determine that it is in the national interest for the Export-Import Bank of the United States to extend a loan in the amount of approximately $260,000,000 to the People's Republic of China in connection with the purchase of U.S. equipment and services for the Nantong II coal-fired power plant in Jiangsu Province.

You are authorized and directed to report this determination to the Congress and publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 26, 1996.

[FR Doc. 96–17729
Filed 7–10–96; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 61, No. 134
Thursday, July 11, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule; Correction.

SUMMARY: Referring to page 50101 of September 28, 1995, paragraph 3 of the Department of the Navy's submission is amended by striking the following language: "Table Five of 706.2 is amended by adding the following vessel;" and substituting therefor: "Table Five of 706.2 is amended by substituting the following information for that contained in the entry for USS MITSCHER."

EFFECTIVE DATE: September 13, 1995.

FOR FURTHER INFORMATION CONTACT: Commander K.P. McMahon, (703) 325–9744.

Dated: June 21, 1996.

M.W. Kerns,

LT, JAGC, U.S. Navy, Acting Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 96–17499 Filed 7–10–96; 8:45 am]
BILLING CODE 3810–FF–M

PANAMA CANAL COMMISSION

35 CFR Parts 61 and 123

RIN 3207–AA34 and RIN 3207–AA35

Technical Amendments

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: The Panama Canal Commission hereby amends its regulations in title 35, Code of Federal Regulations, part 61, to add a new paragraph to section 61.155 which eliminates the requirement for disinfecting vessels under certain conditions as set out by the World Health Organization (WHO). The Commission is also amending 35 CFR, part 123, paragraph (a) of section 123.4, by substituting the words "in meters" for "in feet and inches", thereby conforming to the policy of utilizing the metric measurement scales wherever possible.

EFFECTIVE DATE: July 11, 1996.

FOR FURTHER INFORMATION CONTACT: Captain George T. Hull, Director, Marine Bureau, Panama Canal Commission, telephone in Balboa, Republic of Panama, 011/507–272–4500, or Barbara Fuller, Assistant to the Secretary for Commission Affairs, Office of the Secretary, Panama Canal Commission, 1825 I Street NW, Suite 1050, Washington, DC 20006–5402; Telephone: (202) 634–6441; Facsimile: (202) 634–6439.

SUPPLEMENTARY INFORMATION: The Panama Canal Commission hereby amends 35 CFR Part 61 in accordance with the World Health Organization (WHO) guidelines. These guidelines require the owner of a vessel transiting the Panama Canal to assist in eliminating the spread of yellow fever throughout the world by disinfecting (disinsecting) his vessel whenever the level of Aedes aegypti mosquitos in the Republic of Panama is below the WHO critical infestation level of less than one percent (expressed as WHO index level 1.0). The change eliminates the requirement for such disinsecting when the index of Aedes aegypti mosquitos in Panama is higher than 1.0.

The Commission is also amending its regulations in part 123, to substitute "in meters" for "in feet and inches" in order to replace existing information required of vessel customers, which conforms to the policy of using metric measurement scales.

The Commission is proceeding with the issuance of a final rule instead of a proposed rule with a request for comments because the change to part 61 eliminates a requirement for transiting the Canal and the change to part 123 is a technical amendment.

The Commission has been exempted from Executive Order 12866 and, accordingly, the provisions of that directive do not apply to this final rule. Even if the Order were applicable, its implementation would not have a significant economic impact on a substantial number of small entities as defined under that Act.

Further, the agency has determined that implementation of the rule will have no adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because a notice of proposed rulemaking and opportunity for public comment are not required to be given for this final rule by the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 601), no initial or final regulatory flexibility analysis has to be or will be prepared.

Finally, the Administrator of the Panama Canal Commission certifies these changes in regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No 12988.

List of Subjects

35 CFR Part 61

Communicable Diseases, Public health.

35 CFR Part 123

Radio, Vessels.

Accordingly, 35 CFR Parts 61 and 123 are amended as follows:

PART 61–HEALTH, SANITATION AND COMMUNICABLE DISEASE SURVEILLANCE

1. The authority citation for part 61 continues to read as follows:

Authority: Issued under authority vested in the President by section 1701, Pub. L. 96–70, 93 Stat. 492; EO 12173, 44 FR 69271.

2. Section 61.155 is amended by adding a new paragraph (e) as follows:

§ 61.155 Vessels; yellow fever.

* * * * *

(e) The disinfecting required under paragraph (a) of this section shall be required when the index of Aedes aegypti in Panama exceeds the 1.0 index level established by the World Health Organization (WHO).

PART 123—RADIO COMMUNICATION

3. The authority for part 123 continues to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3811; EO 12215, 45 FR 36043.

4. The "CHARLIE" paragraph following Paragraph (a) of § 123.4 is revised to read as follows:

§ 123.4 Advance notification required by radio from vessels approaching the Canal.

(a) * * * CHARLIE—Estimated draft upon arrival, and estimated transit draft if scheduled to work cargo or take bunker prior to transiting, in meters, fore and aft, in Tropical Fresh Water.

* * * * *

Dated: June 27, 1996.

Gilberto Guardia F.,

Administrator, Panama Canal Commission.

[FR Doc. 96–17662 Filed 7–10–96; 8:45 am]

BILLING CODE 3640–04–P

POSTAL SERVICE

39 CFR Parts 5, 7, 10

Board of Governors Bylaws

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Board of Governors of the United States Postal Service has approved amendments to its bylaws. First, the bylaw provisions concerning procedures of committees of the Board has been amended to conform the conditions under which the Government in the Sunshine Act is invoked to the definition of covered "meeting" under that Act. Second, the Board has revised its rules of conduct to delete provisions superseded by the Standards of Ethical Conduct for Employees of the Executive Branch issued by the Office of Government Ethics and by the Postal Service regulations supplemental to the Standards. Conforming changes are made to the remaining ethics provisions.

EFFECTIVE DATE: July 11, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas J. Koerber, (202) 268–4800.

SUPPLEMENTARY INFORMATION:

A. Committee Procedures

In practice, the Board of Governors has used its committees for a means of in-depth, informal exchange with management on matters of ongoing concern to the Board. It has not considered that sessions of this type are covered by the provisions of the Government in the Sunshine Act, regarding notice and open meetings. The provisions of that Act apply to "the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business" (5 U.S.C. 552b(a)(2)). The Board's bylaw concerning Public Observation (part 7) generally incorporates this language from the Sunshine Act in full (39 CFR 7.1(b)).

Bylaw provisions on committee procedures, in 39 CFR 5.2, currently refer to formal actions by committees—such as recommendations, preliminary decisions, and hearings—in a manner which reaches outside the terms of the Sunshine Act regarding when a committee session will be subject to the Board's Public Observation rules under part 7. Since the Board has intended that the Public Observation rules will apply strictly as provided in the Sunshine Act, some of this bylaw language may be subject to misinterpretation. Accordingly, this language is deleted from 39 CFR 5.2, and conforming changes are made in 39 CFR 7.1(a).

The Board's committees continue to be subject to the Public Observation procedures under part 7, only to the extent that a particular session should constitute a "meeting" within the meaning of the Government in the Sunshine Act, 5 U.S.C. 552b(a)(2), and section 7(b) of the bylaws.

B. Rules of Conduct

Background

On August 7, 1992, the Office of Government Ethics (OGE) published new Standards of Ethical Conduct for Employees of the Executive Branch (Standards), now codified at 5 CFR part 2635. See 57 FR 35006–35067 (August 7, 1992) as corrected at 57 FR 48557 (October 27, 1992) and 57 FR 52583 (November 4, 1992), with additional grace-period extensions at 59 FR 4779–4780 (February 2, 1994) and 60 FR 6390–6391 (February 2, 1995). The Standards, which became effective February 3, 1993, set uniform ethical conduct standards applicable to all executive branch personnel. The Standards superseded most federal agency regulations promulgated under subparts A, B, and C of former 5 CFR part 735.

On September 11, 1995, the Postal Service, with the concurrence of OGE and pursuant to 5 CFR 2635.105, published regulations applicable to Postal Service employees to supplement the Standards. See 60 FR 47240–47241, September 11, 1995. The supplemental regulations, to be codified at 5 CFR part 7001, prohibit certain outside employment or activities, and require prior approval for employees to engage in other specified outside employment or activities.

Discussion

I. General

The principal purpose of the revisions to part 10 is to repeal outdated provisions of the Code of Ethical Conduct for Postal Service Governors (Code), which have been superseded by the new Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635) and Postal Service regulations supplemental thereto (5 CFR part 7001). The Governors of the Postal Service are special Government employees within the meaning of 18 U.S.C. 202(a). Special Government employees are subject to the Standards of Ethical Conduct for Employees of the Executive Branch, and agency regulations supplemental thereto (5 CFR 2635.102(h)). Therefore, the Governors are subject to the regulations in 5 CFR parts 2635 and 7001.

Some provisions of 39 CFR part 10 are retained in amended form to conform to the Ethics Reform Act of 1989. The retained provisions concern advisory service, restrictions on post-employment activities, and the filing of financial disclosure reports.

II. Revision of the Heading of 39 CFR Part 10

The heading of 39 CFR part 10, "Code of Ethical Conduct for Postal Employees [Appendix]," is being revised to "Rules of Conduct for Postal Service Governors [Appendix]." This revision is intended to make clear that the rules of conduct in 39 CFR part 10, as amended, are not part of the ethical standards contained in 5 CFR part 2635 and regulations supplemental thereto.

III. Repeal of Financial Interest Prohibitions

The provisions of the Code that prohibited the holding of specified financial interests, 39 CFR 10.22(a) through (e), and those provisions of 39 CFR 10.23 that involved compensated outside employment relationships, remained temporarily in effect pursuant to the note following 5 CFR 2635.403(a), as extended at 59 FR 4779–4780, February 2, 1994, and 60 FR 6390–6391, February 2, 1995. The note following 5 CFR 2635.403(a) provides that such prohibitions shall cease to be effective upon the issuance of agency

supplemental regulations. On September 11, 1995, the Postal Service issued supplemental regulations. See 60 FR 47240–47241, September 11, 1995. Therefore, the provisions of 39 CFR part 10 concerning prohibited financial interests or compensated outside employment relationships are superseded and repealed. The supplemental regulations prohibit certain outside employment, and they require prior approval for certain outside employment. The supplemental regulations do not, however, specify financial interests the holding of which is prohibited.

IV. Analysis of Subparts

This amendment will repeal large portions of 39 CFR part 10, and the amended part will contain only four sections. Accordingly, part 10 no longer will be divided into subparts. This amendment will affect the regulations in subparts A through D of 39 CFR part 10 as follows.

Subpart A—Basic Purpose and Applicability

Subpart A included explanations of the applicability of 39 CFR part 10 and general standards of ethical conduct applicable to Postal Service Governors. All sections of subpart A have been superseded by 5 CFR part 2635. Section 10.11 has been renumbered as section 10.1 and revised to explain that, in addition to the rules retained in 39 CFR part 10, Governors are subject to the rules contained in 5 CFR parts 2635 and 7001.

Subpart B—Standards of Conduct

Subpart B contained general standards of conduct, rules concerning prohibited financial interests, rules concerning outside employment, rules concerning the acceptance of gifts, and other rules of conduct applicable to Postal Service Governors. All sections of subpart B are repealed because they have been superseded by 5 CFR parts 2635 and 7001.

Subpart C—Ethical Conduct Advisory Services and Remedial Action

Subpart C included procedures by which Postal Service Governors may obtain advice concerning standards of ethical conduct, and a regulation concerning post-employment restrictions imposed under 18 U.S.C. 207. Regulations concerning advisory services are retained in amended form in revised section 10.2. Under 5 CFR 2635.107, agencies are responsible for providing counseling to their employees with regard to the application of 5 CFR part 2635 and regulations supplemental thereto. Revised section 10.2 pertains solely to the Postal Service's internal implementation of requirements imposed by OGE regulations, and it is revised to conform to the OGE regulations.

Regulations concerning post-employment restrictions are retained in amended form in a new section 10.3. New section 10.3 notifies Governors that they are subject to the restrictions imposed under 18 U.S.C. 207.

Subpart D—Reports of Employment and Financial Interests

Subpart D included regulations concerning the filing and review of financial disclosure reports. These regulations are retained in amended form in new section 10.4.

As a result of this amendment, 39 CFR Part 10 will be reorganized as follows:

PART 10—RULES OF CONDUCT FOR POSTAL SERVICE GOVERNORS (APPENDIX)

Sec.
10.1 Applicability.
10.2 Advisory service.
10.3 Post-employment activities.
10.4 Financial disclosure reports.

List of Subjects

39 CFR Part 5

Administrative practice and procedure, Advisory committees, Organization and functions (Government agencies), Sunshine Act.

39 CFR Part 7

Sunshine Act.

39 CFR Part 10

Conflict of interests.

For the reasons set forth above, 39 CFR Chapter I, Subchapter A, is amended as follows:

PART 5—COMMITTEES (ARTICLE V)

1. The authority citation for part 5 is revised to read as follows:

Authority: 39 U.S.C. 202, 203, 204, 205, 401(2), (10), 1003, 3013.

2. Section 5.2 is revised to read as follows:

§ 5.2 Committee procedure.

Each committee establishes its own rules of procedure, consistent with these bylaws, and meets as provided in its rules. A majority of the members of a committee constitute a quorum.

PART 7—PUBLIC OBSERVATION (ARTICLE VII)

3. The authority citation for part 7 continues to read as follows:

Authority: 39 U.S.C. 401(a), as enacted by Pub. L. 91–375, and 5 U.S.C. 552b (a)–(m) as enacted by Pub. L. 94–409.

4. Section 7.1 is amended by republishing the introductory text and by revising paragraph(a) to read as follows:

§ 7.1 Definitions.

For purposes of §§ 7.2 through 7.8 of these bylaws:

(a) The term *Board* means the Board of Governors, and any subdivision or committee of the Board authorized to take action on behalf of the Board.

* * * * *

PART 10—RULES OF CONDUCT FOR POSTAL SERVICE GOVERNORS (APPENDIX)

5. The authority citation for part 10 is revised to read as follows:

Authority: 39 U.S.C. 401.

6. The heading of part 10 is revised as set forth above.

6a. The table of contents for part 10 is revised to read as follows:

Sec.
10.1 Applicability.
10.2 Advisory service.
10.3 Post-employment activities.
10.4 Financial disclosure reports.

7. Subparts A through D headings are removed.

§ 10.11 [Redesignated as § 10.1]

8. Section 10.11 is redesignated as § 10.1 and revised to read as follows:

§ 10.1 Applicability.

This part contains rules of conduct for the members of the Board of Governors of the United States Postal Service. As special employees within the meaning of 18 U.S.C. 202(a), the members of the Board are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and Postal Service regulations supplemental thereto, 5 CFR part 7001.

§ 10.31 [Redesignated as § 10.2]

9. Section 10.31 is redesignated as § 10.2 and revised to read as follows:

§ 10.2 Advisory service.

(a) The General Counsel is the Ethical Conduct Officer of the Postal Service and the Designated Agency Ethics Official for purposes of the Ethics in Government Act, as amended, and the implementing regulations of the Office of Government Ethics, including 5 CFR part 2638.

(b) A Governor may obtain advice and guidance on questions of conflicts of interest, and may request any ruling provided for by either the Standards of Ethical Conduct for Employees of the Executive Branch, or the Postal Service regulations supplemental thereto, from

the General Counsel or a designated assistant.

(c) If the General Counsel determines that a Governor is engaged in activity which involves a violation of federal statute or regulation, including the ethical conduct regulations contained in 5 CFR parts 2635 and 7001, or conduct which creates the appearance of such a violation, he or she shall bring this to the attention of the Governor or shall notify the Chairman of the Board of Governors, or the Vice Chairman, as appropriate.

10. A new section 10.3 is added to read as follows:

§ 10.3 Post-employment activities.

Governors are subject to the restrictions on the post-employment activities of special Government employees imposed by 18 U.S.C. 207. Guidance concerning post-employment restrictions applicable to Governors may be obtained in accordance with § 10.2(b).

§ 10.12 [Removed]

10a. Section 10.12 is removed.

§ 10.21 [Removed]

11. Section 10.21 is removed.

§ 10.22 [Removed]

12. Section 10.22 is removed.

§ 10.23 [Removed]

13. Section 10.23 is removed.

§ 10.24 [Removed]

14. Section 10.24 is removed.

§ 10.32 [Removed]

15–16. Section 10.32 is removed.

§ 10.41 [Redesignated as § 10.4]

17. Section 10.41 is redesignated as § 10.4, and is amended by revising paragraphs (a) and (e)(2) to read as follows:

§ 10.4 Financial disclosure reports.

(a) *Requirement of submission of reports.* At the time of their nomination, Governors complete a financial disclosure report which, under the practice of the Senate Governmental Affairs Committee, is kept confidential. Because the Director of the Office of Government Ethics has ruled that Governors who do not perform the duties of their office for more than 60 days in any calendar year are not required to file financial disclosure reports that are open to the public, Governors file non-public reports annually, in accordance with this section. A Governor who performs the duties of his or her office for more than 60 days in a particular calendar year is required to file a public report in accordance with 5 CFR 2634.204(c).

* * * * *

(e) * * *

(2) Confidentiality of reports. Unless a public report is required by this section, the financial disclosure reports filed by Governors shall not be made public.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 96–17114 Filed 7–10–96; 8:45 am]

BILLING CODE 7710–12–P

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39 CFR Part 20

Implementation of International Package Consignment Service

AGENCY: Postal Service.

ACTION: Amendment to interim rule with request for comments.

SUMMARY: International Package Consignment Service (IPCS) is an international mail service designed for companies sending merchandise to addresses in other countries. The service is currently available to Japan, Canada, and the United Kingdom (U.K.). To use IPCS, a customer is required to mail at least 25,000 packages a year to Japan, at least 25,000 packages a year to Canada, or at least 10,000 packages a year to the U.K. This amendment provides an option for IPCS customers who meet the minimum mailing requirements to any one IPCS country of destination to enter additional packages for delivery in any other IPCS country of destination at reduced volume thresholds, specifically, 5,000 packages per year.

Therefore, an existing IPCS customer who satisfies the minimum volume criteria for one destination country, has linked its information systems with the Postal Service's, and who has established transportation with the Postal Service may send additional packages to other IPCS destination countries by signing a service agreement for that destination country that commits the customer to mail at least 5,000 packages a year to other IPCS destinations of the customer's choosing. Under this option, the customer has greater flexibility to respond more easily to the market conditions in which he is competing for overseas business while allowing the Postal Service to develop a traffic base that contributes to greater economies of scale. The interim implementing regulations have been amended and are set forth below for comment and suggested revision prior to adoption in final form.

DATES: The amended regulations take effect July 11, 1996. Comments must be received on or before July 25, 1996.

ADDRESSES: Written comments should be mailed or delivered to International Package Consignment Service, U.S. Postal Service, 475 L'Enfant Plaza SW, Room EB4400, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection and photocopying at the above address between 9 a.m. and 4 p.m., Monday through Friday, after July 25, 1996.

FOR FURTHER INFORMATION CONTACT: Tim Gribben at the above address. Telephone: (202) 268–3035.

SUPPLEMENTARY INFORMATION:

International Package Consignment Service (IPCS) is designed to more closely meet the needs of customers who send merchandise packages from the United States to multiple international addresses by simplifying the process companies use to prepare their packages for mailing and by reducing the costs those companies incur in mailing merchandise to other countries.

IPCS benefits all users of the Postal Service because revenues collected contribute to fixed costs, thereby decreasing the total revenue that the Postal Service needs to recover from other services. At the same time, IPCS makes it easier and more economical for customers in the United States to export their products to international markets.

Once a customer qualifies for IPCS into Japan, Canada, or the U.K. and has started mailing into one of these destination countries, then the minimum volume requirement for entry into any other country is reduced to 5,000 packages a year. To be considered qualified, customers must meet the following criteria: satisfy the minimum volume requirement for an IPCS destination country, have its information systems linked with the Postal Service's, and have transportation in place between the customer and the Postal Service. The customer must still enter into a separate service agreement for each IPCS destination country to which it wants to use IPCS, and designate the Postal Service as their carrier of choice to that IPCS destination country.

Accordingly, the Postal Service hereby amends IPCS to allow qualified customers to satisfy lower minimum volumes when entering into IPCS service agreements to additional destination countries. Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written data, views, or arguments concerning this interim rule.

The Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, Postal service.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

Subchapter 620—Amended

2. Subchapter 620 of the International Mail Manual, Issue 16, is amended as follows:

6 Special Programs

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620 International Package Consignment Service

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622 Qualifying Customers

To qualify, a customer must enter into a service agreement containing the commitments stipulated in 625.2 and must be able to meet the general and destination country-specific preparation requirements stipulated in 620 and the Individual Country Listings.

Once a customer qualifies for IPCS and has started mailing into a destination country, then the minimum volume requirement for entry into any other country is reduced to 5,000 packages a year. To be considered qualified, customers must meet the following criteria: satisfy the minimum volume requirement for their destination country, have its information systems linked with the Postal Service's; and have transportation in place between the customer and the Postal Service. The customer must still enter into a separate service agreement for each destination country to which it wants to use IPCS and designate the Postal Service as its carrier of choice to that destination country.

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625 IPCS Service Agreements

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625.2 Required Provisions

Each service agreement must contain the following:

a. The customer's commitment to send at least 25,000 packages to Japan or Canada (or 10,000 to the United Kingdom) by IPCS during the next 12 months. However, once a customer enters into an IPCS agreement to one destination country and begins mailing, then that customer may enter other destination countries by committing to mail at least 5,000 packages to the other destination countries. A customer's failure to meet the original volume requirements may result in termination, by the Postal Service, of the right to mail to other destination countries.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 96–17600 Filed 7–10–96; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 157–0010; AD–FRL–5524–2]

Approval and Promulgation of Implementation Plan for Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating approval of the new source review (NSR) program submitted by the Monterey Bay Unified Air Pollution Control District (MBUAPCD) for the purpose of meeting the nonattainment and prevention of significant deterioration (PSD) NSR requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The intended effect of this rulemaking is to regulate air pollution in accordance with the Act. Thus, EPA is finalizing the approval of these revisions into the California state implementation plan (SIP) under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: August 12, 1996.

ADDRESSES: Copies of MBUAPCD's submittals and other supporting information used in developing this final approval are available for inspection during normal business hours at the following location: U.S. EPA, Region IX, Air & Toxics Division (A–5–1), 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Steve Ringer at (415) 744–1260.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The air quality planning requirements for nonattainment NSR are set out in Part D of Title I of the Act, with implementing regulations at 40 CFR 51.160 through 51.165. The air quality planning requirements for PSD are set out in Part C of Title I of the Act, with implementing regulations at 40 CFR 51.166. On August 10, 1995, MBUAPCD submitted its NSR rules to EPA as a proposed revision to the SIP. On April 22, 1996, EPA proposed to approve with contingencies, and to disapprove in the alternative, the submitted SIP revisions. See 61 FR 17675. Full approval as a final action was contingent upon MBUAPCD making required changes to the submitted rules. EPA requested public comments on the proposed approval and received none. MBUAPCD has since submitted to EPA, revised NSR rules which contain the required changes. EPA is therefore promulgating final approval of the revised rules. The specific changes that MBUAPCD made to its rules are detailed below.

The MBUAPCD Governing Board held a public hearing on March 20, 1996 to entertain public comment on its revised NSR rules. The Board adopted the rules on the same date and the rules were submitted by the State to EPA on May 10, 1996 as a revision to the SIP. The SIP revision was reviewed by EPA and determined to be complete on May 22, 1996.

In its April 22, 1996 proposed approval, EPA identified two deficiencies in MBUAPCD's August 10, 1995 submittal which had to be corrected as a condition of full approval. At that time, MBUAPCD had proposed draft rules which corrected the deficiencies. EPA's technical support document (TSD) for the April 22, 1996 proposed approval contains a discussion of how MBUAPCD's proposed draft rules would correct the deficiencies, as well as how they would meet the general NSR requirements of the Act. MBUAPCD's May 10, 1996 submittal is substantially similar to the draft rules upon which EPA based its proposed approval. Below is a discussion of the portions of MBUAPCD's May 10, 1996 submittal which correct the deficiencies identified by EPA.

Corrected Deficiencies

Rule 207, Section 4.2.9: In its April 22, 1996 proposed approval, EPA specified that this section must be revised to require "that any emission reduction required as a precondition of the issuance of a permit shall be made

federally enforceable prior to permit issuance". Accordingly, MBUAPCD modified this section of its rules such that the May 10, 1996 submittal contains the following language: "All emission reductions must be identified and enforceable prior to issuance of the Authority to Construct." This language satisfies EPA's requirement.

Rule 207, Section 4.3.3.2: EPA specified that this section must be revised to require "that emission reductions obtained from another nonattainment area may be used only if (A) the other area has an equal or higher nonattainment classification than the area in which the source is located, and (B) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located." Accordingly, MBUAPCD's May 10, 1996 submittal contains a new section 4.3.3.2.2 with the following language: "The offsets may only be obtained from an upwind area that has been designated by EPA to have a nonattainment status equal to or more serious than the North Central Coast air basin." and a new section 4.3.3.2.3 with the following language: "The offsets may only be obtained from an upwind area that could contribute to violations of the national ambient air quality standards in the North Central air basin." This language satisfies EPA's requirement.

Final Action and Implications

EPA is promulgating final approval of MBUAPCD's NSR program as submitted on May 10, 1996. This submittal consists of MBUAPCD's Rules 207 (Review of New and Modified Sources) and 215 (Banking of Emission Reductions)

EPA did not receive any comments on the changes detailed above that were necessary to make MBUAPCD's program fully approvable. The scope of this approval applies to all new or modified sources (as defined in the program) within the Monterey Bay Unified Air Pollution Control District.

Administrative Review

Copies of MBUAPCD's submittal and other information relied upon for this final approval are contained in docket number NSRR 2–96 MBUAPCD, at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in development of this final approval. The docket is available for public inspection at the location listed under the ADDRESSES section of this document.

Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for a revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, parts C and D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co. v. U.S. E.P.A., 427 U.S. 246, 256–66 (S.Ct 1976); 42 U.S.C. 7410(a)(2).

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. EPA has determined that the approval proposed in this notice does not include such a federal mandate, as this proposed federal action would approve pre-existing requirements under state or local law, and would impose no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, New source review, Nitrogen dioxide, Prevention of significant deterioration, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 31, 1996.

Felicia Marcus,

Regional Administrator.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(231) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(231) New and amended regulations for the following APCDs were submitted on May 10, 1996, by the Governor's designee.

(i) Incorporation by reference.

(A) Monterey Bay Unified APCD.

(*1*) Rules 207 and 215, adopted on March 20, 1996.

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[FR Doc. 96–17643 Filed 7–10–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[TN–167–9627a; FRL–5529–3]

Control Strategy: Ozone (O_3); Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving an exemption request from the oxides of nitrogen (NO_X) reasonably available control technology (RACT) and conformity requirements of the Clean Air Act as amended in 1990 (CAA) for the five county Middle Tennessee (Nashville) moderate ozone (O_3) nonattainment area. The request for a NO_X RACT and conformity exemption was submitted on March 21, 1995, by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC). The exemption request is based upon the most recent three years of monitoring data, which demonstrate that additional reductions of NO_X would not contribute to attainment of the National Ambient Air Quality Standards (NAAQS).

DATES: This final rule is effective September 9, 1996 unless adverse or critical comments are received by August 12, 1996. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: William Denman; Stationary Source Planning Unit; Regulatory Planning and Development Section; Air Programs Branch; Air, Pesticides, and Toxics Management Division; U.S. Environmental Protection Agency, Region 4; 345 Courtland Street NE, Atlanta, Georgia 30365.

A copy of the exemption request is available for inspection at the following locations (it is recommended that you contact William Denman at (404) 347–3555 extension 4208 before visiting the Region 4 office).

United States Environmental Protection Agency; Air, Pesticides, and Toxics Management Division; Air Programs Branch; Regulatory Planning and Development Section; Stationary Source Planning Unit; 345 Courtland Street NE; Atlanta, Georgia 30365.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531, 615/532–0554.

FOR FURTHER INFORMATION CONTACT: William Denman; Stationary Source Planning Unit; Regulatory Planning and Development Section; Air Programs Branch; Air Pesticides and Toxics Management Division; U.S. Environmental Protection Agency; 345 Courtland Street NE, Atlanta, Georgia 30365. Reference file TN–167–9627a.

SUPPLEMENTARY INFORMATION: The air quality planning requirements for the reduction of NO_X emissions are set out in section 182(f) of the CAA, which requires states with nonattainment areas of moderate and above to require the same provisions for major stationary sources of NO_X as apply to major stationary sources of volatile organic compounds (VOCs). One of the requirements of major sources of VOCs is RACT. Therefore, per section 182 of the CAA, RACT is also a requirement for major sources of NO_X. However, under section 182(f)(1)(A) of the CAA, an exemption from the NO_X requirement may be granted for nonattainment areas outside an ozone transport region if additional reductions of NO_X would not contribute to attainment. The NO_X RACT exemption request is based upon the most recent three years of monitoring data, which demonstrate that additional reductions of NO_X would not contribute to attainment of the NAAQS.

The criteria established for the evaluation of a NO_X RACT exemption request from the section 182(f) requirements are set forth in an EPA memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated May 27, 1994, entitled, "Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria;" an EPA memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated December 16, 1993, entitled, "Guideline for Determining the Applicability of Nitrogen Oxide Requirements Under Section 182(f)," dated December 16, 1993; and an EPA memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated February 8, 1995, entitled, "Section 182(f) Nitrogen Oxides (NO_X) Exemptions—Revised Process and Criteria." The February 8, 1995, memorandum referenced above decouples the section 182(f) exemptions from NO_X transport issues. In an area that did not implement the section 182(f) NO_X requirements, but did attain the O_3 standard as demonstrated by ambient air monitoring data (consistent with 40 CFR Part 58 and recorded in the EPA's Aerometric Information Retrieval system (AIRS)), it is clear that the additional NO_X reductions required by section 182(f) would not contribute to attainment of the NAAQS in that area.

On November 14, 1994, the State of Tennessee submitted to EPA Region 4 a request to redesignate the Middle Tennessee (Nashville) moderate O_3 nonattainment area to attainment. The redesignation request is currently under review and will be addressed in a separate rulemaking. On March 21, 1995, the State of Tennessee requested an exemption from the NO_X RACT and NO_X conformity requirements in section 182(f) of the CAA for the Middle Tennessee ozone nonattainment area. The exemption request is based upon ambient air monitoring data from 1992, 1993, and 1994. The five county Middle Tennessee nonattainment area was determined to have attained the National Ambient Air Quality Standard (NAAQS) for ozone in the **Federal Register** on August 8, 1995, (60 FR 40291) in accordance with EPA guidance issued on May 10, 1995, and has continued to monitor attainment to date. This guidance relieved certain nonattainment areas with "clean air data" from some CAA requirements. Therefore, this area is meeting the O_3 NAAQS standard in the entire five county Middle Tennessee area for the relevant three year period. Because the Middle Tennessee area is meeting the O_3 NAAQS, this exemption request for the area meets the applicable requirements contained in the EPA policy and guidance documents referenced above.

However, some NO_X reductions were either obtained prior to the area attaining the ozone standard or have been determined to be necessary for maintenance. Specifically, those reductions obtained prior to attaining the standard were from major source tangentially-fired coal burning boilers subject to Tennessee's rule for the regulation of nitrogen oxides (1200–3–27–.03(1)(b)). The NO_X reductions necessary for maintenance are from two natural gas pumping stations located in the nonattainment area.

Tennessee submitted its chapter for regulating nitrogen oxides (1200–3–27) in submittals to EPA dated June 14, 1993, and May 26, 1994, and revised the submittals on July 29, 1994, and February 23, 1996. Tennessee held a public hearing for the operating permits issued for the two natural gas pumping stations on April 29, 1996. These two sources must be controlled to demonstrate maintenance. The Tennessee Air Pollution Control Board (TAPCB) met to take action on these permits on May 9–10, 1996. After approval by the TAPCB, the permits will be officially submitted to EPA. EPA will act on the NO_X controls which obtained emission reductions prior to the area attaining the standard and those necessary for maintaining the ozone standard either prior to or concurrently with the ozone redesignation request. The approval of this exemption does not exempt sources from any State Implementation Plan (SIP) approved NO_X control requirements.

Until this area is designated attainment, the continuation of the section 182(f) exemption granted herein is contingent upon continued monitoring and continued maintenance of the O_3 NAAQS in the entire Middle Tennessee nonattainment area. If there is a violation of the O_3 NAAQS in any portion of the Middle Tennessee nonattainment area, the exemption will no longer be applicable as of the date of any such determination. Should this occur, EPA will provide notice in the **Federal Register**. A determination that the NO_X exemption no longer applies would mean that the NO_X RACT requirement is immediately applicable to the affected area and the exemption

from NO_X conformity is no longer valid. EPA believes some reasonable period of notice is necessary to provide major stationary sources subject to the RACT requirement time to purchase, install, and operate any required controls. Accordingly, the State may provide sources a reasonable time period to meet the RACT emission limits after the EPA determination that NO_X RACT requirement is necessary. EPA expects the time period to be as expeditious as practicable, but in no case longer than 24 months. The approval of this exemption from federal NO_X requirements in no way exempts sources from any NO_X controls required by the State.

This approval of the State of Tennessee's request for an exemption from the NO_X RACT requirement of the CAA as amended in 1990 is being acted on as a direct final rule making without a prior proposal for approval because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. The National Resources Defense Council (NRDC), Sierra Defense Club, and Environmental Defense Fund (EDF) submitted adverse comments to Mary Nichols on August 24, 1994, regarding all **Federal Register** notices proposing to approve section 182(f) NO_X exemption requests. The EPA responded to the adverse comments as set forth below.

NRDC Comment 1: Certain commenters argued that NO_X exemptions are provided for in two separate parts of the CAA, section 182(b)(1) and section 182(f). Because the NO_X exemption tests in subsections 182(b)(1) and 182(f)(1) include language indicating that action on such requests should take place "when [EPA] approves a plan or plan revision;" these commenters conclude that all NO_X exemption determinations by the EPA, including exemption actions taken under the petition process established by subsection 182(f)(3), must occur during consideration of an approvable attainment or maintenance plan, unless the area has been redesignated as attainment. These commenters also argue that even if the petition procedures of subsection 182(f)(3) may be used to relieve areas of certain NO_X requirements, exemptions from the NO_X conformity requirements must follow the process provided in subsection 182(b)(1), since this is the only provision explicitly referenced by section 176(c), the CAA's conformity provisions.

EPA Response: Section 182(f) contains very few details regarding the administrative procedure for acting on NO_X exemption requests. The absence of specific guidelines by Congress leaves EPA with discretion to establish reasonable procedures, consistent with the requirements of the Administrative Procedure Act (APA).

The EPA disagrees with the commenters regarding the process for considering exemption requests under section 182(f), and instead believes that subsections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO_X exemption requests. The language in subsection 182(f)(1), which indicates that the EPA should act on NO_X exemptions in conjunction with action on a plan or plan revision, does not appear in subsection 182(f)(3). And, while subsection 182(f)(3) references subsection 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) [and, by extension, paragraph (2)], not the procedural requirement that the EPA act on exemptions only when acting on SIPs. Additionally, paragraph (3) provides that "person[s]" (which section 302(e) of the CAA defines to include States) may petition for NO_X exemptions "at any time," and requires the EPA to make its determination within six months of the petition's submission. These key differences lead EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan revision process intended under paragraph (1).

Section 182(f)(1) appears to contemplate that exemption requests submitted under these paragraphs are limited to States, since States are the entities authorized under the Act to submit plans or plan revisions. By contrast, section 182(f)(3) provides that "person[s]" may petition for a NO_X determination "at any time" after the ozone precursor study required under section 185B of the Act is finalized, and gives EPA a limit of 6 months after filing to grant or deny such petitions. Since individuals may submit petitions under paragraph (3) "at any time" this must include times when there is no plan revision from the State pending at EPA. The specific time frame for EPA action established in paragraph (3) is substantially shorter than the time frame usually required for States to develop and for EPA to take action on revisions to a SIP. These differences strongly suggest that Congress intended the process for acting on personal petitions to be distinct—and more expeditious—from the plan-revision process intended under paragraph (1). Thus, EPA believes that paragraph (3)'s reference to paragraph (1) encompasses only the substantive tests in paragraph (1) [and, by extension, paragraph (2)], not the requirement in paragraph (1) for EPA to grant exemptions only when acting on plan revisions.

With respect to major stationary sources, section 182(f) requires States to adopt NO_X NSR and RACT rules, unless exempted. These rules were generally due to be submitted to EPA by November 15, 1992. Thus, in order to avoid the CAA sanctions, areas seeking a NO_X exemption would need to submit their exemption request for EPA review and rulemaking action several months before November 15, 1992. In contrast, the CAA specifies that the attainment demonstrations are not due until November 1993 or 1994 (and EPA may take 12–18 months to approve or disapprove the demonstration). For marginal ozone nonattainment areas (subject to NO_X NSR), no attainment demonstration is called for in the CAA. For maintenance plans, the CAA does not specify a deadline for submittal of maintenance demonstrations. Clearly, the CAA envisions the submittal of and EPA action on exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

The CAA requires conformity with regard to federally-supported NO_X generating activities in relevant nonattainment and maintenance areas. However, EPA's conformity rules explicitly provide that these NO_X requirements would not apply if EPA grants an exemption under section 182(f). In response to the comment that section 182(b)(1) should be the appropriate vehicle for dealing with exemptions from the NO_X requirements of the conformity rule, EPA notes that this issue has previously been raised in a formal petition for reconsideration of EPA's final transportation conformity rule and in litigation pending before the U.S. Court of Appeals for the District of Columbia Circuit on the substance of both the transportation and general conformity rules. The issue, thus, is under consideration within EPA, but at this time remains unresolved. Additionally, subsection 182(f)(3) requires that NO_X exemption petition determinations be made by the EPA within six months. The EPA has stated in previous guidance that it intends to meet this statutory deadline as long as doing so is consistent with the Administrative Procedure Act. The EPA, therefore, believes that until a resolution of this issue is achieved, the applicable rules governing this issue are those that appear in EPA's final conformity regulations, and EPA remains bound by their existing terms.

NRDC Comment 2: Three years of "clean" data fail to demonstrate that NO_X reductions would not contribute to attainment. EPA's policy erroneously equates the absence of a violation for one three-year period with "attainment."

EPA Response: The EPA has separate criteria for determining if an area should be redesignated to attainment under section 107 of the CAA. The section 107 criteria are more comprehensive than the CAA requires with respect to NO_X exemptions under section 182(f).

Under section 182(f)(1)(A), an exemption from the NO_X requirements may be granted for nonattainment areas outside an ozone transport region if EPA determines that "additional reductions of [NO_X] would not contribute to attainment" of the ozone NAAQS in those areas. In some cases, an ozone nonattainment area might attain the ozone standard, as demonstrated by 3 years of adequate monitoring data, without having implemented the section 182(f) NO_X provisions over that 3-year period. The EPA believes that, in cases where a nonattainment area is demonstrating attainment with 3 consecutive years of air quality monitoring data without having implemented the section 182(f) NO_X provisions, it is clear that the section 182(f) test is met since "additional reductions of [NO_X] would not contribute to attainment" of the NAAQS in that area. The EPA's approval of the exemption, if warranted, would be granted on a contingent basis (i.e., the exemption would last for only as long as the area's monitoring data continue to demonstrate attainment).

NRDC Comment 3: The CAA does not authorize any waiver of the NO_X reduction requirements until conclusive evidence exists that such reductions are counter-productive.

EPA Response: EPA does not agree with this comment since it ignores Congressional intent as evidenced by the plain language of section 182(f), the structure of the Title I ozone subpart as a whole, and relevant legislative history. By contrast, in developing and implementing its NO_X exemption policies, EPA has sought an approach that reasonably accords with that intent. Section 182(f), in addition to imposing control requirements on major stationary sources of NO_X similar to those that apply for such sources of VOC, also provides for an exemption (or limitation) from application of these requirements if, under one of several tests, EPA determines that in certain areas NO_X reductions would generally not be beneficial. In subsection 182(f)(1), Congress explicitly conditioned action on NO_X exemptions on the results of an ozone precursor study required under section 185B. Because of the possibility that reducing NO_X in a particular area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f) but throughout the Title I ozone subpart, to avoid requiring NO_X reductions where it would be nonbeneficial or counterproductive. In describing these various ozone provisions (including section 182(f), the House Conference Committee Report states in pertinent part: "[T]he Committee included a separate NO_X/VOC study provision in section [185B] to serve as the basis for the various findings contemplated in the NO_X provisions. The Committee does not intend NO_X reduction for reduction's sake, but rather as a measure scaled to the value of NO_X reductions for achieving attainment in the particular ozone nonattainment area." H.R. Rep. No. 490, 101st Cong., 2d Sess. 257–258 (1990). As noted in response to an earlier comment by these same commenters, the command in subsection 182(f)(1) that EPA "shall consider" the 185B report taken together with the time frame the Act provides both for completion of the report and for acting on NO_X exemption petitions clearly demonstrate that Congress believed the information in the completed section 185B report would provide a sufficient basis for EPA to act on NO_X exemption requests, even absent the additional information that would be included in affected areas' attainment or maintenance demonstrations. However, while there is no specific requirement in the Act that EPA actions granting NO_X exemption requests must await "conclusive evidence," as the commenters argue, there is also nothing in the Act to prevent EPA from revisiting an approved NO_X exemption if warranted due to better ambient information.

In addition, the EPA believes (as described in EPA's December 1993 guidance) that section 182(f)(1) of the CAA provides that the new NO_X requirements shall not apply (or may be limited to the extent necessary to avoid excess reductions) if the Administrator determines that *any one* of the following tests is met:

(1) in any area, the net air quality benefits are greater in the absence of NO_X reductions from the sources concerned;

(2) in nonattainment areas not within an ozone transport region, additional NO_X reductions would not contribute to ozone attainment in the area; or

(3) in nonattainment areas within an ozone transport region, additional NO_X reductions would not produce net ozone air quality benefits in the transport region.

Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO_X exemption. Only the first test listed above is based on a showing that NO_X reductions are "counter-productive." If one of the tests is met (even if another test is failed), the section 182(f) NO_X requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply.

Pollution Probe (Ontario 9–27–94)

Air Quality Comment: Several commenters stated that the air quality monitoring data alone does not support this exemption proposal. The air quality levels are below EPA's definition of an exceedance of the ozone NAAQS at 0.125 ppm, but are greater than the ozone NAAQS of 0.120 ppm.

EPA Response: For the reasons provided below, EPA does not agree with the commenter's conclusion. As stated in 40 CFR 50.9, the ozone "standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million (235 ug/m^3) is equal to or less than 1, as determined by Appendix H." Appendix H references EPA's "Guideline for Interpretation of Ozone Air Quality Standards" (EPA–450/4–79–003, January 1979), which notes that the stated level of the standard is taken as defining the number of significant figures to be used in comparison with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up to 0.01). Thus, 0.125 ppm is the smallest concentration value in excess of the level of the ozone standard.

The transportation conformity rule states that its NO_X provisions do not apply when the Administrator has determined under section 182(f) of the Clean Air Act that "additional reductions of NO_X would not contribute to attainment." On June 17, 1994, EPA published in the **Federal Register** the general preamble for exemption from nitrogen oxide provisions (59 FR 31238). It was clarified in this notice that guidance for transportation conformity is intended to also apply with respect to general conformity. In accordance with this guidance, once EPA grants the NO_X transportation conformity exemption, the area is

relieved of the transportation conformity rule's requirements for regional analysis of NO_X emissions. However, once the maintenance plan for the middle Tennessee ozone nonattainment area is approved, any previously approved NO_X conformity exemption no longer applies. The area must then demonstrate as part of its conformity determinations that the transportation plan and Transportation Improvement Plan (TIP) are consistent with the motor vehicle emissions budget for NO_X where such a budget is established by the maintenance plan.

Final Action

The EPA is approving Tennessee's request to exempt the Middle Tennessee moderate O_3 nonattainment area from the section 182(f) NO_X RACT and NO_X conformity requirements without a prior proposal for approval because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This approval is based upon the evidence provided by Tennessee showing compliance with the requirements outlined in the CAA and in applicable EPA guidance. If a violation of the O_3 NAAQS occurs in any portion of the Middle Tennessee area while the area is designated nonattainment, the exemption from the NO_X RACT and NO_X conformity requirements of section 182(f) of the CAA in the applicable area shall no longer apply.

This action is not a SIP revision and is not subject to the requirements of section 110 of the CAA. The authority to approve or disapprove exemptions from NO_X requirements under section 182 of the CAA was delegated to the Regional Administrator from the Administrator in a memo dated July 6, 1994, from Jonathan Cannon, Assistant Administrator, to the Administrator, titled, "Proposed Delegation of Authority: 'Exemptions from Nitrogen Oxide Requirements Under Clean Air Act section 182(f) and Related Provisions of the Transportation and General Conformity Rules' Decision Memorandum." In a separate document in this **Federal Register** publication, the EPA is proposing to approve the request should adverse or critical comments be filed. This action will be effective September 9, 1996 unless, by August 12, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 9, 1996.

Under section 307(b)(1) of the Clean Air Act (CAA), 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 9, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607(b)(2).)

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This rule approves an exemption from a CAA requirement. Therefore, I certify that it does not have a significant impact on any small entities affected.

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 182 of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. EPA has examined whether the rules being approved by this action will impose any new requirements. Since such sources are already subject to these regulations under State law, no new requirements are imposed by this approval. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action, and therefore there will be no significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: June 18, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2237 is added to read as follows:

§ 52.2237 NO_X RACT and NO_X conformity exemption.

Approval—EPA is approving the section 182(f) oxides of nitrogen (NO_X) reasonably available control technology (RACT) and NO_X conformity exemption request submitted by the Tennessee Department of Environment and Conservation on March 21, 1995, for the five county middle Tennessee (Nashville) ozone moderate nonattainment area. This approval exempts the area from implementing federal NO_X RACT on major sources of NO_X and exempts Tennessee from NO_X conformity. This approval does not exempt sources from any State required or State Implementation Plan (SIP) approved NO_X controls. If a violation of the ozone NAAQS occurs in the area, the exemption from the requirement of section 182(f) of the CAA in the applicable area shall not apply.

[FR Doc. 96–17844 Filed 7–10–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 79

[FRL–5532–4]

Registration of Fuels and Fuel Additives: Minor Changes to the Testing Requirements for Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency ("EPA" or the "Agency") is issuing, as a direct final rule, minor changes to the health-effects testing requirements at 40 CFR Part 79, Subpart F. These requirements deal with the exposure of animals to evaporate and exhaust emissions from motor vehicles. The changes allow for increased flexibility in engine selection, correct an inconsistency with respect to mixing chamber quality assurance, establish clearer exposure timing requirements, provide a necessary option for the units in which emissions data are reported for heavy-duty vehicle engines, clarify oxygen purity requirements, make some minor syntax changes, clarify the handling of the measurements of background chemical species in the ambient air used by the engine generating emissions, clarify the driving schedules, clarify the exposure concentration requirements in the inhalation chamber, clarify dilution system requirements, and clarify the requirements for the collection of particulates and semi-volatiles. These changes will reduce the testing costs without affecting the environmental objectives. This action is being taken without prior notice because EPA believes that the minor changes in the testing requirements will be noncontroversial.

The rule implementing the testing requirements was finalized on May 27, 1994 (59 FR 33042, June 27, 1994). The test data will be used by the Agency to determine if the emissions of certain gasolines and/or diesel fuels present an unacceptable risk to public health. For additional background information see the procedure in this issue of the **Federal Register** proposing changes to the registration regulations. The changes in this direct final rule have also been incorporated into that notice of proposed rulemaking. If an adverse comment or a request for a public hearing is received on this direct final rule, EPA will withdraw the direct final rule and address the comment(s) in a subsequent final rule based on the proposed rule.

DATES: This action will be effective on August 26, 1996 unless EPA receives an adverse comment or a request for a public hearing by August 12, 1996. If EPA receives an adverse comment or hearing request by that date, EPA will withdraw this action via a document in the **Federal Register**. All correspondence should be directed to the addresses below.

ADDRESSES: Materials relevant to this rulemaking have been placed in Docket A–90–07. The docket is located at the U.S. Environmental Protection Agency, Air Docket Section (LE–131), 401 M Street, S.W., Washington, DC 20460 in Room M–1500 of Waterside Mall. Documents may be inspected between the hours of 8:00 a.m. and 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying. Those wishing to notify EPA of their intent to submit an adverse comment or request a public hearing should contact Joseph Fernandes (202) 233–9756 or Jim Caldwell (202) 233–9303 at the EPA.

FOR FURTHER INFORMATION CONTACT: Joseph Fernandes (202) 233–9756 or Jim Caldwell (202) 233–9303, USEPA, Office of Mobile Sources, Fuels and Energy Division, Mail Code 6406J, 401 M Street, S.W., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Regulated categories and entities potentially affected by this action include:

Category	Examples of regulated entities
Industry	Manufacturers of gasoline and diesel fuel. Manufacturers of additives for gasoline and diesel fuel.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity would be regulated by this action, you should carefully examine this preamble and the proposed changes to the regulatory text. You should also carefully examine the existing provisions of the registration program at 40 CFR part 79.

II. Background

For program background, see the notice in this issue of the **Federal Register** proposing non-minor changes to the registration regulations for fuels and fuel additives (F/FA). The changes to the testing requirements in this direct final rule are minor and noncontroversial.

III. Requirements for New Vehicles/Engines

To ensure that the tests conducted on the emissions of one F/FA are not affected by "carryover" emissions from other F/FAs previously used in the test vehicle, § 79.57 of the registration regulations requires that a new vehicle or engine be used in the testing of each F/FA. The regulations also recommend that one or more identical new vehicles or engines be acquired as backup emission generators for each F/FA.

The regulated industry has commented to EPA that this requirement is burdensome, expensive, and unnecessary. They argue that suitable conditioning procedures can satisfactorily "flush out" the remnants of one F/FA and its emissions, so that the same vehicle or engine can be used in testing another F/FA without fear of carryover effects. If this were permitted, a substantially smaller fleet of initial test vehicles/engines might suffice for a given series of F/FAs. Also, a relatively small number of additional vehicles could be acquired to serve as shared backups for the testing of more than one F/FA.

A previous technical communication [1] discussed in detail the possibility of short-term and long-term carryover effects due to test vehicles/engines being used for multiple F/FAs. It also described the restrictions and procedural safeguards which could be adopted to minimize potential carryover problems. Based on that earlier discussion, EPA believes it is now appropriate to ease some of the restrictions on test vehicle use in some circumstances.

Under this revision, the requirement that only new vehicles be used in the test program (specified in § 79.57(a)(1)) has been retained, since it would not be possible to know how, and with what range of F/FA products, a vehicle had been operated in general use. However, it is now acceptable for a single test vehicle or engine to be used sequentially by different F/FA manufacturers for tests on different F/FAs, assuming that adequate documentation is furnished to demonstrate that the test vehicle/engine had not been used for purposes other than testing under this program and that such previous testing was restricted to F/FA types (see below) for which such test vehicle sharing was allowed. The responsibility for assuring the adequacy of such documentation falls to the fuel manufacturer who secondarily acquires the test vehicle.

As discussed in the previously-cited technical memorandum, concerns about possible long-term carryover effects arise primarily in regard to "atypical"

[1] 1. Memo to Docket A–90–07 from James D. Greaves, "A Preconditioning Cycle for Potential Use in the Fuels and Fuel Additives Registration Program," 1992 (Docket Item II–B–8).

elements. Consistent with that discussion, EPA believes that the current prohibition against using test vehicles/engines for more than one F/FA should be retained in the case of atypical F/FAs. However, in the case of F/FAs which belong to the same fuel family (as defined in § 79.56(e)(1)) and which contain no elements other than carbon, hydrogen, oxygen, nitrogen, and sulfur, EPA believes that long-term carryover effects are of minimal concern, and thus believes that it is acceptable to permit test vehicles to be used for more than one such F/FA. Thus, for example, a given test vehicle/engine could be used in testing base gasoline and one or more nonbaseline gasoline formulations. A vehicle that had been used for baseline and/or nonbaseline gasoline testing may be used in testing one a typical F/FA formulation, but may not subsequently be used for additional baseline/nonbaseline F/FA testing nor for testing of other atypical F/FAs.

To prevent short-term carryover effects, a preconditioning procedure is required to "flush out" the remnants of a previously tested F/FA and its emissions from a vehicle's fuel system, engine, exhaust system, and emission control system, before that vehicle is used in the testing of another F/FA. A suitable "intermediate preconditioning cycle" was described in the technical memorandum cited previously, and EPA has adopted this cycle, to prevent short-term carryover effects between tested F/FAs. Section 79.52(b)(2) is revised accordingly.

IV. Mixing Chamber Quality Assurance

The method specified in the F/FA program regulations for generating combustion emissions to be used in biological testing (§ 79.57(e)(2)) requires a mixing chamber or other apparatus to smooth out the variability in emission concentrations related to transient-cycle operations. As a quality assurance mechanism, § 79.57(e)(2)(iii)(C) states that this apparatus "must function such that the average concentration of total hydrocarbons leaving the apparatus shall be within 10 percent of the average concentration of hydrocarbons entering the chamber." EPA has noted that this language is inconsistent with § 79.57(e)(2)(iv)(C), which allows intentional dilution of the exhaust stream to occur "in the mixing chamber (and/or after leaving the chamber) to achieve the desired biological exposure concentrations."

To correct this inconsistency, the language in § 79.57(e)(2)(iii)(C) is changed to account for intentional exhaust dilution. Specifically, the following phrase has been added to the end of the provision cited above: "* * *, taking into account any further intentional dilution occurring in the apparatus pursuant to paragraph (e)(2)(iv)(C) of this section."

V. Exposure Interruptions

Section 79.57(e)(2)(vii) of the regulations specifies how long biological exposures may be interrupted without voiding a test-in-progress. EPA has received feedback from the regulated industry that the language in this section is confusing and that, furthermore, it is inconsistent with customary laboratory practices. EPA agrees with this criticism and has revised the cited section, substituting new exposure time requirements.

Specifically, EPA has incorporated into the regulations the following minimum requirements: (1) A daily exposure must be at least 6 hours plus the time necessary to build the chamber atmosphere to 90 percent of the target exposure atmosphere; (2) A day in which the minimum exposure time has not been achieved does not count as an exposure day; (3) Exposures must be conducted at least 4 days per week; (4) No more than two non-exposure days may occur consecutively during the exposure period, including weekends and days on which the minimum exposure time has not been met.

These exposure rules purposely do not make allowance for Federal holidays. EPA believes that additional "down" days for holidays could impact the results of the 90-day test periods required under Tier 2, and could interfere with EPA's ability to compare the results with other F/FAs tested during cycles in which holidays did not occur. Furthermore, if a particular health effects test guideline contains exposure requirements that differ from these general rules, then the specific requirements would take precedence. An example is the Fertility and Teratology assessment at § 79.63(c)(1), which requires exposures to pregnant animal subjects each day during the first 15 days of gestation.

Under this change, biological tests which did not achieve exposures consistent with the above rules would be considered void. The same rules would be applied to both evaporative emission and exhaust emission tests. See the revised language at §§ 79.57(f)(3), 79.57(e)(2)(vii) and 79.61(d)(5). A new § 79.63(e)(4)(iii) has been added to emphasize the special exposure requirements of § 79.63(c)(1).

VI. Units for Reporting Emissions Data

Section 79.52(b)(1)(iv) specifies that manufacturers report emissions data in units of grams per mile and weight percent total hydrocarbons. These units are typically used to report emissions data from light-duty vehicles operating on chassis dynamometers, but may be inappropriate for reporting emissions data from other engine/vehicle classes operating on engine dynamometers. As such, the wording of paragraph 79.52(b)(1)(iv) has been changed to specify that F/FA manufacturers should use brake-specific emission values in units of grams per brake-horsepower/hour (gm/BHP-HR) where these units are appropriate to the emissions test configuration and the vehicle/engine being tested.

If brake-specific emissions data are reported, then corresponding changes are needed at several other points in the regulations. Section 79.52(b)(2)(iii)(D) specified that the concentration of individual polyaromatic hydrocarbons (PAHs) and nitrated-polyaromatic hydrocarbons (NPAHs) identified in Tier 1 emissions analyses shall be reported only in units of microgram (μg) per mile, with 0.001 μg per mile as the minimum threshold for identifying and reporting on a particular PAH or NPAH compound. Similarly, § 79.52(b)(2)(iii)(E) specified that the concentration of each polychlorinated dibenzodioxin/polychlorinated dibenzofuran (PCDD/PCDF) identified in the Tier 1 emissions stream shall be reported in units of picograms (pg) per mile, with 0.5 pg per mile or more as the minimum threshold for identifying and reporting on a particular PCDD/PCDF compound.

These sections have been revised to allow reporting of PAH, NPAH, and PCDD/PCDF emissions data in units of grams per BHP-HR, where appropriate. The counterpart to the g/mile reporting threshold for PAH and NPAH compounds, expressed in terms of brake-specific emissions, would be 0.5 nanograms per BHP-HR or more. Likewise, the counterpart to the g/mile reporting threshold for PCDD/PCDF compounds would be 0.3 pg per BHP-HR or more. These counterpart values were derived by applying fleet average conversion factors for converting grams per mile to grams per BHP-HR, specified in EPA Technical Report EPA–AA–SDSB–89–1.

For similar reasons, §§ 79.68 (f)(1) and (f)(5)(vi) of the Salmonella typhimurium reverse mutation assay guidelines have been modified to permit data from this assay to be presented in units of either revertants per kilometer (mile) or revertants per BHP–HR, whichever is appropriate to the case at hand.

VII. Oxygenate Purity

Section 79.51(i) specifies that a fuel manufacturer who reports the potential use of more than one oxygenating additive in his non-baseline fuel is responsible for testing (or participating in group testing) of a separate fuel formulation for each such oxygenating additive. This provision has caused some concern that the occurrence in an oxygenate additive of unintended oxygenate byproducts of the manufacturing process could multiply the testing responsibilities of a fuel manufacturer. For example, concern has been expressed that the occurrence of a small amount of tertiary-amyl-ethyl ether (TAEE) as an unintended byproduct of ethyl-tertiary-butyl ether (ETBE) production will affect the grouping of an ETBE additive and will cause a fuel manufacturer who blends ETBE into his fuel to be responsible for testing TAEE as well as ETBE (see docket item VI–D–10). This was not EPA's intention in promulgating this provision. Section 79.51(i)(4) has been revised to state that small amounts of unintended oxygenate compounds occurring as byproducts of the manufacturing process of an oxygenating additive do not affect the grouping of the affected F/FAs nor the testing responsibilities of their manufacturers.

E. Minor Syntax Changes and Clarifications

Minor changes to the regulations are also needed to correct some specific syntax errors. The phrase "Within May 27, 1997," occurring at the beginning of both §§ 79.51(c)(1)(ii) (A) and (B), has been changed to "No later than May 27, 1997". Similarly, the phrase "within May 26, 2000," occurring within § 79.51(c)(1)(ii)(B), has been changed to "by May 26, 2000." The language at the beginning of § 79.51(e)(1), which read, "A testing facility, emissions analysis or health and/or welfare effects, shall permit * * *" has been changed to: "A testing facility, whether engaged in emissions analysis or health and/or welfare effects testing under these regulations, shall permit * * *" Some of the wording in §§ 79.57(e) (2)(i), (2)(ii) (2)(ii)(B), (3)(i), and (3)(i)(A) has been changed to clarify the driving schedules to be used when operating the vehicle or engine to generate combustion emissions for biological testing. The wording in §§ 79.51(h), (h)(1)(ii), and (h)(1)(ii) (A) and (B) dealing with additives belonging to more than one fuel family, has been revised to make this provision easier to understand, without changing the substance of the requirements.

VIII. Background Concentrations

Section 79.52(b)(l)(iii) requires that the ambient/dilution air to the engine generating emissions for characterization be analyzed for levels of background chemical species present at the time of emission sampling (for both combustion and evaporative emissions). These background chemical species concentrations are to be reported with emissions speciation data. This information is necessary so that it can be subtracted from the measured combustion and evaporative concentrations in order to determine the contribution for the F/FA. Section 79.52(b)(l)(iii) is revised to clarify this and require that only the corrected values be reported.

IX. Repetitive Driving Schedules

Section 79.57(e)(l)(I) requires the Light-Duty Urban Dynamometer Driving Schedule (UDDS) or the Heavy Duty Engine Dynamometer Schedule (EDS) as per 40 CFR part 86. Both of these driving schedules require cold starts at the beginning of the cycle, and they include extended engine-off times (10 minutes between bags 2 and 3 for light duty and 20 minutes between cold and hot cycles for heavy duty). While the inclusion of cold starts and extended engine-off times are appropriate for the certification of new vehicles and engines, these two requirements pose significant impracticalities from the standpoint of generating combustion emissions for animal exposures.

First, if the UDDS were repeated as per the new vehicle certification procedure, an eight hour animal exposure would require 24 engines sequenced for a cold start every 20 minutes. Second, the engine-off time requirements from the certification procedure typically involve extended periods of zero emissions. If these were incorporated into the Tier 2 biological testing, the later requirements for a "settling chamber" which will dampen out transients to the point that exposure concentrations are held constant within ±10%, would result in the need for a huge settling chamber.

Thus it is appropriate to allow the engine used for animal exposures to be operated over repeated "hot" driving cycles. This would entail repeated Bags 2 and 3 of the UDDS for light-duty vehicles and back-to-back repeats of the heavy-duty transient cycle for heavy-duty engines. Both of these should be run without extended idles or engine-off periods.

Repeated operation of the engine over the hot portions (bags 2 and 3) of the FTP will avoid the extended engine-off periods which do not contribute anything to animal exposure. This would minimize the transients in the species concentrations, and reduce the need for a large settling chamber, without changing the nature of the species present for the animal exposure. A new § 79.57(e)(1)(i)(C) has been added to reflect this.

X. Exposure Concentration

Section 79.57(e)(2)(vi)(B) requires that the mean exposure concentration in the inhalation chamber be within 10 percent of the target concentration on 90 percent or more of the days. This implies that target concentrations must be established for CO, CO_2, NO_X, SO_X, and total HC, and none can vary by more than 10% of the targets on 90% or more of the exposure days. Given the fundamentals of engine combustion and the transient nature of the driving cycles, it is impossible to maintain all combustion emission products at a constant level all of the time. The focus should be on the pollutants which are limiting for the animals in terms of exposure, which is CO for gasoline and NO_X for diesel. The engine operator will only be able to vary the exhaust dilution ratio, and thus control is assured for only one pollutant (CO or NO_X) at a time. Section 79.57(e)(2)(vi)(B) has been revised accordingly.

XI. Dilution System

Section 79.57(e)(2)(I) states that the biological tests are to be performed "* * * using emissions generated from the test vehicle or engine operated in general accordance with the FTP procedures cited in this section." Later in this section (at § 79.57(e)(2)(iii)), the regulations state that "An apparatues to integrate the large concentration swings typical of transient-cycle exhaust is to be used between the FTP-Constant Volume Sampler (CVS) source of emissions and the exposure chamber containing the animal test cages." These statements imply that a CVS is required to be used as a first stage of dilution in the delivery of combustion emissions for animal exposure. However, we have received a comment that the dilution needed for gasoline blends and for diesel fuels will be more than can be accomplished with a CVS. Therefore, the test laboratory should not be required to use a CVS as a first stage of dilution. In fact, it may be most practical to use a constant dilution (rather than volume) sampler to minimize transient concentrations for the animal exposures. Section

§ 79.57(e)(2)(iii) has been revised to allow the use of any dilution system design that achieves the necessary concentration of CO or NO_x (whichever is limiting) and reduces transient concentration exposure.

XII. Collection of Particulates and Semi-volatiles

Section 79.57(e)(1)(ii) states that emissions of particulates and semi-volatiles are to be collected over triplicate FTP tests for light-duty vehicles and analyzed as part of the requirements for the characterization of combustion emissions. However, the regulatory language in § 79.57(e)(1)(iii)(A) further states that "If the mass of particulate emissions or semi-volatile emissions obtained during one driving cycle is not sufficient for characterization, then the driving cycle may be performed again and the extracted fractions combined prior to chemical analysis." The number of driving cycles that "may be performed" is left unclear and potentially conflicts with the triplicate FTP requirements. We have received a comment that the available literature on gasoline blends suggests that the amount of particulate and semi-volatile emissions collected from one FTP test on a light-duty vehicle is extremely minute, if not less than the detection limits afforded by measurement and analytical procedures currently in use. Thus § 79.57(e)(1)(iii)(A) has been revised to clarify that no more than the three FTP tests are required to be performed for the collection of particulate and semi-volatile emissions. And, the test laboratory should focus on the characterization of the limit detection for particulates and semi-volatile emissions.

XIII. Environmental and Economic Impacts

The environmental impacts of today's action are minimal, as discussed above. Additionally, economic impacts are beneficial to affected manufacturers due to the additional flexibility afforded in today's notice. Minimal anti-competitive effects are expected. A regulatory support document which presents EPA's analysis of the cost impacts of the May 1994 rule is available in Public Docket A–90–07 located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M St. S.W., Washington, D.C. 20460.

XIV. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. This rule will reduce regulatory burdens on small businesses by reducing or eliminating the reporting and testing requirements for many small businesses. EPA has determined that this rule will not have a significant adverse economic impact on a substantial number of small businesses.

XV. Administrative Designation

Pursuant to Executive Order 12866 (58 FR 51735 [October 4, 1993]), the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the executive order. The order defines "significant regulatory actions as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this direct final rule is not a "significant regulatory action". The regulatory revisions in this notice will reduce testing the requirements and costs.

XVI. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and implementing regulations, 5 CFR Part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

XVII. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. The rule is not a "major rule" as defined by section 804(2) of the APA as amended.

XVIII. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate; or by the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The Agency has determined that the action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed action does not establish regulatory requirements that may significantly or uniquely affect small governments. In fact, this proposed action has the net effect of reducing the burden of the fuel and fuel additive registration program on regulated entities. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

XIX. Statutory Authority

The statutory authority for this direct final rule is provided by sections 205 (b) and (c), 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7524 (b) and (c), 7545, and 7601(a), Public Law 95–95).

List of Subjects in 40 CFR Part 79

Environmental protection, Fuel, Fuel additive, Gasoline, Motor vehicle pollution, Penalties.

Dated: June 27, 1996.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 79 of title 40 of the Code of Federal Regulations is amended as follows:

PART 79—[AMENDED]

1. The authority citation for part 79 continues to read as follows:

Authority: 42 U.S.C. 7414, 7524, 7545 and 7601.

2. Section 79.51 is amended by revising paragraphs (c)(1)(ii)(A), (c)(1)(ii)(B), the first sentence of paragraphs (e)(1), (h) introductory text, (h)(1)(ii); and by adding a new paragraph (i)(4) to read as follows:

§ 79.51 General requirements and provisions.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(A) No later than May 27, 1997, all applicable Tier 1 and Tier 2 requirements must be submitted to EPA, pursuant to §§ 79.52, 79.53, and 79.59; or

(B) No later than May 27, 1997, all applicable Tier 1 requirements (pursuant to §§ 79.52 and 79.59), plus evidence of a contract with a qualified laboratory (or other suitable arrangement) for completion of all applicable Tier 2 requirements, must be submitted to EPA. For this purpose, a qualified laboratory is one which can demonstrate the capabilities and credentials specified in § 79.53(c)(1). In addition, by May 26, 2000, all applicable Tier 2 requirements (pursuant to §§ 79.53 and 79.59) must be submitted to EPA.

* * * * *

(e) *Inspection of a testing facility.* (1) A testing facility, whether engaged in emissions analysis or health and/or welfare effects testing under the regulations in this subpart, shall permit an authorized employee or duly designated representative of EPA, at reasonable times and in a reasonable manner, to inspect the facility and to inspect (and in the case of records also to copy) all records and specimens required to be maintained regarding studies to which this subpart applies. * * *

* * * * *

(h) *Special Requirements for Additives.* When an additive is the test subject, the following rules apply:

* * * * *

(1) * * *

(ii) Additives belonging to more than one fuel family.

(A) If an additive product is registered in two or more fuel families as of May 27, 1994, then the manufacturer of that additive is responsible for testing (or participating in group testing of) the respective additive/base fuel mixtures in compliance with the requirements of this subpart for each fuel family in which the manufacturer wishes to maintain a registration for its additive.

(B) If a manufacturer is seeking to register such additive in two or more fuel families then, for testing and registration purposes, the additive shall be considered to be a member of each fuel family in which the manufacturer is seeking registration. The manufacturer is responsible for testing (or participating in group testing of) the respective additive/base fuel mixture in compliance with the requirements of this subpart for each fuel family in which the manufacturer wishes to obtain a product registration for its additive.

* * * * *

(i) * * *

(4) The presence in a particular oxygenating additive of small amounts of other unintended oxygenate compounds as byproducts of the manufacturing process of the given oxygenating additive does not affect the grouping of that additive and does not create multiple testing responsibilities for manufacturers who blend that additive into fuel.

* * * * *

3. Section 79.52 is amended by revising paragraphs (b)(1)(iii) and (b)(1)(iv), (b)(2)(iii)(D) introductory text, and (b)(2)(iii)(E) introductory text, to read as follows:

§ 79.52 Tier 1.

* * * * *

(b) * * *

(1) * * *

(iii) Measurement of background emissions: It is required that ambient/dilution air be analyzed for levels of background chemical species present at the time of emissions sampling (for both combustion and evaporative emissions) and that sample values be corrected by substracting the concentrations contributed by the ambient/dilution air. Background chemical species measurement/analysis during the FTP is specified in §§ 86.109–94(c)(5) and 86.135–94 of this chapter.

(iv) Concentrations of emission products shall be reported either in units of grams per mile (g/mi) or grams per brake-horsepower/hour (g/bhp-hr) (for chassis dynamometer and engine dynamometer test configurations, respectively), as well as in units of weight percent of measured total hydrocarbons.

* * * * *

(2) * * *

(iii) * * *

(D) The analytical method used to measure species of PAHs and NPAHs should be capable of detecting at least 1 ppm (equivalent to 0.001 microgram (μg) of compound per milligram of organic extract) of these compounds in the extractable organic matter. The concentration of each individual PAH or NPAH compound identified shall be reported in units of microgram per mile or nanograms per brake-horsepower/hour (for chassis dynamometer and engine dynamometer test configurations, respectively). Each compound which is present at 0.001 μg per mile (0.5 nanograms per brake-horsepower/hour) or more must be identified, measured, and reported. The following individual species shall be measured:

* * * * *

(E) The analytical method used to measure species and classes of PCDD/PCDFs should be capable of detecting at least 1 part per trillion (ppt) (equivalent to 0.001 picogram (pg) of compound per milligram of organic extract) of these compounds in the extractable organic matter. The concentration of each individual PCDD/PCDF compound identified shall be reported in units of picograms (pg) per mile or picograms per brake-horsepower/hour (for chassis dynamometer and engine dynamometer test configurations, respectively). Each compound which is present at 0.5 pg/mile (0.3 pg/bhp-hr) or more must be identified, measured, and reported.

* * * * *

4. Section 79.57 is amended by adding paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iii) and (e)(1)(i)(C); and by revising paragraphs (e)(1)(iii)(A), (e)(2)(i), (e)(2)(ii) introductory text, (e)(2)(ii)(B), (e)(2)(iii) introductory text, (e)(2)(iii)(C), (e)(2)(vi)(B), (e)(2)(vii), (e)(3)(i)(A), and (f)(3); and by revising the word "cycle" to read "schedule" in paragraph (e)(3)(i) introductory text; to read as follows:

§ 79.57 Emission generation.

* * * * *

(b) * * *

(2) * * *

(i) A vehicle or engine may be used to generate emissions for the testing of more than one fuel or additive, provided that all such fuels and additives belong to the same fuel family pursuant to § 79.56(e)(i), and that, once a vehicle or engine has been used to generate emissions for an atypical fuel or additive (pursuant to § 79.56(e)(2)(iii)), it shall not be used in the testing of any other fuel or additive. Paragraphs (a) (2) and (3) of this section shall apply only to the first fuel or additive tested.

(ii) Prior to being used to generate emissions for testing an additional fuel or additive, a vehicle or engine which has previously been used for testing a different fuel or additive shall undergo an effective intermediate preconditioning cycle to remove the previously used fuel and its emissions from the vehicle's fuel and exhaust systems and from the combustion emission and evaporative emission control systems, if any.

(iii) Such preconditioning shall include, at a minimum, the following steps:

(A) The canister (if any) shall be removed from the vehicle and purged with 300 °F nitrogen at 20 liters per minute until the incremental weight loss of the canister is less than 1 gram in 30 minutes. This typically takes 3–4 hours and removes 100 to 120 grams of adsorbed gasoline vapors.

(B) The fuel tank shall be drained and filled to capacity with the new test fuel or additive/fuel mixture.

(C) The vehicle or engine shall be operated until at least 95% of the fuel tank capacity is consumed.

(D) The purged canister shall be returned to the vehicle.

(E) The fuel tank shall be drained and filled to 40% capacity with test fuel.

(F) Two-hour fuel tank heat builds from 72–120 °F shall be performed repeatedly as necessary to achieve canister breakthrough. The fuel tank must be drained and filled prior to each heat build.

* * * * *

(e) * * *

(1) * * *

(i) * * *

(C) For Tier 2 testing, the engines shall operate on repeated bags 2 and 3 of the UDDS or back to back repeats of the heavy-duty transient cycle of the EDS.

* * * * *

(iii) * * *

(A) In the case of combustion emissions generated from light-duty vehicles/engines, the samples consist of three bags of vapor emissions (one from each segment of the light-duty exhaust emission cycle) plus one sample of particulate-phase emissions and one sample of semi-volatile-phase emissions (collected over all segments of the exhaust emission cycle). If the mass of particulate emissions or semi-volatile emissions obtained during one driving cycle is not sufficient for characterization, up to three driving cycles may be performed and the extracted fractions combined prior to chemical analysis. Particulate-phase emissions shall not be combined with semi-volatile-phase emissions. The test laboratory should focus on the characterization of the limit of detection for particulates and semi-volatile emissions.

* * * * *

(2) * * * *Generating whole combustion emissions for biological testing.* (i) Biological tests requiring whole combustion emissions shall be conducted using emissions generated from the test vehicle or engine operated in accordance with general FTP requirements.

(ii) Light-duty test vehicles/engines shall be repeatedly operated over the Urban Dynamometer Driving Schedule (UDDS) (or equivalent engine dynamometer trace, per paragraph (e)(1)(i)(A) of this section) and heavy-duty test engines shall be repeatedly operated over the Engine Dynamometer Schedule (EDS) (see 40 CFR part 86, appendix I).

* * * * *

(B) The UDDS or EDS shall be repeated as many times as required for the biological test session.

* * * * *

(iii) An apparatus to integrate the large concentration swings typical of transient-cycle exhaust is to be used between the source of emissions and the exposure chamber containing the animal test cages(s). The purpose of such apparatus is to decrease the variability of the biological exposure atmosphere and achieve the necessary concentration of CO or NO_X, whichever is limiting.

* * * * *

(C) The mixing chamber (or any alternative emission moderation apparatus) must function such that the average concentration of total hydrocarbons leaving the apparatus shall be within 10 percent of the average concentration of hydrocarbons entering the chamber, taking into account any further intentional dilution occurring in the apparatus pursuant to paragraph (e)(2)(iv)(C) of this section.

* * * * *

(vi) * * *

(B) These procedures include requirements that the mean exposure concentration in the inhalation test chamber shall be within 10 percent of the target concentration for the single species being controlled (establish in the development phase of testing) on 90 percent or more of exposure days and that daily monitoring of CO, CO_2, NO_X, SO_X, and total hydrocarbons in the exposure chamber shall be required. Analysis of the particle size distribution shall also be performed to established the stability and consistency of particle size distribution in the test exposure.

* * * * *

(vii) To allow for customary laboratory scheduling and unforeseen problems affecting the combustion emission generation or dilution equipment, biological exposures may be interrupted on limited occasions, as specified in § 79.61(d)(5). Interruptions exceeding these limitations shall cause the affected test(s) to be void. Testers shall be aware of concerns for backup vehicles/engines cited in paragraph (e)(7)(ii) of this section.

* * * * *

(3) * * *

(i) * * *

* * * * *

(A) Particulate emissions shall be collected on particulate filters and extracted from the collection equipment for use in biological tests. The number of repetitions of the applicable driving schedule required to collect sufficient quantities of the particulate emissions will vary, depending on the characteristics of the engine, the test fuel, and the requirements of the biological test protocol. The particulate sample may be collected on one or more filters, as necessary.

* * * * *

(f) * * *

(3) For biological testing, vapor shall be withdrawn from the EEG at a constant rate, diluted with air as required for the particular study, and conducted immediately to the biological testing chamber(s) in a manner similar to the method used in § 79.57(e), excluding the mixing chamber therein. The rate of emission generation shall be high enough to supply the biological exposure chamber with sufficient emissions to allow for a minimum of fifteen air changes per exposure chamber per hour. To allow for customary laboratory scheduling and for unforeseen problems with the evaporative emission generation or dilution equipment, biological exposures may be interrupted on limited occasions, as specified in § 79.61(d)(5). Interruptions exceeding these limitations shall cause the affected test(s) to be void.

* * * * *

5. Section 79.61 is amended by revising paragraph (d)(5) to read as follows:

§ 79.61 Vehicle emissions inhalation exposure guideline.

* * * * *

(d) * * *

* * * * *

(5) *Exposure Conditions.* The preferred exposure regimen consists of exposing the study animals to the test atmosphere on a repeated basis for at least 6 hours per day on a 7-day per week basis for the exposure period. However, unless precluded by the requirements of a particular test protocol, exposures based on a nominal 5-day-per-week regimen will be considered acceptable, subject to the following rules:

(i) Each daily exposure during the exposure period must be at least 6 hours plus the time necessary to build the chamber atmosphere to 90 percent of the target exposure atmosphere. A day in which this minimum exposure time has not been achieved does not count as an exposure day.

(ii) Nominally, animal exposures should be conducted for six hours per day for five days per week. In no case should the exposures occur less than four days per week for a total of 65±2 exposure days.

(iii) No more than two non-exposure days may occur consecutively during the exposure period, including days on which the minimum exposure time has not been met.

* * * * *

6. Section 79.63 is amended by adding a new paragraph (e)(4)(iii) to read as follows:

§ 79.63 Fertility assessment/teratology.

* * * * *

(e) * * *

(4) * * *

(iii) Pregnant females shall be exposed to the test atmosphere on each and every day between (and including) the first and fifteenth day of gestation.

* * * * *

7. Section 79.68 is amended by revising paragraphs (f)(1) and (f)(5)(vi) to read as follows:

§ 79.68 Salmonella typhimurium reverse mutation assay.

* * * * *

(f) *Data and report*—(1) *Treatment of results.* Data shall be presented as number of revertant colonies per plate, revertants per kilogram (or liter) of fuel, and as revertants per kilometer (or mile, or brake-horsepower/hour, as appropriate) for each replicate and dose. These same measures shall be recorded on both the negative and positive control plates. The mean number of revertant colonies per plate, revertants per kilogram (or liter) of fuel, and revertants per kilometer (or mile, or brake-horsepower/hour), as well as individual plate counts and standard deviations shall be presented for the test substance, positive control, and negative control plates.

* * * * *

(5) * * *

(vi) Individual plate counts, mean number of revertant colonies per plate, number of revertants per kilometer (or mile, or brake-horsepower/hour), and standard deviation; and

* * * * *

[FR Doc. 96–17549 Filed 7–10–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067–AC47

National Flood Insurance Program; Allocated Loss Adjustment Expense

AGENCY: Federal Insurance Administration (FEMA).

ACTION: Technical amendment.

SUMMARY: This document amends the interim final rule published on Wednesday, May 15, 1996, 61 FR 24462–24464, FR Doc. 96–12019, which revised the allocated loss adjustment expense fee schedule of the National Flood Insurance Program (NFIP) Write Your Own (WYO) Program under the Financial Assistance/Subsidy Arrangement (the Arrangement). This technical amendment revises the fee schedule of the interim final rule, restoring the previous basis for determining the amount of the flood loss and the resulting fees.

EFFECTIVE DATE: July 11, 1996.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Jr., Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, (202) 646–3422.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1996, the Federal Insurance Administration (FIA) published an interim final rule (FR Doc. 96–12019) that modified the allocated loss adjustment fee schedule of the National Flood Insurance Program (NFIP) Write Your Own Program under the Financial Assistance/Subsidy Arrangement (the Arrangement). That interim final rule added new loss ranges and revised the fees for adjusting claims in the higher ranges under the NFIP. The revised fee schedule also contained footnotes establishing a new basis (replacement cost, not to exceed policy limits, in all cases) for determining the amount of loss.

Before the May 15, 1996 changes, the amount of loss reported and used for determining the allocated loss adjustment fee was either on an actual cash value or a replacement cost basis, depending on how the loss was adjusted. Standard deductibles were applied in all cases. The May 15, 1996 changes required WYO companies to report losses, regardless of how they were adjusted, on a replacement cost basis. This requirement, however, is inconsistent with current systems reporting and recording capabilities.

Need To Correct Publication

A number of WYO companies reported that they could not meet the reporting requirement of the May 15, 1996 interim final rule in a timely manner. In order to meet the reporting requirement, WYO companies need additional time to reprogram their data processing systems. FEMA agrees, and by this amendment reverts to the methods for calculating the amount of loss in effect before the May 15, 1996 interim final rule. The new loss ranges and revised fees for the higher ranges remain the same as in the May 15, 1996 rule.

The basis for determining fees contained in the May 15, 1996 interim final rule will be honored from May 15, 1996 until today, the effective date of this revised interim final rule. FIA will provide separate guidance to WYO companies on how to handle financial reporting from May 15, 1996 until today.

Correction of Publication

Accordingly, Exhibit A, Fee Schedule, of the publication of May 15, 1996, at 61 FR 24463–24464, (FR Doc. 96–12019) is corrected to read as follows:

EXHIBIT A.—FEE SCHEDULE

Range (by covered loss)	Fee
Erroneous Assignment.	$40.00
Closed Without Payment.	125.00
Minimum for Upton-Jones Claims.	800.00
$0.01 to $600.00	150.00
$600.01 to $1,000.00	175.00
$1,000.01 to $2,000.00.	225.00
$2,000.01 to $3,500.00.	275.00
$3,500.01 to $5,000.00.	350.00
$5,000.01 to $7,000.00.	425.00
$7,000.01 to $10,000.00.	500.00
$10,000.01 to $15,000.00.	550.00
$15,000.01 to $25,000.00.	600.00
$25,000.01 to $35,000.00.	575.00
$35,000.01 to $50,000.00.	750.00
$50,000.01 to $100,000.00.	3.0%
$100,000.01 to $250,000.00.	2.3% but not less than $3,000.
$250,000.01 and up	2.1% but not less than $5,750.

Note: Allocated fee schedule entry value is the covered loss under the policy based on the standard deductibles ($500 and $500) and limited to the amount of insurance purchased.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood insurance")

Dated: June 2, 1996.

Harvey G. Ryland,

Deputy Director.

[FR Doc. 96–17668 Filed 7–10–96; 8:45 am]

BILLING CODE 6718–05–P

44 CFR Part 64

[Docket No. FEMA–7644]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Acting Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region II				
New Jersey: Flemington, borough of, Hunterdon County.	340520	September 25, 1975, Emerg.; May 15, 1980, Reg.; July 16, 1996, Susp.	July 16, 1996	July 16, 1996.
Region III				
Pennsylvania: Smithfield, township of, Huntingdon County.	420494	March 9, 1973, Emerg.; March 15, 1977, Reg.; July 16, 1996, Susp.	.....do	Do.
Virginia: Norfolk, independent city	510104	August 15, 1973, Emerg.; August 1, 1979, Reg.; July 16, 1996, Susp.	.....do	Do.
Region V				
Michigan: Cadillac, city of, Wexford County.	260247	June 2, 1975, Emerg.; March 18, 1996, Reg.; July 16, 1996, Susp.	March 18, 1996	Do.
Region VI				
Arkansas: Pulaski County, unincorporated areas.	050179	March 6, 1979, Emerg.; July 16, 1981, Reg.; July 16, 1996, Susp.	July 16, 1996	Do.
New Mexico:				
Bernalillo, town of, Sandoval County	350056	January 17, 1975, Emerg.; January 6, 1983, Reg.; July 16, 1996, Susp.	.....do	Do.
Corrales, village of, Sandoval County.	350094	October 14, 1975, Emerg.; January 6, 1983, Reg.; July 16, 1996, Susp.	.....do	Do.
Jemez Springs, village of, Sandoval County.	350096	April 21, 1976, Emerg.; January 3, 1986, Reg.; July 16, 1996, Susp.	.....do	Do.
Rio Rancho, city of, Sandoval County.	350146	November 14, 1990, Emerg.; April 15, 1992, Reg.; July 16, 1996, Susp.	.....do	Do.
Sandoval County, unincorporated areas.	350055	July 16, 1996, Reg.; July 16, 1996, Susp.	.....do	Do.
Truth or Consequences, city of, Sierra County.	350073	August 27, 1974, Emerg.; January 3, 1986, Reg.; July 16, 1996, Susp.	.....do	Do.
Sierra County, unincorporated areas	350071	March 17, 1976, Emerg.; June 3, 1986, Reg.; July 16, 1996, Susp.	.....do	Do.
Oklahoma:				
Chandler, city of, Lincoln County	400237	March 18, 1975, Emerg.; November 4, 1987, Reg.; July 16, 1996, Susp.	.....do	Do.
Lincoln County, unincorporated areas.	400457	September 28, 1990, Emerg.; February 3, 1993, Reg.; July 16, 1996, Susp.	.....do	Do.
Region VII				
Iowa:				
Clayton County, unincorporated areas.	190858	May 3, 1976, Emerg.; May 1, 1990, Reg.; July 16, 1996, Susp.	.....do	Do.
Elkader, city of, Clayton County	190073	October 3, 1974, Emerg.; September 29, 1978, Reg.; July 16, 1996, Susp.	.....do	Do.
Region VIII				
Utah: Wendover, town of, Tooele County	490222	July 25, 1975, Emerg.; August 19, 1980, Reg.; July 16, 1996, Susp.	.....do	Do.

Code for reading third column: Emerg.- Emergency; Reg.- Regular; Rein.- Reinstatement; Susp.-Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: July 2, 1996.

Richard W. Krimm,

Acting Associate Director, Mitigation Directorate.

[FR Doc. 96–17667 Filed 7–10–96; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 95–155]

Toll Free Service Access Codes

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: This final rule clarifies the Report and Order adopted by the Common Carrier Bureau in January 1996, regarding the reservation of 888 numbers corresponding to 800 numbers in which subscribers have asserted a commercial interest. In this decision the Commission provides procedures to allow the release, into the general pool of toll free numbers, any 888 number currently in the "unavailable" pool for which the 800 subscriber originally requesting special treatment no longer wishes to assert an interest. Database Service Management, Inc. ("DSMI") will make such release of 888 numbers only after collecting the appropriate authorizations from the Responsible Organization ("RespOrg") and the 800 number customer releasing its 888 number reservation. The release of these numbers will allow the new 888 service orders to be more efficiently filled and equitably allotted.

EFFECTIVE DATE: June 25, 1996.

FOR FURTHER INFORMATION CONTACT: Mary DeLuca, (202) 418–2334 Network Services Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: 1. This document is a synopsis of the Commission's letter order (CC Docket 95–155, adopted June 24, 1996, and released June 25, 1996). The letter clarifies provisions in the Bureau's Report and Order In the Matter of Toll Free Service Access Codes (CC Docket 95–155, adopted January 24, 1996, and released January 25, 1996, DA 96–69, 61 FR 7738, February 29, 1996). The file is available for inspection and copying during the weekday hours of 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M Street, NW., Washington, DC, or copies may be purchased from the Commission's duplicating contractor, ITS, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, phone (202) 857–3800.

2. Paperwork Reduction.

The Federal Communications Commission has submitted the foregoing information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3507. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10236, NEOB, Washington, D.C. 20503, (202) 395–0651. For further information, contact Dorothy Conway, Federal Communications Commission, (202) 418–0217.

3. Please note: The Commission has requested emergency review of this collection information request by July 18, 1996, under the provisions of 5 CFR Section 1320.13.

Title: Toll Free Service Access Codes—800/888 Number Release Procedures

OMB Control No.: None.

Action: New Collection.

Respondents: Business or other for-profit entities.

Estimated Annual Burden: 2,010 respondents; 1 hour per response; 2,010 hours total annual burden.

Needs and Uses: The Federal Communications Commission regulates the provision of interstate telecommunications services by common carriers, including common carrier paging systems, pursuant to Sections 1, 4, and 201–229 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–229. One of the common carrier-offered services is toll free service. This is a telephone service that allows charges for incoming calls to be paid by the called party (*i.e.*, the 800 subscriber), not the caller. Toll free service is used widely today for both business purposes and personal needs because it provides callers with a free and convenient means of contacting parties holding toll free numbers. In a January 1996, Report and Order, the Commission instructed DSMI to mark as "unavailable," in the toll free database, those 888 numbers which corresponding 800 number customers sought to reserve. However, the Commission did not intend to reserve any 888 number in which an 800 number customer later decided that it no longer wanted to assert an interest. Therefore, the Commission authorized DMSI to release such 888 numbers after collecting the appropriate information from the Responsible Organization or Toll Fee Service Provider and the 800 number customer releasing its 888 number reservation.

The public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, gathering the information and maintaining the data. There are approximately 2,010 respondents consisting of the 160 telephone service Responsible Organizations and the estimated 1,850 toll free subscribers that may seek to release their interest in 888 numbers. Therefore the estimated annual burden of this information collection requirement is 2,010 hours. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Communications Commission, Records Management Branch, Room 234, Paperwork Reduction Project, Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Ordering Clauses

Accordingly, *it is ordered* That, pursuant to authority contained in Sections 1, 4, 5, and 201–205 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 155, and 201–205 and § 0.201(d) of the Commission's rules, 47 CFR 2.201(d) DSMI shall follow the directive in this order.

It is *further ordered* That, DSMI shall immediately distribute this letter to all RespOrgs.

It is *further ordered* That this letter shall be effective upon release.

List of Subjects in 47 CFR Part 61

Communication common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–17602 Filed 7–10–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–54, Notice 3]

RIN 2127–AG25

Federal Motor Vehicle Safety Standards; Air Brake Systems; Long-Stroke Brake Chambers

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule, response to petitions for reconsideration.

SUMMARY: In response to petitions for reconsideration, this document amends the reservoir requirements in Standard No. 121, *Air Brake Systems*, for trucks, buses, and trailers equipped with air brakes. The agency believes that the amendments will improve the braking efficiency of such vehicles and reduce the number of brakes found to be out of adjustment during inspections. It will do this by removing a design restriction that tends to discourage the use of long-stroke brake chambers, a technology with potentially significant safety benefits.

DATES: *Effective Date:* The amendments become effective on September 9, 1996.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than August 26, 1996.

ADDRESSES: Petitions for reconsideration of this rule should refer to Docket 93–54; Notice 3 and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues: Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–366–5274).

For legal issues: Mr. Marvin L. Shaw, NCC–20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202) 366–2992.

SUPPLEMENTARY INFORMATION:

I. Background

Standard No. 121, *Air Brake Systems*, specifies performance requirements applicable to vehicles equipped with air brakes. The Standard also requires air-braked vehicles to be equipped with various types of equipment, including an air compressor and reservoirs. (See section S5.1) The reservoirs store energy, in the form of air at high pressure, that is used to apply a vehicle's brakes, Without such reservoirs, the vehicle's air compressor could not maintain adequate pressure during successive rapid brake applications.

On January 12, 1995, NHTSA issued a final rule amending the reservoir requirements in Standard No. 121 for trucks, buses, and trailers equipped with air brake systems. (60 FR 2892) Prior to that final rule, Standard No. 121 specified a minimum ratio between the volume of the service reservoirs and the volume of the brake chambers. Under the ratio for trucks, the combined volume of all the service and supply reservoirs had to be at least 12 times the combined volume of all the service brake chambers at the maximum travel of the piston. The 1995 final rule amended Standard No. 121 to allow the minimum required air capacity in the service reservoirs to be determined either by the above mentioned ratio (i.e., 12 times the combined volume) or by its "rated volume." The "rated volume" of each brake chamber is determined pursuant to a table of specified values according to the area of the brake diaphragm and the length of the stroke.

In issuing the 1995 final rule, NHTSA sought to encourage the use of brake chambers with longer strokes. Such brake chambers are commonly known as "long-stroke" chambers, in reference to the longer piston or pushrod travel that they incorporate. Reports [1] by NHTSA and the National Transportation Safety Board (NTSB) indicated that long stroke chambers help improve brake adjustment on heavy vehicles. However, the reports also noted that the previous reservoir ratio requirements would have necessitated much larger reservoirs when long-stroke chambers are used. Thus, while the previous requirements did not prohibit long-stroke chambers, the related requirements for reservoir size significantly discouraged their use.

In the 1995 final rule, NHTSA specified rated volumes of certain brake chambers in Table V "Brake Chamber Rated Volumes" that were larger than the rated volumes proposed in the NPRM. This was done to reflect the largest volumes of standard stroke air brake chambers that are currently available. The agency also modified Table V by specifying upper limits to the stroke lengths for the rated volumes that were listed. The agency believed that it was necessary to specify such limits to preclude manufacturers from extending stroke lengths beyond the point at which adequate air pressure reserves were available to bring a vehicle to a complete stop. The agency also modified Table V by limiting the situations in which a vehicle manufacturer may use the "rated volume" rather than the actual brake chamber volume when determining minimum reservoir volume. Specifically, the final rule specified that rated volume may only be used when the maximum strokes for long stroke chambers are no more than 20 percent longer than the nominal stroke for standard stroke chambers.

In the 1995 final rule, NHTSA stated that long-stroke chambers provide several benefits, including improved braking efficiency, a reduction in the number of brakes found to be out of adjustment during inspections, and a reduction in the incidence of dragging brakes. The agency further stated that these amendments removed a design restriction that tended to discourage the use of long stroke brake chambers, a technology that it believed could provide significant safety benefits.

II. Petitions for Reconsideration

NHTSA received several petitions for reconsideration that criticized the 1995 final rule, claiming that the rated volumes adopted by the agency would still impede the introduction of long stroke chambers. The petitioners included vehicle manufacturers (Mack Truck, Ford Motor Company, White/GMC-Volvo, Navistar International, and Paccar), brake manufacturers (Midland-Grau and MGM Brakes), the Heavy Duty Brake Manufacturers Council (HDBMC), and the American Trucking Associations (ATA). Midland-Grau, ATA, and Ford stated that the rated volumes for various types of brake chambers were smaller in the final rule than the proposal. As a result, these petitioners stated that long stroke chambers could only be used if vehicles were redesigned to be equipped with much larger reservoirs. As the following table indicates, the petitioners recommended new rated volumes that were less than those in the final rule. All the rated volumes are in terms of cubic inches.

Chamber type	NPRM	Final rule	Midland-Grau	MGM	ATA	HDBMC
Type 9	17	25	.....	25		
Type 12	23	30	.....	30		
Type 14	35	40	.....	40		
Type 16	40	50	46	46	40	46
Type 18	45	55	50	50	.....	50
Type 20	50	60	54	54	50	54
Type 24	61	70	70	70	67	
Type 30	84	95	89	89	84	90
Type 36	121	135	.....	135		

III. NHTSA's Determination

A. General Considerations

After reviewing the available information, NHTSA has decided to revise certain rated volumes in Table V, thereby removing design restrictions that had continued to discourage the use of long stroke brake chambers. Specifically, the agency has decided to reduce the rated volumes for Type 16 chambers from 50 cubic inches to 46 cubic inches, for Type 18 chambers from 55 cubic inches to 50 cubic inches, for Type 20 chambers from 60 cubic inches to 54 cubic inches, Type 24 chambers from 70 cubic inches to 67 cubic inches, and Type 30 chambers from 95 cubic inches to 89 cubic inches.

[1] *Automatic Slack Adjusters for Heavy Vehicle Brake Systems*, February 1991, DOT HS 807 724, and the National Transportation Safety Board *Heavy Vehicle Airbrake Performance*, 1992, PB92–917003/NTSB/SS–92/01

These reductions are consistent with the rated volumes requested by the brake chamber manufacturers. The agency believes that the rated volumes being specified will ensure that there is an adequate amount of air reserves to accommodate the widespread use of antilock brake systems (ABS), a technology that requires greater air supplies. The agency also has increased the stroke length for Type 24 chambers from 2.25/2.70 inches to 2.50/3.20 inches, given that manufacturers now only manufacture long stroke chambers of the larger size. The agency did not amend the rated volumes and stroke lengths for Type 9 chambers, Type 12 chambers, Type 14 chambers, and Type 36 chambers, because no petitioner requested that the requirements for these brake types be modified.

NHTSA has concluded that these modifications will encourage the use of long stroke chambers without adversely affecting safety. This determination is based on the following considerations. First, NHTSA has recently increased the minimum compressor cut-in requirement from 85 psi to 100 psi. (61 FR 6173, February 16, 1996) This change will result in the amount of reserved air increasing between 10 percent and 15 percent. In addition, the safety of long stroke chambers is confirmed by a study[2] by the agency's Vehicle Research Test Center (VRTC) that compared the effects of standard and long stroke brake chambers on brake application and release timing and on the amount of air used under normal braking situations. Measurements were made of the volumes of typical standard and long stroke chambers, the effects of brake actuation and release timing for combination vehicles, and the pressure drops for simulated on-road situations and for a test procedure to measure reservoir capacity. Vehicle tests involved driving situations that would be the most severe in terms of air consumption (i.e., a mountain descent, and stops with ABS cycling on a slippery surface with the brakes at their maximum adjustment level). In addition, VRTC simulated a compressor failure to portray "worst case" situations. Based on these tests, the agency concluded that "there was essentially no difference in the timing and air consumption for standard and long stroke chambers with the brakes fully adjusted."

The safety of long stroke brake chambers was further confirmed by data submitted by the Society of Automotive Engineers (SAE) Truck and Bus Brake System Subcommittee that is developing the performance requirements for a test procedure that will evaluate air reservoir capacities, SAE J2205. These data, obtained from several vehicle manufacturers and brake manufacturers, indicated no safety problem. Specifically, air consumption was tested on four different makes of ABS by stopping fully loaded five-axle tractor-trailer combinations on wet slippery surfaces with a peak friction coefficient (PFC) of 0.50. The development work which established the test parameters of SAE J2205 indicated that the highest air consumption occurs during stops on low coefficient of friction surfaces which typically have long stopping time durations. The antilock systems cycled from 10 to 13 seconds before the vehicles were stopped in these tests. This is substantially longer than would be experienced in the vast majority of braking events. At the end of the tests, sufficient air pressure remained in the systems to continue cycling of the ABS for at least another 7 seconds, which amounts to reserves ranging from 54 to 70 percent. In addition, vehicle manufacturers submitted data about how they specify total reservoir volume in relation to the size of their front and rear brake chambers used on at least 80 percent of the vehicles they manufacture.

Based on the manufacturers' data, NHTSA believes that the revisions to the rated volumes in Table V will allow approximately 95 percent of currently manufactured air-braked vehicles to use long stroke brake chambers, without having to increase the size of brake chamber reservoirs. As NHTSA stated in the final rule, long-stroke chambers provide important safety benefits including, improved braking efficiency, a reduction in the number of brakes found to be out of adjustment during inspections, and a reduction in the incidence of dragging brakes. The agency believes that specifying these slightly lower rated volumes will remove a design restriction that tended to discourage the use of long stroke brake chambers, a technology that can provide significant safety benefits. Given these safety benefits and no corresponding detriment to safety, NHTSA concludes that today's modifications to the rated volumes in Table V are appropriate.

B. Miscellaneous Considerations

ATA requested that the agency eliminate type 9, 12, 14, 18, and 36 brake chambers from Table V since they do not currently come in long stroke versions.

NHTSA has decided to retain the rated volumes for type 9, 12, 14, 18, and 36 brake chambers in Table V, even though brake manufacturers currently do not manufacture brake chambers of such sizes. The agency believes that retaining the option for having a rated volume for chambers of such sizes is appropriate since it allows manufacturers to decide to develop additional long stroke chambers without the necessity of seeking an amendment to Table V.

Rulemaking Analyses and Notices

Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866, "Regulatory Planning and Review" and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866. This action has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures. This rule does not affect the cost estimates made by the agency regarding the January 1995 final rule since it will not impose any new requirements on manufacturers. Instead, the rule will facilitate the introduction of a new brake design by removing a design restriction. Therefore, the agency believes that this rulemaking will not result in additional costs or cost savings. Accordingly, a full regulatory evaluation is not required for this rule.

C. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendments will not have a significant economic impact on a substantial number of small entities. Vehicle and brake manufacturers typically do not qualify as small entities. For the reasons noted above, the agency believes that this amendment will not have any cost impact on the industry. Small businesses, small organizations, and small governmental units which purchase motor vehicles will not be affected by the requirements. Accordingly, no regulatory flexibility analysis has been prepared.

D. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule will not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws will be affected.

E. National Environmental Policy Act

Finally, the agency has considered the environmental implications of this final rule in accordance with the National Environmental Policy Act of 1969 and determined that the rule will not significantly affect the human environment.

F. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.121 is amended by revising Table V which appears immediately after Figure 3.

§ 571.121 Standard No. 121, Air brake systems.

* * * * *

TABLE V.—BRAKE CHAMBER RATED VOLUMES

Brake chamber type (nominal area of piston or diaphragm in square inches)	Column 1 full stroke (inches)	Column 2 rated volume (cubic inches)
Type 9	1.75/2.10	25
Type 12	1.75/2.10	30
Type 14	2.25/2.70	40
Type 16	2.25/2.70	46
Type 18	2.25/2.70	50
Type 20	2.25/2.70	54
Type 24	2.50/3.20	57
Type 30	2.50/3.20	88
Type 36	3.00/3.60	135

Issued on: July 3, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–17581 Filed 7–10–96; 8:45 am]

BILLING CODE 4910–59–P

[2] Flick, Mark, "Tests to Evaluate Reservoir Volume Requirements for Standard and Long Stroke Chambers," VRTC–82–0255 (January 1996)

Proposed Rules

Federal Register
Vol. 61, No. 134
Thursday, July 11, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 92, 93, 94, 95, 96, and 98

[Docket No. 94–106–4]

RIN 0579–AA71

Importation of Animals and Animal Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: We are extending the comment period for our proposed rule that would amend the regulations regarding the importation of animals and animal products by establishing criteria for foreign "regions" based on risk class levels. We are also announcing the availability, through the World Wide Web and in our comment reading room, of information concerning public comments received on the proposed rule, transcripts of public hearings held on the proposed rule, and other documents that are part of the administrative record for the proposed rule.

DATES: Consideration will be given only to comments on the proposed rule received on or before September 16, 1996.

ADDRESSES: Comments may be submitted as paper copies or by electronic mail. If you submit paper copies, please send an original and three copies of your comments to Docket No. 94–106–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 94–106–1. We encourage the submission of copies by electronic mail, since this both facilitates our analysis of the comments and allows us to make the text of comments available to the public via the Internet. The e-mail address for comments on this proposed rule is 94–106–1@aphis.usda.gov. Please be sure to include your full name and organization in any comments you submit by e-mail. If your e-mail comment is a duplicate of a paper copy you have submitted, please state this in the first line of your e-mail message. Comments submitted by e-mail will be posted to the APHIS Regionalization Proposal Web Page within a few days after receipt. This Web page also contains copies of the proposed rule in several formats, lists of persons who have submitted comments, transcripts of public hearings held on the proposed rule, and other background information from the administrative record of the proposed rule. The Web page URL is http://www.aphis.usda.gov/PPD/region. Both paper and e-mail comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231, (301) 734–8590.

SUPPLEMENTARY INFORMATION: On April 18, 1996, we published in the **Federal Register** (61 FR 16978–17105, Docket No. 94–106–1), a proposal to amend the regulations in title 9 of the Code of Federal Regulations regarding the importation of animals and animal products. We proposed to establish criteria for foreign "regions" based on risk class levels that would apply to the importation of ruminants and swine and the products of these animals. We also proposed to allow, under certain conditions, the unloading and reloading at the port of arrival of meat and other animal products otherwise prohibited entry into the United States.

Comments on the proposed rule were required to be received on or before July 17, 1996. We have received four requests to extend the period during which comments will be accepted. These requests were received from an advisory committee to the Secretary of Agriculture, a livestock institute, a veterinary association, and an animal health association.

In response to these requests, we are extending the comment period on Docket No. 94–106–1 for an additional 60 days. We believe this action, along with the series of four public hearings that we have held regarding the proposal, will allow the organizations requesting extension of the comment period and all other interested persons adequate opportunity to prepare and submit comments.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 3rd day of July 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–17672 Filed 7–10–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ANM–018]

Proposed establishment of Class E airspace; Canon City, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposed rule would establish the Canon City, Colorado, Class E airspace to accommodate a new Global Positioning System (GPS) standard instrument approach procedure (SIAP) to the Fremont County Airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before August 30, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, ANM–530, Federal Aviation Administration, Docket No. 96–ANM–018, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James C. Frala, ANM–532.4, Federal Aviation Administration, Docket No. 96–ANM–018, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–ANM–018." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations Branch, ANM–530, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Canon City, Colorado, to accommodate a new GPS SIAP to the Fremont County Airport. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Canon City, CO

Fremont County Airport, Canon City, CO
(Lat. 38°25'47"N, long. 105°06'31"W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Fremont County Airport.

* * * * *

Issued in Seattle, Washington, on June 27, 1996.

Richard E. Prang,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–17675 Filed 7–10–96; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–37403; File No. S7–16–96; International Series—1001]

RIN 3235–AG81

Amendments to Beneficial Ownership Reporting Requirements

AGENCY: Securities and Exchange Commission.

ACTION: Reproposed rules.

SUMMARY: In accordance with a recent recommendation of the Report of the Task Force on Disclosure Simplification published March 5, 1996, the Securities and Exchange Commission ("Commission") today is publishing for comment a proposal to amend the rules relating to the reporting of beneficial ownership in publicly-held companies. Similar amendments were proposed in 1989 but were not acted upon by the Commission. These reproposals would make Schedule 13G available, in lieu of Schedule 13D, to all investors beneficially owning less than 20 percent of the outstanding class that have not acquired or held the securities for the purpose of and do not have the effect of changing or influencing the control of the issuer of the securities. The purposes of the reproposals are to improve the effectiveness of the beneficial ownership reporting scheme and to reduce the reporting obligations of passive investors.

DATES: Comments should be received on or before September 9, 1996.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. Comment letters should refer to File No. S7–16–96; this file number should be

included on the subject line if e-mail is used. All comments received will be available for public inspection and copying in the Commission's public reference room at the same address. Electronically submitted comments will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Dennis O. Garris, Special Counsel, Office of Mergers and Acquisitions, Division of Corporation Finance, Securities and Exchange Commission at (202) 942–2920, 450 Fifth Street N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is reproposing for comment amendments to Regulation 13D–G[1] and Schedules 13D and 13G.

I. Background and Overview

A. Current Regulatory Scheme

The beneficial ownership reporting requirements embodied in Sections 13(d)[2] and 13(g)[3] of the Securities Exchange Act of 1934 ("Exchange Act")[4] and the regulations adopted thereunder[5] are intended to provide investors and the subject issuer with information about accumulations of securities that may have the potential to change or influence control of the issuer. The statutory and regulatory framework also establishes a comprehensive reporting system for gathering and disseminating information about the ownership of equity securities.[6] These provisions require, subject to exceptions, that any person who acquires beneficial ownership of more than five percent of a class of equity securities registered under Section 12 of the Exchange Act[7] and other specified equity securities (collectively, "subject securities") report such acquisition on Schedule 13D within 10 calendar days. That report must be amended promptly to report any material change in the information provided, including any acquisition or disposition of one percent or more of the class.[8] Persons holding more than five percent of a class of subject securities at the end of the calendar year, but who have not made an acquisition subject to Section 13(d) ("Exempt Investors"),[9] are required instead to file and amend a short-form Schedule 13G within 45 days after the close of the calendar year. The Schedule 13G and amendments need only report securities that are beneficially owned as of the last day of the year.

Schedule 13G is also available to specified institutional investors ("Qualified Institutional Investors")[10] that acquired or hold the securities in the ordinary course of business and without a purpose or effect or in connection with a transaction having a purpose or effect, of changing or influencing control of the issuer. These Qualified Institutional Investors likewise only report their greater than five percent positions held as of the close of the year either in an initial report or amendment in the case of any change in the information provided, except if they own more than 10 percent as of the close of any month, in which case a Schedule 13G must be filed or amended within 10 calendar days reporting the holdings as of the close of the month.[11] These flexible reporting requirements are designed to minimize the costs of monitoring positions in securities acquired in the ordinary course of the investor's business.

B. Proposals for Reform

In 1989, the Commission proposed amendments to Regulation 13D–G to improve the effectiveness of the reporting scheme and to lessen the compliance costs to investors that have not acquired or held the securities with the purpose or effect of changing or influencing the control of the issuer.[12] The 1989 proposed amendments were not acted upon by the Commission. The amendments proposed today are similar to the 1989 proposals except, as more fully discussed below, the Commission is not reproposing a limitation on the amount of securities that a Qualified Institutional Investor can report on Schedule 13G and the Commission is proposing that the new class of persons that would be eligible to use Schedule 13G would have the same amendment requirements that currently apply to Schedule 13D filings, as opposed to the more liberal amendment requirements currently applicable to Schedule 13G.

The current reporting scheme requires most persons other than institutions to file detailed disclosure reports regardless of the reasons for the acquisition. As a result, the current reporting scheme may place unnecessary disclosure burdens on persons whose acquisitions do not implicate the Williams Act's concern with transactions affecting the control of issuers. To further the Commission's goals of disclosure simplification and efficiency, as stated in the Report of the Task Force on Disclosure Simplification published March 5, 1996, the amendments are being reproposed at this time to improve the effectiveness of the beneficial ownership reporting scheme and to reduce the reporting obligations of all investors that acquire or hold the securities without the purpose or the effect of changing or influencing control of the issuer by permitting them for the first time to report on Schedule 13G. Since the Commission first proposed to exempt investors that do not have a disqualifying purpose or effect from the Schedule 13D filing requirements, initial Schedule 13D filings have increased from 2,850 in fiscal 1988 to 3,347 in fiscal 1995, a 17 percent increase. Data provided by the Commission's Office of Economic Analysis indicates that 76 percent of the Schedules 13D studied by that office did not disclose a purpose or effect of changing or influencing control of the issuer and, therefore, would benefit from the amendments proposed today.[13] The reduced number of Schedule 13D filings would allow the marketplace, as well as the staff of the Commission, to focus more quickly on acquisitions involving the potential to change or influence control.

Accordingly, in addition to the two existing categories of Schedule 13G filers (Qualified Institutional Investors and Exempt Investors), a third category ("Passive Investors")[14] would be created, significantly expanding the classes of persons eligible to file on the short form. Any person who acquires or holds more than five percent of a class of subject securities and does not have a disqualifying purpose or effect would be permitted to file a short-form report on Schedule 13G within 10 calendar days after the acquisition, rather than the long-form report on Schedule 13D.[15] A Qualified Institutional Investor would remain eligible to file a short-form report on Schedule 13G 45 days after the year's end, provided that the requirements of amended Rule 13d–1(b)(1) are satisfied. Exempt Investors would continue to file their initial Schedule 13G within 45 calendar days after the calendar year in which they became subject to Section 13(g) and Rule 13d–1(c).

The rule amendments would subject Passive Investors filing Schedule 13G in lieu of Schedule 13D to the same amendment requirements that currently apply to Schedule 13D. Additionally, Passive Investors would be subject to a proposed 20 percent limit on the amount of an issuer's securities that may be reported on Schedule 13G and would be required to file a Schedule 13D within 10 calendar days of acquiring 20 percent or more of the securities. Upon acquiring 20 percent or more, the investor would be prohibited from acquiring additional securities or from voting or directing the voting of the securities until filing that schedule (a "standstill period"). The Commission is not reproposing a percentage limit to reporting on Schedule 13G for Qualified Institutional Investors.

Under the proposed amendments, Passive Investors that are no longer able to certify that they did not acquire or do not hold with a disqualifying purpose or effect would be required to file a Schedule 13D within 10 calendar days of the change in purpose. An investor required to file a Schedule 13D because it has changed its investment purpose would be subject to a waiting period ("cooling-off period") from the time of the change in investment purpose until the expiration of the tenth calendar day from the date of the filing of a Schedule 13D, during which time such person could not vote or direct the voting of the subject securities, or acquire an additional beneficial ownership interest in any securities either of the issuer or of any person controlling the issuer.

In 1992 the Commission revised the proxy rules to exempt certain communications from the proxy regulation and disclosure requirements. The 1992 proxy rule amendments were justified in part because Section 13(d) would continue to require disclosure of concerted activities by and among groups of significant shareholders regarding voting matters.[16] Following the 1992 proxy reform, some commentators have continued to express the concern that Section 13(d) has a potential chilling effect on a shareholder's ability to take full advantage of the proxy rule exemptions, since actions taken pursuant to the proxy exemptions may be interpreted to be inconsistent with the certifications necessary for Qualified Institutional Investors to file on Schedule 13G or such actions may lead to a finding of a "group" under Rule 13d–5(b)(1).[17]

Comment is requested as to whether Section 13(d) reporting obligations restrict a shareholder's ability to use the proxy rule exemptions and whether relief, in addition to that proposed today, from Schedule 13D filing obligations with respect to soliciting activities is necessary and appropriate.

Finally, the Commission is proposing amendments to the schedules and technical amendments to the beneficial ownership rules along with additional related and clarifying amendments.

II. Proposed Amendments to Regulation 13D–G

A. Expansion of the Class of Investors Eligible to Report on Schedule 13G

The Commission is reproposing that Regulation 13D–G be amended to permit Passive Investors to use the short-form Schedule 13G.[18] Passive Investors would file the Schedule within 10 calendar days after acquiring beneficially more than five percent of a class of subject securities. Persons unable or unwilling to certify that they do not have a disqualifying purpose or effect because, for example, the possibility exists that they may seek to exercise or influence control, would be ineligible to file a Schedule 13G and would be required to file a Schedule 13D. The comment letters on the 1989 proposals reflected significant consensus supporting the Commission's expansion of the eligible class of Schedule 13G filers.[19]

The Commission is reproposing that Passive Investors be allowed to choose whether to report on Schedule 13G or Schedule 13D.[20] The Commission preliminarily believes that Passive Investors should be given the flexibility to determine which Schedule is most appropriate given their circumstances. The fact that an investor can represent

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[1] Rules 13d–1, 13d–2, and 13d–7 [17 CFR 240.13d–1, 240.13d–2, and 240.13d–7].

[2] 15 U.S.C. 78m(d).

[3] 15 U.S.C. 78m(g).

[4] 15 U.S.C. 78a *et seq.*

[5] Regulation 13D–G, Rules 13d–1 through 13d-7 [17 CFR 240.13d–1 through 240.13d–7].

[6] For a more extensive discussion of Sections 13(d) and 13(g), and Regulation 13D–G adopted to implement both statutory provisions, see Securities Exchange Act Release No. 26598 (March 8, 1989) [54 FR 10552] ("Proposing Release").

[7] 15 U.S.C. 781.

[8] Rule 13d–2(a).

[9] Persons who acquire all their securities prior to the issuer registering under the Exchange Act are not subject to Section 13(d), and persons who acquire not more than two percent of a class of subject securities within a 12-month period are exempted from Section 13(d) by Section 13(d)(6)(B), but in both cases are subject to Section 13(g). Section 13(d)(6)(A) exempts acquisitions of subject securities acquired in a stock-for-stock exchange which is registered under the Securities Act of 1933.

[10] Such specified institutional investors include a broker or dealer registered under Section 15(b) of the Exchange Act [15 U.S.C. 78o(b)], a bank as defined in Section 3(a)(6) of the Exchange Act [15 U.S.C. 78c(a)(6)], an insurance company as defined in Section 3(a)(19) of the Exchange Act [15 U.S.C. 78c(a)(19)], an investment company registered under Section 8 of the Investment Company Act of 1940 [15 U.S.C. 80a–8], an investment adviser registered under Section 203 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*], an employee benefit plan or pension fund that is subject to the provisions of the Employee Retirement Income Security Act of 1974 [codified principally in 29 U.S.C. 1001–1461], and related holding companies and groups (collectively, "institutional investors"). Rule 13d–1(b)(1)(ii) [17 CFR 240.13d–1(b)(1)(ii)].

[11] Rule 13d–1(b)(2).

[12] Exchange Act Release No. 26598 (March 8, 1989) [54 FR 10552]. The Commission received fifteen comment letters which are available for public inspection and copying at the Commission's Public Reference Room in Washington, D.C. (File No. S7–8–89).

[13] The sample included 110 Schedules 13D filed from November 10, 1994 to December 30, 1994.

[14] The term "Passive Investors" is used in this release to refer to shareholders beneficially owning more than five percent of the class of subject securities and who can certify that the subject securities were not acquired or held for the purpose of and do not have the effect of changing or influencing the control of the issuer of such securities and were not acquired in connection with or as a participant in any transaction having such purpose or effect. *See* proposed Rule 13d–1(b)(2) and revised Item 10 of Schedule 13G. Shareholders that are unable to certify to this effect are considered to have, for purposes of this release, a "disqualifying purpose or effect".

[15] Schedule 13D requires more disclosure than Schedule 13G. The following are the primary disclosures required by Schedule 13D that are not required by Schedule 13G: (i) the source and amount of funds used to purchase the securities; (ii) the purpose of the acquisition of the securities and any plans or proposals that the reporting person has involving the issuer including, among other things, extraordinary transactions and changes of control; (iii) a description of transactions in the securities reported on in the sixty days prior to the filing of the schedule; (iv) a description of any contracts or arrangements involving the securities of the issuer; and, (v) a requirement to file copies of any written contracts or arrangements described in the Schedule 13D as exhibits to the schedule.

[16] *See* Exchange Act Release No. 31326, Section I (October 16, 1992) [57 FR 48276]; testimony of Richard C. Breeden, Chairman of the Securities and Exchange Commission, before the Subcommittee on Securities of the Committee on Banking, Housing, and Urban Affairs, United States Senate (October 17, 1991).

[17] In April 1994, the Council of Institutional Investors submitted a rulemaking petition to allow institutions that incur a Schedule 13D filing obligation as a result of exempt soliciting activities to report their beneficial ownership on a short form instead. The petition requested relief from Section 13(d) filing obligations for Schedule 13G eligible shareholders participating in communications covered by the two principal exemptions from the proxy rules. Under the petition, persons engaged in exempt solicitations would only be required to file a new short form disclosure statement and they would not lose their Schedule 13G eligibility. The petition is available for inspection and copying at the Commission's Public Reference Room in Washington, D.C. (File 4–372).

[18] Proposed Rule 13d–1(b)(2).

[19] Of the 15 comment letters received by the Commission on the proposals, 13 commenters generally supported the expansion and two commenters opposed the expansion.

[20] In the 1989 Proposing Release the Commission requested comment upon whether reporting on a Schedule 13G (as opposed to Schedule 13D) should be permissive or mandatory for investors that do not have a disqualifying purpose or effect. Commenters opposing a mandatory filing requirement suggested that the detailed disclosures contained in a Schedule 13D may be more appropriate in situations where the investor's purpose or effect may abruptly change to a disqualifying purpose or effect and, accordingly, the use of the Schedule 13D, in lieu of the Schedule 13G, should be optional. Commenters supporting mandatory use of Schedule 13G believed that such a requirement would enhance the marketplace's ability to focus on those acquisitions representing a disqualifying purpose or effect and would deter Schedule 13G eligible filers from filing on Schedule 13D in order to avoid the cooling-off period upon a change in purpose or effect.

that it does not have a disqualifying purpose or effect but still chooses to file on a Schedule 13D may provide important information concerning the filing person's intent. Accordingly, the Commission is reproposing that the use of Schedule 13G, in lieu of Schedule 13D, remain optional for those persons eligible to use Schedule 13G. However, the Commission requests comment as to the appropriateness of this approach and whether Schedule 13G eligible persons would choose to file on Schedule 13D to avoid the cooling-off period upon a change in investment purpose. Comment is also requested as to whether a mandatory filing approach would better serve the market by allowing investors to focus on those acquisitions that presently represent an attempt to influence or change control of the issuer.

B. Filing Periods for Passive Investors Filing on Schedule 13G

As reproposed, Passive Investors choosing to file a Schedule 13G would file the schedule within 10 calendar days of crossing the five percent threshold. Requiring the filing within 10 days, rather than the 45 days following year end currently applicable to Schedule 13G filers, would provide more timely notice to the market and shareholders of the existence of voting blocks that have the potential of affecting control of the issuer.

Under the proposed rules, however, Passive Investors filing on Schedule 13G would still be subject to the same amendment requirements currently applicable to Schedule 13D.[21] This approach differs from the 1989 proposals, which proposed that Passive Investors filing on Schedule 13G be subject merely to the more liberal amendment requirements currently applicable to Qualified Institutional Investors filing on Schedule 13G.[22] One commenter on the 1989 proposals expressed the concern that the 1989 proposals would not have required timely disclosure of material changes, including increases in ownership of the issuer's securities. For example, under the 1989 proposals, a Passive Investor would only have been required to file an amendment to the Schedule 13G to disclose an acquisition of ownership in excess of 10 percent of such securities within 10 days after the end of the month in which the person's ownership exceeded 10 percent of the class as of the end of the month. The Commission preliminarily believes that, although Passive Investors do not have a disqualifying purpose or effect, the market may benefit from more timely notice of material changes in ownership and material changes in the information previously reported by such persons.

In addition, by providing that the market will receive notice of material changes in the amount beneficially owned by persons filing under this new category of "Passive Investors", there is less of an incentive for those who may ultimately have a control intent to use Schedule 13G for the purpose of being able to acquire, for example, up to 9.9 percent of an issuer's stock without ever triggering any reporting requirement or disclosure to the market other than, perhaps, a prior filing of a five percent ownership interest. Likewise, without this amendment requirement a Passive Investor could increase a securities holding from just over 10 percent to just under 20 percent without any reporting or disclosure to the market until 10 days after the end of the month in which the 15 percent threshold was crossed. In the past, stock accumulation programs have taken advantage of the current statutory "window" in the Section 13(d) reporting regime. Comment is requested as to whether providing for current Schedule 13G amendment procedures as opposed to the more stringent Schedule 13D amendment procedures, for persons who qualify as Passive Investors, would exacerbate that problem, thereby decreasing investor protection and the availability of timely information provided to the market.

Comment is requested as to whether it is necessary to require that Passive Investors filing on Schedule 13G be subject to the more stringent amendment requirements currently applicable to Schedule 13D. Would more frequent amendments by Passive Investors provide sufficiently useful information to investors, the market and issuers to justify the filing burden on Passive Investors? Would the proposed standstill[23] and cooling-off[24] provisions provide sufficient protection from the abuse noted if the more lenient amendment requirements were adopted? If so, please explain.

Alternatively, would it be more appropriate to require Passive Investors to file an annual amendment for any material change in the information previously reported (like a Qualified Institutional Investor) but also file an amendment promptly upon acquiring 10 percent or more? Thereafter, the Passive Investor would promptly report any change in position of five percent or more (rather than, as with Qualified Institutional Investors, only five percent changes in position as of the last day of the month and amending within 10 days thereafter).[25] Should crossing each of these thresholds trigger a requirement that the Passive Investor cease voting and acquiring additional securities until the amendment is filed? Would that have any deterrent effect to the use of Schedule 13G where substantial acquisitions are planned? Conversely, does the proposed requirement to report promptly any material changes in position render the proposed 20 percent limitation on the use of Schedule 13G by Passive Investors and accompanying standstill period unnecessary? The Commission is considering for adoption each of these combinations of amendment requirements, cooling-off periods, and standstill periods.

The rules would continue to permit Qualified Institutional Investors to file the Schedule 13G within 45 days after calendar year end and without being subject to a 20 percent limitation on their holdings. Qualified Institutional Investors would continue to be required to certify that the subject securities were acquired in the ordinary course of business and not with the purpose nor with the effect of changing or influencing the control of the issuer.[26]

[21] Rule 13d-2(a) requires that an amendment to Schedule 13D be filed promptly upon any material change in the facts set forth in the schedule, including any material increase or decrease in the percentage of the class beneficially owned. Acquisitions or dispositions of one percent or more of the class are deemed to be "material" for the purposes of this rule. Acquisitions or dispositions of less than one percent of the class may be material depending upon the facts and circumstances.

[22] Under Rule 13d-2(b) an amendment to the Schedule 13G would be due 45 calendar days after the close of the year to report only any change that occurred in the information previously reported on Schedule 13G as of the last day of the year. However, under Rule 13d-1(b)(2) if their beneficial ownership exceeds 10 percent of the class at the end of any month, an amendment would be required to be filed within 10 days after the end of that month, as well as within 10 days after the end of any month in which their ownership increases or decreases by more than five percent of such class.

[23] Under the proposed rules, Passive Investors would be required to file a Schedule 13D within 10 days of the date their beneficial ownership equals or exceeds 20 percent of the class and would, upon such acquisition, be subject to a standstill period during which they could not vote their shares or acquire additional shares of the class until the Schedule 13D is filed. See Section II.D. infra.

[24] Under the proposed rules, if a Passive Investor develops a disqualifying purpose or effect, the investor would be subject to a cooling-off period until 10 days after the filing of a Schedule 13D during which period they could not vote their shares or acquire additional securities. See Section II.C. infra.

[25] One commenter on the 1989 proposals suggested requiring an amendment at two percent intervals.

[26] The Commission proposes to revise the certification on the Schedule 13G for Qualified Institutional Investors to provide that such investors certify that the securities were acquired *and held* in the ordinary course of business and were not acquired *or held* for the purpose of and do not have the effect of changing or influencing the control of the issuer of such securities and were not acquired *or held* in connection with or as a participant in any transaction having such purpose or effect (*emphasis added*). This proposed amendment to the certification is to conform the language of the certification to proposed Rule 13d–1(b)(4)(i)(A).

[27] In 1989, the Commission requested comment on the appropriateness of continuing to require the ordinary course of business certification. The sole commenter expressing a view on this matter stated that the ordinary course of business requirement is unnecessary when institutional investors acquire subject securities for passive purposes.

Congress recognized that the Section 13(d) statutory framework could have a significant impact on the reporting obligations of certain institutional investors and professionals in the securities business. Because such persons often acquire securities in the ordinary course of business and not with a view toward influencing control, in 1970 Congress specifically provided in Section 13(d)(5) that the Commission could permit the filing of a short form acquisition notice upon the determination that the securities were acquired in the ordinary course of business. Although the Commission proposes to eliminate that requirement for Passive Investors relying on proposed Rule 13d–1(b)(2), the certification in its present form will be retained with respect to institutions relying on the more liberal filing requirement under Rule 13d–1(b)(1). As a result, institutions would only have to report beneficial ownership of equity securities acquired and held in the ordinary course of business to the extent they owned more than five percent of the class at year end (or more than 10 percent at the end of any month). Proposed Rules 13d–1(b)(1) and (3).

[28] Proposed Rule 13d–1(b)(6)(ii).

[29] Proposed Rule 13d–1(c).

Even where an institutional investor is unable to make the "ordinary course of business" certification[27] it would still be permitted to file on Schedule 13G under the Passive Investor provision so long as it does not have a disqualifying purpose or effect. The Passive Investor provision, however, would require both types of investors, institutional and non-institutional, to file the Schedule 13G within 10 calendar days of the acquisition. Furthermore, such institutions would be required to file an amendment to their Schedule 13G within 10 calendar days of that change in status to disclose the change.[28] Comment is requested as to whether such institutional investors should be subject to a standstill period until the filing of the Schedule 13G amendment. Likewise, an institution unable to make the "ordinary course of business" certification would also be subject to the 20 percent limitation.

In addition, as reproposed, all Exempt Investors would continue to be able to file Schedule 13G within 45 days after the close of the calendar year, and would not be subject to the 20 percent limitation.[29] The exempt holdings do not appear to present a potential for affecting control of the issuer that should require earlier notice to the market and shareholders.

C. 13D Filing Requirement and Cooling-Off Period for Changes in Investment Purpose or Effect

As reproposed, Qualified Institutional Investors and Passive Investors that can no longer certify that they do not hold with a disqualifying purpose or effect must file a Schedule 13D no later than 10 calendar days after the change in investment purpose.[30] A "cooling-off" period would commence at the time the reporting person determines that it holds the subject securities with a disqualifying purpose or effect until the expiration of the tenth calendar day from the date of the filing of a Schedule 13D. This "cooling-off" period differs from the period currently required for Qualified Institutional Investors.[31] That period does not commence until the date of the filing of the Schedule 13D and creates a potential window between the time of the change in the purpose or effect and the "prompt" filing of a Schedule 13D during which the reporting person could acquire additional shares. As reproposed, the new rule would prohibit any such purchases from the moment of the change until the expiration of the tenth calendar day from the date of the filing of the Schedule 13D. During the cooling-off period, the rule would prohibit a person from voting or directing the voting of the subject securities or acquiring beneficial ownership of any equity securities of the issuer or any person controlling the issuer.[32]

The Commission preliminarily believes that the reproposed cooling-off period is necessary and appropriate when the beneficial owner determines that it now holds the securities with a disqualifying purpose or effect and may seek to influence control. The earlier commencement of the cooling-off period would encourage the prompt filing of a Schedule 13D.[33] The cooling-off period would prevent further acquisitions or the voting of the subject securities until the market and investors have been given time to react to the information in the Schedule 13D filing.

Comment is again requested on the necessity of the 10 calendar day cooling-off period. Is the dissemination of information concerning these filings, even for smaller companies, so rapid and widespread in the media that such period could be shortened (*e.g.*, to 3 or 5 days)? One commenter on the 1989 proposals suggested a longer cooling-off period. Should such period be lengthened (*e.g.*, 15 or 20 days)? Comment is requested as to the time at which the cooling-off period should begin—upon the change in purpose or effect, or upon the filing of the Schedule 13D. If the cooling-off period begins upon the change in purpose or effect, should it end upon the filing of the Schedule 13D?

D. Twenty-Percent Limit on Ownership Interest Reportable on Schedule 13G and Related Standstill Period

As originally proposed, the amendments to Regulation 13D–G would have restricted the use of Schedule 13G for all 13G eligible filers (other than Exempt Investors) by limiting the aggregate amount of securities that an investor could report on that Schedule to less than 20 percent. An investor would have been required to report on Schedule 13D within 10 calendar days after reaching the 20 percent threshold. The proposed amendments would have subjected the investor to a standstill period commencing at the time the threshold was reached and continuing until the filing of the Schedule 13D.

The original proposals reflected the Commission's concern regarding the need for prompt disclosure of sizeable blocks of securities because of inherent control implications corresponding to such ownership positions.[34] In this regard, the Commission specifically requested comment on the appropriateness of the 20 percent threshold level and the appropriateness and length of the standstill period.[35]

[30] Proposed Rule 13d–1(b)(4)(i).

[31] *See* Rule 13d–1(b)(3)(ii).

[32] In connection with the 1989 proposals, the Commission requested comment on the necessity of a cooling-off period and whether 10 calendar days was the appropriate period. Seven commenters addressed this issue, and all seven generally supported the concept of a cooling-off period. Four fully supported the 10 day time frame while two suggested a five day period, and a third advocated a 20 day period. The Commission also requested comment on whether the provision would discourage improper Schedule 13G filings by persons seeking to influence control. Four commenters generally believed that such a timing requirement would have such an effect; two other commenters did not agree, in part because of a concern that investor "raiders" may initially characterize themselves as "passive investors" and subsequently delay acknowledging their control intent.

[33] The sooner the Schedule 13D filing is made, the sooner the cooling-off period will end since the cooling-off period ends 10 calendar days from the date the Schedule 13D is filed.

[34] As stated in the Proposing Release, the Commission does not intend these proposed rules to create a presumption that beneficial ownership of 20 percent or more of subject securities indicates control or a control purpose.

[35] Three commenters favored a threshold limiting the availability of Schedule 13G to those filers whose securities holdings fall below a certain level

Continued

Most of the commenters strongly opposed subjecting institutional investors to the 20 percent threshold and the corresponding standstill period. Although recognizing the Commission's concerns regarding the need for prompt disclosure of sizeable blocks of securities, these commenters questioned the usefulness of an expedited Schedule 13D reporting obligation based solely upon reaching the 20 percent threshold level. The commenters stressed that the increased disclosure requirements of Schedule 13D are unwarranted where securities are purchased by otherwise eligible institutions in the ordinary course of business and that such a provision would impose too many costs with little, if any, benefit to the market.

In particular, one commenter asserted that (1) where sizeable blocks are held by institutional investors, such disclosure is already fulfilled pursuant to the current requirement that a Schedule 13G filing be made within 10 days after the end of the month where either an excess of 10 percent ownership or an increase or decrease of more than five percent ownership occurs, computed as of the last of the month[36] and (2) institutions cross the 20 percent level most often because the institutional investor holds convertible stock.

Certain commenters strongly opposed the 20 percent threshold level as it would apply to registered broker-dealers. One noted that a marketmaker's function is to provide the issuer with an efficient pricing mechanism and to provide purchasers and sellers with liquidity thereby enabling them to dispose of or acquire securities.

The Commission is proposing today that the 20 percent limit would apply only with respect to Passive Investors reporting on Schedule 13G pursuant to new Rule 13d–1(b)(2). Consistent with the current regulatory scheme, Qualified Institutional Investors would not be subject to the 20 percent limitation. The Commission recognizes that institutions that purchase securities in the ordinary course of business may be burdened by a limitation on the amount of securities that can be reported on the short-form Schedule 13G. Further, the Commission preliminarily believes that Schedule 13G strikes an appropriate balance between furnishing disclosure to the market and the burdens placed on such institutions.

Upon reaching the 20 percent level, Passive Investors would be required to report the acquisition within 10 calendar days on Schedule 13D, and would be subject to a standstill period during which time such investor would not be permitted to vote or direct the voting of the securities or acquire an additional beneficial ownership interest in any equity securities of the issuer until the investor files the Schedule 13D.[37] Comment is requested on the appropriateness of adopting a 20 percent limit on reporting on Schedule 13G and a standstill period with respect to Passive Investors and with respect to institutional investors who acquire securities other than in the ordinary course of business that remain eligible to file on Schedule 13G as Passive Investors. Comment is also requested on whether a higher or lower threshold should be adopted (*e.g.*, 10 or 15 percent, or 25 or 30 percent.). Is a cap on ownership reported on Schedule 13G by Passive Investors or the proposed standstill period necessary if the Commission applies, as proposed, the current Schedule 13D amendment requirements to Passive Investors? Would a lower threshold, for example 10 percent, be more appropriate in the event the Commission instead decides to permit Passive Investors to take advantage of the more liberal Schedule 13G amendment requirements?

E. Re-establishing Schedule 13G Eligibility

The Commission is proposing to amend Regulation 13D–G to allow persons who have lost their eligibility to file on Schedule 13G to re-establish their Schedule 13G-eligibility and file on Schedule 13G.[38] Specifically, a Qualified Institutional Investor who has lost its Schedule 13G eligibility because it is no longer a qualified entity under Rule 13d–1(b)(1)(ii) or cannot certify that it acquired or holds the securities in the ordinary course of business and not with the purpose or effect of changing or influencing control would be allowed to switch back to Schedule 13G pursuant to the Qualified Institutional Investor provision[39] once it re-establishes its status under Rule 13d–1(b)(1)(ii) or can again make the necessary certifications. Similarly, a Passive Investor that has lost its Schedule 13G-eligibility under proposed Rule 13d–1(b)(2) because it can no longer certify that it does not have a disqualifying purpose or effect or because it exceeded the 20 percent threshold, would be able to switch back to Schedule 13G when it is once again able to make the certification or when its beneficial ownership falls below 20 percent. The Commission preliminarily believes that investors and the market would be better informed if reporting persons were able to switch back to Schedule 13G after re-establishing their eligibility, since the filing of a Schedule 13D would be a clearer indicator of an investor that currently has a disqualifying purpose or effect or an investor that holds 20 percent or more of the class. Comment is requested on whether the proposal would provide better information or whether it would lead to abuse by filing persons.

F. Expansion of the Class of Qualified Institutional Investors

As reproposed, the use of the short-form Schedule 13G pursuant to the Qualified Institutional Investor provisions of Rule 13d–1(b)(1) would continue to be limited essentially to institutions such as brokers, dealers, investment companies, and investment advisers registered with the Commission, or regulated banks or insurance companies. Use of the Schedule 13G by similar non-domestic institutions has been limited in the past to those institutions that have obtained an exemptive order from the Commission[40] or, under the current practice, a no-action position from the Division of Corporation Finance based on the requester's undertaking to grant the Commission access to information that would otherwise be disclosed in a Schedule 13D and the comparability of the foreign regulatory scheme applicable to the particular category of institutional investor.

Since the Passive Investor provisions of proposed Rule 13d–1(b)(2) would make Schedule 13G available to all investors that do not have a disqualifying purpose or effect, including foreign investors, it is unclear whether foreign institutions would still seek relief to file on Schedule 13G under the Qualified Institutional Investor provisions of Rule 13d–1(b)(1). The use of Schedule 13G pursuant to the Passive Investor provisions would require the schedule to be filed within 10 calendar days of the acquisition as opposed to within 45 days after the calendar year in which the institution holds more than five percent at year end under the Qualified Institutional Investor provision, and could not be used to report beneficial ownership of 20 percent or more. Similarly, a prompt amendment requirement may make reliance on the Passive Investor provision less useful for foreign institutions than the Qualified Institutional Investor provision. Comment is requested as to whether the accelerated filing and amendment requirement, and the 20 percent limit under proposed Rule 13d–1(b)(2) would discourage foreign investors from using that provision and cause those foreign institutional investors to continue to seek relief to file pursuant to Rule 13d–1(b)(1).

The Commission continues to believe that a non-U.S. institution seeking relief to file pursuant to Rule 13d–1(b)(1) should be subject to a regulatory scheme in its country comparable to the U.S. regulatory scheme for the particular category of institution and that such institutions should undertake to grant the Commission access to information that would otherwise be disclosed on Schedule 13D.[41] Accordingly, no change to current practice is proposed. However, comment is requested as to whether Rule 13d–1(b)(1) should be amended expressly to allow foreign institutional investors that are the functional equivalent of the domestic institutions enumerated in Rule 13d–1(b)(1)(ii) (A)–(G) to file on Schedule 13G pursuant to that provision without having to obtain individual relief from the Commission. In this regard, should the foreign institution be required to certify on the Schedule 13G that it is subject to a regulatory scheme comparable to the U.S. for the particular category of institution? Additionally, should filing on Schedule 13G under either provision only be available to non-U.S. persons who consent on the Schedule 13G to furnish the Commission with information, at its request, that would otherwise be disclosed in a Schedule 13D?

Additionally, the Commission is proposing that control persons of Qualified Institutional Investors be allowed to report indirect beneficial ownership through the controlled entity on Schedule 13G so long as the control person does not own directly, or indirectly through an ineligible entity or affiliate, more than one percent of the subject company's stock and is not seeking to change or influence control of the subject company.[42] Control persons filing on Schedule 13G pursuant to this provision would not be subject to the 20 percent limitation as they would if they filed on Schedule 13G pursuant to the Passive Investor provision.[43] The Commission is also proposing to make a conforming change under Section 16 of the Exchange Act.[44]

Finally, under the current requirements, only pension funds that are subject to the Employee Retirement Income Security Act of 1974 ("ERISA") are eligible to use Schedule 13G.[45] The Commission limited the category of pension funds eligible to use Schedule 13G to pension funds subject to ERISA because such funds are subject to uniform regulatory controls.[46] The staff has granted no-action relief to a state pension fund to use Schedule 13G based upon a showing that the fund's fiduciaries were subject to similar regulatory standards as those imposed by ERISA.[47] The Commission preliminarily believes that employee benefit plans maintained primarily for the benefit of state or local government employees are now generally subject to fiduciary obligations and standards for investment that are substantially similar to those imposed by ERISA. Therefore, the Commission proposes to amend Rule 13d–1(b)(1)(ii)(F) to allow employee benefit plans maintained primarily for the benefit of employees of a state or local government or instrumentality to report beneficial ownership on Schedule 13G for securities acquired or held in the ordinary course of business and not with the purpose or effect of influencing the control of the issuer. Comment is requested as to whether such proposal is necessary or appropriate. The Commission is proposing to revise the current language in Rule 13d–1(b)(1)(ii)(F) to clarify that employee benefit plans and pension funds must both be subject to ERISA. The language will also be modified to eliminate a redundancy. The Commission is proposing to eliminate the phrase "pension fund" because such entities are included in the definition of employee benefit plan in Section 3(3) of ERISA. The Commission is also proposing to make a conforming change under Section 16 to amend Rule 16a–1(a)(1)(vi) to include state and local government employee benefit plans in the list of persons that are not deemed to be the beneficial owners of securities held for the benefit of third parties. Comment is requested on the appropriateness of conforming the list of institutional investors in Rule 16a–1(a)(1) (i)–(viii) to reflect the changes made to the list of Qualified Institutional Investors in Rule 13d–1(b)(1)(ii) (A)–(H).

G. Related and Clarifying Amendments

The Commission is also proposing amendments to clarify the beneficial ownership reporting requirements. Amendments are proposed to eliminate the redundancies that currently exist in Regulation 13D–G regarding the filing and dissemination requirements by setting forth such requirements in one rule, proposed Rule 13d–7(b). Amendments are also proposed to revise the dissemination requirements of Schedule 13G. Since the Commission believes that a majority of investors will file Schedule 13G in lieu of Schedule 13D as a result of the proposed amendments to Regulation 13D–G, Schedule 13G will become the primary reporting document for beneficial ownership. Therefore, amended Rule 13d–7(b) would require that the original and amendments to Schedules 13G be provided to each exchange where the

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and also favored the proposed standstill period. All three, however, believed that a 20 percent level is too high. One believed that a 10 percent threshold is the correct level because of the increasingly important role large institutional investors play in contested voting situations. Another suggested a 15 percent limit for non-institutional investors because of the possibility of abuse by those investors and suggested that such a requirement would not impose undue burdens on institutional investors.

[36] Rule 13d–1(b)(2) [17 CFR 240.13d–1(b)(2)].

[37] As proposed, the acquisition that causes the reporting person to hold 20 percent or more and therefore triggers the Schedule 13D filing obligation, may also trigger an amendment requirement for such person's Schedule 13G (*e.g.*, an acquisition of one percent or more of the class). The Schedule 13G amendment would be required to be filed promptly upon such acquisition and the Schedule 13D would be required to be filed within 10 days of the acquisition. The reporting person may forego filing the amendment to the Schedule 13G if the Schedule 13D is filed promptly.

[38] Proposed Rule 13d–1(b)(7).

[39] Rule 13d–1(b)(1).

[40] *See* Exchange Act Release No. 14692 (April 21, 1978) [43 FR 18484].

[41] Under the Qualified Institutional Investor provision, the initial Schedule 13G is filed based upon the amount beneficially owned as of the last day of the calendar year unless the beneficial ownership exceeded 10 percent of the outstanding securities at any time during the year. Consequently, issuers and the market are not informed during the year that such an investor holds more than five percent of the issuer's securities. The Commission preliminarily believes that since the Qualified Institutional Investor provision do not require disclosure of such initial acquisitions or the existence of such investors until the end of the year, these more lenient filing requirements should be limited to regulated institutions as enumerated in Rule 13d–1(b)(1)(ii).

[42] Proposed Rule 13d–1(b)(1)(ii)(G). This proposed amendment codifies the no-action position set forth in *Warren E. Buffet & Berkshire Hathaway, Inc.*, (available December 5, 1986). Under the original proposals, the no-action position would have continued to be necessary because of the timing difference (45-day versus 10-day) in the filing of the Schedule 13G by eligible institutions and individuals. However, the current proposal would allow the qualifying control person to file its Schedule 13G within the same filing period as the qualifying institution it controls.

[43] Proposed Rule 13d–1(b)(2).

[44] The Commission proposes to amend Rule 16a–1(a)(1)(vii) to include control persons of institutions in the list of persons that are not deemed to be beneficial owners of securities held for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business as long as the shares are acquired without the purpose or effect of changing or influencing control of the issuer or engaging in any arrangement subject to Rule 13d–3(b). This proposed amendment codifies the interpretive position set forth in *Edward C. Johnson 3d.*, (available August 20, 1991).

[45] See Rule 13d–1(b)(1)(ii)(F).

[46] *See* Exchange Act Release No. 14692, Section II(A)(1)(b) (April 21, 1978) [43 FR 18484].

[47] *See State of Wisconsin Investment Board and Wisconsin Retirement System*, (available December 8, 1992); *see also, Ontario Teachers' Pension Plan Board*, (available May 6, 1992).

security is traded as is currently required for Schedules 13D. Comment is requested as to whether it is necessary or appropriate to require that copies of Schedules 13G be provided to each exchange since such filings are required to be filed electronically on the Commission's Electronic Data Gathering and Retrieval System and therefore available in the electronic media, such as the Commission's World Wide Web site. Additionally, Schedules 13G for exempt acquisitions would continue to be sent only to the issuer at its principal executive offices and be filed with the Commission. Amendments to Schedule 13G relating to exempt acquisitions would no longer be required to be sent to an exchange.

The Commission is also reproposing that a copy of a Schedule 13D, Schedule 13G or amendment filed to report ownership of a class of securities quoted on the National Association of Securities Dealers Automated Quotation System be provided to the National Association of Securities Dealers ("NASD") to parallel the requirements for exchange-traded securities.[48] Comment is requested as to whether it is necessary or appropriate to require that copies of the schedules be provided to the NASD.

Amendments to Regulation 13D–G are proposed to clarify the number of copies required to be filed. Additionally, Rule 13d–7 would be revised to clarify that a Schedule 13D filed with respect to holdings reported until then on Schedule 13G, and vice versa, does not require an additional fee, if beneficial ownership had not fallen below five percent.[49] Finally, technical amendments to Schedules 13D and 13G are being reproposed to conform the schedules to the proposed rules and to amend the filing deadlines and the number of copies in the instruction.

H. Effects of Proposed Amendments to Regulation 13D–G

Issue	Current schedule 13D	Proposed schedule 13D	Current schedule 13G	Proposed schedule 13G
Person Filing.	Any person acquiring more than 5% of an equity security. Rule 13d–1(a).	No change	*Qualified Institutional Investors*—Eligible institutions acquiring more than 5% of an equity security. Rule 13d–1(b). *Exempt Investors*—Persons holding more than 5% of an equity security who are not subject to, or whose acquisitions are exempt from Section 13(d). Rule 13d–1(c).	*Qualified Institutional Investors*—Expanded to include control persons of qualified institutions and state and local employee benefit plans. *Exempt Investors*—No change. *Passive Investors*—Any person holding more than 5% but less than 20% of an equity security and did not acquire such securities with a purpose or effect of changing or influencing control of the issuer or in a transaction having such effect. Proposed Rule 13d–1(b)(2).
Initial Filing.	Within 10 days after the acquisition. Rule 13d–1(a).	No change	*Qualified Institutional Investors*—45 days after calendar year in which the person becomes obligated to file, Rule 13d–1(b)(1), or within 10 days after the end of the first month in which such person's beneficial ownership exceeds 10% of the class of equity securities. Rule 13d–1(b)(2). *Exempt Investors*—45 days after calendar year in which the person becomes obligated to file. Rule 13d–1(c).	*Qualified Institutional Investors*—No change. *Exempt Investors*—No change. Passive Investors—Within 10 days after the acquisition. Proposed Rule 13d–1(b)(2).
Amendment.	Filed promptly to reflect any material change including a change in investment intent. An acquisition or disposition of beneficial ownership of securities equal to 1% or more of the class is deemed a material change. Rule 13d–2(a).	No change	*All Filers*—45 days after the end of the calendar year to report any change in the information. Rule 13d–2(b).	

[48] Proposed Rule 13d–7(b).

[49] The Commission has proposed eliminating the filing fee required for Schedules 13D and 13G. *See* Exchange Act Release No. 37220 (May 16, 1996) [61 FR 25601]. If such fee is eliminated, Rule 13d–7 will be revised accordingly.

Issue	Current schedule 13D	Proposed schedule 13D	Current schedule 13G	Proposed schedule 13G
			Qualified Institutional Investors only—In addition to the requirement stated above, within 10 days after the end of the first month in which such person's beneficial ownership exceeds 10% of the class of equity securities, and thereafter within 10 days of the end of any month in which such person's beneficial ownership increases or decreases more than 5%, computed as of the end of the month. Rule 13d–1(b)(2).	*Qualified Institutional Investors*—No Change. *Exempt Investors*—No change. *Passive Investors*—Same as requirement for persons filing Schedule 13D. Proposed Rule 13d–2(a).
Purpose of Acquisition.	Disclose purpose of the transaction. Schedule 13D, Item 4.	No change	*Qualified Institutional Investors*—Requires certification that the securities were acquired in the ordinary course of business, were not acquired for the purpose of and not have the effect of changing or influencing control of the issuer, and were not acquired in a transaction having such an effect. Schedule 13G, Item 10. Rule 13d–1(b). *Exempt Investors*—No certification required.	*Qualified Institutional Investors*—No change except for a technical change to the certification. *Exempt Investors*—No change. *Passive Investors*—Same certification as Qualified Institutional Investors *except that* acquisitions need not occur in the ordinary course of business. Schedule 13G, proposed Item 10(b). Proposed Rule 13d–1(b)(2). Note: Ability to refile on Schedule 13G once disqualification has lapsed clarified.
Initial Schedule 13D following filing on Schedule 13G.	*Qualified Institutional Investors*—Promptly, but no later than 10 days after such person ceases to be an eligible institution or determines that it no longer holds such securities in the ordinary course of business or not with the purpose or effect of changing or influencing the control of the issuer. Rule 13d–1(b)(3). *Exempt Investors*—Within 10 days upon making an acquisition subject to, or not exempt from Section 13(d).	*Qualified Institutional Investors*—No change. Proposed Rules 13d–1(b)(4) and (b)(6). *Exempt Investors*—No change. *Passive Investors*—Within 10 days of: (1) acquiring or holding the securities with the purpose or effect of changing or influencing control of the issuer or in a transaction having such effect. Proposed Rule 13d–1(b)(4), or.		

Issue	Current schedule 13D	Proposed schedule 13D	Current schedule 13G	Proposed schedule 13G
		(2) the person's beneficial ownership equals or exceeds 20% of the class of equity securities. Proposed Rule 13d–1(b)(5).		
Cooling-Off Period.	*Qualified Institutional Investors*—10 day period after the filing of a Schedule 13D because the person no longer holds such securities in the ordinary course of business or not with the purpose or effect of changing or influencing the control of the issuer. Rule 13d–1(b)(3).	*Qualified Institutional Investors*—From the time the person no longer holds the securities without the purpose or effect of changing or influencing control of the issuer until the tenth day from the date the Schedule 13D is filed. Proposed Rule 13d–1(b)(4)(ii).		
		Passive Investors—Same as Qualified Institutional Investors. Proposed Rule 13d–1(b)(4)(ii).		
Standstill Period.		*Passive Investors*—*From the time the person's beneficial ownership equals or exceeds 20% of the class of equity securities until the filing of the Schedule 13D. Proposed Rule 13d–1(b)(5).*		

III. Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603 concerning the proposed amendments to the beneficial ownership rules and related Schedules 13D and 13G and the proposed amendments to Rules 16a–1(a)(1)(vi) and (vii). The analysis notes that the principal effect of the revisions to Regulation 13D–G will be to reduce the disclosure obligations and associated costs to a majority of persons, including small entities, required to report beneficial ownership under Sections 13(d) and 13(g) of the Exchange Act and would eliminate the reporting obligations under Section 16 of the Exchange Act of certain state and local government employee benefit plans and certain control persons of Qualified Institutional Investors. The analysis also indicates that there are no current federal rules that duplicate, overlap or conflict with the rules and forms to be amended.

As stated in the analysis, alternatives to the proposed amendments were considered, including, among other things, changing or simplifying the compliance or reporting requirements for small entities or exempting small entities from all requirements to file the schedules under Regulation 13D–G. As discussed in the analysis, there is no less restrictive alternative to the proposed rule amendments that would serve the purposes of the beneficial ownership provisions of the Exchange Act.

Written comments are encouraged with respect to any aspect of the analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed revisions are adopted. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Dennis O. Garris in the Office of Mergers and Acquisitions, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

IV. Paperwork Reduction Act

Certain provisions of Regulation 13D–G contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the Commission has submitted proposed revisions to Regulation 13D–G to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 C.F.R. § 1320.11. The titles for the collections of information are "Schedule 13D" and "Schedule 13G".

The beneficial ownership reporting requirements are intended to provide investors and the subject issuer with information about accumulations of securities that may have the ability to change or influence control of the issuer. Regulation 13D–G currently requires that most persons file a detailed disclosure statement on Schedule 13D upon acquiring more than five percent of the subject securities. Certain qualified institutions (Qualified Institutional Investors) and persons who have not made an acquisition subject to Section 13(d) (Exempt Investors) may file the short-form disclosure statement Schedule 13G which requires less detailed disclosure than Schedule 13D.[50]

The Commission anticipates that the proposal to make Schedule 13G available, in lieu of Schedule 13D, to all Passive Investors beneficially owning less than 20 percent would reduce the existing information collection requirements associated with Regulation 13D–G and Schedules 13D and 13G. The proposed amendments will allow more individuals and non-institutional investors to file the short-form Schedule 13G. It is estimated that 803 Schedules 13D would be filed each year if the proposals were adopted.[51] Each Schedule 13D would impose an estimated burden of 14.75 hours for a total annual burden of 11,844.25 hours.[52] It is estimated that 9,065 Schedules 13G would be filed each year if the proposals were adopted.[53] Each Schedule 13G would impose an estimated burden of 10 hours for a total annual burden of 90,650 hours.

Providing the information required by Schedules 13D and 13G is mandatory under Sections 13(d) and 13(g) and Regulation 13D–G of the Exchange Act. The information will not be kept confidential. Unless a currently valid OMB control number is displayed on the Schedules 13D and 13G, the Commission may not sponsor or conduct or require response to an information collection.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) enhance the quality, utility, and clarity of the information to be collected; and, (iv) minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, with reference to File No. S7–16–96. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

V. Cost-Benefit Analysis

No specific data was provided in response to the Commission's original request regarding the costs and benefits associated with amending the filing requirements under Regulation 13D–G.[54] It appears that making Schedule 13G available to all Passive Investors holding less than 20 percent of subject securities should significantly reduce the reporting costs incurred by those investors. Regulation 13D–G applies to any person that acquires more than five percent of a class of equity securities. Although it is difficult to determine reasonably the number of small entities and the costs to small entities of complying with the proposed amendments, the Commission believes that the proposed amendments would not result in a substantial economic impact to a significant number of small entities but rather should result in a substantial savings to entities (both small and large) that qualify to file Schedule 13G in lieu of Schedule 13D. The proposed amendments would decrease the disclosure obligations of a significant number of persons currently required to file the long-form Schedule 13D. Based upon data provided by the Commission's Office of Economic Analysis, 76 percent of Schedules 13D studied by that office did not disclose a purpose or effect for changing or influencing control of the issuer and, therefore, would benefit from the amendments proposed today.[55]

In response to comments in connection with the potential increased costs that institutional investors could incur if subject to the 20 percent threshold level, the Commission is not reproposing the amendment with respect to Qualified Institutional Investors.

The Commission again requests commenters to provide views and data as to the costs and benefits associated with amending the filing requirements for beneficial ownership statements.

VI. Request for Comment

Any interested persons wishing to submit written comments on the proposals, to suggest additional changes, or to submit comments on other matters that might have an impact on the proposals, are requested to do so. In addition to the specific inquiries made throughout this release, the Commission solicits comments on the usefulness of the proposed revisions to the Regulation 13D–G reporting scheme and the conforming changes under Section 16 to reporting persons, registrants, and the marketplace at large.

The Commission also requests comment on whether the proposed rules, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a)(2) of the Exchange Act.[56]

The Commission also encourages the submission of written comments with respect to any aspect of the initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis if the proposed rules are adopted.

Persons wishing to submit written comments should file three copies thereof with Jonathan G. Katz, Secretary,

[50] *See* fn. 13 *supra* for a comparison of the primary differences between the disclosure required by Schedules 13D and 13G.

[51] This estimated number of respondents is based upon the number of Schedules 13D filed in fiscal year 1995 and assumes no increase each year. This represents an estimated 76 percent reduction from the 3,347 Schedules 13D filed in fiscal year 1995. The estimated 76 percent reduction in Schedule 13D filings is based upon the sample data provided by the Office of Economic Analysis.

[52] Total annual burden hours are determined by multiplying the estimated average burden hours for completing the particular schedule by the estimated number of respondents that file that schedule.

[53] This number of respondents is based upon the number of Schedules 13G filed in fiscal year 1995 (6,521) plus the additional 2,544 respondents that are expected to file on Schedule 13G under the proposed rules and assumes no increase each year.

[54] However, eight commenters expressed general views as to the costs and benefits associated with the amendments, without attempting to quantify either the costs or benefits. Five commenters stated that the proposed amendments would reduce passive filers' reporting burdens and associated costs. Seven commenters expressed concern that the proposed 20 percent limitation upon the availability of Schedule 13G to passive institutional investors would impose increased compliance burdens and costs without providing any useful information to the public. Finally, three commenters believed that requiring Schedule 13G filers to provide each exchange upon which the security is traded a copy of the Schedule would be overly burdensome because such information is not readily available.

[55] *See* Section I.B. *supra*.

[56] 15 U.S.C. 78w(a)(2).

Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. Comment letters should refer to File No. S7–16–96; this file number should be included on the subject line if e-mail is used. All comments received will be available for public inspection and copying in the Commission's public reference room at the same address. Electronically submitted comments will be posted on the Commission's Internet web site (http://www.sec.gov).

VII. Statutory Basis and Text of Amendments

The amendments to Rules 13d–1, 13d–2 and 13d–7 and Schedules 13D and 13G and Rule 16a–1 are being proposed pursuant to the authority set forth in Sections 3(b), 13, 16 and 23 of the Securities Exchange Act of 1934.

Lists of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. By amending § 240.13d-1 to revise paragraph (a), the introductory text of paragraph (b)(1), paragraphs (b)(1)(ii)(F) and (G), and paragraphs (b)(2), (b)(3), (b)(4), and (c) and to add paragraphs (b)(5), (b)(6) and (b)(7) to read as follows:

§ 240.13d–1 Filing of Schedules 13D and 13G.

(a) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is specified in paragraph (d) of this section, is directly or indirectly the beneficial owner of more than five percent of such class shall, within 10 days after such acquisition, file with the Commission, a statement containing the information required by Schedule 13D (§ 240.13d–101).

(b)(1) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Schedule 13D (§ 240.13d–101) may, in lieu thereof, file with the Commission, within 45 days after the end of the calendar year in which such person became so obligated, a short-form statement on Schedule 13G (§ 240.13d–102): *Provided*, That it shall not be necessary to file a Schedule 13G unless the percentage of the class of equity security specified in paragraph (d) of this section beneficially owned as of the end of the calendar year is more than five percent: *And provided further*, That:

* * * * *

(ii) * * *

(F) An employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001 et seq. ("ERISA") which is subject to the provisions of ERISA, or any such plan that is not subject to ERISA that is maintained primarily for the benefit of the employees of a state or local government or instrumentality, or an endowment fund;

(G) A parent holding company or control person, provided the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries or affiliates that are not persons specified in § 240.13d–1(b)(1)(ii) (A) through (F), does not exceed one percent of the securities of the subject class;

* * * * *

(2) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Schedule 13D (§ 240.13d–101) may, in lieu thereof, file with the Commission, within 10 days after an acquisition described in paragraph (a) of this section, a short-form statement on Schedule 13G (§ 240.13d–102): *Provided*, That such person:

(i) Has not acquired such securities with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to § 240.13d–3(b);

(ii) Is not a person reporting pursuant to paragraph (b)(1) of this section; and

(iii) Is not directly or indirectly the beneficial owner of 20 percent or more of such class.

(3) Any person relying on § 240.13d–1(b)(1) or § 240.13d–2(b) shall, in addition to filing any statements thereunder, file a statement on Schedule 13G (§ 240.13d–101), or amendment thereto, within 10 days after the end of the first month in which such person's direct or indirect beneficial ownership exceeds 10 percent of a class of equity securities specified in § 240.13d–1(d), computed as of the last day of the month, and thereafter within 10 days after the end of any month in which such person's beneficial ownership of securities of such class, computed as of the last day of the month, increases or decreases by more than five percent of such class of equity securities. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required by this paragraph (b)(3) unless the person thereafter becomes the beneficial owner of more than 10 percent of the class, computed as of the last day of the month.

(4)(i) Notwithstanding paragraphs (b)(1), (b)(2) and (b)(3) of this section and § 240.13d–2(b), a person that has reported that it is the beneficial owner of more than five percent of a class of equity securities in a statement on Schedule 13G (§ 240.13d–102) pursuant to paragraph (b)(1), (b)(2) or (b)(3) of this section, or is required to report such acquisition but has not yet filed the schedule, shall immediately become subject to §§ 240.13d–1(a) and 240.13d–2(a) and shall file a statement on Schedule 13D (§ 240.13d–101) within 10 days if, and shall remain subject to such requirements for so long as, such person:

(A) Has acquired or holds such securities with a purpose or effect of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to § 240.13d–3(b); and

(B) Is at that time the beneficial owner of more than five percent of a class of equity securities described in § 240.13d–1(d).

(ii) From the time such person has acquired or holds such securities with a purpose or effect of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect until the expiration of the tenth day from the date of the filing of a Schedule 13D (§ 240.13d–101) pursuant to this section, such person shall not:

(A) Vote or direct the voting of the securities described therein; or

(B) Acquire an additional beneficial ownership interest in any equity securities of the issuer of such securities, nor of any person controlling such issuer.

(5) Notwithstanding paragraph (b)(2) of this section and § 240.13d–2(b), persons reporting on Schedule 13G (§ 240.13d–102) pursuant to paragraph (b)(2) of this section shall immediately become subject to §§ 240.13d–1(a) and 240.13d–2(a) and shall remain subject to such requirements for so long as, and shall file a statement on Schedule 13D (§ 240.13d–101) within 10 days of the date on which, such person's beneficial ownership equals or exceeds 20 percent of the class of equity securities. Until the filing of a statement on Schedule 13D pursuant to this paragraph, such person shall not:

(i) Vote or direct the voting of the securities described therein, or

(ii) Acquire an additional beneficial ownership interest in any equity securities of the issuer of such securities, nor of any person controlling such issuer.

(6)(i) Any person who has reported an acquisition of securities in a statement on Schedule 13G (§ 240.13d–102) pursuant to paragraph (b)(1) or (b)(3) of this section and thereafter ceases to be a person specified in paragraph (b)(1)(ii) of this section shall immediately become subject to § 240.13d–1(a) or § 240.13d–1(b)(2) (if such person satisfies the requirements specified in § 240.13d–1(b)(2)), and §§ 240.13d–2 (a) or (b) and shall remain subject to such requirements for so long as, and shall file, within 10 days thereafter, a statement on Schedule 13D (§ 240.13d–101) or amendment to Schedule 13G, as applicable, if such person is a beneficial owner at that time of more than five percent of the class of equity securities.

(ii) Any person that has reported beneficial ownership on Schedule 13G (§ 240.13d–102) pursuant to § 240.13d–1(b)(1) shall file an amendment on Schedule 13G within 10 days of the date that such person determines that it no longer has acquired or holds such securities in the ordinary course of business, *Provided* That such person may continue to file on Schedule 13G pursuant to § 240.13d–1(b)(2).

(7) Any person who has filed a Schedule 13D (§ 240.13d–101) pursuant to paragraph (b)(4), (b)(5) or (b)(6) of this section may again report its beneficial ownership on Schedule 13G (§ 240.13d–102) pursuant to paragraphs (b)(1), (b)(2) or (b)(3) of this section provided such person qualifies thereunder, as applicable, by filing a Schedule 13G (§ 240.13d–102) once the person determines that the provisions of paragraph (b)(4), (b)(5) or (b)(6) of this section no longer apply.

(c) Any person who is or becomes directly or indirectly the beneficial owner of more than five percent of any equity security of a class specified in paragraph (d) of this section and who is not required to file a statement under paragraph (a) of this section by virtue of the exemption provided by Section 13(d)(6) (A) or (B) of the Act (15 U.S.C. 78m(d)(6)(A) or 78m(d)(6)(B)), or because such beneficial ownership was acquired prior to December 22, 1970, or because such person otherwise (except for the exemption provided by Section 13(d)(6)(C) of the Act (15 U.S.C. 78m(d)(6)(C))) is not required to file such a statement, shall file with the Commission, within 45 days after the end of the calendar year in which such person became obligated to report under this paragraph (c), a statement containing the information required by Schedule 13G (§ 240.13d–102).

* * * * *

3. By amending § 240.13d–2 by revising paragraphs (a), (b), and the note following paragraph (c) to read as follows:

§ 240.13d–2 Filing of amendments to Schedules 13D or 13G.

(a) If any material change occurs in the facts set forth in the Schedule 13D (§ 240.13d–101) required by § 240.13d–1(a) or the Schedule 13G (§ 240.13d–102) filed pursuant to § 240.13d–1(b)(2), including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned, the person or persons who were required to file such statement shall promptly file or cause to be filed with the Commission an amendment disclosing such change. An acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of the class of securities shall be deemed "material" for purposes of this section; acquisitions or dispositions of less than such amounts may be material, depending upon the facts and circumstances.

(b) Notwithstanding paragraph (a) of this section, and provided that the person filing a Schedule 13G (§ 240.13d–102) pursuant to § 240.13d–1(b)(1) continues to meet the requirements set forth therein, any person who has filed a Schedule 13G pursuant to § 240.13d–1(b)(1) or § 240.13d–1(c) shall amend such statement within forty-five days after the end of each calendar year if, as of the end of such calendar year, there are any changes in the information reported in the previous filing on that Schedule; *Provided, however*, That such amendment need not be filed with respect to a change in the percent of class outstanding previously reported if such change results solely from a change in the aggregate number of securities outstanding. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required unless the person thereafter becomes the beneficial owner of more than five percent of the class and is required to file pursuant to § 240.13d–1.

(c) * * *

Note to § 240.13d–2: For persons filing a short-form statement pursuant to Rule 13d–1(b) (1) or (2), see also Rules 13d–1(b) (3), (4), (5), and (6).

4. By amending § 240.13d–7 by revising the section heading, designating the current text as paragraph (a), revising the last sentence of newly designated paragraph (a) and adding paragraph (b) to read as follows:

§ 240.13d–7 Fees for filing Schedules 13D or 13G; Number of Copies; Dissemination.

(a) * * * No fees shall be required with respect to the filing of any amended Schedule 13D (§ 240.13d–101) or amended Schedule 13G (§ 240.13d–102), and no fees shall be required with respect to an initial Schedule 13D or initial Schedule 13G if the filing person previously has filed a Schedule 13D or Schedule 13G reporting beneficial ownership of more than five percent of such class of equity securities and has not subsequently filed an amendment reporting beneficial ownership of five percent or less of such class; *Provided, however*, That once an amendment has been filed reflecting beneficial ownership of five percent or less of such class, an additional fee of $100 shall be paid with the next filing of that person that reflects ownership of more than five percent.

(b) Schedules filed with the Commission pursuant to §§ 240.13d–1 and 240.13d–2 in paper format shall include a signed original and five copies of the schedule, including all exhibits. One copy of the Schedule filed pursuant to §§ 240.13d–1 and 240.13d–2 shall be sent to the issuer of the security at its principal executive office, by registered or certified mail, and (except with respect to persons filing pursuant to § 240.13d–1(c)) to each national securities exchange or the securities association that operates the automated inter-dealer quotation system where the security is traded or authorized to be quoted.

5. By amending § 240.13d–101 by revising the language preceding the first box on the cover page, and revising the note on the cover page to read as follows:

§ 240.13d–101 Schedule 13D—Information to be included in statements filed pursuant to § 240.13d–1(a) and amendments thereto filed pursuant to § 240.13d–2(a).

* * * * *

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§ 240.13d–1(b)(4), 240.13d–1(b)(5) or 240.13d–1(b)(6), check the following box.

* * * * *

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See § 240.13d–7(b) for other parties to whom copies are to be sent.

* * * * *

6. By amending § 240.13d–102 by revising the section heading, adding a line for the date of the reportable event following the line for CUSIP Number, revising Instruction A, revising Items 3, 4, and 10, and revising the note at the end of the schedule, to read as follows:

§ 240.13d–102 Schedule 13G—Information to be included in statements filed pursuant to § 240.13d–1 (b) and (c) and amendments thereto filed pursuant to § 240.13d–1(b)(3) or § 240.13d–2.

* * * * *

(Date of Event Which Requires Filing of this Statement)

* * * * *

Instructions. A. Statements filed pursuant to § 240.13d–1(b)(1) containing the information required by this schedule shall be filed not later than February 14 following the calendar year in which the person became obligated to report or within the time specified in § 240.13d–1(b)(3), if applicable. Statements filed pursuant to § 240.13d–1(b)(2) shall be filed not later than 10 days after the event requiring the filing.

* * * * *

Item 3. If this statement is filed pursuant to §§ 240.13d–1(b)(1) or 240.13d–2(b), check whether the person filing is a:

(a) [ ] Broker or dealer registered under section 15 of the Act.

(b) [ ] Bank as defined in section 3(a)(6) of the Act.

(c) [ ] Insurance company as defined in section 3(a)(19) of the Act.

(d) [ ] Investment company registered under section 8 of the Investment Company Act of 1940.

(e) [ ] Investment adviser registered under section 203 of the Investment Advisers Act of 1940.

(f) [ ] Employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001 *et seq.* ("ERISA") which is subject to the provisions of ERISA, or any such plan that is not subject to ERISA that is maintained primarily for the benefit of the employees of a state or local government or instrumentality, or an endowment fund.

(g) [ ] Parent holding company or control person, in accordance with § 240.13d–1(b)(1)(ii)(G).

If this statement is filed pursuant to § 240.13d–1(b)(2), check this box. _____

Item 4. Ownership.

Provide the following information regarding the aggregate number and percentage of the class of securities of the issuer identified in Item 1.

(a) Amount beneficially owned: _____.

(b) Percent of class: _____.

(c) Number of shares as to which such person has:

(i) Sole power to vote or to direct the vote _____.

(ii) Shared power to vote or to direct the vote _____.

(iii) Sole power to dispose or to direct the disposition of _____.

(iv) Shared power to dispose or to direct the disposition of _____.

Instruction. For computations regarding securities which represent a right to acquire an underlying security *see* § 240.13d–3(d)(1).

* * * * *

Item 10. Certification.

(a) The following certification shall be included if the statement is filed pursuant to § 240.13d–1(b)(1):

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired and held in the ordinary course of business and were not acquired or held for the purpose of and do not have the effect of changing or influencing the control of the issuer of such securities and were not acquired or held in connection with or as a participant in any transaction having such purpose or effect.

(b) The following certification shall be included if the statement is filed pursuant to § 240.13d–1(b)(2):

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were not acquired or held for the purpose of and do not have the effect of changing or influencing the control of the issuer of such securities and were not acquired or held in connection with or as a participant in any transaction having such purpose or effect.

* * * * *

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See § 240.13d–7(b) for other parties for whom copies are to be sent.

* * * * *

2. By amending § 240.16a–1 to revise paragraphs (a)(1)(vi) and (vii) to read as follows:

§ 240.16a–1 Definition of terms.

* * * * *

(a) * * *

(1) * * *

(vi) An employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001 *et seq.* ("Employee Retirement Income Security Act") which is subject to the provisions of the Employee Retirement Income Security Act, or any such plan that is not subject to the Employee Retirement Income Security Act that is maintained primarily for the benefit of the employees of a state or local government or instrumentality, or an endowment fund;

(vii) A parent holding company or control person, provided the aggregate amount held directly by the parent or control person, and directly and indirectly by its subsidiaries or affiliates that are not persons specified in § 240.16a–1(a)(1) (i) through (vi), does not exceed one percent of the subject class; and

* * * * *

Dated: July 3, 1996.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17579 Filed 7–10–96; 8:45 am]

BILLING CODE 8010–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–167–9627b; FRL–5529–2]

Control Strategy: Ozone (O_3); Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve an exemption request from the oxides of nitrogen (NO_X) reasonably available control technology (RACT) and NO_X conformity requirements of the Clean Air Act as amended in 1990 (CAA) for the five county Middle Tennessee (Nashville) moderate ozone (O_3) nonattainment area. The NO_X exemption request is based upon the most recent three years of monitoring data, which demonstrate that additional reductions of NO_X would not contribute to attainment of the National Ambient Air Quality Standards (NAAQS). In the final rules section of this **Federal Register**, the EPA is approving the exemption request as a direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by August 12, 1996.

ADDRESSES: Written comments on this action should be addressed to William Denman at the Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file TN167–01–9627. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365. William Denman, 404/347–3555 extension 4208.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615/532–0554

FOR FURTHER INFORMATION CONTACT: William Denman 404/347–3555 extension 4208.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 18, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 96–17646 Filed 7–10–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 79

[FRL–5532–5]

Registration of Fuels and Fuel Additives: Changes in Requirements, and Applicability to Blenders of Deposit Control Gasoline Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes several specific changes to regulations requiring the registration and testing of designated motor vehicle fuels and fuel additives (F/FAs) by their manufacturers. The objectives are to reduce the number of respondents, streamline program requirements, further ease small business burdens, and clarify some specific technical provisions in the existing registration regulations. Included in the proposed group of respondents no longer required to be registered as fuel manufacturers are those who solely blend deposit control additives into gasoline.

DATES: Written comments on the issues presented in this document will be accepted until August 12, 1996.

ADDRESSES: Comments should be sent in duplicate to EPA Air Docket Section (LE–131); Attention: Public Docket No. A–90–07; Room M–1500, 401 M Street S.W., Washington, DC 20460; Phone 202–260–7548 or 7549; FAX 202–260–4000. The docket is open for public inspection from 8:00 a.m. until 5:30 p.m., Monday through Friday, except on government holidays. Previous rulemaking documents and other materials related to this proposal are available in the docket. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying services.

FOR FURTHER INFORMATION CONTACT: Jim Caldwell (202–233–9303) or Joseph Fernandes (202–233–9016), U.S. EPA, Office of Mobile Sources, Fuels and Energy Division, Mail Code 6406J, 401 M Street SW, Washington, DC 20460.

Electronic copies of this proposed rule, the regulatory text for this proposed rule, and earlier rulemaking documents related to the F/FA Registration Program are available free of charge on EPA's Technology Transfer Network Bulletin Board System (TTNBBS). For specific instructions, contact Joseph Fernandes at the phone number or address above. These documents are also available in the public docket referenced above.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Regulated categories and entities potentially affected by this action include:

Category	Examples of regulated entities
Industry	Manufacturers of gasoline and diesel fuel. Manufacturers of additives for gasoline and diesel fuel.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity would be regulated by this action, you should carefully examine this preamble and the proposed changes to the regulatory text. You should also carefully examine the existing provisions of the registration program at 40 CFR part 79.

II. Introduction

A. Background

The F/FA registration program is authorized by section 211 of the Clean Air Act (CAA) and codified in 40 CFR part 79. In accordance with CAA sections 211(a) and (b)(1), basic registration requirements applicable to gasoline and diesel fuels and their additives were issued in 1975. These regulations require manufacturers to submit information on their F/FA products, such as the commercial identity, chemical composition, purpose-in-use, and range of concentration, in order to have such products registered by the EPA.

Additional registration requirements, implementing sections 211(b)(2) and (e), were proposed in April 1992 and February 1994 (57 FR 13168 and 59 FR 8886, respectively) and were finalized on May 27, 1994 (59 FR 33042, June 27, 1994). The additional regulations require manufacturers, as part of their F/FA registration responsibilities, to conduct tests and submit information on the health effects of their F/FA products. These requirements are organized within three tiers. Tier 1 requires analysis of the combustion and evaporative emissions of F/FAs and a survey of existing scientific information on the public health and welfare effects

of these emissions. To the extent that adequate test data are not already available (as defined in the regulations), Tier 2 requires manufacturers to conduct specified toxicology tests to screen for potential adverse health effects of the F/FA emissions. Under Tier 3, follow-up testing may be required at EPA's discretion to further evaluate concerns identified in the earlier tiers.

The rule also includes several provisions to reduce the information collection and testing burdens. Among these provisions is a voluntary grouping and cost sharing program which allows manufacturers of similar F/FAs to pool their resources and efforts in complying with the requirements. Special provisions for small manufacturers are also included.

In subsequent sections of this notice, EPA proposes several specific changes to the F/FA registration regulations. These proposals would not impact the overall structure nor (with minor exceptions) the scientific requirements of the current program. Rather, EPA is proposing to revise and/or add certain definitions and provisions, with the intended result of decreasing or, in some cases, removing the requirements altogether for many F/FA registration respondents. EPA believes that the proposed changes would significantly reduce the overall burdens of the F/FA registration program without having an appreciable impact on its monitoring, control, and information collection objectives.

B. Public Participation

EPA desires full public participation in arriving at its final decisions and solicits comments focused specifically on the proposals in this notice. Wherever applicable, full supporting data and detailed analysis should be submitted to allow maximum use of the comments. Written materials already submitted in regard to the issues addressed by these proposals will be fully considered by EPA, and need not be resubmitted in response to this notice. At this time, EPA is not seeking comments on issues other than those specifically addressed in this notice, and is under no obligation to respond to any such comments it may receive. EPA is not planning to hold a public hearing on this proposed rule. However, a hearing will be held if requested within 10 days after publication. Requests for a public hearing should be submitted in writing to Joseph Fernandes at the address provided above.

Any proprietary information being submitted for the Agency's consideration should be markedly distinguished from other submittal information and clearly labeled "Confidential Business Information." Proprietary information should be sent directly to the contact persons listed above, and not to the public docket, to ensure that it is not placed in the docket. Information thus labeled and directed shall be covered by a claim of confidentiality and will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2.

If no claim of confidentiality accompanies a submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

III. Fuel Manufacturer and Additive Definitions

A. Background

Section 211(a) of the Clean Air Act authorizes EPA to designate fuels and fuel additives, and prohibits manufacturers or processors of designated fuels and additives from introducing them into commerce without having them registered. Section 211(b) describes the registration requirement for designated fuels and fuel additives. Pursuant to § 211(b)(1), the manufacturer of any designated fuel or additive must provide EPA with certain identifying information about the fuel or additive to obtain registration. Section 211(b)(2) provides EPA with discretionary authority to require health effects testing information from manufacturers of designated fuels and additives for the purpose of registration.

In the 1977 amendments to the Clean Air Act, Congress included a provision that directed EPA to issue regulations to implement § 211(b)(2). These regulations were issued in May 1994, and included an amendment to EPA's previous definition of fuel manufacturer to include importers. 59 FR 33042 (June 27, 1994). In today's notice, EPA is proposing to amend the definition of fuel manufacturer to exclude parties that add additives in amounts less than 1% by volume of the resulting fuel/additive mixture, and to exclude oxygenate blenders who meet the regulatory definition of a small business. In addition, EPA is proposing to amend the definition of "additive" to exclude substances composed solely of carbon and/or hydrogen.

The term "manufacturer of a fuel or fuel additive" is used in § 211(a), 211(b), and 211(e), but the Act is silent on the definition of "manufacturer" and "additive." Promulgating regulatory definitions of "fuel manufacturer" and "additive" for purposes of implementing these subsections is within the Agency's discretion to interpret the statute it administers where that statute is silent with respect to a specific issue. See *Chevron U.S.A., Inc.* v. *NRDC*, 467 U.S. 837 (1984). A clear definition of "fuel manufacturer" is necessary for EPA to implement its authority effectively under § 211(a), (b), and (e), and to provide certainty as to which parties are subject to statutory requirements that apply to fuel manufacturers. In addition, it is necessary for EPA to define "additive" to clarify which products are covered by EPA's regulations under § 211(e) covering registration and health effects testing requirements.

EPA believes it is reasonable and appropriate to define "fuel manufacturer" to exclude parties that add additives in amounts less than 1% by volume of the resulting fuel/additive mixture. The health effects information that such parties would be required to submit will also be obtained from the manufacturers of the additive, who would not be exempted under the proposed amendment. Therefore, excluding these parties from the definition of fuel manufacturer would reduce the generation and collection of duplicative information. For similar reasons, EPA also believes it is reasonable and appropriate to define "fuel manufacturer" to exclude oxygenate blenders who meet the regulatory definition of a small business. As discussed below, EPA believes that it is reasonable and appropriate to define "additive" to exclude substances composed solely of carbon and/or hydrogen.

According to § 79.1, the F/FA registration regulations apply to all manufacturers of designated fuels and fuel additives. Designated F/FAs, specified in §§ 79.30–79.33, are currently limited to motor vehicle gasoline and diesel fuels and to additives intended for use in these fuels. The applicable definition of a "fuel manufacturer" is provided in § 79.2(d):

> *Fuel manufacturer* means any person who, for sale or introduction into commerce, produces, manufactures, or imports a fuel or causes or directs the alteration of the chemical composition of, or the mixture of chemical compounds in, a bulk fuel by adding to it an additive.

The comprehensiveness of this definition has led to some redundancy in registration requirements. It has also led to problems and confusion arising from the fact that registration and testing responsibilities are sometimes transitive, i.e., they pass along from one manufacturer to another, generally from

bulk additive manufacturers to their fuel manufacturer customers. A number of manufacturers have contacted EPA about these problems (e.g., see docket items VI–D–01, VI–D–05, VI–D–06, and VI–D–11).

For example, terminal owners and others who buy and blend bulk additives into fuel are, according to the definition cited above, fuel manufacturers.[1] These parties are therefore subject to the product registration and testing responsibilities applicable to fuel manufacturers. Under the current regulations, they are required to register their fuel products, including the identity, purpose, and amount of bulk additive(s) which they blend (or intend to blend) into the fuel. Furthermore, they are responsible for any testing applicable to the resulting fuel/additive mixture, or for participating in one or more testing groups based on the composition of this mixture. In effect, their registration and testing responsibilities, and their grouping and cost-sharing opportunities, are defined by the composition of the bulk additives they mix into fuel, though in many instances they may not even know the actual composition of the additive products they buy and use.

The transitivity of registration and testing requirements from additive manufacturers to their fuel manufacturer customers has caused the number of parties subject to registration requirements to multiply and has led to confusion among the various parties along the F/FA production-blending-distribution chain. It may also have unintended effects on the F/FA commercial marketplace. In some cases, for example, blenders may stop using certain kinds of additives rather than incurring the responsibilities of a fuel manufacturer, or may switch from their traditional suppliers to new suppliers based on the grouping properties (set forth in § 79.56) of the competing additives. A particularly awkward result may occur when the direct manufacturer of an additive is exempt from testing requirements under the program's small business provisions (§ 79.58(d)), but the fuel manufacturers who buy and blend the additive into fuel do not qualify for the exemption and must still test the additive/fuel mixture. To keep their customer base, some small manufacturers of "atypical" additives (defined in § 79.56(e)) state that they may find it necessary to waive their small business exemptions and shield their customers from additive testing requirements by fully funding the testing themselves (see, for example, docket item VI–D–06). Clearly, this outcome would undermine the special allowances which EPA intended to grant to small businesses. A revised § 79.58(d)(3) is proposed to remedy this situation, by exempting a fuel manufacturer from Tier 2 requirements for the use of an additive which is exempt from Tier 2.

Another problem associated with the definition of "fuel manufacturer" has arisen as a result of a recent change in the definition of "fuel additive". The final rule which added health effects testing to the registration requirements for F/FAs (59 FR 33042) also changed the definition of an additive, as specified in § 79.2(e). Previously, substances composed solely of carbon and/or hydrogen had been specifically excluded from the definition of an additive,[2] and thus did not have to be registered. Since these substances were not considered additives, parties which blended them into fuels were not considered fuel manufacturers and were not subject to the F/FA registration requirements on the basis of that blending activity.

Recognizing that all-hydrocarbon substances may have toxic properties, the new rule removed the exclusion of all-hydrocarbon substances from the definition of an additive. At the time, EPA was particularly concerned about potential increased use of benzene and other aromatic hydrocarbon additives. However, the change in the definition of an additive has raised some unintended concerns. Under the new definition, hydrocarbon fuel blending stocks (e.g., kerosene, butane, propane), commonly used on a seasonal basis to change the evaporative or flow properties of conventional fuels, could now be considered as additives. Thus, parties which blend these fuel substances into gasoline or diesel fuel could be considered to fit the definition of "fuel manufacturer." Potentially, hundreds of additional parties could be required to register as F/FA manufacturers, creating a substantial regulatory paperwork burden while providing little incremental information to EPA. This was not EPA's intent. Furthermore, the concern about benzene and other aromatics, which originally motivated EPA to delete the all-hydrocarbon exclusion from the additive definition, has now been largely addressed by the reformulated gasoline/anti-dumping rules and other regulatory mechanisms which limit the aromatic composition of gasoline and diesel fuels. In sum, therefore, the change in the additive definition has created a potentially large number of unintended new "fuel manufacturer" respondents among those who add commonplace blending stocks to gasoline and diesel fuels, while achieving little in regard to EPA's original intent.

A substantial number of registrants is composed of persons who fit the definition of "fuel manufacturer" because they blend ethanol into gasoline. In the case of oxygenates other than ethanol, the oxygenate is generally added to gasoline at the fuel refinery, before the gasoline is distributed through the pipeline. These "upstream" oxygenate blenders tend to be relatively limited in number, and often are large fuel manufacturing businesses. Ethanol, on the other hand, is generally prohibited from transport through the pipeline (pipeline policy, technical reasons), and must be added to the fuel downstream. Thus, rather than being blended by relatively few fuel refiners, ethanol is added to fuel by large numbers of terminal operators, fuel haulers, and some fuel retailers. Many such ethanol blenders qualify as small businesses under the definition in § 79.58(d)(2) and thus are excused from the Tier 1 and Tier 2 health effects testing provisions of the F/FA registration regulations. Nevertheless, as fuel manufacturers, they must still comply with the basic reporting requirements of the F/FA registration program. This combination of circumstances maintains a significant paperwork burden for such respondents, while adding little information to EPA in regard to oxygenated fuels beyond that which is currently available through other program reporting mechanisms.

B. Proposed Changes

EPA proposes to address the problems summarized above by modifying the definitions of "additive" and "fuel manufacturer." First, EPA proposes to revise the current definition of an additive (at § 79.2(e)) to exclude substances composed solely of carbon and/or hydrogen, thus reinstating the definition which was in effect prior to the final rule of May 27, 1994. As described previously, this action would provide regulatory relief to perhaps hundreds of companies which are now considered "fuel manufacturers" because they add common hydrocarbon

[1] However, independent terminal operators which blend additives into their customers' fuels at the specific direction of such customers are not considered fuel manufacturers. Also, end users, such as fleet owners/operators who blend additives into bulk fuel for their own fleet use, are not considered fuel manufacturers.

[2] The presence of trace contamination with elements other than carbon and hydrogen did not factor into this exclusion.

stocks to finished fuels. It should be noted that persons who blend hydrocarbon stocks together to produce a usable motor vehicle fuel (rather than adding hydrocarbons to a finished fuel) would continue to be considered fuel manufacturers.

Second, EPA proposes to add provisos to the definition of a fuel manufacturer (at § 79.2(d)) such that the addition of a small volume of any additive[3] to fuel would not in itself cause any party to be considered a fuel manufacturer, nor would the addition of an oxygenating additive by a party qualifying for the small business provisions of the registration program. The proposed new definition of a fuel manufacturer is as follows:

Fuel manufacturer means any person who, for sale or introduction into commerce, produces, manufactures, or imports a fuel or causes or directs the alteration of the chemical composition of a bulk fuel, or the mixture of chemical compounds in a bulk fuel, by adding to it an additive, except that (1) a party who adds a quantity of additive(s) amounting to less than 1.0 percent by volume of the resultant additive(s)/fuel mixture is not thereby considered a fuel manufacturer, and (2) a party who qualifies as a small business under the criteria in § 79.58(d)(2) of this subpart, and who adds an oxygenate compound(s) to fuel is not thereby considered a fuel manufacturer.

This proposed definition would significantly reduce the number of F/FA registration respondents and would address the problems described above that result from the "transitivity" of registration and testing requirements under the current regulations. Under this definition, the addition of most "baseline" and "atypical" additives at ordinary treatment rates would not cause the blending party to be a fuel manufacturer because such additives are added in amounts less than 1% of the resultant mixture. In the general case, parties which add oxygenates to fuel, in an amount sufficient to produce a fuel mixture categorized as non-baseline,[4] would still be considered fuel manufacturers. EPA believes this to be appropriate because the relatively large added volumes can cause substantive changes in the basic characteristics, emission properties, and toxic potential of the fuel. However, to reduce the number of respondents required only to submit redundant registration paperwork, the proposed definition of a fuel manufacturer excludes oxygenate blenders who qualify for the small business provisions of the registration program (chiefly, small ethanol blenders).

For convenience, it is proposed that the definition of "oxygenate compound" at 40 CFR 79.50 also be incorporated at 40 CFR 79.2(k). EPA requests comments on the proposed changes to the definitions of "additive" and "fuel manufacturer."

C. Relationship to the Gasoline Detergent Additive Program

An interface exists between the F/FA registration program and the detergent additive program.[5] In order to avoid duplicate reporting requirements, the detergent additive program interim regulations in 40 CFR Part 80 make use of the existing F/FA registration system as the mechanism for collecting much of the information required of detergent additive blenders. However, if the definition of a fuel manufacturer is changed as proposed above, then detergent additive blenders would no longer be considered fuel manufacturers and would no longer be required to register under the F/FA registration program. Thus, the source of information on which EPA relies for the interim detergent additive program would no longer be available. However, as will be discussed in the upcoming final detergent rule, EPA has concluded that this information is no longer necessary. Therefore, there would be no adverse effect on the detergent additive program.

IV. Small Business Definition

In the F/FA registration program, qualification for special small business provisions is based in part on total annual sales revenue, specifically, a $50 million limit for manufacturers of baseline and non-baseline F/FAs, and a $10 million limit for manufacturers of atypical F/FAs (see §§ 79.58(d) (2) and (3), respectively). Communications from trade organizations which represent fuel retailers (docket item VI–D–05) suggest that these total sales criteria should be revised to take tax effects into account. These organizations point out that sales and excise taxes accumulate as the fuel passes along the refining-distribution-marketing chain, but are generally not included in the price paid for the fuel (nor in the gross sales revenue of the seller) until the fuel is marketed at the retail level. In some instances, the accumulated sales and excise taxes on fuel, including applicable taxes at the local, state, and federal levels, may exceed 40 percent of the price paid by consumers, and thus represents a comparable portion of the retailer's fuel-related sales revenues. The commenters argue that, since these tax effects are not reflected in the small business definition, small marketers are disadvantaged in comparison with small refiners and other upstream businesses.

EPA agrees and proposes that the term "total annual sales" at § 79.58(d) be modified by adding the following: "excluding any revenue which represents the collection of federal, state and/or local excise taxes and/or sales taxes". A revised § 79.59(b)(5)(ii) is proposed to require the submittal, at EPA's request, of applicable bills of lading or other valid documentation to support the legitimacy of any fuel sales amounts excluded as taxes. Comments are requested concerning these proposed revisions.

V. Biodiesel Provisions

Biodiesel fuels and most blends of bio- and conventional diesel fuel contain more than 1.0 weight percent oxygen and thus, according to § 79.56(e)(3)(ii)(B), fall into the non-baseline diesel category. Furthermore, under § 79.56(e)(4)(ii)(B)(2), biodiesel fuels derived from vegetable oil ("mixed alkyl esters of plant origin") are grouped separately from biodiesel fuels derived from animal fat ("mixed alkyl esters of animal origin").

EPA established these two separate biodiesel groups because of concern that the composition of animal-derived and vegetable derived fuels might differ considerably, and thus might demonstrate different toxicologic properties. Both vegetable oil and animal fat are composed of triglycerides, and the esterification process used to convert the triglycerides to fuel (i.e., methyl esters) is the same for both. However, up to 3.0 percent of the resulting chemical mixture is composed of nonesterified reactants, other reaction products, and possible contaminants, and EPA has been concerned that these could vary significantly between the different feedstocks.

In subsequent communications with EPA (docket item VI–E–01), representatives of the industry have asserted that the composition of biodiesel fuels of animal and plant origin have similar physical properties. As a result of their arguments, EPA is considering a change to the grouping rules which would permit animal- and vegetable-derived biodiesel fuels to be grouped together.[6] A revised § 79.56(e)(4)(ii)(B)(2) is proposed. EPA requests comments on this potential action. Data demonstrating the qualitative and quantitative differences between biodiesel fuels from different feedstocks, including the identity and amount of contaminants, would be particularly helpful to EPA's determination of the most appropriate grouping rules for these fuels. Available data comparing the speciated emissions of these fuels would also be of interest.

Section 79.56(e)(4)(ii)(B)*(2)(ii)* of the current regulations contains generic requirements for choosing the representative to be used in testing for the health effects of biodiesel and other defined groups of oxygenating compounds. EPA is considering a requirement specific to biodiesel which would require that 100 percent biodiesel fuel be used as the biodiesel group's test representative. This would maximize the likelihood of detecting any differences in the emissions and/or toxicologic properties between conventional diesel and biodiesel fuels. Under the existing regulations, it is likely that a 20 percent biodiesel formulation will be selected as the test representative; thus, lower exposures to biodiesel emissions would occur during the testing. On the other hand, a 20 percent formulation does currently appear to be the more likely formulation to be introduced into commerce, at least in the near future. Thus, EPA requests comment on which biodiesel fuel specification (20 percent, 100 percent, or some other percentage) would be most appropriate in the context of the testing program. Comments are also requested on the practicality of each option with respect to test vehicle/engine compatibility.

VI. Synthetic Fuel Provisions

A. Background

According to §§ 79.56(e)(3)(I)(B) and (3)(ii)(B), a fuel derived from any synthetic crude source, such as shale, coal, or tar sands, is assigned to a non-baseline category. The regulation does not specify a minimum amount of synthetic component which would cause a fuel to fall into the non-baseline category. Sections 79.56(e)(4)(ii)(A)*(3)* and (ii)(B)*(3)*, for gasoline and diesel F/FAs respectively, define separate non-baseline groups for "formulations derived from each particular non-conventional petroleum source *or process*" (italics added for emphasis), and lists the following types of fuel formulations as examples of such groups: "coal-derived formulations; chemically-synthesized formulations (including those using recycled chemical or petrochemical products); tar sand-derived formulations; shale-derived formulations; and other types of soil-recovered products used in formulating (fuel)".

Since publication of these regulations, EPA has received communications and information from the affected industry (see docket items VI–D–02 and VI–D–03) claiming that synthetic fuels should be categorized as baseline rather than non-baseline products. They point out that the current regulations do not reflect the fact that finished motor vehicle fuels are rarely, if ever, refined solely from synthetic crude. Rather, when synthetic crude is used, it generally comprises a relatively small fraction (e.g., 10–15 percent) of the total crude which is refined into motor vehicle fuel. Moreover, the industry claims that such fuels, once refined, are not significantly different from conventional fuels. They are not labeled differently or stored separately from fuels derived wholly from conventional crude sources. In fact, they are commonly distributed by way of the conventional fuel pipeline system. Downstream parties may therefore buy and sell, additize, and otherwise handle fuels with some synthetic derivation, without even knowing when or if this is the case.

The F/FA registration program covers only designated motor vehicle fuels and their associated additives. It does not require the registration of crude feedstocks from which these F/FAs are made. Thus, in the case of conventional fuels, it is not the entity which takes crude oil from the ground who is responsible for fuel registration; rather, it is the entity which refines finished fuel from crude oil who is required to have that fuel registered prior to placing it in commerce.[7] Similarly, synfuel registration is not the responsibility of parties who mine (or otherwise obtain) a synthetic crude source and subject it to upgrading and purification processes prior to actual fuel refining. Only after the synthetic crude is refined (alone or as part of a synthetic/conventional crude mixture) is the product subject to registration.

Clearly, the responsibility for registering synfuel falls to those business entities (usually fuel refiners) which are the first parties along their respective production chains to introduce into commerce a designated motor vehicle fuel derived in whole or in part from a nonconventional source, and conforming to standard specifications for the designated fuel. These manufacturers are responsible for testing the synfuel products they have had registered. Thus it is incumbent on these manufacturers to take steps to determine if any of the materials from which they produce designated fuels are of synthetic origin. Under the current grouping provisions, those who manufacture synfuel derived from the same non-conventional source are able to form testing groups within the applicable (gasoline or diesel) non-baseline categories.

B. Proposed Changes

In the event that such synfuel groups are formed, the current regulations do not contain adequate guidelines for choosing synfuel group representatives. To facilitate detection of differences between a synthetic fuel and the respective conventional fuel, EPA proposes that, for any synfuel group, the representative should be a fuel derived totally from the relevant synthetic source. If production of a useable 100 percent synfuel is impractical, then the group representative could be a fuel reflecting the highest percentage of syncrude feedstock that is practical and suitable for operating the relevant engine type. Revised §§ 79.56(e)(4)(ii)(A)(3)(ii) and (B)(3)(ii) are proposed. Alternatively, the synfuel group representative could be specified as a fuel reflecting the highest percentage of synthetic crude which is actually input to any member refinery's crude distillation unit(s). The test fuel would otherwise be required to conform to the additization requirements and any other relevant base fuel specifications in § 79.55. Comments on these proposals for selecting synfuel group representatives are requested.

EPA also requests comments on some potential changes to the synfuel grouping rules themselves. First, EPA proposes to delete the phrase "..or process" from §§ 79.56(e)(4)(ii)(A)*(3)* and (ii)(B)*(3)* of the registration regulations. The inclusion in these sections of non-conventional *processes* in addition to non-conventional *sources*

[3] Of course, the additive itself must still be registered.

[4] As specified in § 79.56(e)(3)(I) and (ii), non-baseline F/FAs contain (among other criteria) no elements in addition to carbon, hydrogen, oxygen, nitrogen, and sulfur, and, in the case of gasoline F/FAs, contain 1.5 percent or more oxygen by weight, and, in the case of diesel F/FAs, contain 1.0 percent or more oxygen by weight.

[5] Regulation of Fuels and Fuel Additives: Standards for Deposit Control Gasoline Additives. Proposed Rule: 59 FR 64213, Dec. 6, 1993. Interim Program Final Rule: 59 FR 54678, Nov. 1, 1994. Certification Program Final Rule expected in 1996. These documents are available on EPA's TTNBBS bulletin board. See "For Further Information. . .," at the beginning of this notice.

[6] It is important to note that, notwithstanding any grouping arrangements permitted under the program's grouping rules, EPA retains the authority in § 79.54(a) to require Tier 3 testing either on an individual or group basis, and to require different representative(s) of a group to be tested than may have been tested at the Tier 1 and/or Tier 2 level. Thus, even if the regulations were to be changed to allow biodiesel fuels to group together, EPA would not be precluded from requiring vegetable-derived and animal-derived biodiesel fuels to undergo separate Tier 3 testing.

[7] Of course, this distinction is moot if the two activities are accomplished by the same business entity.

as delineaters of non-conventional fuels is potentially misleading. For example, the current language can be interpreted as meaning that heavy, but otherwise conventional crude feedstocks should be considered non-conventional (and therefore non-baseline) because they need slight modification prior to sale and transport. The proposed changes at §§ 79.56(e)(3)(I)(B) and (3)(ii)(B) to delete the phases "heavy oil deposits" would narrow these provisions so that they focus on fuels of greater concern to EPA, i.e., fuels derived from non-conventional sources, not from mechanical or chemical production processes on otherwise conventional feedstocks. Comments are requested on this proposed revision.

In developing the current regulations, EPA sought to segregate non-conventional fuels into separate non-baseline groups because of concerns that they were likely to contain unknown contaminants and relatively high levels of trace or background elements. However, limited published information and other data received from the industry suggest that, after processing, some mined syncrude feedstocks may not be significantly different from more conventional crudes.

Because they must be compatible with conventional refinery processes and must be fungible with conventional fuels, synthetic crudes are reportedly subjected to extensive upgrading to remove heavy residual oils ("tank bottoms"), sulfur, inorganic elements, organo-metallic compounds, and clays prior to shipping to refineries. In preparing its product for sale, the syncrude manufacturer typically subjects the mined material to de-salting and coking processes (to remove metal contaminants) and atmospheric and vacuum distillations (to remove tank bottoms and asphaltic residues). Limited product assay results provided to EPA (docket item VI–D–02) indicate that syncrude feedstocks may be lower than typical petroleum crudes in vanadium, nickel, and iron. The industry monitors these characteristics because several catalytic refinery processes are intolerant of metallic contaminants.

For these reasons, EPA is considering options that would further ease or, possibly, remove some of the current provisions which distinguish some fuels derived from synthetic sources from conventional petroleum fuels. Substantive comments and additional data are needed to help EPA decide whether any of these additional options should be adopted and, if so, to which crude sources they should apply (i.e., some or all mined crude sources, other petrochemical crude sources, or all types of crude feedstocks).

One alternative provision under consideration would permit a synfuel manufacturer (or group) to submit the results of a thorough chemical analysis of the raw synfuel in conjunction with the Tier 1 emission characterization data. This special analysis would emphasize the identification of elevated levels of trace elements or compounds as compared with the base fuel for the respective fuel family. The data would need to include sufficient numbers of fuel samples to be viewed as a valid sampling of the range of the particular crude feedstock and, likewise, would need to cover a broad range of measurable feedstock characteristics. Based on the special Tier 1 analysis, EPA would determine, on a case-by-case basis, whether the synfuel in question should be permitted to join the baseline group for purposes of Tier 2, or whether the synfuel would continue to be categorized as non-baseline.

Another possibility under consideration would simply delete some or all synthetic crude sources from the list of non-conventional sources. This would mean that fuels from these feedstocks would be classified as baseline products. This choice would recognize that it is in the vital interest of the fuels industry to continue to monitor the quality of the synfuels that are transported in the existing pipeline systems. The demands of fungibility would thus be assumed to maintain the quality and similarity of syncrude products on a par with that of more conventional F/FAs.

Comments are requested on these possible provisions. To the degree that such comments are substantive and provide objective data supporting these alternative provisions, EPA may be more persuaded that its original concerns about synfuel composition may have been exaggerated. Comments are also requested on whether shale-derived synfuels should continue to be categorized as non-baseline, even if fuels from other mined sources (coal, tar sands) are re-categorized as baseline.

C. Other Alternatives

Under a different approach, the grouping system's current definition of synthetic fuels would be retained, but a particular manufacturer's synfuel product would be categorized as baseline or non-baseline depending on the proportion of synthetic crude represented in the finished product. As mentioned earlier, the current F/FA regulations do not establish a minimum amount of synthetic crude feedstock which causes a fuel to be categorized as non-baseline. Given the variability in syncrude proportion and the apparent fungibility of many synfuel products with conventional fuels, such a minimum would appear to be appropriate. Under this approach, for example, EPA could specify that a synfuel product will be considered non-baseline only if more than 15 percent by volume of the crude unit charge (i.e., the input to a refinery's crude distillation unit(s)) is composed of synthetic crude or mixed synthetic-conventional crude feedstock.[8] The choice of 15 percent as the cutoff volume would mean that most of the synfuels produced today would be classified as baseline. Since their manufacturers could thus join the respective baseline group(s), it is likely that some types of synfuel would not routinely undergo testing.[9] In practice, any cutoff point adopted in the regulations would probably function as a cap on the syncrude proportion used by synfuel manufacturers.

As a variation on this approach, different baseline/non-baseline cutoff points could be established for different kinds of synfuels. Under this variation, fuels containing more than 15 percent content derived from mined sources (e.g., coal, shale, and tar sands) would be considered non-baseline, while fuels containing more than 2 percent content derived from other petrochemical sources (e.g., used motor oils, recovered chemical spills, recycled plastics, and industrial waste streams) would be considered non-baseline. Other cutoff points might also be appropriate.

EPA requests comment as to the appropriateness of using 15 percent of crude unit charge as the cutoff point for all syncrude feedstocks in determining whether a fuel belongs in a non-baseline group. Comments are also requested on the alternative approach of setting different cutoff points for different types of synfuel. Suggestions for other cutoff points than the ones discussed above, with support and justification for such suggestions, are welcome. In addition, EPA requests information on the amount of syncrude typically represented in synfuels as they leave the refinery, as well as the usual maximum amount of syncrude used in such fuels today. Information is also sought on any differences in these formulation

[8] This statement assumes there are no other conditions (e.g., high oxygen content) that would cause the fuel to be non-baseline.

[9] However, under the Tier 3 provisions of the F/FA registration regulations, EPA could still require any emission speciation and/or health effects testing it deems necessary if, at some future time, EPA finds that a synfuel or other F/FA is not well represented by the test fuel designated to represent its F/FA group.

practices which may occur as a function of the type of syncrude in question.

VII. De Minimis Provisions

A. Background

In the NPRM published April 15, 1992, EPA raised the possibility of setting *de minimis* levels for some atypical F/FAs,[10] i.e., maximum concentrations or emission rates for atypical elements below which the manufacturers of F/FAs containing such elements would be excused from some or all of the testing requirements for the product. EPA recognized that the extra emission testing requirements proposed for atypical F/FAs and the relatively scarce grouping opportunities among such products could subject manufacturers of atypical F/FAs to considerably higher registration costs than other manufacturers. *De minimis* provisions were discussed as a possible way to reduce these burdens when atypical F/FAs could reasonably be anticipated to have no adverse effects on the public health or the environment (i.e., having no incremental effects relative to the effects of the associated base fuel). The proposed *de minimis* provision would be limited to specific atypical elements which were generally regarded as not producing overt toxicological effects when inhaled *and* were present in the product and its emissions in very low quantities.

When the F/FA test rule was promulgated in May 1994, however, these special *de minimis* provisions were not finalized. EPA noted that very little speciated chemical compound information was available on atypical F/FAs or their emission products, from which possible atypical F/FA candidates and *de minimis* levels could be identified. Likewise, little data existed regarding the potential toxicities, exposures, or health risks associated with atypical F/FAs or their emissions. Finally, there was a concern that, in promulgating *de minimis* levels for atypical elements, EPA's actions would be misinterpreted as setting "safe" levels for exposure to various atypical compounds when, in fact, very few applicable, reliable health and safety exposure standards exist for any of the substances of concern.

However, the practical effect of not promulgating *de minimis* levels for some atypical F/FAs has been to subject all atypical F/FAs to the same level of scrutiny, even though the overall level of concern about their potential health effects may be markedly different. Thus, under the existing regulations, manufacturers of F/FAs containing such unlike elements as, say, mercury and sodium each have to comply with the same detailed emissions characterization and health effects testing requirements under the same set of conservative assumptions.

In an attempt to improve this outcome, EPA is thus again proposing a *de minimis* provision. This proposed provision, described in the next section, differs somewhat from the previous *de minimis* proposal; however, it does not solve all of the original objections. Reliable quantitative data on the toxicity of most atypical F/FAs and their emission products is still lacking. Nevertheless, the proposal described below is conservative in approach and applicability, and EPA believes it to be a reasonable and prudent alternative to the current program, which allows for no distinctions to be made based on the anticipated health effects and exposures associated with substances which, in fact, vary greatly in chemical composition and rate of usage.

EPA wishes to emphasize once again that, in proposing de minimis provisions for certain atypical F/FAs, the Agency is *not* setting a safety level for these F/FAs or their emissions that is meaningful or valid outside a very limited context. The proposal recognizes that a relatively lower level of overall health-related concern exists for some of the atypical elements used in F/FAs, especially under limited exposure conditions at very low concentrations.[11] The relatively low production volumes of most atypical F/FAs means that the population at large would potentially be exposed to exceedingly small amounts of the elements for which EPA is proposing to set *de minimis* levels, particularly after they undergo combustion in motor vehicle engines and the emissions are diluted in air. In combination, these factors make it extremely unlikely that the proposed *de minimis* provisions could result in adverse public health or welfare outcomes. Nevertheless, should such concerns arise in the future, the proposed *de minimis* provisions would in no way limit EPA's flexibility under its Tier 3 testing authority to require additional emission characterization and/or toxicologic testing of any affected F/FA, and to take any follow-up regulatory action warranted by the results.

B. Proposed Provisions

1. Selection of Elements

A number of atypical elements are reported by their manufacturers to be components of one or more F/FAs occurring on EPA's F/FA registration database.[12] EPA is today proposing *de minimis* provisions applicable to the following nine atypical elements:

Aluminum (Al)
Boron (B)
Calcium (Ca)
Sodium (Na)
Zinc (Zn)
Magnesium (Mg)
Phosphorus (P)
Potassium (K)
Iron (Fe)

These nine elements were selected by evaluating a number of factors. First, any element (alone or in compound form) known or believed to have significant inhalation-related health effects or to be a precursor to emission species of particular concern was eliminated as a candidate for the *de minimis* provision. For example, elements in the halogen family were eliminated because of their occurrence in toxic chemical species (e.g., halogenated methane compounds) and/or their potential role in forming dioxin and dioxin-like compounds. Other examples include manganese, mercury, tin, and lead, which were eliminated from consideration because of concerns about their neurologic effects, and cobalt, platinum, silicon, and antimony, which were eliminated because of concerns about their potential respiratory effects in some chemical forms.

EPA also examined any existing exposure assessment values which may exist for the atypical elements (or compounds containing them), including industrial exposure guidelines such as Threshold Limit Value (TLV), Permissible Exposure Limit (PEL),

[10] In the gasoline and diesel fuel families, an atypical F/FA is one which contains one or more elements other than carbon, hydrogen, oxygen, nitrogen, and/or sulfur.

[11] However, recent studies suggest that pulmonary injury may be caused by inhalation exposure to substances generally regarded as biologically inactive, if the exposure to such substances is in the form of "ultrafine" particles (less than 20nm). See, for example, Oberdörster, G., et al., "Role of the Alveolar Macrophage in Lung Injury: Studies with Ultrafine Particles," *Environmental Health Perspectives*, 97: 193–199, 1992. While testing to detect the potential occurrence of ultrafine particles of atypical elements in F/FA combustion emissions is outside the scope of Tiers 1 and 2, such testing could be required under Tier 3 if deemed necessary by EPA. EPA's authority to require such testing would not be affected by any *de minimis* provision for which a fuel or additive might otherwise qualify.

[12] These elements occur on EPA's F/FA registration database as constituents of some diesel F/FAs, or in aftermarket gasoline additives which were "grandfathered" when restrictions on such atypical elements were implemented. These "grandfathering" provisions were previously reviewed in the NPRM and Reopening Notices for the F/FA Registration rulemaking (see 57 FR 13166 and 59 FR 8886).

Recommended Exposure Limit (REL), and Health Effects Assessment Summary Table (HEAST) values. Recognizing that none of these values is specifically intended for use in estimating the toxic potential of long-term continuous exposures to the general population, EPA looked at them only as general, relative indicators of potential toxicity, to be viewed in conjunction with each other and subject to conservatively-applied scientific judgment. In this way, EPA divided the atypical elements into two groups. For one group, containing the nine elements listed above, it appeared that limited exposures to ambient concentrations of at least 0.1 milligrams of the elements per cubic meter of air (mg/m^3) could occur without raising appreciable concerns. For all the remaining atypical elements, specific public health and/or welfare effects issues were identified and/or the exposure assessment values generally indicated that health-related concerns may arise at exposure levels considerably lower than 0.1 mg/m^3. EPA decided that *de minimis* provisions would therefore not be proposed to apply to any of the elements in the latter group.

EPA requests comments on the appropriateness of establishing a *de minimis* provision for atypical F/FAs, given the acknowledged lack of reliable quantitative toxicity data for most of the substances concerned. Specific comments are also requested on the approach described above for differentiating between high- and low-concern atypical elements, and on the nine elements proposed as candidates for the potential *de minimis* provision. Should some of these nine elements be deleted from the list?

2. *de minimis* Level

The *de minimis* provision could theoretically be structured to apply either to (1) the amount of an atypical element in the "raw" state (i.e., in the uncombusted fuel/additive mixture), or (2) the amount occurring in the combustion emissions. While the emissions approach might appear to provide a more direct measurement of the substances of concern, EPA believes that, in this instance, the raw mixture approach provides a simpler and ultimately more effective mechanism for manufacturers to apply and for EPA to evaluate and enforce. Basing the *de minimis* provision on the concentration of atypical elements in the raw state avoids a number of complicated issues that would arise if the provision were based on measurement of atypical elements in the emissions, e.g.: (1) How much accumulated mileage would be required before generating, sampling, and analyzing the emissions for possible *de minimis* qualification; (2) how many samples would be needed; (3) once sampled, what kinds of emissions analyses would be required; (4) how accurate and sensitive would the detection equipment have to be; and (5) how EPA could efficiently confirm the results?

As discussed above, for the group of nine candidate elements, it appears that ambient air concentrations of at least 0.1 mg/m^3 (100 μg/m^3) could occur for limited exposures without raising significant concerns. The concentration of a particular elemental constituent of a fuel/additive mixture which, after combustion in an engine, would yield a given concentration of the element in air depends on a number of factors and relationships, e.g., the chemical characteristics of the element and its host compound(s), the nature of the base fuel, engine type, and driving cycle involved, the scale and complexity of the ambient environment, etc. Thus, corresponding fuel and air concentrations cannot be calculated with precision. However, based on a series of approximations and conservative assumptions, EPA estimates that a concentration of 25 parts per million (ppm) of atypical element(s) in a base fuel (i.e., 0.0025 percent by weight) [13] should generally yield a concentration in air of less than 0.1 mg/m^3, even under the theoretical assumption that the characteristics of the ambient air are a direct function of the combustion emissions of a single vehicle operating on the atypical F/FA mixture.[14]

Thus, EPA is today proposing a de minimis provision based on a qualifying level of 25 ppm in base fuel, disregarding trace amounts of these elements which may exist in the unadditized base fuel. Specifically, if an atypical additive contains no atypical elements other than Al, B, Ca, Fe, Mg, P, K, Na, and/or Zn, and if the total of these elements added to base fuel does not exceed 25 ppm by weight when the additive is mixed into the applicable base fuel at the highest treatment rate recommended by the additive manufacturer, then the additive (and F/FA mixture) would qualify for the de minimis provision. Comments on this general approach and on the proposed de minimis level are requested. The special allowances for which such F/FAs would qualify are described in the next section.

3. Allowances for Qualifying F/FAs

EPA proposes that manufacturers of atypical F/FAs which qualify for the de minimis provision, under the criteria specified above, would be excused from the testing requirements included in Tier 2 (§ 79.53). This is the same allowance provided by the existing regulation (§ 79.58(d)(3)) for atypical F/FAs produced by small manufacturers (i.e., those with less than $10 million in annual revenue). The de minimis provision would not excuse manufacturers from the Tier 1 emission characterization requirements that pertain specifically to atypical F/FAs, i.e., the identification and measurement of individual emission products containing the atypical elements (§ 79.52(b)(2)(iv) and, if applicable, § 79.52(b)(3)(iv)). Notwithstanding the de minimis provision nor any other special provisions for which a F/FA may qualify, the provisions of Tier 3 permit EPA to require any additional testing at its discretion, including testing which might have been required in the absence of the special provision.

Comments on this proposal to excuse qualifying F/FAs from Tier 2 requirements are requested. See the proposed regulatory language at § 79.58(f). Comments are also requested on the scope and specific details of the proposed de minimis provision in general. Any suggestions for easing the provision (i.e., adding elements or increasing the de minimis level) should be accompanied by data to justify such a change. This proposal is deliberately based on conservative assumptions and, EPA requests that commenters provide solid supporting data to justify any suggested changes which would widen the applicability of the proposed provision. EPA is unlikely to adopt any such suggestions from commenters without such data.

VIII. Minor Changes to the Testing Requirement for Registration

Minor changes to the testing requirements are proposed. In the final rules section of this **Federal Register**, these changes are being promulgated as a direct final rule without prior proposal, because they are viewed as noncontroversial and no adverse comments are anticipated. A detailed rationale for these proposed changes is set forth in the direct final rule. If an adverse comment on request for hearing is not received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If an adverse comment or hearing request is received, the portion of the direct final rule at issue will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on these minor changes. Any parties interested in commenting should do so at this time.

IX. Tier 1 Exposure Analysis

Section 79.52(c) requires a manufacturer, using annual and projected production volume, marketing, and distribution data (already required to submitted as a condition for registration), to provide a qualitative discussion of the potential public health exposures to the emission products of its fuels and/or additives. Upon review, EPA has concluded that this qualitative discussion will add little relevant information beyond the registration data. Therefore, it is proposed to delete § 79.52(c) and modify introductory paragraph 79.52(a) accordingly.

X. Environmental and Economic Impacts

The environmental impacts of today's action are minimal, as discussed above. Additionally, economic impacts are beneficial to affected manufacturers due to the additional flexibility afforded in today's notice. Minimal anti-competitive effects are expected. A regulatory support document which presents EPA's analysis of the cost impacts of the May 1994 rule is available in Public Docket A–90–07 located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M St. S.W., Washington, D.C. 20460.

XI. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this rule. This rule will reduce regulatory burdens on small businesses by reducing or eliminating the reporting and testing requirements for many small businesses. EPA has determined that this rule will not have a significant adverse economic impact on a substantial number of small businesses.

XII. Administrative Designation

Pursuant to Executive Order 12866 (58 FR 51735 [October 4, 1993]), the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the executive order. The order defines "significant regulatory actions as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this notice is proposal rulemaking is not a "significant regulatory action". The proposals in this notice will decrease the number of parties to which these regulations apply and will reduce the requirements and costs of other parties subject to the regulations.

XIII. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR Part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

XIV. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate; or by the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed action does not establish regulatory requirements that may significantly or uniquely affect small governments. In fact, this proposed action has the net effect of reducing the burden of the fuel and fuel additive registration program on regulated entities. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

XV. Statutory Authority

The statutory authority for this proposed rule is provided by sections 205 (b) and (c), 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7524 (b) and (c), 7545, and 7601(a), Public Law 95–95).

List of Subjects in 40 CFR Part 79

Environmental protection, Fuel, Fuel additive, Gasoline, Motor vehicle pollution, Penalties.

Dated: June 27, 1996.

Carol M. Browner,

Administrator.

[FR Doc. 96–17550 Filed 7–10–96; 8:45 am]

BILLING CODE 6560–50–P

[13] These measurements refer to the specified elements themselves, not to the weights of the compounds in which these elements may be bound.

[14] Specifically, the very conservative assumption is made that the ambient air consists of fully-passed-through emissions of the atypical element(s) diluted by a factor of 1 to 2,000.

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

[CGD 94–055]

RIN 2115–AF23

Licensing and Manning for Officers of Towing Vessels; Corrections

AGENCY: Coast Guard, DOT.

ACTION: Corrections to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (NPRM) in CGD 94–055, published on Wednesday, June 19, 1996, at 61 FR 31332. The rulemaking relates to licensing and manning for officers of towing vessels.

DATE: These corrections are made on July 11, 1996.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Don Darcy, Operating and Environmental Standards Division, (202) 267–0221.

SUPPLEMENTARY INFORMATION: The NPRM that is the subject of these corrections proposes a major restructuring of the licensing scheme for officers of towing vessels.

Need for Corrections

As published, the NPRM contains typographical errors and omissions that may prove to be misleading and that therefore need corrections.

Corrections to Publication

Accordingly, the NPRM published on June 19, 1996 [CGD 94–055], which was the subject of FR Doc. 96–15346, is corrected as follows:

1. On page 31337, in the second column, in the first paragraph, in line 3, remove "operators" and add, in its place, "operator".

2. On page 31338, in the second column, in paragraph 21, in lines 1 and 2, remove "be revised by requiring" and add, in its place, "require".

3. On page 31340, in the second column, in the line second from the bottom, remove the control-number "2115 AF23" and add, in its place, "2115 0623".

4. On page 31341, in the second column, in the lines fourth and fifth from the bottom, remove "master, mate, or pilot of towing vessels" and add, in its place, "master or mate (pilot) of towing vessels."

Dated: July 3, 1996.

G.F. Wright,

Acting Captain, USCG, Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 96–17566 Filed 7–10–96; 8:45 am]

BILLING CODE 4910–14–M

Notices

Federal Register

Vol. 61, No. 134

Thursday, July 11, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Submission for OMB Review; Comment Request

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for AID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of submission may be obtained by calling (202) 736–4743.

SUPPLEMENTARY INFORMATION:

Ttile: Contractor's Certificate and Agreement with the U.S. Agency for International Development/Contractor's Invoice and Contract Abstract.

Form No.: AID 1440–3.

OMB No: 0412–0017.

Type of Submission: Renewal.

Abstract: USAID finances host country contracts, for technical and professional services and for the construction of physical facilities, between the contractors for such services and entities in the country receiving assistance under loan or grant agreements with the recipient country. USAID is not a party to these contracts, and the contracts are not subject to the FAR. In its role as the financing agency, USAID needs some means of collecting information directly from the contractors supplying such services so that it may take appropriate action in the event that the contractor does not comply with applicable USAID regulations. The information collection, recordkeeping, and reporting requirements are necessary to assure that USAID funds are expended in accordance with statutory requirements and USAID policies.

Annual Reporting Burden:

Number of Respondents: 30.

Annual Responses: 12.

Average hours per response: .50.

Total annual responses: 360.

Dated: July 1, 1996.

Genease E. Pettigrew,

Chief, Information Support Services Division, Office of Administrative Services, Bureau of Management.

[FR Doc. 96–17609 Filed 7–10–96; 8:45 am]

BILLING CODE 8116–71–M

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Child And Adult Care Food Program: National Average Payment Rates, Day Care Home Food Service Payment Rates, and Administrative Reimbursement Rates for Sponsors of Day Care Homes for the Period July 1, 1996–June 30, 1997

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to the national average payment rates for meals served in child care, outside-school-hours care and adult day care centers; the food service payment rates for meals served in day care homes; and the administrative reimbursement rates for sponsors of day care homes to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are required by the statutes and regulations governing the Child and Adult Care Food Program (CACFP).

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, USDA, Alexandria, Virginia 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION: This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the CACFP (7 CFR Part 226).

Background

Pursuant to Sections 4, 11 and 17 of the National School Lunch Act (NSLA) (42 U.S.C. 1753, 1759a and 1766), Section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) and Sections 226.4, 226.12 and 226.13 of the regulations governing the CACFP (7 CFR Part 226), notice is hereby given of the new payment rates for participating institutions. These rates shall be in effect during the period July 1, 1996–June 30, 1997.

As provided for under the NSLA and the Child Nutrition Act of 1966, all rates in the CACFP must be prescribed annually on July 1 to reflect changes in the Consumer Price Index for the most recent 12-month period. In accordance with this mandate, the Department last published the adjusted national average payment rates for centers, the food service payment rates for day care homes, and the administrative reimbursement rates for sponsors of day care homes on July 3, 1995, at 60 FR 34499 (for the period July 1, 1995–June 30, 1996). The payment rates for the period July 1, 1996–June 30, 1997 are:

ALL STATES EXCEPT ALASKA AND HAWAII

Meals Served in Centers—Per Meal Rates in Dollars or Fractions thereof:	
Breakfasts:	
Paid	$.1975
Free	1.0175
Reduced	.7175
Lunches and Suppers:[1]	
Paid	.1775
Free	1.8375
Reduced	1.4375
Supplements:	
Paid	.0450
Free	.5050
Reduced	.2525
Meals Served in Day Care Homes—Per Meal Rates in Dollars or Fractions thereof:	
Breakfasts	.8625
Lunches and Suppers	1.5750
Supplements	.4700
Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars:	
Initial 50 day care homes	73
Next 150 day care homes	56
Next 800 day care homes	44
Additional day care homes	38

Pursuant to Section 12(f) of the NSLA (42 U.S.C. 1760(f)), the Department adjusts the payment rates for participating institutions in the States of Alaska and Hawaii. The new payment rates for Alaska are as follows:

Alaska

Alaska—Meals Served in Centers—Per Meal Rates in Dollars or Fractions thereof:	
Breakfasts:	
Paid	.2850
Free	1.6125
Reduced	1.3125
Lunches and Suppers:[1]	
Paid	.2850
Free	2.9750
Reduced	2.5750
Supplements:	
Paid	.0750
Free	.8175
Reduced	.4075
Alaska—Meals Served in Day Care Homes—Per Meal Rates in Dollars or Fractions thereof:	
Breakfasts	1.36
Lunches and Suppers	2.55
Supplements	.76
Alaska—Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars:	
Initial 50 day care homes	119
Next 150 day care homes	90
Next 800 day care homes	71
Additional day care homes	62

The new payment rates for Hawaii are as follows:

Hawaii

Hawaii—Meals Served in Centers—Per Meal Rates in Dollars or Fractions thereof:	
Breakfasts:	
Paid	.2225
Free	1.1825
Reduced	.8825
Lunches and Suppers:[1]	
Paid	.2075
Free	2.15
Reduced	1.75
Supplements:	
Paid	.0550
Free	.5900
Reduced	.2950
Hawaii—Meals Served in Day Care Homes—Per Meal Rates in Dollars or Fractions thereof:	
Breakfasts	.9975
Lunches and Suppers	1.8425
Supplements	.5500
Hawaii—Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars:	

ALL STATES EXCEPT ALASKA AND HAWAII—Continued

Initial 50 day care homes	86
Next 150 day care homes	65
Next 800 day care homes	51
Additional day care homes	45

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the FEDERAL REGISTER.

The changes in the national average payment rates and the food service payment rates for day care homes reflect a 2.29 percent increase during the 12-month period May 1995 to May 1996 (from 148.6 in May 1995 to 152.0 in May 1996) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 2.89 percent increase during the 12-month period May 1995 to May 1996 (from 152.2 in May 1995 to 156.6 in May 1996) in the series for all items of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating in the program is based on the rates contained in this notice.

Authority: Sections 4(b)(2), 11(a), 17(c) and 17(f)(3)(B) of the National School Lunch Act, as amended (42 U.S.C. 1753, 1759(a), 1766) and section 4(b)(1)(B) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773b).

Dated: July 3, 1996.

William E. Ludwig,

Administrator.

[FR Doc. 96–17671 Filed 7–10–96; 8:45 am]

BILLING CODE 3410–30–P

National School Lunch, Special Milk, and School Breakfast Programs; National Average Payments/Maximum Reimbursement Rates

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the annual adjustments to: (1) The "national average payments," the amount of money the Federal Government provides States for lunches, meal supplements and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; (2) the "maximum reimbursement rates," the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the National School Lunch Program; and (3) the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the National School Lunch and School Breakfast Programs reflect changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for the Special Milk Program reflects changes in the Producer Price Index for Fluid Milk Products. These payments and rates are in effect from July 1, 1996 through June 30, 1997.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FCS, USDA, Alexandria, Virginia 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION: These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555 and No. 10.556, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

Background

Special Milk Program for Children

Pursuant to section 3 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fluid Milk Products (Code 0231), published by the Bureau of Labor Statistics of the Department of Labor.

For the period July 1, 1996 to June 30, 1997, the rate of reimbursement for a half-pint of milk served to a nonneedy child in a school or institution which participates in the Special Milk Program is 12.25 cents. This reflects an increase of 8.96 percent in the Producer Price Index for Fluid Milk Products (Code 0231) from May 1995 to May 1996 (from a level of 122.8 in May 1995 to 133.8 in May 1996).

As a reminder, schools or institutions with pricing programs which elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

National School Lunch and School Breakfast Programs

Pursuant to sections 11 and 17A of the National School Lunch Act, (42 U.S.C. 1759a and 1766a), and section 4 of the Child Nutrition Act of 1966, (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors and to the maximum Federal reimbursement rates for meals and supplements served to children participating in the National School Lunch Program. Adjustments are prescribed each July 1, based on changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the national average payment rates for

schools and residential child care institutions for the period July 1, 1996 through June 30, 1997 reflect a 2.29 percent increase in the Price Index during the 12-month period May 1995 to May 1996 (from a level of 148.6 in May 1995 to 152.00 in May 1996).

Lunch Payment Factors

Section 4 of the National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. There are two section 4 National Average Payment Factors for lunches served under the National School Lunch Program. The lower payment factor applies to lunches served by school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment factor applies to lunches served by school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price. To supplement these section 4 payments, section 11 of the National School Lunch Act provides special cash assistance payments to aid schools in providing free and reduced price lunches. The section 11 National Average Payment Factor for each reduced price lunch served is set at 40 cents less than the factor for each free lunch.

As authorized under sections 8 and 11 of the National School Lunch Act (42 U.S.C. 1757, 1759a), maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates ensure equitable disbursement of Federal funds to school food authorities.

Meal Supplement Payments in Afterschool Care Programs

Section 17A (42 U.S.C. 1766a) of the National School Lunch Act authorizes elementary and secondary schools to be reimbursed for meal supplements as part of the National School Lunch Program if they meet the following requirements (1) Operate school lunch programs under the National School Lunch Act; (2) sponsor afterschool care programs; and (3) were participating in the Child and Adult Care Food Program as of May 15, 1989. The reimbursement rates for supplements served in Afterschool Care Programs under the National School Lunch Program are the same as the rates for supplements served in centers under the Child and Adult Care Food Program.

Breakfast Payment Factors

Section 4 of the Child Nutrition Act of 1966 establishes National Average Payment Factors for free, reduced price and paid breakfasts served under the School Breakfast Program and additional payments for schools determined to be in "severe need" because they serve a high percentage of needy children.

Revised Payments

The following specific section 4 and section 11 National Average Payment Factors and maximum reimbursement rates are in effect through June 30, 1997. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The District of Columbia, Virgin Islands, Puerto Rico and Guam use the figures specified for the contiguous States.

National School Lunch Program Payments

Section 4 National Average Payment Factors—In school food authorities which served *less than 60 percent* free and reduced price lunches in School Year 1994–95, the payments are: *Contiguous States*—17.75 cents, maximum rate 25.75 cents; *Alaska*—28.50 cents, maximum rate 40.50 cents; *Hawaii*—20.75 cents, maximum rate 29.75 cents.

In school food authorities which served *60 percent or more* free and reduced price lunches in School Year 1994–95, payments are: *Contiguous States*—19.75 cents, maximum rate 25.75 cents; *Alaska*—30.50 cents, maximum rate 40.50 cents; *Hawaii* 22.75 cents, maximum rate 29.75 cents.

Section 11 National Average Payment Factors—Contiguous States—free lunch—166.00 cents, reduced price lunch 126.00 cents; *Alaska*—free lunch 269.00 cents, reduced price lunch 229.00 cents; *Hawaii*—free lunch 194.25 cents, reduced price lunch 154.25 cents.

Meal Supplements in Afterschool Care Programs—The payments are: *Contiguous States*—free supplement—50.50 cents, reduced price supplement—25.25 cents, paid supplement—4.50 cents; *Alaska*—free supplement—81.75 cents, reduced price supplement—40.75 cents, paid supplement—7.50 cents; *Hawaii*—free supplement—59.00 cents, reduced price supplement—29.50 cents, paid supplement—5.50 cents.

School Breakfast Program Payments

For schools "not in severe need" the payments are: *Contiguous States*—free breakfast 101.75 cents, reduced price breakfast 71.75 cents, paid breakfast 19.75 cents; *Alaska*—free breakfast 161.25 cents, reduced price breakfast 131.25 cents, paid breakfast 28.50 cents; *Hawaii*—free breakfast 118.25 cents, reduced price breakfast 88.25 cents, paid breakfast 22.25 cents.

For schools in "severe need" the payments are: *Contiguous States*—free breakfast 121.25 cents, reduced price breakfast 91.25 cents, paid breakfast 19.75 cents; *Alaska*—free breakfast 192.50 cents, reduced price breakfast 162.50 cents, paid breakfast 28.50 cents; *Hawaii*—free breakfast 140.75 cents, reduced price breakfast 110.75 cents, paid breakfast 22.25 cents.

Payment Chart

The following chart illustrates: the lunch National Average Payment Factors with the sections 4 and 11 already combined to indicate the per meal amount; the maximum lunch reimbursement rates; the reimbursement rates for meal supplements served in afterschool care programs; the breakfast National Average Payment Factors including "severe need" schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the District of Columbia, Virgin Islands, Puerto Rico and Guam are those specified for the contiguous States.

SCHOOL PROGRAMS—MEAL AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES

[Expressed in Dollars or Fractions Thereof, Effective from July 1, 1996–June 30, 1997]

National school lunch program [1]		Less than 60%	60% or more	Maximum rate
Contiguous States	Paid	$.1775	$.1975	$.2575
	Reduced price	1.4375	1.4575	1.6075
	Free	1.8375	1.8575	2.0075
Alaska	Paid	.2850	.3050	.4050
	Reduced price	2.5750	2.5950	2.8400
Hawaii	Paid	.2075	.2275	.2975
	Reduced price	1.7500	1.7700	1.9450
	Free	2.1500	2.1700	2.3450

School breakfast program		Non-severe need	Severe need
Contiguous States	Paid	$.1975	$.1975
	Reduced price	.7175	.9125
	Free	1.0175	1.2125
Alaska	Paid	.2850	.2850
	Reduced price	1.3125	1.6250
	Free	1.6125	1.9250
Hawaii	Paid	.2225	.2225
	Reduced price	.8825	1.1075
	Free	1.1825	1.4075

Special milk program	All milk	Paid milk	Free milk
Pricing programs without free option	.1225	N/A	N/A
Pricing programs with free option	N/A	.1225	([2])
Nonpricing programs	.1225	N/A	N/A

Supplements served in afterschool care programs

Contiguous States	Paid	.0450
	Reduced price	.2525
	Free	.5050
Alaska	Paid	.0750
	Reduced price	.4075
	Free	.8175
Hawaii	Paid	.0550
	Reduced price	.2950
	Free	.5900

[1] Payments listed for Free & Reduced Price Lunches include both sections 4 and 11 funds.
[2] Average cost ½ pint milk.

Authority: Sections 4, 8, 11 and 17A of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759a, 1766a) and sections 3 and 4(b) of the Child Nutrition Act, as amended, (42 U.S.C. 1772 and 42 U.S.C. 1773(b)).

Dated: July 3, 1996.

William E. Ludwig,

Administrator.

[FR Doc. 96–17670 Filed 7–10–96; 8:45 am]

BILLING CODE 3410–30–P

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: The Rural Housing Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for the currently approved information collection in support of the program for Community Facility Loans.

DATES: Comments on this notice must be received by September 9, 1996 to be assured of consideration.

FOR FURTHER INFORMATION, CONTACT: Yoonie MacDonald, Loan Specialist, Community Programs Division, RHS, U.S. Department of Agriculture, Stop 3222, 1400 Independence Avenue, SW., Washington, DC 20250. Telephone (202) 720–1490.

SUPPLEMENTARY INFORMATION:

Title: Community Facility Loans.

OMB Number: 0575–0015.

Type of Request: Extension of a currently approved information collection.

Abstract: The Community Facilities loan program is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public entities, nonprofit corporations, and Indian tribes for the development of community facilities for public use in rural areas.

Community facilities programs have been in existence for many years. These programs have financed a wide range of projects varying in size and complexity from large general hospitals to small rural water systems. The facilities financed are designed to promote the development of rural communities by providing the infrastructure necessary to attract residents and rural jobs.

Information will be collected by the field offices from applicants, borrowers, and consultants. This information will be used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use funds for authorized purposes. Failure to collect

proper information could result in improper determination of eligibility, improper use of funds, and/or unsound loans.

Expiration Date of Approval: December 31, 1996.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.47 hours per response.

Respondents: Public bodies, not for profits, or Indian Tribes.

Estimated Number of Respondents: 10,520.

Estimated Number of Responses per Respondent: 9.06.

Estimated Total Annual Burden on Respondents: 235,854 hours.

Copies of this information collection can be obtained from the Director, Regulations and Paperwork Management Division at (202) 720–9725.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Barbara Williams, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, Stop 0743, 1400 Independence Avenue, SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 3, 1996.

Jan Shadburn,

Associate Administrator, Rural Housing Service.

[FR Doc. 96–17673 Filed 7–10–96; 8:45 am]

BILLING CODE 3410–07–U

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

July 5, 1996.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, D.C. on July 18–19, 1996.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, N.W., Washington, D.C. A portion of the morning and afternoon sessions on July 18–19, 1996, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on July 18, 1996 will be as follows:

Committee Meetings

(Open to the Public)

Policy Discussion

9:00–10:30 a.m.
- Research/Education Programs—Room M07
- Public Programs—Room 415
- Challenge Grants and Preservation and Access—Room 317

(Closed to the Public)

10:30 a.m. until Adjourned
- Discussion of specific grant applications before the Council

Council Discussion Groups

(Portions Open to the Public)

3:00–5:00 p.m.
- External Affairs—Room 527
- Strategic Plans/Enterprise—Room 503
- Federal-State Partnership—Room 507

The morning session on July 19, 1996 will convene at 10:30 a.m. in the 1st Floor Council Room, M–09. The session will be open to the public as set forth below:

Minutes of the Previous Meeting

Reports

A. Introductory Remarks
B. Staff Report
C. Budget Report
D. Legislative Report/Reauthorization
E. National Conversation on American Pluralism
F. Committee Reports on Policy & General Matters
1. Overview
2. Research and Education Programs
3. Preservation and Access and Challenge Grants
4. Public/Enterprise Programs
5. Charles Frankel Prize

The remainder of the proposed meeting will be closed to the public for the reasons stated above. Further information about this meeting can be obtained from Ms. Sharon I. Block, Advisory Committee Management Officer, Washington, D.C. 20506, or call area code (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Michael S. Shapiro,

Acting, Advisory Committee Management Officer.

[FR Doc. 96–17601 Filed 7–10–96; 8:45 am]

BILLING CODE 7536–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 55–96]

Foreign-Trade Zone 2, New Orleans, Louisiana; Proposed Foreign-Trade Subzone; Murphy Oil USA, Inc. (Oil Refinery Complex), St. Bernard Parish, LA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Commissioners of the Port of New Orleans, grantee of FTZ 2, requesting special-purpose subzone status for the oil refinery complex of Murphy Oil USA, Inc., located in St. Bernard Parish, Louisiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 1, 1996.

The refinery complex (105,000 BPD, 242 employees) is located on a 620-acre site at 2500 E. St. Bernard Highway on the Mississippi River, St. Bernard Parish (Meraux area), Louisiana, some 7 miles southeast of New Orleans.

The refinery is used to produce fuels and petrochemical feedstocks. Fuels produced include gasoline, jet fuel, distillates, residual fuels and naphthas. Petrochemical feedstocks and refinery by-products include methane, ethane, propane, propylene, butane, petroleum coke, asphalt and sulfur. Some 92 percent of the crude oil (96 percent of inputs), and some feedstocks and motor fuel blendstocks are sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the finished product duty rate (nonprivileged foreign status—NPF) on certain petrochemical feedstocks and refinery by-products (duty-free) instead of the duty rates that would otherwise apply to the foreign-sourced inputs (e.g., crude oil, natural gas condensate). The duty rates on inputs range from 5.25¢/barrel to 10.5¢/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 24, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, Hale Boggs Federal Building, 501 Magazine Street, Room 1043, New Orleans, Louisiana 70130

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: July 2, 1996.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 96–17678 Filed 7–10–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–421–803]

Notice of Court Decision: Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 14, 1996, The United States Court of International Trade (the CIT) affirmed the Department of Commerce's (the Department) redetermination on remand of the Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands (58 FR 37199 , July 9,1993), as amended by the Antidumping Duty Order (58 FR 44172, August 19, 1993). *National Steel Corp.* versus *United States*, (Slip. Op. 96–97, Court No. 93–09–00616, June 14) (National Steel).

EFFECTIVE DATE: July 11, 1996.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger at (202) 482–4136, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: On June 14, 1996, the CIT accepted the Department's methodology for selecting the highest non-aberrant margin to be applied to the respondent's, Hoogovens Groep B.V., unreported exporter's sales price data. The CIT also accepted the Department's methodology for calculating the cash deposit rate after the Department had revised its value-added tax adjustment methodology, in accordance with *Federal-Mogul Corp.* versus *United States*, 63 F.3d 1572, 1580 (Fed. Cir. 1995), under remand.

In its decision in *Timken Co.* versus *United States*, 893 F.2d 337 (Fed. Cir. 1990) (Timken), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in National Steel on June 14, 1996, constitutes a decision "not in harmony" with the Department's final affirmative determination. This notice fulfills the publication requirements of Timken.

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or, if appealed, upon a "conclusive" court decision.

Dated: July 5, 1996.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–17677 Filed 7–10–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–811]

Grain-Oriented Electrical Steel From Italy: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on grain-oriented electrical steel from Italy in response to a request by the respondent, Acciai Speciali Terni S.p.A. ("AST"). This covers one manufacturer/exporter of the subject merchandise to the United States during the period of review (POR), February 9, 1994; through July 31, 1995.

AST has withdrawn from participation in this review and failed to submit a response to Section D of the Department's questionnaire. As a result, we have preliminarily determined to use facts otherwise available for cash deposit and assessment purposes.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: July 11, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy Decker or Robin Gray, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3793.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreement Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the

current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** an antidumping order on grain-oriented electrical steel from Italy on August 12, 1994 (59 FR 41431). On August 1, 1995, we published in the **Federal Register** (60 FR 39150) a notice of opportunity to request an administrative review of the antidumping order on grain-oriented electrical steel from Italy covering the period February 9, 1994, through July 31, 1995.

In accordance with 19 CFR 353.22(a)(1)(1995), the respondent, AST, requested that we conduct an administrative review of its sales. We published a notice of initiation of this antidumping duty administrative review on September 15, 1995 (60 FR 47930). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of This Review

The product covered by this review is grain-oriented silicon electrical steel, which is a flat-rolled alloy steel product containing by weight at least 0.6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, of a thickness of no more than 0.560 millimeters, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7225.10.0030, 7225.30.7000, 7225.40.7000, 7225.50.8000, 7225.90.0000, 7226.10.1030, 7226.10.5015, 7226.10.5056, 7226.91.7000, 7226.91.8000, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0000, 7228.30.8050, 7228.60.6000, and 7229.90.1000. Although the HTS subheadings are provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

This review covers one manufacturer/exporter of grain-oriented electrical steel, and the period February 9, 1994, through July 31, 1995.

Use of Facts Available

We preliminarily determine, in accordance with section 776(a)(C) of the Act, that the use of facts available is appropriate for AST because it significantly impeded this review by not responding to Section D of the Department's antidumping questionnaire and by refusing to further participate in the review proceedings. We sent AST a questionnaire on September 27, 1995, with deadlines of October 25, 1995, for section A and November 24, 1995, for sections B and C. AST filed timely responses to these sections. On February 16, 1996, the Department issued a supplemental questionnaire on sections A through C. On February 27, 1996, AST requested and was granted a two-week extension for the submission of a response to the supplemental questionnaire. AST filed the response to the supplemental questionnaire on the deadline of March 15, 1996.

On January 26, 1996, petitioners (Allegheny Ludlum Corporation, Armco, Inc., United Steel Workers of America, Butler Armco Independent Union, and Zanesville Armco Independent) made a sales-below-cost allegation, which the Department accepted, and a request for cost information (section D) was issued on February 15, 1996, with a deadline of March 18, 1996. AST requested an extension for its cost submission until March 29, 1996, which the Department granted. AST then requested another extension on its cost submission until April 12, 1996. The Department extended the deadline by five days, making it due on April 3, 1996. AST did not submit its cost response on that date. On April 4, 1996, AST filed a letter indicating its withdrawal from participation in the review.

Necessary information is not available on the record with regard to AST's cost of production because AST withheld the requested information. Therefore, we must make our preliminary determination based on facts otherwise available (section 776(a) of the Act).

Where the Department must rely on the facts available because the respondent failed to cooperate to the best of its ability, section 776(b) authorizes the Department to use an inference adverse to the interests of that respondent in choosing the facts available. Section 776(b) also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Because information from prior proceedings constitutes secondary information, section 776(c) provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenese, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregared the margin and determine an appropriate margin (see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review (61 FR 6812, February 22, 1996), where the Department disregarded the highest margin in that case as adverse BIA because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). In this case, we have used the highest rate from any prior segment of the proceeding, 60.79 percent, because there is no reliable evidence on the record indicating that the selected margin is not appropriate as adverse facts available.

On April 1, 1996, the Department published in the **Federal Register** (61 FR 14291) an extension of time limits for antidumping administrative reviews, including the review on grain-oriented electrical steel from Italy. The Department determined it was not practicable to complete these reviews within the time limits mandated by the Act. Pursuant to section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended, the Department extended the time limits for this review until September 27, 1996, for the preliminary results of administrative review, and April 2, 1997 for the final results. However, the entire amount of additional time is no longer necessary because AST has refused to further participate in the review proceedings.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/exporter	Time period	Margin (percent)
Accial Speciali Terni S.p.A.	2/9/94–7/31/95	60.79

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and NV may vary from the percentage stated above. Upon completion of this review, the Department will issue assessment instruction directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of grain-oriented electrical steel from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for reviewed companies will be the rate established in the final results of this review; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be the rate established in the investigation of sales at less than fair value, which is 60.79 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of this Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 28, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–17676 Filed 7–10–96; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The NWS is publishing proposed certifications for the proposed consolidations of:

(1) Residual Des Moines Weather Service Office (WSO) into the future Des Moines Weather Forecast Office (WFO);

(2) Residual Louisville WSO into the future Louisville WFO;

(3) Residual St. Louis WSO into the future St. Louis WFO;

(4) Columbia WSO into the future Kansas City/Pleasant Hill, Springfield, and St. Louis WFOs;

(5) Lansing WSO into the future Grand Rapids WFO;

(6) Lexington WSO into the future Louisville and Cincinnati WFOs;

(7) Lincoln WSO into the future Omaha WFO;

(8) Sioux City WSO into the future Omaha and Sioux Falls WFOs;

(9) Baton Rouge WSO into the future New Orleans/Baton Rouge, Lake Charles, and Jackson WFOs; and

(10) Montgomery WSO into the future Birmingham, Mobile, and Tallahassee WFOs.

In accordance with section 706 of Pub. Law 102–567, the Secretary of Commerce must certify that these consolidations will not result in any degradation of service to the affected areas of responsibility and must publish the proposed consolidation certifications in the FR. The documentation supporting each proposed certification includes the following:

(1) A draft memorandum by the meteorologist-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the

In accordance with Pub. Law 102–567, the public will have 60-days in which to comment on these proposed consolidation certifications.

DATES: Comments are requested by September 9, 1996.

ADDRESSES: Requests for copies of the proposed consolidation packages should be sent to Tom Beaver, Room 12314, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0300. All comments should be sent to Tom Beaver at the above address.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1413.

SUPPLEMENTARY INFORMATION: NWS anticipates consolidating:

(1) The Residual Des Moines Weather Service Office (WSO) with the future Des Moines Weather Forecast Office (WFO);

(2) The Residual Louisville WSO with the future Louisville WFO;

(3) The Residual St. Louis WSO with the future St. Louis WFO;

(4) The Columbia WSO with the future Kansas City/Pleasant Hill, Springfield, and St. Louis WFOs;

(5) The Lansing WSO with the future Grand Rapids WFO;

(6) The Lexington WSO with the future Louisville and Cincinnati WFOs;

(7) The Lincoln WSO with the future Omaha WFO;

(8) The Sioux City WSO with the future Omaha and Sioux Falls WFOs;

(9) The Baton Rouge WSO with the future New Orleans/Baton Rouge, Lake Charles, and Jackson WFOs; and

(10) The Montgomery WSO with the future Birmingham, Mobile, and Tallahassee WFOs.

In accordance with section 706 of Pub. Law 102–567, the Secretary of Commerce must certify that these consolidations will not result in any degradation of service to the affected areas of responsibility and must publish the proposed consolidation certifications in the FR. The documentation supporting each proposed certification includes the following:

(1) A draft memorandum by the meteorologist-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the

services to be provided after such action;

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the WSR–88D Radar Commissioning Report(s), User Confirmation of Services Report(s), and the Decommissioning Readiness Report (as applicable); and

(7) A letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Pub. Law 102–567. At their December 14, 1995 meeting the members ". . . resolved that the MTC modify its procedure to eliminate proposed certification consultations of noncontroversial closings, consolidations, relocations, and automation certifications but will provide final consultation on certifications after public comment and before final submission to the Secretary of Commerce."

Documentation supporting the proposed certifications is too voluminous to publish. Copies of the supporting documentation can be obtained through the contract listed above.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certifications. If decisions to certify are made, the Secretary of Commerce must publish the final certifications in the FR and transmit the certifications to the appropriate Congressional committees prior to consolidating the offices.

Dated: July 8, 1996.

Louis J. Boezi,

Deputy Assistant Administrator for Modernization.

[FR Doc. 96–17684 Filed 7–10–96; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant an exclusive license to Giner, Inc. a corporation of the State of Massachusetts, under U.S. Patent Application S/N 08/421,710 for a "Gas Sensor."

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from the date of publication of this notice. Copies of the patent application may be obtained, on request, from the same addressee.

All communications concerning this notice should be sent to: Mr. Samuel B. Smith, Jr., 1501 Wilson Blvd, Suite 805, Arlington, VA 22209-2403, Telephone No: (703) 696-9033.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–17607 Filed 7–10–96; 8:45 am]

BILLING CODE 3910–01–W

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy

Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreement involves the addition of the following mixed-oxide (MOX) fuel fabrication facilities to Annex 1 of the Implementing Agreement between the Government of the United States of America and the Government of Japan Pursuant to Article 11 of their Agreement for Cooperation Concerning Peaceful Uses of Nuclear Energy: Belgonucleaire Usine de Fabrication D'Elements PU Plant located at Dessel, Belgium; Franco-Belge de Fabrication de Combustibles (FBFC) International Assemblage Des Combustibles MOX Plant located at Dessel, Belgium; Etablissement MELOX Plant located at Marcoule, France; Companie Générale des Matiéres Nucléaires (Cogema) Complexe de Fabrication Des Combustibles Plant located at Cadarache, France; and British Nuclear Fuels PLC Plant located at Sellafield, United Kingdom.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner that fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by Section 131 of the Atomic Energy Act of 1954, as amended, are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above may run concurrently.

Dated: July 3, 1996.

For the Department of Energy.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 96–17648 Filed 7–10–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP96–289–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 5, 1996.

Take notice that on June 28, 1996, CNG Transmission Corporation ("CNG"), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Nineteenth Revised Sheet No. 32
Nineteenth Revised Sheet No. 33

CNG requests an effective date of August 1, 1996, for these proposed tariff sheets.

CNG states that the purpose of this filing is to submit CNG's quarterly revision of the Section 18.2.B. Surcharge, effective for the three-month period commencing August 1, 1996. According to CNG, the charge for the period of May through July, 1996 has been $0.0017 per Dt, as authorized by Commission order dated April 26, 1996, in Docket No. RP96–188. CNG's proposed Section 18.2.B. surcharge for the next quarterly period is $0.0131 per Dt. The revised surcharge is designed to recover approximately $69,000 in Stranded Account No. 858 Costs, which CNG incurred for the period of January through March, 1996.

CNG states that copies of this letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions. CNG also states that copies of this filing are available for public inspection during regular business hours, at CNG's principal offices in Clarksburg, West Virginia.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–17620 Filed 7–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–286–000]

Florida Gas Transmission Company; Notice of Filing of Report of Cash-Out Activity

July 5, 1996.

Take notice that on June 27, 1996, Florida Gas Transmission Company (FGT) tendered for filing schedules detailing certain information related to the Cash-Out mechanism from June 1, 1995 through November 30, 1995. No tariff changes are proposed therein.

FGT states that Section 14 of the General Terms and Conditions (GTC) of its FERC Gas Tariff provides for the resolution of differences between quantities of gas scheduled and physically received and/or delivered each month and provides that the elimination of any monthly imbalances not resolved through the Book-Out provisions will be by cash settlement (Cash-Out). The Cash-Out provisions of Section 14 provide that different imbalance factors and price index used to value imbalances due the imbalance parties. FGT states that the purpose of the weighted valuation method was to encourage shipper adherence to scheduled quantities to maintain the integrity of FGT's system, which has no storage facilities to accommodate imbalances.

FGT states that, in order to ensure that any potential benefit resulting from the use of different indices and imbalance factors was properly accounted for, FGT was required to credit to its shippers all revenues derived from Cash-Outs which exceed the actual cost to FGT to maintain a reasonable system balance. These requirements were contained in Section 14.B.8. of the GTC of FGT's tariff.

Although these provisions of Section 14.B.8. were superseded December 1, 1995 by the provisions of a settlement in Docket No. RP95–103–000, FGT states that it is filing the instant report for the activity occurring since its last cash-out report to avoid an unintended gap in reporting.

FGT proposes to directly refund $195,392.72 of excess cash-out revenues to shippers identified in Schedule B to FGT's filing. FGT proposes to make these refunds within 30 days following a final Commission Order accepting the filing.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene.

Copies of this filing are on file with the Commission and are available for public inspections.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–17617 Filed 7–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–288–000]

Kentucky West Virginia Gas Company; Notice of Proposed Change in FERC Gas Tariff

July 5, 1996.

Take notice that on June 28, 1996, Kentucky West Virginia Gas Company (Kentucky West) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, revised tariff sheets listed in its Appendix to become effective August 1, 1996.

Kentucky West states that the purpose of this filing is to modify its tariff as required by the revisions to Part 154 of the Commission's Regulations pursuant to Order No. 582 issued in Docket No. RM95–3–000 on September 28, 1995.

Kentucky West states that these tariff revisions will have no impact on the nature of services Kentucky West performs nor will they result in any increase in Kentucky West's revenues. Kentucky West requests a shortened suspension period to permit the tariff sheets to take effect on August 1, 1996.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulation Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.11 and 385.214 of the Commission's Rules Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–17619 Filed 7–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–291–000]

Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 5, 1996.

Take notice that on June 28, 1996, Mid Louisiana Gas Company ("MIDLA") tendered for filing certain tariff sheets to be included in its FERC Gas Tariff, Third Revised Volume No. 1. The proposed changes would decrease

jurisdictional revenues by approximately $5.7 million annually based upon the twelve month period ended February 29, 1996, as adjusted. MIDLA proposes that the revised tariff sheets, together with the rates and conditions of service identified in such sheets, be made effective contemporaneously with the effective date of a Commission order approving an abandonment application filed by MIDLA in Docket No. CP95–730–000.

MIDLA states that the principal cause of the revenue decrease is the elimination from operation and maintenance expenses of the costs related to storage and transportation services paid to Transcontinental Gas Pipe Line Corporation ("Transco"). MIDLA requested the authority to abandon theses services in its abandonment application in Docket No. CP95–730. Additional purposes of the filing of the Revised Tariff Sheets are to revise and restate the character of MIDLA's Rate Schedule NNS to reflect the conversion from the existing combined storage and transportation function to a No-Notice Service that is predicated on a transportation and receipt point commodity purchase strategy as well as to eliminate Rate Schedule(s) SMS, FSS, and ISS with all of their related references as well as several general clerical and informational modifications as described in the Statement of Nature, Reasons and Basis.

MIDLA states that since its last rate case filing, the Commission approved, in orders in MIDLA's restructuring proceeding under Order No. 636 (Docket No. RS92–20), the basic rate design and cost allocation methods which this filing reflects. Specifically, the instant filing reflects the continuation of the Straight-Fixed Variable (SFV) rate design methodology and the continuation of IT rates designed on a 100% load factor.

Pursuant to Section 154.7(a)(7) of the Commission's Regulations, MIDLA respectfully requests waiver of 154.207, notice requirements, as well as any other requirement of the Regulations in order to permit the tendered tariff sheets to become effective September 1, 1996, as submitted.

MIDLA states that, in compliance with Section 154.208, paper copies of the Revised Tariff Pages and this filing are being served upon its jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–17621 Filed 7–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–294–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

July 5, 1996.

Take notice that on June 28, 1996, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Sixteenth Revised Sheet No. 5, with a proposed effective date of July 1, 1996.

National states that this filing reflects the quarterly adjustment to the reservation and commodity components of the EFT rate pursuant to the Transportation and Storage Cost Adjustment ("TSCA") provision set forth in Section 23 of the General Terms and Conditions of National's FERC Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–17624 Filed 7–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–6–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

July 5, 1996.

Take notice that on June 28, 1996, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Ninth Revised Sheet No. 5A, with a proposed effective date of July 1, 1996.

National states that under Article II, Section 1, of the approved settlement approved in Docket No. RP94–367–000, *et al.*, National is required to recalculate semi-annually the maximum Interruptible Gathering ("IG") rate to be effective on July 1 and January 1. The recalculation produced an IG rate of 17 cents per dth.

National further states that pursuant to Article II, Section 4 of the settlement, National is required to file a revised tariff sheet in a Compliance Filing each time the effective IG rate is revised within 30 days of the effective date of the revised IG rate.

In addition, pursuant to Article I, Section 4, National is required to redetermine quarterly the Amortization Surcharge to reflect revisions in the Plant to be Amortized, interest and associated taxes, and a change in the determinants. The recalculation produced an Amortization Surcharge of 14.35 cents per dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–17627 Filed 7–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–295–000]

Southern Natural Gas Company; Notice of GSR Revised Tariff Sheets

July 5, 1996.

Take notice that on June 28, 1996, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of April 1, 1996:

Tariff Sheets Applicable to Contesting Parties:

First Substitute Eleventh Revised Sheet No. 14
First Substitute Thirty Third Revised Sheet No. 15
First Substitute Eleventh Revised Sheet No. 16
First Substitute Thirty Third Revised Sheet No. 17
First Substitute Nineteenth Revised Sheet No. 18
First Substitute Twenty First Revised Sheet No. 29
First Substitute Twenty First Revised Sheet No. 30
First Substitute Twenty First Revised Sheet No. 31

Tariff Sheets Applicable to Supporting Parties:

First Substitute Fourth Revised Sheet No. 14a
First Substitute Eleventh Revised Sheet No. 15a
First Substitute Fourth Revised Sheet No. 16a
First Substitute Eleventh Revised Sheet No. 17a

Southern submits the revised tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect a change in its FT/FT–NN GSR Surcharge, its other transition cost surcharge, and its Interruptible Transportation Rates due to a decrease in the FERC interest rate and to a net increase in GSR billing units effective July 1, 1996. The FT/FT–NN GSR surcharge also reflects a credit for excess firm transportation reservation quantities.

Copies of the filing were served upon all parties listed on the official service list compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–17625 Filed 7–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–292–000]

Tennessee Gas Pipeline Company; Notice of Cashout Report

July 5, 1996.

Take notice that on June 28, 1996, Tennessee Gas Pipeline Company ("Tennessee") tendered for filing its second annual cashout report for the September 1994 through August 1995 period.

The cashout report reflects a net cashout loss during this period of $1,185,985. The report also reflects the carry forward of cashout losses equalling $14,046,552 reported in Docket No. RP95–64–001.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–17622 Filed 7–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–4–17–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 5, 1996.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on July 1, 1996 tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, revised tariff sheets listed on Appendix A to the filing to become effective August 1, 1996.

Texas Eastern states that these revised tariff sheets are filed pursuant to Section 15.1, Electric Power Cost (EPC) Adjustment, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1. Texas Eastern states that Section 15.1 provides that Texas Eastern shall file to be effective each August 1 revised rates for each applicable zone and rate schedule based upon the projected annual electric power costs required for the operation of transmission compressor stations with electric motor prime movers.

Texas Eastern states that these revised tariff sheets are being filed to reflect changes in Texas Eastern's projected costs for the use of electric power for the twelve month period beginning August 1, 1996. Texas Eastern states that the rate changes proposed to the primary firm capacity reservation charges, usage rates and 100% load factor average costs for full Access Area Boundary service from the Access Area Zone, East Louisiana, to the three market area zones are as follows:

Zone	Reservation	Usage	100% LF
Market 1	$0.002/dth	$(.0003)/dth	$(.0002)/dth
Market 2	$0.005/dth	$(.0009)/dth	$(.0006)/dth
Market 3	$0.013/dth	$(.0013)/dth	$(.0009)/dth

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern and current interruptible shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of

the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–17626 Filed 7–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–287–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 5, 1996.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on June 27, 1996, the tariff sheets listed below to its FERC Gas Tariff, Third Revised Volume No. 1. The tariff sheets are proposed to become effective July 1, 1996.

18th Revised First Revised Sheet No. 27
Third Revised Sheet No. 116
Original Sheet No. 116A

The reasons for the instant filing are: (a) for the limited purpose of revising Transco's Rate Schedule GSS rates to reflect a reduction in the total firm storage service provided by Transco to its rate Schedule GSS customers from a capacity of 65,917,300 Mcf to 62,917,300 Mcf consistent with the authorization granted in the Commission's June 13, 1996 Order in Docket Nos. CP96–226–000 and CP96–238–000 (June 13 Order), and (b) to submit revised tariff sheets reflecting the inclusion in the GSS Rate Schedule of the OFO tariff provisions approved by the June 13 Order. Accordingly, Transco is filing therein 18th Revised First Revised Sheet No. 27 which sets forth the revised rates under Rate Schedule GSS resulting from the foregoing reduction in the GSS customers' storage capacity quantity entitlements, and Third Revised Sheet No. 116 and Original Sheet No. 116A which contain the approved OFO provisions.

In accordance with the provisions of Section 154.2(d) of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main office at 2800 Post Oak Boulevard in Houston, Texas. Transco is serving copies of the instant filing to its Rate Schedule GSS customers, interested State Commissions and intervenors in Docket No. CP96–226–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–17618 Filed 7–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–14–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

July 5, 1996.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on June 28, 1996 in Appendix A thereto Fourteenth Revised Sheet No. 60 to its FERC Gas Tariff, Third Revised Volume No. 1. The proposed effective date of such tariff sheet is August 1, 1996.

The instant filing is submitted pursuant to Section 39 of the General Terms and Conditions of Transco's FERC Gas Tariff which provides that Transco will file to adjust its Great Plains Volumetric Surcharge (GPS) 30 days prior to each GPS Annual Period beginning August 1. The GPS Surcharge is designed to recover i) the cost of gas purchased from Great Plains Gasification Associates (or its successor) which exceeds the Spot Index (as defined in Section 39 of the General Terms) and ii) the related cost of transporting such gas.

The revised GPS Surcharge included therein consists of two components—the Current GPS Surcharge calculated for the period August 1, 1996 through July 31, 1997 plus the Great Plains Deferred Account Surcharge (Deferred Surcharge). The determination of the Deferred Surcharge is based on the balance in the current GPS subaccount plus accumulated interest at April 30, 1996.

Included in Appendix B attached to the filing are workpapers supporting the calculation of the revised GPS Surcharge of $0.0227 per dt reflected on the tariff sheet included therein.

Transco states that copies of the instant filing are being mailed to customers, State Commissions and other interested parties. In accordance with the provisions of Section 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protests said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Sections 385.214 and 385.11 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–17628 Filed 7–10–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–293–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 5, 1996.

Take notice that on June 28, 1996, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing, to be effective August 1, 1996.

Trunkline states that the purpose of this filing is to modify Trunkline's FERC Gas Tariff, First Revised Volume No. 1 to: (1) Remove the gas parking component of Rate Schedule TABS–1 and establish gas parking as a separate service in Rate Schedule GPS for Gas Parking Service; (2) make certain changes to Rate Schedule TABS–1; (3) simplify and expand Trunkline's currently effective cash out provisions in Section 5.2(B)(2) of the General Terms and Conditions; (4) modify Section 10.2 of the General Terms and Conditions to delete Trunkline's five-day notice posting requirement for competing bids for available capacity; (5) add Section 5.3 to the General Terms and Conditions to provide for an overrun penalty applicable to gas taken in excess of a shipper's Maximum Daily Quantity (MDQ); and (6) make certain limited technical changes and corrections to Trunkline's tariff, all as further described in the filing. Accordingly, this filing includes tariff sheets to effectuate the proposed changes in various Rate Schedules and Forms of Service Agreements and the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline states that a copy of this filing is available for public inspection during regular business hours at Trunkline's office at 5400 Westheimer Court, Houston, Texas 77056–5310. In addition, copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–17623 Filed 7–11–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5534–5]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Voluntary Standards for Light-Duty Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a contractor's final report on testing to compare evaporative emissions test procedures of the Environmental Protection Agency with those of the California Air Resources Board (CARB). The information is relevant to policy decisions EPA anticipates making as part of any final rulemaking to adopt the National Low Emission Vehicle program, a voluntary program of emission standards and related provisions applicable to light-duty vehicles and light, light-duty trucks.

DATES: The status report has been released and is currently available to the public.

ADDRESSES: Materials relevant to this study are contained in Docket No. A–95–26. The docket is located at the U.S. Environmental Protection Agency, Air Docket Section, Air Docket Room, Room M–1500, Waterside Mall, 401 M Street SW, Washington, DC 20460 (Telephone (202) 260–7548; FAX (202) 260–4400). The docket may be inspected between the hours of 8:30 a.m. to 5:30 p.m., Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Rob French, Vehicle Programs and Compliance Division, U.S. Environmental Protection Agency, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. Telephone (313) 668–4380, FAX (313) 741–7869.

SUPPLEMENTARY INFORMATION: On October 10, 1995, EPA proposed regulations under sections 202(a) and 301(a) of the Clean Air Act to establish a National Low Emission Vehicle (National LEV) program. 60 FR 52734. Under these regulations, auto manufacturers would be able to volunteer to comply with more stringent tailpipe standards for cars and light, light-duty trucks. Once a manufacturer opted into the program, the standards would be enforced in the same manner as any other federal motor vehicle pollution control requirement. The Agency further proposed that the National LEV program, once found to be in effect, would relieve the 13 states in the Northeast Ozone Transport Region (OTR), of their regulatory obligation to adopt the OTC-LEV program, (a state-by-state implementation of California's LEV program requirements in the Northeast OTR states by February 15, 1996. 60 FR 4712.

The proposed National LEV program is based in part on the California motor vehicle program, whose light-duty exhaust emissions standards are more stringent than the federal counterparts. In an effort to reduce duplicative testing burdens for the vehicle manufacturers, and to provide added incentive for vehicle manufacturers to opt into the National LEV program, EPA stated its intent in the National LEV proposal to harmonize certain elements of the California and federal requirements, including the federal and California requirements for evaporative emissions testing. In the proposal, EPA noted that an investigative program was underway, with support from CARB and the vehicle manufacturers, to examine the relative stringency of the test fuel and test temperature provisions of the federal and California evaporative emission testing requirements. The investigative program has been completed, and today's notice announces the availability of the contractor's final report on the testing. The specific relevance of this test program to policy decisions in the National LEV program will be addressed in a subsequent final action to implement that program.

The contractor's final report is available to the public and may be inspected in the public docket, No. A–95–26, at the location provided above in **ADDRESSES.** In addition, electronic copies of the contractor's report are available from the EPA internet site and via dial-up modem on the Technology Transfer Network (TTN) electronic bulletin board system (BBS).

Internet:
http://www.epa.gov/OMSWWW/
gopher://gopher.epa.gov Menus—>Offices:Air:OMS
ftp://ftp.epa.gov Directory—>pub/gopher/OMS

TTN BBS:
919–541–5742 (1,200–14,400 bps, no parity, eight data bits, one stop bit) (Off-line Mondays 8:00–12:00 Noon ET). Voice help: 919–541–5384

Use the following menu choices from the Top Menu to access the [technical report].

<T> GATEWAY TO TTN TECHNICAL AREAS
<M> OMS - Mobile Sources Information
<K> Rulemaking & Reporting
<1> Light Duty
<7> File area #7 Evaporative Emissions

Download file ATL-RPT.ZIP using a transfer protocol supported by your own software. Information on handling "ZIP" files can be found at System Utilities (Command: 1 from Top Menu). Note that differences between the software used to develop the document and the software into which the document may be downloaded can result in changes in format, page length, etc.

Dated: July 1, 1996.
Mary D. Nichols,
Assistant Administrator.
[FR Doc. 96–17645 Filed 7–10–96; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Tuesday, July 16, 1996 at 10:00 a.m.
PLACE: 999 E Street, N.W., Washington, D.C.
STATUS: This meeting will be closed to the public.
ITEMS TO BE DISCUSSED:
Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, July 18, 1996 at 10:00 a.m.
PLACE: 999 E Street, N.W., Washington, D.C.
STATUS: This meeting will be open to the public.
ITEMS TO BE DISCUSSED:
Correction and Approval of Minutes.
Advisory Opinion 1996–26: Elaine Acevedo on behalf of FTD Association.
Advisory Opinion 1996–27: James A. Boyd, Treasurer, Libertarian Party of Illinois.
Administrative Matters.
PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.
Delores Hardy,
Administrative Assistant.
[FR Doc. 96–17827 Filed 7–9–96; 3:06 pm]
BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 61 FR 33117, June 26, 1996.
PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., July 3, 1996.
CHANGES IN THE MEETING: The following topic was withdrawn from the open portion of the meeting:

- Procedures for Resolution of Outstanding Examination or Supervisory Issues.

The following topic was added to the open portion of the meeting:

- Discussion of the proposed Federal Home Loan Bank System Compensation Regulation.

The Board determined that agency business required its consideration of these matters on less than seven days notice to the public and that no earlier notice of these changes in the subject matter of the meeting was possible.
CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.
Rita I. Fair,
Managing Director.
[FR Doc. 96–17832 Filed 7–9–96; 3:47 pm]
BILLING CODE 6725–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.
Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011465–001.
Title: South America Pacific Coast Rate Agreement.
Parties:
Mediterranean Shipping Company S.A. Nedlloyd Lijnen BV.

Synopsis: The proposed amendment (1) adds Flota Mercante Grancolombiana S.A. as a party; (2) deletes the membership initiation fee and budget assessment provisions in favor of equal share agreement cost allocation; (3) deletes the prohibition against independent service contracts subject to revised service contract procedures; (4) provides for the continuity of effective service contracts entered into by new Agreement members prior to membership and procedures by which members may seek to participate in pre-existing service contracts of other members; and (5) makes other non-substantive changes.

Agreement No.: 203–011517–001.
Title: Space Charter and Sailing Agreement between American President Lines, Ltd./Crowley American Transport, Inc.
Parties:
American President Lines, Ltd.
Crowley American Transport, Inc.

Synopsis: The proposed amendment expands the geographic scope to include points in Puerto Rico or in the Continental Unites States via ports on the U.S. Atlantic or Gulf Coasts. It also expands the application of the Agreement to include vessels owned and chartered (including space chartered) by either party. The parties have requested a shortened review period.

Agreement No.: 203–011547.
Title: Israel Discussion Agreement.
Parties:
Israel Trade Conference
China Ocean Shipping Company

Synopsis: The proposed Agreement authorizes the parties to discuss and agree, on a voluntary basis, on their respective tariffs, rates, service items, rules and service contracts and to exchange information and statistics in the trade between U.S. Atlantic, Gulf, Great Lakes and Pacific Coast ports and points (including Alaska and Hawaii) on the one hand, and Mediterranean ports of Israel, and Israeli inland points and Mediterranean coastal points via such ports, on the other hand.

Agreement No.: 224–200051–007.
Title: Lease Agreement Between Philadelphia Regional Port Authority and Tioga Fruit Terminal, Inc.
Parties:
Philadelphia Regional Port Authority
Tioga Fruit Terminal, Inc.

Synopsis: The proposed amendment extends the option date for Tioga Fruit Terminal, Inc. to extend the lease for a second renewal term until June 30, 1996.

By Order of the Federal Maritime Commission.
Dated: July 5, 1996.
Joseph C. Polking,
Secretary.
[FR Doc. 96–17606 Filed 7–10–96; 8:45 am]
BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. § 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Costa Cruise Lines N.V. and Costa Crociere S.p.A., 80 S.W. 8th Street, Miami, Florida 33130–3097

Vessel: COSTA VICTORIA

Dated: July 8, 1996.
Joseph C. Polking,
Secretary.
[FR Doc. 96–17683 Filed 7–10–96; 8:45 am]
BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. § 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Holland America Line-Westours, Inc. (d/b/a Holland America Line) and Holland America Line N.V., 300 Elliott Avenue West, Seattle, Washington 98119

Vessels: MAASDAM, NIEUW AMSTERDAM, NOORDAM, ROTTERDAM, RYNDAM, STATENDAM, WESTERDAM

Holland America Line-Westours, Inc. (d/b/a Holland America Line) and HAL Cruises Limited, 300 Elliott Avenue West, Seattle, Washington 98119

Vessel: VEENDAM

Holland America Line-Westours, Inc. (d/b/a Windstar Cruises) and Wind Star Limited, 300 Elliott Avenue West, Seattle, Washington 98119

Vessel: WIND STAR

Holland America Line-Westours, Inc. (d/b/a Windstar Cruises) and Wind Spirit Limited, 300 Elliott Avenue West, Seattle, Washington 98119

Vessel: WIND SPIRIT

Dated: July 5, 1996.
Joseph C. Polking,
Secretary.
[FR Doc. 96–17603 Filed 7–10–96; 8:45 am]
BILLING CODE 6730–01–M

Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Holland America Line-Westours, Inc. (d/b/a Holland America Line), Holland America Line N.V. and HAL Nederland N.V., 300 Elliott Avenue West, Seattle, Washington 98119

Vessels: MAASDAM, RYNDAM, STATENDAM

Holland America Line-Westours, Inc. (d/b/a Holland America Line), Holland America Line N.V. and HAL Antillen N.V., 300 Elliott Avenue West, Seattle, Washington 98119

Vessels: NIEUW AMSTERDAM, NOORDAM, ROTTERDAM, WESTERDAM

Holland America Line-Westours, Inc. (d/b/a Holland America Line), HAL Cruises Limited and Wind Surf Limited, 300 Elliott Avenue West, Seattle, Washington 98119

Vessel: VEENDAM

Dated: July 5, 1996.
Joseph C. Polking,
Secretary.
[FR Doc. 96–17604 Filed 7–10–96; 8:45 am]
BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).
Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Air & Ocean International, Inc., 2500 Williamsburg Drive, Laplace, 70068–0000, Officers: Eva Perez, President; Luis Acosta, Vice President

Murphy Shipping & Commercial Services, Inc., 8960 Spring Branch Road, Houston, TX 77080, Officers: Ron Johns, President; June Adams, Vice President

S.A.C. International Forwarding, Inc., 8442 N.W. 70th Street, Miami, FL 33166, Officer: Marianela Villar Zquierdo, President.

Dated: July 5, 1996.
Joseph C. Polking,
Secretary.
[FR Doc. 96–17605 Filed 7–10–96; 8:45 am]
BILLING CODE 6730–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4099–N–02]

Office of Housing; Submission for OMB review: comment request

AGENCY: Office of the Assistant Secretary for Housing, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.
DATES: Comments due date July 18, 1996.
ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, D.C. 20503.
FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, D.C. 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.
The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including weather the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the

burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Mark to Market/ Portfolio Reengineering, Demonstration Program Guidelines Proposal, Submission Requirements and Processing.

OMB Control Number: 2502–xxxx.

Description of the need for the information and proposed use: This notice describes the application and processing procedures for a demonstration program that is designed to restructure the financing of projects that have FHA-insured mortgages and that receive section 8 rent assistance. The purpose of this Congressionally authorized demonstration is to test the feasibility and desirability of multifamily projects meeting their financial and other obligations with or without FHA insurance and/or Section 8 assistance. In negotiating agreements with eligible project owners, HUD must act to protect the financial interests of the federal government, while taking into account the need for assistance of low- and very low-income tenants. HUD anticipates that, over time, it will publish additional guidance that reflects the experience derived through the execution of successful agreements with project owners.

I. Background

The demonstration, title FHA Multifamily Demonstration Authority, is authorized by Section 210 of the Balanced Budget Down Payment Act, II (Pub. L. No. 104–134, 110 Stat. 1321, April 26, 1996). It reflects concern of both the Congress and the Administration about budgetary costs and social issues associated with the renewal of Section 8 project-based assistance contracts on multifamily properties having FHA-insured mortgages.

Section 210 of the Balanced Budget Act provides HUD with a number of special tools (i.e., departures from many laws that would ordinarily apply), enabling HUD to restructure the financing of projects, while protecting the interest of tenants.

II. HUD Processing of Reengineering Proposals

A. Owners will submit proposals to George Dipman at the address below with a copy of the Multifamily Housing Director in the local HUD Field Office having jurisdiction over the property(ies) contained in the proposal: George C. Dipman, Office of Multifamily Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, S.W. (Room 6174), Washington, D.C. 20410–4000.

B. Once received, HUD will process according to the following steps:

1. Proposal will be dated, logged in and given a process locating number;
2. Proposal will be reviewed to determine that it meets threshold qualifying requirements and for completeness;
3. Substantially complete proposals will be assigned to a reengineering project manager who will be the initial liaison with the owner;
4. The project manager will work with the owner to refine the proposal for conceptual review. The manager may work independently or in conjunction with HUD consultants;
5. Approximately 30 days after receipt of a substantially complete proposal, the project will be presented to an internal HUD headquarters reengineering committee for conceptual review.
6. The reengineering committee will consider the following in determining whether to recommend for final negotiation and processing:
   a. compliance with basic project eligibility criteria;
   b. adequacy of proposal vis a vis the submission requirements;
   c. whether proposal "fits" within demonstration authorities/tools;
   d. whether proposal satisfies requirements of the demonstration program and its program principles;
   e. determination cost of the proposed transaction under the Credit Reform Act of 1990.

C. Conceptual review will result in one of three courses of action: rejection; return for clarification; or recommended for restructuring. If the project is recommended for restructuring, it will be referred either to a HUD staff person or HUD consultant for processing, or bundled (with the consent of the owner) with other projects for resolution by a third party joint-venture partner.

D. All projects, regardless of the implementing vehicle, will return to the reengineering review committee for final approval once terms are agreed to and due diligence is completed.

E. Projects with final approval will be referred back to the appropriate staff, consultants or third parties for closing.

III. Submission Requirements

On behalf of eligible properties, owners or their agents must provide the following information. This information is to be in summary format and is intended for conceptual review only. After conceptual approval, more detailed information and associated due diligence will be required.

1. Basic project information
   a. project name and address and photos;
   b. number of units (total and assisted) together with a breakdown of unit sizes; fair markets rents, estimated market rents and contract rents on a monthly per unit basis;
   c. owner name and address and outline of ownership structure;
   d. management agent name and address;
   e. lender name and address;
   f. servicer name and address;
   g. FHA and Section 8 project identification numbers;
2. FHA Mortgage Information
   a. type of FHA Insurance;
   b. date of endorsement and term/ maturity date;
   c. interest rate and interest subsidy, if any;
   d. original mortgage amount and latest unpaid balance;
   e. monthly principle and interest payments;
   f. account status, current (Y/N), amount of arrearage, if any;
   g. liens included taxes or title issues;
   h. current balance of accumulated residual receipts, if any;
   e. number of Section 8 contracts in effect;
   j. basis for calculating contract rents levels budget based, annual adjustment factor, factored rents, other
   k. tenant paid component of rents;
   1. current occupancy;
   m. year to date operating statement.
3. Physical Description and Neighborhood
   a. summary description of construction and development type, physical condition, title or environmental issues;
   b. description of financial condition, and market position;
   c. occupancy profile, including: income, family size, senior/disabled component, residents, employment status, etc.;
   d. description of the neighborhood including physical, social services, public safety and school characteristics;
   e. rental market description and trends (improving, stable deteriorating) for assisted and unassisted projects;
4. Description of reengineering proposal
   a. target market, long term affordability commitments, and transition plan;
   b. rehabilitation requirements including market enhancement and cost estimates;
   c. principle reduction;
   d. new financing source and terms;
   e. proforma with 15 year cashflow; discuss major assumptions, i.e. rent and expense decreases, vacancy, turnover, relocation, debt service and reserves. Important ratios will be expense ratio, debt coverage, loan to value;
   f. sources and uses of reengineering financing including equity, interim financing, permanent financing, local government assistance, etc.;
   g. type and term of tenant assistance required (project based or voucher)
   h. consents of partners required to participate.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for emergency review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). July 9, 1996 is requested for OMB approval.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 3, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Mark to Market/ Portfolio Reengineering, Demonstration Program Guidelines Proposal, Submission Requirements and Processing.

Office: Office of the Assistant Secretary Housing-Federal Housing Commissioner.

OMB Approval Number: 2502–xxxx.

Description of the Need for the Information and Its Proposed Use: This information is required from projects that have FHA-insured mortgages and that receive Section 8 rent assistance. This notice describes the application and processing procedures for a demonstration program that is designed to restructure the financing of the projects. The demonstration is to test the feasibility and desirability of multifamily projects meeting their financial and other obligations with or without FHA insurance and/or Section 8 assistance.

Form Number: None.

Respondents: 200.

Frequency of Submission: Once.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
	200	....	1	....	80	....	16,000

Total Estimated Burden Hours: 16,000.

Status: New collection.

Contact: George C. Dipman, HUD, (202) 708–0614, extension 2574; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: July 3, 1996.

[FR Doc. 96–17638 Filed 7–10–96; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–5700–10; Closure Notice No. NV–030–96–003]

Temporary Closure of Public Lands; Washoe County, Nevada

AGENCY: Bureau of Land Management, Nevada.

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety during the 1996 Reno National Championship Air Races.

EFFECTIVE DATES: September 9 through September 15, 1996.

FOR FURTHER INFORMATION CONTACT: James M. Phillips, Assistant District Manager, Division of Nonrenewable Resources, Carson City District Office, 1535 Hot Springs Road, Carson City, Nevada 89706–0638. Telephone (702) 885–6100.

SUPPLEMENTARY INFORMATION: This closure applies to all the public, on foot or in vehicles. The public lands affected by this closure are described as follows:

Mt. Diablo Meridian

T. 21 N., R. 19E.,
Sec. 8, N½NE¼,SE¼NE¼ and E½SE¼;
Sec. 16, N½ and SW¼.

Aggregating approximately 680 acres.

The above restrictions do not apply to emergency or law enforcement personnel or event officials. The authority for this closure is 43 CFR 8364.1. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisoned for not more than 12 months.

A map of the closed area is posted in the Carson City District Office of the Bureau of Land Management.

Dated: June 25, 1996.

James M. Phillips,

Assistant District Manager, Division of Nonrenewable Resources.

[FR Doc. 96–17611 Filed 7–10–96; 8:45 am]

BILLING CODE 4310–HC–M

[NM–031–06–1020–00]

New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Council Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces the meeting of the New Mexico Resource Advisory Council (RAC). The meeting will be held on August 1 and 2, 1996 at the Best Western Inn and Suites, 700 Scott Avenue, Farmington. In addition on August 3, 1996 there is an attendance optional field tour in the Farmington area for RAC members. The two day agenda for the RAC meeting includes a discussion of the results of scoping meetings on the New Mexico RAC Draft Standards for Rangeland Health and Guidelines for Livestock Grazing (S&G), development of revisions to the S&G as needed, a time for the public to address the RAC and selection of the location and date for the next RAC meeting. The meeting is open to the public. The time for the public to address the RAC is on the first day, August 1, 1996, from 3:00 p.m. to 5:00 p.m. The RAC may reduce or extend the end time of 5:00 p.m. depending on the number of people wishing to address the RAC and the length of time available. The length of time available for each person to address the RAC will be established at the start of the public comment period and will depend on how many people

there are that wish to address the RAC. At the completion of the public comments the RAC may continue discussion on its Agenda items.

DATES: The RAC will meet on Thursday, August 1, 1996 from 8:30 a.m. to 5:00 p.m. and on Friday, August 2, 1996, from 7:30 a.m. to 5:00 p.m. The public may address the RAC during the public comment period on August 1, 1996 starting at 3:00 p.m.

FOR FURTHER INFORMATION CONTACT: Bob Armstrong, New Mexico State Office, Policy and Planning Team, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7436.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: July 5, 1996.

William C. Calkins,

State Director.

[FR Doc. 96–17641 Filed 7–10–96; 8:45 am]

BILLING CODE 4310–FS–M

[CA–940–5700–00; CACA 7845]

Public Land Order No. 7205; Partial Revocation of Secretarial Order dated July 9, 1927; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Secretarial order insofar as it affects 162.07 acres of National Forest System lands withdrawn for Power Site Classification No. 183. The lands are no longer needed for this purpose, and the revocation is necessary to facilitate the completion of a land exchange under the General Exchange Act of 1922. This action will open the lands to such forms of disposition as may by law be made of National Forest System lands. The lands are temporarily closed to mining by a Forest Service exchange proposal. The lands have been and remain open to mineral leasing, and to mining under the provisions of the Mining Claims Rights Restoration Act of 1955. The Federal Energy Regulatory Commission has concurred with this action.

EFFECTIVE DATE: August 12, 1996.

FOR FURTHER INFORMATION CONTACT: Kathy Gary, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, 916–979–2858.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Order dated July 9, 1927, which withdrew National Forest System lands for Power Site Classification No. 183, is hereby revoked insofar as it affects the following described lands:

Mount Diablo Meridian

T. 18 N., R. 10 E.,
Sec. 16, lot 9;
Sec. 18, lot 4, SE¼SW¼, and S½SE¼.

The areas described aggregate 162.07 acres in Nevada County.

2. At 9 a.m. on August 12, 1996, the lands will be opened to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

The lands have been open to mining under the provisions of the Mining Claim Rights Restoration Act of 1955, 30 U.S.C. 621 (1988), and these provisions are no longer required.

Dated: April 24, 1996

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–17614 Filed 7–10–96; 8:45 am]

BILLING CODE 4310–40–P

[OR–958–1430–01; GP6–0064; OR–19664 (WASH)]

Public Land Order No. 7204; Partial Revocation of Secretarial Order Dated February 20, 1934; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 9.60 acres of public land withdrawn for the Bureau of Land Management's Powersite Classification No. 282. The land is no longer needed for this purpose, and the revocation is needed to permit disposal of the land through land exchange. This action will open the land to surface entry subject to temporary segregations of record. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Order dated February 20, 1934, which established Powersite Classification No. 282, is hereby revoked insofar as it affects the following described land:

Willamette Meridian

T. 7 N., R. 44 E.,
Sec. 34, lot 10.

The area described contains 9.60 acres in Asotin County.

2. The State of Washington has a preference right for public highway right-of-way or material sites for a period of 90 days from the date of publication of this order and any location, entry, selection, or subsequent patent shall be subject to any rights granted the State as provided by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1988).

3. At 8:30 a.m. on October 10, 1996, the land described above will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on October 10, 1996, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: June 24, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–17610 Filed 7–10–96; 8:45 am]

BILLING CODE 4310–33–P

[ID–957–1910–00–4573]

Idaho: Filing of Plats of Survey; Idaho

The plat, in 3 sheets, of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m. July 1, 1996.

The plat, in 3 sheets, representing the dependent resurvey of portions of the east boundary and subdivisional lines, the subdivision of certain sections (portions of the subdivisional lines and subdivision of sections 35 and 36 include the boundaries of Fort Hall Townsite), and a metes-and-bounds survey in the Fort Hall Townsite in section 36, T. 4 S., R. 34 E., Boise Meridian, Idaho, Group No. 848, was accepted, July 1, 1996.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs, Fort Hall Agency.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706–2500.

Dated: July 1, 1996.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 96–17612 Filed 7–10–96; 8:45 am]

BILLING CODE 4310–GG–M

[ID–957–1150–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. July 1, 1996.

The plat representing the dependent resurvey of portions of the south boundary and of the subdivisional lines, and the subdivision of sections 28, 29, and 32, T. 11 N., R. 4 W., Boise Meridian, Idaho, Group No. 937, was accepted, July 1, 1996.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706–2500.

Dated: July 1, 1996.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 96–17613 Filed 7–10–96; 8:45 am]

BILLING CODE 4310–GG–M

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of reinstatement of a previously approved collection.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a request to reinstate a previously approved collection of information contained in regulations governing Pollution Prevention and Control in the Outer Continental Shelf (OCS). The MMS will request approval from the Office of Management and Budget (OMB) to reinstate this collection of information. The Paperwork Reduction Act of 1995 (PRA) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit written comments by September 9, 1996.

ADDRESSES: Direct all written comments to the Department of the Interior, Minerals Management Service, Mail Stop 4700, 381 Elden Street, Herndon, VA 20170–4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Alexis London, Engineering and Standards Branch, Minerals Management Service, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart C, Pollution Prevention and Control.

Abstract: 1. The Outer Continental Shelf Lands Act (OCSLA), at 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior (Secretary) to preserve, protect, and develop oil and gas resources in the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on the resources offshore; and preserve and maintain free enterprise competition. The OCSLA Amendments of 1978 also require the Secretary to minimize or eliminate conflicts of oil and natural gas exploration, development, and production, with the recovery of other resources such as fish and shellfish. To carry out these responsibilities, MMS has issued regulations as described in 30 CFR Part 250, Subpart C, Pollution Prevention and Control.

2. The MMS OCS Regions use the information collected to ensure OCS operations are conducted to minimize the threat of serious, irreparable, or immediate damage to the marine environment; to identify potential hazards to commercial fishing; to ensure that the location of items lost overboard are recorded to aid in recovery during site clearance activities on the lease; to ensure that operations are being conducted safely and workman-like and do not threaten the environment; to ensure that crew members are fully trained and able to quickly respond to an oil spill; to ensure that pollution response equipment is maintained in good operating condition; to ensure timely reporting of oil spills; to ensure air emissions will not significantly affect onshore air quality; and to assess the ability of a lessee to prevent or contain any spills.

3. The MMS recently conducted a pilot project with respect to the collection of information required in 30 CFR 250.41(c) on reporting of oil spills. Our objective was to assess the impact of eliminating the requirement for lessees and operators to report to MMS oil spills of less than one barrel. The Federal Water Pollution and Control Act requires lessees and operators to immediately notify the National Response Center of spills of oil into any body of water, including navigable waters offshore out to approximately 200 miles. The survey results showed that MMS can obtain information on oil spills of one barrel or less from the National Response Center within necessary timeframes. To expedite this reporting burden reduction and eliminate a duplicate requirement, MMS issued a "Notice to Lessees (NTL) and Operators of Federal Oil and Gas Leases in the Outer Continental Shelf," effective May 31, 1996. The regulations will be amended to reflect this change. This reduces the number of oil spills lessees must report to MMS by over 95 percent, and the savings have been accounted for in the estimate of burden hours for this collection of information.

4. The information required by 30 CFR 250.45(b)(2) and 250.46(a)(6) is covered in 30 CFR 250.33 and 250.34, Subpart B (OMB Control Number 1010–0049). Consequently, we have not included any hours for this section.

5. Lessees' proprietary information will be protected according to the Freedom of Information Act and 30 CFR 250.18. The collection does not include items of a sensitive nature. The requirement to respond is mandatory. The reporting and recordkeeping requirements vary for each section. The estimates below are based on an average obtained from consultations with lessees in the Gulf of Mexico and Pacific Regions.

Description of Respondents: Federal OCS oil and gas lessees.

Frequency: On occasion; varies by section.

Estimated Number of Respondents: 130.

Estimate of Burden: Reporting average of 42.9 hours per response; recordkeeping average of 162.9 hours per recordkeeper.

Estimate of Total Annual Burden on Respondents: Reporting burden estimate = 55,705 hours; recordkeeping burden estimate = 21,180 hours. Estimated combined total of 76,813 hours.

Estimate of Total Annual Cost to Respondents for Burden Hours: Based on $35 per hour, the total cost to lessees is estimated to be $2,688,455.

Estimate of Total Other Annual Costs to Respondents: Unknown.

Type of Request: Reinstatement.

OMB Control Number: 1010–0057.

Form Number: N/A.

Comments: The MMS will summarize written responses to this notice and address them in the request for OMB approval. All comments will become a matter of public record.

1. The MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for the proper performance of MMS' functions, and will it be useful?

(b) Are the estimates reasonable for the burden of the proposed collection?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including use of appropriate automated electronic, mechanical, or other forms of information technology?

2. In addition, the PRA requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. The MMS needs your comments on this item. Your response should split the cost estimate into two components:

(a) Total capital and startup cost component.

(b) Annual operation, maintenance, and purchase of services component.

Your estimates should consider costs associated with generating, maintaining, and disclosing or providing the information. You should include descriptions of methods used to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and period over which costs will be incurred. Capital and startup costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchases: (1) October 1, 1995; (2) to achieve regulatory compliance with requirements not associated with the information collection; (3) for reasons other than to provide information or keep records for the Government; or (4) as part of customary and usual business or private practices.

Bureau Clearance Officer: Carole A. deWitt (703) 787–1242.

Dated: July 3, 1996.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 96–17615 Filed 7–10–96; 8:45 am]

BILLING CODE 4310–MR–M

Availability of Outer Continental Shelf Official Protraction Diagrams

AGENCY: Minerals Management Service, Interior.

ACTION: Publication of New North American Datum (NAD) 83 Outer Continental Shelf Official Protraction Diagrams (OPD's).

Notice is hereby given that effective with this publication, the following NAD 83-based Outer Continental Shelf (OCS) Official Protraction Diagrams (OPD's) for the Beaufort Sea area are on file and available in the Alaska OCS Region office, Anchorage, Alaska. They reflect current baseline and boundary information portrayed on a metric NAD 83 cadastre. These OPD's should be used for the Offshore Program within the Beaufort Sea.

Description	Date
NR 05–01, Dease Inlet	February 1, 1996.
NR 05–02, Harrison Bay North.	February 1, 1996.
NR 05–03, Teshekpuk	February 1, 1996.
NR 05–04, Harrison Bay	February 1, 1996.
NR 06–01, Beechey Point North.	February 1, 1996.
NR 06–02, Flaxman Island North.	February 1, 1996.
NR 06–03, Beechey Point	February 1, 1996.
NR 06–04, Flaxman Island	February 1, 1996.
NR 06–06, Mt. Michaelson	February 1, 1996.
NR 07–01, (Unnamed)	February 1, 1996.
NR 07–02, (Unnamed)	February 1, 1996.
NR 07–03, Barter Island ...	February 1, 1996.
NR 07–04, Mackenzie Canyon North.	February 1, 1996.
NR 07–05, Demarcation Point.	February 1, 1996.
NR 07–06, Mackenzie Canyon.	February 1, 1996.
NS 05–03, (Unnamed)	February 1, 1996.
NS 05–04, (Unnamed)	February 1, 1996.
NS 05–05, (Unnamed)	February 1, 1996.
NS 05–06, (Unnamed)	February 1, 1996.
NS 05–07, Barrow Canyon	February 1, 1996.
NS 05–08, Canada Basin West.	February 1, 1996.
NS 06–06, (Unnamed)	February 1, 1996.
NS 06–07, Canada Basin	February 1, 1996.
NS 06–03, (Unnamed)	February 1, 1996.
NS 06–05, (Unnamed)	February 1, 1996.
NS 06–08, (Unnamed)	February 1, 1996.
NS 07–05, (Unnamed)	February 1, 1996.
NS 07–06, (Unnamed)	February 1, 1996.
NS 07–07, Beaufort Terrace.	February 1, 1996.
NS 07–08, (Unnamed)	February 1, 1996.
NS 08–05, (Unnamed)	February 1, 1996.
NS 08–07, (Unnamed)	February 1, 1996.

ADDRESSES: Copies of these OPD's may be purchased for $2.00 each from the Minerals Management Service, Alaska OCS Region, 949 East 36th Avenue, Room 308, Anchorage, Alaska 99508–4302, Attention: Tina Huffaker, Library, (907) 271–6621.

FOR FURTHER INFORMATION CONTACT: Technical comments or questions pertaining to these maps should be directed to Mr. Tom Warren, Chief, Leasing Activities Section, at the address stated above, or at (907) 271–6691.

Dated: July 3, 1996.

Rance R. Wall,

Acting Regional Director, Alaska OCS Region.

[FR Doc. 96–17650 Filed 7–10–96; 8:45 am]

BILLING CODE 4310–MR–P

National Park Service

Dayton Aviation Heritage Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Dayton Aviation Heritage Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE, TIME, AND ADDRESS: Monday, August 26, 1996; 2 to 4 p.m., Innerwest Priority Board conference room, 1024 West Third Street, Dayton, Ohio 45407.

AGENDA: This business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons accommodated on a first-come; first-served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the Superintendent, Dayton Aviation, 1 week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: William Gibson, Superintendent, Dayton Aviation, National Park Service, P.O. Box 9280, Wright Brothers Station, Dayton, Ohio 45409, or telephone 513–225–7705.

SUPPLEMENTARY INFORMATION: The Dayton Aviation Heritage Commission was established by Public Law 102–419, October 16, 1992.

Dated: June 27, 1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–17679 Filed 7–10–96; 8:45 am]

BILLING CODE 4310–70–P

Keweenaw National Historical Park Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Keweenaw National Historical Park Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: Tuesday, August 6, 1996; 8:30 a.m. until 4:30 p.m.

ADDRESS: Keweenaw National Historical Park Headquarters, 100 Red Jacket Road (2nd floor), Calumet, Michigan 49913–0471.

AGENDA TOPICS INCLUDE: The Chairman's welcome; minutes of the previous meeting; update on the general management plan; update on park activities; old business; new business; next meeting date; adjournment. This meeting is open to the public.

SUPPLEMENTARY INFORMATION: The Keweenaw National Historical Park was established by Public Law 102–543 on October 27, 1992.

FOR FURTHER INFORMATION CONTACT: Superintendent, Keweenaw National Historical Park, William O. Fink, P.O. Box 471, Calumet, Michigan 49913–0471, 906–337–3168.

Dated: June 27, 1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–17680 Filed 7–10–96; 8:45 am]

BILLING CODE 4310–70–P

Manzanar National Historic Site Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Manzanar National Historic Site Advisory Commission will be held at 1:00 p.m. on Friday, July 26, 1996 in the Commissioners Board Room, 15th Floor of the General Office Building of the Los Angeles Department of Water and Power, 111 North Hope Street (First and Hope Streets), Los Angeles, California, to hear presentations on issues related to the planning, development, and management of Manzanar National Historic Site.

The Advisory Commission was established by Public Law 102–248, to meet and consult with the Secretary of the Interior or his designee, with respect to the development, management and interpretation of the site, including the preparation of a general management plan for the Manzanar National Historic Site.

Members of the Commission are as follows:

Ms. Sue Kunitomi Embrey, Chairperson
Mr. William Michael, Vice Chairperson
Mr. Keith Bright
Ms. Martha Davis
Mr. Ronald Izumita
Mr. Gann Matsuda
Mr. Vernon Miller
Mr. Mas Okui
Mr. Glenn Singley
Mr. Richard Stewart

The main agenda items for this meeting of the Commission will include the following:

(1) Status report on the development of Manzanar National Historic Site by Superintendent Ross R. Hopkins.

(2) Review of the public comments received on the draft park general management plan.

(3) General discussion of miscellaneous matters pertaining to future Commission activities and Manzanar National Historic Site development issues.

(4) Public comment period. This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Commission. A transcript will be available after August 31, 1996. For a copy of the minutes, contact the Superintendent, Manzanar National Historic Site, P.O. Box 426, Independence, California 93526.

Dated: July 3, 1996.

Ross R. Hopkins,

Superintendent, Manzanar National Historic Site.

[FR Doc. 96–17682 Filed 7–10–96; 8:45 am]

BILLING CODE 4310–70–P

Cuyahoga Valley National Recreation Area

AGENCY: National Park Service, Interior Department.

ACTION: Notice of bid sale.

SUMMARY: This notice announces the request for sealed bids for the sale of Cuyahoga Valley National Recreation Area Tract 109–68, a/k/a 5910 Main Street, Peninsula, Ohio. Freehold interest in the property is to be conveyed, including restrictive covenants attached to the deed. The minimum acceptable bid is $44,500 plus a $100 non-refundable processing fee. The fair market appraisal may be inspected at Park Headquarters, 15610 Vaughn Road, Brecksville, Ohio. Bids must be accompanied by earnest money equivalent to 2 percent of the appraised value or $2,500, whichever is greater, with the balance of the bid due within 45 days of the award. Failure to submit the full bid price within 45 days will result in forfeiture of $1,000 of deposited bid amount and the property will be awarded to the next highest bidder.

Monies must be submitted separately for the earnest money and non-refundable fee by certified check, post office money order, bank draft, or cashier's check, made payable to the United States of America for the full amount of the earnest money and non-refundable fee and sent to Superintendent, Cuyahoga Valley National Recreation Area, 15610 Vaughn Road, Brecksville, Ohio 44141. The property will be available for inspection from 2 to 4 p.m. on August 17, 1996, and August 25, 1996. Bids will be received until 2 p.m. on October 4, 1996. The successful high bidder shall have possession of property and title within sixty (60) days upon receipt of the full bid price.

FOR FURTHER INFORMATION CONTACT: Superintendent John P. Debo, Cuyahoga

Valley National Recreation Area, 15610 Vaughn Road, Brecksville, Ohio 44141 or call 216–546–5903.

SUPPLEMENTARY INFORMATION: This notice is being published in accordance with 36 CFR 17.4, July 1, 1992, and June 5, 1996.

Dated: June 26, 1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–17681 Filed 7–10–96; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection of Job Corps Health Questionnaire Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Job Corps is soliciting comments concerning the proposed revision of the Health Questionnaire, Form ETA 6–53, a copy of which is attached to this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 9, 1996. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collection; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSEE: Charles R. Hayman, MD, National Medical Director, Job Corps, Room N4507, 200 Constitution Avenue, NW, Washington, DC 20210, 202–219–5556, ext. 122 (this is not a toll-free number), 202–219–5183 (fax).

SUPPLEMENTARY INFORMATION:

I. Background

The Job Corps program is described in its enabling legislation under Public Law 97–300, Job Training Partnership Act. Section 423(4) states the health eligibility criteria and Section 424 of the Act outlines the screening and selection process for entry into Job Corps. The Department of Labor's regulation at 20 CFR 638.400 (K, L, M) further details the recruitment and screening of applicants, with specific guidance regarding health screening.

Young people wishing to enroll in Job Corps must first be screened to determine their suitability for the program. This initial screening of applicants is carried out by screening agencies, including State employment services, contracted to recruit young people for Job Corps. Screening ensures that applicants meet all admissions criteria as defined in *Performance Requirements Handbook (PRH) Chapter 1, Outreach and Screening, July 1995.*

Nonmedical personnel in the screening agencies (admissions counselors) conduct the screening interview and complete all required application forms included in *PRH–1 and its appendices.* From 1980 through 1986, the Job Corps Health Questionnaire (ETA 6–53) was administered during the screening interview only to those applicants whose medical eligibility was in doubt (as determined by positive response to questions 25 a, b, or c on the Job Corps Data Sheet, ETA 6–52).

A survey of Regional Directors for Job Corps and their staffs in 1982 and 1984 affirmed that the limited use of the Health Questionnaire in effect since 1980 had a significant adverse effect on the program. All regions responding recommended use of the Health Questionnaire during the initial screening interview for all applicants. It was noted that given the guidance and structure of the Health Questionnaire, screeners would ask more questions about applicants' health problems than the four general questions on the Data Sheet, and that responses to these questions would be very likely to uncover health problems (especially mental health problems). In 1987, initial use of the Health Questionnaire for all applicants was reinstituted.

II. Current Actions

The application folders of all applicants for the Job Corps showing questionable medical or behavioral status are transferred to the appropriate Regional Office for review. Regional Office personnel give any records showing potential health problems to the regional nurse consultant.

The nurse consultant reviews the applicant's medical history as contained in the Health Questionnaire. If necessary the consultant supplements' information from the applicant's health care providers to determine whether the individual has health problems that might prevent him or her from benefiting from the Job Corps program or that might unduly tax a center's health care budget.

In Regions II and IV, screening has been delegated to selected staff of each center. Center staff review all applications and make the decision to accept. The Regional Office staff and consultants are called upon for technical assistance as needed and for review and final decision on all applications provisionally rejected by the center.

Persons having significant physical disabilities are accepted into designated centers for the mobility impaired, vision or hearing impaired, or learning disabled. (Applicants with conditions requiring extensive treatment are not accepted).

While most health screening at the Regional level is done by the nurse consultant through review of the applicant's health record, in some instances the nurse will request the assistance of the regional medical, dental or mental health consultant to ensure that the evaluation of the applicant's suitability for Job Corps is correct.

In the case of an applicant with an acceptable health condition requiring special attention, the nurse consultant will advise the Job Corps Regional Director concerning appropriate center placement. For all accepted applicants, the Regional Office sends the Health Questionnaire and all other health information sealed in the student's Health Record Envelope to the center of assignment.

In general, the Regional Directors feel that Job Corps deals with a population of youth that requires them to be quite specific in the screening process. Applicants are perceived as having great difficulty understanding general questions regarding their health history and status. They also do not routinely volunteer necessary information regarding their health unless asked the more detailed questions included on the Health Questionnaire.

Additionally, Regional Directors feel that many admissions counselors do not have the necessary skills to perform an in-depth health interview without the structure provided by the Health Questionnaire.

Regional Directors cite the following specific benefits of using the Health Questionnaire for all applicants:

- Identifies health problems that may prohibit an applicant from successfully completing a Job Corps program.
- Identifies applicants whose physical or mental health problems may result in harm to themselves or others following enrollment.
- Identifies health problems that Job Corps is not prepared to handle due to lack of health care resources or due to excessive costs.
- Assists in assignment of an applicant with a health problem to a center equipped to provide both health care and vocational training appropriate to the applicant's needs.

Experience throughout the Job Corps indicates that the Health Questionnaire is an excellent guide in identifying current and potential applicant health problems. Its use results in considerable savings of time, by both regional health consultants and center health staff, and of money, by reducing high medical program costs and early medical terminations.

In addition, ETA uses the Report of Medical Examination, SF 88 and Report of Medical History, SF 93 when medical examinations of the Job Corps enrollees are conducted.

Burden Cost: Total cost to respondent (Job Corps applicant/student) is 0.

Date: June 5, 1996.

Signing Official: Mary H. Silva, National Director, Job Corps.

Description of Revisions to Existing Collection: Job Corps entities (Regional Offices, centers, screening agencies) were asked to comment on the existing questionnaire. Twenty-five responses were received and analyzed. As a result, the proposed revision (attached) has been developed as being easier to administer, and bringing forth more specific information readily usable by regional health consultants and center health staff.

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Job Corps Health Questionnaire.

OMB Number: 1205–0033.

Agency Number: ETA 6–53.

Record Keeping: Records are maintained for 3 years.

Affected Public: Individual or households, Business or other for-profit, Not for profit institutions, Federal Government, State or Local or Tribal Government.

Total Respondents: 103,000 annually.

Frequency: Once per applicant.

Total Responses: 1.

Average Time Per Response: 12 minutes.

Estimated Total Burden Hours: 20,600.

Total Burden Cost: $6,500.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection requirements; they will also become a matter of public record.

Dated: July 1, 1996.

Signing Official:

Mary H. Silva,

National Director, Job Corps.

BILLING CODE 4510–30–M

Job Corps Health Questionnaire, ETA 6-53

U.S. Department of Labor
Employment and Training Administration

PURPOSE: To determine Job Corps applicant eligibility and proper placement.

INSTRUCTIONS: Job Corps centers provide health care; therefore, please answer all of the questions correctly so that the center you go to can provide you with appropriate health services. The collection of this information is authorized by PL 93-203(4). The information is requested on a voluntary basis; however, no applicant may be accepted by Job Corps unless this form is completed and submitted along with a completed application (ETA 6-52).

1. Name (Last, First, Middle Initial)

2. Social Security Number ___ ___ ___ - ___ ___ - ___ ___ ___ ___ | 3. Sex (M/F) | 4. Height | 5. Weight

6 General Health Condition (circle one): Excellent Good Fair

7. a. Are you or your family covered by health insurance? (If YES, obtain copy of health insurance card and attach to this form.) NO ☐ YES ☐
   b. Are you or your family covered by Medicaid? (If YES, obtain copy of Medicaid card and attach to this form.) NO ☐ YES ☐

A "YES" answer to any item in questions 8 and 9 requires an explanation in question 10 on the reverse of this form.

8. a. Are you currently under the care of a physician or other health professional? NO ☐ YES ☐
   b. Are you currently taking any prescribed medication? NO ☐ YES ☐
   c. Have you been advised to have any surgical procedure or medical treatment? NO ☐ YES ☐
   d. Have you been hospitalized for a medical or mental health reason within the past 2 years? NO ☐ YES ☐
   e. Have you received counseling or treatment for drug or alcohol use within the past 2 years? NO ☐ YES ☐
   f. Have you ever been refused or discharged from military service for medical or mental health reasons? NO ☐ YES ☐
   g. Do you have a disability that may affect your participation in job training activities? NO ☐ YES ☐
   h. Do you wear a medical device or orthodontic braces? NO ☐ YES ☐
   i. Are you allergic to any drugs, medicines, or foods? NO ☐ YES ☐
   j. Have you ever attempted or thought about attempting suicide? NO ☐ YES ☐

9. Have you EVER had or do you now have any of the following conditions?

	No	Yes		No	Yes
a. Anemia (including sickle cell disease)			i. Speech defect (e.g., stuttering)		
b. Asthma			j. Tuberculosis (TB) or positive TB skin test		
c. Blindness or poor eyesight (not correctable by glasses or contact lens)			k. Physical disability (such as limb paralysis)		
d. Deafness or difficulty in hearing			l. Ulcer of stomach or intestines		
e. Serious dental problems			m. Epilepsy, seizures, convulsions		
f. Diabetes (sugar in urine)			n Other health problem(s)		
g. Heart condition or high blood pressure			o. FEMALES: Are you pregnant? If YES, date of last menstrual period ____		
h. Kidney, bladder or urinary problems			**10. SCORING** Place an "A" in the box at right if all responses to items in questions 8 and 9 are "NO." If any item is answered "YES," place a "B" in the box at right.		

11. Provide explanation below of any "YES" responses to items in questions 8 and 9. If additional space is needed, attach separate sheet.

Item	Explanation

I (we) authorize the Job Corps to receive from doctors, clinics, hospitals, or other sources, a complete transcript of my (son's, daughter's, ward's) health records for the purpose of determining his/her eligibility for Job Corps. I (we) authorize release of medical information to staff with a need for that information, and to the local health department when required by law. I (we) authorize an ENTRANCE MEDICAL EXAMINATION which includes blood testing to identify conditions such as anemia, syphilis, and HIV infection; urine testing for conditions such as diabetes, nephritis, pregnancy, and for controlled substance. I (we) understand the reasons for the medical examination and health testing, and have had the opportunity to ask questions. I (we) also authorize immunizations for tetanus, diphtheria, poliomyelitis, measles, mumps, rubella, influenza, and others, if necessary; and a skin test for tuberculosis. I (we) certify that the information that has been provided on this medical form is true and complete to the best of my (our) knowledge. I (we) understand that any false statement or dishonest answers will be grounds for the dismissal for the above-named individual and may be punishable by law.

Applicant Signature — Date

Parent/Guardian Signature (if applicant is a minor) — Date

Admissions Counselor Signature — Date
Comments:

Regional Medical/Mental Health Consultant or Center Health Staff Recommendation — ACCEPT ☐ REJECT ☐
Comments:

Signature: — Date

Regional Office Action — ACCEPT ☐ REJECT ☐
Comments:

Signature: — Date

Public reporting burden for this collection of information is estimated to average 12 minutes per response, including the time for reviewing instructions, search existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N-1301, 200 constitution Avenue, NW, Washington, DC 20210 and to the Office of Management and Budget, Paperwork Reduction Project (1205-0033), Washington, DC 20503.

OMB Approval No. 1205-0033
Expiration Date: xx/xx/xx

BILLING CODE 4510-23-C

Job Corps Health Questionnaire, ETA 6–53

1. *Purpose.* To obtain a health history on each applicant to determine health eligibility of the applicant to enter Job Corps.

2. *Originator.* Job Corps admissions counselor.

3. *Frequency.* Once for each student at time of application.

4. *Distribution.* This is a 2-page form. If there are "yes" answers to one or more questions on the form, you must obtain relevant physician/institution reports and forward the applicant's folder, including the ETA 6–53, to the Job Corps Regional Office for review. The center of assignment receives the original ETA 6–53 if the region approves the application. A copy is retained by the Regional Office.

5. *General Instructions.* Information is placed on the form as given by the applicant during the health interview. This information is confidential and must be so maintained by the admissions counselor. The admissions counselor must:

a. Ensure that the health questionnaire is fully understood by the applicant and that all entries are completed and appropriately written or checked.

b. Score the health questionnaire.

c. Obtain additional information or arrange for a new health examination or evaluation for the applicant when requested by the regional health consultant.

6. Detailed Instructions.

Item	Comments
1	Self Explanatory.
2	Self Explanatory.
3	Self Explanatory.
4	Self Explanatory.
5	Accept weight given by applicant; however, raise questions if there is a great difference (25 or more pounds) between given weight and the admission counselor's estimate based on observation. Note large variations under Item 11.
6	Self Explanatory.
7,8	Ask questions as stated and check "NO" or "YES." a. Attach copy of insurance or Medicaid card if appropriate. b. If possible, obtain the medical diagnosis of the condition rather than the applicant's description of symptons. c. Establish appropriate dates for the onset of the condition and date it ceased, if appropriate.
9	d. Obtain information for each condition. Explain how often the problem occurs (e.g., heart condition—cannot walk up stairs without getting short of breath). Be sure to specify whether the applicant still has the condition. e. For question 8i, list all allergies (such as to foods, dust, penicillin) and include what type of allergic response the applicant has (e.g., hives, sneezing, headaches). f. Obtain information about all hospital stays even if several were for the same condition. List only dates that applicant was in the hospital. Do not include emergency room visits.
10	The admissions counselor will score the questionnaire as follows: a. If answers to all items in questions 8 and 9 are "NO," score as category "A." b. If there are any "YES" answers, or if the admissions counselor observes peculiarity of behavior, or if the applicant admits pregnancy, score as category "B."
11	Use this section to record: a. Any comments provided by the applicant for questions 8 and 9. If the applicant is not sure whether he/she had one of the conditions mentioned in questions 8 or 9, include whatever information the applicant provides. If the applicant is reluctant to give additional information, the admissions counselor must not pressure the applicant. Indicate in this section that the applicant declined to comment. b. Observations made by the admissions counselor regarding the physical limitations or the emotional state of the applicant. Observe whether the applicant has obvious physical disabilities (e.g., walks with a limp) or peculiarity in behavior (e.g., stares or twitches).

[FR Doc. 96–17276 Filed 7–10–96; 8:45 am]
BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (96–072)]

Government-Owned Inventions; Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

Copies of patent applications cited are available from the Office of Patent Counsel, Goddard Space Flight Center, Mail Code 204, Greenbelt, MD 20771. Claims are deleted from the patent applications to avoid premature disclosure.

EFFECTIVE DATE: July 11, 1996.

FOR FURTHER INFORMATION CONTACT: R. Dennis Marchant, Patent Counsel, Goddard Space Flight Center, Mail Code 204, Greenbelt, MD 20771; telephone (301) 286–7351, fax (301) 286–0237.

NASA Case No. GSC–13,546–2: Interface using Video Camera Signals for Laser Triggering Including Background Light Suppression;

NASA Case No. GSC–13,562–2: Absolute Linear Encoding Device;

NASA Case No. GSC–13,614–1: Capaciflector—Guided Mechanisms;

NASA Case No. GSC–13,621–1: Twist Planet Drive;

NASA Case No. GSC–13,552–1: Method for Coding Multiple Source Data Sets;

NASA Case No. GSC–13,612–1: Magnetic Antenna Using Metallic Glass;

NASA Case No. GSC–13,635–1: Method of Manufacture and Apparatus for Collimating the Output of Multiple-Bar Diode Laser Arrays;

NASA Case No. GSC–13,618–1: Frequency Scanning Capaciflector;

NASA Case No. GSC–13,649–1: Small High Torque Reaction Momentum Wheel;

NASA Case No. GSC–13,638–1: Wideband Gain Stable Amplifier;

NASA Case No. GSC–13,644–2: Optical Fiber Cable Chemical Stripping Fixture;

NASA Case No. GSC–13,672–1: System and Method for Creating Expert;

NASA Case No. GSC–13,524–2: Method and Apparatus for Advanced Ultrasonic Imaging;

NASA Case No. GSC–13,329–1: Capillary Pumpted Loop Body Warmer;

NASA Case No. GSC–13,674–1: Screw Released Roller Brake;

NASA Case No. GSC–13,692–1: Roll-Unlocking Sprags;

NASA Case No. GSC–13,706–1: Pistol Grip Power Tool;

NASA Case No. GSC–13,635–2: Method of Manufacture and Apparatus for Collimating the Output of Multiple-Bar Diode Laser Arrays;

NASA Case No. GSC–13,701–1: 3-D Capaciflector;

NASA Case No. GSC–13,681–1: Low Cost GPS Receiver.

Dated: July 3, 1996.
Edward A. Frankle,
General Counsel.
[FR Doc. 96–17647 Filed 7–10–96; 8:45 am]
BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Privacy Act of 1974; Transfer of Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of transfer of records subject to the Privacy Act to the National Archives.

SUMMARY: Records retrievable by personal identifiers which are transferred to the National Archives of the United States are exempt from most provisions of the Privacy Act of 1974 (5 U.S.C. 552a) except for publication of a notice in the **Federal Register**. NARA publishes a notice of the records newly transferred to the National Archives of the United States which were maintained by the originating agency as a system of records subject to the Privacy Act.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Kurtz, Assistant Archivist for the National Archives, on (301) 713–7000.

SUPPLEMENTARY INFORMATION: In accordance with section (l)(1)(3) of the Privacy Act, archival records transferred from executive branch agencies to the National Archives of the United States are not subject to the provisions of the Act relating to access, disclosure, and amendment. The Privacy Act does require that a notice appear in the **Federal Register** when executive branch systems of records retrievable by personal identifiers are transferred to the National Archives of the United States. After transfer of records retrievable by personal identifiers to the National Archives of the United States, NARA does not maintain these records as a separate system of records. NARA will attempt to locate specific records about an individual in any system of records described in a Privacy Act Notice as being part of the National Archives of the United States. Furthermore, records in the National Archives of the United States may not be amended, and NARA will not consider any requests for amendment.

Archival records maintained by NARA are arranged by Record Group depending on the agency of origin. Within each Record Group, the records are arranged by series, thereunder generally by filing unit, and thereunder by document or groups of documents. The arrangement at the series level or below is generally the one used by the originating agency. Usually, a system of records corresponds to a series.

In this notice, each system is identified by the system name used by the executive branch agency that accumulated the records. That system name is followed by information in parentheses about the National Archives Record Group to which records in the system have been allocated. In the section of the notice covering categories of records in the system, the specific segment of the system transferred to the National Archives is identified by the accession number assigned to the system segment when it was transferred to the National Archives and the series title associated with the system in the National Archives.

The following systems of records, or parts thereof, retrievable by personal identifiers have been transferred to the National Archives since the last notice published at 57 FR 10926 (June 09, 1995):

1. *System name:*

Individual Indian Monies-Interior, BIA–3 (part of National Archives Record Group 75, Records of the Bureau of Indian Affairs).

System location:

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

Categories of individuals covered by the system:

Records in the National Archives cover individual Indians who have money accounts.

Categories of records in the system:

Records in the National Archives covered by this notice include per capita and annuity rolls for Eastern and Immigrant Cherokee, Keshena, Ponca, and Winnebago tribes, 1940–1951; and individual Indian account ledgers, 1952–1953. (NARA Accession Numbers NN3–075–095–010, and NN3–075–095–034).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l) (1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers.

b. Retrievability: (a) Indexed by name of identifying number. (b) Retrieved by manual search.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address:

The system manager is the Assistant Archivist for the National Archives, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

Notification procedures:

Individuals desiring information from or about these records should direct inquiries to the system manager.

Record access procedures:

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

2. *System Name:*

Indian Land Records-Interior, BIA–4 (part of National Archives Record Group 75, Records of the Bureau of Indian Affairs).

System location:

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

Categories of individuals covered by the system:

Records in the National Archives cover individual Indians and Indian tribal groups that are owners of land held in trust by the government.

Categories of records in the system:

Records in the National Archives covered by this notice include civilized

tribe probate books, 1940. (NARA Accession Number NN3–075–095–031).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

a. Storage: Paper records stored in archival containers.

b. Retrievability: (a) Indexed by name of identification number of individual. (b) Retrieved by manual search.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address:

The system manager is the Assistant Archivist for the National Archives, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

Notification procedures:

Individuals desiring information from or about these records should direct inquiries to the system manager.

Records access procedures:

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

3. *System name:*

Indian Land Leases-Interior, BIA–5 (part of National Archives Record Group 75, Records of the Bureau of Indian Affairs).

System location:

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

Categories of individuals covered by the system:

Records in the National Archives cover individual Indian and Indian Tribal Groups that are owners of real property held in trust by the government, and individuals or groups that are potential or actual lessees of that property.

Categories of records in the system:

Records in the National Archives covered by this notice include oil and gas leases-Phoenix/Santa Fe, 1915–1949. (NARA Accession Number NN3–075–095–012).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

a. Storage: Paper records stored in archival containers.

b. Retrievability: (a) Indexed by name of identification number of the individual. (b) Retrieved by manual search.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address:

The system manager is the Assistant Archivist for the National Archives, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

Notification procedures:

Individuals desiring information from or about these records should direct inquiries to the system manager.

RECORDS ACCESS PROCEDURES:

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

4. *System name:*

Tribal Rolls-Interior, BIA–7 (part of National Archives Record Group 75, Records of the Bureau of Indian Affairs).

System location:

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740; and National Archives—Rocky Mountain Region, Bldg. 48, Denver Federal Center, P.O. Box 25307, Denver, CO 80225.

Categories of individuals covered by the system:

Records in the National Archives cover individual Indians who are applying for or have been assigned interests of any kind in Indian Tribes, bands, pueblos or corporations.

Categories of records in the system:

Records in the National Archives covered by this notice include (in Washington, DC) individuals being denied tribal membership, 1968 (NARA Accession Number NN3–075–095–024); and program files, 1931–1938 (NARA Accession Number NN3–075–095–025). Also, (in Denver) census polls of New Mexico tribes, 1910–1960. (NARA Accession Number 8NS–075–095–021).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

a. Storage: Paper records stored in archival containers.

b. Retrievability: (a) Indexed by name, identification numbers, family numbers, etc. (b) Retrieved by manual search.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

System manager and address:

The system manager is the Assistant Archivist for the National Archives, and for Special and Regional Archives, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

Notification procedures:

Individuals desiring information from or about these records should direct inquiries to the appropriate system manager.

RECORDS ACCESS PROCEDURES:

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

5. *System name:*

Indian Loan Files-Interior, BIA–13 (part of National Archives Record Group 75, Records of the Bureau of Indian Affairs).

SYSTEM LOCATION:

National Archives—Pacific Southwest Region, P.O. Box 6719, Laguna, Niguel, CA 92607.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in the National Archives cover applicants who applied for or received loans and applicants who applied for or received guaranteed loans.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the National Archives covered by this notice include credit operations report, 1969 (NARA Accession Number 9NSL–075–095–002).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

a. Storage: Paper records stored in archival containers.

b. Retrievability: (a) Indexed by individual's name, control number or tribal name. (b) Retrieved by manual search.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Assistant Archivist for Special and Regional Archives, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

NOTIFICATION PROCEDURES:

Individuals desiring information from or about these records should direct inquiries to the system manager.

RECORDS ACCESS PROCEDURES:

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

6. SYSTEM NAME:

Law Enforcement Services-Interior, BIA–18 (part of National Archives Record Group 75, Records of the Bureau of Indian Affairs).

SYSTEM LOCATION:

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in the National Archives cover: (a) Individuals violating laws on Indian Reservations and those who appear in court for violations of 25 CFR regulations; (b) Individuals primarily interested in Indian Affairs who advocate violence as a means of obtaining their goals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the National Archives covered by this notice include law enforcement reports, 1916–1972. (NARA Accession Number NN3–075–095–021).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Cross referenced by individual's name, case number and docket number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Assistant Archivist for the National Archives, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

NOTIFICATION PROCEDURES:

Individuals desiring information from or about these records should direct inquiries to the system manager.

RECORDS ACCESS PROCEDURES:

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National

Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

7. SYSTEM NAME:

Indian Student Records-Interior, BIA–22 (part of National Archives Record Group 75, Records of the Bureau of Indian Affairs).

SYSTEM LOCATION:

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740; National Archives—Rocky Mountain Region, Bldg. 48, Denver Federal Center, P.O. Box 25307, Denver, CO 80225; and National Archives—Pacific Southwest Region, 24000 Avila Road, P.O. Box 6719, Laguna Niguel, CA 92607.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in the National Archives cover students or potential students at BIA schools (including contact schools) and applicants for or recipients of BIA scholarships or educational grants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the National Archives covered by this notice include (in Washington, DC) education records, 1914–1970 (NARA Accession Number NN3–075–095–039); (in Denver) School census: Paquate and McCarty Day Schools, 1940–1955 (NARA Accession Number 8NS–075–095–024); and (in Laguna Niguel) student case files, 1952–1974 (NARA Accession Number 9NSL–075–095–003).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l) (1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

a. Storage: Paper records stored in archival containers.

b. Retrievability: (a) Indexed by name of student and filed by student identification number. (b) Retrieved by manual search.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Assistant Archivist for the National Archives, and for Special and Regional Archives, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

NOTIFICATION PROCEDURES:

Individuals desiring information from or about these records should direct inquiries to the appropriate system manager.

RECORDS ACCESS PROCEDURES:

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

8. SYSTEM NAME:

Employment Assistance Case Files-Interior, BIA–23 (part of National Archives Record Group 75, Records of the Bureau of Indian Affairs).

SYSTEM LOCATION:

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740; National Archives - Rocky Mountain Region, Bldg. 48, Denver Federal Center, P.O. Box 25307, Denver, CO 80225; and National Archives - Pacific Southwest Region, 24000 Avila Road, P. O. Box 6719, Laguna Niguel, CA 92607.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in the National Archives cover individual Indians who are given assistance in connection with direct employment service or adult vocational training.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the National Archives covered by this notice include (in Washington, DC) individual follow-up study of service recipients employment assistance records, 1963 (NARA Accession Number NN3–075–095–020); (in Denver) employment assistance case files, Denver Field Office including photographs, 1957–1959 and 1971 (NARA Accession Number 8NS–075–095–019); and (in Laguna Niguel) employment assistance case files, 1969–1974 (NARA Accession Number 9NSL–075–095–004).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l) (1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

a. Storage: Paper records stored in archival containers.

b. Retrievability: (a) Indexed alphabetically by name of applicant and/or recipient. (b) Retrieved by manual search.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Assistant Archivist for the National Archives, and for Special and Regional Archives, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

NOTIFICATION PROCEDURES:

Individuals desiring information from or about these records should direct inquiries to the appropriate system manager.

RECORDS ACCESS PROCEDURES:

Upon request, the National Archives will attempt to locate specific records

about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

9. SYSTEM NAME:

Current Research Information System (CRIS), USDA/CSRS–1 (part of National Archives Record Group 164, Records of the Cooperative State Research Service).

SYSTEM LOCATION:

National Archives at College Park, 8601 Adelphi Road, College Park, MD, 20740.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in the National Archives cover scientists listed on research projects entered into the CRIS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the National Archives covered by this notice include electronic records containing detailed data on Current Research Information System (CRIS) Projects, 1994. (NARA Accession Number NN3–164–095–001).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

a. Storage: Electronic database stored on magnetic tape.

b. Retrievability: Records can be retrieved by name of project leader or co-investigator.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Assistant Archivist for Special and Regional Archives, National Archives at College Park, 8601 Adelphi Road, College Park, MD, 20740.

NOTIFICATION PROCEDURES:

Individuals desiring information from or about these records should direct inquiries to the system manager.

RECORDS ACCESS PROCEDURES:

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

10. SYSTEM NAME:

Army History Files, A0870–5DAMH (part of National Archives Record Group 319, Records of the Army Staff).

SYSTEM LOCATION:

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in the National Archives cover military and civilian personnel associated with the Army; individuals who offer historically significant items or gifts of money to the Army Museum System.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the National Archives covered by this notice include records dated 1924–1977 including documentation referencing the MY LAI Incident. (NARA Accession Number NN3–319–095–001).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Records are retrievable by the individual's name.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Assistant Archivist for the National Archives, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

NOTIFICATION PROCEDURES:

Individuals desiring information from or about these records should direct inquiries to the system manager.

RECORDS ACCESS PROCEDURES:

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

11. SYSTEM NAME:

The Immigration and Naturalization Service Index System, JUSTICE/INS–001 (part of National Archives Record Group 85, Records of the Immigration and Naturalization Service).

SYSTEM LOCATION:

National Archives at College Park, 8601 Adelphi Road, College Park, MD, 20740.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in the National Archives cover individuals covered by provisions of the immigration and nationality laws of the United States; individuals who have arrived or departed by aircraft or vessel at a United States port; or aliens lawfully admitted for permanent residence, commuters and other authorized frequent border crossings, and nonimmigrant persons other than transients.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the National Archives covered by this notice include central office subject files, 1906–1959. (NARA Accession Number NN3–085–095–002). Also, included are naturalizations, required departures, lawful immigrants, and deportations, 1992; and lawful immigrant files, 1987–1991. (NARA Accession Number NN3–085–095–001).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Generally, records are indexed and retrievable by name and/or "A" or "C" file number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Assistant Archivist for the National Archives, National Archives at College Park, 8601 Adelphi Road, College Park, MD, 20740.

NOTIFICATION PROCEDURES:

Individuals desiring information from or about these records should direct inquiries to the appropriate system manager.

RECORDS ACCESS PROCEDURES:

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

12. SYSTEM NAME:

Civil Division Case File System, JUSTICE/CIV–001 (part of National Archives Record Group 60, General Records of the Department of Justice).

SYSTEM LOCATION:

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in the National Archives cover individuals referenced in potential or actual cases and matters under the jurisdiction of the civil division, and attorneys, paralegals, and other employees of the civil division directly involved in these cases or matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the National Archives covered by this notice include Department of Justice litigation case file and enclosures concerning government efforts to deport union leader Harry Bridges, 1934–1962. (NARA Accession Number NN3–060–095–002).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l) (1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved by manual search.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Assistant Archivist for the National Archives, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

NOTIFICATION PROCEDURES:

Individuals desiring information from or about these records should direct inquiries to the system manager.

RECORDS ACCESS PROCEDURES:

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

13. SYSTEM NAME:

Classification, Reclassification, Utilization of Soldiers, A0600–200TAPC (part of National Archives Record Group 407, Records of the Adjutant General's Office, 1917–).

SYSTEM LOCATION:

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in the National Archives cover current and former Army members in enlisted grades E1 through E9.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the National Archives covered by this notice include Promotion Selection Board report files and rosters, 1962–1964. (NARA Accession Number NN3–407–095–001).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l) (1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

a. Storage: Paper records stored in archival containers.

b. Retrievability: By individual's surname.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Assistant Archivist for the National Archives, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

NOTIFICATION PROCEDURES:

Individuals desiring information from or about these records should direct inquiries to the system manager.

RECORDS ACCESS PROCEDURES:

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

14. SYSTEM NAME:

Health Care and Medical Treatment Record System, A0040–66bDASG (part of National Archives Record Group 112, Records of the Office of the Surgeon General (Army)).

SYSTEM LOCATION:

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in the National Archives cover military members of the Armed Forces (both active and inactive); dependents; civilian employees of the Department of Defense; members of the U. S. Coast Guard, Public Health Service, and Coast and Geodetic Survey; cadets and midshipmen of the military academies; employees of the American National Red Cross; and other categories of individuals who receive medical treatment at Army Medical Department facilities/activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the National Archives covered by this notice include U. S. Army, Office of the Surgeon General Hospital Admission electronic data file, 1942–1945 and 1950–1954. (NARA Accession Number NN3–112–095–001).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l) (1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

a. Storage: Paper records stored in archival containers.

b. Retrievability: By patient or sponsor's surname or social security number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Assistant Archivist for the National Archives, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

NOTIFICATION PROCEDURES:

Individuals desiring information from or about these records should direct inquiries to the system manager.

RECORDS ACCESS PROCEDURES:

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

15. SYSTEM NAME:

Civil Case Files, JUSTICE/USA005 (part of National Archives Record Group 118, Records of U. S. Attorneys and Marshals).

SYSTEM LOCATION:

National Archives—Mid-Atlantic Region, 9th and Market Streets, Room 1350, Philadelphia, PA 19107.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in the National Archives cover (a) individuals being investigated in anticipation of civil suits; (b) individuals involved in civil suits; (c) defense counsel(s); (d) information sources; and (e) individuals relevant to the development of civil suits.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the National Archives covered by this notice include case files for closed significant civil cases with sentences of 10 years or less, 1980–1983. (NARA Accession Numbers 3NS–118–094–001, 3NS–118–094–002, 3NS–118–094–003, and 3NS–118–094–004).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l) (1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Primarily by name of person, case number, complaint or court docket.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Assistant Archivist for Special and Regional Archives, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

NOTIFICATION PROCEDURES:

Individuals desiring information from or about these records should direct inquiries to the system manager.

RECORDS ACCESS PROCEDURES:

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

16. SYSTEM NAME:

Criminal Case Files, JUSTICE/USA007 (part of National Archives Record Group 118, Records of U. S. Attorneys and Marshals).

SYSTEM LOCATION:

National Archives—Mid-Atlantic Region, 9th and Market Streets, Room 1350, Philadelphia, PA 19107.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in the National Archives cover (a) individuals charged with violations; (b) individuals being investigated for violations; (c) defense counsel(s); (d) information sources; (e) individuals relevant to development of criminal cases; (f) individuals investigated, but prosecution declined; (g) individuals referred to in potential or actual cases and matters of concern to a U. S. attorney's office; and individuals placed into the Department's Pretrial Diversion Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the National Archives covered by this notice include case files for closed significant criminal cases with sentences of 10 years or less, 1980–1983. (NARA Accession Numbers 3NS–118–094–001, 3NS–118–094–002, 3NS–118–094–003, and 3NS–118–094–004).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l) (1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Primarily by name of person, case number, complaint or court docket number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Assistant Archivist for Special and Regional Archives, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

NOTIFICATION PROCEDURES:

Individuals desiring information from or about these records should direct inquiries to the system manager.

RECORDS ACCESS PROCEDURES:

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

17. SYSTEM NAME:

Educational and Cultural Exchange Program Records, STATE–08 (part of National Archives Record Group 59, General Records of the Department of State).

SYSTEM LOCATION:

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in the National Archives cover applicants, recipients, and prospective recipients of educational and cultural exchange grants; members of the Board of Foreign Scholarships; American Executive Secretaries of Fulbright Foundations and Commissions; members of the U. S. Advisory Commission on International Educational and Cultural Affairs; members of the Government Advisory Committee on International Book and Library Programs; members of the former National Review Board of the East-West Center; and faculty members of U. S. educational institutions participating in student counseling workshops conducted in various countries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the National Archives covered by this notice include files on the U. S. Advisory Commission on International Educational and Cultural Affairs including members' folders, 1948–1961 (NARA Accession Number NN3–059–095–011); transcripts of meetings of the Board of Foreign Scholarships and the Executive and Planning Committee, 1942–1970 (NARA Accession Number NN3–059–095–020); records of the U. S. Advisory Committee on the Arts including Committee members files, travel records, and a history of the committee, 1948–1961 (NARA Accession Number NN3–059–095–037); Board of Foreign Scholarships Country Program proposals, memberships, commission personnel, and minutes, 1950–1969 (NARA Accession Number NN3–059–095–071); and files of U. S. Advisory Commission on International Educational and Cultural Affairs on educational and cultural affairs on educational organizations, meetings, etc., 1961–1965 (NARA Accession Number NN3–059–095–081).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l) (1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved by individual name.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Assistant Archivist for the National Archives, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

NOTIFICATION PROCEDURES:

Individuals desiring information from or about these records should direct inquiries to the system manager.

RECORDS ACCESS PROCEDURES:

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

18. SYSTEM NAME:

Personnel Records, STATE–31 (part of National Archives Record Group 59, General Records of the Department of State).

SYSTEM LOCATION:

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in the National Archives cover Department of State employees (current and former; domestic and Foreign Service); applicants for employment with Department of State and employees of other federal agencies on detail to Department of State.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the National Archives covered by this notice include performance evaluation policy records, 1924–1965 (NARA Accession Number NN3–059–095–076); card records of candidates who have taken the written examination for appointment as Foreign Service Officers, 1900–1960 (NARA Accession Number NN3–059–095–077); and Board of the Foreign Service Promotion Files, 1956–1973 (NARA Accession Number NN3–059–095–079).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l) (1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved by individual name.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Assistant Archivist for the National Archives, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740.

NOTIFICATION PROCEDURES:

Individuals desiring information from or about these records should direct inquiries to the system manager.

RECORDS ACCESS PROCEDURES:

Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR part 1253.

Appendix—General Statement About Uses and Restrictions

A record from an accessioned system of records may be made available to any person who has applied for and received a researcher identification card. No special qualifications are required in order to use the records of the National Archives. Rules governing the use of records and procedures for applying for research cards are found in 36 CFR part 1254. However, the use of some of the records is subject to restrictions imposed by statute or Executive order, or by the restrictions specified in writing in accordance with 44 U.S.C. 2108 by the transferring agency. Restrictions currently in effect on access to particular records that have been specified by the transferring agency are known as "specific restrictions." Restrictions on access that may apply to more than one record group are termed "general restrictions." They are applicable to the kinds of information or classes of accessioned records designated regardless of the record group to which they have been allocated or the specific system of records in which they are contained. The restrictions are published in the "Guide to the National Archives of the United States" and supplemented by restriction statements approved by the Archivist of the United States and set forth in 36 CFR part 1256.

Dated: July 1, 1996.

Geraldine N. Phillips,

Acting Assistant Archivist for the National Archives.

[FR Doc. 96–17434 Filed 7–10–96; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation–(1194).

Date and Time: August 2, 1996, 8:30 a.m.–5:00 p.m.

Place: Room 320, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Kesh Narayanan, Director, SBIR (703) 306–1390, and Cheryl Albus, Program Coordinator, SBIR (703) 306–1390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate SBIR Phase I Rapid Prototyping proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552(c)(4) and (6) of the Government in the Sunshine Act.

Dated: July 8, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–17655 Filed 7–10–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194) submitted to the Phase I Small Business Innovation Research Program in the areas of Next Generation Vehicles, (Service Systems/Operations Research), Environmentally Conscious Manufacturing (ECM), and Advanced Manufacturing Processes (Ceramics). In order to review the large volume of proposals, panel meetings will be held on August 2, 1996 in rooms 360, 365, 370, and 380, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA from 8:30 a.m. to 5:00 p.m.

Contact Person: Ritchie Coryell, SBIR Office, (703) 306–1391, Warren DeVries, Program Director, Manufacturing Machines and Equipment, (703) 306–1330, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: July 8, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–17658 Filed 7–10–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Education and Human Resources; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Education and Human Resources; Committee of Visitors.

Date and Time: July 30 (8:00 a.m.–6:00 p.m.) and July 31 (8:00 a.m.–2:00 p.m.).

Place: National Science Foundation, 4201 Wilson Blvd., Suite 370, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Peirce Hammond, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1690.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To review and evaluate the Urban Systemic Initiatives (USI) Program and provide an assessment of program-level technical and managerial matters pertaining to proposal decisions and program operations.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: July 8, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–17654 Filed 7–10–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (#1756).

Date and Time: July 29–July 31, 1996; 8:30 am to 6:00 pm.

Place: Center for High Pressure Research, State University of New York at Stony Brook.

Type of Meeting: Closed.

Contact Person: Dr. Daniel F. Weill, Program Director, Instrumentation & Facilities Program, Division of Earth Sciences, Room 785, National Sciences Foundation, Arlington, VA 22230, (703) 306–1558.

Purpose of Meeting: To review the renewal proposal, evaluate the Science and Technology Center, and make a recommendation concerning future funding of the Science and Technology Center.

Agenda: To evaluate: a) the research program; b) educational and outreach activities; and c) the knowledge transfer activities and the management of the STC. To make a recommendation on the future funding of the STC.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Dated: July 8, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–17656 Filed 7–10–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Science and Technology Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Science and Technology Infrastructure (1373).

Date and Time: August 1–2, 1996 9:00 a.m.–5:30 p.m.; August 5–6, 1996 9:00 a.m.–5:30 p.m.

Place: Rooms 1295 & 1280, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Nathaniel G. Pitts, Director, Office of Science and Technology Infrastructure, Room 1270, 4201 Wilson Blvd., Arlington, VA 22230; Telephone (703) 306–1040.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate applications submitted to the Recognition Awards for the Integration of Research and Education activity.

Reason for Closing: The meeting is closed to the public because the Panel is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 8, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–17657 Filed 7–10–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Northeast Utilities Service Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–65 issued to Northeast Nuclear Energy Company, et al. (the licensee) for operation of the Millstone Nuclear Power Station, Unit No. 2, located in New London, Connecticut.

The proposed amendment was requested on July 3, 1996, and would provide a one-time change to Millstone Unit 2 (MP2) Technical Specification 3.9.1, "Refueling Operations, Boron Concentration." The proposed change would remove the requirement that the boron concentration in all filled portions of the Reactor Coolant System be "uniform." This change would only be applicable during the MP2 Cycle 13 mid-cycle core offload. The requested change supersedes the June 3, 1996, request.

On March 14, 1996, during surveillance testing, it was discovered that a Low Pressure Safety Injection (LPSI) valve could not be closed. In order to repair the valve, the Shutdown Cooling System will have to be removed from service since it is not possible to isolate flow through a stuck open LPSI valve with Shutdown Cooling in operation. The repair requires an offload of the core to the Spent Fuel Pool which will permit removal of the Shutdown Cooling System from service.

Since the core offload could not have been anticipated at the time of shutdown, the Reactor Coolant System was not borated to the refueling concentration required by the Technical Specifications (TSs).

The proposed one-time TS change would strike the words "of all filled portions" and "uniform and" and add a footnote indicating that, for the Cycle 13 mid-cycle core offload activities, it is acceptable for the boron concentrations of the water volumes in the steam generators and the connecting piping to be as low as 1300 ppm.

The Bases for 3.9.1 would be modified to explain that the boron concentration of the water volumes in the Pressurizer, Shutdown Cooling System, Reactor Vessel, Refueling Pool, and the associated connecting piping will be maintained at 1950 ppm boron concentration. This concentration will be high enough to ensure that, even in the unlikely event that all of the lower boron concentration water from the Steam Generators and connecting piping were to mix with the Shutdown Cooling System water, the resulting Shutdown Cooling System boron concentration will remain greater than the minimum required refueling boron concentration.

The initial June 3, 1996, request would have required that the Reactor Coolant System (RCS) inventory be reduced to mid-loop and borate the RCS to greater than 1820 ppm boron to maintain the core at least 5% subcritical during refueling. The current request will reduce the RCS inventory to a level above mid-loop and borate the RCS to 1950 ppm to achieve the subcritical conditions.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve [a significant hazards consideration] because the changes would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

Refueling Operations Technical Specification 3.9.1 requires that, with the reactor vessel head unbolted or removed, the boron concentration of all filled portions of the Reactor Coolant System and the refueling canal shall be maintained uniform and sufficient to ensure that the more restrictive of the following conditions is met:

a. Either a Keff of 0.95 or less, or

b. A boron concentration of greater than or equal to 1720 ppm

The proposed technical specification change would strike the words "of all filled portions" and "uniform and" and add a footnote indicating that for the Cycle 13 mid-cycle core offload activities, it is acceptable for the boron concentrations of the water volumes in the steam generators and connecting piping to be as low as 1300 ppm. In addition, a surveillance will be added to determine that the boron concentration in the steam generators is greater than or equal to 1300 ppm prior to entry into Mode 6.

The impact of the change on the boron dilution accident and the loss of shutdown cooling flow has been evaluated. Based upon this evaluation, the proposed change to Technical Specification 3.9.1 does not involve a significant increase in the probability or consequences of these accidents. The probability of a boron dilution accident or a loss of shutdown cooling event is not increased by allowing the RCS [reactor coolant system] boron concentration in the stagnant regions of the RCS to be less than the previously required concentration since this is compensated by increasing the boron concentration requirement of the shutdown cooling loop in Mode 6. The consequences of a boron dilution accident would not be increased. In fact, the compensatory measure of increasing the RCS boron concentration in the shutdown cooling loops and reactor vessel core regions will result in a higher initial boron concentration for the boron dilution accident, which would actually increase the time to core criticality, ensuring that the operator has at least 30 minutes to intervene. The consequences of a loss of shutdown cooling flow are not increased as the core would continue to remain greater than 5% subcritical (assuming all the control element assemblies remain inserted) without operator intervention even if the less borated water in the stagnant regions of the RCS reached the core regions without mixing.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

By maintaining 1950 ppm in the active region of the RCS, the required shutdown margin is assured, even in the unlikely event that the stagnant [regions] of the RCS mix with the active regions. Thus, the proposed technical specification change would not create the possibility of a new or different type of accident than previously evaluated. Further, the proposed change has no impact on the mitigation of a boron dilution accident or a loss of shutdown cooling event.

3. Involve a significant reduction in the margin of safety.

The proposed technical specification change will not result in a significant reduction in the margin of safety. The results of the boron dilution accident, and the loss of shutdown cooling event are not adversely impacted by the modification to the RCS boration technical specification. In the event of a boron dilution accident, the operator will continue to have at least 30 minutes to prevent core criticality. Without crediting operator intervention, the potential core boron reduction associated with a loss of shutdown cooling event will not result in core criticality. As such, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 12, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford Connecticut. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248–5100 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Phillip F. McKee: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Services Company, Post Office Box 270, Hartford, Connecticut 06141–0270, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 3, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 3rd day of July 1996.

For the Nuclear Regulatory Commission.

Daniel G. McDonald,

Sr. Project Manager, Northeast Utilities Project Directorate, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–17653 Filed 7–10–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 30–7022]

Notice of Intent to Remove the RTI Inc., Rockaway, New Jersey Site From the NRC Site Decommissioning Management Plan

SUMMARY: This notice informs the public that the U.S. Nuclear Regulatory Commission intends to remove the RTI Inc., Rockaway, New Jersey site from the list of contaminated sites in NRC's Site Decommissioning Management Plan (SDMP). Remediation of residual radioactive contamination in areas of the facility has successfully been completed and the facility meets the current NRC criteria for release for unrestricted use.

DATES: The NRC hereby provides notice of an opportunity to comment on the proposed NRC action. Comments must be submitted by no later than August 12, 1996. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Written comments should be sent to USNRC, Region I, Attn: Anthony Dimitriadis, 475 Allendale Road, King of Prussia, Pennsylvania 19406. Hand deliver comments to 475 Allendale Road, King of Prussia, PA 19406 between 7:45 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Anthony Dimitriadis, Division of Nuclear Materials Safety, USNRC, Region I, 475 Allendale Road, King of Prussia, PA 19406, Telephone: (610) 337–6953.

SUPPLEMENTARY INFORMATION: The RTI site in Rockaway, New Jersey, was identified in 1988 by the NRC as a site where significant residual radioactive contamination was present as a result of past operations. RTI is licensed by NRC to perform irradiation of commercial products using a cobalt-60 in-air irradiator. Leakage from the cobalt-60 sources in the 1970's contaminated the irradiator storage pool. Disposal of contaminated waste and effluent discharge caused contamination of soil outside the irradiator.

RTI identified radioactive contamination at various locations inside and outside the fenced area of the site. As a result, NRC included this site in the list of contaminated sites contained in the Site Decommissioning Management Plan (SDMP) in 1990 to ensure that remediation of the areas was accomplished in a timely manner. The site was listed in the SDMP because it satisfied the criterion of large amounts of contaminated soil or burial grounds that may be difficult to decommission.

RTI has remediated residual contamination in the various areas on the site property, performed radiological surveys in those areas, and requested by letter dated June 14, 1996, that the NRC remove the Rockaway, New Jersey site from the SDMP. The staff of the NRC's Region I Division of Nuclear Materials Safety has reviewed and approved various remediation activities since 1987. The staff has also reviewed various records of past activities at the site and the radiological surveys performed by RTI and their contractor and conducted confirmatory radiological measurements at the site. Based on these reviews and independent measurements, the NRC staff has determined that the facility meets the requirements for release of these areas for unrestricted use.

The SDMP describes four criteria that make a site eligible for removal from the SDMP list, including (1) Termination of a license after successful remediation, (2) completion of remediation of an inactive area and modification of the active license to reflect the remediation, (3) completion of remediation at an unlicensed site, or (4) transferral of regulatory jurisdiction for remediation. The RTI site has satisfied the second criterion because the licensee has successfully remediated the inactive, contaminated portion of the site. Licensed irradiation operations are planned to continue at the site. Consequently, the NRC staff intends to remove the RTI site in Rockaway, New Jersey, from the SDMP.

For further details with respect to this action, documents are available for inspection at the NRC's Region I offices located at 475 Allendale Road, King of Prussia, PA 19406. Persons desiring to review documents at the Region I Office, should call Ms. Cheryl Buracker at (610) 337–5093 several days in advance to assure that the documents will be readily available for review.

Dated at Rockville, Maryland this 5th day of July, 1996.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–17651 Filed 7–10–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 40–6354]

Notice of NRC Consideration of Removing the Aberdeen Proving Ground, Maryland, Site From the Site Decommissioning Management Plan

SUMMARY: This notice informs the public that the U.S. Nuclear Regulatory Commission is considering the removal of the U.S. Department of the Army, Aberdeen Proving Ground, Maryland, site from the list of contaminated sites contained in NRC's Site Decommissioning Management Plan (SDMP). The NRC intends to remove the site from the SDMP list if it determines that the environmental impact of the continued use of munitions containing depleted uranium (DU) at this location is small and acceptable.

DATES: The NRC hereby provides notice of an opportunity to comment on the proposed NRC action. Comments must be submitted by no later than August 12, 1996. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Written comments should be sent to USNRC, Region I, Attn: Anthony Dimitriadis, 475 Allendale Road, King of Prussia, Pennsylvania 19406. Hand deliver comments to 475 Allendale Road, King of Prussia, PA 19406 between 7:45 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Anthony Dimitriadis, Division of Nuclear Materials Safety, USNRC, Region I, 475 Allendale Road, King of Prussia, PA 19406, Telephone: (610) 337–6953.

SUPPLEMENTARY INFORMATION: The Department of the Army site at Aberdeen Proving Ground, Maryland, was identified in 1990 by the NRC as a site where significant residual radioactive contamination was present as a result of licensed operations. The Army has tested munitions containing depleted uranium (DU) at the Aberdeen Proving Ground since the 1950's under a license issued under the Atomic Energy Act. DU munitions have been test-fired on an outdoor testing range and have become commingled with unexploded ordnance. Environmental monitoring performed by the Army identified measurable amounts of uranium in some samples, but the existing information was not sufficient to determine if this uranium was naturally occurring or the result of the licensed activities.

The NRC included the Aberdeen site on the list of contaminated sites in the Site Decommissioning Management Plan (SDMP) in 1990 because it satisfied the criterion of large amounts of contaminated soil that may be difficult to decommission. Since the site was included in the SDMP, NRC has reviewed further the licensee's contention that the uranium contamination is environmentally of low consequence and the licensee's request to continue testing DU munitions at the site. The Department of the Army submitted a study of the long term fate of DU at the Aberdeen site, which was performed by Los Alamos National Laboratory. The study evaluated the current distribution of DU in environmental media (e.g., soil, surface water, groundwater, vegetation) at the Aberdeen site and assesses environmental transport of DU that may result in exposures to humans and wildlife. The study concludes that radiological doses to the environment due to current and projected DU testing at Aberdeen are minimal and acceptably low.

On June 26, 1996, the Department of the Army requested by letter that NRC remove the Aberdeen Proving Ground, Maryland site from the SDMP. The request before the NRC at this time is to authorize continued use of DU at the Aberdeen site based on existing information that shows minimal environmental impact from the Army's DU testing program. Since 1990, the NRC staff has reviewed and approved various actions proposed by the Army including "recovery operations" for all future testing of DU munitions, an Environmental Radiation Monitoring Plan, and the Los Alamos National Laboratory Long Term Fate Study.

The SDMP describes four criteria that make a site eligible for removal from the SDMP list, including (1) termination of a license after successful remediation, (2) completion of remediation of an area and modification of an active license to reflect the remediation, (3) completion of remediation at an unlicensed site, or (4) transferral of regulatory jurisdiction for remediation. Aberdeen does not qualify for removal from the SDMP list under any of these criteria. However, the NRC staff has concluded that the Army has established acceptable procedures for controlling and monitoring the DU testing and that unacceptable environmental impacts are not occurring at the Aberdeen site. In addition, the Army has stated its intent to pay for decommissioning of the firing range and other facilities at Aberdeen in the event that the license is terminated at some point in the future. With these controls in place, little benefit would be gained by continuing to include the Aberdeen site in the SDMP.

Consequently, the NRC staff is considering whether the Aberdeen site should be removed from the SDMP.

For further details with respect to this action, documents are available for inspection at the NRC's Region I offices located at 475 Allendale Road, King of Prussia, PA 19406. Persons desiring to review documents at the Region I Office, should call Ms. Cheryl Buracker at (610) 337–5093 several days in advance to assure that the documents will be readily available for review.

Dated at Rockville, Maryland this 5th day of July, 1996.

For the Nuclear Regulatory Commission

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–17652 Filed 7–10–96; 8:45 am]

BILLING CODE 7590–01–P

UNITED STATES POSTAL SERVICE

Board of Governors

Notice of Vote to Close Meeting

At its meeting on July 1, 1996, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for August 5, 1996, in Detroit, Michigan. The members will consider the Postal Rate Commission Decision and Recommended Opinion in Docket No. MC96–2, Preferred Rates Classification Reform.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dyhrkopp, Fineman, Mackie, McWherter, Rider and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Koerber, and General Counsel Elcano.

The Board determined that pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)) because it is likely to disclose information in connection with proceedings under chapter 36 of title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code.

The Board has determined further that pursuant to section 552b(c)(10) of title 5, United States Code, and section 7.3(j) of title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing.

The Board further determined that the public interest does not require that the Board's discussion of these matters be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of title 5, United States Code; section 410(c)(4) of title 39, United States Code; and section 7.3 (c) and (j) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, Thomas J. Koerber, at (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 96–17799 Filed 7–9–96; 2:00 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Schedule 13E–4, SEC File No. 270–190, OMB Control No. 3235–0203.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is publishing the following summary of a collection for public comment.

Schedule 13E–4 is filed pursuant to section 13(e)(1) of the Securities Exchange Act of 1934 by issuers conducting a tender offer. This information is needed to provide full and fair disclosure to the investing public. Schedule 13E–4 takes approximately 232 hours to prepare and is filed by an estimated 121 respondents annually for a total of 28,072 burden hours.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW Washington, DC 20549.

Dated: June 25, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17636 Filed 7–10–96; 8:45 am]

BILLING CODE 8010–01–M

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form ADV–S, SEC File No. 270–43, OMB Control No. 3235–0046.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval of extension of the following form:

Form ADV–S is the form for annual reports for registered investment advisers under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1). There are approximately 22,500 registrants filing annually on Form ADV–S. Approximately 22,500 hours are used to meet the requirements of Form ADV–S. This represents one hour per registrant per year.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 1, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17637 Filed 7–10–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22052; 811–8060]

Institutional Series Trust; Notice of Application for Deregistration

July 5, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Institutional Series Trust.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 6, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 31, 1996 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicant, 1285 Avenue of the Americas, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Mary T. Geffroy, Staff Attorney, at (202) 942–0553, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application

may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Massachusetts business trust, is an open-end investment management company, registered under the Act. On October 15, 1993, applicant filed with the SEC a notification of registration on Form N–8A pursuant to section 8(b) of the Act. On that same day, applicant filed a registration statement on Form N–1A pursuant to the Securities Act of 1933 to register an indefinite number of shares of beneficial interest. The registration statement became effective on December 21, 1993, and the initial public offering commenced shortly thereafter.

2. Applicant offered one series, comprised of two separate classes of shares, Institutional Shares and Financial Intermediary Shares.

3. On November 29, 1995 (the "Closing Date"), the liquidation of applicant occurred in accordance with an Agreement and Plan of Dissolution, Liquidation and Termination (the "Plan"). The Plan provided for the liquidation of all of the assets of applicant, the distribution of all of the proceeds of such liquidation, in cash, less an amount provided for debts and liabilities of applicant, to the sole shareholder of applicant. On the Closing Date, the final monthly dividends of $2.547 per share on the Institutional Shares and $2.539 per share on the Financial Intermediary Shares were paid to applicant's sole shareholder.

4. The net asset value per share for applicant was determined by dividing applicant's assets, less liabilities, by the total number of its outstanding shares. All portfolio securities sold in connection with the liquidation were publicly traded debt instruments for which fair market value was received.

5. On December 13, 1995, applicant's board of trustees, including the trustees who are not interested persons, unanimously approved the Plan and ratified all actions previously taken pursuant to the Plan. In making this determination, the board of trustees considered a number of factors, including, the relatively small size of applicant's assets, the fact that all shareholders other than Mitchell Hutchins Asset Management Inc. had redeemed their shares, the resulting high expense ratio of applicant, and the improbability that sales of applicant's shares could be increased to raise applicant's assets to a more viable level.

6. As of November 28, 1995, there were 8899.942 shares of beneficial interest outstanding (4445.120 of which were Institutional shares and 4454.822 of which were Financial Intermediary shares), having an aggregate net asset value of $82,974 and a per share net asset value of $9.34 per Institutional share and $8.31 per Financial Intermediary share. There are no other classes of securities of applicant outstanding. As of November 29, 1995, there were no shares of beneficial interest outstanding.

7. No expenses were incurred in connection with the distribution. Nor were brokerage commissions incurred in connection with the liquidation. As of the date of the application, applicant had no assets, liabilities, or unitholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor proposes to engage, in any business activities other than those necessary for the winding up of its affairs.

8. A notice of termination will be filed on behalf of applicant with the Office of the Secretary of State of the Commonwealth of Massachusetts to effect the termination of applicant as a Massachusetts business trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17631 Filed 7–10–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22054; No. 811–1501]

Lincoln National Variable Annuity Fund B

July 5, 1996.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Lincoln National Variable Annuity Fund B.

RELEVANT 1940 ACT SECTION: Order requested under Section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on March 25, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 30, 1996, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, Jack D. Hunter, Esq., The Lincoln National Life Insurance Company, 1300 South Clinton Street, P.O. Box 1110, Fort Wayne, Indiana 46802.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Special Counsel, or Peter R. Marcin, Law Clerk, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicant's Representation

1. Fund B was established as a segregated investment account of the Lincoln National Life Insurance Company on December 1, 1966, in accordance with provisions of Indiana insurance law.

2. On May 15, 1967, Fund B filed with the Commission a notification of registration as an investment Company on Form N–8A under Section 8(a) of the 1940 Act.

3. On October 10, 1967, Fund B filed with the Commission: a registration statement (File No. 811–1501) under Section 8(a) of the 1940 Act registering Fund B as an open-end, diversified management investment company; and a registration statement on Form S–5 (File No. 2–27460) to register under the Securities Act of 1933 (the "1933 Act") the securities issued by Fund B—variable annuity contracts issued in a single class. Fund B also commenced the initial public offering of this variable annuity contracts on October 10, 1967, and, pursuant to Rule 24e–2 under the 1940 Act, computed and paid a fee in connection with that offering.

4. Fund B continuously offered its securities from October 10, 1967, to December 31, 1979. Fund B has not sold any new variable annuity contracts since December 31, 1979. Fund B has applied to the Commission pursuant to Rule 477 under the 1933 Act for withdrawal of its registration statement.

5. On May 4, 1995, the Board of Directors of Lincoln Life unanimously approved an agreement and plan of reorganization between Fund B and Lincoln National Variable Annuity Fund A ("Fund A").[1] The Board of Directors of Lincoln Life and the Boards of Managers of Fund A and Fund B recommended the reorganization on the basis that the consolidation of Fund A and Fund B would lead to economies of scale and administrative efficiencies. Each board further believed that the reorganization was in the best interests of Fund B contract owners in that Fund A, having substantially greater assets than Fund B, had greater flexibility in making investments than did Fund B. In addition, the passage of the Tax Reform Act of 1984 effectively eliminated any justification for the maintenance of both Fund A and Fund B.

6. In connection with the reorganization, on May 5, 1995, Lincoln Life, Fund A, and Fund B together filed an application with the Commission for an order of exemption pursuant to Section 17(b) of the 1940 Act from the provisions of Section 17(a) of the 1940 Act (File No. 812–9590). The application was noticed on August 3, 1995, and an order granting the exemption was issued August 30, 1995.

7. Also, in connection with the reorganization, a registration statement on form N–14 under the 1933 Act (File No. 33–59587) was filed with the Commission on May 25, 1995. The registration statement contained a prospectus/proxy statement that was furnished by the respective Boards of Managers of Fund A and Fund B to all Fund A and Fund B contract owners to solicit voting instructions from such contract owners as to the reorganization and other matters.

8. On August 1, 1995, the contract owners of Fund B met and approved an Agreement and Plan of Reorganization ("Agreement") to merge Fund B into Fund A. Pursuant to the terms of the Agreement, on October 4, 1995, Fund B transferred all of its assets to Fund A and had all of its liabilities and contractual obligations assumed by Fund A, in return for accumulation and annuity units of Fund A. The units of Fund A held by Fund B were then credited to the contract owners of Fund B as follows: each Fund B contract owner was credited with the number of Fund A accumulation or annuity units (both full and fractional) that equals the total accumulation or annuity value under the contract owner's Fund B contract.

[1] Fund A is registered with the Commission under the 1940 Act (File No. 811–1434). A copy of the agreement was filed with the Commission on May 25, 1995, as Exhibit A to a registration statement on Form N–14 (File No. 33–59587).

9. Lincoln Life paid all of the expenses in connection with the reorganization, including costs associated with printing and distributing proxy materials, counting contract owner instructions, legal and auditing fees, and expenses of holding the meeting of contract owners.

10. As of October 3, 1995, the nearest date practicable preceding the reorganization, there were 611 variable annuity contracts outstanding supported by Fund B. The net asset value as of that date was $7.98 per share, $7,931,344 in aggregate.

11. The last variable annuity contract was surrendered on October 4, 1995, and the proceeds paid from Fund B upon surrender of those contracts were based upon the accumulation unit values as of that date. As of October 4, 1995, therefore, Fund B had no contract owners and, accordingly, had no contractual liability for the surrender value of any outstanding variable annuity contracts.

12. Fund B has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of Fund B.

13. Fund B has retained no assets and has no security holders. Fund B does not have any debts or other liabilities which remain outstanding and is not a party to any litigation or administrative proceeding.

14 Fund B is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs. Fund B intends to file, after receipt of the relief requested, a certificate of dissolution or similar documents in accordance with state law.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17664 Filed 7–10–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26540]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

July 5, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 29, 1996, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc. (70–5043)

American Electric Power Company, Inc. ("AEP"), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, has filed a post-effective amendment to its declaration under sections 6(a), 7, 32 and 33 of the Act and rules 53 and 54 thereunder.

By orders dated January 3, 1986 (HCAR No. 23980), December 18, 1987 (HCAR No. 24534), December 27, 1990 (HCAR No. 25233) and December 1, 1993 (HCAR No. 25936), the Commission authorized AEP to issue and sell, through December 31, 1996, up to 44 million shares of its authorized but unissued shares of common stock, $6.50 par value ("Common Stock"), pursuant to its Dividend Reinvestment and Stock Purchase Plan ("Plan"). Through May 15, 1996, a total of 43,416,621 shares of Common Stock had been issued and sold, leaving a balance of 583,379 shares of Common Stock ("Remaining Shares").

By order dated May 10, 1996 (HCAR No. 26516), the Commission authorized, among other things, the use of proceeds of the issuance and sale of up to ten million shares of Common Stock, including Common Stock issued under the Plan, for the acquisition of interests in exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOS"), subject to a limitation on such investments to an amount equal to 50% of AEP's consolidated retained

earnings, in accordance with rule 53 under the Act.

AEP now proposes to extend the time period during which it may issue and sell the Remaining Shares, and issue and sell an additional ten million shares of Common Stock, pursuant to the Plan, through December 31, 2000. As a result thereof, AEP will have total authorization under the Plan to issue and sell up to 54 million shares of Common Stock.

The proceeds of the issuance and sale of the additional shares of Common Stock will be used: (1) To pay, at maturity, unsecured debt of AEP; (2) to make additional investments in the common stock equities of AEP's subsidiaries; and (3) for other general corporate purposes, including the acquisition of interests in EWGs and FUCOs.

Entergy Corporation, et al. (70–8861).

Entergy Corporation ("Entergy"), 639 Loyola Avenue, New Orleans, Louisiana 70113, a registered holding company, and two of its wholly-owned subsidiaries, Entergy Operations, Inc. ("Entergy Operations"), Echelon One, 1340 Echelon Parkway, Jackson, Mississippi 29213 and Entergy Services, Inc. ("Entergy Services" and together with Entergy and Entergy Operations, "Applicants"), 639 Loyola Avenue, New Orleans, Louisiana 70113, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 13 of the Act and rules 45, 86, 87, 90 and 91.

Applicants requests authority for Entergy to establish a new subsidiary named Entergy Nuclear, Inc. ("Entergy Nuclear"), to serve as a holding company for one or more wholly-owned special purpose companies ("Subsidiaries"). Entergy Nuclear will, directly or through the subsidiaries, provide nuclear plant operations, management and other nuclear-related services and products to domestic and foreign nonassociate companies. All such nuclear-related services and any related products would be provided to nonassociates at market prices.

Entergy Services provides certain administrative, financial, and support services to associates in the Entergy system. To support the sale by Entergy Nuclear of services to nonassociates, Applicants propose that Entergy Services enter into a service agreement with Entergy Nuclear. Under this agreement, Entergy Services may provide to Entergy Nuclear certain administrative and support services that will enable Entergy Nuclear to provide such services to nonassociates. Entergy Nuclear will reimburse Entergy Services for these services at cost, in accordance with rules 90 and 91 under the Act. Additionally, each of Entergy Nuclear and Entergy Services may provide to the other intellectual property it has developed or otherwise acquired.

Entergy Operations currently operates and manages the five nuclear power generating plants in the Entergy system, which are owned by certain Entergy subsidiaries ("System Nuclear Owners"). To support the sale by Entergy Nuclear of services to nonassociates, Applicants propose that Entergy Operations enter into an agreement with Entergy Nuclear. Under this agreement, Entergy Operations will provide to Entergy Nuclear certain services and products related to nuclear business operations, including the sharing and/or loaning of personnel, that will enable Entergy Nuclear to provide such services to nonassociates.

Under the agreement between Entergy Operations and Entergy Nuclear, Entergy Nuclear may also provide certain services and products related to nuclear business operations, including the sharing and/or loaning of personnel, to Entergy Operations. Each of Entergy Operations and Entergy Nuclear will reimburse the other for services rendered under the agreement at cost, in accordance with rules 90 and 91.

The agreement between Entergy Nuclear and Entergy Operations will also provide that each may provide to the other intellectual property it has developed or otherwise acquired. Under the agreement, Entergy Nuclear may sell to nonassociates rights to intellectual property obtained under the agreement from Entergy Operations, provided that no such sale would prohibit or restrict the continued use of such property by Entergy Operations or the System Nuclear Owners.

Applicants additionally propose that Entergy Nuclear provide certain nuclear-related services and products and administrative and support services to each of the Subsidiaries pursuant to a separate agreement with each such Subsidiary. Each such agreement will also provide for the provision of services related to nuclear business operations by the Subsidiary to Entergy Nuclear.

Services provided by either Entergy Nuclear or the Subsidiary under such an agreement may involve the sharing and/or loaning of personnel from time to time. These services will be provided in accordance with rules 90 and 91. Additionally, each of Entergy Nuclear and a Subsidiary may, under a service agreement between the two, provide to the other certain intellectual property it has developed or otherwise acquired.

Entergy requests authority to make investments in Entergy Nuclear, at one time or from time to time, up to an aggregate amount of $10 million outstanding at any one time through December 31, 2001. Such investments may take the form of (1) purchase of common stock, (2) capital contributions and open accounts, (3) loans, (4) guarantees of securities or other obligations, or (5) any combination thereof. Further, Entergy Nuclear proposes, through December 31, 2001, to lend to, or act as co-surety or indemnitor with respect to the securities or other obligations of, the Subsidiaries for amounts aggregating up to $10 million.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17663 Filed 7–10–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 22053; 812–8418]

Samuel Evans Wyly, et al.; Notice of Application

July 5, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for temporary and permanent orders under the Investment Company Act of 1940 ("Act").

APPLICANTS: Samuel Evans Wyly ("Wyly"); Maverick Capital, Ltd. ("Maverick").

RELEVANT ACT SECTIONS: Temporary and Permanent orders requested under section 9(c) for an exemption from the provisions of section 9(a).

SUMMARY OF APPLICATION: Applicants have requested temporary and permanent orders under section 9(c) exempting Wyly and Maverick from the disqualification provisions of section 9(a) with respect to a securities-related injunction entered against Wyly. The orders would permit Maverick to serve as investment subadviser to one portfolio of The Palladian Trust (the "Trust")

FILING DATES: The application was filed on May 24, 1993, and amended on October 1, 1993, December 6, 1994, November 15, 1995, March 1, 1996, and May 15, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 30, 1996, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 8080 N. Central Expressway, Suite 1300, Dallas, Texas 75206.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 942–0583, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Maverick, a Texas limited partnership, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). All of the partners of Maverick are members of the Wyly family or trusts established for the benefit of family members. Maverick provides investment advice to clients, including a number of private investment companies.

2. Wyly is a general partner and president of Maverick. As president, he oversees the operations of the firm. Wyly's involvement in Maverick's investment advisory business is limited to assisting in formulating its overall investment philosophy and investment objectives. He does not oversee the execution of trades or participate in daily investment management decisions, nor does he perform any financial analysis used to make investment decisions affecting client assets managed by Maverick.

3. In 1979, Wyly was named as a defendant in an injunctive action filed by the Commission (the "Complaint").[1] The Complaint alleged that Wyly had violated section 17(a) of the Securities Act of 1933 and various provisions of the Securities Exchange Act of 1934 in connection with an exchange offer accompanying a plan of recapitalization of Wyly Corporation. Specifically, the Complaint alleged that, as chairman of the board of directors of the corporation, Wyly had arranged for certain individuals to be compensated beyond the terms of the exchange offer as an inducement to participate in the offer. On December 6, 1979, without admitting or denying any wrongdoing, Wyly consented to the entry of a permanent injunction enjoining him from further conduct in violation of those provisions.

4. The Trust is a registered open-end management investment company. Palladian Advisors, Inc. ("PAI") acts as overall manager of the Trust. In this capacity, PAI evaluates and recommends to the Trust registered investment advisers to be retained as portfolio managers by the Trust, monitors their performance, and makes periodic reports to the Trust. Tremont Partners ("Tremont"), an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"), will assist PAI in the management of the Trust, and will provide investment consulting services relating to the development, implementation, and management of the Trust's multiple portfolio manager program. Tremont also will assist PAI with the periodic reevaluation of these portfolio managers.

5. Maverick has been asked by PAI to act as subadviser for one of the protfolios of the Trust. If the requested relief is granted, Wyly will not have any role in the management of the assets of the Trust portfolio. Lee A. Ainslie, III ("Ainslie"), a managing director of Maverick, will be responsible for the investment decisions made on behalf of the Trust portfolio and will have final decision-making responsibility. Ainslie will work with Maverick's chief compliance officer, Michael French, whose decisions on compliance matters are final and are not subject to review by Wyly or any other partner, officer, or employee of Maverick.

Applicants' Legal Analysis

1. Section 9(a)(2), in relevant part, prohibits any person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting as an employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company. In addition, a company whose employee or other affiliated person is ineligible to serve in any such capacity under section 9(a)(2) is similarly disqualified under section 9(a)(3). Accordingly, Wyly is subject to the disqualification provisions of section 9(a)(2) because of the injunction, and Maverick is disqualified under section 9(a)(3) because Wyly is an affiliated person of Maverick.[2]

2. Section 9(c) provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a), either unconditionally or on an appropriate temporary or other conditional basis, if it is established that these provisions, as applied to the applicant, are unduly or disproportionately severe, or that the conduct of the applicant has been such as not to make it against the public interest or protection of investors to grant such application.

3. Applicants state that the injunction was entered over sixteen years ago, and note that Wyly has complied fully with the terms of the injunction since then. In addition, applicants assert that neither Wyly nor Maverick has been subject to any other enforcement or disciplinary proceeding brought by the Commission, any other federal or state law enforcement or regulatory agency, or any self-regulatory organization. Moreover, the actions that gave rise to the injunction did not relate to any investment advisory or investment company activity.

4. Applicants state that they have retained two independent consultants to perform on-site inspections of Maverick's existing advisory business and preparedness to take on investment company management. The consultant on Advisers Act issues certified that, to the best of its knowledge, Maverick (1) is currently in compliance with the Advisers Act and state adviser laws, (2) has developed new written procedures relating to its investment advisory activities, and (3) has adequate procedures in place to provide reasonable assurance that it will remain in compliance with those laws. Another consultant reviewed Maverick's existing capabilities and procedures to determine if Maverick was in a position to take on the responsibility of managing an entity subject to the Act. Although this consultant has recommended general procedures for Maverick to follow in connection with its proposed investment company activities, it has been unable to recommend precise procedures for Maverick to follow because Maverick

[1] *SEC* v. *Samuel E. Wyly*, Civil Action No. 79–3275 (D.D.C. 1979).

[2] Section 2(a)(3)(D) defines an "affiliated person" of another as any officer, director, partner, copartner, or employee of such other person.

has not yet been told which portfolio of the Trust it will be asked to manage. Once this has been decided, PAI will provide Maverick with a compliance manual, which the consultant or outside counsel will review to ensure that it meets applicable requirements under the Act. Maverick's compliance procedures then will be updated to reflect this review of the compliance manual provided by PAI.

5. Maverick will continue to utilize the services of both consultants if temporary and permanent relief is granted. Before the expiration of the one year temporary order, applicants will have each consultant perform another thorough inspection of Maverick's operations and certify to the Commission that applicants are in compliance with the securities laws before the Division acts on the request for permanent relief. Further, as a condition to the permanent exemption, applicants will agree to have the consultants perform on-site periodic audits of Maverick to make sure that Maverick is following the compliance procedures. Neither Wyly nor Maverick will be able to dismiss either of the consultants without appointing another consultant that is not unacceptable to the Commission.

6. Applicants argue that, in light of the foregoing procedures, barring Maverick from serving as a subadviser to one portfolio of a registered investment company because of events that occurred more than 16 years ago would be unduly and disproportionately severe. Applicants also state that Wyly will not be involved in advisory activities for the Trust and assert that his conduct during the 16 years since the entry of the injunction has been such as not to make it against the public interest or protection of investors to grant the relief requested.

Applicants' Conditions

1. Applicants agree that any temporary order granted pursuant to the application will be subject to the following conditions:

a. With respect to registered investment companies, Maverick will provide investment advice only as subadviser to one portfolio of the Trust.

b. Wyly will not have a direct, personal role in providing investment advice to the Trust.

c. Wyly will not attend any partnership meeting at which the operations of, or provision of investment advice to, the Trust portfolio are proposed to be discussed, and will excuse himself from any meeting at which such subjects arise. Further, Wyly will not discuss the provision of investment advice to such portfolio with any person responsible for providing such advice.

d. When Maverick is appointed subadviser to a specific portfolio of the Trust, applicants will provide Maverick's updated compliance manual and the updated consultant's report on Maverick's compliance procedures to the Division.

2. Applicants agree that any permanent relief granted pursuant to the application will be subject to the conditions to the temporary relief and the following additional conditions:

a. Prior to the expiration of the temporary order, an independent consultant(s) not unacceptable to the SEC will confirm in writing to the SEC that Maverick is operating in compliance with the Act and the Advisers Act.

b. Maverick's chief compliance officer will certify annually that Maverick has complied with the procedures and practices referred to in the consultants' reports, and that those procedures and practices continue to be sufficient to ensure Maverick's compliance with the state and federal securities laws. One copy of that certification will be maintained as part of the permanent records of Maverick, and one copy will be delivered to the board of directors of the Trust.

c. An independent consultant(s) not unacceptable to the SEC will conduct periodic on-site inspections of Maverick to ensure that Maverick is following all compliance procedures.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17629 Filed 7–10–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37393; File No. SR–CBOE–96–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., To Amend the Firm Facilitation Exemption

July 2, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 12, 1996, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE, pursuant to Rule 19b–4 of the Act, proposes to amend the firm facilitation exemption provisions of its common or basic position limit rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Earlier in 1996, the CBOE obtained Commission approval to expand the firm facilitation exemption[3] from position and exercise limits to all non-multiply-listed Exchange option classes.[4] Interpretation .06 to Exchange Rule 4.11, the common or basic position limit rule, contains the new firm facilitation exemption provisions. Currently, only a member firm who facilitates and executes an order for its own customer[5] may qualify for a firm facilitation exemption.

The CBOE is proposing to amend the firm facilitation exemption so that both: (a) A member firm who facilitates its own customer whose account it carries, whether the firm executes the order itself or gives the order to an independent broker for execution; and (b) a member firm who receives a customer order for execution only (and thus will not have the resulting position carried by the firm, may qualify for this exemption. The CBOE believes that the proposed rule change will better allow its member firms to meet the investing needs of their customers.

Because the proposed amendment to the firm facilitation exemption should enhance the depth and liquidity of the market by allowing member firms an exemption from position limits to facilitate large customer orders, whether they are firms who accept customer orders for execution only, or they are firms who carry their customers' accounts and positions, the Exchange believes that this rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act in that it would remove impediments to and perfect the mechanism of a free market in a manner consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on the Comments on Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register**, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–96–35 and should be submitted by August 1, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17665 Filed 7–10–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37394; File No. SR–DTC–96–10]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Processing Schedule for Deposits and Withdrawals of Government Securities

July 2, 1996.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 30, 1996, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies DTC's processing schedule for deposits and withdrawals of government securities eligible for settlement through the Federal Reserve Book-Entry ("FBE") system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC proposes to revise the processing schedule for deposits and withdrawals of government securities eligible for settlement through the FBE system. In the past, participants depositing securities through the FBE system were required to deposit eligible securities by 12:30 p.m. Eastern Standard Time ("EST") in order to receive credit in time for the securities to be used the same day for DTC book-entry deliveries for value. As a result of recent changes in the cutoff time for the FBE system and the recent conversion by DTC to a same-day funds settlement system, DTC is able to extend from 12:30 p.m. to 2:00 p.m. EST the time by which a participant may deposit such securities through the FBE system so that the securities may be used that day for valued book-entry deliveries.

DTC is also able to extend the time by which a participant may withdraw securities eligible for the FBE system in order to make a book-entry delivery from DTC's account at the Federal Reserve Bank of New York ("FRBNY") to another FRBNY member. DTC proposes to extend the cutoff time for the withdrawal of FBE system eligible securities from 11:00 a.m. EST to 1:00 p.m. EST.

The proposed rule change is consistent with the requirements of Section 17A of the Act,[3] in that the proposed rule change will promote efficiencies in the clearance and settlement of government securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] The CBOE notes that a facilitation trade is a transaction that involves crossing an order of a member firm's public customer with an order from the member firm's proprietary account.

[4] *See* Securities Exchange Act Release No. 36964 (March 13, 1996), 61 FR 11453 (March 20, 1996) [File No. SR–CBOE–95–66].

[5] The CBOE defines a customer order as one that is entered, cleared, and in which the resulting position is carried with the firm.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified parts of these statements.

[3] 15 U.S.C. 78q–1 (1988).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments from DTC participants or others have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act [4] and Rule 19b–4(e)(4),[5] in that the proposal effects change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection at DTC. All submissions should refer to the File No. SR–DTC–96–10 and should be submitted by August 1, 1996.

[4] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).
[5] 17 CFR 240.19b–4(e)(4) (1995).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17635 Filed 7–10–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37397; File No. SR–MSRB–96–03]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Confirmation, Clearance, and Settlement of Transactions with Customers and Calculations for Confirmation Display

July 2, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] ("Act"), notice is hereby given that on May 29, 1996, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB proposes to amend MSRB rule G–15 regarding confirmation, clearance, and settlement of transactions with customers, and MSRB rule G–33 regarding calculations for confirmation display.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

[6] 17 CFR 200.30–3(a)(12) (1995).
[1] 15 U.S.C. § 78s(b)(1) (1988).
[2] The Commission modified the text of the summaries prepared by the MSRB.

(A) Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

Recently, the MSRB amended rule G–15(a) regarding customer confirmations to clarify the customer confirmation requirements and to revise certain requirements regarding disclosure.[3] To clarify certain provisions of the rule, a limited set of technical amendments became effective February 26, 1996.[4]

The MSRB has identified a need for two additional technical amendments to clarify certain provisions of the rule. First, revised rule G–15(a)(i)(C)(2)(a) requires dealers to disclose on the confirmation the date and price of the next pricing call.[5] The provision also requires dealers to print a legend on the confirmation regarding additional call features if there are any call features in addition to the first pricing call. The MSRB's proposal changes the reference from the "first pricing call" to the "next pricing call" to maintain consistency of terms and to avoid confusion. Since a municipal security traded in the secondary market may be traded after the first pricing call, the term next pricing call more clearly identifies the call to be disclosed on the confirmation.

The second proposed technical amendment concerns the requirement in rule G–15(a)(i)(D)(1) to provide a three-part disclosure statement for zero coupon bonds. The rule currently states that the confirmation for zero coupon bonds shall include a statement that there are no periodic payments and that the bond is callable below maturity value without notice by mail to the holder unless registered. The proposed rule change makes clear that the last part of the disclosure statement regarding call provisions for bearer bonds is necessary on confirmation only if the bonds are both callable and available in bearer form.

The proposed rule change also updates references to revised rule G–15(a) that are contained in rule G–15(c) regarding deliveries to customers and that are contained in rule G–33 regarding certain calculations for confirmation display.[6]

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act,[7] which requires that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

[3] For a complete description of the rule change, refer to Securities Exchange Act Release No. 35953 (July 11, 1995), 60 FR 36843 [File No. SR–MSRB–95–04] (order approving proposed rule change by the MSRB relating to customer confirmations).
[4] Securities Exchange Act Release No. 36596 (December 15, 1995), 60 FR 66571 [File No. SR–MSRB–95–16] (notice of filing and immediate effectiveness of proposed rule change relating to customer confirmations).
[5] MSRB rule G–15 defines pricing call as a call feature that represents an "in-whole call" (*i.e.*, a call of the entire issue) that may be used by the issuer without restriction in a refunding.
[6] The specific changes being made to the MSRB's rules are set forth in the MSRB's proposed rule change, which is available through the MSRB or the Commission's Public Reference Room.
[7] 15 U.S.C. § 78o–(b)(2)(C) (1988).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) [8] of the Act and pursuant to Rule 19b–4(e)(6) [9] promulgated thereunder because the proposed rule change (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) was provided to the Commission for its review at least five days prior to the filing date; and (iv) does not become operative for thirty days from the date of its filing on May 29, 1996. The Commission believes that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition because it makes technical and clarifying changes to an existing MSRB rule. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSRB. All submissions should refer to File No. SR–MSRB–96–03 and should be submitted by August 1, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17666 Filed 7–10–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37407; File No. SR–NASD–96–19]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Amendments to Forms U–4 and U–5

July 5, 1996.

On May 16, 1996, the National Association of Securities Dealers, Inc. (NASD or Association) filed with the Securities and Exchange Commission (SEC or Commission) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (Act)[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Uniform Application for Securities Industry Registration or Transfer, Form U–4, and the Uniform Termination Notice for Securities Industry Registration, Form U–5.

The proposed rule change was published for comment in Securities Exchange Act Release No. 37289 (June 7, 1996), 61 FR 30272 (June 14, 1996). No comments were received by the Commission. This order grants accelerated approval to the proposed amendments.

1. Background and Description of the Proposal

Since November 1993, in support of efforts to redesign the Central Registration Depository (CRD), a task force comprising the North American Securities Administrators Association (NASAA), industry representatives, the SEC, NASD and other SROs has worked to revise the uniform registration forms (Form U–4 and Form U–5). The NASD has undertaken an extensive redesign effort to improve the CRD which will require electronic filing of registration-related forms.[3] The redesigned CRD is intended to offer more efficient processing of registration-related filings and user friendly access to information contained in those filings for all industry and regulatory participants.

The revised Forms U–4 and U–5 define how information regarding securities industry representatives and securities firms will be collected and stored in the revised CRD. Implementation of the amended forms will coincide with implementation of the redesigned CRD. The forms revision effort is intended to provide more useful and accurate information for entry into the CRD. The most significant changes relate to the disclosure questions on Forms U–4 and U–5. The revisions will provide for more detailed reporting to support new functionality created by CRD's redesign. The forms have been revised to include:

- Expansion of Page 1 of Form U–4 and the parallel items on Form U–5 to handle the registration of non-members and to accommodate multiple types of registration or notices of termination for Investment Adviser Representative and Agent of Issuer registrations. (In the long term, the new CRD will ultimately contain licensing data bases for non-members.)

[8] 15 U.S.C. § 78s(b)(3)(A)(iii) (1988).
[9] 17 CFR 240.19b–4(e)(6) (1995).
[10] 17 CFR 200.30–3(a)(12) (1995).
[1] 15 U.S.C. 78s(b)(1) (1988).
[2] 17 CFR 240.19b–4 (1994).
[3] The Commission is currently reviewing a proposal by the NASD to amend its By-Laws and Membership and Registration Rules to require member firms to submit information on Forms U–4, U–5, and BD via electronic means and to establish electronic filing protocols. File No. SR–NASD–96–21; Securities Exchange Act Release No. 37291 (June 7, 1996), 61 FR 30269 (June 14, 1996).

• Addition of a statement on Page 4 of Form U–4 that will be executed by the applicant and retained by the member firm, that authorizes the member firm to make electronic filings on behalf of the applicant.

• An option for the applicant and member firm to request on the Form U–4 processing under a Relicensing Program. This program is intended to replace the existing Temporary Agent Transfer (TAT) Program. The new program will result in expedited handling for eligible persons including most individuals who previously have reported an affirmative answer to disclosure questions on their Forms U–4, but who have no new disclosure upon transfer.

• An opportunity for an individual to provide a summary of the circumstances relating to an internal review disclosure submitted by the individual's former employer on the Form U–5.

• Item 22, the disclosure question on the Form U–4 and the parallel disclosure items on the Form U–5 have been made consistent with each other to the extent possible.

• The questions relating to disclosure have been categorized to provide a uniform format to collect, display and sort disclosure detail.

• Each category of disclosure has its own custom Disclosure Reporting Page (DRP) soliciting detail unique to that category.

• Each custom DRP solicits detail to provide the information that regulators have indicated they need in order to make informed registration decisions. The revised DRPs require more detail than the current DRPs, which will reduce the number of requests for additional disclosures that prolong the review and registration process.

The forms also contain a new customer complaint question. The question was developed after discussion between representatives from the NASD, NASAA and the securities industry. The NASD believes the new question will clarify the types of complaints that have to be reported on the Forms U–4 and U–5. The question will require the reporting of all written customer complaints that allege sales practice rule violations and compensatory damages of $5,000 or more. The definition of the term of "sales practice violations" will be included in the explanation of terms section of the forms. The NASD intends to issue a Notice of Members which will include a list of examples of sales practice violations under this section and the instructional software in the new CRD system will have this list as well. The NASD will periodically revise this list as warranted.

Written complaints, which do not evolve into arbitration, civil litigation or a settlement over the jurisdictional amount, will be deleted from the CRD system two years from the date the complaint was reported to the CRD. All arbitration and civil litigation proceedings involving securities transaction matters will be reported regardless of the dollar amount of compensatory damages. All settlements of $10,000 or more will be reported as well.

The NASD recently began a test pilot phase of the new CRD system with eleven firms and one service bureau that agreed to participate. The pilot participants will go into actual production on the new system on approximately July 29, 1996 using the revised Forms U–4 and U–5. The NASD intends to phase-in the use of the amended Forms with the remaining NASD members commencing on approximately September 9, 1996 and concluding on approximately November 7, 1996.

II. Commission Findings

The Commission finds that the proposed amendments to Forms U–4 and U–5 are consistent with the provisions of Section 15A(b)(6) of the Act.[4] The amended forms will make the filing of disclosable information easier and more efficient for the securities industry. In addition, the amended forms will provide more detailed information for use by securities regulators, thus fostering the protection of investors and the public interest.

The Commission finds good cause to approve the proposed rule change prior to the 30th day after the date of publication of notice of filing in the **Federal Register**. The forms were published for comment by NASAA in August 1995 and the revised customer complaint question also was published by NASAA in March 1996. Comments that were received have been addressed by amendments to the forms. As stated earlier, the Commission has received no comment letters on the instant proposal. In addition, the Commission believes that accelerated approval is warranted so the NASD can print and distribute the new forms in time for NASD members to become familiar with the forms prior to their use in July and September 1996.

III. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (SR–NASD–96–19) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17630 Filed 7–10–96; 8:45 am]

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[4] 15 U.S.C. 78o–3(b)(6) (1988).

[5] 15 U.S.C. 78s(b)(2) (1988).

[Release No. 34–37405; International Series Release No. 1002; File No. SR–NYSE–96–12]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by New York Stock Exchange, Inc., Relating to Equity-Linked Debt Securities

July 3, 1996.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), notice is hereby given that on May 17, 1996, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Exchange filed with the Commission Amendment No. 1 to the proposed rule change on June 7, 1996.[1] The Commission is approving the Exchange's proposal, as amended, on an accelerated basis, and solicits comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The New York Stock Exchange, Inc. ("NYSE" or "Exchange") is proposing amendments to its listing standards for Equity-Linked Debt Securities ("ELDS"). These listing standards are contained in Para. 703.21 of its Listed Company Manual.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] In Amendment No. 1, the Exchange proposes to amend the proposed rule change to delete footnote one in Para. 703.21 of the NYSE Listed Company Manual. In light of the proposed 20% Test + Daily Trading Volume Standard described more fully herein, the Exchange believes that the footnote is unnecessary. *See* Letter from James E. Buck, NYSE, to Jonathan G. Katz, Secretary, Commission, dated June 7, 1996 ("Amendment No. 1").

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose*—ELDS are non-convertible debt securities of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock (the "underlying security"). As initially adopted, the Exchange's listing standards permitted the listing of ELDS only if the underlying security was issued by a U.S. company.[2] The Exchange subsequently amended these standards to permit the listing of ELDS based on underlying securities of widely-held non-U.S. companies which are traded in the U.S. market as sponsored[3] American Depository Receipts, or ordinary shares ("non-U.S. securities") if either (i) the Exchange has an effective, comprehensive surveillance sharing agreement with the primary market for the security or (ii) if over half of the volume in the underlying security occurs in the United States (the "Primary Market Test").[4]

The Exchange proposes to amend its ELDS listing standards by (1) revising the manner in which the Primary Market Test is calculated; (2) adding new criteria for the listing of ELDS on non-U.S. securities based on the daily trading volume in the U.S.; and (3) revising the current restrictions on the size of ELDS issuances linked to non-U.S. securities.

Under the Primary Market Test, the Exchange can list ELDS if (i) for non-U.S. securities that trade in the United States as ordinary shares, at least half the world-wide volume in the security is in the United States or (ii) for non-U.S. securities that trade in the United States as sponsored American Depository Receipts ("ADRs"), the Relative ADR Volume"[5] is at least 50 percent.

When the Exchange first adopted ELDS listing standards for non-U.S. securities, "Relative ADR Volume" was defined generally to require at least half of the trading volume in the security or the ADR, on a share equivalent basis, to be in the United States. However, in October 1995, the Commission approved amendments to that definition so that it now includes both U.S. volume and volume in any other market with which the Exchange has an effective, comprehensive surveillance sharing agreement ("permitted markets") in determining whether the Primary Market Test is satisfied.[6]

By incorporating the definition of "Relative ADR Volume" into the ELDS listing standards, the Exchange can now list ELDS on non-U.S. companies if the underlying security trades in the United States, as sponsored ADRs and at least half the volume in the security is in the United States or in permitted markets. The Exchange also proposes to include the definition of "Relative U.S. Share Volume" as a conforming change to the ELDS listing standards for non-U.S. securities that trade in the United States as ordinary shares.[7]

Second, the Exchange proposes to add an alternate set of criteria for the listing of ELDS on non-U.S. securities ("20% Test + Daily Trading Volume Standard"). These criteria will permit the Exchange to list ELDS on securities of non-U.S. issuers if: (i) the volume in U.S. markets[8] is at least 20 percent of world-wide volume for the most recent six months; (ii) average daily U.S. trading volume for the six-month period is at least 100,000 shares; and (iii) the actual trading volume on the majority of trading days in the United States during the six months is at least 60,000 shares.

Moreover, the Exchange proposes to amend the size limitations of ELDS issuances linked to non-U.S. securities. Specifically, the Exchange proposes to require that the size of ELDS issuances linked to non-U.S. securities will be limited to 2% of the total shares of the underlying security outstanding provided at least 20% (instead of the current 30% requirement) of the worldwide trading volume in the security and related for the six-months prior to the listing occurred in the U.S. market.[9]

The Exchange also proposes to delete footnote one from Section 703.21 of the NYSE Listed Company Manual. That footnote refers to the Exchange's ability to list ELDS linked to non-U.S. securities if there is not an effective, comprehensive surveillance information agreement with the primary exchange in the country where the security is primarily traded. Specifically, the provision currently requires such an agreement if the Primary Market Test was not satisfied. In light of the proposed 20% Test + Daily Trading Volume Standard, the Exchange believes that this provision should no longer be applicable.[10]

The Exchange believes that the proposed rule change will expand the number of non-U.S. securities that may underlie ELDS. In so doing, it will benefit investors by enhancing investment flexibility and increasing the ability of U.S. persons to invest in securities linked to highly-capitalized and actively-traded non-U.S. securities. The Exchange believes that the proposed criteria are carefully crafted to limit eligibility to those non-U.S. securities that have a significant amount of U.S. market trading interest or that trade in markets with which the Exchange has an effective, comprehensive surveillance sharing agreement. The Exchange believes that it will accordingly have the ability to gather information on potential trading problems or irregularities in the primary market for the security.

(b) *Basis*—The Exchange believes that the proposed rule change is consistent with the Act and the requirements of Section 6(b)(5) of the Act in that the proposal is designed to prevent

[2] *See* Securities Exchange Act Release No. 33468 (January 13, 1994), 59 FR 3387 (January 21, 1994).

[3] As opposed to an unsponsored ADR, a sponsored ADR is established jointly by the issuer of the underlying security and depositary. With a sponsored ADR, the depositary is generally required to distribute notices of shareholder meetings and voting instructions to ADR holders, thereby ensuring the ADR holders will be able to exercise voting rights through the depositary with respect to the underlying securities.

[4] *See* Securities Exchange Act Release No. 34545 (August 18, 1994), 59 FR 43877 (August 25, 1995).

[5] The "Relative ADR Volume" is the ratio of (A) the combined trading volume (on a share equivalent basis) of the ADR and "other related ADRs and securities" (as defined below) occurring in U.S. markets or in any other market with which the Exchange has in place an effective surveillance information sharing agreement to (B) the combined worldwide trading volume in the ADR, the security underlying the ADR and "other related ADRs and securities". For the purposes of the preceding sentence, "other related ADRs and securities" refers to the security underlying the ADR, other classes of common stock related to the underlying security, and ADRs overlying such other classes of stock. *See* NYSE Rule 715, Supplementary Material .40 (iv).

[6] *See* Securities Exchange Act Release No. 36434 (October 30, 1995), 60 FR 56071 (November 6, 1995) (order approving revised listing standards for options on ADRs).

[7] Specifically, the proposed definition of "Relative U.S. Share Volume" is the ratio of (i) the combined trading volume of the security and related securities in the United States and in any other market with which the Exchange has in place an effective, comprehensive surveillance information sharing agreement to (ii) the worldwide trading volume in such securities.

[8] This 20% Test + Daily Trading Volume Standard calculation does not include foreign markets with which the Exchange has in place a comprehensive surveillance sharing agreement.

[9] As with the 20% Test + Daily Trading Volume Standard, foreign markets with which the Exchange has in place a comprehensive surveillance sharing agreement are not included in the calculation for determining the size of eligible ELDS issuances.

[10] *See* Amendment No. 1, *supra* note 1.

fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) of the Act.[11] Specifically, the Commission finds that the Exchange's proposal to provide alternate criteria for the listing and trading of ELDs on non-U.S. securities strikes a reasonable balance between the Commission's mandates under section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest.

The Commission believes that the proposed amendments to the listing standards for ELDS on non-U.S. securities will benefit investors by effectively increasing the number of available ELDS-eligible non-U.S. securities. At the same time, as described below, the proposal provides safeguards designed to reduce the potential for manipulation and other abusive trading strategies in connection with the trading of non-U.S. security ELDS and their underlying securities. Accordingly, the Commission believes that the proposal will extend the benefits associated with ELDS on non-U.S. securities to additional non-U.S. securities and provide market participants with opportunities to trade a greater number of ELDS on non-U.S. securities without compromising the effectiveness of the Exchange's listing standards for such securities.

Currently, the Primary Market Test allows the Exchange to list options on an ADR in the absence of a comprehensive/effective surveillance sharing agreement with the primary exchange where the non-U.S. security trades if the combined trading volume of the non-U.S. security and other related non-U.S. securities occurring in the U.S. market and permitted markets during the six month period preceding the selection of the ADR for options listing represents (on a share equivalent basis) at least 50% of the combined world-wide trading volume in such securities. The effect of the NYSE's proposal would be to allow this definition of "Relative U.S. ADR Volume" to apply to the listing of ELDS on ADRs. Additionally, the Exchange proposes to include the definition of "Relative U.S. Share Volume" as a conforming change to the ELDS listing standards for non-U.S. securities that trade in the United States as ordinary shares.

The Commission has previously concluded that this standard is consistent with the Act and will continue to ensure that the majority of world-wide trading volume in the non-U.S. security and other related non-U.S. securities occurs in trading markets with which the Exchange has in place a comprehensive/effective surveillance sharing agreement.[12] The existence of such agreements should deter as well as detect manipulations or other abusive trading strategies and also provide an adequate mechanism for obtaining market and trading information from the non-U.S. markets that list the non-U.S. security underlying the Exchange's ELDS in order to adequately investigate any potential abuse or manipulation.[13]

Additionally, the Commission finds that the proposed 20% Test + Daily Trading Volume Standard is consistent with the Act. As noted above, the 20% Test + Daily Trading Volume Standard will allow the Exchange to list ELDS on a non-U.S. security if, over the six month period preceding the date of selection of the non-U.S. security for ELDS trading (1) the combined world-wide trading volume for the non-U.S. security in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the non-U.S. security and other related non-U.S. securities;[14] (2) the average daily trading volume for the non-U.S. security in the U.S. market is at least 100,000 shares; and (3) the trading volume for the non-U.S. security in the U.S. market is at least 60,000 shares per day for a majority of the trading days.

The Commission believes that these requirements present a reasonable alternative to the Primary Market Test by limiting the actual listing of ELDS on non-U.S. securities to only those non-U.S. securities that have a significant amount of U.S. market trading volume. This will ensure that the U.S. market is sufficiently active to serve as a relevant pricing market for the non-U.S. security and that the underlying foreign security is readily available to meet the delivery requirements upon exercise of the ELDS. Accordingly, the Commission believes that the 20% Test + Daily Trading Volume Standard should help to ensure that the U.S. markets serve a significant role in the price discovery of the applicable non-U.S. security and are generally deep, liquid markets.

Finally, the Exchange believes, for similar reasons, that it is appropriate to reduce the minimum U.S. trading volume requirements for ELDS issuances from 30% to 20%. As noted above, the Commission believes that the 20% Test + Daily Trading Volume Standard will ensure that an underlying non-U.S. security has deep and liquid markets to sustain an ELDS listing. The Commission believes that it is appropriate to adjust the limitations on the size of the ELDS issuance to correspond to this requirement. Accordingly, where the trading volume in the U.S. market for the underlying non-U.S. security is between 20% and 50% of the worldwide trading volume, the issuance will be limited to 2% of the total outstanding shares of the underlying security.[15] The Commission believes that these restrictions will minimize the possibility that trading in such issuances will adversely impact the market for the security to which it is linked.

The Commission notes that other existing ELDS listing requirements relating to the protection of investors will continue to apply. Among other things, these rules set forth issuer standards as well as minimum market capitalization and trading volume requirements that must be met prior to listing an ELDS.[16]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In particular, the Exchange's proposal is substantively similar to proposals submitted by the other options exchanges and recently approved by the Commission,[17] and presents no new regulatory issues. Further, these proposal were published for comment, and no comments were received. Accordingly, the Commission believes it is consistent with section 6(b)(5) of the Act to approve the proposal on an accelerated basis.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that in light of the requirements set forth in the 20% Test + Daily Trading Volume Standard, the provisions contained in footnote one to section 703.21 in the NYSE Listed Company Manual, as described above, should no longer be required. Accordingly, the Commission believes it is consistent with section 6(b)(5) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–NYSE–96–12 and should be submitted by August 1, 1996.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (File No. SR–NYSE–96–12), as amended, is approved on an accelerated basis.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17632 Filed 7–10–96; 8:45 am]

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[11] 15 U.S.C. 78f(b)(5).

[12] *See* Securities Exchange Act Release Nos. 36990 (March 20, 1996), 61 FR 13545 (March 27, 1996) (SR–Amex–95–44); 36995 (March 20, 1996), 61 FR 13550 (March 27, 1996) (SR–CBOE–95–71); ad 36994 (March 20, 1996), 61 FR 13553 (March 27, 1996) (SR–NASD–96–01) ("Structured Notes Approval Orders").

[13] *Id.*

[14] The Commission notes that the 20% Test + Daily Trading Volume Standard does not include worldwide trading volume in the non-U.S. security that takes place in a foreign market regardless of the existence of a comprehensive surveillance sharing agreement with the listing exchange. The 20% Test is a minimum U.S. market share trading test intended to permit the listing of ELDS only on non-U.S. securities that have active and liquid markets in the U.S.

[15] The Commission notes that if a non-U.S. security and related securities has less than 20% of the worldwide trading volume occurring in the U.S. market during the six month period preceding the date of listing, then the instrument may not be linked to that non-U.S. security under any circumstances. The 20% minimum U.S. trading volume requirement should continue to ensure that the U.S. market is significant enough to accommodate ELDS trading.

[16] The Exchange's initial listing standards require, among other things, that the linked stock underlying the Exchange-listed ELDS either: (i) has a minimum market capitalization of $3 billion and during the 12 months preceding listing is shown to have traded at least 2.5 million shares, (ii) has a minimum market capitalization of $1.5 billion and during the 12 months preceding listing is shown to have traded at least 10 million shares; or (iii) has a minimum market capitalization of $500 million and during the 12 months preceding listing is shown to have traded at least 15 million shares. *See* Securities Exchange Act Release No. 36993 (March 20, 1996), 61 FR 13557 (March 27, 1996).

[17] *See* Structured Notes Approval Orders, *supra* note 12.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 U.S.C. 78s(b)(1) (1988).

[Release No. 34–37395; File No. SR–OCC–96–01]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to Choice of Law Provisions in Connection With Amendments to Articles 8 and 9 of the Uniform Commercial Code

July 2, 1996.

On January 16, 1996, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–96–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on March 25, 1996.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposal

In 1994, The American Law Institute and the National Conference of Commissioners on Uniform State Laws promulgated amendments to Articles 8 and 9 of the UCC ("1994 amendments"). To a significant degree, the 1994 amendments were adopted in response to the views of the Commission and others that the shortcomings in the provisions of the 1977 version of Articles 8 and 9 of the UCC contributed to the liquidity problems associated with the October 1987 stock market decline. The 1994 amendments were intended to reduce legal uncertainty and to facilitate the transfer of ownership of and creation of security interests in securities as well as other financial assets and investment property, including futures and futures options, through a set of rules designed to apply to the modern securities and futures holding systems.

Illinois recently adopted the 1994 amendments. Accordingly, the rule change amends OCC's by-laws, rules, and interpretations to take advantage of the benefits associated with the application of the 1994 amendments to govern most options transactions involving OCC. Previously, OCC's by-laws and rules contained choice of law provisions that selected Delaware as the governing law.[3] OCC originally adopted the Delaware choice of law provisions to reinforce the provisions of the 1977 version of the UCC under which OCC options were deemed uncertificated securities. Under the conflict of laws rules in the 1977 version of the UCC, the law of the jurisdiction of incorporation of the issuer of uncertificated securities governs the perfection of security interests therein.

Under the 1994 amendments, OCC will function as a "securities intermediary" rather than an issuer of uncertificated securities. Under the new choice of law provisions in the 1994 amendments, the applicable law will be the law of the securities intermediary's jurisdiction, which may be selected by agreement between the securities intermediary and the entitlement holder (*i.e.*, OCC and its clearing members). In absence of a contrary agreement, OCC believes that Illinois law will apply because under the choice of law rules found in the 1994 amendments, Illinois would be deemed the securities intermediary's jurisdiction.

As discussed above, OCC's present choice of law rules were adopted solely to reinforce the choice of law provisions of the 1977 version of the UCC. However, in light of Illinois' adoption of

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 36983 (March 18, 1996), 61 FR 12124.

[3] Although the 1994 amendments have been adopted in Illinois, they have not been adopted in many other jurisdictions, including Delaware, the state of OCC's incorporation.

the 1994 amendments, the rule change will replace those provisions with Illinois choice of law provisions and makes certain other changes intended to link the terminology of OCC's by-laws and rules with the terminology of the 1994 amendments.

Notwithstanding the adoption of the Illinois choice of law provisions, situations can arise in which the 1977 version of the UCC will be applicable. This could occur if UCC issues develop in a jurisdiction that has not yet adopted the 1994 amendments and if a tribunal in that jurisdiction applies its own choice of law rules. The choice of law provisions in the 1977 version of the UCC are mandatory and cannot be altered by agreement. Therefore, OCC's new choice of law rules would likely be unenforceable and therefore Delaware law would be controlling. Because this possibility exists, OCC will retain the provisions in its by-laws and rules that were deemed necessary or desirable to manage instances when Delaware law is applied to options transactions.[4]

To accommodate Illinois' adoption of the 1994 amendments, OCC has made the following specific changes in its by-laws and rules. The terms "lien" and "pledge" are now defined in Article I, Section 1 of OCC's by-laws to make it clear that these terms refer to a security interest within the meaning of the 1994 amendments.[5] Section 1–201(37) of the UCC defines "security interest" broadly but without reference to such common law concepts as lien and pledge, which are subsumed within the amended definition of security interest.

The definition of "rules" set forth in Article 1, Section 1 now makes it clear that for purposes of Articles 8 and 9 the term "rules of a clearing agency" as applied to OCC will mean anything deemed to be a rule of a clearing agency under the Act. This is because Section 8–111 of the 1994 amendments in effect provides that a rule adopted by a clearing corporation supersedes contrary provisions of the UCC.

The basic choice of law provision applicable to option holders and writers with respect to cleared securities set forth in Article VI, Section 9(c)(1) of OCC's by-laws now contains statements indicating how revised Articles 8 and 9 will apply to OCC and its clearing members with regard to ownership of and security interests in cleared securities. These statements are not intended to alter the substantive operation of Articles 8 and 9 but are intended merely to provide a guide to proper interpretation of Articles 8 and 9. However, because UCC Section 8–111 permits OCC to supersede provisions of the UCC with its own rules, Section 9(c)(1) now deems all cleared securities to be financial assets without regard to whether a particular cleared security constitutes a similar obligation to an option. Determination of whether a cleared security is a similar obligation to an option is required under the definition of financial asset set forth in Section 8–102 of the 1994 amendments. Subparagraph 2 of Section 9(c), which essentially is the prior OCC choice of law provision, will remain in place to cover situations where the 1977 version of the UCC is applicable.

OCC Rule 610(g), which involves the use of depository receipts and electronic confirmations in connection with specific or bulk deposits made to OCC in lieu margin payments, no longer requires that in certain circumstances a depository must acknowledge that securities transfers or pledges were effected through book-entry.[6] This requirement arose because in order to effect a securities pledge and the corresponding perfection of a security interest therein or to deposit securities in favor of OCC, the 1977 version of Article 8 required that the pledgor or depositor "transfer" the security to the pledgee (i.e., OCC). In order to effect this transfer, Section 8–313 of the 1977 version of the UCC required an acknowledgement by the securities depository if the securities were delivered by book-entry. Under the 1994 amendments, a transfer pursuant to Section 8–313 is no longer required to effect a securities deposit or pledge.[7] Under Sections 8–106 and 9–115 of the 1994 amendments, a securities deposit or pledge with the corresponding perfection of a security interest therein is effected once the transferee or pledgee (*i.e.*, OCC) obtains control over the securities. Therefore, depository acknowledgement no longer is required in connection with securities deposits or pledges in favor of OCC involving book-entry delivery of securities.

Finally, OCC Rule 614(m) concerning OCC's obligations to pledgees under OCC's pledge program is revised to make clear that certain provisions of this rule which relate to the 1977 version of Articles 8 and 9 will apply only if the 1977 version of the UCC is otherwise applicable.

II. Discussion

Section 17A(b)(3)(F) of the Act[8] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes the proposed rule change is consistent with OCC's obligations under the Act because it should help to reduce the legal uncertainty associated with the creation of ownership and security interests in options and other securities under Articles 8 and 9 of the UCC. Furthermore, the rule change should help to ensure that OCC's by-laws, rules, and interpretations reflect the concepts embodied in the 1994 amendments.

The evolution of modern securities and futures processing and holding systems have in some respects made obsolete previous versions of the UCC.[9] In certain instances, application of prior versions of the UCC in the options context has led to some industry confusion and in at least one instance required OCC to file a proposed rule change to assure the proper legal interpretation of certain conflicts of laws issues arising in options transactions.[10] The provisions of the 1994 amendments provide a solution to many of these problems.

Specifically, the rule change should expedite the eligibility process for OCC clearing members seeking to participate in cross-margining by expediting the creation and perfection of security interests associated with such cross-margining.[11] Although the Commission notes that the 1994 amendments may not apply to options transactions in all circumstances because certain states have yet to adopt these provisions, in situations where the 1994 amendments do apply, the 1994 amendments should provide a safer and more appropriate framework, given the special characteristics of options, for the transferring, pledging, and holding of such securities and for such securities deposited at OCC for margin and clearing fund purposes.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–96–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17634 Filed 7–10–96; 8:45 am]

BILLING CODE 8010-01-M

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[4] OCC's by-laws and rules previously contained interpretations to alert clearing members and others that Delaware law will not always govern notwithstanding the choice of law provisions. These interpretations have been adapted to reflect the choice of law change from Delaware law to Illinois law in OCC's by-laws. The effect of this change will be to alert clearing members and others that now Illinois law, instead of Delaware law, may not always govern despite the choice of law provisions contained in OCC's by-laws.

[5] Even though the likelihood of misinterpretation on this point may be remote, the addition of these definitions is prudent because the terms lien and pledge no longer appear in the provisions of UCC Articles 8 and 9 under the 1994 amendments that are applicable to OCC.

[6] OCC originally proposed to amend Rule 610(g) in a prior proposed rule filing (File No. SR–OCC–95–17). Subsequently, OCC proposed that Rule 610(g) be amended in the proposed rule change associated with this order. Because approval of SR–OCC–95–17 is still pending with the Commission, the amendments to Rule 610(g) are approved pursuant to this order, and OCC will amend SR–OCC–95–17 to reflect that the changes made to this rule have been approved by this order.

[7] In fact, the entire concept of a transfer requirement in connection with a securities pledge or deposit previously embodied in Section 8–313 of the 1977 version of the UCC has been removed from the 1994 amendments.

[8] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[9] U.C.C. Article 8 (1994 Revision) prefatory note (1995).

[10] Under the pre-1997 UCC, OCC believed that options could be deemed general intangibles which would require the law of the jurisdiction of the debtor's location to govern the creation and perfection of security interests. Under the 1977 amendments to the UCC, options were deemed uncertificated securities in which case the law of the jurisdiction of the issuer's organization would govern. In an attempt to correct the renvoi issue caused by the omission of transitional provisions in the 1977 amendments to the UCC, OCC revised its rules and bylaws to designate Delaware law (OCC's state of incorporation), including its conflict of laws rules, to apply to the creation and perfection of security interests in connection with options transactions to the full extent possible. Securities Exchange Act Release No. 20521 (December 30, 1983), 49 FR 968 [File No. SR–OCC–83–20] (ordering approving proposed rule change).

[11] Currently, there is a two to three week delay before OCC members that also are members of the Chicago Mercantile Exchange ("CME") or the Kansas City Board of Trade ("KCBOT") ("joint members") are eligible to participate in the cross-margining arrangements OCC has with CME and KCBOT. Prior to participation in these cross-margining arrangements, OCC requires that security interests be created and perfected in securities held by the joint member prior to such member's eligibility as a cross-margining participant. Under the 1977 version of the UCC, one way to perfect a security interest in securities requires the filing of the appropriate financing statements. Filing of the appropriate financing statements and confirmation thereof typically can take from two to three weeks. However, under the 1994 amendments, OCC believes that financing statements no longer will be necessary for perfection purposes. As a result, joint members can become cross-margining participants in a matter of days instead of weeks. Telephone conversation between Michael G. Vitek, Staff Counsel, OCC, and Mark Steffensen, Attorney, Division of Market Regulation, Commission (February 12, 1996).

[12] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–37402; File No. SR–PTC–96–03]

Self-Regulatory Organizations; The Participants Trust Company; Notice of Filing of Proposed Rule Change Relating to the Intraday Return of Participants' Prefunding Payments

July 2, 1996.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 3, 1996, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–PTC–96–03) as described in Items I, II, and III below, which Items have been prepared primarily by PTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend Article V, Rule 2, Section 5 of PTC's rules and will establish initial procedures to permit the intraday return of participants' prefunding payments.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend Article V, Rule 2, Section 5 of PTC's rules and to establish initial procedures to enable PTC to implement a program to permit the intraday return of participants' prefunding payments received early in the day that are no longer needed to support transaction processing at PTC. Currently, prefunding must be applied to that day's settlement or withdrawn on the next business day or thereafter. The proposed program is intended to make these funds available to participants intraday to enable them to reduce daylight overdraft exposures or to ease liquidity pressures in other financial markets thereby promoting the more efficient functioning of the financial markets in general.

"Optional deposits," which include prefunding, are defined in PTC's rules as "a participant's voluntary deposits to the participants fund with respect to any master account pursuant to Section 3 of Rule 2 of Article V." Article V, Rule 2, Section 3 states that participants may elect or be required to make optional deposits to the participants fund to (i) provide supplemental processing collateral to increase a participant's net free equity ("NFE"); (ii) prefund a debit balance in a participant's account; or (iii) permit free retransfers of securities from a transfer account.

PTC believes that the return to its participants of prefunding payments which are no longer needed to support transaction processing will increase the amount of funds available to participants during the day. PTC also believes that by providing its participants with the opportunity to manage their overall funding requirements, participant liquidity will be enhanced and costs will be reduced.

In many circumstances, the amounts returned to participants under the proposed program could be required to fund PTC net debits later in the day. Participants will be required to make such payments to PTC which otherwise could have been covered by the prefunding payments. However, PTC believes that the benefits derived from providing participants with increased intraday liquidity outweigh PTC's advantage in retaining the prefunding after the situation requiring such deposit has been remedied.

PTC proposes to implement the intraday return of prefunding payments to participants as a pilot program with initial procedures that will be incorporated into PTC's Participant's Operating Guide upon approval of the proposed rule change.[3] The initial procedures will provide that (i) all prefunding return transactions will be subject to PTC's standard credit controls (*i.e.*, prefunding may be returned only if the participant will be within its NFE and net debit monitoring level

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by PTC.

[3] Upon implementation of the program, PTC plans to evaluate the initial procedures on a quarterly basis and will make changes to such procedures as necessary based upon PTC's experience with the program. PTC will be required to file with the Commission a proposed rule change prior to any change or modification of the initial procedures.

requirements after such prefunding is returned); (ii) only prefunding payments received by PTC between 8:30 a.m. and 11:00 a.m. E.S.T. will be eligible for intraday return; (iii) during the initial stage of the pilot program, only eighty percent of qualifying prefunding payments will be eligible for intraday return to minimize the risk that subsequent transactions will fail PTC's credit controls later in the processing day; (iv) participants will be allowed only one intraday return per day; (v) the minimum amount eligible for intraday return is $10 million; and (vi) all intraday returns are expected to be made by PTC between 11:00 a.m. and 12:00 p.m. E.S.T.

PTC believes that the proposed rule change is consistent with section 17A(b)(3)(F) of the Act[4] and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PTC does not perceive that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

PTC has not solicited and does not intent to solicit comments on the proposed rule change. PTC has not received any unsolicited written comments from its participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which PTC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of PTC. All submissions should refer to the file number. SR–PTC–96–03 and should be submitted by August 1, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17633 Filed 7–10–96; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78q–1(b)(3)(F) (1988).

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Notice is given that Chapter S8 for the Office of the Inspector General is being amended to reflect internal organizational realignments within the Office of the Inspector General (OIG) (S8A). The Office of Audits (OA) (S8C) will be retitled the Office of Audit (OA) (S8C) throughout Chapter S8. The Office of Evaluations and Inspections (OEI) (S8E) will be abolished and the functions integrated into the Office of Audit (OA) (S8C). Two new offices, the Office of Management Services (S8G) and the Office of the Counsel to the Inspector General (S8H), and their corresponding subchapters will be established. A subordinate divisional structure will be established for the following two main offices: the Office of Investigations and the Office of Audit. The changes are as follows:

[5] 17 CFR 200.30–3(a)(12) (1995).

Section S8.00 The Office of the Inspector General—(Mission)

Amend to read as follows:

The Office of the Inspector General (OIG) is directly responsible for meeting the statutory mission of promoting economy, efficiency and effectiveness in SSA programs and operations by reducing the incidence of fraud, waste, abuse and mismanagement. To accomplish this mission, the OIG directs, conducts and supervises a comprehensive program of audits, evaluations and investigations, relating to SSA's programs and operations. The OIG also searches for systemic weaknesses in SSA programs and operations and makes recommendations for needed improvements.

Section S8.10 The Office of the Inspector General—(Organization)

Retitle throughout Chapter S8:

E. The Office of Audits (S8C) to The Office of Audit (S8C)

Delete:

F. The Office of Evaluations and Inspections (S8E)

Add:

F. The Office of Management Services (S8G)

G. The Office of the Counsel to the Inspector General (S8H)

Section S8.20 The Office of the Inspector General—(Functions)

Add as last sentence:

B. Also, is responsible for the Executive Secretariat function.

Amend to read as follows:

C. The Immediate Office of the Inspector General (S8A) provides the Inspector General and Deputy Inspector General with staff assistance on the full range of their responsibilities.

D. The Office of Investigations (OI) (S8B) conducts and coordinates investigative activity related to fraud, waste, abuse and mismanagement in SSA programs and operations. This includes wrongdoing by applicants, grantees, or contractors, or by SSA employees in the performance of their official duties. Serves as the OIG liaison to the Department of Justice on all matters relating to investigations of SSA programs and personnel, and reports to the Attorney General when the OIG has reason to believe Federal criminal law has been violated. The OI works with other investigative agencies and organizations on special projects and assignments. In support of its mission, the OI carries out and maintains an internal quality assurance system.

E. The Office of Audit (OA) (S8C) provides audit policy direction for, and conducts and oversees comprehensive audits and evaluations of SSA programs, operations, grantees and contractors, following generally accepted Government auditing standards. The OA maintains an internal quality assurance system, including periodic quality assessment studies and quality control reviews, to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed in all audit activities performed by, or on behalf of, SSA.

Delete:

F. In its entirety.

Add:

F. The Office of Management Services (OMS) (S8G) provides staff assistance to the Inspector General and Deputy Inspector General. Working with the Counsel to the Inspector General, OMS conducts and coordinates OIG reviews of existing and proposed legislation and regulations related to SSA programs and operations to identify their impact on economy and efficiency, and their potential for fraud and abuse. Serves as the OIG contact for the press and electronic media and as the OIG Congressional liaison. Coordinates the development of the OIG long-range strategic plan and the OIG annual work plan. Compiles the Semiannual Report to the Congress. Formulates and assists the IG with the execution of the OIG budget and confers with the Office of the Commissioner, the Office of Management and Budget, and the Congress on budget matters. Conducts management analyses and establishes and coordinates general management policies of the OIG. Serves as the OIG liaison on personnel management and other administrative and management policies and practices, as well as on equal employment opportunity and civil rights matters.

G. The Office of the Counsel to the Inspector General (OCIG) (S8H) provides independent authoritative legal advice, guidance and counsel to the IG and senior staff on legal issues; regulatory strategy; legislative proposals; and integration and interpretation of new and emerging authorities and Agency responsibilities under anticipated and current regulatory authorities. The OCIG provides advice on the legal issues being deliberated concerning relevant regulatory and procedural information and reviews documents and other materials to ensure sufficiency and compliance with regulatory requirements. The OCIG is responsible for the implementation of the Civil Monetary Penalty (CMP) program, including imposition of penalties and assessments and the settlement and litigation of CMP cases. The OCIG is also responsible for the coordination and drafting of regulatory commentary.

Section S8B.00 The Office of Investigations—(Mission)

Amend to read as follows:

The Office of Investigations (OI) (S8B) conducts and coordinates investigative activity related to fraud, waste, abuse and mismanagement in SSA programs and operations. This includes wrongdoing by applicants, grantees, or contractors, or by SSA employees in the performance of their official duties. Serves as the OIG liaison to the Department of Justice on all matters relating to investigations of SSA programs and personnel and reports to the Attorney General when the OIG has reason to believe Federal criminal law has been violated. The OI works with other investigative agencies and organizations on special projects and assignments. In support of its mission, the OI carries out and maintains an internal quality assurance system.

Section S8B.10 The Office of Investigations—(Organization)

Reletter:

"B" to "C."

Amend to read as follows:

C. The Immediate Office of the Assistant Inspector General for Investigations (S8B).

Add:

B. The Deputy Assistant Inspector General for Investigations (S8B).

D. The Special Operations Division (SOD) (S8BA).

E. The Headquarters Operations Division (HOD) (S8BB).

Section S8B.20 The Office of Investigations—(Functions)

Delete:

Functional statements B.1. through B.17.

Reletter:

"B" to "C."

Amend to read as follows:

C. The Immediate Office of the Assistant Inspector General for Investigations (S8B) provides the Assistant Inspector General and Deputy Assistant Inspector General with staff assistance on the full range of their responsibilities.

Add:

B. The Deputy Assistant Inspector General for Investigations (S8B) assists the Assistant Inspector General in carrying out his/her responsibilities. Directs and coordinates the investigative field offices which conduct OI investigative operations and programs in the United States and in foreign countries. Performs other duties as the Assistant Inspector General may prescribe.

D. The Special Operations Division (SOD) (S8BA) is responsible for the research, development and implementation of new investigative initiatives, techniques and operations in order to provide a proactive response to SSA fraud.

1. The division identifies systemic and programmatic vulnerabilities in SSA's operations and makes recommendations for changes to the appropriate official.

2. The division leads outreach activities to State and local investigative agencies.

3. The division provides pertinent information from SSA records to assist Federal, State and local investigative agencies to detect, investigate and prosecute fraud.

E. The Headquarters Operations Division (HOD) (S8BB) is responsible for the administration, training, policy development and oversight, including implementation and compliance within the OI.

1. The division manages the operation of the SSA, OIG Hotline to receive complaints and allegations of fraud, waste and abuse; and to refer the information for investigation, audit, program review or other appropriate action. Coordinates with the General Accounting Office Hotline and hotlines from other agencies.

2. The division is responsible for the preparation of periodic OI reports and the quality assurance of investigative operations and products.

3. The division develops general management policy for OI; coordinates general management processes; develops and issues instructional media on wrongdoing, and on investigating and processing cases; and plans, develops, implements and evaluates all levels of employee training in OI.

Section S8C.00 The Office of Audit—(Mission)

Amend to read as follows:

The Office of Audit (OA) (S8C) provides audit policy direction for conducts and oversees comprehensive audits and evaluations of SSA programs, operations, grantees and contractors, following generally accepted Government auditing standards. The OA maintains an internal quality assurance system, including periodic quality assessment studies and quality control reviews, to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are

followed in all audit activities performed by, or on behalf of, SSA.

Section S8C.10 The Office of Audit—(Organization)

Reletter:
"B" to "C."
Amend to read as follows:
C. The Immediate Office of the Assistant Inspector General for Audit (S8C).
Add:
B. The Deputy Assistant Inspector General for Audit (S8B)
D. The Central Operations Division (COD) (S8CA).
E. The Evaluations and Technical Services Division (ETSD) (S8CB).
F. The Program Audits Division (PAD) (S8CC).

Section S8C.20 The Office of Audit—(Functions)

Reletter:
"B" to "C."
Amend to read as follows:
C. The Immediate Office of the Assistant Inspector General for Audit (S8C) includes policy, planning and reporting and provides the Assistant Inspector General with staff assistance on the full range of his/her responsibilities.

1. Develops audit policy, procedures, standards, criteria and instructions for all audit activities performed by, or on behalf of, or conforming with SSA programs, grants, contracts of operations, complying with generally accepted Government auditing standards and other legal, regulatory and administrative requirements.

2. Develops policy and procedure for an internal quality assurance system to provide reasonable assurance that applicable laws, regulations, procedures, standards and other requirements are followed in all audit activities performed by, or on behalf of, SSA.

3. Conducts quality assurance studies to ensure that the policies and procedures are implemented by each OA component and are functioning as intended.

4. Develops and monitors audit work plans; and tracks, monitors, and reports on audit resolution.

Add:
B. The Deputy Assistant Inspector General for Audit (S8C) assists the Assistant Inspector General in carrying out his/her responsibilities.

D. The Central Operations Division (COD) (S8CA) plans, conducts, oversees and reports on the results of audits on the following areas: Centralized Automated Data Processing; Operation Financial Management; and General Management Areas which include grant and contract operations, facilities management, personnel and payroll.

E. The Evaluations and Technical Services Division (ETSD) (S8CB) plans, conducts, oversees and reports on the results of special studies of SSA's operations.

1. The division performs and reports on the results of reviews of SSA's customer service.

2. The division plans, develops and coordinates advanced techniques to carry out OA's functions. Such techniques include statistical sampling, specialized data extraction and analysis, computer programming and automated data processing auditing.

3. The division develops and maintains the OA Management Information System.

F. The Program Audits Division (PAD) (S8CC) plans, conducts, oversees and reports on the results of the Retirement, Survivors and Disability Insurance Program; the Supplemental Security Income Program; and the Black Lung Insurance Program. Specific program audit responsibilities include: Enumeration; Retirement, Survivors and Disability Insurance Initial Claims; Earnings Operations; Supplemental Security Income Initial Claims; Field Office Operations; Service to Aliens; Hearings and Appeals; Retirement, Survivors and Disability Insurance Post-Entitlement Operations; Disability Determination Services; Supplemental Security Income Post-Entitlement Operations; and Representative Payees.

Add Subchapter:

Subchapter S8G

Office of Management Services

S8G.00 Mission

S8G.10 Organization

S8G.20 Functions

Section S8G.00 The Office of Management Services—(Mission) The Office of Management Services (OMS) (S8G) provides staff assistance to the Inspector General and Deputy Inspector General. Working with the Counsel to the Inspector General, OMS conducts and coordinates OIG reviews of existing and proposed legislation and regulations related to SSA programs and operations to identify their impact on economy and efficiency and their potential for fraud and abuse. Serves as the OIG contact for the press and electronic media and as the OIG Congressional liaison. Coordinates the development of the OIG long-range strategic plan and the OIG annual work plan. Compiles the Semiannual Report to the Congress. Formulates and assists the IG with the execution of the OIG budget and confers with the Office of the Commissioner, the Office of Management and Budget, and the Congress on budget matters. Conducts management analyses, and establishes and coordinates general management policies of the OIG. Serves as the OIG liaison on personnel management and other administrative and management policies and practices, as well as on equal employment opportunity and civil rights matters.

Section S8G.10 The Office of Management Services—(Organization)

The Office of Management Services (S8G) under the leadership of the Assistant Inspector General for Management Services, includes:
A. The Assistant Inspector General for Management Services (S8G).
B. The Deputy Assistant Inspector General for Management Services (S8G).
C. The Immediate Office of the Assistant Inspector General for Management Services (S8G).

Section S8G.20 The Office of Management Services—(Functions)

A. The Assistant Inspector General for Management Services (S8G) is directly responsible to the Inspector General for carrying out the OMS mission and providing general supervision to the major components of OMS.
B. The Deputy Assistant Inspector General for Management Services (S8G) assists the Assistant Inspector General in carrying out his/her responsibilities.
C. The Immediate Office of the Assistant Inspector General for

Management Services (S8G) provides the Assistant Inspector General and Deputy Assistant Inspector General with staff assistance on the full range of their responsibilities.

Add Subchapter:

Subchapter S8H

Office of the Counsel to the Inspector General

S8H.00 Mission

S8H.10 Organization

S8H.20 Functions

Section S8H.00 The Office of the Counsel to the Inspector General—(Mission)

The Office of the Counsel to the Inspector General (OCIG) (S8H) provides independent authoritative legal advice, guidance and counsel to the IG and senior staff on legal issues; regulatory strategy; legislative proposals; and integration and interpretation of new and emerging authorities and Agency responsibilities under anticipated and current regulatory authorities. The OCIG provides advice on the legal issues being deliberated concerning relevant regulatory and procedural information and reviews documents and other materials to ensure sufficiency and compliance with regulatory requirements. The OCIG is responsible for the implementation of the Civil Monetary Penalty (CMP) program, including imposition of penalties and assessments, and the settlement and litigation of CMP cases. The OCIG is also responsible for the coordination and drafting of regulatory commentary.

Section S8H.10 The Office of the Counsel to the Inspector General—(Organization)

The Office of the Counsel to the Inspector General (OCIG) (S8H) under the leadership of the Counsel to the Inspector General, includes:
A. Counsel to the Inspector General (S8H).
B. The Immediate Office of the Counsel to the Inspector General (S8H).

Section S8H.20 The Office of the Counsel to the Inspector General—(Functions)

A. The Counsel to the Inspector General (S8H) is directly responsible to the Inspector General for providing authoritative legal advice concerning legal and regulatory strategy; legislative proposals; program authority and responsibilities; and the content of applicable statutes, regulations, rulings, administrative decisions and judicial precedents in all matters relating to audits and investigations of Agency programs and the CMP program.

B. The Immediate Office of the Counsel to the Inspector General (S8H) provides staff assistance to the Counsel in support of the full range of his/her responsibilities.

1. The office implements the CMP program.

2. The office formulates CMP regulations and develops operating policies and procedures.

3. The office conducts or directs research involving controversial legal questions, issues, problems and complex cases concerning the interpretation, application and enforcement of Agency statutes, rules and regulations.

4. The office reviews, evaluates and analyzes factual and legal issues and materials resulting from hearings, court actions and other proceedings.

5. The office reviews proposed legislation, regulations, policies and procedures to identify vulnerabilities and recommend modifications, where appropriate.

6. The office reviews OIG files and records in response to Privacy and Freedom of Information Act requests.

7. The office provides legal advice to officials and employees regarding ethics and standards of conduct matters. Coordinates the OIG's confidential reporting system reporting on financial interests and outside activities.

8. The office imposes, settles and litigates CMP cases brought under sections 1129 and 1140 of the Social Security Act.

9. The office coordinates and drafts regulatory commentary.

Dated: June 23, 1996.

David C. Williams,

Inspector General, Social Security Administration.

[FR Doc. 96–17649 Filed 7–10–96; 8:45 am]

BILLING CODE 4190–29–P

STATE JUSTICE INSTITUTE

Sunshine Act Meeting

TIME AND DATE: Sunday, July 28, 1996, 9 a.m.–5 p.m.; Monday, July 29, 1996, 9 a.m.–12 p.m.

PLACE: Opryland Hotel, 2800 Opryland Drive, Nashville, TN 37214.

MATTERS TO BE CONSIDERED: FY 1996 grant requests and internal Institute business.

PORTIONS OPEN TO THE PUBLIC: All matters other than those noted as closed below.

PORTIONS CLOSED TO THE PUBLIC: Internal personnel matters; Board committee meetings.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314, (703)–684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 96–17755 Filed 7–9–96; 11:29 am]

BILLING CODE 6820–SC–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Agricultural Policy Advisory Committee for Trade; Meeting

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the Agricultural Policy Advisory Committee for Trade will hold meetings during the period beginning July 15, 1996 through November 30, 1996. These meetings will be closed to the public.

SUMMARY: The Agricultural Policy Advisory Committee of Trade will hold meetings beginning July 15, 1996 through November 30, 1996. The meetings will include a review and discussion of current issues which influence U.S. agricultural trade policy that include, but are not limited to, issues concerning WTO accession negotiations with various countries; U.S./Mexico bilateral agricultural trade issues; U.S./Canada bilateral agricultural trade issues; Chile NAFTA accession negotiations; international sanitary and phytosanitary barriers to trade; implementation of USDA's Long-term Agricultural Trade Strategy, and WTO Uruguay Round Agreement implementation issues. Pursuant to section 2155(f)(2) of title 19 of the United States Code, the U.S. Trade Representative has determined that these meetings will be concerned solely with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy priorities, negotiating objectives, and bargaining positions. Accordingly, these meetings will be closed to the public.

DATES: The meetings are scheduled beginning July 15, 1996 through November 30, 1996, unless otherwise notified.

ADDRESSES: The meetings will be held at the U.S. Department of Agriculture, 14th & Independence Avenue, S.W., Washington, D.C. 20250, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Clayton Parker, Director of Intergovernmental Affairs, Office of the

United States Trade Representative, (202) 395–6120 or John Winski, Joint Executive Secretary, Agricultural Policy Advisory Committee for Trade, Foreign Agricultural Service, U.S. Department of Agriculture, at (202) 720–6829.

Charlene Barshefsky,

Acting United States Trade Representative.

[FR Doc. 96–17428 Filed 7–10–96; 8:45 am]

BILLING CODE 3410–15–M

Trade Policy Staff Committee: Request for Comments Concerning Basic Telecommunications Services Negotiations Under World Trade Organization's General Agreement on Trade in Services

ACTION: Notice and request for comments.

SUMMARY: The Office of the U.S. Trade Representative (USTR) is soliciting a second round of public comments on the requests made to U.S. negotiating partners in the Group of Basic Telecommunications (GBT) of the General Agreement on Trade in Services (GATS). The GATS is one of the Uruguay Round agreements administered by the World Trade Organization. Interested persons are invited to submit their comments on market-opening commitments that should be sought in the basic telecommunications services sector by August 1, 1996.

FOR FURTHER INFORMATION CONTACT: William Corbett, Office of Services, Investment and Intellectual Property, Office of the United States Trade Representative, at (202) 395–4510 or Laura B. Sherman, Office of the General Counsel, Office of the United States Trade Representative, at (202) 395–3150.

SUPPLEMENTARY INFORMATION: The Group on Basic Telecommunications (GBT) was created in April 1996 by a Decision on Commitments on Basic Telecommunications of the WTO Council on Trade in Services. It is the successor to the Negotiating Group on Basic Telecommunications (NGBT), which was created in April 1994 by a Marrakesh Ministerial Decision with a mandate to conclude talks by April 30, 1996. The New group's charge is to continue negotiations on liberalization of trade in telecommunications transport networks and services within the framework of the General Agreement on Trade in Services. The Decision set the date for entry into force of a prospective agreement as January 1, 1998 and established the period of January 15 through February 15, 1997 during which current negotiating offers could be modified or supplemented and MFN exceptions could be taken.

These arrangements, sought by the United States, effectively extended the life of negotiations to obtain more and better offers and thereby the critical mass necessary for the United States to maintain its offer.

The United States is in the process of refining requests for market-opening commitments from other countries participating in the GBT. These requests must be submitted by the end of September 1996. A list of countries participating in and observing the GBT is attached.

The United States objective in the negotiations is to obtain levels of openness in the telecom markets of other participants equivalent to the level in the United States. Interested persons are invited to submit their comments on commitments the United States should seek in wire or wireless communications, satellite systems, regulatory schemes, interconnection issues, foreign ownership restrictions, and competition safeguards, among other things.

Comments should be filed no later than August 1, 1996. Comments must be in English and provided in twenty copies to Mr. William Corbett, Office of Services, Investment and Intellectual Property, Office of the United States Trade Representative, Room 301, 600 17th Street, Washington D.C. 20508. Non-confidential information received will be available for public inspection by appointment, in the USTR Reading Room, Room 101, Monday through Friday, 10:00 a.m. to 12:00 noon and 1:00 p.m. to 4:00 p.m. For an appointment call Brenda Webb on 202–395–6186. Business confidential information will be subject to the requirements of 15 CFR § 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

WTO Group on Basic Telecommunications

Participants in the NGBT
- Argentina
- Australia
- Barbados*
- Brazil
- Canada
- Chile
- Colombia
- Cote d'Ivoire
- Cuba*
- Cyprus*
- Czech Republic
- Dominican Republic
- Ecuador
- Egypt*
- European Union
- Austria
- Belgium
- Denmark
- Finland
- France
- Germany
- Greece
- Ireland
- Italy
- Luxembourg
- Netherlands
- Portugal
- Spain
- Sweden
- United Kingdom
- Hong Kong
- Hungary
- Iceland
- India
- Israel
- Japan
- Korea
- Mauritius
- Mexico
- Morocco
- New Zealand
- Norway
- Pakistan
- Peru
- Philippines
- Poland
- Singapore
- Slovak Republic
- Switzerland
- Thailand
- Tunisia*
- Turkey
- United States
- Venezuela

Observes in the NGBT
- Bolivia
- Brunei
- Bulgaria
- China
- Chinese Taipei
- Costa Rica
- El Salvador
- Guatemala
- Honduras
- Indonesia
- Ivory Coast
- Jamaica
- Latvia
- Madagascar
- Malaysia
- Myanmar
- Nicaragua
- Pakistan
- Panama
- Romania
- Russian Federation
- Slovenia
- South Africa
- Trinidad & Tobago
- United Arab Emirates
- Uruguay

Participants making offers = 48 governments

(*) Participants not making offers = 4 governments

[FR Doc. 96–17661 Filed 7–10–96; 8:45 am]

BILLING CODE 3196–01–M

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on July 26, 1996 in Washington, D.C. The session will be held from 9:30 a.m.–12:30 p.m. Due to the fire that occurred in the Main Treasury Building on June 26, 1996, the usual meeting room will not be available. The meeting will be held at a separate suitable government or private facility, accessible to the public, within 10 or 15 minutes of Treasury by public transportation. The location can be ascertained by calling the information number, a week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Under Secretary (Enforcement), Room 4004, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Tel. (202) 622–0220.

SUPPLEMENTARY INFORMATION: The provisional agenda to be considered at the meeting is as follows:

1. Developments in Line Release on the Southwest border.

2. North American Trade Automation Prototype (NATAP).

3. Compliance and enforcement issues and challenges particular to the courier industry.

4. Update on implementation of the Customs Modernization Act.

The provisional agenda may be amended prior to the meeting. The Committee, in its discretion, may take up other matters, time permitting.

The meeting is open to the public. However, participation in the discussion is limited to Committee members and Treasury and Customs staff. It is necessary for any person other than an Advisory Committee member who wishes to attend the meeting to give notice by contacting Ms. Theresa Manning no later than July 19, 1996 at 202–622–0220.

Dated: July 8, 1996.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 96–17659 Filed 7–10–96; 8:45 am]

BILLING CODE 4810–25–M

Corrections

Federal Register
Vol. 61, No. 134
Thursday, July 11, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent to Prepare an Environmental Assessment (EA) for Disposal of Property at the Defense Personnel Support Center (DPSC), Philadelphia, PA

Correction

In notice document 96–16809 appearing on page 34424 in the issue of Tuesday, July 2, 1996, make the following correction:

On page 34424, in the second column, in the second paragraph, in the fourth line "not" should read "now".

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Disposition of Surplus Highly Enriched Uranium Final Environmental Impact Statement

Correction

In notice document 96–16565 beginning on page 33719 in the issue of Friday, June 28, 1996, make the following correction:

On page 33719, in the third column, under **DATES:**, in the sixth line, "July 29, 1996" should read "July 15, 1996".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

2115-AF23

Licensing and Manning for Officers of Towing Vessels

Correction

In proposed rule document 96–15346 beginning on page 31332 in the issue of Wednesday, June 19, 1996 make the following corrections:

1. On page 31335, in the second column, in the last pagragraph, seven lines down "lower-trade" should read "lower-grade".

2. On page 31337, in the second column, the heading "*45 CFR Part 10*" should read "*46 CFR Part 10*".

3. On page 31340, in the table "ESTIMATED ANNUAL COSTS OF THIS RULEMAKING ARE AS FOLLOWS:", the third dollar entry "505,00" should read "505,000".

§ 10.43 [Corrected]

4. On page 31345, in the second column, in § 10.43(b), in the seventh line "10.414" should read "10.424"; and in the eighth line "10,418" should read "10.418".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 111

[CGD 94-106]

RIN 2115-AF24

Electrical Engineering Requirements for Merchant Vessels

Correction

In rule document 96–16318 appearing on page 33045, in the issue of Wednesday, June 26, 1996, make the following correction:

§111.87-3 [Corrected]

On page 33045, in the third column, in §111.87-3, in amendatory instruction 20., in the last line, "§100.20-1" should read "§110.20-1".

BILLING CODE 1505–01–D

Reader Aids

Federal Register
Vol. 61, No. 134
Thursday, July 11, 1996

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations
General Information, indexes and other finding aids 202–523–5227

Laws
Public Laws Update Services (numbers, dates, etc.) 523–6641
For additional information 523–5227

Presidential Documents
Executive orders and proclamations 523–5227
The United States Government Manual 523–5227

Other Services
Electronic and on-line services (voice) 523–4534
Privacy Act Compilation 523–3187
TDD for the hearing impaired 523–5229

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NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: 301–713–6905

FEDERAL REGISTER PAGES AND DATES, JULY

33825–34366 1
34367–34712 2
34713–35082 3
35083–35588 5
35589–35914 8
35915–36276 9
36277–36492 10
36493–36608 11

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR
Proclamations:
6907 35083
6908 35587
Administrative Orders:
Presidential Determinations:
No. 96–34 of June 26, 1996 35493
No. 96–35 of June 26, 1996 35495
No. 96–36 of June 28, 1996 35075

5 CFR
Ch. XXIII 35085
Ch. LXV 36246
530 34713
531 34713
534 34713
550 34713
575 34713
581 34713
582 34713
630 34713
734 35088
2634 35589
3201 35915
Proposed Rules:
890 35973

7 CFR
58 35589
301 ..... 35102, 35107
400 34367
868 34714
946 35109
958 35592
997 35594
998 35594
1106 35596
1230 35597
1493 33825
1910 35916
1924 35916
1941 35916
1943 35916
1945 35916
1951 35916
1955 35916
1962 35916
1965 35916
1980 35916
Proposed Rules:
210 35152
220 35152
225 35152
226 35152
300 34379
319 34379
868 35687
1240 34385
1280 35982

8 CFR
103 35597
214 35934
217 35598
301 35111
Proposed Rules:
207 35984
208 35984

9 CFR
112 33840
113 33840
201 ..... 36277, 36279
Proposed Rules:
1 34386
3 ..... 34386, 34389
11 34747
92 36520
93 36520
94 ..... 35987, 36520
95 36520
96 36520
98 36520
301 35990
304 35990
308 35990
318 35992
319 35157
320 35990
381 ..... 35157, 35990
391 34747

10 CFR
53 35935
110 35600
205 3511
420 35890
450 35890
463 35114
1003 35112
1010 35085
1021 36222
Proposed Rules:
1021 35990

12 CFR
324 33842
367 35115
1750 35607
Proposed Rules:
207 33874
218 34749
220 33874
221 33874
250 34749
327 34751

14 CFR
1 34508
25 34716
29 33963
39 ..... 33874, 34368, 34718,

35122, 35126, 35127, 35936, 35938, 35940, 35942, 35944, 35946
61 34508
71 ..... 33843 33844, 33845, 34720, 34721, 34722, 34723, 35307, 36283, 36284, 36285, 36286
73 35623
91 ..... 34508, 36286
97 ..... 35623, 35624, 35626
119 35628
121 ..... 34508, 34927, 35628
125 34508
135 ..... 34508, 34927, 35628
141 34508
142 34508
211 34724
213 34724

Proposed Rules:
25 35056
39 ..... 34767, 35691, 35693, 35695, 36307, 36308, 36310
71 ..... 34391, 34393, 34394, 34395, 34396, 34397, 34398, 34769, 35991, 36311, 36312, 36313, 36314, 36315, 36316, 36317, 36520

15 CFR
902 ..... 34570, 34930, 34966, 35145, 35548

Proposed Rules:
30 36318
922 33876

16 CFR

Proposed Rules:
303 35992

17 CFR

Proposed Rules:
240 36521

18 CFR
10 33845
12 33845
102 33845
134 33845

21 CFR
177 34370
178 33846
184 36287
452 34726
510 35949
520 34727
522 ..... 34727, 35129, 36290
529 34727
558 ..... 34727, 35949, 36291

Proposed Rules:
106 36154
107 36154

22 CFR
41 35628

23 CFR
630 35629

24 CFR
0 36246
60 36462
200 36260
201 36260
202 ..... 36260, 36452
203 ..... 35024, 36260, 36452
206 ..... 35014, 36260
221 ..... 36260, 36452
233 36260
234 ..... 36260, 36452
280 36260
291 36260
570 36456
901 35633
941 35958

25 CFR
10 34371
211 35634
212 35634
700 35666

Proposed Rules:
11 35158
12 35163
21 33876
45 34399
152 34400
171 35167

26 CFR

Proposed Rules:
1 ..... 35596, 36320
31 36320

28 CFR
42 34729

Proposed Rules:
31 34770

29 CFR
Ch. XXVI 34002
Ch. XL 34002
2509 33847
2520 33847
2550 33847

Proposed Rules:
Ch. XIV 34405
101 35172
102 35172

30 CFR
256 34730

32 CFR
706 ..... 35958, 36291, 36497

33 CFR
100 36292
164 35064
165 ..... 35130, 35132
334 34732

Proposed Rules:
117 35702
154 34775
155 34775
167 35703

35 CFR
61 36497
123 36497

36 CFR
1 35133
13 35133
222 35959
223 35960

38 CFR
1 33850

Proposed Rules:
1 33676

39 CFR
5 36498
7 36498
10 36498
20 36500

40 CFR
9 ..... 33851, 34202
52 ..... 36292, 36501, 36502
55 34202
63 ..... 34140, 36295
70 34733
71 34202
79 36506
80 ..... 35310, 35673, 35960
180 ..... 34739, 34741, 36298, 36299
257 34253
261 34252
271 34252
300 ..... 35137, 35962
425 35680

Proposed Rules:
51 ..... 35994, 36112
52 ..... 35998, 36004, 36320, 35534
55 36012
61 36326
63 36326
79 36535
80 34775
81 ..... 33879, 36004
90 34778
93 ..... 35994, 36112
136 36328
180 ..... 36329, 36331
260 33881
261 33881
262 33881
264 33881
268 33881
269 33881
271 33881
425 35705

41 CFR
201 35685

42 CFR
405 35307
417 35307
431 35307
473 35307
498 35307

Proposed Rules:
410 34614
415 34614

43 CFR

Proposed Rules:
4700 36333

44 CFR
62 36513
64 36514
65 ..... 33852, 33854
67 33856

Proposed Rules:
67 33882

46 CFR
42 35963
76 35138
111 ..... 35927, 36608
167 35138
514 35685

Proposed Rules:
10 (2 documents) 36543, 36608
15 (2 documents) 36543, 36606

47 CFR
Ch. I 35964
20 33859
22 34375
24 33850
36 34375
61 36515
73 ..... 34368, 34743, 34744, 35139, 36302
90 34375

Proposed Rules:
Ch. I 34405
73 ..... 34406, 34407, 34784, 34785, 35705
76 ..... 34408, 34409

48 CFR
231 36305

49 CFR
1 34745
192 35139
233 33871
235 33871
236 33871
571 ..... 33891, 36516
1300 35139
1305 35141

Proposed Rules:
1 33886
8 33886
192 ..... 34410, 34413
195 ..... 34410, 34413
397 36016
571 36334

50 CFR
Ch. III 35548
246 35548
280 35548
281 35548
282 35548
298 35548
299 35548
622 34930
625 34966
630 ..... 34746, 35971
638 34930
641 34930
642 34785
645 34930
646 34930
647 34930
648 ..... 34966, 35142
650 34966
651 34966
652 34966
653 34930
655 34966
657 34966
658 34930
659 34930
660 ..... 34570, 35143, 35144
661 34570
663 34570
669 34930
670 34930
679 ..... 34377, 36306
680 34570
681 ..... 34570, 35145
683 34570
685 34570
695 35548
697 34746

Proposed Rules:
17 ..... 36020, 36021, 36346
642 34785
679 35174

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Spearmint oil produced in Far West; published 6-11-96
AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Viruses, serums, toxins, etc.:
Veterinary biologicals; master label system; published 6-11-96
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Whaling provisions, aboriginal; Federal regulatory reform; published 6-11-96
ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Stratospheric ozone protection--
Used class I controlled substances import; excise tax liability certification stay and reconsideration; published 6-11-96
Hazardous waste:
Control of transfrontier movements of wastes destined for recovery operations; OECD Council decision implementation; published 4-12-96
FEDERAL EMERGENCY MANAGEMENT AGENCY
Flood insurance program:
Write-your-own program--
Allocated loss adjustment expense fee schedule; published 7-11-96
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Federal regulatory review; published 6-11-96
INTERIOR DEPARTMENT
Fish and Wildlife Service
Alaska National Wildlife Refuges:
Alaska Peninsula/Becharof National Wildlife Refuge Complex; public use regulations; published 6-11-96
PANAMA CANAL COMMISSION
Health, sanitation, and communicable disease surveillance; and radio communication:
Technical amendments; published 7-11-96
POSTAL SERVICE
Conflict of interests and Sunshine Act; published 7-11-96
International Mail Manual
International package consignment service implementation; published 7-11-96
TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
New pneumatic tires, etc.; and tire identification and recordkeeping; Federal regulatory reform; published 6-11-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Apricots grown in Washington; comments due by 7-17-96; published 6-17-96
Fruits, vegetables, and other products, fresh:
Inspection, certification, and standards fee schedule; comments due by 7-15-96; published 5-14-96
Hazelnuts grown in Oregon and Washington; comments due by 7-15-96; published 6-13-96
Peanuts, domestically produced; comments due by 7-15-96; published 6-13-96
ARMS CONTROL AND DISARMAMENT AGENCY
Privacy Act; implementation; comments due by 7-16-96; published 6-13-96
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Sea turtle conservation; shrimp trawling requirements--
Soft turtle excluder devices approval removed, etc.; comments due by 7-15-96; published 6-17-96
Fishery conservation and management:
Atlantic surf clam and ocean quahog; comments due by 7-19-96; published 6-20-96
Gulf of Mexico and South Atlantic coastal migratory pelagic resources; comments due by 7-18-96; published 7-3-96
Ocean salmon off coasts of Washington, Oregon, and California; comments due by 7-15-96; published 7-5-96
Pacific Coast groundfish; comments due by 7-16-96; published 7-5-96
Puerto Rico and U.S. Virgin Islands reef fish; comments due by 7-15-96; published 6-17-96
Summer flounder and scup; comments due by 7-18-96; published 6-3-96
Marine mammals:
Incidental taking--
Naval activities; USS Seawolf submarine shock testing; comments due by 7-15-96; published 6-14-96
COMMERCE DEPARTMENT
National Telecommunications and Information Administration
Public telecommunications facilities program; comments due by 7-15-96; published 5-30-96
ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Surface coating operations from new or existing shipbuilding and ship repair facilities--
Compliance date revision and implementation plan submittal deadline extension; comments due by 7-18-96; published 6-18-96
Air quality implementation plans; approval and promulgation; various States:
Indiana; comments due by 7-15-96; published 6-13-96
Louisiana; comments due by 7-15-96; published 6-13-96
Virginia; comments due by 7-15-96; published 6-13-96
Clean Air Act:
State operating permits programs-
Idaho; comments due by 7-17-96; published 6-17-96
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Chlorothalonil; comments due by 7-19-96; published 6-19-96
Fenarimol; comments due by 7-15-96; published 6-14-96
Quizalofop ethyl; comments due by 7-19-96; published 5-19-96
Quizalofop-p ethyl ester; comments due by 7-15-96; published 6-14-96
Sodium salt of fomesafen; comments due by 7-19-96; published 6-19-96
Triadimefon; comments due by 7-19-96; published 6-19-96
Vinyl pyrrolidone-acrylic acid copolymer; comments due by 7-15-96; published 6-14-96
Superfund program:
National oil and hazardous substances contingency plan--
National priorities list update; comments due by 7-15-96; published 6-14-96
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Aeronautical services provision via International Maritime Satellite Organization (Inmarsat system); comments due by 7-17-96; published 6-17-96
O+ InterLATA calls; billed party preference; comments due by 7-17-96; published 6-17-96
Satellite communications--
Application and licensing procedures; comments due by 7-15-96; published 6-24-96
Communications equipment:
Radio frequency devices--
Unlicensed NII/SUPERNet operations in 5 GHz frequency range; comments due by 7-15-96; published 5-16-96
Television broadcasting:
Cable television systems--
Video programming delivery; market competition status; comments due by 7-19-96; published 5-20-96
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Virginia; comments due by 7-19-96; published 6-19-96
JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Acts of violence and terrorism prevention; comments due by 7-16-96; published 5-17-96
Drug abuse treatment programs and early release consideration; comments due by 7-16-96; published 5-17-96
TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
Michigan; comments due by 7-15-96; published 5-14-96
TRANSPORTATION DEPARTMENT
Airline oversales signs; Federal regulatory review; comments due by 7-18-96; published 6-3-96
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Allied Signal Commercial Avionics Systems; comments due by 7-15-96; published 6-5-96
Bell; comments due by 7-15-96; published 5-14-96
Boeing; comments due by 7-19-96; published 6-7-96
H.B. Flugtechnik GmbH; comments due by 7-15-96; published 5-13-96
McDonnell Douglas; comments due by 7-15-96; published 5-14-96
Pilatus Britten-Norman Ltd.; comments due by 7-19-96; published 5-9-96

annual assessment; comments due by 7-19-96; published 7-2-96
GENERAL SERVICES ADMINISTRATION
Federal property management:
Public buildings and space--
Small purchase authority; comments due by 7-15-96; published 6-13-96
HEALTH AND HUMAN SERVICES DEPARTMENT
Children and Families Administration
Head Start Fellows Program; comments due by 7-15-96; published 5-15-96
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Food labeling--
Nutrient content claims; general principles and "healthy" definition; fruits, vegetables, etc., inclusion; comments due by 7-18-96; published 3-22-96
INTERIOR DEPARTMENT
Indian Affairs Bureau
Financial activities:
Trust funds; tribal management; comments due by 7-15-96; published 5-16-96
INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Findings on petitions, etc.--
Namibian cheetah; comments due by 7-17-96; published 3-19-96
Least chub; comments due by 7-15-96; published 6-7-96
Importation, exportation, and transportation of wildlife:
Injurious wildlife; Federal regulatory review; comments due by 7-15-96; published 5-14-96
INTERIOR DEPARTMENT
Minerals Management Service
Federal regulaory review; request for comments; comments due by 7-19-96; published 5-20-96
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Virginia; comments due by 7-19-96; published 6-19-96
JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Acts of violence and terrorism prevention; comments due by 7-16-96; published 5-17-96
Drug abuse treatment programs and early release consideration; comments due by 7-16-96; published 5-17-96
TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
Michigan; comments due by 7-15-96; published 5-14-96
TRANSPORTATION DEPARTMENT
Airline oversales signs; Federal regulatory review; comments due by 7-18-96; published 6-3-96
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Allied Signal Commercial Avionics Systems; comments due by 7-15-96; published 6-5-96
Bell; comments due by 7-15-96; published 5-14-96
Boeing; comments due by 7-19-96; published 6-7-96
H.B. Flugtechnik GmbH; comments due by 7-15-96; published 5-13-96
McDonnell Douglas; comments due by 7-15-96; published 5-14-96
Pilatus Britten-Norman Ltd.; comments due by 7-19-96; published 5-9-96
Airworthiness standards:
Special conditions--
Dassault Aviation, Mystere Falcon 50 airplane; comments due by 7-15-96; published 5-29-96
Class E airspace; comments due by 7-19-96; published 6-12-96
TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Controls and displays; Federal regulatory review; comments due by 7-15-96; published 5-30-96
Seat belt assemblies--
Anchorage of voluntarily installed lap/shoulder belt; certification; comments due by 7-15-96; published 5-14-96
TREASURY DEPARTMENT
Customs Service
Organization and functions; field organization, ports of entry, etc.:
Sanford, FL; port of entry designation; comments due by 7-17-96; published 6-17-96
TREASURY DEPARTMENT
Internal Revenue Service
Estate and gift taxes:
Residence trust, personal or qualified personal; sale of residence; comments due by 7-15-96; published 4-16-96
Procedure and administration:
Taxpayer assistance orders; authority to modify or rescind; comments due by 7-18-96; published 4-19-95
VETERANS AFFAIRS DEPARTMENT
Adjudication, pensions, compensation, dependency, etc.:
Marriage dissolution; birth of child; death of family member; evidence of dependents and age requiremens; comments due by 7-16-96; published 5-17-96

LIST OF PUBLIC LAWS

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H.R. 1880/P.L. 104–157

To designate the United States Post Office building located at 102 South McLean, Lincoln, Illinois, as the "Edward Madigan Post Office Building". (July 9, 1996; 110 Stat. 1405)

H.R. 2437/P.L. 104–158

To provide for the exchange of certain lands in Gilpin County, Colorado. (July 9, 1996; 110 Stat. 1406)

H.R. 2704/P.L. 104–159

To provide that the United States Post Office building that is to be located at 7436 South Exchange Avenue, Chicago, Illinois, shall be known and designated as the "Charles A. Hayes Post Office Building". (July 9, 1996; 110 Stat. 1411)

H.R. 3364/P.L. 104–160

To designate the Federal building and United States courthouse located at 235 North Washington Avenue in Scranton, Pennsylvania, as the "William J. Nealon Federal Building and United States Courthouse". (July 9, 1996; 110 Stat. 1412)

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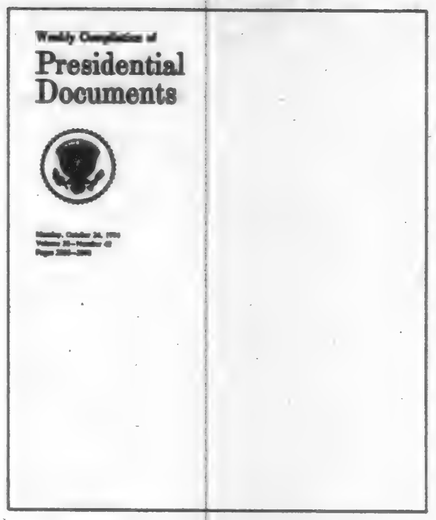

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Friday
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Contents

Federal Register

Vol. 61, No. 135

Friday, July 12, 1996

Agriculture Department
See Forest Service

Architectural and Transportation Barriers Compliance Board
PROPOSED RULES
Americans with Disabilities Act; implementation:
Play Facilities Accessibility Guidelines Negotiated Rulemaking Committee Meetings, 36688

Army Department
See Engineers Corps

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Children and Families Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36732–36733

Coast Guard
RULES
Electrical engineering;
Merchant vessels; electrical engineering requirements Correction, 36786–36787
Organization, functions, and authority delegations:
Headquarters reorganization-related technical amendments
Correction, 36629
Technical amendments
Correction, 36786

Commerce Department
See International Trade Administration
See Minority Business Development Agency
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 36705–36706

Customs Service
NOTICES
Goods assembled abroad from components cut to shape in United States from foreign fabric; entry under Harmonized Tariff Schedule, 36784–36785

Defense Department
See Engineers Corps
RULES
Vocational rehabilitation and education:
Veterans education—
Post-Vietnam Era Veterans Educational Assistance Program; clarification; correction, 36629
NOTICES
Senior Executive Service:
Defense Contract Audit Agency; Performance Review Boards; membership, 36714

Education Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36715
Grants and cooperative agreements; availability, etc.:
School-to-work opportunities State implementation program (FY 1996), 36715–36719

Employment and Training Administration
NOTICES
Adjustment assistance:
Bayer Clothing Group, Inc., et al., 36759
Buster Brown Apparel, Inc., 36759
Dallco Industries, Inc., 36759–36760
IBM Corp., 36760
Oshkosh B'Gosh, 36760
Scotts Hill Leisurewear, Inc., 36760–36761
Snyder Oil Corp., 36761
Grants and cooperative agreements; availability, etc.:
School-to-work opportunities State implementation program (FY 1996), 36715–36719
NAFTA transitional adjustment assistance:
Colstrip Project Division et al., 36761
Scotts Hill Leisurewear, Inc., 36761
Stone Ridge Farm, 36761–36762

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 36762–36763

Energy Department
See Federal Energy Regulatory Commission
RULES
Patent waiver regulation, 36611–36620
NOTICES
Natural gas exportation and importation:
Brooklyn Union Gas Co., et al., 36719

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Bluestone Dam, WV; safety assurance program, 36714–36715

Environmental Protection Agency
PROPOSED RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Glyphosate, 36689–36691
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 36725–36726
Weekly receipts, 36726
Meetings:
Clean Air Act Advisory Committee; correction, 36726

Pesticides; emergency exemptions, etc.:
Pyriproxyfen, etc., 36726–36727
Reports; availability, etc.:
Environmental justice in agency's National Environmental Policy Act compliance analysis; guidance, 36727–36728

Family Support Administration
See Refugee Resettlement Office

Federal Aviation Administration
RULES
Airworthiness directives:
Pratt & Whitney, 36620–36622
Rolls-Royce, plc, 36622–36624
PROPOSED RULES
Airworthiness directives:
Airbus, 36664–36667
Short Brothers, 36667–36669
Shorts, 36669–36671
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36775

Federal Communications Commission
RULES
Common carrier services:
Prison calling services; inmate-only payphones designation as customer premises equipment (CPE); declaratory ruling, 36653
Telephone companies; applications relating to consolidation, acquisition, or control; CFR part removed, 36654
Practice and procedure:
Regulatory fees (FY 1996); assessment and collection, 36629–36653

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 36728

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Western Systems Power Pool, et al., 36721–36723
Environmental statements; availability, etc.:
Armstrong Energy Resources, 36723–36724
National Fuel Gas Supply Corp., 36724–36725
Applications, hearings, determinations, etc.:
Carnegie Interstate Pipeline Co., 36719
Columbia Gas Transmission Corp., 36719–36720
Florida Gas Transmission Co., 36720
Kern River Gas Transmission Co., 36720
Tennessee Gas Pipeline Co., 36720–36721
Texas Eastern Transmission Corp., 36721
Williston Basin Interstate Pipeline Co., 36721

Federal Highway Administration
PROPOSED RULES
Motor vehicle safety standards:
Parts and accessories necessary for safe operation—
Antilock brake systems on air-braked truck tractors, single-unit trucks, buses, trailers, and converter dollies, 36691–36698
NOTICES
Environmental statements; notice of intent:
Benton County, AR, et al., 36775–36776

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 36728–36729
Meetings; Sunshine Act, 36729

Federal Retirement Thrift Investment Board
RULES
Allocation of fiduciary responsibility; CFR part removed, 36610

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations, 36729–36731

Food and Drug Administration
RULES
Administrative practice and procedure:
Advisory committees—
Name and function changes, 36624
NOTICES
Committees; establishment, renewal, termination, etc.:
Transmissible Spongiform Encephalopathies Advisory Committee, 36733
Medical devices; premarket approval:
Abbott PGR-ICA Monoclonal, 36733–36734

Foreign Assets Control Office
RULES
Iraqi sanctions regulations:
Executory contracts for purchase of Iraqi-origin petroleum and petroleum products, etc., 36627–36629

Foreign Claims Settlement Commission
NOTICES
Claims against:
Iraq; registration program establishment
Filing deadline extension, 36757–36758

Forest Service
NOTICES
Environmental statements; availability, etc.:
Umpqua National Forest, OR, 36704–36705
Land and jurisdiction transfers, etc.:
Sam Rayburn Dam and Reservoir Project, TX; correction, 36785
Meetings:
Southwest Oregon Provincial Interagency Executive Committee Advisory Committee, 36705

General Services Administration
NOTICES
Federal travel:
Special actual subsistence expense reimbursement ceiling—
Atlanta, GA; Summer 1996 Olympic Games, 36731–36732

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Public Health Service
See Refugee Resettlement Office

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Maternal and child health services—
Federal set-aside program, etc., 36734

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 36752

Immigration and Naturalization Service
RULES
Immigration:
Resettlement assistance eligibility; paroled Cuban or Haitian nationals, 36610–36611

Indian Affairs Bureau
PROPOSED RULES
Practice and procedure:
Employment preference, 36671–36678

Interior Department
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
NOTICES
Meetings:
Resource advisory councils—
Southwest, 36752

International Trade Administration
NOTICES
Countervailing duties:
Cut-to-length carbon steel plate from—
United Kingdom, 36706
Export trade certificates of review, 36706–36711

Justice Department
See Foreign Claims Settlement Commission
See Immigration and Naturalization Service
PROPOSED RULES
Classified national security information and access to classified information, 36679–36688

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Mine Safety and Health Administration
See Occupational Safety and Health Administration
See Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36758–36759

Land Management Bureau
NOTICES
Closure of public lands:
California, 36752–36753
Washington, 36753–36754
Environmental statements; availability, etc.:
Eagle Mountain Landfill and Recycling Center Project, CA, 36754
Organization, functions, and authority delegations:
Lea County Inspection Station, NM; mailing address change, 36754–36755
Realty actions; sales, leases, etc.:
New Mexico, 36755
Resource management plans, etc.:
Bishop Resource Area, CA, 36755
Survey plat filings:
Oregon and Washington, 36755–36756
Withdrawal and reservation of lands:
Nevada, 36756

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 36768–36769

Mine Safety and Health Administration
RULES
Metal and nonmetal mine safety and health:
Explosives, 36790–36807

Minority Business Development Agency
NOTICES
Business development center program applications:
Texas, 36711

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 36769–36770

National Credit Union Administration
PROPOSED RULES
Credit unions:
Share insurance payment and appeals, 36663–36664

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards and consumer information:
Truck-camper loading; Federal regulatory reform, 36655–36661
PROPOSED RULES
Motor vehicle safety standards:
Passenger car brake systems—
Antilock brake systems for light vehicles; rulemaking deferred, 36698–36702
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36776–36779
Reports; availability, etc.:
Light truck capabilities, utility requirements and uses; implications for fuel economy, 36779

National Institute of Standards and Technology
NOTICES
Meetings:
Weights and Measures National Conference, 36711–36712

National Institutes of Health
NOTICES
Meeting:
National Institute of Mental Health, 36734
Meetings:
National Cancer Institute, 36734–36735
National Institute of Environmental Health Sciences, 36735–36736
National Institute of General Medical Sciences, 36735–36736
National Institute of Mental Health, 36735–36736
National Institute on Deafness and Other Communication Disorders, 36735
Research Grants Division special emphasis panels, 36736–36737

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
West Coast States and Western Pacific; exclusive economic zone; Federal regulatory reform Correction, 36662
PROPOSED RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone and repeal of North Pacific fisheries research plan, 36702–36703
NOTICES
Meetings:
Caribbean Fishery Management Council, 36712
Mid-Atlantic Fishery Management Council, 36712
Permits:
Endangered and threatened species, 36712–36713
Marine mammals, 36713–36714

National Park Service
NOTICES
Native American human remains and associated funerary objects:
Inventory time requirements; extension, 36756–36757

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Entergy Operations, Inc., et al., 36770
Regulatory guides; issuance, availability, and withdrawal, 36771

Occupational Safety and Health Administration
NOTICES
Nationally recognized testing laboratories, etc.:
Canadian Standards Association, 36763–36764
Wyle Laboratories, 36764–36766

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
San Diego National Bank et al., 36766–36768

Pension Benefit Guaranty Corporation
RULES
Regulations; reorganization, renumbering, and reinvention; Federal regulatory reform
Correction, 36626–36627
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36771

Personnel Management Office
RULES
Prevailing rates systems, 36609
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36771–36772

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Organization, functions, and authority delegations:
National Institutes of Health, 36737–36739

Railroad Retirement Board
NOTICES
Privacy Act:
Computer matching programs, 36772

Refugee Resettlement Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Refugee resettlement program—
Refugees in local areas of high need, 36739–36752

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 36772–36773
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 36773–36774

State Department
RULES
International Traffic in Arms regulations; amendments, 36625–36626
NOTICES
Meetings:
Shipping Coordinating Committee, 36774
U.N. Indigenous Rights draft declaration elaboration:
American tribal leaders/U.S. government officials consultations, 36774

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration

Treasury Department
See Customs Service
See Foreign Assets Control Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36779–36780
Submission for OMB review; comment request, 36780–36784
Meetings:
Debt Management Advisory Committee, 36784

Veterans Affairs Department
RULES
Vocational rehabilitation and education:
Veterans education—
Post-Vietnam Era Veterans Educational Assistance Program; clarification; correction, 36629

Separate Parts In This Issue

Part II
Department of Labor, Mine Safety and Health Administration, 36790–36807

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
532 36609
1660 36610
6 CFR
212 36610
10 CFR
784 36611
12 CFR
Proposed Rules:
745 36663
14 CFR
39 (2 documents) 36620, 36622
Proposed Rules:
39 (3 documents) 36664, 36667, 36669
21 CFR
14 36624
22 CFR
126 36625
25 CFR
Proposed Rules:
5 36671
28 CFR
Proposed Rules:
17 36679
29 CFR
Ch. XXVI 36626
Ch. XL 36626
30 CFR
56 36790
57 36790
31 CFR
575 36627
33 CFR
110 36786
116 36786
117 36786
127 36629
157 36786
158 36629
179 36629
181 36786
183 36629
36 CFR
Proposed Rules:
1190 36688
1191 36688
38 CFR
21 36629
40 CFR
Proposed Rules:
180 36689
46 CFR
108 36786
110 36786
111 36786
112 36786
113 36786
161 36786
47 CFR
1 36629
61 36653
64 (2 documents) 36629, 36653
66 36654
49 CFR
571 36655
575 36655
Proposed Rules:
393 36691
571 36698
50 CFR
660 36662
Proposed Rules:
679 36702

Rules and Regulations

Federal Register
Vol. 61, No. 135
Friday, July 12, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 2206–AH54

Prevailing Rate Systems; Redefinition of Anchorage, AK, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing an interim rule to redefine the Anchorage, AK, nonappropriated fund (NAF) Federal Wage System (FWS) wage area for pay-setting purposes.

DATES: This interim rule becomes effective on July 12, 1996. Comments must be received by August 12, 1996.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Policy, Human Resources Systems Service, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415, or FAX: (202) 606–0824.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management is redefining the Anchorage, AK, FWS NAF wage area to add the Valdez-Cordova census area as an area of application, and delete 10 area of application census divisions.

The Anchorage, Alaska, NAF wage area was composed of a 1 census division survey area and an 18 census division area of application. With this change, the wage area is now made up of the same survey area (Anchorage Borough, Alaska) and 9 area of application boroughs and census areas (Fairbanks North Star, Juneau, Kenai Peninsula, Ketchikan Gateway, Kodiak Island, Sitka, Southeast Fairbanks, Valdez-Cordorva, and Yukon-Koyukuk).

These changes became necessary because the Air Force is planning for the first time to hire temporary NAF FWS employees in the Valdez Recreation Area in the Valdez-Cordova census area, an area currently undefined for NAF wage setting purposes. In addition, the definition of the entire Anchorage NAF wage area needed to be updated because the Alaska boroughs and census areas and their names have been changed since this wage area was last defined in regulation and because base closures have left some locations without any NAF employees. The 10 area of application census divisions being deleted are: Aleutian Islands, Barrow-North Slope, Bethel, Bristol Bay, Kobuk, Kuskokwim, Nome, Outer Ketchikan, Southeast Fairbanks, and Upper Yukon.

As required in regulation, 5 CFR 532.219, the following criteria were considered in redefining these wage areas:

(1) Proximity of largest activity in each county;

(2) Transportation facilities and commuting patterns; and

(3) Similarities of the counties in:

(i) Overall population;

(ii) Private employment in major industry categories; and

(iii) Kinds and sizes of private industrial establishments.

An analysis of the proposed change under these criteria supports the recommended redefinition. Valdez-Cordova is contiguous to the Anchorage survey area. Further, because the Anchorage, Alaska, NAF wage area is the only NAF wage area in Alaska and there are no other nearby NAF wage areas, the proposed redefinition is clearly the only reasonable alternative.

The Federal Prevailing Rate Advisory Committee reviewed this recommendation and by consensus recommended approval.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because it is necessary to define the Valdez-Cordova census area to a NAF wage area as soon as possible to provide for setting the pay of new Air Force NAF employees in that location.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix D to subpart B is amended by revising the listing for Anchorage, Alaska, to read as follows:

Appendix D to Subchapter B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

Alaska

Anchorage

Survey Area

Alaska: (Borough)
Anchorage

Area of application. Survey area plus:

Alaska: (Boroughs and census areas)
Fairbanks North Star
Juneau
Kenai Peninsula
Ketchikan Gateway
Kodiak Island
Sitka
Southeast Fairbanks
Valdez-Cordova
Yukon-Koyukuk

* * * * * *

[FR Doc. 96–17782 Filed 7–11–96; 8:45 am]
BILLING CODE 6325–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1660

Allocation of Fiduciary Responsibility

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is removing 5 CFR Part 1660, which has been superseded by regulations issued by the United States Department of Labor.

EFFECTIVE DATE: August 12, 1996.

FOR FURTHER INFORMATION CONTACT: David L. Hutner, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005. By telephone: (202) 942–1661.

SUPPLEMENTARY INFORMATION: Section 114(a)(1) of the Federal Employees' Retirement System Technical Corrections Act of 1986, Public Law 99–556, 100 Stat. 3133 (October 27, 1986) authorized the Board to establish procedures by which fiduciaries of the Thrift Savings Plan (TSP) could allocate their fiduciary responsibilities. Sections 114(a) (1) and (2) of the statute further provided that the authority to make allocations under the procedures established by the Board, as well as any allocation made under those procedures, would expire upon the earlier of December 31, 1988, or the effective date of final regulations issued by the United States Department of Labor (DOL) under 5 U.S.C. 8477(e)(1)(E).

The Board published interim regulations governing allocation of fiduciary responsibilities at 52 FR 38,221 (October 15, 1987). The interim regulations were codified at 5 CFR part 1660.

On December 29, 1988, DOL published final rules governing allocation of fiduciary responsibility with respect to the TSP at 53 FR 52,684. The final rules were codified at 29 CFR part 2584. Because 5 CFR part 1660 was superseded by the final regulations issued by DOL and no longer has any force or effect, its removal is appropriate. The removal of the expired regulation has no legal consequences; it is, in essence, a housekeeping matter.

Regulatory Flexibility Act

I certify that removal of these regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

I certify that removal of these regulations will not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking

Pursuant to 5 U.S.C. 553(b)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Under section 114(a) of the Federal Employees' Retirement System Technical Corrections Act of 1986 (Pub. L. No. 99–556, 100 Stat. 3133), the force and effect of 5 CFR part 1660 expired on December 29, 1988. Since the removal of the expired regulation has no legal consequences, publishing a proposal to remove it is unnecessary, impractical and contrary to the pubic interest.

List of Subjects in 5 CFR Part 1660

Employee benefit plans, Government employees, Retirement, Pensions.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

PART 1660—[REMOVED]

Under the authority of 5 U.S.C. 8474 (b) and section 114 of Pub. L. 99–556, and for the reasons set out in the preamble, 5 CFR part 1660 is removed.

[FR Doc. 96–17800 Filed 7–11–96; 8:45 am]

BILLING CODE 6760–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 1751–96]

RIN 1115–AE29

Effect of Parole of Cuban and Haitian Nationals on Resettlement Assistance Eligibility

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service ("the Service") regulations to clarify that nationals of Cuba or Haiti who were paroled into the United States since October 10, 1980, are to be considered to have been paroled in an immigration status referred to in section 501(e)(1) of the Refugee Education Assistance Act of 1980, as amended. This rule is necessary to ensure that these aliens are not inadvertently considered to hold an immigration status other than the status referred to in section 501(e)(1).

DATES: This interim rule is effective July 12, 1996. Written comments must be received on or before September 10, 1996.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536, Attn: Public Comment Clerk. To ensure proper handling, please reference the INS Number 1751–96 on your correspondence. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Janice B. Podolny, Associate General Counsel, Chief of Examinations Division, Office of the General Counsel, Suite 6100, 425 I Street NW., Washington, DC 20536, telephone: (202) 514–2895.

SUPPLEMENTARY INFORMATION: Section 501 of the Refugee Education Assistance Act of 1980, Public Law 96–422, dated October 10, 1980, as amended, provides for certain assistance to and on behalf of aliens paroled into the United States from Cuba and Haiti. Under section 501(e)(1), and alien paroled as a "Cuban-Haitian Entrant (Status Pending)," or in some other "special status * * * for nationals of Cuba or Haiti" is eligible for this assistance, even it the alien has acquired permanent residence, or some other immigration status, at the time assistance is sought. Under section 501(e)(2), by contrast, Cuban or Haitian nationals who are paroled in some parole status other than the "special status" are eligible for assistance only so long as they have not acquired some other immigration status.

Recent high volume influxes of aliens from Cuba, in particular, have resulted in the parole of aliens, without a clear indication that their parole is in a "special status" for Cubans and Haitians. For example, due to clerical oversight the Forms I–94, Arrival-Departure Record, issued to these aliens often have not borne any endorsement to show that their parole gives them an immigration status that is within the scope of section 501(e)(1). This interim rule amends 8 CFR 212.5 to clarify that these aliens, and any Haitian nationals as well, paroled on or after October 10, 1980, are to be considered to have been paroled in the status referred to in section 501(e)(1). This amendment will make it clear that these aliens have been, and remain, in the immigration status referred to in section 501(e)(1), even if they have since acquired some other immigration status. Exceptions are made for aliens paroled for criminal prosecution or solely in order to testify in some official proceedings in the United States.

This interim rule is an interpretive rule. For this reason, the Commissioner of the Immigration and Naturalization Service may properly adopt this rule without the prior notice and comment period that is ordinarily required. 5 U.S.C. 553(b). Because of the urgent need to clarify the immigration status of these aliens, and to make it clear that they hold an immigration status referred to in section 501(e)(1), the Commissioner finds that good cause exists to make this rule effective upon publication in the **Federal Register**. The Service believes that this interim rule accurately distinguishes the immigration status categories established by sections 501(e)(1) and 501(e)(2), but will consider any comments addressing this issue that are received during the comment period.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Unfunded Mandate Reform Act of 1995

This interim rule is not a Federal intergovernmental mandate, as defined by 2 U.S.C. 658(5). For this reason, it is not necessary to conduct the analysis provided for under 2 U.S.C. 1532, to develop the small government agency plan under 2 U.S.C. 1533, to solicit State, local or tribal government input under 2 U.S.C. 1534, or to justify this rule as the least burdensome alternative under 2 U.S.C. 1535.

Small Business Regulatory Enforcement Fairness Act of 1996

This interim rule is not a major rule, as defined by 5 U.S.C. 804(2).

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has conducted the required review.

Executive Order 12612

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilties among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration. Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. Section 212.5 is amended by adding a new paragraph (g), to read as follows:

§ 212.5 Parole of aliens into the United States.

* * * * *

(g) *Effect of parole of Cuban and Haitian nationals.* (1) Except as provided in paragraph (g)(2) of this section, any national of Cuba or Haiti who was paroled into the United States on or after October 10, 1980, shall be considered to have been paroled in the special status for nationals of Cuba or Haiti, referred to in section 501(e)(1) of the Refugee Education Assistance Act of 1980, Public Law 96–422, as amended (8 U.S.C. 1522 note).

(2) A national of Cuba or Haiti shall not be considered to have been paroled in the special status for nationals of Cuba or Haiti, referred to in section 501(e)(1) of the Refugee Education Assistance Act of 1980, Public Law 96–422, as amended, if the individual was paroled into the United States:

(i) In the custody of a Federal, State or local law enforcement or prosecutorial authority, for purposes of criminal prosecution in the United States; or

(ii) Solely to testify as a witness in proceedings before a judicial, administrative, or legislative body in the United States.

Dated: July 2, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–17674 Filed 7–11–96; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF ENERGY

10 CFR Part 784

Patent Waiver Regulation

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is publishing a final rule to recodify and update a patent waiver regulation that was incorporated in the Department of Energy Acquisition Regulations (DEAR) in 1984 (applicable to contracts) and the DOE Assistance Regulations (applicable to grants and cooperative agreements). The final rule contains changes that conform the regulation provisions to post-1984 statutory amendments, including the addition of terms and conditions for contractor retention of patent rights required by 35 U.S.C. 210. The rule also contains some new clarifying provisions and minor procedural changes to the DOE patent waiver process.

This final rule will govern waiver of the Department's rights in inventions made under contracts, grants, cooperative agreements, understandings, or other DOE arrangements with entities other than small businesses and non-profit organizations. This rule will also apply to all participants in cooperative research and development agreements (CRADAs), with both Bayh-Dole entities and non-Bayh-Dole entities. Rights in inventions made under DOE funding agreements with small businesses and nonprofit organizations are generally controlled by 35 U.S.C. 202, which provides, with certain exceptions, for contractor retention of title to inventions. However, this rule does apply to waiver of rights in inventions when DOE has reserved title and other rights in funding agreements with nonprofit organizations and small business firms pursuant to the exceptions in 35 U.S.C. 202.

EFFECTIVE DATE: August 12, 1996.

FOR FURTHER INFORMATION CONTACT: Michael P. Hoffman, Office of Assistant General Counsel for Technology Transfer and Intellectual Property, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Telephone (202) 586–3441.

SUPPLEMENTARY INFORMATION:

I. Background
II. Section-by-Section Discussion of Final Rule
III. Procedural Requirements
A. Applicable Procedures
B. Review Under Executive Order 12866
C. Review Under Regulatory Flexibility Act
D. Review Under NEPA

E. Review Under Paperwork Reduction Act
F. Review Under Executive Order 12612
G. Review Under Executive Order 12778
H. Review Under the Unfunded Mandates Reform Act

I. Background

The Government is required by law to acquire title to inventions made under DOE contracts, grants, agreements, understandings, or other arrangements with entities other than small businesses or nonprofit organizations pursuant to section 152 of the Atomic Energy Act of 1954, 42 U.S.C. 2182, and section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974, 42 U.S.C. 5908. Both of these acts provide that the Secretary of Energy may waive rights to such inventions under certain circumstances.

The DOE regulations covering waiver of patent rights are in the DOE Procurement Regulation at 41 CFR Part 9–9, principally at 41 CFR 9–9.109–6. After the Federal Acquisition Regulations System became effective in 1984, the DOE patent waiver regulation was continued in effect with regard to procurements and financial assistance in the DEAR, 48 CFR 927.300, and in DOE Assistance Regulations, 10 CFR 600.33, respectively. Today's final rule will recodify and publish these regulations and make them conveniently available to the public.

In today's final rule, DOE also is updating the patent waiver regulation to make changes required by post-1984 statutory amendments (as explained below); and is using this opportunity to make clarifying and minor procedural changes to the regulation. The revised regulation is being codified in a part of the Code of Federal Regulations that is separate from the DEAR, because patent waivers may be requested in connection with DOE arrangements other than procurement contracts, such as grants, cooperative agreements and CRADAs.

Today's final rule reflects statutory changes that are not referenced in the regulation at 41 CFR part 9–9. Specifically, patent waiver terms and conditions in the Federal Nonnuclear Energy Research and Development Act of 1974 were repealed by the Bayh-Dole patent and trademark amendments of 1980, Pub. L. 96–517, § 7 (94 Stat. 3027). Subsequently, a requirement for certain terms and conditions when a non-Bayh-Dole contractor retains title to inventions, pursuant to 35 U.S.C. 202, was imposed by the Trademark Clarification Act of 1984, Pub. L. 98–620, title V (98 Stat. 3367). Accordingly, today's final rule deletes the waiver terms and conditions repealed by the Bayh-Dole patent and trademark amendments of 1980, and sets forth waiver terms and conditions for contractor retention of rights required by 35 U.S.C. 210 and set forth in the DEAR at 48 CFR 952.227–11.

II. Section-by-Section Discussion of Final Rule

Section 784.1 of today's regulation presents the scope and applicability of the regulation. Today's regulation covers waiver of the Government's rights in inventions made under DOE contracts, grants, agreements, understandings, or other arrangements with entities other than small businesses or nonprofit organizations, as well as agreements with small businesses or non profit organizations where the agreement is not a funding agreement. Allocation of rights to inventions made under DOE contracts, grants and other funding agreements with small businesses or nonprofit organizations is controlled by 35 U.S.C. 200 *et seq.*, but today's regulation also governs waivers of rights in inventions falling within exceptions to the policy of that law. The scope of the regulation at 41 CFR 9–9.100 included policies and procedures with respect to inventions made under arrangements with DOE, and is not, as here, limited to policies and procedures regarding waiver of the Government's invention rights.

Section 784.3 summarizes the law underlying the regulation (42 U.S.C. 2182 and 42 U.S.C. 5908), i.e., that while title to inventions under DOE contracts or other arrangements with entities other than small businesses or nonprofit organizations vests in the Government, the Department may waive its rights to such inventions if such waiver is determined to be in the public interest. Such determinations are to be made in accordance with statutorily prescribed objectives. The regulation, at 41 CFR 9–9.109–6(a), is similar, but it does not have an exclusion for contracts with small businesses or nonprofit organizations which under 35 U.S.C. 202, may, with certain exceptions, elect to retain invention rights without a waiver.

Section 784.3(c) clarifies that references to "contract" in the regulation include grants, cooperative agreements, and other arrangements, consistent with the definition of "contract" provided in the regulation at 41 CFR 9–9.107–5(a)(a)(2) and in the statute at 42 U.S.C. 5908(m), although not consistent with the definition of "contract" elsewhere, such as at 10 CFR 600.3.

Section 784.4 recites considerations, specified by statute, that are to be included in making determinations to grant advance patent waivers. For clarity, a definition of an advance waiver is provided in today's regulation. Considerations (l) and (m) have been modified to reflect 35 U.S.C. 202.

Section 784.5 recites statutory considerations to be included in Government determinations to waive title rights in a particular identified invention. Considerations (k) and (l) have been modified to reflect 35 U.S.C. 202.

Section 784.6 recites additional national security related considerations for waiver of certain sensitive inventions, as provided in Pub. L. 99–661 (42 U.S.C. 7261a).

Section 784.7 provides guidance for requesting a class waiver, i.e., a waiver that applies to a class of persons or a class of inventions. Pertinent objectives and considerations set forth in sections 784.3 through 784.6 are to be included in class waiver determinations. Class waivers are authorized by statute (42 U.S.C. 5908) and are provided for in the regulation at 41 CFR 9–9.109–6(a)(1).

Section 784.8 provides general procedures concerning the patent waiver process, including timeliness requirements for requesting waivers, information concerning DOE's processing of waiver requests, information concerning implementation of a waiver, and information concerning requests for reconsideration of waiver denials. These regulations track those in 41 CFR 9–9.109–6.

Section 784.8(a) has been modified slightly from the regulation at 41 CFR 9–9.109–6(a)(1) to reflect class waiver requests.

Section 784.8(b) provides reference to a patent waiver clause to be included when advance waivers are granted, based on the clause provided in the Federal Acquisition Regulation at 48 CFR 952.227–13; and includes guidance for seeking an advance waiver for an identified invention provided in 41 CFR 9–9.109–6(a)(1).

Section 784.8(c) reduces from 9 months to 8 months the time period for requesting waiver for an identified invention to allow for a longer time period (from three months to four months) for the Government to perfect rights within the one-year time period, where a statutory bar may arise due to public disclosure of an invention for which a waiver request is not submitted. It also adds further guidance regarding timeliness for submitting waiver requests and requirements for reimbursement of patent costs to conform to current practice.

Section 784.8(d) adds a sentence regarding obtaining of an agreement to

waiver terms and conditions to conform to current practice.

Sections 784.8 (e), (f) and (g), regarding processing by DOE of waiver requests, have been modified slightly to better reflect current DOE practice.

Section 784.8(h) discusses the right of a waiver requestor to request reconsideration when a waiver request has been denied.

Section 784.8(l) has been added to provide guidance regarding submission of an instrument confirming the Government's rights in waived inventions, to conform to current practice, and as provided for generally in the current regulation at 41 CFR 9–9.109–1(b).

Section 784.9 provides detailed direction concerning the content of waiver requests. A self-explanatory form for requesting waivers is available from the Contracting Officer or DOE Patent Counsel. Generally, waiver requests must include identification of the requestor, identification of the pertinent contract, including a description of the contract effort, the nature of the requested waiver, and information addressing waiver policies and considerations set forth in the regulation. In addition, for an identified invention waiver request, information concerning the specific invention, including names of all inventors and patent status of the invention, is required. The source of the language for this section is 41 CFR 9–9.109–6(e).

Section 784.9(a) adds a reference to the OMB control number for the forms that persons must use to request advance and identified invention waivers.

Section 784.9(c) adds a reference to a statutory provision (35 U.S.C. 205) enacted since issuance of the current regulation that relates to treatment of proprietary information that may be contained in waiver requests.

Section 784.10 provides for public availability of records of waiver determinations, as required by 42 U.S.C. 5908(c). This section replaces 41 CFR 9–9.109–6(f). The Assistant General Counsel for Technology Transfer and Intellectual Property will be responsible for maintaining and updating the publicly available record of waiver determinations.

Section 784.11 describes typical situations that may be appropriate for advance waivers, including cost-shared contracts, situations where DOE is providing relatively modest increased funding to a substantially privately-sponsored program, and situations where a waiver is necessary to obtain the participation of a particular contractor. In addition, the section describes possible limitations on the scope of waivers depending on circumstances surrounding a particular waiver, e.g., restrictions to fields of use that are not the primary object of the contract effort. Further, the section addresses the issue of a prime contractor's obtaining rights to inventions made by a subcontractor. This section has been slightly modified from its counterpart in 41 CFR 9.109–6(g) to reflect current practice and the enactment of, and amendments to, 35 U.S.C. 202. In addition, section 784.11(b)(ii), regarding rights in subcontractor inventions, and contained in the current regulations at 41 CFR 9–9.107–4(h)(2), has been incorporated into this regulation. Subsection (c) is derived from 41 CFR 9–9.109–6(g)(3).

Section 784.12 sets forth the "Patent Rights—Waiver" clause containing the terms and conditions for waivers. The current regulation does not contain a patent waiver clause, but instead contains a section, 41 CFR 9–9.109–6(l) entitled "Terms and conditions of waivers." The clause of the final regulation is based on the contractor retention of rights clause contained in the Federal Acquisition Regulation at 48 CFR 52.227–12, with certain additions. A section (k), Background Patents; a section (p), Waiver Termination; a section (q), Atomic Energy; a section (r), Publication; and a section (s), Forfeiture of Rights in Unreported Subject Inventions, are included, representing a continuation of previous DOE policy contained in the current regulation at 41 CFR 9–9.107–5(a)(k), 41 CFR 9–9.109–6(j), 41 CFR 9–9.107–5(a)(l)(1), 41 CFR 9–9.107–5(a)(f) and 41 CFR 9–9.107–5(a)(g), respectively. Subsection (a) incorporates definitions from 35 U.S.C. 201(d), 42 U.S.C. 5908(m) and 41 CFR 9–9.107–5. A sentence has been added to (p) referring to the "Contractor's minimum license" provision, Subsection (e).

Section 784.13 provides effective dates for various types of waivers. This has been taken from 41 CFR 9–9.109–6(k).

III. Procedural Requirements

A. Applicable Procedures

This final rule recodifies and updates DOE's patent waiver regulations. The rule does not change any DOE substantive policies or establish new requirements affecting the rights and obligations of the public in this area. The rule does include several procedural changes, but DOE has determined that these changes will not have a significant impact on contractors, grantees, or other persons who may request waiver of the Government's rights in inventions made under contracts, grants, and other DOE agreements and arrangements. Therefore, DOE has determined that prior notice and an opportunity for public comment on the rule is not required.

B. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

C. Review Under Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, requires, in part, that an agency prepare an initial regulatory flexibility analysis for any rule, unless it determines that the rule will not have a "significant economic impact" on a substantial number of small entities. The final rule concerns policy and procedures for patent waivers affecting entities that are generally not small businesses because there is separate statutory authority governing disposition of invention rights of Government contractors that are small businesses. The final rule imposes no significant burdens or impact on small entities. Therefore, as required by Section 605(b), DOE certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

D. Review Under NEPA

DOE has determined that issuance of this final rule is not a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., and therefore that neither an environmental assessment nor an environmental impact statement is required. Categorical exclusion A2 in DOE's regulations implementing NEPA, appendix A of subpart D of 10 CFR part 102, applies to this rulemaking. Categorical exclusion A2 encompasses clarifying or administrative modifications of rules pertaining to contracts.

E. Review Under Paperwork Reduction Act

The reporting requirements contained in 41 CFR 9–9.109–6 were approved by OMB and assigned control no. 1901–

0800. This final rule imposes no new reporting requirement.

F. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national Government and the States, and in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. Today's action sets forth DOE policies and procedures governing requests for waiver of the Government's rights to inventions made in the course of contracts, grant agreements, cooperative agreements, and other arrangements that further DOE's mission. DOE has determined that the final rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

G. Review Under Executive Order 12778

Section 2 of Executive Order 12778, 56 FR 55195 (October 25, 1991), instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in section 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulatfons to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that regulations define key terms and are clear on such matters as exhaustion of administrative remedies and preemption. DOE certifies that today's regulatory action meets the requirements of section 2(a) and (b)(2) of Executive Order 12778.

H. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that: (1)would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 10 CFR Part 784

Government contracts, Inventions and patents.

Issued in Washington, D.C., on July 2, 1996.

Robert R. Nordhaus,

General Counsel.

For the reasons set forth in the preamble, Chapter III of Title 10 of the Code of Federal Regulations is amended by adding new Part 784 to read as set forth below.

PART 784—PATENT WAIVER REGULATION

Sec.

784.1 Scope and applicability.
784.2 Definitions.
784.3 Policy.
784.4 Advance waiver.
784.5 Waiver of identified inventions.
784.6 National security considerations for waiver of certain sensitive inventions.
784.7 Class waiver.
784.8 Procedures.
784.9 Content of waiver requests.
784.10 Record of waiver determinations.
784.11 Bases for granting waivers.
784.12 Terms and conditions of waivers.
784.13 Effective dates.

Authority: 42 U.S.C. 7151; 42 U.S.C. 5908; 42 U.S.C. 2182; 35 U.S.C. 202 and 210; 42 U.S.C. 7261a.

PART 784—PATENT WAIVER REGULATION

§ 784.1 Scope and applicability.

(a) This part states the policy and establishes the procedures, terms and conditions governing waiver of the Government's rights in inventions made under contracts, grants, agreements, understandings or other arrangements with the Department of Energy (DOE).

(b) This part applies to all inventions conceived or first actually reduced to practice in the course of or under any contract, grant, agreement, understanding, or other arrangement with or for the benefit of DOE (including any subcontract, subgrant, or subagreement), the patent rights disposition of which is governed by section 152 of the Atomic Energy Act of 1954, 42 U.S.C. 2182, or section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974, 42 U.S.C. 5908. In funding agreements with nonprofit organizations or small business firms, when title or other rights are reserved to the Government under the authority of 35 U.S.C. 202(a), this part will apply to any waiver of such rights. The patent waiver provisions in this part supersede the patent waiver regulations previously included with patent regulations at 41 CFR Part 9–9.100.

§ 784.2 Definitions.

As used in this Part:

Contract means procurement contracts, grants, agreements, understandings and other arrangements (including Cooperative Research and Development Agreements [CRADAs], Work for Others and User Facility agreements, which includes research, development, or demonstration work, and includes any assignment or substitution of the parties, entered into, with, or for the benefit of DOE.

Contractor means entities performing under contracts as defined above.

Patent Counsel means the DOE Patent Counsel assisting the contracting activity.

§ 784.3 Policy.

(a) Section 6 of Public Law 96–517 (the Bayh-Dole patent and trademark amendments of 1980), as amended, as codified at 35 U.S.C. 200—212, provides that title to inventions conceived or first actually reduced to practice in the course of or under any contract, grant, agreement, understanding, or other arrangement entered into with or for the benefit of the Department of Energy (DOE) vests in the United States, except where 35 U.S.C. 202 provides otherwise for nonprofit organizations or small business firms. However, where title to such inventions vests in the United States, the Secretary of Energy (hereinafter Secretary) or designee may waive all or any part of the rights of the United States, subject to required terms and conditions, with respect to any invention or class of inventions made or which may be made by any person or class of persons in the course of or under any contract of DOE if it is determined that the interests of the United States and the general public will best be served by such waiver. In making such determinations, the Secretary or designee shall have the following objectives:

(1) Making the benefits of the energy research, development, and demonstration program widely available to the public in the shortest practicable time;

(2) Promoting the commercial utilization of such inventions;

(3) Encouraging participation by private persons in DOE's energy research, development, and demonstration programs; and

(4) Fostering competition and preventing undue market concentration or the creation or maintenance of other situations inconsistent with the antitrust laws.

(b) If it is not possible to attain the objectives in paragraphs (a)(1) through (4) immediately and simultaneously for any specific waiver determination, the Secretary or designee will seek to reconcile these objectives in light of the overall purposes of the DOE patent waiver policy, as set forth in section 152 of the Atomic Energy Act of 1954, 42 U.S.C. 2182, section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974, 42 U.S.C. 5908, Public Law 99–661, 42 U.S.C. 7261a, and, where not inconsistent therewith, the Presidential Memorandum to the Heads of Executive Departments and Agencies on Government Patent Policy issued February 18, 1983 and Executive Order No. 12591 issued April 10, 1987.

(c) The policy set forth in this section is applicable to all types of contracts as defined in § 784.2 of this part.

§ 784.4 Advance waiver.

This section covers inventions that may be conceived or first actually reduced to practice in the course of or under a particular contract. In determining whether an advance waiver will best serve the interests of the United States and the general public, the Secretary or designee (currently the Assistant General Counsel for Technology Transfer and Intellectual Property) shall, at a minimum, specifically include as considerations the following:

(a) The extent to which the participation of the contractor will expedite the attainment of the purposes of the program;

(b) The extent to which a waiver of all or any part of such rights in any or all fields of technology is needed to secure the participation of the particular contractor;

(c) The extent to which the work to be performed under the contract is useful in the production or utilization of special nuclear material or atomic energy;

(d) The extent to which the contractor's commercial position may expedite utilization of the research, development, and demonstration results;

(e) The extent to which the Government has contributed to the field of technology to be funded under the contract;

(f) The purpose and nature of the contract, including the intended use of the results developed thereunder;

(g) The extent to which the contractor has made or will make substantial investment of financial resources or technology developed at the contractor's private expense which will directly benefit the work to be performed under the contract;

(h) The extent to which the field of technology to be funded under the contract has been developed at the contractor's private expense;

(i) The extent to which the Government intends to further develop to the point of commercial utilization the results of the contract effort;

(j) The extent to which the contract objectives are concerned with the public health, public safety, or public welfare;

(k) The likely effect of the waiver on competition and market concentration;

(l) In the case of a domestic nonprofit educational institution under an agreement not governed by Chapter 18 of Title 35, United States Code, the extent to which such institution has a technology transfer capability and program approved by the Secretary or designee as being consistent with the applicable policies of this section;

(m) The small business status of the contractor under an agreement not governed by Chapter 18 of Title 35, United States Code, and

(n) Such other considerations, such as benefit to the U.S. economy, that the Secretary or designee may deem appropriate.

§ 784.5 Waiver of identified inventions.

This section covers the relinquishing by the Government to the contractor or inventor of title rights in a particular identified subject invention. In determining whether such a waiver of an identified invention will best serve the interests of the United States and the general public, the Secretary or designee shall, at a minimum, specifically include as considerations the following:

(a) The extent to which such waiver is a reasonable and necessary incentive to call forth private risk capital for the development and commercialization of the invention;

(b) The extent to which the plans, intentions, and ability of the contractor or inventor will obtain expeditious commercialization of such invention;

(c) The extent to which the invention is useful in the production or utilization of special nuclear material or atomic energy;

(d) The extent to which the Government has contributed to the field of technology of the invention;

(e) The purpose and nature of the invention, including the anticipated use thereof;

(f) The extent to which the contractor has made or will make substantial investment of financial resources or technology developed at the contractor's private expense which will directly benefit the commercialization of the invention;

(g) The extent to which the field of technology of the invention has been developed at the contractor's expense;

(h) The extent to which the Government intends to further develop the invention to the point of commercial utilization;

(i) The extent to which the invention is concerned with the public health, public safety, or public welfare;

(j) The likely effect of the waiver on competition and market concentration;

(k) In the case of a domestic nonprofit educational institution under an agreement not governed by Chapter 18, Title 35, United States Code, the extent to which such institution has a technology transfer capability and program approved by the Secretary or designee as being consistent with the applicable policies of this section;

(l) The small business status of the contractor, under an agreement not governed by Chapter 18 of Title 35, United States Code; and,

(m) Such other considerations, such as benefit to the U.S. economy that the Secretary or designee may deem appropriate.

§ 784.6 National security considerations for waiver of certain sensitive inventions.

(a) Whenever, in the course of or under any Government contract or subcontract of the Naval Nuclear

Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy, a contractor makes an invention or discovery to which title vests in the Department of Energy pursuant to statute, the contractor may request waiver of any or all of the Government's property rights. The Secretary of Energy or designee may decide to waive the Government's rights.

(b) In making a decision under this section, the Secretary or designee shall consider, in addition to the objectives of DOE waiver policy as specified in § 784.3(a)(1) through (4), and the considerations specified in § 784.4 for advance waivers, and § 784.5 for waiver of identified inventions, the following:

(1) Whether national security will be compromised;

(2) Whether sensitive technical information (whether classified or unclassified) under the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy for which dissemination is controlled under Federal statutes and regulations will be released to unauthorized persons;

(3) Whether an organizational conflict of interest contemplated by Federal statutes and regulations will result, and

(4) Whether waiving such rights will adversely affect the operation of the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy.

(c) A decision under this § 784.6 shall be made within 150 days after the date on which a complete request for waiver, as described by paragraph (d) of this section, has been submitted to the Patent Counsel by the contractor.

(d) In addition to the requirements for content which apply generally to all waiver requests under paragraph (a) of this section, a requestor must include a full and detailed statement of facts, to the extent known by or available to the requestor, directed to the considerations set forth in paragraphs (b)(1) through (4) of this section, as applicable. To be considered complete, a waiver request must contain sufficient information, in addition to the content requirements under paragraphs (a) and (b) of this section, to allow the Secretary or designee to make a decision under this section. For advance waiver requests, such information shall include, at a minimum:

(1) An identification of all of the requestor's contractual arrangements involving the Government (including contracts, subcontracts, grants, or other arrangements) in which the technology involved in the contract was developed or used and any other funding of the technology by the Government, whether direct or indirect, involving any other party, of which the requestor is aware;

(2) A description of the requestor's past, current, and future private investment in and development of the technology which is the subject of the contract. This includes expenditures not reimbursed by the Government on research and development which will directly benefit the work to be performed under the instant contract, the amount and percentage of contract costs to be shared by the requestor, the out-of-pocket costs of facilities or equipment to be made available by the requestor for performance of the contract work which are not charged directly or indirectly to the Government under contract, and the contractor's plans and intentions to further develop and commercialize the technology at private expense;

(3) A description of competitive technologies or other factors which would ameliorate any anticompetitive effect of granting the waiver.

(4) Identification of whether the contract pertains to work that is classified, or sensitive, i.e., unclassified but controlled pursuant to section 148 of the Atomic Energy Action of 1954, as amended (42 U.S.C. 2168), or subject to export control under Chapter 17 of the Military Critical Technology List (MCTL) contained in Department of Defense Directive 5230.25 including identification of all principal uses of the subject matter of the contract, whether inside or outside the contractor program, and an indication of whether any such uses involve classified or sensitive technologies.

(5) Identification of all DOE and DOD programs and projects in the same general technology as the contract for which the requestor intends to be providing program planning advice or has provided program planning advice within the last three years.

(e) For identified invention requests under this section, such requests shall include at a minimum:

(1) A brief description of the intentions of the requestor (or its present or intended licensee) to commercialize the invention. This description should include:

(i) Estimated expenditures,

(ii) Anticipated steps,

(iii) The associated time periods to bring the invention to commercialization, and

(iv) A statement that requestor (or its present or intended licensee) has the capability to carry out its stated intentions.

(2) A description of any continuing Government funding of the development of the invention (including investigation of materials or processes for use therewith), from whatever Government source, whether direct or indirect, and, to the extent known by the requestor, any anticipated future Government funding to further develop the invention.

(3) A description of competitive technologies or other factors which would ameliorate any anticompetitive effects of granting the waiver.

(4) A statement as to whether or not the requestor would be willing to reimburse the Department of Energy for any and all costs and fees incurred by the Department in the preparation and prosecution of the patent applications covering the invention that is the subject of the waiver request.

(5) Where applicable, a statement of reasons why the request was not timely filed in accordance with the applicable patent rights clause of the contract, or why a request for an extension of time to file the request was not filed in a timely manner.

(6) Identification of whether the invention pertains to work that is classified, or sensitive, i.e., unclassified but controlled pursuant to section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168), or subject to export control under Chapter 17 of the Military Critical Technology List (MCTL) contained in Department of Defense Directive 5230.25, including identification of all principal uses of the invention inside or outside the contractor program, and an indication of whether any such uses involve classified or sensitive technologies.

(7) Identification of all DOE and DOD programs and projects in the same general technology as the invention for which the requestor intends to be providing program planning advice or has provided program planning advice within the last three years.

(8) A statement of whether a classification review of the invention disclosure, any resulting patent application(s), and/or any reports and other documents disclosing a substantial portion of the invention, has been made, together with any determinations on the existence of classified or sensitive information in either the invention disclosure, the patent application(s), or reports or other documents disclosing a substantial portion of the invention; and

(9) Identification of any and all proposals, work for other activities, or other arrangements submitted by the requestor, DOE, or a third party, of which requestor is aware, which may involve further funding of the work on the invention at either the contractor facility where the invention arose or another facility owned by the Government.

(f) Patent Counsel will notify the requestor promptly if the waiver request is found not to be a complete request and, in that event, will provide the requestor with a reasonable period, not to exceed 60 days, to correct any such incompleteness. If requestor does not respond within the allotted time period, the waiver request will be considered to be withdrawn. If requestor responds within the allotted time period, but the submittal is still deemed incomplete or insufficient, the waiver request may be denied.

(g) As set forth in paragraph (c) of this section, waiver decisions shall be made within 150 days after the date on which a complete request for waiver of such rights, as specified in this section, has been submitted by the requestor to the DOE Patent Counsel. If the original waiver request does not result in a communication from DOE Patent Counsel indicating that the request is incomplete, the 150-day period for decision commences on the date of receipt of the waiver request. If the original waiver request results in a communication from DOE Patent Counsel indicating that the request is incomplete, the 150-day period for decision commences on the date on which supplementary information is received by Patent Counsel sufficient to make the waiver request complete. For advance waiver requests, if requestor is not notified that the request is incomplete, the 150-day period for decision commences on the date of receipt of the request, or on the date on which negotiation of contract terms is completed, whichever is later.

(h) Failure of DOE to make a patent waiver decision within the prescribed 150-day period shall in no way be construed as a grant of the waiver.

§ 784.7 Class waiver.

This section covers relinquishing of patent title rights by the Government to a class of persons or to a class of inventions. The authorization for class waivers is to be found at 42 U.S.C. 5908(c). Class waivers may be appropriate in situations where all members of a particular class would likely qualify for an advance or identified invention waiver. Normally, class waivers are originated by the Department. However, any person with a direct and substantial interest in a DOE program may request a class waiver by forwarding a written request therefor to the Patent Counsel. While no particular format for requesting a class waiver is prescribed, any request for a class waiver and any resulting determination by the Secretary or designee must address the pertinent objectives and considerations set forth in §§ 784.3(a), 784.4, 784.5, and 784.6.

§ 784.8 Procedures.

(a) All requests for waivers shall be in writing. Each request for a waiver other than a class waiver shall include the information set forth in § 784.9. Such requests may be submitted by existing or prospective contractors in the case of requests for an advance waiver and by contractors, including successor contractors at a facility, or employee-inventors in the case of requests for waiver of identified inventions.

(b) A request for an advance waiver should be submitted to the Contracting Officer (subcontractors may submit through their prime contractors) at any time prior to execution of the contract or subcontract, or within thirty days thereafter, or within such longer period as may be authorized by Patent Counsel for good cause shown in writing. If the purpose, scope, or cost of the contract is substantially altered by modification or extension after the waiver is granted, a new waiver request will be required. When advance waivers are granted, the provisions of the "Patent Rights—Waiver" clause set forth in § 784.12 shall be used in contracts which are the subject of the waivers, unless modified with the approval of the Patent Counsel to conform to the scope of the waiver granted. (See § 784.12.) Advance waivers may be requested for all inventions which may be conceived or first actually reduced to practice under a DOE contract. An advance waiver may also be requested for an identified invention conceived by the contractor before the contract but which may be first actually reduced to practice under the contract. Such waiver request must include a copy of any patent or patent application covering the identified invention, or if no patent application has been filed, a complete description of the invention.

(c) A request for waiver (other than an advance or class waiver) for an identified invention must be submitted to the Patent Counsel at the time the invention is to be reported to DOE or not later than eight months after conception and/or first actual reduction to practice, whichever occurs first in the course of or under the contract, or such longer period as may be authorized by Patent Counsel for good cause shown in writing by the requestor. The time for submitting a waiver request will not normally be extended past the time the invention has been advertised for licensing by DOE. If the Government has already filed a patent application on the invention, the requestor should indicate whether or not it is willing to reimburse the Government for the costs of searching, prosecution, filing and maintenance fees, in the event the waiver is granted.

(d) If the request for waiver contains insufficient information, the Patent Counsel may seek additional information from the requestor and from other sources. The Patent Counsel will thoroughly analyze the request in view of each of the objectives and considerations and shall also consider the overall rights obtained by the Government in the patent, copyright, and data clauses of the contract. Where it appears that a waiver of a lesser part of the rights of the United States than requested would be more appropriate in view of the policies set forth, the Patent Counsel should attempt to negotiate a compromise acceptable to both the requestor and DOE. If approval of a waiver is recommended, Patent Counsel shall obtain an indication of agreement by the requestor to the proposed waiver scope, terms and conditions.

(e) The Patent Counsel will prepare a Statement of Considerations setting forth the rationale for either approving or denying the waiver request and will forward the Statement to the General Counsel or designee for review thereof. While the Statement need not provide specific findings as to each and every consideration of § 784.4 or § 784.5 of this part, it will cover those that are decisive, and it will explain the basis for the recommended determination. There may be occasions when the application of the various individual considerations of § 784.4 or § 784.5 of this part to a particular case could conflict, and in those instances the conflict will be reconciled giving due regard to the overall policies set forth in 784.3(a) (1) through (4).

(f) The Patent Counsel will also obtain comments from the appropriate DOE program organization to assist the Patent Counsel in the waiver determination. Additionally, if any other Federal Government entity has provided funding or will be providing funding, or if a subject invention has been made in whole or in part by an employee of that entity, Patent Counsel shall obtain permission to waive title to the undivided interest in the invention from the cognizant official of that entity. In situations where time does not permit a delay in contract negotiations for the preparation and mailing of a full written

statement, field Patent Counsel may submit a recommendation on the waiver orally to the Assistant General Counsel for Technology Transfer and Intellectual Property, who upon verbal consultation with the appropriate DOE program organization, shall provide a verbal decision to field Patent Counsel. All oral actions shall be promptly confirmed in writing. In approving waiver determinations, the Secretary or designee shall objectively review all requests for waiver in view of the objectives and considerations set forth in §§ 784.3 through 784.6. If the determination and the rationale therefor is not accurately reflected in the Statement of Considerations which has been submitted for approval, a new Statement of Considerations shall be prepared.

(g) In the event that a request for advance waiver is approved after the effective date of the contract, the Patent Counsel shall promptly notify the requestor by letter of the determination and the basis therefor. The letter shall state the scope, terms and conditions of such waiver. If the terms and conditions of an approved advance waiver were not incorporated in the contract when executed, the letter shall inform the requestor that the advance waiver shall be effective as of the effective date of the contract for an advance waiver of inventions identified, i.e., conceived prior to the effective date of the contract, or as of the date the invention is reported with an election by the contractor to retain rights therein, i.e., for an invention conceived or first actually reduced to practice after the effective date of the contract; provided a copy of the letter is signed and returned to the Contracting Officer by the requestor acknowledging the acceptance of the scope, terms and conditions of the advance waiver. After acceptance by the contractor of an advance waiver, the Contracting Officer shall cause a unilateral no-cost modification to be made to the contract incorporating the terms and conditions of the waiver in lieu of previous patent rights provisions.

(h) In the event that a waiver request is denied, the requestor may, within thirty days after notification of the denial, request reconsideration. Such a request shall include any additional facts and rationale not previously submitted which support the request. Request for reconsideration shall be submitted and processed in accordance with the procedures for submitting waiver requests set forth in this section.

§ 784.9 Content of waiver requests.

(a) Forms (OMB No. 1901–0800) for submitting requests for advance and identified invention waivers, indicating the necessary information, may be obtained from the Contracting Officer or Patent Counsel. All requests for advance and identified invention waivers shall include the following information:

(1) The requestor's identification, business address, and, if represented by Counsel, the Counsel's name and address;

(2) An identification of the pertinent contract or proposed contract and a copy of the contract Statement of Work or a nonproprietary statement which fully describes the proposed work to be performed;

(3) The nature and extent of waiver requested;

(4) A full and detailed statement of facts, to the extent known by or available to the requestor, directed to each of the considerations set forth in §§ 784.4 or 784.5 of this part, as applicable, and a statement applying such facts and considerations to the policies set forth in § 784.3 of this part. It is important that this submission be tailored to the unique aspects of each request for waiver, and be as complete as feasible; and

(5) The signature of the requestor or authorized representative with the following statement: "The facts set forth in this request for waiver are within the knowledge of the requestor and are submitted with the intention that the Secretary or designee rely on them in reaching the waiver determination."

(b) In addition to the requirements of paragraph (a) of this section, requests for waiver of identified inventions shall include:

(1) The full names of all inventors;

(2) A statement of whether a patent application has been filed on the invention, together with a copy of such application if filed or, if not filed, a complete description of the invention;

(3) If a patent application has not been filed, any information which may indicate a potential statutory bar to the patenting of the invention under 35 U.S.C. 102 or a statement that no such bar is known to exist; and

(4) Where the requestor is the inventor, written authorization from the applicable contractor or subcontractor permitting the inventor to request a waiver.

(c) Subject to statutes, DOE regulations, requirements, and restrictions on the treatment of proprietary and classified information; all material submitted in requests for waiver or in support thereof will be made available to the public after a determination on the waiver request has been made, regardless of whether a waiver is granted. Accordingly, requests for waiver should not normally contain information or data that the requestor is not willing to have made public. If proprietary or classified information is needed to make the waiver determination, such information shall be submitted only at the request of Patent Counsel.

§ 784.10 Record of waiver determinations.

The Assistant General Counsel for Technology Transfer and Intellectual Property shall maintain and periodically update a publicly available record of waiver determinations.

§ 784.11 Bases for granting waivers.

(a) The various factual situations which are appropriate for waivers cannot be categorized precisely because the appropriateness of a waiver will depend upon the manner in which the considerations set forth in §§ 784.4 or 784.5, and 784.6 if applicable, of this part relate to the facts and circumstances surrounding the particular contracting situation or the particular invention, in order to best achieve the objectives set forth in § 784.3 of this part. However, some examples where advance waivers might be appropriate are:

(1) Cost-shared contracts;

(2) Situations in which DOE is providing increased funding to a specific ongoing privately-sponsored research, development, or demonstration project;

(3) Situations such as Work for Others Agreements, User Facility Agreements or CRADAs, involving DOE-approved private use of Government facilities where the waiver requestor is funding a substantial part of the costs; and

(4) Situations in which the equities of the contractor are so substantial in relation to that of the Government that the waiver is necessary to obtain the participation of the contractor.

(b) Waivers may be granted as to all or any part of the rights of the United States to an invention subject to certain rights retained by the United States as set forth in § 784.12 of this part. The scope of the waiver will depend upon the relationship of the contractual situation or identified invention to considerations set forth in §§ 784.4 or 784.5, and 784.6, if applicable, in order to best achieve the objectives set forth in § 784.3. For example, waivers may be restricted to a particular field of use in which the contractor has substantial equities or a commercial position, or restricted to those uses that are not the primary object of the contract effort.

Waivers may also be made effective for a specified duration of time, may be limited to particular geographic locations, may require the contractor to license others at reduced royalties in consideration of the Government's contribution to the research, development, or demonstration effort, or may require return of a portion of the royalties or revenue to the Government.

(c) Contractors shall not use their ability to award subcontracts as economic leverage to acquire rights for themselves in the subcontractor inventions, where the subcontractor(s) would prefer to petition for title. A waiver granted to a prime contractor is not normally applicable to inventions of subcontractors. However, in appropriate circumstances, the waiver given to the prime contractor may be made applicable to the waivable inventions of any or all subcontractors, such as where there are pre-existing special research and development arrangements between the prime contractor and subcontractor, or where the prime contractor and subcontractor are partners in a cooperative effort. In addition, in such circumstances, the prime contractor may be permitted to acquire nonexclusive licenses in the subcontractors' inventions when a waiver of the subcontractor inventions is not covered by the prime contractor's waiver.

(d) In advance waivers of identified inventions, the invention will be deemed to be a subject invention and the waiver will be considered as being effective as of the effective date of the contract (see § 784.13(a)). This will be true regardless of whether the identified invention had been first actually reduced to practice prior to the time of contracting or would be reduced to practice under the contract or after expiration of the contract. One purpose of advance waivers of identified inventions is to establish the rights of the parties to such inventions when the facts surrounding the first actual reduction to practice prior to or during the contract are or will be difficult to establish.

§ 784.12 Terms and conditions of waivers.

The terms and conditions for waivers are set forth in the "Patent Rights—Waiver" clause in this section. A waiver of all foreign and domestic patent rights under a contract authorizes the use of this clause with any additions prescribed by the DOE Acquisition Regulations (48 CFR Chapter 9) or the terms of the waiver. This clause shall not be used in contracts with small business firms or nonprofit organizations subject to 35 U.S.C. 200 *et seq.* If a waiver of different scope is granted, the clause shall be modified to conform to the scope of the waiver granted. Advance waivers for arrangements other than contracts, grants, and cooperative agreements may use other clause provisions approved by the Assistant General Counsel for Technology Transfer and Intellectual Property, except that all waivers for funding agreements shall be subject to the license of clause paragraph (b) and the provisions of clause paragraphs (i) and (j). The terms and conditions of the clause shall also constitute the basis for confirmatory licenses regarding waivers of identified inventions. For inventions under advance waivers, a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled is required to be submitted promptly after filing a patent application thereon. If, however, a waiver request is pending, delivery of the confirmatory instrument may be delayed until a determination on the waiver request is made. In the case of a waiver of an identified invention pursuant to a request for greater rights, the confirmatory instrument shall be agreed to or submitted to Patent Counsel before or at the time the waiver is granted.

Patent Rights—Waiver

Use the clause at 48 CFR 52.227–12 with the following changes:

(1) In paragraph (a) "Definitions" add the following definitions:

Background patent means a domestic patent covering an invention or discovery which is not a Subject Invention and which is owned or controlled by the Contractor at any time through the completion of this contract:

(i) Which the Contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and

(ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.

Contract means any contract, grant, agreement, understanding, or other arrangement, which includes research, development, or demonstration work, and includes any assignment or substitution of parties.

DOE patent waiver regulations means the Department of Energy patent waiver regulations at 10 CFR part 784.

Patent Counsel means the Department of Energy Patent Counsel assisting the procuring activity.

Secretary means the Secretary of Energy.

(2) In paragraph (a) in the definition of "Subject invention" substitute: "course of or" for: "performance of work".

(3) In paragraph (b) "Allocation of principal rights," add at the beginning of first sentence:

"Whereas DOE has granted a waiver of rights to subject inventions to the Contractor,".

(4) In paragraph (c)(1), substitute:

"Patent Counsel within six months after conception or first actual reduction to practice, whichever occurs first in the course of or under this contract, but in any event, prior to any sale, public use, or public disclosure of such invention known to the Contractor." for.

"Contractor officer within 2 months after the inventor discloses it in writing to Contractor Personnel responsible for Patent matters * * * earlier."

(5) In paragraph (c)(2) add at the end: "The Contractor shall notify the Patent Counsel as to those countries (including the United States) in which the Contractor will retain title not later than 60 days prior to the end of the statutory period."

(6) In paragraph (c)(3) substitute: "but not later than at least 60 days" for "or, if earlier,"

(7) In paragraph (d) add (d)(5):

"(5) If the waiver authorizing the use of this clause is terminated as provided in paragraph (p) of this clause."

(8) In paragraph (e)(1) add: "under paragraph (d) of this clause" after "Government obtains title."

(9) In paragraph (e)(2) substitute "37 CFR part 404 and DOE licensing regulations." for "the Federal Property Management regulations and agency licensing regulations (if any)"

(10) In paragraph (f)(5) substitute "the course of or" for "performance of work".

(11) In paragraph (g) substitute paragraphs (1), (2) and (3) as follows:

(1) Unless otherwise directed by the Contracting Officer, the Contractor shall include the clause at 48 CFR 952.227–11, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization, except where the work of the subcontract is subject to an Exceptional Circumstances Determination by DOE. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the Contractor shall include the patent rights clause at 48 CFR 952.227–13 (suitably modified to identify the parties).

(2) The Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(3) In the case of subcontractors at any tier, Department, the subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Department with respect to those matters covered by this clause.

(12) Substitute the following for paragraph (k):

(k) Background Patents

(1) The Contractor agrees:

(i) to grant to the Government a royalty-free, nonexclusive license under any Background Patent for purposes of practicing

a subject of this contract by or for the Government in research, development, and demonstration work only.

(ii) that, upon written application by DOE, it will grant to responsible parties for purposes of practicing a subject of this contract, nonexclusive licenses under any Background Patent on terms that are reasonable under the circumstances. If, however, the Contractor believes that exclusive or partially exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Contractor.

(2) Notwithstanding paragraph (k)(1)(ii), the Contractor shall not be obligated to license any Background Patent if the Contractor demonstrates to the satisfaction of the Secretary or his designee that:

(i) a competitive alternative to the subject matter covered by said Background Patent is commercially available from one or more other sources; or

(ii) the Contractor or its licensees are supplying the subject matter covered by said Background Patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.

(13) Add new paragraph (l) Communications as follows:

All reports and notifications required by this clause shall be submitted to the Patent Counsel unless otherwise instructed.

(14) In paragraph (m) add to end of sentence: ", except with respect to Background Patents, above."

(15) In paragraph (n)(4) substitute "conducted in such a manner as" for "subject to appropriate conditions."

(16) In paragraph (o) add at the end of the parenthetical phrase in the heading to the paragraph: "or grants".

(17) In paragraph (o) add paragraph (o)(1)(v) as follows:

(v) Convey to the Government, using a DOE-approved form, the title and/or rights of the Government in each subject invention as required by this clause.

(18) In paragraph (o), substitute the following for (o)(3):

(3) Final payment under this contract shall not be made before the Contractor delivers to the Patent Counsel all disclosures of subject inventions required by paragraph (c)(1) of this clause, an acceptable final report pursuant to paragraph (f)(7)(ii) of this clause, and all past due confirmatory instruments, and the Patent Counsel has issued a patent clearance certification to the Contracting Officer.

(19) Add paragraphs (p), (q), (r), and (s) as follows:

(p) Waiver Terminations.

Any waiver granted to the Contractor authorizing the use of this clause (including any retention of rights pursuant thereto by the Contractor under paragraph (b) of this clause) may be terminated at the discretion of the Secretary or his designee in whole or in part, if the request for waiver by the Contractor is found to contain false material statements or nondisclosure of material facts, and such were specifically relied upon by DOE in reaching the waiver determination. Prior to any such termination, the Contractor will be given written notice stating the extent of such proposed termination and the reasons therefor, and a period of 30 days, or such longer period as the Secretary or his designee shall determine for good cause shown in writing, to show cause why the waiver of rights should not be so terminated. Any waiver termination shall be subject to the Contractor's minimum license as provided in paragraph (e) of this clause.

(q) Atomic Energy.

No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted by the Contractor or its employees with respect to any invention or discovery made or conceived in the course of or under this contract.

(r) Publication.

It is recognized that during the course of work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Contractor, approval for release of publication shall be secured from Patent Counsel prior to any such release or publication. In appropriate circumstances, and after consultation with the Contractor, Patent Counsel may waive the right of prepublication review.

(s) Forfeiture of rights in unreported subject inventions.

(1) The Contractor shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Contractor fails to report to Patent Counsel within six months after the time the Contractor:

(i) Files or causes to be filed a United States or foreign patent application thereon; or

(ii) Submits the final report required by paragraph (e)(2)(ii) of this clause, whichever is later.

(2) However, the Contractor shall not forfeit rights in a subject invention if, within the time specified in paragraph (m)(1) of this clause, the Contractor:

(i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract and delivers the decision to Patent Counsel, with a copy to the Contracting Officer; or

(ii) Contending that the subject invention is not a subject invention, the Contractor nevertheless discloses the subject invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the Contracting Officer, or

(iii) Establishes that the failure to disclose did not result from the Contractor's fault or negligence.

(3) Pending written assignment of the patent application and patents on a subject invention determined by the Contracting Officer to be forfeited (such determination to be a Final Decision under the Disputes clause of this contract), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph shall be in addition to and shall not supersede any other rights and remedies which the Government may have with respect to subject inventions.

§ 784.13 Effective dates.

Waivers shall be effective on the following dates:

(a) For advance waivers of identified inventions, i.e., inventions conceived prior to the effective date of the contract, on the effective date of the contract, even though the advance waiver may have been requested after that date;

(b) For identified inventions under advance waivers, i.e., inventions conceived or first actually reduced to practice after the effective date of the contract, on the date the invention is reported with the election to retain rights as to that invention; and

(c) For waivers of identified inventions [other than under an advance waiver), on the date of the letter from Patent Counsel notifying the requestor that the waiver has been granted.

[FR Doc. 96–17431 Filed 7–11–96; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–ANE–10; Amendment 39–9676; AD 96–13–06]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) PW4000 series turbofan engines. This action requires initial and repetitive inspections of the aft cascade support frame assembly of thrust reverser for cracks, and replacement, if necessary, with serviceable parts; or lockout of the thrust reversers. This amendment is prompted by reports of aft cascade support frame assembly failures. The actions specified in this AD are intended to prevent aft cascade support frame assembly failure due to cracks, which can result in thrust reverser hardware liberation and ejection from the aircraft during thrust reverser operation, which can contaminate the runway with debris, causing an operational hazard to other aircraft during takeoff and landing.

DATES: Effective August 1, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 1, 1996.

Comments for inclusion in the Rules Docket must be received on or before September 10, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–10, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address: "epd-adcomments@mail.hq.faa.gov". All comments must contain the Docket No. in the subject line of the comment.

The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7147, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received reports of thrust reverser failure on Pratt & Whitney (PW) PW4000 series turbofan engines. The thrust reverser aft cascade support frame assembly can develop cracks due to high cycle fatigue that could propagate to failure. To date, there have been a total of 38 aft cascade support frame assemblies that were found either cracked or failed. Failure of the cascade support assembly allows thrust reverser hardware to be liberated and ejected from the aircraft during thrust reverser operation. Seven of the failed assemblies caused liberations of thrust reverser hardware. It is possible that other aircrews, either departing or arriving on the same runway, may not see debris left on the runway after a failure of the thrust reverser aft cascade support frame assembly. This debris, therefore, could cause a serious unsafe condition for departing and arriving aircraft. This condition, if not corrected, could result in aft cascade support frame assembly failure due to cracks, which can result in thrust reverser hardware liberation and ejection from the aircraft during thrust reverser operation, which can contaminate the runway with debris, causing an operational hazard to other aircraft during takeoff and landing.

The FAA has reviewed and approved the technical contents of PW Service Bulletin (SB) No. PW4NAC 78–78, Revision 6, dated March 6, 1996, and SB No. PW4MD11 78–67, Revision 5, dated March 6, 1996, that describe procedures for inspection of the aft cascade support frame assembly.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent aft cascade support frame assembly failure. This AD requires initial and repetitive inspections of the aft cascade support frame assembly for cracks, and replacement, if necessary, with serviceable parts; or lockout of the thrust reversers in accordance with the applicable Aircraft Maintenance Manual for a time period not to exceed 10 days. The actions are required to be accomplished in accordance with the SB's described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–ANE–10." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–13–08 Pratt & Whitney: Amendment 39–9676. Docket 96–ANE–10.

Applicability: Pratt & Whitney (PW) PW4000 series turbofan engines, with thrust reverser, Supplemental Type Certificate (STC) No. SJ514NE, installed on Airbus A300–600 and A310 series aircraft, and thrust reverser, STC No. SE744NE, installed on McDonnell Douglas MD–11 series aircraft. These thrust reversers incorporate aft cascade support frame assemblies, Part Numbers (P/N's) 221–0516–503 and 221–0516–504.

Note: This airworthiness directive (AD) applies to each engine with affected thrust reversers identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines with affected thrust reversers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine with affected thrust reversers from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent aft cascade support frame assembly failure due to cracks, which can result in thrust reverser hardware liberation and ejection from the aircraft during thrust reverser operation, which can contaminate the runway with debris, causing an operational hazard to other aircraft during takeoff and landing, accomplish the following:

(a) For engines with affected thrust reversers installed on Airbus A300–600 and A310 series aircraft, accomplish the following:

(1) Initially inspect aft cascade support frame assemblies for cracks within 250 flight hours after the effective date of this AD, in accordance with the Accomplishment Instructions, Part 1—Interim Inspection, of PW Service Bulletin (SB) No. PW4NAC 78–78, Revision 6, dated March 6, 1996.

(2) Thereafter, inspect aft cascade support frame assemblies for cracks at intervals not to exceed 450 flight hours since the last inspection, in accordance with the Accomplishment Instructions, Part 1—Interim Inspection, of PW SB No. PW4NAC 78–78, Revision 6, dated March 6, 1996.

(3) For aft cascade support frame assemblies that do not meet the return to service criteria stated in the Accomplishment Instructions, Part 1—Interim Inspection, of PW SB No. PW4NAC 78–78, Revision 6, dated March 6, 1996, prior to further flight, accomplish either of the following:

(i) Remove from service cracked aft cascade support frame assemblies, and replace with a serviceable part; or

(ii) Lockout the thrust reverser in accordance with the Airbus A300–600 and A310 series Aircraft Maintenance Manuals, as applicable, for a time period not to exceed 10 days. At the conclusion of the 10-day lockout period, prior to further flight remove any cracked aft cascade support frame assemblies and replace with serviceable parts.

(b) For engines with affected thrust reversers installed on McDonnell Douglas MD–11 series aircraft, accomplish the following:

(1) Initially inspect aft cascade support frame assemblies for cracks within 250 flight hours after the effective date of this AD, in accordance with the Accomplishment Instructions, Part 1—Interim Inspection, of PW SB No. PW4MD11 78–67, Revision 5, dated March 6, 1996.

(2) Thereafter, inspect aft cascade support frame assemblies for cracks at intervals not to exceed 450 flight hours since the last inspection, in accordance with the Accomplishment Instructions, Part 1—Interim Inspection, of PW SB No. PW4MD11 78–67, Revision 5, dated March 6, 1996.

(3) For aft cascade support frame assemblies that do not meet the return to service criteria stated in the Accomplishment Instructions, Part 1—Interim Inspection, of PW SB No. PW4MD11 78–67, Revision 6, dated March 6, 1996, prior to further flight, accomplish either of the following:

(i) Remove from service cracked aft cascade support frame assemblies, and replace with a serviceable part; or

(ii) Lockout the thrust reverser in accordance with the McDonnell Douglas MD–11 series Aircraft Maintenance Manual, for a time period not to exceed 10 days. At the conclusion of the 10-day lockout period, prior to further flight remove any cracked aft cascade support frame assemblies and replace with serviceable parts.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) The actions required by this AD shall be done in accordance with the following PW SB's:

Document No.	Pages	Revision	Date
PW4NAC 78–78.	1	6	March 6, 1996.
	2,3	2	October 31, 1995.
	4–6 ...	6	March 6, 1996.
	7	5	October 31, 1995.
	8–11	6	March 6, 1996.
	12	5	October 31, 1995.
	13–19	6	March 6, 1996.
	20–22	5	October 31, 1995.
	23–34	6	March 6, 1996.
	35	5	October 31, 1995.
	36, 37	6	March 6, 1996.
	38	5	October 31, 1995.
	39, 40	6	March 6, 1996.
Total pages:	40..		
PW4MD11 78–67.	1–38	5	March 6, 1996.
Total pages:	38..		

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 1, 1996.

Issued in Burlington, Massachusetts, on July 2, 1996.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–17533 Filed 7–11–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 94–ANE–39; Amendment 39–9672; AD 96–13–04]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce, plc RB211 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Rolls-Royce, plc RB211 series turbofan engines, that requires removing and replacing the existing rigid low pressure (LP) fuel system tube assembly with a tube assembly having flexible sections and revised clip points to preclude cracking and subsequent fuel leakage. This amendment is prompted by multiple reports of fuel leaks. The actions specified by this AD are intended to prevent a fuel system leak, which could result in rapid atomization of fuel and an engine fire.

DATES: Effective September 10, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 10, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce, plc, P.O. Box 31, Moor Lane, Derby, DE248BJ, United Kingdom; telephone 1332–249428, fax 1332–249423. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel Kerman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7130, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Rolls-Royce, plc (R–R) Models RB211–535E4 series and –535E4–B series turbofan engines was published in the **Federal Register** on June 26,1995 (60 FR 20189). That action proposed to require replacement of the low pressure (LP) fuel tube assembly in accordance with R–R Service Bulletin (SB) No. RB.211–73–B048, Revision 1, dated July 22, 1994.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter states that as soon as parts were available, R–R undertook incorporation of the modification described in R–R SB No. RB.211–73–B048, Revision 1, dated July 22, 1994, on all engines in production. The commenter states that all engines starting with serial number (S/N) 31292 were delivered with the configuration required by the proposed AD. The commenter proposes that the applicability section be revised to exclude engine S/N's of 31292 and subsequent. The FAA concurs and has revised the applicability section of this final rule accordingly.

Two commenters support the rule as proposed.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 558 engines of the affected design in the worldwide fleet. The FAA estimates that 292 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,000 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $327,040.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–13–04 Rolls-Royce, plc: Amendment 39–9672. Docket 94–ANE–39.

Applicability: Rolls-Royce, plc. (R–R) Models RB211–535E4 series and –535E4–B series turbofan engines, prior to engine Serial Number (S/N) 31292, installed on but not limited to Boeing 757 series aircraft.

Note: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the Federal Aviation Administration (FAA). This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent a fuel system leak, which could result in rapid atomization of fuel and an engine fire, accomplish the following:

(a) Within one year after the effective date of this AD, remove the existing rigid low pressure (LP) fuel system tube assembly and replace with the new flexible LP fuel system tube design with revised clip points, in accordance with R–R Service Bulletin (SB) No. RB.211–73–B048, Revision 1, dated July 22, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of

compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) The actions required by this AD shall be done in accordance with the following R–R SB:

Document No.	Pages	Revision	Date
RB.211–73–5048.	1–6 ...	1	July 22, 1994.
	7,8	Original	June 3, 1994.
	9–12	1	July 22, 1994.
Supplement ...	1	1	July 22, 1994.
Total Pages: 13.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce, plc, P.O. Box 31, Moor Lane, Derby, DE248BJ, United Kingdom; telephone 1332–249428, fax 1332–249423. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 10, 1996.

Issued in Burlington, Massachusetts, on June 11, 1996.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–17535 Filed 7–11–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

Advisory Committees; Conversion of Ad Hoc Advisory Committee to Standing Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the standing advisory committees' regulations to add the name and function of the Transmissible Spongiform Encephalopathies Advisory Committee (formerly Ad Hoc Advisory Committee on Creutzfeldt-Jakob Disease). Appearing elsewhere in this issue of the **Federal Register** is a notice announcing the renewal of this advisory committee. A notice requesting nominations for membership on this committee will publish at a later date. This action is being taken to incorporate this committee into the agency's list of standing advisory committees because it will no longer be serving in an ad hoc capacity.

EFFECTIVE DATE: July 12, 1996.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

SUPPLEMENTARY INFORMATION: FDA is announcing that the name of the Ad Hoc Advisory Committee on Creutzfeldt-Jakob Disease has been changed. The committee was established on June 21, 1995, to advise the Commissioner of Food and Drugs regarding the safety of blood products obtained or prepared from one or more donations from a donor who, after donation, was diagnosed with Creutzfeldt-Jakob Disease. The committee was chartered for the duration of 1 year.

The Commissioner has now formally determined that there is a continuing need for this committee, that the name and function of the committee will be changed to more accurately describe the committee, and that the committee will no longer be serving in an ad hoc capacity. The name "Transmissible Spongiform Encephalopathies Advisory Committee" will more accurately describe the subject area for which the committee is responsible. The change is consistent with the expanded function of the committee.

The committee's new function is to review and evaluate available scientific data concerning the safety of products which may be at risk for transmission of spongiform encephalopathies having an impact on the public health as determined by the Commissioner of Food and Drugs. The committee will also make recommendations to the Commissioner regarding the regulation of such products.

Management and support services for the committee will continue to be provided by FDA's Center For Biologics Evaluation and Research. In this document, FDA is formally incorporating this committee into the agency's list of standing advisory committees by adding a new paragraph in 21 CFR 14.100(b).

Publication of this final rule constitutes a final action on this change under the Administrative Procedure Act. Under 5 U.S.C. 553(b)(3)(B) and (d) and 21 CFR 10.40(d) and (e), the agency finds good cause to dispense with notice and public procedure and to proceed to an immediately effective regulation. Such notice and procedures are unnecessary and are not in the public interest, because the final rule is merely codifying the new name and expanded function of the advisory committee, as well as its status as a standing advisory committee, and when effective will reflect the current committee charter.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 14 is amended as follows:

PART 14–PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

1. The authority citation for 21 CFR part 14 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394; 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 354, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 263b, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 5 U.S.C. App. 2; 28 U.S.C. 2112.

2. Section 14.100 is amended by adding new paragraph (b)(6) to read as follows:

§ 14.100 List of standing advisory committees.

* * * * *

(b) * * *

(6) *Transmissible Spongiform Encephalopathies Advisory Committee.*

(i) Date established: June 21, 1995.

(ii) Function: Reviews and evaluates available scientific data concerning the safety of products which may be at risk for transmission of spongiform encephalopathies having an impact on the public health.

* * * * *

Dated: July 5, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–17686 Filed 7–11–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

22 CFR Part 126

[Public Notice 2410]

Amendment to the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulation (ITAR) (22 CFR parts 120–130) to reflect that it is no longer the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in the states of the former Yugoslavia with the exception of the Federal Republic of Yugoslavia (Serbia and Montenegro). This includes Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, and Slovenia. With respect to those countries no longer on the proscribed list, all requests for licenses or other approvals involving items covered by the U.S. Munitions List (22 CFR part 121) will be reviewed on a case-by-case basis. The Yugoslavia licenses and approvals suspended by the **Federal Register** notice of July 19, 1991 (58 FR 33322) continue to remain suspended. Exports or other transfers of affected items may only take place pursuant to new licenses or other approvals.

EFFECTIVE DATE: This amendment is effective July 12, 1996.

FOR FURTHER INFORMATION CONTACT: Rene BeBeau, Office of Arms Transfer and Export Control Policy, Bureau of Political-Military Affairs, Department of State (202–647–4231).

SUPPLEMENTARY INFORMATION: Upon the initialling of the Dayton accords, the UN Security Council (UNSC) on November 22, 1995, adopted Resolution 1021, providing for a phased lifting of the UNSC arms embargo on all the successor states of former Yugoslavia. With the signing of the peace agreement on December 14, 1995, by the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), and the submission of a report on the signing by the UN Secretary General ("signing report") on the same date, the timeline for the phased lifting began.

UNSC Resolution 1021 provided that during the first 90 days from the day the Secretary-General submitted the signing report, all the provisions of the embargo under UNSC Resolution 713 remained in place. For the second ninety days following the submission of the signing report, all provisions of the arms embargo were terminated, except that: delivery of heavy weapons (as defined in the peace agreement), ammunition therefor, mines, military aircraft and helicopters continued to be prohibited until the arms control agreement referred to in Annex 1B of the Dayton accords had taken effect. After the 180th day following the submission of the signing report, and after the Secretary-General submitted an additional report (on the implementation of Annex 1B), all provisions of the UNSC arms embargo terminated.

The Secretary-General submitted the report on the implementation of Annex 1B (Agreement on Regional Stabilization) on June 14, 1996. June 14 is thus the day upon which the UNSC arms embargo on the states of the former Yugoslavia, imposed by the Security Council in Resolution 713, terminated.

Section 126.1(c) of the ITAR states that whenever the UN Security Council mandates an arms embargo, all transactions which are prohibited by the embargo and which involve U.S. persons anywhere, or any person in the United States, and defense articles and services of a type enumerated on the United States Munitions List, irrespective of origin, are prohibited under the ITAR for the duration of the embargo, unless the Department of State publishes a **Federal Register** notice specifying different measures. Notice of the policy of denial and suspension with regard to the states of former Yugoslavia was published in the **Federal Register** on July 19, 1991 (58 FR 33322).

The lifting at this time of the policy of denial with respect to states of former Yugoslavia other than the FRY (Serbia and Montenegro), and corresponding amendment to the relevant portion of § 126.1(a) of the ITAR, is consistent with developments in the region and is in furtherance of our national security and foreign policy objectives.

The **Federal Register** notice of July 19, 1991, may not, however, cease to be effective with respect to the FRY (Serbia and Montenegro) without a certification to Congress by the President pursuant to Section 540A of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996, Pub. L. 104–107. No such certification has been made.

Licenses and approvals subject to the new policy on the states of the former Yugoslavia other than the FRY (Serbia and Montenegro) include manufacturing licenses, technical assistance agreements, technical data, and commercial defense article and defense service exports and other transfers of any kind involving these countries under the authority of the Arms Export Control Act and the International Traffic in Arms Regulations.

This amendment to the ITAR involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. This final rule does not contain a new or amended information requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, and under the authority of Section 38 of the Arms Export Control Act (22 U.S.C. 2778) and Executive Order 11958, as amended, 22 CFR Subchapter M is amended as follows:

PART 126—[AMENDED]

1. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Arms Export Control Act, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 41 FR 4311; E.O. 11322, 32 FR 119; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205.

§ 126.1 [Amended]

2. Section 126.1(a) is amended and revised by removing "the states of the former Yugoslavia" and replacing it with "the FRY (Serbia and Montenegro)," so that as revised, paragraph (a) reads as follows:

(a) *General.* It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Afghanistan, Armenia, Azerbaijan, Belarus, Cuba, Georgia, Iran, Iraq, Kazakstan, Kyrgyzstan, Libya, Moldova, Mongolia, North Korea, Syria, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo (e.g. Burma, China, the Federal Republic of Yugoslavia (Serbia and Montenegro), Haiti, Liberia, Rwanda, Somalia, Sudan and Zaire) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Comprehensive arms embargoes are normally the subject of a State Department notice published in the **Federal Register.** The exemptions provided in the regulations in this

subchapter, except §§ 123.17 and 125.4(b)(13) of this subchapter, do not apply with respect to articles originating in or for export to any proscribed countries or areas. With regard to § 123.27 the exemption does not apply with respect to articles originating in or for export to countries prohibited by a United Nations Security Council Resolution or to which the export (or for which the issuance of a license for the export) would be prohibited by a U.S. statute (e.g. by Section 40 of the Arms Export Control Act, 22 U.S.C. 2780, to countries that have been determined to have repeatedly provided support for acts of international terrorism, i.e., Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria).

* * * * *

Dated: June 26, 1996.

Lynn E. Davis,

Under Secretary for Arms Control and International Security Affairs.

[FR Doc. 96–17753 Filed 7–11–96; 8:45 am]

BILLING CODE 4710–25–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Chapters XXVI and XL

RIN 1212–AA75

Reorganization, Renumbering, and Reinvention of Regulations; Correction

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule; correction.

SUMMARY: On July 1, 1996, the Pension Benefit Guaranty Corporation published in the **Federal Register** (at 61 FR 34001, FR Doc. 96–16398) a final rule reorganizing, renumbering, and reinventing its regulations. This document contains corrections to the final rule.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Marc L. Jordan, Attorney, Office of the General Counsel, Suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: FR Doc. 96–16398, appearing at 61 FR 34001 (July 1, 1996), contained errors that are corrected as follows:

§ 4022.23 [Corrected]

1. On page 34032, in the table, the entries for ages 52 and 53, footnote 1 to the table, and the first sentence of footnote 2 to the table, are corrected to read as follows:

FACTORS FOR CONVERTING TEMPORARY ADDITIONAL BENEFIT UNDER STEP-DOWN LIFE ANNUITY

Age of participant[1] at the later of the date the temporary additional benefit commences or the date of plan termination	Number of years temporary additional benefit is payable under the plan as of the date of plan termination[2]									
	1	2	3	4	5	6	7	8	9	10
52	.067	.131	.191	.248	.303	.357	.404	.451	.498	.545
53	.068	.133	.194	.252	.308	.363	.411	.459	.507	.555

[1] At last birthday.

[2] If the benefit is payable for less than 1 year, the appropriate factor is obtained by multiplying the factor for 1 year by a fraction, the numerator of which is the number of months the benefit is payable, and the denominator of which is 12. * * *

§ 4022.24 [Corrected]

2. On page 34033, in the left column, in paragraph (4) of § 4022.24(c), the words "thereafter.) In" are corrected to read "thereafter). In".

§ 4022.62 [Corrected]

3. On page 34036, in the right column, in the paragraph headed "Example 3—. Facts" and in paragraph (i) under the paragraph headed "Estimated guaranteed benefit," the figures "$2000" (which appear once in each of those two paragraphs) are corrected to read "$2,000".

§ 4022.63 [Corrected]

4. On page 34038, in the left column, in the undesignated paragraph following the paragraph headed "Estimated title IV benefit," the figure "$1000" is corrected to read "$1,000".

§ 4041A.2 [Corrected]

5. On page 34052, in the right column, in the second line of § 4041A.2, the reference "§ 4001.l" (ending with the letter "l") is corrected to read "§ 4001.1" (ending with the numeral "1").

Appendix A to Part 4044—[Corrected]

6. On pages 34067 and 34068, in Table 2–M, the heading for the right column is corrected to read "q_x".

7. On page 34067, in the center column, in Table 2–M, the entry for age 33 is corrected to read as follows:

Age x	q_x
33	0.030200

8. On page 34068, in the center column, in Table 2–F, the entry for age 79 is corrected to read as follows:

Age x	q_x
79	0.075524

9. On pages 34068 and 34069, in Table 3, the heading for the left column is corrected to read "Age x".

Appendix B to Part 4044—[Corrected]

10. On page 34069, in Table I [Annuity Valuations], the figures "i_1" (i-subscript-1), where they appear four times in the column headings, are corrected to read "it" (i-subscript-t), and the entry for July 1994 is corrected to read as follows:

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t=	i_t	for t=	i_t	for t=
July 1994	.0690	1–25	.0525	>25	N/A	N/A

11. On page 34070, in Table II [Lump Sum Valuations], in the second line of text, the words and figures "interger and $o < y \leq n_1$)," are corrected to read "integer and $o < y \leq n_1$),".

Appendix D to Part 4044—[Corrected]

12. On page 34071, in Table I–96 [Selection of Retirement Rate Category], the abbreviation "NRA" is corrected to read "URA" wherever it appears (four times) in the column headings.

13. On pages 34071 and 34072, in Tables II–A, II–B, and II–C, the words "Normal retirement age" are corrected to read "Unreduced retirement age" wherever they appear in the column headings (once in each of the three tables).

14. On page 34071, in Table II–A [Expected Retirement Ages for Individuals in the Low Category], the entry for age 63 is corrected to read as follows:

Participant's earliest retirement age at valuation date	Unreduced retirement age										
	60	61	62	63	64	65	66	67	68	69	70
63				63	63	64	64	65	65	65	65

Issued in Washington, D.C., this 9th day of July, 1996.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 96–17791 Filed 7–11–96; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 575

Iraqi Sanctions Regulations; Executory Contracts with the Government of Iraq

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendment.

SUMMARY: This final rule amends the Iraqi Sanctions Regulations to provide a general license authorizing U.S. persons to enter into executory contracts with the Government of Iraq for the purchase of Iraqi–origin petroleum and petroleum products, the sale of essential parts and equipment for the Kirkuk–Yumurtalik pipeline system, and the sale of humanitarian goods, with performance conditioned upon approval by the Office of Foreign Assets Control within the framework of United Nations Security Council Resolution 986 (1995).

EFFECTIVE DATE: July 10, 1996.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief, Licensing Division, Tel.: 202/622–2480, or William B. Hoffman, Chief Counsel, Tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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Background

On April 14, 1995, the United Nations Security Council (the "UNSC") adopted Resolution 986, which creates a framework, subject to agreement of the Government of Iraq, that would permit the Government of Iraq to sell $2 billion worth of petroleum and petroleum products over a 6–month period, with all proceeds placed in a UN escrow account for designated uses. On May 20, 1996, a Memorandum of Understanding Between the Secretariat of the United Nations and the Government of Iraq on the Implementation of Security Council Resolution 986 (1995) (the "Memorandum of Understanding") was signed by representatives of the Government of Iraq and the United Nations (the "UN"). The Memorandum of Understanding contains agreements preparatory to implementation of Resolution 986. A portion of the proceeds in the escrow account will be

available for Iraq's purchase of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs, to be specified in a list prepared by Iraq and submitted to and approved by the UN Secretary–General. At the UN level, this program will be administered by the UNSC Committee established pursuant to UNSC Resolution 661 (the "661 Committee"), which will establish guidelines concerning procedures for permitted Iraqi purchases and sales. Within the United States, the Treasury Department's Office of Foreign Assets Control ("OFAC"), in consultation with the Department of State, will implement UNSC Resolution 986. No direct financial transactions with the Government of Iraq are permitted.

This final rule amends the Iraqi Sanctions Regulations, 31 CFR part 575 (the "Regulations"), to provide a general license in new § 575.522, authorizing U.S. persons to enter into executory contracts with the Government of Iraq for the purchases of Iraqi–origin petroleum and petroleum products, and the sales of humanitarian goods and pipeline parts and equipment permitted pursuant to UNSC Resolution 986, provided that no contract with the Government of Iraq can be performed except as further authorized by OFAC. New §§ 575.323, 575.324, 575.325, and 575.326, provide definitions for the terms "661 Committee," "UNSC Resolution 986," "986 Escrow Account," and "executory contract."

All executory contracts must contain terms requiring that all proceeds of oil purchases from the Government of Iraq, including SOMO, must be placed in the UN escrow account at Banque Nationale de Paris, New York (the "986 Escrow Account"), and all Iraqi payment for sales of authorized pipeline parts and equipment, humanitarian goods, and incidental transaction costs borne by Iraq will, upon 661 Committee approval, be paid or payable out of the 986 Escrow Account.

The Office of Foreign Assets Control will provide further guidance on licensing policy for purchases of Iraqi–origin petroleum and petroleum products, and sales to Iraq of pipeline parts and equipment essential to the safe operation of the Kirkuk–Yumurtalik pipeline and of humanitarian goods, once the 661 Committee has provided guidance on its requirements for contract approval.

Because the Regulations involve a foreign affairs function, Executive Order 12886 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply.

There is no collection of information contained herein.

List of Subjects in 31 CFR Part 575

Administrative practice and procedure, Banks, banking, Blocking of assets, Exports, Foreign trade, Humanitarian aid, Imports, Iraq, Oil imports, Penalties, Petroleum, Petroleum products, Reporting and recordkeeping requirements, Specially designated nationals, Travel restrictions.

For the reasons set forth in the preamble, 31 CFR part 575 is amended as follows:

PART 575—IRAQI SANCTIONS REGULATIONS

1. The authority citation for part 575 continues to read as follows:

Authority: 50 U.S.C. 1701–1706; 50 U.S.C. 1601–1651; 22 U.S.C. 287c; Pub. L. 101–513, 104 Stat. 2047–55 (50 U.S.C. 1701 Note); 3 U.S.C. 301; E.O. 12722, 55 FR 31803, 3 CFR, 1990 Comp., p. 294; E.O. 12724, 55 FR 33089, 3 CFR, 1992 Comp., p. 317.

Subpart C—General Definitions

2. Section 575.323 is added to subpart C to read as follows:

§ 575.323 661 Committee.

The term *661 Committee* means the Security Council Committee established by UNSC Resolution 661, and persons acting for or on behalf of the Committee under its specific delegation of authority for the relevant matter or category of activity, including the overseers appointed by the UN Secretary–General to examine and approve agreements for purchases of petroleum and petroleum products from the Government of Iraq pursuant to UNSC Resolution 986 (1995).

3. Section 575.324 is added to subpart C to read as follows:

§ 575.324 UNSC Resolution 986.

The term *UNSC Resolution 986* means United Nations Security Council Resolution 986, adopted April 14, 1995.

4. Section 575.325 is added to subpart C to read as follows:

§ 575.325 986 Escrow Account.

The term *986 Escrow Account* means the escrow account established by the Secretary–General of the United Nations pursuant to paragraph 7 of UNSC Resolution 986.

5. Section 575.326 is added to subpart C to read as follows:

§ 575.326 Executory contract.

The term *executory contract* means a contract which cannot be performed according to its terms until a stated condition has been fulfilled, such as a contract which requires the approval of a regulatory body before the contracting parties may begin performance.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

6. Section 575.522 is added to subpart E to read as follows:

§ 575.522 Executory contracts with the Government of Iraq for trade in petroleum, pipeline parts and equipment, and humanitarian goods authorized.

(a) United States persons are authorized to enter into executory contracts with the Government of Iraq for the following transactions, the performance of which (including any preparatory activities, payments or deposits related to such executory contracts) is contingent upon the prior authorization of the Office of Foreign Assets Control in or pursuant to this part:

(1) The purchase and exportation from Iraq of Iraqi–origin petroleum and petroleum products;

(2) The trading, importation, exportation, or other dealings in or related to Iraqi–origin petroleum and petroleum products outside Iraq;

(3) The sale and exportation to Iraq of parts and equipment that are essential for the safe operation of the Kirkuk–Yumurtalik pipeline system in Iraq; and

(4) The sale and exportation to Iraq of medicines, health supplies, foodstuffs, and materials and supplies for essential civilian needs.

(b) The authorization contained in paragraph (a) of this section applies only to executory contracts meeting both of the following conditions:

(1) The executory contracts, including all related financing, insurance, transportation, delivery, and other incidental contracts, are consistent with all requirements of UNSC Resolution 986, other applicable Security Council resolutions, the May 20, 1996 Memorandum of Understanding Between the Secretariat of the United Nations and the Government of Iraq on the Implementation of Security Council Resolution 986 (1995), and applicable guidance issued by the 661 Committee; and

(2) The executory contracts make any performance involving the exportation, reexportation, transfer or supply of any goods, technology or services that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. See § 575.101(b).

(c) Nothing in this section authorizes any transaction related to a United States person's travel to Iraq or activity within Iraq, or any debit to an account blocked pursuant to this part.

(d) Note: U.S. passports must be validated by the U.S. Department of State for travel to Iraq.

(e) Attention is drawn to the recordkeeping and retention requirements of § 575.601.

Dated: July 9, 1996.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: July 9, 1996.

James E. Johnson,

Assistant Secretary (Enforcement).

[FR Doc. 96–17951 Filed 7–10–96; 2:05 pm]

BILLING CODE 4810–25–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 127, 158, 179, and 183

[CGD 96–026]

RIN 2115 AF33

Technical Amendments; Organizational Changes; Miscellaneous Editorial Changes and Conforming Amendments

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final regulations [CGD 96–026] which were published Friday, June 28, 1996, (61 FR 33660). The regulations related to recent agency organizational changes and editorial changes throughout Title 33, Code of Federal Regulations.

EFFECTIVE DATE: June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Walton, Project Manager, Office of Standards Evaluation and Development (G–MSR–2), (202) 267–0257.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections amend Title 33, Code of Federal Regulations to reflect recent agency organizational changes. They also make editorial changes to correct addresses, update cross-references, remove obsolete regulatory provisions and make other technical corrections. This rule has no substantive effect on the regulated public.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on June 28, 1996, of the final regulations [CGD 96–026], which were the subject of FR Doc. 96–16488 is corrected as follows:

§ 127.003 [Corrected]

1. On page 33665, in the first column, in § 127.003, line 2, the word "(G–MTH)" is corrected to read "(G–MPS)".

§ 158.140 [Corrected]

2. On page 33668, in the first column, in § 158.140(a)(2), line 4, add the word "port" immediately before the word "or".

§ 179.19 [Corrected]

3. On page 33669, in the second column, line 26, the amendatory language for § 179.19 is corrected to read "In § 179.19, in paragraph (b), remove the word "(G–MMS–4)" and add, in its place, the word "(G–MSE–4)"."

§ 183.3 [Corrected]

4. On page 33670, in the second column, in § 183.3, add, following the definition of "*Transom*", the definition "*Transom height* means the vertical distance from the lowest point of water ingress along the top of the transom to a line representing a longitudinal extension of the centerline of the boat's bottom surface, excluding keels. This distance is measured as a projection on the centerline plane of the boat. See Figure 183.3.".

Dated: July 10, 1996.

Howard L. Hime,

Acting Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 96–17894 Filed 7–11–96; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AH54

Post-Vietnam Era Veterans' Educational Assistance: Miscellaneous; Correction

AGENCIES: Department of Defense and Department of Veterans Affairs.

ACTION: Final rule; correction.

SUMMARY: This document corrects typographical errors contained in a final rule published in the **Federal Register** on Friday, June 7, 1996 (61 FR 29028), concerning the Post Vietnam Era Veterans' Educational Assistance Program (VEAP). This action is necessary to correct amendatory language regarding authority citations.

EFFECTIVE DATE: June 7, 1996.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–273–7187.

Accordingly, the publication on June 7, 1996 of the final rule, which was the subject of FR Doc. 96–14202, is corrected as follows:

§ 21.5100 [Correction]

On page 29030, in the first column, in § 21.5100, amendatory instruction number 11 is corrected to read as follows:

In § 21.5100, the authority citation following paragraph (b) is amended by removing "3241; Pub. L. 96–466, Pub. L. 99–576", and adding, in its place, "3697A(a)"; the authority citation following paragraph (c) is amended by removing "1663 (repealed, Pub. L. 102–16 § 2(b)(1)); Pub. L. 99–466, Pub. L. 99–576" and adding, in its place, "3241, 3697A(a) and (b)"; and the authority citation following paragraph (d) is amended by removing "3697A" and adding, in its place, "3697A(c)".

Dated: July 5, 1996.

Thomas O. Gessel,

Director, Office of Regulations Management, Office of General Counsel, Department of Veterans Affairs.

Dated: July 8, 1996.

W.S. Sellman,

Director, Accession Policy Office, Assistant Secretary for Force Management Policy, Department of Defense.

[FR Doc. 96–17726 Filed 7–11–96; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 64

[MD Docket No. 96–84; FCC 96–295]

Assessment and Collection of Regulatory Fees for Fiscal Year 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has revised its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 1996. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory

fees. For fiscal year 1996 sections 9(b)(2) and (3) provide for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees. These revisions will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

EFFECTIVE DATE: September 10, 1996.

FOR FURTHER INFORMATION CONTACT: Peter W. Herrick, Office of Managing Director at (202) 418–0443, or Terry D. Johnson, Office of Managing Director at (202) 418–0445.

SUPPLEMENTARY INFORMATION:
Adopted: July 1, 1996;
Released: July 5, 1996.

By the Commission: Commissioner Chong concurring and issuing a statement in which Commissioner Quello joins at a later date.

Table of Contents

Topic	Paragraph Nos.
I. Introduction	1–4
II. Background	5–7
III. Discussion	8–73
A. Overall Methodology	8–11
B. Adjustment of Payment Units	12
C. Adjustment of Television Station Fees	13
D. Recalculation of Fees—Mandatory Adjustments	14
E. Proposed Permitted Amendments	15–50
1. Commercial Mobile Radio Service	16–22
2. Commercial AM/FM Radio	23–29
3. Commercial VHF/UHF Television Stations	30–32
4. Auxiliary Broadcast Stations	33–36
5. Intelsat & Inmarsat Signatory	37–47
6. Low Earth Orbit (LEO) Satellite Systems	48–49
7. Minimum Fee Payment Liability	50
F. Additional Regulatory Fee Issues	51–68
1. Cable Television Systems	51–57
2. International Bearer Circuits	58–65
3. National Exchange Carriers Association	66–67
4. Mobile Satellite Service (MSS)	68
G. Procedures for Payment of Regulatory Fees	69–74
1. Annual Payments of Standard Fees	70–72
2. Installment Payments for Large Fees	73
3. Advance Payments of Small Fees	74
H. Schedule of Regulatory Fees	75
IV. Ordering Clause	76
V. Authority and Further Information	77–78
Appendix A—Final Regulatory Flexibility Analysis	
Appendix B—Sources of Payment Unit Estimates	
Appendix C—Calculation of Pro-Rata Adjustments	
Appendix D—Schedule of Regulatory Fees	
Appendix E—Comparison Between FY 1995, Proposed FY 1996 and Final FY 1996 Fees	
Appendix F—Detailed Guidance on Who Must Pay Regulatory Fees	
Appendix G—Description of FCC Activities	
Appendix H—Parties Filing Comments and Reply Comments	
Final Rules	

I. Introduction

1. By this *Report and Order*, the Commission completes its rulemaking proceeding to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, has required it to collect for Fiscal Year (FY) 1996. *See* 47 U.S.C. § 159(a).

2. For FY 1996, Congress has required that we collect $126,400,000 in regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 1996. Public Law No. 104–134 and 47 U.S.C. § 159(a)(2). This is $10 million more than Congress designated for recovery through regulatory fees for FY 1995. *See Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, FCC 95–227, released June 19, 1995, 60 FR 34004 (June 29, 1995). *See FY 1995 Report and Order*, 10 FCC Rcd 13531. It is also $10 million more than Congress initially required us to collect in regulatory fees for FY 1996.[1] *See Notice of Proposed Rulemaking in the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, FCC 96–153, released April 9, 1996, 61 FR 16432 (April 15, 1996). The current Schedule of Regulatory Fees ("Schedule") is set forth in Sections 1.1152 through 1.1156 of the Commission's rules. 47 CFR §§ 1.1152–1.1156.

[1] Subsequent to the April 9, 1996 release of our NPRM in this proceeding, the Congress passed and the President signed on April 26, 1996, H.R. 3019 (Public Law No. 104–134), 110 STAT. 1321, which changed the total amount of regulatory fees to be collected in FY 1996 from $116.4 million (contained in Public Law No. 104–99) to $126.4 million.

3. In addition to adjusting our Section 9 regulatory fees to ensure collection of the $126.4 million that Congress requires us to collect in FY 1996, we are also adjusting the Schedule and associated payment procedures to reflect changes to certain fee amounts recently mandated by Congress in Public Law No. 104–134, to reflect changes in the estimated number of payment units associated with services subject to a fee and to incorporate certain public interest considerations. *See* 47 U.S.C. 159(b).

4. Finally, we are amending the Schedule in order to assess regulatory fees upon licensees and/or regulatees of services not currently subject to payment of a fee, to simplify and streamline the Schedule and to clarify and/or revise certain payment procedures. 47 U.S.C. § 159(b)(3). Except where noted, in those instances where we received no comments on a proposal set forth in our *NPRM*, we are adopting the proposal without further discussion.

II. Background

5. Section 9(a) of the Communications Act of 1934, as amended, requires us to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that we incur in carrying out enforcement, policy and rulemaking, international, and user information activities. 47 U.S.C. 159(a). In our *FY 1994 Report and Order*, 59 FR 30984 (June 16, 1994), 9 FCC Rcd 5333, we adopted the Schedule of Regulatory Fees that Congress established and we prescribed rules to govern payment of the fees, as required by Congress. 47 U.S.C. § 159(b), (f)(1). Subsequently, in our *FY 1995 Report and Order*, we modified the Schedule to increase by approximately 93 percent the revenue generated by our regulatory fees due to the increased amount that Congress required us to collect in FY 1995. 60 FR 34004 (June 29, 1995). Also, in the *FY 1995 Report and Order*, we amended certain rules governing our regulatory fee program based upon our experience administering the program in FY 1994. *See* 47 CFR §§ 1.1151 *et seq.*

6. As noted above, for FY 1994 we adopted the Schedule of Regulatory Fees established in Section 9(g) of the Act. For fiscal years after FY 1994, however, Sections 9(b)(2) and (3), respectively, provide that we adjust our fees by making "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees. 47 U.S.C. 159(b)(2), (b)(3). Section 9(b)(2), entitled "Mandatory Adjustments", requires that we revise the Schedule of Regulatory Fees whenever Congress changes the amount that we are to recover. 47 U.S.C. 159(b)(2).

7. Section 9(b)(3), entitled "Permitted Amendments," requires that we determine annually whether to adjust the fees to take into account factors that are reasonably related to the benefits provided to the payors of the fees and factors that are in the public interest. In making these amendments, we are to "add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services." 47 U.S.C. 159(b)(3). Section 9(i) requires that we develop accounting systems necessary to making permitted amendments. 47 U.S.C. 159(i). Finally, we are required to notify Congress of any permitted amendments 90 days before those amendments go into effect. 47 U.S.C. 159(b)(4)(B).

III. Discussion

A. Overall Methodology

8. As noted above, Congress has required that we recover $126,400,000 for FY 1996 through the collection of regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities. 47 § U.S.C. 159(a).

9. In our *NPRM*, we proposed to develop our fees for FY 1996 by first adjusting our estimates of payment units so that we could determine how much revenue we would collect even if we did not change any individual fee amounts. We then compared the total estimated revenue that we would collect at the existing fee amounts to the total revenues that we are required to collect in FY 1996 ($126.4 million), and pro-rated the difference among all the existing fee categories.[2] We then intended to compare these projected revenues with cost data accumulated from our new cost accounting system and to make any further adjustments necessary to ensure that costs generally correlated with revenues in each fee category. As discussed in the *NPRM*, this step was not performed due to implementation problems associated with our new cost accounting system.

10. We next considered various recommendations made by our Bureaus' and Offices' managers concerning adjustments to the fees and to our collection procedures. The results of these actions, the detailed steps we followed in the development of our proposed FY 1996 regulatory fees, and a proposed new Schedule of Regulatory Fees were presented in our *NPRM*.[3] In addition, we provided detailed descriptions of each fee category, information on the entity responsible for payment of each fee, and other critical information designed to assist potential fee payers in determining the extent of fee liability, if any, for FY 1996. We invited interested parties to comment on our proposed methodology and on our various proposals to revise the Schedule of Regulatory Fees. We are adopting the same general methodology, as set forth in Paragraphs 12–14 below, for developing FY 1996 regulatory fees as we proposed in our *NPRM*.

11. While we received no comments specifically supporting or opposing the proposed methodology, the law firm of Bernstein and McVeigh contends that regulatees are entitled to a fee payment credit because the Federal government, including the Commission, was closed for business for significant periods due to budget disputes and snowstorms resulting in substantially lower regulatory expenditures than anticipated. However, we have no discretion in the amount that we are required to collect since it is Congress that annually establishes the amount that we are to collect through regulatory fees. *See* 47 U.S.C. 159(a). Thus, Bernstein and McVeigh's pleading requires no further discussion.

B. Adjustment of Payment Units

12. In order to calculate individual service fees for FY 1996, we first adjusted the estimated payment units for each service because, in many services, payment units have changed substantially since last year. We obtained our estimates through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Herein, we are further adjusting certain payment units to reflect refinements to our unit counts since adoption of our *NPRM*. Appendix B provides a summary of how payment units were determined for each fee category.

C. Adjustment of Television Station Fees

13. On April 26, 1996, the President signed H.R. 3019 (Public Law No. 104–134), "The Balanced Budget Downpayment Act." This legislation, in addition to requiring that we collect $126.4 million in regulatory fees, revised the fees for television broadcast licensees set forth in Section 1.1153 of our rules.[4] As Congress has required, we have incorporated its revised television station fees into our Schedule of Regulatory Fees for FY 1996.

D. Recalculation of Fees—Mandatory Adjustments

14. We next determined the amount of revenue to be collected from television station licensees based on the new fee amounts established by Congress, as discussed in Paragraph 13. *See* Appendix C. We subtracted our estimated television revenues ($10,060,000) from the total amount that Congress requires us to collect in FY 1996 ($126,400,000). The difference ($116,340,000) is the amount to be recovered from all other regulatees in order to meet Congress' requirement for FY 1996. We then multiplied the revised payment unit estimates for FY 1996 by the corresponding FY 1995 fee amounts in each non-television fee category to determine the revenue we would collect in FY 1996, assuming no other change to the FY 1995 fees. Next, we adjusted the revenue requirements for each fee category on a proportional basis, consistent with Section 9(b)(2) of the Act, in order to insure that we would collect approximately $116,340,000 from these fee categories. Finally, we recalculated the individual fee amounts in order to collect the adjusted amount in each service, and

[2] As noted earlier, Congress increased the amount to be collected in FY 1996 from $116.4 million to $126.4 million subsequent to release of our *NPRM* in this proceeding.

[3] Permitted amendments are being made pursuant to Section 9(b)(3) to incorporate CMRS Mobile Services, CMRS One-Way Paging, Intelsat & Inmarsat Signatory, and Low Earth Orbit (LEO) Satellite Systems regulatory fee categories and to make related changes to Geosynchronous Space Station fees. These new permitted amendments will require 90 days Notice to Congress prior to implementation, 47 U.S.C. 159(b)(4)(B). However, it should be noted that for the CMRS Mobile Services, licensees who have not elected to convert their stations from private to commercial status will not be subject to payment of a CMRS Mobile Services regulatory fee for FY 1996. Therefore, for stations licensed as commercial on or before the date of determination of fee liability the fee will become effective 60 days from the date of publication in the **Federal Register**. *See* para. 17–22.

[4] Specifically, Public Law No. 104–134 made the following changes to Section 1.1153:

Fee category (VHF/UHF Television stations)	FY 1995 fees	New FY 1996 fees
VHF Markets 1–10	$22,400	$32,000
VHF Markets 11–25	19,925	26,000
VHF Markets 26–50	14,950	17,000
VHF Markets 51–100	9,575	9,000
Remaining VHF Markets	5,225	2,500
UHF Markets 1–10	17,925	25,000
UHF Markets 11–25	16,950	20,000
UHF Markets 26–50	11,950	13,000
UHF Markets 51–100	7,975	7,000
Remaining UHF Markets	4,875	2,000

rounded each fee amount as provided by Section 9(b)(2).[5] Appendix C provides detailed calculations describing how the revised fee amounts were determined.

E. Proposed Permitted Amendments

15. In our *NPRM*, we proposed certain changes and additions to our current fee categories and to our methodologies for assessing fees in individual service categories. We have given full consideration to the comments by interested parties and, in certain instances, we have decided that further adjustments to the Schedule of Regulatory Fees are warranted based upon the public interest and other criteria established in 47 U.S.C. 159(b)(3). Each of these changes is discussed below together with any comments we received in response to our *NPRM*. However, as noted above, we will not discuss further any of our proposals from the *NPRM* which received no comments. Instead, these proposals are incorporated as proposed in our *NPRM* or are not adopted in those cases in which we proposed not to change our current rules and procedures. These include: Commercial AM/FM/TV Construction Permits, where we considered and rejected including the revenue requirement in the fees for the broadcast station licensees; Wireless Cable, where we considered and rejected the idea of basing the payment units on subscriber counts instead of on a per license basis; Direct Broadcast Satellite (DBS) Service, where we also considered and rejected a proposal to establish payment units on a subscriber basis rather than per satellite; Interstate Telephone Service Providers, where we proposed to consolidate several service categories into one category; and Earth Stations, where we also proposed to consolidate several service categories into one category.

1. Commercial Mobile Radio Service (CMRS)

16. In the NPRM, we proposed to establish a CMRS Mobile Services fee category and to include in the category cellular providers and CMRS service licensees authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. *See NPRM* at para. 19. We stated that the new CMRS Mobile Services category was intended to replace the Public Mobile/Cellular Radio regulatory fee category and that certain mobile services assigned to the Private Land Mobile Radio Service fee category for FY 1995 would be included in the new CMRS category for FY 1996.[6] Also, we proposed to defer assessing a regulatory fee upon licensees in the Personal Communications Service (PCS) because PCS is in a very early start-up phase. Finally, we proposed that CMRS Mobile Services fee payors calculate their annual regulatory fee based on their total mobile or cellular unit (mobile or cellular call sign or telephone number) count, or on their total per unit (two-way pager) count, as determined on December 31, 1995.

17. The American Mobile Telecommunications Association, Inc. (AMTA) and Nextel Communications, Inc. (Nextel) oppose including Specialized Mobile Radio (SMR) licensees and other mobile communications providers, previously assigned to one of the Private Mobile Radio Services (PMRS) fee categories, in the CMRS Mobile Services fee category for FY 1996. The parties contend that these mobile service providers are not properly subject to the CMRS Mobile Services fee because their operations were not a part of the CMRS service on December 31, 1995, the date for calculating the CMRS Mobile Services fee, and, in fact, will not convert to CMRS status until August 10, 1996. AMTA and Nextel also urge that we exclude from the CMRS Mobile Services category any mobile units that do not have full interconnection capability with the public switched network. In addition, Nextel contends that, given the competitive status of CMRS providers, we should not subject some new mobile service providers to a CMRS Mobile Services fee and defer imposition of the requirement on other new providers, such as PCS. Instead, AMTA and Nextel urge that current mobile service providers pay no fee or remain in the PMRS fee category. Finally, AMTA contends that existing mobile licensees who have paid their regulatory fees in advance should not be subject to a CMRS Mobile Services fee until they file applications for renewal or reinstatement. In the alternative, AMTA and Nextel contend that current licensees that become subject to the CMRS Mobile Services fee before their existing licenses expire are entitled to a credit for the remaining years of their advance fee payments.

18. In the Omnibus Budget Reconciliation Act of 1993, Congress provided that private carrier systems, including 220–222 MHz and SMR services, providing interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public, were to be reclassified as CMRS licensees.[7] Congress provided a three year transition period pursuant to which private carrier licensees authorized prior to August 10, 1993, would continue to be regulated as private carriers until August 10, 1996. Therefore, we agree with the commenters that we should not require licensees that will not become subject to CMRS regulation until August 10, 1996, to pay a CMRS Mobile Services fee for FY 1996. Further, we agree with the parties that existing CMRS licensees should include in their calculations of the CMRS Mobile fee only those units operational on December 31, 1995. Also, as a result of this decision, we have reduced our estimate of the number of payment units for this category.

19. However, we do not agree that CMRS units that do not fully connect with the public switched network should not be subject to the CMRS fee. Consistent with Sections 9(a) and 9(b), our CMRS Mobile Services fee is based upon the costs of our regulatory oversight. As such, we will require mobile providers to submit a CMRS Mobile Services fee based upon our regulatory costs rather than the particular use that a provider makes of its frequencies. Therefore, mobile operators, otherwise subject to the CMRS Mobile Services fee, should submit a CMRS Mobile services fee for any unit operating under the authority of a license authorizing the operator to provide "for profit" service to the public and to interconnect its services with the public switched network, without limitation, or to such classes of eligible users as to be effectively available to a substantial portion of the public, as described in Section 20.3 of our Rules.[8] 47 CFR 20.3.

20. In addition, we reject Nextel's argument that, because we have decided that PCS licensees should not be subject to the fee for FY 1996, all new providers of CMRS service should be excepted from payment of the CMRS Mobile Services fee. Unlike other services within the CMRS category of services, PCS has only recently been established and few PCS providers are now operational. In contrast, SMR licensees, such as Nextel, have long been eligible to provide mobile service, including interconnection with the public switched network, and thus, although they may be newly assigned to CMRS, these operators cannot be said to be new providers of mobile services.

21. We recognize that some current mobile service providers have paid Private Land Mobile fees covering the length of their license term. However, we decline to defer assessing a CMRS fee on these licensees until the expiration of their current licenses.[9] In our *NPRM*, we stated that payors of advance fees would not have these fees "adjusted" during their license term. *See NPRM* at para. 56. Our clear purpose was to assure payors of advance fees that we would not require any additional payment if we increased the fee amount required for the fee category in which the payment was made. It was not our intent that licensees transferred from one fee category to another would not be subject to the fee payment required by their new fee category until the expiration of their current license. Nevertheless, under our Rules, a licensee is entitled to a refund of an advance payment, upon request, whenever we "adopt new rules that nullify a license or other authorization." 47 CFR 1.1159(2)(i). Therefore, any licensee that converts from private to CMRS and has paid its fees in advance for a period of years, may file a request for refund with its initial CMRS regulatory fee payment. Detailed procedures for refund requests will be issued by Public Notice.

22. Destineer, Inc., a PCS licensee, asks that we establish a CMRS Messaging Service fee category to replace our CMRS One-Way Paging fee category. Destineer recognizes that, as a PCS provider, it is not subject to any fee payment for FY 1996. However, it states that, with the exception of two-way paging services, our CMRS Mobile category includes only broadband services and that broadband services, unlike paging services, provide for real time two-way interactive voice communications. We agree with Destineer that there are important regulatory, technical and competitive differences between the two narrowband and broadband services that may warrant establishing a fee category that would include all narrowband services, including two-way paging. However, Destineer has provided us with no information concerning how to structure its proposed fee category, *e.g.*, estimated units that would be included in the category for FY 1996 or the impact of the new fee category on revenues from our CMRS Mobile fee category. Therefore, we will adopt our proposed CMRS Mobile Services and CMRS One-Way Paging fee categories for FY 1996, but we invite interested parties to file proposals and comments on alternative methods to assess CMRS fees in our proceeding to establish regulatory fees for FY 1997.

2. Commercial AM/FM Radio

23. In our *NPRM*, we discussed a proposal to assess regulatory fees for Commercial AM and FM radio licensees according to the size of a station's market, but concluded that development of a market-based fee assessment methodology for radio broadcast stations appeared to be not cost effective. *See* FCC 96–153 at ¶ 20.[10] As a result, we proposed to assess radio broadcast fees solely on the basis of class of license, utilizing the statutory fee structure that we adopted for FY 1994 and FY 1995. 47 U.S.C. 159(g). In our *NPRM*, we invited comments proposing alternatives to the current radio fee structure. *Id.* at ¶ 21.

24. The Montana Broadcasters Association (Montana) filed comments proposing a radio broadcast service fee structure based on class of station and on market size. Montana maintains that its proposed fee structure is similar to the fee structure that Congress enacted for television broadcast stations and that it would more fairly allocate regulatory fees among radio stations by reducing the fees for small market radio stations and increasing them for larger stations. *See* 47 U.S.C. 159(g).

25. Montana's proposed fee structure takes into account both a station's market size and the classification of its facilities. The proposed fee structure establishes broad groupings of radio broadcast markets determined by market size. It assigns a different level of fees for each market grouping predicated on the ratios between fees that Congress initially assessed for licensees in different sized television markets. Montana proposes four specific market classifications: Markets 1 through 25, Markets 26 through 50, Markets 51 through 100, and Remaining Markets. Stations are assigned to a market grouping based upon Arbitron Rating Co. (Arbitron) market designations. Montana proposes ratios between fees paid by larger market radio broadcast stations and fees paid by remaining market radio broadcast stations as follows:

Markets 1 through 25—1 to 3.4[11]
Markets 26 through 50—1 to 2.4
Markets 51 through 100—1 to 1.6

26. Montana assigns different classes of stations to each market by relying on an analysis of the broadcast markets conducted by Dataworld MediaXpert Service. According to Montana, its proposed rate structure would result in aggregate revenue to the Commission approximating the amount to be recovered from AM and FM licensees through the fee structure proposed in our *NPRM*. Although the Montana proposal would raise the fees for radio stations in the top 100 markets, no comments were filed by parties who would be adversely affected by the proposal.

27. Montana proposes to utilize the Dataworld data base which in turn is based on Arbitron market rankings. In

[5] Section 9(b)(2) requires that we round fees to the nearest $5 in the case of fees under $1,000, or to the nearest $25 in the case of fees of $1,000 or more. 47 U.S.C. 159(b)(2).

[6] Specifically, we proposed that the CMRS Mobile Service fee category would include cellular providers (Part 22) and Business Radio Services, 220–222 MHz Land Mobile Systems, Specialized Mobile Radio Services (Part 90); Public Coast Stations (Part 80); Public Mobile Radio, 800 MHz Air-Ground Radiotelephone, and Offshore Radio Services (Part 22). Licensees who have not elected to convert from private to commercial operations will be exempt from payment of the annual CMRS Mobile Services fee for FY 1996. Existing commercial licensees and those who elected to convert prior to December 31, 1995, must pay the annual CMRS Mobile Services fee for FY 1996.

[7] *See* Omnibus Budget Reconciliation Act of 1993, Public Law No. 103–66, Title VI § 6002(b), 107 Stat. 312, 392.

[8] For regulatory fee purposes, "distress" traffic is not included as part of a public coast station licensee's subscriber count.

[9] Because Private Land Mobile regulatory fees are submitted with license applications and paid for the number of years in the term of the license, these licensees have paid their regulatory fees several years in advance. *See* 47 U.S.C. 159(f)(2).

[10] In our *FY 1995 NPRM*, we recognized "that the population density of a station's geographic location was also a public interest factor warranting recognition in the fee schedule." FCC 95–14 at ¶ 29. Subsequently, we declined to adopt a market-based fee structure for AM and FM radio because we were unable to develop a reliable and accurate method for differentiating among radio markets. *See FY 1995 Report and Order*, 10 FCC Rcd at 13531–532.

[11] *See* Montana's petition, n. 4 at p 4. The ratios that Montana employs are those that Congress established in its fee structure for television broadcast regulatory fees. *See* 47 U.S.C. § 159(g). The Montana proposal would raise the fees for stations in larger markets and reduce the fees in smaller markets. For example the *NPRM* proposed a regulatory fee for Class A AM stations of $1,125. Utilizing the proposed Montana Schedule, Class A stations in remaining markets would have their fees reduced to $850; while Class A stations in Markets 1 through 25 would pay $2,890; in Markets 26 through 50 they would pay $2,040 and in Markets 51–100 they would pay $1,360. We note that Congress recently directed the Commission to modify the regulatory fee schedule to increase the differential between the fees paid by major market television stations and fees paid by television stations located outside of the top 50 markets. Utilizing new ratios between fees paid by television in larger and smaller markets based on the relationship between the fees Congress has established would further increase the differential between payments by radio stations in larger and smaller markets.

our *FY 1995 Report and Order*, we found that a proposal to base fees on Arbitron data did not provide a sufficiently accurate and equitable methodology for determining fees. 10 FCC Rcd at 531–532. Moreover, because Congress recently mandated that we amend the regulatory fee schedule for television stations, we believe that further evaluation of the proposal is necessary in order to determine the proper ratio between fees for radio stations in different markets and to evaluate the impact of this change. *See* H.R. 3019, H. Rept. 104–537.

28. As a result, for FY 1996, we have decided to adopt the basic fee structure proposed in our *NPRM*, which differentiates between licensees based on the class of a station's license. The fees therein are low enough so that they should not be an onerous burden on most licensees, and our policy is to grant waivers of the fees where our licensees can make a showing of a compelling case of financial hardship.

29. We agree, however, that there may be inequities in requiring all radio stations of the same class to pay the same fee without regard to the size of their market, particularly since stations serving greater populations generally have greater revenues than stations serving smaller markets. Thus, we believe that the Montana proposal warrants further study and consideration. It is our intention to consider the Montana proposal, or some modification thereof, for assessment of the FY 1997 fees. We will be commencing, subsequent to this proceeding, a *Notice of Inquiry* in order to develop a more appropriate methodology for assessing AM and FM fees. We invite interested parties to comment on Montana's proposal and to submit alternative AM and FM fee methodologies for our consideration in the context of that proceeding.

3. Commercial VHF/UHF Television Stations

30. Subsequent to the release of the FY 1996 *NPRM*, Congress required that we revise Section 1.1153 of the rules in order to increase the fees for VHF and UHF Television Stations located in the top 50 markets and to reduce the fees for stations in the 51 to 100 largest markets and in the remaining markets category. Public Law No. 104–134. Therefore, as required by Congress, we will amend Section 1.1153 of our rules to include the specific fees that Congress determined should be assessed licensees in the Television Broadcast Service for FY 1996. See Appendix D for a listing of the FY 1996 Television Broadcast fees.

31. In our *NPRM* we proposed to rely on Nielsen DMA rankings to determine the appropriate regulatory fee for television licensees in FY 1996 because Arbitron has ceased publication of its Areas of Dominant Influence that we formerly relied upon. *See NPRM* at para. 27. Southern Broadcast Corporation of Sarasota (Southern), licensee of Station WWSB(TV), Sarasota, Florida, opposes reliance on Nielsen DMA's because, as calculated by the DMA, its market rank would change to the 15th largest DMA market from the 153rd ADI market. As a result, Southern will be subject to a substantially higher fee than it has previously been assessed.

32. We have decided to rely on Nielsen's DMA market rankings, as proposed. As noted above, current Arbitron data for assessing television regulatory fees is no longer available. Nielsen data is generally accepted throughout the industry and will be updated and published annually by Warren Publishing in its *Television and Cable Factbook*. While the change may result in some licensees being assigned to new markets, this is not a basis for rejecting Nielsen markets. Nielsen markets may, in fact, provide a more accurate reflection of an applicant's service area than do Arbitron markets. We will consider the equities concerning the fees of licensees that change markets on a case-by-case basis, upon request, and, where a licensee demonstrates that it does not serve its assigned market, we will consider reducing the assigned fees to a more equitable level, based upon the area actually served by the licensee.

4. Auxiliary Broadcast Stations

33. This fee category includes licensees of Remote Pickup Stations, Aural Broadcast Auxiliary Stations, Television Broadcast Auxiliary Stations, and Low Power Auxiliary Stations, authorized under Part 74 of the Commission's Rules. These stations are generally associated with a particular television or radio broadcast station or cable television system.

34. In an attempt to simplify the Fee Schedule, our *NPRM* considered the feasibility and equity of combining Auxiliary Broadcast Station fees with the primary fees paid by broadcast station licensees and cable television operators into a single, consolidated fee. Although a consolidated fee has certain advantages, there are significant problems with using this approach and we found that such a fee would likely result in serious inequities since larger commercial broadcast stations and cable systems in the most profitable markets are more likely to utilize multiple auxiliary stations. While a consolidated fee would have little impact on stations serving larger populations, it could result in less profitable stations in smaller markets subsidizing regulatory fees for stations serving larger markets. Thus, our *NPRM* proposed to retain Auxiliary Broadcast Station fees as a separate category in FY 1996.

35. The Society of Broadcast Engineers (SBE) urges reduction or elimination of the Auxiliary Broadcast Station fee. It contends that frequency coordination and regulation of these facilities are in large part conducted by volunteers and supported by voluntary contributions from the industry. In SBE's view, imposition of a regulatory fee on broadcast auxiliary stations could "possibly place the entire program of SBE-affiliated frequency committees in jeopardy."

36. We have decided to not reduce or eliminate the Auxiliary Broadcast Station fee. We cannot conclude that our proposed regulatory fee would adversely impact voluntary coordination of auxiliary stations. Moreover, the relatively small fee for Auxiliary Broadcast Stations already takes into account volunteer efforts, including those described by SBE. Accordingly, we will retain a separate Auxiliary Broadcast Station fee as proposed in the *NPRM*. *See* Appendix F, Paragraph 27.

5. Intelsat and Inmarsat Signatory

37. In our *NPRM*, we proposed to establish a Signatory fee category to recover our costs of regulating the U.S. Signatories to the International Telecommunications Satellite Organization (Intelsat) and to the International Mobile Satellite Organization (Inmarsat). *See FY 1996 NPRM* at para. 43. We stated that the new fee was warranted due to the unique role of the U.S. Signatories in Intelsat's and Inmarsat's structure and our regulatory role with respect to these entities. The U.S. Signatory to Intelsat is the Communications Satellite Corporation (Comsat), the entity designated, pursuant to the Communications Satellite Act, as the sole operating entity to participate in Intelsat in order to construct and operate the space segment of the global commercial telecommunications satellite system established under the Interim Agreement and Special Agreement signed by the Governments on August 20, 1964. *See* 47 U.S.C. 731. Also, pursuant to the Communications Satellite Act, Comsat is solely designated to participate in the Inmarsat. *See* 47 U.S.C. 751. Because Comsat is the entity that Congress designated as the U.S. Signatory to both Intelsat and Inmarsat, the fee would apply only to Comsat.

38. Comsat has opposed our adoption of the Signatory Fee, contending that the proposed fee is unlawful and, even if lawful, excessive. GE American Communication, Inc. (GE Americom) has filed comments supporting our adoption of the Signatory fee and reply comments responding to certain of Comsat's arguments.

39. Comsat believes that the Signatory fee is beyond our authority in light of Congress' intention not to assess a fee upon space stations operated by international organizations. *See FY 1995 Report and Order* at para. 110. In addition, Comsat argues that we are authorized to establish new fee categories only in those instances in which there has been a change in our regulation or in the law. Comsat also claims that the Signatory fee is prohibited by Article I, Section 8, Clause 1 of the United States Constitution as an unauthorized and unconstitutional tax because it bears no relationship to any specific regulatory benefit that Comsat receives from the Commission. Instead, Comsat argues, Congress alone conferred upon Comsat its "special benefit" of Signatory status. Finally, Comsat maintains that, even assuming that we have authority to establish a Signatory fee, the total amount to be recovered by the fee is grossly excessive.

40. We reject Comsat's contention that the Signatory fee contravenes Congressional intent reflected in Section 9. In the Conference Report accompanying Section 9, Congress stated with respect to space station fees that—

> the Committee intends that fees in this category be assessed on operations of U.S. facilities, consistent with U.S. jurisdiction. Therefore, these fees will only apply to space stations directly licensed by the Commission under Title III of the Communications Act. Fees will not be applied to space stations operated by international organizations subject to the International Organizations Immunities Act, 22 U.S.C. Section 288 *et seq.*[12]

In contrast to the space stations referred to in the Conference Report, however, the Signatory fee will not be imposed on Intelsat and Inmarsat, or on their operation of international space stations. The fee applies only to Comsat, a private, for-profit, U.S. corporation that receives benefits from its special role in international satellite communications. Moreover, in contrast to Congress' rejection of a fee on Intelsat's and Inmarsat's space stations as inconsistent with U.S. jurisdiction, nothing in Section 9 limits our authority to recover our costs of regulating Comsat, a U.S. Corporation.

41. Comsat is also mistaken that the second sentence in subsection 9(b)(3) limits our authority to establish new fee categories. Specifically, subsection 9(b)(3) states that "the Commission shall add, delete, or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law." 47 U.S.C. 159(b)(3). The subsection provides that we *must* add new fees to the Schedule to reflect changes in the nature of our services. The statement does not purport to limit our statutory authority, and duty, to otherwise modify fees as provided in Section 9.

42. In that regard, subsection 9(b)(3) requires that we "amend the Schedule of Regulatory Fees if the Commission determines that the Schedule requires amendment to comply with the requirements of paragraph (1)(A)." Paragraph (1)(A), in turn, requires that we assess and collect regulatory fees to cover the costs of regulatory activities, including international activities, by "tak[ing] into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities and other factors that the Commission determines are necessary in the public interest." 47 U.S.C. 159(b)(1)(A). Thus, Section 9 both authorizes and requires amendment of the Schedule when, as here, we determine that such action is necessary to recover our regulatory costs for international activities, taking into account the benefits that we provide the payor and other public interest factors.

43. Further, we find no merit in Comsat's argument that our proposed Signatory fee constitutes an unauthorized and unconstitutional tax. Relying on *National Cable Television Association* v. *United States*, (*NCTA*), Comsat claims that the fee is an unconstitutional tax, rather than a fee, because it bears no relationship to any regulatory benefit conferred by the Commission on Comsat as a signatory. Comsat also asserts that Congress may not delegate the power to levy a tax. Comsat, however, misstates the law concerning delegations of taxing authority. In *Skinner* v. *Mid-America Pipe Line Co.*, the Supreme Court made clear that, even if agency fees are a form of taxation, the delegation of discretionary authority under Congress' taxing power is subject to no constitutional scrutiny greater than applied to other nondelegation challenges. 490 U.S. 212, 224; 109 S.Ct. 1762, 1733 (1989). Thus, so long as the fees in question are within the scope of Congress' lawful delegation of authority in Section 9, they are constitutional. No requirement exists to establish that all of the administrative costs recovered through the signatory fee are not a tax in that they "inure directly to the benefit of regulated parties," rather than to the public generally. *Id.* at 223–24.

44. Consistent with the Supreme Court's guidance in *Skinner*, Congress in Section 9 of the Act declared that the fees are to be assessed in a rulemaking proceeding, based upon our costs of performing enforcement, policy and rulemaking, international and user information activities, "taking into account" the benefits provided to the payor of the fee by these activities, as well as other public interest factors, and that we are to recover our costs only in the aggregate amount annually appropriated by Congress.

45. We believe that the fee in question fully satisfies the statutory requirements in Section 9. As noted in the *NPRM*, our review of our Signatory activities disclosed that approximately 14.7% of the costs attributable to space station regulatory oversight ($3,175,850) [13], as determined in Appendix C, is directly related to Intelsat and Inmarsat Signatory activities (5.25 FTEs [14] out of a total of 35.7 direct FTEs). As a result, $466,850 (rounded) must be collected from the Signatories to offset the regulatory costs attributed to them ($3,175,850×14.7%). Dividing this revenue requirement by two (there are Signatories to two separate organizations), yields a Signatory fee of $233,425. *See* Appendix F, Paragraph 37. We also have no doubt that Comsat benefits significantly from its status as signatory and the regulatory oversight that is necessitated by that status.[15]

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[12] *See* H.R. Rept. No. 213, 103d Cong., 1st Sess. 499 (1993); *see also* H.R. Rep. No. 102–207, 102d Cong., 1st Sess. 26. Both Intelsat and Inmarsat are subject to the International Organizations Immunities Act. *See* Exec. Order No. 11,966, 42 Fed. Reg. 4331 (1977); Exec. Order No. 12,238, 45 Fed. Reg. 60,877 (1980).

[13] Revenue requirements have been adjusted throughout the satellite fee categories as a result of adjustments to the assessable payment units for some fee categories and the Congressionally imposed fees for VHF and UHF television stations. Therefore, the amounts will not match the amounts shown in the *NPRM*.

[14] Full Time Equivalent (FTE) employment is the total number of regular straight-time hours (i.e., not including overtime or holiday hours) worked or to be worked by current and future employees divided by the number of compensable hours applicable to each fiscal year.

[15] For example, we are currently conducting several proceedings concerning Comsat's authority to provide services via Intelsat and Inmarsat, its

Therefore, taking into account these benefits, we perceive no public interest basis for relieving Comsat of the costs that the Commission incurs in regulating its activities.

46. Since the Signatory fee will recover our costs attributable to our Signatory oversight, we are able to reduce the space station fee. The new space station fee is computed by reducing the revenue requirement for space stations calculated in Appendix C ($3,175,850) by the $466,850 to be collected from signatories and dividing the reduced space station revenue requirement ($2,709,000) by the number of payment units (38 operational space stations). The result of these calculations is a new fee of $71,300 (rounded) for each operational space station.[16]

47. Finally, although we have imposed a Signatory fee in our FY 1996 Schedule of Regulatory Fees, we intend in FY 1997 to explore alternative means of recovering these costs. We may, for example, conclude that it is more efficient to recover these regulatory costs through increases in the fees for international bearer circuits. However, before making such changes, we will seek public comment in the rulemaking proceeding to implement the FY 1997 Schedule of Regulatory Fees.

6. Low Earth Orbit (LEO) Satellite Systems

48. In our *NPRM*, we proposed for the first time to adopt a fee for Low Earth Orbit (LEO) Satellite Systems.[17] In developing that fee, we proposed to apportion the total revenue requirement for all space stations between LEO systems and geosynchronous space station licensees. In so doing, we also proposed to preserve the same relative relationship between the fees established by the Congress in Section 9(g) of the Act for geosynchronous space stations and LEO systems; i.e., an approximate 38.5% differential between the fee for LEO systems and the fee for geosynchronous space stations. 47 U.S.C. 159(g). After reducing the space station revenue requirement by the amount of the Signatory fees, the resultant LEO fee is $97,725 (rounded) and the new geosynchronous fee is $70,575 (rounded).[18]

49. Motorola requests that we defer imposing any regulatory fee on a LEO system until an entire planned constellation has been launched and is fully operational. In our *FY 1994 Report and Order*, we decided that a LEO system would become subject to a fee payment when its first satellite became operational upon certification by its licensee that the operations of the first satellite in its system conforms to the terms and conditions of its authorization pursuant to 47 CFR § 25.120(d). Nothing in Motorola's comments persuades us otherwise. It may take several years for an entire constellation to be completed. However, a system is capable of providing commercial customer services prior to full deployment of all authorized satellites. Thus, because our regulatory oversight of a LEO system begins when its initial satellite is launched and placed in operation, we will require that a LEO system licensee submit a fee once it certifies to the operation of its initial satellite pursuant to Section 25.120(d) of our rules.

7. Minimum Fee Payment Liability

50. As proposed in our *NPRM* at para. 57, we will adopt a minimum fee payment policy in order to minimize the cost of our regulatory fee program because our collection and verification costs for small payments are considerably more than our revenues from these collections. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10. We have reconsidered our proposal to submit the Form FCC 159 and have determined that we will not require those entities qualifying for the minimum fee liability exemption to file Form FCC 159. Those qualifying for exemption, however, are advised that as part of our verification program, it may be necessary for them to provide proof of exemption should we choose to audit their fee liability.

F. Additional Regulatory Fee Issues

1. Cable Television Systems

51. The National Cable Television Association (NCTA) has filed comments objecting to our proposed fee for cable television systems. NCTA asserts that we failed to discuss in our *NPRM* the basis for our proposed fee and that we did not demonstrate that the fee is reasonably related to our costs of regulating cable television. NCTA also believes that with deregulation, the fee for cable television should decrease rather than increase, particularly in light of our "social contract" resolution of rate complaints, ongoing deregulation of small cable systems and its expectation of further rate deregulation. Further, NCTA contends that the cable television per subscriber fee should not be set as high relative to the proposed fee for Wireless Cable (MMDS) licensees.

52. In our *NPRM*, we discussed in detail our methodology for developing our proposed fees for FY 1996, including our cable television fees. *See NPRM* at Paras. 8–12 and Appendix C. Therein, we set forth both our steps used to develop the fees and our mathematical calculations underlying the development of specific fee proposals. We also explained that, for various reasons, our cost accounting system was not yet able to provide reliable information to assist us in developing our fees. *See NPRM* at paras. 13–17. Thus, for FY 1996, we were unable to compare the individual fee category revenues with actual data accumulated from our new cost accounting system.

53. Even though we were not able to use our new cost accounting system, we believe the fees for cable systems are reasonably related to our costs attributable to cable television regulation which consist of several different categories of costs. *Direct* staff costs are those costs attributable to staff assigned to the Cable Services Bureau engaged in activities described in Section 9(a)(1) of the Act. *Indirect* or *overhead* support staff costs are those costs attributable to staff assigned to other Bureaus and Offices within the Commission who support direct staff working in the Cable Services Bureau. Support staff accounts for approximately 40% of staff costs attributable to cable television oversight. *Other obligations* costs are non-personnel costs such as office space rental, equipment, contractual services, supplies, etc. which are attributable to the Cable Services Bureau. In total, these costs have not changed significantly from FY 1995.

54. Additionally, we must recover from our regulatory fees other costs that cannot be specifically attributed to a particular class of licensee. These costs, in the interest of fairness, are allocated on a pro-rata basis to all fee payors. For example, Congress has exempted several classes of licensees from regulatory fees, including amateur radio licensees, non-commercial radio and television stations, non-profit entities and public safety licensees. Although these entities are exempt from payment of a fee, Congress requires that our regulatory costs associated with these entities be borne by those regulatees not exempt from the fee requirement. Additionally, in making the mandatory adjustments to the fee amounts required by Section 9(b)(2)(a), an overall revenue shortfall occurs due to changes in the number of payment units from FY 1995 to FY 1996. This shortfall (over $1 million) is allocated on a pro rata basis to all fee categories, including cable television system operators.

55. Also, we disagree with NCTA's contention that our regulatory costs related to cable television systems should be lower at this stage of the industry's deregulation. Based on the foregoing, our costs attributable to the regulatory categories for which we are required to recover our costs through regulatory fees are actually much higher than they may appear due to overhead and indirect costs. Second, although we are deregulating the cable television industry, our regulatory costs related to cable television have not diminished for FY 1996. Since the Telecommunications Act of 1996 became law, we have commenced several important rulemaking proceedings to further our cable deregulatory policies, requiring significant personnel resources. In addition, because of the large volume of work required of the Commission under the 1996 Act, the Cable Bureau has taken on significant new responsibilities in a number of areas related to the provision of video programming services. For example, the Bureau is responsible for developing and enforcing rules concerning open video systems pursuant to new section 653 of the Communications Act, over-the-air reception devices under section 207 of the 1996 Act and telecommunications navigation devices under new section 629. And the Bureau has been assigned the responsibility to implement the amendments to section 224 (Regulation of Pole Attachments) of the Communications Act of 1934, as well as new section 713 of the Communications Act concerning video programming accessibility. These proceedings (whose costs must be offset by regulatory fees) are in addition to our on-going oversight responsibilities involving rate complaints, program access complaints, informational services, and adjudicatory proceedings work, which must continue even as we implement the Telecommunications Act. Thus, while we agree with NCTA that our "social contracts" with cable operators and the deregulation of small cable operators and similar policy initiatives reduce certain costs of regulation, we cannot conclude that our overall costs of cable regulation or those additional regulatory costs that we must recover from cable operators justify a reduction in the cable television fee for FY 1996.

56. Finally, we reject NCTA's complaint that the cable subscriber fee is too high relative to the regulatory fees paid by Wireless Cable (MMDS) licensees. NCTA estimates that MMDS fees would be $.20 per subscriber if its fee were assessed on a per subscriber basis rather than a call sign basis. As NCTA is aware, cable and MMDS are subject to substantially different regulatory oversight programs. As a consequence of our oversight of these services, our estimated total cost to regulate the cable television industry in FY 1996 is $31 million as opposed to an estimated total cost to regulate MMDS entities in FY 1996 of $158,000. In view of these estimated costs, in large part due to their different regulatory regimes, we see no unreasonable disparity between the revenue requirement that we have assigned to the two services. NCTA should note that MMDS regulatory fees have increased nearly twice as much as cable television fees since Congress established its Schedule of Regulatory Fees in 1993. *See* 47 U.S.C. 159(g).

57. In summary, we expect that our deregulatory activities will result in reduced oversight costs in future years, but those costs have not and will not diminish for FY 1996. Thus, for FY 1996, we will adopt the cable television fee shown in Appendix D.

2. International Bearer Circuits

58. International Bearer Circuit fees are assessed upon facilities-based common carriers activating a circuit in any transmission facility for the provision of service to an end user or a resale carrier. In our *NPRM*, we proposed a fee of $4.00 per bearer circuit upon facilities-based common carriers activating a circuit in any transmission facility for the provision of service to an end user or a resale carrier.

59. Comsat contends that our proposed fee for international bearer circuits is approximately twice the appropriate fee amount necessary to recover the revenue requirement that we assigned to this fee category. Comsat states that the revenue requirement associated with bearer circuits has increased significantly in one year without any explanation. In Comsat's view, the increase in the revenue requirement for bearer circuits arises from underforecasting payment units in FY 1995 and the use of actual payment units as the basis for our FY 1996 forecast. Comsat states that, since there is no evidence that the costs which the bearer circuit fee is designed to recover have increased, our proposed retention of the $4.00 per circuit fee, based on our underestimate of bearer circuit payment units for FY 1995, is unjustified.

60. The Commission, in its *FY 1995 NPRM*, estimated that there were 62,000 international bearer circuits susceptible to regulatory fee payment (based on estimated counts as of December 1994). As a result of comments received from interested parties in that rulemaking, we more than doubled (to 125,000) the number of estimated circuits applicable to our development of FY 1995 regulatory fees in our *FY 1995 Report and Order*. Based on actual numbers of bearer circuits for which fee payments were made in FY 1995, we proposed in our *FY 1996 NPRM* a total of 228,000 circuits for FY 1996 (based on estimated counts as of December 31, 1995).

61. The Commission knows of no reliable source of bearer circuit counts. We do not maintain this data at the Commission nor do we know of any central repository of this information. As such, we must rely on industry estimates or actual prior year payment information in order to determine the

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authority to participate in the procurement or leasing of various Intelsat and Inmarsat space stations, and its authority to participate in certain Intelsat and Inmarsat-associated businesses. There also are proceedings pending before us related to whether Comsat has conformed to applicable structural and financial separation rules. In addition, we actively participate on an ongoing basis with the Executive Branch in the oversight of Comsat's representations of U.S. policy at the Intelsat and Inmarsat governing boards through the U.S. Government Instructional process.

[16] This fee is further adjusted in Paragraph 47.

[17] Congress' Schedule of Regulatory Fees contains a fee for LEO systems. However, for FY 1994 and FY 1995, we determined that no LEO systems were operational on the effective date of the fee requirement for these years. *See FY 1995 Report and Order* at para. 15.

[18] The FY 1996 adjusted revenue requirement for all space stations has been determined to be $2,709,000. *See* Paragraph 46. For FY 1996, there is only one LEO system, and there are 37 geosynchronous (including DBS) space stations subject to fee payment. The formula for computing the new LEO and geosynchronous space station fees is as follows:

(a) We have assigned "L" to represent the LEO system fee and "G" to represent geosynchronous space station fee.

(b) The relationship between the LEO fee and the geosynchronous fee may be expressed as:

L=1.385G (i.e., the LEO fee needs to be 38.5% higher than the corresponding geosynchronous space station fee).

(c) The total revenue to be collected from LEOs and geosynchronous space stations may be expressed as:

L+37G=$2,709,000 (i.e., the one existing LEO system and 37 geosynchronous space stations together must account for $2,709,000 in revenues).

(d) Substituting the value of "L" in (b) above into the formula in (c) above yields the following:

1.385G+37G=$2,709,000

38.385G=$2,709,000

G=$70,574

(e) Therefore, "G" (Geosynchronous space station fee) is $70,575 (rounded).

(f) Substituting the computed value of "G" in (d) above into the formula in (c) above yields the following:

L+37($70,575)=2,709,000

L+2,611,275=2,709,000

L=97,725

(g) Therefore, "L" (LEO fee) is $97,725.

number of payment units for any particular fiscal year. The payment unit estimate for FY 1995 was based on the best information available to us and relied upon information provided by regulatees. The same is true for FY 1996. Although Comsat questions our estimate of payment units for FY 1996, it did not provide its own estimate of circuits, nor did any other commentor. As such, we believe our FY 1996 payment unit estimate based on actual circuits paid for in FY 1995 is appropriate.

62. Comsat's concerns relative to the total revenues being collected from bearer circuits are not persuasive. The methodology for calculating regulatory fees established by the Congress requires that prior year fee amounts be proportionally adjusted in order to ensure that the total amount to be collected is apportioned fairly among our regulatees. The Congress also provided that further adjustments to the fees ("permitted amendments") should be supported by costs derived from our cost accounting system. As noted elsewhere in this item, we were unable to utilize cost data from our new cost accounting system this year and were therefore unable to determine the total costs attributable to bearer circuit regulation and to compare this to our estimate of revenue requirements. This data should be available for development of our FY 1997 regulatory fees. In the absence of reliable cost accounting information, we performed an informal review of bearer circuit costs and found that our costs may significantly exceed the revenue requirement for bearer circuits established in this rulemaking. Estimated staff resources devoted to bearer circuit oversight also seem to support a higher revenue requirement. As such, we believe that our revenue requirement and estimated payment units are based on the most accurate information available, and we will utilize these estimates for FY 1996.

63. In addition, Comsat states that our estimated unit count for bearer circuits may also be low because we failed to consider that we recently authorized domestic satellites to provide international bearer circuits. *See* FCC 96–14 (released Jan. 22, 1996), *summary published* 61 FR 9946 (Mar. 12, 1996), 11 FCC Rcd 2429, (DISCO–I Order). Also, Comsat contends that our definition of bearer circuits should include all bearer circuits, not only those provided by common carriers, because the statutory fee schedule contemplates that the bearer circuit fee will be collected from common and private carriers alike.

64. Nothing in Section 9 of our implementing rules limits payment of international bearer circuit fees to international common carriers. Therefore, any common carrier, including domestic satellite licensees providing international bearer circuits, as described in our *FY 1995 Report and Order* at paras. 115 through 117, is subject to the bearer circuit fee. However, because our *DISCO–I Order* did not become effective until after the calculation date for bearer circuits (October 1, 1995), domestic satellite licensees were not authorized to provide international bearer circuits at the time for calculating the bearer circuit regulatory fee, and, therefore, we have not included bearer circuits provided by domestic satellite carriers in our estimates of bearer circuit payment units for FY 1996.

65. Finally, Comsat contends that Section 9 provides for the payment of a bearer circuit fee by private carriers. However, our *NPRM*, as well as prior year *NPRMs*, did not propose to collect international bearer circuit fees from other than common carriers. We do not have any information in the record of this proceeding on which to calculate a fee applicable to bearer circuits provided directly to end users over non-common carrier international facilities. As a result, we have no other viable alternative but to adopt the fee as proposed in the *NPRM*. However, we believe that Comsat's proposal warrants further consideration. It is our intention to consider Comsat's proposal, or some modification thereof, for assessment of the FY 1997 fees.

3. National Exchange Carrier Association (NECA)

66. NECA has requested by comments in this proceeding that we amend our rules governing confidentiality of information NECA receives in its role as administrator of the Telecommunications Relay Service (TRS) Fund to permit it to use TRS data for the sole additional purpose of aggregating regulatory fees from local exchange carriers (LECs) in accordance with our requirements for assessment of their fees.[19] *See* 47 CFR § 64.604(c)(4)(iii)(I). There were no other comments filed addressing NECA's proposal.

67. Currently, our rules prohibit NECA from using the TRS data it collects for any purpose other than administration of the TRS fund. *See* 47 CFR 64.604(c)(4)(iii)(I). Because our assessment of regulatory fees from LECs and other common carriers is modeled in large part upon the methodology that we adopted for contributions by these carriers to the TRS fund, we believe that a specific limited modification of the rule governing NECA's use of TRS information would increase NECA's efficiency in determining the appropriate regulatory fee due from any carrier that avails itself of NECA's services in paying its regulatory fee. Thus, we will amend our rules to permit NECA to use TRS information for determining a carrier's fee. Section 64.604(c)(4)(iii)(I) will be amended to state that NECA may also use TRS information "to calculate the regulatory fees of interstate common carriers and to aggregate their fee payments for submission to the Commission."

4. Mobile Satellite Service (MSS)

68. Motorola Satellite Communications, Inc's. ("Motorola") has requested clarification that hand-held transmit and transmit/receive units used in the mobile satellite service (MSS) are within the category of MSS "blanket" earth station licenses subject to a single fee for all authorized units on one license. We have incorporated language in Appendix F that MSS "blanket" earth station licenses include hand-held transmit and transmit/receive units as well as vehicle-based transceivers and are, therefore, subject to a fee payment.

G. Procedures for Payment of Regulatory Fees

69. Section 9(f) requires that we permit "payment by installments in the case of fees in large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payor." *See* 47 U.S.C. § 159(f)(1). Consistent with the section, we are again establishing three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee. In general, we are retaining the procedures that we have established for the payment of regulatory fees.

1. Annual Payments of Standard Fees

70. Standard fees are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments

[19] NECA is a not-for-profit, membership association, consisting of all local exchange carriers in the United States, Puerto Rico, the U.S. Virgin Islands and Micronesia. NECA is responsible, under Subpart G of our Rules, for preparation of access charge tariffs on behalf of all local telephone companies that do not file separate tariffs, collection and distribution of access charge revenues, administration of the Universal Service and Lifeline Assistance programs, and the administration of the TRS fund. See 47 CFR § 69.603 and § 64.604.

for their full license term and are not eligible for installment payments. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category.

71. The payment due date for standard fees will be announced by Public Notice in the **Federal Register** following Congressional notification. For licensees, permittees and holders of various authorizations in the Common Carrier, Mass Media, International, and Cable Television Services whose fees are *not* based on a subscriber, unit, or circuit count, liability for fee payment is established for any authorization held as of *October 1, 1995*, the first day of FY 1996. However, the licensee, permittee, or other regulatee at the time a fee payment is due is the individual or entity legally liable for the fee payment.

72. In the case of regulatees whose fees are based upon a subscriber, unit, or circuit count, the number of a regulatee's subscribers or circuits on *December 31, 1995*, will be used to calculate the fee payment.[20] As noted in the preceding paragraph, the licensee, permittee, or other regulatee at the time a fee payment is due is legally liable for the fee payment.

2. Installment Payments for Large Fees

73. There will be insufficient time following the effective date of our FY 1996 Schedule of Regulatory Fees to permit implementation of an installment payment program for large fees. All entities who would otherwise have been eligible for installments, *i.e.*, whose fee liability exceeds our previously established level of $12,000, must submit their fee payments on the date we will announce by Public Notice in the **Federal Register**.

[20] Cable systems have been calculating their regulatory fees using subscriber data submitted to the Commission in their Annual Report of Cable Television Systems (Form FCC 325). Consistent with this methodology, we ask that cable system operators compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Accordingly, the number of cable subscribers will not necessarily be based on a count as of December 31, 1995, but rather on "a typical day in the last full week" of December 1995.

3. Advance Payments of Small Fees

74. As we have in the past, we are treating regulatory fee payments by certain licensees as small fees subject to advance payments. Advance payments will be required from licensees of those services that have been required to make advance payments in the past.[21] Payers of advance fees are required to submit the entire regulatory fee for the full term of their license when filing their initial, renewal or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the regulatory fee is adjusted following payment of the fee, the new fee will not become effective until the expiration of the licensing term. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. The effective date for the payment of all small fees pursuant to the FY 1996 Schedule will be announced by Public Notice in the **Federal Register** following Congressional notification.

H. Schedule of Regulatory Fees

75. The Commission's Schedule of Regulatory Fees for FY 1996 is contained in Appendix D of this *Report and Order*.

IV. Ordering Clause

76. Accordingly, it is ordered that the rule changes as specified herein are adopted. It is further ordered that the rule changes made herein will become effective September 10, 1996, except that changes to the Schedule of Regulatory Fees, made pursuant to Section 9(b)(3) of the Communications Act, and incorporating regulatory fees for CMRS Mobile Services, CMRS One-Way Paging, Geosynchronous Space Stations, Intelsat and Inmarsat Signatories, and Low Earth Orbit Satellite Systems, will become effective 90 days from notification to Congress.

[21] Applicants for new, renewal and reinstatement licenses in the following services are required to pay their regulatory fees in advance: Land Mobile Services, Microwave Services, Interactive Video Data Services (IVDS), Marine (Ship) Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, General Mobile Radio Service (GMRS). In addition, applicants for Amateur Radio vanity call signs are required to submit an advance payment. However, it should be noted that for the CMRS Mobile Services, licensees who did not elect to convert their stations from private to commercial status prior to December 31, 1995, will not be subject to payment of a regulatory fee for FY 1996. Therefore, for stations licensed as commercial on or before the date of determination of fee liability the fee will become effective September 10, 1996. *See* para. 17–22 *supra*. As noted above, the date payment of the regulatory fee is due will be announced by Public Notice in the **Federal Register**.

V. Authority and Further Information

77. Authority for this proceeding is contained in Sections 4 (i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 (i) and (j) and 159 and 303(r).

78. Further information about this proceeding may be obtained by contacting the Fees Hotline at (202) 418–0192.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Federal Communications Commission, Radio, Telecommunications, Television.

47 CFR Part 64

Communications common carriers, Federal Communications Commission, Radio, Telegraph, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 1 and 64 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 1.1152 is revised to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.

Exclusive use services (per license)	Fee amount	Address
1. Land Mobile (Above 470 MHz, Base Station & SMRS)(47 CFR, Part 90)		
(a) 800 MHz New, Renewal, Reinstatement (FCC 574)	$7.00	FCC, 800 MHz, P.O. Box 358235, Pittsburgh, PA 15251–5235.
(b) 900 MHz New, Renewal, Reinstatement (FCC 574)	7.00	FCC, 900 MHz, P.O. Box 358240, Pittsburgh, PA 15251–5240.
(c) 470–512,800,900, 220 MHz, 220 MHz Nationwide Renewal (FCC 574R, FCC 405A)	7.00	FCC, 470–512, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Correspondence Blanket Renewal (470–512,800,900,220 MHz) (Remittance Advice, Correspondence).	7.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA 15251–5305.
(e) 220 MHz New, Renewal, Reinstatement (FCC 574)	7.00	FCC, 220 MHz, P.O. Box 358380, Pittsburgh, PA 15251–5360.
(f) 470–512 MHz New, Renewal, Reinstatement (FCC 574)	7.00	FCC, 470–512, P.O. Box 358810, Pittsburgh, PA 15251–5810.
(g) 220 MHz Nationwide New, Renewal, Reinstatement (FCC 574)	7.00	FCC, Nationwide, P.O. Box 358820, Pittsburgh, PA 15251–5820.
2. Microwave (47 CFR Part 101)		
(a) Microwave New, Renewal, Reinstatement (FCC 402)	7.00	FCC, Microwave, P.O. Box 358250, Pittsburgh, PA 15251–5250.
(b) Microwave Renewal (FCC 402R)	7.00	FCC, Microwave, P.O. Box 358255, Pittsburgh, PA 15251–5255.
(c) Correspondence Blanket Renewal (Microwave) (Remittance Advice, Correspondence).	7.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA 15251–5305.
3. Interactive Video Data Service		
(a) IVDS Renewal (FCC 574R, FCC 405A)	7.00	FCC, IVDS, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(b) Correspondence Blanket Renewal (IVDS) (Remittance Advice, Correspondence)	7.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA 15251–5305.
(c) IVDS New, Renewal, Reinstatement (FCC 574)	7.00	FCC, IVDS, P.O. Box 358365, Pittsburgh, PA 15251–5365.
4. Shared Use Services		
(a) Land Transportation (LT) New, Renewal, Reinstatement (FCC 574)	3.00	FCC, Land Trans., P.O. Box 358215, Pittsburgh, PA 15251–5215.
(b) Business (Bus.) New, Renewal, Reinstatement (FCC 574)	3.00	FCC, Business, P.O. Box 358220, Pittsburgh, PA 15251–5220.
(c) Other Industrial (OI) New, Renewal, Reinstatement (FCC 574)	3.00	FCC, Other Indus., P.O. Box 358225, Pittsburgh, PA 15251–5225.
(d) General Mobile Radio Service (GMRS) New, Renewal, Reinstatement (FCC 574)	3.00	FCC, GMRS, P.O. Box 358230, Pittsburgh, PA 15251–5230.
(e) Business, Other Industrial, Land Transportation, GMRS Renewal (FCC 574R, FCC 405A).	3.00	FCC, Bus., OI, LT, GMRS, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(f) Ground New, Renewal, Reinstatement (FCC 406)	3.00	FCC, Ground, P.O. Box 358260, Pittsburgh, PA 15251–5260.
(g) Coast New, Renewal, Reinstatement (FCC 503)	3.00	FCC, Coast, P.O. Box 358265, Pittsburgh, PA 15251–5265.
(h) Ground Renewal (FCC 452R)	3.00	FCC, Ground, P.O. Box 358270, Pittsburgh, PA 15251–5270.
(i) Coast Renewal (FCC 452R)	3.00	FCC, Coast, P.O. Box 358270, Pittsburgh, PA 15251–5270.
(j) Ship New, Renewal, Reinstatement (FCC 506)	3.00	FCC, Ship, P.O. Box 358275, Pittsburgh, PA 15251–5275.
(k) Aircraft New, Renewal, Reinstatement (FCC 404)	3.00	FCC, Aircraft, P.O. Box 358280, Pittsburgh, PA 15251–5280.
(l) Ship Renewal (FCC 405B)	3.00	FCC, Ship, P.O. Box 358290, Pittsburgh, PA 15251–5290.
(m) Aircraft Renewal (FCC 405B)	3.00	FCC, Aircraft, P.O. Box 358290, Pittsburgh, PA 15251–5290.
(n) Correspondence Blanket Renewal (Bus., OI, LT, GMRS) (Remittance Advice, Correspondence).	3.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA 15251–5305.
(o) Correspondence Blanket Renewal (Ground) (Remittance Advice, Correspondence)	3.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA 15251–5305.
(p) Correspondence Blanket Renewal (Coast) (Remittance Advice, Correspondence)	3.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA 15251–5305.
(q) Correspondence Blanket Renewal (Aircraft) (Remittance Advice, Correspondence)	3.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA 15251–5305.
(r) Correspondence Blanket Renewal (Ship) (Remittance Advice, Correspondence)	3.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA 15251–5305.
5. Amateur Vanity Call Signs	1.00	FCC, Amateur Vanity, P.O. Box 358924, Pittsburgh, PA 15251–5924.
6. CMRS Mobile Services (per unit)	.17	FCC, Cellular, P.O. Box 358835, Pittsburgh, PA 15251–5835.

Exclusive use services (per license)	Fee amount	Address
7. CMRS One-Way Paging (per unit)	.02	FCC, Paging, P.O. Box 358835, Pittsburgh, PA 15251–5835.

3. Sec. 1.1153 is revised to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

	Fee amount	Address
AM Radio (47 CFR, Part 73)		
1. Class D Daytime	$345	FCC, AM Branch, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Class A Fulltime	1,250	
3. Class B Fulltime	890	
4. Class C Fulltime	280	
5. Construction Permits	140	
FM Radio (47 CFR, Part 73)		
1. Classes C,C1,C2,B	$1,250	FCC, FM Branch, P.O. Box 358835, Pittsburgh, PA.
2. Classes A,B1,C3	830	
3. Construction Permits	890	
TV (47 CFR, Part 73) VHF Commercial		
1. Markets 1 thru 10	$32,000	FCC, TV Branch, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Markets 11 thru 25	26,000	
3. Markets 26 thru 50	17,000	
4. Markets 51 thru 100	9,000	
5. Remaining Markets	2,500	
6. Construction Permits	5,550	
UHF Commercial		
1. Markets 1 thru 10	$25,000	FCC, UHF Commercial, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Markets 11 thru 25	20,000	
3. Markets 26 thru 50	13,000	
4. Markets 51 thru 100	7,000	
5. Remaining Markets	2,000	
6. Construction Permits	4,425	
Satellite UHF/VHF Commercial		
1. All Markets	$590	FCC Satellite TV, P.O. Box 358835, Pittsburgh, PA, 15251–5835
2. Construction Permits	250	
Low Power TV, TV/FM Translator, & TV/FM Booster (47 CFR, Part 74)	$190	FCC, Low Power, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Broadcast Auxiliary	35	FCC, Auxiliary, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Multipoint Distribution	155	FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

4. Sec. 1.1154 is revised to read as follows:

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

	Fee amount	Address
Radio Facilities		
1. Domestic Public Fixed	$155	FCC, Dom. Pub. Fixed, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Carriers		
1. Interstate Telephone Service Providers (per dollar contributed to TRS Fund)	.00098	FCC, Carriers, P.O. Box 358835, Pittsburgh, PA.

5. Sec. 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.

	Fee amount	Address
1. Cable Antenna Relay Service	$325	FCC, Cable,

	Fee amount	Address
2. Cable TV System (per subscriber)	.55	P.O. Box 358835, Pittsburgh, PA, 15251–5835.

6. Section 1.1156 is revised to read as follows:

§ 1.1156 Schedule of regulatory fees and filing locations for international services.

	Fee amount	Address
Radio Facilities		
1. International (HF): Broadcast	$280	FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. International Public: Fixed	225	FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Space Stations (Geosynchronous Orbit)	70,575	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Low Earth Orbit Satellite	97,725	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
INMARSAT/INTELSAT Signatory	233,425	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Earth Stations: Transmit/Receive & Transmit Only (per authorization or registration)	370	FCC, Earth Station, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Carriers: 1. International Circuits (per active 64KB circuit or equivalent)	4.00	FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 continues to read as follows:

Authority: Sections 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply Sections 201, 218, 226, 228, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228, unless otherwise noted.

2. Section 64.604(c)(4)(iii)(I) is revised to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(4) * * *

(iii) * * *

(I) *Information filed with the administrator.* The administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form unless directed to do so by the Commission. The administrator shall not use such data except for purposes of administering the TRS Fund, calculating the regulatory fees of interstate common carriers, and aggregating such fee payments for submission to the Commission. The Commission shall have access to all data reported to the administrator, and authority to audit TRS providers.

* * * * *

Appendix A—Final Regulatory Flexibility Analysis

[This Appendix A will not be published in the Code of Federal Regulations.]

Final Analysis of the Report and Order

1. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was provided in the *Notice of Proposed Rulemaking* (*NPRM*). The Commission sought written public comments on the proposals in the *NPRM*, including the IRFA.

2. *Need for and Objective of the Report and Order:* Congress has directed the Commission to collect $126,400,000 in regulatory fees for fiscal year (FY) 1996. The Commission, pursuant to 47 U.S.C. 159, is modifying its Schedule of Regulatory Fees in order to comply with the Congressional directive.

3. *Summary of Significant Issues Raised by the Public in response to the IRFA:* No comments were submitted in response to the IRFA.

4. *Description and Estimate of Number of Small Businesses to Which the Modifications of the Schedule of Fees Will Apply:* The Regulatory Flexibility Act generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632. A small business concern is one which (1) is independently owned and operated; (2) is not dominant in its field of operations; and satisfies additional criteria established by the Small Business Administration (SBA). *Id.* According to the SBA's regulations, entities engaged in the provision of communications services may have maximum revenues of $11 million in order to qualify as a small business concern. 13 CFR § 121.201. Therefore, this standard also applies in determining whether an entity is a small business for purposes of the Regulatory Flexibility Act.

5. The *Report and Order* creates a Commercial Mobile Radio Services (CMRS) category of fees which replaces the Cellular/Public Mobile category in our FY 1995 Schedule of Regulatory Fees. Creation of the new category does not affect any fees payable by licensees nor the manner in which these fees are paid. Cellular and Public Mobile Service licensees representing an estimated 30 million assessable units will continue to pay an annual fee as they have in the past. Business Radio, Special Mobile Radio Services and 220–222 Land Mobile Systems, which are regulated under Part 90 of the Rules, and Public Coast Stations, which are regulated under Part 80, currently pay small fees in advance for the full period of their license terms, when filing their initial, reinstatement or renewal application. Certain of these licensees may now elect to become CMRS licensees. However, they are not required to make that choice before August 10, 1996. When and if they do, those licensees which have converted from the Private Mobile Radio Services (PMRS) to CMRS will be required to pay annual regulatory fees predicated on the number of units they have in service. Based on survey responses from licensees, we estimate that roughly 120,000 stations will be eligible for conversion from PMRS to CMRS. Although we know that many entities hold licenses for multiple stations and not all licensees are small entities, we estimate the number of small entities that will be affected in the future to be approximately 20,000. However, because these conversions will not occur until the end of FY 1996 and were not effective on our established date for fee liability, no annual fee is being imposed on them for FY 1996.

6. With certain exceptions not relevant here, the Commission's Regulatory Fee Schedule applies to all Commission licensee and regulatees. The only other changes in the fee schedule, consist of adjustments in the assessments for various entities necessitated by the Congressionally mandated increase in the amount of fees to be recovered and new fees for Low Earth Orbit Satellite Systems, and Intelsat and Inmarsat Signatory Fees. There is only one Low Earth Orbit System, and Comsat is the sole Intelsat and Inmarsat Signatory. They are dominant carriers. Thus, we certify that these new fees are not subject to the Regulatory Flexibility Act of 1980, as amended, because they do not apply to small entities as defined by Section 601(3) of the Regulatory Flexibility Act. We further certify that the changes in the amounts of the other regulatory fees to be collected are not subject to the Act because they are relatively small and not likely to have a significant economic impact on a substantial number of small entities. Moreover, the Commission's policy is to waive the regulatory fee for licensees which can establish that payment of the regulatory fees would create a compelling case of financial hardship.

7. *Description of Projected Reporting, Record Keeping and Other Compliance Requirements:* Compliance with the fee schedule requires CMRS licensees to tabulate the number of units they have in service, complete and file a form FCC 159, and pay an annual regulatory fee based on the number of units in service. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No outside professional skills are required to complete the form FCC 159, and it can be completed by the employees responsible for an entity's business records. The Commission estimates that it will take each licensee about 5–15 minutes to fill in and file a form FCC 159 after computing the number of units subject to the fee. As an option, licensees are permitted to file electronically or on computer diskette to ease the burden of filing information which would require multiple forms FCC 159. Although not mandatory, the latter may require additional professional skills. For Cellular and Public Mobile Services licensees there is no change to these requirements. Licensees who paid small fees in advance supplied fee information as part of their application and did not use form FCC 159. When and if they convert to CMRS, they must use the form FCC 159, but the impact would be minimal since the basic information is the same as was on the application form.

8. *Minimizing the Impact on Small Entities and Consistent with Stated Objectives:* Although no comments were submitted on the IRFA, we have amended our procedures in a manner calculated to minimize the impact on small entities. The fee schedule will assess the fees to be paid by those who choose to convert from PMRS to CMRS in the future, and require that the fees be paid on an annual basis. These new CMRS licensees will also be required to make annual fee payments, since single advance payments would no longer be practicable because of fluctuations in the numbers of units a licensee may have in service over the length of its license term. Additionally, the economic burden of annual fee payments would be substantially less than would be the burden of requiring advance payment of larger fees. Moreover, the conversion is voluntary, and any licensee can avoid the burden by remaining a private carrier. In addition, because the conversion of existing stations will not take effect until August 10, 1996, licensees who have not converted will be exempt from the fee for FY 1996. Finally, in order to ease the burden on small entities, licensees with fee obligations of less than $10 will be exempt from the fees.

[This Appendix B will not be published in the Code of Federal Regulations]

Appendix B—Sources of Payment Unit Estimates for FY 1996

In order to calculate individual service fees for FY 1996, we adjusted FY 1995 payment units for each service to more accurately reflect expected FY 1996 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 1996 estimates with actual FY 1995 payment units to ensure that our revised estimates were reasonable. Where it made sense, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units yet cannot be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 1996 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 1996 payment units are based on FY 1995 actual payment units, it does not necessarily mean that our FY 1996 projection is *exactly* the same number as FY 1995. It means that we have either rounded the FY 1995 number or adjusted it slightly to account for these variables.

Fee Category	Sources of payment unit estimates
Land Mobile (All), Microwave, IVDS, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration proposals to license portions of these services on a voluntary basis.
CMRS Mobile Services (incl. Cellular/Public Mobile Radio Services and Two Way Paging Services).	Based on actual FY 1995 payment units adjusted to take into consideration industry estimates of growth between FY 1995 and FY 1996 and Wireless Telecommunications Bureau projections of new applications and average number of mobile units associated with each application.
CMRS One Way Paging Services.	Based on industry estimates of the number of pager units in operation.
AM/FM Radio Stations	Based on actual FY 1995 payment units.
UHF/VHF Television Stations.	Based on actual FY 1995 payment units.
AM/FM/TV Construction Permits.	Based on actual FY 1995 payment units.
LPTV, Translators and Boosters.	Based on actual FY 1995 payment units.
Auxiliaries	Based on actual FY 1995 payment units.
MDS/MMDS	Based on actual FY 1995 payment units.
Cable Antenna Relay System (CARS).	Based on actual FY 1995 payment units.
Cable Television System Subscribers.	Based on Cable Services Bureau and industry estimates of subscribership.

Fee Category	Sources of payment unit estimates
IXCs/LECs, CAPs, Other Service Providers.	Based on actual FY 1996 interstate revenues associated with contributions to the Telecommunications Relay System (TRS) Fund adjusted to take into consideration FY 1996 revenue growth in this industry as estimated by the Common Carrier Bureau.
Earth Stations	Based on actual FY 1995 payment units.
Space Stations & LEOs	Based on International Bureau licensee data bases.
International Bearer Circuits	Based on actual FY 1995 payment units.
International HF Broadcast Stations, International Public Fixed Radio Service.	Based on actual FY 1995 payment units.

Appendix C

[This Appendix C will not be published in the Code of Federal Regulations]

| Fee category | FY 1996 Regulatory fees-calculation of mandatory adjustments | | |

Appendix C—Continued

[This Appendix C will not be published in the Code of Federal Regulations]

Fee category	FY 1996 Regulatory fees-calculation of mandatory adjustments						New FY 1996 revenue
	FY 1996 Payment units	(times) Adj. FY 1995 fee	(times) Applicable years	(equals) Computed FY 1996 revenue	Pro-rated revenue **	Recalculated fee	Rounded fee	
UHF Markets 1–10	65	25,000	1	1,825,000			25,000	1,825,000
UHF Markets 11–25	60	20,000	1	1,200,000			20,000	1,200,000
UHF Markets 26–50	65	13,000	1	845,000			13,000	845,000
UHF Markets 51–100	110	7,000	1	770,000			7,000	770,000
UHF Remaining Markets	160	2,000	1	320,000			2,000	320,000
**** Total Estimated Revenue-Television (less Sat. TV)				$10,060,000				$10,060,000
Total Estimated Fee Revenue								$126,275,760
Total Revenue Requirement								$126,400,000
Difference								($124,220)

Appendix D—FY 1996 Schedule of Regulatory Fees

[This Appendix D will not be published in the Code of Federal Regulations]

Fee category	Annual regulatory fee
Land Mobile (per license) (220–222 Mhz, above 470 Mhz, Base Station and SMRS) (47 CFR Part 90)	7
Microwave (per license) (47 CFR Part 101)	7
Interactive Video Data Service (per license) (47 CFR Part 95)	7
Marine (Ship) (per station) (47 CFR Part 80)	3
Marine (Coast) (per license) (47 CFR Part 80)	3
General Mobile Radio Service (per license) (47 CFR Part 95)	3
Land Mobile (per license) (all stations not covered above)	3
Aviation (Aircraft) (per station) (47 CFR Part 87)	3
Aviation (Ground) (per license) (47 CFR Part 87)	3
Amateur Vanity Call Signs (per call sign) (47 CFR Part 97)	3
CMRS Mobile Services (per unit) (47 CFR Parts 20, 22, 80 and 90)	.17
CMRS One-Way Paging (per unit) (47 CFR Parts 20, 22 and 90)	.02
Domestic Public Fixed Radio & Multipoint Distribution Services (per call sign) (47 CFR Part 21)	155
AM Radio (47 CFR Part 73):	
Class A	1,250
Class B	690
Class C	280
Class D	345
Construction Permits	140
FM Radio (47 CFR Part 73):	
Classes C, C1, C2, B	1,250
Classes A, B1, C3	830
Construction Permits	690
TV (47 CFR Part 73) VHF Commercial:	
Markets 1–10	32,000
Markets 11–25	26,000
Markets 26–50	17,000
Markets 51–100	9,000
Remaining Markets	2,500
Construction Permits	5,550
TV (47 CFR Part 73) UHF Commercial:	
Markets 1–10	25,000
Markets 11–25	20,000
Markets 26–50	13,000
Markets 51–100	7,000
Remaining Markets	2,000
Construction Permits	4,425
Satellite Television Stations (All Markets)	690
Construction Permits—Satellite Television Stations	250
Low Power TV, TV/FM Translators & Boosters (47 CFR Part 74)	190
Broadcast Auxiliary (47 CFR Part 74)	35
Cable Antenna Relay Service (47 CFR Part 78)	325
Cable Television Systems (per subscriber) (47 CFR Part 76)	.55
Interstate Telephone Service Providers (per revenue dollar)	.00095
Earth Stations (47 CFR Part 25)	370
Space Stations (per operational station in geosynchronous orbit) (47 CFR Part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR Part 100)	70,575
Low Earth Orbit Satellite (per operational system) (47 CFR Part 25)	97,725
INMARSAT/INTELSAT Signatory (per signatory)	233,425
International Circuits (per active 64KB circuit)	4
International Public Fixed (per call sign) (47 CFR Part 23)	225
International (HF) Broadcast (47 CFR Part 73)	280

Appendix E—Comparison Between FY 1995, FY 1996 Proposed and FY 1996 Final Regulatory Fees

[This Appendix E will not be published in the Code of Federal Regulations]

Fee category	Annual regulatory fee FY 1995	NPRM proposed fee FY 1996	Annual regulatory fee FY 1996
Land Mobile (per license) (220–222 Mhz, above 470 Mhz, Base Station and SMRS) (47 CFR Part 90)	6	6	7
Microwave (per license) (47 CFR Part 101)	6	6	7
Interactive Video Data Service (per license) (47 CFR Part 95)	6	6	7
Marine (Ship) (per station) (47 CFR Part 80)	3	3	3
Marine (Coast) (per license) (47 CFR Part 80)	3	3	3
General Mobile Radio Service (per license) (47 CFR Part 95)	3	3	3
Land Mobile (per license) (all stations not covered above)	3	3	3
Aviation (Aircraft) (per station) (47 CFR Part 87)	3	3	3

Appendix E—Comparison Between FY 1995, FY 1996 Proposed and FY 1996 Final Regulatory Fees—Continued

[This Appendix E will not be published in the Code of Federal Regulations]

Fee category	Annual regulatory fee FY 1995	NPRM proposed fee FY 1996	Annual regulatory fee FY 1996
Aviation (Ground) (per license) (47 CFR Part 87)	3	3	3
Amateur Vanity Call Signs (per call sign) (47 CFR Part 97)	3	3	3
CMRS Mobile Services (per unit) (47 CFR Parts 20, 22, 80 and 90)	.15	.15	.17
CMRS One-Way Paging (per unit) (47 CFR Parts 20, 22, and 90)	.02	.02	.02
Domestic Public Fixed Radio & Multipoint Distribution Services (per call sign) (47 CFR Part 21)	140	140	155
AM Radio (47 CFR Part 73):			
Class A	1,120	1,125	1,250
Class B	620	630	690
Class C	250	255	280
Class D	310	315	345
Construction Permits	125	125	140
FM Radio (47 CFR Part 73):			
Classes C, C1, C2, B	1,120	1,125	1,250
Classes A, B1, C3	745	755	830
Construction Permits	620	625	690
TV (47 CFR Part 73) VHF Commercial:			
Markets 1–10	22,420	22,700	32,000
Markets 11–25	19,925	20,175	26,000
Markets 26–50	14,950	15,125	17,000
Markets 51–100	9,975	10,100	9,000
Remaining Markets	5,225	5,300	2,500
Construction Permits	4,975	5,025	5,550
TV (47 CFR Part 73) UHF Commercial:			
Markets 1–10	17,925	18,150	25,000
Markets 11–25	15,950	16,150	20,000
Markets 26–50	11,950	12,100	13,000
Markets 51–100	7,975	8,075	7,000
Remaining Markets	4,975	5,025	2,000
Construction Permits	3,975	4,025	4,425
Satellite Television Stations (All Markets)	620	625	690
Construction Permits—Satellite Television Stations	225	230	250
Low Power TV, TV/FM Translators & Boosters (47 CFR Part 74)	170	170	190
Broadcast Auxiliary (47 CFR Part 74)	30	30	35
Cable Antenna Relay Service (47 CFR Part 78)	290	295	325
Earth Stations (47 CFR Part 25)	330	335	370
Cable Television Systems (per subscriber) (47 CFR Part 76)	.49	.50	.55
Interstate Telephone Service Providers (per revenue dollar)	.00088	.00089	.00098
Space Stations (per operational station in geosynchronous orbit) (47 CFR Part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR Part 100)	75,000	63,500	70,575
Low Earth Orbit Satellite (per operational system) (47 CFR Part 25)	n/a	63,500	70,575
INMARSAT/INTELSAT Signatory (per signatory)	n/a	87,725	97,725
International Circuits (per active 64KB circuit)	n/a	217,575	233,425
International Public Fixed (per call sign) (47 CFR Part 23)	4	4	4
International (HF) Broadcast (47 CFR Part 73)	200	200	225
	250	255	280

[This Appendix F will not be published in the Code of Federal Regulations]

Appendix F—FY 1996 Guidelines for Regulatory Fee Categories

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in section 9 (g) of the Communications Act, 47 U.S.C. 159(g) as modified in the instant *Report and Order*. Where regulatory fee categories need interpretation or clarification, we have relied on the legislative history of section 9, our own experience in establishing and regulating the Schedule of Regulatory Fees for Fiscal Years (FY) 1994 and 1995 and the services subject to the fee schedule, and the comments of the parties in our proceeding to adopt fees for FY 1995. The categories and amounts set out in the schedule have been modified to reflect changes in the number of payment units, additions and changes in the services subject to the fee requirement and the benefits derived from the Commission's regulatory activities, and to simplify the structure of the schedule. The schedule may be similarly modified or adjusted in future years to reflect changes in the Commission's budget and in the services regulated by the Commission. *See* 47 U.S.C. 159(b)(2), (3).

2. *Exemptions.* Most licensees and other entities regulated by the Commission must pay regulatory fees in 1996. However, governments and nonprofit (exempt under Section 501 of the Internal Revenue Code) entities are exempt from paying regulatory fees and should not submit payment, but may be asked to submit a current IRS Determination Letter documenting its nonprofit status, a certification of governmental authority, or certification

a governmental entity attesting to its exempt status. The governmental exemption applies even where the government-owned or community-owned facility is in direct competition with commercial stations. Other specific exemptions are discussed below in association with a particular service category or group.

I. Private Wireless Radio Services

3. Two levels of statutory fees were established for the Private Wireless Radio Services—exclusive use services and shared use services. Thus, licensees who generally receive a higher quality communication channel due to exclusive or lightly shared frequency assignments, will pay a higher fee than those who share marginal quality assignments. This dichotomy is consistent with the directive of section 9 that the regulatory fees reflect the benefits provided to the licensees. *See* 47 U.S.C. § 159(b)(1)(A). In addition, because of the generally small amount of the fees assessed against Private Wireless Radio Service licensees, applicants for new licenses and reinstatements and for renewal of existing licenses are required to pay a regulatory fee covering the entire license term, with only a percentage of all licensees paying a regulatory fee in any one year. Applications for modification or assignment of existing authorizations do not require the payment of regulatory fees. The expiration date of those authorizations will reflect only the unexpired term of the underlying license rather than a new license term.

a. Exclusive Use Services

4. *Land Mobile Services:* Regulatees in this category include those authorized under Part 90 of the Commission's Rules to provide limited access Wireless Radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensees. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS).[1] For FY 1996, Land Mobile licensees will pay a $7 annual regulatory fee per license, payable for an entire five or ten year license term at the time of application for a new, renewal or reinstatement license.[2] The total regulatory fee due is either $35 for a license with a five year term or $70 for a license with a 10 year term.

5. *Microwave Services:* These services include private microwave systems and private carrier systems authorized under Part 101 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline and utility equipment. For FY 1996, Microwave licensees will pay a $7 annual regulatory fee per license, payable for an entire ten year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $70 for the ten year license term.

6. *Interactive Video Data Service (IVDS):* The IVDS is a two-way point-to-multi-point radio service allocated high quality channels of communications and authorized under Part 95 of the Commission's Rules. The IVDS provides information, products and services, and also the capability to obtain responses from subscribers in a specific service area. The IVDS is offered on a private carrier basis. For FY 1996, IVDS licensees will pay a $7 annual regulatory fee per license, payable for an entire five year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $35 for the five year term of the license.

b. Shared Use Services

7. *Marine (Ship) Service:* This service is a shipboard radio service authorized under Part 80 of the Commission's Rules to provide telecommunications between watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. The recently enacted Telecommunications Act of 1996 gave the Commission the authority to license certain ship stations by rule rather than by individual license. Private boat operators sailing entirely within domestic U.S. waters and who are not otherwise required by treaty or agreement to carry a radio, may no longer be required to hold a marine license if the Commission enacts rules to that effect, and they will not be required to pay a regulatory fee. For FY 1996, parties required to be licensed and those choosing to be licensed for Marine (Ship) Stations will pay a $3 annual regulatory fee per station, payable for an entire ten year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $30 for the ten year license term.

8. *Marine (Coast) Service:* This service includes land-based stations in the maritime services, authorized under Part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and inland waterways. For FY 1996, licensees of Marine (Coast) Stations will pay a $3 annual regulatory fee per call sign, payable for the entire five year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $15 per call sign for the five year license term.

9. *Private Land Mobile (Other) Services:* These services include Land Mobile Radio Services operating under Parts 90 and 95 of the Commission's Rules. Services in this category provide one or two way communications between vehicles, persons or to fixed stations on a shared basis and include radiolocation services, industrial radio services and land transportation radio services. For FY 1996, licensees of services in this category will pay a $3 annual regulatory fee per call sign, payable for an entire five year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $15 for the five year license term.

10. *Aviation (Aircraft) Service:* These services include stations authorized to provide communications between aircraft and from aircraft to ground stations and includes frequencies used to communicate with air traffic control facilities pursuant to Part 87 of the Commission's Rules. The recently enacted Telecommunications Act of 1996 gave the Commission the authority to license certain aircraft radio stations by rule rather than by individual license. Private aircraft operators flying entirely within domestic U.S. airspace and who are not otherwise required by treaty or agreement to carry a radio, may no longer be required to hold an aircraft license if the Commission enacts rules to that effect, and they will not be required to pay a regulatory fee. For FY 1996, parties required to be licensed and those choosing to be licensed for Aviation (Aircraft) Stations will pay a $3 annual regulatory fee per station, payable for the entire ten year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $30 per station for the ten year license term.

11. *Aviation (Ground) Service:* This service includes stations authorized to provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to Part 87 of the Commission's Rules. Certain ground-based stations which only serve itinerant traffic; i.e., possess no actual units on which to assess a fee, are exempt from payment of regulatory fees. For FY 1996, licensees of Aviation (Ground) Stations will pay a $3 annual regulatory fee per license, payable for the entire five year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $15 per call sign for the five year license term.

12. *General Mobile Radio Service (GMRS):* These services include Land Mobile Radio licensees providing personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to Part 95 of the Commission's Rules. For FY 1996, GMRS licensees will pay a $3 annual regulatory fee per license, payable for an entire five year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $15 per license for the five year license term.

c. Amateur Radio Vanity Call Signs

13. *Amateur Vanity Call Signs:* This fee covers voluntary requests for specific call signs in the Amateur Radio Service authorized under part 97 of the Commission's Rules. For FY 1996, applicants for Amateur Vanity Call-Signs will pay a $3 annual regulatory fee per call sign, payable for an entire ten year license term at the time of application for a vanity call sign. The total

[1] This category only applies to licensees of shared-use private 220–222 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected not to change to the Commercial Mobile Radio Service (CMRS). Those who have elected to change to the CMRS are referred to paragraph 14 of this Appendix.

[2] Although this fee category includes licenses with ten year terms, the estimated volume of ten year license applications in FY 1996 is less than one tenth of one percent and, therefore, is statistically insignificant.

regulatory fee due would be $30 per license for the ten year license term.[3]

d. Commercial Wireless Radio Services

14. *Commercial Mobile Radio Services (CMRS) Mobile Services:* The Commercial Mobile Radio Service (CMRS) is a new "umbrella" descriptive term attributed to various existing services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Mobile Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Specialized Mobile Radio Services) and others formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile Services and Cellular Radio Service). While specific rules pertaining to each covered service remain in separate Parts 22, 80 and 90; general rules for CMRS are contained in Part 20. We have replaced the Public Mobile/Cellular Radio regulatory fee category with a CMRS Mobile Services category for regulatory fee collection purposes. CMRS Mobile Services will include: qualifying Business Radio Services, 220–222 MHz Land Mobile Systems, Specialized Mobile Radio Services (Part 90);[4] Public Coast Stations (Part 80); Public Mobile Radio, Cellular, 800 MHz Air-Ground Radiotelephone, and Offshore Radio Services (Part 22). Licensees who have not elected to convert from private to commercial operations will be exempt from payment of the annual CMRS Mobile Services fee for FY 1996. Existing commercial licensees and those who converted prior to December 31, 1995, must pay the annual CMRS Mobile Services fee for FY 1996. Each licensee in this group will pay an annual regulatory fee for each mobile or cellular unit (mobile or cellular call sign or telephone number), including two-way paging units, assigned to its customers, including resellers of its services. For FY 1996, the regulatory fee is $.17 per unit.

15. *Personal Communications Service (PCS):* For FY 1996, the Personal Communications Service (PCS) covered by Part 24 of the rules is exempt from payment of regulatory fees.

16. *Commercial Mobile Radio Services (CMRS) One-Way Paging Services:* The Commercial Mobile Radio Service (CMRS) is a new "umbrella" descriptive term attributed to various existing services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS One-Way Paging Services include certain licensees which formerly were licensed as part of the Private Radio Services (e.g., Private Paging) and others formerly licensed as part of the Common Carrier Radio Services (e.g., Public Mobile One-Way Paging). While specific rules pertaining to each covered service remain in separate Parts 22 and 90; general rules for CMRS are contained in Part 20. We have replaced the Public Mobile One-Way Paging regulatory fee category with a CMRS One-Way Paging Services category for regulatory fee collection purposes. Licensees who have not elected to convert from private to commercial operations will be exempt from payment of the annual CMRS One-Way Paging Services fee for FY 1996. Existing commercial licensees and those who converted prior to December 31, 1995, must pay the annual CMRS One-Way Paging Services fee for FY 1996. Each licensee in the CMRS One-Way Paging Services will pay an annual regulatory fee for each paging unit, assigned to its customers, including resellers of its services. For FY 1996, the regulatory fee is $.02 per unit.

II. Mass Media Services

17. The regulatory fees for the Mass Media fee category apply to broadcast licensees and permittees. Noncommercial Educational Broadcasters are exempt from regulatory fees.

a. Commercial AM and FM Radio

18. These categories include licensed Commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) Radio Stations operating under Part 73 of the Commission's Rules.[5] The regulatory fees for AM and FM Stations for FY 1996 are as follows:

AM Radio	
Class A	$1,250
Class B	690
Class C	280
Class D	345
FM Radio	
Classes C, C1, C2, B	$1,250
Classes A, B1, C3	830

b. Construction Permits—Commercial AM Radio

19. This category includes holders of permits to construct new Commercial AM Stations. For FY 1996, permittees will pay a fee of $140 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable and licensees would be required to pay the applicable fee for the designated class of the station.

c. Construction Permits—Commercial FM Radio

20. This category includes holders of permits to construct new Commercial FM Stations. For FY 1996, permittees will pay a fee of $690 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a regulatory fee based upon the designated class of the station.

d. Commercial Television Stations

21. This category includes licensed Commercial VHF and UHF Television Stations covered under Part 73 of the Commission's Rules, except commonly owned Television Satellite Stations, addressed separately below. Markets are Nielsen Designated Market Areas (DMA) as listed in the *Television & Cable Factbook*, Stations Volume No. 63, 1995 Edition, Warren Publishing, Inc. The fees for each category of station are as follows:

VHF Markets 1–10	$32,000
VHF Markets 11–25	26,000
VHF Markets 26–50	17,000
VHF Markets 51–100	9,000
VHF Remaining Markets	2,500
UHF Markets 1–10	$25,000
UHF Markets 11–25	20,000
UHF Markets 26–50	13,000
UHF Markets 51–100	7,000
UHF Remaining Markets	2,000

e. Commercial Television Satellite Stations

22. Commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station are assessed a fee of $690 annually. Those stations designated as Television Satellite Stations in the 1995 Edition of the *Television and Cable Factbook* are subject to the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

f. Construction Permits—Commercial VHF Television Stations

23. This category includes holders of permits to construct new Commercial VHF Television Stations. For FY 1996, VHF permittees will pay an annual regulatory fee of $5,550. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

g. Construction Permits—Commercial UHF Television Stations

24. This category includes holders of permits to construct new UHF Television Stations. For FY 1996, UHF Television permittees will pay an annual regulatory fee of $4,425. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

h. Construction Permits—Satellite Television Stations

25. The fee for UHF and VHF Television Satellite Station construction permits for FY 1996 is $250. An individual regulatory fee payment is to be made for each Television Satellite Station construction permit held.

i. Low Power Television, FM Translator and Booster Stations, TV Translator and Booster Stations

26. This category includes Low Power UHF/VHF Television stations operating under Part 74 of the Commission's Rules with a transmitter power output limited to 1 kW for a UHF facility and, generally, 0.01 kW for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV Broadcast Station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under Part 74 which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). The stations in this category are secondary to full service stations in terms of frequency priority. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, they are nonprofit, nonprofitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we have addressed those concerns in the ruling on reconsideration of the FY 1994 *Report and Order*. Community based Translators are exempt from regulatory fees. For FY 1996, licensees in this category will pay a regulatory fee of $190 for each license held.

j. Broadcast Auxiliary Stations

27. This category includes licensees of remote pickup stations, Aural Broadcast Auxiliary Stations, Television Broadcast Auxiliary Stations, and Low Power Auxiliary Stations, authorized under Part 74 of the Commission's Rules. Auxiliary Stations are generally associated with a particular television or radio broadcast station or cable television system. For FY 1996, licensees of Commercial Auxiliary Stations will pay a $35 annual regulatory fee on a per call sign basis.

k. Multipoint Distribution Service

28. This service is included in the Domestic Public Fixed Service category and covers Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS), authorized under Part 21 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. For FY 1996, MDS and MMDS stations will pay an annual regulatory fee of $155 per call sign. *See* para. 31 below.

III. Cable Services

a. Cable Television Systems

29. This category includes operators of Cable Television Systems, providing or distributing programming or other services to subscribers under Part 76 of the Commission's Rules. For FY 1996 Cable Systems will pay a regulatory fee of $.55 per subscriber.[6] Payments for Cable Systems are to be made on a per subscriber by community unit basis as of December 31, 1995. Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, the number of individual households in multiple dwelling units, *e.g.*, apartments, condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individual households. *See* FY 1994 *Report and Order*, Appendix B at para. 31.

b. Cable Antenna Relay Service

30. This category includes Cable Antenna Relay Service (CARS) stations used to transmit television and related audio signals, signals of AM and FM Broadcast Stations and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a Cable Television System. For FY 1996, licensees will pay an annual regulatory fee of $325 per CARS license.

IV. Common Carrier Services

a. Fixed Radio Services

31. *Domestic Public Fixed Radio Service:* This category includes licensees in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, Digital Electronic Message Service, Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS),[7] authorized under Part 21 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. For FY 1996, Domestic Public Fixed Radio Service licensees pay a $155 annual regulatory fee per call sign.

b. Interstate Telephone Service Providers

32. This category includes Inter-Exchange Carriers (IXCs), Local Exchange Carriers (LECs), Competitive Access Providers (CAPs), domestic and international carriers that provide operator services, Wide Area Telephone Service (WATS), 800, 900, telex, telegraph, video, other switched, interstate access, special access, and alternative access services either by using their own facilities or by reselling facilities and services of other carriers or telephone carrier holding companies, and companies other than traditional local telephone companies that provide interstate access services to long distance carriers and other customers. This category also includes pre-paid calling card providers. These common carriers, including resellers, must submit fee payments based upon their proportionate share of gross interstate revenues using the methodology that we have adopted for calculating contributions to the TRS fund. *See Telecommunications Relay Services*, 8 FCC Rcd 5300 (1993), 58 FR 39671 (1993). In order to avoid imposing any double payment burden on resellers, we will permit carriers to subtract from their gross interstate revenues, as reported to NECA in connection with their TRS contribution, any payments made to underlying common carriers for telecommunications facilities and services, including payments for interstate access service, that are sold in the form of interstate service. For this purpose, resold telecommunications facilities and services are only intended to include payments that correspond to revenues that will be included by another carrier reporting interstate revenue. For FY 1996, carriers should multiply their adjusted gross revenue figure (gross revenue reduced by the total amount of their payments to underlying common carriers for telecommunications facilities or services) by the factor 0.00098 to determine the appropriate fee for this category of service. You may want to use the following worksheet to determine your fee payment:

	Total	Interstate
(1) Revenue reported in TRS Fund worksheets		
(2) Less: Access charges paid		
(3) Less: Other telecommunications facilities and services taken for resale		
(4) Adjusted revenues (1)minus (2)minus(3)		
(5) Fee factor	.....	0.00098
(6) Fee due (4)times(5)		

V. International Services

a. Earth Stations

33. Very Small Aperture Terminal (VSAT) Earth Stations, equivalent C-Band Earth Stations and antennas, and earth station systems comprised of very small aperture terminals operate in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. *VSAT systems* consist of a network of technically-identical small Fixed-Satellite Earth Stations which often include a larger hub station. VSAT Earth Stations and C-Band Equivalent Earth Stations are authorized pursuant to Part 25 of the Commission's Rules. *Mobile Satellite Earth Stations*, operating pursuant to Part 25 of the Commission's Rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses or trucks.[8] *Fixed- Satellite Transmit/Receive and Transmit Only Earth Station antennas*, authorized or registered

[3] Section 9(h) exempts "amateur radio operator licenses under Part 97 of the Commission's rules (47 CFR Part 97)" from the requirement. However, Section 9(g)'s fee schedule explicitly includes "Amateur vanity call signs" as a category subject to the payment of a regulatory fee.

[4] This category does not include licensees of private shared-use 220 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected to remain non-commercial. Those who have elected not to change to the Commercial Mobil Radio Service (CMRS) are referred to paragraph 4 of this Appendix. Further, Congress provided for a three year transition period until August 10, 1996, for conversion to CMRS. *See* Omnibus Budget Reconciliation Act of 1993, Public Law No. 103–66, Title VI § 6002(b), 107 Stat. 312,392. Therefore, licensees who had not converted to CMRS prior to December 31, 1995, are not subject to the CMRS Mobile Services fee for FY 1996.

[5] The Commission acknowledges that certain stations operating in Puerto Rico and Guam have been assigned a higher level station class than would be expected if the station were located on the mainland. Although this results in a higher regulatory fee, we believe that the increased interference protection associated with the higher station class is necessary and justifies the fee.

[6] Cable systems are to pay their regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory fee schedule. *See* FY 1994 *Report and Order* at para. 100.

[7] MDS and MMDS are regulated by the Mass Media Bureau.

[8] Mobile earth stations are hand-held or vehicle-based units capable of operation while the operator or vehicle is in motion. In contrast, transportable units are moved to a fixed location and operate in a stationary (fixed) mode. Both are assessed the same regulatory fee for FY 1996.

under Part 25 of the Commission's Rules, are operated by private and public carriers to provide telephone, television, data, and other forms of communications. Included in this category are telemetry, tracking, and control (TT&C) earth stations and earth station uplinks. For FY 1996, licensees of VSATs, Mobile Satellite Earth Stations, and Fixed-Satellite Transmit/Receive and Transmit Only Earth Stations will pay a fee of $370 per authorization or registration *as well as a separate fee of $370 for each associated Hub Station.*

34. *Receive only earth stations.* For FY 1996, there is no regulatory fee for receive-only earth stations.

b. Space Stations (Geosynchronous)

35. Geosynchronous Space Stations are domestic and international satellites positioned in orbit to remain approximately fixed relative to the earth. Most are authorized under Part 25 of the Commission's Rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. In addition, this category includes Direct Broadcast Satellite (DBS) Service which includes space stations authorized under Part 100 of the Commission's rules to transmit or re-transmit signals for direct reception by the general public encompassing both individual and community reception. For FY 1996, entities authorized to operate geosynchronous space stations (including DBS satellites) will be assessed an annual regulatory fee of $70,575 per operational station in orbit. Payment is required for any geosynchronous satellite that has been launched and tested and is authorized to provide service.

c. Low Earth Orbit Satellites (LEOs)

36. Low Earth Orbit Satellite Systems are space stations that orbit the earth in non-geosynchronous orbit. They are authorized under Part 25 of the Commission's rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. For FY 1996, entities authorized to operate Low Earth Orbit Satellite Systems will be assessed an annual regulatory fee of $97,725 per operational system in orbit. Payment is required for any LEO System that has one or more operational satellites.

d. Signatories

37. A *Signatory to INMARSAT* is an Administration or government, or the telecommunications entity designated as sole operating entity by an Administration or government, which participates in the International Mobile Satellite Organization (INMARSAT) in order to develop and operate a global maritime satellite telecommunication system which serves maritime commercial and safety needs of the United States and foreign countries. A *Signatory to INTELSAT* is an Administration or government, or the telecommunications entity designated as sole operating entity by an Administration or government, which participates in the International Telecommunications Satellite Organization (INTELSAT) in order to develop, construct, operate and maintain the space segment of the global commercial telecommunications satellite system established under the Interim Agreement and Special Agreement signed by Governments on August 20, 1964. For FY 1996, Signatories to INMARSAT and INTELSAT will be assessed an annual regulatory fee of $233,425 in order to recover the cost of the Commission's regulatory activities associated with such entities.

e. International Bearer Circuits

38. Regulatory fees for International Bearer Circuits are to be paid by the facilities-based common carriers activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Payment of the fee for bearer circuits by private submarine cable operators is required for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *Compare* FY 1994 *Report and Order* at 5367. The fee is based upon active 64 Kbps circuits, or equivalent circuits. Under this formulation, 64 Kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 Kbps circuit equivalent of larger bit stream circuits. For example, the 64 Kbps circuit equivalent of a 2.048 Mbps circuit is 30 64 Kbps circuits. Analog circuits such as 3 and 4 KHz circuits used for international service are also included as 64 Kbps circuits. However, circuits derived from 64 Kbps circuits by the use of digital circuit multiplication systems are not equivalent 64 Kbps circuits. Such circuits are not subject to fees. Only the 64 Kbps circuit from which they have been derived will be subject to payment of a fee. For FY 1996, the regulatory fee is $4.00 for each active 64 Kbps circuit or equivalent. For analog television channels we will assess fees as follows:

Analog television channel size in MHz	No. of equivalent 64 Kbps circuits
36	530
24	288
18	240

f. International Public Fixed

39. This fee category includes common carriers authorized under Part 23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or HF troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. For FY 1996, International Public Fixed Radio Service licensees will pay a $225 annual regulatory fee per call sign.

g. International (HF) Broadcast

40. This category covers International Broadcast Stations licensed under Part 73 of the Commission's Rules to operate on frequencies in the 5,950 khz to 26,100 Khz range to provide service to the general public in foreign countries. For FY 1996, International HF Broadcast Stations will pay an annual regulatory fee of $280 per station license.

Appendix G—Description of FCC Activities

[This Appendix G will not be published in the Code of Federal Regulations]

Authorization of Service: The authorization or licensing of radio stations, telecommunications equipment and radio operators, as well as the authorization of common carrier and other services and facilities. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with authorization activities.

Policy and Rule Making: Formal inquiries, rule making proceedings to establish or amend the Commission's rules and regulations, action on petitions for rule making and requests for rule interpretations or waivers; economic studies and analyses; spectrum planning, modeling, propagation-interference analyses and allocation; and development of equipment standards. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with policy and rule making activities.

Enforcement: Enforcement of the Commission's rules, regulations and authorizations, including investigations, inspections, compliance monitoring and sanctions of all types. Also includes the receipt and disposition of formal and informal complaints regarding common carrier rates and services, the review and acceptance/rejection of carrier tariffs, and the review, prescription and audit of carrier accounting practices. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with enforcement activities.

Public Information Services: The publication and dissemination of Commission decisions and actions, and related activities; public reference and library services; the duplication and dissemination of Commission records and databases; the receipt and disposition of public inquiries; consumer, small business and public assistance; and public affairs and media relations. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with public information activities.

Appendix H—Parties Filing Comments and Reply Comments

[This Appendix H will not be published in the Code of Federal Regulations]

Parties Filing Comments

Bernstein and McVeigh
Motorola Satellite Communications, Inc.
Destineer Corp.
GE American Communications, Inc.
Montana Broadcasters Association
American Mobile Telecommunications Association, Inc.
COMSAT Corporation
Southern Broadcast Corporation of Sarasota
National Cable Television Association, Inc.
Society of Broadcast Engineers, Inc.
National Exchange Carrier Association, Inc.
NEXTEL Communications, Inc.

Parties Filing Reply Comments

GE American Communications, Inc.

[FR Doc. 96–17640 Filed 7–11–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Parts 61 and 64

[DA 96–1073]

Inmate Calling Services—Prison Payphones

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On January 30, 1996, the Commission adopted a Declaratory Ruling that inmate-only payphone instruments are customer premises equipment (CPE) that must be provided on an unregulated basis. The Commission additionally denied petitioner's request that certain inmate-only services be considered enhanced services.

Three petitions were filed with the Commission on March 21, 1996, and one on April 5, 1996, requesting that the Declaratory Ruling be stayed or waived pending the effective date of new rules, pursuant to Section 276 of the Telecommunications Act of 1996, that must be adopted for all payphones. One petitioner also argued that the Declaratory Ruling did not apply to smaller local exchange carriers (LECs). In this Order we deny the request in part and grant it in part, and the intended effect of this action is to ensure that the inmate-only payphone market is competitive.

EFFECTIVE DATE: July 12, 1996.

FOR FURTHER INFORMATION CONTACT: Alan Thomas, 202–418–2338.

SUPPLEMENTARY INFORMATION: This report summarizes the Commission's Order in the matter of Petition for Waiver and Partial Reconsideration or Stay of Inmate-Only Payphones Declaratory Ruling (DA 96–1073, adopted July 3, 1996 and released July 3, 1996). The file is available for inspection and copying in the Network Services Reference Room, room 220, 2000 M Street, NW., Washington, DC, during the weekday hours of 8:30 a.m. to 3:30 p.m. Monday through Thursday; 8:30 a.m. to 11:30 a.m. on Friday; closed between 12:30 p.m. and 1:30 p.m. Monday through Thursday; or copies may be purchased from the Commission's duplicating contractor, ITS, Inc. 2100 M St., NW., Suite 140, Washington, DC 20037, phone (202) 857–3800.

Analysis of Proceeding

2. Petitioners requested the Commission to stay, waive, or reconsider the effective date of the Declaratory Ruling pending the effective date of new rules that must be adopted for all payphones pursuant to Section 276 of the Telecommunications Act of 1996. Petitioners contended that compliance would be superfluous if accounting changes were required to be made solely for inmate-only payphones. Petitioners also argued that providing inmate-only payphones as unregulated CPE would constitute a new service, and that tariffs disclosing technical information regarding such new service must be filed with the Commission six or twelve months before introduction of the new service; thus, petitioners contended that this disclosure requirement made the September 2, 1996 deadline in the Declaratory Ruling impossible to meet. Petitioners also argued that the Declaratory Ruling is in conflict with Section 402 of the Telecommunications Act of 1996 because the former would require that cost allocation manuals (CAMs) be filed more than once annually. Finally, one of the petitioners separately argued that the Telecommunications Act of 1996 did not intend for the Declaratory Ruling to apply to smaller LECs.

3. In this Order, the Commission concluded that the petitioners generally had not satisfied their burden, as stated in *Washington Metropolitan Transit Comm'n* v. *Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977), and thus denied the request for stay and waiver of the Declaratory Ruling. Petitioners did not satisfy their burden that, absent a stay, they would be irreparably injured; nor did they quantify or otherwise demonstrate specific activities that would be superfluous or burdensome. Petitioners also failed to address what effect a stay would have upon the public interest or the harm a stay poses to other parties. The Commission did, however, stay the requirement that CAM revisions be filed. Given that the Commission will soon address Section 402 as part of its ongoing implementation of the Telecommunications Act of 1996, petitioners' position regarding CAM filings did have sufficient merit. Carriers are still required, however, to begin separating their costs effective July 3, 1996.

4. The Commission also waived its requirement that tariffs for a new service such as unregulated payphones must be filed within six or twelve months. Adherence to the Commission's rule would have delayed implementation of the Declaratory Ruling, and the appropriate remedy is not to delay implementation, but rather to waive the normal time period.

5. Finally, the Commission based its Declaratory Ruling on longstanding CPE policies and not the Telecommunications Act of 1996; petitioners offered no bar to the Commission's continued application of these policies with regard to smaller LECs.

Ordering Clauses

6. *It is ordered,* pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that the Petition for Partial Reconsideration or Stay filed jointly by Bell Atlantic, BellSouth, NYNEX, and Pacific Bell and Nevada Bell; the Petition for Reconsideration and Stay filed by Cincinnati Bell; the Petition for Waiver filed by Southwestern Bell; and the Petition for Waiver filed by Pacific Bell and Nevada Bell are denied to the extent described above.

7. *It is further ordered* that pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that we stay the requirement that petitioners file their CAM revisions on July 3, 1996, consistent with this order; however, carriers are still required to begin separating their costs effective July 3, 1996.

8. *It is further ordered* that pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, and authority delegated in § 0.91 of the Commission's rules, 47 CFR 0.91, and § 0.291 of the Commission's rules, 47 CFR 0.291, that we waive the network disclosure time requirements applicable to a new unbundled network service to the extent described above.

List of Subjects in 47 CFR Parts 61 and 64

Federal Communications Commission, Inmate-only payphone equipment, Telephones.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–17810 Filed 7–11–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 66

[FCC 96-242]

Applications Relating to Consolidation, Acquisition, or Control of Telephone Companies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Telecommunications Act of 1996 specifically repealed section 221(a) of the Communications Act of 1934. In 1956, the Commission had enacted part 66 of the rules to set out the contents of an application for authority to consolidate telephone companies. Since the Commission no longer has this authority, it has removed part 66 of its rules as unnecessary.

EFFECTIVE DATE: July 12, 1996.

FOR FURTHER INFORMATION CONTACT: R.J. Hertz, Enforcement Division, Common Carrier Bureau, (202) 418-0984.

SUPPLEMENTARY INFORMATION:

Adopted: May 29, 1996;
Released: June 4 , 1996.

1. On February 8, 1996, the Telecommunications Act of 1996 (the "1996 Act") became law.[1] Section 601(b)(2) of the 1996 Act[2] reads: "(s)ubsection (a) of section 221 (47 U.S.C. 221(a)) is repealed." This Order removes part 66 of the Commission's rules,[3] which concerns the applications to be filed upon the consolidation, acquisition, or change of control of telephone companies. Section 1.527 of our rules contained the rules to implement Section 221(a) of the Communications Act of 1934, as amended.[4] In 1956, after Congress made minor changes to section 221(a), the Commission adopted part 66 to establish new procedures and delineate the information necessary for an application for Commission approval of the consolidation.[5]

2. Under section 221(a) of the Act, before a consolidation could take place,[6] the Commission was required to make a finding that it was not contrary to the public interest for a telecommunications carrier to acquire control, either by acquisition of the physical assets or the securities, of another carrier. Specifically, it provided that upon the filing of an application to consolidate, the Commission was to issue a notice to the areas affected by the consolidation so that the subscribers in those areas, as well as the state or local authorities, would have the opportunity to submit comments on the proposed consolidation. Then, if the Commission determined that the consolidation was in the public interest, it was to certify this fact so as to make inapplicable any other Act or Acts of Congress that would make the proposed transaction unlawful.

3. Congress enacted section 221(a) at a time when local telephone service was viewed as a natural monopoly; thus, section 221(a) allowed competing local telephone companies to merge without facing antitrust scrutiny.[7] According to the Joint Explanatory Statement:

> [S]ection 221(a) could inadvertently undercut several of the provisions of the Telecommunications Act of 1996. The problem arises for at least two reasons. First, the crucial term "telephone company" is not defined. In the old world of regulated monopolies, a definition probably was not necessary. However, in the new world of competition, many companies will be able to argue plausibly that they are telephone companies.
>
> Second, section 221(a) allows the Commission to confer immunity from any Act of Congress (including the Telecommunications Act of 1996) after performing a public interest review. Section 221(a) could be used to avoid the cable-telco buyout provisions of the Telecommunications Act of 1996. Any cable company that owned any telephone assets could become a telephone company and be bought out by a BOC by applying for immunity under this section.
>
> In addition, if immunity were conferred under section 221(a), it would allow mergers between telecommunications giants to go forward without any antitrust or securities review. In the old world, the statute was usually used to confer immunity on mergers between noncompeting Bell operating subsidiaries or mergers between Bells and small independents within their territories. Neither of these situations involved competitive considerations.[8]
>
> The Joint Explanatory Statement clarifies, however, that repeal of Section 221(a) would not affect the Commission's ability to confer antitrust immunity.[9]

4. Because the part 66 rules were promulgated to effectuate a process that has been repealed by the 1996 Act, these rules are now unnecessary and should be removed. Accordingly, we find for good cause that further notice and comment are not necessary, nor required, under section 553(3)(B) of the Administrative Procedure Act,[10] because such changes are purely ministerial and necessary to conform our written rules to the Congressional mandate found in the 1996 Act.

5. Accordingly, *it is ordered*, pursuant to sections 4 (i) and (j) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j), and section 601(b)(2) of the Telecommunications Act of 1996, Pub. L. No. 104-104, sec. 601(b)(2), 110 Stat. 56 (1996), that part 66 of the rules *is hereby removed.*

List of Subjects in 47 CFR Part 66

Administrative practice and procedure, Communications Carriers, Federal Communications Commission, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, part 66, is amended as follows:

PART 66—APPLICATIONS RELATING TO CONSOLIDATION, ACQUISITION, OR CONTROL OF TELEPHONE COMPANIES—[REMOVED]

1. The authority citation for part 66 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended: 47 U.S.C. 154.

. 2. Part 66 is removed.

[FR Doc. 96-17809 Filed 7-11-96; 8:45 am]
BILLING CODE 8712-01-P

[1] Pub. L. No. 104-104, 110 Stat. 56 (1996).
[2] *Id.* sec. 601(b)(2).
[3] 47 CFR 66.11-66.15.
[4] 47 U.S.C. 221(a).
[5] *See* Transfer of Carrier's Property, 42 FCC 125 (1956).
[6] *See supra* note 4.
[7] *See* Joint Explanatory Statement of the Committee of Conference, S. Rep. No. 104-458, at 200 (1996) (*Joint Explanatory Statement*).
[8] *Id.* at 200-01.
[9] *Id.* at 201.
[10] 5 U.S.C. 553(3)(B).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 575

[Docket No. 96-09, Notice 02]

RIN 2127-AF81

Federal Motor Vehicle Safety Standards, and Consumer Information Regulations; Truck-Camper Loading

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This document rescinds Federal Motor Vehicle Safety Standard (Standard) No. 126, *Truck-camper loading*, and combines its provisions with 49 CFR 575.103, *Truck-camper loading*. This action is being taken because a review of this agency's standards and regulations pursuant to the President's regulatory reinvention initiative persuaded the agency that combining these two rules into one will make their respective requirements easier to understand and apply.

This document also eliminates the requirement to assign a vehicle identification number to each slide-in camper.

DATES: This final rule is effective September 1, 1997.

Any petition for reconsideration of this rule must be received by NHTSA not later than August 26, 1996.

ADDRESSES: Petitions for reconsideration should refer to the docket number and notice number set forth above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5109, Washington, DC 20590; telephone (202) 366-4949. Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

For technical issues: Robert M. Clarke, Chief, Vehicle Dynamics Division, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5307, Washington, DC 20590. Telephone (202) 366-5281; FAX (202) 366-4329.

For legal issues: Walter Myers, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5219, Washington, DC 20590. Telephone: (202) 366-2992; FAX (202) 366-3820.

SUPPLEMENTARY INFORMATION:

Background

Standard No. 126 was initially established by final rule published on August 15, 1972 (37 FR 16497) to provide information that can be used by consumers to reduce overloading and improper load distribution in truck-camper combinations. The standard requires manufacturers of slide-in campers to affix a label to each camper specifying, among other things, the maximum weight of the camper and its equipment. The standard also requires that the owner's manual for the camper contain a picture showing the location of the longitudinal center of gravity of the camper when properly loaded.

When initially published, the standard also required manufacturers of trucks capable of accommodating slide-in campers to include in the truck operator's manual a picture showing the manufacturer's recommended longitudinal center of gravity for the cargo weight rating of the camper and a picture of the proper match of a truck and slide-in camper.

Also on August 15, 1972, NHTSA published a notice of proposed rulemaking (NPRM) proposing to require that slide-in campers be identified by a vehicle identification number "to facilitate any future defect notification and recall campaigns that might occur" (37 FR 16505).

By final rule published on December 14, 1972 (37 FR 26605), NHTSA adopted the requirement for a vehicle identification number. In a separate final rule published on the same day, NHTSA withdrew the truck requirements from the standard and reissued them in 49 CFR 575.103, a consumer information regulation (37 FR 26607). That action was taken in response to petitions for reconsideration of the final rule of August 15, 1972, which established Standard No. 126 (37 FR 16497).

Pursuant to the March 4, 1994 directive entitled *Regulatory Reinvention Initiative* from the President to the heads of all Federal departments and agencies, NHTSA reviewed all its Federal motor vehicle safety standards and related regulations. As a result of that review, NHTSA tentatively determined that the camper requirements of Standard No. 126 and the truck requirements of 49 CFR 575.103 should be combined into one regulation as before, but this time as a consumer information regulation rather than a performance standard.

Notice of Proposed Rulemaking

(a) Truck Camper Loading Labeling and Information

The current truck-camper loading requirements of Standard No. 126 and § 575.103 involve labeling and placing certain information in the owner's manual. The former requirements are applicable to campers and the latter, to trucks. Since the two provisions were so closely related and, in fact, overlapping, the agency published an NPRM on February 14, 1996 (61 FR 5730) proposing that Standard No. 126 be rescinded and its provisions combined with and incorporated into the provisions of 49 CFR 575.103. The agency stated that no useful purpose is served by keeping the camper requirements separate from the truck requirements in the CFR. The agency stated that since the provisions of the two sections are so closely related, it would be easier, more convenient, and more efficient for manufacturers, regulators, and the public to apply those provisions if they were combined rather than maintained as separate sections in the CFR.

(b) Slide-in Camper Vehicle Identification Number

As stated in the *Background* discussion above, Standard No. 126 requires camper manufacturers to assign a vehicle identification number (VIN) to each slide-in camper they produce. Specifically, paragraph S5.1.1(e) provides that manufacturers must assign a number to each slide-in camper "for identification purposes consisting of arabic numerals, roman letters, or both." The same paragraph further provides that no two campers produced within a 10-year period shall have the same identification number.

The final rule of December 14, 1972 stated that the purpose of the camper VIN was to increase the accuracy and efficiency of recall campaigns conducted by manufacturers to remedy safety defects. However, out of the 26 recalls that have been conducted under Standard No. 126 since its inception in 1972, none have involved or relied on the camper VIN. Agency experience in past slide-in camper recalls has been that the manufacturer's model and serial numbers are sufficient to identify the campers and/or the models involved in the recall. NHTSA tentatively concluded, therefore, that requiring slide-in campers to have a VIN is redundant and does not serve its intended purpose. Accordingly, NHTSA proposed to delete the requirement for a vehicle identification number on slide-in campers.

Public Comments

Chrysler Corporation (Chrysler), General Motors (GM), and the International Association of Chiefs of Police (IACP) submitted comments in response to the NPRM. All indicated general support for the proposals. The IACP commented that elimination of the VIN will not present any difficulties for law enforcement since the serial and model numbers will suffice for identification purposes in place of the VIN.

GM expressed two concerns. One was related to the proposal to require center of gravity distance information in metric units only. GM stated that such requirement will make it more difficult for purchasers of trucks and slide-in campers to determine the comparability of the combination units. GM argued that purchasers of new trucks who expect to use their old campers will have to convert metric/English units to determine the trucks' centers of gravity, and that many people do not know how to do that. GM suggested, therefore, that the center of gravity information depicted in Figures 2 and 4 be provided in both English and metric units.

The other concern was the absence of a proposed effective date. GM stated that if an effective date sooner than September 1, 1996, the start of model year 1997, were established, it would create a considerable cost burden on manufacturers by requiring them to revise and print new manuals and consumer information booklets to incorporate the new metric requirements. GM recommended, therefore, that an effective date no earlier than September 1, 1996 be established as the effective date of the proposed amendments.

Agency Analysis and Decision

(a) The agency is adopting its proposal for combining of the provisions of Standard No. 126 and § 575.103 and deleting the requirement for a separate VIN for slide-in campers for the reasons stated in the NPRM.

(b) Metric/English units of measurement. Section 5164 of the Omnibus Trade and Competitiveness Act, Pub. L. 100–418 (Act), established the metric system of measurements as the preferred system of weights and measures for U.S. trade and commerce. Executive Order No. 12770 directed Federal agencies to comply with the Act by adopting and publishing a conversion schedule in the **Federal Register**. NHTSA published for comment its plan to convert the Federal motor vehicle safety standards to metric measurements in the **Federal Register** on April 21, 1992 (57 FR 14619). Based on five comments received in response to that notice, NHTSA published an NPRM on March 15, 1994 (59 FR 11962) proposing the initial group of standards to be converted to the metric system, one of which was Standard No. 126. After considering the submissions of 17 commenters, NHTSA published a final rule on March 14, 1995 converting Standard No. 126, among others, to metric measurements, followed by the equivalent English measurements in parentheses. Section 575.103 was not addressed in that final rule.

The agency considers GM's concerns to be reasonable with respect to the metrics-only measurements shown on Figures 2 and 4, particularly since Figure 1 shows both metric and English measurements. NHTSA's stated intention for issuing the truck/camper loading requirements was to provide useful information to consumers in the proper loading of campers into their companion trucks. Obviously, if the required labeling and illustrations are confusing or, at best, not helpful, then the central purpose of the truck/camper requirements is defeated. NHTSA agrees with GM, therefore, that if there is any possibility that consumers may become confused in attempting to convert metric and English units, both units should be shown in Figures 2 and 4. Accordingly, Figures 2 and 4 are amended to depict measurements shown first in metric units, followed by their equivalent English units in parentheses.

(c) Effective date. The agency also agrees with GM with respect to an effective date of this final rule, that is, that the amendments issued by this rule should be effective at the start of a new model year. The agency believes that an effective date of September 1, 1996 does not give manufacturers sufficient time to comply with the new requirements. Accordingly, the effective date of the requirements of this rule is established as September 1, 1997.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, *Regulatory Planning and Review*. NHTSA has considered the impact of this rulemaking action under the DOT's regulatory policies and procedures and has determined that it is not "significant" within the meaning of those policies and procedures.

The amendments promulgated in this rulemaking action are intended to reorganize certain existing requirements and to eliminate a separate, unneeded requirement, thereby simplifying and streamlining the body of Federal regulations. The agency estimates that there will be no cost impact or lead time effects for either manufacturers, dealers, or consumers.

Elimination of the requirement for assigning and affixing a camper VIN will result in only minimal cost savings. Currently, camper manufacturers are required to place the camper VIN on the label containing other information about campers. Since camper manufacturers will continue to be required to place that label on their campers, being relieved of the necessity of placing a camper VIN on the label will at most enable the manufacturers to use a slightly smaller label.

Accordingly, the agency believes that the cost impacts of this rulemaking action will be so minimal as not to warrant the preparation of a full preliminary regulatory evaluation.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. For the reasons stated above, this proposal will have no significant impact on manufacturers of slide-in campers and trucks capable of accommodating slide-in campers, thus will have no impact on the costs of those products. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule will not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No state laws will be affected.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, Pub. L. 96–511, the agency notes that there are no information collection requirements associated with this rulemaking action.

Executive Order 12778 (Civil Justice Reform)

This rule has no retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision thereof may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle only if the state's standard is identical to the Federal standard. However, the United States government, a state or political subdivision thereof may prescribe a standard for a motor vehicle or motor vehicle equipment for its own use that imposes a higher performance requirement than that required by the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. This section does not require submission of a petition for reconsideration or other administrative procedures before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.126 [Removed]

2. Section 571.126 is removed in its entirety from the CFR.

List of Subjects in 49 CFR Part 575

Consumer protection, Motor vehicle safety, Reporting and recordkeeping, Tires.

In consideration of the foregoing, 49 CFR part 575 is amended to read as follows:

PART 575—CONSUMER INFORMATION REGULATIONS

3. The authority citation for part 575 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

4. Section 575.103 is revised to read as follows:

§ 575.103 Truck-camper loading.

(a) *Scope.* This section requires manufacturers of slide-in campers to affix to each camper a label that contains information relating to identification and proper loading of the camper and to provide more detailed loading information in the owner's manual. This section also requires manufacturers of trucks that would accommodate slide-in campers to specify the cargo weight ratings and the longitudinal limits within which the center of gravity for the cargo weight rating should be located.

(b) *Purpose.* The purpose of this section is to provide information that can be used to reduce overloading and improper load placement in truck-camper combinations and unsafe truck-camper matching in order to prevent accidents resulting from the adverse effects of these conditions on vehicle steering and braking.

(c) *Application.* This section applies to slide-in campers and to trucks that are capable of accommodating slide- in campers.

(d) *Definitions.*

Camper means a structure designed to be mounted in the cargo area of a truck, or attached to an incomplete vehicle with motive power, for the purpose of providing shelter for persons.

Cargo Weight Rating means the value specified by the manufacturer as the cargo-carrying capacity, in pounds or kilograms, of a vehicle, exclusive of the weight of occupants in designated seating positions, computed as 68 kilograms or 150 pounds times the number of designated seating positions.

Slide-in Camper means a camper having a roof, floor, and sides, designed to be mounted on and removable from the cargo area of a truck by the user.

(e) *Requirements.*—(1) *Slide-in Camper.*—(i) *Labels.* Each slide-in camper shall have permanently affixed to it, in such a manner that it cannot be removed without defacing or destroying it, and in a plainly visible location on an exterior rear surface other than the roof, steps, or bumper extension, a label containing the following information in the English language lettered in block capitals and numerals not less than 2.4 millimeters (three thirty-seconds of an inch) high, of a color contrasting with the background, in the order shown below and in the form illustrated in Figure 1.

(A) Name of camper manufacturer. The full corporate or individual name of the actual assembler of the camper shall be spelled out, except that such abbreviations as "Co." or "Inc." and their foreign equivalents, and the first and middle initials of individuals may be used. The name of the manufacturer shall be preceded by the words "Manufactured by" or "Mfd by."

(B) Month and year of manufacture. It may be spelled out, such as "June 1995" or expressed in numerals, such as "695."

(C) The following statement completed as appropriate:

"Camper weight is _____ kg. (_____ lbs.) maximum when it contains standard equipment, _____ liters (_____ gal.) of water, _____ kg. (_____ lbs.) of bottled gas, and _____ cubic meters (_____ cubic ft.) refrigerator (or icebox with _____ kg. (_____ lbs.) of ice, as applicable). Consult owner's manual (or data sheet, as applicable) for weights of additional or optional equipment."

(D) "Liters (or gal.) of water" refers to the volume of water necessary to fill the camper's fresh water tanks to capacity. "Kg. (or lbs.) of bottled gas" refers to the amount of gas necessary to fill the camper's bottled gas tanks to capacity. The statement regarding a "refrigerator" or "icebox" refers to the capacity of the refrigerator with which the vehicle is equipped or the weight of the ice with which the icebox may be filled. Any of these items may be omitted from the statement if the corresponding accessories are not included with the camper, provided that the omission is noted in the camper owner's manual as required in paragraph (e)(1)(ii) of this section.

(ii) *Owner's manual.* Each slide-in camper manufacturer shall provide with each camper a manual or other document containing the information specified in paragraph (e)(1)(ii) (A) through (F) of this section.

(A) The statement and information provided on the label as specified in paragraph (e)(1)(i) of this section. Instead of the information required by paragraphs (e)(1)(i)(B) of this section, a manufacturer may use the statements "See camper identification label located (as applicable) for month and year of manufacture." If water, bottled gas, or refrigerator (icebox) has been omitted from this statement, the manufacturer's information shall note such omission and advise that the weight of any such item when added to the camper should be added to the maximum camper weight figure used in selecting an appropriate truck.

(B) A list of other additional or optional equipment that the camper is designed to carry, and the maximum weight of each if its weight is more than 9 kg. (20 lbs) when installed.

(C) The statement: "To estimate the total cargo load that will be placed on a truck, add the weight of all passengers in the camper, the weight of supplies, tools, and all other cargo, the weight of installed additional or optional camper equipment, and the manufacturer's camper weight figure. Select a truck that has a cargo weight rating that is equal to or greater than the total cargo load of the camper and whose manufacturer recommends a cargo center of gravity

zone that will contain the camper's center of gravity when it is installed."

(D) The statements: "When loading this camper, store heavy gear first, keeping it on or close to the camper floor. Place heavy things far enough forward to keep the loaded camper's center of gravity within the zone recommended by the truck manufacturer. Store only light objects on high shelves. Distribute weight to obtain even side-to-side balance of the loaded vehicle. Secure loose items to prevent weight shifts that could affect the balance of your vehicle. When the truck-camper is loaded, drive to a scale and weigh on the front and on the rear wheels separately to determine axle loads. The load on an axle should not exceed its gross axle weight rating (GAWR). The total of the axle loads should not exceed the gross vehicle weight rating (GVWR). These weight ratings are given on the vehicle certification label that is located on the left side of the vehicle, normally on the dash panel, hinge pillar, door latch post, or door edge next to the driver on trucks manufactured on or after January 1, 1972. If weight ratings are exceeded, move or remove items to bring all weights below the ratings."

(E) A picture showing the location of the longitudinal center of gravity of the camper within an accuracy of 5 centimeters (2 inches) under the loaded condition specified in paragraph (e)(1)(i)(D) of this section in the manner illustrated in Figure 2.

(F) A picture showing the proper match of a truck and slide-in camper in the form illustrated in Figure 3.

(2) *Trucks.* (i) Except as provided in paragraph (e)(2)(ii) of this section, each manufacturer of a truck that is capable of accommodating a slide-in camper shall provide to the purchaser in the owner's manual or other document delivered with the truck, in writing and in the English language, the information specified in paragraphs (e)(2)(i) (A) through (E) of this section.

(A) A picture showing the manufacturer's recommended longitudinal center of gravity zone for the cargo weight rating in the form illustrated in Figure 4. The boundaries of the zone shall be such that when a slide-in camper equal in weight to the truck's cargo weight rating is installed, no GAWR of the truck is exceeded.

(B) The truck's cargo weight rating.

(C) The statements: "When the truck is used to carry a slide-in camper, the total cargo load of the truck consists of the manufacturer's camper weight figure, the weight of installed additional camper equipment not included in the manufacturer's camper weight figure, the weight of camper cargo, and the weight of passengers in the camper. The total cargo load should not exceed the truck's cargo weight rating and the camper's center of gravity should fall within the truck's recommended center of gravity zone when installed."

(D) A picture showing the proper match of a truck and slide-in camper in the form illustrated in Figure 3.

(E) The statements: "Secure loose items to prevent weight shifts that could affect the balance of your vehicle. When the truck camper is loaded, drive to a scale and weigh on the front and on the rear wheels separately to determine axle loads. Individual axle loads should not exceed either of the gross axle weight ratings (GAWR). The total of the axle loads should not exceed the gross vehicle weight rating (GVWR). These ratings are given on the vehicle certification label that is located on the left side of the vehicle, normally the dash, hinge pillar, door latch post, or door edge next to the driver. If weight ratings are exceeded, move or remove items to bring all weights below the ratings."

(ii) If a truck would accommodate a slide-in camper but the manufacturer of the truck recommends that the truck not be used for that purpose, the information specified in paragraph (e)(2)(i)(E) of this section shall not be provided but instead the manufacturer shall provide a statement that the truck should not be used to carry a slide-in camper.

MFD. BY: (CAMPER MANUFACTURER'S NAME)

(MONTH AND YEAR OF MANUFACTURE)

CAMPER WEIGHT IS _____ KG (_____ LB) MAXIMUM WHEN IT CONTAINS STANDARD EQUIPMENT, _____ LITERS (_____ GAL) OF WATER, _____ KG (_____ LB) OF BOTTLED GAS, AND _____ CUBIC METERS (_____ CUBIC FT) REFRIGERATOR (OR ICEBOX WITH _____ KG (_____ LB) OF ICE, AS APPLICABLE). CONSULT OWNER'S MANUAL (OR DATA SHEET AS APPLICABLE) FOR WEIGHTS OF ADDITIONAL OR OPTIONAL EQUIPMENT.

Figure 1. Label for Camper

BILLING CODE 4910-59-P

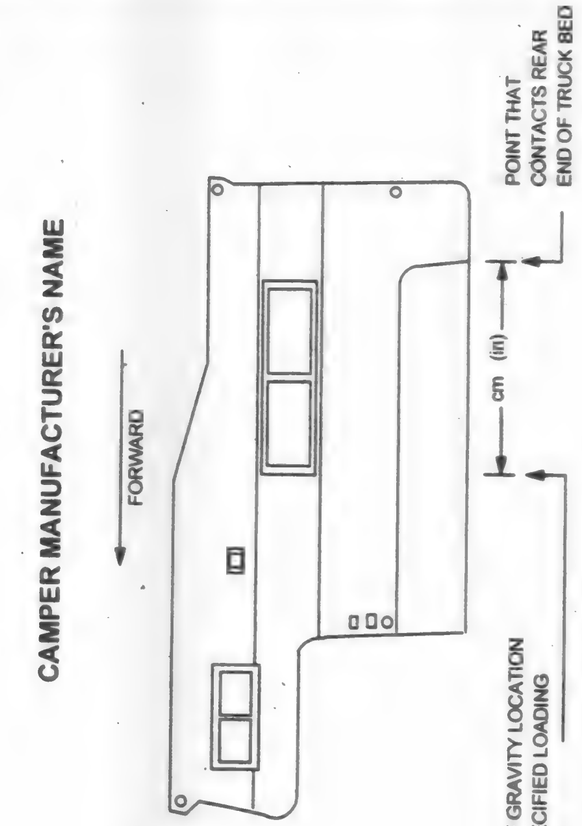

FGIURE 2. CAMPER CENTER OF GRAVITY INFORMATION

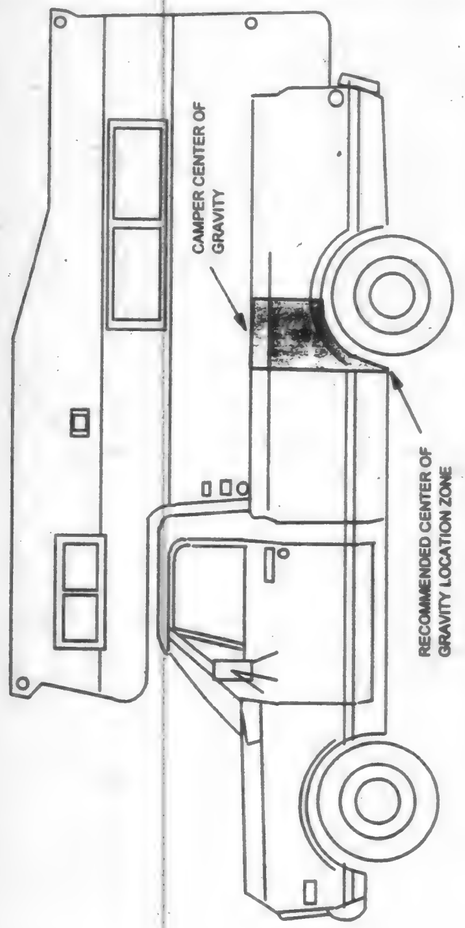

FIGURE 3. EXAMPLE OF PROPER TRUCK AND CAMPER MATCH

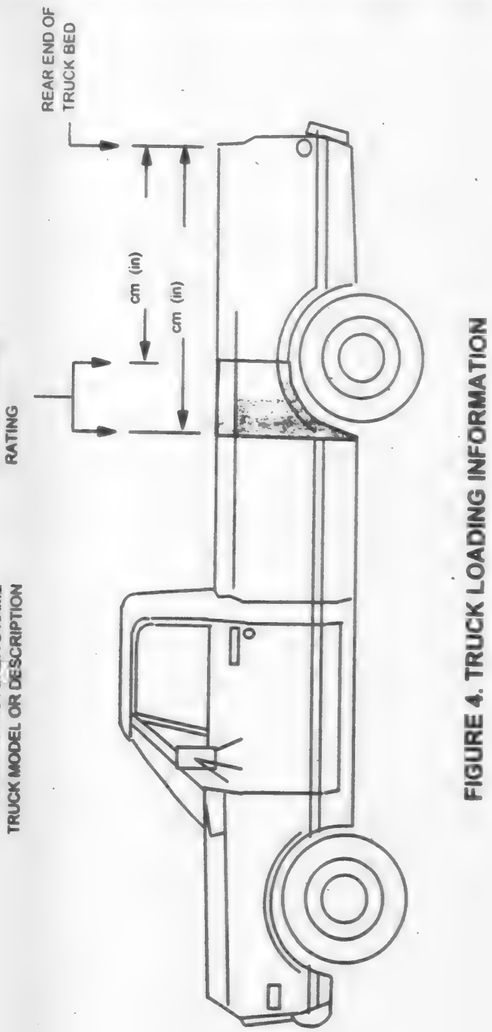

FIGURE 4. TRUCK LOADING INFORMATION

Issued on June 25, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–17751 Filed 7–11–96; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 960614176–6176–01; I.D. 050796A]

RIN 0648–AI18

Fisheries Off West Coast States and in the Western Pacific; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to final rule.

SUMMARY: This document corrects a typographical error in the **EFFECTIVE DATE** line of the preamble for the final rule in this proceeding concerning Fisheries Off West Coast States and in the Western Pacific, published on July 2, 1996 (61 FR 34570).

FOR FURTHER INFORMATION CONTACT: Robert Gorrell, 301–713–2341.

SUPPLEMENTARY INFORMATION:

In the final rule document 96–16234 beginning on page 34570 in the issue of Tuesday, July 2, 1996, make the following correction:

On page 34570, in the first column under the **EFFECTIVE DATE** heading, the citation "50 CFR 600.53" is corrected to read "50 CFR 660.53".

Dated: July 5, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 96–17725 Filed 7–11–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 61, No. 135

Friday, July 12, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

Share Insurance and Appendix

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rule will amend regulations on the payment of share insurance and appeals to provide authority for the liquidating agent to pay dividends earned or accrued, but not posted to share accounts. Also, the proposed rule will amend those regulations to reference other regulations on the construction of time limits when computing time.

DATES: Comments must be postmarked or posted on the NCUA electronic bulletin board by September 10, 1996.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration Board, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Jerry L. Courson, Special Assistant to the President, National Credit Union Administration, Asset Liquidation Management Center, 4807 Spicewood Springs Road, Suite 5100, Austin, Texas 78759 or telephone (512) 795–0999 or Allan H. Meltzer, Associate General Counsel, National Credit Union Administration, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Request for Comments

The NCUA Board seeks comments on the proposed changes to Part 745 of the NCUA Rules and Regulations.

Background

Subpart B of Part 745 of the NCUA Rules and Regulations deals with the payment of share insurance and appeals. Specifically, Section 745.200(b) provides that in determining the amount of share insurance, no dividends shall be paid on shares if sufficient undivided and current earnings are not available for such purpose. However, dividends accrued and posted to share accounts for prior accounting periods are considered as principal (regardless of earnings).

In a small number of liquidations, it has been necessary to reconstruct and correct the credit union records. In these liquidation cases, the reconstruction process disclosed situations where dividends were posted to some member accounts and not posted to other member accounts. Under the current regulation, to properly reconstruct these accounts and the dividends that were miscalculated or omitted, the liquidating agent obtained authority from the NCUA Board.

Since the current rule was adopted in 1990, only a small number of the 352 credit unions placed into involuntary liquidation have involved dividend issues. In most cases, the records are updated and dividends are posted before liquidation. Based on the current volume, if all cases involving unposted dividends were referred to the NCUA Board, the workload would be excessive. However, the workload of the liquidating agent would increase, because it would be necessary to audit or review each member account twice, and the additional workload would result in a delay in actual payment to the members.

The liquidation process would be more efficient if a rule is adopted that permits recording unposted dividends. This option also provides for a more equitable treatment of all members. The proposed rule provides discretion for the liquidating agent to correct share accounts by recording dividend payments that were not posted or were incorrectly posted by credit union personnel due to fraud, embezzlement, or accounting errors. Under the proposed rule, dividends not earned in the normal course of business, would not be included in the determination of insured shares. In addition, the proposed rule provides flexibility in dealing with sufficient earnings. Under the current regulation, dividend payments cannot be considered as principal for insurance purposes if sufficient earnings were not available. The proposed rule is silent on sufficient earnings, but a credit union's earnings could be a factor used by the liquidating agent in determining insured shares.

Under the proposed rule, decisions on unposted dividends can be made without specific NCUA Board action.

In addition to amending the rule to deal with unposted dividends, the proposed rule making also amends Section 745.200(d) to reference Section 747.12(a) of the NCUA Rules and Regulations when computing time. The current regulation references Section 747.119, and this section no longer exists.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe the significant economic impact any proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). This proposal deals with the payment of share insurance and does not directly impact operating credit unions. It does not add any additional requirements or burden. The proposal could provide an additional level of confidence for the credit union member. Accordingly, the NCUA Board has determined and certifies under the authority granted in 5 U.S.C. 605(b) that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Act analysis is not required.

Paperwork Reduction Act

The proposed rule does not impose any new paperwork requirements.

Executive Order 12612

The proposed changes to Section 745.200 will apply to both federal credit unions and federally-insured, state chartered credit unions. The NCUA Board, pursuant to Executive Order 12612, has determined that the proposed amendment will not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Further, the proposed rule will not preempt provisions of state law or regulation.

List of Subjects in 12 CFR Part 745

Administrative practice and procedure, Bank deposit insurance, Claims, Credit unions.

By the National Credit Union Administration Board on July 9, 1996.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulation as follows:

PART 745—SHARE INSURANCE AND APPENDIX

1. The authority citation for part 745 continues to read as follows:

Authority: 12 U.S.C. 1766, 1781, 1789.

2. Section 745.200 is amended by revising paragraphs (b) and (d) to read as follows:

§ 745.200 General.

* * * * *

(b) *Amount of insurance.* The amount of insurance on an insured account shall be determined in accordance with the provisions of subpart A of this part and the Federal Credit Union Act. For the purpose of determining insurance coverage, dividends earned in the ordinary course of business and posted to share accounts for any prior accounting or dividend period shall be deemed to be principal under this rule. Dividends earned or accrued in the ordinary course of business, but not posted to share accounts, may be paid at the discretion of the liquidating agent. In making such determination, the liquidating agent will take into consideration whether the failure to post dividends earned or accrued was due to the fraud, embezzlement or accounting errors of credit union personnel. The liquidating agent may require an accountholder to submit documentation supporting any claim for unposted dividends not otherwise evidenced in the credit union records. However, in no event will dividend amounts be considered as principal for insurance purposes pursuant to this section if not consistent with the amounts paid on similar classes of shares.

* * * * *

(d) *Computing time.* In computing any period of time prescribed by this subpart, the provisions of § 747.12(a) shall apply.

[FR Doc. 96–17783 Filed 7–11–96; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–222–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, that would have required repetitive Tap Test inspections to detect debonding of the elevator skins, and corrective actions, if necessary. That proposal was prompted by a report that a debonded area of the upper skin of an elevator had been discovered during a visual inspection. This action revises the proposed rule by replacing the Tap Test inspections with inspections using a thermographic technique. This action also provides for replacement of the elevators with new or modified elevators, which, if accomplished, terminates the requirements of the AD. The actions specified by this proposed AD are intended to prevent the presence of water in the elevator, which could cause debonding of the elevator skins and, consequently, could adversely affect the structural integrity of the elevator.

DATES: Comments must be received by August 14, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–222–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–222–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–222–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on February 8, 1995 (60 FR 7485). That NPRM would have required repetitive Tap Test inspections to detect debonding of the elevator skins, and corrective actions, if necessary. Additionally, that NPRM would have required repetitive thermographic inspections of the elevator to detect trapped water if certain amounts of debonding are detected. That NPRM was prompted by a report that a debonded area of the upper skin of an elevator had been discovered during a visual inspection. That condition, if not corrected, could result in the presence of water in the elevator, which could cause debonding of the elevator skins and, consequently, could adversely affect the structural integrity of the elevator.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, Airbus has issued Revision 1 of Service Bulletins A310–55–2016 (for Model A310 series airplanes) and A300–55–6014 (for Model A300–600 series airplanes), both dated August 8, 1995. The original issues of these service bulletins were cited in the NPRM as the appropriate sources of service information for accomplishment of repetitive thermographic inspections to detect water in the elevator, and protection and repair of debonded areas of the elevator. Revision 1 of the service bulletins is essentially the same as the original issues, however, Revision 1 specifies an increased allowable cosmetic repair area and introduces new repair criteria. Additionally, Revision 1 provides a threshold and repeat intervals for the thermographic inspections based on the specific types of elevators that are installed.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified these service bulletins as mandatory and issued French airworthiness directive (CN) 95–206–189(B), dated October 25, 1995, in order to assure the continued airworthiness of these airplanes in France. That French CN supersedes the previously-issued French CN 94–184–157(B), dated August 17, 1994. The new French CN removes a previous requirement for repetitive Tap Test inspections and, instead, it requires thermographic inspections to detect water trapped in the elevator. In addition, the new French CN indicates that it applies to Model A310 and A300–600 series airplanes that are equipped with certain carbon fiber elevators on which Airbus Modifications 10489 and 10533 have not been accomplished.

Additionally, since the issuance of the NPRM, Airbus also has issued Service Bulletins A310–55–2019 (for Model A310 series airplanes) and A300–55–6016 (for Model A300–600 series airplanes), both Revision 1, both dated December 18, 1995. These service bulletins describe procedures for replacement of existing elevators with new or modified elevators. Installation of the new or modified elevators will prevent water ingress by adding a second external layer of adhesive and using a different type of Tedlar film. Such installation, if accomplished, will eliminate the need for the repetitive thermographic inspections.

FAA's Conclusions

The FAA has examined the findings of the DGAC and has reviewed the revised service information. The FAA finds that inspections using thermographic techniques are a more reliable method of detecting water trapped in the elevators. Therefore, the FAA has determined that the NPRM must be revised to remove the requirement for repetitive Tap Test inspections and to require, instead, the accomplishment of repetitive thermographic inspections in accordance with the latest service bulletin revisions.

Additionally, the FAA finds that the NPRM must be revised to specify that the inspection threshold and repetitive inspection intervals are based on the specific types of elevators that are installed.

The FAA also finds that the NPRM must be revised to provide for replacement of the elevators with new or modified elevators, which, if accomplished, would terminate the repetitive thermographic inspections.

In addition, the applicability of the NPRM has been revised to coincide with the applicability of French CN 95–206–189(B).

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Type Certification of Affected Airplanes

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 221.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. and

Disposition of Comments to the NPRM

Interested persons were afforded an opportunity to respond to the NPRM. Due consideration has been given to pertinent comments that were submitted, as described below.

Request to Require Pulse-Echo Ultrasound Inspections

One commenter requests that the proposed Tap Tests, be replaced with pulse-echo ultrasound (A-scan) inspections. The commenter states that the pulse-echo ultrasound inspection is much more accurate than a Tap Test.

The FAA concurs partially. The FAA acknowledges that more accurate inspections for debonding may exist; however, the FAA does not agree that pulse-echo ultrasound inspections are the type of inspections that should be required in this case. In developing this AD, the FAA considered the fact that pulse-echo ultrasound equipment and procedures are not readily available to all operators. Additionally, the FAA considered the accuracy of thermographic inspections, as well as the accessibility of thermographic inspections to all operators. In consideration of these items, the FAA finds that thermographic inspections are most appropriate to address the unsafe condition. However, under the provisions of paragraph (f) of the final rule, the FAA may approve alternative methods of compliance with this AD if data are submitted to substantiate that such a method would provide an acceptable level of safety.

Request to Update Cost Impact Information

One commenter requests that the estimated number of affected U.S.-registered airplanes specified in the cost impact information of the proposed rule be revised from 15 to 35, since that is the number of Model A300–600 series airplanes in its fleet.

The FAA concurs and has revised the cost impact information, below, to reflect this change.

Cost Impact

There are approximately 137 Model A310 and A300–600 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 35 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 34 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $71,400, or $2,040 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional replacement of the elevators, it would take approximately 14 work hours per airplane to accomplish the replacement, at an average labor rate of $60 per work

hour. The manufacturer would provide the replacement parts at no cost to the operator. Based on these figures, the cost impact of the optional replacement action is estimated to be $840 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations [14 CFR part 39] as follows:

[illegible]

not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the presence of water in the elevator, which could cause debonding of the elevator skins and, consequently, could affect the structural integrity of the elevator, accomplish the following:

(a) Perform a thermographic inspection to detect any water that is trapped within the elevator structure, in accordance with either Airbus Service Bulletin A310–55–2016, Revision 1, (for Model A310 series airplanes); or Airbus Service Bulletin A300–55–6014, Revision 1, (for Model A300–600 series airplanes), both dated August 8, 1995, as applicable. Perform the inspection at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes on which CARCOM elevators are installed: Perform the inspection at the later of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 4,500 total landings on the elevator, or within 5 years after the first landing on the elevator, whichever occurs later; or

(ii) Within 3 months after the effective date of this AD.

(2) For airplanes on which CASA elevators are installed: Perform the inspection at the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Prior to the accumulation of 5,000 total landings on the elevator, or within 6 years after the first landing on the elevator, whichever occurs later.

(ii) Within 3 months after the effective date of this AD.

(b) If any water is detected, repeat the thermographic inspection required by paragraph (a) of this AD thereafter at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes on which CARCOM elevators are installed: Repeat the inspection at intervals not to exceed 4,500 landings or 5 years, whichever occurs first.

(2) For airplanes on which CASA elevators are installed: Repeat the inspection at intervals not to exceed 5,000 landings or 6 years, whichever occurs first.

(c) If any water is detected in the elevator, and the area is within the limits specified in the Accomplishment Instructions of either Airbus Service Bulletin A310–55–2016, Revision 1, (for Model A310 series airplanes), or A300–55–6016 (for Model A300–600 series airplanes), both Revision 1, both dated August 8, 1995, as applicable: Prior to further flight, protect and/or repair the elevator in accordance with the applicable service bulletin. Thereafter, repeat the thermographic inspections required by paragraph (b) of this AD at the times specified in the Accomplishment Instructions of the applicable service bulletin until the replacement of the elevator is accomplished as specified in paragraph (e) of this AD.

(d) If any water is detected in the elevator that exceeds the limits specified by Airbus Service Bulletin A310–55–2016 (for Model A310 series airplanes), or Airbus Service Bulletin A300–55–6014 (for Model A300–600 series airplanes), both Revision 1, and both dated August 8, 1995, as applicable: Accomplish the requirements of either (d)(1) or (d)(2) of this AD, as applicable.

(1) If any damage is detected that is less than or equal to 60,000 square millimeters or 93 square inches, prior to further flight, protect or repair and perform repetitive inspections in accordance with the applicable service bulletin.

(2) If any damage is detected that is more than 60,001 square millimeters or 93 square inches, prior to further flight, perform the requirements of either paragraph (d)(2)(i) or (d)(2)(ii) of this AD.

(i) If the damage is within the limits of the Structural Repair Manual (SRM) (Ref. SRM 55–20–00), accomplish the repair in accordance with the SRM; or

(ii) Replace the elevator in accordance with Airbus Service Bulletin A310–55–2019 (for Model A310 series airplanes), or A300–55–6016 (for Model A300–600 series airplanes), both dated December 18, 1995. No further action is required by this AD.

(e) Replacement of the elevator in accordance with either Airbus Service Bulletin A310–55–2019 (for Model A310 series airplanes), or A300–55–6016 (for Model A300–600 series airplanes), both dated December 18, 1995, as applicable, constitutes terminating action for the requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 8, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–17741 Filed 7–11–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–122–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 SHERPA Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–60 SHERPA series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions, and to limit or prohibit the use of various flight control devices. This proposal is prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received by August 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–122–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2799; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–122–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–122–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 24, 1996, the FAA issued 18 AD's (see below for a listing of all 18 AD's) to require revising the FAA-approved Airplane Flight Manual (AFM) to provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions, and to limit or prohibit the use of various flight control devices. These AD's were published in the **Federal Register** on May 7, 1996:

Manufacturer/airplane model	AD No.	Amendment No.	FEDERAL REGISTER citation
de Havilland DHC–6 Series	96–09–11	39–9587	61 FR 20616
EMBRAER EMB–110P1/EMB–110P2	96–09–12	39–9588	61 FR 20636
Beech 99/200/1900 Series	96–09–13	39–9589	61 FR 20638
Dornier 228 Series	96–09–14	39–9590	61 FR 20639
Cessna 208/208B	96–09–15	39–9591	61 FR 20641
Fairchild Aircraft SA226/SA227 Series	96–09–16	39–9592	61 FR 20643
Jetstream 3101/3201	96–09–17	39–9593	61 FR 20644
Jetstream BAe ATP	96–09–18	39–9594	61 FR 20668
Jetstream 4101	96–09–19	39–9595	61 FR 20669
British Aerospace HS 748 Series	96–09–20	39–9596	61 FR 20671
Saab SF340A/SAAB 340B/SAAB 2000 Series	96–09–21	39–9597	61 FR 20672
CASA C–212/CN–235 Series	96–09–22	39–9598	61 FR 20674
Dornier 328–100 Series	96–09–23	39–9599	61 FR 20676
EMBRAER EMB–120 Series	96–09–24	39–9600	61 FR 20677
de Havilland DHC–7/DHC–8 Series	96–09–25	39–9601	61 FR 20679
Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	96–09–26	39–9602	61 FR 20681
Short Brothers SD3–30/SD3–60/SD3–SHERPA Series	96–09–27	39–9603	61 FR 20682
Aerospatiale ATR–42/ATR–72 Series	96–09–28	39–9604	61 FR 20646

Those actions were prompted by results of a review of the requirements for certification of the airplane in icing conditions, new information on the icing environment, and icing data provided currently to the flight crews.

The requirements of those AD's are intended to minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

Since the issuance of those AD's, the FAA has determined that Short Brothers Model SD3–60 SHERPA series airplanes were omitted inadvertently from the list of airplane models subject to the potentially unsafe condition described previously and addressed in those AD's.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require revising the AFM to provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions, and to limit or prohibit the use of various flight control devices.

Cost Impact

The FAA estimates that 20 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,200, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

In addition, the FAA recognizes that this proposed AD may impose operational costs. However, those costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time are indeterminable. Nevertheless, because of the severity of the unsafe condition addressed, the FAA has determined that continued operational safety necessitates the imposition of these costs.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Short Brothers, PLC: Docket 96–NM–122–AD.

Applicability: All Model SD3–60 SHERPA series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators must initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accreted on the airframe in areas not normally observed to collect ice.
—Accumulation of ice on the lower surface of the wing aft of the protected area.
—Accumulation of ice on the propeller spinner farther aft than normally observed.

• Since the autopilot may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All icing detection lights must be operative prior to flight into icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(2) Revise the FAA-approved AFM by incorporating the following into the Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

"THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as -18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps during extended operation in icing conditions. Operation with flaps extended can result in a reduced wing angle-of- attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 8, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–17740 Filed 7–11–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–08–AD]

RIN 2120–AA64

Airworthiness Directives; Shorts Model SD3–30, –60, and –SHERPA Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new Airworthiness Directive (AD) that is applicable to all Shorts Model SD3–30, –60, and –SHERPA series airplanes. This proposal would require a visual inspection to detect signs of exfoliation corrosion on the brackets of the flap hydraulic units, and rework or replacement of corroded brackets. This proposal is prompted by a report that exfoliation corrosion was found on the brackets of the flap hydraulic units. The actions specified by the proposed AD are intended to prevent such corrosion, and consequent reduced structural integrity of the brackets of the flap hydraulic units, which could result in the loss of the flap control and consequent reduced controllability of the airplane.

DATES: Comments must be received by August 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–08–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3719.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2146; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–08–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–08–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all Short Brothers Model SD3–30, –60, and –SHERPA series airplanes. The CAA advises that, during a maintenance check on a Model SD3–30 series airplane, exfoliation corrosion was found on the brackets of the flap hydraulic units. The effects of such corrosion could lead to the reduced structural integrity of the brackets of the flap hydraulic units. This condition, if not detected and corrected in a timely manner, could result in the loss of the flap control and consequent reduced controllability of the airplane.

The brackets of the flap hydraulic units on certain Model SD3–60, and –SHERPA series airplanes are identical to those on the affected Model SD3–30 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

Shorts has issued Service Bulletin SD330–27–34 (for Model SD3–30 series airplanes), Service Bulletin SD360–27–24 (for Model SD3–60 series airplanes), and Service Bulletin SD3 SHERPA–27–1 (for Model SD3–SHERPA series airplanes), all dated September 12, 1995. These service bulletins describe procedures for a visual inspection to detect signs of exfoliation corrosion on the brackets of the flap hydraulic units, and rework or replacement of corroded brackets. The CAA classified these service bulletins as mandatory and issued airworthiness directives 005–09–95 (for Model SD3–30 series airplanes), 007–09–95 (for Model SD3–60 series airplanes), and 008–09–95 (for Model SD3–SHERPA series airplanes), in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusion

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require a visual inspection to detect signs of exfoliation corrosion on the brackets of the flap hydraulic units, and rework or replacement of corroded brackets. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Cost Impact

The FAA estimates that 138 airplanes (50 Model SD3–30 series airplanes, 72 Model SD3–60 series airplanes, and 16 Model SD3–SHERPA series airplanes) of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $41,400, or $300 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Short Brothers, PLC: Docket 96–NM–08–AD.

Applicability: All Model SD3–30, –60, and –SHERPA series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion on the brackets of the flap hydraulic units, and consequent reduced structural integrity of those brackets, which could result in the loss of the flap control and consequent reduced controllability of the airplane; accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a visual inspection to detect signs of exfoliation corrosion on the brackets of the flap hydraulic units, in accordance with Shorts Service Bulletin SD330–27–34 (for Model SD3–30 series airplanes); Shorts Service Bulletin SD360–27–24 (for Model SD3–60 series airplanes); or Short Service Bulletin SD3 SHERPA–27–1 (for Model SD3–SHERPA series airplanes); all dated September 12, 1995; as applicable.

(1) If no corrosion is detected, accomplish paragraph (a)(1)(i) or (a)(1)(ii) of this AD, as applicable.

(i) For Model SD3–30 and –60 series airplanes: Repeat the visual inspection thereafter at intervals not to exceed 2,400 hours or 12 months, whichever occurs first.

(ii) For Model SD3–SHERPA series airplanes: Repeat the visual inspection thereafter at intervals not to exceed 12 months.

(2) If any corrosion is detected and it is within the limits specified in the applicable service bulletin, prior to further flight, rework the subject area in accordance with the applicable service bulletin. After accomplishment of the rework, accomplish paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) For Model SD3–30 and –60 series airplanes: Repeat the visual inspection thereafter at intervals not to exceed 600 hours or 6 months, whichever occurs first.

(ii) For Model SD3–SHERPA series airplanes: Repeat the visual inspection thereafter at intervals not to exceed 6 months.

(3) If any corrosion is detected and it is outside the limits specified in the applicable service bulletin, prior to further flight, replace the bracket with a new bracket in accordance with the applicable service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 8, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–17739 Filed 7–11–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 5

RIN 1076–AD05

Preference in Employment

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is proposing to amend the Preference in Employment regulations by clarifying the application of Indian preference not only within BIA but to other organizations within the Department of the Interior and removing the extension of Indian preference to the individuals of the Osage Tribe of Oklahoma who are at least one-quarter degree Indian ancestry. These regulations have also been rewritten in plain English as mandated by E.O. 12866.

DATES: Comments must be received by September 10, 1996.

ADDRESSES: Mail comments to James McDivitt, Acting Director, Office of Management and Administration, Bureau of Indian Affairs, Department of the Interior 1849 C St. NW., Mail Stop 4616–MIB, Washington, DC 20240; OR, hand deliver them to Room 4140 at the above address. Comments will be available for inspection at this address from 9:00 a.m. to 4:00 p.m., Monday through Friday beginning approximately July 26, 1996.

FOR FURTHER INFORMATION CONTACT: Carol Smalley, Bureau of Indian Affairs, Department of the Interior, telephone number (202) 208–5116.

SUPPLEMENTARY INFORMATION:

Background:

Indian Preference

The Indian preference statute, 25 U.S.C. 472, Section 12 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 986, requires that the Secretary of the Interior establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed to positions for the administration of functions or services affecting any Indian tribe. It further provides that qualified Indians shall have preference to the appointment to vacancies in such positions.

The legal position of the Department of the Interior on the scope of the preference is set forth in a June 10, 1988, opinion by then-solicitor Ralph Tarr, "The Scope of Indian Preference Under the Indian Reorganization Act", M–36960, 96 I.D.1. It concludes, in general, that the preference is limited in application to the Bureau of Indian Affairs (BIA) or units removed intact from the Bureau of Indian Affairs to another Departmental bureau. By memorandum dated April 10, 1996, the Deputy Solicitor concluded that when a Bureau of Indian Affairs unit is transferred intact by virtue of an administrative decision from the BIA to a Departmental office where it will continue to perform the functions it formerly performed as part of the BIA, it effectively remains a BIA organization unit and the preference continues to apply. The functions and personnel structure of the organizational unit remain segregated from the remainder of the office to which it is transferred.

Indian Preference to the Individuals of the Osage Tribe of Oklahoma

The Bureau of Indian Affairs must apply Indian preference in filling every vacant position, however created, within the Bureau of Indian Affairs, *Freeman* v. *Morton*, 499 F.2d 492 (DC Cir. 1974). The Secretary issued a final rule for the definition of "Indian" on January 17, 1978, which identified five categories of persons of Indian descent eligible for Indian preference. The fifth criterion applied to the Five Civilized Tribes of Oklahoma and to the Osage Tribe whose rolls were closed by the Acts of Congress, and who had not as yet reorganized to establish current membership standards. Many such individuals have received employment preference based on the one-quarter degree standard which was previously established by the Secretary. In 1978, these Tribes were allowed three years, until July 17, 1981, to organize so that members would not be deprived of the one-quarter eligibility standard rather than the one-half degree standard.

On October 4, 1984, the Bureau of Indian Affairs published a final rule (49 FR 39157) to amend 25 CFR Part 5. Section 5.1(e) specified the date of October 4, 1985, as the final date for making appointments of persons of one-quarter degree Indian ancestry. On September 15, 1986, the BIA published a final rule (51 FR 32632) to revise 25 CFR Part 5, Preference in Employment. Section 5.1(e) specified the date of September 5, 1988, as the final date for making appointments of persons of one-quarter degree Indian ancestry. The last final rule published (54 FR 282, January 5, 1989), extended Section 5.1(e) to January 5, 1990.

On February 10, 1994, the Assistant Secretary—Indian Affairs approved the Osage Tribe constitution as ratified by qualified voters of the Osage Nation February 4, 1994. By memorandum dated July 15, 1994, the Assistant Secretary—Indian Affairs recognized the authority of the Osage National Council to identify those Osage Indians who are eligible for Indian preference and suggested the voting list prepared for the constitutional election and the election of officers serve as a temporary membership roll.

The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9.

Notice of our intent to amend Section 5.1(e), Indian Preference to the Individuals of the Osage Tribe of Oklahoma, appeared in the proposed rule which was published at 59 FR 47046 (Sept. 13, 1994). No comments were received by the Bureau following the publication of the proposed rule.

Certain individuals who are of Indian descent may receive preference when appointments are made to vacancies in positions in the Bureau of Indian Affairs and in any Bureau of Indian Affairs unit that has been transferred intact to a bureau of office within the Department of the Interior and continues to perform the functions it formerly performed as part of the Bureau of Indian Affairs.

Individuals seeking Indian preference in employment must subject proof: of his or her membership in a Federally recognized Indian tribe; of descendancy from a member and that he or she was residing within the present boundaries of any Indian reservation on June 1, 1934; that he or she is an Eskimo or another aboriginal person of Alaska as defined by the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*); or proof of one-half or more Indian

blood of tribes that are indigenous to the United States.

Section 5.3 is intended to clarify how eligibility for Indian preference is determined. Specifically, the application of the definition of Indian in the Indian Reorganization Act of June 18, 1934 (48 Stat. 984, 988, 25 U.S.C. 479) to descendants of members born after June 1, 1934. By memorandum dated March 24, 1976, then-Associate Solicitor for Indian Affairs, Reid P. Chambers, concluded:

[O]nly persons residing within any Indian reservation on June 1, 1934, who are descendants of members may be considered preference eligibles. "Members" in this context means persons identified on approved census rolls or through other means prior to June 1, 1934. Persons born after June 1, 1934, must meet any of the other criteria in order to qualify for preference eligibility.

The form to be used by the Bureau of Indian Affairs to verify eligibility for Indian preference follows the proposed rule.

Publication of the proposed rule by the Department of the Interior (Department) provides the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding the proposed rule to the location identified in the **ADDRESSES** section of this document.

Evaluation and Certification

The Department has certified to the Office of Management and Budget (OMB) that this rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

This rule is not a significant regulatory action under Executive Order 12866 and does not require review by the Office of Management and Budget.

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The Department has determined that this rule does not have "significant" takings implications. This rule does not pertain to "taking" of private property interests, nor does it impact private property.

The Department has determined that this rule does not have significant federalism effects because it will not interfere with the roles, rights and responsibilities of states and it impacts only the application of the Indian preference by the Bureau of Indian Affairs and the Department of the Interior.

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

This rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

This rule has been found to contain no information collection requirements under the Paperwork Reduction Act of 1995. By memorandum dated January 11, 1984, then-Deputy Administrator for the Office of Information and Regulatory Affairs, Robert P. Bedell, Office of Management and Budget (OMB), determined that information collections related to certificates of Indian blood did not require OMB clearance.

Drafting Information. The primary authors of this document are Carol Smalley, Bureau of Indian Affairs, Department of the Interior and Mercedes C. Lewis, formerly of the Division of Personnel Management.

List of Subjects in 25 CFR Part 5

Employment, Government employees, Indians.

For the reasons set out in the preamble, Part 5 of Title 25, Chapter I of the Code of Federal Regulations is proposed to be revised as set forth below.

PART 5—INDIAN PREFERENCE IN EMPLOYMENT

Sec.

5.1 Definitions.
5.2 Do certain individuals receive preference in employment?
5.3 How is eligibility for Indian preference determined?
5.4 When does Indian preference apply?
5.5 Is placement assistance provided to non-Indians affected by the application of Indian preference?
5.6 Information collection.

Authority: 4 Stat. 737, 25 U.S.C. 43; 22 Stat. 88, 25 U.S.C. 46; 28 Stat. 313, 25 U.S.C. 44; 24 Stat. 389, 25 U.S.C. 348; and 48 Stat. 986, 25 U.S.C. 472 and 479, 93 Stat. 1056, 25 U.S.C. 472a and 5 U.S.C. 8336, 43 U.S.C. 1601.

§ 5.1 Definitions.

Alaska Native means a member of an Alaska Native Tribe; or, an individual whose name appears on the roll of Alaska Natives prior to July 31, 1981, and not subsequently disenrolled; or, an individual who was issued stock in a Native corporation pursuant to 43 U.S.C. 1606(g)(1)(B)(i).

Indian tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law 103–454, 108 Stat. 4791. Annually, the Bureau of Indian Affairs publishes a list of Federally recognized tribes in the **Federal Register**.

Roll of Alaska Natives means the roll of Alaska Natives prepared pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*

§ 5.2 Do certain individuals receive preference in employment?

Yes. Certain persons who are of Indian descent, as described in § 5.3, receive preference when appointments are made to vacancies in positions:

(a) In the Bureau of Indian Affairs; and

(b) In any unit that has been transferred intact from the Bureau of Indian Affairs to a Bureau or Office within the Department of the Interior and that continues to perform the functions formerly performed as part of the Bureau of Indian Affairs.

§ 5.3 How is eligibility for Indian preference determined?

You are eligible for preference if:

(a) You are a member of any Federally recognized Indian tribe;

(b) You are a descendant of a member and you were residing within the present boundaries of any Indian reservation on June 1, 1934;

(c) You are an Alaska Native; or

(d) You possess one-half or more Indian blood of tribes that are indigenous to the United States.

§ 5.4 When does Indian preference apply?

(a) If you meet a standard in § 5.3, you are eligible for preference in an initial hire; reinstatement; transfer; reassignment; reduction-in-force; promotion, including a temporary promotion; and details exceeding 120 days.

(b) If you are eligible for preference, we may appoint you under a Schedule A excepted appointment, Exception Number 213.3112(a)(7), and after three consecutive years you may be converted to a career appointment in competitive service. The conversion will not alter your eligibility for preference in personnel actions.

(c) If you are within reach on a Civil Service Register, we may give you a competitive appointment.

§ 5.5 Is placement assistance provided to non-Indians affected by the application of Indian preference?

Yes. The Office of Personnel Management provides assistance to the Bureau of Indian Affairs in placing non-Indian employees in other Federal positions.

§ 5.6 Information collection.

In accordance with Office of Management and Budget regulations in 5 CFR 1320.4, approval of information collections contained in this part is not required.

BILLING CODE 4310-02-P

Appendix to Part 5

FORM BIA - 4432
Revised 5/96

VERIFICATION OF INDIAN PREFERENCE FOR EMPLOYMENT IN BUREAU OF INDIAN AFFAIRS AND THE INDIAN HEALTH SERVICE

Complete one of the categories as stated in the Instructions and submit this form with your application for Federal employment.

CATEGORY A - MEMBERS OF FEDERALLY-RECOGNIZED INDIAN TRIBES, BANDS OR COMMUNITIES
This is to certify that the person named below is a member of the tribe shown:

Full Name _____ Date of Birth _____ Tribal Affiliation _____

I certify that the above information was taken from the official membership records of the _____ Tribe (or records maintained for the Tribe by the BIA) and acknowledge that falsification and misrepresentation of this information is punishable under Federal Law, 18 U.S.C. 1001.

Tribal Representative _____ Date _____ OR BIA Official _____ Date _____

Title _____ Title _____ Agency _____

CATEGORY B - DESCENDANTS OF MEMBERS OF FEDERALLY-RECOGNIZED INDIAN TRIBES, BANDS OR COMMUNITIES WHO WERE RESIDING ON ANY INDIAN RESERVATION ON JUNE 1, 1934
I certify that the person named below has established to my satisfaction that he/she is a descendant of an enrolled member of the tribe named below and that he/she was living on an Indian reservation on June 1, 1934. The applicant's family history is outlined on the attached family history chart.

Full Name _____ Date of Birth _____ Reservation of Residence on June 1, 1934 _____

Full Name of Ancestor & Tribal Affiliation _____ Tribal Record of Affiliation _____

BIA Official _____ Date _____

Title _____ Agency _____

CATEGORY C - PERSONS WHO POSSESS AT LEAST ONE-HALF DEGREE INDIAN BLOOD DERIVED FROM TRIBES INDIGENOUS TO THE UNITED STATES.
I certify that I have reviewed the documentation to support the below listed individual's claim to the possession of at least one-half degree Indian blood. The applicant's family history is outlined on the attached family history chart.

Full Name _____ Date of Birth _____ Degree of Blood and Tribal Derivation _____

Based on:

BIA Official _____ Date _____

Title & Source of Records _____ Title _____ Agency _____

CATEGORY D - ALASKA NATIVE
I certify that the person named below is a member of an Alaska Native Tribe; or, an individual whose name appears on the roll of Alaska Natives prior to July 31, 1981, and not subsequently disenrolled; or, an individual who was issued stock in a Native corporation pursuant to 43 U.S.C. 1606(g)(1)(B)(i).

Full Name _____ Date of Birth _____ Alaska Native Village/Corporation/Roll _____

Title and source of records upon which this is based:

BIA Official _____ Date _____

Title _____ Agency _____

INSTRUCTIONS FOR COMPLETING FORM BIA-4432

1. It is the responsibility of the individual to establish evidence of entitlement to Indian preference. Applicants must submit as much background information as possible to verify eligibility for Indian preference. Falsification or misrepresentation of information is punishable under Federal Law, 18 U.S.C. 1001.

CATEGORY A
MEMBERS OF FEDERALLY-RECOGNIZED INDIAN TRIBES, BANDS OR COMMUNITIES. If you are a member of a Federally-recognized tribe, you may contact either your tribe or the Bureau of Indian Affairs (BIA) agency servicing your tribe for completion of this category. One of the following procedures will apply and you will be advised by the BIA or your tribal representative:

If the BIA maintains the tribal enrollment records or has a copy of a current tribal roll in its custody, the BIA verification and signature is sufficient;

If your tribe has contracted or compacted the maintenance of tribal enrollment records under the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as amended, 25 U.S.C. 450, a verification signed by an *authorized* Tribal Representative(s) is sufficient; or

If the tribe does *not* contract or compact of the tribal enrollment records, the tribe may certify the information and it is verified by an authorized BIA official.

CATEGORY B AND C
- **DESCENDANTS OF MEMBERS OF FEDERALLY-RECOGNIZED INDIAN TRIBES, BANDS OR COMMUNITIES WHO WERE RESIDING ON ANY INDIAN RESERVATION ON JUNE 1, 1934**
- **PERSONS WHO POSSESS AT LEAST ONE-HALF DEGREE INDIAN BLOOD DERIVED FROM TRIBES INDIGENOUS TO THE UNITED STATES**

If you are claiming preference based on any of these categories, you should provide as much information as possible regarding your family history. This will be the only information which the BIA will have to certify your descendence. You are asked to complete the attached FAMILY HISTORY.

Category D
ALASKA NATIVE OR DESCENDANT OF AN ALASKA NATIVE. You may contact the Bureau of Indian Affairs office servicing your village or corporation for completion of this category.

2. INSTRUCTIONS TO RESPONSIBLE BIA OFFICIALS:
This form has been designed for the verification that an applicant is entitled to Indian preference in employment. If category A membership is verified through records maintained for the Tribe by the BIA, a tribal representative must also sign the verification. If the applicant does not meet the tribal enrollment criteria, the form should not be completed. If the applicant cannot document at least one-half degree Indian blood derived from tribes indigenous to the United States, the form should not be completed. Upon verification by a BIA Area Director, Superintendent or other designed responsible BIA official, the applicant will be entitled to preference in employment.

3. INSTRUCTIONS TO PERSONNEL OFFICERS:
Receipt of a properly verified FORM BIA 4432, together with an acceptable application, "Personal Qualifications Statement", entitles an applicant to preference in employment.

4. PAPERWORK REDUCTION ACT NOTICE:
This rule has been found to contain no information collection requirements under the Paperwork Reduction Act of 1995. By memorandum January 11, 1984, then-Deputy Administrator for the Office of Information and Regulatory Affairs, Robert P. Bedell, Office of Management and Budget (OMB), determined that information collections related to certificates of Indian blood did not require OMB clearance.

5. PRIVACY ACT STATEMENT:
This information is collected as provided pursuant to the Privacy Act, 5 U.S.C. 552a, for individuals completing Federal Employment Application Forms. We are authorized to collect information to verify Indian preference by 4 Stat. 737, 25 U.S.C. 43; 22 Stat. 88, 25 U.S.C. 46; 28 Stat. 313, 25 U.S.C. 44; 24 Stat. 389, 25 U.S.C. 348; and 48 Stat. 986, 25 U.S.C. 472 and 479, 93 Stat. 1056, 25 U.S.C. 472a and 5 U.S.C. 8336. The information collected will be used to determine eligibility for Indian preference and may be disclosed to the Department of the Interior Office of Personnel, the United States Office of Personnel Management, and the Indian Health Services Office of Personnel.

6. EFFECTS OF NON-DISCLOSURE:
Disclosure of the information requested on this form (Form BIA 4432) is voluntary. However, consideration for Indian preference in employment under 25 CFR Part 5 requires proof that (a) you are a member of any recognized Indian tribe currently under Federal jurisdiction; (b) you are a descendant of a member residing within the present boundaries of any Indian reservation on June 1, 1934; (c) you are an Eskimo or another aboriginal person of Alaska as defined by the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*); or (d) you possess one-half or more Indian blood of tribes that are indigenous to the United States. Indian Reorganization Act of June 18, 1934, 25 U.S.C. 472.

FAMILY HISTORY FOR CATEGORY B and C

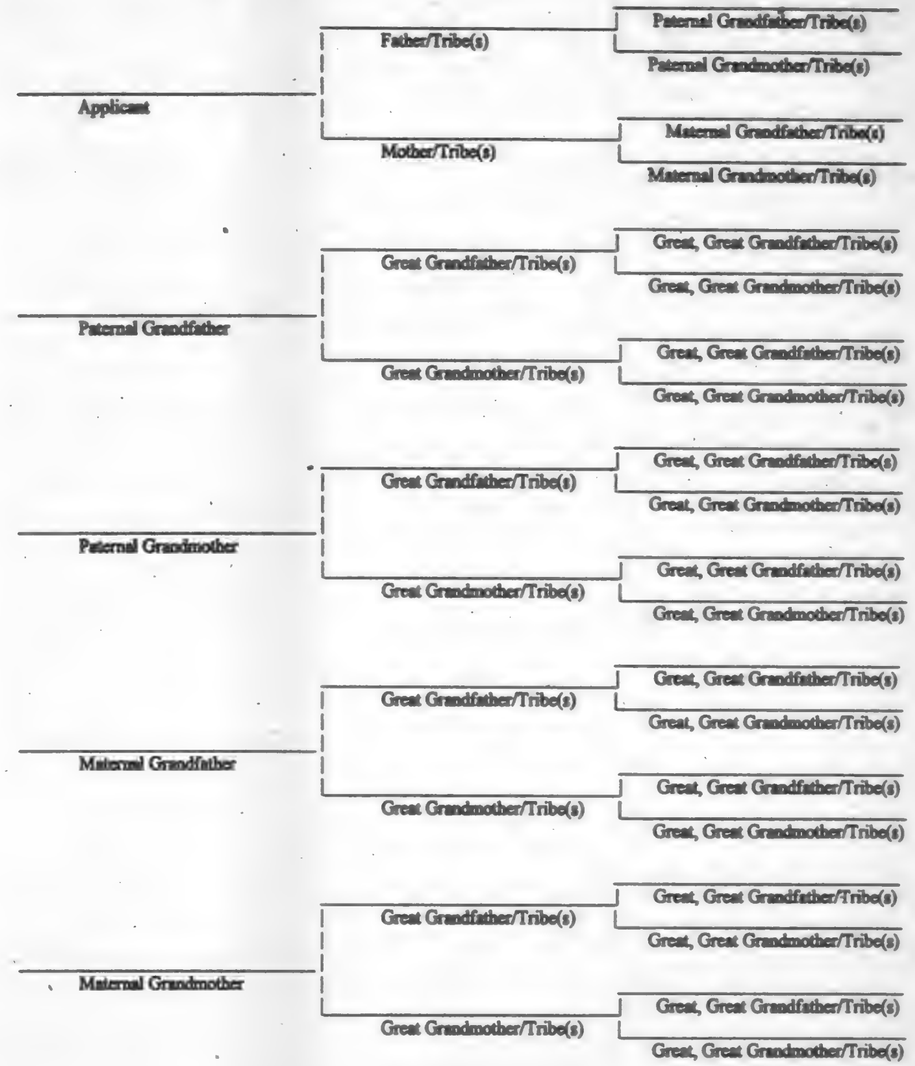

Ada E. Deer,
Assistant Secretary—Indian Affairs.
[FR Doc. 96–16672 Filed 7–11–96; 8:45 am]
BILLING CODE 4310–02–C

DEPARTMENT OF JUSTICE

28 CFR Part 17

[A.G. Order No. 2040–96]

Classified National Security Information and Access to Classified Information

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements Executive Order No. 12958, entitled "Classified National Security Information," and Executive Order No. 12968, entitled "Access to Classified Information," by completely revising and updating the Department of Justice's classified national security information and access regulations.

DATES: Written comments must be received on or before September 10, 1996.

ADDRESSES: Comments should be submitted in triplicate to: D. Jerry Rubino, Director, Security and Emergency Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: D. Jerry Rubino, Director, Security and Emergency Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (202–514–2094 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The President issued Executive Orders No. 12958 and 12968 to update and revise the standards and process for classification and declassification of, and access to, national security information. This proposed rule implements these Presidential directives and completely revises part 17 in accordance with the Administration's priorities for regulatory reform and reinvention of government. The revised rule substantially shortens and simplifies the material contained in part 17, focusing on those matters that affect the general public and that should be published as a formal rule. The revised rule delegates to the Assistant Attorney General for Administration responsibility for developing the vast majority of information and internal operating instructions on classified information and access. This rule has been reviewed by the Information Security Oversight Office of the National Archives and Records Administration, pursuant to Executive Order No. 12958.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order No. 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order No. 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has not been reviewed by the Office of Management and Budget pursuant to Executive Order No. 12866.

Regulatory Flexibility Act

The Attorney General in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 17

Classified information, Foreign relations.

Part 17 of title 28 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 17—CLASSIFIED NATIONAL SECURITY INFORMATION AND ACCESS TO CLASSIFIED INFORMATION

Sec.

17.1 Purpose.
17.2 Scope.
17.3 Definitions.

Subpart A—Administration

17.11 Authority of the Assistant Attorney General for Administration.
17.12 Component head responsibilities.
17.13 Office of Intelligence Policy and Review responsibilities; interpretation of Executive orders.
17.14 Department Review Committee.
17.15 Access Review Committee.
17.16 Violations of classified information requirements.
17.17 Judicial proceedings.
17.18 Prepublication review.

Subpart B—Classified Information

17.21 Classification and declassification authority.
17.22 Classification of information; limitations.
17.23 Emergency classification requests.
17.24 Duration of classification.
17.25 Identification and markings.
17.26 Derivative classification.
17.27 Declassification and downgrading.
17.28 Automatic declassification.
17.29 Documents of permanent historical value.
17.30 Classification challenges.
17.31 Mandatory review for declassification requests.
17.32 Notification of classification changes.

Subpart C—Access to Classified Information

17.41 Access to classified information.
17.42 Positions requiring financial disclosure.
17.43 Reinvestigation requirements.
17.44 Access eligibility.
17.45 Need-to-know.
17.46 Access by persons outside the Executive Branch.
17.47 Denial or revocation of eligibility for access to classified information.

Authority: 28 U.S.C. 501, 509, 510, 515–519; 5 U.S.C. 301; E.O. 12958, 60 FR 7977, 3 CFR, 1995 Comp., p. 333 19825; E.O. 12968, 60 FR 40245, 3 CFR, 1995 Comp., p. 391; 32 CFR part 2001.

§ 17.1 Purpose.

The purpose of this part is to ensure that information within the Department of Justice (the "Department") relating to the national security is classified, protected, and declassified pursuant to the provisions of Executive Orders 12958 (3 CFR, 1995 Comp., p. 333) and 12968 (3 CFR, 1995 Comp., p. 391) and implementing directives from the Information Security Oversight Office of the National Archives and Records Administration ("ISOO"). Executive Orders 12958 and 12968 made numerous substantive changes in the system of classification, declassification, and downgrading of classified National Security Information and the criteria for access to this information. Accordingly, this part is a revision of the Department's classified information security rules.

(a) Subpart A of this part prescribes the implementation of Executive Orders 12958 and 12968 within the Department through the Assistant Attorney General for Administration, as the senior responsible agency official. Subpart A of this part also provides for certain relationships within the Department between the Assistant Attorney General for Administration, other component heads, and the Office of Intelligence Policy and Review.

(b) Subpart B of this part prescribes an orderly and progressive system for ensuring that every necessary safeguard and procedure is in place to assure that information is properly classified and that classified information is protected from unauthorized disclosure. Subpart B of this part requires original classification authorities to make classification decisions based on specific criteria; provides that most newly created classified information be considered for declassification after 10 years; provides that historically valuable information that is more than 25 years old (including information classified under prior Executive orders) be automatically declassified, with

appropriate exceptions; and establishes procedures for authorized holders of classified information to challenge the classification of information.

(c) Subpart C of this part establishes substantive standards and procedures for granting, denying, and revoking, and for appealing decisions to deny access to classified information with an emphasis on ensuring the consistent, cost-effective, and efficient protection of classified information. Subpart C of this part provides a process that is fair and equitable to those with whom classified information is entrusted and, at the same time, assures the security of the classified information.

§ 17.2 Scope.

(a) All employees, contractors, grantees, and other's granted access to classified information by the Department are governed by this part, and by the standards in Executive Order 12958, Executive Order 12968, and directives promulgated under those Executive Orders. If any portion of this part conflicts with any portion of Executive Order 12958, Executive Order 12968, or any successor Executive order, the Executive order shall apply. This part supersedes the former rule and any Department internal operating policy or directive that conflicts with any portion of this part.

(b) This part applies to non-contractor personnel outside of the Executive Branch and to contractor personnel or employees who are entrusted with classified national security information originated within or in the custody of the Department. This part does not affect the operation of the Department's participation in the National Industrial Security Program under Executive Order 12829 (3 CFR, 1993 Comp., p. 570).

(c) This part is independent of and does not affect any classification procedures or requirements of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq).

(d) This part does not, and is not intended to, create any right to judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person. This part creates limited rights to administrative review of decisions pursuant to §§ 17.30, 17.31, and 17.47. This part does not, and is not intended to, create any right to judicial review of administrative action under §§ 17.14, 17.15, 17.18, 17.27, 17.30, 17.31 and 17.50.

§ 17.3 Definitions.

The terms defined or used in Executive Order 12958 and Executive Order 12968, and the implementing directives in 32 CFR part 2001, are applicable to this part.

Subpart A—Administration

§ 17.11 Authority of the Assistant Attorney General for Administration.

(a) The Assistant Attorney General for Administration is designated as the senior agency official as required by § 5.6(c) of Executive Order 12958, and § 6.1(a) of Executive Order 12968 and, except as specifically provided elsewhere in this part, is authorized to administer the Department's national security information program pursuant to Executive Order 12958. The Assistant Attorney General for Administration shall appoint a Department Security Officer and may delegate to the Department Security Officer those functions under Executive Orders 12958 and 12968 that may be delegated by the senior agency official. The Department Security Officer may redelegate such functions when necessary to effectively implement this part.

(b) The Assistant Attorney General for Administration shall, among other actions:

(1) Oversee and administer the Department's program established under Executive Order No. 12958;

(2) Establish and maintain Department-wide security education and training programs;

(3) Establish and maintain an ongoing self-inspection program including the periodic review and assessment of the Department's classified product;

(4) Establish procedures to prevent unnecessary access to classified information, including procedures that:

(i) Require that a need for access to classified information is established before initiating administrative procedures to grant access; and

(ii) Ensure that the number of persons granted access to classified information is limited to the minimum necessary for operational and security requirements and needs;

(5) Develop special contingency plans for the safeguarding of classified information used in or near hostile or potentially hostile areas;

(6) Assure that the performance contract or other system used to rate personnel performance includes the management of classified information as a critical element or item to be evaluated in the rating of:

(i) Original classification authorities;

(ii) Security managers or security specialists; and

(iii) All other personnel whose duties significantly involve the creation or handling of classified information;

(7) Account for the costs associated with implementing this part and report the cost to the Director of the ISOO;

(8) Assign in a prompt manner personnel to respond to any request, appeal, challenge, complaint, or suggestion concerning Executive Order 12958 that pertains to classified information that originated in a component of the Department that no longer exists and for which there is no clear successor in function;

(9) Cooperate, under the guidance of the Security Policy Board, with other agencies to achieve practical, consistent, and effective adjudicative training and guidelines;

(10) Conduct periodic evaluations of the Department's implementation and administration of Executive Orders 12958 and 12968;

(11) Establish a plan for compliance with the automatic declassification provisions of Executive Order 12958 and oversee the implementation of that plan; and

(12) Maintain a list of specific files series of records exempted from automatic declassification by the Attorney General pursuant to section 3.4(c) of Executive Order 12958.

(c) The Department Security Officer may grant, deny, suspend, or revoke employee access to classified information pursuant to and in accordance with Executive Order 12968. The Department Security Officer may delegate the authority under this paragraph to qualified Security Programs Managers when the operational need justifies the delegation and when the Department Security Officer is assured that such officials will apply all access criteria in a uniform and correct manner in accord with the provisions of Executive Order 12968 and subpart C of this part. The fact that a delegation has been made pursuant to this section does not waive the Department Security Officer's authority to make any determinations that have been delegated.

(d) The Department Security Officer shall maintain a current list of all officials authorized pursuant to this part to originally classify or declassify documents.

(e) The Department Security Officer shall promulgate criteria and security requirements for the marking and safeguarding of information, transportation and transfer of information, preparation of classification guides, reporting of communications related to national security by persons granted access to classified information, reporting of information that raises doubts as to whether another employee's continued eligibility for access to classified information is clearly consistent with the national security, and other matters necessary to the administration of the Executive orders, the implementing regulations of the ISOO, and this part.

§ 17.12 Component head responsibilities.

The head of each component shall appoint and oversee a Security Programs Manager to implement this part. The Security Programs Managers shall:

(a) Observe, enforce, and implement security regulations or procedures pertaining to the classification, declassification, safeguarding, handling, and storage of classified national security information;

(b) Report violations of the provisions of this regulation to the Department Security Officer;

(c) Ensure that all employees acquire adequate security education and training as required by the provisions of the Department security regulations and procedures for classified information;

(d) Continuously review the requirements for personnel access to classified information as a part of the continuous need-to-know evaluation, and initiate action to administratively withdraw or reduce the level of access authorized as appropriate; and

(e) Cooperate fully with any request from the Department Security Officer for assistance in the implementation of this part.

§ 17.13 Office of Intelligence Policy and Review responsibilities; interpretation of Executive orders.

(a) The Counsel for Intelligence Policy shall represent the Attorney General at interagency meetings on matters of general interest concerning national security information.

(b) The Counsel for Intelligence Policy shall provide advice and interpretation on any issues that arise under Executive Orders 12958 and 12968 and shall refer such questions to the Office of Legal Counsel as appropriate.

(c) Any request for interpretation of Executive Order 12958 or Executive Order 12968, pursuant to section 6.1(b) of Executive Order 12958, and section 7.2(b) of Executive Order 12968, shall be referred to the Counsel for Intelligence Policy, who shall refer such questions to the Office of Legal Counsel as appropriate.

§ 17.14 Department Review Committee.

(a) The Department Review Committee (DRC) is established to:

(1) Resolve all issues, except those related to the compromise of classified information, that concern the implementation and administration of Executive Order 12958, implementing directives from the ISOO, and subpart B of this part, including those issues concerning over classification, failure to declassify, classification challenges, and delays in declassification not otherwise resolved;

(2) Review all appeals from denials of requests for records made under section 3.6 of Executive Order 12958 and the Freedom of Information Act (5 U.S.C. 552), when the proposed denial is based on their continued classification under Executive Order 12958;

(3) Recommend to the Attorney General appropriate administrative sanctions to correct the abuse or violation of any provision of Executive Order 12958, the implementing directives or subpart B of this part, except as it relates to the compromise of classified national security information; and

(4) Review, on appeal, challenges to classification actions and mandatory review requests.

(b) (1) The DRC shall consist of a senior representative designated by the:

(i) Deputy Attorney General;

(ii) Assistant Attorney General, Office of Legal Counsel;

(iii) Assistant Attorney General, Criminal Division;

(iv) Assistant Attorney General, Civil Division;

(v) Assistant Attorney General for Administration;

(vi) Director, Federal Bureau of Investigation; and

(vii) Counsel for Intelligence Policy.

(2) Each such official shall also designate in writing an alternate to serve in the absence of his or her representative. Four representatives shall constitute a quorum of the DRC. The Attorney General shall designate the Chairman of the DRC from among its members.

(c) The Office of Information and Privacy (OIP) shall provide the necessary administrative staff support for the DRC.

§ 17.15 Access Review Committee.

(a) The Access Review Committee (ARC) is hereby established to review all appeals from denials or revocations of eligibility for access to classified information under Executive Order 12968. Unless the Attorney General requests recommendations from the ARC and personally exercises appeal authority, the ARC's decisions shall be final.

(b) The ARC shall consist of the Deputy Attorney General or a designee, the Counsel for Intelligence Policy or a designee, and the Assistant Attorney General for Administration or a designee. Designations must be approved by the Attorney General.

(c) The Department Security Officer shall provide the necessary administrative staff support for the ARC.

§ 17.16 Violations of classified information requirements.

(a) Any person who suspects or has knowledge of a violation of this part, including the known or suspected loss or compromise of national security information, shall promptly report and confirm in writing the circumstances to the Department Security Officer.

Any person who makes such a report to the Department Security Officer shall promptly furnish a copy of such report:

(1) If the suspected violation involves a Department attorney (including an Assistant United States Attorney or Special Assistant United States Attorney) while engaged in litigation, grand jury proceedings, or giving legal advice, or a law enforcement officer assisting an attorney engaged in such activity, to the Office of Professional Responsibility;

(2) If the suspected violation involves an employee of the Federal Bureau of Investigation or the Drug Enforcement Administration, other than a law enforcement officer in paragraph (a)(1) of this section, to the Office of Professional Responsibility in that component; or

(3) In any other circumstance, to the Office of the Inspector General.

(b) Department employees, contractors, grantees, or consultants may be reprimanded; suspended without pay, terminated from classification authority; suspended from or denied access to classified information; or subject to other sanctions in accordance with applicable law and Department regulation if they:

(1) Knowingly, willfully, or negligently disclose to unauthorized persons information classified under Executive Order 12958 or predecessor orders;

(2) Knowingly, willfully, or negligently classify or continue the classification of information in violation of Executive Order 12958 or its implementing directives; or

(3) Knowingly, willfully, or negligently violate any other provision of Executive Order 12958, or knowingly and willfully grant eligibility for, or allow access to, classified information in violation of Executive Order 12968, or its implementing directives, this part, or security requirements promulgated by the Department Security Officer.

§ 17.17 Judicial proceedings.

(a) (1) Any Department official or organization receiving an order or subpoena from a federal or state court to produce classified information, required to submit classified information for official Department litigative purposes, or receiving classified information from another organization for production of such in litigation, shall immediately determine from the agency originating the classified information whether the information can be declassified. If declassification is not possible, the Department official or organization and the assigned Department attorney in the case shall take all appropriate action to protect such information pursuant to the provisions of this section.

(2) If a determination is made to produce classified information in a judicial proceeding in any manner, the assigned Department attorney shall take all steps necessary to ensure the cooperation of the court and, where appropriate, opposing counsel in safeguarding and retrieving the information pursuant to the provisions of this part.

(b) The Classified Information Procedures Act (CIPA), Pub. L. 96–456, 94 Stat. 2025, 18 U.S.C. App., and the "Security Procedures Established Pursuant to Pub. L. 96–456, 94 Stat. 2025, by the Chief Justice of the United States for the Protection of Classified Information" may be used in Federal criminal cases involving classified information. (Available from the Security and Emergency Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530.)

(c) In judicial proceedings other than Federal criminal cases where CIPA is used, the Department, through its attorneys, shall seek appropriate security safeguards to protect classified information from unauthorized disclosure, including, but not limited to, consideration of the following:

(1) A determination by the court of the relevance and materiality of the classified information in question;

(2) An order that classified information shall not be disclosed or introduced into evidence at a proceeding without the prior approval of either the originating agency, the Attorney General, or the President;

(3) A limitation on attendance at any proceeding where classified information is to be disclosed to those persons with appropriate authorization to access classified information whose duties require knowledge or possession of the classified information to be disclosed;

(4) A court facility that provides appropriate safeguarding for the classified information as determined by the Department Security Officer;

(5) Dissemination and accountability controls for all classified information offered for identification or introduced into evidence at such proceedings;

(6) Appropriate marking to indicate classified portions of any and the maintenance of any classified transcript under seal;

(7) Handling and storage of all classified information including classified portions of any transcript in a manner consistent with the provisions of this part and Department implementing directives;

(8) Return at the conclusion of the proceeding of all classified information to the Department or the originating agency, or placing the classified information under court seal;

(9) Retrieval by Department employees of appropriate notes, drafts, or any other documents generated during the course of the proceedings that contain classified information and immediate transfer to the Department for safeguarding and destruction as appropriate; and

(10) Full and complete advice to all persons to whom classified information is disclosed during such proceedings as to the classification level of such information, all pertinent safeguarding and storage requirements, and their liability in the event of unauthorized disclosure.

(d) Access to classified information by individuals involved in judicial proceedings other than employees of the Department is governed by § 17.46(c).

§ 17.18 Prepublication review.

(a) All individuals with authorized access to Sensitive Compartmented Information shall be required to sign nondisclosure agreements containing a provision for prepublication review to assure deletion of Sensitive Compartmented Information and other classified information. Sensitive Compartmented Information is information that not only is classified for national security reasons as Top Secret, Secret, or Confidential, but also is subject to special access and handling requirements because it involves or derives from particularly sensitive intelligence sources and methods. The prepublication review provision will require Department of Justice employees and other individuals who are authorized to have access to Sensitive Compartmented Information to submit certain material, described further in the agreement, to the Department prior to its publication to provide an opportunity for determining whether an unauthorized disclosure of Sensitive Compartmented Information or other classified information would occur as a consequence of its publication.

(b) Persons subject to these requirements are invited to discuss their plans for public disclosures of information that may be subject to these obligations with authorized Department representatives to an early stage, or as soon as circumstances indicate these policies must be considered. Except as provided in paragraph (j) of this section for Federal Bureau of Investigation (FBI) personnel, all questions concerning these obligations should be addressed to the Counsel for Intelligence Policy, Department of Justice, 10th & Constitution Avenue, NW., Washington, DC 20530. The official views of the Department on whether specific materials require prepublication review may be expressed only by the Counsel for Intelligence Policy and persons should not act in reliance upon the views of other Department personnel.

(c) Prepublication review is required only as expressly provided for in a nondisclosure agreement. However, all persons who have had access to classified information have an obligation to avoid unauthorized disclosures of such information. Therefore, persons who have such access but are not otherwise required to submit to prepublication review under the terms of an employment or other nondisclosure agreement are encouraged to submit material for prepublication review voluntarily if they believe that such material may contain classified information.

(d) The nature and extent of the material that is required to be submitted for prepublication review under nondisclosure agreements is expressly provided for in those agreements. It should be clear, however, that such requirements do not extend to any materials that exclusively contain information lawfully obtained at a time when the author has no employment, contract, or other relationship with the United States Government or that contain information exclusively acquired outside the scope of employment.

(e) A person's obligation to submit material for prepublication review remains identical whether such person prepares the material or causes or assists another person (such as a ghost writer, spouse, friend, or editor) in preparing the material. Material covered by a nondisclosure agreement requiring prepublication review must be submitted prior to discussing it with or showing it to a publisher, co-author, or any other person who is not authorized to have access to it. In this regard, it should be noted that a failure to submit such material for prepublication review constitutes a breach of the obligation and exposes the author to remedial action even in cases where the published material does not actually contain Sensitive Compartmented Information or classified information. *See Snepp v. United States*, 444 U.S. 507 (1980).

(f) The requirement to submit material for prepublication review is not limited to any particular type of material or disclosure or method of production. Written materials include not only book manuscripts but all other forms of written materials intended for public disclosure, such as (but not limited to) newspaper columns, magazine articles, letters to the editor, book reviews, pamphlets, scholarly papers, and fictional material.

(g) Oral statements are also within the scope of a prepublication review requirement when based upon written materials, such as an outline of the statements to be made. There is no requirement to prepare written materials for review, however, unless there is reason to believe in advance that oral statements may contain Sensitive Compartmented Information or other information required to be submitted for review under the terms of the nondisclosure agreement. Thus, a person may participate in an oral presentation where there is no opportunity for prior preparation (e.g., news interview, panel discussion) without violating the provisions of this paragraph.

(h) Material submitted for prepublication review will be reviewed solely for the purpose of identifying and preventing the disclosure of Sensitive Compartmented Information and other classified information. This review will be conducted in an impartial manner without regard to whether the material is critical of or favorable to the Department. No effort will be made to delete embarrassing or critical statements that are unclassified. Materials submitted for review will be disseminated to other persons or agencies only to the extent necessary to identify classified information.

(i) The Counsel for Intelligence Policy (or, in the case of FBI employees, the FBI's Office of Congressional and Public Affairs) will respond substantively to prepublication review requests within 30 working days of receipt of the submission. Priority shall be given to reviewing speeches, newspaper articles, and other materials that the author seeks to publish on an expedited basis. The Counsel's decisions may be appealed to the Deputy Attorney General, who will process appeals within 15 working days of receipt of the appeal. The Deputy Attorney General's decision is final and not subject to further administrative appeal. Persons who are dissatisfied with the final administrative decision may obtain judicial review either by filing an action for declaratory relief or by giving the Department notice of their intention to proceed despite the Department's requests for deletions of classified information, and a reasonable opportunity (30 working days) to file a civil action seeking a court order prohibiting disclosure. Employees and other affected individuals remain obligated not to disclose or publish information determined by the Government to be classified until any civil action is resolved.

(j) The obligations of Department of Justice employees described in this subpart apply with equal force to employees of the FBI with the following exceptions and provisos:

(1) Nothing in this subpart shall supersede or alter obligations assumed under the basic FBI employment agreement.

(2) FBI employees required to sign nondisclosure agreements containing a provision for prepublication review pursuant to this subpart shall submit materials for review to the Assistant Director, Office of Congressional and Public Affairs. Such individuals shall also submit questions as to whether specific materials require prepublication review under such agreements to that Office for resolution. Where such questions raise policy questions or concern significant issues of interpretation under such an agreement, the Assistant Director, Office of Congressional and Public Affairs, shall consult with the Counsel for Intelligence Policy prior to responding to the inquiry.

(3) Decisions of the Assistant Director, Office of Congressional and Public Affairs, concerning the deletion of classified information, may be appealed to the Director, FBI, who will process appeals within 15 working days of receipt. Persons who are dissatisfied with the Director's decision may, at their option, appeal further to the Deputy Attorney General as provided in paragraph (i) of this section. Judicial review, as set forth in that paragraph, is available following final agency action in the form of a decision by the Director or, if the appeal process in paragraph (i) of this section is pursued, the Deputy Attorney General.

Subpart B—Classified Information

§ 17.21 Classification and declassification authority.

(a) Top Secret original classification authority may only be exercised by the Attorney General, the Assistant Attorney General for Administration, and officials to whom such authority is delegated in writing by the Attorney General. No official who is delegated Top Secret classification authority pursuant to this paragraph may redelegate such authority.

(b) The Assistant Attorney General for Administration may delegate original Secret and Confidential classification authority to subordinate officials determined to have frequent need to exercise such authority. No official who is delegated original classification authority pursuant to this paragraph may redelegate such authority.

(c) Officials authorized to classify information at a specified level are also authorized to classify information at a lower level. In the absence of an official authorized to exercise classification authority pursuant to this section, the person designated to act in lieu of such official may exercise the official's classification authority.

§ 17.22 Classification of information; limitations.

(a) Information may be originally classified only if all of the following standards are met:

(1) The information is owned by, produced by or for, or is under control of the United States Government;

(2) The information falls within one or more of the categories of information specified in section 1.5 of Executive Order 12958; and

(3) The classifying official determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security and such official is able to identify or describe the damage.

(b) Information may be classified as Top Secret, Secret, or Confidential according to the standards established in section 1.3 of Executive Order 12958. No other terms shall be used to identify United States classified national security information except as otherwise provided by statute.

(c) Information shall not be classified if there is significant doubt about the need to classify the information. If there is significant doubt about the appropriate level of classification with respect to information that is being classified, it shall be classified at the lower classification of the levels considered.

(d) Information shall not be classified in order to conceal inefficiency,

violations of law, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; or to prevent or delay release of information that does not require protection in the interest of national security. Information that has been declassified and released to the public under proper authority may not be reclassified.

(e) Information that has not previously been disclosed to the public under proper authority may be classified or reclassified after the Department has received a request for it under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of § 17.31. When it is necessary to classify or reclassify such information, it shall be forwarded to the Department Security Officer and classified or reclassified only at the direction of the Attorney General, the Deputy Attorney General or the Assistant Attorney General for Administration.

(f) Compilations of items of information that are individually unclassified may be classified if the compiled information reveals an additional association or relationship that meets the standards for classification under Executive Order 12958 and that is not otherwise revealed in the individual items of information.

§ 17.23 Emergency classification requests.

(a) Whenever any employee, contractor, licensee, certificate holder, or grantee of the Department who does not have original classification authority originates or develops information that requires immediate classification and safeguarding, and no authorized classifier is available, that person shall:

(1) Safeguard the information in a manner appropriate for its classification level;

(2) Apply the appropriate overall classification markings; and

(3) Within five working days, securely transmit the information to the organization that has appropriate subject matter interest and classification authority.

(b) When it is not clear which Department organization would be the appropriate orignal classifier, the information shall be sent to the Department Security Officer to determine the appropriate organization.

(c) The organization with classification authority shall decide within 30 days whether to classify information.

§ 17.24 Duration of classification.

(a) At the time of original classification, original classification authorities shall attempt to establish a specific date or event for declassification not more than 10 years from the date of the original decision based on the duration of the national security sensitivity of the information. If the original classification authority cannot determine an earlier specific date or event for declassification, the information shall be marked for declassification 10 years from the date of the original decision.

(b) At the time original classification, an original classification authority may exempt specific information from declassification within 10 years in accordance with section 1.6(d) of Executive Order 12958.

(c) An original classification authority may extend the duration of classification or reclassify specific information for successive periods not to exceed 10 years at a time if such action is consistent with the standards and procedures established under, and subject to the limitations of, Executive Order 12958.

§ 17.25 Identification and markings.

(a) Classified information must be marked pursuant to the standards set forth in section 1.7 of Executive Order 12958; ISOO implementing directives in 32 CFR part 2001, subpart B; and internal Department of Justice direction provided by the Department Security Officer.

(b) Foreign government information shall be marked or classified at a level equivalent to that level of classification assigned by the originating foreign government.

(c) Information assigned a level of classification under predecessor Executive orders shall be considered as classified at that level of classification.

§ 17.26 Derivative classification.

(a) Persons need not possess original classification authority to derivatively classify information based on source documents or classification guides.

(b) Persons who apply derivative classification markings shall observe original classification decisions and carry forward to any newly created documents the pertinent classification markings.

(c) Information classified derivatively from other classified information shall be classified and marked in accordance with the standards set forth in section 2.1–2.3 of Executive Order 12958, the ISOO implementing directives in 32 CFR 2001.22, and internal Department directions provided by the Department Security Officer.

§ 17.27 Declassification and downgrading.

(a) Classified information shall be declassified as soon as it no longer meets the standards for classification. Declassification and downgrading is governed by sections 3.1–3.3 of Executive Order 12958, implementing ISOO directives at 32 CFR part 2001, subpart E, and applicable internal Department of Justice direction provided by the Department Security Officer.

(b) Information shall be declassified or downgraded by the official who authorized the original classification if that official is still serving in the same position; the originator's successor; a supervisory official of either; or officials delegated such authority in writing by the Attorney General or the Assistant Attorney General for Administration.

(c) It is presumed that information that continues to meet the classification requirements under Executive Order 12958 requires continued protection. In some exceptional cases during declassification reviews, the need to protect classified information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. If it appears that the public interest in disclosure of the information may outweigh the need to protect the information, the declassification reviewing official shall refer the case with a recommendation for decision to the DRC. The DRC shall review the case and make a recommendation to the Attorney General on whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure. The Attorney General shall decide whether to declassify the information. The decision of the Attorney General shall be final. This provision does not amplify or modify the substantive criteria or procedures for classification or create any substantive or procedural rights subject to judicial review.

(d) Each component shall develop schedules for declassification of records in the National Archives. The Department shall cooperate with the National Archives and Records Administration and the Presidential Libraries to ensure that declassification is accomplished in a timely manner.

§ 17.28 Automatic declassification.

(a) Subject to paragraph (b) of this section, all classified information contained in records that are more than 25 years old that have been determined to have permanent historical value shall be declassified automatically on April 17, 2000. Subsequently, all classified information in such records shall be automatically declassified not later than 25 years after the date of its original classification with the exception of specific information exempt from automatic declassification pursuant to section 3.4(b) and (d) of Executive Order 12958.

(b) At least 220 days before information is declassified automatically under this section, the respective component head shall notify the Assistant Attorney General for Administration through the Department Security Officer of any specific information they propose to exempt from automatic declassification. The notification shall include:

(1) A description of the information;

(2) An explanation of why the information is exempt from automatic declassification and must remain classified for a longer period of time; and

(3) A specific date or event for declassification of the information whenever the information exempted does not identify a confidential human source or a human intelligence source.

(c) Proposed exemptions under this section shall be forwarded to the DRC, which shall recommend a disposition of the exemption request to the Assistant Attorney General for Administration. When the Assistant Attorney General for Administration determines the exemption request is consistent with this section, he or she will submit it to the Executive Secretary of the Interagency Security Classification Appeals Panel.

(d) Declassification guides that narrowly and precisely define exempted information may be used to exempt information from automatic declassification. Declassification guides must include the exemption notification information detailed in paragraph (b) of this section, and be approved pursuant to paragraph (c) of this section.

§ 17.29 Documents of permanent historical value.

The original classification authority, to the greatest extent possible, shall declassify classified information contained in record determined to have permanent historical value under title 44 of the United States Code before they are accessioned into the National Archives. The Department shall cooperate with the National Archives and Records Administration in carrying out an automatic declassification program involving accessioned Department records, presidential papers, and historical materials under the control of the Archivist of the United States.

§ 17.30 Classification challenges.

(a) Authorized holders of information classified by the Department who, in good faith, believe that specific information is improperly classified or unclassified are encouraged and expected to challenge the classification status of that information pursuant to section 1.9 of Executive Order 12958. Authorized holders may submit classification challenges in writing to the DRC, through the Office of Information and Privacy, United States Department of Justice, Washington, DC 20530. The challenge need not be more specific than a question as to why the information is or is not classified, or is classified at a certain level.

(b) The DRC shall redact the identity of an individual challenging a classification under paragraph (a) of this section and forward the classification challenge to the original classification authority for review and response.

(c) The original classification authority shall promptly, and in no case later than 30 days, provide a written response to the DRC. The original classification authority may classify or declassify the information subject to challenge or state specific reasons why the original classification determination was proper. If the original classification authority is not able to respond within 30 days, the DRC shall inform the individual who filed the challenge in writing of that fact, and the anticipated determination date.

(d) The DRC shall inform the individual challenging the classification of the determination made by the original classification authority and that individual may appeal this determination to the DRC. Upon appeal, the DRC may declassify, or direct the classification of, the information. If the DRC is not able to act on any appeal within 45 days of receipt, the DRC shall inform the individual who filed the challenge in writing of that fact, and the anticipated determination date.

(e) The DRC shall provide the individual who appeals a classification challenge determination with a written explanation of the basis for the DRC decision and a statement of his or her right to appeal that determination to the Interagency Security Classification Appeals Panel (ISCAP) pursuant to section 5.4 of Executive Order 12958 and the rules issued by the ISCAP pursuant to section 5.4 of Executive Order 12958.

(f) Any individual who challenges a classification and believes that any action has been taken against him or her in retribution because of that challenge shall report the facts to the Office of the Inspector General of the Office of Professional Responsibility, as appropriate.

(g) Requests for review of classified materials for declassification by persons other than authorized holders are governed by § 17.31.

§ 17.31 Mandatory review for declassification requests.

(a) Any person may request classified information be reviewed for declassification pursuant to the mandatory declassification review provisions of § 3.6 of Executive Order. 12958. After such a review, the information or any reasonably segregable portion thereof that no longer requires protection under this part shall be declassified and released to the requester unless withholding is otherwise warranted under applicable law. If the information, although declassified, is withheld, the requester shall be given a brief statement as to the reasons for denial and a notice of the right to appeal the determination to the Director, Office of Information and Privacy, United States Department of Justice, Washington, DC 20530. If the mandatory review for declassification request relates to the classification of information that has been reviewed for declassification within the past two years or that is the subject of pending litigation, the requester shall be informed of that fact and the administrative appeal rights.

(b) Request for mandatory review for declassification and any subsequent appeal to the DRC shall be submitted to the Director, Office of Information and Privacy, United States Department of Justice, Washington, DC 20530, describing the document or material containing the information with sufficient specificity to enable the Department to locate that information with a reasonable amount of effort. The OIP shall promptly forward the request to the component that originally classified the information, or to the DRC in the case of an appeal, and provide the requester with an acknowledgment of receipt of the request.

(c) When the description of the information in a request is deficient, the component shall solicit as much additional identifying information as possible from the requester. Before denying a request on the basis that the information or material is not obtainable with a reasonable amount of effort, the component shall ask the requestor to limit the request to information or material that is reasonably obtainable. If the information or material requested

cannot be described in sufficient particularity, or if it cannot be obtained with a reasonable amount of effort, the component shall provide the requestor with written notification of the reasons why no action will be taken and the right to appeal the decision to the DRC.

(d) The component that originally classified the information shall provide a written response to request for mandatory review within 60 days whenever possible, or shall inform the requester in writing why additional time is needed. Unless there are unusual circumstances, the additional time needed by the component originally classifying the information shall not extend beyond 180 days from the receipt of the request. If no determination has been made at the end of the 180 day period, the requester may apply to the DRC for a determination.

(e) If the component that originally classified the information determines that continued classification is warranted, it shall notify the requester in writing of the decision and the right to appeal the decision to the DRC no later than 60 days after receipt of the notification of the decision.

(f) The DRC shall determine the appeals of the components' mandatory declassification review decisions within 60 days after receipt of the appeal, or notify the requester why additional time is needed. In making its determinations concerning requests for declassification of classified information, the DRC, for administrative purposes, shall impose the burden of proof on the originating component to show that continued classification is warranted. The DRC shall provide the requester with a written statement of reasons for its decision.

(g) If the individual requesting review of a classification is not satisfied with the DRC's decision, he or she may appeal to the ISCAP pursuant to § 5.4 of Executive Order 12958 and rules issued by the ISCAP pursuant to that section.

§ 17.32 Notification of classification changes.

All known holders of information affected by unscheduled classification changes actions shall be notified promptly of such changes by the original classifier or the authority making the change in classification.

Subpart C—Access to Classified Information

§ 17.41 Access to classified information.

(a) No person may be given access to classified information or material originated by, in the custody, or under the control of the Department, unless that person—

(1) Has been determined to be eligible for access in accordance with §§ 3.1–3.3 of Executive Order 12968;

(2) Has a demonstrated need-to-know; and

(3) Has signed an approved nondisclosure agreement.

(b) Eligibility for access to classified information is limited to United States citizens for whom an appropriate investigation of their personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information. A determination of eligibility for access to classified information is a discretionary security decision based on judgments by appropriately trained adjudicative personnel. Eligibility shall be granted only where facts and circumstances indicate access to classified information is clearly consistent with the national security interests of the United States and any doubt shall be resolved in favor of the national security. Sections 2.6 and 3.3 of Executive Order 12968 provide only limited exceptions to these requirements.

(c) The Department of Justice does not discriminate on the basis of race, color, religion, sex, national origin, disability, or sexual orientation in granting access to classified information. However, the Department may investigate and consider any matter that relates to the determination of whether access is clearly consistent with the interests of national security. No negative inferences concerning the standards for access may be raised solely on the basis of the sexual orientation of the employee or mental health counseling.

(d) An employee granted access to classified information may be investigated at any time to ascertain whether he or she continues to meet the requirements for access.

(e) An employee granted access to classified information shall provide to the Department written consent permitting access by an authorized investigative agency, for such time as access to classified information is maintained and for a period of three years thereafter, to:

(1) Financial records maintained by a financial institution as defined in 31 U.S.C. 5312(a) or by a holding company as defined in 12 U.S.C. 3401;

(2) Consumer reports under the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*); and

(3) Records maintained by commercial entities within the United States pertaining to any travel by the employee outside the United States.

(f) Information may be requested pursuant to the employee consent obtained under paragraph (e) of this section only where:

(1) There are reasonable grounds to believe, based on credible information, that the employee or former employee is, or may be, disclosing classified information in an unauthorized manner to a foreign power or agent of a foreign power;

(2) Information the Department deems credible indicates the employee or former employee has incurred excessive indebtedness or has acquired a level of affluence that cannot be explained by other information; or

(3) Circumstances indicate that the employee or former employee had the capability and opportunity to disclose classified information that is known to have been lost or compromised to a foreign power or an agent of a foreign power.

§ 17.42 Positions requiring financial disclosure.

(a) The Assistant Attorney General for Administration, in consultation with the Counsel for Intelligence Policy, shall designate each employee, by position or category where possible, who has a regular need for access to any of the categories of classified information described in § 1.3(a) of Executive Order 12968.

(b) An employee may not hold a position designated as requiring a regular need for access to categories of classified information described in § 1.3(a) of Executive Order 12968 unless, as a condition of access to such information, the employee files with the Department Security Officer:

(1) A financial disclosure form developed pursuant to § 1.3(c) of Executive Order 12968 as part of all background investigations or reinvestigations;

(2) The same financial disclosure form, if selected by the Department Security Officer on a random basis; and

(3) Relevant information concerning foreign travel, as determined by the Department Security Officer.

17.43 Reinvestigation requirements.

Employees who are eligible for access to classified information shall be subject to periodic reinvestigations and may also be reinvestigated if, at any time, there is reason to believe that they may no longer meet the standards for access.

§ 17.44 Access eligibility.

(a) Determinations of eligibility for access to classified information are separate from suitability determinations with respect to the hiring or retention of persons for employment by the Department or any other personnel actions.

(b) The number of employees eligible for access to classified information shall be kept to the minimum required for the conduct of Department functions.

(c) Eligibility for access to classified information shall be limited to classification levels for which there is a need for access. No person shall be granted eligibility higher than his or her need.

§ 17.45 Need-to-know.

No person shall be granted access to specific classified information unless that person has an actual need-to-know that classified information, pursuant to section 2.5 of Executive Order 12968.

§ 17.46 Access by persons outside the Executive Branch.

(a) Classified information shall not be disseminated outside the Executive Branch except under conditions that ensure that the information will be given protection equivalent to that afforded within the Executive Branch.

(b) Classified information originated by or in the custody of the Department may be made available to individuals or agencies outside the Executive Branch provided that such information is necessary for performance of a function from which the Federal Government will derive a benefit or advantage and that the release is not prohibited by the originating department or agency (or foreign government in the case of Foreign Government Information). Before such a release is made, the head of the Office, Board, Division, or Bureau making the release shall determine the propriety of such action, in the interest of the national security, and must approve the release. Prior to the release, the Department Security Officer must confirm that the recipient is eligible for access to the classified information involved and agrees to safeguard the information in accordance with the provisions of this part.

(c) Members of Congress, Justices of the United States Supreme Court, and Judges of the United States Courts of Appeal and District Courts do not require a determination of their eligibility for access to classified information by the Department. All other Legislative and Judicial personnel including, but not limited to, Bankruptcy and Magistrate Judges, congressional committee staffers, congressional staffers, court reporters, typists, secretaries, law clerks, and translators who require access to classified information must be determined eligible by the Department Security Officer pursuant to procedures approved by the Assistant Attorney General for Administration.

(d) When other persons outside the Executive Branch who are not subject to the National Industrial Security Program require access to classified information originated by or in the custody of the Department, but do not otherwise possess a proper access authorization, an appropriate background investigation must be completed to allow the Department Security Officer to determine their eligibility for access to classified information. The length of time it generally takes to complete an expedited background investigation is 90 days. Therefore, all persons requiring access to classified information to participate in congressional or judicial proceedings should be identified and the background investigation initiated far enough in advance to ensure a minimum impact on such proceedings.

(e) Personnel who are subject to a Department contract or grant or who are rendering consultant services to the Department and require access to classified information originated by or in the custody of the Department shall be processed for such access pursuant to procedures approved by the Assistant Attorney General for Administration.

(f)(1) The requirement that access to classified information may be granted only as is necessary for the performance of official duties may be waived, pursuant to section 4.5(a) of Executive Order 12958, for persons who:

(i) Are engaged in historical research projects; or

(ii) Have previously occupied policymaking positions to which they were appointed by the President.

(2) All persons receiving access pursuant to this paragraph (f) must have been determined to be trustworthy by the Department Security Officer as a precondition before receiving access. Such determinations shall be based on such investigation as the Department Security Officer deems appropriate. Historical researchers and former presidential appointees shall not have access to Foreign Government Information without the written permission from an appropriate authority of the foreign government concerned.

(3) Waivers of the "need-to-know" requirement under this paragraph (f) may be granted by the Department Security Officer provided that the Security Programs Manager of the Office, Board, Division, or Bureau with classification jurisdiction over the information being sought:

(i) Makes a written determination that such access is consistent with the interest of national security;

(ii) Limits such access to specific categories of information over which the Department has classification jurisdiction;

(iii) Maintains custody of the classified information at a Department facility;

(iv) Obtains the recipient's written and signed agreement to safeguard the information in accordance with the provisions of this regulation and to authorize a review of any notes and manuscript for determination that no classified information is contained therein; and

(v) In the case of former presidential appointees, limits their access to items that such former appointees originated, reviewed, signed, or received while serving as a presidential appointee and ensures that such appointee does not remove or cause to be removed any classified information reviewed.

(4) If access requested by historical researchers and former presidential appointees requires the rendering of services for which fair and equitable fees may be charged pursuant to 31 U.S.C. 9701, the requester shall be so notified and fees may be imposed.

§ 17.47 Denial or revocation of eligibility for access to classified information.

(a) Applicants and employees who are determined to not meet the standards for access to classified information established in section 3.1 of Executive Order 12968 shall be:

(1) Provided with a comprehensive and detailed written explanation of the basis for that decision as the national security interests of the United States and other applicable law permit and informed of their right to be represented by counsel or other representative at their own expense;

(2) Permitted 30 days from the date of the written explanation to request any documents, records, or reports including the entire investigative file upon which a denial or revocation is based; and

(3) Provided copies of documents requested pursuant to this paragraph (a) within 30 days of the request to the extent such documents would be provided if requested under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a), and as the national security interests and other applicable law permit.

(b) An applicant or employee may file a written reply and request for review of the determination within 30 days after written notification of the determination or receipt of the copies of the documents requested pursuant to this subpart, whichever is later.

(c) An applicant or employee shall be provided with a written notice of and reasons for the results of the review, the identity of the deciding authority, and written notice of the right to appeal.

(d) Within 30 days of receipt of a determination under paragraph (c) of this section, the applicant or employee may appeal that determination in writing to the ARC, established under § 17.15. The applicant or employee may request an opportunity to appear personally before the ARC and to present relevant documents, materials, and information.

(e) An applicant or employee may be represented in any such appeal by an attorney or other representative of his or her choice, at his or her expense. Nothing in this section shall be construed as requiring the Department to grant such attorney or other representative eligibility for access to classified information, or to disclose to such attorney or representative, or permit the applicant or employee to disclose to such attorney or representative, classified information.

(f) A determination of eligibility for access to classified information by the ARC is a discretionary security decision. Decisions of the ARC shall be in writing and shall be made as expeditiously as possible. Access shall be granted only where facts and circumstances indicate that access to classified information is clearly consistent with the national security interest of the United States, and any doubt shall be resolved in favor the national security.

(g) The Department Security Officer shall have an opportunity to present relevant information in writing or, if the applicant or employee appears personally, in person. Any such written submissions shall be made part of the applicant or employee's security record and, as the national security interests of the United States and other applicable law permit, shall also be provided to the applicant or employee. Any personal presentations shall be, to the extent consistent with the national security and other applicable law, in the presence of the applicant or employee.

(h) When the Attorney General or Deputy Attorney General personally certifies that a procedure set forth in this section cannot be made available in a particular case without damaging the national security interests of the United States by revealing classified information, the particular procedure shall not be made available. This is a discretionary and final decision not subject to further review.

(i) This section does not limit the authority of the Attorney General pursuant to any other law or Executive order to deny or terminate access to classified information if the national security so requires and the Attorney General determines that the appeal procedures set forth in this section cannot be invoked in a manner that is consistent with the national security. Nothing in this section requires that the Department provide any procedures under this section to an applicant where a conditional offer of employment is withdrawn for reasons of suitability or any reason other than denial of eligibility for access to classified information. Suitability determinations shall not be used for the purpose of denying an applicant or employee the review proceedings of this section where there has been a denial or revocation of eligibility for access to classified information.

Dated: June 28, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–17310 Filed 7–11–96; 8:45 am]

BILLING CODE 4410–01–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

Accessibility Guidelines for Play Facilities; Notice of Meeting of Regulatory Negotiation Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Committee meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered play facilities covered by the Americans with Disabilities Act and the Architectural Barriers Act. This document announces the dates and location of the next meeting of the committee, which is open to the public.

DATES: The committee will meet as follows: Sunday, August 4, 1996, 9:00 a.m. to 6:00 p.m. Monday, August 5, 1996, 9:00 a.m. to 5:00 p.m. and 7:00 p.m. to 9:30 p.m. Tuesday, August 6, 1996, 9:00 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Maplewood Community Center, 2100 White Bear Avenue, Maplewood, Minnesota.

FOR FURTHER INFORMATION CONTACT: Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC. 20004–1111. Telephone number (202) 272–5434 extension 34 (Voice); (202) 272–5449 (TTY). This document is available in alternate formats (cassette tape, braille, large print, or computer disc) upon request.

SUPPLEMENTARY INFORMATION: In February 1996, the Access Board established a regulatory negotiation committee to develop a proposed rule on accessibility guidelines for newly constructed and altered play facilities covered by the Americans with Disabilities Act and the Architectural Barriers Act. (61 FR 5723, February 14, 1996). The committee will hold its next meeting on the dates and at the location announced above. The meeting is open to the public. The meeting site is accessible to individuals with disabilities. Individuals with hearing impairments who require sign language interpreters should contact Peggy Greenwell by July 26, 1996, by calling (202) 272–5434 extension 34 (voice) or (202) 272–5449 (TTY).

On Sunday, August 4, 1996, the committee will tour various play facilities in the Minneapolis area. Bus transportation will be provided for committee members. There is limited space available on the bus for members of the public. Individuals may reserve space in advance by calling Peggy Greenwell at the phone numbers listed above. If all available spaces are not reserved in advance, spaces will be filled on the day of the tour on a first come/first served basis. The bus will depart from the main entrance of the Sheraton Metrodome, 1330 Industrial Boulevard, Minneapolis, Minnesota, at 9:00 a.m. The bus will return to Maplewood Community Center at approximately 4:00 p.m. and the committee will meet until 6:00 p.m.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 96–17709 Filed 7–11–96; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6E4645/P672; FRL–5384–1]

Glyphosate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a time-limited tolerance for residues of the herbicide glyphosate [N-(phosphonomethyl)glycine] in or on the raw agricultural commodity (RAC) oats at 20 parts per million (ppm). Because additional time is needed for the petitioner to submit additional details on the processing study and the composition of the foreign product, the Agency is proposing to grant this tolerance with a 3-year expiration date. This tolerance is being established to allow for the legal import of oats treated with glyphosate. Monsanto Company requested this tolerance in a petition submitted to EPA pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: Comments, identified by the docket control number [PP 6E4645/P672], must be received on or before August 12, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Comments and data may also be submitted to OPP electronically by sending electronic mail (e-mail) to: opp-docket@epamail. epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 6E4645/P672]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found in the "SUPPLEMENTARY INFORMATION" section of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail, Robert J. Taylor, Product Manager, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-6027; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Monsanto Company, 700 14th St., NW., Suite 1100, Washington, DC 20005, has submitted a pesticide petition (PP) 6E4645 proposing to amend 40 CFR 180.364, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA) 21 U.S.C. 346(a), by establishing a regulation to permit residues of the herbicide glyphosate [N-(phosphonomethyl)glycine] resulting from the application of the isopropylamine salt and/or the monoammonium salt of glyphosate in or on the raw agricultural commodity (RAC) oats at 20.0 parts per million (ppm). The data submitted in the petitions and other relevant material have been evaluated. The glyphosate toxicological data listed below were considered in support of these tolerances.

1. Several acute toxicology studies placing technical-grade glyphosate in Toxicity Category III and Toxicity Category IV.

2. A 1-year feeding study with dogs fed dosage levels of 0, 20, 100, and 500 milligrams/kilogram/day (mg/kg/day) with a no-observable-effect level (NOEL) of 500 mg/kg/day.

3. A 2-year carcinogenicity study in mice fed dosage levels of 0, 150, 750, and 4,500 mg/kg/day with no carcinogenic effect at the highest dose tested (HDT) of 4,500 mg/kg/day.

4. A chronic feeding/carcinogenicity study in male and female rats fed dosage levels of 0, 3, 10, and 31 mg/kg/day (males) and 0, 3, 11, or 34 mg/kg/day (females) with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 31 mg/kg/day (HDT) (males) and 34 mg/kg/day (HDT) (females) and a systemic NOEL of 31 mg/kg/day (HDT) (males) and 34 mg/kg/day (HDT) (females). Because a maximum tolerated dose (MTD) was not reached, this study was classified as supplemental for carcinogenicity.

5. A chronic feeding/carcinogenicity study in male and female rats fed dosage levels of 0, 89, 362, and 940 mg/kg/day (males) and 1, 113, 457, and 1,183 mg/kg/day (females) with no carcinogenic effects noted under the conditions of the study at dose levels up to and including 940/1,183 mg/kg/day (males/females) (HDT) and a systemic NOEL of 362 mg/kg/day (males) based on an increased incidence of cataracts and lens abnormalities, decreased urinary pH, increased liver weight and increased liver weight/brain ratio (relative liver weight) at 940 mg/kg/day (males) (HDT) and 457 mg/kg/day (females) based on decreased body weight gain at 1,183 mg/kg/day (females) (HDT).

6. A developmental toxicity study in rats given doses of 0, 300, 1,000, and 3,500 mg/kg/day with a developmental NOEL of 1,000 mg/kg/day based on an increase in number of litters and fetuses with unossified sternebrae, and decrease in fetal body weight at 3,500 mg/kg/day, and a maternal NOEL of 1,000 mg/kg/day based on decrease in body weight gain, diarrhea, soft stools, breathing rattles, inactivity, red matter in the region of nose, mouth, forelimbs, or dorsal head, and deaths at 3,500 mg/kg/day (HDT).

7. A developmental toxicity study in rabbits given doses of 0, 75, 175, and 350 mg/kg/day with a developmental NOEL of 350 mg/kg/day (HDT); a maternal NOEL of 175 mg/kg/day based on increased incidence of soft stool, diarrhea, nasal discharge, and deaths at 350 mg/kg/day (HDT).

8. A multigeneration reproduction study with rats fed dosage levels of 0, 3, 10, and 30 mg/kg/day with a developmental NOEL of 10 mg/kg/day based on an apparent increased incidence of focal tubular dilation of the kidney (both unilateral and bilateral combined) of male F3b pups.

9. A two generation reproduction study with rats fed dosage levels of 0, 100, 500, and 1,500 mg/kg/day with a developmental NOEL of 500 mg/kg/day based on decreased pup body weight and body weight gain on lactation days 14 and 21 at 1,500 mg/kg/day (HDT), a systemic NOEL of 500 mg/kg/day based on soft stools in Fo and F1 males and females at 1,500 mg/kg/day (HDT) and a reproductive NOEL of 1,500 mg/kg/day (HDT). Additionally, since there was no increase in focal tubular dilation

of the kidney of the pups at any dose level, the findings at 30 mg/kg/day in the earlier study was considered spurious.

10. Mutagenicity data included chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with and without S9 activation); DNA repair in rat hepatocyte; *in vivo* bone marrow cytogenic test in rats; rec-assay with *B. subtilis*; reverse mutation test with *S. typhimurium*; Ames test with *S. typhimurium*; and dominant-lethal mutagenicity test in mice (all negative).

The reference dose (RfD) based on a developmental study with rabbits (NOEL of 175 mg/kg/ bwt/day) and using a hundred-fold safety factor is calculated to be 2.0 mg/kg body weight/ day. The theoretical maximum residue contribution (TMRC) for published tolerances is 0.021460 mg/kg bwt/day or 1.0% of the RfD for the overall U.S. population. This current action on oats will contribute 0.001644 mg/kg/day to the TMRC. This tolerance will utilize a total of 0.082% of the RfD for the overall U.S. population. For U.S. subgroup population, nonnursing infants, the current action and previously established tolerances utilize, a total of 3.2% of the RFD, assuming that residue levels are at the established tolerance levels and that 100% of the crop is treated.

Data desirable for this petition include additional details for the processing study and composition of the foreign product. The Agency is granting the tolerance for oats with a 3-year expiration date to allow the petitoner, Monsanto Company, to provide the required data.

There are currently no actions pending against the continued registration of this pesticide. No detectable residues of N-nitrosoglyphosate, a contaminant of glyphosate, are expected to be present in the commodities for which tolerances are established. The carcinogenic potential of glyphosate was first considered by a panel, then called the Toxicology Branch AD Hoc Committee, in 1985. The Committee, in a consensus review dated March 4, 1985, classified glyphosate as a Group C carcinogen based on an increased incidence of renal tumors in male mice. The Committee also concluded that dose levels tested in the 26-month rat study were not adequate for assessment of glyphosate's carcinogenic potential in this species. These findings, along with additional information, including a reexamination of the kidney slides from the long-term mouse study, were referred to the FIFRA Scientific Advisory Panel (SAP). In its report dated February 24, 1986, SAP classified glyphosate as a Group D Carcinogen (inadequate animal evidence of carcinogenic potential). SAP concluded that, after adjusting for the greater survival in the high-dose mice compared to concurrent controls, that no statistically significant pairwise differences existed, although the trend was significant.

The SAP determined that the carcinogenic potential of glyphosate could not be determined from existing data and proposed that the rat and/or mouse studies be repeated in order to classify these equivocal findings. On reexamination of all information, the Agency classified glyphosate as a Group D carcinogen and requested that the rat study be repeated and that a decision on the need for a repeat mouse study would be made upon completion of review of the rat study.

Upon receipt and review of the second rat chronic feeding/ carcinogenicity study, all toxicological findings for glyphosate were referred to the Health Effects Division Carcinogenicity Peer Review Committee on June 26, 1991, for discussion and evaluation of the weight of evidence on glyphosate with particular emphasis on its carcinogenic potential. The Peer Review Committee classified glyphosate as a Group E (evidence of noncarcinogenicity for humans), based upon lack of convincing carcinogenicity evidence in adequate studies in two animal species. This classification is based on the following findings: (1) None of the types of tumors observed in the studies (pancreatic islet cell adenomas in male rat, thyroid c-cell adenomas and/or carcinomas in male and female rats, hepatocellular adenomas and carcinomas in male rats, and renal tubular neoplasms in male mice) were determined to be compound related; (2) glyphosate was tested up to the limit dose on the rat and up to levels higher than the limit dose in mice; and (3) there is no evidence of genotoxicity for glyphosate. Accordingly, EPA concludes that glyphosate has not been "found to induce cancer when ingested by man or animal." 21 U.S.C. 348(c)(3).

The nature of the residue in plants is adequately understood. The residue to be regulated is the parent glyphosate. Adequate methodology (HPLC) with flurometric detection is available for enforcement purposes, and the methodology has been published in the *Pesticide Analytical Manual (PAM), Vol. II*. The submitted residue data adequately support the proposed tolerance of 20 ppm. Any secondary residues occurring in milk, eggs, meat, fat, liver, and kidney of cattle, goats, horses, hogs, and sheep be covered by existing tolerances.

Based on the information cited above, the Agency has determined that when used in accordance with good agricultural practice, this ingredient is useful and the tolerance established by amending 40 CFR part 180 will protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted and application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this proposal be referred to an Advisory Committee in accordance with Section 408 of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [6E4645/P672]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [PP 6E4645/P672] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any comments electronically into printed, paper form as they are received and will place the paper copies in the rulemaking record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligation of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, EPA has determined that this proposed rule is not "significant" and is therefore not subject to OMB review.

This action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled "Enhancing the Intergovernmental Partnership," or special consideration as required by Executive Order 12898 (59 FR 7629, February 29, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: June 28, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, It is proposed that part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.364 is amended by revising the entry for grain crops (except wheat) under paragraph (a) in the table therein and adding a new paragraph (e) to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodity	Parts per million
. . .	. .
grain crops (except wheat and oats).	0.13
. . .	. .

* * * * *

(e) A tolerance to expire (Insert date 3-years after date of publication of the final rule in the **Federal Register**) is established for residues of the herbicide glyphosate (N-(phosphonomethyl)glycine) resulting from the application of the isopropylamine salt of glyphosate and/ or the monoammonium salt of glyphosate in or on the raw agricultural commodity oat at 20 parts per million.

[FR Doc. 96–17660 Filed 7–11–96; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC–94–31]

RIN 2125–AD42

Parts and Accessories Necessary for Safe Operation; Antilock Brake Systems

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The FHWA is proposing to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to require that air-braked truck tractors manufactured on or after March 1, 1997, and air-braked single-unit trucks, buses, trailers, and converter dollies manufactured on or after March 1, 1998, be equipped with antilock brake systems (ABSs) that meet the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 121. The FHWA is also proposing that hydraulic braked trucks and buses manufactured on or after March 1, 1999, be equipped with ABSs that meet the requirements of FMVSS No. 105. This rulemaking is intended to ensure that the in-service brake standards of the FMCSRs are consistent with the FMVSSs and to improve the safety of operation of commercial motor vehicles (CMVs) by reducing the incidence of accidents caused by jackknifing and other losses of directional stability and control during braking. With regard to CMVs manufactured prior to the dates previously mentioned, the FHWA is not proposing that motor carriers be required to retrofit such vehicles with ABSs. However, the FHWA is requesting comments on this subject.

DATES: Comments must be received on or before September 10, 1996.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–94–31, room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HCS–10, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 4012 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914, 2157) directs the Secretary of Transportation to initiate a rulemaking concerning methods for improving the braking performance of new commercial

motor vehicles,[1] including truck tractors, trailers, and their dollies. Congress specifically directed that the rulemaking examine antilock systems, as a means of improving brake compatibility, and methods of ensuring effectiveness of brake timing.

The NHTSA Rulemaking

In response to the ISTEA, the National Highway Traffic Safety Administration (NHTSA) published a final rule amending Federal Motor Vehicle Safety Standard (FMVSS) No. 105, *Hydraulic Brake Systems*, and FMVSS No. 121, *Air Brake Systems*, to require that medium and heavy vehicles be equipped with an antilock brake system (ABS) to improve the lateral stability (i.e., traction) and steering control of these vehicles during braking (60 FR 13216, March 10, 1995). For truck tractors, the ABS requirement is supplemented by a 48.3 kilometer per hour (30-mph) braking-in-a-curve test on a low coefficient of friction surface using a full brake application. By improving lateral stability and control, these requirements will significantly reduce jackknifing and other losses of control during braking as well as the deaths and injuries caused by those control problems.

In addition, the NHTSA final rule requires all powered heavy vehicles to be equipped with an in-cab lamp to indicate ABS malfunctions. Truck tractors and other trucks equipped to tow air-braked trailers are required to be equipped with two separate in-cab lamps: One indicating malfunctions in the towing vehicle ABS and the other in the trailer ABS. The requirement for the in-cab lamp to alert the driver of malfunctions in the trailer ABS applies to trucks and truck tractors manufactured on or after March 1, 2001 (61 FR 5949, February 15, 1996). Trailers produced during an initial 11-year period (March 1, 1998 through March 1, 2009) must also be equipped with an external malfunction indicator that is visible to the driver of the towing tractor (61 FR 5949).

The amendments to FMVSS No. 105 become effective on March 1, 1999. With the exception of the in-cab indicator for trailer ABS malfunctions, the amendments to FMVSS No. 121 become effective on March 1, 1997, for truck tractors, and on March 1, 1998, for air-braked trailers, converter dollies, single unit trucks, and buses.

FHWA Notice of Intent

On March 10, 1995, the FHWA published a notice of intent to initiate a rulemaking concerning requirements for ABSs on CMVs operating in interstate commerce (60 FR 13306). The notice of intent included an extensive discussion of the NHTSA's ABS fleet study conducted between 1988 and 1993. A copy of the study has been placed in FHWA Docket No. MC–94–31. The NHTSA tracked the maintenance performance histories of 200 truck tractors and 50 semitrailers equipped with ABSs, as well as the histories of a comparison group of 88 truck tractors and 35 semitrailers that were not equipped with ABSs, to determine the incremental maintenance costs and patterns associated with installing ABSs on these heavy vehicles.[2]

The authors concluded that, based upon the data collected during the fleet study, currently available ABSs are reliable, durable, and maintainable. While an ABS is not a zero-cost maintenance item, its presence on a vehicle did not substantially increase maintenance costs (less than one percent for tractors, less than two percent for trailers) or decrease vehicle operational availability.

The NHTSA data indicate that ABSs are neither difficult nor unduly expensive to maintain. The fleet test results do not indicate that the level of maintenance required to keep an ABS functional is unreasonable relative to the safety benefits that will result from the use of these systems.

The FHWA concluded that a rulemaking should be initiated to propose amending the FMCSRs to include ABS requirements and solicited comments on this decision.

Discussion of Comments

The FHWA received 11 comments in response to the March 10, 1995, notice. The commenters were: Advocates for Highway and Auto Safety (AHAS); AlliedSignal Truck Brake Systems Company (AlliedSignal); the American Trucking Associations, Inc. (ATA); Mr. G. Frank Brda, a former CMV owner-operator; Heavy Duty Brake Manufacturers Council (HDBMC); Insurance Institute for Highway Safety (IIHS); Midland-Grau Heavy Duty Systems; National Association of Independent Insurers (NAII); Mack Trucks, Inc.; National Automobile Dealers Association (NADA); and, Rockwell WABCO Vehicle Control Systems (Rockwell).

Generally the commenters were in favor of the FHWA initiating a rulemaking to require that motor carriers maintain the ABSs. However, the ATA, NADA, and AlliedSignal expressed concern about the FHWA proceeding with a notice of proposed rulemaking. The specific concerns or issues raised by the commenters are discussed below.

Interpretation of § 396.3

The ATA and AlliedSignal believe that § 396.3, Inspection, repair, and maintenance, would adequately cover the ABS requirement and that a new provision may not be necessary. The ATA states that:

> This language makes it clear that a system necessary for safety must be maintained in proper condition. It also includes the flexibility to hold that the system can be disconnected if, because of existing circumstances, doing so is the safest policy. For example, we can foresee a time when some failure in an ABS system will imperil braking. Until a cure for that problem is developed, unplugging the specific model involved may be the most prudent course.

The ATA believes NHTSA's research shows serious operational problems with ABSs and the failure warning lamp systems that were not reflected in the FHWA's March 10, 1995, notice of intent. The ATA suggests a review of the NHTSA reports "to get an understanding of both the reliability and safety limitations of ABSs which were indirectly covered by the agency and point to serious concerns about the technology." The ATA summarized its recommendation to the FHWA as follows:

> ATA believes that properly administered, FMCSR 396.3(a)(1) can be used to assure that carriers provide appropriate maintenance for ABS and recommends that this be the strategy the agency follows in this matter. Given present experience and that NHTSA itself has pointed to serious operational difficulties, we believe more about its actual performance must be known before attempting to write a detailed ABS in-use regulation.

AlliedSignal shared the ATA's views on § 396.3 stating that "[t]he current FMCSR 396.3(a)(1) assures that operators maintain brake systems in good working order and therefore possibly negating the need to change FMCSR 396."

The FHWA does not agree with the ATA and AlliedSignal. Section 396.3(a)(1) requires that parts and accessories be in safe and proper operating condition at all times. This includes parts and accessories specified in part 393 and any additional parts and accessories which may affect the safety of operation of the vehicle, including but not limited to, frame and frame assemblies, suspension systems, axles and attaching parts, wheels and rims, and steering systems. The FHWA has historically interpreted § 396.3(a)(1) as applying only to the parts and accessories required by part 393. Parts and accessories that are not required by part 393 are considered additional or optional equipment which is not necessary for the safe and proper operation of commercial motor vehicles. The applicability of § 396.3(a)(1) to optional equipment is limited to only those cases in which a failure or defect in the equipment creates a hazard to the motoring public or adversely affects the performance or function of any piece of equipment required by part 393.

If the FHWA does not establish a requirement for ABSs under part 393, such systems could only be considered as optional equipment under the FMCSRs. Since a failure of the ABS would not affect the foundation brake system, a CMV could meet all of the current requirements of subpart C of part 393 with an inoperative ABS. Therefore, the FHWA could not require motor carriers to systematically inspect, repair, and maintain ABSs unless part 393 is amended.

In response to the ATA's concern that motor carriers need the flexibility to disconnect ABSs if, "because of existing circumstances, doing so is the safest policy," the FHWA does not foresee the development of such problems. In the event that an ABS or vehicle manufacturer, or the NHTSA determines that there is a safety-related defect, the manufacturers are responsible for notifying purchasers of the defective equipment and remedying the problem free of charge (49 CFR part 577, Defect and Noncompliance Notification). If a manufacturer or the NHTSA indicates there is an ABS defect of the severity alluded to by the ATA, the FHWA would immediately notify all Federal officials responsible for enforcing the FMCSRs and State officials responsible for enforcing compatible State regulations to ensure that carriers are not unfairly penalized for inoperable ABSs. However, in the absence of a notification from a vehicle or ABS manufacturer or the NHTSA, the FHWA does not intend to allow motor carriers to disconnect the ABSs.

Research on ABS Operation and Failure Modes

The NADA and the ATA believe the FHWA should evaluate in-use ABS operation and failure modes prior to establishing a requirement for motor carriers to maintain the systems. The NADA indicated that "[u]ntil such an evaluation is undertaken, an ABS maintenance rule would be premature." The ATA states:

> There are several problems with ABS which will impact its inspection and repair.
>
> As NHTSA's ABS studies showed and our follow up research confirms * * * there are numerous troubles with this technology. Many of the problems involve the failure warning system. False warning signals are a daily occurrence in fleets with a large number of ABS equipped vehicles. Examples of such problems are codes for malfunctions which, when checked, didn't occur; alien codes not defined in the maintenance manual and phantom codes which come and go, typically disappearing before the vehicle gets to the shop and hopefully unrelated to a serious problem.
>
> In addition to lamps illuminating when no failure can be found, electrical failures occur which do not cause either the warning lamp to come on or a failure code to be set, sometimes because the warning system itself has failed. Also, the warning lamp does not signal all mechanical failures and, as FMVSS 121 is now written, it is not required to do su.
>
> The warning light system is not directly connected to each part of the ABS. Typically it is coupled to the ECU which grounds the lead when a failure is detected. The ECU makes its decision by taking input from many sources and using electronic logic to calculate whether all is well. The only thing one can say for sure when the warning light is on is that the bulb filament is intact and receiving electrical power.
>
> Given the warning lamp limitations cited above, its use as an enforcement tool to assess whether ABS is working properly is questionable. As it is presently configured, there is no quick, accurate, easy way to do a complete functional test of the total ABS short of making a panic stop and watching for wheel lockup, something impractical for roadside inspection.

In addition to concerns about research, the ATA believes the FHWA should ensure that the availability of spare parts to keep "any vintage ABS acceptably functioning for 20 years" prior to requiring motor carriers to maintain the ABSs. The ATA states:

> There is a very good possibility that in twenty years, there will be no source of repair parts for today's ABS. Certainly there is nothing available now with which to fix most of the 1970's systems. While it can be argued that the deletion of the requirement for ABS from FMVSS 121 eliminated the market, we are not convinced that this was the only major factor impacting the aftermarket spare component arena. Other influences were an extremely small market and the need to retain antiquated processes to build outmoded parts.

The ATA further states that "[i]f FHWA/OMC plans to require that carriers keep systems in repair, then it is only fair that the agency help assure the job can be done."

The FHWA does not consider the issues raised by the ATA and NADA to be sufficient reasons to delay issuing a proposal to require carriers to maintain the ABSs required by the NHTSA. Neither the ATA nor the NADA identify specific safety-related issues that would justify postponing an in-service requirement for ABS. The NHTSA fleet study provides a clear indication of how ABSs behave in a real-world environment. Further, there is no documentation of an ABS defect or malfunction contributing to an accident as the ATA suggests may occur in the future.

The NHTSA studied the reliability, maintainability, and durability of ABSs installed in 200 truck tractors that were operated in normal revenue service by 17 fleets. All of the ABSs which were available in 1988 were included in the test and the antilock systems were installed on truck tractors produced by all of the major United States truck tractor manufacturers. During the two-year test, the ABS equipped tractors accumulated approximately 40 million miles of in-service revenue-producing operation. Maintenance activities for all 200 ABS-equipped tractors as well as 88 comparable tractors without ABSs were monitored and recorded. Each of the ABS-equipped tractors had on-board data recorders to monitor each ABS operation and keep a record of truck mileage, number of brake applications, brake pressure distribution, and acceleration during braking. To verify that these records were representative of normal non-ABS operation, 16 truck tractors out of the 88 control trucks were also equipped with on-board data recorders. All accidents involving the participating tractors were investigated, with particular attention being given to those which might have involved braking and/or ABS operation.

The NHTSA also conducted a two-year study of the performance, reliability, maintainability, and durability of ABSs installed on 50 semitrailers that were operated in normal revenue service by five fleets. All ABSs which were available in 1990 were included in the test, and the ABSs were installed on semitrailers produced by three different manufacturers. The ABS-equipped semitrailers accumulated approximately four million miles of in-service revenue-producing operation.

[1] For the purposes of section 4012, the term "commercial motor vehicle" means any self-propelled or towed vehicle used on highways to transport passengers or property if such vehicle has a gross vehicle weight rating (GVWR) of 11,794 kilograms (kg) (26,001 pounds) or more. The NHTSA's final rule on ABS applies to medium and heavy vehicles with a GVWR of 4,536 kg (10,001 pounds) or more.

[2] "An In-Service Evaluation of the Reliability, Maintainability, and Durability of Antilock Braking Systems (ABS) for Heavy Truck Tractors," DOT Report No. 807 846, March 1992, and "An In-Service Evaluation of the Reliability, Maintainability, and Durability of Antilock Braking Systems (ABS) for Semitrailers," DOT Report No. 808 059, October 1993.

Maintenance activities for all 50 ABS-equipped semitrailers as well as 35 comparable semitrailers without ABS were monitored and recorded. The on-board recorders kept a record of semitrailer mileage, number of brake applications, brake pressure distribution, voltage, and deceleration during braking.

The authors of the studies concluded that, based upon the data collected during the fleet study, the 1988 ABSs used on the truck tractors, and the 1990 ABSs used on the trailers, were reliable, durable, and maintainable. The researchers acknowledge that installation-related problems were encountered during the study. The problems included adjustments, repairs, or, in some cases replacement, of wiring cables, wiring connectors, sensors, modulator valves, or other components. The researchers indicated that many of these problems were related to the experimental nature of the ABS installations on the test vehicles.

As the NHTSA indicated in its report on the truck tractor study, only one U.S. heavy truck manufacturer (Freightliner Corporation) offered ABS as a fully-engineered production option on its line of trucks. In contrast, other manufacturers had only limited experience installing small numbers ofcurrent-generation ABSs and, therefore, had not worked out many of the detailed design aspects of installing the systems. Some of the manufacturers had no experience with the systems they agreed to install for the purposes of the fleet study. Many of the ABS installations required a collaborative effort on the part of ABS suppliers, truck manufacturers, wheel and hub suppliers, and wiring harness suppliers. As a result, the quality of some of the installations was not typical of what would be expected for production-line installations.

The FHWA believes the NHTSA fleet study provides sufficient data concerning the reliability, durability, and maintainability for ABSs and that it is not necessary to conduct additional research. Although the NHTSA experienced installation-related ABS problems, there is no indication that production-line ABSs installed to meet the NHTSA requirements would have problems of the proportion experienced in the fleet study. Neither the ATA nor the NADA have identified flaws in NHTSA's research methodology or explained what additional aspects of ABS operation need to be studied.

With regard to the ATA's concerns about ABS malfunction indicators, the FHWA does not anticipate widespread problems on vehicles manufactured on and after the effective date of the NHTSA requirements. If the ABS malfunction indicator is activated, it is a clear signal that a repair or adjustment to the system is necessary. Either the malfunction signal is correct (indicating a problem with one or more ABS components (ECU, wheel sensors, etc.)) and the ABS is not fully operational, or the malfunction indicator is faulty and the ABS is fully operational. In either case, the cause for the malfunction signal should be properly diagnosed and corrected. Establishing a requirement under the FMCSRs will ensure that motor carriers take the appropriate steps to have the problem diagnosed and corrected.

In response to the ATA's comments about the FHWA helping to assure that motor carriers can maintain the ABSs for 20 years, the agency is responsible for establishing safety regulations and does not have authority to regulate the availability of spare parts. The FHWA notes that most motor carriers do not keep CMVs for 20 years. Those that choose to keep vehicles in service for such periods must take full responsibility for ensuring, at a minimum, that the vehicles meet all safety requirements that were applicable at the time the vehicles were manufactured. Motor carriers have the option of upgrading or retrofitting the vehicles brake systems to meet subsequent safety standards. Therefore if parts are not available in 20 years to maintain the ABSs with which the vehicles were originally equipped (in accordance with the NHTSA requirements), motor carriers have the option of retiring those vehicles from service in interstate commerce, or retrofitting the vehicles with ABSs for which spare parts are available. In any case, the NHTSA's ABS requirements will create a permanent market for replacement parts.

Retrofitting

Several of the commenters discussed retrofitting of vehicles manufactured prior to the effective dates of the NHTSA requirements. Most of these commenters indicated that the FHWA should not require retrofitting. The ATA indicated that manufacturers have made ABS an integral part of vehicle design and that ABS is not a technology which can safely and effectively be retrofitted. The ATA states:

> Installation of this equipment requires additional wiring and wheel sensor hardware that would be very costly and difficult or impossible to install in some existing vehicles, especially on power units.
>
> To monitor the motion of wheels, ABS relies on some sort of device to sense their speed. This equipment is either a part of the axle hub or is internal to the axle itself. In either case, fitting it to existing vehicles not so equipped is very difficult. Heat treated axle housings may have to be drilled and the scrap "chips" generated kept from contaminating the axle lubricant, both of which require special knowledge and equipment. Wheel end hardware may need changing and this could require special, off-vehicle, welding and machining of hub flanges and even fabrication of parts to assure existing wheels and drums can be retained.

The ATA also indicated that wiring must be properly routed to avoid electromagnetic interference with ABS signals and mandated warning lamps. The ATA emphasized that none of these activities are within the normal scope of work of either truck maintenance facilities or garages specializing in air brake systems.

The ATA concluded:

> FHWA/OMC (Office of Motor Carriers) has adopted the proper strategy in not suggesting ABS retrofit and that stance should be maintained. ATA requests that FHWA/OMC confirm it discourages retrofitting because there are serious difficulties associated with such installations on a broad scale and there are technical considerations that have not been fully explored which could introduce operational and safety problems.

With regard to comments in support of a retrofitting requirement, the NAII, in its November 8, 1993, comments in response to the NHTSA's NPRM on ABS (the NAII included a copy of its 1993 comments with its response to the FHWA's notice of intent), stated:

> Requiring ABS on all heavy vehicles would save among 379 and 600 lives annually, prevent between 19,825 and 34,517 injuries and save approximately $541 million to $650 million in property damage, a figure that does not include medical costs and lost time costs. With the immediate benefit of saving lives and avoiding injuries, we go beyond the NPRM to urge that antilock brakes be required to be retrofitted onto existing medium and heavy vehicles and that the implementation date for all vehicles be accelerated to two years after final rulemaking.

The FHWA agrees with the ATA that it would be inappropriate to propose an ABS retrofitting requirement. The FHWA believes the NHTSA research provides a strong indication of the types of technical problems that would be expected if motor carriers were required to retrofit vehicles with ABS.

As noted earlier, at the time the NHTSA conducted its research on ABS for truck tractors, only one heavy truck manufacturer offered ABS as a fully-engineered production option on its line of trucks. In contrast, most of the remaining truck tractor manufacturers had only limited experience installing small numbers of "current-generation" ABSs and, therefore, had not worked out many of the detailed design aspects of installing the systems. The retrofitting of ABSs on truck tractors required teamwork on the part of ABS suppliers, truck manufacturers, wheel and hub suppliers, and wiring harness suppliers. Even with this team effort, some of the test vehicles were delivered to the participating motor carriers with pre-existing problems that, for one reason or another, prevented the ABS from functioning properly.

In all, 116 out of the 200 truck tractors (58 percent) experienced installation/preproduction design related problems. The researchers indicated that the relatively high percentage is indicative of the "newness" of the systems in North American applications. Table 1 summarizes the types of problems that were experienced in the truck tractor portion of the fleet study. Table 2 summarizes installation-related problems in the semitrailer portion of the fleet study.

TABLE 1.—TRUCK-TRACTOR ABS INSTALLATION/PRE-PRODUCTION DESIGN-RELATED PROBLEMS BY SYSTEM COMPONENT NEEDING WORK

ABS component	Number of trucks requiring inspections, adjustments or repairs of this component	Number of trucks requiring replacements of this component
Wiring Cables	12	[2]23
Wiring Connectors	29	10
Sensors and Related Parts	5	10
Modulator Valves and Related Parts	13	[3]50
ECUs	17	[2]20
Others [1]	7	0
Total No. Of Trucks per Column	57	102
Overall No. of Trucks Involved in Installation/Pre-Production Design Related Problems	116	

[1] Others include: rewiring due to installation oversights; two miscellaneous wire resecurements; and the addition of one ground strap to adjust the ECU.

[2] One problem represented all of these replacements.

[3] One problem involved 40 of these trucks, while another involved 10 trucks.

NOTE: Individual column numbers are not additive since specific trucks may have needed maintenance on more than one component.

TABLE 2.—SEMITRAILER ABS INSTALLATION/PRE-PRODUCTION DESIGN-RELATED PROBLEMS BY SYSTEM COMPONENT NEEDING WORK

ABS component	Number of semitrailers requiring inspections, adjustments or repairs of this component	Number of semitrailers requiring replacements of this component
Wiring Cables	0	2
Wiring Connectors	11	0
Sensors and Related Parts	[2]3	10
Modulator Valves and Related Parts	0	0
ECUs	0	5
Others [1]	0	26
Total No. of Semitrailers per Column	14	31
Overall No. Of Semitrailers Involved in Installation/Pre-Production Design-Related Problems	31	

[1] Others include: Isolation diode installation and replacement of ECU grommets.

[2] Sensor adjustment resulted from incorrectly adjusted wheel bearings on new semitrailers.

NOTE: Individual column numbers are not additive since specific semitrailers may have needed maintenance on more than one component.

The NHTSA report on the truck tractor portion of the fleet study indicates the percentage of installation-related problems is similar to that observed by many of the participating fleets when they receive newly-built vehicles. However, the FHWA believes the percentage of malfunctions would be much greater if motor carriers were required to attempt retrofitting innumerable configurations of air-braked vehicles. The FHWA considers NHTSA's fleet study to be a best-case scenario for retrofitting ABS in that the vehicle and brake manufacturers (as well as wheel and hub manufacturers) worked together to complete the installations of the ABS. Even with this collaborative effort of experienced engineers, numerous problems related to the retrofitting process surfaced during the fleet study.

Although many motor carriers have excellent maintenance programs and talented engineering staff, the FHWA believes that the majority of motor carriers could not retrofit their vehicles without a substantial amount of technical assistance from vehicle and component manufacturers. Without this technical assistance it is more likely than not that many of the retrofitted ABS installations would not be performed correctly, thereby creating the potential for a degradation of the CMV's braking performance. It is unrealistic to expect manufacturers to be able to help more than 300,000 motor carriers complete the retrofitting of several million vehicles while working on the design and installation of ABSs on newly manufactured vehicles. Further, it is unlikely that a collaborative effort between vehicle and component manufacturers and the motor carriers would result in better installations than those experienced in the NHTSA fleet study.

The FHWA believes the cost of retrofitting a commercial motor vehicle with ABS is likely to be higher than original equipment manufacturer (OEM) installations because the vehicle will have to be removed from revenue service during the retrofitting process. This is not the case for brand new vehicles. Also, repeated adjustments or repairs of the type described in the NHTSA research reports would mean more down time for the retrofitted vehicles.

In addition, § 396.25 of the FMCSRs, Qualifications of brake inspectors, prohibits motor carriers from allowing their employees to be responsible for ensuring that brake-related inspection, repair, and maintenance tasks are performed correctly unless the employee has at least one year of training and/or experience. This requirement was issued in response to section 9110 of the Truck and Bus Safety and Regulatory Reform Act of 1988 (49 U.S.C. 31137(b)). Therefore, motor carriers that lack sufficient staff with at least one year of training and/or experience at retrofitting ABSs prior to the effective date of a retrofitting requirement would have to rely on commercial garages or similar facilities to fulfill a retrofitting requirement. Since many of these facilities would also have very little if any experience retrofitting ABSs, there is no assurance that they could do a better job than the motor carriers' employees. Therefore, most motor carriers could not allow their employees to attempt the retrofitting of ABSs, and would not have a practical means to satisfy a retrofitting requirement.

Inspection Procedures

Several of the commenters discussed roadside inspection procedures to determine if ABSs are in working order. The HDBMC recommends that the FHWA "provide for maintenance of

ABS systems by regulation and include a[n] ABS roadside inspection procedure." The HDBMC recommends that the roadside inspection procedure include a check of the ABS malfunction indicator.

Midland-Grau also recommends that vehicle inspections include checking the operational status of the ABS. Midland-Grau states:

> The majority of antilock systems on the market have an initial startup check sequence along with on-board diagnostics which monitors the operational status of the ABS. The startup sequence consists of watching the malfunction indicator light on the dash to flash along with listening to the ABS modulator valve to exhaust (blow-down). This operation can be performed simply by having the driver perform the following steps:
>
> 1. Shut down the vehicle's engine by turning off the ignition switch[;]
> 2. Have the driver fully apply the brakes[; and,]
> 3. With the brakes fully applied have the driver turn on the ignition switch[.]
>
> When the driver follows the above sequence of steps the ABS malfunction indicator lamp should flash once followed by the ABS modulator valves exhausting (blow-down). If the ABS is not operating properly then either the ABS malfunction light will remain on and/or the ABS modulator valves will not exhaust (blow-down). This quick check insures that the ABS is fully operational.

Rockwell recommends that the inspection procedure be simple and straightforward. Rockwell states that "[t]he inspections should: (1) [b]e conducted in a short amount of time, (2) [p]rovide meaningful information about the condition of the ABS[,] and (3) [u]tilize the self-diagnostic system capabilities required by rulemaking." Rockwell believes the inspection should consist of a basic bulb check of the ABS indicator lamp followed by a verification that the ABS indicator lamp deactivates at the end of the check function.

The FHWA appreciates the information provided by the brake manufacturers and will share this information with the Commercial Vehicle Safety Alliance (CVSA)—the organization of Federal, State and Provincial government agencies and representatives from private industry in the United States, Canada and Mexico dedicated to improvement of commercial vehicle safety. State agencies responsible for conducting roadside inspections are members of the CVSA. The FHWA will work with the appropriate committees within the CVSA to develop the necessary training material to help inspectors identify ABS components and determine if the ABS malfunction indicators are working properly. However, the FHWA does not intend to include roadside inspection procedures in the FMCSRs. The establishment of inspection procedures for use by State officials is a non-regulatory function that is best left to the CVSA with assistance from the FHWA, the NHTSA, and brake manufacturers.

With regard to the responsibilities of motor carriers in maintaining the ABSs required by the NHTSA, the FHWA intends to work with industry groups and brake manufacturers to develop educational material to help motor carriers understand how the ABSs operate (including the malfunction indicators), and to identify appropriate industry sources for information concerning ABS maintenance. The FHWA does not believe that including detailed systematic, inspection, repair, and maintenance requirements in part 396 of the FMCSRs would benefit the industry. The FHWA requests comments on this issue.

Discussion of the Proposal

Creation of Section 393.55

The FHWA proposes to amend the FMCSRs by adding a new § 393.55, Antilock Brake Systems. This section would be added to subpart C of part 393, Brakes. The provisions of paragraph (a) would require that hydraulic braked trucks and buses manufactured on or after March 1, 1999, be equipped with an ABS that meets the requirements of FMVSS No. 105. Paragraph (b) would require indicator lamps on hydraulic-braked vehicles to alert the driver of ABS malfunctions. Paragraph (c) would require that each air-braked truck tractor manufactured on or after March 1, 1997, be equipped with an ABS that meets the requirements of FMVSS No. 121. Paragraph (c) would also cover air braked trucks, buses, trailers, and converter dollies manufactured on or after March 1, 1998. The requirement for ABS malfunction indicators on air braked vehicles would be covered under paragraph (d). Paragraph (e) would cover the requirement for the external indicator lamp on trailers and converter dollies manufactured between March 1, 1998, and March 1, 2009.

Applicability to Canadian and Mexican Vehicles

The FHWA is not proposing an exemption for CMVs operated in the United States by Canada- and Mexico-based motor carriers. Although the Federal governments of Canada and Mexico have not indicated whether they intend to require ABSs for CMVs operating in their countries, the FHWA believes that it is appropriate to require ABS on foreign-based vehicles manufactured on or after the effective dates of the NHTSA requirements if those vehicles are operated within the United States. This preliminary decision is consistent with the applicability of the requirements of parts 393 and 396 of the FMCSRs and ensures that all CMVs operating in interstate or foreign commerce within the United States are required to meet the same safety standards.

Currently subpart C of part 393 cross references FMVSS No. 105 (Hydraulic Brake Systems), FMVSS No. 106 (Brake Hoses), and FMVSS No. 121 (Air Brake Systems) as well as several other CMV-related FMVSSs. The FHWA's cross references have the net effect of requiring that vehicles operated by Canada- and Mexico-based motor carriers be equipped with safety features/equipment that are compatible with the NHTSA requirements irrespective of where the vehicle was originally manufactured, or whether the vehicle was manufactured for sale or use in the United States. Commercial motor vehicles that do not meet all of the applicable requirements of part 393 cannot be operated in the United States. As such, commercial motor vehicles operated by foreign-based motor carriers are currently required by the FHWA to have, at a minimum, brake systems that comply with the applicable provisions of FMVSS Nos. 105, 106, and 121 in effect on the date of manufacture.

On September 6, 1995 (60 FR 46236), the FHWA published its final rule on automatic brake adjusters and brake adjustment indicators. The final rule requires motor carriers to maintain automatic brake adjusters on hydraulic-braked CMVs manufactured on or after October 20, 1993, and air-braked CMVs manufactured on or after October 20, 1994, the effective dates of NHTSA's requirement for automatic brake adjusters. Further, air braked vehicles that have exposed pushrods and are manufactured on or after October 20, 1994, must have brake adjustment indicators. The preamble to the final rule states:

> These provisions will apply to all CMVs operated in the United States, irrespective of the country where the CMV is based.
>
> Canadian and Mexican vehicles manufactured on or after the effective dates of the NHTSA rules will be required to conform to this regulation.

Although the FHWA does not have data on the extent to which CMVs manufactured for sale in Canada and Mexico comply with the current brake-related FMVSSs and FMCSRs, it is unlikely that there are technical reasons that would preclude manufacturers of these vehicles from offering ABS as an option. As previously mentioned, foreign-based motor carriers are currently required to operate commercial motor vehicles that comply with all of the applicable requirements of part 393 while in the United States.

The FHWA contacted the Truck Manufacturers Association (TMA) to determine the availability of ABS on air braked vehicles sold in Canada and Mexico. The TMA's membership includes the Ford Motor Company; Freightliner; General Motors (GM); Mack Trucks, Inc. (Mack), Navistar International Transportation Corporation (Navistar); PACCAR, Inc. (Kenworth and Peterbilt); and, Volvo GM Heavy Truck Corporation (Volvo).

The TMA indicated that five of the manufactures that sell medium and heavy-duty trucks in Canada install ABS as standard equipment. Another manufacturer offers ABS as optional equipment for the Canadian market. With regard to the Mexican market, none of the TMA's members installs ABS as standard equipment. Only two of the TMA's members offer ABS as optional equipment. However, another member indicated it would make ABS available on units manufactured in Mexico in the near future.

The FHWA also contacted Dina, a Mexican manufacturer of heavy trucks, and determined that ABS is offered as optional equipment.

Based upon the information obtained from the TMA and Dina, the FHWA believes that requiring Canadian and Mexican CMVs manufactured on or after the effective dates of NHTSA's ABS requirements, is appropriate. The FHWA notes that ABS is not yet commercially available for hydraulically-braked medium and heavy vehicles in the United States, Canada or Mexico. However, given the March 1, 1999, effective date of the FMVSS No. 105 requirements for ABS, the FHWA believes these systems will be commercially available in time for motor carriers to comply with the FMCSRs.

The FHWA specifically requests comments from Canada and Mexico-based motor carriers and original equipment manufacturers that sell vehicles for the Canadian and Mexican markets.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866. No serious inconsistency or interference with another agency's actions or plans is likely to result, and it is unlikely that this regulatory action will have an annual effect on the economy of $100 million or more. The FHWA's regulation would only require maintenance of ABSs; the NHTSA final rule published on March 10, 1995, is the regulation which actually requires installation of ABSs. The data collected by NHTSA indicates that the level of maintenance required to keep an ABS functional would only increase incrementally and would not be unreasonable relative to the safety benefits that would result from the use of these systems. Therefore it is anticipated that the economic impact of this proposal would be minimal.

The preamble to NHTSA's March 10, 1995, final rule included estimates of the increased costs of operating heavy vehicles equipped with ABS. Three categories of operating costs were examined: Lifetime maintenance costs; lifetime fuel costs due to the additional weight of the ABS; and lifetime revenue loss due to payload displacement. The range of the increase in total lifetime operating costs related to equipping vehicles with ABS is from $201.47 for single-unit trucks and buses to $786.65 for truck tractors. The NHTSA indicated that the total estimated increase in lifetime vehicle operating costs associated with ABS for all commercial motor vehicles is $232 million. A copy of the NHTSA's final economic assessment is included in FHWA Docket No. MC–94–31.

In addition, the FHWA has determined that this action is not a significant regulatory action under the Department of Transportation's regulatory policies and procedures because it does not concern a matter about which there is substantial public controversy, it will not have a substantial effect on State and local governments, or initiate a substantial regulatory program or change in policy.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities and has determined that it would not have a significant economic impact on a substantial number of small entities. The FHWA finds that this rule would not significantly increase costs for motor carriers because FHWA regulations only require maintenance of brake systems and the data collected by the NHTSA shows that the presence of an ABS on a vehicle would not substantially increase maintenance costs (less than one percent for tractors and less than two percent for trailers) or decrease vehicle operational availability.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. These new safety requirements would not directly preempt any State law or regulation, and no additional costs or burdens would be imposed on the States as a result of this action. Furthermore, the State's ability to discharge traditional State governmental functions would not be affected by this rulemaking.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety.

Issued on: July 8, 1996.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, subchapter B, chapter III, as follows:

PART 393—[AMENDED]

1. The authority citation for part 393 continues to read as follows:

Authority: Sec. 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991), 49 U.S.C. 31136 and 31502; 49 CFR 1.48.

2. Section 393.5 is amended by adding the definition of *antilock brake system*, in alphabetical order, to read as follows:

* * * * *

Antilock Brake System or *ABS* means a portion of a service brake system that automatically controls the degree of rotational wheel slip during braking by:

(1) Sensing the rate of angular rotation of the wheels;

(2) Transmitting signals regarding the rate of wheel angular rotation to one or more controlling devices which interpret those signals and generate responsive controlling output signals; and

(3) Transmitting those controlling signals to one or more modulators which adjust brake actuating forces in response to those signals.

* * * * *

3. In subpart C, § 393.55 is added to read as follows:

§ 393.55 Antilock brake systems.

(a) *Hydraulic brake systems.* Each truck and bus manufactured on or after March 1, 1999, and equipped with a hydraulic brake system, shall be equipped with an antilock brake system that meets the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 105 (49 CFR 571.105, S5.5).

(b) *ABS malfunction indicators for hydraulic braked vehicles.* Each hydraulic braked vehicle subject to the requirements of paragraph (a) of this section shall be equipped with an ABS malfunction indicator system that meets the requirements of FMVSS No. 105 (49 CFR 571.105, S5.3).

(c) *Air brake systems.* (1) Each truck tractor manufactured on or after March 1, 1997, shall be equipped with an antilock brake system that meets the requirements of FMVSS No. 121 (49 CFR 571.121, S5.1.6.1(b)).

(2) Each air braked commercial motor vehicle other than a truck tractor, manufactured on or after March 1, 1998, shall be equipped with an antilock brake system that meets the requirements of FMVSS No. 121 (49 CFR 571.121, S5.1.6.1(a) for trucks and buses, S5.2.3 for semitrailers, converter dollies and full trailers).

(d) *ABS malfunction circuits and signals for air braked vehicles.* (1) Each truck tractor manufactured on or after March 1, 1997, and each single unit air braked vehicle manufactured on or after March 1, 1998, shall be equipped with an electrical circuit that is capable of signaling a malfunction that affects the generation or transmission of response or control signals to the vehicle's antilock brake system (49 CFR 571.121, S5.1.6.2(a)).

(2) Each truck tractor manufactured on or after March 1, 2001, and each single unit vehicle that is equipped to tow another air-braked vehicle, shall be equipped with an electrical circuit that is capable of transmitting a malfunction signal from the antilock brake system(s) on the towed vehicle(s) to the trailer ABS malfunction lamp in the cab of the towing vehicle, and shall have the means for connection of the electrical circuit to the towed vehicle. The ABS malfunction circuit and signal shall meet the requirements of FMVSS No. 121 (49 CFR 571.121, S5.1.6.2(b)).

(3) Each semitrailer, trailer converter dolly, and full trailer manufactured on or after March 1, 2001, and subject to the requirements of paragraph (b)(2) of this section, shall be equipped with an electrical circuit that is capable of signaling a malfunction in the trailer's antilock brake system, and shall have the means for connection of this ABS malfunction circuit to the towing vehicle. In addition, each trailer manufactured on or after March 1, 2001, that is designed to tow another air-brake equipped trailer shall be capable of transmitting a malfunction signal from the antilock brake system(s) of the trailer(s) it tows to the vehicle in front of the trailer. The ABS malfunction circuit and signal shall meet the requirements of FMVSS No. 121 (49 CFR 571.121, S5.2.3.2).

(e) *Exterior ABS malfunction indicator lamps for trailers.* Each trailer (including a trailer converter dolly) manufactured on or after March 1, 1998 and before March 1, 2009, shall be equipped with an ABS malfunction indicator lamp which meets the requirements of FMVSS No. 121 (49 CFR 571.121, S5.2.3.3).

[FR Doc. 96–17785 Filed 7–11–96; 8:45 am]

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National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–94; Notice 3]

RIN 2127–AE47

Federal Motor Vehicle Safety Standards; Antilock Brake Systems for Light Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); Deferral of rulemaking.

SUMMARY: This document defers a rulemaking proceeding in which the agency is considering whether to require light vehicles (those with a gross vehicle weight rating (GVWR) equal to or less than 10,000 lbs.) to be equipped with antilock braking systems (ABS). This rulemaking proceeding was mandated by the National Highway Traffic Safety Administration Authorization Act of 1991, which directed the agency to consider the need for any additional brake performance standards for passenger cars, including antilock brake standards. The agency believes it would be inappropriate at this time to require ABS for light vehicles for the following reasons: Most studies that have analyzed the accident involvement experiences of ABS-equipped light vehicles have found mixed patterns, with a reduction in accidents in some crash modes and an increase in accidents in other crash modes; even without a Federal requirement, a significant majority of light vehicles will be voluntarily equipped with ABS; and requiring ABS on those light vehicles that will not be equipped with ABS would result in significant costs that, on balance, cannot be justified at this time.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues: Mr. Robert M. Clarke, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202) 366–5276.

For legal issues: Mr. Marvin L. Shaw, NCC–20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202) 366–2992.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
- A. Advance Notice of Proposed Rulemaking and Comments to that Notice
- B. NHTSA Evaluation of the Performance of Light Vehicles Equipped with ABS
- C. Other Studies about the Effectiveness of Light Vehicle ABS

II. NHTSA's Decision to Defer Rulemaking
- A. Studies Evaluating the Accident Involvement of Light Vehicle ABS
- B. Market Trends
- C. Cost Implications

I. Background

A. Advance Notice of Proposed Rulemaking and Comments to That Notice

This rulemaking proceeding to consider the need for any additional brake performance standards for passenger cars, including antilock brake standards, was mandated by the National Highway Traffic Safety Administration Authorization Act of 1991 (Public Law 102–240, December 18, 1991). On January 4, 1994, the National Highway Traffic Safety Administration (NHTSA) issued an advance notice of proposed rulemaking (ANPRM), soliciting comments about whether rulemaking was warranted to require that all light vehicles (i.e., those with a gross vehicle weight rating (GVWR) of 10,000 lbs. or less) be equipped with antilock braking systems (ABS) (59 FR 281). The ANPRM also posed a number of questions relative to the regulatory approaches that might be employed if requirements were imposed; the types of performance tests that might be used; varieties of ABSs that might be appropriate; and regulatory implementation strategies and schedules that might be employed if requirements were established.

NHTSA received over 140 comments in response to the docket, the majority of which were from private citizens relating their experiences with ABS-equipped light vehicles. Other commenters included vehicle manufacturers (American Honda, BMW, Chrysler, Ford, General Motors, Mazda, Mitsubishi, Nissan, Porche, Subaru of America, Toyota, and Volkswagen) and brake manufacturers (AlliedSignal, ITT Teves of Germany (ITT Teves), ITT Automotive, and ABS Tech Sciences). Other organizations that commented included Advocates for Highway and Auto Safety (Advocates), the American Automobile Association (AAA), the Insurance Institute for Highway Safety (IIHS), the National School Transportation Association (NSTA), and the American Coalition for Traffic Safety.

Commenters expressed differing opinions about whether all light vehicles should be equipped with ABS. Toyota, ITT Teves, AlliedSignal, AAA, the NSTA, Edge Diagnosis Systems, and approximately 35 percent of the private citizen respondents stated that light vehicles should be required to be equipped with ABS. Nissan, Honda, Chrysler, Mitsubishi, Ford, Subaru, Volkswagen, Mazda, and IIHS, and approximately 65 percent of the private citizen respondents believed that equipping light vehicles with ABS should remain an optional choice for consumers. GM and BMW stated that they were not opposed to a requirement for ABS but indicated that additional information should be obtained before the agency made such a decision.

Commenters supporting a requirement that light vehicles be equipped with ABS offered the following reasons:

- Equipping light vehicles with ABS would increase vehicle safety and enhance correct brake usage.
- Equipping light vehicles with ABS would improve lateral stability and steerability, and enhance braking performance.
- A requirement would eliminate an indefinite transition period for light vehicles to ABS. They believed that a protracted transition period would create the possibility of increased risks to drivers, especially for those who operate light vehicles with and without ABS brake systems.

Additionally, 31 private citizens commented about their positive experience with ABS-equipped light vehicles, such as near-miss crashes.

Commenters opposing a requirement that light vehicles be equipped with ABS offered the following reasons:

- Consumer demand for advanced safety systems including ABS is sufficient to encourage manufacturers to offer the systems.
- Equipping light vehicles with ABS should not be required until data conclusively demonstrate that ABS-equipped light vehicles are involved in fewer and less severe crashes.
- The costs associated with requiring that all light vehicles be equipped with ABS would increase the costs associated with purchasing new light vehicles. This added cost might discourage potential buyers of new light vehicles from purchasing other, optional improved safety features of new vehicles.
- Not all consumers need their light vehicles to be equipped with ABS, based on either their driving habits or the types of roads and/or road conditions they typically encounter.

Twenty-four private citizens submitted comments citing unfavorable experiences with their ABS-equipped light vehicles. These incidents typically involved braking on surfaces with low coefficients of friction. It appears that the drivers incorrectly assumed the ABS would help them stop in shorter distances. These commenters cited additional reasons why they think ABS on light vehicles should remain optional, including concerns that:

- A requirement would add significant costs, thereby lowering the affordability of less expensive vehicles. This would create an incentive for consumers to keep their older, potentially less safe, vehicles longer.
- Insurance industry studies showing no reductions in the number of insurance claims or costs per claim for ABS-equipped light vehicles, compared to non-ABS-equipped light vehicles, do not support a requirement for ABS on such vehicles.
- Repairs of ABS on light vehicles could be expensive which could result in some consumers deciding not to repair these systems.
- There are too few instances where equipping a light vehicle with ABS would be useful.
- The brake pedal pulsation and system noise, evident when some systems activate, could frighten or distract drivers.
- Average drivers lack the skill to capitalize on the main benefit of ABS, the ability to execute aggressive crash-avoidance steering maneuvers.

B. NHTSA Evaluations of the Performance of Light Vehicles Equipped With ABS

The January 1994 ANPRM referenced test track evaluations of ABS-equipped light vehicles,[1] including a December 1991 report which describes tests conducted on ten light vehicles to evaluate the improvement in braking performance and vehicle stability and control resulting from ABS. The test program's purpose was to show the degree to which an ABS improves a light vehicle's braking performance. Among the principal findings in the

[1] Hiltner, Arehart, and Redlinski, "Light Vehicle ABS Performance Evaluation," DOT-HS 807 813, December 1991; and "Light Vehicle ABS Performance Evaluation—Phase II," DOT HS 807 924, May 1992.

report were that each ABS, and especially all-wheel systems, improved the light vehicle's lateral stability during panic braking, and that the all-wheel systems shortened stopping distances on most hard paved surfaces, with improvements of between 25 to 50 percent on wet surfaces.

A May 1992 report described tests conducted on eight light vehicles to evaluate how the ABS influenced vehicle stopping distance and lateral stability and control on various surfaces. Among the report's principle findings were that seven of the eight vehicles were under complete directional control during the tests with ABS "on," and that ABSs improved stopping performance on all surfaces, except for stops on dry gravel surfaces.

In 1994, NHTSA issued a third report evaluating ABS performance.[2] On February 9, 1995, NHTSA published a notice requesting comments about this report. (60 FR 7814). The report evaluated the accident rates of ABS-equipped cars currently on the road and compared them to the accident rates of similar cars without ABS. The principal findings of and conclusions of this report were that (1) ABS reduced the involvements of passenger cars in multi-vehicle crashes on wet roads by 14 percent and reduced those involving fatalities by 24 percent, (2) ABS had little effect on multi-vehicle crashes on dry roads, (3) ABS reduced the risk of fatal collisions with pedestrians by 27 percent in ABS equipped passenger cars, (4) run-off-road crashes (e.g., rollovers, side and front impacts with fixed objects) increased by 19 percent for nonfatal crashes and 28 percent for fatal crashes, and (5) the overall, net effect of light vehicle ABS on both fatal and nonfatal accidents was close to zero.

NHTSA received comments about this study from Volkswagen, the American Automobile Manufactures Association (AAMA), the National Automobile Dealers Association (NADA), General Motors, and Advocates. The commenters generally believed that the NHTSA study should not be considered definitive until additional studies and analysis have been conducted. Volkswagen, NADA, GM, Toyota, and Advocates supported NHTSA's efforts to conduct additional research and to educate the driving public on the advantages and limitations of ABS. GM, Toyota, and NADA agreed with several hypotheses presented by NHTSA to explain why ABS, which clearly improves vehicle performance in controlled maneuvers, appeared to have minimal effect in reducing overall crash rates. In contrast, Advocates disagreed with the agency's risk compensation and driver error hypotheses as possible explanations for why ABS-equipped cars have more run-off-the-road crashes. Advocates also stated that these findings indicate that vehicle platforms need to be redesigned to prevent rollover crashes, since ABS often will not prevent such crashes.

C. Other Studies About the Effectiveness of Light Vehicle ABS

In addition to NHTSA's efforts, several other organizations have evaluated the effectiveness of light vehicle ABS. Studies conducted by the Insurance Institute for Highway Safety (IIHS), which compared insurance claims for 1991 and 1992 model year cars with and without ABS, showed no reduction in claims for cars equipped with ABS.[3] Another study[4] based its conclusions on the same set of data collected by HLDI, yielding similar findings.

Another study[5] by Evans demonstrated that, although benefits associated with ABS-equipped light vehicles may not be seen in general, ABS does have a positive effect in reducing certain types of accidents, while possibly being associated with increases in others.

A recent study by Lau and Padmanaban (1996), reported more favorable results; namely, that ABS-equipped light vehicles were experiencing lower overall crash involvement rates.[6] However, the study reported no measurable difference in the rate of involvements in fatal crashes between light vehicles with and without ABS. The agency notes that the difference in the finding relative to overall crash involvement rates, compared to other studies that found no significant change in crash involvement rates, is primarily the result of different assumptions about which populations of vehicles were appropriate to include in the comparison.

II. NHTSA's Decision to Defer Rulemaking

After reviewing the available information, NHTSA has decided to defer indefinitely its decision about whether to require equipping light vehicles with antilock braking systems until a later date. The agency believes it would be inappropriate to currently mandate such a requirement for the following reasons: (1) most studies that have analyzed the accident involvement experiences of ABS-equipped light vehicles have found mixed patterns, with a reduction in accidents in some crash modes but an increase in accidents in other crash modes, (2) even without a Federal requirement, a significant majority of light vehicles will be voluntarily equipped with ABS, (3) and requiring ABS on those light vehicles that will not be equipped with ABS would result in significant costs that, on balance, cannot be justified at this time.

In a separate rulemaking, NHTSA decided to require that medium and heavy vehicles be equipped with ABS (60 FR 13216, March 10, 1995). The agency emphasizes that its decision not to require that light vehicles be equipped with ABS is applicable only to light vehicles and not to medium and heavy vehicles, and therefore should not be interpreted as being inconsistent with this earlier decision. The two rulemakings are readily distinguishable. The studies discussed in today's notice only studied the accident involvement patterns of ABS on light vehicles; they did not evaluate the accident involvement patterns of ABS on medium or heavy vehicles. Tractor trailer combinations are more prone to loss of stability and control including jackknifing, given that they have an articulation point. ABS provides more potential benefits for vehicles, such as medium and heavy ones, which have a greater disparity between their lightly loaded and fully loaded weights. An out-of-control medium or heavy vehicle (that can weigh 10,000 to 80,000 pounds) is more dangerous in collisions with other vehicles than an out-of-control light vehicle.

A. Studies Evaluating the Accident Involvement of Light Vehicle ABS

NHTSA believes that the increased involvements in some crash modes with ABS equipped light vehicles, especially single vehicle run-off-road crashes, may be due to a lack of driver knowledge rather than the performance attributes of ABS. This is consistent with track test results, conducted by professional drivers, indicating that ABS-equipped light vehicles have better stability and control than non-ABS equipped light vehicles. NHTSA believes that the ability of an ABS-equipped light vehicle to reduce crashes is linked closely to a driver's ability to use its performance capabilities. The agency plans to conduct further analyses to evaluate how driver behavior and performance affect how well light vehicle ABS reduces crashes.

One possible explanation for the increase in single vehicle run-off-road accidents may be due to driver steering behavior rather than the functioning of a light vehicle's ABS.

NHTSA notes that typical panic steering in non-ABS light vehicles is often characterized by a three-stage maneuver: (1) a large steering input to avoid a collision with the obstacle; (2) a reverse steering input to stop lateral deviation and correct for vehicle heading, and 3) an attempt to regain vehicle control by returning to an appropriate lane.[7] ABS-equipped light vehicles allow drivers the opportunity to maneuver around an obstacle, while keeping the vehicle under control, but having such capability does not guarantee a potential crash will be avoided.

NHTSA has considered certain hypotheses to explain why some drivers of ABS-equipped light vehicles may leave the road: (1) Some drivers are unaware of how ABS functions, (2) some drivers do not know how to react properly to crash threats, and (3) some drivers may drive more aggressively with ABS.

NHTSA believes that drivers of ABS-equipped light vehicles may "pump" their brake pedals in crash-imminent situations, thereby defeating the purpose of the ABS. Also, when activated, some ABS systems emit a chattering noise or cause the brake pedal to pulsate, which could confuse drivers into thinking their brakes have failed. Other drivers have reported their belief that the ABS-equipped light vehicle is stopping poorly, because tires on such vehicles do not squeal.

Some drivers may be oversteering their vehicles in an attempt to avoid a crash threat, thereby causing the vehicles to lose control and spin out. Other drivers may purposely steer off the road in crash-imminent situations, either because they incorrectly see no other option or because they decide this is their best option. Further, light vehicle ABS performance in situations where drivers make evasive maneuvers on loose surfaces such as gravel or grass could exacerbate drivers' lack of skill when executing extreme braking and steering maneuvers.

Some drivers may be driving more aggressively because they think that their ABS equipped light vehicle can stop better. This has been termed "risk compensation" or "risk homeostasis."

NHTSA is continuing its efforts to review crash data sets, individual crash case histories, and other information to evaluate these hypotheses. Also, the agency has established a sub-group of its motor vehicle safety research advisory committee to specifically address this problem. Meanwhile, conclusions regarding the effectiveness of ABS-equipped light vehicles which are based on the analysis of currently available accident databases should be viewed with caution. Given increased driver knowledge and experience with ABS-equipped light vehicles, the agency believes that the number of crashes involving such vehicles may decline. In addition, more precise crash database analysis techniques may shed additional light on these questions.

B. Market Trends

As for the marketplace, NHTSA notes that there is a strong trend among vehicle manufacturers to voluntarily equip light vehicles with ABS in response to significant consumer demand for this technology.

As the data in Table 1 indicate, the percentage of new passenger cars equipped with four-wheel antilock systems has grown from 3.7 percent in 1989 to 57 percent in 1995. Most manufacturers have publicly indicated plans to offer ABS as either standard or optional equipment on nearly all of their passenger car lines within the next three years.

TABLE 1.—PERCENTAGE OF PASSENGER CARS SOLD IN THE U.S., EQUIPPED WITH ABS [1]

	Domestic cars % 4WABS	Import cars % 4WABS	Total cars % ABS
1989	3.7	13.6	6.5
1990	7.6	21.4	11.1
1991	14.1	26.0	17.1
1992	32.2	32.2	32.2
1993	42.3	37.0	41.2
1994	57.3	47.6	55.5
1995	57.1	.....	.....

[1] Source: *Wards Automotive*, 1990–1995.

Similar data for light trucks, as shown in Table 2, indicate even stronger trends in this regard, with ABS installation rates growing to 84.3 percent by 1994.

TABLE 2.—PERCENTAGE OF LIGHT TRUCKS SOLD IN THE U.S., EQUIPPED WITH ABS [1]

Model year	Import truck % ABS	Domestic truck % RWAL [2]	Domestic truck % 4WABS	Total truck % ABS
1989	—	59.5	—	—
1990	10.2	77.3	2.1	71.4
1991	41.5	77.1	5.2	77.8
1992	51.6	71.5	11.4	80.1
1993	67.9	52.2	31.9	83.0
1994	66.6	53.0	32.4	84.3

[2] Kahane, C. *Preliminary Evaluation of the Effectiveness of Antilock Brake Systems for Passenger Cars* (DOT Rep. No HS 808 206). Washington, DC: National Highway Traffic Safety Administration. (1994)

[3] Highway Loss Data *Institute. Collision and Property Damage Liability Losses of Passenger Cars With and Without Antilock Brakes.* (Research Report HLDI A41). Arlington, VA (1994, January).

[4] Insurance Institute for Highway Safety. (1994, January). "Antilocks May Not Make the Difference That Many Expected.; What Antilocks Can Do, What They Cannot Do." *Status Report, 29*(2), 1–5, Arlington, VA

[5] Evans, L. (1995). *ABS and Relative Crash Risk Under Different Roadway, Weather, and Other Conditions.* SAE Paper 950353.

[6] Lau, E., and Padmanaban, J., *Accident Experience of Passenger Vehicles with Four-Wheel Antilock Braking Systems*, Failure Analysis Associates, Inc., Menlo Park, CA, January 1996.

[7] Weirwille, W.W., "Driver Steering Performance," in *Automotive Engineering and Litigation, Volume 1*, G.A. Peters and B.J. Peters, Eds., New York, Garland Publishing Co., 1984

TABLE 2.—PERCENTAGE OF LIGHT TRUCKS SOLD IN THE U.S., EQUIPPED WITH ABS[1]—Continued

Model year	Import truck % ABS	Domestic truck % RWAL[2]	Domestic truck % 4WABS	Total truck % ABS
1995		34.7	56.2	

[1] Source: *Wards Automotive*, 1990–1995.
[2] RWAL=Rear Wheel Antilock System.

Based on this information, NHTSA continues to believe that a significant majority of the light vehicle fleet will be equipped with ABS, regardless of whether there is a Federal mandate for such systems. As a result, light vehicles will benefit from the stability and control characteristics obtained by equipping such vehicles with ABS. Accordingly, the agency's decision not to require light vehicles to be equipped with ABS is based in part on the wide scale voluntary installation of ABS.

C. Cost Implications

In the January 1994 ANPRM, NHTSA estimated that requiring all light vehicles to be equipped with ABS would cost approximately $1.04 billion annually to equip those vehicles that would not voluntarily be equipped. That notice stated that this cost consists of ABS hardware costs of $920 million, installation costs of about $80 million, and increased fuel costs of about $40 million due to a small increase in vehicle weight. The average retail price of an ABS system to the consumer was estimated to be $450. This price was based on a cost study of seven ABS systems entitled "Evaluation of Costs of Antilock Brake Systems" and a markup factor of 1.51. The agency's cost estimate assumed that all-wheel ABS would be required on all light vehicles. It projected that all-wheel ABS would be voluntarily installed as standard equipment in 85 percent of model year 1999 passenger cars. The remaining 15 percent, or about 1.4 million vehicles, would be equipped only as a result of this regulatory requirement. However, since the ABS installation rate for 1995 model year domestic passenger vehicle cars, as reported in Table 1, was little different from 1994, it appears that this projected 85 percent voluntary installation rate by 1999 could be somewhat optimistic. A voluntary installation rate of possibly as low as 70 percent by 1999 could occur, in which case the remaining 30 percent, or about 2.8 million passenger cars, would be equipped only if there were a regulatory requirement. Such a higher involuntary ABS installation rate would increase the estimated annual cost of a requirement for passenger cars from $710 million to $1,420 million. If this were to occur, the estimated annual cost for all light vehicles would increase to $1.75 billion.

The cost estimate also projected that all light trucks would be voluntarily equipped with ABS by model year 1999/2000, 75 percent of them having all-wheel systems. Thus, an additional 25 percent of new light trucks or about 1.5 million vehicles, would be involuntarily equipped with all-wheel ABS if the agency issued a final rule requiring this. In this case, all- wheel ABS hardware and installation costs would be about $200 more than those for rear-wheel systems.

NHTSA believes that the significant costs associated with manufacturers having to equip approximately 4.3 million additional vehicles with all-wheel ABS further justifies the agency's decision not to require light vehicles to be equipped with all-wheel ABS at this time. The studies discussed above do not support such a Federal requirement at this time. NHTSA emphasizes that the costs and benefits associated with light vehicle ABS contrasts sharply with the analyses the agency conducted for medium and heavy ABS, which determined that ABS was highly beneficial for such vehicles.

For the reasons set forth above, NHTSA has decided to defer this rulemaking action indefinitely.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: July 5, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–17750 Filed 7–11–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 070196E]

RIN 0648–AI95

Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Fisheries Research Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted for review by NMFS the repeal of the North Pacific Fisheries Research Plan (Research Plan), Amendment 47 to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska, Amendment 47 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Groundfish FMPs), and Amendment 6 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area (Crab FMP). NMFS is requesting comments on these proposed actions from the public. Repeal of the Research Plan would terminate the comprehensive North Pacific groundfish and crab observer program and the associated user-fee system developed by NMFS and the Council as authorized by section 313 of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Amendments 47 and 47 to the groundfish FMPs would establish an interim groundfish observer program to supersede the Research Plan and authorize mandatory groundfish observer coverage requirements for 1997. Amendment 6 to the crab FMP would remove reference to the Research Plan. Copies of the amendments may be obtained from the Council (see **ADDRESSES**).

DATES: Comments should be submitted by September 9, 1996.

A public hearing on the proposed repeal of the Research Plan will be held by teleconference on Monday, August 19, 1996, at 1 p.m., Alaska local time. (For information regarding how to participate, see **ADDRESSES**.)

ADDRESSES: Comments should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802-1668, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK.

Copies of the FMP amendments and the Environmental Assessment/ Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for the amendments are available from the North Pacific Fishery Management Council, 605 West Fourth Ave., Anchorage, AK 99501-2252; telephone: 907-271-2809.

See **SUPPLEMENTARY INFORMATION** for locations of public hearings by teleconference.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907–586–7228.

SUPPLEMENTARY INFORMATION: Locations where interested persons may participate in the August 19, 1996, public hearing by teleconference are as follows:

1. Anchorage—North Pacific Fishery Management Council, 600 West 4th Avenue, Anchorage, AK 99501, telephone: 907–271–2809;

2. Juneau—National Marine Fisheries Service, Alaska Region, 706 West 9th Street, Juneau, AK 99802, telephone: 907–586–7228;

3. Kodiak—National Marine Fisheries Service Laboratory, Bldg. 53, U.S. Coast Guard Support Center, Kodiak, AK 99615, telephone: 907–487–5961;

4. Seattle—Alaska Fisheries Science Center, 7600 Sand Point Way Northeast, Building 4, Room 7600, Seattle, WA 98115, telephone: 206–526–4197;

5. Newport—Oregon Department of Fish and Wildlife, 2040 Southeast Marine Science Drive, Newport, OR 97365, telephone: 503–867–0300.

The Magnuson Act requires that each Regional Fishery Management Council submit any fishery management plan (FMP) or plan amendment it prepares to NMFS for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a document that the FMP or amendment is available for public review and comment. During this comment period, NMFS will conduct public hearings, as required by section 313(c)(2) of the Magnuson Act, in Alaska, Oregon, and Washington to receive public comments on the proposed repeal of the Research Plan. NMFS will consider the public comments received during the comment period in determining whether to approve the repeal of the Research Plan and these amendments.

Repeal of the Research Plan

Beginning in April 1995, the Council and industry representatives voiced numerous concerns about certain elements of the Research Plan. The fundamental issues were cost-related and included: (1) Cost equity issues associated with the redistribution of observer costs throughout the crab, groundfish, and halibut sectors; (2) the ability of NMFS to require necessary observer coverage levels for special management programs (e.g., community development quotas, individual vessel bycatch and discard accountability) given the fee limitations outlined in the Magnuson Act (i.e., fees cannot exceed 2 percent of the exvessel value of retained Research Plan fish); and (3) potential reductions in observer coverage due to cost increases associated with Research Plan objectives to address observer data integrity. As a result, the Council recommended delaying full implementation of the Research Plan and requested that NMFS work with Council-appointed industry representatives on the Observer Oversight Committee (OOC) to address these concerns and others of a less substantial nature.

The OOC met with NMFS and interested parties in September and October 1995. Through discussion and negotiation, the OOC arrived at acceptable solutions to most of the Council's stated Research Plan implementation problems. The OOC was unable to reach consensus on issues associated with the redistribution of costs under the Research Plan. The distribution of costs throughout the crab, groundfish, and halibut fleets on the basis of landed value of catch, and implemented through the Research Plan user fee, resulted in significantly increased observer costs for some industry sectors and generally reduced costs for catcher vessels and small processors. Even though this change in cost distribution was integral to the Research Plan, some participants in the groundfish and crab fisheries asserted that they had been encumbered with an inequitably high share of the cost of the North Pacific observer programs.

Because of the inability to resolve these critical issues, the Council voted at its December 1995 meeting to repeal the Research Plan and its associated fee-based funding mechanism. In response, NMFS issued an interim final rule (61 FR 13782, March 28, 1996) that discontinued the 1995 Research Plan fee collection process, authorized the issuance of annual Federal processor permits without regard to payment of Research Plan fees, and established a procedure to refund all fees collected (approximately $5.6 million) by NMFS under the 1995 Research Plan, along with accrued interest.

FMP Amendments

Amendments 47 to the Groundfish FMPs would authorize an interim North Pacific groundfish observer program and authorize groundfish observer coverage requirements through 1997. Amendment 6 to the Crab FMP would remove language associated with the Research Plan.

A proposed rule to implement the repeal of the Research Plan and the FMP amendments has been submitted for Secretarial review and approval and is scheduled to be published within 15 days of the date of publication of this document. The proposed rule to implement Amendments 47 also will include 1997 observer coverage requirements, vessel and processor responsibilities under the interim groundfish observer program, and criteria for the certification, suspension, and decertification of observers and observer contractors.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 8, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–17788 Filed 7–9–96; 1:23 pm]

BILLING CODE 3510–23–F

Notices

Federal Register
Vol. 61, No. 135
Friday, July 12, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Big Bend Timber Sale, Umpqua National Forest, Douglas and Lane County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On March 29, 1991, a Notice of Intent to prepare an environmental impact statement (EIS) for the Big Bend Timber Sale on the North Umpqua Ranger District of the Umpqua National Forest was published in the **Federal Register** (56 FR 13105). A draft EIS was released to public November 1991. A notice of Availability for the draft EIS was published in the **Federal Register** on November 8, 1991 (56 FR 57330). The comment period on the draft EIS ended December 23, 1991. Forest Service has decided to cancel the environmental analysis process. There will be no final EIS for the Big Bend Timber Sale. The Notice of Intent is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Ned Davis, District Ranger, North Umpqua Ranger District, 18782 North Umpqua Hwy., Glide, Oregon 97443 or telephone (541) 496–3532.

Dated July 3, 1996.

Bernie Rios,

Deputy Forest Supervisor.

[FR Doc. 96–17732 Filed 7–11–96; 8:45 am]

BILLING CODE 3410–11–M

Couplet Timber Sale, Umpqua National Forest, Douglas County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On June 30, 1992, a Notice of Intent to prepare an environmental impact statement (EIS) for the Couplet Timber Sale on the Diamond Lake Ranger District of the Umpqua National Forest was published in the **Federal Register** (57 FR 29059). Forest Service has decided to cancel the environmental analysis process for the Couplet Timber Sale. The Notice of Intent is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to J. Dan Schindler, District Ranger, Diamond Lake Ranger District, 2020 Toketee Ranger Station Rd., Idleyld Park, Oregon 97447 or telephone (541) 498–2531.

Dated: July 3, 1996.

Bernie Rios,

Deputy Forest Supervisor.

[FR Doc. 96–17733 Filed 7–11–96; 8:45 am]

BILLING CODE 3410–11–M

Lake Creek Timber Sale, Umpqua National Forest, Douglas County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On July 10, 1991, a Notice of Intent to prepare an environmental impact statement (EIS) for the Lake Creek Timber Sale on the Diamond Lake Ranger District of the Umpqua National Forest was published in the **Federal Register** (56 FR 31371). Forest Service has decided to cancel the environmental analysis process of the Lake Creek Timber Sale. The Notice of Intent is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to J. Dan Schindler, District Ranger, Diamond Lake Ranger District, 2020 Toketee Ranger Station Rd., Idleyld Park, Oregon 97447 or telephone (541) 498–2531.

Dated: July 3, 1996.

Bernie Rios,

Deputy Forest Supervisor.

[FR Doc. 96–17734 Filed 7–11–96; 8:45 am]

BILLING CODE 3410–11–M

West Cat Timber Sale, Umpqua National Forest, Lane County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On March 29, 1991, a Notice of Intent to prepare an environmental impact statement (EIS) for the West Cat Timber Sale on the Cottage Grove Ranger District of the Umpqua National Forest was published in the **Federal Register** (56 FR 13109). Forest Service has decided to cancel the environmental analysis process for the West Cat Timber Sale. The Notice of Intent is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Jim Wieman, District Ranger, Cottage Grove Ranger District, 78405 Cedar Parks Road, Cottage Grove, Oregon 97424 or telephone (541) 942–5591.

Dated: July 3, 1996.

Bernie Rios,

Deputy Forest Supervisor.

[FR Doc. 96–17735 Filed 7–11–96; 8:45 am]

BILLING CODE 3410–11–M

Inch Timber Sale, Umpqua National Forest, Lane County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On March 29, 1991, a Notice of Intent to prepare an environmental impact statement (EIS) for the Inch Timber Sale on the Cottage Grove Ranger District of the Umpqua National Forest was published in the **Federal Register** (56 FR 13108). Forest Service has decided to cancel the environmental analysis process for the Inch Timber Sale. The Notice of Intent is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Jim Wieman, District Ranger, Cottage Grove Ranger District, 78405 Cedar Parks Road, Cottage Grove, Oregon 97424 or telephone (541) 942–5591.

Dated: July 3, 1996.

Bernie Rios,

Deputy Forest Supervisor.

[FR Doc. 96–17736 Filed 7–11–96; 8:45 am]

BILLING CODE 3410–11–M

Donna Timber Sale, Umpqua National Forest, Lane County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On March 29, 1991, a Notice of Intent to prepare an environmental impact statement (EIS) for the Donna Timber Sale on the Cottage Grove Ranger District of the Umpqua National Forest was published in the **Federal Register** (56 FR 13107). Forest Service has decided to cancel the environmental analysis process for the Donna Timber Sale. The Notice of Intent is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Jim Wieman, District Ranger, Cottage Grove Ranger District, 78405 Cedar Parks Road, Cottage Grove, Oregon 97424 or telephone (541) 942–5591.

Dated: July 3, 1996.

Bernie Rios,

Deputy Forest Supervisor.

[FR Doc. 96–17737 Filed 7–11–96; 8:45 am]

BILLING CODE 3410–11–M

Walton Ridge Timber Sale, Umpqua National Forest, Lane County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On March 29, 1991, a Notice of Intent to prepare an environmental impact statement (EIS) for the Walton Ridge Timber Sale on the Cottage Grove Ranger District of the Umpqua National Forest was published in the **Federal Register** (56 FR 13110). Forest Service has decided to cancel the environmental analysis process for the Walton Ridge Timber Sale. The Notice of Intent is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Jim Wieman, District Ranger, Cottage Grove Ranger District, 78405 Cedar Parks Road, Cottage Grove, Oregon 97424 or telephone (541) 942–5591.

Dated: July 3, 1996.

Bernie Rios,

Deputy Forest Supervisor.

[FR Doc. 96–17738 Filed 7–11–96; 8:45 am]

BILLING CODE 3410–11–M

Southwest Oregon Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on July 24, 1996 at the Red Lion Inn, 1414 N. Bayshore, Coos Bay, Oregon. The meeting will begin at 8:00 a.m. and continue until 4:00 p.m. Agenda items to be covered include: (1) Local area issues presentation; (2) Advisory Committee priority development; (3) Riparian Reserves and grazing; (4) Report on further actions being taken relative to fallen timber from winter storms on the Rogue River National Forest; (5) Timber sale updates; (6) Advisory Committee absenteeism; (7) Advisory Committee monitoring recommendation status, and (8) Public comments.

All Province Advisory committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kurt Austermann, Province Advisory Committee staff, USDI, Medford District, Bureau of Land Management, 3040 Biddle Rd., Medford, Oregon 97504, phone 541–770–2200.

Dated: July 3, 1996.

James T. Gladen,

Forest Supervisor, Designated Federal Official.

[FR Doc. 96–17745 Filed 7–11–96; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

PROCUREMENT LIST PROPOSED ADDITIONS

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 12, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Grounds Maintenance, Lake Mendocino, Ukiah, California, NPA: Rubicon Programs, Inc., Richmond, California

Grounds Maintenance, Tripler Army Medical Center, Oahu, Hawaii, NPA: Lanakila Rehabilitation Center, Honolulu, Hawaii

Switchboard Operation, Department of Veterans Affairs Medical Center, Nashville, Tennessee, NPA: Ed Linsey Industries for the Blind, Inc., Nashville, Tennessee.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 96–17789 Filed 7–11–96; 8:45 am]

BILLING CODE 6352–01–M

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 12, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On March 29 and May 17, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 F.R. 14088 and 24921) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Chock Block
2540–00–T27–8865
2540–00–T27–9043
(Requirements for the Defense Distribution Region West, Stockton, California)

Service

Janitorial/Custodial, Federal Bureau of Investigation, Headquarters Building, 10th & Pennsylvania Avenue, NW., Washington, DC

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 96–17790 Filed 7–11–96; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–412–815]

Notice of Court Decision: Certain Cut-to-Length Carbon Steel Plate from the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Court Decision.

SUMMARY: On June 4, 1996, the United States Court of International Trade (CIT) affirmed the remand determination made by the Department of Commerce (the Department) which used company-specific average useful life of renewable physical assets as the time period over which to allocate benefits from nonrecurring subsidies. *British Steel Plc. et al.* v. *United States*, Slip Op. 96–88 (*British Steel III*). In so doing, the Court rejected the Department's use of the U.S. Internal Revenue Service's Class Life Asset Depreciation Range System (the IRS tax tables) for allocating benefits as set forth in the "Allocation Period" section of its *General Issues Appendix*, which is appended to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37227 (July 9, 1993).

EFFECTIVE DATE: July 12, 1996.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5414.

SUPPLEMENTARY INFORMATION: In its *Final Affirmative Countervailing Duty Determination; Certain Steel Products From the United Kingdom*, 58 FR 37393 (July 9, 1993), the Department allocated benefits from nonrecurring subsidies, such as grants and equity, over the average useful life of renewable physical assets, as set out in the IRS tax tables. The Department's reasoning was fully set forth in the *General Issues Appendix*.

On February 9, 1995, the CIT held that the Department's use of the IRS tax tables was unlawful because the Department did not adequately consider whether and to what extent the 15-year period from the IRS tax tables was reasonable based on the commercial and competitive benefits received by the firms under investigation. *British Steel plc et al.* v. *United States*, 879 F. Supp. 1254. In accordance with the CIT's instructions, the Department reexamined the allocation period in question. The Department found that an allocation methodology based upon the average useful life of assets (AUL) specific to each company was the most reasonable methodology that complied with the instructions of the Court. On June 4, 1996, the CIT affirmed the Department's remand determination. *British Steel III*.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. section 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in *British Steel III* on June 4, 1996, constitutes a decision not in harmony with the Department's final affirmative determination. Publication of this notice fulfills the *Timken* requirement.

Accordingly, the Department will continue to suspend liquidation pending the expiration of the period of appeal, or, if appealed, until a "conclusive" court decision.

Dated: July 2, 1996.

Barbara R. Stafford,
Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–17805 Filed 7–11–96; 8:45 am]
BILLING CODE 3510–DS–P

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 96–00002.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to U.S. Leaf Tobacco Exporters, L.L.C. ("U.S. Leaf"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1994). The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

Leaf tobacco and by-products.

2. Services

Buying, handling, processing and shipment of leaf tobacco and by-products.

3. Export Trade Facilitation Services (as they Relate to the Export of Products and Services)

Consulting, market research, advertising, marketing, insurance, product research and design, legal assistance, transportation (including trade documentation and freight forwarding), communication and processing of orders, warehousing, foreign exchange, financing, and taking title to goods.

Export Markets

The Export Markets are foreign state trading entities ("STEs") and are limited to the following: Algeria, China, Egypt, Korea, Lebanon, Morocco, Taiwan, Thailand, Tunisia, Turkey, and Vietnam.

Export Trade Activities and Methods of Operation

In connection with the promotion and sale of Members' Products and Services into the Export Markets, U.S. Leaf and/or one or more of its Members may:

a. Solicit orders or bids from STEs in Export Markets.

b. Design and execute foreign marketing strategies for sales in Export Markets.

c. Quote charges to STEs for processing, shipping and handling services relating to the sale of U.S. grown tobacco to such customers and for dealer commissions and other miscellaneous buying charges. Such quotes may be made by one or more Members individually or by U.S. Leaf on behalf of such Members as may be interested in participating in such transactions or opportunities.

d. Collect and exchange information about U.S. Leaf's or Members' export operations and prior export sales by Members, including export price information with respect to STEs.

e. Collaborate in the preparation and submission of individual or joint bids for processing, shipping and handling charges relating to the sale of tobacco to STEs in Export Markets.

f. Collect and exchange information and conduct joint negotiations with STEs concerning estimated yields for the processing of green leaf tobacco into redried tobacco.

g. Alocate export sales and/or export markets among Members.

h. Engage in joint promotional activities aimed at increasing sales in existing Export Markets and identifying new Export Markets, such as: arranging trade shows and marketing trips; providing advertising services; providing brochures, industry newsletters and other forms of product, service and industry information; conducting international market and product research; procuring international marketing, advertising and promotional services; and sharing the cost of these joint promotional activities among the Members.

i. Collect and exchange information with respect to transportation services utilized by Members in the export of U.S. grown tobacco, including overseas freight transportation, inland freight transportation from the Members' processing plants to the U.S. port of embarkement, storage and warehousing, stevedoring, wharfage and handling, insurance, forwarder services, trade documentation and services, customs clearance, financial instruments and foreign exchange.

j. Collect and exchange information and conduct joint negotiations with STEs regarding contractual terms for export sales.

Terms and Conditions of Certificate

a. Except as expressly authorized in the Export Trade Activities and Methods of Operations section of this Certificate, neither U.S. Leaf nor any Member shall intentionally disclose, directly or indirectly, to any other Member or Supplier any information that is about its or any other Member's or Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless (1) such information is already generally available to the trade or public; or (2) the information disclosed is a necessary term or condition (e.g., price, time required to fill an order, etc.) of an actual or potential bona fide sale and the disclosure is limited to the prospective purchaser.

b. Any agreements, discussions, or exchanges of information under this Certificate relating to quantities of Products available for Export Markets shall be in connection only with actual or potential bona fide export transactions and shall be on a transaction- by-transaction basis only.

c. Participation by a Member in any Export Trade Activity or Method of Operation under this Certificate shall be entirely voluntary as to that Member, subject to the honoring of contractual commitments. A Member may withdraw from coverage under this Certificate at any time by giving written notice to U.S. Leaf, a copy of which U.S. Leaf shall promptly transmit to the Departments of Commerce and Justice.

d. U.S. Leaf and its Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Definitions

"Members", within the meaning of section 325.2(1) of the Regulations, means the member companies of U.S. Leaf set out in Attachment A and incorporated herein by reference.

"Processing" means the processing of green leaf tobacco into redried tobacco by the removal of moisture content, foreign matter and stems, and the blending of such tobacco.

"Handling charges" means all charges associated with the services provided by the Members in connection with the buying of green leaf tobacco and for the

delivery of redried tobacco to STEs, but excluding the cost of green leaf tobacco at auction and processing charges. Handling charges include, but are not limited to, inland freight, container cost, dealer commissions, tagging, inspection, storage, warehousing, financing, fumigation, by-product credits and ocean shipping.

"Subsidiary" means a U.S. tobacco dealer which is a wholly- or majority-owned subsidiary of a Member or of a Member's controlling entity.

"Supplier" means a person who produces, provides, or sells a Product or Service, whether a Member or nonmember.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: July 1, 1996.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

Attachment A

Member

Universal Leaf Tobacco Company, Incorporated

Subsidiaries: Universal Leaf Tobacco Company, Incorporated, Richmond, VA; Virginia Tobacco Company, Incorporated, Richmond, VA; Virsa Incorporated, Richmond, VA; Winston Leaf Tobacco Company, Incorporated, Richmond, VA; Southern States Tobacco Company, Incorporated, Richmond, VA; Thorpe & Ricks, Inc. (VA), Richmond, VA; Thorpe-Greenville Export Tobacco Company, Rocky Mount, NC; Thorpe-Ricks, Inc (NC), Rocky Mount, NC; Southern Processors, Inc., Danville, VA; Danville Leaf Tobacco Company, Inc., Danville, VA; J.P. Taylor Company, Inc., Henderson, NC; Eastern Leaf Tobacco Company, Richmond, VA; K.R. Edwards Leaf Tobacco Company, Incorporated, Smithfield, NC; Southwestern Tobacco Company, Incorporated, Lexington, KY; W.H. Winstead Company, Inc., Richmond, VA; Tobacco Processors, Inc., Wilson, NC; R.P. Watson Company, Richmond, VA; and Dunnington- Beach Tobacco, Incorporated, Farmville, VA.

Member

DIMON International, Inc., Farmville, NC

Subsidiaries: A.C. Monk & Company, Inc., Farmville, NC; The Austin Company, Incorporated, Kinston, NC; T.S. Ragsdale Company, Inc., Lake City, NC; Dibrell Brothers Tobacco USA, Inc., Danville, VA; Carolina Leaf Tobacco Company, Inc., Greenville, NC; Dimon International, A.G., Basel, Switzerland; and Dimon Asia on behalf of Dimon International, Inc., Farmville, NC.

Member

Unitob Inc., Greenville, NC

Subsidiaries: China American Tobacco Co., Greenville, NC; and Intabex-Hail & Cotton International Co., Greenville, NC.

Member

Standard Commercial Corporation, Wilson, NC

Subsidiaries: Standard Commercial Tobacco Co., Inc., Wilson, NC; and W A Adams Company, Wilson, NC.

Member

G.F. Vaughan Tobacco Co., Inc., Lexington, KY

[FR Doc. 96–17730 Filed 7–11–96; 8:45 am]

BILLING CODE 3510–DR–P

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 95–00006.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Water and Wastewater Equipment Manufacturers Association. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1994). The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

Machinery, equipment, instrumentation, chemicals, supplies, systems, accessories, turnkey systems, and software development (as these items are used in the treatment of water and/or wastewarer).

Export Trade

1. Products

Machinery, equipment, instrumentation, chemicals, supplies, systems, accessories, turnkey systems, and software development (as these items are used in the treatment of water and/or wastewater).

2. Services

A. Identification, conceptual prefeasibility, and feasibility assessments of residential, commercial, industrial, and municipal Products and water and/or wastewater treatment facilities for homeowners, businesses, companies, utilities, or foreign government entities;

B. Engineering and architectural services related to Products and/or to turnkey contracts that substantially incorporate Products;

C. Design and installation of water and/or wastewater treatment facilities and/or Products;

D. Project and construction management of water and/or wastewater treatment facilities;

E. Arranging or offering financing for investments in water and/or wastewater treatment facilities and/or Products, including lease, loan, shared savings arrangements, guaranteed lease or loans, and third party financing;

F. Providing bonded performance guarantees that guarantee a certain level of water and/or wastewater treatment as a result of the installation of water and/or wastewater treatment Products;

G. Servicing, training, and other services related to the sale, use, installations, maintenance monitoring, rehabilitation, or upgrading of Products or to projects that substantially incorporate Products;

H. All other services related to water and/or wastewater treatment.

3. Export Trade Facilitation Services (as They Relate to the Export of Products and Services)

Consulting; international market research; insurance; legal assistance; accounting assistance; services related to compliance with foreign customs requirements; trade documentation and freight forwarding; communication and processing of export orders and sales leads; warehousing; foreign exchange; financing; liaison with U.S. and foreign government agencies, trade associations and banking institutions; taking title to goods; marketing and trade promotion; trade show participation; coordination and negotiation of the terms and conditions of participation in trade promotion activities such as trade shows, expositions, exhibitions, conferences or similar events; and negotiations with providers of transportation, insurance, exhibits and lodging in connection with such trade promotion opportunities.

4. Technology Rights

Patents, trademarks, service marks, trade names, copyrights (including neighboring rights); trade secrets; know-how; technical expertise; utility models (including petty patents); computer modeling; semiconductor mask works; industrial designs; computer software protection associated with Products, Services, industrial designs, first die proofs, design of die block impressions, inserts, and Export Trade Facilitation Services.

Export Markets

The Export Markets include all parts of the world except the United States (the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

A. Except as set forth in Paragraph F, WWEMA and/or one or more of its Members may:

1. Engage in joint selling arrangements for the sale of Products and/or Services in the Export Markets, such as joint marketing, joint negotiation, joint offering, joint bidding, and joint financing; and allocate sales resulting from such arrangements.

2. Establish export prices of Products and/or Services by the Members in Export Markets.

3. Discuss and reach agreements relating to the interface specifications and engineering of Products and/or Services required by specific export customers, potential export customers, or Export Markets.

4. Refuse to quote prices for, or to market or sell, Products and/or Services in Export Markets;

5. Solicit non-Member Suppliers to sell such non-Member Suppliers' Products and/or Services, or offer such non-Member Suppliers' Export Trade Facilitation Services through the certified activities of WWEMA and/or its Members; provided, however, that WWEMA and/or one or more of its Members shall make such solicitations or offers to non-Member Suppliers on a transaction by transaction basis only and then only when the Members are unable to supply, at a price competitive under the circumstances, the requisite Products or Services for such transaction; provided further that WWEMA and/or one or more of its Members may exchange only such information with such non-Member Suppliers as is reasonably required by such transaction.

6. Coordinate with respect to

(a) the development of water and/or wastewater treatment projects in Export Markets, including project identification, scientific and technical assessment, transportation and/or delivery, engineering, design, maintenance, monitoring, construction and delivery, installation and construction, project ownership, project operation, and transfer of project ownership;

(b) the installation and servicing of Products in Export Markets, including establishment of joint warranty, service, and training centers in such markets; and

(c) the operation of and maintenance services for water and/or wastewater treatment facilities, parts warehousing, and support services related to the foregoing.

7. License associated Technology Rights in conjunction with the sale of Products, but in all instances, the terms of such licenses shall be determined solely by negotiations between the licensor Member and the export customer without coordination with WWEMA or any Member.

8. Engage in joint promotional activities aimed at developing existing or new Export Markets. Such promotional activities may include advertising, demonstrating, field trips, trade missions, reverse trade missions, and conferences.

9. Agree on the frequency, level of, duration, or other terms and conditions of participation in joint Export Trade Promotion activities conducted in Export Markets. Such activities may include trade shows for the purpose of promoting the industry's Products in Export Markets.

10. Enter into agreements wherein WWEMA and/or one or more Members acts in certain Export Markets as the Members' exclusive or non-exclusive Export Intermediary. The Export Intermediary shall be responsible for coordinating the level of participation and joint export trade promotion and facilitation activities by WWEMA and its Members, as well as for negotiating agreements with foreign government agencies, corporations, or trade associations concerning terms and conditions of participation, transportation, insurance, lodging, local transportation, and food services in connection with such joint promotional activities. When acting as an Export Intermediary, WWEMA and/or any one or more Members shall make its services available to any Member on non-discriminatory terms.

11. Agree to refuse to attend any specific trade show, exposition, exhibition, or conference conducted in the Export Markets.

12. Establish and operate jointly owned subsidiaries or other joint venture entities owned exclusively by Members for the purposes of engaging in the Export Trade Activities and Methods of Operation herein, other than the licensing of associated Technology Rights pursuant to subparagraph (7) above. WWEMA and/or one or more of its Members may establish and operate joint ventures for operations in Export Markets with non-Members, including public-sector foreign corporations and other foreign government entities, and/or private sector foreign entities such as corporations. Non-Members engaging in such activities shall not receive protection under this Certificate of Review.

13. Enter into exclusive arrangements with an Export Intermediary, which arrangement may provide that such Export Intermediary may not represent any non-Member Supplier of Products and/or Services in specified Export Markets.

14. Agree not to export independently into specified Export Markets, either directly or through any other Export Intermediary or other party.

15. Agree that any information obtained pursuant to this Certificate shall not be provided to any non-Member.

16. For the transportation of Products, act as a shippers' association to negotiate favorable transportation rates and other terms for the transportation of Products with individual common carriers and individual shipping conferences.

B. Except as set forth in Paragraph F, WWEMA and/or one or more of its Members may exchange and discuss the following types of information as they relate solely to Export Trade and Export Markets:

1. Information (other than information about the cost, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or United States business plans, strategies or methods) that is already generally available to the trade or public.

2. Information about sales and marketing efforts for Export Markets,

activities and opportunities for sales of Products and Services in Export Markets, selling strategies for Export Markets, pricing in Export Markets, projected demands in Export Markets (quality and quantity), customary terms of sale in Export Markets, the types of Products available from competitors for sale in particular Export Markets and the prices for such Products, customer specifications for Products in Export Markets, and market strengths and economic and business conditions in Export Markets.

3. Information about the export prices, quality, quantity, sources, available capacity, and delivery dates of Products available from Members for export, provided however that exchanges of information and discussions as to Product quantity, sources, available capacity to produce, and delivery dates must be on a transaction-by-transaction basis and involve only those Members who are participating or have genuine interest in participating in each such transaction.

4. Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by WWEMA and/or its Members.

5. Information about joint bidding, joint selling, or joint servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members.

6. Information about expenses specific to exporting to, and within Export Markets, including without limitation, transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes.

7. Information about U.S. and foreign legislation, regulations and policies and executive actions affecting the sales of Products and/or Services in the Export Markets, such as U.S. Federal and State programs affecting the sales of Products and/or Services in the Export Markets or foreign policies that would affect the sale of Products and/or Services.

8. Information about WWEMA's and/or its Members' export operations, including without limitation, sales and distribution networks established by WWEMA or its Members in Export Markets, and prior export sales by Members (including export price information).

C. Except as set forth in Paragraph F, WWEMA and/or one or more of its Members may meet to engage in the activities described in paragraphs A through B above.

D. Except as set forth in Paragraph F, WWEMA and/or one or more of its Members may refuse to provide Export Trade Facilitation Services to non-Members or refuse to participate in other activities described in paragraphs A through B above.

E. WWEMA and/or one or more of its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (such as prices and/or costs). If such Member elects to respond with respect to domestic activities, it shall respond directly to the requesting foreign government or its agent with respect to such information.

F. If an Export Trade Activity or Method of Operation described in paragraphs A through D would involve: (a) a Product identified in Attachment II as a "Restricted Product", and (b) two or more Member Suppliers of a Restricted Product identified in Attachment II ("Restricted Members"), then such Export Trade Activity or Method of Operation shall be subject to the following limitations:

1. Participation in any price discussion is limited to instances in which the prices are discussed and determined solely in the following manner: a Neutral Third Party, as hereinafter defined, acting independently, will obtain price information concerning each Restricted Product for which the Restricted Members listed in conjunction therewith intend to participate as part of a joint bid or other sales arrangement, and will incorporate such price information into the bid or other arrangement.

(i) For purposes of this paragraph, "acting independently" means that the Neutral Third Party who obtains the price information from the Restricted Members, and who negotiates offer prices on behalf of the Restricted Members, will not disclose the price information of one Restricted Member to another Restricted Member intending to participate in a joint bid or other sales arrangement as a Supplier of the Restricted Products.

(ii) For purposes of this paragraph, "Neutral Third Party" means an individual, partnership, corporation (profit or non-profit), or any representative thereof which is not engaged in the manufacture, distribution, or sale of any Restricted Product. Any Member may be a Neutral Third Party as long as it meets the requirements set out above.

2. The limitation set forth in paragraph F.1 above also shall apply to instances where more than one Restricted Member intends to participate in the joint bid or other sales arrangement but the participation of one is solely as an Export Intermediary for the Export Trade Activity or Method of Operation.

3. Neither WWEMA nor any Member participating in the Export Trade Activity or Method of Operation shall disclose the price information of one Restricted Member to another Restricted Member with respect to the relevant Restricted Product.

Terms and Conditions of Certificate

1. Except as expressly authorized in Export Trade Activity and Method of Operation B.6, in engaging in Export Trade Activities and Methods of Operation, neither WWEMA nor any Member shall intentionally disclose, directly or indirectly, to any other Member or Supplier (including parent companies, subsidiaries, or other entities related to any Member not named as a Member) any information that is about its or any other Member's or Supplier's costs, production, inventories, domestic prices, domestic sales, capacity to produce Products for domestic sale, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless (1) Such information is already generally available to the trade or public; or (2) the information disclosed is a necessary term or condition (e.g., price, time required to fill an order, etc.) of an actual or potential *bona fide* sale and the disclosure is limited to the prospective purchaser.

2. Any agreements, discussions, or exchanges of information under this Certificate relating to quantities of Products available for Export Markets, product specifications or standards, export prices, product quality or other terms and conditions of export sales (other than export financing, servicing and repair arrangements) shall be in connection with actual or potential *bona fide* export transactions and shall be on a transaction-by-transaction basis only and shall include only those Members participating or having a genuine interest in participating in such transactions; provided that WWEMA and/or its Members may discuss standardization of Products and Services for purposes of making *bona fide* recommendations to foreign governmental or private standard-setting organizations.

3. Participation by a Member in any Export Trade Activity or Method of Operation under this Certificate shall be entirely voluntary as to that Member, subject to the honoring of contractual commitments for sales of Products or Services in specific export transactions.

A Member may withdraw from coverage under this Certificate at any time by giving written notice to WWEMA, a copy of which WWEMA shall promptly transmit to the Secretary of Commerce and the Attorney General.

4. WWEMA and its Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Member" means a person who has membership in WWEMA, has been certified as a "Member" within the meaning of Section 325.2(1) of the Regulations, and is listed in Attachment I.

3. "Supplier" means a person who produces, provides, or sells a Product, Service, and/or Export Trade Facilitation Service, whether a Member or non-Member.

Protection Provided by Certificate

This Certificate protects WWEMA, its Members, and directors, officers, and employees acting on behalf of WWEMA and its Members from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits WWEMA and its Members from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to WWEMA by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary of Commerce or by the Attorney General concerning either (a) the viability or quality of the business plans of WWEMA or its Members or (b) the legality of such business plans of WWEMA or its Members under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country.

The application of this Certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V.(D.) of the "Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)," 50 Fed. Reg. 1786 (January 11, 1985).

In accordance with the authority granted under the Act and Regulations, this Certificate of Review is hereby granted to WWEMA.

Dated: July 1, 1996.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

Attachment I

ABB Kent Meters, Inc., Ocala, Florida
A.O. Smith Harvestore Products, Inc., DeKalb, Illinois
Elsag Bailey Process Automation N.V. for the activities of its unit Bailey-Fischer & Porter Company, Warminster, Pennsylvania
Capital Controls Co., Inc., Colmar, Pennsylvania
CBI Walker, Inc., Aurora, Illinois
Dorr-Oliver Incorporated, Milford, Connecticut
Enviroquip, Inc., Austin, Texas
G.A. Industries, Inc., Mars, Pennsylvania
Galaxy Environmental Corporation, Warminster, Pennsylvania
General Signal Corporation for the activities of its unit General Signal Pump Group, North Aurora, Illinois
Gorman-Rupp Company (The), Mansfield, Ohio
The Gorman-Rupp International Company, Mansfield, Ohio
Hycor Corporation, Lake Bluff, Illinois
I. Kruger, Inc., Cary, North Carolina
Infilco Degremont Inc., Richmond, Virginia
JCM Industries, Inc., Nash, Texas
Komline-Sanderson, Peapack, New Jersey
Parkson Corporation, Fort Lauderdale, Florida
Patterson Pump Co., Taccoa, GA
Smith & Loveless, Inc., Lenexa, Kansas
Temcor, Carson, California
Wallace & Tiernan, Inc., Belleville, New Jersey
Water Pollution Control Corp., Brown Deer, Wisconsin

Attachment II

Restricted product	Restricted members
Gas Chlorination Systems.	Bailey-Fischer & Porter Company, Capital Controls Company, Inc., Wallace & Tiernan, Inc.
Evaporators ...	Bailey-Fischer & Porter Company, Capital Controls Company, Inc., Wallace & Tiernan, Inc.
Gas Sulphonation Systems.	Bailey-Fischer & Porter Company, Capital Controls Company, Inc., Wallace & Tiernan, Inc.

[FR Doc. 96–17731 Filed 7–11–96; 8:45 am]
BILLING CODE 3510–DS–P

Minority Business Development Agency

Business Development Center Applications: Corpus Christi

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Amendment.

SUMMARY: The Minority Business Development Agency is revising the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate the Corpus Christi MBDC. The revised closing date for the Corpus Christi MBDC application is July 29, 1996. This solicitation was originally published in the **Federal Register**, Wednesday, June 12, 1996, Vol. 61, No. 114, Page 29738.

(Catalog of Federal Domestic Assistance 11.800 Minority Business Development Center)

Dated: July 9, 1996.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 96–17804 Filed 7–11–96; 8:45 am]
BILLING CODE 3510-21-M

National Institute of Standards and Technology

National Conference on Weights and Measures; Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the 81st Annual Meeting of the National Conference on Weights and Measures will be held July 21, through 25, 1996, at Westin Canal Place, New Orleans, Louisiana. The meeting is open to the public. The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the states, counties, and cities of the United States, and private sector representatives. The interim meeting of the conference, held in January, 1996, as well as the annual meeting, bring together enforcement officials, other government officials, and representatives of business, industry, trade associations, and consumer organizations to discuss subjects that relate to the field of weights and measures technology and administration.

Pursuant to (15 U.S.C. 272(B)(6)), the National Institute of Standards and Technology acts as a sponsor of the National Conference on Weights and Measures in order to promote uniformity among the States in the complex of laws, regulations, methods, and testing equipment that comprises regulatory control by the States of commercial weighting and measuring.

DATE: The meeting will be held July 21–25, 1996.

LOCATION: Westin Canal Place New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Giblert M. Ugiansky, Executive Secretary, National Conference on Weights and Measures, P.O. Box 4025, Gaithersburg, Maryland 20885. Telephone: (301) 975–4005.

Dated: July 8, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–17761 Filed 7–11–96; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 070596C]

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held on August 13–15, 1996.

ADDRESSES: All meetings will be held at the Caravelle Hotel, St. Croix, U.S. Virgin Islands.

Council address: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council; telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 89th regular public meeting to discuss the First Amendment to the Coral Fishery Management Plan, among other topics.

The Council will convene on August 14, 1996, from 9:00 a.m. to 5:00 p.m., and August 15, 1996, from 9:00 a.m. to noon, approximately.

The Administrative Committee will meet on August 13, 1996, from 2:00 p.m. to 5:00 p.m., to discuss administrative matters regarding Council operation.

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or requests for sign language interpretation and/or other auxiliary aids please contact Mr. Miguel A. Rolón, Executive Director, (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 8, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–17786 Filed 7–11–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 070396A]

Mid-Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Scientific and Statistical Committee, Surfclam Ocean Quahog Committee, and Surfclam Ocean Quahog Advisory Panel will hold a public meeting.

DATES: The meeting will be held on July 23, 1996, beginning at 9:30 a.m.

ADDRESSES: The meeting will be held at the Days Inn, 4101 Island Avenue, Philadelphia, PA, telephone 215–492–0400.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review Stock Assessment Review Committee issues raised concerning methods, models, and surveys; review National Fisheries Institute/NMFS Data Needs meeting held in Woods Hole; review of proposals submitted for research work aboard commercial vessels; review of modeling, field studies, and assessment schedules.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: July 8, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–17787 Filed 7–11–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 070396B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of modification 4 to permit 847 (P211E) and modification 4 to permit 822 (P500B).

SUMMARY: Notice is hereby given that NMFS has issued modifications to two permits that authorize takes of Endangered Species Act-listed species for the purpose of scientific research/enhancement, subject to certain conditions set forth therein, to the Oregon Department of Fish and Wildlife (ODFW) and the Fish Passage Center at Portland, OR (FPC).

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301-713-1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

SUPPLEMENTARY INFORMATION: The modifications to permits were issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–222).

Notice was published on April 1, 1996 (61 FR 14296) that an application had been filed by ODFW (P211E) for modification 4 to scientific research/enhancement permit 847. Modification 4 to permit 847 was issued to ODFW on June 28, 1996. Permit 847 authorizes ODFW annual takes of adult and juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with supplementation programs at the Imnaha River and Lookingglass Creek Hatcheries. For Modification 4, ODFW is authorized to retain 50 percent of the adult, ESA-listed, naturally-produced and artificially-propagated salmon that return to the Imnaha River weir in 1996 for hatchery broodstock; to release the adult, ESA-listed, naturally-produced and artificially-propagated salmon not retained for broodstock above the weir for natural spawning as long as the number of hatchery-produced adult releases does not exceed the number of naturally-produced adult releases; and to retain two naturally-produced jacks (age three males) and two artificially-propagated jacks for broodstock for every five females retained, up to a maximum fertilization of 10 percent of the 1996 brood eggs. ODFW is also authorized to release all of the naturally-produced jacks not retained for broodstock above the weir for natural spawning and to sacrifice all of the surplus hatchery jacks so that they do not dominate the population of males above the weir site. Modification 4 is valid in 1996 only.

Permit 847 expires on March 31, 1998.

Notice was published on May 7, 1996 (61 FR 20514) that an application had been filed by FPC (P500B) for modification 4 to scientific research/monitoring permit 822. Modification 4 to permit 822 was issued to FPC on July 3, 1996. Permit 822 authorizes FPC annual takes of juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*); juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*); and juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) associated with scientific research/monitoring activities at upstream locations and at the hydropower dams on the Snake and Columbia Rivers in the Pacific Northwest. For Modification 4, FPC is authorized an increase in the number of juvenile, ESA-listed, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon associated with the operation of a second airlift sampler at John Day Dam during the annual juvenile outmigration. Also for modification 4, FPC is authorized an increase in the number of juvenile, ESA-listed, Snake River sockeye salmon to be captured and handled, and an increase in the resulting indirect mortality of these fish, associated with an increase in the estimate of the number of ESA-listed sockeye salmon juveniles expected to outmigrate in 1996. In addition, FPC is authorized an incidental take of adult and jack, ESA-listed, Snake River spring/summer chinook salmon associated with fallbacks through the juvenile bypass systems at Bonneville and John Day Dams on the Columbia River. FPC is also authorized a modification of their sampling protocol for monitoring juvenile salmonids for symptoms of nitrogen gas bubble trauma. Modification 4 is valid for the duration of the permit. Permit 822 expires on December 31, 1997.

Issuance of the permit modifications, as required by the ESA, was based on a finding that such actions: (1) Were requested in good faith, (2) will not operate to the disadvantage of the ESA-listed species that are the subject of the permits, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing ESA-listed species permits.

Dated: July 5, 1996.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–17724 Filed 7–11–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 070196G]

Marine Mammals; Permit No. 928 (P351E)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Scientific research permit amendment.

SUMMARY: Notice is hereby given that a request for amendment of scientific research permit no. 928 submitted by Ms. Olga von Ziegesar, North Gulf Oceanic Society, P.O. Box 15244, Homer, AK 99603, has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

SUPPLEMENTARY INFORMATION: On May 20, 1996, notice was published in the **Federal Register** (61 FR 25210) that an amendment of permit no. 928, issued July 18, 1994 (59 FR 37745), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

Permit no. 928 authorizes the harassment of up to 100 humpback whales (*Megaptera novaeangliae*) annually during repeated approaches for photo-identification studies in Prince William Sound and in the area from the Copper River Delta to Kachemak Bay, Alaska.

Amendment No. 1 to permit no. 928 authorizes the harassment of up to 400 humpback whales per year during photo-identification studies, of which up to 100 whales may be biopsy sampled over a four year period; export of the biopsy samples collected; and expansion of the research area to include all Alaskan waters.

Issuance of this Permit as required by the ESA of 1973 was based on a finding that the permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in Section 2 of the ESA.

Dated: July 2, 1996.

Ann Hochman,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–17760 Filed 7–11–96; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Membership of the Defense Contract Audit Agency (DCAA) Performance Review Boards

AGENCY: Defense Contract Audit Agency, DOD.

ACTION: Notice of Membership of the Defense Contract Audit Agency Performance Review Boards.

SUMMARY: This notice announces the appointment of the members of the Performance Review Boards (PRBs) of the Defense Contract Audit Agency (DCAA). The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Director, DCAA, regarding final performance ratings and performance awards for DCAA SES members.

EFFECTIVE DATE: July 12, 1996.

FOR FURTHER INFORMATION CONTACT: Dale R. Collins, Director, Human Resources Management, Defense Contract Audit Agency, Department of Defense, Ft. Belvoir, Virginia 22060–6219, 703–767–1236.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of the executives who have been appointed to serve as members of the DCAA Performance Review Boards. They will serve one-year terms, effective upon publication of this notice.

Headquarters Performance Review Board

Mr. Russell Richards, Assistant Director, Operations, Defense Contract Audit Agency, Chairperson.
Mr. Lawrence Uhlfelder, Assistant Director, Policy and Plans, Defense Contract Audit Agency, member.
Mr. Kirk Moberley, General Counsel, Defense Contract Audit Agency, member.

Regional Performance Review Board

Mr. Charles Cherry, Regional Director, Central, Defense Contract Audit Agency, Chairperson.
Mr. Robert Matter, Regional Director, Western, Defense Contract Audit Agency, member.
Mr. Robert Melby, Deputy Regional Director, Eastern, Defense Contract Audit Agency, member.

Dated: July 8, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–17685 Filed 7–11–96; 8:45 am]

BILLING CODE 5000–04–M

Corps of Engineers

Notice of Public Scoping Meeting for an Environmental Impact Statement, and Request for Comments for the Bluestone Dam Safety Assurance Program, Hinton West Virginia

AGENCY: Corps of Engineers, Army.

ACTION: Notice.

SUMMARY: a. Under the Policy of Evaluating Modifications of Existing Dams Related to Hydrologic and Seismic Adequacy, the Huntington District is evaluating alternative measures to modify Bluestone Dam consistent with state of the art design criteria. The proposed action is being conducted through the Corps' Dam Safety Assurance Program for the evaluation of existing dams..

b. The COE is forming working groups to exchange information with known interest groups; businesses; community development; local governments; environmental and cultural resources; emergency management; and cooperating/regulatory agencies. Membership in these working groups is open, and you may participate as a volunteer. Meetings are scheduled for:

Date: July 18, 1996.
Time: 12:30–2:30 pm—business interest group; 3:00–5:00 pm—emergency management interest group.
Place: The Blue & Gold Room, Golf Complex, Pipestem State Park, Pipestem WV.
Date: July 19, 1996.
Time: 10:00 am–12:00 noon—community development interest group; 12:30–2:30 pm—cooperating/regulatory agencies; 3:00–5:00 pm—environmental/cultural resources interest group.
Place: The Blue & Gold Room, Golf Complex, Pipestem State Park, Pipestem WV.

c. The COE is also holding public scoping meetings as follows:

Date: August 5, 1996.
Time: 7:00 pm.
Place: The Conference Room C, Bldg. 7, State Capital Complex, 1900 Kanawha Blvd., Charleston, WV.
Date: August 6, 1996.
Time: 7:00 pm.
Place: The Faulconer Room, Main Lodge, Pipestem State Park, State Route 20, Pipestem, WV.

FOR FURTHER INFORMATION CONTACT: Please address questions regarding this notice to Mr. C. Barry Passmore, PD–R, Huntington District, Corps of Engineers, 502 Eighth Street, Huntington, West Virginia 25701–2070, Telephone: (304) 529–5712.

SUPPLEMENTARY INFORMATION: a. The COE has determined that improvements to the dam are necessary to accommodate the probable maximum flood (PMF). Two dam corrections have been chosen as the most technically feasible:

- Alternative 1—Raising the dam to contain the PMF. Features of this alternative include: a 22-foot cantilever wall on top of the dam; an additional gravity monolith on the east bank; a gate closure across state route 20 on the west bank; removable closures at each end of the spillway; high-strength multi-strand anchors; and mass concrete thrust blocks topped with overburden.
- Alternative 2—Auxiliary Spillway to pass the PMF. Features of this alternative include: gated additional spillway over the penstocks; four 47'×48' tainter gates; a flip-bucket energy dissipator and training walls; and high-strength multi-strand anchors.

b. The COE plans no changes from current day-to-day operation of the Bluestone Dam following completion of construction of necessary modifications.

c. The National Environmental Policy Act (NEPA) requires the COE to take into account the environmental impacts that could result from this Federal action. NEPA also requires that the COE discover and address concerns the public may have about the proposed project. This occurs during the "scoping" process. By this Notice, the COE requests public comments. All comments received related to the scope of the project are considered during the preparation for the EIS.

d. The EIS will discuss impacts that could occur as a result of construction and operation of the proposed project including impacts to biological resources, cultural resources, and socioeconomic effects, air quality, noise impact, and recreation resources.

e. Interested groups and individuals are encouraged to attend the meetings and to present oral comments on the environmental issues which they believe should be addressed in the Draft EIS. Anyone who would like to make an oral presentation should telephone or write Barry Passmore, the COE contact, before 4:00 pm, July 31, 1996, so that time can be allotted during the meetings, and a name placed on the speakers' list.

f. You can make a difference by sending a letter addressing your specific comments or concerns about this project. Focus on the potential environmental effects of the alternatives, and methods to avoid or lessen impacts. The more specific your comments, the more useful they will be. Comments must be received by August 15, 1996.

g. The COE will evaluate alternatives and make recommendations on how to lessen or avoid impacts. An independent analysis of the issues will be presented in the Draft EIS, available in June 1997. A 45-day comment period will be allotted for review of the Draft EIS.

h. State and Federal agencies are asked to indicate whether they want to be cooperating agencies for the purpose of producing the EIS. Those identified to date include:

U.S. Environmental Protection Agency, Region III
U.S. National Park Service
U.S. Fish and Wildlife Service
U.S. Federal Emergency Management Agency
WV Department of Highways
WV Division of Environmental Protection
WV Division of Natural Resources
WV State Historic Preservation Office

i. These, or any other Federal, State or local agencies that want to participate as a cooperating agency should send a letter describing the extent to which you wish to be involved to the contact provided with this notice. Please provide written comments by August 15, 1996.

j. A Notice of Intent was published in the **Federal Register**—March 11, 1996, Volume 61, No. 48, page 9681.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–17743 Filed 7–11–96; 8:45 am]

BILLING CODE 3710–GM–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 12, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: July 8, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of the Under Secretary

Type of Review: New.
Title: Evaluation of School-to-Work Implementation—Survey of Local Partnerships and 18 Month Student Follow-up.
Frequency: Annually.
Affected Public: Individuals or households; State, local or Tribal Government, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 7,896.
Burden Hours: 9,150.
Abstract: The School-to-Work (STW) Act of 1994 directs the Secretaries of Education and Labor to evaluate progress made by States and local communities in establishing systems to promote effective school-to-work transitions. Information will be collected through surveys of local STW partnerships, case studies and surveys of high school seniors. This submission seeks clearance for surveys of local STW partnerships and an 18 month follow-up student survey. Data collected will be used in reports to Congress and to others interested in school-to-work programs.

[FR Doc. 96–17697 Filed 7–11–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No: 84.278e]

Office of Vocational and Adult Education

DEPARTMENT OF LABOR

Employment and Training Administration

Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996 for School-to-Work Opportunities State Implementation Grants (State Implementation Grants)

Purpose of Program: State Implementation Grants will enable States to implement their plans for statewide School-to-Work Opportunities systems. Such systems will offer young Americans access to programs designed to prepare them for a first job in high-skill, high-wage careers, and for further education and training. Funds awarded under section 212 of the School-to-Work Opportunities Act will serve as "venture capital" to allow States to build comprehensive School-to-Work Opportunities systems which provide all youth with high-quality education that integrates school-based learning, work-based learning and connecting activities, prepares young Americans for success in high-skill, high-wage careers, and increases their opportunities for further education and training.

Eligible Applicants: All States, including the District of Columbia and Puerto Rico, that did not receive a State

Implementation Grant in FY 1994 or 1995 are eligible for Implementation Grants under this competition. In accordance with the School-to-Work Opportunities Act, the Governor must submit the application on behalf of the State.

Deadline for Transmittal of Applications: August 30, 1996. Telefacsimile (FAX) applications will not be accepted.

Deadline for Intergovernmental Review: October 29, 1996.

Applications Available: Application packages will be mailed directly to both the Governor and the State School-to-Work Development Grant contact of each eligible applicant. Applications will be mailed to applicants, via overnight mail, within one day of the publication of this notice in the **Federal Register**.

Available Funds: Approximately $55.5 million (funding for the first twelve months).

Estimated Range of Awards: The Departments expect the minimum award to be approximately $1.5 million and the maximum award to be approximately $20 million. The Departments wish to emphasize that, in accordance with sections 212, 213, 214, and 216 of the Act, the actual amount of each award made under this competition will depend on such factors as the scope and quality of the State plan and application, the number of projected participants in programs operating within each State's School-to-Work Opportunities system, and the State's youth population. Therefore, the Departments strongly encourage applicants to consider these factors, the estimated average grant award amount, and the amount of awards made to Implementation States in prior rounds in deciding what funds to request. Applicants are discouraged from requesting significantly more funds than States with similar numbers of school-age youth received last year without a strong programmatic basis for doing so. Information on last years' awards is contained in the application package.

Estimated Average Size of Awards: $4.5 million.

Estimated Number of Awards: Up to 13.

Note: The Departments are not bound by any estimates in this notice.

Project Period: Up to five years (five twelve-month grant periods).

Applicable Regulations: In accordance with the authority provided in the Act, the Departments have determined that the administrative provisions contained in the Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86, will apply to grants awarded to State partnerships under this competition. The selection criteria and definition published in this notice, as well as the instructions contained in the application package and the eligibility and other requirements specified in the Act, apply to this competition.

Definition

All definitions in the Act apply to School-to-Work Opportunities systems funded under this and future State Implementation Grant competitions. Since the Act does not contain a definition of the term "administrative costs" as used in section 217 of the Act, the Departments apply the following definition to competitions for State Implementation Grants:

The term "administrative costs" means the activities of a State or local partnership that are necessary for the proper and efficient performance of its duties under the School-to-Work Opportunities Act and that are not directly related to the provision of services to participants or otherwise allocable to the system's allowable activities listed in section 215(b)(4) and section 215(c) of the Act. Administrative costs may be either personnel costs or non-personnel costs, and direct or indirect. Costs of administration shall include, but not be limited, to—

(a) Costs of salaries, wages, and related costs of the grantee's staff engaged in—

(1) Overall system management, system coordination, and general administrative functions;

(2) Preparing program plans, budgets, and schedules, as well as applicable amendments;

(3) Monitoring of local initiatives, pilot projects, subrecipients, and related systems and processes;

(4) Procurement activities, including the award of specific subgrants, contracts, and purchase orders;

(5) Developing systems and procedures, including management information systems, for assuring compliance with the requirements under the Act;

(6) Preparing reports and other documents related to the Act; and

(7) Coordinating the resolution of audit findings.

(b) Costs for goods and services required for administration of the system;

(c) Costs of system-wide management functions; and

(d) Travel costs incurred for official business in carrying out grant management or administrative activities.

Note on Administrative Cost Cap: In accordance with section 215(b)(6) of the Act, a local partnership receiving a subgrant from State Implementation Grant funds awarded under the competition may use no more than 10 percent of that subgrant for administrative costs associated with carrying out School-to-Work program activities in one fiscal year. This notice clarifies that a 10 percent cap on administrative costs applies to both State Implementation grantees and all State-funded local partnerships.

Selection Criteria and Review Process

Under this School-to-Work Opportunities Implementation Grant competition, the Departments will use the following selection criteria in evaluating applications. These criteria were published in final in the Notice Inviting Applications for New Awards for School-to-Work State Implementation Grants in FY 1995 (60 FR 26812). The Departments will utilize a two-phase review process. In the first phase, review teams, including peer reviewers, will evaluate applications using the selection criteria and the associated point values. In the second phase, review teams, including peers, will visit high-ranking States to gain additional information and further assess State plans. The following selection criteria will apply to both review phases. The Departments will base final funding decisions on information obtained during the site visits, the ranking of applications as a result of the first-phase review, and such other factors as replicability, sustainability, innovation, and geographic balance and diversity of program approaches.

Note: If the initial round of site visits yields fewer States in the competitive range than the Departments anticipated funding, and funds remain to finance additional awards, a second round of visits may be conducted. Candidates for site visits will be selected from States for which site visits have not been previously conducted, according to the scores following the peer review of applications. All site visit determinations will be made in a manner consistent with the process outlined above, and one or more of these States may also be recommended for funding.

Selection Criterion 1: Comprehensive Statewide System.

Points: 35.

Considerations: In applying this criterion, reviewers will consider—

(a) *20 points.* The extent to which the State has designed a comprehensive statewide School-to-Work Opportunities plan that—

(1) Includes effective strategies for integrating school-based and work-based learning, integrating academic and vocational education, and establishing linkages between secondary and postsecondary education;

(2) Is likely to produce systemic change in the way youth are educated and prepared for work and for further education, across all geographic areas of the State, including urban and rural areas, within a reasonable period of time;

(3) Includes strategic plans for effectively aligning other statewide priorities, such as education reform, economic development, and workforce development into a comprehensive system that includes the School-to-Work Opportunities system and supports its implementation at all levels—State, regional and local;

(4) Ensures that all students, including school dropouts, will have a range of options, including options for higher education, additional training and employment in high-skill, high-wage jobs; and

(5) Ensures coordination and integration with existing local education and training programs and resources, including those School-to-Work Opportunities systems established through local partnership grants and Urban/Rural Opportunities grants funded under Title III of the School-to-Work Opportunities Act, and related Federal, State, and local programs.

(b) *15 points.* The extent to which the State plan demonstrates the State's capability to achieve the statutory requirements and to effectively put in place the system components in Title I of the School-to-Work Opportunities Act, including—

(1) The work-based learning component that includes the statutory mandatory activities and that contributes to the transformation of workplaces into active learning components of the education system through an array of learning experiences, such as mentoring, job-shadowing, unpaid work experiences, school-sponsored enterprises, supported work experiences, and paid work experiences;

(2) The school-based learning component that will provide students, as well as school dropouts, with high level academic skills consistent with academic standards that the State establishes for all students, including, where applicable, standards established under the Goals 2000: Educate America Act;

(3) A connecting activities component to provide a functional link between school and work activities and employers and educators for both students and school dropouts; and

(4) A plan for an effective process for assessing students' skills and knowledge required in career majors, and the process for issuing portable skill certificates that are benchmarked to high quality standards such as those the State establishes under the Goals 2000: Educate America Act, and for periodically assessing and collecting information on student outcomes, as well as a realistic strategy and timetable for implementing the process.

Selection Criterion 2: Commitment of Employers and Other Interested Parties.

Points: 15.

Considerations: In applying this criterion, reviewers will consider the following:

(a) The extent to which the State has obtained the active involvement of employers and other interested parties listed in section 213(d)(5) of the Act, such as locally elected officials, secondary schools and postsecondary educational institutions (or related agencies), business associations, industrial extension centers, employees, labor organizations or associations of such organizations, teachers, related services personnel, students, parents, community-based organizations, rehabilitation agencies and organizations, registered apprenticeship agencies, local vocational education agencies, vocational student organizations, State or regional cooperative education associations, and human service agencies, as well as State legislators.

(b) Whether the State plan demonstrates an effective and convincing strategy for continuing the involvement of employers and other interested parties in the statewide system, such as the parties listed in section 213(d)(5) of the Act, as well as State legislators.

(c) The extent to which the State plan proposes to include private sector representatives as joint partners with educators in the oversight and governance of the overall School-to-Work Opportunities system.

(d) The extent to which the State has developed strategies to provide a range of opportunities for employers to participate in the design and implementation of the School-to-Work Opportunities system, including membership on councils and partnerships; assistance in setting standards, designing curricula and determining outcomes; providing worksite experience for teachers; helping to recruit other employers; and providing worksite learning activities for students, such as mentoring, job shadowing, unpaid work experiences, supported work experiences, and paid work experiences.

Selection Criterion 3: Participation of All Students.

Points: 15.

Considerations: In applying this criterion, reviewers will refer to the definition of the term "all students" in section 4(2) of the Act, and consider the following:

(a) The extent to which the State will implement effective strategies and systems to—

(1) Provide all students with equal access to the full range of program components specified in sections 102 through 104 of the Act and related activities such as recruitment, enrollment and placement activities; and

(2) Ensure that all students have meaningful opportunities to participate in School-to-Work Opportunities programs.

(b) Whether the plan identifies potential barriers to the participation of any students, and the degree to which the plan proposes effective ways of overcoming these barriers.

(c) The degree to which the State has developed realistic goals and methods for assisting young women to participate in School-to-Work Opportunities programs leading to employment in high-performance, high-paying jobs, including nontraditional jobs and has developed realistic goals to ensure an environment free from racial and sexual harassment.

(d) The feasibility and effectiveness of the State's strategy for serving students from rural communities with low population densities.

(e) The State's methods for ensuring safe and healthy work environments for students, including strategies for encouraging schools to provide students with general awareness training in occupational safety and health as part of the school-based learning component, and for encouraging employers to provide risk-specific training as part of the work-based learning component.

Note: Experience with the FY 1994 and FY 1995 School-to-Work Opportunities State Implementation Grant applications has shown that many applicants do not give adequate attention to designing programs that will serve school dropouts and programs that will serve students with disabilities. Therefore, the Departments would like to remind applicants that reviewers will consider whether an application includes strategies to specifically identify the barriers to participation of dropouts and students with disabilities and proposes specific methods for effectively overcoming such barriers and for integrating academic and vocational learning, integrating work-based learning and school-based learning, and

linking secondary and postsecondary education for dropouts and students with disabilities. Applicants are reminded that JTPA Title II funds may be used to design and provide services to students who meet the appropriate JTPA eligibility criteria.

Selection Criterion 4: Stimulating and Supporting Local School-to-Work Opportunities Systems.

Points: 15.

Considerations: In applying this criterion, reviewers will consider the following:

(a) The effectiveness of the State's plan for ensuring that local partnerships include employers, representatives of local educational agencies and local postsecondary educational institutions (including representatives of area vocational education schools, where applicable), local educators (such as teachers, counselors, or administrators), representatives of labor organizations or nonmanagerial employee representatives, and students, and others such as those included in section 4(11)(B) of the Act.

(b) The extent to which the State assists local entities to form and sustain effective local partnerships serving communities in all parts of the State.

(c) Whether the plan includes an effective strategy for addressing the specific labor market needs of localities that will be implementing School-to-Work Opportunities systems.

(d) The effectiveness of the State's strategy for building the capacity of local partnerships to design and implement local School-to-Work Opportunities systems that meet the requirements of the Act.

(e) The extent to which the State will provide a variety of assistance to local partnerships, as well as the effectiveness of the strategies proposed for providing this assistance, including such services as: developing model curricula and innovative instructional methodologies, such as creative strategies for meeting the needs of school dropouts; expanding and improving career and academic counseling services; and assisting localities in the use of technology-based instructional techniques.

(f) The effectiveness of the State's strategy for providing staff development to teachers, employers, mentors, counselors, related services personnel, and others who are critical to successful implementation of School-to-Work Opportunities systems for all youth, such as staff in alternative learning environments.

(g) The ability of the State to provide constructive assistance to local partnerships in identifying critical and emerging industries and occupational clusters.

Selection Criterion 5: Resources.

Points: 10.

Considerations: In applying this criterion, reviewers will consider the following:

(a) The amount and variety of other Federal, State, and local resources the State will commit to implementing its School-to-Work Opportunities plan, as well as the specific use of these funds, including funds for JTPA Summer and Year-Round Youth programs and Perkins Act programs.

(b) The feasibility and effectiveness of the State's long-term strategy for using other resources, including private sector resources, to maintain the statewide system when Federal resources under the School-to-Work Opportunities Act are no longer available.

(c) The extent to which the State is able to limit administrative costs in order to maximize the funds spent on the delivery of services to students, as required in section 214(b)(3)(B) of the Act, while ensuring the efficient administration of the School-to-Work Opportunities system.

Criterion 6: Management Plan.

Points: 10.

Considerations: In applying this criterion, reviewers will consider the following:

(a) The adequacy of the management structure that the State proposes for the School-to-Work Opportunities system.

(b) The extent to which the State's management plan anticipates barriers to implementation and proposes effective methods for addressing barriers as they arise.

(c) Whether the application includes an evaluation plan containing feasible, measurable goals for the School-to-Work Opportunities system, based on performance measures contained in section 402(a) of the Act.

(d) The extent to which the evaluation plan includes an effective method for collecting information relevant to the State's progress in meeting its goals, and is likely to assist the State to meet its School-to-Work Opportunities system objectives, to gauge the success of the system in achieving those objectives, to continuously improve the system's effectiveness, and to contribute to the review of results across all States.

(e) Whether the plan includes a feasible workplan for the School-to-Work Opportunities system that includes major planned objectives over a five-year period.

Additional Priority Points

As required by section 214(a)(1) and (a)(2) of the Act, the Departments will give priority to applications that demonstrate the highest level of concurrence among State partners with the State plan, and to applications that require paid, high quality work-based learning experiences as an integral part of the School-to-Work Opportunities system by assigning additional points—above the 100 points described in the criteria—as follows:

(a) *Highest Levels of Concurrence—5 Points*

Up to 5 points will be awarded to applications that can fully demonstrate that each of the State partners listed in section 213(b)(4) of the Act concurs with the State School-to-Work Opportunities plan, and that the State partners' concurrence is backed by a commitment of time and resources to implement the plan.

(b) *Paid, High-quality Work-based Learning—10 Points*

Up to 10 points will be awarded to applications that demonstrate that the State—

(1) Has developed effective plans for requiring, to the maximum extent feasible, paid, high-quality work experience as an integral part of the State's School-to-Work Opportunities system, and for offering the paid, high-quality work experiences to the largest number of participating students and school dropouts as is feasible; and

(2) Has established methods for ensuring consistently high quality work-based learning experiences across the State.

For Applications or Information Contact: Karen Clark, National School-to-Work Office, 400 Virginia Avenue, S.W., Washington, D.C. 20024. Telephone: (202) 401–6222 (this is not a toll-free number). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 6101 *et seq.*

Dated: July 9, 1996.

Timothy M. Barnicle,

Assistant Secretary for Employment and Training, Department of Labor.

Patricia W. McNeil,

Assistant Secretary for Vocational and Adult Education, Department of Education.

[FR Doc. 96–17870 Filed 7–11–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket Nos. 96–25–NG, 96–27–NG, 96–28–NG, 96–30–NG, 96–32–NG, 96–33–NG and 96–34–NG]

The Brooklyn Union Gas Company, et al.; Orders Granting Authorization to Import and/or Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued Orders authorizing various imports and/or exports of natural gas. These Orders are summarized in the attached Appendix.

These Orders are available for inspection and copying in the Office of Fuels Programs Docket Room, 3–F056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 1, 1996.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

APPENDIX—IMPORT/EXPORT AUTHORIZATIONS GRANTED

[DOE/FE AUTHORITY]

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
1168	05/23/96	The Brooklyn Union Gas Company (96–25–NG).		50 Bcf/term	Blanket for 2 years from and to Canada.
1169	5/23/96	The Brooklyn Union Gas Company (96–27–NG).		50 Bcf/term	Blanket for 2 years to Mexico.
1170	05/29/96	The Brooklyn Union Gas Company (96–28–NG).	50 Bcf/term		Blanket for 2 years from Mexico.
1171	06/03/96	Onyx–CCGM, L.C. (96–30–NG)	110 Bcf/term	Combined total (See import).	Blanket for 2 years from and to Mexico.
1172	06/07/96	National Fuel Resources, Inc. (96–32–NG)	8 Bcf/term	8 Bcf/term	Blanket for 2 years from and to Canada.
1173	06/07/96	Michigan Consolidated Gas Company (96–33–NG).	73 Bcf/term		Blanket for 2 years from Canada.
1174	06/14/96	CU Energy Marketing, Inc. (96–34–NG)	200 Bcf/term		Blanket for 2 years from Canada.

[FR Doc. 96–17754 Filed 7–11–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP96–299–000]

Carnegie Interstate Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

July 8, 1996.

Take notice that on July 1, 1996, Carnegie Interstate Pipeline Company ("CIPCO") tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1, to become effective on August 1, 1996:

Eighth Revised Sheet No. 7

CIPCO states that this is its quarterly filing pursuant to Section 32.2 of the General Terms and Conditions of its FERC Gas Tariff to reflect prospective changes in transportation costs associated with unassigned upstream capacity held by CIPCO on Texas Eastern Transmission Corporation ("Texas Eastern") for the 3-month period commencing August 1, 1996 and ending October 31, 1996. The filing reflects an increase in the Transportation Cost Rate ("TCR") from $0.8558 to $0.9786. The new TCR includes a TCR Adjustment of $1.4691 and a TCR Surcharge credit of $0.4905.

CIPCO states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17719 Filed 7–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–298–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 8, 1996.

Take notice that on July 1, 1996, Columbia Gas Transmission Corporation (Columbia) filed the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff) bearing a proposed effective date of August 1, 1996.

Thirteenth Revised Sheet No. 25
Thirteenth Revised Sheet No. 26
Thirteenth Revised Sheet No. 27
Fourteenth Revised Sheet No. 28

Columbia states that this filing is being made pursuant to Section 46 (Stranded Facilities Charge (SFC)) of the General Terms and Conditions (GTC) of Columbia's FERC Gas Tariff, Second

Revised Volume No. 1. Columbia filed its SFC Tariff provision and resulting initial SFC as part of its August 1, 1995, general rate case filing pursuant to Section 4 of the Natural Gas Act initiating Docket No. RP95–408. The SFC was accepted and suspended effective February 1, 1996, and it is currently set for hearing before an Administrative Law Judge in Docket No. RP95–408. GTC Section 46.3(b) requires Columbia to restate the SFC twice a year (Adjustment Filings). This filing is Columbia's first Adjustment Filing recalculating the SFC pursuant to GTC Section 46.3(b) to be effective August 1, 1996. By this filing, Columbia is proposing a reduction in the SFC to reflect adjustments to the unamortized balance of "Stranded Facilities Costs" including: collections for the first biannual collection period; updates for actual activity since February 1, 1996, including for the actual net book value of stranded facilities as of January 31, 1996; the collection of only FERC interest on the unamortized balance; certain capital expenditures to maintain stranded facilities; and to reflect other adjustments as more fully explained in the filing. Columbia states that it has recalculated the SFC based upon projected demand determinats for the twelve month period commencing August 1, 1996, consistent with GTC Section 46.3.

Columbia states that copies of its filing are available for inspection at its offices at 1700 MacCorkle Avenue, SE., Charleston, West Virginia, and 700 Thirteenth Street, NW., Suite 900, Washington, DC; and have been mailed to all firm customers, affected state Commissions and interruptible customers.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervent. Copies of this filing are on filed with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17718 Filed 7–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–301–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 8, 1996.

Take notice that on July 1, 1996, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 the following tariff sheets to become effective August 1, 1996.

Second Revised Sheet No. 122
First Revised Sheet No. 122A

FGT states that Section 10.E. of the General Terms and Conditions (GT&C) of its FERC Gas Tariff provides shippers the opportunity to delegate the tasks associated with nominations and scheduling, as well as other administrative tasks, to one or more designees. Paragraph 1(f) of Section 10.E. requires that if such designation encompasses the resolution of imbalances or payment responsibility under Sections 14 and 15, respectively, of the GT&C, the designee must meet the creditworthiness provisions set forth in Section 16 of the GT&C. The instant filing eliminates this requirement that designees be creditworthy. Rather, the shipper shall retain such responsibility as set forth in Paragraph 1(g) of Section 10.E., unless otherwise agreed upon in writing by FGT.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17716 Filed 7–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–297–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 8, 1996.

Take notice that on July 1, 1996, Tennessee Gas Pipeline tendered for filing as part of its Fifth Revised FERC Gas Tariff the following tariff sheets to become effective August 1, 1996:

Eighth Revised Sheet No. 20
Twelfth Revised Sheet No. 21A
Seventeenth Revised Sheet No. 22
Twelfth Revised Sheet No. 22A
Eighth Revised Sheet No. 23
Third Revised Sheet No. 23B
Fifteenth Revised Sheet No. 24
Tenth Revised Sheet No. 25
Eighth Revised Sheet No. 26B

Tennessee states that the purpose of this filing is to recover gas supply realignment costs ("GSR costs") paid or known and measureable at the time of the filing, consistent with the GSR cost recovery provisions reflected in Section XXVI of the General Terms and Conditions of Tennessee's Fifth Revised FERC Gas Tariff. The charges include a GSR demand surcharge applicable to firm customers and a unit GSR component applicable to Tennessee's interruptible services.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedures. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17717 Filed 7–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–231–001]

Kern River Gas Transmission Company; Notice of Compliance Filing

July 8, 1996.

Take notice that on June 28, 1996, Kern River Gas Transmission ("Kern River") tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to become effective June 3, 1996:

First Revised Volume No. 1

First Revised Sheet Nos. 74–76
First Revised Sheet No. 92
Substitute Third Revised Sheet No. 93
Substitute First Revised Sheet No. 126
Substitute Second Revised Sheet No. 127

Kern River states that the purpose of this filing is to comply with the Commission's Order Accepting Tariff Sheets Subject to Conditions issued on May 30, 1996 in Docket No. RP96–231. 75 FERC ¶ 61,228. To comply with the directives of the Commission, Kern River has proposed tariff language to revise and clarify Kern River's policy regarding the construction of delivery facilities and the choice-of-law provisions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17721 Filed 7–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–117–002]

Texas Eastern Transmission Corporation; Notice of Compliance Filing

July 8, 1996.

Take notice that on June 27, 1996, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to become effective June 27, 1996:

Fourth Revised Sheet No. 596
Substitute Original Sheet No. 596A

Texas Eastern asserts that the purpose of this filing is to comply with the Commission's order issued June 14, 1996 in Docket Nos. RP96–117–000 and RP96–117–001 (June 14 Order).

Texas Eastern states that in compliance with Ordering Paragraph (A) of the June 14 Order, this filing reflects in Section 10.10 of the General Terms and Conditions of its FERC Gas Tariff the pro forma revisions to the order of discounts as submitted in its comments.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern, interested state commissions, and other parties to this proceeding.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17715 Filed 7–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–300–000]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

July 8, 1996.

Take notice that on July 1, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 585011, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 the following revised tariff sheets to become effective July 1, 1996:

Second Revised Volume No. 1

First Revised Sheet No. 264
Third Revised Sheet No. 265
Second Revised Sheet No. 275

Williston Basin states that the revised tariff sheets allow releases of and requests for released capacity under Rate Schedule ST–1 which contains a two-part rate structure.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17720 Filed 7–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER91–195–024, et al.]

Western Systems Power Pool, et al.; Electric Rate and Corporate Regulation Filings

July 5, 1996.

Take notice that the following filings have been made with the Commission:

1. Western Systems Power Pool and Mid American Natural Resources, Inc.

[Docket Nos. ER91–195–024 and ER95–1423–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On June 11, 1996, Western Systems Power Pool filed certain information as required by the Commission's April 23, 1991, order in Docket No. ER91–195–000.

On June 18, 1996, Mid American Natural Resources, Inc. filed certain information as required by the Commission's August 25, 1995, order in Docket No. ER95–1423–000.

2. Central Power and Light Company and West Texas Utilities Company

[Docket Nos. ER96–64–000, ER96–355–000, ER96–1181–000, and ER96–1342–000]

Take notice that on June 20, 1996, Central Power and Light Company and West Texas Utilities Company requested permission to withdraw the service agreements that they submitted in the above-captioned dockets.

Copies of the filing were served on the affected customers.

Comment date: July 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Black Hills Power and Light Company

[Docket No. ER96–1704–000]

Take notice that on June 27, 1996, Black Hills Power and Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: July 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Pool

[Docket No. ER96–2180–000]

Take notice that on June 19, 1996, New England Power Pool Executive Committee filed signature pages to the NEPOOL Agreement dated September 1, 1971, as amended, signed by Eastern Power Distribution, Inc. (Eastern Power), UNITIL Resources, Inc. (UNITIL) and Federal Energy Sales, Inc. (Federal Energy). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature pages would permit Eastern Power, UNITIL and Federal Energy to join the over 90 Participants that already participate in the Pool. NEPOOL further states that the filed signature pages do not change the NEPOOL Agreement in any manner, other than to make Eastern Power, UNITIL and Federal Energy Participants in the Pool. NEPOOL requests an effective date on or before July 1, 1996, or as soon as possible thereafter for commencement of participation in the Pool by Eastern Power, UNITIL and Federal Energy.

Comment date: July 19, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. American Electric Power Service Corporation

[Docket No. ER96–2259–000]

Take notice that on June 28, 1996, American Electric Power Service Corporation (AEPSC), tendered for filing service agreements, executed by AEPSC and the following Parties, under the AEP Companies' Power Sales and/or Point-to-Point Transmission Service Tariffs: AIG Trading Corporation, Ohio Valley Electric Corporation and PanEnergy Power Services, Inc.

The Power Sales Tariff has been designated as FERC Electric Tariff, First Revised Volume No. 2, effective October 1, 1995. The Point-to-Point Transmission tariff has been designated AEPSC FERC Electric Tariff Second Revised Volume No. 1, effective September 7, 1993. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after June 1, 1996.

A copy of the filing served upon the Parties and the State Utility Regulatory Commission of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: July 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Electric and Gas Company

[Docket No. ER96–2260–000]

Take notice that on June 28, 1996, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to CNG Power Services Corporation (CNG), pursuant the PSE&G Bulk Power Service Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations such that the agreement can be made effective on July 1, 1996.

Copies of the filing have been served upon CNG and the New Jersey Board of Public Utilities.

Comment date: July 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Electric and Gas Company

[Docket No. ER96–2261–000]

Take notice that on June 28, 1996, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to PanEnergy Power Services, Inc. (PanEnergy), pursuant the PSE&G Bulk Power Service Tariff, presently on file with the Commission.

Copies of the filing have been served upon PanEnergy and the New Jersey Board of Public Utilities.

Comment date: July 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Louisville Gas and Electric Company

[Docket No. ER96–2262–000]

Take notice that on June 28, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Vitol Gas and Electric, L.L.C. under Rate GSS.

Comment date: July 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Louisville Gas and Electric Company

[Docket No. ER96–2263–000]

Take notice that on June 28, 1996, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Enron Power Marketing, Inc. under Rate GSS.

Comment date: July 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Maine Yankee Atomic Power Company

[Docket No. ER96–2264–000]

Take notice that on June 28, 1996, Maine Yankee Atomic Power Company, tendered for filing a limited 205 filing solely for approval of earnings on Construction Work In Progress balances for the year 1995 that were included in rates subject to refund. Total earnings on CWIP balances for 1995 were $311,055 or 0.15 percent of total billings. This represents an increase of $71,305 from the 1994 CWIP billings of $239,750.

Copies of the limited 205 filing were served upon Maine Yankee's jurisdictional customers, secondary customers, and Massachusetts Department of Public Utilities, Vermont Public Service Board, Connecticut Public Utilities Control Authority, Maine Public Utilities Commission, New Hampshire Public Utilities Commission, Office of the Public Advocate, State of Maine, and Rhode Island Division of Public Utilities and Carriers.

Comment date: July 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Portland General Electric Company

[Docket No. ER96–2265–000]

Take notice that on June 28, 1996, Portland General Electric Company (PGE), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a Notice of Termination for Portland General Electric Company FERC Rate Schedule No. 113, the WNP–1 Project Exchange Agreement between PGE, the Washington Public Power Supply System (WPPSS), and the Bonneville Power Administration (Bonneville).

A copy of the filing was served upon Bonneville and WPPSS.

Comment date: July 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER96–2266–000]

Take notice that on June 28, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Point-to-Point Transmission Service Tariff (the Tariff) entered into between Cinergy and CNG Power Services Corporation.

Comment date: July 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Duke Power Company

[Docket No. ER96–2267–000]

Take notice that on June 28, 1996, Duke Power Company (Duke), tendered for filing a Service Agreement for Market Rate (Schedule MR) Sales between Duke and Union Electric Company.

Comment date: July 18, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17756 Filed 7–11–96; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 11499–000 and 11500–000–Tennessee]

Armstrong Energy Resources; Notice of Intent To Prepare a Joint Environmental Impact Statement, Conduct Public Scoping Meeting and Site Visits, and Determine the Feasibility of Forming a Cooperative Consultation Process Team With Interested Parties

July 8, 1996.

The Federal Energy Regulatory Commission (FERC) and the Tennessee Valley Authority (TVA) have received proposals from Armstrong Energy Resources to construct and operate the 1,500 megawatt Laurel Branch Pumped Storage Project, FERC No. 11499–000, and the 1,000 megawatt Reynolds Creek Pumped Storage Project No. 11500–000. The Laurel Branch Project would be located in Bledsoe County, Tennessee, seven miles northeast of Dunlap, Tennessee. The Reynolds Creek project would be located in Sequatchie County, Tennessee, approximately five miles northwest of Dunlap, Tennessee.

The FERC staff has determined that Federally licensing these projects pursuant to provisions of the Federal Power Act would constitute a major federal action significantly affecting the quality of the human environment. Additional federal involvement with these projects include TVA's approval of project shoreline structures under Section 26a of the TVA Act, providing the "pump-up" power for the projects, and, possibly purchasing some of the generation from the projects. Therefore, FERC and TVA staff intend to prepare an environmental impact statement (EIS) on the hydroelectric projects in accordance with the National Environmental Policy Act (NEPA). TVA has requested that FERC be a joint lead cooperating agency in the preparation of an EIS and FERC has agreed to become a joint lead agency. Additionally, the U.S. Army Corps of Engineers has agreed to be a cooperating agency because of its jurisdiction pursuant to Section 404 of the Clean Water Act.

The review process being utilized for the projects will initiate environmental compliance under NEPA subsequent to the filing of the Section 26(a) permit application with TVA and concurrently with the preparation of a FERC license applications. Under the joint cooperative EIS process, scoping and draft EIS preparation will occur prior to the filing of a final license applications with FERC.

Active participation by interested federal and state agencies and members of the public will be essential for this process to be successful. TVA and FERC staff will determine at the scoping meetings whether Federal and State resource agencies, local and regional conservation organizations, local municipalities and other parties are interested in participating in a Cooperative Consultation Team Process (CCP) to assist the staff in development of the EIS scoping process. CCP team members would assist in identifying areas of interests, issues, required scientific study objectives and methodologies, provide information or data, define project alternatives and other matters of interest to all parties. To enhance public input the TVA and FERC staff will actively engage and work with the participants throughout the process.

The EIS will objectively consider both site-specific and cumulative environmental impacts of the projects and reasonable alternatives. It will also address economic, financial and engineering analysis. A draft EIS will be circulated to all interested parties for review. Comments will also be requested. FERC and TVA will also hold a joint public meeting to elicit comments on the draft EIS. All comments filed on the draft EIS will be analyzed by staff and will be considered in a final EIS. The staffs' conclusions and recommendations will be presented to the Tennessee Valley Authority and the Federal Energy Regulatory Commission for consideration in reaching final permit and licensing decisions, respectively.

Scoping Process

FERC and TVA will jointly conduct two scoping meetings on August 6, 1996. These meetings are scheduled as follows:

An agency scoping meeting will be held at Bledsoe County High School, Highway 127 South in Pikeville, Tennessee, beginning at 10:00 a.m., CDT.

A public scoping meeting will also be held at Bledsoe County High School with registration beginning at 5:00 p.m. and the meeting scheduled from 5:30 to 9:00 p.m., CDT. It will not be necessary for participants to stay for the whole meeting in order to have their comments recorded. Anyone needed sign language interpretation or other special arrangements, please contact Jill Elmendorf at (423) 632–6592 no later than Monday, July 29.

The meetings will be recorded by a stenographer and will become a part of the formal record of the FERC and TVA proceeding. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record.

Interested individuals, organizations, and agencies are invited to comment on the scope of the proposed EIS. Scoping will help ensure that a full range of issues related to these proposals are addressed in the EIS, an also will identify significant or potentially significant impacts that may result from the proposed projects.

To help focus discussions at the meetings, a preliminary scoping document (Scoping Document I) outlining subject areas to be addressed on the EIS will be mailed to agencies and interested individuals. Preliminary Scoping Document I will also be available at the scoping meetings.

At the scoping meetings, FERC and TVA staff will: (1) Identify preliminary environmental issues related to the proposed project; (2) identify preliminary resource issues that are not important and do not require detailed analysis; (3) identify reasonable alternatives to be addressed in the EIS; (4) solicit from the meeting participants all available information, especially quantified data, on the resource issues; and (5) encourage statements from experts and the public on issues that should be analyzed in the EIS, including points of view in opposition to, or in support of, the staffs' preliminary views.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meetings. In addition, written scoping comments may be filed with Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20425, with Linda Oxendine, Senior Specialist, Tennessee Valley Authority, 400 West Summit Hill Drive, WT8C–K, Knoxville, TN 37902. All written correspondence should clearly show the following captions on the first page: Laurel Branch Pumped Storage Project, FERC Project No. 11499–000, and Reynolds Creek Pumped Storage Project, FERC Project No. 11500–000.

Site Visit

A site visit to the proposed project location is planned for Monday, August 5 at 2:00 p.m. CDT. Participants will gather at Dunlap, Tennessee. Please contact Jill Elmendorf at (423) 632–6592 no later than Thursday, August 1 for reservations and information.

Consultation With the State Historic Preservation Officer

With this notice, we are initiating consultation with the Tennessee State Historic Preservation Officer (SHPO), as required by § 106 of the National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Additional Scientific Study Requests

In accordance with Section 4.32(b)(7) of the FERC regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for complete analysis of these projects on its merits, they must file a request for the study with the FERC, together with justification for such request, not later than 60 days from the date of this notice and serve a copy of the request on the potential applicant.

For Further Information on This Process, please contact Eddie R. Crouse, FERC, (202) 219–2794, or Linda Oxendine, TVA, (423) 632–3440.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17714 Filed 7–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–564–000]

National Fuel Gas Supply Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Line K Relocation Project and Request for Comments on Environmental Issues

July 8, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facility proposed in the Line K Relocation Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

National Fuel Gas Supply Corporation (National Fuel) wants to construct about 877 feet of 20-inch-diameter pipeline to replace about 454 feet of Line K in Erie County, New York. Of this 454-foot-long segment of Line K, about 147 feet would be removed and 307 feet would be abandoned in place. National Fuel states that due to encroachment of residential development this segment of deteriorating Line K can not be replace in the same location.

The specific location of the project facility is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facility would require about 0.99 acre of land. Following construction, about 0.60 acre would be maintained as permanent right-of-way. The remaining 0.33 acre would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call the "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- land use
- cultural resources
- hazardous waste
- public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facility and the environmental information provided by National Fuel. This preliminary list of issues may be

[1] National Fuel Gas Supply Corporation's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

changed based on your comments and our analysis:

- Three residences are located within 50 feet of the construction right-of-way.
- The entire project lies within a residential area.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal including alternative routes, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Washington, D.C. 20426;
- Reference Docket No. CP96–564–000;
- Send a *copy* of your letter to: Mrs. Medha Kochhar, EA Project Manager, Federal Energy Regulatory Commission, 888 First St., N.E., PR–11.2, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before August 12, 1996.

If you wish to receive a copy of the EA, you should request one from Mrs. Medha Kochhar at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mrs. Medha Kochhar, EA Project Manager, at (202) 208–2270.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17713 Filed 7–11–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5471–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 24, 1996 Through June 28, 1996 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1996 (61 FR 15251).

Draft EISs

ERP No. D–APH–A99207–00 Rating EC2, Programmatic EIS—Veterinary Services (VS) Programs, Implementation, to Detect, Prevent, Control, and Eradicate Domestic and Foreign Animal Diseases and Pests, All 50 States and the United States Territories.

Summary: EPA expressed environmental concerns with the program regarding contamination of ground water from carcass disposal and issues concerning pesticide use. EPA suggested that the final EIS include additional alternatives and assessment of their impacts, consideration of mitigation of chemical use, applicator training requirements, and several changes to inaccuracies pertaining to pesticide use.

ERP No. D–COE–F35042–IN Rating EC2, Indiana Harbor and Canal Dredging and Confined Disposal Facility, Construction and Operation, Comprehensive Management Plan, East Chicago, Lake County, ID.

Summary: EPA expressed environmental concerns regarding dredging depth impacts to water quality, cumulative impacts, and TSCA and RCRA issues. EPA requested that additional information be provided in the final EIS to address these issues.

ERP No. FRC–L05216–WA Rating EU3, Cushman Hydroelectric Project (FERC No. 460), Relicensing, North Fork Skokomish River, Mason County, WA.

Summary: EPA's review concluded that the proposed alternative is environmentally unsatisfactory. In addition, EPA has significant concerns regarding the adequacy of the draft EIS. In particular, the draft EIS does not (1) provide a comprehensive analysis of cumulative impacts; (2) appropriately characterize the no-action alternative; (3) assess impacts on Tribal Trust/Treaty resources; (4) give equal consideration to power and nonpar values when assessing project "benefits"; and (5) provide sufficient information and support conclusions regarding alternatives and mitigation measures, especially with regard to restoration of more natural flows to the North Fork Skokomish River. EPA noted that if this proposal is carried forward to the final EIS without correcting unacceptable impacts, it will be a candidate for referral to the Council on Environmental Quality.

ERP No. D–IBR–K39043–CA Rating EU3, American River Water Resources Investigation, Implementation, Placer, Suter, EL Dorado, Sacramento and San Joaquin Counties, CA.

Summary: EPA's review concluded that one of the alternatives, the proposed Auburn Dam on the American River, is environmentally unsatisfactory. EPA noted that if this proposal is carried forward to the Final EIS without correcting unacceptable impacts, it will be a candidate for referral to the Council on Environmental Quality. EPA urged the Bureau of Reclamation and other program sponsors to pursue development of a non-Auburn Dam alternative which modifies elements of the Conjunctive Use alternative to guarantee adequate instream flows and Bay/Delta outflow.

ERP No. D–USN–A11073–00 Rating EC2, United States Navy Shipboard Solid Waste Disposal, Implementation, MARPOL Special Areas: Designated Baltic Sea, North Sea, Wilder Caribbean, Antarctic Ocean, Mediterranean Sea, Black Sea and Red Sea, Gulfs Region: Persian Gulf and Gulf of Oman.

Summary: EPA expressed environmental concerns for additional measures to protect special resources (e.g., coral reefs) and to ensure that future designs of ships provide for storage space for wastes; EPA also requested additional impacts analysis and clarification regarding planned actions in the Baltic Sea, the North Sea and Antarctic Waters.

Final EISs

ERP No. F–COE–E30036–MS Coldwater River Watershed Demonstration Erosion Control Project, Flood and Sediment Control Measures, Implementation, Yazoo Basin, Marshall, Benton and Tate Counties, MS.

Summary: EPA had no significant environmental objections with implementation of the proposed flood control measures. No formal comment letter was sent to the preparing agency.

ERP No. FS–COE–K32028–CA
Richmond Harbor Deep Draft Navigation Improvements, Updated and Additional Information to Improve Navigation Efficiency into the Potrero, San Francisco Bay, Contra Costa County, CA.

Summary: EPA expressed environmental concerns with the Corps' failure to select an alternative with a greater degree of beneficial use, in line with the goals of the Long Term Management Strategy for San Francisco Bay dredged material disposal. EPA also expressed a need for monitoring and appropriate mitigation of impacts to eelgrass beds and shallow subtidal habitat.

Dated: July 9, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–17797 Filed 7–11–96; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5471–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed July 01, 1996 Through July 05, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 960312, Draft EIS, NPS, VA, Shenandoah National Park, Facility Development Plan, Implementation, several counties, VA, Due: August 26, 1996, Contact: John W. Wade (540) 999–3400.

EIS No. 960313, Final EIS, FHW, AL, Montgomery Outer Loop Construction, US 80 southwest of Montgomery to I–85 east of Montgomery, Funding and COE Section 404 Permit Issuance, Montgomery County, AL, Due: August 12, 1996, Contact: Joe D. Wilkerson (334) 223–7370.

EIS No. 960314, Draft Supplement, AFS, OR, Mount Hood Meadows Ski Area Additional Development and Expansion to the Skiing and Summer Areas, Construction to Forest Road 3555, Special Use Permit and NPDES Permit, Hood River Ranger District, Mount Hood National Forest, Hood River County, OR, Due: August 26, 1996, Contact: Mike Odom (360) 696–7766.

EIS No. 960315, Draft EIS, COE, Santa Maria and Sisquoc Rivers Specific Plan, Mining and Reclamation Plans, (MRPs), Coast Rock Site and S.P. Milling Site, Conditional Use Permits, Approval of Reclamation Plans, and COE Section 404 Permits, Santa Barbara and San Luis Obispo County, CA, Due: August 26, 1996, Contact: Theresa Stevens (805) 641–0936.

EIS No. 960316, Final EIS, FRC, MT, Kerr Hydroelectric Project (FERC No. 5–021), License Modification Issuance to Existing License, Flathead River, Flathead and Lake Counties, MT, Due: August 12, 1996, Contact: Robert Grieve (202) 219–2655.

EIS No. 960317, Final EIS, AFS, MT, Boulder and Wyman Gulch Vegetation Management Timber Sale and Prescribed Burning, Implementation, Beaverhead-Deerlodge National Forests, Philipsburg Ranger District, Granite County, MT, Due: August 12, 1996, Contact: Ed Casey (406) 859–3211.

EIS No. 960318, Draft EIS, FHW, CA, CA–125 South Route Location, Adoption and Construction, between CA–905 on Otay Mesa to CA–54 in Spring Valley, Funding and COE Section 404 Permit, San Diego County, CA, Due: September 03, 1996, Contact: Jeffery S. Lewis (916) 498–5035.

Dated: July 9, 1996.

William D. Dickerson,

Director, NEPA Compliance Division Office of Federal Activities.

[FR Doc. 96–17798 Filed 7–11–96; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5536–3]

Clean Air Act Advisory Committee Notice of Meeting; Correction Notice

SUMMARY: On June 28, 1996 (61 FR 33736) a notice was published in error stating that the Subcommittee for Development of Ozone, Particulate Matter and Regional Haze Implementation Programs of the Clean Air Act Advisory Committee was planned for Monday, July 29, 1996. The meeting of this subcommittee is scheduled for Tuesday, July 30, 1996, from 8:00 a.m.–5:00 p.m., and will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Crystal City, Virginia.

For Further Information concerning the Subcommittee for Development of Ozone, Particulate Matter, and Regional Haze Implementation Programs, please contact Mr. William F. Hamilton, Designated Federal Official, at 919–541–5498, or by mail at U.S. EPA, Office of Air Quality Planning and Standards, MD–12, Research Triangle Park, North Carolina 27711. When a draft agenda is developed, a copy can be downloaded from the Ozone/Particulate Matter/Regional Haze FACA Bulletin Board, which is located on the Office of Air Quality Planning and Standards Technology Transfer Network (OAQPS TTN) or by contacting Ms. Denise M. Gerth at 919–541–5550.

Dated: July 8, 1996.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 96–17803 Filed 7–11–96; 8:45 am]

BILLING CODE 6560–50–M

[OPP–181016; FRL 5383–4]

Pyriproxyfen and Buprofezin; Receipt of Application for Emergency Exemptions, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the California Environmental Protection Agency, Department of Pesticide Regulation (hereafter referred to as the "Applicant") to use the insect growth regulators pyriproxyfen (CAS 95737–68–1) and buprofezin (CAS 69327–76–0) to treat up to 24,000 acres of cotton in Imperial, Riverside, and San Bernardino counties, to control the sweet potato, or silverleaf whitefly (*Bemesia species*).

In the case of pyriproxyfen, the Applicant proposes the first food use of an active ingredient. Buprofezin is an unregistered material, and its proposed use is thus use of a "new" chemical.

Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments must be received on or before July 29, 1996.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–181016," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181016]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8791; e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue specific exemptions for the use of pyriproxyfen and buprofezin on cotton to control the sweet potato, or silverleaf whitefly (SLW). Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant states that a new strain or possibly a new species, of whitefly, often referred to as the strain B of sweet potato whitefly, or silverleaf whitefly (SLW), has been a major pest of cotton in Imperial, Riverside, and San Bernardino counties of California since 1991. Since that time, it has steadily spread to new host plants and grown in population size each summer and fall. The SLW causes damage by feeding, and also through the production of honeydew, which encourages growth of sooty mold and other fungi. When SLWs become numerous, their direct feeding lowers the yield. The SLW has also been implicated as a vector of virus. The Applicant claims that adequate control of the SLW is not being achieved with currently registered products and alternative cultural practices. The Applicant points out that the ability to adequately control this pest is further complicated because of the close proximity of these California cotton-growing areas to that of Arizona where large populations of whitefly have demonstrated resistance to available insecticidal control. It is expected that resistant whitefly will migrate into California and cause identical resistance problems to those being experienced in Arizona. The Applicant indicates that one application of either one or the other of the requested chemicals would not provide adequate control throughout the season, and since application of either would be limited to one, is requesting the use of both materials. The Applicant indicates that without adequate control of the SLW in cotton, significant economic losses will be suffered.

The Applicant proposes to apply pyriproxyfen at a rate of 0.054 lb. active ingredient (a.i.) per acre with a maximum of one application per crop season on a total of 24,000 acres of cotton. The Applicant proposes to apply buprofezin at a rate of 0.35 lb. a.i., per acre with a maximum of one application per crop season on a total of up to 24,000 acres of cotton. Therefore, use under these exemptions could potentially amount to a maximum total of 1,296 lbs. of pyriproxyfen and 8,400 lbs. of buprofezin.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt in the **Federal Register** for an application for a specific exemption proposing the first food use of an active ingredient, or for use of a new (unregistered) chemical. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–181016] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the California Department of Pesticide Regulation.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: July 2, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–17901 Filed 7–11–96; 8:45 am]

BILLING CODE 6560–50–F

[ER–FRL–5471–4]

Availability of Draft Guidance on Environmental Justice in EPA's NEPA Compliance Analysis

Responsible Agency: Office of Federal Activities.

The Office of Federal Activities (OFA) has prepared a draft guidance on "Environmental Justice in EPA's NEPA Compliance Analysis" which is available for review.

The National Environmental Policy Act (NEPA) requires all federal agencies to evaluate the environmental consequences of major federal actions. In February, 1994, the Administration issued Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and

Low-Income Populations. Specifically, the Executive Order requires all federal agencies to analyze the environmental effects, including human health, economic and social effects, of federal actions, including effects on minority communities and low-income communities, as required by the National Environmental Policy Act of 1969.

A Presidential Memorandum accompanying the Executive Order requires all federal agencies to design a strategy to incorporate EJ assessment into ongoing projects and all future planning. In conjunction with the Office of Environmental Justice and the American Indian Environmental Office, OFA has completed draft guidance to assist EPA staff responsible for developing EPA/NEPA compliance documentation, including environmental impact statements (EISs) and environmental assessments (EAs) in addressing environmental justice concerns. The draft EJ/NEPA Guidance is available for review through September 30, 1996. At that time, the document will be revised to incorporate comments.

Please contact Arthur Totten at 202/564–7164 or Karen Norris at 202/564–7132 or write EPA, 401 M Street, SW. (2252A), Washington, DC, 20460 to request a copy. The document can also be found on the Internet under OFA's home page at http://es.inel.gov/oeca/ofa/index.html.

Dated: July 9, 1996.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 96–17811 Filed 7–11–96; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, July 16, 1996, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Proposed Amendments to Part 311—Rules Governing Public Observation of Meetings of the Corporation's Board of Directors.

Memorandum and resolution re: Proposed Amendments to Part 357—Determination of Economically Depressed Regions.

Discussion Agenda:

Memorandum and resolution re: Stored Value Cards.

Memorandum and resolution re: Final Rule Amending Part 348 of the Corporation's Regulations on Management Official Interlocks.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898–6757.

Dated: July 9, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96–17897 Filed 7–10–96; 12:16 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 5, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Roosevelt Financial Group, Inc., Chesterfield, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Community Charter Corporation, St. Louis, Missouri, and thereby indirectly acquire Missouri State Bank & Trust Company, St. Louis, Missouri.

In connection with this proposal, Roosevelt Financial Group, Inc., Chesterfield, Missouri, has applied to continue to own, control and operate a savings institution through the retention of 100 percent of the voting shares of Roosevelt Bank, FSB, Chesterfield, Missouri, pursuant to § 225.25(b)(9) of the Board's Regulation Y; and continue to engage in mortgage banking activities through the retention of 10 percent of the voting shares of Roosevelt Mortgage Company, Chesterfield, Missouri, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. Southwest Missouri Bancshares, Inc., Ozark, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Southwest Community Bank, Ozark, Missouri, a *de novo* bank.

3. S.Y. Bancorp, Inc., Louisville, Kentucky; to acquire 100 percent of the voting shares of The Austin State Bank, Austin, Indiana.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Nacogdoches Commercial Bancshares, Inc., Nacogdoches, Texas; to acquire 6.33 percent of the voting shares of Security National Bank, Nacogdoches, Texas.

2. Incus Company, Ltd., Road Town, Tortola, BVI; and Laredo National Bancshares, Inc., Laredo, Texas, to acquire 100 percent of the voting shares of Mercantile Financial Enterprises, Inc., Wilmington, Delaware, and thereby indirectly acquire Mercantile Bank, NA, Brownsville, Texas.

Board of Governors of the Federal Reserve System, July 8, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–17723 Filed 7–11–96; 8:45 am]

BILLING CODE 6210–01–F

Board of Governors; Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, July 17, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 10, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–17900 Filed 7–10–96; 12:14 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 061796 AND 062896

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Protection One, Inc., Metrol Security System, Inc., Metrol Security System, Inc	96–2033	06/17/96
Jordan Industries, Inc., Dean Stanton, Diversified Wire & Cable, Inc	96–2038	06/17/96
Stichting "The SITA Foundation," AMR Corporation, American Airlines, Inc	96–2056	06/17/96
Masland Corporation, The Dexter Corporation, The Dexter Corporation	96–2061	06/17/96
Alusuisse-Lonza Holding Ltd., Celltech Group plc (a British company), Celltech Biologics plc	96–2076	06/17/96
DenAmerica Corp., Unigate PLC, Black-eyed Pea U.S.A., Inc	96–2104	06/17/96
Kaiser Foundation Health Plan, Inc., CHP Companies, Inc., CHP Companies, Inc	96–1993	06/18/96
Allied Waste Industries, Inc., Brian O'Leary, Container Corporation of Carolina	96–2055	06/18/96
Hollywood Park, Inc., Boomtown, Inc., Boomtown, Inc	96–2063	06/18/96
Fibreboard Corporation, Stone Products Corporation, Stone Products Corporation	96–2066	06/18/96
Equitable of Iowa Companies, Bankers Trust New York Corporation, BT Variable, Inc	96–2073	06/18/96
The SK Equity Fund, L.P., Ezra Dabah, The Children's Place Retail Stores, Inc	96–2074	06/18/96
Rohm and Haas Company, RohMax Additives GmbH, RohMax Additives GmbH	96–2080	06/18/96
HealthPlan Services Corporation, Harrington Services Corporation, Harrington Services Corporation	96–2082	06/18/96
Physician Sales & Services, Inc., John Armstrong, The Crocker-Fels Company	96–2083	06/18/96
FPA Medical Management, Inc., Sterling Healthcare Group, Inc., Sterling Healthcare Group, Inc	96–2089	06/18/96
Shaw Industries, Inc., Irving Nusbaum, New York Carpet World, Inc	96–2090	06/18/96
Shaw Industries, Inc., Marvin Berlin, New York Carpet World, Inc	96–2091	06/18/96
Siemens Aktiengesellschaft, Mark IV Industries, Inc., Automatic/Eagle Holding, LLC	96–2103	06/18/96
Counsel Corporation, Stadtlander Drug Company, Inc., Stadtlander Drug Company, Inc	96–2110	06/18/96
Lynch Corporation, Dunkirk & Fredonia Telephone Company, Dunkirk & Fredonia Telephone Company	96–2111	06/18/96
Computer Sciences Corporation, Arthur H. Spiegel, III, American Practice Management, Inc	96–2112	06/18/96
Quaker State Corporation, Sheldon G. Adelman, Blue Coral, Inc	96–2125	06/18/96
Sheldon G. Adelman, Quaker State Corporation, Quaker State Corporation	96–2126	06/18/96
The Coastal Corporation, Tenneco Inc., Tennessee/New England Pipeline Company	96–2130	06/18/96
Kelso Investment Associates V, L.P., GS Capital Partners II, L.P., AMF Holdings, Inc	96–2084	06/19/96
Newcourt Credit Group Inc., Anthem Insurance Companies, Inc., Anthem Financial, Inc	96–2093	06/19/96
Koninklijke Pakhoed N.V., Univar Corporation, Univar Corporation	96–2097	06/19/96
Darwin Deason, MCN Corporation, The Genix Group, Inc	96–2098	06/19/96
LDI, Ltd. (Limited Partnership), Maxco, Inc., FinishMaster, Inc	96–2100	06/19/96
CB Commercial Holdings, Inc., Lawrence J. Melody, L.J. Melody & Company and L.J. Melody & Company of Cali	96–2118	06/19/96

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 061796 AND 062896—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Dennis R. Washington, Morrison Knudsen Corporation, Morrison Knudsen Corporation	96–2121	06/19/96
Warner-Lambert Company, Glaxo Wellcome plc (a British company), Glaxo Services, Inc	96–2141	06/19/96
Hoechst AG, O'Brien Powder Products, Inc., O'Brien Powder Products, Inc	96–2005	06/20/96
Anheuser-Busch Companies, Inc., Eagle Distributors, Inc., Eagle Distributors, Inc	96–2032	06/20/96
PacifiCorp, Pacific Gas & Electric Company, Hermiston Generating Company, L.P	96–2069	06/20/96
Scott K. Ginsburg, Allen B. Shaw, Crescent Communications L.P	96–2105	06/20/96
Blackstone TWF Capital Partners, L.P., The Toronto-Dominion Bank, Mission Cable Company, L.P	96–2107	06/20/96
U.S. Can Corporation, Alltrista Corporation, Alltrista Corporation	96–2116	06/20/96
BTR plc, Henry Vogt Machine Company, Henry Vogt Machine Company	96–2134	06/20/96
Sun Alliance Group plc, Royal Insurance Holdings plc, Royal Insurance Holdings plc	96–1938	06/22/96
Jefferson Health System, Inc., Methodist Hospital Foundation, Methodist Hospital Foundation	96–1998	06/24/96
Health Systems International, Inc., Medaphis Corporation, Medaphis Corporation	96–2000	06/24/96
Consolidated Healthcare Services, Inc., Sewickley Valley Hospital, Sewickley Valley Hospital	96–2001	06/24/96
Sewickley Valley Hospital, Consolidated Healthcare Services, Inc., Consolidated Healthcare Services, Inc	96–2002	06/24/96
Packard Bell Electronics, Inc., NEC Corporation, NEC Corporation	96–2064	06/24/96
OrNda HealthCorp, Cypress Fairbanks Medical Center, Inc., Cypress Fairbanks Medical Center, Inc	96–2087	06/24/96
Nash-Finch Company, T.J. Morris Company, T.J. Morris Company	96–2129	06/24/96
Movie Gallery, Inc., Home Vision Entertainment, Inc., Home Vision Entertainment, Inc	96–2137	06/24/96
Sinclair Broadcast Group, Inc., Gerald J. Robinson, Bloomington Comco, Inc	96–2139	06/24/96
Robert E. and Kathryn Gracey Cannon, Buckeye Cellulose Corporation, Buckeye Cellulose Corporation	96–2140	06/24/96
Gay M. Love, Newco, Newco	96–2144	06/24/96
WinStar Communication, Inc., MobileMedia Corporation, Local Area Telecommunications, Inc	96–2145	06/24/96
Einstein Bros., Equity Funding, L.L.C., Boston Chicken, Inc., Einstein Bros. Bagels, Inc	96–2146	06/24/96
Borland International, Inc., Open Environment Corporation, Open Environment Corporation	96–2147	06/24/96
Rite Aid Corporation, Taylor Drug Stores, Inc., Taylor Drug Stores, Inc	96–2148	06/24/96
Capital Blue Cross, Hospital Service Association of Northeastern PA., Hospital Service Association of Northeastern PA	96–2150	06/24/96
American Radio Systems Corporation, Charlton Buckley, Henry Broadcasting Company	96–2152	06/24/96
Charlton Buckley, American Radio Systems Corporation, American Radio Systems Corporation	96–2153	06/24/96
Cerberus Partners, L.P., Frederick C. Caruso (debtor-in-possession), Colfor, Inc. and Colmach, Inc	96–2160	06/24/96
Tiger/Westbrook Real Estate Fund, L.P., Kahler Realty Corporation, Kahler Realty Corporation	96–2161	06/24/96
Apria Healthcare Group Inc., Vitas Healthcare Corporation, Vitas Healthcare Corporation	96–2167	06/24/96
Fred Meyer, Inc., General Electric Company, Merksamer Jewelers, Inc	96–2168	06/24/96
U.S. Office Products Company, Donald Ray Pate, Jr., Re-Print Corporation	96–2169	06/24/96
Donald Ray Pate, Jr., U.S. Office Products Company, U.S. Office Products Company	96–2170	06/24/96
The Maxim Group, Inc., Image Industries, Inc., Image Industries, Inc	96–2173	06/24/96
UtiliCorp United Inc., The Dow Chemical Company, Oasis Pipe Line Company	96–2177	06/24/96
360 (Degree) Communications Company, Henry Crown and Company, Independent Cellular Network, Inc	96–2179	06/24/96
St. Laurent Paperboard Inc., Cascades Inc., Paperboard Inudstries Inc	96–2183	06/24/96
Liquid Container, Vorwerk & Co. Beteiligungsgesellschaft mbH, Plaxicon Holding Corporation	96–2186	06/24/96
Clear Channel Communications, Inc., Second Amended and Restated Voting Trust, Heftel Broadcasting Corporation	96–2188	06/24/96
Teleport Communications Group Inc., TCG Partners, TCG Partners and TCG St. Louis	96–2202	06/24/96
Teleport Communications Group, Inc., Tele-Communications, Inc., TCG Dallas/TCG Pittsburgh/TCG Seattle/TCG San Francisco	96–2220	06/24/96
Teleport Communications Group Inc., Cox Enterprises, Inc., TCG Omaha, TCG Phoenix and TCG San Diego	96–2221	06/24/96
Teleport Communications Group, Inc., TCG Chicago, TCG Chicago	96–2222	06/24/96
Teleport Communications Group, Inc., TCG Los Angeles, TCG Los Angeles	96–2223	06/24/96
Teleport Communications Group Inc., TCG Connecticut, TCG Connecticut	96–2224	06/24/96
Teleport Communications Group Inc., TCG Detroit, TCG Detroit	96–2225	06/24/96
Teleport Communications Group, Inc., TCG Illinois, TCG Illinois	96–2226	06/24/96
Teleport Communications Group, Inc., TCG South Florida, TCG South Florida	96–2227	06/24/96
Allianz Aktiengesellschaft Holding, John Hancock Mutual Life Insurance Company, John Hancock Property and Casualty Insurance Company	96–1987	06/25/96
Teledyne, Inc., Allegheny Ludlum Corporation, Allegheny Ludlum Corporation	96–1756	06/26/96
Allegheny Ludlum Corporation, Teledyne, Inc., Teledyne, Inc	96–1757	06/26/96
AGRIPAC, Inc., Stokely USA, Inc., Stokely USA, Inc	96–2015	06/26/96
JELD–WEN, Inc., TJ International, Inc., Norco Windows, Inc	96–2096	06/26/96
Eastman Chemical Company, Solvay S.A., Solvay Enzymes, Inc	96–1077	06/27/96
Cultor Ltd., Solvay S.A., Solvay Enzymes, Inc	96–1078	06/27/96
George A. Roberts, Allegheny Teledyne Incorporated, Allegheny Teledyne Incorporated	96–1758	06/27/96
Richard P. Simmons, Allegheny Teledyne Incorporated, Allegheny Teledyne Incorporated	06–1759	06/27/96
Henry E. Singleton, Allegheny Teledyne Incorporated, Allegheny Teledyne Incorporated	96–1760	06/27/96
Robert P. Bozzone, Allegheny Teledyne Incorporated, Allegheny Teledyne Incorporated	96–1761	06/27/96
Dean Foods Company, Stokely USA, Inc., Stokely USA, Inc	96–1988	06/27/96
Caisse Nationale de Credit Agricole, Compagnie de Suez, Banque Indosuez	96–2057	06/27/96
Anatoly Tikhman, Quarterdeck Corporation, Quarterdeck Corporation	96–2060	06/27/96
ConAgra, Inc., Don Davis, Texas Smokehouse Foods, Inc	96–2065	06/27/96
Genzyme Corporation, KDK Acquisition Company, L.P., Deknatel Snowden Pencer, Inc	96–2068	06/27/96
Kelso Investment Associates IV, L.P., International Cold Storage Co., Inc Emp. Stock Own. Tr., International Cold Storage Co., Inc	96–2136	06/27/96

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 061796 AND 062896—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Adaptec, Inc., Cogent Data Technologies, Inc., Cogent Data Technologies, Inc	96–2149	06/27/96
Robert J. Gourley, NV Knoinklijke KNP BT (a Netherlands corporation), VGC Corp., Graphic Art Supplies, Inc. and Graphic Arts	96–2151	06/27/96
ERLY Industries, Inc., Campbell Soup Company, Campbell Soup Company, Compania Envasadora Loreto, S.A	96–2158	06/27/96
Larry J. Winget, Bailey Corporation, Bailey Corporation	96–2176	06/27/96
Tenneco Inc., The Pullman Company, The Pullman Company	96–2230	06/27/96
Chemical Banking Corporation, Alfalfa's Inc., Alfalfa's Inc	96–1506	06/28/96
TransCanada PipeLines Limited, Cibola Energy Services Corporation, Cibola Energy Services Corporation	96–1994	06/28/96
Protection One, Inc., The Buckey Family Trust, Metrol Security Systems, Inc	96–2062	06/28/96
Sybron International Corporation, John Cornwell and Carol Cornwell, Stephens Scientific Division of Cornwell Corporation	96–2067	06/28/96
Lane Investment Limited Partnership, Steven Dinetz, Shamrock Broadcasting Inc	96–2070	06/28/96
Steven Dinetz, Lane Investment Limited Partnership, Secret Communications Limited Partnership	96–2071	06/28/96
The Chase Manhattan Banking Corporation, UROHEALTH Systems, Inc., UROHEALTH Systems, Inc	96–2085	06/28/96
Apollo Investment Fund III, L.P., UROHEALTH Systems, Inc., UROHEALTH Systems, Inc	96–2086	06/28/96
SunGuard Data Systems Inc., National Computer Systems, Inc., NCS Financial Systems, Inc	96–2094	06/28/96
Charles W. Ergen, Direct Broadcasting Satellite Corporation, Direct Broadcasting Satellite Corporation	96–2123	06/28/96
ABRY Broadcast Partners II, L.P., Citadel Communications Corporation, Citadel Communications Corporation	96–2124	06/28/96
United Auto Group, Inc., Lynda Jane Hickman, Executrix, Nissan, Inc., a Georgia Corporation	96–2143	06/28/96
Wireless One, Inc., Henry M. Burkhalter, TruVision Wireless, Inc	96–2175	06/28/96
Falcon Holding Group, L.P., Falcon Cable Systems Company, Falcon Cable Systems Company	96–2181	06/28/96
Varlen Corporation, Brenco, Incorporated, Brenco, Incorporated	96–2182	06/28/96
Dura Pharmaceuticals, Inc., The Procter & Gamble Company, Procter & Gamble Pharmaceuticals, Inc	96–2194	06/28/96
Quanex Corporation, Mr. B.F. Sammons, Piper Impact, Inc	96–2196	06/28/96
WPG Corporate Development Associates IV, L.P., Bernard P. West, West Roofing & Supply, Inc	96–2198	06/28/96
Electrowatt Ltd., McCormick & Company, Incorporated, Gilroy Energy Company, Inc	96–2199	06/28/96
Coca-Cola Enterprises Inc., Bussey C. Bonner, Jr., Coca-Cola Bottling Company West, Inc. and Grand Forks	96–2200	06/28/96
Coca-Cola Enterprises Inc., The Coca-Cola Company, Coca-Cola Bottling Company West, Inc. and Grand Forks	96–2201	06/28/96
General Communications, Inc., Alaska Cable, Inc., Prime Cable of Alaska, L.P	96–2205	06/28/96
Insignia Financial Group, Inc., Edward S. Gordon, Edward S. Gordon Company, Incorporated	96–2210	06/28/96
Danaher Corporation, William G. Hungerford, American Sigma, Inc	96–2211	06/28/96
Suiza Foods Corporation, Jose M. Rodriguez Garrido, Garrido y Compania, Inc	96–2214	06/28/96
U.S. Industries, Inc., Keller Industries, Inc. (debtor-in-possession), Keller Industries, Inc. (debtor-in-possession)	96–2216	06/28/96
Zapata Corporation, Malcolm I. Glazer, Houlihan's Restaurant Group, Inc	96–2219	06/28/96
Florida Progress Corporation, Gerald Mansbach, Mansbach Realty Company	96–2228	06/28/96
Florida Progress Corporation, Samuel Mansbach, Mansbach Realty Company	96–2229	06/28/96
Royal Dutch Petroleum Company, Stichting AdministratiekantoorVitol Holding II, Catex Vitol Gas, Inc	96–2235	06/28/96
Idex Corporation, Henry Crown & Company, Fluid Management L.P	96–2236	06/28/96
Buffets, Inc., HomeTown Buffet, Inc., HomeTown Buffet, Inc	96–2237	06/28/96
C-Cube Microsystems Inc., SAGEM S.A., DiviCom Inc	96–2254	06/28/96

For Further Information Contact: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–17784 Filed 7–11–96; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 19, Supplement 1]

Federal Travel Regulation; Reimbursement of Higher Actual Subsistence Expenses for Official Travel to Per Diem Localities Impacted by the 1996 Atlanta, Georgia, Olympic Games

AGENCY: Office of Policy, Planning and Evaluation, GSA.

ACTION: Notice of bulletin.

SUMMARY: The attached bulletin informs agencies of several additions to the special actual subsistence expense ceilings described in GSA Bulletin FTR 19 (61 FR 28211, June 4, 1996) for official travel to certain localities due to the escalation of lodging rates during the 1996 Atlanta Olympic Games. The Departments of Agriculture, Commerce, Justice, and Transportation requested establishment of the increased rates to accommodate employees who perform temporary duty in either of the States of Georgia and Tennessee in areas not covered in GSA Bulletin FTR 19 and who experience a temporary but significant increase in lodging costs due to the escalation of lodging rates during the 1996 Atlanta Olympic Games. These additions are in Georgia: Athens area (Clarke County), Columbus area (Muscogee County), Conyers area (Rockdale County), Gainesville and Lake Lanier Island areas (Hall County), and McDonough area (Henry County); and in Tennessee: Benton, Ococee, and Parksville areas (Polk County), Chattanooga area (Hamilton County), and Cleveland area (Bradley County).

EFFECTIVE DATES: These special rates are applicable to claims for reimbursement covering travel to specified localities in

the States of Georgia and Tennessee during the specified periods.

FOR FURTHER INFORMATION CONTACT: Devoanna R. Reels, General Services Administration, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION: The Administrator of General Services, pursuant to 41 CFR 301–8.3(c), has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to certain localities in the States of Georgia and Tennessee for travel during specified periods. The attached GSA Bulletin FTR 19, Supplement 1 is issued to inform agencies of the establishment of these special actual subsistence expense ceilings.

Dated: July 1, 1996.

Becky Rhodes,

Deputy Associate Administrator, Office of Transportation and Personal Property.

Attachment

[GSA Bulletin FTR 19, Supplement 1]

July 1, 1996.

To: Heads of Federal agencies

Subject: Reimbursement of higher actual subsistence expenses for official travel to per diem localities impacted by the 1996 Atlanta, Georgia, Olympic Games.

1. *Purpose.* This supplement informs agencies of additional locations subject to special actual subsistence expense ceilings for official travel to certain localities due to the escalation of lodging rates during the 1996 Atlanta Olympic Games. Special actual subsistence expense ceilings were previously established for several areas in Georgia due to the 1996 Atlanta Olympic Games (see GSA Bulletin FTR 19 (61 FR 28211, June 4, 1996)). These special rates apply to claims for reimbursement covering travel during periods as specified in paragraph 3, below.

2. *Background.* The Federal Travel Regulation (FTR) (41 CFR chapters 301–304) part 301–8 permits the Administrator of General Services to establish a higher maximum daily rate for the reimbursement of actual subsistence expenses of Federal employees on official travel to an area within the continental United States.

The head of an agency may request establishment of such a rate when special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period. The Departments of Agriculture, Commerce, Justice, and Transportation requested establishment of such rates for areas in the States of Georgia and Tennessee to accommodate employees who perform temporary duty there and experience a temporary but significant increase in lodging costs due to the escalation of lodging rates during the 1996 Atlanta Olympic Games. These circumstances justify the need for higher subsistence expense reimbursement in these areas during the designated periods.

3. *Maximum rate, effective date, and affected localities.* The Administrator of General Services, pursuant to 41 CFR 301–8.3(c), has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to certain localities in the States of Georgia and Tennessee during the 1996 Atlanta Olympic Games. These special reimbursement rates apply for travel to the following areas:

Georgia

Athens area (Clarke County), a higher actual subsistence expense reimbursement rate not to exceed $195 maximum for lodging with a $30 M&IE allowance during the period July 6 through August 18, 1996.

Columbus area (Muscogee County), a higher actual subsistence expense reimbursement rate not to exceed $121 maximum for lodging with a $30 M&IE allowance during the period July 13 through August 10, 1996.

Conyers area (Rockdale County), a higher actual subsistence expense reimbursement rate not to exceed $154 maximum for lodging with a $30 M&IE allowance during the period July 13 through August 10, 1996.

Gainesville and Lake Lanier Island areas (Hall County), a higher actual subsistence expense reimbursement rate not to exceed $172 maximum for lodging with a $26 M&IE allowance during the period July 6 through August 18, 1996.

McDonough area (Henry County), a higher actual subsistence expense reimbursement rate not to exceed $83 maximum for lodging with a $26 M&IE allowance during the period July 13 through August 10, 1996.

Tennessee

Benton, Ocoee, and Parksville areas (Polk County), a higher actual subsistence expense reimbursement rate not to exceed $172 maximum for lodging with a $26 M&IE allowance during the period July 6 through August 18, 1996.

Chattanooga area (Hamilton County), a higher actual subsistence expense reimbursement rate not to exceed $240 maximum for lodging with a $30 M&IE allowance during the period July 6 through August 18, 1996.

Cleveland area (Bradley County), a higher actual subsistence expense reimbursement rate not to exceed $172 maximum for lodging with a $26 M&IE allowance during the period July 6 through August 18, 1996.

4. *Expiration date.* This bulletin expires for administrative tracking purposes on December 31, 1996.

5. *For further information contact.* Devoanna R. Reels, General Services Administration, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–1538.

[FR Doc. 96–17706 Filed 7–11–96; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: OCSE–34 Child Support Enforcement Program Quarterly Report of Collections.

OMB No.: 0970–0013.

Description: The authorities to collect and report the information requested on form are found in the following sections of the Social Security Act: 403(b)(2)(c), 452(a)(6), 452(a)(10)(A), and 458. State agencies administering State plans approved under Title IV–D of the Social Security Act are required by legislation in section 454(10) to maintain a full record of child support collections and have an adequate reporting system to provide information as requested by the Department. Under legislation at section 452(a)(6) and (a)(10)(A), the Department is required to maintain records of this information as reported by the State agencies for use in the annual report to Congress. This information is also necessary to compute incentive payments to States as required by Section 458.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–34	54	4	8	1,728

Estimated Total Annual Burden Hours: 1,728.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: July 8, 1996.

Bob Sargis,

Acting Director, Office of Information Services.

[FR Doc. 96–17762 Filed 7–11–96; 8:45 am]

BILLING CODE 4184–01–M

Proposed Information Collection Activity; Comment Request

Title: ACF Uniform Discretionary Grant Application Form.

OMB No.: 0970–0139.

Description: ACF has more than forty discretionary grant programs. The proposed information collection form would be a uniform discretionary application form usable for all of these grant programs to collect the information from grant applicants needed to evaluate and rank applicants and protect the integrity of the grantee selection process. All ACF discretionary grant programs would be eligible but not required to use this application form. The application consists of general information and instructions; the Standard Form 424 series that requests basic information, budget information and assurances; the Program Narrative requesting the applicant to describe how these objectives will be reached; and certifications. Guidance for the content of information requested in the Program Narrative if found in OMB Circulars A–102 and A–110.

Respondents: State governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application Form	4,127	1	4	16,688

Estimated Total Annual Burden Hours: 16,688.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: July 9, 1996.

Bob Sargis,

Acting Director, Office of Information, Management Services.

[FR Doc. 96–17763 Filed 7–11–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

Advisory Committee; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the renewal of the Transmissible Spongiform Encephalopathies Advisory Committee (formerly Ad Hoc Advisory Committee on Creutzfeldt-Jakob Disease) by the Commissioner of Food and Drugs. The Commissioner has determined that it is in the public interest to renew the charter of the Committee for an additional 2 years. At the time of charter renewal, the Committee's name and function were changed to more accurately describe the Committee and because the Committee is no longer serving in an ad hoc capacity. Elsewhere in this issue of the **Federal Register** the agency is issuing a final rule that announces the addition of the Transmissible Spongiform Encephalopathies Advisory Committee to the agency's list of standing advisory committees (21 CFR 14.100). This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 (5 U.S.C. app.2)).

DATES: Authority for this committee will expire on June 9, 1998, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

Dated: July 5, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–17688 Filed 7–11–96; 8:45 am]

BILLING CODE 4160–01–F

Food and Drug Administration

[Docket No. 96M–0219]

Abbott Laboratories; Premarket Approval of Abbott PGR–ICA Monoclonal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application submitted by Abbott Laboratories, Abbott Park, IL, for premarket approval, under the Federal Food, Drug, and Cosmetic Act

(the act), of Abbott PGR–ICA Monoclonal. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 26, 1995, of the approval of the application.

DATES: Petitions for administrative review by August 12, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Cornelia B. Rooks, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1243.

SUPPLEMENTARY INFORMATION: On February 6, 1992, Abbott Laboratories, Abbott Park, IL 60064–3500, submitted to CDRH an application for premarket approval of Abbott PGR–ICA Monoclonal. The device is for the detection of human progesterone receptor (PgR) in breast tumor tissue to be used as an aid in assessing the likelihood of response to hormonal therapy, and as an aid in the prognosis and management of breast cancer patients.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On September 26, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 12, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 21, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–17687 Filed 7–11–96; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Special Project Grants; Maternal and Child Health (MCH) Services; Community Integrated Service Systems (CISS) Set-Aside Program

AGENCY: Health Resources and Services Administration (HRSA).

ACTION: Extension of application deadline dates.

The Special Project Grants; Maternal and Child Health (MCH) Services; Community Integrated Service Systems (CISS) Set-Aside Program notice deadline dates published on June 20, 1996, beginning on page 31537, are hereby uniformly extended to August 1, 1996.

The rest of the notice remains as published.

Dated: July 8, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–17747 Filed 7–11–96; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 16, 1996.

Time: 8:30 a.m.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Phyllis L. Zusman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: July 3, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–17818 Filed 7–11–96; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Advisory Board which was published in the **Federal Register** on June 26, 1996 (61 FR 33129).

The National Cancer Advisory Board was scheduled to hold an open telephone conference on July 18, 1996 from 1 pm to approximately 2 pm. The date has been changed to July 29, 1996; the time remains the same.

Dated: July 3, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–17819 Filed 7–11–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code, Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: July 25, 1996.

Time: 1:00 to 4:30 p.m.

Place: Executive Plaza South, Room 400C, Bethesda, MD, (telephone conference call).

Contact Person: Marilyn Semmes, Ph.D., Acting Chief, Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301–496–8683.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which could constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: July 9, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–17812 Filed 7–11–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: Long Term Effects of Prenatal DES Exposure on Bone (Telephone Conference Call).

Date: July 23, 1996.

Time: 9:00 a.m.

Place: National Institute of Environmental Health Sciences, North Campus, Bldg. 17, Conference Room 1713, Research Triangle Park, North Carolina.

Contact Person: Dr. John Braun, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–1446.

Purpose/Agenda: To review and evaluate contract proposals.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: July 9, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–17813 Filed 7–11–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 26, 1996.

Time: 8: 30 a.m.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Bernice R. Cherry, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–1367.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: July 3, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–17814 Filed 7–11–96; 8: 45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Committee Name: National Institute of General Medical Sciences Special Emphasis Panel—Trauma and Burn.

Date: July 25, 1996.

Time: 2:00 p.m.–adjournment.

Place: Inn by the Sea, 7830 Fay Avenue, La Jolla, CA 92037.

Contact Person: Bruce K. Wetzel, Ph.D., Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–19K, Bethesda, MD 20892–6200.

Purpose: To review and evaluate a Trauma and Burn application.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS])

Dated: July 3, 1996.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 96–17817 Filed 7–11–96; 8:45 am]
BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.
Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: July 9, 1996.
Time: 12:30 p.m.
Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3367.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: July 10, 1996.
Time: 3 p.m..
Place: Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Phyllis L. Zusman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: July 16, 1996.
Time: 2 p.m.
Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Lawrence E. Chaitkin, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: July 23, 1996.
Time: 2 p.m.
Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Angela L. Redlingshafer, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: July 29, 1996.
Time: 8:30 a.m.
Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Phyllis L. Zusman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: July 30, 1996.
Time: 8:30 a.m.
Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Phyllis L. Zusman, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: July 30, 1996.
Time: 2 p.m.
Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Lawrence E. Chaitkin, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: July 3, 1996.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 96–17821 Filed 7–11–96; 8:45 am]
BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences

National Institute of Environmental Health Sciences (NIEHS)/National Toxicology Program (NTP) Public Meeting; Proposed Partnerships for the Validation of New Approaches for Toxicological Evaluation.

Notice is hereby given of a public meeting to be held at the National Institute of Environmental Health Sciences to explore the development and utilization of partnerships to develop stronger and more efficient links between toxicology, risk assessment, and regulatory decision-making. Discussions will focus in three areas: (1) Evaluation and Validation of Transgenic Carcinogenicity Models; (2) Evaluation of Risks to Human Reproduction; and (3) Evaluation of Alternative Toxicological Methods. Invited participants will comment and add perspectives to discussion documents prepared by NIEHS/NTP scientists in each of the areas.

The meeting will begin at 8:30 a.m. on Monday, July 22, 1996, in the Main Conference Facility of the NIEHS, South Campus, 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will adjourn by 5:00 p.m.

The tentative agenda includes: Opening Comments from 8:30–9:15 a.m.; an update of the ongoing Partnership for the Evaluation and Validation of Transgenic Carcinogenicity Models from 9:15 to approximately 10:00 a.m. followed by open discussion by all invited participants; presentations by scheduled speakers on a draft proposal for an NIEHS/NTP Center for the Evaluation of Risks to Human Reproduction from 11:00 a.m. to noon. Lunch is expected to be from noon to 12:45 p.m., followed by open discussion on the proposed Center by all invited participants. Beginning at approximately 1:45 p.m. there will be scheduled presenters commenting on a proposed NIEHS/NTP Interagency Center for the Evaluation of Alternative Toxicological Methods which will also be followed by open discussion on the proposed interagency center for all invited participants. A summary of the day's deliberations and any future action is tentatively scheduled from 4:15 to 5:00 p.m.

The entire meeting is open to the public and limited only by the space available. Persons wanting additional information or wishing to attend should contact Ms. Sandra Lange, NTP Liaison Office, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709; telephone (919) 541–0530; fax (919) 541–0295; or on the Internet: britton@niehs.nih.gov.

Dated: July 3, 1996.
Kenneth Olden,
Director, National Institute of Environmental Health Sciences and the National Toxicological Program.
[FR Doc. 96–17822 Filed 7–11–96; 8:45 am]
BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Clinical Sciences.
Date: July 15, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4104, Telephone Conference.
Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 5, 1996.
Margery G. Grubb,
Senior Committee Management Specialist, NIH.
[FR Doc. 96–17815 Filed 7–11–96; 8:45 am]
BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Biological and Physiological Sciences.
Date: July 23–24, 1996.
Time: 8:00 p.m.
Place: Holiday Inn, Chevy Chase, MD.
Contact Person: Dr. Cheryl Corsaro, Scientific Review Administrator, 6701 Rockledge Drive, Room 6172, Bethesda, Maryland 20892, (301) 435–1045.

Name of SEP: Clinical Sciences.
Date: July 24, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4100, Telephone Conference.
Contact Person: Dr. Jeanne Ketley, Scientific Review Administrator, 6701 Rockledge Drive, Room 4100, Bethesda, Maryland 20892, (301) 435–1788.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Clinical Sciences
Date: July 29, 1996.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 4128, Telephone Conference.
Contact Person: Dr. Anshumali Chaudhari, Scientific Review Administrator, 6701 Rockledge Drive, Room 4128, Bethesda, Maryland 20892, (301) 435–1210.

Name of SEP: Behavioral and Neurosciences.
Date: July 29, 1996.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5172, Telephone Conference.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

Name of SEP: Behavioral and Neurosciences.
Date: July 30, 1996.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5172, Telephone Conference.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

Name of SEP: Clinical Sciences.
Date: July 31, 1996.
Time: 8:00 a.m.
Place: Holiday Inn—Olde Towne, Alexandria, VA.
Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892, (301) 435–1787.

Name of SEP: Clinical Sciences.
Date: August 15, 1996.
Time: 10:00 a.m.
Place: NIH, Rockledge 2, Room 4138, Telephone Conference.
Contact Person: Dr. Anthony Chung, Scientific Review Administrator, 6701 Rockledge Drive, Room 4138, Bethesda, Maryland 20892, (301) 435–1213.

Purpose/Agenda: To review Small Business Innovation Research.
Name of SEP: Behavioral and Neurosciences.
Date: July 29, 1996.
Time: 8:30 a.m.
Place: Double Tree Hotel, Rockville, MD.
Contact Person: Dr. Luigi Giacometti, Scientific Review Administrator, 6701 Rockledge Drive, Room 5179, Bethesda, Maryland 20892, (301) 435–1246.

Name of SEP: Behavioral and Neurosciences.
Date: August 1, 1996.
Time: 8:30 a.m.
Place: Bethesda Marriott, Bethesda, MD.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Domestic Assistance Programs Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 5, 1996.
Margery G. Grubb,
Senior Committee Management Specialist, NIH.
[FR Doc. 96–17816 Filed 7–11–96; 8:45 am]
BILLING CODE 4140–01–M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) (NIH) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 61 FR 14804, April 3, 1996), is amended to reflect the reorganization of the extramural information systems and data analysis functions within the NIH. The reorganization transfers from the Division of Research Grants (DRG) (HNG) the extramural information systems and data analysis functions of the Information Systems Branch (ISB) (HNG–3) to the Office of Extramural Research (OER) (HNA3), except for those functions related to DRG-specific support and the Networking and Telecommunications Section (HNG–38). (1) In DRG, retitle the ISB to the Advanced Technology Branch (ATB), revise its functional statement and realign its Standard Administrative Code from HNG–3 to HNG3. (2) Revise the overall functional statement for the DRG. (3) Establish the Office of Reports and Analysis (ORA) (HNA36) in OER; transfer the functions of two sections of DRG/ATB, Research Documentation Section (HNG–33) and Statistics, Analysis and Evaluation Section (HNG–34), to ORA, then abolish the two DRG/ATB sections. (4) Establish the Division of Extramural Information Systems (HNA345) within the Office of Policy for Extramural Research Administration (OPERA) (HNA34), OER; transfer the functions of three DRG/ATB sections to this new Division (the Data Management and Control Section [HNG–36], the Information Systems Management Section [HNG–37], and the Systems Analysis Section [HNG–39]). (5) In OPERA, retitle the Division of Extramural Invention Reports (HNA343) to the Division of Extramural Inventions and Technology Resources (DEITR); consolidate the functions of invention reporting and development of a common Federal database into one office by transferring functions from the Office of Extramural Programs (OEP) (HNA32) to DEITR; and revise DEITR's

functional statement. (6) In OPERA, revise the functional statement for the Division of Grants Policy (HNA342). (7) In OEP, retitle the Division of Extramural Programs Management (HNA322) to the Division of Research Programs, Training and Review Policy (DRPTR); consolidate the functions of programs management, research training, and appeals into one office by transferring functions from Division of Research Training and Special Programs (DRTSP) (HNA323) to DRPTR; abolish DRTSP; and revise DRPTR's functional statement. (8) In OEP, retitle the Division of Institutional Affairs (HNA326) to the Division of Extramural Outreach and Information Resources (DEOIR); consolidate the information dissemination function into one office by transferring functions from the Grants Information Office (HNG1–53), DRG, to DEOIR; revise DEOIR's functional statement. (9) Revise the functional statement for OPERA. (10) In OEP, revise the functional statement for the Division of Extramural Staff Training (HNA325). (11) Revise the functional statement for OEP.

Section HN–B, Organization and Functions, is amended as follows:

(1) Under the heading *Office of the Director (HNA),* insert the following:

Office of Extramural Programs (HNA32). (1) Advises the Deputy Director for Extramural Research on matters pertaining to the development, promulgation and management of policies and procedures related to extramural research programs; (2) conducts evaluations of programs, policies, and procedures; and (3) represents the OER on numerous permanent and ad hoc NIH, Departmental, interagency, and non-governmental committees concerned with extramural program activities.

Division of Research Programs, Training and Review Policy (HNA323). Develops NIH policies concerning extramural programs and review, and coordinates or manages selected activities, including: (1) Provides guidance in the development of NIH policies and recommended procedures concerning peer review, extramural research programs, research training and career development programs; (2) advises the Deputy Director for Extramural Research, the Director of the Office of Extramural Programs, and NIH staff concerning NIH extamural program and review policy and procedures; (3) provides advice to extramural staff on the use of the appropriate NIH extramural award mechanism, e.g., grant, cooperative agreement, or contract; (4) leads and manages NIH functional program, review, and research training committees, which represent the ICDs and NIH staff, and provide for discussion and recommendations on relevant policies and procedures; (5) coordinates policies for dealing with applicants' and grantees' concerns about the review of their applications and awardees' concerns about adverse determinations on their grants, and manages the process for investigating appeals of peer review and post-award determinations; (6) coordinates and/or manages selected NIH-wide activities, such as the Small Business Innovation Research (SBIR) program, the Small Business Technology Transfer (STTR) program, the Academic Research Enhancement Award (AREA) program, and the Shannon Awards; and (7) conducts evaluations of extramural policies and procedures in relation to scientific program activities, peer review, and research training.

Division of Extramural Staff Training (HNA325). Develops and administers the extramural program staff training activities, including (1) the Staff Training in Extramural Programs (STEP); (2) the Extramural Associates Program (EAP), a residential training program on NIH extramural functions and policies for individuals selected from women's and minority institutions; and (3) the Extramural Scientist Administrators training program that includes mandatory fundamental training for persons new to NIH extramural program administration, as well as continuing education programs for more senior ESAs.

Division of Extramural Outreach and Information Resources (HNA326). (1) Identifies issues, concerns, and information needs of the extramural research community and the information needs of the NIH extramural research staff; (2) designs and manages the central telephone contact for information about NIH extramural research programs, including integration of electronic and FAX systems for delivery of information; (3) designs, develops, and manages the website for the Office of Extramural Research; (4) coordinates the development and parallel production of printed and electronic products to provide information to the extramural research community, including the weekly NIH Guide for Grants and Contracts, the NIH Extramural Programs, and other program descriptions, policy notices, descriptive data, and analytical reports; and (5) maintains liaison with NIH components, trans-NIH committees, professional associations, and the segments of the extramural research community that are involved in outreach activities, information systems technology, and electronic research administration.

Office of Policy for Extramural Research Administration (HNA34). (1) Assures effective grants administration policies and procedures for the NIH extramural programs and stewardship of Federal funds, which includes electronic research administration; (2) maximizes research productivity, increases public accountability, enhances administrative integrity, and monitors fiscal stewardship in research administration systems; (3) ensures proper management of extramural resources at both the portfolio level (allocation issues), program level (strategic planning), and project level (cost analysis); (4) promotes the proper selection and effective use of assistance mechanisms by both NIH staff and the extramural community; (5) initiates new procedures for research administration; (6) provides assistance to NIH extramural staff and grantee organizations regarding policies and procedures pertinent to the administration of NIH grants; (7) receives and maintains all documentation relating to extramural inventions made with assistance of research grants or research and development contracts from NIH; (8) establishes and maintains communication between NIH and awardee and applicant institutions and investigators with respect to extramural policies and procedures; (9) conducts studies, develops plans and manages projects that extend, improve and/or maintain system capabilities to satisfy the information requirements associated with NIH extramural research; (10) conducts requirements analyses, develops general and detailed designs databases, oversees the programming and testing of new systems, and the development and execution of implementation plans.

Division of Grants Policy (HNA342). (1) Initiates new and modifies existing NIH grants administration policies and procedures; (2) provides assistance to NIH extramural staff and grantee organizations regarding policies and procedures pertinent to the administration of NIH grants to ensure stewardship of Federal funds; (3) provides guidance to and articulates grants management policy for NIH extramural staff on the effective utilization of extramural assistance mechanisms (grants and cooperative agreements); (4) reviews for OMB clearance all application forms, proposed surveys, and questionnaires for information gathering activities conducted under research contracts to meet the requirements of the Federal Paperwork Reduction Act; and (5) develops the business process and functionality for pertinent Electronic Research Administration components.

Division of Extramural Inventions and Technology Resources (HNA343). (1) Ensures proper and complete compliance with mandated patent policies and procedures; (2) informs grantees, contractors, and NIH staff of their responsibilities through various policy and administration manual issuances, and instructions and commentary in the *NIH Guide for Grants and Contracts;* (3) receives and maintains all documentation relating to extramural inventions made with the assistance of research grants or research and development contracts from NIH; (4) promotes the proper utilization of patents and inventions in extramural programs through guidance or referral on licensing agreements and distribution of shares resources; and (5) develops the business process and functionality for progress reporting, abstracting, research resources and other pertinent Electronic Research Administration components.

Division of Extramural Information Systems (HNA345). (1) Provides computer systems design, programming, and systems maintenance for the IMPAC/CRISP systems and the ancillary systems supporting the NIH extramural grants management program; (2) maintains a comprehensive systems overview, providing data systems currency and ensuring interoperability between IMPAC and related subsystems; (3) facilitates the interoperability with Electronic Research Administration functional components and interfaces; (4) develops specifications for the interoperability of IMPAC, CRISP, Committee Management Information, Trainee Appointment, payback, and other related auxiliary data systems; (5) maintains overall integrity of data systems while making changes and enhancements to satisfy NIH needs; (6) develops quality control procedures in data capture functions; (7) reconciles data integrity issues; and (8) performs assigned data capture functions.

Office of Reports and Analysis (HNA36). This office is responsible for: (1) maintaining CRISP, the Computer Retrieval of Information on Scientific Projects System database, by adding scientific information and indexing terms to IMPAC records for funded PHS research; (2) maintaining and updating the CRISP Thesaurus as emerging concepts and technologies are developed; (3) editing all IMPAC titles for accuracy and uniformity; (4) publishing reports based on the CRISP database; (5) conducting statistical investigations of extramural trends and related topics; (6) designing, establishing, and maintaining databases to compile and analyze information relevant to policy or program issues; (7) developing and conducting special projects, experiments, and simulations to support planning and evaluation of programs, policies and procedures; (8) serving as a focal point for requests from individual Institutes and Centers for *ad hoc* statistical reports; (9) supporting NIH budget development by providing financial projections and reports; and (10) providing consultation to CRISP and IMPAC users.

(2) Under the heading *Division of Research Grants (HNG),* insert the following:

Division of Research Grants (HNG). (1) Provides staff support to the Office of the Director, NIH, in the formulation of grant and award policies and procedures; (2) provides central receipt of all PHS applications for research and research training support, and makes initial referral to PHS components; (3) assigns NIH applications to supporting institutes, centers, and divisions and to DRG initial review groups; and (4) provides for scientific review of NIH research grants, National Research Service Awards, and research career development applications.

Advanced Technology Branch (HNG3). (1) Establishes comprehensive long-range plans for developing, implementing, supporting, and expanding all systems on the DRG LAN and the NIH mainframe relating to DRG extramural activities; (2) conducts studies and analyses for new LAN- and PC-based automatic data processing applications; (3) provides end-user support across NIH/PHS for DRG-developed systems; (4) maintains hardware, software and related on-site services for the PC workstations and LAN for DRG and OD/OER components in the Rockledge Building; (5) serves as the focal point for responding to NIH IRM studies and dissemination of IRM information; (6) manages DRG risk assessments and life cycle planning; and (7) plans for the acquisition of all DRG ADP requirements.

Dated: July 1, 1996.

Ruth L. Kirschstein,

Acting Director, NIH.

[FR Doc. 96–17820 Filed 7–11–96; 8:45 am]

BILLING CODE 4140–01–M

Office of Refugee Resettlement

Refugee Resettlement Program; Availability of Formula Allocation Funding for FY 1996 Targeted Assistance Grants for Services to Refugees in Local Areas of High Need

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Final notice of availability of formula allocation funding for FY 1996 targeted assistance grants to States for services to refugees [1] in local areas of high need.

SUMMARY: This notice announces the availability of funds and award procedures for FY 1996 targeted assistance grants for services to refugees under the Refugee Resettlement Program (RRP). These grants are for service provision in localities with large refugee populations, high refugee concentrations, and high use of public assistance, and where specific needs exist for supplementation of currently available resources. This notice reflects the final rule published in the **Federal Register** on June 28, 1995 (60 FR 33584) which was effective October 1, 1995. This rule established a new subpart L, providing regulations for the Targeted Assistance Program (TAP) for the first time.

This notice announces that the qualification of counties is based on refugee and entrant arrivals during the 5-year period from FY 1991 through FY 1995, in keeping with ORR's new regulation, and on the concentration of refugees and entrants as a percentage of the general population. Under this notice, 15 new counties will qualify for targeted assistance and 18 counties which previously received targeted assistance grants will no longer qualify for targeted assistance funding. This notice also establishes a new allocation formula to reflect the limitation on the

[1] In addition to persons who meet all requirements of 45 CFR 400.43, "Requirements for documentation of refugee status," eligibility for targeted assistance includes Cuban and Haitian entrants, certain Amerasians from Vietnam who are admitted to the U.S. as immigrants, and certain Amerasians from Vietnam who are U.S. citizens. (See section II of this notice on "Authorization.") The term "refugee", used in this notice for convenience, is intended to encompass such additional persons who are eligible to participate in refugee program services, including the targeted assistance program.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the targeted assistance program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival, or until they obtain permanent resident alien status, whichever comes first.

use of targeted assistance funding for services to refugees who have resided in the United States 5 years or less.

In addition, this notice replaces the schedule of allowable administrative cost amounts for local administrative budgets that appeared in previous notices with an allowable administrative cost amount of up to 15% for all TAP counties for the purpose of increasing local flexibility and oversight.

The final notice reflects an adjustment in final allocations to States as a result of additional arrival data.

A notice of proposed allocation of targeted assistance funds was published for public comment in the **Federal Register** on May 6, 1996 (61 FR 20260).

FOR FURTHER INFORMATION CONTACT: Toyo Biddle (202) 401–9250.

APPLICATION DEADLINE: The closing date for submission of applications is August 12, 1996. Applications postmarked after the closing date will be classified as late.

Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Division of Refugee Self-Sufficiency, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attention: Application for Targeted Assistance Formula Program.

Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications handcarried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Division of Refugee Self-Sufficiency, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

To be considered complete, an application package must include a signed original and two copies of Standard Form 424, 424A, and 424B, dated April 1988. (We will provide copies of these materials to all targeted assistance States.)

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER: 93.584.

FOR FURTHER INFORMATION ON APPLICATION PROCEDURES: States should contact their State Analyst in ORR.

SUPPLEMENTARY INFORMATION:

I. Purpose and Scope

This notice announces the availability of funds for grants for targeted assistance for services to refugees in counties where, because of factors such as unusually large refugee populations, high refugee concentrations, and high use of public assistance, there exists and can be demonstrated a specific need for supplementation of resources for services to this population.

The Office of Refugee Resettlement (ORR) has available $55,397,000 in FY 1996 funds for the targeted assistance program (TAP) as part of the FY 1996 appropriation for the Department of Health and Human Services (Pub. L. 104–134).

The FY 1996 House Appropriations Committee Report (H.R. Rept. No. 104–209) reads as follows with respect to targeted assistance funds:

This program provides grants to States for counties which are impacted by high concentrations of refugees and high dependency rates. The Committee agrees that $19,000,000 is available for targeted assistance to serve communities affected by the Cuban and Haitian entrants and refugees whose arrivals in recent years have increased. The Committee has set-aside 20 percent of these funds for increased support to communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense and longer duration level of Federal assistance.

The Conference Report on Appropriations (H. Rept. No. 104–537) agrees with the allocation of targeted assistance contained in the House Report.

The Director of the Office of Refugee Resettlement (ORR) will use the $55,397,000 appropriated for FY 1996 targeted assistance as follows:

- $25,317,600 will be allocated under the 5-year population formula, as set forth in this notice.
- $19,000,000 will be awarded to serve communities most heavily affected by recent Cuban and Haitian entrant arrivals.
- $11,079,400 (20% of the total) will be awarded under a discretionary grant announcement that has been issued separately setting forth application requirements and evaluation criteria. These funds will be used to provide increased support to communities with large concentrations of refugees whose cultural differences make assimilation especially difficult, in accordance with the intent of Congress as reflected in the House Appropriations Committee Report.

In addition, the Office of Refugee Resettlement will have available an additional $5,000,000 in FY 1996 funds for the targeted assistance discretionary program through the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996 (Pub. L. 104–107). These funds are to be used for grants to localities most heavily impacted by the influx of refugees such as Laotian Hmong, Cambodians and Soviet Pentecostals, and will be awarded under a discretionary grant announcement which has been issued setting forth application requirements and evaluation criteria.

The purpose of targeted assistance grants is to provide, through a process of local planning and implementation, direct services intended to result in the economic self-sufficiency and reduced welfare dependency of refugees through job placements.

The targeted assistance program reflects the requirements of section 412(c)(2)(B) of the Immigration and Nationality Act (INA), which provides that targeted assistance grants shall be made available (i) primarily for the purpose of facilitating refugee employment and achievement of self-sufficiency, (ii) in a manner that does not supplant other refugee program funds and that assures that not less than 95 percent of the amount of the grant award is made available to the county or other local entity.

II. Authorization

Targeted assistance projects are funded under the authority of section 412(c)(2) of the Immigration and Nationality Act (INA), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605), 8 U.S.C. 1522(c); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above; section 584(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202), insofar as it incorporates by reference with respect to certain Amerasians from Vietnam the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above, including certain Amerasians from Vietnam who are U.S. citizens, as provided under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. 100–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513).

III. Client and Service Priorities

Targeted assistance funding must be used to assist refugee families to achieve economic independence. To this end, States and counties are required to ensure that a coherent family self-sufficiency plan is developed for each eligible family that addresses the family's needs from time of arrival until attainment of economic independence. (See §§ 400.79 and 400.156(g) of the final rule.) Each family self-sufficiency plan should address a family's needs for both employment-related services and other needed social services. The family self-sufficiency plan must include: (1) A determination of the income level a family would have to earn to exceed its cash grant and move into self-support without suffering a monetary penalty; (2) a strategy and timetable for obtaining that level of family income through the placement in employment of sufficient numbers of employable family members at sufficient wage levels; and (3) employability plans for every employable member of the family. In local jurisdictions that have both targeted assistance and refugee social services programs, one family self-sufficiency plan may be developed for a family that incorporates both targeted assistance and refugee social services.

Services funded through the targeted assistance program are required to focus primarily on those refugees who, either because of their protracted use of public assistance or difficulty in securing employment, continue to need services beyond the initial years of resettlement. Effective October 1, 1995, under new regulations at § 400.315(b) published in the **Federal Register** on June 28, 1995, (60 FR 33584), States may not provide services funded under this notice, except for referral and interpreter services, to refugees who have been in the United States for more than 60 months (5 years). States may, however, continue to provide employability services through September 30, 1996, or until the services are completed, whichever occurs first, to refugees who have been in the U.S. for more than 60 months, who were receiving employability services, as defined in § 400.316, as of September 30, 1995, as part of an employability plan.

In accordance with § 400.314, States are required to provide targeted assistance services to refugees in the following order of priority, except in certain individual extreme circumstances (a) Refugees who are cash assistance recipients, particularly long-term recipients; (b) unemployed refugees who are not receiving cash assistance; and (c) employed refugees in need of services to retain employment or to attain economic independence.

In addition to the statutory requirement that TAP funds be used primarily for the purpose of facilitating refugee employment (section 412(c)(2)(B)(i)), funds awarded under this program are intended to help fulfill the Congressional intent that employable refugees should be placed on jobs as soon as possible after their arrival in the United States (section 412(a)(1)(B)(i) of the INA). Therefore, in accordance with § 400.313 of the final rule, targeted assistance funds must be used primarily for employability services designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program in order to achieve economic self-sufficiency as soon as possible. Targeted assistance services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Targeted assistance funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

In accordance with § 400.317, if targeted assistance funds are used for the provision of English language training, such training must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related activities.

A portion of a local area's allocation may be used for services which are not directed toward the achievement of a specific employment objective in less than one year but which are essential to the adjustment of refugees in the community, provided such needs are clearly demonstrated and such use is approved by the State. Allowable services include those listed under § 400.316.

Reflecting section 412(a)(1)(A)(iv) of the INA, States must insure that women have the same opportunities as men to participate in training and instruction. In addition, in accordance with § 400.317, services must be provided to the maximum extent feasible in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women. The Director also strongly encourages the inclusion of refugee women in management and board positions in agencies that serve refugees. In order to facilitate refugee self-support, the Director also expects States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit. States and counties are expected to make every effort to assure availability of day care services for children in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, day care may be treated as a priority employment-related service under the targeted assistance program. Refugees who are participating in TAP-funded or social services-funded employment services or have accepted employment are eligible for day care services for children. For an employed refugee, TAP-funded day care should be limited to one year after the refugee becomes employed. States and counties, however, are expected to use day care funding from other publicly funded mainstream programs as a prior resources and are encouraged to work with service providers to assure maximum access to other publicly funded resources for day care.

In accordance with § 400.317 in the new regulations, targeted assistance services must be provided in a manner that is culturally and linguistically compatible with a refugee's language and cultural background, to the maximum extent feasible. In light of the increasingly diverse population of refugees who are resettling in this country, refugee service agencies will need to develop practical ways of providing culturally and linguistically appropriate services to a changing ethnic population. Services funded under this notice must be refugee-specific services which are designed specifically to meet refugee needs and are in keeping with the rules and objectives of the refugee program. Vocational or job-skills training, on-the-job training, or English language training, however, need not be refugee-specific.

When planning targeted assistance services, States must take into account

the reception and placement (R & P) services provided by local resettlement agencies in order to utilize these resources in the overall program design and to ensure the provision of seamless, coordinated services to refugees that are not duplicative. See § 400.156(b).

ORR strongly encourages States and counties when contracting for targeted assistance services, including employment services, to give consideration to the special strengths of mutual assistance associations (MAAs), whenever contract bidders are otherwise equally qualified, provided that the MAA has the capability to deliver services in a manner that is culturally and linguistically compatible with the background of the target population to be served. ORR also strongly encourages MAAs to ensure that their management and board composition reflect the major target populations to be served.

ORR defines MAAs as organizations with the following qualifications:

a. The organization is legally incorporated as a nonprofit organization; and

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association is comprised of refugees or former refugees, including both refugee men and women.

Finally, in order to provide culturally and linguistically compatible services in as cost-efficient a manner as possible in a time of limited resources, ORR strongly encourages States and counties to promote and give special consideration to the provision of services through coalitions of refugee service organizations, such as coalitions of MAAs, voluntary resettlement agencies, or a variety of service providers. ORR believes it is essential for refugee-serving organizations to form close partnerships in the provision of services to refugees in order to be able to respond adequately to a changing refugee picture. Coalition-building and consolidation of providers is particularly important in communities with multiple service providers in order to ensure better coordination of services and maximum use of funding for services by minimizing the funds used for multiple administrative overhead costs.

The award of funds to States under this notice will be contingent upon the completeness of a State's application as described in section IX, below.

IV. Discussion of Comments Received

Twenty-three letters of comment were received in response to the notice of proposed availability of FY 1996 funds for targeted assistance. The comments are summarized below and are followed in each case by the Department's response.

Comment: Six commenters expressed concern about the Cuban entrant figures being used to determine eligibility. Two commenters were concerned about the accuracy of the data being used. Three commenters were concerned about the fact that States were only given 30 days to submit documentation to support the adjustment of county arrival numbers to reflect parolees who originated in Havana. Two of these commenters requested a 60-day delay to review the data. One commenter objected to the fact that ORR was placing the onus on the States to submit supporting documentation and recommended that the revised allocation be circulated for comment before the notice is made final. One commenter noted that the Cuban arrivals for October, November, and December 1995 were significant but are not included in the TAP formula for this year.

Response: The 5-year arrival data used to determine county eligibility and targeted assistance allocations to counties are derived from the ORR Refugee Data System. ORR refugee arrival data are based on monthly refugee/Amerasian arrival data received from the Refugee Data Center (RDC) in New York. These data are then matched with monthly port-of-entry data received from the Centers for Disease Control (CDC) to identify and correct discrepancies. Cuban/Haitian entrant data received from the Community Relations Service (CRS) in the Department of Justice, the agency responsible for the initial resettlement of Cuban and Haitian entrants in the U.S., are merged with the refugee/Amerasian data file, providing a complete refugee/entrant/Amerasian arrival file. There is no other refugee/entrant arrival data system that is as accurate and comprehensive as the ORR Data System.

However, as we acknowledged in the May 6 notice of proposed allocations, ORR arrival data do not include Cuban parolees who came to the United States directly from Havana in FY 1995. Because these parolees were not resettled through any sponsoring agencies, there is no reliable source of destination data for these parolees at this time. We indicated in the Allocation Formula section of the May 6 notice that States could receive credit for their Havana parolee population with the submission of documented evidence. One State, Florida, where the great majority of Cuban entrants and parolees resettle, submitted documentation of Havana parolee arrivals to its counties. Florida's arrival population has been appropriately credited.

In the case of qualified targeted assistance counties that were not able to submit evidence of Havana parolee arrivals, we have devised a method of crediting each county with a share of Havana parolees that we believe is a reasonable proxy in the absence of hard data. ORR has credited each qualified TAP county that received entrant arrivals during the 5-year period from FY 1991 through FY 1995 with a prorated share of the estimated 10,279 parolees who came directly from Havana during FY 1995. The proration is based on the percentage of the total 5-year entrant arrival population that each qualified county received. Thus, for example, San Diego County, which received 378 entrants during the period from FY 1991–FY 1995, received 0.69 percent of the entrants who resettled in the United States during the 5-year period. San Diego, therefore, would be credited with the same percentage of the estimated 10,279 Havana parolees, or 71 parolees, increasing San Diego's 5-year population from 13,579 to 13,650. These adjustments in county 5-year refugee/entrant arrivals are reflected in the third column of table 3 in this notice.

Regarding the comment about Cuban parolees who arrived after FY 1995, the commenter is correct, Cuban arrivals for October, November, and December 1995 are not included in the TAP formula this year because FY 1996 allocations are based on arrivals during the 5-year period from FY 1991 through FY 1995. Targeted assistance counties will be given credit for Cuban parolees who arrived during FY 1996 in the targeted assistance allocations for FY 1997

Comment: One commenter requested that ORR review the procedure for awarding the $19 million Cuban/Haitian set-aside to only those counties which qualify for targeted assistance to determine if deserving counties are excluded from consideration for set-aside funds.

Response: After considering the commenter's request, we have decided to include any county that received 900 or more entrant arrivals from FY 1991 through FY 1995 for eligibility for Cuban/Haitian set-aside funds, instead of limiting qualification for these funds only to counties eligible for regular targeted assistance formula funds. In reviewing congressional report language regarding the use of the special set-aside funds (H.R. Rept. No. 104–209), we believe congressional intent would be better served if eligibility for Cuban/Haitian set-aside funds is open to all counties affected by recent Cuban and Haitian arrivals, regardless of their eligibility for regular targeted assistance funds. We re-examined the eligibility of all counties that received entrant arrivals over the past 5 years to identify all counties with 900 or more entrant arrivals, based on documented arrival data. Two additional counties, Broward County and Hillsborough County, FL, were found to have 900 or more entrant arrivals and are, therefore, eligible to receive set-aside funds.

Comment: Five commenters questioned the limiting of eligible counties to the top 38 counties. One commenter wondered what the rationale was for arriving at the cut-off of 38. Four commenters questioned why the Denver metropolitan area, which ranked 39th with an arrival population of more than 5,000 refugees, was not included among the list of eligible counties and recommended including Denver in the final notice. Two of these commenters recommended that we allow all counties with 5,000 or more refugee arrivals to qualify. One commenter who felt that refugee population is a much more significant factor than concentration recommended that ORR assign 3 times as much weight to population as to concentration. One commenter asked how many counties were considered for qualification.

Response: ORR proposed to limit the number of qualified counties to the top 38 counties in order to cover as many counties as possible while still targeting a sufficient level of funding to the most impacted counties. The decision to place the cut-off after the 38th county was based on the fact that a sufficient point difference existed in the sum of ranks between the 38th county and the 39th county, the Denver metropolitan area, to constitute a natural break. In contrast, the summed scores between the 39th county through the next several counties were clustered within a very narrow point range.

In regard to the qualification of the Denver metropolitan area, this metropolitan area, which is made up of 5 counties, does not qualify for targeted assistance. While the Denver area had over 5,000 refugee arrivals, the percentage of refugees to the general population was low. However, Denver County, which has over 62 percent of the refugee arrivals in the 5-county area and a much higher refugee-to-general population ratio than the 5-county area, when considered alone, ranks as the 26th county. We have, therefore, decided to include Denver County, as the 26th county, on the qualified county list. The addition of Denver changes the rank of the subsequent counties on the qualified list, shifting Oakland County, MI from 38 to 39, thereby increasing the list of qualified counties to the top 39 counties.

We do not agree with the suggestion that ORR should allow all counties with 5,000 or more refugees to qualify for targeted assistance. Our statutory language requires ORR to take into account refugee concentrations as well as refugee population numbers as factors in qualifying counties for targeted assistance. A county with 5,000 or more refugees may have a very low concentration rank that results in a summed score that is not high enough to legitimately qualify the county for targeted assistance. We also do not agree with the suggestion that population should be given 3 times as much weight as concentration. This weighting would reduce the factor of concentration to insignificance, contrary to our understanding of congressional intent.

Regarding the number of counties that were considered for qualification, 1,000 counties were considered.

Comment: One commenter requested clarification on the methodology used to qualify counties. The commenter wondered whether assigning a weight of 2 to the 5-year arrival population means that the number of arrivals in each county were multiplied by two and then all counties were ranked based on this number. The commenter also wondered whether refugee concentration was calculated by computing a ratio of the number of refugees to the total population and whether old refugees only or old refugees plus new arrivals were divided by the total population. The commenter wondered whether the final ranking was the sum of the population ranking and the concentration ranking.

Response: In regard to the weight given to the factor of population, a county's rank on arrivals from FY 1991 through FY 1995 was multiplied by 2. Thus, if county X had a rank of 4 for arrivals, this rank was multiplied by 2, giving a total of 8. Refugee concentration was calculated by dividing the number of refugee/entrant arrivals to a county during the 5-year period by the county's general population number, thus yielding the percentage that the 5-year arrivals represent of the county's general population. The counties were ranked on the basis of their refugee concentration, with the county having the highest refugee concentration assigned a rank of 1. A county's population rank (multiplied by 2) was then added to its concentration rank for a summed rank score. Counties were then ranked in order of their summed scores, with the county with the lowest summed score given the rank of 1. If county X, mentioned earlier, ranked 1 on concentration, its summed score would be 9 (8+1). If the score of 9 happens to be the lowest summed score, then county X would be ranked as the top county, with a rank of 1.

Comment: Thirteen commenters expressed concerns about the factors used in the formula to determine county qualification. Ten commenters objected to the exclusion of secondary migrants in the population count. Four commenters recommended that a State's secondary migration numbers could be allocated to each county based on the proportion of new arrivals going to those counties. Two commenters objected to the fact that ORR is not taking welfare dependency into account when determining eligibility. One commenter recommended that we use population as the sole eligibility criterion, since we allocate TAP formula funds according to population. Another commenter recommended that we determine eligibility at the municipality level, instead of at the county level.

Response: As we have noted in previous years, we are not able to include secondary migrants in the population count for targeted assistance because secondary migration data are not available at the county level. States report annually on in-migration at the State level using the ORR–11. This reporting is based on the first three digits of a refugee's Social Security Number (SSN). These digits identify the State in which the SSN was issued which, with a few exceptions, is the State of initial resettlement. This information enables ORR both to credit the State of in-migration and to debit the State of out-migration in developing State population estimates. Most States and counties are not able to provide county secondary migration data, which would involve tracking intrastate movement. Such data would be very difficult to construct since it would be necessary to determine both in-migration and out-migration for all targeted assistance counties in order to arrive at adjusted population estimates.

The suggestion to allocate a State's secondary migration numbers to each county based on the proportion of new arrivals in the State going to those counties, is an idea that warrants some consideration. We can see problems with using a proportion of State secondary migration data as a proxy for actual data on county secondary migration because the use of secondary migration data involves both credits and debits for in- and out-migration. However, we are willing to look further

into the feasibility of using this method or some form of it in FY 1997.

Regarding the use of welfare dependency data, ORR no longer uses welfare dependency as a qualifying factor because data that would accurately reflect refugee dependency rates with any reasonable scope do not exist. While some States collect refugee recipient data in the AFDC program, many States and counties no longer collect such data. Using these data for some counties and not for others would be inequitable. As discussed in Section V, if a State with more than one eligible targeted assistance county collects welfare dependency data, such data may be used by the State to determine county allocations differently from the allocations set forth in this notice.

Regarding the suggestion that we use population as the only qualifying criterion, ORR must take into account all eligibility factors which are outlined in the statute for which data are available. In section 412(c)(2) of the Immigration and Nationality Act, the three factors for targeted assistance are high population, high refugee concentration, and high use of public assistance. While we do not have available welfare dependency data, data are available on refugee population and refugee concentration. Therefore, we are required to use both factors in determining county qualification.

Regarding the suggestion that ORR determine eligibility at the municipality level, ORR is required by statute to make grants to States for assistance to counties and similar areas. Therefore, we do not consider smaller municipalities, such as townships, for targeted assistance eligibility.

Comment: Six commenters recommended that ORR determine country eligibility on an annual basis instead of the proposed three-year eligibility period. The commenters felt that the three-year eligibility period does not account for fluctuations in arrivals.

Response: As the notice indicates, we proposed maintaining county eligibility for three years in order to allow counties an adequate period of time to address the refugee impact in their counties. An annual redetermination of county qualification would not provide the funding stability needed to sufficiently address refugee impact. If a community experiences a new population impact, discretionary funds are available through the unanticipated arrivals standing announcement to address this issue.

Comment: Three commenters recommended that the 20 percent discretionary funding be included in the targeted assistance formula allocation to impacted areas. One commenter felt that this would result in a more equitable distribution of funds and would avoid the administrative costs involved in preparing a grant proposal.

Response: It is the intent of Congress that TAP 20 percent funds be made available to all communities with large concentrations of refugees whose cultural differences make assimilation especially difficult, not just targeted assistance counties.

Comment: One commenter objected to the $19 million set-aside for Cuban/Haitian Entrants, stating that this set-aside allows certain counties to receive a disproportionate share of the funding.

Response: The allocation of Cuban/Haitian set-aside funds is in accordance with Congressional intent as expressed in the Appropriation Committee Reports.

Comment: Three commenters recommended that ORR consider the impact that discontinuing funding will have on areas of high unemployment. Two commenters expressed concern about the effect that the loss of TAP funds will have on counties' abilities to serve refugees. In addition, two commenters expressed concern that the loss of TAP funds will decrease the county's ability to leverage other funds that have been used to provide services to refugees.

Response: ORR understands that discontinuing funding in the counties that no longer qualify for TAP will undoubtedly have an effect on the services in those counties. It is time, however, to direct targeted assistance funds to those counties that are the most impacted by recent refugee arrivals. Over the past 13 years, the same counties have been receiving targeted assistance, based on arrivals dating back to FY 1980. New ORR regulations require that we now limit our focus on the most recent 5-year arrival populations, which, not surprisingly, shifts the funds to areas with more recent impacts. Such changes to the targeted assistance formula have been discussed with States at a number of meetings over the past two years to ensure that States would understand the effect that the new formula would have and would prepare for the possible loss of funds.

Counties losing targeted assistance formula funds may wish to apply for ORR targeted assistance discretionary funds through their States.

Comment: Two commenters expressed concerns about the application requirements. One commenter felt that offering the TAP funds to the counties would lead the counties to merge TAP with other funds to provide consolidated workforce programs; the commenter felt that such a scenario would detract from the concept of refugee-specific services as supported by ORR. Another commenter asked at what point States can stop applying for TAP funds and have them allocated in the same manner as social service funds. One commenter recommended that ORR allow for a 90-day application period; another commenter recommended that there be a 60-day application period or that there be fewer application requirements.

Response: Section 412(c)(2)(B)(ii) of the Immigration and Nationality Act requires that 95 percent of targeted assistance funds by made available to the county or similar local jurisdiction. States, therefore, must pass the funding down to the qualified county unless the county chooses to rely on the States to administer the targeted assistance program.

Regarding the question about eliminating the need to apply for TAP funds, we have no plans to eliminate this requirement. States that wish to receive targeted assistance funding will continue to have to submit an application for funding in accordance with the application content requirements contained in this notice. Similarly, the receipt of social services formula funds is contingent upon the submission of an approved Annual Services Plan.

A full application is required this year because a number of new counties are eligible for targeted assistance and because counties that have received TAP funds in the past and will continue to qualify for TAP have not been required to submit a full application since FY 1986. Application requirements in the second and third year of a 3-year TAP period will be less extensive. Regarding the time allowed to prepare applications, we plan to allow a longer period of time beginning in FY 1997 for submission of applications.

Comment: One commenter was opposed to requiring the submission of outcome goals in the TAP application since goals which reflect TAP funding will be submitted to ORR every November as part of a State's Annual Outcome Goal Plan. The commenter also felt that goals should reflect changes in funding and other local factors such as the refugee population. The commenter stated that outcomes will decrease if funding decreases.

Response: It is necessary for targeted assistance counties to establish outcome goals as part of their TAP application for two reasons: Not all States that received TAP funds in FY 1995 included TAP-

funded goals in their FY 1996 aggregated Annual Outcome Goal Plans; and HHS grants policy requires grantees to set goals specific to each funding source.

ORR understands that funding levels and other variables must be taken into account when setting and meeting goals. For this reason, we ask States and counties to set goals in terms of percentages of caseload and real numbers. A decrease in funding will likely result in a smaller caseload to be served, but need not necessarily result in a smaller percentage of the caseload entering employment.

Comment: One commenter was opposed to the fact that the notice specifies what must be included in family self-sufficiency plans. The commenter stated that there is no evidence that gathering this information leads to jobs any sooner.

Response: Sections 400.156 and 400.317 of ORR's final rule stipulate that a family self-sufficiency plan must be developed for anyone receiving employment services funded by social services and TAP dollars. We received comments to the proposed rule requesting a definition of a family self-sufficiency plan. Therefore, in response to this request, we defined what we mean by a family self-sufficiency plan in the preamble to the final rule, published on June 28, 1995. The same definition is used in this notice. Contrary to the commenter's view, while there may not be hard evidence that a family self-sufficiency plan, as defined in this notice, leads to earlier employment, there is abundant experiential evidence in the refugee program that the development of such plans assists both the refugee family and the employment counselor to focus more clearly on what steps need to be taken to achieve self-sufficiency. Such plans result ultimately in earlier family self-sufficiency through the attainment of jobs for one or more wage-earners at self-supporting wages.

Comment: One commenter objected to ORR's encouraging States with more than one funded county to place all counties on the same contracting cycle. The commenter stated that until ORR allocates on a Federal fiscal year funding cycle, ORR should not expect States to require counties to operate on the same cycle. Another commenter stated that while having the same start date for all counties would be nice, it would not be able to be accomplished without additional funds in order to avoid a reduction in services.

Response: We are encouraging uniformity of contracting cycles within a State because we believe this makes good management sense and makes reporting less complicated.

Comment: One commenter recommended that TAP funds be allocated to counties within 5 months after being appropriated by Congress. The commenter felt that releasing the funds later keeps counties from accessing funds when they are needed and gives Congress and OMB the impression that the counties do not really need the resources.

Response: We are looking into the feasibility of issuing targeted assistance formula allocations on a quarterly basis, similar to the quarterly allocation of social service formula funds, beginning in FY 1997. Next year, when county eligibility for targeted assistance will not have to be re-determined, we should be able to issue the awards earlier.

Comment: One commenter objected to increasing the county administrative allowance to 15 percent. This commenter felt that counties that have no experience working with refugees will contract out the services to providers that already have contracts with the State, resulting in the same services with added administrative costs. Another commenter expressed support for the increase.

Response: County administrative costs vary in the targeted assistance program. Some counties are able to operate an efficient targeted assistance program with a minimum of administrative costs, while other counties require a higher administrative level of funding to properly manage their targeted assistance program. The increase to 15 percent simply allows for more flexibility in meeting differing administrative cost needs. The increase, however, is not meant to encourage counties to automatically increase their administrative costs, regardless of need.

V. Eligible Grantees

Eligible grantees are those agencies of State governments that are responsible for the refugee program under 45 CFR 400.5 in States containing counties which qualify for FY 1996 targeted assistance awards.

The Director of ORR has determined the eligibility for counties for inclusion in the FY 1996 targeted assistance program on the basis of the method described in section VI of this notice.

The use of targeted assistance funds for services to Cuban and Haitian entrants is limited to States which have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

The State agency will submit a single application on behalf of all county governments of the qualified counties in that State. Subsequent to the approval of the State's application by ORR, local targeted assistance plans will be developed by the county government or other designated entity and submitted to the State.

A State with more than one qualified county is permitted, but not required, to determine the allocation among for each qualified county within the State. However, if a State chooses to determine county allocations differently from those set forth in this notice, in accordance with § 400.319, the FY 1996 allocations proposed by the State must be based on the State's population of refugees who arrived in the U.S. during the most recent 5-year period. A State may use welfare data as an additional factor in the allocation of its targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula. In addition, if a State chooses to allocate its FY 1996 targeted assistance funds in a manner different from the formula set forth in this notice, the FY 1996 allocations and methodology proposed by the State must be included in the State's application for ORR review and approval.

Applications submitted in response to this notice are not subject to review by State and areawide clearinghouses under Executive Order 12372, Intergovernmental Review of Federal Programs.

VI. Qualification and Allocation Formulas

Beginning with FY 1996, ORR has eliminated the formulas used to date for qualification for, and allocation of, targeted assistance funds and replaced them with new formulas in keeping with § 400.315 in ORR's final rule which limits the use of targeted assistance funds to serving refugees who have been in the U.S. 5 years or less.

A. Qualifying New Counties

In order to qualify for application for FY 1996 targeted assistance funds, a county (or group of adjacent counties with the same Standard Metropolitan Statistical area, or SMSA) or independent city is required to rank above a selected cut-off point of jurisdictions for which data were reviewed, based on two criteria: (1) The number of refugee/entrant arrivals placed in the county during the most recent 5-year period (FY 1991—FY 1995); and (2) the 5-year refugee/entrant population as a percent of the county overall population. County arrival numbers have been adjusted based on

updated refugee and entrant arrival data.

Welfare dependency will no longer be used as a qualifying criterion since welfare dependency data for refugee AFDC recipients have not been available at the national level since FY 1989.

Each county was ranked on the basis of its 5-year arrival population and its concentration of refugees, with a relative weighting of 2 to 1 respectively, because we believe that large numbers of refugee/entrant arrivals into a county create a significant impact, regardless of the ratio of refugees to the county general population. The rank of some counties changed slightly due to updated arrival numbers. No county changed its rank sufficiently to change its status from ineligible to eligible.

Each county was then ranked in terms of the sum of a county's rank on refugee arrivals and its rank on concentration. To qualify for targeted assistance, a county had to rank within the top 39 counties. ORR has decided to limit the number of qualified counties to the top 39 counties in order to target a sufficient level of funding to the most impacted counties. Denver County, which had been considered as part of the Denver metropolitan area, in combination with 4 other counties, in the May 6 notice, was ranked as a separate county in the final notice and found to qualify in its own right as the 26th county. The addition of Denver has increased the list of qualified counties from the 38 counties listed in the May 6 notice to 39.

ORR has screened data on all counties that have received awards for targeted assistance since FY 1983 and on all other counties that could potentially qualify for TAP funds based on the criteria in this notice. Analysis of these data indicates that: (1) 24 counties which have previously received targeted assistance continue to qualify; (2) 18 counties which have previously received targeted assistance no longer qualify; and (3) 15 new counties qualify.

Table 1 provides a list of the counties that remain qualified and the new counties that qualify, the number of refugee/entrant arrivals in those counties within the past 5 years, the percent that the 5-year arrival population represents of the overall county population, and each county's rank, based on the qualification formula described above.

Table 2 lists the counties that have previously received targeted assistance which no longer qualify, the number of refugee/entrant arrivals in those counties within the past 5 years, the percent that the 5-year arrival population represents of the overall county population, and each county's rank, based on the qualification formula.

The ORR Director plans to determine qualification of counties for targeted assistance funds once every three years. Thus the counties listed in this notice as qualified to apply for FY 1996 TAP funding will remain qualified for TAP funding through FY 1998. ORR does not plan to consider the eligibility of additional counties for TAP funding until FY 1999, when ORR will again review data on all counties that could potentially qualify for TAP funds based on the criteria in this notice. We believe that a more frequent redetermination of county qualification for targeted assistance would not provide qualifying counties a sufficient period of time within a stable funding climate to adequately address the refugee impact in their counties, while a less frequent redetermination of county qualification would pose the risk of not considering new population impacts in a timely manner.

B. Allocation Formula

Of the funds available for FY 1996 for targeted assistance, $25,317,600 is allocated by formula to States for qualifying counties based on the initial placements of refugees, Amerasians, and entrants in these counties during the 5-year period from FY 1991 through FY 1995 (October 1, 1990—September 30, 1995).

At this time, ORR entrant arrival data do not include Cuban parolees who came to the U.S. directly from Havana in FY 1995 under the U.S. Bilateral Agreement with Cuba. Reliable data on these parolees are difficult to obtain since these parolees are not resettled through sponsoring agencies. Only one State was able to provide appropriate documentation to ORR regarding the number of Havana parolee arrivals to that State. We have adjusted the 5-year population to include Havana parolees to that State based on the data it submitted. For those States that were not able to submit documentation on Havana parolee arrivals, we have decided, in the absence of actual data, to credit each qualified TAP county that received entrant arrivals during the 5-year period from FY 1991–FY 1995 with a prorated share of the estimated 10,279 parolees who came to the U.S. directly from Havana in FY 1995. We believe it is a reasonable proxy to base the proration on the percentage of the total 5-year entrant population that each county received. The allocations in this notice reflect these additional parolee numbers.

C. Allocation Formula for Communities Affected by Recent Cuban/Haitian Arrivals

Allocations for recent Cuban and Haitian entrant arrivals are based on entrant arrival numbers during the 5-year period beginning October 1, 1990 through September 30, 1995. Allocations are limited to counties that received 900 or more Cuban and Haitian arrivals during the 5-year period. We have limited allocations to counties with at least 900 entrants to target these resources on the most impacted counties. Counties with 900 or more entrants are eligible for these special funds regardless of whether they qualify for the regular targeted assistance formula program.

VII. Allocations

Table 3 lists the qualifying counties, the number of refugee/entrant arrivals in those counties during the 5-year period from October 1, 1990–September 30, 1995, the prorated number of Havana parolees credited to each county based on the county's proportion of the 5-year entrant population in the U.S., the sum of the first two columns, and the amount of each county's allocation based on its 5-year total population.

Table 4 lists the number of Cuban and Haitian entrant arrivals in each county during FY 1991–FY 1995, the prorated number of Havana parolees credited to each county, the total number of entrants and parolees, and the allocation amount for each county that received 900 or more entrants during the 5-year period.

Table 5 provides State totals for targeted assistance allocations.

Table 6 indicates the areas that each qualified county represents.

TABLE 1.—TOP 39 COUNTIES ELIGIBLE FOR TARGETED ASSISTANCE, TARGETED ASSISTANCE COUNTIES ELIGIBLE FOR CONTINUATION

County and state	5-year arrival pop.	Concentration percent	Rank
Alameda, CA	5,915	0.4634	23
Fresno, CA	6,856	1.0271	8
Merced, CA	1,885	1.0566	38
Orange, CA	26,218	1.0876	4
Sacramento, CA	12,967	1.2454	5
San Diego, CA	13,579	0.5436	14
San Francisco, CA	11,798	0.7357	12
San Joaquin, CA	3,019	0.6281	28
Santa Clara, CA	18,395	1.2283	3
Los Angeles, CA	30,395	0.3429	21
Denver, CO	3,420	0.7314	26
Dade, FL	54,386	2.6076	1
Palm Beach, FL	3,715	0.4302	35
Cook/Kane, IL	18,979	0.3500	22
Suffolk, MA	6,305	0.9497	13
Hennepin, MN	5,324	0.5157	20
Ramsey, MN	4,814	0.9910	15
New York, NY	87,570	1.1959	2
Multnomah, OR	11,463	0.8116	9
Philadelphia, PA	8,643	0.5451	16
Dallas/Tarrant, TX	13,371	0.4423	17
Harris, TX	11,337	0.4023	24
Fairfax, VA	4,848	0.5055	25
King, WA	17,618	0.8930	6
NEW COUNTIES THAT QUALIFY			
District of Columbia	4,460	0.7349	19
Duval, FL	3,282	0.4877	34
De Kalb, GA	5,762	1.0556	11
Fulton, GA	6,581	1.0141	10
Polk, IA	2,784	0.8510	29
City of Baltimore, MD	3,568	0.4545	32
Oakland, MI	4,100	0.3784	39
City of St. Louis, MO	5,442	1.3719	7
Lancaster, NE	2,894	1.3546	18
Bernalillo, NM	2,828	0.5885	37
Broome, NY	2,155	1.0157	36
Monroe, NY	3,495	0.4895	30
Oneida, NY	2,300	0.9169	33
Davidson, TN	3,308	0.6476	27
Richmond, VA	2,165	1.0662	31

TABLE 2.—TARGETED ASSISTANCE COUNTIES THAT NO LONGER QUALIFY

County and state	5-year arrival pop.	Concentration percent	Rank
Contra Costa, CA	1,748	0.2175	85
Tulare, CA	1,110	0.3559	87
Stanislaus, CA	1,258	0.3395	82
Broward, FL	3,703	0.2949	51
Hillsborough, FL	2,863	0.3433	52
Honolulu, HI	1,363	0.1630	111
Sedgwick, KS	1,572	0.3894	68
Orleans, LA	1,259	0.1332	117
Montgomery/Prince Georges, MD	4,530	0.3048	47
Middlesex, MA	3,114	0.2227	61
Jackson, MO	3,234	0.4067	41
Essex, NJ	2,100	0.2699	67
Hudson, NJ	2,761	0.4992	44
Union, NJ	1,221	0.2473	101
Providence, RI	1,389	0.2329	95
Salt Lake, UT	2,957	0.2511	59
Arlington, VA	1,468	0.5585	54
Pierce, WA	2,825	0.4819	46

TABLE 3.—TARGETED ASSISTANCE ALLOCATIONS BY COUNTY: FY 1996

County, state	Arrivals: Refugee+entrant[1] FY 1991–1995	Prorated[2] Havana Parolees	Total arrivals	$25,317,600 Total FY 1996 allocation
ALAMEDA, CA	5,915	3	5,918	$341,304
FRESNO, CA	6,856	0	6,856	395,400
LOS ANGELES, CA	30,395	114	30,509	1,759,519
MERCED, CA	1,885	0	1,885	108,712
ORANGE, CA	26,218	6	26,224	1,512,394
SACRAMENTO, CA	12,967	1	12,968	747,892
SAN DIEGO, CA	13,579	71	13,650	787,224
SAN FRANCISCO, CA	11,798	35	11,833	682,434
SAN JOAQUIN, CA	3,019	1	3,020	174,170
SANTA CLARA, CA	18,395	2	18,397	1,060,994
DENVER, CO	3,420	1	3,421	197,296
DIST OF COLUMBIA, DC	4,460	2	4,462	257,333
DADE, FL	54,386	0	54,386	3,136,556
DUVAL FL	3,282	0	3,282	189,280
PALM BEACH, FL	3,715	0	3,715	214,252
DE KALB, GA	5,762	4	5,766	332,537
FULTON, GA	6,581	31	6,612	381,328
COOK/KANE, IL	18,979	62	19,041	1,098,135
POLK, IA	2,784	0	2,784	160,559
BALTIMORE, MD[3]	3,568	0	3,568	205,774
SUFFOLK, MA	6,305	52	6,357	366,622
OAKLAND, MI	4,100	2	4,102	236,571
HENNEPIN, MN	5,324	0	5,324	307,046
RAMSEY, MN	4,814	2	4,816	277,749
ST LOUIS, MO[3]	5,442	0	5,442	313,852
LANCASTER, NE	2,894	1	2,895	166,961
BERNALILLO, NM	2,828	188	3,016	173,939
BROOME, NY	2,155	5	2,160	124,572
MONROE, NY	3,495	76	3,571	205,947
NEW YORK, NY	87,570	193	87,763	5,061,479
ONEIDA, NY	2,300	0	2,300	132,646
MULTNOMAH, OR	11,463	62	11,525	664,671
PHILADELPHIA, PA	8,643	12	8,655	499,152
DAVIDSON, TN	3,308	0	3,308	190,779
DALLAS/TARRANT, TX	13,371	85	13,456	776,036
HARRIS, TX	11,337	19	11,356	654,925
FAIRFAX, VA	4,848	1	4,849	279,652
RICHMOND, VA	2,165	15	2,180	125,725
KING/SNOHOMISH, WA	17,618	2	17,620	1,016,183
TOTAL	437,944	1,048	438,992	25,317,600

[1] Includes Havana parolees for counties in Florida.
[2] Havana Parolees credited to non-Florida TAP counties based on counties' proportion of the 5 year entrant population in the U.S.
[3] The qualifying local jurisdiction is the independent City of Baltimore and the independent city of St. Louis.

TABLE 4.—TARGETED ASSISTANCE ALOCATIONS FOR COMMUNITIES AFFECTED BY RECENT CUBAN AND HAITIAN ARRIVALS: FY 1996

County, state	Entrants[1] FY 1991–1995	Prorated[2] Havana parolees	Entrants[1]+Prorated[2] Havana parolees	Entrants[1]+Prorated[2] Havana Par. more than 900	$19,000,000 total FY 1996 C/H allocation
ALAMEDA, CA	16	3	19		
FRESNO, CA	0	0	0		
LOS ANGELES, CA	608	114	722		
MERCED, CA	0	0	0		
ORANGE, CA	30	6	36		
SACRAMENTO, CA	3	1	4		
SAN DIEGO, CA	378	71	449		
SAN FRANCISCO, CA	187	35	222		
SAN JOAQUIN, CA	5	1	6		
SANTA CLARA, CA	12	2	14		
DENVER, CO	3	1	4		
DIST OF COLUMBIA, DC	13	2	15		
DADE, FL	42,679	0	42,679	42,679	$15,737,705
DUVAL, FL	35	0	35		
PALM BEACH, FL	2,955	0	2,955	2,955	$1,089,644
DE KALB, GA	19	4	23		
FULTON, GA	165	31	196		

TABLE 4.—TARGETED ASSISTANCE ALOCATIONS FOR COMMUNITIES AFFECTED BY RECENT CUBAN AND HAITIAN ARRIVALS: FY 1996—Continued

County, state	Entrants[1] FY 1991–1995	Prorated[2] Havana parolees	Entrants[1]+Prorated[2] Havana parolees	Entrants[1]+Prorated[2] Havana Par. more than 900	$19,000,000 total FY 1996 C/H allocation
COOK/KANE, IL	331	62	393	0	0
POLK, IA	0	0	0		
BALTIMORE, MD[2]	1	0	1		
SUFFOLK, MA	277	52	329		
OAKLAND, MI	8	2	10		
HENNEPIN, MN	0	0	0		
RAMSEY, MN	8	2	10		
ST LOUIS, MO[2]	1	0	1		
LANCASTER, NE	5	1	6		
BERNALILLO, NM	1,002	188	1,190	1,190	$436,808
BROOME, NY	29	5	34		
MONROE, NY	403	76	479		
NEW YORK, NY	1,029	193	1,222	1,222	450,607
ONEIDA, NY	1	0	1		
MULTNOMAH, OR	329	62	391		
PHILADELPHIA, PA	66	12	78		
DAVIDSON, TN	1	0	1		
DALLAS/TARRANT, TX	452	85	537		
HARRIS, TX	99	19	118		
FAIRFAX, VA	4	1	5		
RICHMOND, VA	82	15	97		
KING/SNOHOMISH, WA	12	2	14		
BROWARD, FL[3]	2,523	0	2,523	2,523	$930,348
HILLSBOROUGH, FL[3]	957	0	957	957	$352,890
TOTAL	54,728	1,048	55,776	51,526	$19,000,000

[1] Includes Havana parolees for counties Florida.
[2] Havana Parolees credited to non-Florida TAP counties based on counties' proportion of the 5 year entrant population in the U.S.
[3] Broward and Hillsborough counties only qualify for the C/H Allocation.

TABLE 5.—TARGETED ASSISTANCE ALLOCATIONS BY STATE: FY 1996

State	$25,317,600 Total FY 1996 allocation	$19,000,000 Total FY 1996 C/H allocation	$44,317,600 Total FY 1996 allocation
California	$7,570,043		$7,570,043
Colorado	197,296		197,296
District of Col.	257,333		257,333
Florida	3,540,088	18,110,585	21,650,673
Georgia	713,865		713,865
Illinois	1,098,135		1,098,135
Iowa	160,559		160,559
Maryland	205,774		205,774
Massachusetts	366,622		366,622
Michigan	236,571		236,571
Minnesota	584,795		584,795
Missouri	313,852		313,852
Nebraska	166,961		166,961
New Mexico	173,939	438,808	612,747
New York	5,524,644	450,607	5,975,251
Oregon	664,671		664,671
Pennsylvania	499,152		499,152
Tennessee	190,779		190,779
Texas	1,430,961		1,430,961
Virginia	405,377		405,377
Washington	1,016,183		1,016,183
Total	25,317,600	19,000,000	44,317,600

TABLE 6.—TARGETED ASSISTANCE AREAS

State	Targeted assistance area[1]	Definition
CA	ALAMEDA	
CA	FRESNO	

TABLE 6.—TARGETED ASSISTANCE AREAS—Continued

State	Targeted assistance area [1]	Definition
CA	LOS ANGELES	
CA	MERCED	
CA	ORANGE	
CA	SACREMENTO	
CA	SAN DIEGO	
CA	SAN FRANCISCO	MARIN, SAN FRANCISCO, & SAN MATEO COUNTIES
CA	SAN JOAQUIN	
CA	SANTA CLARA	
CO	DENVER	
DC	DISTRICT OF COL.	
FL	DADE	
FL	DUVAL	
FL	PALM BEACH	
GA	DEKALB	
GA	FULTON	
IL	COOK/KANE	
IA	POLK	
MD	CITY OF BALTIMORE	
MA	SUFFOLK	
MI	OAKLAND	
MN	HENNEPIN	
MN	RAMSEY	
MO	CITY OF ST. LOUIS	
NE	LANCASTER	
NM	BERNALILLO	
NY	BROOME	
NY	MONROE	
NY	NEW YORK	BRONX, KINGS, NEW YORK, QUEENS, & RICHMOND COUNTIES.
NY	ONEIDA	
OR	MULTNOMAH	CLACKAMAS, MULTNOMAH, & WASHINGTON COUNTIES, OR. & CLARK COUNTY, WA.
PA	PHILADELPHIA	
TN	DAVIDSON	
TX	DALLAS/TARRANT	
TX	HARRIS	
VA	FAIRFAX	FAIRFAX COUNTY & THE INDEPENDENT CITIES OF ALEXANDRIA, FAIRFAX AND FALLS CHURCH.
VA	RICHMOND	
WA	KING/SNOHOMISH	

[1] Consists of named county/counties eligible for the regular Targeted Assistance Formula Grant unless otherwise defined.

VIII. Application and Implementation Process

Under the FY 1996 targeted assistance program, States may apply for and receive grant awards on behalf of qualified counties in the State. A single allocation will be made to each State by ORR on the basis of an approved State application. The State agency will, in turn, receive, review, and determine the acceptability of individual county targeted assistance plans.

Pursuant to § 400.210(b), FY 1996 targeted assistance funds must be obligated by the State agency no later than one year after the end of the Federal fiscal year in which the Department awarded the grant. Funds must be liquidated within two years after the end of the Federal fiscal year in which the Department awarded the grant. A State's final financial report on targeted assistance expenditures must be received no later than two years after the end of the Federal fiscal year in which the Department awarded the grant. If final reports are not received on time, the Department will deobligate any unexpended funds, including any unliquidated obligations, on the basis of a State's last filed report.

Although additional funding for communities affected by Cuban and Haitian entrants and refugees whose arrivals in recent years have increased is part of the appropriation amount for targeted assistance, the scope of activities for these additional funds will be administratively determined. Applications for these funds are therefore not subject to provisions contained in this notice but to other requirements which will be conveyed separately. Similarly, the requirements regarding the discretionary portion of the targeted assistance appropriation have been addressed separately in the grant announcement for those funds.

IX. Application Requirements

In applying for targeted assistance funds, a State agency is required to provide the following:

A. Assurance that effective October 1, 1995, targeted assistance funds will be used in accordance with the new ORR regulations published in the **Federal Register** on June 28, 1995.

B. Assurance that targeted assistance funds will be used primarily for the provision of services which are designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program. States must indicate what percentage of FY 1996 targeted assistance formula allocation funds that are used for services will be allocated for employment services.

C. Assurance that targeted assistance funds will not be used to offset funding otherwise available to counties or local jurisdictions from the State agency in its administration of other programs, e.g. social services, cash and medical assistance, etc.

D. Identification of the local administering agency.

E. The amount of funds to be awarded to the targeted county or counties. If a State with more than one qualifying targeted assistance county chooses to allocate its targeted assistance funds differently from the formula allocation for counties presented in the ORR targeted assistance notice in a fiscal year, its allocations must be based on the State's population of refugees who arrived in the U.S. during the most recent 5-year period. A State may use welfare data as an additional factor in the allocation of targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula. The application must provide a description of, and supporting data for, the State's proposed allocation plan, the data to be used, and the proposed allocation for each county.

In instances where a State receives targeted assistance funding for impacted counties contained in a standard metropolitan statistical area (SMSA) which includes a county or counties located in a neighboring State, the State receiving those funds must provide a description of coordination and planning activities undertaken with the State Refugee Coordinator of the neighboring State in which the impacted county or counties are located. These planning and coordination activities should result in a proposed allocation plan for the equitable distribution of targeted assistance funds by county based on the distribution of the eligible population by county within the SMSA. The proposed allocation plan must be included in the State's application to ORR.

F. A description of the State's guidelines for the required content of county targeted assistance plans and a description of the State's review/approval process for such county plans. Acceptable county plans must minimally include the following:

1. Assurance that targeted assistance funds will be used in accordance with the new ORR regulations published in the **Federal Register** on June 28, 1995. In particular, a description of a county's plan to carry out the requirements of 45 CFR 400.156.

2. Procedures for carrying out a local planning process for determining targeted assistance priorities and service strategies. All local targeted assistance plans will be developed through a planning process that involves, in addition to the State Refugee Coordinator, representatives of the private sector (for example, private employers, private industry council, Chamber of Commerce, etc.), leaders of refugee/entrant community-based organizations, voluntary resettlement agencies, refugees from the impacted communities, and other public officials associated with social services and employment agencies that serve refugees. Counties are encouraged to foster coalition-building among these participating organizations.

3. Identification of refugee/entrant populations to be served by targeted assistance projects, including approximate numbers of clients to be served, and a description of characteristics and needs of targeted populations. (As per § 400.314)

4. Description of specific strategies and services to meet the needs of targeted populations. These should be justified where possible through analysis of strategies and outcomes from projects previously implemented under the targeted assistance programs, the regular social service programs, and any other services available to the refugee population.

5. The relationship of targeted assistance services to other services available to refugees/entrants in the county including State-allocated ORR social services.

6. Analysis of available employment opportunities in the local community. Examples of acceptable analyses of employment opportunities might include surveys of employers or potential employers of refugee clients, surveys of presently effective employment service providers, review of studies on employment opportunities/forecasts which would be appropriate to the refugee populations.

7. Description of the monitoring and oversight responsibilities to be carried out by the county or qualifying local jurisdiction.

8. Assurance that the local administrative budget will not exceed 15% of the local allocation. Targeted assistance grants are cost-based awards. Neither a State nor a county is entitled to a certain amount for administrative costs. Rather, administrative cost requests should be based on projections of actual needs. Beginning with FY 1996 funds, all TAP counties will be allowed to spend up to 15% of their allocation on TAP administrative costs, as need requires. However, States and counties are strongly encouraged to limit administrative costs to the extent possible to maximize available funding for services to clients.

9. For any State that administers the program directly or otherwise provides direct service to the refugee/entrant population (with the concurrence of the county), the State must provide ORR with the same information required above for review and prior approval.

G. All applicants must establish targeted assistance proposed performance goals for each of the 6 ORR performance outcome measures for each impacted county's proposed service contract(s) or sub-grants for the next contracting cycle. Proposed performance goals must be included in the application for each performance measure. The 6 ORR performance measures are: entered employments, cash assistance reductions due to employment, cash assistance terminations due to employment, 90-day employment retentions, average wage at placement, and job placements with available health benefits. Targeted assistance program activity and progress achieved toward meeting performance outcome goals are to be reported quarterly on the ORR–6, the Quarterly Performance Report.

States which are currently grantees for targeted assistance funds should base projected annual outcome goals on past performance. Current grantees should have adequate baseline data for at least 3 of the 6 ORR performance outcome measures (entered employments, 90 day retentions, and average wage at placement) based on a long history (in some cases, as much as 12 years) of targeted assistance program experience. Where baseline data do not exist for a specific performance outcome measure, current grantees should use available performance data from the current targeted assistance funding cycle to establish reasonable outcome goals for contractors and sub-grantees on all 6 measures.

States identified as new eligible targeted assistance grantees are also required to set proposed outcome goals for each of the 6 ORR performance outcome measures. New grantees may use baseline data, as available, and current data as reported on the ORR–6 for social services program activity to assist them in the goal-setting process.

Proposed targeted assistance outcome goals should reflect improvement over past performance and strive for continuous improvement during the project period from one year to another.

H. An identification of the contracting cycle dates for targeted assistance service contracts in each county. States with more than one qualified county are encouraged to ensure that all counties participating in TAP in the State use the same contracting cycle dates.

I. A description of the State's plan for conducting fiscal and programmatic monitoring and evaluations of the targeted assistance program, including frequency of on-site monitoring.

J. Assurance that the State will make available to the county or designated local entity not less than 95% of the amount of its formula allocation for purposes of implementing the activities proposed in its plan, except in the case of a State that administers the program locally as described in item F9 above.

K. A line item budget and justification for State administrative costs limited to a maximum of 5% of the total award to the State. Each total budget period funding amount requested must be necessary, reasonable, and allocable to the project. States that administer the program locally in lieu of the county, through a mutual agreement with the qualifying county, may add up to, but not exceed, 10% of the county's TAP allocation to the State's administrative budget.

L. Assurance that the State will follow or mandate that its sub-recipients will follow appropriate State procurement and contract requirements in the acquisition, administration, and management of targeted assistance service contracts.

X. Reporting Requirements

States are required to submit quarterly reports on the outcomes of the targeted assistance program, using Schedule A and Schedule C of the new ORR–6 Quarterly Performance Report form which was sent to States in ORR State Letter 95–35 on November 6, 1995.

Dated: July 8, 1996.

Lavinia Limon,

Director, Office of Refugee Resettlement.

[FR Doc. 96–17808 Filed 7–11–96; 8:45 am]

BILLING CODE 4184–01–P–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3778–N–03]

Office of the Assistant Secretary for Community Planning and Development; Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 12, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* versus *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 5, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 96–17560 Filed 7–11–96; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–030–06–1610–00–1784]

Southwest Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Resource Advisory Council Meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 USC), notice is hereby given that the Southwest Resource Advisory Council (SW RAC) will meet on Wednesday, August 14, 1996, in the See Forever Room in the Miramonte Building, 333 West Colorado Avenue, Telluride, Colorado, and on Thursday, September 12, 1996, at the Gunnison County Fairgrounds Multi-Purpose Building, 275 South Spruce, Gunnison, Colorado.

DATES: The meetings will be held on Wednesday, August 14, 1996, and on Thursday, September 12, 1996. Both meetings will begin at 9:00 a.m. and end at 4:30 p.m.

ADDRESSES: For additional information, contact Roger Alexander, Bureau of Land Management, Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401; Telephone 970–249–7791; TDD 970–249–4639.

SUPPLEMENTARY INFORMATION: The August 14, 1996, meeting is scheduled to begin at 9:00 a.m. in the See Forever Room in the Miramonte Building, 333 West Colorado Avenue, Telluride, Colorado. The agenda will focus on management of the San Miguel River corridor and will include a tour of the San Miguel River Area of Critical Environmental Concern/Special Recreation Management Area. Time will be provided for public comments. Field trip participants must provide their own transportation.

The Thursday, September 12, 1996, is scheduled to begin at 9:00 a.m. at the Gunnison County Fairgrounds Multi-Purpose Building, 275 South Spruce, Gunnison, Colorado. This will be a joint meeting with the Gunnison Sage Grouse Working Group and the agenda will focus on the management of sage grouse in southwestern Colorado. Time will be provided for public comments.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the Montrose District Manager.

Summary minutes for Council meetings are maintained in the Montrose District Office and are available for public inspection and reproduction during regular business hours within thirty (30) days following each meeting.

Dated: July 5, 1996.

Mark W. Stiles,

District Manager.

[FR Doc. 96–17706 Filed 7–11–96; 8:45 am]

BILLING CODE 4310–JB–P

[CA–066–06–1610–00]

Emergency Area Closure to the Discharge of Firearms, San Diego County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency area closure to the discharge of firearms on BLM-managed public lands, San Diego County, California.

SUMMARY: Under the authority of 43 CFR 8364.1 (a), notice is hereby given that an emergency area closure to the discharge of firearms is in effect on BLM-managed public lands, San Diego County, east side of La Posta Road, approximately 4.5 miles south of Old Highway 80. Township 17 South, Range 5 East, Section 25. The emergency area closure shall remain in effect until the official end of fire season as authorized by the California Department of Forestry and Fire Protection. Exceptions to this rule are as follows: (1) The discharge of firearms in the legal taking of game pursuant to possession of a valid hunting license and valid game tag if necessary. In this taking of game, steel core ammunition is prohibited; and (2) Federal, State and local law enforcement officers in the performance of their official duties.

DATES: The emergency area closure, effective June 26, 1996, shall remain in effect until the official end of the 1996 fire season as authorized by the California Department of Forestry and Fire Protection.

FOR ADDITIONAL INFORMATION CONTACT: John Blachley, Chief Ranger, U.S.D.I. Bureau of Land Management, Palm Springs-South Coast Resource Area, 690 Garnet Avenue, North Palm Springs, CA 92258–2000; telephone (619) 251–4861.

SUPPLEMENTARY INFORMATION: The discharge of firearms on the aforementioned public lands poses a significant threat to public land resources, public safety, and adjacent private property including residences. The threat determination was based on the following factors: (1) the existence of high and extreme fire danger in this area, and (2) the close proximity of private residences, group camps, ranches, houses and barns to the area where the discharge of firearms is occurring on public lands, causing projectiles to strike buildings, outbuildings, personal property and persons.

Dated: June 26, 1996.

Julia Dougan,

Area Manager.

[FR Doc. 96–17707 Filed 7–11–96; 8:45 am]

BILLING CODE 4310–40–P

[OR–035–00–1050–00; G6–00188]

Notice of Emergency Closure and Restrictions on Public Land in the Grande Ronde Area of Critical Environmental Concern (ACEC), Asotin County, WA

AGENCY: Bureau of Land Management, Baker Resource Area, Vale District.

ACTION: Emergency Closure and Use Restrictions on Public Land in the Lime Hill and Rogersburg areas of the Grande Ronde ACEC, Asotin County, Washington.

SUMMARY: Notice is hereby given that the Vale District is implementing emergency closures and restrictions to protect the values of the Grande Ronde Area of Critical Environmental Concern (ACEC) on public lands near the mouth of the Grande Ronde River and on the west bank of the Snake River in Asotin County, Washington. The purpose of the closure and restrictions are to protect wildlife habitat, native vegetation, fragile soils, and scenic, cultural, and natural values on public land in this part of the Grande Ronde ACEC. These closure and restriction orders will be in effect on 2070 acres of public land.

The authority for this emergency closure and restriction is 43 CFR 8364.1: Closure and restriction orders. This emergency order will be evaluated in a management plan and environmental assessment for the Lime Hill vicinity of the Grande Ronde ACEC

The public lands in Asotin County, Washington, affected by this emergency order are located at:

Willamette Meridian, Oregon:

T. 7N., R. 46E., Section 13
T. 7N., R. 47E., Sections 18, 19, 20, 29, 33
T. 7N., R. 47E., Section 32: E½
T. 6N., R. 47E., Sections 4, 9

The following acts are prohibited on all public lands administered by the Bureau of Land Management (BLM) within the affected area of the Grande Ronde Area of Environmental Concern at the locations identified in this order:

1. Motorized Vehicles

A. Operating any motorized vehicle within the affected ACEC area, except on the existing improved Rogersburg Access Road on BLM public land. The Rogersburg Access Road is located on the east bank of the Grande Ronde River, from the BLM and Washington State public land boundary to the west boundary of the BLM public land and Rogersburg community, at the following location:

T.7N, R.46 E, Section 13: All that portion of the road beginning at the boundary of the BLM administered public land in the SE¼ of the SW¼ of Section 13 to the boundary between the public land and private land located in the SE¼ of the SE¼ of Section 13.

B. Aircraft landing without authorization.

2. Fire

A. Building or maintaining any open campfires except those contained in a fireblanket, firepan or similar metal container with sides measuring at least 2 inches in height.

B. Failure to remove campfire debris and disposing of it in a refuse container.

3. Sanitation and Refuse

A. Disposal of solid human waste except at designated locations or facilities provided for that purpose.

4. Camping

A. Installation of permanent camping facilities.

B. Overnight camping on the public lands located in Township 7N, Range 46E, Section 13, including on and in the vicinity of the Rogersburg Access Road.

SUPPLEMENTARY INFORMATION: This emergency closure and use restriction order is the minimum required to mitigate the impacts of unregulated off-highway vehicle use; to protect wildlife habitat, cultural resources, scenic values, native vegetation and fragile soils in the area; and to respond to concerns of public health and safety, wildfire, weed control and resource degradation. Actions to implement the closure and restrictions will be undertaken.

Private Lands

This order is in no way intended to affect the legal rights, or existing right-of-way, of adjacent private land owners, or their interests within private lands within the closure area. Further, this order does not infer any Bureau of Land Management jurisdiction over private lands located within the closure area.

State Lands

This order is in no way intended to affect uses or restrictions on Washington state owned lands adjacent to the closure area. Further, this order does not infer any Bureau of Land Management jurisdiction over state lands.

Copies of the closure and restriction order and maps showing the location of the closed lands and roads are available from the Baker Resource Area office, 1550 Dewey Avenue, Baker City, Oregon 97814.

Personnel that are exempt from the area closures and restrictions include any Federal, State, or local officer, or member of any organized rescue or fire-fighting force in the performance of an official duty, or any person authorized or permitted in writing by the Bureau of Land Management. BLM personnel conducting official duties, cooperating agency personnel, and contractors authorized by the Bureau of Land Management are included in the exemption from this order.

EFFECTIVE DATES: The closure and use restrictions shall be effective

immediately and shall remain in effect until rescinded or modified by the Authorized Officer.

PENALTIES: Violations of this closure and restriction order are punishable by fines not to exceed $100,000 and imprisonment not to exceed 1 year.

FOR FURTHER INFORMATION CONTACT: Gloria Brown, Area Manager, Baker Resource Area, 1550 Dewey Avenue, P.O. Box 987, Baker City, Oregon 97814; (541) 523–1256 or Vale District Manager, Vale District, 100 Oregon Street, Vale, Oregon 97918; (541) 473–3144.

Gloria D. Brown,

Area Manager.

[FR Doc. 96–17765 Filed 7–11–96; 8:45 am]

BILLING CODE 4310–33–M

[CA–066–00–5440–00–ZBBB; CACA–30070; CACA–25594; CACA–31926]

Notice of Availability of Draft Eagle Mountain Landfill and Recycling Center Project Environmental Impact Statement/Environmental Impact Report, Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Draft Eagle Mountain Landfill and Recycling Center Project Environmental Impact Statement/Environmental Impact Report.

SUMMARY: In accordance with Section 202 of the National Environmental Policy Act of 1969, a draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) has been prepared for the Eagle Mountain Landfill and Recycling Center Project by the Bureau of Land Management (BLM) and County of Riverside. The EIS/EIR describes and analyzes six alternatives in addition to the proposed project. Mine Reclamation Corporation and Kaiser Eagle Mountain, Inc. has proposed to develop the project on a portion of the Kaiser Eagle Mountain Mine in Riverside County, California. The proposed project comprises a Class III nonhazardous municipal solid waste landfill and the renovation and repopulation of Eagle Mountain Townsite. The proposal by the proponent includes a land exchange and application for rights-of-way with the Bureau of Land Management and a Specific Plan, General Plan Amendment, Change of Zone, Development Agreement, Revised Permit to Reclamation Plan, and Tentative Tract Map with the County. The EIS/EIR analyzes the effects of the proposed action and alternatives on such environmental issues as desert tortoise, air and water quality, and wilderness. The BLM has not identified a preferred alternative in the Draft EIS/EIR; a preferred alternative will be identified in the Final EIS/EIR. Comments concerning the adequacy of this document will be considered in preparation of the Final EIS/EIR. Copies of the EIS/EIR are available for review at the following libraries:

Desert Hot Springs Public Library, 1691 West Drive, Desert Hot Springs, CA
Los Angeles Public Library, Documents Department, 433 Spring Street, Los Angeles, CA
Palo Verde Valley District Library, 125 W. Chanslor Way, Blythe, CA
San Bernardino County Library, Yucca Valley Branch, 57098 Twentynine Palms Highway, Yucca Valley, CA
University of California, Riverside Library, Government Publications, Riverside, CA
California State Library, Sacramento, CA
Indio Branch Library, 200 Civic Center Mall, Indio, CA
Palm Desert Public Library, 4480 Portola, Palm Desert, CA
Riverside Central Library, Government Documents, 381 Mission Inn Avenue, Riverside, CA
Colllege of the Desert Library, 43–500 Monterey Avenue, Palm Desert, CA
Coachella Branch Library, Coachella, CA
Lake Tamarisk Branch Public Library, 43880 Lake Tamarisk Drive, Desert Center, CA
Palm Springs Library, 300 S. Sunrise Way, Palm Springs, CA
San Bernardino County Library, Joshua Tree Branch, 6465 Park Boulevard, Joshua Tree, CA
San Bernardino Public Library, Feldheym Central Library, W. 6 Street, San Bernardino, CA
Riverside Community College, Martin Luther King Library, 4800 Magnolia Avenue, Riverside, CA
Rancho Mirage Public Library, 42520 Bob Hope Drive, Rancho Mirage, CA
Cathedral City, 33520 Date Palm Drive, Cathedral City, CA

Copies will be also be available at the following BLM and County offices:

BLM Desert District Office, 6221 Box Springs Boulevard, Riverside, CA
BLM Palm Springs-South Coast Resource Area, 63–500 Garnet, North Palm Springs, CA
County of Riverside, Planning Department, 4080 Lemon Street, 9th Floor, Riverside, CA
County of Riverside, Transportation and Land Management Agency, 46–209 Oasis Street, Room 209, Indio, CA

DATES: A sixty (60) day comment period has been established for review of the Draft EIS/EIR. Written comments on the draft EIS/EIR must be submitted or postmarked no later than September 10, 1996. Oral and/or written comments may also be presented at four public hearings to be held:

August 5, 1996, 6:00–9:00 p.m.—Lake Tamarisk Clubhouse, 26251 Parkview, Desert Center, CA
August 6, 1996, 4:00–7:00 p.m.—Palm Springs Convention Center, Springs Theater, 277N. Avenida Caballeros, Palm Springs, CA
August 7, 1996, 6:00–9:00 p.m.—Black Rock Visitor Center, 9800 Black Rock Canyon Road, Yucca Valley, CA
August 8, 1996, 4:00–7:00 p.m.—Riverside Municipal Auditorium, 3485 Mission Inn Avenue, Riverside, CA

ADDRESSES: Written comments on the document should be addressed to: Eagle Mountain Landfill and Recycling Center Project, Bureau of Land Management, 6221 Box Springs Boulevard, Riverside, California 92507.

FOR FURTHER INFORMATION CONTACT: Joan Oxendine, California Desert District, 6220 Box Springs Boulevard, California 92507; phone (909) 697–5365.

Dated: July 3, 1996.

Henri R. Bisson,

District Manager.

[FR Doc. 96–17699 Filed 7–11–96; 8:45 am]

BILLING CODE 4310–40–M

[(NM–060–06–1610–00) (602)]

Change of Mailing Address; Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Change of mailing address.

SUMMARY: This notice sets forth the new mailing address of the Bureau of Land Management, Lea County Inspection Station, Hobbs, New Mexico.

DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Howard Parman, Public Affairs Officer, Bureau of Land Management 1717 West 2nd Street, Roswell NM 88201 (505) 627–0212.

SUPPLEMENTARY INFORMATION: The Department of Interior's Bureau of Land Management, New Mexico State Office, Roswell District Office, Carlsbad Resource Area Office, Lea County Inspection Station, Hobbs, New Mexico is changing their mailing address effective August 19, 1996. The new mailing address will be: Bureau of Land Management, Lea County Inspection Station, 414 W. Taylor, Hobbs, New Mexico 88240.

Dated: July 2, 1996.

Leslie M. Cone,

District Manager.

[FR Doc. 96–17698 Filed 7–11–96; 8:45 am]

BILLING CODE 4310–FB–M

[NM017–1430–01/G–010–G6–0204; NMNM 34098]

Partial Termination of Airport Lease Segregation and Opening Order, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative affect on 20 acres in airport lease NMNM 34098. The land will be open to the public land laws.

EFFECTIVE DATE: Termination of the segregation is effective July 12, 1996. The land will be open to entry at 9:00 a.m. on July 12, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph Jaramillo, Realty Specialist, Rio Puerco Resource Area, 435 Montano Rd. NE, Albuquerque, NM, 87107, 505–761–8779.

SUPPLEMENTARY INFORMATION: On July 18, 1978, Airport Lease application, NMNM 34098 segregated the following described land:

T. 24 N., R. 2 W., NMPM,
Sec. 20, S½SE¼;
Sec. 21, S½S½ and NE¼SW¼.

This Notice terminates the segregation of 20 acres as to the N½SW¼SE¼, sec. 20, T. 24 N., R. 2 W., NMPM. At 9:00 a.m. on July 12, 1996 the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregation, of record, and the requirements of applicable law.

Dated: July 1, 1996.

Sue Richardson,

Associate District Manager.

[FR Doc. 96–17702 Filed 7–11–96; 8:45 am]

BILLING CODE 4310–AG–M

[CA–017–05–1220–00]

Proposed Resource Area Management Plan Amendment, Bishop Resource Area, California

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of Intent to amend the Bishop Resource Area Management Plan.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), the Federal Land Policy and Management Act of 1976 (FLPMA) and the Code of Federal Regulations (40 CFR 1501.7, 43 CFR 1610.5–5), notice is hereby given that the Bureau of Land Management (BLM) will consider a proposed amendment to the Bishop Resource Area Managment Plan.

The proposed plan amendment would evaluate the potential wilderness suitability of eight Section 202 Wilderness Study Areas (WSAs) in the Bishop Resource Area. An environmental assessment would be prepared to identify the environmental consequences of this action and determine whether an Environmental Impact Statement is needed.

SUPPLEMENTARY INFORMATION: The Bishop Resource Area proposes to determine if eight Section 202 WSAs potentially qualify for wilderness designation based on the mandatory criteria of the Wilderness Act of 1964 (PL 88–577). The WSAs were designated in 1979. They qualified for WSA designation only when considered in combination with similar wilderness values of adjacent United States Forest Service wilderness study areas. The Forest Service referred to their study areas as "RARE II Further Planning Areas".

Without the adjoining Forest Service lands, the Bureau's Section 202 WSAs would not have met minimum size requirements and outstanding opportunities for solitude or primitive recreation opportunities.

The Forest Service RARE II areas were identified as nonsuitable for wilderness and released from further wilderness review.

The Bureau proposes to determine each Section 202 WSA's wilderness suitability potential as per the Wilderness Act criteria, recommend an administrative land use designation based on wilderness suitability potential, and prepare an environmental assessment.

The Section 202 WSAs to be evaluated are located in Inyo and Mono Counties. Several contain multiple land parcels. The WSAs include the following:

1. CA–010–060—Paiute WSA—(3 parcels—7,600 total acres)
2. CA–010–063—Coyote Southeast WSA—(5 parcels—3,211 total acres)
3. CA–010–065—Black Canyon WSA—(3 parcels—total 6,518 acres)
4. CA–010–068—Wheeler Ridge WSA—(2 parcels—3,197 total acres)
5. CA–010–072—Laurel-McGee WSA—(1 parcel—110 acres)
6. CA–010–075—White Mountain WSA—(9 parcels—1,260 total acres)
7. CA–010–077—Benton Range WSA—(2 parcels—4,052 total acres)
8. CA–010–103—Sweetwater WSA—(1 parcel—960 acres)

Public participation is an integral part of the planning and environmental review process. For 30 days commencing the date of this notice, citizens are formally requested to identify issues related to wilderness value identification, including designation recommendations for the Section 202 WSAs. Relevant comments will be incorporated into the planning process and environmental assessment. Upon completion of the draft plan amendment and environmental assessment, a 60 day public comment period will take place.

DATES: Citizens are invited to submit or provide any information that may help the Bureau prepare this amendment and environmental assessment. Written comments must be submitted no later than August 12, 1996, to the following address: Ms. Genivieve D. Rasmussen, 785 N. Main Street, Ste. E, Bishop, CA 93514. Citizens submitting comments will automatically be included on a mailing list to receive a copy of the Proposed Plan and Environmental Assessment when available.

FOR ADDITIONAL INFORMATION CONTACT: Genivieve D. Rasmussen, Bishop Resource Area, 785 N. Main St., Ste. E, Bishop, CA 93514. Telephone: (619) 872–4881.

Genivieve D. Rasmussen,

Area Manager, Bishop Resource Area.

[FR Doc. 96–17704 Filed 7–11–96; 8:45 am]

BILLING CODE 4315–45–P

[OR–957–00–142–00; G6–0200]

Filing of Plats of Survey; Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 40 S., R. 12 E., accepted June 25, 1996
T. 40 S., R. 13 E., accepted June 25, 1996
T. 34 S., R. 5 W., accepted May 9, 1996
T. 21 S., R. 11 W., accepted May 23, 1996
T. 22 S., R. 12 W., accepted May 23, 1996
T. 39 S., R. 13 W., accepted May 24, 1996
T. 38 S., R. 14 W., accepted May 22, 1996

Washington

T. 6 N., R. 13 E., accepted June 25, 1996
T. 22 N., R. 11 W., accepted June 21, 1996

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue,) P.O. Box 2965, Portland, Oregon 97208.

Dated: July 2, 1996.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 96–17703 Filed 7–11–96; 8:45 am]

BILLING CODE 4310–33–M

[NV–930–1992–01; N–59336]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service proposes to withdraw 9,422.82 acres of public lands for an addition to the Ash Meadows National Wildlife Refuge, Nye County, Nevada. This notice closes the lands for up to 2 years from settlement, sale, location, and entry under the general land laws, including the mining laws.

DATES: Comments and requests for meeting should be received on or before October 10, 1996.

ADDRESSES: Comments and meeting requests should be sent to the Nevada State Director, BLM, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, 702–785–6507.

SUPPLEMENTARY INFORMATION: On June 24, 1996, a petition was approved allowing the U.S. Fish and Wildlife Service to file an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian

T. 17 S., R. 50 E.,
Sec. 9, lots 7 and 8;
Sec. 10, lot 12;
Sec. 15, lots 1 to 4, inclusive;
Sec. 17, E½NE¼;
Sec. 19, lot 14;
Sec. 21, lots 5 and 6;
Sec. 22, lots 1 to 5, inclusive, W½SE¼, and SE¼SE¼;
Sec. 23, lots 3 and 4;
Sec. 26, S½;
Sec. 27;
Sec. 28, E½NE¼;
Sec. 29, NE¼NW¼;
Sec. 32, NE¼NE¼, S½NE¼, and N½SE¼;
Sec. 34, NE¼;
Sec. 35, E½NE¼, W½NE¼, N½NW¼, SW¼NW¼, W½SW¼, E½SE¼, and NW¼SE¼;
Sec. 36, W½ and SE¼SE¼.
T. 17 S., R. 51 E.,
Sec. 31, lot 4, SE¼SW¼, and SW¼SE¼;
Sec. 32, S½NW¼.
T. 18 S., R. 50 E.,
Sec. 1, lots 1 to 4, inclusive;
Sec. 2, lots 1 and 2, S½NE¼, and SE¼;
Sec. 3, SW¼SW¼;
Sec. 9, W½NW¼;
Sec. 10, E½;
Sec. 11, N½NW¼ and W½SW¼;
Sec. 12, W½NE¼ and NW¼;
Sec. 13, SW¼NE¼, SE¼SW¼, NW¼SE¼, E½W½SW¼SE¼, and E½SW¼SE¼;
Sec. 14, NE¼, NW¼SE¼, and SE¼SE¼;
Sec. 15, E½ and E½SW¼;
Sec. 23;
Sec. 24, E½NE¼, NW¼NE¼, W½SW¼, and N½NW¼;
Sec. 25, S½N½ and NW¼NW¼;
Sec. 26, NE¼.
T. 18 S., R. 51 E.,
Sec. 5, lot 1;
Sec. 6, lots 2 to 6, inclusive, SW¼NE¼, SE¼NW¼, NE¼SW¼, and SE¼;
Sec. 7, NE¼ and E½NW¼;
Sec. 8, NW¼;
Sec. 18, lots 2 to 4, inclusive, SW¼NE¼, SE¼NW¼, and E½SW¼;
Sec. 19, lots 1 and 2, E½NE¼, NW¼NE¼, SW¼NE¼, E½NW¼, E½SW¼, and SE¼;
Sec. 20, W½E½ and W½;
Sec. 29, W½NE¼ and NW¼;
Sec. 30, lot 2, NE¼ (excluding patent #27–70–009), and E½NW¼.

The areas described aggregate 9,422.82 acres in Nye County.

The purpose of the proposed withdrawal is for an addition to the Ash Meadows National Wildlife Refuge.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Nevada State Director of the Bureau of Land Management.

Notice is hereby given that a public meeting in connection with the proposed withdrawal will be held at a later date. A notice of the time and place will be published in the **Federal Register** and a newspaper in the general vicinity of the lands to be withdrawn at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are rights-of-way, leases, and permits.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the U.S. Fish and Wildlife Service.

Dated: July 1, 1996.

William K. Stowers,

Lands Team Lead.

[FR Doc. 96–17764 Filed 7–11–96; 8:45 am]

BILLING CODE 4310–HC–P

National Park Service

Extension of Time for Inventory

AGENCY: National Park Service

ACTION: Notice

The Native American Graves Protection and Repatriation Act (NAGPRA) requires museums and Federal agencies to complete inventories of all Native American human remains and associated funerary objects in their collections by November 16, 1995. Section 5(c) of the statute authorizes the Secretary to extend the inventory time requirements for museums that have made good faith efforts to complete their inventories by the statuary deadline.

58 INSTITUTIONS with APPROVED EXTENSION APPEALS

MUSEUM DATE

American Museum of Natural History, NY 11/16/98
Arkansas Tech University, Museum of Prehistory and History 5/16/96
Auburn University, AL 4/30/97
Baylor University, TX 11/16/96
Brooklyn Museum, NY 11/16/97
Cabrillo College, CA 12/1/96
California Dept. of Parks & Recreation 11/16/97
California State University, Sacramento 11/16/96
Foothill-DeAnza Community College District, CA 9/30/96
Fort Ticonderoga, NY 5/16/97
Georgia Dept. of Natural Resources 11/16/96
Georgia Dept. of Transportation 5/16/96
Grand Valley State University, MI 5/16/96
Graves Museum of Archaeology and Natural History, FL 12/31/96
Harvard University, Peabody Museum of Archaeology & Ethnography, MA 11/16/98
Hutchinson County Historical Museum, TX 5/16/96
Iowa Historical Society 8/31/97
Jersey City Museum, NJ 9/1/96
Louisiana State University 5/31/96
Michigan State University 5/31/96
Milwaukee Public Museum, WI 11/16/97
Minnesota Indian Affairs Council 7/1/97
Museum of the Great Plains, OK 5/16/96
Natural History Museum of LA County, CA 11/16/98
Nevada State Museum Nevada Historical Society, Lost City Museum, NV 6/16/96
New Mexico State University 9/19/96
New York State Museum 11/16/98
Northeast Louisiana University 12/31/97
Northern Indiana Center for History 9/30/96
Ohio Historical Society 11/16/98
Old Fort Museum, AR 8/31/96
Putnam Museum, IA 9/30/96
Reading Public Museum, PA 11/16/98
Robert S. Peabody Museum at Phillips Academy, MA 11/16/98
Rochester Museum & Science Center, NY
7/31/96
San Diego State University, CA (one site)
7/15/96
San Francisco State University, CA 5/31/98
San Juan County Museum Association, NM 6/1/97
Santa Barbara Museum of Natural History, CA 11/16/96
South Dakota State Archeological Research Center 12/31/98
Southern Illinois University—Carbondale, Center for Archeological Investigations
12/15/96
State University of NY, Binghamton (one site) 11/16/96
Trinidad State Junior College, Louden-Henritze Archaeology Museum, CO, 11/16/96
University of California, Berkeley, Hearst Museum 11/16/98
University of California, Los Angeles, Fowler Museum 3/31/96
University of Florida, Florida Museum of Natural History 8/16/96
University of Idaho 11/16/96
University of Illinois—Urbana 11/16/96
University of Kansas, Museum of Anthropology 4/30/96
University of Oregon 6/30/96
University of Pennsylvania, Museum of Archaeology & Anthropology 12/31/96
University of Texas-Austin, Texas Archeological Research Laboratory 11/16/98
University of West Florida, Archaeology Institute 6/15/96
Wagner Free Institute of Science, PA 12/31/97
Washington State University 5/17/97
West Virginia Division of Culture & History, State Historic Preservation Office Blennerhasset Museum 12/31/96
Western Kentucky University, Kentucky Museum 12/31/96
Western Kentucky University, Dept. of Modern Languages & Intercultural Studies
11/16/98

Dated: July 5, 1996

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeology and Ethnography Program.

[FR Doc. 96–17807 Filed 7–11–96; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

Registration of Potential Claims Against Iraq; Extension of Filing Deadline

AGENCY: Foreign Claims Settlement Commission; Justice.

ACTION: Notice.

SUMMARY: By notice published in the **Federal Register** on May 23, 1996 (61 F.R. 25897), the Foreign Claims Settlement Commission announced the establishment of an Iraq Claims Registration Program for registration of potential claims of United States nationals (individual U.S. citizens, corporations and other legal entities) against the Government of Iraq. The deadline for registration of such claims is hereby extended to August 30, 1996.

DATES: The new deadline for registration of claims is August 30, 1996.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission of the United States, 600 E Street, N.W., Suite 6002, Washington, DC 20579. Tel. (202) 616–6975; FAX (202) 616–6993.

Notice of Commencement of Claims Registration Program, and of Program Completion Date

The Foreign Claims Settlement Commission of the United States (FCSC), an independent, quasi-judicial agency within the U.S. Department of Justice, has begun a program for United States nationals (private citizens, corporations, and other legal entities) to register claims against the Government of Iraq for breach of contract, loss of and damage to property, physical injury or illness, and other losses and damages.

Claims to be registered in this program are claims against the Government of Iraq (and its subdivisions and controlled entities) that are not within the jurisdiction of the United Nations Compensation Commission (UNCC) in Geneva, Switzerland. The UNCC's jurisdiction is defined by relevant United Nations Security Council resolutions (particularly 687 and 692) and the decisions of the UNCC Governing Council.

The claims covered by this Registration Program include: (1) All claims which arose prior to Iraq's August 2, 1990, invasion of Kuwait; (2) all claims of U.S. military personnel or their survivors which arose out of Desert Shield and Desert Storm (other than claims for inhumane treatment of prisoners of war, which are compensable by the UNCC); and (3) all claims arising out of Iraq's 1987 attack on the U.S.S. Stark (other than wrongful death claims, which have been compensated by Iraq).

The information collected in the FCSC Iraq Claims Registration Program will be used to compile an accurate and comprehensive Registry of claimants and claims against Iraq, in preparation

for the adjudication of those claims upon enactment of authorizing legislation. If such legislation is not enacted, the information will be used to ensure that all claims are taken into account in connection with any future claims settlement negotiations with Iraq.

This Claims Registration Program will update and supplement the information on such claims compiled by the Treasury Department in 1991. (56 F.R. 5636, Feb. 11, 1991) Potential claimants who registered previously with the Treasury Department should also file in this new Registration Program.

Requests for claim registration forms should be directed to the following address: Foreign Claims Settlement Commission, Attn: Iraq Claims Registration, Washington, DC 20579.

Forms also may be requested in person at the offices of the Foreign Claims Settlement Commission, 600 E Street, Northwest, Suite 6002, Washington, DC, or by telephone at 202–616–6975 or fax at 202–616–6993.

The new deadline for filing a Registration Form is August 30, 1996.

Note: The registration of a claim in this program will *not* constitute the filing of a formal claim against Iraq. In the event legislation is passed authorizing the Commission to adjudicate these claims against Iraq, instructions for the formal filing of claims will be forwarded to all those registered in this Iraq Claims Registration Program.

Approval has been obtained from the Office of Management and Budget for the collection of this information. Approval No. 1105–0067.

David E. Bradley,

Chief Counsel.

[FR Doc. 96–17708 Filed 7–11–96; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 9, 1996.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5095). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202)–219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget or for Departmental Management, Room 10235, Washington, DC 20503 ((202)–395–7316), by no later than August 12, 1996.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Employment Service Reporting System.

OMB Number: 1205–0240.

Affected Public: State, Local or Tribal Government.

Form	Respondents	Frequency	Average time per response
ETA 9002A–C	54	Quarterly	3 hours.
ETA 200A–B & 300	54	Quarterly	2 hours 42 minutes.
Management Report	1,600	Quarterly	50 minutes.
Recordkeeping	54	As needed	12 hours.

Total Burden Hours: 7,213.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: The Employment Service Program Reporting System is to provide data on State public employment service program activity and expenditures, for use at the Federal level by the U.S. Employment Service and the Veterans Employment and Training Service in program administration and to provide reports to the President and Congress.

Agency: Departmental Management, Women's Bureau.

Title: Fair Pay Clearinghouse.

Type: New collection.

OMB Number: 1225–0new.

Frequency: Annually.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Form/instrument	Respondents	Estimated time per respondent	Total burden hours
Letter to Solicitors	52	8 hours	416
Letter to State/local governments	177	12 hours	2,124
Labor Unions	19	12 hours	228
Organizations	750	30 minutes	375
State Commissions on Women	46	1 hour	46

Total Burden Hours: 3,189.

Total Annualized Capital/Startup Cost: 0.

Total Annual Cost (operating/maintaining systems or purchasing services): 0.

Description: The Women's Bureau needs to have current information on the status of fair pay/pay equity adjustments to respond to employees, employers, unions and other organizations that wish to explore successful pay equity experience in the United States with a view toward implementing pay equity in other work environments. The Clearinghouse will facilitate networking. Survey respondents include state local government entities, unions and organizations.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–17760 Filed 7–11–96; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

[TA–W–31, 736, etc.]

Bayer Clothing Group, Inc., Formerly Known as Target Sportswear, Clearfield, PA, Hyde, PA, New Philadelphia, PA, and Kent Sportswear, Inc., Formerly Known as Target Sportswear, Curwensville, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 1, 1996, applicable to all workers of Bayer Clothing Group, Inc., Clearfield, Pennsylvania. The notice was published in the **Federal Register** on March 19, 1996 (61 FR 11224). The certification was amended on April 29, 1996, to include other production facilities of the subject firm. The notice was published in the **Federal Register** on May 8, 1996 (61 FR 20835).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that Bayer Clothing Group, Inc., was formerly known as Target Sportswear. Workers of Target Sportswear were covered under a certification until August 5, 1995. Accordingly, the Department is amending this certification to change the impact date from December 11, 1994 to August 5, 1995.

The intent of the Department's certification is to include all workers of Bayer Clothing Group, Inc., formerly known as Target Sportswear, who were adversely affected by increased imports of apparel, beginning with the expiration of the precious certification August 5, 1995.

The amended notice applicable to TA–W–31, 736 is hereby issued as follows:

All workers of Bayer Clothing Group, Inc., formerly known as Target Sportswear, located in Clearfield, Pennsylvania (TA–W–31, 736), Hyde Pennsylvania (TA–W–31, 736A), New Philadelphia, Pennsylvania (TA–W–31, 736B); and Kent Sportswear, Inc., Curwensville, Pennsylvania (TA–W–31, 736C), who became totally or partially separated from employment on or after August 5, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C. this 28th day of June, 1996

Linda G. Poole,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–17773 Filed 7–11–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,260; 32,260A]

Buster Brown Apparel, Inc. Garment Finishing Department Chattanooga, TN and Chilhowie, VA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 24, 1996, applicable to all workers of Buster Brown Apparel, Inc., Chattanooga, Tennessee. The notice was published in the **Federal Register** on May 17, 1996 (FR 61 24960).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations have occurred at Buster Brown's Garment Finishing Department in Chilhowie, Virginia. The production facility closed in March 1996. The workers were engaged in employment related to the production of infant's and children's apparel.

The intent of the Department's certification is to include all workers of Buster Brown Apparel adversely affected by imports. Accordingly, the Department is amending the certification to include all workers at the subject firms' Chilhowie, Virginia location.

The amended notice applicable to TA–W–32,260 is hereby issued as follows:

"All workers of Buster Brown Apparel, Inc., Garment Finishing Department, Chattanooga, Tennessee (TA–32,260), and Chilhowie, Virginia (TA–W–32,260A) who became totally or partially separated from employment on or after April 15, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 1st day of July 1996.

Curtis K. Kooser,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–17770 Filed 7–11–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,397]

Buster Brown Apparel, Inc., Garment Finishing Department, Chilhowie, VA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 3, 1996 in response to a worker petition which was filed May 20, 1996 on behalf of workers at Buster Brown Apparel, Garment Finishing Department, Chilhowie, Virginia (TA–W–32,397).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA–W–32,260A). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 1st day of July 1996.

Curtis K. Kooser,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–17772 Filed 7–11–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,179A; 32,179B]

Dalico Industries, Inc., Headquarters and Production Facility, York and Production Facility, Adams County, Pennsylvania, and Mt. Union, PA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 22, 1996, applicable to all workers of Dalico Industries, Inc., headquarters and production facility, York, Pennsylvania

and production facility, Adams County, Pennsylvania. The notice was published in the **Federal Register** on June 6, 1996 (61 FR 28900).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The Department's review of the certification, revealed that workers at the subject firm's Mount Union, Pennsylvania production facility were inadvertently excluded from the certification. Accordingly, the Department is amending the certification to include workers of Dallco Industries, Inc. located in Mount Union. The workers are engaged in employment related to the production of ladies' loungewear, sleepwear, sportswear and children's clothing.

The intent of the Department's certification is to include all workers of Dallco Industries, Inc. who were adversely affected by imports.

The amended notice applicable to TA–W–32,179A is hereby issued as follows:

"All workers of Dallco Industries, Inc., headquarters and production facility, York Pennsylvania and the production facility in Adams County, Pennsylvania (TA–W–32,179A), and the production facility in Mount Union, Pennsylvania (TA–W–32,179A), who became totally or partially separated from employment on or after March 12, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 1st day of July 1996.

Curtis K. Kooser,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–17775 Filed 7–11–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,258]

IBM Corporation, Glendale Development Laboratory (Including Network Systems (NS) Division), Endicott, NY; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 15, 1994, applicable to all workers of IBM Corporation, Glendale Development Laboratory located in Endicott, New York. The notice was published in the **Federal Register** on January 20, 1995 (60 FR 4195).

At the request of the petitioner, the Department reviewed the certification for workers of the subject firm. Findings show that some workers of Glendale Laboratory were transferred to Network Systems (NS) Division, and continued to perform the same development work in Endicott for IBM's Large Scale Computing Division. Worker separations have occurred at Network Systems. Based on these new findings, the Department is amending the certification to cover workers of Network Systems (NS) Division located in Endicott.

The intent of the Department's certification is to include all workers of IBM Corporation, Glendale Development Laboratory, who are adversely affected by imports.

The amended notice applicable to TA–W–30,258 is hereby issued as follows:

"All workers of Glendale Development Laboratory, including Network Systems (NS) Division located in Endicott, New York of the Large Scale Computing Division of IBM Corporation who became totally or partially separated from employment on or after July 29, 1993, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 26th day of June 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–17776 Filed 7–11–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,096]

Oshkosh B'Gosh, Columbia Cutting and Columbia Sewing, Columbia, Ky; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Revised Determination on Reopening for Worker Adjustment Assistance on June 21, 1996, applicable to all workers of OshKosh B'Gosh, Columbia Cutting, located in Columbia, Kentucky. The notice will soon be published in the **Federal Register**.

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. The findings show that worker separations have occurred at OshKosh's Columbia Sewing plant in Columbia, Kentucky. The workers are engaged in the production of children's apparel.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by imports. Accordingly, the Department is amending the certification to include all workers at the Columbia Sewing plant of OshKosh B'Gosh.

The amended notice applicable to TA–W–32 is hereby issued as follows:

"All workers of OshKosh B'Gosh, Columbia Cutting and Columbia Sewing, Columbia, Kentucky, who became totally or partially separated from employment on or after March 11, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 1st day of July 1996.

Curtis K. Kooser,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–17769 Filed 7–11–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,134; 32,134A]

Scotts Hill Leisurewear, Inc., Scotts Hill, TN and Henderson, TN; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 28, 1996, applicable to all workers of Scotts Hill Leisurewear, Inc., located in Scotts Hill, Tennessee. The notice was published in the **Federal Register** on June 20, 1996 (61 FR 31533).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The findings show that worker separations have occurred at Scotts Hill Leisurewear plant in Henderson, Tennessee. The workers produce ladies robes and sleepwear.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by imports. Accordingly, the Department is amending the certification to include all workers at the Scotts Hill Leisurewear plant in Henderson.

The amended notice applicable to TA–W–32,134 is hereby issued as follows:

"All workers of Scotts Hill Leisurewear, Inc., Scotts Hill, Tennessee (TA–W–32,134), and Henderson, Tennessee (TA–W–32,134A) who became totally or partially separated from employment on or after March 13, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 1st day of July 1996.

Curtis K. Kooser,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–17768 Filed 7–11–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31, 694; TA–W–31, 694A]

Snyder Oil Corporation, Headquartered in Fort Worth, TX Operating Throughout the States of Texas and Wyoming; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 2, 1996, applicable to all workers of Snyder Oil Corporation, headquartered in Fort Worth, Texas and operating throughout the State of Texas. The notice was published in the **Federal Register** on February 21, 1996 (61 FR 6660).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations will occur at Snyder Oil's production operations throughout the State of Wyoming. The workers are engaged in employment related to the production of crude oil, natural gas and natural gas liquids.

The intent of the Department's certification is to include all workers of Snyder Oil Corporation adversely affected by imports. Accordingly, the Department is amending the certification to include all workers at the subject firms' Wyoming locations.

The amended notice applicable to TA–W–31, 694 is hereby issued as follows:

"All workers at Snyder Oil Corporation, headquartered in Fort Worth, Texas, operating throughout the State of Texas (TA–W–31, 694), and operating throughout the State of Wyoming (TA–W–31, 694A), who became totally or partially separated from employment on or after November 17, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 1st day of July 1996.

Curtis K. Kooser,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–17774 Filed 7–11–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00946; NAFTA–00946A]

Montana Power Company, Colstrip Project Division, Colstrip, MT and Western Energy Company, Colstrip, MT; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on May 10, 1996, applicable to all workers of Montana Power Company, Colstrip Project Division located in Colstrip, Montana. The certification was published in the **Federal Register** on May 24, 1996 (61 FR 26220).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. The new findings show that worker separations have occurred at Western Energy Company in Colstrip, Montana. Western Energy is a wholly-owned subsidiary of Montana Power Company. The workers are engaged in employment related to the production of electricity.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports. Accordingly, the Department is amending the certification to include workers at Western Energy Company.

The amended notice applicable to NAFTA–00946 is hereby issued as follows:

All workers of Montana Power Company, Colstrip Project Division (NAFTA–00946), and Western Energy Company (NAFTA–00946A), both located in Colstrip, Montana, who became totally or partially separated from employment on or after April 1, 1995, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C., this 27th day of June 1996.

Linda G. Poole,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–17777 Filed 7–11–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00952, 00952A]

Scotts Hill Leisurewear Inc., a Wholly Owned Subsidiary of I. Appel Corporation, Scotts Hill, TN and Henderson, TN; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on May 8, 1996, applicable to all workers of Scotts Hill Leisurewear Inc., a wholly owned subsidiary of I. Appel Corporation, located in Scotts Hill, Tennessee. The certification was published in the **Federal Register** on May 24, 1996 (61 FR 26219).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The findings show that worker separations have occurred at Scotts Hill Leisurewear plant in Henderson, Tennessee. The workers produce ladies robes and sleepwear.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in production from the workers' firm to Mexico or Canada. Accordingly, the Department is amending the certification to include workers at the Scotts Hill Leisurewear plant in Henderson.

The amended notice applicable to NAFTA—00952 is hereby issued as follows:

All workers of Scotts Hill Leisurewear, Inc., a wholly owned subsidiary of the I. Appel Corporation, Scotts Hill, Tennessee (NAFTA–00952) and Henderson, Tennessee (NAFTA–00952A) who became totally or partially separated from employment on or after March 28, 1995, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C., this 1st day of July 1996.

Curtis K. Kooser,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–17771 Filed 7–11–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00955]

Stone Ridge Farm, Livingston Manor, NY; Notice of Revised Determination On Reopening

On June 13, 1996, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and formers workers of the subject firm. The notice will soon be published in the **Federal Register**.

The workers at Stone Ridge Farm were engaged in the production of beef cattle. New findings on reconsideration show that a major customer of Stone Ridge Farm imported beef from Canada during the time period relevant to the investigation. Other findings on

reconsideration show that the value of United States imports of cattle from Mexico and Canada increased from 1994 to 1995.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports from Mexico and Canada of articles like or directly competitive with cattle contributed importantly to the declines in sales or production and to the total or partial separation of workers at Stone Ridge Farm, Livingston, New York. In accordance with the provisions of the Act, I make the following certification:

"All workers of Stone Ridge Farm, Livingston, New York who became totally or partially separated from employment on or after March 1, 1995 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, D.C. this 1st day of July 1996.

Curtis K. Kooser,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–17767 Filed 7–11–96; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interests in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

NONE

Volume II

District of Columbia
DC960001 (March 15, 1996)
DC960003 (March 15, 1996)
Delaware
DE960001 (March 15, 1996)
DE960002 (March 15, 1996)
DE960004 (March 15, 1996)
DE960005 (March 15, 1996)
DE960009 (March 15, 1996)
Maryland
MD960008 (March 15, 1996)
MD960017 (March 15, 1996)
MD960035 (March 15, 1996)
MD960047 (March 15, 1996)
MD960048 (March 15, 1996)
Virginia
VA960022 (March 15, 1996)
VA960034 (March 15, 1996)
VA960039 (March 15, 1996)
VA960052 (March 15, 1996)
VA960063 (March 15, 1996)
VA960069 (March 15, 1996)
VA960102 (March 15, 1996)
VA960104 (March 15, 1996)
VA960105 (March 15, 1996)

Volume III

Kentucky
KY960025 (March 15, 1996)
KY960027 (March 15, 1996)
KY960028 (March 15, 1996)

Volume IV

Indiana
IN960001 (May 17, 1996)

Volume V

Louisiana
LA960001 (March 15, 1996)
LA960004 (March 15, 1996)
LA960005 (March 15, 1996)
LA960009 (March 15, 1996)
LA960014 (March 15, 1996)
LA960018 (March 15, 1996)

Volume VI

Alaska
AK960001 (March 15, 1996)
California
CA960032 (March 15, 1996)
Hawaii
HI960001 (March 15, 1996)
Idaho
ID960001 (March 15, 1996)
Nevada
NV960001 (March 15, 1996)
NV960002 (March 15, 1996)
NV960003 (March 15, 1996)
NV960004 (March 15, 1996)
NV960005 (March 15, 1996)
NV960006 (March 15, 1996)
NV960007 (March 15, 1996)
Oregon
OR960001 (March 15, 1996)
OR960017 (March 15, 1996)
South Dakota
SD960002 (March 15, 1996)
SD960024 (March 15, 1996)
Washington
WA960001 (March 15, 1996)
WA960002 (March 15, 1996)
WA960003 (March 15, 1996)
WA960004 (March 15, 1996)
WA960006 (March 15, 1996)
WA960007 (March 15, 1996)
WA960008 (March 15, 1996)
WA960011 (March 15, 1996)
WA960013 (March 15, 1996)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C., this 5th day of July 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–17540 Filed 7–11–96; 8:45 am]

BILLING CODE 4510–27–M

Occupational Safety and Health Administration

[Docket No. NRTL–2–92]

Canadian Standards Association

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of Request for Expansion of Recognition as a Nationally Recognized Testing Laboratory, and Preliminary finding.

SUMMARY: This notice announces the application of the Canadian Standards Association for expansion of its recognition as an NRTL under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is September 10, 1996.

ADDRESSES: Send comments to: NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor—Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Canadian Standards Association (CSA), which previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7, for recognition of its Rexdale (Toronto) facility as a Nationally Recognized Testing Laboratory (see 57 FR 23429, 6/3/92; amended 57 FR 48804, 10/28/92), and was so recognized (see 57 FR 61452, 12/24/92); made application for expansion of the recognition of its Rexdale facility (see 58 FR 64973, 12/10/93), and was so recognized (see 59 FR 5447, 2/4/94); subsequently made application for inclusion of its Pointe-Claire, Richmond, Edmonton, Moncton, and Winnipeg facilities in the recognition of its Rexdale facility as an NRTL (see 59 FR 10173, 3/3/94), and was so recognized (see 59 FR 40602, 8/9/94); made application for expansion of its recognition (see 59 FR 63383, 12/8/94, and was so recognized (see 60 FR 15595, dated 3/24/95); has made application for expansion of its recognition as a Nationally Recognized Testing Laboratory for the programs and procedures listed below.

The addresses of the laboratories covered by this application are:

Canadian Standards Association, Rexdale (Toronto) Facility, 178 Rexdale Boulevard, Rexdale, Ontario M9W1R3, Canada
Canadian Standards Association, Pointe-Claire (Montreal) Facility, 865 Ellingham Street, Pointe-Claire, Quebec H9R 5E8, Canada
Canadian Standards Association, Richmond (Vancouver) Facility, 13799 Commerce Parkway, Richmond British Columbia V6V 2N9, Canada
Canadian Standards Association, Edmonton Facility, 1707–94th Street, Edmonton, Alberta T6N 1E6, Canada
Canadian Standards Association, Moncton Facility, 40 Rooney Cresent, Moncton, New Brunswick E1E 4M3, Canada
Canadian Standards Association, Winnipeg Facility, 50 Paramount Road, Winnipeg, Manitoba R2X 2W3, Canada

Expansion of Recognition

On July 12, 1995, the Canadian Standards Association made application for expansion of its recognition as a Nationally Recognized Testing Laboratory, based upon the conditions as detailed in the **Federal Register** document titled, "Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures", 60 FR 12980, 3/9/95, for the following programs and procedures:

1. Acceptance of testing data from independent organizations, other than NRTLs.
2. Acceptance of product evaluations from independent organizations, other than NRTLs.
3. Acceptance of witnessed testing data.
4. Acceptance of testing data from non-independent organizations.
5. Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing).
6. Acceptance of continued certification following minor modifications by the client.
7. Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme.
8. Acceptance of services other than testing or evaluation performed by subcontractors or agents.

The NRTL Recognition Program staff made an in-depth study of the details of CSA's original application for recognition, as well as its requests for expansion, the original and renewal on-site assessments, and of all of the programs that it has utilized for many years in testing and certifying products in its Product Certification Program (under its Canadian accreditation), and determined that CSA had the staff capability and that the controls for the various programs had already been

established to enable it to test and certify products under the programs and procedures which it had requested. The NRTL staff determined that additional on-site reviews were not necessary at this time and that at the next regularly scheduled audits the auditors will assure that the controls are adequate for the scope of the activities involved in the NRTL program.

Preliminary Finding

Based upon a review of the completed application file and the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the Canadian Standards Association can meet the requirements as prescribed by 29 CFR 1910.7 for the programs and procedures for which it has requested recognition.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for expansion of its recognition as a Nationally Recognized Testing Laboratory, as required by 29 CFR 1910.7 and Appendix A to 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than September 10, 1996, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, Room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Copies of the CSA application, the laboratory survey reports, the NRTL staff review and recommendation on this request, and all submitted comments, as received, (Docket No. NRTL–2–92), are available for inspection and duplication at the Docket Office, Room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant (the Canadian Standards Association) satisfies the requirements for expansion of its recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with Appendix A to Section 1910.7.

Signed at Washington, D.C. this 8th day of July, 1996.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 96–17778 Filed 7–11–96; 8:45 am]

BILLING CODE 4510–26–M

[Docket No. NRTL–1–93]

Wyle Laboratories

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of Request for Expansion of Recognition as a Nationally Recognized Testing Laboratory, and Preliminary Finding.

SUMMARY: This notice announces the application of Wyle Laboratories for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is September 10, 1996.

ADDRESSES: Send comments to: NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor—Room N3653, 200 Constitution Avenue, NW, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, D.C. 20210.

SUPPLEMENTARY INFORMATION: Notice is hereby given that Wyle Laboratories (WL), which previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (see 59 FR 783, 1/6/94), and was so recognized (see 59 FR 37500, 7/22/94), has made application for expansion of its recognition as a Nationally Recognized Testing Laboratory, for the programs and procedures, and the equipment or materials, listed below.

The address of the laboratory covered by this application is: Wyle Laboratories, 7800 Highway 20 West, Huntsville, Alabama 35807.

Expansion of Recognition

On September 15, 1995, Wyle Laboratories made application for expansion of its recognition as a Nationally Recognized Testing Laboratory in the following areas:

Expansion of Recognition—Programs and Procedures

Based upon the conditions as detailed in the **Federal Register** document titled, "Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures", 60 FR 12980, 3/9/95, WL applied for recognition for the following programs and procedures:

1. Acceptance of testing data from independent organizations, other than NRTLs.
2. Acceptance of product evaluations from independent organizations, other than NRTLs.
3. Acceptance of witnessed testing data.
4. Acceptance of testing data from non-independent organizations.
5. Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing).
6. Acceptance of continued certification following minor modifications by the client.
7. Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme.
8. Acceptance of services other than testing of evaluation performed by subcontractors or agents.

Expansion of Recognition—Test Standards

WL also requested expansion of its NRTL recognition for testing and certification of products when tested for compliance with the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c):

ANSI/UL 8—Foam Fire Extinguishers
ANSI/UL 20—General—Use Snap Switches
ANSI/UL 22—Amusement and Gaming Machines
ANSI/UL 44—Rubber-Insulated Wires and Cables
ANSI/UL 45—Portable Electric Tools
ANSI/UL 48—Electric Signs
ANSI/UL 62—Flexible Cord and Fixture Wire
ANSI/UL 65—Electric Wired Cabinets
ANSI/UL 67—Electric Panelboards
ANSI/UL 73—Electric-Motor-Operated Appliances
ANSI/UL 83—Thermoplastic-Insulated Wires and Cables
ANSI/UL 92—Fire Extinguisher and Booster Hose
UL 98—Enclosed and Dead-Front Switches
ANSI/UL 154—Carbon Dioxide Fire Extinguishers
ANSI/UL 198B—Class H Fuses
ANSI/UL 198C—High-Interrupting-Capacity Fuses, Current Limiting Type
ANSI/UL 198D—High-Interrupting-Capacity Class K Fuses
ANSI/UL 198E—Class R Fuses
ANSI/UL 198F—Plug Fuses
ANSI/UL 198G—Fuse for Supplementary Overcurrent Protection
ANSI/UL 198H—Class T Fuses
ANSI/UL 198L—DC Fuses for Industrial Use
ANSI/UL 244A—Solid-State Controls for Appliances
ANSI/UL 299—Dry Chemical Fire Extinguishers
ANSI/UL 363—Knife Switches
ANSI/UL 393—Indicating Pressure Gauges for Fire Protection Service
ANSI/UL 429—Electrically Operated Valves
UL 444—Communications Cables
ANSI/UL 466—Electric Scales
ANSI/UL 467—Electrical Grounding and Bonding Equipment
ANSI/UL 486B—Wire Connectors for Use with Aluminum Conductors
ANSI/UL 486C—Splicing Wire Connectors
ANSI/UL 486D—Insulated Wire Connectors for Use With Underground Conductors
UL 497A—Secondary Protectors for Communication Circuits
ANSI/UL 498—Attachment Plugs and Receptacles
ANSI/UL 507—Electric Fans
ANSI/UL 510—Insulating Tape
ANSI/UL 512—Fuseholders
ANSI/UL 539—Single and Multiple Station Heat Detectors
ANSI/UL 541—Refrigerated Vending Machines
ANSI/UL 547—Thermal Protectors for Electric Motors
ANSI/UL 626—2½ Gallon Stored Pressure Water Type Fire Extinguishers
ANSI/UL 711—Rating and Fire Testing of Fire Extinguishers
ANSI/UL 796—Printed-Wiring Boards
ANSI/UL 813—Commercial Audio Equipment
ANSI/UL 817—Cord Sets and Power-Supply Cords
ANSI/UL 845—Electric Motor Control Centers
ANSI/UL 854—Service Entrance Cable
ANSI/UL 863—Electric Time-Indicating and -Recording Appliances
ANSI/UL 877—Circuit Breakers and Circuit-Breaker Enclosure for Use in Hazardous (Classified) Locations
ANSI/UL 894—Switches for Use in Hazardous (Classified) Locations
ANSI/UL 916—Energy Management Equipment
ANSI/UL 917—Clock-Operated Switches
ANSI/UL 924—Emergency Lighting and Power Equipment
ANSI/UL 943—Ground-Fault Circuit Interrupters
ANSI/UL 961—Hobby and Sports Equipment
ANSI/UL 9677—Fused Power-Circuit Devices
ANSI/UL 998—Humidifiers
ANSI/UL 1004—Electric Motors
ANSI/UL 1008—Automatic Transfer Switches
ANSI/UL 1018—Electric Aquarium Equipment
UL 1022—Line Isolated Monitors
ANSI/UL 1028—Electric Hair-Clipping and -Shaving Appliances
UL 1047—Isolated Power Systems Equipment
ANSI/UL 1053—Ground-Fault Sensing and Relaying Equipment
ANSI/UL 1054—Special-Use Switches
ANSI/UL 1058—Halogenated Agent Extinguishing System Units
UL 1059—Terminal Blocks
UL 1066—Low-Voltage AC and DC power Circuit Breakers Used in Enclosures
ANSI/UL 1077—Supplementary Protectors for Use in Electrical Equipment
ANSI/UL 1091—Butterfly Valves for Fire Protection Service
ANSI/UL 1093—Halogenated Agent Fire Extinguishers
ANSI/UL 1096—Electric Central Air-Heating Equipment
ANSI/UL 1097—Double Insulation Systems for Use in Electrical Equipment
UL 1254—Pre-Engineered Dry Chemical Extinguishing System Units
ANSI/UL 1283—Electromagnetic-Interference Filter
ANSI/UL 1412—Fusing Resistors and Temperature-Limited Resistors for Radio-, and Television-Type Appliances
ANSI/UL 1416—Overcurrent and Overtemperature Protectors for Radio- and Television-Type Appliances
UL 1424—Cables for Power-Limited Fire-Protective-Signaling Circuits
ANSI/UL 1429—Pullout Switches
UL 1437—Electric Analog Instruments, Panelboard Types
UL 1449—Transient Voltage Surge Suppressors
ANSI/UL 1474—Adjustable Drop Nipples for Sprinkler Systems
ANSI/UL 1481—Power Supplies for Fire Protective Signaling Systems
UL 1486—Quick Opening Devices for Dry Pipe Valves for Fire-Protection Service
ANSI/UL 1557—Electrically Isolated Semiconductor Devices
ANSI/UL 1564—Industrial Battery Chargers
ANSI/UL 1577—Optical Isolators
UL 1604—Electrical Equipment for Use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations
ANSI/UL 1624—Light Industrial and Fixed Electric Tools
ANSI/UL 1664—Immersion-Detection Circuit-Interrupters
UL 1673—Electric Space Heating Cables
UL 1682—Plugs, Receptacles, and Cable Connectors, of the Pin and Sleeve Type
ANSI/UL 1876—Isolating Signal and Feedback Transformers for Use in Electronic Equipment
UL 1995—Heating and Cooling Equipment
UL 2006—Halon 1211 Recovery/Recharge Equipment

The NRTL Recognition Program staff made an in-depth study of the details of WL's original application for recognition and the on-site assessment and determined that an additional on-site visit was not necessary. The programs and procedures for which Wyle Laboratories has requested accreditation are the type that have been utilized previously in their nuclear and defense area programs, and controls have already been established. With respect to the test standards for which WL has requested, all but those pertaining to fire extinguishment and protection equipment are similar to the standards for which it has already been accredited and are, therefore, within the recognized capabilities of its personnel, facilities and equipment. Regarding the fire extinguishment and equipment protection standards, Wyle has tested at least four products in each of 16 of the 18 standards requested. The general knowledge that WL has acquired in the performance of those tests, and the test equipment and personnel on the site, would indicate that it has the capability to test and certify products under these standards.

In any event, at the next scheduled audit a judgement will be made of the adequacy of the controls for the scope of activities involved in the NRTL program as well as of the status of the facility, equipment, and personnel.

Preliminary Finding

Based upon a review of the completed application file and the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the Wyle Laboratories facility for which expansion of its recognition was requested (Huntsville, Alabama) can meet the requirements as prescribed by 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for expansion of its recognition as a Nationally Recognized Testing Laboratory, as required by 29 CFR 1910.7 and

Appendix A to 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than September 10, 1996, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, Room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Copies of the WL application, the laboratory survey reports, and all submitted comments, as received, (Docket No. NRTL–1–93), are available for inspection and duplication at the Docket Office, Room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant (Wyle Laboratories) satisfies the requirements for expansion of its recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with Appendix A to Section 1910.7.

Signed at Washington, D.C. this 8th day of July, 1996.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 96–17779 Filed 7–11–96; 8:45 am]

BILLING CODE 4510–26–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 96–50; Exemption Application No. D–10039, et al.]

Grant of Individual Exemptions; San Diego National Bank

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

San Diego National Bank Deferred Savings Plan (the Plan) Located in San Diego, California

[Prohibited Transaction Exemption 96–50; Exemption Application No. D–10039]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the past acquisition by the Plan of certain stock rights (the Rights) pursuant to a stock rights offering (the Offering) by SDNB Financial Corp., a California corporation (the Parent), which wholly-owns and is the parent company of the San Diego National Bank (the Employer), the sponsor of the Plan and a party in interest with respect to the Plan; (2) the past holding of the Rights during the subscription period of the Offering; and (3) the disposition or exercise of the Rights by the Plan; provided the following conditions are satisfied: (a) The acquisition and holding of the Rights by the Plan occurred in connection with the Offering made available to all shareholders of the common stock of the Parent; (b) all holders of the common stock of the Parent were treated in a like manner, with respect to the Offering, including the Plan; and (c) all decisions regarding holding and disposing of the Rights by the Plan were made in accordance with Plan provisions for individually-directed investment of participant accounts by the individual participant whose account in the Plan received Rights in the Offering, and if no instructions were received the Rights were sold.

EFFECTIVE DATE: The effective date of this exemption is May 30, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is a toll-free number.)

Puckett Machinery Company Profit Sharing Plan (the Plan), Located in Jackson, Mississippi

[Prohibited Transaction Exemption 96–51; Exemption Application No. D–10149]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)((A) through (E) of the Code shall not apply to the sale (the Sale) of improved real property (the Property) by the Plan to Richard H. Puckett, a party in interest with respect to the Plan provided that: (a) The Sale is a one time transaction for cash; (b) the Plan will receive the greater of $315,000 or the fair market value of the Property at the time of the Sale; (c) the Property has been appraised by an independent and qualified real estate appraiser; (d) the Plan will pay no fees or commissions associated with the Sale; and (e) the terms and conditions of the Sale are at least as favorable as those obtainable with an unrelated third party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 4, 1996 at 61 FR 15143.

FOR FURTHER INFORMATION CONTACT: Allison Padams of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

First Virginia Banks, Inc. Located in Falls Church, Virginia

[Prohibited Transaction Exemption 96–52; Application Nos. D–10175 thru D–10177]

Exemption

Section I—Transactions

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the following transactions provided that all of the conditions set forth in Section II below are met:

(a) The cash sale on December 23, 1994 of certain variable rate certificates of deposit (CDs) issued by Merrill Lynch National Bank, Salt Lake City, Utah (the Merrill Lynch CDs) by forty (40) employee benefit plans, Keogh plans and individual retirement accounts (IRAs), for which First Knoxville Bank in Knoxville, Tennessee (the Bank) serves as a fiduciary, to First Virginia Banks, Inc. (First Virginia), a party in interest or disqualified person with respect to such plans and IRAs;

(b) The cash sale on various dates during 1995 of certain fixed rate CDs issued by various unrelated financial institutions (the Fixed Rate CDs) by eighteen (18) employee benefit plans, Keogh plans and IRAs, for which the Bank serves as a fiduciary to First Virginia, a party in interest or disqualified person with respect to such plans and IRAs; and

(c) The proposed cash sale of certain additional fixed rate CDs issued by various unrelated financial institutions (the Additional Fixed Rate CDs) by approximately twenty-one (21) employee benefit plans, Keogh plans and IRAs, for which the Bank serves as a fiduciary, to First Virginia, a party in interest or disqualified person with respect to such plans and IRAs.

Section II—Conditions

(a) Each sale is a one-time transaction for cash;

(b) Each plan or IRA (hereafter referred to as "Plan") receives an amount which is equal to the greater of (i) the face amount of the CDs owned by the Plan, plus accrued but unpaid interest, at the time of sale, or (ii) the fair market value of the CDs owned by the Plan as determined by an independent, qualified appraiser at the time of the sale;

(c) The Plans do not pay any commissions or other expenses with respect to the sale of such CDs;

(d) The Bank, as trustee of the Plans, determines that the sale of the CDs is in the best interests of each Plan and its participants and beneficiaries at the time of the transaction;

(e) The Bank takes all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries in connection with the transactions;

(f) Each Plan receives a reasonable rate of interest on the CDs during the period of time such CDs are held by the Plan;

(g) The Bank or an affiliate maintains for a period of six years the records necessary to enable the persons described below in paragraph (h) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank or affiliate, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than the Bank or affiliate shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (h) below; and

(h)(1) Except as provided below in paragraph (h)(2) and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in paragraph (g) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Client Plans who has authority to acquire or dispose of shares of the Funds owned by the Client Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (h)(1) (ii) and (iii) shall be authorized to examine trade secrets of the Bank, or commercial or financial information which is privileged or confidential.

EFFECTIVE DATE: This exemption is effective as of December 23, 1994, for the transactions described in Section I(a) above, and the various appropriate sale dates in 1995 for the transactions described above in Section I(b).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 25, 1996, at 61 FR 18430.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

AmSouth Bancorporation Thrift Plan (the Plan) Located in Birmingham, Alabama

[Prohibited Transaction Exemption 96–53; Exemption Application No. D–10185]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) of Guaranteed Investment Contract No. 62531 and Guaranteed Investment Contract No. 62651 (collectively, GICs), both issued by Confederation Life Insurance of Atlanta, Georgia, by the Plan to AmSouth Bancorporation, a Delaware corporation, the sponsor of the Plan and a party in interest with respect to the Plan; provided that (1) The Sale is a one-time transaction for cash; (2) the Plan experiences no losses nor incurs any expenses from the Sale; and (3) the Plan receives as consideration from the Sale an amount, as expressed in paragraph No. 4 of the Notice of Proposed Exemption, that is equal to the total amount expended by the Plan when acquiring the GICs plus all interest earnings occurring under the terms of the GICs until the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 6, 1996, at 61 FR 20283.

COMMENTS: The Department received two written comments, both of which were in favor of granting the proposed exemption. Accordingly, after giving full consideration to the entire record, the Department has determined to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or

disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 9th day of July, 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 96–17806 Filed 7–11–96; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Meeting of the Corporation's Board of Directors

TIME AND DATES: The Legal Services Corporation Board of Directors will meet on July 20, 1996. The meeting will begin at 9:00 a.m. and continue until conclusion of the Board's agenda.

LOCATION: Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002, (202) 336–8800.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a unanimous vote of the Board of Directors to hold an executive session. At the closed session, the Board may be briefed by management on internal operational and personnel matters and by the Corporation's Inspector General on activities of the Office of Inspector General. In addition, the General Counsel will report to the Board on litigation to which the Corporation is or may become a party and the Board may act on the matters reported. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. section 552b(c) (10)] and the corresponding regulation of the Legal Services Corporation [45 CFR section 1622.5(h)].[1] A copy of the General Counsel's Certification, that the closing is authorized by law, will be posted for public inspection at the Corporation's headquarters, located at 750 First Street NE., Washington, DC 20002, in its 11th floor reception area, and will also be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Approval of Minutes of May 20, 1996, meeting.
3. Approval of Minutes of May 20, 1996, executive session.
4. Chairman's and Members' Reports.
5. President's Report.
6. Inspector General's Report and presentation on the Office of Inspector General's technology project.
7. Consider and act on Board's Operations and Regulations Committee Report.
   a. Internal personnel policies of the Corporation.
   b. Implementation of Pub. L. 104–134 (H.R. 3019) by the adoption of interim regulations on:
   (1) priorities in the allocation of resources.
   (2) disclosure of plaintiff identity and statement of facts.
   (3) class actions.
   (4) solicitation of clients by grantees.
   (5) use of funds from sources other than the Corporation.
   (6) redistricting activities.
   (7) legal assistance to aliens.
   (8) representation in certain eviction proceedings.
   (9) subgrants, fees and dues.
   (10) applying federal waste, fraud and abuse law to LSC funds,
   (11) grantees' participation in litigation on behalf of prisoners.
   (12) grantees' involvement in challenges to welfare reform.
   (13) lobbying and certain other activities by grantees.
   (14) fee-generating cases.
   (15) grantees' collection of attorneys' fees.
8. Consider and act on the report of the Board's Finance Committee, including the adoption of an FY '96 budget mark.

Closed Session

9. Consider and act on the General Counsel's report on potential and pending litigation involving the Corporation.
10. Inspector General's briefing of the Board on activities of LSC's Office of Inspector General.
11. Management's briefing of the Board on internal operations and personnel matters.

Open Session

12. Schedule board and committee meetings through October 1996.
13. Public comment.
14. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting should contact Barbara Asante, at (202) 336–8800.

Victor M. Fortuno,

General Counsel.

Dated: July 10, 1996.

[FR Doc. 96–17953 Filed 7–10–96; 3:21 pm]

BILLING CODE 7050–01–P

Sunshine Act Meeting; Meeting of the Board of Directors' Operations and Regulations Committee

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation's Board of Directors will meet on July 19, 1996, at 8:00 a.m.

LOCATION: Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Report on Phase II of staff and OPM recommendations relating to internal personnel policies of the Corporation.
3. Consider and act on implementation of Pub. L. 104–134 (H.R. 3019) by the adoption of interim regulations on:
   a. priorities in the allocation of resources.
   b. disclosure of plaintiff identity and statement of facts.
   c. class actions.
   d. solicitation of clients by grantees.
   e. use of funds from sources other than the Corporation.
   f. redistricting activities.
   g. legal assistance to aliens.
   h. representation in certain eviction proceedings.
   i. subgrants, fees and dues.
   j. applying federal waste, fraud and abuse law to LSC funds,
   k. grantees' participation in litigation on behalf of prisoners.
   l. grantees' involvement in challenges to welfare reform.
   m. lobbying and certain other activities by grantees.
   n. fee-generating cases.
   o. grantees' collection of attorneys' fees.
4. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel & Corporate Secretary, (202) 336–8813.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8892.

Dated: July 10, 1996.

Victor M. Fortuno,

General Counsel and Corporate Secretary.

[FR Doc. 96–17954 Filed 7–10–96; 3:22 pm]

BILLING CODE 7050–01–P

Sunshine Act Meeting; Meeting of the Finance Committee

TIME AND DATE: The Finance Committee of the Legal Services Corporation's Board of Directors will meet on July 19, 1996. The meeting will begin at 1:30 p.m. and continue until conclusion of the committee's agenda.

LOCATION: Legal Services Corporation, 750 First Street NE, 11th Floor, Washington, DC 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of May 19, 1996, meeting.
3. Review of FY '96 budget and expenses.
4. Consider and act on proposed budget mark for FY '98.
5. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8800.

Dated: July 10, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96–17962 Filed 7–10–96; 3:20 pm]

BILLING CODE 7050–01–P

[1] Briefings do not constitute "meetings," as defined by the Government in the Sunshine Act. Notice of briefings is here provided as a courtesy to the public.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: Office of Records Administration, National Archives and Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATE: Request for copies must be received in writing on or before August 26, 1996. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture, Farm Service Agency (N1–258–96–1). Case files of audit compliance reviews of reinsured companies.
2. Department of Agriculture, Agricultural Research Service (N1–310–96–3). Routine and facilitative Congressional Correspondence files.
3. Department of the Air Force (N1–AFU–96–13). Summary court martial records.
4. Department of the Air Force (N1–AFU–96–14). Performance reporting and quality control records.
5. Department of the Air Force (N1–AFU–96–15). Ambulatory procedure visit (medical) records.
6. Department of the Army, U.S. Army Garrison-Panama (N1–338–96–1). Architectural drawings pertaining to minor, insignificant structures.
7. Department of State, All Foreign Service Posts (N1–84–96–2). Extradition case files.
8. Department of the Treasury, Internal Revenue Service (N1–58–96–1 and N1–58–96–2). Background and input records supporting the agency's strategic planning and organization process.
9. Defense Logistics Agency, Defense Technical Information Center (N1–361–94–4). Routine administrative records.
10. Defense Nuclear Facilities Safety Board (N1–524–96–1). Routine administrative records.
11. Federal Mine Safety and Health Review Commission (N1–470–96–1). Records maintained by the Office of General Counsel and the Docket Office.
12. General Services Administration (N1–269–96–2). Reduction in retention

periods for telecommunications engineering records.

13. General Services Administration (N1–269–96–1). Financial management projects case files and clearance records relating to proposed legislation.

14. National Archives and Records Administration (N2–326–96–1). Routine engineering construction project files in the custody of the National Archives relating to the construction and maintenance of supporting facilities at DOE and DOD test sites in the Pacific Ocean Area and Western United States.

15. United States Postal Service (N1–028–96–1). San Francisco Regional Records, 1942–63, including discontinued APO files, routine Congressional correspondence and transportation contracts.

Dated: July 3, 1996.

James W. Moore,

Assistant Archivist for Records Administration.

[FR Doc. 96–17766 Filed 7–11–96; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–416]

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, Mississippi Power & Light Company; Grand Gulf Nuclear Station, Unit 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–29, issued to Entergy Operations, Inc. (the licensee), for operation of the Grand Gulf Nuclear Station, Unit 1, (GGNS), located in Claiborne County, Mississippi.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the operating license and the antitrust conditions of the license to account for the change in name of Mississippi Power & Light Company (MP&L) to Entergy Mississippi, Inc. The proposed action is in accordance with the licensee's application for amendment dated May 6, 1996.

The Need for the Proposed Action

The proposed action is needed because the name of Mississippi Power & Light (MP&L) will be changed to Entergy Mississippi, Inc. The licensee has stated that this is only a name change, and the corporate existence continues uninterrupted and all legal characteristics remain the same. There is no change in the state of incorporation, registered agent, registered office, directors, officers, rights or liabilities of the company. Nor is there a change in the function of the Company or the way in which it does business. MP&L's financial responsibility for GGNS and its sources of funds to support the facility will remain the same. Further, this name change does not impact the existing ownership of GGNS or the existing entitlement to power and will not alter the existing antitrust license conditions applicable to MP&L or MP&L's ability to comply with these conditions or with any of its other obligations or responsibilities under the operating license for GGNS.

The licensee also stated that the company, Entergy Mississippi, Inc., will still own all of the same assets as did MP&L, serve the same customers, and will continue all the existing obligations and commitments. There is also no change in the management or the procedures that operate GGNS. The financial responsibility for GGNS and the funds to support the facility will remain the same.

The licensee further stated that the name change is being made to improve customer identification by establishing a consistent, well recognized name, "Entergy", for the region that the licensee serves.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the change in company name will have no effect on the radiological and nonradiological operation of the plant.

The change will not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite from the plant, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure at the plant. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for GGNS.

Agencies and Persons Consulted

In accordance with its stated policy, on June 10, 1996, the staff consulted with the Mississippi State official, Robert Goff of the Division of Radiological Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated May 6, 1996, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, Mississippi 39120.

Dated at Rockville, Maryland, this 2nd day of July, 1996.

For the Nuclear Regulatory Commission.

Jack N. Donohew,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–17795 Filed 7–11–96; 8:45 am]

BILLING CODE 7590–01–P

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 1.153, "Criteria for Safety Systems," describes a method acceptable to the NRC staff for complying with the Commission's regulations with respect to the design, reliability, qualification, and testability of the power, instrumentation, and control portions of safety systems of nuclear power plants. This guide endorses the Institute of Electrical and Electronics Engineers Standard Std 603–1991, "Criteria for Safety Systems of Nuclear Power Generating Stations" (including the correction sheet dated January 30, 1995).

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Single copies of regulatory guides may be obtained free of charge by writing the Office of Administration, Attention: Distribution and Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax at (301)415–2260. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 17th day of June 1996.

For the Nuclear Regulatory Commission.

Thomas P. Speis,

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. 96–17796 Filed 7–11–96; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Survey of Nonparticipating Single Premium Group Annuity Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of submission for OMB review; comment request.

SUMMARY: The American Council of Life Insurance conducts a quarterly survey of insurance company prices for annuity contracts for the PBGC. Responses to the survey are voluntary. The Pension Benefit Guaranty Corporation has requested that the Office of Management and Budget extend a previously approved collection of information under the Paperwork Reduction Act for this voluntary collection of information, which is not contained in a regulation. OMB's current approval of this collection of information (OMB control number 1212–0030) expires on August 31, 1996.

ADDRESSES: All written comments should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 725 17th Street, NW., Room 10235, Washington, DC 20503. The request for approval will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Marc L. Jordan, Attorney, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005, 202–326–4026 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. The Act vests the Office of Management and Budget with regulatory responsibility over these burdens, and OMB has promulgated rules on the clearance of collections of information by Federal agencies.

Each month the PBGC publishes the interest rates to be used under its regulations for plans terminating or undergoing mass withdrawal during the next month. (See 29 CFR Parts 4044 and 4281). The interest rates are intended to reflect current conditions in the investment and annuity markets.

To determine these interest rates, the PBGC gathers pricing data from the insurance companies through a quarterly "Survey of Nonparticipating Single Premium Group Annuity Rates." The survey is sent out by the American Council of Life Insurance, which tabulates it to assure that the PBGC receives blind data. Beginning in 1996, the September survey will request that respondents specify the mortality assumptions used in developing the pricing quotes.

The survey is directed at insurance companies that have volunteered to participate, most or all of which are members of the American Council of Life Insurance. The survey will be conducted quarterly and will be sent to approximately 14 insurance companies. Based on experience under the current approval, the PBGC estimates that 10 insurance companies will complete and return the survey each quarter and that each respondent will take 45 minutes to complete it. The annual burden of responding to the survey is therefore estimated to be 30 hours.

On April 9, 1996, the PBGC published in the **Federal Register** a notice of intention to request OMB approval of this collection. No comments were received in response to the notice.

Issued at Washington, D.C., this 5th day of July, 1996.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 96–17801 Filed 7–11–96; 8:45 am]

BILLING CODE 7708–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 92–22

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for clearance of a revised information collection. RI 92–22, Annuity Supplement Earnings Report, is used annually to obtain the amount of

personal earnings from annuity supplement recipients to determine if there should be a reduction in benefits paid to the annuitant.

Approximately 2,500 RI 92–22 forms are completed annually. Each form requires approximately 15 minutes to complete. The annual estimated burden is 625 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov

DATES: Comments on this proposal should be received September 10, 1996.

ADDRESSES: Send or deliver comments to—Victor J. Roy, Chief, Eligibility Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 2342, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–17781 Filed 7–11–96; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Computer Matching and Privacy Protection Act of 1988; Notice of RRB Records Used in Computer Matching Programs

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of records used in computer matching programs notification to individuals who are receiving or have received benefits under the Railroad Retirement Act.

SUMMARY: As required by the Computer Matching and Privacy Protection Act of 1988, the RRB is issuing a public notice of its use and intent to use, in ongoing computer matching programs, certain information obtained from the Health Care Financing Administration (HCFA).

The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by the RRB of this information obtained from HCFA by means of a computer match.

DATES: Comments should be received by no later than August 12, 1996.

ADDRESSES: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Denise LeSeur-Waechter, Office of Programs, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone number (312) 751–3337.

SUPPLEMENTARY INFORMATION: Under certain circumstances, the Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, requires a Federal agency participating in a computer matching program to publish a notice in the **Federal Register** regarding the establishment of that matching program. Such a notice must include information in the following first five categories:

Name of Participating Agencies: The Railroad Retirement Board and the Health Care Financing Administration (HCFA).

Purpose of the Match: To identify RRB annuitants who are age 66 or over and who have not had any Medicare utilization during the past calender year. The general purposes of the match are (1) to verify that these RRB annuitants are still alive and if alive, to determine whether the RRB should appoint a representative payee for them; (2) to identify instances when payments are being made to persons who because they are deceased are no longer entitled to receive them; (3) to recover any payments erroneously made; and (4) to identify instances of fraud, and where established and warranted, to initiate prosecution.

Authority for Conducting the Match: 45 U.S.C. Section 231f(b)(7). This section requires that the Secretary of Health and Human Services provide information pertinent to the administration of the Railroad Retirement Act. The death of an annuitant under that Act is a terminating event.

Categories of Records and Individuals Covered: All annuitants under the Railroad Retirement Act who are age 66 or over and who have had no Medicare utilization during the previous calendar year. The RRB records used in this matching program are covered under Privacy Act system of records, RRB–22, Railroad Retirement, Survivor, and Pensioner Benefit System. The HCFA records used in this matching program are covered under Privacy Act system of records HHS/HCFA/BPO 09–70–0526, Common Working File.

Inclusive Dates of the Matching Program: The life of this agreement is 18 months; the match will be conducted no more than three times during this period.

Procedure: HCFA will furnish the RRB with a computer tape of annuitants under the Railroad Retirement Act who, according to HCFA records, are age 66 or older and have had no Medicare utilization during the previous calendar year. After excluding certain categories of individuals for whom no follow-up action will be taken, the RRB will contact the remaining identified individuals to determine whether they are still alive and if so to determine whether the RRB needs to appoint a representative payee to ensure that the benefits to which they are entitled are properly expended on their behalf. If the RRB establishes that an individual so identified in the match is deceased it will terminate the annuity, and if there are any benefits that were improperly paid, it will take action to recover them. In addition, if there is any indication of fraud, the RRB will evaluate whether prosecution should be initiated against the person or persons who acted fraudulently. No action will be taken with respect to the individuals excluded from the monitoring program.

The public information collection represented by the follow-up action for the individuals identified by the matching program was previously approved by the Office of Management and Budget (OMB 3220–0178). A request for re-approval is pending.

Other information: The notice we are giving here is in addition to any individual notice.

A copy of this notice has been or will be furnished to both Houses of Congress and the Office of Management and Budget.

Dated: July 5, 1996.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 96–17727 Filed 7–11–96; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [61 FR 26940, May 29, 1996 and 61 FR 33786, June 28, 1996].

STATUS: Open and Closed Meetings.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: May 29, 1996 and June 28, 1996.

CHANGE IN THE MEETING: Cancellations.

The open meeting scheduled for Wednesday, May 29, 1996, at 3:00 p.m., and the closed meeting scheduled for Tuesday, July 2, 1996, at 10:00 a.m., have been cancelled.

Commissioner Wallman, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: July 9, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17935 Filed 7–10–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37406; File No. SR–Amex–96–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to the Closing of Equity Option Trading at 4:00 p.m.

July 3, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 20, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Rules 1 and 918 to provide for the closing of equity option trading at 4:00 p.m.

The text of the proposed rule change is available at the Office of the Secretary, Amex, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Since 1978, equity options have traded until 4:10 p.m., ten minutes beyond the close of trading of the underlying securities to allow investors to trade options based upon the final closing prices of those underlying securities.[1] In 1978, frequent delays between the time of the execution of the closing transaction and the appearance of the trade on the Consolidated Tape Association's Tape A gave rise to time lags that, in some instances, were as long as seven minutes after the close of trading at 4:00 p.m. Today, due to improvements in trading and reporting systems, the dissemination of closing prices is delayed, at most, one or two minutes and only in unusual market conditions are any significant time lags encountered. Another reason cited in 1978 for extending equity options trading until 4:10 p.m. was to give options participants additional time to digest the impact of news announcements by companies and government agencies who oftentimes released such news at 4:00 p.m. or shortly thereafter.[2]

While the Exchange expressed reservations regarding the move to a later close, the Amex ultimately acceded to the industry's consensus that a 4:10 p.m. close was appropriate. Although the Exchange has made efforts to encourage companies and others to withhold significant news announcements until after the close of options trading, occasionally, such announcements are released between 4:00 and 4:10 p.m. which dramatically impact the trading of options. When such instances occur, the Exchange has observed that public customers are unable to react as quickly as professional traders and accordingly lack the ability to give their brokers instructions or take action with regard to orders that may have been previously placed on the limit order book. Further, because the principal market for the underlying stock is closed, option specialists and marketmakers have oftentimes experienced extreme difficulty making orderly options markets given their inability to hedge or otherwise offset market risk with transactions in the underlying stock.

Therefore, the Exchange now proposes that effective at 4:00 p.m. (1) all trading in equity options will cease; (2) all automated order routing and execution systems will be turned off; (3) no orders will be permitted to be entered on the trading floor; and (4) a closing rotation [3] will be held (a) immediately after the close of trading for options whose underlying stocks are traded through the facilities of the National Association of Securities Dealers Automated Quotation System (Nasdaq); or (b) for options whose underlying stocks trade on either the New York Stock Exchange or the Amex, immediately after the last sale in the security has been disseminated. No orders may be entered, modified or canceled in any option series after 4:00 p.m., except on expiration Friday [4] in expiring option series when orders may be entered, modified or canceled until the commencement of the closing rotation in such series.[5]

The Exchange believes a return to 4:00 p.m. closing time for equity options is necessary and appropriate given the improvements in dissemination of closing prices and the limited ability of public customers to react to news announcements and changing markets in the last ten minutes of trading. Such

[1] The extension of the trading hours for options by ten minutes until 4:10 p.m. (E.S.T.) by the American Stock Exchange ("Amex"), the Chicago Board Options Exchange, Incorporated ("CBOE"), the Midwest Stock Exchange, Incorporated ("MSE") (now known as the Chicago Stock Exchange, Inc. ("CHX")), Pacific Stock Exchange Incorporated ("PSE"), and the Philadelphia Stock Exchange, Inc. ("PHLX") (collectively referred to as the "options exchanges") was initially approved by the Commission on a trial basis for a four month period beginning on Oct. 23, 1978 and extending through Feb. 28, 1979. Securities Exchange Release No. 15241 (Oct. 18, 1978), 43 FR 49867 (Oct. 25, 1978) (order approving File Nos. SR–Amex–78–22, SR–CBOE–78–30, SR–MSE–78–26, SR–PSE–78–17, and SR–PHLX–78–18). The Commission approved the continued use by the options exchanges of the existing 4:10 p.m. (E.S.T.) closing time for standardized options trading through Apr. 28, 1979. Securities Exchange Act Release No. 15593 (Feb. 28, 1979), 44 FR 12525 (Mar. 7, 1979) (order approving File Nos. SR–Amex–79–3, SR–CBOE–79–1, SR–MSE–79–7, SR–PSE–79–1, and SR–PHLX–79–1). The Commission has since then approved on a permanent basis the closing of options trading on the options exchanges at 4:10 p.m. (E.S.T.). Securities Exchange Act Release No. 15765 (Apr. 27, 1979), 44 FR 26819 (May 7, 1979) (order approving File Nos. SR–Amex–79–6, SR–CBOE–79–4, SR–MSE–79–11, SR–PSE–79–3, and SR–PHLX–79–4).

[2] *See* Release No. 15241, *supra* note 1.

[3] A closing rotation is a trading procedure to determine appropriate closing prices or quotes for each series of options on an underlying stock.

[4] The term "expiration Friday" refers to the trading day, usually the third Friday of the month, when various stock index futures, stock index options, and options on stock index futures expire or settle concurrently.

[5] The Exchange also is proposing to amend Rule 1 to provide that closing transactions may be permitted after 4:00 p.m. where the Exchange has determined to permit such transactions pursuant to Rule 117. Securities Exchange Release No. 37146 (Apr. 26, 1996), 61 FR 19650 (May 2, 1996) (notice of File No. SR–Amex–96–13).

a change in trading hours, however, should not be implemented unless all options exchanges agree to similar procedures in order to limit confusion by preserving uniformity at the options exchanges especially in those classes that are multiply traded.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–96–17 and should be submitted by August 2, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17701 Filed 7–11–96; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice No. 2412]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea and Associated Bodies Working Group on Stability and Load Lines and on Fishing Vessels Safety; Notice of Meeting

The Working Group on Stability and Load Lines and on Fishing Vessels Safety of the Subcommittee on Safety of Life at Sea will conduct an open meeting at 9 a.m. on Friday, August 2, 1996, in Room 6103, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This meeting will discuss the upcoming 40th Session of the Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF) and associated bodies of the International Maritime Organization (IMO) which will be held on September 2–6, 1996, at the IMO Headquarters in London, England.

Items of discussion will include the following:

a. The role of human factors in marine casualties;

b. Harmonization of probabilistic damage stability provisions for all ship types;

c. Technical revisions to the 1996 Load Line Convention;

d. Safety aspects of ballast water exchange.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Paul Cojeen or Mr. Jaideep Sirkar, U.S. Coast Guard Headquarters, Commandant (G–MMS–2), Room 1308, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling: (202) 267–2988.

Dated: July 3, 1996.

Richard T. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 96–17710 Filed 7–11–96; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 2414]

State Department Consultation With American Indian Tribal Leaders; Public Notice

The Department of State will hold consultations between U.S. Government officials and American Indian tribal leaders with regard to the ongoing negotiations in the United Nations of a Draft Declaration on Indigenous Rights. These initial consultations are scheduled for Tuesday, July 23, 1996, from 9:00 a.m. to 4:00 p.m. at the Department of State in Washington, D.C.

The U.N. Draft Declaration on Indigenous Rights in being elaborated by a Working Group of the U.N. Human Rights Commission in Geneva. The goal of the Working Group (which allows direct participation by tribal governments and other indigenous organizations) is to elaborate a Declaration on Indigenous Rights for consideration and adoption by the United Nations General Assembly during the International Decade of the World's Indigenous People (1994–2004). The "Draft United Nations Declaration on the Rights of Indigenous Peoples" is serving as the basis for negotiations at the Working Group.

The consultation with tribal leaders on July 23 is in preparation for the next session of the Working Group which is scheduled to take place in Geneva later this year. The consultations will be held in the Loy Henderson Auditorium, Department of State, 2201 C Street, N.W., Washington, D.C. Registration begins at 8:30 a.m. at the main entrance (C Street) of the State Department. The public is invited to attend the meetings.

Those interested in attending or seeking additional information should contact Tom Hushek (202–647–1042) or Alex Arriaga (202–647–1696) in the Bureau of Democracy, Human Rights, and Labor, at the State Department.

Dated: July 10, 1996.

John Shattuck,

Assistant Secretary, Bureau of Democracy, Human Rights, and Labor, Department of State.

[FR Doc. 96–17903 Filed 7–11–96; 8:45 am]

BILLING CODE 4710–18–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Reports, Forms and Recordkeeping Requirements, Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the information collections and their expected cost and burden. Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1995, requires that agencies prepare a notice for publication in the **Federal Register**, requesting emergency processing for 90 days effective July 23, 1996, in accordance with criteria set forth in that Act, for Oshkosh Video Survey, 2120–####. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

DATES: Comments must be submitted on or before September 5, 1996.

ADDRESSES: Written comments on the DOT/FAA information collection request should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, SW.; Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION: Each year the system Safety Office produces a videotape entitled "VFR Arrival Procedures: Oshkosh 96" for the Oshkosh Fly-In in August. To better serve our customers need for this information and our distribution procedures, we will be asking pilots who fly into Oshkosh a few short questions on the availability and usefulness of the videotape. This is a one day, one time survey.

Title: Oshkosh Video Survey.

OMB Control Number: 2120-New.

Abstract: The System Safety Office will use this information to serve the needs of its customers better. Per their suggestions, the System Safety Office may be able to add information to the video or add distribution points.

Respondents: An estimated 100 pilots who flew into Oshkosh for the annual fly-in.

Frequency: One time oral survey.

Burden: One minute, 13 seconds per respondent for a total of 2 hours and 2 minutes.

Issued in Washington, DC on July 5, 1996.

Phillip A. Leach,

Information Clearance Officer, United States Department of Transportation.

[FR Doc. 96–17712 Filed 7–11–96; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement; Benton County, AR and McDonald County, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Benton County, Arkansas and McDonald County, Missouri.

FOR FURTHER INFORMATION CONTACT: Wendall L. Meyer, Environment/Design Specialist, Federal Highway Administration, 3128 Federal Office Building, Little Rock, Arkansas 72201–3298, Telephone: (501) 324–6430; Don Neumann, District Engineer, Federal Highway Administration, P.O. Box 1787, 209 Adams Street, Jefferson City, Missouri 65102, Telephone: (573) 636–7104; Reid Beckel, Consultant Coordinator, Arkansas State Highway and Transportation Department, P.O. Box 2261, Little Rock, Arkansas 72203–2261, Telephone: (501) 569–2163; or Richard Walter, District Engineer, Missouri Highway and Transportation Department, 3901 East 32nd Street, P.O. Box 1445, Joplin, Missouri, 64802, Telephone: (417) 629–3300.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Arkansas State Highway and Transportation Department and the Missouri Highway and Transportation Department, will prepare an environmental impact statement (EIS) for a proposed improvement to U.S. 71 in Benton County, Arkansas and McDonald County, Missouri. The proposed improvement may involve the reconstruction or relocation on new alignment of U.S. 71 from Bella Vista, Arkansas to Pineville, Missouri, a total distance of approximately 26 kilometers (16 miles). Information contained in the Final EIS for U.S. 71 improvements beginning at I–44 in Jasper County, Missouri and passing through Newton and McDonald Counties to existing U.S. 71 at the Missouri/Arkansas state line, approved by the FHWA on August 3, 1992, will be utilized for this EIS.

Improvements to the corridor include improving U.S. 71 to a four-lane, fully controlled access facility with Interstate standards to meet anticipated traffic demands and to improve roadway safety. Alternatives under consideration include relocation of U.S. 71 on new alignment, improving the existing facility and the no-action alternative.

The proposed improvements would improve the capacity of the existing route and increase regional mobility along a proposed ultimate route extending from Kansas City, Missouri to Shreveport, Louisiana. This project is one of several projects identified as "high priority corridors" on the National Highway System that would provide a transportation corridor of national significance from Kansas City to Shreveport. This proposed improvement will draw new traffic through northwest Arkansas and southwest Missouri and serve as both a short-term and long-term economic stimulus, promoting development in this currently rural area. Major metropolitan areas lying along this "high priority corridor" include Kansas City, Kansas-Missouri; Joplin, Missouri; Fayetteville, Arkansas; Fort Smith, Arkansas; Texarkana, Arkansas-Texas; and Shreveport, Louisiana.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited form all interested parties. Comments or questions concerning this proposed action and EIS should be directed to any of the individuals at the appropriate address provided above. A formal scoping meeting is scheduled for July 30, 1996 at Bella Vista, Arkansas. Invitation letters providing details of the scoping meeting and describing the proposed action will be sent to appropriate Federal, State and local agencies. Several public meetings, including a public hearing, will be held during the preparation of the EIS. Public notice will be given of the time and place of the meetings and hearings. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372

regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: July 3, 1996.

Wendall L. Meyer,

Environment/Design Specialist, FHWA, Little Rock, Arkansas.

[FR Doc. 96–17700 Filed 7–11–96; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 96–073; No. 1]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collections of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes four collections of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before September 10, 1996.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to Docket Section, Room 5109, NHTSA, 400 Seventh St. S.W., Washington, D.C. 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB Clearance Number. It is requested, but not required, that 1 original plus 2 copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Ed Kosek, NHTSA Information Collection Clearance Officer, NHTSA, 400 Seventh Street, S.W., Room 6123, Washington, D.C. 20590. Mr. Kosek's telephone number is (202) 366–2589. Please identify the relevant collection of information by referring to its OMB Clearance Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected; and

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following four proposed collections of information:

Production System for Mandatory Installation of Air Bags In All Passenger Cars and Light Trucks

Type of Request—Reinstatement of clearance.

OMB Clearance Number—2127–0535.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—September 1, 1998.

Summary of the Collection of Information—NHTSA must ensure that motor vehicle manufacturers comply with a new provision in the 1991 Intermodal Surface Transportation Efficiency Act requiring that 95 percent of all new passenger cars manufactured on or after September 1, 1996 but before September 1, 1997 shall be equipped with inflatable restraints accompanied by lap/shoulder safety belts for both front outboard seating positions, and 100 percent thereafter. Similarly, 80 percent of all new light trucks, small buses, and multipurpose passenger vehicles manufactured on or after September 1, 1997 but before September 1, 1998 shall be so equipped, and 100 percent thereafter.

Description of the need for the information and proposed use of the information—In order to ensure manufacturers are complying with the 1991 statute, NHTSA needs reports from manufacturers of new passenger cars and new light trucks, small buses, and multipurpose passenger vehicles. For each report, the manufacturer will provide (in addition to administrative necessities such as identity, address) numerical information from which NHTSA will be able to determine whether a manufacturer complies with the percentage phase-in requirements. The required numerical information will include the total number of each vehicle type manufactured during the production year that are equipped with air bags, and the total number of each vehicle type produced.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information—NHTSA anticipates that no more than 23 vehicle manufacturers will be affected by the reporting requirements. NHTSA does not believe any of these 23 manufacturers is a small business (i.e., one that employs less than 500 persons) since each manufacturer employs more than 500 persons. Manufacturers of passenger cars must file one report. Similarly, manufacturers of light trucks, small buses, and multipurpose passenger vehicles must file one report.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—NHTSA estimates that each manufacturer will need 24 hours to prepare a report, at a cost of $30.00 per hour. Thus, the number of estimated reporting burden hours a year on manufacturers (23 manufacturers multiplied by 1 report multiplied by 24 hours for each report) is 552, at a cost of $16,560 for each report that they must submit.

NHTSA estimates that each manufacturer will incur 12 burden hours a year in recording and keeping the information. Thus, the total recordkeeping burden on the manufacturers (23 manufacturers multiplied by 1 report multiplied by 12 hours) is 276 hours. Assuming a cost of $30.00 an hour, the total recordkeeping cost per manufacturer per year is $8,280.00 for each report that they must submit.

49 CFR Section 551.45—Designation of Agent

Type of Request—Reinstatement of clearance.

OMB Control Number—2127–0040.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—Three years from date of approval.

Summary of the Collection of Information—This collection of information applies to motor vehicle and motor vehicle equipment manufacturers located outside of the United States (foreign manufacturers). Every manufacturer offering a motor vehicle or item of motor vehicle equipment for importation into the United States is statutorily required to designate in writing an agent upon whom service of all administrative and judicial processes, notices, orders, decisions and requirements may be made for and on behalf of the manufacturer. (49 U.S.C. 30164) These designations are required to be filed with NHTSA.

Description of the Need for the Information and Proposed Use of the Information—NHTSA needs this information in case it needs to advise a foreign manufacturer of a safety related defect in its products so that the manufacturer can, in turn, notify purchasers and correct the defect. This information also enables NHTSA to serve a foreign manufacturer with all administrative and judicial processes, notices, orders, decisions and requirements.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—NHTSA estimates that the number of respondents per year is 70. Each respondent provides the information once. NHTSA estimates it takes one hour to write the letter to NHTSA providing the information. The estimated total burden on all respondents for this standard is 70 hours per year.

Based on an assumed clerical cost of $20.00 per hour, it costs each manufacturer $20.00 to write the letter, and postage (on the average from a foreign country) of approximately $1.00 per letter. Thus, each response costs the manufacturer a total of $21.00. Since NHTSA estimates the number of respondents per year is 70, the total cost on all respondents per year is approximately $1,470.00.

There are no recordkeeping costs to the manufacturers.

49 CFR Parts 591 and 592—Motor Vehicle Importation

Type of Request—Reinstatement of clearance.

OMB Clearance Number—2127–0002.

Form Number—Form HS–7 and Form HS–474.

Requested Expiration Date of Approval—Three years from date of clearance.

Summary of the Collection of Information—A motor vehicle which does not conform to applicable Federal Motor Vehicle Safety Standards (FMVSSs) is statutorily required to be refused admission into the United States, except under certain circumstances. (49 U.S.C. 30141 *et seq.*) NHTSA may authorize importation of nonconforming vehicles upon specified terms and conditions (include the furnishing of bond) to ensure that any such vehicle will be brought into conformity with all applicable FMVSSs or will be exported out of or abandoned to the United States at no cost.

Before importing a nonconforming vehicle, a Registered Importer must fill out Form HS–7 *Declaration* and Form HS–474 *Bond Conformance* that requires posting bond to ensure the vehicle will be brought into conformance with all applicable FMVSSs.

Description of the Need for the Information and Proposed Use of the Information—If NHTSA could not collect the information needed for the import program, it could not fulfill its statutory obligation to monitor importation of nonconforming motor vehicles and motor vehicle equipment into the United States. NHTSA has used and uses the information to monitor noncomplying vehicles presented for importation into the United States, to ascertain whether the vehicles are actually brought into conformance with the FMVSSs, and to determine the validity of the statements under which the vehicles were entered into the United States.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information—The likely respondents are Registered Importers of vehicles or parties with contracts with Registered Importers. The collection of information burden on each Registered Importer depends on how often the Importer imports noncomplying vehicles.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—NHTSA estimates that the total information collection burden on Registered Importers is 16,600 hours. Based on an assumed cost of $20.00 per hour for clerical/professional personnel to collect the information, the yearly information collection cost to industry is 16,600 hours multiplied by $20.00, or $332,000.

The cost per Importer for record keeping is minimal. NHTSA estimates that the aggregate cost to industry of storing the Form HS–474 information is approximately $160.00 per year, and the cost of storing the Form HS–7 information is approximately $160.00 per year.

49 CFR Part 571.213—Child Restraint Systems

Type of Request—Extension of a currently approved clearance.

OMB Clearance Number—2127–0511.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—Three years from date of clearance.

Summary of the Collection of Information—NHTSA has issued Federal Motor Vehicle Safety Standard No. 213, *Child Restraint Systems*, which specifies requirements for restraint systems used to protect infants and young children in motor vehicle and aircraft accidents. Standard No. 213 requires that manufacturers provide labels and other printed information to ensure correct use of the restraint systems. Manufacturers of child restraint systems must also provide registration cards for completion and return by purchasers of child restraints, and keep names and addresses of child restraint system owners. These actions are necessary to facilitate contacting the owners in the event of a safety recall campaign.

Description of the Need for the Information and Proposed Use of the Information—NHTSA requires labeling information to ensure that child seat owners have important safety information. The information currently provided on or with the restraint includes instructions on correct use of the restraint, and recommendations as to which children are suitable for the restraint. Without this information, the effectiveness of child restraints could be greatly diminished.

The child restraint registration information enables manufacturers to directly contact child restraint owners to notify them of safety recalls. This better ensures that owners will hear about a recall and will remedy the safety problem with their restraints.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—NHTSA estimates that 15 manufacturers of child safety seats and restraints offer their products for sale in the United States. The frequency of response to the collection of information depends on

the number of child seats or restraints that each manufacturer sells.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—Currently, 15 manufacturers produce, on the average, a total of approximately 4,500,000 child restraints a year. NHTSA estimates that the total annual information collection burden on all manufacturers is 153,000 hours. NHTSA estimates that annualized costs on all manufacturers is $1,071,000.00.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Issued: July 5, 1996.

Patricia Breslin,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 96–17749 Filed 7–11–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–054, Notice 1]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collections of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

At NHTSA's request, the Office of Management and Budget (OMB) authorized emergency processing of this information collection. OMB approved the information collection for a90-day extension, under OMB control no. 2127–0021.

DATES: Comments must be received on or before September 10, 1996.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to Docket Section, Room 5109, NHTSA, 400 Seventh St. S.W., Washington, D.C. 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB Clearance Number. It is requested, but not required, that 1 original plus 2 copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Edward Kosek, NHTSA Information Collection Clearance Officer, NHTSA, 400 Seventh Street, S.W., Room 6123, Washington, D.C. 20590. Mr. Kosek's telephone number is (202) 366–2590. Please identify the relevant collection of information by referring to its OMB Clearance Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected; and

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

National Accident Sampling System (NASS)

Type of Request—Reinstatement of clearance.

OMB Clearance Number—2127–0021.

Form Numbers—HS–433A, HS–433B, HS–435H, HS–435I, and HS–435F.

Requested Expiration Date of Approval—June 30, 1999.

Summary of the Collection of Information—NASS investigates high severity crashes. Once a crash has been selected for investigation, several activities are initiated by the NASS Crashworthiness Data System (CDS) team. Researchers locate, visit, measure, and photograph the crash scene; locate, inspect, and photograph all involved vehicles; conduct a telephone or personal interview with each involved person or surrogate; and obtain and record injury information from hospitals or emergency rooms for all injured victims. During each activity the researchers record information on the NASS vehicle, and occupant/pedestrian forms as appropriate.

Description of the Need for the Information and Proposed Use of the Information—NASS CDS data are used to describe and analyze circumstances, mechanisms, and consequences of high severity motor vehicle crashes in the United States. These descriptions and analyses in turn will help to describe the magnitude of vehicle damage and injury severity as related to traffic safety problems. It will give motor vehicle researchers an opportunity to specify areas in which improvements may be possible, design countermeasure programs, and evaluate the effects of existing and proposed safety measures. Users include virtually every program area in NHTSA, other federal agencies such as the Federal Highway Administration, state and local governments, domestic and foreign motor vehicle manufacturers, insurance and consumer organizations, safety research organizations, universities, foreign government agencies, and individual citizens.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—Participation is voluntary for all respondents. NHTSA contractor employers begin by going to the police to get copies of accident reports. They select certain accidents, usually the more serious, to investigate. They interview occupants and witnesses, acquire medical records, and inspect the crash scene and vehicles. Data is coded on standard forms and entered into a computerized database.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—Each year, 6,000 crashes will be researched. A total of 13,500 occupants and witnesses will be interviewed. The average interview takes .33 hours or a total of 4,455 burden hours. Police and hospital records clerks will simply make existing files available to us. This will take a police/hospital total of 1,224 burden hours. Tow facility personnel will provide access to our researchers to inspect crash vehicles. This will take a total of 128 burden hours. The yearly total from the above groups is 5,807 burden hours. NHTSA will require no Recordkeeping outside of NHTSA employees and contractors.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Issued: July 9, 1996.

William Boehly,

Associate Administrator, Research and Development.

[FR Doc. 96–17752 Filed 7–11–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 94–20; Notice 4]

Light Truck Capabilities, Utility Requirements and Uses

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of publication of report, Light Truck Capabilities, Utility Requirements and Uses: Implications for Fuel Economy.

SUMMARY: NHTSA has published a report of a study conducted by the Volpe National Transportation Systems Center regarding the unique capabilities, utility requirements, and uses of light trucks and the implications of these factors on the ability to improve the fuel economy of light trucks. This report was prepared in response to a provision of the Department of Transportation Appropriations Act for Fiscal Year 1995.

FOR FURTHER INFORMATION AND COPIES OF THE REPORT CONTACT: Orron Kee, Office of Planning and Consumer Programs, Safety Performance Standards, NHTSA, Washington, DC 20590, telephone 202 366–0846. The report is also available as report number DOT HS 808 378 from the NHTSA Technical Reference Section, telephone 202 366–2768, and through the National Technical Information Service, Springfield, VA 22161.

Issued on: July 9, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–17748 Filed 7–11–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Proposed Collection; Comment Request

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Crimes Enforcement Network ("FinCEN"), invites the general public and other government agencies to comment on its proposal to continue to collect information on its Request for Research Form from government officials who use FinCEN's services.

DATES: Written comments should be received on or before September 10, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Hedda Verinder, Financial Crimes Enforcement Network, 2070 Chain Bridge Road, Vienna, VA 22182, Telephone number 703–905–3736.

FOR FURTHER INFORMATION CONTACT: Hedda Verinder, Financial Crimes Enforcement Network, 2070 Chain Bridge Road, Vienna, VA 22182, Telephone number 703–905–3736.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), FinCEN is soliciting comments on the collection of information described below.

Title: Request for Research Form.

OMB Number: 1505–0139.

Form Number: TDF90–22.44.

Abstract: FinCEN provides investigative support for federal, state, and local law enforcement. FinCEN supports law enforcement investigations by conducting searches of federal law enforcement, regulatory, and financial databases, and commercial databases for relevant information which, when analyzed, provides enforcement officials with useful and expanded knowledge of the subjects of the inquiry. Requests for assistance are received from individual law enforcement agents in writing.

In order for FinCEN to undertake a thorough search and analysis, requests to FinCEN must include a minimum amount of information about the nature of the request for assistance. The information supplied in the Request for Research Form is used by agents and analysts at FinCEN in order to perform financial analysis in support of ongoing investigations conducted by the respondents' employing agency. The information on the form provides FinCEN personnel with sufficient information to be able to determine (i) which systems of records/databases may be searched lawfully in response to the query (i.e., whether the purpose of the search is compatible with the routine use(s) for a particular system or systems of records to which FinCEN has access), (ii) which systems of records would likely yield useful data related to the investigation in question, and (iii) a record for FinCEN to monitor the number and nature of inquiries received. In addition, requests for some databases legally require a written request and this form ensures a consistent format for the requests.

Current Actions: Revisions to this existing form are in format only; there are no substantive or material changes.

Type of Review: Extension.

Affected Public: Federal Government/ State and Local Government.

Estimated Number of Respondents: 7500.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 3,750.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: July 8, 1996.

William F. Baity,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 96–17758 Filed 7–11–96; 8:45 am]

BILLING CODE 4820–03–U

Proposed Collection; Comment Request

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Crimes Enforcement Network ("FinCEN"), invites the general public and other government agencies to comment on its proposal to continue to collect information on its Access Identification Form from government officials who use FinCEN's services.

DATES: Written comments should be received on or before September 10, 1996.

ADDRESSES: Direct all written comments to Hedda Verinder, Financial Crimes Enforcement Network, 2070 Chain Bridge Road, Vienna, VA 22182, Telephone number 703–905–3736.

FOR FURTHER INFORMATION CONTACT: Hedda Verinder, Financial Crimes

Enforcement Network, 2070 Chain Bridge Road, Vienna, VA 22182, Telephone number 703–905–3736.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), FinCEN is soliciting comments on the collection of information described below.

Title: Access Identification Form.

OMB Number: 1505–0137.

Form Number: TDF90–22.45.

Abstract: FinCEN provides investigative support for federal, state and local law enforcement. The Access Identification Form is the vehicle used to verify the identity of authorized personnel, and to enter information about such personnel into FinCEN's automated database. It provides FinCEN with the means to ensure that law enforcement and other sensitive information is disclosed only to authorized personnel in accordance with FinCEN security requirements.

Current Actions: There are no substantive or material changes to the form.

Type of Review: Extension.

Affected Public: Federal Government/ State and Local Government.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 45.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: July 8, 1996.

William F. Baity,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 96–17759 Filed 7–11–96; 8:45 am]

BILLING CODE 4820–03–U

Submission for OMB Review; Comment Request

July 1, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Customs Service (CUS)

OMB Number: 1515–0026.
Form Number: CF 3078.
Type of Review: Extension.
Title: Application for Identification Card.
Description: Customs Form 3078 is used by licensed Cartmen, Lightermen, Warehousemen, brokerage firms, foreign trade zones, container station operators, their employees, and employees requiring access to Customs secure areas to apply for an identification card so that they may legally handle merchandise which is in Customs custody.
Respondents: Individuals or households.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Respondents: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 5,250 hours.

OMB Number: 1515–0055.
Form Number: CF 3229.
Type of Review: Extension.
Title: Certificate of Origin.
Description: This certification is required to determine whether an importer is entitled to duty-free entry for goods which are: (1) The growth or product of a U.S. insular possession, or (2) Caribbean Basin initiative imports.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Respondent: 20 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 113 hours.

OMB Number: 1515–0065.
Form Number: CF 7501 and CF 7501A.
Type of Review: Extension.
Title: Entry Summary and Continuation Sheet.
Description: Customs Form 7501 is used by Customs as a record of the import transaction, to collect proper duty, taxes, exactions, certifications and enforcement endorsements, and to provide copies of Census for statistical purposes.
Respondents: Not-for-profit institutions, Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 38,193.
Estimated Burden Hours Per Respondent/Recordkeepers: 20 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 4,970,470 hours.

OMB Number: 1515–0078.
Form Number: CF 1302 and 1302A.
Type of Review: Extension.
Title: Cargo Declaration and Cargo Declaration (Outward with Commercial Forms).
Description: Customs Forms 1302 and 1302A are used by the master of a vessel to list all inward cargo onboard and for the clearance of all cargo onboard with commercial forms.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 5,600.
Estimated Burden Hours Per Respondent: 5 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 11,662 hours.

OMB Number: 1515–0128.
Form Number: None.
Type of Review: Extension.
Title: Request for Temporary Identification Card.
Description: Cartmen, Lightermen and airport employees may request temporary identification to be issued to their employees if they can show that a hardship to their business would result, pending the issuance of a permanent identification card.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 100 hours.
Clearance Officer: J. Edgar Nichols (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Room 6216, 1301 Constitution Avenue, N.W., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–17691 Filed 7–11–96; 8:45 am]

BILLING CODE 4820–02–P

Submission for OMB Review; Comment Request

July 1, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0156.
Form Number: ATF F 2987 (5120).
Type of Review: Extension.
Title: Computation of Tax and Agreement to Pay Tax on Puerto Rican Cigars and Cigarettes.
Description: ATF F 2987 (5210.8) is used to calculate the tax due on cigars and cigarettes manufactured in Puerto Rico and shipped to the United States. The form identifies the taxpayer, cigars or cigarettes by tax class and a certification by a U.S. Customs official as to the amount of shipment, and that the shipment has been released to the United States.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 30.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 30 hours.

OMB Number: 1512–0199.
Form Number: ATF F 5110.30.
Type of Review: Extension.
Title: Drawback on Distilled Spirits Exported.
Description: ATF F 5110.30 is used by persons who export distilled spirits and wish to claim a drawback of taxes already paid in the United States. The form describes the claimant spirits for tax purposes, amount of tax to be refunded, and a certification by the U.S. Government agency attesting to exportation.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 2 hours
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 10,000 hours.

OMB Number: 1512–0214.
Form Number: ATF F 5110.74.
Type of Review: Extension.
Title: Application and Permit Under 26 U.S.C. 5181—Alcohol Fuel Producer.
Description: This form is used by persons who wish to produce alcohol for fuel use. This form describes the person(s) applying for the permit, location of the proposed operation, type of material used for production, and the amount of spirits to be produced.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 1,364.
Estimated Burden Hours Per Respondent: 1 hour, 48 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,455 hours.

OMB Number: 1512–0220.
Form Number: ATF F 5170.4.
Type of Review: Revision.
Title: Application for Federal Alcohol Administration Act Basic Permit to Wholesale or Import.
Description: Persons intending to engage in the business of importing wholesaling alcoholic-beverages apply for a permit on ATF Form 5170.4. The information provided allows ATF to identify the applicant and location of the business and to determine the applicant's qualifications.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 1,300.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,600 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–17692 Filed 7–11–96; 8:45 am]

BILLING CODE 4810–31–P

Submission to OMB for Review; Comment Request

July 1, 1996.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0065.
Form Number: IRS Forms 4070, 4070A, 4070PR, and 4070A–PR.
Type of Review: Revision.
Title: Employee's Report of Tips to Employer (4070A); Employee's Daily Record of Tips (4070A); Informe al Patrono de Propinas Recibidas por el Employeado (4070PR); and Registro Diario de Propinas del Empleado (4070A–PR).
Description: Employees who receive at least $20 per month in tips must report the tips to their employers monthly for purposes of withholding of employment taxes. Forms 4070 and 4070PR (Puerto Rico only) are used for this purpose. Employees must keep a daily record of tips they receive. Forms 4070A and 4070A–PR are used for this purpose.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 540,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

	4070	4070A	4070PR	4070A–PR
Recordkeeping	7 min	3 hr., 23 min	0 min	0 min.
Learning about the law or the form	2 min	2 min	2 min	2 min.
Preparing the form	13 min	55 min	0 min	0 min.

	4070	4070A	4070PR	4070A–PR
Copying and providing	10 min	28 min	0 min	0 min.

Frequency of Response: Monthly.
Estimated Total Reporting/ Recordkeeping Burden: 34,415,520 hours.
OMB Number: 1545–0067.
Form Number: IRS Form 2555.
Type of Review: Extension.
Title: Foreign Earned Income.
Description: This form is used by U.S. citizens and resident aliens to qualify for the foreign earned income exclusion and/or the foreign housing exclusion or deduction. This information is used by the Service to determine if a taxpayer qualifies for exclusion(s) or deduction.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 181,626.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hr., 11 min.
Learning about the law or the form—27 min.
Preparing the form—1 hr., 40 min.
Copying, assembling, and sending the form to the IRS—49 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 926,293 hours.
OMB Number: 1545–0203.
Form Number: IRS Form 5329.
Type of Review: Extension.
Title: Additional Taxes Attributable to Qualified Retirement Plans (including IRAs), Annuities, and Modified Endowment Contracts.
Description: This form is used to compute and collect taxes related to distributions from individual retirement arrangements (IRAs) and other qualified plans. These taxes are for excess contributions to an IRA, premature distributions from an IRA and other qualified retirement plans, excess accumulations in an IRA and excess accumulations in an IRA and excess distributions from qualified retirement plans. The data is used to help verify that the correct amount of tax has been paid.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 1,000,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hr., 24 min.
Learning about the law or the form—33 min.
Preparing the form—1 hr., 19 min.
Copying, assembling, and send the form to the IRS—35 min.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 4,840,000 hours.
OMB Number: 1545–0227.
Form Number: IRS Form 6251.
Type of Review: Extension.
Title: Alternative Minimum Tax—Individuals.
Description: Form 6251 is used by individuals with adjustments, tax preference items, taxable income above certain exemption amounts, or certain credits. Form 6251 computes the alternative minimum tax which is added to regular tax. The information is needed to ensure the taxpayer is complying with the law.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 273,396
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hr., 17 min.
Learning about the law or the form—1hr., 12 min.
Preparing the form—1 hr., 47 min.
Copying, assembling, and sending the form to the IRS—20 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 1,533,752 hours.
OMB Number: 1545–1032.
Form Number: IRS Form 8689.
Type of Review: Extension.
Title: Allocation of Individual Income Tax to the Virgin Islands.
Description: Form 8689 is used by U.S. citizens or residents as an attachment to form 1040 when they have Virgin Island source income. The data is used by IRS to verify the amount claimed on Form 1040 for taxes paid to the Virgin Islands.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 800.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—33 min.
Learning about the law or the form—18 min.
Preparing the form—59 min.
Copying, assembling, and sending the form to the IRS—20 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 1,744 hours.
OMB Number: 1545–1079.
Form Number: IRS Form 9041.
Type of Review: Revision.
Title: Application for Electronic/ Magnetic Media Filing of Business and Employee Benefit Plan Returns.
Description: Form 9041 is filed by fiduciaries, partnerships, and plan sponsors/administrators as an application to file their returns electronically or on magnetic media; and by software firms, service bureaus, and electronic transmitters to develop auxiliary services.
Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 3,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 18 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 900 hours.
OMB Number: 1545–1128.
Form Number: IRS Form 8814.
Type of Review: Extension.
Title: Parents' Election to Report Child's Interest and Dividends.
Description: Form 8814 is used by parents who elect to report the interest and dividend income of their child under age 14 on their own tax return. If this election is made, the child is not required to file a return.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 1,100,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—20 min.
Learning about the law or the form—10 min.
Preparing the form—16 min.
Copying, assembling, and sending the form to the IRS—35 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 1,463,000 hours.
OMB Number: 1545–1139.
Regulation ID Number: PS–264–82 Final.
Type of Review: Extension.
Title: Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders.
Description: The regulations provide the procedures and the statements to be filed by S corporations for making the election provided under section 1368, and by shareholders who choose to reorder items that decrease their basis. Statements required to be filed will be used to verify that taxpayers are complying with the requirements imposed by Congress.
Respondents: Business or other for-profit, Individuals or households.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Respondent: 6 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 200 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–17693 Filed 7–11–96; 8:45 am]

BILLING CODE 4830–01–M

Submission for OMB Review; Comment Request

July 2, 1996.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Special Request: In order to conduct the focus group interviews described below in the late-July/early-August 1996 time frame, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by July 12, 1996. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1349.
Project Number: SOI–21.
Type of Review: Revision.
Title: 1997 TeleFile Tax Package Focus Groups.
Description: The purpose of these focus group interviews is to obtain taxpayer feedback on the new TeleFile tax package and the interactive telephone system.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 80.
Estimated Burden Hours Per Respondent: 3 minutes.
Frequency of Response: Other.
Estimated Total Reporting Burden: 92 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–17694 Filed 7–11–96; 8:45 am]

BILLING CODE 4830–01–P

Submission for OMB Review; Comment Request

July 2, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the survey described below in the late-July/early-August 1996 time frame, the Department of Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by July 12, 1996. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 96–017G.
Type of Review: Revision.
Title: Your Business Tax Kit (YBKT) Survey of Business Owners.
Description: In an effort to enhance customer service to the small business community, a task force was formed to thoroughly analyze the YBKT. The task has modified which forms and publications are available in the YBKT. The plan to test the modified YBKT by distributing 2,500 kits to business owners. In order to obtain feedback from recipients of the modified YBKT, a questionnaire will be included in these kits.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 2,500.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: Other.
Estimated Total Reporting Burden: 292 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–17695 Filed 7–11–96; 8:45 am]

BILLING CODE 4830–01–P

Submission for OMB Review; Comment Request

July 5, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the survey described below in the early-August 1996 time frame, the Department of Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by July 17, 1996. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 96–018G.
Type of Review: Revision.
Title: Toll-free/ICP Survey Focus Groups with Taxpayers Calling IRS in 1995–96.
Description: The survey will focus on improving the quality of its toll-free telephone service and assessing the impact of its Integrated Case Processing (ICP) system. ICP, once fully implemented will allow employees to better serve its customers by resolving most cases on one telephone contact.
Respondents: Individuals, Business or other for-profit.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 170 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–17696 Filed 7–11–96; 8:45 am]

BILLING CODE 4830–01–P

Departmental Offices; Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. section 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC, on July 30 and 31, 1996, of the following debt management advisory committee:

Public Securities Association Treasury Borrowing Advisory Committee

The agenda for the meeting provides for a technical background briefing by Treasury staff on July 30, followed by a charge by the Secretary of the Treasury or his designate that the committee discuss particular issues, and a working session. On July 31, the committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 11:30 a.m. Eastern time on July 30 and will be open to the public. The remaining sessions on July 30 and the committee's reporting session on July 31 will be closed to the public, pursuant to 5 U.S.C. App. section 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. section 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. section 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. section 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Domestic Finance is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b.

Dated: July 8, 1996.

John D. Hawke, Jr.,

Under Secretary of the Treasury for Domestic Finance.

[FR Doc. 96–17742 Filed 7–11–96; 8:45 am]

BILLING CODE 4810–25–M

Customs Service

Entry of Certain Goods Assembled Abroad From Components Cut to Shape in the U.S. From Foreign Fabric

AGENCY: U.S. Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document sets forth instructions for the proper entry under the Harmonized Tariff Schedule of the United States of certain goods assembled abroad from components cut to shape in the U.S. from foreign fabric.

FOR FURTHER INFORMATION CONTACT: Craig Walker, Special Classification and Marking Branch, Office of Regulations and Rulings (202–482–6980).

SUPPLEMENTARY INFORMATION:

Background

1. Entry of Section 334(b)(4)(A) Goods Under 9802.00.8065

Section 10.25, Customs Regulations (19 CFR 10.25) implements section 334(b)(4)(A) of the Uruguay Round Agreements Act ("the Act") (codified at 19 U.S.C. 3592), which provides that where components are cut to shape in the U.S. from foreign fabric and exported to another country for assembly into an article that is returned to the U.S. and entered, or withdrawn from warehouse, for consumption on or after July 1, 1996, the dutiable value of the article shall not include the value of such components. In the final rule document implementing the provisions of section 334 of the Act, published in the **Federal Register** on September 5, 1995 (60 FR 46188), Customs stated the following regarding 19 CFR 10.25:

> Under section 334(b)(4), where goods are assembled abroad from components cut in the United States from foreign fabric (even though under section 334 the cut components are not products of the United States and the assembling country is the country of origin), the assembled goods, when imported into the United States, will continue to receive the same duty treatment presently accorded to such goods under subheading 9802.00.80, HTSUS * * * section 334(b)(4) serves to preserve a tariff treatment that otherwise would no longer be available under the section 334 origin rules * * *.

Section 10.25 incorporates by reference the same operational, valuation, and documentation requirements applicable to goods entered under subheading 9802.00.80, HTSUS. Accordingly, in promulgating 19 CFR 10.25, Customs expressed its intent to continue to allow entry of these goods under subheading 9802.00.80, on and after July 1, 1996. Thus, imported goods entitled to a duty allowance under 19 CFR 10.25 are to be entered under subheading 9802.00.8065, HTSUS, and, solely for purposes of calculating the duty allowance under this subheading, Customs will treat these textile components as if they were "U.S. fabricated components".

It is important to note, however, that permitting the entry of section 10.25 goods under subheading 9802.00.8065, in order to implement the duty allowance provided under section 334(b)(4)(A) of the Act, should not be interpreted as a determination of the country of origin of these cut components. The determination of the country of origin of textile components cut in the U.S. from foreign fabric will be made under a general application of the section 334 rules of origin, as implemented by section 102.21, Customs Regulations (19 CFR 102.21).

Thus, it is possible that a shipment of assembled goods will be eligible for a partial duty allowance under subheading 9802.00.8065 pursuant to 10.25, but the country of origin of those goods, for quota, marking and other general origin purposes, will be neither the country of assembly nor the U.S. because the origin of the assembled goods is determined by the origin of the fabric comprising the goods. For example, if Indian-origin fabric is dyed, printed and cut to shape in the U.S. into components for a tent, and those components are assembled in Mexico into a tent, the country of origin of that tent, pursuant to section 334(b)(1) or (2) of the Act, is the origin of the fabric—India. Upon importation into the U.S., the tent may receive a duty allowance under 19 CFR 10.25 for the value of the fabric components, but it will be a product of India for purposes of marking (and quota if applicable).

2. Entry of Section 334(b)(4)(B) Goods Under 9802.00.8040

U.S. Note 2(b), subchapter II, Chapter 98, HTSUS ("Note 2(b)") (commonly referred to as "CBI II"), provides for the duty-free treatment of articles (except textile and apparel products, petroleum and petroleum products) assembled or processed in a designated CBI beneficiary country in whole of U.S.-origin components or ingredients (other than water).

Headquarters telex No. 9264071 to Customs field offices dated September 28, 1990, set forth instructions regarding the proper entry of goods entitled to duty-free treatment under Note 2(b). Specifically, the telex advised that two statistical breakouts had been created for Note 2(b) articles: subheading 9802.00.5010, HTSUS—for articles processed in whole of U.S. ingredients (other than water); and subheading 9802.00.8040, HTSUS—for articles assembled in whole of U.S. fabricated components.

Section 10.26(b), Customs Regulations (19 CFR 10.26(b)), implements section 334(b)(4)(B) of the Act, which provides that, effective for goods entered, or withdrawn from warehouse, for consumption on or after July 1, 1996, no article (except a textile or apparel product) assembled in whole of components cut to shape in the U.S. from foreign fabric, or of such components and components of U.S. origin, in a designated CBI beneficiary country shall be treated as a foreign article or as subject to duty. Thus, through the promulgation of 19 CFR 10.26(b), Customs has fulfilled Congressional intent to continue the duty-free treatment accorded such articles under Note 2(b) prior to July 1, 1996.

In keeping with the overall statutory intent, as expressed in 19 CFR 10.26(b), Customs has determined that imported goods entitled to duty-free treatment under 19 CFR 10.26(b) should continue to be entered under subheading 9802.00.8040, HTSUS. All other instructions and documentation requirements set forth in telex No. 9264071 shall also continue to apply to such articles.

Dated: July 8, 1996.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 96–17689 Filed 7–11–96; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register
Vol. 61, No. 135
Friday, July 12, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

Transfer of Administrative Jurisdiction; Sam Rayburn Dam and Reservoir Project

Correction

In notice document 96–15867, beginning on page 31915, in the issue of Friday, June 21, 1996, make the following corrections:

1. On page 31915, in the second column, under **SUPPLEMENTARY INFORMATION:**, in the fifth line, "transfer or" should read "transfer of".

2. On the same page, in the second column, after Valdis E. Mezainis' signature and title, the double rule should be removed and the first three headings should read as follows:

Department of the Army

Department of Agriculture

Sam Rayburn Reservoir, Texas

3. On the same page, in the 3rd column, in the 12th line from the top, "A+1" should read "A-1".

4. On page 31916, in the first column, "Dated: October 10, 1996" should read "Dated: October 10, 1995".

5. On the same page, in the third column, in the first full paragraph, in the fourth entry, "South 64° West, 349.4 feet" should read "South 64° West, 349.48 feet".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110, 116, 117, 157, and 181

[CGD 96-026]

RIN 2115-AF33

Technical Amendments; Organizational Changes; Miscellaneous Editorial Changes and Conforming Amendments

Correction

In rule document 96–16488, beginning on page 33660, in the issue of Friday, June 28, 1996, make the following corrections:

1. On page 33663, in the second column, in the Authority citation for Part 110, in the last line, "33 U.S.C. 1233" should read "33 U.S.C. 1223".

2. On the same page, in the third column, in the Authority citation for Part 116, "49 U.S.C. CFR" should read "49 U.S.C. 1655(g); 49 CFR".

Appendix A to Part 117 [Corrected]

3. On page 33664, in Appendix A to Part 117 table, in the Pacheco Creek entry, in the last column, "8" should read "9".

4. On page 33665, in Appendix A to Part 117 table, in the first column, in the first entry, "Steamboad Slough" should read "Steamboat Slough".

§ 157.03 [Corrected]

5. On page 33666, in the third column, in § 157.03, in the third and last definitions from the bottom, *Existing vessel* and *From the nearest land* respectively, in the first line of each remove "means" the second time it appears.

6. On page 33667, in the third column, in § 157.03, the first definition, "*Oil Mixture*" should read "*Oily Mixture*".

7. On the same page, in the same column, in § 157.03, under *Tank vessel* (3), in the last line insert "the" after "in".

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 108, 110, 111, 112, 113, and 161

[CGD 94-108]

RIN 2115-AF24

Electrical Engineering Requirements for Merchant Vessels

Correction

In rule document 96–13416, beginning on page 28260, in the issue of Tuesday, June 4, 1996, make the following corrections:

1. On the cover sheet, in the subject line, "**Final Rule**" should read "**Interim Rule.**"

2. On page 28260, in the first column, in the document heading, the missing RIN number should read as is cited above.

3. On page 28263, in the second column, "*§111.05-07*" should read "*§111.05-7*".

4. On page 28266, in the first column, under *§111.75-17* (1), "paragraphs (e)(e)" should read "paragraphs (e)(3)".

5. On the same page, under *§111.81-1*, in the third column, in paragraph (2), "§111.8-1" should read "§111.81-1."

6. On page 28267, in the first column, under *§111.105-15* (3), "removing paragraph (b0" should read "removing paragraph (b)".

7. On the same page, in the second column, under *§111.105-31* (2), "paragraphs (1)(3) and (1)(4)" should read "paragraphs (l)(3) and (l)(4)."

8. On the same page, in the second column, under *§111.105-31* (2), in the second paragraph, "ABS Rule 4/5.151.lb" should read "ABS Rule 4/5.151.1b."

9. On page 28268, in the first column, under *§113.25-6*, in the second paragraph, "11-1/43" should read "II-1/43".

10. On page 28269, in the first column, under *§113.50-10* (2), "removing the replacement" should read "removing the requirement".

13. On the same page, the same column, in the IEC 92-201 entry, "Installation" should read "Installations".

14. On the same page, the same column, in the IEC 92-202 entry, "Installation" should read "Installations".

15. On the same page, the same column, in the IEC 92-352 entry, "Equipment–Choice and Installation" should read "Choice and Installation".

16. On page 28273, in the first column, in the *National Fire Protection Association (NFPA)* entry, "see NFPA 70.." should read "see NFPA 70."

17. On page 28274, in the first column, in the UL 1573 entry, "Stage ad Studio" should read "Stage and Studio".

§ 111.10-4 [Corrected]

18. On page 28277, in the first column, under § 111.10-4(a), "electric's" should read "electric".

§111.15-5 [Corrected]

19. On page 28278, in the first column, under § 111.15-5(a), "requirements in support" should read "requirements in subpart".

§111.15-30 [Corrected]

20. On the same, in the second column, under § 111.15-30, fifth line, "Chargers incorporating ground" should read "Chargers incorporating grounded".

§§ 111.30-21 and 111.30-23 [Corrected]

21. On page 28279, in the first column, "**§§ 111-30-21 and 111.30-23 [Removed]**" should read "**§§ 111.30-21 and 111.30-23 [Removed]**."

§ 111.75-20 [Corrected]

22. On page 28283, in the first column, under § 111.75-20(e), third line from the bottom "fluorescent tubes longer than 103 cm" should read "fluorescent tubes longer than 102 cm".

§ 111.105-29 [Corrected]

23. On page 28285, in the first column, under § 111.105-29(c), fifth line, "§ 111.10531(1)" should read "§ 111.10531(l)."

§ 112.05-1 [Corrected]

24. On page 28286, in the second column, under § 112.05-1(a), second line, "dependable independent," should read "dependable, independent,".

§ 112.15-5 [Corrected]

25. On page 28287, in the first column, under § 112.15-5(i), second line, "distress and safety system (GMDSs)" should read "distress and safety system (GMDSS)".

§ 113.30-25 [Corrected]

26. On page 28289, in the third column, under § 113.30-25(d), first line, "In a noise location" should read "In a noisy location".

§ 113.50-15 [Corrected]

27. On page 28291, in the first column, under § 113.50-15(a), third line, "which would degrade communications" should read "which would degrade communication."

§ 161.002-1 [Corrected]

28. On the same page, in the second column, under § 161.002-1(a), twelfth line, "Register.800" should read "Register, 800".

BILLING CODE 1505–01–D

federal register

Friday
July 12, 1996

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 56 and 57
Safety Standards for Explosives at Metal and Nonmetal Mines; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

RIN 1219–AA84

Safety Standards for Explosives at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule revises certain provisions of the Mine Safety and Health Administration's (MSHA) safety standards for explosives at metal and nonmetal mines. The final rule revises existing standards for separation of detonators from other explosives or blasting agents during storage in powder chests and during transportation. Additionally, it revises existing provisions related to loading and blasting of explosive materials. The final rule also expands the application of existing provisions concerning the protection of explosive materials from impact and exposure to high temperatures, and it revises and clarifies the existing provisions addressing static electricity dissipation during loading. The rule revises the existing preamble discussion for vehicles containing explosive material, and incorporates existing blast site security provisions into the loading and blasting standards. For the convenience of the mining community, MSHA has published the full text of the explosives standards for metal and nonmetal mines in this **Federal Register** document.

EFFECTIVE DATES: This final rule is effective September 10, 1996. The incorporation by reference listed in the regulations is effective September 10, 1996.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

Under final §§ 56/57.6306(a), operators must either attend; barricade and post the blast site with warning signs, such as "Danger," "Explosives," or "Keep Out;" or flag the blast site against unauthorized entry. These final requirements for use of warning signs, such as "Danger," "Explosives," or "Keep Out," are not considered information collection under the Paperwork Reduction Act of 1995 (PRA 95) and are not subject to approval by the Office of Management and Budget (OMB).

Final §§ 56/57.6306(d) requires that operators conduct loading and blasting in a manner to facilitate a continuous process so that the blast is fired as soon as possible. The final standard does not retain the concept of "undue delay", but retains the existing requirement to notify MSHA of blasting delays beyond 72 hours. MSHA estimates that these provisions affect fewer than 10 respondents annually, all large mines. Although notification is considered an information collection burden under PRA 95, this provision is not subject to OMB approval because it affects fewer than 10 respondents annually.

II. Rulemaking Background

MSHA published comprehensive revisions to its explosives safety standards for metal and nonmetal mines in January 1991 (56 FR 2070). Prior to the effective date of the rule, MSHA stayed several provisions due to compliance issues raised by the mining community and explosives manufacturers. The provisions involved were subsequently reproposed on October 16, 1992 (57 FR 47524) for revision and clarification. On December 30, 1993, MSHA published the existing final rule which became effective on January 31, 1994 (58 FR 69596).

In February 1994, the American Mining Congress (AMC) and the Institute of Makers of Explosives (IME) each filed a petition for review of the final rule with the United States Court of Appeals for the District of Columbia Circuit, in *American Mining Congress* v. *MSHA*, Docket No. 91–1124 and 91–1568, consolidated cases, and in *IME* v. *MSHA*, Docket No. 94–1144. AMC requested that MSHA reconsider evidence in the rulemaking record regarding the continuous loading requirements of §§ 56/57.6306(c), *Loading and blasting*. In addition, AMC requested that the Agency clarify the preamble discussion to §§ 56/57.6202(a)(1), concerning vehicles containing explosive materials.

IME suggested revision of §§ 56/57.6000, the definition of "laminated partition," and corresponding changes in §§ 56/57.6133(b), *Powder chests*, and §§ 56/57.6201(a)(2) and (b)(2), *Separation of transported explosive material*. Also, IME requested that MSHA reconsider information in the rulemaking record regarding the requirements of §§ 56/57.6602, *Static electricity dissipation during loading*.

In response to the issues raised by the mining industry and explosive manufacturers, MSHA issued Program Policy Letter No. P94–IV–3 on September 30, 1994. This Program Policy Letter provided information to the mining community regarding the proper usage of the IME–22 Container as a "laminated partition" under §§ 56/57.6000, §§ 56/57.6133, and §§ 56/57.6201. The Agency also interpreted the "continuous loading" requirements of §§ 56/57.6306; clarified the meaning of the term "good condition" as it applies to vehicles used in §§ 56/57.6202; clarified the application of §§ 56/57.6501 regarding double trunklines or loop systems when using low energy detonating cord with inhole delays; and interpreted §§ 56/57.6602(e) on static electricity dissipation during loading as it applies to the use of plastic hole liners. This final regulation addresses these regulatory issues except for §§ 56/57.6501 regarding double trunklines or loop systems. Therefore, Program Policy Letter No. P94–IV–3 will expire on the effective date of this final regulation.

On January 5, 1995, MSHA published a proposed rule in the **Federal Register** (60 FR 1866) which would have revised the provisions discussed above. Public hearings were held in Cleveland, Ohio, and Elko, Nevada in July 1995. The rulemaking record closed on August 18, 1995. MSHA received and reviewed written and oral statements on the proposed rule from all segments of the mining community. These final standards for explosives at metal and nonmetal mines are based on consideration of the entire rulemaking record, including all written comments and exhibits received related to the January 1991 and the December 1993 final regulations, as well as the January 5, 1995, proposal and the public hearing record.

To serve the interests of the mining community, MSHA has republished the full text of subpart E of 30 CFR parts 56 and 57 as they will read effective September 10, 1996. This final rule, however, addresses revisions only to the following sections. Sections republished here and not on the list below are unchanged.

Parts 56 and 57

§§ 56/57.6000 Definitions.
§§ 56/57.6133 owder chests.
§§ 56/57.6201 Separation of transported explosive material.
§§ 56/57.6202 Vehicles.
§§ 56/57.6302 Separation of explosive material.
§§ 56/57.6306 Loading, blasting, and security.
§§ 56/57.6313 Blast site security.
§§ 56/57.6602 Static electricity dissipation during loading.
§§ 56/57.6905 Protection of explosive material.

III. Discussion and Summary of the Final Rule

A. General Discussion

Historically, hazards associated with the storage, transportation, and use of explosive materials have caused or contributed to serious injuries and fatalities in metal and nonmetal mines. Precautions to safeguard against these hazards are an essential part of any effective mine safety program. The standards in 30 CFR parts 56 and 57, subpart E, focus on hazards associated with using or working near explosive materials at metal and nonmetal mines. The standards in this final rule clarify and address certain precautions necessary to prevent the hazards common to storing, transporting, and handling explosive materials. These standards also address the issues raised in the rule challenges noted above.

B. Organizational Changes

Paragraph (b) of existing §§ 56/57.6302 is moved to §§ 56/57.6905 of this subpart. Paragraph (a) of existing §§ 56/57.6302 requires that explosives and blasting agents be kept separate from detonators until loading begins. This provision remains unchanged. The section heading of §§ 56/57.6302 is revised in the final rule to read "*Separation of explosive material.*"

Paragraph (b) of existing §§ 56/57.6302 requires that explosive material be protected from impact and temperatures in excess of 150 degrees Fahrenheit when taken to the blast site.

In 1993, MSHA promulgated §§ 56/57.6302 under the "*Use*" portion of the explosives regulation, thereby inadvertently creating confusion as to whether explosives also must be protected from impact during transportation and storage. MSHA's intent was to require protection of explosive material from impact and high temperatures generally, not just during use. This final rule moves existing paragraph (b) of §§ 56/57.6302 to "*General Requirements*" and "*General Requirements-Surface and Underground.*" The provision is codified as §§ 56/57.6905, with the section heading "*Protection of explosive material.*"

C. Deletions

Existing §§ 56/57.6313, which require that areas where loading is suspended or loaded holes are awaiting firing be attended, barricaded and posted, or flagged against unauthorized entry are deleted, and these requirements are incorporated into final §§ 56/57.6306(a) for loading and blasting.

D. Incorporations by Reference

Existing §§ 56/57.6000, §§ 56/57.6133, and §§ 56/57.6201 incorporate by reference the definition of "laminated partition" and recommendations found in the IME Safety Library Publication No. 22, "Recommendations for the Safe Transportation of Detonators in a Vehicle with other Explosive Materials," (May 1993), and "The Generic Loading Guide for the IME–22 Container," (October 1993). Whenever a laminated partition is used under the final rule, IME's recommendations contained in these two publications must be followed. As discussed below, MSHA will make these IME publications available to the mining community.

E. Section-by-Section Analysis

The following section-by-section analysis explains the final rule and its effect on existing standards. The standards in part 56 apply to all surface metal and nonmetal mines; those in part 57 apply to underground and surface areas of underground metal and nonmetal mines.

§§ 56/57.6000 Definitions.
§§ 56/57.6133 Powder chests.
§§ 56/57.6201 Separation of transported explosive material.

Sections 56/57.6133 and 56/57.6201 address the hazards of unplanned detonation of explosives when stored and transported. The separation requirements are intended to impede propagation should detonators be initiated.

The existing definition of "laminated partition" in 30 CFR §§ 56/57.6000 includes the combinations of materials which must be used in a partition if operators choose to store or transport certain detonators with explosives or blasting agents. These dimensions are based on IME Safety Library Publication No. 22, "Recommendations for the Safe Transportation of Detonators in a Vehicle with other Explosive Materials," (May 1993), and the "Generic Loading Guide for the IME–22 Container," (October 1993). The term "laminated partition" appears in existing §§ 56/57.6133, *Powder chests*, and in §§ 56/57.6201, *Separation of transported explosive material*.

Existing standards §§ 56/57.6133 require that detonators stored at surface operations and at surface areas of underground operations must be kept in chests separate from other explosives or blasting agents, unless the detonators and explosives or blasting agents are separated by 4 inches of hardwood or equivalent, or a laminated partition. Similarly, existing §§ 56/57.6201(a)(2) require detonators and other explosives or blasting agents to be transported on separate vehicles or conveyances, except detonators in quantities of more than 1,000 may be transported on the same vehicle or conveyance if maintained in the manufacturer's original packaging, and if separated from explosives or blasting agents by 4 inches of hardwood or equivalent, or a laminated partition. The 4 inches of hardwood or equivalent must be fastened to the vehicle or conveyance. Paragraph (b)(2) of §§ 56/57.6201 allows detonators in quantities of 1,000 or fewer to be transported with explosives or blasting agents when kept in closed containers and separated by 4 inches of hardwood or equivalent, or a laminated partition. The 4 inches of hardwood or equivalent must be fastened to the vehicle or conveyance.

The Institute of Makers of Explosives (IME) raised objections to these existing regulations since the IME safety guidelines warn against hazards associated with use of the IME–22 container when transporting detonators with other explosives and blasting agents on the same vehicle.

Proposed §§ 56/57.6000 included language similar to that of the existing regulation. Proposed §§ 56/57.6133(b) would have allowed operators the flexibility to continue storing detonators with other explosives and blasting agents in a powder chest (day box) when separated by 4 inches of hardwood or equivalent. Likewise, proposed §§ 56/57.6201 (a)(2) and (b)(2) would have allowed operators to continue transporting detonators with explosives and blasting agents on the same vehicle or conveyance if they are separated by 4 inches of hardwood or equivalent. In response to IME's comments, both proposed standards also would have allowed use of a laminated partition to separate detonators from explosive materials, provided operators followed guidelines included in the IME Safety Library Publication No. 22, "Recommendations for the Safe Transportation of Detonators in a Vehicle with other Explosive Materials," (May 1993), and the "Generic Loading Guide for the IME–22 Container" (October 1993) when using a laminated partition.

Final regulations for §§ 56/57.6000 are the same as the proposed rule. The final regulations for both §§ 56/57.6133(b) and §§ 56/57.6201 (a)(2) and (b)(2) parallel the proposed rules in that they permit the longstanding practice of using 4 inches of hardwood or

equivalent, or a laminated partition (which includes the IME–22 Container or box) to separate detonators from other explosives or blasting agents, provided that the provisions of the IME Safety Library Publication No. 22, "Recommendations for the Safe Transportation of Detonators in a Vehicle with other Explosive Materials," (May 1993), and the "Generic Loading Guide for the IME–22 Container" (October 1993) are followed. Copies of these IME publications are available to the mining industry at MSHA headquarters in Arlington, VA, and at all Metal and Nonmetal Mine Safety and Health district offices.

MSHA did not receive any comments relative to the Agency's definition of the term "laminated partition" as described in the proposed rule.

One commenter objected to MSHA incorporating by reference IME publications stating that such incorporation would interfere with the opportunity to comment on the content of these publications. MSHA has historically relied upon manufacturers' design specifications and recommendations for the proper use of specific mining equipment and machinery where unintended use of such equipment and machinery poses a serious safety hazard to miners. Therefore, if operators use a laminated partition for compliance with standards §§ 56/57.6133 and §§ 56/57.6201, they must follow the guidelines prescribed in IME's accompanying documentation, including updated revisions where applicable. MSHA expects that the IME will periodically update this documentation, and MSHA intends to give mine operators adequate notice should compliance changes become necessary.

Some commenters sought clarification of the phrase "4 inches of hardwood, or equivalent," as used in proposed §§ 56/57.6133 and §§ 56/57.6201, while other commenters requested that MSHA define the term "equivalent" in the final regulation to specify the types of or combinations of materials that would be accepted. "Equivalent" under the final rule refers to any barrier, other than a laminated partition, that provides at least the same degree of protection for explosives or blasting agents as 4 inches of hardwood should detonators be initiated by outside forces. Presently, MSHA has no equivalency data to convert the degree of protection provided by hardwood to another material. However, the final standard preserves the flexibility to recognize such future developments.

One commenter requested that MSHA clarify whether "4 inches of hardwood" refers to a partition separating two containers or to the construction of the detonator box itself. The 4 inches of hardwood or its equivalent refers to the partition used to separate explosives and blasting agents from detonators. The purpose of separation is to impede propagation should detonators be initiated by outside forces. The 4 inches of hardwood or equivalent separator must be fastened inside the cargo area of the vehicle or conveyance containing explosive materials.

At commenters' suggestions, mine operators are reminded that MSHA standards are applicable only to mining property, including transporting of explosive materials. Any transportation of explosive material over public highways is subject to the requirements of the United States Department of Transportation in Title 49 of the Code of Federal Regulations.

Sections 56/57.6202 Vehicles

Sections 56/57.6202 address the hazard of an unplanned detonation of explosive material during transportation. Detonation can result from vehicle fires, vehicle accidents or construction of an explosive container with inappropriate material.

The existing regulations at §§ 56/57.6202(a)(1) require that vehicles used to transport explosives be maintained in "good condition." MSHA indicated in the preamble discussion to this regulation that for compliance purposes, vehicles must be road-worthy and capable of passing Federal, state, and local licensing requirements for over-the-road use.

MSHA received a number of objections to this interpretation of "good condition." In response to these commenters, MSHA clarifies in this final regulation preamble that for vehicles to be in "good condition" that they comply with the applicable MSHA standards contained in subpart M-Machinery and Equipment, which address requirements for all self-propelled mobile equipment used on mine property. Commenters agreed with this interpretation and MSHA adopts this approach in the final rule.

"USE"

Sections 56/57.6302 Separation of Explosive Material and Sections 56/57.6905 Protection of Explosive Material

Sections 56/57.6302 address the hazard of unplanned detonation of explosive material and protection for explosive material during use, transportation, and prior to loading.

Existing paragraph (a) of §§ 56/57.6302 requires that explosives and blasting agents be kept separate from detonators until loading begins. Existing paragraph (b) requires that explosive material be protected from impact and temperatures in excess of 150 degrees Fahrenheit when taken to the blast site.

When MSHA promulgated existing §§ 56/57.6302, the standards appeared in the "*USE*" portion of the explosives regulations, although the same hazards also exist during the transportation and storage processes. Therefore, the final rule revises and expands application of existing paragraph (b) of §§ 56/57.6302 to "*GENERAL REQUIREMENTS*" for both surface and underground, and moves this existing paragraph to newly numbered standards §§ 56/57.6905. Like the proposed regulation, final paragraph (a) requires that operators protect explosive materials against temperatures in excess of 150 degrees Fahrenheit. This temperature threshold is based upon the 1992 Bureau of Mines Information Circular No. 9335, *Blasting Hazards of Gold Mining in Sulfide-Bearing Ore Bodies*; MSHA's Investigation Report No. D7431–S949, *Investigation of Premature Detonations, Paradise Peak Mine*, (December 10, 1991); and the IME Safety Library Publication No. 4, *"Warnings and Instructions for Consumers in Transporting, Storing, Handling and Using Explosive Materials,"* (March 1992), all of which suggest a hazardous change in stability of explosives once temperatures reach this level.

Final paragraph (b) of §§ 56/57.6905, as proposed, requires that explosive material be protected from impact except for tamping and dropping during loading, so long as operators comply with existing requirements of §§ 56/57.6304 for primer protection. For example, large equipment used during the loading process may be capable of exerting forcible impact onto detonating or initiating systems. Also, the proximity of other mining activity may allow equipment to come in contact with explosive loading equipment and explosive containers, thereby exerting impact.

In the proposal, MSHA would have added a new requirement for underground mines to address the hazard of freeing hang-ups in raises, chutes and ore passes. To allow for this type of blasting, the proposal would have permitted only detonating cord to initiate explosives placed in raises, chutes, and ore passes to free hang-ups.

Commenters objected to the proposal as being too restrictive in that it would limit commonly accepted methods of blasting and prohibit application of new technological developments. These commenters stated that the use of detonating cord as proposed by MSHA may introduce inherent hazards such as fire from the ignition of timber, loosening timber, or other supports, contributing to flyrock, and loosening rib and back. Although MSHA's experience with detonating cord has not resulted in these hazards, the rulemaking record does not contain sufficient support to finalize the proposal. Therefore, the final rule does not adopt the proposal and will continue to permit current conventional practices for freeing hang-ups, provided applicable MSHA safety standards for explosives are followed. These standards, including the requirements of the final rule, provide reasonable protection against unplanned detonation of explosives during hang-up blasting.

Sections 56/57.6313 Blast Site Security and Sections 56/57.6306 Loading, Blasting, and Security

The final regulations address the hazard of unplanned detonation of explosives and the presence of unauthorized persons within the blast site, as well as moving vehicles or electrically-powered equipment which could contact and detonate explosive material. The final rule also protects persons working in the blast site from other mining activities unrelated to loading explosives, which can interfere with the loading process and increase the likelihood of an accident.

Existing paragraph (a) of §§ 56/57.6306 prohibits vehicles and other equipment from being driven over explosive material or initiating systems. Existing paragraph (b) allows haulage activity near the base of the highwall being loaded, if no other haulage access exists. MSHA has incorporated existing requirements of §§ 56/57.6313 on blast site security into final §§ 56/57.6306(a). Existing §§ 56/57.6313 require that areas in which loading is suspended or loaded holes are awaiting firing must be attended, barricaded and posted, or flagged against unauthorized entry. The proposal would have revised and expanded application of existing §§ 56/57.6313 by requiring that when explosive materials or initiating systems are brought to the blast site, operators must either barricade and post, or flag the blast site so that unauthorized or inadvertent entry is prevented. Most commenters agreed with the proposal. One commenter objected, however, suggesting that MSHA require identification of the blast site only when the blast site is not attended.

Final §§ 56/57.6306(a) adopts the proposal and includes one revision consistent with existing §§ 56/57.6313 regarding attending the blast site. Under the final standard, operators must either attend; barricade and post the blast site with warning signs; or flag the blast site against unauthorized entry. MSHA has included in the final standard some common examples of the content of warning signs used in the mining industry. In no way does the Agency intend for these examples to be an exclusive list. Operators may use other warning signs for compliance with this provision provided these signs adequately convey to persons that they are entering a hazardous area. MSHA's experience is that these warning signs are universally accepted and are consistent with DOT placards for explosive materials. Once explosives or initiating systems are brought to the blast site, good safety practices dictate that precautions be taken to prevent accidental damage to explosive materials, which can lead to a misfire or accidental detonation. Key among these precautions is delineating the blast site to warn unauthorized persons of the presence of explosives. The provisions of §§ 56/57.6313 were intended to require mine operators to alert other persons working at the mine during loading and blasting operations of the blast site parameters to prevent unauthorized or inadvertent entry onto the blast site. Particularly on a large blast site, persons performing blast-related tasks, such as loading explosives, would not be readily able to warn persons to keep out of the blast site.

One commenter stated that the proposal would result in additional costs to purchase warning signs to barricade, post or flag the blast site. MSHA anticipates that the final rule will result in only nominal cost increases to the mining industry because the posting requirement of final paragraph (a) is an incorporation of existing §§ 56/57.6313, as explained above. Moreover, the final regulation gives operators compliance flexibility by providing alternative methods on how to demarcate the blast site. Under this final regulation, once initiation systems are brought to the blast site, mine operators must either: (1) attend the blast site; (2) barricade and post the blast site with warning signs, such as "Danger," "Explosives," or "Keep Out;"; or (3) flag the blast site, to be in compliance with paragraph (a).

In the final rule, existing paragraph (a) of §§ 56/57.6306 becomes paragraph (b) with no substantive change.

Paragraph (c) of final §§ 56/57.6306 restates the existing rule and restricts persons from entering the blast site except those engaged in surveying, stemming, sampling of geology, and reopening of holes. The final rule, like the proposal, clarifies that haulage activity is permitted near the base of surface highwalls or underground bench faces being loaded or awaiting firing, where no other haulage access exists.

Final paragraph (d) of §§ 56/57.6306 protects against the hazard of periods in which the process of loading and firing explosives is interrupted. In the proposal, MSHA would have added new requirements for all mines to address the potential hazards posed by unauthorized personnel entering a blast site where explosive materials are present. The preamble discussion to the proposed rule stated that persons unfamiliar with the blast site may throw lighted smoking materials into a blast hole, disturb the initiation system, or kick material into a hole—any one of which could contribute to a premature detonation.

Existing paragraph (c) requires that loading be continuous except where adverse circumstances beyond the operator's control necessitate an interruption in loading. Existing paragraph (e) requires that when loading is completed and circuits are connected, operators must blast without undue delay, unless adverse circumstances exist which are beyond the operator's control. The existing standard also requires that operators notify MSHA if such delay could exceed 72-hours. Existing paragraphs (c) and (e) of §§ 56/57.6306 are deleted by the final rule. Hazards addressed under these existing provisions are covered under the final rule in paragraph (d).

Proposed paragraph (d)(1) would have required mine operators to continue the loading and firing process without interruption or undue delay. MSHA gave examples of "undue delay" in the preamble discussion to the proposed standard which included emergencies, unfavorable atmospheric conditions, shift changes and large equipment failures. Also, the proposal would have required operators to attend the mine to prevent unauthorized entry into the blast site.

Commenters indicated that the proposed "attended" requirement was confusing because it could be read to suggest that the physical presence of an individual at the blast site is necessary, contrary to MSHA's definition of the term "attended." Commenters also requested that MSHA clarify the meaning of "undue delay" with a list of circumstances. Other commenters suggested that MSHA clarify that examples listed in the preamble to the proposed standard are not the only justifications for an interruption in the

loading process. In addition, commenters objected to the proposal and to the preamble discussion by stating that past practices in the mining industry have successfully provided protection when loading was interrupted or blasting was delayed, and that no injuries or deaths have been attributed to unattended explosives.

MSHA agrees that there have been no known deaths caused by loaded explosives awaiting blasting. However, explosives technology literature and experience confirm that caution, including reasonable security measures, are appropriate. The final rule therefore adopts an updated version of a previous explosives safety regulation, and continues to permit longstanding practices at larger mining operations which take several days to complete the loading and blasting process.

Final paragraph (d) requires that operators conduct loading and blasting in a manner to facilitate a continuous process so that the blast is fired as soon as possible. The final standard does not retain the concept of "undue delay," but retains the existing requirement to notify MSHA of blasting delays beyond 72 hours. The final standard does not include the proposed requirement that the mine be attended when loading is interrupted or blasting is delayed. MSHA believes that requiring mine operators to load and blast as soon as practicable provides the measure of protection needed for miners by minimizing the loading and blasting exposure time.

Paragraph (d)(2) of §§ 56/57.6306 of the proposed standard would have required that persons securing a blast site at a surface mine or at the surface area of an underground mine withdraw from the blast site during the approach and progress of an electrical storm. The proposal also would have required that persons securing an underground blast site using an electrical blasting system that is capable of being initiated by lightning be withdrawn to a safe location.

Commenters objected to this proposal by stating that it was duplicative of existing §§ 56/57.6604, which provides for the suspension of blasting operations and the withdrawal of persons from the blast area to a safe location during the approach and progress of an electrical storm. MSHA agrees that §§ 56/57.6604 sufficiently addresses the precautions necessary to protect miners from the danger of accidental detonation caused by an electrical storm. Therefore, the final rule does not adopt proposed §§ 56/57.6306.

Paragraphs (f) and (g) of the final rule are unchanged from the existing regulations. These final rules continue to require that operators institute specific safety measures immediately prior to and after the blasting process. Final paragraph (f) requires, among other things, ample warning, clear escape routes from the blast area, and all access to the blast area to be guarded or barricaded to prevent the passage of persons or vehicles. Numerous accidents have occurred from the failure to clear or prevent unauthorized entry to the blast area. Final paragraph (g) requires post-blast examinations to minimize hazards to persons who will perform subsequent work in the area.

"EXTRANEOUS ELECTRICITY"

Sections 56/57.6602 Static Electricity Dissipation During Loading

This standard addresses the hazard resulting from a buildup of static electricity generated by pneumatic loading, which could cause premature detonation of explosives.

Existing §§ 56/57.6602 require that when explosive material is loaded pneumatically or dropped into a blasthole in a manner that could generate static electricity, an evaluation must be made of potential static electricity hazards and the hazard must be eliminated before loading begins. The standard prohibits the use of wire-countered hoses and plastic tube hole liners where their use could generate static electricity in an amount sufficient to initiate a detonator.

Following publication of the existing rule, MSHA received technical information from commenters suggesting that the scope of the standard is too broad. The term "dropping" encompasses dropping, pouring, or augering explosive materials into blastholes, activities which are performed at a low velocity. As a result, insufficient static electricity is generated to initiate a detonator, and therefore, does not pose a serious hazard. In the proposal, MSHA narrowed the application of this standard by deleting the term "dropping" from the text of existing §§ 56/57.6602.

In response to the proposed revision, a number of commenters indicated that the rule would still include activities which would not generate sufficient static electricity to initiate a detonator. These commenters indicated that the amount of energy required to initiate a detonator should be well-known by the blaster in charge and that blaster is in the best position to make the determination as to when precautions are necessary.

The final rule adopts this approach and requires that certain precautions be taken only when there is a static electricity hazard.

IV. Executive Order 12866 and the Regulatory Flexibility Act

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations. MSHA has determined that this rulemaking is not a significant regulatory action and, therefore, has not prepared a separate analysis of costs and benefits. The Regulatory Flexibility Act requires regulatory agencies to consider a rule's impact on small entities. For the purpose of the Regulatory Flexibility Analysis, MSHA defines a small entity as an operation employing fewer than 20 employees. This final rule would not have a significant economic impact on a substantial number of small entities. The analysis contained in this preamble meets MSHA's responsibilities under Executive Order 12866 and the Regulatory Flexibility Act.

Under the January 5, 1995, proposed rule (60 FR 1866), MSHA estimated that the total annual recurring cost impact would have been about $70,000. All of these costs were attributable to proposed §§ 56/57.6306(d)(1) which would have required the blast site to be attended if loading was interrupted or firing of the blast was delayed for any reason. MSHA recognizes that it is a safe practice to continuously load explosives and fire them promptly; however, interruptions in loading and delays in firing do occur, particularly in large mining operations. This final rule, therefore, will retain the existing requirements that permit reasonable interruptions in the loading process and require notification to MSHA if blasting of a loaded round will be delayed for more than 72 hours. MSHA estimates that this provision affects fewer than 10 mines annually, but that the mining industry will not incur any additional costs resulting from MSHA's retention of the existing requirements.

The final rule eliminates existing §§ 56/57.6313 and incorporates these requirements for blast site security as §§ 56/57.6306(a) which require that the blast site be attended; barricaded and posted with warning signs, such as "Danger," "Explosives," or "Keep Out;" or flagged against unauthorized entry, when explosives or initiating systems are present. MSHA estimates that final §§ 56/57.6306(a) would affect about 15 small and 60 large mines annually. MSHA anticipates that these provisions primarily would affect quarries; open pit mines, except for certain operations which do not use explosives, such as clay mines and phosphate mines; and large underground mines. MSHA does not expect small underground mines to be affected as these operations would rarely, if ever, experience the need to leave the blast site unattended when explosive materials or initiating systems are present. Sand and gravel operations and mills rarely blast, and then the blast site is likely to be a single charge, such as that needed to break a large boulder.

Although the scope of this requirement is expanded from when loading is suspended or firing is delayed to apply whenever explosive materials or initiating systems are present at the blast site, MSHA experience is that it is common industry practice to have the blast site attended when explosive materials or initiating systems are delivered and while loading is in progress. Final §§ 56/57.6306(a) address blast site security when explosives are being used. When explosive materials or initiating systems are not being used, other MSHA standards require that they be secured in magazines or other appropriate explosive materials storage facilities. On occasion, however, circumstances, such as delays in loading or firing, may require the blast site to be left unattended when explosive materials are present. In such situations, MSHA expects that mine operators would choose to barricade and post with warning signs, such as "Danger," "Explosives," or "Keep Out," or flag the blast site against unauthorized entry, rather than attend the blast site. One commenter stated that the proposal would result in additional costs to purchase warning signs to barricade, post, or flag the blast site. As this is required under existing §§ 56/57.6313, no new costs are required for compliance with the final rule. MSHA, therefore, has not included an additional cost for this provision in the Regulatory Flexibility Analysis.

V. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, requires each Federal agency to assess the effects of Federal regulatory actions on state, local, and tribal governments and the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. The Agency has determined that this final rule does not impose an unfunded mandate on state and local governments or tribal entities.

List of Subjects in 30 CFR Parts 56 and 57

Explosives, Incorporation by reference, Mine safety and health, Reporting and recordkeeping requirements.

Dated: June 26, 1996.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Parts 56 and 57, subchapter N, chapter I, title 30 of the Code of Federal Regulations are amended as follows:

PART 56—[AMENDED]

1. The authority citation for part 56 is revised to read as follows:

Authority: 30 U.S.C. 811.

2. Effective September 10, 1996, subpart E of part 56 is revised to read as follows:

Subpart E—Explosives

Sec.

56.6000 Definitions.

STORAGE

56.6100 Separation of stored explosive material.
56.6101 Areas around explosive material storage facilities.
56.6102 Explosive material storage practices.
56.6130 Explosive material storage facilities.
56.6131 Location of explosive material storage facilities.
56.6132 Magazine requirements.
56.6133 Powder chests.

TRANSPORTATION

56.6200 Delivery to storage or blast site areas.
56.6201 Separation of transported explosive material.
56.6202 Vehicles.
56.6203 Locomotives.
56.6204 Hoists.
56.6205 Conveying explosives by hand.

USE

56.6300 Control of blasting operations.
56.6301 Blasthole obstruction check.
56.6302 Separation of explosive material.
56.6303 Initiation preparation.
56.6304 Primer protection.
56.6305 Unused explosive material.
56.6306 Loading, blasting, and security.
56.6307 Drill stem loading.
56.6308 Initiation systems.
56.6309 Fuel oil requirements for ANFO.
56.6310 Misfire waiting period.
56.6311 Handling of misfires.
56.6312 Secondary blasting.

ELECTRIC BLASTING

56.6400 Compatibility of electric detonators.
56.6401 Shunting.
56.6402 Deenergized circuits near detonators.
56.6403 Branch circuits.
56.6404 Separation of blasting circuits from power source.
56.6405 Firing devices.
56.6406 Duration of current flow.
56.6407 Circuit testing.

NONELECTRIC BLASTING

56.6500 Damaged initiating material.
56.6501 Nonelectric initiation systems.
56.6502 Safety fuse.

EXTRANEOUS ELECTRICITY

56.6600 Loading practices.
56.6601 Grounding.
56.6602 Static electricity dissipation during loading.
56.6603 Air gap.
56.6604 Precautions during storms.
56.6605 Isolation of blasting circuits.

EQUIPMENT/TOOLS

56.6700 Nonsparking tools.
56.6701 Tamping and loading pole requirements.

MAINTENANCE

56.6800 Storage facilities.
56.6801 Vehicle repair.
56.6802 Bulk delivery vehicles.
56.6803 Blasting lines.

GENERAL REQUIREMENTS

56.6900 Damaged or deteriorated explosive material.
56.6901 Black powder.
56.6902 Excessive temperatures.
56.6903 Burning explosive material.
56.6904 Smoking and open flames.
57.6905 Protection of explosive material.

Subpart E—Explosives

§ 56.6000 Definitions.

The following definitions apply in this subpart.

Attended. Presence of an individual or continuous monitoring to prevent unauthorized entry or access.

Barrier. A material object, or objects that separates, keeps apart, or demarcates in a conspicuous manner such as cones, a warning sign, or tape.

Blast area. The area in which concussion (shock wave), flying material, or gases from an explosion may cause injury to persons. In determining the blast area, the following factors shall be considered:

(1) Geology or material to be blasted.

(2) Blast pattern.

(3) Burden, depth, diameter, and angle of the holes.

(4) Blasting experience of the mine.

(5) Delay system, powder factor, and pounds per delay.

(6) Type and amount of explosive material.

(7) Type and amount of stemming.

Blast site. The area where explosive material is handled during loading, including the perimeter formed by the loaded blastholes and 50 feet (15.2 meters) in all directions from loaded holes. A minimum distance of 30 feet (9.1 meters) may replace the 50-foot (15.2-meter) requirement if the perimeter of loaded holes is demarcated with a barrier. The 50-foot (15.2-meter) and alternative 30-foot (9.1-meter)

requirements also apply in all directions along the full depth of the hole.

Blasting agent. Any substance classified as a blasting agent by the Department of Transportation in 49 CFR 173.114a(a). This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Detonating cord. A flexible cord containing a center core of high explosives which may be used to initiate other explosives.

Detonator. Any device containing a detonating charge used to initiate an explosive. These devices include electric or nonelectric instantaneous or delay blasting caps and delay connectors. The term "detonator" does not include detonating cord. Detonators may be either "Class A" detonators or "Class C" detonators, as classified by the Department of Transportation in 49 CFR 173.53, and 173.100. This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Emulsion. An explosive material containing substantial amounts of oxidizers dissolved in water droplets, surrounded by an immiscible fuel.

Explosive. Any substance classified as an explosive by the Department of Transportation in 49 CFR 173.53, 173.88, and 173.100. This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Explosive material. Explosives, blasting agents, and detonators.

Flash point. The minimum temperature at which sufficient vapor is released by a liquid to form a flammable vapor-air mixture near the surface of the liquid.

Igniter cord. A fuse that burns progressively along its length with an external flame at the zone of burning, used for lighting a series of safety fuses in a desired sequence.

Laminated partition. A partition composed of the following material and minimum nominal dimensions: ½-inch-thick plywood, ½-inch-thick gypsum wallboard, ⅛-inch-thick low carbon steel, and ¾-inch-thick plywood, bonded together in that order (IME–22 Box). A laminated partition also includes alternative construction materials described in the Institute of Makers of Explosives (IME) Safety Library Publication No. 22, "Recommendations for the Safe Transportation of Detonators in a Vehicle with other Explosive Materials," (May 1993), and the "Generic Loading Guide for the IME–22 Container," (October 1993). This incorporation by reference has been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available at MSHA, 4015 Wilson Boulevard, Room 728, Arlington, VA 22203, and at all Metal and Nonmetal Mine Safety and Health district offices, or available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

Loading. Placing explosive material either in a blasthole or against the material to be blasted.

Magazine. A bullet-resistant, theft-resistant, fire-resistant, weather-resistant, ventilated facility for the storage of explosives and detonators (BATF Type 1 or Type 2 facility).

Misfire. The complete or partial failure of explosive material to detonate as planned. The term also is used to describe the explosive material itself that has failed to detonate.

Multipurpose dry-chemical fire extinguisher. An extinguisher having a rating of at least 2–A:10–B:C and containing a nominal 4.5 pounds or more of dry-chemical agent.

Primer. A unit, package, or cartridge of explosives which contains a detonator and is used to initiate other explosives or blasting agents.

Safety switch. A switch that provides shunt protection in blasting circuits between the blast site and the switch used to connect a power source to the blasting circuit.

Slurry. An explosive material containing substantial portions of a liquid, oxidizers, and fuel, plus a thickener.

Storage facility. The entire class of structures used to store explosive materials. A "storage facility" used to store blasting agents corresponds to a BATF Type 4 or 5 storage facility.

Water gel. An explosive material containing substantial portions of water, oxidizers, and fuel, plus a cross-linking agent.

STORAGE

§ 56.6100 Separation of stored explosive material.

(a) Detonators shall not be stored in the same magazine with other explosive material.

(b) When stored in the same magazine, blasting agents shall be separated from explosives, safety fuse, and detonating cord to prevent contamination.

(c) Trees that live trees 10 feet or taller need not be removed.

(b) Other combustibles shall not be stored or allowed to accumulate within 50 feet of explosive material. Combustible liquids shall be stored in a manner that ensures drainage will occur away from the explosive material storage facility in case of tank rupture.

§ 56.6102 Explosive material storage practices.

(a) Explosive material shall be—

(1) Stored in a manner to facilitate use of oldest stocks first;

(2) Stored according to brand and grade in such a manner as to facilitate identification; and

(3) Stacked in a stable manner but not more than 8 feet high.

(b) Explosives and detonators shall be stored in closed nonconductive containers except that nonelectric detonating devices may be stored on nonconductive racks provided the case-insert instructions and the date-plant-shift code are maintained with the product.

§ 56.6130 Explosive material storage facilities.

(a) Detonators and explosives shall be stored in magazines.

(b) Packaged blasting agents shall be stored in a magazine or other facility which is ventilated to prevent dampness and excessive heating, weather-resistant, and locked or attended. Drop trailers do not have to be ventilated if they are currently licensed by the Federal, State, or local authorities for over-the-road use. Facilities other than magazines used to store blasting agents shall contain only blasting agents.

(c) Bulk blasting agents shall be stored in weather-resistant bins or tanks which are locked, attended, or otherwise inaccessible to unauthorized entry.

(d) Facilities, bins or tanks shall be posted with the appropriate United States Department of Transportation placards or other appropriate warning signs that indicate the contents and are visible from each approach.

§ 56.6131 Location of explosive material storage facilities.

(a) Storage facilities for any explosive material shall be—

(1) Located so that the forces generated by a storage facility explosion will not create a hazard to occupants in

(b) Operators should also be aware of regulations affecting storage facilities in 27 CFR part 55, in particular, 27 CFR 55.218 and 55.220. This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

§ 56.6132 Magazine requirements.

(a) Magazines shall be—

(1) Structurally sound;

(2) Noncombustible or the exterior covered with fire-resistant material;

(3) Bullet resistant;

(4) Made of nonsparking material on the inside;

(5) Ventilated to control dampness and excessive heating within the magazine;

(6) Posted with the appropriate United States Department of Transportation placards or other appropriate warning signs that indicate the contents and are visible from each approach, so located that a bullet passing through any of the signs will not strike the magazine;

(7) Kept clean and dry inside;

(8) Unlighted or lighted by devices that are specifically designed for use in magazines and which do not create a fire or explosion hazard;

(9) Unheated or heated only with devices that do not create a fire or explosion hazard;

(10) Locked when unattended; and

(11) Used exclusively for the storage of explosive material except for essential nonsparking equipment used for the operation of the magazine.

(b) Metal magazines shall be equipped with electrical bonding connections between all conductive portions so the entire structure is at the same electrical potential. Suitable electrical bonding methods include welding, riveting, or the use of securely tightened bolts where individual metal portions are joined. Conductive portions of nonmetal magazines shall be grounded.

(c) Electrical switches and outlets shall be located on the outside of the magazine.

§ 56.6133 Powder chests.

(a) Powder chests (day boxes) shall be—

(1) Structurally sound, weather-resistant, equipped with a lid or cover, and with only nonsparking material on the inside;

(2) Posted with the appropriate

(4) Locked or attended when containing explosive material; and

(5) Emptied at the end of each shift with the contents returned to a magazine or other storage facility, or attended.

(b) Detonators shall be kept in chests separate from explosives or blasting agents, unless separated by 4-inches of hardwood or equivalent, or a laminated partition. When a laminated partition is used, operators must follow the provisions of the Institute of Makers of Explosives (IME) Safety Library Publication No. 22, "Recommendations for the Safe Transportation of Detonators in a Vehicle with other Explosive Materials," (May 1993), and the "Generic Loading Guide for the IME–22 Container," (October 1993). This incorporation by reference has been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available at MSHA, 4015 Wilson Boulevard, Room 728, Arlington, VA 22203, and at all Metal and Nonmetal Mine Safety and Health district offices, or available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

TRANSPORTATION

§ 56.6200 Delivery to storage or blast site areas.

Explosive material shall be transported without undue delay to the storage area or blast site.

§ 56.6201 Separation of transported explosive material.

Detonators shall not be transported on the same vehicle or conveyance with other explosives except as follows:

(a) Detonators in quantities of more than 1000 may be transported in a vehicle or conveyance with explosives or blasting agents provided the detonators are—

(1) Maintained in the original packaging as shipped from the manufacturer; and

(2) Separated from explosives or blasting agents by 4-inches of hardwood or equivalent, or a laminated partition. The hardwood or equivalent shall be fastened to the vehicle or conveyance. When a laminated partition is used, operators must follow the provisions of the Institute of Makers of Explosives (IME) Safety Library Publication No.22, approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available at MSHA, 4015 Wilson Boulevard, Room 728, Arlington, VA 22203, and at all Metal and Nonmetal Mine Safety and Health district offices, or available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(b) Detonators in quantities of 1000 or fewer may be transported with explosives or blasting agents provided the detonators are—

(1) Kept in closed containers; and

(2) Separated from explosives or blasting agents by 4-inches of hardwood or equivalent, or a laminated partition. The hardwood or equivalent shall be fastened to the vehicle or conveyance. When a laminated partition is used, operators must follow the provisions of IME Safety Library Publication No. 22, "Recommendations for the Safe Transportation of Detonators in a Vehicle with other Explosive Materials," (May 1993), and the "Generic Loading Guide for the IME–22 Container," (October 1993). This incorporation by reference has been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available at MSHA, 4015 Wilson Boulevard, Room 728, Arlington, VA 22203, and at all Metal and Nonmetal Mine Safety and Health district offices, or available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

§ 56.6202 Vehicles.

(a) Vehicles containing explosive material shall be—

(1) Maintained in good condition and shall comply with the requirements of subpart M of this part;

(2) Equipped with sides and enclosures higher than the explosive material being transported or have the explosive material secured to a nonconductive pallet;

(3) Equipped with a cargo space that shall contain the explosive material (passenger areas shall not be considered cargo space);

(4) Equipped with at least two multipurpose dry-chemical fire extinguishers or one such extinguisher and an automatic fire suppression

(7) Attended or the cargo compartment locked, except when parked at the blast site and loading is in progress; and

(8) Secured while parked by having—

(i) The brakes set;

(ii) The wheels chocked if movement could occur; and

(iii) The engine shut off unless powering a device being used in the loading operation.

(b) Vehicles containing explosives shall have—

(1) No sparking material exposed in the cargo space; and

(2) Only properly secured nonsparking equipment in the cargo space with the explosives.

(c) Vehicles used for dispensing bulk explosive material shall—

(1) Have no zinc or copper exposed in the cargo space; and

(2) Provide any enclosed screw-type conveyors with protection against internal pressure and frictional heat.

§ 56.6203 Locomotives.

Explosive material shall not be transported on a locomotive. When explosive material is hauled by trolley locomotive, covered, electrically insulated cars shall be used.

§ 56.6204 Hoists.

(a) Before explosive material is transported in hoist conveyances, the hoist operator shall be notified.

(b) Explosive material transported in hoist conveyances shall be placed within a container which prevents shifting of the cargo that could cause detonation of the container by impact or by sparks. The manufacturer's container may be used if secured to a nonconductive pallet. When explosives are transported, they shall be secured so as not to contact any sparking material.

(c) No explosive material shall be transported during a mantrip.

§ 56.6205 Conveying explosives by hand.

Closed, nonconductive containers shall be used to carry explosives and detonators to and from blast sites. Separate containers shall be used for explosives and detonators.

USE

§ 56.6300 Control of blasting operations.

(a) Only persons trained and experienced in the handling and use of explosive material shall direct blasting operations and related activities.

(b) Trainees and inexperienced persons shall work only in the immediate presence of persons trained and experienced in the handling and use of explosive material.

§ 56.6301 Blasthole obstruction check.

Before loading, blastholes shall be checked and, wherever possible, cleared of obstructions.

§ 56.6302 Separation of explosive material.

Explosives and blasting agents shall be kept separated from detonators until loading begins.

§ 56.6303 Initiation preparation.

(a) Primers shall be made up only at the time of use and as close to the blast site as conditions allow.

(b) Primers shall be prepared with the detonator contained securely and completely within the explosive or contained securely and appropriately for its design in the tunnel or cap well.

(c) When using detonating cord to initiate another explosive, a connection shall be prepared with the detonating cord threaded through, attached securely to, or otherwise in contact with the explosive.

§ 56.6304 Primer protection.

(a) Tamping shall not be done directly on a primer.

(b) Rigid cartridges of explosives or blasting agents that are 4 inches (100 millimeters) in diameter or larger shall not be dropped on the primer except where the blasthole contains sufficient depth of water to protect the primer from impact. Slit packages of prill, water gel, or emulsions are not considered rigid cartridges and may be drop loaded.

§ 56.6305 Unused explosive material.

Unused explosive material shall be moved to a protected location as soon as practical after loading operations are completed.

§ 56.6306 Loading, blasting, and security.

(a) When explosive materials or initiating systems are brought to the blast site, the blast site shall be attended; barricaded and posted with warning signs, such as "Danger," "Explosives," or "Keep Out;" or flagged against unauthorized entry.

(b) Vehicles and equipment shall not be driven over explosive material or initiating systems in a manner which could contact the material or systems, or create other hazards.

(c) Once loading begins, the only activities permitted within the blast site shall be those activities directly related to the blasting operation and the activities of surveying, stemming, sampling of geology, and reopening of holes, provided that reasonable care is exercised. Haulage activity is permitted near the base of a highwall being loaded or awaiting firing, provided no other haulage access exists.

(d) Loading and blasting shall be conducted in a manner designed to facilitate a continuous process, with the blast fired as soon as possible following the completion of loading. If blasting a loaded round may be delayed for more than 72 hours, the operator shall notify the appropriate MSHA district office.

(e) In electric blasting prior to connecting to the power source, and in nonelectric blasting prior to attaching an initiating device, all persons shall leave the blast area except persons in a blasting shelter or other location that protects them from concussion (shock wave), flying material, and gases.

(f) Before firing a blast—

(1) Ample warning shall be given to allow all persons to be evacuated;

(2) Clear exit routes shall be provided for persons firing the round; and

(3) All access routes to the blast area shall be guarded or barricaded to prevent the passage of persons or vehicles.

(g) Work shall not resume in the blast area until a post-blast examination addressing potential blast-related hazards has been conducted by a person with the ability and experience to perform the examination.

§ 56.6307 Drill stem loading.

Explosive material shall not be loaded into blastholes with drill stem equipment or other devices that could be extracted while containing explosive material. The use of loading hose, collar sleeves, or collar pipes is permitted.

§ 56.6308 Initiation systems.

Initiation systems shall be used in accordance with the manufacturer's instructions.

§ 56.6309 Fuel oil requirements for ANFO.

(a) Liquid hydrocarbon fuels with flash points lower than that of No. 2 diesel oil (125 °F) shall not be used to prepare ammonium nitrate-fuel oil, except that diesel fuels with flash points no lower than 100 °F may be used at ambient air temperatures below 45 °F.

(b) Waste oil, including crankcase oil, shall not be used to prepare ammonium nitrate-fuel oil.

§ 56.6310 Misfire waiting period.

When a misfire is suspected, persons shall not enter the blast area—

(a) For 30 minutes if safety fuse and blasting caps are used; or

(b) For 15 minutes if any other type detonators are used.

§ 56.6311 Handling of misfires.

(a) Faces and muck piles shall be examined for misfires after each blasting operation.

(b) Only work necessary to remove a misfire and protect the safety of miners engaged in the removal shall be permitted in the affected area until the misfire is disposed of in a safe manner.

(c) When a misfire cannot be disposed of safely, each approach to the area affected by the misfire shall be posted with a warning sign at a conspicuous location to prohibit entry, and the condition shall be reported immediately to mine management.

(d) Misfires occurring during the shift shall be reported to mine management not later than the end of the shift.

§ 56.6312 Secondary blasting.

Secondary blasts fired at the same time in the same work area shall be initiated from one source.

ELECTRIC BLASTING

§ 56.6400 Compatibility of electric detonators.

All electric detonators to be fired in a round shall be from the same manufacturer and shall have similar electrical firing characteristics.

§ 56.6401 Shunting.

Except during testing—

(a) Electric detonators shall be kept shunted until connected to the blasting line or wired into a blasting round;

(b) Wired rounds shall be kept shunted until connected to the blasting line; and

(c) Blasting lines shall be kept shunted until immediately before blasting.

§ 56.6402 Deenergized circuits near detonators.

Electrical distribution circuits within 50 feet of electric detonators at the blast site shall be deenergized. Such circuits need not be deenergized between 25 to 50 feet of the electric detonators if stray current tests, conducted as frequently as necessary, indicate a maximum stray current of less than 0.05 amperes through a 1-ohm resistor as measured at the blast site.

§ 56.6403 Branch circuits.

(a) If electric blasting includes the use of branch circuits, each branch shall be equipped with a safety switch or equivalent method to isolate the circuits to be used.

(b) At least one safety switch or equivalent method of protection shall be located outside the blast area and shall be in the open position until persons are withdrawn.

§ 56.6404 Separation of blasting circuits from power source.

(a) Switches used to connect the power source to a blasting circuit shall be locked in the open position except when closed to fire the blast.

(b) Lead wires shall not be connected to the blasting switch until the shot is ready to be fired.

§ 56.6405 Firing devices.

(a) Power sources shall be capable of delivering sufficient current to energize all electric detonators to be fired with the type of circuits used. Storage or dry cell batteries are not permitted as power sources.

(b) Blasting machines shall be tested, repaired, and maintained in accordance with manufacturer's instructions.

(c) Only the blaster shall have the key or other control to an electrical firing device.

§ 56.6406 Duration of current flow.

If any part of a blast is connected in parallel and is to be initiated from powerlines or lighting circuits, the time of current flow shall be limited to a maximum of 25 milliseconds. This can be accomplished by incorporating an arcing control device in the blasting circuit or by interrupting the circuit with an explosive device attached to one or both lead lines and initiated by a 25-millisecond delay electric detonator.

§ 56.6407 Circuit testing.

A blasting galvanometer or other instrument designed for testing blasting circuits shall be used to test each of the following:

(a) Continuity of each electric detonator in the blasthole prior to stemming and connection to the blasting line.

(b) Resistance of individual series or the resistance of multiple balanced series to be connected in parallel prior to their connection to the blasting line.

(c) Continuity of blasting lines prior to the connection of electric detonator series.

(d) Total blasting circuit resistance prior to connection to the power source.

NONELECTRIC BLASTING

§ 56.6500 Damaged initiating material.

A visual check of the completed circuit shall be made to ensure that the components are properly aligned and connected. Safety fuse, igniter cord, detonating cord, shock or gas tubing, and similar material which is kinked, bent sharply, or damaged shall not be used.

§ 56.6501 Nonelectric initiation systems.

(a) When the nonelectric initiation system uses shock tube—

(1) Connections with other initiation devices shall be secured in a manner which provides for uninterrupted propagation;

(2) Factory-made units shall be used as assembled and shall not be cut except that a single splice is permitted on the lead-in trunkline during dry conditions; and

(3) Connections between blastholes shall not be made until immediately prior to clearing the blast site when surface delay detonators are used.

(b) When the nonelectric initiation system uses detonating cord—

(1) The line of detonating cord extending out of a blasthole shall be cut from the supply spool immediately after the attached explosive is correctly positioned in the hole;

(2) In multiple row blasts, the trunkline layout shall be designed so that the detonation can reach each blasthole from at least two directions;

(3) Connections shall be tight and kept at right angles to the trunkline;

(4) Detonators shall be attached securely to the side of the detonating cord and pointed in the direction in which detonation is to proceed;

(5) Connections between blastholes shall not be made until immediately prior to clearing the blast site when surface delay detonators are used; and

(6) Lead-in lines shall be manually unreeled if connected to the trunklines at the blast site.

(c) When the nonelectric initiation system uses gas tube, continuity of the circuit shall be tested prior to blasting.

§ 56.6502 Safety fuse.

(a) The burning rate of each spool of safety fuse to be used shall be measured, posted in locations which will be conspicuous to safety fuse users, and brought to the attention of all persons involved with the blasting operation.

(b) When firing with safety fuse ignited individually using handheld lighters, the safety fuse shall be of lengths which provide at least the minimum burning time for a particular size round, as specified in the following table:

TABLE E–1.—SAFETY FUSE—MINIMUM BURNING TIME

Number of holes in a round	Minimum burning time
1	2 min.[1]
2–5	2 min. 40 sec.
6–10	3 min. 20 sec.
11 to 15	5 min.

[1] For example, at least a 36-inch length of 40-second-per-foot safety fuse or at least a 48-inch length of 30-second-per-foot safety fuse would have to be used to allow sufficient time to evacuate the area.

(c) Where flyrock might damage exposed safety fuse, the blast shall be timed so that all safety fuses are burning within the blastholes before any blasthole detonates.

(d) Fuse shall be cut and capped in dry locations.

(e) Blasting caps shall be crimped to fuse only with implements designed for that purpose.

(f) Safety fuse shall be ignited only after the primer and the explosive material are securely in place.

(g) Safety fuse shall be ignited only with devices designed for that purpose. Carbide lights, liquefied petroleum gas torches, and cigarette lighters shall not be used to light safety fuse.

(h) At least two persons shall be present when lighting safety fuse, and no one shall light more than 15 individual fuses. If more than 15 holes per person are to be fired, electric initiation systems, igniter cord and connectors, or other nonelectric initiation systems shall be used.

EXTRANEOUS ELECTRICITY

§ 56.6600 Loading practices.

If extraneous electricity is suspected in an area where electric detonators are used, loading shall be suspended until tests determine that stray current does not exceed 0.05 amperes through a 1-ohm resister when measured at the location of the electric detonators. If greater levels of extraneous electricity are found, the source shall be determined and no loading shall take place until the condition is corrected.

§ 56.6601 Grounding.

Electric blasting circuits, including powerline sources when used, shall not be grounded.

§ 56.6602 Static electricity dissipation during loading.

When explosive material is loaded pneumatically into a blasthole in a manner that generates a static electricity hazard—

(a) An evaluation of the potential static electricity hazard shall be made and any hazard shall be eliminated before loading begins;

(b) The loading hose shall be of a semiconductive type, have a total of not more than 2 megohms of resistance over its entire length and not less than 1000 ohms of resistance per foot;

(c) Wire-countered hoses shall not be used;

(d) Conductive parts of the loading equipment shall be bonded and grounded and grounds shall not be made to other potential sources of extraneous electricity; and

(e) Plastic tubes shall not be used as hole liners if the hole contains an electric detonator.

§ 56.6603 Air gap.

At least a 15-foot air gap shall be provided between the blasting circuit and the electric power source.

§ 56.6604 Precautions during storms.

During the approach and progress of an electrical storm, blasting operations shall be suspended and persons withdrawn from the blast area or to a safe location.

§ 56.6605 Isolation of blasting circuits.

Lead wires and blasting lines shall be isolated and insulated from power conductors, pipelines, and railroad tracks, and shall be protected from sources of stray or static electricity. Blasting circuits shall be protected from any contact between firing lines and overhead powerlines which could result from the force of a blast.

EQUIPMENT/TOOLS

§ 56.6700 Nonsparking tools.

Only nonsparking tools shall be used to open containers of explosive material or to punch holes in explosive cartridges.

§ 56.6701 Tamping and loading pole requirements.

Tamping and loading poles shall be of wood or other nonconductive, nonsparking material. Couplings for poles shall be nonsparking.

MAINTENANCE

§ 56.6800 Storage facilities.

When repair work which could produce a spark or flame is to be performed on a storage facility—

(a) The explosive material shall be moved to another facility, or moved at least 50 feet from the repair activity and monitored; and

(b) The facility shall be cleaned to prevent accidental detonation.

§ 56.6801 Vehicle repair.

Vehicles containing explosive material and oxidizers shall not be taken into a repair garage or shop.

§ 56.6802 Bulk delivery vehicles.

No welding or cutting shall be performed on a bulk delivery vehicle until the vehicle has been washed down and all explosive material has been removed. Before welding or cutting on a hollow shaft, the shaft shall be thoroughly cleaned inside and out and vented with a minimum ½-inch diameter opening to allow for sufficient ventilation.

§ 56.6803 Blasting lines.

Permanent blasting lines shall be properly supported. All blasting lines shall be insulated and kept in good repair.

GENERAL REQUIREMENTS

§ 56.6900 Damaged or deteriorated explosive material.

Damaged or deteriorated explosive material shall be disposed of in a safe manner in accordance with the instructions of the manufacturer.

§ 56.6901 Black powder.

(a) Black powder shall be used for blasting only when a desired result cannot be obtained with another type of explosive, such as in quarrying certain types of dimension stone.

(b) Containers of black powder shall be—

(1) Nonsparking;

(2) Kept in a totally enclosed cargo space while being transported by a vehicle;

(3) Securely closed at all times when—

(i) Within 50 feet of any magazine or open flame;

(ii) Within any building in which a fuel-fired or exposed-element electric heater is operating; or

(iii) In an area where electrical or incandescent-particle sparks could result in powder ignition; and

(4) Opened only when the powder is being transferred to a blasthole or another container and only in locations not listed in paragraph (b)(3) of this section.

(c) Black powder shall be transferred from containers only by pouring.

(d) Spills shall be cleaned up promptly with nonsparking equipment. Contaminated powder shall be put into a container of water and shall be disposed of promptly after the granules have disintegrated, or the spill area shall be flushed promptly with water until the granules have disintegrated completely.

(e) Misfires shall be disposed of by washing the stemming and powder charge from the blasthole, and removing and disposing of the initiator in accordance with the requirement for damaged explosives.

(f) Holes shall not be reloaded for at least 12 hours when the blastholes have failed to break as planned.

§ 56.6902 Excessive temperatures.

(a) Where heat could cause premature detonation, explosive material shall not be loaded into hot areas, such as kilns or sprung holes.

(b) When blasting sulfide ores where hot holes occur that may react with explosive material in blastholes, operators shall—

(1) Measure an appropriate number of blasthole temperatures in order to assess the specific mine conditions prior to the introduction of explosive material;

(2) Limit the time between the completion of loading and the initiation of the blast to no more than 12 hours; and

(3) Take other special precautions to address the specific conditions at the mine to prevent premature detonation.

§ 56.6903 Burning explosive material.

If explosive material is suspected of burning at the blast site, persons shall be evacuated from the endangered area and shall not return for at least one hour after the burning or suspected burning has stopped.

§ 56.6904 Smoking and open flames.

Smoking and use of open flames shall not be permitted within 50 feet of explosive material except when separated by permanent noncombustible barriers. This standard does not apply to devices designed to ignite safety fuse or to heating devices which do not create a fire or explosion hazard.

§ 56.6905 Protection of explosive material.

(a) Explosive material shall be protected from temperatures in excess of 150 degrees Fahrenheit.

(b) Explosive material shall be protected from impact, except for tamping and dropping during loading.

PART 57—[AMENDED]

1. The authority citation for part 57 is revised to read as follows:

Authority: 30 U.S.C. 811.

2. Effective September 10, 1996, subpart E of part 57 is revised to read as follows:

Subpart E—Explosives

Sec.
57.6000 Definitions.

STORAGE—SURFACE AND UNDERGROUND
57.6100 Separation of stored explosive material.
57.6101 Areas around explosive material storage facilities.
57.6102 Explosive material storage practices.

STORAGE—SURFACE ONLY
57.6130 Explosive material storage facilities.
57.6131 Location of explosive material storage facilities.
57.6132 Magazine requirements.
57.6133 Powder chests.

STORAGE—UNDERGROUND ONLY
57.6160 Main facilities.
57.6161 Auxiliary facilities.

TRANSPORTATION—SURFACE AND UNDERGROUND
57.6200 Delivery to storage or blast site areas.
57.6201 Separation of transported explosive material.
57.6202 Vehicles.
57.6203 Locomotives.
57.6204 Hoists.
57.6205 Conveying explosives by hand.

USE—SURFACE AND UNDERGROUND
57.6300 Control of blasting operations.
57.6301 Blasthole obstruction check.
57.6302 Separation of explosive material.
57.6303 Initiation preparation.
57.6304 Primer protection.
57.6305 Unused explosive material.
57.6306 Loading, blasting, and security.
57.6307 Drill stem loading.
57.6308 Initiation systems.
57.6309 Fuel oil requirements for ANFO.
57.6310 Misfire waiting period.
57.6311 Handling of misfires.
57.6312 Secondary blasting.

ELECTRIC BLASTING—SURFACE AND UNDERGROUND
57.6400 Compatibility of electric detonators.
57.6401 Shunting.
57.6402 Deenergized circuits near detonators.
57.6403 Branch circuits.
57.6404 Separation of blasting circuits from power source.
57.6405 Firing devices.
57.6406 Duration of current flow.
57.6407 Circuit testing.

NONELECTRIC BLASTING—SURFACE AND UNDERGROUND
57.6500 Damaged initiating material.
57.6501 Nonelectric initiation systems.
57.6502 Safety fuse.

EXTRANEOUS ELECTRICITY—SURFACE AND UNDERGROUND
57.6600 Loading practices.
57.6601 Grounding.
57.6602 Static electricity dissipation during loading.
57.6603 Air gap.
57.6604 Precautions during storms.
57.6605 Isolation of blasting circuits.

EQUIPMENT/TOOLS—SURFACE AND UNDERGROUND
57.6700 Nonsparking tools.
57.6701 Tamping and loading pole requirements.

MAINTENANCE—SURFACE AND UNDERGROUND
57.6800 Storage facilities.
57.6801 Vehicle repair.
57.6802 Bulk delivery vehicles.
57.6803 Blasting lines.

GENERAL REQUIREMENTS—SURFACE AND UNDERGROUND
57.6900 Damaged or deteriorated explosive material.
57.6901 Black powder.
57.6902 Excessive temperatures.
57.6903 Burning explosive material.
57.6904 Smoking and open flames.
57.6905 Protection of explosive material.

GENERAL REQUIREMENTS—UNDERGROUND ONLY
57.6960 Mixing of explosive material.

Subpart E—Explosives

§ 57.6000 Definitions.

The following definitions apply in this subpart.

Attended. Presence of an individual or continuous monitoring to prevent unauthorized entry or access. In addition, areas containing explosive material at underground areas of a mine can be considered attended when all access to the underground areas of the mine is secured from unauthorized entry. Vertical shafts shall be considered secure. Inclined shafts or adits shall be considered secure when locked at the surface.

Barrier. A material object, or objects that separates, keeps apart, or demarcates in a conspicuous manner such as cones, a warning sign, or tape.

Blast area. The area in which concussion (shock wave), flying material, or gases from an explosion may cause injury to persons. In determining the blast area, the following factors shall be considered:

(1) Geology or material to be blasted.

(2) Blast pattern.

(3) Burden, depth, diameter, and angle of the holes.

(4) Blasting experience of the mine.

(5) Delay system, powder factor, and pounds per delay.

(6) Type and amount of explosive material.

(7) Type and amount of stemming.

Blast site. The area where explosive material is handled during loading, including the perimeter formed by the loaded blastholes and 50 feet (15.2 meters) in all directions from loaded holes. A minimum distance of 30 feet (9.1 meters) may replace the 50-foot (15.2-meter) requirement if the perimeter of loaded holes is demarcated with a barrier. The 50-foot (15.2-meter) and alternative 30-foot (9.1-meter) requirements also apply in all directions along the full depth of the hole. In underground mines, at least 15 feet (4.6 meters) of solid rib, pillar, or broken rock can be substituted for the 50-foot (15.2-meter) distance. In underground mines utilizing a block-caving system or similar system, at least 6 feet (1.8 meters) of solid rib or pillar, including concrete reinforcement of at least 10 inches (254 millimeters), with overall dimensions of not less than 6 feet (1.8 meters), may be substituted for the 50-foot (15.2-meter) distance requirement.

Blasting agent. Any substance classified as a blasting agent by the Department of Transportation in 49 CFR

173.114a(a). This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Detonating cord. A flexible cord containing a center core of high explosives which may be used to initiate other explosives.

Detonator. Any device containing a detonating charge used to initiate an explosive. These devices include electric or nonelectric instantaneous or delay blasting caps, and delay connectors. The term "detonator" does not include detonating cord. Detonators may be either "Class A" detonators or "Class C" detonators, as classified by the Department of Transportation in 49 CFR 173.53, and 173.100. This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Emulsion. An explosive material containing substantial amounts of oxidizers dissolved in water droplets, surrounded by an immiscible fuel.

Explosive. Any substance classified as an explosive by the Department of Transportation in 49 CFR 173.53, 173.88, and 173.100. This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

Explosive material. Explosives, blasting agents, and detonators.

Flash point. The minimum temperature at which sufficient vapor is released by a liquid to form a flammable vapor-air mixture near the surface of the liquid.

Igniter cord. A fuse that burns progressively along its length with an external flame at the zone of burning, used for lighting a series of safety fuses in a desired sequence.

Laminated partition. A partition composed of the following material and minimum nominal dimensions: ½-inch-thick plywood, ½-inch-thick gypsum wallboard, ⅛-inch-thick low carbon steel, and ¼-inch-thick plywood, bonded together in that order (IME–22 Box). A laminated partition also includes alternative construction materials described in the Institute of Makers of Explosives (IME) Safety Library Publication No. 22, "Recommendations for the Safe Transportation of Detonators in a Vehicle with other Explosive Materials." (May 1993), and the "Generic Loading Guide for the IME–22 Container," (October 1993). This incorporation by reference has been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available at MSHA, 4015 Wilson Boulevard, Room 728, Arlington, VA 22203, and at all Metal and Nonmetal Mine Safety and Health district offices, or available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., 7th Floor, suite 700, Washington, DC.

Loading. Placing explosive material either in a blasthole or against the material to be blasted.

Magazine. A bullet-resistant, theft-resistant, fire-resistant, weather-resistant, ventilated facility for the storage of explosives and detonators (BATF Type 1 or Type 2 facility).

Misfire. The complete or partial failure of explosive material to detonate as planned. The term also is used to describe the explosive material itself that has failed to detonate.

Multipurpose dry-chemical fire extinguisher. An extinguisher having a rating of at least 2–A:10–B:C and containing a nominal 4.5 pounds or more of dry-chemical agent.

Primer. A unit, package, or cartridge of explosives which contains a detonator and is used to initiate other explosives or blasting agents.

Safety switch. A switch that provides shunt protection in blasting circuits between the blast site and the switch used to connect a power source to the blasting circuit.

Slurry. An explosive material containing substantial portions of a liquid, oxidizers, and fuel, plus a thickener.

Storage facility. The entire class of structures used to store explosive materials. A "storage facility" used to store blasting agents corresponds to a BATF Type 4 or 5 storage facility.

Water gel. An explosive material containing substantial portions of water, oxidizers, and fuel, plus a cross-linking agent.

STORAGE—SURFACE AND UNDERGROUND

§ 57.6100 Separation of stored explosive material.

(a) Detonators shall not be stored in the same magazine with other explosive material.

(b) When stored in the same magazine, blasting agents shall be separated from explosives, safety fuse, and detonating cord to prevent contamination.

§ 57.6101 Areas around explosive material storage facilities.

(a) Areas surrounding storage facilities for explosive material shall be clear of rubbish, brush, dry grass, and trees for 25 feet in all directions, except that live trees 10 feet or taller need not be removed.

(b) Other combustibles shall not be stored or allowed to accumulate within 50 feet of explosive material. Combustible liquids shall be stored in a manner that ensures drainage will occur away from the explosive material storage facility in case of tank rupture.

§ 57.6102 Explosive material storage practices.

(a) Explosive material shall be—

(1) Stored in a manner to facilitate use of oldest stocks first;

(2) Stored according to brand and grade in such a manner as to facilitate identification; and

(3) Stacked in a stable manner but not more than 8 feet high.

(b) Explosives and detonators shall be stored in closed nonconductive containers except that nonelectric detonating devices may be stored on nonconductive racks provided the case-insert instructions and the date-plant-shift code are maintained with the product.

STORAGE—SURFACE ONLY

§ 57.6130 Explosive material storage facilities.

(a) Detonators and explosives shall be stored in magazines.

(b) Packaged blasting agents shall be stored in a magazine or other facility which is ventilated to prevent dampness and excessive heating, weather-resistant, and locked or attended. Drop trailers do not have to be ventilated if they are currently licensed by the Federal, State, or local authorities for over-the-road use. Facilities other than magazines used to store blasting agents shall contain only blasting agents.

(c) Bulk blasting agents shall be stored in weather-resistant bins or tanks which are locked, attended, or otherwise inaccessible to unauthorized entry.

(d) Facilities, bins or tanks shall be posted with the appropriate United States Department of Transportation placards or other appropriate warning signs that indicate the contents and are visible from each approach.

§ 57.6131 Location of explosive material storage facilities.

(a) Storage facilities for any explosive material shall be—

(1) Located so that the forces generated by a storage facility explosion will not create a hazard to occupants in mine buildings and will not damage dams or electric substations; and

(2) Detached structures located outside the blast area and a sufficient distance from powerlines so that the powerlines, if damaged, would not contact the magazines.

(b) Operators should also be aware of regulations affecting storage facilities in 27 CFR part 55, in particular, 27 CFR 55.218 and 55.220. This document is available at any MSHA Metal and Nonmetal Safety and Health district office.

§ 57.6132 Magazine requirements.

(a) Magazines shall be—

(1) Structurally sound;

(2) Noncombustible or the exterior covered with fire-resistant material;

(3) Bullet resistant;

(4) Made of nonsparking material on the inside;

(5) Ventilated to control dampness and excessive heating within the magazine;

(6) Posted with the appropriate United States Department of Transportation placards or other appropriate warning signs that indicate the contents and are visible from each approach, so located that a bullet passing through any of the signs will not strike the magazine;

(7) Kept clean and dry inside;

(8) Unlighted or lighted by devices that are specifically designed for use in magazines and which do not create a fire or explosion hazard;

(9) Unheated or heated only with devices that do not create a fire or explosion hazard;

(10) Locked when unattended; and

(11) Used exclusively for the storage of explosive material except for essential nonsparking equipment used for the operation of the magazine.

(b) Metal magazines shall be equipped with electrical bonding connections between all conductive portions so the entire structure is at the same electrical potential. Suitable electrical bonding methods include welding, riveting, or the use of securely tightened bolts where individual metal portions are joined. Conductive portions of nonmetal magazines shall be grounded.

(c) Electrical switches and outlets shall be located on the outside of the magazine.

§ 57.6133 Powder chests.

(a) Powder chests (day boxes) shall be—

(1) Structurally sound, weather-resistant, equipped with a lid or cover, and with only nonsparking material on the inside;

(2) Posted with the appropriate United States Department of Transportation placards or other appropriate warning signs that indicate the contents and are visible from each approach;

(3) Located out of the blast area once loading has been completed;

(4) Locked or attended when containing explosive material; and

(5) Emptied at the end of each shift with the contents returned to a magazine or other storage facility, or attended.

(b) Detonators shall be kept in chests separate from explosives or blasting agents, unless separated by 4-inches of hardwood or equivalent, or a laminated partition. When a laminated partition is used, operators must follow the provisions of the Institute of Makers of Explosives (IME) Safety Library Publication No. 22, (May 1993), "Recommendations for the Safe Transportation of Detonators in a Vehicle with other Explosive Materials," (May 1993), and the "Generic Loading Guide for the IME–22 Container," (October 1993). This incorporation by reference has been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available at MSHA, 4015 Wilson Boulevard, Room 728, Arlington, VA 22203, and at all Metal and Nonmetal Mine Safety and Health district offices, or available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., 7th Floor, suite 700, Washington, DC.

STORAGE—UNDERGROUND ONLY

§ 57.6160 Main facilities.

(a) Main facilities used to store explosive material underground shall be located—

(1) In stable or supported ground;

(2) So that a fire or explosion in the storage facilities will not prevent escape from the mine, or cause detonation of the contents of another storage facility;

(3) Out of the line of blasts, and protected from vehicular traffic, except that accessing the facility;

(4) At least 200 feet from work places or shafts;

(5) At least 50 feet from electric substations;

(6) A safe distance from trolley wires; and

(7) At least 25 feet from detonator storage facilities.

(b) Main facilities used to store explosive material underground shall be—

(1) Posted with warning signs that indicate the contents and are visible from any approach;

(2) Used exclusively for the storage of explosive material and necessary equipment associated with explosive material storage and delivery:

(i) Portions of the facility used for the storage of explosives shall only contain nonsparking material or equipment.

(ii) The blasting agent portion of the facility may be used for the storage of other necessary equipment;

(3) Kept clean, suitably dry, and orderly;

(4) Provided with unobstructed ventilation openings;

(5) Kept securely locked unless all access to the mine is either locked or attended; and

(6) Unlighted or lighted only with devices that do not create a fire or explosion hazard and which are specifically designed for use in magazines.

(c) Electrical switches and outlets shall be located outside the facility.

§ 57.6161 Auxiliary facilities.

(a) Auxiliary facilities used to store explosive material near work places shall be wooden, box-type containers equipped with covers or doors, or facilities constructed or mined-out to provide equivalent impact resistance and confinement.

(b) The auxiliary facilities shall be—

(1) Constructed of nonsparking material on the inside when used for the storage of explosives;

(2) Kept clean, suitably dry, and orderly;

(3) Kept in repair;

(4) Located out of the line of blasts so they will not be subjected to damaging shock or flyrock;

(5) Identified with warning signs or coded to indicate the contents with markings visible from any approach;

(6) Located at least 15 feet from all haulageways and electrical equipment, or placed entirely within a mined-out recess in the rib used exclusively for explosive material;

(7) Filled with no more than a one-week supply of explosive material;

(8) Separated by at least 25 feet from other facilities used to store detonators; and

(9) Kept securely locked unless all access to the mine is either locked or attended.

TRANSPORTATION—SURFACE AND UNDERGROUND

§ 57.6200 Delivery to storage or blast site areas.

Explosive material shall be transported without undue delay to the storage area or blast site.

§ 57.6201 Separation of transported explosive material.

Detonators shall not be transported on the same vehicle or conveyance with other explosives except as follows:

(a) Detonators in quantities of more than 1,000 may be transported in a vehicle or conveyance with explosives or blasting agents provided the detonators are—

(1) Maintained in the original packaging as shipped from the manufacturer; and

(2) Separated from explosives or blasting agents by 4 inches of hardwood or equivalent, or a laminated partition. The hardwood or equivalent shall be fastened to the vehicle or conveyance. When a laminated partition is used, operators must follow the provisions of the Institute of Makers of Explosives (IME) Safety Library Publication No. 22, "Recommendations for the Safe Transportation of Detonators in a Vehicle with other Explosive Materials" (May 1993), and the "Generic Loading Guide for the IME–22 Container" (October 1993). This incorporation by reference has been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available at MSHA, 4015 Wilson Boulevard, Room 728, Arlington, VA 22203, and at all Metal and Nonmetal Mine Safety and Health district offices, or available for examination at the Office of the Federal Register, 800 North Capitol Street NW., 7th Floor, suite 700, Washington, DC.

(b) Detonators in quantities of 1,000 or fewer may be transported with explosives or blasting agents provided the detonators are—

(1) Kept in closed containers; and

(2) Separated from explosives or blasting agents by 4 inches of hardwood or equivalent, or a laminated partition. The hardwood or equivalent shall be fastened to the vehicle or conveyance. When a laminated partition is used, operators must follow the provisions of IME Safety Library Publication No. 22, "Recommendations for the Safe Transportation of Detonators in a Vehicle with other Explosive Materials" (May 1993), and the "Generic Loading Guide for the IME–22 Container" (October 1993). This incorporation by reference has been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available at MSHA, 4015 Wilson Boulevard, Room 728, Arlington, VA 22203, and at all Metal and Nonmetal Mine Safety and Health district offices, or available for examination at the Office of the Federal Register, 800 North Capitol Street NW., 7th Floor, suite 700, Washington, DC.

§ 57.6202 Vehicles.

(a) Vehicles containing explosive material shall be—

(1) Maintained in good condition and shall comply with the requirements of subpart M of this part;

(2) Equipped with sides and enclosures higher than the explosive material being transported or have the explosive material secured to a nonconductive pallet;

(3) Equipped with a cargo space that shall contain the explosive material (passenger areas shall not be considered cargo space);

(4) Equipped with at least two multipurpose dry-chemical fire extinguishers or one such extinguisher and an automatic fire suppression system;

(5) Posted with warning signs that indicate the contents and are visible from each approach;

(6) Occupied only by persons necessary for handling the explosive material;

(7) Attended or the cargo compartment locked at surface areas of underground mines, except when parked at the blast site and loading is in progress; and

(8) Secured while parked by having—

(i) The brakes set;

(ii) The wheels chocked if movement could occur; and

(iii) The engine shut off unless powering a device being used in the loading operation.

(b) Vehicles containing explosives shall have—

(1) No sparking material exposed in the cargo space; and

(2) Only properly secured nonsparking equipment in the cargo space with the explosives.

(c) Vehicles used for dispensing bulk explosive material shall—

(1) Have no zinc or copper exposed in the cargo space; and

(2) Provide any enclosed screw-type conveyors with protection against internal pressure and frictional heat.

§ 57.6203 Locomotives.

Explosive material shall not be transported on a locomotive. When explosive material is hauled by trolley locomotive, covered, electrically insulated cars shall be used.

§ 57.6204 Hoists.

(a) Before explosive material is transported in hoist conveyances—

(1) The hoist operator shall be notified; and

(2) Hoisting in adjacent shaft compartments, except for empty conveyances or counterweights, shall be stopped until transportation of the explosive material is completed.

(b) Explosive material transported in hoist conveyances shall be placed within a container which prevents shifting of the cargo that could cause detonation of the container by impact or by sparks. The manufacturer's container may be used if secured to a nonconductive pallet. When explosives are transported, they shall be secured so as not to contact any sparking material.

(c) No explosive material shall be transported during a mantrip.

§ 57.6295 Conveying explosives by hand.

Closed, nonconductive containers shall be used to carry explosives and detonators to and from blast sites. Separate containers shall be used for explosives and detonators.

USE—SURFACE AND UNDERGROUND

§ 57.6300 Control of blasting operations.

(a) Only persons trained and experienced in the handling and use of explosive material shall direct blasting operations and related activities.

(b) Trainees and inexperienced persons shall work only in the immediate presence of persons trained and experienced in the handling and use of explosive material.

§ 57.6301 Blasthole obstruction check.

Before loading, blastholes shall be checked and, wherever possible, cleared of obstructions.

§ 57.6302 Separation of explosive material.

Explosives and blasting agents shall be kept separated from detonators until loading begins.

§ 57.6303 Initiation preparation.

(a) Primers shall be made up only at the time of use and as close to the blast site as conditions allow.

(b) Primers shall be prepared with the detonator contained securely and completely within the explosive or contained securely and appropriately for its design in the tunnel or cap well.

(c) When using detonating cord to initiate another explosive, a connection shall be prepared with the detonating cord threaded through, attached securely to, or otherwise in contact with the explosive.

§ 57.6304 Primer protection.

(a) Tamping shall not be done directly on a primer.

(b) Rigid cartridges of explosives or blasting agents that are 4 inches (100 millimeters) in diameter or larger shall not be dropped on the primer except where the blasthole contains sufficient depth of water to protect the primer from impact. Slit packages of prill, water gel, or emulsions are not considered rigid cartridges and may be drop loaded.

§ 57.6305 Unused explosive material.

Unused explosive material shall be moved to a protected location as soon as practical after loading operations are completed.

§ 57.6306 Loading, blasting, and security.

(a) When explosive materials or initiating systems are brought to the blast site, the blast site shall be attended; barricaded and posted with warning signs, such as "Danger," "Explosives," or "Keep Out;" or flagged against unauthorized entry.

(b) Vehicles and equipment shall not be driven over explosive material or initiating systems in a manner which could contact the material or system, or create other hazards.

(c) Once loading begins, the only activities permitted within the blast site shall be those activities directly related to the blasting operation and the activities of surveying, stemming, sampling of geology, and reopening of holes, provided that reasonable care is exercised. Haulage activity is permitted near the base of bench faces being loaded or awaiting firing, provided no other haulage access exists.

(d) Loading and blasting shall be conducted in a manner designed to facilitate a continuous process, with the blast fired as soon as possible following the completion of loading. If blasting a loaded round may be delayed for more than 72 hours, the operator shall notify the appropriate MSHA district office.

(e) In electric blasting prior to connecting to the power source, and in nonelectric blasting prior to attaching an initiating device, all persons shall leave the blast area except persons in a blasting shelter or other location that protects them from concussion (shock wave), flying material, and gases.

(f) Before firing a blast—

(1) Ample warning shall be given to allow all persons to be evacuated;

(2) Clear exit routes shall be provided for persons firing the round; and

(3) All access routes to the blast area shall be guarded or barricaded to prevent the passage of persons or vehicles.

(g) Work shall not be resumed in the blast area until a post-blast examination addressing potential blast-related hazards has been conducted by a person with the ability and experience to perform the examination.

§ 57.6307 Drill stem loading.

Explosive material shall not be loaded into blastholes with drill stem equipment or other devices that could be extracted while containing explosive material. The use of loading hose, collar sleeves, or collar pipes is permitted.

§ 57.6308 Initiation systems.

Initiation systems shall be used in accordance with the manufacturer's instructions.

§ 57.6309 Fuel oil requirements for ANFO.

(a) Liquid hydrocarbon fuels with flash points lower than that of No. 2 diesel oil (125 °F) shall not be used to prepare ammonium nitrate-fuel oil, except that diesel fuels with flash points no lower than 100 °F may be used at ambient air temperatures below 45 °F.

(b) Waste oil, including crankcase oil, shall not be used to prepare ammonium nitrate-fuel oil.

§ 57.6310 Misfire waiting period.

When a misfire is suspected, persons shall not enter the blast area—

(a) For 30 minutes if safety fuse and blasting caps are used; or

(b) For 15 minutes if any other type detonators are used.

§ 57.6311 Handling of misfires.

(a) Faces and muck piles shall be examined for misfires after each blasting operation.

(b) Only work necessary to remove a misfire and protect the safety of miners engaged in the removal shall be permitted in the affected area until the misfire is disposed of in a safe manner.

(c) When a misfire cannot be disposed of safely, each approach to the area affected by the misfire shall be posted with a warning sign at a conspicuous location to prohibit entry, and the condition shall be reported immediately to mine management.

(d) Misfires occurring during the shift shall be reported to mine management not later than the end of the shift.

§ 57.6312 Secondary blasting.

Secondary blasts fired at the same time in the same work area shall be initiated from one source.

ELECTRIC BLASTING—SURFACE AND UNDERGROUND

§ 57.6400 Compatibility of electric detonators.

All electric detonators to be fired in a round shall be from the same manufacturer and shall have similar electrical firing characteristics.

§ 57.6401 Shunting.

Except during testing—

(a) Electric detonators shall be kept shunted until connected to the blasting line or wired into a blasting round;

(b) Wired rounds shall be kept shunted until connected to the blasting line; and

(c) Blasting lines shall be kept shunted until immediately before blasting.

§ 57.6402 Deenergized circuits near detonators.

Electrical distribution circuits within 50 feet of electric detonators at the blast site shall be deenergized. Such circuits need not be deenergized between 25 to 50 feet of the electric detonators if stray current tests, conducted as frequently as necessary, indicate a maximum stray current of less than 0.05 ampere through a 1-ohm resistor as measured at the blast site.

§ 57.6403 Branch circuits.

(a) If electric blasting includes the use of branch circuits, each branch shall be equipped with a safety switch or equivalent method to isolate the circuits to be used.

(b) At least one safety switch or equivalent method of protection shall be located outside the blast area and shall be in the open position until persons are withdrawn.

§ 57.6404 Separation of blasting circuits from power source.

(a) Switches used to connect the power source to a blasting circuit shall be locked in the open position except when closed to fire the blast.

(b) Lead wires shall not be connected to the blasting switch until the shot is ready to be fired.

§ 57.6405 Firing devices.

(a) Power sources shall be capable of delivering sufficient current to energize all electric detonators to be fired with the type of circuits used. Storage or dry cell batteries are not permitted as power sources.

(b) Blasting machines shall be tested, repaired, and maintained in accordance with manufacturer's instructions.

(c) Only the blaster shall have the key or other control to an electrical firing device.

§ 57.6406 Duration of current flow.

If any part of a blast is connected in parallel and is to be initiated from powerlines or lighting circuits, the time of current flow shall be limited to a maximum of 25 milliseconds. This can be accomplished by incorporating an arcing control device in the blasting circuit or by interrupting the circuit with an explosive device attached to one or both lead lines and initiated by a 25-millisecond delay electric detonator.

§ 57.6407 Circuit testing.

A blasting galvanometer or other instrument designed for testing blasting circuits shall be used to test the following:

(a) In surface operations—

(1) Continuity of each electric detonator in the blasthole prior to stemming and connection to the blasting line;

(2) Resistance of individual series or the resistance of multiple balanced series to be connected in parallel prior to their connection to the blasting line;
(3) Continuity of blasting lines prior to the connection of electric detonator series; and
(4) Total blasting circuit resistance prior to connection to the power source.
(b) In underground operations—
(1) Continuity of each electric detonator series; and
(2) Continuity of blasting lines prior to the connection of electric detonators.

NONELECTRIC BLASTING—SURFACE AND UNDERGROUND

§ 57.6500 Damaged initiating material.

A visual check of the completed circuit shall be made to ensure that the components are properly aligned and connected. Safety fuse, igniter cord, detonating cord, shock or gas tubing, and similar material which is kinked, bent sharply, or damaged shall not be used.

§ 57.6501 Nonelectric initiation systems.

(a) When the nonelectric initiation system uses shock tube—
(1) Connections with other initiation devices shall be secured in a manner which provides for uninterrupted propagation;
(2) Factory-made units shall be used as assembled and shall not be cut except that a single splice is permitted on the lead-in trunkline during dry conditions; and
(3) Connections between blastholes shall not be made until immediately prior to clearing the blast site when surface delay detonators are used.
(b) When the nonelectric initiation system uses detonating cord—
(1) The line of detonating cord extending out of a blasthole shall be cut from the supply spool immediately after the attached explosive is correctly positioned in the hole;
(2) In multiple row blasts, the trunkline layout shall be designed so that the detonation can reach each blasthole from at least two directions;
(3) Connections shall be tight and kept at right angles to the trunkline;
(4) Detonators shall be attached securely to the side of the detonating cord and pointed in the direction in which detonation is to proceed;
(5) Connections between blastholes shall not be made until immediately prior to clearing the blast site when surface delay detonators are used; and
(6) Lead-in lines shall be manually unreeled if connected to the trunklines at the blast site.
(c) When nonelectric initiation systems use gas tube, continuity of the circuit shall be tested prior to blasting.

§ 57.6502 Safety fuse.

(a) The burning rate of each spool of safety fuse to be used shall be measured, posted in locations which will be conspicuous to safety fuse users, and brought to the attention of all persons involved with the blasting operation.
(b) When firing with safety fuse ignited individually using handheld lighters, the safety fuse shall be of lengths which provide at least the minimum burning time for a particular size round, as specified in the following table:

TABLE E–1.—SAFETY FUSE—MINIMUM BURNING TIME

Number of holes in a round	Minimum burning time
1	2 min.[1]
2–5	2 min. 40 sec.
6–10	3 min. 20 sec.
11 to 15	5 min.

[1] For example, at least a 36-inch length of 40-second-per-foot safety fuse or at least a 48-inch length of 30-second-per-foot safety fuse would have to be used to allow sufficient time to evacuate the area.

(c) Where flyrock might damage exposed safety fuse, the blast shall be timed so that all safety fuses are burning within the blastholes before any blasthole detonates.
(d) Fuse shall be cut and capped in dry locations.
(e) Blasting caps shall be crimped to fuse only with implements designed for that purpose.
(f) Safety fuse shall be ignited only after the primer and the explosive material are securely in place.
(g) Safety fuse shall be ignited only with devices designed for that purpose. Carbide lights, liquefied petroleum gas torches, and cigarette lighters shall not be used to light safety fuse.
(h) At least two persons shall be present when lighting safety fuse, and no one shall light more than 15 individual fuses. If more than 15 holes per person are to be fired, electric initiation systems, igniter cord and connectors, or other nonelectric initiation systems shall be used.

EXTRANEOUS ELECTRICITY—SURFACE AND UNDERGROUND

§ 57.6600 Loading practices.

If extraneous electricity is suspected in an area where electric detonators are used, loading shall be suspended until tests determine that stray current does not exceed 0.05 amperes through a 1-ohm resister when measured at the location of the electric detonators. If greater levels of extraneous electricity are found, the source shall be determined and no loading shall take place until the condition is corrected.

§ 57.6601 Grounding.

Electric blasting circuits, including powerline sources when used, shall not be grounded.

§ 57.6602 Static electricity dissipation during loading.

When explosive material is loaded pneumatically into a blasthole in a manner that generates a static electricity hazard—
(a) An evaluation of the potential static electricity hazard shall be made and any hazard shall be eliminated before loading begins;
(b) The loading hose shall be of a semiconductive type, have a total of not more than 2 megohms of resistance over its entire length and not less than 1000 ohms of resistance per foot;
(c) Wire-countered hoses shall not be used;
(d) Conductive parts of the loading equipment shall be bonded and grounded and grounds shall not be made to other potential sources of extraneous electricity; and
(e) Plastic tubes shall not be used as hole liners if the hole contains an electric detonator.

§ 57.6603 Air gap.

At least a 15-foot air gap shall be provided between the blasting circuit and the electric power source.

§ 57.6604 Precautions during storms.

During the approach and progress of an electrical storm—
(a) Surface blasting operations shall be suspended and persons withdrawn from the blast area or to a safe location; or
(b) Underground electrical blasting operations that are capable of being initiated by lightning shall be suspended and all persons withdrawn from the blast area or to a safe location.

§ 57.6605 Isolation of blasting circuits.

Lead wires and blasting lines shall be isolated and insulated from power conductors, pipelines, and railroad tracks, and shall be protected from sources of stray or static electricity. Blasting circuits shall be protected from any contact between firing lines and overhead powerlines which could result from the force of a blast.

EQUIPMENT/TOOLS—SURFACE AND UNDERGROUND

§ 57.6700 Nonsparking tools.

Only nonsparking tools shall be used to open containers of explosive material or to punch holes in explosive cartridges.

§ 57.6701 Tamping and loading pole requirements.

Tamping and loading poles shall be of wood or other nonconductive, nonsparking material. Couplings for poles shall be nonsparking.

MAINTENANCE—SURFACE AND UNDERGROUND

§ 57.6800 Storage facilities.

When repair work which could produce a spark or flame is to be performed on a storage facility—
(a) The explosive material shall be moved to another facility, or moved at least 50 feet from the repair activity and monitored; and
(b) The facility shall be cleaned to prevent accidental detonation.

§ 57.6801 Vehicle repair.

Vehicles containing explosive material and oxidizers shall not be taken into a repair garage or shop.

§ 57.6802 Bulk delivery vehicles.

No welding or cutting shall be performed on a bulk delivery vehicle until the vehicle has been washed down and all explosive material has been removed. Before welding or cutting on a hollow shaft, the shaft shall be thoroughly cleaned inside and out and vented with a minimum ½-inch diameter opening to allow for sufficient ventilation.

§ 57.6803 Blasting lines.

Permanent blasting lines shall be properly supported. All blasting lines shall be insulated and kept in good repair.

GENERAL REQUIREMENTS—SURFACE AND UNDERGROUND

§ 57.6900 Damaged or deteriorated explosive material.

Damaged or deteriorated explosive material shall be disposed of in a safe manner in accordance with the instructions of the manufacturer.

§ 57.6901 Black powder.

(a) Black powder shall be used for blasting only when a desired result cannot be obtained with another type of explosive, such as in quarrying certain types of dimension stone.
(b) Containers of black powder shall be—
(1) Nonsparking;
(2) Kept in a totally enclosed cargo space while being transported by a vehicle;
(3) Securely closed at all times when—
(i) Within 50 feet of any magazine or open flame;
(ii) Within any building in which a fuel-fired or exposed-element electric heater is operating; or
(iii) In an area where electrical or incandescent-particle sparks could result in powder ignition; and
(4) Opened only when the powder is being transferred to a blasthole or another container and only in locations not listed in paragraph (b)(3) of this section.
(c) Black powder shall be transferred from containers only by pouring.
(d) Spills shall be cleaned up promptly with nonsparking equipment. Contaminated powder shall be put into a container of water and shall be disposed of promptly after the granules have disintegrated, or the spill area shall be flushed promptly with water until the granules have disintegrated completely.
(e) Misfires shall be disposed of by washing the stemming and powder charge from the blasthole, and removing and disposing of the initiator in accordance with the requirement for damaged explosives.
(f) Holes shall not be reloaded for at least 12 hours when the blastholes have failed to break as planned.

§ 57.6902 Excessive temperatures.

(a) Where heat could cause premature detonation, explosive material shall not be loaded into hot areas, such as kilns or sprung holes.
(b) When blasting sulfide ores where hot holes occur that may react with explosive material in blastholes, operators shall—
(1) Measure an appropriate number of blasthole temperatures in order to assess the specific mine conditions prior to the introduction of explosive material;
(2) Limit the time between the completion of loading and the initiation of the blast to no more than 12 hours; and
(3) Take other special precautions to address the specific conditions at the mine to prevent premature detonation.

§ 57.6903 Burning explosive material.

If explosive material is suspected of burning at the blast site, persons shall be evacuated from the endangered area and shall not return for at least one hour after the burning or suspected burning has stopped.

§ 57.6904 Smoking and open flames.

Smoking and use of open flames shall not be permitted within 50 feet of explosive material except when separated by permanent noncombustible barriers. This standard does not apply to devices designed to ignite safety fuse or to heating devices which do not create a fire or explosion hazard.

§ 57.6905 Protection of explosive material.

(a) Explosive material shall be protected from temperatures in excess of 150 degrees Fahrenheit.
(b) Explosive material shall be protected from impact, except for tamping and dropping during loading.

GENERAL REQUIREMENTS—UNDERGROUND ONLY

§ 57.6960 Mixing of explosive material.

(a) The mixing of ingredients to produce explosive material shall not be conducted underground unless prior approval of the MSHA district manager is obtained. In granting or withholding approval, the district manager shall consider the potential hazards created by—
(1) The location of the stored material and the storage practices used;
(2) The transportation and use of the explosive material;
(3) The nature of the explosive material, including its sensitivity;
(4) Any other factor deemed relevant to the safety of miners potentially exposed to the hazards associated with the mixing of the bulk explosive material underground.
(b) Storage facilities for the ingredients to be mixed shall provide drainage away from the facilities for leaks and spills.

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Federal Register

Vol. 61, No. 135

Friday, July 12, 1996

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FEDERAL REGISTER PAGES AND DATES, JULY

33825–34366 1
34367–34712 2
34713–35082 3
35083–35588 5
35589–35914 8
35915–36276 9
36277–36492 10
36493–36608 11
36609–36808 12

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6907 35083
6908 35587

Administrative Orders:
Presidential Determinations:
No. 96–34 of June 26, 1996 36493
No. 96–35 of June 26, 1996 36495
No. 96–36 of June 28, 1996 35075

5 CFR

Ch. XXIII 35085
Ch. LXV 36246
530 34713
531 34713
532 36609
534 34713
550 34713
575 34713
581 34713
582 34713
630 34713
734 35088
1660 36610
2634 35589
3201 35915

Proposed Rules:
890 35973

7 CFR

58 35589
301 ..... 35102, 35107
400 34367
868 34714
946 35109
958 35592
997 35594
998 35594
1106 35596
1230 35597
1493 33825
1910 35916
1924 35916
1941 35916
1943 35916
1945 35916
1951 35916
1955 35916
1962 35916
1965 35916
1980 35916

Proposed Rules:
210 35152
220 35152
225 35152
226 35152
300 34379
319 34379
868 35687
1240 34385
1280 35982

8 CFR

103 35597
212 36610
214 35934
217 35598
301 35111

Proposed Rules:
207 35984
208 35984

9 CFR

112 33840
113 33840
201 ..... 36277, 36279

Proposed Rules:
1 34386
3 ..... 34386, 34389
11 34747
92 36520
93 36520
94 ..... 35987, 36520
95 36520
96 36520
98 36520
301 35990
304 35990
308 35990
318 35992
319 35157
320 35990
381 ..... 35157, 35990
391 34747

10 CFR

53 35935
110 35600
205 3511
420 35890
450 35890
463 35114
784 36611
1003 35112
1010 35085
1021 36222

Proposed Rules:
1021 35990

12 CFR

324 33842
367 35115
1750 35607

Proposed Rules:
207 33874
218 34749
220 33874
221 33874
250 34749
327 34751
745 36663

14 CFR
1 34508
25 34716
29 33963
39 ..... 33874, 34368, 34718, 35122, 35126, 35127, 35936, 35938, 35940, 35942, 35944, 35946, 36620, 36622
61 34506
71 ..... 33843 33844, 33845, 34720, 34721, 34722, 34723, 35307, 36283, 36284, 36285, 36286
73 35623
91 ..... 34508, 36286
97 ..... 35623, 35624, 35626
119 35628
121 ..... 34508, 34927, 35628
125 34508
135 ..... 34508, 34927, 35628
141 34508
142 34508
211 34724
213 34724
Proposed Rules:
25 35056
39 ..... 34767, 35691, 35693, 35695, 36307, 36308, 36310, 36654, 36667, 36669
71 ..... 34391, 34393, 34394, 34395, 34396, 34397, 34398, 34769, 35991, 36311, 36312, 36313, 36314, 36315, 36316, 36317, 36520

15 CFR
902 ..... 34570, 34930, 34966, 35145, 35548
Proposed Rules:
30 36318
922 33876

16 CFR
Proposed Rules:
303 35992

17 CFR
Proposed Rules:
240 36521

19 CFR
10 33845
12 33845
102 33845
134 33845

21 CFR
14 36624
177 34370
178 33846
184 36287
452 34726
510 35949
520 34727
522 ..... 34727, 35129, 36290
529 34727
558 ..... 34727, 35949, 36291
Proposed Rules:
106 36154
107 36154

22 CFR
41 35626
126 36625

23 CFR
630 35629

24 CFR
0 36246
60 36462
200 36260
201 36260
202 ..... 36260, 36452
203 ..... 35024, 36260, 36452
206 ..... 35014, 36260
221 ..... 36260, 36452
233 36260
234 ..... 36260, 36452
280 36260
291 36260
570 36456
901 35633
941 35958

25 CFR
10 34371
211 35634
212 35634
700 35666
Proposed Rules:
5 36671
11 35158
12 35163
21 33876
45 34399
152 34400
171 35167

26 CFR
Proposed Rules:
1 ..... 35696, 36320
31 36320

28 CFR
42 34729
Proposed Rules:
17 36679
31 34770

29 CFR
Ch. XXVI 34002, 36626
Ch. XL 34002, 36626
2509 33847
2520 33847
2550 33847
Proposed Rules:
Ch. XIV 34405
101 35172
102 35172

30 CFR
56 36790
57 36790
256 34730

31 CFR
575 36627

32 CFR
706 ..... 35958, 36291, 36497

33 CFR
100 36292
110 36786
116 36786
117 36786
127 36629
157 36786
158 36629
164 35064
165 ..... 35130, 35132
179 36629
181 36786
183 36629
334 34732
Proposed Rules:
117 35702
154 34775
155 34775
167 35703

35 CFR
61 36497
123 36497

36 CFR
1 35133
13 35133
222 35959
223 35960
Proposed Rules:
1190 36688
1191 36688

38 CFR
1 33850
21 36629
Proposed Rules:
1 33878

39 CFR
5 36498
7 36498
10 36498
20 36500

40 CFR
9 ..... 33851, 34202
52 ..... 36292, 36501, 36502
55 34202
63 ..... 34140, 36295
70 34733
71 34202
79 36506
80 ..... 35310, 35673, 35960
180 ..... 34739, 34741, 36298, 36299
257 34253
261 34252
271 34252
300 ..... 35137, 35962
425 35680
Proposed Rules:
51 ..... 35994, 36112
52 ..... 35998, 36004, 36320, 36534
55 36012
61 36326
63 36326
79 36535
80 34775
81 ..... 33879, 36004
90 34778
93 ..... 35994, 36112
136 36328
180 ..... 36329, 36331, 36689
260 33881
261 33881
262 33881
264 33881
268 33881
269 33881
271 33881
425 35705

41 CFR
201 35685

42 CFR
405 35307
417 35307
431 35307
473 35307
498 35307
Proposed Rules:
410 34814
415 34814

43 CFR
Proposed Rules:
4700 36333

44 CFR
62 36513
64 36514
65 ..... 33852, 33854
67 33856
Proposed Rules:
67 33882

46 CFR
42 35963
76 35138
108 36786
110 36786
111 ..... 35927, 36608, 36786
112 36786
113 36786
161 36786
187 35138
514 35685
Proposed Rules:
10 ..... 36543, 36608
15 ..... 36543, 36608

47 CFR
Ch. I 35964
1 36629
20 33859
22 34375
24 33850
36 34375
61 ..... 36515, 36653
64 ..... 36629, 36653
66 36654
73 ..... 34368, 34743, 34744, 35139, 36302
90 34375
Proposed Rules:
Ch. I 34405
73 ..... 34408, 34407, 34784, 34785, 35705
76 ..... 34408, 34409

48 CFR
231 35305

49 CFR
1 34745
192 35139
233 33871
235 33871
236 33871
571 ..... 33891, 36516, 36655
575 36655
1300 35139
1305 35141
Proposed Rules:
1 33886
8 33886

192 ..... 34410, 34413
195 ..... 34410, 34413
393 36691
397 36016
571 ..... 36334, 36698

50 CFR
Ch. III 35548
246 35548
280 35548
281 35548
282 35548
298 35548
299 35548
622 34930
625 34966
630 ..... 34746, 35971
638 34930
641 34930
642 34785
645 34930
646 34930
647 34930
648 ..... 34966, 35142
650 34966
651 34966
652 34966
653 34930
655 34966
657 34966
658 34930
659 34930
660 ..... 34570, 35143, 35144, 35662
661 34570
663 34570
669 34930
670 34930
679 ..... 34377, 36306
680 34570
681 ..... 34570, 35145
683 34570
685 34570
695 35548
697 34746
Proposed Rules:
17 ..... 36020, 36021, 36346
642 34785
679 ..... 35174, 36702

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Potatoes (Irish) grown in—
Colorado; published 6-12-96
EDUCATION DEPARTMENT
Postsecondary education:
William D. Ford Federal direct student loan program; published 6-12-96
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Ohio; published 6-12-96
Pennsylvania; published 6-12-96
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Prison calling services; inmate-only payphones designation as customer premises equipment (CPE); declaratory ruling; published 7-12-96
Telephone companies; applications relating to consolidation, acquisition, or control; CFR part removed; published 7-12-96
FEDERAL RESERVE SYSTEM
Reimbursement for providing financial records (Regulation S):
Recordkeeping requirements for certain financial records; published 6-12-96
Correction; published 6-24-96
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Administrative practice and procedure:
Advisory committees—
Name and function changes; published 7-12-96
INTERIOR DEPARTMENT
Land Management Bureau
Recreation management:
Procedures; CFR part removed; published 6-12-96
Recreation programs; CFR part removed; published 6-12-96
JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:
Resettlement assistance eligibility; paroled Cuban or Haitian nationals; published 7-12-96
PERSONNEL MANAGEMENT OFFICE
Prevailing rates systems; published 7-12-96
STATE DEPARTMENT
International Traffic in Arms regulations; amendments; published 7-12-96
TRANSPORTATION DEPARTMENT
Federal regulatory reform:
Accounts and reports; policies; published 6-12-96
Interlocking relationships between air carrier and person controlling another air carrier; policy statement removed; Federal regulatory reform; published 6-12-96
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
McDonnell Douglas; published 6-7-96
MDB Flugtechnik; published 6-18-96
VETERANS AFFAIRS DEPARTMENT
Inventions by employees; published 6-12-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Apricots grown in Washington; comments due by 7-17-96; published 6-17-96
Fruits, vegetables, and other products, fresh:
Inspection, certification, and standards fee schedule; comments due by 7-15-96; published 5-14-96
Hazelnuts grown in Oregon and Washington; comments due by 7-15-96; published 5-13-96
Peanuts, domestically produced; comments due by 7-15-96; published 6-13-96
ARMS CONTROL AND DISARMAMENT AGENCY
Privacy Act; implementation; comments due by 7-16-96; published 6-13-96
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Sea turtle conservation; shrimp trawling requirements—
Soft turtle excluder devices approval removed, etc.; comments due by 7-15-96; published 6-17-96
Fishery conservation and management:
Atlantic surf clam and ocean quahog; comments due by 7-19-96; published 6-20-96
Gulf of Mexico and South Atlantic coastal migratory pelagic resources; comments due by 7-18-96; published 7-3-96
Ocean salmon off coasts of Washington, Oregon, and California; comments due by 7-15-96; published 7-5-96
Pacific Coast groundfish; comments due by 7-16-96; published 7-5-96
Puerto Rico and U.S. Virgin Islands reef fish; comments due by 7-15-96; published 6-17-96
Summer flounder and scup; comments due by 7-18-96; published 6-3-96
Marine mammals:
Incidental taking—
Naval activities; USS Seawolf submarine shock testing; comments due by 7-15-96; published 6-14-96
COMMERCE DEPARTMENT
National Telecommunications and Information Administration
Public telecommunications facilities program; comments due by 7-15-96; published 5-30-96
ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Surface coating operations from new or existing shipbuilding and ship repair facilities—
Compliance date revision and implementation plan submittal deadline extension; comments due by 7-18-96; published 6-18-96
Air quality implementation plans; approval and promulgation; various States:
Indiana; comments due by 7-15-96; published 6-13-96
Louisiana; comments due by 7-15-96; published 6-13-96
Virginia; comments due by 7-15-96; published 6-13-96
Clean Air Act:
State operating permits programs—
Idaho; comments due by 7-17-96; published 6-17-96
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Chlorothalonil; comments due by 7-19-96; published 5-19-96
Fenarimol; comments due by 7-15-96; published 6-14-96
Quizalofop ethyl; comments due by 7-19-96; published 5-19-96
Quizalofop-p ethyl ester; comments due by 7-15-96; published 6-14-96
Sodium salt of fomesafen; comments due by 7-19-96; published 6-19-96
Triadimefon; comments due by 7-19-96; published 6-19-96
Vinyl pyrrolidone-acrylic acid copolymer; comments due by 7-15-96; published 6-14-96
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 7-15-96; published 6-14-96
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Aeronautical services provision via International Maritime Satellite Organization (Inmarsat system); comments due by 7-17-96; published 6-17-96
O+ InterLATA calls; billed party preference; comments due by 7-17-96; published 6-17-96
Satellite communications—
Application and licensing procedures; comments due by 7-15-96; published 6-24-96
Communications equipment:
Radio frequency devices—
Unlicensed NII/SUPERNet operations in 5 GHz frequency range; comments due by 7-15-96; published 5-16-96
Television broadcasting:
Cable television systems—
Video programming delivery; market competition status; annual assessment; comments due by 7-19-96; published 7-2-96
GENERAL SERVICES ADMINISTRATION
Federal property management:
Public buildings and space—
Small purchase authority; comments due by 7-15-96; published 6-13-96
HEALTH AND HUMAN SERVICES DEPARTMENT
Children and Families Administration
Head Start Fellows Program; comments due by 7-15-96; published 5-15-96
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Food labeling—
Nutrient content claims; general principles and "healthy" definition; fruits, vegetables, etc., inclusion; comments due by 7-18-96; published 3-22-96
INTERIOR DEPARTMENT
Indian Affairs Bureau
Financial activities:
Trust funds; tribal management; comments due by 7-15-96; published 5-16-96
INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Findings on petitions, etc.—
Namibian cheetah; comments due by 7-17-96; published 3-19-96
Least chub; comments due by 7-15-96; published 6-7-96
Importation, exportation, and transportation of wildlife:
Injurious wildlife; Federal regulatory review; comments due by 7-15-96; published 5-14-96
INTERIOR DEPARTMENT
Minerals Management Service
Federal regulatory review; request for comments; comments due by 7-19-96; published 5-20-96
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Virginia; comments due by 7-19-96; published 6-19-96
JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Acts of violence and terrorism prevention; comments due by 7-16-96; published 5-17-96
Drug abuse treatment programs and early release consideration; comments due by 7-16-96; published 5-17-96
TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
Michigan; comments due by 7-15-96; published 5-14-96
TRANSPORTATION DEPARTMENT
Airline oversales signs; Federal regulatory review; comments due by 7-18-96; published 6-3-96
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Allied Signal Commercial Avionics Systems; comments due by 7-15-96; published 6-5-96
Bell; comments due by 7-15-96; published 5-14-96
Boeing; comments due by 7-19-96; published 6-7-96
H.B. Flugtechnik GmbH; comments due by 7-15-96; published 5-13-96
McDonnell Douglas; comments due by 7-15-96; published 5-14-96
Pilatus Britten-Norman Ltd.; comments due by 7-19-96; published 5-9-96
Airworthiness standards:
Special conditions—
Dassault Aviation, Mystere Falcon 50 airplane; comments due by 7-15-96; published 5-29-96
Class E airspace; comments due by 7-19-96; published 6-12-96
TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Controls and displays; Federal regulatory review; comments due by 7-15-96; published 5-30-96
Seat belt assemblies—
Anchorage of voluntarily installed lap/shoulder belt; certification; comments due by 7-15-96; published 5-14-96
TREASURY DEPARTMENT
Customs Service
Organization and functions; field organization, ports of entry, etc.:
Sanford, FL; port of entry designation; comments due by 7-17-96; published 6-17-96
TREASURY DEPARTMENT
Internal Revenue Service
Estate and gift taxes:
Residence trust, personal or qualified personal; sale of residence; comments due by 7-15-96; published 4-15-96
Procedure and administration:
Taxpayer assistance orders; authority to modify or rescind; comments due by 7-18-96; published 4-19-96
VETERANS AFFAIRS DEPARTMENT
Adjudication, pensions, compensation, dependency, etc.:
Marriage dissolution; birth of child; death of family member; evidence of dependents and age requirements; comments due by 7-16-96; published 5-17-96

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List July 11, 1996

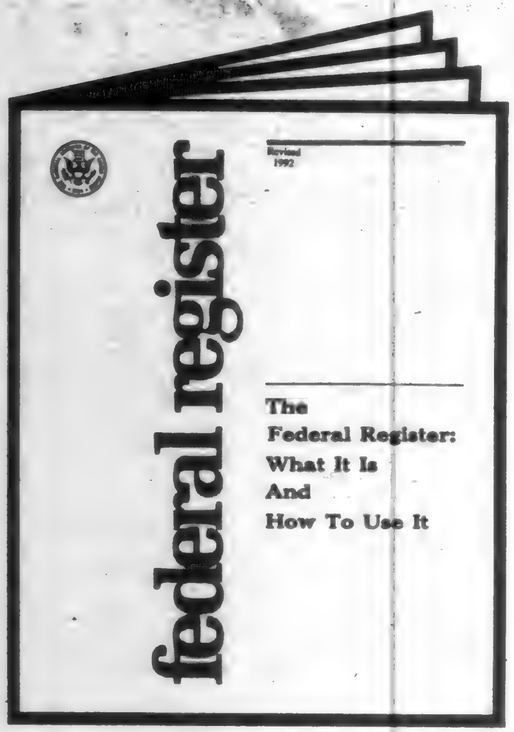

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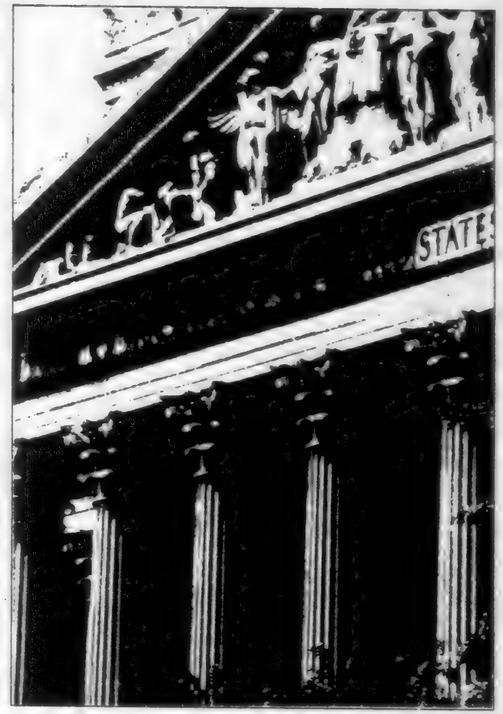

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Vol. 61 No. 136

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Monday
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Vol. 61 No. 136
Pages 35809–36068

Monday
July 15, 1996

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Contents

Federal Register
Vol. 61, No. 136
Monday, July 15, 1996

Agency for Health Care Policy and Research
NOTICES
Meetings; advisory committees:
July, 36885–36886

Agricultural Marketing Service
RULES
Potatoes (Irish) grown in—
Colorado, 36813–36814
Raisins produced from grapes grown in California, 36814–36815
PROPOSED RULES
Onions (sweet) grown in Washington and Oregon, 36827–36829

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Goats from Mexico for immediate slaughter and horse quarantine facilities, 36816–36817
Plant-related quarantine, domestic:
Karnal bunt disease—
Arizona et al., 36812–36813
Public forum, 36811–36812

Arms Control and Disarmament Agency
RULES
Service of process, production of official information, and agency employees testimony or response; prior approval, 36820–36824

Commerce Department
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Pakistan, 36951
Singapore, 36951–36952
Textile and apparel categories:
Correlation with U.S. Harmonized Tariff Schedule, 36952

Customs Service
NOTICES
Records required for merchandise entry; interim list, 36956–36960

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Applied Science Labs, 36913–36914

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36861
Submission for OMB review; comment request, 36861–36862
Grants and cooperative agreements; availability, etc.:
Postsecondary education—
Federal Perkins loan program expanded lending option, 36862–36863
Postsecondary education:
National direct and Federal Perkins student loan programs; directory of designated low-income schools; availability
Teacher cancellation benefits, 36863–36864

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission

Energy Efficiency and Renewable Energy Office
RULES
Consumer products; energy conservation program:
Energy efficiency standards; consideration procedures, 36974–36987

Environmental Protection Agency
PROPOSED RULES
Air and water programs:
Pulp, paper, and paperboard industries; effluent limitations guidelines, pretreatment standards, and new source performance standards, 36835–36858
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 36858–36860
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36875–36876
Submission for OMB review; comment request, 36876–36879
Hazardous waste:
Land disposal restrictions; exemptions—
Chemical Waste Management, Inc., 36880–36881
Disposal Systems, Inc., 36879
Disposal Systems of Corpus Christi, Inc., 36880
EMPAK, Inc., 36881
Rollins Environmental Services of Louisiana, Inc., 36879–36880
Meetings:
Environmental Financial Advisory Board, 36881

Federal Aviation Administration
RULES
Airworthiness directives:
Fairchild, 36817–36820
Airworthiness standards:
European Joint Aviation Authorities requirements; normal and transport category rotorcraft—
Performance, systems, propulsion, and airframes; harmonization; correction, 36965
Rotocraft, normal and transport category—
Takeoff, climb, and landing performance requirements, determination factors; correction, 36965

Class E airspace
Correction, 36965
Class E airspace; correction, 36820
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36953
Meetings:
Aviation Rulemaking Advisory Committee, 36953–36954
RTCA, Inc., 36954

Federal Communications Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36881–36882
Submission for OMB review; comment request, 36882–36883

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 36883

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Southern Natural Gas Co., 36872–36873
Meetings; Sunshine Act, 36873–36875
Applications, hearings, determinations, etc.:
Colorado Interstate Gas Co., 36864
Columbia Gulf Transmission Co., 36864
Eastern Shore Natural Gas Co., 36864–36865
Equitrans, L.P., 36865
Florida Gas Transmission Co., 36865
Iroquois Gas Transmission System, L.P., 36865–36866
KN Interstate Gas Transmission Co., 36866
Mississippi River Transmision Corp. et al., 36866
Northern Natural Gas Co., 36866–36867
PacifiCorp, 36867
Paiute Pipeline Co., 36867–36868
Panhandle Eastern Pipe Line Co., 36868
Power Fuels, Inc., 36868
Tennessee Gas Pipeline Co., 36869
Trunkline Gas Co., 36869–36870
Williams Natural Gas Co., 36870
Williston Basin Interstate Pipeline Co., 36870–36872

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 36884
Permissible nonbanking activities, 36884–36885
Federal Open Market Committee:
Domestic policy directives, 36885

Federal Transit Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 36954–36955

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 36891–36892

Food and Drug Administration
NOTICES
Food additive petitions:
Henkel Corp.; withdrawn, 36886
Medical devices:
Medical software devices; public workshop, 36886–36887
Medical devices; premarket approval:
Acrysof Models MA60BM and MA30BA Ultraviolet-Absorbing Soft Acrylic Posterior Chamber Intraocular Lenses, 36887–36888
Technicon Immuno 1 PSA Assay, 36888–36889
Meetings:
Advisory committees, panels, etc., 36889

Forest Service
NOTICES
Meetings:
Olympic Provincial Interagency Executive Committee Advisory Committee, 36861

General Accounting Office
RULES
Practice and procedure:
Personnel Appeals Board—
Reductions in force, 36809–36811

Health and Human Services Department
See Agency for Health Care Policy and Research
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Indian Affairs Bureau
PROPOSED RULES
Housing improvement program:
Administrative guidelines simplification, 36829–36835
NOTICES
Tribal-State Compacts approval; Class III (casino) gambling:
Mississippi Band of Choctaw Indians, MS, 36892

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service

Justice Department
See Drug Enforcement Administration
NOTICES
Alternative dispute resolution; case identification criteria; policy statements, 36895–36913

Labor Department
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Alaska, 36892

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 36889–36890
National Institute of Dental Research, 36890
Research Grants Division special emphasis panels, 36890–36891

National Oceanic and Atmospheric Administration
RULES
Ocean and coastal resource management:
Coastal zone management program regulations; Federal regulatory reform
Correction, 36965

National Park Service
NOTICES
Boundary establishment, descriptions, etc.:
James A. Garfield National Historic Site, OH, 36892–36894
Environmental statements; availability, etc.:
Missouri/Niobrara/Verdigre Creek National Recreational Rivers, SD and NE, 36895

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Georgia Power Co. et al., 36914–36916
Petitions; Director's decisions:
Consolidated Edison Co. of New York et al.; correction, 36916
Florida Power & Light Co., 36916
Romer, Klaus R., 36916–36918
Reports; availability, etc.:
Chemical, galvanic, or other reactions in spent fuel storage and transportation casks, 36918–36919
Applications, hearings, determinations, etc.:
Baltimore Gas & Electric Co., 36914

Occupational Safety and Health Administration
RULES
State plans; development, enforcement, etc.:
Minnesota, 36824–36825

Patent and Trademark Office
RULES
Trademark cases:
Rules of practice—
Notice of opposition filing time extensions, consented requests; proof of service requirement eliminated, 36825

Pension Benefit Guaranty Corporation
RULES
Single-employer plans:
Allocation of assets—
Benefits valuation; interest rates, 36968–36969
NOTICES
Single-employer and multiemployer plans:
Interest rates and assumptions, 36971–36972

Personnel Management Office
NOTICES
Privacy Act:
Systems of records, 36919–36940

Postal Service
NOTICES
Domestic Mail Manual:
Postal security devices and indicia (postmarks); specifications; correction, 36940

Prospective Payment Assessment Commission
NOTICES
Meetings, 36940

Public Health Service
See Agency for Health Care Policy and Research
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Research and Special Programs Administration
RULES
Pipeline safety:
Voluntary specifications and standards, etc.; periodic updates; Federal regulatory reform
Correction, 36825–36826

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 36944
Self-regulatory organizations; proposed rule changes:
Boston Stock Exchange, Inc., 36944–36945
MBS Clearing Corp. et al., 36945–36947
National Association of Securities Dealers, Inc., 36947–36949
Participants Trust Co., 36949–36950
Applications, hearings, determinations, etc.:
Chase Corp., 36940
Laser Industries Ltd., 36940–36941
Norwest Bank Minnesota, N.A., et al., 36941–36944
Penn Engineering & Manufacturing Corp., 36944

Small Business Administration
NOTICES
Disaster loan areas:
Florida, 36950
New Jersey, 36950–36951
Pennsylvania, 36951
Applications, hearings, determinations, etc.:
Javelin Capital Fund, L.P., 36950

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 36891

Surface Transportation Board
RULES
Practice and procedure:
Class III rail carriers; class exemption for acquisition or operation of rail lines
Correction, 36965

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Supervision Office
NOTICES
Decisions and findings; review, appeal, and reconsideration guidelines, 36960–36964

Transportation Department
See Federal Aviation Administration
See Federal Transit Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 36952–36953
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 36953

Treasury Department
See Customs Service
See Thrift Supervision Office

United States Information Agency
NOTICES
Art objects; importation for exhibition:
From Court Jews to the Rothschilds; Art, Patronage and Power (1600-1800), 36964

Separate Parts In This Issue

Part II
Pension Benefit Guaranty Corporation, 36968–36971

Part III
Department of Energy, Energy Efficiency and Renewable Energy Office, 36974–36987

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

4 CFR
28 36809
29 36809

7 CFR
301 (2 documents) 36811, 36812
948 36813
989 36814
Proposed Rules:
956 36827

9 CFR
92 36816

10 CFR
430 36974

14 CFR
29 (2 documents) 36965
39 36817
71 (2 documents) 36820, 36965

15 CFR
923 36966

22 CFR
608 36820

25 CFR
Proposed Rules:
256 36829

29 CFR
1952 36824
4044 36968

37 CFR
2 36825

40 CFR
Proposed Rules:
63 36835
300 36858
430 36835

49 CFR
192 36825
193 36825
195 36825
1150 36965

Rules and Regulations

Federal Register
Vol. 61, No. 138
Monday, July 15, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

GENERAL ACCOUNTING OFFICE

4 CFR Parts 28 and 29

Personnel Appeals Board; Procedural Regulations

AGENCY: General Accounting Office Personnel Appeals Board.

ACTION: Final rule.

SUMMARY: The General Accounting Office Personnel Appeals Board is issuing a final rule to govern appeals of employees who are separated from employment as a result of a Reduction in Force (RIF) action. The rule is published according to the Board's authority under section 753(d) of the General Accounting Office Personnel Act of 1980 (GAOPA). The revision provides affected employees with an optional streamlined process for pursuing appeals of RIF-based terminations.

EFFECTIVE DATE: July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Catherine McNamara, Solicitor, Personnel Appeals Board, 202–512–6137.

SUPPLEMENTARY INFORMATION: The Personnel Appeals Board (PAB) authority with respect to employment practices within the General Accounting Office (GAO or the agency) includes authority over appeals from RIF actions taken by the agency. The GAO recently revised Order 2351.1, Reduction in Force, applicable to GAO employees.

The PAB has long had published regulations which define the role of its Office of General Counsel (PAB/OGC) and the procedures to be followed in pursuing an appeal before the Board. See 4 CFR part 28. Previous regulations required that in all cases an individual obtain a Right to Appeal Letter from the PAB's Office of General Counsel before filing with the Board. See 4 CFR 28.18(a). The Board or an administrative judge can waive a PAB regulation in an individual case for good cause shown, consistent with the requirements of the GAOPA. 4 CFR 28.16(b).

On March 7, 1996, the Board adopted interim regulations (61 FR 9089) to provide employees who are separated from employment as a result of a RIF action with the option of appealing directly to the PAB without first filing a charge with the Board's Office of General Counsel, as prescribed in § 28.11 of this part, and obtaining a Right to Appeal Letter. This change was designed to expedite the appeal process, at the employee's option, in situations in which the RIF action results in separation from employment. Because of the need to have regulations in place prior to agency implementation of its RIF order, the revisions were made effective immediately on an interim basis. With several modifications as explained below, the regulations are adopted as final. Because the appeal period for recent RIF action at GAO is currently running, this final rule is made effective immediately.

Brief Summary of the Interim Regulations

The interim regulations published by the Board on March 7, 1996, contained a new § 28.13, defining a special procedure for actions challenging a RIF-based termination to bypass the PAB/OGC at the option of the employee. See 61 FR 9089 (March 7, 1996). In addition, the interim regulations amended § 28.18, paragraphs (a) and (b), to specify that a person whose employment was terminated as a result of a RIF action may choose to file directly with the Board, and that such an action must be filed within 30 days of the effective date of the RIF action.

The PAB invited comments from the public through May 31, 1996, and stated that it would carefully consider such comments before the regulations were adopted in final form. See 61 FR 9089. In addition to publishing the interim regulations in the **Federal Register**, the PAB also provided GAO employees with notice of the revised procedures, applicable to individuals separated from employment because of a RIF, by means of a summary of the changes in the "GAO Management News." See GAO Management News, Vol. 23, No. 25 (Week of April 8–12, 1996).

The Board received one comment concerning the interim regulations. That comment, submitted by Patricia Shahen, Acting Director of GAO's Affirmative Action/Civil Rights Office, addressed a perceived ambiguity in the regulations as revised. The perceived ambiguity involved whether an employee raising discrimination issues in challenging a RIF-based separation may bypass the Civil Rights Office as well as the PAB/OGC.

In revised § 28.13, the Board streamlined the appeal process for employees separated by a RIF by allowing them to file directly with the Board without first filing a charge with the PAB's Office of General Counsel. Ms. Shahen's comment pointed out that under 4 CFR 28.98(a), employees raising charges of prohibited discrimination are required to file a discrimination complaint with GAO's Civil Rights Office before filing such a complaint with the PAB General Counsel. Section 28.98(c) provides an exception to this rule for employees affected by a removal, suspension for more than 14 days, reduction in grade or pay, or furlough of not more than 30 days. If an employee alleges that the subject action was due at least in part to unlawful discrimination, he or she may elect to file a charge directly with the PAB General Counsel. The comment pointed out that the exception in § 28.98(c) does not specifically refer to RIF actions.

Ms. Shahen expressed concern that the revised regulations "could be interpreted to mean that employees who allege discrimination because of a RIF, may go directly to the Board without going through the Civil Rights Office process; but if they want to go through the PAB General Counsel, they must first go through the Civil Rights Office process. This does not seem to be the intent of the proposed regulation."

Summary of Changes

After carefully considering the comment received, the Board has adopted several modifications to the regulations to clarify their effect on RIF-based termination actions raising discrimination claims. In addition, conforming changes were made to assure that the streamlined procedures would be available to Board employees, and several technical changes were made to reflect a revision to the Board's address.

Section 28.13, added in the interim regulations, is revised to clarify that individuals raising discrimination issues in RIF-based actions may avail

themselves of the streamlined procedures which allow bypassing the PAB/OGC. The revised section also specifies that, pursuant to § 28.98, such individuals also may bypass the agency Civil Rights Office in the interest of reaching an expeditious resolution of their complaints.

Section 28.98, which was not specifically addressed in the interim regulations, is amended to clarify that in RIF-based actions raising discrimination claims, an employee may elect to (1) file directly with the PAB/OGC, (2) proceed through the agency's discrimination complaint processing system, or (3) file directly with the PAB, thus bypassing both the PAB/OGC and the Civil Rights Office. The Board notes that when § 28.98(c) was published for comment, the agency did not object to the change which gave employees a choice of procedures for adverse or performance-based actions alleged to be due to discrimination. See 58 FR 61988, 61990–91 (November 23, 1993).

In reconsidering the regulatory revisions, the Board also concluded that a further change was necessary to clarify that PAB personnel may avail themselves of the streamlined procedures for pursuing RIF-based termination appeals. Section 28.17(a) was revised to specify that Board employees, whether or not raising equal employment opportunity (EEO) claims, may choose to file an appeal of a RIF-based termination directly with the PAB.

Several technical changes were made in 4 CFR parts 28 and 29 to reflect the Board's change of address. These sections specify where to file at the PAB or the PAB/OGC: §§ 28.11(c) (1) and (2); 28.18(c) (1) and (2); 28.86(b) (1) and (2); 29.8(c) (1) and (2); and 29.10(c) (1) and (2).

Accordingly, 4 CFR parts 28 and 29 are amended and the interim rule amending title 4, part 28, Code of Federal Regulations, which was published at 61 FR 9089 on March 7, 1996, is adopted as final, with changes as follows.

List of Subjects

4 CFR Part 28

Administrative practice and procedure, Equal employment opportunity, Government employees, Labor-management relations, Reductions in force.

4 CFR Part 29

Administrative practice and procedure, Equal employment opportunity, Government employees.

PART 28—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; PROCEDURES APPLICABLE TO CLAIMS CONCERNING EMPLOYMENT PRACTICES AT THE GENERAL ACCOUNTING OFFICE

1. The authority citation for part 28 continues to read as follows:

Authority: 31 U.S.C. 753.

2. Section 28.11, paragraph (c)(1) and the first sentence of paragraph (c)(2) are revised to read as follows:

§ 28.11 Filing a charge with the General Counsel.

* * * * *

(c) * * *

(1) *Filing in person:* A charge may be filed in person at the Office of the General Counsel, Suite 580, Union Center Plaza II, 820 First Street, NE., Washington, DC.

(2) *Filing by mail:* A charge may be filed by mail addressed to the General Counsel, Personnel Appeals Board, Suite 580, Union Center Plaza II, 441 G Street, NW., Washington, DC 20548. * * *

* * * * *

3. Section 28.13 is revised to read as follows:

§ 28.13 Special procedure for Reduction in Force.

In the event of a Reduction in Force resulting in an individual's separation from employment, an aggrieved employee may choose to file an appeal directly with the Personnel Appeals Board, without first filing the charge with the PAB's Office of General Counsel pursuant to § 28.11. This option is available to individuals raising discrimination issues in connection with a RIF action. Pursuant to § 28.98, such individuals need not file a complaint with GAO's Civil Rights Office before pursuing a RIF challenge alleging discrimination, either by filing directly with the PAB or by filing a charge with the PAB's Office of General Counsel.

4. In § 28.17, paragraphs (a)(2) and (a)(3) are revised to read as follows:

§ 28.17 Internal appeals of Board employees.

(a) * * *

(1) * * *

(2) When an employee of the Board believes that he or she has been denied his or her right to equal employment opportunity, the employee shall consult either with the Solicitor or with the General Counsel and seek advice on filing an EEO complaint. If the matter cannot be resolved within 10 days, the Solicitor or General Counsel shall notify the employee of his or her right to file an EEO complaint. The employee shall have 20 days from service of this notice to file an EEO complaint with the General Counsel. Upon receipt of an EEO complaint, the General Counsel shall arrange for processing in accordance with paragraph (b) of this section. If the EEO allegations involve challenge to a RIF-based separation, the employee may choose to expedite the procedures by filing a charge directly with the Board.

(3) When an employee of the Board wishes to raise any other issue that would be subject to the Board's jurisdiction, the employee shall file a charge with the General Counsel and the General Counsel shall arrange for processing in accordance with paragraph (b) of this section. If the challenged action is a RIF-based separation from employment, the employee may choose to expedite the procedures by filing a charge directly with the Board.

* * * * *

5. Section 28.18, paragraph (c)(1) and the first sentence of paragraph (c)(2) are revised as follows:

§ 28.18 Filing a petition for review with the Board.

* * * * *

(c) * * *

(1) *Filing in person:* A petition may be filed in person at the office of the Board, Suite 560, Union Center Plaza II, 820 First Street NE., Washington, DC.

(2) *Filing by mail:* A petition may be filed by mail addressed to the Personnel Appeals Board, Suite 560, Union Center Plaza II, 441 G Street NW., Washington, DC 20548. * * *

* * * * *

6. Section 28.86, paragraph (b)(1) and the first sentence of paragraph (b)(2) are revised to read as follows:

§ 28.86 Board procedures; recommended decisions.

* * * * *

(b) * * *

(1) *Filing by hand delivery:* Exceptions may be filed by hand delivery at the office of the Board, Suite 560, Union Center Plaza II, 820 First Street NE., Washington, DC.

(2) *Filing by mail:* Exceptions may be filed by mail addressed to the Personnel Appeals Board, Suite 560, Union Center Plaza II, 441 G Street, NW., Washington DC 20548. * * *

* * * * *

7. Section 28.98 is amended by redesignating paragraph (d) as (e)(1), by adding new paragraphs (d) and (e)(2), by revising the paragraph heading of paragraph (c) and by revising newly redesignated paragraph(e)(1) as follows:

§ 28.98 Individual charges in EEO cases.

* * * * *

(c) *Special rules for adverse and performance based actions.* * * *

(d) *Special rules for RIF based actions.* An individual alleging discrimination issues in connection with a RIF-based separation may follow the procedures outlined above in paragraph (c) of this section for adverse and performance based actions, or may choose instead a third option. In accordance with the provisions of § 28.13, such an individual may appeal that action by filing directly with the PAB, thus bypassing both the Civil Rights Office and the PAB's Office of General Counsel.

(e)(1) The charging party shall file the charge with the General Counsel in accordance with § 28.11. The General Counsel shall investigate the charge in accordance with § 28.12.

(2) A charging party challenging a RIF action by filing directly with the PAB shall follow the procedures prescribed in § 28.13 and § 28.18.

* * * * *

PART 29—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; PROCEDURES APPLICABLE TO CLAIMS CONCERNING EMPLOYMENT AT THE ARCHITECT OF THE CAPITOL

8. The authority citation for part 29 continues to read as follows:

Authority: 31 U.S.C. 753.

9. Section 29.8, paragraph (c)(1) and the first sentence of paragraph (c)(2) are revised to read as follows:

§ 29.8 Filing a charge with the General Counsel.

* * * * *

(c) * * *

(1) *Filing in person:* A charge may be filed in person at the Office of the General Counsel, Suite 580, Union Center Plaza II, 820 First St. NE., Washington, DC.

(2) *Filing by mail:* A charge may be filed by mail addressed to the General Counsel, Personnel Appeals Board, Suite 580, Union Center Plaza II, 441 G Street, NW., Washington, DC 20548. * * *

* * * * *

10. Section 29.10, paragraph (c)(1) and the first sentence of paragraph (c)(2) are revised to read as follows:

§ 29.10 Filing a petition for review with the Board.

* * * * *

(c) * * *

(1) *Filing in person:* A petition may be filed in person at the office of the Board, Suite 560, Union Center Plaza II, 820 First Street NE., Washington, DC.

(2) *Filing by mail:* A petition may be filed by mail addressed to the Personnel Appeals Board, Suite 560, Union Center Plaza II, 441 G Street, NW., Washington DC 20548. * * *

* * * * *

Nancy A. McBride,

Chair, Personnel Appeals Board General Accounting Office.

[FR Doc. 96–17873 Filed 7–12–96; 8:45 am]

BILLING CODE 1610–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 96–016–6]

Karnal Bunt; Public Forum

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public forum.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service is hosting a public forum in Washington, DC, on the Agency's program to control and eradicate Karnal bunt. The forum will provide an additional opportunity for the public to comment on the regulations established and amended by a series of interim rules published in the **Federal Register** since March, 1996. The regulations quarantine portions of Arizona, California, New Mexico, and Texas because of infestations of Karnal bunt, restrict the movement of regulated articles from the quarantined areas, and provide compensation for certain individuals in order to mitigate losses and expenses incurred because of Karnal bunt. Comments will also be accepted addressing any aspect of the Karnal bunt program not included in the regulations, including control and survey activities conducted in the quarantined areas, the national Karnal bunt survey program, and the certification of wheat for export. Information gathered at the public forum will be considered by the Department in developing guidelines and procedures for conducting the Karnal bunt program for the 1996–97 wheat growing season. USDA intends to schedule additional public forums on the Karnal bunt program, to be held in Arizona, California, and Kansas over the next 2 months. We will give notice of these additional forums in the **Federal Register**.

DATES: The public forum will be held in Washington, DC, on Wednesday, July 17, 1996, from 9 a.m. until 5 p.m.

Consideration will be given only to comments received on or before September 3, 1996.

ADDRESSES: The public forum will be held in room 107A, Jamie L. Whitten Federal Building, United States Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC. Persons attending the forum should use the entrance to the building facing the Mall, and will be required to show picture identification at the Guard Desk. Any persons who are unable to attend the forum, but who wish to comment on any aspect of the Karnal bunt program, may send written comments.

Please send an original and three copies of written comments to Docket No. 96–016–6, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–106–9. Comments received, including a transcript from the public forum, may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION: This public forum is being held concerning the Animal and Plant Health Inspection Service's (APHIS) program to control and eradicate Karnal bunt. Comments will be accepted on the regulations established and amended by a series of interim rules published by APHIS in the **Federal Register** since March, 1996. These interim rules were published on March 28, 1996 (61 FR 13649–13655, Docket No. 96–016–3), April 25, 1996 (61 FR 18233–18235, Docket No. 96–016–5), and July 5, 1996 (61 FR 35107–35109, Docket No. 96–016–6 and 61 FR 35102–35107, Docket No. 96–016–7). The public forum in Washington, DC, will be held on Wednesday, July 17, 1996, in room 107A, Jamie L. Whitten Federal Building, United States Department of Agriculture, 14th Street

and Independence Avenue SW., Washington, DC.

Comments were required to be received on Docket No. 96–016–3 on or before May 28, 1996, and on Docket No. 96–016–5 on or before June 24, 1996. We are reopening and extending the comment periods for both of these interim rules until September 3, 1996, in order to receive additional public comments at this forum, and at forums in Arizona, California, and Kansas to be scheduled over the next 2 months. We will give notice of these additional forums in the **Federal Register**. The comment periods for Docket No. 96–016–6 and Docket No. 96–016–7 are already scheduled to close on September 3, 1996.

A representative of the United States Department of Agriculture (USDA) will preside at the public forum. Any interested person may appear and be heard in person, or through an attorney or other representative. Persons who wish to speak at the public forum will be asked to provide their names and affiliations. Parties wishing to make oral presentations may register in advance by calling the Legislative and Public Affairs staff of APHIS, USDA, at (202) 720–2511 before close of business on July 15, 1996. Registration will also be held at the hearing site on July 17, 1996, from 8 a.m. until 8:45 a.m. Speakers will be scheduled in the order their registration is received.

The public forum will begin at 9 a.m. and is scheduled to end at 5 p.m. local time. However, the forum may be terminated at any time after it begins if all persons desiring to speak have been heard. The presiding officer may limit the time for each presentation so that all interested persons have an opportunity to participate. Attendees who wish to speak but who did not register will be provided time to speak only after all registered speakers have been heard.

The purpose of the forum is to give interested persons an opportunity for oral presentation of data, views, and information to the Department concerning APHIS' program to control and eradicate Karnal bunt. Questions about the content of the interim rules concerning Karnal bunt may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of the Department will respond to the comments on the interim rules at the forum, except to clarify or explain provisions of the interim rules.

We ask that anyone who reads a statement provide two copies to the presiding officer at the forum. A transcript will be made of the public forum and the transcript will be placed in the rulemaking record and will be available for public inspection.

Done in Washington, DC, this 10th day of July 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–17994 Filed 7–11–96; 10:25 am]

BILLING CODE 3410–34–P

7 CFR Part 301

[Docket No. 96–016–8]

Karnal Bunt; Removal of Quarantined Areas; Technical Amendment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule; technical amendment.

SUMMARY: In an interim rule effective June 27, 1996, and published in the **Federal Register** on July 5, 1996, we amended the Karnal bunt regulations by removing certain areas in Arizona, New Mexico, and Texas from the list of areas quarantined because of infestations of Karnal bunt. We removed a portion of Mohave County, AZ, from the list of quarantined areas that should not have been removed. Therefore, we are amending the boundaries of the quarantined area in Mohave County, AZ, to add that portion of the county to the list of quarantined areas.

DATES: This amendment is effective July 9, 1996. We will consider written comments on the interim rule (Docket No. 96–016–6) published at 61 FR 35107, as corrected by this document, received on or before September 3, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–016–6, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale MD 20737–1238. Please state that your comments refer to Docket No. 96–016–6. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road, Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: In an interim rule effective June 27, 1996, and published in the **Federal Register** on July 5, 1996 (Docket No. 96–016–6) (61 FR 35107), we amended the Karnal bunt regulations in 7 CFR 301.89–3(e) by removing areas in Arizona, New Mexico, and Texas from the list of areas quarantined because of infestations of Karnal bunt. We removed a portion of Mohave County, AZ, from the list of quarantined areas that should not have been removed. Therefore, we are amending the boundaries of the quarantined area in Mohave County, AZ, to add that portion of the county to the list of quarantined areas.

Before the effective date of this document, the portion of Mohave County, AZ, that remained under quarantine for Karnal bunt was located in the western central region of the county and, therefore, was isolated from the larger, continuous area quarantined for infestations of Karnal bunt that includes counties, and portions of counties, in Arizona, California, New Mexico, and Texas. We are expanding the quarantined area in Mohave County, AZ, to include the portion of the county that connects the previously isolated quarantined area to the larger quarantined area. The portion of Mohave County, AZ, that we are adding to the list of quarantined areas does not produce wheat and has no association with Karnal bunt contaminated seed, but regulated articles from areas that are quarantined because of infestations of Karnal bunt are transported through this area. As amended by this document, the quarantined area of Mohave County, AZ, is that portion of the county bounded as follows: Beginning at the intersection of Arizona/Nevada State line and State Route 68; then east along State Route 68 to U.S. Highway 93; then southeast along U.S. Highway 93 to Interstate 40; then east along Interstate 40 to U.S. Highway 93; then south along U.S. Highway 93 to the Mohave/Yavapai County line; then south along the Mohave County line to the Mohave/La Paz County line; then west along the Mohave County line to the Arizona/California State line; then north along the State line to the point of beginning.

This action prevents the artificial spread of Karnal bunt into noninfested areas of the United States while allowing the movement of regulated articles within the area quarantined for Karnal bunt, including counties, and portions of counties, in Arizona, California, New Mexico, and Texas.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.89–3, paragraph (e) is amended by revising the entry for Mohave, County, AZ, to read as follows:

§ 301.89–3 Quarantined areas.

* * * * *

(e) * * *

Arizona

* * * * *

Mohave County. Beginning at the intersection of Arizona/Nevada State line and State Route 68; then east along State Route 68 to U.S. Highway 93; then southeast along U.S. Highway 93 to Interstate 40; then east along Interstate 40 to U.S. Highway 93; then south along U.S. Highway 93 to the Mohave/Yavapai County line; then south along the Mohave County line to the Mohave/La Paz County line; then west along the Mohave County line to the Arizona/California State line; then north along the State line to the point of beginning.

* * * * *

Done in Washington, DC, this 9th day of July 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–17919 Filed 7–12–96; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV96–948–2IFR]

Irish Potatoes Grown in Colorado; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) (Committee) under Marketing Order No. 948 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of Irish potatoes grown in Colorado. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on September 1, 1996. Comments received by August 14, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, FAX 202–720–5698, or Dennis L. West, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724, FAX 503–326–7440.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive order 12778, Civil Justice Reform. Under the marketing order now in effect, Colorado potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes beginning September 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 285 producers of Colorado Area II potatoes in the production area and approximately 118 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Colorado Area II potato producers and handlers may be classified as small entities.

The Colorado potato marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Colorado Area II potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is

formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

In Colorado, both a State and a Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. All expenses in this category are financed under the State order. The jointly operated programs consume about equal administrative time and the two orders continue to split administrative costs equally.

The Committee met on May 23, 1996, and unanimously recommended 1996–97 expenditures of $60,999 and an assessment rate of $0.0030 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were $62,328. The assessment rate of $0.0030 is the same as last year's established rate. Major expenditures recommended by the Committee for the 1996–97 year include $34,624 for salaries for the Executive Director, Administrator, and Assistant Administrator, and $3,000 for utilities. Budgeted expenses for these items in 1995–96 were $36,976 and $3,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado Area II potatoes. Potato shipments for the year are estimated at 16,500,000 hundredweight which should provide $49,500 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at those meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996–97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period begins on September 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 948.216 is added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

§ 948.216 Assessment rate.

On and after September 1, 1996, an assessment rate of $0.0030 per hundredweight is established for Colorado Area II potatoes.

Dated: July 8, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–17867 Filed 7–12–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 989

[FV96–989–1FIR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for the 1995–96 Crop Year for Natural (Sun-Dried) Seedless, Zante Currant, and Other Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which established final free and reserve percentages for 1995–96 crop Natural (sun-dried) Seedless (NS), Zante Currant (ZC), and Other Seedless (OS) raisins. The percentages are 79 percent free and 21 percent reserve, 70 percent free and 30 percent reserve, and 51 percent free and 49 percent reserve for NS, ZC, and OS raisins, respectively. These percentages are intended to stabilize supplies and prices and to help counter the destabilizing effects of the burdensome oversupply situation facing the raisin industry. This rule was unanimously recommended by the Raisin Administrative Committee (Committee), the body which locally administers the marketing order.

EFFECTIVE DATE: August 14, 1996.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: 209–487–5901 or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: 202–205–2830.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This action finalizes final free and reserve percentages for NS, ZC, and OS raisins for the 1995–96 crop year, beginning August 1, 1995, through July 31, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

An interim final rule was published in the **Federal Register** on February 26, 1996 (61 FR 7067), with an effective date of February 26, 1996. That rule established final free and reserve percentages for NS, ZC, and OS raisins for the 1995–96 crop year. The percentages were established in a new section 989.249 of the rules and regulations in effect under the marketing order. That rule provided a 30-day comment period which ended March 27, 1996. No comments were received.

The order prescribes procedures for computing trade demands and preliminary and final percentages that establish the amount of raisins that can be marketed throughout the season. The regulations apply to all handlers of California raisins. Raisins in the free percentage category may be shipped immediately to any market, while reserve raisins must be held by handlers in a reserve pool for the account of the Committee. Under the order, reserve raisins may be: Sold at a later date by the Committee to handlers for free use; used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; or disposed of in other outlets noncompetitive with those for free tonnage raisins.

While this rule continues in effect restrictions limiting the amount of NS, ZC, and OS raisins that enter domestic markets, final free and reserve percentages are intended to lessen the impact of the oversupply situation facing the industry and promote stronger marketing conditions, thus stabilizing prices and supplies and improving grower returns. In addition to the quantity of raisins released under the preliminary percentages and the final percentages, the order specifies methods to make available additional raisins to handlers by requiring sales of reserve pool raisins for use as free tonnage raisins under "10 plus 10" offers, and authorizing sales of reserve raisins under certain conditions.

The Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specifies that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal is met by the establishment of a final percentage which makes available 100 percent of the computed trade demand and the additional offering of reserve raisins to handlers under "10 plus 10" offers. The "10 plus 10" offers are two simultaneous offers of reserve pool raisins which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use. A total of 62,578 tons of NS, 960 tons of ZC, and 638 tons of OS were purchased by handlers for free use pursuant to these offers.

Pursuant to section 989.54(a) of the order, the Committee met on August 15, 1995, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. The trade demand is 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use for each varietal type into all market outlets, adjusted by subtracting the carryin of each varietal type on August 1 of the current crop year and by adding to the trade demand the desirable carryout for each varietal type at the end of that crop year. As specified in section 989.154, the desirable carryout for each varietal type shall be equal to the shipments of free tonnage raisins of the prior crop year during the months of August, September, and one fourth of October. If the prior year's shipments are limited because of crop conditions, the total shipments during that period of time during one of the three years preceding the prior crop year may be used. In accordance with these provisions, the Committee computed and announced 1995–96 trade demands of 257,314 tons, 2,208 tons, and 1,047 tons for NS, ZC, and OS raisins, respectively.

As required under section 989.54(b) of the order, the Committee met on October 3, 1995, and computed and announced preliminary crop estimates and preliminary free and reserve percentages for NS and ZC raisins which released 65 percent of the trade demand since the field prices had not been established, and 85 percent of the trade demand for OS raisins because the field price had been established. The preliminary crop estimates and preliminary free and reserve percentages were as follows: 335,118 tons, 50 percent free, and 50 percent reserve for NS raisins; 3,696 tons, 39 percent free, and 61 percent reserve for ZC raisins; and 2,197 tons, 40 percent free, and 60 percent reserve for OS raisins. The Committee authorized the Committee staff to modify the preliminary percentages to release 85 percent of the trade demand when the field prices were established for NS and ZC raisins. The preliminary percentages for NS and ZC raisins were adjusted soon thereafter to 65 percent free, 35 percent reserve, and 51 percent free and 49 percent reserve, respectively.

Also at that meeting, the Committee computed and announced preliminary crop estimates and preliminary free and reserve percentages for Dipped Seedless, Oleate and Related Seedless, Golden Seedless, Sultana, Muscat, and Monukka raisins. It determined that the supplies of these varietal types would be less than or close enough to the computed trade demands for each variety, and that volume control percentages would not be necessary to maintain market stability for these varietal types.

On January 12, 1996, the Committee recommended final percentages of 79 percent free, 21 percent reserve for NS raisins; 70 percent free, 30 percent reserve for ZC raisins; and 51 percent free, 49 percent reserve for OS raisins.

Pursuant to section 989.54(c), the Committee may adopt interim free and reserve percentages. Interim percentages may release less than the computed trade demand for each varietal type. The Committee also computed interim free and reserve percentages at the January 12, 1996, meeting. Interim percentages were announced as 78.75 percent free, 21.25 percent reserve for NS raisins; 69.75 percent free, 30.25 percent reserve for ZC raisins; and 50.75 percent free, 49.25 percent reserve for OS raisins. That action released most, but not all, of the computed trade demand for NS, ZC, and OS raisins.

Under section 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type.

The Committee's final estimate of 1995–96 production of NS raisins is 325,808 tons. Dividing the computed trade demand of 257,314 tons by the final estimate of production results in a final free percentage of 79 percent and a final reserve percentage of 21 percent for NS raisins.

The Committee's final estimate of 1995–96 production of ZC raisins is 3,158 tons. Dividing the computed trade demand of 2,208 tons by the final estimate of production results in a final free percentage of 70 percent and a final reserve percentage of 30 percent for ZC raisins.

The Committee's final estimate of 1995–96 production of OS raisins is 2,048 tons. Dividing the computed trade demand of 1,047 tons by the final estimate of production results in a final free percentage of 51 percent and a final reserve percentage of 49 percent for OS raisins.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 4,500 producers in the production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts (from all sources) are less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than eight handlers, and a majority of producers, of California raisins may be classified as small entities. Twelve of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining eight handlers have sales less than $5,000,000, excluding receipts from any other sources.

In recent years, the California raisin industry has been faced with a burdensome oversupply. A major reason for its oversupply problem is that wineries have not been purchasing as many raisin variety grapes. Raisin variety grapes which wineries will not buy generally are dried into raisins. The volume control procedures specified in the order provide a means of lessening the impact of year-to-year variations in raisin supplies on producer prices. The percentages contribute toward orderly marketing and market stability.

The free and reserve percentages established by the interim final rule, and continued in effect, without change, by this rule, apply uniformly to all handlers in the industry, whether small or large, and release the full trade demand. There are no known additional costs incurred by small handlers that are not incurred by large handlers. As the season progressed, additional quantities of the trade demand were released. For some varieties of raisins, no volume control was implemented.

Although raisin markets are limited, they are available to all handlers, regardless of size. While the level of benefits of this action are difficult to quantify, the stabilizing effects of the percentages impact both small and large handlers positively by helping them maintain and expand markets even though raisin supplies fluctuate from season to season. Between the 1989–90 and 1994–95 crop years, total California raisin shipments increased by three percent, which benefitted both small and large handlers.

Accordingly, the Agricultural Marketing Service has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities in the California raisin industry.

After consideration of all relevant information presented, including the Committee's recommendations and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** on February 26, 1996 (61 FR 7067), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 61 FR 7067 on February 26, 1996, is adopted as a final rule without change.

Dated: July 8, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–17869 Filed 7–12–96; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 91–101–2]

Goats Imported From Mexico for Immediate Slaughter; Horse Quarantine Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal importation regulations to clarify the quarantine requirements for horses imported into the United States. We are not taking final action in this document to remove the requirements for a health certificate for goats imported into the United States from Mexico for immediate slaughter.

EFFECTIVE DATE: August 14, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Senior Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1228, (301) 734–8170, or e-mail: dvogt@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 govern the importation into the United States of certain animals and poultry and certain animal and poultry products. Section 92.308 establishes requirements for the quarantine of certain horses imported into the United States. Section 92.308(c)(2)(ii)(B), which contains the physical requirements for a quarantine facility, provides that "Doors, windows, and other openings of the facility shall be provided with double screens which will prevent insects from entering the facility." However, the preceding paragraph, § 92.308(c)(2)(ii)(A) states that "All walls, floors and ceilings shall be constructed of solid impervious material or be screened as provided in paragraph (c)(2)(ii)(B) of this section." The last phrase of this sentence has led some readers to believe that walls, floors, and ceilings, of quarantine facilities could somehow be constructed of screening. However, our intention is that if a facility's solid and impervious walls, floor or ceiling have openings, they must be screened in accordance with § 92.308(c)(2)(ii)(B).

On March 1, 1994, we published in the **Federal Register** (59 FR 9679–9681, Docket No. 91–101–1) a proposal to amend the regulations by removing the last phrase of the misleading sentence in § 92.308(c)(2)(ii)(A) to make it read "All walls, floors and ceilings shall be constructed of solid impervious material."

We also proposed, in the same **Federal Register** document, to amend the regulations in §§ 92.428 and 92.429, concerning importation of goats by allowing goats from Mexico to be imported into the United States without a health certificate if the goats were imported for immediate slaughter.

We solicited comments concerning our proposal for 60 days ending May 2, 1994. We received one comment addressing this proposed change to § 92.308(c)(2)(ii)(A), and the comment was supportive.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the portion of the proposal that pertained to horse quarantine facilities as a final rule without change.

We received three comments on this proposed change to §§ 92.428 and 92.429 by the close of the comment period. They were from a research organization, a State agricultural department, and a goat industry representative. One was supportive; the other two expressed concern that the goats could present a disease risk.

The proposed provisions concerning goats are not adopted by this document. At this time, we are considering major revisions to the regulations for importing ruminants, including goats, and to the regulations for importing swine and products of ruminants and swine. Interested persons should see Docket No. 94–106–1 (61 FR 16978–17105), a proposed rule published for comment on April 18, 1996. The three comments received on the proposed change to §§ 92.428 and 92.429 will be considered in conjunction with that rulemaking.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule is making a minor change for clarity in our regulations concerning horses subject to quarantine after importation into the United States. Since this rule change is only a clarification, there will be no economic impact on any large or small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§ 92.308 [Amended]

2. In § 92.308, paragraph (c)(2)(ii)(A) is amended by removing the phrase "or be screened as provided in paragraph (c)(2)(ii)(B) of this section".

Done in Washington, DC, this 9th day of July 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–17917 Filed 7–12–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–35–AD; Amendment 39–9689; AD 93–15–02 R2]

RIN 2120–AA64

Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises Airworthiness Directive (AD) 93–15–02 R1, which requires the following on Fairchild Aircraft SA226 and SA227 series airplanes that are equipped with a certain Simmonds-Precision pitch trim actuator: repetitively measuring the freeplay of the pitch trim actuator and repetitively inspecting the actuator for rod slippage; immediately replacing any actuator if certain freeplay limitations are exceeded or rod slippage is evident; and eventually replacing the actuator regardless of the inspection results. The compliance times for the first inspection of an actuator that is installed in accordance with AD 93–15–02 R1 was inadvertently referenced incorrectly. This action retains the repetitive inspection and replacement requirements of the current AD, corrects the above-referenced compliance times, and adds an additional replacement actuator option that will then require repetitive inspections and replacements of that actuator. The actions specified by this AD are intended to prevent the horizontal stabilizer from going nose-down or jamming because of pitch trim actuator failure, which could result in loss of control of the airplane.

DATES: Effective July 25, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of July 25, 1996.

Comments for inclusion in the Rules Docket must be received on or before August 30, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from Field Support Engineering, Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; telephone (210) 824–9421; facsimile (210) 820–8609. This information may also be examined at the FAA, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Werner Koch, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5133; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Events Leading to This Action

On July 20, 1993, the FAA issued AD 93–15–02, Amendment 39–8648 (59 FR 40734, July 30, 1993), to require the following on Fairchild Aircraft SA226 and SA227 series airplanes that are equipped with a Simmonds-Precision pitch trim actuator, part number (P/N) DL5040M5:

—repetitively measuring the freeplay of the pitch trim actuator and repetitively inspecting the actuator for rod slippage; and,

—if certain freeplay limitations are exceeded or rod slippage is evident, replacing any actuator with a new actuator of the same part number or with a part of improved design, P/N 27–19008–001 or P/N 27–19008–002.

The requirements of the AD will no longer apply when an actuator of improved design, P/N 27–19008–001 or P/N 27–19008–002, is installed. AD 93–15–02 specified accomplishment of the freeplay measurements and inspections in accordance with the instructions in Fairchild Aircraft SA226 Series Service Letter (SL) 226–SL–005, and Fairchild Aircraft SA227 Series SL 227–SL–011, both Issued: April 8, 1993, Revised: April 26, 1993, as applicable; and specified accomplishment of the pitch trim actuator replacement in accordance with the applicable maintenance manual.

AD 93–15–02 was issued based on reports of two in-flight incidents where the above-referenced pitch trim actuator failed on Fairchild Aircraft SA226 and SA227 series airplanes. In one case, the horizontal stabilizer went full-nose down, and in the other instance, the horizontal stabilizer jammed. Fortunately, the pilots were able to safely land in both of these instances. Upon removal and inspection of each of these pitch trim actuators, fatigued barrel nuts were found and the actuator usage time was well over 5,000 hours time-in-service (TIS).

After AD 93–15–02 became effective, the FAA received a report of an in-flight incident where the referenced actuator on one of the affected airplanes failed. The airplane operator had accomplished the 5,000-hour TIS initial inspection (with satisfactory results), but had not reached the 6,500-hour TIS mandatory replacement threshold.

This prompted the FAA to revise AD 93–15–02 (to the R1 level, Amendment 39–9180, 60 FR 15667, March 27, 1995) to require the same repetitive inspections and actuator replacement as AD 93–15–02, but changes the compliance times by (1) reducing the number of hours time-in-service (TIS) before the initial inspection is required; and (2) shortening both the time period between repetitive inspections and the actuator replacement compliance time, unless the replacement actuator is new or if the tube nut assemblies have been replaced during overhaul. Fairchild Aircraft revised the applicable service bulletins to reflect the inspection time changes. Accomplishment of the inspections required by AD 93–15–02 R1 is in accordance with the instructions in Fairchild Aircraft SA226 Series Service Letter (SL) 226–SL–005, and Fairchild Aircraft SA227 Series SL 227–SL–011, both Issued: April 8, 1993, Revised: March 2, 1995, as applicable.

AD 93–15–02 R1 inadvertently referenced incorrect compliance times for the first inspection for an actuator that is installed in accordance with AD 93–15–02 R1. That AD specifies repetitively inspecting the actuator at either 250 or 300-hour TIS intervals after replacing the actuator. The intent was to initially inspect upon accumulating 3,000, 5,000, or 7,500 hours TIS (depending on the type of actuator replacement) after installing the actuator, and repetitively inspecting every 250 or 300 hours TIS thereafter.

In addition, the FAA has become aware of an additional replacement actuator that should be incorporated into the existing AD. This replacement actuator is a modified P/N DL5040M5 actuator that is re-identified as P/N DL5040M6. Installation of this actuator would then require repetitive inspections and replacements.

After examining all available information related to the subject discussed above, the FAA has determined that further AD action should be taken to correct these compliance times of AD 93–15–02 R1 and to prevent the horizontal stabilizer from going nose-down or jamming because of pitch trim actuator failure, which could result in loss of control of the airplane.

Fairchild Aircraft has revised (dated May 22, 1996) SA226 Series SL 226–SL–005 and SA227 Series 227–SL–011, to reflect the information discussed above.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Aircraft SA226 and SA227 series airplanes of the same type design that are equipped with a Simmonds-Precision pitch trim actuator, P/N DL5040M5 or P/N DL5040M6, this AD requires the same repetitive inspections and actuator replacement as AD 93–15–02 R1, but revises the initial inspection compliance times after installing the actuator as previously specified. This action incorporates Simmonds-Precision pitch trim actuator, P/N DL5040M6, as a replacement option that will then require repetitive inspections and replacements. The P/N DL5040M6 actuator can consist of a new part or a modified DL5040M5 actuator, both of which can be obtained from Simmonds-Precision.

This action revises a previous action to correct an error in a final rule by changing the compliance time for the initial inspection after installing the actuator, and incorporates the additional replacement option. This change in the compliance time reduces the burden upon the public. The replacement option imposes the same burden that is currently required. Since this action does not impose any additional burden (financial or otherwise) upon the public than is already required by AD 93–15–02 R1 or than was previously required by AD 93–15–02, it is found that notice and prior public comment hereon are unnecessary.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–9180 (60 FR 15667, March 27, 1995), and by adding a new airworthiness directive to read as follows:

93–15–02 R2 Fairchild Aircraft: Amendment 39–9689; Docket No. 93–CE–35–AD. Revises AD 93–15–02 R1, Amendment 39–9180.

Applicability: All SA226 and SA227 series airplanes (all models and serial numbers), certificated in any category, that are equipped with a Simmonds-Precision pitch trim actuator, part number (P/N) DL5040M5 or P/N DL5040M6.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the pitch trim actuator, which could result in the horizontal stabilizer going nose-down or jamming, accomplish the following:

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.
Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

(a) Accomplish the following at the times specified in the chart in paragraph (b) of this AD:

(1) *Initial and repetitive inspections:* Measure the freeplay (inspection) of the pitch trim actuator and inspect the actuator for rod slippage in accordance with the INSTRUCTIONS section of Fairchild Aircraft SA226 Series Service Letter (SL) 226–SL–005, and Fairchild Aircraft SA227 Series SL 227–SL–011, both Issued: April 8, 1993, Revised: May 22, 1996, as applicable.

(2) *Initial and repetitive replacements:* Replace the pitch trim actuator with one of the following in accordance with the instructions in the applicable maintenance manual at the times specified in the Initial Inspection and Repetitive Inspection columns of the chart in paragraph (b) of this AD and, replace the pitch trim actuator prior to further flight if certain freeplay limitations that are specified in the service letters are exceeded or if rod slippage is found.

(i) A new Simmonds-Precision actuator, P/N DL5040M5 or DL5040M6.

(ii) A pitch trim actuator with an overhauled, zero-timed part of the same design and part number.

(iii) A new actuator of improved design, P/N 27- 19008–001 or 27–19008–002. This replacement eliminates the repetitive inspection and replacement requirements of this AD, and may be accomplished at any time to eliminate the inspection requirement of this AD.

(b) The following chart presents the initial and repetitive inspection and replacement compliance times of this AD:

Condition	Initial inspection	Repetitive inspection	Repetitive replacement
With an original Simmonds-Precision actuator, P/N DL5040M5, installed.	Upon accumulating 3,000 hours TIS on a Simmonds-Precision P/N DL5040M5 actuator or within 50 hours TIS after April 17, 1995 (the effective date of AD 93–15–02 R1), whichever occurs later.	Every 250 hours TIS after initial inspection until accumulating 5,000 hours TIS on the actuator or 500 hours TIS after the last inspection required by AD 93–15–02 R1, whichever occurs later.	Initially upon accumulating 5,000 hours TIS on the actuator or 500 hours TIS after the initial inspection, whichever occurs later, and thereafter as indicated below.
With a replacement Simmonds-Precision actuator, P/N DL5040M5, installed.	Initially upon accumulating 5,000 hours TIS on the new actuator.	Every 300 hours TIS after the initial inspection until accumulating 6,500 hours TIS on the actuator.	Upon accumulating 6,500 hours TIS on the actuator.
With a replacement Simmonds-Precision actuator, P/N DL5040M6, installed. This part can be new, modified from a P/N DL5040M5 actuator or overhauled and zero-timed.	Initially upon accumulating 7,500 hours TIS on the new or modified actuator.	Every 300 hours TIS after the initial inspection until accumulating 9,900 hours TIS on the actuator..	Upon accumulating 9,900 hours TIS on the actuator.

Condition	Initial inspection	Repetitive inspection	Repetitive replacement
With a replacement P/N DL5040M5 actuator installed that was overhauled and zero-timed where both nut assemblies, P/N AA56142, were replaced with new assemblies during overhaul.	Initially upon accumulating 5,000 hours TIS on the overhauled actuator.	Every 300 hours TIS after the initial inspection until accumulating 6,500 hours TIS on the actuator.	Upon accumulating 6,500 hours TIS on the actuator.
With a replacement P/N DL5040M5 actuator installed that was overhauled and zero-timed where both nut assemblies, P/N AA56142, were not replaced with new assemblies during overhaul.	Initially upon accumulating 3,000 hours TIS on the overhauled actuator.	Every 250 hours TIS after the initial inspection until accumulating 5,000 hours TIS on the actuator.	Upon accumulating 5,000 hours TIS on the actuator.
With a pitch trim actuator of improved design installed, P/N 27–19008–001 or 27–19008–002.	No action necessary	No action necessary	No action necessary.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(e) The inspections and modification required by this AD shall be done in accordance with Fairchild Aircraft SA226 Series Service Letter 226–SL–065, and Fairchild Aircraft SA227 Series Service Letter 227–SL–011, both issued: April 8, 1993, Revised: May 22, 1996, as applicable. This incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Field Support Engineering, Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–9689) revises AD 93–15–02 R1, Amendment 39–9180.

(g) This amendment (39–9689) becomes effective on July 25, 1996.

Issued in Kansas City, Missouri, on June 25, 1996.

[redacted] E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–17483 Filed 7–12–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–AGL–19]

Modification of Class E Airspace; Rice Lake, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the summary portion of the Rice Lake Regional-Carl's Field Airport, Rice Lake, WI, docket published in the final rule on April 24, 1996 (61 FR 18061). Airspace Docket Number 95–AGL–19. There is no change to the legal description of the airspace.

EFFECTIVE DATE: 0901 UTC, August 15, 1996.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 96–9997, Airspace Docket 95–AGL–19, published on April 24, 1996, (61 FR 18061), established the Class E5 to accommodate a Very High Frequency Omnidirectional Range (VOR) for runway 19 approach and a Nondirectional Radio Beacon (NDB) for runway 1/19 approach at Rice Lake Regional-Carl's Field Airport, Rice Lake, WI.

Upon review of the final rule errors were discovered in the summary portion of the airspace action.

The correct summary should read as follows: This action modifies Class E5 airspace to accommodate a VOR approach to runway 01, a VOR approach to runway 19 and an NDB approach to runway 19 at Rice Lake Regional-Carl's Field Airport, Rice Lake, WI.

* * * * *

Issued in Des Plaines, Illinois, June 25, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96–17593 Filed 7–12–96; 8:45 am]

BILLING CODE 4910–13–M

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Part 608

Service of Process; Production of Official Information; and Testimony of Agency Employees

AGENCY: Arms Control and Disarmament Agency.

ACTION: Final rule.

SUMMARY: This rule establishes or clarifies policies, practices, responsibilities, and procedures for the service of legal process upon the United States Arms Control and Disarmament Agency (ACDA, the Agency), its officers, and employees, and the production of official ACDA information and the appearance of and testimony by ACDA employees as witnesses in connection with litigation. This rule is procedural in nature.

EFFECTIVE DATE: July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Frederick Smith, Jr., United States Arms Control and Disarmament Agency, Room 5635, 320 21st Street, NW., Washington, DC 20451, telephone (202) 647–3596.

SUPPLEMENTARY INFORMATION:

General

This rule is intended to clarify ACDA policies and practices regarding litigation-related matters such as service of process upon ACDA and ACDA employees and the production of official ACDA information in litigation. ACDA anticipates that the rule will eliminate or reduce current ambiguities regarding such matters for ACDA employees, as well as for private attorneys and judicial and quasi-judicial authorities. ACDA also expects that this rule will promote consistency in ACDA's assertions of privileges and objections, thereby reducing the potential for both inappropriate, potentially harmful disclosure of protected information and wasteful or inappropriate allocation of Agency resources. Although the rule is largely self-explanatory, we describe the general scheme of the several subsections below for the readers' ease of reference.

Service of Process

Part 604.4(b) of 22 CFR establishes the Agency's Office of the General Counsel as the designated office for the presentation of administrative claims asserted under the Federal Tort Claims Act (and 22 CFR parts 602, 603, and 605 set forth procedures for administrative requests under the Freedom of Information Act, under the Privacy Act, and for declassification of national security information, respectively). However, until the present, the Agency has not had regulations establishing the Agency's General Counsel, or his/her delegate, as the sole Agency recipient for litigation-related demands, whether civil or criminal, for official Agency information, whether oral or documentary, or for other Agency action. The rule also clarifies that ACDA is not an agent for service on behalf of its employees in respect of purely private legal disputes and explains that ACDA will counsel its employees not to use their official positions to evade judicial process.

Compliance With Requests or Demands for Official Information

Fundamentally, the compliance sections of the rule (§§ 608.4–608.9) simply track, to a greater or lesser degree, similar regulations which have been adopted by other federal agencies and which derive from the Supreme Court's decision in *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951). Thus, the principal thrust of the compliance provisions of the rule is that Agency employees (including former employees) must obtain the approval of the Agency's General Counsel, or his/her delegate, prior to responding to any subpoenas or other litigation-related requests or demands for Agency information, whether classified or unclassified, that relate to the employee's official duties.

Significantly, § 608.5 requires the party who initiates a litigation-related request or demand for official ACDA information to provide a written statement providing specified information concerning the nature and scope of the demand.

Finally, the rule describes factors, among others, that Agency officials shall take into consideration when considering litigation-related requests or demands and specifies that Agency employees may ordinarily not provide expert or official testimony on behalf of private parties.

On May 28, 1996, ACDA published a notice of proposed rulemaking (61 FR 26474–26477) with a 31-day comment period. No comments were received during the comment period. Accordingly, the rule is adopted as proposed.

List of Subjects in 22 CFR Part 608

Administrative practice and procedure, Classified information, Government employees.

Chapter VI of title 22 of the Code of Federal Regulations is amended by adding a new part 608 to read as follows:

PART 608—SERVICE OF PROCESS; PRODUCTION OR DISCLOSURE OF OFFICIAL INFORMATION IN RESPONSE TO COURT ORDERS, SUBPOENAS, NOTICES OF DEPOSITIONS, REQUESTS FOR ADMISSIONS, INTERROGATORIES, OR SIMILAR REQUESTS OR DEMANDS IN CONNECTION WITH FEDERAL OR STATE LITIGATION; EXPERT TESTIMONY

Sec.

608.1 Purpose and scope; definitions.
608.2 Service of summonses and complaints.
608.3 Service of subpoenas, court orders, and other demands or requests for official information or action.
608.4 Testimony and production of documents prohibited unless approved by appropriate Agency officials.
608.5 Procedure when testimony or production of documents is sought—general.
608.6 Procedure when response to demand is required prior to receiving instructions.
608.7 Procedure in the event of an adverse ruling.
608.8 Considerations in determining whether the Agency will comply with a demand or request.
608.9 Prohibition on providing expert or opinion testimony.

Authority: 22 U.S.C. 2581(j).

§ 608.1 Purpose and scope; definitions.

(a) This part sets forth the procedures to be followed with respect to:

(1) service of summonses and complaints or other requests or demands directed to the U.S. Arms Control and Disarmament Agency (ACDA, the Agency) or to any ACDA employee or former employee in connection with federal or state litigation arising out of or involving the performance of official activities of ACDA; and

(2) the oral or written disclosure, in response to subpoenas, orders, or other requests or demands of federal or state judicial or quasi-judicial authority (collectively, "demands"), whether civil or criminal in nature, or in response to requests for depositions, affidavits, admissions, responses to interrogatories, document production, or other litigation-related matters, pursuant to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, or applicable state rules (collectively, "requests"), of any material contained in the files of the Agency, any information relating to material contained in the files of the Agency, or any information acquired while the subject of the demand or request is or was an employee of the Agency as part of the performance of the person's duties or by virtue of the person's official status.

(b) For purposes of this part, and except as ACDA may otherwise determine in a particular case, the term employee includes the Director of ACDA and former Directors of ACDA, and all employees and former employees of ACDA or other federal agencies who are or were appointed by, or subject to the supervision, jurisdiction, or control of the Director of ACDA, whether residing or working in the United States or abroad, including United States nationals, foreign nationals, and contractors.

(c) For purposes of this part, the term *litigation* encompasses all pre-trial, trial, and post-trial stages of all judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, or other judicial or quasi-judicial bodies or tribunals, whether criminal, civil, or administrative in nature. This part governs, inter alia, responses to discovery requests, depositions, and other pre-trial, trial, or post-trial proceedings, as well as responses to informal requests by attorneys or others in situations involving litigation. However, this part shall not apply to any claims by ACDA employees (present or former), or applicants for Agency employment, for which

jurisdiction resides with the U.S. Equal Employment Opportunity Commission; the U.S. Merit Systems Protection Board; the Office of Special Counsel; the Federal Labor Relations Authority; the Foreign Service Labor Relations Board; the Foreign Service Grievance Board; or a labor arbitrator operating under a collective bargaining agreement between ACDA and a labor organization representing ACDA employees; or their successor agencies or entities.

(d) For purposes of this part, *official information* means all information of any kind, however stored, that is in the custody and control of ACDA, relates to information in the custody and control of ACDA, or was acquired by ACDA employees as part of their official duties or because of their official status within ACDA while such individuals are employed by or served on behalf of ACDA.

(e) Nothing in this part affects disclosure of information under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, Executive Order 12958, 3 CFR, 1995 Comp., p. 333, the Government in the Sunshine Act, 5 U.S.C. 552b, the Agency's regulations in 22 CFR chapter VI implementing any of the foregoing, or pursuant to congressional subpoena. Nothing in this part otherwise permits disclosure of information by ACDA or its employees except as provided by statute or other applicable law.

(f) This part is intended only to inform the public about ACDA procedures concerning the service of process and responses to demands or requests and is not intended to and does not create, and may not be relied upon to create, any right or benefit substantive or procedural, enforceable at law by a party against ACDA or the United States.

(g) Nothing in this part affects:

(1) The disclosure of information during the course of legal proceedings in foreign courts, commissions, boards, or other judicial or quasi-judicial bodies or tribunals; or

(2) The rules and procedures, under applicable U.S. law and international conventions, governing diplomatic and consular immunity.

(h) Nothing in this part affects the disclosure of official information to other federal agencies or Department of Justice attorneys in connection with litigation conducted on behalf or in defense of the United States, its agencies, officers, and employees, or to federal, state, local, or foreign prosecuting and law enforcement authorities in conjunction with criminal law enforcement investigations, prosecutions, extradition, deportation or other proceedings.

§ 608.2 Service of summonses and complaints.

(a) Only ACDA's General Counsel, or his/her delegate, is authorized to receive and accept summonses or complaints sought to be served upon ACDA or ACDA employees. All such documents should be delivered or addressed to General Counsel, U.S. Arms Control and Disarmament Agency, 320 21st St. NW., Room 5635, Washington, DC 20451. Pursuant to 42 U.S.C. 659(b) and 5 U.S.C. 5520a(c)(1), this same officer has been designated specifically to accept service of process for the enforcement of the legal obligation to provide child support or to make alimony payments by employees of the Agency and to accept service of process for the enforcement of the legal obligation to pay monies owed for other than child support or alimony by employees of the Agency, respectively.

(b) In the event any summons or complaint described in § 608.1(a) is delivered to an employee of ACDA other than in the manner specified in this part, such attempted service shall be ineffective, and the recipient thereof shall either decline to accept the proffered service or return such document under cover of a written communication which directs the person attempting to make service to the procedures set forth in this part.

(c) Except as otherwise provided in §§ 608.2(d) and 608.3(c), ACDA is not an authorized agent for service of process with respect to civil litigation against ACDA employees purely in their personal, non-official capacity. Copies of summonses or complaints directed to ACDA employees in connection with legal proceedings arising out of the performance of official duties may, however, be served upon ACDA's General Counsel, or his/her delegate.

(d) Although ACDA is not an agent for the service of process upon its employees with respect to purely personal, non-official litigation, ACDA recognizes that its employees stationed overseas should not use their official positions to evade their personal obligations and will, therefore, counsel and encourage ACDA employees to accept service of process in appropriate cases, and will waive applicable diplomatic or consular privileges and immunities when ACDA determines that it is in the interest of the United States to do so. Pursuant to section 302 of Executive Order 12953 (3 CFR, 1995 Comp., p. 325), ACDA's General Counsel has been designated in Appendix B to 5 CFR part 581 as the official to assist in the service of legal process in civil actions pursuant to orders of State courts to establish paternity and to establish or to enforce support obligations by making ACDA employees available for service of process, regardless of the location of the employee's workplace.

(e) Documents for which ACDA's General Counsel, or his/her delegate, accepts service in official capacity only shall be stamped "Service Accepted in Official Capacity Only." Acceptance of service shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under the laws or rules applicable for the service of process.

§ 608.3 Service of subpoenas, court orders, and other demands or requests for official information or action.

(a) Except in cases in which ACDA is represented by legal counsel who have entered an appearance or otherwise given notice of their representation, only ACDA's General Counsel, or his/her delegate, is authorized to receive and accept subpoenas, or other demands or requests directed to ACDA or any component thereof, or its employees, or former employees, whether civil or criminal in nature, for:

(1) Material, including documents, contained in the files of the Agency;

(2) Information, including testimony, affidavits, declarations, admissions, response to interrogatories, or informal statements, relating to material contained in the files of the Agency or which any Agency employee acquired in the course and scope of the performance of official duties;

(3) Garnishment or attachment of compensation of current or former employees; or

(4) The performance or non-performance of any official ACDA duty.

(b) In the event that any subpoena, demand, or request is sought to be delivered to an Agency employee (including former employee) other than in the manner prescribed in paragraph (a) of this section, such attempted service shall be ineffective. Such employee shall, after consultation with the Office of the General Counsel, decline to accept the subpoena, demand, or request or shall return it to the server under cover of a written communication referring to the procedures prescribed in this part.

(c) Except as otherwise provided in this part, ACDA is not an agent for service or otherwise authorized to accept on behalf of its employees any subpoenas, show-cause orders, or similar compulsory process of federal or state courts, or requests from private individuals or attorneys, which are not related to the employees' official duties except upon the express, written authorization of the individual ACDA employee to whom such demand or request is directed.

(d) Acceptance of such documents by ACDA's General Counsel, or his/her delegate, does not constitute a waiver of any defenses that might otherwise exist with respect to service under the Federal Rules of Civil or Criminal Procedure or other applicable rules.

§ 608.4 Testimony and production of documents prohibited unless approved by appropriate Agency officials.

(a) No employee of ACDA shall, in response to a demand or request in connection with any litigation, whether criminal or civil, provide oral or written testimony by deposition,declaration, affidavit, or otherwise concerning any information acquired while such person is or was an employee of ACDA as part of the performance of that person's official duties or by virtue of that person's official status, unless authorized to do so by ACDA's General Counsel, or his/her delegate.

(b) No ACDA employee shall, in response to a demand or request in connection with any litigation, produce for use at such proceedings any document or any other material acquired as part of the performance of that employee's duties or by virtue of that employee's official status, unless authorized to do so by ACDA's General Counsel, or his/her delegate.

§ 608.5 Procedure when testimony or production of documents is sought—general.

(a) If official ACDA information is sought, through testimony or otherwise, by a request or demand, the party seeking such release or testimony must (except as otherwise required by federal law or authorized by the Office of the General Counsel) set forth in writing and with as much specificity as possible, the nature and relevance of the official information sought. Where documents or other materials are sought, the party should identify the record or reasonably describe it in terms of date, format, subject matter, the office originating or receiving the record, and the names of all persons to whom the record is known to relate. Subject to § 606.7, ACDA employees may produce, disclose, release, comment upon, or testify concerning only those matters that were specified in writing and properly approved by ACDA's General Counsel or his/her delegate. See *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951). The Office of the General Counsel may waive this requirement in appropriate circumstances.

(b) To the extent it deems necessary or appropriate, ACDA may also require from the party seeking such testimony or documents a plan of all reasonably foreseeable demands, including but not limited to the names of all employees and former employees from whom discovery will be sought, areas of inquiry, expected duration of proceedings requiring oral testimony, and identification of potentially relevant documents.

(c) ACDA's General Counsel, or his/her delegate, will notify the ACDA employee and such other persons as circumstances may warrant of the decision regarding compliance with the request or demand.

(d) The Office of the General Counsel will consult with the Department of Justice regarding legal representation for ACDA employees in appropriate cases.

§ 608.6 Procedure when response to demand is required prior to receiving instructions.

(a) If a response to a demand is required before ACDA's General Counsel, or his/her delegate, renders a decision, ACDA will request that either a Department of Justice attorney or an ACDA attorney designated for the purpose:

(1) Appear with the employee upon whom the demand has been made;

(2) Furnish the court or other authority with a copy of the regulations contained in this part;

(3) Inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt consideration of ACDA's General Counsel, or his/her delegate; and

(4) Respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

(b) In the event that an immediate demand for production or disclosure is made in circumstances that would preclude the proper designation or appearance of a Department of Justice or ACDA attorney on the employee's behalf, the employee shall respectfully request the demanding court or authority for a reasonable stay of proceedings for the purpose of obtaining instructions from ACDA.

§ 608.7 Procedure in the event of an adverse ruling.

If the court or other judicial or quasi-judicial authority declines to stay the effect of the demand in response to a request made pursuant to § 608.6, or if the court or other authority rules that the demand must be complied with irrespective of the Agency's instructions not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing these regulations and *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 463 (1951).

§ 608.8 Considerations in determining whether the Agency will comply with a demand or request.

(a) In deciding whether to comply with a demand or request, ACDA officials and attorneys shall consider, among others:

(1) Whether such compliance would be unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand arose;

(2) Whether compliance is appropriate under the relevant substantive law concerning privilege or disclosure of information;

(3) The public interest;

(4) The need to conserve the time of ACDA employees for the conduct of official business;

(5) The need to avoid spending the time and money of the United States for private purposes;

(6) The need to maintain impartiality between private litigants in cases where a substantial government interest is not implicated;

(7) Whether compliance would have an adverse effect on performance by ACDA of its mission and duties; and

(8) The need to avoid involving ACDA in controversial issues not related to its mission.

(b) Among those demands and requests in response to which compliance will not ordinarily be authorized are those with respect to which, *inter alia*, any of the following factors exist:

(1) Compliance would violate a statute or a rule of procedure;

(2) Compliance would violate a specific regulation or executive order;

(3) Compliance would reveal information properly classified in the interest of national security;

(4) Compliance would reveal confidential commercial or financial information or trade secrets without the owner's consent;

(5) Compliance would reveal the internal deliberative processes of the Executive Branch; or

(6) Compliance would potentially impede or prejudice an on-going law enforcement investigation.

§ 606.8 Prohibition on providing expert or opinion testimony.

(a) Except as provided in this section, and subject to 5 CFR 2635.805, ACDA employees shall not provide opinion or expert testimony based upon information which they acquired in the scope and performance of their official ACDA duties, except on behalf of the United States or a party represented by the Department of Justice.

(b) Upon a showing by the requester of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the United States, ACDA's General Counsel, or his/her delegate, may, consistent with 5 CFR 2635.805, in the exercise of discretion, grant special, written authorization for ACDA employees to appear and testify as expert witnesses at no expense to the United States.

(c) If, despite the final determination of ACDA's General Counsel, a court of competent jurisdiction or other appropriate authority orders the appearance and expert or opinion testimony of an ACDA employee, such employee shall immediately inform the office of the General Counsel of such order. If the Office of the General Counsel determines that no further legal review of or challenge to the court's order will be made, the ACDA employee shall comply with the order. If so directed by the Office of the General Counsel, however, the employee shall respectfully decline to testify. See *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

Dated: July 1, 1996.

Mary Elizabeth Hoinkes,

General Counsel.

[FR Doc. 96–17711 Filed 7–14–96; 8:45 am]

BILLING CODE 6820–32–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Minnesota State Plan; Level of Federal Enforcement

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule; change in level of Federal enforcement.

SUMMARY: This document gives notice of a change in the level of federal enforcement authority in Minnesota. The Minnesota Department of Labor and Industry is excluding coverage of tribal and private sector employment on Indian Reservations under its approved State plan. As a result, the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) is assuming coverage over tribal and private sector employment on Indian reservations. OSHA is hereby amending sections of its regulations to reflect this change in the level of enforcement authority.

EFFECTIVE DATE: July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Anne Cyr, Acting Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room, N–3637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–8148.

SUPPLEMENTARY INFORMATION:

A. Background

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 667, provides that States which wish to assume responsibility for developing and enforcing their own occupational safety and health standards, may do so by submitting, and obtaining Federal approval of, a State plan. State plan approval occurs in stages which include initial approval under section 18(b) of the Act and, ultimately, final approval under section 18(e).

The Minnesota State plan was initially approved on May 29, 1973. On July 30, 1985, OSHA announced the final approval of the Minnesota State plan pursuant to section 18(e) and amended Subpart N of 29 CFR Part 1952 to reflect the Assistant Secretary's decision. As a result, Federal OSHA relinquished its authority with regard to occupational safety and health issues covered by the Minnesota plan. Federal OSHA retained its authority over safety and health in private sector offshore maritime employment, employment at the Twin Cities Army Ammunition Plant, and with regard to Federal government employers and employees.

29 CFR 1952.205 states that "any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the plan which has received final approval and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest or [sic] administrative practicability Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal OSHA and the State designated agency."

On December 21, 1994 Darrell E. Anderson, Director, Minnesota OSHA Management Team, Minnesota Department of Labor and Industry, wrote that because of the many "obstacles Minnesota OSHA faces in gaining access to Indian reservation worksites and tribal employers, and because Federal OSHA is not subject to the same limitations as the State . . ." Minnesota will "exclude Indian reservations from coverage under the Minnesota Occupational Safety and Health Act" (December 21, 1994 letter to Area Director Charles E. Burin).

B. Decision

To assure worker protection under the OSH Act, Federal OSHA will assume coverage over tribal and private sector employment on Indian reservations. OSHA is hereby amending 29 CFR part 1952, Subpart N, to reflect this change in the level of Federal enforcement.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health, Reporting and recordkeeping requirements.

Signed at Washington, DC, this 28th day of June 1996.

Joseph A. Dear,

Assistant Secretary.

For the reasons set out in the preamble 29 CFR part 1952 is amended as set forth below:

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

1. The authority citation for part 1952 continues to read as follows:

Authority: Secs. 18, 84, Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 1–90 (55 FR 9033).

2. Section 1952.204 is amended by revising paragraph (b) to read as follows:

§ 1952.204 Final approval determination.

* * * * *

(b) The plan which has received final approval covers all activities of employers and all places of employment in Minnesota except for private sector offshore maritime employment, employment at the Twin Cities Army Ammunition Plant, Federal government employers and employees, and any tribal or private sector employment within any Indian reservation in the State.

* * * * *

3. Section 1952.205 is amended by revising the first four sentences of paragraph (b) to read as follows:

§ 1952.205 Level of Federal enforcement.

* * * * *

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Minnesota plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector offshore maritime activities and will continue to enforce offshore all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments. Federal jurisdiction is also retained over the Twin Cities Army Ammunitions Plant, over Federal government employers and employees, and over any tribal or private sector employment within any Indian reservation in the State. * * *

* * * * *

4. Section 1952.205 is further amended by removing the word "or" immediately preceding the words "administrative practicability" in the second to last sentence in paragraph (b) and adding the word "of" in its place.

[FR Doc. 96–17794 Filed 7–12–96; 8:45 am]

BILLING CODE 4510–25–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. 960621181–6181–01]

RIN 0651–AA69

Elimination of Requirement for Proof of Service in Consented Requests for Extensions of Time To File a Notice of Opposition

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: This rule deletes the requirement for proof of service when a request for an extension of time to oppose registration of a trademark is based upon a statement that applicant has consented to the request. This rule will simplify opposition proceedings by eliminating an unnecessary requirement.

EFFECTIVE DATE: July 15, 1996. This rule will be applicable to all relevant correspondence filed with the Office on or after the effective date.

FOR FURTHER INFORMATION CONTACT: David Sams by telephone at (703) 308–9330, by facsimile transmission at (703) 308–9333, or by mail marked to his attention and addressed to the Assistant Commissioner for Trademarks, Box TTAB, 2900 Crystal Drive, Arlington, Virginia 22202–3513.

SUPPLEMENTARY INFORMATION: Section 2.102(c)(2), which provides for an extension of time for filing an opposition under 37 CFR Part 2, is revised to delete the requirement that proof of service be included in consented extension requests. This change permits potential opposers to request an extension of time to oppose aggregating more than 120 days from the date of publication based on a written statement that the applicant or its authorized representative has consented to the request. The Office believes that the requirement for proof of service is unnecessary when the applicant has assertedly consented to the filing of the extension request. The Trademark Trial and Appeal Board sends a copy of the request together with the Board's action thereon to the applicant, which may file a request for reconsideration of the Board's action if necessary.

The Patent and Trademark Office has determined that this revision is procedural and remedial in nature, and this revision is therefore being published as a final rule. 5 U.S.C. 553(b)(3) (A) and (B). This rule is not a significant rule for the purposes of Executive Order 12866. No notice of proposed rulemaking is required for this rule under 5 U.S.C. 553 or any other law, so a regulatory flexibility analysis is not required and has not been prepared. 5 U.S.C. 603(a).

List of Subjects in 37 CFR Part 2

Administrative practice and procedure, Conflicts of interest, Courts, Inventions and patents, Lawyers.

For the reasons set forth in the preamble, and pursuant to the authority contained in 15 U.S.C. 1123 and 35 U.S.C. 6, part 2 of title 37 of the Code of Federal Regulations is amended as set forth below:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for 37 CFR Part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.102(c)(2) is revised to read as follows:

§ 2.102 Extension of time for filing an opposition.

* * * * *

(c) * * * (2) a written request by the potential opposer or its authorized representative stating that the applicant or its authorized representative has consented to the request, or * * *

Dated: July 2, 1996.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 96–17746 Filed 7–12–96; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192, 193, and 195

[Docket No. PS–143; Amdts. 192–76; 193–11; 195–56]

RIN 2137–AC74

Periodic Updates to the Pipeline Safety Regulations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Corrections to the final rule.

SUMMARY: On May 24, 1996, RSPA published a final rule in the Federal Register (61 FR 26121) titled "Periodic Updates to the Pipeline Safety Regulations." This final rule updated the references to voluntary specifications and standards to reflect more recently published editions of each document, enabling pipeline operators to utilize current technology, materials, and practices, thereby reducing costs and enhancing economic growth. The final rule also eliminated the requirement for odorization of hydrogen transmission lines in cases where the odorization interferes with industrial end uses. Consistent with President Clinton's Regulatory Reinvention Initiative, these actions eliminated unnecessary regulatory burdens without compromising safety. This document makes minor corrections to the final rule to provide consistency in the regulations.

EFFECTIVE DATE: August 14, 1996.

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366–0918, regarding the subject matter of this document; or the Dockets Unit, (202) 366–4453; for copies of this document or other materials in the docket.

SUPPLEMENTARY INFORMATION:

Need for Correction

The final rule did not make note of amendment numbers to properly revise the pipeline safety laws. The amendment numbers for Docket No. PS–143 are "Amdt. 192–78; 193–11; 195–56."

In Section 192.63(a)(1) of the final rule, the word "fitting" is improperly used in discussing the marking of thermoplastic fittings in accordance with ASTM D 2513. The word "fittings" should replace the word "fitting."

The final rule also updated two references to the address of the American Society for Testing and Materials (ASTM). However, the correct address was not updated in the amended Section 195.3(b)(6). The address was listed as "Conshohocken, PA" not "West Conshohocken, PA," as correctly noted in the amended Appendix A of Part 192. To provide consistency in the pipeline safety regulations, this document corrects section 195.3(b)(6) to reflect the accurate address for ASTM. The correct address is "American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428."

Finally, the updated editions of voluntary consensus standards included in Appendix A of Part 192 were not updated in Appendix B—"Qualification of Pipe." Appendix B lists the pipe specifications incorporated by reference in Part 192. For consistency, the specifications in Appendix B should accurately reflect the updated references in Appendix A. This document updates the specifications in Appendix B to match Appendix A.

Correction of Publication

Accordingly, the publication on May 24, 1996, of the final rule (61 FR 26121) is corrected as follows:

§ 192.63—[Corrected]

On page 26122, in the third column, in § 192.63, paragraph (a)(1), in line four, the word "fitting" is corrected to read "fittings."

Appendix B to Part 192—[Revised]

On page 26123, in the third column, a new amendatory instruction is added following amendment 5.

6. Appendix B to Part 192, section I, is revised to read as follows:

Appendix B to Part 192—Qualification of Pipe

I. Listed Pipe Specifications (Numbers in Parentheses Indicate Applicable Editions)

API 5L—Steel pipe (1995).
ASTM A 53—Steel pipe (1995a).
ASTM A 106—Steel pipe (1994a).
ASTM A 333/A 333M—Steel pipe (1994).
ASTM A 381—Steel pipe (1993).
ASTM A 671—Steel pipe (1994).
ASTM A 672—Steel pipe (1994).
ASTM A 691—Steel pipe (1993).
ASTM D 2513—Thermoplastic pipe and tubing (1995c).
ASTM D 2517—Thermosetting plastic pipe and tubing (1994).

* * * * *

§ 195.3—[Corrected]

On page 26123, in the third column, in § 195.3, paragraph (b)(6), in line three, the name "Conshohocken" is corrected to read "West Conshohocken."

These updates were incorporated in the final rule, so RSPA does not need further rulemaking action to correct the updated specifications in Appendix B of Part 192. The purpose of this Notice is to provide consistency in the pipeline safety regulations. RSPA regrets any confusion this error may have occasioned, and publishes this document to provide clarification to all affected parties of this rulemaking.

Issued in Washington, DC, on July 3, 1996.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 96–17580 Filed 7–12–96; 8:45 am]
BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 61, No. 136
Monday, July 15, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[FV96–956–1PR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Proposed Establishment of Handler Reporting Requirements and Interest Charges on Overdue Assessment Payments, and Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish handler reporting requirements and establish interest charges on overdue assessments. This action also announces the Agricultural Marketing Service's (AMS) intention to request a revision to the currently approved information collection requirements issued under the marketing order. This proposed rule would contribute to the efficient operation of the program by helping to ensure that assessments are available in a timely manner to cover budgeted expenses incurred under the marketing order. The Committee believes that this is the only alternative available to ensure timely payments of assessments. These proposed changes are expected to reduce the need for compliance efforts and thereby reduce the costs to administer the order.

DATES: Comments must be received by July 30, 1996. Pursuant to the Paperwork Reduction Act, comments to the information collection burden must be received by September 13, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456, Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724; or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 690–0464.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Order No. 956 (7 CFR part 956; 60 FR 27624, May 24, 1995), regulating the handling of sweet onions grown in the Walla Walla Valley of southeast Washington and northeast Oregon, hereinafter referred to as the "order." The order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." This proposed rule was recommended by the Walla Walla Sweet Onion Committee (Committee), the agency responsible for the local administration of the marketing order for sweet onions grown in the Walla Walla Valley.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. If adopted, the proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

In compliance with the Small Business Regulatory Enforcement Act of 1996, the Agricultural Marketing Service (AMS) has published a "Small Business Guide for Complying with Marketing Agreements and Orders for Fruits, Vegetables and Specialty Crops." Interested persons may obtain a copy of the Guide by contacting: Jay Guerber, Marketing Order Administration Branch, P.O. Box 96456, room 2523–S, Washington, DC 29909–6456; telephone (202) 720–2491, FAX (202) 720–5698.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of Walla Walla Sweet Onions subject to regulation under the marketing order and approximately 50 producers in the regulated production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of Walla Walla Sweet Onion handlers and producers may be classified as small entities.

This proposed rule would establish interest charges on overdue assessments

and establish handler reporting requirements.

This proposed rule would contribute to the efficient operation of the program by helping to ensure that assessments are available in a timely manner to cover budgeted expenses incurred under the marketing order. Those persons large and small who pay in a timely manner would not be subject to an interest charge. The proposed changes establishing interest charges are expected to reduce the need for compliance efforts and thereby reduce the costs to administer the order which will benefit all persons who are subject to assessments.

The preparation of one form one time each year should not constitute a significant burden on a business unit, small or large. The estimated reporting burden per response is 0.323 hours. In addition, gift box and roadside stand sales would be exempt from reporting the region to which shipments are made, which should be particularly favorable to small entities.

Therefore, the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of the proposal on small businesses.

The Committee meets prior to each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Walla Walla Sweet Onions. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

At its February 15, 1996, meeting the Committee unanimously proposed the addition of administrative rules and regulations that would provide a late payment charge for delinquent assessments and a reporting requirement for handlers.

The Act provides that each handler shall pay to the Committee such handler's pro rata share of Committee expenses that the Secretary finds are reasonable and likely to be incurred for the maintenance and functioning of the Committee. Section 956.42 authorizes the Committee to levy assessments on handlers of Walla Walla Sweet Onions to cover each handler's share of Committee expenses.

Section 956.42(f) provides the authority for the Committee to impose, with the approval of the Secretary, a late payment or an interest charge on handlers who fail to pay any assessment in a timely manner. This proposed rule would establish an interest charge of 1 ½ percent per month to be applied to any assessment balance remaining unpaid on October 1 of each year.

The Committee depends upon handler assessments for operating funds. Last year, the first season of operation of the order, some handlers were late with their assessment payments, with fewer than half submitting their assessment payments when due. When assessments are not paid in a timely manner, the handlers paying assessments on time are placed in an unfair situation compared to the delinquent handlers.

As part of its collection efforts, the Committee requested delinquent handlers to promptly submit assessment payments. However, such requests did not substantially hasten the payment of such delinquent assessments, a few of which were over 120 days delinquent. To facilitate the collection of assessments needed for the maintenance and functioning of the Committee, the Committee recommended the establishment of an interest charge of 1 ½ percent per month to be applied to assessment balances unpaid after 30 days. Annual assessments are due from handlers on September 1. The 1–½ percent interest charge would be applied monthly, after September 30, to the unpaid balance, including any accumulated interest.

This proposed change is intended to encourage handlers to pay their assessments when due, thereby eliminating potential inequities towards handlers who pay their assessments on time. It would contribute to the efficient operation of the program by ensuring that adequate funds are available to cover expenses incurred under the marketing order.

Section 956.80 provides authority for the Committee, with the approval of the Secretary, to require that each handler furnish to the Committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the Committee to perform its duties under the marketing order.

This proposed rule would also establish a requirement that each handler submit an annual report, on a form provided by the Committee, showing their weekly and total yearly shipments of Walla Walla Sweet Onions by geographical region. The annual handler reporting requirement would provide the Committee with statistical information regarding total industry shipments which would be useful to the Committee in developing a budget and in making marketing and promotion plans for the upcoming season. The form would include the total number of 50 pound equivalents of Walla Walla Sweet Onions shipped during each week of the shipping season and an end of season total. The form will also require handlers to indicate the geographical regions to which onions are shipped. The geographical region to which shipments are made would be useful in planning marketing and promotional activities. The Committee has drawn up boundaries of 11 geographical regions to help it in developing its marketing and promotional plans. To effectively promote and market Walla Walla Sweet Onions, knowledge of market conditions and access to accurate statistical information is invaluable. The Committee recommended that handlers be exempt from having to indicate the geographical region to where the onions were shipped when making roadside stand and gift box sales. The Committee felt that having to report the geographical region shipped for every bag of onions sold in these outlets would be burdensome to handlers making such shipments.

The form would also require handlers to provide their name and address to properly identify the firm, as a basis for verifying compliance with the assessment provisions of the order.

In addition to marketing and promotion planning, the information on the form would help compliance efforts by keeping the committee informed of handlers' operations. It would enable the Committee manager to become aware of potential problems and discuss them with the handlers involved before violations occurred, thus reducing the need for, and the expense of, compliance action by the Committee and the Department.

To implement these changes, a new Subpart—Rules and Regulations is proposed to be added to part 956. Sections 956.142 *Interest charges.*, and 956.180 *Reports.* would be included in that subpart.

A 15-day comment period is provided to allow interested persons to respond to this proposal. This period is deemed appropriate because the shipping season, which begins soon, is relatively short and the Committee needs to gather information on shipments made during the shipping period. The proposal was recommended by the Committee in a public meeting and all interested persons were invited to provide input.

All written comments received within the comment period will be considered before a final determination is made on this matter.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the AMS announces its intention to request a revision to a currently approved information collection for Walla Walla sweet onions.

Title: Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon, Marketing Order No. 956.

OMB Number: 0581–0172.

Expiration Date of Approval: March 31, 1998.

Type of Request: Revision of a currently approved information collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Agricultural Marketing Agreement Act, to provide the respondents the type of service they request, and to administer the program.

This proposed rule would establish a requirement that each handler submit an annual report, on a form provided by the Committee, showing Walla Walla Sweet Onion shipment information. This information would facilitate the billing and collection of handler assessments needed for the maintenance and functioning of the Committee. The information would also be useful to the Committee in developing a budget and in making marketing plans for the upcoming season.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Division regional and headquarter's staff, and employees of the Committee. Committee employees are the primary users of the information and AMS employees are secondary users.

Estimate of Burden: Public reporting burden for this proposed collection of information is estimated to average 0.323 hours per response.

Respondents: Walla Walla Sweet Onion producers and for-profit businesses handling fresh Walla Walla Sweet Onions produced in southwestern Washington and northeastern Oregon.

Estimated Number of Respondents: 82.

Estimated Number of Responses per Respondent: 0.756.

Estimated Total Burden on Respondents: 25 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the functioning of the Walla Walla Sweet Onion Marketing Order and the Department's overaight of the program; (2) the accuracy of the collection burden estimate and the validity of methodology and assumptions used in estimating the burden on respondents; (3) ways to enhance the quality, utility, and clarity of the information requested; and (4) ways to minimize the burden, including use of automated or electronic technologies.

Comments must be received by September 13, 1996. Comments should reference OMB No. 0581–0172 and the Walla Walla Sweet Onion Marketing Order No. 956, and be submitted to Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, OR 97204; fax 503–326–7440. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

Because there is insufficient time for normal clearance procedures, AMS is seeking temporary approval from OMB for the use of this form for the coming season. The form would be added to the other 5 forms currently approved for use under OMB Number 0581–0172.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and record keeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 956 be amended as follows:

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

1. The authority citation for 7 CFR part 956 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In part 956, a new Subpart—Rules and Regulations consisting of sections 956.142 and 956.180 is added to read as follows:

Subpart—Rules and Regulations

§ 956.142 Interest charges.

The Committee shall impose an interest charge on any handler who fails to pay his or her annual assessments within thirty (30) days of the due date of September 1. The interest charge shall, after 30 days, be 1 1/2 percent of the unpaid assessment balance. In the event the handler fails to pay the delinquent assessment amount within 60 days following the due date, the 1 1/2 percent interest charge shall be applied monthly thereafter to the unpaid balance, including any accumulated interest. Any amount paid by a handler as an assessment, including any charges imposed pursuant to this paragraph, shall be credited when the payment is received in the Committee office.

§ 956.180 Reports.

Each handler shall furnish to the Committee by September 1 of each year an annual report containing the following information, except that gift-box and roadside stand sales shall be exempt from paragraph (b):

(a) The number of 50 lb. equivalents of Walla Walla Sweet Onions shipped by each handler during each week of the shipping season and the total for the season;

(b) The geographical regions as defined by the Committee to which each shipment is made; and

(c) The name, address, and signature of each handler.

Dated: July 8, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–17868 Filed 7–12–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 256

RIN 1076–AD52

Housing Improvement Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to amend the regulations governing the Housing Improvement Program (HIP) by clarifying the terms and conditions under which the program is operated.

DATES: Comments must be received on or before September 13, 1996. Comments will be available for inspection at the address below from 9:00 a.m. to 4:00 p.m., Monday through Friday beginning approximately July 29, 1996.

ADDRESSES: Mail comments to June Henkel, Division of Housing, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 1849 C St. NW, Mail Stop 4603–MIB, Washington, DC 20240; OR, hand deliver them to Room 4603 at the above address.

FOR FURTHER INFORMATION CONTACT: June Henkel, Office of Tribal Services, Bureau of Indian Affairs at telephone (202) 208–3707.

SUPPLEMENTARY INFORMATION:

Background

The proposed rule reflects the recommendations of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization, various tribal and Federal workgroups, and the Department of the Interior Office of the Inspector General. The proposed rule contains simplified administrative guidelines and makes the program more flexible and responsive to the needs of tribes.

On April 7, 1994, the Assistant Secretary-Indian Affairs published a Notice of Proposed Rulemaking (NPRM) proposing amendment of 25 CFR Part 256, Housing Improvement Program (59 FR 16726). One proposal concerned changing the HIP funding distribution methodology from one based on housing inventory to one based on documented eligible applicants. Proposed technical corrections were for the elimination of Category C, Downpayments, and elimination of eligibility for applicants whose dwellings were acquired under HUD through an Indian Housing Authority. The comment period closed on June 6, 1994 and on June 10, 1994, was extended to July 6, 1994. Public comment on the funding distribution methodology provided only a 1% margin of difference between those for and against the proposed change. As a result of the lack of clear direction on the funding distribution methodology, the numerous comments received on the proposed technical corrections and the need to improve the program, the program was recommended for reinvention. In July 1994 the Acting Deputy Commissioner of Indian Affairs agreed to a recommendation by the Office of Audit and Evaluation to place HIP in the National Performance Review (NPR) Reinventing Government Projects program. The HIP was approved as an NPR lab project by October 1994. Along with accommodating administrative corrective action tasks, the NPR lab was established to ensure tribal representation throughout the reinvention process resulting in a program that would be more responsive to tribal needs.

Evaluation and Certification

The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9.

Publication of the proposed rule by the Department of the Interior (Department) provides the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding the proposed rule to the location identified in the "addresses" section of this document.

Executive Order 12988

The Department has determined that this proposed rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This proposed rule is not a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Executive Order 12630

The Department has determined that this proposed rule does not have "significant" takings implications. The proposed rule does not pertain to "taking" of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this proposed rule does not have significant federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

NEPA Statement

The Department has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

This proposed rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Paperwork Reduction Act of 1995

The information collection requirements contained in § 256.9 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.* and assigned clearance number 1076–0084. The information is collected to determine applicant eligibility for services and eligibility to participate in the program based on the criteria referenced in 256.10 and in Table B. Response is required to obtain a benefit. The public reporting burden for this form is estimated to average thirty minutes per response, including the time for reviewing the instructions, gathering and maintaining data, and completing and reviewing the form.

Drafting Information

The primary author of this document is June Henkel, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior.

List of Subjects in 25 CFR Part 256

Housing, Indians, Reporting and recordkeeping requirements.

For the reasons given in the preamble, Part 256 of Title 25, Chapter I of the Code of Federal Regulations is proposed to be revised as set forth below.

PART 256—HOUSING IMPROVEMENT PROGRAM

Sec.

256.1 Purpose.
256.2 Definitions.
256.3 Policy.
256.4 Information collection.
256.5 What is the Housing Improvement Program?
256.6 Am I eligible for the Housing Improvement Program?
256.7 What are the Housing Improvement Program categories for which I am eligible?
256.8 Who administers the Housing Improvement Program?
256.9 How do I apply for the Housing Improvement Program?
256.10 What are the steps that must be taken to process my application for the Housing Improvement Program?
256.11 How long will I have to wait for the improvement, repair, or replacement of my dwelling to be done?
256.12 Who is responsible for identifying what work will be done on my dwelling?
256.13 What will the servicing housing office do to identify what work is to be done on my dwelling?
256.14 How will I be advised of what work is to be done?
256.15 Who performs the improvements, repairs, or replacement of my dwelling?
256.16 How are these repairs or construction trades persons and home building contractors selected and paid?
256.17 Will I have to vacate my dwelling while repair work or replacement of my dwelling is being done?
256.18 How can I be sure that the work that is being done on my dwelling meets minimum construction standards?
256.19 How will I be advised that the repair work or replacement of my dwelling has been completed?
256.20 How many times can I receive improvements, repairs, or replacement services under the Housing Improvement Program?
256.21 Will I need flood insurance?
256.22 Is my Federal Government assisted dwelling eligible for services under the Housing Improvement Program?
256.23 Are mobile homes eligible for services under the Housing Improvement Program?
256.24 Can Housing Improvement Program resources be supplemented with other available resources?
256.25 What can I do if I disagree with actions taken under the Housing Improvement Program?

Authority: 42 Stat. 208. (25 U.S.C. 13).

§ 256.1 Purpose.

The purpose of this part is to define the terms and conditions under which assistance is given to Indians under the Housing Improvement Program (HIP).

§ 256.2 Definitions.

As used in this part 256:

Agency means the current organizational unit of the Bureau that provides direct services to the governing body or bodies and members of one or more specified Indian Tribes.

Appeal means a written request for review of an action or the inaction of an official of the Bureau of Indian Affairs that is claimed to adversely affect the interested party making the request, as provided in part 2 of this chapter.

Applicant means an individual or persons on whose behalf an application for services has been made under this part.

Application means the process through which a request is made for services.

Area Director means the officer in charge of a Bureau of Indian Affairs area office, or his/her authorized delegate.

Bureau means the Bureau of Indian Affairs.

Child means a person under the age of 18 or such other age of majority as is established for purposes of parental support by tribal or state law (if any) applicable to the person at his or her residence, except that no person who has been emancipated by marriage can be deemed a child.

Family means one or more persons maintaining a household.

Handicapped means legally blind; legally deaf; lack of or inability to use one or more limbs; chair or bed bound; inability to walk without crutches or walker; mental disability in an adult of a severity that requires a companion to aid in basic needs, such as dressing, preparing food, etc.; or severe heart and/or respiratory problems preventing even minor exertion.

Household means persons living with the *head of household* who may be related or unrelated to the *head of household* and who function as members of a family.

Indian tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law 103–454, 108 Stat. 4791.

Secretary means the Secretary of the Interior.

Service area means reservations (former reservations in Oklahoma), allotments, restricted lands, and Indian-owned fee lands (including lands owned by corporations established pursuant to the Alaska Native Claims Settlement Act) within a geographical area designated by the tribe and approved by the Area Director to which equitable services can be delivered.

Servicing housing office means the Tribal Housing Office or Bureau Housing Assistance Office administering the Housing Improvement Program in the service area in which the applicant resides.

Superintendent means the Bureau official in charge of an agency office.

§ 256.3 Policy.

(a) The Bureau of Indian Affairs' housing policy is consistent with the objectives of the national housing policy that declares that every American family should have the opportunity for a decent home and suitable living environment. To the extent possible, the program will serve the neediest of the needy Indian families.

(b) Every Indian as defined in § 256.2 who meets the basic eligibility criteria defined in § 256.6 is entitled to participate in the program. Participation is based on priority of need, regardless of tribal affiliation, provided services can be delivered to the geographic area within which the participant resides.

(c) Tribal participation in and direct administration of the Housing Improvement Program is encouraged to the maximum extent possible. Tribal involvement is necessary to ensure that the services provided under the program are responsive to the needs of tribes and the program participants.

(d) Partnerships with complementary improvement programs are encouraged to increase the basic benefits derived from the Housing Improvement Program fund. An example is the agreement with Indian Health Services to provide water and sanitation facilities for Housing Improvement Program houses.

§ 256.4 Information collection.

The information collection requirements contained in § 256.9 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.* and assigned clearance number 1076–0084. The information is collected to determine applicant eligibility for services and eligibility to participate in the program based on the criteria referenced in § 256.10 and in Table B to this part. Response is required to obtain a benefit. The public reporting burden for this form is estimated to average thirty minutes per response, including the time for reviewing the instructions, gathering and maintaining data, and completing and reviewing the form.

§ 256.5 What is the Housing Improvement Program?

The Housing Improvement Program provides funds to repair or replace houses that fail to meet basic building standards for the neediest of the needy Housing Improvement Program applicants.

§ 256.6 Am I eligible for the Housing Improvement Program?

You are eligible for the Housing Improvement Program if:

(a) You are a member of a Federally-recognized American Indian tribe or Alaskan Native village; and

(b) You are living in an approved tribal service area; and

(c) Your annual income does not exceed 125% of the Department of Health and Human Services Poverty Income Guidelines. These guidelines are available from your servicing housing office.

§ 256.7 What are the Housing Improvement Program categories for which I am eligible?

(a) *Category A.* You are eligible to receive up to $2,500 in housing repairs and improvements if the dwelling in which you are living cannot be brought to applicable building code standards.

(b) *Category B.* You are eligible to receive housing repairs and improvements if the cost to bring the dwelling to applicable building code standards does not exceed $35,000, and:

(1) You are the owner of the dwelling in which you are living;

(2) The estimated cost of repairs and improvements, as determined by the Housing Improvement Program servicing office will result in making the dwelling meet applicable building code standards; and

(3) You sign a written agreement that if you sell the dwelling within five (5) years following the date of completion of the repairs, the grant will be voided

and you will repay the full amount of the cost of repairs to the Bureau of Indian Affairs at the time of settlement.

(c) *Category C.* You are eligible to receive a modest (see Table A to this part, Occupancy and Square Footage Chart) replacement home, if:

(1) You are the owner of the dwelling in which you are living;

(2) The dwelling in which you are living cannot be brought to applicable code standards within the Category B cost limit of $35,000; or you do not own a home but have ownership of sufficient land suitable for housing, with adequate ingress/egress rights; and

(3) You sign a written agreement that if you sell the house within the first ten (10) years from the date of ownership, the grant is voided and you will repay the full amount of the cost of the house to the Bureau of Indian Affairs at the time of settlement. If you sell the house after the first ten years, you can retain ten (10) percent of the original cost of the house per year, beginning in the eleventh year, with the remaining amount payable to the Bureau of Indian Affairs. If the sale occurs twenty (20) years or more after the date of ownership, you will not have to make repayment.

§ 256.8 Who administers the Housing Improvement Program?

The Housing Improvement Program is administered by a servicing housing office operated:

(a) By a tribal housing office under a Public Law 93–638 contract or a self-governance annual funding agreement; or

(b) By the Bureau of Indian Affairs.

§ 256.9 How do I apply for the Housing Improvement Program?

(a) First, you must obtain an application, BIA Form 6407, and a Privacy Act Statement from your nearest servicing housing office.

(b) Second, you must complete and sign BIA Form 6407 and the Privacy Act Statement.

(c) Third, you must submit your completed application and signed Privacy Act Statement to your servicing housing office. Submission to the nearest BIA housing office does not preclude tribal approval of the application.

(d) Fourth, you must furnish documentation proving tribal membership. Examples of acceptable documentation include a copy of your Certificate of Degree of Indian Blood (CDIB) or a copy of your tribal membership card.

(e) Fifth, you must provide proof of income from all members of the household.

(1) You must submit *signed* copies of current 1040 tax returns from all members of the household, including W–2's and all attachments.

(2) You must provide proof of all other income from all members of the household. This includes unearned income such as social security, aid to families with dependent children (AFDC), retirement and unemployment benefits.

(3) If you or other household members did not file a tax return, you must submit a signed, notarized statement explaining why a tax return was not filed.

(f) Sixth, you must furnish a copy of your trust income statement, such as for royalty and lease monies, from your home agency. If you do not have an account, you must ask your agency to provide a statement to that effect.

(g) Seventh, you must provide proof of ownership (sole possessory interest) of the residence and/or land:

(1) For fee property, you must provide a copy of a fully executed Warranty Deed, Gift Deed, or other exclusive possessory agreement, which is available at your local county court house; or

(2) For trust property, you must provide a copy of certification from the Agency Realty Office; or

(3) For tribally-owned land, you must provide a copy of a properly executed tribal assignment; or

(4) For multi-owner property, you must provide a copy of a properly executed lease of not less than twenty-five (25) years.

(h) Eighth, you must furnish a copy of a map and a letter from an official source indicating whether your residence and/or land is in an area having special flood hazards:

(1) If your land is held in trust, you must obtain this information from your servicing housing office.

(2) If your land is fee land, you must obtain this information from the county in which your land is located.

§ 256.10 What are the steps that must be taken to process my application for the Housing Improvement Program?

(a) The servicing housing office must review your application for completeness. If your application is incomplete, it will be returned to you along with a written explanation and advice on how to complete and resubmit your application.

(b) The servicing housing office will use your completed application to determine if you are eligible for the Housing Improvement Program.

(1) If you are found ineligible for the Housing Improvement Program or otherwise do not qualify for the program, the servicing housing office will advise you in writing within 45 days of receipt of your completed application. Your application may be placed in a file with the applications of other ineligible applicants for a period of not less than two (2) years. Your application may be used to develop workload and housing needs information by the servicing housing office.

(2) If you are found eligible for the Housing Improvement Program, the servicing housing office will inform you in writing within 45 days of receipt of your completed application.

(c) If you are found eligible for the Housing Improvement Program, the servicing housing office will assess your application for need, according to the factors and numeric values shown in Table B to this part.

(d) Based on the total numeric value assigned to each application, the servicing housing office will develop the List of Eligible Housing Improvement Program Applicants (LEHIPA), ranked in order of need, from highest to lowest. In the case of a tie, the family with the lower income will be served first.

(e) The servicing housing office will develop and include on the LEHIPA the estimated cost of improvements, repairs or replacement for each application.

(f) The servicing housing office will compare the LEHIPA with the total amount of funds available for the program. Starting with the most needy applicant, the amount of available funds is reduced by the amount of estimated, allowable costs to improve, repair or replace the applicant's dwelling. This process is repeated for the next applicant on the list until there are no more funds.

(1) The servicing housing office will advise you in writing within 45 days of completion of the LEHIPA whether funds are available for the improvement, repair or replacement of your dwelling.

(2) If funds are available to meet the estimated cost of improvement, repair, or replacement of your dwelling, the servicing housing office will identify your application as "active" on the LEHIPA.

(3) If there are no available funds for improving, repairing or replacing your dwelling, your application will be identified as having "no available funds" on the LEHIPA.

(g) Your application will be held for an indefinite period of time during which your servicing housing office will request, in writing, annual written confirmation from you that your application is still accurate.

(1) Your written confirmation will permit your application to be included in the next annual ranking of eligible applicants.

(2) Your servicing housing office will advise you in writing and provide written explanation should you need to submit a new or updated application.

(3) Should your circumstances change appreciably during the time that your application is pending funding, you are encouraged to submit an updated application at your earliest convenience.

(h) Your servicing housing office will prepare an annual report identifying construction work undertaken during the fiscal year and related construction expenditures. The annual report is due on October 15 of each year for fiscal year tribes and on January 15 of each year for calendar year tribes. The report, at a minimum, will contain:

(1) Number of Eligible Applicants;

(2) Number of Applicants Provided Service;

(3) Names of Applicants Provided Service;

(4) For Each Applicant Provided Service:

(i) Date of Construction start;

(ii) Date of Construction Completion, if applicable;

(iii) Cost; and.

(iv) HIP Category.

§ 256.11 How long will I have to wait for the improvement, repair, or replacement of my dwelling to be done?

The length of time that it takes to accomplish the work to be done on your dwelling is dependent on:

(a) Whether funds are available;

(b) The type of work to be done; and

(c) The climate and seasonal conditions where your dwelling is located.

§ 256.12 Who is responsible for identifying what work will be done on my dwelling?

The servicing housing office is responsible for identifying what work is to be done on your dwelling or whether your dwelling will be replaced.

§ 256.13 What will the servicing housing office do to identify what work is to be done on my dwelling?

(a) First, a trained and qualified representative of your servicing housing office must visit your dwelling to identify what improvements or repairs are to be done under the Housing Improvement Program. The representative must ensure that flood, National Environmental Protection Act (NEPA) and earthquake requirements are met.

(b) Second, based on the list of improvements or repairs to be done, the representative must estimate the total cost of improvements or repairs to your dwelling. Cost estimates must be based on locally available services and product costs, or other regional-based, industry-recognized cost data, such as that provided by the MEANs or MARSHAL SWIFT. If the dwelling is located in Alaska, documented, reasonable and substantiated freight costs, in accordance with Federal Property Management Regulations (FPMR 101–40), not to exceed 100% of the cost of materials, can be added to the cost of the project.

(c) Third, the representative must determine which Housing Improvement Program category the improvements to your dwelling meet, based on the estimated cost of improvements or repairs. If the estimated cost to repair your dwelling is $35,000 or more, the representative must approve your dwelling for replacement.

(d) Fourth, the representative must develop a detailed, written report, also called "bid specifications," that identifies what and how the improvement, repair and construction work is to be accomplished at the dwelling.

(1) When the work includes new construction, the "bid specifications" will be supplemented with a set of construction plans. The plans must not exceed the occupancy and square footage criteria identified in Table A of this part, Occupancy and Square Footage Chart. The plans must be sufficiently detailed to provide complete instructions to the builder for the purpose of construction.

(2) "Bid specifications" are also used to inform potential bidders of what work is to be done.

§ 256.14 How will I be advised of what work is to be done?

You will receive written notice from the servicing housing office of what work is being scheduled under the Housing Improvement Program. You will be requested to concur with the scheduled work by signing a copy of the notice and returning it to the servicing housing office. No work will be started until the signed copy is returned to the servicing housing office.

§ 256.15 Who performs the improvements, repairs, or replacement of my dwelling?

Independent repair and construction trades persons and home building contractors will perform the improvements, repairs or replacement of your dwelling.

§ 256.16 How are these repair or construction trades persons and home building contractors selected and paid?

(a) The servicing housing office must provide the prepared "bid specifications," also called a statement of work, to the local Bureau or tribal contracting office. The office will use the statement of work to advertise the work. Advertising will be accomplished by two or more of the following means: local or national newspapers; various tribal publications; physical or electronic bulletin boards; any other generally-recognized advertising media.

(b) Based on the statement of work, interested parties are invited to bid on the job.

(c) The winning bidder will be selected by the local Bureau or tribal contracting office, after technical review by and written recommendation from the servicing housing office. Prior to selection, bidders must be determined to be qualified contractors capable of completing the contract as advertised.

(d) Payments to the winning bidder are negotiated in the contract. Payments are based on specified delivery of services.

(1) Partial payments will not exceed 80 percent of the value of the completed work.

(2) Final payment will be made after final inspection and after all provisions of the contract have been met, including punch-up items.

§ 256.17 Will I have to vacate my dwelling while repair work or replacement of my dwelling is being done?

(a) You will be notified by the servicing housing office that you must vacate your dwelling only if:

(1) It is scheduled for major repairs requiring that all occupants vacate the dwelling for safety reasons; or

(2) It is scheduled for replacement which requires the demolition of your current dwelling.

(b) If you are required to vacate the premises for the duration of the construction, you are responsible for:

(1) Locating other lodging;

(2) Paying all costs associated with vacating and living away from the dwelling; and

(3) Removing all your belongings and furnishings prior to the scheduled, beginning work date.

§ 256.18 How can I be sure that the work that is being done on my dwelling meets minimum construction standards?

(a) At various stages of construction, a trained and qualified servicing housing office representative or building inspector will review the construction to ensure that it meets applicable minimum construction standards and

building codes. Upon completion of each stage, further construction is prohibited until the inspection occurs and approval is granted.

(b) Inspections are, at a minimum, made at the following stages of construction:

(1) Footings;

(2) Closed in, rough wiring and rough plumbing; and

(3) At final completion.

§ 256.19 How will I be advised that the repair work or replacement of my dwelling has been completed?

You will be advised in writing by the servicing housing office that the work has been completed in compliance with the project contract. Also, you will have a final walk-through of the dwelling with your servicing housing office representative. You will be requested to verify that you received the notice of completion of the work by signing a copy of the notice and returning it to the servicing housing office representative.

§ 256.20 How many times can I receive improvements, repairs, or replacement services under the Housing Improvement Program?

(a) Under Category A you can receive services under the Housing Improvement Program more than one (1) time, for improvements to the dwelling in which you are living to improve the safety and sanitation of the dwelling:

(1) For not more than a total cost of $2,500; and,

(2) For not more than one dwelling; and,

(b) Under Category B, after October 1, 1986, you may receive services one (1) time, for repairs to the dwelling that you own and occupy that requires not more than $35,000 to make the dwelling meet applicable building code standards; or,

(c) Under Category C, after October 1, 1986, you may receive services one (1) time, for a modest replacement home.

§ 256.21 Will I need flood insurance?

You will need flood insurance if your dwelling is located in an area identified as having special flood hazards under the Flood Disaster Protection Act of 1973 (Public Law 93–234, 87 Stat. 977). Your servicing housing office will advise you.

§ 256.22 Is my Federal Government assisted dwelling eligible for services under the Housing Improvement Program?

No. Housing purchased with Federally subsidized funds are not eligible for services under the Housing Improvement Program.

§ 256.23 Are mobile homes eligible for services under the Housing Improvement Program?

No. A mobile home with an integral steel frame, also referred to as a manufactured home, is not eligible for any services under the Housing Improvement Program.

§ 256.24 Can Housing Improvement Program resources be supplemented with other available resources?

Yes. Housing Improvement Program resources may be supplemented through other available resources for the purpose of:

(a) Increasing the number of Housing Improvement Program recipients. Supplemental funds cannot be used to increase Housing Improvement Program limits or the scope of an individual project; or

(b) Increasing the basic benefits derived from the Housing Improvement Program, such as, but not limited to, providing sanitation facilities, water or road access.

§ 256.25 What can I do if I disagree with actions taken under the Housing Improvement Program?

You may appeal action or inaction by an official of the Bureau of Indian Affairs, in accordance with 25 CFR part 2. You may appeal action or inaction by tribal officials through the appeal process established by the servicing tribe.

TABLE A TO PART 256.—OCCUPANCY AND SQUARE FOOTAGE CHART

Number of occupants	Number of bedrooms	Total house square footage (maximum)
1–4	2	900
5–7	3	1050
8+	14	[1]1200

[1] Adequate for all but the very largest families.

TABLE B TO PART 256.—PRIORITY RANKING FACTORS

Factor—Ranking factor and definition	Ranking descriptors	Point descriptors
1. Annual Household Income	Income/ 125%/FPIG* (% of 125% of FPIG).	Points (Maximum=40)
• Must include income of all persons counted in Factors 2, 3, and 4	0–25	40
	26–50	30
	51–75	20
• Income includes earned income, royalties, and one-time income	76–100	10
	101–125	0
2. Aged Persons	Years of Age	Points
• For the benefit of persons age 55 or older; and	Less than 55	0
• Must be living in the dwelling	55 and over	1 point per year of age over 54
3. Handicapped Individual	% of Handicap (A%+B%/2)	Points (Maximum=20)
• Any one (1) handicapped person living in the dwelling	100%	20
(The percentage of handicap must be based on the average (mean) of the % of disabilities identified from two (2) sources (A+B) of statements of condition which may include a physician's certification, Social Security or Veterans Affairs determination, or similar determination.).	or less than 100%.	10
4. Dependent Children	Dependent Child (Number of Children).	Points (Maximum=5)

TABLE B TO PART 256.—PRIORITY RANKING FACTORS—Continued

Factor—Ranking factor and definition	Ranking descriptors	Point descriptors
• Must be under the age of 18 or such other age established for purposes of parental support by tribal or state law (if any).	1	0
	2	1
	3	2
• Must live in the dwelling and not be married	4	3
	5	4
6 or more	5.	

*FPIG means Federal Poverty Income Guidelines

Dated: June 17, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–16673 Filed 7–12–96; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 430

[FRL–5535–5]

RIN 2060–AD03 and 2040–AB53

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards: Pulp, Paper, and Paperboard Category; National Emission Standards for Hazardous Air Pollutants for Source Category: Pulp and Paper Production; Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: On December 17, 1993, EPA proposed standards to reduce the discharge of water pollutants and emissions of hazardous air pollutants from the pulp, paper, and paperboard industry (58 FR 66078). This document describes the Agency's goals for environmental improvement in this industry, announces a framework for the final wastewater standards, and presents the preliminary results of detailed analyses for a portion of this industry.

DATES: Comments on this notice are solicited and will be accepted until August 14, 1996. Comments are to be submitted in triplicate, and also in electronic format (diskettes) if possible.

ADDRESSES: Comments are to be submitted to Mr. David Hoadley at the following address: Engineering and Analysis Division (4303), EPA, 401 M Street, SW., Washington, DC 20460.

The framework and preliminary results of detailed analyses being announced today are based on data and information in the EPA Water Docket at EPA Headquarters at Waterside Mall, room M2616, 401 M Street, SW, Washington, DC 20460, telephone (202) 260–3027. The Docket staff requests that interested parties call for an appointment before visiting the Docket. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For questions regarding wastewater standards, contact Mr. Donald Anderson at the following address: Engineering and Analysis Division (4303), EPA, 401 M Street, SW., Washington, DC 20460, telephone number (202) 260–7189, or Mr. Ronald Jordan also at this address, telephone number (202) 260–7115. For questions regarding air emissions standards, contact Ms. Penny Lassiter, Emissions Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–5396.

Contents of This Notice

I. Summary of Notices for this Regulation
II. EPA's Long-Term Environmental Goals
III. Anticipated Schedule for Issuing Final Wastewater Standards
A. Schedule for Proposed Bleached Papergrade Kraft and Soda and Proposed Papergrade Sulfite Subcategories
B. Scheduled for Proposed Dissolving Kraft and Dissolving Sulfite Subcategories
C. Schedule for the Remaining Proposed Subcategories
IV. Post-Proposal Data Gathering
V. Regulatory Framework and Preliminary Results
A. Proposed Bleached Papergrade Kraft and Soda Subcategory
1. Preliminary Conclusion Regarding Technology Basis for BAT
2. Incentives for Further Environmental Improvements
3. Technology Options for BAT
4. Framework for PSES
5. Pollutant Parameters
6. Best Management Practices
7. Costs for Options A and B
8. Effluent Reduction Benefits
9. Revised Effluent Limitations
a. Changes to Statistical Methodology
b. Revised Effluent Limitations Being Considered
10. Conventional Pollutant Limitations (BPT and BCT)
11. Technology Options for NSPS
12. Revised Economic Impact Results
a. Revisions to the Economic Analysis
b. Economic Impacts of BAT Options A and
c. Cost-Effectiveness
B. Proposed Papergrade Sulfite Subcategory
1. Preliminary Conclusions Regarding Technology Basis for BAT
2. Technology Options for BAT
3. Costs
4. Effluent Reduction Benefits
5. Revised Effluent Limitations for BAT and PSES
6. Conventional Pollutant Limitations
7. Technology Options and Revised Effluent Limitations for NSPS
8. Economic Impacts
a. Costs and Impacts
b. Cost-Effectiveness
VI. Environmental Assessment
VII. Best Management Practices
VIII. Pretreatment Standards
IX. Implementation Issues
A. Permit Limits for Multiple Subcategory Mills
B. New Sources
C. Monitoring
D. BMPs as NPDES Permit Special Conditions
E. Relationship Between the Cluster Rules and Project XL
F. Summary of Changes to Methods for Analysis of Pulp and Paper Industry Wastewaters
1. Method 1624, Volatiles by Purge-and-Trap and Isotope Dilution GC/MS
2. Method 1650, AOX by Adsorption and Coulometric
3. Method 1653, Chlorophenolics by In-Situ Derivatization and Isotope Dilution GC/MS
4. Method NCASI Technical Bulletin No. 253, Color
G. Regulatory Flexibility Analysis
X. Incentives for Further Environmental Improvements
A. Advanced Technology Tiers
1. Definition of Incentives-Related BAT Limitations or NSPS by Tier
a. Tier I BAT Limitations
b. Tier II BAT Limitations and NSPS
c. Tier III BAT Limitations and NSPS
2. Basis for Incentives-Related BAT Limitations and NSPS
3. Legal Authority to Establish Incentives-Related BAT Limitations and NSPS
B. Incentives Available Prior to Achievement of Incentives-Related BAT
1. Extended Compliance Schedules

C. Incentives Available After Achievement of Advanced Technology BAT Limitations and NSPS
1. Greater certainty regarding permit limits and requirements
2. Reduced effluent monitoring
3.Reduced penalties
4. Reduced inspections
5. Public recognition programs
6. Fast-track permit modification
D. Solicitations of Comments on Incentives Program
E. Alternative Incentives Programs and Provisions Suggested by Stakeholders

I. Summary of Notices for This Regulation.

Today's notice announces the Agency's current thinking, based on preliminary detailed evaluation of the supplemented record and stakeholder discussions, regarding the technology bases to be considered for setting final effluent limitations and standards for a portion (i.e., certain subcategories) of this industry. These subcategories are the proposed bleached papergrade kraft and soda and papergrade sulfite subcategories. Today's notice continues the public review and participation process that began with the proposed rulemaking and continued with additional notices.

On December 17, 1993 (58 FR 66078), EPA proposed integrated air and water rules that included limitations and standards to reduce the discharge of toxic, conventional, and nonconventional pollutants in wastewaters and emissions of hazardous air pollutants from the pulp, paper, and paperboard industry. On March 17, 1994 (59 FR 12567), EPA published a correction notice to the proposed rules and extended the comment period to April 18, 1994.

In the preamble to the proposed rules, EPA solicited data on various issues and questions related to the proposed effluent limitations guidelines and standards and air emissions standards. The Agency received and added new material to the Air and Water Dockets. In a notice of data availability published on February 22, 1995 (60 FR 9813), EPA announced the availability of new data related to the proposed air emissions standards. Those new data are located in Air Docket A–92–40. In a second notice of data availability published on July 5, 1995 (60 FR 34938), EPA announced the availability of new information and data related to the proposed effluent limitations guidelines and standards. Those new data are located starting at Section 18.0 of the Post-Proposal Rulemaking Record, which is a continuation of the proposal record. The Post-Proposal Rulemaking Record is located in the Water Docket, which is updated periodically to include other new information and analyses. EPA did not solicit comment on the new air and water data in either notice. EPA solicits comment on the information and data announced in those prior notices, on the information and approach discussed in this notice, on other newly docketed information, and on the preliminary results of the detailed analyses presented in this notice.

On March 8, 1996, EPA published a **Federal Register** notice pertaining to the air portions of the proposed rules, announced the availability of supplemental information, and proposed additional sources to be covered by the rulemaking (61 FR 9383). The comment period for that notice closed on April 8, 1996.

The Agency has held numerous meetings on these proposed integrated rules with many of the stakeholders from the pulp and paper industry, including a trade association (American Forest and Paper Association, or AF&PA), numerous individual companies, consultants and vendors, environmental groups, labor unions, and other interested parties. Materials have been added to the Air and Water Dockets to document these meetings and to make available for public review new information received at those meetings.

II. EPA's Long-Term Environmental Goals

The Agency envisions a long-term approach to environmental improvement that is consistent with sound capital expenditures. This approach, which is presented in today's notice, stems from extensive discussions with a range of stakeholders. The effluent limitations and air emissions standards are only one component of the framework to achieve long-term environmental goals. The overall regulatory framework also includes incentives to reward and encourage mills that implement pollution prevention beyond regulatory requirements.

EPA's long-term goals include improved air quality, improved water quality, the elimination of fish consumption advisories downstream of mills, and elimination of ecologically significant bioaccumulation. An integral part of these goals is an industry committed to continuous environmental improvement—an industry that aggressively pursues research and pilot projects to identify technologies that work together appropriately to reduce, and ultimately eliminate, pollutant discharges for existing and new sources. A holistic approach to implementing these pollution prevention technologies would contribute to the long-term goal of minimizing impacts of mills in all environmental media by moving mills toward closed-loop process operations. Effective implementation of these technologies is capable of increasing reuse of recoverable materials and energy while concurrently reducing consumption of raw materials (e.g., process water, unrecoverable chemicals, etc.), and reducing generation of air emissions and hazardous and non-hazardous wastes. This combination of regulation, research, pilot projects, and incentives will foster continuous environmental improvement with each mill investment cycle.

III. Anticipated Schedule for Issuing Final Wastewater Standards

A. Schedule for Proposed Bleached Papergrade Kraft and Soda and Proposed Papergrade Sulfite Subcategories

EPA will promulgate final effluent limitations and standards for the Pulp, Paper, and Paperboard industrial category in stages consisting of several subcategories at a time. For the following reasons, EPA intends to promulgate final effluent limitations and standards for the proposed bleached papergrade kraft and soda subcategory and the proposed papergrade sulfite subcategory before promulgating such limitations and standards for any other proposed subcategory.

Under the consent decree entered in the case *Environmental Defense Fund and National Wildlife Federation* v. *Thomas*, Civ. No. 85–0973 (D.D.C.), and subsequently amended, EPA was required to use its best efforts to promulgate regulations addressing discharges of dioxins and furans from 104 bleaching pulp mills by June 17, 1995. Despite making its best efforts, EPA was not able to promulgate final effluent limitations and standards for those subcategories by this date. However, EPA believes that regulating the discharge of dioxins and furans from those mills remains a very high priority and for this reason plans to promulgate effluent limitations and standards for mills in the proposed bleached papergrade kraft and soda subcategory and the proposed papergrade sulfite subcategory before it finalizes limitations and standards for the other proposed subcategories.

B. Scheduled for Proposed Dissolving Kraft and Dissolving Sulfite Subcategories

EPA is evaluating the comments and preliminary new data affecting the proposed dissolving kraft and dissolving sulfite subcategories. The Agency anticipates that the final effluent limitations and standards for these subcategories will be based on different technologies than those that served as the basis for the proposed limitations and standards. For example, EPA has received data suggesting that oxygen delignification is not a feasible process for making some dissolving pulp products, particularly high grade products. In addition, some use of hypochlorite appears to be necessary to maintain product quality for some products. Affected companies have undertaken laboratory studies and mill trials to develop alternative bleaching processes and to document the effects on wastewater and air emissions. The Agency is working with these companies as their efforts progress.

For these reasons, EPA does not expect to promulgate final effluent limitations guidelines and standards for these proposed subcategories in 1996. Even in the absence of these limitations and standards, however, EPA anticipates that alternative bleaching processes developed as a result of these studies and trials should contribute to substantial reductions in the generation and release of pollutants, when compared to current operating practices. Among the pollutants EPA expects to be reduced are chlorinated organic compounds (e.g., chloroform) in air emissions and wastewaters. EPA encourages mills in these subcategories to undertake and expeditiously complete developmental work that will facilitate installation of alternative process technologies that achieve these pollution prevention goals.

C. Schedule for the Remaining Proposed Subcategories

EPA is assessing comments and data received since proposal for the remaining eight proposed subcategories. These eight proposed subcategories are: (1) Unbleached Kraft; (2) Semi-Chemical; (3) Mechanical Pulp; (4) Non-Wood Chemical Pulp; (5) Secondary Fiber Deink; (6) Secondary Fiber Non-Deink; (7) Fine and Lightweight Papers from Purchased Pulp; and (8) Tissue, Filter, Non-Woven, and Paperboard from Purchased Pulp. For example, EPA has received information from an industry-sponsored survey of secondary fiber non-deink mills. The Agency also has received additional data from mills in other proposed subcategories, including semi-chemical, unbleached kraft, and secondary fiber deink. EPA plans to promulgate effluent limitations guidelines and standards for these subcategories after promulgation of the final rules for the proposed bleached papergrade kraft and soda subcategory and the proposed papergrade sulfite subcategory.

IV. Post-Proposal Data Gathering

EPA has gathered a substantial amount of new information and data since proposal. Much of this information was collected with the cooperation and support of AF&PA and the National Council of the Paper Industry for Air and Stream Improvement (NCASI), and with the assistance of many individual mills in the U.S. EPA also has gathered additional information from pulp and paper mills primarily in Canada and Europe. Some of the new information and data were generated through field sampling and related efforts at individual mills in the U.S., Canada, and Europe. The following paragraphs summarize some of these data gathering efforts.

For the proposed bleached papergrade kraft and soda subcategory, EPA has new data for several technologies, including: complete chlorine dioxide substitution (without oxygen delignification); oxygen delignification (OD) or extended cooking plus complete chlorine dioxide substitution; extended cooking plus OD plus complete chlorine dioxide substitution; OD plus ozone bleaching plus complete substitution with chlorine dioxide; and totally chlorine-free (TCF) processes. EPA has a combination of bleach plant and end-of-pipe data for these technologies. (See the record at Document Control Number (DCN) 13951.)

For the proposed papergrade sulfite subcategory, EPA has new bleach plant data for elemental chlorine-free processes and TCF processes. EPA also has information on trials for alternative processes beyond existing technologies for products that cannot be made with TCF processes. For example, EPA has data from trials using OD plus complete chlorine dioxide substitution for selected products.

For the proposed dissolving kraft and dissolving sulfite subcategories, EPA has information on trials for alternative processes beyond existing technologies (e.g., reduction in use of hypochlorite, chlorine dioxide substitution with OD and without OD). EPA also has a preliminary evaluation of minimum hypochlorite usage necessary to maintain product quality.

EPA has new information on several topics related to compliance cost estimation, such as process information and data for selected bleached chemical pulp mills and costs of process technology unit operations at selected mills. This information has been used by the Agency to verify its cost curves. EPA also has new information on best management practices, recovery systems, and equipment availability.

V. Regulatory Framework and Preliminary Results

A. Proposed Bleached Papergrade Kraft and Soda Subcategory

For this subcategory and all others addressed in the proposal, the Agency proposed numerical effluent limitations guidelines and standards based on certain model technologies. Although EPA similarly will employ model technologies to calculate the final effluent limitations guidelines and standards, individual mills will be free to use any combination of technologies that will result in compliance with the final effluent limitations and standards.

1. Preliminary Conclusion Regarding Technology Basis for BAT

After re-evaluating technologies for mills in the proposed bleached papergrade kraft and soda subcategory, EPA has determined that two technology options identified in the proposal merit careful consideration for effluent limitations based on best available technology economically achievable (BAT) and pretreatment standards for existing sources (PSES). These options include both in-plant process technologies (e.g., chemical substitution) and end-of-pipe biological treatment technologies (e.g., activated sludge systems). The first of these options is complete (100 percent) substitution of chlorine dioxide for chlorine as the key process technology. The second of these options is the technology basis from proposal, which includes oxygen delignification (OD) or extended cooking with complete (100 percent) substitution of chlorine dioxide for chlorine as the key process technologies. Although the final detailed analysis and decisions are not yet complete, the post-proposal analysis to date has demonstrated to the Agency that the first option—complete (100 percent) substitution of chlorine dioxide—should be given equal weight as a possible technology basis for the BAT effluent limitations and for PSES for this proposed subcategory. EPA anticipates that comments on this notice will assist in the final decision.

EPA's preliminary evaluation of information and data for these two BAT/PSES options indicates that both options appear to reduce dioxins and furans in wastewaters to concentrations at or below the current analytical minimum levels. EPA also anticipates that both technology options would reduce discharges of dioxin such that the number of dioxin-based fish consumption advisories related to discharges from these facilities are likely to be substantially reduced or eliminated over time (depending on stream hydrodynamics of each site).

The incremental environmental benefits that the Agency can attribute to the use of extended delignification (e.g., OD or extended cooking) in addition to complete (100 percent) substitution include reduced chronic toxicity to some aquatic life species. This reduced chronic toxicity is probably attributable to a reduction in mass loadings of certain nonchlorinated compounds that are indirectly measured by the bulk analytical parameter chemical oxygen demand (COD). The reduced chronic toxicity also may reflect an incremental reduction in the potential for formation of dioxin (2,3,7,8 TCDD) and furan (2,3,7,8 TDCF), which at many mills is no longer measurable by current analytical methods at the end-of-pipe, and a reduction in mass loadings of all chlorinated compounds which can be measured by the bulk analytical parameter adsorbable organic halides (AOX).

EPA is continuing to carefully review and analyze the information and data pertinent to establishing effluent limitations guidelines and standards under the Clean Water Act. This includes an analysis of compliance costs and economic achievability. Results of these and other analyses, presented in preliminary form below, will be carefully considered along with comments in preparing the final rule.

2. Incentives for Further Environmental Improvements

EPA is considering including compliance and enforcement incentives in the final regulations to recognize the achievements of those mills that use technology options more advanced than the technology option ultimately selected as BAT. If EPA chooses as the basis for the final BAT limitations and PSES complete (100 percent) substitution of chlorine dioxide for chlorine, without OD or extended cooking, qualifying technologies might include processes employing extended delignification (e.g., OD, extended cooking), ozone-based bleaching sequences, totally chlorine-free (TCF) bleaching, process wastewater flow reduction (i.e., technologies which move mills toward closed loop operation), or other combinations of technologies. Many of these technologies also would qualify for incentives if EPA includes an extended delignification process as part of BAT. All of these technologies are already being implemented at some mills while further developmental work is ongoing to improve the performance of these technologies.

EPA is considering establishing two sets of incentives for further environmental improvements. The structure, with some variations, would apply regardless of the baseline BAT technology options ultimately selected. The first set of incentives would provide interested mills with additional time—up to 15 years beyond the effective date of these rules—to meet limitations more stringent than those based on the baseline BAT. This set of incentives would be available to any mill that voluntarily selects, as its BAT, technologies that can achieve more stringent effluent limits set forth in the incentives approach. The various incentives-related BAT limitations and standards would be codified in the Code of Federal Regulations and would represent BAT limitations for any mill choosing to participate in the incentives program. The second set of incentives, which could include various monitoring, enforcement, and public recognition elements, would be available only after compliance with the more stringent incentive-related BAT limits and standards is achieved. Any incentives adopted by EPA would be intended to encourage mills to investigate, develop, and implement technologies that are more advanced and that achieve more stringent limitations and standards than the technologies now being considered as the basis for baseline BAT limitations.

EPA has already received suggestions from several stakeholders on possible incentives. Details regarding the possible incentives are discussed in Section X of this notice. EPA solicits comments on this approach and invites specific ideas for incentives. EPA solicits comments on extending this approach to indirect dischargers. Such comments and suggestions would be considered as EPA formulates the final rule for the proposed bleached papergrade kraft and soda and papergrade sulfite subcategories.

3. Technology Options for BAT

As noted above, the post-proposal analysis focuses on two process technology options. The first option, referred to as Option A, employs conventional pulping processes followed by complete (100 percent) substitution for elemental chlorine by chlorine dioxide. This is an elemental chlorine-free (ECF) technology.

The second option, referred to as Option B, employs oxygen delignification (OD) and/or extended cooking (EC), followed by complete (100 percent) substitution which reduces the lignin content of unbleached pulp beyond that typically provided through conventional pulping processes. The effectiveness of pulping processes in removing lignin is indicated by the unbleached pulp kappa number. A kappa number typical of unbleached pulp from traditional pulping processes for softwoods is approximately 30 and for hardwoods is approximately 20. Extended delignification processes (such as OD or EC) typically produce unbleached softwood pulps with an approximate kappa number of 15 (approximately 10 for hardwoods). Option B also is an ECF technology.

In analyzing performance for Option B, the Agency is considering performance data for mills with OD and/or EC. This analysis differs from proposal when the Agency distinguished between extended delignification sequences with only OD or EC, and sequences with both OD and EC.

This notice presents EPA's preliminary analysis of data pertaining to Option A and compares it to Option B. In addition to obtaining and analyzing data pertaining to Options A and B, the Agency also has endeavored to obtain and analyze additional data for TCF process technologies as a possible BAT technology. TCF technologies typically incorporate OD while relying on peroxide and/or ozone, rather than chlorine-containing compounds, to accomplish pulp bleaching and brightening. Only one U.S. bleached papergrade kraft mill employs a TCF process, and it produces a market pulp of somewhat less than full market pulp brightness. Since proposal of this rule, the U.S. bleached papergrade kraft TCF mill has achieved higher brightness targets, but still less than full market brightness pulp of approximately 90 ISO. EPA obtained bleach plant performance data from this mill, but because the mill discharges to territorial seas under Section 301(m) of the Clean Water Act and thus does not employ secondary treatment, end-of-pipe data reflecting the performance of biological treatment were not available. European TCF mills have achieved at or near full market brightness pulps for limited periods. However, EPA consistently requested but obtained only limited process and pollutant removal performance data for TCF mills in Europe. The limited range of papergrade TCF products currently produced and sold in the U.S. market indicates that TCF technology is not yet available to make the full range of products produced by ECF or similar chlorine-based processes. Nonetheless, EPA continues to strongly encourage further development and implementation of TCF technologies and products. It is also probable that all TCF mills would qualify for the advanced technology incentives program described below; this should provide an opportunity to stimulate production and U.S. market share for TCF products.

The Agency considered other technology options in developing the proposed regulations for the proposed bleached papergrade kraft and soda subcategory. However, for reasons cited in the proposal, these technologies were not selected as the underlying process technologies for the proposed effluent limitations based on BAT, and have not been further pursued as options for the final rule.

4. Framework for PSES

In the proposal, EPA discussed three options for pretreatment standards for existing sources (PSES) for four proposed subcategories, including bleached papergrade kraft and soda. These options primarily concern end-of-pipe limitations for indirect dischargers. The conclusions in the discussion of BAT technology options also apply to technology options for bleach plant limits for indirect dischargers. See Section VIII of today's notice for a discussion of PSES options.

5. Pollutant Parameters

In the proposed regulations, EPA included both in-process (bleach plant) and end-of-pipe BAT limitations and PSES for mills that bleach chemical pulps covered in four proposed subcategories, including bleached papergrade kraft and soda.

The parameters proposed to be controlled at the bleach plant were 2,3,7,8 TCDD ("dioxin"), 2,3,7,8 TCDF ("furan"), 12 specific chlorinated phenolic compounds, and the volatile organic pollutants chloroform, methylene chloride, methyl ethyl ketone (MEK), and acetone. With respect to the proposed bleached papergrade kraft and soda and papergrade sulfite subcategories, EPA is considering codifying limits for all of these pollutants except for methylene chloride, MEK, and acetone. Based on EPA's most current data, the presence of these pollutants or the levels at which they are found does not appear to be directly related to any of the pollution prevention process technologies being considered (extended delignification processes, such as extended cooking or oxygen delignification, or bleaching process changes, such as complete substitution for elemental chlorine by chlorine dioxide and elimination of hypochlorite). Acetone and MEK generally are amenable to biological treatment, while other forms of end-of-pipe physical treatment, for the concentrations levels involved, are likely to be costly. Methylene chloride has been found to be a sample and laboratory contaminant in certain cases. Therefore, EPA cannot at this time identify a pollution prevention basis for setting effluent limitations and standards for these pollutants for these proposed subcategories.

The parameters proposed to be controlled at the end-of-pipe were adsorbable organic halides (AOX), chemical oxygen demand (COD), and, for the proposed bleached papergrade kraft and soda subcategory only, color. EPA received comments asserting that neither AOX nor COD is an appropriate parameter to be controlled because, among other reasons cited, these parameters are not directly related to environmental effects or effluent toxicity. Commenters also asserted that color should not be controlled because it is an aesthetic concern more appropriately addressed in individual permits based on applicable water quality standards.

EPA continues to believe that AOX is a valid measure of the total chlorinated organic matter in wastewaters resulting from the bleaching of pulps. Although statistically significant relationships between AOX and a broad range of specific chlorinated organic compounds have not been established, trends in concentration changes, however, have been observed between AOX and specific pollutants, including dioxin, furan, and chlorinated phenolic compounds. Even though dioxin and furan are no longer measurable at the end-of-pipe at many mills, the potential for formation of these pollutants continues to exist at pulp and paper mills as long as any chlorine-containing compounds (including chlorine dioxide) are used in the bleaching process. Final effluent AOX loading is an appropriate measure of the performance of in-process and end-of-pipe technologies in reducing the mass of chlorinated organic pollutants such as dioxin and furan found in wastewaters discharged by this industry. Thus, EPA expects that process changes and treatment technologies implemented to reduce AOX discharges at the end of the pipe will in turn further reduce the likelihood of the formation and discharge of these chlorinated organic pollutants. The analytical method for this bulk parameter is also very reliable and affords significant savings in monitoring costs over analytical methods for individual pollutants, which are substantially more expensive.

With regard to COD, the Agency notes that chronic sub-lethal aquatic toxicity has been found from wastewaters discharged by both bleached and unbleached pulp mills. Some evidence indicates that this toxicity is associated at least in part with families of non-chlorinated organic materials. Some of these materials are probably wood extractive constituents found in pulping liquors and are refractory or resistant to rapid biological degradation, and thus are not measurable by the five-day biochemical oxygen demand (BOD_5) analytical method. Several studies indicate that as wastewater COD is reduced, indices of these chronic toxicity effects also are reduced. In addition, final effluent COD loading is an appropriate measure of the performance of in-process and end-of-pipe technologies in reducing the mass of non-chlorinated pollutants found in wastewaters discharged by this industry. EPA also has found that COD is an appropriate parameter for use by mills for self-monitoring to evaluate the performance of spent pulping liquor spill prevention programs (BMPs), as noted in Section V.A.6 below. The analytical method for this bulk parameter also is very reliable and affords significant savings in monitoring costs over analytical methods for individual pollutants.

In evaluating comments on the proposal EPA has endeavored to obtain additional data that would supplement the current COD data base for setting final effluent limitations and standards. This supplemented data base would allow EPA to determine the need and, if appropriate, the basis for COD loadings allowances from other contributing sources on-site at mills, such as paper machines and semi-chemical pulping. EPA has received very limited (and, for some operations, insufficient) data to characterize COD loadings from these mill operations. Further, EPA has received only limited additional data to determine the combined performance of well designed and operated spill prevention programs (BMPs), process changes, and end-of-pipe biological treatment systems in removing COD. Moreover, data that are now available indicate a significant

range of values that may not accurately reflect the best performance of these technologies. (See the record at DCN 13958,) EPA solicits additional data that would further define the best performance of these technologies and provide a basis for EPA to assess the need for allowances for other on-site sources of COD and to develop such allowances if appropriate. EPA will evaluate any COD data and public comments received in response to this notice in establishing final limits and standards for this parameter for ECF and TCF mills. EPA also is considering whether it is appropriate that final COD limits and standards for ECF and TCF mills in the proposed bleached papergrade kraft and soda and papergrade sulfite subcategories should be deferred and developed concurrently with BAT COD limits that may be developed for other subcategories in a later rulemaking.

With regard to color, the Agency notes that some mills receive limitations for color in their National Pollutant Discharge Elimination System (NPDES) permits where stream water quality requires such limitations. The Agency is considering not promulgating a technology-based limit for color, but rather deferring control of color to individual permits where necessary to implement water quality standards under CWA Section 301(b)(1)(C).

6. Best Management Practices

In the proposed regulations, EPA included provisions for leak and spill prevention, containment, and control through best management practices (BMPs). The public comments on the proposal generally support the use of BMPs, although some commenters challenged the details of these provisions. EPA plans to incorporate BMPs into the final rule with substantial restructuring of the program that was proposed. EPA anticipates that the BMPs in the final rule will apply to mills in the proposed bleached papergrade kraft and soda and papergrade sulfite subcategories. EPA also anticipates that the revised BMPs also will apply, as proposed, to mills in other chemical pulping subcategories (e.g., semi-chemical, unbleached kraft). Additional details about BMPs are presented in Section VII of today's notice.

7. Costs for Options A and B

EPA has used additional cost information and data to update its costing methodology. EPA has used costs for recently installed equipment at U.S. mills as well as vendor information to update cost curves and model algorithms for both capital costs and operation and maintenance (O&M) costs. EPA has updated mill specific information and has estimated compliance costs for Options A and B. EPA used these revised cost estimates to estimate economic impacts; the revised economic results are discussed in Section V.A.12 of today's notice. Reports included in the record contain detailed cost information (see DCN 13953).

Much of the cost data EPA is considering was submitted by AF&PA. One of the most significant sources of differences in costs developed by AF&PA and EPA are the assumptions regarding the impact on recovery boiler operation. EPA has investigated the differing assumptions and revised its cost analysis for selected boiler capacity and related recovery cycle components. EPA's preliminary findings are that relatively inexpensive boiler upgrades will accommodate OD filtrate streams and other increases in heat load. EPA's analysis of each mill in this proposed subcategory indicates that boiler replacement will not be necessary with the installation of OD as defined in Option B.

The Agency's revisions to the costing methodology to reflect new information about the recovery cycle include, where appropriate, boiler upgrades, pulping process modifications, black liquor oxidation, and evaporator upgrades. Additional information about these cost components is presented in the record (see DCN 13959).

EPA also relied on new data and information to revise costs for BMPs. The new data were used to revise design assumptions and cost model algorithms for developing mill-specific costs for BMP upgrades. A significant increase in costs for BMPs resulted.

EPA also revised its analysis for changes in the cost of chemicals and other raw materials used in pulp mills and bleach plants. Costs for some of these raw materials and chemicals have increased while costs for other raw materials and chemicals have decreased. The net effect of these changes on total option costs varies among mills.

EPA updated its process information for each mill by reviewing comments on the proposed rule, information gathered by AF&PA and NCASI, other publicly available information, and by contacting mills directly. EPA considered process changes and upgrades or renovations either completed, underway, or committed to as of mid-1995. Costs in this notice are presented in 1995 dollars. EPA used the updated information for each mill, along with the costing methodology revisions, to determine the need for and the sizing of process change unit operations for Options A and B. The result of this mill-specific costing is summarized in Table 1.

TABLE 1.— CAPITAL, O&M, AND TOTAL ANNUALIZED COSTS FOR BAT AND BMPs

	Costs estimated at proposal for Option B (proposed Option 4)	Current cost estimates	
		Option A	Option B
Capital ($ million)	2,184	998	2,036
O&M ($ million/yr)	11.8	109	(7)
Total Annualized Costs:			
(million/yr)	223.2	140	155
($/UBMT)	7.50	4.78	5.27

8. Effluent Reduction Benefits

EPA has updated the calculation of effluent reduction benefits for each bleached papergrade kraft and soda mill to a new baseline of mid-1995. In addition, EPA has revised and simplified the methodology used to estimate that baseline. The baseline calculation methodology revisions along with details of the effluent reduction calculations are described in the record (see DCN 13592). The following highlights are changes from the proposal based on comments and new information.

First, EPA used data characterizing the generation of pollutants by a variety of pulping and bleaching technologies and information about the pulping and bleaching technologies at each mill and associated wastewater flow data to characterize the pollutant loads generated as of mid-1995. EPA also used data for individual mills from the NCASI 1994 Dioxin Profile (see DCN 13764) to estimate the effluent load of 2,3,7,8–TCDD and 2,3,7,8–TCDF. The revised baselines, which were found to be comparable to NCASI's industry-wide estimates, were used to calculate effluent reduction benefits, summarized in Table 2. These calculated reduction benefits are virtually the same for both options. It is interesting to note that the baseline annual discharge loading in 1992 was 70 grams/year of 2,3,7,8-TCDD and 341 grams/year of 2,3,7,8 TCDF (total of 411 grams/year). The reduction since 1992 to estimated discharge loadings of 3–4 grams/year for 2,3,7,8 TCDD and 3–4 grams/year for 2,3,7,8 TCDF in mid-1995 represents a reduction of 95 percent for 2,3,7,8 TCDD and 99 percent for 2,3,7,8 TCDF.

TABLE 2.—BASELINE DISCHARGES AND ESTIMATED REDUCTIONS OF SELECTED POLLUTANTS FOR BLEACHED PAPERGRADE KRAFT AND SODA MILLS

Pollutant parameter	Baseline discharge	Estimated reductions from baseline attributable to Option A	Estimated reductions from baseline attributable to Option B
2,3,7,8–TCDD (g/yr)	15	11	12
2,3,7,8–TCDF (g/yr)	93	89	90
AOX (kkg/yr)	35,000	24,700	30,600

9. Revised Effluent Limitations

a. Changes to Statistical Methodology. In developing the BAT limitations presented in today's notice, EPA included the new data discussed in Section IV to calculate the revised effluent limitations. EPA also made four changes to the proposed statistical methodology. First, EPA determined that limitations set at non-detect (ND) levels could be justified in some situations where the data included detected measurements. In the proposal, EPA had set ND limitations only when the data were all non-detected measurements or were detected below the minimum level of the analytical method. In today's notice, TCDF, chloroform, and AOX have numerical BAT limitations. The remaining analytes have ND limitations. Second, EPA determined that the value of half of the sample-specific detection limit should be substituted for all non-detect measurements. In the proposal, EPA had used a methodology for substituting a lower value for anomalously large detection limits. Third, EPA calculated bleach plant limitations for TCDF and chloroform by aggregating the acid and alkaline measurements prior to calculating the limitations. In the proposal, EPA had calculated separate production-normalized mass limitations for the acid and alkaline streams and then summed the two for an overall production-normalized mass bleach plant limitation. Fourth, EPA calculated a concentration-based limitation for TCDF. In the proposal, EPA had calculated a production-normalized mass-based limitation for TCDF. Fifth, EPA adjusted for autocorrelation in the AOX limitations by using BOD autocorrelation factors. In the preamble to the proposed rules, EPA requested additional AOX data that would allow for evaluating autocorrelation in daily AOX measurements. The AOX data that EPA has received are insufficient for the purpose of evaluating the autocorrelation in Options A and B. Adjustment for positive autocorrelation appropriately leads to larger numerical values for limitations. EPA believes that positive autocorrelation is likely to be present in daily measurements of AOX and has adjusted the AOX monthly average limitations using observed autocorrelation in BOD measurements. The numerical values of the AOX daily maximum and monthly average limitations for both options in today's notice are larger than the proposed limitations.

EPA has provided additional documentation in the record on the changes made to the BAT statistical methodology (see DCN 13963). The information added to the record also includes the time series analysis used in calculating the proposed BCT limitations; methodology used to aggregate data collected from different sample points; errata to the statistical support document; and the detailed results of the statistical analyses.

b. Revised Effluent Limitations Being Considered. Table 3 presents the proposed limitations and the preliminary results of revising bleach plant effluent limitations for Options A and B.

TABLE 3.—BLEACHED PAPERGRADE KRAFT AND SODA BLEACH PLANT LIMITATIONS

	Daily Maximum Limitation			Monthly Average Limitation[a]		
	As proposed for Option B	Option A	Option B	As proposed for Option B	Option A	Option B
TCDD	ND	ND	ND	N/A	N/A	N/A
TCDF (pg/l)	359	24.1	24.1	N/A	N/A	N/A
	(ng/kkg)					
Chlorinated Phenolics	ND[b]	ND	ND	N/A	N/A	N/A
Chloroform (g/kkg)	5.06	5.33	5.33	2.01	2.80[c]	2.80[c]

[a] Where the monitoring frequency was proposed to be once a month, the monthly average limitation would not be applicable (N/A).

[b] Limits > ND for two pollutants (trichlorosyringol and 2,4,6-trichlorophenol)(mg/kkg).
[c] Limits based on low air-flow low-flow (pressure or diffusion) pulp washers in bleach plants.

Table 4 presents the proposed limitations and the preliminary results of revising end-of-pipe effluent limitations for AOX. Additional data from two mills representing Option A were submitted by the industry but not with sufficient lead time to allow EPA to complete all analyses necessary to use that data in this notice. Results of analyses for these additional data sets will be incorporated as appropriate in the final rule. Listings of these additional data sets are provided in the record (see DCNs 13960, 13961).

TABLE 4.— BLEACHED PAPERGRADE KRAFT AND SODA END-OF-PIPE AOX

	As proposed for Option B	Option A (kg/kkg)	Option B (kg/kkg)
Long-Term Average	0.143	0.413	0.153
Monthly Average Limitation	0.156	0.448	0.162
Daily Maximum Limitation	0.267	0.769	0.236

Table 5 presents the proposed limitations and the preliminary results of revising end-of-pipe effluent limitations for COD. The revised limitations reflect additional data submitted by the industry since proposal. However, as noted previously in this notice, the supplemented database upon which the revised limitations are based includes only limited data to determine the need for and magnitude of end-of-pipe COD allowances for on-site sources other than pulping and bleaching (e.g., paper machines, semi-chemical pulping). Therefore, while the revised COD limitations presented in Table 5 have been developed reflecting only market pulp operations, EPA intends that final COD limitations reflect integrated mills, both ECF and TCF. Table 5 includes a range of possible LTA values for an integrated mill based on the market pulp LTA plus a range of paper machine allowances (presented as such due to limitations of currently available data). EPA also is concerned that the limited COD data currently available for market pulp operations may not represent the best performance of BMPs and end-of-pipe biological treatment systems. Additional details on these preliminary revised COD limitations and underlying data sets are provided in the record (see DCN 13958).

TABLE 5.—BLEACHED PAPERGRADE KRAFT AND SODA SUBCATEGORY END-OF-PIPE COD

	As proposed for Option B	Option A (kg/kkg)	Option B (kg/kkg)
Long-Term Average:			
Market Pulp	NA	58.2	25.5
Only Integrated Mills.	21.3	44–61[a]	31–48[a]
Monthly Average Limitation:			
Market Pulp	NA	45.6[b]	30.4[b]
Only Integrated Mills.	25.4	TBD	TBD
Daily Maximum Limitation:			
Market Pulp	NA	64.0[b]	42.7[b]
Only Integrated Mills.	35.7	TBD	TBD

[a] Market pulp plus range of values for paper machine allowances.
[b] Derived with same variability factors used for proposed limits.
TBD To Be Developed—insufficient data at this time.

In the proposal, the end-of-pipe "annual average" limitation for non-continuous dischargers was set equal to the long-term average. The daily maximum limitation applies to both continuous and non-continuous dischargers. The monthly average limitations apply only to continuous dischargers.

EPA is considering a change in the regulatory language defining non-continuous dischargers (see the general definitions section of the proposed regulation, at § 430.01 (k)). The proposed definition focuses on wastewaters stored for periods greater than 24 hours and released on a batch basis. Alternative language being considered by EPA describes the same non-continuous discharge patterns but focuses on wastewaters stored for periods as required by NPDES authorities and released on a variable flow or pollutant loading rate basis to protect receiving water quality. EPA solicits comments, particularly from NPDES authorities, on whether this change in emphasis is appropriate.

10. Conventional Pollutant Limitations (BPT and BCT)

EPA proposed to revise effluent limitations based on the best practicable control technology currently available (BPT) for all of the proposed subcategories, including bleached papergrade kraft and soda. EPA highlighted several controversial issues concerning the BPT limitations, their calculation, and their interpretation. EPA also presented a rationale, methodology, and related controversies for establishing limitations based on the best conventional pollutant control technology (BCT).

Although the Agency believes that it has the statutory authority to revise BPT, the Agency also believes that it has the discretion to determine whether to revise BPT effluent limitations guidelines in particular circumstances.

For the final rule, the Agency is currently considering exercising its discretion not to revise BPT. Where more stringent effluent limitations for conventional pollutants pass the BCT cost test, EPA would revise BCT in this rulemaking. EPA is likely to apply this same discretion and reliance on the BCT cost test to final rules for this entire industry, not just the proposed bleached papergrade kraft and soda subcategory. EPA solicits comment on this approach.

The Agency also is carefully reviewing comments claiming that certain of the data sets used to establish the proposed revised conventional pollutant effluent limitations do not accurately represent secondary biological treatment technology. EPA also has received a suggestion from AF&PA regarding a different approach for identifying mills having secondary treatment for purposes of performing the BCT cost reasonableness test. This approach suggests that EPA's secondary treatment regulations applicable to POTWs (see 40 CFR 133.101(m)) provide a basis for determining which mills performing at levels beyond secondary treatment should be excluded from EPA's BCT analysis. See the record at DCN 14047. If EPA were to adopt this approach, datasets for certain mills asserted to represent more stringent performance than secondary treatment would be removed from the conventional pollutant database and the ensuing BCT cost reasonableness test. EPA solicits comments on this possible approach, particularly with respect to the use of 40 CFR 133.101(m) for this purpose. In response, EPA has made some adjustments to the data sets used to characterize effluent loadings of conventional pollutants typical of secondary biological treatment as applied in the proposed bleached papergrade kraft and soda subcategory. Additional discussion of the BCT datasets and calculations are in the record (DCN 13954). Table 6 summarizes the changes to the long-term average performance for the BCT options resulting from these adjustments.

TABLE 6.—BLEACHED PAPERGRADE KRAFT AND SODA SUBCATEGORY LONG-TERM AVERAGE PERFORMANCE LEVELS FOR BCT OPTIONS

	BOD_5 Long-Term Average (kg/OMMT)	TSS Long-Term Average (kg/OMMT)
Proposal Option 1 (average of the best 90%)	2.65	4.46
Proposal Option 2 (average of the best 50%)	1.57	2.72
Revised Option 1 (average of the best 90%)	2.73	4.41
Revised Option 2 (average of the best 50%)	1.73	2.73

11. Technology Options for NSPS

For New Source Performance Standards (NSPS) in the proposed bleached papergrade kraft and soda subcategory, EPA is considering a minor revision to the proposed technology option. The likely technology basis will be Option B, described in Section V.A.3. This option includes extended delignification generally, including OD and/or extended cooking to produce softwood pulps with a kappa number of approximately 15 (approximately 10 for hardwoods) followed by complete (100 percent) substitution by chlorine dioxide for bleaching.

EPA's data do not indicate performance differences between the proposed NSPS option (then, Option 5) and the option being considered today. EPA plans to use performance data from both of these options to establish NSPS effluent limitations for priority and nonconventional pollutants for the final rule.

For NSPS for conventional pollutants, EPA proposed effluent limitations based on best demonstrated end-of-pipe secondary wastewater treatment. EPA used the treatment system with the lowest long-term average BOD discharge to characterize the best demonstrated performance. EPA's position is that the best existing performance can be achieved (or surpassed) by new facilities as demonstrated by recently built mills in Canada and Scandinavia. EPA has reviewed comments and the supplementary information gathered since proposal and is now considering the best existing performance as characterized by the average of the best 50 percent of the existing mills in the subcategory. Based on that review of the supplemented database and other information available to date, EPA believes this may be a more appropriate representation of the best existing performance for mills in the proposed bleached papergrade kraft and soda subcategory because the single best mill does not account for all sources of process-related variability expected in the entire subcategory, including raw materials (i.e., furnish), process operations, and final products.

12. Revised Economic Impact Results

a. Revisions to the Economic Analysis. The Agency plans to base its decisions regarding the economic achievability of BAT and other cost considerations on several revisions since proposal. First, the revised economic impacts for the proposed bleached papergrade kraft and soda subcategory will be based on the revised mill-specific engineering costs described in Section V.A.7 of today's notice.

EPA also has revised the economic methodology to account for changes that have occurred in the industry. Some of these changes are summarized below; additional discussion is in the record (see Section 27.0). At proposal, EPA used both a financial model, which estimated facility closures and production changes, and a market model, which was used to estimate price and production effects. Though not fully integrated, these models validated each other's results. Between 1989 and 1995, the industry underwent a period of intensive capital investment, some for pollution control, but mostly to increase production and to change product lines. During this period, a full industry cycle was completed, with pulp mill revenues peaking in 1988, falling through 1992, and reaching new heights in 1995 as the capacity expansions of 1988–1991 were fully exploited. This same period was also one of considerable industry consolidation, with almost 15 percent of the facilities being acquired by others in the industry. In addition, several facilities ceased operation, while several new ones opened. EPA plans to update its financial profile of facilities that have changed ownership and to use those updates in the economic analysis.

As a result of the industry's changes, EPA believes that the market model used at proposal—based on information obtained in the 1989 survey—no longer provides reliable economic information. EPA does not plan to update the market model, which would only be possible through a new survey of every mill and all product lines. Instead, EPA plans to incorporate some features of the market model, particularly product supply and demand elasticities, into the financial model.

The financial model will incorporate several additional changes to bring it up to date. For example, EPA is adjusting the start year of the model to 1996, which will reflect changes in prices, inflation, interest rates, and position in the pulp and paper industry cycle. Additionally, EPA plans to adjust the industry cycle used for the closure analysis in order to incorporate 1995 financial data. The revised cycle will be seven years instead of the six year cycle used at proposal. EPA also plans to adjust interest rates to reflect changes in industry borrowing costs. EPA used a 7 percent rate in the analyses reported in this notice.

EPA also plans to incorporate a cost pass-through or price change parameter into the model to improve estimates of the effects of closures on pulp and paper production. Although the results presented in today's notice assume no price increases (as assumed at proposal), this new feature will provide a more accurate estimate of the degree to which increased costs are passed through to consumers. Hence, various assumptions about cost pass-through will be considered when the Agency makes final decisions about economic impacts.

b. Economic Impacts of BAT Options A and B. The economic impact analysis will continue to use the three forecasting methods and the composite scoring technique used at proposal to predict mill closures. The revised economic impacts discussed in today's notice are based on an analysis of 85 bleached papergrade kraft and soda mills (76 direct dischargers and nine indirect dischargers). The compliance costs summarized here are expressed in 1995 dollars. The Agency has not yet completed its analysis of the combined impact of all components of the Cluster Rules (e.g., BAT, BCT, BMP and MACT) for this subcategory. The Agency plans to estimate economic impacts for the compilation of all compliance costs and will consider those results in making decisions for the final rules.

The total annualized costs (expressed as a sum of after-tax, or private, costs to each mill) for BAT and PSES for Option A are $140 million. One mill is predicted to close with associated losses of approximately 500 jobs (1.3 percent of bleached papergrade kraft and soda mills and 0.6 percent of subcategory employment).

For Option B, total annualized costs for BAT and PSES are $155 million. Three mills are predicted to close with associated losses of approximately 4,100

jobs (3.5 percent of bleached papergrade kraft mills and about 5 percent of subcategory employment).

c. Cost-Effectiveness. The Agency has revised the cost-effectiveness analysis for BAT and PSES to reflect the revised estimates of costs and pollutant reductions. In addition, the Agency has expanded its cost-effectiveness analysis since proposal to include two cost bases: pre-tax and after-tax compliance costs. The Agency uses pre-tax costs, which consider industry compliance costs as well as reductions in state and federal tax revenues occasioned by these costs, as a measure of direct social costs. After-tax costs are used to estimate the direct private costs to the regulated industry. While the after-tax cost basis was the only result presented for cost-effectiveness at proposal, both sets of results have been calculated and presented in the revised cost-effectiveness analysis. The additional set of results responds to comments and to policy discussions concerning cost-effectiveness ratios. Although AOX is likely to have an effluent limit in the final rule (see section V.A.5 of this notice), AOX reductions are not included in the cost-effectiveness ratios. This remains unchanged since proposal. Additional details about the cost-effectiveness analysis are in the record (See Section 26).

For BAT, the cost-effectiveness ratios using pre-tax compliance costs are $12 (§ 1981) per pound-equivalent removed for Option A and $11 per pound-equivalent removed for Option B. For PSES, the cost-effectiveness ratios are $12 per pound-equivalent removed for Option A and $16 per pound-equivalent removed for Option B, and $78 per pound-equivalent for the increment of Option A to Option B.

The cost-effectiveness ratios for Options A and B are very close and within the bounds of accuracy of EPA's costing analysis and data available for loadings estimates. The Agency solicits comment on whether these differences are meaningful for purposes of comparing the options. The relative costs for implementing Options A and B will differ among mills. The cost-effectiveness analysis is not presented as mill-specific results, but instead, the analysis is conducted on aggregate annualized compliance costs for direct and indirect dischargers in this subcategory.

When the costs of Options A and B are compared on a pre-tax, annualized basis, Option B is slightly less expensive than Option A for the sum of all direct dischargers in this subcategory. Such a result might appear counter-intuitive because Option B is a more capital intensive option. This outcome occurs because, compared to industry process technologies in place in 1995, implementing oxygen delignification reduces operating costs at certain mills. At some of these mills, the operation and maintenance cost savings of Option B are sufficiently large that they outweigh that option's higher capital costs.

In calculating annualized costs, the Agency used fixed assumptions about discount rates (OMB's preferred 7 percent real rate) and tax shields (including depreciation and deductions for operation and maintenance costs), both of which may differ among mills due to the firms' differing capital (borrowing) costs. The significantly greater capital costs for Option B may be unachievable within normal compliance periods for firms with higher borrowing costs or more limited access to credit.

The Agency notes that there may be additional impacts associated with mill closures, such as job losses and related displacement costs (see Record Section 17, DCN 08587, pp. 5–5 to 5–6) that are not part of the cost-effectiveness calculation, but which are considered by the Agency when evaluating the economic achievability of options.

B. Proposed Papergrade Sulfite Subcategory

EPA is considering revisions to the proposed papergrade sulfite subcategory. EPA received comments that criticized the proposed effluent limitations for their inapplicability to specialty grade pulps and to ammonium-based pulping processes. Commenters also asserted that the proposed technology basis, which was totally chlorine-free (TCF) bleaching, is not feasible for certain products and processes.

1. Preliminary Conclusions Regarding Technology Basis for BAT

EPA is carefully reviewing the demonstration and feasibility of proposed effluent limitations and standards for all mills in the proposed papergrade sulfite subcategory. Preliminary conclusions are that certain specialty grade pulps have not been produced using totally chlorine-free bleaching, and that totally chlorine-free bleaching has not been demonstrated to be universally applicable to pulps made by ammonium-based processes. Therefore, the Agency is considering segmenting this proposed subcategory to better reflect the product considerations, the variation of manufacturing processes, and the demonstration and feasibility of pollution prevention process changes. The segments being considered by EPA are:

(a) Production of pulp and paper at papergrade sulfite mills using an acidic cooking liquor of calcium, magnesium, or sodium sulfite.

(b) Production of pulp and paper at papergrade sulfite mills using an acidic cooking liquor of ammonium sulfite.

(c) Production of pulp and paper at specialty grade sulfite mills. Specialty grade sulfite mills are those papergrade mills producing specialty grade pulp characterized by a high percentage of alpha cellulose and high brightness. Typical end uses of such pulp include plastic molding compounds, saturating and laminating products, and photographic papers.

The technology basis for papergrade sulfite products made by the first segment (calcium-, magnesium-, and sodium-based processes) is likely to be totally chlorine-free bleaching, as proposed.

For the second segment (ammonium-based), EPA has received comments and data regarding the applicability of TCF bleaching. The Agency's preliminary conclusion regarding this information is that TCF bleaching is not demonstrated and may not be feasible for the full range of products produced by ammonium-based sulfite mills in the United States. This conclusion is based primarily on the greater difficulty in bleaching ammonium-based sulfite pulps (especially those pulps derived from softwood) without the use of chlorine-containing compounds compared to other sulfite pulps, and the inability to maintain product specifications for certain products within this segment using TCF bleaching. TCF bleaching has not been demonstrated for products with a high percentage of ammonium-based sulfite pulp that also require low dirt count and high strength. Laboratory scale data have been submitted by a firm producing such products indicating that such products can be produced with elemental chlorine-free (ECF) technologies.

EPA expects to promulgate bleach plant effluent limitations for dioxin, furan, and chlorinated phenolic compounds for the ammonium-based segment. EPA anticipates that it will reserve promulgation of bleach plant chloroform limitations and end-of-pipe AOX limitations for this segment until such time that sufficient performance data are available for a mill with the product quality concerns discussed above. EPA expects to have data that could serve as the basis of chloroform and AOX limits for this segment no later than mid-1997.

For the third possible segment (mills that produce specialty grade pulps), EPA has received comments and data that indicate key pulp and product characteristics have not been achieved using TCF bleaching technologies. Data from a firm producing specialty grade pulps indicate required product characteristics may be achievable using ECF bleaching technologies. These results are from limited laboratory scale trials.

The Agency is continuing to work with specialty sulfite pulp manufacturers as their research efforts progress and therefore does not expect to promulgate final effluent limitations guidelines and standards for this segment of the papergrade sulfite subcategory in 1996. EPA anticipates, however, that alternative bleaching processes developed as a result of these research efforts should contribute to substantial reductions from current operating practices in the generation and release of pollutants including, for example, air emissions of chloroform and discharge of chlorinated organic compounds in wastewaters. EPA encourages mills in this segment to undertake and expeditiously complete developmental work that will facilitate installation of alternative process technologies that achieve these pollution prevention goals at the earliest possible date.

2. Technology Options for BAT

For papergrade sulfite mills using an acidic cooking liquor of calcium, magnesium, or sodium sulfite, the TCF technology option being considered as the technology basis for limitations is oxygen and peroxide enhanced extraction, followed by peroxide bleaching. Although still TCF, the technology sequence is a change from proposal, when TCF was an oxygen stage with peroxide addition, followed by a peroxide bleaching stage. This change to the TCF bleaching sequence reflects the more common approach to TCF bleaching within the proposed papergrade sulfite subcategory, and also reflects the technology basis of the mill from which performance data have been collected.

For papergrade sulfite mills using an acidic cooking liquor of ammonium sulfite, the technology option being considered as the technology basis for limitations is complete (100 percent) substitution of chlorine dioxide for chlorine, peroxide enhanced extraction, and elimination of hypochlorite. This sequence reflects the results of laboratory trials showing the ability to produce the full range of products manufactured by mills in the ammonium segment, with acceptable final product characteristics.

For production of pulp and paper at specialty grade sulfite mills, technology development work is still ongoing. The most likely technology basis for this segment is oxygen delignification, complete (100 percent) substitution, and oxygen and peroxide enhanced extraction.

3. Costs

EPA revised its cost estimates for mills in the subcategory by using the revised bleaching sequences outlined above. EPA also has updated equipment cost curves and unit operating costs. The detailed basis of these revised cost estimates are provided in the record (DCNs 13920, 13947). The preliminary estimates of capital costs for mills in the first two segments of the papergrade sulfite subcategory are $57.9 million. The preliminary annual operating and maintenance costs are estimated to be $1.3 million per year. Total annualized costs are estimated to be $6.6 million per year. These estimates do not include costs for specialty grade sulfite mills.

4. Effluent Reduction Benefits

EPA has updated the calculation of effluent reduction benefits for each papergrade sulfite mill, adjusting the baseline to mid-1995. EPA used methodology similar to that used for the proposed bleached papergrade kraft and soda subcategory.

5. Revised Effluent Limitations for BAT and PSES

Table 7 presents the preliminary results of revising BAT effluent limitations for the proposed papergrade sulfite subcategory, based on TCF bleaching for the calcium-, magnesium-, and sodium-based segment and ECF bleaching for the ammonium sulfite segment. For a discussion of the pollutants EPA is considering addressing in its final rules for this proposed subcategory, see Section V.A.5 of today's notice.

TABLE 7.— PAPERGRADE SULFITE SUBCATEGORY BLEACH PLANT DAILY MAXIMUM LIMITATIONS

	Proposed	Calcium, magnesium, and sodium-based sulfite pulping TCF bleaching	Ammonium-based sulfite pulping ECF bleaching
TCDD (ng/l/kg)	none	none	ND
TCDF (ng/l/kg)	none	none	ND
Chlorinated Phenolics (mg/l/kg).	none	none	ND
Chloroform (g/l/kg).	none	none	TBD[a]
AOX (kg/l/kg)	0.1[b]	ND[b]	TBD[a]

[a] To Be Developed (TBD).
[b] End-of-pipe limitation.

Table 8 presents the proposed effluent limitations for COD. However, the supplemented database for the proposed papergrade sulfite subcategory has very limited data to characterize COD loadings either for on-site sources (including pulping and bleaching and other sources) or the performance of the best spill prevention (BMPs), process changes, and end-of-pipe biological treatment systems. As noted previously, EPA will consider additional data and comments received in response to this notice in developing final COD limits for TCF (calcium-, magnesium-, and sodium-based sulfite) and ECF (ammonium-based sulfite) mills in this subcategory. However, EPA also is considering deferring developing COD limits until BAT COD limits are developed for other subcategories in a later rulemaking.

TABLE 8.—PAPERGRADE SULFITE SUBCATEGORY END-OF-PIPE COD

	As proposed	Segment A[a] (kg/l/kg) TCF Bleaching	Segment B[b] (kg/l/kg) ECF Bleaching
Long-Term Average.	53.7	TBD	TBD
Monthly Average Limitation.	71.2	TBD	TBD
Daily Maximum Limitation.	144	TBD	TBD

[a] Segment A:Calcium-, magnesium-, and sodium-based sulfite pulping.

[a] Segment B:Ammonium-based sulfite pulping.

6. Conventional Pollutant Limitations

As is the case for the proposed papergrade kraft and soda subcategory, the Agency is considering promulgating more stringent effluent limitations for conventional pollutants for the proposed papergrade sulfite subcategory only if such limits pass the BCT cost test. EPA solicits comment on this approach. The revised conventional pollutant limitations would apply to the calcium-, magnesium-, or sodium-sulfite segment and to the ammonium sulfite segment, but not to the specialty grade segment. Characteristics of wastewaters from specialty grade sulfite mills are significantly different than wastewaters from papergrade sulfite mills in the other two segments. The Agency does not as yet have sufficient data to establish performance levels for conventional pollutants for the specialty grade segment.

EPA has updated and revised its analysis of performance levels in response to comments and additional data. These changes are detailed in the record (see DCN 13954). Table 9 summarizes the adjustments to the proposed BCT options and the revised BCT option.

TABLE 9.—PAPERGRADE SULFITE SUBCATEGORY[a] Long-Term Average Performance of Proposed BCT Options and Revised BCT Option

	BOD_5 Long-Term Average (kg/OMMT)	TSS Long-Term Average (kg/OMMT)
Proposal Option 1	4.97	5.46
Proposal Option 2	3.60	4.74
Revised Option	7.05	8.39

[a] Applicable to Calcium-, Magnesium-, and Sodium-based Sulfite Pulping Segment, and to Ammonium-based Sulfite Pulping Segment.

7. Technology Options and Revised Effluent Limitations for NSPS

The technology basis of NSPS for the segments of the proposed papergrade sulfite subcategory is likely to be the same as for the BAT limitations. For calcium-, magnesium-, and sodium-based sulfite mills, TCF-based technology is the likely basis for NSPS. TCF bleaching has not been demonstrated as applicable to the full range of products made by ammonium-based sulfite mills; therefore, ECF-based technology is likely to be the basis of NSPS for mills in this segment. EPA plans to reserve NSPS for specialty grade sulfite mills.

EPA proposed NSPS for conventional pollutants based on best demonstrated end-of-pipe secondary wastewater treatment. The treatment system with the lowest long-term average BOD_5 discharge was used to characterize the best demonstrated performance. EPA does not anticipate changing this methodology for developing NSPS for the proposed papergrade sulfite subcategory. EPA continues to maintain that any newly constructed mill will be able to achieve the same discharge load as the best existing mill. Because of the changes since proposal in the data sets characterizing typical treated effluent loads for conventional pollutants for the proposed papergrade sulfite subcategory, the best existing performance has changed, as summarized in Table 10. The end-of-pipe performance of the single best mill adequately represents the expected variability in raw materials, processes, and products for mills in this subcategory.

TABLE 10.—PAPERGRADE SULFITE NSPS CONVENTIONAL POLLUTANTS (LONG TERM AVERAGES)

	BOD_5 (kg/OMMT)	TSS (kg/OMMT)
Proposed NSPS	2.69*	2.99*
Revised NSPS	5.61	8.98

*Note that this is the average load of the best mill identified in the Technical Development Document for the proposed rule.

8. Economic Impacts

a. *Costs and Impacts.* The economic analysis for papergrade sulfite mills was revised and updated in a manner similar to that described in Section V.A.12 of today's notice for the proposed bleached papergrade kraft and soda subcategory.

Total annualized BAT and PSES costs for the papergrade sulfite subcategory are estimated to be approximately $6.6 million (post-tax). No mills would be expected to close as a result of these costs, with no related job losses.

b. *Cost-Effectiveness.* The following results are for the first two segments of the papergrade sulfite subcategory. Cost-effectiveness ratios are not yet available for each of these segments, reported separately.

For direct dischargers, the cost-effectiveness ratio using pre-tax-costs, is $10 per pound-equivalent removed. For indirect dischargers, the cost-effectiveness ratio is $284 per pound-equivalent removed.

VI. Environmental Assessment

At proposal, EPA estimated 2,3,7,8 TCDD ("dioxin") and 2,3,7,8 TCDF ("furan") concentrations in fish tissue and then used those concentrations to estimate individual cancer risks and non-cancer hazards from consuming contaminated fish. EPA calculated estimates for recreational and subsistence anglers using two water quality models. One is a simple dilution model that assumes complete mixing and bioavailability with contaminant accumulation in fish estimated by a bioconcentration factor (BCF). The other model is EPA's Dioxin Reassessment Evaluation Model (DRE), which estimates fish tissue concentrations by equilibrium partitioning between the fish tissue and contaminants adsorbed to the organic fraction of sediments suspended in the water column. EPA received comments asserting that EPA improperly employed the simple dilution model as a basis for predicting the risk from dioxin and furan discharges. The comments further suggest that EPA should only use the "more realistic" DRE model and not the simple dilution model to estimate human exposure.

After evaluating these comments and new data related to the water quality modeling for hydrophobic compounds, such as dioxin and furan, EPA is considering changing its methodology for estimating dioxin and furan concentrations in fish and for estimating individual cancer risks and non-cancer hazards for the final rule. EPA is considering not using the simple dilution model, which assumes complete mixing and bioavailability with contaminant accumulation in fish estimated by a bioconcentration factor, but instead using the DRE model. If EPA uses the DRE model, however, EPA would replace the Biota to Suspended Solids Accumulation Factor (BSSAF factor) of 0.09 (based on Lake Ontario data which is primarily historical sources) with a BSSAF factor of 0.2, a value considered more appropriate for ecosystems with ongoing impacts (see "Estimating Exposures to Dioxin-Like compounds" Volume III: Site-Specific Assessment Procedures; EPA 1994; DCN 13955).

EPA is still conducting its reassessment of dioxin and its impacts on human health and the environment. Results of that reassessment available prior to completing the Cluster Rules will be considered as appropriate. EPA also has made available the 1995 database update of the National Listing of Fish and Wildlife Consumption Advisories. See the record at DCN 14016, Section 20.3. This listing is PC-based and available to the public free of charge from the Internet through the following URL: HTTP://www.epa.gov/OW/OST/Tools.

VII. Best Management Practices

In the proposed regulations EPA included provisions for leak and spill prevention, containment, and control through best management practices (BMPs). EPA has received comments that generally support the use of BMPs. However, some commenters challenged the details of these provisions. EPA continues to believe that leak and spill prevention, containment, and control through BMPs yield not only increased environmental benefits but also improved efficiency of operations at pulp and paper mills. The Agency also intends that BMPs apply in the final rule both for direct and indirect discharging mills.

The Agency has assessed preliminarily the comments and data received on BMPs and has held detailed discussions with stakeholders regarding options for BMPs and associated costs. EPA received a substantial amount of additional information and data, including costs, through a survey conducted by AF&PA and NCASI. Based on the information and data received from mills that have implemented spill prevention and control programs, EPA has reformulated the scope of BMPs to focus on spent pulping liquor (i.e., black liquor and red liquor) spill control. The Agency is also restructuring BMP program requirements to allow for further flexibility in how BMPs are implemented to achieve meaningful prevention and control of leaks and spills of spent pulping liquors. The Agency has prepared and included in the record (DCN 13894) a document that incorporates EPA's preliminary revisions to its proposed BMP program.

In response to comments, this document also describes a management program being considered by EPA for monitoring the implementation of BMPs. The purposes of this requirement are: (1) To provide a framework for monitoring the performance and effectiveness of BMPs on a continuing basis; and (2) to establish an early warning system to detect trends in spent pulping liquor losses that might otherwise not be obvious from other sources. The program entails establishing upper operating control limits on a measure of organic loading at the influent to wastewater treatment or at another key location or locations in the mill sewer system, and responding to exceedances of those control limits with investigative and corrective actions, as appropriate. EPA does not intend that exceedances of the upper control limits will constitute violations of NPDES permits or pretreatment control mechanisms. Failure of the owner or operator to conduct the required monitoring or failure to conduct investigative or corrective actions when such limits are exceeded would constitute violations.

EPA believes, consistent with a comment received, that COD is among the best, if not the best, pulp mill wastewater characteristics to monitor to meet the requirements of this provision of the BMP regulation. The test method for COD is highly reproducible and can be run in a short period of time, unlike BOD_5. It also has the advantage of being responsive to losses of turpentine and soap, unlike conductivity which is not responsive to these materials. Accordingly, the revised BMP program incorporates COD as the control parameter to measure performance of pulping liquor spill controls. The Agency seeks comments on the revised approach to BMPs and related details, including costs. EPA also seeks comment on the management program described above, including its potential effectiveness and any implementation issues it might present, especially from a permit writer's perspective.

VIII. Pretreatment Standards

In the proposal, EPA discussed three options for pretreatment standards for existing sources (PSES) for the 13 indirect discharging facilities in four proposed subcategories, each of which contribute the majority of flow or pollutant loadings to a publicly owned treatment works (POTW). The option selected for proposal would have set PSES for these indirect dischargers for the same pollutants controlled by BAT for direct dischargers; the proposed standards would have applied at the point of discharge from the bleach plant and at the point of discharge to the POTW, depending upon the pollutant proposed to be regulated. EPA also solicited comment on whether pretreatment standards for BOD_5 and TSS were warranted to ensure that pass-through of these and other pollutants (e.g., AOX) did not occur.

For the proposed bleached papergrade kraft and soda subcategory and the proposed papergrade sulfite subcategory, EPA's record shows that both direct-discharging mills in those proposed subcategories and POTWs accepting wastewaters from pulp and paper mills in those proposed subcategories generally operate secondary biological treatment systems. Data now available to EPA suitable for characterizing treatment system performance at these POTWs still are quite limited. In general, the data provided by indirect-discharging facilities, POTWs, and other interested parties lack paired influent and effluent AOX, COD, and color data points, accompanying information concerning operations (at either the treatment system or related to pulping and bleaching process areas of the mills), analytical methods, and quality control/assurance (QA/QC) associated with sample collection, handling, and laboratory analysis. In addition, some commenters provided summary information unaccompanied by individual analytical data points, particularly for POTW influent. As a result, EPA has been unable to develop a complete and rigorous database for conducting a pass-through analysis. Nevertheless, EPA has used the limited information available to the extent possible in comparing pollutant reductions attained by direct-discharging mill treatment systems and by POTWs accepting similar wastewaters in evaluating the potential for pass-through to take place. Based on the limited data available for the proposed bleached papergrade kraft and soda and the proposed papergrade sulfite subcategories, it appears that secondary biological treatment systems at POTWs and direct-discharging mills generally achieve comparable reductions of BOD_5, TSS, AOX, COD, and color. (See the record at DCN 13956.) Thus, EPA has concluded preliminarily that the data reviewed for this analysis do not indicate pass-through of these pollutants is likely to occur at these POTWs. EPA solicits comments on this finding.

Accordingly, EPA anticipates that it will not promulgate national pretreatment standards for new or existing sources for BOD_5, TSS, AOX, COD, or color for the proposed bleached papergrade kraft and soda subcategory or the proposed papergrade sulfite subcategory. Any new data received on these pollutants, particularly for POTWs that did not submit data usable for this analysis, will be considered in preparing the final rules and will be placed in the record. Notwithstanding EPA's preliminary decision not to set PSES or PSNS for those pollutants for these subcategories, other regulatory authorities may determine, based on a site-specific review of treatment system performance, that pass-through of these or other pollutants does indeed occur and that locally imposed limits are appropriate.

Concerning the pollutants discharged from the bleach plant, EPA continues to

believe that sludge contamination occurs and therefore is likely to promulgate PSES and PSNS for the same pollutants controlled at the bleach plant by BAT limitations, as included in the proposal and as now being considered in this notice, for direct-discharging facilities. See Sections V.A and V.B, supra, for discussion of pollutants selected for BAT regulation at the discharge from the bleach plant.

IX. Implementation Issues

A. Permit Limits for Multiple Subcategory Mills

The Agency has structured the revised effluent limitations guidelines and standards to be used in a building block approach. This means that the applicable NPDES permit limitations for mills with production in more than one subcategory will be the sum of the mass loadings based on the appropriate production in each subcategory and the respective subcategory effluent limitations guidelines or standards. In some cases, such any BCT limitations for conventional pollutants, this may entail the use of two distinct subcategorization schemes, revised and current. Where the Agency has revised effluent limitations guidelines or standards, the appropriate production encompassed in the revised subcategories will be utilized for the calculation of mass limitations, with all remaining production categorized and mass loadings calculated according to the current subcategory scheme.

B. New Sources

In the proposed rule, EPA included definitions of types of facilities that would be considered new sources. EPA received comments that asserted that EPA had no basis for changing the definition of new sources as provided in National Pollutant Discharge Elimination System (NPDES) permit program regulations (found at 40 CFR 122.2 and 122.29). EPA is considering clarifying its definitions such that only new "greenfield" mills and new capacity increases at existing mills would be considered new sources. Any existing mills that renovate existing fiber lines at existing production levels for purposes of complying with either BAT or PSES effluent limitations or standards or any existing mills that voluntarily accept more stringent BAT limitations as part of the incentives program would not be considered new sources.

C. Monitoring

EPA proposed specific minimum monitoring requirements in the regulation (at § 430.02) with monitoring frequencies for pollutant parameters included in both bleach plant effluent limitations and end-of-pipe effluent limitations. EPA is considering retaining these minimum monitoring requirements as proposed at least for the two proposed subcategories covered by this notice, and possibly also for remaining bleaching subcategories to be covered in a later rulemaking. However, EPA acknowledges that this approach would be a change from past effluent guidelines practice where EPA issued only guidance with respect to monitoring. EPA therefore welcomes comment—particularly from permitting authorities—regarding the appropriateness of promulgating specific minimum monitoring requirements. EPA also acknowledges that specific minimum monitoring requirements may be at odds with the Agency's recent initiative to tailor monitoring requirements to particular circumstances, notably compliance records.

EPA has received a suggestion from the industry that if mills certify that elemental chlorine is not being used in bleaching operations (i.e., ECF—complete substitution with chlorine dioxide and elimination of hypochlorite), monitoring should not be required for dioxin, furan, or any other chlorinated organic pollutant parameters proposed to be regulated (i.e., AOX, chloroform, chlorinated phenolic compounds, etc.). EPA does not agree with the industry's assertion that substitution of chemicals alone (changing to and ECF process), without regard for operational controls, is sufficient to warrant such an approach. There are data available for ECF operations indicating, for example, that detectable concentrations of dioxin still can be generated in bleach plant effluents. Contrary to the industry's assertion, this finding reflects the need for careful control of chemical (e.g., chlorine dioxide) application rates. Further, chloroform concentrations in wastewater, and also air emissions, can be expected to exhibit considerable variability reflecting pulp washing and other operational practices. Therefore, without meaningful monitoring data to reflect a range of operational practices, as well as raw materials and final products, there is no assurance that changes in process technologies that are installed are being properly operated or that bleach plant limits or end-of-pipe limits are being achieved consistently.

D. BMPs as NPDES Permit Special Conditions

EPA proposed that specific BMP requirements be fully implemented within thirty months from the effective date of the final rules, separate from the normal NPDES reissuance process. This structure would be retained for indirect dischargers because the BMPs would be promulgated as part of PSES. For direct dischargers, however, EPA is now considering requiring implementation of BMPs as special NPDES permit conditions and to require implementation of the BMPs within thirty months from the effective date of the final rule or the date the mill's next NPDES permit is issued, whichever is later. However, EPA expects that the compliance date for implementation shall not extend beyond five years from the effective date of the final rule, because EPA expects NPDES permit for those mills to be reissued on a timely basis.

E. Relationship Between the Cluster Rules and Project XL

As described in the May 22, 1995 **Federal Register** notice (60 FR 27282), EPA is participating in the development of regulatory reinvention excellence and leadership (Project XL) pilot projects. Such projects would involve the exercise of regulatory flexibility by EPA in exchange for a commitment on the part of the regulated entity to achieve better environmental results than would have been attained through full compliance with all applicable regulations. One bleached papergrade kraft mill is participating in Project XL. Many of the incentives listed in Section X of this notice provide regulatory flexibility in exchange for superior environmental benefits. EPA solicits comments on how, if at all, project XL should be reflected in this rulemaking.

F. Summary of Changes to Methods for Analysis of Pulp and Paper Industry Wastewaters

The pulp and paper industry and other commenters have provided suggestions for improvement of methods for analysis of pulp and paper industry wastewaters. Where these suggestions are expected to have a positive effect on the reliability of analytical data produced, EPA will incorporate the suggestions into the final versions of methods incorporated by reference into the final rule to be promulgated at 40 CFR part 430. Methods for which changes are anticipated and a summary of these changes are given below. This summary is not intended to be all-inclusive, but to be indicative of the type of changes anticipated. Detailed revisions to these methods will be added to the record at a later date.

1. Method 1624, Volatiles by Purge-and-Trap and Isotope Dilution GC/MS

Suggested changes focused mostly on clarification of the language in Method 1624 rather than on substantive modifications of the method. These clarifications will be made when Method 1624 is revised, updated, and re-promulgated at 40 CFR Part 136. This update is expected in late 1996 or in 1997. No changes will be made to Method 1624 for promulgation of the pulp and paper industry Cluster Rules.

2. Method 1650, AOX by Adsorption and Coulometric Titration

EPA expects that changes will be made in Method 1650 as part of this rulemaking to improve the ease of use and the reliability of this method. Among the possible changes, EPA expects that the breakthrough specification will be adjusted based on data provided by the industry; that a 25-mL adsorption volume will be allowed, provided the sensitivity requirements in the method are met; that greater flexibility will be allowed in the apparatus cited in the method; that 2-mm columns only will be allowed; and that a minimum integration time of 10 minutes will be added to assure that all AOX is measured.

3. Method 1653, Chlorophenolics by In-Situ Derivatization and Isotope Dilution GC/MS

EPA expects that changes will be made to Method 1653 as part of this rulemaking to improve the reliability of the method and to lower costs of measurements. Among the possible changes, EPA anticipates lowering the spiking levels of the labeled compounds to reduce interferences with trace levels of the analytes of interest and to lower the cost of labeled compounds; allowing the use of solvents more appropriate to the particular analyte being dissolved; the addition of the labeled compounds to the sample prior to pH adjustment; and a reduction in method flexibility in certain critical areas.

4. Method NCASI Technical Bulletin No. 253, Color

Changes anticipated as part of this rulemaking are: Removal of extraneous tables; revision of text of interferences; use of a prefilter and/or centrifugation to reduce turbidity; and allowance of use of a buffer solution and prefiltration so long as these changes do not result in lower color values.

G. Regulatory Flexibility Analysis

At the time of proposal, EPA examined the potential economic impact of the proposed Cluster Rules on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., Pub. L. 96–354). See 58 FR 66077, 66154, (December 17, 1993). As part of this analysis, EPA estimated the economic impact of the proposed integrated regulatory alternative on small mills and small companies involved in pulp, paper and paperboard manufacturing. See 58 FR 66154. The analysis also presented the Agency's consideration of alternatives that might minimize the impacts of the proposed Cluster Rules on small entities. See 58 FR 66165. EPA did not analyze the alternative represented by Option A at proposal because it lacked the data and information necessary to perform that analysis. Based on the information and data EPA has received since proposal, EPA believes that Option A represents a significant alternative to the proposed BAT option. Because that alternative, if adopted, would afford more flexibility to small businesses than the proposed option and because the original analysis addressed what EPA regards as the most stringent set of regulatory alternatives, EPA believes that the original analysis continues to provide an adequate basis by which to evaluate the impact of the proposed Cluster Rules on small entities. Moreover, mills in the proposed bleached papergrade kraft and soda and papergrade sulfite subcategories typically are not small businesses, whereas the proposed Cluster Rules included other subcategories in which small businesses are more likely to be operating. As described earlier in this notice, these other subcategories will not be included in this initial phase of final rulemaking but in a later phase of rulemaking. For this reason, EPA believes that no further regulatory flexibility analysis is necessary at this time. However, EPA will perform a final regulatory flexibility analysis in compliance with all applicable laws at the time it promulgates the Cluster Rules.

X. Incentives for Further Environmental Improvements

As noted earlier in this notice, EPA's vision of long term environmental goals for the pulp and paper industry includes continuing research and progress toward environmental improvement. The Agency believes that individual mills could be encouraged to explore and install technologies that could achieve further pollutant reductions through a voluntary incentives program designed to complement the baseline BAT. This industry's participation in the 33/50 program and its progress toward reducing toxic discharges in advance of the proposed BAT revisions indicate that such an approach may be widely accepted and utilized by individual mills.

Further, EPA recognizes that technologies exist, and are currently employed by some mills, that have the ability to surpass the environmental protection that would be provided by compliance with limits and standards based on the final rules. These technologies include extended delignification (e.g., extended cooking and/or oxygen delignification) in conjunction with complete substitution (if Option A is selected), and TCF bleaching technologies. Some mills also are investigating and developing advanced technologies that achieve major reductions in water use and process wastewater flow through treatment and recycle of pulping and evaporator condensates and bleach plant filtrates to recovery systems.

EPA has received suggestions for an incentives program from a number of stakeholders. In addition to the suggestions EPA has incorporated into its preliminary incentives program, EPA also received ideas for other incentives; these ideas are summarized later in this notice. From these and other stakeholder suggestions, EPA has developed a preliminary program, presented below, that is intended to provide incentives for further long term environmental improvements. EPA is considering several types of incentives to encourage further environmental improvements by mills that have yet to decide on an approach to comply with BAT effluent limitations. Because mill-specific factors, including product specifications and existing equipment, may affect the technical approach taken or the environmental goal attainable by an individual mill, EPA is considering several tiers of performance-based incentives. The appropriate limits and standards for each of tier would be codified as an alternative BAT and, as appropriate, NSPS for any mill choosing to participate in the incentives program at that tier. Under this approach, greater incentives would be available for greater reductions in pollutant discharge.

EPA recognizes that there are mills in the proposed bleached papergrade kraft and soda subcategory that have already installed, have committed to install or may yet decide to install, advanced technologies that are achieving or have the potential to achieve effluent limitations more stringent than those

likely to be adopted in the final rules (particularly if Option A is selected). These mills would qualify for the incentives program, and the incentives would actually serve as rewards for actions already taken.

A key tenet of this program is that mills would voluntarily chose an incentives-related BAT/NSPS as the basis for their technology-based NPDES permit limits (e.g., inclusion in NPDES permits of AOX effluent limitations more stringent than those based on the baseline BAT as well as condensate and bleach plant wastewater flow reduction limitations) in order to qualify for these incentives. Mills would not be required to enter this program. A mill choosing not to accept incentives-related BAT limitations or NSPS would be subject to the baseline BAT limitations or NSPS would be subject to the baseline BAT limatations on NSPS of the type discussed in today's notice in Section V.

Any mill could voluntarily enter at any tier appropriate to its individual circumstances. Further, mills that enter either at Tier I or Tier II could decide, after making such a commitment in permits but before termination of the appropriate compliance period (i.e., not later than five years—Tier I, or not later than ten years—Tier II), to commit to the requirements of a more stringent tier (i.e., Tier II or Tier III). The limitations and standards corresponding to those tiers would then be BAT for that mill. Threshold requirements at Tier I being considered for mills to qualify would include unbleached pulp characteristics typical of extended delignification technologies (e.g., oxygen delignification) and recycle of pulp mill filtrates to recovery systems (for purposes of this discussion using Option A as the BAT baseline). For NSPS, the entry tier would probably be Tier II (as tentatively defined in this Notice), assuming that the baseline NSPS is codified as discussed in Section V.A.11 above.

Mills that operate a single fiber line and that achieve performance reflective of advanced technology on that line will be considered eligible as a whole mill for the incentives described below (except for operations outside of the pulp, paper and paperboard industrial category and the proposed bleached papergrade kraft and soda subcategory). At mills with more than one fiber line, only those fiber lines that achieve performance reflective of advanced technology performance standards will be eligible for the incentives described below.

A preliminary list of possible incentives along with the Agency's preliminary structure of these advanced technology program tiers follows below. This structure consists of three tiers that would apply if Option A is selected as the baseline BAT in the final rule.

A. Advanced Technology Tiers

1. Definition of Incentives-Related BAT Limitations or NSPS by Tier

EPA is considering including in the final regulation three tiers of BAT limitations and two tiers of NSPS applicable to the proposed bleached papergrade kraft and soda subcategory, each of which would be defined in the Code of Federal Regulations. In addition to the possible limitations and standards described below, each tier also would include as limitations and standards for other parameters the bleach plant limitations EPA is considering promulgating as part of the baseline BAT/NSPS.

a. Tier I BAT Limitations. To qualify for this tier, a mill would need to operate its advanced technology (AT) fiber line(s) to achieve a final effluent AOX long term average (LTA) of 0.30 kg/kkg. AT fiber lines must also achieve reduced lignin content in unbleached pulps as measured by a kappa number of 20 for softwoods and 13 for hardwoods. Finally, AT fiber lines must recycle to recovery systems all filtrates up to the point at which the unbleached pulp kappa numbers are measured (e.g., brownstock into bleaching).

b. Tier II BAT Limitations and NSPS. To qualify for this tier, a mill would need to operate its AT fiber line(s) to achieve a final effluent AOX LTA of less than 0.10 kg/kkg, and total pulping area condensate, evaporator condensate, and bleach plant wastewater flow of 10 m^3/kkg or less.

c. Tier III BAT Limitations and NSPS. To qualify for this tier, a mill would need to operate its AT fiber line(s) to achieve a final effluent AOX LTA of 0.05 kg/kkg, and total pulping area condensate, evaporator condensate, and bleach plant wastewater flow of 5 m3/kkg or less.

For each tier described above, EPA would also promulgate appropriate limitations (maximum monthly average and maximum for any one day) that account for variability around the long term average (LTA) limits presented above. See the record for discussion of limits and standards defining these tiers (DCN 13957).

2. Basis for Incentives-Related BAT Limitations and NSPS

For Tier I (if complete substitution is chosen as the baseline BAT), the BAT model technology would be that represented by BAT Option B. EPA is not selecting a model technology for Tiers II and III (under the present structure) because these Tiers are intended to reflect evolution of advanced technologies that cannot be specified today. However, EPA expects that those technologies would move mills toward minimum impacts and closed loop operations. EPA has chosen to use AOX as a performance standard for each of the three incentives-related BAT tiers and the two NSPS tiers because AOX is a measure of progress in reducing the total chlorinated organic matter in wastewaters resulting from the bleaching of pulps. In addition, the use of AOX rather than other measures of organic matter (e.g., BOD) will further encourage a pollution prevention approach instead of end-of-pipe treatment technologies. EPA seeks comment on including COD as a performance criterion in addition to AOX, and seeks comment on and data supporting the performance-based COD value that would be appropriate for each of the tiers in terms of mass-loading or percent reduction beyond BAT/NSPS levels.

In addition to the AOX criterion, EPA is considering establishing BAT limitations for Tier I that include kappa numbers measured prior to bleaching and a narrative limitation calling for recycling of the filtrates generated prior to the point at which that kappa is achieved. By meeting the kappa number and recycle limitations, Tier I mills would achieve substantial reductions in precursors for chlorinated organic pollutants found in lignin (measured as kappa number values) beyond reductions achieved by mills with conventional pulping processes. Further, Tier I mills would be bleaching pulps with less lignin and would realize significant reductions in the amount of unrecoverable bleaching chemicals required to achieve their target brightness. By using less bleaching chemical, Tier I mills would further increase the margin of safety by reducing the formation and discharge of chlorinated organic pollutants generated by bleaching pulps with chlorine-containing compounds, including chlorine dioxide. By recycling the bleaching filtrates, Tier I mills also would be implementing an important building block for long-term flow reduction goals.

By defining Tier I with parameter values (AOX, kappa numbers) and recycle requirements as presented above, EPA intends to provide maximum encouragement to as many mills as possible to achieve the performance of at least the initial threshold of the advanced technology program. Adopting threshold performance criteria that are too stringent could discourage mills from making additional capital investments beyond those necessary to achieve the baseline BAT. This could undermine one goal of the incentives program, which is to achieve the greatest environmental results possible consistent with mills' capital investment cycles. Conversely, setting threshold criteria at levels that could be met by some mills that only comply with the baseline BAT limitations and do not employ advanced technologies could serve as a disincentive to invest in advanced technologies that achieve dramatic reductions in pollutant loadings and flow. The kappa numbers defined above for Tier I, while at the upper end of the range of values achieved by these technologies, nonetheless appear to separate mills that employ them from mills that would use conventional pulping technologies and achieve the BAT effluent limitations now being considered by EPA. EPA seeks comment on this finding.

EPA is considering setting the incentives-related BAT limitations and NSPS for Tier II and Tier III based on a more stringent philosophy than for Tier I. EPA believes that Tiers II and III should reflect movement toward the long-term goal of minimizing impacts of mills in all environmental media through partially or fully closed loop processes. For Tier II, EPA is considering an AOX limit based on a long-term average (0.10 kg/kkg) that is currently being achieved by some of the best mills in the industry. For Tier III, EPA is considering an AOX limit based on a long-term average (0.05 kg/kkg) that is being achieved only by a very few mills, including one ECF mill. While this ECF mill achieved the AOX limit only with hardwood furnish, it did so without the level of flow reduction anticipated for Tier III. It is the Agency's judgment, based on trends in ECF technology development to date, that with recycle of pulping and evaporator condensates and bleach plant filtrates necessary to achieve a wastewater flow of 5 m^3/kkg and removal of chlorides from filtrates (or at other points in the recovery cycle), commensurate reductions in the mass of chlorinated organic pollutants contained in wastewaters discharged also are likely to occur. For this reason, it is EPA's judgment that the Tier III AOX limit would be achievable by advanced ECF mills for both hardwood and softwood furnishes. It is also important to note that recently gathered data from TCF mills indicate that end-of-pipe AOX levels below detection limits can be achieved. For this reason, EPA expects that all TCF mills should be eligible to participate in this program (based solely on AOX performance) and that separate BAT/NSPS AOX limitations would be unnecessary. Therefore, it is the Agency's judgment that either advanced ECF or TCF mills will be capable of achieving this AOX limit for Tier III.

Flow reduction and progress toward closed loop mill operations are very important long-term environmental goals because releases to all environmental media would be minimized. Review of currently available data and literature indicates that the numerical values set forth to define Tiers II (10 m^3/kkg) and III (5 m^3/kkg) are appropriately stringent reduced flow targets by comparison to current wastewater flow for mills with extended delignification technologies. Moreover, EPA indicated in the March 8, 1996 notice that the industry's "clean water alternative" could be a MACT compliance alternative that conceptually will facilitate segregation, treatment, and reuse of condensates. Inclusion of pulping and evaporator condensates in these reduced flow targets is therefore both consistent with this potential alternative and appropriate in that it will foster even greater flow reduction through recycle and reuse of the greatest possible volume of process wastewater. While completely closed loop operations offer a theoretically desirable goal, EPA is concerned that without considerably more research and mill trials, the potential exists for cross-media transfers or product quality concerns.

As EPA presently conceives the incentives program, a mill would qualify for incentives only if it agrees to accept permit limitations corresponding to the tier it selects (e.g., for Tier II, an AOX limitation of 0.10 kg/kkg and condensate and bleach plant wastewater flow of 10 m^3/kkg) including all applicable bleach plant limitations (e.g., those corresponding to BAT Option B and the proposed NSPS). Those limitations would constitute BAT/NSPS for that mill. The permit developed for a mill participating in the incentives program also would need to contain all other permit limitations and conditions otherwise applicable to the mill, including any conventional pollutant limitations and standards established by these Cluster Rules, any water quality-based effluent limitations required under CWA section 301(b)(1)(C), and best management practices (BMPs) provisions.

3. Legal Authority to Establish Incentives-Related BAT Limitations and NSPS

EPA believes it has the legal authority to establish incentives-related BAT limits for Tier I, Tier II, and Tier III applicable solely at the election of the regulated entity. (Similar arguments support EPA's preliminary NSPS determination.) Under CWA section 304(b)(2), EPA is authorized to identify a technology as BAT after taking into account a variety of factors, including the cost of achieving such effluent reduction, non-water quality environmental impacts and such other factors as the Administrator deems appropriate. In this instance, EPA believes the limits corresponding to each of the tiers would reflect BAT for any participating mill for the following reasons.

First, having voluntarily agreed to make these limits enforceable in its permit, the mill represents to EPA that there is a technology that is the best available and economically achievable for that mill to achieve the limits. Thus, the costs of achieving the desired effluent reductions—evaluated against the mill's own choices—support the BAT finding. Second, EPA would conclude that a less stringent baseline BAT (e.g., for purposes of this discussion based on complete substitution) would not be BAT for such a mill on the date of promulgation because the mill is making investment and engineering decisions that would make a process focused solely on complete substitution technically and financially inappropriate (such as by over designing chlorine dioxide generation capacity). In other words, that process technology would not be "best" for those mills committed to moving beyond complete substitution to more stringent incentive-based limitations. Moreover, avoiding such over design would avoid unnecessary capital investments, with those investments possibly applied to projects to prevent other environmental impacts. Finally, application of incentives-related BAT limits would be completely voluntary; an Advanced Technology mill participating in the incentives program would always be free to forgo the incentives and to meet the baseline BAT limits instead.

The same analysis justifying the various pollutant parameter limits for the baseline (i.e., non-incentives) BAT applies equally to the incentives-related BAT limits for those parameters, with the addition of progressively more stringent end-of-pipe AOX limits, limits pertaining to lignin content in

unbleached pulp and recycle of filtrates for Tier I, and reductions in condensate and bleach plant wastewater flows for Tiers II and III. See Section V.A.5 and 9. EPA believes, for the reasons discussed in Section X.A.2, above, it has the authority to establish incentive-based BAT limits for lignin content in unbleached pulp, for recycle of filtrates, and for reduced condensate and bleach plant wastewater flows. Kappa numbers limits (representing the lignin content of unbleached pulp) can be used to reduce the presence of precursors for chlorinated organic pollutants in a mill's wastewater. Recycle of filtrates to chemical recovery processes reduces the mass of precursors for chlorinated organic pollutants, as well as all other pollutants in these wastewaters, that would otherwise be discharged. Limits for condensate and bleach plant wastewater flows move mills toward closed loop operations, thereby dramatically reducing chlorinated organic pollutants and all other pollutants otherwise found in mill wastewater discharges. The basis for these limits is discussed in Section X.A.2 above. EPA solicits comment on this approach, including the reasoning EPA offers in support of it.

B. Incentives Available Prior to Achievement of Incentives-Related BAT

1. Extended Compliance Schedules

A major obstacle to implementing advanced technologies in this industry is the disjunction between the statutory requirement that mills comply immediately with BAT and the longer time frames usually associated with a mill's investment plans. While the immediate compliance requirements of the Act promote, in the short term, prompt implementation of proven BAT technologies—and hence deliver over the long term the environmental benefits associated with achieving the BAT limits—EPA is concerned that the statutory deadlines also can discourage mills in this industry from implementing technologies superior to the BAT technology. EPA believes that many mills, were it not for the BAT time constraints, would choose to invest in more advanced technologies than BAT because the long-term environmental, operational, and market competitiveness benefits would be correspondingly greater. Such investments, however, typically require more time than the statute allows, especially in this industry where capital investment cycles are five years or longer. Mills wishing to implement—or to design and pilot—more advanced technologies are often faced with an unattractive choice: either achieve BAT immediately with the risk that that technology will be overtaken imminently in whole or in part by more advanced technologies, or risk extended noncompliance with BAT in pursuit of superior performance levels. This is particularly the case here, where mills can design their bleach plants either to achieve BAT, such as that represented by Option A, or to adopt a long-term approach that includes more advanced extended delignification processes (such as those anticipated under Tier I) or TCF processes. For example, if immediate compliance with baseline BAT limitations (for purposes of this discussion Option A) were to be required, these mills may be compelled to expand chlorine dioxide generating capacity to meet those limitations immediately even though that expanded capacity would be unnecessary once their advanced systems are in place. See also 61 FR 9383, 9395 (March 8, 1996) where EPA discussed a similar quandary regarding how short-term compliance with MACT could create a disincentive to adopt more advanced wastewater control technology alternatives.

EPA is considering addressing this tension through an incentive. Under this possible incentive, mills selecting an incentives-related BAT requiring immediate compliance with the limits corresponding to the chosen tier would receive additional time through an enforcement order to meet those limits. In this way, EPA hopes to give mills an incentive to implement advanced technologies and to accommodate the realities of capital investment cycles and complex implementation tasks such as flow reduction. Because the Clean Water Act requires immediate compliance with BAT limitations (including those contemplated by the incentive tiers), the permitting authority is foreclosed from establishing a longer deadline for compliance in the permit. However, the permitting authority is authorized to exercise its enforcement discretion to issue an accompanying enforcement order that includes a schedule by which the mill must achieve full compliance, including interim milestones as appropriate. This could also be accomplished through negotiated consent decrees under CWA section 309(a)(3). Extended compliance schedules established pursuant to this possible incentive would apply only to the BAT limitations and standards for Tiers I, II or III, including the baseline BAT bleach plant limits applicable to the mill. These extended compliance schedules would not govern compliance with other permit limitations and conditions, including those based on BCT, water quality concerns, or BMP requirements. Rather, any appropriate compliance periods pertaining to those requirements would need to be established under the authorities applicable to them.

When EPA is the permitting authority, EPA would exercise its enforcement discretion to extend BAT compliance periods for mills that accept incentives-related BAT limitations and standards in their NPDES permit. In addition, at the time the proposed Advanced Technology permit is made available for public comment, EPA would also make available the proposed enforcement order in order to give the public adequate notice of and opportunity to comment on the length of time contemplated by the compliance schedule and the proposed interim milestones. When EPA is not the permitting authority, EPA would issue guidance to States strongly urging States to issue similar compliance orders to Advanced Technology mills and to follow the public notice procedures described above.

EPA also would issue guidance strongly urging States to impose enforceable interim milestones as part of the compliance order that would incrementally benefit the environment during the interim period that would ensure that participating mills make reasonable progress toward achieving the superior performance represented by the various Advanced Technology Alternative BAT tiers. Where EPA is the permitting authority, EPA would impose such interim milestones itself. Milestones could include intermediate pollutant load and wastewater flow reductions in addition to research schedules, construction schedules, mill trial schedules, or other milestones appropriate to the advanced technology and the participating mill. EPA would encourage these interim milestones to be tailored to circumstances and process technologies at individual mills. The compliance order would also need to specify interim limits that function as the starting point for the mill's compliance schedule. EPA would issue guidance providing that the starting point for the in-plant limits and advanced technology AOX limit contained in the compliance orders would be no less stringent than existing effluent quality or the effluent limits imposed in the last permit, whichever are more stringent.

EPA recognizes that compliance orders also would be available for mills choosing not to participate in the incentives program. Typically compliance orders for baseline BAT limitations require compliance no later than three years from the date the permit imposing such requirements is issued. In this possible incentive, EPA contemplates an approach that would be different from this typical practice in two respects: First, the compliance schedules would be longer, ranging from five to fifteen years; second, the extended compliance period would commence on the date the Cluster Rules are promulgated, not on the date the permit incorporating the relevant limits is issued.

With respect to the length of a compliance schedule for achieving incentives-related BAT limits and standards, EPA believes that the following time frames would be reasonable: Tier I—not later than five years beyond the effective date of the final rule; Tier II—not later than ten years beyond the effective date of the final rule; and Tier III—not later than fifteen years beyond the effective date of the final rule.

EPA regards five years as a reasonable time frame to achieve the incentives-related BAT limitations and standards corresponding to Tier I (including the bleach plant BAT effluent limitations) if Option A is the selected BAT because Tier I limitations could be achieved using known technologies (Option B technologies) within that timeframe without the closures predicted for Option B. In addition, premature compliance with certain BAT limitations could lead to counterproductive outcomes (e.g., installation of either excess or completely unnecessary chlorine dioxide generating capacity).

EPA regards ten years as a reasonable timeframe to achieve the incentives-related BAT limitations corresponding to Tier II because substantial flow reduction, to 10 m^3/kkg, is the most difficult and time consuming element of this tier. Recycle of a substantial portion of pulping and evaporator condensates and bleach plant filtrates, with the attendant complexities of total mill balances for very large volumes of process water and wastewater, requires considerable time before it can be implemented successfully at mill-scale. Nonetheless, achievement of enforceable interim milestones, including the BAT bleach plant limitations, in a period shorter than ten years is likely and should be required by the enforcement authority.

EPA regards fifteen years as a reasonable timeframe to achieve the incentives-related BAT limitations corresponding to Tier III. As for Tier II, flow reduction again is the most difficult and time consuming task. However, because achieving or surpassing flow reduction to 5 m^3/kkg for pulping and evaporator condensates and bleach plant filtrates approaches a closed mill configuration, even more technically difficult and time consuming tasks must be successfully completed. This probably would include removal of metals and chlorides by "kidney" technologies in order to control system scaling and corrosion problems while maintaining product quality and minimizing cross-media impacts. Successful completion of these tasks at individual mills will involve extensive research and mill trials. Nonetheless, achievement of interim milestones, including the BAT bleach plant limitations and intermediate levels of flow reduction, in a period shorter than fifteen years is likely and should be required by the enforcement authority.

EPA also believes that it has a reasonable basis to measure the extended time periods from the promulgation date of the Cluster Rules rather than from the date a participating mill's NPDES permit is issued. First, EPA wants to promote implementation of advanced technologies as soon as possible; if EPA were to measure the extended compliance period from the date of permit reissuance, compliance with Tier I limits could be deferred by as much as ten years from the date of promulgation. Second, EPA has determined that many mills in the proposed bleached papergrade kraft and soda subcategory are discharging under permits that have already expired, that will expire soon after the promulgation of the Cluster Rules, or that have reopener clauses to allow the permitting authority to adjust the permit to reflect the new effluent guideline limitations. EPA expects that permit writers will reissue these permits promptly after the Cluster Rules are published. Thus, the decision to measure an extended compliance period from the date of promulgation rather than from the date of permit issuance should have little practical effect on most mills. Third, mills in the proposed bleached papergrade kraft and soda subcategory have been on notice since at least 1993 that EPA was considering basing some portion of its Cluster Rules on extended delignification technologies. (In its 1993 proposal, EPA proposed to base BAT limitations on a process that included oxygen delignification and 100 percent substitution of chlorine dioxide for elemental chlorine.) In some cases, that proposal has already influenced investment decisions at some mills. Finally, with the issuance of this notice detailing EPA's possible incentives program, mills potentially interested in participating can plan accordingly with little prejudice.

EPA acknowledges that a mill choosing not to participate in the advanced technology incentives program in some cases could obtain a three-year compliance schedule that, depending on the date its permit was reissued, could allow that mill to achieve BAT limits (including a less stringent AOX limit) at a later date than Advanced Technology mills would be required to achieve a lower AOX value and lower kappa numbers and filtrates recycling. However, EPA cannot foresee any circumstances in which such relief would be deemed necessary by the permitting authority.

Although EPA is considering implementing this incentives program through enforcement orders, EPA also recognizes that mills may be discouraged from participating in the program by the uncertainty inherent in obtaining additional time to comply through enforcement—rather than permitting—mechanisms. In order to address this uncertainty, EPA also is considering establishing an Alternative BAT at the Tier I level that would be effective five years from the date of promulgation, a second Alternative BAT at the Tier II level that would be effective ten years from the date of promulgation, and a third Alternative BAT at the Tier III level that would be effective fifteen years from the date of promulgation.

If EPA were to adopt a structure of Alternative BAT limitations at the Tier I, Tier II, and Tier III levels, EPA would codify "Tier I Alternative BAT limits," "Tier II Alternative BAT limits," and "Tier III Alternative BAT limits" in addition to the incentives-related BAT limitations for those tiers that would be effective immediately. Those Alternative BAT limits would apply—on a purely voluntary basis—to any mill in the proposed bleached papergrade kraft and soda subcategory choosing to gain additional time for compliance with the selected tier alternative BAT limits through a permitting rather than enforcement mechanism. Any mill that voluntarily chooses this Alternative BAT approach would qualify for any incentives applicable to the appropriate tier once it achieves the Alternative BAT limits for that tier.

The Alternative BAT limits would probably consist of two phases. The first phase would commence on the date the Cluster Rules are promulgated and would terminate five years from the date of promulgation for Tier I, ten years

from the date of promulgation for Tier II, and fifteen years from the date of promulgation for Tier III. During the first phase, any permit issued to a participating mill would need to include, as BAT limitations, interim effluent limits that would be equivalent either to the limits in the mill's last permit or to the mill's current effluent quality, whichever is more stringent. These first phase interim BAT limits would be effective immediately. The permit also would need to include any water quality-based effluent limitations required under CWA section 301(b)(1)(C) and any other applicable requirements including any BMPs required by these rules. The purpose of the interim BAT limits in the first phase would be to ensure that, at a minimum, current effluent quality is maintained while the mill moves toward achieving limits corresponding to the tier selected by the mill. During the second phase, the permit limits would be made more stringent to correspond to the tier limits the mill has committed to achieve. Those limits would be effective five years from the date the Cluster Rules are promulgated for Tier I, ten years for Tier II, and fifteen years for Tier III. Thus, mills electing to accept Alternative BAT at Tier I would have the appropriate limits and standards and any appropriate interim milestones leading toward achievement of the ultimate Alternative BAT Tier I limits incorporated into its permit as soon as it is reissued; the Tier I limits and standards, however, would not be "effective" until five years from the date of promulgation of the Cluster Rules. Mills electing to accept Alternative BAT Tier II limits would be required to meet interim BAT limits reflecting, at a minimum, existing effluent quality for the first five year permit term and any appropriate interim milestones leading toward achievement of the ultimate Alternative BAT Tier II limits selected by that mill. The second five year permit term would incorporate those interim limits, any further interim milestones, and the ultimate Alternative BAT Tier II limits which would become effective ten years from the date of promulgation of the Cluster Rules. Similarly, mills electing to accept Alternative BAT Tier III limits would maintain limits reflecting, at a minimum, existing effluent quality for the first and second five year permit terms (total of ten years), with any appropriate interim milestones leading toward achievement of the ultimate Alternative BAT Tier III limits selected by that mill. The third five year permit term would incorporate those interim limits, any further interim milestones, and the Alternative BAT Tier III limits, which would become effective fifteen years from the date of promulgation of the Cluster Rules.

The only practical difference between the Alternative BAT structure with delayed effective dates and the other incentives-related BAT limitations, effective immediately, is the mechanism by which the participating mill receives additional time to achieve the tier limits. Under the Alternative BAT approach, the mechanism is the permit; under the other approach, the mechanism is an enforcement order. Mills choosing either approach will be required to maintain, at a minimum, existing effluent quality during the interim period before the date the ultimate BAT limits become enforceable. Mills under either approach also would be subject to interim milestones as appropriate. Finally, at the end of either five or ten or fifteen years from the date of promulgation of the Cluster Rules, every mill participating in the incentives program would be expected to achieve the final BAT limits represented by Tier I, Tier II, or Tier III. Thus, the only difference between the enforcement approach and the Alternative BAT structure would be the mechanism, not the result.

EPA believes it has the authority to adopt the Alternative BAT approach for the incentive tiers, which includes delayed effective dates. The delayed effective dates are intended to make the underlying tier technologies the best available technologies economically achievable for mills willing to go beyond the baseline BAT by allowing those mills more time to develop and implement technologies and plan for capital expenditures. EPA solicits comment on the alternative BAT approach. EPA also solicits comment regarding the applicability of this incentives-related program to new sources, including the appropriateness of "Alternative NSPS."

C. Incentives Available After Achievement of Advanced Technology BAT Limitations and NSPS

1. Greater Certainty Regarding Permit Limits and Requirements

Some industry stakeholders have suggested to EPA that mills could be encouraged to implement advanced technologies if they had a reasonable assurance that all limitations and conditions in their permits would remain constant over a specified period of time, once compliance with the Advanced Technology limits and standards is achieved. EPA seeks comment on this incentive and on the details described below.

Under this incentive, EPA would issue guidance urging states, where allowed by state law, to administratively extend the permits of Advanced Technology mills for up to five years past the date the Advanced Technology permit would otherwise expire, subject to the following conditions. First, this incentive would be available only for the first permit issued after the facility achieves full compliance with its incentives-related BAT limits or NSPS, as appropriate. Second, as part of the permitting process, the permitting authority would inform the public that it regards the AT facility as a low priority for permit reissuance in the next permitting cycle and that it will consider allowing the permit (after it expires five years hence) to continue to be administratively extended for up to five additional years provided that the permittee has filed a timely application and that the permitting authority possesses no new water quality or facility-related data that would justify new or different permit conditions and limits. In EPA's view, the permitting authority could reasonably conclude at the time the AT permit would ordinarily be reissued, that the permit is a low priority for permit reissuance if there is no new water quality- or facility-related data or information that would justify new or different limits. Under these circumstances, EPA believes it would be reasonable for a permitting authority to conclude that the AT facility is a lower priority for permit reissuance because the mill is voluntarily achieving reductions greater than otherwise required by the effluent guidelines and hence presents a lower risk to water quality than other mills. Moreover, EPA expects that the permit eligible for an administrative extension already would contain BMPs and any water quality-based effluent limits necessary to achieve applicable water quality standards. Thus, EPA would not expect any adverse effect on the environment during the period the permit is administratively extended, in the absence of specific information indicating that more stringent water quality effluent limits need to be imposed.

EPA would also issue guidance urging states, when they reissue AT permits, to reissue without changing the terms and conditions contained in the initial AT permit, unless the permitting authority receives new facility- or watershed-specific information indicating that more stringent effluent limits are necessary to achieve applicable water quality standards. In that case, EPA is considering issuing guidance to urge states to develop priorities for allocating any necessary load reductions in a way that gives preference to AT mills, particularly where AT mills contribute a small portion of the total pollutant loads to the stream. Moreover, where more than one AT mill discharges in a watershed, these priorities would further give preference first to Tier III mills, then to Tier II, and finally to Tier I mills. EPA seeks comment on this possible incentive.

2. Reduced Effluent Monitoring

EPA believes that reduced monitoring provisions would be appropriate to include in the final water regulation for mills that achieve incentives-related BAT limitations or NSPS, as appropriate. In EPA's view, consistent and successful implementation of the advanced technologies will make it increasingly less likely that the pollutants controlled by incentives-related BAT will be present in the wastewater from advanced technology fiber lines in levels of concern. Because of these reductions and because in-plant monitoring for these pollutants tends to be costly, EPA believes it is reasonable to allow mills achieving the incentives-related BAT limits or NSPS, as appropriate, to monitor less frequently for those pollutant parameters after establishing a reliable baseline of consistent achievement of those incentives-related BAT limits/NSPS. (This incentive would be adopted only if EPA decides to retain the monitoring requirements applicable to the entire proposed subcategory regardless of the BAT option selected.)

As part of an initiative separate from the incentives program being considered solely for the pulp and paper industry, EPA also has issued interim guidance on a performance-based schedule of reductions in the frequency of monitoring in NPDES permits. This separate initiative would be applicable to all industrial point sources, including pulp and paper mills choosing to comply with baseline BAT and not participate in the incentives program, where a facility consistently performs better than its permit limits. Under that initiative, facilities become eligible after passing through a set of entry criteria based on compliance history and review of two or more years of data demonstrating better than BAT performance. On a parameter by parameter basis, the greater the percentage of "beyond BAT" performance, the greater the reductions in required monitoring frequency. A statistical model was used to determine the reductions in monitoring frequencies that would lead to little or no increase in the potential of detecting discharges in excess of permit limits. See the post-proposal rulemaking record for additional details of this emerging performance-based monitoring program, as set forth in interim guidance dated April 19, 1996.

The reduced monitoring incentive being considered specifically for this effluent limitations guideline would be incorporated in the Code of Federal Regulations, and is summarized as follows:

a. For any TCF process under Tiers I, II, and III, particularly for facilities with newly established TCF processes, the final regulation would require weekly end-of-pipe monitoring for AOX for the first six months to confirm that AOX is not present in detectable levels, and thereafter no monitoring for any pollutant controlled by the incentives-related BAT at the bleach plant or end-of-pipe AOX, provided that such facilities certify annually that they are using only totally chlorine-free processes. EPA seeks comment on any monitoring alternatives and invites suggestions regarding the content of such certification. EPA also particularly welcomes suggestions regarding indicators of totally chlorine-free processes, such as raw materials, process chemicals used and process variables, and products generated. EPA also seeks comment on how this incentive could apply at mills that swing from TCF to non-TCF processes.

b. For any ECF process under Tiers I, II, and III, an Advanced Technology mill would be required to perform in-plant monitoring of all pollutants controlled by incentives-related BAT, as applicable, on a monthly basis for one year. The mill would also be required for a year to perform weekly monitoring at the end of the pipe for at least AOX. That one year period must include "worst case" conditions for generation of chlorinated organic pollutants. In the event that reasonably anticipated "worst case" conditions do not occur in the first year but occur later on during a period of certification, limited monitoring of those "worst case" conditions would be required to confirm compliance with the incentives-related BAT limitations, with certification thereafter. If after one year of monitoring the advanced technology mill demonstrates that it is discharging pollutants at levels at or below the applicable BAT limits and standards, then it would not be required to monitor at the bleach plant for any pollutant controlled by BAT and would be authorized to monitor AOX at the end-of-pipe on only a monthly basis, provided that the facility submits an annual certification.

EPA invites suggestions regarding the content of such certification and particularly seeks comment on relevant indicators of Tier I processes, such as raw materials used (e.g., softwood), process chemicals used and process variables (e.g., complete substitution of chlorine dioxide and elimination of hypochlorite at all times, bleaching chemical application factors such as active chlorine multiple), and products generated (notably, their ISO brightness), that, when taken together, lead to —worst case— circumstances for potential generation of chlorinated organic pollutants (e.g., TCDD, TCDF, chloroform, etc.). Minimum monitoring as stringent as that proposed to be required by the rules for BAT and PSES would resume if a violation occurs on the Advanced Technology fiber line and would continue until the correction and compliance is confirmed.

As an alternative to performing annual monitoring for pollutants regulated at the bleach plant is not done to verify a certification (for any Tier), mills could elect to implement the principles of environmental management systems (EMS) in order to qualify for this incentive. Weekly end-of-pipe monitoring would be required for AOX, and monthly monitoring would be permitted after compliance is established.

EPA seeks comments on this possible incentive, in particular with respect to the nature of a certification, the frequency of reduced monitoring, and methods of insuring the regulatory authorities and citizens have adequate information regarding the mill's environmental practices.

3. Reduced penalties

In recognition of the considerable capital expenditures that mills participating in the incentives-related Alternative BAT program will make to implement advanced technologies and to achieve pollutant reductions superior to those achievable through the baseline BAT, EPA is considering encouraging enforcement authorities to take into account those investments as appropriate when assessing penalties against these mills for violations of environmental statutes. EPA believes existing EPA settlement policies can be interpreted to provide consideration of advanced technology investments, where the evidence of environmental good faith is clear and unequivocal and circumstances are such that failing to take such investments into account would be a manifest injustice. See

VOL 61 ISS 136 JL 15 1996 UMI

Spang & Company, EPCRA Appeal No. 94–3 & 94–4 at 27–30 (Oct. 20, 1995). In EPA's view, if a facility has installed and is operating the advanced technology in good faith, reports violations in a prompt manner to EPA or the State, and either corrects the violations in a timely manner or agrees to and complies with reasonable remedial measures concurred on by the primary enforcement authority, then the enforcement authority would be justified in taking the AT investment into account in determining economic benefit and in reducing the gravity portion of the penalty up to 100 percent. EPA assumes that the installation and operation of any advanced technology will be more expensive than the installation and operation of the technology underlying the baseline BAT and therefore the advanced technology facilities will derive no economic benefit (i.e., zero BEN) from the violation associated with the advanced technology. This would be the case even when the advanced technology fails, as long as the design, operation and installation are within applicable engineering standards and operational procedures are within industry norms. The decision whether to take such AT investments into account in determining economic benefit would be left to the State's discretion when the State is the enforcing authority. EPA would issue guidance to clarify application of this incentive.

Mills also can take advantage of the recently issued audit policy providing they meet the criteria specified in that policy. (See the **Federal Register** for December 22, 1995, 60 FR 66706.) Moreover, EPA also is considering issuing guidance to interpret EPA's existing media-specific settlement policy in cases where advanced technology does not perform as well as initially required by limits included in NPDES permits but where interim milestones have been met and good faith efforts have been demonstrated. EPA welcomes comments on this possible incentive.

4. Reduced inspections

As another possible incentive, EPA is considering issuing guidance to the Regions indicating that mills with advanced technology fiber lines should be a lower priority for routine inspections in all media. Under this incentive, facilities achieving advanced technology limits would be targeted by EPA for routine inspections not more than once every two years. This incentive would reflect EPA's view that mills installing and operating advanced technologies at levels to meet the appropriate tier effluent limits are likely to be complying with the other permit requirements applicable to that fiber line. EPA already has redirected Federal NPDES inspections away from annual inspections of all major dischargers to focus on high risk facilities on priority watersheds. Targeted efforts in these priority watersheds focus on such factors as facility compliance status and rates, location and affected population, citizen complaints, etc. Nonetheless, under this incentive, EPA would reserve the authority to conduct multi-media inspections without prior notice, and to inspect advanced technology fiber lines for cause, whether or not there is an ongoing violation. EPA would also reserve its right to inspect an advanced technology mill in the connection with watershed or airshed concerns. EPA seeks comment on this possible incentive. EPA is particularly interested in comments on the question whether reduced inspections should apply mill-wide and across various media and, if so, why.

5. Public Recognition Programs

While EPA public recognition programs already exist, the Agency believes that it would be appropriate to develop and implement a program unique to this industry as an incentive to advanced technology investments. As part of a public recognition program, EPA would establish criteria for mills to qualify for public recognition on an annual basis. In addition to commitments leading to and achievement of the limits specified in the selected tier, such criteria could include the use of the principles of environmental management system (EMS) programs. EPA would then recognize the qualifying mills each year through a public event. EPA would describe this program in greater detail in the preamble to the final Cluster Rules. EPA solicits comment on this possible incentive, the applicable criteria, the type of recognition accorded, and the period of recognition.

6. Fast-Track Permit Modification

EPA is considering issuing guidance encouraging states to accord permit process priority for advanced technology mills where it is consistent with watershed-based permitting strategies and air permitting policies. EPA solicits comment on whether this is an appropriate policy and on the availability of resources for implementing such a policy.

D. Solicitations of Comments on Incentives Program

In addition to all of the specific comment solicitations above, EPA seeks comment on the entire concept of establishing a voluntary program of advanced technology tiers with incentives-related BAT limits/NSPS unique to those tiers. EPA also seeks comment on the criteria defining each tier, including both the type of criteria and the numeric values ascribed to each. EPA also seeks comment regarding the philosophy EPA should adopt in establishing the incentives-related BAT limits and NSPS being considered to define the advanced technology tiers, and how these incentives-related alternative BAT limits/NSPS could be adapted to mills with indirect discharge to POTWs. EPA seeks comments and welcomes suggestions regarding the incentives offered and alternatives that might be included, and other ways of implementing the program. EPA seeks comments on defining and implementing such a program for other bleached chemical pulp subcategories, including the papergrade sulfite subcategory, the dissolving sulfite and dissolving kraft subcategories, and other subcategories for which EPA may develop revised effluent limitations based on BAT.

E. Alternative Incentives Programs and Provisions Suggested by Stakeholders

One of the principal objectives of this proposed incentives program is to promote pollution prevention technologies and practices. In EPA's view, each of the advanced technologies has a significant pollution prevention component with respect to effluent discharges. Nevertheless, in comments on the proposed regulations, industry voiced concerns that operation of technology options could produce increased emissions to the air and consequently trigger major New Source Review ("NSR") under the Clean Air Act.

In its March 8, 1996, **Federal Register** Notice discussing the MACT portion of the Cluster Rules, EPA acknowledged concerns about the interaction between the installation of MACT emission controls and the NSR requirements. (See 61 FR 9383, 9396). In particular, EPA noted that commenters expressed concern that EPA had not accounted for the impacts that would be incurred in triggering major NSR such as costs associated with permitting and implementation requirements, the burden imposed on state air quality offices, or the risk that delays in receiving major NSR preconstruction permits might jeopardize timely compliance with the MACT portion of the Cluster Rules. *Id.* EPA considered those comments and the air pollutant reductions, environmental and energy impacts of implementing the MACT technologies. In response, EPA stated in its March Notice that it considers projects implemented to comply with the MACT portion of the Cluster Rules to be environmentally beneficial from an air quality perspective and hence eligible for exemption from major NSR as air pollution control projects under policy guidance issued by EPA on July 1, 1994. *Id.* EPA also noted that it expects such projects to qualify as pollution control projects under the NSR reform regulations, signed on April 3, 1996. EPA solicited comment on these determinations and on the question whether EPA should provide a specific exclusion in the major NSR rules for controls installed to comply with the MACT portion of the Cluster Rules. (See 61 FR 9396.)

Some members of the pulp and paper industry have suggested to EPA that controls installed to achieve incentives-related Alternative BAT limits corresponding to Tiers I, II or III should also be excluded from major New Source Review and have suggested that such an exclusion would be a significant incentive to encourage mills to install advanced water technologies. EPA is not prepared to offer such an incentive at this time. Unlike the MACT-related controls that EPA considers to be eligible for exemption from major NSR, advanced water technologies may not have a consistently positive effect on air emissions. EPA intends to address these cross-media issues in the context of its NSR Reform rulemaking proposal, which was signed on April 3, 1996. In that rulemaking proposal, EPA is soliciting comment on the broader issue of whether applicability of the pollution control project exemption should be extended to "cross media" pollution control projects generally and whether and how they should be required to meet the "environmentally beneficial" test typically required for pollution prevention projects. EPA recognizes that resolution of this issue is of particular interest to mills in the proposed bleached papergrade kraft and soda subcategory because of the possible value of this exemption as an incentive to implement advanced water technologies. EPA nevertheless believes that the question whether the pollution control project exemption should be extended to "cross media" pollution control projects should be resolved on a broad, rather than industry-specific, basis. Accordingly, EPA is not including as a possible incentive in today's notice a provision that would exempt advanced water technologies from major NSR.

In order promote full consideration of this issue, however, EPA welcomes comments in connection with today's notice on whether advanced water pollution control technology implemented by the pulp and paper industry should be eligible for an exclusion from major NSR (assuming that such technology increases air emissions in significant amounts at an existing major source) and, if so, whether the exclusion should be implemented under the provisions of the pollution control projects exclusion under the NSR proposed regulations. Specifically, EPA solicits comments on whether there are pollutant increases from such water pollution control projects, the nature of any such pollutant increases in terms of process conditions and equipment changes, and the types of air pollutants likely to increase that would warrant this special treatment. EPA also solicits comment on the type of criteria that should be used to evaluate the cross-media impacts of pollution control projects to determine whether the overall environmental benefits to one media are sufficient to waive environmental reviews and requirements otherwise applicable for other media and, if so, whether the project should be allowed to qualify under the proposed major NSR exclusion. EPA also solicits comments, with supporting rationale, on whether an exemption for cross-media pollution control projects should be extended to any project that achieves the required levels of control or whether, because of the cross-media nature of the controls, the exemption should be available only for controls that achieve greater than the required levels of treatment.

In addition to recommendations for incentives submitted by one group of four industry stakeholders (see the record at DCN 13930), an alternative set of recommendations for an incentives program was submitted by a group of seven companies in the pulp and paper industry (see the record at DCN 13937). Among other things, the latter proposal recommended that the incentives program be: broad-based, applicable to mills regulated under the Cluster Rules and available on a mill-by-mill basis and that it be extended throughout the individual mills participating in the program; available for mills using any processes or practices (with no restrictions) that achieve reductions of 25–30 percent (Tier I), and 55–60 percent (Tier II) for at least any two water pollutants (an eighth company recently endorsing this proposal also suggested that the two pollutants selected could be water or air pollutants; see the record at DCN 13965) regulated under the effluent guidelines portion of the Cluster Rules (excluding dioxin, furan, and the chlorinated phenolic pollutants), with Tier II mills also committing to achieving mill-wide process water usage of 12,000–14,000 gallons/short ton (50–58 m^3/kkg) of pulp; and that it be expanded beyond the proposed bleached papergrade kraft and soda subcategory. Among the incentives suggested in this alternative program were: extended compliance period of five years for Tier I mills and 15 years for Tier II mills; extended permit terms, including an administrative presumption of additional time during which incentive-based effluent limits are not changed, for five years (total of ten years) beyond the prevailing statutory permit term for Tier I mills, and ten years (total of 15 years) beyond the prevailing statutory permit term for Tier II mills; and other provisions similar in principle but often differing in details to those in the program discussed above (e.g., fast track permitting, exemptions from PSD/NSR, reduced penalties, etc.). This set of alternatives also proposed a similar incentives program for mills that elect to achieve more stringent control of air emissions than required by the MACT standards.

Another set of alternative recommendations was submitted by a vendor of process technologies and raw materials used in the pulp and paper industry (see the record at DCN 13932). This set of alternative recommendations suggested that, in addition to achieving pollutant reductions greater than required by limits based on BAT, mills would be required to demonstrate that they achieve minimization in resource use (i.e., fiber, water, and energy consumption) and reduction (or at a minimum no increase) in air emissions or solid wastes. This alternative set of recommendations suggested as criteria for participation in the program a 10 percent reduction below COD limits (rather than AOX limits) promulgated by EPA, a bleach plant flow of 20 m^3/ADMT (air dry metric tons), and use of process simulation techniques to identify practices that go beyond the minimum BMPs incorporated in the final rule.

Another suggested component of an incentives program involves Federal procurement. The President's Executive Order 12873, "Federal Acquisition, Recycling, and Waste Prevention" (58

VOL
61
ISS
136
JL
15
1996
UMI

FR 54911, October 22, 1993), establishes a Federal policy for procurement of environmentally friendly products. EPA solicits comment on whether it also is appropriate and effective public policy to provide a Federal procurement advantage to paper products containing pulp or paper from mills that achieve incentives-related BAT limitations or NSPS, as appropriate, corresponding to the Advanced Technology tiers or that otherwise demonstrate performance more stringent than that which is based on the baseline BAT/NSPS. Such an advantage might be a Federal agency preference for such paper products, consistent with other Federal preferences (e.g., recovered materials content) and Federal procurement law. EPA also solicits comment on the mechanics of implementing this type of a procurement preference.

EPA solicits comments on these alternate incentives programs, particularly regarding those components which differ from the incentives program described Section X through X.C of this notice, and how the most useful components of these alternate programs may be incorporated into an incentives program in the final rules.

Dated: July 2, 1996.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 96–17802 Filed 7–12–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5534–1]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Pomona Oaks Well contamination (Pomona Oaks) and the Vineland State School (currently known as the Vineland Developmental Center) Superfund sites from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II Office announces its intent to delete the Pomona Oaks and the Vineland State School Superfund sites from the National Priorities List (NPL) and requests public comment on these actions. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New Jersey have determined that no further fund-financed remedial actions are appropriate at these sites and actions taken to date are protective of public health, welfare, and the environment.

DATES: Comments concerning these sites may be submitted on or before August 14, 1996.

ADDRESSES: Comments may be mailed to: Kathleen Callahan, Director, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, NY 10007.

Comprehensive information on these sites is available through the EPA Region II public docket, which is located at EPA's Region II Office in New York City, and is available for viewing, by appointment only, from 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. Requests for appointments should be directed to: Mr. Matthew Westgate, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, NY 10007, (212) 637–4422.

Background information from the Regional public docket related to the Pomona Oaks site is also available for viewing at information repository noted below: Galloway Township Municipal Building, 300 East Jimmie Leeds Road, Absecon, New Jersey 08201.

Background information from the Regional public docket related to the Vineland State School is available for viewing at the repository noted below: Vineland City Library, 1058 East Landis Ave, Vineland, New Jersey 08360.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Westgate, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, NY 10007, (212) 637–4422.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletions

I. Introduction

The Environmental Protection Agency (EPA) Region II announces its intent to delete the Pomona Oaks site, Galloway Township, Atlantic County, New Jersey, and the Vineland State School site, City of Vineland, Cumberland County, New Jersey from the National Priorities List (NPL) and requests public comment on these actions. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to section 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

The EPA will accept comments concerning the Pomona Oaks and the Vineland State School sites for thirty days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for these actions. Section IV discusses how the sites meet the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete sites from the NPL. In accordance with 40 CFR Section 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist Agency management.

EPA Region II will accept and evaluate public comments before making a final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of the Pomona Oaks and the Vineland State School sites:

1. EPA Region II has recommended deletion and has prepared the relevant documents.

2. The State of New Jersey has concurred with the deletion decisions.

3. Concurrent with this Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate Federal, state and local officials, and other interested parties. This notice announces a thirty-day public comment period on the deletion package, which starts July 15, 1996, and will conclude on August 14, 1996.

4. The Region has made all relevant documents available in the Regional Office and local site information repositories.

The comments received during the notice and comment period will be evaluated before any final decision is made. EPA Region II will prepare a Responsiveness Summary, which will address the comments received during the public comment period.

The deletion will occur after the EPA Regional Administrator places a notice in the **Federal Register.** The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Region II Office.

IV. (A). Basis for Intended Deletion of the Pomona Oaks Site

The Pomona Oaks Site includes a residential subdivision and an adjacent shopping center in the Pomona area of Galloway Township, Atlantic County, New Jersey. The residential subdivision contains about 200 single family homes built in the 1970s and has a population of approximately 800 to 1000 people. It is surrounded by undeveloped wooded areas, scattered residences and small "strip" type shopping areas. Some of the outlying areas are farms. Southwest of the subdivision is a combination gas station-convenience store and a "strip" mall containing a dry cleaner. Another gas station and a salvage yard are located to the west and northwest. The Pomona Oaks subdivision has both municipal water and sewers.

Construction of homes in the Pomona Oaks subdivision began in 1972. Initially, homes within the subdivision relied upon private wells as the source of potable water and upon individual septic systems for wastewater disposal. By 1982, all of the homes in the subdivision were connected to the public sewer system.

In June 1982, residents complained to the Atlantic County Health Department (ACHD) of foul tasting well water. Extensive testing of residential wells revealed high levels of organics including benzene and 1,2-dichloroethane. As a result the ACHD advised residents not to use their well water for drinking or cooking.

Over the next few years additional testing of individual wells was performed by the New Jersey Department of Health (NJDOH) and the EPA. The results of these sampling events in the Pomona Oaks subdivision indicated widespread contamination of the drinking water aquifer with organic compounds. As a result in August 1985, all 193 homes within the subdivision were connected to the Absecon water supply.

The Pomona Oaks site was formally added to the National Priorities List on June 1, 1986. In December 1986, EPA initiated a Remedial Investigation and Feasibility Study (RI/FS). The remedial investigation was designed to determine the nature, extent and source of the ground water and soil contamination at the site, which includes the Pomona Oaks subdivision, Pomona Plaza Shopping Center, and those residents downgradient of the subdivision. The RI fieldwork, conducted from October 1988 to March 1989, included a soil gas survey, subsurface soil sampling, sediment sampling, monitoring well and piezometer installation, one round of sampling from the monitoring wells, residential well sampling (outside the subdivision), aquifer slug testing, and gamma logging of wells.

The sources of contamination were not identified during the RI. There was not enough contamination present in the soil or the ground water to give an indication of its origin. Potential sources include two nearby gas stations, a local automobile salvage yard, and the now closed septic systems of the Pomona Plaza Shopping Center and the residences in the subdivision.

Data obtained during the extensive RI has shown that the ground water contamination in the Pomona Oaks subdivision no longer exists above health risk or drinking water standard levels. On September 26, 1990, the EPA Regional Administrator, with the concurrence of the NJDEP, signed a Record of Decision for the Pomona Oaks site. The selected remedy was to take no remedial action.

This decision was based on the following facts:

—The immediate threat to the residents of the Pomona Oaks subdivision was removed by the installation of the alternate water supply in 1985;

—The RI indicated that the high concentrations of chemicals that were present during the 1982 to 1985 period had significantly decreased to below drinking water standards suggesting dispersion and/or biodegradation of contaminants over time; and

—The contamination was not present in the Pomona Oaks subdivision and, therefore, did not come from a continuous source, but most likely discrete events, such as spills.

(B). Basis for Intended Deletion of the Vineland State School Site

The Vineland State School, currently known as the Vineland Developmental Center (VDC), is located to the northeast of the intersection of Main Road (State Highway 555) and Landis Avenue (State Highway 56) in the City of Vineland, New Jersey. The Vineland Developmental Center is a residential treatment facility for mentally handicapped women operated by the New Jersey Department of Human Services. It has been in existence since the late 1800's. The 195 acre site is comprised of numerous buildings to house, feed, educate and care for the needs of approximately 1300 residents. Also on the grounds are administration and maintenance facilities, as well as large open fields for recreational purposes. The surrounding area is primarily residential, on land that was formerly orchards and agricultural fields.

As a result of allegations of improper disposal of hazardous materials made by VDC employees, investigations were conducted beginning in March 1980 on behalf of the New Jersey Department of Health Services (NJDHS). These investigations were carried out by the NJDEP, the City of Vineland and the EPA. The VDC site was added to the National Priorities List in September 1983. Based on the allegations by VDC employees that five separate areas of the VDC property were potential hazardous waste disposal areas, five distinct subsites were investigated within the facility.

VOL
61
ISS
136
JL
15
1996
UMI

A significant amount of investigation work prior to and during the RI performed at the VDC site. The investigative activities were performed in order to determine the nature and extent of contamination at the suspected subsites. The major investigative activities included potable well sampling, installation and sampling of monitoring wells, performing a conductivity survey, conducting exploratory excavations and collecting subsurface soil samples.

The results of these investigations failed to detect any significant contamination in four of the five subsites. Only subsite 2 was found to be contaminated to any meaningful degree. This area was remediated by the NJDEP in October 1988. The cleanup included the removal of nearly 4,000 tons of soils contaminated with polychlorinated biphenyls (PCBs). Also, a public water supply was extended to service homes in the vicinity of the site.

In summary, although there were allegations of illegal dumping, investigations of the four other areas failed to detect any significant contamination. In fact, the risks associated with the low levels of contamination in these areas are within the acceptable range as determined by EPA and NJDEP.

In view of the above, the selected remedy in the September 30, 1989 Record of Decision (ROD) was to take no further remedial action. However, because sporadic low levels of subsurface soil contamination exist at the site, a program to monitor groundwater and the existing disposal areas has been implemented. A review will be performed within five years to ensure that the selected remedial action provides adequate protection of human health and the environment.

Having met the deletion criteria, EPA proposes to delete this site from the NPL. EPA and the State have determined that the response actions are protective of human health and the environment.

Dated: May 14, 1996.

William J. Muszynski,

Acting Regional Administrator, USEPA Region II.

[FR Doc. 96–17460 Filed 7–12–96; 8:45 am]

BILLING CODE 6560–60–P

Notices

Federal Register
Vol. 61, No. 136
Monday, July 15, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic PIEC Advisory Committee will meet on August 2, 1996 at the Northwest Forest Resources Office, 3033 Ingram Street, Hoquiam, Washington. The meeting will begin at 9:30 a.m. and continue until 3 p.m. Agenda topics are: (1) Cooperative Fire Protection; (2) Watershed Restoration Projects and Priority Setting; (3) Rechartering of Province Advisory Committee and New Members; (4) Update on timber and other programs on the Quinault District; (5) Northwest Forest Plan Monitoring Process; (6) Open Forum; and (7) Public Comments. All Olympic Province Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kate Snow, Province Liaison, USDA, Quilcene Ranger District, P.O. Box 280, Quilcene, WA 98376, (360) 765–2211 or Ronald R. Humphrey, Forest Supervisor, at (360) 956–2301.

Dated: July 9, 1996.

Ann Stratton,

Budget and Finance Officer.

[FR Doc. 96–17877 Filed 7–12–96; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 13, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 9, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Intergovernmental and Interagency Affairs

Type of Review: Extension.
Title: The Exchange Visitor Waiver Review Guidelines—Waiver Board Guidelines.
Frequency: On occasion.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Burden:
Responses: 25.
Burden Hours: 38.
Abstract: The Exchange Visitor Waiver Review Board makes requests to the U.S. Information Agency (USIA) for waiver of the two-year home residency requirement for exchange visitors who have been granted J1 visas. The guidelines and applications, subject to Office of Management and Budget clearance, will be used by educational or rehabilitative institutions or organizations that apply to the Department of ED to act as interested agency and request waiver of the two-year home requirement on behalf of an exchange visitor. Also, as a result of regulation reinvention efforts, the Federal Regulations governing this process will be eliminated October 1, 1996.

[FR Doc. 96–17866 Filed 7–12–96; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Education.

ACTION: Submission for OMB review; comment request.

VOL
61
ISS
136
JL
15
1996
UMI

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 14, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: July 9, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Application for Grants Under the Innovative Programs Section of the Magnet Schools Assistance Program.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs and LEAs.

Annual Reporting and Recordkeeping Burden:

Responses: 150.

Burden Hours: 3,600.

Abstract: The application is used by local educational agencies to apply for funds to administer innovative programs under the Magnet Schools Program. The proposed projects must involve strategies other than magnet schools, be organized around a special emphasis, theme, or concept, and involve parent and community input.

[FR Doc. 96–17865 Filed 7–12–96; 8:45 am]

BILLING CODE 4000–01–P

Office of Postsecondary Education; Federal Perkins Program Expanded Lending Option

AGENCY: Education.

ACTION: Notice of deadline of submission of institutional agreement for participation in the Federal Perkins Program Expanded Lending Option.

SUMMARY: This notice establishes the deadline for submission of the "Institutional Agreement For Participation In the Federal Perkins Loan Program Expanded Lending Option (ELO)" (ELO Participation Agreement) by those eligible institutions that elect to participate in the Federal Perkins Loan Program ELO in the 1996–97 award year (the period from July 1, 1996 through June 30, 1997).

SUPPLEMENTARY INFORMATION: The Federal Perkins Loan Program provides low-interest loans to financially needy students attending institutions of higher education to help them pay their educational costs. The ELO is available for the 1996–97 award year for institutions of higher education that participate in the Federal Perkins Loan Program.

To be eligible to participate in the Federal Perkins Loan Program ELO for 1996–97, an institution must have had a Federal Perkins Loan cohort rate of 15 percent or less as of June 30, 1995, and must have participated in the Federal Perkins Loan Program for the two previous award years (1994–95 and 1995–96). In addition, an institution must enter into a special ELO Participation Agreement with the Secretary. An institution that elects to participate in the ELO must complete, sign, date and submit the ELO Participation Agreement by the deadline date to obtain approval.

Institutions that become Federal Perkins Loan Program ELO participants will be required to increase the Institutional Capital Contribution (ICC) to at least a dollar-for-dollar match with any portion of the 1996–97 award year Federal Capital Contribution (FCC) received. Only new FCC received on or after July 1, 1996, would be matched at the increased rate. Institutions would not match funds received prior to July 1, 1996, at the higher rate.

Institutions that become Federal Perkins Loan Program ELO participants may make loans to eligible students at higher maximum annual and aggregate limits than is the case with nonparticipating institutions. ELO participating institutions that do not ultimately make any loans at the higher ELO levels for the 1996–97 award year must still honor the ELO Participation Agreement to deposit in the Federal Perkins Loan Program Fund an ICC at least equal to the 1996–97 award year FCC deposited into the Fund. All other administrative procedures would remain the same as for institutions not participating in the Federal Perkins Loan Program ELO.

DATES: *Closing Date for Transmittal of ELO Participation Agreement:* To ensure participation in the Federal Perkins Loan Program ELO in the 1996–97 award year, an eligible institution that elects to participate must submit its ELO Participation Agreement by August 1, 1996.

ELO Participation Agreement Delivered By Mail: An ELO Participation Agreement delivered by mail must be addressed to the U.S. Department of Education, Student Financial Assistance Programs, Institutional Financial Management Division, Campus-Based Financial Operations Branch, 600 Independence Avenue, SW., Room 4714 Regional Office Building 3, Washington, DC 20202–5458.

An institution must show proof of mailing its ELO Participation Agreement by the closing date. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If an ELO Participation Agreement is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

ELO Participation Agreement delivered by hand and Commercial Delivery Services: An ELO Participation Agreement delivered by hand must be delivered to the U.S. Department of Education, Student Financial Assistance Programs, Institutional Financial Management Division, Campus-Based Financial Operations Branch, 7th and D Streets, SW., Room 4714 Regional Office Building 3, Washington DC. Hand-delivered ELO Participation Agreements will be accepted between 8 a.m. and 4:30 p.m. daily (eastern Daylight Time), except Saturdays, Sundays, and Federal holidays. An ELO Participation Agreement that is hand-delivered will not be accepted after 4:30 p.m. on August 1, 1996.

Applicable Regulations: The following regulations apply to this program:

Student Assistance General Provisions, 34 CFR Part 668.

Federal Perkins Loan Program, 34 CFR Part 674.

Federal Work-Study Program, 34 CFR Part 675.

Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 676.

Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600.

Federal Family Educational Loan Program, 34 CFR 682.

New Restrictions on Lobbying, 34 CFR part 82.

Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

FOR FURTHER INFORMATION CONTACT: For information concerning ELO Participation Agreement submissions, contact Sandra Donelson, Financial Management Specialist, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Office of Postsecondary Education, 600 Independence Avenue, SW. (Room 4714, ROB–3), Washington, DC 20202–5452. Telephone: 202–708–9751.

For technical assistance concerning the Federal Perkins Loan Program ELO, contact Susan Morgan, Chief, Campus-Based Loan Programs Section, or Sylvia R. Ross, Program Specialist, Policy Development Division, Student Financial Assistance Programs, Office of Postsecondary Education, U.S. Department of Education, Telephone: 202–708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

(Catalog of Federal Domestic Assistance Numbers: 84.038, Federal Perkins Loan Program)

Dated: July 8, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96–17871 Filed 7–12–96; 8:45 am]

BILLING CODE 4000–01–P

Office of Postsecondary Education; Availability of the Amendments to the Federal Perkins Loan and National Direct Student Programs Loan Directory of Designated Low-Income Schools for Teacher Cancellation Benefits for the 1995–96 School Year

AGENCY: Department of Education.

ACTION: Notice of availability of the amendments to the 1995–96 Federal Perkins Loan and National Direct Student Loan Programs Directory of Designated Low-Income Schools.

SUMMARY: Institutions and borrowers participating in the Federal Perkins Loan and National Direct Student Loan Programs and other interested persons are advised that they may obtain information regarding the amendments to the Federal Perkins Loan and National Direct Student Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits for the 1995–96 School Year (Directory). The amendments identify changes in the list of schools that qualify borrowers for teacher cancellation benefits under each of the loan programs.

DATES: The amendments to the Directory are currently available.

ADDRESSES: Information concerning specific schools listed in the amendments to the Directory may be obtained from Systems Administration Branch, Campus-Based Programs System Division, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, S.W., (Room 4621, ROB–3), Washington, D.C. 20202–5453, Telephone (202) 708–6730.

Information concerning deferment and/or cancellation of a National Direct Student Loan or Federal Perkins Loan may be obtained from Susan M. Morgan, Section Chief, Campus-Based Loan Programs Section, Loans Branch, Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, S.W., (Room 3053, ROB–3), Washington, D.C. 20202–5345, Telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: The amendments to the Directory are available at (1) each institution of higher education participating in the Federal Perkins Loan Program, (2) each of the fifty-seven (57) State and Territory Departments of Education, (3) each of the major Federal Perkins Loan billing services, and (4) the U.S. Department of Education.

SUPPLEMENTARY INFORMATION: The Secretary of Education published a notice in the **Federal Register** on December 19, 1995, indicating that the Directory was available. The Secretary has revised the Directory due to the opening and closing of schools, school name changes, and the need for other corrections. These revisions are listed in the amendments to the Directory.

The procedures for selecting the schools that qualify borrowers for cancellation benefits are described in the Federal Perkins Loan Program regulations at 34 CFR 674.53 and 674.54. The Secretary has determined that for the 1995–96 academic year full-time teaching in the schools set forth in the Directory and the amendments to the Directory qualifies a borrower for cancellation benefits.

The Secretary is providing the amendments to the Directory to each institution participating in the Federal Perkins Loan Program. Borrowers and other interested parties may check with their lending institutions, the appropriate State or Territory Department of Education, regional offices of the Department of Education, or the Office of Postsecondary Education of the Department of Education concerning the identity of qualifying schools for the 1995–96 academic year.

The Office of Postsecondary Education retains, on a permanent basis,

VOL
61
ISS
136
JL
15
1996
UMI

copies of all published Directories and amendments.

(Catalog of Federal Domestic Assistance Number 84.037; National Defense/Direct and Federal Perkins Student Loan Cancellations)

Dated: July 8, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96–17872 Filed 7–12–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM96–6–32–001]

Colorado Interstate Gas Company; Notice of Compliance Tariff Filing

July 9, 1996.

Take notice that on July 2, 1996, Colorado Interstate Gas Company (CIG) filed 1st Rev. Sixteenth Revised Sheet No. 11 of its FERC Gas Tariff, First Revised Volume No. 1, pursuant to the Commission's Letter Order issued June 17, 1996, which requires CIG to submit this filing to change incorrect paginated Sheet No. 11.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17863 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–6–70–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1996.

Take notice that on July 1, 1996, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective August 1, 1996:

Thirteenth Revised Sheet No. 018
Fourteenth Revised Sheet No. 019

Columbia Gulf states that by the instant filing, Columbia Gulf is submitting a Periodic TRA filing pursuant to Section 33 of the General Terms and Conditions of its FERC Gas Tariff, to effectuate an increase in the company-use component of the retainage percentage applicable to the Mainline Zone (Rayne, LA to Points North). The increase in the retainage percentage is caused by an unanticipated increase in the throughput in the Mainline Zone during the first five months of 1996. The higher utilization has been necessary to meet market needs and to refill a higher than projected level of Columbia Gas Transmission Corporation's storage following the extremely cold weather during this period. The increased use of Columbia Gulf's mainline system during the summer months is projected to continue through the end of the summer, given the remaining level of storage injections which are anticipated. The instant filing is necessary to prevent further underrecoveries, which would generate a significant deferral to be collected through the 1997 surcharge.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17862 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ96–7–23–000 and TM96–11–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1996.

Take notice that on July 2, 1996 Eastern Shore Natural Gas Company (ESNG) tendered for filing certain revised tariff sheets in the above captioned dockets as part of its FERC Gas Tariff, First Revised Volume No. 1, with a proposed effective date of August 1, 1996.

ESNG states that the revised tariff sheets included herein are being filed pursuant to Sections 21 and 23, respectively, of the General Terms and Conditions of ESNG's Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth herein reflect an overall increase of $0.0295 per dt in the Demand Charge and an overall increase of $0.3785 per dt in the Commodity Charge, as measured against the following ESNG instant filings; Docket No. TQ96–6–23–000, a regularly scheduled Quarterly PGA filed on March 29, 1996 proposed to be effective May 1, 1996.

ESNG states that the instant filing also tracks rates attributable to storage service purchased from Columbia Gas Transmission (Columbia) under Columbia's Rate Schedules SST and FSS the costs of which are included in the rates and charges payable under ESNG's Rate Schedules CWS and CFSS effective August 1, 1996. The tracking portion of this filing is being made pursuant to Section 24 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and Section 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17864 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–70–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1996.

Take notice that on July 1, 1996, Equitrans, L.P. (Equitrans), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to become effective July 1, 1996.

Third Revised Sheet No. 401

Equitrans states that this filing is made to update Equitrans' index of customers. In Order No. 581 the Commission established a revised format for the Index of Customers to be included in the tariffs of interstate pipelines and required the pipelines to update the index on a quarterly basis to reflect changes in contract activity. Equitrans requests a waiver of the Commission's notice requirements to permit the tariff sheet to take effect on July 1, 1996, the first calendar quarter, in accordance with Order No. 581.

Equitrans states that a copy of its filing has been served upon its customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17844 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket NO. RP96–309–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1996

Take notice that on July 3, 1996, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective September 1, 1996.

Fifteenth Revised Sheet No. 8A
Seventh Revised Sheet No. 8A.02
Twelfth Revised Sheet No. 8B
Fifth Revised Sheet No. 8B.01
Third Revised Sheet No. 208
Third Revised Sheet No. 300
Third Revised Sheet No. 302
Third Revised Sheet No. 303
Third Revised Sheet No. 308
Third Revised Sheet No. 310
Second Revised Sheet No. 311

On October 5, 1995, FGT filed an application in Docket No. CP96–12–000 requesting authorization pursuant to section 7(b) of the Natural Gas Act (NGA) to abandon certain facilities located in South Texas (South Texas Facilities) by transfer to its non-jurisdictional affiliate, Citrus Energy Services (Citrus Energy). In response to concerns raised by several parties to the proceeding, FGT stated that it would agree to make a limited NGA section 4 filing to reduce its rates concurrently with the effectiveness of the abandonment and closing of the sale to reflect the abandonment of the facilities.

In a Preliminary Determination on Abandonment Application and Declaring Jurisdictional Status of Facilities issued June 14, 1996 (June 14 Order), the Commission made a preliminary determination that the proposed abandonment is permitted by the public convenience and necessity. The June 14 Order required, as a precondition to a final determination, that FGT submit evidence that demonstrates that Citrus Energy has in place a regime of private contracts with FGT's firm service customers with primary points located on the South Texas Facilities in order to ensure continuity of service to the firm service customers potentially affected by the abandonment.

FGT states that on June 27, 1996, it filed a Submittal of Evidence of Replacement Service demonstrating that all affected firm service customers have either: (1) agreed to relocate or have relocated receipt points to points at or downstream of FGT's Compressor Station 2; or (2) entered into a new contract with Citrus Energy (or PanEnergy Services) for continued service through the facilities to be abandoned. The June 14 Order also directed FGT to make a NGA section 4 filing to reflect the abandonment of the South Texas Facilities.

FGT states that the instant filing is submitted in compliance with the June 14 Order, and has requested an effective date of September 1, 1996, the proposed date of the transfer of the South Texas Facilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17858 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–1–001]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1996.

Take notice that on June 28, 1996, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing Twelfth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1. The proposed effective date of the tariff sheet is July 1, 1996.

Iroquois states that the purpose of the filing is to reflect the elimination of $2,004,656 in gas plant in service and the applicable associated costs from its cost of service. Iroquois asserts that the filing is in compliance with the Commission's May 23, 1996 order in the captioned proceeding approving a Stipulation and Consent Agreement and that the rates are identical to those set forth in Attachment A to that Stipulation.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the

VOL
61
ISS
136
JL
15
1996
UMI

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with and 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17846 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–296–000]

K N Interstate Gas Transmission Co.; Notice of Tariff Filing

July 9, 1996.

Take notice that on July 1, 1996, K N Interstate Gas Transmission Co. (KNI) filed in their entirety Third Revised Volume Nos. 1–A and 1–B to its FERC Gas Tariff which completely supersede the currently effective Volume Nos. 1–A and 1–B. KNI requested an August 1, 1996 effective date.

KNI states that the purpose of this filing is to make certain substantive changes to its tariff based upon its nearly three years of operating experience since the implementation of Order No. 636, to revise its tariff consistent with Order No. 582, to update its tariff as required by Order Nos. 497, *et seq.*, and 566, to clarify existing procedures, to delete information no longer required, to reformat for ease of understanding, and to update references to Commission regulations and other miscellaneous housekeeping as more fully discussed in the filing.

KNI states that copies of the filing were served upon KNI's mainline jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17851 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–3–53–000]

K N Interstate Gas Transmission Company; Notice of Fuel and Loss Filing

July 9, 1996.

Take notice that on June 28, 1996, K N Interstate Gas Transmission Company (KNI) made its annual fuel and loss reimbursement filing in the above captioned docket.

KNI states that the filing revises KNI's fuel and loss reimbursement percentages and details, for the twelve months January 1995 through December 1995, its actual fuel and loss and its fuel and loss reimbursement. KNI proposes an effective date of August 1, 1996.

KNI states that copies of the filing were served upon KNI's jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17860 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP96–376–001 and MT96–18–000]

Mississippi River Transmission Corporation and NorAm Field Services Corp.; Notice of Compliance Filing

July 9, 1996.

Take notice on July 1, 1996, Mississippi River Transmission Corporation (MRT) submitted for filing the following tariff sheets as part of its FERC Gas Tariff, Third Revised Volume No. 1:

Third Revised Sheet No. 249
Third Revised Sheet No. 250

MRT states that the tariff sheets reflect the terms and conditions as set forth in MRT's pro forma tariff sheets submitted on April 28, 1995 in this proceeding, which the Federal Energy Regulatory Commission (Commission) directed MRT to file in the Commission's May 31, 1996 "Order Authorizing Abandonment and Declaring Jurisdictional Status of Facilities" in Docket No. CP95–376–000. Specifically, MRT states that the tariff sheets address the standards of conduct between MRT and its affiliated gathering company, NorAm Field Services Corp. (NFS). MRT requests an effective date of September 1, 1996, the date of the intended sale of the subject gathering facilities to NFS, and respectfully requests a waiver of 18 CFR 154.207 and any other requirements so that the tariff sheets can be effective as proposed.

MRT states that a copy of this filing has been mailed to each of its customers and the State Commissions of Arkansas, Missouri and Illinois.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 or 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must be a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17838 Filed 7–21–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–616–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

July 9, 1996.

Take notice that on July 2, 1996, Northern Natural Gas Company (Northern), 111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–616–000, a request pursuant to Sections 157.205 and 157.212 (18 CFR Sections 157.205 and 157.211) of the Commission's Regulations under the Natural Gas Act, and Columbia's authorization in Docket No. CP82–401–000, to upgrade an existing delivery point to accommodate increased natural gas deliveries to Michigan Gas Company (MiGas) for delivery to the Houghton #1 town border station (TBS) in Houghton County, Michigan, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that it requests authority to upgrade an existing delivery point in Michigan to accommodate increased natural gas deliveries to MiGas for delivery to the Houghton #1 TBS under Northern's currently effective throughout service agreements. Northern asserts that MiGas has requested the proposed upgrade to accommodate service, due to expansion, into an area not previously served by natural gas. It is stated that the estimated incremental volumes proposed to be delivered to MiGas at the Houghton #1 TBS are 575 MMBtu on a peak day and 71,291 MMBtu on an annual basis. Northern has stated that the upgrade of the proposed delivery point will not increase MiGas' existing firm entitlement under their currently effective throughput service agreements.

Northern has stated that the estimated cost to upgrade the delivery point is $93,000. MiGas will reimburse Northern for the total cost of upgrading the delivery point.

Northern has stated that the estimated cost to upgrade the delivery point is $93,000. MiGas will reimburse Northern for the total cost of upgrading the delivery point.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days within the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17841 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–302–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1996.

Take notice that on July 1, 1996, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective August 1, 1996:

Thirty-First Revised Sheet No. 53
Second Revised Sheet No. 148
First Revised Sheet No. 226
First Revised Sheet No. 226A
First Revised Sheet No. 266
Original Sheet No. 266A
First Revised Sheet No. 290
Third Revised Sheet No. 291
Second Revised Sheet No. 292

Northern states that the above sheets propose an increase in the positive and punitive daily delivery variance charge (DDVC) applicable only on those limited days when a Critical Day is in effect on Northern's system. Also proposed are revisions to receipt point scheduling penalties and to the provision applicable to hourly takes of gas.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17852 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES96–37–000]

PacifiCorp; Notice of Application

July 9, 1996.

Take notice that on July 1, 1996, PacifiCorp filed an application, under § 204 of the Federal Power Act, seeking authorization to issue unsecured commercial paper and unsecured short-term notes, from time to time, in an aggregate principal amount of not more than $1 billion outstanding at any one time.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 31, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17843 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–305–000]

Paiute Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1996.

Take notice that on July 1, 1996, Paiute Pipeline Company (Paiute) pursuant to Section 4, of the Natural Gas Act, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets to become effective August 1, 1996:

1st Rev. Third Revised Sheet No. 10
First Revised Sheet No. 21
First Revised Sheet No. 21A

Paiute has also tendered Alternate 1st Rev. Third Revised Sheet No. 10 in the event that the Commission does not accept proposed 1st Rev. Third Revised Sheet No. 10. The proposed changes would increase revenues from jurisdictional services by $6,882,430 based on the 12-month period ending March 31, 1996, as adjusted.

Paiute proposes a general increase in its rates under all rate schedules contained in Second Revised Volume No. 1–A of its tariff. Paiute states that

VOL
61
ISS
136
JL
15
1996
UMI

based upon the test period cost of service and the projected throughput quantities employed in its filing, Paiute projected a deficiency of approximately $6,882,430 in annual revenues under its existing rates. Paiute is therefore proposing to increase rates for its jurisdictional transportation and storage service in an amount that is sufficient to eliminate the revenue deficiency, and to recover the full cost of service reflected in its filing.

Paiute indicates that the principal items of cost changes producing its deficiency are: (1) increases in plant and related items; (2) increases in depreciation expenses; (3) increases in various operation and maintenance expenses; and (4) increases in the required rate of return and related income taxes. Paiute further indicates that in designing its proposed transportation rates, it has utilized the same straight fixed-variable method of rate design, cost classification, and cost allocation that was used to derive its present transportation rates in Docket No. RP93–6–000.

Paiute states that its proposed tariff sheets are submitted to revise its Statement of Rates tariff sheet and to make clarifications to its interruptible transportation revenue crediting mechanism.

Paiute states that it has served copies of its filing on all affected customers and all interested State Regulatory Commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17855 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–8–28–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1996.

Take notice that on July 1, 1996, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing, proposed to be effective August 1, 1996.

Panhandle states that the purpose of this filing is to comply with Section 28 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1 which requires that at least 30 days prior to August 1 of each year Panhandle make a filing with the Commission to reflect the adjustment, if any, required to Panhandle's Base Transportation and Storage Rates to reflect the result of the Interruptible Revenue Credit Adjustment.

Panhandle states that no adjustment is required to Base Transportation Rates for Rate Schedules FT, EFT, SCT and LFT and that a (.10¢) reduction is required in the maximum Capacity Charge for storage service under Rate Schedules IOS, WS, PS and FS.

Panhandle states that a copy of this filing is being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17861 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1930–000]

Power Fuels, Inc.; Notice of Issuance of Order

July 9, 1996.

Power Fuels, Inc. (Power Fuels) submitted for filing a rate schedule under which Power Fuels will engage in wholesale electric power and energy transactions as a marketer. Power Fuels also requested waiver of various Commission regulations. In particular, Power Fuels requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Power Fuels.

On July 5, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Power Fuels should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Power Fuels is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Power Fuels' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protest, as set forth above, is August 5, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17842 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–607–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

July 9, 1996.

Take notice that on July 1, 1996, Tennessee Gas Pipeline Company (Tennessee), a Delaware corporation, Post Office Box 2511, Houston, Texas 77252, filed a request with the Commission in Docket No. CP96–607–000, pursuant to Sections 157.205, and 157.212(a) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to install a new delivery point located on Tennessee's system in Montgomery County, Texas, for Hughes Natural Gas, Inc. (Hughes) authorized in blanket certificate issued in Docket No. CP82–413–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to install, own, operate and maintain a 2-inch hot tap on its existing right-of-way and inspect Hughes' installation of the interconnect piping, meter facilities, regulation and strainer facilities. Tennessee reports that they would operate the interconnect piping, regulation and strainer facilities and would own and maintain the meter facilities which would be located on a site, provided by Hughes, adjacent to and along Tennessee's existing right-of-way. The estimated cost of the new facilities would be $15,400 which would be reimbursed by Hughes.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17840 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–307–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

July 9, 1996.

Take notice that on July 2, 1996, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of August 1, 1996.

First Revised Sheet No. 306
Second Revised Sheet No. 306

Tennessee states that it is filing the instant tariff sheets to eliminate the requirement that waivers of gas quality specifications be contained in shipper transportation contracts. Tennessee states that, as a result of unbundling, it is producers and not shippers who control and must meet the gas quality specifications and therefore the proposed changes conform Tennessee's tariff with post restructuring operations.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17856 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–305–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

July 9, 1996.

Take notice that on July 2, 1996, Tennessee Gas Pipeline Company (Tennessee), submitted for filing as part of its FERC Gas Tariff, Fifth Revised Volume 1, the following revised tariff sheets, to be effective on September 1, 1996:

First Revised Sheet No. 209B
First Revised Sheet No. 209C
First Revised Sheet No. 209D
Second Revised Sheet No. 209E
First Revised Sheet No. 209F
First Revised Sheet No. 209G
First Revised Sheet No. 209H
Original Sheet No. 209I
Third Revised Sheet No. 316
Fourth Revised Sheet No. 317
Original Sheet No. 593C
Original Sheet No. 593D

Tennessee states that the purpose of this filing is to implement a modification to its Storage Swing Option (SSO) whereby delivery customers can utilize firm swing service provided by third parties for balancing purposes on the Tennessee system.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection in the public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17857 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–129–001]

Trunkline Gas Company; Notice to Place Suspended Rates into Effect

July 9, 1996.

Take notice that on July 1, 1996 Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A of its filing to become effective August 1, 1996.

Trunkline states that the revised tariff sheets submitted herewith are being filed in compliance with Section 154.206 of the Commission's Regulations to move into effect the tariff sheets which the Commission suspended until August 1, 1996 in its February 29, 1996 Order in this Docket.

Trunkline states that copies of this motion filing are being served on all jurisdictional customers, interested state commissions and all parties to this proceeding.

VOL 61 ISS 136 JL 15 1996 UMI

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17848 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–175–002]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1996.

Take notice that on July 2, 1996, Williams Natural Gas Company (WNG) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, to be effective April 13, 1996:

Second Substitute First Revised Sheet No. 6B
Second Substitute Second Revised Sheet No. 250A
Second Substitute First Revised Sheet No. 250B

WNG states that on April 24, 1996, it filed tariff sheets in compliance with Commission order issued April 9, 1996, in the above referenced docket. By letter order issued June 17, 1996, the Commission rejected the tariff sheets for noncompliance with the April 9, 1996 order. The June 17, 1996 order directed WNG to refile within 15 days of the date of the order, reflecting that WNG would assess a zero fuel charge for all transportation backhauls between the specified receipt and delivery points. The instant filing is being made to reflect this tariff change. The tariff changes also clarify that the minimum percent for the production area is as provided in Article 13.3.

WNG states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above and on all jurisdictional customers and interested state commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17849 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–281–001]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1996.

Take notice that on July 2, 1996, Williams Natural Gas Company (WNG), filed Substitute Thirteenth Revised Sheet No. 6A, Second Revised Volume No. 1, to be effective on July 1, 1996.

WNG states that this filing is being made to correct an inadvertent error in the ITS–P maximum rate in its filing made June 19, 1996, in Docket No. RP96–281–000.

WNG states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in Docket No. RP96–281 and on all jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17850 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP96–303–000 and RP89–183–053]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1996.

Take notice that on July 1, 1996, Williams Natural Gas Company (WNG), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with the proposed effective date of August 1, 1996:

Fourteenth Revised Sheet No. 6A
First Revised Sheet Nos. 8C and 8D

WNG states that this filing is being made pursuant to Article 14 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. WNG hereby submits its quarterly report of take-or-pay buyout, buydown and contract reformation costs and gas supply related transition costs, and the application or distribution of those costs and refunds.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of WNG's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17853 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–71–000]

Williston Basin Interstate Pipeline Company; Notice of Filing

July 9, 1996.

Take notice that on July 1, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective July 1, 1996:

Second Revised Volume No. 1
Fifth Revised Sheet No. 775
Twelfth Revised Sheet No. 779
Eleventh Revised Sheet No. 780
Fifteenth Revised Sheet Nos. 787–788
Sixteenth Revised Sheet Nos. 789–790
Fifteenth Revised Sheet No. 791
Sixteenth Revised Sheet Nos. 792–794
Fourteenth Revised Sheet No. 832
Fifteenth Revised Sheet No. 833

Williston Basin states that the revised tariff sheets are being filed simply to update its Master Receipt/Delivery Point List.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17845 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT96–17–000]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

July 9, 1996.

Take notice that on July 1, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, second Revised Volume No. 1, the following revised tariff sheet to become effective August 1, 1996.

Fourth Revised Sheet No. 187

Williston Basin states that the revised tariff sheet reflects a change to the list of possible shared personnel.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17847 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–305–000]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

July 9, 1996.

Take notice that on July 2, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets as listed in Appendix A to the filing.

Williston Basin states that pursuant to Section 4 of the Natural Gas Act and part 154 of the Commission's Regulations, it is submitting the following revisions to comply with Commission Order Nos. 582 and 582–A in Docket Nos. RM95–3–000 and RM95–3–001, respectively: (1) its title page to include a telephone and fax number in compliance with Section 154.102 of the Commission's amended Regulations; (2) numerous tariff sheets to reflect the correct carrying charge reference to Section 154.501 of the Commission's amended Regulations; and (3) Sheet No. 362 to reflect the correct Annual Charge Adjustment reference to Section 154.402 of the Commission's amended Regulations.

Williston Basin states that in addition to the above revisions, it has added language to its FERC Gas Tariff in compliance with Section 154.109 (b) and (c) of the Commission's amended Regulations, to contain a statement which specifies the order in which each component of Williston Basin's rates will be discounted and a statement of Williston Basin's policy with respect to the financing and construction of internals.

Williston Basin states it is also submitting the following "housekeeping" revisions: (1) Sheet Nos. 120 and 122 to delete subsections which pertain to Rate Schedule S–3; (2) Sheet No. 207 to clarify that it is necessary for a shipper to designate between primary and alternate points; (3) Sheet No. 224 to clarify that Storage Service Requests do not pertain just to firm storage; and (4) Sheet No. 303 to reflect the correct reference in Section 284.7 of the Commission's Regulations with regard to discounting.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20246, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17854 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–304–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Revisions

July 9, 1996.

Take notice that on July 2, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 the following revised tariff sheets to become effective August 1, 1996:

Second Revised Volume No. 1
First Revised Sheet No. 182
Original Sheet No. 182A

Williston Basin states that the revised tariff sheets are being filed to revise Section 5 of its General Terms and Conditions to: (1) allow gas measurement charts to be changed or indices read at intervals mutually agreed upon by Williston Basin and the affected Shipper; and (2) allow Shippers to access daily flow data from Williston Basin's Remote Terminal Units. Williston Basin states that such Shippers will assume sole responsibility for all use of the data and information.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission,

VOL
61
ISS
136
JL
15
1996
UMI

Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17859 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–541–000]

Southern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Zone III Expansion Project and Request for Comments on Environmental Issues

July 9, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Zone III Expansion Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Southern Natural Gas Company (Southern) wants to expand the capacity of its facilities in Alabama, Georgia, and Mississippi to transport an additional 45,880 cubic feet per day of natural gas to nine companies and two municipalities. Southern seeks authority to construct and operate:

- 4.6 miles of 30-inch-diameter loop in Crawford and Monroe Counties, Georgia;
- 5.1 miles of 16-inch-diameter loop in Jones and Twiggs Counties, Georgia;
- 5.9 miles of 30-inch-diameter loop in Lee County, Alabama;
- 7.3 miles of 24-inch-diameter loop in Pickens and Tuscaloosa Counties, Alabama; and
- 4.6 miles of 30-inch-diameter loop in Walthall, Lawrence, and Marion Counties, Mississippi.

Southern has also proposed to upgrade four turbine compressor engines which are located within the Selma Compressor Station in Dallas County, Alabama and the Bay Springs Compressor Station in Jasper County, Mississippi.

In addition, Southern would place an existing 104.6 mile 20-inch-diameter pipeline back in service. The Wrens-Savannah Pipeline is in Jefferson, Burke, Jenkins, Screven, Effingham, and Chantham Counties, Georgia.

The general location of the project facilities and specific locations for facilities on new sites are shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 83.38 acres of land. Following construction, about 19.52 acres would be maintained as new right-of-way. The remaining 63.86 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Land use.
- Cultural resources.
- Air quality and noise.
- Endangered and threatened species.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Southern. This preliminary list of issues may be changed based on your comments and our analysis.

- Two federally listed endangered species may occur in the proposed project area.
- Three residences are located within 50 feet of the proposed construction right-of-way.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposals, alternatives to the proposal including alternative routes, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Washington, DC 20426.
- Reference Docket No. CP96–541–000.
- Send a *copy* of your letter to: Ms. Amy Olson, EA Project Manager, Federal Energy Regulatory Commission, 888 First St., N.E., PR–11.1, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before August 19, 1996.

If you wish to receive a copy of the EA, you should request one from Ms. Olson at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Amy Olson, EA Project Manager, at (202) 208–1199.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17839 Filed 7–12–96; 8:45 am]

BILLING CODE 6717–01–M

Sunshine Act Meeting

July 10, 1996.

The following Notice of Meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 17, 1996, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro 650th Meeting—July 17, 1996; Regular Meeting (10:00 a.m.)

CAH–1.
DOCKET# P–5984–005, NIAGARA MOHAWK POWER CORPORATION

Consent Agenda—Electric

CAE–1.
DOCKET# ER96–1886–000, ORANGE AND ROCKLAND UTILITIES, INC.
OTHER#S ER96–1887–000, ORANGE AND ROCKLAND UTILITIES, INC.
CAE–2.
DOCKET# ER96–1888–000, ILLINOIS POWER COMPANY
CAE–3.
DOCKET# ER96–1992–000, NORTHEAST UTILITIES SERVICE COMPANY
CAE–4.
DOCKET# ER96–1895–000, FLORIDA POWER CORPORATION
OTHER#S ER96–1826–000, FLORIDA POWER CORPORATION
ER96–1893–000, FLORIDA POWER CORPORATION
ER96–1914–000, FLORIDA POWER CORPORATION
CAE–5.
DOCKET# ER96–1905–000, SOUTHWESTERN PUBLIC SERVICE COMPANY
OTHER#S ER96–1906–000, SOUTHWESTERN PUBLIC SERVICE COMPANY
ER96–1907–000, SOUTHWESTERN PUBLIC SERVICE COMPANY
ER96–1908–000, SOUTHWESTERN PUBLIC SERVICE COMPANY
ER96–1909–000, SOUTHWESTERN PUBLIC SERVICE COMPANY
ER96–1910–000, SOUTHWESTERN PUBLIC SERVICE COMPANY
CAE–6.
OMITTED
CAE–7.
DOCKET# FA94–23–001, CONNECTICUT YANKEE ATOMIC POWER COMPANY
CAE–8.
DOCKET# ER96–370–000, MAINE PUBLIC SERVICE COMPANY
OTHER#S ER96–561–000, MAINE PUBLIC SERVICE COMPANY
CAE–9.
DOCKET# ER95–634–000, FLORIDA POWER CORPORATION
OTHER#S ER95–634–001, FLORIDA POWER CORPORATION
ER95–634–002, FLORIDA POWER CORPORATION
ER95–1536–000, FLORIDA POWER CORPORATION
ER95–1536–001, FLORIDA POWER CORPORATION
CAE–10.
DOCKET# EL96–33–000, ALLEGHENY GENERATING COMPANY
OTHER#S EL96–33–001, ALLEGHENY GENERATING COMPANY
CAE–11.
DOCKET# ER95–222–002, DELMARVA POWER & LIGHT COMPANY
OTHER#S ER95–1639–001, DELMARVA POWER & LIGHT COMPANY
CAE–12.
DOCKET# EL95–53–000, ARKANSAS PUBLIC SERVICE COMMISSION V. ENTERGY SERVICES, INC.
CAE–13.
DOCKET# EL96–35–000, WABASH VALLEY POWER ASSOCIATION, INC. V. NORTHERN INDIANA PUBLIC SERVICE COMPANY, INC.
OTHER#S ER96–399–000, NORTHERN INDIANA PUBLIC SERVICE COMPANY, INC.
CAE–14.
DOCKET# EL95–58–000, ENTERGY SERVICES, INC.
CAE–15.
DOCKET# EL96–32–000, ILLINOIS MUNICIPAL ELECTRIC AGENCY V. CENTRAL ILLINOIS PUBLIC SERVICE COMPANY

Consent Agenda—Gas and Oil

CAG–1.
DOCKET# RP96–279–000, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–2.
OMITTED
CAG–3.
DOCKET# RP95–128–002, EAST TENNESSEE NATURAL GAS COMPANY
CAG–4.
DOCKET# RP95–408–010, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–5.
DOCKET# RP95–457–001, ANR PIPELINE COMPANY
CAG–6.
DOCKET# RP96–249–000, TENNESSEE GAS PIPELINE COMPANY
CAG–7.
DOCKET# RP94–52–000, NORTHWEST ALASKAN PIPELINE COMPANY
OTHER#S RP94–52–001, NORTHWEST ALASKAN PIPELINE COMPANY
RP94–250–000, NORTHWEST ALASKAN PIPELINE COMPANY
RP94–250–001, NORTHWEST ALASKAN PIPELINE COMPANY
CAG–8.
DOCKET# RP95–125–002, MIDWESTERN GAS TRANSMISSION COMPANY
CAG–9.
OMITTED
CAG–10.
DOCKET# RP96–129–000, TRUNKLINE GAS COMPANY
CAG–11.
DOCKET# RP96–137–000, NORTHERN NATURAL GAS COMPANY
CAG–12.
DOCKET# ST88–2555–007, LOUISIANA INTRASTATE GAS COMPANY L.L.C.
OTHER#S PR91–12–000, LOUISIANA INTRASTATE GAS COMPANY L.L.C.
PR92–7–000, LOUISIANA INTRASTATE GAS COMPANY L.L.C.
PR94–8–000, LOUISIANA INTRASTATE GAS COMPANY L.L.C.
PR94–8–001, LOUISIANA INTRASTATE GAS COMPANY L.L.C.
PR94–8–002, LOUISIANA INTRASTATE GAS COMPANY L.L.C.

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[1] Southern Natural Gas Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

VOL
61
ISS
136
JL
15
1996
UMI

PR94–8–003, LOUISIANA INTRASTATE GAS COMPANY L.L.C.
ST88–2905–000, LOUISIANA INTRASTATE GAS COMPANY L.L.C.
ST89–1708–000, LOUISIANA INTRASTATE GAS COMPANY L.L.C.
ST89–1775–000, LOUISIANA INTRASTATE GAS COMPANY L.L.C.
ST89–3337–000, TEXAS GAS TRANSMISSION CORPORATION
CAG–13.
DOCKET# RP96–64–001, SOUTH GEORGIA NATURAL GAS COMPANY
OTHER#S RP96–64–000, SOUTH GEORGIA NATURAL GAS COMPANY
CAG–14.
DOCKET# RP96–61–000, TENNESSEE GAS PIPELINE COMPANY
CAG–15.
DOCKET# RP89–186–057, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
OTHER#S ST93–2038–001, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
ST93–2039–001, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
ST93–2040–001, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
ST93–2732–001, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
ST93–2733–001, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
ST93–3139–001, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
ST93–3140–001, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
ST93–3141–001, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
ST93–3142–001, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
CAG–16.
DOCKET# RP96–67–003, MOJAVE PIPELINE COMPANY
CAG–17.
DOCKET# RP96–78–001, STINGRAY PIPELINE COMPANY
CAG–18.
DOCKET# RP96–200–001, NORAM GAS TRANSMISSION COMPANY
CAG–19.
DOCKET# RP95–296–004, WILLIAMS NATURAL GAS COMPANY
CAG–20.
DOCKET# RP93–5–025, NORTHWEST PIPELINE CORPORATION
OTHER#S RP93–98–005, NORTHWEST PIPELINE CORPORATION
CAG–21.
DOCKET# RP92–163–007, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
OTHER#S RP92–170–007, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
RP92–236–006, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–22.
DOCKET# RP91–166–030, NORTHWEST PIPELINE CORPORATION
CAG–23.
DOCKET# RP92–137–040, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–24.
DOCKET# AC94–179–001, ALGONQUIN GAS TRANSMISSION COMPANY
OTHER#S AC93–61–001, TENNESSEE GAS PIPELINE COMPANY, MIDWESTERN GAS TRANSMISSION CO. AND EAST TENNESSEE NATURAL GAS COMPANY, ET AL.
AC93–186–001, CNG TRANSMISSION CORPORATION
AC94–40–001, MISSISSIPPI RIVER TRANSMISSION CORPORATION
AC94–48–001, PANHANDLE EASTERN PIPE LINE COMPANY
AC94–49–001, TRUNKLINE GAS COMPANY
CAG–25.
DOCKET# GP91–6–007, JACK J. GRYNBERG, ET AL. V. ROCKY MOUNTAIN NATURAL GAS COMPANY, A DIVISION OF K N ENERGY INC.
OTHER#S GP91–10–007, ROCKY MOUNTAIN NATURAL GAS COMPANY, A DIVISION OF K N ENERGY INC. V. JACK J. GRYNBERG, ET AL.
CAG–26.
DOCKET# RP96–172–001, KOCH GATEWAY PIPELINE COMPANY
CAG–27.
DOCKET# RP96–173–001, WILLIAMS NATURAL GAS COMPANY
OTHER#S RP89–183–061, WILLIAMS NATURAL GAS COMPANY
CAG–28.
DOCKET# RM95–3–002, FILING REQUIREMENTS FOR INTERSTATE NATURAL GAS COMPANY RATE SCHEDULES AND TARIFFS
CAG–29.
DOCKET# RP95–436–000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–30.
DOCKET# OR96–13–000, ULTRAMAR, INC. V. GAVIOTA TERMINAL COMPANY
CAG–31.
DOCKET# OR89–2–007, TRANS ALASKA PIPELINE SYSTEM
OTHER#S IS89–7–000, AMERADA HESS PIPELINE CORPORATION
IS89–8–000, ARCO PIPELINE COMPANY
IS89–9–000, BP PIPELINES (ALASKA) INC.
IS89–10–000, EXXON PIPELINE COMPANY
IS89–11–000, MOBIL ALASKA PIPELINE COMPANY
IS89–12–000, PHILLIPS ALASKA PIPELINE CORPORATION
IS89–13–000, UNOCAL PIPELINE COMPANY
CAG–32.
DOCKET# RM96–10–000, OIL PIPELINE COST-OF-SERVICE FILING REQUIREMENTS
CAG–33.
DOCKET# RP88–68–041, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S IN89–1–002, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–34.
DOCKET# RP94–344–000, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–35.
DOCKET# CP94–172–002, MOJAVE PIPELINE COMPANY
CAG–36.
DOCKET# CP95–11–004, WILLIAMS NATURAL GAS COMPANY
OTHER#S CP95–11–005, WILLIAMS NATURAL GAS COMPANY
CP95–12–002, WILLIAMS GAS PROCESSING-KANSAS HUGOTON COMPANY
CAG–37.
DOCKET# CP95–783–000, COLORADO INTERSTATE GAS COMPANY
CAG–38.
DOCKET# CP96–29–000, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–39.
DOCKET# CP95–785–000, NORAM GAS TRANSMISSION COMPANY
CAG–40. OMITTED
CAG–41.
DOCKET# CP96–168–000, NORTHWEST PIPELINE CORPORATION
CAG–42.
DOCKET# CP95–735–000, MURPHY EXPLORATION & PRODUCTION COMPANY V. QUIVIRA GAS COMPANY
OTHER#S CP95–735–001, MURPHY EXPLORATION & PRODUCTION COMPANY V. QUIVIRA GAS COMPANY
CAG–43.
DOCKET# RP96–92–000, AMOCO PRODUCTION COMPANY V. ANR PIPELINE COMPANY
CAG–44.
OMITTED
CAG–45.
OMITTED

Hydro Agenda

H–1.
DOCKET# P–2113–038, WISCONSIN VALLEY IMPROVEMENT COMPANY
OTHER#S P–1999–004, WISCONSIN PUBLIC SERVICE CORPORATION
P–2212–002, WEYERHAEUSER COMPANY
P–2239–004, TOMAHAWK POWER AND PULP COMPANY
P–2255–003, NEKOOSA PAPERS, INC.
P–2256–001, CONSOLIDATED WATER POWER COMPANY
P–2291–001, NEKOOSA PAPERS, INC.
P–2292–001, NEKOOSA PAPERS, INC.
P–2476–001, WISCONSIN PUBLIC SERVICE CORPORATION
P–2590–001, CONSOLIDATED WATER POWER COMPANY
ORDER ON APPLICATIONS FOR NEW LICENSE
H–2.
DOCKET# P–2113–022, WISCONSIN VALLEY IMPROVEMENT COMPANY
ORDER ON APPLICATION FOR NEW LICENSE.
H–3.
DOCKET# P–2239–004, TOMAHAWK POWER AND PULP COMPANY
ORDER ON APPLICATION FOR NEW LICENSE.
H–4.
DOCKET# P–2476–001, WISCONSIN PUBLIC SERVICE CORPORATION
ORDER ON APPLICATION FOR SUBSEQUENT LICENSE.
H–5.
DOCKET# P–1999–004, WISCONSIN PUBLIC SERVICE CORPORATION
ORDER ON APPLICATION FOR NEW LICENSE.
H–6.
DOCKET# P–2212–001, WEYERHAEUSER COMPANY
ORDER ON APPLICATION FOR NEW LICENSE.
H–7.
DOCKET# P–2590–001, CONSOLIDATED WATER POWER COMPANY
ORDER ON APPLICATION FOR NEW LICENSE.
H–8.
DOCKET# P–2256–001, CONSOLIDATED WATER POWER COMPANY
ORDER ON APPLICATION FOR NEW LICENSE.
H–9.
DOCKET# P–2255–003, NEKOOSA PAPERS, INC.
ORDER ON APPLICATION FOR NEW LICENSE.
H–10.
DOCKET# P–2291–001, NEKOOSA PAPERS, INC.
ORDER ON APPLICATION FOR NEW LICENSE.
H–11.
DOCKET# P–2292–001, NEKOOSA PAPERS, INC.
ORDER ON APPLICATION FOR NEW LICENSE.

Electric Agenda

E–1.
RESERVED

Oil and Gas Agenda

I.
PIPELINE RATE MATTERS
PR–1.
DOCKET# RM96–1–000, STANDARDS FOR BUSINESS PRACTICES OF INTERSTATE NATURAL GAS PIPELINES
FINAL RULE.
PR–2.
DOCKET# RP93–100–000, DAKOTA GASIFICATION COMPANY
OTHER#S RP93–151–015, TENNESSEE GAS PIPELINE COMPANY
RP94–39–006, TENNESSEE GAS PIPELINE COMPANY
RP94–87–008, NATURAL GAS PIPELINE COMPANY OF AMERICA
RP94–122–006, NATURAL GAS PIPELINE COMPANY OF AMERICA
RP94–150–000, ANR PIPELINE COMPANY
RP94–169–006, NATURAL GAS PIPELINE COMPANY OF AMERICA
RP94–195–005, NATURAL GAS PIPELINE COMPANY OF AMERICA
RP94–202–000, TENNESSEE GAS PIPELINE COMPANY
RP94–208–000, NATURAL GAS PIPELINE COMPANY OF AMERICA
RP94–222–000, TENNESSEE GAS PIPELINE COMPANY
RP94–249–004, NATURAL GAS PIPELINE COMPANY OF AMERICA
RP94–260–004, NATURAL GAS PIPELINE COMPANY OF AMERICA
RP94–266–000, ANR PIPELINE COMPANY
RP94–298–000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
RP94–305–002, NATURAL GAS PIPELINE COMPANY OF AMERICA
RP94–309–003, TENNESSEE GAS PIPELINE COMPANY
RP94–347–000, ANR PIPELINE COMPANY
RP94–364–001, NATURAL GAS PIPELINE COMPANY OF AMERICA
RP94–384–000, ANR PIPELINE COMPANY
TM94–14–29–000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
ORDER ON INITIAL DECISION.
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

Lois D. Cashell,

Secretary.

[FR Doc. 96–18001 Filed 7–11–96; 12:11 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00443; FRL–5383–9]

Renewal of Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that the following Information Collection Request (ICR) is coming up for renewal. This ICR, Trade Secret Clearance Justification, OMB No. 2070–0053, EPA No. 0613.06, expires on December 31, 1996. Before submitting the renewal packages to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before September 13, 1996.

ADDRESSES: Submit written comments identified by the docket control number OPP–00443 and the appropriate ICR number by mail to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments directly to the OPP docket which is located in Rm. 1132 of Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Copies of the complete ICR and accompanying appendices may be obtained from the OPP docket at the above address or by contacting the person whose name appears under FOR FURTHER INFORMATION CONTACT.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as a ASCII file avoiding the use of special characters and any form or encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number "OPP–00443" and the appropriate ICR number. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit III. of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ellen Kramer, Policy and Special Projects Staff, Office of Pesticide Programs, Environmental Protection Agency, Mail Code (7501C), 401 M St., SW., Washington, DC 20460, Telephone: (703) 305-6475, e-mail: kramer.ellen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of the ICR are available from the EPA Public Access gopher (gopher.epa.gov) at the Environmental Sub-Set entry for this document under "Rules and Regulations."

I. Information Collection Request

EPA is seeking comments on the following Information Collection Request (ICR).

Title: Trade Secret Clearance Justification. OMB No. 2070–0053. EPA ICR No. 0613.06. Expiration date: December 31, 1996.

VOL
61
ISS
136
JL
15
1996
UMI

Affected entities: Registrants of pesticide products subject to Freedom of Information Act (FOIA) requests.

Abstract: The purpose of the collection is to determine the confidentiality of information submitted to the Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The collection is usually prompted by a request under the Freedom of Information Act (FOIA) for a record which may be entitled to confidential treatment. The collection instrument consists of nine questions codified under 40 CFR part 2, subpart B. A final determination on the releasability of the requested record is issued by EPA upon evaluation of the business's response.

EPA may not disclose information which is described by FIFRA section 10(d)(1)(A),(B), or (C). Under 40 CFR 2.204(a), EPA may take action to determine whether business information is entitled to confidential treatment when a request for disclosure is received under FOIA, when the Agency anticipates receiving a request under FOIA, or when the Agency wishes to determine if information in its possession is confidential. When determining whether information is entitled to confidential treatment, EPA is required by 40 CFR 2.204(e) to notify the affected business and provide an opportunity for comment.

Burden Statement: The annual respondent burden for this program is estimated to average 21 hours per response, including time for: Reading collection request; conferring with EPA; gathering resources and coordinating actions; reviewing information to identify potential confidential portions; processing, compiling, and reviewing claims of confidentiality for accuracy and appropriateness; reporting and substantiating findings; and storing, filing, or maintaining the information.

The total number of registrants impacted by this ICR is estimated to be 90 per year. Total cost per respondent to comply with this ICR, including capital costs, labor costs, and other operating and maintenance costs is estimated at approximately $1,708 per response. The total hours and respondents to comply with this ICR has remained the same as the previous ICR, but the total cost has increased due to updated labor costs provided by the Bureau of Labor Statistics. There is no third party notification associated with this activity.

Any Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are contained in 40 CFR part 9.

II. Request for Comments

EPA solicits comments to:

(i) Evaluate whether the proposed collections of information described above are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(ii) Evaluate the accuracy of the agency's estimates of the burdens of the proposed collections of information.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

Send comments regarding these matters, or any other aspect of these information collections, including suggestions for reducing the burdens, to the docket under ADDRESSES listed above.

III. Public Record

A record has been established for this action under docket number "OPP-00443" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

List of Subjects

Environmental protection and Information collection requests.

Dated: July 8, 1996.

Susan H. Wayland,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 96–17902 Filed 7–12–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5537–2]

Toxics; Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The Agency is requesting the renewal of an existing approval, which expires on August 31, 1996. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 14, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, 202–260–2740, and refer to EPA ICR No. 1139.

SUPPLEMENTARY INFORMATION:

Review Requested: Extension of a currently approved information collection.

ICR Numbers: EPA ICR No. 1139; OMB No. 2070–0033.

Expiration Date: Current OMB approval expires on August 31, 1996.

Title: TSCA Section 4 Test Rules, Consent Orders/Agreement and Test Rule Exemptions.

Abstract: Section 4 of the Toxic Substances Control Act (TSCA) is designed to assure that chemicals that may pose serious risks to human health or the environment undergo testing by manufacturers or processors, and that the results of such testing are made available to EPA. EPA uses the information collected under the authority of TSCA section 4 activity to assess risks associated with the manufacture, processing, distribution, use or disposal of a chemical, and to support any necessary regulatory action with respect to that chemical.

EPA must assure that appropriate tests are performed on a chemical if it decides: (1) that a chemical being considered under TSCA section 4(a) may pose an "unreasonable risk" or is produced in "substantial" quantities that may result in substantial or significant human exposure or substantial environmental release of the chemical; (2) that additional data are needed to determine or predict the impacts of the chemical's manufacture, processing, distribution, use or disposal; and (3) that testing is needed to develop such data. Rules and consent orders under TSCA section 4 require that one manufacturer or processor of a subject chemical perform the specified testing and report the result of that testing to EPA. TSCA section 4 also allows a manufacturer or processor of a subject chemical to apply for an exemption from the testing requirement if that testing will be or has been performed by another party.

Responses to the collection of information are mandatory (see 40 CFR part 790). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 488 hours per response. This estimate includes the time needed to review instructions, develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9.

Respondents/Affected Entities: Companies that manufacture, process, use, distribute or dispose of chemicals.

Estimated No. of Respondents: 152.

Estimated Total Annual Burden on Respondents: 95,728 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following addresses. Please refer to EPA ICR No. 1139 and OMB Control No. 2070–0033 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2137), 401 M Street, SW., Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: July 9, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–17907 Filed 7–10–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5537–5]

Agency Information Collection Activities Under OMB Review; Standards of Performance for Electric Utility Steam Generating Units; OMB No. 2060–0023, EPA No. 1053.05

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) for the electric utility steam generating units described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 14, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1053.05.

SUPPLEMENTARY INFORMATION:

Title: Standards of Performance for Electric Utility Steam Generating Units (OMB No. 2060–0023; EPA ICR No. 1053.05) This is a request for revision of a currently approved collection.

Abstract: In Administrator's judgement, nitrogen oxides (NO_X), particulate matter (PM) and sulfur dioxide (SO_2) emissions from electric utility steam generating units cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. In order to assure compliance with the emission standards, adequate monitoring and recordkeeping is necessary. In the information required by the standards were not collected, the Agency would have no means for ensuring that compliance with the NSPS is achieved and maintained by sources subject to the regulation. The information collected is also used for targeting inspections, and is of sufficient quality to be used as evidence in court. The information collected is required under 40 CFR Part 60 Subpart Da and records of the information are required to be maintained for at least two years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 C.F.R. Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on 3/26/96 (FR 61, No. 59 pg 13173–13174).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.65 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents: Owners or operators of steam generating units.

Estimated Hours/Response: 0.65 hours.

Estimated Number of Respondents: 103.

Frequency of Response: quarterly.

Estimated Total Annual Hour Burden: 24,101 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses.

VOL
61
ISS
136
1996
JL
15
UMI

Please refer to EPA ICR No. 1053.05 and OMB Control No. 2060–0023 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460.
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: July 5, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–17908 Filed 7–12–96; 8:45 am]

BILLING CODE 6560–60–M

[FRL–5537–4]

Agency Information Collection Activities Under OMB Review; Standards of Performance for Fossil-Fuel-Fired Steam Generating Units; OMB No. 2060–0026; EPA No. 1052.05

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) for the fossil-fuel-fired steam generating units described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 14, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1052.05.

SUPPLEMENTARY INFORMATION:

Title: Standards of Performance for Fossil-Fuel-Fired Steam Generating Units (OMB No. 2060–0026; EPA ICR No. 1052.05) This is a request for revision of a currently approved collection.

Abstract: In Administrator's judgment, nitrogen oxides (NO_X), particulate matter (PM) and sulfur dioxide (SO_2) emissions from fossil-fuel-fired steam generating units cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. In order to assure compliance with the emission standards, adequate monitoring and recordkeeping is necessary. If the information required by the standards were not collected, the Agency would have no means for ensuring that compliance with the NSPS is achieved and maintained by sources subject to the regulation. The information collected is also used for targeting inspections, and is of sufficient quality to be used as evidence in court. The information collected is required under 40 CFR Part 60 Subpart D and records of the information are required to be maintained for at least two years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on 3/26/96 (FR 61, No. 59 pg 13172–13173).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.3 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents: owners and operators of fossil-fuel-fired steam generating units

Estimated Hours/Response: 0.3 hours.

Estimated Number of Respondents: 660.

Frequency of Response: quarterly.

Estimated Total Annual Hour Burden: 62,865 hours.

Estimated Total Annualized Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1052.05 and OMB Control No. 2060–0026 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460.
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: July 5, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–17909 Filed 7–12–96; 8:45 am]

BILLING CODE 6560–60–M

[FRL–5537–3]

Agency Information Collection Activities Under OMB Review; Standards of Performance for New Stationary Sources (NSPS) Kraft Pulp Mills; Reporting and Recordkeeping

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507(a)(1)(D)), this notice announces that the Information Collection Request (ICR) for the New Source Performance Standards for Kraft Pulp Mills (40 CFR Part 60, Subpart BB) described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 14, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1055.05.

SUPPLEMENTARY INFORMATION:

Title: New Source Performance Standards for Kraft Pulp Mills (40 CFR Part 60, Subpart BB), Reporting and Recordkeeping Requirements

OMB Control No: 2060–0021 EPA ICR No: 1055.05 This information collection is a revision of an approved collection.

Abstract: New Source Performance Standards for Kraft Pulp Mills were developed to ensure that air emissions from these facilities do not cause ambient concentrations of particulate matter and Total Reduced Sulfur (TRS) to exceed levels that may reasonably be anticipated to endanger public health and the environment. In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Responses are mandatory under 40 CFR Part 60. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 26, 1996 [61 *FR* 13174].

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.6 hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 74.

Estimated Number of Responses: 26,064.

Frequency of Response: semi-annual.

Estimated Total Annual Hour Burden: 16,238 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1055.05 and OMB Control No. 2060–0021 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: July 5, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–17910 Filed 7–12–96; 8:45 am]

BILLING CODE 6560–60–M

[FRL–5536–7]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Disposal Systems Inc., (DSI)

AGENCY: Environmental Protection Agency

ACTION: Notice of final decision on petition reissuance.

SUMMARY: Notice is hereby given that modification of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to DSI, for the Class I injection wells located at Deer Park, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by DSI, of the specific restricted hazardous waste identified in the exemption modification, into the Class I hazardous waste injection wells at the Deer Park, Texas facility specifically identified in the modified exemption, for as long as the basis for granting an approval of this exemption remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued May 8, 1996. The public comment period closed on June 24, 1996. EPA received no comments. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of July 3, 1996.

ADDRESSES: Copies of the reissued petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ken Williams, Acting Chief, Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–7165.

William B. Hathaway,

Director, Water Quality Protection Division (6WQ).

[FR Doc. 96–17911 Filed 7–12–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5536–6]

Underground Injection Control Program; Hazardous Waste Land Disposal Restrictions; Petition for Exemption—Class I Hazardous Waste Injection Well, Rollins Environmental Services of Louisiana, Inc., (Rollins)

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on exemption modification.

SUMMARY: Notice is hereby given that a petition for modification to an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Rollins, for the Class I injection well located at the Plaquemine, Louisiana, facility. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Rollins of the specific restricted hazardous waste identified in the petition modification, into the Class I hazardous waste injection well at the Plaquemine, Louisiana, facility specifically identified in the petition for as long as the basis for granting an approval of this petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued on April 25, 1996. The public comment period ended on June 10, 1996. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of July 3, 1996.

ADDRESSES: Copies of the petition for modification and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ken Williams, Acting Chief Ground Water/

VOL 61 ISS 136 JL 15 1996 UMI

UIC Section, EPA—Region 6, telephone (214) 665–7165.

William B. Hathaway,

Director, Water Quality Protection Division.

[FR Doc. 96–17912 Filed 7–12–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5536–8]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Disposal Systems of Corpus Christi, Inc., (DSICC)

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition reissuance.

SUMMARY: Notice is hereby given that modification of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to DSICC, for the Class I injection well located at Corpus Christi, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by DSICC, of the specific restricted hazardous waste identified in the exemption modification, into the Class I hazardous waste injection well at the Corpus Christi, Texas facility specifically identified in the modified exemption, for as long as the basis for granting an approval of this exemption remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued May 14, 1996. The public comment period closed on June 28, 1996. EPA received no comments. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of July 3, 1996.

ADDRESSES: Copies of the reissued petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ken Williams, Acting Chief, Ground Water/ UIC Section, EPA—Region 6, telephone (214) 665–7165.

William B. Hathaway,

Director, Water Quality Protection Division (6WQ).

[FR Doc. 96–17913 Filed 7–12–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5535–2]

Notice of Final Decision To Grant Chemical Waste Management, Inc., a Modification of An Exemption From the Land Disposal Restrictions of the Solid and Waste Disposal Amendments of 1984 Regarding Injection of Hazardous Wastes

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on a request to modify an exemption from the Hazardous and Solid Waste Amendments of the Resource Conservation and Recovery Act.

SUMMARY: Notice is hereby given by the United States Environmental Protection Agency (USEPA or Agency) that modification of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA) has been granted to Chemical Waste Management, Inc. (CWM) of Oakbrook, Illinois. This modification allows CWM to inject RCRA-regulated hazardous wastes which will be banned from land disposal on July 8, 1996, January 8, 1997, and April 8, 1998 as a result of the Phase III Rule. Wastes designated by a total of 91 additional RCRA waste codes, may continue to be land disposed through four waste disposal wells at the facility at Vickery, Ohio. As required by 40 CFR Part 148, CWM has demonstrated, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the injection zone utilized by CWM's waste disposal facility located near Vickery, Ohio, for as long as the newly exempted waste remains hazardous. This decision constitutes a final Agency action for which there is no administrative appeal.

SUPPLEMENTARY INFORMATION:

Background

CWM submitted a petition for an exemption from the restrictions on land disposal of hazardous wastes on January 19, 1988. Revised documents were received on December 4, 1989, and several supplemental submittals were subsequently made. The exemption was granted on August 7, 1990. On September 12, 1994, CWM submitted a petition to modify the exemption to include wastes bearing 23 additional wastes codes. Region 5 reviewed documents supporting the request and granted the modification of the exemption on May 16, 1995. A notice of the modification appeared on June 5, 1996 at 60 FR 29592 et seq.

On April 9, 1996, in response to the Land Disposal Restrictions Phase III Rule which set ban dates for a number of hazardous waste constituents, CWM submitted a request to add 91 additional waste codes to its exemption. After careful review of the material submitted, the USEPA has determined, as required by 40 CFR part 148.20(f), that there is a reasonable degree of certainty that waste streams containing constituents designated by these codes will behave hydraulically and chemically like wastes for which CWM was granted its original exemption and will not migrate from the injection zone within 10,000 years. The injection zone is the Mt. Simon Sandstone and the Rome, Conasauga, Kerbel, and Knox Formations. The confining zone is comprised of the Wells Creek and Black River Formations.

A public notice of the proposed decision was issued on May 1, 1996. A single comment letter was received during the public comment period which expired on June 14, 1996. This comment did not provide any information which affected the basis of the decision to modify the CWM exemption.

As a result of this action, CWM may continue to inject the wastes bearing the codes:

K156, K157, K158, K159, K160, K161, P127, P128, P185, P188, P189, P190, P191, P192, P194, P196, P197, P198, P199, P201, P202, P203, P204, P205, U271, U277, U278, U279, U280, U364, U365, U366, U367, U372, U373, U375, U376, U377, U378, U379, U381, U382, U383, U384, U385, U386, U387, U389, U390, U391, U392, U393, U394, U395, U396, U400, U401, U402, U403, U404, U407, U409, U410, and U411

after wastes denoted by these codes are banned from land disposal on July 8, 1996; CWM may continue to inject wastes denoted by the waste code K088 after wastes denoted by this code is banned from land disposal on January 8, 1997; and CWM may continue to inject wastes denoted by the RCRA waste codes:

D018, D019, D020, D021, D022, D023, D024, D025, D026, D027, D028, D029, D030, D031, D032, D033, D034, D035, D036, D037, D038, D039, D040, D041, D042, and D043

after the wastes denoted by these codes are banned from land disposal on April 8, 1998. These waste codes are added to the waste codes which have been previously exempted and are listed in the **Federal Register** notice of June 5, 1995.

CONDITIONS: General conditions of this exemption are found at 40 CFR Part 148. The exemption granted to CWM on August 7, 1990 included a number of specific conditions. Conditions numbered (1), (2), (3), (4), and (9) remain in force. Monitoring under condition 5, which called for construction and operation of a deep monitoring well, will continue through the life of the facility. Conditions numbered (5), (6), (7), and (8) have been satisfied. The results of the work carried out under these conditions confirms that the model used to simulate fluid movement within the injection zone for the next 10,000 years is valid and results of the simulation bound the region of the injection zone within which the waste will be contained.

DATES: This action is effective as of June 24, 1996.

FOR FURTHER INFORMATION CONTACT: Harlan Gerrish or Nathan Wiser, Lead Petition Reviewers, USEPA, Region 5, telephone (312) 886–2939 or (312) 353–9569, respectively. Copies of the petition and all pertinent information relating thereto are on file and are part of the Administrative Record. It is recommended that you contact the lead reviewer prior to reviewing the Administrative record.

Rebecca L. Harvey,

Acting Director, Water Division.

[FR Doc. 96–17914 Filed 7–12–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5536–9]

Underground Injection Control Program Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; EMPAK, Inc., (EMPAK)

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition reissuance.

SUMMARY: Notice is hereby given that modification of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to EMPAK, for the Class I injection well located at Deer Park, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by EMPAK, of the specific restricted hazardous waste identified in the exemption modification, into the Class I hazardous waste injection well at the Deer Park, Texas facility specifically identified in the modified exemption, for as long as the basis for granting an approval of this exemption remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued May 8, 1996. The public comment period closed on June 24, 1996. EPA received no comments. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of July 3, 1996.

ADDRESSES: Copies of the reissued petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6,Water Quality Protection Division, Source Water Protection Branch (6WQ–S),1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ken Williams, Acting Chief, Ground Water/ UIC Section, EPA—Region 6, telephone (214) 665–7150.

William B. Hathaway,

Director, Water Quality Protection Division (6WQ).

[FR Doc. 96–17915 Filed 7–12–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5537–5]

Notice of Open Meeting of the Environmental Financial Advisory Board on August 15–16, 1996

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting of the full Board on August 15–16, 1996. The meeting will be held in the Visitors Center Conference Room of the Presidio National Park in San Francisco, California. The August 15 session will run from 9:00 a.m. to 5:00 p.m., while the August 16 session will run from 8:00 a.m. to 11:00 a.m.

EFAB is chartered with providing authoritative analysis and advice to the EPA Administrator on environmental finance. The purpose of this meeting is to develop a strategic action agenda to direct the Board's work activities over the remainder of this year and into 1997. Financing topics expected to be discussed include: brownfields redevelopment, private sector participation in delivering environmental services, financial tools to pay for sustainable environmental systems, and funding options for drinking water systems.

The meeting will be open to the public, but seating is limited. For further information, please contact Eugene Pontillo, U.S. EPA on 202–260–6044, or Joanne Lynch, U.S. EPA on 202–260–1459.

Dated: June 28, 1996.

George Ames,

Acting Director, Resource Management Division.

[FR Doc. 96–17906 Filed 7–12–96; 8:45 am]

BILLING CODE 6560–60–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

July 9, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments September 13, 1996.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC

VOL
61
ISS
136
JL
15
1996
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20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0461.
Title: Section 90.173 Policies governing the assignment of frequencies.
Form No.: N/A.
Type of Review: Extension of an existing collection.
Respondents: Individuals or households; Business or other for-profit; State or local governments.
Number of Respondents: 200.
Estimated Time Per Response: 4.5 hours.
Total Annual Burden: 9,000.
Needs and Uses: This rule allows individuals who provide the Commission with information that a current licensee is violating certain rules to be granted a license preference for any channels recovered as a result of that information. Information will be used to determine if licensee is in violation of certain rules.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 96–17881 Filed 7–12–96; 8:45 am]
BILLING CODE 6712–01–F

Notice of Public Information Collections Being Reviewed by FCC for Extension Under Delegated Authority 5 CFR 1320 Authority; Comments Requested

July 9, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before September 13, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0435.
Title: Section 80.361 Frequencies for Narrow-Band Direct-Printing (NB–DP) and data transmissions.
Form No.: N/A.
Type of Review: Extension of existing collection.
Respondents: Individuals, business or other for-profit.
Number of Respondents: 2.
Estimated Time Per Response: 2 hours.
Total Annual Burden: 4 hours.
Total Annual Cost: 0.
Needs and Uses: The reporting requirement contained in Section 80.361 is necessary to require applicants to submit a showing of need to obtain new or additional narrow-band direct-printing (NB–DP) frequencies. Applicants for new or additional NB–DP frequencies are required to show the schedule of service of each currently licensed or proposed series of NB–DP frequencies and to show a need for additional frequencies based on at least a 40% usage of existing NB–DP frequencies. The information is used to determine whether an application for a NB–DP frequency should be granted. If the collection of this information was not conducted, the FCC would have no information available regarding the use of NB–DP frequencies by public coast stations, and, therefore would be handicapped in determining whether the frequencies were being hoarded and not put into use by public coast stations.

OMB Approval Number: 3060–0263.
Title: Section 90.177 Protection of certain radio receiving locations.
Form No.: N/A.
Type of Review: Extension of existing collection.
Respondents: Individuals and households; Businesses or other for-profit; Non-profit institutions; State and local governments.
Number of Respondents: 300.
Estimated Time Per Response: .5 hours.
Total Annual Burden: 150 hours.
Needs and Uses: This rule requires applicants proposing to locate near certain radio receiving sites to notify those parties. Requirement protects critical national security and research sites from interference.

OMB Approval Number: 3060–0225.
Title: Section 90.131(b) Amendment or dismissal of applications.
Form No.: N/A.
Type of Review: Extension of existing collection.
Respondents: Businesses or other for-profit; Non-profit institutions; State and local governments.
Number of Respondents: 25.
Estimated Time Per Response: .166 hours.
Total Annual Burden: 4.15 hours.
Needs and Uses: This rule allows applicants to dismiss any pending application by sending a written request. Information will alert licensing personnel of applicant's desire to discontinue processing of application.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 96–17882 Filed 7–12–96; 8:45 am]
BILLING CODE 6712–01–F

Public Information Collection Requirement Submitted to OMB for Review and Approval

July 8, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarify of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments September 13, 1996.

ADDRESSES: Direct all comments to Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3561 or via internet at fain_t@a1.eop.gov, and Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: New collection.
Title: Telecommunications Relay Services (TRS), CC Docket No. 90–571, MO&O (Coin Sent-Paid Order).
Form No.: N/A.
Type of Review: New Collection
Respondents: Business or other for-profit.
Number of Respondents: 30 respondents for the 12 and 18 month reports; 3,000 respondents for the disclosure requirement.
Estimated Time Per Response: 7 hours per response for the 12 month report, 9 hours per response for the 18 month report and 2.5 hours per respondent to comply with the disclosure requirement.
Total Annual Burden: 7,980.
Needs and Uses: In *Memorandum Opinion and Order, (Order)* issued in CC Docket No. 90–571 , the Bureau suspended the coin sent-paid requirement until August 26, 1997. This *Order* requires that payphones be made accessible to TRS users pursuant to the alternative plan proposed and during the continued suspension, outlined in paragraph 18 of the attached *Order*. In addition, carriers must make either calling cards or prepaid (debit) cards available to TRS users. TRS providers and/or carriers must also implement programs to educate TRS users about these alternative payment methods.

The Bureau also required that Petitioners work with any other interested parties that wish to participate, to prepare and file a joint status report with the Commission on August 26, 1996 (twelve month status report) and February 26, 1997 (eighteen month status report).

The twelve month status report must address the following issues: (1) Implementation and effectiveness of the alternative payment methods, *i.e.*, free local calling, and calling cards and/or prepaid cards for toll calls; (2) implementation and effectiveness of consumer education and card distribution programs; (3) coordination with the TRS user community; and (4) identification of any problem areas and corrective actions taken or proposed.

The eighteen month status report must address issues (1) through (4) above, as well as the following: (5) technical feasibility of developing and implementing TRS coin sent-paid service; (6) estimated costs of developing and implementing TRS coin sent-paid service; (7) any significant difference, in technical feasibility or cost, between the provision of TRS coin sent-paid service for local calls and the provision of such service for toll calls; (8) data on call volume and payment methods for TRS and non-TRS payphone calls, including, to the extent feasible, data on both local and long distance calls; and (9) to the extent not provided in response to item (8) above, data indicating long term trends in the demand for coin sent-paid service.

OMB Approval Number: 3060–0003.
Title: Application for Amateur Operator/Primary Station License.
Form No.: FCC 610.
Type of Review: Revision of a currently approved collection.
Respondents: Individuals or households.
Number of Respondents: 93,000.
Estimated Time Per Response: 10 minutes.
Total Annual Burden: 15,438.
Needs and Uses: Fcc Rules require that applicants file the FCC 610 to apply for a new, renewed or modified license. The form is required by the Communications of 1934 as amended. The form is being revised to include a space for applicants to provide an internet address and newly implemented antenna registration numbers. No other changes are being proposed to this form.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 96–17883 Filed 7–12–96; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10 a.m. on Tuesday, July 9, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Matters relating to the Corporation's corporate and supervisory activities.

Matters relating to the probable failure of an insured depository institution.

In calling the meeting, the Board determined, on motion of Director Joseph H. Neely (Appointive), seconded by Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Vice Chairman Andrew C. Hove, Jr. and Ms. Julie Williams, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: July 9, 1996.

Federal Deposit Insurance Corporation.
Valerie J. Best,
Assistant Executive Secretary.
[FR Doc. 96–17971 Filed 7–10–96; 4:54 pm]
BILLING CODE 6714–01–M

VOL
61
ISS
136
JL
15
1996
UMI

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 8, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Centura Banks, Inc., Rocky Mount, North Carolina; to acquire 100 percent of the voting shares of FirstSouth Bank, Burlington, North Carolina.

2. FNB Bancshares, Inc., Gaffney, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of the Carolina, Gaffney, South Carolina.

3. Key Capital Corporation, Inc., Owings Mills, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Key Bank and Trust, Randallstown, Maryland, successor to Key Federal Savings Bank.

In connection with this application Key Capital Corporation, Inc., also has applied to engage in making, acquiring, or service loans or other extensions of credit, including issuing letters of credit and accepting drafts, for Key Capital Corporation, Inc., or for the account of others, such as would be made by consumer finance, credit card, mortgage, and commercial finance companies, pursuant to §§ 225.25(b)(1)(i),(ii),(iii), and (iv) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. The Maddox Corporation, Blakely, Georgia; to become a bank holding company by acquiring 25 percent of the voting shares of First State Bancshares of Blakely, Inc., Blakely, Georgia, and thereby indirectly acquire First State Bank of Blakely, Blakely, Georgia.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Country Bank Shares Corporation, Mt. Horeb, Wisconsin; to merge with Belleville Bancshares Corporation, Belleville, Wisconsin, and thereby indirectly acquire Belleville State Bank, Belleville, Wisconsin.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. The Belknap Partnership, L.P., Poplar Bluff, Missouri; to become a bank holding company by acquiring 32.15 percent of the voting shares of Bootheil Bancorp, Inc., Poplar Bluff, Missouri, and thereby indirectly acquire First Community Bank, Poplar Bluff, Missouri.

Board of Governors of the Federal Reserve System, July 9, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–17898 Filed 7–12–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The company listed in this notice has given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

The notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 29, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SouthTrust Corporation, Birmingham, Alabama; to engage *de novo* through its subsidiary, SouthTrust Securities, Inc., Birmingham, Alabama, in underwriting and dealing, to a limited extent, certain private ownership industrial development revenue bonds issued for the traditional governmental services and certain unrated municipal revenue bonds (including unrated public ownership and private ownership industrial development bonds). These activities have been previously approved by the Board by order to be so closely related to banking as to be proper incident thereto within the meaning of section 4(c)(8) of the BHC Act. *See Bank South Corporation*, 81 Fed. Res. Bull 1,116 (1995)(private ownership industrial development bonds); *letter Interpreting Section 20 Orders*, 81 Fed Res. Bull. 198 (1995) (unrelated municipal revenue bonds). Applicant previously received the Board's approval to engage through SouthTrust Securities in, among other things, underwriting and dealing in municipal revenue bonds, including public ownership industrial development bonds. *See* SouthTrust Corporation, 75 Fed. Res. Bull. 647 (1989).

Board of Governors of the Federal Reserve System, July 9, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–17899 Filed 7–12–96; 8:45 am]

BILLING CODE 6210–01–F

Federal Open Market Committee; Domestic Policy Directive of May 21, 1996

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 21, 1996.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that, on balance, economic activity has grown moderately in recent months. Nonfarm payroll employment changed little in April after rising substantially in the first quarter; the civilian unemployment rate fell to 5.4 percent. Industrial production increased sharply in April, largely reflecting a rebound in motor vehicle assemblies after a strike in March. Retail sales declined somewhat in April after posting a strong gain in the first quarter. Single-family housing starts rose considerably in April. Orders and contracts point to some deceleration in spending on business equipment and nonresidential structures after a very rapid expansion in the first quarter. The nominal deficit on U.S. trade in goods and services widened significantly in the first quarter from its rate in the fourth quarter of last year. Upward pressures on food and energy prices have led to somewhat larger increases in the consumer price index over recent months.

Short-term market interest rates have changed little while long-term rates have risen somewhat further since the Committee meeting on March 26. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies has appreciated considerably over the intermeeting period.

Growth of M2 and M3 slowed substantially in April after recording sizable increases earlier in the year. For the year through April, both aggregates grew at rates somewhat above the upper bounds of their respective ranges for the year. Expansion in total domestic nonfinancial debt remained moderate on balance over recent months.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in January established ranges for growth of M2 and M3 of 1 to 5 percent and 2 to 6 percent respectively, measured from the fourth quarter of 1995 to the fourth quarter of 1996. The monitoring range for growth of total domestic nonfinancial debt was set at 3 to 7 percent for the year. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint or slightly lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with moderate growth in M2 and M3 over coming months.

By order of the Federal Open Market Committee, July 8, 1996.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 96–17835 Filed 7–12–96; 8:45 am]

BILLING CODE 6210–01–F

[1] Copies of the Minutes of the Federal Open Market Committee meeting of May 21, 1996, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. appendix 2), announcement is made of the following advisory subcommittee scheduled to meet during the month of July 1996:

Name: Subcommittee on Request for Proposal No. AHCPR–96–0004, Planning, Evaluation and Analyses.

Date and Time: July 18–19, 1996, 8:30 a.m.–5:00 p.m.

Place: Agency for Health Care Policy and Research, Executive Office Center, 6th Floor Conference Room, 2101 East Jefferson Street, Rockville, Maryland 20852.

This meeting will be closed to the public.

Purpose: The Subcommittee's charge is to provide, on behalf of the Health Care Policy and Research Contracts Review Committee, advice and recommendations to the Secretary and to the Administrator, Agency for Health Care Policy and Research (AHCPR), regarding the scientific and technical merit of contract proposals submitted in response to a specific Request for Proposals. The purpose of this task order contract is to provide focused, high-priority planning, evaluation, and other types of analytical products to various AHCPR components on a short turnaround basis as the need arises. Multiple awards are anticipated with individual tasks orders to be competed among awardees. Task orders are anticipated to last no longer than 18 months at an estimated cost of $10,000–$250,000 each.

Agenda: The session of the Subcommittee will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to a specific Request for Proposals. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This is necessary to protect the free exchange of views and avoid undue interference with Committee and Department operations, and safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during the sessions. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. appendix 2, Department regulations, 45 CFR section 11.5(a)(6), and procurement regulations, 48 CFR section 315.604(d). Anyone wishing to obtain information regarding this meeting should contact Sharon Williams, Office of Management, Contracts Management Staff, Agency for Health Care

VOL 61 ISS 136 JUL 15 1996 UMI

Policy and Research, Executive Office Center, 2101 East Jefferson Street, Suite 601, Rockville, Maryland. 20852, (301) 594–1445.

Dated: July 8, 1996.

Cliften R. Gaus,

Administrator.

[FR Doc. 96–17879 Filed 7–12–96; 8:45 am]

BILLING CODE 4160–60–M

Food and Drug Administration

[Docket No. 90F–0063]

Henkel Corp.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to future filing, of a food additive petition (FAP 0B4194) proposing that the food additive regulations be amended to provide for the safe use of a mixed ester product resulting from the reaction of pentaerythritol and dipentaerythritol with C_{14}-C_{22} fatty acids as a release agent for ethylene-1,4-cyclohexylene dimethylene terephthalate copolymers, polyethylene phthalate polymers, and poly(tetramethylene terephthalate) intended to contact food.

FOR FURTHER INFORMATION CONTACT: Mitchell A. Cheeseman, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3083.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 15, 1990 (55 FR 9772), FDA announced that a food additive petition (0B4194) had been filed by Henkel Corp., Organic Products Division, 300 Brookside Ave., Ambler, PA 19002, (Currently c/o Bruce A. Schwemmer, Bruce EnviroExcel Group, Inc., 94 Buttermilk Bridge Rd., Washington, NJ 07882). The petition proposed to amend the food additive regulations in § 178.3860 *Release agents* (21 CFR 178.3860) to provide for the safe use of a mixed ester product resulting from the reaction of pentaerythritol and dipentaerythritol with C_{14}-C_{22} fatty acids as a release agent for ethylene-1,4-cyclohexylene dimethylene terephthalate copolymers, polyethylene phthalate polymers, and poly(tetramethylene terephthalate) intended to contact food. Henkel Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 25, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–17826 Filed 7–12–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96D–0360]

Medical Devices; Medical Software Devices; Notice of Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) and the National Library of Medicine (NLM) are announcing a public workshop to discuss definitions of medical software devices, criteria for defining risk categories, software quality audits and premarket notification, commercial distribution of software, and the options available for regulating medical software devices. FDA has noted some confusion among manufacturers regarding which requirements apply to medical software devices and accessories. This workshop will help to clarify the requirements, and provide FDA with information to better assess the risks to public health associated with different types of medical software devices.

DATES: The workshop will be held on September 3 and 4, 1996, from 9:30 a.m. to 4:30 p.m. Participants and other persons who want to present data or information must be present by 9 a.m. Written notices of participation must be submitted on or before August 5, 1996.

ADDRESSES: The workshop will be held at the National Institutes of Health, Natcher Conference Center, 45 Center Dr., Bethesda, MD 20892. Written comments, identified with the docket number found in brackets in the heading of this document, regarding the subjects being discussed at the workshop may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. A more detailed listing of the workshop topics, issues, background information, as well as registration forms, can be obtained after August 1, 1996, through the Center for Devices and Radiological Health (CDRH) Facts-On-Demand system. To receive the public workshop on medical software devices documents to your FAX machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number, 1072, followed by the pound sign (#). Then follow the remaining voice prompts to complete your request. The information will be sent by FAX. All workshop-related information can also be obtained by using the World Wide Web. FDA's home page address may be accessed at http://www.fda.gov.

FOR FURTHER INFORMATION CONTACT: Charles S. Furfine, Center for Devices and Radiological Health (HFZ–143), 12720 Twinbrook Pkwy., Rockville, MD 20852, 301–443–2536, ext. 16; FAX 301–443–8101; or EMail csf@fdadr.cdrh.fda.gov.

Registration forms should be sent to Charles Furfine (address above). There is no registration fee but advance registration is required. Interested persons are encouraged to register early because space is limited. If you have a disability that affects your attendance at, or participation in, this meeting, please contact Charles S. Furfine (address above) in writing and identify your needs. The availability of appropriate accommodations cannot be assured unless prior written notification is provided.

SUPPLEMENTAL INFORMATION:

I. Background

On September 25, 1987 (52 FR 36104), FDA published a notice of availability of a "Draft Policy Guidance for Regulation of Computer Products," which the agency was making available for comment. The guidance was intended to provide software developers and manufacturers of medical devices with guidance about which software products were regulated as medical devices and which might be exempt from particular regulatory controls, such as premarket notification. A 1989 draft of the FDA software policy reiterated the basic statements of the 1987 draft, but also addressed specific issues related to blood-bank software products. The 1989 draft also addressed the issue of which medical software devices should be exempt from general controls, including the current good manufacturing practice regulations. The agency stated in the 1989 draft that medical software devices (unclassified medical software devices that are not components, parts, or accessories to classified devices) would not be subject to active regulatory oversight if they "are intended to involve competent human intervention before any impact on human health occurs (e.g., where clinical judgment and experience can be used to check and interpret a system's output) * * *."

Since 1989, FDA has gained experience in applying the criterion of competent human intervention on a case-by-case basis to medical software devices and has noted two problems that arise. First, some manufacturers have brought to market medical software devices that are actually accessories to classified medical devices without a premarket submission, most likely because of confusion over which devices were meant to be covered by the draft policy. Components, parts, or accessories to classified devices are regulated according to the class of the parent device and are not covered by the draft policy. Second, the increasing complexity and sophistication of current software devices makes it increasingly difficult to decide when healthcare practitioners can, in fact, comprehend the functions performed by the software sufficiently to know when significant errors have occurred.

FDA is, therefore, reassessing its position regarding the regulation of medical software devices. Further, it is important that any exemption from regulatory oversight continue to be based upon an assessment of the risk to human health, as provided by law. Additionally, FDA believes that increased application of proper engineering practices provides an opportunity to develop preproduction controls for the majority of medical software devices which may obviate the need for premarket submissions for such medical software devices in some cases.

II. Purpose and Tentative Agenda of the Workshop

The purpose of the workshop is to obtain information on subjects such as: (1) Definitions that could be used in the classification of medical software devices; (2) criteria that could be used to define risk categories; (3) the scope and content of a proposed software quality audit that might be used in lieu of premarket notification for certain medical software devices; (4) factors related to the unique characteristics of the distribution of software that the agency could consider in determining whether a particular medical software product is intended by the manufacturer or sponsor for commercial distribution; and (5) potential scenarios and regulatory hurdles to implementing a risk-based classification process. This will provide FDA with information to better assess the risks to public health associated with different types of medical software devices.

Presiding over the workshop will be: Harvey Rudolph, Acting Deputy Director, Office of Science and Technology, Center for Devices and Radiological Health, and Harold Schoolman, Deputy Director for Education and Research, NLM. They will be assisted by other FDA and NLM officials.

Opening remarks will be made by representatives of the sponsoring institutions, FDA and NLM, identifying the respective agency's interests in medical software devices. Following these presentations, FDA will make a presentation outlining its responsibilities for regulating medical software devices and for identifying specific areas where information from the public could be most useful. Following FDA's presentation, a specific period of time will be provided for other participants to make presentations. There will be break-out sessions following these presentations where discussion can take place on specific topics, such as those noted above.

Interested persons who wish to present prepared comments at the plenary session to the public workshop may, on or before August 5, 1996, submit to the Dockets Management Branch (address above) a written notice of participation identified with the docket number found in brackets in the heading of this document, including name, address, telephone number, business affiliation, and a brief summary of the presentation. The limited time available will allow 10 minutes or less for each presentation.

FDA requests that individuals or groups having similar interests consolidate their comments and present them through a single representative. FDA may require joint presentations by persons with common interests. A schedule of the allotted times will be available at the workshop. Each participant will be notified before the workshop of the approximate time of his or her presentation. The schedule will be placed on file in the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this document. The workshop will also include an opportunity for interested persons who did not submit a notice of participation to make brief statements or comments, if time permits.

The workshop is informal; however, no participant may interrupt the presentation of another participant.

Dated: July 9, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–17880 Filed 7–12–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96M–0221]

Alcon Laboratories, Inc.; Premarket Approval of Acrysof® Models MA60BM and MA30BA Ultraviolet-Absorbing Soft Acrylic Posterior Chamber Intraocular Lenses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Alcon Laboratories, Inc., Fort Worth, TX, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Acrysof® Models MA60BM and MA30BA ultraviolet-absorbing soft acrylic posterior chamber intraocular lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of December 22, 1994, of the approval of the application.

DATES: Petitions for administrative review by August 14, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donna L. Rogers, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053.

SUPPLEMENTARY INFORMATION: On May 28, 1993, Alcon Laboratories, Inc., Fort Worth, TX 76134–2099, submitted to CDRH an application for premarket approval of Acrysof® Models MA60BM and MA30BA ultraviolet-absorbing soft acrylic posterior chamber intraocular lenses. The devices are posterior chamber intraocular lenses and are indicated for replacement of the human lens to achieve visual correction of aphakia in patients 60 years of age and older when extracapsular cataract extraction or phacoemulsification are performed. These lenses are intended for placement in the capsular bag.

On May 20, 1994, the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On December 22, 1994, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

VOL
61
ISS
136
JL
15
1996
UMI

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 14, 1996, file with the Docket Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in the brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 21, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–17825 Filed 7–12–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96M–0200]

Bayer Corp.; Premarket Approval of Technicon Immuno 1® PSA Assay

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Bayer Corp., Tarrytown, NY, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Immuno 1® PSA Assay. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of December 22, 1995, of the approval of the application.

DATES: Petitions for administrative review by August 14, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1293.

SUPPLEMENTARY INFORMATION: On June 27, 1995 Bayer Corp., Tarrytown, NY 10591, submitted to CDRH an application for premarket approval of Immuno 1® PSA Assay. This device is an in vitro diagnostic device intended to quantitatively measure prostate specific antigen (PSA) in human serum on the Technicon Immuno 1® system. PSA values obtained should be used as an aid in the management (monitoring) of prostate cancer patients. This diagnostic method is not intended for use on any other system.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Immunology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory Committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On December 22, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 14, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 9, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–17829 Filed 7–12–96; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of a meeting of the Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee. This meeting was announced in the **Federal Register** of June 24, 1996 (61 FR 32443 at 32445). The amendment is being made to announce the cancellation of the third day of the meeting and to change the agenda for the meeting. The location previously announced for the first 2 days remains the same. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT:

For matters relating to electronic fetal monitoring or implantable fetal stents: Alfred W. Montgomery, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

For matters relating to commercial kits for Group B Streptococcus detection: Freddie M. Poole, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–2096.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 24, 1996, FDA announced that a meeting of the Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee would be held on July 22, 23, and 24, 1996. On page 32445, in the first column, the "*Date, time, and place*" portion is amended to read as follows:

Date, time, and place. July 22 and 23, 1996, 8:30 a.m., Gaithersburg Marriott Washingtonian Center, Ballroom, 9751 Washingtonian Blvd., Gaithersburg, MD.

On the same page, in the first and second columns, the "*Type of meeting and contact person*" and "*Open committee discussion*" portions are amended as follows:

Type of meeting and contact person. Open committee discussion, July 22, 1996, 8:30 a.m. to 2 p.m.; open public hearing, 2 p.m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 7 p.m.; open committee discussion, July 23, 1996, 8:30 a.m. to 11 a.m.; open public hearing, 11 a.m. to 11:30 a.m., unless public participation does not last that long; open committee discussion, 11:30 a.m. to 3 p.m.; open public hearing, 3 p.m. to 4 p.m., unless public participation does not last that long; open committee discussion, 4 p.m. to 6:15 p.m.; Alfred W. Montgomery, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Obstetrics and Gynecology Devices Panel, code 12524. Please call the hotline for information concerning any possible changes.

Open committee discussion. On July 22, 1996, the committee will be asked to consider new technological advances in intrapartum electronic fetal monitoring (EFM). After hearing a series of presentations on the subject, the committee will discuss appropriate recommended testing for such new technology applications. FDA will consider these recommendations in the future development of testing guidelines. Committee deliberations on this subject will continue on July 23, 1996. FDA recognizes that there continues to be questions asked about EFM and its place in the clinical management of the patient in labor. The intent of the committee discussion is not to resolve issues related to clinical practice and clinical standards in the area of EFM. Rather, the focus of discussions will be on reasonable study methodologies for establishing the safety and effectiveness of the new fetal monitoring technologies. On July 23, 1996, following the discussions on new technological advances in intrapartum EFM, the committee will discuss and vote on a preinarket approval application (PMA) for an implantable stent used for in utero treatment of fetal post-vesicular uropathy. Also, on July 23, 1996, following deliberations on the above PMA, the committee will discuss issues concerning the performance of commercial kits for the direct detection of Group B Streptococcus from clinical specimens obtained from pre-term and intrapartum women, and neonates, in relation to the kits' indications for use.

Dated: July 3, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–17828 Filed 7–12–96; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Notice is hereby given of the meeting of the National Center Institute Board of Scientific Advisors Prevention Program Working Group, August 21, 1996 at The DoubleTree Hotel, 1750 Rockville Pike, Rockville, Maryland.

The meeting will be closed to the public from 12 p.m. to adjournment for discussion of confidential issues relating to the review, discussion and evaluation of individual programs and projects conducted by the NCI Prevention Program. These discussions will reveal confidential trade secrets or commercial property such as patentable material, and personal information including consideration of personnel qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Information pertaining to the meeting may be obtained from Dr. Jack Gruber, Executive Secretary, National Center Institute Prevention Program Working Group, National Cancer Institute, 6130 Executive Blvd., EPN, Rm. 540, Bethesda, MD 20892 (301–496–9740).

Dated: July 9, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–17890 Filed 7–12–96; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Closed Meeting

Notice is hereby given of the meeting of the National Cancer Institute Board of Scientific Advisors Cancer Centers Program Working Group, July 22, 1996 at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA.

This meeting will be closed to the public from 8:30 am to adjournment for discussion of confidential issues relating to the review, discussion and evaluation of individual programs and projects conducted by the Cancer Centers Extramural Program. These discussions will reveal confidential trade secrets or commercial property such as patentable material, and

VOL 61 ISS 136 JL 15 1996 UMI

personal information including consideration of personnel qualifications and performance, the competence of individual investigators and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Information pertaining to the meeting may be obtained from Dr. Paulette Gray, Executive Secretary, National Cancer Institute Board of Scientific Advisors, National Cancer Institute, 6130 Executive Blvd., EPN, Rm. 600, Bethesda, MD 20892, (301–496–4218).

Dated: July 9, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–17891 Filed 7–12–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R44 Applications (96–40).
Date: July 23, 1996.
Time: 1:00 p.m.
Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892 (Teleconference).
Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of Contract RFP NLM 96–108/VMS (96–42).
Date: July 23, 1996.
Time: 3:00 p.m.
Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892 (Teleconference).
Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R44 Applications (96–36).
Date: July 24, 1996.
Time: 12:30 p.m.
Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892 (Teleconference).
Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R01's (96–38).
Date: July 24, 1996.
Time: 2:00 p.m.
Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892 (Teleconference).
Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of RFP, NLM 96–106/DJH (96–41).
Date: July 25, 1996.
Time: 3:00 p.m.
Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892 (Teleconference).
Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel—Review of R44 Application (96–34).
Date: July 25, 1996.
Time: 3:00 p.m.
Place: National Institutes of Health, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892 (Teleconference).
Contact Person: Dr. George Hausch, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.
Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: July 9, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–17893 Filed 7–12–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Clinical Sciences.
Date: July 18, 1996.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 4214, Telephone Conference.
Contact Person: Dr. Dan McDonald, Scientific Review Administrator, 6701 Rockledge Drive, Room 4214, Bethesda, Maryland 20892, (301) 435–1215.

Name of SEP: Clinical Sciences.
Date: July 24, 1996.
Time: 3:00 p.m.
Place: NIH, Rockledge 2, Room 4214, Telephone Conference.
Contact Person: Dr. Dan McDonald, Scientific Review Administrator, 6701 Rockledge Drive, Room 4214, Bethesda, Maryland 20892, (301) 435–1215.

Name of SEP: Biological and Physiological Sciences.
Date: July 24, 1996.
Time: 11:30 a.m.
Place: NIH, Rockledge 2, Room 5202, Telephone Conference.
Contact Person: Dr. Anita Sostek, Scientific Review Administrator, 6701 Rockledge Drive, Room 5202, Bethesda, Maryland 20892, (301) 435–1260.

Name of SEP: Biological and Physiological Sciences.
Date: July 25, 1996.
Time: 8:00 a.m.
Place: Ramada Inn, Rockville, MD.
Contact Person: Dr. David Remondini, Scientific Review Administrator, 6701 Rockledge Drive, Room 6154, Bethesda, Maryland 20892 (301) 435–1038.

Name of SEP: Biological and Physiological Sciences.
Date: July 26, 1996.
Time: 8:00 a.m.
Place: NIH, Rockledge 2, Room 6154, Telephone Conference.
Contact Person: Dr. David Remondini, Scientific Review Administrator, 6701 Rockledge Drive, Room 6154, Bethesda, Maryland 20892, (301) 435–1038.

Name of SEP: Clinical Sciences.
Date: July 29, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4104, Telephone Conference,
Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Clinical Sciences.
Date: August 8, 1996.
Time: 10:30 a.m.
Place: Holiday Inn-Olde Towne, Alexandria, VA.
Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda Maryland 20892, (301) 435–1787.

Name of SEP: Multidisciplinary Sciences.
Date: August 20–22, 1996.
Time: 7:00 p.m.
Place: Ramada Inn, Falmouth, MA.
Contact Person: Dr. Nadarajen A. Vydelingum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5210, Bethesda, Maryland 20892, (301) 435–1176.

The meetings will be closed in accordance with the provisions set forth sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: July 9, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 96–17892 Filed 7–12–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301)443–0525.

Alcohol and Drug Services Survey (ADSS) Phase I—New—ADSS Phase I will gather information from a sample of 2,200 substance abuse treatment programs nationwide, including data on treatment type and costs, program capacity, number of clients served, waiting lists, and services provided to special populations. ADSS is a three phase study that will be conducted twice. The total annualized burden estimate for both rounds of ADSS Phase I is 5,904 hours.

	No. of respondents	No. of responses per respondent	Avg. burden/response	Total burden (hour)
Treatment Facility Directors	4,800	1	1.23	5,904

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, D.C. 20503.

Dated: July 8, 1996.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 96–17875 Filed 7–12–96; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Notice of Receipt of Application for Permit

AGENCY: Fish and Wildlife Service, Interior.

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–816882

Applicant: Mr. Jeffry E. Hohman, East Kentucky Power Cooperative, Inc., Winchester, Kentucky.

The applicant requests a permit to take (capture by mist net, identify, and release) Indiana bats, *Myotis sodalis*, gray bats, *Myotis grisescens*, and Virginia big-eared bat, *Plecotus townsendii virginianus*, on Daniel Boone National Forest for the purpose of enhancement of survival of the species.

PRT–815493

Applicant: Dr. Phillip Doerr, North Carolina State University, Raleigh, North Carolina.

The applicant requests a permit to take (capture, collect blood samples, and release) up to 132 red-cockaded woodpeckers, *Picoides borealis*, from throughout North Carolina for the purpose of enhancement of survival of the species.

PRT–816864

Applicant: Mr. Benny E. Herring, Kilmichael, Mississippi.

The applicant requests a permit to take (capture, identify, and release) the Alabama beach mouse, *Peromyscus polionotus ammobates*, Anastasia beach mouse, *P.p. phasma*, Choctawahatchee beach mouse, *P.p. allophrys*, Perdido Key beach mouse, *P.p. trissyliepsis*, and southeastern beach mouse, *P.p. niveiventris*, throughout the species' ranges in Baldwin County, Alabama, and Walton and Bay Counties, Florida for the purpose of enhancement of survival of these species.

PRT–815491

Applicant: Dr. Edward Menhinick, University of North Carolina, Charlotte, North Carolina.

The applicant requests a permit to take (capture, identify, and release; and to preserve selected specimens for range documentation) listed species of freshwater molluscs and crayfish throughout the waters of North Carolina for the purpose of enhancement of survival of these species.

PRT–815492

Applicant: Mr. Vernon Compton, Blackwater River State Forest, Milton, Florida.

VOL
61
ISS
136
1996
JL
15
UMI

The applicant requests a permit to take (harass during nest cavity inspections) red-cockaded woodpeckers, *Picoides borealis*, throughout the species range on Blackwater River State Forest for the purpose of enhancement of survival of the species.

Written data or comments on these applications should be submitted to: Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313, fax: 404/679–7081.

Dated: July 8, 1996.

Jerome M. Butler,

Acting Regional Director.

[FR Doc. 96–17876 Filed 7–12–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Amendments to Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved Amendment II to the Tribal-State Compact Between the Mississippi Band of Choctaw Indians and the State of Mississippi, which was executed on May 24, 1996.

DATES: This action is effective July 15, 1996.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240; (202) 219–4068.

Dated: July 8, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–17944 Filed 7–12–96; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[AK–020–1430–01; F–91792]

Notice of Realty Action: Recreation and Public Purposes (R&PP) Act Classification; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands near Galena, Alaska, have been examined and found suitable for classification for conveyance to the City of Galena pursuant to the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq*) and 43 Code of Federal Regulations (CFR) 2740. The City of Galena proposes to use the lands for a municipal landfill.

Kateel River Meridian, Alaska

Land within lot 7, U.S. Survey No. 7401 located between the Yukon River and the Galena to Campion Road in Sec. 18, T. 9 S., R. 11 E. Containing approximately 69 acres.

The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior; a right-of-way for ditches and canals constructed by the authority of the United States; all minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals; and any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Detailed information concerning this action is available for review at the Bureau of Land Management, Northern District Office, 1150 University Avenue, Fairbanks, Alaska.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed conveyance or classification of the lands to the BLM Manager, Northern District Office, 1150 University Avenue, Fairbanks, Alaska, 99709–3844. Any adverse comments will be reviewed by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, the classification will be come effective 60 days from the date of publication of this notice.

COMMENTS: Interested parties may submit comments involving the suitability of the land for a community landfill. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs. Comments on the application and plan of development may address whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a landfill.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Northern District Office (see address above) or by contacting Betsy Bonnell at (907) 474–2336.

Dated: July 8, 1996.

Richard W. Bouts,

Acting District Manager.

[FR Doc. 96–17874 Filed 7–12–96; 8:45 am]

BILLING CODE 4310–JA–P

National Park Service

Establishment of the James A. Garfield National Historic Site

PURPOSE: The purpose of this notice is to announce the formal establishment of the James A. Garfield National Historic Site, effective on the date of publication of this notice.

SUMMARY: Public Law 96–607 (94 Stat. 3545, 16 U.S.C. 461 note), dated December 28, 1980, authorized the Secretary of the Interior to establish the James A. Garfield National Historic Site in Mentor, Ohio, as a unit of the National Park System. This park was authorized in order to preserve for the benefit, education, and inspiration of present and future generations certain historically significant properties associated with the life of James A. Garfield, the 20th President of the United States.

Public Law 96–607 provided that the Secretary of the Interior may acquire by donation, purchase with donated or appropriated funds, or exchange, the lands and buildings thereon known as "Lawnfield" at 8059 Mentor Avenue, Mentor, Ohio. Further, upon completion of land acquisition, the Secretary of the Interior may establish the park area by publishing a notice and boundary map of the site in the **Federal Register**. The National Park Service has acquired all land at the site encompassing the land and estate as described in detail on Corporate Warranty Deed No. 758227 and on Gratuitous Deed No. 901717. These deeds are on file in the Records of Lake County, Ohio. Copies of these deeds may be obtained by writing the Superintendent at the address listed below.

BOUNDARY MAP: The map described in Public Law 96–607 bears a National Park Service drawing number of 487/80,007 and is dated June 10, 1996. The map is on file in the office of the Department of the Interior, National Park Service, Washington, DC.; the office at the National Park Service, Midwest Field Area, 1709 Jackson Street, Omaha, Nebraska 68102; and the office of the Superintendent, Cuyahoga Valley.

FOR FURTHER INFORMATION CONTACT: John Debo, Superintendent, Cuyahoga Valley National Recreation Area, 15610 Vaughn Road, Brecksville, Ohio 44141; or telephone 216–650–4636.

Dated: June 10, 1996.

David N. Given,

Acting Field Director, Midwest Field Area.

BILLING CODE 4310–70–P

VOL 61 ISS 136 JUL 15 1996 UMI

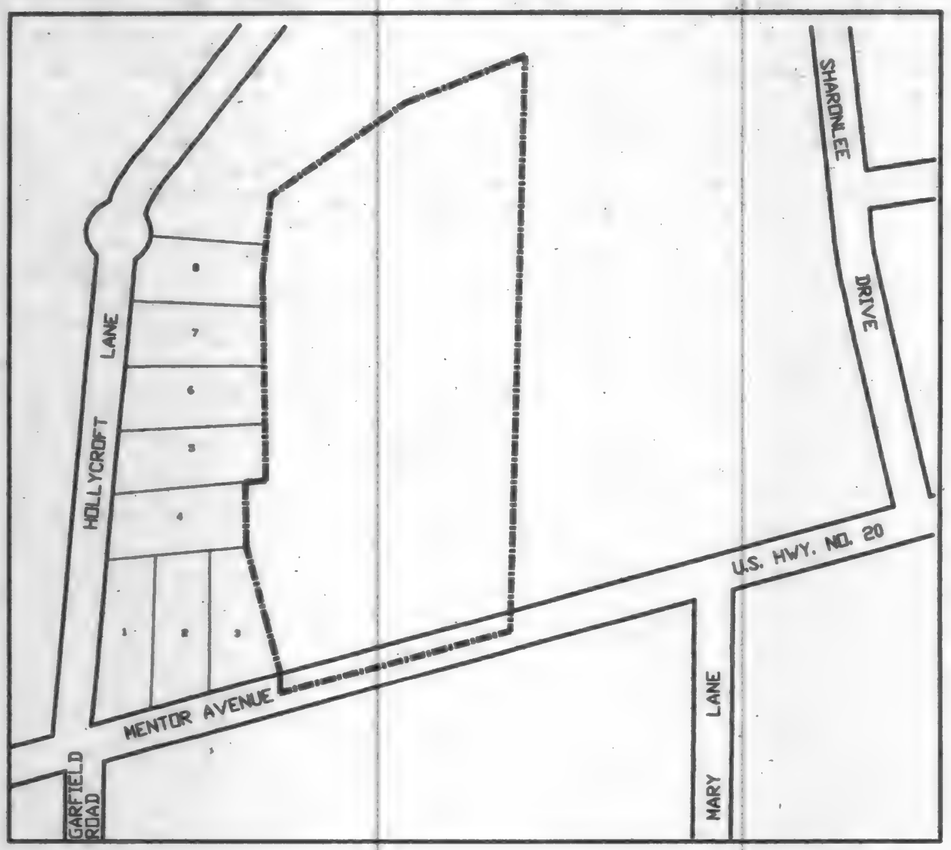

[FR Doc. 96–17888 Filed 7–12–96; 8:45 am]
BILLING CODE 4310–70–C

Missouri/Niobrara/Verdigre Creek National Recreational Rivers Draft Environmental Impact Statement and General Management Plan

AGENCY: National Park Service.

ACTION: Availability of draft environmental impact statement and general management plan, for the Missouri/Niobrara/Verdigre Creek National Recreational Rivers located in Bon Homme, Charles Mix, and Gregory counties, South Dakota, and Boyd and Knox counties in Nebraska.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the draft environmental impact statement (DEIS) and general management plan, for the Missouri/Niobrara /Verdigre Creek National Recreation Rivers. The DEIS responds to Public Law 102–50, which amended the Wild and Scenic Rivers Act to add 39 miles of the Missouri, 20 miles of the Niobrara, and 8 miles of Verdigre Creek to the national wild and scenic rivers system. The NPS prepared the DEIS. Cooperating agencies included the U.S. Army Corps of Engineers; the U.S. Fish and Wildlife Service; the Nebraska Game and Parks Commission; the South Dakota Department of Game, Fish and Parks; the Nebraska and South Dakota State Historic Preservation Offices; Boyd and Knox counties in Nebraska; and Bon Homme, Charles Mix, and Gregory counties in South Dakota.

The document describes five management and boundary alternatives. Alternative 1, a no action alternative, is required in order to provide a description of baseline conditions from which the action alternatives can be compared; its boundary is 1/4 mile from the riverbank, which is the interim boundary noted in the establishing legislation. Alternative 2 would provide for the preservation of the rural landscape, primarily through local management, and would establish a boundary at 200 feet from the riverbank. Alternative 3 would emphasize management to preserve and restore the biological elements of the river ecosystem; its boundary would be 200 feet from the riverbank, plus significant biological bottomland. Alternative 4 would emphasize visitor use along with resource conservation; its boundary would be 200 feet from the riverbank, plus significant biologic and public use resource areas. Alternative 5, the preferred alternative, combines the local management and philosophy of Alternative 2, some resource management and boundary of Alternative 3, and some interpretive and visitor experience aspects of Alternative 4.

Each management action alternative is expected to provide a mechanism for long-term resource protection and accommodate recreational use of the river with minimal impact on the private property owner. In each alternative, farming and ranching are considered appropriate activities within the boundaries of the recreational rivers. Each action alternative relies heavily on the cooperative efforts of property owners, local communities and the National Park Service. No alternative would require much, if any, acquisition of land; any acquisitions would be from willing sellers only.

DATES: Comments on the DEIS should be received no later than September 3, 1996. Public meetings will be held in various Nebraska and South Dakota towns and cities during August, 1996, and will be announced in local news media when schedules are final.

ADDRESSES: Comments on the DEIS should be submitted to the Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763.

SUPPLEMENTARY INFORMATION: Public reading copies of the DEIS will be available for review at the Department of Interior Natural Resources Library, 1849 C Street, N.W., Washington, D.C. 20240, and at public libraries and county courthouses in Center and Butte, Nebraska; and Burke, Lake Andes and Tyndall, South Dakota. Public reading copies will also be available at the public libraries in Verdigre and Niobrara, Nebraska.

FOR FURTHER INFORMATION CONTACT: Warren H. Hill, Superintendent, Niobrara/Missouri National Scenic Riverways at the above address or he can be reached at 402–336–3970.

Dated: July 3, 1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–17889 Filed 7–12–96; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Office of the Senior Counsel for Alternative Dispute Resolution

Policy on the Use of Alternative Dispute Resolution, and Case Identification Criteria for Alternative Dispute Resolution

AGENCY: Office of the Senior Counsel for Alternative Dispute Resolution, Justice.

ACTION: Notice.

SUMMARY: This notice publishes the Alternative Dispute Resolution Policy Statements prepared by each of the civil litigating components in the Department of Justice as well as their criteria for identifying cases as potentially suitable for dispute resolution. As indicated in the introduction by the Attorney General, these documents were prepared by teams of staff attorneys within each of the components. Each document reflects the nature of the practice of that component. These documents have been provided to all staff attorneys in the Department of Justice who handle civil litigation, in Washington and in United States Attorneys' Offices, and are being published in the **Federal Register** to make clear the Department's commitment to greater use of alternative dispute resolution. Nothing in these documents, however, creates any right or benefit by a party against the United States.

FOR FURTHER INFORMATION CONTACT: Peter R. Steenland, Jr., Senior Counsel for Alternative Dispute Resolution, United States Department of Justice, Room 5708, Washington, DC 20530. (202) 616–9471.

Dated: June 17, 1996.

Peter R. Steenland, Jr.,

Senior Counsel, Alternative Dispute Resolution.

ADR Federal Register Introduction

On April 6, 1995, I issued an Order directing greater use of Alternative Dispute Resolution by the Department of Justice. In part, that Order required our civil litigating components to provide their attorneys with policy guidance on the use of Alternative Dispute Resolution techniques and directed them to develop case selection criteria for using ADR in appropriate cases. Our commitment to make greater use of ADR is long overdue. Clearly, our federal court system is in overload. Delays are all too common, depriving the public of swift, efficient, and just resolution of disputes. The Department of Justice is the biggest user of the federal courts and the nation's most prolific litigator. Therefore, it is incumbent upon those Department attorneys who handle civil litigation from Washington and throughout the country to consider alternatives to litigation.

The Guidance documents for using Alternative Dispute Resolution were prepared by teams of attorneys in each of the components. Each policy statement and set of case selection criteria reflect the many varied types of litigation in which we represent the United States, federal agencies and federal officials. Each component head has approved the policy statement and case selection criteria, and has expressed a commitment to making greater use of Alternative Dispute Resolution. Working with our Senior Counsel

VOL
61
ISS
136
1996
JL
15
UMI

for Alternative Dispute Resolution, I expect our attorneys to implement our commitment to use ADR in appropriate cases. It is also my expectation that their ability to use ADR will be given as much recognition within the Department and elsewhere as their present contributions as dedicated and resourceful litigators.

If we are successful, the outcome will benefit litigants by producing better and quicker results, and will benefit the entire justice system by preserving the scarce resources of the courts for the disputes that only courts can decide. I urge everyone to work with us in this important civil justice reform effort.

Today, I am making available all of the Department's ADR case selection criteria developed pursuant to the Order. These criteria relate to the government's voluntary participation in ADR. Nothing in these Guidance documents shall be construed to create any right or benefit, substantive or procedural, enforceable at law or in equity, by a party against the United States, its agencies, its officers or any other person. For further information contact: Peter R. Steenland, Jr., Senior Counsel for ADR, U.S. Department of Justice, Room 5706, Washington, DC 20530. Phone: (202) 616–9471.

Janet Reno,

Attorney General.

To: All Section and Field Office Chiefs, Antitrust Division.
From: Anne K. Bingaman, Assistant Attorney General, Antitrust Division.
Re: Use of Alternative Dispute Resolution Techniques.

On April 6, 1995, the Attorney General issued the attached order directing Department-wide initiatives to promote greater use of Alternative Dispute Resolution ("ADR") techniques in civil litigation. Under the AG Order, ADR techniques are defined to include arbitration, mediation, early neutral evaluation, neutral expert evaluation, mini-trials, and summary jury trials—essentially those techniques that employ the services of a third-party neutral to assist in the conciliatory resolution of a dispute. The ADR techniques addressed in the AG Order have the potential to eliminate unnecessary civil litigation, shorten the time that it takes to resolve civil disputes, and achieve better case resolutions with the expenditure of fewer resources.

General Policy

Although the Antitrust Division has an excellent record of settling its civil cases through the use of unassisted negotiations, the application of ADR techniques in appropriate circumstances to the negotiation process has the potential to provide even better results. Just as it is important for our attorneys to develop good advocacy and litigation skills, and to be accomplished negotiators during settlement discussions, it is also important that they become knowledgeable concerning ADR techniques so that the Division can take advantage of the benefits that ADR provides.

It is, therefore, the policy of the Antitrust Division to encourage the use of ADR techniques in those civil cases where time permits and there is a reasonable likelihood that ADR would shorten the time necessary to resolve a dispute or otherwise improve the outcome for the United States. Because of the time constraints imposed by the H–S–R Act and the exigencies of the merger review process in general, ADR techniques will likely be difficult to apply during the course of merger investigations. On the other hand, non-merger investigations often have more timing flexibility. In order better to assess the potential for ADR to shorten the resolution time for such investigations or otherwise to improve their outcome, I am directing the chiefs of sections and offices conducting civil, non-merger investigations to work closely with Becky Dick to identify cases where ADR can be tried at different stages of the investigative process (e.g., prior to the issuance of CIDs; during settlement negotiations) as test cases, to provide a basis for comparison and to help serve as a guide to future use of ADR by the Division.

Please be assured that in implementing this ADR policy, the Antitrust Division will recognize the contributions made by staff attorneys who handle matters in ADR by providing the same opportunities for promotion, awards, and other professional recognition as those engaged in more traditional litigation. Often, ADR will accelerate settlements, avoid trials, and provide enhanced resolution of disputes that litigation cannot provide. Those who use ADR to these ends will be evaluated on their skills in these endeavors, and they will be recognized for the contributions they have made to the Department and the public.

Case Selection Criteria

In order for this policy to work, it is necessary that our attorneys become knowledgeable about the types of ADR techniques that are available and sensitive to the possibilities that they offer for improving antitrust civil enforcement. To assist this effort, I am today issuing case selection criteria to aid in selecting the types of cases and the types of ADR techniques that are appropriate for resolving various issues and impasses that can arise during the course of civil investigations. For example, at the beginning of an investigation, prior to the issuance of a CID to the subject, it might be appropriate to engage in discussions with the subject about the nature of the Division's concerns, the type of information that we will be seeking, etc., in order to better formulate our CIDs, reduce compliance disputes, and speed the resolution of the investigation. A third-party neutral could be used to facilitate these discussions. This will not always be useful or lead to a better result, and there will be circumstances where various factors militate against employing ADR. But I believe that the best way initially to asses the value of ADR for the Division is actually to use it in some cases and evaluate the results.

Training Requirement

Acknowledging that ADR is a new concept for many Department attorneys, the AG Order requires attorneys who have substantial civil litigation responsibilities to receive regular training in negotiation and ADR techniques. We will be working with the Department's Senior Counsel for ADR to identify the training needs for Antitrust Division attorneys in this area in light of the results of our experience in the use of ADR as it develops.

In sum, ADR is another litigation tool that we have at our disposal. In appropriate circumstances it can help to enhance our investigation and negotiation efforts, conserve resources, and achieve better civil antitrust enforcement results.

Attachments

To: All Section and Field Office Chiefs, Antitrust Division.
From: Anne K. Bingaman, Assistant Attorney General, Antitrust Division.
Re: Case Selection Criteria for the Use of Alternative Dispute Resolution ("ADR") in Antitrust Division Civil Litigation.

The Administrative Dispute Resolution Act of 1990 ("ADR Act"), Pub. L. No. 101–552, 104 Stat. 2736–48, and Attorney General Order OBD 1160.1, "Promoting the Broader Appropriate Use of Alternative Dispute Resolution Techniques," (April 6, 1995) require careful consideration of the use of alternative means of dispute resolution by Antitrust Division personnel during the course of investigating, settling, and litigating civil disputes. ADR can be defined as any technique that results in the conciliatory resolution of a dispute, including facilitation, mediation, fact finding, minitrials, early neutral evaluation, and arbitration. While unassisted negotiation is a well understood dispute resolution technique that is frequently successfully employed within the Antitrust Division, other ADR techniques—techniques that require the use of a third-party neutral—have received much less attention. These "formal" ADR techniques are the focus of the AG Order and this policy memorandum, which is intended to provide guidance to Antitrust Division attorneys in identifying civil cases that are possible candidates to be resolved through the use of formal ADR techniques.

As you are aware, federal courts are increasingly likely to require parties to disputes to consider the use of ADR in cases that do not settle rapidly following the filing of a complaint as part of a court-annexed ADR program. However, the use of ADR may also be of real value prior to the filing of a complaint as an aid to the settlement negotiation process.[1] ADR is not intended to replace traditional one-on-one negotiations, but rather to provide attorneys with additional tools that may facilitate negotiation where traditional two-party negotiation has not produced an acceptable resolution. In appropriate circumstances, ADR techniques can be used in conjunction with unassisted negotiation to resolve particular issues if, in the estimation of the parties, such ADR techniques would likely result in a speedier resolution of the overall dispute, increase the likelihood that the dispute will be resolved short of litigation, or result in a better resolution of the dispute than would otherwise be obtained.

Available ADR Techniques

A variety of ADR techniques exist that make use of the presence of a third-party neutral to assist in the negotiation or litigation process. The following are the most common:

- *Mediation*
  - Non-binding settlement process facilitated by a neutral who does not impose a resolution.
  - Neutral has no authority to impose decision.
  - Neutral meets with parties in joint session and in separate sessions to facilitate resolution that is acceptable to all parties.
  - Can be used to narrow issues for trial.
- *Early Neutral Evaluation (ENE)*
  - Gives non-binding prediction of outcome.
  - Most useful in disputes involving specific legal issues.
  - Most useful if neutral is a recognized expert in the particular subject area or area of law.
- *Neutral Expert Factfinder*
  - Makes findings of fact on specific issues.
  - Most useful in factual disputes.
  - May be binding or non-binding depending upon agreement of the parties.
  - Can be used to narrow factual issues for trial.
- *Mini-trial*
  - Non-binding presentation of highlights of case by attorneys for each party to their decision makers in mock trial setting.
  - May include some witnesses and testimony.
  - Facilitated by a neutral who presides over presentation, engages parties in litigation risk analysis, and facilitates settlement discussions.
  - After presentation of the case, neutral meets with parties to facilitate settlement.
  - Allows decision makers to focus on and analyze their cases.
- *Arbitration*
  - Can be binding or non-binding depending upon agreement and nature of the parties.
  - Neutral or panel of neutrals who impose a decision or resolution.
  - Is most adjudication-like of ADR processes.
  - May be more costly than other forms of ADR if it involves discovery, witnesses, and the presentation of the case.

It is important to appreciate the diversity and flexibility of available ADR techniques. Some ADR techniques, such as ENE or arbitration, involve the neutral in making evaluations of the respective parties claims or the strengths and weaknesses of their legal theories or evidence. Other techniques, such as mediation, use the neutral simply to facilitate the parties' negotiations without being in any way judgmental.

Neutrals only perform those functions agreed upon by the parties, and only for so long as both parties believe that the presence of the neutral is of value. Neutrals can be brought in at the beginning of a negotiation to get the ball rolling smoothly or after a particular problem has arisen to help resolve that problem amicably, and they can be dismissed if they are not proving useful or after a predetermined period of time. Parties do not lose control by employing a third-party neutral; if anything they gain control, especially if the application of ADR techniques enable the parties to avoid the litigation process.

Factors To Consider in Selecting an Appropriate ADR Technique

In those instances where a case is a good candidate for ADR, each of the available ADR techniques can be used effectively to break a litigation or negotiation deadlock, depending on the nature of the dispute that needs to be resolved. In reaching a decision concerning the selection of a particular ADR technique in any given case, there are a number of factors to consider.

- What is the nature of the problem that is preventing a consensual resolution of the dispute?
- Hostility/lack of communication between the parties.
- Technical or complex factual issues.
- Legal issues.
- Settlement issues.
- What would it take to break the negotiation stalemate?
- Intervention by a neutral party to diffuse hostility.
- Neutral evaluation of dispositive factual issues.
- Neutral evaluation of dispositive legal issues.
- Neutral evaluation of dispositive settlement issues.
- Presentation by each side of its case to party decision makers.
- What resource constraints do the parties face?
- Is there sufficient time available to employ a given ADR technique? Can the parties agree to an extension of time in order to attempt ADR?
- Do the parties have the financial resources to employ a given ADR technique?
- What practical constraints do the parties face?

[1] In light of the congressional directive contained in the Antitrust Procedures and Penalties Act of 1974 ("Tunney Act") that consent judgments in civil antitrust cases entered into by the Antitrust Division be publicly aired and approved by a federal judge as being in the public interest, see 15 U.S.C. 16 (b)–(h), civil investigations that result in a determination by the Division that an antitrust violation has occurred should ordinarily not be resolved without the filing of a complaint. (Merger investigations where the proposed transaction has been abandoned and there is no reasonable likelihood of that transaction being renewed within the time period for which the existing H–S–R filing remains valid are an exception.) When the Division and opposing parties are able to agree on the appropriate resolution of a dispute prior to the institution of litigation, the disposition of that dispute through the filing of a complaint and simultaneous consent decree is consistent with the goals of the ADR Act, the AG Order, and the Tunney Act.

VOL 61 ISS 136 JL 15 1996 UMI

• Have either of the parties expressed a willingness or a hostility to engaging in ADR?

• Do either of the parties have any history of using ADR?

• Are the attorneys handling the investigation/litigation experienced with one or more ADR techniques?

Of course, not every case or situation is appropriate for the use of ADR. There are a variety of factors that can be considered as either supporting the use of ADR or making the use of ADR less likely in a particular case.

Factors Favoring ADR

The Parties

• Continuing Relationships

The United States, aggrieved persons, or other litigants are likely to have continued contact with the defendants in implementation of the remedy or in other contexts.

• Barriers to Communication

The United States or other litigants foresee impasses developing because of conflicts within interest groups, political visibility, or poor or non-existent communication among the participants (including attorneys) due to personality difficulties or past history.

• Absent Stakeholder(s)

Participation of persons or groups who are not directly involved in the legal action may be beneficial or necessary to a optimal resolution.

• Divergence of Interests

There are gains and losses to be apportioned constructively, and in which varying priorities among the parties will allow trading off of those gains and losses to permit all involved to benefit from the outcome.

• Numerous Parties

The number of parties or interested persons or groups is so numerous that a structured/facilitated negotiation process would be helpful.

Nature of the Case

• Need for Problem Solving or Development of Creative Alternatives

A thorough exchange of information and generation of alternatives and options will improve the outcome.

• Factural or Technical Complexity or Uncertainty

The parties would benefit from reliance on the expertise of a third-party expert for technical assistance and/or fact-finding.

• Need for Facilitated Private Discussions

The settlement desired may be improved by the neutral's ability to conduct frank, private discussions among the parties.

• Flexibility Desired in Shaping Relief

The United States is seeking relief with detailed implementation and/or monitoring on multiple issues or subjects that may be difficult to obtain from the Court, or is amenable to resolution through cooperation between the parties.

• Ultimate Outcome Uncertain

Litigants face uncertain outcome at the time of trial based on the law, the facts, or the decisionmaker. Also important is the likelihood of prevailing on appeal should the United States loss at trial.

• Hostile Decisionmaker

Case will be tried in front of an unsympathetic judge, or jury venire is likely to be unsympathetic or even hostile.

• Conservation of Enforcement Resources

Preparing the case for trial would require a burdensome commitment of significant resources without achieving a proportionate impact.

• Numberous Issues

Discussion of multiple issues will be assisted by a structured/facilitated negotiation process.

• Direct Settlement Negotiations Unsuccessful

The United States has attempted traditional settlement negotiations without success or an impasse has been reached and the United States believes involvement of a third-party neutral will facilitate further progress and/or final resolution.

Representation

• Need to Speak Directly to Client

The parties (or aggrieved persons) need to hear an evaluation of the case from someone other than their lawyers.

• Lawyers Are Willing To Consider ADR

The lawyers involved are knowledgeable about ADR processes and intend to participate in the chosen ADR process in a good-faith attempt to resolve the dispute.

Timing

• Facts Are Sufficiently Developed

The parties have sufficient information to permit them to make informed decisions concerning the ultimate disposition of the dispute.

• Parties Are Prepared to Discuss Settlement

The parties are willing to resolve the case short of trial.

Factors Disfavoring ADR

• Public Sanction Necessary

There is a need for public sanctioning of conduct.

• Imbalance of Power or Ability

A party or parties are not able to negotiate effectively themselves or with assistance of counsel.

• Judicial Decision Required

Development of the law is important or the imprimatur of a court decision is necessary to secure vindication of rights, enforcement, or compliance.

• Biased Selection Process of ADR Neutral

Political sensitivity of case coupled with questionable neutral selection process would likely result in selection of "neutral" with ties to interests contrary to the United States.

• Successful Summary Judgment Certain

• Case Likely To Settle Through Unassisted Negotiation in Near Future

* * *

Using these selection criteria as a guide, it should be possible to identify Antitrust Division cases that would benefit from the application of ADR, and to identify the most appropriate ADR technique to assist the investigation/litigation process. Although many civil cases brought by the Antitrust Division will not be good candidates for ADR—for example, most merger investigations will face time constraints that make the use of ADR impossible, and many of our non-merger cases move swiftly and smoothly to resolution—there will be instances where one-on-one settlement negotiations may benefit from the presence of a neutral, either from the start or once they have reached an impasse, time is available, and a third-party neutral would advance the case more effectively than simply involving higher-level Division officials or permitting a cooling-off period. There may also be instances where involving a neutral expert could resolve a factual or legal dispute at the negotiation stage in a manner that would either speed the resolution of the case or result in a more favorable outcome for the United States than would unassisted negotiations or litigation. Such cases should be considered for the use of ADR.

The issuance by the Antitrust Division of case selection criteria for the use of alternative dispute resolution relates solely to the government's voluntary participation in ADR. Nothing herein shall be construed to limit the government's duty to participate in ADR according to court order or applicable local rules, except that Antitrust Division attorneys shall resist participation in ADR, by appropriate motion, whenever said participation would violate the United States Constitution or other governing law.

This memorandum shall not be construed as creating any right or benefit, substantive or procedural, enforceable at law or in equity, by a party against the United States, its agencies, its officers, or any other person. This memorandum shall not be construed to create any right to judicial review involving the compliance or noncompliance of any Antitrust Division attorney with its terms.

CIVIL DIVISION—STATEMENT ON ALTERNATIVE DISPUTE RESOLUTION

Introduction

On April 6, 1995, the Attorney General issued an order promoting the broader use of alternative dispute resolution techniques for the Department of Justice's litigating divisions in appropriate matters. The order requires each litigating division handling civil matters to issue: a policy statement on ADR; case selection criteria identifying appropriate cases for ADR; criteria for the selection of ADR providers; training requirements in negotiation and ADR; a statement on internal procedures for authorization and funding of ADR; and finally a reporting system for statistics on each division's use of ADR.

I. POLICY

The Civil Division is fully committed to encouraging consideration of alternative dispute resolution ("ADR") in appropriate cases and implementing all aspects of the Attorney General's April 6th Order on ADR. ADR is any consensual dispute resolution process facilitated by third-party neutrals which can be utilized prior to or during litigation. ADR is not meant to replace traditional litigation or unassisted negotiation, but rather is meant to supplement them. In other words, ADR is another tool to resolve disputes and can provide unique advantages. ADR can be used when traditional negotiation is likely to be unsuccessful, has already been unsuccessful, or when it can expedite negotiations and/or allow them to proceed more efficiently. ADR can be used to resolve discrete parts of a particular case or, a series of cases; it can help narrow and/or eliminate issues; it can expedite critical discovery; and can help the parties gain a better understanding of the strengths and weaknesses of the case. ADR provides flexibility by allowing the parties to fashion their own resolutions to disputes—creative resolutions beyond what courts can offer.

In a similar vein, ADR allows the parties to fashion their procedures for resolving disputes. There are as many ADR processes as the parties can create. The most widely used ADR techniques are mediation, early neutral case evaluation, arbitration, mini-trial and summary jury trial (see attached appendix for descriptions). Consideration of whether ADR can be beneficial to a particular matter should begin as soon as a Civil Division attorney is assigned to a case, should be ongoing, and should be revisited at the watershed points in the litigation. Different forms of ADR may be useful at particular points in the case.

In analyzing a case for ADR and considering the particular component's case selection criteria, some general considerations should be kept in mind. the factors listed below for each Civil Division component will not all be relevant in any given case. Factors not listed may also be present that weigh in favor of or against the use of ADR. A threshold inquiry should be whether ADR will be beneficial to a case; that is, whether it will be more cost efficient, faster or will enhance the opportunities for a better result than would be the case with traditional litigation or unassisted negotiation. Even if the threshold inquiry is negative, consideration should still be given to whether ADR can be of benefit to a case even if it does not settle or entirely resolve the matter. For instance, if ADR can narrow the issues or expedite critical discovery, then ADR should be considered. In selecting a particular ADR process, each Civil Division component has listed a series of factors to evaluate for this selection, and there may be more than one ADR process appropriate for an individual case. Attorneys should also consider the different ADR processes that the relevant district or circuit court programs provide or require. Even where a particular district has an ADR program, Civil Division attorneys should employ the analysis in this statement.

In determining whether a case can benefit from ADR, there are no hard and fast rules. It bears emphasizing that the use of ADR is not mandated, and the determination to use ADR and the selection of the particular ADR process should be done on a case-by-case basis. Because an understanding of the nature of the particular litigation is critical to an ADR assessment, and because the Civil Division handles such a wide variety of litigation, included below is a description of each Civil Division component's caseload.

Finally, it is the policy of the Civil Division to recognize the work made by staff attorneys who handle matters in ADR by providing the same opportunities for promotion, awards and other professional recognition as those engaged in more traditional litigation. Often, ADR will accelerate settlements, avoid trials, and provide enhanced resolution of disputes that litigation cannot provide. Those who use ADR to these ends will be evaluated on their skills in these endeavors, and they will be recognized for the contributions they have made to the Department and the public.

Commercial Litigation Branch: The Commercial Litigation Branch is the largest of the litigating components, accounting for 39% of the Division's caseload. Its cases consists of both affirmative and defensive work regarding financial disputes between the government and private parties. It has four principal litigating units:

The *Fraud* unit files affirmative litigation, usually under the False claims Act. Last year it recovered over 1 billion dollars. Almost 90% of its cases settle and approximately half of those are completed prior to filing a complaint. The nature of the cases indicates that they are good candidates for ADR mechanisms.

The *Court of Federal Claims* unit defends suits brought by contractors, (usually as the result of an adverse decision by an agency contracting officer,) and defends appeals filed by government employees from decisions of the Merit Systems Protection Board. They settle approximately 30% of their cases and win the majority of the balance on motions. Both types of cases follow administrative reviews which have afforded the parties settlement opportunities. Although personnel cases can often benefit from third party neutral participation, these cases are small and are almost always disposed of in favor of the government on routine motions. In addition OPM, the client in most cases, would like to see their

VOL
61
ISS
136
JL
15
1996
UMI

decisions, which have been the result of a rather lengthy administrative process, upheld. (Cases that have merit are usually disposed of in that administrative process.) Likewise, many contract cases are weeded out by dispositive motions on the basis of the Court's limited jurisdiction. However, the remaining complex contract actions can make use of not only mediation but informal fact finding and neutral evaluation procedures. The Court of Federal Claims has a standing order that provides for two modes of ADR. Other forms of consensual ADR are encouraged by the court.

The *Corporate/Financial Litigation* unit litigates both affirmative and defensive cases, including complex contractual and financial matters, bankruptcies and large foreclosure proceedings. These cases can often benefit from ADR mechanisms.

The *Intellectual Property* unit litigates matters involving patents and copyright issues. These are highly technical. They are often complex, especially regarding damage calculations.

The Torts Branch: The Torts Branch is responsible for defending government agencies and employees in tort suits and administrative claims. It is subdivided into four litigating sections, General Torts, Constitutional and Specialized Torts, Environmental Torts and Aviation and Admiralty.

The General Torts Staff's workload includes a broad array of traditional tort litigation (automobile cases, premise liability and medical malpractice). In addition, the FTCA Staff is responsible for conducting major litigation involving claims arising from financial institution failures and AIDS related tort suits. This Staff also handles highly visible suits that are likely to set significant precedents, involve large sums or are especially sensitive because of the factual context in which they arise.

Constitutional and Specialized Torts (CST) is responsible for representing present and former high ranking officials and other employees who are personally sued for monetary damages as a result of actions taken in the course of their duties. CST handles cases filed under the National Vaccine Injury Compensation Program, which involve allegations of injuries and death which are claimed to have been caused by the administration of certain childhood vaccines. This section also reviews and adjudicates claims brought by individuals under the Radiation Exposure Compensation Program. These claims involve injuries which are alleged to have been caused by radiation exposure from atmospheric nuclear testing and from employment related to the mining of Uranium.

The Environmental Torts Section defends the United States in environmental contamination suits alleging personal injury and property damage as a result of alleged exposure to chemicals, asbestos, radiation and other environmental toxins. Typical suits allege negligence on behalf of the United States and/or its contractors in operating installations and industrial facilities throughout the nation. The cases are complex and rely heavily on expert scientific and medical evidence to protect out interests.

The Aviation and Admiralty section handles defensive and affirmative claims. Aviation litigation results from private, military and air carrier operations and accidents and from the Government's responsibility for air traffic control, airport and aircraft certification and weather information distribution. In Admiralty, on the defensive side, the cases involve collisions at sea, groundings, seaman's injury, search and rescue and other actions relating to the Government's regulation of the nation's waterways. On the affirmative side, the cases include mortgage foreclosure, oil pollution and damage to Government property. The admiralty section also handles cases filed in district courts involving maritime contracts, both defensive and affirmative.

The Federal Programs Branch: The Federal Programs Branch of the Civil Division is a large law office with a diverse civil practice representing over 100 federal agencies. The Branch defends against major suits challenging the constitutionality of statues and the constitutionality and validity under the Administrative Procedure Act of government policies and programs; major Administration initiatives; and agency decisions, orders, and regulations. The Branch also handles significant government personnel litigation, including employment discrimination claims in federal district court and adverse action challenges before the Merit Systems Protection Board (when the Department of Justice is sued) and before federal district courts. Certain APA and personnel actions are amenable to ADR, especially those involving ongoing working relationships. The Branch also personally handles significant government information lawsuits, such as those brought under the Freedom of Information Act and the Privacy Act. About ten percent of the Branch's workload involves affirmative litigation to prevent interference with government operations and enforce various statutes and regulations such as banking laws, the National Highway Traffic Safety Act, and the Ethics in Government Act.

Office of Consumer Litigation: The Office of Consumer Litigation (OCL) is responsible for enforcement of Federal consumer protection statutes, most of which provide for both civil and criminal remedies. OCL principally handles affirmative litigation. OCL receives most of its case referrals from the Food and Drug Administration, the Federal Trade Commission, the Consumer Product Safety Commission, and the National Highway Transportation Safety Administration. Approximately 73% of OCL attorney hours are spent on FDA cases (the approximately 409 pending FDA cases include both civil and criminal enforcement actions and defensive matters).[1] The Office also handles approximately 25 appellate cases per year.

Referrals from the FDA involve the illegal production, distribution, and sale of misbranded and adulterated drugs, medical devices, and foods. In pursuing these affirmative enforcement actions, OCL seeks a variety of remedies under the Food Drug and Cosmetic Act (FDCA), including seizures, injunctions, and criminal prosecutions. While OCL does not seek monetary relief in FDA affirmative cases, ADR techniques may nonetheless prove effective in obtaining expeditious civil settlements. OCL also handles a number of cases defending FDA. The majority of FDA defensive cases are administrative and constitutional challenges to FDA statutes and regulations. These cases rarely settle as both parties need a judicial resolution.

Referrals from the FTC typically involve allegations of FTC Rule violations (e.g. FTC's Franchise Rule, Used Car Rule, and Funeral Rule) or charges of false advertising. In pursuing these affirmative enforcement actions, OCL seeks a variety of remedies under the FTC Act, including civil penalties, consumer redress, and injunctions (which often require the defendants to modify and reform their consumer disclosure practices). Approximately 11% of OCL attorney hours are spent on FTC cases (the approximately 72 pending FTC cases include both FTC Rule and false advertising cases). Those cases are quite suitable for most ADR techniques.

CPSC referrals constitute a small fraction of OCL's case load. Approximately 3% of OCL attorney hours are spent on CPSC cases (the approximately 11 pending CPSC cases includes civil actions seeking civil penalties, consumer redress, and injunctions; OCL handles few CPSC criminal enforcement actions). NTSHA referrals involve criminal matters.

The Office of Immigration Litigation: The Office of Immigration Litigation (OIL) is responsible for civil trial and appellate litigation concerning immigration and nationality matters, ranging from high seas interdiction and alien detention, deportation and exclusion, visa and naturalization suits, to document fraud and litigation arising under the employer sanction provisions that affect citizens as well as aliens. OIL has both affirmative and defensive litigation responsibilities, and represents the Immigration and Naturalization Service, Department of State, Executive Office of Immigration Review, and other agencies that regulate the movement of aliens across and within U.S. borders. A number of factors and statutory obligations make this type of litigation unique and generally unsuited to most ADR programs. OIL defends government policies relating to immigration that have broad implications for the nation. They also defend against challenges to the constitutionality of statutes, regulations, and government programs, as well as agency decisions and orders. ADR techniques may be appropriate in settling suits challenging certain operational decisions in the INS districts, where the agency may have some flexibility and the outcome may be guided by existing legal precedent, or in resolving attorney fee disputes. The majority of OIL's cases, however, are: (1) statutory, constitutional, and regulatory challenges to the enforcement of immigration laws and policy which rarely settle; and (2) petitions for review challenging orders of deportation and exclusion, which are preceded by lengthy administrative proceedings during which the record is established, and where there is little to no flexibility for either outcome or relief (especially as most meritorious cases and applications for relief are resolved prior to this stage by agency adjudication), and where any opportunity for an additional procedure is more likely to result in an unwarranted delay of deportation than to speed resolution of the case.

The Appellate Staff: The Appellate Staff handles appeals in cases litigated by the individual Civil Division components, as well as by United States Attorneys' Offices. Most of the work emanates from the Torts, Federal Programs, and Commercial Litigation Branches, with a much smaller number of appeals from the Office of Consumer Litigation and the Office of Immigration Litigation. The Appellate Staff also handles petitions for direct review in the courts of appeals challenging agency actions. While most of the appeals involve defensive litigation (defending statutes, regulations, agency decisions, civil rights/personnel actions), some of the Office's appeals are based on affirmative litigation (e.g., FDA enforcement, enforcement of the federal trade laws, civil penalty actions). Many of the cases that are good candidates for ADR at the district court level are also good candidates for ADR in the Court of Appeals.

[1] All statistics are for fiscal year 1994.

II. Case Selection Criteria

A. Criteria for the Commercial Litigation Branch

In applying the below criteria, it is important to consider the development of the facts and whether any particular ADR mechanism is appropriate at the particular time to assist in a resolution of the case, or assist in the development of the facts toward a faster and more efficient resolution. Consideration should be given throughout the litigation to appropriate ADR assistance.

1. *Factors Counseling in Favor of ADR*

(a) The Parties
(1) There is a continuous relationship
(2) There may be benefits to either client hearing directly from the opposing side
(3) Either party would be influenced by opinion of neutral third party
(4) The opposition does not have a realistic view of the case
(5) The parties have indicated that they want to settle
(6) Either party needs a swift resolution
(b) Nature Of The Case
(1) Complex Facts
(2) Technical complexity
(3) Hostile forum or decisionmaker
(4) Flexibility in desired in relief
(5) Trial preparation will be difficult, costly or lengthy
(6) Need to avoid adverse precedent

2. *Factors Counseling Against ADR*

(a) Need for precedent
(b) Need for public determination or sanction
(c) Case likely to settle soon without assistance
(d) Case likely to be resolved efficiently by motion
(e) Opposing counsel are not trustworthy

B. Criteria for ADR Use in Torts Branch

In applying the below criteria, it is important to consider the development of the facts and whether any particular ADR mechanism is appropriate at the particular time to assist in a resolution of the case, or assist in the development of the facts toward a faster and more efficient resolution. Consideration should be given throughout the litigation to appropriate ADR assistance.

1. *Factors Counseling for ADR*

(a) Seeking monetary relief is sole purpose of lawsuit
(1) Any unfavorable precedent may be established
(2) There are multiple defendants, with the United States having the greatest exposure
(3) There are no dispositive legal precedents established or desired
(4) Reasonable probability of unfavorable resolution of factual issues
(5) Where at various stages of the litigation, an evaluation shows that the future costs of discovery and litigation would be greater than the amount of the settlement
(6) In affirmative cases, there will be an unacceptable delay from the time suit is filed until payment
(7) Multiple party litigation desiring intermediate mediation to reduce the number of parties and/or issues
(8) In affirmative cases, the defendant is uninsured or under insured
(b) Non-monetary relief sought
(1) Injunctive relief is not necessary even though desired
(2) A declaratory judgment is not necessary even though desired

2. *Factors Counseling Against ADR*

(1) Need to obtain/maintain legal precedent
(2) No liability on part of United States based on facts and/or well-established precedent
(3) Case is anticipated to be one of many
(4) Subject to a motion to dismiss in lieu of answer
(5) Subject to a motion for summary judgment once facts are developed, where costs of proceeding are less than plaintiff would take in settlement
(6) Individual is sued in his personal capacity as a Government employee
(7) A case involving the seizure of property to pay a debt where the property is the only source of revenue
(8) Injunctive relief sought where no compromise or relief available
(9) Case is likely to settle soon without ADR

C. Criteria for the Office of Consumer Litigation

In applying the below criteria, it is important to consider the development of the facts and whether any particular ADR mechanism is appropriate at the

VOL 61 ISS 136 JL 15 1996 UMI

particular time to assist in a resolution of the case, or assist in the development of the facts toward a faster and more efficient resolution. Consideration should be given throughout the litigation to appropriate ADR assistance.

1. *FDA Referrals*

a. *FDA Civil Affirmative Litigation.* In civil affirmative actions under the Food Drug and Cosmetic Act (FDCA), the Government may pursue seizure remedies (*e.g.* in *in rem* actions against adulterated or misbranded food, drugs, or medical devices) and/or injunctive remedies (*e.g.* in actions against manufacturers or distributors of misbranded or adulterated food, drugs, or medical devices). Civil penalties and consumer redress are unavailable under the FDCA. While OCL does not seek monetary relief in FDA affirmative cases, ADR techniques may nonetheless prove effective in obtaining expeditious settlements.

Because FDA seizure and injunction cases almost always involve serious public health concerns, the client agency may be more receptive to ADR techniques in which the Government takes an active role in fashioning the settlement and retains the ability to accept or reject a third party neutral's recommendations. Accordingly mediation (rather than arbitration) is likely to be the ADR technique of choice. In addition, the Government is likely to favor the utilization of third party neutrals (whether U.S. Magistrates, retired Federal Judges, or private mediators) who have an expertise in food and drug or public health law.

Mediation may be particularly effective in the following situations:

(1) Mediating claimants' manner of reconditioning or destruction of adulterated or misbranded products in seizure actions.

(2) Mediating claimants' reimbursement of the Government's storage and destruction costs in seizure actions.

(3) Mediating claimants' agreement to injunctive language in consent decrees in actions initially filed as civil seizures. In contested seizures, the Government may wish to expand its scope of relief upon discovery of new facts or upon expenditure of considerable resources. ADR is of particular use in these situations as the relief sought extends beyond that prayed for in the Complaint. ADR should also be considered in settling appeals of seizure actions (a settlement which includes an injunction may prove more effective than an appellate court's affirmance of a seizure that includes no prospective relief.)

(4) Mediating terms of injunctions, including reconditioning plans, consumer notification obligations; and defendants; reimbursement of the costs of FDA inspections conducted to ensure compliance with consent decree terms.

b. *FDA Civil Defensive Litigation.* Most of OCL's defensive litigation involves administrative and constitutional challenges to FDA statutes and regulations (e.g. Administrative Procedure Act challenges to the Nutrition Labeling and Education Act). Typically, both parties in these cases seek a judicial resolution of the dispute which will result in legal precedent. Nevertheless, ADR may be effective in certain cases in which the agency may wish to avoid publicity, a judicial decision is likely to be unfavorable, or the issue at stake (e.g. whether the FDA has engaged in unreasonable delay in evaluating an applicant's new drug application) is not of precedential importance to the Government.

c. *FDA Criminal Litigation.* FDA criminal cases are inappropriate for ADR consideration because a final judicial decision (whether through a plea agreement or trial) is required.

2. *FTC Referrals*

OCL's affirmative FTC Rule violation and false advertising actions include requests for monetary relief and are often most suitable for ADR techniques. Mediation or early neutral evaluation provided by U.S. Magistrates and/or Senior Judges is the ADR methodology currently preferred by the client agency for the following reasons: (1) The FTC recommends specific parameters to OCL regarding the acceptable range of monetary relief for which it will settle (settlement ranges are provided by the FTC's Bureau of Economics and are voted on by the FTC Commissioners). Any type of binding arbitration may therefore be inappropriate, as OCL must maintain an ability to reject a settlement proposal suggested by a third party neutral that is out of the range considered acceptable by the client agency. (2) Individual FTC Rule violation cases are often part of larger enforcement initiatives. OCL must therefore retain the ability to ensure that like cases are settled for like amounts. (3) The FTC's economic statistics used to guide the Government's settlement positions are confidential. The agency would be reluctant to release those statistics to third party neutrals who are not judicial officers. However, other non-binding ADR techniques utilizing third party neutrals should be considered.

Mediation may be particularly effective in the following situations:

(1) Mediating the terms of a consent decree for FTC Rule violations including modification of the defendant's consumer disclosure practices.

(2) Mediating the amount of civil penalties recovered.

(3) Mediating the amount of consumer redress recovered and the method for dispersing such funds among injured consumers.

3. *CPSC Referrals*

OCL's cases referred by the Consumer Product Safety Commission include civil actions seeking civil penalties, consumer redress, and injunctions. The criteria and concerns relating to civil CPSC matters mirror those relating to FTC civil enforcement actions discussed above. OCL also prosecutes a small number of criminal CPSC cases. These criminal matters are not amendable to ADR techniques as a judicial resolution is required.

4. *NHTSA Referrals*

OCL referrals from National Highway Transportation and Safety Administration (and, to a lesser extent, State Highway Patrols and the FBI) relate primarily to criminal odometer tampering prosecutions. These criminal actions require judicial resolution and are not amendable to ADR techniques.

D. Criteria for the Office of Immigration Litigation

In applying the below criteria, it is important to consider the development of the facts and whether any particular ADR mechanism is appropriate at the particular time to assist in a resolution of the case, or assist in the development of the facts toward a faster and more efficient resolution. Consideration should be given throughout the litigation to appropriate ADR assistance.

1. *Factors Counseling for ADR*

a. Lawsuits challenging INS operations other than enforcement measures controlled by statute or regulation may be amendable to ADR at various stages. (The factors regarding other types of OIL litigation identified in section 2 below, should also be considered in deciding whether ADR is appropriate for these cases.) Mediation is most likely, although other ADR methods such as early neutral evaluation may be appropriate if they are likely to reduce the time and cost of litigation in a specific case.

(1) Issue is localized or limited to a specific INS district or facility.

(2) Agency (or district) has some flexibility in resolving matters.

(3) Need exists to narrow issues, dispute is largely factual, or discovery needs to be tailored to material issues.

(4) Hostile forum (where more control of case and a fairer or more effective and favorable outcome may be obtained through mediation).

(5) Court appears to be unwilling to rule

(6) Expectations of party/parties are unreasonable (parties or aggrieved persons may benefit from an evaluation of their case by someone other than their lawyers).

(7) Statute or regulation has been rescinded.

b. Attorney Fee Disputes.

(1) Sole issue or remaining issue in the case

(2) ADR will speed anticipated settlement and avoid needless increase in attorney fees.

2. *Factors Counseling Against ADR*

a. Petitions for review of deportation orders in the courts of appeal and petitions for habeas corpus for judicial review of exclusion orders in the district court under 8 U.S.C. 1105a, or exercise of enforcement authority and discretion delegated to INS district directors or other officials:

(1) Statute provides the "exclusive" procedures for judicial review.

(2) Prescribed outcomes or statutory remedies are inflexible.

—Grounds for exclusion and deportation are determined by statute

—Requirements for relief are determined by statute

(3) There has been prior extensive administrative process

—Review is limited to the administrative record, and facts of these cases are rarely in dispute by the time case reaches federal court

—Actual challenge is to the agency's evaluation of facts, exercise of discretion, or other elements entitled to deference by the courts

(4) Additional procedure would most benefit the alien who seeks to delay his inevitable departure or to stall for the time he lacks to minimally qualify for relief such as suspension of deportation and 212(c) waivers.

(5) Actual error can be corrected by motion to remand to BIA or reconsideration by agency.

b. Litigation challenging implementation of the immigration laws, including new legislative initiatives, Executive orders, government policy, amended regulations, and enforcement actions under existing authority, statutes and regulations:

(1) Judicial resolution or precedent is needed.

—case involves significant legal, policy, or constitutional issues where there is little or no likelihood of flexibility in the government's position

—case involves issue of first impression and is important to development of a particular area of law

—favorable facts make the case a good vehicle to establish legal ruling in development of law

—judicial resolution is unavoidable because statutory or regulatory program is at stake

(2) Injunctive relief is sought and delay would cause prejudice.

(3) Agency is exercising its judicially recognized exclusive authority over issues of immigration and needs to respond to changed circumstances.

(4) Executive Branch must be able to fully preserve its ability to respond to events that may implicate relations with other nations.

(5) Law enforcement function cannot be compromised.

—goal of opponent's suit is to undermine or minimize adverse consequences prescribed by Congress

—challenge is to principles so fundamental that productive negotiation is unrealistic

—nongovernmental party has an incentive to stall

(6) Issue needs uniform treatment.

—issue has nationwide impact

—similar suits pending or anticipated

—aliens' advocates are bringing similar actions in different courts in search of a sympathetic forum

—no legitimate reason to settle with one party or plaintiff group

—need to maintain established policies or consistent results between individual cases

—need to discourage similar suits

(7) Law is settled.

—no compromise or relief is available

—strong likelihood of success on the legal issues

—case is likely to be disposed of by summary judgment or other dispositive motion

—case is frivolous, dispute is different from actual grievance (i.e., due process claim when alien is ineligible for relief), or only discernible purpose is delay

(8) Case is likely to settle or settle faster through unassisted negotiation without ADR

(9) Parties are not willing to negotiate or prepared to settle case

(10) Government official, officer or other individual is sued in his personal capacity

(11) Parties are not represented by counsel

(12) Opponent is untrustworthy, his credibility is a disputed issue, or United States has reason to believe that he is engaging in fraudulent or criminal behavior

E. Criteria for the Federal Programs Branch

Among the Branch cases which appear most amenable to ADR are personnel actions, particularly those involving factual disputes and parties which have an ongoing work relationship. Less amenable as a group are the constitutional and major APA challenges, since the cases the Branch chooses to personally handle involve the most visible government policies and programs which impact not just the parties directly involved in the lawsuits but often have broad implications for the whole of society. These are often the cases whose policy determinations are considered the most important by the defendant agencies and for which flexibility in terms of settlement options is quite limited. Consideration of ADR may be appropriate, however, for routine APA challenges where there is more flexibility in the agency, substantial legal precedent already exists, and the use of a third-party neutral may be beneficial to expedite the settlement process.

In applying the below criteria, it is important to consider the development of the facts and whether any particular ADR mechanism is appropriate at the particular time to assist in a resolution of the case, or assist in the development of the facts toward a faster and more efficient resolution. Consideration should be given throughout the litigation to appropriate ADR assistance.

1. *Factors Counseling for ADR*

(a) Continuing relationships between plaintiffs and agency.

(b) Case involves largely a factual dispute.

(c) Relief sought is money damages.

(d) Agency is essentially a stakeholder, with plaintiffs or co-defendants trying to impose on agency diametrically opposed relief or requirements (this element may appear in some APA and other policy type cases); similarly, where there are many parties to the lawsuit with divergent interests which hamper standard negotiation efforts.

(e) Plaintiffs and agency are interested in seeking resolution but personality conflicts or poor communication

VOL 61 ISS 136 JUL 15 1996 UMI

between opposing counsel adversely affects settlement negotiations.

(f) There are underlying issues which are not formally part of the complaint and which cannot be resolved by the relief legally available, but which are the catalyst for the lawsuit.

(g) Apparent unwillingness of court to rule on matters which would advance the case toward resolution.

(h) Where you expect to settle eventually, most likely on the "courthouse steps."

(i) Where plaintiffs' demands, or the agency's view of the case, are unrealistic, and a realistic appraisal of the situation by a neutral third party may help unlodge the recalcitrant party.

(j) Where there is a need to avoid adverse precedent but traditional settlement negotiations have reached an impasse.

2. *Factors Counseling Against ADR*

(a) Case involves significant legal, policy, or constitutional issues where there is little or no likelihood of flexibility in the government's position.

(b) Where judicial resolution is necessary for precedential value.

(c) The case can likely be efficiently disposed of by summary judgment or other dispositive motion.

(d) The case is likely to settle in near future without need for neutral assistance.

F. Criteria for the Appellate Staff

The criteria listed below are suggested as a starting point for analyzing whether a case on appeal could benefit from ADR. While each attorney should also examine the criteria of the trial component from which the appeal arose, other criteria come into play or take on a different degree of importance at the appellate level. For instance, the role of precedent at the court of appeals level is much greater. Attorneys should consider what if any ADR efforts were attempted earlier in the case, and whether and how the case has changed from its posture at the trial level, both factually and legally. The ADR techniques that are likely to be used by the Appellate Staff are mediation and case evaluation, because at the appellate level the issues are largely legal ones that would not benefit from the more fact-intensive techniques such as mini-trials.

1. *Factors Counseling for ADR*

(a) Predominantly factual case where government faces clearly erroneous standard.

(b) Monetary cases without significant precedential concerns.

(c) Risk of adverse precedent or publicity. E.g., case is poor vehicle to establish favorable legal precedent, circuit has poor track record on type of issue, risk of circuit split and Solicitor General unlikely to authorize certiorari, loss on the issue may create poor precedent for other government agencies.

(d) Need for swift resolution. E.g., agency has programmatic needs that cannot await the usual length of the appellate process, the appeal is only one part of multi-issue litigation with the potential for future remands and appeals.

(e) Continuing relationships. E.g., ongoing federal/state relationship, ongoing relationship between agency and regulated entity, continued contact in implementation of remedy or class action.

(f) Numerous parties and issues.

(g) Need to avoid increased attorneys fees or post-judgment interest that unsuccessful appeal will incur.

(h) Need for problem solving or development of creative alternatives or flexibility in shaping relief e.g., suit is only one facet of a deeper dispute involving other issues court may not be able to address.

(i) Other parties are willing to consider ADR.

(j) Certain statutory, regulatory, or constitutional cases e.g., no continuing importance because statutes or regulations have been amended, constitutional challenge such as due process actually masks some underlying issue capable of resolution such as plaintiff's desire for expungement of record or consideration for job opening.

(k) Case is one which should have been settled in district court but was not.

2. *Factors Counseling Against ADR*

(a) Need for judicial precedent. E.g., need to establish legal ruling in development of a particular area of law and favorable facts make case a good vehicle, judicial resolution unavoidable because nothing short of validity of statutory/regulatory program is at stake.

(b) Need for uniform treatment. E.g., many similar suits pending and no legitimate reason to settle with only one party.

(c) Need to discourage similar suits.

(d) Need for continuous monitoring of compliance by court or public judicial decision in certain enforcement cases.

(e) Likelihood of success is great and relief sought is significant.

III. Which ADR Techniques Are Appropriate for a Case

A. Mediation

1 There is a continuing relationship among the parties.

2 The disputed facts are not technical, requiring subject-matter expertise.

3 There are multiple defendants, with the United States having the greatest exposure.

4 Risk of unfavorable precedent.

5 In affirmative cases, there will be an unacceptable delay from the time suit is filed until payment.

6 Either side can benefit from hearing directly from the client.

7 Opposition needs a realistic view of the case.

8 Flexibility in desired relief.

B. Early Neutral Case Evaluator/Expert

1 Know at the outset that case can be settled.

2 The parties disagree on the amount of damages.

3 Factual issues requiring expert testimony may be dispositive of liability or damage issues and use of an expert neutral is cost effective.

4 A resolution of the factual issue will assist in settlement.

5 Opposition needs a realistic view of the case.

C. Arbitration

1 The parties disagree on the amount of damages.

2 It is a District where the arbitrators are well-respected.

3 There are no complex factual issues involving several areas of expertise and the parties disagree on the facts.

D. Mini Trials

1 In affirmative cases, there will be an unacceptable delay from the time suit is filed until payment.

2 There are simple factual issues which do not necessarily require expert testimony, but would take an excessive amount of time to present in a traditional forum.

3 There are complex factual issues which are generally explained with expert testimony.

4 The attorneys can equably summarize the facts to the fact-finder, without the necessity of lengthy cross-examination.

IV. Criteria for the Selection of ADR Providers

In selecting an ADR provider for a case, Civil Division attorneys should consider the non-exclusive factors set out below. When assessing these factors, attorneys may also consider whether an ADR provider meets the requirements of the relevant state or federal court rules for neutrals. Attorneys may wish to interview the prospective neutral and obtain their resumes in ADR experience where appropriate. Attorneys may also wish to consult other attorneys who have used the prospective neutral in other cases. In finding prospective ADR providers, attorneys may consult the Senior Counsel for Dispute Resolution, other attorneys in their office, division, or in the Department for such providers.

1. Neutrality, and Related Ethics Standards—Is the ADR provider unbiased, acting in good faith, diligent, and not seeking to advance his or her own interest at the expense of the parties? Will the ADR provider deal fairly with the parties, be reasonably available to the parties, show no personal interest in the content of the settlement? Does the neutral know counsel, and if so, what is the nature and context of that knowledge? Is the neutral subject to disqualification on grounds analogous to those found within 28 U.S.C. 455. Check Society of Professional for Dispute Resolution's Ethical Standards.

2. Training—What kind and extent of training for the particular ADR process has the neutral received? Has the neutral been trained by a well-recognized program?

3. Experience—

(a) *ADR Experience:* number of cases in which the neutral has employed the particular dispute resolution process or related processes, dollar amount in controversy, diversity of processes, complexity of the issues, years of experience in a particular process(es), breadth of experience in types of disputes, experience in multi-party and/or multi-issue disputes, affiliation with court-annexed programs.

(b) *Litigation Experience:* Is the neutral an attorney? Type of legal practice, years of experience, complexity of cases and issues, experience in government litigation.

4. Subject-Matter Expertise In The Type of Dispute and/or Issues—Factors Favoring Subject-Matter Expertise:

(a) Highly technical areas of law are central for understanding the dispute and/or issues and the fashioning of the options for resolution of the dispute (e.g. patent, subspecialities of science or medicine).

(b) Issue is one of damages—when offers are far apart, expertise in typical damage awards and in standard components of damage calculation may bring parties; offers closer (e.g. certain attorney fees, personal injury disputes).

(c) When the parties and attorneys are hesitant to use ADR for a particular case, and expertise will build credibility for them.

(d) There is an impasse over discrete factual and/or legal issues.

(e) Expertise is central to a particular Kind of ADR process—e.g. case evaluation on factual issues, mini-trial, arbitration.

V. Training

Each Civil Division attorney will be trained in a basic, but comprehensive, 6-hour ADR course. The course will be skills-based and interactive. Classes should be comprised of 30–35 attorneys from a variety of Civil Division components. The small class size will permit an interactive focus and discussion format, while the class composition will facilitate a cross-pollination of experiences and ideas among the components. As many of the instructors as possible will be Civil Division litigators with substantial ADR experience. The agenda for the basic ADR training course is envisioned as follows:

A. ADR TECHNIQUES, CASE SELECTION CRITERIA, SELECTION OF PARTICULAR ADR PROCESS (lecture/discussion 1½ hours).

B. CONCRETE EXAMPLES BY GOVERNMENT LITIGATORS OF ADR AND HOW IT WORKS (lecture/discussion 30 minutes).

C. NEGOTIATION SKILLS (lecture 1 hour).

D. INTERNAL PROCEDURES, AUTHORIZATION & FUNDING OF NEUTRALS, SELECTION OF NEUTRALS (lecture 30 minutes). This section will include guidance on how to find an appropriate neutral and how to assess whether the prospective neutral will be a good fit for the case.

E. ATTORNEY PREPARATION FOR ADR (lecture 30 minutes)—includes discussion of case and client agency preparation for ADR, and pre-settlement & settlement authorization.

F. ADR ROLE-PLAYS (2 to 2½ hours)—class may be divided into smaller groups. Each member of the small groups will have the opportunity to participate in the role-play. Instructors and participants will have the opportunity to critique and give feedback both during and after the role-plays. The fact patterns for the role-plays will be chosen to reflect the Civil Division's diverse litigation responsibilities, for example, torts, contract, EEO, and an APA challenge. Every effort will be made to match the participant with a role-play relevant to their litigation caseload.

At the conclusion of the course, participants will be asked to complete and evaluation form. On the basis of those evaluations, comments from the instructors and our actual experiences with ADR, the Civil Division will continue to modify and refine the basic course. All new Civil Division attorneys will also be required to take the course. Once experience with the basic ADR training occurs, the Civil Division will be able to develop supplemental ADR training as needed. This training will be coordinated with the Office of the Senior Counsel for ADR.

VI. Procedures for Authorization and Funding of Neutrals

These procedures supplement the instructions issued by the Office of Senior Counsel for Alternative Dispute Resolution (SCADR) in the Associate Attorney General's Office. Civil Division attorneys shall request authorization and funding for neutrals in accordance with these procedures. Prior to using these procedures you should make arrangements with the opposing party and third party neutral and execute a proposed ADR agreement (available from your ADR representative).

The revised Form OBD–47, Request for Authorization, and Agreement for Fees and Expenses for Witnesses and Alternative Dispute Resolution Neutrals will be used. This document will serve as the formal contract with the third party neutral.

STEP 1—It is impractical to obtain full and open competition for ADR in most cases. However, before the OBD–47 is completed, the case attorney must negotiate the best neutral rate possible.

STEP 2—Once the OBD–47 has been completed and approved by the branch director, forward the OBD–47, the ADR agreement, and any additional supporting documentation to Raziya Clouser of the Contracts and Procurement Branch (Room 7110, Todd Building) for processing. Contracts and Procurement Branch will obtain a commitment of funds from SCADR for each request; a neutral should not begin work in advance of a fully approved request.

STEP 3—After the Contracts and Procurement Branch has returned the approved agreement, the case attorney should sign it, obtain the neutral's signature, and return a copy of the fully executed agreement back to the Branch. It is not necessary for the case attorney to forward a copy of the signed agreement to the SCADR; the Contract and Procurement Branch will perform this task.

STEP 4—The neutral should forward all invoices to the case attorney for review and certification. Because of Prompt Payment Act requirements, it is critical that invoices are date stamped when they are received by the attorney. It is also vital that the case attorney review the invoice and (1) reject it, if it is defective, or (2) certify it for payment,

VOL
61
ISS
136
JL
15
1996
UMI

if it is proper, within seven days of the invoice's receipt (refer to the Civil Division directive on expert witnesses, CIV 2110A, § d. *Payment of the Expert Witness* for more detailed invoice rejection and certification instructions).

STEP 5—Once a neutral's invoice has been certified for payment, it should be forwarded along with a copy of the signed OBD–47 to Frank Free of the Office of Planning, Budget, and Evaluation (Room 7032, Todd Building) for payment.

Questions regarding the procurement of third party neutrals should be directed to Ms. Clouser at 606–0786. Questions regarding payment should be directed to Mr. Free at 307–0842.

VII. Coordination, Reporting, and Evaluation

The Civil Division ADR committee shall coordinate ADR activities on behalf of the Division. The committee consists of Stephen Altman (Chair), Deborah Kant (Vice Chair), Susan Cavanagh, Mary Doyle, Vince Faggioli, Debra Kossow, Cindy Lebow, Emily Radford, Deborah Smolover, and Sandy Schraibman and Kim Humphries.

A system of reporting on cases in ADR shall be established. A reporting form of one page shall be filled out when an ADR process is considered or used, and the data shall be included in the computerized data bank maintained by the Civil Division's Management Programs component.

In addition, a system of evaluation will be instituted that allows for civil division attorneys using ADR providers to give immediate feedback to a centralized data base. Attorneys using ADR providers' services will be asked to rate the provider on the general standards set out above in the selection of neutrals section. These evaluation forms should then be made available to any potential future users of an ADR provider's services. When any providers consistently receive poor evaluations, this information will be included in the data bank and made available to civil division attorneys.

VIII. Miscellaneous

The Civil Division's Statement On ADR relates to the government's voluntary participation in ADR. Nothing herein shall be construed to limit the government's duty to participate in ADR pursuant to court or applicable local rules, except that Civil Division attorneys shall resist participation in ADR, by appropriate motion, whenever said participation would violate the United States Constitution or other governing law.

This Statement shall not be construed as creating any right or benefit, substantive or procedural, enforceable at law or in equity, by a party against the United States, its agencies, its officers, or any other person. This Statement shall not be construed to create any right to judicial review involving the compliance or noncompliance of a Civil Division attorney with its terms.

Appendix

"Alternative Dispute Resolution" ("ADR") means any procedure, involving a "neutral," that is used in lieu of trial to resolve one or more issues in controversy, and includes but is not limited to the following "ADR techniques";

1. *Mediation* means a flexible, nonbinding process in which a neutral third party, the mediator, facilitates negotiations among the parties to help them reach a settlement. In doing so, the mediator may expand traditional settlement discussion and broaden resolution options, often by going beyond the legal issues in controversy or incorporating nonparties in discussions. Theoretically, the mediator does not provide an opinion as to how the case should be resolved, but merely helps the parties settle the case among themselves.

2. *Early neutral case evaluation*, unlike mediation, on liability and/or damages. The evaluator usually has subject-matter expertise. The opinion is non-binding and generally occurs early in the lawsuit. The parties may have the option of asking the evaluator to continue to mediate the dispute.

3. *Neutral expert evaluation* is similar to early neutral case evaluation; however, the evaluation does not necessarily occur early in the litigation. The expert is chose based on the expertise needed to resolve some factual dispute in the case. The export provides a non-binding opinion.

4. *Arbitration* usually consists of a panel of one or more arbitrators who listen to the parties present their respective views of the case in an expedited, adversarial hearing format. The formality varies and may involve presentation of documents and witnesses or simply a summary by counsel. A decision is rendered that addresses liability and damages, if necessary. As of this time, it is non-binding on the United States and either party may request a trial *de novo*.

5. *Minitrial* means a flexible, nonbinding hearing, generally reserved for complex cases, in which counsel for each party informally presents a shortened form of its case to settlement-authorized representatives of the parties in the presence of a presiding judge, magistrate judge, or other neutral, at the conclusion of which the representatives meet, with or without the judge or neutral, to negotiate a settlement, failing which the case proceeds to trial.

6. *Summary bench trial* means, in any case not triable by a jury, a pretrial procedure intended to facilitate settlement consisting of a summarized presentation of a case to a Judicial Officer whose decision and subsequent factual and legal analysis serves as an aid to settlement negotiations.

7. *Summary jury trial* means a flexible nonbinding procedure, usually reserved for trial-ready cases in which protracted jury trials are anticipated, and involving a short hearing in which evidence is presented by counsel in summary form, following which a jury returns an advisory verdict that forms the basis for settlement negotiations.

Civil Rights Division, Alternative Dispute Resolution, Case Screening Factors

Alternative Dispute Resolution ("ADR"), as used here, is any dispute resolution process facilitated by a third-party neutral. The Civil Rights Division resolves consensually many of its civil cases through traditional two-party negotiation and will continue to do so. ADR is not meant to replace traditional negotiation, but rather to provide attorneys with additional tools that may facilitate communication and resolution of matters where party-to-party negotiations have been or are likely to be unsuccessful.

In evaluating whether an ADR process may be useful, there are no hard and fast rules. Attorneys should consider whether ADR might be helpful in a particular case at the beginning of the litigation and revisit the question throughout the progress of the case taking into account the ADR processes that may be available through or imposed by the court in a particular district or circuit as well as the private ADR providers available in the relevant market. The following is a brief description of the major ADR processes.

1. *Mediation*. An impartial third party facilitates confidential discussions or negotiations among the parties to help them reach settlement. Mediation is a creative, flexible process that may broaden resolution options, often by going beyond the legal issues in controversy.

2. *Neutral Evaluation*. Neutral evaluation is a confidential conference where the parties and their counsel present the factual and legal bases of their case and receive a non-binding assessment by an experienced neutral with subject-matter expertise and/or with significant trial experience in the jurisdiction. This assessment can form the basis for settlement discussions facilitated by the evaluator if the parties so choose.

3. *Joint Fact-Finding*. This term encompasses various processes in which facts relevant to a controversy are examined and determined by a neutral third party. Typically, the parties appoint a neutral expert to resolve complex factual, technical, scientific, or legal questions and agree in advance whether the findings will be treated as advisory or binding.

4. *Mini-Trial/Summary Jury Trial*. An informal hearing-like presentation by the parties of their best case in shortened form to settlement-authorized representatives. Following the hearing, the parties and representatives meet, with or without a neutral advisor, to negotiate a settlement. If a jury is used, the jury's non-binding verdict is used as a basis for subsequent settlement negotiations.

5. *Arbitration*. One or more arbitrators issue a judgment on the merits (binding or non-binding) after an expedited adversarial hearing.

The following is a non-exclusive list of factors to assist attorneys in determining whether to use ADR in a particular case. Not all factors listed will be relevant to a given case, and factors not listed below may weigh in favor of or against use of ADR in a particular instance.

Factors Favoring Use of ADR

The Parties

• *Continuing Relationships*. The United States, aggrieved persons, or other litigants are likely to have continued contact with the defendants in implementation of remedy or in other contexts.

• *Barriers to Communication*. The United States or other litigants foresee impasses developing because of conflicts within interest groups, political visibility, or poor or non-existent communication among the participants (including attorneys) due to personality difficulties or past history.

• *Absent Stakeholder(s)*. Participation of persons or groups who are not directly involved in the legal action may be beneficial or necessary to optimal resolution.

• *Divergence of Interests*. There are gains and losses to be apportioned constructively, and in which varying priorities among the parties will allow trading off of those gains and losses to permit all involved to benefit from the outcome.

• *Numerous Parties*. The number of parties or interested persons or groups is so numerous that a structured/facilitated negotiation process would be helpful.

• *Litigation Against Other Government Agencies*. Involvement of a third-party neutral may assist in sorting through and/or evaluating "public interest" claims of various governmental components (among federal agencies or between federal and state or local entities), provided non-Departmental litigants are acting in good faith.

Nature of the Case

• *Need for Problem Solving or Development of Creative Alternatives*. A thorough exchange of information and generation of alternatives and options will improve the outcome.

• *Factual or Technical Complexity or Uncertainty*. The parties would benefit from reliance on the expertise of a third-party expert for technical assistance and/or fact-finding.

• *Need for Facilitated Private Discussions*. The settlement desired may be improved by the neutral's ability to conduct frank, private discussions among the parties.

• *Flexibility Desired in Shaping Relief*. The United States is seeking relief with detailed implementation and/or monitoring on multiple issues or subjects that may be difficult to obtain from the Court, or is amenable to resolution through cooperation between the parties.

• *Ultimate Outcome Uncertain*. Litigants face uncertain outcome at the time of trial based on the law, the facts, or the decisionmaker. Also important is the likelihood of prevailing on appeal should the United States lose at trial.

• *Hostile Decisionmaker*. Case will be tried in front of an unsympathetic judge, or jury venue is likely to be unsympathetic or even hostile.

• *Conservation of Enforcement Resources*. Preparing the case for trial would require a burdensome commitment of significant resources without achieving a proportionate impact.

• *Numerous Issues*. Discussion of multiple issues will be assisted by a structured/facilitated negotiation process.

• *Direct Settlement Negotiations Unsuccessful*. The United States has attempted traditional settlement negotiations without success or an impasse has been reached and the United States believes involvement of a third-party neutral will facilitate further progress and/or final resolution.

Representation

• *Need To Speak Directly to Client*. The parties (or aggrieved persons) need to hear an evaluation of the case from someone other than their lawyers.

(For example, a case that appears to be headed for trial merely because a defendant does not understand the applicable law.)

• *Lawyers Are Willing To Consider ADR*. The lawyers involved are knowledgeable about ADR processes and intend to participate in the chosen ADR process in a good-faith attempt to resolve the dispute.

Timing

• *Facts Are Sufficiently Developed*. The parties have sufficient information to permit them to make informed decisions concerning the ultimate disposition of the dispute.

• *Parties Are Prepared To Discuss Settlement*. The parties are willing to resolve the case short of trial.

Factors Disfavoring Use of ADR

• Public Sanction Necessary. There is a need for public sanctioning of conduct.

• Imbalance of Power or Ability. A party or parties are not able to negotiate effectively themselves or with assistance of counsel.

• Judicial Decision Required. Development of the law is important or the imprimatur of a court decision is necessary to secure vindication of rights, enforcement, or compliance.

• Biased Selection Process for ADR Neutral. Political sensitivity of case coupled with questionable neutral selection process would likely result in selection of "neutral" with ties to local political powers or parochial interests contrary to the United States. (This situation may be dealt with by insisting that the United States have power to overturn final selection of neutral.)

• Successful Summary Judgment Certain To Resolve Case Conclusively.

• Case Very Likely To Settle Through Unassisted Negotiation in Near Future.

Civil Rights Division, Alternative Dispute Resolution, Case Screening Factors

Alternative Dispute Resolution ("ADR"), as used here, is any dispute resolution process facilitated by a third-party neutral. The Civil Rights Division resolves consensually many of its civil cases through traditional two-party negotiation and will continue to do so. ADR is not meant to replace traditional negotiation, but rather to provide attorneys with additional tools that may facilitate communication and resolution of matters where party-to-party negotiations have been or are likely to be unsuccessful.

In evaluating whether an ADR process may be useful, there are no hard and fast rules. Attorneys should consider whether ADR might be helpful in a particular case at the beginning of the litigation and revisit the question throughout the progress of the case taking into account the ADR processes that may be available through or imposed by the court in a particular district or circuit as well as the private ADR providers available in the relevant market. The following is a brief description of the major ADR processes.

1. *Mediation*. An impartial third party facilitates confidential discussions or negotiations among the parties to help them reach settlement. Mediation is a creative, flexible process that may broaden resolution options, often by going beyond the legal issues in controversy.

2. *Neutral Evaluation*. Neutral evaluation is a confidential conference where the parties and their counsel present the factual and legal bases of their case and receive a non-binding assessment by an experienced neutral with subject-matter expertise and/or with significant trial experience in the jurisdiction. This assessment can form the basis for settlement discussions facilitated by the evaluator if the parties so choose.

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4. *Mini-Trial/Summary Jury Trial*. An informal hearing-like presentation by the parties of their best case in shortened form to settlement-authorized representatives. Following the hearing, the parties and representatives meet, with or without a neutral advisor, to negotiate a settlement. If a jury is used, the jury's non-binding verdict is used a basis for subsequent settlement negotiations.

5. *Arbitration*. One or more arbitrators issue a judgment on the merits (binding or non-binding) after an expedited adversarial hearing.

The following is a non-exclusive list of factors to assist attorneys in determining whether to use ADR in a particular case. Not all factors listed will be relevant to a given case, and factors not listed below may weigh in favor of or against use of ADR in a particular instance.

Factors Favoring Use of ADR

The Parties

• *Continuing Relationships*. The United States, aggrieved persons, or other litigants are likely to have continued contact with the defendants in implementation of remedy or in other contexts.

• *Barriers to Communication*. The United States or other litigants foresee impasses developing because of conflicts within interest groups, political visibility, or poor or non-existent communication among the participants (including attorneys) due to personality difficulties or past history.

• *Absent Stakeholder(s)*. Participation of persons or groups who are not directly

VOL
61
ISS
136
JL
15
1996
UMI

involved in the legal action may be beneficial or necessary to a optimal resolution.

• *Divergence of Interests.* There are gains and losses to be apportioned constructively, and in which varying priorities among the parties will allow trading off of those gains and losses to permit all involved to benefit from the outcome.

• *Numerous Parties.* The number of parties of interested persons or groups is so numerous that a structured/facilitated negotiation process would be helpful.

• *Litigation Against Other Government Agencies.* Involvement of third-party neutral may assist in sorting through and/or evaluating "public interest" claims of various governmental components (among federal agencies or between federal and state or local entities), provided non-Departmental litigants are acting in good faith.

Nature of the Case

• *Need for Problem Solving or Development of Creative Alternatives.* A thorough exchange of information and generation of alternatives and options will improve the outcome.

• *Factual or Technical Complexity or Uncertainty.* The parties would benefit from reliance on the expertise of a third-party expert for technical assistance and/or fact-finding.

• *Need for Facilitated Private Discussions.* The settlement desired may be improved by the neutral's ability to conduct frank, private discussions among the parties.

• *Flexibility Desired in Shaping Relief.* The United States is seeking relief with detailed implementation and/or monitoring on multiple issues or subjects that may be difficult to obtain from the Court, or is amenable to resolution through cooperation between the parties.

• *Ultimate Outcome Uncertain.* Litigants face uncertain outcome at the time of trial based on the law, the facts, or the decisionmaker. Also important is the likelihood of prevailing on appeal should the United States lose at trial.

• *Hostile Decisionmaker.* Case will be tried in front of an unsympathetic judge, or jury venire is likely to be unsympathetic or even hostile.

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• *Direct Settlement Negotiations Unsuccessful.* The United States has attempted traditional settlement negotiations without success or an impasse has been reached and the United States believes involvement of a third-party neutral will facilitate further progress and/or final resolution.

Representation

• *Need To Speak Directly to Client.* The parties (or aggrieved persons) need to hear an evaluation of the case from someone other than their lawyers.

(For example, a case that appears to be headed for trial merely because a defendant does not understand the applicable law.)

• *Lawyers Are Willing To Consider ADR.* The lawyers involved are knowledgeable about ADR processes and intend to participate in the chosen ADR process in a good-faith attempt to resolve the dispute.

Timing

• *Facts Are Sufficiently Developed.* The parties have sufficient information to permit them to make informed decisions concerning the ultimate disposition of the dispute.

• *Parties Are Prepared To Discuss Settlement.* The parties are willing to resolve the case short of trial.

Factors Disfavoring Use of ADR

• *Public Sanction Necessary.* There is a need for public sanctioning of conduct.

• *Imbalance of Power or Ability.* A party or parties are not able to negotiate effectively themselves or with assistance of counsel.

• *Judicial Decision Required.* Development of the law is important or the imprimatur of a court decision is necessary to secure vindication of rights, enforcement, or compliance.

• *Biased Selection Process for ADR Neutral.* Political sensitivity of case coupled with questionable neutral selection process would likely result in selection of "neutral" with ties to local political powers or parochial interests contrary to the United States. (This situation may be dealt with by insisting that the United States have power to overturn final selection of neutral.)

• *Successful Summary Judgment Certain To Resolve Case Conclusively.*

• *Case Very Likely To Settle Through Unassisted Negotiation in Near Future.*

September 11, 1995.

ADR Criteria—Environment and Natural Resources Division

The Environment and Natural Resources Division ("ENRD") proposes the following ADR criteria for use by its attorneys.

ENRD has made substantial progress in developing an ADR docket. Approximately 18 months ago, we began to require each section regularly to review its docket for potential ADR cases and to make reports to the Assistant Attorney General. In this time, the sections have identified approximately 200 cases as candidates for resolution through ADR; of those matters, approximately 150 cases are now in an ADR process or have been resolved through ADR or otherwise.

We have several ideas for building on these initial successes. Principally, we seek to encourage the use of ADR in new types of cases and to increase the number of attorneys who are actively involved in ADR and who have ADR expertise. For our purposes, the ADR criteria should be inclusive, rather than exclusive, and should encourage attorneys to be creative in the use of ADR. The criteria are not intended to be utilized as a "checklist" of factors that must be present for an ADR process; rather, they are offered as some reasons among many others to use ADR. Further Division experience with ADR processes will likely allow refinement of these criteria.

We therefore propose that ENRD attorneys should use a single criterion and several factors in evaluating the use of ADR:

ADR Criterion: ENRD attorneys should consider and use ADR techniques in their cases whenever ADR may be an effective way to reach a consensual result that is beneficial to the United States.

ADR Factors: In its use of ADR thus far, ENRD has found that ADR can be helpful in achieving a beneficial settlement in various situations, some of which are identified below. ENRD attorneys should look to these factors as some reasons why ADR might be useful in their cases. Even cases that do not exhibit these factors are often appropriate for ADR.

One of the advantages of ADR is that it gives the parties to a dispute the flexibility to fashion their own procedures for resolving the dispute. There are almost as many kinds of ADR as there are parties and disputes. Thus, in evaluating whether ADR processes may be useful, there are no hard and fast rules. Attorneys should begin considering whether ADR might be helpful in a particular case at the beginning of the litigation and should continue to revisit the question throughout the progress of the case. Such analysis must take account of the ADR processes that may be available through or imposed by the court in a particular district court or circuit. Attorneys should keep in mind that many different kinds of ADR are available both through the courts and independent of the courts.

As ENRD gains more experience with ADR, we intend to amend and add to these factors:

—Ability of neutral to conduct frank, private discussions may improve the outcome.
—Range of issues are broad enough, or can be creatively made broad enough, to allow tradeoffs and creative generation of options presented, especially when some options cannot be ordered by a court. For example, in a NEPA dispute, underlying resource management decisions are likely the crux of concern, but cannot be reached by a court. Addressing concerns with respect to the underlying dispute can resolve the issue at hand, and may forestall future litigation. Money disputes can often be more complex than they first appear.
—A neutral may be helpful in facilitating negotiations by breaking through impasses that develop because of:
—Conflicts within interest groups;
—Technical complexity or uncertainty;
—Political visibility;
—Poor communication among the participants due to personalities or past history.

For example, a neutral can defuse tension with a citizens' group angry about a particular agency project by presenting negotiating proposals from all sides in an even-handed manner. If appropriate, a neutral or other joint expert might offer technical expertise on a given issue.

—Thorough exchange of information will improve the outcome. For example, a neutral can help to ensure that all issues are addressed, and that the heat of negotiating has not caused the parties to overlook an item that may be crucial to settlement implementation.

—Participation of parties not directly involved in a legal action is necessary or beneficial to the settlement. For example, numerous citizens' groups may be interested in a particular agency project; addressing the concerns only of the group that sued may be short-sighted, and invite future litigation from others.
—Number of parties and issues numerous, such that a facilitated, structured settlement process would be helpful, and no party is willing or able to take on his role. For example, CERCLA allocation disputes often involve multiple parties and issues, and a neutral who provides a structure for allocation can assist the parties in reaching a global settlement.

* * * * *

This document relates to the United States' voluntary participation in ADR. Nothing here shall be construed to limit the United States' duty to participate in ADR pursuant to court order or applicable local rules, except that Division attorneys shall resist participation in ADR, by appropriate motion, whenever such participation would violate the United States Constitution or other governing law.

This document shall not be construed to create any right or benefit, substantive or procedural, enforceable at law or in equity, by a party against the United States, its agencies, its officers, or any other person. This document shall not be construed to create any right to judicial review involving the compliance or noncompliance of a Division attorney with its terms.

Executive Office for United States Attorneys' Policy Statement and Practice and Procedure Guide on the Use of Alternative Dispute Resolution

This Policy Statement and Practice and Procedure Guide ("Guide") is distributed to all United States Attorneys (USAs) nationwide pursuant to paragraph 7 of Department of Justice Order OBD 1160.1, dated April 6, 1995, and entitled, "Promoting the Broader Appropriate Use of Alternative Dispute Resolution Techniques." This Guide should be distributed immediately to all Assistant United States Attorneys (AUSAs) and Special Assistant United States Attorneys (SAUSAs) handling civil litigation in state or federal courts.

I. Introduction

The purpose of this Policy Statement and Practice and Procedure Guide is to encourage the use of Alternative Dispute Resolution (ADR) and to foster and develop alternatives to the traditional adversarial techniques used to resolve civil legal disputes involving the United States. Pursuant to the Department of Justice Order OBD 1160.1, the civil litigating components of the Department of Justice (DOJ) are expected to use ADR techniques in appropriate civil cases in an effort to resolve or avoid litigation. The USAs have the opportunity to take the lead in formulating and implementing ADR methods in order to promote less time consuming, more effective resolution of civil litigation.

The April 6, 1995 Order, requires each component of the Department of Justice, including the Executive Office for United States Attorneys (EOUSA) to:

(1) issue a policy statement concerning and promoting the use of ADR and to cooperate with court-annexed or court-sponsored ADR programs;

(2) create a set of criteria to be used in identifying specific cases appropriate for resolution through settlement negotiations or formal ADR techniques, identifying the most suitable methods of ADR for specific case categories and developing a criteria for selection of independent neutrals;

(3) implement a component-wide comprehensive basic training program in negotiation and ADR that shall be mandatory for all attorneys handling civil matters with periodic supplemental training;

(4) issue a complete explanation of the internal procedures attorneys should follow in obtaining authorization and funding for the use of formal ADR techniques;

(5) designate person(s) within the component who shall have primary responsibility for coordinating the component's ADR efforts so that a network of individuals with ADR expertise is established, and

(6) collect and maintain statistics regarding component use of ADR and report these statistics annually to the Associate Attorney General.

All attorneys within the litigating components of the DOJ, including AUSAs, who handle civil litigation, are urged to consider the appropriate use of ADR in each matter handled. Alternative Dispute Resolution should be used in conjunction and association with traditional settlement processes found within the litigation process.

Civil AUSAs will be responsible for reviewing their respective cases and matters to determine whether ADR is appropriate and what ADR process is most suitable for each case or matter in accordance with each district's approval procedures. Assistant United States Attorneys with primary case responsibility, with approval and oversight of the district's ADR Officer, will be responsible for analyzing the matter or case in light of the following guidelines.

It is important to the concept of Access to Justice that the courts provide for swift resolution of conflict for civil litigants. As the courts continue to be saturated with criminal matters and significant civil litigation, appropriate ADR will serve to reserve judicial time and court expense to the truly intractable issue.

II. General Civil Litigation Policy Statement

A. *Settlement Objectives.* The goal of USAs as participants in ADR and during other settlement discussions shall be as follows: In consultation with the client, to weigh the magnitude and likelihood of all costs, risks, and benefits associated with nonsettlement versus participation in ADR and to consider the best interests of the client and the government, and—through voluntary settlement and/or ADR, if possible and cost-efficient—to achieve the most favorable result reasonably obtainable under the circumstances on behalf of the client, consistent with applicable law and the highest standards of fairness, justice and equity.

B. Although the interest of the government in participating in ADR is compelling, this Guide is intended neither to compel ADR nor any ADR technique in any particular case or category of cases, nor is it to compel pretrail settlement. Nothing in this Guide shall be construed to obligate the United States to offer funds to settle any case, to accept a particular settlement or resolution of a dispute, to alter its standards for accepting settlements, or to alter any existing delegation of settlement or litigating authority.

C. This Guide relates to the government's voluntary participation in ADR. Nothing herein shall be construed to limit the government's duty to participate in ADR pursuant to court order or applicable local rules, except that USAs shall resist participation in ADR, by appropriate motion, whenever said participation would violate the United States Constitution or other governing law.

D. The USAs are encouraged to recognize contributions made by AUSAs who handle matters in ADR by providing the same opportunities for promotion, awards and other professional recognition as those engaged in more traditional litigation.

E. This Guide shall not be construed as creating any right or benefit, substantive or procedural, enforceable at law or in equity, by a party against the United States, its agencies, its officers, or any other person. This Guide shall not be construed to create any right to judicial review involving the compliance or noncompliance of the USAs with its terms.

III. Purposes

The purposes of this Guide include the following:

A. To designate various categories of cases as generally "appropriate for ADR" according to cause of action and nature of disputed issues.

B. To designate various other categories of cases as generally "inappropriate for ADR."

C. With respect to those categories of cases designated as "appropriate for ADR," to suggest preferred ADR techniques, without limiting the discretion of the USA to employ other ADR techniques.

D. To identify, by way of example but not limitation, various circumstances under which the USA might wish to participate in ADR, notwithstanding that the particular case may fall outside a category designated as "appropriate for ADR" or may be designated as generally "inappropriate for ADR."

E. Generally to promote the broader appropriate use of ADR techniques by United States Attorneys through enhanced awareness, training, and recordkeeping, among other things.

IV. Definitions

The following definitions shall apply throughout this Guide[1]

A. *"Alternative Dispute Resolution" ("ADR") means any procedure, involving a "neutral," that is used in lieu of trail to*

[1] Most of the definitions set forth herein have been excerpted, with minor adaptions, from National ADR Institute for Federal Judges, *Judge's Deskbook on Court ADR* (Harvard Law School, November 12–13, 1993).

VOL 61 ISS 136 JL 15 1996 UMI

resolve one or more issues in controversy, and includes, but is not limited to the following "ADR techniques":

1. *"Arbitration"* means a flexible adjudicatory dispute resolution process in which one or more arbitrators issue a nonbinding judgment on the merits after an expedited, adversarial hearing. The nonbinding decision of the arbitrator(s) addresses only the disputed legal issues and applies legal standards. Either party may reject the nonbinding ruling and request a trial *de novo*.

2. *"Early neutral evaluation"* means bringing all parties and their counsel together early in the pretrial phase of litigation to present summaries of their cases and receive a nonbinding assessment by an experienced, neutral evaluator with subject-matter expertise, usually an attorney, who may also provide case planning guidance and, if requested by the parties, settlement assistance.

3. A *"judicial settlement conference"* means a settlement conference before a judge or magistrate judge, who, upon hearing summaries of each party's case and applicable law, may articulate opinions about the merits of the case or otherwise facilitate the trading of settlement offers by mediatory or other techniques aimed at improving communication among the parties and eliminating barriers to settlement. Because the judicial settlement conference constitutes a more traditional litigation mechanism, judicial settlement conferences will not be reported as an ADR mechanism for statistical purposes.

4. *"Mediation"* means a flexible, nonbinding process in which a neutral third party, the mediator, facilitates negotiations among the parties to help them reach a settlement. In doing so, the mediator may expand traditional settlement discussion and broaden resolution options, often by going beyond the legal issues in controversy or incorporating nonparties in discussions.

5. *"Minitrial"* means a flexible, nonbinding hearing, generally reserved for complex cases, in which counsel for each party informally presents a shortened form of its case to settlement-authorized representatives of the parties in the presence of a presiding judge, magistrate judge, or other neutral, at the conclusion of which the representatives meet, with or without the judge or neutral, to negotiate a settlement. If settlement is not reached, the case then proceeds to trial.

6. *"Neutral expert evaluation"* means bringing all parties and their counsel together to present summaries of their cases to an experienced, neutral expert for the purpose of receiving a nonbinding assessment or otherwise resolving a "swearing contest" among competing experts.

7. *"Summary bench trial"* means, in any case not triable by a jury, a pretrial procedure intended to facilitate settlement consisting of a summarized presentation of a case to a judicial officer whose decision and subsequent factual and legal analysis serves as an aid to settlement negotiations.

8. *"Summary jury trial"* means a flexible nonbinding procedure, usually reserved for trial-ready cases in which protracted jury trials are anticipated, and involves a short hearing in which evidence is presented by counsel in summary form to a jury. Following the evidentiary presentation, the jury returns an advisory verdict that forms the basis for settlement negotiations.

B. *"Client"* means the particular client represented by the USA in the case at issue and, depending on the circumstances, may include the United States of America or one or more of its agencies, officers or employees, or other individuals or entities for whom representation has been authorized.

C. *"Government"* means the United States of America and its agencies and officers.

D. *"Nonbinding"* means that the parties are not bound by any resolution unless they agree in advance to be bound. All of the ADR techniques described in this Guide produce nonbinding outcomes. (In contrast, the terms "mandatory" and "voluntary" describe how cases enter ADR. "Mandatory" means that the referral to ADR is court-ordered; "voluntary" means that the referral to ADR is by consent of the parties.)

E. *"United States Attorney"* includes any duly authorized designate of the USA.

V. General Case Analysis Criteria

In order to operate successfully, the chosen ADR technique must be specifically tailored to the particular dispute. Alternative Dispute Resolution is often appropriate in cases where litigation will produce an unsatisfactory result regardless of outcome or where litigation is too slow or cumbersome. Alternative Dispute Resolution also permits the parties to exercise more direct control over the dispute resolution remedy. ADR techniques have proven successful in many categories of cases where the cases are routine (not precedent setting), such as routine auto torts, slip and fall, and employment rights cases, or where confidential communication with a neutral third party will help to clarify issues. Alternative Dispute Resolution techniques also allow the parties to craft individualized, nontreditional remedies. The following are some general suggestions to consider when determining whether to undertake ADR in a give case.

Use of ADR should be seriously considered in matters involving contract performance or interpretation disputes, permit or licensing disputes, discrimination cases or any case in which the parties will have a continuing relationship regardless of outcome. ADR is also appropriate in many tort cases.

The use of an ADR technique should be considered, but is often inappropriate, in cases involving the need to set precedent or to clarify constitutional issues. In addition, ADR is rarely appropriate in cases where there are prescribed outcomes or statutory remedies are inflexible. For example, in Social Security cases, the agency has no real discretion to depart from the statutory mandates of the Social Security Act. Finally, in those cases in which it is clear that the parties are not ready to negotiate or are opposed to the use of any ADR process, ADR is inappropriate.

Alternative Dispute Resolution is not meant to replace traditional negotiation in every case. Rather, it may serve to provide attorneys with additional tools to facilitate negotiation where traditional two-party negotiation has not produced an acceptable resolution or where the presence of a neutral may cause negotiations to proceed more efficiently.

The following, by way of example but not limitation, are factors to consider when determining whether to use ADR and when determining which ADR technique will be most suitable in a given case:

A. General Considerations. The following is a list of factors to consider and analyze when determining whether and when to use ADR in a given matter. These factors are neutral in the sense that whether they militate in favor of or against the use of ADR depends entirely upon the specific facts and circumstances of the case at issue.

1. The parties' purpose in filing the lawsuit demonstrates an agenda separate from the specific issues in the case.

2. Case procedural history, *i.e.*, what administrative proceedings have preceded filing in court.

3. Assessment of likely outcome including likelihood of appeal.

4. Where is the case in the discovery process? Has all of the information necessary to settle the case been discovered?

5. Where is the United States in terms of procuring settlement authority? Is more information necessary before authority can be obtained?

6. Who is in charge of the litigation, parties or counsel?

7. Are factual disputes significant?

8. Are legal disputes significant?

9. Are parties individuals, corporations or other governmental entities, and how does that affect their ability to participate in ADR process?

10. Witness credibility and its impact on the litigation.

11. Are there individuals or entities with interests in the outcome who are not parties to the case?

12. There has been prior extensive administrative process.

13. Position on the court docket.

14. Expenses of litigation versus expenses of ADR.

B. Factors That Generally Favor ADR. 1. If suit is one facet of a deeper dispute necessitating remedies unavailable to the court, for example, where the remedy available through the litigation may be different from the true agenda of the opposing party, ADR may be helpful to resolve the larger, underlying dispute by permitting the parties to fashion remedies not available to the court.

2. The relationship between the parties will continue beyond the resolution of the litigation. For example, in employment dispute cases where the plaintiff will continue to be employed by the agency, ADR may help to resolve the issues while minimizing damage to an employment relationship that will continue beyond the litigation.

3. There will be detrimental impact on parties, witnesses, and evidence because of crowded court dockets and projected trial dates.

4. Any of the parties has limited resources.

5. The relative resources of the parties are unequal.

6. Relative positions of multiple parties (while the entire case may not be resolved, with multiple parties, disputes may be narrowed for trial).

7. There is a need for confidentiality.

8. There is a large administrative record in cases involving APA review.

9. The client or other participants in the litigation may benefit from the input of an impartial third party.

C. Factors That Generally Disfavor ADR. 1. There is a need for precedential decision.

2. There is a need for resolution of public policy issues or constitutional issues.

3. There is a parallel criminal investigation or proceeding involving the parties or circumstances of the case.

4. There is a strong likelihood of swift resolution on jurisdictional or other legal issues.

5. The United States has reason to believe that the opponent is engaging in fraudulent or criminal behavior. For example, in an auto tort case there is reason to believe that the accident has been staged.

6. It is believed that settling the case would encourage future meritless litigation.

VI. Designation of Cases

A. The ADR techniques which may be appropriate for a case depend upon many specific factors peculiar to that case. The following categories of cases are generally "appropriate for ADR."

The ADR techniques to consider within the context of the given case include, but are not limitbd to, arbitration, early neutral evaluation, judicial settlement conference, mediation, mini-trial, neutral expert evaluation, summary bench trial, and summary jury trial.

1. Drivers, Motor Vehicle Accidents (TODR), Property Damage (TOPD), Personal Injury (TOPI), Medical Malpractice (TOMM) and Wrongful Death (TOWD).

2. Employment Discrimination (ED) and Civil Rights Fair Housing (CRTH), Veteran's Reemployment Rights Act (LBVR).

3. Employment Rights of Government Employees (ER), Back Pay (ERBP), Adverse Action (ERAA) and Grievance (ERGR).

4. Land/Real Property Condemnation (LDCN) (only where United States is plaintiff).

5. Commercial Litigation Adversarial Proceeding (COAD), other claims related to federal assistance programs (COOC) and Recovery of overpayments made by the government (CORO).

6. Recovery of Health Education Assistance Loans (COHE), Recovery of National Health Services Corps Scholarships (COHS) and Civil Penalty (CV).

7. Fraud (FR), Anti-Kickback (FRAK), Government Commercial Programs (FRCM), False Claims (FRFC), Health Care Fraud (FRHC), Education (FRED), Environmental (FREV), Medicaid/Medicare (FRME), Medicare Only (FRMO) and Qui Tam suits (FRQT). In Qui Tam suits, there must be careful analysis of the relator's position on ADR.

B. The following categories of cases are generally "inappropriate for ADR":

1. Notwithstanding that a particular category may be enumerated in Part VI-A above, any case in which there is a dispositive motion by the United States Attorney, to which opposition would be frivolous or insubstantial in the considered opinion of the USA.

2. Government agents sued in their individual capacity, e.g., *Bivens* (TOBI) and other non-government individuals (e.g., witnesses and jurors) sued in their individual capacities (TOOI). (In Bivens cases, careful consideration should be given to the fact that the individual defendant is the client rather than the government.)

3. Any case in which the adverse party appears *pro se*.

4. Preliminary injunctions/TRO's (IJ) (where United States or its agency is a defendant).

5. Foreclosure/Liens (COMC).

6. Constitutionality of Statute (CN).

7. Social Security cases (SS) and all related causes of action as presently structured.

8. Any case in which the United States Attorney has determined that a precedent setting decision is required on a significant issue in the case.

9. Freedom of Information Act (FO).

10. Privacy Act (PV).

11. Immigration (IM).

12. Prisoner Cases (PC), Post Conviction § 2255 (PCST), Habeas Proceedings (PCHC).

13. Asset Forfeiture (COFF).

C. With the client's consent and input, the United States Attorney should consider voluntary participation in ADR in cases specifically designated as generally "inappropriate for ADR," including those designated in Part VI–B above, under the following circumstances:

1. The United States Attorney believes that the enhanced communication available through ADR will increase the likelihood of settlement or the scope of settlement options under construction.

2. The United States Attorney foresees a substantial probability that, even in the absence of complete settlement, ADR will result either in a stipulation narrowing the scope of disputed issues or a more focused, mutual effort of the parties to tailor further discovery to material issues that are genuinely disputed.

D. This Guide reflects recommendations formulated within the context of practice in United States Attorneys' Offices and may vary from guidance provided by other DOJ litigating components because of different underlying policy considerations.

VII. Specific Guidance for Cases Designated As Generally "Appropriate for ADR"

With respect to those categories of cases designated as "appropriate for ADR" in Part VI–A above and not otherwise excluded by Part VI–B, it is recommended that USAs pursue the following course:

A. With the client's consent and input, engage in genuine settlement discussions with opposing counsel at an early practicable opportunity and at reasonable times thereafter for the purpose of settling the case even without the necessity of ADR, if possible and appropriate under the circumstances.

B. Notify the court in writing, either in such case management reports or pretrial statements as may be filed under Fed. R. Civ. P. 16 or under applicable local rules or otherwise, of:

1. The client's willingness, if any, to participate in ADR;

2. The client's preferred ADR technique, and

3. The preferred timing of ADR under the circumstances of the case (*e.g.*, before, during or after discovery, before or after ruling on dispositive motion(s)).

C. Participate in ADR if ordered by the court or, with the client's consent, voluntarily, with such notice to the court of the employment of ADR as the circumstances may suggest.

VIII. Specific Guidance for Cases Designated As Generally "Inappropriate for ADR"

With respect to those categories of cases designated as "inappropriate for ADR" in Part VI–B above, it is recommended that USA's:

A. With the client's consent and input, engage in genuine settlement discussions with opposing counsel at an early practicable opportunity and at reasonable times thereafter for the purpose of settling the case, if possible and appropriate under the circumstances;

B. Participate in ADR if ordered by the court;

C. Participate in ADR voluntarily with the consent of the client at the discretion of the USA, if circumstances, including but not limited to those set forth at Part VI–C above, suggest that ADR may enhance the opportunity for a cost-efficient resolution of the case.

IX. Training Programs

A. Current Training: The Office of Legal Education (OLE), EOUSA, has played a leading role in ADR and negotiations training. An ADR Seminar, where ADR is the exclusive subject, is offered twice a year by the Legal Education Institute (LEI) (whose primary target is agency counsel) and twice a year in the Attorney General's Advocacy Institute (AGAI) (whose primary target is AUSAs and Department of Justice Trial Attorneys). In addition, ADR is taught as part of several LEI and AGAI courses including: the Negotiations Skills Course, offered three times a year; the Federal Administrative Process Course, offered two to three times a year; the Civil Chiefs Seminar, offered for Supervisory Assistant U.S. Attorneys each year; the Affirmative Civil Enforcement Course, offered twice each year; the Advanced Civil Trial Course, offered at least once each year; and the Civil Practice Seminar, offered three times a year.

The Office of Legal Education also has an extensive video and audiotape lending library which includes several selections on ADR issues. The Office of Legal Education continually updates this library and makes it available to all USAOs offices and DOJ litigating divisions.

B. Future Training: The Office of Legal Education will develop future training within existing budgetary constraints in consultation with the USAOs, the AGAC Working Group on ADR and the Senior Counsel for ADR.

VOL 61 ISS 136 JL 15 1996 UMI

X. Internal Procedures for Authorization and Funding

A. ADR Officer: The USA shall designate one AUSA as the ADR Officer who shall oversee, implement and monitor the ADR activity within the district's civil litigation. It is suggested that the Civil Chief of the district be designated the ADR Officer.

The ADR Officer will be responsible for coordinating ADR activity within the district. Specific responsibilities of ADR Officers include:

1. Ensuring that each AUSA with civil litigation responsibility receives comprehensive basic training in negotiation and ADR with periodic supplemental training.

2. Coordinating the district's collection and reporting of statistics consistent with the provisions of section XIII of this Guide.

B. ADR Reporting Responsibilities: Each district will be responsible for making an annual report to EOUSA showing the frequency and type of ADR techniques utilized within the year and whether ADR was instrumental in resolving the litigation prior to trial.

C. Withdrawal From ADR Activity: The United States retains the right to object and withdraw from any ADR activity where the USA or his designate has made a determination that the selected neutral should be disqualified under conditions analogous to those found within 28 U.S.C. § 455. It is recommended that the USA or his designate should promptly communicate this objection and withdrawal to the Clerk of Court and should strive to identify an alternative neutral acceptable to the court and all parties prior to objection and withdrawal.

XI. Selection Criteria for Appointment of Neutrals

A. Selection Criteria for Neutrals: Factors to be considered when selecting a neutral include, but are not limited to:

1. Whether the neutral is an attorney;
2. What other training or expertise the neutral possesses;
3. Experience in the technical area of the dispute;
4. Experience in ADR processes;
5. Experience in government litigation;
6. Experience in multiparty litigation;
7. Whether the neutral knows counsel and the nature and context of that knowledge; and,
8. Cost associated with hiring neutral.

B. Selection and Certification: Any person qualified as a neutral by a federal judicial officer or pursuant to the rules promulgated by the highest court of a state, its legislative bodies or other government sanctioned ADR unit and who is not disqualified or disqualifiable under conditions analogous to those found within 28 U.S.C. § 455 may act as a neutral in a case or matter involving the United States.

XII. Payment of Fees and Expenses Associated With ADR

A. Neutrals: Neutrals shall be paid for through the neutrals fund established through JMD and in the manner prescribed by EOUSA.

B. Expert witnesses: Shall be paid in the same manner as expert witnesses in any civil litigation within the USAO.

C. Fact witnesses: Shall be paid in the same manner as fact witnesses in any civil litigation in the USAO.

Other fees and expenses: Fees and expenses associated with ADR proceedings, other than fees for neutrals, shall be paid from the litigation expense budget of the USAO.

XIII. Designation of ADR Coordinators

The following are designated as ADR coordinators for the USAOs and EOUSA:

1. William D. Wilmoth, United States Attorney for the Northern District of West Virginia, 304–234–0100.
2. Jeanette Plante, Special Assistant United States Attorney, Executive Office for U.S. Attorneys, 202–616–6444

XIV. Statistics

The Executive Office will collect statistics on the use of ADR in the Districts. The statistical collection plan will be developed in consultation with the USAOs and the Senior Counsel for ADR and will be as minimally burdensome as possible.

XV. Miscellaneous

USAO Employees Serving As Neutrals: USAO employees, with the written approval of the United States Attorney, may render services as a "neutral" on a case by case basis when it has been determined that the United States has no known or future interest in the litigation and the USAO employee "neutral" is not disqualified under conditions analogous to those found within 28 U.S.C. § 455. The USAO employees who render services as a "neutral" may not receive reimbursement for said services, except for travel and *per diem*.

Tax Division—Policy for Tax Litigation

Introduction

On April 6, 1996, the Attorney General signed an order promoting broader use of Alternative Dispute Resolution as a tool for resolving disputes between the government and its citizens in as prompt, efficient, and inexpensive a manner as possible. Alternative Dispute Resolution ("ADR") is any non-binding dispute resolution process facilitated by a third-party neutral. ADR methods include, but are not limited to, arbitration, mediation, early neutral evaluation, neutral expert evaluation, mini-trials, and summary jury trials. ADR may be conducted pursuant to the agreement of the litigants, or it may be court-mandated.

Policy

the Tax Division always has had, and continues to have, a policy of settling cases, where appropriate, as early in the litigation as reasonably possible. I believe that the use of ADR will further this Division policy. Therefore, Tax Division attorneys are expected to use ADR in appropriate cases and to cooperate with and support court-annexed or court-sponsored ADR programs.

Tax Division lawyers should consider the use of ADR in all civil cases within the Division in a manner consistent with our enforcement objectives and the need for consistent treatment of similarly situated taxpayers. In cases where the attorney assigned to the case, in consultation with his or her reviewer, believes that ADR may be appropriate, he or she should consider using an independent third-party neutral through a court-sponsored program, from another government agency, or from outside of the government. Where court-sponsored and/or court-annexed ADR programs are available, Division attorneys are expected to utilize and participate fully in such programs in all appropriate cases.

The Tax Division has a strong record of resolving disputes through settlements achieved through traditional negotiation between counsel. I expect that all attorneys in the Division will continue to use their negotiation skills to settle cases where settlement is appropriate. ADR is not a substitute for traditional negotiation, but rather provides attorneys with additional tools to facilitate settlement of cases on an appropriate basis at the earliest state at which such a settlement reasonably can be reached. Knowing how and when to settle a case is as important as knowing how to try a case. ADR processes can be important tools in the prompt and fair resolution of tax disputes and the skilled use of negotiation and ADR processes is part of the responsibility of every attorney in the Division. To facilitate the greater use of ADR, as well as to improve attorneys' negotiating skills in general, all Division attorneys will be required to participate in comprehensive and continuing training in both negotiation and ADR.

It is the policy of the Tax Division, in making promotions and giving awards and other professional recognition, to recognize the outstanding contributions of trial attorneys in skillfully negotiating settlements as well as in trying cases. Thus, skillful use of ADR will likewise be considered in evaluating attorneys and recognizing their contributions to the Division.

Attached is a set of case selection criteria to be used by the Civil Trial Sections, Court of Federal Claims Section, Appellate Section, and Office of Review in evaluating whether and when ADR is appropriate in a particular case.

Tax Division—Alternative Dispute Resolution

Case Selection Criteria

Alternate Dispute Resolution ("ADR"), as used here, is any non-binding dispute resolution process facilitated by a third-party neutral, whether or not appointed by a court. The Tax Division presently resolves a large number of its cases through settlements negotiated through traditional two-party negotiation and believes that it will continue to do so. ADR is not meant to replace traditional negotiation, but rather to provide attorneys with additional tools that may facilitate negotiation of settlement where traditional two-party negotiation has not produced an acceptable resolution or where the presence of a third party may cause negotiations to proceed more quickly or efficiently.

One of the advantages of ADR is that it gives the parties to a dispute the flexibility to fashion their own procedures for resolving the dispute. There are almost as many kinds of ADR as there are parties and disputes. Thus, in evaluating whether ADR processes may be useful, there are no hard and fast rules. Attorneys should begin considering whether ADR might be helpful in a particular case at the beginning of the litigation and should continue to revisit the question throughout the progress of the case. Such analysis must take account of the ADR processes that may be available through or imposed by the court in a particular district or circuit.[1] Attorneys also should keep in mind that many different kinds of ADR are available both through the courts and independent of the courts. Some forms of ADR may be more useful than others at particular points in the litigation. For example, early neutral evaluation, a process whereby a third-party neutral evaluates each side's case and helps the parties agree on the most efficient method of exchanging factual material, is most appropriate at the beginning of litigation and can be a useful tool in quickly obtaining a better understanding of the strengths and weaknesses of your case. By contrast, mediation, a process where a third party facilitates negotiation between the parties, may be most useful after the case has been more fully developed.

This statement on ADR relates to the government's voluntary participation in ADR. Nothing herein shall be construed to limit the government's duty to participate in ADR pursuant to court order or applicable local rules, except that Tax Division attorneys shall resist participation in ADR, by appropriate motion, whenever said participation would violate the U.S. Constitution or other governing law or would not be in the best interest of the United States.

This statement shall not be construed as creating any right or benefit, substantive or procedural, enforceable at law or in equity, by a party against the United States, its agencies, its officers, or any other person. This statement shall not be construed to create any right to judicial review involving the compliance or noncompliance of Tax Division attorneys with its terms.

The following is a list of factors to assist attorneys in the Tax Division in determining whether to use ADR in a particular case.[2] Not all listed factors will have relevance in any given case and factors not listed below may also be present that weigh in favor of or against the use of an ADR process.

Factors Favoring ADR

1. The case involves largely factual issues and the legal principles are well established (e.g., valuation cases, substantiation cases, trust fund recovery cases).
2. The case is legally and/or factually complex.
3. The case involves multiple independent factual issues (e.g., bankruptcy cases).
4. The case is one where there is a particular need for a prompt resolution of the dispute (e.g., summons, estate tax and bankruptcy cases).
5. The case is one where a consensual resolution may lead to greater future compliance (e.g., employee-independent contractor cases).
6. A settlement in the case would be based solely on collectibility.
7. The other party has a particular need to keep information confidential (e.g., financial information or trade secrets).
8. There are problems perceived either with respect to the decisionmaker or the forum, for example:
   a. The judge is particularly slow in resolving cases;
   b. The docket is backlogged with criminal and/or civil cases;
   c. There is the potential for jury nullification.
9. The case is one where the Government will be required to litigate in a forum other than a federal court.
10. The case is one where the nature or status of a party to the dispute might, in itself, influence the outcome of the litigation (e.g., sympathetic plaintiff).
11. The case is one where there are substantial litigating hazards for both parties.
12. The case is one where trial preparation will be difficult, costly and/or lengthy and the expected out-of-pocket and lost opportunity costs outweigh any benefit the government can realistically expect to obtain through litigation.
13. The case is one where it is desirable to avoid adverse precedent.
14. The case is one where either the party or the attorney may have an unrealistic view of the merits of the case or an unreasonable desire to litigate, with insufficient regard for what may be in the client's best interest.
15. The case is one where the other party has expressed an interest in using ADR.
16. The case is one where the working relationship between the parties or their counsel suggests that the intervention of a neutral third party would be beneficial.
17. The case is one where traditional negotiations will be difficult and protracted.
18. The case is one where the progress of settlement discussions may be improved by a third-party neutral's ability to conduct frank, private discussions with each of the parties.

Factors Disfavoring ADR

1. Taxpayer's case clearly has no merit (e.g., certain *Bivens* cases or protestor suits).
2. The case is one that should be resolved on motion, such as a motion to dismiss or for summary judgment.
3. The case presents an issue where legal precedent is needed, for example:
   a. Issue involved is of national or industry-wide significance;
   b. Issue is presented in a substantial number of cases;
   c. Issue is a continuing one with same taxpayer.
4. The importance of the issue involved in the case makes continued litigation necessary despite some adverse precedent.
5. The information presently available about the case is insufficient to evaluate meaningfully the issues involved or settlement potential.
6. The case involves significant enforcement issues, for example:
   a. Case involves protestors;
   b. Case is high profile and will involve publicity which could encourage taxpayer compliance;
   c. Case involves a uniform settlement position (e.g., shelter cases).
7. The case involves a constitutional challenge.
8. The case is one where government concession is under consideration.
9. The case is one which is very likely to settle through traditional negotiations within a reasonable time after the facts have been ascertained, without a third-party neutral.
10. The case is one where Court imposed scheduling makes use of ADR impractical (e.g., "rocket-dockets").
11. The case is one where the other party has already engaged in ADR at the agency level.[3]
12. The case involves 26 U.S.C. Section 6103 information or privileges which would prevent open discussions with a third-party neutral (e.g., case involving request for third-party tax return information).

[FR Doc. 96–17744 Filed 7–12–96; 8:45 am]

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[1] The taxpayer should be required to provide a waiver of 26 U.S.C. 6103 as a condition of the government's agreement to participate in ADR other than ADR imposed by the Court. In the absence of such a waiver, the government might not be able to make a full factual disclosure to the third-party neutral which would substantially undermine the utility of the ADR process.

[2] Many of these factors are equally applicable in determining whether a case should be settled using traditional, unassisted negotiations.

[3] For purposes of this factor, normal agency administrative procedures, such as appellate conferences or administrative claims review, are not considered to be ADR procedures.

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 28, 1996, Applied Science Labs, Division of Altech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

VOL 61 ISS 136 JL 15 1996 UMI

	Schedule
Drug:	
Heroin (9200)	I.
Morphine (9300)	II.

The firm plans to import the listed controlled substances in small quantities for the manufacture of reference standards.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: June 27, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–17831 Filed 7–12–96; 8:45 am]

BILLING CODE 4410–28–M

NUCLEAR REGULATORY COMMISSION

[Docket 72–8 (50–317/318)]

Notice of Transfer of Authority to Receive, Possess, Store and Transfer Spent Fuel at the Calvert Cliffs Independent Spent Fuel Storage Installation From Baltimore Gas and Electric Company to Constellation Energy Corporation

Notice is hereby given that the U. S. Nuclear Regulatory Commission (Commission) is considering approval under Title 10 of the Code of Federal Regulations (10 CFR), Section 72.50, of the transfer of the license to receive, possess, store and transfer spent fuel at the Calvert Cliffs Independent Spent Fuel Storage Installation (ISFSI), from Baltimore Gas and Electric Company (BG&E) to Constellation Energy Corporation (CEC). By application dated April 5, 1996, BG&E requested consent to the transfer, pursuant to 10 CFR 72.50, of the Materials License SNM–2505 for the Calvert Cliffs ISFSI. The approval of the proposed license transfer is requested in connection with the pending merger between BG&E and Potomac Electric Power Company into Constellation Energy Corporation. The proposed license transfer would transfer authority to receive, possess, store, and transfer spent fuel at the Calvert Cliffs ISFSI from BG&E to CEC.

Pursuant to 10 CFR 72.50, the Commission may approve the transfer of a license, after notice to interested persons, upon the Commission's determination that the holder of the license following the transfer is qualified to be a holder of the license and the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission. BG&E submitted the April 5, 1996, application to amend the license to reflect the transfer of the license from BG&E to CEC.

For further details with respect to this action, see the April 5, 1996, letter, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 5th day of July, 1996.

For the Nuclear Regulatory Commission.

William D. Travers,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–17940 Filed 7–12–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–321 and 50–366]

Georgia Power Company, et al.; Edwin I. Hatch Nuclear Plant, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License Nos. DPR–57 and NPF–5, issued to Georgia Power Company, et al. (the licensee), for operation of the Edwin I. Hatch (Hatch) Nuclear Plants, Units 1 and 2, located in Appling County, Georgia.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 70.24, which requires, in each area in which special nuclear material is handled, used, or stored, a monitoring system that will energize clearly audible alarms if accidental criticality occurs. The proposed action would also exempt the licensee from the requirements of 10 CFR 70.24(a)(3) to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm and to conduct drills and designate responsible individuals for such emergency procedures.

The proposed action is in accordance with the licensee's application for exemption dated June 4, 1996.

The Need for the Proposed Action

Power reactor license applications are evaluated for the safe handling, use, and storage of special nuclear materials. The proposed exemption from criticality accident requirements is based on the original design for radiation monitoring at Hatch. Exemptions from the requirements of 10 CFR 70.24(a) "Criticality Accident Requirements" were granted in the Special Nuclear Material (SNM) licenses for each unit as part of the 10 CFR Part 70 license. However, with the issuance of the Part 50 license this exemption expired because it was inadvertently omitted in that license. Therefore, the exemption is needed to clearly define the design of the plant as evaluated and approved for licensing.

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the exemption is granted. Inadvertent or accidental criticality will be precluded through compliance with the Hatch Technical Specifications, the geometric spacing of fuel assemblies in the new fuel storage facility and spent fuel storage pool, and administrative controls imposed on fuel handling procedures.

Inadvertent or accidental criticality of SNM while in use in the reactor vessel is precluded through compliance with the Hatch Technical Specifications, including reactivity requirements (e.g., shutdown margins, limits on control rod movement), instrumentation requirements (e.g., reactor power and radiation monitors), and controls on refueling operations (e.g., control rod interlocks and source range monitor requirements). In addition, the operators' continuous attention directed toward instruments monitoring behavior of the nuclear fuel in the reactor assures that the facility is operated in such a manner as to preclude inadvertent criticality. Finally, since access to the fuel in the reactor vessel is not physically possible while in use and is procedurally controlled during refueling, there are no concerns associated with loss or diversion of the fuel.

SNM as a nuclear fuel is stored in one of two locations—the spent fuel pool or the new fuel vault. The spent fuel pool is used to store irradiated fuel under water after its removal from the reactor. The pool is designed to store fuel in a geometric array that precludes criticality. In addition, existing Technical Specification limits on k_{eff} are maintained less than or equal to 0.95, even in the event of a fuel handling accident.

The new fuel vault is used to receive and store new fuel in a dry condition upon arrival on site and prior to loading in the reactor. The new fuel vault is designed to store new fuel in a geometric array that precludes criticality. In addition, existing safety evaluations demonstrate that an effective multiplication factor is maintained less than or equal to 0.95 when the new fuel racks are fully loaded and dry or flooded with unborated water, or in the event of a fuel handling accident.

New fuel is shipped in a plastic wrap. When the fuel is removed from its transportation cask, the wrap is removed and the fuel is placed in the fuel inspection stand. Following inspection, the new fuel can either be placed in the new fuel storage vault or in the spent fuel pool (typically placed in the spent fuel pool). In no case is the plastic wrap reinserted on the fuel. Removal of the wrap requires it to be slit down the length of the new fuel assembly, thereby making its reuse highly unlikely. Therefore, there is no concern that the plastic wrap used as part of the new fuel package will be capable of holding water from flooding from overhead sources. Additionally, as discussed above, the new fuel storage racks were analyzed for a postulated flooded condition, and the results show that k_{eff} is maintained less than or equal to 0.95.

Both irradiated and unirradiated fuel is moved to and from the reactor vessel and the spent fuel pool to accommodate refueling operations. Also, unirradiated fuel can be moved to and from the new fuel vault. In addition, fuel movements into the facility and within the reactor vessel and the spent fuel pool occur. In all cases, fuel movements are procedurally controlled and designed to preclude conditions involving criticality concerns. Moreover, previous accident analyses demonstrate that a fuel handling accident (i.e., a dropped fuel element) will not create conditions that exceed design specifications. In addition, the Technical Specifications and Technical Requirements Manuals specifically address refueling operations and limit the handling of fuel to ensure against an accidental criticality and preclude certain movements over the spent fuel pool and the reactor vessel.

In summary, exemptions from the requirements of 10 CFR Part 70, Section 70.24 approved by the NRC in connection with the SNM licenses for Hatch Units 1 and 2 were based upon NRC's finding that the inherent features associated with the storage and inspection of unirradiated fuel established good cause for granting the exemption and that granting such an exemption at this time will not endanger public life or property or the common defense and security and is otherwise in the public interest. The training provided to all personnel involved in fuel handling operations, the administrative controls, the Technical Specifications requirements, and the design of the fuel storage racks preclude inadvertent or accidental criticality. Since the facilities, storage, and inspection and procedures currently in place are consistent with those in place at the time the exemptions were granted in connection with the SNM licenses, an exemption from 10 CFR 70.24 is appropriate.

The proposed exemption will not affect radiological plant effluents nor cause any significant occupational exposures. Only a small amount, if any, of radioactive waste is generated during the receipt and handling of new fuel (e.g., smear papers or contaminated packaging material). The amount of waste would not be changed by the exemption.

With regard to potential nonradiological impacts, the proposed exemption involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative would be to deny the requested exemption. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to an operating license for the Edwin I. Hatch Nuclear Plant, Unit 1, and of a construction permit for Unit 2, dated October 1972, and the Final Environmental Statement related to the operation of Edwin I. Hatch Nuclear Plant, Unit 2, dated March 1978.

Agencies and Persons Consulted

In accordance with its stated policy, on June 24, 1996, the staff consulted with the Georgia State official, Mr. James L. Setser, of the Georgia Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 4, 1996, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the

VOL
61
ISS
136
JL
15
1996
UMI

Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated at Rockville, Maryland, this 9th day of July 1996.

For the Nuclear Regulatory Commission.

Kahtan N. Jabbour,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–17939 Filed 7–12–96; 8:45 am]

BILLING CODE 7590–01–P

Correction to Director's Decision Under 10 CFR 2.206

On June 17, 1996 (61 FR 30643), notice of issuance of Director's Decision DD–96–08 under 10 CFR 2.206 was published, concerning Indian Point Nuclear Generating Units 2 and 3. However, reference to one of the licensees, the Power Authority of the State of New York, was inadvertently omitted from the heading on page 30643.

Dated at Rockville, Maryland, this 8th day of July 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–17937 Filed 7–12–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–335]

Florida Power and Light Company, St. Lucie Plant, Units No. 1 and 2; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by letter dated June 12, 1996, Thomas J. Saporito, Jr., for himself and on behalf of the National Litigation Consultants (Petitioners) requested that the Nuclear Regulatory Commission (Commission) take action with regard to operations at the Florida Power and Light Company's (licensee's) St. Lucie Plant, Units No. 1 and 2 pursuant to 10 CFR 2.206.

The Petitioners request that the Commission (1) issue a confirmatory order requiring that the licensee not operate St. Lucie Plant, Unit No. 1, above 50 percent of its power level capacity, (2) require the licensee to specifically identify the "root cause" for the premature failure of the steam generator tubing, and (3) require the licensee to specifically state what corrective measures will be implemented to prevent recurrence of steam generator tube failures in all the steam generators in Unit 1 and Unit 2.

As basis for the requests, the Petitioners assert that (1) the licensee's Unit 1 steam generator tubes have degraded to the extent that more than 2,500 of the tubes have been plugged, (2) the licensee has not identified the root cause for the premature failure of the steam generator tubing, (3) the licensee will most likely experience similar tube ruptures on other steam generators at the station, and (4) the licensee's "FSAR's [Final Safety Analysis Reports] and the NRC's CFR's [*Code of Federal Regulations*] require that the integrity of the primary systems on Unit 1 and Unit 2 not be breached."

The Petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The Petition has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on this request within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, and at the local public document room located at the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida.

Dated at Rockville, Maryland, this 8th day of July 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–17941 Filed 7–12–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 040–08724]

Issuance of Director's Decision Under 10 CFR 2.206

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Issuance of Director's Decision Under 10 CFR 2.206.

I. Introduction

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has issued a decision concerning a Petition dated January 6, 1989, submitted by Dr. Klaus R. Romer, on behalf of McGean-Rohco, Inc.

By letter dated January 6, 1989, Dr. Klaus R. Romer, on behalf of McGean-Rohco, Inc. (Petitioner or McGean), requested that the U.S. Nuclear Regulatory Commission (NRC) take action pursuant to 10 CFR 2.206 with respect to Chemetron Corporation (Chemetron), an NRC licensee. McGean requested that NRC exercise its enforcement powers to compel Chemetron, at the time a subsidiary of Allegheny International, Inc. (Allegheny), to immediately commence decontamination of its facilities at 2910 Harvard Avenue, Cuyahoga Heights, Ohio, (the Harvard Avenue site) under the terms agreed to by Allegheny in its Confirmation of Commitment dated November 14, 1988. The Petitioner also requested the NRC to impose sanctions upon Chemetron for its failure to carry out the decontamination of the Harvard Avenue site. McGean alleged the following bases for its requests:

(1) On November 14, 1988, Chemetron committed to begin decontamination of the Harvard Avenue site immediately and complete the job by March 17, 1989;

(2) The NRC had stated that the March completion deadline would be relaxed only if Chemetron made a compelling showing of diligent efforts to clean up the site and good cause;

(3) Chemetron's letter to the NRC of December 12, 1988, which requests an extension of the deadline for good cause, fails to make a compelling showing of good cause; and

(4) Chemetron has not made a good faith effort to decontaminate the site.

On March 22, 1989, the Director of the Office of Nuclear Material Safety and Safeguards, formally acknowledged receipt of the Petition and informed Petitioner that its request was being treated pursuant to 10 CFR 2.206 of the NRC's regulations. A notice of the receipt of the Petition was published in the **Federal Register** notice on March 28, 1989 (54 FR 12698). In the March 22, 1989, letter, the Director denied the Petitioner's request for immediate relief because NRC considered that Chemetron's actions demonstrated minimally sufficient progress towards decontamination. However, the Director deferred a decision on the remainder of the Petition.

II. Background

In 1965, pursuant to 10 CFR Part 40, the Atomic Energy Commission issued Source Material License No. SUB–852 to Chemetron, which through its McGean Unit of the Inorganic Chemical Division, manufactured catalysts containing depleted uranium. These operations were carried out between 1965 and 1972 in facilities located at the Harvard Avenue site. By February 1972, manufacture of the catalysts had been terminated, and in December 1973, the License was amended to authorize storage only for the remaining depleted uranium. No activities involving source material, other than decontamination, have been conducted at the site since the termination of the catalyst production by Chemetron in 1972.

In 1975, the McGean Chemical Company, Inc., the predecessor to McGean-Rohco, Inc., purchased the Harvard Avenue site. The Chemetron Corporation, however, retained the License and responsibility for the depleted uranium remaining at the facility. In late 1977, the Licensee was acquired by Allegheny-Ludlum Industries. In 1979, the Licensee obtained a new NRC License, No. SUB–1357, to authorize the possession of depleted uranium contamination at the Harvard Avenue site and its remediation. License SUB–1357 superseded SUB–852. The License was last renewed, pursuant to 10 CFR 40.42(a), on January 10, 1990, and is continuing in effect.

Remediation activities at the Harvard Avenue site under License SUB–1357 began in 1979, with the expectation that the project would be completed in about six months. However, those activities were not completed within the term of the License. The NRC renewed the License five times between 1979 and 1984. As renewed on July 18, 1984, the Licensee included a condition requiring, within one year, the completion of decontamination, a final radiological survey, and a request for license termination. But again, these activities were not completed within the required timeframe.

From 1985 through 1989, the NRC continued to take actions intended to lead to decontamination of the Harvard Avenue site. These actions included (1) amending the License on October 1, 1987, to require completion of decontamination by October 1, 1988; (2) issuing a Demand for Information on June 13, 1988; and (3) requesting a Confirmation of Commitment to complete the Harvard Avenue decontamination by March 17, 1989. While Chemetron performed some survey and decontamination work during this time, Chemetron did not then complete decontamination of the Harvard Avenue site. Chemetron's parent, Allegheny International, entered bankruptcy on February 20, 1988, and Chemetron then stopped spending money for decontamination until the Bankruptcy Court authorized such expenditures on March 9, 1989. This was one of several factors Chemetron claimed prevented completion of decontamination according to the required schedules. Some of Chemetron's claimed reasons for failing to meet the schedules had merit, but some did not.

Shortly after the Bankruptcy Court's authorization, Chemetron resumed decontamination activities at the Harvard Avenue site. Chemetron soon discovered, however, that it had significantly underestimated the amount of contamination at the site due to an inadequate characterization of that contamination. From 1989 to 1992, including Allegheny's emergence from bankruptcy in 1990 (Allegheny was reorganized as Sunbeam/Oster Company, Inc. (Sunbeam)), the NRC sought Chemetron's commitment to characterize and remediate the Harvard Avenue site. To that end, concurrent with the NRC's approval of a transfer of control over the License to Sunbeam through the reorganization, the NRC sought Chemetron's commitment to complete a revised remediation plan for the Harvard Avenue site, based on adequate site characterization. On August 31, 1990, Chemetron proposed to complete a revised remediation plan by March 1, 1991, and the NRC approved this schedule and the transfer of control of the License on September 11, 1990.

Chemetron, however, again failed to meet its schedule, and failed to meet subsequent revised schedules showing completion of site characterization by March 1, 1991, and completion of a revised remediation plan by August 16, 1991. While some characterization data had been obtained, the site characterization report submitted on July 28, 1991, was inadequate, and, consequently, Chemetron's August 16, 1991, remediation plan was also inadequate. Accordingly, the NRC sought to compel Chemetron to characterize the site. As a result, on May 5, 1992, the NRC and Chemetron entered into a Consent Order that established June 15, 1992, as the submittal date for the Final Site Characterization Report for the Harvard Avenue site. Chemetron met this date, and on January 8, 1993, the NRC approved the Final Site Characterization Report as an acceptable basis for developing a remediation plan.

After NRC acceptance of the Final Site Characterization Report, Chemetron, by License Condition, established October 1, 1993, as the submittal date for the remediation plan. Chemetron submitted a remediation plan on this date that was incomplete. Accordingly, the NRC issued a Confirmatory Order to Chemetron on October 26, 1993, which required, inter alia, that all required portions of the remediation plan be submitted by November 15, 1993. Chemetron complied with this order.

On February 28, 1995, Chemetron submitted Revision 1 to its site remediation plan, which incorporated modifications as requested by the NRC. On June 7, 1996, the NRC approved Chemetron's revised remediation plan for the Harvard Avenue site and amended the License to authorize remediation of the site in accordance with the plan.

III. Discussion

Since the Petition was submitted to NRC, NRC staff and inspectors have made numerous site visits and inspections of the Harvard Avenue site. The inspections included routine safety inspections, which involved observing the status of site physical security provisions, verifying compliance with 10 CFR Part 20 radiation protection requirements, and observing the condition of tarpaulins securing soil piles. In April 1992, NRC inspectors installed air sampling devices and thermoluminescent detectors to measure radioactivity levels at the Harvard Avenue site and verify Chemetron measurements. These monitoring efforts were discontinued in 1993 because the results indicated radioactivity was at background levels consistent with the continuing Chemetron monitoring results. The NRC inspections, site visits, and monitoring have ensured that public health and safety have been adequately protected.

As set forth above, Chemetron made progress (except for some time while in bankruptcy) towards remediating the Harvard Avenue site, but this progress was very slow. One major impediment to remediating the site was the lack of an adequate site characterization. The NRC's frustration with the slow progress towards adequate characterization of the site resulted in the NRC's entering into the Consent Order of May 5, 1992, which compelled Chemetron to submit an adequate Final Site Characterization Report on June 15, 1992. The characterization report was acceptable because it provided information on: (1) depleted uranium concentration levels not only on the surface, but also at depth; (2) depleted uranium concentratioN levels in soil piles; and (3) groundwater monitoring results. The NRC then required Chemetron, through a license condition, to submit a remediation plan for the Harvard Avenue site by October 1, 1993.

As described above, Chemetron did not meet its schedule for submitting an adequate remediation plan for the Harvard Avenue site, which resulted in the NRC issuing the Confirmatory Order of October 26, 1993. The Confirmatory Order led to the NRC's June 7, 1996, approval of Chemetron's site remediation plan. The NRC staff concluded that this remediation plan, unlike the previous ones submitted by Chemetron, is adequate because (1) it is based on a comprehensive site

VOL
61
ISS
136
JL
15
1996
UMI

characterization; (2) adequately describes the decommissioning activities; (3) provides acceptable radiological controls to protect workers and the public; (4) provides an adequate plan for conducting a final survey; and (5) provides an acceptable decommissioning cost estimate. By authorizing Chemetron to proceed, NRC staff is confident that Chemetron can safely and successfully complete the remediation within the one-year schedule proposed. In the NRC review of the Harvard Avenue remediation plan, NRC staff considered the radiological controls that Chemetron would use during the remediation and the health and safety impacts of the proposed onsite disposal cell. Accordingly, NRC has now received adequate assurance from the Licensee that it has produced a final remediation plan that will lead to the ultimate decontamination of the Harvard Avenue site by the end of 1997.

In accordance with Commission policy, the Petitioner's request to impose sanctions was not granted as requested. On April 10, 1992, the Commission approved the "Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Plan Sites." The Action Plan discussed the imposition of civil penalties for sites listed in NRC's Site Decommissioning Management Plan (SDMP). (Chemetron's Harvard Avenue site is one of the SDMP listed sites.) The Action Plan provides that civil penalties should be limited to two situations. Specifically, the Action Plan provides that "the NRC will consider civil penalties where (1) the licensee or responsible party fails to comply with an order compelling payment into an escrow account; or (2) the licensee or responsible party fails to comply with a requirement or an order compelling cleanup when there is already sufficient decommissioning funding."

The clear intent of the Action Plan is to take into account the financial impact of a civil penalty on achieving decommissioning. In the staff's view, for schedular violations, the test should be the reasonableness of the Licensee's efforts to achieve decommissioning in a timely manner. It is not the intent of NRC staff to impose civil penalties where such penalties adversely affect the financial ability of the Licensee to properly complete decommissioning.

On May 11, 1994, NRC staff issued a Notice of Violation and Proposed Civil Penalty of $10,000 to Chemetron for submitting an incomplete remediation plan on the date established for the plan submittal set under a License Condition (i.e., October 1, 1993). The base civil penalty of $5,000 was escalated because NRC identified the violation and because of the Licensee's limited corrective action. The civil penalty reflected the poor progress that had been made at that time by the Licensee in the decommissioning. The NRC deferred imposition of the civil penalty until a final waste disposal option for both the Harvard Avenue site and Chemetron's Bert Avenue site is approved, to ensure that sufficient funds have been set aside to carry out the decommissioning.

As set forth above, based on the Commission's guidance in the Action Plan, NRC has not imposed sanctions as requested by the Petitioner. However, NRC staff has taken appropriate enforcement actions where the Licensee did not achieve decommissioning milestones set out in the License.

Based on the above, the NRC staff has taken appropriate actions to ensure the decontamination of the Harvard Avenue site. The most significant actions include the issuance of a License Amendment (dated May 25, 1993) and two Orders (dated May 5, 1992, and October 26, 1993) to establish schedules for the submittal of documents key to the Harvard Avenue site remediation and the issuance of a License Amendment on June 7, 1996, authorizing Chemetron to proceed with the remediation. Further, based on a review of the Licensee's actions regarding this decontamination effort, the NRC staff has concluded that the Licensee has made adequate progress towards this end. Therefore, for all practical purposes the Petitioner's request to compel the remediation of the Harvard Avenue site has been granted to the extent that this is required by the License Amendments of May 25, 1993, and June 7, 1996, and the Orders of May 5, 1992, and October 26, 1993. However, NRC staff does not consider that the imposition of sanctions, beyond those proposed on May 11, 1994, is needed to compel completion of the Harvard Avenue site remediation. Therefore, we are denying the Petitioner's request to impose further sanctions. Finally, the staff has concluded that no additional NRC actions are warranted concerning these requests. Should Chemetron fail to meet its one-year schedule for decontamination of the Harvard Avenue site, NRC staff will take appropriate action at that time.

IV. Conclusion

For the reasons discussed above, Petitioner's request that NRC compel Chemetron to commence action to decontaminate the Harvard Avenue site has been granted to the extent this is required by the License Amendments of May 25, 1993, and June 7, 1996, and the Orders dated May 5, 1992, and October 26, 1993. However, to the extent these actions were not taken in the time originally specified by Petitioner, the request is denied. Petitioner's second request that NRC impose sanctions against Chemetron for failing to comply with its November 14, 1988, Confirmation of Commitment to decontaminate the Harvard Avenue site, as requested by the Petitioner, has been denied. Further, no substantial public health and safety concerns currently exist that warrant additional NRC action concerning these requests.

As provided by 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. The Decision will become a final action of the Commission twenty-five (25) days after issuance unless the Commission on its own motion institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 3rd day of July 1996.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–17936 Filed 7–12–96; 8:45 am]

BILLING CODE 7590–01–P

Chemical, Galvanic, or Other Reactions in Spent Fuel Storage and Transportation Casks; Issued

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Bulletin 96–04 to notify all holders of operating licenses or construction permits for nuclear power reactors; all holders of, and applicants for, certificates of compliance for storage/transportation casks for commercial spent fuel; all vendors of storage/transportation casks for commercial spent fuel; and all registered users of transportation casks for commercial spent fuel, about the potential for chemical, galvanic, or other reactions among the materials of a spent fuel storage or transportation cask, its contents, and the environments the cask may encounter during use, that may produce adverse conditions in cask loading, unloading and handling operations or degrade the performance and integrity of the cask. However, action is only requested from licensees with independent spent fuel storage installations, vendors of spent fuel storage and transportation casks, and holders of certificates of compliance for spent fuel storage and transportation casks ("action addressees"). Action addressees are requested to evaluate the susceptibility of spent fuel storage and transportation cask designs to chemical, galvanic, or other reactions, and evaluate the effects of such reactions on the ability of the cask to maintain the structural integrity and retrievability of the spent fuel; action addressees are required to also submit a written response. This bulletin is available in the NRC Public Document Room under accession number 9607020241.

DATES: The bulletin was issued on July 5, 1996.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Marissa G. Bailey at (301) 415–8531.

SUPPLEMENTARY INFORMATION: This bulletin is an information request made pursuant to 10 CFR 2.204, 10 CFR 71.39, and 10 CFR 72.44(b)(3). The objective of the actions requested in this bulletin is to verify that licensees are in compliance with existing NRC rules and regulations pertaining to the appropriateness and adequacy of the design of spent fuel storage and transportation casks including, and without limitation, 10 CFR 71.43(d), 72.122(h), 72.122(l), 72.236(c), 72.236(f), 72.236(g), 72.40(a)(5), 72.212(b)(9), 72.236(h), 72.234(b), and 72.146(b). The staff is not establishing a new position for such compliance in this bulletin.

Dated at Rockville, Maryland, this 8th day of July, 1996.

For the Nuclear Regulatory Commission.

David B. Matthews,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 96–17938 Filed 7–12–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Publication of Notices of Systems of Records and a Proposed New Routine Use

AGENCY: Office of Personnel Management.

ACTION: Notice; publication of notices of the eight Governmentwide systems of records managed by the Office of Personnel Management, adding a note of explanation to one system of records, deleting an existing routine use and proposing a routine use for one system of records.

SUMMARY: This notice provides an accurate and complete text with administrative changes of the Office of Personnel Management's notices for its eight Governmentwide systems of records. This notice also adds a note of explanation to one of the routine uses to one Governmentwide system, deletes one routine use, and adds one routine use to a system of records. This action effects the administrative changes that have occurred in the Office's reorganization and makes readily available in one issue of the **Federal Register** an accurate and complete text of the Office notices most widely used by individuals and by agency Privacy Act officers.

DATES: The notice with the administrative (non-substantive) changes are effective on July 15, 1996. The proposed routine use will become effective, without further notice, on September 13, 1996, unless comments dictate otherwise.

ADDRESSES: Written comments may be sent or delivered to: Assistant Director for Workforce Information, Room 7439, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: John Sanet, Privacy Act Advisor, Office of Workforce Information (202) 606–1955.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (the Office) last published its Governmentwide systems notices in 1992. To be in conformance with the recent reorganization of the Office, internal changes in the designation of the systems managers and location of records have occurred that are reflected in this publication. In addition one routine use was deleted and one routine use is proposed to a particular system of records. In addition, a note of explanation is added to one routine use for OPM/GOVT–1.

A brief description of the major changes follows:

OPM/GOVT–1. A note has been added to routine use "j" allowing the home addresses of bargaining unit employees to be disclosed to recognized labor organizations that are legally required to represent them from OPM's internal payroll system of records.

The note explains that home addresses contained in OPM/GOVT–1 or in any other system of records administered by OPM may not be disclosed to labor organizations under any circumstances.

In addition, volunteers, grantees, and contract employees on whom an agency is maintaining employment records may also be covered by this system.

OPM/GOVT–3, Records of Adverse Actions, Performance Based Reduction in Grade and Removal Actions, and Terminations of Probationers. Routine Use "o" has been deleted as no longer necessary and a proposed new routine use is offered to allow records within this system to be made available to specified agencies (Federal, State, or county, municipal, or other publicly recognized charitable or income security, administrative agency like an unemployment compensation agency) when necessary to adjudicate a claim under the retirement, insurance, unemployment, or health benefits program, or to conduct an analytical study or audit of such programs. Presently, an identical routine use exists in the OPM/GOVT–1 system of records. This proposed routine use will enable agencies to disclose relevant information from the OPM/GOVT–3 system for the same purpose.

OPM/GOVT–6, Personnel Research and Test Validation Records. Administrative changes are made reflecting the title of the system manager and the system location for these records due to OPM's reorganization are incorporated in this notice.

OPM/GOVT–7, Applicant Race, Sex, National Origin, and Disability Status Records. Administrative changes reflecting the title of the system location and system location for these records due to OPM's reorganization are incorporated in this notice.

OPM/GOVT–9, File on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals. An administrative change reflecting the identification of the system manager is incorporated in this notice.

The system report, as required by 5 U.S.C. 552a(r), has been submitted to the Committee on Governmental Affairs of the United States Senate, the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Management and Budget.

Following is a complete text of these eight Office of Personnel Management systems of records.

Office of Personnel Management,

Lorraine A. Green,

Deputy Director.

OPM/GOVT–1

SYSTEM NAME:

General Personnel Records.

SYSTEM LOCATION:

Records on current Federal employees are located at the Office and with Personnel Officers or other designated offices of the local installation of the department or agency that currently

VOL
61
ISS
136
JL
15
1996
UMI

employs the individual. When agencies determine that duplicates of these records need to be located in a second office, e.g., an administrative office closer to where the employee actually works, such copies are covered by this system. Former Federal employees' Official Personnel Folders (OPFs) are located at the National Personnel Records Center, National Archives and Records Administration, 111 Winnebego Street, St. Louis, Missouri 63118. Records not considered long-term records, but which may be retained in the OPF or elsewhere during employment, and which are also included in this system, may be retained by agencies for a period of time after the employee leaves service.

The use of the phrase "long-term" to describe those records filed on the right-hand-side of OPFs is used throughout this notice because these records are not actually permanently retained. The term "temporary" is used when referencing short-term records filed on the left-hand-side of OPFs and all other records not filed in the OPF, but covered by this notice.

Note 1.—The records in this system are "owned" by the Office of Personnel Management (Office) and should be provided to those Office employees who have an official need or use for those records. Therefore, if an employing agency is asked by an Office employee to access the records within this system, such a request should be honored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees as defined in 5 U.S.C. 2105. (Volunteers, grantees, and contract employees on whom the agency maintains records may also be covered by this system).

CATEGORIES OF RECORDS IN THE SYSTEM:

All categories of records may include identifying information, such as name(s), date of birth, home address, mailing address, social security number, and home telephone. This system includes contents of the OPF as specified in OPM's Operating Manual, "The Guide to Personnel Recordkeeping." Records in this system are—

a. Records reflecting work experience, educational level achieved, and specialized education or training obtained outside of Federal service.

b. Records reflecting Federal service and documenting work experience and specialized education received while employed. Such records contain information about past and present positions held; grades; salaries; duty station locations; and notices of all personnel actions, such as appointments, transfers, reassignments, details, promotions, demotions, reductions-in-force, resignations, separations, suspensions, Office approval of disability retirement applications, retirement, and removals.

c. Records on enrollment or declination of enrollment in the Federal Employees' Group Life Insurance Program and Federal Employees Health Benefit Program, as well as forms showing designation of beneficiary, Federal Employee's Thrift Savings Program.

d. Records relating to an Intergovernmental Personnel Act assignment or Federal-private sector exchange program.

Note 2.—Some of these records may also become part of the OPM/CENTRAL–5, Intergovernmental Personnel Act Assignment Record system.

e. Records relating to participation in an agency Federal Executive or SES Candidate Development Program.

Note 3.—Some of these records may also become part of the OPM/CENTRAL–3, Federal Executive Development Records; or OPM/CENTRAL–13, Senior Executive Service Records systems.

f. Records relating to Government-sponsored training or participation in an agency's Upward Mobility Program or other personnel program designed to broaden an employee's work experiences and for purposes of advancement (e.g., an administrative intern program).

g. Records contained in the Central Personnel Data File (CPDF) maintained by OPM and exact substantive representations in agency manual or automated personnel information systems. These data elements include many of the above records along with handicap and race and national origin codes. A definitive list of CPDF data elements is contained in OPM's Operating Manual, The Guide to Personnel Data Standards.

h. Records on the Senior Executive Service (SES) maintained by agencies for use in making decisions affecting incumbents of these positions, e.g., relating to sabbatical leave programs, reassignments, and details, that are perhaps unique to the SES and that may be filed in the employee's OPF. These records may also serve as the basis for reports submitted to OPM for implementing OPM's oversight responsibilities concerning the SES.

i. Records on an employee's activities on behalf of the recognized labor organization representing agency employees, including accounting of official time spent and documentation in support of per diem and travel expenses.

Note 4.—Alternatively, such records may be retained by an agency payroll office and thus be subject to the agency's internal Privacy Act system for payroll records. The OPM/GOVT–1 system does not cover general agency payroll records.

j. To the extent that the records listed here are also maintained in an agency electronic personnel or microform records system, those versions of these records are considered to be covered by this system notice. Any additional copies of these records (excluding performance ratings of record and conduct-related documents maintained by first line supervisors and managers covered by the OPM/GOVT–2 system) maintained by agencies at field/administrative offices remote from where the original records exist are considered part of this system.

Note 5.—It is not the intent of OPM to limit this system of records only to those records physically within the OPF. Records may be filed in other folders located in offices other than where the OPF is located. Further, as indicated in the records location section, some of these records may be duplicated for maintenance at a site closer to where the employee works (e.g., in an administrative office or supervisors work folder) and still be covered by this system. In addition, a working file that a supervisor or other agency official is using that is derived from OPM/GOVT–1 is covered by this system notice.

k. Records relating to designations for lump sum death benefits.

l. Records relating to classified information nondisclosure agreements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions or amendments:

5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347, and Executive orders 9397, 9830, and 12107.

PURPOSE(S):

The OPF and other general personnel records files are the official repository of the records, reports of personnel actions, and the documents and papers required in connection with these actions effected during an employee's Federal service. The personnel action reports and other documents, some of which are filed as long-term records in the OPF, give legal force and effect to personnel transactions and establish employee rights and benefits under pertinent laws and regulations governing Federal employment.

These files and records are maintained by OPM and the agencies for the Office in accordance with Office regulations and instructions. They provide the basic source of factual data

about a person's Federal employment while in the service and after his or her separation. Records in this system have various uses by agency personnel offices, including screening qualifications of employees; determining status, eligibility, and employee's rights and benefits under pertinent laws and regulations governing Federal employment; computing length of service; and other information needed to provide personnel services. These records and their automated or microform equivalents may also be used to locate individuals for personnel research.

Temporary documents on the left side of the OPF may pertain to a formal action but do not constitute a record of it nor make a substantial contribution to the employee's long-term record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEMS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used—

a. To disclose information to Government training facilities (Federal, State, and local) and to non-Government training facilities (private vendors of training courses or programs, private schools, etc.) for training purposes.

b. To disclose information to education institutions on appointment of a recent graduate to a position in the Federal service, and to provide college and university officials with information about their students working in the Student Career Experiment Program, Volunteer Service, or other similar programs necessary to a student's obtaining credit for the experience gained.

c. To disclose information to officials of foreign governments for clearance before a Federal employee is assigned to that country.

d. To disclose information to the Department of Labor, Department of Veterans Affairs, Social Security Administration, Department of Defense, or any other Federal agencies that have special civilian employee retirement programs; or to a national, State, county, municipal, or other publicly recognized charitable or income security, administration agency (e.g., State unemployment compensation agencies), when necessary to adjudicate a claim under the retirement, insurance, unemployment, or health benefits programs of the Office or an agency cited above, or to an agency to conduct an analytical study or audit of benefits being paid under such programs.

e. To disclose to the Office of Federal Employees Group Life Insurance, information necessary to verify election, declination, or waiver of regular and/or optional life insurance coverage, eligibility for payment of a claim for life insurance, or to TSP election change and designation of beneficiary.

f. To disclose, to health insurance carriers contracting with the Office to provide a health benefits plan under the Federal Employees Health Benefits Program, information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination or audit of benefit provisions of such contracts.

g. To disclose information to a Federal, State, or local agency for determination of an individual's entitlement to benefits in connection with Federal Housing Administration programs.

h. To consider and select employees for incentive awards and other honors and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition.

i. To consider employees for recognition through quality-step increases, and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition.

j. To disclose information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

Note 6.—The release of updated home addresses of all bargaining unit employees to labor organizations recognized under 5 U.S.C. Chapter 71 from an accurate internal system of records is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining under 5 U.S.C. 7114(b)(4). OPM has determined that retrieval of home addresses from OPM/GOVT–1 or any other system of records administered by OPM would yield a great deal of inaccurate information because the home addresses are not regularly updated, and frequently are inaccurate. Consequently, the release of the home addresses from this system would not serve the purpose of the disclosure, namely, the furnishing of correct and useful information. Use of this system, which is not wholly automated, would require an inordinate amount of time to locate information that was not even requested, namely, inaccurate home addresses. Accordingly, home addresses will not be released from OPM/GOVT–1 or any other system administered by OPM, but should be released from an accurate internal system. OPM's internal system of records, which is clearly the most accurate repository of the home address of OPM employees, will be utilized to accomplish this release of information. See **Federal Register** of March 8, 1996 (61 FR 9510).

k. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

l. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision to hire or retain an employee, issue a security clearance, conduct a security or suitability investigation of an individual, classify jobs, let a contract, or issue a license, grant, or other benefits.

m. To disclose to a Federal agency in the executive, legislative, or judicial branch of government, in response to its request, or at the initiation of the agency maintaining the records, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

n. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

o. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual

p. to disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

q. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

VOL 61 ISS 136 JL 15 1996 UMI

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, when the agency determines that litigation is likely to affect the agency or any of its components.

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

r. By the National Archives and Records Administration in records management inspections and its role as Archivist.

s. By the agency maintaining the records or by the Office to locate individuals for personnel research or survey response, and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

t. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

u. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's record may be disclosed to any person who is responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

v. To disclose to the agency-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee, in connection with an examination ordered by the agency under—

(1) Fitness-for-duty examination procedures; or

(2) Agency-filed disability retirement procedures.

w. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

x. To disclose to a requesting agency, organization, or individual the home address and other relevant information on those individuals who it reasonably believed might have contracted an illness or might have been exposed to or suffered from a health hazard while employed in the Federal workforce.

y. To disclose specific civil service employment information required under law by the Department of Defense on individuals identified as members of the Ready Reserve to assure continuous mobilization readiness of Ready Reserve units and members, and to identify demographic characteristics of civil service retirees for national emergency mobilization purposes.

z. To disclose information to the Department of Defense, National Oceanic and Atmospheric Administration, U.S. Public Health Service, Department of Veterans Affairs, and the U.S. Coast Guard needed to effect any adjustments in retired or retained pay required by the dual compensation provisions of section 5532 of title 5, United States Code.

aa. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. chapter 12, or as may be authorized by law.

bb. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

cc. To disclose information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator's awards when a question of material fact is raised, and in connection with matters before the Federal Service Impasses Panel.

dd. To disclose to prospective non-Federal employers the following information about a specifically identified current or former Federal employee:

(1) Tenure of employment;

(2) Civil service status;

(3) Length of service in the agency and the Government; and

(4) When separated, the date and nature of action as shown on the Notification of Personnel Action—Standard Form 50 (or authorized exception).

ee. To disclose information on employees of Federal health care facilities to private sector (i.e., other than Federal, State, or local government) agencies, boards, or commissions (e.g., the Joint Commission on Accreditation of Hospitals). Such disclosures will be made only when the disclosing agency determines that it is in the Government's best interest (e.g., to comply with law, rule, or regulation, to assist in the recruiting of staff in the community where the facility operates or to avoid any adverse publicity that may result from public criticism of the facility's failure to obtain such approval, or to obtain accreditation or other approval rating). Disclosure is to be made only to the extent that the information disclosed is relevant and necessary for that purpose.

ff. To disclose information to any member of an agency's Performance Review Board or other panel when the member is not an official of the employing agency; information would then be used for approving or recommending selection of candidates for executive development or SES candidate programs, issuing a performance rating of record, issuing performance awards, nominating for meritorious and distinguished executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance.

gg. To disclose, either to the Federal Acquisition Institute (FAI) or its agent, information about Federal employees in procurement occupations and other occupations whose incumbents spend the predominant amount of their work hours on procurement tasks; provided that the information shall only be used for such purposes and under such conditions as prescribed by the notice of the Federal Acquisition Personnel Information System as published in the **Federal Register** of February 7, 1980 (45 FR 8399).

hh. To disclose relevant information with personal identifiers of Federal civilian employees whose records are contained in the Central Personnel Data File to authorized Federal agencies and non-Federal entities for use in computer matching. The matches will be performed to help eliminate waste, fraud, and abuse in Governmental programs; to help identify individuals who are potentially in violation of civil or criminal law or regulation; and to collect debts and overpayments owed to Federal, State, or local governments and their components. The information disclosed may include, but is not limited to, the name, social security number, date of birth, sex, annualized salary rate, service computation date of basic active service, veteran's preference, retirement status, occupational series, health plan code, position occupied, work schedule (full time, part time, or intermittent), agency identifier, geographic location (duty station location), standard metropolitan service area, special program identifier, and submitting office number of Federal employees.

ii. To disclose information to Federal, State, local, and professional licensing boards, Boards of Medical Examiners, or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications or registration necessary to practice an occupation, profession or speciality, in order to obtain information relevant to an Agency decision concerning the hiring retention or termination of an employee or to inform a Federal agency or licensing boards or the appropriate non-government entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency.

jj. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

kk. To disclose information to a Federal, State, or local governmental entity or agency (or its agent) when necessary to locate individuals who are owed money or property either by a Federal, State, or local agency, or by a financial or similar institution.

ll. To disclose to a spouse or dependent child (or court-appointed guardian thereof) of a Federal employee enrolled in the Federal Employees Health Benefits Program, upon request, whether the employee has changed from a self-and-family to a self-only health benefits enrollment.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, on lists and forms, microfilm or microfiche, and in computer processable storage media.

RETRIEVABILITY:

These records are retrieved by various combinations of name, birth date, social security number, or identification number of the individual on whom they are maintained.

SAFEGUARDS:

Paper or microfiche/microfilmed records are located in locked metal file cabinets or in secured rooms with access limited to those personnel whose official duties require access. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

The OPF is maintained for the period of the employee's service in the agency and is then transferred to the National Personnel Records Center for storage or, as appropriate, to the next employing Federal agency. Other records are either retained at the agency for various lengths of time in accordance with the National Archives and Records Administration records schedules or destroyed when they have served their purpose or when the employee leaves the agency.

a. Long-term records. The OPF is maintained by the employing agency as long as the individual is employed with that agency.

For non-SES employees, transfer performance ratings of record 4 years old or less from the Employee Performance File to the OPF, if the ratings and plans are not maintained by the agency in the OPF.

Within 90 days after the individual separates from the Federal service, the OPF is sent to the National Personnel Records Center for long-term storage. In the case of administrative need, a retired employee, or an employee who dies in service, the OPF is sent to the Records Center within 120 days.

Destruction of the OPF is in accordance with General Records Schedule–1 (GRS–1).

b. Other records. Other records are retained for varying periods of time. Generally they are maintained for a minimum of 1 year or until the employee transfers or separates.

c. Records contained on computer processable media within the CPDF (and in agency's automated personnel records) may be retained indefinitely as a basis for longitudinal work history statistical studies. After the disposition date in GRS–1, such records should not be used in making decisions concerning employees.

SYSTEM MANAGER AND ADDRESS:

a. Assistant Director for Workforce Information, Human Resources Systems Service, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

b. For current Federal employees, OPM has delegated to the employing agency the Privacy Act responsibilities concerning access, amendment, and disclosure of the records within this system notice.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate Office or employing agency office, as follows:

a. Current Federal employees should contact the Personnel Officer or other responsible official (as designated by the employing agency), of the local agency installation at which employed regarding records in this system.

b. Former Federal employees should contact the Office's St. Louis office (address cited in "Records Access Procedure" below), or as explained in the Note in the "Records Access Procedure" below, the National Personnel Records Center (Civilian), 111 Winnebago Street, St. Louis, Missouri 63118, regarding the records in this system.

Individuals must furnish the following information for their records to be located and identified:

a. Full name(s).

b. Date of birth.

c. Social security number.

d. Last employing agency (including duty station) and approximate date(s) of the employment (for former Federal employees).

e. Signature.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should contact the appropriate OPM or agency office, as specified in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name(s).

b. Date of birth.

c. Social security number.

d. Last employing agency (including duty station) and approximate date(s) of

VOL 61 ISS 136 JUL 15 1996 UMI

employment (for former Federal employees).

e. Signature.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR 297).

Note 7.—An individual who is a former Federal employee may direct a request to the National Personnel Records Center (NPRC) for a copy of a specific OPF document or for a transcript of his or her own employment history compiled from documents in the OPF. The transcript includes the individual's name; date of birth; social security number; all past grades held, position titles, duty stations, and salaries; and dates of personnel actions.

Under no circumstances shall an individual direct a request to NPRC for access to copies of all records maintained in his or her OPF. Though NPRC stores and services the OPFs of former Federal employees covered by this system, that record remains the property of the Office, and such requests will be handled and processed by the: OPF/EMF Access Unit, Office of Personnel Management, P.O. Box 18673, St. Louis, Missouri 63118.

CONTESTING RECORD PROCEDURE:

Current employees wishing to request amendment of their records should contact their current agency. Former employees should contact the system manager and not the Office. Individuals must furnish the following information for their records to be located and identified.

a. Full name(s).

b. Date of birth.

c. Social security number.

d. Last employing agency (including duty station) and approximate date(s) of employment (for former Federal employees).

e. Signature.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

Note 8.—Under no circumstances shall former employees direct a request for amendment to records in the OPF to the NPRC or to the Office's OPF/EMF Access unit in St. Louis, Missouri. NPRC only stores and services the OPFs on former Federal employees covered by this system, and the Office's office in St. Louis processes only access requests. Processing under the amendment provisions of the Privacy Act will be handled only by the system manager.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by—

a. The individual on whom the record is maintained.

b. Physicians examining the individual.

c. Educational institutions.

d. Agency officials and other individuals or entities.

e. Other sources of information for long-term records maintained in an employee's OPF, in accordance with Code of Federal Regulations Part 293, and OPM's Operating Manual, "The Guide to Personnel Recordkeeping."

OPM/GOVT–2

SYSTEM NAME:

Employee Performance File System Records.

SYSTEM LOCATION:

Records maintained in this system may be located as follows:

a. In an Employee Performance File (EPF) maintained in the agency office responsible for maintenance of the employee's Official Personnel Folder (OPF) or other agency-designated office. This includes those instances where the agency uses an envelope within OPF in lieu of a separate EPF folder.

b. In the EPF of Senior Executive Service (SES) appointees where the agency elects to have the file maintained by the Performance Review Boards required by 5 U.S.C. 4314(c)(1), or the administrative office supporting the Board.

c. In any supervisor/manager's work folder maintained in the office by the employee's immediate supervisor/manager or, where agencies have determined that records management is better served, in such folders maintained for supervisors/managers in a central administrative office.

d. In an agency's electronic personnel records system.

e. In an agency microformed EPF.

Note 1.—Originals or copies of records covered by this system may be located in more than one location, but if they become part of an agency internal system (e.g., administrative or negotiated grievance file), those copies then would be subject to the agency's internal Privacy Act implementation guidance regarding their use within the agency's system.

Note 2.—the records in this system are "owned" by the Office of Personnel Management (Office) and should be provided to those Office employees who have an official need or use for those records. Therefore, if an employing agency is asked by an Office employee for access to the records within this system, such a request should be honored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees (including SES appointees).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system, wherever they are maintained, may include any or all of the following:

a. Annual summary performance ratings of record issued under employee appraisal systems and any document that indicates that the rating is being challenged under administrative procedures (e.g., when the employee files a grievance on the rating received).

b. A document (either the summary rating form itself or a form affixed to it) that identifies the job elements and the standards for those elements upon which the rating is based.

c. Supporting documentation for employee ratings of records, as required by agency rating systems or implementing instructions, and which may be filed physically with the rating of record (e.g., productivity and quality control records, records of employee counseling, individual development plans, or other such records as specified in agency issuances) and maintained, for example in a work folder by supervisors/managers at the work site.

d. Records on SES appraisals generated by Performance Review Boards, including statements of witnesses and transcripts of hearings.

e. Written recommendations for awards, removals, demotions, denials of within-grade increases, reassignments, training, pay increases, cash bonuses, or other performance-based actions (e.g., nominations of SES employees for Meritorious or Distinguished Executive), including supporting documentation.

f. Statements made (letter on or appended to the performance rating document) by the employee (e.g., a statement of disagreement with the rating or recommendation), in accordance with agency performance plans and implementing instructions, regarding a rating given and any recommendations made based on them.

Note 3—When a recommendation by a supervisor/manager or a statement made by the employee regarding the rating issued (or a copy) becomes part of another Governmentwide system or internal agency file (e.g., an SF 52 filed in an OPF when the action is effected or when documents or statements of disagreement are placed in a grievance file), that document then becomes subject to that system's notice and appropriate Office or employing agency Privacy Act requirements, respectively, for the system of records covering that file.

g. Records created by Executive Resource Boards regarding performance of an individual in an executive development program.

h. Records concerning performance during the supervisory or managerial probationary period, the SES appointment probationary period, or the employee's initial period of probation after appointment.

i. Notices of commendations (which are not considered a permanent OPF document), recommendations for training, such as an Individual Development Plan, and advice and counseling records that are based on work performance.

j. Copies of supervisory ratings used in considering employees for promotion or other position changes originated in conjunction with agency merit promotion programs when specifically authorized for retention in the EPF or work folder.

k. Performance-related material that may be maintained in the work folder to assist the supervisor/manager in accurately assessing employee performance. Such material may include transcripts of employment and training history, documentation of special licenses, certificates, or authorizations necessary in the performance of the employee duties, and other such records that agencies determine to be appropriate for retention in the work folder.

l. Standard Form 7B Cards. (While the use of the SF 7B Card system was cancelled effective December 31, 1992, this system notice will cover any of those cards still in existence.)

Note 4.—To the extent that performance records covered by this system are maintained in either an EPF, supervisor/manager work folder, or an agency's electronic or microform record system, they are considered covered under this system of records. Further, when copies of records filed in the employee's OPF are maintained as general records related to performance (item K above), those records are to be considered as being covered by this system and not the OPM/GOVT–1 system.

This notice does *not* cover these records (or copies) when they become part of a grievance file or a 5 CFR parts 432, 752, or 754 file (documents maintained in these files are covered by the OPM/GOVT–3 system of records, while grievance records are covered under an agency-specific system), or when they become part of an appeal or discrimination complaint file as such documents are considered to be part of either the system of appeal records under the control of the Merit Systems Protection Board (MSPB) or discrimination complaints files under the control of the Equal Employment Opportunity Commission (EEOC).

When an agency retains copies of records from this system in another system of records, not covered by this or another OPM, MSPB, or EEOC Government-wide system notice, the agency is solely responsible for responding to any Privacy Act issues raised concerning these documents.

The Office has adopted a position that when supervisors/managers retain personal "supervisory" notes, i.e., information on employees that the agency exercises no control and does not require or specifically describe in its performance system, which remain solely for the personal use of the author and are not provided to any other person, and which are retained or discarded at the author's sole discretion, such notes are not subject to the Privacy Act and are, therefore, not considered part of this system. Should an agency choose to adopt a position that such notes are subject to the Act, that agency is solely responsible for dealing with Privacy Act matters, including the requisite system notice, concerning them.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions or amendments:

Sections 1104, 3321, 4305, and 5405 of title 5, U.S. Code, and Executive Order 12107.

PURPOSE(S):

These records are maintained to ensure that all appropriate records on an employee's performance are retained and are available (1) to agency officials having a need for the information; (2) to employees; (3) to support actions based on the records; (4) for use by the Office in connection with its personnel management evaluation role in the executive branch; and (5) to identify individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

a. To disclose information to the Merit Systems Protection Board or the Office of Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and other functions as promulgated in 5 U.S.C. chapter 12, or for such other functions as may be authorized by law.

b. To disclose information to the EEOC when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal Affirmative Action programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

c. To disclose information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator's awards where a question of material fact is raised, and matters before the Federal Service Impasses Panel.

d. To consider and select employees for incentive awards, quality-step increases, merit increases and performance awards, or other pay bonuses, and other honors and to publicize those granted. This may include disclosure to public and private organizations, including news media, which grant or publicize employee awards or honors.

e. To disclose information to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

f. To disclose to an agency in the executive, legislative, or judicial branch, or to the District of Columbia's government in response to its request, or at the initiation of the agency maintaining the records, information in connection with hiring or retaining of an employee; issuing a security clearance; conducting a security or suitability investigation of an individual; classifying jobs; letting a contract; issuing a license, grant, or other benefits by the requesting agency; or the lawful statutory, administrative, or investigative purposes of the agency to the extent that the information is relevant and necessary to the decision on the matter.

g. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

h. To disclose information to a congressional office from the record or an individual in response to an inquiry from that congressional office made at the request of the individual.

i. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

j. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, when the agency determines that litigation is likely to

VOL 61 ISS 136 JL 15 1996 UMI

affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

k. By the National Archives and Records Administration in records management inspections and its role as Archivist.

l. By the Office or employing agency to locate individuals for personnel research or survey response and in producing summary descriptive statistics and analytical studies to support the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

m. To disclose pertinent information to the appropriate Federal, State, or local government agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the agency maintaining the record becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

n. To disclose information to any member of an agency's Performance Review Board or other board or panel when the member is not an official of the employing agency. The information would then be used for approving or recommending performance awards, nominating for meritorious and distinguished executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance.

o. To disclose to Federal, State, local, and professional licensing boards or Boards of Medical Examiners, when such records reflect on the qualifications of individuals seeking to be licensed.

p. To disclose to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, envelopes, and on magnetic tapes, disks, microfilm, or microfiche.

RETRIEVABILITY:

Records are retrieved by the name and social security number of the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in file folders or envelopes, on electronic media, magnetic tape, disks, or microforms and are stored in locked desks, metal filing cabinets, or in a secured room with access limited to those whose official duties require access. Additional safeguarding procedures include the use of sign-out sheets and restrictions on the number of employees able to access electronic records through use of access codes and logs.

RETENTION AND DISPOSAL:

Records on former non-SES employees will generally be retained no longer than 1 year after the employee leaves his or her employing agency. Records on former SES employees may be retained up to 5 years under 5 U.S.C. 4314.

a. Summary performance appraisals (and related records as the agency prescribes) on SES appointees are retained for 5 years and ratings of record on other employees for 4 years, except as shown in paragraph b below, and are disposed of by shredding, burning, erasing of disks, or in accordance with agency procedures regarding destruction of personnel records, including giving them to the individual. When a non-SES employee transfers to another agency or leaves Federal employment, ratings of record and subsequent ratings (4 years old or less) are to be filed on the temporary side of the OPF and forwarded with the OPF.

b. Ratings of unacceptable performance and related documents, pursuant to 5 U.S.C. 4303(d), are destroyed after the employee completes 1 year of acceptable performance from the date of the proposed removal or reduction-in-grade notice. (Destruction to be no later than 30 days after the year is up.)

c. When a career appointee in the SES accepts a Presidential appointment pursuant to 5 U.S.C. 3392(c), the employee's performance folder remains active so long as the employee remains employed under the Presidential appointment and elects to have certain provisions of 5 U.S.C. relating to the Service apply.

d. When an incumbent of the SES transfers to another position in the Service, ratings and plans 5 years old or less shall be forwarded to the gaining agency with the individual's OPF.

e. Some performance-related records (e.g., documents maintained to assist rating officials in appraising performance or recommending remedial actions or to show that the employee is currently licensed or certified) may be destroyed after 1 year.

f. Where any of these documents are needed in connection with administrative or negotiated grievance procedures, or quasi-judicial or judicial proceedings, they may be retained as needed beyond the retention schedules identified above.

g. Generally, agencies retain records on former employees for no longer than 1 year after the employee leaves.

Note 5—When an agency retains an electronic or microform version of any of the above documents, retention of such records longer than show is permitted (except for those records subject to 5 U.S.C. 4303(d)) for agency use or for historical or statistical analysis, but only so long as the record is not used in a determination directly affecting the individual about whom the record pertains (after the manual record has been or should have been destroyed).

SYSTEM MANAGERS AND ADDRESS:

a. Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

b. For current Federal employees, OPM has delegated to the employing agency the Privacy Act responsibilities concerning access, amendment, and disclosure of the record within this system notice.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact their servicing personnel office, supervisor/manager, Performance Review Board office, or other agency designated office maintaining their performance-related records where they are or were employed. Individuals must furnish the following information for their records to be located and identified:

a. Full name(s).

b. Social Security number.

c. Position occupied and unit where employed.

RECORDS ACCESS PROCEDURE:

Individuals wishing access to their records should contact the appropriate

office indicated in the Notification Procedure section where they are or were employed. Individuals must furnish the following information for their records to be located and identified:

a. Full name(s).

b. Social security number.

c. Position occupied and unit where employed.

Individuals requesting access to records must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment to their records should contact the appropriate office indicated in the Notification Procedure section where they are or were employed. Individuals must furnish the following information for their records to be located and identified:

a. Full name(s).

b. Social security number.

c. Position occupied and unit where employed.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORDS SOURCE CATEGORIES:

Records in this system are obtained from:

a. Supervisors/managers.

b. Performance Review Boards.

c. Executive Resource Boards.

d. Other individuals or agency officials.

e. Other agency records.

f. The individual to whom the records pertain.

OPM/GOVT–3

SYSTEM NAME:

Records of Adverse Actions, Performance Based Reduction in Grade and Removal Actions, and Termination of Probationers.

SYSTEM LOCATION:

These records are located in personnel or designated offices in Federal agencies in which the actions were processed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees (including Senior Executive Service (SES) employees) against whom such an action has been proposed or taken in accordance with 5 CFR parts 315 (Subparts H and I), 432, 752, or 754 of the Office's regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records and documents on: (1) The processing of adverse actions, performance based reduction in grade and removal actions, and (2) the termination of employees serving initial appointment probation and return to their former grade of employees serving supervisory or managerial probation. The records include, as appropriate, copies of the notice of proposed action, materials relied on by the agency to support the reasons in the notice, replies by the employee, statements of witness, hearing notices, reports, and agency decisions.

Note.—This system does not include records, including the action file itself, compiled when such actions are appealed to the Merit Systems Protection Board (MSPB) or become part of a discrimination complaint record at the Equal Employment Opportunity Commission (EEOC). Such appeal and discrimination complaint file records are covered by the appropriate MSPB or EEOC system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions or amendments:

5 U.S.C. 3321, 4303, 7504, 7514, and 7543.

PURPOSES:

These records result from the proposal, processing, and documentation of these actions taken either by the Office or by agencies against employees in accordance with 5 CFR parts 315 (subparts H and I), 432, 752, or 754 of the Office's regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To provide information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to any source from which additional information is requested for processing any of the covered actions or in regard to any appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

d. To disclose information to a Federal agency, in response to its request, in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, or classifying jobs, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

g. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, when the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

h. By the National Archives and Records Administration in records management inspections and its role as Archivist.

i. By the agency maintaining the records or the Office to locate individuals for personnel research or survey response and in producing summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection for elements of data

VOL
61
ISS
136
JL
15
1996
UMI

included in the study may be structured in such a way as to make the data individually identifiable by inference.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in pending judicial or administrative proceeding.

k. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, as promulgated in 5 U.S.C. 1205 and 1206, and as specified in 5 U.S.C. 7503(c) and 5 U.S.C. 7513(e), or as may be authorized by law.

l. To disclose information to the EEOC when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission.

m. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

n. To provide an official of another Federal agency information he or she needs to know in the performance of his or her official duties or reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

o. To disclose information to the Department of Labor, Department of Veterans Administration, Social Security Administration, Department of Defense, or any other Federal agencies that have special civilian employee retirement programs; or to a national, State, county, municipal, or other publicly recognized charitable or income security, administration agency (e.g., State unemployment compensation agencies), when necessary to adjudicate a claim under the retirement, insurance, unemployment, or health benefits programs of the Office or an agency to conduct an analytical study or audit of benefits being paid under such programs.

p. To disclose to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These standards are maintained in file folders, in automated media, or on microfiche or microfilm.

RETRIEVABILITY:

These records are retrieved by the names and social security number of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in locked metal filing cabinets or in automated media to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Records documenting an adverse action, performance-based removal or demotion action, or covered actions against probationers are disposed of not sooner then four years nor later than seven years after the closing of the case in accordance with each agency's records disposition manual. Disposal is by shredding, or erasure of tapes (disks).

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Employee and Workforce Performance, Human Resources Systems Service, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415 for actions taken under Parts 432, 752 (Subparts A through D only), and 754. Assistant Director for Executive Policy and Services, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415 for actions taken against SES appointees under subparts E and F, of part 752. Associate Director for Employment Service for actions taken under Part 315.

NOTIFICATION PROCEDURE:

Individuals receiving notice of a proposed adverse, removal, or demotion action must be provided access to all documents supporting the notice. At any time thereafter, individuals subject to the action will be provided access to the complete record. Individuals should contact the agency personnel or designated office where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

RECORD ACCESS PROCEDURE:

Individuals against whom such actions are taken must be provided access to the record. However, after the action has been closed, an individual may request access to the official file by contacting the agency personnel or designated office where the action was processed. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals requesting access must also follow the Office's Privacy Act regulations on verification of identity and access to records (5 CFR Part 297).

CONTESTING RECORD PROCEDURE:

Review of requests from individuals seeking amendment of their records that have or could have been the subject of a judicial, quasi-judicial, or administrative action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the agency personnel or designated office where the actions were processed. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals requesting amendment must also follow the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By supervisors/managers.

b. By the individual on whom the record is maintained.

c. By testimony of witnesses.

d. By other agency officials.

e. By other agency records.

f. From related correspondence from organizations or persons.

OPM/GOVT–4 [Reserved]

OPM/GOVT–5

SYSTEM NAME:

Recruiting, Examining, and Placement Records

SYSTEM LOCATION:

Associate Director for Employment Service, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, OPM regional and area offices; and personnel or other designated offices of Federal agencies that are authorized to make appointments and to act for the Office by delegated authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Persons who have applied to the Office or agencies for Federal employment and current and former Federal employees submitting applications for other positions in the Federal service.

b. Applicants for Federal employment believed or found to be unsuitable for employment on medical grounds.

CATEGORIES OF RECORDS IN THE SYSTEM:

In general, all records in this system contain identifying information including name, date of birth, social security number, and home address. These records pertain to assembled and unassembled examining procedures and contain information on both competitive examinations and on certain noncompetitive actions, such as determinations of time-in-grade restriction waivers, waiver of qualification requirement determinations, and variations in regulatory requirements in individual cases.

This system includes such records as—

a. Applications for employment that contain information on work and education, military service, convictions for offenses against the law, military service, and indications of specialized training or receipt of awards or honors. These records may also include copies of correspondence between the applicant and the Office or agency.

b. Results of written exams and indications of how information in the application was rated. These records also contain information on the ranking of an applicant, his or her placement on a list of eligibles, what certificates applicant's names appeared on, an agency's request for Office approval of the agency's objection to an eligible's qualifications and the Office's decision in the matter, an agency's request for Office approval for the agency to pass over an eligible and the Office's decision in the matter, and an agency's decision to object/pass over an eligible when the agency has authority to make such decisions under agreement with the Office.

c. Records regarding the Office's final decision on an agency's decision to objection/pass over an eligible for suitability or medical reasons or when the objection/pass over decision applies to a compensable preference eligible with 30 percent or more disability. (Does not include a rating of ineligibility for employment because of a confirmed positive test result under Executive Order 12564.)

d. Responses to and results of approved personality or similar tests administered by the Office or agency.

e. Records relating to rating appeals filed with the Office or agency.

f. Registration sheets, control cards, and related documents regarding Federal employees requesting placement assistance in view of pending or realized displacement because of reduction in force, transfer or discontinuance of function, or reorganization.

g. Records concerning non-competitive action cases referred to the Office for decision. These files include such records as waiver of time-in-grade requirements, decisions on superior qualification appointments, temporary appointments outside a register, and employee status determinations. Authority for making decisions on many of these actions has also been delegated to agencies. The records retained by the Office on such actions and copies of such files retained by the agency submitting the request to the Office, along with records that agencies maintain as a result of the Office's delegations of authorities, are considered part of this system of records.

h. Records retained to support Schedule A appointments of severely physically handicapped individuals, retained both by the Office and agencies acting under the Office delegated authorities, are part of this system.

i. Agency applicant supply file systems (when the agency retains applications, résumés, and other related records for hard-to-fill or unique positions, for future consideration), along with any pre-employment vouchers obtained in connection with an agency's processing of an application, are included in this system.

j. Records derived from the Office-developed or agency-developed assessment center exercises.

k. Case files related to medical suitability determinations and appeals.

l. Records related to an applicant's examination for use of illegal drugs under provisions of Executive Order 12564. Such records may be retained by the agency (e.g., evidence of confirmed positive test results) or by a contractor laboratory (e.g., the record of the testing of an applicant, whether negative, or confirmed or unconfirmed positive test result).

Note 1.—Only Routine Use "p" identified for this system of records is applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and any supervisory or management official within the employee's agency having authority to take the adverse personnel action against the employee.

Note 2.—The Office does not intend that records created by agencies in connection with the agency's Merit Promotion Plan program be included in the term "Applicant Supply File" as used within this notice. It is the Office's position that Merit Promotion Plan records are not a system of records within the meaning of the Privacy Act as such records are usually filed by a vacancy announcement number or some other key that is not a unique personnel identifier. Agencies may choose to consider such records as within the meaning of a system of records as used in the Privacy Act, but if they do so, they are solely responsible for implementing Privacy Act requirements, including establishment and notice of a system of records pertaining to such records.

Note 3.—To the extent that an agency utilizes an automated medium in connection with maintenance of records in this system, the automated versions of these records are considered covered by this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions or amendments:

5 U.S.C. 1302, 3109, 3301, 3302, 3304, 3305, 3306, 3307, 3309, 3313, 3317, 3318, 3319, 3326, 4103, 4723, 5532, and 5533, and Executive Order 9397.

PURPOSE:

The records are used in considering individuals who have applied for positions in the Federal service by making determinations of qualifications including medical qualifications, for positions applied for, and to rate and rank applicants applying for the same or similar positions. They are also used to refer candidates to Federal agencies for employment consideration, including appointment, transfer, reinstatement, reassignment, or promotion. Records derived from the Office-developed or agency-developed assessment center exercises may be used to determine training needs of participants. These

VOL 61 ISS 136 JUL 15 1996 UMI

records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Note 4—With the exception of Routine Use "p," none of the Other Routine Uses identified for this system of records are applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within that agency, generally only to the agency Medical Review Officer (MRO), the administrator of the agency's Employee Assistance Program, and the management official empowered to recommend or take adverse action affecting the individual.

a. To refer applicants, including current and former Federal employees to Federal agencies for consideration for employment, transfer, reassignment, reinstatement, or promotion.

b. With the permission of the applicant, to refer applicants to State and local governments, congressional offices, international organizations, and other public offices for employment consideration.

c. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

d. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purposes of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision concerning hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, classifying positions, letting a contract, or issuing a license, grant, or other benefit.

e. To disclose information to a Federal agency, in response to its request, in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, classifying positions, letting a contract, or issuing a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

f. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

g. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

h. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to a judicial or administrative proceeding.

i. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, when the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

j. By the National Archives and Records Administration in records management inspections and its role as Archivist.

k. By the agency maintaining the records or by the Office to locate individuals for personnel research or survey response or in producing summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

l. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as prescribed in 5 U.S.C. chapter 12, or as may be authorized by law.

m. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines or Employee Selection Procedures, or other functions vested in the Commission.

n. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

o. To disclose, in response to a request for discovery or for an appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

p. To disclose the results of a drug test of a Federal employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

q. To disclose information to Federal, State, local, and professional licensing boards, Boards of Medical Examiners, or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning the issuance, retention, or revocation of licenses, certifications, profession, or specialty, in order to obtain information relevant to an agency decision concerning the hiring, retention, or termination of an employee or to inform a Federal agency or licensing board or the appropriate non-government entity about the health care practice of a terminated, resigned, or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency.

r. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tapes, disk, punched cards, microfiche, cards, lists, and forms.

RETRIEVABILITY:

Records are retrieved by the name, date of birth, social security number, and/or identification number assigned to the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in a secured area or automated media with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records in this system are retained for varying lengths of time, ranging from a few months to 5 years, e.g., applicant records that are part of medical determination case files or medical suitability appeal files are retained for 3 years from completion of action on the case. Most records are retained for a period of 1 to 2 years. Some records, such as individual applications, become part of the person's permanent official records when hired, while some records (e.g., non-competitive action case files), are retained for 5 years. Some records are destroyed by shredding or burning while magnetic tapes or disks are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director Employment Service, Office of personnel Management, 1900 E Street, NW., Washington, D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the agency or the Office where application was made or examination was taken. Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social security number.
d. Identification number (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

RECORD ACCESS PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. (c)(3) and (d), regarding access to records.

The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kind of material exempted and the reasons for exempting them from access. Individuals wishing to request access to their non-exempt records should contact the agency or the Office where application was made or examination was taken. Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social security number.
d. Identification number (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

Individuals requesting access must also comply with the Office's privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of material exempted and the reasons for exempting them from amendment. An individual may contact the agency or the Office where the application is filed at any time to update qualifications, education, experience, or other data maintained in the system.

Such regular administrative updating of records should not be requested under the provisions of the Privacy Act. However, individuals wishing to request amendment of other records under the provisions of the Privacy Act should contact the agency or the Office where the application was made or the examination was taken. Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social security number.
d. Identification number (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR Part 297).

Note 5.—In responding to an inquiry or a request for access or amendment, resource specialists may contact the Office's area office that provides examining and rating assistance for help in processing the request.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individuals to whom it applies or is derived from information the individual supplied, reports from medical personnel on physical qualifications, results of examinations that are made known to applicants, agencies, and Office records, and vouchers supplied by references or other sources that the applicant lists or that are developed.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains investigative materials that are used solely to determine the appropriateness of a request for approval of an objection to an eligible's qualifications for Federal civilian employment or vouchers received during the processing of an application. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such investigative material from certain provisions of the Act, to the extent that release of the material to the individual whom the information is about would—

a. Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or

b. Reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

This system contain testing and examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relate to access to and amendment of records.

The specific material exempted include, but are not limited to, the following:

a. Answer keys.
b. Assessment center exercises.
c. Assessment center exercise reports.
d. Assessor guidance material.
e. Assessment center observation reports.
f. Assessment center summary reports.

VOL
61
ISS
136
1996
JL
15
UMI

g. Other applicant appraisal methods, such as performance tests, work samples and simulations, miniature training and evaluation exercises, structured interviews, and their associated evaluation guides and reports.

h. Item analyses and similar data that contain test keys.

i. Ratings given for validating examinations.

j. Rating schedules, including crediting plans and scoring formulas for other selection procedures.

k. Rating sheets.

l. Test booklets, including the written instructions for their preparation.

m. Test item files.

n. Test answer sheets.

OPM/GOVT–6

SYSTEM NAME:

Personnel Research and Test Validation Records.

SYSTEM LOCATION:

Director, Office of Personnel Resources and Development, Employment Service, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415; OPM's Service Centers, and agency personnel offices (or other designated offices) conducting personnel research.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees, applicants for Federal employment, current and former State and local government employees, and applicants for State and local government employment, selected private sector employees, and applicants for sample comparison groups.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information on education and employment history, test scores, responses to test items and questionnaires, interview data, and ratings of supervisors regarding the individuals to whom the records pertain. Additional information (race, national origin, disability status, and background) is collected from applicants for certain examinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions or amendments:

5 U.S.C. 1303, 3301, and 4702.

PURPOSE:

These records are collected, maintained, and used by the Office or other Federal agencies for the construction, analysis, and validation of written tests and other assessment instruments used in personnel selection and appraisal, other assessment instruments used in personnel selection and appraisal, and for research on and evaluation of personnel/organizational management and staffing methods, including workforce effectiveness studies. Agencies and the Office may provide each other with data collected in support of these functions. Such research includes studies extending over a period of time (longitudinal studies). Private sector data are used in research only, to evaluate Federal study results against non-Federal comparison groups. Race and national origin data are used by the Office or other agencies to evaluate the role and effects of selection procedures in the total employee staffing process. Use of these race and national origin data is limited to such evaluation, oversight and research projects conducted by the employing agencies or the Office. The records may also be used by the Office or other Federal agencies to locate individuals for personnel research. Data are collected on a project-by-project basis under conditions assuring the confidentiality of the information. No personnel action or selection is made using these research records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Under normal circumstances, no individually identifiable records will be provided. However, under those unusual circumstances when an individually identifiable record is required, proper safeguards will be maintained to protect the information collected from unwarranted invasion of personal privacy. Such protection must be specified in writing by the requester and, to the satisfaction of the agency official responsible for maintaining the data, indicate that the proposed use of the data is in compliance with the letter and spirit of the Privacy Act. Under these circumstances, the routine uses are as follows:

a. By the OPM or employing agency maintaining the records to locate individuals for personnel research or survey responses and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

b. To furnish personnel records and information to the Equal Employment Opportunity Commission for use in determining the existence of adverse impact in the total selection program, reviewing allegations of discrimination, or assessing the status of compliance with Federal law.

c. To furnish information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with actions by offices relating to allegations of discriminatory practices on the part of an agency or one of its employees.

d. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

e. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

f. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

g. To provide information to a congressional office from the record of an individual in response to a request from that congressional office made at the request of that individual.

h. To provide aggregate data to non-Federal organizations participating in workforce studies. These data will be limited to individuals associated with the organization requesting the data or to data aggregated for all organizations in a study.

i. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

j. To disclose research records to a court or other body in camera when tests and other assessment instruments are involved.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETENTION AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on punched cards, disks, magnetic tape, CD Rom.

RETRIEVABILITY:

Records are generally maintained by project. Personal information can be retrieved by name or personal identifier only for certain research projects such as those involving longitudinal studies.

SAFEGUARDS:

Records are kept in locked files in a locked room with access limited to authorized staff. Access to tape, disk, and other files used in data processing will be only by authorized staff.

RETENTION AND DISPOSAL:

Records are retained for 2 years after completion of the project unless needed in the course of litigation or other administrative actions involving a research or test validation survey. Records collected for longitudinal studies will be maintained indefinitely. Manual records are destroyed by shredding or burning and magnetic tapes and disks are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Resources and Development, Employment Service, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager, the OPM regional office servicing the State where they are employed, or their employing agency's personnel office. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. If known, the title, time, and/or place of the research study in which the individual participated.

d. Social security number.

e. Signature.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding access to records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of material exempted and the reasons for exempting them from access. Individuals wishing to request access to non-exempt records should contact the appropriate office listed in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. If known, the title, time, and/or place of the research study in which the individual participated.

d. Social security number.

e. Signature.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of materials exempted and the reasons for exempting them from amendment. Individuals wishing to request amendment of any non-exempt records should contact the appropriate office listed in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. If known, the title, time, and/or place of the research study in which the individual participated.

d. Social security number.

e. Signature.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Individual applicants and employees; supervisors; assessment center assessors; and agency or Office personnel files and records (e.g., race, sex, national origin, and disability status data from OPM/GOVT–1 and OPM/GOVT–7 systems of records).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains testing and examination materials that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing and examination material and information from certain provisions of the Act, when the disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relates to access to and amendment of records.

This system contains records required to be maintained and used solely for statistical purposes. The Privacy Act, at 5 U.S.C. 552a(k)(4), permits an agency to exempt all such statistical records from certain provisions of the Act, when the disclosure of the material would compromise the objectivity and fairness of these records. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relates to access to and amendment of records.

The specific materials exempted include, but are not limited to, the following:

a. Answer keys.

b. Assessment center and interview exercises.

c. Assessment center and interview exercise reports.

d. Assessor guidance material.

e. Assessment center observation reports.

f. Assessment center and interview summary reports.

g. Other applicant appraisal methods, such as performance tests, work samples and simulations, miniature training and evaluation exercises, interviews, and reports.

h. Item analyses and similar data that contain test keys.

i. Ratings given for validating examinations.

j. Rating schedules, including crediting plans and scoring formulas for other selection procedures.

k. Ratings sheets.

l. Test booklets, including the written instructions for their preparation.

m. Test item files.

n. Test answer sheets.

o. Those portions of research and development files that could specifically reveal the contents of the above exempt documents.

p. Performance appraisals for research purposes.

OPM/GOVT–7

SYSTEM NAME:

Applicant Race, Sex, National Origin, and Disability Status Records.

VOL
61
ISS
136
JL
15
1996
UMI

SYSTEM LOCATION:

Records in this system may be located in the following offices:

a. Director Office of Personnel Resources and Development, Employment Service, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

b. Office of Diversity, Employment Service, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

c. OPM's Service Centers, and any register-holding offices under the jurisdiction of the Service Center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees and individuals who have applied for Federal employment, including—

a. Applicants for examinations administered either by the Office or by employing agencies.

b. Applicants on registers or in inventories by the Office and subject to its regulations.

c. Applicants for positions in agencies having direct hiring authority and using their own examining procedures in compliance with the Office regulations.

d. Applicants whose records are retained in an agency's Equal Opportunity Recruitment file (including any file an agency maintains on current employees from under-represented groups).

e. Applicants (including current and former Federal employees) who apply for vacancies announced under an agency's merit promotion plan.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records include the individual's names; social security number; date of birth; statement of major field of study; type of current or former Federal employment status (e.g., career or temporary); applications showing work and education experience; and race, sex, national origin, and disability status data.

Note—The race and national origin information in this system is obtained by three alternative methods: (1) Use of an agency's OMB approved form on which individuals identify themselves as to race and national origin;

(2) by visual observation (race) or knowledge of an individual's background (national origin); or (3) at the agency's option, from the OPM/GOVT–1 system in the case of applicants who are current Federal employees. Disability status is obtained by use of Standard Form 256, "Self Identification of Medical Disability," which allows for a description by self-identification of the handicap.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions or amendments:

5 U.S.C. 7201, Sections 4A, 4B, 15A(1) and (2), 15B(11), and 15D(11); Uniform Guidelines on Employee Selection Procedures (1978); 43 FR 38297 *et seq.* (August 25, 1978); 29 CFR 720.301; and 29 CFR 1613.301.

PURPOSE(S):

These records are used by OPM and agencies to—

a. Evaluate personnel/organizational measurement and selection methods.

b. Implement and evaluate agency affirmative employment programs.

c. Implement and evaluate agency Federal Equal Opportunity Recruitment Programs (including establishment of minority recruitment files).

d. Enable the Office to meet its responsibility to assess an agency's implementation of the Federal Equal Opportunity Recruitment Program.

e. Determine adverse impact in the selection process as required by the Uniform Guidelines cited in the Authority section above. (See also "Questions and Answers," on those Guidelines published at 44 FR 11996, March 2, 1979.)

f. Enable reports to be prepared regarding breakdowns by race, sex, and national origin of applicants (by exams taken, and on the selection of such applicants for employment).

g. To locate individuals for personnel research.

Note 1.—These data are maintained under conditions that ensure that the individual's identification as to race, sex, national origin, or disability status does not accompany that individual's application nor is otherwise made known when the individual is under consideration by a selecting official.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To disclose information to the Equal Employment Opportunity Commission (EEOC), in response to its request for use in the conduct of an examination of an agency's compliance with affirmative action plan instructions and the Uniform Guidelines on Employee Selection Procedures (1978), or other requirements imposed on agencies under EEOC authorities in connection with agency Equal Employment Opportunity programs.

b. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with the processing of appeals, special studies relating to the civil service and other merit systems in the executive branch, investigations into allegations of prohibited personnel practices, and such other functions; e.g., as prescribed in 5 U.S.C. chapter 12, or as may be authorized by law.

c. By the Office or employing agency maintaining the records to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

d. To disclose information to a Federal agency in response to its request for use in its Federal Equal Opportunity Recruitment Program to the extent that the information is relevant and necessary to the agency's efforts in identifying possible sources for minority recruitment.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

f. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is party to a judicial or administrative proceeding.

g. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

h. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on magnetic tape and disks.

RETRIEVABILITY:

Records are retrieved by the name and social security number of the individuals on whom they are maintained.

SAFEGUARDS:

Records are retained in locked metal filing cabinets in a secured room or in a computerized system accessible by confidential passwords issued only to specific personnel.

RETENTION AND DISPOSAL:

Records are generally retained for 2 years, except when needed to process applications or to prepare adverse impact and related reports, or for as long as an application is still under consideration for selection purposes. When records are needed in the course of an administrative procedure or litigation,they may be maintained until the administrative procedure or litigation is completed. Manual records are shredded or burned and magnetic tapes and disks are erased.

Note 2—When an agency retains an automated version of any of the records in this system, maintenance of that record beyond the above retention schedules is permitted for historical or statistical analysis, but only so long as the record is not used in a determination directly affecting the individual about whom the record pertains after the prescribed destruction date.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Resources and Development, Employment Service, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Those individuals wishing to inquire if this system contains information about them should contact the system manager; OPM's Service Centers covering the locations where the application for Federal employment was filed; or the personnel, Equal Employment Opportunity, or Equal Employment Opportunity Recruitment office or other designated office where they took an exam, filed an application, or where they are employed. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Social security number.

c. Title of examination, position, or vacancy announcement for which they filed.

d. The OPM or employing agency office where they are employed or submitted the information.

e. Signature.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to records about themselves should contact the appropriate office shown in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Social security number.

c. Title of examination, position, or vacancy announcement for which they filed.

d. The OPM or employing agency office where they are employed or submitted the information.

e. Signature.

An individual requesting access must also follow OPM's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records should contact the appropriate office shown in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified.

a. Name.

b. Social security number.

c. Title of examination, position, or vacancy announcement for which they filed.

d. The OPM or employing agency office where they are employed or submitted the information.

e. Signature.

An individual requesting amendment must also follow OPM's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information is provided by the individual to whom the record pertains, on forms approved by the Office of Management and Budget or is obtained directly from other agency or OPM records (e.g., race, sex, national origin, and disability status data may be obtained from the OPM/GOVT–1, General Personnel Records system).

OPM/GOVT–5 [Reserved]
OPM/GOVT–6

SYSTEM NAME:

File on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals.

SYSTEM LOCATION:

These records are located at the Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, OPM Oversight Division Offices, agency personnel offices (or other designated offices), and Federal records centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former Federal employees who have filed a position classification appeal or a job grading appeal with a U.S. Office of Personnel Management Oversight Division Office, or with their agency.

b. Current and former Federal employees who have filed a retained grade or pay appeal with a U.S. Office of Personnel Management Oversight Division Office.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to the processing and adjudication of a position classification appeal, job grading appeal, or retained grade or pay appeal. The records may include information and documents regarding a personnel action of the agency involved and the decision or determination rendered by an agency regarding the classifying or grading of a position or whether an employee is to remain in a retained grade or pay category. This system may also include transcripts of agency hearings and statements from agency employees.

Note 1.—This system notice also covers agency files created when: (a) An employee appeals a position classification or job grading decision to OPM or within the agency regardless of whether that agency appeal decision is further appealed to OPM; and (B) an employee files a retained grade or pay appeal with OPM.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

Includes the following with an revisions or amendments:

5 U.S.C. 5112, 5115, 5346, and 5366.

PURPOSES:

These records are primarily used to document the processing and adjudication of a position classification appeal, job grading appeal, or retained grade or pay appeal. Internally, OPM may use these records to locate individuals for personnel research.

VOL
61
ISS
1
36
JL
15
1996
UMI

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local government agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

c. To provide information to a congressional office from the record of an individual in response to an iniquiry from that congressional office made at the request of that individual.

d. To disclose information to any source from which additional information is requested in the course of adjudicating a position classification appeal, job grading appeal, or retained grade or pay appeal to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

e. To disclose information to a Federal agency, in response to its request, in connection with the hiring, retaining or assigning of an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, and classifying positions, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

f. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding.

g. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

h. By the Office or an agency in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

i. By the National Archives and Records Administration in records management inspections and its role as Archivist.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions; e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

l. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission, and to otherwise ensure compliance with the provisions of 5 U.S.C. 7201.

m. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

n. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES FOR STORAGE, RETRIEVAL, SAFEGUARDS, AND RETENTION AND DISPOSAL OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and binders and on index cards, magnetic tape, disks, and microfiche.

RETRIEVAL:

These records are retrieved by the subject's name, and the name of the employing agency of the individual on whom the record is maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets or automated media in a secured room, with access limited to those persons whose official duties require and such access.

RETENTION AND DISPOSAL:

Records related to position classification appeal, job grading appeal, and retained grade or pay appeal files are maintained for 7 years after closing action on the case. Records are destroyed by shredding, burning, or erasing as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director for Merit Systems Oversight, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should—

a. For records pertaining to retained grade or pay appeals, contact the system manager or the appropriate OPM Oversight Division Office.

b. For records pertaining to a position classification appeal or job grading appeal, where the appeal was made only to OPM, contact the system manager or the OPM Oversight Division Office, as appropriate.

c. For records pertaining to a position classification appeal or a job grading appeal filed with both the agency and OPM, contact the agency personnel officer, other designated officer, or the system manager, or the OPM Oversight Division Office, as appropriate.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Agency in which employed when the appeal was filed and the approximate date of the closing of the case.

d. Kind of action (e.g., position classification appeal, job grading appeal, or retained grade or pay appeal).

RECORD ACCESS PROCEDURE:

Individuals who have filed a position classification appeal, job grading appeal, or a retained grade or pay appeal, must be provided access to the record. However, after the appeal has been closed, an individual may request access to the official copy of the records by writing the official indicated in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Agency in which employed when appeal was filed and the approximate date of the closing of the case.

d. Kind of action (e.g., position classification appeal, job grading appeal, or retained grade or pay appeal).

Individuals requesting access must also follow OPM's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Review of requests from individuals seeking amendment of their records that have previously been or could have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency or administrative body ruling on the case, and will not include a review of the merits of the action, determination, or finding. Individuals wishing to request an amendment to their records to correct factual errors should contact the appropriate official indicated in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Agency in which employed when the appeal was filed and the approximate date of the closing of the case.

d. Kind of action (e.g., position classification appeal, job grading appeal, or retained grade or pay appeal).

Individuals requesting amendment of their records must also follow OPM's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

a. Individual to whom the record pertains.

b. Agency and/or OPM records relating to the action.

c. Statements from employees or testimony of witnesses.

d. Transcript of hearings.

OPM/GOVT–10

SYSTEM NAME:

Employee Medical File System Records.

SYSTEM LOCATION:

a. For current employees, records are located in agency medical, personnel, dispensary, health, safety, or other designated offices within the agency, or contractors performing a medical function for the agency.

b. For former employees, most records will be located in an Employee Medical Folder (EMF) stored at the National Personnel Records Center operated by the National Archives and Records Administration (NARA). In some cases, agencies may retain for a limited time (e.g., up to 3 years) some records on former employees.

Note 1.—The records in this system of records are "owned" by the Office of Personnel Management (Office) and should be provided to those Office employees who have an official need or use for those records. Therefore, if an employing agency is asked by an Office employee to access the records within this system, such a request should be honored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal civilian employees as defined in 5 U.S.C. 2105.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include—

a. Medical records, forms, and reports completed or obtained when an individual applies for a Federal job and is subsequently employed;

b. Medical records, forms and reports completed during employment as a condition of employment, either by the employing agency or by another agency, State or local government entity, or a private sector entity under contract to the employing agency;

c. Records and pertaining and resulting from the testing of the employee for use of illegal drugs under Executive Order 12564. Such records may be retained by the agency (e.g., by the agency Medical Review Official) or by a contractor laboratory. This includes records of negative results, confirmed or unconfirmed positive test results, and documents related to the reasons for testing or other aspects of test results.

d. Reports of on-the-job injuries and medical records, forms, and reports generated as a result of the filing of a claim for Workers' Compensation, whether the claim is accepted or not. (The official compensation claim file is not covered by this system; rather, it is part of the Department of Labor's Office of Workers' Compensation Program (OWCP) system of records.)

e. All other medical records, forms, and reports created on an employee during his/her period of employment, including any retained on a temporary basis (e.g., those designated to be retained only during the period of service with a given agency) and those designated for long-term retention (i.e., those retained for the entire duration of Federal service and for some period of time after).

Note 2.—Records maintained by an agency dispensary are included in this system only when they are the result of a condition of employment or related to an on-the-job occurrence.

Note 3.—Records pertaining to employee drug or alcohol abuse counseling or treatment, and those pertaining to other employee counseling programs conducted under Health Service Program established pursuant to 5 U.S.C. chapter 79, are not part of this system of records.

Note 4.—Only Routine Use "u" identified for this system of records is applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and any supervisory or management official within the employee's agency having authority to take the adverse personnel action against the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions or amendments:

Executive Orders 12107, 12196, and 12564 and 5 U.S.C. chapters 11; 31, 33, 43, 61, 63, and 83.

PURPOSE(S):

Records in this system of records are maintained for a variety of purposes, which include the following:

a. To ensure that records required to be retained on a long-term basis to meet the mandates of law, Executive order, or regulations (e.g., the Department of Labor's Occupational Safety and Health Administration (OSHA) and OWCP regulations), are so maintained.

b. To provide data necessary for proper medical evaluations and diagnoses, to ensure that proper treatment is administered, and to maintain continuity of medical care.

c. To provide an accurate medical history of the total health care and medical treatment received by the individual as well as job and/or hazard exposure documentation and health monitoring in relation to health status and claims of the individual.

VOL 61 ISS 136 JL 15 1996 UMI

d. To enable the planning for further care of the patient.

e. To provide a record of communications among members of the health care team who contribute to the patient's care.

f. To provide a legal document describing the health care administered and any exposure incident.

g. To provide a method for evaluating quality of health care rendered and job-health-protection including engineering protection provided, protective equipment worn, workplace monitoring, and medical exam monitoring required by OSHA or by good practice.

h. To ensure that all relevant, necessary, accurate, and timely data are available to support any medically-related employment decisions affecting the subject of the records (e.g., in connection with fitness-for-duty and disability retirement decisions).

i. To document claims filed with and the decisions reached by the OWCP and the individual's possible reemployment rights under statutes governing that program.

j. To document employee's reporting of on-the-job injuries or unhealthy or unsafe working conditions, including the reporting of such conditions to the OSHA and actions taken by that agency or by the employing agency.

k. To ensure proper and accurate operation of the agency's employee drug testing program under Executive Order 12564.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Note 5.—With the exception of Routine Use "u," none of the other Routine Uses identified for this system of records are applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and the management official empowered to recommend or take adverse action affecting the individual.

These records and information in these records may be used—

a. To disclose information to the Department of Labor, Department of Veterans Affairs, Social Security Administration, Federal Retirement Thrift Investment Board, or a national, State, or local social security type agency, when necessary to adjudicate a claim (filed by or on behalf of the individual) under a retirement, insurance, or health benefit program.

b. To disclose information to a Federal, State, or local agency to the extent necessary to comply with laws governing reporting of communicable disease.

c. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

d. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

e. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

f. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

g. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

h. To disclose information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

i. To disclose information to the Merit System Protection Board or the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, the Equal Employment Opportunity Commission, arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties.

j. To disclose information to survey team members from the Joint Commission on Accreditation of Hospitals (JCAH) when requested in connection with an accreditation review, but only to the extent that the information is relevant and necessary to meet the JCAH standards.

k. To disclose information to the National Archives and Records Administration in records management inspections and its role as Archivist.

l. To disclose information to health insurance carriers contracting with the Office to provide a health benefits plan under the Federal Employees Health Benefits Program information necessary to verify eligibility for payment of a claim for health benefits.

m. By the agency maintaining or responsible for generating the records to locate individuals for health research or survey response and in the production of summary descriptive statistics and analytical studies (e.g., epidemiological studies) in support of the function for which the records are collected and maintained. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study might be structured in such a way as to make the data individually identifiable by inference.

n. To disclose information to the Office of Federal Employees Group Life Insurance or Federal Retirement Thrift Investment Board that is relevant and necessary to adjudicate claims.

o. To disclose information, when an individual to whom a record pertains is mentally incompetent or under other legal disability, to any person who is responsible for the care of the individual, to the extent necessary.

p. To disclose to the agency-appointed representative of an employee, all notices, determinations, decisions, or other written communications issued to the employee, in connection with an examination ordered by the agency under—

(1) Medical evaluation (formerly Fitness for Duty) examinations procedures; or

(2) Agency-filed disability retirement procedures.

q. To disclose to a requesting agency, organization, or individual the home address and other information concerning those individuals who it is reasonably believed might have contracted an illness or been exposed to or suffered from a health hazard while employed in the Federal workforce.

r. To disclose information to a Federal agency, in response to its request or at the initiation of the agency maintaining the records, in connection with the retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency; or the lawful, statutory, administrative, or investigative purpose of the agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

s. To disclose to any Federal, State, or local government agency, in response to its request or at the initiation of the agency maintaining the records, information relevant and necessary to the lawful, statutory, administrative, or investigatory purpose of that agency as it relates to the conduct of job related epidemiological research or the insurance of compliance with Federal, State, or local government laws on health and safety in the work environment.

t. To disclose to officials of labor organizations recognized under 5 U.S.C. chapter 71, analyses using exposure or medical records and employee exposure records, in accordance with the records access rules of the Department of Labor's OSHA, and subject to the limitations at 29 CFR 1910.20(e)(2)(iii)(B).

u. To disclose the results of a drug test of a Federal employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

v. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement or job for the Federal Government.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on microfiche, in electronic record systems, and on file cards, x-rays, or other medical reports and forms.

RETRIEVABILITY:

Records are retrieved by the employee's name, date of birth, social security number, or any combination of those identifiers.

SAFEGUARDS:

Records are stored in locked file cabinets or locked rooms. Electronic records are protected by restricted access procedures and audit trails. Access to records is strictly limited to agency or contractor officials with a bona need for the records.

RETENTION AND DISPOSAL:

The EMF is maintained for the period of the employee's service in the agency and is then transferred to the National Personnel Records Center for storage, or as appropriate, to the next employing Federal agency. Other medical records are either retained at the agency for various lengths of time in accordance with the National Archives and Records Administration's records schedules or destroyed when they have served their purpose or when the employee leaves the agency. Within 30 days after the individual separates from the Federal service, the EMF is sent to the National Personnel Records Center for storage. Destruction of the EMF is in accordance with General Records Schedule-1(21). Records arising in connection with employee drug testing under Executive Order 12564 are generally retained for up to 3 years. Records are destroyed by shredding, burning, or by erasing the disk.

SYSTEM MANAGER(S) AND ADDRESS:

a. Assistant Director for Workforce Information, Human Resources Systems Service, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

b. For current Federal employees, OPM has delegated to the employing agency the Privacy Act responsibilities concerning access, amendment, and disclosure of the records within this system notice.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains records on them should follow the appropriate procedure listed below.

a. Current Employees. Current employees should contact their employing agency's personnel, dispensary, health, safety, medical, or other designated office responsible for maintaining the records, as identified in the agency's internal issuance covering this system. Individuals must furnish such identifying information as required by the agency for their records to be located and identified.

b. Former employees. Former employees should contact their former agency's personnel, dispensary, health, safety, medical, or other designated office responsible for maintaining the records, as identified in the agency's internal issuance covering this system. Additionally, for access to their EMF, they should submit a request to: OPF/EMF Access Unit, Office of Personnel Management, P.O. Box 18673, St. Louis, Missouri 63118.

Requests to the Office's OPF/EMF Access Unit in St. Louis, Missouri, must submit the following information for their records to be located and identified:

1. Full name.
2. Date of birth.
3. Social security number.
4. Agency name, dates, and location of last Federal service.
5. Signature.

RECORDS ACCESS PROCEDURE:

a. Current employees should contact the appropriate agency office as indicated in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the records sought.

b. Former employees should contact the appropriate agency office as indicated in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the records sought. Former employees may also submit a request to the Office's OPF/EMF Access Unit in St. Louis, Missouri, for access to their EMF. When submitting a request to the Office's OPF/EMF Access Unit in St. Louis, Missouri, the individual must furnish the following information to locate and identify the record sought:

1. Full name.
2. Date of birth.
3. Social security number.
4. Agency name, dates, and location of last Federal service.
5. Signature.

c. Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORDS PROCEDURE:

Because medical practitioners often provide differing, but equally valid medical judgments and opinions when making medical evaluations of an individual's health status, review of requests from individuals seeking amendment of their medical records, beyond correction and updating of the records, will be limited to consideration of including the differing opinion in the record rather than attempting to determine whether the original opinion is accurate.

Individuals wishing to amend their records should—

a. For a current employee, contact the appropriate agency office identified in the Notification Procedure section and furnish such identifying information as

VOL
61
ISS
136
JL
15
1996
UMI

required by the agency to locate and identify the records to be amended.

b. For a former employee, contact the appropriate agency office identified in the Notification Procedure section and furnish such identifying information as required by the agency to locate and identify the record to be amended. Former employees may also submit a request to amend records in their EMF to the system manager. When submitting a request to the system manager, the individual must furnish the following information to locate and identify the records to be amended:

1. Full name.
2. Date of birth.
3. Social security number.
4. Agency name, dates, and location of last Federal service.
5. Signature.

c. Individuals seeking amendment of their records must also follow the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORDS SOURCE CATEGORIES:

Records in this system are obtained from—

a. The individual to whom the records pertain.

b. Agency employee health unit staff.

c. Federal and private sector medical practitioners and treatment facilities.

d. Supervisors/managers and other agency officials.

e. Other agency records.

[FR Doc. 93–17425 Filed 7–12–96; 8:45 am]

BILLING CODE 6325–01–M

POSTAL SERVICE

Specifications for Postal Security Devices and Indicia (Postmarks); Correction

AGENCY: Postal Service.

ACTION: Correction to Notice of proposed specifications with request for comments.

SUMMARY: The original notice (61 FR 34460; July 2, 1996) included incorrect dates. The **DATES** section is corrected to read as follows:

DATES: Comments on the two specifications must be received on or before September 30, 1996. Comments addressing intellectual property issues must be received on or before August 15, 1996. A general meeting on this subject is being planned for July 19, 1996 in Washington, DC. All persons who have expressed an interest in the proposed specifications will be invited to attend the meeting. This meeting will focus solely on technical aspects of the two specifications. Interested parties may submit questions by July 17, 1996 which will be considered for incorporation into the meeting presentation.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 96–17961 Filed 7–10–96; 4:50 pm]

BILLING CODE 7710–12–P

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting

Notice is hereby given of the changed meeting dates of the Prospective Payment Assessment Commission from Tuesday and Wednesday, October 1–2, 1996, to Tuesday and Wednesday, October 8–9, 1996 at the Madison Hotel, 15th & M Streets, NW., Washington, DC, 202/862–1600.

The meeting time and location will be published approximately one week in advance.

Donald A. Young,

Executive Director.

[FR Doc. 96–17830 Filed 7–12–96; 8:45 am]

BILLING CODE 6820–SW–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Chase Corporation, Common Stock, $.10 Par Value) File No. 1–0552

July 9, 1996.

Chase Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Boston Stock Exchange Incorporated ("BSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Security is presently listed on the American Stock Exchange, Inc. In making the decision to withdraw its Security, from listing on the BSE, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Security on the BSE and the Amex. The Company does not see any particular advantage in the dual trading of its securities and believes that dual listing would fragment the market for its securities.

Any interested person may, on or before July 30, 1996, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17933 Filed 7–12–96; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Laser Industries Limited, Ordinary Shares Par Value NIS 0.00001); File No. 1–8201

July 9, 1996.

Laser Industries Limited ("Company"), a Company incorporated in Israeli, has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, its Board of Directors unanimously approved resolutions on May 27, 1996, which authorized the Company's officers, among other things, to withdraw the Security from listing on the Amex and to apply for the quotation of the Security on the National Association of Securities Dealers Automated Quotations National Market System ("Nasdaq/NMS").

The Company's Board of Directors believes that quotation on Nasdaq will be more beneficial to the Company's shareholders than the present listing on the Amex for the following reasons:

(a) The Nasdaq's system of multiple, competing market makers provide the Company with increased visibility within the financial community, resulting in increased awareness of the Company's activities among investors;

(b) Nasdaq system will enable the Company to attract its own market makers and to expand the capital base available for purchases of its Security;

(c) Nasdaq system will, in the Company's opinion, stimulate increased demand for its Security and result in greater liquidity for the Company's shareholders;

(d) The firms making a market in the Security on Nasdaq will be more likely to issue research reports with respect to the Company, which will increase the availability of information about the Company and increase its visibility to investors; and

(e) A significant number of the Company's competitors which are publicly owned have one or more classes of common equity securities which are quoted on Nasdaq, providing the Company's shareholders with a comparable peer group against which to assess the trading performance of the Security.

Any interested person may, on or before July 30, 1996 submit by letter to the Secretary of the securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17932 Filed 7–12–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22066; 812–10040]

Norwest Bank Minnesota, N.A., et al.; Notice of Application

July 9, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Norwest Bank Minnesota, N.A. (the "Bank"), Norwest Advantage Funds, Forum Financial Services, Inc. ("Forum"), Core Trust (Delaware) ("Core Trust"), and Schroder Capital Management International, Inc. ("Schroder").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act from section 12(d)(1) of the Act, and under sections 6(c) and 17(b) of the Act from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would supersede a prior order (the "Existing Order")[1] and would permit Norwest Advantage Funds to invest any percentage of their assets in an underlying Core Trust portfolio or in direct investments. It also would remove certain restrictions currently imposed on the Core Trust portfolios to permit them to accept investments from persons other than Norwest Advantage Funds.

FILING DATE: The application was filed on March 8, 1996 and amended on May 17, 1996, and June 27, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 5, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Forum Financial Group, Two Portland Square, Portland, Maine 04101, Attention: David I. Goldstein, Esq.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574 or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Norwest Advantage Funds is a registered open-end series investment company organized as a Delaware business trust.[2] Norwest Advantage Funds currently consists of 30 series. Five of the Norwest Advantage Funds (the "Blended Funds") allocate their assets among a combination of different investment strategies or styles (*e.g.*, small company stock, international stock, short-term corporate bonds). The Blended Funds currently are offered without a sales load or redemption fee and do not bear distribution expenses pursuant to a plan adopted under rule 12b–1 under the Act, although applicants anticipate revising these arrangements in the future. Other Norwest Advantage Funds offer multiple classes of shares in reliance on rule 18f–3, including classes subject to sales loads and distribution expenses pursuant to rule 12b–1 plans.

2. Core Trust is a registered open-end series investment company organized as a Delaware business trust. Core Trust does not offer its securities to the public; its securities are offered only in private placement transactions to registered investment companies and other institutional investors. Core Trust, however, reserves the right to offer its shares to the public in the future. Presently, there are seven series of Core Trust (the "Core Trust Portfolios"). Three series of Core Trust, Small Company Portfolio, International Portfolio II, and Index Portfolio, operate in a manner similar to master funds in a master-feeder arrangement, and currently offer their securities only to the Blended Funds pursuant to the Existing Order (the "Core Advantage Portfolios"). Four series of Core Trust operate as master funds in master feeder arrangements: Treasury Cash Portfolio, Government Cash Portfolio, Cash Portfolio (collectively, the "Money Fund Portfolios"), and International Portfolio. The Money Fund Portfolios (which currently are unrelated in any way to the Bank and/or Norwest Advantage Funds) invest in money market instruments. International Portfolio currently offers its securities only to International fund, a series of Norwest Advantage Funds, in reliance on section 12(d)(1)(E) of the Act. The Core Trust Portfolios may, in the future, be offered to Funds (as defined below) relying on any order granting this application, or to any other investor legally entitled to purchase securities issued by the Core Trust Portfolios. Shares of the Core Trust Portfolios that intend to rely on the requested order presently are offered

[1] *Norwest Bank Minnesota, N.A., et al.*, Investment Company Act Release Nos. 20640 (Oct. 19, 1994) (notice) and 20697 (Nov. 10, 1994) (order).

[2] At the time of the Existing Order, Norwest Advantage Funds was known as "Norwest Funds" Effective October 1, 1996, Norwest Funds changed its name to Norwest Advantage Funds.

VOL
61
ISS
136
JL
15
1996
UMI

without a sales load or redemption fee and do not bear distribution expenses pursuant to a rule 12b–1 plan.

3. The Bank is a wholly-owned subsidiary of Norwest Corporation. The Bank is the investment adviser to each Norwest Advantage Fund and two Core Advantage Portfolios. Schroder, a registered investment adviser, serves as subadviser to international fund and, with respect to investments in international securities, to each Blended Fund. Schroder also serves as investment adviser to International Portfolio and International Portfolio II of Core Trust. Forum, a registered broker-dealer and investment adviser, provides distribution, management, and related services to the Norwest Advantage Funds and Core Trust. Applicants request that any relief granted pursuant to this application also apply to (a) any registered open-end investment company or series thereof for which the Bank, Schroder, Forum, or any entity that controls, is controlled by, or is under common control with the Bank, Schroder, or Forum serves as investment adviser, administrator (as that term is defined in item 5 of Form N–1A), principal underwriter, or placement agent (together with Norwest Advantage Funds, the "Funds") that in the future determines to invest its assets in another registered open-end investment company that is part of the same "group of investment companies," (together with Core Trust, the "Portfolios")[3] and (b) to any such Portfolio.[4]

4. The Existing Order allows each Blended Fund to invest a portion of its assets, within a specified range, in the outstanding voting shares of the three Core Advantage Portfolios, and imposes several restrictions on the operation of the Blended Funds and Core Advantage Portfolios. For example, the Existing Order applies only to investments in the three Core Advantage Portfolios. A Blended Fund that allocates part of its assets to a different investment style must invest in portfolio securities directly, without the benefits of pooled investment. Each Core Advantage Portfolio is barred from offering securities to persons other than Blended Funds relying on the Existing Order, including feeder funds relying on section 12(d)(1)(E) of the Act. Moreover, each Blended Fund must allocate a "base percentage" of its assets to each of the three Core Advantage Portfolios in which it invests, and may deviate from these base allocations only within specified ranges. Applicants contend that the Existing Order is outdated and that the proposed revisions constitute a cost-effective response to investor demand for diversification of fund portfolios.

5. Applicants request an exemption under section 6(c) of the Act from section 12(d)(1) of the Act, and under sections 6(c) and 17(b) of the Act from section 17(a) of the Act. The requested order would supersede the Existing Order and would permit the Funds to invest any percentage of their assets in underlying Portfolios or in direct investments to the extent consistent with their investment policies and registration statements. It also would remove certain restrictions currently imposed on the Core Trust portfolios to permit the Portfolios to accept investments from persons other than the Norwest Advantage Funds.

6. The funds will not invest in any Portfolio unless the Portfolio may not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A), except for securities received as a dividend or as a result of a plan of reorganization of any company. The exception for securities received as a dividend or as a result of a plan of reorganization is based on section 12(d)(1)(D).[5] No Portfolio will participate in any plan or reorganization devised for the purpose of evading the provisions of section 12(d)(1)(A). Applicants assert that the legislative history of section 12(d)(1)(D) indicates that the enumerated exceptions are warranted because they do not involve any new commitment on the part of the acquiring investment company, and consequently do not present the abuses section 12(d)(1)(A) was intended to address.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 6(c) provides that the SEC may exempt persons or transactions if, and to the extent that, such exemption is necessary or appropriate in the pubic interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order under section 6(c) exempting them from sections 12(d)(1)(A) and (B) to permit the Funds to invest in shares of the Portfolios in excess of the percentage limitations of section 12(d)(1).

3. Applicants believe that the proposed investment structure will not be subject to any of the abuses that section 12(d)(1) was intended to prevent. One of the concerns that led to the enactment of section 12(d)(1) was the layering of fees. Applicants assert that fees charged to the Funds and Portfolios in which they invest will not be duplicative. Any advisory fees that are charged to a Fund would be subject to the approval of the Fund's director or trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"). This approval process is designed to ensure that any advisory fee that may be borne by any Fund would be for services that augment, rather than duplicate, those services provided to the Portfolios. If the requested relief is granted, applicants expect to seek shareholder approval to the extent required by section 15 of the Act to reorganize the fee structure of the Blended Funds and the Portfolios such that advisory fees would be charged only at the Portfolio level. If shareholder approval is obtained, advisory fees then would be assessed at the Fund level only for (a) services related to the direct investment activities undertaken by the Funds, and (b) any non-duplicative services rendered only at the Fund level. Any advisory fee charged at the Fund level would compensate the adviser for services (*e.g.*, asset allocation) that were unique to the Fund and that would not be provided at the Portfolio level.

4. Applicants assert that granting the requested relief would not present any danger of duplicative or excessive sales loads. Applicants intend that sales charges will continue to be incurred only at the Fund level. Applicants have, however, reserved the right to have different sales load structures in the future, which may include the payment of sales charges or service fees at both the Portfolio and Fund levels. If a Fund determines to invest in shares of a Portfolio that also bears a sales charge or service fee, it will do so only in conformity with the National Association of Securities Dealers' ("NASD") restrictions on aggregated sales charges and service fees. The funds would pay no sales charges on account of their investments in the Portfolios unless such charges had been reviewed and approved by the Fund's Independent Trustees.

5. Applicants assert that the requested relief would not lead to undue control or the threat of large-scale redemptions. Applicants contend that the excessive from the threat of redemptions and the concomitant loss of advisory fees does no apply in the context of funds of funds, all of which belong to the same group of investment companies. Because of the relationship among the investment advisers and/or principal underwriters/placement agents for a Fund and the Portfolio in which it invests, the threat of redemption as a means of exercising control is remote.

6. Section 17(a) makes it unlawful for an affiliated person of a registered investment company, or an affiliated person of such person, to sell securities to, or purchase securities from, the company. Because Norwest Advantage Funds and the index Portfolio and the Small Company Portfolio of Core Trust are each advised by the Bank, and because six Norwest Advantage Funds and International Portfolio and International Portfolio II are advised by or subadvised by Schroder, Norwest Advantage Funds and Core Trust could be deemed to be affiliates of one another. Purchases by the Norwest Advantage Funds of the shares of the Core Trust Portfolios and the sale by the Core Trust Portfolios of their shares to the Norwest Advantage Funds could thus be deemed to be principal transactions between affiliated persons under section 17(a).

7. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if (a) the terms of the proposed transaction, including the consideration paid or received, are reasonable and fair and do not involve overreaching on the part of any persons concerned; (b) the proposed transaction is consistent with the policies of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act. Applicants request an exemption under sections 6(c) and 17(b) to permit the Portfolios to sell their shares to the Funds.[6] Applicants believe that the proposed transaction meet the standards of sections 6(c) and 17(b).

Applicant's Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each Fund will be part of the same "group of investment companies" as any Portfolio in which it invests. For purposes of this condition, "group of investment companies" mean any two or more registered open-end investment companies that hold themselves out to investors as related companies for purposes of investment and investor services, and (a) that have a common investment adviser or principal underwriter/placement agent, or (b) the investment adviser or principal underwriter/placement agent of one of the companies is an affiliated person as defined in section 2(a)(3) of the Act of the investment adviser or principal underwriter/placement agent of each of the other companies.

2. A Fund will not invest in any Portfolio unless the Portfolio may not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except for securities received as a dividend or as a result of a plan of reorganization of any company.

3. At least a majority of each Fund's directors or trustees will be Independent Trustees, and the selection of Independent Trustees necessary to fill any vacancies on the board of directors or trustees, as well as the nomination of those persons to be recommended by the board of directors or trustees in connection with any shareholder vote, will be committed to the discretion of such Independent Trustees.

4. Prior to approving any advisory or management contract under section 15 of the Act or promptly upon the termination of a fee waiver, the directors or trustees of each Fund, including a majority of the Independent Trustees, shall find that the management and advisory fees charged under such contract, if any, are based on services that will be in addition to, rather than duplicative of, the services provided under the contracts of any Portfolio in which the Fund may invest; provided that no such findings will be necessary if the Bank or other investment adviser to a Portfolio waives all advisory fees that may be imposed for serving as investment adviser to the Portfolio or, if only a portion of such advisory fees are waived, the Bank or another party reimburses the Portfolio for any advisory fee or portion thereof that is not waived. These findings and their basis will be recorded fully in the minute books of the Fund.

5. Any Sales Charges or Service Fees, as such terms are defined under Section 26(b) of Article III of the NASD Rules of Fair Practice, as may be charged with respect to securities of a Fund, when aggregated with any such sales charges and/or service fees borne by the Fund with respect to the shares of a Portfolio, shall not exceed the limits set forth in section 26(d) of Article III of the NASD Rules of Fair Practice.

6. Applicants will provide the following information in electronic format to the Chief Financial Analyst of the SEC's Division of Investment Management as soon as reasonably practicable following each fiscal year-end of each Fund, unless the Chief Financial Analyst notifies applicants that the information need no longer be submitted: (a) monthly average total assets for each Fund and each Portfolio in which a Fund invests; (b) monthly purchases and redemptions (other than by exchange) for each Fund and each Portfolio in which a Fund invests; (c) monthly exchanges into and out of each Fund and each Portfolio in which a Fund invests; (d) month-end allocations of each Fund's assets among the Portfolios in which it invests; (e) annual expense ratios for each Fund and each Portfolio in which a Fund invests; and (f) a description of any vote taken by the shareholders of any Portfolio in which a Fund invests, including a statement of the percentage of votes cast for and against the proposal by the Fund and by the other shareholders of that Portfolio.

[3] The Money Fund Portfolios currently offer their securities to three series of Monarch Funds, and currently intend to offer their securities to at least two series of forum Funds in reliance on section 12(d)(1)(E) of the act. Both Monarch Funds and forum Funds are registered open-end management investment companies whose securities are distributed by Forum. Neither Monarch Funds nor forum Funds currently intends to invest in Portfolios in reliance on this order, but may do so in the future.

[4] For purposes of this application, "group of investment companies" has the same meaning as that term is assigned in rule 11a–3(a)(5) under the Act, modified to the extent that an investment company that does not offer its shares to the public has a placement agent rather than a principal underwriter.

[5] Section 12(d)(1)(D) permits an investment company to exceed the limits contained in section 12(d)(1)(A) in the event that the investment company exceeds the limits because it acquires investment company shares as a dividend, as a result of an offer of exchange, or pursuant to a plan of reorganization (other than a plan devised for the purpose of evading section 12(d)(1)(A)).

[6] Section 17(b) applies to a specific proposed transaction rather than an ongoing series of future transactions. *See* Keystone Custodian Funds, 21 S.E.C. 295, 298–99 (1945). Section 6(c), along with section 17(b), frequently is used to grant relief from section 17(a) to permit an ongoing series of future transactions.

VOL
61
ISS
136
1996
JL
15
UMI

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–17931 Filed 7–12–96; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Penn Engineering & Manufacturing Corp., Common Stock, $.01 Par Value; Class A Common Stock, $.01 Par Value) File No. 1–5356

July 9, 1996.

Penn Engineering & Manufacturing Corp. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Securities from listing and registration include the follr ving:

According to the Company, it has listed the Security with the New York Stock Exchange, Inc. ("NYSE"). In making the decision to withdraw the Securities from listing on the Amex, the Company considered that, in order to avoid the direct and indirect costs and the division of the market resulting from dual listing of the Securities on the Amex and the NYSE, it was in its best interest to delist and suspend the trading of the Securities on the Amex upon the admission of the Securities to trading on the NYSE.

Any interested person may, on or before July 30, 1996, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–17934 Filed 7–12–96; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of July 15, 1996.

A closed meeting will be held in Wednesday, July 17, 1996, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. §552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, July 17, 1996, at 10:00 a.m., will be:

Institution and settlement of administrative proceedings of an enforcement nature.

Institution and settlement of injunctive actions.

Formal order of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting times. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: July 10, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–18051 Filed 7–11–96; 1:37 pm]

BILLING CODE 8010–01–M

[Release No. 34–37414; File No. SR–BSE–96–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc., Relating to its Fee Schedule

July 9, 1996.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 24, 1996, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its fee schedule pertaining to Transaction Fees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has determined to amend its Transaction Fee schedule in order to improve the Exchange's competitive position in the overall marketplace. As such, the Exchange plans to implement a maximum transaction fee cap (the total of all Trade Recording and Comparison Charges and all Value Charges) of $.45 per 100 average monthly shares as of July 1, 1996.[3]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[4] in general and furthers the objectives of Section 6(b)(4)[5] in particular in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the Exchange's proposal is based on a rule filing that was recently approved by the Commission. *See* Securities Exchange Act Release No. 36828 (February 12, 1996); 61 FR 6403 (February 20, 1996) (File No. SR–CHX–96–04).

[4] 15 U.S.C. 78f(b) (1988).

[5] 15 U.S.C. 78f(b)(4) (1988).

B. Self-Regulatory Organization's Statement on Burden on Competition

The self-regulatory organization does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to section 19(b)(3)(A) of the Act[6] and subparagraph (e) of Rule 19b–4 thereunder on July 1, 1996.[7]

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–96–07 and should be submitted by August 5, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–17927 Filed 7–12–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37413; File Nos. SR–MBSCC–96–02, SR–GSCC–96–03, and SR–ISCC–96–04]

Self-Regulatory Organizations; MBS Clearing Corporation, Government Securities Clearing Corporation, and International Securities Clearing Corporation; Notice of Filings of Proposed Rule Changes Seeking Authority To Enter Into Limited Cross-Guarantee Agreements

July 9, 1996.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 11, 1996, May 10, 1996, and May 16, 1996, the MBS Clearing Corporation ("MBSCC"), the Government Securities Clearing Corporation ("GSCC"), and the International Securities Clearing Corporation ("ISCC") (collectively referred to as "the clearing corporations"), respectively, filed with the Securities and Exchange Commission ("Commission") the proposed rule changes (File Nos. SR–MBSCC–96–02, SR–GSCC–96–03, and SR–ISCC–96–04) as described in Items I, II, and III below, which items have been prepared primarily by MBSCC, GSCC, and ISCC, respectively. On May 13, 1996, GSCC filed an amendment to the proposed rule change to a change the specific rule numbers used in the proposed rule change.[2] On July 2, 1996 and July 3, 1996, ISCC and GSCC, respectively, filed amendments to their proposed rule changes to make certain technical corrections.[3] The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Karen Walraven, Vice President and Associate Counsel, GSCC, to Jerry Carpenter, Assistant Director, Division of Market Regulation ("Division"), Commission (May 13, 1996).

[3] Letter from Julie Beyers, ISCC, to Peter Geraghty, Special Counsel, Division, Commission (July 1, 1996), and letter from Karen Walraven, Vice President and Associate Counsel, GSCC, to Peter Geraghty, Special Counsel, Division, Commission (July 2, 1996).

I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes

The purpose of the proposed rule change is to modify the clearing corporations' rules to enable them to enter into limited cross-guarantee agreements with other clearing agencies.

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, MBSCC, GSCC, and ISCC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments that they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. MBSCC, GSCC, and ISCC have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of the proposed rule changes is to modify the rules of the clearing corporations to enable them to enter into limited cross-guarantee agreements with other clearing agencies. Generally, limited cross-guarantee agreements contain a guarantee from one clearing agency to another clearing agency that can be invoked in the event of a default of a common member. The guarantee provides that resources of a defaulting common member remaining after the defaulting common member's obligations to the guaranteeing clearing agency have been satisfied will be used to satisfy the obligations of the defaulting common member that remain unsatisfied at the other clearing agency. The guarantee is limited to the amount of a defaulting common member's resources remaining at the guaranteeing clearing agency.[5]

Generally, limited cross-guarantee agreements should be beneficial to the clearing corporations because amounts available under limited cross-guarantee agreements may be applied to unpaid obligations of the defaulting participant. With regard to GSCC, these amounts may reduce possible pro rata allocations against original counterparties of the defaulting participant. Similarly, these

[4] The Commission has modified the text of the summaries submitted by MBSCC, GSCC, and ISCC.

[5] In the case of GSCC, the principal resources likely to exist are funds-only settlement payments and clearing fund deposits.

[6] 15 U.S.C. 78s(b)(3)(A) (1988).

[7] CFR 240.19b–4.

[8] 17 CFR 200.30–3(a)(12).

VOL
61
ISS
136
JL
15
1996
UMI

amounts available to ISCC may reduce the possibility of pro rata charges against its clearing fund. Furthermore, even though MBSCC does not mutualize risk, these amounts may reduce allocations against and losses of the original contrasides of a defaulting participant.

The benefits accruing to the clearing corporations from a limited cross-guarantee agreement are illustrated by the following example:

Dealer A, a common participant of Clearing Agency X and Clearing Agency Y, declares bankruptcy. Upon insolvency, Dealer A owes Clearing Agency Y $10 million and Clearing Agency X owes A $7 million. In the absence of an inter-clearing agency limited cross-guarantee agreement, Clearing Agency X would be obligated to pay $7 million to Dealer A's bankruptcy estate and Clearing Agency Y would have a claim for $10 million against Dealer A's bankruptcy estate as a general creditor with no assurance as to the extent of recovery. However, an effective cross-guarantee arrangement would obligate Clearing Agency X to pay Clearing Agency Y an amount equal to Dealer A's $7 million receivable from Clearing Agency X thereby reducing Clearing Agency Y's net exposure from $10 million to $3 million. This approach would enable Clearing Agency Y to secure earlier payment and would allow Clearing Agency X to fulfill its obligations without making an actual payment to Dealer A's bankruptcy estate.

The benefits specifically accruing to MBSCC from a limited cross-guarantee agreement are illustrated by the following example:

A sells to B who sells to C. A also sells to X who sells to Y; and A also sells to Q. B and X net out, leaving obligations of A owing to C, Y, and Q. A becomes insolvent. Under MBSCC's rules, if A's participants fund contribution is not adequate to cover the aggregate of C's and Y's losses, then B, X, and Q, as original contra-sides, would be responsible for covering such losses. However, before allocating C's and Y's aggregate loss to B, X, and Q, MBSCC may obtain resources under a limited cross-guarantee agreement to reduce, if not eliminate, the amount of such allocations. If those resources are sufficient to satisfy C's and Y's losses, any remaining funds would also be available for the satisfaction of O's losses.

The limited cross-guarantee agreements are designed to preserve substantial flexibility to the counterparty clearing corporation. The agreements will provide a list of all the limited cross-guarantee agreements to which the clearing agencies are a party, including the counterparties to those agreements. The agreements will set forth the clearing agency's priority structure with respect to the order in which it will make guarantee payments to its counterparty clearing agencies (if more than one exist) in the event of a defaulting common participant. GSCC intends to prioritize its counterparty clearing agencies in the following manner: (1) Pro rata to those counterparty clearing agencies with a transactional nexus to GSCC; (2) the National Securities Clearing Corporation; and (3) pro rata to all other counterparty clearing agencies.[6]

An additional source of flexibility in a limited cross-guarantee agreement is the length of time within which a demand for payment must be made. This period is negotiated and agreed to by the counterparty clearing agencies. GSCC believes that an appropriate time period for this purpose is six months.[7] During this six month period, the limited cross-guarantee agreement would permit recalculations of each clearing agency's available resources and losses. A six month period would allow for changed circumstances at one or several clearing corporations.

The Commission has stated its support of the use of limited cross-guarantee agreements and other similar arrangements among clearing agencies as a method of reducing clearing agencies' risk of loss due to a common member's default and has encouraged clearing agencies to explore such agreements or arrangements.[8]

Accordingly, GSCC's proposed rule change modifies GSCC's rules to enable GSCC to enter into one or more limited cross-guarantee agreements. Proposed Rule 41 governing limited cross-guarantee agreements provides that a participant is obligated to GSCC for any guarantee payment that GSCC is required to make to a clearing agency pursuant to the terms of any limited cross-guarantee agreement. GSCC's Rule 41 and the proposed modifications to Section 8 of Rule 4 provide that amounts received by GSCC under any limited cross-guarantee agreement will be applied to the common participant's unpaid obligations to GSCC and will reduce assessments against original counterparties of the defaulting participant. The proposed rule change also modifies Rule 1 of GSCC's rules to add definitions of the terms "common member," "cross-guarantee obligation," "cross-guarantee party," "defaulting common member," "defaulting member," and "limited cross-guarantee agreement." GSCC is proposing to amend Section 8 of Rule 4 to clarify that liabilities of GSCC include limited cross-guarantee payments made to a counterparty clearing agency pursuant to a limited cross-guarantee agreement.[9]

MBSCC's proposed rule change will add new Rule 4 to Article III of MBSCC's rules. The new rule will enable MBSCC to enter into one or more limited cross-guarantee agreements. The new rule provides that a former participant[10] is obligated to MBSCC for any guarantee payment MBSCC is required to make to a clearing agency pursuant to the terms of any limited cross-guarantee agreement. The new rule also provides that amounts received by MBSCC under any limited cross-guarantee agreement will be applied to unpaid obligations of the former participant to MBSCC and to reduce assessments against and losses of original contra-side participants. A technical modification will be made to the current Rule 4 of Article III to renumber such rule as Rule 5. MBSCC's proposed rule change also modifies Rule 1 of Article I of MBSCC's rules to add definitions of the terms "limited cross-guarantee agreement," "cross-guarantee obligation," and "cross-guarantee party." MBSCC's proposed rule change also modifies Chapter VI of MBSCC's procedures relating to application of the participants fund to reflect that amounts received by MBSCC under any limited cross-guarantee agreement will be applied to unpaid obligations of a former participant of MBSCC and to reduce assessments against and losses of original contra-side participants.[11]

ISCC's proposed rule change will add new Rule 13 to ISCC's rules. The new rule provides that an ISCC member is obligated to ISCC for any guarantee payment ISCC is required to make to a clearing agency pursuant to the terms of any limited cross-guarantee agreement. ISCC's proposed rule change also modifies ISCC's rules to indicate that amounts available to satisfy aggregate losses will include amounts available under limited cross-guarantee agreements. ISCC's proposal also modifies Rule 1 of the ISCC's rules to add definitions of the terms "limited cross-guaranty agreement," "cross-guaranty obligation," and "cross-guaranty party."[12]

MBSCC, GSCC, and ISCC believe the proposed rule changes are consistent with Section 17A of the Act and the rules and regulations thereunder because the proposals should help to safeguard securities and funds in their custody or control or for which they are responsible and should foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organizations' Statements on Burden on Competition

MBSCC, GSCC, and ISCC do not believe that the proposed rule changes will impact or impose a burden on competition.

(C) Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

No written comments relating to the proposed rule changes have been solicited or received. MBSCC, GSCC, and ISCC will notify the Commission of any written comments they receive.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which MBSCC, GSCC, and ISCC consents, the Commission will:

(a) By order approve such proposed rule changes or

(b) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the respective filings will also be available for inspection and copying at the respective principal offices of MBSCC, GSCC, and ISCC. All submissions should refer to file number SR–MBSCC–96–02, SR–GSCC–96–03, and SR–ISCC–96–04 and should be submitted by August 5, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–17929 Filed 7–12–96; 8:45 am]

BILLING CODE 8010–01–M

[6] At this time, MBSCC and ISCC have not determined the priority structures of their limited cross-guarantee agreements.

[7] At this time, MBSCC and ISCC have not determined a specific recovery period for their limited cross-guarantee agreements.

[8] Securities Exchange Act Release Nos. 36431 (October 27, 1995), 60 FR 55740 [File No. SR–GSCC–95–03] and 36507 (December 15, 1995), 60 FR 66570 [File No. SR–MBSCC–95–06] (orders approving proposed rule changes authorizing the release of clearing data relating to participants).

[9] The definitions of the terms described above as well as the specific changes to GSCC's rules and procedures are attached as Exhibit A to GSCC's proposed rule change which is available through GSCC or through the Commission's public reference room.

[10] Under Section 10 of Rule 3 of Article III of MBSCC's rules, the term "former participant" is defined as a participant for whom MBSCC has ceased to act pursuant to Sections 1 and 2 of Rule 3 of Article III.

[11] The definitions of the terms described above as well as the specific changes to MBSCC's rules and procedures are attached as Exhibit A to MBSCC's proposed rule change which is available through MBSCC or through the Commission's public reference room.

[12] The definitions of the terms described above as well as the specific changes to ISCC's rules and procedures are attached as Exhibit A to ISCC's proposed rule change which is available through ISCC or through the Commission's public reference room.

[13] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–37412; File No. SR–NASD–95–25]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Obligations of CQS Market Makers To Have Available Quotation Services That Provide Quotation Information for CQS Securities

July 9, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 21, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule

The NASD proposes to amend NASD Rule 6630, formerly Section 2 of Part VI of Schedule D to the NASD By-Laws, to require NASD members registered with The Nasdaq Stock Market, Inc. ("Nasdaq") as Consolidated Quotation Service[1] ("CQS Service" or "CQS") market makers to have available in close proximity to the Nasdaq terminals at which they make markets in CQS securities a quotation service that disseminates the bid prices and offer prices then being furnished by or on behalf of all exchanges and CQS market makers in the CQS issues for which they are registered. (Additions are in italic; deletions are bracketed.)

NASD Rule 6330 Obligations of CQS Market Makers

(a)–(c). No change.

(d) A CQS market maker shall be obligated to have available in close proximity to the Nasdaq terminal at which it makes a market in a CQS security a quotation service that disseminates the bid price and offer price then being furnished by or on behalf of all exchanges and CQS market makers trading and quoting that CQS security.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is proposing to amend NASD Rule 6330,[2] the NASD's rule governing CQS market maker obligations, to provide that a CQS market maker must have available, in close proximity to the Nasdaq terminal at which it makes a market in a CQS security, a quotation service that disseminates the bid price and offer

[1] CQS is Nasdaq's service that provide subscribers with quotation, last sale, and volume information for securities listed on the New York and American Stock Exchanges. With respect to quotations, the Service provides a non-dynamically-updated montage of quotations from all exchanges and NASD members registered as CQS market makers in a particular issue.

[2] NASD Rule 6330 was formerly Section 2 of Part VI of Schedule D to the NASD By-Laws prior to the revision of the NASD Manual.

VOL
61
ISS
136
JL
15
1996
UMI

price then being furnished by or on behalf of all exchanges and CQS market makers trading and quoting that CQS security.[3] As discussed in more detail below, this proposed rule change is necessitated by a planned modification to CQS by Nasdaq that will substantially augment Nasdaq's computer processing capacity. Specifically, Nasdaq is planning to modify CQS so that quotation montages for exchange-listed securities will consist only of CQS market makers' quotations.

The planned modification to CQS reflects Nasdaq's strategic decision to enhance its computer processing capacity in an efficient and cost-effective manner by withdrawing from the business of vending quotation information in exchange-listed securities. By eliminating exchange quotations from CQS, Nasdaq will be able to redeploy its computer processing capacity presently devoted to processing these quotations toward meeting the demands associated with processing Nasdaq trading volume greater than one billion shares a day.[4] Once exchange quotations have been deleted from CQS, CQS will essentially function as a means by which CQS market makers can monitor their current quotations resident in Nasdaq's computers as well as the timeliness with which their quotation updates are being processed and disseminated by Nasdaq. Thus, rather than providing quotation information to a broad spectrum of market participants, CQS will function primarily as a quotation verification mechanism for CQS market makers.

Under Section 6(a)(i)(A) of the ITS Plan, however, the NASD has agreed that "for each ITS/CAES security in which an ITS/CAES Market Maker is registered as such with the NASD for the purposes of the Applications [of the ITS Plan], there shall be available at each location on the premises of such ITS/CAES Market Maker at which ITS/CAES stations are located a quotation service that disseminates the bid price and offer price then being furnished by or on behalf of each other Participant." Accordingly, since Nasdaq is planning to eliminate exchange quotations from CQS quotation montages, the NASD is submitting this rule proposal to ensure the NASD's ongoing compliance with Section 6(a)(i)(A) of the ITS Plan. In particular, by mandating that all CQS market makers have available, in close proximity to the Nasdaq terminals at which they make markets in CQS securities, the same exchange quotation information that is scheduled to be deleted from CQS (*i.e.*, exchange quotes in CQS issues), the NASD will be continuing to satisfy its obligation under section 6(a)(i)(A) of the ITS Plan.[5]

The NASD believes the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities associated be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, because of the increase in Nasdaq's processing capacity that would result from the deletion of exchange quotations from CQS, the NASD and Nasdaq believe the planned modification to CQS is consistent with the protection of investors, the maintenance of fair and orderly markets, and the preservation of the integrity of the Nasdaq market. At the same time, the NASD and Nasdaq do not believe eliminating exchange quotes from CQS will contribute to unfair competition among ITS Participant Markets or compromise the best executive of customer orders. Because CQS quotations are not updated dynamically, market participants rely on other vendor services for quotation and last-sale information on exchange-listed securities. These other vendor services provide the same information as CQS in a dynamic fashion, often with additional analytical features and the ability to customize the presentation of such information. As a result, CQS is principally only subscribed to by CQS market makers, and even then only to monitor their quotes. Thus, the NASD and Nasdaq do not believe that deleting exchange quotes from CQS will jeopardize the ability of financial intermediaries to obtain best execution for their customers' orders or the ability of customers to monitor the quality of the executions they receive. In addition, because CQS market makers will be required by the instant rule proposal to display in close proximity to their Nasdaq terminals montages of all exchange and CQS market maker quotes in the CQS issues for which they are registered, the NASD and Nasdaq do not believe any ITS Participant Market will be adversely affected by the planned modification to CQS. In addition, the NASD, NASD Regulation, Inc., and Nasdaq do not believe that eliminating exchange quotations from CQS will compromise the NASD's ability to surveil trading in the third market. This is because NASDR's Market Regulation Department already receives market information concerning exchange-listed securities from securities information vendors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal**

[3] An NASD member cannot enter quotes into CQS unless it is registered with Nasdaq as a CQS market maker. CQS market makers are obligated under NASD rules to quote continuous, firm, two-sided markets with a minimum size of 500 shares. The minimum quotation size for an individual CQS Security may be lowered, under unique circumstances, from 500 shares to 200 shares by the NASD. All CQS market makers in Rule 19c–3 securities must also be registered with Nasdaq as ITS/CAES market makers and CAES market makers. ITS/CAES is the Nasdaq's link to the Intermarket Trading System ("ITS") that enables CQS Market Makers in Rule 19c–3 securities to direct agency and principal orders to and receive orders from the floors of participating ITS exchanges. CAES is an automated system operated by Nasdaq that allows NASD members to direct agency and principal orders in exchange-listed securities to CAES for automatic execution against CQS market makers. For non-19c–3 securities, CQS market makers must be registered as CAES market makers.

[4] In order to provide exchange quotations through CQS, Nasdaq receives and processes a feed of quotation and last sale information from the Securities Information Automation Corporation ("SIAC"). Thus, at present, Nasdaq computers are not only processing all quotation updates in Nasdaq-listed securities, but also all quotation updates in exchange-listed securities. The demands on Nasdaq system capacity to process exchange quotation updates are also exacerbated because of the regional exchanges' use of auto-quoting programs. In fact, at times, the processing of exchange quotations through CQS can consume approximately 40 percent of Nasdaq's computer capacity on a given day.

[5] Because Nasdaq must adhere to the requirements of the SEC's Vendor Display Rule, Rule 11Ac1–2 under the Act, which requires, among other things, that vendors may not exclude quotation information based on the market-center making available such information, Nasdaq also has submitted a request, pursuant to paragraph (g) of the Vendor Display Rule, for an exemption from the Rule to facilitate the planned modification to CQS. *See* letter from Robert E. Aber, Vice President & General Counsel, Nasdaq, to Howard L. Kramer, Associate Director, Division of Market Regulation, SEC, dated June 21, 1996.

Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 5, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–17930 Filed 7–12–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37411; File No. SR–PTC–96–01]

Self-Regulatory Organizations; Participants Trust Company; Order Approving a Proposed Rule Change Eliminating the Deduction of Reserve on Gain in the Calculation of Net Free Equity for Proprietary and Agency Accounts of a Receiving Participant in Certain Transactions

July 8, 1996.

On February 5, 1996, the Participants Trust Company ("PTC") field with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–PTC–96–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on May 28, 1996.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change amends Article I, Rule 1 of PTC's rules to eliminate the deduction of reserve on gain ("ROG")[3] in the calculation of net free equity ("NFE")[4] for proprietary and agency accounts of a receiving participant in certain transactions. PTC will retain the deduction of ROG as it applies to the calculation of NFE for proprietary and agency accounts of a delivering participant.

NFE measures the value associated with the account of a participant that is available to support transaction processing to or from the participant's account. Under Article II, Rule 9, Section 2 and Article II, Rule 13, PTC will not process an account transfer of securities if as a result of such transfer the account of the delivering participant or receiving participant will have negative NFE.

In any account transfer versus payment from a proprietary or agency account in which the contract value of the securities exceeds the market value, the deliverer's ROG is the difference in those values. The deliverer's ROG is deducted in calculating the NFE of the account of the delivering participant to prevent the gain on the transaction from increasing the delivering participant's NFE (*i.e.*, the amount available to the participant to support other activity in its account). The deduction of the deliverer's ROG creates an NFE "reserve" to ensure that if necessary sufficient funds exist in the delivering participant's account to permit the debit of the contract value from the cash balance in the account in the event the transaction is reversed (*i.e.*, "DK'ed") by the receiving participant because of error or other circumstances permitted under the guidelines for good delivery. The ROG deduction also prevents a delivering participant, which inputs the terms of the trade on PTC's system, from abusing the system by creating additional NFE through the delivery versus payment of securities at an artificially inflated value.

The receiver's ROG is the difference in value that results when the market value of securities received into a proprietary or agency account versus payment exceeds the contract value of the securities. (*I.e.*, on the receive-side of a transaction, the amount of the potential NFE gain is the excess of market value of the securities over contract value). The rationale for deducting the receiver's ROG is different from that for deducting the deliverer's ROG. Unlike deliver-side ROG, receive-side ROG is not needed to ensure a receiving participant's ability to reverse a securities transaction because the receiving participant initiates the reversal and controls the availability of NFE in its account.

The deduction of ROG in the NFE calculation for an account of a receiving participant was incorporated into PTC's rules in 1989 pursuant to the order granting PTC's registration as a clearing agency. The rule's purpose was to assure sufficient NFE in an account to enable PTC to reverse securities deliveries to achieve settlement in the event of participant default.[5] The provisions of PTC's rules providing the ability to reverse transactions has been deleted.[6] Accordingly, deduction of

[6] 17 CFR 200.30–3(a)(12) (1996).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 37237 (May 20, 1996), 61 FR 26552.

[3] In connection with any account transfer versus payment, ROG is: (i) with respect to a delivering participant, the amount by which the contract value credited to the cash balance of the account of the delivering participant exceeds the market value of the securities delivered or (ii) with respect to a receiving participant, the amount by which the market value of the securities credited to the transfer account associated with the account of the receiving participant exceeds the contract value of the transaction.

[4] Article II, Rule 9 of PTC's rules provides that NFE for any agency or proprietary account is the sum of (i) the applicable percentage, as defined in Article I, Rule 1 of PTC's rules, of the market value of securities in the account and the associated transfer account, (ii) the cash balance in the account, and (iii) the participant's supplemental processing collateral, as calculated pursuant to the formula set forth in Article I, Rule 1 of PTC's rules, to the extent not required to collateralize an account transfer in any other account, minus the amount, if any, of ROG with respect to the account.

[5] In 1988, MBS Clearing Corporation ("MBSCC"), PTC's predecessor, proposed a rule change to its Depository Division rules to include ROG in the NFE calculation of a receiving participant's account. Securities Exchange Act Release No. 26101 (September 22, 1988), 53 FR 37805 [File No. SR–MBS–88–14] (notice of filing of proposed rule change relating to Depository Division rules). Subsequently, the order granting PTC's registration as a clearing agency incorporated the proposed rule change stating that PTC's rules were essentially identical to MBSCC's Depository Division rules including the most recently proposed rule changes. Securities Exchange Act Release No. 26671 (March 31, 1989), 54 FR 13286, [File No. 600–29] (order granting registration as a clearing agency and statement of reasons).

[6] For a more complete discussion of PTC's reasons for removing the reversal capability, refer to Securities Exchange Act Release No. 34701 (September 22, 1994), 59 FR 49730 [File No. SR–PTC–94–03] (order approving proposed rule change eliminating PTC procedures relating to deliverer's

Continued

VOL
61
ISS
136
JL
15
1996
UMI

ROG from the NFE on the receive-side is no longer required.

II. Discussion

Section 17A(b)(3)(F)[7] of the act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that PTC's proposed rule change is consistent with PTC's obligation under the Section 17A of the Act. Elimination of the NFE deduction for receive-side ROG is consistent with the prior repeal of PTC's authority to reverse transactions. Because PTC no longer can reverse transactions and because the receive-side participant initiates any reversal due to erroneous delivery or other permitted circumstances and thus controls the availability of NFE in its account, the ROG deduction is no longer necessary. As a result, participants with receive-side ROG should benefit from the increased liquidity resulting from the release of NFE previously encumbered by PTC should not incur any additional risks by such release. Moreover, by maintaining the NFE ROG deduction for deliver-side participants, PTC should be able to continue to protect itself from the risks associated with permitted reversals initiated by receive-side participants by ensuring that sufficient NFE exists in delivering participants' accounts. The exclusion of deliver-side ROG from NFE also should continue to dissuade deliver-side participant from taking actions to artificially inflate their NFE.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–PTC–96–01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

security interests). In the notice of proposed rule change pertaining to this order, the Commission erroneously referred to Release No. 27193 (August 29, 1989), 54 FR 37085 [File No. SR–PTC–89–02] (order approving proposed rule change) as the rule change that removed PTC's reversal capability.

[7] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[8] 17 CFR 200.30–3(a)(12) (1995).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–17928 Filed 7–12–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 04/74–0263]

Javelin Capital Fund, L.P.; Notice of Issuance of a Small Business Investment Company License

On Tuesday, June 20, 1995, a notice was published in the **Federal Register** (Vol. 60, No. 118, FR 32193) stating that an application had been filed by Javelin Capital Fund, L.P., at 1075 13th Street, South, Birmingham, Alabama 35205, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1996)) for a license to operate as a small business investment company.

Interested parties were given until close of business Wednesday, July 5, 1995 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/74–0263 on August 28, 1995, to Javelin Capital Fund, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 10, 1996.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–17949 Filed 7–12–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2871]

Florida; Declaration of Disaster Loan Area

Manatee County and the contiguous counties of DeSoto, Hardee, Hillsborough, Polk, and Sarasota in the State of Florida constitute a disaster area as a result of damages caused by severe storms and flooding which occurred on June 20, 1996. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 3, 1996 and for economic injury until the close of business on April 3, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308 or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	7.625
Homeowners without Credit Available Elsewhere	3.875
Businesses with Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (including Non-Profit Organizations) with Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 287106 and for economic injury the number is 895300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 3, 1996.

Ginger Lew,

Acting Administrator.

[FR Doc. 96–17947 Filed 7–12–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2870]

New Jersey; Declaration of Disaster Loan Area

Mercer County and the contiguous counties of Burlington, Hunterdon, Middlesex, Monmouth, and Somerset in the State of New Jersey constitute a disaster area as a result of damages caused by severe storms and flooding which occurred June 12 through June 24, 1996. Applications for loans for physical damage may be filed until the close of business on September 3, 1996 and for economic injury until the close of business on April 2, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, New York 14303 or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	7.625
Homeowners without Credit Available Elsewhere	3.875
Businesses with Credit Available Elsewhere	8.000
Businesses and Non-Profit organizations without Credit Available Elsewhere	4.000
Others (including Non-Profit Organizations) with Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 287006 and for economic injury the number is 895200.

Any county contiguous to the above-named county and not listed herein has been previously declared in a separate declaration for the same occurrence.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 2, 1996.

Ginger Lew,

Acting Administrator.

[FR Doc. 96–17946 Filed 7–12–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2867]

Pennsylvania; Declaration of Disaster Loan Area (Amendment #1)

In accordance with notices from the Federal Emergency Management Agency, effective June 28, 1996, the above-numbered Declaration is hereby amended to include Adams, Beaver, Bedford, and Franklin Counties in the State of Pennsylvania as a disaster area. This declaration is further amended to expand the incident type for this disaster to include damages resulting from severe storms as well as flooding, and to establish the incident period as June 12 through June 19, 1996.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Allegheny, Blair, Butler, Cambria, Cumberland, Fulton, Huntingdon, Juniata, Lawrence, Lehigh, Montgomery, Northampton, Perry, Philadelphia, Somerset, Washington, and York Counties in Pennsylvania; Burlington, Hunterdon, Mercer, and Warren Counties in New Jersey; Allegany, Carroll, Frederick, and Washington Counties in Maryland; and Columbiana and Hancock Counties in Ohio.

All other information remains the same, i.e., the termination date for filing applications for physical damage is August 17, 1996, and for loans for economic injury the deadline is March 18, 1997.

The economic injury numbers assigned to this are 894700 for Pennsylvania; 894800 for New Jersey; 895400 for Maryland; and 895500 for Ohio.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 8, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–17948 Filed 7–12–96; 8:45 am]

BILLING CODE 8025–01–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Pakistan

July 10, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: July 11, 1996.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–6714. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Category 360 is being increased by recrediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62393, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 10, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on July 11, 1996, you are directed to amend the November 29, 1995 directive to increase the limit for Category 360 to 4,300,000 numbers [1], as provided for under the terms of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–17942 Filed 7–12–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Singapore

July 10, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: July 11, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6716. For information on

[1] The limit has not been adjusted to account for any imports exported after December 31, 1995.

VOL
61
ISS
136
JL
15
1996
UMI

embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Categories 338/339 is being increased by recrediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62403, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 10, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on July 11, 1996, you are directed to increase the limit for Categories 338/339 to 1,196,218 dozen [1], as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–17943 Filed 7–12–96; 8:45 am]

BILLING CODE 3510–DR–F

Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States; Changes to the 1996 Correlation

July 9, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Changes to the 1996 Correlation

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

The Correlation: Textile and Apparel Categories based on the Harmonized Tariff Schedule of the United States (1996) presents the harmonized tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the textile program. The Correlation should be amended to include the following HTS numbers for Categories 218 and 847 inadvertently omitted from the Correlation at the time of publication. Also, there are changes in Category 362 due to statistical breakouts effective on July 1, 1996.

Changes to the 1996 Correlation

Add 5209.49.0080 (218)—Woven fabrics containing 85 percent or more by weight of cotton, weighing more than 200 g/m2, or yarns of different colors, other fabrics not elsewhere specified or included.
Add 5211.49.0080 (218)—Woven fabrics of cotton, containing less than 85 percent by weight of cotton, mixed mainly or solely with man-made fibers, weighing more than 200 g/m2, of yarns of different colors, other fabrics not elsewhere specified or included.
Add 6203.49.8045 (847)—Men's or boys' trousers and breeches, not knit, of other textile materials of silk blends or non-cotton vegetable fibers.
Delete 6307.90.8990 (362).
Add 6307.90.8995 (362)—Shells for quilts, eiderdowns, comforters, and similar articles, containing other than 85 percent or more by weight of cotton.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–17834 Filed 7–12–96; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1995.

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending 6/28/96

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–1476.
Date filed: June 24, 1996.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/P 1967, dated June 21, 1996, Europe-Mideast Resos 080aa (r1) & 080ae (r–2) (Summary attached.), Intended effective date: November 1, 1996.

Docket Number: OST–96–1477.
Date filed: June 24, 1996.
Parties: Members of the International Air Transport Association.
Subject: TC3 Telex Mail Vote 809, Korea-Japan fare revisions r1–4, r–1–063d, r–2–053d, r–3–043d, r–4–0855r, Intended effective date: July 15, 1996.

Docket Number: OST–96–1478.
Date filed: June 24, 1996.
Parties: Members of the International Air Transport Association.
Subject: COMP Reso/C 0667, dated May 31, 1996, r1–7, COMP Reso/C 0669, dated May 31, 1996, r6–9, Expedited Cargo Resolutions (Summary attached), Intended effective date: August 1, 1996.

Docket Number: OST–96–1488.
Date filed: June 26, 1996.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/P 1966, dated June 21, 1996, Europe-Mideast Expedited Resos, r–21, (Summary attached.), Intended effective date: August 1, 1996.

Paulette V. Twine,
Chief, Documentary Services Division.

[FR Doc. 96–17885 Filed 7–12–96; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending June 28, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1492.
Date filed: June 28, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 26, 1996.
Description: Application of United Parcel Service Co. pursuant to Subpart Q of the Department's Procedural Regulations and Section 41101 of Title 49 of the United States Code, for an amendment to its certificate of public convenience and necessity for Route 581 so as to authorize UPS to engage in scheduled foreign air transportation of cargo (property and mail) between a point or points in the United States, on the one hand, and Osaka, Japan, on the other hand, and to two beyond points.

Paulette V. Twine,
Chief, Documentary Services Division.

[FR Doc. 96–17884 Filed 7–12–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. On April 8, 1996, a notice was published in the **Federal Register** to request comments on the paperwork burden associated with the following collection of information.

DATES: Comments must be submitted on or before August 10, 1996.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, S.W.; Washington, DC 20591; Telephone number (202) 267–9895.

Title: Security Programs for Foreign Air Carrier.

OMB Control Number: 2120–0536.

Abstract: Security Programs required by FAR Part 129 set forth procedures to be used by Foreign Air Carriers in carrying out their responsibilities involving the protection of persons and property against acts of criminal violence, aircraft piracy, and terrorist activities.

Need: Each foreign air carrier landing or taking off in the United States is to submit a security program for the Administrator's acceptance to ensure adequate security measures are being implemented by those foreign air carriers.

Respondents: An estimated 171 foreign air carriers/governments.

Burden: The estimated total annual burden is 27,360 hours.

Issued in Washington, DC, on July 8, 1996.

Phillip A. Leach,
Information Clearance Officer, United States Department of Transportation.

[FR Doc. 96–17887 Filed 7–12–96; 8:45 am]

BILLING CODE 4910–62–P

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss emergency evacuation issues.

DATES: The meeting will be held on July 25, 1996, beginning at 9 a.m. Arrange for oral presentations by July 12, 1996.

ADDRESSES: The meeting will be held at McDonnell Douglas, 1735 Jefferson-Davis Highway, Suite 1200, Crystal City, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Courtney, Federal Aviation Administration, Office of Rulemaking (ARM–200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3327; facsimile number (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on July 25 at McDonnell Douglas, 1735 Jefferson-Davis Highway, Suite 1200 Crystal City, Virginia.

The agenda will include:

- Opening Remarks
- Review of the activities of the Performance Standards Working Group

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by July 12, 1996, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Emergency Evacuation Issues or by bringing the copies to the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the

VOL
61
ISS
136
JL
15
1996

heading FOR FURTHER INFORMATION CONTACT.

Issued in Washington, DC, on June 26, 1996.

Ava L. Robinson,

Assistant Executive Director for Emergency Evacuation Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 96–17922 Filed 7–12–96; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 165; Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., appendix 2), notice is hereby given for Special Committee (S.C.) 165 meeting to be held July-31–August 2, 1996, starting at 9:30 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will be as follows:

(1) Welcome and Introductions;

(2) Approval of the Summary of the Previous Meeting;

(3) Chairman's Remarks;

(4) Overview of New Developments Relevant to AMSS and SC–165

a. Required Communications Performance (SC–169/Working Group (WG) #2); b. AMCP WG–A on AMSS; c. Industry, Users Government (Planned Presentations on Next-Generation Satellite Systems and Their Relevance to Aeronautical Safety Communications);

(5) Review of Working Group Activities: a. WG#1 (AMSS Avionics Equipment MOPS); b. WG#3 (System/Service Performance Criteria); c. WG#5 (AMS(R)S Satcom Voice);

(6) Other Business;

(7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the

Federal Transit Administration

[FTA Docket No. FTA–96–1527]

Notice of Request for the Extension of Currently Approved Information Collections

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collections:

(1) Prevention of Alcohol Misuse in Transit Operations;
(2) Nondiscrimination as it applies to FTA Grant Programs;
(3) Title VI as it applies to FTA Grant Programs;
(4) Technical Activities Form;
(5) Bus Testing Program.

DATES: Comments must be submitted before September 13, 1996.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590. All comments received will be available for examination at the above address from 10:00 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT:

Control of Alcohol Misuse in Transit Operations—Ms. Judy Meade, Office of Program Management, (202) 366–2896

Nondiscrimination as it applies to FTA Grant Programs and Title VI as it applies to FTA Grant Programs—Mr. Akira Sano, Office of Civil Rights, (202) 366–4018

Reporting of Technical Activities by FTA Grant Recipients—Sean Libberton, Office of Program Management, (202) 366–1626

Bus Testing Program—Mr. Frank Borris, Office of Research, Demonstration and Innovation, (202) 366–8089.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of these information collections, including: (1) the necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB reinstatement of this information collection.

Title: Prevention of Alcohol Misuse in Transit Operations (OMB Number: 2132–0557)

Background: The Omnibus Transportation Employee Testing Act of 1991 (Pub.L. 102–143, October 28, 1991, now codified in relevant part at 49 U.S.C. Section 5331) requires any recipient of Federal financial assistance under 49 U.S.C. Sections 5309, 5307, or 5311 or under 23 U.S.C. Section 103(e)(4) to establish a program designed to help prevent accidents and injuries resulting from the misuse of drugs and alcohol by employees who perform safety-sensitive functions. FTA's regulation, 49 CFR Part 654, "Prevention of Alcohol Misuse in Transit Operations," effective March 17, 1994, requires recipients to submit to FTA annual reports containing data which summarize information concerning the recipients' alcohol testing program, such as the number and type of test given, number of positive test results, and the kind of safety-sensitive function the employee performs. FTA uses these data to ensure compliance with the rule, to assess the misuse of alcohol in the transit industry, and to set the random testing rate. The data will also be used to assess the effectiveness of the rule in reducing the misuse of alcohol among safety-sensitive transit employees and making transit safer for the public.

Respondents: State and local government, business or other for-profit, non-profit institutions, and small businesses organizations.

Estimated Annual Burden on Respondents: 20.1 hours for each of the 1,615 respondents.

Estimated Total Annual Burden: 32,480 hours.

Frequency: Annual.

Title: Nondiscrimination As It Applies to FTA Grant Programs (OMB Number: 2132–0542)

Background: All entities receiving

procedures are followed, FTA requires grant recipients to submit written EEO plans to FTA for approval. FTA's assessment of this requirement shows that the formulating, submitting, and implementing of EEO programs should minimally increase costs for FTA applicants and recipients.

To determine a grantee's compliance with applicable laws and requirements, grantee submissions are evaluated and analyzed based on the following criteria. First, an EEO program must include an EEO policy statement issued by the chief executive officer covering all employment practices, including recruitment, selection, promotions, terminations, transfers, layoffs, compensation, training, benefits, and other terms and conditions of employment. Second, the policy must be placed conspicuously so that employees, applicants, and the general public are aware of the agency's EEO commitment.

The data derived from written EEO and affirmative action plans will be used by the Office of Civil Rights in monitoring grantees' compliance with applicable EEO laws and regulations. This monitoring and enforcement activity will ensure that minorities and women have equitable access to employment opportunities and that recipients of Federal funds do not discriminate against any employee or applicant because of race, color, creed, sex, national origin, or age, or disability.

Respondents: FTA grant recipients.

Estimated Annual Burden on Respondents: 40 hours for each of the 150 EEO submissions.

Estimated Total Annual Burden: 6,000 hours.

Frequency: On occasion, every 3 years, annually.

Title: Title VI As It Applies to FTA Grant Programs (OMB Number: 2132–0542)

Background: Section 601 of Title VI of the Civil Rights Act of 1964 states: "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." This information collection is required by the Department of Justice (DOJ) Title VI Regulation, 28 CFR Part 42, Subpart F (Section 42.406), program requirement at the application stage is necessary to assure that benefits and services are equitably distributed by grant recipients. The requirements prescribed by the Office of Civil Rights accomplish that objective while diminishing possible vestiges of discrimination among FTA grant recipients. FTA's assessment of this requirement indicated that the formulation and implementation of the Title VI program should occur with a decrease in costs to such applicants and recipients.

All FTA grant applicants, recipients, and subrecipients are required to submit applicable Title VI information to the FTA Office of Civil Rights for review and approval. If FTA did not conduct pre-award reviews, solutions would not be generated in advance and program improvements could not be integrated into projects. FTA's experience with pre-award reviews for all projects and grants suggests this method contributes to maximum efficiency and cost effectiveness of FTA dollars and has kept post-award complaints to a minimum. Moreover, the objective of the Title VI statute can be more easily attained and beneficiaries of FTA funded programs have a greater likelihood of receiving transit services and related benefits on a nondiscriminatory basis.

Respondents: FTA grant recipients.

Estimated Annual Burden on Respondents: 8.1 hours for each of the 371 Title VI submissions.

Estimated Total Annual Burden: 2,998 hours.

Frequency: Annual.

Title: Reporting of Technical Activities by FTA Grant Recipients (OMB Number: 2132–0549)

Background: 49 U.S.C. Sections 5303 and 5313 (a) and (b) authorize the use of Federal funds to assist metropolitan planning organizations (MPOs), states, and local public bodies in developing transportation plans and programs to serve future transportation needs of urbanized areas over 50,000 in population and States throughout the nation. As part of this effort, MPOs are required to consider a wide range of goals and objectives and to analyze alternative transportation system management and investment strategies. These objectives are measured by definable activities such as suburban and congressional direction, and allows FTA to track grantees' use of Federal planning and research funds.

Respondents: FTA grant recipients.

Estimated Annual Burden on Respondents: 3 hours for each of the 50 respondents.

Estimated Total Annual Burden: 150 hours.

Frequency: Annual.

Title: Bus Testing Program (OMB Number: 2132–0550)

Background: 49 U.S.C. Section 5323(c) provides that no Federal funds appropriated or made available after September 30, 1989, may be obligated or expended for the acquisition of a new bus model (including any model using alternative fuels) unless the bus has been tested at the Bus Testing Center (Center) in Altoona, Pennsylvania. 49 U.S.C. Section 5318(a) further specifies that each new bus model is to be tested for maintainability, reliability, safety, performance (including braking performance), structural integrity, fuel economy, emissions, and noise.

The operator of the Bus Testing Center, the Pennsylvania Transportation Institute (PTI), is under contract to the FTA. PTI operates and maintains the Center, and establishes and collects fees for the testing of the vehicles at the facility. Upon completion of the testing of the vehicle at the Center, a test report is provided to the manufacturer of the new bus model. The bus manufacturer certifies to an FTA grantee that the bus the grantee is purchasing has been tested at the Center. Also, grantees about to purchase a bus use this report to assist them in making their purchasing decisions. PTI maintains a reference file for all the test reports which are made available to the public.

Respondents: Bus manufacturers.

Estimated Annual Burden on Respondents: 3 hours for each of the 20 bus manufacturers.

Estimated Total Annual Burden: 60 hours.

Frequency: Annual.

Issued: July 10, 1996.

Gordon J. Linton,

Administrator.

VOL 61 ISS 136 JL 15 1996 UMI

DEPARTMENT OF THE TREASURY

Customs Service

Interim List of Records Required To Be Maintained and Produced Pursuant to 19 U.S.C. 1509(a)(1)(A)

AGENCY: U.S. Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document sets forth for the information of the general public the text of a document that was previously published in the *Customs Bulletin* on January 3, 1996 concerning a list of records or entry information required to be maintained and produced under section 509(a)(1)(A) of the Tariff Act of 1930, as amended by title VI of the North American Free Trade Agreement Implementation Act.

FOR FURTHER INFORMATION CONTACT: Stuart P. Seidel, Assistant Commissioner, Office of Regulations and Rulings at (202) 482–6920 or William Inch, Director, Office of Regulatory Audit at (202) 927–1100.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, the President signed the North American Free Trade Agreement Implementation Act (Pub. L. 103–182). Title VI of the act is entitled "Customs Modernization" and is popularly known as the Customs Modernization Act. Section 615 of the Customs Modernization Act amends § 509(a)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1509(a)(1)(A)) to require the maintenance and production of a record if "such record is required by law or regulation for the entry of merchandise (whether or not the Customs Service required its presentation at the time of entry)." Section 509 was further amended by adding a new subsection (e) which requires the Customs Service to identify and publish a list of records or entry information that is required to be maintained and produced under § 509(a)(1)(A)—commonly referred to as "the (a)(1)(A) list." In their respective discussions of section 615, both the House Report and Senate Report on the North American Free Trade Agreement Implementation Act indicate that the requirement to publish the (a)(1)(A) list refers to publication in the *Customs Bulletin*. On January 3, 1996, Customs published the (a)(1)(A) list in the *Customs Bulletin*.

This publication of the (a)(1)(A) list in the **Federal Register** is for the information of the general public.

Dated: July 9, 1996.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

Accordingly, the document setting forth the (a)(1)(A) list, as discussed above, is reproduced below:

DEPARTMENT OF THE TREASURY

UNITED STATES CUSTOMS SERVICE

(T.D. 96–1)

INTERIM LIST OF RECORDS REQUIRED TO BE MAINTAINED AND PRODUCED PURSUANT TO 19 U.S.C. § 1509(a)(1)(A)

AGENCY: U.S. Customs Service, Treasury.

ACTION: Interim "(a)(1)(A) list".

SUMMARY: This document lists records (which includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data) required by law or regulation for the entry of the merchandise (whether or not the Customs Service requires its presentation at the time of entry). Publication is required by section 509(a)(1)(A) of the Tariff Act of 1930, as amended by section 615 of Public Law 103–182 (19 U.S.C. § 1509(a)(1)(A)). This interim list addresses public comments solicited by the Proposed List which was posted on Customs Electronic Bulletin Board on September 12, 1994 and published in the *Customs Bulletin* on September 21, 1994. The list is being published as an interim listing because the Customs Service is re-engineering its entry and related processes and the list is expected to change as entry requirements are revised.

EFFECTIVE DATE: Since this document merely lists records already required by law or regulation, it is effective on January 3, 1996, the date of publication in the Customs Bulletin.

ADDRESSES: Comments should be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW. (Franklin Court), Washington, D.C. 20229. Comments may be inspected at the Regulations Branch, Office of Regulations and Rulings, Suite 4000W, 1099 14th Street NW., Washington, DC 20005. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Stuart Seidel, Assistant Commissioner, Office of Regulations and Rulings at (202) 482–6920 or William Inch, Director, Office of Regulatory Audit at (202) 927–1100.

SUPPLEMENTARY INFORMATION:

Background

Section 509(a)(1)(A) of the Tariff Act of 1930 (19 U.S.C. § 1509(a)(1)(A)) as amended by 615 of title VI of the North American Free Trade Agreement Implementation Act (generally referred to as the "Customs Modernization Act") requires the maintenance and production of a record if "such record is required by law or regulation for the entry of merchandise (whether or not the Customs Service required its presentation at the time of entry)." Section 509 was further amended by adding a new subsection (e) which requires the Customs Service to identify and publish a list of records or entry information that is required to be maintained and produced under section 509(a)(1)(A)—commonly referred to as "the (a)(1)(A) list." On September 12, 1994, the proposed (a)(1)(A) list was placed on the Customs Electronic Bulletin Board for public comment, followed by publication in the September 21, 1994 Customs Bulletin. Comments were received from the following organizations or their counsel: the Air Courier Conference of America, National Customs Brokers & Forwarders Association of America, Inc., The United States Association of Importers of Textiles and Apparel, The Joint Industry Group, American Association of Exporters and Importers, U.S. Transportation Coalition, and a group of petroleum and petrochemical companies. In addition comments were received from a Customs broker, a law firm, an express consignment company and its brokerage, and a Customs office. A total of eleven comments were received. However, many of the submissions were from trade groups, or their counsel, representing hundreds of interested parties. A summary of the comments received and Customs response follows:

Comment: One commenter opined that NAFTA records should be excluded from the (a)(1)(A) list because it would subject record keepers to the additional penalties available under 19 U.S.C. 1509, and NAFTA exporter's records are already subject to penalties.

Customs Response: Customs agrees that records required to be kept by U.S. exporters should be excluded from the (a)(1)(A) list (unless the same party is also an importer and is relying upon those records to claim a NAFTA preference on reimportation) since (a)(1)(A) only applies to entry records. However, Customs believes that certain other NAFTA records are entry records. The law requires a person claiming NAFTA preferences to be in possession of a NAFTA Certificate of Origin at the time the preference is claimed. Thus, when NAFTA preferences are claimed at the time of entry, the NAFTA records are entry records and properly fall within the purview of (a)(1)(A). To make this clear, the NAFTA certificate of origin and supporting records required by 19 CFR 181.22 have been specifically added to the list.

Comment: One commenter suggested that for petroleum and petrochemical products, only the following should be required to be kept for five years: CF 7501 and related documents, purchase orders or contracts (except when made orally), invoice and payment records (including canceled checks, wire transfer evidence, inter company accounts and similar records, bills of lading or charter agreements, freight invoices, import inspection reports, etc, evidence of use (for classification where use controls), TSCA and EPA certifications.

Customs Response: The record retention period is beyond the scope of the (a)(1)(A) list and will be addressed in a separate regulatory package. As indicated in the Background portion, Customs will consider changes in entry record requirements as Customs processes are revised. However, until those requirements are changed, the law requires that all records required for the entry of merchandise be included in the (a)(1)(A) list.

Comment: One commenter expressed concern that the size of the (a)(1)(A) list will result in the list being a tool to penalize persons during routine audits. The commenter points out that under current practice, the failure to present certain required records results in a denial of a preference. In other cases, the record (19 CFR 10.174, for example) may be required within 60 days of entry, after which it does not appear to be required. In other cases, importation is prohibited without the required record (19 CFR 12.161 fur seal certificate). The commenter suggested that the (a)(1)(A) list be limited to those presently required to be produced, and not routinely the subject of waivers. The commenter suggested that the entry not be accepted without a statement that the required document is in the importer's possession, because without the statement, potential third party record keepers might not be willing to undertake this responsibility since there would be no guarantee that records would be available. The commenter further suggested reducing the maintenance period from five years to not longer than liquidation of the entry.

Customs Response: In an automated environment, Customs must be able to use a post-entry record demand to ensure that an importer's claims on entry were valid. In order to expedite the release of merchandise, Customs may initially waive production of certain required records and then verify them at a later date. This is especially true in the case of records not affecting admissibility. This fact is recognized in the law, which refers to a record which is required by law or regulation for the entry of the merchandise *whether or not the Customs Service required its presentation at the time of entry*, emphasis added. A record retention period beyond liquidation was clearly contemplated by Congress, because the statute specifically permits reliquidation and denial of claimed preferenses if the record is demanded within two years of the original liquidation and is not produced. As pointed out in other comments, Customs is reviewing its entire entry process and the (a)(1)(A) list will be adjusted in the future. With regard to the penalty process, Customs intends to follow the legislative history which states, "[o]nce this listing has been made available and importers have had an opportunity to familiarize themselves with the contents, the Committee expects the person on whom a demand has been made for any of the records under section 509(a)(1)(A) of the Act will furnish them under the 'reasonable time' standard embodied in the law. The Committee also believes that Customs headquarters should exercise tight control over the imposition of record keeping penalties, and until the Customs Service gains some experience in administering this penalty, no such penalty should be issued without prior headquarters review and approval."

Comment: One commenter was of the opinion that the (a)(1)(A) list should only contain those records required for "entry," which the commenter equates with "admission" or "release" of the merchandise. The commenter further points out that many of the documents on the list are not required for release. The commentor suggests that as electronic textile visas are introduced, importers will not have any visa documentation to produce and the (a)(1)(A) list should reflect that. The commentor also believes it is inappropriate to list documents, such as origin declarations and quota charge statements which are presented at the time of entry and retained by Customs. The commentor also believes that purchase orders and contracts are not required for entry and refers to 19 CFR 141.83 and 141.86, and therefor should be eliminated from the list. The commentor also believes that the manifest description of the goods should be stricken from the list since the carrier, not the importer is responsible for producing this to Customs. Finally, the commenter believes that the broker power of attorney should be eliminated since the record is not, in the commenter's view, required for entry.

Customs Response: The term "entry" is used in the Customs laws and regulations in two ways. The first refers to a specific document, the "entry" form (such as consumption entry, vessel repair entry, etc); the second to a procedure, "entry of merchandise," "entry and clearance." Customs believes that the (a)(1)(A) list refers to the procedure— that is, records required to complete the entry process. Section 1484 of title 19 of the United States Code (19 U.S.C. 1484) refers to an importer using reasonable care to make entry by filing such information as is necessary to obtain release of the merchandise, and completing the entry by filing such additional information as may be necessary to enable Customs to fix the final appraisement and classification of the merchandise and insure compliance with applicable law. Thus, the scope of the (a)(1)(A) list is broader than contemplated by the commentor. This is supported by the examples listed in the legislative history which include not only any record required for admissibility, but also the following which are not required for release: a commercial invoice, a packing list, certificate of origin Form A (where a claim for a preference is made), and declarations of a foreign manufacturer. With regard to purchase orders and contracts, Customs notes that while not every importation requires such records for entry, importations covered by sections 12.99, 10.84 and 10.183 of the Customs Regulations do require contracts. Customs has deleted purchase orders from the (a)(1)(A) list, although they must be retained and made available for examination pursuant to other provisions of 19 U.S.C. 1508 and 1509. With regard to the comment that electronic visas may be transmitted to the Customs Service, we note that the visa will still be a record required for entry and thus will have to be listed, but the importer will not be subject to penalties, since the record is transmitted to and retained by Customs, and the penalty provisions do not apply when Customs retains the record.

Comment: Several commenters recommended that the (a)(1)(A) list be simplified, to eliminate unnecessary material, and suggest Customs review documents which are routinely waived to see if they can be eliminated. One commenter believed that the list was accurate, but far too complex. The commenter suggested a "front end" summary of which documents contain which data elements and that the list be re-structured to simplify it. Finally, several commenters suggested that the list could be clarified by referencing the documents currently required rather than the data elements or information.

Customs Response: Customs agrees that the list should be rearranged to show which data is routinely provided to Customs on entry forms and has tried to group the records to show which ones are required by all, or most, import transactions. We agree that the list is complex, and lists some records which are not required in most import transactions, but only are required for imports of certain specific merchandise, or in certain situations. We have tried to list those situations and hope to simplify and reduce the list in the future as new procedures and regulations are implemented. The law requires that the (a)(1)(A) list contain not only documents but also data elements and other information required for entry.

Comment: Several commenters suggested that Customs list the parties responsible for maintaining specific documents. For example, one commenter points out that carriers are responsible for the manifest under regulations issued pursuant to 19 U.S.C. 1321, but should not be responsible for the summary manifest for letters and documents and return shipments since these intangibles are, in the commenter's view exempt from entry under General Notes 13 (d), (e) of the Harmonized Tariff Schedule of the United States (HTSUS) and § 641c of the Mod Act. The commenter questions the inclusion of the vessel entry form 226 since, in the commenter's view, it does not relate to the "entry of merchandise."

Customs Response: Whether or not an article is covered by the HTSUS is not determinative of whether the article is "merchandise" within the Tariff Act of 1930. Section 401 (19 U.S.C. 1401) defines "merchandise" as goods, wares, and chattels of every description and includes merchandise the importation of which is prohibited, and monetary instruments. Thus, returned articles and documents are in fact merchandise, albeit exempt from the HTSUS. In fact, 19 U.S.C. 1498 specifically permits the Secretary to promulgate regulations for the declaration and entry of returned merchandise. With regard to the vessel entry form, we note that while it is used to report vessel repairs, it is also used to report the entry of equipment and spare parts and is also referenced in 19 U.S.C. 1498.

Comment: One commenter suggested that express carriers (operating under part 128, Customs Regulations) be required to keep the

VOL 61 ISS 136 JL 15 1996 UMI

manifest, consolidated entry summary or its equivalent and invoices for informal entries, and the manifest, individual entry summaries or their equivalent and invoices for formal entries. The commenter did not believe that individual house airway bills and packing lists should be listed because the airway bill's data elements duplicated the manifest, and the packing lists were rarely used for express consignments. The commenter expressed the view that since express carriers have "a statutory right under 19 U.S.C. 1484 to designate their own brokers to make entry," no power of attorney was needed and it should therefor be eliminated from the (a)(1)(A) list. The commenter suggested that other federal or state agency documents should be listed. The commenter believed that the list should include (for carriers), records relating to entry for immediate transportation pursuant to 19 U.S.C. 1552, transportation and exportation pursuant to 19 U.S.C. 1553 and records relating to instruments of international traffic pursuant to 19 U.S.C. 1322. Several commenters pointed out that Customs Forms 3311, 4455 and Form A are no longer required (see 59 FR 25503) and should be removed from the (a)(1)(A) list. One commenter pointed out that since only "an owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license under section 1641" may make formal entry, carriers should not be liable for maintaining records on the (a)(1)(A) list except in limited circumstances.

Customs Response: Customs agrees that a power of attorney is not required by a broker who is the importer of record, since in that capacity, the broker is the principal and is liable for duties, fees and taxes. However, powers of attorney, when required by the regulations, are entry records. Customs agrees that the CF 3311 and CF 4455 are no longer required for certain entries pursuant to 19 CFR 10.1(a) and 10.8 and 10.9. However, the CF 3311 and/or CF 4455 remain entry records for certain importations (see revised 19 CFR 7.8(b), 10.1 (b), (i), (j) and 10.66, 10.67, for example. The Origin Form A has been deleted from the (a)(1)(A) list for GSP and CBI importations. Customs also agrees that records required by 19 U.S.C. 1552, 1553 and 1322 are entry records and has added them to the (a)(1)(A) list.

CONCLUSION

Customs has revised the (a)(1)(A) list in accordance with the foregoing and is publishing it at this time as an interim document to allow future modifications as procedures change. The "Background" section has been renamed "General Information" and expanded and clarified. The list will also be published as an Appendix to the revised record keeping regulations when that document is published. Customs intends the importing community to familiarize themselves with the (a)(1)(A) list and expects that a person on whom a demand has been made for any of the entry records will furnish them under the "reasonable time" standard embodied in the law. Although the record keeping penalties are effective upon publication of the list, Customs headquarters will, as recommended in the legislative history, exercise tight control over the imposition of record keeping penalties, and until the Customs Service gains some experience in administering this penalty, Customs officers will not issue such a penalty without prior headquarters review and approval.

Dated: December 21, 1995

Stuart P. Seidel, Assistant Commissioner, Office of Regulations and Rulings

INTERIM (a)(1)(A) LIST

LIST OF RECORDS REQUIRED FOR THE ENTRY OF MERCHANDISE

GENERAL INFORMATION: Section 506 of the Tariff Act of 1930, as amended (19 U.S.C. 1506), sets forth the general record keeping requirements for Customs-related activities. Section 509 of the Tariff Act of 1930, as amended (19 U.S.C. 1509) sets forth the procedures for the production and examination of those records (which includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data).

Section 509(a)(1)(A) of the Tariff Act of 1930, as amended by title VI of Public Law 103–182, commonly referred to as the Customs Modernization Act (19 U.S.C. 1509(a)(1)(A)), requires the production, within a reasonable time after demand by the Customs Service is made (taking into consideration the number, type and age of the item demanded) if "such record is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry)". Section 509(e) of the Tariff Act of 1930, as amended by Public Law 103–182 (19 U.S.C. 1509(e)) requires the Customs Service to identify and publish a list of the records and entry information that is required to be maintained and produced under subsection (a)(1)(A) of section 509 (19 U.S.C. 1509 (a)(1)(A)). This list is commonly refered to as "the (a)(1)(A) list."

The Customs Service has tried to identify all the presently required entry information or records on the following list. However, as automated programs and new procedures are introduced, these may change. In addition, errors and omissions to the list may be discovered upon further review by Customs officials or the trade. Pursuant to section 509(g), the failure to produce listed records or information upon reasonable demand may result in penalty action or liquidation or reliquidation at a higher rate than entered. A record keeping penalty may not be assessed if the listed information or records are transmitted to and retained by Customs.

OTHER RECORDKEEPING REQUIREMENTS: The importing community and Customs officials are reminded that the (a)(1)(A) list only pertains to records or information required for the entry of merchandise. An owner, importer, consignee, importer of record, entry filer, or other party who imports merchandise, files a drawback claim or transports or stores bonded merchandise, any agent of the foregoing, or any person whose activities require them to file a declaration or entry, is *also* required to make, keep and render for examination and inspection records (including, but not limited to, statements, declarations, documents and electronically generated or machine readable data) which pertain to any such activity or the information contained in the records required by the Tariff Act in connection with any such activity; and are normally kept in the ordinary course of business. While these records are not subject to administrative penalties, they are subject to examination and/or summons by Customs officers. Failure to comply could result in the imposition of significant judicially imposed penalties and denial of import privileges.

The following list does not replace entry requirements, but is merely provided for information and reference. In the case of the list conflicting with regulatory or statutory requirements, the latter will govern.

LIST OF RECORDS AND INFORMATION REQUIRED FOR THE ENTRY OF MERCHANDISE

The following records (which includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data) are required by law or regulation for the entry of merchandise and are required to be maintained and produced to Customs upon reasonable demand (whether or not Customs required its presentation at the time of entry). Information may be submitted to Customs at time of entry in a Customs authorized electronic or paper format. Not every entry of merchandise requires all of the following information. Only those records or information applicable to the entry requirements for the merchandise in question will be required/mandatory. The list may be amended as Customs reviews its requirements and continues to implement the Customs Modernization Act. When a record or information is filed with and retained by Customs, the record is not subject to record keeping penalties, although the underlying backup or supporting information from which it is obtained may also be subject to the general record retention regulations and examination or summons pursuant to 19 U.S.C. 1508 and 1509.

(All references, unless otherwise indicated, are to title 19, Code of Federal Regulations, April 1, 1995 Edition, as amended by subsequent Federal Register notices.)

I. General list or records required for most entries. Information shown with an asterisk (*) is usually on the appropriate form and filed with and retained by Customs:

141.11–.15 Evidence of right to make entry (airway bill/bill of lading or *carrier certificate, etc.) when goods are imported on a common carrier.
141.19 *Declaration of entry (usually contained on the entry summary or warehouse entry)
141.32 Power of attorney (when required by regulations)
141.54 Consolidated shipments authority to make entry (if this procedure is utilized)
142.3 Packing list (where appropriate)
142.4 Bond information (except if 10.101 or 142.4(c) applies) Parts 4,18,122,123
*Vessel, Vehicle or Air Manifest (filed by the carrier)

II. The following records or information are required by 141.61 on Customs Form (CF) 3461 or CF 7533 or the regulations cited.

Information shown with an asterisk (*) is contained on the appropriate form and/or otherwise filed with and retained by Customs:

142.3, .3a *Entry Number
*Entry Type Code
*Elected Entry Date
*Port Code
142.4 *Bond information
141.61,142.3a *Broker/Importer Filer Number
141.61,142.3 *Ultimate Consignee Name and Number/street address of premises to be delivered
141.61 *Importer of Record Number
*Country of Origin
141.11 *IT/BL/AWB Number and Code
*Arrival Date
141.61 *Carrier Code
*Voyage/Flight/Trip
*Vessel Code/Name
*Manufacturer ID Number (for AD/CVD must be actual mfr.)
*Location of Goods—Code(s)/Name(s)
*U.S. Port of Unlading
*General Order Number (only when required by the regulations)
142.6 *Description of Merchandise
142.6 *HTSUSA Number
142.6 *Manifest Quantity
*Total Value
*Signature of Applicant

III. In addition to the information listed above, the following records or items of information are required by law and regulation for the entry of merchandise and are presently required to be produced by the importer of record at the time the Customs Form 7501 is filed.

141.61 *Entry Summary Date
141.61 *Entry Date
142.3 *Bond Number, Bond Type Code and Surety code
142.3 *Ultimate Consignee Address
141.61 *Importer of Record Name and Address
141.61 *Exporting Country and Date Exported
*I.T. (In-bond) Entry Date (for IT Entries only)
*Mode of Transportation (MOT Code)
141.61 *Importing Carrier Name
141.82 Conveyance Name/Number
*Foreign Port of Lading
*Import Date and Line Numbers
*Reference Number
*HTSUS Number
141.61 *Identification number for merchandise subject to Anti-dumping or Countervailing duty order (ADA/CVD Case Number)
141.61 *Gross Weight
*Manifest Quantity
141.61 *Net Quantity in HTSUSA Units
141.61 *Entered Value, Charges, and Relationship
141.61 *Applicable HTSUSA Rate, ADA/CVD Rate, I.R.C. Rate, and/or Visa Number, Duty, I.R. Tax, and Fees (e.g. HMF, MPF, Cotton)
141.61 Non-Dutiable Charges
141.61 *Signature of Declarant, Title, and Date
*Textile Category Number
141.83..86 Invoice information which includes—e.g., date, number, merchandise (commercial product) description, quantities, values, unit price, trade terms, part, model, style, marks and numbers, name and address of foreign party responsible for invoicing, kind of currency
Terms of Sale
Shipping Quantities
Shipping Units of Measurements
Manifest Description of Goods
Foreign Trade Zone Designation and Status Designation (if applicable)
Indication of Eligibility for Special Access Program (9802/GSP/CBI)
141.89 CF 5523
141.89, et al Corrected Commercial Invoice
141.86 (e) Packing List
177.8 *Binding Ruling Identification Number (or a copy of the ruling)
10.102 Duty Free Entry Certificate (9808.00.30009 HTS)
10.108 Lease Statement

IV. Documents/records or information required for entry of special categories of merchandise (The listed documents or information is only required for merchandise entered (or required to be entered) in accordance with the provisions of the sections of 19 CFR (the Customs Regulations) listed). These are in addition to any documents/records or information required by other agencies in their regulations for the entry of merchandise:

4.14 CF 226 Information for vessel repairs, parts and equipment
7.8(a) CF 3229 Origin certificate for insular possessions
7.8(b) CF 3311 and Shipper's declaration for insular possessions
Part 10 Documents required for entry of articles exported and returned:
10.1–10.6 foreign shipper's declaration or master's certificate, declaration for free entry by owner, importer or consignee
10.7 certificate from foreign shipper for reusable containers
10.8 declaration of person performing alterations or repairs
declaration for non-conforming merchandise
10.9 declaration of processing
10.24 declaration by assembler endorsement by importer
10.31..35 Documents required for Temporary Importations Under Bond: Information required, Bond or Carnet
10.36 Lists for samples, professional equipment, theatrical effects
Documents required for Instruments of International Traffic:
10.41 Application, Bond or TIR carnet
Note: additional 19 U.S.C. 1508 records: see 10.41b(e)
10.43 Documents required for exempt organizations
10.46 Request from head of agency for 9808.00.10 or 9808.00.20 HTSUS treatment
Documents required for works of art
10.48 declaration of artist, seller or shipper, curator, etc
10.49,.52 declaration by institution
10.53 declaration by importer
USFWS Form 3–177, if appropriate
10.59,.63 Documents/CF 5125 for withdrawal of ship supplies
10.66,.67 Declarations for articles exported and returned
10.68,.69 Documents for commercial samples, tools, theatrical effects
10.70,.71 Purebred breeding certificate
10.84 Automotive Products certificate
10.90 Master records and metal matrices: detailed statement of cost of production.
10.98 Declarations for copper fluxing material
10.99 Declaration of non-beverage ethyl alcohol, ATF permit
10.101–.102 Stipulation for government shipments and/or certification for government duty-free entries, etc.
10.107 Report for rescue and relief equipment
15 CFR 301 Requirements for entry of scientific and educational apparatus
10.121 Certificate from USIA for visual/auditory materials
10.134 Declaration of actual use (When classification involves actual use)
10.138 End Use Certificate
10.171– Documents, etc. required for entries of GSP merchandise
10.173,10.175 GSP Declaration (plus supporting documentation)
10.174 Evidence of direct shipment
10.179 Certificate of importer of crude petroleum
10.180 Certificate of fresh, chilled or frozen beef
10.183 Civil aircraft parts/simulator documentation and certifications
10.191–.198 Documents, etc. required for entries of CBI merchandise CBI declaration of origin (plus supporting information)
10.194 Evidence of direct shipment
†[10.306 Evidence of direct shipment for CFTA]
†[10.307 Documents, etc. required for entries under CFTA
Certificate of origin of CF 353]
[†CFTA provisions are suspended while NAFTA remains in effect. See part 181]
12.6 European Community cheese affidavit
12.7 HHS permit for milk or cream importation
12.11 Notice of arrival for plant and plant products
12.17 APHIS Permit animal viruses, serums and toxins
12.21 HHS license for viruses, toxins, antitoxins, etc for treatment of man
12.23 Notice of claimed investigational exemption for a new drug
12.26–.31 Necessary permits from APHIS, FWS & foreign government certificates when required by the applicable regulation
12.33 Chop list, proforma invoice and release permit from HHS
12.34 Certificate of match inspection and importer's declaration
12.43 Certificate of origin/declarations for goods made by forced labor, etc.
12.61 Shipper's declaration, official certificate for seal and otter skins
12.73 12.80 Motor vehicle declarations

VOL
61
ISS
136
JL
15
1996
UMI

12.85 Boat declarations (CG–5096) and USCG exemption
12.91 FDA form 2877 and required declarations for electronics products
12.99 Declarations for switchblade knives
12.104–.104i Cultural property declarations, statements and certificates of origin
12.105–.109 Pre-Columbian monumental and architectural sculpture and murals certificate of legal exportation evidence of exemption
12.110 Pesticides, etc. notice of arrival
12.118–.127 Toxic substances: TSCA statements
12.130 Textiles & textile products
Single country declaration
Multiple country declaration
VISA
12.133 NAFTA textile requirements
54.8 Declaration by importer of use of use of certain metal articles
54.8(a) Re-Melting Certificate
114 Carnets (serves as entry and bond document where applicable)
115 Container certificate of approval
128 Express consignments
128.21 *Manifests with required information (filed by carrier)
132.23 Acknowledgment of delivery for mailed items subject to quota
133.21(b)(6) Consent from trademark or trade name holder to import otherwise restricted goods
134.25,.36 Certificate of marking; notice to repacker
141.88 Computed value information
141.89 Additional invoice information required for certain classes of merchandise including, but not limited to:
Textile Entries: Quota charge Statement, if applicable including Style Number, Article Number and Product
Steel Entries: Ordering specifications, including but not limited to, all applicable industry standards and mill certificates, including but not limited to, chemical composition.
143.13 Documents required for appraisement entries bills, statements of costs of production value declaration
143.23 Informal entry: commercial invoice plus declaration
144.12 Warehouse entry information
145.11 Customs Declaration for Mail, Invoice
145.12 Mail entry information (CF 3419 is completed by Customs but formal entry may be required.)
148 Supporting documents for personal importations
151 subpart B Scale Weight
151 subpart B Sugar imports sampling/lab information (Chemical Analysis)
151 subpart C Petroleum imports sampling/lab information
Out turn Report 24. to 25.—Reserved
151 subpart E Wool and Hair invoice information, additional documents
151 subpart F Cotton invoice information, additional documents
181.22 NAFTA Certificate of origin and supporting records
19 U.S.C. 1356k Coffee Form O (currently suspended)

Other Federal and State Agency Documents
State and Local Government Records
Other Federal Agency Records (See 19 CFR Part 12, 19 U.S.C. 1484, 1499)
Licenses, Authorizations, Permits

Foreign Trade Zones
146.32 Supporting documents to CF 214

[FR Doc. 96–17833 Filed 7–12–96; 8:45 am]
BILLING CODE 4820–02–P

Office of Thrift Supervision

[96–62]

Review of OTS Decisions

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final guidelines.

SUMMARY: The Office of Thrift Supervision (OTS) is issuing guidelines for the review, appeal and reconsideration of various agency findings and decisions as Thrift Bulletin 68 (TB 68). The guidelines issued today establish an independent appellate process available to review supervisory decisions, examination findings and application decisions. TB 68 also provides for an agency Ombudsman to act as a liaison between the OTS and persons dealing with the OTS. The text of TB 68 appears as Appendix A to this document.

Section 309(a) of the Community Development and Regulatory Improvement Act of 1994 (CDRIA) requires the OTS and the other Federal banking agencies to develop an intra-agency supervisory review process. One purpose of TB 68 is to fulfill OTS's statutory mandate under section 309 of the CDRIA. The guidelines that the OTS previously followed for its supervisory review process were set forth in Regulatory Bulletin 4a (RB 4a), dated September 20, 1993. TB 68 incorporates, with certain modifications, the guidelines provided for in RB 4a and RB 4a is hereby rescinded.

Irrespective of the statutory mandate of Section 309(a) of the CDRIA, but related to the appellate process, TB 68 also provides a process for the reconsideration of decisions made with respect to applications filed with the OTS. Previously, as part of a restructuring of its applications regulations, in April 1992, the OTS deleted review provisions in several individual application regulations with the intent of developing uniform procedures that would cover all applications filed with the OTS. The guidelines issued today in TB 68 set forth these procedures.

The CDRIA also requires that each Federal banking agency appoint an Ombudsman to "act as a liaison between the agency and any affected person with respect to any problem such party may have in dealing with the agency resulting from the regulatory activities of the agency; and assure that safeguards exist to encourage complainants to come forward and preserve confidentiality." The responsibilities of and procedures to be used by the OTS Ombudsman are also set forth in TB 68.

DATES: The final guidelines are effective July 15, 1996.

FOR FURTHER INFORMATION CONTACT: The Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552: Alvin W. Smuzynski, Director, Regional Operations (202) 906–5669 or Valerie J. Lithotomos, Counsel (Banking and Finance), Regulations and Legislation Division, Chief Counsel's Office (202) 906–6439, regarding supervisory appeals; David A. Sjogren, Program Manager, Applications, Corporate Activities Division (202) 906–6739 or John P. Harootunian, Senior Counsel, Business Transactions Division, Chief Counsel's Office (202) 906–6415, regarding application reconsiderations; and Lee Lassiter (202) 906–5685, regarding Ombudsman matters.

SUPPLEMENTARY INFORMATION:

I. Supervisory Review and Appeals

Section 309(a) of the CDRIA [1] requires the OTS and the other banking agencies to establish an "independent intra-agency appellate process" for the review of "material supervisory determinations" (as defined in Section 309(f)(1) of the CDRIA) made at insured depository institutions. Prior to the statutory mandate of section 309 of the CDRIA, the OTS provided a supervisory review process since 1992 that is described in RB 4a. On December 29, 1994, the OTS published a notice of proposed guidelines with a request for comments, describing a revised supervisory review and appeals process.[2] The public comment period closed on February 27, 1995. No comments were received and so the guidelines published today incorporate the supervisory review and appeals process proposed in December 1994. To ensure that OTS decisions and findings are fair, equitable and consistent, the guidelines in TB 68 being issued today go beyond the statutory mandate of section 309 by providing an appellate

[1] Pub. L. 103–325, 108 Stat. 2160, 2218–20 (September 23, 1994) (codified at 12 U.S.C. 4806).
[2] 59 FR 67383 (December 29, 1994).

process for *all* supervisory decisions and examination findings which is more expansive than the statutorily required "material supervisory determination." The discussion below sets forth OTS's compliance with the statutory mandate of section 309 of the CDRIA.

A. Independence

Section 309 of the CDRIA sets forth certain standards for the agencies' supervisory appeals process. First, the process must be "independent." The statute defines independence to mean that the review provided must be conducted "by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review."

TB 68 specifies that the final decision maker for supervisory appeals is the Executive Director, Supervision in Washington, D.C. who reports directly to the Director of OTS. This reporting arrangement satisfies the independence requirement of Section 309. Furthermore, supervisory reviews will be conducted by an agency official who does not directly report to the agency official who made the determination under review.

Notwithstanding the supervisory appeals process at the Executive Director's level, the OTS believes that open discussions between examination and supervisory staff at the regional level is a productive means to address a savings association's concerns. Accordingly, the OTS continues to encourage savings associations to attempt to resolve issues directly with regional examination or supervisory staff before filing an appeal with the Executive Director, Supervision in Washington, D.C.

B. Prompt Disposition of Appeal

The statute also requires that the supervisory appeals process be structured so that appeals are "heard and decided expeditiously." TB 68 sets a deadline of sixty calendar days for review by the Executive Director, Supervision. Before filing an appeal with the Executive Director, however, savings associations are encouraged to utilize an optional regional review procedure. The deadline for action on a regional review is thirty calendar days. These deadlines may be extended in writing by the OTS stating the reason for the extension and the expected date of decision.

C. Material Supervisory Determinations

Section 309 of the CDRIA requires that the appeals process be available for the review of "material supervisory determinations" (as defined in section 309(f)(1) of the CDRIA). The guidelines in TB 68 specifically include "material supervisory determinations" within the scope of the appeals process in conformance with section 309 of the CDRIA. In addition, under the guidelines contained in TB 68, savings associations may also appeal *all* supervisory decisions and examination findings. TB 68 may also be used to appeal supervisory actions affecting individuals or affiliates of savings associations. Such appeals may be filed by the individual or affiliate and do not require the concurrence of the savings association's board of directors.

The guidelines in TB 68 recite the statutory definition of "material supervisory determinations" and clarify that the reference to "examination ratings" in such definition includes ratings for any type of examination that the OTS conducts, including safety and soundness, trust, information systems, compliance and savings and loan holding company examinations and CRA evaluations of savings associations.

The OTS will initially exclude from the section 309 appeals process, matters for which some other special review process is available. However, a savings association may appeal a supervisory action resulting from a special review process using the supervisory appeals process described in TB 68 if the specialized review process results in a decision adverse to the savings association and an additional appeal would further the OTS's mandate under section 309 of the CDRIA.

The statute specifically exempts from the supervisory appeals process decisions to appoint a conservator or receiver and decisions to take action pursuant to the prompt corrective action provisions of section 38 of the Federal Deposit Insurance Act.[3] The revised guidelines also retain the exclusions for preliminary examination results and formal enforcement-related actions.

D. Safeguards Against Retaliation

Section 309 requires that the appeals process contain "appropriate safeguards" to protect savings associations from retaliation by agency examiners. TB 68 makes explicit the OTS's policy of prohibiting any employee, including examiners and supervisory staff, from taking retaliatory action against a savings association or other parties that pursue a review or an appeal.

In addition, section 309 of the CDRIA requires that the OTS appoint an Ombudsman whose duties include assuring "that safeguards exist to encourage complainants to come forward and preserve confidentiality." The OTS does not contemplate that its Ombudsman will be involved in the review of the merits of supervisory decisions in dispute. However, the Ombudsman will be the appropriate recipient for any complaints of retaliation and will investigate and resolve such complaints. The OTS will take appropriate action to remedy any occurrence of employee retaliation against a savings association or other party that seeks a review of a supervisory determination.

[3] 12 U.S.C. 1831o.

II. Application Reconsiderations

The 1992 Applications Restructuring Regulation [4] deleted various procedures from individual application regulations for the reconsideration of applications that had been denied by the OTS. The intent was to develop a single uniform procedure that would cover all applications filed with the agency. In order to consolidate the OTS's appellate process for all decisions and findings, the OTS has described the procedures for reconsideration of an application in TB 68.

The application reconsideration process provides for prompt review and decision by an independent decision maker. An applicant that believes that the OTS's decision on an application is inconsistent with existing regulations, policies, procedures or facts presented in the application may request the OTS's reconsideration of that decision. The right to request reconsideration extends to decisions to deny applications and decisions to impose non-standard conditions of approval. Applicants are encouraged to discuss any concerns they have about an OTS decision on an application with the office that made the initial decision (e.g., the OTS Regional Office or the Washington, D.C. office) before requesting reconsideration. Reconsideration decisions will be made in Washington, D.C. by either the Director or the Director's designee.

The application reconsideration process described in TB 68 does not supersede any statutory provisions for judicial or administrative review of OTS decisions concerning applications.

III. Ombudsman

Section 309 of the Act provides that the Ombudsman is to:

(1) Act as a liaison between the agency and any affected person with respect to any problem such party may have in dealing with the agency

[4] 57 FR 14329 (April 20, 1992).

VOL
61
ISS
136
JL
15
1996
UMI

resulting from the regulatory activities of the agency; and

(2) assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.

TB 68 describes the responsibilities of and procedures to be used by the Ombudsman. TB 68 also provides guidance regarding the relationship between the Ombudsman and the agency's other appeals processes.

Dated: July 9, 1996.

By the Office of Thrift Supervision.

John F. Downey,

Executive Director, Supervision.

Appendix A to Final Guidelines Regarding Review of OTS Decisions

Office of Thrift Supervision

Thrift Bulletin

Handbook:	Thrift Activities	Section: 060, 510
Subject:	Examination Strategy, Management and Scoping Oversight by Board of Directors	TB 68. July 15, 1996.

Supervisory Review, Appeal and Reconsideration Process and Ombudsman Matters

Summary: This bulletin provides a process for the review and appeal of OTS supervisory decisions and examination findings; reconsideration of OTS application decisions; and utilization of the OTS Ombudsman. Regulatory Bulletin 4a, dated September 20, 1993, is rescinded.

For Further Information Contact: Director, Regional Operations (202) 906–5669 regarding the OTS supervisory review and appeals process; Program Manager, Corporate Activities (202) 906–6739 regarding application reconsiderations; and Ombudsman (202) 906–5685 regarding complaints, concerns or problems in dealing with the OTS.

The OTS recognizes that its decisions have a significant effect on OTS regulated savings associations and that certain OTS supervisory decisions and examination findings may be challenged. Because it is the OTS's objective to ensure OTS decisions and findings are fair, equitable and consistent, the OTS has developed a process for the review, appeal and reconsideration of disputed OTS decisions and findings. Filings and submissions made pursuant to this Bulletin are not subject to 12 CFR Part 516.

The OTS supervisory review and appeals process is provided in Section I of this Bulletin. The reconsideration of application decisions process is provided in Section II of this Bulletin. Section III provides for the utilization of the OTS Ombudsman in dealing with the OTS in any matter, regardless of whether the matter relates to the OTS supervisory review and appeals process or the application reconsideration process.

I. Appeal of OTS Supervisory Decisions and Examination Findings, Including "Material Supervisory Determinations"

Background

Section 309(b) of the Community Development and Regulatory Improvement Act of 1994 (CDRIA) requires that the OTS (and the other Federal banking agencies) establish an intra-agency appellate process for the review of "material supervisory determinations" made by agency officials. Decisions and findings made during the examination process by the OTS staff may affect savings associations directly and immediately. From time to time, savings associations may disagree with supervisory decisions or with examination findings upon which those decisions are based. The OTS previously followed guidelines set forth in Regulatory Bulletin 4a (RB 4a), dated September 20, 1993, for its supervisory review process which was applicable to all supervisory decisions and examination findings. This section of this Bulletin incorporates, with certain modification, the guidelines set forth in RB 4a and establishes the guidelines that govern the OTS supervisory review and appeals process for all OTS supervisory decisions and examination findings, including all "material supervisory determinations" as defined in Section 309 of the CDRIA (these terms shall be collectively referred to as "supervisory determinations"). RB 4a is hereby rescinded and replaced by this Thrift Bulletin 68 (TB 68).

The OTS encourages the resolution of supervisory disputes through informal communications between savings associations and the OTS regional supervisory and examination staff. If disputes cannot be resolved successfully at the regional level, however, savings associations may appeal and seek independent review by the Executive Director, Supervision in Washington, D.C. pursuant to the procedures specified below. Other parties affected by an OTS supervisory determination may also seek review under these guidelines.

Scope of the OTS Supervisory Review and Appeals Process

Matters that may be reviewed or appealed are all OTS supervisory decisions and examination findings, including "material supervisory determinations" such as:

- examination ratings;
- the adequacy of loan loss reserve provisions; and
- classifications of loans that are significant to the savings association.

Matters that may not be reviewed or appealed include:

- decision to appoint a conservator or receiver;
- preliminary examination findings and conclusions prior to issuance of a final report of examination;
- any decision relating to formal enforcement-related action, such as a decision to initiate a formal investigation, to file a notice of charges, or to assess civil money penalties; or
- any decision to take action pursuant to the Prompt Corrective Action provisions that appear at Section 38 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1831o.

Matters that are subject to a special review or appeals process, such as modification of the interest rate risk component discussed in Thrift Bulletin 67, dated August 21, 1995, are not immediately appealable through the OTS supervisory review and appeals process. However, if the special review or appeals process results in a supervisory determination that is adverse to the savings association and an additional appeal would further OTS's mandate under Section 309 of the CDRIA, the savings association may seek OTS supervisory review and appeal of the determination under these guidelines.

Supervisory Review at the Regional Level

A. *During the On-Site Examination.* If a disagreement arises during an on-site examination, the matter should be raised directly with the examiner-in-charge (EIC) while the EIC is at the savings association. If issues remain unresolved, the savings association should request that the EIC's supervisor (e.g., Field Manager or Assistant Regional Director) be included in the discussions. Disagreements will be briefly noted in the final report of examination.

B. *With the Regional Office.* Savings associations are encouraged to raise with the appropriate OTS Regional Office disagreements with examination findings during the examination or disagreements with supervisory decisions at any time. A final supervisory determination in dispute may be raised either orally or in writing to the Assistant Regional Director, Deputy Regional Director, or Regional Director or his designee, who was not directly involved in the determination being reviewed. If the savings association elects to state the issue or problem in writing, the written request for review should describe the issue or problem, specify the related facts, and be signed by the Chief Executive Officer. The Regional Office will act within 30 calendar days of receipt of the request for a supervisory review, unless the Regional Director responds to the savings association, in writing, stating the reason why a decision will take longer than 30 calendar days and specifing the expected date for a decision.

Supervisory Appeal to the Executive Director, Supervision

A. *The Savings Association's Appeal Submission.* If the above-described discussions or supervisory review do not result in satisfactory resolution of the disagreement or if the savings association elects to use the supervisory appeals process without first obtaining regional supervisory review, an appeal may be filed with the Executive Director, Supervision. The following procedures apply to supervisory appeals:

- The board of directors of the savings association must authorize the supervisory appeal by resolution and forward one copy of such resolution to the Executive Director, Supervision with the appeal. A supervisory appeal by an individual or affiliate does not require an authorization from the savings association's board of directors.
- The savings association will have 60 calendar days from notification of a supervisory determination (or, in the event a request for regional supervisory review has been made, from the date of the Regional Office's decision) to file a supervisory appeal with the Executive Director, Supervision.[1] Requests for a supervisory appeal should be directed to: Executive Director, Supervision, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.
- The supervisory appeal should contain:
  - —A concise statement, no longer than five pages, of the dispute and why it is material. For example, identify the precise loans(s), property, appraisal, etc.
  - —The remedy being sought and its financial effect.
  - —A statement of whether the savings association has attempted to resolve the dispute at the regional level.
  - —A description of any applicable statutes, regulations, policies, or procedures on which the savings association relies.
  - —Confirmation as to whether the savings association has, in the interim, complied with the supervisory determination being appealed. If the savings association has not complied with the supervisory determination, the supervisory appeal must include a request for a suspension of the supervisory determination.
  - —Copies of any relevant excerpts from supervisory documents, reports and correspondence with the region about the supervisory determination. (These copies do not count toward the five page limit.)
  - —The name, address and telephone number of an individual at the savings association designated to provide additional information.
- No fee is required for submission of the supervisory appeal. Savings associations are encouraged to minimize costs by internally preparing the supervisory appeal rather than using outside attorneys, accountants or consultants. If warranted by the circumstances and agreed to by the savings association, the OTS may use outside experts to evaluate issues. In such circumstances, the savings association shall pay the costs of such experts.

B. *Review by the Executive Director, Supervision*

- The OTS will acknowledge receipt of a supervisory appeal within five calendar days of receipt.
- Within 15 calendar days of receipt, the OTS will make a request for any additional information necessary to complete the decision on the supervisory appeal.
- The savings association shall furnish additional information within 15 calendar days of receipt of the OTS's request, unless the time is extended by the Executive Director, Supervision or his designee.
- Absent unusual circumstances, the OTS will provide its decision on the supervisory appeal within 60 calendar days of receipt of the filing of the supervisory appeal or, if additional information is requested, within 60 calendar days of receipt of any additional information.
- Any of the above timeframes may be extended by the Executive Director, Supervision or his designee. Any extensions granted will be in writing, and will include the reason for the extension, and the expected date that a decision will be made.

[1] The OTS will grant to a savings association a suspension from the requirement to publicly disclose the savings associations's Community Reinvestment Act (CRA) Performance Evaluation in its public file within 30 calendar days after its receipt from the OTS; provided, however, that the savings association submits a supervisory appeal pertaining to its CRA rating within the 30 calendar day period.

Effect of Initiating a Supervisory Review or Appeal

An OTS supervisory review or appeal will not suspend or delay the pursuit of any enforcement action or formal investigation. An OTS supervisory review or appeal will not stay the obligation of a savings association or an institution-affiliated party to comply with any order or other determination resulting from an enforcement action. An OTS supervisory review or appeal will not operate automatically to relieve a savings association or other party of the obligation to comply with the supervisory determination under review. Upon the request of the savings association or other party filed simultaneously with its supervisory appeal, the Executive Director, Supervision may relieve the savings association or other party of the obligation to comply while the supervisory appeal is pending in Washington, D.C. The appropriate regional official may grant similar relief while a supervisory review is pending at the regional level. The OTS retains the right to take any action and to apply any standards deemed appropriate to ensure the safety and soundness of a savings association.

Prohibition on Retaliation

The OTS prohibits any employee, including members of its examination and supervision staff, from acts of retaliation against a savings association or other party that seeks review or appeal of a supervisory determination. See Section III of this Bulletin.

II. Reconsideration of Application Decisions

A request to reconsider a decision made on an application or notice (collectively referred to as an "application") may be made when, in the applicant's judgment, the OTS's decision on an application or its decision to impose non-standard conditions of approval is inconsistent with existing OTS regulations, policies, procedures or the facts presented in the application. In all cases, before filing a request to reconsider a decision made on an application, applicants are encouraged to discuss with the decision-making office (e.g., Regional or Washington, D.C.) any concerns regarding the OTS decision on the application.

Requests for reconsideration of application decisions or non-standard conditions of approval should be filed in the following manner:

- Applicants requesting a reconsideration of an application should file an original request with the OTS Applications Filing Room, and conformed copies with the Corporate Activities Division and Business Transactions Division, 1700 G Street, N.W., Washington, D.C. 20552 within 30 calendar days of the OTS action on the application.
- The request should contain:
  - —The type of application on which review is sought.
  - —A statement of whether the applicant is submitting a request for reconsideration of an OTS application decision or the imposition of non-standard conditions of approval.
  - —A concise statement of the reasons why the applicant disagrees with the OTS application decision or non-standard conditions of approval.
  - —A description of any applicable statutes, regulations, policies or procedures on which the applicant relies.
  - —Confirmation as to whether the applicant has, in the interim, complied with the terms of the application decision or non-standard conditions of approval.
  - —Copies of any supporting documents.
  - —The name, address and telephone number of an individual designated to provide additional information.
- No fee will be charged for a request for reconsideration.
- The Director, or his designee(s) will make every effort to take action upon a request for reconsideration within 60 calendar days of the receipt of a request, or if additional information is requested, within 60 calendar days of receipt of any additional information.

Effects of Filing a Request for Reconsideration

The procedures described in this section of the Bulletin regarding the reconsideration of application decisions do not supersede any statutory provisions for judicial or administrative review of agency decisions concerning applications. An applicant's election to use the procedures in this section of this Bulletin will not toll or suspend the running of any statutorily-prescribed period for seeking judicial review. In addition, when a statute requires the OTS to make a decision on an application within a specific period of time, the OTS will deem the original decision, and not the decision rendered in response to a request for reconsideration, to determine compliance with such a requirement.

Prohibition on Retaliation

The OTS prohibits any employee, including members of its examination and supervisory staff, from acts of retaliation against an applicant that files for the reconsideration of an application. See Section III of this Bulletin.

III. Ombudsman Matters

Section 309(d) of the CDRIA requires that each Federal banking agency appoint an Ombudsman. Section 309 provides that the Ombudsman is to:

(1) Act as a liaison between the agency and any affected person with respect to any problem such party may have in dealing with the agency resulting from the regulatory activities of the agency; and

(2) Assure that safeguards exist to encourage complainants to come forward and preserve confidentiality.

Section 309(b)(2) of the CDRIA provides that each Federal banking agency shall

VOL
61
ISS
136
1996
JL
15
UMI

ensure that appropriate safeguards exist for protecting any party who appeals a "material supervisory determination" from retaliation by agency examiners.

Responsibilities of the Ombudsman. The OTS believes that the proper role of the Ombudsman under Section 309 is to act as a facilitator and mediator for the resolution of complaints. The Ombudsman will ensure that complaints about OTS regulatory actions are addressed in a fair and timely manner. The Ombudsman's major function is to provide assistance as a liaison with the thrift industry and the public on issues, concerns or problems that they may have in dealing with the OTS. The OTS Ombudsman reports directly to the Director.

Handling of Complaints. When a problem is brought to the attention of the Ombudsman for which there is an existing avenue of appeal on the merits or another appropriate forum for resolution, the Ombudsman will explain the process or forum for resolution, and direct the party to the appropriate appeals process or forum for the dispute. The OTS's regulations provide existing mechanisms for resolutions of disputes in many instances, such as: prompt corrective action directives under Section 38 of the Federal Deposit Insurance Act; denials or partial denials of Freedom of Information or Privacy Act requests; issuance of capital directives; and supervisory decisions and examination findings; application decisions; and matters within the jurisdiction of the Department of the Treasury's Inspector General or Federal or State investigatory or prosecutorial authorities.

Where an established appeals process or forum may not be available to resolve a dispute or if a party has a complaint with regard to the process, the Ombudsman will meet with the appropriate OTS official, or arrange a meeting between the complainant and the appropriate OTS official and attempt to resolve the problem. If the Ombudsman believes a problem or complaint has not been satisfactorily addressed, the Ombudsman may raise the matter with a higher level official and/or the Director for resolution.

Safeguards. Section 309(d)(2)(B) of the CDRIA requires that the Ombudsman ensure that safeguards exist to encourage complainants to come forward and preserve confidentiality. In the OTS's view, the OTS's existing avenues for appeal or complaints, the Ombudsman's authority to compel meetings with appropriate OTS officials at all levels in Washington, D.C. and the regions, as well as the authority of the Ombudsman to review complaints of retaliation, should encourage complainants to come forward.

All information and materials utilized in the Ombudsman's review of a complaint shall be used only for purposes of the review and not disclosed outside of the Ombudsman's office, except to appropriate reviewing officials or with appropriate authorization. The Ombudsman will honor requests to keep confidential the identity of a complaining party. It must be recognized, however, that the resolution of certain complaints (such as complaints of retaliation against an individual institution) may not be possible should the identity of the complainant remain confidential. In such cases, the Ombudsman will discuss the circumstances limiting confidentiality with the complaining party involved. The OTS believes these provisions should assist in preserving the confidentiality of complainants and the Ombudsman function.

Retaliation. The Ombudsman is authorized to receive complaints of retaliation against a party as a result of utilizing the Ombudsman or any existing avenue of appeal or complaint forum. Upon receiving a complaint of retaliation, the Ombudsman will investigate the supervisory basis for the alleged retaliatory conduct. Upon completion of the review, the Ombudsman will report any findings of retaliation to the Director of OTS with a recommendation for remedial action to protect the complainant. A finding of retaliation will be referred to the Chief Counsel, for possible disciplinary action against the OTS employee who retaliated.

Procedures. A party may contact the Ombudsman at any time regarding a problem resulting from the regulatory activities of the OTS by calling (202) 906–5685 or writing to: Ombudsman, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

John F. Downey,

Executive Director, Supervision.

[FR Doc. 96–17878 Filed 7–12–96; 8:45 am]

BILLING CODE 6720–01–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "From Court Jews to the Rothschilds: Art, Patronage and Power 1600–1800" (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Jewish Museum in New York City from on or about September 8, 1996, through January 19, 1997, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: July 10, 1996.

Les Jin,

General Counsel.

[FR Doc. 96–17970 Filed 7–12–96; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Carol Epstein, Assistant General Counsel, at 202/619–6981, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

Corrections

Federal Register
Vol. 61, No. 136
Monday, July 15, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 923

[Docket No. 960126015–6165–02]

RIN 0648–AI43

Coastal Zone Management Program Regulations

Correction

In rule document 96–16402, beginning on page 33802 in the issue of Friday, June 28, 1996, make the following corrections:

§ 923.12 [Corrected]

1. On page 33806, in the third column, in the third paragraph of § 923.12, in line one, "(5)" should read "(b)".

§ 923.13 [Corrected]

2. On the same page, in the same column, in the third paragraph of § 923.13, in line one, "(5)" should read "(b)".

§ 923.25 [Corrected]

3. On page 33808, in the first column, in the first paragraph of § 923.25, in line eight, "this" is corrected as "This".

§ 923.81 [Corrected]

4. On page 33815, in the third column, in § 923.81(b)(2), in line one, insert "An" after "(2)".

§ 923.83 [Corrected]

5. On page 33816, in the first column, the section heading "**§ 923.89 Mediation of amendments.**" should read "**§ 923.83 Mediation of amendments.**"

§ 923.84 [Corrected]

6. On the same page, in the third column, in § 923.84(b)(5), the paragraph designated "(1)" should read "(i)".

§ 923.133 [Corrected]

7. On page 33818, in the third column, in the fourth line of amendatory instruction 9, "§ 928.3(d)" should read "§ 928.2(d)".

§ 923.124 [Corrected]

8. On page 33819, in the first column, in the sixth line of amendatory instruction 16, "§§ 0923.121(b)" should read "§§ 923.121(b)".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. 24802; Amendment No. 29-39]

RIN 2120-AB36

Airworthiness Standards; Transport Category Rotorcraft Performance

Correction

In rule document 96–11494, corrected on page 33963-33999, in the issue of Monday, July 1, 1996, in the first column, "Amendment No. 29-40" appearing in the heading should read "Amendment No. 29-39".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. 28006; Amendment No. 27-33,29-40]

RIN 2120-AF65

Rotorcraft Regulatory Changes Based on European Joint Aviation Requirements

Correction

In rule document 96–11493, corrected on page 33963-33999, in the issue of Monday, July 1, 1996, in the third column, "Amendment No. 27-33,29-39" appearing in the heading should read "Amendment No. 27-33,29-40".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96-ANM-001]

Amendment of Class E Airspace; Baker, Montana

Correction

In rule document 96–14878 appearing on page 29645 in the issue of Wednesday, June 12, 1996 make the following corrections:

§71.1 [Corrected]

In the second column, in §71.1, in the last paragraph:

(a) Fourteen lines from the bottom "46°20'00"N" should read "46°29'00"N".

(b) Twelve lines from the bottom "104°31'00"W; to lat. 46°37'00"N, long." was incorrectly repeated.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1150

[STB Ex Parte No. 529]

Class Exemption for Acquisition Or Operation Of Rail Lines By Class III Rail Carriers Under 49 U.S.C. 10902

Correction

In rule document 96–15895 beginning on page 32355 in the issue of Monday, June 24, 1996, make the following corrections:

§ 1150.44 [Corrected]

On page 32356, in the first column, in § 1150.44, after the introductory text, the headings should read as follows:

Surface Transportation Board

Notice of Exemption

STB Finance Docket No.

(1) — Exemption (2) — (3)

BILLING CODE 1505–01–D

VOL
61

ISS
136

JL
15

1996

UMI

federal register

Monday
July 15, 1996

Part II

Pension Benefit Guaranty Corporation

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Rates and Assumptions Used in Making Benefits Valuations; Final Rule and Notice

VOL 61 ISS 136 1996 JL UMI

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Rate for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans. The regulation prescribes interest assumptions for valuing benefits under terminating single-employer plans. This rule adopts interest assumptions for plans with valuation dates in August 1996 and advises the public of the new assumptions. These interest assumptions are also used under the PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal.

EFFECTIVE DATE: August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This rule adopts the August 1996 interest assumptions to be used in benefit valuations for terminating single-employer plans. Before July 1996, the interest assumptions used for such benefit valuations were contained in PBGC regulations codified at 29 CFR part 2619. In a final rule effective July 1, 1996 (61 FR 34001), the PBGC reorganized and renumbered its regulations. The single-employer benefit valuation provisions are now codified in the PBGC's regulation on Allocation of Assets in Single-Employer Plans at 29 CFR part 4044, and this rule amends that regulation. As discussed in a notice published elsewhere in today's **Federal Register**, these interest assumptions are also used in valuations of multiemployer plans following mass withdrawal.

Part 4044 prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. Under ERISA section 4041(c), a single-employer plan administrator wishing to terminate the plan in a distress termination must value guaranteed benefits and "benefit liabilities" (*i.e.*, all benefits provided under the plan as of the plan termination date) in accordance with part 4044. (Benefit liabilities may also be valued in accordance with part 4044 for purposes of the Standard Termination Notice filed with the PBGC by a plan terminating in a standard termination, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it values benefits in accordance with part 4044 to determine the amount of the plan's underfunding.

Among the actuarial assumptions prescribed in part 4044 are interest rates and factors, which are set forth in appendix B to part 4044. Because these interest rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

Two sets of interest rates and factors are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the two sets of interest rates and factors for valuing benefits in plans with valuation dates during August 1996.

For annuity benefits, the interest rates will be 6.30 percent for the first 20 years following the valuation date and 4.75 percent thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.25 percent for the period during which benefits are in pay status, 4.50 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. The annuity interest assumptions represent an increase (from those in effect for July 1996) of 0.10 percent for the first 20 years following the valuation date and are otherwise unchanged. The lump sum interest assumptions represent an increase (from those in effect for July 1996) of 0.25 percent for the period during which benefits are in pay status and the seven years directly preceding that period and are otherwise unchanged.

Generally, the interest rates and factors under part 4044 are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions are normally published in the **Federal Register** on or about the 15th of the preceding month.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during August 1996, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, part 4044 of chapter XL, title 29, Code of Federal Regulations, is hereby amended as follows:

PART 4044—[AMENDED]

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

Appendix B to Part 4044—[Amended]

2. In appendix B, a new entry is added to Table I, and Rate Set 34 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums

TABLE I.—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_j) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date]

For valuation dates occurring in the month—	The values of i_j are:					
	i_j	for t=	i_j	for t=	i_j	for t=
*	*	*	*	*	*	*
August 1996	.0630	1–20	.0475	>20	N/A	N/A

TABLE II.—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
34	08–1–96	09–1–96	5.25	4.50	4.00	4.00	7	8

Issued in Washington, DC, on this 5th day of July 1996.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 96–17792 Filed 7–12–96; 8:45 am]

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VOL
61
ISS
1
36
JL
15
1996
UMI

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's home page (http://www.pbgc.gov).

DATES: The interest assumptions for determining the variable-rate premium under part 4006 apply to premium payment years beginning in May, June, and July 1996. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in August 1996. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the third quarter (July through September) of 1996.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: Before July 1996, the rates and assumptions to be used under the PBGC regulations discussed below were set forth in tables in the regulations, even though the tabulated rates were merely copied from (or based on) rates published by other agencies, or were identical to rates in other PBGC regulations. In a final rule effective July 1, 1996 (61 FR 34001), the PBGC reorganized, renumbered, and significantly shortened its regulations. Tables that simply set forth information available elsewhere were among the unnecessary items that were removed. The PBGC will now publish the new rates and assumptions in Federal Register notices on or about the 15th of each month, with tables of the rates for recent periods. The rates will be published monthly or quarterly, as appropriate, regardless of whether they have changed.

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe methods for determining a single-employer plan's unfunded vested benefits for premium computation purposes. These methods (previously codified at 29 CFR part 2610) involve use of an assumed interest rate equal to a specified percentage (currently 80 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid. The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15. The assumed interest rates to be used for computing premiums for plan years beginning in May, June, and July 1996 (*i.e.*, 80 percent of the yield figures for April, May, and June 1996) are 5.43 percent, 5.54 percent, and 5.65 percent respectively.

The following table lists the interest rates required under 29 CFR 4006.4(b)(1) to be used in valuing vested benefits for purposes of determining variable-rate premiums for plans with premium payment years beginning within the specified months:

For premium payment years beginning in	The required interest rate is
August 1995	5.38
September 1995	5.49
October 1995	5.24
November 1995	5.10
December 1995	5.01
January 1996	4.85
February 1996	4.84
March 1996	4.99
April 1996	5.28
May 1996	5.43
June 1996	5.54
July 1996	5.65

Late Premium Payments; Underpayments and Overpayments of Single-employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. (These provisions were previously codified at 29 CFR parts 2610 and 2622.) The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the third quarter (July through September) of 1996, as announced by the IRS, is 9 percent.

The following table lists the late payment interest rates under 29 CFR §§ 4007.7(a) and 4062.7 for the specified time periods:

From	Through	Interest rate (percent)
10/1/89	3/31/91	11
4/1/91	12/31/91	10
1/1/92	3/31/92	9
4/1/92	9/30/92	8
10/1/92	5/30/94	7
7/1/94	9/30/94	8
10/1/94	3/31/95	9
4/1/95	6/30/95	10
7/1/95	3/31/96	9
4/1/96	6/30/96	8
7/1/96	9/30/96	9

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. (These provisions were previously codified at 29 CFR part 2644.) For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). The rate for the third quarter (July through September) of 1996 (*i.e.*, the rate reported for June 17, 1996) is 8.25 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates under 29 CFR § 4219.32(b) for the specified time periods:

From	Through	Rate (percent)
4/1/90	3/31/91	10.00
4/1/91	6/30/91	9.00
7/1/91	9/30/91	8.50
10/1/91	12/31/91	8.00
1/1/92	3/31/92	7.50
4/1/92	9/30/92	6.50
10/1/92	6/30/94	6.00
7/1/94	9/30/94	7.25
10/1/94	12/31/94	7.75
1/1/95	3/31/95	8.50
4/1/95	9/30/95	9.00
10/1/95	3/31/96	8.75
4/1/96	9/30/96	8.25

Multiemployer Plan Valuations Following Mass Withdrawal

Section 4281.13 of the PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes methods for valuing benefits and certain assets of multiemployer plans following mass withdrawal under sections 4219(c)(1)(D) and 4281(b) of ERISA. These methods (previously codified at 29 CFR part 2676) involve use of the same interest assumptions used and prescribed under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). However, only part 4044 actually sets forth the prescribed interest assumptions; part 4281 simply refers to the assumptions in part 4044. The interest assumptions applicable to valuation dates in August 1996 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's Federal Register. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 5th day of July 1996.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

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VOL
61

ISS
136

JL
15

1996

UMI

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Part III

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products; Final Rule

VOL
61
ISS
136
JL
15
1996
UMI

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

RIN [1904–AA83]

Energy Conservation Program for Consumer Products: Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of final rulemaking.

SUMMARY: The Department of Energy (DOE or Department) today promulgates a rule to elaborate on the procedures, interpretations and policies that will guide the Department in establishing new or revised energy efficiency standards for consumer products. The process described in this rule provides for greatly enhanced opportunities for public input, improved analytical approaches, and encouragement of consensus-based standards. This enhanced approach was developed by the Department on the basis of extensive consultations with many stakeholders.

EFFECTIVE DATE: The procedures, interpretations and policies established in this rule take effect on August 14, 1996.

ADDRESSES: A copy of the report entitled "Results of the Appliance Rulemaking Process Improvement Effort," from which much of the enhanced process described in this rule is derived, may be obtained from: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, EE–43, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7574. This report may be read at the DOE Freedom of Information Reading Room, U.S. DOE, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–0371

Douglas W. Smith, Office of General Counsel, U.S. Department of Energy, Mail Station GC–70, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–3410

Deborah E. Miller, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Mail Station EE–1, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–8888.

SUPPLEMENTARY INFORMATION:

I. Background on Appliance Standards Program
II. Process Leading to Development of this Rule
III. Description of Rule
1. Objectives
2. Scope
3. Setting Priorities for Rulemaking Activity
4. Process for Developing Efficiency Standards and Factors to be Considered
5. Policies on Selection of Standards
6. Effective Date of a Standard
7. Test Procedures
8. Joint Stakeholder Recommendations
9. Principles for the Conduct of Engineering Analysis
10. Principles for the Analysis of Impacts on Manufacturers
11. Principles for the Analysis of Impacts on Consumers
12. Consideration of Non-Regulatory Approaches
13. Crosscutting Analytical Assumptions
14. Deviations, Revisions, and Judicial Review
IV. Related DOE Actions to Implement Process Improvements
1. Finalized process improvement report
2. Process to develop rulemaking priorities
3. Review of manufacturer impact analysis
4. Review of non-regulatory approaches
5. Creation of an advisory committee
V. Status of Ongoing Rulemakings
VI. Administrative Procedure
VII. Administrative Reviews

I. Background on Appliance Standards Program

The Department of Energy's appliance standards program is conducted pursuant to Title III, Part B of the Energy Policy and Conservation Act (EPCA). 42 U.S.C. 6291–6309. In 1987, EPCA was amended to establish by law national efficiency standards for certain appliances and a schedule for DOE to conduct rulemakings to periodically review and update these standards. National Appliance Energy Conservation Act, Pub. L. 100–12 (1987). The products covered by these standards included refrigerators and freezers, room air conditioners, central air conditioners and heat pumps, water heaters, furnaces, dishwashers, clothes washers and dryers, direct heating equipment, ranges and ovens, pool heaters, and fluorescent lamp ballasts. In conducting the rulemakings to update the standards, the Secretary of Energy is to set standards at levels that achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified.

The Energy Policy Act of 1992 (EPACT) further amended EPCA to expand the coverage of the standards program to include certain commercial and industrial equipment, including commercial heating and air-conditioning equipment, water heaters, certain incandescent and fluorescent lamps, distribution transformers, and electric motors. Energy Policy Act of 1992, Pub. L. 102–486 (1992). EPACT also established maximum water flow-rate requirements for certain plumbing products and provided for voluntary testing and consumer information programs for office equipment, luminaires, and windows.

EPCA also provides for DOE to establish test procedures to be used in evaluating compliance with efficiency standards. These test procedures are revised periodically to reflect new product designs or technologies.

As prescribed by EPCA, energy efficiency standards are established by a three-phase public process: Advance Notice of Proposed Rulemaking (ANOPR); Notice of Proposed Rulemaking (NOPR); and Final Rule. The process to develop test procedures is similar, except that an Advance Notice is not required.

In updating standards as required by EPCA, DOE revised standards for refrigerators and freezers in November 1989, with those standards becoming effective in January 1993. 54 FR 47916 (Nov. 17, 1989). These standards resulted in an approximately 25 percent reduction in refrigerator energy use. In May 1991, DOE issued revised energy conservation standards for clothes washers, clothes dryers, and dishwashers which became effective on May 14, 1994. 56 FR 22250 (May 14, 1991).

DOE has published notices of proposed rulemaking on revised standards for a number of covered products. A NOPR for energy conservation standards for eight products (water heaters, room air-conditioners, mobile-home furnaces, direct-heating equipment, pool heaters, kitchen ranges and ovens, fluorescent lamp ballasts, and televisions) was published in March 1994. 59 FR 10464 (March 4, 1994). DOE has since withdrawn the proposal to establish standards for television sets. 60 FR 32627 (June 23, 1995). With regard to ballasts and electric water heaters, DOE is gathering further inputs and conducting further analysis. 60 FR 5880 (Jan. 31, 1995). In July 1995, the Department issued a NOPR for energy conservation standards for refrigerator products which was based largely on a proposal made by a coalition of refrigerator manufacturers, electric utilities, states and energy conservation advocates. 60 FR 37388 (July 20, 1995).

The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1996 included a moratorium on proposing or issuing energy conservation appliance standards for the remainder of Fiscal Year 1996. *See* Pub. L. 104–134. The Department is continuing to work on the analyses underlying proposed standards and on test procedure revisions during this fiscal year.

The appliance standards program supports key objectives of the Administration's Sustainable Energy Strategy, which include: Increasing the efficiency of energy use in order to strengthen our economy and improve living standards; reducing the adverse environmental impacts associated with energy production, delivery and use; and keeping America secure by reducing our vulnerability to global energy market shocks. Although the Department recognizes that policies that rely on market forces or market-based incentives are preferable in many circumstances, appropriate regulatory intervention can achieve efficiency gains that will benefit consumers, businesses, and the Nation. Existing appliance standards are projected to save 23 quadrillion BTUs of energy from 1993 to 2015, resulting in estimated consumer savings of $1.7 billion per year in 2000 and estimated annual emission reductions of 107 million tons of carbon dioxide and 280 thousand tons on nitrogen oxides by 2000. An aggressive program for promoting the efficient use of energy resources, including appliance efficiency standards that are technically feasible and economically justified, is a critical element of the Sustainable Energy Strategy.

II. Process Leading to Development of This Rule

Since the National Performance Review's recommendations on Regulatory Reform were issued over two years ago, the U.S. DOE has forged new ways of carrying out its appliance standards rulemaking responsibilities. To supplement the traditional rulemaking process established by law, the Department has encouraged consensus-based alternatives and invited interest group participation in the early stages of standards development with mechanisms such as technical sessions and workshops.

In September 1995, the Department announced a formal effort to consider further improvements to the process used to develop appliance efficiency standards, calling on energy efficiency groups, manufacturers, trade associations, state agencies, utilities, and other interested parties to provide input to guide the Department's work. To date, the Department's process improvement effort has consisted of several elements:

—A series of preliminary meetings were held with interested parties to identify opportunities for improvement in the rulemaking process, standards priority setting, analysis methods and Department decision-making;
—Interviews were conducted with thirty organizations that have participated in past appliance rulemakings to solicit information regarding the perceived strengths and weaknesses of the process;
—A preliminary draft "Process Improvement Plan" was developed from these initial meetings and interviews;
—A public workshop was held to obtain broad-based input on the Department's draft "Process Improvement Plan" and other elements of the Department's proposed new approach;
—A draft report entitled "Results of the Appliance Rulemaking Process Improvement Effort" was prepared and distributed for comment to the workshop participants;
—Follow-up meetings were held with interested parties on the issues raised in the draft report; and
—Several drafts of today's rule were shared with stakeholders, and the Department addressed numerous comments made by interested parties in written submissions and during two well-attended stakeholder workshops.

The publication of this rule is an important step in institutionalizing the procedural improvements identified in this process. It is not, however, the only step. Other actions in the Department's process improvement effort include: A review of the manufacturing impact analysis model and methodologies; a review of non-regulatory approaches; the prioritization of future rules; and the creation of an advisory committee consisting of a representative group of interested parties, to oversee the implementation of these commitments. (See section IV of the Supplementary Information.) The objective is to act quickly to implement this enhanced standards development process, and to continue to invite extensive stakeholder consultation in the implementation phase.

The Department's many stakeholders have contributed tremendously to this effort to review the Department's procedures. The Department appreciates that sustained contribution, and is committed to implement a process that is more responsive to stakeholder concerns.

III. Description of Rule

1. Objectives

Section 1 of the rule articulates the Department's major objectives for the enhanced process to be employed for considering new or revised appliance efficiency standards. The Department's objectives are to:

(a) Provide for early input from stakeholders
(b) Increase predictability of the rulemaking timetable
(c) Increase use of outside technical expertise
(d) Eliminate problematic design options early in the process
(e) Fully consider non-regulatory approaches
(f) Conduct thorough analysis of impacts
(g) Use transparent and robust analytical methods
(h) Articulate policies to guide selection of standards
(i) Support efforts to build consensus on standards
(j) Reduce time and cost of developing standards

2. Scope

Section 2 describes the applicability of the enhanced process contained in the rule. The Department has adopted a common sense approach to the transition to this enhanced process.

DOE will use the new approach for all new rulemakings. With regard to rulemakings that are already underway, DOE and interested parties have invested substantial effort and resources. In balancing whether the benefits of using this enhanced process justify the delay of starting these rulemakings anew, DOE has concluded that the new process will be used, from the start, with respect to rulemakings in which a NOPR has not yet been published. To the extent analytical work has already been done or public comment on an ANOPR has already been provided, such analysis and comment will be considered, as appropriate, in proceeding under the new process. A case-by-case review is needed to determine how to proceed (i.e., whether some or all of the analytical or procedural steps should be repeated) with respect to products for which a NOPR has been issued and the

VOL
61
ISS
136
JL
15
1996
UMI

analysis is nearly complete. DOE's intentions concerning how to proceed with those rulemakings that are beyond the NOPR stage are discussed in some detail in section V below. Note that the rulemakings beyond the NOPR stage include one rule based on a consensus stakeholder recommendation and others for which there has been shared analysis and public workshops consistent with the direction of this rule.

3. Setting Priorities for Rulemaking Activity

Section 3 describes the process that will be used in developing rulemaking priorities, including factors to be considered. The annual process invites public input on the program's rulemaking agenda for the coming year, establishes factors to be considered in establishing priorities, and provides, in conjunction with the Department's Regulatory Agenda, a clear set of expectations about the scheduled rulemaking activities.

4. Process for Developing Efficiency Standards and Factors To Be Considered

Section 4 establishes the process for developing efficiency standards. This process is designed to provide for greater, and more productive, interaction between the Department and interested parties throughout the process. It is also designed so that key analyses are performed earlier in the process, with early opportunities for public input to and comment on the analyses. The process is consistent with the procedural requirements of law, but adds some important steps to enhance the process.

Building upon the National Performance Review's regulatory reform initiative, an effort has been underway at the Department to increase consultation with interested parties at every stage of the rulemaking process. In addition to holding the formal public hearings and soliciting written comments, the Department has increased its use of public workshops and other less formal tools to develop more effective standards. The Department has received broad support for its recent efforts to open the standards development process and its commitment to obtain input from interested parties early—well in advance of the ANOPR—and often in the rulemaking process.

Section 4 also articulates factors that DOE will take into account in screening design options, selecting candidate standard levels, and selecting proposed and final standard levels.

(a) Pre-ANOPR Screening and Analysis of Design Options

As described in section 4(a), the first step in a rulemaking will be a screening analysis that will identify the product categories and technologically feasible design options and then narrow the range of design options being considered for the development of candidate standard levels. This screening analysis, along with the engineering analysis and the selection of candidate standard levels, will occur before DOE publishes an ANOPR.

Some manufacturers have expressed concern that the Department may devote too much attention to consideration of design options that: Are not practical to mass manufacture, install or service; have substantial impacts on consumer utility; or raise significant safety concerns. The screening step is designed to address these concerns. The Department will develop, with input from interested parties, a list of design options for further consideration. The Department will eliminate from further consideration a design option that: Is not technologically feasible; is not practicable to manufacture, install and service; has significant adverse impact on the utility of the product to consumers; or adversely affects health or safety. Consistent with *Natural Resources Defense Council* v. *Herrington*, 768 F.2d 1355 (D.C. Cir. 1985), the Department will evaluate design options for technological feasibility on the basis of whether the options are in use by industry or research has progressed to the development of a prototype. However, consideration of practicability to manufacture, impacts on consumer utility and health and safety effects at this stage is designed to ensure that commercially impractical designs, even if technologically feasible, are screened out on the basis of other statutory criteria early in the process. This early screening approach should reduce uncertainty as to the direction of standards development.

The Department will seek expert input to conduct the necessary analyses. The Department, with input from interested parties, will identify issues that will be examined in the engineering analysis and the types of specialized expertise that may be required. With these specifications, DOE will select appropriate contractors, subcontractors, and as necessary, expert consultants to perform the engineering analysis and the impact analysis. DOE, in consultation with interested parties, also will identify technology/industry experts who can provide independent, expert review of the results of the engineering analysis and the subsequent impact analysis. The Department will consider in the analyses, wherever feasible, data, information and analyses received from stakeholders.

After the screening of design options, the DOE contractor will perform engineering and initial economic analysis of the design options. The results of this analysis will be distributed for review by experts and interested parties. If appropriate, a public workshop will be conducted to review these results.

The process does not contemplate that the early screening process will be the final opportunity to gather and consider input on whether a design option is technologically feasible; is practicable to manufacture, install and service; has significant adverse impact on utility of the product to consumers; or adversely affects health or safety. Any new information on these issues that is provided in later stages of the rulemaking will be considered, as provided in sections 4(b)(4) and 4(d)(7)(ix), and a preliminary determination to include or exclude consideration of a design option based on the screening analysis may be revised if supported by a reexamination of these factors based on new information.

This emphasis on the early stages of the process is designed to enable interested parties and DOE to engage in a more productive, informative interaction on standards issues prior to the publication of the ANOPR, so that the standards development process starts with the best possible foundation of common understanding.

(b) Factors in Selection of Proposed Standard

Section 4(c) provides that following review of comments on the ANOPR, DOE's contractor will conduct specified impact analyses to be used by DOE in selecting proposed standards. The factors to be considered by DOE in selection of proposed standard levels include:

(i) Consensus stakeholder recommendations
(ii) Impacts on manufacturers
(iii) Impacts on consumers
(iv) Impacts on competition
(v) Impacts on utilities
(vi) National energy, economic and employment impacts
(vii) Impacts on the environment and energy security
(viii) Impacts of non-regulatory approaches
(ix) New information relating to factors use for screening design options.

The Department's approach to analysis and consideration of several of these key factors is discussed in sections 10, 11, and 12 of the rule.

(c) Enhanced Opportunities for the Public to Receive Information and Provide Input

Throughout the process, the Department will provide interested parties with opportunities to provide data, recommendations and other comments. DOE will share with the public both analyses and preliminary decisions to inform interested parties as to the progress of standards development. This information from the Department will enable the public to provide informed input to DOE at each step of the process.

With the goal of better informing stakeholders about DOE rulemaking activities, the Department will use various methods, in addition to **Federal Register** notices, to notify intefested parties of upcoming meeting and rulemaking notices, such as industry publications, Inside Energy, Air Conditioning News, Appliance Magazine, Product Safety Letter, and the Energy Efficiency and Renewable Energy Network (EREN) located on the Internet at http://www.eren.doe.gov.

(d) Timely Completion of Rulemakings

The Department's intent is to use a process that will produce standards that have sound analytical grounding and have been subject to thorough review andcomment without making the process unduly time-consuming. The entire process provided for in section 4, from the date of issuance of the listing of priorities indicating that work is about to begin on the development of a new standard, to issuance of the final rule, should take no more than three years. The time required from issuance of an ANOPR to issuance of a final rule should be no more than 18 months.

Timely completion of rulemakings is essential. If experience demonstrates rulemakings are not being completed within a 3-year timeframe using this new process, DOE will reconsider this process to explore how changes can be made to expedite the process.

5. Policies on Selection of Standards

Section 5 describes Department policies concerning the selection of new or revised standards, and decisions preliminary thereto. These policies are intended to provide guidance for making the determinations required by section 325 of the EPCA, 42 U.S.C. 6295.

Section 5(b) states policy guidance for screening design options. In particular, it states that a design option will not be considered further if it is determined that the technology: is not incorporated in a commercial product or a working prototype; will not be capable of being mass produced and installed and serviced by persons serving the relevant market at the time a standard would take effect; will have significant adverse impact on the utility of the product to consumers, or result in the unavailability of any product type generally available in the U.S. market; or will have significant adverse impacts on health or safety.

Section 5(c) and (d) describe the policies pertaining to the selection of candidate standard levels.

Sections 5(e) and (f) describe Department policies guiding selection of proposed and final standard levels. Section 325(o)(2)(A) of EPCA provides that any new or revised standard must be designed to achieve the maximum improvement in energy efficiency that is determined to be technologically feasible and economically justified. A candidate standard level will not be proposed or promulgated if the Department determines that it is not technologically feasible and economically justified. See EPCA section 325(o)(3)(B). A standard level is economically justified if the benefits exceed the burdens. See EPCA section 325(o)(2)(B)(i).

The Department encourages efforts to develop consensus among interested parties on proposals for new or revised standards as an effective mechanism for balancing the economic, energy, and environmental interests affected by standards. Thus, notwithstanding any other policy on selection of proposed standards, a consensus recommendation on an updated efficiency level submitted by a group that represents all interested parties will be proposed by the Department if it is determined to meet the statutory criteria.

Section 5(e) articulates a number of policies to guide the application of EPCA's economic justification criterion in selecting a proposed standard. Although many factors are pertinent to the ultimate judgment about whether the benefits of a standard level exceed the burdens, these policies reflect special concern about particular types of significant adverse impacts on consumers and manufacturers in reaching that judgment.

The policies articulated in section 5(e)(3)(i) are stated as rebuttable presumptions. Although these presumptions reflect the great significance DOE attaches to these factors, DOE will consider evidence that rebuts an applicable presumption that a standard level is not economically justified. Any applicable presumption will be rebutted if the Department determines that specifically identified expected benefits of the standard would outweigh the expected adverse effects.

6. Effective Date of a Standard

Section 6 provides that the lead time between the publication of a final rule in the **Federal Register** and the effective date of the new or revised standard will be at least the period contemplated by the rulemaking schedules contained in EPCA. The Department will consider, on a case-by-case basis, further extending this lead time if the circumstances warrant. For instance, the lead time might be extended to mitigate the cumulative burden of implementing multiple product regulations or to permit time for market acceptance of new products. This section also provides that the period between the effective date of one standard and the effective date of any revision to that standard will be at least the period contemplated by the rulemaking schedules contained in EPCA. These policies will ensure that the time available for manufacturers to prepare for implementation of a new or revised standard and the time available for the amortization of any fixed costs associated with compliance will be no less than anticipated in the statute.

7. Test Procedures

Section 7 states the Department's commitment to ensure that revisions to test procedure rules necessary to evaluate revisions to standards are developed and finalized in a timely fashion.

Any necessary modifications in test procedures will be proposed before issuance of an ANOPR on revised standards and will be finalized prior to the issuance of a NOPR on revised standards. Where significant test procedure changes are needed, DOE will attempt to finalize test procedure revisions before the issuance of an ANOPR on revised standards.

8. Joint Stakeholder Recommendations

Section 8 states that the Department supports efforts by groups of interested parties to develop and present consensus recommendations on standards to DOE. Throughout the standards development process, and especially following the issuance of the ANOPR, interested parties are welcome to develop common recommendations to the Department on product categories and standard levels as well as on more specific analytical issues. The

VOL
61
ISS
136
JL
15
1996
UMI

Department will seek to support these efforts in whatever way possible.

9. Principles for the Conduct of Engineering Analysis

Section 9 states the Department's commitment to solicit input from interested parties and experts in conducting the engineering analysis. The Department will use this input to develop the design options to be considered in the subsequent analyses, identify any engineering models necessary, and estimate the likely cost and performance improvement potential of design options. The Department will use analytical methods that explicitly account for uncertainty.

10. Principles for the Analysis of Impacts on Manufacturers

Section 10 describes the approach DOE will use in the analysis and consideration of impacts on manufacturers. The process addresses a number of concerns raised in the process improvement effort. First, the process provides opportunities for comments in the pre-ANOPR screening process and at the beginning of the impact assessment process. This will focus attention on items of specific concern to each individual regulatory proceeding. Discussions on what data are critical as well as the specific approaches for generating those data will be conducted in open proceedings. Second, the Department will utilize an annual cash flow approach to determine quantitative impacts on manufacturers including a short term assessment based on the cost and capital requirements during the period between the announcement of a regulation and the time when the regulation comes into effect. Third, with input from manufacturers and other interested parties, the Department will develop estimates of the critical variables affecting manufacturers (such as expected changes in product prices, sales, and possible fuel switching) drawing on multiple sources of data both quantitative and qualitative. Fourth, the Department will analyze the impacts of a standard on different types of manufacturers, with particular attention to impacts on small manufacturers. This will be done with scenario analysis or other appropriate methods. Fifth, the Department will use models that: are clear and understandable; feature accessible calculations; and recognize and report the range of uncertainty. Finally, the Department will assess and describe the effects on manufacturers of other significant product-specific regulations that will take effect within three years of the effective date of the standard under consideration and will affect significantly the same manufacturers. This assessment is intended to capture the impacts of different DOE standards affecting multiple products made by the same manufacturing division.

With respect to overlapping efficiency standards on a product and components of the product, the Department will pay special attention to the cumulative regulatory burden being borne by the manufacturer of finished products containing that component. In such cases, the Department will specifically address the cost of potential component standards plus the overlapping costs of existing parallel standards on both the component and the system in which the component is installed.

11. Principles for the Analysis of Impacts on Consumers

Section 11 describes the Department's approach to consideration of consumer impacts. First, in the very early stages of standard development, DOE will consider adverse impacts of design options on consumer utility and will identify other possible impacts on consumers of updated efficiency standards which may warrant closer examination during the standards development process. Second, DOE will determine, on the basis of any information submitted during the standard development process, whether a proposed standard is likely to result in the unavailability of any covered product type with performance characteristics, features, sizes, capacities, and volumes that are substantially the same as products generally available in the U.S. at the time. Consistent with EPCA, DOE will not promulgate a standard at a level where it concludes that it would result in such unavailability. Third, the Department will consider the views of the Department of Justice on any impacts of a proposed standard on competition, and will not issue a standard determined to have significant anticompetitive impacts. Fourth, the Department will use regional analysis and sensitivity analysis tools, as appropriate, to evaluate the potential distribution of impacts of candidate standards levels on consumers. The Department will consider impacts on significant segments of society in determining standards levels. Where significant subgroups would be expected to bear significant adverse impacts, DOE will place increased emphasis on voluntary programs to bring about additional potential energy savings.

The Department will be sensitive to first cost increases and make greater use of sensitivity analysis and scenario analysis in reporting consumer Life-Cycle Cost, Payback Period and Cost of Conserved Energy. The Department expects that the use of these methods will result in more economically efficient standards than reliance on pay-back period alone, while achieving the similar result of avoiding negative impacts to identifiable population groups.

Substantial increases in product prices may adversely affect low-income households or cause shifts in product purchasing patterns. Thus, if a candidate standard level would cause a substantial increase in the product first costs to consumers or would not pay back such additional first costs through energy cost savings in less than three years, Department will specifically assess the likely impacts of such a standard on low-income households, product sales and fuel switching. The results of this assessment will be considered in the evaluation of consumer and manufacturer impacts.

As noted during the process improvement effort, consumers have rarely participated directly in standards development. In order to address concerns about the lack of such direct participation, DOE will seek to strengthen its efforts to inform and involve consumers and consumer representatives in the process of developing standards. This will include expanded notification of consumer representatives during the process of developing updated efficiency standards and, where appropriate, DOE may seek the direct input of consumers.

The Department is committed to improving the analysis of engineering issues and consumer and manufacturer impacts. The Department also is cognizant that using ever more elaborate quantitative approaches carries the risk of unacceptable delays and incomprehensible analysis and results. For these reasons, the Department will seek to balance appropriately the use of quantitative and qualitative approaches, with the goal of providing the most useful information upon which to make the required judgments.

12. Consideration of Non-Regulatory Approaches

Section 12 states the Department's commitment to consider fully the likely effects of market forces and any non-regulatory initiatives in assessing the incremental benefits of efficiency standards. DOE considers voluntary "market pull" programs to be an important complement to its standards program.

13. Crosscutting Analytical Assumptions

Section 13 describes the principles the Department intends to follow in selecting the key assumptions which are critical to the quantitative analysis of the impacts of candidate standard levels, including rates of economic growth, energy price and demand trends, product specific energy efficiency trends, real discount rates and emission rates. These cross-cutting analytical assumptions will continue to be specifically identified in all notices of proposed rulemaking and will continue to be subject to public comment and review as part of each such rulemaking.

Certain crosscutting analytical assumptions will change regularly as forecasts of economic growth, energy price, demand, efficiency and other trends are modified. In other cases, such as the real discount rates used to assess the present value of future costs or savings for consumers, commercial businesses, manufacturers or the Nation, the Department hopes that the crosscutting analytical assumptions will remain relatively stable. For residential consumers, the Department currently uses real discount rates of 2, 6 and 15% in the analysis of likely impacts of appliance standards. For commercial users, the Department currently uses 4, 8 and 12%. For manufacturers, the Department currently uses 12%, but is likely to develop a range of values for future use. For National benefits, the Department currently uses 7%.

With respect to the consideration of the impacts of candidate standards on the environment and energy security, the Department can find no sound analytical method for accurately estimating the monetary value of such environmental or energy security benefits (or costs). Therefore, the Department will not attempt to incorporate the estimated monetary value of such externalities into its estimates of the national net present values of candidate standard levels. However, as required by the National Environmental Policy Act, the Department will continue to consider the likely effects of candidate standard levels on the environment and energy security in reaching a decision as to whether the benefits of the such standard levels exceed their burdens.

EPCA provides that energy conservation standards prescribed under EPCA are to be based on energy consumption at the point of use (*i.e.*, site energy). *See* EPCA sections 321 (4), (5) and (6). For purposes of estimating energy savings in evaluating the benefits of a proposed standard, DOE considers the energy savings associated with the production of the fuel used by the appliance covered by the standard (*i.e.*, source energy).

14. Deviations, Revisions and Judicial Review

The Department has crafted this rule to include procedures, interpretations and policies that it believes will be appropriate for general use in the future conduct of the appliance standards program. However, given the possibility of unanticipated circumstances affecting either particular rulemakings or the program generally, the rule includes provision for case-specific deviations and modifications of the generally applicable rule. If the Department concludes that elements of this rule are not appropriate in a particular standards rulemaking, DOE will provide interested parties with notice of the deviation and an explanation of why such a deviation was deemed appropriate. If the Department concludes, based on experience with this approach, that changes in this Appendix are appropriate, DOE will provide notice of such modifications to the rule with an accompanying explanation. DOE will consult with interested parties, probably through the advisory committee (described in section IV.5 of this Supplementary Information), prior to any such modification to the rule. The procedures, interpretations, and policies stated in this Appendix are not intended to establish any new cause of action or right to judicial review. Judicial review of final rules is provided for in section 336 of EPCA.

IV. Related DOE Actions To Implement Process Improvements

In addition to promulgation of this rule, DOE employed other activities to address some of the concerns raised by stakeholders during the process improvement. These activities are described below.

1. Finalized Process Improvement Report

The Department will issue the final report on "Results of the Appliance Rulemaking Process Improvement Effort" in August 1996.

2. Process To Develop Rulemaking Priorities

On June 14, 1996, the Department held a public workshop on priority-setting and DOE will make available a draft priority listing based on the results of our priority-setting analysis in late July. The draft rulemaking priority listing and the accompanying analysis will: indicate for which covered products DOE is proposing to initiate or continue, during the next two years, the development of updated standards; document the priority-setting analysis which DOE used to develop the draft priority listing; indicate the next steps for all currently active rulemakings; describe any variations from the enhanced process that will be followed for specific products; and provide a schedule for completion of each rulemaking identified.

The final list of rulemaking priorities will be available at the time that the Regulatory Agenda is published in the **Federal Register** in the fall of 1996. During the summer, the Department will obtain public comments on the draft listing of rulemaking priorities.

3. Review of Manufacturer Impact Analysis

In order to initiate the process of developing new and substantially improved methods for assessing the impacts of standards on manufacturers, DOE will review in detail the existing analyses methodologies, develop a draft work plan for the development of new methods for assessing manufacturer impact, and invite comments and suggestions from interested parties.

4. Review of Non-Regulatory Approaches

DOE has initiated a process for developing methods for comparing the likely benefits and costs of updated efficiency standards to various non-regulatory alternatives. For instance, DOE held a public workshop on June 20, 1996 which examined, among other issues, alternatives and complements to standards for fluorescent lamp ballasts. DOE expects to hold one or more similar workshops to examine these issues with regard to other products.

5. Creation of an Advisory Committee

DOE is establishing an Advisory Committee on Appliance Energy Efficiency Standards. The Committee will provide an official, organized forum for interested parties to provide the Department with advice, information, and recommendations on the Appliance Efficiency Standards rulemaking process. Committee members will be chosen to ensure an appropriately balanced representation of various points of view and functions of interested parties and experts, such as manufacturer trade associations, manufacturers, energy efficiency groups, consumers, utilities, retailers, and state energy offices. The Assistant Secretary

VOL 61 ISS 136 JL 15 1996 UMI

for Energy Efficiency and Renewable Energy will chair the Committee.

It is anticipated that this advisory committee will be a useful forum for obtaining advice on the desirability of making changes to the procedures, interpretations and policies set out in this rule, and on cross cutting analytical issues affecting all product standards. The Advisory Committee may recommend that DOE undertake generic proceedings relating to crosscutting analytical issues.

V. Status of Ongoing Rulemakings

As stated in section 2 of the rule, the Department will apply the new process described in section 4 of the rule to all rulemakings for which a NOPR has not yet been published. To the extent analytical work has already been done, and public comment on an ANOPR already has been provided, such analysis and comment will be considered, as appropriate, in proceeding with the new process.

The Department is precluded through September 1996 from using funds appropriated under the Fiscal Year 1996 Interior Appropriations Act to propose or promulgate new or revised efficiency standards. With respect to rulemakings for which a NOPR has already been published, DOE currently intends to proceed as follows:

Refrigerators. The analysis of comments on the NOPR is complete. At this time, DOE believes that no major changes to the underlying analysis of the proposed refrigerator standards is necessary. However, the Department expects to consult further with interested parties to determine whether it is appropriate to make alterations to the proposed standards to take into account the interaction between the revised efficiency standards and Clean Air Act and Montreal Protocol on Substances that Deplete the Ozone Layer regulations relating to manufacture of HCFCs, which take effect in 2003, as suggested by some stakeholders. The Department expects that any further consideration of this issue would be consistent with the approach taken in today's rule on pertinent topics such as cumulative regulatory burden.

Ballasts. The analysis underlying the previously proposed standards has been substantially revised and has been circulated for technical review by manufacturers and other interested parties. A public workshop to review this revised analysis was held on June 20, 1996.

Cooking Products and Room Air Conditioners. The analyses underlying the proposed standards for these two product categories have been substantially revised and are now being circulated for technical review by manufacturers and other interested parties. On the basis of these analyses and any comments received on these analyses, the Department expects to proceed to issue a final rule after the current fiscal year 1996 moratorium expires.

Water Heaters. The analyses for gas, oil and electric water heaters are being revised and will be completed and made available for review depending on the priority given this product. A revised NOPR would be issued following the new procedure.

Mobile Home Furnaces, Direct Heating Equipment and Pool Heaters. The analyses for these products have been revised and will be made available for review depending on the priority given them. Revised NOPRs would be issued following the new procedure.

In the near term, DOE will consider these rulemakings among others in the upcoming priority setting effort, and will solicit and consider public comment on how to proceed with these rules in that process.

VI. Administrative Procedure

The rule published today describes procedures, interpretations, and policies DOE will follow in conducting rulemakings on appliance standards. DOE is not required to provide for prior notice and opportunity for comment on today's final regulations because they fall within the Administrative Procedure Act's exception for "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice." 5 U.S.C. 553(b)(A). Moreover, these procedures, interpretations and policies were developed with extensive consultation with representatives of all of the interests that typically participate in standards rulemakings. The consultations to date are described in detail in section II of this Supplementary Information.

VII. Administrative Reviews

A. Review Under Executive Order 12866

This regulatory action is not a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," October 4, 1993. Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under Executive Order 12612

Executive Order 12612 requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effect on states, on the relationship between the National Government and states, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

The final rules published today do not regulate the states. They primarily will affect the manner in which DOE develops proposed rules to revise consumer product energy efficiency standards. Section 327 of the EPCA provides for preemption of state regulation in this area. The final rules published today do not alter the distribution of authority and responsibility to regulate in this area. Accordingly, DOE has determined that preparation of a federalism assessment is unnecessary.

C. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's final regulations under the standards of section 3 of the Executive Order and determined that, to the extent permitted by law, they meet the requirements of those standards.

D. Regulatory Flexibility Act

If an agency is required by law to issue a general NOPR, and if a rule has, or is likely to have, a significant negative economic impact on a substantial number of small entities, then the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires preparation of an initial and final regulatory flexibility analysis to accompany proposed and final rulemakings, respectively. Because the rule published today is exempt from notice and comment rulemaking under the Administrative Procedure Act, there is no requirement to prepare a regulatory flexibility analysis.

E. Review Under the National Environmental Policy Act

The Department has concluded that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, 4331–35, 4341–47, because they would not individually or cumulatively have a significant impact on the human environment as determined by DOE's regulations. 10 CFR part 1021, subpart D. Therefore this rule does not require preparation of an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, Pub.L. 104–4, requires each Federal agency to assess the possible effects of Federal regulatory action on state, local, and tribal governments, and the private sector of Federal mandates. If a Federal mandate is expected to have an impact of $100 million or more in any year, then the mandate is significant and the issuing agency is obliged to undertake a detailed assessment of costs and benefits. If the Federal mandate is a significant intergovernmental mandate, then the issuing agency is obliged to provide a meaningful and timely opportunity for affected governments to participate in the development of the rule. The final regulations in this notice apply only to the conduct of DOE officials and do not place regulatory obligations on anyone outside of DOE. Accordingly, there are no legal requirements under the Unfunded Mandates Reform Act of 1995 that apply to this rulemaking.

G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

Consistent with the Small Business Regulatory Enforcement Fairness Act of 1996, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will note the Office of Management and Budget's determination that this rule does not constitute a "major rule" under that Act. 5 U.S.C. 801, 804.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on July 9, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is amended as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority cite continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

2. Appendix A to Subpart C of Part 430—Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products—is added as set forth below:

Appendix A to Subpart C of Part 430—Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products

1. Objectives
2. Scope
3. Setting Priorities for Rulemaking Activity
4. Process for Developing Efficiency Standards and Factors to be Considered
5. Policies on Selection of Standards
6. Effective Date of a Standard
7. Test Procedures
8. Joint Stakeholder Recommendations
9. Principles for the Conduct of Engineering Analysis
10. Principles for the Analysis of Impacts on Manufacturers
11. Principles for the Analysis of Impacts on Consumers
12. Consideration of Non-Regulatory Approaches
13. Crosscutting Analytical Assumptions
14. Deviations, Revisions, and Judicial Review

1. Objectives

This Appendix establishes procedures, interpretations and policies to guide the DOE in the consideration and promulgation of new or revised appliance efficiency standards under the Energy Policy and Conservation Act (EPCA). The Department's objectives in establishing these guidelines include:

(a) *Provide for early input from stakeholders.* The Department seeks to provide opportunities for public input early in the rulemaking process so that the initiation and direction of rulemakings is informed by comment from interested parties. Under the guidelines established by this Appendix, DOE will seek early input from interested parties in setting rulemaking priorities and structuring the analyses for particular products. Interested parties will be invited to provide input for the selection of design options and will help DOE identify analysis, data, and modeling needs. DOE will gather input from interested parties through a variety of mechanisms, including public workshops.

(b) *Increase predictability of the rulemaking timetable.* The Department seeks to make informed, strategic decisions about how to deploy its resources on the range of possible standards development activities, and to announce these prioritization decisions so that all interested parties have a common expectation about the timing of different rulemaking activities. The guidelines in this Appendix provide for setting priorities and timetables for standards development and test procedure modification and reflect these priorities in the Regulatory Agenda.

(c) *Increase use of outside technical expertise.* The Department seeks to expand its use of outside technical experts in evaluating product-specific engineering issues to ensure that decisions on technical issues are fully informed. The guidelines in this Appendix provide for increased use of outside technical experts in developing, performing and reviewing the analyses. Draft analytical results will be distributed for peer and stakeholder review.

(d) *Eliminate problematic design options early in the process.* The Department seeks to eliminate from consideration, early in the process, any design options that present unacceptable problems with respect to manufacturability, consumer utility, or safety, so that the detailed analysis can focus only on viable design options. Under the guidelines in this Appendix, DOE will eliminate from consideration design options if it concludes that manufacture, installation or service of the design will be impractical, or that the design option will adversely affect the utility of the product, or if the design has adverse safety or health impacts. This screening will be done at the outset of a rulemaking.

(e) *Fully consider non-regulatory approaches.* The Department seeks to understand the effects of market forces and voluntary programs on encouraging the purchase of energy efficient products so that the incremental impacts of a new or revised standard can be accurately assessed and the Department can make informed decisions about where standards and voluntary "market pull" programs can be used most effectively. Under the guidelines in this

VOL
61
ISS
1
36
JL
15
1996
UMI

Appendix, DOE will solicit information on the effectiveness of market forces and non-regulatory approaches for encouraging the purchase of energy efficient products, and will carefully consider this information in assessing the benefits of standards. In addition, DOE will continue to support voluntary efforts by manufacturers, retailers, utilities and others to increase product efficiency.

(f) *Conduct thorough analysis of impacts.* In addition to understanding the aggregate costs and benefits of standards, the Department seeks to understand the distribution of those costs and benefits among consumers, manufacturers and others, and the uncertainty associated with these analyses of costs and benefits, so that any adverse impacts on significant subgroups and uncertainty concerning any adverse impacts can be fully considered in selecting a standard. Under the guidelines in this Appendix, the analyses will consider the variability of impacts on significant groups of manufacturers and consumers in addition to aggregate costs and benefits, report the range of uncertainty associated with these impacts, and take into account cumulative impacts of regulation on manufacturers.

(g) *Use transparent and robust analytical methods.* The Department seeks to use qualitative and quantitative analytical methods that are fully documented for the public and that produce results that can be explained and reproduced, so that the analytical underpinnings for policy decisions on standards are as sound and well-accepted as possible. Under the guidelines in this Appendix, DOE will solicit input from interested parties in identifying analysis, data, and modeling needs with respect to measurement of impacts on manufacturers and consumers.

(h) *Articulate policies to guide selection of standards.* The Department seeks to adopt policies elaborating on the statutory criteria for selecting standards, so that interested parties are aware of the policies that will guide these decisions. Under the guidelines in this Appendix, policies for screening design options, selecting candidate standard levels, selecting a proposed standard level, and establishing the final standard are established.

(i) *Support efforts to build consensus on standards.* The Department seeks to encourage development of consensus proposals for new or revised standards because standards with such broad-based support are likely to balance effectively the economic, energy, and environmental interests affected by standards. Under the guidelines in this Appendix, DOE will support the development and submission of consensus recommendations for standards by representative groups of interested parties to the fullest extent possible.

(j) *Reduce time and cost of developing standards.* The Department seeks to establish a clear protocol for initiating and conducting standards rulemakings in order to eliminate time-consuming and costly missteps. Under the guidelines in this Appendix, increased and earlier involvement by interested parties and increased use of technical experts should minimize the need for re-analysis. This process should reduce the period between the publication of an Advance Notice of Proposed Rulemaking (ANOPR) and the publication of a final rule to not more than 18 months, and should decrease the government and private sector resources required to complete the standard development process.

2. Scope

(a) The procedures, interpretations and policies described in this Appendix will be fully applicable to:

(1) Rulemakings concerning new or revised Federal energy conservation standards for consumer products initiated after August 14, 1996, and

(2) Rulemakings concerning new or revised Federal energy conservation standards for consumer products that have been initiated but for which a Notice of Proposed Rulemaking (NOPR) has not been published as of August 14, 1996.

(b) For rulemakings described in paragraph (a)(2) of this section, to the extent analytical work has already been done or public comment on an ANOPR has already been provided, such analyses and comment will be considered, as appropriate, in proceeding under the new process.

(c) With respect to incomplete rulemakings concerning new or revised Federal energy conservation standards for consumer products for which a NOPR was published prior to August 14, 1996, the Department will conduct a case-by-case review to decide whether any of the analytical or procedural steps already completed should be repeated. In any case, the approach described in this Appendix will be used to the extent possible to conduct any analytical or procedural steps that have not been completed.

3. Setting Priorities for Rulemaking Activity

(a) *Priority-setting analysis and development of list of priorities.* At least once a year, the Department will prepare an analysis of each of the factors identified in paragraph (d) of this section based on existing literature, direct communications with interested parties and other experts, and other available information. The results of this analysis will be used to develop rulemaking priorities and proposed schedules for the development and issuance of all rulemakings. The DOE analysis, priorities and proposed rulemaking schedules will be documented and distributed for review and comment.

(b) *Public review and comment.* Each year, DOE will invite public input to review and comment on the priority analysis.

(c) *Issuance of final listing of rulemaking priorities.* Each fall, the Department will issue, simultaneously with the issuance of the Administration's Regulatory Agenda, a final set of rulemaking priorities, the accompanying analysis, and the schedules for all priority rulemakings that it anticipates within the next two years.

(d) *Factors for priority-setting.* The factors to be considered by DOE in developing priorities and establishing schedules for conducting rulemakings will include:

(1) Potential energy savings.

(2) Potential economic benefits.

(3) Potential environmental or energy security benefits.

(4) Applicable deadlines for rulemakings.

(5) Incremental DOE resources required to complete rulemaking process.

(6) Other relevant regulatory actions affecting products.

(7) Stakeholder recommendations.

(8) Evidence of energy efficiency gains in the market absent new or revised standards.

(9) Status of required changes to test procedures.

(10) Other relevant factors.

4. Process for Developing Efficiency Standards and Factors to be Considered

This section describes the process to be used in developing efficiency standards and the factors to be considered in the process. The policies of the Department to guide the selection of standards and the decisions preliminary thereto are described in section 5.

(a) *Identifying and screening design options.* Once the Department has initiated a rulemaking for a specific product but before publishing an ANOPR, DOE will identify the product categories and design options to be analyzed in detail, and identify those design options eliminated from further consideration. Interested parties will be consulted to identify key issues, develop a list of design options, and to help the Department identify the expertise necessary to conduct the analysis.

(1) *Identification of issues for analysis.* The Department, in consultation with interested parties, will identify issues that will be examined in the standards development process.

(2) *Identification of experts and other interested parties for peer review.* DOE, in consultation with interested parties, will identify a group of independent experts and other interested parties who can provide expert review of the results of the engineering analysis and the subsequent impact analysis.

(3) *Identification and screening of design options.* In consultation with interested parties, the Department will develop a list of design options for consideration. Initially, the candidate design options will encompass all those technologies considered to be technologically feasible. Following the development of this initial list of design options, DOE will review each design option based on the factors described in paragraph (a)(4) of this section and the policies stated in section 5(b). The reasons for eliminating any design option at this stage of the process will be fully documented and published as part of the ANOPR. The technologically feasible design options that are not eliminated in this screening will be considered further in the Engineering Analysis described in paragraph (b) of this section.

(4) *Factors for screening of design options.* The factors for screening design options include:

(i) Technological feasibility. Technologies incorporated in commercial products or in working prototypes will be considered technologically feasible.

(ii) Practicability to manufacture, install and service. If mass production of a technology in commercial products and reliable installation and servicing of the technology could be achieved on the scale necessary to serve the relevant market at the time of the effective date of the standard, then that technology will be considered practicable to manufacture, install and service.

(iii) Adverse Impacts on Product Utility or Product Availability.

(iv) Adverse Impacts on Health or Safety.

(5) *Selection of contractors.* Using the specifications of necessary contractor expertise developed in consultation with interested parties, DOE will select appropriate contractors, subcontractors, and as necessary, expert consultants to perform the engineering analysis and the impact analysis.

(b) *Engineering analysis of design options and selection of candidate standard levels.* After design options are identified and screened, DOE will perform the engineering analysis and the benefit/cost analysis and select the candidate standard levels based on these analyses. The results of the analyses will be published in a Technical Support Document (TSD) to accompany the ANOPR.

(1) *Identification of engineering analytical methods and tools.* DOE, in consultation with outside experts, will select the specific engineering analysis tools (or multiple tools, if necessary to address uncertainty) to be used in the analysis of the design options identified as a result of the screening analysis.

(2) *Engineering and life-cycle cost analysis of design options.* The DOE and its contractor will perform engineering and life-cycle cost analyses of the design options.

(3) *Review by expert group and stakeholders.* The results of the engineering and life-cycle cost analyses will be distributed for review by experts and interested parties. If appropriate, a public workshop will be conducted to review these results. The analyses will be revised as appropriate on the basis of this input.

(4) *New information relating to the factors used for screening design options.* If further information or analysis leads to a determination that a design option, or a combination of design options, has unacceptable impacts based on the policies stated in section 5(b), that design option or combination of design options will not be included in a candidate standard level.

(5) *Selection of candidate standard levels.* Based on the results of the engineering and life-cycle cost analysis of design options and the policies stated in section 5(c), DOE will select the candidate standard levels for further analysis.

(c) *Advance Notice of Proposed Rulemaking.*

(1) *Documentation of decisions on candidate standard selection.* (i) If the screening analysis indicates that continued development of a standard is appropriate, the Department will publish an ANOPR in the **Federal Register** and will distribute a draft TSD containing the analyses performed to this point. The ANOPR will specify candidate standard levels but will not propose a particular standard. The ANOPR will also include the preliminary analysis of consumer life-cycle costs, national net present value, and energy impacts for the candidate standard levels based on the engineering analysis.

(ii) If the preliminary analysis indicates that no candidate standard level is likely to meet the criteria specified in law, that conclusion will be announced. In such cases, the Department may decide to proceed with a rulemaking that proposes not to adopt new or amended standards, or it may suspend the rulemaking and conclude that further action on such standards should be assigned a low priority under section 3.

(2) *Public comment and hearing.* There will be 75 days for public comment on the ANOPR with at least one public hearing or workshop.

(3) *Revisions based on comments.* Based on consideration of the comments received, any necessary changes to the engineering analysis or the candidate standard levels will be made.

If major changes are required at this stage, interested parties and experts will be given an opportunity to review the revised analysis.

(d) *Analysis of impacts and selection of proposed standard level.* After the ANOPR, economic analyses of the impacts of the candidate standard levels will be conducted. The Department will propose updated standards based on the results of the impact analysis.

(1) *Identification of issues for analysis.* The Department, in consultation with interested parties, will identify issues that will be examined in the impacts analysis.

(2) *Identification of analytical methods and tools.* DOE, in consultation with outside experts, will select the specific economic analysis tools (or multiple tools if necessary to address uncertainty) to be used in the analysis of the candidate standard levels.

(3) *Analysis of impacts.* DOE will conduct the analysis of the impacts of candidate standard levels including analysis of the factors described in paragraphs (d)(7)(ii)–(viii) of this section.

(4) *Review by expert group and stakeholders.* The results of the analysis of impacts will be distributed for review by experts and interested parties. If appropriate, a public workshop will be conducted to review these results. The analysis will be revised as appropriate on the basis of this input.

(5) *Efforts to develop consensus among stakeholders.* If a representative group of interested parties undertakes to develop joint recommendations to the Department on standards, DOE will consider deferring its impact analysis until these discussions are completed or until participants in the efforts indicate that they are unable to reach a timely agreement.

(6) *Selection of proposed standard level based on analysis of impacts.* On the basis of the analysis of the factors described in paragraph (d)(7) of this section and the policies stated in section 5(e), DOE will select a proposed standard level.

(7) *Factors to be considered in selecting a proposed standard.* The factors to be considered in selection of a proposed standard include:

(i) Consensus stakeholder recommendations.

(ii) Impacts on manufacturers. The analysis of manufacturer impacts will include: Estimated impacts on cash flow; assessment of impacts on manufacturers of specific categories of products and small manufacturers; assessment of impacts on manufacturers of multiple product-specific Federal regulatory requirements, including efficiency standards for other products and regulations of other agencies; and impact on manufacturing capacity, plant closures, and loss of capital investment.

(iii) Impacts on consumers. The analysis of consumer impacts will include: Estimated impacts on consumers based on national average energy prices and energy usage; assessments of impacts on subgroups of consumers based on major regional differences in usage or energy prices and significant variations in installation costs or performance; sensitivity analyses using high and low discount rates and high and low energy price forecasts; consideration of changes to product utility and other impacts of likely concern to all or some consumers, based to the extent practicable on direct input from consumers; estimated life-cycle cost with sensitivity analysis; and consideration of the increased first cost to consumers and the time required for energy cost savings to pay back these first costs.

(iv) Impacts on competition.

(v) Impacts on utilities. The analysis of utility impacts will include estimated marginal impacts on electric and gas utility costs and revenues.

(vi) National energy, economic and employment impacts. The analysis of national energy, economic and employment impacts will include: Estimated energy savings by fuel type; estimated net present value of benefits to all consumers; and estimates of the direct and indirect impacts on employment by appliance manufacturers, relevant service industries, energy suppliers and the economy in general.

(vii) Impacts on the environment and energy security. The analysis of environmental and energy security impacts will include estimated impacts on emissions of carbon and relevant criteria pollutants, impacts on pollution control costs, and impacts on oil use.

(viii) Impacts of non-regulatory approaches. The analysis of energy savings and consumer impacts will incorporate an assessment of the impacts of market forces and existing voluntary programs in promoting product efficiency, usage and related characteristics in the absence of updated efficiency standards.

(ix) New information relating to the factors used for screening design options.

(e) *Notice of Proposed Rulemaking.*

(1) *Documentation of decisions on proposed standard selection.* The Department will publish a NOPR in the **Federal Register** that proposes standard levels and explains the basis for the selection of those proposed levels, and will distribute a draft TSD documenting the analysis of impacts. As required by § 325(p)(2) of EPCA, the NOPR also will describe the maximum improvement in energy efficiency or

VOL
61
ISS
136
JL
15
1996
UMI

maximum reduction in energy use that is technologically feasible and, if the proposed standards would not achieve these levels, the reasons for proposing different standards.

(2) *Public comment and hearing.* There will be 75 days for public comment on the NOPR, with at least one public hearing or workshop.

(3) *Revisions to impact analyses and selection of final standard.* Based on the public comments received and the policies stated in section 5(f), DOE will review the proposed standard and impact analyses, and make modifications as necessary. If major changes to the analyses are required at this stage, interested parties and experts will be given an opportunity to review the revised analyses.

(f) *Notice of Final Rulemaking.* The Department will publish a Notice of Final Rulemaking in the **Federal Register** that promulgates standard levels and explains the basis for the selection of those standards, accompanied by a final TSD.

5. Policies on Selection of Standards.

(a) *Purpose.* (1) Section 4 describes the process that will be used to consider new or revised energy efficiency standards and lists a number of factors and analyses that will be considered at specified points in the process. Department policies concerning the selection of new or revised standards, and decisions preliminary thereto, are described in this section.

These policies are intended to elaborate on the statutory criteria provided in section 325 of the EPCA, 42 U.S.C. 6295.

(2) The policies described below are intended to provide guidance for making the determinations required by EPCA. This statement of policy is not intended to preclude consideration of any information pertinent to the statutory criteria. The Department will consider all pertinent information in determining whether a new or revised standard is consistent with the statutory criteria. Moreover, the Department will not be guided by a policy in this section if, in the particular circumstances presented, such a policy would lead to a result inconsistent with the criteria in section 325 of EPCA.

(b) *Screening design options.* Section 4(a)(4) lists factors to be considered in screening design options. These factors will be considered as follows in determining whether a design option will receive any further consideration:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the effective date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility to consumers.* If a technology is determined to have significant adverse impact on the utility of the product to significant subgroups of consumers, or result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the U.S. at the time, it will not be considered further.

(4) *Safety of technologies.* If it is determined that a technology will have significant adverse impacts on health or safety, it will not be considered further.

(c) *Identification of candidate standard levels.* Based on the results of the engineering and cost and benefit analyses of design options, DOE will identify the candidate standard levels for further analysis. Candidate standard levels will be selected as follows:

(1) *Costs and savings of design options.* Design options which have payback periods that exceed the average life of the product or which cause life-cycle cost increases relative to the base case, using typical fuel costs, usage and discount rates, will not be used as the basis for candidate standard levels.

(2) *Further information on factors used for screening design options.* If further information or analysis leads to a determination that a design option, or a combination of design options, has unacceptable impacts under the policies stated in paragraph (b) of this section, that design option or combination of design options will not be included in a candidate standard level.

(3) *Selection of candidate standard levels.* Candidate standard levels, which will be identified in the ANOPR and on which impact analyses will be conducted, will be based on the remaining design options.

(i) The range of candidate standard levels will typically include:

(A) The most energy efficient combination of design options;

(B) The combination of design options with the lowest life-cycle cost; and

(C) A combination of design options with a payback period of not more than three years.

(ii) Candidate standard levels that incorporate noteworthy technologies or fill in large gaps between efficiency levels of other candidate standard levels also may be selected.

(d) *Advance notice of proposed rulemaking.* New information provided in public comments on the ANOPR will be considered to determine whether any changes to the candidate standard levels are needed before proceeding to the analysis of impacts. This review, and any appropriate adjustments, will be based on the policies in paragraph (c) of this section.

(e) *Selection of proposed standard.* Based on the results of the analysis of impacts, DOE will select a standard level to be proposed for public comment in the NOPR. Section 4(d)(7) lists the factors to be considered in selecting a proposed standard level. Section 325(o)(2)(A) of EPCA provides that any new or revised standard must be designed to achieve the maximum improvement in energy efficiency that is determined to be technologically feasible and economically justified.

(1) *Statutory policies.* The fundamental policies concerning selection of standards are established in the EPCA, including the following:

(i) A candidate standard level will not be proposed or promulgated if the Department determines that it is not technologically feasible and economically justified. See EPCA section 325(o)(3)(B). A standard level is economically justified if the benefits exceed the burdens. See EPCA section 325(o)(2)(B)(i). A standard level is rebuttably presumed to be economically justified if the payback period is three years or less. See EPCA section 325(o)(2)(B)(iii).

(ii) If the Department determines that a standard level is likely to result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the U.S. at the time, that standard level will not be proposed. See EPCA section 325(o)(4).

(iii) If the Department determines that a standard level would not result in significant conservation of energy, that standard level will not be proposed. See EPCA section 325(o)(3)(B).

(2) *Selection of proposed standard on the basis of consensus stakeholder recommendations.* Development of consensus proposals for new or revised standards is an effective mechanism for balancing the economic, energy, and environmental interests affected by standards. Thus, notwithstanding any other policy on selection of proposed standards, a consensus recommendation on an updated efficiency level submitted by a group that represents all interested parties will be proposed by the Department if it is determined to meet the statutory criteria.

(3) *Considerations in assessing economic justification.*

(i) The following policies will guide the application of the economic justification criterion in selecting a proposed standard:

(A) If the Department determines that a candidate standard level would result in a negative return on investment for the industry, would significantly reduce the value of the industry, or would cause significant adverse impacts to a significant subgroup of manufacturers (including small manufacturing businesses), that standard level will be presumed not to be economically justified unless the Department determines that specifically identified expected benefits of the standard would outweigh this and any other expected adverse effects.

(B) If the Department determines that a candidate standard level would be the direct cause of plant closures, significant losses in domestic manufacturer employment, or significant losses of capital investment by domestic manufacturers, that standard level will be presumed not to be economically justified unless the Department determines that specifically identified expected benefits of the standard would outweigh this and any other expected adverse effects.

(C) If the Department determines that a candidate standard level would have a significant adverse impact on the environment or energy security, that standard level will be presumed not to be economically justified unless the Department determines that specifically identified expected benefits of the standard would outweigh this and any other expected adverse effects.

(D) If the Department determines that a candidate standard level would not result in significant energy conservation relative to non-regulatory approaches, that standard level will be presumed not to be economically justified unless the Department determines that other specifically identified expected benefits of the standard would outweigh the expected adverse effects.

(E) If the Department determines that a candidate standard level is not consistent with the policies relating to practicability to manufacture, consumer utility, or safety in paragraphs (b) (2), (3) and (4) of this section, that standard level will be presumed not to be economically justified unless the Department determines that specifically identified expected benefits of the standard would outweigh this and any other expected adverse effects.

(F) If the Department determines that a candidate standard level is not consistent with the policies relating to consumer costs in paragraph (c)(1) of this section, that standard level will be presumed not to be economically justified unless the Department determines that specifically identified expected benefits of the standard would outweigh this and any other expected adverse effects.

(G) If the Department determines that a candidate standard level will have significant adverse impacts on a significant subgroup of consumers (including low-income consumers), that standard level will be presumed not to be economically justified unless the Department determines that specifically identified expected benefits of the standard would outweigh this and any other expected adverse effects.

(H) If the Department or the Department of Justice determines that a candidate standard level would have significant anticompetitive effects, that standard level will be presumed not to be economically justified unless the Department determines that specifically identified expected benefits of the standard would outweigh this and any other expected adverse effects.

(ii) The basis for a determination that triggers any presumption in paragraph (e)(3)(i) of this section and the basis for a determination that an applicable presumption has been rebutted will be supported by substantial evidence in the record and the evidence and rationale for making these determinations will be explained in the NOPR.

(iii) If none of the policies in paragraph (e)(3)(i) of this section is found to be dispositive, the Department will determine whether the benefits of a candidate standard level exceed the burdens considering all the pertinent information in the record.

(f) *Selection of a final standard.* New information provided in the public comments on the NOPR and any analysis by the Department of Justice concerning impacts on competition of the proposed standard will be considered to determine whether any change to the proposed standard level is needed before proceeding to the final rule. The same policies used to select the proposed standard level, as described in section 5(e) above, will be used to guide the selection of the final standard level.

6. Effective Date of a Standard

The effective date for new or revised standards will be established so that the period between the publication of the final rule and the effective date is not less than any period between the dates for publication and effective date provided for in EPCA. The effective date of any revised standard will be established so that the period between the effective date of the prior standard and the effective date of such revised standard is not less than period between the two effective dates provided for in EPCA.

7. Test Procedures

(a) *Identifying the need to modify test procedures.* DOE, in consultation with interested parties, experts, and the National Institute of Standards and Technology, will attempt to identify any necessary modifications to established test procedures when initiating the standards development process.

(b) *Developing and proposing revised test procedures.* Needed modifications to test procedures will be identified in consultation with experts and interested parties early in the screening stage of the standards development process. Any necessary modifications will be proposed before issuance of an ANOPR in the standards development process.

(c) *Issuing final test procedure modification.* Final, modified test procedures will be issued prior to the NOPR on proposed standards.

(d) *Effective date of modified test procedures.* If required only for the evaluation and issuance of updated efficiency standards, modified test procedures typically will not go into effect until the effective date of updated standards.

8. Joint Stakeholder Recommendations

(a) *Joint recommendations.* Consensus recommendations, and supporting analyses, submitted by a representative group of interested parties will be given substantial weight by DOE in the development of a proposed rule. See section 5(e)(2). If the supporting analyses provided by the group addresses all of the statutory criteria and uses valid economic assumptions and analytical methods, DOE expects to use this supporting analyses as the basis of a proposed rule. The proposed rule will explain any deviations from the consensus recommendations from interested parties.

(b) *Breadth of participation.* Joint recommendations will be of most value to the Department if the participants are reasonably representative of those interested in the outcome of the standards development process, including manufacturers, consumers, utilities, states and representatives of environmental or energy efficiency interest groups.

(c) *DOE support of consensus development, including impact analyses.* In order to facilitate such consensus development, DOE will make available, upon request, appropriate technical and legal support to the group and will provide copies of all relevant public documents and analyses. The Department also will consider any requests for its active participation in such discussions, recognizing that the procedural requirements of the Federal Advisory Committee Act may apply to such participation.

9. Principles for the Conduct of Engineering Analysis

(a) The purpose of the engineering analysis is to develop the relationship between efficiency and cost of the subject product. The Department will use the most appropriate means available to determine the efficiency/cost relationship, including an overall system approach or engineering modeling to predict the improvement in efficiency that can be expected from individual design options as discussed in the paragraphs below. From this efficiency/cost relationship, measures such as payback, life cycle cost, and energy savings can be developed. The Department, in consultation with interested parties, will identify issues that will be examined in the engineering analysis and the types of specialized expertise that may be required. With these specifications, DOE will select appropriate contractors, subcontractors, and expert consultants, as necessary, to perform the engineering analysis and the impact analysis. Also, the Department will consider data, information and analyses received from interested parties for use in the analysis wherever feasible.

(b) The engineering analysis begins with the list of design options developed in consultation with the interested parties as a result of the screening process. In consultation with the technology/industry expert peer review group, the Department will establish the likely cost and performance improvement of each design option. Ranges and uncertainties of cost and performance will be established, although efforts will be made to minimize uncertainties by using measures such as test data or component or material supplier information where available. Estimated uncertainties will be carried forward in subsequent analyses. The use of quantitative models will be supplemented by qualitative assessments as appropriate.

(c) The next step includes identifying, modifying or developing any engineering models necessary to predict the efficiency impact of any one or combination of design options on the product. A base case configuration or starting point will be established as well as the order and combination/blending of the design options to be evaluated. The DOE, utilizing expert consultants, will then perform the engineering analysis and develop the cost efficiency curve for the product. The cost efficiency curve and any necessary models will be subject to peer review before being issued with the ANOPR.

10. Principles for the Analysis of Impacts on Manufacturers

(a) *Purpose.* The purpose of the manufacturer analysis is to identify the likely

VOL
61
ISS
136
JL
15
1996
UMI

impacts of efficiency standards on manufacturers. The Department will analyze the impact of standards on manufacturers with substantial input from manufacturers and other interested parties. The use of quantitative models will be supplemented by qualitative assessments by industry experts. This section describes the principles that will be used in conducting future manufacturing impact analysis.

(b) *Issue identification.* In the impact analysis stage (section 4(d)), the Department, in consultation with interested parties, will identify issues that will require greater consideration in the detailed manufacturer impact analysis. Possible issues may include identification of specific types or groups of manufacturers and concerns over access to technology. Specialized contractor expertise, empirical data requirements, and analytical tools required to perform the manufacturer impact analysis also would be identified at this stage.

(c) *Industry characterization.* Prior to initiating detailed impact studies, the Department will seek input on the present and past industry structure and market characteristics. Input on the following issues will be sought:

(1) Manufacturers and their relative market shares;

(2) Manufacturer characteristics, such as whether manufacturers make a full line of models or serve a niche market;

(3) Trends in the number of manufacturers;

(4) Financial situation of manufacturers;

(5) Trends in product characteristics and retail markets; and

(6) Identification of other relevant regulatory actions and a description of the nature and timing of any likely impacts.

(d) *Cost impacts on manufacturers.* The costs of labor, material, engineering, tooling, and capital are difficult to estimate, manufacturer-specific, and usually proprietary. The Department will seek input from interested parties on the treatment of cost issues. Manufacturers will be encouraged to offer suggestions as to possible sources of data and appropriate data collection methodologies. Costing issues to be addressed include:

(1) Estimates of total cost impacts, including product-specific costs (based on cost impacts estimated for the engineering analysis) and front-end investment/conversion costs for the full range of product models.

(2) Range of uncertainties in estimates of average cost, considering alternative designs and technologies which may vary cost impacts and changes in costs of material, labor and other inputs which may vary costs.

(3) Variable cost impacts on particular types of manufacturers, considering factors such as atypical sunk costs or characteristics of specific models which may increase or decrease costs.

(e) *Impacts on product sales, features, prices and cost recovery.* In order to make manufacturer cash flow calculations, it is necessary to predict the number of products sold and their sale price. This requires an assessment of the likely impacts of price changes on the number of products sold and on typical features of models sold. Past analyses have relied on price and shipment data generated by economic models. The Department will develop additional estimates of prices and shipments by drawing on multiple sources of data and experience including: actual shipment and pricing experience, data from manufacturers, retailers and other market experts, financial models, and sensitivity analyses. The possible impacts of candidate standard levels on consumer choices among competing fuels will be explicitly considered where relevant.

(f) *Measures of impact.* The manufacturer impact analysis will estimate the impacts of candidate standard levels on the net cash flow of manufacturers. Computations will be performed for the industry as a whole and for typical and atypical manufacturers. The exact nature and the process by which the analysis will be conducted will be determined by DOE, in conjunction with interested parties. Impacts to be analyzed include:

(1) Industry net present value, with sensitivity analyses based on uncertainty of costs, sales prices and sales volumes;

(2) Cash flows, by year;

(3) Other measures of impact, such as revenue, net income and return on equity, as appropriate;

The characteristics of atypical manufacturers worthy of special consideration will be determined in consultation with manufacturers and other interested parties and may include: manufacturers incurring higher or lower than average costs; and manufacturers experiencing greater or fewer adverse impacts on sales. Alternative scenarios based on other methods of estimating cost or sales impacts also will be performed, as needed.

(g) *Cumulative impacts of other Federal regulatory actions.* (1) The Department will recognize and seek to mitigate the overlapping effects on manufacturers of new or revised DOE standards and other regulatory actions affecting the same products. DOE will analyze and consider the impact on manufacturers of multiple product-specific regulatory actions. These factors will be considered in setting rulemaking priorities, assessing manufacturer impacts of a particular standard, and establishing the effective date for a new or revised standard. In particular, DOE will seek to propose effective dates for new or revised standards that are appropriately coordinated with other regulatory actions to mitigate any cumulative burden.

(2) If the Department determines that a proposed standard would impose a significant impact on product manufacturers within three years of the effective date of another DOE standard that imposes significant impacts on the same manufacturers (or divisions thereof, as appropriate), the Department will, in addition to evaluating the impact on manufacturers of the proposed standard, assess the joint impacts of both standards on manufacturers.

(3) If the Department is directed to establish or revise standards for products that are components of other products subject to standards, the Department will consider the interaction between such standards in setting rulemaking priorities and assessing manufacturer impacts of a particular standard. The Department will assess, as part of the engineering and impact analyses, the cost of components subject to efficiency standards.

(h) *Summary of quantitative and qualitative assessments.* The summary of quantitative and qualitative assessments will contain a description and discussion of uncertainties. Alternative estimates of impacts, resulting from the different potential scenarios developed throughout the analysis, will be explicitly presented in the final analysis results.

(i) *Key modeling and analytical tools.* In its assessment of the likely impacts of standards on manufacturers, the Department will use models which are clear and understandable, feature accessible calculations, and have assumptions that are clearly explained. As a starting point, the Department will use the Government Regulatory Impact Model (GRIM). The Department will consider any enhancements to the GRIM that are suggested by interested parties. If changes are made to the GRIM methodology, DOE will provide notice and seek public input. The Department will also support the development of economic models for price and volume forecasting. Research required to update key economic data will be considered.

11. Principles for the Analysis of Impacts on Consumers

(a) *Early consideration of impacts on consumer utility.* The Department will consider at the earliest stages of the development of a standard whether particular design options will lessen the utility of the covered products to the consumer. See section 4(a).

(b) *Impacts on product availability.* The Department will determine, based on consideration of information submitted during the standard development process, whether a proposed standard is likely to result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the U.S. at the time. DOE will not promulgate a standard if it concludes that it would result in such unavailability.

(c) *Department of justice review.* As required by law, the Department will solicit the views of the Justice Department on any lessening of competition that is likely to result from the imposition of a proposed standard and will give the views provided full consideration in assessing economic justification of a proposed standard. In addition, DOE may consult with the Department of justice at earlier stages in the standards development process to seek to obtain preliminary views on competitive impacts.

(d) *Variation in consumer impacts.* The Department will use regional analysis and sensitivity analysis tools, as appropriate, to evaluate the potential distribution of impacts of candidate standards levels among different subgroups of consumers. The Department will consider impacts on significant segments of consumers in determining standards levels. Where there are significant negative impacts on identifiable subgroups, DOE will consider the efficacy of voluntary approaches as a means to achieve potential energy savings.

(e) *Payback period and first cost.* (1) In the assessment of consumer impacts of standards, the Department will consider Life-Cycle Cost, Payback Period and Cost of Conserved Energy to evaluate the savings in operating expenses relative to increases in purchase price. The Department intends to increase the level of sensitivity analysis and scenario analysis for future rulemakings. The results of these analyses will be carried throughout the analysis and the ensuing uncertainty described.

(2) If, in the analysis of consumer impacts, the Department determines that a candidate standard level would result in a substantial increase in the product first costs to consumers or would not pay back such additional first costs through energy cost savings in less than three years, Department will specifically assess the likely impacts of such a standard on low-income households, product sales and fuel switching.

12. Consideration of Non-Regulatory Approaches

(a) The Department recognizes that voluntary or other non-regulatory efforts by manufacturers, utilities and other interested parties can result in substantial efficiency improvements. The Department intends to consider fully the likely effects of non-regulatory initiatives on product energy use, consumer utility and life cycle costs, manufacturers, competition, utilities and the environment, as well as the distribution of these impacts among different regions, consumers, manufacturers and utilities. DOE will attempt to base its assessment on the actual impacts of such initiatives to date, but also will consider information presented regarding the impacts that any existing initiative might have in the future. Such information is likely to include a demonstration of the strong commitment of manufacturers, distribution channels, utilities or others to such voluntary efficiency improvements. This information will be used in assessing the likely incremental impacts of establishing or revising standards, in assessing appropriate effective dates for new or revised standards and in considering DOE support of non-regulatory initiatives.

(b) DOE believes that non-regulatory approaches are valuable complements to the standards program. In particular, DOE will consider pursuing voluntary programs where it appears that highly efficient products can obtain a significant market share but less efficient products cannot be eliminated altogether because, for instance, of unacceptable adverse impacts on a significant subgroup of consumers. In making this assessment, the Department will consider the success more efficient designs have had in the market, their acceptance to date, and their potential market penetration.

13. Crosscutting Analytical Assumptions

In selecting values for certain crosscutting analytical assumptions, DOE expects to continue relying upon the following sources and general principles:

(a) *Underlying economic assumptions.* The appliance standards analyses will generally use the same economic growth and development assumptions that underlie the most current Annual Energy Outlook (AEO) published by the Energy Information Administration (EIA).

(b) *Energy price and demand trends.* Analyses of the likely impact of appliance standards on typical users will generally adopt the mid-range energy price and demand scenario of the EIA's most current AEO. The sensitivity of such estimated impacts to possible variations in future energy prices are likely to be examined using the EIA's high and low energy price scenarios.

(c) *Product-specific energy-efficiency trends, without updated standards.* Product-specific energy-efficiency trends will be based on a combination of the efficiency trends forecast by the EIA's residential and commercial demand model of the National Energy Modeling System (NEMS) and product-specific assessments by DOE and its contractors with input from interested parties.

(d) *Discount rates.* For residential and commercial consumers, ranges of three different real discount rates will be used. For residential consumers, the mid-range discount rate will represent DOE's approximation of the average financing cost (or opportunity costs of reduced savings) experienced by typical consumers. Sensitivity analyses will be performed using discount rates reflecting the costs more likely to be experienced by residential consumers with little or no savings and credit card financing and consumers with substantial savings. For commercial users, a mid-range discount rate reflecting the DOE's approximation of the average real rate of return on commercial investment will be used, with sensitivity analyses being performed using values indicative of the range of real rates of return likely to be experienced by typical commercial businesses. For national net present value calculations, DOE would use the Administration's approximation of the average real rate of return on private investment in the U.S. economy. For manufacturer impacts, DOE plans to use a range of real discount rates which are representative of the real rates of return experienced by typical U.S. manufacturers affected by the program.

(e) *Environmental impacts.* The emission rates of carbon, sulfur oxides and nitrogen oxides used by DOE to calculate the physical quantities of emissions likely to be avoided by candidate standard levels will be based on the current average carbon emissions of the U.S. electric utilities and on the projected rates of emissions of sulfur and nitrogen oxides. Projected rates of emissions, if available, will be used for the estimation of any other environmental impacts. The Department will consider the effects of the proposed standards on these emissions in reaching a decision about whether the benefits of the proposed standards exceed their burdens but will not determine the monetary value of these environmental externalities.

14. Deviations, Revisions, and Judicial Review

(a) *Deviations.* This Appendix specifies procedures, interpretations and policies for the development of new or revised energy efficiency standards in considerable detail. As the approach described in this Appendix is applied to the development of particular standards, the Department may find it necessary or appropriate to deviate from these procedures, interpretations or policies. If the Department concludes that such deviations are necessary or appropriate in a particular situation, DOE will provide interested parties with notice of the deviation and an explanation.

(b) *Revisions.* If the Department concludes that changes to the procedures, interpretations or policies in this Appendix are necessary or appropriate, DOE will provide notice in the **Federal Register** of modifications to this Appendix with an accompanying explanation. DOE expects to consult with interested parties prior to any such modification.

(c) *Judicial review.* The procedures, interpretations, and policies stated in this Appendix are not intended to establish any new cause of action or right to judicial review.

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VOL
61
ISS
136
JL
15
1996
UMI

Reader Aids

Federal Register
Vol. 61, No. 136
Monday, July 15, 1996

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FEDERAL REGISTER PAGES AND DATES, JULY

33825–34366	1
34367–34712	2
34713–35082	3
35083–35588	5
35589–35914	8
35915–36276	9
36277–36492	10
36493–36608	11
36609–36808	12
36809–36988	15

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

4 CFR
28 36809
29 36809
Proclamations:
6907 35083
6908 35587
Administrative Orders:
Presidential Determinations:
No. 96–34 of June 26, 1996 36493
No. 96–35 of June 26, 1996 36495
No. 96–36 of June 28, 1996 35075

5 CFR
Ch. XXIII 35085
Ch. LXV 36246
530 34713
531 34713
532 36609
534 34713
550 34713
575 34713
581 34713
582 34713
630 34713
734 35088
1660 36610
2634 35589
3201 35915
Proposed Rules:
890 35973

7 CFR
58 35589
301 ..... 35102, 35107, 36811, 36812
400 34367
868 34714
946 35109
948 36813
958 35592
989 36814
997 35594
998 35594
1106 35596
1230 35597
1493 33825
1910 35916
1924 35916
1941 35916
1943 35916
1945 35916
1951 35916
1955 35916
1962 35916
1965 35916
1980 35916
Proposed Rules:
210 35152
220 35152
225 35152
226 35152
300 34379
319 34379
868 35687
956 36827
1240 34385
1280 35582

8 CFR
103 35597
212 36610
214 35934
217 35598
301 35111
Proposed Rules:
207 35984
208 35984

9 CFR
92 36818
112 33840
113 33840
201 ..... 36277, 36279
Proposed Rules:
1 34386
3 ..... 34386, 34389
11 34747
92 36520
93 36520
94 ..... 35987, 36520
95 36520
96 36520
98 36520
301 35990
304 35990
308 35990
318 35992
319 35157
320 35990
381 ..... 35157, 35990
391 34747

10 CFR
53 35935
110 35600
205 3511
420 35890
430 36974
450 35890
463 35114
784 36611
1003 35112
1010 35085
1021 36222
Proposed Rules:
1021 35990

12 CFR
324 33842
367 35115
1760 35607

VOL 61 ISS 136 JL 15 1996 UMI

Proposed Rules:
207 33874
218 34749
220 33874
221 33874
250 34749
327 34751
745 36663

14 CFR
1 34508
25 34716
29 ..... 33963, 36965
39 ..... 33874, 34368, 34718, 35122, 35126, 35127, 35936, 35938, 35940, 35942, 35944, 35946, 36620, 36622, 36817
61 34508
71 ..... 33843 33844, 33845, 34720, 34721, 34722, 34723, 35307, 35283, 36284, 36285, 36286, 36820, 35623
91 ..... 34508, 36286
97 ..... 35623, 35624, 35626
119 35626
121 ..... 34508, 34927, 35626
125 34508
135 ..... 34508, 34927, 35626
141 34508
142 34508
211 34724
213 34724

Proposed Rules:
25 35056
39 ..... 34787, 35691, 35693, 35695, 36307, 36308, 36310, 36664, 36667, 35609
71 ..... 34391, 34393, 34394, 34395, 34396, 34397, 34398, 34769, 35691, 36311, 36312, 36313, 36314, 36315, 36316, 36317, 36520

15 CFR
902 ..... 34570, 34930, 34966, 35145, 35548
923 36965

Proposed Rules:
30 36318
922 33876

16 CFR

Proposed Rules:
303 35932

17 CFR

Proposed Rules:
240 36521

19 CFR
10 33845
12 33845
102 33845
134 33845

21 CFR
14 36624
177 34370
178 33846
184 36287
452 34726
510 35949
520 34727
522 ..... 34727, 35129, 36290
529 34727
558 ..... 34727, 35949, 36291

Proposed Rules:
106 36154
107 36154

22 CFR
41 35628
126 36625
606 36820

25 CFR
630 35629

24 CFR
0 36246
60 36462
200 36260
201 36260
202 ..... 36260, 36452
203 ..... 35024, 36260, 36452
206 ..... 35014, 36260
221 ..... 36260, 36452
233 36260
234 ..... 36260, 36452
280 36260
291 36260
570 36456
901 35633
941 35958

25 CFR
10 34371
211 35634
212 35634
700 35666

Proposed Rules:
5 36671
11 35158
12 35163
21 33876
45 34399
152 34400
171 35167
256 36829

29 CFR

Proposed Rules:
1 ..... 35996, 36320
31 36320

28 CFR
42 34729

Proposed Rules:
17 36679
31 34770

29 CFR
Ch. XXVI 34002, 36626
Ch. XL 34002, 36626
1952 36824
2509 33847
2520 33847
2550 33847
4044 35958

Proposed Rules:
Ch. XIV 34405
101 35172
102 35172

30 CFR
56 36790
57 36790
256 34730

31 CFR
575 36627
706 ..... 35958, 36291, 36497

33 CFR
100 36292
110 36786
116 36786
117 36786
127 36629
157 36786
158 36629
164 35064
165 ..... 35130, 35132
179 36629
181 36786
183 36629
334 34732

Proposed Rules:
117 35702
154 34775
155 34775
167 35703

35 CFR
61 36497
123 36497

36 CFR
1 35133
13 35133
222 35959
223 35960

Proposed Rules:
1190 36668
1191 36668

37 CFR
2 36825

38 CFR
1 33850
21 36629

Proposed Rules:
1 33878

39 CFR
5 36498
7 36498
10 36498
20 36500

40 CFR
9 ..... 33851, 34202
52 ..... 36292, 36501, 36502
55 34202
63 ..... 34140, 36295
70 34733
71 34202
79 36506
80 ..... 35310, 35673, 35960
180 ..... 34739, 34741, 36298, 36299
257 34253
261 34252
271 34252
300 ..... 35137, 35962
425 35680

Proposed Rules:
51 ..... 35994, 36112
52 ..... 35996, 36004, 36320, 35534
55 36012
61 36326
63 ..... 36326, 36835
79 36535
80 34775
81 ..... 33879, 36004
90 34778
93 ..... 35994, 36112
136 36328
180 ..... 36329, 36331, 36689
260 33881
261 33881
262 33881
264 33881
268 33881
269 33881
271 33881
300 36858
425 35705
430 36835

41 CFR
201 35685

42 CFR
405 35307
417 35307
431 35307
473 35307
498 35307

Proposed Rules:
410 34614
415 34614

43 CFR

Proposed Rules:
4700 36333

44 CFR
62 36513
64 36514
65 ..... 33852, 33854
67 33856

Proposed Rules:
67 33882

46 CFR
42 35963
76 35138
108 36786
110 36786
111 ..... 35927, 36606, 36786
112 36786
113 36786
161 36786
167 35138
514 35685

Proposed Rules:
10 ..... 36543, 36606
15 ..... 36543, 36606

47 CFR
Ch. I 35964
1 36629
20 33859
22 34375
24 33850
36 34375
61 ..... 36515, 36653
64 ..... 36629, 36653
66 36654
73 ..... 34368, 34743, 34744, 35139, 36302
90 34375

Proposed Rules:
Ch. I 34405
73 ..... 34406, 34407, 34784, 34785, 35705
76 ..... 34408, 34409

48 CFR
231 36305

49 CFR
1 34745
192 ..... 35139, 36825
193 36825
195 36825
233 33871
235 33871
236 33871
571 ..... 33891, 36516, 36655
575 36655
1150 36965
1300 35139
1305 35141

Proposed Rules:
1 33886
8 33886
192 ..... 34410, 34413
195 ..... 34410, 34413
393 36691
397 36016
571 ..... 36334, 36698

50 CFR
Ch. III 35548
246 35548
280 35548
281 35548
282 35548
298 35548
299 35548
622 34930
625 34966
630 ..... 34746, 35971
638 34930
641 34930
642 34785
645 34930
646 34930
647 34930
648 ..... 34966, 35142
650 34966
651 34966
652 34966
653 34930
655 34966
657 34966
658 34930
659 34930
660 ..... 34570, 35143, 35144, 36662
661 34570
663 34570
669 34930
670 34930
679 ..... 34377, 36306
680 34570
681 ..... 34570, 35145
683 34570
685 34570
695 35548
697 34746

Proposed Rules:
17 ..... 36020, 36021, 36346
642 34785
679 ..... 35174, 36702

VOL 61 ISS 136 JL 15 1996 UMI

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Onions grown in–
Idaho et al., and imported; published 7-8-96
Potatoes (Irish) grown in–
Washington; published 6-19-96
Tobacco inspection:
Growers; referendum results; published 6-13-96
ARMS CONTROL AND DISARMAMENT AGENCY
Service of process, production of official information, and agency employees testimony or response; prior approval; published 7-15-96
COMMERCE DEPARTMENT
Patent and Trademark Office
Trademark cases:
Rules of practice–
Notice of opposition filing time extensions, consented requests; proof of service requirement eliminated; published 7-15-96
ENVIRONMENTAL PROTECTION AGENCY
Acquisition regulations:
Information Resources Management policies; electronic access; published 6-28-96
Air quality implementation plans; approval and promulgation; various States:
Ohio; published 5-15-96
Oregon; published 5-16-96
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
New Mexico; published 6-13-96
GENERAL ACCOUNTING OFFICE
Practice and procedure:
Personnel Appeals Board–
Reductions in force; published 7-15-96
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
New drug applications–
Diethylcarbamazine tablets, etc.; published 7-3-96
LABOR DEPARTMENT
Occupational Safety and Health Administration
State plans; development, enforcement, etc.:
Minnesota; published 7-15-96
NUCLEAR REGULATORY COMMISSION
Production and utilization facilities; domestic licensing:
Nuclear power reactors–
Emergency planning and preparedness exercise requirements; published 6-14-96
SECURITIES AND EXCHANGE COMMISSION
Securities:
Disclosure Simplification Task Force recommendations; published 6-14-96
TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
New Jersey; published 6-13-96
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operations:
Commuter operator requirements
Correction; published 7-8-96
Commuter operator requirements; correction; published 6-14-96
Airworthiness directives:
Airbus; published 6-10-96
Beech; published 6-10-96
Fokker; published 6-10-96
Jetstream; published 6-28-96
Lockheed; published 6-10-96
Textron Lycoming; published 6-10-96
TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Occupant crash protection–
Head restraints; published 5-30-96
TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Rulemaking procedures–
Direct final rule process for use with noncontroversial rules; published 6-14-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
Arizona-California citrus; comments due by 7-22-96; published 6-20-96
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Sea turtle conservation; shrimp trawling requirements–
Additional turtle excluder device requirements within statistical zones; comments due by 7-24-96; published 6-27-96
Fishery conservation and management:
Limited access management of Federal fisheries in and off of Alaska; comments due by 7-22-96; published 5-25-96
ENVIRONMENTAL PROTECTION AGENCY
Acquisition regulations:
Source selection process; comments due by 7-22-96; published 5-21-96
Air pollutants, hazardous; national emission standards:
Radon emissions from phosphogypsum stacks; comment period reopening; comments due by 7-26-96; published 7-10-96
Air programs:
Gasoline retailers and wholesale purchaser-consumer fuel dispensing rate requirements
Implementation date delayed; comments due by 7-26-96; published 6-26-96
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 7-24-96; published 6-24-96
New Mexico; comments due by 7-24-96; published 6-24-96
Puerto Rico; comments due by 7-22-96; published 6-21-96
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Tennessee; comments due by 7-24-96; published 6-24-96
Clean Air Act:
State operating permits programs–
Michigan; comments due by 7-24-96; published 6-24-96
Hazardous waste program authorizations:
Nebraska; comments due by 7-25-96; published 6-25-96
Nevada; comments due by 7-24-96; published 6-24-96
Pesticide programs:
Registration modifications; notification procedures; comments due by 7-26-96; published 6-26-96
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Copper 8-quinolinolate; comments due by 7-26-96; published 6-26-96
Water programs:
Pollutants analysis test procedures; guidelines–
Oil and grease and total petroleum hydrocarbons; comment period reopening; comments due by 7-23-96; published 5-24-96
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Telecommunications Act of 1996; implementation–
Market entry barriers for small businesses; identification and elimination; comments due by 7-24-96; published 6-26-96
Radio broadcasting:
Grandfathered short-spaced FM stations; comments due by 7-22-96; published 6-27-96
Television broadcasting:
Cable television systems–

Major television markets; list; comments due by 7-22-96; published 6-10-96
GENERAL SERVICES ADMINISTRATION
Acquisition regulations:
Contract Appeals Board; procedure rules–
Automatic data processing equipment and services procurements; Board's jurisdiction eliminated; comments due by 7-24-96; published 6-24-96
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Biological products:
Placental/umbilical cord blood stem cell products intended for transplantation, etc.; draft document; comments due by 7-26-96; published 5-28-96
Human drugs:
Orally ingested drug products containing calcium, magnesium, and potassium (OTC)–
Labeling provisions; comments due by 7-22-96; published 4-22-96
Sodium content (OTC); labeling provisions; comments due by 7-22-96; published 4-22-96
INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Barton Springs salamander; comments due by 7-24-96; published 6-24-96
Fat three-ridge, etc. (seven freshwater mussels); comments due by 7-26-96; published 7-9-96
Hunting and fishing:
Open areas list additions; comments due by 7-22-96; published 6-21-96
Refuge-specific regulations; comments due by 7-24-96; published 6-24-96
INTERIOR DEPARTMENT
Minerals Management Service
Royalty management:
Federal leases; natural gas valuation regulations; amendments; comments due by 7-22-96; published 5-21-96
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Ohio; comments due by 7-24-96; published 6-24-96
JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION
Fellowship program requirements; comments due by 7-22-96; published 5-22-96
LABOR DEPARTMENT
Federal Contract Compliance Programs Office
Government contractors, affirmative action requirementas; EO 11246 implementation; comments due by 7-22-96; published 5-21-96
MEXICO AND UNITED STATES, INTERNATIONAL BOUNDARY AND WATER COMMISSION
International Boundary and Water Commission, United States and Mexico
Freedom of Information Act; implementation:
Fee schedule; comments due by 7-22-96; published 6-20-96
NUCLEAR REGULATORY COMMISSION
Nuclear power reactors, standard design certifications; and combined licenses; early site permits:
Boiling water reactors–
System 80+ standard designs; certification approval; comments due by 7-23-96; published 5-30-96
PERSONNEL MANAGEMENT OFFICE
Acquisition regulations:
Health benefits, Federal employees; Truth in Negotiations Act; amendments; comments due by 7-24-96; published 5-24-96
POSTAL SERVICE
Domestic Mail Manual:
Mail classification reform; implementation standards; comments due by 7-24-96; published 6-24-96
TRANSPORTATION DEPARTMENT
Coast Guard
International Conventions on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 78):
Licensing, documentation, and manning; comments due by 7-24-96; published 5-26-96
International Conventions on Standards of Training, Certification and Watchkeeping for Seafarers
Meetings; comments due by 7-24-96; published 4-8-96
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operation:
Radar beacon system and Mode S transponder requirements in national airspace system; comments due by 7-22-96; published 5-23-96
Correction; comments due by 7-22-96; published 6-17-96
Airworthiness directives:
Airbus; comments due by 7-22-96; published 6-13-96
TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Warning devices–
Fusees or flares placed on roadway behind disabled buses and trucks; comments due by 7-25-96; published 6-10-96
TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous materials transportation–
Oxygen generators as cargo in passenger aircraft; temporary prohibition; comments due by 7-23-96; published 5-24-96
TREASURY DEPARTMENT
Internal Revenue Service
Income taxes, etc.:
Tax withholding on certain U.S. source income paid to foreign persons and related collection, refunds, and credits, etc.; comments due by 7-22-96; published 4-22-96
VETERANS AFFAIRS DEPARTMENT
Medical benefits:
Alcohol and drug dependence disorders; contract program; eligibility criteria; comments due by 7-22-96; published 5-21-96

VOL
61
ISS
136
JL
15
1996
UMI

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3 (1995 Compilation and Parts 100 and 101)	(869-028-00002-9)	22.00	[1] Jan. 1, 1996
4	(869-028-00003-7)	5.50	Jan. 1, 1996
5 Parts:			
1–699	(869-028-00004-5)	26.00	Jan. 1, 1996
700–1199	(869-028-00005-3)	20.00	Jan. 1, 1996
1200-End, 6 (6 Reserved)	(869-028-00006-1)	25.00	Jan. 1, 1996
7 Parts:			
0–26	(869-028-00007-0)	22.00	Jan. 1, 1996
27–45	(869-028-00008-8)	11.00	Jan. 1, 1996
46–51	(869-028-00009-6)	13.00	Jan. 1, 1996
52	(869-028-00010-0)	5.00	Jan. 1, 1996
53–209	(869-028-00011-8)	17.00	Jan. 1, 1996
210–299	(869-028-00012-6)	35.00	Jan. 1, 1996
300–399	(869-028-00013-4)	17.00	Jan. 1, 1996
400–699	(869-028-00014-2)	22.00	Jan. 1, 1996
700–899	(869-028-00015-1)	25.00	Jan. 1, 1996
900–999	(869-028-00016-9)	30.00	Jan. 1, 1996
1000–1199	(869-028-00017-7)	35.00	Jan. 1, 1996
1200–1499	(869-028-00018-5)	29.00	Jan. 1, 1996
1500–1899	(869-028-00019-3)	41.00	Jan. 1, 1996
1900–1939	(869-028-00020-7)	16.00	Jan. 1, 1996
1940–1949	(869-028-00021-5)	31.00	Jan. 1, 1996
1950–1999	(869-028-00022-3)	39.00	Jan. 1, 1996
2000-End	(869-028-00023-1)	15.00	Jan. 1, 1996
8	(869-028-00024-0)	23.00	Jan. 1, 1996
9 Parts:			
1–199	(869-028-00025-8)	30.00	Jan. 1, 1996
200-End	(869-028-00026-6)	25.00	Jan. 1, 1996
10 Parts:			
0–50	(869-028-00027-4)	30.00	Jan. 1, 1996
51–199	(869-028-00028-2)	24.00	Jan. 1, 1996
200–399	(869-028-00029-1)	5.00	Jan. 1, 1996
400–499	(869-028-00030-4)	21.00	Jan. 1, 1996
500-End	(869-028-00031-2)	34.00	Jan. 1, 1996
11	(869-028-00032-1)	15.00	Jan. 1, 1996
12 Parts:			
1–199	(869-028-00033-9)	12.00	Jan. 1, 1996
200–219	(869-028-00034-7)	17.00	Jan. 1, 1996
220–299	(869-028-00035-5)	29.00	Jan. 1, 1996
300–499	(869-028-00036-3)	21.00	Jan. 1, 1996
500–599	(869-028-00037-1)	20.00	Jan. 1, 1996
600-End	(869-028-00038-0)	31.00	Jan. 1, 1996
13	(869-028-00039-8)	18.00	Mar. 1, 1996
14 Parts:			
1–59	(869-028-00040-1)	34.00	Jan. 1, 1996
60–139	(869-028-00041-0)	30.00	Jan. 1, 1996
140–199	(869-028-00042-8)	13.00	Jan. 1, 1996
200–1199	(869-028-00043-6)	23.00	Jan. 1, 1996
1200-End	(869-028-00044-4)	16.00	Jan. 1, 1996
15 Parts:			
0–299	(869-028-00045-2)	16.00	Jan. 1, 1996
300–799	(869-028-00046-1)	26.00	Jan. 1, 1996
800-End	(869-028-00047-9)	18.00	Jan. 1, 1996
16 Parts:			
0–149	(869-028-00048-7)	6.50	Jan. 1, 1996
150–999	(869-028-00049-5)	19.00	Jan. 1, 1996
1000-End	(869-028-00050-9)	26.00	Jan. 1, 1996
17 Parts:			
1–199	(869-028-00052-5)	21.00	Apr. 1, 1996
200–239	(869-028-00053-3)	25.00	Apr. 1, 1996
240-End	(869-028-00054-1)	31.00	Apr. 1, 1996
18 Parts:			
1–149	(869-028-00055-0)	17.00	Apr. 1, 1996
150–279	(869-028-00056-8)	12.00	Apr. 1, 1996
280–399	(869-028-00057-6)	13.00	Apr. 1, 1996
400-End	(869-028-00058-4)	11.00	Apr. 1, 1996
19 Parts:			
1–140	(869-026-00061-1)	25.00	Apr. 1, 1995
141–199	(869-026-00062-0)	21.00	Apr. 1, 1995
200-End	(869-028-00061-4)	12.00	Apr. 1, 1996
20 Parts:			
1–399	(869-026-00064-6)	20.00	Apr. 1, 1995
400–499	(869-026-00065-4)	34.00	Apr. 1, 1995
500-End	(869-028-00064-9)	32.00	Apr. 1, 1996
21 Parts:			
1–99	(869-026-00067-1)	16.00	Apr. 1, 1995
100–169	(869-026-00068-9)	21.00	Apr. 1, 1995
170–199	(869-026-00069-7)	22.00	Apr. 1, 1995
200–299	(869-028-00068-1)	7.00	Apr. 1, 1996
300–499	(869-026-00071-9)	39.00	Apr. 1, 1995
500–599	(869-026-00072-7)	22.00	Apr. 1, 1995
600–799	(869-026-00073-5)	9.50	Apr. 1, 1995
800–1299	(869-026-00074-3)	23.00	Apr. 1, 1995
1300-End	(869-026-00075-1)	13.00	Apr. 1, 1995
22 Parts:			
1–299	(869-026-00076-0)	33.00	Apr. 1, 1995
300-End	(869-028-00075-4)	24.00	Apr. 1, 1996
23	(869-026-00078-6)	22.00	Apr. 1, 1995
24 Parts:			
0–199	(869-026-00079-4)	40.00	Apr. 1, 1995
200–219	(869-026-00080-8)	19.00	Apr. 1, 1995
220–499	(869-026-00081-6)	23.00	Apr. 1, 1995
500–699	(869-026-00082-4)	20.00	Apr. 1, 1995
700–899	(869-026-00083-2)	24.00	Apr. 1, 1995
900–1699	(869-026-00084-1)	24.00	Apr. 1, 1995
1700-End	(869-026-00085-9)	17.00	Apr. 1, 1995
25	(869-026-00086-7)	32.00	Apr. 1, 1995
26 Parts:			
§§ 1.0-1-1.60	(869-028-00085-1)	21.00	Apr. 1, 1996
§§ 1.61-1.169	(869-026-00088-3)	34.00	Apr. 1, 1995
§§ 1.170-1.300	(869-026-00089-1)	24.00	Apr. 1, 1995
§§ 1.301-1.400	(869-028-00088-6)	17.00	Apr. 1, 1996
§§ 1.401-1.440	(869-026-00091-3)	30.00	Apr. 1, 1995
§§ 1.441-1.500	(869-028-00090-8)	22.00	Apr. 1, 1996
§§ 1.501-1.640	(869-028-00091-6)	21.00	Apr. 1, 1996
§§ 1.641-1.850	(869-026-00092-4)	25.00	Apr. 1, 1995
§§ 1.851-1.907	(869-026-00095-6)	26.00	Apr. 1, 1995
§§ 1.908-1.1000	(869-028-00094-1)	26.00	Apr. 1, 1996
§§ 1.1001-1.1400	(869-028-00095-9)	26.00	Apr. 1, 1996
§§ 1.1401-End	(869-028-00096-7)	35.00	Apr. 1, 1996
2–29	(869-028-00097-5)	28.00	Apr. 1, 1996
30–39	(869-028-00098-3)	20.00	Apr. 1, 1996
40–49	(869-026-00101-4)	14.00	Apr. 1, 1995
50–299	(869-028-00100-9)	14.00	Apr. 1, 1996
300–499	(869-028-00101-7)	25.00	Apr. 1, 1996

Title	Stock Number	Price	Revision Date
500–599	(869-028-00102-5)	6.00	[4] Apr. 1, 1990
600-End	(869-026-00105-7)	8.00	Apr. 1, 1995
27 Parts:			
1–199	(869-026-00106-5)	37.00	Apr. 1, 1995
200-End	(869-028-00105-0)	13.00	Apr. 1, 1996
28 Parts:			
1–42	(869-026-00108-1)	27.00	July 1, 1995
43-end	(869-026-00109-0)	22.00	July 1, 1995
29 Parts:			
0–99	(869-026-00110-3)	21.00	July 1, 1995
100–499	(869-026-00111-1)	9.50	July 1, 1995
500–899	(869-026-00112-0)	36.00	July 1, 1995
900–1899	(869-026-00113-8)	17.00	July 1, 1995
1900–1910 (§§ 1901.1 to 1910.999)	(869-026-00114-6)	33.00	July 1, 1995
1910 (§§ 1910.1000 to end)	(869-026-00115-4)	22.00	July 1, 1995
1911–1925	(869-026-00116-2)	27.00	July 1, 1995
1926	(869-026-00117-1)	35.00	July 1, 1995
1927-End	(869-026-00118-9)	36.00	July 1, 1995
30 Parts:			
1–199	(869-026-00119-7)	25.00	July 1, 1995
200–699	(869-026-00120-1)	20.00	July 1, 1995
700-End	(869-026-00121-9)	30.00	July 1, 1995
31 Parts:			
0–199	(869-026-00122-7)	15.00	July 1, 1995
200-End	(869-026-00123-5)	25.00	July 1, 1995
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869-026-00124-3)	32.00	July 1, 1995
191–399	(869-026-00125-1)	38.00	July 1, 1995
400–629	(869-026-00126-0)	26.00	July 1, 1995
630–699	(869-026-00127-8)	14.00	[5] July 1, 1991
700–799	(869-026-00128-6)	21.00	July 1, 1995
800-End	(869-026-00129-4)	22.00	July 1, 1995
33 Parts:			
1–124	(869-026-00130-8)	20.00	July 1, 1995
125–199	(869-026-00131-6)	27.00	July 1, 1995
200-End	(869-026-00132-4)	24.00	July 1, 1995
34 Parts:			
1–299	(869-026-00133-2)	25.00	July 1, 1995
300–399	(869-026-00134-1)	21.00	July 1, 1995
400-End	(869-026-00135-9)	37.00	July 5, 1995
35	(869-026-00136-7)	12.00	July 1, 1995
36 Parts			
1–199	(869-026-00137-5)	15.00	July 1, 1995
200-End	(869-026-00138-3)	37.00	July 1, 1995
37	(869-026-00139-1)	20.00	July 1, 1995
38 Parts:			
0–17	(869-026-00140-5)	30.00	July 1, 1995
18-End	(869-026-00141-3)	30.00	July 1, 1995
39	(869-026-00142-1)	17.00	July 1, 1995
40 Parts:			
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52	(869-026-00144-8)	39.00	July 1, 1995
53–59	(869-026-00145-6)	11.00	July 1, 1995
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61–71	(869-026-00147-2)	36.00	July 1, 1995
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150–189	(869-026-00151-1)	25.00	July 1, 1995
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790-End	(869-026-00158-8)	15.00	July 1, 1995
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869-026-00159-6)	9.50	July 1, 1995
101	(869-026-00160-0)	29.00	July 1, 1995
102–200	(869-026-00161-8)	15.00	July 1, 1995
201-End	(869-026-00162-6)	13.00	July 1, 1995
42 Parts:			
1–399	(869-026-00163-4)	26.00	Oct. 1, 1995
400–429	(869-026-00164-2)	26.00	Oct. 1, 1995
430-End	(869-026-00165-1)	39.00	Oct. 1, 1995
43 Parts:			
1–999	(869-026-00166-9)	23.00	Oct. 1, 1995
1000–3999	(869-026-00167-7)	31.00	Oct. 1, 1995
4000-End	(869-026-00168-5)	15.00	Oct. 1, 1995
44	(869-026-00169-3)	24.00	Oct. 1, 1995
45 Parts:			
1–199	(869-022-00170-7)	22.00	Oct. 1, 1995
200–499	(869-026-00171-5)	14.00	Oct. 1, 1995
500–1199	(869-026-00172-3)	23.00	Oct. 1, 1995
1200-End	(869-026-00173-1)	26.00	Oct. 1, 1995
46 Parts:			
1–40	(869-026-00174-0)	21.00	Oct. 1, 1995
41–69	(869-026-00175-8)	17.00	Oct. 1, 1995
70–89	(869-026-00176-6)	8.50	Oct. 1, 1995
90–139	(869-026-00177-4)	15.00	Oct. 1, 1995
140–155	(869-026-00178-2)	12.00	Oct. 1, 1995
156–165	(869-026-00179-1)	17.00	Oct. 1, 1995
166–199	(869-026-00180-4)	17.00	Oct. 1, 1995
200–499	(869-026-00181-2)	19.00	Oct. 1, 1995
500-End	(869-026-00182-1)	13.00	Oct. 1, 1995
47 Parts:			
0–19	(869-026-00183-9)	25.00	Oct. 1, 1995
20–39	(869-026-00184-7)	21.00	Oct. 1, 1995
40–69	(869-026-00185-5)	14.00	Oct. 1, 1995
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80-End	(869-026-00187-1)	30.00	Oct. 1, 1995
48 Chapters:			
1 (Parts 1–51)	(869-026-00188-0)	39.00	Oct. 1, 1995
1 (Parts 52–99)	(869-026-00189-8)	24.00	Oct. 1, 1995
2 (Parts 201–251)	(869-026-00190-1)	17.00	Oct. 1, 1995
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3–6	(869-026-00192-8)	23.00	Oct. 1, 1995
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15–28	(869-026-00194-4)	31.00	Oct. 1, 1995
29-End	(869-026-00195-2)	19.00	Oct. 1, 1995
49 Parts:			
1–99	(869-026-00196-1)	25.00	Oct. 1, 1995
100–177	(869-026-00197-9)	34.00	Oct. 1, 1995
178–199	(869-026-00198-7)	22.00	Oct. 1, 1995
200–399	(869-026-00199-5)	30.00	Oct. 1, 1995
400–999	(869-026-00200-2)	40.00	Oct. 1, 1995
1000–1199	(869-026-00201-1)	18.00	Oct. 1, 1995
1200-End	(869-026-00202-9)	15.00	Oct. 1, 1995
50 Parts:			
1–199	(869-026-00203-7)	26.00	Oct. 1, 1995
200–599	(869-026-00204-5)	22.00	Oct. 1, 1995
600-End	(869-026-00205-3)	27.00	Oct. 1, 1995
CFR Index and Findings Aids	(869-028-00051-7)	35.00	Jan. 1, 1996

VOL
61
ISS
136
JL
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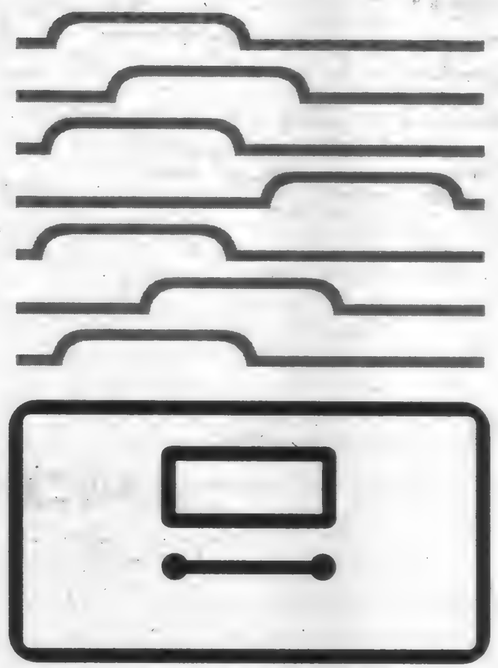

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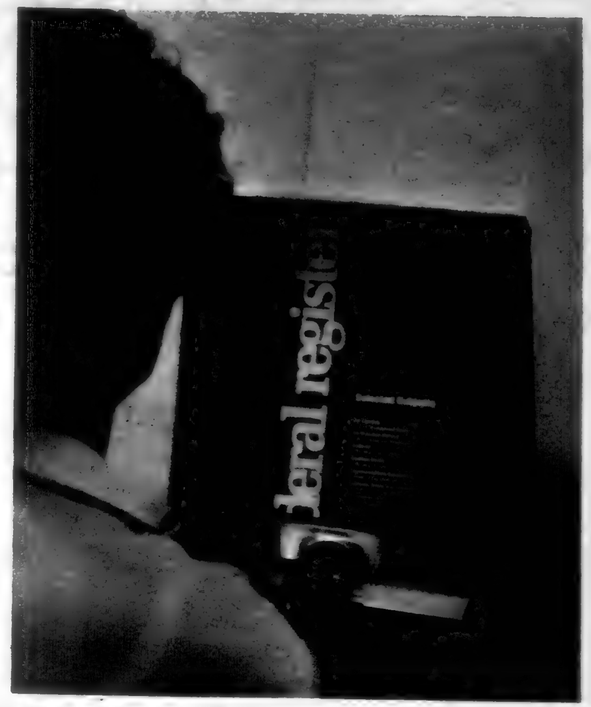

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VOL
61
ISS
137
JL
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7–16–96
Vol. 61 No. 137
Pages 36989–37198

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Tuesday
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VOL
61
ISS
137
JL
16
1996
UMI

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Contents

Federal Register
Vol. 61, No. 137
Tuesday, July 16, 1996

Agriculture Department
See Animal and Plant Health Inspection Service
See Farm Service Agency
PROPOSED RULES
Acquisition regulations:
Federal regulatory review, 37032–37034

Alcohol, Tobacco and Firearms Bureau
RULES
Firearms:
Firearms and ammunition; manufacturers excise taxes, 37005–37007
Technical amendments, 37002–37004
PROPOSED RULES
Firearms:
Firearms and ammunition; manufacturers excise tax, 37022–37023

Animal and Plant Health Inspection Service
PROPOSED RULES
Plant-related quarantine, domestic:
Corn cyst nematode, 37018–37019

Centers for Disease Control and Prevention
NOTICES
Meetings:
National Center for HIV, STD and TB Prevention, 37070–37071

Children and Families Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 37071

Coast Guard
NOTICES
Agency information collection activities:
Proposed collection; comment request; correction, 37113

Commerce Department
See Export Administration Bureau
See International Trade Administration
See Minority Business Development Agency
See National Oceanic and Atmospheric Administration

Defense Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37049

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Applied Science Labs, 37078–37079
Mallinckrodt Chemical, Inc., 37079–37081
MD Pharmaceutical, Inc., 37081
RX Returns, Inc., 37081–37090

Education Department
PROPOSED RULES
Direct grant programs, 37184–37194

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 37030
NOTICES
Confidential business information and data transfer, 37050–37051
Drinking water:
Underground injection control program—
Texas, 37051
Meetings:
National Environmental Education Advisory Council, 37051–37052
Superfund; response and remedial actions, proposed settlements, etc.:
Chemical Handling Corp. Site, CO, 37052–37065

Executive Office of the President
See Presidential Documents

Export Administration Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37043

Farm Service Agency
RULES
Farm marketing quotas, acreage allotments, and production adjustments:
Peanuts, 36997–37001

Federal Aviation Administration
RULES
Class E airspace, 37001–37002
Correction, 37113
PROPOSED RULES
Air carrier certification and operations:
Digital flight data recorder requirements, 37144–37181
Airworthiness directives:
de Havilland, 37019–37022
Class E airspace
Correction, 37113
NOTICES
Exemption petitions; summary and disposition, 37105–37107

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Alaska, 37065, 37065
Iowa, 37065–37066
Nebraska, 37066
Ohio, 37066
Vermont, 37066–37067

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Entergy Services, Inc., 37049–37050

VOL
61
ISS
137
JL
16
1996
UMI

Federal Maritime Commission
NOTICES
Agreements filed, etc., 37067
Freight forwarder licenses:
Hung Ng, Herman Wai et al., 37067

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 37067
Permissible nonbanking activities, 37068
Meetings; Sunshine Act, 37068

Financial Management Service
See Fiscal Service

Fiscal Service
RULES
Bonds and notes, U.S. Treasury:
Payments by banks and other financial institutions of United States savings bonds and notes (Freedom Shares), 37196–37197
Marketable book-entry Treasury bills, notes, and bonds; sale and issue, 37007–37011

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Copperbelly water snake, 37034–37035
NOTICES
Meetings:
Sport Fishing and Boating Partnership Council, 37077

Food and Drug Administration
NOTICES
Medical devices; premarket approval:
Arrow International; Model 3000 Constant Flow Inplantable Pump with Bolus Safety Valve, 37071–37072

General Accounting Office
NOTICES
Meetings:
Federal Accounting Standards Advisory Board, 37068

General Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37049

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Organization, functions, and authority delegations:
Budget Office, 37068–37070

Health Care Financing Administration
RULES
Medicare:
Interest expense and income from zero coupon bonds; reporting by providers, 37011–37015

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Nursing informatics for faculty in medically underserved communities; continuing education, 37072–37074
Primary care research center; medically underserved and vulnerable populations, 37074–37075

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Economic development initiative, 37132–37141
Mortgage and loan insurance programs:
Debenture interest rates, 37076

Indian Affairs Bureau
PROPOSED RULES
Indian Gaming Regulatory Act; implementation:
Tribal revenue allocation plans
Correction, 37022

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Natural resource damage assessments
Type B procedures, 37031–37032

International Trade Administration
NOTICES
Antidumping:
Fresh cut flowers from—
Ecuador, 37044–37047
Antidumping duty orders and findings:
Determinations not to revoke, 37043–37044

International Trade Commission
NOTICES
Meetings; Sunshine Act, 37078

Justice Department
See Drug Enforcement Administration

Labor Department
See Labor Statistics Bureau
See Mine Safety and Health Administration
NOTICES
Privacy Act:
Computer matching program, 37090–37091

Labor Statistics Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37091

Land Management Bureau
RULES
Minerals management:
Mining laws; use and occupancy, 37116–37130
NOTICES
Public land orders:
North Dakota; correction, 37113
Realty actions; sales, leases, etc.:
Utah, 37077

Mine Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37091–37092

Minority Business Development Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Capital development center; nationwide, 37047–37048

National Aeronautics and Space Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37049
Inventions; Government-owned; availability for licensing, 37092–37093
Meetings:
Space Science Advisory Committee, 37093

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 37107–37108
Motor vehicle safety standards; exemption petitions, etc.:
General Motors Corp., 37109

National Institutes of Health
NOTICES
Meetings:
National Institute on Drug Abuse, 37075

National Labor Relations Board
NOTICES
Senior Executive Service:
Performance Review Board; membership, 37093

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 37041–37042
Marine mammals:
Commercial fishing operations—
Commercial fisheries authorization; list of fisheries categorized according to frequency of incidental takes, 37035–37041
NOTICES
Environmental statements; availability, etc.:
Texas coastal management program, 37048–37049

National Park Service
NOTICES
Concession contract negotiations:
Rock Creek Park, MD; trail ride and horse boarding service, 37077–37078

Nuclear Regulatory Commission
PROPOSED RULES
Radiation protection standards:
Performance requirements for radiography equipment, 37019
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37093–37094
Meetings; Sunshine Act, 37095
Petitions; Director's decisions:
Watts Bar Nuclear Plant, 37095–37096
Applications, hearings, determinations, etc.:
Tennessee Valley Authority, 37094–37095

Personnel Management Office
RULES
Conflict of interest, 36993–36997
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 37096–37097

Postal Rate Commission
NOTICES
Meetings; Sunshine Act, 37097

Presidential Documents
RULES
China
Export-Import Bank loan for equipment and services for Xiaolangdi hydroelectric power plant in Henan Province (Presidential Determination No. 96-38 of June 29, 1996), 36991
Export-Import Bank loan for plant equipment and services at Qinshan II nuclear power plant (Presidential Determination No. 96-37 of June 29, 1996), 36989

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Securities and Exchange Commission
NOTICES
Applications, hearings, determinations, etc.:
FMR Corp. et al., 37097–37102
Sherry Lane Growth Fund, Inc. et al., 37102–37104

Small Business Administration
NOTICES
License surrenders:
San Joaquin Capital Corp., 37104
Applications, hearings, determinations, etc.:
Gateway Partners, L.P., 37104

Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Knowledge dissemination and substance abuse treatment conference programs
Receipt date cancellation, 37075–37076

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
West Virginia, 37023–37024
NOTICES
Valid existing rights determinations:
Buckingham Coal Co., Inc.; Wayne National Forest, OH, 37078

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Norfolk Southern Railway Co. et al., 37109–37110

VOL 61 ISS 137 JL 16 1996 UMI

Thrift Supervision Office
NOTICES
Applications, hearings, determinations, etc.:
Foundation Savings Bank, 37110
Park Federal Savings Bank, 37110

Transportation Department
See Coast Guard
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
RULES
Omnibus Transportation Employee Testing Act of 1991:
Drug and alcohol testing requirements for foreign-based drivers operating in U.S.; participation by Canadian and Mexican laboratories, 37015–37017
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37104
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 37105

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Fiscal Service
See Thrift Supervision Office

United States Information Agency
RULES
Exchange visitor program:
Program extension procedures, research programs design and conduct, etc.; clarification, 37002

Veterans Affairs Department
PROPOSED RULES
Medical benefits:
Homeless providers grant and per diem program, 37024–37030
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37110–37111
Submission for OMB review; comment request, 37111–37112

Separate Parts in This Issue

Part II
Department of the Interior, Bureau of Land Management, 37116–37130

Part III
Housing and Urban Development Department, 37132–37141

Part IV
Department of Transportation, Federal Aviation Administration, 37144–37181

Part V
Department of Education, 37184–37194

Part VI
Department of Treasury, Fiscal Service, 37196–37197

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Presidential Determinations:
No. 96–37 of June 29, 1996 36989
No. 96–38 of June 29, 1996 36991

5 CFR
1001 36993
Ch. XXXV 36993

7 CFR
729 36997
Proposed Rules:
301 37018

10 CFR
Proposed Rules:
34 37019

14 CFR
71 (2 documents) 37001, 37113
Proposed Rules:
39 37019
71 37113
121 37144
125 37144
129 37144
135 37144

22 CFR
514 37002

25 CFR
Proposed Rules:
290 37022

27 CFR
18 37002
30 37002
53 37005
275 37005
Proposed Rules:
53 37022

30 CFR
Proposed Rules:
948 37023

31 CFR
321 37196
356 37007

34 CFR
Proposed Rules:
75 37184
206 37184
231 37184
235 27184
369 27184
731 27184
373 27184
375 27184
376 27184
378 27184
380 27184
381 27184
385 27184
386 27184
387 27184
389 27184
390 27184
610 27184
612 27184
630 27184
637 27184
658 27184
660 27184
661 27184
669 27184

38 CFR
Proposed Rules:
17 37024

40 CFR
Proposed Rules:
52 37030

42 CFR
413 37011

43 CFR
3710 37116
Proposed Rules:
11 37031

46 CFR
Proposed Rules:
401 37032
453 37032

49 CFR
40 37015

50 CFR
Proposed Rules:
17 37034
229 37035
679 37041

VOL
61
ISS
137
JL
16
1996
UMI

Federal Register
Vol. 61, No. 137
Tuesday, July 16, 1996

Presidential Documents

Title 3—

The President

Presidential Determination No. 96–37 of June 29, 1996

Determination Under Section 2(b)(2)(D)(ii) of the Export-Import Bank Act of 1945, as Amended: People's Republic of China

Memorandum for the Secretary of State

Pursuant to Section 2(b)(2)(D)(ii) of the Export-Import Bank Act of 1945, as amended, I determine that it is in the national interest for the Export-Import Bank of the United States to extend a loan in the amount of approximately $120 million to the People's Republic of China in connection with the purchase of (1) non-nuclear island balance of plant equipment and services and (2) Westinghouse engineering services to the nuclear island, for two units of the Qinshan II nuclear power plant.

You are authorized and directed to report this determination to the Congress and publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 29, 1996.

[FR Doc. 96–18098
Filed 7–15–96; 8:45 am]
Billing code 4710–10–M

VOL
61
ISS
137
JL
16
1996
UMI

Presidential Documents

Presidential Determination No. 96–38 of June 29, 1996

Determination Under Section 2(b)(2)(D) of the Export-Import Bank Act of 1945, as Amended: People's Republic of China

Memorandum for the Secretary of State

Pursuant to Section 2(b)(2)(D) of the Export-Import Bank Act of 1945, as amended, I determine that it is in the national interest for the Export-Import Bank of the United States to extend a loan in the amount of approximately $56,000,000 to the People's Republic of China in connection with the purchase of U.S. equipment and services for the Xiaolangdi hydroelectric power plant in Henan Province.

You are authorized and directed to report this determination to the Congress and publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 29, 1996.

[FR Doc. 96–18099
Filed 7–15–96; 8:45 am]
Billing code 4710–10–M

VOL
61
ISS
137
JL
16
1996
UMI

Rules and Regulations

Federal Register
Vol. 61, No. 137
Tuesday, July 16, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 1001

5 CFR Chapter XXXV

RIN 3206–AG87, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Office of Personnel Management

AGENCY: Office of Personnel Management (OPM).

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management, with the concurrence of the Office of Government Ethics (OGE), is issuing an interim rule for employees of OPM that supplements the executive branch-wide Standards of Ethical Conduct (Standards) issued by OGE. The interim rule contains a notice requirement designed to ensure that OPM employees do not use their official positions or nonpublic information to obtain an advantage for themselves or for certain other persons on competitive and other examinations relating to Federal service, and a requirement for OPM employees to obtain prior approval before engaging in certain types of outside activities. The Office of Personnel Management is also repealing that portion of its internal standards of conduct regulations that was retained on an interim basis pending issuance of its supplemental regulations, and those portions of its internal standards of conduct regulations that were superseded by the new Standards or by the executive branch financial disclosure regulations issued by OGE. The Office of Personnel Management is retaining in its internal standards of conduct regulation a separate Privacy Act conduct code and adding a cross-reference to ethics and other conduct-related statutes and regulations.

DATES: Interim rule effective July 16, 1996. Comments must be received on or before August 15, 1996.

ADDRESSES: Send comments to: Lorraine Lewis, General Counsel, Office of Personnel Management, Room 7353, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Nancy Lee Gregg, Alternate Designated Agency Ethics Official, Office of the General Counsel, Office of Personnel Management, (202) 606–1701.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published new Standards of Ethical Conduct for Employees of the Executive Branch. *See* 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52583, and 60 FR 51667, with additional grace period extensions for certain existing provisions at 59 FR 4779–4780, 60 FR 6390–6391, and 60 FR 66857–66858. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, established uniform standards of ethical conduct that apply to all executive branch personnel. With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The Office of Personnel Management, with OGE's concurrence, has determined that the following supplemental regulations, being codified in new 5 CFR chapter XXXV, consisting of part 4501, are necessary in light of OPM's unique programs and operations for the successful implementation of OPM's ethics program.

The Office of Personnel Management is simultaneously repealing the provisions of its internal employee responsibilities and conduct regulations in 5 CFR part 1001 which have already been superseded or which will be superseded upon issuance of these supplemental regulations, and is replacing those provisions with a new section that provides cross-references to 5 CFR part 2635 and other precepts that pertain to employee conduct. A Privacy Act conduct code is also being retained.

II. Analysis of the Regulations

Section 4501.101 General

Section 4501.101 explains that the regulations apply to all OPM employees and supplement the executive branch-wide Standards in 5 CFR part 2635. Section 4501.101 also provides a cross-reference to the executive branch employee responsibilities and conduct regulations contained in 5 CFR part 735, the OPM employee responsibilities and conduct regulations in 5 CFR part 1001, the executive branch-wide financial disclosure regulations contained in 5 CFR part 2634, and the executive branch-wide regulation regarding outside employment at 5 CFR part 2636.

Section 4501.102 Examination Information

Section 4501.102 supplements the prohibitions on use of public office for private gain at 5 CFR 2635.702 and the prohibitions on use of nonpublic information at 5 CFR 2635.703.

Under § 4501.102(a), an OPM employee who takes part in the construction of written tests or other assessment devices, has access to such material, or is involved in the examination rating process must notify his or her supervisor before filing to take a competitive examination, an internal competitive examination or an Armed Services entrance examination. Supervisory notification is also required when an employee knows that the employee's spouse, minor child, or business general partner intends to take such an examination.

As indicated by the supervisory responsibilities set forth in paragraph (b) of § 4501.102, the purpose of the notification requirement is to ensure, either by the assignment of official duties that will not place the employee in contact with information relating to the examination to be taken or by substituting an examination about which the employee does not have information, that the employee does not have knowledge of questions on, answers to, or methods of scoring the test or other assessment device in issue. Proper exercise of these supervisory responsibilities will foreclose the possibility of any suggestion that an OPM employee who has a role in devising tests or other assessment devices has profited unfairly, or that the employee's spouse, minor child, or general partner has profited unfairly,

VOL 61 ISS 137 JL 16 1996

from possible use of nonpublic information or other knowledge gained in the course of the employee's official duties. It also protects the integrity of the examination process and ensures that the prospects of others subject to that process are not diminished by any OPM employee's use of nonpublic information or use of public office for private gain.

The examination information provisions of § 4501.102 are similar to, but more specific than, those which had been in effect under OPM's employee responsibilities and conduct regulations at 5 CFR 1001.735–206, which is now being repealed (see below). Whereas § 1001.735–206 had imposed the notice requirement on all OPM employees, § 4501.102 applies only to those OPM employees who have some direct connection with the examination process.

Section 4501.103 Prior Approval for Certain Outside Activities

Under 5 CFR 2635.803, agencies may, by supplemental regulations, require employees to obtain approval before engaging in outside employment and activities. Under 5 CFR 1001–735.203, which is now being revoked, OPM employees have long been required to provide notice of, or obtain approval for, proposed outside employment and activity under a variety of circumstances. OPM has found this requirement useful in ensuring that the outside employment activities of employees conform with all applicable laws and regulations. In accordance with 5 CFR 2635.803, OPM has determined that it is necessary to the administration of its ethics program to continue to require prior approval for certain types of outside employment and activities that pose a potential for employees to engage in conduct that might violate applicable laws and regulations.

As compared to the requirement that has been imposed by 5 CFR 1001–735.203, § 4501.103(a) has been changed to clarify the requirement, and to narrow its scope, consistent with the Standards. Section 1001–735.203 has required OPM employees, other than special Government employees, who engage in any kind of outside paid employment on a substantially regular basis to provide notice of such employment to their supervisors. In appointments as faculty members for after-hours teaching; and in order to hold elective office in the employee's local community government. In contrast to § 1001.735.203, § 4501.–103(a) requires prior approval for four types of outside activities on the part of OPM employees (again excluding special Government employees).

Under § 4501.103(a)(1), the first type of outside activity for which OPM employees must obtain prior approval is the provision of professional services that involve the application of the same specialized skills or the same educational background as performance of the employee's official duties. Such outside activities may raise a strong possibility of a violation of the Standards. For purposes of this section, "professional services" is defined in § 4501.103(d)(3) on the basis of the definition of "profession" established by OGE in its executive branch-wide regulations at 5 CFR 2636.305(b)(1), and means the provision of personal services by an employee, including the rendering of advice or consultation, which involves application of the skills of a profession. Secretarial and clerical positions are not, for purposes of this requirement, considered to provide "professional services."

Under § 4501.103(a)(2), the second type of outside activity for which OPM employees must obtain prior approval is teaching, speaking, or writing that relates to the employee's official duties. Unlike the requirement in 5 CFR 1001.735–203 for prior approval of after hours teaching, this section requires prior approval of outside speaking and writing, as well as outside teaching, but only if it "relates to the employee's official duties." Consistent with the Standards, the term "relates to the employee's official duties" is defined in § 4501.103(d)(5) as having the meaning given in 5 CFR 2635.–807(a)(2)(i)(B) through (a)(2)(i)(E). Under that definition, teaching, speaking, or writing relates to the employee's official duties if the invitation to teach, speak, or write is extended primarily because of the employee's official position; if the invitation or the offer of compensation (when the employee is to be compensated for the activity) is extended by a person whose interests may be affected substantially by the employee's performance or nonperformance of his or her official reason of Federal employment and that the employee knows or reasonably should know has not been made available to the general public; if the subject of the activity deals in significant part with OPM programs, operations or policies or with the employee's current or recent assignments; or, in the case of a noncareer employee as defined in 5 CFR 2636.303(a), if the subject of the activity deals in significant part with the general subject matter area, industry, or economic sector primarily affected by the programs and operations of OPM.

Under § 4501.103(a)(3), the third type of outside activity for which OPM employees must obtain prior approval is certain service for a "prohibited source." The term "prohibited source" is defined in § 4501.103(d)(4) as having the meaning set forth in § 2635.203(d) of the Standards, and therefore means any person who is (and also any organization more than half of whose members are) seeking official action by OPM, doing or seeking to do business with OPM, regulated by OPM, or substantially affected by the performance or nonperformance of the employee's duties. The kind of services for a prohibited source for which § 4501.103(a)(3) requires prior approval are those which could raise a question of conflicting financial interests under subpart D of the Standards or a question of loss of impartiality in performing official duties under subpart E of the Standards. Those services include service as an officer, director, trustee, general partner, employee, agent, attorney, consultant, contractor, or "active participant." The term "active participant" is defined in § 4501.103(d)(1) as having the meaning set forth in subpart E of the Standards, at 5 CFR 2635.502(b)(1)(v). In accordance with that definition, payment of dues to an organization, or the donation or solicitation of financial support, alone does not constitute active participation.

An exception to the prior approval requirement in § 4501.–103(a)(3) excludes from the prior approval requirement therein a number of uncompensated and volunteer activities that are unlikely to raise issues under the Standards. Specifically, employees do not have to obtain approval before providing the services listed in § 4501.103(a)(3), if the service is without

organization. However, prior approval for such an activity is required if the activity is covered by another of the prior approval requirements in this section. In addition, because OPM exercises general supervision over all operations of the Combined Federal Campaign (CFC), through which nonprofit organizations receive or seek to receive charitable fundraising support in the Federal workplace, prior approval is required by § 4501.103(a)(3) if the organization that is a prohibited source receives or seeks to receive fundraising support through the CFC, and the employee's official duties would involve him in administration of the CFC program.

Under § 4501.103(a)(4), the fourth type of outside activity for which OPM employees must obtain prior approval is the provision of services, other than clerical services or service as a fact witness, on behalf of any other person in connection with a particular matter in which the United States is a party, or in which the United States has a direct and substantial interest, or if the provision of services involves the preparation of materials for submission to, or representation before, a Federal court or executive branch agency. Under 5 CFR 2635.805, employees are required to obtain authorization before acting as expert witnesses, other than on behalf of the United States, in any proceeding before a Federal court or agency in a matter in which the United States is a party or has a direct and substantial interest. Paragraph (a)(4) of § 4501.103 is intended to cover such testimony as an outside activity, thus eliminating the need to create a separate procedure for the required authorization. In addition, requiring prior approval under these circumstances will help employees to avoid violating the representational bars in 18 U.S.C. 203 and 205. Consistent with the Federal Service Labor Management Relations Statute (5 U.S.C. chapter 71) and the "personnel administration proceedings" exception at 18 U.S.C. 205(d), an exception in § 4501.103(a)(4) provides that prior approval is not required for OPM employees acting on behalf of the labor organization that is the exclusive representative of the OPM employees in the unit it represents to represent an employee who is the subject of disciplinary, loyalty, or other personnel administration proceedings in

employee is to submit with the request for approval.

Section 4501.103(c) specifies the standard for granting approval. Approval shall be granted only upon a determination by the agency official designated authority to make such a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation.

Section 4501.103(d) defines the terms "active participant," "nonpublic information," "professional services," "prohibited source," and "relates to the employee's official duties," for purposes of the section, as explained above, consistent with the Standards and other regulations issued by OGE.

Requiring prior approval will give OPM managers the opportunity to review the proposed employment or activity in light of the employee's official duties and to consult with an agency ethics official concerning the applicability of Federal conflict of interest statutes and ethics regulations to the proposed activity. The executive branch-wide Standards, at 5 CFR 2635.802, explain that an activity conflicts with an employee's official duties if it is prohibited by statute or by an agency supplemental regulation, or if, under the standards set forth in §§ 2635.402 and 2635.502 of the Standards, it would require the employee's disqualification from matters so central or critical to the performance of the employee's official duties that the employee's ability to perform the duties of his or her position would be materially impaired. Even where prior approval is not required, conflict of interest statutes and the Standards may restrict the actions of employees in connection with participation in such activities or organizations.

III. Repeal of Portions of OPM's Internal Regulations Regarding Employee Conduct and Related Modifications

The interim rule repeals those portions of the regulations at 5 CFR part 1001 governing OPM employees' responsibilities and conduct that were superseded by the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, or by the financial disclosure regulations at 5 CFR part 2634, the requirement for prior approval employee responsibilities and conduct regulations contained in 5 CFR part 735.

These actions leave in 5 CFR part 1001 only the code of conduct required by the Privacy Act of 1974, at 5 U.S.C. 552a(e)(9). The Privacy Act code of conduct for OPM employees, previously contained at 5 CFR 1001.735–206a, is redesignated as § 1001.102 and follows a new § 1001.101 which provides a cross-reference to ethics and other conduct-related statutes and regulations.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

Under 5 U.S.C. 1103(b)(1) and 1105, these regulations are not subject to the rulemaking requirements of the Administrative Procedure Act, at 5 U.S.C. 553 (b), (c), and (d), because they apply solely to OPM or its employees. Furthermore, OPM finds good cause that it is in the public interest that these internal regulations take effect as an interim rule upon the date of publication of this **Federal Register** rulemaking document.

Executive Order 12866

In promulgating these interim regulations, OPM has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These regulations have not been reviewed by the Office of Management and Budget under that Executive order, as they deal with agency management and personnel matters and are not, in any event, "significant" thereunder.

Regulatory Flexibility Act

As Director of OPM, I certify that this regulation will not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

As Director of OPM, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects

VOL
61
ISS
137
JL
16
1996
UMI

Dated: July 2, 1996.

James B. King,

Director, Office of Personnel Management.

Approved: July 5, 1996.

F. Gary Davis,

Deputy Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Personnel Management, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations as follows:

CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT

PART 1001—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. The authority citation for part 1001 is revised to read as follows:

Authority: 5 U.S.C. 552a, 7301.

Subparts A, B, C and D [Amended]

2. Subpart A, consisting of §§ 1001.735–101 through 1001.735–103; §§ 1001.735–201 through 1001.735–206 and 1001.735–207 through 1001.735–214 of subpart B; and subparts C and D, consisting of §§ 1001.735–301 through 1001.735–304 and 1001.735–401 through 1001.735–412, respectively, of part 1001 are removed.

3. A new § 1001.101 is added to read as follows:

§ 1001.101 Cross-reference to financial disclosure requirements and other conduct rules.

In addition to the regulations contained in this part, employees of the Office of Personnel Management (OPM) should refer to:

(a) The Standards for Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635;

(b) The OPM regulations at 5 CFR part 4501, which supplement the executive branch-wide standards;

(c) The Employee Responsibilities and Conduct regulations at 5 CFR part 735;

(d) The executive branch financial disclosure regulations at 5 CFR part 2634;

(e) The executive branch outside employment regulations at 5 CFR part 2636; and

(f) The restrictions upon use of political referrals in employment matters at 5 U.S.C. 3303.

4. Section 1001.735–206a is redesignated as § 1001.102, and the heading is revised to read "Privacy Act rules of conduct."

5. A new chapter XXXV, consisting of part 4501, is added to read as follows:

CHAPTER XXXV—OFFICE OF PERSONNEL MANAGEMENT

PART 4501—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE OFFICE OF PERSONNEL MANAGEMENT

Sec.

4501.101 General.
4501.102 Examination information.
4501.103 Prior approval for certain outside activities.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.702, 2635.703, 2635.–802, 2635.803, 2635.805.

§ 4501.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Office of Personnel Management (OPM) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the regulations in 5 CFR part 2635 and this part, OPM employees are subject to the responsibilities and conduct regulations contained in 5 CFR parts 735 and 1001, the executive branch-wide financial disclosure regulations contained in 5 CFR part 2634, and the executive branch regulations regarding outside employment at 5 CFR part 2636.

§ 4501.102 Examination information.

(a) An employee of OPM who takes part in the construction of written tests or any other assessment device, has access to such material, or is involved in the examination rating process, shall notify his supervisor, in writing, when he intends to file for a competitive examination, an internal competitive examination, or an Armed Services entrance examination. The employee also must give such notice if he knows that his spouse, minor child, or business general partner intends to take any of these examinations.

(b) The employee's supervisor or other appropriate authority will arrange the employee's duty assignments to prevent his contact with materials related to the examination or examinations that will be taken. If the test material involved in the forthcoming examination has already been exposed to the employee, arrangements will be made for the employee or other person concerned to be given an alternate test.

(c) The employee's supervisor is responsible for seeing that notifications given by employees under this section are transmitted promptly to the Test Security Officer in OPM's Employment Service.

§ 4501.103 Prior approval for certain outside activities.

(a) *Prior approval requirement.* An employee, other than a special Government employee, shall obtain written approval before engaging—with or without compensation—in the following outside activities:

(1) Providing professional services involving the application of the same specialized skills or the same educational background as performance of the employee's official duties;

(2) Teaching, speaking, or writing that relates to the employee's official duties;

(3) Serving as an officer, director, trustee, general partner, employee, agent, attorney, consultant, contractor, or active participant for a prohibited source, except that prior approval is not required by this paragraph (a)(3) to provide such service without compensation (other than reimbursement of expenses) for a prohibited source that is a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless prior approval for the activity is required by paragraph (a)(1), (a)(2), or (a)(4) of this section, or unless the organization receives or seeks to receive fundraising support through the Combined Federal Campaign (CFC) under 5 CFR part 950 and the employee's official duties involve the administration of the CFR program; or

(4)(i) Except as provided in paragraph (a)(4)(ii) of this section, providing services, other than clerical services or service as a fact witness, on behalf of any other person in connection with a particular matter:

(A) In which the United States is a party;

(B) In which the United States has a direct and substantial interest; or

(C) If the provision of services involves the preparation of materials for submission to, or representation before, a Federal court or executive branch agency.

(ii) Prior approval is not required by paragraph (a)(4)(i) of this section for OPM employees acting on behalf of the labor organization that is the exclusive representative of the OPM employees in the unit it represents to provide services as an agent or attorney for, or otherwise to represent, such an OPM employee who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

(b) *Submission of requests for approval.* (1) Requests for approval shall be submitted in writing to the agency designee, through normal supervisory channels. Such requests shall include, at a minimum, the following:

(i) The employee's name and position title;

(ii) The name and address of the person or organization for whom the outside activity is to be performed;

(iii) A description of the proposed outside activity, including the duties and services to be performed while engaged in the activity; and

(iv) The proposed hours that the employee will engage in the outside activity, and the approximate dates of the activity.

(2) Together with his request for approval, the employee shall provide a certification that:

(i) The outside activity will not depend in any way on nonpublic information;

(ii) No official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside activity; and

(iii) The employee has read subpart H ("Outside Activities") of 5 CFR part 2635.

(3) Upon a significant change in the nature or scope of the outside activity or in the employee's official position, the employee shall submit a revised request for approval.

(c) *Approval of requests.* Approval shall be granted only upon a determination by the agency designee, in consultation with an agency ethics official when such consultation is deemed necessary by the agency designee, that the outside activity is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(d) *Definitions.* For purposes of this section:

(1) *Active participant* has the meaning set forth in 5 CFR 2635.502(b)(1)(v).

(2) *Nonpublic information* has the meaning set forth in 5 CFR 2635.703(b).

(3) *Professional services* means the provision of personal services by an employee, including the rendering of advice or consultation, which involves application of the skills of a profession as defined in 5 CFR 2636.305(b)(1).

(4) *Prohibited source* has the meaning set forth in 5 CFR 2635.203(d).

(5) *Relates to the employee's official duties* has the meaning set forth in 5 CFR 2635.807(a)(2)(i)(B) through (a)(2)(i)(E).

[FR Doc. 96–18020 Filed 7–15–96; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 729

RIN 0560–AE82

Amendments to the Peanut Poundage Quota Regulations

AGENCY: Farm Service Agency, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule sets forth regulations for Federal farm peanut poundage quotas in order to implement provisions of the Agricultural Market Transition Act of 1996 (the 1996 Act) for the 1996 through 2002 crops of peanuts. The amendments to the regulations adopted in this interim rule involve: eliminating the national poundage quota floor; eliminating the undermarketing carryover provisions; establishing temporary seed quota allocations; establishing the ineligibility of certain farms for quota allocation; authorizing the inter-county transfer of farm poundage quota in all States, subject to certain percentage limitations on certain transfers in certain States; eliminating the special allocations of increased quotas for certain Texas counties; and establishing new provisions for "considered-produced" credit with respect to a farm whose quota has been transferred.

DATES: Effective April 4, 1996.

Comments must be received on or before August 15, 1996, to be assured consideration.

ADDRESSES: Submit comments on the interim rule to: Director, Tobacco and Peanuts Division, Farm Service Agency, U.S. Department of Agriculture, Room 5750–S, Ag Code 0514, P.O. Box 2415, Washington, DC 20013–2415. All written submissions made pursuant to this rule will be made available for public inspection in Room 5750 South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., during regular Federal workdays.

FOR FURTHER INFORMATION CONTACT: David Kincannon, (202) 720–7914.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule because the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Unfunded Federal Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this interim rule applies are: Commodity Loans and Purchases—10.051.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This interim rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim rule do not preempt State laws to the extent that such laws are inconsistent with the provisions of this interim rule. Before any legal action is brought regarding determinations made under provisions of 7 CFR part 729, the administrative appeal provisions set forth at 7 CFR parts 11 and 780 must be exhausted. This rule has been made retroactive to April 4, 1996, in order to affirm determinations for the current crop year that had to be made in advance of this notice because of the time of the passage of the 1996 Act and the onset of the planting season for peanuts.

National Appeals Division Rules of Procedure

The procedures set out in 7 CFR parts 11 and 780 apply to appeals of adverse decisions made under the regulations adopted in this notice.

VOL
61
ISS
137
JL
16
1996

Small Business Regulatory Enforcement Fairness Act of 1996

Section 161(d) of the 1996 Act provides the regulation necessary to implement Title I of the 1996 Act must be issued within 90 days of enactment and that such regulations shall be issued without regard to the notice and comment provisions of section 553 of the United States Code. These regulations affect the immediate planting and marketing decisions of an extraordinarily large number of agricultural producers and previous decisions of the agency. Accordingly, as authorized by section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, this rule is effective as of April 4, 1996, the date of enactment of the 1996 Act.

Paperwork Reduction Act

As provided in section 161(d) of the 1996 Act, the Paperwork Reduction Act is not applicable to these regulations. However, the forms necessary to conduct these programs have been previously submitted for clearance to the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Background

This rule addresses peanut quota amendments for the 1996 through 2002 crops which were enacted in section 155 of the 1996 Act.

A. Certain Farms Ineligible to Hold Peanut Poundage Quota

Section 358–1(b)(1) of the 1938 Act, as amended by the 1996 Act, provides that, effective beginning with the 1998 crop of peanuts, quotas shall not be established for farms owned or controlled by municipalities, airport authorities, schools, colleges, refuges, and other public entities (not including universities for research purposes), or by a person who is not a producer and resides outside the State in which the quota is allocated. Section 729.205 has been added to the regulations accordingly and provides, consistent with the 1996 Act, that if a farm is ineligible for peanut poundage quota as of August 1, 1997, under the provisions of the 1996 Act, the quota held by such ineligible farms must be sold by October 1, 1997, or it will be allocated to other farms within the same State, beginning with the next crop year. Under the

B. Elimination of Quota Floor, Establishment of the National Poundage Quota, and Peanut Quota Referendum

The 1996 Act provides for referenda for peanut quotas and amends section 358–1(a)(1) of the 1938 Act to eliminate the floor for the national quota. In addition, the 1996 Act excludes seed peanuts from the calculation of the basic national quota. This rule revises section 729.216 (as redesignated) of the regulations accordingly.

C. Temporary Seed Quota Allocation

The 1996 Act amendments to the 1938 Act also, however, provide for adding to a farm's basic quota a temporary allocation of quota for the amount of seed peanuts planted on a farm. This rule amends the definition of "effective quota" in section 729.103 of the regulations accordingly.

This rule adopts a national seeding rate for each type of peanut and provides that the quantity of temporary seed quota allocated to a farm shall equal the amount determined by multiplying the acres planted to peanuts by the national per-acre planting rate by peanut type. The seed planted will be converted to farmers stock basis by multiplying, by a factor of 1.5, the amount of seed so calculated. Another option considered was setting a rate as a maximum with producers required to prove actual seed purchases and use, with the lower of the standardized maximum or the proven seed use establishing the seed quota allocation. Comments are requested on these and any other options, and on: (a) the issues of increased producer workload involved with proving seed use, (b) the use of a standardized national seeding rate vs. a standardized State seeding rate, and (c) the seeding rate amounts.

For purposes of determining seed use, the national per-acre planting rate by type shall, for this calculation, be equal to:

(i) 95 pounds for Runner-type peanuts;

(ii) 110 pounds for Virginia peanuts;

(iii) 80 pounds for Spanish peanuts; and

(iv) 80 pounds for Valencia peanuts.

The temporary seed allocation will be made after the producer files a proper certification of planted acres.

E. Reallocations in Texas of Increased Quota

The 1996 Act removes the special quota allocation provisions that formerly applied to Texas only, in cases where the national quota is increased. This rule amends section 729.206(f)(former 729.204(f)) of the regulations, as redesignated, accordingly.

F. Inter-county Transfers

The 1996 Act removes the previous prohibition of inter-county quota transfers in large-quota States to allow, with limits, the transfer of farm poundage quota by sale or lease to any county within each of those States. Such transfers are limited to an aggregate of 40 percent of the total poundage quota within a county as of January 1, 1996, and may not exceed a crop year limit of 15, 25, 30, and 35 percent for the 1996 through 1999 crops respectively and 40 percent for the 2000 and subsequent crops. Further, however, in any county with a quota allocation less than 50 tons for the preceding year's crop, all or any part of a farm poundage quota may be transferred by sale or lease or otherwise from a farm in the county to a farm in the same State. These prescriptions are set by the 1996 Act.

This rule has adopted selection by lottery to implement the out-of-county sale and lease limitation provisions in counties where the amount of farm poundage quota requested for such sale and lease was greater than the limitation for the current year. This rule amends section 729.214 (former 729.212) of the regulations, as redesignated by this rule, to implement the limitation requirements. Other options considered with respect to administering the transfer limitation included a first-come, first-considered basis and a proration of the limited amount among all applicants. Time constraints and the practicality of transferring only portions of a farm's quota were the major determinants in selecting the lottery method. Comments are requested on these or any other options for controlling the transfer limitation and on the issue of giving priority to quota sales over quota leases.

Also, current regulations in part 729 have prohibited the approval of any transfers filed after January 31 and before August 1 if the approval of such

long as the transfer from the farm is a temporary transfer.

In addition, section 729.214(f)(3)(i), as redesignated, is amended to ease the prohibition against permanent transfers of quota from a farm to which quota had been transferred during the base period (the 3 immediately preceding crop years). The revised paragraph will limit the prohibition to the amount of quota permanently transferred to the farm during the 3-year period.

G. Considered-Produced Credit

Section 358–1(b) (3) and (4) of the 1938 Act provides that to the extent practicable and on such fair and equitable basis as the Secretary may provide, a farm will, generally, lose any quota which is not produced or considered produced on the farm in 2 out of 3 consecutive years. That section contains a specific provision allowing considered-produced credit for in-county transfers, but only once every 3 years. The new act leasing provisions in the 1996 Act, as indicated, revamp the spring lease provisions for quotas and provide that the transfer of quota under that paragraph will not reduce the quota of the transferring farm if the quota is produced or considered produced on the receiving farm. Since no change was made to the in-county transfer provisions of 358–1(b)(3) (for those transfers which do not involve the same owner or operator), it appears that the 1996 Act did not intend for a modification to be made with respect to within-county transfers as allowed prior to the 1996 Act. Accordingly, the interim rule maintains the same considered-produced provisions, as in the past, for such in-county transfers (that is, considered-produced credit for leased quota will be allowed only once every 3 years). For inter-county transfers, however, the rule allows the transferring farm to receive considered-produced credit for any year in which the receiving farm produces, or is considered to have produced, the quota. This is the same rule that has been applied to out-of-county transfers in past years when such transfers were only allowed in States with a small total quota.

H. Other Provisions

The interim rule makes several technical changes including: (i) changes

List of Subjects in 7 CFR Part 729

Peanuts, Penalties, Poundage quotas, Reporting and recordkeeping requirements.

Interim Rule

Accordingly, 7 CFR Part 729 is amended as follows:

PART 729—[AMENDED]

1. The authority citation is revised to read as follows:

Authority: 7 U.S.C. 1301, 1357 et seq., 1372, 1373, 1375, and 7271.

2. Section 729.102 is amended by removing "1991 through 1995" and adding "1996 through 2002" in its place, and by adding a sentence at the end of the paragraph to read as follows:

§ 729.102 Applicability.

* * * The peanut marketing quota and disposition requirements for peanuts for the 1991 through 1995 crops shall, as applicable, continue to be governed by the regulations codified at 7 CFR Part 729, as of April 1, 1996.

3. Section 729.103 is amended as follows:

a. The definition for "FSA" is moved to its proper place in alphabetical order.

b. The definition of "Considered-produced credit" is amended by revising paragraph (iii) to read as follows:

§ 729.103 Definitions.

* * * * *

(b) * * *

Considered-produced credit. * * *

(iii) A farm's basic quota that was not produced if the Farmers Home Administration or the Farm Service Agency had control of, or title to, such farm.

* * * * *

c. The definition of "DASCO" is removed, and the definition of "Deputy Administrator" is added in alphabetical order to read as follows:

Deputy Administrator. The Deputy Administrator for Farm Programs, Farm Service Agency.

d. The definition of "Effective quota" is amended by revising paragraph (v) to read as follows:

Effective quota. * * *

(v) Temporary seed quota allocated to the farm.

e. The definition of "First purchaser" is added in alphabetical order to read as

f. The definition of "Preliminary quota" is revised to read as follows:

Preliminary quota. For the current year and an eligible farm, the basic quota established for the farm for the preceding year to the extent that the farm is not subject to a reduction in quota.

g. The definition of "Temporary seed quota" is added in alphabetial order to read as follows:

Temporary seed quota. Quota temporarily allocated for the current crop year only and in an amount determined by FSA to account for the amount of seed peanuts planted on the farm for production of peanuts, excluding green peanuts and peanuts produced under the one-acre exemption set forth in § 729.306 of this part.

* * * * *

h. The definition of "Undermarketings" is removed.

4. Section 729.104(a) is revised to read as follows:

§ 729.104 Administration.

(a) The regulations in this part will be administered under the general supervision of the Administrator, FSA, and shall be carried out in the field by State and county FSA committees.

* * * * *

5. Section 729.104(c) is amended by removing the phrase "committee shall" and adding "committee" in its place, and removing "Instruct" and adding "Shall instruct" in its place.

§ 729.108 [Amended]

6. Section 729.108 is amended by removing "ASC" and adding "FSA" in its place.

§ 729.201 [Amended]

7. Section 729.201 is amended by removing "1991 through 1995" wherever it appears and adding in its place "1996 through 2002 and removing "1990" wherever it appears and adding in its place"1995".

§ 729.204–729.214 [Redesignated as § 729.206–729.216]

8. Sections 729.204 through 729.214 are redesignated as sections 729.206 through 729.216 respectively, and new sections 729.204 and 729.205 are added to read as follows:

§ 729.204 Temporary seed quota allocation.

VOL 61 ISS 137 JL 16 1996 UMI

(3) To exclude the production of green peanuts and peanuts produced under the one-acre exemption provided for in 7 CFR 729.306.

(b) *Quantity of allocation.* The temporary quota allocated to a producer shall be the farmers stock equivalent pounds of qualifying seed peanuts considered planted on the farm as determined by FSA by multiplying the acres determined planted to qualifying peanuts times the per-acre planting rates of:

(1) 95 pounds for Runner-type peanuts;

(2) 110 pounds for Virginia peanuts;

(3) 80 pounds for Spanish peanuts; and

(4) 80 pounds for Valencia peanuts.

(c) *Conversion factor.* For the purpose of determining the farmers stock basis for temporary seed quota allocations under this section, the amount of seed planted as determined in accord with paragraph (b) of this section shall be multiplied by a factor of 1.5.

(d) *Time of notification.* The notice of determination for temporary seed quota allocations shall be made by the Deputy Administrator as soon as practicable following the deadline for filing certifications of planted acres.

§ 729.205 Farms ineligible for farm poundage quota.

(a) *Ineligible farms.* Except for quota allocated under the provisions of § 729.208 for experimental and research programs, effective beginning with the 1998 crop year, farm poundage quotas shall not be established for farms which are determined by FSA to be owned or controlled by:

(1) Municipalities, airport authorities, schools, colleges, refuges, and other public entities.

(2) A person:

(i) Who is not a peanut producer; and

(ii) Whose primary domicile, in the case of individual, or primary place of business, in the case of an entity, as determined by FSA, is located outside the State in which the quota is allocated.

(b) *Determination of Residency and Related Rules.* For purposes of administering paragraph (a) of this section, with respect to farms owned or controlled by a partnership or corporation or other entity, the forfeiture in paragraph (a)(2) of this section shall not be deemed to apply if a person or persons with at least a 20 percent interest in any such entity are individuals whose primary residence is in the State in which the quota is allocated; provided further, that paragraph (a)(2) of this section shall not apply to any involuntary acquisition of a farm by foreclosure, or otherwise, resulting directly from the conduct of a public business in the State in which the quota is allocated, or an acquisition resulting directly by reason of a death. The exemption for involuntary farm acquisitions allowed under the preceding sentence shall only apply to the establishment of quota in the three crop years immediately following the date of the involuntary acquisition of the quota farm. Further, for purposes of applying the rules in paragraph (a) of this section as they regard production, the determination of whether paragraph (a)(2) of this section applies shall be made based on the crop last planted before the date on which the determination is to be made.

(c) *Allocating forfeited quota and sales of quotas subject to paragraph (a).* Any farm poundage quota held on or after August 1, 1997, by an ineligible person as determined under paragraph (a) of this section shall be allocated from the quota farm to other farms in the same State in accordance with § 729.206 of this part. In the event that the ineligible party acquired the subject farm on or before August 1, 1997, such person shall have until October 1, 1997, to permanently dispose of the quota by sale to another farm for subsequent crop years in which case the transfer will be deemed to be effective as of August 1, 1997. If the farm in dispute was acquired after August 1, 1997, then no quota shall be established for the farm until such time as the ineligibility is removed provided further, however, that the quota may be sold to another qualifying farm effective with the next crop year following the sale or such later date as may be approved by FSA.

9. Redesignated § 729.206 is amended:

a. In the heading of paragraph (f), by removing the phrase "increased quota," and by removing the comma following the word "nonproduction";

b. In the first sentence of paragraph (f)(1), by removing the phrase "33 percent of any increase in the Texas peanut poundage quota resulting from an increase in the national quota and";

c. In paragraph (f)(3), by removing the phrase, ", as determined in accordance with paragraph (f)(2) of this section for the 1991 through 1995 crops" and adding in its place "granted under any special rules for Texas under this section and its predecessor for the 1991 and subsequent crops"; and

d. In paragraph (f)(7), removing the phrase "except for the 33 percent allocated to eligible Texas counties in accordance with paragraph (f)(2) of this section,".

10. Redesignated § 729.207 is amended:

a. In paragraph (c), by removing "§ 729.204(b)(2)" and adding "§ 729.206(b)(2)" in its place;

b. In paragraph (d)(1)(ii)(B), by removing "§ 729.212" and adding "§ 729.214" in its place; and

c. In paragraph (d)(2), by removing "§ 729.204(e)" and adding "§ 729.206(e) in its place.

11. Redesignated § 729.208 is amended by revising paragraph (d) to read as follows:

§ 729.208 Allocation of quota for experimental and research programs.

* * * * *

(d) *Quota for 1996 through 2002 crops.* For each institution with continuing eligibility for which a 1995 basic quota was determined in accordance with this section or its predecessor, a basic quota shall be established for the 1996 through 2002 crops in the same manner as for other farms within the State.

12. Redesignated § 729.210 is amended by revising paragraph (a)(1) to read as follows:

§ 729.210 Determining a farm's effective quota.

* * * * *

(a) Upward adjustment. * * *

(1) The temporary seed quota allocated to the farm;

* * * * *

13. Redesignated § 729.213 is revised to read as follows:

§ 729.213 Erroneous notice of effective farm poundage quota.

If the official notice of effective quota issued for a farm erroneously stated a quota larger than the correct effective quota, the quota shown on the erroneous notice shall serve as the basis for marketing penalty computations for the farm for the current marketing year only if the county committee determines and the State Executive Director concurs that:

(a) *Extent of error.* The error was not so substantial as to place the operator on notice that such notice of quota was incorrect; and

(b) *Response to notice.* The operator, relying upon such notice and acting in good faith:

(1) Has made plans, or is engaged in activities, to produce the quota in the amount set forth on the erroneous notice (for example, land preparation; purchase of seed, fertilizer, and other production materials; or reducing the acreage of other crops); or

(2) Has planted the acreage of peanuts needed to produce the erroneous farm poundage quota.

14. Redesignated § 729.214 is revised:

a. In paragraph (a)(2) by removing "with respect to the 1992 and subsequent crops";

b. By redesignating paragraphs (d) through (l) as (e) through (m); and

c. By revising paragraph (c), adding a new paragraph (d), and revising redesignated paragraphs (f)(1)(iii)(A), (f)(3)(i), and (l) to read as follows:

§ 729.214 Transfer of quota by sale, lease, owner, or operator.

* * * * *

(c) *Location of farms.* In order to transfer poundage quota between two farms, such farms must be located within the same State and, to the extent required by paragraph (d) of this section, in the same county. It is not necessary for the receiving farm to have had a basic quota in the current or prior year, except as provided in paragraph (d)(4) of this section.

(d) *Limitations on transfer by sale or lease.* Subject to the provisions of paragraph (m) of this section:

(1) *States with less than 10,000 tons of quota.* With respect to farms in any State for which the State's poundage quota for the year preceding the current year was less than 10,000 tons, transfers of peanut quota by sale or lease may be made to any other farm in any county within the State.

(2) *States with 10,000 tons or more of quota.* For farms in States with 10,000 tons or more of quota:

(i) Poundage quota may be transferred to any other farm within the same county.

(ii) If the farm is in a county with less than a total of 50 tons of quota, the poundage quota may be transferred to any other farm within the same State without regard to the limitations set forth in paragraph (d)(2)(iii) of this section.

(iii) If the farm is in a county with a total of 50 tons or more of quota, poundage quota transferred out of county shall be limited to 40 percent of the quota in the transferring county as of January 1, 1996. Further, the cumulative unexpired out-of-county transfers for a crop year may not exceed the following percentages of the quota in the transferring county as of January 1, 1996:

(A) 15 percent for the 1996 crop;

(B) 25 percent for the 1997 crop;

(C) 30 percent for the 1998 crop;

(D) 35 percent for the 1999 crop; and

(E) 40 percent for the 2000 and subsequent crops.

(iv) *Selecting approved transfers.* For purposes of administering the limitations on the amount of transfers, the Director shall establish a method for selecting, by lot, those applications which are to be approved. The Director may give preference to permanent transfers.

(3) *Fall transfers.* The limitations in paragraph (d)(2)(iii) of this section do not apply to 1-year fall transfers, which may, in all cases, be made to any farm in the same State, subject to such restrictions as otherwise apply for fall transfers.

(4) *Owner or operator transfer.* Owner or operator transfers of poundage quota are permitted to contiguous counties within the same State without regard to the percentage limitations of paragraph (d)(2)(iii) of this section; provided that, the receiving farm had a basic quota established for the preceding year's crop and has the same owner, in an owner transfer, or the same operator, in an operator transfer.

* * * * *

(f) *Other transfer provisions.*—(1) *Temporary transfer of quota from a farm.* * * *

(iii) *Filed after July 31 and before February 1 ("Fall transfers").* * * *

(A) The reported or determined acreage of peanuts plus prevented planted credit for the transferring farm for the current year, when multiplied by the larger of the farm yield or the highest actual yield during the base period, is equal to or greater than 90 percent of the farm's effective quota;

* * * * *

(3) *Permanent transfer of quota from a farm.* * * *

(i) *Permanent transfer of quota to the farm.* For the amount of quota purchased or otherwise permanently transferred to the farm during the base period, as adjusted for any increase or decrease in such quota due to adjustment in the national quota during the base period.

* * * * *

(l) *Adjustment of marketings.* For the purpose of computing production history for quota increase based on production, in the case of temporary transfers by owner to the same owner or operator to the same operator and all out-of-county transfers, if the current year's produced or considered-produced credit from the receiving farm exceeds such farm's basic quota, such produced or considered-produced credit on the receiving farm shall be reduced by the amount of such excess, to the extent of the quota temporarily transferred to such farm by owner or operator, and such reduced amount shall be added to the current year produced or considered-produced credit for the transferring farm.

* * * * *

§ 729.15 [Amended]

15. Redesignated § 729.215 is amended in paragraph (f)(2) by removing "§ 729.204" and adding "§ 729.206" in its place.

16. Redesignated § 729.216 is revised to read as follows:

§ 729.216 National poundage quota.

(a) *National poundage quota for 1996 and subsequent crop years.* The national poundage quota for the 1996 and subsequent crop years shall be established by the Secretary at a level that is equal to the quantity of peanuts that the Secretary estimates will be devoted in each marketing year to domestic edible use (except seed), and related uses.

(b) *Disapproval of quotas.* No loan for quota peanuts may be made available for any crop of peanuts with respect to which it is determined by the Deputy Administrator that poundage quotas have been disapproved by producers pursuant to a referendum conducted in accordance with section 358–1(d) of the Agricultural Adjustment Act of 1938, as amended.

Signed at Washington, D.C., on July 5, 1996.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

[FR Doc. 96–17690 Filed 7–12–96; 2:18 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ACE–5]

Amendment to Class E Airspace; Ames, IA

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Ames, IA, to accommodate a planned Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at the Ames Municipal Airport. This action will provide for additional controlled airspace necessary for the aircraft utilizing the new SIAP.

EFFECTIVE DATE: 0901 UTC August 15, 1996.

FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO, 64106; telephone (816) 426–3408.

VOL
61
ISS
137
JL
16
1996
UMI

SUPPLEMENTARY INFORMATION:

History

On May 13, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying the Class E airspace area at Ames, IA (61 FR 21984). The proposed action would provide additional controlled airspace to accommodate the new SIAP to Ames Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraphs 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the Class E airspace area at Ames, IA, by providing additional controlled airspace for aircraft executing the new SIAP to the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Ames, IA

Ames Municipal Airport, IA
(lat. 41°59'31"N., long. 93°37'18W.)
Ames NDB
(lat. 41°59'42"N., long. 93°37'37"W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Ames Municipal Airport, and within 2.1 miles each side of the 197° bearing from the Ames NDB extending from the 6.6-mile radius to 7.4 miles south of the airport, and within 2 miles each side of the 136° bearing from the airport extending from the 6.6-mile radius to 10 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO on June 25, 1996.

Christopher R. Blum,
Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 96–18058 Filed 7–15–96; 8:45 am]
BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Program

AGENCY: United States Information Agency.

ACTION: Notice of policy statement.

SUMMARY: Notice is hereby given that Agency-designated sponsors currently authorized the professor and research scholar categories, who seek authority to utilize the short-term scholar category provided for in existing regulations, may do so by written request to the Agency.

ADDRESSES: Letter requests should be addressed to: Sally J. Lawrence, Chief, Program Designation Branch, Office of the General Counsel, Room 700, 301 4th Street, SW, Washington, D.C. 20547.

FOR FURTHER INFORMATION CONTACT: Sally J. Lawrence, Chief, Program Designation Branch, at the above address or by telephone, (202) 401–9810.

SUPPLEMENTARY INFORMATION: The Agency published a final rule in the Federal Register on June 10, 1996 that amended existing regulations governing Exchange Visitor Program eligibility requirements for prospective professor and research scholar participants. These amendments placed a twelve month bar from continued program participation upon individuals who had been physically present in the United States for all or part of the twelve months immediately preceding their commencement of program participation as a professor or research scholar. This regulation further provided an exception to the application of a twelve month bar to prospective participants who had previously participated in the Exchange Visitor Program as a short-term scholar participant.

By providing this exception to the twelve month bar, the Agency seeks to promote the proper use of the short-term scholar category, having determined that such use will foster and promote collaborative international research and exchange. Currently, some but not all of the Agency's designated Exchange Visitor Program sponsors are authorized to utilize the short-term scholar category. As stated, the Agency endorses the use of this category and accordingly has determined that designated sponsors currently authorized to utilize the professor and research scholar category shall be authorized to utilize the short-term scholar category solely upon written request to the Agency.

Les Jin,
General Counsel.

[FR Doc. 96–18065 Filed 7–15–96; 8:45 am]
BILLING CODE 8230–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 18, 30, and 275

[T.D. ATF–361]

RIN 1512–AB47

Technical Amendments (95R–008P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This Treasury decision makes technical amendments and conforming changes to chapter I of title 27 Code of Federal Regulations (CFR). All changes are to provide clarity and uniformity throughout title 27 CFR.

EFFECTIVE DATE: July 16, 1996.

FOR FURTHER INFORMATION CONTACT: Angela R. Shanks, Alcohol and Tobacco Programs Division, Wine, Beer, and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202–927–8230)

SUPPLEMENTARY INFORMATION: The Bureau of Alcohol, Tobacco and Firearms (ATF) administers regulations published in chapter I of title 27 Code of Federal Regulations (CFR). These regulations are updated April 1 of each year to incorporate new or revised regulations that were published by ATF in the **Federal Register** during the preceding year. Upon reviewing title 27 CFR for the annual revision, ATF and the CFR Unit of the Office of the Federal Register identified several amendments and conforming changes that are needed to provide uniformity in chapter I of title 27, CFR.

These amendments do not make any substantive changes and are only intended to improve the clarity of title 27 CFR or relieve regulatory requirements.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no recordkeeping or reporting requirements.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply. A copy of this final rule was submitted to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f). No comments were received.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action because it will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Administrative Procedures Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Angela R. Shanks, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 18

Administrative practice and procedure, Authority delegations, Excise taxes, Exports, Labeling, Reporting requirements, Security measures, Spices and flavorings, Stills, Surety bonds.

27 CFR Part 30

Alcohol and alcoholic beverages, Measurement standards, Scientific equipment.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspections, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirement, Seizures and forfeitures, Surety bonds, U.S. Possessions, Warehouses.

Authority and Issuance

Title 27, Code of Federal Regulations is amended as follows:

PART 18—PRODUCTION OF VOLATILE FRUIT-FLAVOR CONCENTRATE

Par. 1. The authority citation for part 18 continues to read as follows:

Authority: 26 U.S.C. 5001, 5172, 5178, 5179, 5203, 5511, 5552, 6065, 7805; 44 U.S.C. 3504(h).

§ 18.13, 18.14, 18.17, 18.21, 18.22, and 18.24 [Amended]

Par. 2. Sections 18.13, 18.14, 18.17, 18.21, 18.22 and 18.24 are amended by adding, at the end of the section, the approved OMB Control Number to read as follows:

(Approved by the Office of Management and Budget under control number 1512–0046)

§ 18.26 [Amended]

Par. 3. Section 18.26 is amended by adding, at the end of the section, the approved OMB Control Number to read as follows:

(Approved by the Office of Management and Budget under control number 1512–0079)

§§ 18.27, 18.31, 18.32, 18.33, 18.34, 18.35, 18.36, 18.37 and 18.38 [Amended]

Par. 4. Sections 18.27, 18.31, 18.32, 18.33, 18.34, 18.35, 18.36, 18.37 and 18.38 are amended by adding, at the end of the section, the approved OMB Control Number to read as follows:

(Approved by the Office of Management and Budget under control number 1512–0046)

§ 18.51 [Amended]

Par. 5. Section 18.51 is amended by adding, at the end of the section, the approved OMB Control Number to read as follows:

(Approved by the Office of Management and Budget under control number 1512–0098)

§ 18.52 [Amended]

Par. 6. Section 18.52 is amended by adding, at the end of the section, the approved OMB Control Number to read as follows:

(Approved by the Office of Management and Budget under control number 1512–0046)

§ 18.54 and 18.55 [Amended]

Par. 7. Section 18.54 and 18.55 are amended by adding, at the end of the section, the approved OMB Control Number to read as follows:

(Approved by the Office of Management and Budget under control number 1512–0098)

§ 18.56, 18.61, 18.62 and 18.63 [Amended]

Par. 8. Section 18.56, 18.61, 18.62 and 18.63 are amended by revising the approved OMB Control Number at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 1512–0098)

§ 18.65 [Amended]

Par 9. Section 18.65 is amended by adding, at the end of the section, the approved OMB Control Number to read as follows:

(Approved by the Office of Management and Budget under control number 1512–0098)

PART 30—GAUGING MANUAL

Par. 10. The authority citation for part 30 is revised to read as follows:

Authority: 26 U.S.C. 7805.

§ 30.22 [Amended]

Par. 11. Section 30.22 is amended by removing the phrase "furnished to ATF officers" in the first sentence, and adding in its place the word "used".

VOL
61
ISS
137
JL
16
1996
UMI

§ 30.23 [Amended]

Par. 12. Section 30.23 is amended by revising two computations in the example which follows the text. The first revised computation follows the introductory text of the example, and the second computation appears in the paragraph before the last paragraph of the example. As revised, they read as follows:

§ 30.23 Use of precision hydrometers and thermometers.

* * * * *

Example. * * *

From Table 1:

193.0° at 72.0° F.	=	190.2°
192.0° at 72.0° F.	=	189.1°
Difference	=	1.1°
192.0° at 72.0° F.	=	189.1°
192.0° at 73.0° F.	=	188.9°
Difference	=	0.2°

* * * * * *

Proof at 60° F.=189.1+0.902–0.03=189.972°=190.0°.

* * * * *

§ 30.24 [Amended]

Par. 13. Section 30.24 is amended by removing the degree symbol following the number "0.0005" from the concluding sentence in paragraph (a).

§ 30.32 [Amended]

Par. 14. Section 30.32 is amended by removing the word "distilate" in the third sentence of paragraph (c) and adding in its place the word "distillate".

§ 30.43 [Amended]

Par. 15. Section 30.43 is amended by removing the word "wight" in the second sentence of the introductory text and adding in its place the word "weight".

§ 30.51 [Amended]

Par. 16. The example following § 30.51 is amended by removing the number "868" from the line which begins "Proof of spirits" and by adding in its place the number "86.8" and by removing the number "995" from the line which begins "Temperature correction factor" and adding in its place the number "0.995".

PART 275—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Par. 17. The authority citation for part 275 continues to read as follows:

Authority: 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5722, 5723, 5741, 5761, 5762, 5763, 8301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 18. Section 275.30 is revised to read as follows:

§ 275.30 Pipe tobacco.

On pipe tobacco imported or brought into the United States after January 1, 1993, the tax imposed by law is 67.5 cents per pound and a proportionate tax at the like rate on fractional parts of a pound. (*See* 26 U.S.C. 5701(f).)

Par. 19. Section 275.31 is revised to read as follows:

§ 275.31 Cigar tax rates.

(a) On cigars imported or brought into the United States on or after January 1, 1993, the taxes imposed by law are:

(1) Small cigars. $1.125 per thousand.

(2) Large cigars. 12.75 percent of the sale price, but not more than $30 per thousand.

(b) Cigars not exempt from tax under this part which are removed but not intended for sale are taxed at the same rate as similar cigars removed for sale. (*See* 26 U.S.C. 5701(a).)

Par. 20. Section 275.32 is revised to read as follows:

§ 275.32 Cigarette tax rates.

(a) On cigarettes imported or brought into the United States on or after January 1, 1993, the taxes imposed by law are:

(1) Small cigarettes. $12 per thousand.

(2) Large cigarettes. $25.20 per thousand.

(b) Special rule for large cigarettes. If large cigarettes are more than 6½ inches in length, the rate of tax is the rate prescribed for small cigarettes, counting each 2 3/4 inches, or fraction thereof, of the length of each as one cigarette. (*See* 26 U.S.C. 5701(b).)

Par. 21. Section 275.33 is revised to read as follows:

§ 275.33 Smokeless tobacco tax rates.

On smokeless tobacco imported or brought into the United States, the following taxes are imposed by law:

(a) Snuff. Snuff removed on or after January 1, 1993, 36 cents per pound and a proportional tax at a like rate on fractional parts of a pound.

(b) Chewing tobacco. Chewing tobacco removed on or after January 1, 1993, 12 cents per pound and a proportional tax at the like rate on fractional parts of a pound. (*See* 26 U.S.C. 5701(e).)

Par. 22. Section 275.34 is revised to read as follows:

§ 275.34 Cigarette papers.

(a) On each book or set of cigarette papers containing more than 25 papers imported or brought into the United States on or after January 1, 1993, the taxes imposed by law are 0.75 cent for each 50 papers or fractional part thereof.

(b) Where cigarette papers measure more than 6½ inches in length, they shall be taxable at the above rates, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette paper. (*See* 26 U.S.C. 5701(c).)

Par. 23. Section 275.35 is revised to read as follows:

§ 275.35 Cigarette tubes.

(a) On cigarette tubes imported or brought into the United States on or after January 1, 1993, the taxes imposed by law are 1.5 cents for each 50 tubes or fractional part thereof.

(b) Where cigarette tubes measure more than 6½ inches in length, they shall be taxable at the above rates, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette tube. (*See* 26 U.S.C. 5701(d).)

§ 275.39 [Removed] and § 275.39a [Redesignated as 275.39]

Par. 24. Section 275.39 is removed and section 275.39a is redesignated as section 275.39.

§ 275.72a [Removed], § 275.72b [Redesignated as 275.72a] and § 275.72c [Removed]

Par. 25. Section 275.72a is removed, section 275.72b is redesignated as section 275.72a, and section 275.72c is removed.

Subpart H (§§ 275.151–275.153) [Removed]

Par. 26. Subpart H consisting of §§ 275.151 through 275.153, is removed and reserved.

§ 275.183 [Removed]

Par. 27. Section 275.183 is removed and reserved.

Signed: June 3, 1996.

John W. Magaw,

Director.

Approved: June 10, 1996.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 96–17996 Filed 7–15–96; 8:45 am]

BILLING CODE 4810–31–P

27 CFR Part 53

[T.D. ATF–380]

RIN 1512–AB42

Manufacturers Excise Taxes—Firearms and Ammunition (95R–055P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is amending the regulations in 27 CFR Part 53 to simplify the regulations relating to exemption certificates. The regulations are being revised to give taxpayers the option of using a preprinted document for use as exemption certificates and vendor(vendee) statements or designing their own certificates and statements using specified information. The temporary rule will remain in effect until superseded by final regulations.

These amendments are part of the Administration's Reinventing Government effort to reduce burden and streamline requirements.

In the proposed rules section of this **Federal Register**, ATF is also issuing a notice of proposed rulemaking inviting comments on the temporary rule for a 90-day period following the publication date of this temporary rule.

EFFECTIVE DATE: The temporary regulations are effective July 16, 1996.

ADDRESS: Send written comments to: Chief, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20226–0221.

FOR FURTHER INFORMATION CONTACT: Mary Lou Blake, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Ave., NW, Washington, DC 20226; (202–927–8210).

SUPPLEMENTARY INFORMATION:

Background

Under current regulations, persons who sell firearms or ammunition tax-free must obtain certain exemption certificates or statements to support such sales. Current regulations include suggested forms for each type of statement and certificate. These certificates and statements are now available through the Bureau's Distribution Center. Taxpayers may order these preprinted documents and reproduce them as needed.

Since the forms are available from ATF, there is no need to reproduce them in the regulations. Accordingly, this Treasury Decision removes the text of the forms from the regulations, but retains all information required for taxpayers who wish to design and use their own certificates or statements.

This temporary rule also includes technical amendments to the regulations in 27 CFR Part 53.

Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required.

Administrative Procedure Act

Because this document merely furnishes the taxpayer with an optional method of providing exemption certificates or statements and does not change the existing regulatory requirements, it is found to be impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities or impose or otherwise cause an increase in the reporting, recordkeeping or other compliance burdens on a substantial number of small entities. The factual basis for such certification is that this revision does not add any new requirement for reporting or recordkeeping. This revision serves only to clarify and streamline current regulatory requirements. Pursuant to section 7805(f) of the Internal Revenue Code, this proposed regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1329, do not apply to this regulation because there are no new reporting or recordkeeping requirements.

Drafting Information

The author of this document is Mary Lou Blake, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 53

Administrative practice and procedure, Arms and munitions, Authority delegations, Exports, Imports, Penalties, Reporting and recordkeeping requirements.

Authority and Issuance

27 CFR Part 53 is amended to read as follows:

PART 53—MANUFACTURERS EXCISE TAXES—FIREARMS AND AMMUNITION

Paragraph 1. The authority citation for 27 CFR Part 53 continues to read as follows:

Authority: 26 U.S.C. 4181, 4182, 4216–4219, 4221–4223, 4225, 6001, 6011, 6020, 6021, 6061, 6071, 6081, 6091, 6101–6104, 6109, 6151, 6155, 6161, 6301–6303, 6311, 6402, 6404, 6416.

Par. 2. Section 53.3 is revised to read as follows:

§ 53.3 Exemption certificates.

Several sections of the regulations in this part, relating to sales exempt from manufacturers excise tax, require the manufacturer to obtain an exemption certificate from the purchaser to substantiate the exempt character of the sale. Any form of exemption certificate will be acceptable if it includes all the information required to be contained in such a certificate by the pertinent sections of the regulations in this part. These certificates are available as preprinted documents which may be ordered from the Bureau's Distribution Center (see § 53.21 for the address of the Distribution Center). The preprinted certificates may be reproduced as needed.

Par. 3. Section 53.131 is amended by revising the third sentence in paragraph (a)(5) to read as follows:

§ 53.131 Tax-free sales; general rule.

(a) * * *

* * * * * *

(5) * * * See paragraph (c) of this section for provisions relating to evidence required in support of tax-free sales. * * *

* * * * * *

Par. 4. Section 53.132 is amended by revising paragraph (c)(2)(i) and by adding paragraph (c)(2)(iii) to read as follows:

§ 53.132 Tax-free sale of article to be used for, or resold for, further manufacture.

* * * * * *

(c) * * *

(2) * * *

(i) *Certificate of purchaser.* The proof of resale to be received by the

VOL
61
ISS
137
JUL
16
1996
UMI

manufacturer, as required under section 4221(b)(1) of the Code, may consist of either a copy of the invoice of the manufacturer's vendee directed to his purchaser which discloses the certificate of registry number held by each party or a statement described in this paragraph. In the case of an invoice of manufacturer's vendee, it must appear from such invoice (or by statement attached thereto) that the article was in fact resold for use in further manufacture. In lieu of such an invoice, proof of resale may consist of a statement, executed and signed by the manufacturer's vendee which includes the following:

(A) Date statement was executed.

(B) Name and address of manufacturer's vendee (if other than the person executing statement).

(C) Certificate of registry number held by vendee.

(D) Specify article(s) purchased tax-free, by whom purchased, certificate of registry number of second purchaser, date of purchase(s), whether articles were purchased as material in the manufacture or production of, or as a component part or parts of, an article or articles taxable under Chapter 32 of the Code.

(E) Statement that person executing statement or manufacturer's vendee possesses proof of tax-free resale of the article(s) in the form of purchase orders and sales invoices and identifying the person who will maintain custody of such proof for 3 years from the date of the statement and will make such proof available for inspection by ATF during such 3 year period.

(F) Statement that a previous statement has not been executed in respect of such certificate of resale and that the person signing the statement is aware that fraudulent use of the statement may subject the person signing the statement and all parties making fraudulent use of the statement to all applicable criminal penalties under the Code.

(G) Name, signature, and title of individual executing statement.

(ii) * * *

(iii) *ATF I 5600.37.* A preprinted statement, ATF I 5600.37, Statement of Manufacturer's Vendee, is available from the Bureau's Distribution Center which, when completed, contains all necessary information for a properly executed statement. Extra copies of ATF I 5600.37 may be reproduced as needed.

Par. 5. Section 53.133 is amended by revising paragraph (d)(2) and by adding paragraph (d)(4) to read as follows:

§ 53.133 Tax-free sale of article for export, or for resale by the purchaser to a second purchaser for export.

* * * * *

(d) * * *

* * * * *

(2) In any case where the manufacturer is not the exporter, the manufacturer must have in its possession a statement from the vendee to whom the manufacturer sold the article stating the following:

(i) Date statement was executed.

(ii) Name and address of manufacturer's vendee (if other than the person executing statement).

(iii) Certificate of registry number held by vendee.

(iv) Specify article(s) purchased tax-free, by whom purchased, and date of purchase.

(v) Statement that article(s) was either exported in due course by the vendee or was sold to another person who in due course exported the article(s).

(vi) Name and address of vendee who will maintain possession of the proof of exportation documents, description of the documents, and statement that vendee will maintain documents for 3 years and make them available to ATF for inspection.

(vii) Statement that a previous statement has not been executed in respect of the articles covered by this statement and that fraudulent use of this statement may subject person executing statement and all parties making fraudulent use of statement to all applicable criminal penalties under the Code.

(viii) Name, signature, title, and address of individual executing certificate.

(3) * * *

(4) *ATF I 5600.36.* A preprinted statement, ATF I 5600.36, Statement of Manufacturer's Vendee, is available from the Bureau's Distribution Center which, when completed, contains all necessary information for a properly executed statement. Extra copies of ATF I 5600.36 may be reproduced as needed.

Par. 6. Section 53.134 is amended by revising paragraph (d)(2)(iii) and by adding paragraph (d)(2)(iv) to read as follows:

§ 53.134 Tax-free sale of articles for use by the purchaser as supplies for vessels or aircraft.

* * * * *

(d) * * *

(2) * * *

(iii) *Acceptable form of exemption certificate.* A certificate of exemption to support tax-free sales under this section must include the following:

(A) Name of owner, charterer, or authorized agent.

(B) Name of company and vessel.

(C) List article(s) covered by the certificate or beginning and ending dates during which orders will be placed (not to exceed 12 calendar quarters).

(D) Statement that articles will be used only for fuel supplies, ships' stores, sea stores, or legitimate equipment on a vessel belonging to one of the class of vessels to which section 4221 of the Code applies. Identify class of vessel certificate covers (see paragraphs (a) and (b) of this section).

(E) If articles are purchased for use on civil aircraft engaged in foreign trade or trade between the United States and any of its possessions, state the country in which the aircraft is registered.

(F) Statement that it is understood that if any articles are used for any purpose other than as stated in the certificate, or are resold or otherwise disposed of, the person executing the certificate must notify the manufacturer.

(G) Statement that the certificate shall not be used to purchase tax-free articles for use as supplies, etc. on pleasure vessels or any type of aircraft except: (1) Civil aircraft employed in foreign trade or trade between the United States and any of its possessions; (2) Aircraft owned by the United States or any foreign country and constituting a part of the armed forces thereof.

(H) Statement that it is understood that any fraudulent use of the certificate may subject person executing certificate and all parties making fraudulent use of the certificate to all applicable criminal penalties under the Code.

(I) Statement that person executing certificate is prepared to establish by satisfactory evidence the purpose for which the article(s) was used.

(J) Date, name, signature, and address of person executing the certificate.

(iv) *ATF I 5600.34.* A preprinted certificate, ATF I 5600.34, Exemption Certificate, is available from the Bureau's Distribution Center which, when completed, contains all necessary information for a properly executed certificate. Extra copies of ATF I 5600.34 may be reproduced as needed.

Par. 7. Section 53.135 is amended by revising paragraph (c)(1) and by adding paragraph (c)(3) to read as follows:

§ 53.135 Tax-free sale of articles to State and local governments for their exclusive use.

* * * * *

(c) * * *

(1) In the case of a State or local government which is registered (see § 53.141 for provisions under which a State or local government may register if it so desires), the provisions of paragraph (c) of § 53.131 have application as to the evidence required in support of tax-free sales. If a State or local government is not registered, the evidence required in support of a tax-free sale to the State or local government shall, except as provided in paragraph (c)(2) of this section, consist of a certificate, executed and signed by an officer or employee authorized by the State or local government to execute and sign the certificate. If it is impracticable to furnish a separate certificate for each order or contract because of frequency of purchases, a certificate covering all orders between given dates (such period not to exceed 12 calendar quarters) will be acceptable. The certificates and proper records of invoices, orders, etc., relative to tax-free sales must be retained by the manufacturer as provided in § 53.24(d). A certificate of exemption to support tax-free sales under this section must contain the following:

(i) Title of official executing certificate, branch of government, date executed, and statement that official is authorized to execute certificate.

(ii) List articles covered by the certificate or beginning and ending dates during which orders will be placed by the purchaser (period not to exceed 12 calendar quarters).

(iii) Name of manufacturer from which articles purchased.

(iv) Governmental unit purchasing articles.

(v) Statement that is understood that articles purchased under this certificate of exemption are limited to use exclusively by the purchasing governmental entity.

(vi) Statement that is understood that any fraudulent use of this certificate may subject the person executing the certificate and all parties making fraudulent use of the certificate to all applicable criminal penalties under the Code.

(vii) Name, address, and signature of person executing the certificate.

(2) * * *

(3) *ATF I 5600.35.* A preprinted certificate, ATF I 5600.35, Exemption Certificate, is available from the Bureau's Distribution Center which, when completed, contains all necessary information for a properly executed certificate. Extra copies of ATF I 5600.35 may be reproduced as needed.

* * * * *

Par. 8. Section 53.179 is amended by revising paragraph (b)(1)(iii) and by adding paragraph (b)(1)(iv) to read as follows:

§ 53.179 Supporting evidence required in case of manufacturers tax involving exportations, uses, sales, or resales.

* * * * *

(b) * * *

(1) * * *

(iii) *Certificate of ultimate vendor.* Any certificate executed and signed by an ultimate vendor as evidence to be retained by the person who paid the tax as provided in paragraph (a)(4) of this section may be executed with respect to any one or more overpayments by the person which arose under section 6416(b)(2) and § 53.178 by reason of exportations, uses, sales or resales, occurring within any period of not more than 12 consecutive calendar quarters, the beginning and ending dates of which are specified in the certificate. A certificate supporting a claim for credit or refund under this section shall contain the following:

(A) Name of ultimate vendor if other than person executing the certificate.

(B) Statement that article(s) was purchased by the ultimate vendor tax-paid and was thereafter exported, used, sold, or resold.

(C) Description of proof which supports exportation or certificate as to use executed by ultimate purchaser.

(D) Statement that ultimate vendor retains such proof for 3 years from the date of the statement and will, upon request, supply such proof at any time within such 3 year period to the taxpayer to establish that credit or refund is due in respect of the article.

(E) Statement that to the best knowledge and belief of the person executing the certificate, no statement in respect of the proof of exportation or certificate has previously been executed and that the person executing the certificate understands that any fraudulent use of the certificate may subject the person executing the certificate or any other party to all applicable criminal penalties under the Code.

(F) Name, title, address and signature of person executing certificate and date signed.

(G) Description of all articles covered by the certificate, with the corresponding vendor's invoice number, date of resale of article, quantity, whether articles were exported or used and the use made of article or to be made of article.

(iv) *ATF I 5600.33.* ATF I 5600.33, Statement of Ultimate Vendor, is available from the Bureau's Distribution Center which, when completed, contains all necessary information for a properly executed certificate. Additional copies may be reproduced as needed.

* * * * *

Signed: May 30, 1996.

Bradley A. Buckles,

Acting Director.

Approved: June 10, 1996.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 96–17995 Filed 7–15–96; 8:45 am]

BILLING CODE 4810–31–P

Fiscal Service

31 CFR Part 356

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds (Department of the Treasury Circular, Public Debt Series No. 1–93)

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury ("Department") is issuing an amendment to its regulations governing the sale and issue of marketable book-entry Treasury securities (Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds). The amendment defines the term "investment adviser" and contains a new section on bidding through investment advisers. The amendment also makes certain technical and clarifying changes.

EFFECTIVE DATE: The amendment is effective on September 16, 1996.

FOR FURTHER INFORMATION CONTACT: Donald V. Hammond, Assistant Director, Government Securities Regulations Staff, Bureau of the Public Debt (202) 219–3632; or Margaret Marquette, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt (202) 219–3320.

SUPPLEMENTARY INFORMATION:

I. Background

31 CFR part 356, also referred to as the uniform offering circular, sets out the terms and conditions for the sale and issuance by the Department of the Treasury to the public of marketable book-entry Treasury bills, notes, and bonds. The uniform offering circular was originally published on January 5, 1993 (58 FR 412), as a comprehensive statement of those terms and conditions. Amendments to the circular were published on June 3, 1994 (59 FR 28773), and March 15, 1995 (60 FR 13906). In the time since the rule was

VOL
61
ISS
137
JL
16
1996
UMI

first published, several questions have arisen about the application of the circular in situations where an investment adviser formulates a bid or otherwise makes bidding decisions for a managed or controlled account. In response, the Department is defining the term "investment adviser" and is setting out the specific terms and conditions for bidding through investment advisers.

Previously, the treatment of investment advisers was found in a discussion in the preamble to the January 5, 1993, publication. The preamble and rule did not specify how the various provisions of the rule should be applied with respect to accounts that participate in auctions through investment advisers, leaving ambiguous the answers to a number of technical questions. Accordingly, the Department published a proposed amendment on January 5, 1996,[1] which provided a definition of the term "investment adviser" and clarified how the provisions of the uniform offering circular would be applied to bids submitted for accounts that are managed by investment advisers (controlled accounts). Additionally, the existing exclusion for certain controlled accounts on whose behalf an investment adviser is not bidding in an auction was proposed to be substantially modified. The proposed modification would have reduced from $500 million to $10 million the dollar threshold applied to the position of a non-participating controlled account in determining eligibility for the exclusion.

Though not required to, the Department published the clarifications and changes in proposed form in order to receive the full benefit of input from affected auction participants. The comment period closed on March 5, 1996.

II. Comments Received in Response to the Proposed Rule

The Department received one comment letter, from the Public Securities Association (PSA), in response to the proposed amendment.[2] The PSA letter strongly supported the clarifications and guidance that the proposed amendment provided but expressed significant objections to the proposed modification of the exclusion available for non-participating controlled accounts.

[1] 61 FR 402 (January 5, 1996).

[2] March 4, 1996, letter from Stephanie Wolf, Assistant General Counsel, Public Securities Association, to Kenneth R. Papaj, Director, Government Securities Regulations Staff, Bureau of the Public Debt.

A. Definition of Investment Adviser

The PSA supported the definition for the term "investment adviser," which also describes what is meant by the phrase "investment discretion." However, the PSA stated that the phrase "or otherwise exercises control," describing investment discretion in the proposed definition, introduces an element of ambiguity. It was noted that the current net long position reporting requirement, which the definition seeks to clarify, uses the phrase "exercising control" which has been understood to mean the exercise of investment discretion. With the addition of the definition of the term "investment adviser," the commenter believes that inclusion of a general provision such as "or otherwise exercises control" raises the question as to what other types of control might exist and is contrary to the intent behind the amendment. The Department agrees and has deleted the phrase from the final definition.

B. Bidding Through Investment Advisers

The PSA expressed support for the codification and clarification of the manner in which investment advisers may bid for their controlled accounts. The commenter requested that the application of the restriction against noncompetitive and competitive bidding in the same auction be addressed for the situation in which an investment adviser bids both competitively for its own proprietary account and noncompetitively for its controlled accounts in the names of those accounts. As stated in § 356.15(a) of the proposed rule, an investment adviser may bid for a controlled account either in the name of the investment adviser, in which case the adviser is considered the bidder, or in the name of the account, in which case the account is considered the bidder. This means that, for purposes of bidding noncompetitively, an investment adviser that bids for its controlled accounts in the name of the adviser is limited to the maximum allowed bid and award amount for a noncompetitive bid for that auction, e.g., $1 million total in a bill auction. An investment adviser that bids noncompetitively for its controlled accounts in the names of the accounts may bid for each account for the maximum allowed noncompetitive amount, e.g., $1 million for each account in a bill auction. Additionally, the investment adviser may not bid for the controlled account both competitively and noncompetitively in the same auction, regardless of whether the bidding is in the name of the adviser or in the name of the controlled account.

The proposed rule did not specifically address, with respect to the restriction against bidding both competitively and noncompetitively in the same auction, the situation in which an investment adviser is bidding for its own account in the same auction that it is bidding for controlled accounts. It is the Department's intention that the proprietary account of an investment adviser be treated in the same manner as that of any other bidder.[3] In other words, an investment adviser may bid competitively in its own name for its proprietary account so long as it is also not bidding noncompetitively in its own name. Therefore, if a controlled account is being bid for noncompetitively in the name of the account, the investment adviser may bid competitively in its own name for its proprietary account. It may also bid competitively, in the name of the investment adviser or the account, for any controlled accounts that are not being bid for noncompetitively. However, the investment adviser may NOT bid both competitively and noncompetitively in its own name in the same auction, regardless of whether the bids represent its own account or controlled accounts. Also the investment adviser may not bid both competitively and noncompetitively in the same auction for any one controlled account, regardless of whether the bid is in the name of the investment adviser or in the name of the account.

C. Reporting Net Long Positions

The proposed rule stated that, in determining if it has reached the $2 billion net long position reporting threshold, an investment adviser must include in its calculation those bids and positions it controls in addition to bids and positions it would otherwise have to include as a bidder. This provision clarified the existing requirement for the calculation of a net long position. The proposal also contained a significant change from the current rule in the amount of a controlled account's position that may be excluded from the investment adviser's net long position calculation. The rule currently allows the adviser to exclude net long positions less than $500 million for certain controlled accounts that are not bid for in an auction. The proposal provided for a similar type of exclusion but decreased the amount to $10 million per controlled account.

[3] An investment adviser, under the bidder definitions, may itself need to be aggregated with its affiliates as part of a larger bidder. The restriction against bidding both noncompetitively and competitively in the same auction is applicable to all the affiliates that are required to be aggregated since they form a single bidder, i.e., if an entity is bidding competitively in an auction, an affiliate of that entity may not bid noncompetitively in the same auction, unless that affiliate has received recognition as a separate bidder.

The PSA strongly objected to the proposed change. While understanding the Department's objective of obtaining more information than is currently provided about the positions that an investment adviser may control, the commenter believed that this objective could not justify the cost to auction participants of reporting on controlled accounts at the significantly reduced amount. It was the commenter's opinion that in order to include controlled accounts at a $10 million threshold within the current net long position reporting timeframes, auction participants would have to develop automated systems to track the information. The PSA represented that the cost to develop such systems would be prohibitive and might adversely affect investment advisers' participation in auctions. Accordingly, the PSA recommended that the Department retain the current exclusionary amount or set a lower amount that would not impose such significant costs. The letter did not provide any suggestions for an appropriate alternative amount. Additionally, the commenter did not address the alternative approach for an exclusion discussed in the proposal or offer any other approaches for providing Treasury with better information about the size of a position that an investment adviser might control.

The reduction in the exclusionary amount was proposed because the Department believes that a lower amount is necessary to give a more accurate picture of the amount of a security controlled by an investment adviser. The Department is sensitive to the concerns of auction participants about the cost of compliance with the auction rules and recognizes, in particular, that the net long position reporting provisions are costly because of the scope of the aggregation provisions and the short reporting timeframe. Balanced against this compliance cost is the Department's goal of avoiding undue concentrations of ownership or control upon original issue. The net long position report is an essential tool in achieving this goal.

In developing the proposal, the Department considered and rejected alternatives, such as providing investment advisers an exclusion based on an aggregate amount rather than separate position amounts in specific accounts, because of a concern that they would be more burdensome or costly for advisers. Nothing in the comment letter would lead the Department to a different conclusion. Therefore, the approach outlined in the proposal is believed to be the best approach for excluding non-participating accounts.

However, a cost-effective exclusion threshold needs to be determined. A tradeoff exists between the time and cost necessary for an investment adviser to determine the holdings of non-participating controlled accounts and the meaningfulness of the net long position information submitted with the bid. The higher the exclusion amount the less costly compliance is for the investment adviser, but also the less useful the information is to the Department. The higher the threshold the fewer number of nonparticipating controlled accounts that would be needed to control a significant undisclosed position in the auctioned security. After due consideration of the potential compliance costs versus the usefulness of the net long position report, the Department has determined that an exclusion threshold of $100 million is appropriate. A $100 million threshold is at a high enough level that relatively few managed accounts should be affected, thus minimizing systems and compliance costs, and yet is low enough that Treasury will receive useful information on the control of the security.

D. Other Comments

The PSA letter briefly discussed the modification that would allow investment advisers to submit bids for their controlled accounts directly to a Federal Reserve Bank or to the Bureau of the Public Debt. The PSA did not object to the proposed change but observed that it had no impact on its membership since its members are all either banks or broker-dealers who are already authorized to submit bids for others directly. The provision allowing an adviser to submit or forward bids in the names of its controlled accounts is an exception to the restriction against anyone other than a depository institution or dealer submitting or forwarding bids for others. The Department reiterates that it is not its intent to authorize an investment adviser that does not also meet the definition of a depository institution or dealer to submit or forward bids for customers. A controlled account is not the same as a customer since, unlike a customer, the beneficial owner of a controlled account is not involved in determining the terms of the auction bid and is generally not aware of the bid until after the fact. (See the definition of "customer" in § 356.2 which refers to directing a depository institution or dealer to bid for a specified amount of securities in a specific auction.)

III. Changes from the Proposed Rule

In § 356.2, the definition of "investment adviser" has been modified to delete the phrase "or otherwise exercises control" in response to a comment from the PSA. The Department believes that this deletion does not affect the intended meaning of the definition and that the change reduces possible confusion.

The language of § 356.15(b) regarding competitive and noncompetitive bidding has not been changed. However, the Department is clarifying that the provision permits an investment adviser to bid competitively for its proprietary account and noncompetitively for one or more controlled accounts in the same auction provided that the noncompetitive bids are in the names of the controlled accounts. The investment adviser would not be permitted to bid both competitively and noncompetitively in the adviser's name in the same auction, regardless of which accounts the bids are for; nor would the adviser be allowed to bid both competitively and noncompetitively for a controlled account. (See Discussion in Section II.B. of this release.)

The only change to proposed § 356.15(c) is the dollar level of the exclusion threshold. The $10 million threshold proposed was strongly criticized by auction participants as being at a level so low as to cause them to incur substantial compliance costs which they believed could not be justified by the benefits received by Treasury. Upon due consideration of this comment and further discussions with the commenter, the Department has concluded that a threshold of $100 million would be more appropriate. This revised threshold provides sufficient additional information about the size of positions controlled by an investment adviser while not imposing unreasonable costs on affected entities. (See Discussion in Section II.C. of this release.)

The proposed changes in §§ 356.11, 356.13, 356.21, and 356.22, as well as appendix A to part 356, are being adopted as proposed. Other sections have been renumbered as a result of adding new § 356.15. Additionally, § 356.36 has been amended to reflect approval under the Paperwork Reduction Act of the new information collections in § 356.15.

VOL
61
ISS
137
JL
16
1996
UMI

IV. Procedural Requirements

The rule does not meet the criteria for a "significant regulatory action" pursuant to Executive Order 12866.

Although the rule was published in proposed form to secure the benefit of public comment, the notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

The collection of information contained in this rule, in § 356.15, has been reviewed and approved by the Office of Management and Budget under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under Control Number 1535–0112. Under the Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

This information is being collected by the Department in order to determine the amount of a Treasury security controlled by an investment adviser bidding competitively in an auction for that security. The information will be used for the purpose of determining the award to be made as the result of a competitive bid for a security. Responses to the collection of information are required in order for the potential respondent to purchase securities. Information concerning securities holdings and transactions is protected against disclosure under Treasury regulations (31 CFR Part 323) and in certain instances, the Privacy Act. The information may be disclosed only as authorized by law.

The burden hours estimated in the notice of proposed rulemaking have been reduced as a result of a change in the final rules that increases the number of accounts that would be eligible for the reporting exclusion. This change was made in response to a comment received from the public.

Estimated total annual reporting burden: 100 hours.

Estimated average annual burden hours per respondent: 5 hours.

Estimated number of respondents: 20.

Estimated annual frequency of responses: on occasion.

Comments on the accuracy of the estimate for this collection of information or suggestions to reduce the burden should be sent to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Department of the Treasury/Bureau of the Public Debt, Washington, D.C. 20503, with copies to the Government Securities Regulations Staff, Bureau of the Public Debt, Room 515, 999 E Street, NW, Washington DC 20239–0001.

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Securities.

For the reasons set forth in the preamble, 31 CFR chapter II, subchapter B, part 356, is amended as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

1. The authority citation for part 356 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*; 12 U.S.C. 391.

2. Section 356.2 is amended by adding in alphabetical order the definition of "investment adviser" to read as follows:

§ 356.2 Definitions.

* * * * *

Investment adviser means any person or entity that has investment discretion for the bids or positions of a person or entity not considered part of the investment adviser under the bidder definitions in Appendix A of this part. Investment discretion includes determining what, how many, and when securities shall be purchased or sold. A person or entity managing investments for itself is not considered an investment adviser for such investments. Where a person is employed or supervised by an entity in connection with his activities as an investment adviser, such person is considered to be part of that entity.

* * * * *

3. Section 356.11(a)(1) is amended by revising the second sentence to read as follows:

§ 356.11 Submission of bids.

(a) *General.*

(1) * * * Except as otherwise provided, tenders must be submitted in an approved format, including the use of preassigned identification numbers, where applicable. * * *

* * * * *

4. Section 356.13 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(1) as paragraph (a). The last two sentences of newly redesignated paragraph (a) are revised to read as follows:

§ 356.13 Net long position.

(a) *Reporting net long positions.* * * * In cases where a bidder that is required to report the amount of its net long position has more than one bid, the bidder's total net long position should be reported in connection with only one bid. A bidder that is a customer must report its reportable net long position through only one depository institution or dealer. (See § 356.14(c).)

* * * * *

5. Sections 356.15 and 356.16 are redesignated as §§ 356.16 and 356.17 respectively and new § 356.15 is added to read as follows:

§ 356.15 Bidding through investment advisers.

(a) *General.* Where bids or positions of a person or entity are controlled by an investment adviser, such bids or positions are considered to be a controlled account, separate from the bids and positions of any person or entity with which they would otherwise be associated under the bidder definitions in Appendix A of this part. The investment adviser may bid for controlled accounts by including, in a bid in the adviser's name, amounts that it is investing for the controlled accounts. The investment adviser may also bid for controlled accounts in the names of such accounts. Where bids are in an investment adviser's name, the investment adviser is considered the bidder for such bids and, where bids are in the name of a controlled account, the named controlled account is considered the bidder, for all purposes of this part 356, except as specified in this § 356.15.

(b) *Noncompetitive and competitive bidding.* Regardless of whether the bid for a controlled account is in the name of the investment adviser or in the name of the controlled account, such account may not be bid for both noncompetitively and competitively in the same auction. In addition, such account is subject to the noncompetitive bidding restrictions and award limitations contained in §§ 356.12(b) and 356.22(a).

(c) *Reporting net long positions.* In calculating the amount of its bids and positions for purposes of the net long position reporting requirement found in § 356.13(a), the investment adviser must include, in addition to what would otherwise be included for the investment adviser as a bidder under the bidder definitions, all other competitive bids and positions controlled by the investment adviser. The investment adviser may exclude any net long position less than $100 million of any nonproprietary controlled account unless the adviser is placing a competitive bid for that account either in the name of the investment adviser or in the name of the account. However, if any net long position less than $100 million of any nonproprietary accounts not being bid for is excluded, then all net short positions less than $100 million of nonproprietary accounts not being bid for must also be excluded. Regardless of whether the investment adviser bids in its own name or in the name of its controlled accounts, if the net long position is reportable, it must be reported as a total in connection with only one bid in accordance with § 356.13(a).

(d) *Submitting bids for controlled accounts.* Notwithstanding the definition of submitter found in § 356.2, and the restriction against submitting bids for others found in § 356.14, an investment adviser may submit bids, whether in the adviser's own name or in the names of its controlled accounts, directly to a Federal Reserve Bank or the Bureau of the Public Debt, in which case the investment adviser is considered a submitter. In the alternative, the investment adviser may forward such bids to a depository institution or dealer.

(e) *Certifications.* By bidding for a controlled account, an investment adviser is deemed to have certified that it is in compliance with this part and the offering announcement governing the sale and issue of the security. Further, the investment adviser is deemed to have certified that the information provided on the tender or provided to a submitter or intermediary with regard to bids for controlled accounts is accurate and complete.

(f) *Proration of awards.* In auctions where bids at the highest accepted yield or discount rate are prorated under § 356.20(a)(2) of this part, investment advisers that submit bids for controlled accounts in the names of such accounts are responsible for prorating awards for their controlled accounts at the same percentage as that announced by the Department. The same prorating rules apply to controlled accounts as apply to submitters. See § 356.21 of this part.

6. Section 356.21 is amended by revising paragraph (a) to read as follows:

§ 356.21 Proration of awards.

(a) *Awards to submitters.* In auctions where bids at the highest accepted yield or discount rate are prorated under § 356.20(a)(2) of this part, the Federal Reserve Banks are responsible for prorating awards for submitters at the percentage announced by the Department. For example, if 80% is the announced percentage at the highest yield or discount rate, then each bid at that rate or yield shall be awarded 80% of the amount bid. Hence, a bid for $100,000 at the highest accepted yield or discount rate would be awarded $80,000. In all cases, awards will be for, at least, the minimum to hold, and awards must be in an appropriate multiple to hold. Awards at the highest accepted yield or rate are adjusted upwards, if necessary, to an appropriate multiple to hold. For example, Treasury bills may be issued with a minimum to hold of $10,000 and multiples of $1,000. Where an $18,000 bid is accepted at the high discount rate, and the percent awarded at the high discount rate was 88%, the award to that bidder would be $16,000, representing an upward adjustment from $15,840 ($18,000 × .88) to an appropriate multiple to hold. If tenders at the highest accepted rate were prorated at, for example, a rate of 4%, the award for a $100,000 bid would be $10,000, instead of $4,000, in order to meet the minimum to hold for a bill issue.

* * * * *

7. Section 356.22(b) is amended by revising the last sentence to read as follows:

§ 356.22 Limitation on auction awards.

* * * * *

(b) *Awards to competitive bidders.* * * * When the bids and net long positions of more than one person or entity must be combined as required by § 356.15(c), such combined amount will be used for the purpose of this award limitation.

8. Section 356.36 is revised to read as follows:

§ 356.36 Paperwork Reduction Act approval.

The collections of information contained in §§ 356.11, 356.12, 356.13, 356.14, and 356.15 and in appendix A of this part have been approved by the Office of Management and Budget under control number 1535–0112.

9. Appendix A to Part 356 is amended by adding to section (a) a new paragraph between the second and third paragraphs of the introductory text to read as follows:

Appendix A To Part 356—Bidder Definitions

* * * * *

(a) *Corporation*—* * *

For the purpose of this part, a business trust, such as a Massachusetts business trust or a Delaware business trust, is considered to be a corporation.

* * * * *

Dated: July 9, 1996.

John A. Kilcoyne,

Acting Fiscal Assistant Secretary.

[FR Doc. 96–17896 Filed 7–15–96; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BPD–647–F]

RIN 0938–AH11

Medicare Program; Reporting of Interest From Zero Coupon Bonds

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule requires Medicare providers to report all interest expense and interest income from zero coupon bonds in the cost reporting period in which the interest was accrued. This final rule is necessary to add provisions to the Medicare regulations that specifically address the reporting by providers of interest expense and income from zero coupon bonds.

EFFECTIVE DATE: This regulation is effective on August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Ann Pash, (410) 786–4615.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(v)(1)(A) of the Social Security Act (the Act) defines reasonable cost for any service under Medicare as the cost actually incurred, excluding any cost unnecessary in the efficient delivery of needed health services. That section of the Act also provides that reasonable costs must be determined in accordance with regulations that establish the methods to be used and the items to be included for purposes of determining which costs are allowable for various types or classes of institutions, agencies, and services. In addition, section 1861(v)(1)(A) of the Act specifies that regulations implementing the principles of reasonable cost payment may provide for the use of different methods in different circumstances. This section of the Act is implemented by regulations at 42 CFR part 413. In particular, § 413.24 establishes the methods to be used and the adequacy of data needed to determine allowable costs for various types or classes of institutions, agencies, and services.

VOL 61 ISS 137 JL 16 1996 UMI

Under Medicare, providers are paid for inpatient and outpatient services that they furnish to beneficiaries under Part A (Hospital Insurance) or Part B (Supplementary Medical Insurance). Currently, most hospitals are paid for their hospital inpatient operating costs and capital-related costs under the prospective payment systems in accordance with sections 1886 (d) and (g) of the Act and regulations at 42 CFR part 412. Under these systems, Medicare payment is made at a predetermined, specific rate for inpatient operating costs and inpatient capital-related costs for each hospital discharge based on the information contained in actual bills submitted. Section 1886(f)(1)(A) of the Act requires us to maintain a system for reporting costs of hospitals paid under the prospective payment systems. This provision is implemented by regulations at § 412.52. Section 412.52 requires all prospective payment system hospitals to meet the cost reporting requirements of §§ 413.20 and 413.24, which include submitting a cost report for each 12-month period.

Hospital outpatient units and hospitals and hospital units that are excluded from the prospective payment systems, as well as most other providers, are generally paid an amount based on the reasonable cost of items and services furnished to beneficiaries, in accordance with section 1861 (v)(1)(A) of the Act, the regulations at 42 CFR part 413, and the Provider Reimbursement Manual. These cost-based providers are subject to the same cost reporting requirements of §§ 413.20 and 413.24 and thus must maintain financial records and statistical data sufficient for the proper determination of costs payable under the Medicare program and submit cost reports on an annual basis.

For cost-based providers (and for prospective payment hospitals during the capital prospective payment system transition period), interest expense on capital indebtedness such as loans for acquiring facilities and equipment or for making capital improvements and on current indebtedness is an allowable cost as set forth at §§ 413.130(a)(7) and 413.153. Interest must be necessary—that is, incurred on a loan made to satisfy the financial need of a provider, and for a purpose reasonably related to patient care. It must also be proper—that is, incurred at a rate not in excess of that which a prudent borrower would have to pay in the money market when the loan was made.

One source of financing for providers is the sale of zero coupon bonds. Similarly, one source of provider investment income is the purchase of zero coupon bonds. The name "zero coupon bond" is derived from the fact that there are no coupons issued with these bonds. Zero coupon bonds are issued by government agencies, corporations (including Medicare providers), and banks at a price substantially below the face value of the bond. The difference between the purchase price of a zero coupon bond and the face amount payable at maturity reflects the actual amount of interest and is neither a discount nor an adjustment to the interest rate as with most other bonds. All interest is actually paid when the bond is presented for redemption, at face value, on the date of maturity.

II. Policy Changes

A. Interim Policy

As discussed in detail in our December 13, 1993 proposed rule (58 FR 65150), on December 22, 1989, we issued a Regional Office memorandum for distribution to all intermediaries that allowed providers to choose which method they would use to report interest expense or income from zero coupon bonds—either at maturity in a lump sum, or each year as the interest accrues, as long as their treatment of interest expense is consistent with their treatment of interest income.

We stated that this interim policy would apply to all zero coupon bonds issued or purchased on or after December 22, 1989, as well as to any zero coupon bond interest reported on cost reports that could be amended or reopened as of December 22, 1989. Thus, a provider's options under the interim policy are as follows:

- *Bonds Issued before December 22, 1989:* For interest from zero coupon bonds issued before December 22, 1989, that is reportable on cost reports that could be amended or reopened as of December 22, 1989, a provider could request amendment or reopening and specify the method to be used for reporting interest expense and income on zero coupon bonds. Conversely, by not requesting an amendment or reopening, a provider could choose to continue the method already in use.
- *Bonds Issued on or after December 22, 1989, and before February 22, 1991:* For all zero coupon bonds issued on or after December 22, 1989, but before February 22, 1991, a provider could choose the method it would use to report interest expense or income, as discussed above. Therefore, in cases where a provider's cost reports are not amended, or cost report determinations are not reopenable, on or after December 22, 1989, the provider's preference would be evidenced by the choice the provider exercises for the first zero coupon bonds issued or purchased on or after December 22, 1989, but before February 22, 1991. In either case, once the provider has exercised its choice, the method of reporting interest accrued on all zero coupon bonds issued or purchased from that date through February 21, 1991, should be consistent with that choice.

B. Current Policy (Applicable to Bonds Issued on or after February 22, 1991)

We revised the Medicare Provider Reimbursement Manual (Transmittal No. 358) in February 1991 to establish our current policy. In developing the manual issuance, we concluded that it was not appropriate to continue to permit the provider to report accrued interest in a lump sum at maturity because the interest accrues during the life of the bond. We now require that, for zero coupon bonds issued or purchased by providers on or after February 22, 1991, all interest expense and income must be reported in the cost reporting period in which the interest accrues.

Neither the policy enunciated in our December 22, 1989, Regional Office memorandum nor the one in the Provider Reimbursement Manual has been set forth in regulation.

III. Provisions of the Proposed Rule

On December 13, 1993, we published in the **Federal Register** (58 FR 65150) a proposed rule to add to the Medicare regulations at 42 CFR 413.153 provisions that specifically address the reporting by providers of interest expense and interest income from zero coupon bonds. We also proposed to add the definition of "zero coupon bond" to the regulations.

Under our proposal, for zero coupon bonds issued on or after the effective date of a final regulation, interest expense incurred to finance capital-related costs would be an allowable expense, and interest income earned for investment purposes would be an allowable offset, in the cost reporting period in which the interest accrues. We proposed that earned interest from zero coupon bonds must be offset against all allowable interest expense as set forth in § 413.130(g)(2). In addition, interest expense must meet the definition of "necessary" in § 413.153(b)(2)(iii).

For cost reporting purposes, we proposed to require the use of the effective interest method rather than the straight line method. Under the straight line method, the interest for a computation period is computed by dividing the total interest payable (the value at maturity less the amount paid) by the number of compensation periods. This method recognizes the average interest expense or income for each compensation period.

Under the effective interest method, we indicated that in each computation period (as specified by the bond instrument) we would apply the interest rate to the sum of the face amount and the accrued interest from prior periods. If the interest computation period involves portions of more than one cost reporting period, the amount of interest for that computation period would be apportioned to each cost reporting period. This method recognizes the actual accrual of interest expense or income for each interest computation period (as specified by the bond instrument) throughout the life of the bond to maturity. A constant effective yield rate is determined and applied to the book value (outstanding loan balance including prior accrued interest) of the bond at the beginning of each period to determine the total interest for the period. We also proposed to set forth in the regulations under proposed § 413.153(f)(3)(iv) an example of the computation of interest using the effective interest method.

IV. Analysis of and Responses to Public Comments

We received two letters of comment on the December 22, 1993 proposed rule. These comments and our responses are discussed below.

Comment: One commenter questioned whether the effective date of the final regulation would be the February 22, 1991, effective date of the manual provisions. The commenter also wanted us to explain the current applicability of the interim policies in the Regional Office memorandum dated December 22, 1989, and in the Provider Reimbursement Manual for the interim period before the effective date of this final rule. The commenter stated that if the final rule has an effective date other than February 22, 1991, the manual provisions would be inconsistent with the regulation.

Response: This final rule is effective on August 15, 1996 and applies to bonds issued on and after that date. This date is not inconsistent with the effective dates of HCFA's prior policies addressing reimbursement for zero coupon bond interest. The reimbursement policies in existence before the effective date of this final rule apply to cost reporting periods that precede the promulgation of this final rule, and the policies continue in force only with respect to bonds issued before August 15, 1996. The December 22, 1989 memorandum provided that for interest from zero coupon bonds issued before December 22, 1989 (that is reportable on a cost report that can be reopened on or after December 22, 1989), a provider could request amendment or reopening to specify the method of reporting the interest expense and income on the zero coupon bonds.

The memorandum did not establish a time limitation on these requests. However, in order to effectuate an orderly implementation of this rule, we are requiring providers to submit requests for reopening or amendment within 60 days of publication of this final rule, that is by September 16, 1996. Any request received after that date will not be considered timely and will not be honored.

The provisions of this final rule supersede any agency policy that is inconsistent with the regulation's terms.

Comment: One commenter stated that while the preamble and the regulation text of the proposed rule referred to interest expense incurred to finance capital-related costs, section 213(A) of the Provider Reimbursement Manual refers to "issuing zero coupon bonds for a purpose related to patient care." The commenter asked for consistent use of language as the Manual wording implies that interest expense for operating purposes, such as working capital, is also an allowable cost.

Response: The language in section 213(A) of the Manual is correct. Zero coupon bonds may be used to provide funds for either capital-related costs or operating costs, as long as the costs are for a purpose related to patient care. We have revised § 413.153(f)(1) to clarify that interest expense incurred to provide funds for "patient care-related costs" is an allowable expense.

Comment: One commenter suggested that in the final rule we reference a specific exception to our general policy on the liquidation of liabilities, established at section 2305 of the Provider Reimbursement Manual, since the actual payment of interest expense will not be made until the bonds mature.

Response: Section 2305 of the Manual requires that short-term liabilities be liquidated within 1 year of the end of the cost reporting period in which the liability is incurred, subject to certain specified exceptions. With zero coupon bonds, the interest accrues during the life of the bond but is not payable until maturity or redemption of the bond. Since there are no specified interest payments due during the life of the bond, the liability for payment does not occur until the bond matures or is redeemed. There is no short-term liability. We note, in section 2305, that it does not apply to zero coupon bonds until they mature or are redeemed.

Comment: One commenter objected to the language in § 413.153(f)(2), which specified that earned interest from zero coupon bonds must be offset against all allowable interest expense. The commenter's concern was that in the case of a bond defeasance (an advance refunding of debt) there are specific guidelines regarding the treatment of costs associated with advance refunding and with the allocation of investment income. These guidelines are laid out in the Provider Reimbursement Manual in sections 2806.G.1, 233, and 213. The commenter believed that the proposed regulations are in conflict with specific instructions for bond defeasance.

Response: The commenter is correct. In an advance refunding of debt (which includes bond defeasance), the investment income is offset against the interest expense of both the refunded debt and the refunding debt and is included in determining the gain or loss on the advanced refunding rather than included with other investment income and prorated under § 413.130(g)(2). We agree that some changes in the language of the regulations are needed to better reflect the treatment of investment income in an advance refunding. We have removed the reference to "all" in § 413.153(f)(2) and revised the section to indicate that if zero coupon bonds are purchased with the proceeds of an advance refunding, offset of the investment income is required under § 413.153(b)(2)(iii), but the investment income is not prorated under § 413.130(g)(2).

Comment: One commenter raised a question about the current applicability of the section of the memorandum dated December 22, 1989, that allowed a provider, under certain circumstances, to reopen or amend a cost report to specify the method to be used for reporting interest expense and income on zero coupon bonds issued before December 22, 1989.

Response: The memorandum dated December 22, 1989, provided that for interest from zero coupon bonds issued before December 22, 1989, that is reportable on a cost report that can be reopened on or after December 22, 1989, a provider could request amendment or reopening to specify the method of reporting the interest expense and income on the zero coupon bonds. The memorandum did not contain a time limitation on the requests. However, in order to effectuate an orderly implementation of these provisions, we are requiring providers to submit request for reopenings or amendments

VOL 61 ISS 137 JL 16 1996 UMI

within 60 days of publication of this final rule. Any request received after that date will be considered not timely filed and will not be honored.

V. Provision of the Final Regulations

This final rule adopts the provisions of the proposed rule as final, with the following minor revisions:

- In § 413.153(f)(1), we have changed the phrases "capital-related cost" to "patient care-related cost" and to "provide funds" rather than "finance".
- In § 413.153(f)(2), we deleted the word "all", rewrote part of the section for clarity, and added an appropriate cross-reference provision for handling zero coupon bonds purchased with the proceeds of an advance refunding of debt.

VI. Regulatory Impact

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5. U.S.C. 601 through 612) unless we certify that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider providers to be small entities.

Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any final rule that will have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area.

In the December 22, 1993 proposed rule, we concluded that the proposed rule changes would not have a significant economic impact on a substantial number of small entities, and would not have a significant impact on the operations of a substantial number of small rural hospitals. As discussed above, we received two letters of comments on the proposed rule, neither of which objected to our conclusion that these changes will not have a significant impact. This final rule adopts the provisions at the proposed rule with only minor technical changes. Therefore, we have determined, and certify, that this final rule will not have a significant economic impact on a substantial number of small entities. Also, this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or a rural hospital impact analysis.

In accordance with the provisions of Executive Order 12866, this final regulation was not reviewed by the Office of Management and Budget.

Under the provisions of Public Law 104–121, we have determined that this final rule is not a major rule.

VII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the collection burden on the affected public, including automated collection techniques.

The overall recordkeeping and information collection burden associated with filing the provider cost report has been approved by OMB through August 31, 1996 under OMB No. 0938–0050.

In the December 13, 1993, proposed rule (58 FR 65150), we indicated that there would be no additional reporting burden on those providers who have zero coupon bonds and solicited comments. No comments were received.

Section 413.153 defines when interest expense is an allowable cost and how interest income is treated. The changes to this section represent a clarification of the current policy on interest expense and income as it applies to zero coupon bonds. It does not change the information collection and recordkeeping requirements. The information and recordkeeping required is that which is already required to file a cost report and approved by OMB as indicated above.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR chapter IV, part 413, is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

A. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

Subpart G—Capital-Related Costs

B. Section 413.153 is amended by adding paragraphs (b)(4) and (f) to read as follows:

§ 413.153 Interest expense.

* * * * *

(b) *Definitions*—* * *

(4) *Zero coupon bonds.* Zero coupon bonds are issued by government agencies, corporations, and banks at a price substantially below the face value. The difference between the purchase price and the face value reflects the actual amount of interest and is neither a discount nor an adjustment to the interest rate as with other bonds. Interest is paid at maturity when the bond is redeemed at face value.

* * * * *

(f) *Zero coupon bonds*—(1) *Interest on bonds issued on or after August 15, 1996.* For zero coupon bonds issued on or after August 15, 1996, interest expense incurred to provide funds for patient care-related costs is an allowable expense, and interest income earned for investment purposes is an allowable offset, in the cost reporting period in which the interest accrues.

(2) *Interest income offset.* Interest income from zero coupon bonds must be offset against allowable interest expense as prescribed in paragraph (b)(2) of this section and in § 413.130(g)(2). If zero coupon bonds are purchased with the proceeds of an advanced refunding of debt, offset of the investment income is required under § 413.153(b)(2)(iii), but the investment income is not prorated under § 413.130(g)(2).

(3) *Use of effective interest method.* (i) Interest expense and interest income from zero coupon bonds that are reported as they accrue must be amortized using the effective interest method. This method recognizes the actual accrual of interest expense or income for each interest computation period (as specified by the bond instrument) throughout the life of the bond.

(ii) A constant effective yield rate is determined and applied to the book value (outstanding loan balance including prior accrued interest) of the bond at the beginning of each period to determine the total interest for the period.

(iii) If the interest computation period involves portions of more than one cost reporting period, the amount of interest for that computation period shall be apportioned to each cost reporting period.

(iv) An example of the computation of interest using the effective interest method follows:

Facts

Life of zero coupon bond: 15 years.
Value at maturity: $50,000.
Bondholder pays $6,996 for the bond.
Annual interest rate is 13.5506% compounded semi-annually.
From the table below, interest for the first year would be $980.11 ($474.00 plus $506.11).

Col 1 Six-month periods	Col 2 Book value beginning of period	Col. 3 Effective interest*	Col. 4 Book value end of period (columns 2 + 3)
1	$6,996.00	$474.00	$7,470.00
2	7,470.00	506.11	7,976.11
3	7,976.11	540.40	8,516.51
4	8,516.51	577.02	9,093.53
29	43,855.94	2,971.37	46,827.31
30	46,827.31	3,172.69	50,000.00

*Computed by multiplying the book value at the beginning of each period (Column 2) by 6.7753% (the annual interest rate of 13.5506% 2 = 6.7753%).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 23, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 96–17895 Filed 7–15–96; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

49 CFR Part 40

[OST Docket No. OST–96–1532]

RIN 2105–AC37

Amendments to Laboratory Certification Requirements

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This final rule establishes provisions that would permit drug testing laboratories located outside the U.S. to participate in the Department's drug testing program. The Department of Transportation would take action permitting the laboratories to participate based on recommendations from the Department of Health and Human Services.

EFFECTIVE DATE: This rule is effective on July 16, 1996.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Room 10424, (202–366–9306); 400 7th Street, SW., Washington DC 20590; or Mary Bernstein, Director, Office of Drug Enforcement and Program Compliance, same street address, Room 10317, (202) 366–3784.

SUPPLEMENTARY INFORMATION: Recently, the Federal Highway Administration (FHWA) issued a final rule applying its drug and alcohol testing requirements to foreign-based drivers operating in the United States (60 FR 49322; September 22, 1995). Under the rule, Canadian and Mexican drivers who come into the United States will be subject to testing on the same basis as U.S. drivers, beginning July 1, 1996, for employees of larger carriers and a year later for employees of smaller carriers.

In any case, Canadian and Mexican employers who collect drug urine specimens under FHWA rules will be able to have the specimens tested in U.S. laboratories certified by the Department of Health and Human Services (DHHS), on the same basis as U.S. employers. In the interest of facilitating program implementation, the Department hopes that it will be possible for Mexican and Canadian laboratories to participate in the program as well. (If Canadian and Mexican laboratories are not authorized to participate in the program as provided in this rule, Canadian and Mexican employers must send specimens to DHHS-certified laboratories in the U.S. for testing.)

Canadian and Mexican laboratories may participate in the DOT-mandated testing program only if their participation is consistent with the Department's statutory authority. Strict safeguards for the accuracy and quality of laboratory tests are a key mandate of the Omnibus Transportation Employee Testing Act of 1991.

The motor carrier portion of the Act (49 U.S.C. 31306(b), which parallels the other modal sections of the Act), provides that, in carrying out the requirement to establish a motor carrier drug testing program , the Secretary "shall" develop requirements "that shall"

(2) for laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any amendments to those guidelines, including mandatory guidelines establishing—

(A) comprehensive standards for every aspect of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards requiring the use of the best available technology to ensure the complete reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimens collected for controlled substances testing; * * *

(C) appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section.

(3) require that a laboratory involved in testing under this section have the capability and facility, at the laboratory, of performing screening and confirmation tests; * * *

The language of these provisions is clearly mandatory, a point which the legislative history reinforces. Senate Report 102–54 (May 2, 1991), concerning S. 676, the bill that became the Act, notes, in response to concerns about testing accuracy and false positive tests, that "By incorporating laboratory certification and testing procedures developed by HHS and DOT * * * the Committee has taken affirmative steps to ensure accuracy." (S. Rept. 102–54 at 7.) Later, in speaking of the laboratory and other safeguards in the bill, the report says that

> These safeguards are critical to the success of any testing program. They are designed to ensure that * * * there is accountability and accuracy of testing. They provide what the Committee believes are the basic minimums * * * the Secretary is urged to carefully review the safeguards in any testing program to ensure they are adhered to in a vigorous manner. (*Id.* at 31)

More specifically on laboratory matters, the Committee said that

> Incorporating the HHS guidelines relating to laboratory standards and procedures * * * as DOT has done in Part 40 * * * is an essential component of the procedural safeguards specified in this subsection.* * * Realizing that these guidelines may be subject to future modification, the Committee has acted to specify that the basic elements of certain provisions now in effect are mandated, including the need for comprehensive standards and procedures for all aspects of laboratory testing of drugs * * * [and] the establishment of standards and procedures

VOL
61
ISS
137
JL
16
1996
UMI

for the periodic review of laboratories and the development of criteria for laboratory certification or revocation of such certification. (*Id.* at 32)

It is noteworthy that Congress explicitly accepts an active DOT role in establishing and carrying out the laboratory-related provisions of the statute. What is mandatory is not that one agency or the other play any particular administrative role in the process, but that the protections embodied in the DHHS guidelines be applied, through DOT's rules, to participants in the program. There is no bar in the statutory language to a DOT rule assigning to DOT the task of reviewing and certifying laboratories, so long as these actions by DOT are based on the conformity of the laboratories to DOT's incorporation of DHHS laboratory standards. Consequently, DOT has broad legal discretion to take action in the area of drug testing procedures, extending to the certification of laboratories.

DOT and DHHS are working closely together with respect to the potential certification of foreign laboratories. As the two agencies envision the process, there could be two different ways in which foreign laboratories become certified. First, DHHS could review the application of the foreign laboratory, in the same manner that it reviews applications from U.S. laboratories. If the laboratory meets DHHS standards, DHHS would recommend that DOT certify the laboratory under DOT authority. (The direct certifying authority of DHHS extends only to laboratories that would participate in the Federal employee testing program.) Second, DHHS could review the standards and procedures of a foreign certifying agency. If DHHS determined that the foreign agency had standards, procedures, and authority equivalent to those of DHHS, DHHS would recommend to DOT that DOT deem the foreign agency to be an equivalent certifying authority. Laboratories that the foreign agency certified would then be permitted to participate in the DOT testing program.

DOT and DHHS have discussed laboratory issues with officials of Transport Canada, the Canadian Trucking Association and its affiliates, and the Standards Council of Canada (a potential laboratory certification organization in Canada), as well as representatives of some Canadian laboratories. We have also had discussions with Mexican officials concerning program and laboratory matters. Following these discussions, the Department proposed a change to 49 CFR 40.39 to accommodate the possibility that foreign laboratories may be able to participate in DOT-mandated drug testing (61 FR 13609; March 28, 1996).

The NPRM proposed to add a new paragraph to authorize the participation of foreign laboratories in the DOT drug testing program in the two circumstances outlined above (i.e., based on a recommendation by DHHS that a particular laboratory meets DHHS certification requirements, or based on a certification by a foreign certifying organization whose standards and process had been deemed equivalent to those of DHHS). The Department received three comments on the proposal, all of which supported it. Two of the comments sought assurances that the rule would result in foreign laboratories that fully met all DHHS requirements, including periodic inspections and re-certifications.

The Department is adopting the proposal without change. The rule will result in full compliance with DHHS procedures and standards for laboratory certification by foreign laboratories authorized to participate in the program, including inspection and re-certification provisions. It should be emphasized that the rule does not have the effect of actually certifying any foreign laboratories. It simply puts in place a mechanism that would allow such laboratories to participate, if and when DOT and DHHS determine that all issues had been resolved satisfactorily, in full compliance with DHHS requirements for laboratory certification. Once authorized to participate in the DOT drug testing program by this process, a Canadian or Mexican laboratory would be on the same footing as any DHHS-certified laboratory concerning program participation, including the ability to test specimens collected in the U.S. by U.S. employers.

Regulatory Process Matters

The proposed rule is considered to be a nonsignificant rulemaking under DOT Regulatory Policies and Procedures, 44 FR 11034. It also is a nonsignificant rule for purposes of Executive Order 12886. The Department certifies, under the Regulatory Flexibility Act, that the rule does not have a significant economic effect on a substantial number of small entities. The rule does not impose any costs or burdens on regulated entities, since it deals with a subject (applying for laboratory certification) that is completely voluntary. Laboratories that are able to meet DHHS standards are typically not small entities, in any case. The rule makes it possible for Canadian and Mexican motor carriers to use laboratories that are closer to them than laboratories in the U.S., which may result in somewhat lower costs for these carriers, which include some small entities. The rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The rule is being made effective immediately. The Department has good cause to do so, on the basis that in order to give the Department the opportunity to authorize foreign laboratories to participate in the DOT drug testing program by the July 1, 1996, compliance date for Canadian and Mexican motor carriers, the Department needs this rule to be in place. Making this rule effective now will permit the Department to respond in a timely way if DHHS determines that foreign laboratories or certifying organizations meet DHHS standards. Even if foreign laboratories are not in a position to be approved for participation by July 1, it is important that the Department's authority to approve foreign laboratories be in place, as a matter of good faith on our part toward our trading partners.

List of Subjects in 49 CFR Part 40

Drug Testing, Alcohol Testing, Reporting and Recordkeeping Requirements, Safety, Transportation.

For the reasons set forth in the preamble, 49 CFR part 40 is amended as follows:

1. The authority citation for part 40 continues to read as follows:

Authority: 49 U.S.C. 102,301,322; 49 U.S.C. app. 1301nt., app. 1434nt., app. 2717, app. 1618a.

2. Section 40.39 is revised to read as follows:

§ 40.39 Use of certified laboratories.

(a) Except as provided in paragraph (b) of this section, employers subject to this part shall use only laboratories certified under the DHHS "Mandatory Guidelines for Federal Workplace Drug Testing Programs," April 11, 1988, and subsequent amendments thereto.

(b) Employers subject to this part may also use laboratories located outside the United States if—

(1) The Department of Transportation, based on a written recommendation from DHHS, has certified the laboratory as meeting DHHS laboratory certification standards or deemed the laboratory fully equivalent to a laboratory meeting DHHS laboratory certification standards; or

(2) The Department of Transportation, based on a written recommendation from DHHS, has recognized a foreign certifying organization as having equivalent laboratory certification standards and procedures to those of DHHS, and the foreign certifying organization has certified the laboratory, pursuant to those equivalent standards and procedures.

Issued this 9th day of July 1996, at Washington, DC.

Federico Peña,

Secretary of Transportation.

[FR Doc. 96–18063 Filed 7–15–96; 8:45 am]

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VOL
61
ISS
137
JL
16
1996
UMI

Proposed Rules

Federal Register
Vol. 61, No. 137
Tuesday, July 16, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–001–1]

Corn Cyst Nematode

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to remove the regulations that quarantine certain areas of the United States because of the corn cyst nematode and that restrict the interstate movement of certain articles, such as soil, from the quarantined areas. We are proposing this action because this pest is present in only five counties in two States and appears to be adequately contained by the two States affected. This action would relieve restrictions on the interstate movement of regulated articles.

DATES: Consideration will be given only to comments received on or before August 15, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–001–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–001–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Ms. Coenne O'Hern, Assistant Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1228, (301) 734–8247, or e-mail: cohern@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Corn cyst nematode (*Heterodera zeae*) is a cyst-forming nematode that attacks the roots of host plants such as corn, barley, oats, and sorghum. The nematode bores into the roots of the plants and feeds on the plant juices, resulting in poor root development and poor plant growth and potentially causing severe crop losses. The corn cyst nematode is spread through the movement of infested soil and equipment carrying infested soil.

The corn cyst nematode was first detected in the United States in Kent County, MD, in 1981. Subsequent surveys found infestations in Harford, Cecil, and Queen Anne's Counties, MD. Between 1981 and 1983, all 3 counties in Delaware, 13 in Maryland, 11 in New Jersey, 11 in Pennsylvania, and 2 in Virginia were surveyed for corn cyst nematode. The results of these surveys were negative. Since 1983, Maryland has completed surveys in all of its counties, and no additional counties have been found infested. In 1992, corn cyst nematode was confirmed on one property in Cumberland County, VA. Delimiting surveys have been conducted on adjacent properties and all properties leased or farmed by the owner of the infested property. Surveys were also conducted in corn fields located along the Appomattox River in Appomattox and Prince George's Counties, VA. These additional surveys were negative for corn cyst nematode.

The regulations in 7 CFR 301.90 through 301.90–10 designate areas that are quarantined because of the presence of corn cyst nematode. These regulations also restrict the interstate movement of soil and other articles from the quarantined areas to prevent the spread of corn cyst nematode.

Studies conducted by the Maryland State Agricultural Experiment Station (MAES) indicate that corn cyst nematode may not be an economic pest anywhere in the United States with the possible exception of south Florida and south Texas. This research has shown that corn cyst nematode develops best in soil temperatures of 33 to 36 °C. At soil temperatures below 30 °C, corn cyst nematode does not reproduce quickly enough to cause economic damage. Research conducted by MAES also indicates that corn cyst nematode is easily controlled by crop rotation. One year of a nonhost crop reduces corn cyst nematode populations drastically, and recovery may take several years.

The State of Maryland has established a State quarantine that restricts the movement of possible infested articles from the infested areas in Cecil, Harford, Kent, and Queen Anne's Counties. The owner of the infested property in Cumberland County, VA, has entered into a compliance agreement with the State of Virginia that restricts the movement from the property of farm machinery and other articles that may carry infested soil.

Under these circumstances, we believe that the regulations in § 301.90 through § 301.90–10 are no longer necessary to prevent the interstate spread of corn cyst nematode. We therefore propose to remove these regulations.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This proposed rule change is not expected to have an effect on any entities in the regulated areas. This is because the States of Maryland and Virginia have restrictions in place to prevent the movement of potentially infested articles from the infested areas in Cecil, Harford, Kent and Queen Anne's Counties, MD, and Cumberland County, VA.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) State and local laws and regulations will not be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is proposed to be amended as follows:

PART 301—[AMENDED]

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Subpart—Corn Cyst Nematode [Removed]

2. Subpart—Corn Cyst Nematode, consisting of §§ 301.90 and 301.90–1 through 301.90–10, would be removed.

Done in Washington, DC, this 9th day of July 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–17918 Filed 7–15–96; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

Radiography Equipment Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Public workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) staff plans to convene a public workshop with representatives of Agreement States, NRC radiography licensees, radiography equipment manufacturers and other interested persons to discuss and solicit comments and concerns relating to NRC regulations for radiography, specifically § 34.20. The purpose of the workshop is to establish whether there is a need for rulemaking related to design and control of radiography equipment.

DATES: The workshop will be held on August 29, 1996. The meeting time is: 8:30 am–5:00 pm or earlier if the business of the workshop is concluded at an earlier time.

ADDRESSES: Holiday Inn & Hotel Suites, 7787 Katy Freeway (I–10 West), Houston, Texas 77024. Telephone 1–800–822–8373 or (713) 681–5000.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Trottier, Office of Nuclear Regulatory Research, Mail Stop T–9C24, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, Telephone: (301) 415–6232.

SUPPLEMENTARY INFORMATION: During the currently ongoing revision of NRC regulations on radiography, 10 CFR Part 34, numerous comments were received from NRC and Agreement State licensees and manufacturers of radiography devices that expressed concerns in regard to § 34.20 of the regulations entitled "Performance requirements for radiography equipment." Many of these comments related to the proposed requirements on accessories, referred to in the regulation as "associated equipment," to the labelling of the various components, and to the modification of radiography devices and components. In addition, the NRC has received and is requesting public comment on a petition for rulemaking filed by Amersham Corporation (61 FR 30837) Docket No. PRM–34–5, that requests that the NRC amend its regulations to remove reference to "associated equipment" from § 34.20. In light of this petition and comments received during the development of the Part 34 final rule, the NRC is re-evaluating the applicability of the standard ANSI N432–1980 to associated equipment.

Conduct of the Meeting: The workshop will be chaired by Cheryl A. Trottier. The workshop will be conducted in a manner that will expedite the orderly conduct of business. A transcript of the workshop will be available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555–0001 on or about September 30, 1996.

The following procedures apply to public attendance at the workshop:

1. Questions or statements from attendees other than participants will be entertained as time permits.

2. Seating for the public will be on a first come, first-served basis.

Dated at Rockville, Maryland on this 10th day of July, 1996.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 96–18006 Filed 7–15–96; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–72–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–8–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all deHavilland DHC–8–100 and –300 series airplanes, that currently requires repetitive inspections to detect loose bolts at the retract actuator support fitting of the main landing gear, and various follow-on actions, if necessary. That AD was prompted by a report of loose actuator supporting bolts and cracks in the relief radius of the boss at the forward surface of the fittings. This action would add a requirement to accomplish a new modification, which, when accomplished, would terminate the repetitive inspections. The actions specified by the proposed AD are intended to prevent loss of hydraulic systems and reduced controllability of the airplane due to loose actuator support bolts or cracks in the relief radius of the boss at the forward surface of the fittings.

DATES: Comments must be received by August 26, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–72–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe and Propulsion Branch, ANE–173, FAA, New York Aircraft Certification Office, Engine and

VOL
61
ISS
137
JL
16
1996
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Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7523; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–72–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–72–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 12, 1991, the FAA issued AD 91–20–12, amendment 39–8046 (56 FR 47901, September 23, 1991), applicable to all de Havilland Model DHC–8–100 and –300 series airplanes. That amendment superseded AD 91–15–51, amendment 39–8016 (56 FR 41928, August 26, 1991), to add de Havilland Model DHC–8–300 series airplanes to the applicability; to require repetitive inspections to detect loose bolts at the retract actuator support fitting of the main landing gear (MLG); and, if necessary, to require a magnetic particle inspection, replacement of loose bolts, and replacement of cracked fittings. That action was prompted by a report of loose actuator supporting bolts and cracks in the relief radius of the boss at the forward surface of the fittings. The requirements of that AD are intended to prevent these conditions, which could result in loss of the hydraulic systems and reduced controllability of the airplane.

In the preamble to AD 91–20–12, the FAA indicated that inspections of the MLG's were considered "interim action" and that further rulemaking action was being considered. As a follow-on action from that determination, the FAA is now proposing additional, final action.

Explanation of Relevant Service Information

Since the issuance of AD 91–20–12, de Havilland has issued Service Bulletin S.B. 8–54–34, Revision 'A', dated July 21, 1995, which describes procedures for modification of the frame and the retraction actuator fitting of the MLG. This modification involves removing the enamel application from the interface surfaces of the frame and fitting.

This modification will allow the bracket to seat properly on the MLG frame and will prevent preload stress in the bracket.

De Havilland has also issued Service Bulletin S.B. 8–54–27, Revision 'B', dated August 22, 1994, which also describes procedures for modification of the frame and the retraction actuator fitting of the MLG. This modification involves installing modified brackets with improved fasteners. This modified bracket incorporates a material change to preclude hydrogen embrittlement cracking.

Accomplishment of these modifications eliminates the need for the repetitive inspections.

Transport Canada Aviation classified these service bulletins as mandatory and issued Canadian airworthiness directive CF–91–25R2 in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Requirements of the Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 91–20–12. The proposed AD would continue to require repetitive inspections to detect loose bolts at the retract actuator support fitting of the MLG; and, if necessary, to require a magnetic particle inspection, replacement of loose bolts, and replacement of cracked fittings. In addition, this new proposed AD would require modification of the frame and the retraction actuator fitting of the MLG, which would constitute terminating action for the repetitive inspection requirements. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Operators should also note that the applicability of the proposed rule differs from the current applicability of AD 91–20–12. The proposed AD would limit the applicability to include only those airplanes having serial numbers 3 through 400 inclusive, except serial number 391. The FAA points out that, during production, Modifications 8/1830 and 8/2049 were installed on Model DHC–8–100 and –300 series airplanes having serial number 400 and subsequent; therefore, these airplanes are not subject to the requirements of this AD.

Differences Between Proposed AD and Relevant Service Information

Operators should note that, unlike the effectivity listing specified in de Havilland Service Bulletin 8–54–27, Revision 'B', dated August 22, 1994, the proposed AD would require that the modification be accomplished on Model DHC–8–100 and –300 series airplanes, serial numbers 3 through 400 inclusive, except serial number 391. The FAA points out that de Havilland inadvertently excluded the serial numbers of some affected airplanes from the effectivity listing of its service bulletin.

Cost Impact

There are approximately 125 de Havilland Model DHC–8–100 and –300 series airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 91–20–12, and retained in this proposed AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures the cost impact on U.S. operators of the actions currently required is estimated to be $7,500, or $60 per airplane.

The installation of modified brackets with new fasteners that would be required by this proposal would take approximately 10 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $3,500 per airplane. Based on these figures, the cost impact of the modification requirement of this proposal on U.S. operators is estimated to be $512,500 or $4,100 per airplane.

The removal of the enamel application (Modification 8/1830) that would be required by this proposal would take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the proposed requirements of this AD is estimated to be $37,500, or $300 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8046 (56 FR 47901, September 23, 1991), and by adding a new airworthiness directive (AD), to read as follows:

De Havilland, Inc.: Docket 95–NM–72–AD, Supersedes AD 91–20–12, Amendment 39–8046.

Applicability: Model DHC–8–100 and –300 series airplanes, serial numbers 3 through 400 inclusive, except serial number 391; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of hydraulic systems and reduced controllability of the airplane due to loose actuator support bolt or cracks in the relief radius of the boss at the forward surface of the fittings, accomplish the following:

(a) For Model DHC–8–100 series airplanes: Within 24 hours after September 9, 1991 (the effective date of AD 91–15–51, amendment 39–8016), inspect the three actuator attachment fitting bolts on the right- and left-hand main landing gears (MLG) to detect loose bolts by applying a torque of not less than 10 foot-pounds to each bolt.

(1) If no loose bolt is found as a result of the inspection required by paragraph (a) of this AD, repeat this inspection thereafter at intervals not to exceed 500 landings.

(2) If any loose bolt is found as a result of the inspection required by paragraph (a) of this AD, accomplish paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this AD.

(i) Prior to further flight, replace the loose bolt with a new bolt of the same part number.

(ii) Within 250 landings after October 7, 1991 (the effective date of 91–20–12, amendment 39–8046) accomplish paragraphs (a)(2)(ii)(A) and (a)(2)(ii)(B) of this AD.

(A) Remove the associated support fitting having part number (P/N) 85410084.

(B) Perform a magnetic particle inspection to detect cracks throughout the fitting, paying particular attention to the relief radius at the forward surface boss. If any crack is detected as a result of this inspection, prior to further flight, replace the fitting with a serviceable part.

(iii) Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 500 landings.

(b) For Model DHC–8–300 series airplanes: Within 250 landings after October 7, 1991 (the effective date of AD 91–20–12, amendment 39–8046), inspect the three actuator attachment fitting bolts on the right- and left-hand MLG's to detect loose bolts by applying a torque of not less than 10 foot-pounds to each bolt.

(1) If no loose bolt is found as a result of the inspection required by paragraph (b) of this AD, repeat this inspection thereafter at intervals not to exceed 500 landings.

(2) If any loose bolt is found as a result of the inspection required by paragraph (a) of this AD, accomplish paragraphs (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) of this AD.

(i) Prior to further flight, replace the loose bolt with a new bolt of the same part number.

(ii) Within 250 landings after October 7, 1991 (the effective date of AD 91–20–12, amendment 39–8046), accomplish (b)(2)(ii)(A) and (b)(2)(ii)(B) of this AD.

(A) Remove the associated support fitting (P/N 85410084 for Model DHC–8–301 airplanes, and P/N 85411701 for Model DHC–8–311 airplanes).

(B) Perform a magnetic particle inspection to detect cracks throughout the fitting, pay particular attention to the relief radius at the forward surface boss. If any crack is detected as a result of this inspection, prior to further flight, replace the fitting with a serviceable part.

(iii) Repeat the inspection required by paragraph (b) of this AD thereafter at intervals not to exceed 500 landings.

(c) Within 90 days after the effective date of this AD, accomplish paragraphs (c)(1) and (c)(2), as applicable, of this AD. Accomplishment of this paragraph constitutes terminating action for the inspections required by paragraphs (a) and (b) of this AD.

(1) For Model DHC–8–100 and –300 series airplanes, having serial numbers 3 through 400 inclusive, except serial number 391: Modify the frame and the retraction actuator fitting of the MLG, in accordance with de Havilland Service Bulletin S.B. 8–54–34, Revision 'A', dated July 21, 1995.

(2) For Model DHC–8–100 and –300 series airplanes, having serial number 3 through 332 inclusive: Modify the retraction actuator fitting of the MLG, in accordance with de Havilland Service Bulletin S.B. 8–54–27, Revision 'B', dated August 22, 1994.

(d) An alternative method of compliance or adjustment of the compliance time that

VOL 61 ISS 137 JL 16 1996

provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch ANM–113.

(e) Special flight permits may be used in accordance with section 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Any loose bolt found as a result of the inspections required by paragraph (a) or (b) of this AD, must be retorqued prior to application for a special flight permit. The upper bold, P/N 81812–7–22, must be retorqued to 36–39 foot-pounds; the lower two bolts, P/N 81812–6–22, must be retorqued to 22–25 foot-pounds.

Issued in Renton, Washington, on July 10, 1996.

Darryll M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–17983 Filed 7–15–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 290

RIN 1076–AD14

Tribal Revenue Allocation Plans

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule; correction.

SUMMARY: This document modifies the preamble to a proposed rule published on June 7, 1996 regarding tribal revenue allocation plans. This correction clarifies that the proposed rule applies prospectively to plans submitted for approval from the effective date of the final rule.

FOR FURTHER INFORMATION CONTACT: Nancy Pierskalla, Management Analyst, Indian Gaming Management Staff Office, at 202–219–4068.

SUPPLEMENTARY INFORMATION: In proposed rule FR Doc 96–14061, beginning on page 29044 in the issue of June 7, 1996, make the following correction:

On page 29045, in the second column, in the first full paragraph, the last sentence is corrected to read as follows: "Previously approved Tribal Revenue Allocation Plans need not be resubmitted for review and approval by the Bureau of Indian Affairs and continue to remain in effect. However, amendments to approved Tribal Revenue Allocation Plans will need to be submitted to the BIA for approval under the proposed regulation."

Dated: July 1, 1996

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–17430 Filed 7–15–96; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 53

[Notice No. 831]

RIN 1512–AB42

Manufacturers Excise Taxes-Firearms and Ammunition (95R–055P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Proposed rule; request for comments on temporary regulations.

SUMMARY: In the Rules and Regulations portion of this **Federal Register**, the Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing temporary regulations to simplify the regulations in 27 CFR Part 53 relating to exemption certificates. The regulations are being revised to give taxpayers the option of using a preprinted document as exemption certificates and vendor(vendee) statements or designing their own certificates and statements using specified information. ATF is requesting comments on the temporary regulations before issuing the final regulations.

DATES: Written comments must be received on or before October 15, 1996.

ADDRESSES: Send written comments to: Chief, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities or impose or otherwise cause an increase in the reporting, recordkeeping or other compliance burdens on a substantial number of small entities. The factual basis for such certification is that this revision does not add any new requirement for reporting or recordkeeping. This revision serves only to clarify and streamline current regulatory requirements. Pursuant to section 7805(f) of the Internal Revenue Code, this proposed regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1329, do not apply to this notice because there are no new reporting or recordkeeping requirements.

Public Participation

ATF requests comments on the proposed regulations from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an

The temporary regulations in this issue of the **Federal Register** amend the regulations in 27 CFR Part 53. For the text of the temporary regulations, see T.D. ATF–360 published in the Rules and Regulations section of this issue of the **Federal Register**.

Drafting Information

The author of this document is Mary Lou Blake, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Signed: May 30, 1996.

Bradley A. Buckles,

Acting Director.

Approved: June 10, 1996.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 96–17997 Filed 7–15–96; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–075–FOR]

West Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed Rule; reopening of comment period.

SUMMARY: OSM is reopening the pubic comment period on a proposed amendment to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises the West Virginia Surface Mining Reclamation Regulations concerning topsoil substitutes. The amendment is intended to improve the effectiveness of the West Virginia program.

DATES: Written comments must be received on or before 4:00 p.m. on July 31, 1996.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. James C. Blankenship, Jr., Director, Charleston Field Office at the address listed below. Copies of the proposed amendment are available for inspection Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting the OSM Charleston Field Office.

Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301 Telephone: (304) 347–7158

West Virginia Division of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0515

In addition, copies of the proposed amendment are available for inspection during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office; Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. Background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of the approval can be found in the January 21, 1981, **Federal Register** (46 FR 5915–5956). Subsequent actions concerning the West Virginia program and previous amendments are codified at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Discussion of the Proposed Amendment

By letter dated April 2, 1996 (Administrative Record Number WV–1024), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to its approved permanent regulatory program

§ 38–2–14.3(c) concerning topsoil substitutes was inadvertently omitted from that notice. Therefore, OSM is reopening the public comment period only on the following proposed amendment.

Section 38–2–14.3(c)(2) is amended by adding the word "reasonably" immediately following the word "best." As amended, subsection (c)(2) reads as follows: "The resulting soil medium is the best reasonably available in the permit area to support vegetation; and."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on the proposed amendment submitted by the State of West Virginia to its permanent regulatory program. Specifically, OSM is seeking comments on the revision to the State's regulations that was submitted on April 2, 1996 (Administrative Record No. WV–1024), and is identified above. Comments should address whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the West Virginia program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this notice and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary, and OMB regulatory review is not required.

Executive Order 12988

VOL
61
ISS
137
JL
16
1996
UMI

are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 8, 1996.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 96–17964 Filed 7–15–96; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AH89

VA Homeless Providers Grant and Per Diem Program Clarification of Per Diem Eligibility

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: It is proposed to amend the regulations implementing the VA Homeless Providers Grant and Per Diem Program concerning per diem assistance by: Establishing more detailed criteria for determining which entities are eligible for obtaining per diem assistance; establishing a priority for funding eligible entities; clarifying the requirements for continued receipt of per diem payments; and clarifying the maximum amount payable for per diem assistance. The proposal is designed to ensure that the appropriate entities receive the appropriate amount of per diem assistance under fair and objective procedures. This document also proposes to obtain approval of collection of information provisions concerning applicants for grants and per diem.

DATES: Comments must be received on or before September 16, 1996.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Room 1154, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AH89." All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Roger Casey, VA Homeless Providers Grant and Per Diem Program, Mental Health and Behavioral Sciences Service (111C1E), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420; (202) 273–8442. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: It is proposed to amend the regulations implementing VA's Homeless Providers Grant and Per Diem Program (38 CFR part 17.700) concerning per diem assistance by: (1) Establishing more detailed criteria for determining which entities are eligible for obtaining per diem assistance; (2) establishing a priority for funding eligible entities; (3) clarifying the requirements for continued receipt of per diem payments; and (4) clarifying the maximum amount payable for per diem assistance. These regulations were established pursuant to Homeless Veterans Comprehensive Services Act of 1992 (Pub. L. 102–590, as amended by Pub. L. 104–110). The regulations set forth provisions to assist public or non-profit private entities in establishing new programs to furnish supportive services and supportive housing for homeless veterans through grants. The regulations also provide for per diem payments, or in-kind assistance in lieu of per diem payments, to entities that are receiving grants or to entities eligible to receive a grant that established supportive services or a supportive housing program for homeless veterans after November 10, 1992.

Some homeless veterans service providers have informed us they understood the regulations allowed only grant recipients to apply for per diem assistance. However, neither the Act nor the regulations limit per diem assistance to grant recipients. Nevertheless, the Act does limit per diem assistance to entities that meet basic criteria applicable to grant recipients. "Eligible entity" under the Act means a public or nonprofit private entity that: Has the capacity to effectively administer a grant under the Act; demonstrates that adequate financial support will be available to carry out the project for which the grant is sought; and agrees to meet the applicable criteria and requirements of the grant program. Grant program criteria and requirements applicable to the receipt of per diem include: Targeting the homeless veteran population; coordinating with the community; providing the needed services; and establishing a project plan that details the goals that will be used in evaluating participants' progress as well as program successes with increasing veterans' residential stability, skill and/or income level, and self determination. It is proposed to subject per diem applicants to these criteria. It appears this would ensure that the entities awarded per diem assistance would have the necessary standards of quality required to comply with the Act. Further, it is proposed that per diem applicants be required to score a minimum of 500 points on the per diem portions of the Grant/Per Diem application. This minimum eligibility score is proportional to the minimum 600 points required for grant eligibility. The remaining criteria and requirements of the grant program pertain to construction, property acquisition, leveraging resources, vehicle acquisition, etc., which are not applicable to per diem.

Additionally, the rule would clarify that non-grant recipients' programs that are not scored under per diem criteria, and grant recipients' programs that are not established as a result of grant funding, would not receive per diem payments.

It is also proposed to establish a priority for funding and criteria for ranking per diem applicants. Under the proposal, per diem assistance would first be awarded to supportive housing or supportive service center grant recipients that request per diem and that receive a sufficient ranking based on a cumulative score on portions of the Grant/Per Diem application pertaining to per diem assistance. It is proposed that if funding is still available, a Notice of Funding Availability (NOFA) would be published in the **Federal Register** and applications would be accepted from non-grant recipients. Also, the proposal provides that per diem would be awarded to those non-grant recipients who are deemed eligible entities and who receive a sufficient ranking based on the application. It appears that this method of prioritizing would help ensure success of the entities receiving grant funds for supportive housing and supportive service centers while still providing for consideration of non-grant recipients. In evaluating grant recipients and non-grant recipients, scores would be ranked from highest to lowest and funds would be allocated on the basis of rank from highest to lowest until funds are expended. Under this proposal those non-grant recipient entities that have already submitted a request for recognition of eligibility, prior to the issuance of this amendment, would need not submit a second request but would be expected to follow the proposed requirements for application. Those grant recipients that have received a grant prior to this amendment and have not received per diem payments, would be asked to submit a request for recognition of eligibility to initiate scoring of the per diem relevant portions of their grant application.

It is also proposed to clarify the requirements for continued receipt of per diem payments. To help ensure the quality of per diem recipients' programs, VA would require recipients to maintain their programs so that they would score the minimum number of points required on per diem relevant sections of the Grant/Per Diem application. Under the proposal, VA would ensure compliance by conducting inspections and would provide an opportunity to challenge a VA decision to terminate per diem payments for a recipient's failure to comply with requirements prior to the actual termination of payments.

The legislative history of the Act indicates that it was Congress' intent that per diem rates for the Homeless Providers Grant and Per Diem Program not be more generous than per diem rates under the State Home Program to avoid creating an incentive for states to participate in the Homeless Providers Grant and Per Diem Program instead of expanding and/or continuing participation in the State Home Program. Further, the Act limits per diem payments to one half the recipients' cost of providing services supported by such payments. Therefore, to better reflect the intent of Congress, it is proposed to clarify in the rule that the maximum per diem rate for supportive housing under the Homeless Providers Grant and Per Diem Program will be the prevailing State Home per diem rate for domiciliary care or one-half the cost of providing this service, whichever is less. Additionally, it is proposed to revise the rule so it is clear that this "maximum" amount is in fact a fixed rate and VA will not pay less than this rate unless prevented from doing so by budget constraints.

Non-substantive changes also are proposed for purposes of organization and clarity.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

This collection of information included in 38 CFR 17.710 through 17.714 and §§ 17.717 through 17.719 concerns an application for public or nonprofit private entities to establish new programs to furnish supportive services and supportive housing for homeless veterans through grants of up to 65 percent of the cost to construct, expand, remodel or alter existing buildings; to acquire facilities; or to procure vans to provide transportation for and support outreach to homeless veterans and to provide per diem payments for those veterans determined eligible for such payments by the Department of Veterans Affairs. Provisions concerning per diem are explained above in this preamble. Provisions concerning grants are already set forth in 38 CFR and are restated in the regulatory text portion of this document.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collection(s) of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and;
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the proposed collections of information contained in this document between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Title: Application for VA homeless providers grant and per diem program.

Summary of collection of information: The Department requires the applicant for grants and/or per diem to submit information that assists in the

VOL
61
ISS
137
JL
16
1996
UMI

determination of funds to be awarded. The requested information addresses the ability of the organization to effectively administer a program and requires the organization to demonstrate the quality of the project, how the homeless veteran will be targeted, the need for the proposed program, the coordination with other agencies, and the project's cost effectiveness.

Description of the need for information and proposed use of information: The Department is required to assess organizations' projects and fund those that most appropriately meet the needs of homeless veterans as determined by the rules of the program. This collection of information will be used to rank various projects and award those most likely to meet intent of the statute.

Description of likely respondents: public or non-profit private entities providing supportive services and supportive housing for homeless veterans.

Estimated total annual reporting burden for grants: *5,000* hours.

Estimated total annual reporting burden for per diem: *2,500* hours.

The estimated annual burden per respondent for grants: *50* hours.

The estimated annual burden per respondent for per diem: *50* hours.

Estimate number of respondents for grants: *100*.

Estimate number of respondents for per diem: *50*.

Estimate annual frequency of responses for grants: *1*

Estimate annual frequency of responses for per diem: *1*

Regulatory Flexibility Act

The Secretary hereby certifies that the provisions of the proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602. In all likelihood, only similar entities that are small entities would participate in the Homeless Providers Grant and Per Diem Program, therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

The Catalog of Federal Domestic Assistance program number is 64.024.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and record-keeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: June 26, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 17 is proposed to be amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 is revised to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

§ 17.700 [Amended]

2. In § 17.700, paragraph (a) is amended by removing "17.715(a)" and adding, in its place, "17.716".

3. Sections 17.710 through 17.719 are revised to read as follows:

§ 17.710 Application requirements.

(a) *General.* Applications for grants must be submitted in the form prescribed by VA in the application package, must meet the requirements of this part, and must be submitted within the time period established by VA in the notice of fund availability under § 17.708 of this part. The application packet includes exhibits to be prepared and submitted as part of the application process, including:

(1) Justification for the project by addressing items listed in § 17.711(c) of this part;

(2) Site description, design, and cost estimates;

(3) Documentation on eligibility to receive assistance under this part;

(4) Documentation on matching funds committed to the projects;

(5) Documentation on operating budget and cost sharing;

(6) Documentation on supportive services committed to the project;

(7) Documentation on site control and appropriate zoning, and on the boundaries of the area or community proposed to be served;

(8) Applicants who are States must submit any comments or recommendations by appropriate State (and area wide) clearinghouses pursuant to E.O. 12372 (3 CFR, 1982 Comp., p. 197); and

(9) Reasonable assurances with respect to receipt of assistance under this part that:

(i) The project will be used principally to furnish to veterans the level of care for which such application is made; that not more than 25 percent of participants at any one time will be non-veterans; and that such services will meet standards prescribed by VA;

(ii) Title to such site or van will vest solely in the applicant;

(iii) Each recipient will keep those records and submit those reports as VA may reasonably require, within the time frames required; and give VA, upon demand, access to the records upon which such information is based; and

(iv) Adequate financial support will be available for the purchase of the van or completion of the project, and for its maintenance, repair and operation.

(b) *Pre-award expenditures.* Costs incurred for a project after the date the Department of Veterans Affairs notifies an applicant that the project is feasible for VA participation are allowable costs if the application is approved and the grant is awarded. These pre-award expenditures include architectural and engineering fees. Such notification occurs when VA requests information for the second submission portion of the application.

§ 17.711 Rating criteria for applications.

(a) *General.* Applications will be assigned a rating score and placed in ranked order, based upon the criteria listed in paragraphs (b) through (d) of this section.

(b) *Threshold review.* Applicants will undergo a threshold review prior to rating and ranking, to ensure they meet the following:

(1) *Form, time, and adequacy.* Applications must be filed in the form prescribed by VA in the application process and within the time established in the NOFA.

(2) *Application eligibility.* The applicant and project sponsor, if relevant, must be eligible to apply for the specific program.

(3) *Eligible population to be served.* The population proposed to be served must be homeless veterans and meet other eligibility requirements of the specific program.

(4) *Eligible activities.* The activities for which assistance is requested must be eligible for funding under this part (e.g., new programs or new components of existing programs).

(5) *Outstanding audit findings.* No organization that receives assistance may have an outstanding obligation to VA that is in arrears or for which a payment schedule has not been agreed to, or whose response to an audit is overdue or unsatisfactory.

(c) *Rating and ranking of first submission.* Applicants that pass the threshold review will then be rated using the eight selection criteria listed in paragraph (c)(1) through (c)(8) of this section. Applicants must receive at least 600 points (out of a possible 1,200) and must receive points under criteria 1, 2, 3, 4, and 8. Applicants that are applying as an innovative supportive housing project must achieve points under the innovative quality of the proposal criterion.

(1) Quality of the project—300 points.

(2) Targeting to persons on streets and in shelters—150 points.

(3) Ability of the applicant to develop and operate a project—200 points.

(4) Need for the type of project proposed in the area to be served—150 points.

(5) Innovative quality of the proposal—50 points.

(6) Leveraging—50 points.

(7) Cost effectiveness—100 points.

(8) Coordination with other programs—200 points.

(d) *Selection criteria*—(1) *Quality of the project.* VA will award up to 300 points based on the extent to which the application presents a clear, well-conceived and thorough plan for assisting homeless veterans achieve residential stability, increased skills and/or income, and more influence over decisions that affect their lives. Higher ratings will be assigned to those applications that clearly describe:

(i) How program participants will achieve residential stability, including how available supportive services will help participants reach this goal;

(ii) How program participants will increase their skill level and/or income, including how available supportive services will help participants reach this goal;

(iii) How program participants will be involved in making project decisions that affect their lives, including how they will be involved in selecting supportive services, establishing individuals goals and developing plans to achieve these goals so that they achieve greater self determination;

(iv) How permanent affordable housing will be identified and made available to participants upon leaving the transitional housing, and how participants will be provided necessary follow-up services to help them achieve stability in the permanent housing;

(v) How the service needs of participants will be assessed on an ongoing basis;

(vi) How the proposed housing, if any, will be managed and operated;

(vii) How participants will be assisted in assimilating into the community through access to neighborhood facilities, activities and services;

(viii) How and when the progress of participants toward meeting their individuals goals will be monitored and evaluated;

(ix) How and when the effectiveness of the overall project in achieving its goals will be evaluated and how program modifications will be made based on those evaluations; and

(x) How the proposed project will be implemented in a timely fashion.

(2) *Targeting to persons on streets and in shelters.* VA will award up to 150 points based on:

(i) The extent to which the project will serve homeless veterans living in places not ordinarily meant for human habitation (e.g., streets, parks, abandoned buildings, automobiles, under bridges, in transportation facilities) and those who reside in emergency shelters; and

(ii) The likelihood that proposed plans for outreach and selection of participants will result in these populations being served.

(3) *Ability of applicant to develop and operate a project.* VA will award up to 200 points based on the extent to which those who will be involved in carrying out the project have experience in activities similar to those proposed in the application. Rating will be assigned based on the extent to which the application demonstrates experience in the following areas:

(i) Engaging the participation of homeless veterans living in places not ordinarily meant for human habitation and in emergency shelters;

(ii) Assessing housing and relevant supportive service needs of homeless veterans;

(iii) Accessing housing and relevant supportive service resources;

(iv) If applicable, contracting for and/or overseeing the rehabilitation or construction of housing;

(v) If applicable, administering a rental assistance program;

(vi) Providing supportive services for homeless veterans;

(vii) Monitoring and evaluating the progress of persons toward meeting their individual goals; and

(viii) Evaluating the overall effectiveness of a program and using evaluation results to make program improvements.

(4) *Need.* VA will award up to 150 points based on the applicant's demonstrated understanding of the needs of the specific homeless veteran population proposed to be served in the specified area or community. Ratings will be made based on the extent to which applicants demonstrate:

(i) Substantial unmet needs, particularly among the target population who are living in places not ordinarily meant for human habitation (e.g., streets) and in emergency shelters, based on reliable data from surveys of homeless populations, a Comprehensive Housing Affordability Strategy (CHAS), or other reports or data gathering mechanisms that directly support claims made;

(ii) An understanding of the homeless population to be served and its unmet housing and supportive service needs.

(5) *Innovative quality of the proposal.* Applicants who have indicated in their application that they are applying under the innovative supportive housing component must receive points under this criteria to be eligible for award. VA will award up to 50 points based on the innovative quality of the proposal, when compared to other applications and projects; in terms of:

(i) Helping homeless veterans or homeless veterans with disabilities to be served to reach residential stability, increase their skill level and/or income and increase the influence they have over decisions that affect their lives; and

(ii) A clear link between the innovation(s) and its proposed effect(s); and

(iii) Its ability to be used as a model for other projects.

(6) *Leveraging.* VA will award up to 50 points based on the extent to which resources from other public and private sources, including cash and the value of third party contributions, have been committed to support the project at the time of application. Any applicant who wishes to receive points under this criterion must submit documentation of leveraged resources which meets the requirements stated in the application. This is optional; applicants who cannot, or choose not to, provide firm documentation of resources as part of the application will forego any points for leveraging.

(7) *Cost effectiveness.* VA will award up to 100 points for cost effectiveness. Projects will be rated based on the cost and number of new supportive housing beds made available or the cost, amount and types of supportive services made available, when compared to other transitional housing and supportive services projects, and when adjusted for high cost areas. Cost effectiveness may include using excess government properties (local, State, Federal), as well as demonstrating site control at the time of application.

(8) *Coordination with other programs.* VA will award up to 200 points based on the extent to which applicants demonstrate that they have coordinated with Federal, State, local, private and other entities serving homeless persons in the planning and operation of the project. Such entities may include

VOL 61 ISS 137 JL 16 1996 UMI

shelter, transitional housing, health care, or social service providers; providers funded through Federal initiatives; local planning coalitions or provider associations; or other programs relevant to the local community. Applicants are required to demonstrate that they have coordinated with the VA medical care facility of jurisdiction and VA Regional Offices of jurisdiction in their area. Higher points will be given to those applicants that can demonstrate that:

(i) They are part of an ongoing community-wide planning process which is designed to share information on available resources and reduce duplication among programs that serve homeless veterans;

(ii) They have consulted directly with other providers regarding coordination of services for project participants. VA will award up to 50 points of the 200 points for this criterion based on the extent to which commitments to provide supportive services are available at the time of application. Applicants who wish to receive points under this optional criterion must submit documentation of supportive service resources.

§ 17.712 Selecting applications.

(a) *General.* The highest-ranked applications will be conditionally selected in accordance with their ranked order, as determined under § 17.711 of this part. Each will be requested, as necessary, to provide additional project information, as described in § 17.713 of this part, as a prerequisite to a grant from VA.

(b) *Ties between applicants.* In the event of a tie between applicants, VA will use the selection criterion in § 17.711(d)(4) of this part, need for the type of project proposed in the area to be served, to determine which application should be selected for potential funding.

(c) *Procedural error.* If an application would have been selected but for a procedural error committed by VA, VA will select that application for potential funding when sufficient funds become available if there is no material change in the information that resulted in its selection. A new application will not be required for this purpose.

§ 17.713 Obtaining additional information and awarding grants.

(a) *Additional information.* Applicants who have been conditionally selected will be requested by VA to submit additional project information, as described in the second submission of the application, which may include:

(1) Documentation to show that the project is feasible.

(2) Documentation showing the sources of funding for the project and firm financing commitments for the march described in § 17.706.

(3) Documentation showing site control, as described in § 17.731.

(4) Information necessary for VA to ensure compliance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*), as described in § 17.714.

(5) A site survey performed by a licensed land surveyor. A description of the site shall be submitted noting the general characteristics of the site. This should include soil reports and specifications, easements, main roadway approaches, surrounding land uses, availability of electricity, water and sewer lines, and orientation. The description should also include a map locating the existing and/or new buildings, major roads, and public services in the geographic area. Additional site plans should show all site work including property lines, existing and new topography, building locations, utility data, and proposed grades, roads, parking areas, walks, landscaping, and site amenities.

(6) Design development (35 percent) drawings.

(i) The applicant shall provide to VA one set of sepias and two sets of prints, rolled individually per set, to expedite the review process. The drawing shall indicate the designation of all spaces, size of the areas and rooms and indicate in outline the fixed and moveable equipment and furniture. The drawings shall be drawn at ⅛" or ¼" scale. Bedroom and toilet layouts, showing clearances and Uniform Federal Accessibility Standards requirements, should be shown at ¼" scale. The total floor and room areas shall be shown in the drawings. The drawings shall include:

(A) A plan of any proposed demolition work;

(B) A plan of each floor. For renovation, the existing conditions and extent of new work should be clearly delineated;

(C) Elevations;

(D) Sections and typical details;

(E) Roof plan;

(F) Fire protection plans; and

(G) Technical engineering plans, including structural, mechanical, plumbing, and electrical drawings.

(ii) If the project involves acquisition, remodeling, or renovation, the applicant should include the current as-built site plan, floor plans and building sections which show the present status of the building and a description of the building's current use and type of construction.

(7) Design development outline specifications. The applicant shall provide eight copies of outline specifications which shall include a general description of the project, site, architectural, structural, electrical and mechanical systems such as elevators, air conditioning, heating, plumbing, lighting, power, and interior finishes (floor coverings, acoustical material, and wall and ceiling finishes).

(8) Design development cost estimates. The applicant shall provide three copies of cost estimates showing the estimated cost of the buildings or structures to be acquired or constructed in the project. Cost estimates should list the cost of construction, contract contingency, fixed equipment not included in the contract, movable equipment, architect's fees and construction supervision and inspection.

(9) A design development conference. After VA reviews design development documents, a design development conference may be recommended in order to provide applicants and their architects an opportunity to learn VA procedures and requirements for the project and to discuss VA review comments.

(10) Such other documentation as specified by VA in writing to the applicant, that confirms or clarifies information provided in the application.

(b) *Receipt of additional information.* The required additional information must be received in acceptable form within the time frame established by VA in a notice of fund availability published in the **Federal Register**. VA reserves the right to remove any proposed project from further consideration for grant assistance if the required additional project information is not received in acceptable form by the established deadline.

(c) *Grand award.* Following receipt of the additional information in acceptable form (and, where applicable, provided that the environmental review described in § 17.714 indicates that the proposed project is environmentally acceptable to VA), to the extent funds are available VA will approve the application and send a grant agreement for execution to the applicant.

§ 17.714 Environmental review requirements.

(a) *Generally.* Project selection is subject to completion of an environmental review of the proposed site, and the project may be modified or the site rejected as a result of that review. The environmental effects must be assessed in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) (NEPA) as implemented pursuant to the Council on Environmental Quality's applicable regulations (40 CFR parts 1500–1508) and VA's applicable implementing regulations (38 CFR part 26).

(b) *Responsibility for review.* (1) VA will perform the environmental review, in accordance with part 26 of this title, for conditionally selected applications received directly from private nonprofit organizations and governmental entities with special or limited purpose powers. VA is not permitted to approve such applications prior to its completion of this review. Because of time constraints, any application subject to environmental review by VA that requires an Environmental Impact Statement (EIS) (generally, an application that VA determines would result in a major Federal action significantly affecting the quality of the human environment in accordance with the environmental assessment procedures (at 38 CFR part 26) will not be eligible for assistance under this part.

(2) Applicants that are States, metropolitan cities, urban counties, Indian tribes, or other governmental entities with general purpose powers shall include environmental documentation for the project by submitting information establishing a Categorical Exclusion (CE), a proposed Environmental Assessment (EA), or a proposed Environmental Impact Statement (EIS). The environmental documentation will require approval by VA before final award of a construction or acquisition grant under this part. (See 38 CFR 26.6 for compliance requirements.) If the proposed actions involving construction or acquisition do not individually or cumulatively have a significant effect on the human environment, the applicant shall submit a letter noting a CE. If construction outside the walls of an existing structure will involve more than 75,000 gross square feet (GSF), the application shall include an EA to determine if an EIS is necessary for compliance with section 102(2)(c) of the National Environmental Policy Act 1969. When the application submission requires an EA, the State shall briefly describe the possible beneficial and/or harmful effect which the project may have on the following impact categories:

(i) Transportation;

(ii) Air quality;

(iii) Noise;

(iv) Solid waste;

(v) Utilities;

(vi) Geology (soils/hydrology/flood plains);

(vii) Water quality;

(viii) Land use;

(ix) Vegetation, wildlife, aquatic, and ecology/wetlands;

(x) Economic activities;

(xi) Cultural resources;

(xii) Aesthetics;

(xiii) Residential population;

(xiv) Community services and facilities;

(xv) Community plans and projects; and

(xvi) Other.

(3) If an adverse environmental impact is anticipated, the action to be taken to minimize the impact should be explained in the EA. An entity covered by this section that believes that it does not have the legal capacity to carry out the responsibilities required by 38 CFR part 26 should contact the VA Homeless Providers Grant and Per Diem Program, Mental Health and Behavioral Sciences Service (111C), U.S. Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

§ 17.715 Aid for supportive services and supportive housing.

(a) *Per diem payments.* Aid in the form of per diem payments may be paid to an entity meeting the requirements of the regulations of this part under the heading "VA Homeless Providers Grant and Per Diem Program," including the specific criteria of § 17.716, if:

(1) VA referred the homeless veteran to a recipient of a grant under this part (or entity eligible for such a grant as described in § 17.716); or

(2) VA authorized the provision of supportive services or supportive housing for the homeless veteran.

(b) *In-kind assistance.* In lieu of per diem payments under this section, VA may, with approval of the grant recipient (or entity eligible for such a grant as described in § 17.716), provide in-kind assistance through the services of VA employees and the use of other VA resources, to a grant recipient (or entity eligible for such a grant as described in § 17.716).

(c) *Selection of per diem applicants.* In awarding per diem assistance, applications from grant recipients and non-grant recipients will be reviewed and ranked separately. Funds will first be awarded to grant recipients who request such assistance. If funds are still available for non-grant recipients, VA will announce funding through a Notice of Funding Availability (NOFA) process as described in § 17.708. VA will not award any per diem payments when doing so would decrease funding to those entities already receiving such payments. For both grant recipients and non-grant recipients, eligibility will be determined by the criteria described in § 17.716, and applications will be ranked according to scores achieved on the portions of the application described in § 17.716(b)(4). Applicants must score a minimum of 500 points on these portions to be eligible for per diem. Those applicants that meet the eligibility criteria will be conditionally selected for per diem assistance. Funds will be allocated to the highest ranked conditionally selected applicants in descending order until funds are expended. Payments will be contingent upon meeting the requirements of a site inspection conducted by VA pursuant to § 17.721.

(d) *Continued receipt of per diem assistance.* (1) Continued receipt of per diem assistance for both grant recipients and non-grant recipients will be contingent upon maintaining the program for which per diem is provided so that it would score at least the required minimum 500 points as described in § 17.716(b)(4) on the application. VA will ensure compliance by conducting inspections as described in § 17.721.

(2) Where the recipient fails to comply with paragraph (d)(1) of this section, VA will issue a notice of the Department's intent to discontinue per diem payments. The recipient will then have 30 days to submit documentation demonstrating why payments should not be terminated. After review of any such documentation, VA will issue a final decision on termination of per diem payment.

(3) Continued payment is subject to availability of funds. When necessary due to funding limitations, VA will, in proportion to the decrease in funding available, decrease the per diem payment for each authorized veteran.

(Authority: 38 U.S.C. 501, 7721, note)

§ 17.716 Eligibility to receive per diem payments.

An entity must be formally recognized by VA as eligible to receive per diem payments under this section before per diem payments can be made for the care of homeless veterans, except that per diem payments may be made on behalf of a veteran up to three days prior to this recognition.

(a) A grant recipient will be eligible if it receives the minimum score as described in paragraph (b)(4) of this section.

(b) A non-grant recipient will be eligible if it is an entity eligible to

VOL 61 ISS 137 JUL 16 1996 UMI

receive a grant, which for the purposes of this section means:

(1) At least 75 percent of persons who are receiving supportive services or supportive housing from the entity are veterans who may be included in computation of the amount of aid payable from the Department of Veterans Affairs;

(2) The supportive services or supportive housing program for which per diem payments is requested was established after November 10, 1992;

(3) The entity is a public or nonprofit private entity; and

(4) The entity scores at least 500 cumulative points on the following sections of the Grant/Per Diem application: Quality (1); Targeting (2); Ability (3); Description of Need (4); and Coordination with Other Programs (8). These sections correspond to the selection criteria of § 17.711(c).

(c) For grant recipients, only those programs that provide supportive services or supportive housing (or the portions thereof) created with grant funds will be considered for per diem assistance. For non-grant recipients, only those portions of the supportive services or supportive housing described in the application will be considered for per diem assistance.

(Authority: 38 U.S.C. 501, 7721, note)

§ 17.717 Request for recognition of eligibility.

(a) Requests for recognition of eligibility may be addressed to the VA Homeless Providers Grant and Per Diem Programs; Mental Health and Behavioral Sciences Service (111C), U.S. Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

(b) For non-grant recipients, the receipt of application for per diem will constitute the request for recognition of eligibility. Grant recipients seeking per diem assistance will indicate this request on the application. Grant recipients are not required to complete a separate application for per diem assistance. VA will review those portions of the grant application that pertain to per diem. Those entities already receiving a grant must submit a request for recognition to initiate the scoring of their application for per diem payments.

(Authority: 38 U.S.C. 501, 7721, note)

§ 17.718 Approval of annexes and new facilities.

Separate applications for recognition must be filed for any annex, branch, enlargement, expansion, or relocation of the site of service provision of an eligible entity's facility which is not on the same or contiguous grounds on which the parent facility is located. When an eligible entity establishes sites which have not been inspected and approved by VA, a request for separate approval of such sites must be made. The prohibitions in § 17.720 are also applicable to applications for aid on behalf of any veterans cared for in a new annex, branch or enlarged, expanded or relocated facility.

§ 17.719 Amount of aid payable.

The per diem amount payable for supportive housing is the current VA State Home Program per diem rate for domiciliary care as set forth in 38 U.S.C. 1741. The per diem amount payable for supportive services, not provided in conjunction with supportive housing, is $1.10 for each half-hour during which supportive services are provided up to $17.60 per day. These rates will be paid provided, however, the per diem amount for supportive housing or supportive services (not provided in conjunction with supportive housing) do not exceed one-half of the cost to the per diem recipient of providing the services. Also, provided further, per diem payment for supportive housing and supportive services may be lessened because of budget restrictions as described in § 17.715(d)(3). Per diem payments may not be paid for a veteran for both supportive housing and supportive services (not in conjunction with supportive housing).

(Authority: 38 U.S.C. 501, 7721, note)

§ 17.720 [Amended]

4. In § 17.720, paragraphs (a) introductory text, (a)(1), and (a)(2) are amended by removing "17.715(a)" and adding, in their place, "17.716".

[FR Doc. 96–17836 Filed 7–15–96; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA52–2–7156; FRL–5538–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; extension of the comment period.

SUMMARY: EPA is reopening the comment period for a proposed rule published on April 9, 1996 (61 FR 15744). In the April 9, 1996 proposed rule, EPA proposed to approve reasonably available control technology (RACT) requirements for 21 Pennsylvania sources of volatile organic compounds (VOC's) or nitrogen oxides (NO_X). At the request of the Pennsylvania Power Company, EPA is reopening the comment period through August 2, 1996 only as it pertains to the RACT determinations for the Pennsylvania Power-New Castle plant and International Paper-Hammermill Division. (The comment period had been previously extended through June 28, 1996 (61 FR 29508).) All comments received on or before August 2, 1996, including those received between the close of the comment period on June 28, 1996 and the publication of this document, will be entered into the public record and considered by EPA before taking final action on the proposed rule.

DATES: Comments are now due on or before August 2, 1996.

ADDRESSES: Comments may be mailed to Kathleen Henry, Acting Chief, Ozone and Mobile sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl at the EPA Region III address listed above, (215) 566–2180, or via e-mail at stahl.cynthia@epamail.epa.gov pertaining to the reopening for the comment period for the Pennsylvania Power-New Castle and International Paper-Hammermill RACT determinations.

Dated: July 3, 1996.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 96–18039 Filed 7–15–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

RIN 1090–AA29 and 1090–AA43

Natural Resource Damages Assessments—Type B Procedures

AGENCY: Department of the Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of the Interior is revising the regulations for assessing natural resource damages resulting from a release or discharge of a hazardous substance in compliance with a statutory biennial review requirement and a court remand. The regulations provide procedures that Federal, State, and Tribal natural resource trustees may use to develop plans for restoring injured natural resources and to determine appropriate compensation due from potentially responsible parties. The regulations include an administrative process for conducting assessments as well as two types of technical procedures for the actual quantification of injuries and damages. "Type A" procedures are standard procedures for simplified assessments requiring minimal field observation in cases of minor discharges or releases in certain environments. "Type B" procedures are procedures for detailed assessments in other cases. This document solicits comment on potential revisions to the administrative process and the type B procedures in light of recently promulgated natural resource damage assessment regulations for oil discharges.

DATES: Comments will be accepted through September 16, 1996.

ADDRESSES: Comments should be sent in duplicate to the Office of Environmental Policy and Compliance, ATTN: NRDA Rule—Type B, Mail Stop 2340, Department of the Interior, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mary C. Morton at (202) 208–3302.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This document solicits comment on the revision of regulations for assessing natural resource damages for releases or discharges of hazardous substances. The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*) (CERCLA) provides that certain categories of persons, known as potentially responsible parties (PRPs), are liable for natural resource damages when a release of a hazardous substance has resulted in injury to, destruction of, or loss of natural resources. 42 U.S.C. 9607(a). Natural resource damages fund restoration, replacement, or acquisition of the equivalent of the injured natural resources. 42 U.S.C. 9607(f)(1).

Only those Federal, State, and Tribal officials designated as natural resource trustees may recover natural resource damages. CERCLA defines "State" to include:

> The District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction. 42 U.S.C. 9601(27).

Trustees may recover damages for those natural resource injuries that are not fully remedied by response actions as well as the public interim losses from the date of the release until the injured natural resources have fully recovered or been restored. Trustees may also recover the reasonable costs of assessing natural resource damages.

CERCLA requires the President to promulgate regulations for the assessment of natural resource damages under CERCLA and the Clean Water Act (33 U.S.C. 1251 et seq.) (CWA). 42 U.S.C. 9651(c)(1). CWA provides authority for Federal and State trustees to recover natural resource damages resulting from discharges of hazardous substances into navigable waters. 33 U.S.C. 1321(f)(4) and (5).

The regulations must identify the "best available" procedures for assessing natural resource damages. 42 U.S.C 9651(c)(2). CERCLA requires that the natural resource damages assessment regulations include two types of assessment procedures. "Type A" procedures are "standard procedures for simplified assessments requiring minimal field observation." 42 U.S.C. 9651(c)(2)(A). "Type B" procedures are "alternative protocols for conducting assessments in individual cases." 42 U.S.C. 9651(c)(2)(B). If trustees and PRPs fail to reach settlement, Federal and State trustees who performed their assessments in accordance with the natural resource damage assessment regulations will receive a rebuttable presumption in litigation of their claims. 42 U.S.C. 9607(f)(2)(C). The President delegated the responsibility for promulgating the natural resource damages assessment regulations to the Department of the Interior (the Department). E.O. 12316, as amended by E.O. 12580.

Hazardous Substance Regulations

The Department has issued regulations that provide an administrative process for conducting natural resource damages assessments as well as technical type A and type B procedures for the actual quantification of injuries and damages resulting from hazardous substance releases and discharges. The Department recently published a final rule containing two type A procedures—one for minor releases and discharges in coastal and marine environments and the other for minor releases and discharges in the Great Lakes. 61 FR 20560 (May 7, 1996). In *State of Ohio* v. *United States Department of the Interior*, 880 F.2d 432 (D.C. Cir. 1989) (*Ohio* v. *Interior*), the U.S. Court of Appeals for the D.C. Circuit vacated and remanded portions of the original administrative process and the type B procedures that were issued in 1986. On March 25, 1994, the Department published a final rule in response to the *Ohio* v. *Interior* remand. 59 FR 14261. This final rule is currently being challenged in *Kennecott Utah Copper Corp.* v. *United States Department of the Interior*, No. 93–1700 and consolidated cases (D.C. Cir.).

The March 25, 1994, rule addressed all but one issue in the *Ohio* v. *Interior* remand—the calculation of damages for interim lost nonuse values. The Department's regulations currently provide that trustees can recover from PRPs the cost of implementing a publicly reviewed plan for restoring, rehabilitating, replacing, and/or acquiring the equivalent of the natural resources injured by a hazardous substance release or discharge. The regulations also authorize trustees to recover the economic values lost by the public pending restoration or recovery of the injured resources. These values are known as "compensable values" and may include "use" and "nonuse" values, if they can be reliably calculated. Trustees must eventually determine how to spend damages recovered for compensable values on restoration actions but only after the assessment has been completed and the funds have been recovered.

On May 4, 1994, the Department published a notice of proposed rulemaking concerning the reliability of calculating nonuse values using the contingent valuation methodology. 59 FR 23097. The Department then published an advance notice of proposed rulemaking announcing the start of an overall review of the administrative process and the type B procedures. 59 FR 52749 (Oct. 19, 1994). The Department must review the

VOL
61
ISS
137
JUL
16
1996
UMI

hazardous substance natural resource damages assessment regulations, and revise them as appropriate, every two years. 42 U.S.C. 9651(c)(3).

The Department now intends to develop a proposed rule that will address both the biennial review and the remaining aspect of the *Ohio* v. *Interior* remand and that will supersede the May 4, 1994, proposed rule. This document solicits comment on inclusion in this upcoming proposed rule of the concepts of the recently promulgated oil natural resource damages assessment regulations.

New Oil Regulations

On January 5, 1996, the National Oceanic and Atmospheric Administration (NOAA) published a final rule under the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.) for assessing natural resource damages caused by oil spills. 61 FR 439. The oil regulations adopt a new approach to several aspects of natural resource damages assessment. One particularly significant and promising feature of the oil regulations is the adoption of a new method of measuring damages based on unified restoration planning. The oil regulations extend the hazardous substance regulations' emphasis on restoration to all elements of a natural resource damages claim, including compensation for interim loss of injured natural resources and resource services.

Under the oil regulations, a natural resource damages claim is based on a unified restoration plan developed during the assessment that incorporates both "primary" restoration actions to return injured resources and services to the condition that would have existed if the discharge had not occurred and "compensatory" restoration actions to compensate the public for interim loss of resource services.

The oil regulations fundamentally change the role of economic valuation in developing claims for interim loss of injured natural resources and resource services. Unlike the current hazardous substance regulations, the new oil regulations require trustees to determine compensation for interim losses based on the cost of appropriately scaled compensatory restoration actions, rather than economic values per se.

The Department has indicated that during the biennial review it will work to ensure the maximum consistency appropriate between the hazardous substance regulations and the oil regulations. 59 FR 52752. The Department believes that the unified restoration planning approach in the oil regulations is one appropriate option for biennial reforms to the hazardous substance regulations designed to expedite restoration, reduce litigation, and encourage cooperative efforts among trustees and PRPs.

The Department also believes that resolution of the *Ohio* v. *Interior* remand concerning the calculation of nonuse values should be considered within the same context as the overall biennial review of the hazardous substance regulations. As NOAA has stated in connection with its new method of measuring damages, "[t]he possible use of contingent valuation (CV) and other stated-preference methods of valuation to determine what scale of compensatory restoration provides an equivalent value to the lost services avoids many problems identified by commenters regarding the use of CV to calculate a dollar value for the damages." 61 FR 442.

Issues for Comment

To assist in the development of a proposed rule, the Department is soliciting comment on how the hazardous substance regulations should be revised to ensure maximum appropriate consistency with the oil regulations and comply with *Ohio* v. *Interior*. The Department is particularly interested in comments on revising the hazardous substance regulations to incorporate the new method for measuring damages in the oil regulations. The Department also solicits comment on revising the hazardous substance regulations to reflect the more streamlined approach to injury assessment contained in the oil regulations. Whereas the current hazardous substance regulations contain relatively detailed standards and procedures for all aspects of injury determination and quantification, the oil regulations provide a general framework of decision criteria within which trustees determine on a case-by-case basis how best to assess injury. The Department solicits comment on the suitability of the new approaches in the oil regulations for the hazardous substance regulations, in light of the differences between oil spills and hazardous waste sites.

Dated: July 10, 1996.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 96–17980 Filed 7–15–96; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF AGRICULTURE

48 CFR Parts 401 Through 453

RIN 0599–AA00

Agriculture Acquisition Regulation; Revision

AGENCY: Procurement and Property Management, Department of Agriculture.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed amendment to the Agriculture Acquisition Regulation (AGAR). We are revising the AGAR to reflect changes in acquisition law and regulations since the AGAR's last major revision in 1986, to update organizational references throughout the AGAR, and to streamline the AGAR as part of the President's Regulatory Reform Initiative.

DATES: Comments must be submitted on or before September 16, 1996.

ADDRESSES: Requests for a copy of the proposed rule should be sent to U.S. Department of Agriculture, Procurement and Property Management, Procurement Policy Division, STOP 9303, 1400 Independence Avenue SW., Washington, DC 20250–9303. The Procurement Policy Division has also posted a copy of the proposed rule on the Internet for review at WWW.USDA.GOV/DA/PROCURE/AGAR.HTM. Submit written comments to the Procurement Policy Division at the mailing address listed above, through the Internet at 00.00–POST.JDARAGAN@SIES.WSC.AG.GOV (alternate: JDARAGAN@USDA.GOV), or via fax at (202) 720–8972.

FOR FURTHER INFORMATION CONTACT: Joseph J. Daragan, U.S. Department of Agriculture, Procurement and Property Management, STOP 9303, 1400 Independence Avenue SW., Washington, DC 20250–9303, (202) 720–5729.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Executive Order 12866.
B. Regulatory Flexibility Act.
C. Paperwork Reduction Act.
III. Public Comments

I. Background

The AGAR implements the Federal Acquisition Regulation (FAR), where further implementation is needed, and supplements the FAR when coverage is needed for subject matter not covered by the FAR. The AGAR is being revised as part of the National Performance Review (NPR) program to eliminate necessary regulations and improve those that remain in force.

As an initial step in the NPR regulatory review initiative, the Department of Agriculture (USDA) identified parts of the AGAR which required updating or streamlining. USDA's review indicated that almost all parts required revision. Accordingly, USDA has reviewed and made revisions to substantially all parts of the AGAR. In an Advance Notice of Proposed Rulemaking (61 FR 7456, February 28, 1996). USDA sought comments and suggestions from the public concerning what changes should be made to the AGAR. One comment was received from a USDA field office. The commenter suggested a change to AGAR part 416; this comment has been implemented.

The principal effects of the proposed rule are as follows:

(a) References to the Director, Office of Operations, in the AGAR are revised to refer to the Senior Procurement Executive (SPE) to reflect the reorganization of USDA's Departmental Administration.

(b) To the extent permitted by the FAR, responsibilities have been delegated to the lowest appropriate organizational level.

(c) Section 401.103–70 is redesignated section 401.370 and revised to allow promulgation of interim policies and procedures outside the AGAR, subject to the policies of FAR subpart 1.3.

(d) Section 401.371 is added to establish AGAR Advisories to communicate guidance on acquisition issues to establish internal acquisition policies and procedures on an interim basis.

(e) Subpart 403.1 is added to address standards of conduct and procurement integrity issues.

(f) Subpart 405.3 is added to establish procedures for announcement of contract awards over $1 million.

(g) Subpart 405.5 is revised to clarify procedures for publication of paid advertisements.

(h) Subpart 406.2 is added to designate the SPE as the individual authorized to make the FAR 6.202 determination.

(i) Section 407.305 and the accompanying clauses at 452.207–70 and 452.207–71 are removed since existing FAR coverage is deemed adequate.

(j) Subpart 407.5 is added to implement FAR subpart 7.5, Inherently Governmental Functions.

(k) 408.7 is added to create an advocacy program for the acquisition of products and services from the non-profit agencies employing people who are blind or severely disabled.

(l) Subpart 408.11 is added to establish a preference for recovered materials in the leasing vehicles.

(m) Section 409.504 and the accompanying clause at 452.209–70 are removed as superfluous.

(n) Part 410 is redesignated as part 411 and is revised to eliminate unnecessary text and to authorize the Head of the Contracting Activity (HCA) to make market acceptance determinations in accordance with FAR 11.103(a).

(o) Subpart 412.1 is redesignated subpart 411.4 and is amended to remove prescriptions for clauses at 452.212–70 and 452.212–71. The corresponding clauses at 452.212–70 and 452.212–71 are also removed.

(p) Part 412 is revised to provide coverage for the acquisition of commercial items. Subpart 412.3 is added to designate the HCA as the individual authorized to approve requests to tailor clauses and terms and conditions for commercial items in accordance with FAR 12.302(c).

(q) Section 413.501 is added to permit issuance of purchase orders on other than a fixed price basis if authorized by contracting activity written procedures.

(r) Section 413.505–3 is added to state that use of Standard Form 44 is not authorized within USDA, and section 413.505–70 is removed since form AD–744, Purchase Order-Invoice-Voucher, is no longer used by USDA.

(s) Section 414.407–3 is revised to delegate the authority to make mistake in bid determinations to HCA's.

(t) Section 415.407 is amended to remove prescriptions for solicitation provisions at 452.215–73, 452.215–74, and 452.215–75, and the corresponding provisions are removed, to eliminate collection of unnecessary information from offerors and to provide flexibility to tailor requests for proposal submissions.

(u) Section 415.612 is amended to remove the requirement that the HCA must be the formal source selection official for negotiated contracts over $500,000.

(v) Section 415.902 is revised to authorize use of another Federal Agency's formalized structured approach for establishing profit or fee objectives.

(w) Section 416.000 is added to allow the use of contract types described in FAR part 16 for simplified acquisitions.

(x) Subpart 416.3, section 416.403, and section 416.404–1 are removed because FAR coverage is deemed adequate.

(y) Section 416.404–2 is amended to remove material adequately covered by the FAR.

(z) Section 417.204 is added to authorize HCA's to approve option contracts exceeding 5 years in accordance with FAR 17.204(e).

(aa) Section 417.204 is amended to remove prescriptions for clauses at 452.217–74, 452.217–75, 452.217–76, 452.217–77, 452.217–78, and 452.217–79, since they have been superseded by FAR clauses 52.217–6, 52.217–7, and 52.217–9. The referenced AGAR clauses are likewise removed from part 452.

(ab) Subpart 417.4 is removed since USDA does not use the leader company contracting method.

(ac) Subpart 417.6 is removed since USDA does not have the requisite statutory authority to enter into management and operating contracts.

(ad) Section 422.302 is added to provide procedures for review of liquidated damages assessed under section 104(c) of the Contract Work Hours and Safety Standards Act.

(ae) Subpart 422.70 is added to provide guidance for compliance with E.O. 12989, *Economy and Efficiency in Government Procurement Through Compliance with Certain Immigration and Naturalization Act Provisions*, February 13, 1996.

(af) Part 423 is revised to update the part and to address changes in environmental and safety law and in the FAR.

(ag) Subpart 423.4 is added to incorporate USDA's Acquisition, Recycling, and Waste Prevention Program, initiated to comply with 42 U.S.C. 6901, et seq., and with E.O. 12873, *Federal Acquisition, Recycling, and Waste Prevention*, October 20, 1993.

(ah) Subpart 430.2 is revised to update procedures for waivers of the Cost Accounting Standards and of Disclosure Statements.

(ai) Section 432.006 is added to provide procedures for reduction or suspension of contract payments upon finding of fraud.

(aj) Subparts 432.1 and 432.2 are added to supplement FAR coverage on financing for commercial and non-commercial items.

(ak) Subpart 432.6 is added to implement the FAR coverage on contract debts.

(al) Subpart 432.7 is added to address USDA specific funding issues.

(am) Part 433 is modified to provide an alternate forum for agency protests.

(an) Part 434 is amended to remove superfluous material and to identify the official(s) authorized to make the decisions under FAR 34.005–6.

(ao) Section 436.602–1 is amended to remove obsolete selection criteria.

(ap) Section 437.110 is amended to remove the prescription for the clause at

VOL
61
ISS
137
JL
16
1996
UMI

452.237–72, and the corresponding clause, since FAR 52.237–1 may be used instead of this clause.

(aq) Section 442.704 and the clause at 452.242–70 are removed, since the FAR provides identical coverage.

(ar) Section 442.1502 is added to delegate to HCA's responsibility for establishing past performance evaluation procedures and systems as required by FAR 42.1502 and 42.1503.

(at) Section 449.501 is added to delegate authority to HCA's to approve the use of special purpose termination clauses pursuant to FAR 49.501.

II. Procedural Requirements

A. Executive Order 12866

A work plan was prepared for this regulation and submitted to the Office of Management and Budget pursuant to Executive Order 12866. The proposed rule has been determined to be not significant for the purposes of Executive Order 12866. Therefore, the proposed rule has not been reviewed by the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

The proposed rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601–611, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. The AGAR is issued to implement or supplement the FAR, and does not materially add to the impact of the FAR regulations it implements or supplements. USDA certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared. However, comments from small entities concerning parts affected by the proposed rule will be considered. Such comments must be submitted separately and cite 5 U.S.C. 609 (AGAR Revision) in correspondence.

C. Paperwork Reduction Act

Information collection and recordkeeping required by the AGAR have been approved by the OMB. OMB control numbers 0505–0010, 0505–0011, 0505–0013, 0505–0014, 0505–0015, and 0505–0016 apply to the AGAR. No additional information collection or recordkeeping requirements are imposed on the public by this proposed rulemaking. Accordingly no OMB clearance is required by section 350(h) of the Paperwork Reduction Act, 44 U.S.C. 3501, et. seq., or OMB's implementing regulation at 5 CFR Part 1320.

III. Public Comments

Interested persons are invited to participate in this rulemaking by submitting views and comments with respect to the proposed AGAR revision set out in this notice. All written comments will be carefully assessed and fully considered prior to publication of the final rule.

List of Subjects in 48 CFR Parts 401 Through 453

Government contracts, Government procurement.

For the reasons set out in this preamble, the Department proposes to amend Chapter 4 of Title 48 of the Code of Federal Regulations. Copies of the proposed rule may be obtained from the addresses set forth above.

W.R. Ashworth,

Director, Procurement and Property Management.

[FR Doc. 96–17920 Filed 7–15–96; 8:45 am]

BILLING CODE 3410–XE–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Threatened Status for Copperbelly Water Snake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service) provides notice that the comment period on the proposed threatened status for the copperbelly water snake (*Nerodia erythrogaster neglecta*) is reopened. This snake occupies portions of southern Michigan, northwestern Ohio and adjacent northeastern Indiana, southern Indiana, southeastern Illinois, and western Kentucky.

DATES: Comments from all interested parties must be received by September 16, 1996.

ADDRESSES: Comments and materials concerning this proposal should be sent to U.S. Fish and Wildlife Service, 620 South Walker Street, Bloomington, Indiana 47403–2121.

FOR FURTHER INFORMATION CONTACT: David Hedak, Field Supervisor, (see ADDRESSES section), 812/334–4261 extension 200.

SUPPLEMENTARY INFORMATION:

Background

A proposed rule to list the copperbelly water snake (sometimes referred to as the northern copperbelly water snake) as threatened was published on August 18, 1993 (58 FR 43860). A public hearing on the proposal was held in Indianapolis on April 4, 1994, and the comment period for this proposed rule was extended or reopened five times, with the last comment period closing on September 30, 1995 (60 FR 42140, August 15, 1995).

Following the December 15, 1994, to January 13, 1995, comment period the Service again began evaluating all available scientific and commercial data concerning the species' status. On April 10, 1995, Public Law 104–06 imposed a moratorium which prevented the addition of any species to the Threatened and Endangered Species List. Thus, the Service was prevented from making a final decision on the proposed threatened classification of the copperbelly water snake. The moratorium remained in effect until April 26, 1996, at which time Public Law 104–134 was enacted, providing for the termination of the listing moratorium by the President.

The Service is required to use the best available scientific and commercial data in making listing determinations under the Endangered Species Act of 1973 (Act), as amended. The Service's Final Listing Priority Guidance, published May 16, 1996, (61 FR 24722–24728) notes that the inaction forced upon the Service by the moratorium and related funding limitations may result in a need to reopen comment periods due to unresolved questions or the potential for the existence of new information. Pursuant to this Guidance, it is necessary to reopen the comment period to ensure that the Service has the best scientific and commercial information currently available to use in making a final listing determination for the copperbelly water snake.

During this comment period the Service desires to receive any scientific and commercial data that have become available since the previous comment period closed on September 30, 1995. If significant data are provided that are likely to influence the listing determination, the Service will notify the public of the data's existence and will provide copies to parties that request them. If necessary, the Service will then extend or reopen the comment period to allow sufficient time for interested parties to review and comment on the new data.

The Service expects to receive a report on the biological status of the northern population (southern Michigan and the adjacent portions of Indiana and Ohio) of the copperbelly water snake during this comment period. Parties wishing to receive a copy of the northern population report or other significant data received during this comment period are invited to furnish their address to the Service.

Therefore, by this notice the Service is reopening the comment period to solicit and receive additional data and comments on the proposal and to receive addresses from parties who want to receive a copy of the northern population report. The Service is especially interested in receiving data that have become available since the September 30, 1995, close of the previous comment period.

Data and comments which have been previously submitted do not need to be resubmitted. When the Service makes its final determination whether to list the copperbelly water snake as a threatened species all previously received materials will be considered along with newly submitted material. Data and comments received during this and earlier comment periods may lead to final regulations that differ from the proposal of August 18, 1993.

Author

The primary author of this notice is Ronald L. Refsnider, U.S. Fish and Wildlife Service, Division of Endangered Species, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056 (612–725–3536).

Authority

Authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

Dated: July 10, 1996.

William F. Hartwig,

Regional Director, Region 3, Fort Snelling, MN.

[FR Doc. 96–17985 Filed 7–15–96; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 960605147–6189–04; I.D. 040996D]

RIN 0648–AH33

Proposed List of Fisheries for 1997

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This action proposes changes for 1997 to the List of Fisheries (LOF) required by the Marine Mammal Protection Act (MMPA). The proposed LOF for 1997 reflects new information on commercial fisheries, marine mammals, and interactions between commercial fisheries and marine mammals. Under the MMPA, a commercial fishery is to be placed on the LOF in one of three categories based upon the level of serious injuries and mortalities that occur to marine mammals incidental to that fishery. The LOF informs the public of the level of interactions with marine mammals in various U.S. commercial fisheries and which fisheries are subject to certain provisions of the Marine Mammal Protection Act (MMPA) such as the requirement to register for Authorization Certificates. This action also proposes to revise the process for registering for such a certificate, under certain circumstances, to allow greater flexibility and to reduce associated paperwork and other burdens.

DATES: Comments on the proposed rule must be received by October 15, 1996.

ADDRESSES: Send comments to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

Comments regarding the burden-hour estimates or any other aspect of the collection of information requirements contained in this proposed rule should be sent to the above individual and to the Office of Information and Regulatory Affairs, OMB, Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robyn Angliss, Office of Protected Resources, 301–713–2322; Douglas Beach, Northeast Region, 508–281–9254; Charles Oravetz, Southeast Region, 813–570–5301; James Lecky, Southwest Region, 310–980–4015; Brent Norberg, Northwest Region, 206–526–6140; Steven Zimmerman, Alaska Region, 907–586–7235.

SUPPLEMENTARY INFORMATION:

Background

History of the List of Fisheries

The annual publication of a LOF placing all U.S. commercial fisheries into one of three categories based on the levels of incidental serious injury and mortality of marine mammals in the fishery is required by section 118 of the Marine Mammal Protection Act, as amended in 1994. Proposed and final regulations implementing section 118 of the MMPA were published in 1995 (60 FR 31666, June 17, 1995, and 60 FR 45086, August 30, 1995, respectively). These regulations replaced those published to implement old section 114, and establish the procedures NMFS now uses to manage incidental interactions between marine mammals and U.S. commercial fisheries.

Definitions of the fishery classification criteria for Category I, II, and III fisheries are found in the implementing regulations for section 118 (50 CFR part 229). Because classification of fisheries in the LOF depends on the definitions of the criteria, the following explanation of the criteria is provided. Although this information is available in the preambles to final rule implementing section 118 and to the LOF for 1996, it is repeated here because of the importance of this information to understanding how fisheries are classified.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock and then addresses the impact of individual fisheries on each stock. This approach is based on the rate, in numbers of animals per year, of serious injuries and mortalities due to commercial fishing relative to the Potential Biological Removal (PBR) level for the each marine mammal stock.

Tier 1. If the total annual mortality and serious injury across all fisheries that interact with a stock is less than or equal to 10 percent of the PBR level of such a stock, then all fisheries interacting with this stock would be placed in Category III. Otherwise, these fisheries are subject to the next tier to determine their classification.

Tier 2—Category I. Annual mortality and serious injury of a stock in a given

VOL
61
ISS
137
JL
16
1996
UMI

fishery is greater than or equal to 50 percent of the PBR level.

Tier 2—Category II. Annual mortality and serious injury in a given fishery is greater than 1 percent and less than 50 percent of the PBR level.

Tier 2—Category III. Annual mortality and serious injury in a given fishery is less than or equal to 1 percent of the PBR level.

Tier 1, therefore, considers the cumulative fishery mortality and serious injury for a particular stock, while Tier 2 considers fishery-specific mortality for a particular stock. Additional details regarding how threshold percentages between the categories were determined are provided in the preamble to the final rule implementing section 118.

Requirements for Vessels Participating in Category I and II Fisheries

The primary functions of the LOF are to inform the public of the levels of interactions with marine mammals in various commercial fisheries and to identify fisheries for which efforts to reduce these interactions may be necessary. In addition, the LOF informs the fishing industry of which fisheries are subject to certain provisions of the MMPA.

Registration. Fishers participating in Category I or II fisheries must be registered under the MMPA, as required by 50 CFR 229.4. Unless the Authorization Certificate program for a fishery is integrated and coordinated with existing fishery license, registration or permit systems and related programs, fishers must obtain a registration packet from NMFS and submit the completed registration form and the required registration fee to the NMFS Regional Office in which their fishery operates. Normally, NMFS will send the fisher an Authorization Certificate, program decal, and reporting forms within 60 days of receiving the registration form and registration fee.

NMFS has successfully integrated registration under the MMPA with state fishery registration in Washington and Oregon and is actively pursuing integration with state fishery registration in Alaska. The benefits of integration with existing programs have included a reduction or elimination of fees for some commercial fishers, a reduction in paperwork that must be completed by the fisher, and a reduction in paperwork that must be completed by NMFS.

NMFS is proposing to provide additional flexibility for integrated registration systems so that, if registration information is supplied by NMFS or by a State participating in the integrated system for a fishery, individual fishers are not required to fill out forms or submit information but automatically will be issued Authorization Certificates. NMFS will continue to integrate registration with existing programs where possible.

Reporting. Vessel owners or operators, or fishers, in the case of non-vessel fisheries, in Category I, II, or III fisheries must comply with 50 CFR 229.6 and report all incidental mortality and injury of marine mammals during the course of commercial fishing operations to NMFS Headquarters or appropriate NMFS Regional Office. "Injury" is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear, or any animal that is released with fishing gear entangling, trailing or perforating any part of the body is considered injured and must be reported. Instructions for submission of reports are found at 50 CFR 229.6(a).

Observers. Finally, fishers participating in Category I and II fisheries may be required, upon request, to accommodate an observer on board their vessels. Observer requirements may be found at 50 CFR 229.7.

Timing of the Publication of the 1996 LOF

Because of other regulatory activities that occurred concurrently, such as the preparation and publication of the final implementing regulations for section 118 of the MMPA, the LOF for 1996 was published on December 28, 1995 (60 FR 67063) instead of the target date of October 1, 1995. Due to this delay, there was a very short time period between the publication of the 1996 LOF and the publication of this proposed LOF for 1997. NMFS focused its analysis for the proposed LOF for 1997 on those fisheries it committed to future review in the 1996 LOF.

NMFS hopes to have available revised estimates of incidental serious injury and mortality in U.S. commercial fisheries, and revised PBR levels for the proposed LOF for 1998.

Proposed Changes to the LOF

The following specific changes are proposed for the LOF that would take effect in 1997. Fisheries are placed into Category I, II, or III based on the classification scheme defined in the final rule implementing section 118 (60 FR 45086–45106, August 30, 1995). With the exception of these specific proposed changes, NMFS proposes to retain the fishery classifications as published in the final LOF for 1996.

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

U.S. Atlantic Tuna Purse Seine Fishery

The bluefin tuna purse seine fishery, which is largely prosecuted in the Gulf of Maine, was placed in Category III in the 1994 LOF, but was inadvertently omitted from the 1996 LOF. In 1995, five bluefin tuna purse seine permit holders reported landings in August and September. Because there is also a yellowfin tuna purse seine fishery, which is largely prosecuted in the U.S. mid-Atlantic and was not previously listed in the LOF, the two target species are combined in this proposed LOF under the name "U.S. Atlantic tuna purse seine fishery".

NMFS has received reports of interactions between the bluefin tuna purse seine fishery and marine mammals. However, the marine mammals were released uninjured. Because incidental serious injuries and mortalities are not expected in this fishery, this fishery is proposed to be placed in Category III.

Gulf of Maine Mackerel Trawl Fishery

A combined trawl fishery for squid, mackerel, and butterfish was created in the 1996 LOF. A separate listing for a component of that fishery, the Gulf of Maine mackerel trawl fishery, is duplicative and is proposed to be deleted from the LOF. NMFS does not anticipate significant effort in the mackerel trawl fishery in the Gulf of Maine in the future.

Finfish Aquaculture Fishery

Records of harbor seal incidental mortality and serious injury have been reported for this fishery, though at a level that does not warrant a change in categories. However, NMFS proposes to add "Harbor seal, Western North Atlantic stock" as a marine mammal stock that incurs serious injury and mortality incidental to this fishery.

U.S. North Atlantic Coastal Gillnet Fisheries

NMFS proposes to change the names and revise the boundaries of the "New England multispecies sink gillnet" and the "U.S. mid-Atlantic coastal gillnet" fisheries to reflect a change in the Northeast Multispecies Fishery Management Plan (FMP) and to eliminate a boundary overlap.

The "New England multispecies sink gillnet fishery (including species as defined in the Multispecies Fishery Management Plan and spiny dogfish and monkfish)" is proposed to be changed to "Northeast Multispecies sink gillnet fishery (including but not limited to species as defined in the Northeast Multispecies Fishery Management Plan, dogfish, and monkfish)." The southern boundary of the Northeast Multispecies sink gillnet fishery is proposed to be changed from 71°40′ W. long. to 72°30′ W. long.

The "U.S. Mid-Atlantic coastal gillnet fishery", defined in the 1992 LOF as "mid-Atlantic coastal gillnet fishery (includes, but is not limited to, Atlantic croaker, Atlantic mackerel, Atlantic sturgeon, black drum, bluefish, herring, menhaden, scup, shad, striped bass, sturgeon, weakfish, white perch, yellow perch)," is proposed to be changed to "U.S. Mid-Atlantic coastal gillnet fishery (including but not limited to, Atlantic croaker, Atlantic mackerel, Atlantic sturgeon, black drum, bluefish, herring, menhaden, scup, shad, striped bass, sturgeon, weakfish, white perch, yellow perch, dogfish, and monkfish)." The eastern boundary for the mid-Atlantic coastal gillnet fishery is proposed to be the 72°30′ W. long. line, running south from the southern Long Island shoreline; the southern boundary for this fishery is proposed to be a line drawn from the North Carolina-South Carolina border eastward to the 72°30′ line.

NMFS anticipates having additional data from observer programs and from other sources to use in re-evaluating these fisheries. In addition, studies are underway to provide NMFS with new information on the nature of these fisheries, which have traditionally been difficult to define or observe because of their highly seasonal nature.

Offshore Monkfish Bottom Gillnet Fishery

The offshore monkfish bottom gillnet fishery was a new fishery that was placed in Category III in the 1996 LOF. However, because of the location of the fishery and the type of gear typically employed, this fishery should have been considered a new component of two existing fisheries instead of a new, separate fishery. Monkfish will be added as a target species to the Northeast Multispecies sink gillnet fishery and to the U.S. mid-Atlantic coastal gillnet fishery, as defined in the above section on the U.S. North Atlantic coastal gillnet fisheries. Thus, fishers targeting monkfish using gillnets either will be in the U.S. mid-Atlantic coastal gillnet fishery, and placed with that fishery in Category II, or in the Northeast Multispecies sink gillnet fishery, and placed with that fishery in Category I. Gulf of Maine and U.S. Mid-Atlantic Lobster Fisheries.

1. *Summary.* Currently there are two lobster fisheries in the LOF, the "Gulf of Maine, U.S. Mid-Atlantic Inshore Lobster Trap/Pot Fisheries" and the "Gulf of Maine, U.S. Mid-Atlantic Offshore Lobster Trap/Pot Fisheries." Based on a review of 1990–1994 large whale entanglement reports received by the agency and new information received about the prosecution of the lobster fishery, the inshore and offshore fisheries are proposed to be combined into a single fishery, and referred to as the "Gulf of Maine, U.S. Mid-Atlantic Lobster Trap/Pot Fishery." This fishery is proposed to be placed in Category I in the 1997 LOF.

2. *Combining lobster fisheries.* The two lobster fisheries described in the 1996 LOF are proposed to be combined because there is currently no practical way to distinguish between "inshore" and "offshore" fisheries with regard to differences in marine mammal take. Definitions of "inshore" and "offshore" or a discussion of what constitutes an inshore fishery versus an offshore fishery were not presented in the previous LOFs.

Generally, as the distances from shore increase, so do the size of the pots, number of pots, and number and size of associated lines and surface gear. There is no evidence to indicate that significant changes in fishing operations occur at the boundary between state waters and the exclusive economic zone. In some cases, gear used in state waters is indistinguishable (larger pots and long strings, similar surface gear) from that used 161 km (100 miles) offshore.

Comments are specifically requested from the public on whether there is a practical operational distinction between the inshore and offshore sectors of the fishery. Comments should consider factors such as geographic location, gear characteristics, and fishing practices such as tending gear. Comments also should consider how interactions with marine mammals should be attributed if separate fisheries are recommended.

3. *Special problems.* The lobster fishery is one of the largest fisheries in the Northeast. It is estimated that there are 14,000 combined state and federal lobster trap/pot permit holders. This information is based on a fishery from Maine through New Jersey, although the fishery may extend as far south as Cape Hatteras in some years.

A confounding problem in analyzing the impacts of this fishery is that many whales are capable of dragging lobster gear some distance from the location in which it was originally set. For example, a northern right whale carried part of a lobster trawl from the Bay of Fundy for three months before it was spotted in Massachusetts waters. In addition, a 4.3–meter (14–foot) minke whale dragged a pair trap (a two-trap string) 9.2 km (5.5 miles) before it was sighted and disentangled. Thus, either of the fishers, upon returning to the location at which they had originally set the gear, would not have known whether an entanglement had occurred or whether the missing gear was dislodged by mobile gear or for other reasons.

NMFS has provided observer coverage designed to sample the lobster catch for this fishery, at least 66 days in some years, which has not identified a marine mammal bycatch problem. Due to the whale behavior described above and the size of the lobster fishery, the agency believes that traditional observer coverage will not be effective in this fishery. Alternative monitoring programs such as aerial surveys, enhanced stranding and disentanglement network reporting, and additional gear marking requirements may be considered as alternatives to traditional observer coverage.

4. *Interactions between the lobster fishery and marine mammals.* As described in the following analysis, serious injuries and/or mortalities of marine mammals are known to occur in the lobster fishery. An examination of large whale entanglement records from sources other than an observer program reveals that large whale entanglements occur in gear which is reported as "lobster gear", "lobster pot warp", "line like lobster pot warp", or in similar terms. Generally, these reports describe the whale's condition and provide a basic description of how the gear is entangling the animal so that a rescue can be planned. The reports often do not contain the detail necessary to assign the entanglements to a particular fishery or location. On many occasions, the whale is not re-sighted, so a close examination of the gear cannot be attempted. In some cases, additional supportive information may be available to confirm the gear type and origin, but sources of that information have not been fully investigated at this time.

For this analysis, NMFS has been conservative in attributing available records of entanglements to this fishery and has used only 18 of 42 (43 percent) of the available 1990–1994 line entanglement (as opposed to net entanglement) records. The reasons for this approach include: (1) Records have been excluded where gear was only reported as "line" or "line like lobster pot warp" since NMFS cannot confirm at this time whether lobster pot warp or line from some other fixed or mobile gear was involved; (2) records were

VOL
61
ISS
137
JL
16
1996
UMI

excluded if there was insufficient information on degree of injury or marine mammal species identification; 3) records were excluded if the whale disentangled itself; and,4) records were excluded if gear was known to be of non-U.S. origin or gear was of unknown origin but the entanglement was first sighted in non-U.S. waters. In addition, records of entanglements prior to 1990 or after 1994 were not considered in this analysis.

Tier 1 evaluation. Annual serious injury and mortality levels across all fisheries for humpback, northern right whale, and minke whale stocks interacting with this fishery exceed 10 percent of the PBR levels for all three species.

Tier 2 evaluation. One record of serious injury and/or mortality of a northern right whale, 11 records of serious injury and/or mortality of humpback whales, and 6 records of serious injury and/or mortality of minke whales were reported for this fishery from 1990–1994. These records cannot be extrapolated to a total kill estimate and therefore represent a minimum serious injury and/or mortality rate (from a 5-year average) of 0.2 per year for northern right whales, 2.2 per year for humpback whales, and 1.2 per year for minke whales. This rate is greater than 1% but less than 50 percent of the PBR level for humpback and minke whales, but equal to 50 percent of the PBR level for northern right whales. Therefore this fishery is proposed to be placed in Category I in the 1997 LOF.

In addition to the one right whale entanglement used in the above analysis, the agency has received at least one report of a right whale entanglement after 1994 as well as during the 1990–1994 period which may be attributable to the lobster fishery, including a video of a temporarily entangled right whale calf in Cape Cod Bay in 1995. Further verification is anticipated on a 1993 report of an entangled right whale sighted near Munson Canyon and one in 1994 sighted off Plum Island, Massachusetts.

5. *Registration of the lobster fishery.* Annual registration for an MMPA Authorization Certificate is required for participants in Category I and II fisheries. NMFS will consider registration options for the lobster fishery that will minimize the registration burden on lobster fishers.

The lobster fishery is currently licensed under a combination of several state and federal systems. NMFS will work with the New England and Mid-Atlantic states to integrate registration under the MMPA with state lobster fishery registration. NMFS intends to coordinate registration for the federally managed lobster fishery with the MMPA registration program.

The proposed rule would provide additional flexibility for integrated registration systems so that, for qualified programs, individual fishers would not be required to fill out forms or submit registration information but automatically would be issued registrations and Authorization Certificates. Once an alternative registration system is developed, and a reduction in administration costs is realized, NMFS will waive the registration fee for the lobster fishery.

Commercial Fisheries in the Pacific Ocean

Oregon Swordfish/Blue Shark Surface Longline Fishery

The Oregon swordfish/blue shark surface longline fishery was classified as a Category II fishery in the 1996 LOF based on analogy with other pelagic longline fisheries. NMFS proposes to separate this fishery into two fisheries based upon the target species to reflect the current licensing practices of the Developmental Fisheries Program in the State of Oregon. The two fisheries would be the: "Oregon swordfish floating longline fishery" and "Oregon blue shark floating longline fishery." There are 20 participants and 10 participants in these fisheries, respectively. Both fisheries would remain in Category II in 1997.

California Squid Purse Seine Fishery

The California squid purse seine fishery was classified as a Category III fishery in the 1996 LOF. However, the Pacific Scientific Review Group, established under section 117 of the MMPA, recommended that the squid purse seine fishery be monitored with an observer program because of lack of information about marine mammal mortalities and historical interactions between this fishery and short-finned pilot whales.

Incidental mortality of pilot whales has occurred historically in the California squid purse seine fishery. Twelve pilot whales were observed and reported entangled in this manner during the 1980 season (Miller et al. 1983). Miller et al. (1983) also reported that pilot whales were occasionally shot in the squid purse fishery when lethal deterrence was legal. Heyning and Woodhouse (1994) analyzed stranding data between 1975-90 and found 14 short-finned pilot whales stranded or floating dead (most during the late 1970's). They believe that these pilot whales were incidentally killed in the squid purse seine fishery. All animals that were examined had stomachs full of market squid; none that were stranded had evidence of bullet holes, and commercial squid boats were reported to have been working those areas at the time.

Short-finned pilot whales were once common off Southern California, especially near Santa Catalina Island (Barlow et al. 1995). Dohl et al. (1980) estimated that a resident population of 400 short-finned pilot whales occurred in California, with a seasonal increase of up to 2,000 individuals. Short-finned pilot whales disappeared from the area after the strong 1982-83 El Nino event, and few sightings were made between 1984-92 (Barlow et al. 1995). Because the 1991-92 aerial and shipboard cetacean surveys only sighted one short-finned pilot whale, there is no estimate of population size available at this time. However, six sightings of short-finned pilot whales were made during another ship survey off California in 1993, and a population estimate will be available in the near future. In addition, short-finned pilot whales are also incidentally killed in the offshore drift gillnet fishery for thresher shark and swordfish. Thirteen short-finned pilot whales were observed incidentally killed between 1990-94 in this fishery. Thus, short-finned pilot are rare, but present in the area (Forney 1994).

Currently, purse seine vessels that fish for mackerel, tuna, and anchovies (a Category II fishery) use the same gear to fish for squid in the winter off southern California. The number of vessels has remained relatively stable in southern California, with approximately 65 squid purse seine vessels in operation. Over the last few years, squid purse seine effort and landings have increased. In the absence of reliable information indicating the frequency of interaction, NMFS must determine whether a fishery is a Category II fishery by evaluating other factors (60 FR 45086, August 30, 1995). Because of historical evidence and possible significant interactions with the short-finned pilot whale, NMFS is proposing to re-categorize the squid purse seine fishery from Category III to Category II.

NMFS is concerned about the lack of recent data on which to base this proposed fishery classification and about the apparent change in distribution of the short-finned pilot whale in California waters. NMFS specifically requests comments on these two aspects of this proposed reclassification.

Re-evaluation of Other Fisheries

Gulf of Maine, U.S. Mid-Atlantic Tuna, Shark, and Swordfish Hook and Line/Harpoon Fisheries

An examination of entanglement records from sources other than observer data reveals that large whale entanglements occur in gear reported as "tuna gear", "tuna dart", "line with tuna ball", etc. Generally, these reports describe the whale's condition and provide a general description of how the gear is entangling the animal so that a rescue can be planned. The reports often do not contain the detail necessary to definitively identify the responsible fishery or the location where the entanglement occurred. On many occasions, the whale is not resighted, so a close examination of the gear cannot be attempted. In some cases, additional supportive information may be available to confirm the gear type and origin, but sources of that information have not been fully investigated at this time. NMFS will continue to monitor these entanglements and will verify the origin of the gear if possible. Until the data can be verified and additional information is obtained on the hook and line/harpoon fisheries for tuna, shark and swordfish, NMFS proposes to retain the large pelagics hook-and-line/harpoon fisheries in Category III in the LOF.

Other Fisheries

In the 1996 LOF, NMFS indicated that the annual incidental serious injury and mortality levels of marine mammals in several fisheries would be re-evaluated in a future LOF. New data were not yet available for adequate re-evaluations of the level of serious injury and mortality incidental to some Atlantic trap/pot fisheries, the Atlantic inshore gillnet fisheries, the North Atlantic bottom trawl fishery, and several other fisheries described in the 1996 LOF. NMFS recognizes that incidental serious injuries and mortalities may occur at some level in some of these fisheries and will continue to monitor these interactions.

Definitions of Various U.S. North Atlantic Trawl Fisheries

Since the publication of the 1996 LOF, it has come to NMFS' attention that there is confusion regarding the definitions of the trawl fisheries. NMFS is concerned that the current fishery definitions may not reflect current fishing practices. It is often difficult for a fisher to determine under which category his/her vessel falls, and therefore whether or not to register in the Marine Mammal Authorization Program and be prepared for possible observer coverage. The absence of a clear understanding of the definitions of certain fisheries may confound the classification of certain fisheries in the LOF. Thus, NMFS is specifically requesting comments from the public on appropriate definitions of the trawl fisheries.

The following are the trawl fisheries as listed in the LOF for 1996. Definitions of the fisheries are included for those fisheries not described by target species and gear type in the fishery name.

U.S. Atlantic Large Pelagics Pair Trawl Fishery

This fishery is in Category I and currently consists of seven pairs of vessels. This fishery is characterized by the use of two vessels to cooperatively haul trawl net gear.

Atlantic Mackerel, Squid, and Butterfish Trawl Fishery

This fishery is in Category II and currently consists of approximately 260 vessels/persons. This fishery consists of the "Mid-Atlantic squid trawl" and the "Mid-Atlantic mackerel trawl" fisheries as defined in the 1994 LOF. These fisheries were combined, proposed to include the butterfish trawl fishery in order to parallel the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries of the North Atlantic, and proposed to be identified as the "Atlantic mid-water trawl fishery" in the proposed LOF for 1996 (60 FR 31680, June 16, 1995). In response to a public comment indicating that it was incorrect to call the squid trawl fishery a mid-water trawl fishery, the name of the fishery was changed in the final LOF for 1996 to the "Atlantic squid, mackerel, and butterfish trawl" fishery to reflect the species targeted and to parallel the relevant FMP (60 FR 67070, December 28, 1995).

North Atlantic Bottom Trawl Fishery

This fishery was placed in Category III in the 1996 LOF and currently consists of 1,052 vessels/persons. This fishery was renamed from the "Gulf of Maine, mid-Atlantic groundfish trawl" fishery to include a specific list of species targeted (60 FR 31681, June 16, 1995). Although the list of species targeted was not provided in the final LOF for 1996, the proposed LOF for 1996 indicted that this fishery targets species included in, but not limited to, all species described in the Northeast Multispecies, and Summer Flounder FMPs and scup and seabass which may be included in the Summer Flounder FMP at a later date.

Gulf of Maine Mackerel Trawl Fishery

This fishery was placed in Category III in the 1996 LOF and currently consists of approximately 30 vessels. This fishery is proposed to be combined with the squid, mackerel, butterfish trawl fishery in this proposed LOF.

Mid-Atlantic Mixed Species Trawl Fishery

This fishery was placed in Category III in the 1996 LOF and currently consists of more than 1,000 vessels/persons.

Gulf of Maine and Mid-Atlantic Sea Scallop Trawl Fishery

This fishery was placed in Category III in the 1996 LOF and currently consists of 215 vessels/persons.

Gulf of Maine, Southern North Atlantic, and Gulf of Mexico Herring Trawl Fishery

This fishery was placed in Category III in the 1996 LOF and currently consists of five vessels/persons.

U.S. Atlantic Monkfish Trawl Fishery

This fishery was a new fishery that was placed in Category III in the 1996 LOF and consists of an unknown number of participants. This fishery harvests monkfish in the deep waters off the Atlantic coast. Some participants in this fishery use a modified beam trawl; most use otter trawls. In addition, some participants in the scallop dredge fishery target monkfish using dredge gear during off-days for scallops as well as targeting scallops and monkfish simultaneously.

Bluefish, Croaker, and Flounder Trawl Fishery

This fishery is in Category III and currently includes approximately 550 vessels/participants.

Other Proposed Changes

Annual registration is one of the requirements of the MMPA which would apply to participants in Category I and II fisheries. NMFS is considering registration options that will ensure compliance with the MMPA while minimizing the registration burden to fishers. As noted above, NMFS has successfully integrated registration under the MMPA with state fishery registration in Washington and Oregon under current regulations, is pursuing an integrated registration system with Alaska, and would consider integrated registration systems for other fisheries such as the Gulf of Maine, U.S. Mid-Atlantic Lobster Trap/Pot Fishery.

The proposed rule would provide additional flexibility for integrated registration systems so that, if MMPA

VOL 61 ISS 137 JL 16 1996 UMI

Authorization Certificate registration information is supplied through integration with state systems, interjurisdictional fisheries programs, and federally managed fisheries, individual fishers would not required to fill out forms or submit registration information but automatically would be issued registrations and Authorization Certificates.

The benefits of integrating MMPA registration with existing fishery registration or permit programs have included a reduction in paperwork that must be completed by the fisher, a reduction in paperwork that must be completed by NMFS, and reduced staff burdens for NMFS. NMFS will consider reducing or waiving registration fees for the fisheries where an integrated registration program can be arranged.

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Under existing regulations certain fishers must register, obtain an Authorization Certificate, and pay a fee of $25. Such a certificate authorizes the taking of certain marine mammals incidental to commercial fishing operations. Currently, approximately 13,000 fishers are registered. This proposed rule, if adopted, would require the registration of additional fishers in fisheries that are classified as Category I and II, including approximately 14,000 participants in the Gulf of Maine, U.S. Mid-Atlantic Lobster Trap/Pot Fishery. NMFS will consider waiving or reducing the registration fee for fisheries where an integrated registration program can be arranged. In any case, the fee, with respect to expected revenues, is not considered significant. As a result, a regulatory flexibility analysis was not prepared. This proposed rule has been determined to be not significant for purposes of E.O. 12866.

This proposed rule does not contain new collection-of-information requirements subject to the Paperwork Reduction Act. Further, proposed regulatory changes are designed to provide additional flexibility and to reduce paperwork burdens. However, the proposed reclassification of some fisheries to Category I or II would be expected to increase the number of fishers that may be subject to collection-of-information requirements.

Although this collection has been approved previously by the Office of Management and Budget (OMB) under OMB control numbers 0648–0224 and 0648–0225, because of new collection requirements as a result of the reclassification of some fisheries to Category I and II, this proposed rule is being resubmitted to OMB for review and approval. The average reporting burden under the existing requirements is 0.25 hours for each fisher who is required to register for an Authorization Certificate and 0.17 hours for each report of marine mammal injury or mortality. Those burdens are not expected to change significantly if this proposed rule is adopted, and may actually decrease as a result of proposed changes in the registration system to reduce those burdens. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

The Assistant Administrator for Fisheries, NOAA, prepared an environmental assessment (1995 EA) under the National Environmental Policy Act for regulations to implement section 118 of the MMPA. The 1995 EA concluded that implementation of those regulations would not have a significant impact on the human environment and is available upon request (see **ADDRESSES**). For the proposed LOF, NMFS is constrained by the MMPA with respect to the information that may be considered; changes in the implementing regulations are minor and procedural in nature and do not change the analysis or conclusion of the 1995 EA.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Imports, Indians, Marine Mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: July 10, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 229 is proposed to be amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 229.4, paragraphs (a), (b) and (e) are revised to read as follows:

§ 229.4 Requirements for Category I and II fisheries.

(a) *General.* (1) In order to lawfully incidentally take a marine mammal in the course of a commercial fishing operation in a Category I or II fishery, a valid Certificate of Authorization authorizing such a taking must be on board the vessel or, in the case of nonvessel fisheries, must be in the possession of the person in charge of the fishing operation. The owner of a vessel or nonvessel fishing gear is responsible for obtaining a Certificate of Authorization.

(2) The administration of Authorization Certificates under this part will be integrated and coordinated with existing fishery license, registration, or permit systems and related fishery management programs wherever possible. These fishery management programs may include, but are not limited to, state or interjurisdictional fisheries programs. If the administration of Authorization Certificates is integrated into a fishery management program, NMFS will publish a notice in the **Federal Register** announcing the integrated program and summarizing how a person may register under that program or how registration will be achieved. Additional efforts will be made to contact participants in the affected fishery via other appropriate means of notification.

(b) *Registration.* (1) The owner of a vessel, or for nonvessel gear fisheries, the owner of gear who participates in a Category I or II fishery is required to be registered for a Certificate of Authorization.

(2) Unless a notice is published in the **Federal Register** announcing an integrated Authorization Certificate/fishery management program, the owner of a vessel, or for nonvessel fishery, the owner of the gear must submit the following information using the format specified by NMFS:

(i) Name, address, and phone number of owner;

(ii) Name, address, and phone number of operator, if different from owner, unless the name of the operator is not known or has not been established at the time the registration is submitted;

(iii) For a vessel fishery, vessel name, length, and U.S. Coast Guard documentation number or state vessel registration number, and if applicable, state commercial vessel license number and for a nonvessel fishery, a description of the gear and state commercial license number, if applicable.

(iv) A list of all Category I and II fisheries in which the fisher may engage during next calendar year;

(v) The approximate time, duration, and location of each such fishery operation, and the general type and nature of use of the fishing gear and techniques used; and

(vi) A certification signed and dated by the owner of an authorized representative of the owner as follows: "I hereby certify that I am responsible for the vessel or gear described in this registration, that I have reviewed all information contained in this registration, and that the information is true and complete to the best of my knowledge."

(3) If a notice is published in the **Federal Register** announcing an integrated Authorization Certificate/fishery management program, the owner of a vessel, or for nonvessel fishery, the owner of the gear may register by following the directions provided in that notice. In some cases, an integrated Authorization Certificate/fishery management program may automatically register participants in a fishery for Authorization Certificates. If a person receives a registration to which he or she is not entitled or if the registration contains incorrect, inaccurate or incomplete information, the person shall notify NMFS within 10 days following receipt. A registration must be signed and dated by the owner or an authorized representative of the owner unless it contains incorrect, inaccurate or incomplete information. If for some reason a person who expects to receive automatic registration does not receive that registration within the time specified in the notice announcing the integrated Authorization Certificate/fishery management program, the person shall notify NMFS as directed in the notice or may apply for registration by submitting the information required under paragraph (b)(1)(i) through (vi).

* * * * *

(e) *Issuance.* (1) NMFS will issue an Authorization Certificate and annual decal to an owner or a representative of the owner who submits a completed registration and the required fee, or is registered under an integrated Authorization Certificate/fishery management program and has paid any required fee, provided that the registrant has complied with the requirements of this section and §§ 229.6 and 229.7.

(2) NMFS will renew an Authorization Certificate and issue a new annual decal to an owner or a representative of the owner who submits updated registration or renewal registration which includes a statement (yes/no) whether any marine mammals were killed or injured during the current or previous calendar year and the required fee, or who is registered under an integrated Authorization Certificate/fishery management program and has paid any required fee, provided that the registrant has complied with the requirements of this section and §§ 229.6 and 229.7.

(3) If a person receives an Authorization Certificate or an annual decal to which he or she is not entitled, the person shall notify NMFS within 10 days following receipt. In order for a Authorization Certificate to be valid, the certification must be signed and dated by the owner or an authorized representative of the owner.

* * * * *

[FR Doc. 96–18002 Filed 7–11–96; 11:45 am]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 960703187–6187–01; I.D. 062096B]

RIN 0648–AI95

Fisheries of the Exclusive Economic Zone off Alaska; Allow Longline Pot Gear

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to allow the use of longline pot gear in the directed sablefish fishery in the Bering Sea. Sablefish hook-and-line fishermen in the Bering Sea have faced increasing depredation of hooked sablefish by killer whales. The use of longline pot gear would effectively prevent such depredation. This action is necessary to protect Bering Sea sablefish harvests and is intended to resolve a conflict between fishermen and a species protected under the Marine Mammal Protection Act of 1972 (MMPA).

DATES: Comments must be received by August 15, 1996.

ADDRESSES: Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, Room 453, 709 W. 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99510–2252.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) according to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by NMFS under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). This FMP, implemented by regulations at 50 CFR parts 600, and 679, provides for changes to gear restrictions by regulatory amendment without amendment to the FMP. The regulations pertaining to this action, at § 679.24, specify gear types that may legally be employed to harvest sablefish in the Bering Sea. Killer whales (*Orcinus orca*) are protected under the MMPA, which prohibits harassment of marine mammals and authorizes the Secretary of Commerce to consult with and assist regional fishery management councils to reduce takings of marine mammals incidental to commercial fishing operations.

In September 1995, commercial fishing industry representatives reported to the Council that the annual Bering Sea sablefish quota had been underharvested due in part to interactions with killer whales. While fishermen retrieve their hook-and-line gear when fishing for sablefish, killer whales frequently pick sablefish off the hooks. Sablefish consumed by killer whales in this manner represent undocumented fishing mortality. Even though the sablefish quota may be underharvested by fishermen, overall fishing mortality could actually be higher than the specified quota, resulting in overharvests. Although NMFS is not able to quantify the amount of killer whale-caused fishing mortality, such mortality is a conservation concern to the extent that the amount of overharvests introduces

VOL
61
ISS
137
JL
16
1996
UMI

uncertainty in management of the fishery.

Attempts to deter the whales by various non-lethal means have proven unsuccessful. Research referenced in the EA/RIR/IRFA for this action concluded that the only viable method for reducing killer whale interactions with this fishery is to harvest with longline pot gear instead of hook-and-line gear, and thus deny killer whales the opportunity to take fish being hauled to the surface.

Currently, regulations at § 679.24(b)(1)(iii) prohibit longline pot gear in the Bering Sea to prevent the pre-emption of fishing grounds by one gear-type. Gear conflicts and the pre-emption of fishing grounds by a single gear-type arise from the use of diverse gear in the same area over the same period of time. The nature of longline pot gear and strategies used in fishing longline pots deter fishermen from deploying hook-and-line and trawl gear on fishing grounds where longline pot gear is set. This effectively pre-empts common fishing grounds. For this reason, the Council chose in 1991 to prohibit the use of longline pot gear in the Bering Sea groundfish fisheries. Regulations prohibiting longline pot gear were promulgated on August 21, 1992 (57 FR 37906).

In 1995, the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries extended sablefish seasons in Federal waters off Alaska to a period of 8 months. By allowing the fleet to spread its operations over time, the IFQ Program greatly reduced the possibility of congestion and pre-emption of common fishing grounds. The reintroduction of longline pot gear into the Bering Sea fisheries would pose less of a grounds pre-emption threat now compared to 1992 when longline pots were prohibited. Authorizing the use of longline pot gear, with limitations, in the Bering Sea directed sablefish fishery would allow fishermen to use this gear and reduce interactions with killer whales.

In recommending this action, the Council expressed concern that, despite the decreased likelihood of grounds pre-emption, fishermen using traditional hook-and-line gear in relatively small boats may be pre-empted from grounds by fishermen in larger boats using longline pot gear. Therefore, this action would establish a Bering Sea closure to longline pot gear from June 1 through June 30. Lifting the prohibition on longline pot gear for sablefish fisheries would reduce interactions with killer whales, while the month-long closure would continue to provide a period for conducting other fisheries without the potential for gear conflicts with longline pot gear.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The rule would reduce a restriction by allowing fishermen to use longline pot gear to harvest sablefish. At the present time, fishermen may use only hook-and-line gear, a gear subject to depredation of harvests by killer whales. While a gear switch would have direct costs, a switch would be voluntary and presumably would only be made if the fisherman judge that the costs associated with changing gear would be offset by the greater landed weight of sablefish possible in the absence of killer whale depredation.

The Director, Alaska Region, NMFS, has determined that fishing activities conducted under this rule would have no adverse impacts on marine mammals. The express purpose of this rule is to reduce the interactions with commercial fisheries in the Bering Sea and resident killer whale populations.

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements

Dated: July 9, 1996.

Nancy Foster, Ph.D.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

2. In § 679.24, paragraphs (b)(1)(iii) and (c)(4) are revised to read as follows:

§ 679.24 Gear limitations.

* * * * *

(b) * * *

(1) * * *

(iii) *Longline pot gear.* Any person using longline pot gear must treat any catch of groundfish as a prohibited species, except:

(A) In the Aleutian Islands subarea.

(B) While directed fishing for sablefish in the Bering Sea, except as provided in paragraph (c)(4)(ii) of this section.

* * * * *

(c) * * *

(4) *BSAI.* (i) Operators of vessels using gear types other than hook-and-line, pot, or trawl gear in the BSAI must treat sablefish as a prohibited species as provided by § 679.21(b).

(ii) Longline pot gear is prohibited in directed fishing for sablefish from 0001 hrs, A.l.t., on June 1 until 1200 hrs, A.l.t., on June 30.

* * * * *

[FR Doc. 96–17945 Filed 7–15–96; 8:45 am]
BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 137
Tuesday, July 16, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Offsets in Military Reports

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 16, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th and Constitution Avenue, N.W., Room 6877, Washington, D.C., 20230 (telephone: 202–482–0500).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Defense Production Act Amendments of 1992, Section 123 (P.L. 102–558), which amended Section 309 or the Defense Production Act of 1950, requires United States firms to furnish information regarding offset agreements and transactions exceeding $5,000,000 in value associated with sales of weapon systems or defense-related items to foreign countries. The information collected on offset agreements and transactions will be used to assess the cumulative effect of offset compensation practices on U.S. trade and competitiveness, as required by statute.

II. Method of Collection

The information is provided annually by a written report.

III. Data

OMB Number: 0694–0084.

Form Number: None.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 100.

Estimated Time Per Response: 10 hours per response.

Estimated Total Annual Burden Hours: 1,000.

Estimated Total Annual Cost: $20,000 (Respondents will not need to purchase equipment or materials to respond to this survey).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: July 10, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–18036 Filed 7–15–96; 8:45 am]
BILLING CODE 3510–07–P

International Trade Administration

Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination not to revoke antidumping duty orders and findings nor to terminate suspended investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: July 16, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR § 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on May 2, 1996, we published in the **Federal Register** a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received requests for administrative review or objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the

VOL
61
ISS
137
JUL
16
1996
UMI

suspended investigations. Therefore, because administrative reviews were requested or because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–357–802
Argentina
Rectangular Carbon Steel Tubing
Objection Date: May 30, 1996
Objector: Hannibal Industries, Inc.
Contact: Tom Killiam at (202) 482–2704

A–351–503
Brazil
Iron Construction Castings
Objection Date: May 7, 1996
Objector: East Jordan Iron Works, Inc.
Contact: Hermes Pinilla at (202) 482–3477

A–533–502
India
Pipes and Tubes
Review Requested By: Rajinder Pipes Limited of India on May 22, 1996, Allied Tube and Conduit Corporation, Sawhill Tubular Division of Armco Inc., Wheatland Tube Company, and Laclede Steel Company on May 24, 1996, Lloyds Metals & Engineers Ltd. on April 30, 1996
Contact: Davina Hashmi at (202) 482–0180

A–588–068
Japan
Impression Fabric
Objection Date: May 30, 1996
Objector: Bomont Industries
Contact: Lyn Johnson at (202) 482–5287

A–580–507
South Korea
Malleable Cast Iron Pipe Fittings, Other than Grooved
Objection Date: May 8, 1996
Objector: Grinnell Corporation, Ward Manufacturing, Inc., and Stockham Valves & Fittings Co., Inc.
Contact: Thomas Schauer at (202) 482–4852

A–583–008
Taiwan
Certain Welded Carbon Steel Pipe & Tubes
Review Requested By: Allied Tube and Conduit Corporation, Sawhill Tubular Division of Armco Inc., Wheatland Tube Company, and Laclede Steel Company on May 24, 1996
Contact: Michael Heaney at (202) 482–4475

A–583–507
Taiwan
Malleable Cast Iron Pipe Fittings, Other Than Grooved
Objection Date: May 8, 1996
Objector: Grinnell Corporation, Ward Manufacturing Inc., Stockham Valves & Fittings Co., Inc.
Contact: Laurel LaCivita at (202) 482–4740

Dated: July 12, 1996.

Joseph A. Spetrini,
Deputy Assistant Secretary for Compliance.

[FR Doc. 96–18053 Filed 7–15–96; 8:45 am]
BILLING CODE 3510–DS–P

[A–331–602]

Certain Fresh Cut Flowers From Ecuador; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Final Results of Antidumping Duty Administrative Review.

SUMMARY: On August 2, 1995, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain fresh cut flowers from Ecuador. The review covers 12 producers and/or exporters of this merchandise to the United States and the period March 1, 1993 through February 28, 1994.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, we have made certain changes for the final results. The review indicates the existence of dumping margins for certain firms during the review period. Therefore, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the foreign market value (FMV).

EFFECTIVE DATE: July 16, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas E. Schauer or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4852/4477.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 1987, the Department of Commerce (the Department) published in the **Federal Register** (52 FR 8494) the antidumping duty order on certain fresh cut flowers from Ecuador. On March 4, 1994, the Department published a notice of "Opportunity to Request Administrative Review" with respect to the period March 1, 1993 through February 28, 1994 (59 FR 14808). The Department received a timely request for review from the petitioner, the Floral Trade Council, on March 31, 1994, in accordance with 19 CFR 353.22(a). On August 2, 1995, we published the preliminary results of the administrative review (60 FR 39358). Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Two respondents have asked that we correct clerical errors contained in their responses. We have had a long-standing practice of correcting a respondent's clerical errors after the preliminary results only if we can assess from information already on the record that an error has been made, that the error is obvious from the record, and that the correction is accurate. *See Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Italy: Final Results of Antidumping Duty Administrative Review*, 57 FR 8295, 8297 (March 9, 1992). In light of a recent decision of the United States Court of Appeals for the Federal Circuit (CAFC), we have reevaluated our policy for correcting clerical errors of respondents. *See NTN Bearing Corp. v. United States*, Slip Op. 94–1186 (Fed. Cir. 1995) (*NTN*).

In *NTN*, the CAFC ruled that the Department had abused its discretion by refusing to correct certain clerical errors, which the respondent brought to the Department's attention after the preliminary results of review. Specifically, the CAFC found that the Department's application of its test for determining whether to correct clerical errors in *NTN* was unreasonable for the following reasons: 1) the requirement that the record disclose the error essentially precludes corrections of clerical errors made by a respondent; 2) draconian penalties are inappropriate for clerical errors because clerical errors are by their nature not errors in judgment but merely inadvertencies; 3) in NTN's case, a straightforward mathematical adjustment was all that was required, so correction of NTN's errors would neither have required beginning anew nor have delayed issuance of the final results of review.

As a result of the NTN decision, we are modifying our policy regarding the correction of alleged clerical errors. We will accept corrections of clerical errors under the following conditions: (1) the error in question must be demonstrated to be a clerical error, not a methodological error, an error in judgment, or a substantive error; (2) the Department must be satisfied that the corrective documentation provided in support of the clerical error allegation is reliable; (3) the respondent must have availed itself of the earliest reasonable opportunity to correct the error; (4) the clerical error allegation, and any corrective documentation, must be submitted to the Department no later than the due date for the respondent's administrative case brief; (5) the clerical error must not entail a substantial revision of the response; and (6) the respondent's corrective documentation must not contradict information previously determined to be accurate at verification. In the *Analysis of Comments Received* section of this notice, we have evaluated company-specific situations using the above criteria.

Scope of the Review

Imports covered by the review are shipments of certain fresh cut flowers from Ecuador (standard carnations, standard chrysanthemums, and pompom chrysanthemums). This merchandise is classifiable under Harmonized Tariff Schedule (HTS) items 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers Flores La Antonia, Flores del Quinche S.A., Florisol Cia Ltda., Flores de Ibarra, Flores de Puewmbo, Flores del Ecuador, Flores Pichincha, Florestrade, Guaisa S.A., Inlandes S.A., Mundiflor, and Velvet Flores Cia S.A., which are producers and/or exporters of certain fresh cut flowers from Ecuador to the United States and the period March 1, 1993 through February 28, 1994.

Best Information Available

Because certain companies did not provide a response to our request for information, we have determined that the use of best information otherwise available (BIA) is appropriate for these firms in accordance with section 776(c) of the Tariff Act of 1930, as amended (the Tariff Act). Our regulations provide that we may take into account whether a party refuses to provide information in determining what rate to use as BIA (19 CFR 353.37(b) (1994)). Generally, whenever a company refuses to cooperate with us or otherwise significantly impedes the proceeding, we use as adverse BIA the highest rate for any company for the same class or kind of merchandise from this or any other segment of the proceeding. When a company substantially cooperates with our requests for information, but fails to provide all the information requested in a timely manner or in the form requested, we use as cooperative BIA the higher of (1) the highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the less-than-fair-value (LTFV) investigation or a prior administrative review; or (2) the highest calculated rate in this review for any firm for the same class or kind of merchandise from the same country. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et al.; Final Results of Antidumping Duty Administrative Review*, 57 FR 28360, 28379–80 (July 24, 1992); *see also Allied-Signal Aerospace Co. v. United States*, 996 F.2d 1185 (Fed. Cir. 1993).

For these final results we have applied a cooperative BIA rate to sales made by Flores de Ibarra, Flores de Puewmbo, Flores del Ecuador, Flores Pichincha, Florestrade, and Mundiflor. These firms are no longer in business, and we have determined, in accordance with the standards enumerated in *Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review, and Notice of Revocation of Order (in Part)*, 59 FR 15159 (March 31, 1994) (*Colombian Flowers*), that they are incapable of responding to the Department's questionnaire. In *Colombian Flowers*, the Department treated bankrupt, or otherwise out-of-business, firms as cooperative provided that they explained their situation to the Department. In this case, the firms mentioned above submitted certifications that they are no longer in business and thus could not respond.

Therefore, in accordance with *Colombian Flowers*, we find these firms to be cooperative.

In this proceeding, the highest rate ever applicable to all of the firms to which we are applying second-tier BIA is the "all others" rate from the less-than-fair-value investigation. None of the rates calculated for this review exceeded the "all others" rate. Therefore, we have applied the "all others" rate, which is 5.89 percent, to Flores de Ibarra, Flores de Puewmbo, Flores del Ecuador, Flores Pichincha, Florestrade, and Mundiflor.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of counsel for Expoflores, an Ecuadorian trade association representing Ecuadorian flower producers including the respondents in this review, we held a hearing on September 26, 1995. We received case and rebuttal briefs from the Floral Trade Council (FTC), petitioner in this proceeding, and Expoflores, on behalf of respondents in this proceeding.

Issues Raised by the FTC

Comment 1: The FTC argues that the Department should deduct commissions paid to related consignees where they are at arm's length and directly related to sales, and that both commissions and indirect selling expenses should be deducted from ESP regardless of the relationship of the consignee. The FTC contends that where the statute (section 772(e)(1)) and the Department's regulations (19 CFR 353.41) direct the Department to deduct commissions from ESP, no distinction is made for commissions paid to related or unrelated consignees, nor is there any language directing the Department to deduct either commissions or indirect selling expenses, but not both. The FTC also argues that not deducting related party commissions is inconsistent with the Court of International Trade's (CIT) finding in *Timken Co. v. United States*, 630 F. Supp. 1327, 1341 (1986). The FTC further argues that, even assuming that the statute at section 772(e)(1) does not direct the Department to deduct commissions paid to related parties, such commissions should be deducted as a circumstance-of-sale adjustment whenever such commissions are at arm's length and directly related to sales. Finally, the FTC argues that commissions paid to related parties in the U.S. market are likely to be understated rather than overstated, and that the statute requires that, when commissions are not at arm's length, the Department is to deduct any commissions and remaining general expenses.

Expoflores claims that this issue is not relevant because none of the companies under review have related importers.

Department's Position: We agree with Expoflores. None of the companies for which we calculated margins have related importers. Therefore, this issue does not apply in this case. As for the FTC's argument that we should deduct both commissions and indirect selling expenses regardless of the relationship between the exporter and the consignee, we note that for the preliminary and these final results of review we deducted both commissions paid to unrelated consignees and indirect selling expenses incurred in the home market on U.S. sales.

Comment 2: The FTC claims that the Department did not specifically describe its treatment of FONIN export taxes in

VOL
61
ISS
137
JL
16
1996
UMI

the preliminary results of review, and asks the Department to ensure that it deducts these taxes correctly from U.S. price in the final results of review.

Department's Position: We deducted FONIN export taxes from USP, in accordance with section 772(d)(2)(B) of the Tariff Act.

Issues Raised by Respondents

Comment 3: Expoflores claims that Flores La Antonia (Antonia) made several obvious clerical errors in its questionnaire response, and that the Department should correct these errors. The clerical errors alleged by Expoflores are (1) the quantity of pompons shipped to a certain customer in a certain month is dramatically overstated; (2) box charges were inadvertantly not reported; (3) domestic inland freight expense is overstated in one month; (4) the sales values of certain flowers for a few months for one importer were shifted by one month; and (5) the quantity of subject merchandise shipped to a certain customer in a certain month is understated. Expoflores argues that these errors are of the sort normally found and corrected at verification, but, because the Department chose not to verify Antonia, these errors were not discovered until after issuance of the preliminary results. Expoflores asks that, in the interest of fairness and accuracy, the Department correct these errors so as not to unduly penalize Antonia for not having undergone verification. Expoflores claims that the accuracy of the corrections submitted on behalf of Antonia is clear from the administrative record. Expoflores further argues that the corrections should not be considered untimely on the grounds that they cannot be verified, because it was the Department's decision not to verify Antonia. Finally, Expoflores argues that because the corrections refer to original timely submitted data provided in Antonia's original response to the Department's questionnaire, they do not constitute new information.

The FTC contends that the Department should not make these corrections as submitted by Antonia, because these errors were not obvious from the record and could not have been identified by the Department without additional information. The FTC asserts that the fact that neither the Department nor Antonia identified the errors prior to issuance of the preliminary results is compelling evidence that the errors were not obvious. In addition, the FTC contends that the Department should reject the information Antonia submitted in its case brief to support its argument because it contained untimely new information.

The FTC also argues that Antonia's claim that these errors are of the sort normally found at verification has no relevance here. Because the Department did not conduct verification and did not find the errors in preparing the preliminary results, the FTC argues that the burden is on Antonia to ensure that the data submitted is correct. The FTC argues that the purpose of verification is not to discover errors so that corrections can be made, but rather to determine the accuracy of submitted data. Furthermore, the FTC states that it is not clear whether there are any other unidentified reporting errors in the response. The FTC further argues that the Department has no way of confirming the accuracy of the remaining portions of Antonia's response without verification and should consider rejecting the response entirely and assigning a margin based on best information available.

Department's Position: Because we received Antonia's request that we correct its response after publication of our preliminary results and the alleged errors were not apparent from the record, we have applied the six criteria explained in the *Background* section of this notice. First, we examined the errors, and have determined that they are clerical, and not methodological, in nature. Second, respondent submitted, with its case brief, grower's reports, as well as cites to its original response, that substantiated its claims with regard to these clerical errors. Third, no note that these errors in the original submission existed was made by any party prior to respondent's case brief. Fourth, the clerical error allegation was not made later than the due date for respondent's case brief. Fifth, we determine that, because each of the errors affected one or a few figures for individual line items for the POR, correction of these errors does not entail a substantial revision of the response. Finally, we had not previously verified the information submitted. Thus, we find that Antonia met all of the criteria for each of the errors. Therefore, we have accepted Antonia's corrections as clerical in nature and have made these changes for the final results.

Comment 4: Expoflores argues that the interest rate that the Department used in calculating interest expense for Flores del Quinche (Quinche) is incorrect. Expoflores claims that Quinche inadvertantly entered the wrong value in the spreadsheet, but noted this mistake, and reported the correct interest rate in its narrative response. Expoflores asks that the Department correct this error for the final results.

The FTC contends that because the record is inconsistent with respect to the correct interest rate, the Department should select the higher rate as best information available.

Department's Position: Since Quinche's request that we correct its response was received after publication of our preliminary results, we have applied the six criteria from our new policy which we explained in the *Background* section of this notice. We find that Quinche met all of the criteria, with the substantiating evidence having been on the record prior to the preliminary results. Therefore, we have made this change for the final results.

Final Results of the Review

As a result of our review, we determine that the following margins exist for the period March 1, 1993 through February 28, 1994:

	Margin (percent)
Manufacturer/Exporter:	
Flores la Antonia	0.51
Flores del Quinche S.A	1.17
Florisol Cia Ltda	0.05
Flores de Ibarra	5.89
Flores de Puewmbo	5.89
Flores del Ecuador	5.89
Flores Pichincha	5.89
Florestrade	5.89
Guaisa S.A	(1)
Inlandes S.A	(1)
Mundiflor	5.89
Velvet Flores Cia S.A	(1)

[1] No shipments during the period of review; since there was no prior review of this company, the "all other" rate from the less-than-fair-value (LTFV) investigation is applicable.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse for consumption, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates as listed above, except for Florisol Cia, Ltda., for which, because the margin is *de minimis*, we will instruct the Customs Service to require a cash deposit of zero percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all other" rate of 5.89 percent. This is the rate established during the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 8, 1996.

Robert LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–18054 Filed 7–15–96; 8:45 am]

BILLING CODE 3510–DS–P

Minority Business Development Agency

Nationwide Capital Development Center

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: Funds are available to conduct a competitive solicitation in order to select an applicant to operate a nationwide Capital Development Center to assist minority business clients to access debt and equity capital. This Center, to be operated under detailed work requirements established by the Minority Business Development Agency (MBDA), will provide client services designed to enable minority business enterprises (MBEs) to implement long-term growth strategies by securing capital through both mainstream and specialized capital markets. Such services shall include analyzing an MBE's financial statements, assisting in the preparation of financial plans, introduction of the MBE to prospective investors and lenders, and assistance in transaction closings. The Center will act as a liaison between the MBE community and the capital markets, serving as a clearinghouse for available resources and opportunities, and matching qualified MBEs with potential funding sources.

The project will be national in scope, and will serve eligible minority firms throughout the fifty states, as provided by the work requirements. Firms eligible to receive client assistance shall be growth-oriented firms, in business for not less than two years, and who seek to engage in capital transactions of $500,000 or more.

Executive Order 11625, effective October 13, 1991, authorizes MBDA to provide management and technical assistance to socially and economically disadvantaged businesses and to coordinate Federal efforts to assist in the growth and expansion of the nation's minority business sector. MBDA has determined that a substantial impediment to minority business growth involves the inability to access financial capital. The primary objective of this project is to provide management and technical assistance to middle-market MBEs who are seeking to approach the capital markets to obtain financing. Areas of assistance will include: obtaining venture capital financing, the design and implementation of financial plans as vehicles for sustained growth, replacement of debt with equity capital, and financing business acquisitions and mergers.

The successful applicant will operate the Center for a three-year period, subject to agency priorities, recipient performance and the availability of funds.

DATES: The closing date for applications is August 15, 1996. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before August 15, 1996. A pre-application conference to assist all interested applicants will be held on July 30, 1996, at 1:00 p.m., at the U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Room 5045, Washington, D.C. 20230.

PROPER IDENTIFICATION IS REQUIRED FOR ENTRANCE INTO ANY FEDERAL BUILDING.

ADDRESSES: Competitive Application Packages for the Capital Development Center will be available from MBDA beginning on the date this Notice is published. To obtain a copy of the Application Package, please call via telephone (202) 482–3261, or facsimile (202) 482–6021, or send a written request with two (2) self-addressed mailing labels to Robert Hooks, Chief, Resource and Market Division, Minority Business Development Agency, Room 5092, U.S. Department of Commerce, 14th & Constitution Avenue, N.W., Washington, D.C. 20230.

Completed proposals should be submitted to the U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Elio Muller, Associate Director for Strategic Planning and Operations, (202) 482–1015.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from October 1, 1996 to October 31, 1997, is estimated at $588,235. A 30-day start-up period will be added to the first budget period, making it a 13-month award. The application must include a minimum cost-share of $88,235 or 15% of the total project cost, through non-Federal contributions. The Federal share, to be in the amount of $500,000, includes $12,000 for an annual audit fee. Cost-sharing may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the expertise and capabilities of the firm and its staff in addressing the capital needs of businesses in general and, more specifically, of minority businesses (50 points); the resources available to the firm in assisting minority firms to raise capital (10 points); the firm's approach (techniques and methodologies) to performing the work requirements developed for this project (20 points);

VOL
61
ISS
137
JL
16
1996
UMI

and the firm's estimated cost of performing the work requirements. An application must receive at least 70% of the points assigned to each of the evaluation criteria to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

The Capital Development Center operator shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the operator may charge client fees for management and technical assistance (M&TA) rendered. Any client fees charged for services rendered under this award must be charged at rates determined under an established fee policy approved by the Department of Commerce (DOC).

If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC. Awards under this program shall be subject to all Federal laws, Federal and Departmental regulations, policies and procedures applicable to Federal assistance awards.

Quarterly reviews culminating in year-end evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the operator's performance, the availability of funds and Agency priorities. The anticipated processing time for this award is 90 days.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Accounts Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, or a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal whether any key individuals associated with the applicant have been convicted or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Non-Procurement Debarment and Suspension—Prospective participants (as defined at 15 CFR, Part 26, Section 26.105) are subject to 15 CFR, Part 26, "Non-Procurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR, Part 26, Section 26.605) are subject to 15 CFR, Part 26, Subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR, Part 28, Section 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR, Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient and should not be transmitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

Dated: July 10, 1996.

Frances B. Douglas,

Alternate, Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 96–17986 Filed 7–15–96; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Notice of Public Hearings in Texas on the Draft Environmental Impact Statement on the Proposed Texas Coastal Management Program

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public hearings.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) hereby gives notice that it will hold two public hearings in Texas on the Texas Coastal Management Program/Draft Environmental Impact Statement (P/DEIS). The P/DEIS has been prepared in conjunction with NOAA's proposed approval of the Texas Coastal Management Program (TCMP, or program) under the provisions of Section 306 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1455. The P/DEIS was filed with EPA on June 13, 1996 and the notice of availability for the DEIS was published in the **Federal Register** on June 21, 1996. The public comment period on the P/DEIS ends August 5, 1996. Notice of these hearings was provided to all agencies, organizations and individuals receiving copies of the P/DEIS.

Pursuant to the Coastal Zone Management Act of 1972, as amended, NOAA's Office of Ocean and Coastal Resource Management (NOAA/OCRM), in coordination with the Texas Coastal Coordination Council will hold the two public hearings at the following locations in Texas:

Wednesday, July 31, 1996—7:00 p.m.
Corpus Christi City Hall, Council Chambers, 1201 Leopard, Corpus Christi, Texas

Thursday, August 1, 1996—7:00 p.m.
Texas A&M University at Galveston, University Auditorium, Room CLB–100, 200 Seawolf Parkway, Galveston, Texas.

The purpose of the hearings is to receive comments on NOAA's preliminary determination to approve the Texas Coastal Management Program pursuant to the Coastal Zone Management Act as reflected in the P/DEIS.

The proposed Federal approval of the program would make Texas eligible for program administration and enhancement awards and require Federal actions to be consistent with the enforceable policies of the State's management program (16 U.S.C. 1455, 1456). The alternatives to approval include delaying approval of the program, or denying approval which, in this case, is the no-action alternative.

Individuals or organizations wishing to submit written comments on the range of alternatives, the underlying issues for decision, or other issues should do so by August 5, 1996. Requests for the above described documents and all comments should be made to:

National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Coastal Programs Division, Gulf/Caribbean Region, 1305 East-West Highway (N/ORM3), Silver Spring, Maryland 20910, Attention: Joe Uravitch.

FOR FURTHER INFORMATION CONTACT: Bill O'Beirne at tel. 301/713–3109 x160; fax (301) 713–4367; internet [bobeirnecoasts.nos.noaa.gov] or, Janet Fatheree of the Texas General Land Office at tel. 512/463–5385; fax 512/475–0680, or internet [jfathere@glo.state.tax.us].

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated July 9, 1996.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 96–17992 Filed 7–15–96; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0103]

Proposed Collection; Comment Request Entitled Procurement Integrity

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0103)

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Procurement Integrity. This OMB clearance currently expires on October 31, 1996.

DATES: Comment Due Date: September 16, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0103, Procurement Integrity, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Peter O'Such, Office of Federal Acquisition Policy, GSA (202) 501–1759.

SUPPLEMENTARY INFORMATION:

A. Purpose

Public Law 100–679, the Office of Federal Procurement Policy Act Amendments of 1988, as amended by section 814 of Public Law 101–189, requires that contractors certify, prior to execution of each contract, modification or extension in excess of $10,000 with respect to conduct prohibited by the Act.

The information obtained in the certification will be used by the contracting officer to ensure that prohibited conduct specified in the Act is identified and in determining the responsibility of the firm for contract award.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *5 minutes* per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *20,000;* responses per respondent, *20;* total annual responses, *400,000;* preparation hours per response, *5 minutes;* and total response burden hours, *43,333.*

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *20,000;* hours per recordkeeper, *30 minutes;* and total recordkeeping burden hours, *10,000.*

Dated: July 9, 1996.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 96–17972 Filed 7–15–96; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL95–33–000]

Louisiana Public Service Commission v. Entergy Services, Inc.; Notice of Filing

July 2, 1996.

Take notice that on May 9, 1995, the Louisiana Public Service Commission filed an amended complaint under

VOL
61
ISS
137
JL
16
1996
UMI

Sections 205 and 206 of the Federal Power Act, 16 U.S.C. §§ 824d and 824e against Entergy Services, Inc. as the representative of Entergy Corporation and its operating companies, Louisiana Power & Light Co. (LP&L), Arkansas Powpr & Light Co. (AP&L), Mississippi Power & Light Co. (MP&L), and New Orleans Public Service, Inc. (NOPSI). The complaint seeks a revision of the Entergy System Agreement based upon allegations that the terms of that agreement, under current circumstances, are unjust and unreasonable. Specifically, the complaint alleges that the absence of any provisions in the System Agreement excluding curtailable load from the determination of a company's load responsibility under the System Agreement results in an unjust and unreasonable cost allocation to companies that do not cause these costs to be incurred, and results in cross-subsidization among the companies. Additionally, it is alleged that the absence of any provision in MSS–3 for allocating marginal energy costs to customers that purchase energy under Entergy's "real time pricing" rate schedules at the retail level discriminates against a company that offers real time pricing. It further alleges that the System Agreement should be amended to require use of the 4CP method to determine load.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 16, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the amended complaint shall also be due on or before July 16, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 96–17967 Filed 7–15–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140244; FRL–5383–2]

Access to Confidential Business Information by ABT Associates, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, ABT Associates (ABT), of Cambridge, Massachusetts and Bethesda, Maryland, for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than July 26, 1996.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–W6–0021 contractor ABT of 55 Wheeler St. Cambridge, MA and 4800 Montgomery Lane, Suite 600, Bethesda, MD, will assist the Office of Pollution Prevention and Toxics (OPPT) in evaluating the potential risk of new and existing chemical substances and develop a data bearing on such risks.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W6–0021, ABT will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. ABT personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the **Federal Register** of January 11, 1991 (56 FR 1185), ABT was authorized for access to CBI submitted to EPA under sections 4, 5, 6, 8, 9, and 21 of TSCA. EPA is issuing this notice to allow ABT access to TSCA CBI under contract number 68–W6–0021 at its Bethesda, MD facility.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide ABT access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and at the contractor's Bethesda, MD facility only.

ABT will be authorized access to TSCA CBI at their facility under the EPA "*TSCA Confidential Business Information Security Manual.*" Before access to TSCA CBI is authorized at ABT's site, EPA will approve ABT's security certification statement, perform the required inspection of its facility, and ensure that the facility is in compliance with the manual. Upon completing review of the CBI materials, ABT will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until April 30, 2001.

ABT personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: July 10, 1996.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 96–18037 Filed 7–15–96; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–140245; FRL–5383–3]

Access to Confidential Business Information by Eastern Research Group, Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Eastern Research Group (ERG), of Lexington, Massachusetts, for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than July 26, 1996.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–W6–0022, contractor ERG, of 110 Hartwell Avenue, Lexington, MA, will assist the Office of Pollution Prevention and Toxics (OPPT) in evaluating the potential risk of new and existing chemical substances and develop a data bearing on such risks.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W6–0022, ERG will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. ERG personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the **Federal Register** of January 11, 1991 (56 FR 1185), ERG was authorized for access to CBI submitted to EPA under sections 4, 5, 6, 8, 9, and 21 of TSCA. EPA is issuing this notice to allow ERG's access to TSCA CBI under contract 68–W6–0022 at its Lexington, MA facility.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide ERG access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA facilities and ERG's Lexington, MA facility only.

ERG will be authorized access to TSCA CBI at their facility under the EPA "*TSCA Confidential Business Information Security Manual.*" Before access to TSCA CBI is authorized at ERG's site, EPA will approve ERG's security certification statement, perform the required inspection of its facility, and ensure that the facility is in compliance with the manual. Upon completing review of the CBI materials, ERG will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until April 30, 2001.

ERG personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: July 10, 1996.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 96–18038 Filed 7–15–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5538–5]

Underground Injection Control Program Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection—Chemical Waste Management, Inc., (CWMI)

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition modification.

SUMMARY: Notice is hereby given that modification of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to CWMI, for the Class I injection well located at Port Arthur, Texas. As required by 40 CFR § 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by CWMI, of the specific restricted hazardous waste identified in the exemption modification, into the Class I hazardous waste injection well at the Port Arthur, Texas facility specifically identified in the modified exemption, for as long as the basis for granting an approval of this exemption remains valid, under provisions of 40 CFR § 148.24. As required by 40 CFR § 124.10, a public notice was issued May 17, 1996. The public comment period closed on July 1, 1996. EPA received no comments. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of July 5, 1996.

ADDRESSES: Copies of the reissued petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ken Williams, Acting Chief, Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–7165.

William B. Hathaway,

Director, Water Quality Protection Division (6WQ).

[FR Doc. 96–18045 Filed 7–15–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5538–7]

Notice of Public Meeting of National Environmental Education Advisory Council and Public Review of Council's Draft Report to Congress

Notice is hereby given that the National Environmental Education Advisory Council, established under section 9 of the National Environmental Education Act of 1990 (the Act), will hold a public meeting on August 5th and 6th, 1996. The meeting will take place at the Madison Hotel, 15th and M Streets, NW, Washington DC from 9:00 am to 5:00 pm on Monday, August 5th and from 9:00 am to 3:00 pm on Tuesday, August 6th. The purpose of this meeting is provide the Council with an opportunity to advise EPA's Environmental Education Division (EED) on its implementation of the Act. Members of the public are invited to attend the meeting and to submit written comments to EPA following the meeting.

Notice is also hereby given that EPA will release the Council's draft report to Congress to the public for review and comment prior to the Council's August meeting. This report assesses environmental education in the United States and EPA's implementation of the Act. The Council is required to prepare this report under section 9 of the Act. EPA expects the report to be available for public review and comment from July 17th through July 31st, 1996. Public comments on the report will be discussed at the Council's August meeting.

For additional information regarding the Council's upcoming meeting or to obtain a copy of the Council's draft report to Congress for review and comment, please contact Kathleen MacKinnon, Environmental Education Division (1707), Office of Communications, Education, and Public Affairs, U.S. EPA, 401 M Street, SW, Washington, DC, 20460 or call 202–260–4951.

VOL 61 ISS 137 JL 16 1996 UMI

Dated: July 9, 1996.

Kathleen MacKinnon,

Designated Federal Official, National Environmental Education Advisory Council.

[FR Doc. 96–18040 Filed 7–15–96; 8:00 am]

BILLING CODE 6560–50–P

[FRL–5534–3]

Proposed Cercla Administrative De Minimis Settlements—Chemical Handling Corporation Site, Jefferson County, Colorado

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice and Request for Public Comment.

SUMMARY: In accordance with the requirements of Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of two proposed administrative *de minimis* settlements under Section 122(g) of CERCLA, 42 U.S.C. 9622(g), concerning the Chemical Handling Corporation site located at 11811 Upham Street, near the City of Broomfield, in unincorporated Jefferson County, Colorado ("Site"), with the settling parties listed in the Supplementary Information portion of this notice. The settlements, embodied in proposed Administrative Orders on Consent ("AOCs"), are designed to resolve fully each private settling party's liability and each federal settling party's liability at the Site through a covenant not to sue (for private parties) or a covenant not to take administrative action (for federal parties) under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973. The proposed AOCs require the Potentially Responsible Parties ("PRPs") listed in the Supplementary Information section below to pay an aggregate total of $1,097,244.34 to address their liability to the United States related to response actions taken at the Site.

OPPORTUNITY FOR COMMENT: For thirty (30) days following the date of publication of this notice, the Agency will consider all comments received and may modify or withdraw its consent to either or both of the settlements if comments received disclose facts or considerations which indicate that either or both of the settlements are inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA Superfund Record Center, 999 18th Street, 5th Floor, in Denver, Colorado. Commenters may request an opportunity for a public meeting in the affected area in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

DATES: Comments must be submitted on or before August 15, 1996.

ADDRESSES: The proposed settlements and additional background information relating to the settlements are available for public inspection at the EPA Superfund Record Center, 999 18th Street, 5th Floor, in Denver, Colorado. Comments and requests for a copy of the proposed settlements should be addressed to Carol Pokorny, Enforcement Specialist (8ENF–T), Technical Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, and should reference the Chemical Handling Corporation Site, Jefferson County, Colorado and EPA Docket Nos. CERCLA VIII–96–09 (private party AOC) and CERCLA VIII–96–09A (federal party AOC).

FOR FURTHER INFORMATION CONTACT: Carol Pokorny, Enforcement Specialist (8ENF–T), Technical Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 312–6970.

SUPPLEMENTARY INFORMATION: Notice of proposed administrative *de minimis* settlements under Section 122(g) of CERCLA, 42 U.S.C. 9622(g): In accordance with Section 122(i) of CERCLA, 42 U.S.C. 9622(i), notice is hereby given that the terms of two Administrative Orders on Consent ("AOCs") have been agreed to by the following settling parties, for the following amounts (where the name of a party is followed by one or more sets of " {," the name contained within the " }" is the name that appears on the AOC signature page or is the name(s) of the party(ies) that is/are assuming liability under the AOC):

Name of party	Settlement amount
AOC CERCLA VIII–96–09A (Federal Parties)	
Air National Guard	$2,353.53
Angell C.C.C./USDA Forest Service	470.31
Commandant, U.S. Coast Guard, Env. Law Division	29.93
U.S. Coast Guard Group North Bend	
U.S. Coast Guard Group Port Angeles	
Crater Lake National Park	1,646.10
CSMS c/o USP & FO	823.05
Denali National Park	256.53
Federal Highway Admin—CFLHD	2,009.52
National Park Service (Bryce Canyon National Park)	117.58
National Park Service (Denver)	213.78
NOAA/US Department of Commerce	304.63
U.S. Army Corps of Engineers/Dalles	1,400.25
U.S. Army Corps of Engineers/Walla Walla	4,542.80
U.S. Customs Service	641.34
U.S. Department of Interior/Bureau of Mines	522.65
U.S. Department of Interior/Bureau of Rec/Montana	235.16
U.S. Department of Interior/Bureau of Rec/Utah	235.16
U.S. Department of Justice/Unicor	1,410.94
U.S. Department of Treasury/U.S. Mint	2,201.92
U.S. Postal Service (7500 E. 53rd Place)	844.43
U.S. Postal Service (Federal Way, Washington)	235.16
Unicor/Federal Prison Industries	1,581.96
Veterans Affairs, Office of Regional Counsel	5,622.38

Name of party	Settlement amount
V.A. Medical Center (Tacoma)	
V.A. Medical Center (Spokane)	
V.A. Medical Center (Seattle)	
V.A. Medical Center (Portland)	
Weber Basin Job Corps./U.S. Department of the Interior	470.31
Total	$26,169.46
AOC CERCLA VIII–96–09 (Private Parties)	
A&K Auto Works	$841.34
A. G. Wassenaar	331.36
Wassenaar, A.G.	
A. G. Wassenaar	
A.C.I. (Coors) {Coors Ceramics Company}	3,880.09
ABC Auto Body	673.40
Academy Ford {Academy, Inc.}	534.45
Accurate Industries {The Service Center, Inc.}	106.89
Ackerman & Sons (Littleton)	213.78
Adams County Engineering	32.07
Adams County School Dist. #12	534.45
Adams County School District #14	117.58
Advanced Body & Paint	117.58
Aelco Corporation	705.47
Aero Metalcraft, Inc	117.58
Aero Propeller & Accessories	213.78
Aeroquip Corporation	1,038.17
Aggression Snow Boards	962.00
Ak-wa Inc	10,934.79
Albuquerque Auto Auction {ADT Automotive}	1,827.81
Alexander Films {Don Hawks}	213.78
Alexander Motor Company	235.16
All West Display {Prosser Enterprises, Inc.}	2,233.99
All Wire Inc	106.89
Alpine Body Shop	235.16
Amax Coal Company—Belle Ayr Mine {Amax Coal West, Inc.}	491.69
Amax Coal Company—Eagle Butte Mine {Amax Coal West, Inc.}	577.20
America Now {America Now, Inc.}	106.89
American Air Cargo	427.56
American Auto Body {American Auto Body, Inc.}	106.89
American Cabinet Concepts {American Cabinet Concepts, Inc.}	13,639.09
American Gear & Supply Co. {American Gear & Supply Co., Inc.}	823.05
American Web {American Web, Inc.}	5,023.80
Ameron Pipe {Ameron, Inc.}	497.04
AMI {Tenet Healthsystem}	117.58
Amigo Chevrolet-Geo	756.91
Ampad Corp	117.58
Ampex Corp—CSP (Colorado Springs)	1,175.78
Ampex Corp—CSP (Colorado Springs)	
Ampex Corp. (Golden)	
AMW Industries, Inc:	
{Crane Pumps and Systems, Inc.}	470.32
{AMW Industries, Inc.}	470.32
Analog Devices Inc	74.82
Analytical Development Corp	3,174.62
Analytical Technologies Inc	5,996.50
Anchor Printing & Graphic {Anchor Printing & Graphic, Inc.}	352.74
Anderson Lumber Company	117.58
Anema Auto Body (5555 E. Evans) {Anema Auto Body, Inc.}	2,244.66
Anema's Auto Body (5303 E. Pacific Place)	
Anema's Auto Body (5545 E. Evans)	
Anema Auto Body (5555 E. Evans)	
Animate Systems Inc	117.58
Anodizing Inc	14,116.88
Pacific Coatings, Inc. (Anodizing)	
Anodizing Inc.	
Anodyne, Incorporated	748.23
Applewood Auto Body {Applewood Auto Body, Inc.}	106.89
Arapahoe Body and Paint {Tath Corp.}	106.89
Arkansas Fuel Injections {Arkansas Fuel Injections, Inc.}	352.74
Arvada Auto Body {Arvada Auto Body, Inc.}	427.56
Ash Grove Cement Company (Portland)	1,881.25

VOL 61 ISS 137 JL 16 1996 UMI

Name of party	Settlement amount
Ash Grove Cement West	
Ash Grove Cement (Seattle)	
Asko Processing Inc	235.16
Asphalt Supply & Service:	
(Asphalt Supply & Service, Inc.)	64.13
(Conoco, Inc.)	64.14
Assaigai Analytical Laboratories (Assaigai Analytical Labs., Inc.)	352.74
Associated Pathologists	352.74
Atec Associates, Inc. (Indianapolis)	3,848.02
Atec Associates Inc. (47th Avenue)	
Fruehauf Trailers	
Attbar Plastics, Inc. (Attbar, Inc.)	352.74
Auraria Higher Education Center	587.89
Auraria Higher Education Center	
Metropolitan State College	
University of Colorado, Denver	
Auto Body Dynamics (Budco, Inc.)	1,282.67
Auto Electronical de Juarez, S.A./Acustar, Inc. (Chrysler Corp.)	13,526.21
Auto Lover Collision (& Glass—Platte) (Auto Lovers Collision East, Inc.)	876.49
Auto Lover Collision (& Glass—Fillmore)	
Auto Lover Collision (& Glass—Platte)	
Automotive Services, Inc	12,185.39
Avedon Engineering	5,237.58
Avis Rent-A-Car (Story Enterprises)	587.89
AVX Corporation (Avio Excelente, S. A. de C.V.)	16,450.26
AVX Corporation (Colorado Springs)	
AVX Corporation (El Paso)	
B&B Auto Body	1,175.78
B&E Auto Service	427.56
B.C. Rail Ltd. (Vancouver)	10,699.63
B.C. Rail Ltd. (Vancouver)	
B.C. Rail (Squamish)	
Bale Chevrolet (Bale Chevrolet Co., Inc.)	1,410.94
Balkamp Inc	705.47
Bandag Inc	6,937.12
Bandgap Technology Corporation	213.78
Bannock Center Corp	1,496.45
Barone Inc	1,282.67
Bart's Auto Body	2,458.46
Bear Creek Auto Body	106.89
Beckstrom Body Shop	470.31
Bemis Company Inc	753.57
Bernalillo County Public Works Dept	1,485.76
Betz Laboratories (Betz Laboratories, Inc.)	1,197.16
Bevtech, Inc	352.74
BHP Minerals International	13,991.82
BHP-Utah International, Inc.	
BHP-Utah San Juan Coal Company	
BHP-Utah San Juan Mine	
Black & White Auto (Black & White Auto, Inc.)	1,389.56
Blazer Industries (Blazer Industries, Inc.)	235.16
Bob Turner's Ford Country	940.63
Bob's Auto Body & Paint	1,603.34
Body Beautiful	342.05
Body Master	235.16
Body Works Unlimited	235.16
Body's by Brown (Body's by Brown, Inc.)	427.56
Boulder Bump Shop, Inc	1,924.01
Boulder Community Hospital	587.89
Boulder Valley Public Schools	641.34
Boyd Lighting (Boyd Lighting Co.)	748.23
Bradford Auto Body, Inc	1,175.78
Brigham Young University	10,039.05
Broomfield Industrial Paint (Broomfield Industrial Painting, Inc.)	213.78
Brown & Root (Brown & Root, Inc.)	1,410.94
Brownell Electric (Avnet/BE Corp.)	106.89
Brunson Instrument Co	513.07
Burlington Northern Railroad	106.89
Burns Automotive (Burns Automotive Body Shop)	427.56
Burris Co	534.45
Burt Chevrolet	4,183.99
Burt Subaru Inc	882.57
Bushmen Press	

Name of party	Settlement amount
(Banta Corporation)	470.31
(SPG, Inc.)	1,998.83
C&S Drywall (C&S Drywall, Inc.)	1,496.45
C.P.R. Complete Paint and Repair (C.P.R. Complete Paint and Repair, Inc.)	847.22
Cable Technology Corporation (Quatro Corporation)	117.58
Cadet Manufacturing (Cadet Manufacturing Co.)	1,076.91
California Institute for Men	587.89
Can-am Body Shop	117.58
Canron Western (Canron Construction Corporation)	352.74
Car Crafters Paint and Body Repair	4,467.98
Car Works Auto Body (Car Works Auto Body II, Inc.)	534.45
Careleon Cadillac (Careleon Quality Body and Paint)	117.58
Carlin Dodge Inc	1,175.78
Carts of Colorado (Carts of Colorado, Inc.)	106.89
Cascade General Inc	7,760.17
Cascade Pole (Tacoma) (Cascade Pole and Lumber Co.)	3,174.62
Cascade Pole Company (Olympia)	
Cascade Pole (Tacoma)	
Cellpro, Inc	662.71
Cenco Architectural Wood	2,116.41
Center Line Machine (Center Line Machine Co.)	427.56
Center Printing & Graphics	106.89
Centex American Gypsum Company	53.44
Central City Concerns (Portland Development Commission)	100.22
Central Products (Central Products Company)	5,665.14
Century International Corp	982.00
Chamberdoor Industries (Chamberdoor Industries, Inc.)	11,939.55
Charles Grant & Company	1,132.64
Chem Rex (Chem Rex, Inc.)	8,604.60
Chemical & Geological Lab of Alaska (CTE Environmental Services)	235.16
Chen-Northern (Chen and Associates)	117.58
Cherry Creek Collision (Cherry Creek Collision, Inc.)	534.45
Cherry Creek Dodge (Cherry Creek Dodge, Inc.)	213.78
Cherry Creek School District	1,881.25
Cherry Creek Schools, Publications Department	
Smoky Hill High School—Transportation	
Cherry Creek Schools, District #5	
Overland High School	
Chesrown Chevrolet (Chesrown Chevrolet, Inc.)	1,496.45
Chevron Research and Technology Company	8,194.42
Chevron USA—East Painter Compression Station	
Chevron U.S.A., Inc. (P.O. Box 4424, Portland)	
Chevron U.S.A., Inc. (P.O. Box 4168, Portland)	
Christensen Motor Yachts Corp. (Christensen Shipyards Ltd.)	8,112.91
Christensen Motor Yachts Corp. (Columbia Way)	
Christensen Motor Yachts Corp. (Hidden Way)	
City and County of Denver	1,956.08
City & County of Denver, Dept. of Public Works	
Denver General Hospital	
Denver Police Garage	
City of Albuquerque	4,072.49
Albuquerque Fire Department	
City of Albuquerque Fleet Management	
City of Albq. General Services	
Albuquerque Police Department	
Sun Tran of Albuquerque	
City of Aurora	662.71
Aurora Maintenance Facility	
City of Casper	117.58
City of Fort Smith, Traffic Control	587.89
City of Greenwood Village	235.16
City of Kennewick	256.53
City of Lakewood	2,150.61
City of Longmont	534.45
City of Longmont (Signs & Paint Shop)	
City of Portland	1,410.94
City of Tacoma, Dept. of Public Util., Light Div.	4,371.78
City of Tacoma, Dept. of Public Utilities	
City of Tacoma	
City of Vancouver	1,143.72
City of Wheatridge	213.78
Claridge Extrusions, Inc	235.16
Claridge Products & Equipment (Claridge Products & Equipment, Inc.)	3,680.09

VOL 61 ISS 137 JL 16 1996 UMI

Name of party	Settlement amount
Classic Coach	655.12
Clearfield Conveyor {Clearfield Conveyors Corporation}	587.89
Clyde West Equipment	470.31
Clyde's Auto Body	748.23
Coast Engine & Equipment Co	705.47
Collcraft de Mexico, S.A./Collcraft, Inc	5,055.87
Collins Auto Renewell	427.56
Color Dynamics Inc	1,528.52
Color-rite Auto Body	106.89
Colorado Auto Body Inc	2,244.68
Colorado Barricade {Colorado Barricade Co., Inc.}	427.56
Colorado Chrysler Plymouth	855.12
Colorado Coach Auto Body, Inc	962.00
Colorado Collision {Colorado Collision Repair, Inc.}	213.78
Colorado Corrections {Colorado Department of Corrections}	441.29
Colorado Dept. of Highways	213.78
Colorado Frame Mfg. {Colorado Frame Mfg., Inc.}	320.67
Colorado Histology	277.91
Colorado Plasticard {Colorado Plasticard, Inc.}	748.23
Colorado Steel & Wire {Colorado Steel & Wire Co.}	2,244.68
Colorado Time Systems {Colorado Time Systems, Inc.}	106.89
Columbia Analytical Services {Columbia Analytical Services, Inc.}	4,115.24
Combs Gates Denver Inc	459.62
Complete Auto Body {Complete Auto Body & Paint}	320.67
Comptronics {Comptronix}	427.56
Confi-dental Products {Confidental Products Co.}	213.78
Continental Brass Co	470.31
Corvette Center	735.48
County of Spokane, State of WA	697.99
Courtesy Ford	2,244.68
CPSI	106.89
Cramers Body Shop	641.34
Crawford Chevrolet	801.67
Creative Pultrusions, Inc	2,712.32
Crete Carriers	235.16
Crown Lift Truck {Crown Equipment Corporation}	855.12
Cryenco, Inc	6,800.84
Cryogenic Energy Co.	
Cryenco, Inc	
Crystal Lite Manufacturing {Crystal Lite Manufacturing Co.}	470.31
Crystal Specialties International	
{Akzo Nobel Electronics Products, Inc.}	21.38
{Crystal Specialties, Inc.}	21.38
Cuerden Sign Co	470.31
Cummins N.W	485.42
Current, Inc {Deluxe Corporation}	8,743.55
D&H Steel {D&H Steel Supply, Inc.}	288.60
D&K Printing	534.45
D.K. Watson (Collision Repair, Auto Body)	352.74
Daisy Manufacturing Co., Inc	5,878.92
Dakota Creek Industries, Inc	4,115.24
Dal Soglio {Dal Soglio, Inc.}	117.58
Dan Bearden Body Shop	235.16
Dana Corporation	47.03
Daniels Chevrolet {Daniels Motors, Inc.}	106.89
Danler Collision, Inc	1,250.61
Darragh Company	929.94
Dave's Auto Body	106.89
DCX, Inc	427.56
Decorative Coating Systems {Decorative Coating Systems, Inc.}	534.45
Dem-tronics {Electronic Technology Corporation}	235.16
Denver Auto Body & Paint Inc	748.23
Denver Autometrics {Svedala Industries, Inc.}	641.34
Denver Instrument Company	4,243.51
Denver Metal Finishing	823.05
Deseret Industries {Ogden Deseret Industries}	117.58
Design Conveyor Systems {Designed Conveying Systems, Inc.}	320.67
Design Fabricators {Design Fabricators, Inc.}	427.56
Designer Decal, Inc	117.58
Diagonal Firestone {Bridgestone/Firestone, Inc.}	106.89
Diamond Paint & Auto Body {Diamond Paint & Auto Body, Inc.}	1,389.56
Diamond Wood Products {Diamond Wood Products, Inc.}	705.47
Dionex Lee Scientific {Dionex Corporation}	161.81

Name of party	Settlement amount
Divine Coaches	427.56
Don Juan's Paint & Body	235.16
Don Massey Cadillac, Inc	2,886.01
Dorsar Investment Company	2,939.48
Drew Paints, Inc	1,528.52
Dun-rite Deburring	106.89
Dunkin & Bush Painting {Dunkin & Bush Painting, Inc.}	1,410.94
Dutro Co	2,908.74
DVH Company {DVH Company, Inc.}	213.78
Dynatek International {Dynatek International, Inc.}	2,704.30
E-max Instruments, Inc	106.89
E.R. Carpenter Co {Carpenter Co.}	352.74
Eagle Direct	1,389.56
Earl Stoner	929.94
East Side Plating {East Side Plating, Inc.}	1,432.32
Eastman Booth, Inc	117.58
Eastwood Printing {Eastwood Printing & Publishing Company, Inc.}	534.45
Edo Western Corporation	2,939.46
Electro Coating Co	213.78
Electro Static Refinishers {Electro Static Refinishers, Inc.}	470.31
Electronic Fab Technology Corp	1,293.36
Electronic Metal Products {Electronic Metal Products, Inc.}	427.56
Elkhart Products Corporation	1,293.36
Emich Oldsmobile	962.00
Empire Air {Empire Airlines}	235.16
Empire Laboratories{Empire Laboratories, Inc.}	309.98
Energy Laboratories {Energy Laboratories, Inc.}	235.16
Engineered Data Products {Engineered Data Products, Inc.}	1,924.01
Engineering Measurement Company	171.02
Englewood Auto Repair	427.56
Environmental Air Control, Inc. {Enviro Corporation}	2,896.70
Envirotech Pump Systems	2,517.78
Rubber Engineering	
BGA International	
Erickson Air Crane	1,646.10
European Auto Body (Boulder) {European Auto Body Corp.}	106.89
European Auto Body (Denver) {European Auto Body Shop, Inc.}	106.89
Evergreen Analytical {Evergreen Analytical, Inc.}	1,485.76
Evergreen Specialty Company	320.67
Evergreen State College	160.33
EWC {Electri-Wire Corporation}	213.78
Exabyte Corporation	598.58
Facet Automotive Corp	352.74
Fashion Tech {Fashion Tech, Inc.}	587.89
Fender Menders, Inc (Broomfield)	106.89
Fender Menders, Inc (Ft. Collins)	1,068.89
First Brands Corporation	1,175.78
Fischer Imaging Corporation	320.67
Fisher Chevrolet {Fisher Chevrolet, Inc.}	481.68
Flame Spray Inc	855.12
Flow International Corp	117.58
Flying Colors {Flying Colors, Inc.}	106.89
Foamex {Foamex, L.P.}	940.63
Fogg's Porsche Audi Specialist	213.78
Foreign Car Auto Body	320.67
Fortune Lincoln Mercury, Inc	1,763.68
Foss Maritime {Foss Maritime Company}	9,278.00
Fought and Company Inc	5,291.03
Frank & Dave's T&D Auto Body	213.78
Front Range Machining {Front Range Machining, Inc.}	106.89
Furniture Refinishing, Inc	534.45
Fusion Specialties {Fushion Specialties, Inc.}	4,810.02
Galaxie Auto Body (Galaxy Auto Body)	1,517.83
Galles Chevrolet	1,742.30
Gans Ink and Supply Co., Inc	4,350.40
Gans Ink (Portland)	
Gans Ink Corporation (Salt Lake City)	
Gardner Signs, Inc	641.34
Gencorp Inc., Automotive	13,179.46
General Motors DRC	213.78
General Tire Service {Continental General Tire, Inc.}	352.74
Gold Star Auto Body	331.36
Goldberg Brothers	534.45

VOL 61 ISS 137 JUL 16 1996 UMI

Name of party	Settlement amount
Goldco Industries, Inc	4,211.44
Goodman Buick	1,603.34
Goodwill Industries	320.67
Graeser's Painting (Graeser's Painting and Decorating, Inc.)	106.89
Granville-Phillips Co	705.47
Graphic Ink (Graphic Ink Company)	2,586.72
Graphics Info (Graphics Information, Inc.)	213.78
Great Western Railroad (Great Western Railroad Company of Colorado)	213.78
Greeley Dodge (Greeley Dodge, Inc.)	106.89
Grubbs, Garner & Hoskyns (Grubbs, Garner & Hoskyns, Inc.)	823.05
H.E.R. Painting	2,233.99
H.O.J. Engineering Company (Hesco Services)	235.16
Halliburton Geophysical (Halliburton Energy Services)	213.78
Halton Company	1,549.90
Hampden Auto Body	213.78
Harold Gwatney Chevrolet	1,881.25
Harold's Body Repair, Inc	584.09
Hayes Cabinets, Ins	352.74
Hazen Research, Inc	2,992.90
Heather Gardens Assoc	106.89
Heggem-Lundquist Paint Company	1,817.12
Helac Corporation	4,115.24
Heli-Support (Heli-Support, Inc.)	352.74
Hewitt Robbins	534.45
Hi Tech Body Shop	106.89
High Country Auto Body	233.02
Hilton Inn of Santa Fe (Link Properties, Inc. & Fried Hotel Company)	44.89
Histotec	64.13
Hiwasse Manufacturing Company	940.63
Hollister Dodge, Inc. (Hollister Motor Company)	320.67
Holly Sugar Corporation (Imperial Holly Corporation)	53.44
Homco (Weatherford U.S., Inc.)	1,389.56
Home Club Warehouse (Homebase)	249.33
Hotsy Corp	213.78
Howland Machine Corporation	748.23
Hoyt U.S.A	3,527.35
Huggy Bear's Cupboards (Huggy Bears's Cupboards, Inc.)	587.09
Hulett Printing, Inc	117.58
Hunter Douglas (Hunter Douglas, Inc.)	106.89
Hussmann Corporation	106.89
I-CON Industries (I-CON Industries, Inc.)	181.71
I-COS (I-COS Corporation)	168.89
I.C. Security Printers (I.C. Security Printers, Inc.)	117.58
Idaho Pole Co	1,881.25
Imperial Manufacturing Inc. (Cold Coolers, Inc.)	3,104.07
Inca Paint & Print Ltd	213.78
Independant Signs (Independent Signs Co., Inc.)	213.78
Industrial Ceramics (Industrial Ceramics, Inc.)	213.78
Industrial Glove Cleaners	7,877.75
Industrial Printers (Industrial Printers of Colorado, Inc.)	213,78
Integrated Systems (Integrated Systems Engineering)	235.16
International Composites Corp	673.40
INX / Midland Color (INX International Ink Co.)	3,532.70
Irathane Systems, Inc (ITW Irathane Systems)	106.89
Itel Rail	117.58
Itesa/Siemens Energy & Automation, Inc	2,116.41
J W Bunger & Associates (James W. Bunger & Associates, Inc.)	117.58
J&E Body Shop (J&E Body Shop, Inc.)	587.89
J.H. Baxter & Co	7,816.29
J.B. Hunt Transport Inc	1,058.21
J.E. Good Auto Body (Norman D. Steele, Inc.)	534.45
Jack T. Carter Company, Inc	705.47
Jackson Brooks (Jackson Brooks & Company)	320.67
Jan-eze Plating Company (Jan-eze Plating, Inc.)	117.58
Jefferson County	2,030.90
Jefferson County Sign Shop	
Jerry Roth Automotive Center/Jerry Roth Chevrolet	534.45
Jerry Seiner Chevrolet	823.05
Jerry's Body Shop (Jerry's Body Shop, Inc.)	213.78
Jofler Auto Body	106.89
Jones & Demille Engineering	630.65
Joy Technologies	823.05
K-mart Corporation (International Headquarters)	534.45

Name of party	Settlement amount
K-mart (Boulder)	
K-mart (Englewood)	
Kaehr Corporation	235.16
Kaiser Aluminum & Chemical Corporation	106.10
Karle Coachwork (Karle Coachwork, Inc.)	213.78
Karmen Kitchens	823.05
Karosserie Fabric Auto Body (Karosserie Fabrik)	427.56
KBP Coil Coating (KBP Coil Coating, Inc.)	5,451.36
Kemp Ford, Inc	352.74
Keyline Corp d.b.a. Keyline Graphics	320.67
King County, WA Office of the Prosecuting Attorney	4,042.56
Metro Environmental Lab	
Metro Renton Treatment Center	
Metro Transit (1555 Airport Way S.)	
Metro West Pt. Treatment Plant	
Metro Transit (11911 E. Marginal Way S., C)	
Metro Transit (12100/200 E. Marginal Way S.)	
Metro Transit (821 2nd Ave MS75)	
Metro Transit (1975—124th N.E.)	
King Soopers Meat Plant (King Soopers, Inc.)	106.89
Kiper Auto Body, Inc	213.78
Kittredge Auto Body (Kittredge Auto Rebuilders)	748.23
Knudsen Printing (Knudsen Printing Company)	1,496.45
Komfort Industries of Oregon, Inc	352.74
Lake Capital Corp./Komfort Industries of Oregon	
K/P Graphics (Salt Lake City)	235.16
KP Graphics—Denver (K/P Corporation)	320.67
KSH Decorating, Inc	406.18
L & H Auto Body	748.23
L & M Printing (L&M Printing Company)	748.23
L & M Radiator (L&M Radiator Inc.)	470.31
L.A. Gauge Company	2,698.96
L.D. Mcfarland (Cascade Pole Co.) (L.D. Mcfarland Co. Ltd.)	1,528.52
L.D.S. Motion Picture Studio	1,175.78
L.D.S. Motion Picture Studio	
Brigham Young University Motion Picture Studio	
Laguna Industries, Inc	8,219.80
Laidlaw Environmental Services (TES), Inc	1,048.33
Laidlaw Environmental Services (TES), Inc.	
Technical Environmental Systems, Inc.	
Lake Union Drydock (Lake Union Drydock Company)	9,258.89
Lamb Grays Harbor, Blain & Firman (Lamb Grays Harbor Co.)	1,175.78
Lamiglass, Inc	352.74
Lang Exploratory Drilling	352.74
Larry H. Miller Chevrolet	2,306.81
Lavalley Equipment Corp. (Construction Co. West) (Lavalley Industries, Inc.)	4,938.29
Lawton Printing, Inc	256.26
Learjet Inc	12,998.58
Lectra Products	705.47
Len Lyall Chevrolet (Len Lyall Chevrolet Geo, Inc.)	1,282.67
Les Schwab (Spanaway) (Les Schwab Tire Centers of Washington, Inc.)	470.31
Leupold & Stevens, Inc	352.74
Levolor Corporation	6,349.23
Litho Graphics Inc	587.89
Littleton Auto Body (Littleton Auto Body, Inc.)	534.45
LK Printing Service (LK Printing Service, Inc.)	213.78
Long Painting & Building Specialties	11,169.94
Lorraine Press	1,293.36
Lucas Western (Lucas Western, Inc.)	587.89
M & Q Plastic Products	323.61
M&M Auto Reconditioning (E. Colfax) (M&M Auto Reconditioning, Inc.)	2,244.68
M&M Auto Reconditioning (E. Colfax)	
M&M Auto Reconditioning (E. Batavia)	
M&S Body Shop (M&S Body Shop, Inc.)	352.74
M.D. Incorporated	235.16
Maaco Auto Body (2424 E. Colfax—Denver) (Varco, Inc.)	1,068.89
Maaco Auto Painting & Bodyworks (Arvada)	
Maaco Auto Body (2424 E. Colfax—Denver)	
Maaco Auto Body (Salt Lake City)	352.74
Maaco Auto Body (Sandy)	352.74
Maaco Auto Body Shop (Littleton)	748.23
Maaco Auto Painting & Bodywork (Colorado Springs)	534.45
Maaco Auto Painting & Bodywork (Lakewood)	320.67

VOL 61 ISS 137 JL 16 1996 UMI

Name of party	Settlement amount
Maasai, Inc	10,421.72
Prolitho	
Machine Design	235.16
Madix Inc. (Store Fixtures)	5,996.50
Magnetek (Magnetek, Inc.)	1,049.12
Malcolm Montague (Portland)	1,378.87
Malcolm Montague (Wilsonville)	
Malcolm Montague (Portland)	
Mandatory Maintenance	106.89
Mantech Environmental Tech Inc	106.89
Manufacturing Unlimited, Inc	855.12
Mapsco	470.31
Marathon Oil Company	587.89
March Press (TCM, Inc.)	320.67
Marine Environmental Testing (Marine Environmental Testing, Inc.)	3,997.66
Maritime Contractors, Inc	1,068.89
Mark Williams Enterprises (Mark Williams Enterprises, Inc.)	320.67
Martin Door Mfg	117.58
Martins Car Star (Martins Auto Works)	748.23
Matthews International (Matthews International Corporation)	4,938.29
Mattocks Brothers Auto Body (Mattocks Brothers Auto Body, Inc.)	641.34
Maxey Inc	534.45
Maxim (Maxim, Inc.)	85.51
McCoy Sales (McCoy Sales Corporation)	203.09
McWhorter, Inc. (McWhorter Technologies, Inc.)	14,932.45
Mega Corp	940.63
Melloy Dodge	470.31
Metro Machine, Inc	106.89
Meyer Skidmore & Company	106.89
Micro Metals (Micro Metals, Inc.)	1,068.89
Microcomputer Electronics Corp. (Universal Avionics Systems Corp.)	352.74
Midvale Public Works (Midvale City, Utah)	235.16
Midwest Machine Products (Midwest Machine Products, Inc.)	4,596.24
Milam Oldsmobile (Milam Oldsmobile, Inc.)	374.11
Millar Instruments	235.16
Miller Dial Corp	2,586.72
Moore Lithograph Inc	470.31
Motor Cargo	64.13
Mountain States Motors (Mountain States Motors Co., Inc.)	962.00
Mountain States Plastics (Mountain States Plastics, Inc.)	106.89
Mr. B's Auto Body (Mr. B's Auto Body, Inc.)	106.89
Multicare (Multicare Health System)	1,015.45
National Fire Hose Corp. (NFH, Inc.)	1,058.21
National Sanitary Supply Co	106.89
National Wire and Stamping (National Wire and Stamping, Inc.)	85.51
NCR Corp, Denver Repair Depot	213.78
Neoplan USA	6,520.25
NeoRx (NeoRx Corporation)	149.65
NER Data Products, Inc	1,004.76
New Castle Construction	427.56
New Mexico State Hwy. & Trans. Dept	780.29
New Mexico State Hwy. & Trans. Dept.	
New Mexico State Land Office	
Nob Hill Body Shop	320.67
Northwest Label/Design, Inc	470.31
Northwest Pipe & Casing Co	2,233.99
Nylund's Auto (Nylund's Automotive Refinishing)	320.67
Obenchain Printing (Obenchain Printing Company)	320.67
Ogden Body Shop	470.31
One Day Paint and Body Center, Inc (2101 First Street)	908.56
One Day Paint & Body (6147 Zuni Rd. S.E.)	
One Day Paint and Body Center (2101 First Street)	
Oregon Department of Environmental Quality	352.74
Oregon Department of Transportation	
Oregon Department of Environmental Quality	
Oregon Primate Center (Oregon Regional Primate Research Center)	130.41
Oregon Sandblasting (Oregon Sandblasting & Coating, Inc.)	705.47
Oxford Screen Printing, Inc	470.31
Ozzie's Body Shop	106.89
Pacific Hoe Saw & Knife	309.98
Pacific Marquis (Marquis Corporation)	117.58
Package Service Co	427.56
Packaging Corp. of America (Tenneco Packaging, Inc.)	2,030.90

Name of party	Settlement amount
Padden Creek Marine, Inc	1,646.10
Paine Corporation	331.36
Painter's Supply (Painter's Supply Co., Inc.)	534.45
Parade Packaging (Parade Packaging Materials Co., Inc.)	1,603.34
Paris Management Company, Inc	662.71
Cheyenne Aero Tech	
Colorado Aero Tech	
Park City School District	587.89
Parker Cadillac (Parker Cadillac, Inc.)	940.63
Pasar (Pasar, Inc.)	106.89
Pastimes Restoration	106.89
Patrick Industries	235.16
Payette Industries (Payette Industries, Inc.)	1,881.25
Pelsue and Co. (T.A. Pelsue Co.)	213.78
Pend Oreille County Pud #1	795.50
Pepsico, Inc	4,104.55
Perfection Auto Craft of Abq (Perfection Auto Craft, Inc.)	470.31
Perfection Auto Craft of Santa Fe (Perfection Auto Craft of Santa Fe, Inc.)	897.87
Perfection Unlimited (Perfection Unlimited, Inc.)	213.78
Pharmaceutical Basics, Inc. (Rosemont Pharmaceutical Corp.)	1,678.16
Phelps-Dodge Morenci	5,558.25
Phil Long Ford (Body Shop #1)	5,650.86
Phil Long Ford (Body Shop #1)	
Phil Long Ford (Body Shop #2)	
Physio Control Corp	117.58
Picture Woods Ltd	106.89
Pike Tool and Grinding, Inc	641.34
Pikes Peak Community College	641.34
Pine Lane Auto Body	106.89
Plastic Design Manufacturing	748.23
Plastics Inc	213.78
Polyvend Inc	13,228.63
Portco Corporation (Portco Packaging)	1,998.83
Potter & Brumfield de Mexico S.A. de C.V	1,528.52
Pratt Construction (Pratt Management Co., L.L.C.)	213.78
Precision Auto Body	534.45
Preferred Uni-body (Preferred Unibody and Frame, Inc.)	748.23
Preservative Paint	6,937.12
Print Color	106.89
Printing Impressions	117.58
Pro-coat Systems (Pro-coat Systems, Inc.)	320.67
Production Plating, Inc	705.47
Productos Marine de Mexico/Mercury Marine	13,051.20
Products for Industry	962.00
Professional Paint Supply, Inc	235.16
Property Securement (Property Securement Services)	106.89
Providence Medical Center	587.89
Pueblo Diversified Industries	470.31
Quadrant Corporation (Weyerhauser Company)	459.62
Quality Metal Products, Inc	1,507.14
Quality Paint & Body (Quality Paint & Body, Inc.)	320.67
Quality Pontiac-Cadillac	1,229.23
R & R Auto Body	213.78
R&M Colour Graphics (Edison Press)	534.45
R. Wagner Co	235.16
R.D.S. de Mexico, S.A. de C.V./Rapid Design Inc	138.96
Rainbow Cycle Craft	106.89
Red Noland Cadillac	1,282.67
Noland Cadillac	
Red Noland Cadillac	
Regent Beverly Wilshire Hotel (Beverly Wilshire Hotel Company)	470.31
Reidy Metal Services (Reidy Metal Services, Inc.)	106.89
Reliable Chevrolet/Geo	1,058.21
Reliance Electric (Rockwell International Corp.)	1,175.78
Research Industries (Midvale)	758.91
Research Industries (Salt Lake City)	
Research Industries (Midvale)	
Rice University	534.45
Richardson Ford Sales, Inc	823.05
Rick Warner Body Shop	459.62
Rick Warner Heavy Trucks	823.05
Rickenbaugh Cadillac Co	962.00
Rite-way Paint and Body Shop	235.16

VOL 61 ISS 137 JL 16 1996 UMI

Name of party	Settlement amount
Robertson Associates (Metal Packaging International)	12,185.39
Rock Springs Auto Body (Rock Springs Auto Body & Glass, Inc.)	3,099.79
Rocky Mountain Auto Refinisher (Rocky Mountain Auto Refinisher, Inc.)	320.67
Rocky Mountain Autobody Specialists, Inc	213.78
Rocky Mountain Bank Note (RMBNC, Inc.)	352.74
Rocky Mountain Instruments (Rocky Mountain Instruments Company)	438.25
Rocky Mountain Nissan (Rocky Mountain Nissan, Inc.)	855.12
Rocky Mountain Paint & Body Shop (Rocky Mountain Paint & Body Shop, Inc.)	1,175.78
Rocky Mountain Prestress (Rocky Mountain Prestress, Inc.)	320.67
Rocky Mountain Railcar (Rocky Mountain Railcar, Inc.)	641.34
Rod Jones—Chevron (Chevron)	70.55
Rodriguez Body Shop	641.34
Rogers Tool Works (Rogers)	1,881.25
Rogers Tool Works (Rogers)	
Rogers Tool Works (Bentonville)	
Ron Grob Co	213.78
Ron Howard Body Shop	117.58
Ron Jones Marine	587.89
Ron's Body Shop (Dennis D. Garner, Inc.)	352.74
Ross Auto Body, Inc	534.45
Ross Printing (Ross Printing, Inc.)	1,389.56
Rust Tractor Company	1,731.61
Ryder Truck Rental (Ryder Truck Rental, Inc.)	514.14
Salinas Disposal Service, Inc	3,527.35
Salt Lake City Corporation (Corp.)	1,752.99
Salt Lake City Printing Center	2,191.23
Salt Lake City School District	705.47
Salt Lake County Conservancy Dist	88.18
Samsonite Corporation	6,905.06
San Luis Obispo County	3,495.28
Sanchez Seamless Gutter	106.89
Sandia Peak (Sandia Peak Ski Co.)	303.57
Santa Barbara County	13,232.91
SAS Circuits (SAS Circuits, Inc.)	962.00
Schnieder Body & Paint (Schneider Auto Karosserie)	470.31
Schreiber Machine & Manufacturing, Inc. (Milltek, Inc.)	235.16
SCI Manufacturing (SCI Systems Inc.)	2,928.77
Scougal Rubber Co. (Scougal Rubber Corp.)	1,175.78
Screen Tech Graphics, Inc	641.34
Seagull Printing (Seagull Printing, Inc.)	235.16
Seattle University	470.31
Seaview East Boatyard	1,058.21
Security Life of Denver (Security Life of Denver Insurance Company)	106.89
Seizee Inc	320.67
Sergent, Hauskins & Beckwith	213.78
Serpentix	106.89
Sherwin Williams Co	213.78
Shure Brothers, Inc	2,351.57
Sonido Selectos/Shure Brothers, Inc.	
Siegel Oil (Siegel Oil Company)	962.00
Sign Systems	213.78
Signage Inc	106.89
Signs, Inc	213.78
Sill Terhar Motors, Inc	534.45
Silver State Platics Inc	534.45
Simpson Timber Company	235.16
Simpson Door (Simpson Timber Co)	
Simpson Timber—Camp One	
Sinclair (Sinclair Oil Corporation)	213.78
Sisbarro Buick-Pontiac-GMC, Inc	940.53
Skills, Inc	3,369.69
Skyline Products	1,058.21
Slicks Custom Auto Body	106.89
Sonoco Products Company	79.91
Sound Steel Service, Inc	470.31
South Seattle Community College	5,986.79
Southern Pacific Transportation Company	1,956.08
Southwest Chemical Co., Inc	865.80
Southwest Collision Craftsmen, Inc	323.61
Southwest Marine	13,874.25
Northwest Marine Iron Works	
Southwest Marine Inc.(Northwest Marine Iron Works)	
Specialty Plating Inc	438.25

Name of party	Settlement amount
Spence's Bodytec Corp. (Denver)	1,175.78
Spence's Bodytec Corp. (Littleton)	2,030.90
Spokane School District # 81	373.58
Spray Rite Inc	235.16
Sprint Denver (Sprint Denver, Inc.)	320.67
SRM Assoc. (Vintage Real Estate Services, Inc.)	213.78
St. Joseph Medical Center	117.58
St. Luke's Hospital.	
(New H PSL, Inc. (Tenet Healthcare Corporation))	56.89
(HealthOne)	50.00
St. Michael Hospital	5,285.86
Standard Builders Supply	117.58
Stanley Aviation Corp	8,144.97
Steel Storage Systems	1,496.45
Steven's Memorial Hospital (Stevens Healthcare)	395.49
Stevens Equipment Co	235.16
Stewart Body & Frame	641.34
Stone & Webster (Stone & Webster Engineering Corporation)	106.89
Stone Container Corp	320.67
Stowe Woodward (SW Industries, Inc.)	1,293.36
Stripper, The (The Stripper, L.L.C.)	470.31
Stuttgart Auto Body (Stuttgart Auto Body Ltd.)	213.78
Sun Lithographing Co	1,996.83
Super Vacuum Mfg Co. Inc	1,924.01
Supreme Auto Body (Supreme Auto Body and Coach Rebuilders)	213.78
Suss Pontiac GMC	2,030.90
Swedish Motors, Inc	320.67
Swiss Lenox (Swiss Lenox, Inc.)	427.56
Systems Protective & Technical Coatings, Inc	38.48
Taylor Lumber & Treating, Inc	4,542.80
Teleflex Precision Casting	823.05
Terra Corporation	235.16
Tessco, Inc	705.47
Texas Aircraft Milling (Texas Aircraft Milling, Inc.)	4,703.13
The Auto Works (Snyder Autoworks)	320.67
The Body Shop (PTAKS, Inc.)	855.12
The North Face (The North Face, Inc.)	106.89
Thermo Tech	320.67
Thermometer Corp. of America	3,527.35
Thermometer Corp. of America/TCA de Juarez SA de CV	
Thompson Metal Fab, Inc. (3000 S.E. Hidden Wy)	5,456.81
Timpte Inc	213.78
Titan Labe	3,741.13
TNT Auto Warehousing (Auto Warehousing Company)	136.82
Tolin Mechanical	117.58
Tom's Body Shop, Inc	320.67
Tommy's Nob Hill Auto Body (915 1st Street)	117.58
Tony Lama Company, Inc	12,538.13
Torres Auto Body	235.16
Tracor Aerospace (Tracor Aerospace, Inc.)	823.05
Transcisco Rail Services	940.63
Translogic Corp	641.34
Treasure Chest Advertising	587.89
Tri Way Industries	1,293.36
Tumbleweed Press (Tumbleweed Corporation)	427.56
Tumwater Lumber Company	1,058.21
Twin Lakes Body Shop	235.16
U-Haul	748.23
Unicover Corporation	470.31
Union Oil Company of California d/b/a/ Unocal	897.87
Unocal 76 (Intermountain West-Tacoma/Wilsonville)	
Unocal Corporation (Portland)	
United Dominion Industries, Inc	7,995.33
Varco Pruden Buildings (Pine Bluff)	
Varco Pruden Buildings (St. Joseph)	
Varco Pruden Buildings (SPC)	
United Lithographers (United Lithographers, Inc.)	78.03
University of Puget Sound	1,175.78
University of Utah	3,356.33
Utah Scientific	117.58
Utah State Prison	652.03
Utah State University	3,314.92
U.S.U. Safety Office	
Utah Valley Community College	235.16

VOL 61 ISS 137 JL 16 1996 UMI

Name of party	Settlement amount
Valley Auto Painting & Body	231.42
Valley Enterprise Inc	459.62
Vehicle Body & Paint	320.67
Ventura Regional Sanitation District	4,467.98
Video Viewing, Inc	117.58
Vintage Auto Body (Vintage Body Tech & Collision)	106.89
Vinyard & Associates, Inc	117.58
Virginia Mason Hospital (Virginia Mason Medical Center)	823.05
Vision Ford-Lincoln Mercury	235.16
VMI	320.67
W. Ray Crabb Inc	427.56
W.R. Grace and Co	1,924.01
W.W. Apprenticeship & Training Trust	47.03
Wadsworth Control (Wadsworth Control Systems, Inc.)	106.89
Wal-mart PMDC	352.74
Wallace Chevrolet (Wallace Chevrolet, Olds, Cadillac)	117.58
Wanco	588.38
Warneke Paper (Warneke Paper Box Co., Inc.)	106.89
Washington Water Power Co	3,741.94
Watts Company, The	2,725.68
Web Southwest, Inc	235.16
Weber Auto Body	213.78
Weiser Inc	2,233.99
West Auto Body	320.67
West Wind Litho	470.31
Western Atlas International, Inc	448.94
Core Laboratories	
Western Atlas International Core Lab. Division	
Western Co (BJ Services Company, U.S.A.)	1,282.67
Western Fluid Power	769.60
Western International Aviation (Western International Aviation, Inc.)	1,646.10
Western International Truck	235.16
Western Mobile New Mexico, Inc	117.58
Western Wire Works	235.16
Westside Chrysler Plymoth Jeep Eagle	1,528.52
Ken Johns Lincoln-Mercury	
Westside Lincoln-Mercury-Jeep	
Casa Chevrolet Center	
Credit Cars	
White Sands Research Center	128.27
White Water Whirlpool Baths & Systems (Lindon)	3,527.35
White Water Whirlpool Baths & Systems (P.G.)	
White Water Whirlpool Baths & Systems (Lindon)	
Widefield School District—Maintenance	1,966.77
Wigand Corp	7,265.48
Willamette Industries (Willamette Industries, Inc.)	4,467.98
Williams Printing (CGF Industries)	833.74
Wiltec Research Company, Inc	352.74
Wiltech Corp	1,293.36
Wisdom Paint & Body	235.16
Wise Investment	668.06
Wizard Machine	147.10
Woody's Welding Service, Inc (Woodie's Welding)	427.56
Wright & McGill Co	213.78
Wright Business Forms Inc	320.67
Wyoming Medical Center	1,068.21
Xedar Corp	106.89
York International	1,389.56
Young Chevrolet Body Shop (Young Chevrolet Co.)	587.89
Zimmerman Metals	106.89
Total	1,069,074.88

By the terms of the proposed AOCs, the settling parties under both AOCs will pay a combined $1,097,244.34 to the Hazardous Substance Superfund. This payment represents approximately 43% of the $2,543,217.89 in response costs that EPA has incurred through December 31, 1995. EPA expects to incur approximately $167,000.00 in additional enforcement-related response costs in conjunction with the Site. The settling parties under both AOCs manifested 511,557.26 gallons of hazardous substances to the Site. This amount represents approximately 40% of the 1,260,589.79 gallons of hazardous substances manifested to the Site by all generators, both *de minimis* and non-*de minimis*.

In exchange for payment, EPA will provide the settling parties with a covenant not to sue (for private parties) or a covenant not to take administrative action (for federal parties) under Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and under section 7003 of the Solid Waste Disposal Act, as amended (also known as the Resource Conservation and Recovery Act), which will resolve fully each settling party's liability at the Site.

The amount that each individual PRP will pay, as shown above, was based upon the number of gallons of hazardous substances manifested to the Site. The total amount of settlement dollars owed by each party to the settlements was arrived at by multiplying the cost per gallon by the number of gallons a party manifested to the Site ("Base Amount") and then adding to this amount a premium payment equal to 9% or 50% (see discussion below) of the Base Amount. The cost per gallon of $1.9612736353 was derived by dividing the estimated clean-up cost at the time of calculation of $2,472,361.52 by the 1,260,589.79 total gallons of hazardous substances manifested to the Site.

To be eligible for the *de minimis* settlements, each PRP must have submitted a response to EPA's Request for Information and must have contributed no more than .7% of the total volume of hazardous substances manifested to the Site. PRPs that submitted timely responses to EPA's Request for Information were allowed to participate in the settlements at the 9% premium level. PRPs that failed to respond to EPA's First Request for Information and the Follow-up Request for Information letters when originally issued, have been allowed to participate in the de minimis settlements at the 50% premium level, provided they submitted a full response to EPA's Information Request prior to publication of this notice.

It is so agreed:

Dated: June 27, 1996.

Jack W. McGraw,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region VIII.

[FR Doc. 96–18042 Filed 7–15–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1119–DR]

Alaska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–1119–DR), dated June 7, 1996, and related determinations.

EFFECTIVE DATE: June 7, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 7, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Alaska, resulting from wildland fires on June 2, 1996, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance and Hazard Mitigation may be designated at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Richard Buck of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alaska to have been affected adversely by this declared major disaster:

Matanuska-Susitna Borough and the City of Houston for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–18032 Filed 7–15–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1119–DR]

Alaska; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska, (FEMA–1119–DR), dated June 7, 1996, and related determinations.

EFFECTIVE DATE: June 25, 1996

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Alaska, is hereby amended to include Public Assistance and Hazard Mitigation in the following area determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 7, 1996:

The Matanuska-Susitna Borough for Public Assistance and Hazard Mitigation (already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–18033 Filed 7–15–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1121–DR]

Iowa; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–1121–DR), dated June 24, 1996, and related determinations.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa,

VOL
61
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137
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is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 24, 1996:

Adams, Ringgold, Taylor and Union Counties for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–18034 Filed 7–15–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1123–DR]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–1123–DR), dated June 25, 1996, and related determinations.

EFFECTIVE DATE: June 25, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 25, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Nebraska, resulting from a tornado and severe storms on May 8, 1996 through and including May 28, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Carol Coleman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Nebraska to have been affected adversely by this declared major disaster:

Gage, Johnson, Nemaha and Otoe Counties for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–18030 Filed 7–15–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1122–DR]

Ohio; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio, (FEMA–1122–DR), dated June 24, 1996, and related determinations.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Ohio, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 24, 1996:

Butler, Clermont, Lawrence and Monroe Counties for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–18035 Filed 7–15–96; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1124–DR]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Vermont (FEMA–1124–DR), dated June 27, 1996, and related determinations.

EFFECTIVE DATE: June 27, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 27, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Vermont, resulting from extreme rainfall and flooding on June 12–14, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Vermont.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Alma Armstrong of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Vermont to have been affected adversely by this declared major disaster:

Windham County for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–18031 Filed 7–15–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200992.

Title: Broward County/SeaEscape Cruises, Ltd. Terminal Agreement.

Parties:

Broward County ("Broward")
SeaEscape ("SeaEscape")

Synopsis: Under the proposed Agreement, Broward will provide berthing, and other terminal services to SeaEscape for its daily cruise service from Port Everglades.

Agreement No.: 224–200993.

Title: Port of Oakland/Yang Ming Transport, Corporation Terminal Agreement.

Parties:

Port of Oakland ("Port")
Yang Ming Transport, Corporation ("Yang Ming")

Synopsis: The proposed Agreement permits Yang Ming the non-exclusive rights to certain premises at the Port's Seventh Street Marine Container Terminal. Subject to Agreement provisions, Yang Ming will pay to the Port ninety percent of dockage tariff charges and seventy percent of wharfage tariff charges.

Agreement No.: 224–200995.

Title: Broward County/Discovery Cruises, Inc. Terminal Agreement.

Parties:

Broward County ("Broward")
Discovery ("Discovery")

Synopsis: Under the proposed Agreement, Broward will provide berthing, and other terminal services to Discovery for its daily cruise service from Port Everglades.

By Order of the Federal Maritime Commission.

Dated: July 10, 1996.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 96–17973 Filed 7–15–96; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Herman Wai Hung Ng, 5467 Mission Street, San Francisco, CA 94112; Sole Proprietor

Adelino J. Vazquez, 73–75 Ferry Street, Newark, NJ 07105, Sole Proprietor.

Dated: July 10, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–17993 Filed 7–15–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 9, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mark Twain Bancshares, Inc., St. Louis, Missouri; to acquire at least 90 percent of the voting shares of Northland Bancshares, Inc., Kansas City, Missouri, and thereby indirectly acquire First National Bank of Platte County, Kansas City, Missouri.

In connection with the application Mark Twain Acquisition Corp. II, St. Louis, Missouri, a subsidiary of Mark Twain Bancshares, Inc., has applied to become a bank holding company by acquiring at least 90 percent of the voting shares of Northland Bancshares, Inc., Kansas City, Missouri, and thereby indirectly acquire First National Bank of Platte County, Kansas City, Missouri.

Board of Governors of the Federal Reserve System, July 10, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96-18009 Filed 7-15-96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 30, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Kansas Bancshares, Inc., Hutchinson, Kansas; to engage *de novo* through its subsidiary, Personal Finance Corp., Hutchinson, Kansas, in a joint venture in consumer finance lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Wells Fargo & Company, San Francisco, California; to engage *de novo* through all their subsidiary banks, in expanding the geographic scope of the activities authorized by Board Order dated December 16, 1985. Specifically to engage in the issuance and sale of payment instruments as follows: (1) domestic money orders up to a maximum face value of $10,000; (2) international money orders in denominations not to exceed $10,000; and (3) official checks with no maximum limitation on the face amount, but subject to certain conditions. Wells Fargo will engage in these activities nationwide.

Board of Governors of the Federal Reserve System, July 10, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96-18008 Filed 7-15-96; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, July 22, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 12, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-18155 Filed 7-12-96; 3:23 pm]

BILLING CODE 6210-01-P

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board Meeting

AGENCY: General Accounting Office.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will meet on Thursday, July 25, 1996, from 9:00 A.M. to 3:00 P.M. in room 7C13 of the General Accounting Office, 441 G St., N.W., Washington, D.C.

The purpose of the meeting is to discuss and review the following projects (1) Management Discussion & Analysis (MD&A), (2) Natural Resources, and (3) Codification.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First St., N.E., Room 1001, Washington, D.C. 20002, or call (202) 512-7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92-463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101-6.1015 (1990).

Dated: July 11, 1996.

Ronald S. Young,

Executive Director.

[FR Doc. 96-18055 Filed 7-15-96; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

HHS Management and Budget Office; Office of Budget; Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services is being amended at Chapter AM, HHS Management and Budget Office, Chapter AML, Office of Budget, as last amended at March 2, 1992. The changes are to reflect a realignment of functions within the Office of Budget.

Delete Chapter AML in its entirety and replace with the following:

Section AML.00 Mission

The Office of Budget provides advice and support to the Secretary and the Assistant Secretary for Management and Budget on matters pertaining to: Formulation of the HHS and President's budget, presentation of budgets and reconciliation legislation to OMB and the Congress, and resolution of issues arising from the execution of final appropriations, implementation of authorizing legislation, and management of the Service and Supply Fund. In addition, the Office ensures that all Office of the Secretary employment policies and actions are in accordance with Equal Employment Opportunity (EEO) rules and regulations.

Section AML.10 Organization

The Office of Budget is headed by the Deputy Assistant Secretary for Budget who reports to the Assistant Secretary for Management and Budget and includes the following:

A. Division of Discretionary Programs (AML1)
B. Division of Health Benefits and Income Support (AML3)
C. Division of Budget Policy and Management (AML4)
D. Division of Program Integrity and Organizational Management (AML2)
E. Office of the Secretary Office of Equal Employment Opportunity (AML-1)

Section AML.20 Functions

1. Division of Discretionary Programs. The Division:

a. Provides analytical services and assistance to the Secretary, the Assistant Secretary for Management and Budget, and Department OPDIV heads in their budgetary management of the Department's principal discretionary programs including science and health services programs administered by the Public Health components; social service programs of the Administration for Children and Families and the Administration on Aging; and Departmental Management.

b. Reviews budgets and related requests for resources; and analyzes plans and proposals for new or alternative legislation.

c. Analyzes proposed regulations, reorganizations, or program initiatives to determine their policy, resource and management implications.

d. Proposes recommendations on draft regulations, proposed legislation and reorganization proposals.

e. Proposes budget options and policy initiatives as necessary to achieve program objectives established by the Secretary.

f. Assists in the development of strategies for the presentation of the budget to the Office of Management and Budget and the Congress and develops materials for key Departmental officials who testify at hearings before these bodies.

g. Provides guidance to OPDIVs and STAFFDIVs in the formulation of their budgets.

h. Conducts special reviews and analyses to examine assigned OPDIV and STAFFDIV program operations and management effectiveness.

i. Provides assistance to STAFFDIVs in the execution of appropriations, including financial plans, apportionments, allotments, and centrally-managed projects.

2. Division of Health Benefits and Income Support. The Division:

a. Provides analytical services and assistance to the Secretary, the Assistant Secretary for Management and Budget, and the Department OPDIV heads in the budgetary management of the Department's principal entitlement programs including Medicare, Medicaid, Family Support Payments and other entitlements in support of children and families.

b. Reviews budget and related requests for resources; analyzes plans and proposals for new legislation, regulations, or program initiatives to determine their resource, policy, and management implications; proposes recommendations for the Office of Budget on budget requests, draft regulations, proposed legislation, and reorganization proposals.

c. Assists the Secretary, the Assistant Secretary for Management and Budget and the OPDIV heads in evaluating programs and budgetary proposals by developing reliable cost projections for legislative and planning proposals, and ensuring that proposals are consistent with approved plans and policies.

d. Coordinates the preparation of budget estimates and forecasts of resources required to support the programs and operations of the Department.

e. Reviews reprogramming requests and recommends appropriate action to the Office of Budget.

f. Provides guidance in budget formulation for the appropriate OPDIV.

g. Conducts special management reviews and analyses, and develops management options to ensure efficient and effective program operations and to encourage management improvements.

h. Proposes budget options and policy initiatives as necessary to achieve program objectives established by the Secretary.

i. Assists in the development of strategies for presentation of the budget to the Office of Management and Budget and the Congress and develops materials for key Department officials who testify at hearings before these bodies.

3. Division of Budget Policy and Management. The Division:

a. Directs the formulation and presentation of the HHS budget by developing and promulgating to the OPDIVs and others the policies, procedures, guidance, and schedules for preparing budget submissions.

b. Coordinates the presentation of the Department's budget to Congress including preparation and submission of justifications, reports, significant items, and cross-cutting materials; preparation of the Secretary's testimony before the Appropriations Committees; and coordination of transcripts, questions for the record, and other hearing materials.

c. Provides advice and analysis to support Department-wide budget decision-making.

d. Maintains active communication with Department budget officers with regard to external budget events.

e. Manages a computerized budget information system reflecting data on an HHS-wide basis and coordinates OPDIV input into this system.

f. Provides direct staff support to the Secretary in preparation for appropriation hearings and other budget related presentations and briefings.

g. Actively communicates with the Budget and Appropriations Committees in the Congress and provides intelligence and analyses of budget decisions to senior HHS staff and the operating divisions.

h. Prepares guidelines for determining funding levels under continuing resolutions.

i. Coordinates preparation of guidelines governing reprogrammings, transfers between accounts, and other cross-cutting funding methods; provides recommendations and staff support in processing cross-cutting funding proposals.

j. Analyzes and prepares reports on HHS' performance in achieving streamlining and FTE reduction goals; provides expert advice on Departmentwide staffing policy.

4. Division of Program Integrity and Organizational Management. The Division:

a. Reviews and analyzes the budgets of the Office of Inspector General (OIG) and Office for Civil Rights (OCR). Prepares special analyses of OIG and OCR budgets for the purpose of evaluating capacity and determining if alternative approaches are feasible. These analyses would usually be for the use of the Deputy Assistant Secretary, Budget, the Assistant Secretary for

Management and Budget, and the Secretary. Monitors Congressional appropriations hearings in which the OIG and/or OCR are participants.

b. Provides staff assistance to the Secretary, the Assistant Secretary for Management and Budget, the Service and Supply Fund (SSF) Board of Directors, OPDIV Budget Officers, and STAFFDIV heads in the budgetary and financial management of the Service and Supply Fund.

c. Provides for policy management, and financial integrity of the SSF in the provision of Departmental common use administrative services.

d. Provides budget policy and technical support to the Program Support Center Director (and other activity managers) on all SSF activities.

e. Directs and provides technical guidance to SSF activity managers in preparing annual budgets. Assists in the planning and preparation of the SSF budget for presentation to the SSF Board, the Office of Management and Budget, and Congress.

f. Directs and provides technical guidance to SSF accountants in preparing annual financial statements. Assists in the planning and preparation of these statements for presentation to the SSF Board, auditors, and the Office of Management and Budget.

g. Prepares apportionment requests for the Service and Supply Fund.

h. Establishes Department policy in the management of Inspector General Reports and audits; prepares the Secretary's semi-annual report to Congress on IG report management.

i. Serves as the principal source of advice on all aspects of Department-wide organizational analysis including: (1) Planning for new organizational elements; (2) evaluating current organizational structures for effectiveness; (3) conducting the review process for reorganization proposals. Manages the reorganization process for the Office of the Secretary (OS) requiring the Assistant Secretary for Management and Budget or the Secretary's signature. Administers the Department's system for the review, approval and documentation of delegations of authority. Develops Department-wide policies and provides technical assistance on the use and application of delegations of authority. Advises senior officials within the Department on delegations of authority, coordinates review of proposed delegations requiring the Secretary's or the Assistant Secretary for Management and Budget's approval. Analyzes and makes recommendations related to legislative proposals with potential impact upon the Department's organizational structure or managerial procedures.

j. Manages, in accordance with the Paperwork Reduction Act of 1980, as amended, the OS activities related to the review and approval of all public use reports and record-keeping requirements which impose a paperwork burden on the public. Develops policies for and manages the OS Information Collection Budget and the Information Collection Budget process. Develops policies and procedures for the OS and carries out analytical and oversight activities related to the Department's paperwork burden reduction efforts.

k. Maintains the Departmental Standard Administrative Code (SAC) system, providing oversight, advice, and assistance Department-wide to assure codes are in accord with the current approved organization.

l. Provides staff assistance to the Assistant Secretary for Management and Budget and the HHS operating divisions in the implementation, management and analysis of: (1) Federal management control policies and processes of the Federal Managers Financial Integrity Act (FMFIA) and implementing regulations; (2) audit follow-up management and Semiannual Management and Inspector General Reports under the Inspector General Act Amendments of 1988 (IGAA); and (3) budget-related performance planning and annual performance plans required under the Government Performance and Results Act (GPRA).

(m) Represents the Department in government-wide activities to implement FMFIA, audit follow-up, and budget-related GPRA performance planning policies, requirements and processes.

n. Provides special management review services for selected activities.

5. The OS Office of Equal Employment Opportunity assists the ASMB in carrying out the delegated authority to establish and maintain equal employment opportunity programs within the Office of the Secretary. The Office is responsible for ensuring that all OS employment policies and actions are based on merit; without regard to race, color, religion, national origin, sex, age, or physical/mental disability. Major functions include: pre-complaint counseling; formal complaint processing; affirmative employment planning and implementation; technical guidance and policy development. The functions of the office also include program efforts which focus on the Federal Women's Program, the Hispanic Employment Program, and the Program for People with Disabilities.

Dated: July 3, 1996.

John J. Callahan,

Assistant Secretary for Management and Budget.

[FR Doc. 96–17959 Filed 7–15–96; 8:45 am]

BILLING CODE 4210–04–M

Centers for Disease Control and Prevention

Cooperative Agreements for Community-Based Human Immunodeficiency Virus (HIV) Prevention Projects; Meeting

The National Center for HIV, STD, and TB Prevention (NCHSTP) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Consultation on draft program announcement for Cooperative Agreements for Community-Based Human Immunodeficiency Virus (HIV) Prevention Projects—Public Meeting between CDC and national organizations serving populations at high risk for HIV infection; State and local health departments; HIV prevention community planning group co-chairs; and other interested parties.

Time and Date: 9 a.m.–4:30 p.m., July 22, 1996.

Place: Capital Hilton, 16th and K Street, NW, Washington, DC, 20036–5796, telephone 202/393–1000, fax 202/639–5784.

Status: Open to the public for participation, comment, and observation, limited only by the space available. The meeting room accommodates approximately 100 people, including invited consultants.

Purpose: In 1989, CDC began providing direct financial and technical assistance to minority and other community-based organizations working toward reducing the behaviors that lead to HIV transmission in their own communities. The partnerships which developed through these cooperative agreements between CDC and hundreds of community-based organizations have proven effective in reaching high-risk populations with HIV prevention interventions. A new, competitive program announcement is being developed to provide direct funding to minority and other community-based organizations serving high-risk populations beginning in 1997 as a three-year project.

This meeting is to discuss and comment on the draft program announcement which outlines the purpose, eligibility, available funds, required program activities, application content, and evaluation criteria.

Matters to be Discussed: Agenda items will focus on discussion of the draft program announcement, "Cooperative Agreements for Community-Based Human Immunodeficiency Virus (HIV) Prevention Projects Program Announcement."

The draft program announcement will be published in the **Federal Register** for a period of 30 days. Written comments should be submitted to the contact person listed below by August 16, 1996. All comments will be reviewed and, if applicable, incorporated into the final announcement to be published in the **Federal Register** in October.

For Further Information Contact: Mary Willingham, Division of HIV/AIDS Prevention, NCHSTP, CDC, M/S A24, 1600 Clifton Road, NE, Atlanta, Georgia 30303, telephone 404/639–0965.

Dated: July 10, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–17987 Filed 7–15–96; 8:45 am]

BILLING CODE 4163–18–M

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Program Information Report (PIR)

OMB No.: 0980–0017

Description: The Head Start Act requires that the Program Information Report (PIR) information is collected from Head Start grantees and delegate agencies. Data elements are primarily in the areas of management, class activity, health profile and home environment. Principal user of the data include local program management, ACF regional management, ACYF central office management, management of services to children with disabilities, and dissemination to other interested parties.

Respondents: Not-for-profit institutions, and State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
PIR	2,078	4	3.35	6,691

Estimated Total Annual Burden Hours: 6,691.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: July 9, 1996.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 96–17958 Filed 7–15–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 96M–0239]

Arrow International; Premarket Approval of the Model 3000 Constant Flow Implantable Pump with Bolus Safety Valve

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Arrow International, Walpole, MA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Model 3000 Constant Flow Implantable Infusion Pump with Bolus Safety Valve. After reviewing the recommendation of the General Hospital and Personal Use Device Section of the General Medical Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of March 11, 1996, of the approval of the application.

DATES: Petitions for administrative review by August 15, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Galgon, Center for Devices and Radiological Health (HFZ–420), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1287.

SUPPLEMENTARY INFORMATION: On September 18, 1990, Arrow International, Walpole, MA 02081, submitted to CDRH an application for premarket approval of the Model 3000 Constant Flow Implantable Infusion Pump with Bolus Safety Valve. The device is an implantable infusion pump and is indicated for the continuous regional intra-arterial delivery of 2'-deoxy-5-fluorouridine (FUDR), heparinized saline, normal saline, and bacteriostatic water.

On March 5, 1991, the General Hospital and Personal Use Device Section of the General Medical Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On March 11, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested

person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 15, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 21, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–17956 Filed 7–15–96; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Program Announcement, Proposed Project Requirements, Review Criteria, and Funding Preference for Regional Nursing Partnerships to Provide Continuing Education in Nursing Informatics for Faculty in Medically Underserved Communities

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1996 Cooperative Agreements for Regional Nursing Partnerships to Provide Continuing Education in Nursing Informatics for Faculty in Medically Underserved Communities. These cooperative agreements will be funded for one year under the Public Health Service Act, as amended by Nurse Education and Practice Improvement Amendments of 1992, Title II, Public Law 102–408, dated October 13, 1992, Section 820 (c), Continuing Education for Nurses in Medically Underserved Communities. It is anticipated that $280,000 will be available to support up to three competitive one-year awards.

Purpose

The purpose of the cooperative agreements is to support the formation of partnerships between recognized regional nursing organizations and nursing entities qualified to provide continuing education in nursing informatics for nursing faculty in schools located in, or preparing students to serve in, medically underserved communities. Nursing informatics is defined as the integration of nursing science, computer science, and information science applied to the identification, collection, analysis, and management of data for nursing education, practice, and research. Increasing the number of nurses in the workforce who are knowledgeable about nursing informatics, especially those practicing in underserved or rural communities, will enhance clinical proficiency and improve access to and quality of health care for increasing numbers in the population. For the purpose of these cooperative agreements, regional nursing organizations are those regionally based nursing organizations whose members must include schools of nursing in institutions of higher education located within the designated region, and whose members may also include health care agencies and other health care entities.

Applicants must establish and maintain effective partnerships to implement sound continuing education programs designed to meet the identified nursing faculty needs in nursing informatics. Continuing education program curricula must be based on regional assessments of undergraduate and graduate nursing faculty proficiency in computer technology and nursing informatics.

Eligibility and Proposed Funding Preference

Eligible applicants include public and non-profit entities. A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications in a discretionary program. It is proposed that a funding preference will be given to recognized regional nursing organizations who enter partnerships with nursing entities experienced in teaching nursing informatics. These entities may include, but are not limited to, schools of nursing. The partner providing the nursing informatics expertise must be located within the recognized regional nursing organization's designated region. It is highly unlikely that any applicant not meeting the funding preference will be supported under this cooperative agreement.

Proposed Project Requirements

1. Develop a formalized partnership between the regional nursing organization and nursing entities qualified to provide continuing education in nursing informatics.
2. Establish an Advisory Board to oversee the development, administration, and evaluation of the project. The Advisory Board must include at least one non-academically based nurse practicing in a medically underserved community.
3. Utilize an existing assessment of undergraduate and graduate nursing programs within the region to determine:
   (a) The availability of computer-based systems;
   (b) Faculty knowledge, skills, and abilities in the use of computer-based systems; and
   (c) The ability of faculty to prepare students for practice in technologically advanced practice environments.
4. Based on analysis of the assessment in #3, develop and implement four regionally-based nursing informatics continuing education programs during the 1997 academic year. Each continuing education program must be designed to:
   (a) Enhance faculty knowledge, skills, and abilities in nursing informatics in the areas of computer technology; human factors; information and database management; professional practice, trends, and issues; system analysis and design; system implementation and support; system testing and evaluation; and theoretical frameworks;
   (b) Include a computer lab practicum;
   (c) Be completed in a one-week, 30–36 hour session;
   (d) Be provided in two or more different geographic locations to facilitate participation by faculty from distant areas within the region;
   (e) Enroll a minimum of 14 nursing faculty from schools of nursing located in or experienced in preparing nurses to serve in medically underserved communities;
   (f) Provide participants a syllabus and reading materials prior to the session; and
   (g) Award continuing education credit in nursing informatics.
6. Project must be documented in a format to facilitate replication by other organizations.

Substantial Federal Programmatic Involvement

Personnel in the Bureau of Health Professions, Division of Nursing will have substantial programmatic involvement with the planning, development, administration, and evaluation of the Regional Nursing Partnerships to Provide Continuing Education in Nursing Informatics for Faculty in Medically Underserved Communities and their outputs by:

1. Participating in the identification and selection of an Advisory Board. This includes participation in the selection of co-chair(s), one of whom will be the Division of Nursing representative, Meribeth Reed, PhD, RN.
2. Providing guidance for obtaining an existing regional assessment on the availability of computer-based systems; faculty knowledge, skills, and abilities in the use of computer-based systems; and the ability of faculty to prepare students for practice in technologically advanced practice environments.
3. Providing technical assistance, guidance, and recommendations for project modifications.
4. Reviewing and advising on curricula content, selection of participants, methodologies, and teaching techniques.
5. Reviewing and advising on program evaluation methods.
6. Reviewing and advising on documenting project activities and experiences for dissemination and replication.
7. Providing data and information about Federal programs that may impact the project.

National Health Objectives for the year 2000

The HRSA urges applicants to submit work plans that address specific objectives of *Healthy People 2000*. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between HRSA education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The HRSA strongly encourages all grant recipients to provide a smoke-free workplace; to promote the non-use of all tobacco products; and to promote Public Law 103–227, the Pro-Children Act of 1994, which prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Proposed Review Criteria

The review of applications will take into consideration the following criteria:

1. The need for the proposed project.
2. The potential effectiveness of the proposed project in carrying out the stated purpose.
3. The administrative and managerial capability of the applicant to carry out the proposed project.
4. The efficacy of the proposed partnership.
5. The adequacy of the facilities and resources available to the applicant to carry out the proposed project.
6. The qualifications of the project director and proposed staff.
7. The feasibility of the proposed budget in relation to the proposed project.
8. The potential of the project to continue on a self-sustaining basis after the period of Federal support.

Additional Information

Interested persons are invited to comment on the proposed project requirements; review criteria; and funding preference for recognized nursing organizations in partnership with nursing entities qualified to provide continuing education in nursing informatics. The comment period is 30 days. All comments received on or before August 15, 1996 will be considered before the final project requirements and review criteria are established. The final project requirements and review criteria will be included in the final notice published in the **Federal Register**. Written comments should be addressed to Marla Salmon, ScD, RN, FAAN, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m., Eastern Standard Time.

Application Availability

Application materials, including Supplemental Instructions and Training Application Form PHS 6025–1, are available on the World Wide Web at: http://www.os.dhhs.gov/hrsa/bhpr. To obtain the supplemental instructions, click on the file named "NICE.EXE" to download to your computer. Click on "save to disk." The file will be saved as a self-extracting WordPerfect 5.1 file named NICE.EXE. Once the file is downloaded to your disk or hard drive, you may exit the web site.

The NICE.EXE file will be a compressed file. To decompress or expand the file in *DOS*, go to the DOS directory where the file has been downloaded and type in "NICE.EXE", then "enter." The file will expand into a WordPerfect 5.1 file, now named "NICE."

To decompress the file in *Windows*, go to "program manager," then click on "file," then "run." The file will expand to a Windows file now named "NICE." Note that in DOS or in Windows, you will retain a file with the extension ".EXE," and one without the extension, but with considerably larger disk size. The expanded file is the one you will use. To obtain the PHS 6025–1, follow the same instructions, after clicking on "PHS 6025–1."

Questions regarding grants policy and business management issues should be directed to Ms. Wilma Johnson, Acting Chief, Centers and Formula Grants Section (wjohnson@hrsa.ssw.dhhs.gov), Grants Management Branch, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857. Applicants are strongly encouraged to obtain application materials from the

World Wide Web via the Internet. However, if you are unable to obtain the application materials electronically, you may obtain application materials in the mail by sending a written request to the Grants Management Branch at the address above. Written requests may also be sent via FAX (301) 443–6343 or via the internet listed above. Completed applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact Meribeth Reed, PhD, RN, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857. Dr. Reed may be reached by telephone at (301) 443–5763, by fax at (301) 443–8586, or by e-mail at: (mreed@hrsa.ssw.dhhs.gov).

Paperwork Reduction Act

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB Clearance Number is 0915–0060.

The deadline date for receipt of applications is August 19, 1996. Applications will be considered to be "on time" if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant. In addition, applications which exceed the page limitation and/or do not follow format instructions will not be accepted for processing and will be returned to the applicant.

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is also not subject to the Public Health System Reporting Requirements.

Dated: July 10, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–17998 Filed 7–15–96; 8:45 am]

BILLING CODE 4160–15–P

Availability of Funds for Cooperative Agreement to Create a Primary Care Resource Center

AGENCY: Health Resources and Services Administration.

ACTION: Notice of available funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that applications will be accepted in fiscal year (FY) 1996 to create a university-based Primary Care Resource Center. The purpose of the Center is to study the organization, financing, and delivery of primary health care services to underserved and vulnerable populations, in order to develop materials and information which will assist and benefit Community Health Centers (CHCs) in their analysis of the need for primary health services, the development of clinical practices, and the refinement of fiscal and administrative systems. Funding of this activity is authorized under Section 330(f)(1) of the Public Health Service (PHS) Act.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. HRSA programs, and CHCs in particular, are related to the objectives cited for special populations, particularly minorities, people with low income, and other types of vulnerable populations. Potential applicants may obtain a copy of *Healthy People 2000—Full Report* (Stock No. 017–001–00474–0) or *Healthy People 2000—Summary Report* (Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–783–3238).

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, day care, health care, or early childhood development services are provided to children.

DUE DATES: Applications are due August 30, 1996. Applications will be considered to have met the deadline if they are: (1) Received on or before the deadline date; or (2) postmarked on or before the established deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing. Applications received after the announced deadline will not be considered for funding.

ADDRESSES: Application kits (Form PHS 5161–1) with revised face sheet DHHS Form 424, as approved by the Office of Management and Budget under control number 0937–0189, may be obtained from, and completed applications should be mailed to: BPHC Grants Management Officer, c/o Houston Associates, Inc., 1010 Wayne Avenue, Suite 1200, Silver Spring, MD 20910, Telephone 800/523–2192.

FOR FURTHER INFORMATION CONTACT: For information on programmatic and research issues, contact: Ms. Bonnie Lefkowitz, Associate Bureau Director, Office of Data, Evaluation, Analysis, and Research, Bureau of Primary Health Care, HRSA, 4350 East-West Highway, Bethesda, Maryland 20814, Telephone 301/594–4280 (FAX 301/594–4986).

For information on business management issues, please contact Nancy Benson in the Office of Grants Management, Bureau of Primary Health Care, 301/594–4232.

SUPPLEMENTARY INFORMATION:

Program Requirements

HRSA's Bureau of Primary Health Care (BPHC) is seeking to enter into a cooperative agreement with a university or university-based organization for the purpose of operating a Primary Care Resource Center. The activities to be performed under this cooperative agreement are intended to assure that relevant knowledge about the health care environment and about methods of clinical and management improvement is made available to the health centers and other primary care providers; and that this knowledge is disseminated throughout those programs, and is conveyed to policymakers, program planners and administrators, care providers, and the user populations. Toward that goal, the Primary Care Resource Center will communicate effectively and regularly with these audiences through instruments it develops and disseminates.

Areas and topics for study will be determined jointly by BPHC and the Center, with emphasis on the ability to respond to changing needs of BPHC programs. The Center will be responsible for:

1. Producing short-term (e.g., 3–4 weeks turn-around) analytic reports, white papers, and monographs, for dissemination, as appropriate, to the public;

2. Conducting longer-term (e.g., 6–12 months turn-around), more comprehensive applied policy research studies;

3. Developing informational and educational materials, including monographs and summary reports, to help link policymakers and the BPHC audiences identified above with sources of information about primary care.

Subjects of such papers, studies, and reports are expected to include, for example:

- Monitoring the impact of changes in financing and delivery of health care on vulnerable populations;
- Access to care for underserved populations—status of "safety net" services;
- The changing role of Federal programs in health care generally, and adaptation to managed care;
- Prevention strategies for underserved and vulnerable populations (e.g., homeless and persons with HIV disease);
- Assessing quality of care and quality of service;
- Approaches to studying performance and health outcomes;
- Design of program evaluations in primary care; and
- Recruitment and retention of primary care providers.

Criteria for Evaluating Applications

Applications for cooperative agreement support will be reviewed based upon the following evaluation criteria:

a. Extent to which the applicant shows understanding of policy issues that have a significant effect on primary care for underserved populations, particularly in light of the changing health care and government environment;

b. Extent to which the applicant demonstrates flexibility to provide quick response to requests and inquiries, for example, as indicated in a management plan and personnel table, and in evidence of ongoing relationships with appropriate personnel so as to minimize start-up time;

c. Appropriateness and adequacy of qualifications and experience of the proposed project staff and consultants;

d. Extent to which the applicant demonstrates prior evidence of organizational ability to conduct high-quality policy-relevant studies and disseminate materials in an appropriate format in a timely manner, and to appropriate audiences; and

e. Reasonableness of costs in relation to the value of proposed activities, including how the proportion of the proposed budget for direct production of deliverables has been maximized.

Eligible Applicants

Any public or private university or university-based organization may apply. Less than maximum competition is necessary in order to ensure academic rigor and depth of skills, and to gain optimal access to current information, professional research, and informed opinion regarding the delivery of primary health care for minority and vulnerable populations and those with special health care needs. The experience and attributes of a university or university-based organization are essential to the timely and successful completion of the products required.

Number of Awards

It is anticipated that one award will be made. The cooperative agreement for a Primary Care Resource Center will be awarded for a three-year period, and the initial budget period will be eight months. Funding during FY 1996 will be approximately $200,000; BPHC will consider continutation funding during FY 1997 based on the availability of funds and performance in the first budget period.

Federal Responsibilities Under Cooperative Agreements

Federal responsibilities under the cooperative agreement, in addition to the usual monitoring and technical assistance, will include: (1) Participation in the development and approval of an initial workplan, in accord with changing events in government policies and in the health care environment, and modification thereof, as appropriate; (2) participation in meetings conducted under the cooperative agreement; (3) consultation to and cooperation with the grantee regarding the grantee's preparation and dissemination of materials; and (4) approval of specific studies and projects.

Other Award Information

This program is not subject to review under Executive Order 12372 or the Public Health System Reporting Requirements.

Dated: July 10, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–17999 Filed 7–15–96; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute on Drug Abuse; Notice of Cancellation of Meeting

Notice is given of the cancellation of the meeting of the AIDS Biomedical and Clinical Research Subcommittee, National Institute on Drug Abuse Initial Review Group on July 16–17, 1996 at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814 which was published in the **Federal Register** on June 20, 1996, Volume 61 FR 31540.

The meeting was canceled due to a scheduling conflict.

Dated: July 10, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–18100 Filed 7–12–96; 11:28 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Cancellation of Receipt Date for SAMHSA Conference Grant Applications

AGENCY: Center for Substance Abuse Prevention and Center for Substance Abuse Treatment, SAMHSA.

ACTION: Cancellation of September 10, 1996 application receipt date.

SUMMARY: As a result of a substantial reduction in appropriations in fiscal year 1996 and uncertainty concerning future funding availability, SAMHSA's Center for Substance Abuse Prevention (CSAP) and Center for Substance Abuse Treatment (CSAT) are canceling the September 10, 1996, receipt date for applications for the following grant programs:

CSAP's Knowledge Dissemination Conference Grants (CFDA No. 93.174)

CSAT's Substance Abuse Treatment Conference Grants (CFDA No. 93.218)

To be placed on a mailing list for an application kit and current programmatic guidelines, potential applicants should contact: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, Maryland 20847–2345, Tele: 1–800–729–6686; TDD: 1–800–487–4889, Web Address: www.health.org.

For information regarding future receipt dates or for programmatic assistance, potential applicants should contact the following individuals:

CSAP: Ms. Luisa del Carmen Pollard, Division of Community Education, CSAP, Rockwall II Building, Suite 800, 5600 Fishers Lane, Rockville, Maryland 20857, Tele: (301) 443–8824.

CSAT: Ms. Nancy Kilpatrick, Office of Scientific Analysis and Evaluation, CSAT, Rockwall II Building, Suite 840, 5600 Fishers Lane, Rockville, Maryland 20857, Tele: (301) 443–8831.

Dated: July 10, 1996.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 96–17957 Filed 7–15–96; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4027–N–02]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under Section 221(g)(4) of the Act during the six-month period beginning July 1, 1996, is 6⅞ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning July 1, 1996, is 7¼ percent.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Financial Services Division, Department of Housing and Urban Development, 470 L'Enfant Plaza East, Room 3119, Washington, D.C. 20024. Telephone (202) 755–7450 ext. 125, or TTY (202) 708–4594 for hearing- or speech-impaired callers. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning July 1, 1996, is 7¼ percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 7¼ percent for the six-month period beginning July 1, 1996. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the last six months of 1996.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980
9⅞	July 1, 1980	Jan. 1, 1981
11¾	Jan. 1, 1981	July 1, 1981
12⅞	July 1, 1981	Jan. 1, 1982
12¾	Jan. 1, 1982	Jan. 1, 1983
10¼	Jan. 1, 1983	July 1, 1983
10⅝	July 1, 1983	Jan. 1, 1984
11½	Jan. 1, 1984	July 1, 1984
13⅜	July 1, 1984	Jan. 1, 1985
11⅝	Jan. 1, 1985	July 1, 1985
11⅛	July 1, 1985	Jan. 1, 1986
10¼	Jan. 1, 1986	July 1, 1986
8¼	July 1, 1986	Jan. 1, 1987
8	Jan. 1, 1987	July 1, 1987
9	July 1, 1987	Jan. 1, 1988
9⅛	Jan. 1, 1988	July 1, 1988
9⅜	July 1, 1988	Jan. 1, 1989
9¼	Jan. 1, 1989	July 1, 1989
9	July 1, 1989	Jan. 1, 1990
8⅛	Jan. 1, 1990	July 1, 1990
9	July 1, 1990	Jan. 1, 1991
8¾	Jan. 1, 1991	July 1, 1991
8½	July 1, 1991	Jan. 1, 1992
8	Jan. 1, 1992	July 1, 1992
8	July 1, 1992	Jan. 1, 1993
7¾	Jan. 1, 1993	July 1, 1993
7	July 1, 1993	Jan. 1, 1994
6⅝	Jan. 1, 1994	July 1, 1994
7¾	July 1, 1994	Jan. 1, 1995
8⅜	Jan. 1, 1995	July 1, 1995
7¼	July 1, 1995	Jan. 1, 1996
6½	Jan. 1, 1996	July 1, 1996
7¼	July 1, 1996	Jan. 1, 1997

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" of interest in effect at the time the debentures are issued. The term "going Federal rate" is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of eight- to twelve-year maturities, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the six-month period beginning July 1, 1996, is 6⅞ percent.

HUD expects to publish its next notice of change in debenture interest rates in January 1997.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(l). For that reason, no environmental finding has been prepared for this notice.

(Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: July 10, 1996.

Stephanie A. Smith,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–18027 Filed 7–15–96; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Sport Fishing and Boating Partnership Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: As provided in Section 10(a)(2) of the Federal Advisory Committee Act, the Service announces a meeting designed to foster partnerships to enhance recreational fishing and boating in the United States. This meeting, sponsored by the Sport Fishing and Boating Partnership Council (Council), is open to the public and interested persons may make oral statements to the Council or may file written statements for consideration.

DATES: August 7, 1996, beginning at 1:00 p.m.

ADDRESSES: The meeting will be held in the Medical Forum Meeting Room B at the Sheraton-Civic Center Hotel, 2101 Civic Center Boulevard, Birmingham, Alabama 35203, telephone (205) 324–5000.

Summary minutes of the conference will be maintained by the Coordinator for the Council at 1033 North Fairfax Street, Suite 200, Arlington, VA 22314, and will be available for public inspection during regular business hours within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

FOR FURTHER INFORMATION CONTACT: Doug Alcorn, Council Coordinator, at 703/836–1392.

SUPPLEMENTARY INFORMATION: The Council will discuss recommendations from its Outreach/Education Committee to determine overall direction for public outreach and education on sport fishing and boating issues. The Council will hear a report from the States Organization for Boating Access on its assessment of national needs for boating access. The Council will discuss pertinent boating issues and determine future actions needed to address the priority issues. The Council will consider for adoption, the findings of its Technical Working Group on the Role and Responsibilities for Recreational Fisheries for the U.S. Fish and Wildlife Service. Minutes of prior meetings on December 20, 1995, and March 26, 1996, will be considered for approval. A future meeting site and date will be selected.

Dated: July 8, 1996.

J.L. Gerst,

Acting Deputy Director.

[FR Doc. 96–17974 Filed 7–15–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[UT–066–5440–J067; UTU–74303]

Notice of Realty Action; Non-Competitive Sale of Public Land, Carbon County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, sale of public land in Carbon County, Utah.

SUMMARY: The following described parcel of public land had been examined and found suitable for disposal by sale utilizing non-competitive sales procedures (43 CFR 2711.3–3), at no less than the fair market value. Authority for the sale is section 203 of the Federal Land Policy and Management Act of 1976 (90 stat. 2750; 43 U.S.C. 1713).

Salt Lake Meridian, Utah

T. 15 S., R. 13 E.,
Section 10, lot 3 (portions thereof)
Containing 19.878 acres more or less.

The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**. This land is being offered as a direct non-competitive sale to the City of East Carbon. The parcel is not required for any Federal purpose or program. Sale of the parcel is consistent with current BLM land use planning and would be in the public interest.

THE TERMS AND CONDITIONS APPLICABLE TO THE SALE ARE:

1. All valid existing rights documented on the official public land records at the time of conveyance issuance.

2. A reservation to the United States of all mineral deposits, together with the right to prospect for, mine, and remove such deposits under applicable law and such regulations as the Secretary of the Interior may prescribe.

3. A reservation to the United States for rights-of-way for ditches and canals under the Act of August 20, 1890 (26 Stat. 391; 43 U.S.C. 945).

Upon publication of this notice in the **Federal Register** the lands will be segregated from all forms of appropriation under the public land laws including the mining laws, except the mineral leasing laws. The segregative effect will end upon issuance of a patent or other document of conveyance, or two hundred seventy (270) days from the date of this publication, whichever occurs first.

Comments: For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning the proposed action, and the terms and conditions of the sale may be obtained from Mark Mackiewicz, Area Realty Specialist, Price River Resource Area, 125 South 600 West, P. O. Box 7004, Price, Utah 84501, (801) 636–3600, or from Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood Drive, P.O. Box 970, Moab, Utah 84532, (801) 259–6111.

Dated: July 9, 1996.

Brad Palmer,

Acting District Manager.

[FR Doc. 96–18026 Filed 7–15–96; 8:45 am]

BILLING CODE 4310–DQ–P

National Park Service

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service contract with Rock Creek Park Horse Centre, Inc., to provide trail ride and horse boarding services for the public at Rock Creek Park expired by limitation of term on December 31, 1992. At the request of the Secretary, the concessioner has continued to provide services to the public. The National Park Service has prepared a Prospectus which sets forth the terms and conditions under which Rock Creek Park Horse Centre, Inc., or a successor concessioner shall provide such facilities for a period of approximately ten (10) years commencing from the date of execution.

EFFECTIVE DATE: September 16, 1996.

ADDRESSES: Interested parties should contact the Field Director, National Capital Area, 1100 Ohio Drive, SW., Room 348, Washington, D.C. 20242, for information as to the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: The proposed contract requires/authorizes a construction and improvement program. An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a

major Federal action having significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed in the Superintendent's office, Rock Creek Park.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1992, and therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 [79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR, paragraph 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: July 3, 1996.

Robert Stanton,

Field Director, National Capitol Area.

[FR Doc. 96–18040 Filed 7–15–96; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Request for Determination of Valid Existing Rights Within the Wayne National Forest

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of public hearing and reopening of comment period on request for determination.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) has received a request by the Buckeye Forest Council for a pubic hearing on the application by Buckingham Coal Co., Inc. (Buckingham) for a determination that the applicant has valid existing rights (VER) pursuant to section 522(e) of the Surface Mining Control and Reclamation Act of 1977 to mine coal by surface methods on 25.2 acres of Federal land within the Wayne National Forest in Perry County, Ohio. By this notice, OSM is announcing the scheduling of a public hearing and the reopening of the comment period. Interested persons are reinvited to participate in the proceeding and to submit relevant factual information on the matter.

DATES: OSM will hold the public hearing on August 8, 1996 from 7:00 PM until 11:00 PM. Requests to speak at the hearing must be received by 5:00 local time on August 1, 1996. OSM will accept written comments until 5:00 p.m. local time on August 16, 1996.

ADDRESSES: The public hearing will be held in the Ball Room of the Ohio University Inn, 331 Richland Avenue, Athens, Ohio. Written comments and requests to speak at the hearing must be mailed or hand delivered to the Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, Room 218, Three Parkway Center, Pittsburgh, PA 15220.

The Administrative Record is available for review at both the address above and OSM's Columbus Office, Eastland Professional Plaza, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232 during normal business hours, Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Peter Michael, Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, Room 218, Three Parkway Center, Pittsburgh, PA 15220. Telephone: (412) 937–2867.

SUPPLEMENTARY INFORMATION: Background information on VER requirements for national forest lands and the Buckingham application for VER determination is available in the March 1, 1996 **Federal Register** (61 FR 8074).

Dated: July 2, 1996.

Mike Robinson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 96–17963 Filed 7–15–96; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[USITC SE–96–15]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 26, 1996 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. Nos. TA–201–65 and NAFTA–302–1 (Remedy) (Broom Corn Brooms)—briefing and vote.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 11, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–18107 Filed 7–12–96; 11:13 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 28, 1996, Applied Science Labs, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O, Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer) (1590)	I
Lysergic acid diethylamide (7315)	I
Mescaline (7381)	I
3,4-Methylenedioxyamphetamine (7400)	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
N-Ethyl-1-phenylcyclohexylamine (7455)	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458)	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470)	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II

The firm plans to manufacture small quantities of the listed controlled substances for reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (60 days from publication).

Dated: July 3, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–18022 Filed 7–15–96; 8:45 am]

BILLING CODE 4410-01-M

Manufacturer of Controlled Substances; Notice of Registration

By notice dated September 5, 1995, and published in the **Federal Register** on September 13, 1995, (60 FR 47591), Mallinckrodt Chemical, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724) a basic class of controlled substance listed in Schedule II. Also, by Notice dated March 27, 1996, and published in the **Federal Register** on April 4, 1996 (61 FR 15120), Mallinckrodt Chemical, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Methylphenidate (1724)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine Hydrochloride (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-Intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium powdered (9639)	II
Opium granulated (9640)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

On July 20, 1995, and January 31, 1996, Mallinckrodt Chemicals, Inc. (Mallinckrodt) filed applications with the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of methylphenidate. DEA published notices of these applications in the **Federal Register** on September 13, 1995, and April 4, 1996, respectively. One registered manufacturer of bulk methylphenidate filed comments in response to these notices. The commentor argues that DEA failed to comply with the Administrative Procedure Act (APA) and further alleges that Mallinckrodt's registration would be contrary to the public interest pursuant to 21 U.S.C. 823(a). The commentor requested a hearing on the 1995 application and urged DEA to deny the 1996 application, or, at a minimum, issue an order to show cause proposing to deny the application.

With respect to the first notice, published September 13, 1995, the commentor alleges that it is entitled to a hearing on Mallinckrodt's application since the regulation terminating the third party hearing right (21 C.F.R. 1301.43(a)) did not take effect until the end of the day on July 20, 1995. The commentor argues that, since Mallinckrodt's application was filed during the day on July 20, 1995, the commentor is entitled to ask for and obtain a hearing. The commentor maintains that if DEA were to consider the application under the new regulation, it would be in violation of Section 553(d) of the Administrative Procedure Act (APA) which dictates that there must be thirty days between publication of a rule and its effective date.

DEA is not persuaded by the commentor's argument that the new regulation could not have become effective until the *end* of the day on July 20, 1995, i.e. after the filing of Mallinckrodt's application during the day of July 20, 1995. In any event, the commentor's contention regarding the effective date of the new regulation is, at this point, moot. Mallinckrodt did not manufacture any methylphenidate pursuant to its application published on July 20, 1995. The commentor thus was not prejudiced by the lack of a hearing. Convening a hearing regarding Mallinckrodt's July 1995 application would serve no purpose.

Furthermore, Mallinckrodt has since filed a new application, published in April 1996. There is no question that Mallinckrodt's 1996 application was filed after the effective date of the new regulation. As a result, the commentor enjoys no right to request or receive a hearing regarding Mallinckrodt's 1996 application.

The commentor next asserts that the 60 day comment period was an insufficient amount of time for the commentor to gather information regarding Mallinckrodt' application. However, in amending the regulation, DEA did not intend to encourage third parties to become, in essence, independent investigators. DEA's intent in amending 21 C.F.R. 1301.43(a) was to allow third parties to provide information already known to the third parties regarding an applicant. It is DEA's position, therefore, that 60 days are sufficient to permit third parties to share information of which they are aware regarding an applicant.

The commentor argues that the notices of Mallinckrodt's applications failed to provide third parties, including the commentor, with an opportunity for meaningful, informed comment. The commentor concludes that DEA has violated the rulemaking provisions of Section 553(b) of the APA. Contrary to the commentor's contention, for the reasons set forth below, DEA's registration of bulk manufacturers does not constitute a "rulemaking" proceeding. Nor did DEA voluntarily adopt notice and comment rulemaking procedures when it amended 21 C.F.R. 1301.43(a).

First, the commentor has ignored the definitions set forth in the APA and, in so doing, confuses notice and comment rulemaking with agency licensing proceedings. The commentor insists that DEA proceedings to grant or deny an application for registration as a bulk manufacturer are rulemakings. The APA, however, defines "rule making" to mean an "agency process for formulating, amending, or repealing a rule." 5 U.S.C. 551(5). The APA defines a "rule" as:

the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing.

5 U.S.C. 551(4).

Review of the APA's definitions of license and licensing reveals that the granting or denial of a manufacturer's registration is a licensing action, not a rulemaking. Courts have frequently distinguished between agency licensing actions and rulemaking proceedings. See *e.g., Gateway Transp. Co.* v. *United States*, 173 F. Supp. 822, 828 (D.C. Wis. 1959); *Underwater Exotics, Ltd.* v. *Secretary of the Interior*, 1994 U.S. Dist. LEXIS 2262 (1994). Courts have interpreted agency action relating to licensing as not falling within the APA's rulemaking provisions.

In *Underwater Exotics*, the United States District Court for the District of Columbia drew the distinction between an agency placing conditions on a license and an agency creating a rule. In that case, the plaintiff was licensed by the Fish and Wildlife Service (Service) to import and export certain aquatic species. When the Service imposed certain conditions on the plaintiff's license, plaintiff sued, arguing, *inter alia*, that the Service failed to comply with the APA's rulemaking requirements.

The court looked to the APA's definitions of "licensing" and "rule" and concluded that "the Service's imposition of these conditions on a license did not violate the APA, because the Service's actions did not involve the creation of a rule." 1994 U.S. Dist. LEXIS 2262, *26. The court further stated that:

> the Service's imposition of conditions on the plaintiff's import/export license clearly fall within the definitions of "license" and "licensing." * * * this agency action is not a "rule making." Absent specific statutory direction otherwise, a court should not force an agency to employ a certain procedural format * * *.

Id.

Since the registration of bulk manufacturers is not a "rule," DEA is not required to follow traditional notice and comment rulemaking procedures when granting or denying applications for such registration. In fact, the D.C. Circuit clearly supported this analysis in a 1980 decision in which the court stated that "agency action that clearly falls outside the definition of 'rule' is also freed from rulemaking procedures." *Batterton* v. *Marshall*, 648 F. 2d 694, 701 n. 25 (D.C. Cir. 1980).

Furthermore, the commentor's contention that DEA voluntarily adopted notice and comment rulemaking with its amendment of 21 C.F.R. 1301.43(a) is not supported by either the notice of proposed rulemaking or the final rule. In fact, while the final rule does invite written comments form current manufacturers and applicants, nowhere in the final rule does DEA state, implicitly or explicitly, that it intended to follow notice and comment rulemaking procedures when acting upon a bulk manufacturer's application. DEA simply stated in the final rule that it would take into account such written comments when deciding whether to grant a particular registration or issue an order to show cause proposing to deny an application.

If DEA determines, based on information provided to it in written comments and its own investigation, that the registration of an applicant would not be in the public interest, an order to show cause will be issued. The decision of whether to issue an order to show cause is solely within DEA's discretion. If the applicant requests a hearing, the ensuing adjudicatory proceedings will comply with the APA. DEA's decision to address applications via individual adjudication, and not by notice and comment rulemaking, is within its discretion and in conformity with both the APA and the Controlled Substances Act (CSA). Courts have held that agencies have this discretion to determine whether to proceed by rulemaking or individual adjudication. *See PBW Stock Exchange* v. *Securities and Exchange Commission*, 485 F. 2d 718, 731 (3d Cir. 1973) *cert denied* 94 S. Ct. 1992 (1974).

Finally, the commentor's citation to *Rodway* v. *USDA*, 514 F. 2d 809 (D.C. Cir. 1975) and *Heron* v. *Heckler*, 576 F. Supp. 218 (N.D. Cal. 1983) is inappropriate. In those cases, as the commentor itself acknowledges, the agencies in question had either promulgated a regulation or adopted a policy statement specifically espousing the APA's notice and comment requirements. DEA has done neither.

DEA's action upon a bulk manufacturer's application is not a rulemaking action. DEA is therefore not required to follow notice and comment rulemaking when considering these applications. Neither the APA nor the CSA requires DEA to follow notice and comment rulemaking when acting upon bulk manufacturer applications. While DEA invites comments from competitors and applicants, such invitation does not translate into an implicit adoption of notice and comment rulemaking.

The commentor makes several allegations regarding its claim that Mallinckrodt's registration would not be consistent with the public interest pursuant to 21 U.S.C. 823(a). First, with respect to 21 U.S.C. 823(a) (1), (2), and (5), the commentor alleges that Mallinckrodt lacks effective controls to prevent diversion, noting past instances of violations of the CSA and its implementing regulations relating to recordkeeping and security. The commentor also draws attention to violations of the Food Drug and Cosmetic Act. The commentor further notes that Mallinckrodt has been cited by both federal and state authorities for violations of environmental laws and regulations.

With respect to Mallinckrodt's compliance with the CSA and its implementing regulations, Mallinckrodt is currently registered with DEA as a bulk manufacturer of other Schedule II controlled substances. It is true that DEA issued letters of admonition to Mallinckrodt in 1990 and 1991. The problems identified in these letters, however, were not significant enough to prompt DEA to seek revocation of Mallinckrodt's registration. Further, Mallinckrodt acted expeditiously to correct those problems.

Since the issuance of the letters of admonition, DEA has investigated Mallinckrodt to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. The results of these investigations have led DEA to conclude that Mallinckrodt is in compliance with the CSA and that its continued registration is consistent with the public interest.

The commentor also notes Mallinckrodt's violation of Food and Drug Administration (FDA) regulations. DEA has verified that Mallinckrodt's registration with the FDA is current and is confident that the nature of the FDA violations does not warrant the initiation of proceedings to deny Mallinckrodt's applications.

In addition, the commentor points out that Mallinckrodt has been cited by the United States Environmental Protection Agency and the State of North Carolina for violations of environmental regulations. In the absence of evidence that these violations relate to the manufacture, distribution, or dispensing of controlled substances, DEA declines to consider them for purposes of determining whether Mallinckrodt's registration would be in the public interest.

The commentor further alleges that there currently exists an adequate and uninterrupted supply of methylphenidate under adequately competitive conditions. Consequently, the commentor claims that registration of an additional manufacturer could lead to an increased threat of diversion. In support of its position, the commentor points to a background paper published by DEA in which DEA voiced concerns about the diversion of methylphenidate. As the commentor itself noted, however, DEA's paper concluded that this diversion results from illegal sales by health care professionals, overprescribing by physicians, and illegal sales by end-users. As the commentor acknowledges, there is little evidence of diversion occurring at the bulk manufacturer level.

The commentor contends that, since currently registered manufacturers of methylphenidate produce an adequate and uninterrupted supply of the drug to meet the legitimate needs of the United States, registration of another manufacturer is not needed. The commentor argues that "there is no evidence that the registration of Mallinckrodt * * * will have a beneficial effect upon competition." The CSA, however, does not demand that such a finding be made before DEA can register a bulk manufacturer. Furthermore, pursuant to 21 CFR 1301.43(b), DEA is not:

> required to limit the number of manufacturers in any basic class to a number less than that consistent with maintenance of effective controls against diversion solely because a smaller number is capable of producing an adequate and uninterrupted supply.

As is discussed above, DEA is confident that registration of Mallinckrodt will not impede DEA's statutory obligation to guard against the diversion of controlled substances.

With respect to 21 U.S.C. 823(a)(3), the commentor questions whether Mallinckrodt will promote technical advances in the art of manufacturing methylphenidate and the development of new substances. Mallinckrodt has been registered with DEA since 1971. In the past 25 years, Mallinckrodt has demonstrated its technical and manufacturing expertise with respect to other controlled substances. Based on this history, DEA is confident that Mallinckrodt will continue this practice if registered to manufacture methylphenidate.

Regarding 21 U.S.C. 823(a)(4), the commentor admits that it is unaware of any prior convictions of Mallinckrodt. DEA has verified that Mallinckrodt and its principals have not been convicted under Federal or state laws relating to the manufacture, distribution or dispensing of controlled substances.

Finally, under 21 U.S.C. 823(a)(6), the commentor again argues that Mallinckrodt's alleged lack of compliance with various FDA regulations indicates that its registration as a bulk manufacturer of methylphenidate would be inconsistent with the public interest. For the reasons set forth above, DEA does not feel that the nature of the noted violations warrants issuing an order to show cause to seek to deny Mallinckrodt's applications.

After reviewing all the evidence, including the comments filed, DEA has determined, pursuant to 21 U.S.C. 823(a), that registration of Mallinckrodt as a bulk manufacturer of methylphenidate is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator hereby orders that the 1996 application submitted by Mallinckrodt for registration as a bulk manufacturer of the listed controlled substances, including methylphenidate, is granted. The Deputy Assistant Administrator declines to take action on Mallinckrodt's 1995 application since, given that Mallinckrodt did not manufacture methylphenidate pursuant to its 1995 application and has since submitted an application for 1996, it is unnecessary to do so.

Dated: July 10, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–18024 Filed 7–15–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 26, 1996, and published in the **Federal Register** on March 4, 1996, (61 FR 8303), MD Pharmaceutical, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Diphenoxylate (9170)	II

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of MD Pharmaceutical, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 C.F.R. 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 3, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–18023 Filed 7–15–96; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 94–77]

RX Returns, Inc.; Revocation of Registration

On August 15, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to RX Returns, Inc., (Respondent) of Palm, Pennsylvania, notifying it of an opportunity to show cause as to why DEA should not revoke its DEA Certificate of Registration, RR0166113, and deny any pending applications for renewal of its registration as a distributor (disposer), under 21 U.S.C. 823(e), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged in relevant part that:

(1) On March 19, 1992, the Respondent entered into a Memorandum of Understanding (MOU) with DEA, where, in exchange for its receiving a DEA registration as a distributor (disposer) of controlled substances, it agreed to comply with security, inventory, and recordkeeping requirements of a DEA registrant;

(2) In July 1992, a DEA investigation of the Respondent revealed numerous recordkeeping and security violations. As a result, on September 24, 1992, DEA conducted an informal hearing in which the Respondent was given an opportunity to reply to allegations regarding violations of 17 recordkeeping and security requirements.

(3) In lieu of further administrative proceedings, on June 18, 1993, the Respondent entered into a second MOU with DEA, in which it agreed to correct the 17 alleged violations and to comply with laws and regulations relating to the handling of controlled substances.

(4) On May 5, 1994, DEA attempted to conduct an audit of seven controlled substances at the Respondent's firm. However, DEA was unable to conduct the audit based upon the Respondent's failure to maintain records of the receipt, distribution and/or disposal of controlled substances. In addition, DEA again uncovered numerous recordkeeping and security violations, most of which the Respondent had agreed to correct pursuant to the June 18, 1993, MOU.

On September 13, 1994, the Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Philadelphia, Pennsylvania, on June 13, 14, and 15, 1995, and continued in Allentown, Pennsylvania, on July 19 and 20, 1995, before Administrative Law Judge Paul A. Tenney. At the hearing, both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. Both parties were given the opportunity to respond to the other side's brief, and counsel for each side submitted a reply brief. On November 14, 1995, Judge Tenney issued his Findings of Fact, Conclusions of Law and Recommendations, recommending that the Respondent's DEA registration be continued and no action be taken against it. On December 5, 1995, the Government filed Exceptions to Judge Tenney's opinion and recommendation, and on December 15, 1995, the Respondent filed a brief in support of Judge Tenney's opinion and recommendation. On December 20, 1995, Judge Tenney transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 C.F.R. 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, with noted exceptions, the Findings of Fact, Conclusions of Law, and Recommended Ruling of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that the Respondent is a disposal company founded in 1989 by Mr. Jeffrey Dershem (President), a registered pharmacist. The Respondent receives pharmaceutical products, to include controlled substances, from various sources or customers, such as health care facilities, retailers, and wholesalers. The substances are accepted for either destruction or for distribution back to the original manufacturer for credit. The President testified before Judge Tenney, stating that the Respondent employed, in either a part-time, full-time, or temporary basis, approximately 60 to 65 people, with a payroll of approximately $1.5 million annually.

In the Summer of 1991, the President contacted the local DEA office concerning an application for a DEA registration to handle controlled substances. He was informed that, because of the unique nature of the Respondent's business, it did not fall under any then existing categories of DEA registrants. After negotiating with DEA personnel, the President was told to apply for registration for the Respondent as a distributor of controlled substances. A local DEA Diversion Investigator consulted with management for the Respondent throughout the pre-registration process. The Respondent's proposed processing and recordkeeping systems initially were found acceptable to the DEA, and a preliminary DEA Certificate of Registration was granted to the Respondent on September 12, 1991.

In March of 1992, the Respondent entered into an MOU with the DEA, which stated that the Respondent would (1) install storage facilities for controlled substances in substantial compliance with the provisions of 21 C.F.R. 1301.71 and 1301.72; (2) maintain complete and accurate records of all controlled substances received, distributed or destroyed as required by 21 C.F.R. Part 1304; (3) inventory all controlled substances received and intended for disposal on a DEA Form 41 or approved equivalent, and comply with the provisions of 21 C.F.R. 1307.21; and (4) advise the appropriate DEA office of security measures to be taken to prevent diversion of the controlled substances awaiting disposal. In return, the DEA agreed (1) to issue a registration for a distributor handling controlled substances in Schedules III through V, to the Respondent, when installed security had been approved by DEA; and (2) to review with the Respondent the adequacy of its proposed recordkeeping system, noting that "necessary modifications to the system proposed by the [Respondent would] be discussed with [it]." This MOU was entered into because there were no specific DEA regulations governing disposers of controlled substances in the Code of Federal Regulations. Although not yet finalized, on August 23, 1995, the DEA did publish proposed regulations applicable to disposers of controlled substances. *See* 60 FR 43732 (1995).

On June 22, 1992, the DEA conducted an on-site review of the Respondent's facility. Investigators discovered that the Respondent was storing controlled substances and non-controlled substances together inside the controlled substance cage, in violation of DEA regulations. By letter dated July 22, 1992, the President was reminded that on October 10, 1991, and on June 25, 1992, the DEA had informed him not to store controlled substances and non-controlled substances together, but rather to keep them segregated, as required by 21 C.F.R. 1301.72(b)(8)(ii).

On July 22, 1992, after having provided the Respondent advanced notice, the DEA conducted its first official inspection of the Respondent's facility and business operations. A DEA Diversion Investigator (Investigator) testified before Judge Tenney, stating that the DEA was unable to complete an audit of controlled substances during this inspection because of the Respondent's inaccurate or incomplete records. Further, many recordkeeping and security violations were discovered, including the continued storage of non-controlled and controlled substances together, the lack of an initial inventory of controlled substances, the lack of receiving records and distribution records, the failure to submit ARCOS reports, the failure to record the exact quantity of controlled substances received, and the improper preparation of DEA Form 41. Further, the Investigator testified about the security concerns created by this lack of documentation, stating that such a lack of tracking records created a "greater likelihood of things being diverted just in between the customer and the firm." She concluded that "[o]verall the [processing] system left a lot of loopholes that an employee could, if they (sic) so felt like it, possibly get access to any of the drugs and the firm would probably not know about it because it sometimes took months for things to be processed even into their computer for them to get an inventory." The DEA recorded seventeen violations identified during this inspection.

After being served with a Notice of Hearing listing all seventeen violations, the Respondent met with the DEA at an informal administrative hearing on

September 24, 1992. At this meeting, representatives from the DEA and the Respondent discussed the seventeen violations and the Respondent's proposed remedies for these violations. Specifically, the DEA representatives emphasized that the dates of receipt and shipment of controlled substances, and the maintenance of precise receiving records, were needed accountability systems given the Respondent's business.

As a result of this hearing, the Respondent and the DEA entered into a second MOU, in which the Respondent agreed to correct all seventeen cited violations and to comply with all applicable laws and regulations regarding controlled substances. For example, the MOU notes that the Respondent had (1) "[f]ailed to properly segregate Schedule 3–5 substances from non-controlled substances, * * * within the DEA approved overnight storage cage as required by 21 CFR 1304.72(b)(8)(ii); (2) "[f]ailed to maintain receiving records (packing slips, invoices) and DEA–41 destruction forms for at least two years from the date of such record for inspection and copying by employees of DEA, as required by 21 CFR 1304.04(a)"; (3) "[f]ailed to maintain inventories and records of controlled substances in Schedules 3, 4, and 5 either separately from all other records of the registrant[,] or in such form that the information required is readily retrievable from the ordinary business records of the registrant, as required by 21 CFR 1304.04 ((f)(2)"; (4) (4) "[f]ailed to maintain on a current basis a complete and accurate record of each such substance * * * received, sold, delivered, or otherwise disposed of as required by 21 CFR 1304.21 (a)"; and (5) "[f]ailed to maintain records showing the actual quantity of controlled substances received, including the date of receipt, as required by 21 CFR 1304.21 (b) and (c)."

This MOU also memorialized the corrective action needed, to include: (1) "Respondent will obtain receipt documents (i.e., invoices or packing slips) from its suppliers and maintain these records for at least two years from the date of each record for inspection and copying by employees of DEA as required by 21 CFR 1303.04(a)"; (2) "Respondent will maintain on a current basis a complete and accurate record of each such substance * * * received, sold, delivered, or otherwise disposed of as required by 21 CFR 1304.21(a)"; (3) "Respondent will maintain records showing the actual quantity (i.e. number of dosage units, volume of liquid, etc.) received, including the date of receipt, as required by 21 CFR 1304.23(b) and (c)"; and (4) "Respondent will maintain records showing the actual quantities (i.e. number of dosage units, volume of liquid, etc.) of controlled substances distributed to other persons, including the date of distribution, and the name, address and DEA registration number of the person or firm to whom the distribution was made, as required by 21 CFR 1304.23 (b) and (e)." The agreement also required the Respondent to notify the local DEA office of any proposed change to its current disposal site. This MOU was signed on June 18, 1993.

The DEA allowed the Respondent one-and-a-half years to correct the violations set out in this second MOU, for a second inspection was not conducted until May of 1994. Again, however, the DEA found further problems with the Respondent's processing, recordkeeping, and security systems. The investigators were unable to conduct an audit, initially because of a lack of records showing the date of distribution of the controlled substances from the Respondent's location to other destinations. Also, the DEA noted in relevant part that (1) the Respondent was accepting patient prescription medications for destruction, after having been informed by DEA representatives at the informal hearing that the Respondent was not authorized to accept such medications; (2) the Respondent had not conducted a biennial inventory of all controlled substances in the Respondent's warehouse in September 1993, the date the inventory should have been conducted as required by DEA regulations; (3) the Respondent's computer records had indicated that the Respondent had shipped out controlled substances, although the products actually were found at the Respondent's warehouse; (4) the Respondent had destroyed controlled substances at a destruction site different from the one approved by the DEA, in violation of the second MOU, which had stated that if the Respondent wished to change its disposal site, it was required to first notify the local DEA Division Office; and (5) that the Respondent had constructed a Schedule II vault without prior approval of the local DEA office, for by regulation, any vault that is to be used to store Schedule II controlled substances must first be approved by the DEA before being used for such storage.

Also, the Investigator testified before Judge Tenney, stating that Ms. Smith had informed her that patient prescriptions were not entered in the computer system, although such substance had been received at the Respondent's location. The Investigator stated that this recordkeeping practice led her to the following conclusion:

> If I had been trying to do an audit before this, this would have completely killed it because our audits are basically a record of all controlled substances that go through a company. If things are coming in that we don't know about, then we can't really tell if diversion would be occurring.

Concerning an audit attempt in May of 1994, the Investigator also stated that "[t]heir records were so bad, I couldn't put together numbers because I had no accurate numbers on a large variety of records * * *. The May, 1994 audit was the follow up to the 1992 audit * * *. Our follow up was to say, enough's enough. We have three years here of a firm not being in compliance."

However, the Investigator also testified that, since 1992, the Respondent had corrected a prior error by reporting to the ARCOS unit as required. Yet, due to the problems with the actual recording of shipment dates, the Investigator opined that the ARCOS reports were probably inaccurate.

As for other documentary problems, the Investigator also testified that the Respondent's personnel continued to improperly prepare the DEA Form 41, stating that the documents reviewed still failed to accurately reflect burned products and actual quantities of substances destroyed. Specifically, the Investigator recounted that "I have a whole lot of forms that don't give me the product name, much less an accurate idea of what these numbers represent when they're in the columns saying * * * controlled substance doses [, and] controlled substance use."

In response, Deborah Smith testified before Judge Tenney, stating that she was the Respondent's executive vice president and general manager, and that she was responsible for insuring that the Respondent's operation complied with DEA regulations and requirements. During the course of her testimony, a videotape, which has been prepared the day before the hearing, was presented. The videotape demonstrated the processes used when a product is returned by a customer to the Respondent's facility. The Investigator confirmed that this product-processing system was in place when she conducted the investigation in January of 1995.

Specifically, as to the handling of controlled substances, Ms. Smith testified that, prior to sending the Respondent pharmaceutical products, a customer had to first contact the Respondent to receive a Return Authorization Number. If controlled substances were to be shipped, the

customer would receive an authorization number ending in a "5." Customers were then sent a return label preprinted with the authorization number, and the customers were instructed to place the label on the front of all boxes. The customer was also sent an information packet, which instructed the customer to conduct an inventory of all scheduled drugs and to send the inventory with any shipment containing controlled substances. Ms. Smith testified that controlled substances received without customer inventories were to be returned to the customer with a letter identifying the flaw in the shipment. The customers were also informed that the Respondent was not authorized to receive Schedule II controlled substances, and if such substances were shipped, they would be returned to the customer. Customers were further instructed to place controlled substances in a sealed pouch in the first box of any shipment. Ms. Smith stated that, when a customer's shipment containing controlled substances arrives at the Respondent's location, the employees in the receiving department note the return authorization number ending in a "5," and know to immediately take the package to the security cage.

Ms. Smith also stated that, after the controlled substances arrive at the security cage, another employee authorized to handle such substances would take a count of all controlled substances. If the physical count did not match the customer's inventory, the Respondent would send the customer a letter identifying the discrepancy. After inprocessing the controlled substances, the product would then be stored in the security cage according to proposed disposition (i.e. return to manufacturer for credit or destroy) until such time as the products would be shipped from the Respondent's facility.

When controlled substance are to be shipped, the product is reinventoried and information regarding the destination of the shipment would be entered into the secured computer system. The controlled substances would then be packaged for shipment inside the cage, taken to the loading dock manager, and put on a truck leaving the facility before the close of that business day. If the products were to be destroyed, they are taken to an incinerator where one of the Respondent's officers, usually the President, would witness the burn. A signed, computer-generated DEA Form 41, would then be sent to DEA, and copies would be retained in the customer's file and at the security cage.

Ms. Smith testified that, if a product was not in its original packaging, the Respondent's personnel would use a reference book to obtain the information needed to complete the computer records as to the identity of the product. Once the information had been located, it would be entered into the computer database so that records for products not in manufacturer packaging contain the same information as records for products in manufacturer packaging. This newly developed system replaced the less precise computer entry of "repackaged goods," which the DEA had found lacked the necessary processing information.

Before Judge Tenney, Ms. Smith addressed the DEA-identified discrepancies. Specifically, she testified that she had understood from discussions with the DEA that the Respondent was allowed to accept patient medications, as long as relevant records were kept separate from the main recordkeeping system. However, after the Investigator informed her that the Respondent was not allowed to accept patient prescriptions under any conditions, the Respondent ceased accepting such drugs. Ms. Smith testified that "[i]f any of the agents that are at our facility come back and make a recommendation to me, I make a procedural change to accommodate exactly what they want me to do." The Respondent also implemented a procedure to return the patient-prescription substances with a reminder to customers, informing them of the Respondent's inability to process such substances.

As to the lack of a biennial inventory in September of 1993, Ms. Smith testified that she had informed the DEA that the Respondent was conducting monthly inventories, and she was under the impression that those inventories would fulfill the biennial inventory requirement. However, Ms. Smith testified, and the Investigator concurred, that after the Investigator informed her of the need for a separate biennial inventory, and after the Respondent's new computer system was in place, such an inventory was conducted in October of 1994.

Ms. Smith testified in great detail concerning the shipping and receiving documents utilized by the Respondent's company personnel. She stated that during the January 1995 inspection, the Investigator's interpretation of the shipping records continued to be misleading. The DEA investigators had failed to ask the appropriate personnel at the Respondent's firm why the shipping records, as read by the Investigator, appeared to contradict the actual existence of the substances under review inside the security cage. For example, in one instance, Ms. Smith testified that the Investigator had misread the computer record, thinking that a substance had been shipped, when in fact it was still at the Respondent's warehouse awaiting the customer's authorization to return the substances. Ms. Smith testified that the shipping records would have shown that the controlled substances in question had never left the warehouse, and, in fact, were awaiting authorization from the customer for the return shipment.

As to the violation of destroying controlled substances at a facility not previously disclosed to the DEA as required, Ms. Smith admitted that the Respondent had sent controlled substances for destruction to a new facility without first notifying the DEA. She stated that the incident had been a trial run because the Respondent needed to find a new destruction site. Due to a change in the municipality code, the prior destruction company was prohibited by law from accepting the Respondent's destruction business.

The Investigator also testified that the Respondent had violated the June 1993 MOU when it had failed to destroy controlled substances during a ten-month period. The MOU stated: "Respondent will provide periodic monthly reports (DEA Form 41's) of controlled substance disposals to the DEA Philadelphia D.O. Respondent agrees that such disposals will occur on the last Thursday of each month * * *. Respondent does not need to notify the Philadelphia Division Office if it elects not to destroy controlled substances during any particular month." Although admitting that ten months had elapsed prior to destruction of controlled substances, Ms. Smith strongly denied that the accumulation of controlled substances for this ten-month period compromised the security of the Respondent's storage cage. She stated that the ten-month period was the time taken by the President to locate, to inspect, and to conduct a background check of another destruction site. Ms. Smith also testified that she had provided DEA with a verbal notification of the change in location, but had not provided written verification. Also, the Investigator had agreed that, after the initial destruction at the previously undisclosed facility, the Respondent had conducted subsequent destructions at a DEA-disclosed facility in compliance with the regulation and the MOU.

As to the problems identified by the Investigator concerning the DEA Form 41, Ms. Smith testified that the old system of handwriting the Form 41's had been changed to a computer-driven process. Specifically, the Respondent's computer system generates the form, and the current process was created and implemented just prior to the May 1994 DEA inspection. Ms. Smith testified that during that inspection, she had showed the Investigator a sample of the new DEA Form 41, and that the Investigator had told her that "I don't have a problem with it."

Yet during the hearing before Judge Tenney, the Government presented a DEA Form 41 dated February 28, 1995, stating that the form reflected destruction of "Repackaged DEA control C-III" substances. As the Investigator testified, these entries were useless; for, although DEA would know that "1.00 item" of a Schedule III substance was destroyed per this document, the DEA still would have no idea what the controlled substance was, what the dosage unit was, and what quantity was contained in the destroyed package. From this document, the DEA remained unable to create an accurate count of the precise controlled substance actually destroyed. Thus, the Investigator concluded that the DEA continued to have problems with the actually completed DEA Form 41's being submitted by the Respondent, despite approving, in theory, their new form.

As to the construction of a Schedule II storage vault, Ms. Smith testified that nothing was stored in that vault. She stated, "It's not operational in any way, shape, or form." Further, the employee who operates the Respondent's controlled substances storage area also confirmed that nothing was stored in the Schedule II storage vault. The Government presented no evidence to the contrary.

As a result of the May 1994 inspection results, the DEA issued an Order to Show Cause, seeking to revoke the Respondent's registration. In response to this order, the Respondent invited the DEA Diversion Investigators to visit its facility for another inspection to verify that the Respondent had achieved compliance with the DEA regulations. The DEA conducted that inspection in January of 1995, and, for the third time, DEA Diversion Investigators inspected the security systems and tried to conduct an inspection of certain controlled substances.

As to the Respondent's receiving and initial customer inventory documents, the investigators found that the Respondent had revised the documents, "and it looked like the firm was, in good faith, doing everything it could to get such documents from its customers." Further, as previously requested by DEA personnel, the Respondent's employees had dated the receiving documents with the actual date of receipt of controlled substances at the Respondent's facility, rather than using the date the substances were being handled and processed at the Respondent's facility. On cross-examination, the Investigator testified that "the receiving system that the firm had is one thing that I found in January that I felt they had made advances on and that we could accept what they were proposing."

However, the investigators reported, in significant part, a substantial number of discrepancies still noted during the January 1995 inspection. Specifically, (1) DEA personnel found that the Respondent's records were incomplete and inaccurate, failing to list drug names, correct quantities of products on-hand or shipped, with discrepancies being noted even among the Respondent's own internal tracking documents covering the same period of time, (2) DEA personnel had difficulty tracking controlled substances through the Respondent's records, because the shipping records did not show the date of shipment of controlled substances from the firm. (3) DEA personnel again found Schedule II controlled substances at the Respondent's facility and determined that those substances had been at the Respondent's location for several months. Further, Schedule II products, as well as controlled substances from Schedules III, IV, and V, were found at the Respondent's warehouse in an unsecured area. (4) DEA personnel found that the Respondent had accepted shipments of controlled substances from customers lacking active DEA registrations. Specifically, in one instance a controlled substance was shipped from a company in December of 1994, but that company's DEA registration was retired by DEA on April 1, 1991. (5) Investigators also reported that the Respondent's shipping records failed to show the actual DEA-registered name of some of the receiving registrants. As to this point, the Investigator stated "I think there's something wrong in the computer system that is giving me a[']shipped to[']name[,] and the firm is saying, 'We don't take back controlled stuff.'"

Further, the Investigator testified that after the January 1995 inspection, the Respondent's attorney had provided her with an update of the October 1994 biennial inventory. Specifically, she stated that the Respondent's counsel wrote that "the biennial inventory failed to include 465 items that were on hand prior to October 10, 1994, and 79 items that came into the firm during the two-week inventory period." According to the Investigator, such a discrepancy "[m]akes the inventory [in]complete and inaccurate as far as we're concerned". The Investigator opined that missing 465 items when taking or recording a physical inventory creates a potential for diversion; for "somebody could have walked off with all 465 items" without detection.

However, the Respondent's employee, who had provided the Investigator with a copy of the October 1994 biennial inventory, testified before Judge Tenney, stating that the failure to list the 465 items from a single customer was a result of the Respondent's employees conducting an inventory of those products at the customer's location. Ms. Smith testified that, in this unusual case, this bankrupt customer no longer had employees to conduct the customer-prepared inventory normally required by the Respondent prior to accepting a shipment of controlled substances. Instead, the Respondent's employees had used a stand-alone computer system to enter the date from this inventory, and that data had not been integrated into the Respondent's computer network at the time of the biennial inventory. Rather, the data was maintained on the stand-alone computer system. The employee also testified that the remaining items did not appear on the October 1994 inventory because they were received while the inventory was being taken, and these products had not been counted during the taking of this inventory.

Yet the Investigator testified that the October 1994 inventory was deficient, because it failed to indicate a time certain for accountability purposes, as required by regulation. One of the Respondent's employees testified that in the future the biennial inventory would be conducted over a weekend, when no products would be processed into the Respondent's facility, and the exact time of the inventory would be noted on the report. However, the Investigator also testified that the Respondent had yet to submit a verifiable biennial inventory, as required, despite being registered with the DEA since September 12, 1991. The Investigator testified that, lacking such an inventory, the DEA remains unable to determine whether any diversion of controlled substances has taken place at the Respondent's location.

The Investigator also testified about her efforts to inspect the controlled substances on hand, to determine whether her inspection results would coincide with inspection documents provided by the Respondent. The

documents listed the controlled substances that should be on-hand in the security cage on the day selected for the inspection. However, the Respondent's inventory documents did not match the inventory results reported after DEA personnel conducted their independent physical count of the substances in the storage area.

Ms. Smith testified that on the first day of the January 1995 inspection, she had introduced herself to the DEA inspection team and had informed them that she was the Respondent's contact person during the inspection. However, she testified that the Investigator had failed to inform her of the problems DEA investigators were having in reading the Respondent's reports and collecting the data they needed to complete the controlled substances inspection. Specifically, she stated that the Investigator had reviewed the Respondent's records, noted an inability to determine the name or quantity of specific substances tracked in the records, yet had failed to inform her or any other of the Respondent's management personnel of the problems.

Ms. Smith stated that once she became aware of the specific data the DEA wanted to retrieve from the Respondent's records, she insured that the report contained such information. Specifically, the subsequent report clearly contained the identity of the controlled substance, the quantity, and other pertinent information requested by the DEA personnel. She also testified that such information was recorded in the Respondent's daily records, but that the person preparing the DEA-requested reports had failed to access the various computer fields needed to generate the statistical information sought during the inspection. Further, before Judge Tenney, Ms. Smith reviewed in detail the then current documentation used in the receiving and shipping process, noting that the substances could be tracked if the correct document fields were retrieved to create the report.

An employee of the Respondent's also testified concerning his entry of data, to include the name, strength, and dosage for every controlled substance product received in the secured storage area. He confirmed Ms. Smith's testimony concerning the extent of information recorded in the Respondent's computer system for tracking the processing of controlled substances through the Respondent's facility.

As for the Schedule II substances found by the DEA investigators, Ms. Smith testified that the Respondent's personnel had retrieved six truckloads of pharmaceutical products from a bankrupt customer. The Respondent had contracted to remove all pharmaceutical products from the customer with the exception of Schedule II controlled substances. Security guards at the hospital had informed the Respondent's employees that all Schedule II products had been collected and were stored in a vault at the customer's facility. The Respondent's personnel did not know that there were some Schedule II products intermingled with the truckload of products retrieved until two months after the products had been received and personnel were processing them. Ms. Smith testified that, when the Schedule II products were discovered, the Respondent's personnel promptly shipped them back to the customer's attorney for processing, since the Respondent's registration did not authorize the handling of Schedule II drugs.

The Respondent's personnel did not deny that other Schedule II substances were found at the warehouse in an unsecured area. However, Ms. Smith testified that the boxes containing the Schedule II substances had not been authorized for shipment to the Respondent, and that the boxes were not properly labelled as containing controlled substances. During her testimony, Ms. Smith provided evidence of the Respondent's pre-shipment contact with a customer, but here, since the pre-shipping procedures had with a customer, but here, since the pre-shipping procedures had not been followed by these customers, the Respondent's normal safeguards had failed to prevent the improper storage of the Schedule II substances. At the time of the DEA inspection, the boxes in question had not even been opened, since the Respondent had intended to return all of the unauthorized boxes to the senders. However, since the senders were in bankruptcy status, the Respondent was having difficulties determining were to send the boxes.

Further, as to the shipping of controlled substances to customers lacking active DEA registrations, Ms. Smith denied that the Respondent shipped controlled substances to such entities. She testified that the Investigator had failed to raise this concern to her, and that, if the Investigator had asked her for the shipping information, she could have pulled the shipping document from the computer, which would have reflected that the substances in question had actually been shipped to a location with an appropriate DEA registration number.

As to the receipt of controlled substances from a company lacking a DEA registration, Ms. Smith testified that the intent was always to receive controlled substances only from registered entities. However, in response to the Investigator's concerns, Ms. Smith testified that a procedure was recently adopted that required customers to send a copy of their DEA Certificate of Registration prior to being authorized to actually ship substances to the Respondent's location. The copy, which would reflect the active status of the certificate, is then placed in that customer's file.

Finally, evidence was presented, demonstrating that in October of 1991, the Respondent had hired a consultant (Consultant) to design and develop its computer database system. The Consultant testified before Judge Tenney about the various stages of development and about the on-going modifications required as the company itself developed. For example, in April of 1994, a bar code system was added. Every product processed by the Respondent was labelled with a bar code, and then, "if the product got misplaced in the warehouse, all the personnel needed to do was pick up the product, scan it in, and the computer would be able to identify where the product belongs, who entered the product, when it was entered [,] and so forth." The Consultant testified that this system was implemented as a security measure and to enhance efficiency. The Consultant also stated that, because the Respondent was such a unique business, there was no existing computer software on the market that it could purchase to do its inventory, and that "it was a very complex system to write."

The Consultant also testified that, as of October of 1994, the computer system tracks all DEA product coming into the Respondent's facility, shipped out of the facility, or destroyed, and tracks product that remained in the Respondent's warehouse awaiting the customer's disposition orders. He opined that the records related to all of these processes were readily or easily retrievable. He also stated that he had heard the testimony concerning problems in retrieving data at the request of DEA in October of 1994, and he opined that such problems would be common when a company was in the process of making a system conversion such as the one the Respondent was making in October of 1994. In conclusion, the Consultant testified that, given the tests that had been run since the conversion, he was "confident that DEA products are being tracked accurately from the time they enter the facility until the time they leave."

The Respondent also presented evidence demonstrating that pre-employment criminal records checks are performed, and that limited access to controlled substances is effectuated by limiting access to the work area where controlled substances are handled and stored. Further, the Investigator testified on cross-examination that the Respondent had installed sufficient physical security equipment.

Pursuant to 21 U.S.C. 824(a)(4), the Deputy Administrator may suspend or revoke a DEA Certificate of Registration and deny any pending application for such registration, if he determines that the registrant has committed such acts as would render his continued registration inconsistent with the "public interest." In this case, to determine the public interest, the following factors specified in 21 U.S.C. 823(e) are to be considered:

(1) maintenance of effective controls against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels;

(2) compliance with applicable State and local laws;

(3) prior conviction record of registrant under Federal and State laws relating to the manufacture, distribution, or dispensing of such substances;

(4) past experience in the distribution of controlled substances; and

(5) such other factors as may be relevant to and consistent with the public health and safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989).

Absent evidence which raises the issues of (1) a prior conviction record, (2) compliance, or lack thereof, with State and local law, and (3) the Respondent's past experience in distributing controlled substances, the Deputy Administrator finds that only factors one and five are relevant in determining whether the Respondent's continued registration would be inconsistent with the public interest. As to factor one, "maintenance of effective controls against diversion," the Respondent presented extensive evidence of its current physical security measures, to include a videotape of the exterior and interior of its facility, and testimony concerning its security cage construction. Although there was evidence presented of prior physical security concerns involving the relocation of the security cage, the Investigator testified that such concerns have been remedied by the Respondent's corrective action, to include installation of additional bars over the skylights and mesh over the cage door to preclude theft of controlled substances from the security cage. Further physical security controls were also implemented, to include an extensive bar code system to assist in tracking controlled substances through the Respondent's warehousing process.

However, the Government has presented evidence of a lack of accurate and precise accounting and recordkeeping controls, resulting in the Government's inability to determine whether or not diversion had occurred. Specifically, the Respondent's first biennial inventory was inaccurate and incomplete, for it failed to account for approximately 500 controlled substances. Such a failure puts into question the Respondent's inventory practices, for if those substances were unaccounted for at the time of the inventory, then safeguards to prevent diversion were, arguably, equally ineffective, given the fact that the Respondent failed to identify the actual existence of these substances in its possession at the time of the inventory. Further, although disputed, the Investigatory testified that she was unable to reconcile the Respondent's records with substances on hand when she conducted her inspection in January of 1995. She also testified that, for the four years in which the Respondent had been a registrant, DEA had been unable to ever effectuate an accountability audit. Such a problem again calls into question the Respondent's accountability procedures for keeping an accurate count of controlled substances handled on its premises during any given timeframe. If controlled substances are on the Respondent's premises without knowledge of the Respondent's personnel, then it becomes questionable whether the Respondent's security procedures are adequate to prevent diversion of such unaccounted for controlled substances.

The Government also presented evidence that in January of 1995, Schedule II controlled substances were found on the Respondent's premises, despite the Respondent's lack of authorization to handle such substances. To further aggravate the situation, the substances were found in unopened boxes outside the secured cage, and evidence was presented to establish that they had been in an unsecured location for at least several months. Further, the substances had not been accounted for or processed through the Respondent's records, making their accountability impossible during this time. Such lack of action on the part of the Respondent resulted in a failure of the system to safeguard the substances and to prevent their diversion.

The Respondent's response to the Investigator's testimony was to present evidence that one customer's Schedule II controlled substances were received by Respondent improperly, and that, because of the customer's bankrupt status, the Respondent had had difficulty determining where to return the substances. However, in conflict with this characterization, the Respondent also presented evidence that established that the Respondent's employees had actually conducted an inventory of this customer's returned product at the customer's location prior to boxing and shipping the goods to the Respondent's warehouse. Therefore, the Respondent should have known what substances were in the boxes packed by its own employees. If not, then the unknown boxes perhaps should have been processed first to properly identify what substances the Respondent had taken possession and control of as a result of this business relationship.

The Deputy Administrator finds that the Respondent's failure to know it had Schedule II substances in its possession for several months, coupled with its cavalier storage of unknown substances outside of its security cage, results in a finding that the Respondent has failed to act consistent with the responsibilities inherent in a registrant's status. Specifically, a registrant is charged with knowing, in an expeditious manner, what controlled substances are in its possession, and with affording those substances the necessary protection required to prevent diversion. In this instance, the Respondent did not know it had Schedule II substances, did not open and identify the substances it had received for several months, and had failed to maintain effective controls over these Schedule II substances for a protracted period of time. Such conduct fails to result in "the maintenance of effective controls against diversion."

As to factor five, "such other factors as may be relevant to and consistent with the public health and safety," the Deputy Administrator concurs with Judge Tenney's finding that the basis for measuring the success of the Respondent's past experience is rooted in the 1992 MOU, and the 1993 MOU. The Deputy Administrator acknowledges that, at the time of the first MOU, the DEA did not have

regulations in place which specifically addressed the Respondent's business. The MOU acknowledges this fact by stating that "this registration as a DISTRIBUTOR is an interim measure until such time as the proposed administrative actions are completed. At that time, the distributor registration will be converted to the new category of registration as provided under the law." The Deputy Administrator agrees with Judge Tenney's interpretation of this provision of the 1992 MOU, when he writes "[i]t indicates that the Respondent's business is relatively new, and that the DEA is in the process of proposing guidelines under which to register disposers of controlled substances. Furthermore, * * * [it] suggests that the DEA and Respondent would have to work together [] so that Respondent could fulfill its obligations with respect to the recordkeeping and security obligations of a DEA registrant."

The record provides evidence of the DEA and the Respondent working together to accomplish the goals of the 1992 MOU. In July of 1992, a DEA inspection resulted in the identification of numerous improprieties, the most significant of which was the DEA's inability to conduct an accountability audit of controlled substances due to the lack of documentation that would facilitate the DEA's need to track the receipt and disposition of controlled substances through the Respondent's facility. The Deputy Administrator agrees that such a lack of verifiable accountability creates a greater likelihood of diversion, for the Respondent, at that time, had not created an accountability system to the degree of specifically needed to maintain a continuous track record of the controlled substances flowing through its facility. Yet, in the spirit of the 1992 MOU, rather than take action to revoke the Respondent's registration, the DEA held in informal administrative hearing on September 24, 1992, resulting in the creation of a second MOU dated June 18, 1993.

The second MOU spelled out 17 problems found by the DEA during the 1992 inspection. Contrary to the testimonial evidence provided by the Respondent's witnesses, the Deputy Administrator finds that these violations are identified with a degree of specificity necessary to enable the Respondent to initiate corrective action. These discrepancies memorialize the fact that the DEA, after conducting an inspection of the Respondent's physical facility and accountability procedures, was unable to conclude that adequate security measures were in place to preclude diversion of controlled substances, because the DEA could not verify through an accountability audit, that the Respondent handled controlled substances in such a manner as to preclude diversion of the substances while in its facility. But the MOU did not stop there, for the parties also memorialized in detail the corrective action the Respondent needed to take.

In May of 1994, the DEA conducted another inspection of the Respondent's facility, and the record demonstrates that the Investigator was again unable to conduct an accountability audit. Although acknowledging the various actions found to be in violation of the 1993 MOU, the Deputy Administrator is most concerned with the inability of the DEA investigators, with the assistance of the Respondent's employees, to conduct an accountability audit. The evidence concerning the imprecise method in which the Respondent documented the controlled substances flowing through its facility during this time, as "repackaged goods" lacking an exact identity and count, was justifiably found to be in violation of the agreed accountability procedures defined with specificity in the 1993 MOU.

As to the issue of the construction of the Schedule II vault, the Deputy Administrator agrees with Judge Tenney. Although the relevant rule specifies that a vault must be constructed to certain specifications and approved by the DEA prior to using it to store any Schedule II drugs, the record clearly demonstrates that the Respondent has not stored any Schedule II substances in the vault. Further, Judge Tenney noted that "21 CFR 1301.71(d) permits, but does not require, registrants to submit proposed security systems to the Special Agent in Charge in the region in which the system is located. * * *" The Deputy Administrator agrees that "[s]ince there is nothing in the regulations that requires a registrant to obtain DEA approval before building the vault, there has been no breach."

The Deputy Administrator also notes that, again in the spirit of cooperation that permeated the relationship between this Respondent and the DEA, the DEA investigators, while this matter was pending before Judge Tenney, again conducted an inspection of the Respondent's facility in January of 1995. Yet against the DEA investigators were unable to complete an accountability audit, finding the Respondent's records incomplete and inaccurate. Specifically, the record contains contemporaneously produced documents for DEA's inspection which lacked quantity counts, stating instead, for example, that a "repackaged good" of a Schedule III substance had been destroyed. Such documentation failed to provide the investigator with the exact identity and quantity of the Schedule III substance thus destroyed, in violation of both DEA regulations and the 1993 MOU. Lacking the degree of specificity necessary to enable the DEA investigators to conduct an accountability audit, the records were found deficient. Significant is the fact that the DEA investigators could not reconcile an audit of substances on hand by using the documents presented to the DEA employees for that purpose. From the previous four years of discussions and MOUs, the DEA had clearly defined its concern over the accountability of the respondent for the receipt, processing, distribution, or destruction of controlled substances. DEA's needs were clearly defined, yet the Respondent's personnel were unable to present documents showing that it conducted its business in a manner consistent with the requirements of a DEA registrant.

However, evidence was presented by the Respondent, demonstrating that a multitude of information may have been available at the time of the January 1995 inspection, if the DEA only had requested specific data from the Respondent's employees. A significant issue in dispute in this case was whether the availability of such evidence in the Respondent's computer system equalled the "readily retrievable" standard established in DEA regulations for such recordkeeping. The Deputy Administrator agrees with Judge Tenney's conclusion that "it is implicit from the definition of the term 'readily retrievable' that the DEA recognizes that records may be kept by 'automated data processing systems or other electronic or mechanized recordkeeping systems.' *See* 21 CFR 1304.02(i)." Further, the regulations specify that "readily retrievable" is defined, in relevant part, as requiring certain "records [be] kept by automatic data processing systems or other electronic or mechanized recordkeeping systems in such a manner that they can be separated out from all other records in a reasonable time." 21 CFR 1304.029i). However, focusing on the method of storage of data misses the problem here.

The Deputy Administrator disagrees with Judge Tenney's analysis of the application of this standard in this case. Judge Tenney wrote:

> [The Investigator] testified that because the reports did not contain all the necessary information, then that information was not readily retrievable. However, the information for the reports was in the computer and was 'readily retrievable' once it was understood which 'fields' of information contained in the computer database must be reflected in the reports. Many of Respondent's reports have already been changed to reflect missing information and Respondent appears willing to make any future adjustments to its reports.

Such an analysis places the burden upon the DEA to inform the Respondent as to which "fields" of information to include misses the point of the inspection, which is to view the reports used by the Respondent during its normal business activities to track the processing of controlled substances through its facility to insure that the process is effective in preventing diversion of such substances to unauthorized recipients. During an inspection, the Respondent is not asked to create special reports for DEA's use. Rather, the Respondent is to present shipping, receiving, and destruction reports utilized on a daily basis by the Respondent to meet its accountability responsibility as a registrant. Of course such reports may be maintained in an automatic data processing system, but the method of maintenance of the report is not the issue. The issue is the content of the report and its usefulness in demonstrating the Respondent's compliance with DEA requirements in its handling of controlled substances during its daily operation. The DEA merely relies upon the Respondent's existing recordkeeping system to conduct an accountability audit.

However, here the DEA investigators have consistently been unable to use the Respondent's documentation to reconcile the Respondent's accountability records with substances found on hand in the Respondent's security cage on the date of the DEA audit. As of the January 1995 inspection, the Respondent continued to fail to meet this obligation; an accountability obligation levied against any DEA registrant thus handling controlled substances.

Thus, the Deputy Administrator finds that this failure, coupled with the unauthorized storage of unaccounted for Schedule II substances outside a security cage for an extended period of time, create a basis for the revocation of the Respondent's registration. The Respondent had failed to demonstrate that it had maintained effective controls against diversion, and such a failure has created a risk to the public interest.

In mitigation, the Deputy Administrator notes both Ms. Smith's and the President's evidence of continuous attempts to meet DEA's requirements during the course of the meetings and inspections conducted by the DEA. The Deputy Administrator also takes note of the timely and responsive manner in which Respondent's officers modified the firm's business practices to attempt to bring them into regulatory compliance. Their responsive and cooperative attitude indicates a desire and a willingness to operate this returns business in compliance with statutory and regulatory requirements. The Respondent has committed extensive personnel and fiscal resources toward developing a system to insure its operation is in compliance with DEA requirements. Also, the Respondent has initiated procedures, such as employee criminal background checks, to insure that personnel with access to controlled substances within its facility are qualified to meet the responsibilities of such a position.

Further, many of the problems identified in the 1992 MOU and the 1993 MOU have been resolved, such as (1) The Respondent's clearly communicating to its customers its inability to accept Schedule II substances and patient-prescribed substances, and the procedures implemented to return such substances to the customer; (2) fulfilling the ARCOs reporting requirements; (3) separately storing controlled substances and non-controlled substances; (4) correct the Respondent's receiving records to reflect the actual date of receipt of its customer's products; (5) adding the requirement that a customer provide to the Respondent a copy of its DEA Certificate of Registration and an inventory of controlled substances actually shipped to the Respondent; (6) providing DEA notice of its selected disposal site; and (7) modifying the way in which records for repackaged products are created.

Procedurally, Judge Tenney recommended that the Deputy Administrator take no action with respect to the Respondent's registration. After receiving his recommendation, the Government timely filed exceptions, pursuant to 21 CFR 1316.66, and the Respondent field a brief in support of Judge Tenney's recommendation.

After reviewing the parties filings, the Deputy Administrator notes that a significant issue forming the basis of the Government's exception is that Judge Tenney, after reviewing the Respondent's evidence of corrective action taken since the January 1995 inspection, had found such corrective action persuasive in remedying the violations previously identified by the Investigator. Specifically, the Government took exception to Judge Tenney's finding that the Respondent had made reasonable efforts to comply with DEA regulations, given the fact that even as late as the January 1995 inspection, the Investigator had continued to find numerous recordkeeping and security violations. The Government wrote, "[a]s recent as the July 1995 hearing, the Respondents were still in the process of attempting to bring itself into compliance with DEA requirements * * *. In addition, [the Investigator] testified to matters that remained uncorrected at the firm as of January 1995, and to date, DEA has not been able to conduct an accountability audit at the firm because of the firm's poor record-keeping, (*sic*) nor has the firm produced an accurate and verifiable biennial inventory." In a related concern, the Government also took exception to Judge Tenney's finding as to the efforts taken by the Respondent's personnel to create a controlled substance tracking system. The Government wrote that "there is practically no evidence in the record that [the] Respondent's information system has produced accurate and verifiable information to DEA."

The Deputy Administrator agrees with Judge Tenney's finding that the Respondent has made efforts to comply with DEA's regulations, as evidenced by the extensive efforts taken to create a computer system that would assist in managing the flow of controlled substances through the Respondent's facility. However, the Deputy Administrator also agrees that the evidence supports the Government's concerns, for DEA has been unable to successfully conduct an accountability audit. The Deputy Administrator agrees that the Respondent's lack of verifiable inventory control places the public at risk from diversion of controlled substances.

The Government also took exception to Judge Tenney's conclusion that the public interest was served by continuing the Respondent's registration, in light of the Respondent's past history of non-compliance with DEA requirements. The Deputy Administrator agrees with the Government's assertion that "[a]n agency rationally may conclude that past performance is the best predictor of future performance. *Alra* v. *Drug Enforcement Administration*, 54 F.3d 450 (7th Cir. 1995)." However, here DEA's requirements differ from the average regulatory case, for DEA does not have regulations responsive to and governing the Respondent's business, since this Respondent does not manufacture, distribute, or dispense controlled substances. The terms of the two MOU's and the regulations incorporated into those agreements form the basis for the DEA's regulatory requirements, and both DEA and the Respondent acknowledged the need for

cooperation in applying those requirements as the Respondent's business practices were developed. Although the Deputy Administrator acknowledges that the overall regulatory goal of preventing diversion of controlled substances outside of the regulated system of distribution has applied equally to the Respondent as to any other DEA registrant, from the inception of the Respondent's operation, the mechanisms of compliance have had to be developed. The Deputy Administrator must take these facts into account when reviewing this Respondent's past history of compliance.[1]

Yet the responsibility remains the Registrant's to conduct its business in an accountable manner that does not place the public at risk of diversion of controlled substances. Therefore, in the balance, the Deputy Administrator concludes that it is in the public interest for the Respondent's DEA registration to be revoked. However, the Deputy Administrator feels that the evidence of changes made by the Respondent in response to the Government's case at the hearing before Judge Tenney, may, in operation, finally create an accountability system adequate for the Respondent to demonstrate the requisite degree of precision in handling controlled substances necessary to continue in operation as a disposer. The Deputy Administrator also finds that it is in the public interest for the Respondent to be given yet another opportunity to demonstrate that the latest alterations to the Respondent's business practices will adequately contain the risk to the public of diversion from the Respondent's operation.

Therefore, the Deputy Administrator will stay the revocation and impose a one-year probationary period to determine whether the Respondent can now fully comply with all DEA recordkeeping, reporting, and security requirements. During the one-year probationary period, DEA will conduct inspections and audits in compliance with the procedures established in 21 U.S.C. 880 and its implementing regulations. It is significant that during this period, the Respondent will be taking its second biennial inventory, which will afford the Respondent the opportunity to demonstrate its ability to conduct a meaningful inventory of controlled substances in its possession.

However, if the DEA's inspections or audits reveal either new or repeated violations, the Deputy Administrator will remove the stay and the DEA Certificate of Registration will be revoked immediately, and all pending applications for renewal will be summarily denied. If, however, at the end of the one-year period, the Respondent successfully demonstrates its compliance with the DEA's regulatory requirements, then the Deputy Administrator will withdraw this order and will permit the Respondent to retain its registration, and to renew it, if necessary, at that time.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders DEA Certificate of Registration RR0166113, issued to RX Returns, Inc., be, and it hereby is, revoked and any pending applications for renewal are denied. It is further ordered that this revocation order will be stayed for a period of one year from its effective date. If during the one-year probationary period, the Respondent is found to have violated any DEA reporting, recordkeeping, or security requirements, the previously imposed stay will be removed, the Respondent's DEA Certificate of Registration will be revoked, and any pending applications for renewal will be summarily denied. This final order is effective August 15, 1996.

Dated: July 5, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–18025 Filed 7–15–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs; Report of Computer Matching Program Between Department of Labor and Social Security Administration

Participating Agencies: The participating agencies in this computer matching program are the Office of Workers' Compensation Programs, Department of Labor (DOL) and the Social Security Administration (SSA). This Notice is published as required by the Computer Matching and Privacy Protection Act of 1988, as amended, and OMB Guidelines on the conduct of matching programs. The purpose of the agreement is to establish the conditions under which SSA will disclose Social Security Administration Data Integrity Boards.

Purpose of Match: DOL will conduct a computer matching program of DOL and SSA records of Black Lung benefit recipients in order to detect individuals who might improperly receive dual Black Lung benefits from SSA and DOL. When a verified match occurs, the case will be referred to the proper DOL office for development to assure the validity of the match and to make any required benefit adjustments. The SSA data will contain the date of death of SSA beneficiaries. This information will help to minimize those cases in which benefit payments are made to deceased beneficiaries, by identifying a DOL beneficiary who has died, but DOL has not been notified of the death. The SSA data also will assist DOL in properly referring inquiries and correspondence received at DOL regarding SSA-only Black Lung beneficiaries.

Authority for Conducting the Matching Program: Title IV of the Federal Mine Safety and Health Act, 30 U.S.C. 901, et seq.

Categories of Records and Individuals Covered: SSA, as the source agency, will provide DOL with its Black Lung Payment System, HHS/SSA/OSR 09–60–0045, (52 FR 9543, March 25, 1987), which will be matched with DOL's Office of Workers' Compensation Programs' Black Lung Benefit Payment records contained in DOL/ESA–30 (55 FR 7131, February 28, 1990). The individuals covered will be DOL and SSA Black Lung beneficiaries.

Inclusive Dates of the Matching Program: The Matching program will begin either 30 days after the publication date of this Notice, or 40 days (whichever is later) after a copy of the written agreement for this matching program is sent to the Chairman of the Committee on Government Affairs of the U.S. Senate, to the Chairman of the Committee on Governmental Reform and Oversight Operations of the U.S. House of Representatives and to the Office of Information and Regulatory Affairs of the Office of Management and Budget. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

Address for Receipt of Public Comment: Shelby Hallmark, Acting Director, Office of Workers' Compensation Programs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–3524, Washington, D.C. 20210, Telephone (202) 219–7552 (this is not a toll-free number).

Signed at Washington, D.C. this 11th day of July 1996.

Shelby Hallmark,

Acting Director, Office of Workers' Compensation Programs.

[FR Doc. 96–18048 Filed 7–15–96; 8:45 am]

BILLING CODE 4510–27–M

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "Point of Purchase Survey." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 16, 1996.

BLS is particularly interested in comments which help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSEE: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue N.E., Washington, D.C. 20212. Ms. Kurz can be reached on 202–606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this survey is to develop and maintain a timely list of retail, wholesale, and service establishments where urban consumers shop for specified items. This information is used as the sampling universe for selecting establishments at which prices of specific items are collected and monitored for use in calculating the Consumer Price Index (CPI). The survey has been ongoing since 1980 and also provides expenditure data which allows items that are priced in the CPI to be properly weighted.

II. Current Actions

Starting in 1997, the survey will be administered quarterly and entirely via a computer-assisted-telephone-interview, as opposed to the current practice of an annual personal-visit interview. This revised collection methodology is more flexible and creates the possibility of introducing new products into the Consumer Price Index in a more timely manner. Furthermore, the cost efficiency of telephone interviewing permits data collection in all sampling areas each year, rather than the current practice of collecting data in only 20 percent of all sampling areas each year. This new sample design will produce an overall CPI market basket that is more reflective of the prices faced and the establishments visited by urban consumers.

Type of Review: Revision of a currently approved collection.
Agency: Bureau of Labor Statistics.
Title: Point of Purchase Survey.
OMB Number: 1220–0044.
Affected Public: Individuals or households.
Total Respondents: 18,018.
Frequency: Quarterly.
Total Responses: 32,760.
Average Time Per Response: 12 Minutes.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, D.C., this 10th day of July, 1996.

Peter T. Spolarich,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 96–18046 Filed 7–15–96; 8:45 am]

BILLING CODE 4510–24–M

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Main Fan Maintenance Record

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed new/revision/extension/reinstatement of the information collection related to the Main Fan Maintenance Record. MSHA is particularly interested in comments which:

*Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

*Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

*Enhance the quality, utility, and

electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Submit comments on or before September 16, 1996.

ADDRESSES: Written comments shall be mailed to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: George M. Fesak, Director, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mr. Fesak can be reached at gfesak@msha.gov (Internet E-mail), (703) 235–8378 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Sections 303(a), and (g) of the Federal Mine Safety and Health Act of 1977 authorize the recordkeeping and reporting requirements implemented in 30 CFR 57, Subpart G–Ventilation, Section 57.8525. The main fans are the major life support system to the entire underground mining operation. The air flow provided by the fans assures fresh air to the miners at working faces, reduces the chance of the air reaching threshold limit values of airborne contaminants, and dilutes accumulations of possible explosive gases.

II. Current Actions

MSHA is seeking to continue the requirement for a regular fan maintenance schedule to assure an uninterrupted supply of air in the mine.

Type of Review: Extension.
Agency: Mine Safety and Health Administration.
Title: Main Fan Maintenance Record.
OMB Number: 1219–0012.
Affected Public: Business or other for-profit.
Cite/Reference/Form/etc: 30 CFR 57.8525.
Total Respondents: 212.
Frequency: Weekly occasion/etc.
Total Responses: 10,600.
Average Time per Response: 0.017 hours.
Estimated Total Burden Hours: 180 hours.
Estimated Total Burden Cost: None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 10, 1996.

George M. Fesak,
Director, Program Evaluation and Information Resources.

[FR Doc. 96–18047 Filed 7–15–96; 8:45 am]
BILLING CODE 4510–43–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–074]

Government-Owned Inventions; Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent Trademark Office, and are available for licensing.

Copies of patent applications cited are available from the Office of Patent Counsel, Ames Research Center. Claims are deleted from the patent applications to avoid premature disclosure.

DATE: July 16, 1996.

FOR FURTHER INFORMATION CONTACT: Ken Warsh, Patent Counsel, Ames Research Center, Mail Code 202A–3, Moffett Field, CA 94035; telephone (415) 604–5104, fax (415) 604–1592.

NASA Case No. ARC–12,052–1GE: A Technique for the Areal Measurement of Surface Stress Vectors Using Liquid Crystal Coatings;
NASA Case No. ARC–12,071–1GE: Source Doubles Diagraph Model Processing Method;
NASA Case No. ARC–12,015–2GE: Image Data Compression Having Minimum Perceptual Error (Continuation in Part);
NASA Case No. ARC–12,069–1GE: Environmentally Friendly Deicing Fluid;
NASA Case No. ARC–12,011–2SB: Process to Prepare Uniform Low Density Structural Ceramic Alator System (Continuation in Part);
NASA Case No. ARC–11,992–2GE: Rotorcraft Blade Vortex International Controller (Continuation in Part);
NASA Case No. ARC–11,978–2SB: Flexible Ceramic Thermal Protection System Resistant to High Acoustic Noise (Continuation in Part);
NASA Case No. ARC–14,008–1GE: Non Linear Wind Tunnel Modeling and Analysis Technology;
NASA Case No. ARC–12,110–1LE: Wing Tip Fence for Reduction of Lift Generated Airframe Noise;
NASA Case No. ARC–12,080–1GE: Temporal Resolution Process for Enhanced Visual Displays;
NASA Case No. ARC–12,097–1LE: Hierarchical Network Management System;
NASA Case No. ARC–12,072–1SB: Contactless Magnetic Slip Ring;
NASA Case No. ARC–14,027–1GE: Hybrid Flexible and Rigid Ceramic Insulation;
NASA Case No. ARC–14,057–1GE: Photonic Switching Device Using Light Bullets;
NASA Case No. ARC–14,029–1SB: Surface Modification for Efficient Waterproofing;
NASA Case No. ARC–14,063–1GE: Method and Apparatus for Monitoring of Daily Activity in Terms of Ground Reaction Forces;
NASA Case No. ARC–11,890–2GE: Far Infrared Diffuses Refractor (Continuation in Part);
NASA Case No. ARC–14,048–1GE: Autogenic Feedback Training;
NASA Case No. ARC–14,030–1GE: Nose Cap Heat Shield;
NASA Case No. ARC–14,031–1GE: Leading Edge Heat Shield Configuration for Vehicles During Atmospheric Entry at Hypersonic Speed;
NASA Case No. ARC–14,043–1GE: Virtual Window for Vehicle Displays;
NASA Case No. ARC–14,061–1GE: Viscoelastic Dovetail Damper for Rotor Blades;
NASA Case No. ARC–12,092–1SB: Fiber Optic Lock;
NASA Case No. ARC–12,099–1GE: Noise Reducing Screens for in Flow Pressure Sensors or Microphones;
NASA Case No. ARC–12,069–2GE: Environmentally Friendly Anti Icing and Deicing Fluid (Continuation in Part);
NASA Case No. ARC–069–3GE: Environmentally Friendly Anti Icing and Deicing Fluid (Foreign Filed Patent);
NASA Case No. ARC–12,087–1SB: Ziconium Hafnaum Ceramic Composites for Enhanced Ablation Resistance;
NASA Case No. ARC–12,081–1CU: Durable Advanced Flexible Reuseable Surface Insulation;
NASA Case No. ARC–14,054–1GE: An Algorithm for Treating Systematic Errors in Data from Imaging Interferometers;
NASA Case No. ARC–14,060–1LE: Blind Pointer;
NASA Case No. ARC–14,051–1SB: Molded Structural Thermal Protection;
NASA Case No. ARC–14,052–1SB: Integrated System Advanced Attachment Concept for Thermal Protection;
NASA Case No. ARC–14,053–1LE: System and Method for Finite Element Simulation and Helicopter Turbulence.

Dated: July 8, 1996.

Edward A. Frankle,
General Counsel.

[FR Doc. 96–17969 Filed 7–15–96; 8:45 am]
BILLING CODE 7510–01–M

[Notice 96–073]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Solar System Exploration Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Solar System Exploration Advisory Subcommittee.

DATES: Monday, August 19, 1996, 8:30 a.m. to 5:00 p.m.; and Tuesday, August 20, 1996, 8:30 a.m. to 4:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, MIC Room 7H46, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Jurgen Rahe, Code SA, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2150.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Office of Space Science Activities
—Board of Directors Overview
—Research Program Management Overview
—Advanced Technology and Mission Studies Overview
—Mission and Payload Development, Overview
—Roadmap to the Solar System
—Future Activities

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 9, 1996.

Leslie M. Nolan,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–17968 Filed 7–15–96; 8:45 am]
BILLING CODE 7510–01–M

NATIONAL LABOR RELATIONS BOARD

Appointments of Individuals to Serve as Members of Performance Review Boards

5 U.S.C. 4314(c)(4) requires that the appointments of individuals to serve as members of performance review boards be published in the **Federal Register**. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of performance review boards in the National Labor Relations Board for the rating year beginning October 1, 1994 and ending September 30, 1995.

Name and Title

Richard L. Ahearn—Regional Director, Region 9
Frank V. Battle—Deputy Director of Administration
B. Allan Benson—Acting Associate General Counsel, Operations—Management
Mary Joyce Carlson—Deputy General Counsel
Harold J. Datz—Chief Counsel to Board Member
Robert A. Giannasi—Chief Administrative Law Judge
Wayne R. Gold—Acting Director, Office of Representation Appeals
Peter B. Hoffman—Regional Director, Region 34
Susan Holik—Chief Counsel to Board Member
Gloria Joseph—Director of Administration
Barry J. Kearney—Associate General Counsel, Advice
Linda R. Sher—Associate General Counsel, Enforcement Litigation
William R. Stewart—Chief Counsel to the Chairman
Elinor H. Stillman—Chief Counsel to Board Member
John J. Toner—Executive Secretary
Dennis P. Walsh—Chief Counsel to Board Member
Jeffrey D. Wedekind—Acting Solicitor

Dated: Washington, D.C., July 10, 1996.

By Direction of the Board.

John J. Toner,
Executive Secretary.

[FR Doc. 96–18028 Filed 7–15–96; 8:45 am]
BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions".
2. Current OMB approval number: 3150–0021.
3. How often the collection is required: On occasion. Upon submittal of an application for a construction permit, operating license, operating license renewal, early site review, design certification review, decommissioning or termination review, manufacturing license, materials license, or upon submittal of a petition for rulemaking.
4. Who is required or asked to report: Licensees and applicants requesting approvals for actions proposed in accordance with the provisions of 10 CFR Parts 30, 32, 33, 34, 35, 36, 39, 40, 50, 52, 54, 60, 61, 70 and 72.
5. The number of annual respondents: 24.
6. The number of hours needed annually to complete the requirement or request: 38,410.
7. Abstract: 10 CFR Part 51 of the NRC's regulations specifies information and data to be provided by applicants and licensees so that the NRC can make determinations necessary to adhere to the policies, regulations, and public laws of the United States, which are to be interpreted and administered in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended.

Submit, by September 16, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6–F33, Washington, DC, 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 9th day of July, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford, Designated Senior,

Official for Information Resources Management.

[FR Doc. 96–18005 Filed 7–15–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–390 (10 CFR 2.206)]

Tennessee Valley Authority (TVA) (Watts Bar Nuclear Plant); Final Director's Decision Under 10 CFR 2.206

I. Introduction

On February 14, 1996, Ms. Faith Young (Petitioner) of Dixon Springs, Tennessee, submitted a letter requesting that the U.S. Nuclear Regulatory Commission (NRC), among other things, rescind the operating license of Watts Bar Nuclear Plant (WBNP). The Petitioner's concern, as stated in her February 14 letter, is as follows:

> Watts Bar lake water which cools Watts Bar nuclear plant's radioactive core holds sediment contaminated by radioactive material. Over a lifetime of Watts Bar nuclear plant operation uncontrolled access to this lake will disturb its sediment, in turn contaminating water drawn into the nuclear cooling system. This heightened radioactive contamination of nuclear plant emission has not been previously addressed. No action is being considered to restrict lake use or to remove radioactive material. This "record of decision" by Department of Energy, Environmental Protection Agency, U. S. Army Corps of Engineers, state of Tennessee and Tennessee Valley Authority appears in an interagency document dated September, 1995.

Since the document referred to by Ms. Young ("Record of Decision for the Lower Watts Bar Reservoir," DOE/OR/02–1373&D3, dated September 1995, hereinafter, the "Department of Energy (DOE) report") clearly addresses Lower Watts Bar Reservoir (LWBR), the staff has assumed, for purposes of this Decision, that the "Watts Bar lake" in Ms. Young's letter refers to the Lower Watts Bar Reservoir. On March 27, 1996, the staff formally notified Ms. Young that her Petition was being evaluated pursuant to 10 CFR 2.206.

II. Discussion

The DOE report presents the selected remedial action being used to address the contamination of the LWBR "Operable Unit (OU)." The report attributes LWBR contamination to past activities at the DOE's Oak Ridge Reservation (ORR) and other non-DOE sources. The boundaries of the LWBR, as defined in the DOE report, extend from the Watts Bar Dam at Tennessee River Mile (TRM) 529.9 on the Tennessee River, upstream to TRM 567.5 at the confluence of the Clinch and Tennessee Rivers. The DOE report, on page 2–2, discusses the selection of the Watts Bar Dam as the downstream boundary as follows:

> The downstream boundary of the ORR was placed at Watts Bar Dam because earlier studies had shown that the vast majority of sediment-associated contaminants released from ORR had collected in lower Watts Bar Reservoir. Consequently, concentrations of sediment-associated contaminants released from ORR are much lower in reservoirs downstream of Watts Bar Dam. The level of Oak Ridge-derived contaminants detected in past studies in the Tennessee River system below the Watts Bar Dam were well below the concentrations determined to be of human health concerns by the baseline risk assessment within the Watts Bar Reservoir.

WBNP is located approximately 1.9 river miles downstream from the Watts Bar Dam on the west bank of the Chickamauga Lake. Chickamauga Lake is the next lake downstream from the LWBR and is bounded by the Chickamauga Dam approximately 57 miles downstream from WBNP. The intake and discharge for cooling water to WBNP are located 1.9 or more river miles downstream from the Watts Bar Dam. Accordingly, it must be noted that WBNP is located outside and below the boundary of the area considered by the DOE report. Therefore, since WBNP does not draw cooling water from within the boundary of the LWBR and does not discharge cooling water into the boundary of the LWBR, the operation of WBNP will have no effect on the sediment in the LWBR and, accordingly, will not cause contaminated sediment to be drawn into WBNP.

The Petitioner's understanding that the LWBR holds sediment contaminated by radioactive material is consistent with the DOE report (see page 2–2) and with information in the NRC staff's "Final Environmental Statement Related to the Operation of Watts Bar Nuclear Plant, Units 1 and 2," (FES) NUREG–0498, Supplement 1, Section 2.5, April 1995. The NRC staff stated therein that "Operations at the Oak Ridge Reservation have historically resulted in the release of radionuclides to the aquatic environment * * *. Most of the releases occurred during the 1950s and have declined since." The NRC staff concluded in the FES, Supplement 1, that there are no significant changes in environmental impacts as a result of changes in plant design, procedures or proposed methods of plant operation, or changes in the environment.

By contrast, the Petitioner's claim that "no action is being considered to restrict lake use or to remove radioactive material" is not consistent with the DOE report. The DOE report's "Statement of Basis and Purpose" (page 2–2) states that the report "presents the selected remedial action for the LWBR OU." The "Description of Selected Remedy" (page 2–2) and "The Selected Remedy" (page 2–10) describe the selected remedy as the "continuance of existing controls and advisories regarding LWBR activities" and the "Monitoring Plan." The DOE report (page 2–9) also notes that "The state of Tennessee and other federal agencies are already implementing the main components of the preferred alternative." With respect to the removal of radioactive sediments, the DOE report (page 2–9) states that "The cost of the preferred alternative is much lower and a more effective use of funds when compared to active remediation of sediments." In other words, a remedy has been developed for the contamination in the LWBR and the purpose of the DOE report is to present that remedy.

Notwithstanding the conclusion that operation of WBNP will not disturb the sediment in the upstream LWBR, the WBNP Technical Specifications (TS) and the associated Offsite Dose Calculation Manual require programs and controls for the control of radioactive effluents from the plant itself. Such controls include limitations on the concentrations of radioactive material released in liquid effluents from the plant. The staff evaluated control of radioactive effluents by WBNP in Section 11 of NUREG–0847, "Safety Evaluation Report related to the operation of Watts Bar Nuclear Plant, Units 1 and 2." The staff concluded therein that WBNP meets applicable regulations (10 CFR 20.1302; 10 CFR Part 50, Appendix A, General Design Criteria 60, 63, and 64) and other guidance documents and is therefore acceptable for operation.

The NRC staff's review did not substantiate the Petitioner's assertions. The Petitioner did not offer information that indicated any need to revisit the staff's previous evaluations.

III. Conclusion

For the reasons given above, Petitioner's request to rescind the operating license of the WBNP is denied. As explained above, the NRC staff concludes that the Petitioner has not raised any substantial health and safety issues as the staff believes that there is no appreciable threat to the public health and safety presented by WBNP's effluent water. Accordingly, the Petitioner's request for action pursuant to 10 CFR 2.206, as specifically stated in the letter of February 14, 1996, is denied.

A copy of this Final Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). This Decision will become the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 9th day of July 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–18004 Filed 7–15–96; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of July 15, 22, 29, and August 5, 1996.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 15

There are no meetings scheduled for the Week of July 15.

Week of July 22—Tentative

There are no meetings scheduled for the Week of July 22.

Week of July 29—Tentative

Monday, July 29

10:00 a.m.
Briefing on Uranium Recovery Program (Public Meeting)
(Contact: Joe Holonich, 301–415–6643)

Tuesday, July 30

10:00 a.m.
Briefing by Nuclear Waste Technical Review Board (Public Meeting)
2:00 p.m.
Briefing on Status of Staff Actions on Industry Restructuring and Deregulation (Public Meeting)
(Contact: Dave Mathews, 301–415–1282)

Wednesday, July 31

2:00 p.m.
Briefing on EEO Program (Public Meeting)
(Contact: Ed Tucker, 301–415–7382)

Thursday, August 1

10:00 a.m.
Briefing on Spent Fuel Pool Cooling Issues (Public Meeting)
(Contact: George Hubbard, 301–415–2870)
11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of August 5—Tentative

There are no meetings scheduled for the Week of August 5.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)-301 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: July 12, 1996.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96–18149 Filed 7–12–96; 2:24 pm]

BILLING CODE 7590–01–M

[Docket No. 50–390]

Tennessee Valley Authority, Watts Bar Nuclear Plant; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation (NRR), has taken action on a Petition of February 14, 1996 (Petition), for action under Section 2.206 of Title 10 of the CODE OF FEDERAL REGULATIONS (10 CFR 2.206) filed by Ms. Faith Young (Petitioner) of Dixon Springs, Tennessee. The Petitioner asks that the NRC rescind Watts Bar's license to operate until the alleged issue of increased radioactive contamination of the plant's emission is resolved.

Petitioner believes that the lake containing the water used to cool Watts Bar's core contains sediment previously contaminated by radioactive material. Over the lifetime of Watts Bar's operation, according to Petitioner, uncontrolled access to the lake will disturb this sediment, which will in turn contaminate water drawn into the plant's cooling system. Petitioner believes that the issue of heightened radioactive contamination of nuclear power plant emissions has not been previously addressed. The Notice of Receipt of Petition Under 10 CFR 2.206 was published in the **Federal Register** on April 4, 1996 (61 FR 15151).

The Director of NRR determined that the Petition should be denied for the reasons explained in the "Director's

Decision under 10 CFR 2.206" (DD–96–10), the complete text of which follows this notice and is available for public inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, D. C., and at the Local Public Document Room for the Watts Bar Nuclear Plant at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee.

A copy of this Director' Decision will be filed with the Secretary of the Commission for the Commission's to review in accordance with 10 CFR 2.206(c). As provided by this regulation, this Decision will constitute the final action of the Commission 25 days after the date of issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 9th day of July 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–18003 Filed 7–15–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request; Review of an Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a final request for clearance of an information collection, the voluntary commercial garnishment application form. The Application For Federal Employee Commercial Garnishment is intended to be completed by creditors in order to facilitate the Federal Government's compliance with commercial garnishment orders as mandated by section 9 of the Hatch Act Reform Amendments of 1993, Public Law 103–94, by providing information about each commercial garnishment order in a uniform manner that would otherwise not be available due to the wide variety of commercial garnishment orders issued by various state and local jurisdictions.

We estimate that approximately 100 forms will be completed annually for OPM employees, each requiring an estimated ten minutes to complete, for a total public burden of approximately 17 hours. OPM anticipates, of course, that many other federal agencies will also be suggesting that creditors complete the form. OPM is unable to predict the total annual public burden as a result of the completion of this form.

On September 18, 1995, an initial notice of OPM's clearance request was published in the **Federal Register** (60 FR 48176). In response to the initial notice, OPM received written comments from four federal agencies, the National Association of Retail Collection Attorneys, the National Association of Federal Credit Unions, the Commercial Law League of America, and one individual. A fifth federal agency provided oral comments and a fourth organization, Nationwide Credit Corporation, did not comment directly, but forwarded comments from two law firms.

While not in response to any suggestion, OPM renumbered the items on the form and replaced the word "Applicant" with "Authorized Payee" in Parts C and D.

Two federal agencies recommended that the form be mandatory. OPM disagrees with making the use of this form mandatory since it would be unnecessary interference with the operation of state courts. Further, regardless of whether or not use of the form is mandatory, it is expected that the form will be in widespread use.

One organization noted that in the collection industry the word "commercial" is interchangeable with the word "business" and that it would be better to simply delete the word "commercial" from the form. However, OPM has opted not to delete the word "commercial" from the form, lest the form be associated by some as being intended to be completed in conjunction with the garnishment of child support indebtednesses which has no "commercial" implication. OPM has been advised that the Department of Health and Human Services is currently conducting a pilot program that utilizes a wholly different form in connection with child support garnishment. It is OPM's intent to avoid any inconsistency or confusion with the child support form.

One agency suggested that number 3 of the "Instructions" on the form be rewritten to explain that agencies are not required to respond until 30 days after receipt by the designated agent. OPM has, however, retained the proposed instruction that more closely follows the language of the statute which provides for agency responses "within thirty days."

Another agency suggested that the use of certified mail be encouraged. In order to make the form as clear and concise as possible, OPM has opted to have the form include only the statutory mailing provisions.

While one agency suggested that specific identifying information concerning the employee-obligor be made mandatory when completing Part A of the form, such a requirement would conflict with the statutory authority for commercial garnishment which only requires that sufficient identifying information be provided so as to enable the employing agency to identify the employee-obligor. See the Hatch Act Reform Amendments of 1993, Public Law 103–94, section 9, codified at 5 U.S.C. 5520a.

One of the creditor associations expressed concern that incomplete forms might be rejected and noted that creditors typically do not obtain an employee-obligor's date of birth or social security number. The instructions in Part A of the proposed form reflect the statutory identification requirements. It should be emphasized that where sufficient information has been provided for the employing agency to identify the employee-obligor, a garnishment order must not be rejected as being incomplete.

One agency recommended that the form ask the creditor to identify the employee-obligor's payroll office. OPM has not adopted this suggestion. It is doubtful that many creditors would know or could easily obtain the employee-obligor's payroll office. However, individual agencies could include such a request in the "For Agency Use" block at A.6 of the form.

A second agency suggested that block B.7 (now block B.1) identify the court as well as the case number. OPM has adopted this suggestion.

Two creditor organizations suggested that block B.8 (now block B.2) be revised to request the garnishment amount rather than the judgment amount. OPM has adopted this suggestion in order to clarify that the amount to be garnished is the amount listed on the garnishment order, i.e., what is not referred to in block B.2 as the "Garnishment Amount," rather than what might have been mistaken as being the amount of the underlying judgment.

One federal agency also suggested that block B.10 (now B.4) be revised. The agency opined that as written, the block could be misinterpreted to mean that there were instances when the Consumer Credit Protection Act was inapplicable. As rewritten, the form now avoids the word "inapplicable" and focuses on the need for information in instances where the percentage limitation provided in the Consumer Credit Protection Act is replaced by a lower limitation in accordance with state or local law.

OPM emphasizes that the purpose of the form is to elicit as much helpful information as possible from the garnishor so as to facilitate the processing of the garnishment order by agencies of the Federal Government. OPM emphasizes this point in response to one organization's comment that the form should be changed to place the burden of providing applicable law on the garnishee.

While OPM reaches no conclusion concerning what is "common practice" in the collection industry, it is reasonable to assume that the party that brought the garnishment action will be best able to provide the legal basis for the garnishment. OPM would, however, also explain that a failure to cite the correct legal provision in block B.10 (now B.4) should not, by itself, serve as a basis for an agency to refuse to comply with the garnishment order.

One organization suggested that creditors not be asked to provide copies of relevant statutory provisions. While OPM appreciates the organization's concern, OPM believes that it will be helpful for this information to be provided.

One agency recommended that information concerning bankruptcy filings be included. It is OPM's belief that most creditors will comply with the automatic stay provision of the Bankruptcy Code and not attempt to garnish if they have knowledge that a bankruptcy petition has been filed by the employee-obligor.

One of the law firms commented that the form will not solve all of the problems relating to the Federal Government's processing of commercial garnishment orders. OPM does not disagree, but OPM remains hopeful that usage of the form will facilitate the processing of commercial garnishments by the Federal Government.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov.

DATES: Comments on this proposed form should be received on or before August 15, 1996.

ADDRESSES: Send or deliver comments to:

Lorraine Lewis, General Counsel, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, Senior Attorney, Office of the General Counsel, (202) 606–1701.

U.S. Office of Personnel Management

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–18019 Filed 7–15–96; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

Sunshine Act Meeting

NAME OF AGENCY: Postal Rate Commission.

TIME AND DATE: 10:00 a.m. on July 23, 1996.

PLACE: Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268.

STATUS: Open.

MATTERS TO BE CONSIDERED: Discuss and vote on the Postal Rate Commission Budget for FY 1997.

CONTACT PERSON FOR MORE INFORMATION: Margaret P. Crenshaw, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, Telephone (202) 789–6840.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 96–18154 Filed 7–12–96; 3:22 pm]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22062; 813–142]

FMR Corp. and Fidelity Waterway Limited Partnership; Notice of Application

July 10, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICATIONS: FMR Corp. ("FMR") and Fidelity Waterway Limited Partnership (the "Initial Partnership").

RELEVANT ACT SECTIONS: Order under sections 6(b) and 6(e) of the Act for an exemption from all provisions of the Act except section 9, certain provisions of sections 17 and 30, sections 36 through 53, and the rules and regulations thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit the Initial Partnership, and future partnerships or investment vehicles that may be offered to the same class of investors (the "Subsequent Partnerships") (together with the Initial Partnership, the "Partnerships"), to engage in certain affiliated and joint transactions. Each Partnership will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

FILING DATES: The application was filed on May 12, 1995 and amended on December 21, 1995 and June 19, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 5, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: 82 Devonshire Street, F5H, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. FMR and its subsidiaries provide investment advisory, management, and shareholder services for the "FMR Funds,"[1] for individual and institutional investors, as well as for pension trusts. FMR and its subsidiaries also offer discount brokerage services to

[1] "FMR Funds" means an investment fund or account organized for the benefit of investors who are not affiliated with the FMR Group (as defined below) and over which an entity within the FMR Group exercises investment discretion. An entity which is either within the FMR Group or an FMR Fund is referred to as an "FMR Affiliate."

retail and institutional clients, manage and develop real estate properties, operate a credit card business, offer variable annuity and life insurance products, and operate and invest in emerging businesses.

2. The Partnerships will be organized by FMR and its affiliates (as defined in rule 12b–2 promulgated under the Securities Exchange Act of 1934 (the "Exchange Act"), excluding the FMR Funds (FMR, together with such included affiliates, the "FMR Group"). The Partnerships are intended to benefit certain current employees, officers, directors, and persons on retainer of the FMR Group (the "Eligible Employees") who, except as described below, are also "accredited investors" meeting the income requirements set forth in rule 501(a)(6) of regulation D under the Securities Act of 1933 (the "Securities Act"),[2] and to be a means of rewarding and retaining those individuals. An entity with the FMR Group will, as a general partner or other manager of each Partnership (a "General Partner"), participate in each Partnership. The Partnerships will enable such personnel to participate in a wide variety of investment opportunities that would not be offered to them as individual investors.

3. The Partnerships will operate as non-diversified, closed-end management investment companies. The Partnerships generally will seek to achieve a high rate of return through long-term capital appreciation by providing expansion capital to a variety of emerging growth companies and by making investments in real estate assets through a venture capital portfolio (the "FMR Investments").

4. Participation in the Partnerships will be limited to Eligible Employees, individuals, and entities that fall within the following categories: (a) Trusts of which the trustees, grantors and/or beneficiaries are Eligible Employees; (b) partnerships, corporations, or other entities all of the voting power of which is controlled by Eligible Employees; and (c) spouses, parents, children, spouses of children, brothers, sisters, and grandchildren ("Eligible Family Members") of Eligible Employees, and trusts established for the benefit of Eligible Family Members ((a), (b), and (c), collectively, "Qualified Participants"). Eligible Employees and their Qualified Participants are referred to as "Eligible Participants."

5. The purpose of the Initial Partnership is to enable Eligible Employees and persons or entities related to Eligible Employees to receive the benefit of certain FMR Investments. In order to achieve this result, the Eligible Participants have acquired their limited partnership interests in the Initial Partnership without payment therefor by way of a dividend on their stock interests in FMR. Similarly, in the case of any Subsequent Partnership in which the investors will acquire their limited partnership interests without payment therefor by way of a dividend or compensation award from an entity within the FMR Group, the interests will be granted only to those persons and entities that are Eligible Participants. The amount and timing of distribution of limited partnership interests in a Partnership to Eligible Participants will be determined solely by FMR. Because the recipients of a distribution of limited partnership interests will not have discretion over whether or not they receive such distribution of interests, it is possible that certain Eligible Employees who receive such interests may not meet the income requirements set forth in rule 501(a)(6) under regulation D under the Securities Act and, similarly, certain Qualified Participants may not qualify as "accredited investors" under regulation D.[3] FMR Group will endeavor to ensure that no more than 35 Eligible Participants who are not "accredited investors" will receive partnership interests in the Initial Partnership which is distributed by way of a dividend on FMR stock.[4]

6. To date, FMR has acquired limited partnership interests in the Initial Partnership in exchange for capital contributions of real estate interests and securities representing all or a portion of FMR's interest in certain FMR Investments. FMR has transferred, by way of a dividend on its capital stock, substantially all of its limited partnership interests in the Initial Partnership to Eligible Participants. Those Eligible Participants who acquire limited partnership interests in a Partnership are referred to as "Limited Partners." FMR stockholders who were not Eligible Participants (*i.e.*, charitable organizations) and certain individual stockholders who do not participate for tax reasons (collectively with the charitable organizations, "Excluded Stockholders") received cash in lieu of limited partnership interests in the Initial Partnership. If interests in Subsequent Partnerships are acquired by means of a dividend, Excluded Stockholders will receive cash and all other shareholders will receive partnership interests.[5]

7. Currently, the Initial Partnership is not structured to enable Participants to invest their own funds but may be amended to permit such transactions. Subsequent Partnerships will be identical to the Initial Partnership except that they may provide for participants to invest their own funds.

8. The management and control of each Partnership, including all investment decisions, will be vested exclusively in the General Partner. The General Partner will be under the common control of FMR. Thus, the business and affairs of each Partnership will be managed by or under the direction of the board of directors or other committee serving similar functions (the "Board") of an entity that is under common control with FMR. Each Board will be comprised exclusively of directors and/or officers of the FMR Group, each of whom is expected to qualify as an Eligible Employee.

9. In the case of a Partnership that makes investments with funds provided by the Limited Partners, the General Partner will be responsible primarily for identifying, investigating, and structuring the investments. The General Partner initially will not receive any fees or other compensation for serving as the General Partner of the Initial Partnership. However, Subsequent Partnerships may provide, and the Initial Partnership may be amended to provide, for the General

[2] An Eligible Employee may be determined to be an "accredited investor" under rule 501(a)(6) of regulation D under the Securities Act by reference to income from sources other than from the FMR Group.

[3] Each such employee who is not an "accredited investor" will have received minimum total compensation, (including any profit shares, whether paid as dividend or other investment income, and bonus) of at least $150,000 in the year prior to the year in which the interest in the Initial Partnership is distributed to such employee and will have a reasonable expectation of at least the same level of minimum total compensation in each of the two immediately succeeding years. All such employees will have received undergraduate degrees, will have been employed with the FMR Group for at least two years, and will occupy middle to senior level positions. In addition, each such employee will have such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment or FMR will have a reasonable belief immediately prior to such employee becoming a limited partner of a Partnership that such employee falls within the foregoing description.

[4] In the event the number of non-accredited investors would exceed 35 if all stockholders received the partnership interests as a dividend, an appropriate number of non-accredited investors will receive cash instead of partnership interests.

[5] Until receipt of the requested exemptive order, FMR Corp. may effect transactions similar to that described above with respect to FMR Corp.'s interest in certain FMR Investments, provided that at all times the Initial Partnership will continue to qualify for the exclusion provided in section 3(c)(50(C) of the Act.

Partner to receive a management or performance-based fee, or "carried interest" based on the gains and losses arising from a Partnership's investments.[6] Any such fee would not exceed those customarily charged for such investment advisory services.

10. Applicants anticipate that a Partnership may own an investment in an entity in which an FMR Affiliate is also invested and the Partnership's investment may be in the same or different securities as the entity's investment. A Partnership's investment may be acquired by the Partnership as a capital contribution from an entity within the FMR Group while the entity continues to hold an investment in the same or different securities of the portfolio company. In the case of a Partnership that makes investments with funds provided by the Limited Partners, an investment in a portfolio company may be purchased by a Partnership: (a) From an entity within the FMR Group while the entity continues to hold an investment in the same or different securities of the portfolio company; (b) concurrently with an investment made in the same or different securities by an entity within the FMR Group; or (c) at a different point in time from an investment held by an entity within the FMR Group in the same or different securities of the portfolio company. All such purchases will meet the requirements of condition 1 below.

11. If a Partnership makes its investment concurrently with an investment in the same securities by an entity within the FMR Group, the economic terms applicable to the Partnership's investment generally will be substantially the same as those applicable to the corresponding investment by the FMR Group entity. It is possible, however, that the FMR Group entity's investment may have more favorable non-economic terms (*e.g.*, the right to representation on the board of directors of the portfolio company) in light of differences in legal structure or regulatory, tax, or other considerations.

12. In addition, a Partnership may co-invest in a portfolio company alongside an FMR Fund.[7] Although the terms applicable to the investment by the FMR Fund may differ from the terms of the relevant investment held by the Partnership, and the limitations and conditions contained in the application that are applicable to entities within the FMR Group will not apply to the FMR Fund, the entities within the FMR Group will continue to be subject to all of the limitations and conditions contained in the application with respect to the making and disposition of investments by the Partnership.

13. The Partnership will, except as permitted under condition 3 below, be required to be given the opportunity to sell or otherwise dispose of its investments prior to or concurrently with, and on the same terms as, sales or other dispositions of the side-by-side investment of an entity within the FMR Group in the same investment securities.[8]

14. The General Partner and the Limited Partners (collectively, the "Partners") of the Initial Partnership will share in the profits and losses arising from the Initial Partnership's investment activities in proportion to the size of their respective interests in the Initial Partnership. When distributing cash and securities to the Partners, the General Partner will be required to distribute the cash and securities to all Partners in the same proportion, however, the General Partner will have the right to make non-ratable distributions.[9]

15. The Initial Partnership may, in the future, either through the Initial Partnership or a subsidiary partnership established by the Initial Partnership (a "Subpartnership"), acquire additional FMR Investments through: (a) The proceeds of a loan from an entity within the FMR Group made to the Initial Partnership or such Subpartnership; (b) cash generated by Partnership investments or; (c) capital contributions provided by an entity within the FMR Group. A Subpartnership might be utilized to allow an FMR Group entity and the Initial Partnership to invest together. In the event that the Initial Partnership incurs indebtedness from an entity within the FMR Group to finance such investments, such indebtedness will bear interest on terms no less favorable to the Partnership than would be obtained on an arm's-length basis from an unaffiliated third party.

16. The Partnerships also may, in the future, make loans to FMR. The loans will be on terms no more favorable than would be obtainable by FMR from an unaffiliated third party on an arm's length basis. Such unsecured loans will be fully disclosed to an Eligible Employee prior to the acquisition of limited partnership interests.

17. In addition, the Initial Partnership or a Subpartnership may, in the future, enter into a joint venture or other arrangement with an FMR Group entity (a "Joint Venture"). Such Joint Ventures will be fully disclosed to an Eligible Employee prior to the acquisition of limited partnership interests. Such Joint Ventures will acquire additional FMR Investments or capital contributions provided by such FMR entity and/or the Initial Partnership or Subpartnership. Any entity with the FMR Group that participates with the Initial Partnership in a Joint Venture will be subject to the requirements applicable to a "Co-Investor" under condition 3.

18. During the existence of the Initial Partnership, full and faithful books and accounts will be kept, in which the General Partner will enter, or cause to be entered, all business transacted by the Initial Partnership and all monies received, advanced, paid out, or delivered on behalf of the Initial Partnership, the results of the Initial Partnership's operations, and each Partner's capital. Such books will at all times be accessible to all Partners. In addition, the General Partner will supply to the Limited Partners all information it deems necessary to enable the Limited Partners to prepare their Federal income tax returns.

19. The General Partner will cause a firm of independent certified public accountants to make a determination of the net asset value of the Initial Partnership as of the end of each fiscal year of the Initial Partnership and at any time such value will affect or determine the price at which a specified percentage of interests in the Initial Partnership will be redeemed, sold, or otherwise transferred by any Partner,

[6] A "carried interest" is an allocation to the General Partner of net gains in addition to the amount allocable to the General Partner that is in proportion to its capital contributions. If a "carried interest" is payable to the General Partner, it will be structured to comply with the requirements of rule 205–3 under the Advisers Act.

[7] With respect to any FMR Fund that is an investment company registered under the Act, applicant acknowledges and agrees that, for purposes of the application, no exemption from any provision of the Act that may apply to any Partnership's dealings with such investment company is being sought, and each Partnership will continue to be subject to, and to comply with, all of the provisions of the Act that may apply to any such dealings with any such investment company.

[8] "Non-lockstep" dispositions generally would be confined to instances where tax or other regulatory concerns made different disposition strategies advisable. For example, FMR may donate appreciated securities to charity to minimize capital gains taxation. Holders of partnership interests, on the other hand, would pay tax on dispositions by the Partnership. Thus, holders of Partnership interests might prefer to sell the securities in a later negotiated sale or that the securities be distributed in order to choose the timing of recognition of capital gains.

[9] The General Partner's right to make such non-ratable distributions would be confined to the instances in which it is desirable for an individual partner to receive certain types of distributions due to regulatory, tax, or other legal considerations. No non-ratable distribution will be made to any Partner to the extent that such distribution, while beneficial to such Partner, is substantially likely to have a material adverse effect on another Partner.

unless such requirement is waived by the parties to the applicable transaction.

20. Subsequent Partnerships may be structured in a manner substantially identical to that of the Initial Partnership described above. However, it is possible that a Subsequent Partnership may have different terms for the purpose of enabling Eligible Participants to invest their own funds through the Partnership in investments that come to the attention of the FMR Group from time to time.

Applicants' Legal Analysis

1. Applicants request an exemption under sections 6(b) and 6(e) of the Act from all provisions of the Act, except section 9, sections 17 and 30 (except as described below), sections 36 through 53, and the rules and regulations thereunder that would permit the Partnerships to engage in certain affiliated and joint transactions. Each Partnership will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

2. Section 2(a)(13) defines an employees' security company, among other things, as any investment company all of the outstanding securities of which are beneficially owned by the employees or persons on retainer of a single employer; or by members of the immediate family of such employees, persons on retainer, or former employees. Section 6(b) provides that the SEC shall exempt employees' securities companies from the provisions of the Act to the extent that such exemption is consistent with the protection of investors. Section 6(e) provides that in connection with any order exempting an investment company from section 7, certain specified provisions of the Act shall be applicable to such company, and to other persons in their transactions and relations with such company, as though such company were registered under the Act, if the SEC deems it necessary or appropriate in the public interest or for the protection of investors.

3. Section 17(a) provides, in relevant part, that it is unlawful for any affiliated person of a registered investment company, acting as principal, to sell any security or other property to such registered investment company or to purchase from such registered investment company any security or other such property. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act.

4. Applicants request an exemption from section 17(a) of the Act to the extent necessary to: (a) Permit an entity within the FMR Group, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by such Partnership; and (b) permit any Partnership to invest in or engage in any transaction with any entity, acting as principal, (i) in which such Partnership, any company controlled by such Partnership or any FMR Affiliate has invested in or will invest, or (ii) with which such partnership, any company controlled by such Partnership or any FMR Affiliate is or will become otherwise affiliated. The transactions to which any Partnership is a party will be effected only after a determination by the Board that the requirements of condition 1 below have been satisfied.

5. The principal reason for the requested exemption is to ensure that each Partnership will be able to hold investments in companies: (a) In which an FMR Affiliate or its individual employees, officers, or directors may make or have already made an investment, or (b) with which an FMR Affiliate or its individual employees, officers, or directors may engage in transactions.

6. The Partners of each Partnership will have been fully informed of the possible extent of such Partnership's dealings with an FMR Affiliate and, as professionals employed in the securities business, will be able to understand and evaluate the attendant risks. Applicants believe that the community of interest among the Partners of each Partnership, on the one hand, and the FMR Group, on the other hand, is the best safeguard against any risk of abuse.

7. Section 17(d) makes it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which such company, or a company controlled by such company, is a joint or joint and several participant in contravention of SEC rules. Rule 17d-1 provides that the SEC may approve a transaction subject to section 17(d) after considering whether the participation of such registered company is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

8. Applicants request an order in accordance with section 17(d) and rule 17d-1 to the extent necessary to permit affiliated persons of each Partnership (including without limitation on the General Partner and the investment adviser of such Partnership and other FMR Affiliates), or affiliated persons of any of these persons, to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which such Partnership or a company controlled by such Partnership is a participant.

9. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d-1 were designed to prevent. The concern that permitting co-investments or joint investments by an FMR Affiliate on the one hand, and a Partnership on the other, might lead to less advantageous treatment of such Partnership should be mitigated by the fact that: (a) The FMR Group will be acutely concerned with its relationship with the personnel who invest in such Partnership; and (b) senior officers and directors of the FMR Group will be investing in such Partnership.

10. Section 17(f) provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange, or the company itself in accordance with SEC rules. Applicants request an exemption from section 17(f) and rule 17f–1 to the extent necessary to permit an entity within the FMR Group to act as custodian without a written contract. Applicants believe that because there is such a close association between each Partnership and the FMR Group, requiring a detailed written contract would expose such Partnership to unnecessary burden and expense. An exemption also is requested from the terms of rule 17f–1(b)(4), as applicants do not believe the expense of retaining an independent accountant to conduct periodic verifications is warranted given the community of interest of all the parties involved and the existing requirement for an independent annual audit.

11. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to securities or funds of the company. Applicants request an exemption from section 17(g) and rule 17g–1 to the extent necessary to permit each Partnership to comply with rule 17g–1 without the necessity of having a majority of the members of the related Board who are not "interested persons" take such actions and make such approvals as are set forth in rule 17g–1. Applicants state that since all the members of the related Board will be affiliated persons, without the requested relief, a Partnership could not comply with rule 17g–1.

12. Section 17(j) and rule 17j–1 make it unlawful for certain persons to engage in fraudulent, deceitful, or manipulative practices in connection with the purchase or sale of a security held or to be acquired by an investment company. Rule 17j–1 also requires every registered investment company, its adviser, and its principal underwriter to adopt a written code of ethics with provisions reasonably designed to prevent fraudulent activities, and to institute procedures to prevent violations of the code. Applicants request an exemption from section 17(j) and rule 17j–1 (except rule 17j–1(a)). Applicants believe that requiring such Partnership to adopt a written code of ethics and requiring access persons to report each of their securities transactions would be time consuming and expensive, and would serve little purpose in light of, among other things, the community of interest among the Partners of such Partnership by virtue of their common association in the FMR Group, and the substantial and largely overlapping protection afforded by the conditions with which such Partnerships have agreed to comply.

13. Sections 30(a), 30(b), and 30(d), and the rules under those sections, generally require that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports and financial statements. Applicants believe that the forms prescribed by the SEC for periodic reports have little relevance to a Partnership and would entail administrative and legal costs that outweigh any benefit to the Limited Partners of such Partnership. An exemption is requested to the extent necessary to permit a Partnership to report annually to its Partners in the manner described above.

14. Section 30(f) requires that every officer, director, and member of an advisory board of a closed-end investment company be subject to the same duties and liabilities as those imposed upon similar classes of persons under section 16(a) of the Exchange Act. An exemption also is requested from section 30(f) to the extent necessary to exempt the General Partner of each Partnership and any other persons who may be deemed members of an advisory board of such Partnership, such as members of the related Board, from filing Forms 3, 4, and 5 under section 16 of the Exchange Act with respect to their ownership of interests in such Partnership. Applicants argue that the purpose intended to be served by section 30(f) is not apparent because there would be no trading market and the transfers of interests are severely restricted.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 to which a Partnership is a party (the "Section 17 Transactions") will be effected only if the Board, through the General Partner of such Partnership, determines that: (a) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners of such Partnership and do not involve overreaching of such Partnership or its Partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the Partners of such Partnership, such Partnership's organizational documents and such Partnership's reports to its Partners. In addition, the General Partners of each Partnership will record and preserve a description of such affiliated transactions, the Board's findings, the information or materials upon which the Board's findings are based. All such records will be maintained for the life of such Partnership and at least two years thereafter and will be subject to examination by the SEC and its staff.[10]

2. In connection with Section 17 Transactions, the Board, through the General Partner of each Partnership, will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for such Partnership, or any affiliated person of such a person, promoter, or principal underwriter.

3. The General Partner of each Partnership will not invest funds in any investment in which a "Co-Investor", as defined below, has acquired or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d-1 in which such Partnership and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives such General Partner sufficient, but not less than one day's notice of its intent to dispose of its investment; and (b) refrains from disposing of its investment unless such Partnership has the opportunity to dispose of such Partnership's investment prior to or concurrently with, and on the same terms as, and *pro rata* with the Co-Investor. The term "Co-Investor," with respect to any Partnership, is defined as any person who is: (a) An "affiliated person" (as such term is defined in the Act) of such Partnership (other than an FMR Fund); (b) an entity within the FMR Group; (c) an officer or director of an entity within the FMR Group; or (d) a company in which the General Partner of such Partnership acts as a general partner or has a similar capacity to control the sale or other disposition of the company's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a "Parent") of which such Co-Investor is a direct or indirect wholly-owned subsidiary of its Parent; (b) to immediate family members of the Co-Investor or a trust or other investment vehicle established for any such family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder; or (e) when the investment is comprised of securities that are listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a United States national securities exchange or a United States national market system for securities.

4. Each Partnership and the General Partner of such Partnership will maintain and preserve, for the life of such Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Partners of such Partnership, and each annual report of such Partnership required to be sent to such Partners, and agree that all such

[10] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

records will be subject to examination by the SEC and its staff.[11]

5. The General Partner of each Partnership will send to each Partner of such Partnership who had an interest in any capital account of such Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by such partnership's independent accountants. At the end of each fiscal year, the General Partner of such Partnership will make a valuation or have a valuation made of all of the assets of such partnership as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 90 days after the end of each fiscal year of each Partnership or as soon as practicable thereafter, the General Partner of such Partnership will send a report to each person who was a partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the partner of his or its federal and state income tax returns and a report of the investment activities of such Partnership during such year.

6. In any case where purchases or sales are made by a Partnership from or to an entity affiliated with such Partnership by reason of a 5% or more investment in such entity by an FMR Group director, officer, or employee, such individual will not participate in such Partnership's determination of whether or not to effect such purchase or sale.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18050 Filed 7–15–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22060; 812–10062]

Sherry Lane Growth Fund, Inc., et al.; Notice of Application

July 10, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Sherry Lane Growth Fund, Inc. ("Fund") and Sherry Lane Capital Advisors, Inc. ("Adviser").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 57(i) and rule 17d–1 thereunder permitting certain joint transactions otherwise prohibited by section 57(a)(4).

SUMMARY OF APPLICATION: Applicants request an order to permit the Fund and Davis Venture Partners II, L.P. ("DVP II") to co-invest in the same portfolio securities.

FILING DATES: The application was filed on April 10, 1996, and amended on June 27, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 5, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Fund and Adviser, 320 South Boston, Suite 1000, Tulsa, Oklahoma 74103–3703.

FOR FURTHER INFORMATION CONTACT: Mercer E. Bullard, Staff Attorney, (202) 942–0565, or Elizabeth G. Osterman, Assistant Director, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund, a Delaware corporation, is a non-diversified closed-end investment company that has elected to be regulated as a business development company ("BDC") under the Act. The Fund filed a registration statement on Form N–2 that became effective May 29, 1996.

2. The Adviser is a registered investment adviser under the Investment Advisers Act of 1940 and is the investment adviser to the Fund. The Adviser is also responsible, subject to the oversight of the Fund's board of directors, for administering the Fund's business affairs. The chief executive officer and president of the Adviser also serve as directors and chief executive officer and president of the Fund, and as general partners of the general partner of DVP II, a venture capital partnership. Applicants state that DVP II is not registered as an investment company in reliance on the exclusion from the definition of investment company in section 3(c)(1) of the Act.

3. The Fund's investment objective will be to achieve long-term capital appreciation. The Fund also will structure its investments to provide an element of current income through interest, dividends, and fees whenever feasible in light of market conditions and the cash flow characteristics of the portfolio companies. The Fund intends to invest in between 10 and 20 private investment opportunities that typically will require a substantial financial commitment.

4. The principals of the Adviser intend to select investments for the Fund and DVP II separately considering in each case only the investment objectives, investment position, available funds, and other pertinent factors of the particular fund, including applicable investment restrictions and regulatory requirements. Applicants state that the Fund and DVP II have similar investment objectives and expect that they frequently may invest in the same portfolio securities.

Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits certain affiliated persons from participating in a joint transaction with a BDC in contravention of rules as prescribed by the SEC. Under section 57(b)(1) of the Act, persons who are affiliated persons of the directors or officers of a BDC within the meaning of section 2(a)(3)(C) of the Act are subject to section 57(a)(4). Under section 2(a)(3)(C), an affiliated person of another person includes any person directly or indirectly controlled by such other person. DVP II may be deemed to be controlled by certain directors and officers of the Fund because they are also general partners of the general partner of DVP II. DVP II therefore may be deemed to be subject to section 57(a)(4) with respect to co-investments with the Fund.

2. Section 57(i) of the Act provides that, until the SEC prescribes rules under section 57(a)(4), the SEC's rules under sections 17(a) and 17(d) of the Act applicable to closed-end investment companies shall be deemed to apply to sections 57(a) and 57(d). Because the SEC has not adopted any rules under section 57(a)(4), rule 17d–1 applies.

3. Rule 17d–1, promulgated under section 17(d) of the Act, prohibits affiliated persons of an investment company from participating in joint transactions with the company unless the SEC has granted an order permitting such transactions. In passing on applications under rule 17d–1, the SEC considers whether the company's participation in the joint transactions is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

4. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Because DVP II may be deemed to be subject to section 57(a)(4), investments in a portfolio company by the Fund in which DVP II also invests may be subject to section 57(a)(4).

6. Applicants believe that co-investing will enable the Fund to compete more effectively with entities and individuals who have greater resources, and that co-investing will increase the Fund's ability to achieve greater diversification and accordingly qualify for treatment as a regulated investment company for federal income tax purposes.

7. Applicants contend that the obligations imposed on the Fund's directors who are not "interested persons" as defined under section 2(a)(19) of the Act ("Independent Directors") provide significant protection to investors against possible conflicts of interest in co-investments by the Fund and DVP II. Applicants also believe that the conditions relating to the terms on which co-investments may be made as set forth in the application are consistent with the policies underlying the Act. Applicants therefore believe that requested relief is consistent with the standards enumerated in section 6(c).

Applicants' Conditions

Applicants agree that the order shall be subject to the following conditions:

1. (a) To the extent that the Fund is considering new investments, the Adviser will review investment opportunities on behalf of the Fund, including investments being considered on behalf of DVP II. The Adviser will determine whether an investment being considered on behalf of DVP II ("DVP II Investment") is eligible for investment by the Fund.

(b) If the Adviser deems a DVP II Investment eligible for the Fund ("co-investment opportunity"), the Adviser will determine what it considers to be an appropriate amount that the Fund should invest. When the aggregate amount recommended for the Fund and that sought by DVP II exceeds the amount of the co-investment opportunity, the amount invested by the Fund shall be based on the ratio of the net assets of the Fund to the aggregate net assets of the Fund and DVP II.

(c) Following the making of the determinations referred to in (a) and (b), the Adviser will distribute written information concerning all co-investment opportunities to the Fund's Independent Directors. Such information will include the amount DVP II proposes to invest.

(d) Information regarding the Adviser's preliminary determinations will be reviewed by the Fund's Independent Directors. The Fund will co-invest with DVP II only if a required majority (as defined in section 57(o) of the Act) ("Required Majority") of the Fund's Independent Directors conclude, prior to the acquisition of the investment, that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the shareholders of the Fund and do not involve overreaching of the Fund or such shareholders on the part of any person concerned;

(ii) The transaction is consistent with the interests of the shareholders of the Fund and is consistent with the Fund's investment objectives and policies as recited in filings made by the Fund under the Securities Act of 1933, as amended, its registration statement and reports filed under the Securities Exchange Act of 1934, as amended, and its reports to shareholders;

(iii) The investment by DVP II would not disadvantage the Fund, and that participation by the Fund would not be on a basis different from or less advantageous than that of DVP II; and

(iv) The proposed investment by the Fund will not benefit the Adviser or any affiliated entity thereof, other than DVP II, except to the extent permitted pursuant to sections 17(e) and 57(k) of the Act.

(e) The Fund has the right to decline to participate in the co-investment opportunity or purchase less than its full allocation.

2. The Fund will not make an investment for its portfolio if DVP II, the Adviser, or a person controlling, controlled by, or under common control with the Adviser is an existing investor in such issuer, with the exception of a follow-on investment that complies with condition number 5.

3. For any purchase of securities by the Fund in which DVP II is a joint participant, the terms, conditions, price, class of securities, settlement date, and registration rights shall be the same for the Fund and DVP II.

4. If DVP II elects to sell, exchange, or otherwise dispose of an interest in a security that is also held by the Fund, the Adviser will notify the Fund of the proposed disposition at the earliest practical time and the Fund will be given the opportunity to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to DVP II. The Adviser will formulate a recommendation as to participation by the Fund in such a disposition, and provide a written recommendation to the Fund's Independent Directors. The Fund will participate in such disposition to the extent that a Required Majority of its Independent Directors determines that it is in the Fund's best interest. Each of the Fund and DVP II will bear its own expenses associated with any disposition of a portfolio security.

5. If DVP II desires to make a "follow-on" investment (*i.e.*, an additional investment in the same entity) in a portfolio company whose securities are held by the Fund or to exercise warrants or other rights to purchase securities of such an issuer, the Adviser will notify the Fund of the proposed transaction at the earliest practical time. The Adviser will formulate a recommendation as to the proposed participation by the Fund in a follow-on investment and provide the recommendation to the Fund's Independent Directors along with notice of the total amount of the follow-on investment. The Fund's Independent Directors will make their own determination with respect to follow-on investments. To the extent that the amount of a follow-on investment opportunity is not based on the amount of the Fund's and DVP II's initial investments, the relative amount of investment by DVP II and the Fund will be based on the ratio of the Fund's remaining funds available for investment to the aggregate of the Fund's and DVP II's remaining funds available for investment. The Fund will participate in such investment to the extent that a Required Majority of its Independent Directors determine that it is in the Fund's best interest. The acquisition of follow-on investments as permitted by this condition will be subject to the other conditions set forth in the application.

[11] Each Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

6. The Fund's Independent Directors will review quarterly all information concerning co-investment opportunities during the preceding quarter to determine whether the conditions set forth in the application were compiled with.

7. The Fund will maintain the records required by section 57(f)(3) of the Act as if each of the investments permitted under these conditions were approved by the Fund's Independent Directors under section 57(f).

8. No Independent Director of the Fund will be a director or general partner of DVP II.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–18052 Filed 7–15–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 07/77–0097]

Gateway Partners, L.P.; Notice of Request for Exemption

On June 11, 1996, Gateway Partners, L.P. ("Gateway"), a limited partnership SBIC located in St. Louis, Missouri, filed a request for an exemption to Section 107.730(d) of the Regulations governing small business investment companies (13 CFR (1996)) to allow Gateway to invest in TALX Corporation (TALX) of St. Louis, Missouri. The request for a conflict of interest exemption arises because: (1) Gateway and Gateway Venture Associates II (Gateway II) have common Managing General Partners, and (2) Gateway II owns an 18% equity interest in TALX, a small concern Gateway wishes to finance. Mr. Richard Ford, one of the managing general partners, is also a director of TALX.

TALX is currently in need of additional working capital, and Gateway proposes to participate in a $4 million financing negotiated by an unaffiliated lead investor.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on this exemption request to the Associate Administrator for Investment, Small Business Administration, 409 Third Street SW, Washington D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in St. Louis, Missouri.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 9, 1996

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–17981 Filed 7–15–96; 8:45 am]

BILLING CODE 8025–01–P

[License # 09/14–0037]

San Joaquin Capital Corporation; Notice of License Surrender

Notice is hereby given that San Joaquin Capital Corporation ("SJCC") surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). SJCC was licensed by the Small Business Administration on January 20, 1978.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on April 30, 1996, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

Dated: July 3, 1996.

Donald A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–17980 Filed 7–15–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics; Agency Information Collection; Activity Under OMB Review; Reporting Required for International Civil Aviation Organization (ICAO)

ACTION: Notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics (BTS) invites the general public, industry and other Federal Agencies to comment on the continuing need and usefulness of BTS collecting supplemental data for the International Civil Aviation Organization (ICAO). Comments are requested concerning whether (a) the supplemental reports are needed by BTS to fulfill the U.S. treaty obligation of furnishing financial and traffic reports to ICAO; (b) BTS accurately estimated the reporting burden; (c) there are other ways to enhance the quality, utility and clarity of the information collected; and (d) there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by September 16, 1996.

ADDRESSES: Comments should be directed to the Docket Clerk, Docket OST–96–1509, room PL 401, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Washington DC 20590–0001 from 10 a.m. to 5 p.m. ET, Monday through Friday, except Federal Holidays.

Comments: Comments should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket OST–96–1509. The postcard will be dated/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–25, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC. 20590, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0039.

Title: Reporting Required for International Civil Aviation Organization (ICAO)

Form No.: BTS Form EF.

Type of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 40.

Estimated Time Per Response: 20 minutes

Total Annual Burden: 26 hours.

Needs and Uses: As a party to the Convention on International Civil Aviation (Treaty), the United States is obligated to provide ICAO with financial and statistical data on operations of U.S. air carriers. Over 99 percent of the data filed with ICAO is extracted from the air carriers' Form 41 submissions to DOT. BTS Form EF is the means by which BTS supplies the remaining one percent of the air carrier data to ICAO.

Timothy E. Carmody,

Acting Director, Office of Airline Information,Bureau of Transportation Statistics.

[FR Doc. 96–17823 Filed 7–15–96; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending July 5, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1503.

Date filed: July 5, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 2, 1996.

Description: Application of American Trans Air, Inc. pursuant to 49 U.S.C. 41101 and Subpart Q for a certificate of public convenience and necessity authorizing American Trans Air, Inc. to engage in the scheduled foreign air transportation of persons, property, and mail between Orlando, Florida, and Grand Cayman, Cayman Islands.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–18014 Filed 7–15–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Summary Notice No. PE–96–33]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 5, 1996.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 10, 1996.

Michael E. Chase,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28575

Petitioner: Business Express Airlines, Inc.

Sections of the FAR Affected: 14 CFR 91.207(a)

Description of Relief Sought: To permit Business Express Airlines, Inc., to operate Saab SF340 aircraft under part 121 and Beech 1900C aircraft under part 135 with the emergency locator transmitter permanently removed.

Docket No.: 28578

Petitioner: Northern Air Cargo, Inc.

Sections of the FAR Affected: 14 CFR 121.380(a)(2)(ii)

Description of Relief Sought: To permit Northern Air Cargo, Inc., to operate its 14 Douglas DC–6 cargo aircraft without maintaining records of the total time in service of each engine and propeller.

Docket No.: 28593

Petitioner: Empresa de Aerotaxi e Manutencao Pampulha, Ltda.

Sections of the FAR Affected: 14 CFR 145.47(b)

Description of Relief Sought: To permit Empresa de Aerotaxi e Manutenção Pampulha, Ltda., an FAA-certificated foreign repair station located in Belo Horizonte, Brazil, (FAA Certificate No. XT7Y718J) to substitute the calibration standards of the Brazilian National Standard Laboratory, Instituto Nacional de Metrologia, Normalização e Qualidade Industrial, for the calibration standards of the U.S. National Institute of Standards and Technology to test its inspection and test equipment.

Docket No.: 28598

Petitioner: Boeing Commercial

Sections of the FAR Affected: 14 CFR 25.1435(b)(1)

Description of Relief Sought: To permit Boeing Commercial to (1) use the Model 777–200 airplane hydraulic system proof pressure test results to show compliance for the longer fuselage Model 777–300 airplane hydraulic system by conducting a similarity analysis; and (2) for the newly added tail skid system on the 777–300, conduct a proof pressure test at 3400+/−100 psig in lieu of the static proof pressure test at 1.5 times the design operating pressure, as required by the FAR.

Dispositions of Petitions

Docket No.: 25286

Petitioner: United States Parachute Association

Sections of the FAR Affected: 14 CFR 91.307(a)(2), 91.607, and 105.43(a)

Description of Relief Sought/ Disposition: To extend Exemption No. 4946, as amended, which permits the United States Parachute Association (USPA) to allow parachutists who are foreign nationals to participate in U.S. National Skydiving Championship events sponsored by the USPA without meeting the parachute equipment and packing requirements of § 105.43(a). In addition, the exemption allows the carriage of up to 40 parachutists in DC–3/C–47 aircraft during sport parachuting activities sponsored by the USPA.

Grant, May 31, 1996, Exemption No. 4946E

Docket No.: 26223

Petitioner: Airbus Service Company, Inc.

Sections of the FAR Affected: 14 CFR 121.411(a) (2) and (3) and (b)(2); 121.413 (b) and (c); and appendix H to part 121

Description of Relief Sought/ Disposition: To permit Airbus Service

Company, Inc., (Airbus) to use the instructors listed in its original exemption who do not meet all of the applicable training requirements of part 121, subpart N, or the employment requirements of part 121, appendix H, to train employees of part 121 certificate holders in FAA-approved simulators and in turbo jet-powered airplanes manufactured by Airbus.

Grant, June 3, 1996, Exemption No. 5302C

Docket No.: 26721
Petitioner: Regional Airline Association
Sections of the FAR Affected: 14 CFR 135.63(a)(4) and subparts E, G, and H of part 135
Description of Relief Sought/ Disposition: To extend Exemption No. 5450, as amended, which permits Regional Airline Association member airlines and other similarly situated air carriers to train, check, and qualify flight crewmembers in accordance with §§ 121.681 and 121.683; subparts N and O of part 121; and appendices E, F, and H to part 121.

Grant, June 3, 1996, Exemption No. 5458B

Docket No.: 28167
Petitioner: Mr. Reid W. Dennis
Sections of the FAR Affected: 14 CFR 91.313(d)
Description of Relief Sought/ Disposition: To permit Mr. Dennis, to the extent necessary, to carry passengers not for compensation or hire in his Grumman HU–16C (Registration No. N44RD) restricted category civil aircraft without those passengers performing any of the function described in § 91.313(d).

Denial, May 24, 1996, Exemption No. 6441

Docket No.: 28278
Petitioner: United Airlines Contract Training
Sections of the FAR Affected: 14 CFR 121.411(a) (2) and (3) and (b)(2); 121.413 (b), (c), and (d); and appendix H to part 121
Description of Relief Sought/ Disposition: To permit certain pilot and flight engineer (FE) instructors employed by United Airlines Contract Training (UACT) and listed in a part 121 certificate holder's approved training program to act a simulator instructors for that ground and flight training in accordance with that certificate holder's training program approved under subpart N of part 121. This exemption also permits simulator instructors employed by UACT and listed in a certificate holder's approved training program to serve in advanced simulators without being employed by the certificate holder for 1 year, provided the instructors receive applicable training in accordance with the provisions of this exemption.

Partial Grant, May 31, 1996, Exemption No. 6447

Docket No.: 28307
Petitioner: Bombardier Aerospace Training Center
Sections of the FAR Affected: 14 CFR appendix H to part 121; 135.337(a) (2) and (3) and (b)(2); and 135.339 (b) and (c)
Description of Relief Sought/ Disposition: To permit certain instructors employed by the Bombardier Aerospace Training Center (Bombardier) and listed in a part 135 certificate holder's approved training program to act as simulator instructors for that certificate holder under part 135 without those instructors having received ground and flight training in accordance with that certificate holder's training program approved under subpart H of part 135. This exemption also permits simulator instructors employed by Bombardier and listed in a certificate holder's approved training program to serve in advance simulators without being employed by the certificate holder for 1 year, provided the instructors receive applicable training in accordance with the provisions of this exemption.

Partial Grant, May 31, 1996, Exemption No. 6446

Docket No.: 28318
Petitioner: Ogden-Hinckley Airport
Sections of the FAR Affected: 14 CFR 91.215(b)(2)
Description of Relief Sought/ Disposition: To permit operations at Ogden-Hinckley Airport to be conducted in aircraft that are not equipped with transponders that have automatic pressure altitude reporting capability.

Denial, May 31, 1996, Exemption No. 6450

Docket No.: 28367
Petitioner: Mr. Stephen R. Raklovits
Sections of the FAR Affected: 14 CFR 103.11
Description of Relief Sought/ Disposition: To permit Mr. Raklovits to operate a powered parachute-type ultralight at night conducting demonstrations, training, and special use operations, including search, rescue, and surveillance, for local, State, and Federal law enforcement agencies.

Denial, May 2mi, 1996, Exemption No. 6440

Docket No.: 28381
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 121.613
Description of Relief Sought/ Disposition: To permit part 121 certificate holders to dispatch or release aircraft to any destination airport under instrument flight rules (IFR) or over-the-top, when weather reports or forecasts, or any combination thereof, indicate that the weather conditions at the estimated time of arrival (ETA) at the destination airport may be below meteorological visibility minimums.

Denial, June 4, 1996, Exemption No. 6458

Docket No. 28406
Petitioner: TEMSCO Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To permit appropriately trained pilots employed by TEMSCO Helicopters, Inc., (TEMSCO) to remove and reinstall the passenger seats in its aircraft that are type certificated for nine or fewer passenger seats and use in operations conducted by TEMSCO under part 135.

Grant, April 16, 1996, Exemption No. 6426

Docket No.: 28481
Petitioner: Wings, Inc.
Sections of the FAR Affected: 14 CFR 141.65
Description of Relief Sought/ Disposition: To permit Wings, Inc., to recommend graduates of its approved certification courses for flight instructor certificates and airline transport pilot (ATP) certificates without those graduates taking the FAA written tests.

Grant, June 3, 1996, Exemption No. 6455

Docket No.: 28496
Petitioner: Bohlke International Airways
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Bohlke International Airways to operate its Turbo Commander 681 aircraft (Registration No. N113CT, Serial No. 6006) without a TSO-C112 (Mode S) transponder installed.

Grant, June 3, 1996, Exemption No. 6454

Docket No.: 28504
Petitioner: Renown Aviation, Inc.
Sections of the FAR Affected: 14 CFR 121.356(a)
Description of Relief Sought/ Disposition: To permit Renown Aviation, Inc., to operate one Convair 340 non-turbine-powered aircraft (Registration No. N3HH, Serial No. 173), and two Convair 440 non-turbine-powered aircraft (Registration Nos. N202RA and N204RA; Serial Nos. 497 and 504, respectively) without traffic alert and collision avoidance system (TCAS) II equipment installed.

Denial, May 31, 1996, Exemption No. 6445

[FR Doc. 96–18062 Filed 7–15–96; 8:45 am]
BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 96–071; Notice 1]

Notice of Receipt of Petition for Decision that Nonconforming 1991 Jaguar XJS Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991 Jaguar XJS passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1991 Jaguar XJS that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 15, 1996.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas ("Wallace") (Registered Importer 90–005) has petitioned NHTSA to decide whether 1991 Jaguar XJS passenger cars are eligible for importation into the United States. The vehicle which Wallace believes is substantially similar is the 1991 Jaguar XJS that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1991 Jaguar XJS to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that the non-U.S. certified 1991 Jaguar XJS, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1991 Jaguar XJS is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence . . .*, 103 *Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 113 Hood Latch Systems, 116 *Brake Fluid,* 118 *Power Operated Window Systems,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity, and* 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) replacement of the speedometer/odometer with one calibrated in kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.—model headlight assemblies; (b) installation of U.S.—model turn signal lenses; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* inscription of the required warning statement on the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* installation of a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a seat belt warning buzzer module; (b) installation of a U.S.—model steering wheel, and driver's side air bag and knee bolster. The petitioner states that the vehicle is equipped with Type 2 seat belts in both designated seating positions.

Additionally, the petitioner states that bumper shocks, an armature, and miscellaneous attachments must be added to the non-U.S. certified 1991 Jaguar XJS to comply with the Bumper Standard found in 49 CFR Part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 10, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–18018 Filed 7–15–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–070; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1986 Honda CP 450 SC Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1986 Honda CP 450 SC motorcycles are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1986 Honda CP 450 SC that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is August 15, 1996.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1986 Honda CP 450 SC motorcycles are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1986 Honda CB 450 SC that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Honda Motor Company, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non- U.S. certified 1986 Honda CP 450 SC to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1986 Honda CP 450 SC, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1986 Honda CP 450 SC is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 115 *Vehicle Identification Number*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 120 *Tire Selection and Rims for Vehicles other than Passenger Cars*, and 122 *Motorcycle Brake Systems*.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model headlamp assemblies.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S.-model speedometer calibrated in miles per hour.

Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 10, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–18017 Filed 7–15–96; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–062; Notice 01]

General Motors Corporation; Receipt of Application for Decision of Inconsequential Noncompliance

The Buick Division of the General Motors Corporation (GM), of Warren, Michigan, has determined that certain 1996 Buick Skylark cars fail to conform to the requirements of 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) 108, "Lamps, Reflective Devices and Associated Equipment," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." GM has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118(d) and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

In FMVSS No. 108, Paragraph S5.1.1.5 states that "the turn signal operating unit on each passenger car, . . . shall be self-canceling by steering wheel rotation and capable of cancellation by a manually operated control."

Certain 1996 model year Buick Skylark cars were assembled with a defective multi-function switch, which causes the turn signal self-cancel feature to work intermittently after left turns. As a result, the turn signal does not meet the requirements of S5.1.1.5. GM stated that while all of the subject vehicles meet the latter requirement, some may intermittently fail to meet the self cancel requirement.

GM first became aware of this condition during a railhead audit in August of 1995. Once the condition was discovered, multiple inspections for suspect switches were immediately implemented, both at the assembly plant and by the supplier, and breakpoints were established. A total of 1,969 vehicles were built with suspect switches.

GM supported its application for inconsequential noncompliance with the following:

- No more than 5.5 percent of the 1,969 vehicles, or 108 vehicles, are predicted to have a defective switch. This prediction is based on a sort of 400 switches, of which 22 were determined to possibly be suspect. This projection may overstate the field condition since the sort was very conservative; many of the suspect 22 switches may function properly in vehicles. In addition, the projection is based on a sort of the latest shipments of switches before the supplier corrected its manufacturing problem. Since the condition was caused by tooling dimensions drifting out of specification, the actual rate of defective switches for the entire production run may well be less than the projected rate.
- The self-cancel feature will operate properly for a majority of turn signal activations even on vehicles with a defective switch. The self-canceling feature works correctly when signaling for all right turns, as well as for some left turns. The switch is sensitive to the rate of turn signal lever actuation and position of the steering wheel, and will not cancel only intermittently, for some left hand turns. On one of the vehicles discovered with this condition, it took about 20 turn signal cycles to recreate the failure.
- All 1996 Skylarks have a turn signal reminder chime that will signal the driver if the turn signal indicator is still on after 1/2 mile of driving. Therefore, even in those instances when the self-cancel feature fails, the driver will get an additional cue that the turn signal is on and deactivate it.
- GM is not aware of any accidents, injuries, owner complaints or field reports associated with this condition.

Interested persons are invited to submit written data, views, and arguments on the application of GM, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, D.C., 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials and all comments received after the closing date will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: August 15, 1996.

(49 U.S.C. 30118, 30120; delegation of authority at 49 CFR 1.50 and 501.8)

Issued on: July 11, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–18016 Filed 7–15–96; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board [1]

[STB Finance Docket No. 32993]

Norfolk Southern Railway Company—Corporate Family Transaction Exemption—The Atlanta and Charlotte Air-Line Railway Company

Norfolk Southern Railway Company (NSR), a Class I railroad, and The Atlanta and Charlotte Air-Line Railway Company (A&CAL), a Class III railroad, have jointly filed a verified notice of exemption. The exempt transaction is a merger of A&CAL with and into NSR.[2]

The transaction is expected to be consummated on or after August 1, 1996.

The proposed merger will eliminate A&CAL as a separate corporate entity, thereby simplifying the corporate structure of NSR and the NSR system, and eliminating costs associated with separate accounting, tax, bookkeeping and reporting functions.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels or significant operational changes.

As a condition to this exemption, any employees adversely affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32993, must be filed with

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[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323–24.

[2] A&CAL is a wholly owned, direct subsidiary of NSR with authorized capital stock consisting of 17,000 shares of Common Stock, 16,999 of which are issued and outstanding and owned by NSR. NSR has controlled A&CAL through stock ownership, and has leased and operated the properties of A&CAL since approximately 1881. The proposed Agreement and Plan of Merger provides that all shares of A&CAL's capital stock will be canceled and retired, and no consideration will be paid in respect of such shares. NSR is controlled through stock ownership by Norfolk Southern Corporation, a noncarrier holding company.

the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on James A. Squires, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

Decided: July 10, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–18010 Filed 7–15–96; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–38; OTS No. 02230]

Foundation Savings Bank, Cincinnati, Ohio; Approval of Conversion Application

Notice is hereby given that on July 8, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Foundation Savings Bank, Cincinnati, Ohio, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606–4360.

Dated: July 10, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 96–17965 Filed 7–15–96; 8:45 am]

BILLING CODE 6720-01-M

[AC–35; OTS No. 0605]

Park Federal Savings Bank, Chicago, Illinois; Approval of Conversion Application

Notice is hereby given that on June 21, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Park Federal Savings Bank, Chicago, Illinois, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606–4360.

Dated: July 10, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 96–17966 Filed 7–15–96; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before September 16, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document the VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0381.

Title and Form Number: Notice for Election to Convey and/or Invoice for Transfer of Property, VA Form 26–8903.

Type of Review: Extension of a currently approved collection.

Need and Uses: VA Form 26–8903 serves four purposes: holder's election to convey; invoice for the purchase price of the property; VA's voucher for authorizing payment to the holder; and establishment of the VA's property records. The form provides the holder, who has elected to convey a property to the VA, with a convenient and uniform means of notification to the proper VA regional office. This form simplifies processing for lenders/holders who, in most instances, operate branch offices statewide and nationwide.

Current Actions: Section 3732 of Title 38, U.S.C., and 38 CFR 36.4320(a)(1), provide that if a minimum amount for credit to the borrower's indebtedness has been specified by VA in relation to the sale of the real property and the holder is the successful bidder at the sale for no more than the amount specified by the Secretary, the holder will credit the indebtedness with that amount. The holder may then retain the property, or not later than 15 days after the date of sale, advise the Secretary of its election to convey and transfer the property to the Secretary.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 5,000 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 273–8032 or FAX (202) 273–5981.

Dated: July 2, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–17978 Filed 7–15–96; 8:45 am]

BILLING CODE 8320-01-P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before September 16, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document the VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0251.

Title and Form Number: Request to Lender for Status of Loan Account—LCS, VA Form 26–8778.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used to collect information from the servicer and it serves as a code sheet to input data in the automated Liquidation and Claims System (LCS). The form is computer-generated and sent directly to the servicer of the loan. The servicer completes its portion and sends the form to the VA regional officer having responsibility for the loan. Upon receipt of the form, the VBA takes whatever action is necessary to properly service the loan.

Current Actions: After the VA receives notification of a loan default, the servicer is contacted to obtain pertinent data about the status of the account. The VA must obtain this information in order to assure that necessary action is taken to cure the default.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 29,167 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 175,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 273–8032 or FAX (202) 273–5981.

Dated: July 2, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–17979 Filed 7–15–96; 8:45 am]

BILLING CODE 8320-01-P

Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before September 16, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document the VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0251.

Title and Form Number: Request to Lender for Status of Loan Account—LCS, VA Form 26–8778.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used to collect information from the servicer and it serves as a code sheet to input data in the automated Liquidation and Claims System (LCS). The form is computer-generated and sent directly to the servicer of the loan. The servicer completes its portion and sends the form to the VA regional officer having responsibility for the loan. Upon receipt of the form, the VBA takes whatever action is necessary to properly service the loan.

Current Actions: After the VA receives notification of a loan default, the servicer is contacted to obtain pertinent data about the status of the account. The VA must obtain this information in order to assure that necessary action is taken to cure the default.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 29,167 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 175,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 273–8032 or FAX (202) 273–5981.

Dated: July 2, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–17979 Filed 7–15–96; 8:45 am]

BILLING CODE 8320-01-P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0242.

Title and Form Number: Water-Plumbing Systems Inspection Report (Manufactured Home), VA Form 26–8731a.

Type of Review: Extension of a currently approved collection.

Need and Uses: Inspections are ordered by lending institutions and performed by experienced plumbers or manufactured home service personnel. VA Form 26–8731a will be completed by the inspector after the tests described on the form have been made. The lender submits the report form to the applicable VA regional office with its report of loan closing. If the report is satisfactory, and the loan is otherwise proper, the regional office then issues a certificate of guaranty covering the loan. Without proof of satisfactory water and plumbing systems, VA would be guaranteeing loans on used manufactured homes which could be unsafe and which would not be acceptable security on which to base an increase in the government's contingent liability.

Affected Public: Individuals or households and Business or other for-profit.

Estimated Annual Burden: 800 hours.

Estimated Average Burden Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 400.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8915.

Comments and recommendations concerning the submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: July 2, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–17975 Filed 7–15–96; 8:45 am]

BILLING CODE 8320-01-P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: None Assigned.

Title and Form Number: Army Chemical Corps Vietnam Veterans Health Study, VA Form 10–20998(NR).

Type of Review: New collection.

Need and Uses: VA researchers will use the proposed study data to determine whether there are indications that veterans of the Army Chemical Corps and their families suffer from illnesses at higher or unusual rates than non-Vietnam era Army Chemical Corps veterans and their families. The relationship between health outcomes and possible exposure to herbicides will also be evaluated. If the information for the study is not collected, the VA will not be able to do the study and will have failed to comply with the intent of Congress when Public Law 102–4, the "Agent Orange Act of 1991", was enacted. In addition, the results of the study will be valuable to VA in formulating compensation and medical

benefits policies for veterans of the Vietnam War.

Affected Public: Individuals and households.

Estimated Annual Burden: 325 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 550.

ADDRESSES: Copies of these submissions may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

Comments and recommendations concerning the submissions should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collections should be directed to the OMB Desk Officer on or before August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: June 28, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–17976 Filed 7–15–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0032.

Title and Form Number: Veterans's Supplemental Application for Assistance in Acquiring Specially Adapted Housing, VA Form 26–4555c.

Type of Review: Extension of a currently approved collection.

Need and Uses: The information requested is necessary for the VBA to determine if it is economically feasible for a veteran to reside in specially adapted housing and to compute the proper grant amount.

Affected Public: Individuals or households; required to obtain or retain benefits.

Estimated Annual Burden: 115 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 460.

ADDRESSES: Copies of these submissions may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

Comments and recommendations concerning the submissions should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collections should be directed to the OMB Desk Officer on August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: June 28, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–17977 Filed 7–15–96; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 61, No. 137

Tuesday, July 16, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–01; NDM 83168]

Public Land Order No. 7206; Withdrawal of Public Lands for Waterfowl Production Areas; North Dakota

Correction

In notice document 96–17341 appearing on page 36079 in the issue of Tuesday, July 9, 1996, make the following corection:

On page 36079, in the second column, under **Fifth Principal Meridian**, T. 142 N., R. 75 W., the second line should read: "Sec. 14, S½SW¼ and E½SE¼;".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 96–031]

Agency Information Collection Activities Under OMB Review

Correction

In notice document 96–16895, beginning on page 34920, in the issue of Wednesday, July 3, 1996, make the following correction:

On page 34920, in the third column, "OMB No. 2115–007" should read "OMB No. 2115–0077".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 96–ACE–6]

Amendment to Class E Airspace, Boone, IA

Correction

In rule document 96–14762 beginning on page 29472 in the issue of Tuesday, June 11, 1996 make the following correction:

§71.1 [Corrected]

On page 29473, in the third column, in §71.1, in the fifth line from the bottom "lat. 42°02'16"N" should read "lat. 42°02'58"N".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ANM–012]

Proposed Establishment of Class E Airspace; Grants Pass, Oregon

Correction

In proposed rule document 96–14877 beginning on page 29699 in the issue of Wednesday, June 12, 1996 make the following correction:

§71.1 [Corrected]

On page 29700, in the first column, in §71.1, under *Paragraph 6005* "**ANM OR E5 Grants, OR**" should read "**ANM OR E5 Grants Pass, OR**".

BILLING CODE 1505–01–D

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federal register

Tuesday
July 16, 1996

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 3710
Use and Occupancy Under the Mining Laws; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3710

[WO–320–4130–02–24 1A]

RIN 1004–AC39

Use and Occupancy Under the Mining Laws

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is adopting regulations addressing the unlawful use and occupancy of unpatented mining claims for non-mining purposes. This rule sets forth the restrictions on use and occupancy of public lands open to the operation of the mining laws that BLM administers in order to limit use and occupancy to those involving prospecting or exploration, mining, or processing operations and reasonably incidental uses. The rule establishes procedures for beginning occupancy, standards for reasonably incidental use or occupancy, prohibited acts, procedures for inspection and enforcement, and procedures for managing existing uses and occupancies. It also provides for penalties and appeals procedures. This rule is necessary to prevent unnecessary or undue degradation of the public lands from uses and occupancies not reasonably incident to mining. The rule does not adversely affect bona fide mining operations or alter BLM's regulations in 43 CFR Part 3800 pertaining to them. Terms used in this preamble have the meaning given to them in the rule.

EFFECTIVE DATE: August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Richard Deery, (202) 452–0353.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Discussion of Final Rule and Response to Comments.
III. Procedural Matters.

I. Background

The mining industry has played a key role in both the settlement and development of the American West. The problem of occupancy of mining claims on public lands by those who have no intention of conducting legitimate hardrock mineral prospecting, exploration or extraction activities has long been recognized. These occupancies waste valuable resources by hampering and discouraging the activities of those who are engaged in the legitimate development of our mineral resources or other legitimate uses of the public lands. This rule establishes a framework for distinguishing between bona fide uses and occupancies and those that represent abuse of the mining laws. The purpose of this rule is to strengthen BLM's use of its enforcement authority to combat abuse of the Mining Law of 1872 for non-mining pursuits.

The Mining Law of 1872

The Mining Law of 1872 is the Act of May 10, 1872 (17 Stat. 91, 30 U.S.C. 22 *et seq.*) together with its judicial interpretations. The law established the basic statutory framework governing the location of mining claims that is still in practice today.

Under the law, a person can acquire an interest in the public lands by the proper location of a mining claim. A prospector can go out on the public lands, search for minerals and, upon discovery of a valuable mineral deposit, locate a claim to the lands upon which the discovery is made. A prospector can locate a claim by staking the corners of the claim, posting a notice of the claim, and filing or recording the claim according to state and federal law.

The law did not operate without conflict and controversy. After all, the "claim jumper" has become as much a part of the folklore of the West as the prospector and his mule. Two noteworthy cases were decided in the early part of this century that helped define the scope of activities allowed on unpatented mining claims.

One, *Teller* v. *United States*, 113 F. 273 (8th Cir. 1901), involved the cutting of timber on an unpatented mining claim. The court found that the owner of the claim had the right to work the claim for its minerals, but had no right to cut timber or engage in other surface activities unless the activities were reasonably necessary to the mining operation. The second case, *United States* v. *Rizzinelli*, 182 F. 675 (D. Idaho 1910), involved the establishment of saloons on unpatented mining claims. This case stands for the principle that surface uses of a claim can only be for purposes "connected with or incident to" exploration for, and recovery of, minerals.

Surface Resources Act of 1955

In spite of all good intentions, by the 1950's it had become clear that widespread abuse of the general mining law was taking place. People were locating mining claims who either had no intention of mining or who never got around to it. Some of the uses taking place on unpatented claims included permanent residences, summer homes, townsites, orchards, farms, a nudist colony, restaurants, a rock museum, a real estate office, hunting and fishing lodges, filling stations, curio shops and tourist camps. To deal with this, Congress passed the Surface Resources Act of 1955 (69 Stat. 367, 30 U.S.C. 601–615), which included a provision that any unpatented mining claim may not be used for purposes other than prospecting, mining or processing operations and reasonably incident uses.

Federal Land Policy and Management Act of 1976

The Federal Land Policy and Management Act of 1976 (90 Stat. 2743, 43 U.S.C. 1701 *et seq.*), also known as FLPMA, directed the Secretary of the Interior to take any action necessary to prevent unnecessary or undue degradation of the public lands. FLPMA established a federal mining claim recording system, which requires an annual filing of an affidavit of assessment work or a notice of intention to hold a mining claim. It also strengthened the Secretary's enforcement authorities by authorizing the Secretary to issue regulations necessary to implement FLPMA, the violation of which are punishable by civil and criminal penalties. In 1980, BLM adopted regulations outlining procedures and standards designed to prevent hardrock mining operations from causing unnecessary or undue degradation of the public lands.

BLM's 1980 Regulations

The 1980 regulations, found at 43 CFR part 3800, address the management of surface impacts from exploration and mining operations, treating mining operations differently depending on the level of mining activity the operator proposes. At the lowest level of activity, called "casual use," prospectors or part-time miners who cause only negligible surface disturbance need not contact BLM. An operator who exceeds this negligible level of surface activity, but keeps the amount of surface disturbance below five acres per year, is required only to file a notice with BLM 15 days before commencing operations. The operator does not have to obtain BLM's approval of the notice, nor obtain bonding, except in special circumstances. Operators proposing mining operations causing more than five acres of surface disturbance per year are required to file a plan of operations which sets out the details of those operations. The operator must also file a plan of operations if special categories of land are involved, even if

less than five acres per year will be disturbed. BLM must approve the plan before the operator may commence operations.

Development of Proposed Regulations

In August 1990, the General Accounting Office issued a report that found some holders of unpatented mining claims were using their claims for unauthorized residences, non-mining commercial operations, illegal activities, or speculative activities not related to legitimate mining. See *Unauthorized Activities on Hardrock Claims*, GAO/RCED–90–111. These unauthorized activities result in a variety of problems, including blocked access to public land; safety hazards, including threats of violence; environmental contamination; investment scams; and increased costs to reclaim the land. The report recommended that BLM revise its regulations to clearly state that residency and nonmining commercial activities are normally not authorized, thereby shifting the burden of proof to the claim holder to show that an activity is incidental to mining. At a follow-up hearing before the Subcommittee on Mining and Natural Resources, House Interior and Insular Affairs Committee, in September 1990, the Director of BLM and the Subcommittee agreed that while occupancy reasonably incident to prospecting, mining, and production is legitimate, BLM field staff need a satisfactory process for administering and enforcing legal requirements.

After the September 1990 hearing, BLM established a task force of headquarters and field staff to strengthen BLM's ability to prevent unauthorized uses and occupancies on the public lands under the mining laws. The task force drafted a proposal in late 1990 and discussed it in meetings with miners and environmentalists in Washington, D.C.; Denver, Colorado; Spokane, Washington; and Sacramento, California. Following these discussions, a proposed rule adding a new subpart 3715 to the regulations at 43 CFR part 3710 was published in the **Federal Register** on September 11, 1992 (57 FR 41846). Refer to the **Federal Register** notice cited above for a full discussion of the proposal. The 60-day comment period closed on November 10, 1992. BLM received 44 comments concerning the proposal: 16 from individuals, 4 from mining businesses, 7 from associations, 16 from offices of federal agencies, and 1 from a state government citizens' advisory commission. As discussed in the next portion of the preamble to this final rule, BLM gave full consideration to all comments received. Any changes in the final rule from the proposed rules are identified in the following detailed discussion of the final rule.

Regulatory Reform

In February 1995, the President outlined his regulatory reform initiative, which is intended to reduce unnecessary regulatory burden and overlap, create regulations with clearly stated goals and objectives and stimulate partnerships with regulated parties. BLM undertook a page-by-page review of its rules and identified about 1,000 pages in the Code of Federal Regulations that would be eliminated, streamlined or rewritten in "plain English." Plain English is a specific writing technique that communicates the information and legal requirements of regulations more effectively through the use of question-and-answer headings, active voice, short sentences, and tables, among other things.

Because the proposed rule was issued before the regulatory reform initiative, it was not written in plain English. Readers of the final rule will quickly note differences in the language and format of the final rule as compared to the proposal. Readers will also note that final § 3715.4 addresses existing occupancies. In the proposed rule, these provisions were generally located in § 3715.7. BLM changed the location of the existing occupancy provisions and renumbered the intervening sections accordingly as part of a reorganization of the final rule. The conversion to plain English does not affect the substantive content of the rule. These changes are intended to increase the clarity and understandability of the rule. Any substantive changes that BLM has made in the final rule are fully described in the following discussion.

To assist the reader in understanding the difference between the proposed rule and the final rule adopted today, BLM has prepared the following table:

COMPARISON OF PROPOSED RULE AND "PLAIN ENGLISH" FINAL RULE

Proposed Rule	"Plain English" Final Rule
§ 3715.0–1	§ 3715.0–1
§ 3715.0–2	§ 3715.0–1
§ 3715.0–3	§ 3715.0–3
§ 3715.0–5	§ 3715.0–5
§ 3715.0–6	§ 3715.0–1
§ 3715.0–7	§ 3715.0–1
None	§ 3715.0–9
§ 3715.1	§ 3715.1
§ 3715.2 (a) and (b)	§ 3715.2
§ 3715.2(c)	§ 3715.2–1
§ 3715.2(d)	§ 3715.2–2
§ 3715.3 (a)–(e)	§ 3715.3
§ 3715.3(f)	§ 3715.3–2
§ 3715.3(g)	§ 3715.3–2 and § 3715.3–3
§ 3715.3(h)	§ 3715.3–4
§ 3715.3(h)(1)	§ 3715.3–5(a) and § 3715.7–1(a)
§ 3715.3 (h)(2) and (i)	§ 3715.3–5(b)
§ 3715.3(j)	§ 3715.3–6
§ 3715.3(k)	§ 3715.1
§ 3715.4(a)	§ 3715.5(a)
§ 3715.4(b)	§ 3715.3–1(b)
§ 3715.4 (c)–(e)	§ 3715.5 (b)–(e)
§ 3715.4(f)	§ 3715.5–1(a)
§ 3715.4(f)(1)	§ 3715.5–1(b)
§ 3715.4(f)(2)	§ 3715.5–2
§ 3715.5	§ 3715.6
§ 3715.6(a)	§ 3715.7 (a) and (b)
§ 3715.6(b)	§ 3715.7–1(a)
§ 3715.6(c)	§ 3715.4–3(c)
§ 3715.6(d)	§ 3715.7–1(c)
§ 3715.6(e)	§ 3715.7–1(d)
§ 3715.6(f)	§ 3715.7–2
§ 3715.7(a)	§ 3715.4(b)
§ 3715.7(b)	§ 3715.4–1
§ 3715.7(c)	§ 3715.4–2
§ 3715.7(d)	§ 3715.4(a)
§ 3715.7(e)	§ 3715.4–3
§ 3715.8(a)	§ 3715.8(a)
§ 3715.8(b)	§ 3715.8–1
§ 3715.9(a)	§ 3715.9
§ 3715.9(b)	§ 3715.9
§ 3715.9(c)	Deleted
§ 3715.9(d)	Deleted
§ 3715.9(e)	Deleted
3715.9(f)	§ 3715.9–1
§ 3715.9(g)	Deleted

II. Discussion of Final Rule and Response to Comments

Legal Basis and Purpose of the Final Rule

These regulations carry out the statutory requirements of section 4 of the Surface Resources Act of 1955, which states that mining claims are not to be used for any purposes other than prospecting, mining, or processing operations, and uses reasonably incident thereto (30 U.S.C. 612). Even before 1955, the courts had long held that the Mining Law of 1872 itself entitled the mining claimant to use the surface only for reasonably incident purposes. See, for example, *United States* v. *Rizzinelli*, 182 F. 675 (D. Id. 1910) and *Bruce W. Crawford*, 92 I.D. 208, 216 (1985).

Uses that are not reasonably incident are not authorized by the mining laws and should not be occurring on public lands, unless they are authorized under other authorities. Because illegal uses should never occur on public lands, the mere existence of an illegal use

inherently constitutes "unnecessary or undue degradation" of the public lands. Consequently, these regulations clarify that unauthorized uses and occupancies on public lands constitute "unnecessary or undue degradation" of the public lands.

Section 302(b) of the Federal Land Policy and Management Act gives the Secretary of the Interior the duty to take *any action necessary* to prevent unnecessary or undue degradation of the public lands. This duty arises in section 302(b) in the context of the Secretary's obligation to manage the public lands by regulating the use, occupancy, and development of the public lands. Accordingly, as applied to this rule, "unnecessary or undue degradation" includes those uses that are not authorized by law, specifically those activities which are not reasonably incident and are not authorized under any other applicable law or regulation.

To the extent that uses are reasonably incident and do not involve occupancy, the surface management requirements of 43 CFR part 3800 govern the conduct of those uses.

The purposes of the regulations in this subpart are to—

(a) Distinguish between the allowable and prohibited uses and occupancies under the Mining Law of 1872 (30 U.S.C. 21 *et seq.*), section 4(a) of the Surface Resources Act, (30 U.S.C. 612), the Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*), and other applicable law, to ensure that mining claims and millsites are not used, prior to issuance of patent therefor, for any purposes other than prospecting or exploration, mining, or processing operations, and uses reasonably incident thereto;

(b) Inform persons operating under the mining laws of their basic rights and responsibilities relative to use and occupancy of public lands;

(c) Identify mining laws and regulations applicable to use and occupancy of public lands;

(d) Enumerate instances where use and occupancy of public lands are authorized under the mining laws, and to set standards for such use or occupancy;

(e) Enumerate prohibited acts relating to use and occupancy of public lands under the mining laws; and

(f) Provide for administrative remedies and appropriate penalties for cases of non-compliance with the regulations in this subpart.

The rule does not adversely affect bona fide mining operations or alter BLM's regulations in 43 CFR Part 3800 pertaining to them.

General Comments.

Several comments from individuals objected to the proposed rule as an undue infringement on their use of a mining claim. The rule does not, however, infringe on lawful uses of the public lands. Bona fide mining operations will not be adversely affected by the rule. The rule is necessary to carry out the statutory responsibility to manage the public lands and to enforce the statutory restrictions on the use and occupancy of the public lands for reasonably incident activities. Enforcement authority is found in sections 302(c), 303(a), and 303(g) of the Federal Land Policy and Management Act of 1976 (FLPMA), the Unlawful Occupancy and Inclosures of Public Lands Act (43 U.S.C. 1201), and 18 U.S.C. 1001.

Section 3715.0–1 What are the Purpose and Scope of This Subpart?

Final § 3715.0–1(a) describes the purpose of subpart 3715. The purpose is to manage the use of the public lands for the development of locatable mineral deposits by limiting use and occupancy to that which is reasonably incident.

One comment suggested a change in the policy provision, proposed § 3715.0–6, to provide added protection for valid uses of mining claims. Another comment suggested a wording change in the policy provision, pointing out that some older unpatented mining claims may lie on lands that are withdrawn or otherwise not now open to the operation of the mining laws. However, these claims are still subject to regulation under the mining laws. BLM adopted these comments in the final rule, with language added to final § 3715.0–1 specifically to provide for protection of valid uses of valid claims, regardless of when created.

Final paragraph (b) states that the subpart applies to public lands BLM administers.

Final paragraph (c) states that these regulations do not impair the right of any person to engage in recreational activities or any other authorized activity on public lands BLM administers. This paragraph was added in response to concerns from commenters that legitimate recreational activities would be affected by the regulations.

BLM formed this section of the final rule from proposed §§ 3715.0–2, 3715.0–5, and 3715.0–7.

Section 3715.0–3 What are the Legal Authorities for This Subpart?

This section enumerates the statutory authority for the promulgation of these regulations. The primary authorities include the Mining Law of 1872, the Surface Resources Act of 1955, the Federal Land Policy and Management Act, and the Unlawful Occupancy and Inclosures of Public Lands Act.

Section 1 of the Mining Law of 1872 (30 U.S.C. 22) provides that, except as otherwise provided by law, all valuable mineral deposits in lands belonging to the United States must be free and open to exploration and purchase. It also provides that the lands containing these deposits must be open to occupation and purchase under regulations prescribed by law and the local customs or mining district rules that are not inconsistent with the laws of the United States.

Section 15 of the Mining Law of 1872, as amended (30 U.S.C. 42), provides that a patent application for a lode claim may include nonmineral land not contiguous to the vein or lode only if it is used or occupied for mining or milling purposes. It also provides that a patent application for a placer claim may include nonmineral land only if it is needed, used and occupied by the proprietor of a placer claim for mining, milling, processing, beneficiation, or other operations in connection with that claim.

Section 4 of the Surface Resources Act (30 U.S.C. 612) states that any mining claim located after July 23, 1955, under the mining laws of the United States must not be used, prior to issuance of patent, for any purposes other than prospecting, mining, or processing operations, and reasonably incident uses. Any such mining claim is also subject, prior to issuance of patent, to the right of the United States, its permittees, and licensees, to use so much of the surface as may be necessary for management and disposition of vegetative surface resources and management of other surface resources, or for access to adjacent land.

Several comments argued that pre-1955 claims should be exempt from the provisions of the rule. This position is not adopted in the final rule. Such claims are subject to the portions of the regulations establishing whether a use or occupancy is reasonably incident to prospecting, mining, milling, and so forth. While Section 4(a) of the Act of July 23, 1955 (30 U.S.C. 601 *et seq.*) (the 1955 Act), provides that claims located after that date are not to be used before patenting for any purpose other than prospecting, mining, or processing operations, or uses reasonably incident thereto, this provision merely restated the law as it existed prior to its enactment. (*Bruce Crawford*, 86 IBLA 325, 92 I.D. 208, 216, 221, n. 15). Cases

cited in *Crawford* held that, as long ago as 1910, uses of mining claims were required to be reasonably incident to mining. See *United States* v. *Rizzinelli*, 182 F. 675 (D. Id. 1910). The legislative history of the 1955 Act shows clearly that existing law prohibited uses of the Mining Law for non-mineral-related occupancies, and that a purpose of the 1955 Act was only to strengthen existing tools for dealing with these situations. See S. Rep. No. 554, 84th Cong., 1st Session (1955). The Mining Law of 1872 itself states that "all valuable mineral deposits in lands belonging to the United States . . . shall be free and open . . . to occupation . . . under regulations prescribed by law. . . ." 30 U.S.C. 22. The patenting authority for millsites also defines valid millsites as those used for mining, milling, processing, beneficiation, or other operations. 30 U.S.C. 42. The citation to that authority for millsites has been added to the rule. However, BLM concurrence that a use or occupancy on a millsite is authorized under this rule does not necessarily mean that the millsite is valid for purposes of complying with 30 U.S.C. 42. A validity determination for patenting or for establishing the underlying validity of a millsite is separate from a BLM concurrence in a proposed use or occupancy on a millsite under this subpart.

Section 302(b) of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1732(b)) directs the Secretary to take all necessary actions to prevent unnecessary or undue degradation in managing the public lands to regulate use, occupancy, and development of the public lands.

Section 302(c) of FLPMA (43 U.S.C. 1732(c)) directs the Secretary to include in all land use instruments a provision authorizing revocation or suspension, after notice and hearing, of such instrument upon a final administrative finding of a violation of any term or condition of the instrument. This section also provides that the Secretary may order an immediate temporary suspension of use, occupancy, or development prior to a hearing or final administrative finding if such a suspension is necessary to protect health, safety, or the environment.

Section 303(a) of FLPMA (43 U.S.C. 1733(a)) states that the Secretary must issue regulations necessary to implement the provisions of FLPMA with respect to the public lands, and sets forth basic penalties for violation of such regulations.

Section 303(g) of FLPMA (43 U.S.C. 1733(g)) states that the use, occupancy, or development of any portion of the public lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued under any such regulation, is unlawful and prohibited.

Section 1 of the Unlawful Occupancy and Inclosures of Public Lands Act (43 U.S.C. 1061 *et seq.*) prohibits inclosures and exclusive use and occupancy of the public lands, without claim or color of title as described in the Act. The same Act states, in summary, that no person, by force, threats, intimidation, or by any fencing or any other unlawful means, may prevent or obstruct peaceful entry, free passage or transit over or through the public lands by another person.

43 U.S.C. 1201 states that the Secretary of the Interior, or such officer as the Secretary may designate, is authorized to enforce and to execute, by appropriate regulations, every part of the provisions related to the public lands not otherwise specially provided for.

43 U.S.C. 1457 charges the Secretary with the supervision of public business relating to the public lands, including mines.

18 U.S.C. 1001 states that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writings or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, will be fined not more than $10,000 or imprisoned not more than 5 years, or both.

The Sentencing Reform Act of 1984 (18 U.S.C. 3571 *et seq.*) authorizes fines for Class A misdemeanors of up to $100,000 for individuals and $200,000 for organizations.

Section 3715.0–5 How are Certain Terms in This Subpart Defined?

This section contains definitions of terms significant to this rule. These terms include "mining laws," "mining operations," "occupancy," "permanent structure," "public lands," "prospecting or exploration," "reasonably incident," "substantially regular work," and "unnecessary or undue degradation." BLM has not adopted the proposed definition of "authorized officer." To simplify the rule, BLM uses the term "BLM" instead of "authorized officer" in the final rule.

BLM has added a definition of "mining laws" to the final rule in order to make it clear that this term refers to all laws that apply to hardrock mining on public lands and which make public lands available for hardrock mineral development.

BLM has added a definition of "public lands" to the final rule in order to eliminate possible confusion or misinterpretation regarding the lands to which this rule applies. The definition also eliminates repetitious language included throughout the proposed rule regarding the rule's applicability to public lands, including mining claims and millsites. In the context of this rule, "public lands" are defined as BLM-administered lands open to the operation of the mining laws. These lands specifically include mining claims and millsites on which most mining activities occur. However, to the extent that mining-related activities may occur to a certain extent on the public lands before a proper mining claim or millsite is located, this rule also applies to those public lands. In addition, to the extent that unauthorized uses are occurring on public lands without the proper location of a mining claim or millsite under the guise of a mining operation or mining-related activity, this rule applies. Finally, to the extent unauthorized uses are occurring or may occur on mining claims or millsites located on public lands, this rule also applies.

One comment found the definition of "occupancy" overly broad and confusing, stating that it blurred the distinction between activities that justify occupancy and those that comprise occupancy. BLM does not agree, but did modify the wording of the definition for clarity.

One comment pointed out that other multiple uses of the public lands, such as recreation, are allowed as short-term temporary encampments, usually 14 days or less, while conducting that use. The comment suggested that mining-related activities should not be treated differently. BLM has adopted this comment in the final rule and will not treat temporary occupancies up to 14 days as occupancies required to conform to the standards contained in the final rule. As discussed below, §§ 3715.1 and 3715.2 of the final rule provide that this subpart is applicable only to occupancy for more than 14 calendar days in any 90-day period within a 25-mile radius of the initially occupied site.

One comment stated that tents and lean-tos should be excepted from the definition of "permanent structure," so that they can be used for temporary encampments for assessment work or prospecting. Although, as another comment pointed out, temporary encampments may be subject to abuse through conversion or expansion to semi-permanent structures, BLM has

adopted the comment in the final rule, which specifically excludes tents and lean-tos from the definition of "permanent structure." BLM will rely on monitoring to prevent abuse of this provision.

One comment suggested that the use of the "reasonably incident" standard should not be read to discourage the continued development of new technology, exploration techniques, or mining methods. It is not the intent of the rule that the standard be limiting in this way. The rule defines the uses of the public land authorized under the general mining law in terms of the prudent miner and appropriate methods, structures, and equipment, and is not designed to discourage the development of new technology, exploration techniques, or mining methods intended to discover, delineate, recover, or process locatable minerals. Such new technologies may be more efficient, cost effective, or environmentally sensitive. BLM will consider them to be reasonably incident if the activity is a good faith effort to improve the methods of prospecting or exploration, mining, or processing locatable minerals.

Several comments stated that the use of the phrase "substantially regular and steady work" in proposed § 3715.2 could be construed to prohibit occupancies associated with weekend or intermittent mining activities that would otherwise be legitimate under the general mining law. BLM has changed the phrase "substantially regular and steady work" to "substantially regular work" and included a definition in this section of the final rule. "Substantially regular work" means work on, or that substantially and directly benefits, a mineral property, including nearby properties under the control of the operator. The work must be associated with the search for and development of mineral deposits or the processing of ores. It includes active and continuing exploration, mining, and beneficiation or processing of ores. It also includes assembly or maintenance of equipment, work on physical improvements, and procurement of supplies, incidental to activities meeting the conditions of this subpart. It may also include off-site trips associated with these activities. The term encompasses a seasonal, but recurring, work program. This provision does not prohibit weekend or intermittent mining activities. Such

One comment raised a concern that the rule was not adequately based on the "unnecessary or undue degradation" standard and raised a question about the ease of interpretation and enforcement of the "unnecessary or undue degradation" standard as applied to occupancy. BLM's regulations at 43 CFR parts 3802 and 3809 define "unnecessary and undue degradation" to mean, among other things, "surface disturbance greater than what would normally result when an activity is being accomplished by a prudent operator in usual, customary, and proficient operations of similar character." The purpose of the 43 CFR parts 3802 and 3809 regulations is to establish procedures to prevent unnecessary or undue degradation of public lands by mining operations. 43 CFR 3802.0–1 and 3809.0–1. However, the purpose of this rule is to distinguish between those uses that are authorized by the mining laws and those that are not and to prohibit those that are not authorized. Because this rule covers regulation of those uses that are not authorized, BLM has added a definition of "unnecessary or undue degradation" to these rules to address unauthorized uses that are not covered by the 43 CFR parts 3802 and 3809 definitions of "unnecessary or undue degradation."

Section 3715.0–9 Information Collection

Final § 3715.0–9 explains that BLM has submitted to the Office of Management and Budget (OMB) the information collection requirements contained in this subpart under 44 U.S.C. 3507 and the Paperwork Reduction Act of 1995. BLM collects the information so that it may manage use and occupancy of the public lands by prohibiting unauthorized uses and occupancies. A response is mandatory and required to obtain the benefit of occupying the public lands for reasonably incident activities.

BLM inadvertently omitted this section from the proposal, but is including it in the final rule because the Paperwork Reduction Act requires it. This section is technical in nature and imposes no requirements in addition to subpart 3715.

Section 3715.1 Do the Regulations in This Subpart Apply to My Use or Occupancy?

for clarity. No comments were received on this portion of the proposal.

Proposed § 3715.3(k) exempted authorized occupancies from the time limits of 43 CFR 8365.1–2. BLM has made some minor editorial changes to that provision and moved it to the table in final § 3715.1.

Section 3715.2 What Activities Do I Have To Be Engaged in to Allow Me To Occupy the Public Lands?

Final § 3715.2 describes the circumstances warranting occupancy of the public lands under this subpart.

In response to a comment on the definition of "occupancy" suggesting a need to treat uses and occupancies of less than 14-day duration in a consistent manner, the final rule indicates that subpart 3715 governs uses and occupancies lasting for more than 14 calendar days. In addition, the table in § 3715.1 states that this subpart does not apply to occupancy of 14 days or less in any 90-day period on the same site or within a 25-mile radius of that site. This section of the final rule is intended to prevent abusers of the mining laws from circumventing its requirements by moving illegal occupancies (for example, recreational vehicles) from one site to another nearby.

Section 3715.2–1 What Additional Characteristic(s) Must my Occupancy Have?

Final § 3715.2–1 provides that in addition to the requirements specified in § 3715.2, occupancies must involve at least one of five qualifying activities in order to warrant an occupancy.

One comment suggested that equipment that requires protection from theft or loss or that would constitute a danger to the public should warrant occupancy of a mining claim if the equipment is not otherwise readily portable, and if the equipment cannot reasonably be protected through means other than site occupancy, or if the hazard could not be prevented by reasonable means other than occupancy. BLM has adopted this comment in the final rule and has revised § 3715.2–1(b) accordingly. A certain minimum amount of appropriate, operable equipment is necessary to warrant an occupancy. This minimum amount may vary among operations. The equipment you assert to justify an occupancy should be in regular use and required for the operation. Equipment used only

hauled away at the end of a work day will not by itself normally justify an occupancy. Larger amounts of equipment may also be removable at the end of a work day, depending on the situation. On the other hand, nothing in this provision prevents the storage and use of portable equipment and personnel for prospecting and exploration for 14 days or less. Unused or infrequently used equipment cannot be stored on site or added to on-site equipment to justify an occupancy.

Final § 3715.2–1(e) has been revised editorially to make it clear that the work expected on an occupied site is that which is usual and customary, which is ordinarily not less than 8 hours but not necessarily an unbroken 8-hour shift or a rigid 8-hour shift every day. For example, the first and last days of an occupancy may be short for travel purposes, or shifts may be split overnight between two days.

Section 3715.2–2 How Do I Justify Occupancy by a Caretaker or Watchman?

Final § 3715.2–2 provides the conditions you must meet in order to justify a caretaker or watchman. BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.2–3 Under What Circumstances Will BLM Allow Me To Temporarily Occupy a Site for More Than 14 Days?

Final § 3715.2–3 describes the circumstances under which BLM will allow you to remain on a site temporarily beyond 14 days without first having met all of the requirements in this subpart for beginning occupancy. This provision was not part of the proposed rule, but BLM added it to the final rule in response to a commenter's concern about site security.

Section 3715.3 Must I Consult With BLM Before Occupancy?

This section of the final rule is organized as a table that lists the requirements you must follow to consult with BLM regarding a proposed occupancy before occupancy may begin in connection with a plan of operations, notice-level activities, or casual use activities. The table also notes that in some cases you may propose both to occupy the public lands and to conduct

consulting BLM. For example, you may propose both to build a cabin on a mining claim and to dig a small pit subject to the notice provisions of 43 CFR part 3800, subpart 3809. Under the final rule, you could dig the pit after giving notice to BLM under subpart 3809, but would have to consult with BLM before building the cabin.

One comment stated that, whereas the proposed rule is often directed toward new operations, the rule should also address modifications of plans of operations that are often necessitated by changed conditions or operations. BLM adopted this comment and added language to final § 3715.3 making it applicable to plan modifications as well as new plans. Plan modifications may call for new, additional, or enhanced occupancy.

Several comments suggested that certain activities that are incidental to justified occupancies, but are not themselves actually reasonably incident, should be allowed if they do not cause unnecessary or undue degradation. The activities of concern in this connection are recreational in nature, done after regular work on the mining claim during periods of occupancy. The rule is not intended to preclude such activities where they are reasonably undertaken together with the justified occupancy.

Section 3715.3–1 At What Point May I Begin Occupancy?

Final § 3715.3–1 describes the requirements you must meet before you may begin occupancy. This provision consolidates two proposed provisions related to restrictions on initiating occupancy, proposed §§ 3715.3(b) and 3715.4(b).

One comment stated that it was unreasonable for proposed § 3715.4(b) to require operators to obtain all necessary state permits before beginning use or occupancy of a claim. The comment pointed out that this would require that all permits conceivably necessary during the life of the mining operation be obtained in advance rather than as needed. BLM accepted this comment and changed final § 3715.3–1(b) to require only those permits necessary for the particular use or reasonably incident use justifying the occupancy. Requiring compliance with building codes is not a matter of technicalities; rather, it is important in protecting public health and safety. A 1982 report of the General

Lands—A Problem with Serious Implications, No. RCED–8248 (1982), pp. 30–32.

Section 3715.3–2 What Information Must I Provide to BLM About My Proposed Occupancy?

Final § 3715.3–2 describes the kinds of information that you must provide to BLM regarding your proposed occupancy, including maps and written descriptions of your occupancy. BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.3–3 How Does BLM Process the Information I Submit About My Proposed Occupancy?

Final § 3715.3–3 provides that BLM must review all proposed occupancies, enclosures, fences, gates, or signs intended to exclude the general public in order to make a concurrence or non-concurrence determination. This section also describes the timing of BLM's review, including any action that BLM must take to comply with the National Environmental Policy Act (NEPA), the National Historic Preservation Act, Section 7 of the Endangered Species Act, and/or other applicable statutes. For example, under NEPA, BLM will analyze the environmental impact of your proposed occupancy and document in writing its analysis and findings. BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.3–4 How Will BLM Notify Me of the Outcome of Its Review Process?

Final § 3715.3–4 describes the written determination of concurrence or non-concurrence you will receive from BLM after its review is complete. BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.3–5 What Will BLM's Notification Include?

Final § 3715.3–5 describes what information BLM's written determination of concurrence or non-concurrence will contain. BLM found that the second sentence of proposed § 3715.3(h)(1), which identified the circumstances under which BLM would

the provision describing when BLM will assume that a risk to health, safety, and the environment exists to final § 3715.7–1(a).

Several comments suggested that proposed § 3715.3(h)(2) should be amended to state that BLM will allow a proposed occupancy to be amended if the original proposal results in a non-concurrence. BLM adopted this suggestion in § 3715.3–5(b) of the final rule. It is in the public interest to permit appropriate activity under the general mining law if this activity can be planned through cooperation between you and BLM, avoiding costly administrative appeals, if possible, in cases where the initial proposal is not accepted.

Section 3715.3–6 May I Begin Occupancy if I Have Not Received Concurrence From BLM?

Final § 3715.3–6 prohibits beginning occupancy until a concurrence from BLM is received. BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.4 What if I have an Existing Use or Occupancy?

Final § 3715.4 describes how this subpart applies to existing uses and occupancies. This section of the final rule combines proposed §§ 3715.7 (a) and (d). BLM revised this section to make it clear that existing use or occupancy that is not reasonably incident may be subject to an immediate, temporary suspension, if necessary to protect health, safety, or the environment. BLM received no comments on this part of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.4–1 What Happens After I Give BLM Written Notification of My Existing Occupancy?

Final § 3715.4–1 describes the actions BLM will take after it receives a written notification of your existing occupancy. Paragraph (a) of this section, which provides that BLM will visit your site during the normal course of inspection to obtain the information required under § 3715.3–2, did not exist in the proposed rule. However, BLM added it to the final rule in an effort to reduce the paperwork burden on operators with existing occupancies. Final § 3715.4–1(b) was proposed as § 3715.7(b) and is adopted with minor editorial changes.

Taken together, §§ 3715.4 and 4–1 allow your existing occupancy a one-year grace period from compliance with this final rule if you timely notify BLM of the occupancy, with the expectation that BLM will visit your site within that one-year period to gather additional information. If the year passes and BLM has not yet visited your site, this final rule does not require you to take any further action with regard to obtaining BLM's concurrence in your occupancy. At that point, the ball would be in BLM's court.

Section 3715.4–2 What if I Do Not Notify BLM of My Existing Occupancy?

Final § 3715.4–2 (proposed § 3715.7(c)) states that you are subject to the penalty and enforcement provisions of this subpart if you do not file the written notice required in § 3715.4. BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.4–3 What if BLM Does Not Concur in My Existing Use or Occupancy?

Final § 3715.4–3 describes the actions BLM may take after inspection if it determines that your use or occupancy, or portion thereof, is not reasonably incident. Final § 3715.4–3 consolidates provisions proposed at §§ 3715.6 (b) and (c) as they apply to existing operations. BLM moved proposed § 3715.6(c) to final § 3715.4–3(b) because it deals with existing use and occupancy. BLM received no comments on this part of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.4–4 What if There is a Dispute Over the Fee Simple Title to the Lands on Which My Existing Occupancy is Located?

Final § 3715.4–4 describes BLM's discretion in deferring a determination regarding the status of your occupancy if the lands on which the occupancy occurs are involved in a title dispute with the United States regarding the underlying fee simple title to the land. This provision was not part of the proposal, but BLM added it to the final rule to make it clear that BLM has discretion to defer the point at which it deals with occupancy on lands over which a title dispute exists.

Section 3715.5 What Standards Apply to My Use or Occupancy?

Final § 3715.5 describes the laws and standards which you must comply with while engaging in any use or occupancy of the public lands. Paragraph (b) of this section refers to the federal and state standards that apply to uses of public lands under the mining laws. Paragraph (c) refers to the standards applicable to occupancies. The paragraphs are identical, except that occupancies are subject to the standards of this final rule, while uses are not.

These provisions were included in the proposal as §§ 3715.4 (a), (c), (d), and (e) respectively. One comment addressed proposed § 3715.4(e), pointing out that, normally, residential structures need only be in compliance with building and other codes in effect at the time of construction, rather than, as the proposed rule implied, with current codes. The final rule has been changed to require structures to conform with "applicable" state or local codes. If, in some areas, structures need only be in compliance with codes in effect at the time of construction, those codes will be the only ones applicable.

Several comments objected to BLM's adoption of state and local building codes rather than promulgation of its own regulatory requirements. BLM does not agree and did not adopt these comments in the final rule. State and local building codes are a function of the police powers held by state and local governments. In addition, the building codes already exist and are tried and tested.

One comment pointed out that it may be a burden for state or local officials to visit remote claims to inspect for code compliance, and another suggested that the rule allow BLM to waive compliance with such codes in truly remote areas. BLM does not agree and did not adopt these comments in the final rule. If state or local agencies wish to waive code compliance, BLM will recognize that waiver, but BLM has no authority to independently allow you to ignore code requirements.

One comment called on the BLM to adopt a standard that combines the reasonably incident standard with a "required" standard, that is, to disallow use and occupancy that is not required in order to conduct mining activities. The comment argued that *United States* v. *Richardson*, 599 F.2d 290 (9th Cir.), *cert. denied*, 444 U.S. 1014 (1980), serves as a precedent for using this combined standard. BLM chooses to adopt the standard of "reasonably incident to" rather than "required for" prospecting, mining, or processing operations. The statutory language quoted in the comment is in section 4(c) of the 1955 Act and relates to the severance and use of vegetative and other surface resources. Such use must be required for mining, prospecting, or processing operations and uses reasonably incident thereto. However, the general standard applied in this rule is found in section 4(a) of the 1955 Act, which prohibits the use of the claim itself for any purposes other than

prospecting, mining or processing operations and uses reasonably incident thereto. Under section 4(c) of the 1955 Act, surface resources may be used only if "required" for uses "reasonably incident" to mining. The tighter standard for removal and use of trees and other surface resources in section 4(c) is built upon the standard in section 4(a). The applicable standard for activities on the claims is the basic "reasonably incident" standard rather than the "required" standard that is applicable only to removal and use of trees and other surface resources. The burden of proving that activities are reasonably incident to mining will remain on you, as it is under existing law, and occupancies that are not reasonably incident will not be allowed.

Section 3715.5–1 What Standards Apply to Ending My Use or Occupancy?

Final § 3715.5–1 describes what you must do with structures, material, equipment or other personal property placed on the public lands during your use or occupancy when your use or occupancy ends.

These provisions were included in the proposal as §§ 3715.4 (f) and (f)(1) respectively. BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.5–2 What Happens to Property I Leave Behind?

Final § 3715.5–2 describes what BLM will do with property you leave on the public lands after your use or occupancy ends. This provision was included in the proposal as § 3715.4(f)(2). BLM received no comments on this part of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.6 What Things Does BLM Prohibit Under This Subpart?

Final § 3715.6 (proposed § 3715.5) describes those activities, uses, or occupancies that are prohibited under this subpart.

Two comments pointed out drafting errors in proposed § 3715.5. Paragraph (a), as proposed, would have required a violation of both the conditions of occupancy under proposed § 3715.2 and one or more of the standards of occupancy under proposed § 3715.4. The intent of the rule is that uses or occupancies are not permitted that violate any provision of § 3715.2, § 3715.2–1 *or* § 3715.5. Also, paragraph (b) as proposed could have been read to imply that occupancy might be initiated after rejection of a plan of operation. Paragraphs (a) and (b) of § 3715.6 in the final rule have been revised to correct these errors.

Some comments argued that claimants with claims located before 1955 are not barred from blocking access to or through the claims. The *Crawford* case, *supra*, at pages 216–217, stated that section 4(b) of the 1955 Act substantially changed the mining law with regard to access. Actions by owners of such claims to block reasonable access by the public will, however, prompt a determination of surface rights under section 5 of the 1955 Act and 43 CFR part 3710, subpart 3712, and/or a validity examination.

One comment stated that proposed § 3715.5(f) would not allow an operator to exclude the public from hazardous areas or areas that need to be secure for proprietary reasons. BLM has corrected this provision at § 3715.6(f) of the final rule to allow operators to take reasonable security measures. Mining claimants have the right to exclude the public from use of the land within the operation in order to prevent material interference with the operation or to comply with relevant state or federal law or regulations.

One comment noted that proposed § 3715.5(i) should be amended to prohibit non-mining related animal maintenance or pasturage. BLM has adopted this comment, but has also revised § 3715.6(i) of the final rule to make it clear that the acts listed are prohibited unless they are allowable under other applicable law or regulation. For example, a non-mining activity on a mining claim could be authorized under 43 CFR part 2920 under appropriate circumstances.

Section 3715.7 How Will BLM Inspect My Use or Occupancy and Enforce This Subpart?

Final § 3715.7 provides that BLM field staff is authorized to physically inspect all structures, equipment, workings and uses located on public lands and will not inspect the inside of structures used solely as residences without permission from the occupant or a proper court.

BLM included these provisions in the proposal at § 3715.6(a). One comment suggested that proposed § 3715.6(a) should be amended to provide BLM with discretion to inspect all occupancies on public lands rather than obligate BLM to inspect all such occupancies. The proposed rule language was not intended to obligate BLM to conduct inspections within a certain timeframe. The language is merely to establish BLM's authority to conduct inspections of all structures, equipment, workings and uses located on public lands. Final § 3715.6(a) has been amended to make it clear that there is no time limitation placed on BLM for inspections.

Section 3715.7–1 What Types of Enforcement Action Can BLM Take if I Do Not Meet the Requirements of This Subpart?

Final § 3715.7–1 discusses the four types of orders that BLM can issue to you, depending on the circumstances, for not complying with the provisions of this subpart.

Final paragraph (a) describes the circumstance under which BLM can order an immediate, temporary suspension of use or occupancy prior to a hearing if you are not in compliance with §§ 3715.2, 3715.2–1, 3715.3–1(b), 3715.5 or 3715.5–1, if necessary to protect health, safety or the environment. If you fail at any time to meet any of the standards in paragraphs §§ 3715.3–1(b) and 3715.5 (b), (c) and (d), BLM will presume that a risk to health, safety or the environment exists. BLM's assumption that breach of those sections creates a risk to health, safety, or the environment is based on the nature of those requirements. Readers should note that an appeal of an order issued under this paragraph does not stay the effect of the order. This means that if BLM orders you under this paragraph to immediately suspend your occupancy, you must comply even if you file an appeal. Your activity must remain suspended until the appeal has been decided.

Section 3715.3–1(b) requires you to be in possession of all requisite federal, state and local mining, reclamation, and waste disposal permits, approvals, or other authorizations before beginning an occupancy. Sections 3715.5 (b) and (c) require your use or occupancy to conform to all applicable federal, state and local environmental standards and have all requisite permits and authorizations. In addition, § 3715.5(e) requires your buildings and structures to comply with state and local building, fire and electrical codes and occupational safety and health and mine safety standards. To the extent that you do not possess the proper mining, reclamation, waste disposal, building, fire, electrical or occupational safety or mine safety permits or have not met related standards, BLM may reasonably assume that you are creating a risk to health, safety or the environment. This provision was included in the proposal at §§ 3715.3(h)(1) and 3715.6(b). The final rule has been revised editorially at § 3715.7–1(a)(3) to make clear the corrective actions BLM may require you to take to correct the noncompliance in

addition to suspension of the use or occupancy.

Final paragraph (b) was not included in the proposal, but BLM added it to the final rule because, while the final rule provides for immediate, temporary suspensions, no provision specifically provided for cessation of unlawful use or occupancy, subject to normal appeal procedures or for failure to comply with BLM notices of noncompliance.

Final paragraph (c) describes the circumstances under which BLM can issue notices of noncompliance. BLM included paragraph (c) of the final rule in the proposal at § 3715.6(d). BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Final paragraph (d) describes the circumstances under which BLM can order you to apply within 30 days for authorization under the regulations of 43 CFR Group 2900 or 8300, or, as to sites in Alaska, 43 CFR part 2560.

Section 3715.7–2 What Happens if I Do Not Comply With a BLM Order?

Final § 3715.7–2 describes the legal remedies the Interior Department may seek if you do not comply with a BLM order. This relief may be in addition to the penalties described in § 3715.8. BLM included this paragraph in the proposal at § 3715.6(f). BLM received no comments on this part of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.8 What Penalties Are Available to BLM for Violations of This Subpart?

Final § 3715.8 describes the penalties BLM may seek against individuals or corporations for knowingly and willfully violating requirements of this subpart.

One comment suggested that the penalty provisions in proposed § 3715.8 be amended to incorporate the maximum penalties provided for in the Sentencing Reform Act of 1984, as amended (18 U.S.C. 3571 *et seq.*). BLM adopted this comment and made the penalties described in the final rule consistent with the penalties that a court could otherwise impose under the Sentencing Reform Act. Penalty provisions such as those in both FLPMA and the Unlawful Occupancy and Inclosures of Public Lands Act, which provide for up to a year in jail or a fine of $1,000 for violations, are classified as Class A misdemeanors under 18 U.S.C. 3559. The Sentencing Reform Act authorizes fines for Class A misdemeanors of up to $100,000 for individuals and $200,000 for organizations.

Section 3715.8–1 What Happens if I Make False Statements to BLM?

Final § 3715.8–1 describes possible legal consequences if you make false statements to BLM. BLM included this paragraph in the proposal at § 3715.8(b). BLM received no comments on this portion of the proposal, which is adopted with minor editorial changes into the final rule.

Section 3715.9 What Appeal Rights Do I Have?

Final § 3715.9 describes the way in which you may appeal BLM decisions, orders or determinations made under this subpart.

BLM has removed provisions included in the proposal which allowed for appeals to the State Director. This change is made to make the appeals provisions in this rule consistent with BLM's other appeals provisions. In addition, because appeals from a BLM non-concurrence or a cessation order may require a hearing, an appellant's rights are best preserved by providing an opportunity for a hearing before an administrative law judge or an administrative appeals board.

Section 3715.9–1 Does an Appeal to IBLA Suspend a BLM Decision?

Final § 3715.9–1 describes the conditions under which a BLM decision may be suspended while IBLA considers an appeal of that decision.

BLM included these paragraphs in the proposal at §§ 3715.9 (b) and (f). BLM received no comments on this portion of the proposal and adopts it with minor editorial changes into the final rule. BLM did not include proposed § 3715.9(g) in the final rule because it is subsumed in the right to appeal a BLM decision to IBLA.

III. Procedural Matters

National Environmental Policy Act

BLM has determined that this final rule does not constitute a major federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. BLM has determined that this final rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the proposal would not meet any of the 10 criteria for exceptions to categorical exclusion listed in 516 DM 2, Appendix 2. This categorical exclusion includes rules that are of a financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis. Under the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means a categories of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Executive Order 12866 and Regulatory Flexibility Act

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866. No discernible economic impacts on operations involving occupancy are expected from this final rule. All operations involving occupancy are expected to occur under notices or plans covered by 43 CFR part 3800, subparts 3802 or 3809. The BLM is unaware of any specific casual use occupancies. The cost of complying with the requirements of the final rule is indistinguishable from the requirements imposed by the existing surface management regulations found in 43 CFR part 3800, because the requirements of the final rule limit uses and occupancies to those that are governed by 43 CFR part 3800. Further, for the same reasons, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the rule will not have a significant economic impact on a substantial number of small entities. The effect of the rule will be to curtail occupancy activities by those whose occupancy of the public lands is not reasonably incident to mining, prospecting or exploration, or processing operations. Such activities are already, and have long been, prohibited by law. Therefore, the only activities that would be curtailed are those that are already unlawful.

Federal Paperwork Reduction Act

Under 44 U.S.C. 3507 and the Paperwork Reduction Act of 1995, the Office of Management and Budget (OMB) has approved the information collection requirements contained in this subpart. OMB has assigned clearance number 1004–0169. BLM collects the information so that it may manage use and occupancy of the public lands under the mining laws. A response is mandatory and required to obtain the benefit of occupying the public lands for reasonably incidental activities.

BLM estimates the public reporting burden for this information to average two hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (DW–110), Bureau of Land Management, Building 50, Denver Federal Center, Denver, Colorado 80225–0047, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0169, Washington, DC 20503.

Executive Order 12630

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. The rule will not adversely affect lawful occupancies. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

Unfunded Mandates Reform Act

BLM has determined that this regulation is not significant under the Unfunded Mandates Reform Act of 1995, because it will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Further, this rule will not significantly or uniquely affect small governments.

Authors

The principal author of this final rule is Richard E. Deery, Solid Minerals Group, BLM. Patrick W. Boyd, Regulatory Management Team, BLM, prepared the plain English version. Staff of the Division of Mineral Resources, Office of the Solicitor, Department of the Interior, provided assistance.

List of Subjects in 43 CFR Part 3710

Administrative practice and procedure, Mines, Public lands-mineral resources.

Dated: May 20, 1996.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

Under the authorities cited below, and for the reasons stated in the preamble, part 3710, group 3700, subchapter C, chapter II, subtitle B, title 43 of the Code of Federal Regulations is amended by adding a new subpart 3715 to read as follows:

PART 3710—PUBLIC LAW 167; ACT OF JULY 23, 1955

Subpart 3715—Use and Occupancy Under the Mining Laws

Sec.

3715.0–1 What are the purpose and the scope of this subpart?
3715.0–3 What are the legal authorities for this subpart?
3715.0–5 How are certain terms in this subpart defined?
3715.0–9 Information collection.
3715.1 Do the regulations in this subpart apply to my use or occupancy?
3715.2 What activities do I have to be engaged in to allow me to occupy the public lands?
3715.2–1 What additional characteristic(s) must my occupancy have?
3715.2–2 How do I justify occupancy by a caretaker or watchman?
3715.2–3 Under what circumstances will BLM allow me to temporarily occupy a site for more than 14 days?
3715.3 Must I consult with BLM before occupancy?
3715.3–1 At what point may I begin occupancy?
3715.3–2 What information must I provide to BLM about my proposed occupancy?
3715.3–3 How does BLM process the information I submit about my proposed occupancy?
3715.3–4 How will BLM notify me of the outcome of its review process?
3715.3–5 What will BLM's notification include?
3715.3–6 May I begin occupancy if I have not received concurrence from BLM?
3715.4 What if I have an existing use or occupancy?
3715.4–1 What happens after I give BLM written notification of my existing occupancy?
3715.4–2 What if I do not notify BLM of my existing occupancy?
3715.4–3 What if BLM does not concur in my existing use or occupancy?
3715.4–4 What if there is a dispute over the fee simple title to the lands on which my existing occupancy is located?
3715.5 What standards apply to my use or occupancy?
3715.5–1 What standards apply to ending my use or occupancy?
3715.5–2 What happens to property I leave behind?
3715.6 What things does BLM prohibit under this subpart?
3715.7 How will BLM inspect my occupancy and enforce this subpart?
3715.7–1 What types of enforcement action can BLM take if I do not meet the requirements of this subpart?
3715.7–2 What happens if I do not comply with a BLM order?
3715.8 What penalties are available to BLM for violations of this subpart?
3715.8–1 What happens if I make false statements to BLM?
3715.9 What appeal rights do I have?
3715.9–1 Does an appeal to IBLA suspend a BLM decision?

Subpart 3715—Use and Occupancy Under the Mining Laws

Authority: 18 U.S.C. 1001, 3571 *et seq.*; 30 U.S.C. 22, 42, 612; 43 U.S.C. 1061 *et seq.*, 1201, 1457, 1732 (b) and (c), 1733 (a) and (g).

§ 3715.0–1 What are the purpose and the scope of this subpart?

(a) *Purpose.* The purpose of this subpart is to manage the use and occupancy of the public lands for the development of locatable mineral deposits by limiting such use or occupancy to that which is reasonably incident. The Bureau of Land Management (BLM) will prevent abuse of the public lands while recognizing valid rights and uses under the Mining Law of 1872 (30 U.S.C. 22 *et seq.*) and related laws governing the public lands, regardless of when those rights were created. BLM will take appropriate action to eliminate invalid uses, including unauthorized residential occupancy of the public lands.

(b) *Scope.* This subpart applies to public lands BLM administers. They do not apply to state or private lands in which the mineral estate has been reserved to the United States. They do not apply to Federal lands administered by other Federal agencies, even though those lands may be subject to the operation of the mining laws.

(c) This subpart does not impair the right of any person to engage in recreational activities or any other authorized activity on public lands BLM administers.

§ 3715.0–3 What are the legal authorities for this subpart?

The authorities for this subpart are 18 U.S.C. 1001, 3571 *et seq.*; 30 U.S.C. 22, 42, 612; 43 U.S.C. 1061 *et seq.*, 1201, 1457, 1732 (b) and (c), 1733 (a) and (g).

§ 3715.0–5 How are certain terms in this subpart defined?

As used in this subpart the term:

Mining laws means all laws that apply to hardrock mining on public lands and which make public lands available for hardrock mineral development. This includes, but is not limited to, the general authorities relating to hardrock mining or to the public lands on which

this rule is based and case law which interprets those authorities.

Mining operations means all functions, work, facilities, and activities reasonably incident to mining or processing of mineral deposits. It includes building roads and other means of access to a mining claim or millsite on public lands.

Occupancy means full or part-time residence on the public lands. It also means activities that involve residence; the construction, presence, or maintenance of temporary or permanent structures that may be used for such purposes; or the use of a watchman or caretaker for the purpose of monitoring activities. Residence or structures include, but are not limited to, barriers to access, fences, tents, motor homes, trailers, cabins, houses, buildings, and storage of equipment or supplies.

Permanent structure means a structure fixed to the ground by any of the various types of foundations, slabs, piers, poles, or other means allowed by building codes. The term also includes a structure placed on the ground that lacks foundations, slabs, piers, or poles, and that can only be moved through disassembly into its component parts or by techniques commonly used in house moving. The term does not apply to tents or lean-tos.

Public lands means lands open to the operation of the mining laws which BLM administers, including lands covered by unpatented mining claims or millsites.

Prospecting or exploration means the search for mineral deposits by geological, geophysical, geochemical, or other techniques. It also includes, but is not limited to, sampling, drilling, or developing surface or underground workings to evaluate the type, extent, quantity, or quality of mineral values present.

Reasonably incident means the statutory standard "prospecting, mining, or processing operations and uses reasonably incident thereto" (30 U.S.C. 612). It is a shortened version of the statutory standard. It includes those actions or expenditures of labor and resources by a person of ordinary prudence to prospect, explore, define, develop, mine, or beneficiate a valuable mineral deposit, using methods, structures, and equipment appropriate to the geological terrain, mineral deposit, and stage of development and reasonably related activities.

Substantially regular work means work on, or that substantially and directly benefits, a mineral property, including nearby properties under your control. The work must be associated with the search for and development of mineral deposits or the processing of ores. It includes active and continuing exploration, mining, and beneficiation or processing of ores. It may also include assembly or maintenance of equipment, work on physical improvements, and procurement of supplies, incidental to activities meeting the conditions of §§ 3715.2 and 3715.2–1. It may also include off-site trips associated with these activities. The term also includes a seasonal, but recurring, work program.

Unnecessary or undue degradation, as applied to unauthorized uses, means those activities that are not reasonably incident and are not authorized under any other applicable law or regulation. As applied to authorized uses, the term is used as defined in 43 CFR 3802.0–5 and 3809.0–5.

§ 3715.0–9 Information collection.

(a) BLM has submitted to the Office of Management and Budget the information collection requirements contained in this subpart under 44 U.S.C. 3507 and the Paperwork Reduction Act of 1995 and assigned clearance number 1004–0169. BLM collects the information so that it may manage use and occupancy of public lands under the mining laws by prohibiting unauthorized uses and occupancies. A response to BLM is mandatory and required to obtain the benefit of occupying the public lands for reasonably incident activities.

(b) BLM estimates the public reporting burden for this information to average two hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (DW–110), Bureau of Land Management, Building 50, Denver Federal Center, Denver, Colorado 80225–0047, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0169, Washington, DC 20503.

§ 3715.1 Do the regulations in this subpart apply to my use or occupancy?

To determine if the regulations in this subpart apply to your activities, refer to Table 1 in this section.

TABLE 1

Applicability of this subpart	
If your proposed use of the public lands—	Then—
Includes occupancy and is "reasonably incident" as defined by this subpart.	The provisions of this subpart apply to you. You must seek concurrence from BLM before beginning this use and comply with all provisions of this subpart.
Involves the placement, construction, or maintenance of enclosures, gates, fences, or signs.	The provisions of this subpart apply to you. You must seek concurrence from BLM before beginning this use and comply with all provisions of this subpart.
Is reasonably incident, but does not involve occupancy	The provisions of this subpart do not apply to you, except for §§ 3715.4, 3715.5 and 3715.7. You are subject to the applicable regulations in 43 CFR part 3800.
Is *not* reasonably incident (involving rights-of-way, for example), but may be allowed under the public land laws.	The occupancy consultation provisions of this subpart do not apply to you. Your use is not allowed under this subpart. You must seek authorization under 43 CFR Group 2900.
Is not allowed under the public land laws, the mining laws, the mineral leasing laws, or other applicable laws.	Your use is prohibited. You must not begin or continue unauthorized uses.
Involves occupancy of a site, or any subsequent site within a 25-mile radius of the initially occupied site, for 14 days or less in any 90-day period.	The provisions of this subpart do not apply to you. Refer to the applicable regulations in 43 CFR part 8360 and pertinent State Director supplementary rules. 43 CFR part 8360 will not otherwise apply to a reasonably incident use or occupancy that this subpart allows.

§ 3715.2 What activities do I have to be engaged in to allow me to occupy the public lands?

In order to occupy the public lands under the mining laws for more than 14 calendar days in any 90-day period within a 25-mile radius of the initially occupied site, you must be engaged in certain activities. Those activities that are the reason for your occupancy must:

(a) Be reasonably incident;

(b) Constitute substantially regular work;

(c) Be reasonably calculated to lead to the extraction and beneficiation of minerals;

(d) Involve observable on-the-ground activity that BLM may verify under § 3715.7; and

(e) Use appropriate equipment that is presently operable, subject to the need for reasonable assembly, maintenance, repair or fabrication of replacement parts.

§ 3715.2–1 What additional characteristic(s) must my occupancy have?

In addition to the requirements specified in § 3715.2, your occupancy must involve one or more of the following:

(a) Protecting exposed, concentrated or otherwise accessible valuable minerals from theft or loss;

(b) Protecting from theft or loss appropriate, operable equipment which is regularly used, is not readily portable, and cannot be protected by means other than occupancy;

(c) Protecting the public from appropriate, operable equipment which is regularly used, is not readily portable, and if left unattended, creates a hazard to public safety;

(d) Protecting the public from surface uses, workings, or improvements which, if left unattended, create a hazard to public safety; or

(e) Being located in an area so isolated or lacking in physical access as to require the mining claimant, operator, or workers to remain on site in order to work a full shift of a usual and customary length. A full shift is ordinarily 8 hours and does not include travel time to the site from a community or area in which housing may be obtained.

§ 3715.2–2 How do I justify occupancy by a caretaker or watchman?

If you assert the need for a watchman or caretaker to occupy the public lands to protect valuable or hazardous property, equipment, or workings, you must show that the need for the occupancy is both reasonably incident and continual. You must show that a watchman or caretaker is required to be present either whenever the operation is not active or whenever you or your workers are not present on the site.

§ 3715.2–3 Under what circumstances will BLM allow me to temporarily occupy a site for more than 14 days?

BLM may allow temporary occupancy at a single site to extend beyond the 14-day period described in § 3715.1 if you need to secure the site beyond 14 days through the use of a watchman as allowed by § 3715.2–2, and you have begun consultation with BLM under § 3715.3. If BLM decides not to concur in the occupancy, the temporary occupancy must stop.

§ 3715.3 Must I consult with BLM before occupancy?

Before beginning occupancy, you must consult with BLM about the requirements of this subpart. See Table 2 in this section.

TABLE 2

Consultation requirements	
If you are proposing a use that would involve occupancy	Then.
Under a plan of operations or a modification submitted under 43 CFR part 3800, subpart 3802 or subpart 3809.	You must include in the proposed plan of operations the materials required by § 3715.3–2 describing any proposed occupancy for BLM review concurrently with review of the plan of operation. BLM will determine whether you have complied with the requirements of this subpart together with its decision approving or modifying the plan.
Under the notice provisions of 43 CFR part 3800, subpart 3809.	You must submit the materials required by § 3715.3–2 together with the materials submitted under 43 CFR 3809.1–3 for BLM review concurrently with its review of the proposed activity. Any activities in the notice that do not involve occupancy and are reasonably incident may proceed in accordance with 43 CFR part 3800, subpart 3809.
And is a "casual use" under 43 CFR 3809.1–2 or does not require a plan of operations under 43 CFR 3802.1–2 and 3809.1–4 or a notice under 43 CFR 3809.1–3.	You are subject to the consultation provisions of this subpart and must submit the materials required by § 3715.3–2 to BLM. Any casual use activities that do not involve occupancy and are reasonably incident may proceed in accordance with 43 CFR part 3800, subpart 3809.
Or enclosures, fences, gates, or signs intended to exclude the general public.	You are subject to the consultation provisions of this subpart and must submit the materials required by § 3715.3–2 to BLM.

§ 3715.3–1 At what point may I begin occupancy?

You must not begin occupancy until—

(a) You have complied with either 43 CFR part 3800, subpart 3802 or 3809 and this subpart, and BLM has completed its review and made the required determinations under the use or occupancy as required under this subpart.

§ 3715.3–2 What information must I provide to BLM about my proposed occupancy?

You must give BLM a detailed map that identifies the site and the

(a) How the proposed occupancy is reasonably incident;

(b) How the proposed occupancy meets the conditions specified in § 3715.2 and § 3715.2–1;

(c) Where you will place temporary or permanent structures for occupancy;

(d) The location of and reason you need enclosures, fences, gates and signs

(f) The estimated period of use of the structures, enclosures, fences, gates, and signs, as well as the schedule for removal and reclamation when operations end.

§ 3715.3–3 How does BLM process the information I submit about my proposed occupancy?

BLM will review all proposed occupancies and all proposed enclosures, fences, gates, or signs intended to exclude the general public to determine if your proposed occupancy or use will conform to the provisions of §§ 3715.2, 3715.2–1 and 3715.5. BLM will complete its review of a proposed occupancy not involving a plan of operations within 30 business days of receipt of the materials, unless it concludes that the determination cannot be made until:

(a) 30 business days after it prepares necessary environmental documents, and

(b) 30 business days after it has complied with section 106 of the National Historic Preservation Act, Section 7 of the Endangered Species Act, and/or other applicable statutes, if applicable.

§ 3715.3–4 How will BLM notify me of the outcome of its review process?

At the conclusion of the review, BLM will make a written determination of concurrence or non-concurrence, and will send it to you. For operations conducted under a plan of operations, BLM will include this written determination in the decision that approves, modifies, or rejects the plan.

§ 3715.3–5 What will BLM's notification include?

(a) BLM will include in each determination of concurrence a statement requiring you to continue to comply with §§ 3715.2, 3715.2–1 and 3715.5.

(b) BLM will specify in each determination of non-concurrence how the proposed occupancy fails to meet the conditions of § 3715.2, § 3715.2–1 or § 3715.5, and will provide you an opportunity to modify the proposed occupancy or appeal the determination under § 3715.9.

§ 3715.3–6 May I begin occupancy if I have not received concurrence from BLM?

If you have not received concurrence from BLM, you must not begin occupancy even though you have submitted, or plan to submit, an amended occupancy proposal or an appeal.

§ 3715.4 What if I have an existing use or occupancy?

(a) By August 18, 1997, all existing uses and occupancies must meet the applicable requirements of this subpart. If not, BLM will either issue you a notice of noncompliance or order any existing use or occupancy failing to meet the requirements of this subpart to suspend or cease under § 3715.7–1. BLM will also order you to reclaim the land under 43 CFR part 3800, subpart 3802 or 3809 to BLM's satisfaction within a specified, reasonable time, unless otherwise expressly authorized.

(b) If you are occupying the public lands under the mining laws on August 15, 1996, you may continue your occupancy for one year after that date, without being subject to the procedures this subpart imposes, if:

(1) You notify BLM by October 15, 1996 of the existence of the occupancy using a format specified by BLM; and

(2) BLM has no pending trespass action against you concerning your occupancy.

(c) The one-year grace period provided in paragraph (b) of this section will not apply if at any time BLM determines that your use or occupancy is not reasonably incident and the continued presence of the use or occupancy is a threat to health, safety or the environment. In this situation, BLM will order an immediate temporary suspension of activities under § 3715.7–1(a).

(d) If you have no existing occupancies, but are engaged in uses of the public lands under the mining law, you are subject to the standards in § 3715.5. BLM will determine if your existing uses comply with those standards during normal inspection visits to the area and during BLM review of notices and plans of operations filed under 43 CFR part 3800.

§ 3715.4–1 What happens after I give BLM written notification of my existing occupancy?

(a) BLM will visit your site during the normal course of inspection to obtain the information described in § 3715.3–2. After the visit, BLM will make a determination of concurrence or non-concurrence.

(b) You must provide the information described in § 3715.3–2 to BLM. You may provide it either in writing or verbally during a site visit by BLM field staff.

§ 3715.4–2 What if I do not notify BLM of my existing occupancy?

If you do not provide the written notice required in § 3715.4, you will be subject to the enforcement actions of § 3715.7–1, the civil remedies of § 3715.7–2, and the criminal penalties of § 3715.8.

§ 3715.4–3 What if BLM does not concur in my existing use or occupancy?

If BLM determines that all or any part of your existing use or occupancy is not reasonably incident:

(a) BLM may order a suspension or cessation of all or part of the use or occupancy under § 3715.7–1;

(b) BLM may order the land to be reclaimed to its satisfaction and specify a reasonable time for completion of reclamation under 43 CFR part 3800; and

(c) BLM may order you to apply within 30 days after the date of notice from BLM for appropriate authorization under the regulations in 43 CFR Group 2900.

§ 3715.4–4 What if there is a dispute over the fee simple title to the lands on which my existing occupancy is located?

BLM may defer a determination of concurrence or non-concurrence with your occupancy until the underlying fee simple title to the land has been finally determined by the Department of the Interior. During this time, your existing occupancy may continue, subject to § 3715.5(a).

§ 3715.5 What standards apply to my use or occupancy?

(a) Your use or occupancy must be reasonably incident. In all uses and occupancies, you must prevent or avoid "unnecessary or undue degradation" of the public lands and resources.

(b) Your uses must conform to all applicable federal and state environmental standards and you must have obtained all required permits before beginning, as required under 43 CFR part 3800. This means getting permits and authorizations and meeting standards required by state and federal law, including, but not limited to, the Clean Water Act (33 U.S.C. 1251 *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), and the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), as required under 43 CFR part 3800.

(c) Your occupancies must conform to all applicable federal and state environmental standards and you must have obtained all required permits before beginning, as required under this subpart and 43 CFR part 3800. This means getting permits and authorizations and meeting standards required by state and federal law, including, but not limited to, the Clean Water Act (33 U.S.C. 1251 *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), and the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), as required under this subpart and 43 CFR part 3800.

(d) If your prospecting or exploration activities involve only surface activities, you must not place permanent structures on the public lands. Any temporary structures you place on the public lands during prospecting or exploration will be allowed only for the duration of the activities, unless BLM expressly and in writing allows them to remain longer. If your prospecting or exploration activities involve subsurface activities, you may place permanent structures on the public lands, if BLM concurs.

(e) All permanent and temporary structures you place on the public lands must conform with the applicable state or local building, fire, and electrical codes, and occupational safety and health and mine safety standards. If state or local codes require, you must obtain a certificate of occupancy or its equivalent before you begin use or occupancy involving permanent structures. If state or local law requires, you must also acquire appropriate sewerage and sanitation permits before the occupancy or use of a permanent structure placed on the public lands.

§ 3715.5–1 What standards apply to ending my use or occupancy?

Unless BLM expressly allows them in writing to remain on the public lands, you must remove all permanent structures, temporary structures, material, equipment, or other personal property placed on the public lands during authorized use or occupancy under this subpart. You have 90 days after your operations end to remove these items. If BLM concurs in writing, this provision will not apply to seasonal operations that are temporarily suspended for less than one year and expected to continue during the next operating season or to operations that are suspended for no longer than one year due to market or labor conditions.

§ 3715.5–2 What happens to property I leave behind?

Any property you leave on the public lands beyond the 90-day period described in § 3715.5–1 becomes property of the United States and is subject to removal and disposition at BLM's discretion consistent with applicable laws and regulations. You are liable for the costs BLM incurs in removing and disposing of the property.

§ 3715.6 What things does BLM prohibit under this subpart?

Except where other applicable laws or regulations allow, BLM prohibits the following:

(a) Placing, constructing, maintaining or using residences or structures for occupancy not meeting:

(1) The conditions of occupancy under §§ 3715.2 or 3715.2–1; or

(2) Any of the standards of occupancy under § 3715.5;

(b) Beginning occupancy before the filing, review, and approval or modification of a plan of operation as required under 43 CFR part 3800, subparts 3802 or 3809;

(c) Beginning occupancy before consultation with BLM as required by § 3715.3 for activities that do not require a plan of operations under 43 CFR part 3800, subpart 3802 or that are defined as casual use or notice activities under 43 CFR part 3800, subpart 3809;

(d) Beginning occupancy without receiving a determination of concurrence because the proposed occupancy or fencing will not conform to the provisions of § 3715.2, § 3715.2–1 or § 3715.5;

(e) Not complying with any order issued under this subpart within the time frames the order provides;

(f) Preventing or obstructing free passage or transit over or through the public lands by force, threats, or intimidation; provided, however, that reasonable security and safety measures in accordance with this subpart are allowed;

(g) Placing, constructing, or maintaining enclosures, gates, or fences, or signs intended to exclude the general public, without BLM's concurrence;

(h) Causing a fire or safety hazard or creating a public nuisance;

(i) Not complying with the notification and other requirements under § 3715.4 relating to an existing occupancy; and

(j) Conducting activities on the public lands that are not reasonably incident, including, but not limited to: non-mining related habitation, cultivation, animal maintenance or pasturage, and development of small trade or manufacturing concerns; storage, treatment, processing, or disposal of non-mineral, hazardous or toxic materials or waste that are generated elsewhere and brought onto the public lands; recycling or reprocessing of manufactured material such as scrap electronic parts, appliances, photographic film, and chemicals; searching for buried treasure, treasure trove or archaeological specimens; operating hobby and curio shops; cafes; tourist stands; and hunting and fishing camps.

§ 3715.7 How will BLM inspect my use or occupancy and enforce this subpart?

(a) BLM field staff is authorized to physically inspect all structures, equipment, workings, and uses located on the public lands. The inspection may include verification of the nature of your use and occupancy to ensure that your use or occupancy is, or continues to be, reasonably incident and in compliance with §§ 3715.2, 3715.2–1, 3715.4–1 and 3715.5.

(b) BLM will not inspect the inside of structures used solely for residential purposes, unless an occupant or a court of competent jurisdiction gives permission.

§ 3715.7–1 What types of enforcement action can BLM take if I do not meet the requirements of this subpart?

BLM has four types of orders that it can issue depending on the circumstances:

(a) *Immediate suspension.*

(1) BLM may order an immediate, temporary suspension of all or any part of your use or occupancy if:

(i) All or part of your use or occupancy is not reasonably incident or is not in compliance with §§ 3715.2, 3715.2–1, 3715.3–1(b), 3715.5 or 3715.5–1, and

(ii) an immediate, temporary suspension is necessary to protect health, safety or the environment.

(2) BLM will presume that health, safety or the environment are at risk and will order your use or occupancy to be immediately and temporarily suspended if:

(i) You are conducting an occupancy under a determination of concurrence under this section; and

(ii) You fail at any time to meet any of the standards in paragraphs § 3715.3–1(b) or § 3715.5 (b), (c) or (d).

(3) The suspension order will describe—

(i) How you are failing or have failed to comply with the requirements of this subpart; and

(ii) The actions, in addition to suspension of the use or occupancy, that you must take to correct the noncompliance and the time by which you must suspend the use or occupancy. It will also describe the time, not to exceed 30 days, within which you must complete corrective action.

(4) The suspension order will not be stayed by an appeal.

(b) *Cessation order.*

(1) BLM may order a temporary or permanent cessation of all or any part of your use or occupancy if:

(i) All or any part of your use or occupancy is not reasonably incident but does not endanger health, safety or the environment, to the extent it is not reasonably incident;

(ii) You fail to timely comply with a notice of noncompliance issued under paragraph (c) of this section;

(iii) You fail to timely comply with an order issued under paragraph (d) of this section; or

(iv) You fail to take corrective action during a temporary suspension ordered under paragraph (a) of this section.

(2) The cessation order will describe—

(i) The ways in which your use or occupancy is not reasonably incident; is in violation of a notice of noncompliance issued under paragraph (c) of this section; or is in violation of an order issued under paragraphs (a) or (d) of this section, as appropriate;

(ii) The actions, in addition to cessation of the use or occupancy, that you must take to correct the noncompliance;

(iii) The time by which you must cease the use or occupancy, not to exceed 30 days from the date the Interior Board of Land Appeals affirms BLM's order; and

(iv) The length of the cessation.

(c) *Notice of noncompliance.*

(1) If your use or occupancy is not in compliance with any requirements of this subpart, and BLM has not invoked paragraph (a) of this section, BLM will issue an order that describes—

(i) How you are failing or have failed to comply with the requirements of this subpart;

(ii) The actions that you must take to correct the noncompliance and the time, not to exceed 30 days, within which you must start corrective action; and

(iii) The time within which you must complete corrective action.

(2) If you do not start and complete corrective action within the time allowed, BLM may order an immediate suspension under paragraph (a) of this section, if necessary, or cessation of the use or occupancy under paragraph (b) of this section.

(d) *Other.* If you are conducting an activity that is not reasonably incident but may be authorized under 43 CFR Group 2900 or 8300, or, as to sites in Alaska, 43 CFR part 2560, BLM may order you to apply within 30 days from the date you receive the order for authorization under the listed regulations.

§ 3715.7–2 What happens if I do not comply with a BLM order?

If you do not comply with a BLM order issued under § 3715.7–1, the Department of the Interior may request the United States Attorney to institute a civil action in United States District Court for an injunction or order to prevent you from using or occupying the public lands in violation of the regulations of this subpart. This relief may be in addition to the enforcement actions described in § 3715.7–1 and the penalties described in § 3715.8.

§ 3715.8 What penalties are available to BLM for violations of this subpart?

The penalties for individuals and organizations are as follows:

(a) *Individuals.* If you knowingly and willfully violate the requirements of this subpart, you may be subject to arrest and trial under section 303(a) of FLPMA (43 U.S.C. 1733(a)) and/or section 4 of the Unlawful Occupancy and Inclosures of Public Lands Act (43 U.S.C. 1064). If you are convicted, you will be subject to a fine of not more than $100,000 or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisonment not to exceed 12 months, or both, for each offense.

(b) *Organizations.* If an organization or corporation knowingly or willfully violates the requirements of this subpart, it is subject to trial and, if convicted, will be subject to a fine of not more than $200,000, or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571.

§ 3715.8–1 What happens if I make false statements to BLM?

You are subject to arrest and trial before a United States District Court if, in any matter under this subpart, you knowingly and willfully falsify, conceal or cover up by any trick, scheme or device a material fact, or make any false, fictitious or fraudulent statements or representations, or make or use any false writings or document knowing the same to contain any false, fictitious or fraudulent statement or entry. If you are convicted, you will be fined not more than $250,000 or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisoned not more than 5 years, or both.

§ 3715.9 What appeal rights do I have?

If you are adversely affected by a BLM decision, order or determination made under this subpart, you may appeal the decision, order or determination to the Interior Board of Land Appeals (IBLA) under the provisions of 43 CFR part 4.

§ 3715.9–1 Does an appeal to IBLA suspend a BLM decision?

(a) An appeal to IBLA does not suspend an order requiring an immediate, temporary suspension of occupancy issued under § 3715.7–1(a) before the appeal or while it is pending. In this case, the provisions of 43 CFR 4.21(a) do not apply.

(b) The provisions of 43 CFR 4.21(a) apply to all other BLM decisions, orders or determinations under this subpart.

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Part III

Department of Housing and Urban Development

Funding Availability and Program Guidelines for the Economic Development Initiative; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4065–N–01]

Office of the Assistant Secretary for Community Planning and Development; Notice of Funding Availability (NOFA) and Program Guidelines for the Economic Development Initiative (EDI)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD

SUMMARY: This NOFA announces the availability of funds for grants under section 108(q) of the Housing and Community Development Act of 1974, as amended. HUD reserves the right to award grants under this NOFA up to the maximum amount authorized by law. As of the date of this NOFA and subject to funding availability, HUD intends to award up to $50 million in EDI grant funds.

In addition to soliciting proposals that undertake traditional economic development projects, HUD is also soliciting proposals to undertake large-scale projects that would create Homeownership Zones—proposals designed to reclaim hard-pressed neighborhoods by creating homeownership opportunities for hardworking low- and moderate-income families and serving as a catalyst for private investment, business creation and neighborhood revitalization. See the separate discussion on Homeownership Zones in section I.(D) below.

Communities that are authorized to obtain Section 108 loan guarantee commitments to carry out qualifying projects are eligible under this NOFA to receive EDI grants. EDI grants are used to enhance the security of the Section 108 guaranteed loan or to improve the feasibility of proposed projects through techniques such as interest rate subsidies, loan loss reserves, etc. This NOFA sets out program guidelines that will govern the application, application review, and award process for this round of EDI grants.

DATES: Applications are due in HUD Headquarters at the address stated below under "Addresses" by September 17, 1996. HUD will not accept applications that are submitted to HUD via facsimile (FAX) transmission. Applications that are mailed prior to September 17, 1996, and received within ten (10) days after that date will be deemed to have been received by that date if postmarked by the United States Postal Service by no later than September 16, 1996. Overnight delivery items received within ten (10) days after September 17, 1996, will be deemed to have been received by that date upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than September 16, 1996.

ADDRESSES: On or prior to September 17, 1996, completed applications will be accepted at the following address: Processing and Control Unit, Room 7255, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, Attention: EDI Grant. At close of business on the deadline date, completed applications will also be received in the south lobby of the Department of Housing and Urban Development at the above address (inquire at the security guard desk). However, any application received by the Office of Community Planning and Development in Headquarters, Washington, DC, by September 17, 1996 will be accepted.

FOR FURTHER INFORMATION CONTACT: Paul Webster, Director, Financial Management Division, Office of Block Grant Assistance, Room 7178, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1871.

With respect to proposals for Homeownership Zones contact: Gordon McKay, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Room 7164, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–2685. (These are not toll-free numbers.)

Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Purpose and Substantive Description

(A) *Authority.* Title I, Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301–5320) (the "Act"); 24 CFR part 570.

(B) *Definitions. CDBG funds* means, in addition to those funds specified at § 570.3, grant funds received pursuant to Section 108(q). CDBG funds received pursuant to section 108(q) must be used for activities eligible under section 108(a) of the Act. This does not include *all* CDBG-eligible activities, but only those listed in 24 CFR 570.703. In addition, funds received pursuant to section 108(q) must be used only in conjunction with projects and activities assisted with section 108 loan guarantee proceeds. Finally, funds received pursuant to section 108(q) may not be disbursed until the section 108 obligations financing the related assisted projects and activities are actually guaranteed under section 108.

Community and Individual Investment Corporation (CIIC) means a for-profit corporation capitalized in part by EDI and Section 108 funds which invests in economic development activities (otherwise eligible for EDI and Section 108 Loan Guarantee assistance under this NOFA) in an identified service area where at least 51 percent of the residents are low and moderate income people and which offers residents of the service area opportunities to purchase and own shares in the Corporation. Note that the CIIC must provide financial and other services to a qualifying low and moderate income area meeting the CDBG program national objective for area benefit activities at 24 CFR 570.208(a)(1). It is important to emphasize that there is a fundamental difference between a CIIC and a Community Development Financial Institution (CDFI). CDFIs are private and community initiated financial institutions which may apply for part of their capitalization to the Federal Government (the CDFI Fund which is part of the Department of the Treasury). By contrast, in the case of CIICs, the process of formation is initiated by a public entity as part of its community development strategy.

Designated Empowerment Zone or Enterprise Community means an urban area designated as an Empowerment Zone or an Enterprise Community by the Secretary of HUD on December 21, 1994.

Economic Development Initiative (EDI) means the provision of economic development grant assistance under Section 108(q) of the Act, as authorized by Section 232 of the Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 103–233; approved April 11, 1994) (the "1994 Act").

Economic development project means an activity or activities (including mixed use projects with housing components) that are eligible under the Act and under 24 CFR 570.703, and that increase economic opportunity for persons of low- and moderate-income, or that stimulate or retain businesses or jobs, or that otherwise lead to economic revitalization.

Empowerment Zone Strategic Plan means a strategy developed and agreed to by the nominating local government(s) and State(s) and submitted in partial fulfillment of the application requirements for designation as an Empowerment Zone or Enterprise Community pursuant to 24 CFR part 597.

HOME funds means funds made available under title II of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625; approved November 28, 1990).

Homeownership Zone means a continuous, geographically defined neighborhood that is primarily residential in character and in which the Homeownership Zone activities together with other physical and economic development activities can make a measurable, visible improvement to the area.

National Homeownership Strategy is a five-year blueprint containing 100 actions, developed and implemented by a partnership involving HUD and more than 50 other national organizations. The goal of the Strategy is to achieve an all-time high level of homeownership by the end of the year 2000.

Neighborhood Revitalization Strategy means a strategy submitted as part of a CDBG grantee's Consolidated Plan, or an amendment, for reinvestment of human and economic capital in a distressed neighborhood. The strategy must meet the guidelines of Notice CPD–96–01, issued January 16, 1996, and must be approved by HUD. Any Empowerment Zone Strategic Plan prepared for a Federally-designated Empowerment Zone or Enterprise Community will be presumed to be approved by HUD and meet HUD's guidelines for a Neighborhood Revitalization Strategy.

Qualifying Empowerment Zone or Enterprise Community area means an urban area designated as an Empowerment Zone or Enterprise Community pursuant to 24 CFR part 597 or nominated by one or more local governments and the State or States in which it is located for consideration of designation as an Empowerment Zone or Enterprise Community pursuant to 24 CFR part 597. The area need not have been designated an Empowerment Zone or Enterprise Community by the Secretary to be a qualifying Empowerment Zone or Enterprise Community area, but if it was not so designated it must meet the eligibility requirements for a nominated area pursuant to 24 CFR part 597, subpart B.

Unless otherwise defined herein, terms defined in 24 CFR part 570 and used in this NOFA shall have the respective meanings given thereto in that part.

(C) *Background.* EDI is intended to complement and enhance the Section 108 Loan Guarantee program (see 24 CFR 570.700–710 for regulations governing the Section 108 program). This provision of the Community Development Block Grant (CDBG) program provides communities with a source of financing for economic development (including capitalization of CIICs), housing rehabilitation, and large scale physical development projects. HUD is authorized pursuant to section 108 to guarantee notes issued by CDBG entitlement communities and nonentitlement units of general local government eligible to receive funds under the State CDBG program. Regulations governing the Section 108 program are found at 24 CFR part 570, subpart M.

The Section 108 Loan Guarantee program is authorized at $1.5 billion in loan guarantee authority in Fiscal Year 1996. Under this program, communities (and States on behalf of a State's non-entitlement community) pledge future years' CDBG allocations as security for loans guaranteed by HUD. The full faith and credit of the United States is pledged to the payment of all guarantees made under Section 108. The Section 108 program, however, does not require CDBG funds to be escrowed for loan repayment. This means that a community or State may continue to spend its existing allocation for other CDBG purposes, unless needed for loan repayment. One purpose of EDI grant funds is to further minimize the risk of Section 108 borrowing and potential loss of future CDBG allocations:

(1) By strengthening the economic feasibility of the projects financed with Section 108 funds (and thereby increasing the probability that the project will generate enough cash to repay the guaranteed loan),

(2) By directly enhancing the security of the guaranteed loan, or

(3) Through a combination of these or other risk mitigation techniques.

Through this NOFA, in addition to soliciting proposals for the typical economic development projects previously funded under the EDI grant program, HUD is particularly soliciting Homeownership Zone proposals.

(D) *Proposals to implement a Homeownership Zone.* Homeownership is a key component of the American dream and the Administration's National Homeownership Strategy. It is also one of the most important vehicles to create opportunities throughout the country and to support economic development in our neighborhoods. Increasing homeownership can serve as the engine that produces visible change and drives economic growth in distressed neighborhoods.

Homeownership Zones will build on the successes of Empowerment Zones in several key ways:

- Empowerment: Homeownership is one of the best ways to empower community residents. It provides them with a stake in their community, increases the bonds among residents, and helps low- and moderate-income residents achieve a key component of the American Dream.
- Public/private cooperation: Competitive Homeownership Zone proposals would include close collaboration between the public and private sectors, significant leveraging of private dollars, and a coordinated approach that uses homeownership as part of a larger community and economic development strategy.
- National Homeownership Strategy: Homeownership Zones will also increase homeownership levels and build stronger communities, in furtherance of the National Homeownership Strategy. The Strategy is a five-year blueprint of cooperative actions identified by 56 private and public organizations that is to achieve an all-time high level of homeownership in America by the end of the year 2000. The National Homeownership Strategy, "Partners in the American Dream," was prepared by the Department and its Partners in response to a request from President Clinton in 1995.
- Streamlined processes: Homeownership Zone proposals would indicate, where appropriate, how local processes and building and development regulations would be streamlined or modified to result in prompt and cost-effective construction.
- Emphasis on performance: Homeownership Zones will have clear performance measures and benchmarks. In addition, they will build on proven performance in Empowerment Zones and Enterprise Communities.
- Visible change: Homeownership Zones must plan to provide tangible and visible evidence of neighborhood revitalization. Proposals should involve

large tracts of previously vacant or blighted areas that would be transformed into vital and vibrant neighborhoods which can spur further community revitalization.

Homeownership Zones are intended to make a major impact in distressed neighborhoods by converting vacant, abandoned land and buildings into thriving, vibrant neighborhoods by using single-family homeownership as a catalyst for revitalization. Offering these homeownership opportunities to low- and moderate-income residents in designated neighborhoods will provide the foundation for needed commercial and economic development.

(1) A Homeownership Zone proposal must provide for significant new homeownership opportunities that will make a visible difference in a concentrated area. An application that includes at least 300 new single-family homes will be presumed to meet this standard. If the application proposes fewer than 300 such homes, the applicant must demonstrate how the strategy will make a visible difference and impact within the Homeownership Zone. It is anticipated that most newly constructed housing will be single-family housing (one to four units, including rowhouses); however, condominium and cooperative developments which contain up to four units per structure may also be included.

(2) Construction should be ready to proceed promptly. Particular attention will be paid to applications that can begin significant construction activities within 60 days of the award of the EDI grant. Therefore, it is expected as a practical matter that the most successful programs will develop land already vacant, available for development, and reasonably clear of environmental hazards and other problems. However, the program need not be limited to vacant areas and may include infill housing and rehabilitation of existing housing if the overall project meets the goal of visible and meaningful change in a concentrated area.

(3) Homeownership Zone proposals should provide for a mix of incomes in a distressed and readily identifiable neighborhood. In all likelihood, in order to achieve this income mix, it will be necessary to use other sources of funds, including housing developed through the applicant's CDBG or HOME programs, a State mortgage revenue bond program, private financing, or

Note that in order to achieve a mix of incomes within the Homeownership Zone assisted units and to also meet the CDBG national objective criterion of benefitting low- and moderate-income persons, applicants may wish to focus proposals on approved Neighborhood Revitalization Strategy areas. If an applicant has an approved Neighborhood Revitalization Strategy, all housing activities in the area, pursuant to the strategy, may, during the year in which EDI and Section 108 assistance is obligated, be considered to be a single structure for purposes of meeting the low- and moderate-income provitions. This means that 51 percent or more of the assisted units, in the aggregate, would need to be occupied by low- and moderate-income households (see 24 CFR 570.208(d)(5)(ii)) instead of 100 percent if a Neighborhood Strategy Area were not in place. Also note, that any Empowerment Zone Strategic Plan prepared for a Federally-designated Empowerment Zone Supplemental Empowerment Zone or Enterprise Community or Enhanced Enterprise Community will be presumed to be approved by HUD and meet HUD's guidelines for a Neighborhood Revitalization Strategy.

(4) It is anticipated that the developer or developers will take advantage of the most recent advances in urban housing design to create a sense of neighborhood and community through the overall plan for the area, including linkages with transit, innovative architectural design, and development of structures on a scale that encourages interaction among residents and fosters a sense of community.

(5) The essence of Homeownership Zone proposals is that the Federal EDI grant serves as a challenge to other public, private, and nonprofit partners to participate in the Homeownership Zone development. Thus, it is expected that applicants will donate land, commit to construct site improvements and public facilities, waive fees, expedite approvals of permits and plans, and otherwise act to remove impediments to the development of affordable housing. Consistent with the National Homeownership Strategy, it is further expected that the applicant will establish extensive partnerships with the private and nonprofit sectors, such as businesses, lending institutions, real estate professionals, builders, educational institutions, nonprofit organizations, religious entities, and

important factors in the award of points in the competition.

(6) Homeownership Zones are expected to include development of housing opportunities as part of a comprehensive approach and overall revitalization of the neighborhood.

(7) Homeownership Zones must incorporate clear performance measures and benchmarks. The EDI grant contract will be conditioned upon the benchmarks submitted with the application, or subsequent amendments, such that subsequent draw downs of EDI grant funds and/or related Section 108 Loan Guarantee amounts will be dependent upon accomplishment of the applicant's established benchmarks.

(8) It is anticipated that the developers and local governments will utilize, to the greatest extent possible, innovations in construction techniques and land use planning that can reduce the cost of housing construction; and, will also reform building, planning and zoning regulations so as to minimize regulatory barriers to prompt and cost-effective construction.

(9) Homeownership Zones should strive to incorporate several of the basic principles of the New Urbanism. Neighborhoods that have been designed according to these principles have typically had a finite size, defined by a comfortable walking distance from their center, and have included, for example, such characteristics as: a mix of compatible uses such as housing, shops, workplaces, parks, civic and cultural institutions; a mix of housing types to accommodate a range of incomes, ages and lifestyles; buildings with architectural variety; at the center, a public gathering space such as a square or green, one or several public buildings such as a library, community center or daycare center, and a connection to transit; edges defined by boulevards, greenbelts or other natural features; and a network of pedestrian-friendly streets, alleys, and blocks that encourage connection with adjacent neighborhoods.

Eligible Homeownership activities. With respect to the types of housing development activities that are eligible to be carried out using EDI grant and Section 108 Loan funds, a recipient or a qualified subrecipient may use such funds to:

(1) Acquire improved or unimproved real property;

(4) Assist qualified Community-Based Development Organizations to carry out a community economic development project containing a mixed-use business and housing development project consistent with 24 CFR 570.204(a)(2); and

(5) Carry out other activities eligible under 24 CFR 570.703.

Examples of Homeownership Zone housing projects using EDI grants and Section 108 Guaranteed Loan funds.

HUD provides the following examples to give applicants an idea of how they may use EDI grants and Section 108 Loan Guarantee funds to assist housing development activities. While for clarity these examples do not show the use of other Federal, State, local, and private financing, it is anticipated that comprehensive housing development strategies will maximize the use of such other sources in order to make housing development projects more financially feasible.

• *Acquisition of land for a project site.* A community may use EDI grant funds in conjunction with Section 108 Loan Guarantee funds to write-down the cost of land acquisition and thus reduce the overall development cost of the project. For example, a proposal to develop 300 units of new construction housing with a design density of 10 dwelling units per acre would require approximately 30 acres. In most urban areas, a single parcel so large does not exist and can only be created by purchasing a number of smaller parcels, often at greater expense than a single parcel of the same size would cost. This increased cost without any additional economic value generally makes redevelopment of such land economically infeasible. In this example, the cost of acquiring such sites could be as much as $200,000 per acre or $6,000,000 total. This would result in a $20,000 land acquisition cost per housing unit built. Using $3,000,000 in EDI grant funds to write-down the acquisition cost, the land acquisition cost per housing unit is reduced by $10,000.

By reducing the total project costs, EDI grant funds, when used in conjunction with the Section 108 guaranteed loans, enhance the financial security of the Section 108 guaranteed loan and improve the viability of the project.

• *Infrastructure improvements.* A

• *Substantial or "gut" rehabilitation.* If some portion of the housing development project involves the substantial rehabilitation of housing units, a community may use the EDI grant funds to write-down the cost of rehabilitation with some or all of the remainder of the rehabilitation costs financed with Section 108 Loan Guarantee funds.

For example, a community's proposal to provide 300 single-family homeowner units may include substantially rehabilitating 50 structurally sound vacant units located in the Homeownership Zone. A typical per-unit cost might include an acquisition cost of $20,000 per unit with an additional $40,000 in substantial rehabilitation for a total redevelopment cost of $60,000 per unit. EDI grant funds and Section 108 Loan Guarantee funds could be used to subsidize the acquisition and/or a portion of the rehabilitation costs.

The community may sell the home for $45,000 (an amount affordable to a low- or moderate-income family). The sales proceeds are used to repay the Section 108 guaranteed loan and the development subsidy of $15,000 is financed with the EDI grant.

Range of Proposals. In addition to requesting proposals for Homeownership Zones, HUD is also soliciting proposals for a range of economic development project proposals submitted for EDI grant and Section 108 Loan Guarantee funding.

Typical financing structures for typical economic development projects and economic development revolving loan funds.

HUD envisions that the following project structures (though not limited to them) could be typical:

Funding reserves—The cash flow generated by an economic development project may be expected to be relatively "thin" in the early stages of the project. The EDI grant can make it possible for debt service or operating reserves to be established in a way that does not jeopardize the economic feasibility of the project.

An example is a supermarket or neighborhood shopping center that is designed to provide basic services and jobs for residents in a distressed neighborhood. The public entity must be prepared to make the Section 108 loan repayments that are required to be made during the period after completion of construction and during the lease-up

establish with a trustee a reserve account (or accounts) that would be available to cover operating expenses and/or debt service during this lease-up period. While such reserves are commonplace, their cost may be so high as to make an already risky neighborhood shopping center project economically infeasible. The increased cost resulting from establishing such reserves may be defrayed by the EDI grant. As with the letter of credit example below, such reserves protect the CDBG program against the risk that CDBG funds will have to be used to cover shortfalls in the intended source for repayment of the Section 108 loan.

Over-collateralizing the Section 108 loan—The use of EDI grant funds may be structured, in appropriate cases, so as to improve the chances that cash flow will be sufficient to cover debt service on the Section 108 loan and directly to enhance the guaranteed loan. One technique for accomplishing this approach is over-collateralization of the Section 108 loan.

An example is the creation of a loan pool made up of Section 108 and EDI grant funds. The community would make loans to various businesses at an interest rate equal to or greater than the rate on the Section 108 loan. The total loan portfolio would be pledged to the repayment of the Section 108 loan. If the total loan repayments from the loan fund were twice the amount of the debt service on the Section 108 loan, the community could accumulate a loan loss reserve that would mitigate virtually any risk to future CDBG funds.

Direct enhancement of the security of the Section 108 loan—The EDI grant can be used to cover the cost of providing enhanced security. An example of how the EDI grant can be used for this purpose is by using the grant funds to cover the cost of a standby letter of credit, issued in favor of HUD. This letter of credit will be available to fund amounts due on the Section 108 loan if other sources fail to materialize and will, thus, serve to protect the public entity's future CDBG funds.

Provision of financing to for-profit businesses at a below market interest rate—While the rates on loans guaranteed under Section 108 are only slightly above the rates on comparable U.S. Treasury obligations, they may nonetheless be higher than can be afforded by businesses in severely economically distressed neighborhoods. The EDI grant can be used to make

to both new and existing businesses at very low interest rates for some period of time until each business has reached a stabilized and profitable level of operation. EDI grant funds could serve to "buy down" the interest rate up front, or make full or partial interest payments, allowing the businesses to be financially viable in the early start-up period not otherwise possible with Section 108 alone. This strategy would be particularly useful where a community was undertaking a large commercial/retail project in a distressed neighborhood to act as a catalyst for other development in the area. The use of EDI/Section 108 funds for financing the commercial/retail project along with providing financial assistance to neighboring new or existing businesses within the target area would create complementary economic activity and enhance the financial viability of all assisted activities.

(E) *Timing of Grant Awards.* To the extent a full Section 108 application is submitted with the EDI grant application, the Section 108 application will be evaluated concurrently with the request for EDI grant funds. Note that EDI grant assistance cannot be used to support a Section 108 Loan Guarantee approved prior to the date of the publication of this NOFA. (See II.B. of this NOFA.) However, the EDI grant may be awarded prior to HUD approval of the Section 108 Loan Guarantee commitment if HUD determines that such award will further the purposes of the Act. HUD notification to the grantee of the amount and conditions (if any) of EDI funds awarded based upon review of the EDI application shall constitute an obligation of grant funds, subject to compliance with the conditions of award and execution of a grant agreement.

Notwithstanding HUD's approval and announcement of an EDI grant award, HUD cannot actually disburse EDI grant funds for approved activities until after the execution of a grant agreement and after HUD guarantees the notes evidencing the related Section 108 loans. It is anticipated that final EDI Grant Agreements and final Section 108 note guarantee documents will be executed concurrently.

(F) *Limitations on the Ratio of EDI grant funds to Section 108 Loan Guarantee funds.* HUD reserves the right to determine a minimum or a maximum amount of any EDI grant award or Section 108 Loan Guarantee award per applicant, application, or project and to modify requests accordingly.

HUD expects to approve EDI grant amounts for approvable applications at a range of ratios of EDI grant funds awarded to new Section 108 loan guarantee commitments. For example, an applicant could request an EDI grant of $1 million and propose to leverage only $1 million in new Section 108 loan guarantee commitments and another applicant could request an EDI grant of $1 million and propose to leverage $5 million in new Section 108 loan guarantee commitments. However, in no event will HUD make an award in which the amount of EDI funds awarded exceeds the amount of new Section 108 commitments. Of course, even in the first example above, applicants remain free to propose a greater leverage ratio of new Section 108 to EDI grant funds, for example $5 million of new Section 108 to $1 million of EDI grant funds. All applicants should discuss why their project requires the particular level of EDI grant assistance to Section 108 loan guarantee funds in their response to the Selection Criterion—"Extent of need for EDI assistance to financially support the Section 108 loan and the project"—in section II.(C)(2) described below. It is understood that certain activities such as housing-related activities for Homeownership Zones or capitalization of a CIICs may not be able to support Section 108 guaranteed loans without equivalent amounts of EDI grant funds.

EDI grant funds may not be used to substitute for the Section 108 financed activity, or to immediately repay the Section 108 loan. For example, a recipient of an EDI grant may not undertake land assemblage for an economic development project with a loan guaranteed by Section 108 and upon completion of all acquisition repay the Section 108 guaranteed loan with the EDI grant. A recipient may, however, acquire land with a combination of an EDI grant and Section 108 guaranteed loan funds.

In the case of an applicant that has received a prior EDI grant award, the Department reserves the right to consider the amount of the previous EDI award and the grant amount requested in response to this NOFA and to adjust the amount of an EDI award under this NOFA, including, if appropriate, not making an award.

In the event the applicant is awarded an EDI grant that has been reduced below the original request, the applicant will be required to modify its project plans and application to conform to the terms of HUD approval before execution of a grant agreement and/or a Section 108 Loan Guarantee commitment. HUD reserves the right to reduce or de-obligate the EDI grant award if an approvable Section 108 loan guarantee application is not submitted by the grantee in the required amounts on a timely basis. After approval of the EDI grant, any requested modifications must be within the scope of the original EDI application or upon re-ranking must score at or above the lowest score obtained by the lowest ranked application that was funded.

In the case of requested amendments to an approved Section 108 loan guarantee commitment (as further discussed in paragraph II.B.), the EDI assistance approved will be based on the increased amount of Section 108 loan guarantee assistance.

(G) *Eligibility to apply for grant assistance.* Any public entity eligible to apply for Section 108 loan guarantee assistance pursuant to § 570.702 may apply for grant assistance under Section 108(q) and this NOFA. ELIGIBLE APPLICANTS ARE CDBG ENTITLEMENT UNITS OF GENERAL LOCAL GOVERNMENT AND NON-ENTITLEMENT UNITS OF GENERAL LOCAL GOVERNMENT ELIGIBLE TO RECEIVE LOAN GUARANTEES UNDER § 570.702. Note that effective January 25, 1995, nonentitlement communities in the States of New York and Hawaii were authorized to apply to HUD for Section 108 loans. Thus nonentitlement communities in all 50 States and Puerto Rico are now eligible to participate in the Section 108 and EDI programs.

(H) *Eligible activities.* EDI grant funds may be used for:

(1) Activities listed at § 570.703, provided such activities are carried out as part of an economic development project, including a Homeownership Zone proposal. If the applicant is awarded points for activities and projects under selection criterion II.(C)(6)(b) (Proposals Addressing Special Need), the applicant is required to continue to use any funds awarded for such activities and projects under this NOFA and Program Guidelines to benefit the Qualifying Empowerment Zone or Enterprise Community area.

(2) Payment of costs of private financial guaranty insurance policies, letters of credit, or other credit enhancements for the notes or other obligations guaranteed by HUD pursuant to Section 108, provided such notes or obligations are used to finance an economic development project. Such enhancements shall be specified in the contract required by § 570.705(b)(1), and shall be satisfactory in form and substance to HUD for security purposes.

(3) The payment of principal or interest due (including such servicing, underwriting, or other costs as may be authorized by HUD) on the notes or other obligations guaranteed pursuant to the Section 108 loan guarantee program.

(4) Capitalization of Community and Individual Investment Corporations (CIICs) serving low- and moderate-income areas. A Community and Individual Investment Corporation is a type of economic development revolving loan fund designed to stimulate asset building among low- and moderate-income persons and return these assets to the community in the form of investments in economic development activities. Section 108 funds and EDI grant funds are used to capitalize the for-profit Community and Individual Investment Corporation. The CIIC provides financial services to residents and businesses in a low- and moderate-income area. Section 108 and EDI grant funds may be provided as permanent capital to the Corporation. The Section 108 funds may be provided to the Corporation in various ways such as a loan, as equity, or as other creative mechanisms with appropriate terms to allow for the repayment of the Section 108 guaranteed loan. The EDI grant funds, when provided as part of the Corporation's permanent capital act as the ultimate security for the repayment of the Section 108 guaranteed loan in the event that there are losses in the Corporation's overall operations. If the Corporation is chartered so that its service area is limited to a qualifying low- and moderate-income area, and the Corporation provides economic development financial assistance and services (eligible pursuant to 24 CFR 570.203) to the residents and businesses of the low- and moderate-income area, then the Corporation as a whole can meet the CDBG national objectives of benefitting a low- and moderate-income area. It is important to emphasize that there is a fundamental difference between a CIIC and a Community Development Financial Institution (CDFI). CDFIs are private and community initiated financial institutions which may apply for part of their capitalization to the federal government (the CDFI Fund which is part of the Department of the Treasury). By contrast, in the case of CIICs, the process of formation is initiated by a public entity as part of its community development strategy. (A complete description of the CIIC model is available in a CIIC guide that may be requested from HUD. Please call Community Connections at 1–800–998–9999 to request a copy of the guide.)

(5) EDI grants *shall not be used* as a resource to immediately repay a loan guaranteed by Section 108. For example, Section 108 guaranteed loan proceeds cannot be used to acquire land for an economic development project and immediately upon the purchase of the land use EDI grant funds to repay the Section 108 guaranteed loan. However, it would be acceptable to use EDI grant funds in combination with loan funds guaranteed by Section 108 to acquire land.

(I) *Neighborhood Revitalization Strategies.* If an applicant has not been designated an Empowerment Zone or Enterprise Community and has not previously submitted a Neighborhood Revitalization Strategy for HUD approval, an applicant may submit such a strategy with its EDI grant application. If HUD has not approved the Neighborhood Revitalization Strategy by the time that HUD announces awards under this NOFA, and if the applicant has ranked high enough to receive an EDI grant, HUD may condition such award upon approval of the applicant's Neighborhood Revitalization Strategy. If after a reasonable period of time, but not less than 60 days after the award, unless an exception is granted by HUD for good cause, HUD is not able to approve the applicant's Neighborhood Revitalization Strategy, HUD may ask the applicant to amend or modify its program or if that's not possible HUD may cancel the EDI grant award proceed to fund additional grant(s) in rank order, beginning with the first applicant just below the original cut-off line for funding.

(J) *Catalogue of Federal Domestic Assistance (CFDA).* The EDI program CFDA number is "14.246." Please insert this number on the SF 424 as appropriate.

(K) *Section 3.* Additionally, assistance provided under this NOFA is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, and the implementing regulations in 24 CFR part 135, as amended by an interim rule published on June 30, 1994 (59 FR 33866). Section 3 requires that to the greatest extent feasible, and consistent with Federal, State, and local laws and regulations, job training, employment and other contracting opportunities generated from certain HUD financial assistance be directed to low- and very-low income persons. The eligible activities for which funding is provided under this NOFA are consistent with the objectives of section 3. Public entities awarded funds under this NOFA and that intend to use the funds for housing rehabilitation, housing construction, or other public construction must comply with the applicable requirements of the interim regulations published on June 30, 1994.

II. The Application Process

Public entities seeking EDI assistance must apply in accordance with this NOFA. The EDI application shall be accompanied by a request for a Section 108 loan guarantee commitment, as further described in Section II.B. of this NOFA below. Application requirements for the Section 108 program are found at § 570.704.

(A) *Timing of submission.* Applications for EDI assistance shall be received at HUD Headquarters in the manner described under "Dates" and "Addresses" above.

(B) *Submission requirements.* (1) The EDI application (an original plus two copies) shall be accompanied by a request for loan guarantee assistance under Section 108. The request for Section 108 loan guarantee can be either one or more of the following:

(a) A formal application for Section 108 loan guarantee(s), including the documents listed at § 570.704(b);

(b) A brief description of a Section 108 loan guarantee application(s) to be submitted within 60 days (with HUD reserving the right to extend such period for good cause on a case-by-case basis) of a notice of EDI selection (EDI awards will be conditioned on approval of actual Section 108 loan commitments). This description must be sufficient to support the basic eligibility of the proposed project or activities for Section 108 assistance;

(c) If applicable, a copy of a Section 108 loan guarantee approval document with grant number and date of approval (which was approved *after* the date of this NOFA, except in conjunction with a previous EDI award); or

(d) A request for a Section 108 loan guarantee amendment (analogous to subparagraph (a) or (b) above) that proposes to increase the amount of a previously approved application.

(e) However, any amount of Section 108 loan guarantee authority approved *before* the date of this NOFA is not eligible to be used in conjunction with an EDI grant under this NOFA. Further, a Section 108 loan guarantee amount that is required to be used in conjunction with a prior EDI grant award, whether or not the Section 108 loan guarantee has been approved as of the date of this NOFA, is not eligible for an EDI award under this NOFA. For example, if a community has a previously approved Section 108 loan guarantee commitment of $12 million, even if none of the funds have been utilized, or if the community had previously been awarded an EDI grant of $1 million and had certified that it would submit a Section 108 loan application for $10 million in support of that EDI grant, the community's application under this NOFA must propose to increase the amount of its

total Section 108 loan guarantee commitments beyond those amounts (the $12 million or $10 million in this example) to which it has previously agreed.

(f) Applicants should note that an application for a Section 108 Loan Guarantee commitment requires that the applicant certify that it has made efforts to obtain financing without the use of the Section 108 Loan Guarantee and that it cannot complete such financing consistent with the timely execution of the program plans without the Section 108 Loan Guarantee.

(2) In addition, an application for EDI grant funds shall include the following:

(a) SF 424, Application for Federal Assistance.

(b) The certification regarding lobbying required under 24 CFR part 87 (Appendix A). The applicant may use the lobbying certification published with this NOFA.

(c) A narrative statement providing a description of the activities that will be carried out with the EDI grant funds and explaining how the use of EDI grant funds meets the criteria in paragraph II.(C) below. The narrative statement shall clearly state whether the proposal is for (i) a Homeownership Zone, (ii) a CIIC, or (iii) another economic development project.

In addition to the above, HUD encourages applicants to submit maps and related information generated by the community's Consolidated Plan computer software with their applications.

The Homeownership Zone description shall:

- Identify and describe the boundaries, the approximate size, and population size of the Zone;
- Include a map of the neighborhood (Note that the Office of Community Planning and Development's Consolidated Plan computer software is available for applicants to use in defining their zone area, planning and coordinating revitalization activities, and illustrating how zone activities will produce visible change. HUD encourages applicants to submit maps and other data generated with this software with their applications.); and
- Describe the activities to be carried out with the EDI grant, how they will create visible change and are part of a larger comprehensive revitalization effort, and how they meet the selection criteria, including performance measures and benchmarks for these activities.

Where appropriate, the Homeownership Zone proposal should also indicate how local processes and building development regulations have been or would be streamlined or modified to ensure prompt and cost-effective construction or rehabilitation. Identify who or which agency will carry out each activity, the estimated cost and funding sources, and the timetable for completion.

The Community and Individual Investment Corporation (CIIC) description shall

- Identify and describe the service area.
- Include a draft business plan with financial projections for not less than a five year period.
- Describe a plan for marketing shares of the CIIC to residents of the service area.

(d) The narrative statement and the response to all of the selection criteria in II.(C) below should preferably not exceed thirty (30) 8.5" by 11" pages.

(3) Where relevant, applications shall be deemed to include a copy of the strategic plan for community revitalization previously submitted to HUD as part of a Federal Empowerment Zone or Enterprise Community application pursuant to a Notice inviting applications, published on January 18, 1994 at 59 FR 2711, or any approved Neighborhood Revitalization Strategy covering the approved Homeownership Zone.

(C) *Selection Criteria.* All applications will be considered for selection based on the following criteria. As described in section II.(B)(2)(d) above, each applicant's response to the narrative statement and all of the selection criteria should preferably not exceed thirty (30) 8.5" by 11" typewritten pages. Each application will receive only one score. Applicants should not mix more than one type of proposal in a single application, but may submit a separate application for each project type.

(1) Distress—(up to 20 points). In evaluating this criterion, HUD will consider the level of distress in the immediate community/neighborhood to be served by the project and the jurisdiction applying for assistance. Note that in previous EDI competitions, poverty rates for the community/neighborhood area served by the project were often considered the best indicator of distress levels, although the applicant may demonstrate the level of distress with other factors indicative of distress such as income, unemployment, drug use, homelessness and other indicators of distress. Also, in previous competitions, all other factors being equal, an indicator of distress in the immediate community/neighborhood area to be served by the project that was greater than the general level of distress in the applicant's overall jurisdiction as a whole had a greater impact on the score under this criterion.

(2) Extent of need for EDI assistance to financially support the Section 108 loan and the project—(up to 10 points).

(a) HUD will use the following information to evaluate this criterion. In addition to the information listed below, HUD will also consider the information in (b) below for proposals for Homeownership Zones. In utilizing the information in this subparagraph (a), HUD will consider the extent to which the applicant's response demonstrates the financial need for the EDI grant to financially support the loan guaranteed by the Section 108 Loan Guarantee commitment and enhance the viability of the project. Additionally, the score may be increased within this criterion to the extent other funds (non-Federal public or private) are leveraged. Note that if the applicant proposes a generic loan fund to assist a certain category of project or businesses, the applicant should demonstrate why the use of Section 108 loans to assist such businesses would not be financially feasible without EDI grant assistance. Relevant information may include:

(i) Project costs and financial requirements;

(ii) The amount of any debt service or operating reserve accounts to be established in connection with the economic development project;

(iii) The reasonableness of the costs of any credit enhancement paid with EDI grant funds.

(iv) The amount of program income (if any) to be received each year during the repayment period for the guaranteed loan;

(v) Interest rates on those loans to third parties (other than subrecipients) (either as an absolute rate or as a plus/minus spread to the Section 108 rate);

(vi) Underwriting guidelines used (or expected to be used) in determining project feasibility;

(vii) The extent to which federal funds provided as a result of the Federal Empowerment Zone/Enterprise Community designation process may be utilized for the proposed EDI project; and

(viii) Other relevant information.

(b) In addition to the information in (a) above, HUD will consider the use of the following to evaluate Homeownership Zone proposals:

(i) The leveraging of other non-Federal public and private resources for housing and;

(ii) The extent to which the EDI and Section 108 financial assistance achieves affordability and marketability for lower-income households while

ensuring the financial viability of the Section 108 Guaranteed loan.

(3) The extent to which the proposal, compared to other proposals for similar types of activities, e.g. Homeownership Zones or other traditional economic development proposal, leverages other non-Federal public and private resources, in addition to loan funds guaranteed under the Section 108 Loan Guarantee program (up to 15 points). For Homeownership Zone Proposals: Leveraged funds include State and local public funding and private financing. Leveraged funds may also include donations of land, nonprofit organizations' commitments of financing and volunteer labor, and waivers of local fees or taxes.

(4) Quality of the plan—(up to 60 points). HUD will consider the quality of the applicant's plan for the use of EDI funds and Section 108 loans, including the extent to which the applicant's proposed plan for the effective use of EDI grant/Section 108 loan guarantee will address its described need in the applicant's immediate community and/or its jurisdiction, and the extent to which the plan is logically, feasibly, and substantially likely to achieve its stated purpose. HUD will also consider the extent to which the proposal includes public/private partnerships, i.e. the involvement of groups such as non-profit organizations, builders/developers and others. In addition to the above, HUD will use the criteria in (a) below to evaluate this factor for Homeownership Zones:

(a) Proposals for Homeownership Zones: The extent to which the plan demonstrates a logical, feasible, and efficient approach to addressing the Zone's problems; a high likelihood of success; and the ability to begin implementation and construction almost immediately after grant approval. HUD will also consider the following:

(i) the number of new homeownership opportunities;

(ii) how quickly construction can begin, and how quickly results will be achieved;

(iii) the mix of incomes;

(iv) the use of recent advances in urban housing design to create a sense of neighborhood and community;

(v) the degree to which the applicant provides for a comprehensive approach to neighborhood revitalization;

(vi) the clarity and feasibility of performance measures, including interim benchmarks, timeliness for construction, and other clear deliverables;

(vii) the level of involvement of the community in the preparation of revitalization plans, whether there is an ongoing role for the community residents in implementing the plan, and a clear strategy for ensuring that residents will benefit from the new homeownership opportunities. Evidence of such benefits to residents may include marketing the new housing to existing residents of the neighborhood, training of neighborhood residents in construction skills, and assistance in establishing and expanding neighborhood-owned businesses.

(b) Due to an order of the U.S. District Court for the Northern District of Texas, Dallas Division, with respect to any application submitted by the City of Dallas, Texas, HUD's consideration of the quality of the plan will consider the extent to which the applicant's plan for the use of EDI funds and Section 108 loans will be used to eradicate the vestiges of racial segregation in the Dallas Housing Authority's programs consistent with the Court's order.

(5) The capacity or potential capacity of the public entity to successfully carry out the plan—(up to 15 points). This may include factors such as the applicant's performance in the administration of its CDBG, HOME or other programs, including, for Homeownership Zone proposals, whether the applicant has been recognized by the National Partners in Homeownership as having formed, and is effectively implementing a Local Partnership consistent with the National Homeownership Strategy; its previous experience, if any, in administering a section 108 loan guarantee; its performance and capacity in carrying out economic development projects; its ability to conduct prudent underwriting; its capacity to manage and service loans made with the guaranteed loan funds or EDI grant funds; its capacity to carry out its projects and programs in a timely manner; and, if applicable, its capacity to manage projects under this NOFA along with any federal funds awarded as a result of a federal urban Empowerment Zone/Enterprise Community designation.

The capacity of subrecipients, nonprofit organizations and other entities that have a role in implementing the proposed program will be included in this review. HUD may rely on information from performance reports, financial status information, monitoring reports, audit reports and other information available to HUD, in making its determination under this criterion.

(6) Applicants will be rated on both criteria (a) and (b) (if applicable) below, but will receive points for only the higher rated criterion of the two, but not both.

(a) The extent to which the proposed plan follows a comprehensive and coordinated approach in addressing the community and economic development needs of the public entity and furthers neighborhood revitalization—(up to 20 points).

(b) Proposals Addressing Special Need—(Applicants to which this criterion does not apply need not respond thereto.) (up to 20 points). Of the 20 points under this factor, one point will be awarded to applicants that received a federal urban Empowerment Zone or Enterprise Community designation and up to 19 additional points will be awarded to applicants that propose EDI and Section 108 loan assisted activities that will benefit the applicant's Qualifying Empowerment Zone or Enterprise Community area and are consistent with the applicant's Strategic Plan; and

(7) Innovation and creativity—(up to 20 points). The extent to which the applicant incorporated innovation and/or creativity in the design and proposed implementation of the proposed activities carried out with Section 108/EDI funds. In addition to the above, HUD will use the criteria below to evaluate this factor for Homeownership Zones:

Proposals for Homeownership Zones. The extent to which the applicant proposes a unique approach to increasing homeownership or expanding economic opportunity, or incorporates innovation and/or creativity in the design and implementation of the proposed activities carried out with the EDI grant and Section 108 funds, including community planning, urban design, housing architecture, and construction methods and materials.

(D) Selection Process—Once all proposals are scored under the selection criteria above, applications for Homeownership Zones and CIICs will each have 10 additional points added to its total score. Then, all applications will be ranked in order of points assigned, with the applications receiving more points ranking above those receiving fewer points. Applications will be funded in rank order, however, HUD, in its sole discretion, may choose to award EDI assistance to a lower rated approvable application over a higher rated application in order to increase the level of geographic diversity of grants approved under this part. The parameters of any diversity factors used in the selection process will be described in writing by the panel and/

or selecting official, and consistently applied in the final selections. However, no application will be funded for geographic diversity that does not have a selection score of at least 80 points.

As discussed in paragraph I.(F) above, HUD reserves the right to determine a minimum and a maximum amount of any EDI award or Section 108 commitment per applicant, application or project and to modify requests accordingly. In addition, if HUD determines that an application rated, ranked and fundable could be funded at a lesser EDI grant amount than requested consistent with feasibility of the funded project or activities and the purposes of the Act, HUD reserves the right to reduce the amount of the EDI award and/or increase the Section 108 loan guarantee commitment, if necessary, in accordance with such determination.

HUD may decide not to award the full amount of EDI grant funds available under this NOFA and may make any remaining amounts available under a future NOFA.

To review and rate applications, the Department may establish panels including persons not currently employed by HUD to obtain certain expertise and outside points of view, including views from other Federal agencies.

(E) Timing of grant awards—To the extent full Section 108 applications are submitted concurrently with the EDI grant application, HUD's approval of the related Section 108 loan guarantee commitment will in most cases be granted contemporaneously with EDI grant approval. However, the EDI grant may be awarded prior to HUD approval of the Section 108 commitment if HUD determines that such award will further the purposes of the Act. EDI funds shall not be disbursed to the public entity before the issuance of the related Section 108 guaranteed obligations.

III. Technical Assistance

To the extent permitted by law, HUD may advise applicants of technical deficiencies in the EDI applications after submission and permit them to be corrected. Technical deficiencies relate only to items, such as a failure to submit or sign a required certification, that would not improve the substantive quality of the application relative to the selection criteria. Applicants will have 14 calendar days from the date HUD notifies the applicant of any such technical deficiency to submit the appropriate information in writing to HUD. At any time during the selection process, which began with preparation of this NOFA, HUD staff are limited in the assistance they are permitted to provide regarding applications for EDI grants, due to the requirements of the HUD Reform Act. The assistance and advice that can be provided includes such activities as explaining and responding to questions about program regulations or generally discussing strengths and weaknesses observed in applications during previous competitions, the dates by which decisions will be made and the procedures that are required to be performed to process an application. The term "technical assistance" however, does not include advising the applicant how to make substantive improvements in its application that will affect ratings.

In addition, any information published in the **Federal Register** and in this NOFA, and any information that has been made public through a means other than the **Federal Register** or NOFA, may be discussed.

HUD staff will be available throughout the EDI application period to provide extensive advice and assistance, as is currently provided, to develop 108 loan applications since the 108 program is not subject to the HUD Reform Act. Staff providing such assistance may provide technical advice to the EDI selection panel but *in no case* will such staff participate in the panel's voting process for EDI awards under this NOFA.

IV. Other Matters

Environmental Impact. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410.

Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government. While the NOFA offers financial assistance to units of general local government, none of its provisions will have an effect on the relationship between the Federal Government and the States, or the States' political subdivisions.

Family. The General Counsel, as the Designated Official for Executive Order 12606, *The Family*, has determined that the policies announced in this NOFA would not have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. No significant change in existing HUD policies and programs will result from issuance of this NOFA, as those policies and programs relate to family concerns.

Section 102 of the HUD Reform Act. Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published, at 57 FR 1942, a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

Section 103 of the HUD Reform Act. HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989, codified as 24 CFR part 4, apply to this funding competition. The requirements of the regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics-related questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel or Headquarters counsel for the program to which the question pertains.

Prohibition Against Lobbying Activities. The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Dated: July 11, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signed: _____

(Print name and title)

Date: _____

24 CFR Part 87, Appendix A1

[FR Doc. 96–18012 Filed 7–15–96; 11:55 am]

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Tuesday
July 16, 1996

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 125, 129, and 135
Revisions to Digital Flight Data Recorder Rules; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, 129, and 135

[Docket No. 28109; Notice No. 96–7]

RIN 2120–AF–76

Revisions to Digital Flight Data Recorder Rules

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise and update the Federal Aviation Regulations to require certain operators to record additional digital flight data recorder (DFDR) parameters. These revisions follow a series of safety recommendations issued by the National Transportation Safety Board (NTSB) and the Federal Aviation Administration's (FAA) decision that the DFDR rules should be revised to upgrade recorder capabilities in most transport airplanes. These revisions would allow additional information to be collected to ensure more thorough accident or incident investigation and to enable industry to predict certain trends and make necessary modifications before an accident or incident occurs.

DATES: Comments on the proposed revisions to parts 121, 125, and 135 must be received by August 15, 1996. Comments on the proposed revisions to part 129 must be received by November 13, 1996.

ADDRESSES: Comments on this notice should be mailed, in triplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28109, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 28109. Comments may also be submitted electronically to the following Internet address: nprmcmts@mail.hq.faa.gov. Comments may be examined in Room 915G weekdays, except on Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Frank Rock, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–9567.

proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental energy, federalism, or economic impact that might result from adopting the proposal in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposal contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 28109." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the Federal Register's electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Register's webpage at http://www.access.gpo.gov/su_docs for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket

Distribution System, that describes the application procedure.

Background

Statement of the Problem

The NTSB has submitted recommendations to the FAA to require the recordation of additional parameters on certain flight data recorders. These recommendations were submitted in response to accidents involving two Boeing 737 aircraft that were operated by two different air carriers. Both airplanes were equipped with flight data recorders (FDR's), but in neither case did the FDR provide sufficient information about airplane motion and flight control surface positions during the accident sequence to enable the NTSB to determine a probable cause in either accident.

The history of aircraft accidents and the lack of information that has inhibited proper investigation of their causes is much broader than recent experience with the Boeing 737. Historical records of airplane incidents suggest that additional, reliable data for the entire fleet of transport category airplanes is necessary to identify causes of these incidents before accidents occur. This proposed rule seeks to expand the data collection requirements to include all parameters that can cost-effectively be collected.

History of FDR Regulations

Since the original development of foil flight recorders, both the FAA and the NTSB have relied heavily on the data retrieved from them to aid in accident and incident investigation. The limited capability of the 6-parameter foil recorder made it virtually impossible to fully identify the probable cause of certain accidents, such as those related to windshear. Until the advent of more sophisticated flight data recorders, many accidents were assumed to be caused by pilot error since no other viable alternative could be identified. The high failure rate of those recorders and their limited recording capabilities led Congress to require the use of improved recorders.

On March 25, 1987, the FAA promulgated a final rule that required operators, by May 26, 1995, to install improved (11-parameter digital) flight data recorders [DFDR's] on all airplanes type certificated on or before September 30, 1969, and operated under part 121

that revealed a high failure rate for metal foil flight recorders. The data revealed that 37 recorders (48 percent) had one or more malfunctioning parameters preceding the accident or incident, preventing the recording or readout of pertinent data.

On July 11, 1988, the FAA promulgated a final rule that required the recording of additional parameters for certain newer airplanes. Airplanes manufactured after May 26, 1989, and certain other airplanes were required to have a DFDR that would record 17 or more parameters.

In August 1991, the Air Transport Association (ATA) petitioned the FAA for an exemption from § 121.343(c). The ATA stated that the 1994 compliance date for the DFDR retrofit was inappropriate when considering the schedule for either retrofitting airplanes with nose abatement equipment or retiring airplanes in order to comply with the Stage 3 transition mandated in September 1991 (56 FR 48628, September 25, 1991). The FAA denied the ATA exemption request, stating that the Stage 3 transition rule did not mandate the retirement of any Stage 2 airplanes. The FAA pointed out that noise abatement equipment was expected to be available for virtually the entire active fleet.

In June 1992, the ATA again requested that the FAA extend the May 26, 1994, DFDR compliance date for its members and similarly situated operators. In the alternative, the ATA requested that the FAA establish a delayed DFDR retrofit schedule that coincided with the Stage 3 transition interim compliance dates to avoid having to install new DFDR's on airplanes that were scheduled to be retired. The ATA asserted that the compliance deadline would require its members to install DFDR's on Stage 2 airplanes that would be retired within 5½ years of the May 1994 compliance date to remain in compliance with the part 91 noise operating rule. The ATA asserted that this DFDR retrofit requirement for State 2 airplanes would impose substantial costs on them with little perceived benefit.

On January 29, 1993, the FAA granted an exemption to ATA members to operate certain Stage 2 airplanes equipped with DFDR's that have 6 rather than 11 operational parameters until the aircraft are retired, but no later than December 31, 1998.

carriers, and that a change to the rule was necessary. As justification for this proposed change, the ATA stated in its petition that there would be significant compliance costs and that there were problems with the technical requirements of DFDR installation.

In January 1994, to further support its petition, the ATA presented updated information indicating that conditions in the industry had changed further, and that meeting the May 26, 1994, compliance date would be impossible for a significant number of Stage 2 airplanes because of changes in fleet plans, and equipment availability and certification difficulties.

Although the FAA was unable to support the ATA position, the agency stated that some relief was needed from the combined impact of the Stage 3 transition and DFDR retrofit rules and the then-current equipment availability problems, at least as far as Stage 2 airplanes were concerned. Accordingly, in May 1994, the FAA amended § 121.343(c) to provide to part 121 operators up to one year of relief for the retrofit of Stage 2 airplanes that were subject to the noise transition requirements of 14 CFR part 91. The extension of the compliance date for 11-parameter DFDR's on Stage 2 airplanes to May 1995 was intended to allow operators to retire some of the affected airplanes as of the December 31, 1994, noise compliance deadline, and to acquire the necessary equipment for the remaining Stage 2 airplanes. No problems with meeting the 1995 compliance date were reported.

NTSB Recommendations

On February 22, 1995, the NTSB submitted recommendations A–95–25, A–95–26, and A–95–27, which recommended that the FAA require upgrades of the flight data recorders installed on certain airplanes to record certain additional parameters not required by the current regulations. As justification for these recommendations, the NTSB submitted background information. The full recommendation has been placed in the docket for this rulemaking and is summarized below.

On September 8, 1994, a USAir Boeing 737–300, flight 427, was on a scheduled passenger flight from Chicago, Illinois, to Pittsburgh, Pennsylvania. During the approach to Pittsburgh, the airplane suddenly rolled to the left and pitched down until it

continuing, and no probable cause has yet been determined.

On March 3, 1991, a United Airlines Boeing 737–291, flight 585, was on a scheduled passenger flight from Denver to Colorado Springs, Colorado. As the airplane was completing the turn to final approach, it rolled rapidly to the right and pitched down, reaching a nearly vertical attitude before it struck the ground. The airplane was destroyed; none of the five crewmembers or 20 passengers survived. In its report, the NTSB was unable to make a determination of probable cause of the accident.

Both airplanes were equipped with flight data recorders. In neither case did the recorder provide information about airplane motion and flight control surface positions during the accident sequence that the NTSB has stated would be important in determining a probable cause of the accident.

In the Colorado Springs accident, five flight data parameters—altitude, airspeed, heading, vertical acceleration, and microphone keying—were recorded by the FDR in accordance with § 121.343 for airplanes of its age. The FDR of the airplane involved in the Colorado Springs accident was not required to record other parameters that the NTSB has cited as critical to its accident investigation, including airplane pitch and roll attitude, engine thrust values, lateral and longitudinal acceleration, control wheel position, rudder pedal position, and the position of control surfaces such as the rudder, aileron, and spoiler.

The Aliquippa accident also involved a Boeing 737, but that airplane's FDR system had been retrofitted with six additional parameters in anticipation of the 1995 deadline for these enhancements. However, the additional parameters did not include information on the positions of cockpit controls, flight control surface position, lateral acceleration, or autopilot status parameters that the NTSB has stated hampered its continuing accident investigation. In a public hearing on the accident, conducted by the NTSB in Pittsburgh, Pennsylvania, on January 23–27, 1995, witnesses from the FAA, aircraft manufacturers, and airlines agreed that additional FDR parameters would have assisted the NTSB in determining the probable cause of this accident.

Had the airplanes involved in the

surface movements, configuration changes, or autopilot status changes that may have been involved in the loss of airplane control. This information from the additional parameters might also have allowed the NTSB to rule out certain factors, if warranted, and to focus its investigations on other areas.

The NTSB has stated that the additional data parameters recorded on some FDR's substantially aided its investigation of two regional airline accidents that occurred during 1994. The first accident occurred on October 31, 1994, while an American Eagle ATR–72–210, flight 4184, was on a scheduled flight from Indianapolis, Indiana, to Chicago, Illinois. The flight had been placed in a holding pattern over Roselawn, Indiana, because of weather delays at O'Hare Airport. The flight was cleared to remain in the holding pattern and to descend from 10,000 to 8,000 feet. The airplane rolled to the right, entered a steep descent, and struck the ground. None of the 64 passengers or 4 crewmembers survived. The NTSB's continuing investigation has not yet determined the probable cause of the accident; however, information from the enhanced FDR enabled the NTSB to identify, within hours after receiving the recorder in its laboratories, the key events leading to the airplane's departure from controlled flight and the events during its final descent.

The ATR–72 was equipped with an FDR that recorded 98 parameters, including vane angle of attack (VAOA), aileron bellcrank position, flap position, aileron trim position, and autopilot engagement status. The FDR data showed that, as the airplane was descending through 9,400 feet, the wing flaps began to retract and the airplane's VAOA increased. As the VAOA reached 5 degrees, the autopilot disengaged, and within ¼ second the ailerons deflected to near maximum travel in the right-wing-down direction. The FDR data also showed that the rolling moment was reversed when the VAOA was reduced to below 5 degrees and the ailerons deflected in the left-wing-down direction. The right rolling moment recurred as the VAOA again increased to 5 degrees and the ailerons deflected in the right-wing-down direction. Control of the airplane was not restored in time to prevent impact with the ground.

The data available from the ATR–72 FDR indicated to investigators that the airplane rolled as expected in response to aileron control surface movements, and that the aileron movements were correlated with increases in the airplane's angle of attack. As a result, the NTSB was able to focus its efforts on possible explanations for the aileron control surface movements and, within days of the accident, the NTSB issued safety recommendations to minimize the likelihood of similar occurrences in the future. As part of its continuing investigation, the NTSB is also examining readouts from FDR's with expanded parameters from seven other ATR airplanes that have reportedly encountered flight control anomalies, three of which have shown similarities to those recorded before the accident.

In the second accident, on February 1, 1994, an American Eagle Saab 340B, flight 3641, was approaching Baton Rouge, Louisiana, on a scheduled passenger flight from Dallas/Fort Worth, Texas. As the airplane descended through 9,000 feet, both engines failed. The flightcrew executed a forced landing at False River Air Park in New Roads, Louisiana, during which the airplane sustained substantial damage. A flight attendant received minor injuries during the emergency evacuation. The 2 pilots and 23 passengers aboard were not injured.

The FDR installed on the Saab 340B recorded 128 parameters. Data from the FDR showed that as the airplane descended through 9,040 feet, there was a rapid rise of both propellers' rotational speed to well above the maximum allowable revolutions per minute. Because the FDR was equipped to capture the positions of the engine power levers as well as the engine RPM's, the NTSB was able to determine that at the same time the propeller speed increased, the power levers moved from the flight idle gate position to aft of the ground idle detents. The airplane's approved flight manual prohibits such power lever movements while in flight. This flightcrew action explained the propeller overspeed, which resulted in dual engine failure. With the expanded FDR data, the NTSB was able to rule out alternative explanations for the propeller overspeed, including propeller system failures that previously had affected similar propellers installed in another turboprop regional airliner.

The importance of FDR data is not limited to investigations of catastrophic accidents. Flight recorder data from incidents, which are less serious but more common, can provide information to help prevent accidents involving similar circumstances. Following the Colorado Springs and Aliquippa accidents, the NTSB investigated 28 Boeing 737 incidents (U.S. operators) involving anomalous rudder activity or uncommanded roll oscillations. The FDR's aboard these incident airplanes, however, were not equipped to record flight control surface positions, flight control inputs, or lateral acceleration. Like 79 percent of all U.S.-registered Boeing 737's, the airplanes involved in the incidents were manufactured prior to May 26, 1989; consequently, they were required to record only the five basic FDR parameters. As a result, certain objective data were not available from the FDR's, and investigators had little more than the flightcrews' subjective recollections of these incidents to aid in determining cause.

In contrast to the investigations of 28 Boeing 737 incidents, for which important FDR data were not available, investigations of other incidents have been greatly aided by the availability of enhanced recorded information. These incidents involved airplanes equipped with a digital data bus that transmits information from many sensors to the onboard recording devices.

In 1993, a British Airways Boeing 747–436 experienced a nose-down pitching moment immediately after departure from London Heathrow Airport. The captain avoided ground contact by exerting substantial back pressure on his control column. The incident was investigated by the United Kingdom's Air Accidents Investigation Branch (AAIB). Use of information recorded by a Quick Access Recorder (QAR) was useful in the AAIB's investigation, and led to a recommendation that the FAA require modifications of Boeing 747 hydraulic systems and elevator power control units.

Between June and August 1993, an Air France Boeing 737–300 airplane experienced three rudder deflection anomalies. For each incident, approximately 206 flight data parameters were available to the French accident investigation authority. The data were recorded on QAR's, and available parameters included control surface positions, flight path data, acceleration in three axes, yaw damper, and autopilot modes. The NTSB is evaluating the data from these incidents for possible applicability to the Aliquippa and Colorado Springs accidents.

The data parameters currently required to be recorded on FDR's are based on the NTSB's accident investigation experience and the capacity of the recording devices. Historically, many accidents investigated by the NTSB focused on wind shear, takeoff overruns, and instances of controlled flight into terrain; fewer accidents may have involved the inflight loss of lateral or directional control. In response, FDR

parameter requirements focused on airplane performance (such as airspeed, altitude, and longitudinal acceleration) rather than on flight controls (such as rudder position and trim settings). However, recent accidents and incidents have persuaded the NTSB that more information about flight controls should be recorded by FDR's.

Among the additional flight control parameters cited as important by the NTSB are those that pertain to the positions of flight control inputs and control surface positions. Under current rules. Airplanes fitted with conventional flight controls are permitted to record either the cockpit control input (such as control wheel position) or the control surface position (such as the direction and amount of aileron deflection), if one can be derived from the other. However, in its investigations of the recent Boeing 737 accidents, the NTSB found that in some failure modes, flight control surfaces could move independently of cockpit flight control inputs. Also, under some conditions, additional information is needed by investigators to determine whether the controls on the flight deck caused the control surfaces to move, or vice versa. Consequently, the NTSB strongly recommends that FDR's should record both the control inputs and control surface positions.

Flight control trim information, including the positions of trim controls for roll and yaw, also has been found to be essential during recent accident investigations. For example, the aileron and rudder trim parameters provided answers to critical questions early in the investigation of the Roselawn accident. The airplane involved had previously experienced trim anomalies; the FDR revealed none on the accident flight.

Recent technological changes have made feasible the acquisition and storage of large amounts of data on FDR's. Today, even for older airplanes, many FDR systems are capable of recording additional parameters because of unused capacity in the flight recording system. In terms of flight recording systems, there are two general categories of airplanes in the current air carrier fleet: those that operate predominately with analog systems, and those that operate predominately with digital systems.

On an airplane that operates with an analog system, information from remotely located data sensors (for example, a rudder position sensor located in the tail section) is transmitted in an analog format to the FDR via dedicated wires. The information is then converted to digital format in the FDR or the flight data acquisition unit (FDAU).

On an airplane equipped with a digital data bus, information is transmitted in digital format from a multitude of sensors, along a single, high-capacity communications pathway (data bus). Information transmitted on the bus is provided to a number of systems, including flight management computers. cockpit displays, QAR's, and FDR's. Additional data can be fed from the bus to the FDR, based on information that is already on the bus for other purposes or added to the bus by new sensors.

During the public hearing on the Aliquippa accident, a major U.S. air carrier expressed concern about the costs of upgrading FDR's on the carrier's fleet. The NTSB recognized that enhanced FDR capability needs to be weighed against the costs. However, the Board also believes that the costs should be balanced against the remaining useful life and revenue-earning potential of an airplane.

The NTSB believes that transport category airplanes of a type that is still in production and operated under 14 CFR Parts 121, 125, or 135 should be retroffitted with the sensors and FDAU needed to record the parameters listed in its recommendation. Further, certain airplanes that are out of production but continue to be heavily used in U.S. airline fleets should also be retrofitted to record the parameters listed in its recommendation.

The NTSB recommended that the FAA complete its rulemaking on FDR enhancements by December 31, 1995, and that upgrades be completed by January 1, 1998. Further, since Boeing 737 airplanes account for about 23 percent of the U.S. air carrier fleet, the NTSB recommends that FDR enhancement be accomplished sooner for these airplanes. The NTSB recommended that the FAA require all Boeing 737 airplanes operated under 14 CFR Parts 121 and 125 be equipped by December 31, 1995, with FDR's that record the parameters required by current regulations plus lateral acceleration, flight control inputs for pitch, roll, and yaw, and primary flight control surface positions for pitch, roll, and yaw.

The following recommendations were submitted by the NTSB to the Federal Aviation Administration:

I. Require that each Boeing 737 airplane operated under 14 CFR Part 121 or 125 be equipped, by December 31, 1995, with a flight data recorder system that records, as a minimum, the parameters required by current regulations applicable plus the following parameters: lateral acceleration, flight control inputs for pitch, roll, and yaw, and primary flight control surface positions for pitch, roll, and yaw. (Classified as Class I, Urgent Action) (Recommendation No. A–95–25)

II. Amend, by December 31, 1995, 14 CFR §§ 121.343, 125.225, and 135.152 to require that Boeing 727 airplanes, Lockheed L–1011 airplanes, and all transport category airplanes operated under 14 CFR Parts 121, 125, or 135 whose type certificates apply to airplanes still in production, be equipped to record on a flight data recorder system, as a minimum, the parameters listed in "Proposed Minimum FDR Parameter Requirements for Airplanes in Service" plus any other parameters required by current regulations applicable to each individual airplane. Specify that the airplanes be so equipped by January 1, 1998, or by the later date when they meet Stage 3 noise requirements but, regardless of Stage 3 compliance status, no later than December 31, 1999. (Classified as Class II, Priority Action) (Recommendation No. A–95–26)

III. Amend, by December 31, 1995, 14 CFR 121.343, 125.225, and 135.152 to require that all airplanes operated under 14 CFR Parts 121, 125, or 135, having 10 or more seats, and for which an original airworthiness certificate is received after December 31, 1996, record the parameters listed in "Proposed FDR Enhancements for Newly Manufactured Airplanes" on a flight data recorder having at least a 25-hour recording capacity. (Classified as Class II, Priority Action) (Recommendation No. A–95–27)

FAA Response to the NTSB Recommendation

The FAA responded to the above NTSB recommendations in a letter dated May 16, 1995, which is summarized below.

In response to Safety Recommendation A–95–25, the FAA stated that it agrees that Boeing 737 airplanes that operate under 14 CFR Part 121 or 125 should be equipped with flight data recorders that include, as a minimum, the parameters referenced in this safety recommendation. The proposed rule would require all Boeing 737 airplanes as well as certain other airplanes operated under 14 CFR Parts 121, 125, or 135 having 10 or more seats to be equipped to record the parameters that were specified by the NTSB.

The FAA received enough valid information from the public to determine that the schedule for retrofit completion by December 31, 1995,

could not be met. The proposed date would have imposed an extremely aggressive retrofit schedule that, if it were physically possible, would have resulted in substantial airplane groundings and very high associated costs. Furthermore, if operators had been required to retrofit all Boeing 737 airplanes before the end of 1995, each of these airplanes might have had to undergo a second retrofit to meet the expanded requirements that are being proposed in response to NTSB Recommendations A–95–26 and –27.

In response to NTSB recommendation A–95–26, the FAA agrees that airplanes still in production should be required to be equipped with DFDR's that record, as a minimum, the parameters listed in the NTSB recommendation.

In response to NTSB recommendation A–95–27, the FAA agrees that airplanes operated under parts 121, 125, or 135 having 10 or more seats for which an original airworthiness certificate is received after December 31, 1996, should record the parameters listed in "proposed FDR Enhancements for Newly Manufactured Airplanes" on a flight data recorder having at least a 25 -hour recording capacity.

On March 14, 1995, the FAA published in the **Federal Register** a notice of a public hearing, and solicited public comment pursuant to the NTSB recommendations. On April 20, 1995, the public hearing was held in Washington, DC. Eight speakers from the aviation community gave presentations. Copies of the presentations have been placed in the docket for this rulemaking.

After reviewing the comments submitted and listening to the presentations, the FAA determined that it would be beneficial to have aviation industry personnel assist in any related rulemaking efforts. On June 27, 1995, the FAA published a notice in the **Federal Register** that the Aviation Rulemaking Advisory Committee (ARAC) established the Flight Data Recorder Working Group (60 FR 33247), which included members representing the Air Transport Association, Aerospace Industries Association of America, General Aviation Manufacturers Association, Regional Airline Association, Air Line Pilots Association, and the FAA. The NTSB was invited to participate in working group efforts in an advisory capacity. The working group's task was to recommend to ARAC rulemaking proposals or other alternatives that would satisfactorily address the NTSB recommendations. The ARAC could then make one or more recommendations to the FAA, and the FAA would determine whether to issue a proposal based on the ARAC recommendation.

The ARAC DFDR working group first met in June 1995 in Washington, DC. Work continued on a draft proposed rulemaking until November, with members communicating by electronic mail, fax, telephone conference calls, and in person at subsequent working group meetings.

Several elements of the proposed rule were discussed many times, including the characteristics that would define various classes of aircraft (e.g., date of certification, date of manufacture, current FDR equipment installations and configurations, equipment availability), the inclusion of certain airplane types in the applicability of a new rule, the compliance times attached to each category of airplane described.

Despite numerous meetings and proposals, no consensus was reached as to the requirements that would be acceptable to the FAA, NTSB, airplane operators and airplane manufacturers. On November 15, 1995, the working group presented to the ARAC Executive Committee a summary of the work undertaken by the working group. The presentation highlighted the areas where consensus had not been reached, including some of the actual parameters that would be included in the final list of requirements and the differences between the proposed list and those required under the European Joint Aviation Requirements for Operations (JAR-Ops), whether airplanes with 10-19 passenger seats should be covered since they were not specifically mentioned in the NTSB recommendation, whether expected but not currently existing technology could be mandated in future requirements for new airplanes, and several issues concerning the cost figures used in the draft regulatory evaluation. The ARAC Executive Committee decided that each committee member would review the two versions of the proposed rulemaking document that were presented and make individual comments to be submitted to the FAA by December 1.

Comments from several ARAC Executive Committee members were forwarded to the FAA on December 4. The ARAC Executive Committee made no formal recommendation to the FAA concerning the proposed rule documents reviewed and discussed at the November 15 meeting. Of the comments received on December 4, the general comments are addressed here; specific comments as to the inclusion or exclusion of certain provisions from the proposed rule are included in the explanation of the proposed rule provisions below.

General Comments From the ARAC Executive Committee Members

Several members stated that the decision to propose to require up to 88 parameters for airplanes manufactured five years after the final rule is effective will create a disharmony with the European JAR-Ops and will create a disparity in the configuration of U.S. and European airplanes, limiting their exchange.

The FAA acknowledges that the proposed requirement to record 88 parameters exceeds the 57 parameters being required by JAR-Ops, but no disharmony is created. The first 57 parameters (and their values in proposed Appendix M to part 121) were arranged so as to be the same as those rquired by JAR-Ops, at the suggestion and request of the working group members, including two U.S. manufacturers, they are considered harmonized. The fact that the U.S. requirement would exceed the European requirement is not disharmony, since there is no further JAR requirement with which the proposed rule could disagree. The 88 parameters came from the NTSB recommendation already discussed, which served as a basis for implementing a rule change. The FAA never represented that the proposed rule would be limited to JAR-Ops, since the agency understood that this would not satisfy the NTSB recommendation. In fact, the original NSTB recommendation included more than 88 parameters. The number was reduced slightly through certain parameter combinations and their rearrangement to coincide with JAR-Ops.

The NTSB has also indicated to the FAA that at least some of the European manufacturers are already equipping their airplanes to record 88 or more parameters and that it does not anticipate a problem with the proposed requirement. Further, the NTSB is proposing through ICAO that the 88 parameters become the international standard; it is using the list and Appendix values developed for this proposed rule as its proposal to ICAO.

Some members commented that it is difficult to visualize the proposed DFDR upgrade scheme by reading the rule language alone, and proposed that a flow chart be included to assist with a rule overview. The FAA agrees and is including a chart in the form of a matrix, but cautions that the chart is a summary and should not be regarded as a substitute for the actual rule language. The chart can be found in this document, immediately following the general discussion of the proposed rule.

At least one member recommends that a phased compliance schedule be adopted for upgraded DFDR installation, rather than the proposed 4-year compliance time to provide more flexibility to operators.

The FAA does not understand why a mandatory schedule of compliance (with a suggested 35% of an operator's fleet requiring the upgrade within 2 years) is considered more flexible than a simple final compliance date in four years—an operator may comply as early as it likes within the proposed 4 years. The FAA's experience with compliance schedules has not always been positive, and several other operator compliance schedules already exist for other requirements. Adding yet another schedule for DFDR equipment modifications could lead to several schedule conflicts and result in numerous requests for exemptions and extensions compromising the intent of each rule involved. Accordingly, the FAA does not consider an additional compliance schedule to be advisable.

Another comment suggesting that a 6-year compliance schedule be considered rather than 4 years is not addressed in this document because it was never proposed at the working group level, nor has any data been submitted as to the comparative costs of compliance. The FAA notes that longer compliance schedules almost always result in reduced costs. However, the proposed rule already exceeds the NTSB time recommendation for implementation of the upgrades, and the safety considerations of upgraded DFDR equipment are too serious to consider lengthening the proposed 4-year compliance time. The proposed compliance is the product of significant working group discussion and elimination of a 2-year alternative that was predicted to be nearly impossible because of equipment approval, availability and airplane down time. Without similar cost data from the commenter, a 6-year compliance time cannot be evaluated properly.

The comments concerning the proposed compliance time imply some disagreement with the provision that upgrades must be installed beginning at the next heavy maintenance check that occurs two years after the effective date of the final rule (but in any case within four years). That provision was added to prevent operators from waiting until the last minute to install upgrades, causing a logjam in scheduling and equipment availability; a similar provision was shown to have worked well when the last amendment to the DFDR rules was done in 1994. Further, at the working group meetings, this provision was not only acknowledged as necessary, the language was discussed and changed several times at the request of the member operators. Accordingly, the language that defines a heavy maintenance check as any time an airplane is scheduled to be out of service for 4 or more days and is scheduled to include access to major structural components is included in the proposed rule as a result of working group discussions and general agreement. No proposed phased compliance schedule or problem with the included provision was raised at the working group meetings.

Similarly, operators of small airplanes comment that the same heavy maintenance check provision is inappropriate for their operations. The FAA has changed the proposed rule to include the words "or equivalent" in the provision that relates to smaller airplanes, and specifically requests that if operators of these airplanes have a more appropriate way of describing their maintenance practices so as to achieve a similar result, they should submit that language as a comment to the proposed rule. This issue was not raised at the working group level during drafting of the proposed rule.

Several commenters stated that they felt that the proposed requirement to record lateral acceleration is unnecessary if both rudder pedal and rudder position are also recorded. The NTSB disagrees that lateral acceleration is redundant since it may show the effect of outside forces on an airplane that are separate from the effect of rudder movement. The NTSB cautions that the concern over lateral acceleration and rudder pedal and position is not limited to the accidents and incidents reported on the Boeing 737; the proposed requirement to record those parameters takes into account all airplane types and the critical nature of the information that such recordation may uncover. The NTSB also notes that the upgrade from dual to triaxial accelerometers may not necessarily be costly, as one commenter states, since at least one manufacturer has a "trade-in" program for that equipment. Manufacturers of this equipment are urged to supply the FAA with further data concerning the cost and availability of this equipment.

Commenters also expressed some confusion over the effect of the proposed rule on airplanes currently covered by exemption No. 5593, Stage 2 airplanes that are scheduled to be retired and are allowed to operate with 6-parameter recorders through 1998. The terms of the exemption were clear when granted—it was only to be used for airplanes that were scheduled to be retired by the end of 1998; it was not an exemption that could be used to delay the upgrade to an 11-parameter recorder that was due in 1995. Accordingly, since any airplane covered by the exemption should be retired before the proposed compliance date, this proposed rule should have no effect on the exempted airplanes.

As the FAA has stated previously, any airplane covered by the exemption that is not retired but is instead retrofitted to meet the Stage 3 noise requirements must also upgrade to an 11-parameter recorder before it is allowed to operate. If a decision to noise retrofit causes an airplane to have to undergo two DFDR retrofits—to an 11-parameter recorder to operate past 1998 and then to the requirement of this proposed rule—it is a decision of an individual operator, and will only result from a failure to effectively plan its fleet composition or by an abuse of the previous DFDR upgrade requirement and exemption No. 5593. The FAA does not intend to lengthen the term of the exemption for any operator.

Finally, more than one commenter objected to the change that would require the recordation of both pilot inputs and actual control surface positions. The current requirements call for one or the other to be recorded. Discussion of this issue consumed an appreciable amount of time in the working group, and covered the perceived need for the data and the cost and capability of recording both parameters (input and output). Although consensus was not reached, the FAA is including this provision in the proposed rule because the NTSB considers it among the most critical of the recommended parameters. As stated previously, NTSB investigations have shown that in some failure modes, flight control surfaces can move independent of cockpit flight controls. Under some conditions, additional information is necessary to determine whether flight deck controls caused the control surfaces to move, or if the movement of the control surface caused the cockpit controls to move. The FAA accepts the NTSB recommendation since the current practice of allowing one input to be recorded to demonstrate the movement of both the control surfaces and cockpit controls has been shown to be insufficient.

General Discussion of the Proposal

The FAA stresses that the ARAC working group provided valuable input to the proposed rule, and that many

issues were brought forth and the position of the members explained, even if consensus could not be reached on each issue. For example, there was basic agreement among the working group members as to the framework of the proposed rule, including the categories of airplanes to be upgraded in various phases. As described below, consensus could not be reached on the description of future-manufactured airplanes or the number of parameters that they would be required to record. Similarly, because of the considerable amount of time required to complete the economic analysis, the efforts of the working group were often well ahead of supporting economic data analysis, which included data that were supplied by the working group member organizations.

As noted previously, the ARAC did not formally recommend either version of the draft proposed rules it received from the working group. Accordingly, the FAA is promulgating this NPRM based on the recommendations of the NTSB and the results of the significant working group efforts that it can support.

If adopted, this proposed rule would amend the DFDR rules, and associated appendices, as they apply to airplanes operating under parts 121, 125, 129, and 135. The current regulations, depending on the age of the airplanes, require as a minimum that either 11 or 17 parameters be recorded in every airplane; in some cases, more parameters must be recorded. Proposed requirements for part 125 closely parallel part 121 requirements, except for minor differences in the age and configuration of affected airplanes. Part 129 does not currently have a DFDR requirement; however, the FAA is now proposing a DFDR requirement in part 129 for U.S.-registered airplanes. Proposed requirements for part 135 would apply only to newly manufactured airplanes that will be used in schedules service; there are not retrofit requirements proposed for on-demand, nonschedules airplanes.

The FAA recognizes that the program envisioned by the proposed rule would require a substantial financial undertaking by the airline industry. Accordingly, commenters are expressly invited to recommend alternative approaches that could reduce the cost burden. For example, are there certain airplanes or certain models of airplanes not discussed in this document that should be excluded from this proposed rule, and if so, what is the rationale for excluding these airplanes? Recognizing that a change in the proposed number of required parameters or the elimination of certain proposed parameters could significantly alter the costs involved, are there other, less costly means to obtain the information needed for accident and incident investigations? The FAA recognizes that cost could be reduced by further extending the compliance schedule; at the same time, NTSB needs critical information in a timely manner to complete its investigations effectively. If the compliance schedule is extended further, are there incentives that would encourage operators to comply earlier?

Commenters advocating a different regulatory approach are strongly encouraged to set forth specific recommendations and explain both the costs and benefits involved in the changes recommended. The FAA will weigh any recommendations with particular care, and it can do so only if meaningful cost and safety data are provided.

Part 121

The FAA proposes to amend § 121.344 and add a new § 121.344a. Current § 121.343 is not being revised because it is necessary to retain the current regulations for airplanes that are excluded from compliance with these proposed amendments. Airplanes specifically excluded from the proposed FDR upgrade include State 2 airplanes that are subject to the phased compliance rules of § 91.801(c). Following considerable analysis, the FAA has determined that, if they remain Stage 2, these airplanes do not have enough remaining useful life to justify the cost of FDR retrofit proposed by this document. The FAA has also proposed that certain other aircraft types that are no longer in production and are in limited use in air carrier operations be excluded because the cost associated with retrofitting these airplanes with new DFDR's would cause undue economic burden and would yield little safety return.

The proposed amendments to § 121.344 would require that all turbine-engine powered transport category airplanes—including airplanes having a seating capacity of 20–30 that were formerly operated under part 135—record at least 18 specified parameters, except for airplanes with more than two engines. In some cases, compliance would require a retrofit of a flight data recorder and/or the addition of sensors and wiring capable of recording the specified parameters, or a reprogramming of the current recorder to accommodate the specified parameters. Requirements for DFDR's on newer airplanes and newly manufactured airplanes are also being revised to require the recordation of additional parameters.

On December 20, 1995, the FAA published a final rule "Commuter Operations and General Certification and Operations Requirements" (60 FR 65832, FAA Docket No. 28154), which requires airplanes having a passenger seating configuration, excluding any required crewmember seat, of 10 to 19 seats to be operated under part 121. That rule did not address FDR's because this rulemaking project was in process. Proposed new § 121.344a would apply to those airplanes formerly operated under part 135.

Proposed § 121.344 would require Boeing 737 airplanes to be equipped with the expanded flight data recorder systems recommended by the NTSB as part of the retrofit of the overall active fleet. The FAA determined that compliance with the NTSB recommendation to retrofit these airplanes by December 31, 1995, would have resulted in substantial airplane groundings and very high associated costs. Furthermore, if operators had been required to retrofit all Boeing 737 airplanes before the end of 1995, each of these airplanes might have had to undergo a second retrofit to meet the expanded requirements depending on what is adopted as a result of NTSB Safety Recommendation A–95–26 and-27, discussed earlier in this document.

Accordingly, this proposed rule reflects the FAA's adoption of the ARAC working group suggestion that NTSB recommendations A–95–25 and A–95–26 be consolidated for rulemaking purposes.

Requirements for Transport Category Airplanes

Proposed § 121.344(a): This paragraph lists the operating parameters that would be required to be recorded by DFDR's required by this section. The list is consistent with both European standards and the parameters recommended by the NTSB in its "Proposed FDR enhancements for newly manufactured airplanes." The ARAC working group used the European standards and the NTSB proposal as a basis for this list of parameters and made minor revisions to it that would apply to both new and in-service airplanes.

The parameters listed in this paragraph are presented in order of their priority. Where the rule requires the recording of additional parameters based on the capability of installed equipment, the additional parameters should be selected in the order given in this paragraph. In some instances, individual parameters need only be recorded if the equipment needed is already installed in the airplane. For example, angle of attack, § 121.344(a)(32) need only be recorded if the sensor for that parameter is already installed. These parameters are designated "when an information source is installed." In any instance, if a sensor is installed, the data must be made available to the FDR, unless it would compromise a critical function. Individual members of the ARAC working group suggested that something other than a "critical function" be used as a basis. After further consideration, the FAA has determined that the term critical function is well understood by aircraft manufacturers in terms of FDR functions, and no new terms will be introduced.

The introductory text to paragraph (a) also explains that when the phrase "when an information source is installed" is used, it indicates that no change in equipment was intended in requiring this parameter to be recorded. Although the parameters are listed in priority order in this paragraph, the ARAC considered that some of the parameters that carry the designated text should be required only when the recording system on the airplane is sufficient to record these parameters. Where recording one of the parameters that includes the noted phrase would require new equipment such as a DFDAU or recorder, that parameter is not required to be recorded.

Airplanes Manufactured on or Before October 11, 1991

Proposed § 121.344(b): Except for certain older airplanes (identified below), this paragraph establishes a final compliance date of [insert date 4 years from the effective date of the final rule], for all turbine-engine powered transport category airplanes manufactured on or before October 11, 1991. By that date, all affected airplanes must be equipped with a DFDR that is capable of recording the first 17 (or 18) parameters listed in § 121.344(a).

Proposed § 121.344(b)(1) would apply to airplanes that were not equipped with a flight data acquisition unit on [insert date of publication of NPRM], and currently record 11 parameters of flight data. The recordation of lateral acceleration, paragraph (a)(18), would be required for certain airplanes with more than two engines only if the capacity to record this parameter is available on the FDR. Information obtained during the rulemaking process indicated that for airplanes that were manufactured on or before October 11, 1991 that have more than two engines, the recording of lateral acceleration could exceed the capacity of installed recorders and would require an expensive equipment retrofit for the sake of one parameter.

These non-FDAU airplanes would be required to record these parameters within the ranges, accuracies, and intervals specified in current Appendix B to part 121. Although this rule would create a new Appendix M, these older airplanes would continue to use the values in Appendix B that are currently in effect in order to stay within the capacity of installed recorders and other data acquisition equipment.

Proposed § 121.344(b)(2) would apply to airplanes that were equipped with a FDAU on [insert date of publication of NPRM] and currently are required under § 121.343 to record 17 parameters of flight data. These airplanes would be required to record the parameters listed in paragraphs (a)(1) through (a)(22) by [insert date 4 years from publication of the NPRM]. This installation would be required at the next heavy maintenance check that occurs after 2 years from the effective date of the final rule, but no later than [insert date 4 years after date of final rule]. Airplanes with FDAU's would be required to record the parameters within the ranges, accuracies, resolutions and recording intervals specified in proposed Appendix M to part 121. Proposed new Appendix M provides the ranges, accuracies, resolutions, and recording intervals for all parameters listed in paragraphs (a)(1) through (a)(88). In some instances, the values for certain parameters have been increased over those in current Appendix B.

For all airplanes covered by proposed § 121.344(b), the parameters listed in paragraphs (a)(12) through (a)(17) may be recorded from a single source.

Proposed § 121.344(c)(1) would require that as of [insert date 4 years after effective date of final rule], all turbine-engine powered transport category airplanes that were manufactured on or before October 11, 1991, and that were equipped with a digital data bus and an ARINC 717 digital flight data acquisition unit (DFDAU) or its equivalent on [insert publication date of NPRM], record the parameters listed in paragraphs (a)(1) through (a)(22). Paragraph (c)(1) would also require that the parameters be recorded in accordance with the specifications in proposed Appendix M. This paragraph would also permit the parameters described in paragraphs (a)(12) through (a)(14) to be recorded from a single source.

Proposed § 121.344(c)(2) introduces the term "recording system" which includes the DFDAU or equivalent and the DFDR. This paragraph would require that, based on the capacity of the recording system, all additional parameters (beyond those required by (c)(1)) for which there is capacity on the recorder system must be recorded in the order given in paragraph (a) and in accordance with the values listed in Appendix M.

The term "recording system" was adopted to identify the components in question so as not to require upgraded equipment on airplanes retrofitted to meet the proposed requirements. Thus, additional parameters need only be recorded when such parameters are within the capacity of the flight data recordation system installed on any airplane. That term is used again later in the regulation.

Proposed § 121.344(c)(3) would require airplanes that were subject to § 121.343(e) to continue to meet the requirements of that section until compliance with paragraph (c)(1) is accomplished.

Paragraph (c) brings forward and upgrades the requirements of current § 121.343(e). That section was originally adopted to require airplanes that were capable of recording more than the minimum required parameters to do so. At the time it was adopted, § 121.343(e) referenced the ARINC 717 DFDAU because it was the "state of the art," and the capability of recording additional parameters existed. The adoption of § 121.343(e) reflected the FAA's growing awareness that the information gained by recording additional FDR parameters was important. Accordingly, § 121.344(c) of the proposed rule requires that airplanes subject to that section continue to record those parameters that they are capable of recording, whether they are equipped with an ARINC 717 or an equivalent DFDAU. When these airplanes comply with proposed paragraph (c)(1), they would be recording the parameters listed in (a)(1) through (a)(22), plus all additional parameters they are capable of recording, and all of these must be recorded in accordance with proposed new Appendix M. These provisions are proposed to prevent a possible decrease in the number of parameters already being recorded before the compliance date of the proposed regulation.

Airplanes Manufactured After October 11, 1991

A significant portion of the work of the ARAC working group was focused on the requirements for airplanes not yet built. Airplanes for which no type certificate yet exists were seen as less of a problem. To that end, discussions focused on the ability of manufacturers

to re-engineer airplanes that are already type certificated, and the time needed to accomplish that engineering, get FAA approval of the change in type design, and incorporate it into airplanes on the production line. Significant discussion also occurred on the best way to describe the airplanes that were to be covered by future requirements. For example, a newer "model" of an airplane recently type certificated might already be in the works, with a significant investment in the engineering. Further, there is no standard industry terminology for what the "next version" of an already certificated airplane might be called. Finally, the number of parameters to be recorded by these future airplanes was also part of the discussion, and included consideration of flight data recorder requirements that will be included in the operating rules of the Joint Aviation Authorities of Europe (JAR-Ops).

The proposed regulation places airplanes manufactured after October 11, 1991, into three groups, with DFDR requirements increasing as age decreases. These airplane groups and the requirements that apply to each were the subject of considerable discussion within the ARAC working group.

Because there was little agreement on the terminology to be used or the time necessary to incorporate upgrades into future aircraft models at the least cost, the requirements that would apply to future production airplanes remained one of the most contentious issues in the working group.

The FAA began discussions with the recommendations of the NTSB that would require an upgrade to 88 parameters of recorded data for all airplanes manufactured after 1998, regardless of the date of type certification of models then in production. Representatives of airplane manufacturers on the working group indicated that this was unrealistic given the time needed to re-engineer airplanes in production, get FAA approval of the design changes, and incorporate the modifications into airplanes on the assembly line that had been on order, in some instances, years before the requirements were written. The ARAC industry members thus suggested an alternative requirement that would apply to airplanes that receive a new or amended type certificate beginning one year after the final rule becomes effective. This alternative would mean that airplanes produced under a type certificate that existed before that date might never be required to upgrade to 88 parameters, even if manufactured 10 years after the rule went into effect, if the type design were not amended. The NTSB considers this unacceptable, and describes it as a parallel to the current circumstances where technological development and capability have far outpaced current regulations. Further, the NTSF notes that a letter requirement will in the future place the FAA and the industry in the same circumstances that exist today in attempting to catch up with available technology.

There was also considerable debate within the working group over the recording equipment that might be necessary to record the 88 parameters of information proposed. Little hard data was available concerning whether the current 128-word recorders would be able to handle the 88-parameter requirement. Several members indicated that a 256-word recorder would likely be needed, and that since no such recorder was currently available or approved for use, no regulation that would require its use could be promulgated. Similarly, data were available to indicate that while there was no 256-word recorder currently available, the reason was that there was no current market for it. Informal inquiries by the NTSB to equipment manufacturers indicated that a 256-word recorder is well within the bounds of currently available technology, and may well already exist.

Taking into account the NTSB concern that all new airplanes be able to record the maximum number of parameters, balanced against the knowledge that airplanes in production cannot be re-engineered without sufficient lead time, the FAA has determined that FDR requirements for future airplane production will be based on the date of manufacture, but that the dates suggested by the NTSB cannot realistically be met without incurring overwhelming costs and unacceptable delays in production. Accordingly, the proposed rule would place the following requirements on newly manufactured airplanes.

The first group of airplanes, addressed in proposed § 121.344(d)(1), are those manufactured after October 11, 1991, but on or before [insert date three years from effective date, i.e. 2000] to record the parameters listed in paragraphs (a)(1) through (a)(34), and do so in accordance with Appendix M. Similar to the requirements for older airplanes, the parameters listed in paragraphs (a)(12) through (a)(14) could be recorded from a single source. Proposed § 121.344(d)(2) carries forward the requirements that all additional parameters that are within the capacity of the recording system must also be installed to take advantage of the latest advancements in technology and the capabilities of individual airplanes. Because this requirement will apply to airplanes recently produced, it is a retrofit requirement, but the effect of the retrofit is softened by limiting the requirement to the first 34 parameters.

The second group of airplanes, addressed in proposed § 121.344(e)(1), are those that will be manufactured after [insert date three years from effective date, i.e. 1999], but on or before [insert date five years from effective date, or 2001]. These airplanes would be required to record the parameters listed in paragraphs (a)(1) through (a)(57), and to do so in accordance with Appendix M. Proposed § 121.344(e)(2) carries forward the requirements that all additional parameters that are within the capacity of the recording system must also be installed to take advantage of the latest advancements in technology and the capabilities of individual airplanes.

This group of airplanes is considered to include the already engineered versions of currently certificated airplanes, and any airplane getting a new type certificate during this time period. The three year time period was considered by several members of the working group as sufficient lead time to incorporate the upgrades required. The number of parameters was chosen based on the recommendations of the NTSB and the 57 parameters that will be required to be recorded under JAR-Ops, which will become effective in 1998.

The third group of airplanes, addressed in proposed § 121.344(f), are those that would be manufactured after [insert date five years from effective date]. These airplanes would be required to record the parameters listed in paragraphs (a)(1) through (a)(88), and to do so in accordance with Appendix M.

As indicated in the previous discussion, this requirement would apply to all airplanes manufactured five years after the effective date of the rule. The FAA agrees with the NTSB that it is not acceptable to adopt a requirement that could allow airplanes with 57 parameters to be produced indefinitely. The concept of "manufactured after" was established in the FDR requirements of § 121.343 and is being used in other sections of this proposed rule. The "manufactured after" standard is viewed as being the most straightforward for the agency to administer and for the industry to comply with. Further, during the meetings of the ARAC working group, a lead time of five years was consistently mentioned as the working standard for new airplane design.

The FAA did raise another alternative that would require all 88 parameters to be recorded on any airplane for which a new, amended, or supplemental type certificate is applied for one year after the effective date of the final rule. That proposal would have included, by necessity, significant deviation authority for any changes to airplanes that did not affect the operational or performance characteristics of airplanes, or that did not provide sufficient opportunity to accomplish the necessary modifications. That proposal was made after considerable discussion regarding the lack of consistent terminology regarding new airplane models. In designing the proposal, the FAA looked to its experience in similar equipment upgrade requirements and concluded that it would be necessary for the agency to retain exclusive discretion as to what constituted enough of a change to an airplane design (by amended or supplemental type certificate) to cause the FDR upgrade requirements to apply, or for a deviation to be granted.

The FAA determined that, while that proposal had a sound regulatory foundation and would be triggered by well-established events that would not be the source of semantic debate, it would be unwieldy in practice and would lead to considerable extra work and expenditures for the agency and every future applicant for an amended or supplemental type certificate.

The proposed requirement to record 88 parameters may require the installation of the 256-word recorder described previously. The FAA is unable to accept the argument that simply because a 256-word recorder is not currently marketed or approved for installation in aircraft, it would not be available by the time the proposed requirement would take effect, five years after the effective date of a final rule. The FAA has experience in proposing requirements for new technology. For example, the technology for TCAS systems existed at the time the FAA promulgated a requirement for the equipment, but it was not commercially available in the format into which it eventually evolved. In a similar sense, air carriers strongly urged the FAA to authorize the use of predictive windshear technology in lieu of current reactive technology despite the fact that the technology was only expected to be available at some unspecified future date.

In this case, information available to the FAA and the NTSB suggests that the 256-word recorder that may be needed to record 88 parameters is close to being a reality, since the technology already exists. The FAA and NTSB expect the 256-word recorder to be commercially available as soon as some commercial demand exists. Neither the FAA nor NTSB can accept the argument of current unavailability as a basis for not imposing a more stringent requirement on future-production airplanes, and the FAA has received no evidence indicating that this position is not realistic. The FAA specifically requests comment on this issue concerning the probable availability of such equipment.

Except for paragraphs (j) and (l), the balance of proposed § 121.344 carries forward the rest of the requirements of § 121.343.

Proposed § 121.344(g) would duplicate current § 121.343(g), which requires an FDR's continuous operation from the time of an airplane's takeoff roll to its landing roll, except for a minor, nonsubstantive editorial change.

Proposed § 121.344(h) would duplicate § 121.343(h), which addresses the number of hours of recorded data that needs to be kept, and erasures of that data, except for minor, nonsubstantive editorial changes.

Proposed § 121.344(i) would duplicate current § 121.343(i), which addresses requirements pursuant to flight data in the event of an accident or occurrence that requires immediate notification of the NTSB, except for minor, nonsubstantive editorial changes.

Proposed § 121.344(j) addresses the equipment installation and correlation requirements of 14 CFR part 25 for transport category airplanes. This paragraph was rewritten to reflect current technology and the need for correlation data retention. No significant change in the duty of air carriers to retain this data is intended by this update of this regulation.

Proposed § 121.344(k) would duplicate current § 121.343(k), which requires an approved device to locate a flight data recorder under water, except for minor, nonsubstantive editorial changes.

Proposed § 121.344(l) would identify those airplanes to which these proposals would not apply.

Paragraph (l)(1) addresses Stage 2 airplanes that are scheduled to be retired under the noise transition regulations of Part 91. These airplanes would not have to be retrofitted with upgraded DFDR's prior to December 31, 1999. However, no Stage 2 airplane would be allowed to be operated after December 31, 1999, unless it meets the upgraded FDR requirements. Although the noise transition regulations allow for the possibility that some Stage 2 airplanes would be allowed to operate under certain limited waivers, the intent behind the noise operating rules differs significantly from the intent behind the FDR requirements. Accordingly, the FAA is not willing to allow the continued operation of these airplanes with 11-parameter recorders beyond the final noise compliance date regardless of an airplane's noise operating status, and the agency will not put itself in a position of having to forgo the safety considerations behind FDR upgrades as an economic matter if a change in circumstances causes a change in the noise operating rules whether by waiver or a change in the regulations. Noise waivers are not a certainty, and operators have been warned not to presume that they will be granted as a matter of course and to plan for full compliance. No such waiver is included in these proposed FDR requirements; the FAA views the grant of any such FDR waiver as encouraging operators to gamble on the availability of noise waivers as an excuse not to install upgraded flight data recorders, undermining the intent of both the noise transition and FDR upgrade rules.

Paragraph (l)(2) lists those airplanes that are out of production. After considering analysis of data presented by aircraft operators and manufacturers, the ARAC working group determined that the remaining economic life of these airplanes is insufficient to justify the cost associated with extensive DFDR retrofit. Further, the number of these airplanes in operation is sufficiently small and is declining, such that any safety return from expanded FDR's would be minimal. The FAA agrees in the selection of the aircraft types listed. The FAA also specifically requests that commenters submit other aircraft types, if any, that should be included in this list. Submissions for inclusion should include a detailed explanation of the reasons why these aircraft should be included on the list, and the number of aircraft that would be affected.

Specific Comments Concerning Proposed § 121.344

A significant comment was submitted through the ARAC Executive Committee from Trans World Airlines (TWA), which did not have a separate representative on the working group. In general, TWA expressed difficulty with the proposed requirements for certain of its older airplanes, the Lockheed L–1011 and the Boeing 747–100. TWA indicates that, to meet the requirements of the proposed rule, it would have to replace recording equipment in more than a third of its airplanes, and one of the premises of the working group was that significant equipment replacement would not be required for older

airplanes. To that end, TWA recommended several specific changes to the proposed rule language and Appendix values that would allow its Loral F800 flight data recorders to continue to be used.

The existence of older recording systems, including the Loral F800, was the subject of considerable discussion at the working group meetings. In an attempt to accommodate some of this older equipment, for example, § 121.344(b)(1)(i) was added to *not* require the recordation of lateral acceleration on airplanes with more than two engines unless recording that parameter could be accommodated on installed equipment. That provision was added to accommodate the Loral F800 recorder installed on the L–1011. The FAA is concerned that broader changes to the proposed rule—including revisions to the values in current Appendix B and a new category of aircraft that would change the established manufacturing-date groups—would weaken the intent of the rule by allowing loopholes and exceptions that would be almost impossible to track, and would result in an unmanageable number of different recording capabilities within the part 121 fleet. The FAA will not promulgate rules to accommodate one or two older pieces of equipment, especially when the intent of the rule is to upgrade equipment in airplanes that remain viable portions of the fleet.

However, the FAA is willing to make what accommodations are within the spirit of the rulemaking, as in the example cited above, where such accommodation does not change the effect of the rule in general on the rest of the fleet. Accordingly, while the agency will not consider changes to existing rules that are a step back from current requirements, TWA, and other operators that may find themselves in unique circumstances because of equipment configurations, are urged to comment specifically on provisions that they feel they will not be able to meet without undue burden, and to suggest limited provisions such as the one cited that may alleviate some of that burden.

A U.S. aircraft manufacturer commented through the ARAC Executive Committee that to record parameters (a)(58) through (a)(88) would "require the installation of sensors [that have] a poor reliability history." The NTSB agrees that there is a question as to the reliability of control force sensors over the full range of forces, but it is this very unreliability of the current generation of sensors for control forces that has caused the NTSB to recommend that 88 parameters be recorded. The FAA requests comment from manufacturers and operators as to the current reliability rates for control force sensors, and what plans may exist for increasing their reliability before they would be required in five years.

Airplanes With 10–19 Passenger Seats

The February 1995 recommendations of the NTSB did not specifically address airplanes that carry 10–19 passengers. However, the adoption of new operating rules for certain airplanes formerly operated under part 135 has led to a need for the FAA to address FDR requirements for these airplanes. Since these airplanes will, in scheduled service, be operated under part 121, the FAA has determined that the FDR requirements that would apply to these airplanes are best provided in a separate section. Accordingly, the FAA is proposing the adoption of a new § 121.344a, to separate these requirements from those applicable to transport category airplanes and prevent confusion as to applicability and compliance times.

Proposed § 121.344a(a) would require all turbine-engine powered airplanes having a passenger seating configuration, excluding any required crewmember seat, of 10 to 19 seats that were brought onto the U.S. register after October 11, 1991, to be equipped with a DFDR that is capable of recording, at a minimum, the parameters required in § 135.152. This provision would carry over the current requirements of part 135 until the upgraded standard in the proposed rule is met.

By [4 years from the effective date of the final rule], those airplanes would be required to be equipped with a DFDR that is capable of recording the parameters listed in § 121.344 (a)(1) through (a)(11). In addition, these airplanes must record either three additional parameters of control input or control surface position. If capable of being recorded, these airplanes must also record the parameters described in § 121.344 (a)(19) through (a)(22).

As stated in the proposed rule language, parameter (a)(18) would not be required for airplanes with more than two engines, unless sufficient capacity is available on the existing recorder. Further, the parameters listed in paragraphs (a)(12) through (a)(17) would be permitted to be recorded from a single source. All of the parameters would be required to be recorded in accordance with the values listed in Appendix B to part 135, the standard in the current rule, unless the parameter to be recorded has no value indicated in that appendix. In that case, the values in Appendix B to part 121 would be used.

Consistent with current regulation, airplanes with 10 to 19 passenger seats that were brought onto the U.S. register on or before October 11, 1991, would not be required to comply with this regulation. The FAA has determined that the cost of retrofitting this fleet of airplanes would be substantial.

However, the FAA is concerned that all airplanes used in air carrier operations be equipped with FDR equipment. Accordingly, the FAA has determined that the already established date for installation of FDR equipment—airplanes brought onto the U.S. register after October 11, 1991—will remain the standard for FDR installation if these airplanes are operated under part 121.

Further, the FAA emphasizes that, consistent with current regulation, airplanes that may have been on the register on or before October 11, 1991, but were removed from the U.S. register, and brought back onto the U.S. register after October 11, 1991, would be required under this proposed rule to have a DFDR capable of recording the required 18 to 22 parameters. There has been at least one previous policy determination made concerning airplanes that have been removed from the U.S. register after 1991 and then brought back; that policy stated that compliance with the FDR rules of part 135 is not necessary because the airplane was on the register before October 11, 1991. After further consideration, however, the FAA has determined that this policy is inconsistent with the language of the regulation itself and with the intent of the recently adopted rules bringing part 135 scheduled commuters under part 121. Airplanes that have been operated without FDR's based on this policy determination will have to be retrofitted with the FDR equipment required under § 121.344a(a) by the compliance date proposed in that paragraph, as they would have if they remained under part 135.

Although the basic requirements for 10–19 seat airplanes are not identical to those for transport category airplanes in § 121.344, it was determined that some differences could exist without compromising safety. These airplanes currently are required to record 17 parameters of information under part 135.152; the 18 parameters to be recorded under the proposed rule differ slightly and will require that some FDR's be reprogrammed. The FAA found, however, that requiring an increase to the first 23 parameters would result in substantial costs. Since the NTSB recommendations do not address these airplanes or any specific upgrade for their flight data recorders, a determination has been made that recordation of the first 18 parameters—or 22 where capable—is sufficient for this class of airplanes.

The ARAC Executive Committee submitted a comment from a member indicating that the applicability of proposed § 121.344a(a) should be changed to airplanes that were manufactured after October 11, 1991, rather than airplanes brought onto the U.S. register after that date. The FAA disagrees. This distinction by date of registration was maintained as established in part 135, and the use of the registration date has resulted in a specific set of airplanes to which these rules apply. A change in the applicability of the regulation now could cause airplanes that were previously required to have DFDR's to no longer need them, with the consequences of recorders being removed from in-service airplanes. A change in applicability under part 121 would also have the confusing effect of establishing different applicability provisions for the same airplanes, depending on the part under which they are operated. The FAA will not introduce such complication into the regulations nor promulgate a rule that would reduce the number of airplanes required to have DFDR's.

Another comment stated that the FAA is proposing to cover 10–19 seat airplanes operated under part 121 "with no technical support * * * for their inclusion." The commenter suggests that the FAA "abide by the NTSB recommendation and remove these" airplanes from the proposed rule.

As stated previously, the NTSB recommendation was considered the starting point for this rulemaking action. The NTSB recommendation did not include consideration of the FAA's proposal to bring smaller aircraft operated in scheduled service under part 135 into part 121, so no recommendation for DFDR requirements on those airplanes could have been included. However, as part of the FAA's goal of regulating all scheduled operators under a single part, it would be inconsistent *not* to propose that all airplanes operated in part 121 service be covered by the same or comparable requirements. It is up to the FAA to determine the proper scope and consistency of its regulations, and the agency cannot be constrained by a recommendation of the NTSB that did not consider other ongoing agency actions and initiatives. The NTSB did not state that these airplanes *not* be covered—it simply never addressed them. Further, it is not clear what the commenter means as to the existence of "technical support" for a proposal that is but one part of an overall agency safety initiative.

Proposed § 121.344a(b) would require recorders on all turbine-engine powered airplanes having a passenger seating configuration, excluding any required crewmember seat, of 10 to 19 seats, that are manufactured after [insert date 3 yrs after effective date of final rule], to record the parameters listed in § 121.344 (a)(1) through (a)(57), as well as all additional parameters that are within the capacity of the recording system within the ranges, accuracies, resolutions, and recording intervals specified in Appendix M to part 121.

Proposed § 121.344a(c) would require recorders on all turbine-engine powered airplanes having a passenger seating configuration, excluding any required crewmember seat, of 10 to 19 seats, that are manufactured after [insert date 5 yrs after effective date of final rule], to record the parameters listed in § 121.344 (a)(1) through (a)(88), within the ranges, accuracies, resolutions, and recording intervals specified in Appendix M to part 121. This is the same requirement that would apply to transport category airplanes as proposed in § 121.344, and the same reasons for its adoption applies.

Proposed § 121.344a(d) would bring forward the appropriate references in current § 135.152(f), pursuant to airplanes only, which includes requirements for installation of flight recorders and correlation of flight data. Rotorcraft requirements would remain in § 135.152(f); they are not being addressed in this rulemaking.

Proposed § 121.344a(e) would require all airplanes subject to this section to also comply with paragraphs (g)–(k) of § 121.344.

Proposed § 121.344a(f) would identify those airplanes to which these proposals would not apply. Included are airplanes that are no longer in production. After considering analysis of data presented by aircraft operators and manufacturers, the ARAC working group determined that the remaining economic life of these airplanes is insufficient to justify the cost associated with extensive DFDR retrofit. Further, the number of these airplanes in operation is sufficiently small that any safety return from expanded FDR's would be minimal. The FAA agrees in the selection of the aircraft types listed. The FAA also specifically requests that commenters submit other aircraft types, if any, that should be included in this list. Submissions for inclusion should include a detailed explanation of the reasons why these aircraft should be included on the list, and the number of aircraft that would be affected.

New Appendix

Proposed Appendix M: This new appendix would correspond directly to the parameter list set forth in § 121.344(a), and would present the ranges, accuracies, resolutions, and recording intervals for each parameter. Values for these items were determined based on the capacity of current equipment and take into consideration the European standards. Where possible, the standards in Appendix M are the same as those in the European requirements.

Specific Comments Concerning Proposed Appendix M

Several specific changes to Appendix M were submitted in the comments from the ARAC Executive Committee. The addition of TSO C51a to the Accuracy column of the Pressure Altitude parameter was reviewed and accepted. One comment stated that the Heading parameter, which would require a true/mag discrete is unclear and that the two should be separated. A significant amount of time was expended in working group discussions on this topic, and the designation as it appears in the proposed Appendix was agreed to by working group members. A comment concerning Manual radio transmitter keying states that existing installations should only require a single discrete. That is all that is required, and only for air traffic communications. A further comment that language should be added to exclude digital voice and data transmissions is not being addressed because there is no requirement that digital data link transmissions be included as part of this parameter.

Part 125

The FAA proposes to add a new § 125.226 to require the existing airplane fleet operated under part 125 to be retrofitted with FDR's that record additional parameters. Requirements for DFDR's on newer airplanes and newly manufactured airplanes would also be revised to require that additional parameters be recorded. The preceding discussion for the proposed amendments to part 121 also applies to aircraft operated under part 125. The text in § 125.225 would remain unchanged because airplanes excluded from these proposed amendments would be required to continue to comply with that section.

Proposed Appendix E: This new appendix to part 125 would be identical

to the proposed Appendix M to part 121 above.

Part 129

The FAA proposes to add a new § 129.20, Digital Flight Data Recorders, to address flight data recorder regulations for U.S.-registered airplanes operated outside the United States. Although the NTSB recommendations did not apply to part 129 operators, the FAA has determined that U.S.-registered airplanes, regardless of where they are operated, should be required to comply with the same FDR requirements as though they were operated domestically. Accordingly, the proposed rule indicates that, depending on the airplane type, airplanes that are U.S.-registered but operated outside the United States must comply with the applicable flight data recorder regulations of part 121, 125, or 135. Descriptions of these requirements can be found above in the sections describing the proposed amendments to those parts. Consequently, the FAA proposes to revise the applicability of § 129.1(b) to include reference to the proposed § 129.20.

The period for public comment to the proposed part 129 amendment is no longer than that provided for the other proposals in this NPRM to allow sufficient time for international entities to comment. Therefore, the comment period for revisions to part 129 will be 120 days from the date of publication of the NPRM, and the final rule for any revisions to part 129 will be issued separately, although the compliance time adopted may be the same as that proposed for parts 121, 125, and 135.

Part 135

These proposed flight data recorder amendments would apply to turbine-engine-powered airplanes having a passenger seating configuration, excluding any required crewmember seat, of 10 to 30 seats, that are manufactured after [insert date 3 years after effective date of final rule] and operated under part 135. These requirements are being proposed to parallel the requirements for the same airplanes operated under part 121. These amendments would not apply to any airplane type certificated to be configured with nine or fewer passenger seats or any rotorcraft.

Proposed § 135.152(f)(1) would retain the requirement from current § 135.152(f). A new § 135.152(f)(2) is proposed that would update the correlation data requirements for newly manufactured airplanes.

Proposed new § 135.152(h) would list the parameters that apply to newly manufactured airplanes. This list is identical to the parameter list proposed in § 121.344.

Proposed § 135.152(i) would require all turbine-engine powered airplanes that are manufactured after [insert date three years after effective date of final rule] to record the parameters listed in paragraphs (h)(1) through (h)(57) of this part, as well as any additional parameters capable of being recorded on the installed FDR equipment, in accordance with proposed Appendix F to part 135.

Proposed § 135.152(j) would require all turbine-engine powered airplanes that are manufactured after [insert date 5 yrs after effective date of final rule], to record the parameters listed in paragraph (h)(1) through (88) of this section within the ranges, accuracies, resolutions, and recording intervals specified in Appendix F. This provision is identical as proposed in § 121.344a(c), since it would apply to the same airplanes, and the same reasons for its adoption applies.

Proposed Appendix F: This new appendix would correspond directly to the parameter list set forth in § 135.152(h), and would present the ranges, accuracies, resolutions, and recording intervals for each parameter. This proposed appendix is identical to proposed Appendix M to part 121.

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FLIGHT DATA RECORDER UPGRADE REQUIREMENTS

	Category 1 No FDAU*, mfd on or before 10/11/91	Category 2 FDAU, mfd on or before 10/11/91	Category 3 FDAU, mfd after 10/11/91	Category 4 FDAU, mfd 3 (or 5) years after final rule
Current Parameters	11 parameters	17 parameters	Up to 29 parameters	29 parameters
Proposed parameters	17/18 parameters	17 - 22 parameters	34 parameters	57 parameters (3 years) 88 parameters (5 years)
Airplanes	1929 airplanes over 30 seats; 727, 737, L-1011, DC-8, DC-9, F-28	1360 airplanes over 30 seats 704 turboprops A-320, 737, 747, 757, 767, DC-10, F-28, MD-80, ATR-42, EMB-120, SAAB 340, DHC-8	1036 airplanes over 30 seats 673 airplanes 10-19 seats 277 airplanes 20-30 seats 737, 747, 757, 767, 777, F-100, MD-11, MD-80, MD-88, MD-90, ATR-72	All newly manufactured airplanes Existing derivatives and any new type certificates

*FDAU = Flight Data Acquisition Unit

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International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization regulations and Joint Aviation Authority regulations, where they exist. Any differences between those documents and these regulations are of a minor, technical nature, and are deemed insignificant. They would not adversely affect harmonization.

Paperwork Reduction Act

No information collection is required by this proposed rule.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. A regulatory evaluation of the proposal is in the docket.

Costs

To obtain representative and comprehensive information from which to develop the industry costs of this proposed rule, the FAA relied on the responses of ATA and RAA members to an air carrier cost survey developed by the ARAC working group. (The FAA augmented this information with adjusted costs analysis from the recently approved commuter rule.) The principle aggregate cost detailed in the cost survey were (1) equipment and inventory/spares; (2) engineering, installation, and other costs, inclusive of recurrent maintenance costs; and (3) aircraft out-of-service costs which reflect revenue losses resulting from unscheduled aircraft downtime.

The total turbojet fleet costs for air carriers operating under part 121 for the projected retrofits are $472.0 million ($420.4 million, discounted) if required to be done within a 2-year compliance time frame. For a 4-year compliance time frame, the FAA estimates the costs would be $308.9 million ($259.1 million, discounted). The equivalent total turboprop fleet costs for air carriers operating under part 121 are $39.0 million ($35.2 million, discounted) for the 2-year compliance time frame, and $30.4 million ($25.8 million, discounted) for the 4-year compliance time frame. The total 4-year compliance time frame costs for part 135, 10–19 seat aircraft required to now operate under part 121 are estimated to be $26.4 million ($22.3 million, discounted) and for part 135, 20–30 seat aircraft, $10.9 million ($9.2 million, discounted), or $37.3 million ($31.5 million, discounted) total part 135 costs. Thus, the total 4-year compliance time frame discounted costs for the proposed retrofits required under this proposed rule are $316.3 million.

With regard to the total turbojet fleet costs for air carriers operating under part 121, nearly one-half the total cost for the 2-year alternative represents the out-of-service costs or lost revenues that would be imposed by the shorter compliance time requirement. The other one-half of the total cost represents the basic costs which include capital investment and expenses. In the 4-year time frame, just over 20 percent of the total cost represents the out-of-service costs or lost revenues that would be imposed by this compliance time requirement. No similar assessment can be made for either the turboprop fleet or part 135 carriers that will now be required to operate under part 121. However, because the total turbojet fleet costs represent over 80 percent of the air carrier industry cost analyzed for this proposed rule, the two year time frame suggests itself to clearly be a more costly option than the four year time frame. The FAA's estimates of out of service costs by aircraft type are summarized in the appendix to the full Regulatory Evaluation. That document is available for review in the regulatory docket.

Benefits

DFDR's do not in and of themselves prevent accidents; they are used as an investigative tool when accidents or incidents occur. From the DFDR information, a greater understanding of the dynamics and probable causes of accidents and incidents can be obtained. With this knowledge, a "fix" can be made to reduce the chance of a similar occurrence in the future.

Due to the very nature of the DFDR requirements (i.e., that we currently do not know how or why certain accidents occur), the FAA is not able to quantify the likely benefits that will ultimately result from this proposal. Nevertheless, the FAA has determined, particularly in light of the NTSB recommendations, that information concerning enhanced parameters can be collected cost-effectively. The FAA will be able to use incident information to reduce accidents of the nature that are currently of undetermined cause.

Benefit Cost Comparison

The FAA cautions that the cost analysis detailed in the preceding sections is not necessarily exhaustive. The purpose of this rulemaking is to require the installation of DFDR's that provide more flight information about aviation accidents or incidents. This in turn, would allow industry to predict certain trends in order to make the necessary modifications prior to future accidents or incidents. Thus, it is assumed that as a result of this rulemaking the quantity and quality of information is increased about those accidents for which the NTSB currently cannot determine the probable cause. To the extent that this occurs, then the FAA would take appropriate additional action to prevent a recurrence of those kinds of accidents.

Future FAA actions could take the form of Advisory Circulars, Airworthiness Directives, or possibly, additional rulemakings. The costs of these follow-on FAA actions could vary from negligible costs to considerable costs of some unknown amount. The costs of such future follow-on actions by the FAA should be taken into consideration as part of the costs of this rulemaking. However, the costs of potential future actions have not been included because the costs of such follow-on actions cannot be estimated. It should be understood, therefore, that, to the extent that the cost of the follow-on actions are more than negligible, the current costs estimates would tend to underestimate the total cost of this rulemaking.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires regulatory agencies to review rules which may have "a significant economic impact on a substantial number of small entities." For this proposed rulemaking, a "small entity" is an operator of aircraft for hire owning, but not necessarily operating, nine (9) aircraft or less. A "substantial number of small entities", as defined in FAA order 2100.14A-Regulatory Flexibility Criteria and Guidance, is a number (in this instance, the number of operators) which is not less than eleven and is more then one-third of the small entities subject to a proposed or existing rule.

A "significant economic impact" or cost threshold, is defined as an annualized net compliance cost level that exceeds 1) $119,900 (1994 dollars) in the case of scheduled operators of aircraft for hire whose entire fleet has a seating capacity in excess of 60 seats; 2) $67,000 (1994 dollars) in the case of scheduled operators of aircraft for hire for which the entire fleet has a seating capacity less than or equal to 60 seats; and 3) $4,800 (1994 dollars) in the case of unscheduled operators of aircraft for hire.

The FAA has determined the annualized costs (20 years) for scheduled operators of large aircraft to be $9,128 per aircraft for the 2-year time frame and $5,611 per aircraft for the 4-year time frame. Multiplying each of these estimates by 9, (the upper bound of the small entity criteria) yields results of $82,155 and $50,501 for the 2-year and 4-year time frames, respectively. Each of these estimates is significantly below the minimum compliance cost criteria of $119,900 for scheduled operators of large aircraft.

The FAA has also determined the annualized costs (20 years) for scheduled operators of small aircraft to be $4,378 per aircraft for the 2-year time frame and $3,067 per aircraft for the 4-year time frame. The upper bound costs for consideration within the small entity (9 aircraft) criteria are $39,398 for the 2-year time frame and $27,603 for the 4-year time frame, respectively. Both are well below the minimum compliance cost of $67,000.

International Trade Impact Assessment

The FAA has determined that revisions to digital flight data recorder rules could have a significant impact on international trade. The FAA is of the opinion that while the proposed rule will not effect non-U.S. operators of foreign aircraft operating outside the United States, it could have a significant impact on the suppliers of materials required for retrofitting the affected aircraft in the domestic fleet. Domestic sources of the required retrofit products may not be able to meet the increased demand of the domestic air carriers for DFDR's as these air carriers increased orders to meet the tight compliance time-frame imposed by this proposed rule. Foreign producers may benefit by supplying the unfilled orders. The FAA welcomes comments on this issue from manufacturers and suppliers of the proposed retrofit materials as well as other interested parties.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation would be a significant regulatory action under Executive Order 12866, and is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects

14 CFR Part 121

Air carriers, Aviation safety, Reporting and recordkeeping requirements, Transportation

14 CFR Part 125

Aviation safety, Reporting and recordkeeping requirements

14 CFR Part 129

Air carriers, Aviation safety, Reporting and recordkeeping requirements

14 CFR Part 135

Aviation safety, Reporting and recordkeeping requirements

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR parts 121, 125, 129, and 135 of the Federal Aviation Regulations as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. Section 121.344 is revised to read as follows:

§ 121.344 Digital flight data recorders for transport category airplanes.

(a) Except as provided in paragraph (l) of this section, no person may operate under this part a turbine-engine-powered transport category airplane unless it is equipped with one or more approved flight recorders that use a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. The operational parameters required to be recorded by digital flight data recorders required by this section are as follows; the phrase "when an information source is installed" following a parameter indicates that recording of that parameter is not intended to require a change in installed equipment:

(1) Time;
(2) Pressure altitude;
(3) Indicated airspeed;
(4) Heading—primary flight crew reference (if selectable, record discrete, true or magnetic);
(5) Normal acceleration (Vertical);
(6) Pitch attitude;
(7) Roll attitude;
(8) Manual radio transmitter keying, or CVR/DFDR synchronization reference;
(9) Thrust/power of each engine—primary flight crew reference;
(10) Autopilot engagement status;
(11) Longitudinal acceleration;
(12) Pitch control input;
(13) Lateral control input;
(14) Rudder pedal input;
(15) Primary pitch control surface position;
(16) Primary lateral control surface position;
(17) Primary yaw control surface position;
(18) Lateral acceleration;
(19) Pitch trim surface position or the parameters of paragraph (a)(82) of this section, if currently recorded;
(20) Trailing edge flap or cockpit flap control selection (except when the parameters of paragraph (a)(85) of this section apply);
(21) Leading edge flap or cockpit flap control selection (except when the parameters of paragraph (a)(86) of this section apply);
(22) Each Thrust reverser position (or equivalent for propeller airplane);
(23) Ground spoiler position or speed brake selection (except when the parameters of paragraph (a)(87) of this section apply);
(24) Outside or total air temperature;
(25) Automatic Flight Control System (AFCS) modes and engagement status, including autothrottle;
(26) Radio altitude (when an information source is installed);
(27) Localizer deviation, MLS Azimuth;
(28) Glideslope deviation, MLS Elevation;
(29) Marker beacon passage;
(30) Master warning;
(31) Air/ground sensor (primary airplane system reference nose or main gear);
(32) Angle of attack (when information source is installed);
(33) Hydraulic pressure low (each system);
(34) Ground speed (when an information source is installed);
(35) Ground proximity warning system;
(36) Landing gear position or landing gear cockpit control selection;
(37) Drift angle (when an information source is installed);
(38) Wind speed and direction (when an information source is installed);

(39) Latitude and longitude (when an information source is installed);
(40) Stick shaker/pusher (when an information source is installed);
(41) Windshear (when an information source is installed);
(42) Throttle/power lever position;
(43) Additional engine parameters (as designated in appendix M of this part);
(44) Traffic alert and collision avoidance system;
(45) DME 1 and 2 distances;
(46) Nav 1 and 2 selected frequency;
(47) Selected barometric setting (when an information source is installed);
(48) Selected altitude (when an information source is installed);
(49) Selected speed (when an information source is installed);
(50) Selected mach (when an information source is installed);
(51) Selected vertical speed (when an information source is installed);
(52) Selected heading (when an information source is installed);
(53) Selected flight path (when an information source is installed);
(54) Selected decision height (when an information source is installed);
(55) EFIS display format;
(56) Multi-function/engine/alerts display format;
(57) Thrust command (when an information source is installed);
(58) Thrust target (when an information source is installed);
(59) Fuel quantity in CG trim tank (when an information source is installed);
(60) Primary Navigation System Reference;
(61) Icing (when an information source is installed);
(62) Engine warning each engine vibration (when an information source is installed);
(63) Engine warning each engine over temp. (when an information source is installed);
(64) Engine warning each engine oil pressure low (when an information source is installed);
(65) Engine warning each engine over speed (when an information source is installed);
(66) Yaw trim surface position;
(67) Roll trim surface position;
(68) Brake pressure (selected system);
(69) Brake pedal application (left and right);
(70) Yaw or sideslip angle (when an information source is installed);
(71) Engine bleed value position (when an information source is installed);
(72) De-icing or anti-icing system selection;
(73) Computed center of gravity;
(74) AC electrical bus status;
(75) DC electrical bus status;
(76) APU bleed valve position (when an information source is installed);
(77) Hydraulic pressure (each system);
(78) Loss of cabin pressure;
(79) Computer failure;
(80) Heads-up display (when an information source is installed);
(81) Para-visual display (when an information source is installed);
(82) Cockpit trim control input position—pitch;
(83) Cockpit trim control input position—roll;
(84) Cockpit trim control input position—yaw;
(85) Trailing edge flap and cockpit flap control position;
(86) Leading edge flap and cockpit flap control position;
(87) Ground spoiler position and speed brake selection; and
(88) All cockpit flight control input forces (control wheel, control column, rudder pedal).

(b) For all turbine-engine powered transport category airplanes manufactured on or before October 11, 1991, by [four years from effective date of final rule]—

(1) For airplanes not equipped as of July 15, 1996 with a flight data acquisition unit (FDAU), the parameters listed in paragraphs (a)(1) through (a)(18) of this section must be recorded within the ranges and accuracies specified in Appendix B of this part, and—

(i) For airplanes with more than two engines, the parameter described in paragraph (a)(18) is not required unless sufficient capacity is available on the existing recorder to record that parameter;

(ii) Parameters listed in paragraphs (a)(12) through (a)(17) each may be recorded from a single source.

(2) For airplanes that were equipped as July 16, 1996 with a flight data acquisition unit (FDAU), the parameters listed in paragraphs (a)(1) through (a)(22) of this section must be recorded within the ranges, accuracies, and recording intervals specified in appendix M of this part. Parameters listed in paragraphs (a)(12) through (a)(17) each may be recorded from a single source.

(3) The approved flight recorder required by this section must be installed at the earliest time practicable, but no later than the next heavy maintenance check after [two years after service for 4 or more days and is scheduled to include access to major structural components.

(c) For all turbine-engine powered transport category airplanes manufactured on or before October 11, 1991—

(1) That were equipped as of July 16, 1996 with one or more digital data bus(es) and an ARINC 717 digital flight data acquisition unit (DFDAU) or equivalent, the parameters specified in paragraphs (a)(1) through (a)(22) of this section must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified in appendix M of this part by [4 years after effective date of the final rule]. Parameters listed in paragraphs (a)(12) through (a)(14) each may be recorded from a single source.

(2) Commensurate with the capacity of the recording system (DFDAU or equivalent and the DFDR), all additional parameters for which information sources are installed and which are connected to the recording system, must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified in appendix M of this part by [4 years after effective date of the final rule].

(3) That were subject to § 121.343(e) of this part, all conditions of § 121.343(e) must continue to be met until compliance with paragraph (c)(1) of this section is accomplished.

(d) For all turbine-engine-powered transport category airplanes that were manufactured after October 11, 1991,—

(1) The parameters listed in paragraph (a)(1) through (a)(34) of this section must be recorded within the ranges, accuracies, resolutions, and recording intervals specified in appendix M of this part by [4 years after the effective date of the final rule]. Parameters listed in paragraphs (a)(12) through (a)(14) each may be recorded from a single source.

(2) Commensurate with the capacity of the recording system, all additional parameters for which information sources are installed and which are connected to the recording system, must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified in appendix M of this part by [4 years after effective date of the final rule].

(e) For all turbine-engine-powered transport category airplanes that are manufactured after [3 years after effective date of final rule]—

(1) The parameters listed in paragraph (a)(1) through (a)(88) of this section must be recorded within the ranges, accuracies, resolutions, and recording intervals specified in appendix M of this part.

(2) Commensurate with the capacity of the recording system, all additional parameters for which information sources are installed and which are connected to the recording system, must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified in appendix M of this part.

(f) For all turbine-engine-powered transport category airplanes that are manufactured after [5 years after effective date of final rule], the parameters listed in paragraph (a)(1) through (a)(88) of this section must be recorded within the ranges, accuracies, resolutions, and recording intervals specified in appendix M of this part.

(g) Whenever a flight data recorder required by this section is installed, it must be operated continuously from the instant the airplane begins its takeoff roll until it has completed its landing roll.

(h) Except as provided in paragraph (i) of this section, and except for recorded data erased as authorized in this paragraph, each certificate holder shall keep the recorded data prescribed by this section, as appropriate, until the airplane has been operated for at least 25 hours of the operating time specified in § 121.359(a) of this part. A total of 1 hour of recorded data may be erased for the purpose of testing the flight recorder or the flight recorder system. Any erasure made in accordance with this paragraph must be of the oldest recorded data accumulated at the time of testing. Except as provided in paragraph (i) of this section, no record need be kept more than 60 days.

(i) In the event of an accident or occurrence that requires immediate notification of the National Transportation Safety Board under 49 CFR part 830 of its regulations and the results in termination of the flight, the certificate holder shall remove the recorder from the airplane and keep the recorder data prescribed by this section, as appropriate, for at least 60 days or for a longer period upon the request of the Board or the Administrator.

(j) Each flight data recorder system required by this section must be installed in accordance with the requirements of § 25.1459 (a), (b), (d), and (e) of this chapter. A correlation must be established between the values recorded by the flight data recorder and the corresponding values being measured. The correlation must contain

and airspeed sensors that are an integral part of the flight data recorder system, a single correlation may be established for any group of airplanes—

(1) That are of the same type;

(2) On which the flight recorder system and its installation are the same; and

(3) On which there is no difference in the type design with respect to the installation of those sensors associated with the flight data recorder system. Documentation sufficient to convert recorded data into the engineering units and discrete values specified in the applicable appendix must be maintained by the certificate holder.

(k) Each flight data recorder required by this section must have an approved device to assist in locating that recorder under water.

(l) The following airplanes need not comply with this section, but must continue to comply with applicable paragraphs of § 121.343 of this chapter, as appropriate:

(1) Airplanes that meet the Stage 2 noise levels of part 36 of this chapter and are subject to § 91.801(c) of this chapter, until January 1, 2000. On and after January 1, 2000, any Stage 2 airplane otherwise allowed to be operated under part 91 of this chapter must comply with the applicable flight data recorder requirements of this section for that airplane.

(2) General Dynamics Convair 580, General Dynamics Convair 600, General Dynamics Convair 640, de Havilland Aircraft Company Ltd. DHC–7, Fairchild Aircraft, Inc., FH 227, Fokker F–27 (except Mark 50), F–28 Mark 1000 and Mark 4000, Gulfstream Aerospace G–159, Lockheed Aircraft Corporation Electra 10–A, Lockheed Aircraft Corporation Electra 10–B, Lockheed Aircraft Corporation Electra 10–E, Maryland Air Industries, Inc. F27, Mitsubishi Heavy Industries, Ltd. YS–11, Short Bros. Limited SD3–30, Short Bros. Limited SD3–60.

3. Section 121.344a is added to read as follows:

§ 121.344a Digital flight data recorders for 10–19 seat airplanes.

(a) No person may operate a turbine-engine-powered airplane having a passenger seating configuration, excluding any required crewmember seat, of 10 to 19 seats, that was brought onto the U.S. register after October 11, 1991, unless it is equipped with one or brought onto the U.S. register after October 11, 1991, must comply with either the requirements in this section or the applicable paragraphs in § 135.152 of this chapter. In addition, by [4 years after the effective date of the final rule]—

(1) The parameters listed in §§ 121.344(a)(1) through 121.344(a)(11) must be recorded within the ranges, accuracies, and resolutions specified in appendix B of part 135 of this chapter, except that—

(i) Either the parameter listed in § 121.344(a)(12) or (a)(15) must be recorded; either the parameter listed in § 121.344(a)(13) or (a)(16) must be recorded; and either the parameter listed in § 121.344(a)(14) or (a)(17) must be recorded.

(ii) For airplanes with more than two engines, the parameter described in § 121.344(a)(18) must also be recorded if sufficient capacity is available on the existing recorder to record that parameter;

(iii) Parameters listed in §§ 121.344(a)(12) through 121.344(a)(17) each may be recorded from a single source;

(iv) Any parameter for which no value is contained in appendix B of part 135 of this chapter must be recorded within the ranges, accuracies, and resolutions specified in appendix B of this part.

(2) Commensurate with the capacity of the recording system (FDAU or equivalent and the DFDR), the parameters listed in sections 121.344(a)(19) through 121.344(a)(22) also must be recorded within the ranges, accuracies, resolutions, and recording intervals specified in appendix B of part 135 of this chapter:

(3) The approved flight recorder by this section must be installed as soon as practicable, but no later than the next heavy maintenance check or equivalent after [two years after effective date of final rule]. A heavy maintenance check is considered to be any time an airplane is scheduled to be out of service for 4 or more days and is scheduled to include access to major structural components.

(b) For all turbine-engine-powered airplanes having a passenger seating configuration, excluding any required crewmember seat of 10 to 19 seats, that are manufactured after [three years from effective date of final rule]—

(1) The parameters listed in sections 121.344(a)(1) through 121.344(a)(57)

parameters listed in section 121.344(a) for which information sources are installed and which are connected to the recording system, must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified in appendix M of this part by [4 years after effective date of the final rule].

(c) For all turbine-engine-powered airplanes having a passenger seating configuration, excluding any required crewmember seats, of 10 to 19 seats, that are manufactured after [5 years after effective date of final rule], the parameters listed in section 121.344(a)(1) through (a)(88) must be recorded within the ranges, accuracies, resolutions, and recording intervals specified in appendix M of this part.

(d) Each flight data recorder system required by this section must be installed in accordance with the requirements of section 23.1459 (a), (b), (d), and (e) of this chapter. A correlation must be established between the values recorded by the flight data recorder and the corresponding values being measured. The correlation must contain a sufficient number of correlation points to accurately establish the conversion from the recorded values to engineering units or discrete state over the full operating range of the parameter. A single correlation may be established for any group of airplanes—

(1) That are of the same type;

(2) On which the flight recorder system and its installation are the same; and

(3) On which there is no difference in the type design with respect to the installation of those sensors associated with the flight data recorder system.

Correlation documentation must be maintained by the certificate holder.

(e) All airplanes subject to this section are also subject to the requirements and exceptions stated in sections 121.344(g) through 121.344(k).

(f) The following airplane types need not comply with this section, but must continue to comply with applicable paragraphs of section 135.152 of this chapter, as appropriate: Beech Aircraft—99 Series, Beech Aircraft 1300, Beech Aircraft 1900C, Construcciones Aeronauticas, S.A. (CASA) C–212, deHaviland DHC–6, Dornier 228, HS–748, Embraer EMB 110, Jetstream 3101, Jetstream 3201, Fairchild Aircraft SA–226.

4. Appendix M to part 121 is added to read as follows:

APPENDIX M TO PART 121.—AIRPLANE FLIGHT RECORDER SPECIFICATION

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
1. Time or Relative Time counts.	24 Hrs, 0 to 4095	+/−0.125% Per Hour.	4	1 sec	UTC time preferred when available. Counter increments each 4 seconds of system operation.
2. Pressure Altitude	−1000 ft to max certificated altitude of aircraft. +5000 ft.	+/−100 to +/−700 ft (see table, TSO C124a or TSO C51a).	1	5′ to 35′	Data should be obtained from the air data computer when practicable.
3. Indicated airspeed or Calibrated airspeed.	50 KIAS or minimum value to Max V_{so}, and V_{so} to 1.2 V_{D}.	+/−5% and +/−3%	1	1 kt	Data should be obtained from the air data computer when practicable.
4. Heading (Primary flight crew reference).	0−360° and Discrete "true" or "mag".	+/−2°	1	0.5°	When true or magnetic heading can be selected as the primary heading reference, a discrete indicating selection must be recorded.
5. Normal Acceleration (Vertical).	−3g to +6g	+/−1% of max range excluding datum error of +/−5%.	0.125	0.01g.	
6. Pitch Attitude	+/−75°	+/−2°	1 or 0.25 for airplanes operated under § 121.344(f).	0.5°	A sampling rate of 0.25 is recommended.
7. Roll Attitude	+/−180°	+/−2°	1 or 0.5 for airplanes operated under § 121.344(f).	0.5°	A sampling rate of 0.5 is recommended.
8. Manual Radio Transmitter Keying or CVR/DFDR synchronization reference.	On-Off (Discrete)		1		Preferably each crew member but one discrete acceptable for all transmission provided the CVR/FDR system complies with TSO C124a CVR synchronization requirements (paragraph 4.2.1 ED–55).
9. Thrust/Power on Each Engine—primary flight crew reference.	Full Range Forward	+/−2%	1 (per engine)	0.2% of full range.	Sufficient parameters (e.g. EPR, N1 or Torque, NP) as appropriate to the particular engine be recorded to determine power in forward and reverse thrust, including potential overspeed conditions.
10. Autopilot Engagement.	Discrete "on" or "off".		1.		

APPENDIX M TO PART 121.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
11. Longitudinal Acceleration.	+/−1g	+/−1.5% max. range excluding datum error of +/−5%.	0.25	0.01g.	
12a. Pitch Control(s) position (non-fly-by-wire systems.	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.2% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
12b. Pitch Control(s) position (fly-by-wire systems).	Full Range	+/−2° Unless Higher Accuracy, Uniquely Required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.2% of full range.	
13a. Lateral Control position(s) (non-fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.2% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
13b. Lateral Control positions(s) (fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.2% of full range.	
14a. Yaw Control positions(s) (fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5	0.2% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5.
14b. Yaw Control positions(s) (fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5	0.2% of full range.	
15. Pitch Control Surface(s) Position.	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 121.344(f)	0.2% of full range.	For airplanes fitted with multiple or split surfaces, a suitable combination of inputs is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25.
16. Lateral Control Surface(s) Position.	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 121.344(f)	0.2% of full range.	A suitable combination of surface position sensors is acceptble in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25.
17. Yaw Control Surface(s).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5	0.2% of full range.	For airplanes with multiple or split surfaces, a suitable combination of surface position sensors is acceptable in lieu of recording each surface seperately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5.
18. Lateral Acceleration.	+/−1g	+/−1.5% max. range excluding datum error of +/−5%.	0.25	0.01g.	
19. Pitch Trim Surface Position.	Full Range	+/−3% Unless Higher Accuracy Uniquely Required.	1	0.3% of full range.	

APPENDIX M TO PART 121.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
20. Trailing Edge Flap or Cockpit Control Selection.	Full Range or Each Position (discrete).	+/−3° or as Pilot's indicator.	2	0.5% of full range.	Flap positin and cockpit control may each be sampled alternately at 4 second intervals, to give a data point every 2 seconds.
21. Leading Edge Flap or Cockpit Control Selection.	Full Range or Each Discrete Position.	+/−3° or as Pilot's indicator and sufficient to determine each discrete position..	2	0.5% of full range.	Left and right sides, or flap position and cockpit control may each be sampled at 4 second intervals, so as to give a data point every 2 seconds.
22. Each Thurst Reverser Position (or equivalent for propeller airplane).	Stowed, In Transit, and Reverse (Discrete).		1 (per engine).		Turbo-jet—2 discretes enable the 3 states to be determined, Turbo—prop—1 discrete.
23. Ground Spoiler Position or Speed Brake Selection.	Full Range or Each Position (discrete).	+/−2° Unless Higher Accuracy Uniquely Required.	1 0.5 for airplanes operated under §121.344(f).	0.2% of full range.	
24. Outside Air Temperature or Total Air Temperature.	−50°C to +90°C	+/−2°C	2	0.3°C.	
25. Autopilot/ Autothrottle/AFCS Mode and Engagement Status.	A suitable combination of discretes.		1		Discretes should show which systems are engaged and which primary modes are controlling the flight path and speed of the aircraft.
26. Radio Altitude	−20 ft to 2,500 ft	+/−2 ft or +/−3% Whichever is Greater Below 500 ft and +/−5% Above 500 ft.	1	1 ft + 5% above 500 ft.	For autoland/category 3 operations each radio altimeter should be recorded, but arranged so that at least one is recorded each second.
27. Localizer Deviation or MLS Azimuth.	+/−400 Microamps or available sensor range as installed, +/−62°.	As installed +/−3% recommended.	1	0.3% of full range.	For autoland/category 3 operations each system should be recorded but arranged so that at least one is recorded each second. It is not necessary to record ILS and MLS at the same time, only the approach aid in use need be recorded.
28. Glideslope Deviation or MLS Elevation.	+/−400 Microamps or available sensor range as installed, 0.9 to + 30°.	As installed +/−3% recommended.	1	0.3% of full range.	For autoland/category 3 operations each system should be recorded but arranged so that at least one is recorded each second. It is not necessary to record ILS and MLS at the same time, only the approach aid in use need be recorded.
29. Marker Beacon Passage.	Discrete "on" or "off".		1		A single discrete is acceptable for all makers.
30. Master Warning	Discrete		1		Record the master warning and record each 'red' warning that cannot be determined from other parameters or from the cockpit voice recorder.
31. Air/ground sensor (primary airplane system reference nose or main gear).	Discrete "air" or "ground".		1 (0.25 recommended).		
32. Angle of Attack (If measured directly).	As installed	As Installed	2 or 0.5 for airplanes operated under §121.344(f).	0.3% of full range.	If left and right sensors are available, each may be recorded at 4 second intervals so as to give a data point each half second.
33. Hydraulic Pressure Low, Each System.	Discrete or available sensor range, "low"or "normal".	+/−5%	2	0.5% of full range.	
34. Groundspeed	As Installed	Most Accurate Systems Installed.	1	0.2% of full range.	

APPENDIX M TO PART 121.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
35. GPWS (ground proximity warning system).	Discrete "warning" or "off".		1		A suitable combination of discretes unless recorder capacity is limited in which case a single discrete for all modes is acceptable.
36. Landing Gear Position or Landing gear cockpit control selection.	Discrete		4		A suitable combination of discretes should be recorded.
37. Drift Angle	As installed	As installed	4	0.1°.	
38. Wind Speed and Direction.	As installed	As installed	4	1 knot, and 1.0°.	
39. Latitude and Longitude.	As installed	As installed	4	0.002°	Provided by the Primary Navigation System Reference. Where capacity permits Latitude/longitude resolution should be 0.0002°.
40. Stick shaker and pusher activation.	Discrete(s) "on" or "off".		1		A suitable combination of discretes to determine activation.
41. Windshear Detection.	Discrete "warning" or "off".		1		
42. Throttle/power lever position.	Full Range	+/−2%	1 for each lever	2% of full range	For airplanes with non-mechanically linked cockpit engine controls.
43. Additional Engine Parameters.	As installed	As installed	Each engine each second.	2% of full range	Where capacity permits, the preferred priority is indicated vibration level, N2, EGT, Fuel Flow, Fuel Cut-off lever position and N3, unless engine manufacturer recommends otherwise.
44. Traffic Alert and Collision Avoidance System (TCAS).	Discretes	As installed	1		A suitable combination of discretes should be recorded to determine the status of—Combined Control, Vertical Control, Up Advisory, and Down Advisory. (ref. ARINC Characteristic 735 Attachment 6E, TCAS VERTICAL RA DATA OUTPUT WORD.)
45. DME 1 and 2 Distance.	0–200 NM	As installed	4	1 NM	1 mile.
46. Nav 1 and 2 Selected Frequency.	Full range	As installed	4		Sufficient to determine selected frequency.
47. Selected barometric setting.	Full Range	+/−5%	(1 per 64 sec.)	0.2% of full range.	
48. Selected Altitude	Full Range	+/−5%	1	100 ft.	
49. Selected speed	Full Range	+/−5%	1	1 knot.	
50. Selected Mach	Full Range	+/−5%	1	.01.	
51. Selected vertical speed.	Full Range	+/−5%	1	100 ft/min.	
52. Selected heading	Full Range	+/−5%	1	1°.	
53. Selected flight path.	Full Range	+/−5%	1	1°.	
54. Selected decision height.	Full Range	+/−5%	64	1 ft.	
55. EFIS display format.	Discrete(s)		4		Discretes should show the display system status (e.g., off, normal, fail, composite, sector, plan, nav aids, weather radar, range, copy.
56. Multi-function/Engine Alerts Display format.	Discrete(s)		4		Discretes should show the display system status (e.g., off, normal, fail, and the identity of display pages for emergency procedures, need not be recorded.
57. Thrust command	Full Range	+/−2%	2	2% of full range.	
58. Thrust target	Full Range	+/−2%	4	2% of full range.	
59. Fuel quantity in CG trim tank.	Full Range	+/−5%	(1 per 64 sec.)	1% of full range.	

APPENDIX M TO PART 121.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
60. Primary Navigation System Reference.	Discrete GPS, INS, VOR/DME, MLS, Loran C, Omega, Localizer Glideslope.		4		A suitable combination of discretes to determine the Primary Navigation System reference.
61. Ice Detection	Discrete "ice" or "no ice".		4.		
62. Engine warning each engine vibration.	Discrete		1.		
63. Engine warning each engine over temp.	Discrete		1.		
64. Engine warning each engine oil pressure low.	Discrete		1.		
65. Engine warning each engine over speed.	Discrete		1.		
66. Yaw Trim Surface Position.	Full Range	+/−3% Unless Higher Accuracy Uniquely Required.	2	0.3% of full range.	
67. Roll Trim Surface Position.	Full Range	+/−3% Unless Higher Accuracy Uniquely Required.	2	0.3% of full range.	
68. Brake Pressure (left and right).	As installed	+/−5%	1		To determine braking effort applied by pilots or by autobrakes.
69. Brake Pedal Application (left and right).	Discrete or Analog "applied" or "off".	+/−5% (Analog)	1		To determine braking applied by pilots.
70. Yaw or sideslip angle.	Full Range	+/−5%	1	0.5°.	
71. Engine bleed valve position.	Discrete "open" or "closed".		4.		
72. De-icing or anti-icing system selection.	Discrete "on" or "off".		4.		
73. Computed center of gravity.	Full Range	+/−5%	(1 per 64 sec.)	1% of full range.	
74. AC electrical bus status.	Discrete "power" or "off".		4		Each bus.
75. DC electrical bus status.	Discrete "power" or "off".		4		Each bus.
76. APU bleed valve position.	Discrete "open" or "closed".		4.		
77. Hydraulic Pressure (each system).	Full range	+/−5%	2	100 psi.	
78. Loss of cabin pressure.	Discrete "loss" or "normal".		1.		
79. Computer failure (critical flight and engine control systems).	Discrete "fail" or "normal".		4.		
80. Heads-up display (when an information source is installed).	Discrete(s) "on" or "off".		4.		
81. Para-visual display (when an information source is installed).	Discrete(s) "on" or "off".		1.		
82. Cockpit trim control input position—pitch.	Full Range	+/−5%	1	0.2% of full range.	

APPENDIX M TO PART 121.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
83. Cockpit trim control input position—roll.	Full Range	+/−5%	1	0.2% of full range.	
84. Cockpit trim control input position—yaw.	Full Range	+/−5%	1	0.2% of full range.	
85. Trailing edge flap and cockpit flap control position.	Full Range	+/−5%	2	0.5% of full range.	Trailing edge flaps and cockpit flap control position may each be sampled alternately at 4 second intervals to provide a sample each 0.5 second.
86. Leading edge flap and cockpit flap control position.	Full Range or Discrete.	+/−5%	1	0.5% of full range.	
87. Ground spoiler position and speed brake selection.	Full Range or Discrete.	+/−5%	0.5	0.2% of full range.	
88. All cockpit flight control input forces (control wheel, control column, rudder pedal).	Full Range Control wheel Control Column Rudder pedal	+/−5% +/−70 lbs. +/−85 lbs +/−165 lbs.	1	0.2% of full range.	For fly-by-wire flight control systems, where flight control surface position is a function of the displacement of the control input device only, it is not necessary to record this parameter.

PART 125 CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

5. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

6. Section 125.226 is added to read as follows:

§ 125.226 Digital flight recorders.

(a) Except as provided in paragraph (l) of this section, no person may operate under this part a turbine-engine-powered transport category airplane unless it is equipped with one or more approved flight recorders that use a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. The operational parameters required to be recorded by digital flights data recorders required by this section are as follows; the phrase "when an information source is installed" following a parameter indicates that recording of that parameters is not intended to require a change in installed equipment:

(1) Time;
(2) Pressure altitude;
(3) Indicated airspeed;
(4) Heading—primary flight crew reference (if selectable, record discrete, true or magnetic);
(5) Normal acceleration (Vertical);
(6) Pitch attitude;
(7) Roll attitude;
(8) Manual radio transmitter keying, or CVR/DFDR synchorinization reference;
(9) Thrust/power of each engine—primary flight crew reference;
(10) Autopilot engagement status;
(11) Longitudinal acceleration;
(12) Pitch control input;
(13) Lateral control input;
(14) Rudder pedal input;
(15) Primary pitch control surface position;
(16) Primary lateral control surface position;
(17) Primary yaw control surface position;
(18) Lateral acceleration;
(19) Pitch trim surface position or the parameters of paragraph (a)(82) of this section, if currently recorded;
(20) Trailing edge flap or cockpit flap control selection (except when the parameters of paragraph (a)(85) of this section apply);
(21) Leading edge flap or cockpit flap control selection (except when the parameters of paragraph (a)(86) of this section apply);
(22) Each Thrust reverser position (or equivalent for propeller airplane);
(23) Ground spoiler position or speed brake selection (except when the parameters of paragraph (a)(87) of this section apply);
(24) Outside or total air temperature;
(25) Automatic Flight Control System (AFCS) modes and engagement status, including autothrottle;
(26) Radio altitude (when an information source is installed);
(27) Localizer deviation, MLS Azimuth;
(28) Glideslope deviation, MLS Elevation;
(29) Maker beacon passage;
(30) Master warning;
(31) Air/ground sensor (primary airplane system reference nose or main gear);
(32) Angle of attack (when information source is installed);
(33) Hydraulic pressure low (each system);
(34) Ground speed (when an information source is installed);
(35) Ground proximity warning system;
(36) Landing gear position or landing gear cockpit control selection;
(37) Drift angle (when an information source is installed);
(38) Wind speed and direction (when an information source is installed);
(39) Latitude and longitude (when an information source is installed);
(40) Stick shaker/pusher (when an information source is installed);
(41) Windshear (when an information source is installed);
(42) Throttle/power lever position;
(43) Additional engine parameters (as designated in appendix E of this part);
(44) Traffic alert and collision avoidance system;

(45) DME 1 and 2 distances;
(46) Nav 1 and 2 selected frequency;
(47) Selected barometric setting (when an information source is installed);
(48) Selected altitude (when an information source is installed);
(49) Selected speed (when an information source is installed);
(50) Selected mach (when an information source is installed);
(51) Selected vertical speed (when an information source is installed);
(52) Selected heading (when an information source is installed);
(53) Selected flight path (when an information source is installed);
(54) Selected decision height (when an information source is installed);
(55) EFIS display format;
(56) Multi-function/engine/alerts display format;
(57) Thrust command (when an information source is installed);
(58) Thrust target (when an information source is installed);
(59) Fuel quantity in CG trim tank (when an information source is installed);
(60) Primary Navigation System Reference;
(61) Icing (when an information source is installed);
(62) Engine warning each engine vibration (when an information source is installed);
(63) Engine warning each engine over temp. (when an information source is installed);
(64) Engine warning each engine oil pressure low (when an information source is installed);
(65) Engine warning each engine over speed (when an information source is installed);
(66) Yaw trim surface position;
(67) Roll trim surface position;
(68) Brake pressure (selected system);
(69) Brake pedal application (left and right);
(70) Yaw or sideslip angle (when an information source is installed);
(71) Engine bleed valve position (when an information source is installed);
(72) De-icing or anti-icing system selection (when an information source is installed);
(73) Computed center of gravity (when an information source is installed);
(74) AC electrical bus status;
(75) DC electrical bus status;
(76) APU bleed valve position (when an information source is installed);
(77) Hydraulic pressure (each system);
(78) Loss of cabin pressure;
(79) Computer failure;
(80) Heads-up display (when an information source is installed);
(81) Para-visual display (when an information source is installed);
(82) Cockpit trim control input position—pitch;
(83) Cockpit trim control input position—roll;
(84) Cockpit trim control input position—yaw;
(85) Trailing edge flap and cockpit flap control position;
(86) Leading edge flap and cockpit flap control position;
(87) Ground spoiler position and speed brake selection; and
(88) All cockpit flight control input forces (control wheel, control column, rudder pedal).

(b) For all turbine-engine powered transport category airplanes manufactured on or before October 11, 1991, by [four years from effective date of final rule]—

(1) For airplanes not equipped as of July 15, 1996 with a flight data acquisition unit (FDAU), the parameters listed in paragraphs (a)(1) through (a)(18) of this section must be recorded within the ranges and accuracies specified in appendix D of this part, and—

(i) For airplanes with more than two engines, the parameter described in paragraph (a)(18) is not required unless sufficient capacity is available on the existing recorder to record that parameter;

(ii) Parameters listed in paragraphs (a)(12) through (a)(17) each may be recorded from a single source.

(2) For airlines that were equipped as of July 15, 1996 with a flight data acquisition unit (FDAU), the parameters listed in paragraphs (a)(1) through (a)(22) of this section must be recorded within the ranges, accuracies, and recording intervals specified in appendix E of this part. Parameters listed in paragraphs (a)(12) through (a)(17) each may be recorded from a single source.

(3) The approved flight recorder required by this section must be installed at the earliest time practicable, but no later than the next heavy maintenance check after [two years after effective date of final rule], and no later than [four years after the effective date of the final rule]. A heavy maintenance check is considered to be any time an airplane is scheduled to be out of service for 4 or more days and is scheduled to include access to major structural components.

(c) For all turbine-engine powered transport category airplanes manufactured on or before October 11, 1991—

(1) That were equipped as of July 15, 1996 with one or more digital data bus(es) and an ARINC 717 digital flight data acquisition unit (DFDAU) or equivalent, the parameters specified in paragraphs (a)(1) through (a)(22) of this section must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified in appendix E of this part by [4 years after effective date of the final rule]. Parameters listed in paragraphs (a)(12) through (a)(14) each may be recorded from a single source.

(2) Commensurate with the capacity of the recording system (DFDAU or equivalent and the DFDR), all additional parameters for which information sources are installed and which are connected to the recording system, must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified in appendix E of this part by [4 years after effective date of the final rule].

(3) That were subject to § 125.225(e) of this part, all conditions of § 125.225(c) must continue to be met until compliance with paragraph (c)(1) of this section is accomplished.

(d) For all turbine-engine-powered transport category airplanes that were manufactured after October 11, 1991,—

(1) The parameters listed in paragraph (a)(1) through (a)(34) of this section must be recorded within the ranges, accuracies, resolutions, and recording intervals specified in appendix E of this part by [4 years after effective date of the final rule]. Parameters listed in paragraphs (a)(12) through (a)(14) each may be recorded from a single source.

(2) Commensurate with the capacity of the recording system, all additional parameters for which information sources are installed and which are connected to the recording system, must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified in appendix E of this part by [4 years after effective date of the final rule].

(e) For all turbine-engine-powered transport category airplanes that are manufactured after [3 years after effective date of the final rule]—

(1) The parameters listed in paragraph (a)(1) through (57) of this section must be recorded within the ranges, accuracies, resolutions, and recording intervals specified in appendix E of this part.

(2) Commensurate with the capacity of the recording system, all additional parameters for which information sources are installed and which are connected to the recording system, must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified in appendix E of this part.

(f) For all turbine-engine-powered transport category airplanes that are manufactured after [5 years after effective date of final rule], the parameters listed in paragraphs (a)(1) through (a)(88) of this section must be recorded within the ranges, accuracies, resolutions, and recording intervals specified in appendix E of this part.

(g) Whenever a flight data recorder required by this section is installed, it must be operated continuously from the instant the airplane begins its takeoff roll until it has completed its landing roll.

(h) Except as provided in paragraph (i) of this section, and except for recorded data erased as authorized in this paragraph, each certificate holder shall keep the recorded data prescribed by this section, as appropriate, until the airplane has been operated for at least 25 hours of the operating time specified in § 121.359(a) of this part. A total of 1 hour of recorded data may be erased for the purpose of testing the flight recorder or the flight recorder system. Any erasure made in accordance with this paragraph must be of the oldest recorded data accumulated at the time of testing. Except as provided in paragraph (i) of this section, no record need be kept more than 60 days.

(i) In the event of an accident or occurence that requires immediate notification of the National Transportation Safety Board under 49 CFR part 830 of its regulations and that results in termination of the flight, the certificate holder shall remove the recorder from the airplane and keep the recorder data prescribed by this section, as appropriate, for at least 60 days or for a longer period upon the request of the Board or the Administrator.

(j) Each flight data recorder system required by this section must be installed in accordance with the requirements of § 25.1459 (a), (b), (d), and (e) of this chapter. A correlation must be established between the values recorded by the flight data recorder and the corresponding values being measured. The correlation must contain a sufficient number of correlation points to accurately establish the conversion from the recorded values to engineering units or discrete state over the full operating range of the parameter. Except for airplanes having separate altitude and airspeed sensors that are an integral part of the flight data recorder system, a single correlation may be established for any group of airplanes—

(1) That are of the same type;

(2) On which the flight recorder system and its installation are the same; and

(3) On which there is no difference in the type design with respect to the installation of those sensors associated with the flight data recorder system. Documentation sufficient to convert recorded data into the engineering units and discrete values specified in the applicable appendix must be maintained by the certificate holder.

(k) Each flight data recorder required by this section must have an approved device to assist in locating that recorder under water.

(l) The following airplanes need not comply with this section, but must continue to comply with applicable paragraphs of § 125.225 of this chapter, as appropriate:

(1) Airplanes that meet the Stage 2 noise levels of part 36 of this chapter and are subject to § 91.801(c) of this chapter, until January 1, 2000. On and after January 1, 2000, any Stage 2 airplane otherwise allowed to be operated under part 91 of this chapter must comply with the applicable flight data recorder requirements of this section for that airplane.

(2) General Dynamics Convair 580, General Dynamics Convair 600, General Dynamics Convair 640, de Havilland Aircraft Company Ltd. DHC–7, Fairchild Aircraft, Inc., FH 227, Fokker F–27 (except Mark 50), F–28 Mark 1000 and Mark 4000, Gulfstream Aerospace G–159, Lockheed Aircraft Corporation Electra 10–A, Lockheed Aircraft Corporation Electra 10–B, Lockheed Aircraft Corporation Electra 10–E, Maryland Air Industries, Inc. F27, Mitsubishi Heavy Industries, Ltd. YS–11, Short Bros. Limited SD3–30, Short Bros. Limited SD3–60.

7. Appendix E to part 125 is added to read as follows:

APPENDIX E TO PART 125.—AIRPLANE FLIGHT RECORDER SPECIFICATION

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per Sampling Interval	Resolution	Remarks
1. Time or Relative Time Courts.	24 Hrs 0 to 4095	+/−0.125% Per Hour.	4	1 sec	UTC time preferred when available. Counter increments each 4 seconds of system operation.
2. Pressure Altitude	−1000 ft to max certificated altitude of aircraft.+5000 ft.	1/−100 to +/−700 ft (see table, TSO C124a or TSO C51A).	1	5′ to 35′	Data should be obtained from the air data computer when practicable.
3. Indicated airspeed or Calibrated airspeed.	50 KIAS or minimum value to Max V_{SO}, and V_{SO} to 1.2 V_{D}.	+/−5% and/−3%+	1	1 kt	Data should be obtained from the air data computer when practicable.
4. Heading (Primary flight crew reference.	0−360° and Discrete "true"or "mag".	+/−2°	1	0.5°	When true or magnetic heading can be selected as the primary heading reference, a discrete indicating selection must be recorded.
5. Normal Acceleration (Vertical).	−3g to +6g	+/−1% of max range excluding datum error of +/−5%.	0.125	0.01g.	

APPENDIX E TO PART 125.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per Sampling Interval	Resolution	Remarks
6. Pitch Attitude	+/−75°	+/−2°	1 or 0.25 for airplanes operated under § 121.344(f).	0.5°	A sampling rate of 0.25 is recommended.
7. Roll Attitude	+/−180°	+/−2°	1 or 0.5 for airplanes operated under § 121.344(f).	0.5°	A sampling rate of 0.5 is recommended.
8. Manual Radio Transmitter Keying or CVR/DFDR synchronization reference.	On-Off (Discrete) none.		1		Preferably each crew member but one discrete acceptable for all transmission provided the CVR/FDR system complies with TSO C124a CVR synchronization requirements (paragraph 4.2.1 ED–55).
9. Thrust/Power on Each Engine—Primary flight crew reference.	Full Range Forward	+/−2%	1 (per engine)	0.2% of full range.	Sufficient parameters (e.g. EPR, N1 or Torque, NP) as appropriate to the particular engine be recorded to determine power in forward and reverse thrust, including potential overspeed conditions.
10. Autopilot Engagement.	Discrete "on" or "off".		1		
11. Longitudinal Acceleration.	+/−1g	+/−1.5% max. range excluding datum error of +/−5%.	0.25	0.01g	
12a. Pitch Control(s) position (non-fly-by-wire systems.	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.2% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
12b. Pitch Control(s) position (fly-by-wire systems).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.2% of full range.	
13a. Lateral Control position(s) (non-fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.2% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
13b. Lateral Control position(s) (fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.2% of full range.	
14a. Yaw Control position(s) (non-fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5	0.2% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5.
14b. Yaw Control position(s) (fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5	0.2% of full range.	

APPENDIX E TO PART 125.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per Sampling Interval	Resolution	Remarks
15. Pitch Control Surface(s) Position.	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.2% of full range.	For airplanes fitted with multiple or split surfaces, a suitable combination of inputs is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25.
16. Lateral Control Surface(s) Position.	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.2% of full range.	A suitable combination of surface position sensors is acceptable in lieu of recording each surface seperately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25.
17. Yaw Control Surface(s) Position.	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5	0.2% of full range.	For airplanes with multiple or split surfaces, a suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5.
18. Lateral Acceleration.	+/−1g	+/−1.5% max. range excluding datum error of +/−5%.	0.25	0.01g.	
19. Pitch Trim Surface Position.	Full Range	+/−3% Unless Higher Accuracy Uniquely Required..	1	0.3% of full range.	
20. Trailing Edge Flap or Cockpit Control Selection.	Full Range or Each Position (discrete)..	+/−3° or as Pilot's indicator.	2	0.5% of full range.	Flap position and cockpit control may each be sampled alternately at 4 second intervals, to give a data point every 2 seconds.
21. Leading Edge Flap or Cockpit Control Selection.	Full Range or Each Discrete Position.	+/−3° or as Pilot's indicator and sufficient to determine each discrete position.	2	0.5% of full range.	Left and right sides, or flap position and cockpit control may each be sampled at 4 second intervals, so as to give a data point every 2 seconds.
22. Each Thrust Reverser Position (or equivalent for propeller airplane).	Stowed, In Transit, and Reverse (Discrete)..		1 (per engine).		Turbo-jet 2 discretes enable the 3 states to be determined, Turbo—prop—1 discrete.
23. Ground Spoiler Position or Speed Brake Selection.	Full Range or Each Position (discrete)..	+/−2° Unless Higher Accuracy Uniquely Required.	1, 0.5 for airplanes operated under § 121.344(f).	0.2% of full range.	
24. Outside Air Temperature or Total Air Temperature.	−50°C to +96°C	+/−2° C	2	0.3° C.	
25. Autopilot/ Autothrottle/AFCS Mode and Engagement Status.	A suitable combination of discretes.		1		Discretes should show which systems are engaged and which primary modes are controlling the flight path and speed of the aircraft.
26. Radio Altitude	−20 ft to 2,500 ft	+/−2 ft or +/−3% Whichever is Greater Below 500 ft and +/−5% Above 500 ft..	1	1 ft +5% above 500 ft.	For autoland/category 3 operations. each radio altimeter should be recorded, but arranged so that at least one is recorded each second.
27. Localizer Deviation or MLS Azimuth.	+/−400 Microamps or available sensor range as installed +/−62°.	As installed +/−3% recommended.	1	0.3% of full range.	For autoland/category 3 operations. each system should be recorded but arranged so that at least one is recorded each second. It is not necessary to record ILS and MLS at the same time, only the approach aid in use need be recorded.

APPENDIX E TO PART 125.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per Sampling Interval	Resolution	Remarks
28. Glideslope Deviation or MLS Elevation.	+/−400 Microamps or available sensor range as installed. 0.9 to +30°.	As installed +/−3% recommended.	1	0.3% of full range.	For autoland/category 3 operations. each system should be recorded but arranged so that at least one is recorded each second. It is not necessary to record ILS and MIS at the same time, only the approach aid in use need be recordad.
29. Marker Beacon Passage.	Discrete "on" or "off".		1		A single discrete is acceptable for all markers.
30. Master Warning	Discrete		1		Record the master warning and record each "red" warning that cannot be determined from other parameters or from the cockpit voice recorder.
31. Air/ground sensor (primary airplane system reference nose or main gear).	Discrete "air" or "ground".		1 (0.25 recommended).		
32. Angle of Attack (if measured directly).	As installed	As installed	2 or 0.5 for airplanes operated under §121.344(f).	0.3% of full range.	If left and right sensors are available, each may be recorded at 4 second intervals so as to give a data point each half second.
33. Hydraulic Pressure Low, Each System.	Discrete or available sensor range, "low" or "normal".	+/−5%	2	0.5% of full range.	
34. Groundspeed	As installed	Most Accurate Systems Installed.	1	0.2% of full range.	
35. GPWS (ground proximity warning system).	Discrete "warning" or "off".		1		A suitable combination of discretes unless recorder capacity is limited in which case a singel discrete for all modes is acceptable.
36. Landing Gear Position or Landing gear cockpit control selection.	Discrete		4		A suitable combination of discretes should be recorded.
37. Drift Angle	As installed	As installed	4	0.1%.	
38. Wind Speed and Direction.	As installed	As installed	4	1 knot, and 1.0.	
39. Latitude and Longitude.	As installed	As installed	4	0.002°	Provided by the Primary Navigation System Reference. Where capacity permits Latitude/longitude resolution should be 0.0002".
40. Stick shaker and pusher activation.	Discrete(s) "on" or "off".		1		A suitable combination of discretes to determine activation.
41. Windshear Detection.	Discrete "warning" or "off".		1.		
42. Throttle/power lever position.	Full Range	+/−2%	1 for each lever	2% of full range	For airplanes with non-mechanically linked cockpit engine controls.
43. Additional Engine Parameters.	As installed	As installed	Each engine each second.	2% of full range	Where capacity permits, the preferred priority is indicated vibration level, N2, EGT, Fuel Flow, Fuel Cut-off lever position and N3, unless engine manufacturer recommends otherwise.
44. Traffic Alert and Collision Avoidance System (TCAS).	Discretes	As installed	1		A suitable combination of discretes should be recorded to determine the status of—Combined Control, Vertical Control, Up Advisory, and Down Advisory. (ref. ARINC Characteristic 735 Attachment 6E, TCAS VERTICAL RA DATA OUTPUT WORD.)
45. DME 1 and 2 Distance.	0–200 NM;	As installed	4	1 NM	1 mile.
46. Nav 1 and 2 Selected Frequency.	Full range	As installed	4		Sufficient to determine selected frequency.
47. Selected barometric setting.	Full Range	+/−5%	(1 per 64 sec.)	0.2% of full range.	

APPENDIX E TO PART 125.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per Sampling Interval	Resolution	Remarks
48. Selected Altitude	Full Range	+/−5%	1	100 ft.	
49. Selected speed	Full Range	+/−5%	1	1 knot.	
50. Selected Mach	Full Range	+/−5%	1	.01.	
51. Selected vertical speed.	Full Range	+/−5%	1	100 ft/min.	
52. Selected heading	Full Range	+/−5%	1	1°.	
53. Selected flight path.	Full Range	+/−5%	1	1°.	
54. Selected decision height.	Full Range	+/−5%	64	1 ft.	
55. EFIS display format.	Discrete(s)		4		Discretes should show the display system status (e.g., off, normal, fail, composite, sector, plan, nav aids, weather radar, range, copy.
56. Multi-function/Engine Alerts Display format.	Discrete(s)		4		Discretes should show the display system status (e.g., off, normal, fail, and the identity of display pages for emergency procedures, need not be recorded.
57. Thrust command	Full Range	+/−2%	2	2% of full range.	
58. Thrust target	Full Range	+/−2%	4	2% of full range.	
59. Fuel quantity in CG trim tank.	Full Range	+/−5%	(1 per 64 sec.)	1% of full range.	
60. Primary Navigation System Reference.	Discrete GPS, INS, VOR/DME, MLS, Loran C, Omega, Localizer Glideslope.		4		A suitable combination of Discretes to determine the Primary Navigation System reference.
61. Ice Detection	Discrete "ice" or "no ice".		4.		
62. Engine warning each engine vibration.	Discrete		1.		
63. Engine warning each engine over temp..	Discrete		1.		
64. Engine warning each engine oil pressure low.	Discrete		1.		
65. Engine warning each engine over speed.	Discrete		1.		
66. Yaw Trim Surface Position.	Full Range	+/−3% Unless Higher Accuracy Uniquely Required.	2	0.3% of full range.	
67. Roll Trim Surface Position.	Full Range	+/−3% Unless Higher Accuracy Uniquely Required.	2	0.3% of full range.	
68. Brake Pressure (left and right).	As installed	+/−5%	1		To determine braking effort applied by pilots or by autobrakes.
69. Brake Pedal Application (left and right).	Discrete or Analog "applied" or "off".	+/−5% (Analog)	1		To determine braking applied by pilots.
70. Yaw or sideslip angle.	Full Range	+/−5%	1	0.5°	
71. Engine bleed valve position.	Discrete "open" or "closed".		4.		
72. De-icing or anti-icing system selection.	Discrete "on" or "off".		4.		
73. Computed center of gravity.	Full Range	+/−5%	(1 per 64 sec.)	1% of full range..	
74. AC electrical bus status.	Discrete "power" or "off".		4		Each bus.

APPENDIX E TO PART 125.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per Sampling Interval	Resolution	Remarks
75. DC electric bus status.	Discrete "power" or "off".		4		Each bus.
76. APU bleed valve position.	Discrete "open" or "closed".		4.		
77. Hydraulic Pressure (each system).	Full Range	+/−5%	2	100 psi.	
78. Loss of cabin pressure.	Discrete "loss" or "normal".		1.		
79. Computer failure (critical flight and engine control systems).	Discrete "fail" or "normal".		4.		
80. Heads-up display (when an information source is installed).	Discrete(s) "on" or "off".		4.		
81. Para-visual display (when an information source is installed).	Discrete(s) "on" or "off".		1.		
82. Cockpit trim control input position—pitch.	Full Range	+/−5%	1	0.2% of full range.	
83. Cockpit trim control input position—roll.	Full Range	+/−5%	1	0.2% of full range.	
84. Cockpit trim control input position—yaw.	Full Range	+/−5%	1	0.2% of full range.	
85. Trailing edge flap and cockpit flap control position.	Full Range	+/−5%	2	0.5% of full range.	Trailing edge flaps and cockpit flap control position may each be sampled alternately at 4 second intervals to provide a sample each 0.5 second.
86. Leading edge flap and cockpit flap control position.	Full Range or Discrete.	+/−5%	1	0.5% of full range.	
87. Ground spoiler position and speed brake selection.	Full Range or discrete.	+/−5%	0.5	0.2% of full range..	
88. All cockpit flight control input forces (control wheel, control column, rudder pedal).	Full Range Control wheel Control Column Rudder pedal	+/−5% +/−70 lbs. +/−85 lbs. +/−165 lbs.	1	0.2% of full range.	For fly-by-wire flight control systems, where flight control surface position is a function of the displacement of the control input device only, it is not necessary to record this parameter.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

8. The authority citation for part 129 continues to read as follows:

Authority: 49 USC 106(g), 40104–40105, 40113, 40119, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44096.

9. In § 129.1, the first sentence of paragraph (b) is revised to read as follows:

§ 129.1 Applicability.

* * * * *

(b) Sections 129.14 and 129.20 also apply to U.S.-registered aircraft operated in common carriage by a foreign person or foreign air carrier solely outside the United States. * * *

10. Section 129.20 is added to read as follows:

§ 129.20 Digital flight data recorders.

No person may operate an aircraft under this part that is registered in the United States unless it is equipped with one or more approved flight recorders that use a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. The flight data recorder must record the parameters that would be required to be recorded if the aircraft were operated under parts 121 or 135 of this chapter, and must be installed by the compliance times required by those parts, as applicable to the aircraft.

PART 135 AIR—TAXI OPERATORS AND COMMERCIAL OPERATORS

11. The authority citation for part 135 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

12. Section 135.152 is revised to read as follows:

§ 135.152 Flight recorders.

* * * * *

(f) (1) For airplanes manufactured on or before [3 years after effective date of final rule], and all other aircraft, each flight recorder required by this section must be installed in accordance with the requirements of § 23.1459, 25.1459, 27.1459, or 29.1459, as appropriate, of this chapter. The correlation required by paragraph (c) of §§ 23.1459, 25.1459, 27.1459, or 29.1459, as appropriate, of this chapter need be established only on one aircraft of a group of aircraft:

(i) That are of the same type;

(ii) On which the flight recorder models and their installations are the same; and

(iii) On which there are no differences in the type design with respect to the installation of the first pilot's instruments associated with the flight recorder. The most recent instrument calibration, including the recording medium from which this calibration is derived, and the recorder correlation must be retained by the certificate holder.

(f) (2) For airplanes manufactured after [3 years after effective date of final rule], each flight data recorder system required by this section must be installed in accordance with the requirements of § 23.1459 (a), (b), (d), and (e) of this chapter, or § 25.1459 (a), (b), (d), and (e) of this chapter. A correlation must be established between the values recorded by the flight data recorder and the corresponding values being measured. The correlation must contain a sufficient number of correlation points to accurately establish the conversion from the recorded values to engineering units or discrete state over the full operating range of the parameter. Except for airplanes having separate altitude and airspeed sensors that are an integral part of the flight data recorder system, a single correlation may be established for any group of airplanes—

(i) That are of the same type;

(ii) On which the flight recorder system and its installation are the same; and

(iii) On which there is no difference in the type design with respect to the installation of those sensors associated with the flight data recorder system. Documentation sufficient to convert recorded data into the engineering units and discrete values specified in the applicable appendix must be maintained by the certificate holder.

* * * * *

13. In § 135.152, new paragraphs (h), (i), and (j) are added to read as follows:

* * * * *

(h) The operational parameters required to be recorded by digital flight data recorders required by paragraphs (i) and (j) of this section are as follows; the phrase "when an information source is installed" following a parameter indicates that recording of that parameter is not intended to require a change in installed equipment:

(1) Time;

(2) Pressure altitude;

(3) Indicated airspeed;

(4) Heading—primary flight crew reference (if selectable, record discrete, true or magnetic);

(5) Normal acceleration (Vertical);

(6) Pitch attitude;

(7) Roll attitude;

(8) Manual radio transmitter keying, or CVR/DFDR synchronization reference;

(9) Thrust/power of each engine—primary flight crew reference;

(10) Autopilot engagement status;

(11) Longitudinal acceleration;

(12) Pitch control input;

(13) Lateral control input;

(14) Rudder pedal input;

(15) Primary pitch control surface position;

(16) Primary lateral control surface position;

(17) Primary yaw control surface position;

(18) Lateral acceleration;

(19) Pitch trim surface position or the parameters of paragraph (h)(82) of this section, if currently recorded;

(20) Trailing edge flap or cockpit flap control selection (except when the parameters of paragraph (h)(85) of this section apply);

(21) Leading edge flap or cockpit flap control selection (except when the parameters of paragraph (h)(86) of this section apply);

(22) Each Thrust reverser position (or equivalent for propeller airplane);

(23) Ground spoiler position or speed brake selection (except when the parameters of paragraph (h)(87) of this section apply);

(24) Outside or total air temperature;

(25) Automatic Flight Control system (AFCS) modes and engagement status, including autothrottle;

(26) Radio altitude (when an information source is installed);

(27) Localizer deviation, MLS Azimuth;

(28) Glideslope deviation, MLS Elevation;

(29) Market beacon passage;

(30) Master warning;

(31) Air/ground sensor (primary airplane system reference nose or main gear);

(32) Angle of attack (when information source is installed);

(33) Hydraulic pressure low (each system);

(34) Ground speed (when an information source is installed);

(35) Ground proximity warning system;

(36) Landing gear position or landing gear cockpit control selection;

(37) Drift angle (when an information source is installed);

(38) Wind speed and direction (when an information source is installed);

(39) Latitude and longitude (when an information source is installed);

(40) Stick shaker/pusher (when an information source is installed);

(41) Windshear (when an information source is installed);

(42) Throttle/power lever position;

(43) Additional engine parameters (as designated in appendix F of this part);

(44) Traffic alert and collision avoidance system;

(45) DME 1 and 2 distances;

(46) Nav 1 and 2 selected frequency;

(47) Selected barometric setting (when an information source is installed);

(48) Selected altitude (when an information source is installed);

(49) Selected speed (when an information source is installed);

(50) Selected mach (when an information source is installed);

(51) Selected vertical speed (when an information source is installed);

(52) Selected heading (when an information source is installed);

(53) Selected flight path (when an information source is installed);

(54) Selected decision height (when an information source is installed);

(55) EFIS display format;

(56) Multi-function/engine/alerts display format;

(57) Thrust command (when an information source is installed);

(58) Thrust target (when an information source is installed);

(59) Fuel quantity in CG trim tank (when an information source is installed);

(60) Primary Navigation System Reference;

(61) Icing (when an information source is installed);

(62) Engine warning each engine vibration (when an information source is installed);

(63) Engine warning each engine over temp. (when an information source is installed);

(64) Engine warning each engine oil pressure low (when an information source is installed);

(65) Engine warning each engine over speed (when an information source is installed);

(66) Yaw trim surface position;

(67) Roll trim surface position;

(68) Brake pressure (selected system);
(69) Brake pedal application (left and right);
(70) Yaw or sideslip angle (when an information source is installed);
(71) Engine bleed valve position (when an information source is installed);
(72) De-icing or anti-icing system selection (when an information source is installed);
(73) Computed center of gravity (when an information source is installed);
(74) AC electrical bus status;
(75) DC electrical bus status;
(76) APU bleed valve position (when an information source is installed);
(77) Hydraulic pressure (each system);
(78) Loss of cabin pressure;
(79) Computer failure;
(80) Heads-up display (when an information source is installed);
(81) Para-visual display (when an information source is installed);
(82) Cockpit trim control input position—pitch;
(83) Cockpit trim control input position—roll;
(84) Cockpit trim control input position—yaw;
(85) Trailing edge flap and cockpit flap control position;
(86) Leading edge flap and cockpit flap control position;
(87) Ground spoiler position and speed brake selection; and
(88) All cockpit flight control input forces (control wheel, control column, rudder pedal).

(i) For all turbine-engine-powered airplanes with a seating configuration, excluding any required crewmember seat, of 10 to 30 passenger seats, manufactured after [3 years after effective date of the final rule]—

(1) The parameters listed in paragraphs (h)(1) through (h)(57) of this section must be recorded within the ranges, accuracies, resolutions, and recording intervals specified in appendix F of this part.

(2) Commensurate with the capacity of the recording system, all additional parameters for which information sources are installed and which are connected to the recording system, must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified in appendix F of this part.

(j) For all turbine-engine-powered airplanes with a seating configuration, excluding any required crewmember seat, of 10 to 30 passenger seats, that are manufactured after [5 years after effective date of final rule], the parameters listed in paragraph (a)(1) through (a)(88) of this section must be recorded within the ranges, accuracies, resolutions, and recording intervals specified in appendix F of this part.

14. Appendix F to part 135 is added to read as follows:

APPENDIX F TO PART 135.—AIRPLANE FLIGHT RECORDER SPECIFICATION

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
1. Time or Relative Time Counts.	24 Hrs 0 to 4095	+/−0.125 Per Hour	4	1 sec	UTC time preferred when available. Counter increments each 4 seconds of system operation.
2. Pressure Altitude	−1000 ft to max certificated altitude of aircraft.+5000 ft.	+/−100 to +/−700 ft (see table, TSO C124a or TSO C51a).	1	5′ to 35′	Data should be obtained from the air data computer when practicable.
3. Indicated airspeed or Calibrated airspeed.	50 KIAS or minimum value to Max V_{so} and V_{so} to 1.2 V_{D}.	+/−5% and +/−3%	1	1 kt.	Data should be obtained from the air data computer when practicable.
4. Heading (Primary flight crew reference).	0−360° and Discrete "true" or "mag".	+/−2°	1	0.5°	When true or magnetic heading can be selected as the primary heading reference, a discrete indicating selection must be recorded.
5. Normal Acceleration (Vertical).	−3g to +6g	+/−1% of max range excluding datum error of +/−5%.	0.125	0.01g	
6. Pitch Attitude	+/−75°	+/−2°	1 or 0.25 for airplanes operated under §121.344(f).	0.5°	A sampling rate of 0.25 is recommended.
7. Roll Attitude	+/−180°	+/−2°	1 or 0.5 for airplanes operated under §121.344(f).	0.5°	A sampling rate of 0.5 is recommended.
8. Manual Radio Transmitter Keying or CVR/DFDR synchronization reference.	On-Off (Discrete)		1		Preferably each crew member but one discrete acceptable for all transmission provided the CVR/FDR system complies with TSO C124a CVR synchronization requirements (paragraph 4.2.1 ED–55).
9. Thrust/Power on Each Engine—primary flight crew reference.	Full Range Forward	+/−2%	1 (per engine)	0.2% of full range.	Sufficient parameters (e.g. EPR, N1 or Torque, NP) as appropriate to the particular engine be recorded to determine power in forward and reverse thrust, including potential overspeed conditions.

APPENDIX F TO PART 135.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
10. Autopilot Engagement.	Discrete "on" or "off".		1.		
11. Longitudinal Acceleration.	+/−1g	+/−1.5% max. range excluding datum error of +/−5%.	0.25	0.01g	
12a. Pitch Control(s) position (non-fly-wire systems.	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
12b. Pitch Control(s) position (fly-by-wire systems).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range.	
13a. Lateral Control position(s) (non-fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
13b. Lateral Control position(s) (fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range.	
14a. Yaw Control Position(s) (non-fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5	0.2% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5.
14b. Yaw Control Position(s) (fly-by-wire).	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5	0.2% of full range.	
15. Pitch Control Surface(s) Position.	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range.	For airplanes fitted with multiple or split surfaces, a suitable combination of inputs is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25.
16. Lateral Control Surface(s) Position.	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.2% of full range.	A suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25.
17. Yaw Control Surface(s) Position.	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5	0.2% of full range.	For airplanes with multiple or split surfaces, a suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5
18. Lateral Acceleration.	+/−1g	+/−1.5% max. range excluding datum error of +/−5%.	0.25	0.01g.	

APPENDIX F TO PART 135.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
19. Pitch Trim Surface Position.	Full Range	+/−3% Unless Higher Accuracy Uniquely Required.	1	0.3% of full range.	
20. Trailing Edge Flap or Cockpit Control Selection.	Full Range or Each Position (discrete).	+/−3° or as Pilot's indicator.	2	0.5% of full range.	Flap position and cockpit control may each be sampled alternately at 4 second intervals, to give a data point every 2 seconds.
21. Leading Edge Flap or Cockpit Control Selection.	Full Range or Each Discrete Position.	+/−3° or as Pilot's indicator and sufficient to determine each discrete position.	2	0.5% of full range.	Left and right sides, or flap position and cockpit control may each be sampled at 4 second intervals, so as to give a data point every 2 seconds.
22. Each Thrust Reverser Position (or equivalent for propeller airplane).	Stowed, In Transit, and Reverse (Discrete)..		1 (per engine)		Turbo-jet—2 discretes enable the 3 states to be determined Turbo-prop-1 discrete.
23. Ground Spoiler Position or Speed Brake Selection.	Full Range or Each Position (discrete).	+/−2° Unless Higher Accuracy Uniquely Required.	1 or 0.5 for airplanes operated under § 121.344(f).	0.2% of full range.	
24. Outside Air Temperature or Total Air Temperature.	−50°C to +90°C	+/−2° C	2	0.3° C.	
25. Autopilot/ Autothrottle/AFCS Mode and Engagement Status.	A suitable combination of discretes.		1		Discretes should show which systems are engaged and which primary modes are controlling the flight path and speed of the aircraft.
26. Radio Altitude	−20 ft to 2,500 ft	+/−2 ft or +/−3% Whichever is Greater Below 500 ft and +/−5% Above 500 ft.	1	1 ft 5% above 500 ft of full range.	For autoland/category 3 operations, each radio altimeter should be recorded, but arranged so that at least one is recorded each second.
27. Localizer Deviation or MLS Azimuth.	+/−400 Microamps or available sensor range as installed +/−62°.	As installed +/−3% recommended.	1	0.3% of full range.	For autoland/category 3 operations, each system should be recorded but arranged so that at least one is recorded each second. It is not necessary to record ILS and MLS at the same time, only the approach aid in use need to be recorded.
28. Glideslope Deviation or MLS Elevation.	+/−400 Microamps or available sensor range as installed. 0.9 to + 30°.	As installed +/−3% recommended.	1	0.3% of full range.	For autoland/category 3 operations, each system should be recorded but arranged so that at least one is recorded each second. It is not necessary to record ILS and MLS at the same time, only the approach aid in use need to be recorded.
29. Marker Beacon Passage.	Discrete "on" or "off".		1		A single discrete is acceptable for all markers.
30. Master Warning	Discrete		1		Record the master warning and record each 'red' warning that cannot be determined from other parameters or from the cockpit voice recorder.
31. Air/ground sensor (primary airplane system reference nose or main gear).	Discrete "air" or "ground".		1 (0.25 recommended).		
32. Angle of Attack (If measured directly).	As installed	As Installed	2 or 0.5 for airplanes operated under § 121.344(f).	0.3% of full range.	If left and right sensors are available, each may be recorded at 4 second intervals so as to give a data point each half second.
33. Hydraulic Pressure Low, Each System.	Discrete or available sensor range, "low" or "normal".	+/− 5%	2	0.5% of full range.	

APPENDIX F TO PART 135.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
34. Groundspeed	As Installed	Most Accurate Systems Installed.	1	0.2% of full range.	
35. GPWS (ground proximity warning system).	Discrete "warning" or "off".		1		A suitable combination of discretes unless recorder capacity is limited in which case a single discrete for all modes is acceptable.
36. Landing Gear Position or Landing gear cockpit control selection.	Discrete		4		A suitable combination of discretes should be recorded.
37. Drift Angle	As installed	As installed	4	0.1°.	
38. Wind Speed and Direction.	As installed	As installed	4	1 knot, and 1.0°.	
39. Latitude and Longitude.	As installed	As installed	4	0.002°	Provided by the Primary Navigation System Reference. Where capacity permits Latitude/longitude resolution should be 0.0002°.
40. Stick shaker and pusher activation.	Discrete(s) "on" or "off".		1		A suitable combination of discretes to determine activation.
41. Windshear Detection.	Discrete "warning" or "off".		1.		
42. Throttle/power lever position.	Full Range	+/− 2%	1 for each lever	2% of full range	For airplanes with non-mechanically linked cockpit engine controls.
43. Additional Engine Parameters.	As installed	As installed	Each engine each second.	2% of full range	Where capacity permits, the preferred priority is indicated vibration level, N2, EGT, Fuel Flow, Fuel Cut-off lever position and N3, unless engine manufacturer recommends otherwise.
44. Traffic Alert and Collision Avoidance System (TCAS).	Discretes	As installed	1		A suitable combination of discretes should be recorded to determine the status of—Combined Control, Vertical Control, Up Advisory, and Down Advisory. (ref. ARINC Characteristic 735 Attachment 6E, TCAS VERTICAL RA DATA OUTPUT WORD.)
45. DME 1 and 2 Distance.	0–200 NM;	As installed	4	1 NM	1 mile.
46. Nav 1 and 2 Selected Frequency.	Full range	As installed	4		Sufficient to determine selected frequency.
47. Selected barometric setting.	Full Range	+/− 5%	(1 per 64 sec.)	0.2% of full range.	
48. Selected Altitude	Full Range	+/− 5%	1	100 ft.	
49. Selected speed	Full Range	+/− 5%	1	1 knot.	
50. Selected Mach	Full Range	+/− 5%	1	.01.	
51. Selected vertical speed.	Full Range	+/− 5%	1	100 ft/min.	
52. Selected heading	Full Range	+/− 5%	1	1°.	
53. Selected flight path.	Full Range	+/−5%	1	1°.	
54. Selected decision height.	Full Range	+/− 5%	64	1 ft.	
55. EFIS display format.	Discrete(s)		4		Discretes should show the display system status (e.g., off, normal, fail, composite, sector, plan, nav aids, weather radar, range, copy.
56. Multi-function/Engine Alerts Display format.	Discrete(s)		4		Discretes should show the display system status (e.g., off, normal, fail, and the identity of display pages for emergency procedures, need not be recorded.
57. Thrust command	Full Range	+/− 2%	2	2% of full range.	
58. Thrust target	Full Range	+/−2%	4	2% of full range.	
59. Fuel quantity in CG trim tank.	Full Range	+/−5%	(1 per 64 sec.)	1% of full range.	

APPENDIX F TO PART 135.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
60. Primary Navigation System Reference.	Discrete GPS, INS, VOR/DME, MLS, Loran C, Omega, Localizer Glideslope.	.....	4	.....	A suitable combination of discretes to determine the Primary Navigation System Reference.
61. Ice Detection	Discrete "ice" or "no ice".	.....	4.		
62. Engine warning each engine vibration.	Discrete	.....	1.		
63. Engine warning each engine over temp.	Discrete	.....	1.		
64. Engine warning each engine oil pressure low.	Discrete	.....	1.		
65. Engine warning each engine over speed.	Discrete	.....	1.		
66. Yaw Trim Surface Position.	Full Range	+/−3% Unless Higher Accuracy Uniquely Required.	2	0.3% of full range.	
67. Roll Trim Surface Position.	Full Range	+/−3% Unless Higher Accuracy Uniquely Required.	2	0.3% of full range.	
68. Brake Pressure (left and right).	As Installed	+/−5%	1	.....	To determine braking effort applied by pilots or by autobrakes.
69. Brake Pedal Application (left and right).	Discrete or Analog "applied" or "off".	+/−5% (Analog)	4	.....	To determine braking applied by pilots.
70. Yaw or sideslip angle.	Full Range	+/−5%	1	0.5°.	
71. Engine bleed valve position.	Discrete "open" or "closed".	.....	4.		
72. Deicing or anti-icing system selection.	Discrete "on" or "off".	.....	4.		
73. Computed center of gravity.	Full Range	+/−5%	(1 per 64 sec.)	1% of full range.	
74. AC electrical bus status.	Discrete "power" or "off".	.....	4	.....	Each bus.
75. DC electrical bus status.	Discrete "power" or "off".	.....	4	.....	Each bus.
76. APU bleed valve position.	Discrete "open" or "closed".	.....	4.		
77. Hydraulic Pressure (each system).	Full range	+/−5%	2	100 psi.	
78. Loss of cabin pressure.	Discrete "loss" or "normal".	.....	1.		
79. Computer failure (critical flight and engine control systems).	Discrete "fail" or "normal".	.....	4		
80. Heads-up display (when an information source is installed).	Discrete(s) "on" or "off".	.....	4.		
81. Para-visual display (when an information source is installed).	Discrete(s) "on" or "off".	.....	1.		
82. Cockpit trim control input position—pitch.	Full Range	+/−5%	1	0.2% of full range.	

APPENDIX F TO PART 135.—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

[The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second]

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
83. Cockpit trim control input position—roll.	Full Range	+/−5%	1	0.2% of full range.	
84. Cockpit trim control input position—yaw.	Full Range	+/−5%	1	0.2% of full range.	
85. Trailing edge flap and cockpit flap control position.	Full Range	+/−5%	2	0.5% of full range.	Trailing edge flaps and cockpit flap control position may each be sampled alternately at 4 second intervals to provide a sample each 0.5 second.
86. Leading edge flap and cockpit flap control position.	Full Range or Discrete.	+/−5%	1	0.5% of full range.	
87. Ground spoiler position and speed brake selection.	Full Range or discrete.	+/−5%	0.5	0.2% of full range.	
88. All cockpit flight control input forces (control wheel, control column, rudder pedal).	Full Range ..... Control wheel ..... Control Column ..... Rudder pedal	+/−5% ..... +/−70 lbs. +/−85 lbs. +/−165 lbs.	1	0.2% of full range.	For fly-by-wire flight control systems, where flight control surface position is a function of the displacement of the control input device only, it is not necessary to record this parameter.

Issued in Washington, DC, on July 9, 1996.

Ava L. Robinson,

Special Assistant to the Director, Aircraft Certification Service.

[FR Doc. 96–17824 Filed 7–10–96; 3:17 pm]

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Tuesday
July 16, 1996

Part V

Department of Education

34 CFR Part 75, et al.
Direct Grant Programs; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 75, 206, 231, 235, 369, 371, 373, 375, 376, 378, 380, 381, 385, 386, 387, 388, 389, 390, 39,, 610, 612 630, 637, 658, 660, 661, 669

RIN 1880-AA74

Direct Grant Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Education Department General Administrative Regulations (EDGAR) that govern discretionary grant programs. These proposed amendments would reduce the need for specific regulations governing individual programs while ensuring that proposed projects meet the highest standards of professional excellence. These proposed amendments would establish new general selection criteria; allow programs with one or more selection criteria in program regulations to use the criteria in combination with general EDGAR criteria and criteria based on statutory provisions; allow programs to assign weights to criteria; provide for using the new general selection criteria in considering unsolicited applications; and remove a number of regulations made unnecessary by the amendments.

DATES: Comments must be received on or before August 30, 1996.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Margo Anderson, U.S. Department of Education, 555 New Jersey Avenue, NW., Washington, DC 20208–5530. Comments also may be sent through the Internet to "EDGAR____criteria@ed.gov".

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in the preceding paragraph.

FOR FURTHER INFORMATION CONTACT: Margo Anderson, U.S. Department of Education, 555 New Jersey Avenue, NW., Washington, DC 20208–5530. Telephone: (202) 219–2005. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

In January of 1995 the Department developed its "Principles for Regulating" (Principles) premised on the tenet that the Department will regulate only when absolutely necessary. The Principles were developed to ensure that the Department regulates in the most flexible, most equitable, and least burdensome way possible. The President, on March 4, 1995, announced a Regulatory Reinvention Initiative (Initiative) to reform the Federal regulatory system. The Initiative required all Federal agencies to review their regulations page-by-page. Regulators were asked to eliminate obsolete regulations, revise regulations to reward results instead of rewarding process, and streamline regulations to achieve agency goals in the most efficient and least intrusive way possible. Since March of 1995, the Department has been reviewing thoroughly all of its regulations consistent with the Initiative and the Principles.

Through this process, the Department determined that a number of program regulations resulted from a program's need for tailored selection criteria for evaluating grant applications. Most Department programs require applicants applying for a grant to address numerous selection criteria that are detailed and specific to the particular program. In response to the Principles, some programs, in an effort to eliminate regulations or because the program office determined that general selection criteria were sufficient, used the general EDGAR selection criteria in § 75.210. A number of programs, however, continue to maintain selection criteria designed to evaluate particular elements of a project to ensure that grants will be given only to high quality applicants that meet specific program objectives.

The selection criteria in § 75.210 are necessarily very general and thus, for many programs, inadequate for reviewers to evaluate the quality of an application. The Secretary proposes these amendments to establish a menu of improved selection criteria that can be selected as appropriate to fit the needs of individual programs and eliminate the need for many program-specific selection criteria. With a more uniform approach to selection criteria, applicants will be better able to anticipate the type of information that they may be required to provide in applying for grants. Moreover, application reviewers should have a better understanding of the standards on which the Department evaluates many of its programs. These amendments will create more consistency and predictability for grant applicants.

The Secretary has already taken several steps toward increased flexibility and consistency in establishing selection criteria. On September 14, 1995 the Department published in the **Federal Register** (60 FR 47803) final regulations that contained the Standards for the Conduct and Evaluation of Activities Carried Out by the Office of Educational Research and Improvement (OERI Standards). The OERI Standards established evaluation criteria to be used in evaluating grant applications and contract proposals for a variety of educational research, development, and dissemination activities.

The Secretary bases this proposed menu of selection criteria for § 75.210 on the OERI Standards' evaluation criteria, the current EDGAR regulations, and other changes needed to cover the broad spectrum of Department programs that will be affected.

In addition to the OERI Standards, the Department published final regulations in the **Federal Register** on December 12, 1995 (60 FR 63873) that created a new § 75.209 of EDGAR that authorizes the Secretary to establish selection criteria based on statutory provisions that apply to the program, without notice and comment on the specific criteria established.

These proposed amendments to § 75.210 and § 75.209 would authorize the Secretary to evaluate applications by applying the general selection criteria (§ 75.210), selection criteria based on the statutory provisions that apply to the program (§ 75.209), or any combination of general selection criteria, criteria based on the statute, or criteria in program-specific regulations. The amendments would also allow the Secretary the flexibility to weigh the criteria according to the needs of each individual program.

Proposed Selection Criteria (§ 75.210)

These proposed amendments would establish a menu of selection criteria. For each competition, the Secretary would select from the menu one or more criteria that best enable the Department to identify the highest quality applications consistent with the program purpose, statutory requirements, and any priorities established. Within each criterion, the Secretary could further define the criterion by selecting one or more specific factors.

Two criteria, however, contain factors that would always be considered if the criterion is selected. Under the "quality of project services" criterion, the Secretary would always evaluate the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented. Under the "quality of project personnel" criterion, the Secretary would always evaluate the extent to which an applicant encourages applications for employment from persons who are members of groups that have been traditionally underrepresented. The Department's consideration of these factors, which first appeared in EDGAR in 1980, continues to reflect the Department's mission to ensure equal access to educational opportunities as embodied in the Department of Education Organization Act and recently reaffirmed by Congress in section 427 of the General Education Provisions Act.

Under this menu approach, in addition to selecting criteria, the Secretary would establish the number of points or the weight to be given to each criterion or factor. The applicable selection criteria and the assigned points or weights would be announced in the application package or in a notice published in the **Federal Register**. The Secretary would not solicit further public comment on the choice or weighting of the criteria. The public would have some opportunity to comment on criteria through the Paperwork Reduction Act of 1995, which requires an opportunity for public comment on application packages.

The Secretary would select criteria and factors appropriate to the nature and purposes of the grant program. For example, in the case of a national research center competition, the Secretary could select the criterion "Significance" (§ 75.210(b)(2)) and then further select factor (C), "the potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies," and factor (D), "the potential contribution of the proposed project to the development and advancement of theory and knowledge in the field of study." In the case of a competition for demonstration activities, the Secretary could choose other factors under the "Significance" criterion; for example: (E), "the potential for generalizing from the findings or results of the proposed project," and (F) "the extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies." In the case of a competition for training activities, the Secretary could select the criterion "Need for project" (§ 75.210(b)(1)) and could choose factor (A), "the magnitude or severity of the problem to be addressed by the proposed project," and factor (D), "the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses."

The Secretary could determine that, for some competitions, it is not necessary to further define a criterion by selecting specific factors. If no factors are chosen, the application reviewer would apply the criterion in the context of a particular competition. The reviewer would not have to consider any of the factors.

Advantages and Discussion of Proposed Amendments

The proposed amendments provide an opportunity to improve significantly the grant application review process. This menu of selection criteria would provide the Department the flexibility to choose, from among the criteria and factors established in the regulations, a set of criteria tailored to a given competition. In selecting from the menu a set of criteria and factors for a particular competition, the Secretary would not solicit formal public comment but expects to draw on input from grantees and program beneficiaries; feedback from peer reviewers and program evaluators; discussions among Department employees, grantees, and program beneficiaries; and meetings, conferences, visits to grantees, and other forms of outreach and exchange with the relevant communities.

Also, the menu approach would obviate the need to create specific selection criteria through individual program regulations. Because no time will be spent developing program-specific regulations, the Secretary will be able to make grants earlier or give applicants more time to prepare their applications, or both. The Secretary expects these amendments to allow the Department to conduct grant competitions at a time that would best address grantees' planning and implementation cycles, such as announcing during the spring for programs involving school districts. The Secretary believes applicants would find that criteria selected from the menu for specific competitions would provide them with adequate guidance about review standards, and also with flexibility to design and propose the projects that they believe best serve their needs.

The Secretary is particularly interested in comments from potential grant applicants and intended program beneficiaries on this proposed approach. The value of this approach lies in expediting the grantmaking process by reducing separate program regulations and in minimizing potentially confusing variety in selection criteria on the same subject. Do applicants or program beneficiaries support this approach? For example, do applicants and program beneficiaries agree that the anticipated advantages, such as increased consistency in phrasing of selection criteria across programs and earlier grant awards, are valuable? Are there any revisions that would improve this proposed rule? For example, would it be preferable to limit the number or percentage of points that could be assigned to any particular criterion or factor? Are there any costs associated with shifting from using selection criteria tailored to individual programs to using a flexible menu of general selection criteria? If yes, what are those costs and does the benefit of the added flexibility of the proposed approach justify the costs? Would these proposed amendments have other effects?

Other CFR Parts and Sections Affected by These Amendments

These proposed amendments would also revise § 75.201 to inform applicants that programs may assign weights to criteria in evaluating applications and would create a new § 75.211 regarding selection criteria for unsolicited applications. Also, these amendments would revise §§ 75.200 and 75.209 to allow programs with one or more selection criteria in program regulations to use the criteria in combination with general EDGAR criteria and criteria based on statutory provisions.

Only those programs that currently have no program regulations, have no selection criteria in their program regulations, are new, or are listed in either chart below would be able to use the menu approach when the amendments became effective. Before any other programs could use this approach, the Department would need to amend the program regulations through notice and comment rulemaking procedures. When these amendments to part 75 are published as final regulations, the Department intends in that same document to repeal certain regulations of programs that will use these selection criteria. The Department would repeal all of the regulations governing the following programs:

Name of program	34 CFR part
Drug-free Schools and Communities—General Provisions	231
Drug-free Schools and Communities—Federal Activities Grants Program	235
Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Disabilities	373
Vocational Rehabilitation Service Projects Program for Migratory Agricultural Workers and Seasonal Farmworkers with Disabilities	375
Projects for Initiating Recreational Programs for Individuals with Disabilities	378
School, College, and University Partnerships	610
Drug Prevention Programs in Higher Education	612
Fund for the Improvement of Postsecondary Education	630

The Department would remove selection criteria from the following program regulations and make technical amendments to the following other sections of the regulations to reflect the use of the general EDGAR selection criteria (program regulations affecting matters other than selection criteria would remain in effect):

Name of program	34 CFR sections
Special Educational Programs for Students Whose Families Are Engaged in Migrant and Other Seasonal Farmwork—High School Equivalency Program and College Assistance Migrant Program.	206.30 and 206.31.
Vocational Rehabilitation Service Projects	369.1, 369.2, 369.21, 369.30, 369.31, 369.32, and 369.42.
Vocational Rehabilitation Service Projects for American Indians with Disabilities	371.30.
Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Youth with Disabilities.	376.31.
Special Projects and Demonstrations for Providing Supported Employment Services to Individual With the Most Severe Disabilities and Technical Assistance Projects.	380.10, 380.11, 380.12, 380.13, and 380.14.
Protection and Advocacy of Individual Rights	381.20 and 381.21.
Rehabilitation Training	385.31, 385.32, and 385.33.
Rehabilitation Training: Rehabilitation Long-Term Training	386.20.
Experimental and Innovative Training	387.30
State Vocational Rehabilitation Unit In-Service Training	388.20.
Rehabilitation Continuing Education Programs	389.30.
Rehabilitation Short-Term Training	390.30
Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind	396.30, 396.31, and 396.32.
Minority Science Improvement Program	637.31 and 637.32.
Undergraduate International Studies and Foreign Language Program	658.30, 658.31, 658.32, 658.33, and 658.34.
The International Research and Studies Program	660.30, 660.31, 660.32, and 660.33.
Business and International Education Program	661.30 and 661.31.
Language Resource Centers Program	669.20, 669.21, and 669.22.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of the regulatory action.

The benefits of these proposed regulations would include improving the Department's ability to make grants more quickly, eliminating unnecessary regulations, and creating a single overall approach for evaluating applications for a number of programs. These proposed regulations would result in better access to Department regulations that apply to many programs and would better inform applicants and application reviewers of project qualities that the Department values across programs.

Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential

The potential costs and benefits of these proposed regulations are discussed elsewhere in this preamble under the following topic heading: Proposed Selection Criteria.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing,

§ 75.210 *General selection criteria.*) (4) Is the description of the regulations in the "Supplementary Information" section of this preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Ave., SW., Room 5121, FB10, Washington, DC 20202–2110.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

These regulations could affect States, State agencies, and individuals. States, State agencies, and individuals, however, are not defined as "small entities" in the Regulatory Flexibility Act.

The small entities that could be affected by these regulations are institutions of higher education, local educational agencies, private schools, community-based organizations, and nonprofit organizations receiving Federal funds under a direct grant program. The proposed regulations, however, would not have a significant economic impact on these entities, if affected, because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The proposed regulations would impose minimal requirements for the Secretary to select grantees.

Paperwork Reduction Act of 1995

Section 75.210 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information: Direct Grant Programs—General Selection Criteria.

These regulations would affect the following types of entities eligible to apply for grants and cooperative agreements: State, local, or tribal governments or agencies, businesses or

The total annual public reporting and recordkeeping burden for this collection of information is one hour for one respondent. For programs that may use the EDGAR selection criteria, the annual public reporting and recordkeeping burden is estimated to range from 15 hours for each of approximately 750 applications for a field-initiated research study to 150 hours for ten or fewer applications for a research center. The total annual reporting and recordkeeping burden for each program using the EDGAR selection criteria will be determined by the number of applicants that respond to an application notice and the type of project to be supported in the particular competition. The actual burden and total annual reporting and recordkeeping burden for each program will be assigned as an application package is cleared by OMB under the procedures in the Paperwork Reduction Act of 1995. For example, if a program using the EDGAR selection criteria had a public reporting and recordkeeping burden of 90 hours for each respondent and received 300 applications, the total annual reporting and recordkeeping burden for that program would be 27,000 hours. For some programs using the menu approach, the reporting and recordkeeping burden will be less than under the prior process.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Wendy Taylor, Desk Officer for the U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the

e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Intergovernmental Review

Some of the programs that would be affected by these regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 600, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 75

Administrative practice and procedure, Continuation funding, Education, Grant programs—education, Grants administration, Incorporation by reference, Performance reports,

Educational study programs, Grants program—education, Migrant labor, Students, Vocational education.

34 CFR Part 231

Drug abuse, Elementary and secondary education, Grants program—education.

34 CFR Part 235

Drug abuse, Elementary and secondary education, Grants program—education.

34 CFR Part 369

American Indians, Disabled, Grants program—education, Vocational rehabilitation.

34 CFR Part 371

American Indians, Disabled, Employment, Grants program—education, Vocational rehabilitation.

34 CFR Part 373

Blind, Deaf, Disabled, Grants program—education, Vocational rehabilitation.

34 CFR Part 375

Disabled, Grants program—education, Migrant labor, Vocational rehabilitation.

34 CFR Part 376

Disabled, Grants program—education, Vocational rehabilitation, Youth.

34 CFR Part 378

Arts and crafts, Disabled, Grants program—education, Hobbies, Recreation and recreation areas, Vocational rehabilitation.

34 CFR Part 380

Disabled, Grants program—education, Vocational rehabilitation.

34 CFR Part 381

Advocacy, Disabled, Grants program—education.

34 CFR Part 385

Disabled, Grants program—education, Occupational training, Training programs, Vocational rehabilitation.

34 CFR Part 386

Disabled, Grants program—education, Occupational training, Training programs, Vocational education, Vocational rehabilitation.

34 CFR Part 387

Disabled, Grants program—education, Occupational training, Training programs, Vocational education, Vocational rehabilitation.

34 CFR Part 390

Disabled, Grants program—education, Occupational training, Training programs, Vocational education, Vocational rehabilitation.

34 CFR Part 396

Blind, Deaf, Disabled, Grants program—education, Occupational training, Training programs, Vocational education.

34 CFR Part 610

Colleges and universities, Elementary and secondary education, Education of disadvantaged, Education of students with disabilities, Grant programs—education.

34 CFR Part 612

Colleges and universities, Drug abuse, Grant programs—education.

34 CFR Part 630

Colleges and universities, Grant programs—education.

34 CFR Part 637

Colleges and universities, Grant programs—education, Minority groups, Science and technology, Women.

34 CFR Part 658

Colleges and universities, Educational study program, Foreign relations, Grant programs—education, Teachers.

34 CFR Part 660

Colleges and universities, Educational research, Foreign relations, Grant programs—education.

34 CFR Part 661

Business and industry, Colleges and universities, Exports, Foreign relations, Foreign trade, Grant programs—education.

34 CFR Part 669

Colleges and universities, Educational research, Foreign relations, Grant programs—education, Teachers.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: June 13, 1996.

Richard W. Riley,

Secretary of Education.

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for Part 75 continues to read as follows:

Authority: 20 U.S.C. 1221–3 and 3474, unless otherwise noted.

2. Section 75.200(b)(3)(iii) is revised to read as follows:

§ 75.200 How applications for new grants and cooperative agreements are selected for funding; standards for use of cooperative agreements.

* * * * *

(b) * * *

(3) Unless the regulations for a program state otherwise, the Secretary uses one of the following to evaluate applications for new grants under the program:

* * * * * *

(iii) Any combination of selection criteria established under § 75.209, selection criteria in § 75.210, and selection criteria in the program's regulations.

* * * * *

3. Section 75.201 is revised to read as follows:

§ 75.201 How the selection criteria will be used.

(a) If points or weights are assigned to the selection criteria, the Secretary informs applicants in the application package or a notice published in the **Federal Register** of—

(1) The total possible score for all of the criteria for a program; and

(2) The assigned weight or the maximum possible score for each criterion or factor under that criterion.

(b) If no points or weights are assigned to the selection criteria and selected factors, the Secretary evaluates each criterion equally and, within each criterion, each factor equally.

(Authority: 20 U.S.C. 1221e–3 and 3474)

§ 75.209 [Amended]

4. Section 75.209(a) is amended by removing "If a discretionary grant program does not have implementing regulations or has implementing regulations that do not include selection criteria," and capitalizing the word "the".

5. Section 75.210 is revised to read as follows:

§ 75.210 General selection criteria.

(a) In addition to the selection criteria

competition, the Secretary may select one or more of the following criteria and may select from among the specific factors listed under each criterion:

(1) *Need for project.* (i) The Secretary considers the need for the proposed project.

(ii) In determining the need for the proposed project, the Secretary considers one or more of the following factors:

(A) The magnitude or severity of the problem to be addressed by the proposed project.

(B) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(C) The extent to which the proposed project will provide services or otherwise address the needs of students at risk of educational failure.

(D) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals.

(E) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(F) The extent to which the proposed project will prepare personnel for fields in which shortages have been demonstrated.

(2) *Significance.* (i) The Secretary considers the significance of the proposed project.

(ii) In determining the significance of the proposed project, the Secretary considers one or more of the following factors:

(A) The national significance of the proposed project.

(B) The significance of the problem or issue to be addressed by the proposed project.

(C) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(D) The potential contribution of the proposed project to increased knowledge or understanding of rehabilitation problems, issues, or effective strategies.

(E) The likelihood that the proposed project will result in system change or improvement.

(F) The potential contribution of the

(H) The extent to which the proposed project is likely to yield findings that may be utilized by other appropriate agencies and organizations.

(I) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(J) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(K) The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used effectively in a variety of other settings.

(L) The extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies.

(M) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(N) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(O) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in employment and independent living services.

(P) The importance or magnitude of the results or outcomes likely to be attained by the proposed project.

(3) *Quality of the project design.* (i) The Secretary considers the quality of the design of the proposed project.

(ii) In determining the quality of the design of the proposed project, the Secretary considers one or more of the following factors:

(A) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(B) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(C) The extent to which there is a conceptual framework underlying the proposed research or demonstration

appropriate, a substantial addition to an ongoing line of inquiry.

(E) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(F) The extent to which the proposed project is based upon a specific research design, and the quality and appropriateness of that design, including the scientific rigor of the studies involved.

(G) The extent to which the proposed research design includes a thorough, high-quality review of the relevant literature, a high-quality plan for research activities, and the use of appropriate theoretical and methodological tools, including those of a variety of disciplines, where appropriate.

(H) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives.

(I) The quality of the proposed demonstration design and procedures for documenting project activities and results.

(J) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(K) The extent to which the proposed development efforts include adequate quality controls and, as appropriate, repeated testing of products.

(L) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(M) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(N) The extent to which the proposed project represents an exceptional approach for meeting statutory purposes and requirements.

(O) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition.

(P) The extent to which the proposed

organizations providing services to the target population.

(R) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(S) The extent to which the proposed project encourages parental involvement.

(T) The extent to which the proposed project encourages consumer involvement.

(U) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

(V) The quality of the methodology to be employed in the proposed project.

(W) The extent to which fellowship recipients or other project participants are to be selected on the basis of academic excellence.

(4) *Quality of project services.* (i) The Secretary considers the quality of the services to be provided by the proposed project.

(ii) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers one or more of the following factors:

(A) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(B) The extent to which entities that are to be served by the proposed technical assistance project demonstrate support for the project.

(C) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(D) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(E) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(F) The extent to which the training or professional development services to be provided by the proposed project are likely to alleviate the personnel shortages that have been identified or are the focus of the proposed project.

(G) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(H) The likelihood that the services to be provided by the proposed project will lead to improvements in the skills necessary to gain employment or build capacity for independent living.

(I) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(J) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(K) The extent to which the services to be provided by the proposed project are focused on those with greatest needs.

(L) The quality of plans for providing an opportunity for participation in the proposed project of students enrolled in private schools.

(5) *Quality of project personnel.* (i) The Secretary considers the quality of the personnel who will carry out the proposed project.

(ii) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers one or more of the following factors:

(A) The qualifications, including relevant training and experience, of the project director or principal investigator.

(B) The qualifications, including relevant training and experience, of key project personnel.

(C) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(6) *Adequacy of resources.* (i) The Secretary considers the adequacy of resources for the proposed project.

(ii) In determining the adequacy of resources for the proposed project, the Secretary considers one or more of the following factors:

(A) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(B) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(C) The extent to which the budget is adequate to support the proposed project.

(D) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(E) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(F) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(G) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(7) *Quality of the management plan.* (i) The Secretary considers the quality of the management plan for the proposed project.

(ii) In determining the quality of the management plan for the proposed project, the Secretary considers one or more of the following factors:

(A) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(B) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(C) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(D) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(E) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(8) *Quality of the project evaluation.* (i) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(ii) In determining the quality of the evaluation, the Secretary considers one or more of the following factors:

(A) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(B) The extent to which the methods of evaluation are appropriate to the context within which the project operates.

(C) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(D) The extent to which the methods of evaluation include the use of objemtive perforuance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(E) The extent to which the methods of evaluation will provide timely guidance for quality assurance.

(F) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(G) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

(Authority: 20 U.S.C. 1221e–3 and 3474)

6. A new section 75.211 is added to read as follows:

§ 75.211 Selection criteria for unsolicited applications.

(a) If the Secretary considers an unsolicited application under 34 CFR 75.222(a)(2)(ii), the Secretary uses the selection criteria and factors, if any, used for the competition under which the application could have been funded.

(b) If the Secretary considers an unsolicited application under 34 CFR 75.222(a)(2)(iii), the Secretary selects from among the criteria in 75.210(b), and may select from among the specific factors listed under each criterion, the criteria that are most appropriate to evaluate the activities proposed in the application.

(Authority: 20 U.S.C. 1221e–3 and 3474)

PART 206—SPECIAL EDUCATIONAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND OTHER SEASONAL FARMWORK—HIGH SCHOOL EQUIVALENCY PROGRAM AND COLLEGE ASSISTANCE MIGRANT PROGRAM

7. The authority citation for part 206 continues to read as follows:

Authority: 20 U.S.C. 1070d-2, unless otherwise noted.

8. Section 206.30 is revised to read as follows:

§ 206.30 How does the Secretary evaluate an application?

The Secretary evaluates an application under the procedures in 34 CFR part 75.

(Authority: 20 U.S.C. 1070d-2(a) and (e))

§ 206.31 [Removed]

9. Section 206.31 is removed.

PART 231—DRUG-FREE SCHOOLS AND COMMUNITIES—GENERAL PROVISIONS [REMOVED]

10. Part 231 is removed.

PART 235—DRUG-FREE SCHOOLS AND COMMUNITIES—FEDERAL ACTIVITIES GRANTS PROGRAM [REMOVED]

11. Part 235 is removed.

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

12. The authority citation for part 369 is removed to read as follows:

Authority: 29 U.S.C. 711(c), 732, 750, 777(a)(1), 777b, 777f and 795g, unless otherwise noted.

§ 369.1 [Amended]

13. Section 369.1 is amended by removing paragraphs (b)(2) and (b)(4), by removing in paragraph (b)(3) "(34 CFR part 373)", in paragraph (b)(5) "(34 CFR part 375)", and in paragraph (b)(7) "(34 CFR part 378)", and by redesignating paragraphs (b)(3), (b)(5), (b)(6), (b)(7), and (b)(8) as paragraphs (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) respectively.

§ 369.2 [Amended]

14. Section 369.2 is amended by removing paragraphs (b) and (d) and by redesignating paragraphs (c), (e), (f), (g), and (h) as paragraphs (b), (c), (d), (e), and (f) respectively.

§ 369.21 [Amended]

15. Section 369.21 is amended by removing "under 34 CFR parts 372, 373, 374, 375, 376, 378, or 379", and adding, in its place, "covered by this part".

16. Section 369.30 is revised to read as follows:

§ 369.30 How does the Secretary evaluate an application?

The Secretary evaluates an application under the procedures in 34 CFR Part 75.

(Authority: 29 U.S.C. 711(c))

§ 369.31 [Removed]

17. Section 369.31 is removed.

§ 369.32 [Amended]

18. Section 369.32 is amended by removing "listed in § 369.31 and 34 CFR parts 371, 372, 373, 374, 375, 376, 378, and 379", in the introductory text and adding, in its place, "used in accordance with the procedures in 34 CFR part 75".

§ 369.42 [Amended]

19. Section 369.42 paragraph (b) is amended by removing "34 CFR parts 371, 372, 373, 374, 375, 376, 378, or 379", and adding, in its place, "a program covered by this part".

PART 371—VOCATIONAL REHABILITATION SERVICE PROJECTS FOR AMERICAN INDIANS WITH DISABILITIES

20. The authority citation for part 371 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 750, unless otherwise noted.

§ 371.30 [Removed]

21. Section 371.30 is removed.

PART 373—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING VOCATIONAL REHABILITATION SERVICES TO INDIVIDUALS WITH DISABILITIES [REMOVED]

22. Part 373 is removed.

PART 375—VOCATIONAL REHABILITATION SERVICE PROJECTS PROGRAM FOR MIGRATORY AGRICULTURAL WORKERS AND SEASONAL FARMWORKERS WITH DISABILITIES [REMOVED]

23. Part 375 is removed.

PART 376—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING TRANSITIONAL REHABILITATION SERVICES TO YOUTH WITH DISABILITIES

24. The authority citation for part 376 continues to read as follows:

Authority: 29 U.S.C. 777a(b), unless otherwise noted.

§ 376.31 [Removed]

25. Section 376.31 is removed.

PART 378—PROJECTS FOR INITIATING RECREATIONAL PROGRAMS FOR INDIVIDUALS WITH DISABILITIES [REMOVED]

26. Part 378 is removed.

PART 380—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING SUPPORTED EMPLOYMENT SERVICES TO INDIVIDUALS WITH THE MOST SEVERE DISABILITIES AND TECHNICAL ASSISTANCE PROJECTS

27. The authority citation for part 380 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 777a(c), unless otherwise noted.

28. Section 380.10 is revised to read as follows:

§ 380.10 How does the Secretary evaluate an application?

The Secretary evaluates an application under the procedures in 34 CFR Part 75.

(Authority: 29 U.S.C. 777a(c))

§§ 380.11, 380.12, and 380.13 [Removed]

29. Sections 380.11, 380.12, and 380.13 are removed.

30. Section 380.14 is revised to read as follows:

§ 380.14 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria used in accordance with the procedures in 34 CFR part 75, the Secretary, in making awards under this part, considers the geographical distribution of projects in each program category throughout the country.

(Authority: 29 U.S.C. 777a(a)(1) and 777a(c))

PART 381—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

31. The authority citation for part 381 continues to read as follows:

Authority: 29 U.S.C. 794e, unless otherwise noted.

32. Section 381.20 is revised to read as follows:

§ 381.20 How does the Secretary evaluate an application?

In any fiscal year in which the amount appropriated for the PAIR program is less than $5,500,000, the Secretary evaluates applications under the procedures in 34 CFR part 75.

(Authority: 29 U.S.C. 711(c) and 794e (b) and (f))

§ 380.21 [Removed]

33. Section 381.21 is removed.

PART 385—REHABILITATION TRAINING

34. The authority citation for part 385 continues to read as follows:

Authority: 29 U.S.C. 711(c), 772, and 774, unless otherwise noted.

35. Section 385.31 is revised to read as follows:

§ 385.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates applications under the procedures in 34 CFR part 75.

(b) The Secretary evaluates each application using selection criteria identified in parts 386, 387, 388, 389 and 390, as appropriate.

(c) In addition to the selection criteria described in paragraph (b) of this section, the Secretary evaluates each application using—

(1) Selection criteria in 34 CFR 75.210;

(2) Selection criteria established under 34 CFR 75.209; or

(3) A combination of selection criteria established under 34 CFR 75.209 and selection criteria in 34 CFR 75.210.

(Authority: 29 U.S.C. 711(c))

§ 385.32 [Removed]

36. Section 385.32 is removed.

§ 385.33 [Amended]

37. Section 385.33 is revised by removing the number "385.32" in the introductory text and adding in its place the number "75.210".

PART 386—REHABILITATION TRAINING: REHABILITATION LONG-TERM TRAINING

38. The authority citation for part 386 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

39. Section 386.20 is revised to read as follows:

§ 386.20 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criteria to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program.* (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either—

(i) To increase the supply of trained personnel available to State and other public or nonprofit agencies involved in the rehabilitation of individuals with physical or mental disabilities through degree or certificate granting programs; or

(ii) To improve the skills and quality of professional personnel in the rehabilitation field in which the training is to be provided through the granting of a degree or certificate.

(b) *Nature and scope of curriculum.* (1) The Secretary reviews each application for information that demonstrates the adequacy of the proposed curriculum.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the coursework reflect content that can be expected to enable the achievement of the established project objectives;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practical and other field experiences in settings that ensure student involvement in the provision of vocational rehabilitation, supported employment, or independent living rehabilitation services to individuals with disabilities, especially individuals with severe disabilities;

(iv) The coursework includes student exposure to vocational rehabilitation, supported employment, or independent living rehabilitation processes, concepts, programs, and services; and

(v) If applicable, there is evidence of current professional accreditation by the designated accrediting agency in the professional field in which grant support is being requested.

(Authority: 29 U.S.C. 711(c) and 771a)

PART 387—EXPERIMENTAL AND INNOVATIVE TRAINING

40. The authority citation for part 387 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

41. Section 387.30 is revised to read as follows:

§ 387.30 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criteria to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program.* (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either—

(i) To increase the supply of trained personnel available to public and private agencies involved in the rehabilitation of individuals with disabilities; or

(ii) To maintain and improve the skills and quality of rehabilitation workers.

(b) *Nature and scope of curriculum.* (1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed curriculum.

(2) The Secretary looks for information that shows that—

(i) The scope and nature of the training content can be expected to enable the achievement of the established project objectives of the training project;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practicum or other field experiences in settings that assure student involvement in the provision of vocational rehabilitation or independent living rehabilitation services to individuals with disabilities, especially individuals with severe disabilities; and

(iv) The didactic coursework includes student exposure to vocational rehabilitation or independent living rehabilitation processes, concepts, programs, and services.

(Authority: 29 U.S.C. 711(c) and 774)

PART 388—STATE VOCATIONAL REHABILITATION UNIT IN-SERVICE TRAINING

42. The authority citation for Part 388 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

43. Section 388.20 is revised to read as follows:

§ 388.20 What additional selection criteria are used under this program?

In addition to the selection criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criteria to evaluate an application:

(a) *Evidence of need.* (1) The Secretary reviews each application for information that shows that the need for the in-service training has been adequately justified.

(2) The Secretary looks for information that shows—

(i) How the proposed project relates to the mission of the State-Federal rehabilitation service program and can be expected to improve the competence of all State vocational rehabilitation personnel in providing vocational rehabilitation services to individuals with disabilities that will result in employment outcomes or otherwise contribute to more effective management of the State unit program;

(ii) That the State unit in-service training plan responds to needs identified in their training needs assessment and the proposed training relates to the unit's State plan, particularly the requirements in section 101(a)(7) of the Rehabilitation Act for each designated State unit to develop a comprehensive system of personnel development;

(iii) The need for training methods and materials that will be useful in determining how in-service training improves the impact and effectiveness of services to individuals with disabilities assisted under the Rehabilitation Act to ensure employment outcomes; and

(iv) The State has conducted a needs assessment of the in-service training needs for all of the State unit employees.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

PART 389—REHABILITATION CONTINUING EDUCATION PROGRAMS

44. The authority citation for Part 389 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

45. Section 389.30 is revised to read as follows:

§ 389.30 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criterion to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program.* (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service programs.

(2) The Secretary reviews each application for information that shows that the proposed project includes an assessment of the potential of existing programs within the geographical area (including State vocational rehabilitation unit in-service training) to meet the needs for which support is sought.

(3) The Secretary looks for information that shows that the proposed project can be expected to improve the competence of professional and other personnel in the rehabilitation agencies serving individuals with severe disabilities.

(Authority: 29 U.S.C. 711(c))

PART 390—REHABILITATION SHORT-TERM TRAINING

46. The authority citation for Part 390 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

47. Section 390.30 is revised to read as follows:

§ 390.30 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criterion to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program.* (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service programs.

(2) The Secretary looks for information that shows that the proposed project can be expected to improve the skills and competence of—

(i) Personnel engaged in the administration or delivery of rehabilitation services; and

(ii) Others with an interest in the delivery of rehabilitation services.

(Authority: 29 U.S.C. 711(c) and 774)

PART 396—TRAINING OF INTERPRETERS FOR INDIVIDUALS WHO ARE DEAF AND INDIVIDUALS WHO ARE DEAF-BLIND

48. The authority citation for Part 396 continues to read as follows:

Authority: 29 U.S.C. 771a(f), unless otherwise noted.

49. Section 396.30 is revised to read as follows:

§ 396.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates applications under the procedures in 34 CFR part 75.

(b) The Secretary evaluates each application using selection criteria in § 396.31.

(c) In addition to the selection criteria described in paragraph (b) of this section, the Secretary evaluates each application using—

(1) Selection criteria in 34 CFR 75.210;

(2) Selection criteria established under 34 CFR 75.209; or

(3) A combination of selection criteria established under 34 CFR 75.209 and selection criteria in 34 CFR 75.210.

(Authority: 29 U.S.C. 771a(f))

50. Section 396.31 is revised to read as follows:

§ 396.31 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 396.30(c), the Secretary uses the following additional selection criterion to evaluate an application:

(a) *Demonstrated relationships with service providers and consumers.* The Secretary reviews each application to determine the extent to which—

(1) The proposed interpreter training project was developed in consultation with service providers;

(2) The training is appropriate to the needs of both individuals who are deaf and individuals who are deaf-blind and to the needs of public and private agencies that provide services to either individuals who are deaf or individuals who are deaf-blind in the geographical area to be served by the training project;

(3) There is a working relationship between the interpreter training project and service providers; and

(4) There are opportunities for individuals who are deaf and individuals who are deaf-blind to be involved in the training project.

(Authority: 29 U.S.C. 771a(f))

§ 396.32 [Amended]

51. Section 396.32 is amended by adding after the number "396.31" the cross-reference "and 34 CFR 75.210".

PART 610—SCHOOL, COLLEGE, AND UNIVERSITY PARTNERSHIPS [REMOVED]

52. Part 610 is removed.

PART 612—DRUG PREVENTION PROGRAMS IN HIGHER EDUCATION [REMOVED]

53. Part 612 is removed.

PART 630—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION [REMOVED]

54. Part 630 is removed.

PART 637—MINORITY SCIENCE IMPROVEMENT PROGRAM

55. The authority citation for part 637 continues to read as follows:

Authority: 20 U.S.C. 1135b–1135b–3, 1135d–1135d–3, 1135d–5, and 1135d–6, unless otherwise noted.

56. Section 637.31 is revised to read as follows:

§ 637.31 How does the Secretary evaluate an application?

The Secretary evaluates an application under the procedures in 34 CFR Part 75 and using selection criteria established under the procedures in 34 CFR Part 75.

(b) The Secretary gives priority to applicants that have not previously received funding from the program and to previous grantees with a proven record of success, as well as to applications that contribute to achieving balance among funded projects with respect to—

(1) Geographic region;

(2) Academic discipline; and

(3) Project type.

(Authority: 20 U.S.C. 1135b–1 and 1135d–3)

§ 637.32 [Removed]

57. Section 637.32 is removed.

PART 658—UNDERGRADUATE INTERNATIONAL STUDIES AND FOREIGN LANGUAGE PROGRAM

58. The authority citation for part 658 continues to read as follows:

Authority: 20 U.S.C. 1124, unless otherwise noted.

59. Section 658.30 is revised to read as follows:

§ 658.30 How does the Secretary evaluate an application?

The Secretary evaluates an application under the procedures in 34 CFR part 75 and using selection criteria established under the procedures in 34 CFR part 75.

(Authority: 20 U.S.C. 1124)

§§ 658.31, 658.32, and 658.33 [Removed]

60. Sections 658.31, 658.32, and 658.33 are removed.

§ 658.34 [Amended]

61. Section 658.34 is amended by removing the comma after the word "in" and by removing the words and numbers "as appropriate §§ 658.31, 658.32, and 658.33," and adding in their place the number "§ 75.210".

PART 660—THE INTERNATIONAL RESEARCH AND STUDIES PROGRAM

62. The authority citation for Part 660 continues to read as follows:

Authority: 20 U.S.C. 1125, unless otherwise noted.

63. Section 660.30 is revised to read as follows:

§ 660.30 How does the Secretary evaluate an application?

The Secretary evaluates an application under the procedures in 34 CFR Part 75 and using selection criteria established under the procedures in 34 CFR Part 75.

(Authority: 20 U.S.C. 1125)

§§ 660.31, 660.32, and 660.33 [Removed]

64. Sections 660.31, 660.32 and 660.33 are removed.

PART 661—BUSINESS AND INTERNATIONAL EDUCATION PROGRAM

65. The authority citation for part 661 continues to read as follows:

Authority: 20 U.S.C. 1130–1130b, unless otherwise noted.

66. Section 661.30 is revised to read as follows:

§ 661.30 How does the Secretary evaluate an application?

The Secretary evaluates an application under the procedures in 34 CFR part 75 and using selection criteria established under the procedures in 34 CFR part 75.

(Authority: 20 U.S.C. 1130a)

§ 661.31 [Removed]

67. Section 661.31 is removed.

PART 669—LANGUAGE RESOURCE CENTERS PROGRAM

68. The authority citation for part 669 continues to read as follows:

Authority: 20 U.S.C. 1123, unless otherwise noted.

69. Section 669.20 is revised to read as follows:

§ 669.20 How does the Secretary evaluate an application?

The Secretary evaluates an application under the procedures in 34 CFR part 75 and using the selection criteria established under the procedures in 34 CFR part 75.

(Authority: 20 U.S.C. 1123)

§ 669.21 [Removed]

70. Section 669.21 is removed.

71. Section 669.22 is amended by adding a new paragraph (c) to read as follows:

§ 669.22 What priorities may the Secretary establish?

* * * * *

(c) If the Secretary establishes one or more priorities under this section, the Secretary may award an applicant up to an additional 20 possible points for

federal register

Tuesday
July 16, 1996

Part VI

Department of the Treasury

Fiscal Service

31 CFR Part 321

Regulations Governing Payments by Banks and Other Financial Institutions of United States Savings Bonds and United States Savings Notes (Freedom Shares); Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 321

[Department of the Treasury Circular, Public Debt Series No. 750]

Regulations Governing Payments by Banks and Other Financial Institutions of United States Savings Bonds and United States Savings Notes (Freedom Shares)

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury hereby publishes this final rule amending the regulations to update procedures used by the Bureau of the Public Debt for collecting debts owed by paying agents of United States Savings Bonds and Savings Notes (collectively referred to herein as savings bonds or bonds). These collection procedures are used when a paying agent cannot be relieved of liability for a savings bond transaction and the paying agent fails to reimburse Public Debt in a timely manner.

Accounts designated or utilized by paying agents at Federal Reserve Banks for receiving settlements for savings bond redemptions are immediately credited upon the receipt of paid bonds with cash letters by Federal Reserve Banks or Branches through the EZ CLEAR system. These immediate settlements occur with the understanding that adjustments to correct errors may later be necessary. This system has expedited the process of crediting the accounts paying agents have designated or utilized for receiving savings bond transaction settlements. However, the system has also made it more cumbersome for Public Debt to collect monies from paying agents, not relieved of liability, that fail to reimburse Public Debt in a timely manner.

This amendment corrects this problem by providing that paying agents are deemed to have authorized the debit of any overdue amount, interest, administrative cost, and penalty assessed, directly from the agents' Reserve, correspondent, or clearing accounts designated or utilized at Federal Reserve Banks or Branches for settlement of redeemed savings bonds.

EFFECTIVE DATE: July 16, 1996.

FOR FURTHER INFORMATION CONTACT: Wallace L. Earnest, Division Director, Division of Staff Services (304) 480–6319, or Edward Gronseth, Deputy Chief Counsel, Office of the Chief Counsel (304) 480–5192.

SUPPLEMENTARY INFORMATION:

I. Background

The final rule will update the debt collection process used by the Bureau of the Public Debt. This update is necessitated by the automated processing of redeemed savings bonds through EZ CLEAR.

Paying agents receive settlements for the value of savings bonds redeemed via credits to Reserve, correspondent, and clearing accounts with Federal Reserve Banks, or their Branches.

When a depository financial institution qualifies as a savings bond paying agent, it agrees in writing to be bound by all of the provisions set out in 31 CFR part 321 and the Appendix thereto, as revised and amended, including any instructions promulgated by Treasury and its fiscal agents.

Relief of a paying agent from liability for a loss related to the redemption of a savings bond is a determination made under authority of 31 U.S.C. 3126(a).

The collection procedures will apply when a paying agent cannot be relieved of liability under 31 U.S.C. 3126(a) for a loss resulting from a payment of a savings bond pursuant to 31 CFR part 321. No change is being made in the procedure for assessing liability under 31 U.S.C. 3126(a), or in the regulations with respect to such liability determinations.

II. Summary of Amendments

Section 321.21 refers to collection procedures outlined in Paragraph 21 of the appendix to this part.

Paragraph 21 of the appendix to this part provides a detailed explanation of the consequences of a paying agent's failure to make reimbursement within 30 days of Public Debt's mailing the first demand letter, provided the paying agent cannot be relieved of liability under 31 U.S.C. 3126(a) for an erroneous payment.

A paying agent receiving settlement for the redemption value of redeemed savings bonds via credits to a Reserve, correspondent, or clearing account is deemed to have authorized the Federal Reserve Bank or Branch to debit the amount due from that account. Such debits shall be made if the paying agent fails to make timely reimbursement or submit new evidence sufficient for Public Debt to change a determination of liability within 120 days of the mailing of the first demand letter. The amount due from the redemption of a security for which the paying agent is not relieved of liability, under 31 U.S.C. 3126(a), shall include the amount of the final loss resulting from the erroneous payment, interest, administrative costs, and penalty charges.

A financial institution designated by a paying agent to receive settlement for redeemed savings bonds on behalf of that paying agent via a credit to a Reserve, correspondent, or clearing account with a Federal Reserve Bank or Branch is deemed to have authorized a debit from such account to collect an amount due from the paying agent. The consequences of a paying agent's failure to make timely reimbursement include the paying agent's being required to pay:

(a) Interest charges accruing from the date the first demand letter is mailed to the date of reimbursement, at the current value of funds rate published by the Secretary of the Treasury annually or quarterly in the **Federal Register**;

(b) Administrative costs (currently processing costs of $6.00) will be assessed, if reimbursement is not made within 30 days of the date the first demand letter is mailed;

(c) Penalty charges in accordance with 31 U.S.C. 3717(e), if reimbursement is not made within 120 days of the date the first demand letter is mailed. When assessed, the penalty charge will accrue and be calculated from 30 days after the date the first demand letter is mailed to the date of reimbursement.

Procedural Requirements

It has been determined that this final rule is not a "significant regulatory action" pursuant to Executive Order 12866.

Although this rule was published in the **Federal Register** as a proposed rule on April 1, 1996, to secure the benefit of public comment, the rule relates to matters of public contract, as well as the borrowing power and fiscal authority of the United States. The notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There are no collections of information required by this final rule, therefore, the Paperwork Reduction Act does not apply.

Comments

No comments were received on the proposed rule published April 1, 1996, with a 30 day comment period.

List of Subjects in 31 CFR Part 321

Banks, Banking, Bonds, Government securities.

Dated: July 3, 1996.

John Kilcoyne,

Deputy Fiscal Assistant Secretary.

For the reasons set forth in the preamble, part 321 of title 31 of the Code of Federal Regulations is amended to read as follows:

PART 321—PAYMENTS BY BANKS AND OTHER FINANCIAL INSTITUTIONS OF UNITED STATES SAVINGS BONDS AND UNITED STATES SAVINGS NOTES (FREEDOM SHARES)

1. The authority citation for part 321 is revised as follows:

Authority: 2 U.S.C. 901, 5 U.S.C. 301, 12 U.S.C. 391, 31 U.S.C. 3105, 31 U.S.C. 3126.

2. Section 321.21 is revised to read as follows:

§ 321.21 Replacement and recovery of losses.

(a) If a final loss results from the redemption of a security, and the paying agent redeeming the security is not relieved of liability for such loss under 31 U.S.C. 3126(a), the Bureau of the Public Debt will demand that the paying agent promptly reimburse the United States in the amount of the final loss and will take such other action as may be necessary to collect such amount as set out in the procedure described in Paragraph 21 of the appendix to this part.

(b) If a final loss has resulted from the redemption of a security, and no reimbursement has been or will be made, the loss shall be subject to replacement out of the fund established by the Government Losses in Shipment Act, as amended.

3. Subpart E, paragraph 21 of the appendix to this part is revised as follows:

21. *Determination of liability.* (Sec. 321.18 and Sec. 321.21)

(a) Upon completing the investigation, the Bureau of the Public Debt will examine the available information and determine whether a paying agent may be relieved of liability for any loss that may have resulted. If the paying agent cannot be relieved of liability, demand will be made upon the paying agent to reimburse the Treasury promptly. Any amount not paid within 30 days following the mailing of the first demand letter is subject to the following charges.

(1) Interest shall accrue from the date the first demand letter is mailed to the date reimbursement is made. The rate of interest to be used will be the current value of funds rate published annually or quarterly in the **Federal Register** and in effect during the entire period in which the remittance is late.

(2) Administrative costs shall be assessed as set out in the first demand letter, if reimbursement is not made within 30 days of the date the first demand letter is mailed.

(3) Penalty charges shall be assessed, in accordance with 31 U.S.C. 3717(e), if reimbursement is not made within 120 days of the date the first demand letter is mailed. The penalty charge will accrue and be calculated from 30 days after the date the first demand letter is mailed to the date of reimbursement.

(b) When a paying agent fails, within 120 days of the date the first demand letter is mailed, to make such reimbursement or to submit new evidence sufficient for Public Debt to change the determination of liability, by virtue of the paying agent's acceptance of settlement via credits to a Reserve, correspondent, or clearing account with a Federal Reserve Bank or Branch, the agent is deemed to have authorized the Federal Reserve Bank to debit the amount due from that account designated or utilized by the agent at the Federal Reserve Bank or Branch. An institution, designated by a paying agent to receive settlement on its behalf, in authorizing such paying agent to utilize its Reserve, correspondent, or clearing account on the books at the Federal Reserve Bank shall similarly be deemed to authorize such debits from that account.

(c) Reconsideration of a determination of liability will be made in any case when a paying agent so requests and presents additional evidence and information regarding the transaction.

* * * * *

[FR Doc. 96–17988 Filed 7–15–96; 8:45 am]

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Vol. 61, No. 137

Tuesday, July 16, 1996

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FEDERAL REGISTER PAGES AND DATES, JULY

33825–34366	1
34367–34712	2
34713–35082	3
35083–35588	5
35589–35914	8
35915–36276	9
36277–36492	10
36493–36608	11
36609–36808	12
36809–36988	15
36989–37198	16

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6907 35083
6908 35587

Administrative Orders:

Presidential Determinations:
No. 96–34 of June 26, 1996 36493
No. 96–35 of June 26, 1996 36495
No. 96–36 of June 28, 1996 35075
No. 96–37 of June 29, 1996 36989
No. 96–38 of June 29, 1996 36991

4 CFR

28 36809
29 36809

5 CFR

Ch. XXIII 35085
Ch. XXXV 36993
Ch. LXV 36246
530 34713
531 34713
532 36609
534 34713
550 34713
575 34713
581 34713
582 34713
630 34713
734 35088
1001 36993
1660 36610
2634 35589
3201 35915

Proposed Rules:
890 35973

7 CFR

58 35589
301 ..... 35102, 35107, 36811, 36812
400 34367
729 36997
868 34714
946 35109
948 36813
958 35592
989 36814
997 35594
998 35594
1106 35596
1230 35597
1493 33825
1910 35916
1924 35916
1941 35916
1943 35916
1945 35916
1951 35916
1955 35916
1962 35916
1965 35916
1980 35916

Proposed Rules:
210 35152
220 35152
225 35152
226 35152
300 34379
301 38018
319 34379
868 35687
956 36827
1240 34385
1280 35982

8 CFR

103 35597
212 36610
214 35934
217 35598
301 35111

Proposed Rules:
207 35984
208 35984

9 CFR

92 36816
112 33840
113 33840
201 ..... 36277, 36279

Proposed Rules:
1 34386
3 ..... 34386, 34389
11 34747
92 36520
93 36520
94 ..... 35987, 36520
95 36520
98 36520
98 36520
301 35990
304 35990
308 35990
318 35992
319 35157
320 35990
381 ..... 35157, 35990
391 34747

10 CFR

53 35935
110 35600
205 3511
420 35890
430 36974
450 35890
463 35114
784 36611
1003 35112

1010 35085
1021 36222

Proposed Rules:
34 37019
1021 35990

12 CFR
324 33842
367 35115
1750 35607

Proposed Rules:
207 33874
218 34749
220 33874
221 33874
250 34749
327 34751
745 36663

14 CFR
1 34508
25 34716
29 ..... 33963, 36965
39 ..... 33874, 34368, 34718, 35122, 35126, 35127, 35936, 35938, 35940, 35942, 35944, 35946, 36620, 36622, 36817
61 34508
71 ..... 33843 33844, 33845, 34720, 34721, 34722, 34723, 35307, 36283, 36284, 36285, 36286, 36820, 37001, 37113
73 35623
91 ..... 34508, 36286
97 ..... 35623, 35624, 35626
119 35628
121 ..... 34508, 34927, 35628
125 34508
135 ..... 34508, 34927, 35628
141 34508
142 34508
211 34724
213 34724

Proposed Rules:
25 35056
39 ..... 34767, 35691, 35693, 35695, 36307, 36308, 36310, 36664, 36667, 36669, 37019
71 ..... 34391, 34393, 34394, 34395, 34396, 34397, 34398, 34769, 35991, 36311, 36312, 36313, 36314, 36315, 36316, 36317, 36520, 37113
121 37144
125 37144
129 37144
135 37144

15 CFR
902 ..... 34570, 34930, 34966, 35145, 35548
923 36965

Proposed Rules:
30 36318
922 33876

16 CFR

Proposed Rules:
303 35992

17 CFR

Proposed Rules:
240 36521

19 CFR
10 33845
12 33845
102 33845
134 33845

21 CFR
14 36624
177 34370
178 33846
184 36287
452 34726
510 35949
520 34727
522 ..... 34727, 35129, 36290
529 34727
558 ..... 34727, 35949, 36291

Proposed Rules:
106 36154
107 36154

22 CFR
41 35628
126 36625
514 37002
608 36820

23 CFR
630 35629

24 CFR
0 36246
60 36462
200 36260
201 36260
202 ..... 36260, 36452
203 ..... 35024, 36260, 36452
206 ..... 35014, 36260
221 ..... 36260, 36452
233 36260
234 ..... 36260, 36452
280 36260
291 36260
570 36456
901 35633
941 35958

25 CFR
10 34371
211 35634
212 35634
700 35666

Proposed Rules:
5 36671
11 35158
12 35163
21 33876
45 34399
152 34400
171 35167
256 36829
290 37022

26 CFR

Proposed Rules:
1 ..... 35696, 36320
31 36320

27 CFR
18 37002
30 37002
53 37005
275 37005

Proposed Rules:
53 37022

28 CFR
42 34729

Proposed Rules:
17 36679
31 34770

29 CFR
Ch. XXVI 34002, 36626
Ch. XL 34002, 36626
1952 36824
2509 33847
2520 33847
2550 33847
4044 36968

Proposed Rules:
Ch. XIV 34405
101 35172
102 35172

30 CFR
56 36790
57 36790
256 34730

Proposed Rules:
948 37023

31 CFR
321 37196
356 37007
575 36627

32 CFR
706 ..... 35958, 36291, 36497

33 CFR
100 36292
110 36786
116 36786
117 36786
127 36629
157 36786
158 36629
164 35064
165 ..... 35130, 35132
179 36629
181 36786
183 36629
334 34732

Proposed Rules:
117 35702
154 34775
155 34775
167 35703

34 CFR

Proposed Rules:
75 37184
206 37184
231 37184
235 27184
369 27184
371 27184
373 27184
375 27184
376 27184
378 27184
380 27184
381 27184
385 27184
386 27184
387 27184
388 27184
389 27184
390 27184
396 27184
610 27184
612 27184
630 27184
637 27184
658 27184
660 27184
661 27184
669 27184

35 CFR
61 36497
123 36497

36 CFR
1 35133
13 35133
222 35959
223 35960

Proposed Rules:
1190 36688
1191 36688

37 CFR
2 36825

38 CFR
1 33850
21 36829

Proposed Rules:
1 33878
17 37024

39 CFR
5 36498
7 36498
10 36498
20 36500

40 CFR
9 ..... 33851, 34202
52 ..... 36292, 36501, 36502
55 34202
63 ..... 34140, 36295
70 34733
71 34202
79 36506
80 ..... 35310, 35673, 35960
180 ..... 34739, 34741, 36298, 36299
257 34253
261 34252
271 34252
300 ..... 35137, 35962
425 35680

Proposed Rules:
51 ..... 35994, 36112
52 ..... 35998, 36004, 36320, 36534, 37030
55 36012
61 36326
63 ..... 36326, 36835
79 36535
80 34775
81 ..... 33879, 36004
90 34778
93 ..... 35994, 36112
136 36328
180 ..... 36329, 36331, 36689
260 33881
261 33881
262 33881
264 33881
268 33881
269 33881
271 33881
300 36858
425 35705

430 36835

41 CFR
201 35685

42 CFR
405 35307
413 37011
417 35307
431 35307
473 35307
498 35307

Proposed Rules:
410 34614
415 34614

43 CFR
3710 37116

Proposed Rules:
11 37031
4700 36333

44 CFR
62 36513
64 36514
65 ..... 33852, 33854
67 33856

Proposed Rules:
67 33882

46 CFR
42 35963
76 35138
108 36786
110 36786
111 ..... 35927, 36608, 36786
112 36786
113 36786
161 36786
167 35138
514 35685

Proposed Rules:
10 ..... 36543, 36608
15 ..... 36543, 36608

47 CFR
Ch. I 35964
1 36629
20 33859
22 34375
24 33850
36 34375
61 ..... 36515, 36653
64 ..... 36629, 36653
66 36654
73 ..... 34368, 34743, 34744, 35139, 36302
90 34375

Proposed Rules:
Ch. I 34405
73 ..... 34406, 34407, 34784, 34785, 35705
76 ..... 34408, 34409

48 CFR
231 36305

Proposed Rules:
401 37032
453 37032

49 CFR
1 34745
40 37015
192 ..... 35139, 36825
193 36825
195 36825
233 33871
235 33871
236 33871
571 ..... 33891, 36516, 36655
575 36655
1150 36965
1300 35139
1305 35141

Proposed Rules:
1 33886
8 33886
192 ..... 34410, 34413
195 ..... 34410, 34413
393 36691
397 36016
571 ..... 36334, 36698

50 CFR
Ch. III 35548
246 35548
280 35548
281 35548
282 35548
298 35548
299 35548
622 34930
625 34966
630 ..... 34746, 35971
638 34930
641 34930
642 34785
645 34930
646 34930
647 34930
648 ..... 34966, 35142
650 34966
651 34966
652 34966
653 34930
655 34966
657 34966
658 34930
659 34930
660 ..... 34570, 35143, 35144, 36662
661 34570
663 34570
669 34930
670 34930
679 ..... 34377, 36306
680 34570
681 ..... 34570, 35145
683 34570
685 34570
695 35548
697 34748

Proposed Rules:
17 ..... 36020, 36021, 36346, 37034
229 37035
642 34785
679 ..... 35174, 36702, 37041

REMINDERS
The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

FARM CREDIT ADMINISTRATION
Farm credit system:
- Loan policies and operations--
  - Funding and discount relationship between FCS banks and other financing institutions; published 5-17-96

PERSONNEL MANAGEMENT OFFICE
Conflict of interest; published 7-16-96

TRANSPORTATION DEPARTMENT
Omnibus Transportation Employee Testing Act of 1991:
- Drug and alcohol testing requirements for foreign-based drivers operating in U.S.; participation by Canadian and Mexican laboratories; published 7-15-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
- Fokker; published 6-11-96
- New Piper Aircraft, Inc.; published 6-6-96

TREASURY DEPARTMENT
Alcohol, Tobacco and Firearms Bureau
Firearms:
- Firearms and ammunition; manufacturers excise taxes; published 7-16-96

Technical amendments; published 7-16-96

TREASURY DEPARTMENT
Fiscal Service
Bonds and notes, U.S. Treasury:
- Payments by banks and other financial institutions of United States savings bonds and notes (Freedom Shares); published 7-16-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
- Arizona-California citrus; comments due by 7-22-96; published 6-20-96

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
- Sea turtle conservation; shrimp trawling requirements--
  - Additional turtle excluder device requirements within statistical zones; comments due by 7-24-96; published 6-27-96

Fishery conservation and management:
- Limited access management of Federal fisheries in and off of Alaska; comments due by 7-22-96; published 6-25-96

ENVIRONMENTAL PROTECTION AGENCY
Acquisition regulations:
- Source selection process; comments due by 7-22-96; published 5-21-96

Air pollutants, hazardous; national emission standards:
- Radon emissions from phosphogypsum stacks; comment period reopening; comments due by 7-26-96; published 7-10-96

Air programs:
- Gasoline retailers and wholesale purchaser-consumer fuel dispensing rate requirements
  - Implementation date delayed; comments due by 7-26-96; published 6-26-96

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 7-24-96; published 6-24-96
- New Mexico; comments due by 7-24-96; published 6-24-96
- Puerto Rico; comments due by 7-22-96; published 6-21-96

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
- Tennessee; comments due by 7-24-96; published 6-24-96

Clean Air Act:
- State operating permits programs--
  - Michigan; comments due by 7-24-96; published 6-24-96

Hazardous waste program authorizations:
- Nebraska; comments due by 7-25-96; published 6-25-96
- Nevada; comments due by 7-24-96; published 6-24-96

Pesticide programs:
- Registration modifications; notification procedures; comments due by 7-26-96; published 6-26-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Copper 8-quinolinolate; comments due by 7-26-96; published 6-26-96

Water programs:
- Pollutants analysis test procedures; guidelines--
  - Oil and grease and total petroleum hydrocarbons; comment period reopening; comments due by 7-23-96; published 5-24-96

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
- Telecommunications Act of 1996; implementation--
  - Market entry barriers for small businesses; identification and elimination; comments due by 7-24-96; published 6-26-96

Radio broadcasting:
- Grandfathered short-spaced FM stations; comments due by 7-22-96; published 6-27-96

Television broadcasting:
- Cable television systems--
  - Major television markets; list; comments due by 7-22-96; published 6-10-96

GENERAL SERVICES ADMINISTRATION
Acquisition regulations:
- Contract Appeals Board; procedure rules--
  - Automatic data processing equipment and services procurements; Board's jurisdiction eliminated; comments due by 7-24-96; published 6-24-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Biological products:
- Placental/umbilical cord blood stem cell products intended for transplantation, etc.; draft document; comments due by 7-26-96; published 5-28-96

Human drugs:
- Orally ingested drug products containing calcium, magnesium, and potassium (OTC)--
  - Labeling provisions; comments due by 7-22-96; published 4-22-96
- Sodium content (OTC); labeling provisions; comments due by 7-22-96; published 4-22-96

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
- Barton Springs salamander; comments due by 7-24-96; published 6-24-96
- Fat three-ridge, etc. (seven freshwater mussels); comments due by 7-26-96; published 7-9-96

Hunting and fishing:
- Open areas list additions; comments due by 7-22-96; published 6-21-96
- Refuge-specific regulations; comments due by 7-24-96; published 6-24-96

INTERIOR DEPARTMENT
Minerals Management Service
Royalty management:
- Federal leases; natural gas valuation regulations; amendments; comments due by 7-22-96; published 5-21-96

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
- Ohio; comments due by 7-24-96; published 6-24-96

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION
Fellowship program requirements; comments due by 7-22-96; published 5-22-96

LABOR DEPARTMENT
Federal Contract Compliance Programs Office
Government contractors, affirmative action requirementas; EO 11246 implementation; comments due by 7-22-96; published 5-21-96

MEXICO AND UNITED STATES, INTERNATIONAL BOUNDARY AND WATER COMMISSION
International Boundary and Water Commission, United States and Mexico
Freedom of information Act; implementation:
- Fee schedule; comments due by 7-22-96; published 5-20-96

NUCLEAR REGULATORY COMMISSION
Nuclear power reactors, standard design certifications; and combined licenses; early site permits:
- Boiling water reactors--
  - System 80+ standard designs; certification approval; comments due by 7-23-96; published 5-30-96

PERSONNEL MANAGEMENT OFFICE
Acquisition regulations:
- Health benefits, Federal employees; Truth in Negotiations Act; amendments; comments due by 7-24-96; published 5-24-96

POSTAL SERVICE
Domestic Mail Manual:
- Mail classification reform; implementation standards; comments due by 7-24-96; published 6-24-96

TRANSPORTATION DEPARTMENT
Coast Guard
International Conventions on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 78):
- Licensing, documentation, and manning; comments due by 7-24-96; published 3-26-96

International Conventions on Standards of Training, Certification and Watchkeeping for Seafarers Meetings; comments due by 7-24-96; published 4-8-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operation:
- Radar beacon system and Mode S transponder requirements in national airspace system; comments due by 7-22-96; published 5-23-96
- Correction; comments due by 7-22-96; published 6-17-96

Airworthiness directives:
- Airbus; comments due by 7-22-96; published 6-13-96

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Warning devices--
- Fusees or flares placed on roadway behind disabled buses and trucks; comments due by 7-25-96; published 6-10-96

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
- Hazardous materials transportation--
  - Oxygen generators as cargo in passenger aircraft; temporary prohibition; comments due by 7-23-96; published 5-24-96

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes, etc.:
- Tax withholding on certain U.S. source income paid to foreign persons and related collection, refunds, and credits, etc.; comments due by 7-22-96; published 4-22-96

VETERANS AFFAIRS DEPARTMENT
Medical benefits:
- Alcohol and drug dependence disorders; contract program; eligibility criteria; comments due by 7-22-96; published 5-21-96

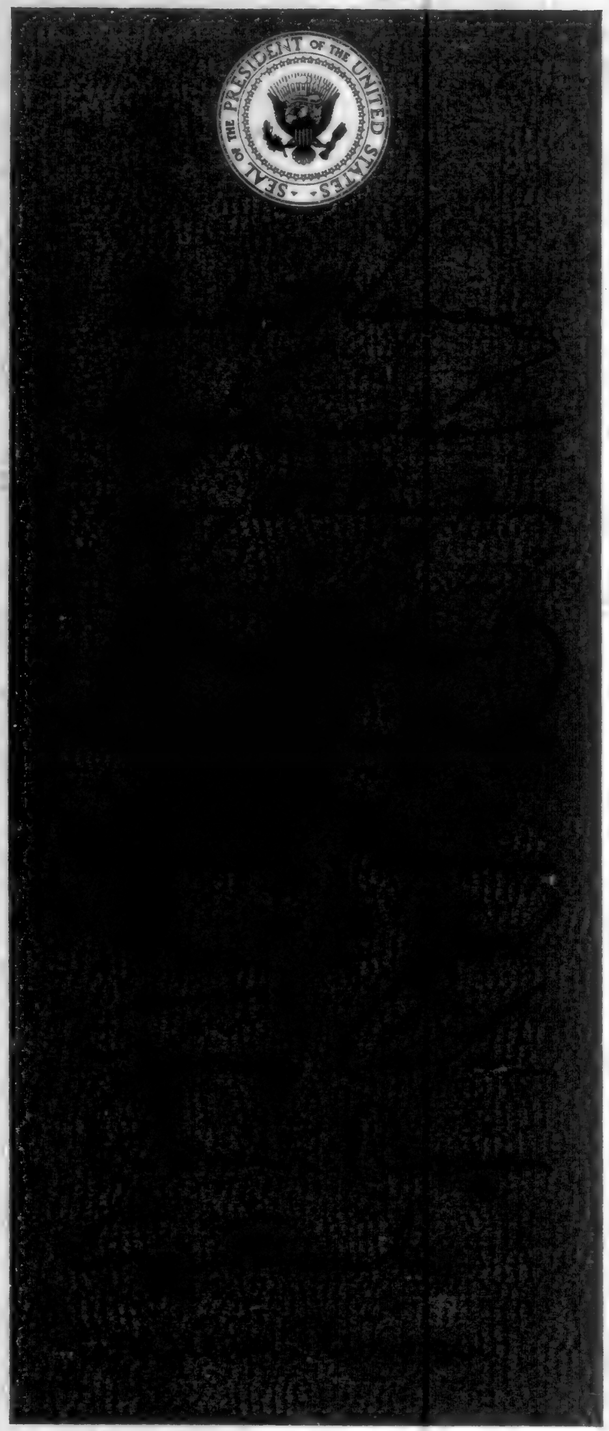

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Wednesday
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7-17-96
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July 17, 1996

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Contents

Federal Register
Vol. 61, No. 138
Wednesday, July 17, 1996

Agricultural Marketing Service
RULES
Referendum:
Tobacco auction market consolidations—
Sanford et al.; correction, 37316

Agriculture Department
See Agricultural Marketing Service
See Forest Service
RULES
Meat import limitations; CFR part removed, 37199
NOTICES
Import quotas and fees:
Sugar, raw cane, 37243

Children and Families Administration
PROPOSED RULES
Aid to Families with Dependent Children under title IV-A of the Social Security Act; child support cooperation and referral, 37236–37240

Coast Guard
RULES
Drawbridge operations:
Maryland, 37211
Ports and waterways safety:
San Diego Bay, CA; safety zone, 37211–37213
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37309–37310
Meetings:
Chemical Transportation Advisory Committee, 37310–37311
Towing Safety Advisory Committee, 37311

Commerce Department
See Minority Business Development Agency
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Bangladesh, 37308–37309

Comptroller of the Currency
PROPOSED RULES
National banks lending limits, 37227–37229

Copyright Office, Library of Congress
RULES
Copyright arbitration royalty panel rules and regulations:
Digital phonorecord delivery rate adjustment proceeding, 37213–37216

Employment and Training Administration
NOTICES
Environmental statements; availability, etc.:
Chicago Job Corps Center, IL, 37291–37292

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 37292–37294

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; notice of intent:
Rocky Flats Environmental Technology Site (RFETS), CO; interim storage of plutonium, 37247–37251
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Fonet, Inc., 37251

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Wisconsin, 37216–37218
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Folpet, 37218–37222
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Wisconsin, 37232–37233
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Cyfluthrin, 37233–37236

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Farm Credit Administration
PROPOSED RULES
Farm credit system:
Loan policies and operations—
Short- and intermediate-term credit; FCS (System) and non-System lenders, 37230

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 37202–37204
British Aerospace, 37199–37202
Class E airspace, 37204–37206
IFR altitudes, 37206–37208
Omnibus Transportation Employee Testing Act of 1991:
Substance abuse professional; definition amendment, 37222–37224
PROPOSED RULES
Class D airspace, 37230–37231
Class E airspace, 37231–37232
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37311–37312
Exemption petitions; summary and disposition, 37312–37313

Federal Communications Commission
PROPOSED RULES
Radio and television broadcasting:
Equal employment opportunity (EEO) requirements; streamlining, 37241

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Pennsylvania, 37265

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Empresa de Generaci n Electrica nor Peru S.A. et al., 37252–37256
Lee 8 Storage Partnership, 37256–37257
Montana Power Co., 37257
Environmental statements; notice of intent:
Granite State Gas Transmission, Inc., 37257
Hydroelectric applications, 37257–37263
Natural gas exportation and importation:
Columbia Gas Transmission Corp. et al., 37263–37265
Applications, hearings, determinations, etc.:
Alqonquin Gas Transmission Co., 37251–37252
NorAm Gas Transmission Co., 37252
Williston Basin Interstate Pipeline Co., 37252

Federal Highway Administration
RULES
Onmibus Transportation Employee Testing Act of 1991:
Substance abuse professional; definition amendment, 37222–37224

Federal Housing Finance Board
NOTICES
Federal home loan bank system:
Community support review—
Selection of members, 37265–37276

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
U.S. International Forwarding Agency, Inc., et al., 37276

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 37294

Federal Railroad Administration
RULES
Omnibus Transportation Employee Testing Act of 1991:
Substance abuse professional; definition amendment, 37222–37224

Federal Reserve System
PROPOSED RULES
Electronic fund transfers (Regulation E):
Home banking services disclosure; new accounts error resolution, and store-value cards, etc., 37229

Federal Transit Administration
RULES
Omnibus Transportation Employee Testing Act of 1991:
Substance abuse professional; definition amendment, 37222–37224

Food and Drug Administration
RULES
Food additives:
Adhesive coatings and components—
1,4-cyclohexanedicarboxylic acid, 37208
Paper and paperboard components—
Ammonium zirconium lactate-citrate, 37209–37210
Polymers—
Polymethylsilsesquioxane, 37210–37211
NOTICES
Harmonization International Conference; guidelines availability:
Clinical study reports; structure and content, 37320–37343
Medical devices; premarket approval:
MicroTrak II IgM Anti-HAV EIA, 37276–37277
Schneider (USA) Inc.; Wallstent transjugular intrahepatic portosystemic shunt (TIPS) endoprothesis, 37277–37278

Forest Service
NOTICES
Environmental statements; notice of intent:
Okanogan National Forest, WA; Long Draw Salvage timber sale, 37243–37245

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Health Care Financing Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37278
Submission for OMB review; comment request, 37278–37279

Interior Department
See Land Management Bureau
See National Park Service

International Trade Commission
NOTICES
Import investigations:
Large newspaper printing presses and components, assembled or unassembled, from—
Germany and Japan, 37283
Persulfates from—
China, 37283–37284
Senior Executive Service:
Performance Review Board; membership, 37284

Justice Department
See Juvenile Justice and Delinquency Prevention Office
See Parole Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37285
Pollution control; consent judgments:
Chem-Tech Systems, Inc., 37285

Juvenile Justice and Delinquency Prevention Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Missing and exploited children's program, 37286–37290

Labor Department
See Employment and Training Administration
See Employment Standards Administration

Land Management Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37281–37282
Realty actions; sales, leases, etc.:
Nevada, 37282

Library of Congress
See Copyright Office, Library of Congress

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

Minority Business Development Agency
NOTICES
Business development center program applications:
Massachusetts, 37245–37246

National Institute of Standards and Technology
NOTICES
Meetings:
Malcolm Baldrige National Quality Awards—
Panel of Judges, 37246–37247

National Institutes of Health
NOTICES
Inventions, Government-owned; availability for licensing, 37279–37280
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Cephalon, Inc., 37280

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 37225–37226
Magnuson Act provisions; CFR parts consolidation and update
Correction, 37225
PROPOSED RULES
Fishery management councils; hearings:
New England, 37241–37242
NOTICES
Meetings:
Pacific Fishery Management Council, 37247

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 37282–37283

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Commonwealth Edison Co., 37294–37295
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 37295–37307
Organization, functions, and authority delegations:
Atomic Safety and Licensing Board, 37307

Office of United States Trade Representative
See Trade Representative, Office of United States

Parole Commission
NOTICES
Meetings; Sunshine Act, 37290–37291

Pension Benefit Guaranty Corporation
RULES
Regulations; reorganization, renumbering, and reinvention; Federal regulatory reform
Correction, 37316

Postal Rate Commission
RULES
Practice and procedure:
Domestic mail classification schedule—
Preferred rate mailers rates changes, etc.; correction, 37316–37318

Presidential Documents
EXECUTIVE ORDERS
Committees; establishment, renewal termination, etc.:
President's Commission on Critical Infrastructure Protection, establishment (EO 13010), 37347–37350

Public Health Service
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Research and Special Programs Administration
RULES
Onmibus Transportation Employee Testing Act of 1991:
Substance abuse professional; definition amendment, 37222–37224

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
MBS Clearing Corp., 37307–37308

Substance Abuse and Mental Health Services Administration
NOTICES
Grant and cooperative agreement awards:
American Nurse Association et al., 37280–37281

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Burlington Northern Santa Fe Corp. et al., 37313–37314
Evansville Terminal Co., Inc., 37314
RailAmerica, Inc., 37314–37315
Railroad services abandonment:
CSX Transportation, Inc., 37315

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
Meat from European Community; termination of increased duties, 37309

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Federal Transit Administration
See Research and Special Programs Administration
See Surface Transportation Board

RULES
Omnibus Transportation Employee Testing Act of 1991:
Substance abuse professional; definition amendment, 37222–37224

Treasury Department
See Comptroller of the Currency

Separate Parts In This Issue

Part II
Department of Health and Human Services, Food and Drug Administration, 37320–37343

Part III
The President, 37347–37350

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders:
EO 13010 37347

7 CFR
16 37199
29 37316

12 CFR
Proposed Rules:
32 37227
205 37229
614 37230

14 CFR
39 (2 documents) 37199, 37202
71 (2 documents) 37204, 37205
95 37206
121 37222
Proposed Rules:
71 (2 documents) 37230, 37231

21 CFR
175 37208
176 37209
177 37210

29 CFR
Ch. XXVI 37316
Ch. XL 37316

33 CFR
117 37211
165 37211

37 CFR
251 37213

39 CFR
3001 37316

40 CFR
52 37216
180 37218
Proposed Rules:
52 37232
180 37233
185 37233
186 37233

45 CFR
Proposed Rules:
232 37236
235 37236

47 CFR
Proposed Rules:
1 37241
73 37241

49 CFR
40 37222
199 37222
219 37222
382 37222
653 37222
654 37222

50 CFR
600 37225
679 (4 documents) 37225, 37226
Proposed Rules:
648 37241

Rules and Regulations

Federal Register
Vol. 61, No. 138
Wednesday, July 17, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 16

Removal of Obsolete Regulations

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule; removal of part.

SUMMARY: The Department of Agriculture is removing Part 16—Limitation on Imports of Meat, from Title 7 of the Code of Federal Regulations since this part is obsolete.

EFFECTIVE DATE: July 17, 1996.

ADDRESSES: Comments should be addressed to the Director, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, U.S. Department of Agriculture, Room 6616–S, 14th and Independence Ave., S.W., Washington, D.C. 20250. All comments will be available for public inspection in room 6621–S at the above address.

FOR FURTHER INFORMATION CONTACT: Lisa Hardy-Bass, Livestock Group Leader, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, U.S. Department of Agriculture, Room 6621–S, 14th and Independence Ave., S.W., Washington, D.C. 20250. Telephone: (202) 720–7217.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule is issued in conformance with Executive Order 12866. It has been determined to be neither significant nor economically significant for the purposes of E.O. 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12778

This rule has been reviewed under Executive Order 12778. The provisions of this rule are not retroactive and do not preempt state or local laws.

Background

The Department of Agriculture is removing Part 16—Limitation on Imports of Meat, from Title 7 of the Code of Federal Regulations since it is obsolete. Section 403 of the Uruguay Round Agreements Act, P.L. 103–465, 108 Stat. 4959, repealed the Meat Import Act of 1979, as amended (the Meat Import Act) (19 U.S.C. 2253 note), effective January 1, 1995. The Meat Import Act was the statutory authority for this part.

The Meat Import Act provided for the imposition of quotas on certain meat articles if imports exceeded a specified quantity determined according to a statutory formula. Under the Uruguay Round, a system of tariff rate quotas replaced the absolute quotas that could have been imposed pursuant to the Meat Import Act. Section 204 of the Agricultural Act of 1956, 7 U.S.C. 1854, provides authority for the President to negotiate voluntary restraint agreements on agricultural commodities. This authority was used to negotiate

published in this part. The Meat Import Act has now been repealed.

List of Subjects

7 CFR Part 16

Agriculture Department, Imports, Meat and meat products.

Accordingly, Part 16—Limitation on Imports of Meat is removed.

Issued at Washington, D.C. this 10th day of July 1996.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 96–18090 Filed 7–16–96; 8:45 am]
BILLING CODE 3410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–162–AD; Amendment 39–9694; AD 96–14–09]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 96–14–09 that was sent previously to all known U.S. owners and operators of British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes by individual notices. This amendment supersedes a previously issued AD that currently requires installation of a placard prescribing special procedures to be followed when operating at certain flight levels with the engine and airframe anti-ice switch ON; modification of the air brake auto-retract function; and a revision to the Airplane Flight Manual (AFM) to include special procedures for operating in certain icing conditions. This new amendment adds a requirement to accomplish an

(rollback) when operating in certain icing conditions that exist in the vicinity of thunderstorms. The actions specified by this AD are intended to prevent engine power rollback during flight in icing conditions, a condition that could result in insufficient power to sustain flight.

DATES: Effective July 22, 1996, to all persons except those persons to whom it was made immediately effective by AD 96–14–09, issued July 2, 1996, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 22, 1996.

Comments for inclusion in the Rules Docket must be received on or before September 16, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–162–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from British Aerospace Holding, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: On March 24, 1994, the FAA issued AD 94–07–09, amendment 39–8867 (59 FR 15042, March 31, 1994), applicable to all British Aerospace Model BAe 146–100A, –200A, and –300A airplanes. That AD requires:

1. installation of a placard, which prescribes special procedures when operating at certain flight levels with the engine and airframe anti-ice switch ON;
2. modification of the air brake auto-retract function; and
3. revisions to the FAA-approved Airplane Flight Manual (AFM), which prescribe certain altitude and operating limitations and procedures.

That AD was prompted by reports of uncommanded engine thrust reductions (rollback) when operating in certain icing conditions that exist in the vicinity of thunderstorms. The requirements of that AD are intended to prevent engine power rollback during flight in icing conditions.

Actions Since Issuance of Previous AD

Since issuance of that AD, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that it has received two additional reports of uncommanded engine thrust reductions (rollback) when operating these airplanes in icing conditions at altitudes above 26,000 feet. In these incidents, the power level of one or more of the engine(s) simultaneously rolled back below the level set by the flightcrew. The engines failed to respond when the flightcrew attempted to restore power by moving the power controls. In one of these incidents, the airplane lost altitude before the flightcrew could restart the engines that are needed to arrest the descent of the airplane. In addition, some of these engines had exceeded their temperature limits during the rollback event and, consequently, the flightcrew had to shut down those engines in flight.

The cause of these engine power rollback incidents has been attributed to the accumulation of ice on a stator in the compressor section of the engine. If engine power rollback occurs during flight in icing conditions, it could result in insufficient power to sustain flight.

Explanation of Relevant Service Information

British Aerospace has issued the following Temporary Revisions (TR) to the AFM, all of which are dated July 1996:

1. TR 32, Issue No. 2; Document No. BAe 3.3 (for Model BAe 146–100A airplanes);
2. TR 44, Issue No. 2, Document No. BAe 3.6 (for Model BAe 146–200A airplanes); and
3. TR 25, Issue No. 2, Document No. BAe 3.11 (for Model BAe 146–300A airplanes).

These TR's prescribe certain altitude and operating limitations, which prohibit flight into known or forecast icing conditions above an altitude of 26,000 feet, and define procedures to be followed when icing conditions are inadvertently encountered above 26,000 feet.

The CAA has approved these AFM revisions and has issued British airworthiness directive 003–06–096, dated July 1, 1996, to mandate the described limitations and procedures in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusion

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design registered in the United States, this airworthiness directive is issued to supersede AD 94–07–09. It continues to require installation of a placard, which prescribes special procedures when operating at certain flight levels with the engine and airframe anti-ice switch ON; and modification of the air brake auto-retract function. This new AD also requires additional new revisions to the FAA-approved AFM. These new revisions prescribe certain altitude and operating limitations, which prohibit flight into known or forecast icing conditions above an altitude of 26,000 feet, and define procedures to be followed when icing conditions are inadvertently encountered above 26,000 feet. The AFM revisions are required to be accomplished in accordance with the TR's described previously.

Interim Action

The requirements of this AD are considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Publication and Effectivity of AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on July 2, 1996, to all known U.S. owners and operators of British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–162–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8867 (59 FR 15042, March 31, 1994), and by adding a new airworthiness directive (AD), amendment 39–9694, to read as follows:

96–14–09 British Aerospace Regional Aircraft Limited, Avro International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft Limited): Docket No. 96–NM–162–AD. Supersedes AD 94–07–09, Amendment 39–8867.

Applicability: All Model BAe 146–100A, –200A, and –300A airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this ad is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine power rollback during flight in icing conditions above an altitude of 26,000 feet, accomplish the following:

(a) For airplanes listed in British Aerospace Service Bulletin SB.11–97–01285A, Revision 1, dated April 3, 1992: Within 30 days after December 17, 1992 (the effective date of AD 92–24–09, amendment 39–8415), install a placard below the ice protection switches on the flight deck overhead panel to include additional procedures to be followed when operating at certain flight levels with the engine and airframe anti-ice switch ON, in accordance with British Aerospace Service Bulletin SB.11–97–01285A, Revision 1, dated April 3, 1992.

(b) For airplanes listed in British Aerospace Service Bulletin SB.11–97–01285A, Revision 1, dated April 3, 1992: Within 30 days after December 17, 1992 (the effective date of AD 92–24–09, amendment 39–8415), modify the air brake auto-retract function, in accordance with British Aerospace Service Bulletin SB.11–97–01285A, Revision 1, dated April 3, 1992.

(c) Within 6 days after the effective date of this AD, amend the FAA-approved Airplane Flight Manual (AFM) as required by paragraphs (c)(1) and (c)(2) of this AD.

(1) Remove the following Temporary Revisions (TR) from the Limitations Section and Normal/Abnormal Procedures Section, as applicable:

(i) For Model BAe 146–100A airplanes: TR 30, Issue No. 2 (Document No. BAe 3.3), dated February 1994.

(ii) For Model BAe 146–200A airplanes: TR 41, Issue No. 2 (Document No. BAe 3.3), dated February 1994, or TR 42, Issue No. 2 (Document No. BAe 3.3), dated February 1994, as applicable.

(iii) For Model BAe 146–300A airplanes: TR 23, Issue No. 2 (Document No. BAe 3.3), dated February 1994.

(2) Insert the following TR's into the Limitations Section and the Normal/Abnormal Procedures/Handling Section, as applicable.

(i) For Model BAe 146–100A airplanes: TR 32, Issue No. 2 (Document BAe 3.3), dated July 1996.

(ii) For Model BAe 146–200A airplanes: TR 44, Issue No. 2 (Document BAe 3.6), dated July 1996.

(iii) For Model BAe 146–300A airplanes: TR 25, Issue No. 2 (Document BAe 3.11), dated July 1996.

(d) When the TR's specified in paragraph (c)(2) have been incorporated into an AFM General Revision, the applicable AFM General Revision may be inserted into the corresponding FAA-approved AFM, provided the information contained in the AFM General Revision corresponds identically to that specified in TR 32, TR 44, or TR 25.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations

Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with Sections 21.197 and 21.199 of the Federal Aviation Regulations [14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The AFM revisions shall be done in accordance with Temporary Revision (TR) 32, Issue No. 2 (Document BAe 3.3), dated July 1996 (for Model BAe 146–100A airplanes); TR 44, Issue No. 2 (Document BAe 3.6), dated July 1996 (for Model BAe 146–200A airplanes); and TR 25, Issue No. 2 (Document BAe 3.11), dated July 1996 (for Model BAe 146–300A airplanes); as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Holding, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on July 22, 1996, to all persons except those persons to whom it was made immediately effective by emergency AD 96–14–09, issued July 2, 1996, which contained the requirements of this amendment.

Issued in Renton, Washington, on July 10, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–17984 Filed 7–16–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–161–AD; Amendment 39–9695; AD 96–14–51]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T96–14–51 that was sent previously to all known U.S. owners and operators of Boeing Model 767 series airplanes by individual telegrams. This AD requires an inspection of the aileron control cables and the generator feeder cables to detect chafing damage of the cables and to ensure that a minimum clearance exists between them. It also requires the correction of any discrepancies detected and submission of a report of inspection results to the FAA. This amendment is prompted by reports of failure of the aileron control cables due to inadequate clearance between the aileron control cable and the generator power feeder cable, which occurred during manufacture of the airplane.. The actions specified by this AD are intended to prevent reduced controllability of the airplane due to failure of the aileron control cable.

DATES: Effective July 22, 1996, to all persons except those persons to whom it was made immediately effective by telegraphic AD T96–14–51, issued July 3, 1996, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 22, 1996.

Comments for inclusion in the Rules Docket must be received on or before September 16, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–161–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Boeing Commercial Airplane Group, P. O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2793; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: On July 3, 1996, the FAA issued telegraphic AD T96–14–51, which is applicable to certain Boeing Model 767 series airplanes. That action was prompted by two reports of failure of the aileron control cable on these airplanes. The failures have been attributed to inadequate clearance between the left side aileron control cable and the right generator power feeder cable, which occurred during manufacture of the airplane.

One of the reported failures resulted in uncommanded movement of the left side ailerons shortly after takeoff, which required significant compensating control wheel input to correct, and resulted in an air turnback to the departure airport. The uncommanded aileron movement occurred almost concurrently with the right generator tripping off-line. Investigation revealed that the aileron control cable A2B–3 was broken. Further investigation revealed that the right generator power feeder cable (W208) had been damaged (due to chafing) and approximately ¼-inch of the conductor was exposed. This cable is routed from the aft side of the P32 panel. The power feeder cable can chafe the aileron control cable (A2B–3) at approximately Station 340, Water Line (WL) 190, Right Buttock Line (RBL) 67.5. The airplane involved in this incident had accumulated 5,940 flight hours and 857 flight cycles.

The second reported failure occurred during a pre-flight control check of the airplane while it was on the ground. Investigation revealed that the left side aileron control cable was broken at the same approximate location as breakage found on the airplane involved in the previous incident. Additionally, the right generator power feeder cable was damaged.

Contact between the generator power feeder cable and the aileron control cable on either the left or right side of the airplane could result in chafing damage to the insulation on the feeder cable. Such damage could cause short circuiting and arcing, which could sever the aileron control cable. This condition, if not corrected, could result in failure of the aileron control cable, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–24A0113, Revision 1, dated July 2, 1996, which describes procedures for a one-time inspection of the aileron control cable (A2B–3) and the right generator power feeder cable (W208) on the right side of the airplane, and the aileron control cable (A1A–3) and the left generator power feeder cable (W204) on the left side of the airplane. The intent of this inspection is to detect chafing damage of the cables, and to ensure that a minimum clearance of one inch exists between the power feeder cables and aileron control cables. The service bulletin also describes procedures for repair or adjustment of the cables, if necessary.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued Telegraphic AD T96–14–51 to prevent reduced controllability of the airplane due to failure of the aileron control cable. The AD requires a one-time inspection of the aileron control cables and the generator power feeder cables on the left and right sides of the airplane to detect chafing damage of the cables, and to ensure that a minimum clearance of one inch exists between them. The AD also requires repair or adjustment of the cables, if necessary. These actions are required to be accomplished in accordance with the alert service bulletin previously described.

This AD also requires that operators submit a report to the FAA of inspection findings where clearance is found to be less than one inch.

Publication and Effectivity of AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on July 3, 1996, to all known U.S. owners and operators of Boeing Model 767 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–161–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–14–51 Boeing: Amendment 39–9695. Docket 96–NM–161–AD.

Applicability: Model 767 series airplanes; line numbers 1 through 618 inclusive, except for line numbers 580, 590, 594, 598, and 600; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane due to failure of the aileron control cable, accomplish the following:

(a) Within 10 days after the effective date of this AD: Perform a one-time inspection of the aileron control cables and the generator feeder cables on both the left and right sides of the airplane to detect chafing damage of the cables, and to ensure that a minimum clearance of 1.0 inch exists between the power feeders and aileron control cables, in accordance with Boeing Alert Service Bulletin 767–24A0113, Revision 1, dated July 2, 1996.

(1) If a minimum clearance of 1.0 inch exists between the cables, and if no damage is detected: No further action is required by this AD.

(2) If the clearance between the cables is 0.5 inch or more, but less than 1.0 inch, and if no contact between the cables or damage of the cables is detected: Within 500 flight hours after the inspection, adjust the power feeder cable to achieve a minimum clearance of 1.0 inch from the respective aileron control cables, in accordance with the alert service bulletin.

(3) If the clearance between the cables is less than 0.5 inch, or if any contact between the cables or damage of the cables is detected: Prior to further flight, repair the damage and adjust the cables to achieve a minimum clearance of 1.0 inch from the respective aileron control cables, in accordance with the alert service bulletin.

(b) For any airplane on which damage of the aileron control cable or the generator feeder cable is observed, or for which clearance between the cables is less than 1 inch, as detected by the inspection required by paragraph (a) of this AD: Within 10 days after accomplishing the inspection, submit a report of inspection findings to the FAA, Manager, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (206) 227–1181. The report shall include the items identified in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) the operator's name;

(2) the line number of the airplane;

(3) a brief description of the damage detected; and

(4) the amount of separation between the aileron control cable and the power feeder cable.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection, adjustment, and repair shall be done in accordance with Boeing Alert Service Bulletin 767–24A0113, Revision 1, dated July 2, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 22, 1996, to all persons except those persons to whom it was made immediately effective by telegraphic AD T96–14–51, issued on July 3, 1996, which contained the requirements of this amendment.

Issued in Renton, Washington, on July 10, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–17982 Filed 7–16–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Docket No. 96–ACE–8]

Amendment to Class E Airspace, McCook, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at McCook Municipal Airport, McCook NE. The Federal Aviation Administration has developed a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) which has made this change necessary. The effect of this rule is to provide additional controlled airspace for aircraft executing the new SIAP at McCook Municipal Airport.

DATES: *Effective date.* October 7, 1996. *Comment date.* Comments must be received on or before August 16, 1996.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations Branch, Air Traffic Division, ACE–530, Federal Aviation Administration, Docket Number 96–ACE–8, 601 East 12th St., Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106: telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed a Standard Instrument Approach Procedure (SIAP) utilizing the Global Positioning System (GPS) at the McCook Municipal Airport, McCook, NE. The amendment to Class E airspace at McCook, NE, will provide additional controlled airspace to segregate aircraft operating under Visual Flight Rules (VFR) from aircraft operating under Instrument Flight Rules (IFR) procedures while arriving or departing the airport. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to either circumnavigate the area, continue to operate under VFR to and from the airport, or otherwise comply with IFR procedures. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received, confirming the date on which the final rule will become effective. If the FAA does receive an adverse or negative comment within the comment period, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–ACE–8." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—AMENDED

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 McCook, NE [Revised]

McCook Municipal Airport, NE
(Lat. 40°12′22″N., long. 100°35′31″W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of McCook Municipal Airport and within 4 miles southwest and 6 miles northeast of the 120° bearing from McCook Municipal Airport extending from the 6.8-mile radius to 10.6 miles southeast of the airport and within 4 miles southwest and 6 miles northeast of the 325° bearing from McCook Municipal Airport extending from the 6.8-mile radius to 10.5 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on June 27, 1996.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 96–18057 Filed 7–16–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Docket No. 96–ACE–7]

Amendment to Class E Airspace, Russell, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Russell Municipal Airport, Russell, KS. The Federal Aviation Administration has developed a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) which has made this change necessary. The effect of this rule is to provide additional controlled airspace for aircraft executing the new SIAP at Russell Municipal Airport.

DATES: *Effective date.* October 7, 1996. *Comment date.* Comments must be received on or before August 16, 1996.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations Branch, Air Traffic Division, ACE–530, Federal Aviation Administration, Docket Number 96–ACE–7, 601 East 12th St., Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106: telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed a Standard Instrument Approach Procedure (SIAP) utilizing the Global Positioning System (GPS) at the Russell Municipal Airport, Russell, KS. The amendment to Class E airspace at Russell, KS, will provide additional controlled airspace to segregate aircraft operating under Visual Flight Rules (VFR) from aircraft operating under Instrument Flight Rules (IFR) procedures while arriving or departing the airport. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to either circumnavigate the area, continue to operate under VFR to and from the airport, or otherwise comply with IFR procedures. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of

the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received, confirming the date on which the final rule will become effective. If the FAA does receive an adverse or negative comment within the comment period, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–ACE–7." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—AMENDED

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Russell, KS [Revised]

Russell Municipal Airport, KS
(Lat. 38°52'20"N., long. 98°48'42"W.)
Hays VORTAC
(Lat. 38°50'52"N., long. 99°16'36"W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Russell Municipal Airport and within 4 miles each side of the 086° radial of Hays VORTAC extending from the 6.3-mile radius to 6.6 miles west of the airport and within 2 miles each side of the 354° bearing from Russell Municipal Airport extending from the 6.3-mine radius to 9.6 miles north of the airport and within 2 miles each side of the 174° bearing from Russell Municipal Airport extending from the 6.3-mile radius to 8.8 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on June 14, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 96–18056 Filed 7–16–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 95

[Docket No. 28621; Amdt. No. 397]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, D.C. on July 5, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC,

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 397 effective date, August 15, 1996]

From	To	MEA
B9	**§ 95.1001 Direct Routes—U.S.**	
	Atlantic Routes is Added to Read	
Marathon, FL NDB *4000–MRA **1500–MOCA	*Deeds, FL FIX	**2000
	§ 95.6099 VOR Federal Airway 99 is Amended to Delete	
Hartford, CT VORTAC *4000–MRA **2500–MOCA	*Graym, MA FIX	**3000
	§ 95.6151 VOR Federal Airway 151 is Amended to Read in Part	
Gails, MA FIX	Inndy, RI FIX	2000
Inndy, RI FIX *1500–MOCA	Providence, RI VORTAC	*2000
	§ 95.6175 VOR Federal Airway 175 is Amended to Read in Part	
Madup, IA FIX *3900–MRA	*Welte, IA FIX	5500
Welte, IA FIX	Sioux City, IA VORTAC	3000
	§ 95.6189 VOR Federal Airway 189 is Amended to Read in Part	
Wright Brothers, NC VOR/DME *2000–MOCA	Tar River, NC VORTAC	*4000
	§ 95.6233 VOR Federal Airway 233 is Amended to Read in Part	
Gaylord, MI VOR/DME *5000–MRA	*Dripe, MI FIX	3100
	§ 95.6268 VOR Federal Airway 268 is Amended by Adding	
Tonni, MA FIX *5000–MRA	*Meshi, ME FIX	5000
Meshi, ME FIX	Sappe, ME FIX	3000
Sappe, ME FIX *1800–MOCA	Augusta, ME VOR/DME	*3000
	Is Amended to Read in Part	
Inndy, RI FIX *6000–MRA	*Tonni, MA FIX	6000
	§ 95.6451 VOR Federal Airway 451 is Amended to Delete	
Groton, CT VOR	Avonn, RI FIX	6000
Avonn, RI FIX	Inndy, RI FIX	2000
Inndy, RI FIX *6000–MRA	*Tonni, MA FIX	6000
Tonni, MA FIX	Seedy, NH FIX	5000

From	To	MEA	MAA
	§ 95.7062 Jet Route No. 62 is amended to Delete		
Nantucket, MA VORTAC	Saile, MA W/P	18000	45000
	§ 95.7086 Jet Route No. 86 is amended by Adding		
Beatty, NV VORTAC	Fuzzy, NV FIX	18000	45000
Fuzzy, NV FIX	Boulder City, NV VORTAC	29000	45000
	§ 95.7092 Jet Route No. 92 is Amended to Read in Part		
Beatty, NV VORTAC	Boulder City, NV VORTAC	24000	45000

§ 95.7092 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

Airway Segment		Changeover Points	
From	To	Distance	From
J–92			
Beatty, NV VORTAC	Boulder City, NV VORTAC	12	Boulder City.

[FR Doc. 96–18059 Filed 7–16–96; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 94F–0398]

Indirect Food Additives; Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,4-cyclohexanedicarboxylic acid as a polybasic acid for use in polyester resins intended for food-contact coatings. This action is in response to a petition filed by Eastman Chemical Co.

DATES: Effective July 17, 1996; written objections and requests for a hearing August 16, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 23, 1994 (59 FR 60364), FDA announced that a food additive petition (FAP 4B4431) had been filed by Eastman Chemical Co., P.O. Box 1994, Kingsport, TN 37662. The petition proposed to amend the food additive regulations in § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) to provide for the safe use of 1,4-cyclohexanedicarboxylic acid as a polybasic acid for use in polyester resins intended for food-contact coatings.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use of the additive in polyester resins intended for food-contact coatings is safe, that the additive will have its intended technical effect, and therefore, that § 175.300 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before August 16, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 175.300 is amended in paragraph (b)(3)(vii)(*a*) by alphabetically adding a new item to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) * * *

(vii) * * *

(*a*) * * *

* * * * *

1,4-cyclohexanedicarboxylic (CAS Reg. No. 1076–97–7).

* * * * *

Dated: June 28, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–18069 Filed 7–16–96; 8:45 am]
BILLING CODE 4160–01–F

21 CFR Part 176

[Docket No. 96F–0070]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the additional safe use of ammonium zirconium lactate-citrate complexes for use as insolubilizers with protein binders in coatings for paper and paperboard intended for food-contact applications. This action is in response to a petition filed by Sequa Chemicals, Inc.

DATES: Effective July 17, 1996; written objections and requests for a hearing by August 16, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 8, 1996 (61 FR 9462), FDA announced that a food additive petition (FAP 6B4497) had been filed by Sequa Chemicals, Inc., One Sequa Dr., Chester, SC 29706–0070. The petition proposed to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of ammonium zirconium lactate-citrate complexes for use as insolubilizers with protein binders in coatings for paper and paperboard intended for food-contact applications.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed use of the additive in paper and paperboard products in contact with food is safe. Based on this information, the agency has also concluded that the additive will have the intended technical effect. Therefore, § 176.170 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before August 16, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 379e).

2. Section 176.170 is amended in the table in paragraph (a)(5) by revising the entry for "Ammonium zirconium citrate (CAS Reg. No. 149564–62–5)" to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * * * * * *	
Ammonium zirconium citrate (CAS Reg. No 149564–62–5), ammonium zirconium lactate-citrate (CAS Reg. No. 149564–64–7), ammonium zirconium lactate (CAS Reg. No. 149564–63–6).	For use as insolubilizers with protein binders in coatings for paper and paperboard, at a level not to exceed 1.4 percent by weight of coating solids.
* * * * * * *	

* * * * *

Dated: June 28, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–18072 Filed 7–16–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 177

[Docket No. 95F–0332]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polymethylsilsesquioxane as a surface lubricant or anti-blocking agent in polyolefin films intended for use in contact with food. This action is in response to a petition filed by GE Silicones.

DATES: Effective July 17, 1996; written objections and requests for a hearing by August 16, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 17, 1995 (60 FR 53789), FDA announced that a food additive petition (FAP 5B4484) had been filed by GE Silicones, c/o Hyman, Phelps & McNamara, P.C., 700 13th St. NW., suite 1200, Washington, DC 20005. The petition proposed to amend the food additive regulations in § 177.1520 *Olefin polymers* (21 CFR 177.1520) to provide for the safe use of polymethylsilsesquioxane as a surface lubricant or anti-blocking agent in polyolefin films intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and (3) the regulations in § 177.1520 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before August 16, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.1520 is amended in the table in paragraph (b) by alphabetically adding a new entry under the headings "Substance" and "Limitations" to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(b) * * *

Substance	Limitations
. . .	. . .
Polymethylsilsesquioxane (CAS Reg. No. 68554–70–1).	For use only as a surface lubricant or anti-blocking agent in films.
. . .	. . .

* * * * *

Dated: June 28, 1996.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–18070 Filed 7–16–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–96–043]

Temporary Deviation; Isle of Wight Bay Drawbridge, Ocean City, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation; request for comments.

SUMMARY: At the request of the Maryland Department of Transportation (MDOT), Commander, Fifth Coast Guard District has approved a temporary deviation from the regulations that govern the operation of the Route 50 drawbridge across Isle of Wight Bay, mile 0.5, located in Ocean City, Maryland. This temporary deviation will test the effects of restricted drawbridge openings for all vessels each Saturday between July 13 through August 31, 1996, between the hours of 1 p.m. to 5 p.m. During these times, the bridge need open only on the hour, and must remain in the open position until all waiting vessels pass. All other provisions of the existing regulation for the Route 50 bridge remain the same. This test is intended to help the Coast Guard determine if a permanent change to the regulations would reduce motor vehicle traffic delays and congestion related to summer traffic entering and exiting the town of Ocean City, while still providing for the reasonable needs of navigation.

EFFECTIVE DATES: This deviation is effective from July 13 through August 31, 1996. Comments must be received before September 30, 1996.

ADDRESSES: Comments should be mailed or delivered to Commander (Aowb), US Coast Guard Atlantic Area, 4th Floor Federal Bldg., 431 Crawford Street, Portsmouth, Virginia 23704–5004.

FOR FURTHER INFORMATION CONTACT: Ms. Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at 757–398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to comment on this temporary deviation by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice of temporary deviation (CGD05–96–043) and the specific section of this deviation to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped self-addressed postcard or envelop.

The Coast Guard will consider all comments received during the comment period when determining whether to propose a permanent change to the regulation.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (Aowb) at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid any future proposed rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Maryland Department of Transportation (MDOT) has requested a deviation from the requirements of 33 CFR 117.559 to test the effects of reduced opening periods during which the Route 50 drawbridge opens for marine traffic on Saturday afternoons during the summer months. Section 117.559 requires the Isle of Wight Bay Route 50 bridge to open at 25 minutes and 55 minutes after the hour for a maximum of 5 minutes from 9:25 a.m. to 9:55 p.m. from May 25 through September 15. MDOT's request is based on a large number of vacationers traveling to and from Ocean City on Saturday afternoons during the tourist season (summer months). Vacationers check in and out of hotels on Ocean City Island every Saturday afternoon of the season. This creates a traffic surge of vehicles entering and exiting the island with only two highway bridges (Route 50 and Route 90) available for access. The Route 90 bridge is a fixed-span structure, and the Route 50 bridge is a drawbridge. Over 350 charter boats historically pass through the Route 50 drawbridge on Saturdays from July 15 through September 15. This produces a dilemma to both waterway users and vehicular traffic trying to access the same drawbridge. MDOT proposes that, by providing only hourly openings on Saturday afternoons as opposed to the current half-hourly openings, vehicular traffic congestion on U.S. 50 will be reduced and highway safety will be increased. This test is intended to provide information needed to determine whether the Coast Guard should propose a permanent change to the regulation to better balance the needs of both waterway users and vehicular traffic.

Based on the above information, Commander, Fifth Coast Guard District has approved a temporary deviation from the requirements of 33 CFR 117.559 from July 13, 1996 through August 31, 1996. This temporary deviation will require the drawbridge to open only on the hour from 1 p.m. to 5 p.m. for waiting vessels on each Saturday from July 13 through August 31, 1996. When the bridge is opened, it will remain in the open position until all waiting vessels pass. The provisions of 33 CFR 117.31 which provide for the passage on signal for Federal, State and local government vessels used for public safety; vessels in distress where a delay would endanger life or property; commercial vessels engaged in rescue or emergency salvage operations; and vessels seeking shelter from severe weather will remain unchanged.

The terms of the approved temporary deviation are as follows:

The draw of the US 50 bridge, mile 0.5, located in Ocean City, Maryland, shall open according to 117.559 except from July 13, 1996 through August 31, 1996, on every Saturday, the bridge need open only on the hour from 1 p.m. to 5 p.m. for any waiting vessels, and shall remain in the open position until all waiting vessels pass. Vessels in an emergency involving danger to life or property shall be passed at any time.

Kent H. Williams,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 96–18113 Filed 7–16–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP San Diego 96–002]

RIN 2115–AA97

Security Zone; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the U.S. Secret Service, the Coast Guard is establishing a temporary security zone within San Diego Bay adjacent to the San Diego Convention Center. The security zone is needed to protect those attending the Republican National Convention by securing the nearby Marriott Marina and any adjacent vessels, waterfront facilities, or waters. Authorized vessels will be permitted to remain within the security zone.

EFFECTIVE DATES: This rule is in effect from 8 a.m. Pacific Daylight Time (PDT) on August 11, 1996 until 11 p.m. PDT on August 15, 1996.

ADDRESSES: Copies of documents referenced in this rulemaking are available for inspection or copying at Marine Safety Office San Diego, 2716 N. Harbor Dr., San Diego, California between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (j.g.) John V. Reinert, Marine Safety Office San Diego, (619) 683–6486.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 23, 1996 the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled "Security Zone; San Diego Bay, San Diego, CA" (COTP San Diego, CA" (COTP San Diego 96–002) in the **Federal Register** (61 FR 25838). The Captain of the Port (COTP) held public meetings on June 1 and July 2, 1996 on the proposal. Twelve people made comments at the public meetings, and 23 written comments were submitted prior to the closure of the comment period on July 8, 1996. Copies of the comments and a videotape of the public meetings are available for inspection or copying at the location indicated under **ADDRESSES.**

Discussion of Comments and Changes

The Coast Guard received 29 comments from individuals, 6 comments from small businesses, and two comments from organizations concerning the proposal.

Nine commenters questioned the legal authority of the COTP to perform searches of vessels within the security zone. The establishment of marine security zones is authorized by 50 U.S.C. 191. Through 33 U.S.C. 1223, 1225, and 1226, the Coast Guard is authorized to take measures, including the establishment of security zones, to protect vessels, harbors, and waterfront facilities. The authority to establish and enforce these security zones has been delegated to the COTP under 33 CFR Parts 6 and 165. Under 33 CFR Part 6, the COTP may utilize this security zone authority to regulate navigation and other activities, and limit access to defined areas by conditioning entry or presence in the zone on receiving the permission of the COTP. When a security zone is established, vessels entering or remaining in the zone are doing so with the permission of the COTP. The COTP has determined that the Republican National Convention presents a security need for a search of vessels and facilities within this security zone in order to detect explosives, weapons, or other articles which may pose a threat to the Marriott Marina or any adjacent vessels, waterfront facilities, or waters. Under this rule, permission by the COTP for vessels to enter or remain in the security zone is conditioned upon consent to such a search. Vessel owners electing not to give consent for a search will not be granted permission to enter or remain in the security zone, once it is established.

Thirty-four comments were received regarding the proposed limitation on access to docks and vessels within the security zone between the hours of 10 p.m. and 8 a.m. In light of the comments received and a change in the event security plan by the U.S. Secret Service, the COTP has removed this item from the Final Rule.

Seventeen comments were received regarding the proposed limitation on access to the docks and restriction on vessel movements from 2 p.m. until 11 p.m. on 15 August. In light of the comments received and a change in the event security plan by the U.S. Secret Service, the COTP has removed this item from the Final Rule.

Several comments were received concerning the proposed requirement that a vessel owner or operator provide the COTP a list of names of all individuals transiting the security zone, prior to transiting the zone. In light of the comments received and a change in the event security plan by the U.S. Secret Service, the COTP has removed this item from the Final Rule.

Several questions were received concerning operational enforcement of the security zone, *e.g.*, number of patrol boats involved, number of Coast Guard personnel, and pay grades of personnel involved with searches. Security considerations preclude publicizing Coast Guard enforcement resource information before and during the effective period of the security zone. Access to agency records regarding resources utilized may be requested after August 15, 1996 by writing to the address under **ADDRESSES.**

Discussion of Regulations

The Republican National Convention will be held at the San Diego Convention Center in San Diego, CA from August 12 through 15, 1996. The Secret Service has requested that the Coast Guard establish this security zone to ensure the security of those attending the Republican National Convention by securing the nearby Marriott Marina and any adjacent vessels, waterfront facilities, and waters. Expected attendees at the convention include former U.S. Presidents and their spouses, high ranking U.S. Government officials, and the Republican Presidential and Vice-Presidential Nominees and their spouses.

The security zone is in effect from 8 a.m. PDT on August 11, 1996 until 11 p.m. PDT on August 15, 1996. The security zone will encompass the entrance to the Marriott Marina starting at a point along the waterfront between Marriott Marina finger piers "F" and "G" at a point 32°42′26″N, 117°09′56″W; extending southwesterly to the south end of North Embarcadero Park at a point 32°42′20″N, 117°10′01″W; continuing 500 feet southwesterly toward channel buoy "23" at a point 32°42′16″N, 117°10′07″W; then extending southeasterly following the South Embarcadero Park shoreline to a point where it intersects with the easterly side of the navigable channel at 32°42′13″N, 117°10′02″W; then proceeding along the channel edge 100 feet past the southernmost point of South Embarcadero Park to a point 32°42′09″N, 117°09′50″W; then northeasterly until it intersects with the shoreline at a point 32°42′16″N, 117°09′42″W; then along shoreline to the point of beginning.

Pursuant to the Coast Guard's authority in 33 U.S.C. 1223, 50 U.S.C. 191, and the general regulations governing security zones in 33 CFR 165.33 and 33 CFR 6.04, no vessel will be allowed to enter or remain in this zone unless specifically authorized by the COTP. The COTP may grant permission for a vessel to enter or remain within the security zone if the vessel owner or operator first consents to a search of the vessel by the U.S. Secret Service, the Coast Guard, or other authorities for the purpose of detection of explosives, weapons, or other articles which may pose a threat to the Marriott Marina or any adjacent vessels, waterfront facilities, or waters. The owner or operator of a vessel entering the security zone must also provide the COTP with the number of persons on board and destination slip number.

Vessels whose owners or operators do not consent to a search of their vessels or who refuse to provide any information requested by the COTP will not be granted permission to enter or remain within the security zone.

The COTP may grant permission for a vessel in the moorings at the Marriott Marina to remain within the security zone if the owners or operators consent to a search of the vessel. If a vessel leaves its mooring and exits the security zone, its reentry will be conditioned on consent to be searched.

The COTP, working with Secret Service and other law enforcement authorities during this operation, may impose other restrictions within the security zone if circumstances dictate. Restrictions imposed by the COTP will be tailored to impose the least impact on maritime interests while ensuring the security of the Marriott Marina and any adjacent vessels, waterfront facilities, or waters.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under 5 U.S.C. 601 *et seq.*, known as the Regulatory Flexibility Act, the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The COTP will allow vessels in the Marriott Marina to remain at their moorings while the security zone is in place, subject to the conditions discussed previously. Costs incurred by vessel owners and commercial entities within the security zone are expected to be minimal. Any such costs are greatly outweighed by the need to safeguard the security of the attendees at the convention. Since the impact of this rule is expected to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

This rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B, as revised in 59 FR 38654, July 29, 1994. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket and is available for inspection and copying at the address listed under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulations

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191: 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new section 165.T11–030 is added to read as follows:

§ 165.T11–030 Security Zone; San Diego Bay, San Diego, CA.

(a) *Location.* The following area is a security zone: the water and land area adjacent to the San Diego Convention Center, San Diego, CA, described as follows:

Beginning at 32°42′26″N, 117°09′56″W; then southwest to 32°42′20″N, 117°10′01″W; then southwest to 32°42′16″N, 117°10′07″W; then southeast to the outer channel line to 32°42′13″N, 117°10′02″W; then continuing along the outer channel line to 32°42′09″N, 117°09′50″W; then northeast to point of land at 32°42′16″N, 117°09′42″W; then along the shoreline to the point of beginning. Datum: NAD 83).

(b) *Effective dates.* This section is effective from 8 a.m. PDT on August 11, 1996 until 11 p.m. PDT on August 15, 1996.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port.

(2) The Captain of the Port may grant permission for a vessel to enter or remain within the security zone if the owners or operators consent to a search of their vessel for the purpose of locating explosives, weapons, or other articles or things which could pose a threat to the security of the Marriott Marina, adjacent vessels, waterfront facilities, or waters.

(3) All persons and vessels within the security zone shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Upon being hailed via siren, radio, flashing light, or other means, the operator of a vessel shall follow the instructions of the patrol personnel.

(4) The Captain of the Port will notify the public of the status of this security zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

Dated: July 9, 1996.

J.A. Watson,

Commander, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. 96–18114 Filed 7–16–96; 8:45 am]

BILLING CODE 4910–14–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 251

[Docket No. 96–4 CARP DPRA]

Digital Phonorecord Delivery Rate Adjustment Proceeding

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations, notice of initiation of negotiation period.

SUMMARY: The Copyright Office is announcing the initiation of the negotiation period for determining reasonable rates and terms for digital transmissions that constitute a digital phonorecord delivery. This negotiation period is mandated by the Digital

Performance Right in Sound Recordings Act of 1995 and is intended to promote the private settlement of the rates and terms for digital phonorecord delivery. In addition, the Office is adopting procedural regulations implementing the Digital Performance Right in Sound Records Act of 1995. The Office also solicits comments on the advisability of consolidating the digital phonorecord delivery rate adjustment proceeding with the physical phonorecord rate adjustment proceeding.

EFFECTIVE DATES: The regulations are effective August 16, 1996. The negotiation period begins July 17, 1996 and ends December 31, 1996. Comments on consolidation are due November 8, 1996. Petitions for rate adjustment are due January 10, 1997.

ADDRESSES: Comments, copies of voluntary license agreements, and petitions, when sent by mail should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Comments, copies of voluntary license agreements, and petitions, when hand delivered, should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM–407, First and Independence Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, or William Roberts, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024, (202) 707–8380.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1995, Congress passed the Digital Performance Right in Sound Recordings Act of 1995 ("Digital Performance Act"). Public Law 104–39, 109 Stat. 336. Among other things, it confirms and clarifies that the scope of the compulsory license to make and distribute phonorecords of nondramatic musical compositions includes digital transmissions which constitute "digital phonorecord deliveries." 17 U.S.C. 115(c)(3). A "digital phonorecord delivery" is each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient. 17 U.S.C. 115(d), 37 CFR 255.4.

The Digital Performance Act also provides that the rate for all digital phonorecord deliveries made or authorized under a compulsory license on or before December 31, 1997, shall be the same as the rate in effect for the making and distribution of physical phonorecords. Accordingly, the Copyright Office and the Library of Congress amended part 255 of the Copyright Office's rules to set the rate for digital phonorecord deliveries at 6.95 cents for each work embodied in a phonorecord, or 1.3 cents per minute of playing time or fraction thereof, whichever amount is larger. 60 FR 61655 (December 1, 1995); 37 CFR 255.5. This is the same rate that applies to the manufacture and distribution of physical phonorecords.

This Rate Adjustment Proceeding

The current rate for digital phonorecord deliveries expires December 31, 1997. Accordingly, in the Digital Performance Act, Congress established a two-step process for adjusting the royalty rate: a negotiation period during the second half of 1996 wherein the owners and the users attempt to reach their own voluntary licenses, and the, if necessary, and upon petition in 1997, the convening of a copyright arbitration panel (CARP) to establish rates and terms for those persons who are not covered by such voluntary licenses. 17 U.S.C. 115(c)(3)(C) and (D).

For the first step in the process, the negotiation period, the Digital Performance Act provides that during the period of June 30, 1996, through December 31, 1996, the Librarian of Congress shall cause notice to be published in the **Federal Register** of the initiation of voluntary negotiation proceedings for the purpose of determining reasonable terms and rates for digital phonorecord deliveries. 17 U.S.C. 115(c)(3)(C).

The Digital Performance Act does not require the negotiation period to begin on June 30, 1996, nor does it require that the negotiation period be six months long. It is the Office's understanding that the Act leaves the commencement and the length of the negotiation period to the discretion of the Librarian.

Upon consideration, the Office believes that the negotiation period should begin in July, 1996, and should conclude by December 31, 1996, and that petitions to convene a CARP should be filed by January 10, 1997, for the following reason. The current rate for digital phonorecord deliveries, by operation of law, is set to expire December 31, 1997. Should negotiations fail and the Librarian be petitioned to convene a CARP, written direct cases would have to be filed by January 31, 1997, if the precontroversy period (three months), the arbitration proceeding (six months) and the Librarian's review of the CARP's decision (two moths) is to conclude by December 31, 1997. Otherwise, there will be a lapse in time when no rates apply to digital phonorecord deliveries.

Therefore, the following procedural dates shall apply:

- From today's publication in the **Federal Register** to December 31, 1996, there is established the voluntary negotiation proceeding for determining reasonable terms and rates of royalty payments for digital phonorecord deliveries. Such terms and rates shall distinguish between (a) digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, and (b) digital phonorecord deliveries in general.
- If negotiations are successful, any copyright owners of nondramatic musical works and any persons entitled to obtain a compulsory license for digital phonorecord deliveries may submit to the Librarian of Congress licenses covering such activities. 17 U.S.C. 115(c)(3)(C).
- In addition, if negotiations are successful, the Librarian may, upon the request of the parties to the negotiation proceeding, submit the agreed upon rates and terms to the public in a notice-and-comment proceeding. The Librarian may adopt the rates and terms embodied in the proposed settlement without convening a CARP, provided that no opposing comment is received by the Librarian from a party with an intent to participate in a CARP proceeding. 37 CFR 251.63(a). Such petitions are to be filed by January 10, 1997.
- If negotiations are not successful, petitions to convene a CARP are to be filed by January 10, 1997.[1] The petition shall detail petitioner's interest in the royalty rate sufficiently to permit the Librarian of Congress to determine whether the petitioner has a "significant interest" in the rate. The petition must also identify the extent to which the petitioner's interest is shared by other owners or users; owners or users with similar interests may file a joint petition. 37 CFR 251.62.
- Notices of Intent to Participate in a CARP proceeding to adjust the rates and establish the terms of the digital phonorecord delivery compulsory license are to be filed by January 17, 1997.
- Written direct cases in the CARP proceeding shall be filed by January 31, 1997.
- After the precontroversy discovery period, the Librarian will initiate the CARP proceeding on May 1, 1997.

[1] Because the law requires petitions to be filed in 1997, and because written direct cases must be filed by January 31, 1997, if the proceeding is to conclude by December 31, 1997, the petitions must be received by the Copyright Office by January 10, 1997. Therefore, it is advisable for petitioners to deliver their petitions to the Copyright Office. If petitions are mailed to the CARP post office box, it is advisable that they be sent well in advance.

Relationship to Rate Adjustment Proceeding for Physical Phonorecords

The year 1997 is also when the mechanical royalty rate for physical phonorecords may be adjusted. This rate can be the same as, or different from, the rate that applies to digital phonorecord deliveries. While the rate for digital phonorecord deliveries expires, by law, on December 31, 1997, and needs to be replaced, there is no similar urgency to adjust the mechanical royalty rate for physical phonorecords. If no rate adjustment proceeding for physical phonorecords is concluded by December 31, 1997, the rate in existence now will simply continue until such time as it is adjusted.

The question is still raised whether it wouldn't be more efficient and less costly to have the same CARP panel, if one is to be convened, consider the mechanical royalty rates for both physical phonorecords and digital phonorecord deliveries. To consolidate such proceedings, it would be necessary to have a petition to adjust the physical phonorecord rate filed at the same time as the petition to adjust the digital phonorecord deliveries rate, January 10, 1997.

However, to require petitions to be filed by January 10, 1997, might deprive the interested copyright owners and users of time in 1997 to negotiate the rate. Therefore, the Office solicits comments on the advisability of consolidating the two rate adjustment proceedings. Comments are due by November 8, 1996. If the comments favor consolidation, the Office will issue an order indicating that the two proceedings will be consolidated. The order will also call for physical phonorecord petitions to be filed by January 10, 1997, Notices of Intent to Participate to be filed by January 17, 1997, written direct cases to be filed by January 31, 1997, and list all other procedural dates. The order will also cancel, because of time constraints, the 30-day negotiation period that follows the filing of a physical phonorecord petition set out in 37 CFR 251.63(a). The Librarian will initiate the consolidated proceeding on May 1, 1997.

Amendment of CARP Rules to Reflect Passage of Digital Performance Act

In addition to expanding the scope of the mechanical compulsory license to include digital phonorecord deliveries, the Digital Performance Act also added a new compulsory license: the license for qualifying subscription digital audio transmission services to perform sound recordings. The rates and terms for both these licenses are to be set by the CARP, if negotiations prove successful. Therefore, the current CARP rules need to be amended to reflect these additional responsibilities.

Section 553(b)(3)(A) of the Administrative Procedure Act states that general notice of proposed rulemaking is not required for rules of agency organization, procedure, or practice. Since the Office finds that the following final regulations are rules of agency organization, procedure, or practice, no notice of proposed rulemaking is required.

List of Subjects in 37 CFR Part 251

Administrative practice and procedure, Cable television, Copyright, Jukeboxes, Organization and functions (government agencies), Recordings, Satellites.

For the reasons set forth in the preamble, the Copyright Office and the Library of Congress amend 37 CFR part 251 as follows:

PART 251—COPYRIGHT ARBITRATION ROYALTY PANEL RULES OF PROCEDURE

1. The authority citation for part 251 continues to read as follows:

Authority: 17 U.S.C. 801–803.

2. Section 251.2 is revised to read as follows:

§ 251.2 Purpose of Copyright Arbitration Royalty Panels.

The Librarian of Congress, upon the recommendation of the Register of Copyrights, may appoint and convene a Copyright Arbitration Royalty Panel (CARP) for the following purposes:

(a) To make determinations concerning royalty rates for the cable compulsory license, 17 U.S.C. 111;

(b) To make determinations concerning royalty rates and terms for the subscription digital audio transmissions compulsory license, 17 U.S.C. 114;

(c) To make determinations concerning royalty rates for making and distributing phonorecords, and royalty rates and terms for digital transmissions that constitute digital phonorecord deliveries, 17 U.S.C. 115;

(d) To make determinations concerning royalty rates for coin-operated phonorecord players (jukeboxes) whenever a negotiated license expires or is terminated and is not replaced by another such license agreement, 17 U.S.C. 116;

(e) To make determinations concerning royalty rates and terms for the use by noncommercial educational broadcast stations for certain copyrighted works, 17 U.S.C. 118;

(f) To make determinations concerning royalty rates for the satellite carrier compulsory license, 17 U.S.C. 119; and

(g) To make determinations concerning the distribution of cable and satellite carrier royalty fees and digital audio recording devices and media payments deposited with the Register of Copyrights, 17 U.S.C. 111, 119, and chapter 10, respectively.

3. Section 251.58(c) is revised to read as follows:

§ 251.58 Judicial review.

* * * * *

(c) The pendency of any appeal shall not relieve persons obligated to make royalty payments under 17 U.S.C. 111, 114, 115, 116, 118, 119, or 1003, and who would be affected by the determination on appeal, from depositing statements of account and royalty fees by those sections.

4. The first sentence of § 251.60 is revised to read as follows:

§ 251.60 Scope.

This subpart governs only those proceedings dealing with royalty rate adjustments affecting cable (17 U.S.C. 111), subscription digital audio transmission (17 U.S.C. 114), the manufacture and distribution of phonorecords, including digital phonorecord deliveries (17 U.S.C. 115), performances on coin-operated phonorecord players (jukeboxes) (17 U.S.C. 116), noncommercial educational broadcasting (17 U.S.C. 118) and satellite carriers (17 U.S.C. 119). * * *

5. In § 251.61, paragraph (a) is revised to read as follows:

§ 251.61 Commencement of adjustment proceedings.

(a) In the case of cable, subscription digital audio transmissions, phonorecords, digital phonorecord deliveries, and coin-operated phonorecord players (jukeboxes), rate adjustment proceedings shall commence with the filing of a petition by an interested party according to the following schedule:

(1) Cable: During 1995, and each subsequent fifth calendar year.

(2) Subscription Digital Audio Transmissions: During a 60-day period prescribed by the Librarian in 1996, 2000, and each subsequent fifth calendar year.

(3) Phonorecords: During 1997 and each subsequent tenth calendar year.

(4) Digital Phonorecord Deliveries: During 1997 and each subsequent fifth calendar year except to the extent that different years may be determined by the parties to a negotiated settlement or by the copyright arbitration royalty panel.

(5) Coin-operated phonorecord players (jukeboxes): Within one year of the expiration or termination of a negotiated license authorized by 17 U.S.C. 116.

* * * * *

6. In § 251.62, the first sentence of paragraph (a) is revised to read as follows:

§ 251.62 Content of petition.

(a) In the case of a petition for rate adjustment proceedings for cable, subscription digital audio transmissions, phonorecords, digital phonorecord deliveries,and coin-operated phonorecord players (jukeboxes), the petition shall detail the petitioner's interest in the royalty rate sufficiently to permit the Librarian of Congress to determine whether the petitioner has a "significant interest" in the matter. * * *

* * * * *

7. In § 251.63, the first sentence of paragraph (a) is revised to read as follows:

§ 251.63 Consideration of petition; settlements.

(a) To allow time for the parties to settle their differences concerning cable, phonorecord, and jukebox rate adjustments, the Librarian of Congress shall, after the filing of the petition under § 251.62 and before the 45-day period specified in § 251.45(b)(2)(i), designate a 30-day period for consideration of their settlement. * * *

* * * * *

Dated: July 12, 1996.

Recommended by:

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 96–18105 Filed 7–16–96; 8:45 am]

BILLING CODE 1410–33–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI72–01–7296a; FRL–5528–3]

Approval and Promulgation of State Implementation Plan; Wisconsin; Site-Specific Revision For General Electric Medical Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency approves a site-specific volatile organic compound (VOC) reasonably available control technology (RACT) state implementation plan (SIP) revision for the General Electric Medical Systems (GEM) facility located at 4855 West Electric Avenue in Milwaukee, Wisconsin. This SIP revision was submitted by the Wisconsin Department of Natural Resources (WDNR) on March 15, 1996. This approval makes federally enforceable the State's consent order establishing an alternate control system for GEM's cold cleaning operation.

In the proposed rules section of this **Federal Register**, the EPA is proposing approval of, and soliciting comments on, this requested SIP revision. If adverse comments are received on this action, the EPA will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule, which is being published in the proposed rules section of this **Federal Register**. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time. This approval makes federally enforceable the State's rule that has been incorporated by reference.

DATES: The "direct final" is effective on September 16, 1996, unless EPA receives adverse or critical comments by August 16, 1996. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the proposed SIP revision and EPA's analysis are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–1767.

SUPPLEMENTARY INFORMATION:

I. Background

General Electric Medical Systems (GEM) owns a facility located at 4855 West Electric Avenue in Milwaukee, Wisconsin. The GEM facility manufactures X-ray tubes and components for other medical systems, and includes a cold cleaning operation which is part of an automated batch chemical treatment process for X-ray tubes. The GEM facility is located in the Milwaukee severe nonattainment area and is subject to rule NR 423 of the Wisconsin Administrative Code, which regulates VOC emissions from solvent cleaning operations. This rule has been approved by the United States Environmental Protection Agency (EPA) as meeting the RACT requirements of the Clean Air Act (Act).

Specifically, under sections NR 423.03(3)(d), (i), and (j), GEM is required to control organic compound emissions from the cold cleaning operation through a freeboard ratio greater than or equal to 1.0, through a water cover, or through an alternate control system equivalent to a freeboard ratio of 1.0. Under section 423.03(9), any alternate control method approved by the WDNR must be submitted to and approved by EPA as a site-specific SIP revision. For the reasons outlined below, GEM chose to install an alternate control system. The WDNR has made the determination that the controls proposed by GEM are more effective than those required by Rule 423 and has approved GEM's proposal through Consent Order AM–96–200. On March 15, 1995, the Wisconsin Department of Natural Resources (WDNR) submitted this Order to EPA, along with associated materials, for incorporation into Wisconsin's SIP.

II. Facility and Process Description

As noted above, GEM manufactures X-ray tubes and components for other medical systems. This includes glass blowing, graphite target manufacturing, cathode and anode machining and X-ray assembly. The X-ray units are also tested and rebuilt at this facility.

The facility has a cold cleaning operation which is part of an automated batch chemical treatment process for X-ray tubes. This process consists of loading parts into a carrier that automatically immerses them in various chemicals, baths and water rinses, ending with immersion in the cold cleaner bath which contains 95 percent ethanol and 5 percent methanol. The equipment associated with the cold cleaning process was specially made for this facility. The overhead conveyor was designed with a limited vertical travel distance. With this limitation, the equipment can not be modified to comply with a freeboard ratio greater than or equal to 1.0 without significant expense. Consequently, GEM has proposed an alternate control system.

GEM's proposed system includes an enclosed solvent storage tank, control valves, pump and piping with an automated operating sequence. The following is the proposed operation procedure for the equipment.

1. The cover opens.
2. The parts are lowered into an empty immersion tank.
3. The cover closes.
4. The solvent is pumped into the tank.
5. The parts are slowly agitated.
6. The solvent is drained from the tank.
7. The parts remain inside the tank until the excess solvent drips off.
8. The cover opens.
9. The parts are removed.
10. The cover closes.

Additional design information for the proposed equipment is as follows.

1. The cleaner will be fitted with a mechanically assisted bi-parting cover.
2. The solvent storage tank will be enclosed.
3. The enclosed solvent storage tank along with associated control valves, pump and piping will be installed and programmed to provide an automated operating sequence.
4. The size of the tank will be 16" W x 20" L x 12" H.
5. The cover will only be opened when the parts are being placed in or removed from the tank.

III. Evaluation of State's Submittal

As noted previously, EPA has approved Wisconsin's rule NR 423 as meeting the RACT requirements of the Act. Under sections 423.03(3)(d)3., and (j), sources may comply through an alternate method approved by WDNR, providing that it achieves emission reductions equivalent to that achieved under a freeboard ratio of 1.0. Additionally, this alternate must be submitted to, and approved by, EPA.

To demonstrate that the proposed alternate method of control is equivalent to the level of control that would be achieved under a freeboard ratio of 1.0, GEM relied on emission factors developed by EPA and contained in the fifth edition of AP–42, dated January 1995. GEM estimated that evaporative emissions from the cold cleaner operating with a freeboard ratio of 1.0 and uncovered when in use (as allowed under Wisconsin's rule), would be 0.35 pounds of VOC per day. The VOC emissions resulting from the proposed enclosed system were estimated to be 0.33 pounds per day.

The State has determined that the alternate control system proposed by GEM meets the requirements of NR 423, as approved by EPA, and is thus sufficient to meet the requirements of RACT. Furthermore, by complying through the proposed alternate control method, the GEM facility will be achieving greater emission reductions than it would had it complied through the freeboard ratio specified in rule 423.

The proposed alternate control system has been reviewed by EPA, as well as the procedures used to establish this alternate system. The alternate control system will result in a net environmental benefit and is consistent with the RACT regulation promulgated by the State and approved by EPA.

IV. Final Rulemaking Action

The EPA approves Wisconsin's site-specific SIP revision for incorporation into the State's federally enforceable ozone SIP.

Because EPA considers this action noncontroversial and routine, we are approving it without prior proposal. This action will become effective on September 16, 1996. However, if we receive adverse comments by August 16, 1996, EPA will publish a document that withdraws this action.

V. Miscellaneous

A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (1976).

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), 2 U.S.C. 1532, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, 2 U.S.C. 1532, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203, 2 U.S.C. 1532, requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

E. Petitions for Judicial Review

Under Section 307(b)(1) of the Act, petitions for judicial review of this

action must be filed in the United States Court of Appeals for the appropriate circuit by September 16, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 17, 1996.

David A. Ullrich,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(95) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(95) On March 15, 1996, Wisconsin submitted a site-specific SIP revision in the form of a consent order for incorporation into the federally enforceable ozone SIP. This consent order establishes an alternate volatile organic compound control system for a cold cleaning operation at the General Electric Medical Systems facility located at 4855 West Electric Avenue in Milwaukee.

(i) *Incorporation by reference.* The following items are incorporated by reference.

(A) State of Wisconsin Consent Order AM–96–200, dated February 20, 1996.

(B) September 15, 1995 letter from Michael S. Davis, Manager—Air and Chemical Management Programs, General Electric Medical Systems to Denese Helgeland, Wisconsin Department of Natural Resources, along with the enclosed system diagram. (This letter is referenced in Consent Order AM–96–200.)

[FR Doc. 96–17990 Filed 7–16–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300363B; FRL–5382–1]

RIN 2070–AC18

Folpet; Revocation of Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule revokes tolerances for folpet residues in or on the following commodities: celery, cherries, leeks, onions (green), shallots, blackberries, blueberries, boysenberries, crabapples, currants, dewberries, gooseberries, huckleberries, loganberries, raspberries, citrus fruits, garlic, pumpkins, summer squash, and winter squash. This revocation is necessary because the registrant has voluntarily canceled use of this fungicide on these commodities.

EFFECTIVE DATE: This final rule becomes effective September 16, 1996.

ADDRESSES: Written objections and hearing requests, identified by the docket, [OPP–300363B], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300363B]. No "Confidential Business Information" (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail, Jeff Morris, Review Manager, Special Review Branch (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 3rd floor, Crystal Station, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8029; e-mail: morris.jeffrey@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Following issuance of a proposed rule to revoke folpet tolerances (59 FR 61859, December 2, 1994)(FRL–4912–6) and considering comments that EPA received in response to the proposed rule, this rule serves as a final order to revoke tolerances for folpet residues in or on the following commodities: celery, cherries, leeks, onions (green), shallots, blackberries, blueberries, boysenberries, crabapples, currants, dewberries, gooseberries, huckleberries, loganberries, raspberries, citrus fruits, garlic, pumpkins, summer squash, and winter squash. The tolerance for folpet residues in or on avocados will remain as currently listed in 40 CFR 180.191, and will be addressed through the reregistration process (the avocado tolerance was not subject to the December 2, 1994 proposed rule). In a separate notice, EPA will address the remaining tolerances that were subject to the proposed rule; the registrant is currently generating data to support those tolerances.

I. Legal Authorization

The Federal Food, Drug, and Cosmetic Act (FFDCA, 21 U.S.C. 301 et seq.) authorizes the establishment of tolerances (maximum legal residue levels) and exemptions from the requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities pursuant to section 408 [21 U.S.C. 346(a)]. Without such tolerances or exemptions, a food containing pesticide residues is considered to be "adulterated" under section 402 of FFDCA, and hence may not legally be moved in interstate commerce [21 U.S.C. 342]. To establish a tolerance or an exemption under section 408 of FFDCA, EPA must make a finding that the promulgation of the rule would "protect the public health" [21 U.S.C. 346a(b)]. For a pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under FFDCA, but also must be registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136 et seq.).

In 1988, Congress amended FIFRA and required EPA to review and reassess the potential hazards arising from currently registered uses of pesticides registered prior to November 1, 1984. As part of this process, EPA must determine whether a pesticide is eligible for reregistration or whether any subsequent actions are required to fully attain reregistration status. EPA has chosen to include in the reregistration process a reassessment of existing tolerances or exemptions from the need for a tolerance. Through this reassessment process, based on more recent data, EPA can determine whether a tolerance must be amended, revoked, or established, or whether an exemption from the requirement of one or more tolerances must be amended or is necessary.

Tolerance procedures are discussed in 40 CFR parts 177 through 180. Part 177 establishes the procedures for establishing, amending, or revoking tolerances or exemptions from the requirement of tolerances; part 178 contains procedures for filing objections and requests for hearings; part 179 contains rules governing formal evidentiary hearings; and part 180 contains regulations establishing tolerances or exemptions from the requirements of a tolerance. The Administrator of EPA, or any person by petition, may initiate an action proposing to establish, amend, revoke, or exempt a tolerance for a pesticide registered for food uses. Each petition or request for a new tolerance, an amendment to an existing tolerance, or a new exemption from the requirement of a tolerance must be accompanied by a fee. Comments submitted in response to EPA's published proposals are reviewed; EPA then publishes its final determination regarding the specific tolerance actions. Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA). This includes monitoring for pesticide residues in or on commodities imported into the United States.

II. Background

Folpet is a broad-spectrum fungicide registered for industrial use in paints, stains, coatings, and plastics. In addition, two folpet products are registered for food use. One product is actively registered for use on avocados in Florida only; the other is a registration for all folpet food uses, including the food uses covered by the tolerances that are subject to this rule, that EPA suspended in 1987 for failure of the registrant to supply the data required by EPA to support the continued registration of these uses. EPA has classified folpet as a B2 (probable) human carcinogen.

A. Proposed Revocation of Tolerances and Comment Period Extension

At the time the proposed rule was published, with the exception of data to support the avocado use, the registrant had not submitted the following residue chemistry data, which, according to the June 1987 folpet registration standard, are needed to support registration of the commodities subject to this rule: nature of the residues (metabolism) studies (guideline no. 171–4a) for representative crops; analytical method validation (guideline no. 171–4c); storage stability studies (guideline no. 171–4e) for representative crops; crop field trials (guideline no. 171–4k) for the subject commodities; and processing studies (guideline no. 171–4l) for applicable commodities. These data are required under 40 CFR part 158, and are needed to allow EPA to determine whether a proposed tolerance level is practical and achievable. Because the establishment of a tolerance under section 408 of FFDCA requires a finding that a tolerance will protect the public health, and because EPA did not have adequate data to make such a finding, EPA issued a proposed rule to revoke all folpet tolerances, except the avocado tolerance. The proposed rule was published in the **Federal Register** on December 2, 1994 (59 FR 61859).

In a **Federal Register** notice dated January 3, 1995 (60 FR 89)(FRL–4982–3), EPA extended the end of the comment period for the proposed rule from January 3, 1995, to March 3, 1995. The January 3 notice also requested the following: (1) That interested parties identify which tolerances they were willing to support by providing the data necessary to maintain the tolerances, and (2) that interested parties identify specific existing data they were prepared to submit in support of the tolerances.

B. Registrant's Response to the Proposed Rule

1. *Commitment to support tolerances.* In its comments to the December 2, 1994 proposed rule, Makhteshim-Agan, the sole folpet registrant, committed to generate the data necessary to establish tolerances in or on the following nine commodities: apples, cranberries, cucumbers, grapes, lettuce, melons, onions, strawberries, and tomatoes. (Makhteshim-Agan had previously submitted the required data for the use of folpet on avocados.) Makhteshim-Agan also submitted use information on the other nine commodities and a summary of the residue chemistry data that had thus far been generated for those commodities.

2. *Request to delete uses.* In a letter to EPA dated June 11, 1995, Makhteshim-Agan requested that EPA delete the following uses from its folpet registration number 66222–8: blackberries, boysenberries, dewberries, loganberries, raspberries, blueberries, huckleberries, summer/winter squash, pumpkins, celery, cherries (red tart), citrus (oranges, grapefruit, lemons, limes, tangelos, and tangerines), gooseberries, currants, and garlic. EPA published a notice of receipt of this request in a **Federal Register** notice dated April 17, 1996 (61 FR 16779)(FRL–5360–5). Following the 90–day comment period for this notice, the deletion of the uses is expected to take effect on July 16, 1996.

III. Final Actions

In response to comments made to the December 2, 1994 proposed rule, through meetings and other communication with the folpet registrant, and in accord with EPA's policy regarding data requirements to support tolerances, EPA is issuing this final order to revoke the 20 tolerances that have received no commitment for support.

This final rule revokes the following folpet tolerances listed in 40 CFR 180.191: blackberries, blueberries, boysenberries, celery, cherries, citrus fruits, crabapples, currants, dewberries, garlic, gooseberries, huckleberries, leeks, loganberries, onions (green), pumpkins, raspberries, shallots, summer squash, and winter squash. EPA is revoking these tolerances for two reasons: (1) The registrant is no longer supporting the uses on its folpet registrations, and (2) EPA does not have the data necessary to make a finding that the tolerances are protective of the public health, as is required by section 408 of FFDCA and 40 CFR part 158. The 25 ppm avocado tolerance is being supported through the reregistration program for domestic registrations and is not subject to this rule, and therefore remains unchanged. The remaining nine supported tolerances will be the subject of a separate notice that EPA will issue in the future.

Because folpet food-use registrations have been suspended since 1987 and therefore commodities may not be legally treated with any existing folpet stocks, EPA expects no folpet residues to be in or on the commodities associated with the tolerances subject to

this rule; nor, for the same reason, are folpet residues expected to persist in the environment. Following revocation of the tolerances, any imported commodities containing folpet residues will be subject to seizure as a result of FDA and USDA monitoring; this should prohibit any treated imported commodities from entering domestic channels of trade. Therefore, final expiration of the tolerances will occur 60 days from the date of publication of this rule in the **Federal Register**, barring submission of a petition for a stay of the effective date of this rule, and EPA will not require action levels following expiration of the tolerances.

IV. Comments Received on Proposed Rule and Response to Comments

The following section summarizes the comments received to the December 2, 1994 proposed revocation of folpet tolerances, and EPA's response to those comments. The actual comments are in the folpet docket.

A. Revocation Will Negatively Impact Importation of Commodities

Many commentors stated that the revocation of the U.S. folpet tolerances may have a significant negative impact on the present and future importation of agricultural products into the United States. Commentors were particularly concerned that revocation of the grape tolerance would negatively affect wine imports.

EPA responds that the folpet registrant has committed to generate the necessary data for nine tolerances, including a grape tolerance. EPA will not revoke tolerances for those commodities if adequate data are submitted by the agreed-upon due date.

B. Need for an Import Tolerance Policy

Other commentors expressed concern regarding the lack of a policy outlining the data necessary to establish import tolerances, and that the approach taken in EPA's **Federal Register** notice of December 2, 1994 is not an efficient regulatory process. They stated that deciding complex issues, such as data requirements, on a case-by-case basis cannot be efficient and detracts from regulatory transparency; they added that an import tolerance policy presented for public comment would permit EPA to evaluate the appropriateness of the data required in the December 2, 1994 notice.

EPA's response is that it has an import tolerance policy. EPA's May 3, 1995 letter to Makhteshim-Agan states: "EPA requires the same product chemistry and toxicology data for import tolerances as are required to support U.S. registrations of pesticide products and any resulting tolerances. In addition, EPA needs residue chemistry data that are representative of growing conditions in exporting countries." It is because EPA has received neither the data required in the 1987 Registration Standard nor a commitment to generate the data necessary to establish tolerances, that EPA is revoking the tolerances subject to this rule. EPA is currently reviewing its import tolerance policy to address issues raised by folpet and other similar cases. In application of its policy, EPA is committed to consistency and, when possible, harmonization with international standards.

C. Potential GATT and NAFTA Violations

Some commentors claimed that EPA's proposed action would violate international obligations of the United States. They stated that the World Trade Organizations's Sanitary and Phytosanitary (SPS) Agreement permits EPA to deviate from Codex in exceptional circumstances, but any higher level of sanitary or phytosanitary protection must have a scientific justification. Such justification requires a finding by EPA that the forthcoming Codex standard for folpet is not sufficient to achieve its appropriate level of protection.

EPA responds that Codex has proposed to revoke most of the folpet Maximum Residue Limits (MRLs), including the grape MRL, because the data submitted to Codex are inadequate. The crop field trial program for the supported import-only tolerances initiated by the folpet registrant is expected to provide data adequate for setting U.S. and international residue levels for folpet. Since no data are available for the remaining tolerances subject to this rule, EPA is revoking those tolerances.

D. U.S. Standards Must Not Be Compromised

One commentor argued that EPA should revoke folpet tolerances unless the existing data enable EPA to make the FFDCA public health finding, and that the unsupported tolerances should not remain in effect while the data are being developed and submitted. The commentor also stated that nothing in international trade agreements requires any deviation from FFDCA's public health mandate.

EPA agrees that its mandate to protect the public health must not be compromised. All remaining permanent folpet tolerances will be based on adequate data that demonstrate that such tolerances are protective of the public health.

V. Effective Date and Stays of Effective Date

This final rule shall become effective September 16, 1996. A person filing objections to this Order may submit with the objections a petition to stay the effective date of this Order. Such stay petitions must be submitted to the Hearing Clerk on or before August 16, 1996. A copy of the stay request filed with the Hearing Clerk shall be submitted to the Office of Pesticide Programs Public Docket. A stay may be requested for a specific time period or for an indefinite time period. The stay petition must include a citation to this Order and the specific food additive regulation(s) as to which the stay is sought, the length of time for which the stay is requested, and a full statement of the factual and legal grounds upon which the petitioner relies for the stay. If a petition for a stay is submitted, EPA will automatically stay the effective date of the Order as to the particular regulation(s) for which the stay is sought for such time as is required to review the stay petition, if necessary. In determining whether to grant a stay, EPA will consider the criteria set out in FDA's regulations regarding stays of administrative proceedings at 21 CFR 10.35. Under those rules, a stay will be granted if it is determined that: (1) The petitioner will otherwise suffer irreparable injury; (2) the petitioner's case is not frivolous and is being pursued in good faith; (3) the petitioner has demonstrated sound public policy grounds supporting the stay; and (4) the delay resulting from the stay is not outweighed by public health or other public interests. Under FDA's criteria, EPA may also grant a stay if EPA finds that such action is in the public interest and in the interest of justice.

If a stay petition is submitted, EPA will publish a notice of receipt in the **Federal Register**, stating that the effective date of this Order is stayed as to the regulation(s) to which the stay is requested pending EPA consideration of the stay request. Any affected person may submit objections to a stay request to the Hearing Clerk on or before 15 days after the date of publication in the **Federal Register** of the notice of receipt. Any decision lifting the stay will be published in the **Federal Register**.

VI. Hearing Request

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Public Docket

A record has been established for this rulemaking under docket number [OPP–300363A] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

To satisfy the requirements for analysis specified by Executive Order 12866, the Regulatory Flexibility Act, the Paperwork Reduction Act, the Unfunded Mandates Reform Act, and the Small Business Regulatory Enforcement Fairness Act, EPA has considered the impacts of this final rule.

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

EPA has reviewed this final rule under the Regulatory Flexibility Act of 1980 [5 U.S.C. 601 et seq.], and has determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. Accordingly, I certify that this final rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This regulatory action does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

D. Unfunded Mandates Reform Act

This final rule contains no Federal mandates under Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 for State, local, or tribal governments or the private sector, because it would not impose enforceable duties on them.

E. Small Business Regulatory Enforcement Fairness Act

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 24, 1996.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR, chapter I, part 180 is amended as follows:

PART 180—[AMENDED]

The authority citation for part 180 would continue to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.191 is revised to read as follows:

§ 180.191 Folpet; tolerances for residues.

Tolerances are established for the fungicide folpet (*N*-(trichloromethylthio)phthalimide) in or on raw agricultural commodities as follows:

Commodity	Parts per million
Apples	25
Avocados	25
Cranberries	25
Cucumbers	15
Grapes	25
Lettuce	50
Melons	15
Onion (dry bulb)	15
Strawberries	25
Tomatoes	25

[FR Doc. 96–16586 Filed 7–16–96; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

49 CFR Part 40

Federal Aviation Administration

14 CFR Part 121

Research and Special Programs Administration

49 CFR Part 199

Federal Railroad Administration

49 CFR Part 219

Federal Highway Administration

49 CFR Part 382

Federal Transit Administration

49 CFR Parts 653 and 654

[OST Docket No. OST–96–1533]

RIN 2105–AC33

Amendment to Definition of "Substance Abuse Professional"

AGENCIES: Office of the Secretary, Federal Aviation Administration, Research and Special Programs Administration, Federal Highway Administration, Federal Railroad Administration, Federal Transit Administration, DOT.

ACTION: Final rule.

SUMMARY: Each of the Department's alcohol testing rules include a definition of a substance abuse professional. By this action, the Department is consolidating these definitions into its Department-wide testing procedures rule and adding to the definition substance abuse professionals certified by the International Certification Reciprocity Consortium.

EFFECTIVE DATE: This rule is effective July 17, 1996.

FOR FURTHER INFORMATION CONTACT: Jim Swart, Program Analyst, Office of Drug Enforcement and Program Compliance, Room 10317 (202–366–3784); or Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Room 10424, (202–366–9306); 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Transportation Employees Testing Act of 1991 required that an opportunity for treatment be made available to covered employees. To implement this requirement in its alcohol and drug testing rules issued in February 1994, the Department of Transportation established the role of the "substance abuse professional" (SAP). The DOT rules require an employer to advise a covered employee, who engages in conduct prohibited under these rules, of the resources available for evaluation and treatment of substance abuse problems, including the names, addresses, and telephone numbers of SAPs and counseling and treatment programs. The rules also provide for SAP evaluation to identify the assistance needed by employees with substance abuse problems. In many cases (e.g., the Federal Highway Administration and Federal Transit Administration rules), this process and the role of the SAP apply to drug testing as well as alcohol testing.

The primary safety objective of the DOT rules is to prevent, through deterrence and detection, alcohol and controlled substance users from performing transportation safety-sensitive functions. The SAP is responsible for several duties important to the evaluation, referral, and treatment of employees identified through breath and urinalysis testing as being positive for alcohol and/or controlled substance use, or who refuse to be tested, or who have violated other provisions of the DOT rules.

The SAP's fundamental responsibility is to provide a comprehensive face-to-face assessment and clinical evaluation to determine if the employee needs assistance resolving problems associated with alcohol use or prohibited drug use. If the employee is found to need assistance as a result of this evaluation, the SAP recommends a course of treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty. Assistance recommendations can include, but are not limited to: In-patient treatment, partial in-patient treatment, out-patient treatment, education programs, and aftercare. Upon the determination of the best recommendation for assistance, the SAP will serve as a referral source to assist the employee's entry into an acceptable treatment or education program.

In general, the DOT rules prohibit a covered employee who has engaged in conduct prohibited by the rules from performing any safety-sensitive functions until meeting the conditions for returning to work, which include a SAP evaluation, demonstration of successful compliance with any required assistance program, and a successful return-to-duty test result (below 0.02 for alcohol test and/or a negative drug test). Therefore, the SAP follow-up evaluation is needed to determine if the employee demonstrates successful compliance with the original treatment recommendation. In addition, the SAP directs the employee's follow-up testing program.

The DOT rules define the SAP to be a licensed physician (Medical Doctor or Doctor of Osteopathy), a licensed or certified psychologist, a licensed or certified social worker, or a licensed or certified employee assistance professional. In addition, alcohol and drug abuse counselors certified by the National Association of Alcoholism and Drug Abuse Counselors (NAADAC) Certification Commission, a national organization that imposes qualification standards for treatment of alcohol and drug related disorders, are included in the SAP definition. All must have knowledge of and clinical experience in the diagnosis and treatment of substance abuse-related disorders (the degrees and certificates alone do not confer this knowledge). The rules do not authorize individuals to be SAPs who meet only state certification criteria because qualifications vary greatly by state. In some states, certified counselors do not have the experience or training deemed necessary to implement the objectives of the rules. State-certified addiction counselors could have, of course, taken the NAADAC competency examination to receive certification.

The issue of who should be regarded as qualified to be a SAP was one of the most commented-upon issues in the rulemaking leading to the February 1994 rules (see 59 FR 7334–36; February 15, 1994). In the time since these rules were issued, various parties have continued to request that they be included within the definition of SAPs. In evaluating how to respond to such requests, the Department has taken the view that any expansion of the definition of SAPs should ensure that the qualifications of persons playing this important role not be diluted.

The International Certification Reciprocity Consortium (ICRC)/Alcohol & Other Drug Abuse (Suite 213, 3725 National Drive, Raleigh, North Carolina 27612), petitioned the DOT for inclusion of its certified counselors in the SAP definition. Upon receipt of the petition, the DOT began a thorough evaluation of the ICRC proposal, including information from ICRC related to counselor eligibility criteria, quality assurance procedures, codes of ethics, and certification and testing parameters. We also reviewed ICRC information on testing procedures, examination availability, and psychometrician standards.

The results of our evaluation supported the conclusion that ICRC has rigorous standards in place and that their counselors warrant inclusion in the Department's SAP definition. Their program requirements for professional counselors and their testing and certification procedures (as well as test availability) are consistent with those of other groups already defined as qualified for participation. After careful review and evaluation of the ICRC petition, supporting documentation, and testing methodology the DOT proposed including ICRC certified counselors in its SAP definition. ICRC-certified counselors must meet examination, experience, and other standards comparable to NAADAC-certified counselors, who are included in the existing SAP definition.

At the same time, the Department proposed consolidating SAP-related matters into Part 40, its Department-wide procedural regulation. Under the NPRM, the Department proposed to place the revised definition of SAP—including ICRC-certified counselors—in part 40, while removing the SAP definitions in each of the operating administration rules.

Comments and DOT Responses

Twenty-eight comments addressed the inclusion of ICRC-certified counselors in the SAP definition. No one opposed the proposed amendment. For the reasons noted above, the Department will include ICRC counselors in the definition.

Three comments suggested that additional professions or certifications be recognized in the SAP definition. Further additions to the definition are beyond the scope of this rulemaking. However, representatives of any group or profession seeking inclusion may contact the individuals listed above in "For Further Information Contact" to discuss the process for considering such requests.

One comment asked for further clarification of the operational role of the SAP, with respect to such matters as referral for treatment, the return to duty process, and follow-up testing. The Department has issued guidance in these areas and, if needed, can issue additional guidance in the future. In our view, further elaboration of the regulatory text in these areas is not necessary.

One comment, from a trade association, suggested that the definition of SAP remain in the regulation for the operating administration that regulates its members, rather than being consolidated in 49 CFR part 40. The rationale for this suggestion appears to be that employers would prefer to find all relevant terms in one rule—the operating administration rule—rather than needing to be familiar with both the operating administration rule and part 40.

This rationale is unpersuasive. Part 40 already applies to all employers covered by all the operating administration drug and alcohol testing rules. Each operating administration rule already incorporates by reference and applies Part 40 with respect to all tests conducted by covered employers. Employers must already be familiar with and refer to part 40 in order to conduct tests properly. Having a DOT-wide, common definition of SAP in part 40 is no more remarkable or difficult for employers to grasp than having the existing common definitions of Medical Review Officer or Breath Alcohol Technician in part 40. The ease of reference to common terms affecting the drug and alcohol testing process found in a single place, particularly for the many multi-modal employers covered by the Department's rules, is a significant reason for adopting the proposed consolidation. Moreover, it is much quicker to amend one rule than to amend six, an important consideration when the SAP definition is potentially subject to additional amendments if additional professions or certifications are included. The Department is adopting the proposed consolidation.

Regulatory Process Matters

The final rule is considered to be a nonsignificant rulemaking under DOT Regulatory Policies and Procedures, 44 FR 11034. It also is a nonsignificant rule for purposes of Executive Order 12866. The Department certifies, under the Regulatory Flexibility Act, that the NPRM, if adopted, would not have a significant economic effect on a substantial number of small entities. The NPRM would not impose any costs or burdens on regulated entities, serving merely to broaden the definition of service providers under the rule. The rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Department finds good cause to make this final rule effective immediately. There are a substantial number of ICRC-certified counselors who are ready and waiting to participate as SAPs in the DOT drug and alcohol testing program, and there is no opposition to their beginning to participate. The interest of the DOT program, the counselors themselves, and the employers who will be able to make use of them is served by making this rule change effective as soon as possible. In addition, this rule can be viewed as relieving a restriction on the participation of ICRC-counselors in the program.

Office of the Secretary

List of Subjects in 49 CFR Part 40

Drug testing, Alcohol testing, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble, 49 CFR part 40 is amended as follows:

PART 40—[AMENDED]

1. The authority citation for part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322; 49 U.S.C. app. 1301nt., app. 1434nt., app. 2717, app. 1618a.

2. In § 40.3, after the definition of "specimen bottle," a definition of "substance abuse professional" is added, to read as follows:

§ 40.3 Definitions.

* * * * *

Substance abuse professional. A licensed physician (Medical Doctor or Doctor of Osteopathy); or a licensed or certified psychologist, social worker, or employee assistance professional; or an addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/ Alcohol & Other Drug Abuse). All must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

Issued this 9th day of July, 1996, at Washington, DC.

Federico Peña,

Secretary of Transportation.

Federal Aviation Administration

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Airplanes, Air transportation, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

For the reasons set out in the preamble, the Federal Aviation Administration amends 14 CFR part 121, as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

Appendix I [Amended]

2. In Appendix I, Sec. II, the definition of "Substance abuse professional" is removed.

Appendix J [Amended]

3. In Appendix J, Sec. I, subsection C, the definition of "Substance abuse professional" is removed.

Issued in Washington, DC on May 13, 1996.

David R. Hinson,

Administrator, Federal Aviation Administration.

Research and Special Programs Administration

List of Subjects in 49 CFR Part 199

Alcohol testing, Drug testing, Pipeline safety, Recordkeeping and reporting.

For the reasons stated in the preamble, RSPA amends 49 CFR part 199 as follows:

PART 199—DRUG AND ALCOHOL TESTING

1. The authority for Part 199 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, and 60108; 49 CFR 1.53.

§ 199.205 [Amended]

2. In 49 CFR 199.205, the definition of "Substance abuse professional" is removed.

Issued in Washington, DC on June 11, 1996.

D.K. Sharma,

Administrator, Research and Special Programs Administration.

Federal Railroad Administration

List of Subjects in 49 CFR Part 219

Alcohol and drug abuse, Railroad safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FRA amends 49 CFR part 219, as follows:

PART 219—CONTROL OF ALCOHOL AND DRUG USE

1. The authority for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20113, 20140, 21301, 21304; Pub. L. 103–272 (July 5, 1994); and 49 CFR 1.49(m).

§ 219.5 [Amended]

2. In § 219.5, the definition of "Substance abuse professional" is removed.

Issued in Washington, DC on July 9, 1996.

Donald M. Itzkoff,

Deputy Administrator, Federal Railroad Administration.

Federal Highway Administration

List of Subjects in 49 CFR Part 382

Alcohol and drug abuse, Highway safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the FHWA amends 49 CFR part 382, as follows:

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

1. The authority for part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.*, 31502; and 49 CFR 1.48.

2. In § 382.107, the definition of "Substance abuse professional" is removed.

Issued in Washington, DC on July 9, 1996.

Rodney E. Slater,

Administrator, Federal Highway Administration.

Federal Transit Administration

List of Subjects

49 CFR Part 653

Drug testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 654

Alcohol testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set out in the preamble, the Federal Transit Administration amends 49 CFR parts 653 and 654, as follows:

PART 653—PREVENTION OF PROHIBITED DRUG USE IN TRANSIT OPERATIONS

1. The authority for part 653 continues to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.51.

§ 653.7 [Amended]

2. In § 653.7, the definition of "Substance abuse professional" is removed.

PART 654—PREVENTION OF ALCOHOL MISUSE IN TRANSIT OPERATIONS

1. The authority for part 654 continues to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.51.

§ 654.7 [Amended]

2. In § 654.7, the definition of "Substance abuse professional" is removed.

Issued in Washington, DC on July 9, 1996.

Gordon J. Linton,

Administrator, Federal Transit Administration.

[FR Doc. 96–18064 Filed 7–16–96; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 960315061–6160–02; I.D. 030596B]

RIN 0648–AI17

Magnuson Act Provisions; Consolidation and Update of Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to the final regulations (I.D. 030596B), which were published Monday, June 24, 1996, (61 FR 32538). The regulations contain general provisions under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Tom Meyer, 301–713–2339.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction, consolidate nine CFR parts into one part that contains general provisions under the Magnuson Act.

Need for Correction

As published, the final regulations contain a typographical error in a reference, which prevents the enforcement of regulations by authorized officers in the southeast region.

Correction of Publication

Accordingly, the publication on June 24, 1996, of the final regulation (I.D. 030596B), which were the subject of FR Doc. 96–15767, is corrected as follows:

§ 600.730 [Corrected]

On page 32574, in the first column, in § 600.730, paragraph (a), on line three the number "625" is corrected to read "622".

Dated: July 12, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 96–18123 Filed 7–16–96; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 071096G]

Groundfish of the Gulf of Alaska; Pacific Ocean Perch in the Eastern Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific ocean perch in the Eastern Regulatory Area of the Gulf of Alaska management area (GOA). This action is necessary to prevent exceeding the Pacific ocean perch total allowable catch (TAC) in the Eastern Regulatory Area.

EFFECTIVE DATE: Effective 1200 hrs, Alaska local time (A.l.t.), July 11, 1996, until 2400 hrs, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific ocean perch TAC for the Eastern Regulatory Area was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996) as 2,366 metric tons (mt). (See § 679.20(c)(3)(ii).)

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 679.20(d)(1), that the Pacific ocean perch TAC in the Eastern Regulatory Area soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 2,066 mt, with consideration that 300 mt will be taken as incidental catch in directed fishing for other species in the Eastern Regulatory Area. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Regulatory Area.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e).

Classification

This action is taken under § 679.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 11, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Development, National Marine Fisheries Service.

[FR Doc. 96–18074 Filed 7–11–96; 4:51 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 071096H]

Groundfish of the Gulf of Alaska; Pacific Ocean Perch in the Central Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific ocean perch in the Central Regulatory Area of the Gulf of Alaska management area (GOA). This action is necessary to prevent exceeding the Pacific ocean perch total allowable catch (TAC) in the Central Regulatory Area.

EFFECTIVE DATE: Effective 1200 hrs, Alaska local time (A.l.t.), July 11, 1996, until 2400 hrs, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific ocean perch TAC for the Central Regulatory Area was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996) as 3,333 metric tons (mt). (See § 679.20(c)(3)(ii).)

The Director, Alaska Region, NMFS (Regional Director), has determined that the Pacific ocean perch TAC in the Central Regulatory Area soon will be reached. (See § 679.20(d)(1).) Therefore, the Regional Director has established a

directed fishing allowance of 2,933 mt, with consideration that 400 mt will be taken as incidental catch in directed fishing for other species in the Central Regulatory Area. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Regulatory Area.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e).

Classification

This action is taken under § 679.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 11, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–18073 Filed 7–11–96; 4:51 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 071096B]

Groundfish of the Gulf of Alaska; Northern Rockfish in the Western Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the northern rockfish total allowable catch (TAC) in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 11, 1996, until 12 midnight, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR parts 679.

The northern rockfish TAC for the Western Regulatory Area was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996) as 640 metric tons (mt). See § 679.20(c)(3)(ii).

The Director, Alaska Region, NMFS (Regional Director), established a directed fishing allowance for northern rockfish of 600 mt, with consideration that 40 mt will be taken as incidental catch in directed fishing for other species in this area. See § 679.20(d)(1). The Regional Director has determined that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area.

The maximum retainable bycatch amounts at § 679.20(e), apply to a fishery that is closed to directed fishing.

Classification

This action is taken under 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 11, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–18080 Filed 7–11–96; 4:51 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 071096D]

Groundfish of the Gulf of Alaska; Pacific Ocean Perch in the Western Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska management area (GOA). This action is necessary to prevent exceeding the Pacific ocean perch total allowable catch (TAC) in the Western Regulatory Area.

EFFECTIVE DATE: Effective 1200 hrs, Alaska local time (A.l.t.), July 11, 1996, until 2400 hrs, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific ocean perch TAC for the Western Regulatory Area was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996) as 1,260 metric tons (mt). (See § 679.20(c)(3)(ii).)

The Director, Alaska Region, NMFS (Regional Director), has determined that the Pacific ocean perch TAC in the Western Regulatory Area soon will be reached. (See § 679.20(d)(1).) Therefore, the Regional Director has established a directed fishing allowance of 1,100 mt, with consideration that 160 mt will be taken as incidental catch in directed fishing for other species in the Western Regulatory Area. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for the Pacific ocean perch in the Western Regulatory Area.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e).

Classification

This action is taken under § 679.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 11, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–18079 Filed 7–11–96; 4:51 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 61, No. 138

Wednesday, July 17, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 32

[Docket No. 96–14]

RIN 1557–AB55

Lending Limits

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing revisions to its lending limits regulation in order to provide additional flexibility for a national bank to preserve personal property securing a loan, consistent with safe and sound banking practices. The proposal also makes several technical changes designed to clarify certain provisions in the current rule.

DATES: Comments must be received by September 16, 1996.

ADDRESSES: Comments should be directed to Office of the Comptroller of the Currency, Communications Division, 250 E Street, SW., Washington, DC 20219, Attention: Docket No. 96–14. Comments will be available for public inspection and photocopying at the same location. In addition, comments may be sent by facsimile transmission to FAX number (202) 874–5274 or by internet mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: William C. Kerr, National Bank Examiner, or Frank R. Carbone, National Bank Examiner, Credit and Management Policy, (202) 874–5170; Laura Goldman, Attorney, or Aline J. Henderson, Senior Attorney, Bank Activities and Structure Division, (202) 874–5300; or Mark J. Tenhundfeld, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090.

SUPPLEMENTARY INFORMATION:

Background

In 1995, as part of its Regulation Review Program (Program), the OCC comprehensively revised its lending limits regulation. *See* 60 FR 8537 (February 15, 1995). These amendments to part 32 changed, among other things, the definition of "loans and extensions of credit" to exempt under certain circumstances additional funds advanced for the payment of maintenance and operating expenses necessary to preserve the value of real property securing a loan. *See* 12 CFR 32.2(j)(2)(i). Also, the amendments changed the definition of "capital and surplus" to allow a national bank, in most instances, to calculate its lending limit based on information contained in the bank's most recent quarterly Consolidated Report of Condition and Income (Call Report). *See id.* § 32.4.

As is explained in greater detail in the discussion that follows, these changes prompted requests for the OCC: (a) to extend the exemption for funds advanced to preserve and maintain collateral to loans secured by *personal* property as well as to loans secured by *real* property; and (b) to clarify the date on which a national bank must recalculate its capital and surplus. This proposal addresses both issues, and makes several technical changes designed to improve part 32 without changing its substance. Moreover, the proposal reflects the OCC's continuing commitment to assess the effectiveness of the rules it has revised under the Program and to make further changes where necessary to improve a regulation.

The OCC invites comments of a general nature on all aspects of the proposal in addition to comments on specific issues identified in the text that follows.

The Proposal

Definition of "Loans and Extensions of Credit" (§ 32.2(j))

Current § 32.2(j)(2)(i) states that additional funds advanced for the benefit of a borrower by a bank for payment of maintenance and operating expenses necessary to preserve the value of real property securing a loan are not "loans or extensions of credit" for purposes of 12 U.S.C. 84 and part 32 under certain circumstances. This exemption for funds advanced to protect collateral does not address advances for the purpose of protecting personal property collateral.

The proposal amends the current exemption by treating an advance to protect personal property collateral the same as an advance to protect real property collateral. The reasoning underlying both types of advances is identical, namely, to protect the position of the lending bank by preserving collateral prior to foreclosure in order to avoid greater expenses later. For example, advancing funds for the purpose of preserving the condition of equipment or getting perishable crops to market may protect the bank's condition more effectively than waiting until after foreclosure to take the steps necessary to protect the bank's interest.

Under the proposal, an advance to protect personal property collateral is subject to the same safeguards that currently apply to an advance to protect real property. Thus, the advance must be for maintenance and operating expenses only to the extent necessary to preserve the collateral, and must be consistent with safe and sound banking practices. These advances are permitted only for the purpose of protecting a bank's interest in the collateral. Moreover, a bank must treat any amount so advanced as an extension of credit if the bank makes a new loan to the borrower.

In proposing this expansion of the exemption, the OCC expects that a bank will reasonably anticipate a borrower's need to fund various expenses in determining the appropriate size of the loan that the bank will make. Moreover, the OCC intends for the exemption not to create incentives for borrowers to divert or reclassify spending in order to qualify larger portions of their credit needs for the exemption. A bank that wishes to advance funds pursuant to the proposed exemption should be able to document what collateral is being protected, how the additional advance will preserve the collateral, why the amount of the advance is the necessary amount, the basis for the bank's belief that the additional advance is likely to be repaid, and how the bank's position would be protected by preserving the collateral as compared to attempting a sale of the property.

The proposal also clarifies that the exemption, whether it applies to

advances to protect real or personal property, is to protect and maintain identified collateral for a particular loan. The exemption is not intended to allow a bank to speculate on the value of collateral by advancing additional funds in the hope that increasing collateral values will enable the borrower to repay all funds advanced. Nor is the exemption intended to permit a bank to continue funding the operations of a borrower until the borrower's business fortunes improve. To further clarify the scope of the exemption with respect to advances to protect *either* real or personal property collateral, and to emphasize that the exception is not available for speculative purposes, the proposal deletes the words "value of" used in conjunction with the reference to the relevant real or personal property.

The OCC requests comment on whether the restrictions it proposes to place on the advance of funds pursuant to the expanded exemption are workable and adequate to insure safety and soundness. Commenters are invited to suggest additional or alternative conditions.

Calculation of Lending Limits (§ 32.4)

Current § 32.4(a) requires a bank to calculate its lending limit as of the later of the date when the bank's Call Report "is required to be filed" or when the bank's capital category changes for purposes of the prompt corrective action provisions of 12 U.S.C. 1831o and 12 CFR part 6. Pursuant to current § 32.4(b), the OCC may require a national bank to calculate its lending limit more frequently if the OCC determines that the bank should do so for safety and soundness reasons.

Because the General Instructions to the Call Report refer to two separate "filing" dates, questions have arisen under the current rule concerning the date on which a recalculated lending limit is to become effective. The first potential filing date identified in the General Instructions, termed the "report date," is defined as the last calendar day of each calendar quarter. The second potential filing date, termed the "submission date," is the date by which the appropriate Federal banking agency must receive the Call Report. For most banks, the submission date is 30 days after the report date. Thus, the reference in the current rule to the date when the Call Report "is required to be filed" could produce some confusion as to when a recalculated limit becomes effective, depending on which "filing" date is used.

The proposal resolves this ambiguity by distinguishing the "calculation date" of a lending limit from its "effective date." Assuming that a national bank's capital category has not changed, the bank is to calculate its lending limit using numbers reported in the bank's most recent Call Report, and, therefore, base its lending limit on the bank's capital and surplus as of the end of the most recent calendar quarter (the calculation date). However, this new limit will not be effective until the earlier of the date on which the bank submits its Call Report or is required to submit the Call Report (the effective date). The proposal amends § 32.4(a)(1), redesignates current § 32.4(b) as § 32.4(c), and adds a new § 32.4(b) that sets forth the effective date for using the updated numbers to accomplish this result.

If a bank's capital category for prompt corrective action purposes changes, then the bank must determine its lending limit as of the date on which the capital category changes. The new limit in this instance will be effective on the date that the limit is to be recalculated. The OCC also will continue its practice of permitting a recalculation of lending limits at a point during a quarter when there is a material change in a bank's capital arising from corporate activities such as a merger or stock issuance.

Technical Amendments (§§ 32.2(b) and 32.3(c))

The proposal makes several clarifying technical amendments to part 32. None of these amendments affects the substance of the current rule. The technical amendments are summarized below.

Current § 32.2(b) states that capital and surplus includes, among other things, a bank's Tier 1 and Tier 2 capital "included in the bank's risk-based capital under" the OCC's minimum capital ratios as set forth in Appendix A to 12 CFR Part 3. The proposal clarifies this definition by changing that language to refer to a bank's Tier 1 and Tier 2 capital "calculated under the OCC's risk-based capital standards set out in Appendix A to part 3 of this chapter as reported in the bank's Consolidated Report of Condition and Income as filed under 12 U.S.C. 161."

Current § 32.3(c)(4)(ii) exempts a loan from the lending limits to the extent that the loan is secured by an unconditional takeout commitment or guarantee of a Federal agency. In explaining when a commitment or guarantee is unconditional, § 32.3(c)(4)(ii)(B) notes that protection against loss is not materially diminished or impaired by a procedural requirement, such as "an agreement to take over only in the event of default * * *." The proposal clarifies that the phrase "an agreement to take over" means an agreement to pay on an obligation.

Finally, current § 32.3(c)(6)(ii)(B) states that a bank must establish procedures to revalue foreign currency deposits to ensure that the loan or extension of credit remains fully secured at all times. The proposal clarifies that the revaluation must be periodic.

The OCC invites comments on these proposed technical amendments and suggestions for other technical changes that would clarify or improve the rule.

Regulatory Flexibility Act

It is hereby certified that this proposal will not have a significant economic impact on a substantial number of small entities. As is explained in greater detail in the preamble to this proposal, the only substantive change that is proposed would enhance a national bank's ability to protect its interest in real property that serves as collateral for a loan already made by the bank. By relaxing a restriction that currently impedes this ability, the proposal will reduce the regulatory burden on national banks, regardless of size. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a notice of proposed rulemaking (NPRM) likely to result in a rule that includes a Federal mandate that may result in the annual expenditure of $100 million or more in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act requires an agency to identify and consider a reasonable number of alternatives before promulgating an NPRM. The OCC has determined that the proposal will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. As discussed in the preamble, the proposal would clarify certain provisions of the current rule and provide additional flexibility to a national bank to extend credit for the purpose of protecting personal property that secures a loan from the bank.

List of Subjects in 12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, part 32 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 32—LENDING LIMITS

1. The authority citation for part 32 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 84, and 93a.

2. In § 32.2, paragraphs (b) and (j)(2)(i) are revised to read as follows:

§ 32.2 Definitions.

* * * * *

(b) *Capital and surplus* means—

(1) A bank's Tier 1 and Tier 2 capital calculated under the OCC's risk-based capital standards set out in Appendix A to part 3 of this chapter as reported in the bank's Consolidated Report of Condition and Income as filed under 12 U.S.C. 161; plus

(2) The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital under Appendix A to part 3 of this chapter, as reported in the bank's Consolidated Report of Condition and Income as filed under 12 U.S.C. 161.

* * * * *

(j) * * *

(2) * * *

(i) Additional funds advanced for the benefit of a borrower by a bank for payment of taxes, insurance, utilities, security, and maintenance and operating expenses to the extent necessary to preserve real or personal property securing the loan, consistent with safe and sound banking practices, but only if the advance is for the protection of the bank's interest in the collateral, and provided that such amounts must be treated as an extension of credit if a new loan or extension of credit is made to the borrower;

* * * * *

§ 32.3 [Amended]

3. Paragraph (c)(4)(ii)(B) of § 32.3 is amended in the last sentence by removing the term "take over" and adding in lieu thereof "pay on the obligation".

4. Paragraph (c)(6)(ii)(B) of § 32.3 is amended by adding the word "periodically" before the word "revalue".

5. Section 32.4 is revised to read as follows:

§ 32.4 Calculation of lending limits.

(a) *Calculation date.* For purposes of determining compliance with 12 U.S.C. 84 and this part, a bank shall determine its lending limit as of the most recent of the following dates—

(1) The last day of the preceding calendar quarter; or

(2) The date on which there is a change in the bank's capital category for purposes of 12 U.S.C. 1831o and § 6.3 of this chapter.

(b) *Effective date.* (1) A bank's lending limit calculated in accordance with paragraph (a)(1) of this section will be effective as of the earlier of the following dates—

(i) The date on which the bank's Consolidated Report of Condition and Income (Call Report) is submitted; or

(ii) The date on which the bank's Call Report is required to be submitted.

(2) A bank's lending limit calculated in accordance with paragraph (a)(2) of this section will be effective on the date that the limit is to be calculated.

(c) *More frequent calculations.* If the OCC determines for safety and soundness reasons that a bank should calculate its lending limit more frequently than required by paragraph (a) of this section, the OCC may provide written notice to the bank directing the bank to calculate its lending limit at a more frequent interval, and the bank shall thereafter calculate its lending limit at that interval until further notice.

Dated: June 24, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 96–18021 Filed 7–16–96; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–0919]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; Extension of comment period.

SUMMARY: On May 2, 1996, the Board requested comment on a proposal to amend Regulation E, which implements the Electronic Fund Transfer Act, to address the use of electronic communication in home-banking services for providing disclosures and other documentation; error resolution procedures for new accounts; and the treatment of stored-value cards (imposing modified Regulation E requirements on stored-value products in systems that track individual transactions, cards, or consumers; providing an exemption for cards on which a maximum value of $100 can be stored; and providing that other stored-value cards are not covered by Regulation E). In response to requests for an extension of the comment period, the Secretary of the Board, acting pursuant to delegated authority, has extended the comment period from August 1, 1996, to September 6, 1996, to give the public additional time to provide comments.

DATES: Comments must be received on or before September 6, 1996.

ADDRESSES: Comments should refer to Docket No. R–0919 and be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may also be delivered to the guard station in the Eccles Building Courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) between 8:45 a.m. and 5:15 p.m. weekdays. Except as provided in the Board's rules regarding the availability of information (12 CFR 261.8), comments will be available for inspection and copying by members of the public in the Freedom of Information Office, Room MP–500 of the Martin Building, between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Regarding the proposed amendments on electronic communications, Michael Hentrel, Staff Attorney, and regarding the other proposed amendments, Jane Jensen Gell, Natalie Taylor, or Obrea Poindexter, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 452–3667 or (202) 452–2412. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson, at (202) 452–3544.

SUPPLEMENTARY INFORMATION: The Board is extending the comment period on the proposed amendments to Regulation E (Electronic Fund Transfers) published on May 2, 1996 at 61 FR 19696 to give the public additional time to comment on the proposal.

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, July 10, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–18011 Filed 7–16–96; 8:45 am]

BILLING CODE 6210–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB67

Loan Policies and Operations; Other Financing Institutions

AGENCY: Farm Credit Administration.

ACTION: Advance notice of proposed rulemaking; comment period extension.

SUMMARY: On May 17, 1996, the Farm Credit Administration (FCA) published for public comment an Advance Notice of Proposed Rulemaking (ANPRM) concerning potential revisions to the regulations in subpart P of part 614 that govern the funding and discount relationship between Farm Credit System (Farm Credit, FCS, or System) banks that operate under title I of the Farm Credit Act of 1971, as amended (Act), and non-System other financing institutions (OFIs). *See* 61 FR 24907, May 17, 1996. The comment period expired on July 16, 1996. In order to allow interested parties additional time to respond, the FCA extends the comment period until August 30, 1996, and invites public comment on the questions in the ANPRM.

DATES: Written comments should be received on or before August 30, 1996.

ADDRESSES: Comments may be mailed or delivered to Patricia W. DiMuzio, Associate Director, Regulation Development, Office of Examination, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or sent by facsimile transmission to the FAX number at (703) 734–5784. Copies of all communications received will be available for review by interested parties in the Office of Examination, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Eric Howard, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498,

or

Richard A. Katz, Senior Attorney, Regulatory Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On May 17, 1996, the FCA published an ANPRM in the **Federal Register** that sought information and guidance from the public about how to revise regulations in subpart P of part 614 that govern the funding and discount relationship between System banks that operate under title I of the Farm Credit Act of 1971, as amended (Act), and non-System OFIs. Farm Credit Banks (FCBs) and agricultural credit banks (ACBs) are authorized to fund and discount certain short- and intermediate-term loans for non-System lenders, such as commercial banks, savings associations, credit unions, trust companies, agricultural credit corporations, and other agricultural and aquatic lenders as part of their mission to finance agriculture, aquaculture, and other specified rural credit needs. External developments, such as the consolidation of the commercial banking industry, the advent of interstate banking and branching, the gradual reduction of Federal assistance to agriculture and rural communities, and the increased interest of non-System financial institutions in additional sources of funding and liquidity may necessitate revisions to the regulations in subpart P of part 614 so that System banks can fulfill their obligation to meet demands in rural communities for short- and intermediate-term credit. The purpose of any future rulemaking would be to ensure that eligible and creditworthy farmers, ranchers, aquatic producers and harvesters, processing and marketing operators, farm-related businesses, and rural homeowners will continue to have access to affordable, dependable, and stable short- and intermediate-term credit through both System and non-System lenders. Specifically, the ANPRM sought comments regarding the FCA's OFI regulations and how they may be revised to better implement the statutory provisions. Several interested parties have advised the FCA that they need additional time to prepare thoughtful responses to the questions in the ANPRM. For this reason, the FCA hereby extends the comment period until August 30, 1996.

Dated: July 11, 1996.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 96–18132 Filed 7–16–96; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASO–15]

Proposed Amendment to Class D Airspace; Smyrna, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class D surface area airspace at Smyrna, TN. Due to the relocation of the Nashville VORTAC, an airspace review of the Smyrna, TN, Class D airspace area was conducted. As a result of the airspace review, it was determined that the Smyrna Class D airspace area for the Smyrna Airport requires redefinition by removing a small exclusion and reducing the height from 3,000 feet to 2,000 feet MSL in the northwest quadrant of the Smyrna Class D airspace area.

DATES: Comments must be received on or before August 26, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 96–ASO–15, Manager, Operations Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–ASO–15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Operations Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class D surface area airspace Smyrna, TN. As a result of the relocation of the Nashville VORTAC, an airspace of the Smyrna, TN, Class D airspace area was conducted. As a result of the airspace review, it was determined that the Smyrna Class D airspace area required redefinition by removing a small exclusion and reducing the height from 3,000 feet to 2,000 feet MSL in the northwest quadrant of the Smyrna Class D airspace area. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which are incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ASO TN D Smyrna, TN [Revised]

Smyrna Airport, TN
(lat. 36°00'32"N, long. 86°31'12"W)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 3.9-mile radius of the Smyrna Airport, excluding that airspace within the Nashville Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on July 3, 1996.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 96–18060 Filed 7–16–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AAL–9]

Proposed Revision of Class E Airspace; Cold Bay, Nome, and Tanana, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action revises the Class E airspace at Cold Bay, Nome, and Tanana, AK. The development of the Global Positioning System (GPS) instrument procedures to Nome Airport, AK, and Ralph M. Calhoun Memorial (Tanana), AK, have made this action necessary. Revisions to the Cold Bay Class E airspace will correct discrepancies found during an airspace review. The areas would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Cold Bay, Nome, and Tanana, AK.

DATES: Comments must be received on or before September 3, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–9, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AAL–9." The postcard will be date/time stamped and returned to the commenter. All communications

received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Cold Bay, Nome, and Tanana, AK. This action is necessary to correct the airspace legal description for Cold Bay, AK, and accommodate new GPS instrument approach procedures at Nome Airport, AK, and Ralph M. Calhoun Airport (Tanana), AK. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g), 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

* * * * *

Paragraph 6002 The Class E airspace areas listed below are designated as a surface area for an airport.

* * * * *

AAL AK E2 Cold Bay, AK [Revised]

Cold Bay Airport, AK
(lat. 55°12'20" N, long. 162°43'27" W)
Cold Bay VORTAC
(lat. 55°16'03" N, long. 162°46'27" W)
Elfee NDB
(lat. 55°17'46" N, long. 162°47'21" W)

Within a 4.7-mile radius of the Cold Bay Airport and within 2.6 miles each side of the 338° bearing and the 158° bearing from the Elfee NDB, extending from the 4.7-mile radius to 13 miles north of the airport and within 3 miles each side of the Cold Bay VORTAC 150° radial, extending from the 4.7-mile radius to 17.4 miles south of the airport.

* * * * *

AAL AK E2 Nome, AK [Revised]

Nome Airport, AK
(lat. 64°30'44" N, long. 165°26'43" W)
Nome VORTAC
(lat. 64°29'06" N, long. 165°15'11" W)
Gold NDB/DME
(lat. 64°30'48" N, long. 165°25'01" W)

Within a 3.9-mile radius of the Nome Airport and within 3.4 miles each side of the Nome VORTAC 106° radial, extending from the 3.9-mile radius to 12.1 miles east of the airport, and within 3.4 miles each side of the Nome VORTAC 286° radial extending from the 3.9-mile radius to 6 miles west of the airport, and within 3.5 miles each side of the 195° bearing from the Gold NDB/DME extending from the 3.9-mile radius to 6 miles south of the airport.

AAL AK E2 Tanana, AK [Revised]

Ralph M. Calhoun Memorial Airport, AK
(lat. 65°10'28" N, long. 152°06'34" W)
Bear Creek NDB
(lat. 65°10'26" N, long. 152°12'21" W)
Tanana VOR/DME
(lat. 65°10'38" N, long. 152°10'39" W)

Within a 3.9-mile radius of the Ralph M. Calhoun Memorial Airport and within 2.5 miles south and 3.5 miles north of the 250° bearing from the Bear Creek NDB extending from the NDB to 9.5 miles west of the NDB, and 2.5 miles north of the Tanana VOR/DME 277° radial extending from 3.9-mile radius to 7 miles west of the VOR/DME. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska (Airport/Facility Directory).

* * * * *

Issued in Anchorage, AK, on July 8, 1996.

Trent S. Cummings,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 96–18061 Filed 7–16–96; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI72–01–7298b; FRL–5534–6]

Approval and Promulgation of Implementation Plan; Wisconsin; Site-Specific Revision for General Electric Medical Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency proposes to approve a site-specific volatile organic compound (VOC) reasonably available control technology (RACT) state implementation plan (SIP) revision for the General Electric Medical Systems (GEM) facility located at 4855 West Electric Avenue in Milwaukee, Wisconsin. This SIP revision was submitted by the Wisconsin Department of Natural Resources (WDNR) on March 15, 1996. This approval would make federally enforceable the State's consent order establishing an alternate control system for GEM's cold cleaning operation.

In the final rules section of this **Federal Register**, the EPA is approving this action as a direct final without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed action must be received by August 16, 1996.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the following address: (Please telephone Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 office.) EPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 17, 1996.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 96–17989 Filed 7–16–96; 8:45 am]

BILLING CODE 6560–50–P

ENVRIONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[PP 4F4313 and FAP 4H5687/P670, FRL–5374–1]

RIN 2070-AC18

Cyfluthrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish permanent tolerances for residues of the pyrethroid cyfluthrin in or on the raw agricultural commodities (RACs) group citrus, fruits; to withdraw the proposed food/feed additive petition for citrus oil, dried pulp, and molasses and to establish a maximum residue limit for cyfluthrin on citrus oil and dried pulp. Bayer Corporation (formerly Miles, Inc.) submitted petitions pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA) requesting these regulations to establish certain maximum permissible levels for residues of the insecticide.

DATES: Comments, identified by the docket control number [PP 4F4313 and FAP 4H5687/P670], must be received on or before August 16, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. In person, bring comments to: Rm. 1132 CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted to OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 4F4313 and FAP 4H5687/P670]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 200, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703) 305-6100.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of July 13, 1994 (59 FR 35717), which announced that Miles Corp. had submitted pesticide petition PP 4F4313 and food/feed additive petition (FAP) 4H5687 to EPA. Pesticide petition 4F4313 requests that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), amend 40 CFR 180.436 by establishing tolerances for residues of the insecticide cyfluthrin, [cyano[4-fluoro-3-phenoxyphenyl]-methyl-3-[2,2-dicloroethenyl]-2,2-dimethylcyclopropanecarboxylate] in or on the raw agricultural commodities group citrus, fruits at 0.2 parts per millions (PPM).

Food/feed additive petition 4H5687 requests that the Administrator, pursuant to section 409(b) of the FFDCA (21 U.S.C. 348), amend 40 CFR parts 185 and 186 by establishing food/feed additive regulations for cyfluthrin in or on the processed food commodity citrus oil at 1.0 ppm, and the feed commodities citrus dried pulp at 1.0 ppm and citrus molasses at 0.5 ppm.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

On May 2, 1996, Miles Corp. requested that the proposed food/feed additive regulation (4H5687) for citrus oil, citrus dried pulp, and citrus molasses under section 409 of FFDCA be withdrawn and proposed establishment of a maximum residue level (MRL) for citrus oil and citrus dried pulp at 0.3 ppm under section 701 of FFDCA. The request to withdraw the feed additive petition for citrus molasses was submitted in response to EPA's determination that citrus molasses is no longer considered a significant feed item. See EPA's final 860 Series Residue Chemistry Guidelines (860.1000) published as public drafts on August 25, 1995 (60 FR 44343) (formerly Table II of Subdivision O, Residue Chemistry, of the Pesticide Assessment Guidelines).

The request to withdraw the food/feed additive petition under section 409 for citrus oil and citrus dried pulp and instead propose to establish a MRL for citrus oil and citrus dried pulp under section 701 was submitted in response to EPA's policy changes regarding when pesticide residues concentrate in processed food and whether a particular processed food is considered "ready to eat." In June 1995 (60 FR 31300, June 14, 1995), EPA issued a revised policy concerning when section 409 food and feed additive tolerances were needed to

prevent the adulteration of foods and animal feeds. Under EPA's revised policy, a section 409 tolerance is necessary for pesticide residues in processed food when it is likely that the level of some residues of the pesticide will exceed the section 408 tolerance level in "ready to eat" processed food/feed. Of particular relevance to the proposed food/feed additive regulation for citrus oil and dried pulp is EPA's decision to interpret the term "ready to eat" processed food/feed as food ready for consumption "as is" without further preparation. For foods/feeds that are found to be not "ready to eat," EPA takes into account the dilution of residues that occurs in preparing a "ready to eat" food/feed.

Under the revised policy, EPA has determined that citrus fruit oil and dried citrus pulp are not "ready to eat" food or animal feed commodities. Citrus oil is not consumed "as is" but used as a flavoring in other foods. Likewise EPA has found no evidence that dried citrus pulp is fed to livestock as a stand-along feed stock. Rather dried citrus pulp is used as an ingredient in animal feeds. As such, dried citrus pulp can constitute up to 25% of animal feed.

The proposed section 408 tolerance for cyfluthrin on citrus is 0.2 ppm. The highest average residue found in crop field trials for cyfluthrin on citrus fruits was 0.06 ppm. A processing study showed that in producing citrus oil and dried pulp residues concentrated 530% (a concentration factor of 5.3x). Thus with this information it is likely that cyfluthrin residues of 0.32 ppm (0.06 x 5.3) could occur in citrus oil and dried pulp. However to project what residues are likely in "ready to eat" food or animal feed containing citrus oil and dried citrus pulp the 0.32 ppm must be divided by 238 for citrus oil and 3 for dried citrus pulp to allow for dilution occurring when citrus oil and dried citrus pulp is added to other ingredients in the preparation of food and animal feed respectively. Once these dilutions are taken into account (0.32 divided by 238) and (0.32 divided by 3) the likely residues of cyfluthrin in food and animal feed would not be expected to exceed 0.001 ppm for citrus oil (or < 0.01 ppm which is the limit of detection of the analytical method) and 0.11 for dried citrus pulp. Since these levels are below the 408 tolerance level (0.2 ppm) food and animal feed would not be adulterated and no section 409 tolerances are needed. However since residues could be present in the not "ready to eat" commodities at levels (0.32 ppm) appreciably higher than the 0.2 ppm RAC tolerance, section 701 MRL's are being proposed. A section 701 MRL represents the highest level of pesticide residue in a not "ready to eat" processed commodity that is consistent with the requirements in 21 U.S.C. 342(a)(2)(C) that the pesticide be applied in accordance with the section 408 tolerance and that good manufacturing processes be used.

EPA will compute the MRL by multiplying the highest average residue found in the raw commodity in field trials by the concentration factor determined in processing studies using good manufacturing practices. As noted above, the highest average residue from the cyfluthrin fields trials is 0.06 ppm and the concentration factor for processing is 5.3x. Multiplying 0.06 by 5.3 yields a product of 0.318 ppm. EPA believes it is appropriate to round 0.318 ppm and proposes 0.3 ppm as MRL for cyfluthrin residues in citrus oil and dried citrus pulp. For purposes of enforcement of the MRL, the same analytical method used for enforcement of the section 408 tolerances should be used.

EPA is proposing to place this MRL in existing parts 185 and 186 of title 40 of the Code of Federal Regulations (CFR) rather than creating a new part of title 40. Currently, 40 CFR parts 185 and 186 contain section 409 food and feed additive tolerances organized by pesticide. EPA believes it will be clearer to the regulated community and to enforcement personnel if all regulations pertaining to residue levels of a pesticide in food and animal feeds are located in the same part of the CFR. Because EPA is respectively proposing to expand the type of regulation that would be included in part 185 and 186, EPA proposes modifying the titles of parts 185 and 186 to "Pesticides in Food and Pesticides in Animal Feeds" to reflect these changes.

The science data submitted in support of the petitions and other relevant material have been reviewed. The toxicological and metabolism data considered in support of this tolerance are discussed in detail in a related document published in the **Federal Register** of March 15, 1996 (61 FR 10678).

A chronic dietary exposure/risk assessment was performed for cyfluthrin using a Reference Dose (RfD) of 0.025 mg/kg bwt/day, based on a No Observed Effect Level (NOEL) of 50 ppm (2.5 mg/kg bwt/day) and an uncertainty factor of 100. The NOEL was determined in a 2-year rat feeding study. The endpoint effects of concern were decreased body weights in males and inflammation of the kidneys in females at the LEL of 150 ppm (6.2 mg/kg/day). The current estimated dietary exposure for the U.S. population resulting from established tolerances is 0.002907 mg/kg/bwt day, which represents 11.6% of the RfD and 0.00662 mg/kg/day, which represents 26.4% of the RfD for children (1-6 years old), the subgroup population exposed to the highest risk. The current action will increase exposure to 0.003268 mg/kg/day or 13% of the RfD and 0.007605 mg/kg/day or 30.4% of the RfD respectively. Generally speaking, EPA has no cause for concern if total residue contribution for published and proposed tolerances is less than the RfD. EPA concludes that the chronic dietary risk of cyfluthrin, as estimated by the dietary risk assessment, does not appear to be of concern.

Because there was a sign of developmental effects seen in animal studies, the Agency used the rabbit developmental toxicity study (with a NOEL of 20 mg/kg/day to assess acute dietary exposure and determine a margin of exposure (MOE) for the overall U.S. population and certain subgroups. Since the toxicological end-point pertains to developmental toxicity, the population group of concern for this analysis is women aged 13 and above, the subgroup which most closely approximates women of child-bearing age. The MOE is calculated as the ratio of the NOEL to the exposure. For this analysis, the Agency calculated the MOE for women ages 13 and above to be 666. Generally speaking, MOE's greater than 100 for data derived from animal studies are generally not of concern.

The metabolism of cyfluthrin in plants and livestocks for this use is adequately understood. The residues of concern is cyfluthrin. Adequate analytical methodology (Gas liquid chromatography with an electron capture detector) is available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual Vol. II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from Calvin Furlow, Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson-Davis Hwy., Arlington, VA 22202, (703) 305-5232.

The established tolerances for residues of cyfluthrin in/on eggs, milk, fat, meat and meat by-products of cattle, goats, hogs, horses, sheep and poultry are adequate to cover secondary residues resulting from the proposed use as delinated in 40 CFR 180.6(a)(2).

There are presently no actions pending against the continued registration of this chemical.

The pesticide is considered useful for the purpose for which the tolerances are sought. Based on the information and data considered, the Agency concludes that the establishment of the proposed tolerances will protect the public health and proposed MRLs are consistent with 21 U.S.C. 342 (a)(c). Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA. Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 4F4313/FAP 4H5687/P670]. All written comments filed in response to this petition will be available in the Public Responses and Program Resources Branch, at the address given above from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under the docket number [PP 4F4313/FAP 4H5687/P670] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall 1B2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

The Office of Management and Budget has exempted this document from the requirement of review pursuant to Executive Order 12866.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review. In addition, this action does not impose any enforceable duty or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 1993), entitled "Enhancing the Intergovernmental Partnership," or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950). EPA has treated regulations similar to the establishment of tolerances as also not having a significant economic impact on substantial number of small entities. Therefore, the proposed MRL is not expected to have such impact.

List of Subjects in 40 CFR Parts 180, 185, and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 19, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.436(a), by adding and alphabetically inserting the following entry in the table therein to read as follows:

§ 180.436 Cyfluthrin; tolerances for residues.

(a) * * *

Commodities	Parts per million	Expiration date
* * *	* * *	*
Citrus, fruits	0.2	None

Commodities	Parts per million	Expiration date
* * *	* * *	*

* * * * *

PART 185—PESTICIDES IN FOOD

2. In part 185:

a. The authority citation for part 185 is revised to read as follows:

Authority: 21 U.S.C. 342, 348, and 701.

b. By revising the part heading for part 185 to read as set forth above.

c. In § 185.1250, by adding paragraph (b) to read as follows:

§ 185.1250 Cyfluthrin.

* * * * *

(b)(1) A maximum residue level regulation is established for residues of the insecticide cyfluthrin, [cyano[4-fluoro-3-phenoxyphenyl]-methyl-3-[2,2-dicloroethenyl]-2,2-dimethylcyclopropanecarboxylate] in or on the following food commodities:

Commodities	Parts per million
Citrus oil	0.3

(2) This regulation reflects the maximum level of residues in citrus oil consistent with use of cyfluthrin on citrus, fruits in conformity with § 180.436 of this chapter and with the use of good manufacturing practices.

* * * * *

PART 186 — [AMENDED]

3. In part 186:

a. The authority citation for part 186 is revised to read as follows:

Authority: 21 U.S.C. 342, 348, and 701.

b. In § 186.1250, by adding paragraph (b), to read as follows:

§ 186.1250 Cyfluthrin.

* * * * *

(b)(1) A maximum residue level regulation is established for residues of the insecticide cyfluthrin, [cyano[4-fluoro-3-phenoxyphenyl]-methyl-3-[2,2-dicloroethenyl]-2,2-dimethylcyclopropanecarboxylate] in or on the following feed commodities:

Commodities	Parts per million
Citrus, dried pulp	0.3

(2) This regulation reflects the maximum level of residues in citrus, dried pulp consistent with use of cyfluthrin on citrus, fruits in conformity with § 180.436 of this chapter and with the use of good manufacturing practices.

* * * * *

[FR Doc. 96–18183 Filed 7–15–96; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 232 and 235

Aid To Families With Dependent Children; AFDC/Child Support Program Cooperation and Referral

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule is part of President Clinton's recently announced initiative to strengthen the child support enforcement system and promote parental responsibility. ACF is proposing to amend the regulations for the Aid to Families with Dependent Children (AFDC) program under title IV–A of the Social Security Act to improve cooperation requirements as follows:

Prior to receipt of AFDC, applicants will be required to provide sufficient information to located the non-custodial parent, establish the paternity of a child born out of wedlock and secure child support. By making the receipt of benefits conditional upon fulfillment of the cooperation requirement at the time of application, this policy will increase the likelihood of success in locating non-custodial parents, establishing paternity, and securing support.

- Applicants and recipients will be held to a strict cooperation standard. They will be required to provide the name of the father and identifying information available to the caretaker such as the address, Social Security Number, telephone number, place of employment or school, and names of relatives, etc.
- To ensure effective due process protection, States will be required to establish criteria to determine when the individual cannot reasonably be expected to know the required identifying information.
- The AFDC agency will be required to refer applicants to the child support agency within two working days of application so that the non-custodial parent can be located and paternity action can be initiated right away.
- To ensure that clients are protected from delays in processing applications, the prohibition on State or local agencies from denying, delaying or discontinuing assistance pending a good cause determination will also apply to the cooperation determination.
- To provide additional flexibility, States may request waivers under the Intergovernmental Cooperation Act to have the child support agency, rather than the AFDC agency, make the good cause and cooperation determination. Since the child support agency has the responsibility to bring legal action to establish paternity, it is often in the best position to make this determination.

The current good cause provisions are unchanged. Applicants and recipients who have good cause will continue to be exempt from cooperating.

DATES: Interested persons and agencies are invited to submit written comments concerning these regulations no later than September 16, 1996.

ADDRESSES: Comments should be submitted in writing to the Assistant Secretary for Children and Families, ATTENTION: Mr. Mack A. Storrs, Director, Division of AFDC/JOBS, 5th Floor, Office of Family Assistance, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447 or delivered to the Office of Family Assistance, 5th Floor, Aerospace Building, 901 "D" St., S.W., Washington, D.C. 20447, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these hours by making arrangements with the contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Mack A. Storrs, Administration for Children and Families, Office of Family Assistance, 5th Floor, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, telephone (202) 401–9289.

SUPPLEMENTARY INFORMATION:

Background

Recently, President Clinton announced a new initiative to strengthen the child support enforcement system and promote parental responsibility. The President directed the Secretary to exercise her legal authority to propose new rules which would require all applicants for welfare to cooperate by providing sufficient information, *prior* to receipt of AFDC, to locate the non-custodial parent, establish the paternity of a child born out of wedlock and secure child support. The new regulations will also require AFDC recipients to similarly cooperate at their next redetermination.

Currently, more than 1.2 million children are born each year to unwed parents. These children deserve to have their relationship with their father legally acknowledged and to receive financial and emotional support from him. No father should be able to bring a child into this world and then just walk away. A clear message must be conveyed to parents, especially young parents, that bringing a child into this world brings with it significant, long-term responsibilities.

Paternity establishment is the crucial, first step toward securing financial support for a child, and, perhaps even more importantly, promoting the development of a nurturing relationship with the father. If paternity is not established, the child may be denied a lifetime of emotional, psychological and economic benefits. While a parental link opens the door to child support and other potential financial benefits, it also provides qualitative benefits to the child, such as the value of a father's legal acknowledgement of their relationship, an opportunity for extended family ties, and access to medical history and genetic information.

The Administration has made paternity establishment a top priority. In the Omnibus Reconciliation Act of 1993, the Administration proposed, and Congress enacted, a requirement for States to establish voluntary paternity acknowledgment programs in hospitals as an effective way to establish child/father bonds right from the start of a child's life. Voluntary data from thirty-one States show that more than 200,000 paternities were established through the in-hospital program in 1995. In addition, the total number of paternities established by child support agencies has increased by 40 percent since 1992. Still, more needs to be done. That is why the President has ordered the Secretary of the Department of Health and Human Services to exercise her legal authority to propose new regulations on paternity establishment and child support cooperation in the AFDC program.

Unless paternity is established for a child in a family seeking welfare, the government pays the costs of raising the child—costs that the father should be sharing. As a condition of receipt of welfare benefits, mothers are currently required to cooperate with paternity-establishment efforts. However, the process of cooperating is seldom completed during the application process, and efforts to determine cooperation and establish paternity are often not made until after the mother has begun receiving benefits. Research shows that a greater percentage of mothers know the identity and whereabouts of the father of their child than is currently reported to welfare agencies. Because agencies do not receive all relevant information, paternity is often not established. In fact, the national rate for paternity establishment in welfare cases is only about 40 percent. Under these proposed rules, quick action would be taken to improve life prospects for families.

Since passage of the Family Support Act in 1988, States have been dramatically changing the culture of welfare to emphasize that assistance ought to be temporary while families take the necessary steps to become self-sufficient. Establishing paternity and getting child support from the non-custodial parent, combined with finding and holding a job, are critical components of a financial base leading to independence. In addition to assuring that eligible applicants receive prompt and accurate benefits, eligibility staff should know, understand and communicate the benefits and need for paternity establishment and self-sufficiency.

Discussion of Proposed Changes

In cases of a child born out of wedlock, the establishment of paternity is a critical first step in the child support enforcement process. The earlier paternity is established, the sooner the child may benefit from child support, the father's medical benefits, and information about his medical history. The child may also gain access to other financial benefits such as dependent's benefits under Social Security, pensions, veterans' benefits, and rights of inheritance.

Section 402(a)(26)(B) of the Social Security Act provides that, as a condition of eligibility for aid, each applicant or recipient will be required to cooperate with the State in establishing the paternity of a child born out of wedlock, in locating the non-custodial parent and in obtaining support or any other payments or property due such applicant or such child, unless there is good cause for refusing to cooperate. Good cause determinations are rendered by the AFDC agency, based on standards prescribed by the Secretary.

Current rules at § 232.12(b) provide that the applicant or recipient shall provide information, but allow an individual to "attest to the lack of information, under penalty of perjury." Many unmarried applicants are routinely attesting that they do not have the basic information needed to locate the father and establish paternity. As a result, paternity is established in only about 40 percent of these cases.

To increase the rate of paternity determinations, a number of States have requested that we tighten the definition of cooperation by requiring that applicants and recipients furnish specific information about the identity of the non-custodial parent. Under waivers in their welfare reform demonstrations, a number of States have modified or proposed modifications to the cooperation criteria to define cooperation as providing specific information. Some of these modifications have subsequently been challenged in court for providing no exceptions. Advocacy groups have also expressed concern about changes in the cooperation rules because some caretaker relatives do not have or cannot be reasonably expected to obtain the necessary information to identify and locate the non-custodial parents. We are proposing a regulation which we believe balances these concerns.

Recognizing how important it is to establish paternity or secure child support at the earliest possible time, we propose to amend the regulations at § 232.12 and § 235.70 to require that States take action to secure the applicant's cooperation on paternity and child support within the application-processing period. Except in circumstances where the client cannot be reasonably expected to know or obtain the information, or claims good cause, the applicant will be required to provide the name and sufficient information necessary to identify the non-custodial parent.

We propose to amend § 232.12(b) to require States to establish effective procedures to obtain necessary information to identify the non-custodial parent. We have specified at the revised § 232.12(b)(3) that the required cooperation includes providing both the name of the putative father and other information sufficient to verify the identity of the person named. The other information which must be given could include: the social security number, date of birth, past or present address,

telephone number, past or present place of employment, past or present school attended, names and addresses of parents, friends or relatives able to provide location information, or other information which could enable service of process on such person. This requirement is intended to ensure that the mother provide at least the name of the father and sufficient additional information so that the State or local agency can verify that the person named is an actual person and not a fictitious name and to elicit information that can aid the agency in locating the person. This new specific requirement does not change the general requirement at § 232.12(b)(1) that the mother must provide any other verbal or written information, or documentary evidence known to, possessed by, or reasonably obtainable by the applicant or recipient.

Further, the revised regulation would replace the attestation rule at § 232.12(b)(3) with a provision that would allow States to establish criteria for determining cooperation in cases where the applicant or recipient cannot reasonably be expected to know the identifying information about the non-custodial parent. We recognize that the kind and amount of information that a client may have depends on the nature of the relationship and believe that States are in the best position to make this determination. We have included an example of one common situation that the criteria must address—cases where recipients do not know or have the required information due to a long lapse of time since contact with the non-custodial parent. This will allow States to require more than a mere attestation but to accept less than the required information, as specified by the State, in limited circumstances. Providing States this flexibility is reasonable since they are in the best position to develop criteria that respond to their administrative needs and caseload characteristics. States are encouraged to elicit and seriously consider the views of client representatives and advocates when formulating the new criteria.

Section 232.46 prohibits State or local agencies from denying, delaying or discontinuing assistance pending a good cause determination. To ensure that clients are protected from delays in processing applications, we are proposing that this requirement also apply to the cooperation determination. For example, if the name and identifying information provided by the applicant cannot be verified within the application processing timeframe (no later than 45 days from the filing date or a shorter period as elected by the State) and the delay is not due to inaction on the part of the applicant, then benefits must be authorized once other eligibility and payment factors have been met. This also applies to all application filed under any State-defined criteria for emergency processing.

So that the non-custodial parent can be located and paternity or child support action can be initiated right away, we are proposing that the AFDC agency be required to send a prompt notice to the child support agency that an application has been filed on behalf of a child who is deprived of parental support or care due to the continued absence of a parent. Section 235.70 will be amended to define a "prompt notice" as one that is sent to the child support agency within two working days of the date that the application for AFDC is filed, rather than the current requirement of within two working days of when assistance is granted.

We propose that these new cooperation requirements be effective 90 days after publication of the final rule or, for States requiring new legislation, no later than the first day of the first calendar quarter beginning after the close of the first legislative session that begins after the date of the final rule. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature. The new requirements will apply to all applicants after that date, and to current recipients no later than the next redetermination after that date. Before imposing the new requirements on recipients, States shall notify recipients in writing about their responsibilities to provide additional information, the consequences of failure to cooperate and their rights to claim good cause and to appeal adverse actions.

For current recipients, we expect States to review the records of cases where paternity or support has not been established, or the whereabouts of the non-custodial parent is not known. The purpose of the review is to determine, based on case situation, whether the recipient may have additional information or has cooperated under these new requirements. States should pay particular attention to their criteria for assessing the recipient's lack of information, based on the lapse of time or age of a child for whom paternity has not been established. States may apply the new requirements at any time after the notice to recipients, but shall apply them no later than the next redetermination.

Several States have also persuasively argued that the child support agency, rather than the AFDC agency, should be permitted to make the good cause and cooperation decisions. Allowing child support staff to make the decisions may be more efficient because it eliminates delays caused by the "back-and-forth" referrals between child support and AFDC staff. It also encourages client responsibility and rapport in dealing with workers who help establish paternity and obtain child support. We believe these arguments have merit. Although we are not proposing a regulatory change in this area, States that are interested in having the child support agency render the good cause and cooperation decisions are encouraged to request a waiver under section 204 of the Intergovernmental Cooperation Act of 1968.

Under the Intergovernmental Cooperation Act, the Governor or the appropriate executive of the single State agency may request a waiver and explain: (1) Why the proposed organizational arrangement is more effective and efficient within the State government; and (2) how the objectives of title IV–A will be met by the alternative arrangement that is being requested (e.g., having the child support agency render the good cause and cooperation decisions). The formal request for a waiver, together with the State plan preprint pages (i.e., Section 1.1–2, page 1 and Attachment 1.1–B) should be submitted to the appropriate ACF Regional Office for review and approval.

We also want to clarify that no changes are proposed in several areas related to cooperation. Pursuant to section 402(a)(26) of the Social Security Act, a failure to cooperate, without good cause, either at application or subsequently will result in the removal of the caretaker's needs from the grant. This consequence is not changed. Likewise, States are still required to inform all applicants or recipients who fail to cooperate of their right to a fair hearing to appeal the determination. If an individual fails to cooperate and is determined ineligible for benefits, but subsequently chooses to cooperate and takes appropriate action, benefits will be reinstated. Finally, the current requirements regarding good cause for not cooperating because it would be "against the best interests of the child" are not changed.

Regulatory Procedures

Executive Order 12866 on Regulatory Planning and Review

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that these rules are consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

The proposed rule is designed to provide that applicants and recipients provide sufficient information to establish paternity and obtain support, and that information be provided on a timely basis—i.e., before establishing welfare eligibility, if possible. At the same time, it seeks to both protect cooperative individuals against unreasonable requirements and prevent unnecessary legal challenges in the States. Thus, we believe it properly balances our interests in improving the effectiveness of paternity establishment and child support efforts against our concern about the burdens imposed both on governmental agencies and needy families seeking assistance.

The requirement on welfare agencies to make referrals within two days of application may initially be burdensome in some States or localities, but we believe that the broad automation of welfare and child support enforcement programs substantially mitigates any such burden, and that the two-day requirement is necessary to ensure timely and effective paternity establishment efforts. Nevertheless, we welcome specific comments on the administrative burden associated with this two-day requirement.

Paperwork Reduction Act

This NPRM contains information collection requirements in sections 232.12, 232.46, and 235.70. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Administration for Children and Families has submitted a copy of these sections to the Office of Management and Budget (OMB) for review.

More specifically, sections 232.12 and 232.46 both include State plan amendments; section 232.12(b) includes information to be provided to the State welfare agency by the parent seeking assistance; and section 235.70 revises prompt notice requirements.

One group of respondents to the proposed information collection requirements is State welfare agencies. These agencies will be required to revise their State plans to specify: (1) The actions, documents and information required for cooperation of applicants and recipients—including what additional information (beyond a name) individuals must provide in order to establish paternity [at section 232.12(b)(3)]; (2) the criteria for determining cooperation when individuals cannot reasonably be expected to know the required identifying information [also at section 232.12(b)(3)]; and (3) provision of benefits pending a determination of cooperation or good cause in cases of compliance with other requirements [at section 232.46]. The State plan changes are necessary to ensure that States are making necessary changes to improve the effectiveness of their paternity establishment and child support efforts, while protecting needy individuals from undue harm and unreasonable requirements. By requiring specification of these policies and procedures in the State plans, we help to ensure broad public access to information on the policies and procedures being implemented by States and expand the opportunities for public comment on them. To minimize the burden on respondents, we will be providing preprint pages for their use. Adding this additional plan language will create a one-time burden for the 54 State agencies, which we estimate will average 5 hours per State, for a total burden of 270 hours.

We expect State and local welfare agencies implementing these new plan provisions will also spend additional time collecting, documenting and inputting information when individuals apply for welfare and, if needed, when recipients have their benefits redetermined. However, we believe that the burden of collecting this information up front in the welfare office should be substantially, if not fully, offset by a reduced burden on child support and Medicaid agencies. These latter agencies will face a reduction in their own administrative burdens because they will be receiving more complete and more useful information on the cases that are referred from the welfare office.

We estimate that 240,000 applicants per year would be affected by these additional requirements (160,000 of which would become recipients). We also estimate that each year about 55,000 recipients who were previously affected by these requirements and previously provided sufficient information would be again affected because of the birth of a new child. Thus, a total of 295,000 applicants and recipients would be affected on an annual basis.

In addition, over the first couple of years, as these requirements are implemented, we estimate that 360,000 recipients would be affected at the time of their first subsequent redetermination. The vast majority of recipients will only be affected one time—at their first redetermination following the implementation of the new requirements.

The burden on parents seeking assistance will be more significant, but the precise impact is difficult to determine. We do not know the specific policies and procedures the States will put into effect. We also do not know what percentages of paternity cases are already providing "sufficient information" under existing program rules. Nevertheless, with these caveats in mind, we estimate that the number of affected applicants and recipients per year would be 295,000 and the average additional time required of each of these applicants and recipients would be 30 minutes (i.e., 0.5 hours). Thus, the total ongoing impact would be 147,500 hours per annum.

Likewise, we estimate that 360,000 recipients would be affected on a one-time basis over the first couple of years as the new requirements are implemented. Assuming a slightly higher hourly burden on these recipient parents (of 45 minutes, or 0.75 hours, per individual) would produce a total burden estimate of 270,000 hours.

We do not expect that the overall burden on State and local agencies associated with the prompt notice requirements will be affected by this proposed rule.

In summary, therefore, we estimate a net one-time burden on State and local agencies of 270 burden hours; annual burdens for parents who are either applicants or recipients with new infants of 147,500 burden hours; and a one-time burden on recipient parents who are newly subject to these requirements of 270,000 burden hours.

The Administration for Children and Families (ACF) will consider comments by the public on these proposed collections of information in:

- Evaluating whether the proposed collections are necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;
- Evaluating the accuracy of ACF's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and the clarity of the information to be collected;
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technology, e.g., permitting electronic submission of responses.

To ensure that public comments are fully understood and have the maximum effect on the development of final regulations, ACF urges that each comment clearly identify the specific section or sections of the regulations at issue and the type of respondent being addressed.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations. Written comments to OMB on the proposed information collections should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, ATTN: Ms. Wendy Taylor.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities because the primary impact of these regulations is on State governments and individuals. We do not believe that any provision will have direct impact on small businesses or other small entities within the scope of the Regulatory Flexibility Act and therefore, a regulatory flexibility analysis is not required.

List of Subjects

45 CFR Part 232

Aid to families with dependent children, Child support, Grant programs-social programs.

45 CFR Part 235

Aid to families with dependent children, Fraud, Grant programs-social programs, Public assistance programs.

(Catalog of Federal Domestic Assistance Programs 93.020, Assistance Payments Maintenance Assistance.)

Dated: June 21, 1996.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: July 1, 1996.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, we propose to amend Chapter II of Title 45 of Code of Federal Regulations as follows:

PART 232—SPECIAL PROVISIONS APPLICABLE TO TITLE IV–A OF THE SOCIAL SECURITY ACT

1. The authority citation for Part 232 is amended to read as follows:

Authority: 42 U.S.C. 602, and 1302.

2. Section 232.12 is amended by revising the introductory text of paragraph (b) and paragraphs (b)(1) and (b)(3).

§ 232.12 Cooperation in obtaining support.

* * * * *

(b) The plan shall specify that "cooperate" includes any of the actions reflected in paragraphs (b) (1), (2), (3), or (4) of this section that are relevant to, or necessary for, the achievement of the objectives specified in paragraph (a) of this section:

(1) Appearing at an office of the State or local agency or the child support agency as necessary prior to receipt of benefits (or, if necessary for recipients, at redetermination) to provide verbal or written information, or documentary evidence known to, possessed by, or reasonably obtainable by the applicant or recipient.

(i) An applicant or recipient who knowingly provides false information shall be subject to prosecution for perjury.

(ii) States shall specify the actions, documents and information required of applicants and recipients to cooperate in achieving the objectives specified in paragraph (a).

(2) * * *

(3)(i) As part of the requirement to cooperate in paternity establishment, providing:

(A) The name of the putative father; and

(B) Sufficient additional information to enable the State agency, if reasonable efforts were made, to verify the identity of the person named; including such information as the putative father's social security number; date of birth; past or present address; telephone number; past or present place of employment; past or present school attended; names and addresses of parents, friends or relatives able to provide location information; or other information which could enable service of process on such person.

(ii) The State shall establish criteria for determining cooperation in cases where the individual cannot reasonably be expected to know the required identifying information about the father (including, but not limited to, cases where long term recipients do not know the required information due to a lapse of a long period of time since contact with the father).

* * * * *

3. Section 232.46 is revised to read as follows:

§ 232.46 Granting or continuation of assistance.

The plan shall provide that the State or local agency will not deny, delay, or discontinue assistance pending a determination of cooperation or good cause for refusal to cooperate if the applicant or recipient has complied with the requirements of §§ 232.12, 232.40(c) and 232.43 to furnish corroborative evidence and information. This requirement applies to the 45-day application processing time frame, a shorter application period as elected by the State and to all applications filed under any State-defined criteria for emergency processing.

PART 235—ADMINISTRATION OF FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for Part 235 continues to read as follows:

Authority: 42 U.S.C. 603, 616, and 1302.

2. Section 235.70 is amended by revising paragraph (b)(2), removing paragraph (b)(3), and redesignating paragraph (b)(4) as (b)(3) to read as follows:

§ 235.70 Prompt notice to child support or Medicaid agency.

* * * * *

(b) * * *

(1) * * *

(2) *Prompt notice* means written notice including a copy of the AFDC case record, or all relevant information as prescribed by the child support agency. Prompt notice must also include all relevant information as prescribed by the State medicaid agency for the pursuit of liable third parties. The prompt notice shall be provided within two working days of the filing of the application.

* * * * *

[FR Doc. 96–18116 Filed 7–16–96; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

[MM Docket No. 96–16, DA 96–1033]

Revision of Broadcast EEO Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment period.

SUMMARY: In *Streamlining Broadcast EEO Rules and Policies*, DA 96–1033, released June 26, 1996, (*Streamlining*), the Commission grants a motion for extension of time concerning the Commission's *Order and Notice of Proposed Rule Making*, MM Docket No. 96–16, (*NPRM*). A group of organizations request the extension of time due to, among other things, staff shortages. The Commission finds that the public interest favors grant of the motion for extension of time for filing comments, as well as a corresponding extension of time for filing reply comments.

DATES: Initial comments due July 11, 1996; reply comments due August 12, 1996.

ADDRESSES: Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Hope G. Cooper, Mass Media Bureau, Enforcement Division. (202) 418–1450.

SUPPLEMENTARY INFORMATION:

Adopted: June 26, 1996.
Released: June 26, 1996.
Comment Date: July 11, 1996.
Reply Comment Date: August 12, 1996.

1. On February 8, 1996, the Commission adopted an *Order and Notice of Proposed Rule Making*, 11 FCC Rcd 5154 (1996), 61 FR 9964 (March 12, 1996) (*NPRM*), which vacated the Commission's *EEO Forfeiture Policy Statement* and requested comment on proposals for amending the Commission's EEO Rule and policies. Comment and Reply Comment dates were established for April 30, 1996, and May 30, 1996, respectively.

2. On April 12, 1996, twenty organizations, including the Minority Media and Telecommunications Council (hereinafter "Petitioners"), filed a Motion for Extension of Time to file comments in response to the above-captioned proceeding.[1] On April 26, 1996, the Commission granted the Petitioners' request for extension of time.[2] The date for filing comments was extended to July 1, 1996, and the date for filing reply comments was extended to July 31, 1996.

3. On June 20, 1996, Petitioners filed a Motion for Further Extension of Time. Therein, Petitioners request that we extend further the date for submission of comments in response to the *NPRM* by ten days, until July 11, 1996. Petitioners do not seek an extension of the reply comment deadline. In support of their request, petitioners state that they are conducting "very extensive research on broadcast stations' EEO practices, in order to provide the Commission and the other parties with a useful database for evaluation of the Commission's proposals."[3] They assert that due to, among other things, staff shortages, "it is physically impossible to complete this task by July 1."[4]

4. It is Commission policy that extensions of time not be routinely granted. *See* Section 1.46(a) of the Commission's Rules, 47 CFR Section 1.46(a). We believe, however, that the public interest favors grant of the request for extension of time for filing comments in this proceeding. In addition, we believe that the public interest favors a corresponding extension of time for filing reply comments. Accordingly, we will extend the date for filing comments to July 11, 1996, and extend the date for filing reply comments to August 12, 1996.

5. Accordingly, it is ordered that the Motion for Extension of Time filed by Petitioners is granted and that the Commission, on its own motion, also extends the time for filing reply comments.

6. It is therefore ordered that the dates for filing comments and reply comments in this proceeding ARE EXTENDED to July 11, 1996, and August 12, 1996, respectively.

7. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 4(i) and 303(r), and Sections 0.204(b), 0.283 and 1.46 of the Commission's Rules, 47 CFR Sections 0.204(b), 0.283 and 1.46.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 96–18077 Filed 7–16–96; 8:45 am]

BILLING CODE 6712–01–P

[1] *See* National Council of Churches *et al.*, Petition For Reconsideration and Clarification, MM Docket No. 96–16, filed April 11, 1996, at 1.

[2] FCC 96–198 (released: April 26, 1996), 61 FR 25183 (May 20, 1996).

[3] Minority Media and Telecommunications Council *et al.*, Motion For Further Extension of Time, MM Docket No. 96–16, filed June 20, 1996, at 1.

[4] *Id.* at 2.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 070596D]

New England Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day meeting to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will begin on Wednesday, July 17, 1996, at 10 a.m. and on Thursday, July 18, 1996, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, Route One, Peabody, MA; telephone (508) 535–4600. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097; telephone: (617) 231–0422.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, (617) 231–0422.

SUPPLEMENTARY INFORMATION:

July 17, 1996

After introductions, the July 17 session will begin with a report on and discussion of the Canadian Program for Responsible Fishing Operations. The Marine Mammal Committee report will follow and include a recommendation to take final action on Framework Adjustment 16 to the Northeast Multispecies Fishery Management Plan (Multispecies FMP) that would extend the timing of the Mid-coast Closure Area. An additional measure under consideration for the same framework adjustment would prohibit the use of pelagic and any other gillnets in the harbor porpoise time/area closures under certain conditions.

In the afternoon, the Multispecies Groundfish Committee will review and possibly recommend changes to the gillnet effort reduction measures currently in the FMP. Additionally, they will discuss membership on the Council's Multispecies Monitoring Committee, progress on the development of a fishery management plan for whiting, and possible alternatives to the Gulf of Maine

groundfish area closures. The Council also will consider final action on Framework Adjustments 17 and 18, as explained below. There will also be an update on the Atlantic States Marine Fisheries Commission's (ASMFC's) Winter Flounder Plan.

July 18, 1996

The July 18 session will begin with reports from the Council Chairman; Executive Director; Director, Northeast Region, NMFS (Regional Director); and representatives from the Northeast Fisheries Science Center; ASMFC; U.S. Coast Guard; and the Mid Atlantic Council. The Herring Committee Chairman will brief the Council on the outcome of the most recent United States/Canada meeting. The Enforcement Committee will discuss its review of the management alternatives proposed for inclusion in the proposed monkfish fishery management plan (Monkfish FMP). There will be a discussion of the experimental fishery for mahogany quahogs in the Gulf of Maine. The Regional Director is considering an experimental fishery for vessels involved in a Fishing Industry Grant (FIG) entitled "Local Production and Market Development for High Quality Cape Cod Shark Frozen Fillets." The objective of the project is to enhance dogfish processing and marketing. Operations under the FIG grant have become restricted by the implementation of Amendment 7 to the Multispecies FMP and therefore possibly threaten the success of the grant. Experimental fishing permits would be necessary for vessels to continue to operate as they had done under Amendment 5 to the FMP. The Regional Director is considering issuing experimental fishing permits for federally permitted vessels that may be involved in a continuation of a gear development project conducted by the Massachusetts Division of Marine Fisheries (MADMF) in the Cape Cod Bay/Massachusetts Bay area. The purpose of the experimental fishery is to continue to test and refine a MADMF constructed trawl and the associated fishing technique as a selective type of gear that can be used in the whiting fishery, as well as the dogfish and red hake fisheries. The MADMF expects its experimental net to retain primarily whiting, red hake, and dogfish while minimizing the catch of bottom dwelling groundfish. The information compiled by MADMF from last year's experiment has been reviewed by NMFS and supports continuation of the project.

The afternoon session will include reports from the Gear Conflict and Monkfish Committees. There will be a briefing on the most recent industry meeting concerning a proposed framework adjustment to address the Southern New England gear conflict situation, as well as a status report on the development of monkfish management alternatives. The Monkfish Committee will present a Monkfish FMP draft public hearing document for Council comment. The Council will address any other outstanding business at the conclusion of the agenda items described above.

Background for Framework Adjustments

Abbreviated Rulemaking—Northeast Multispecies

At the recommendation of its Marine Mammal Committee, the Council will consider final action on Framework Adjustment 16 to the Multispecies FMP under the framework for abbreviated rulemaking procedure contained in 50 CFR 648.90. The Council proposes to further reduce the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery by extending the timing of the Mid-coast Closure Area. Currently, the use of sink gillnets is prohibited from November 1 through December 31. This adjustment would add September 15 through October 31 to the existing period. No change in area is proposed although the Council may recommend an experimental fishery to continue the assessment of the use of acoustic deterrents to mitigate the porpoise bycatch.

Final action also may be taken on a provision to prohibit the use of pelagic and other gillnets during the harbor porpoise time/area closures. The measure, which also would be included in Framework Adjustment 16, would allow such gillnets if they were constructed of mesh less than the regulated size of 6 inches (15 cm), were not anchored to the bottom but attached to the boat, had surface floats, and were set in the top third of the water column. The Council is considering two options for the length of the net, 300 feet (91 m) and 900 feet (274 m).

At the recommendation of its Groundfish Committee, the Council will consider final action on Framework Adjustments 17 and 18 to the Multispecies FMP. Framework Adjustment 17 would restore DAS to vessels that took time out of the groundfish fishery between May 31 and July 1 and were then subject to a DAS allocation under Amendment 7, which again subtracted days for those same months. This adjustment would rectify the inequity. Framework Adjustment 18 would allow herring/mackerel fishing with pelagic mid-water trawls in areas of Georges Bank now closed to all gear capable of catching groundfish.

The Council will consider public comments at a minimum of two Council meetings prior to making any final recommendations to the Regional Director under the provisions for abbreviated rulemaking cited above. If the Regional Director concurs with the measures proposed by the Council, he will publish them as a final rule in the **Federal Register**.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall, New England Fishery Management Council (see **ADDRESSES**), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 11, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–18081 Filed 7–11–96; 4:51 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 61, No. 138

Wednesday, July 17, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Modification of Total Amount of Tariff-rate Quota for Imported Raw Cane Sugar

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice modifies the aggregate quantity of raw cane sugar that may be entered under subheading 1701.11.10 of the Harmonized Tariff Schedule of the United States (HTS) during fiscal year 1996 (FY 96). As modified, such aggregate quantity is 2,167,195 metric tons, raw value.

EFFECTIVE DATE: June 12, 1996.

ADDRESSES: Inquiries may be mailed or delivered to the Sugar Team Leader, Import Policy and Programs Division, Foreign Agricultural Service, Room 5531, South Building, U.S. Department of Agriculture, Washington, D.C. 20250–1000.

FOR FURTHER INFORMATION CONTACT: Stephen Hammond (Sugar Team Leader); telephone: 202–720–1061.

SUPPLEMENTARY INFORMATION: Paragraph (a)(i) of additional U.S. note 5 to chapter 17 of the HTS provides, in part, that "* * * the aggregate quantity of raw cane sugar entered, or withdrawn from warehouse for consumption, under subheading 1701.11.10, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), not less than, 1,117,195 metric tons, as shall be established by the Secretary of Agriculture (hereinafter referred to as 'the Secretary'), and the aggregate quantity of sugars, syrups, and molasses entered, or withdrawn from warehouse for consumption, under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10 and 2106.90.44, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), not less than 22,000 metric tons, as shall be established by the Secretary." On August 3, 1995, the Secretary established the aggregate quantity of 1,117,195 metric tons, raw value, of raw cane sugar that may be entered under subheading 1701.11.10 of the HTS and the aggregate quantity of 22,000 metric tons (raw value basis) for certain sugars, syrups, and molasses that may be entered under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS during FY 96. (60 FR 42142.) On November 9, 1995, the Secretary increased the aggregate quantity of raw cane sugar that may be entered under subheading 1701.11.10 to 1,417,195 metric tons. On January 17, 1996, the Secretary increased the aggregate quantity of raw cane sugar that may be entered under subheading 1701.11.10 to 1,817,195 metric tons. Again on April 1, 1996, the Secretary increased the aggregate quantity of raw cane sugar that may be entered under subheading 1701.11.10 to 2,017,195 metric tons.

Paragraph (a)(ii) of additional U.S. note 5 to chapter 17 of the HTS provides that "[w]henever the Secretary believes that domestic supplies of sugars may be inadequate to meet domestic demand at reasonable prices, the Secretary may modify any quantitative limitations which have previously been established * * *." The U.S. sugar production estimate for FY 96, released on June 12, 1996, in the World Agricultural Supply and Demand Estimates (WASDE), was reduced by 130,000 short tons raw value (STRV) to 7.34 million STRV from the WASDE production forecast released on April 11, 1996. During this same period, the U.S. sugar ending stocks estimate declined by 344,000 STRV, to 1.31 million STRV. Both the current season-to-date (October 1 through June 11) average domestic wholesale refined sugar price (28.75 cents per pound), and the raw cane sugar price (22.62 cents per pound) are at their highest average in over five years.

Paragraph (b)(i) of U.S. additional note 5 proves that "[t]he quota amounts established [by the Secretary] may be allocated among supplying countries and areas by the United States Trade Representative."

Notice

Notice is hereby given that I have determined, in accordance with paragraph (a)(ii) of additional U.S. note 5 to chapter 17 of the HTS, that an aggregate quantity of up to 2,167,195 metric tons, raw value, of raw cane sugar described in subheading 1701.11.10 of the HTS may be entered or withdrawn from warehouse for consumption during the period from October 1, 1995 through September 30, 1996.

This modified quota amount will be allocated among supplying countries and areas by the United States Trade Representative.

Signed at Washington, D.C. on July 10, 1996.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 96–18089 Filed 7–16–96; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Long Draw Salvage Timber Sale, Okanogan National Forest, Okanogan County, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) for a proposal to salvage dead and dying timber in the Long Draw analysis area. The Long Draw Salvage project includes: A salvage timber sale of dead, dying and live trees in stands at risk to insect caused mortality; closure of a road; construction and reconstruction of roads; and a prescribed burn of shrub and grass lands to decrease shrub cover and invigorate native species. The EIS will develop and evaluate a range of alternatives for management of the resources in the project area. the alternatives will include the No Action alternative, involving no timber harvest or road construction, and alternatives in response to issues identified during the scoping process. The proposed action in consistent with the direction in the 1989 Okanogan National Forest Land and Resource Management Plan (Forest Plan), as amended, which provides the overall guidance for management of the area. The majority of the project area lies within the Long Draw and Long Swamp Roadless Areas. Implementation of the proposal is scheduled for Fiscal Year 1997. The agency invites written comments on this project. In addition,

the agency gives notice of this environmental analysis so that interested and affected people are aware of how they may participate and contribute to the decision making process.

DATES: Comments concerning this proposal must be received by August 15, 1996.

ADDRESSES: Submit written comments to John Townsley, Project Coordinator, Okanogan National Forest Supervisors Office, 1240 S. Second Avenue, Okanogan, Washington 98840, telephone: 509–826–3568.

FOR FURTHER INFORMATION: Direct questions about the proposed action and environmental analysis to John Townsley, Project Coordinator, Okanogan National Forest Supervisors Office, 1240 S. Second Avenue, Okanogan, Washington 98840, telephone: 509–826–3568.

SUPPLEMENTARY INFORMATION: The Long Draw analysis area consists of approximately 13,300 acres of primarily forested lands. The area is located 25 miles west of Tonaskat, Washington, in the Toats Coulee watershed. Forest types include: Lodgepole pine; Englemann spruce; subalpine fir; mixed aspen/conifer; and mixed Douglas-fir/western larch forest. Since the late 1980s, lodgepole pine stands have experienced increasing tree mortality from a mountain pine beetle epidemic. It is estimated that of the 13,300 acres within the Long Draw analysis area boundary, over 9,000 acres have been attacked by the mountain pine beetle, throughout the project area, and have differing amounts of mortality. Mountain pine beetle attacks and kills lodgepole pine trees generally six inches in diameter or larger. Trees of this size, growing in crowded, overstocked conditions, are most at risk. The epidemic is expected to continue until all or most of the suitable host trees are killed.

The Analysis Area is allocated to the following Management Areas:

—Approximately 56 percent is in Management Area 5 which is designed to provide opportunities for recreation and viewing scenery in a roaded natural setting with a retention or partial retention scenic quality objective.

—Approximately 44 percent is in Management Area 12 which is designed to provide habitat to support a stable lynx population over the long term while accessing the area for the purpose of growing and producing merchantable wood fiber.

—Less than 1 percent is in Management Area 17 which is designed to provide a variety of developed recreation opportunities in a roaded setting.

Scoping for this project began in November 1995, and continued throughout development of an environmental assessment (EA) which was issued on June 21, 1996. In November 1995, a proposed action was mailed to interested individuals. This proposed action was based on preliminary information, with no detailed analysis. As a result of scoping and detailed analysis, a revised proposed action was developed. An EA was sent to the public on June 21, 1996. The Forest also hosted an open house in Seattle and a field trip to the analysis area to discuss the proposed action.

On July 2, 1996, Secretary of Agriculture Glickman issued direction that "No salvage sale in inventoried roadless areas may go forward using authorities in section 2001(b) of Public Law 104–19, except * * * [where] trees 'imminently susceptible to fire' are located in areas with high fuel loading or where there is a high fire risk rating for a specific habitat type, and near local communities or occupied structures." Since the Long Draw area does not meet all of these elements and the Long Draw Salvage Timber Sale project is expected to have significant effects on the roadless character in the Long Draw and Long Swamp Roadless Areas, this environmental analysis will be documented in an EIS.

This EIS will tier to the Forest Plan as amended. The amended Forest Plan provides forest-wide standards and guidelines, management area standards and guidelines, and desired future conditions for the various lands on the Forest. This direction is provided for management practices that will be utilized during the implementation of the Forest Plan.

The Long Draw Salvage Timber Sale would salvage 1,129 acres of dead, dying, and live trees at risk of insect caused mortality, while maintaining adequate connectivity for lynx. Salvage would be done with regeneration and commercial thinning harvest methods, and would use ground-based logging systems. Approximately 15.7 miles of new road would be constructed, approximately 10.6 miles of road would be reconstructed, and approximately 0.4 miles of road would be closed.

The following issues have been identified in this proposed project: unroaded and undeveloped character of the area; salvage of dead and dying timber; economics; soils; inland fisheries; existing and future fire risk; wilderness; recreational opportunities; wildlife; forest health; and the cumulative effects of Federal and non-Federal actions.

The analysis will develop a range of alternatives from the No Action alternative to alternatives with varying degrees of timber harvest and road construction.

Public participation has been an important part of this analysis process, and will continue to be. The Forest Service has sought and will continue to seek information, comments, and assistance from other Federal, State and local agencies, and tribes, and other individuals or organizations who may be interested in or affected by the proposed project. This input has been and will be used in the preparation of the draft and final EISs.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in August, 1996. Your comments and suggestions are encouraged and should be in writing. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of their opportunity to participate, and of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also environmental objections that could be raised at the draft stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can be meaningfully considered and responded to in the final EIS.

To assist the Forest Service in identifying and considering issues about the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement.

Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is scheduled for completion in January 1997. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. Sam Gehr, Forest Supervisor, Okanogan National Forest, is the responsible official. The responsible official will document the decision and rationale for the decision in the Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: July 10, 1996.

Maureen T. Hyzer,

Acting Forest Supervisor.

[FR Doc. 96–18103 Filed 7–16–96; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Notice; Solicitation of Business Development Center Applications for Boston

AGENCY: Minority Business Development Agency, Commerce.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate the Boston Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development assistance to persons who are members of groups determined by MBDA to be socially or economically disadvantaged, and to business concerns owned and controlled by such individuals. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Boston, Massachusetts Metropolitan Area. The award number of the MBDC will be 01–10–96002–01.

DATES: The closing date for applications is August 21, 1996. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before August 21, 1996. A pre-application conference will be held on Tuesday, July 23, 1996, at 11:00 a.m., at the New York Regional Office, 26 Federal Plaza, Room 3720, New York, New York.

Proper identification is required for entrance into any Federal Building.

ADDRESSES: Completed application packages should be submitted to the U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230.

FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT: Heyward Davenport, Regional Director, at (212) 264–3262

SUPPLEMENTARY INFORMATION: In accordance with the Interim Final Policy published in the **Federal Register** on May 31, 1996, the cost-share requirement for the MBDCs listed in this notice has been increased to 40%. The Department of Commerce will fund up to 60% of the total cost of operating an MBDC on an annual basis. The MBDC operator is required to contribute at least 40% of the total project cost (the "cost-share requirement").

Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof. In addition to the traditional sources of an MBDC's cost-share contribution, the 40% may be contributed by local, state and private sector organizations. It is anticipated that some organizations may apply jointly for an award to operate the center. For administrative purposes, one organization must be designated as the recipient organization.

Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from October 1, 1996 to October 31, 1997, is estimated at $314,778. The total Federal amount is $188,867 and is composed of $184,260 plus the Audit Fee amount of $4,607. The application must include a minimum cost share of 40%, $125,911 in non-federal (cost-sharing) contributions for a total project cost of $314,778.

The funding instrument for this project will be a cooperative agreement. If the recommended applicant is the current incumbent organization, the award will be for 12 months. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). In accordance with Interim Final Policy published in the **Federal Register** on May 31, 1996, the scoring system will be revised to add ten (10) bonus points to the application of community-based organizations. Each qualifying application will receive the full ten points. Community-based applicant organizations are those organizations whose headquarters and/or principal place of business within the last five years have been located within the geographic service area designated in the solicitation for the award. Where an applicant organization has been in existence for fewer than five years or has been present in the geographic service area for few than five years, the individual years of experience of the applicant organization's principals may be applied toward the requirement of five years of organization experience. The individual years of experience must have been acquired in the geographic service area which is the subject of the solicitation. An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant

with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 40% of the total project cost through non-federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 26.105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 26.605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbing using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program.

11.800 Minority Business Development Center
(Catalog of Federal Domestic Assistance)

Dated: July 11, 1996.

Frances B. Douglas,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 96–18104 Filed 7–16–96; 8:45 am]

BILLING CODE 3510–21–M

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a closed meeting of the Judges Panel of the Malcolm Baldrige National Quality Award on Wednesday, August 7, 1996. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the 1996 Award applications and to select applications to be considered in the site visit stage of the evaluation. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene August 7, 1996, at 8:00 a.m. and adjourn at 5:00 p.m. on August 7, 1996. The entire meeting will be closed.

ADDRESS: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 29, 1996, that the meeting of the Panel of Judges will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, P.L. 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: July 11, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–18142 Filed 7–16–96; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 071096F]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Northern Habitat Panel will hold a public meeting.

DATES: The meeting will be held on July 30, 1996, beginning at 10 a.m.

ADDRESSES: The meeting will be held at the Conference Center of the Northwest Indian Fisheries Commission, 6700 Martin Way East, Olympia, WA; telephone: (360) 438–1180.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: John Coon, Fishery Management Coordinator (Salmon); telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss and develop recommendations for Council action on regional fishery habitat issues which merit consideration at this time.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: July 11, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–18075 Filed 7–16–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 071096E]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Council) will convene a public meeting of its salmon stock review team for Puget Sound chinook and Strait of Juan de Fuca coho salmon stocks.

DATES: The meeting will be held on July 31, 1996, beginning at 10 a.m.

ADDRESSES: The meeting will be held at the Conference Center of the Northwest Indian Fisheries Commission, 6700 Martin Way East, Olympia, WA; telephone: (360) 438–1180.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: John Coon, Fishery Management Coordinator (Salmon); telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to complete a review of the status of some Puget Sound chinook and Strait of Juan de Fuca coho stocks as required under the Council's salmon fishery management plan when a stock fails to meet its spawning escapement objective for 3 consecutive years.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric W. Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: July 11, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–18076 Filed 7–16–96; 8:45 am]

DEPARTMENT OF ENERGY

Notice of Intent to Prepare An Environmental Impact Statement Concerning Interim Storage of Plutonium at the Rocky Flats Environmental Technology Site

AGENCY: Department of Energy.

ACTION: Notice of Intent.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA), in accordance with the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA and the DOE NEPA implementing regulations. DOE has identified a need to provide safe interim storage of approximately 10 metric tons of plutonium at the Rocky Flats Environmental Technology Site (RFETS). The plutonium at RFETS is in the form of both metals (including plutonium-bearing weapons components known as "pits") and oxides. The 10 metric ton amount includes the current plutonium inventory at RFETS as well as the additional inventory projected to be generated from future processing of plutonium residues into more stable forms suitable for safe storage. DOE intends to prepare an EIS to evaluate the potential environmental impacts associated with reasonable alternative means of providing the needed storage.

DATES: The public scoping period begins with the publication of this NOI and will continue until August 16, 1996. Written comments postmarked by that date will be considered in the preparation of the Rocky Flats Plutonium Storage Environmental Impact Statement (EIS). Comments

postmarked after that date will be considered to the extent practicable.

A public meeting is scheduled for Tuesday, August 6, 1996, from 6:00 p.m. to 9:00 p.m., at RFETS, Building 60 (located immediately off State Highway 93 at the RFETS west entrance).

ADDRESSES: Written comments or suggestions on the scope of the Rocky Flats Plutonium Storage EIS, including issues to be addressed, should be submitted to: Ms. Dorothy Newell, NEPA Document Manager, U.S. Department of Energy, Rocky Flats Field Office, Office of Material Stabilization and Disposition (Building 460), P.O. Box 928, Golden, CO 80402–0928, (Facsimile number 303–966–2497).

Envelopes should be marked "Rocky Flats Plutonium Storage EIS".

FOR FURTHER INFORMATION CONTACT: For further information on the Rocky Flats Plutonium Storage EIS, please contact: Ms. Dorothy Newell, NEPA Document Manager, U.S. Department of Energy, Rocky Flats Field Office, Office of Material Stabilization and Disposition (Building 460), Telephone number: 303–966–3521.

For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone number: 202–586–4600 or leave a message at 800–472–2756.

Addresses of reading rooms where additional Rocky Flats Plutonium Storage EIS information is available are listed in the Public Scoping Process section, below.

SUPPLEMENTARY INFORMATION: The DOE announces its intent to prepare an EIS pursuant to NEPA (42 USC 4321, *et seq.*), in accordance with the CEQ Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508) and the DOE NEPA implementing regulations (10 CFR Part 1021). DOE has identified the need to provide for safe interim storage of the approximately 10 metric tons of plutonium metals (including pits, which are plutonium-bearing weapons components) and oxides currently at the RFETS or projected to be generated from future processing of plutonium residues into more stable forms suitable for safe storage. DOE intends to prepare an EIS to evaluate the potential environmental impacts associated with alternative reasonable means of providing the needed storage.

DOE also announces its decision to defer completion of a RFETS Site-wide EIS (SWEIS), pending completion of a new cleanup agreement among DOE, the Environmental Protection Agency, and the State of Colorado for RFETS, and pending decisions that may result from issuance of the *Waste Management Programmatic Environmental Impact Statement* (WM PEIS) (DOE/EIS–0200–D, Draft EIS issued August 1995). At the time of the publication of the Notice of Intent (59 FR 40011, August 5, 1994) for the Rocky Flats SWEIS, the Department anticipated that the SWEIS would analyze reasonable alternatives regarding waste management, cleanup, economic conversion, and special nuclear materials (which include plutonium and highly enriched uranium) management activities at RFETS. Because future activities proposed at RFETS are expected to be heavily influenced by the terms of the new cleanup agreement and the programmatic decisions resulting from the WM PEIS, DOE has determined that it is preferable to defer completion of the SWEIS until these decisions are made.

Purpose and Need

RFETS, a Federal Government-owned, contractor-operated facility located near Golden, Colorado, began operations in 1952. RFETS's primary mission was the production of component parts for nuclear weapons. Although weapon component production ceased in 1989, RFETS still has a plutonium metal and oxide inventory (including pits) of 9.8 metric tons stored in six major buildings. In addition, current plans for processing plutonium-bearing residues into a more stable form suitable for storage will result in approximately 0.45 metric tons of plutonium oxide: 0.15 metric tons derived from stabilization of solutions and 0.3 metric tons from stabilization of solid residues.

As discussed further below, the Department needs to improve the storage arrangements for plutonium metals and oxides at RFETS. Although DOE is engaged in a programmatic (Department-wide) evaluation of alternatives for the long-term storage and disposition of plutonium, no decisions regarding long-term storage and disposition have yet been made. The analysis being undertaken by DOE in the Rocky Flats Plutonium Storage EIS for interim storage of plutonium metals and oxides at RFETS will serve to ensure that decisions on safe and cost-effective interim storage can be made and implemented in the event that long-term storage and disposition decisions, or the implementation of these decisions, should be delayed for any reason.

Background

A number of the buildings at RFETS, including those storing the site's plutonium inventory, are several decades old. In early 1994, RFETS began consolidating its entire plutonium metal and oxide inventory into Building 371, the newest and most structurally sound building at the site. DOE examined issues associated with the consolidation and safe storage of plutonium in Building 371 at levels above the building's historic limit in the *Consolidation and Interim Storage of Special Nuclear Material at the Rocky Flats Environmental Technology Site Environmental Assessment* (DOE/EA–1060, June 1995). In addition to enhancing the safety of plutonium storage at RFETS, this consolidation, when completed, will also reduce costs associated with operations, maintenance, and security of storage facilities.

In its Recommendation 94–3 (September 1994), the Defense Nuclear Facilities Safety Board, which oversees nuclear safety at DOE sites, questioned the suitability of Building 371 for storage of the RFETS plutonium inventory, in light of the uncertainty of the duration of the storage mission at RFETS. Recommendation 94–3 questioned the ability of Building 371 to withstand certain accident scenarios, especially earthquakes, that could potentially lead to the release of plutonium and pose a hazard to workers, the public, and the surrounding environment. The Board recommended that DOE formulate an integrated program plan to address the civil engineering, structural, seismic, and safety issues related to the storage activities in Building 371 and to specify building upgrades and improvements consistent with the building's storage mission. In response to the Board's recommendations, DOE initiated studies of safer and more cost effective plutonium storage methods at RFETS in parallel with its ongoing consolidation efforts. These studies provide much of the foundation for the preliminary alternatives identified below for ensuring safe interim storage of the RFETS plutonium inventory.

When the Notice of Intent for the SWEIS was published in 1994, DOE intended that the SWEIS would examine the environmental impacts associated with RFETS special nuclear materials management activities (including safe storage), waste management, cleanup, and economic conversion activities. With the exception of plutonium metal and oxide storage issues, the remaining activities

to be analyzed in the SWEIS are likely to be influenced by the new RFETS cleanup agreement and decisions based on completion of the Department's WM PEIS (discussed under "Related Documentation," below). The RFETS cleanup agreement is intended to establish a process for setting enforceable cleanup milestones and accelerating cleanup actions. The WM PEIS (Draft EIS issued August 1995) addresses nationwide Departmental management alternatives for various categories of waste, and RFETS is considered in that document as a potential treatment, storage, and/or disposal location for some waste types. Upon completion of the RFETS cleanup agreement (planned for the summer of 1996) and issuance of Records of Decision for individual waste types for the WM PEIS (scheduled for early 1997), it is expected that the purpose and need, scope, and proposed actions for the RFETS SWEIS will be better defined. Therefore, completion of the SWEIS will be deferred, pending completion of the cleanup agreement and decisions resulting from the WM PEIS.

With regard, however, to the storage of RFETS plutonium metals and oxides, a decision on a course of action to ensure the continued safe interim storage of this material is required sooner than, and independently of, the waste management and land use decisions on which the planned SWEIS analysis would focus. For this reason, DOE has decided to proceed at this time to analyze storage alternatives in the Rocky Flats Plutonium Storage EIS rather than deferring this analysis to the SWEIS. However, any decisions made following completion of the Rocky Flats Plutonium Storage EIS will be included as appropriate in the cumulative impacts analysis in the SWEIS.

The Rocky Flats Plutonium Storage EIS will analyze alternatives for the safe interim storage of RFETS plutonium metals and oxides. Long-term storage and disposition options for these materials are being analyzed in DOE's *Storage and Disposition of Weapons-Usable Fissile Materials Programmatic EIS* (S&D PEIS)(DOE/EIS–0229–D, Draft EIS issued February 1996). Under the No Action alternative in the S&D PEIS, RFETS weapons-usable fissile materials would remain at the RFETS. Other alternatives considered in the S&D PEIS include the transportation and storage of this material to six other DOE sites: the Hanford Site in Washington, the Idaho National Engineering Laboratory, the Pantex Plant in Texas, the Savannah River Site in South Carolina, the Nevada Test Site, and the Oak Ridge Reservation in Tennessee. Any decisions resulting from the Rocky Flats Plutonium Storage EIS will be consistent with the decisions made as a result of the S&D PEIS analysis. The draft S&D PEIS was issued for public review in February 1996. The final S&D PEIS is scheduled to be completed in November 1996, and the Record of Decision is scheduled for December 1996, before the Record of Decision for the Rocky Flats Plutonium Storage EIS.

Public Scoping Process

To ensure that the Rocky Flats Plutonium Storage EIS addresses the full range of issues and alternatives related to the safe interim storage of RFETS plutonium metals and oxides, DOE invites all interested persons to submit relevant oral or written comments to Ms. Dorothy Newell at the address listed above. DOE also invites all interested persons to present oral and/or written comments at the public scoping meeting scheduled for August 6, 1996. All written and oral comments will be recorded and given equal weight in preparation of the draft Rocky Flats Plutonium Storage EIS.

Persons desiring to speak at the meeting are requested to submit their written requests by mail or facsimile to Ms. Dorothy Newell, at the address or number listed above, at least two working days before the meeting. Persons who register at the meeting will be called on to speak as time permits, after the pre-registered speakers. This meeting is scheduled for Tuesday, August 6, 1996, from 6:00 p.m. to 9:00 p.m., at RFETS, Building 60 (located immediately off State Highway 93 at the RFETS west entrance). Written comments also will be accepted at the meeting, and speakers are encouraged to provide written versions of their oral comments for the record.

DOE is committed to providing opportunities for the involvement of interested individuals and groups in the preparation of the EIS. DOE will publish additional notices of the date, time, and location of the public scoping meeting in local newspapers well in advance of the scheduled meeting date. If it becomes necessary to change the date, time, or location of the public scoping meeting, the changes will be announced in appropriate media.

DOE will record and prepare transcripts of the oral comments received during the public scoping meeting. Interested persons will be able to review the transcripts, written comments, reference material, related NEPA documents, and background information on RFETS during normal business hours at the following locations:

U.S. Department of Energy, Freedom of Information Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202–586–6020

U.S. Department of Energy, Rocky Flats Environmental Technology Site Public Reading Room, Front Range Community College Library, 3645 West 112th Avenue, Westminster, CO 80030, Telephone: 303–469–4435

Rocky Flats Environmental Technology Site, Citizens Advisory Board, 9035 Wadsworth Parkway, Suite 2250, Westminster, CO 80021, Telephone: 303–420–7855.

Preliminary Alternatives

Discussed below are the preliminary alternatives identified for safe interim storage of RFETS plutonium metal and oxide. DOE welcomes comments on these or other reasonable alternatives and on the identification of a preferred alternative.

Alternative 1—No Action: As required by Council on Environmental Quality and DOE regulations, the No Action alternative provides a reference point against which the environmental impacts associated with the other alternatives analyzed can be compared. In general, the No Action alternative consists of the continuation of ongoing storage activities and stabilization activities, and the initiation of any new activities for which NEPA analysis has already been completed.

Specifically, the No Action alternative consists of the continued consolidation of plutonium metals and oxides from other buildings into Building 371, and completion of immediate safety upgrades, such as installation of fasteners between beams and repairs to fire doors, in Building 371. The No Action alternative also includes the continuation of RFETS activities associated with the stabilization and repackaging of plutonium metals and oxides in compliance with DOE's Criteria for Safe Storage of Plutonium Metal and Oxide. These criteria include standards for material form, container specifications, packaging, and surveillance and inspection.

Alternative 2—On-Site Storage: In addition to the stabilization and repackaging activities and the immediate safety upgrades addressed in Alternative 1, this alternative would encompass the following two subalternatives:

a. New Storage Vault—A new storage vault would be constructed to store the entire RFETS plutonium metals and oxides inventory. Until the vault would be ready for operation, DOE would

continue to consolidate plutonium metals and oxides into Building 371 and undertake minimal structural and system upgrades in addition to those identified under Alternative 1.

b. Building 371 with Seismic Upgrades—DOE would continue to consolidate plutonium metals and oxides into Building 371 and would enhance the building's safety envelope with seismic and safety system upgrades. Upgrades to Building 371 under this subalternative would be more extensive than those defined for Alternative 1 or 2(a).

Alternative 3—Off-site Storage: This alternative incorporates the activities considered in Alternative 1 and provides for the interim storage of the RFETS plutonium metal and oxide at another DOE site. RFETS plutonium metals and oxides, packaged in accordance with the DOE Criteria for Safe Storage of Plutonium Metal and Oxide, would be shipped to one or more of the six sites that are being considered for long-term storage and disposition in the S&D PEIS and that have available storage capacity to meet the interim storage needs for the RFETS materials.

Preliminary Issues To Be Addressed

The Rocky Flats Plutonium Storage EIS will address the impacts of alternatives to the extent necessary to make a reasoned choice among the alternatives. The following preliminary issues are presented to facilitate public discussion of the Rocky Flats Plutonium Storage EIS. This presentation is not intended to be all inclusive.

1. Public and Occupational Safety and Health. The potential radiological and non-radiological impacts of the plutonium storage alternatives, including projected effects on workers and the public from routine operations and potential accidents.

2. Environmental Media. Potential impacts on soil, water, and the air.

3. Sensitive Environmental Resources. Potential impacts on plants, animals, and habitat, including impacts to flood plains, wetlands, and threatened and endangered species and their habitat.

4. Resource Consumption. Potential impacts from consumption of natural resources and energy, including water, natural gas, and electricity.

5. Socioeconomic. Potential impacts on local communities, including labor force employment and support services.

6. Environmental Justice. Potential for disproportionately high and adverse impacts of DOE activities on minority and low-income populations.

7. Cultural Resources. Potential impacts on cultural resources, such as historic, archeological, scientific, or culturally important sites.

8. Regulatory Compliance. The impacts of the alternatives on compliance of RFETS with applicable Federal and state laws and regulations.

9. Cumulative Impacts. The impacts of alternatives in conjunction with other past, present and reasonably foreseeable future actions regardless of agency (Federal or non-Federal) or persons undertaking such other actions.

10. Potential Irreversible and Irretrievable Commitment of Resources. The potential irreversible and irretrievable commitments of resources that would be involved in each alternative.

Related Documentation

Documents that have been or are being prepared that may relate to the scope of the Rocky Flats Plutonium Storage EIS include the following:

1. Consolidation and Interim Storage of Special Nuclear Material at Rocky Flats Environmental Technology Site Environmental Assessment (DOE/EA–1060) and Finding of No Significant Impact, issued June 1995. This Environmental Assessment addressed the stabilization and repackaging of plutonium metals and oxides and their consolidation into Building 371. These activities are in the baseline for the No Action alternative for the Rocky Flats Plutonium Storage EIS.

2. Actinide Solution Processing at the Rocky Flats Environmental Technology Site Environmental Assessment (DOE/EA–1039) and Finding of No Significant Impact, issued June 1994. This Environmental Assessment addressed the processing of approximately 30,000 liters of residue solutions at the RFETS. Decisions made as a result of this analysis are in the baseline for the No Action alternative and will generate approximately 0.15 metric tons of plutonium oxides, the storage of which will be considered in the Rocky Flats Plutonium Storage EIS.

3. Solid Residue Treatment, Repackaging, and Storage Environmental Assessment (DOE/EA–1120) and Finding of No Significant Impact, issued April 1996. This Environmental Assessment addressed the stabilization of the solid residue inventory and its packaging to meet the interim safe storage criteria. Decisions made as a result of this analysis are in the baseline for the No Action alternative and will generate approximately 0.3 metric tons of plutonium oxides, the storage of which will be considered in the Rocky Flats Plutonium Storage EIS.

4. Draft Storage and Disposition of Weapons-Usable Fissile Materials Programmatic Environmental Impact Statement (S&D PEIS) (DOE/EIS–0229–D, February 1996). This EIS analyzes the potential environmental impacts associated with approaches to long-term storage and disposition of the Department's weapons-usable fissile materials, including plutonium. Under the S&D PEIS No Action alternative, RFETS plutonium metals and oxides would remain at the RFETS. Under all other alternatives, RFETS material would be stabilized and packaged in accordance with the DOE Criteria for Safe Storage of Plutonium Metal and Oxide and transferred to another selected DOE site. The alternative sites include the Hanford Site in Washington, the Idaho National Engineering Laboratory, the Pantex Plant in Texas, the Savannah River Site in South Carolina, the Nevada Test Site, and the Oak Ridge Reservation in Tennessee. Any decisions resulting from the Rocky Flats Plutonium Storage EIS will be consistent with DOE decisions made as a result of the S&D PEIS. The S&D PEIS Record of Decision is scheduled to be issued in December 1996.

5. Rocky Flats Site-wide Environmental Impact Statement Notice of Intent (59 FR 40011, August 5, 1994). This Notice announced DOE's intention to prepare a SWEIS for RFETS. A SWEIS is a broad-scope, programmatic NEPA document that identifies and assesses individual and cumulative environmental effects of ongoing and reasonably foreseeable future actions. The Notice described the intended scope of the RFETS SWEIS as providing a basis for selection of a site-wide strategic approach for nuclear materials storage, waste management, cleanup, and economic conversion, as well as project-level decisions for land use, management of nuclear materials, deactivation of RFETS facilities, decontamination and decommissioning of existing facilities, and possible on-site and off-site transportation of radioactive, hazardous, and mixed waste. For the reasons noted above, the scope of the SWEIS is being modified so that issues associated with the safe interim storage of RFETS plutonium will be analyzed in the Rocky Flats Plutonium Storage EIS, and completion of the SWEIS has been deferred pending completion of a new RFETS cleanup agreement and decisions based on completion of the WM PEIS.

6. Draft Waste Management Programmatic Environmental Impact Statement (WM PEIS) (DOE/EIS–0200–D, August 1995). The WM PEIS considers programmatic aspects of managing DOE waste; alternatives regarding the treatment, storage, and/or disposal of low-level, low-level mixed, hazardous, transuranic, and high-level waste are analyzed. While waste may be generated under the alternatives discussed in the Rocky Flats Plutonium Storage EIS, DOE expects that the amount would be small. Therefore, the Rocky Flats Plutonium Storage EIS will not materially impact the scope of the WM PEIS. Records of Decision based on the WM PEIS are scheduled for early 1997. Decisions to be made as a result of the Rocky Flats Plutonium Storage EIS will be coordinated with the decisions resulting from the WM PEIS.

7. Defense Nuclear Facilities Safety Board Recommendation 94–3, Rocky Flats Environmental Technology Site, Implementation Plan: Task 3, Study Site Storage Alternatives. Material Form and Packaging Alternatives (Deliverable 3–2a, November 22, 1995). As part of DOE's Implementation Plan for Board Recommendation 94–3, this study analyzes whether changes in material form and packaging could be used, in conjunction with building and location alternatives, to control the risk of interim storage of excess plutonium and highly enriched uranium at RFETS.

8. Defense Nuclear Facilities Safety Board Recommendation 94–3, Rocky Flats Environmental Technology Site, Implementation Plan: Task 3, Study Site Storage Alternatives, Interim Plutonium Storage Vault Alternatives Evaluation (Deliverable 3–2b, November 21, 1995). As part of DOE's Implementation Plan for Board Recommendation 94–3, this study identifies feasible facility alternatives for the interim storage of the RFETS plutonium and highly enriched uranium inventories.

Issued in Washington, DC, this 11 day of July 1996.

Tara O'Toole,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 96–18109 Filed 7–16–96; 8:45 am]

BILLING CODE 6450–01–P

Fonet, Inc;. Notice of Intent To Grant Exclusive Patent License

AGENCY: Department of Energy, Office of the General Counsel.

SUMMARY: Notice is hereby given of an intent to grant to Fonet, Inc. of Clearwater, Florida, an exclusive license to practice the invention described in U.S. Patent No. 5,205,624, entitled "Material Isolation Enclosure." The invention is owned by the United States of America, as represented by the Department of Energy (DOE).

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than September 16, 1996.

ADDRESSES: Office of Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone (202) 586–4792.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the Department with authority to grant exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR part 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Fonet, Inc., of Clearwater, Florida, has applied for an exclusive license to practice the invention embodied in U.S. Patent No. 5,205,624, and has a plan for commercialization of the invention. The patent is entitled "Material Isolation Enclosure," useful for isolating hazardous materials, including toxic substances and certain biological materials. The patent relates to an enclosure similar to a glovebox for isolating materials from the atmosphere, yet allowing a technician to manipulate the materials located inside the enclosure.

The exclusive license will be subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. § 209(c), unless, within 60 days of this notice, the Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents.

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all timely written responses to this notice, and will grant the license if, after consideration of written responses to this notice, a determination is made that the license grant is in the public interest.

Issued in Washington, DC, on July 10, 1996.

Agnes P. Dover,

Deputy General Counsel for Technology Transfer and Procurement.

[FR Doc. 96–18108 Filed 7–16–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. CP94–260–007 and RP95–310–003]

Algonquin Gas Transmission Company; Notice of Compliance Filing

July 11, 1996.

Take notice that on June 20, 1996, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, proposed to be effective July 1, 1996:

Sixth Revised Sheet No. 20
First Revised Original Sheet Nos. 36–37
Sheet Nos. 38–39
Third Revised Sheet No. 100
Sheet Nos. 238–240
First Revised Original Sheet Nos. 241–248
Sheet No. 249–599
Fourth Revised Sheet Nos. 678–680
Third Revised Sheet No. 680A
Third Revised Sheet No. 710
Fourth Revised Sheet No. 712
Third Revised Sheet No. 799
Sheet Nos. 936–939
First Revised Original Sheet Nos. 940–946
Sheet Nos. 947–1099

Algonquin states that the purpose of this filing is to comply with the Commission's order issued June 13 in Docket Nos. CP94–260–000 and RP95–310–00, *et al.* In that order, the Commission directed Algonquin to file tariff sheets effective July 1, 1996, within seven days of the date of the order. Algonquin requests that the Commission grant any waiver that may be necessary to place these tariff sheets into effect on the date requested.

Algonquin states that copies of the filing were mailed to all customers of Algonquin and interested state commissions.

Any person wishing to protest this filing should file a protest with the

Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests were due to be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18083 Filed 7–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–200–004]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 11, 1996.

Take notice that on July 2, 1996, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet to be effective July 1, 1996:

Third Revised Sheet No. 7

NGT states that the revised tariff sheet is being filed to reflect specific negotiated rate transactions for the month of July, 1996.

NGT states that copies of the filing has been mailed to each of NGT's customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18087 Filed 7–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–4–40–000]

Williston Basin Interstate Pipeline Company; Notice of Fuel Reimbursement Charge Filing

July 11, 1996.

Take notice that on July 1, 1996, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff the following revised tariff sheets, with a proposed effective date of August 1, 1996:

Second Revised Volume No. 1

Nineteenth Revised Sheet No. 15
Eighth Revised Sheet No. 15A
Twenty-second Revised Sheet No. 16
Eighth Revised Sheet No. 16A
Nineteenth Revised Sheet No. 18
Eighth Revised Sheet No. 18A
Eighth Revised Sheet No. 19
Eighth Revised Sheet No. 20
Sixteenth Revised Sheet No. 21

Original Volume No. 2

Sixty-third Revised Sheet No. 11B

Williston Basin states that the revised tariff sheets reflect revisions to the fuel reimbursement charge and percentage components of the Company's relevant gathering, transportation and storage rates, pursuant to Williston Basin's Fuel Reimbursement Adjustment Provision, contained in Section 38 of the General Terms and Conditions of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18088 Filed 7–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG96–79–000, et al.]

Empresa de Generaci N Eléctrica Nor Peru S.A., et al.; Electric Rate and Corporate Regulation Filings

July 10, 1996.

Take notice that the following filings have been made with the Commission:

1. Empresa de Generaci N Eléctrica Nor Peru S.A.

[Docket No. EG96–79–000]

On June 28, 1996, Empresa De Generación Eléctrica Nor Perú ("EGENOR"), filed with the Federal Energy Regulatory Commission an application for determinations of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Sixty percent of EGENOR, a Peruvian corporation, will be owned by Inversions Dominion Perú S.A., a wholly-owned indirect subsidiary of Dominion Energy, Inc., a Virginia corporation which in turn is a wholly-owned subsidiary of Dominion Resources, Inc., also a Virginia corporation.

EGENOR will own and operate two run-of-river hydroelectric facilities and six combustion turbine/diesel generator facilities in Peru with a combined installed capacity of approximately 405 MW. (collectively, the "Facilities"). The Facilities are located in Huaylas Province, Chota Province, and the towns of Chimbote, Trujillo, Chiclayo, Piura, Sullana and Palta, Peru.

Comment date: July 31, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Glenns Ferry Cogeneration Partners, Ltd.

[Docket No. EG96–80–000]

On July 3, 1996, Glenns Ferry Cogeneration Partners, Ltd. ("Applicant") (c/o Jonathan W. Gottleib, Esq., Reid & Priest LLP, 701 Pennsylvania Avenue, NW, Washington, DC 20004) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant is a limited partnership organized and in good standing under the laws of the Colorado. Applicant was formed to own an electric generating facility to be located in Glenns Ferry, Idaho.

Comment date: July 31, 1996, in accordance with standard Paragraph E at the end of this notice. The

Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Rupert Cogeneration Partners, Ltd.

[Docket No. EG96–81–000]

On July 3, 1996, Rupert Cogeneration Partners, Ltd. ("Applicant") (c/o Jonathan W. Gottleib, Esq., Reid & Priest LLP, 701 Pennsylvania Avenue, NW, Washington, DC 20004) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant is a limited partnership organized and in good standing under the laws of the Colorado. Applicant was formed to own an electric generating facility to be located in Rupert, Idaho.

Comment date: July 31, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Concord Electric Company

[Docket No. ER96–1429–000]

Take notice that on June 20, 1996, Concord Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Exeter & Hampton Electric Company

[Docket No. ER96–1430–000]

Take notice that on June 20, 1996, Exeter & Hampton Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: July 25, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Services, Inc.

[Docket No. ER96–2268–000]

Take notice that on June 28, 1996, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (Entergy Operating Companies), tendered for filing a Transmission Service Agreement (TSA) between Entergy Services, Inc. and Duke/Louis Dreyfus. Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating Companies provide non-firm transmission service under their Transmission Service Tariff.

Comment date: July 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER96–2269–000]

Take notice that on June 28, 1996, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (Entergy Operating Companies), tendered for filing a Service Agreement for the sale of capacity and energy to Mississippi Power Company and Southern Company Services, Inc. as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric Power Company (collectively SCSI) pursuant to Rate Schedule SP—System Power accepted for filing by the Commission in Docket No. ER91–569. Entergy Services request waiver of the notice requirements to permit an effective date of June 1, 1995.

Comment date: July 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER96–2270–000]

Take notice that on June 28, 1996, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (Entergy Operating Companies), tendered for filing a Letter Agreement for the sale of limited firm capacity and associated energy to Alabama Electric Cooperative, Inc. (AECI) pursuant to Service Schedule LF—Limited Firm Capacity and Energy of the Interchange Agreement between Entergy Mississippi, Inc. and AECI. Entergy Services requests waiver of the notice requirements to permit an effective date of July 1, 1995.

Comment date: July 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER96–2271–000]

Take notice that on June 28, 1996, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (Entergy Operating companies), tendered for filing a Transmission Service Agreement (TSA) between Entergy Services, Inc. and Aquila Power Corporation. Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating Companies provide non-firm transmission service under their Transmission Service Tariff.

Comment date: July 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Services, Inc.

[Docket No. ER96–2272–000]

Take notice that on June 28, 1996, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (Entergy Operating Companies), tendered for filing a Transmission Service Agreement (TSA) between Entergy Services, Inc. and Southern Company Services, Inc. Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating Companies provide non-firm transmission service under their Transmission Service Tariff.

Comment date: July 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER96–2273–000]

Take notice that on June 28, 1996, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (Entergy Operating Companies), tendered for filing a Transmission Service Agreement (TSA) between Entergy Services, Inc. and Commonwealth Edison Company. Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating Companies provide non-firm transmission service under their Transmission Service Tariff.

Comment date: July 23, 1996, in accordance with standard Paragraph E at the end of this notice.

12. Dayton Power and Light Company

[Docket No. ER96–2274–000]

Take notice that on June 28, 1996, Dayton Power and Light Company (DP&L) tendered for filing an executed bilateral agreement dated June 25, 1996 between DP&L and American Municipal Power-Ohio, Inc. (AMP-Ohio). Under the agreement DP&L will provide AMP-Ohio with 30 MW of non-firm point-to-point transmission service from DP&L's interconnection with Cincinnati Gas & Electric Company (CG&E) to DP&L's interconnection with The Ohio Edison Company (OE).

DP&L requests an effective date of July 1, 1996 and waiver of the Commission's notice requirements.

Comment date: July 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Montaup Electric Company

[Docket No. ER96–2275–000]

Take notice that on June 28, 1996, Montaup Electric Company tendered for filing an annual report titled Conservation and Load Management Informational Report Proposed Surcharge—June 28, 1996—supporting surcharges for the period July 1, 1996 through December 31, 1996. This annual report filing is required under a conservation and load management (C&LM) clause applied to service to Montaup's affiliated M-rate customers as amended by Montaup in a filing approved by the Commission on December 29, 1994 in Docket No. ER95–241–000. The informational report shows the surcharges that will be required to true up collections for the twelve months ended December 31, 1995 with actual C&LM cost for calendar-year 1995.

Comment date: September 27, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Boston Edison Company

[Docket No. ER96–2276–000]

Take notice that on June 28, 1996, Boston Edison Company (Boston Edison) tendered for filing a letter agreement between Boston Edison Company and Cambridge Electric Light Company (CEL). The tendered letter agreement extends the terms and conditions of the Substation 402 Agreement to and including September 30, 1996. The Substation 402 Agreement is designated as Boston Edison's FERC Rate Schedule No. 149. Boston Edison requests an effective date of June 30, 1996.

Comment date: July 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER96–2277–000]

Take notice that on June 28, 1996, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (Entergy Operating Companies), tendered for filing a Letter Agreement for the sale of limited firm capacity and associated energy to Alabama Electric Cooperative, Inc. (AECI) pursuant to Service Schedule LF—Limited Firm Capacity and Energy of the Interchange Agreement between Entergy Mississippi, Inc. and AECI. Entergy Services requests waiver of the notice requirements to permit an effective date of June 1, 1995.

Comment date: July 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Midwest Energy, Inc.

[Docket No. ER96–2278–000]

Take notice that on June 28, 1996, Midwest Energy, Inc. (Midwest) tendered for filing Service Agreements for Opportunity Sales Service entered into between Midwest and the following customers:

City of Colby (Fully Executed)
City of Jetmore (Fully Executed)
City of Oakley (Fully Executed)
City of LaCrosse (Fully Executed)
City of Hill City, Kansas (Partially Executed)

Comment date: July 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Louisville Gas and Electric Company

[Docket No. ER96–2281–000]

Take notice that on July 1, 1996, Louisville Gas and Electric Company tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Electric Clearinghouse Inc. under Rate GSS.

Comment date: July 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas and Electric Company

[Docket No. ER96–2282–000]

Take notice that on July 1, 1996, Louisville Gas and Electric Company tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Louis Dreyfus Electric Power Inc. under Rate GSS.

Comment date: July 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Central Power and Light Company, West Texas Utilities Company

[Docket No. ER96–2283–000]

Take notice that on July 1, 1996, Central Power and Light Company and West Texas Utilities Company, (jointly, the Companies) tendered for filing a service agreement under which they will provide transmission service to Calpine Power Services Company (Calpine) under their point-to-point transmission service tariff.

The Companies state that copies of the filing have been served on Calpine.

Comment date: July 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Public Service Company of Oklahoma, Southwestern Electric Power Co.

[Docket No. ER96–2284–000]

Take notice that on July 1, 1996, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the Companies) tendered for filing a Service agreement under which they will provide transmission service to Calpine Power Services Company (Calpine) under their point-to-point transmission service tariff.

Comment date: July 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Duke Power Company

[Docket No. ER96–2285–000]

Take notice that Duke Power Company (Duke or Company) on July 1, 1996, tendered for filing the Fifth Amendments to the Interconnection Agreements (Amendments) dated June 1, 1996, between the Company and North Carolina Electric Membership Corporation (NCEMC) and Saluda River Electric Cooperative, Inc. (Saluda River). Duke, NCEMC, and Saluda River are three of the joint owners of the Catawba Nuclear Station. Under the terms of the Interconnection Agreements, Duke interconnects its generation and transmission system with the Catawba Nuclear Station, wheels electric power and energy to the members of the other joint owners, provides supplemental capacity and energy to the members of the other joint owners, provides supplemental capacity and energy in excess of that provided by the owners' ownership interest, and provides back-up services. Duke states that these Amendments were entered into in connection with a settlement of certain disputes under the Interconnection Agreements which included the revision of those portions of the Interconnection Agreements that would facilitate the sale of Surplus Energy by NCEMC and Saluda River to third parties.

Duke states that the Interconnection Agreements are on file with the Commission and have been designated as follows:

Rate Schedule FERC No. 273 (NCEMC)
Rate Schedule FERC No. 274 (Saluda River)

Copies of this filing were mailed to NCEMC, Saluda River, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: July 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Illinois Power Company

[Docket No. ER96–2286–000]

Take notice that on July 1, 1996, Illinois Power Company (Illinois Power) tendered for filing firm and non-firm transmission agreements under which Eastern Power Corporation, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of July 1,1996.

Comment date: July 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Illinois Power Company

[Docket No. ER96–2287–000]

Take notice that on July 1, 1996, Illinois Power Company (Illinois Power) tendered for filing non-firm transmission agreements under which Tennessee Power Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of July 1, 1996.

Comment date: July 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Illinois Power Company

[Docket No. ER96–2288–000]

Take notice that on July 1, 1996, Illinois Power Company (Illinois Power) tendered for filing firm and non-firm transmission agreements under which National Gas & Electric L.P. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of July 1, 1996.

Comment date: July 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Arizona Public Service Company

[Docket No. ER96–2289–000]

Take notice that on July 1, 1996, Arizona Public Service Company (APS), tendered for filing a Service Agreement under APS–FERC Electric Tariff Original Volume No. 1 (APS Tariff) with the following entity:

City of Azusa

A copy of this filing has been served on the above listed party and the Arizona Corporation Commission.

Comment date: July 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Northern States Power Company (Minnesota Company)

[Docket No. ER96–2290–000]

Take notice that on July 1, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the following Transmission Service Agreement between NSP and Wisconsin Public Service Company.

NSP requests that the Commission accept the agreement effective June 12, 1996, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: July 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Northern Indiana Public Service Company

[Docket No. ER96–2291–000]

Take notice that on July 1, 1996, Northern Indiana Public Service Company, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Duke/Louis Dreyfus L.L.C.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Duke/Louis Dreyfus L.L.C. under Northern Indiana Public Service Company's Power Sales Tariff, which was accepting for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and Duke/Louis Dreyfus L.L.C. request waiver of the Commission's sixty-day notice requirement to permit an effective date of July 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: July 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. Northern Indiana Public Service Company

[Docket No. ER96–2292–000]

Take notice that on July 1, 1996, Northern Indiana Public Service Company, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and TransCanada Power Corporation.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to TransCanada Power Corporation under Northern Indiana Public Service Company's Power Sales Tariff, which was accepting for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and TransCanada Power Corporation request waiver of the Commission's sixty-day notice requirement to permit an effective date of July 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: July 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

29. New York State Electric & Gas Corporation

[Docket No. ER96–2293–000]

Take notice that on July 1, 1996, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with Duke/Louis Dreyfus L.L.C. (D/LD). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to D/LD and D/LD will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on July 2, 1996, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and D/LD.

Comment date: July 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

30. Upper Peninsula Power Company

[Docket No. ER96–2294–000]

Take notice that on July 1, 1996, Upper Peninsula Power Company (UPPCO), tendered for filing a proposed Power Service Agreement for sales of electricity to the Village of Baraga, Michigan. UPPCO states that the rates established in the Power Service

Agreement for 1996 will result in a decrease in revenues from sales to Baraga of approximately 9% annually. UPPCO has asked for waiver of the notice provisions of the Commission's regulations in order to make the Power Service Agreement effective in accordance with its terms beginning July 1, 1996.

Comment date: July 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

31. Florida Power Corporation

[Docket No. ER96–2295–000]

Take notice that on July 2, 1996, Florida Power Corporation, tendered for filing a modification to its power sales tariff. Florida Power requests that the Commission waive its notice requirements and allow the modification to take effect on July 2, 1996, the day on which it was filed.

Comment date: July 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

32. AIG Trading Corporation

[Docket No. ER96–2296–000]

Take notice that on July 1, 1996, AIG Trading Corporation (AIGTC), tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that AIGTC had completed all the steps for good membership. AIGTC requests that the Commission amend the WSPP Agreement to include it as a member.

AIGTC requests an effective date of July 1, 1996 for the proposed amendment. Accordingly, AIGTC requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: July 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

33. Indianapolis Power & Light Company

[Docket No. ER96–2297–000]

Take notice that on July 2, 1996, Indianapolis Power & Light Company (IPL), tendered for filing a letter agreement extending by one year to August 31, 1997, the service IPL currently provides to PSI Energy, a public utility subsidiary of Cinergy, under an existing interconnection agreement.

Copies of this filing were sent to the Indiana Utility Regulatory Commission and Cinergy.

Comment date: July 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

34. Union Electric Company

[Docket No. ER96–2298–000]

Take notice that on July 2, 1996, Union Electric Company (UE), tendered for filing a Transmission Service Agreement dated June 30, 1996 between Duke/Louis Dreyfus L.L.C. (D/LD) and UE. UE asserts that the purpose of the Agreement is to act out specific rates, terms, and conditions for transmission service transactions from UE to D/LD.

Comment date: July 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

35. Union Electric Company

[Docket No. ER96–2299–000]

Take notice that on July 2, 1996, Union Electric Company (UE), tendered for filing an Interchange Agreement dated June 30, 1996, between UE and Duke Power Company. UE asserts that the purpose of the Agreement is to set out specific rates, terms, and conditions for the types of power and energy to be exchanged.

Comment date: July 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (19 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18120 Filed 7–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR96–11–000]

Lee 8 Storage Partnership; Notice of Petition for Rate Approval

July 11, 1996.

Take notice that on June 14, 1996, Lee 8 Storage Partnership (Lee 8) filed pursuant to Section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable market-based rates for firm and interruptible storage services to be rendered by Lee 8 at its Michigan storage facility or, in the alternative, cost based rates pursuant to Section 311(a)(2) of the Natural Gas Policy Act of 1978. Lee 8 states that its rates for firm and/or interruptible storage services will be negotiated between Lee 8 and various shippers. In addition, Lee 8 states that it will charge 1% of the injected volumes and 1% of the withdrawal volumes as an allowance for compressor fuel and lost and unaccounted for gas on Lee 8's system.

Lee 8's petition states that Lee 8 is a Hinshaw pipeline exempt from Commission regulation under Section 11(c) of the Natural Gas Act, with facilities located wholly within the state of Michigan. Lee 8 states that its storage facility currently has a working gas capacity of 1,445,000 Mcf of natural gas.

Lee 8 states that it anticipates that it will utilize all of the working gas capacity at its Michigan storage facilities for third party service that will include both intrastate service and service in support of interstate commerce pursuant to its blanket certificate under 18 CFR 284.224. It is stated that Lee 8's storage services are structured to include both transportation to and from storage.

Lee 8 states that it will comply fully with its obligation under Part 284 of the Commission's regulations to offer NGPA Section 311(a)(2) storage services on a basis which is neither unduly preferential nor unduly discriminatory. It is stated, however, that Lee 8 will not be obligated to accept any proposal for storage service at its Michigan storage facility which Lee 8 determines is below the market rate for such service.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date of Lee 8's Petition, Lee 8's market-based rates for firm and interruptible storage services will be deemed to be fair and equitable. The Commission may within such 150 day period extend the time for action or institute a proceeding in which all interested parties will be afforded an opportunity for written comments and the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All motions must be filed with the secretary of the Commission on or before July 26, 1996. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18085 Filed 7–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR96–12–000]

The Montana Power Company; Notice of Petition for Rate Approval

July 11, 1996.

Take notice that on July 1, 1996, the Montana Power Company (Montana Power) filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's regulations, as required by ordering paragraph (D) of the Commission's August 3, 1995 Order in Docket No. PR93–3 [72 FERC ¶ 61,146 (1995)], and ordering paragraph (2) of the Order Denying Petition for Adjustment in Docket No. SA96–1–000, as further extended by the Commission's Notice of Further Extension of Time dated April 25, 1996.

Montana Power states that it is a local distribution company as defined by the NGPA doing business in the State of Montana. Montana Power is requesting that the Commission approve as fair and equitable a maximum monthly demand charge of $6.7577 per MMBtu and a maximum commodity charge of $0.0360 per MMBtu for firm off-peak transportation service and a maximum rate of $0.2670 per MMBtu for interruptible transportation service plus an allowance of 2.56 percent for fuel for services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). Montana Power proposes an effective date of July 1, 1996.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All motions must be filed with the Secretary of the Commission on or before July 26, 1996. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18086 Filed 7–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP96–52–000 and CP96–610–000]

Granite State Gas Transmission, Inc.; Notice of Intent To Prepare a Final Environmental Impact Statement for the Proposed Granite State LNG Project and Request for Comments on Environmental Issues

July 11, 1996.

On January 29, 1996, the Federal Energy Regulatory Commission (FERC) issued a Draft Environmental Impact Statement (DEIS) for the proposed Granite State LNG Project in Docket No. CP95–52–000. However, on June 21, 1996, the Director of the Office of Pipeline Regulation of FERC dismissed the CP95–52–000 application without prejudice to the refiling of Granite State's proposal to change from a baseload to a peakshaving service. The dismissal letter also stated that all of the environmental information would be retained by the FERC staff and that Granite State could incorporate this material by reference if, and when, they file a new application reflecting a peakshaving facility. Subsequently, Granite State Gas Transmission, Inc. (Granite State) filed on application in Docket No. CP96–610–000 to reflect a change in the nature of the service from winter baseload to peakshaving. Granite State submits that the LNG facility proposed in this application is identical to the facility proposed in Docket No. CP95–52–000.

The FERC staff intends to continue preparing a Final Environmental Impact Statement (FEIS) for the Granite State LNG project (now in Docket No. CP96–610–000 rather than in CP95–52–000). A new DEIS will not be issued for public comment. The main change to the plant is in pumping requirements for the LNG plant to send out natural gas at a higher pressure. However, if anyone wishes to file additional comments on environmental topics to be addressed in the FEIS as a result of the new application, please follow the instructions below. If you have already submitted comments on the DEIS, you do not need to resubmit them.

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.
- Reference Docket No. CP96–610–000 Docket Nos. CP95–52–000, *et al.*
- Send a copy of your letter to Mr. Chris Zerby, EIS Project Manager, Federal Energy Regulatory Commission, 888 First Street, NE., Room 72–55, Washington, DC 20426; and
- Mail your comments so that they are received in Washington, DC on or before July 26, 1996.

For further information on the EIS process, call Chris Zerby, EIS Project Manager, at (202) 208–0111.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18084 Filed 7–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 1980–009 et al.]

Hydroelectric Applications [Wisconsin Electric Power Company, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* New Major License.

b. *Project No.:* P–1980–009.

c. *Date Filed:* February 27, 1996.

d. *Applicant:* Wisconsin Electric Power Company.

e. *Name of Project:* Big Quinnesec Falls Hydroelectric Project.

f. *Location:* On the Menominee River, in Florence and Marinette Counties, Wisconsin and Dickinson County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Sections 791(a)–825(r).

h. *Applicant Contact:* Ms. Rita L. Hayen Wisconsin Electric Power Company 231 W. Michigan P.O. Box 2046 Milwaukee, WI 53201–2046.

i. *FERC Contact:* Patti Leppert-Slack (202) 219–2767.

j. *Comment Date:* September 6, 1996.

k. *Status of Environmental Analysis:* This application has been accepted for filing, but is not ready for environmental analysis at this time—see attached standard paragraph E1. The Big Quinnesec Project will be included in the applicant-prepared environmental assessment (APEA) process for the Upper Menominee River Basin Projects.

l. *Description of Project:* The proposed project would consist of the following: (1) an existing reservoir with a surface area of 272 acres and gross storage capacity of 3,790 acre-feet at the normal maximum surface elevation of 1034.9 feet, National Geodetic Vertical Datum; (2) an existing dam, consisting of: (a) a concrete non-overflow section, about 157 feet long, equipped with two

control gates, (b) an intake section, about 96 feet long, (c) a gated spillway section, about 229 feet long, equipped with 7 Taintor gates, (d) a concrete non-overflow section, about 145 feet long, and (e) two earth dikes, with a combined length of about 200 feet; (4) an existing concrete forebay, about 100 feet by 245 feet; (5) two existing 12 foot-diameter steel penstocks, each about 65 feet long; (6) an existing reinforced concrete powerhouse, containing two turbine/generator units, each with a rating of 1,875 kilowatts (kW); (7) two existing 12 foot-diameter steel penstocks, each about 250 feet long; (8) an existing reinforced concrete powerhouse, containing two turbine/generator units, each with a rating of 8,000 kW, providing a total project installed capacity of 19,750 kW; and (9) appurtenant facilities.

m. *Purpose of Project:* Project power is utilized in the applicant's power generation system.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2A, Washington, D.C., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Electric Power Company, 333 W. Everett Street, Room A265, Milwaukee, WI 53203, between 8:00 a.m. and 4:30 p.m., Monday through Friday.

2a. *Type of Application:* Application to Grant an Easement to East Shores Homeowners Association to Construct a Private Marina.

b. *Project name and No:* Catawba-Wateree Project, FERC Project No. 2232–326.

c. *Date Filed:* June 12, 1996.

d. *Applicant:* Duke Power Company.

e. *Location:* Burke County, North Carolina, East Shores VI Subdivision on Lake, James near Morganton.

f. *Filed pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r)

g. *Applicant Contact:* Mr. E.M. Oakley Duke Power Company P.O. Box 1006 (EC12Y) Charlotte, NC 28201–1006 (704) 382–5778

h. *FERC Contact:* Brian Romanek, (202) 219–3076.

i. *Comment Date:* August 21, 1996.

j. *Description of the filing:* Application to grant an easement of 0.709 acre of project land to East Shores Homeowners Association to construct a private residential marina consisting of 32 floating boat slips. The proposed marina would provide access to the reservoir for residents of East Shores VI Subdivision. The proposed marina facility would consist of an access ramp and a floating slip facility. The slips would be anchored by using self driving, telescopic piles.

k. *This notice also consists of the following standard paragraphs:* B, C1, D2.

3a. *Type of Application:* Application to Grant an Easement to Diamondhead Venture to Construct a Private Marina.

b. *Project Name and No:* Catawba-Wateree Project, FERC Project No. 2232–327.

c. *Date Filed:* June 12, 1996.

d. *Applicant:* Duke Power Company.

e. *Location:* Iredell County, North Carolina, Diamondhead Subdivision on Lake Norman near Mooresville.

f. *Filed pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

g. *Applicant Contact:* Mr. E.M. Oakley, Duke Power Company, P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006; (704) 382–5778.

h. *FERC Contact:* Brian Romanek, (202) 219–3076.

i. *Comment Date:* August 21, 1996.

j. *Description of the filing:* Application to grant an easement of 0.78 acre of project land to Diamondhead Venture to construct a private residential marina consisting of 43 floating boat slips. The proposed marina would provide access to the reservoir for residents of Diamondhead Subdivision. The proposed marina facility would consist of an access ramp and a floating slip facility. The slips would be anchored by using self driving, telescopic piles.

k. *This notice also consists of the following standard paragraphs: B, C1, D2.*

4a. *Type of Application:* Major License.

b. *Project No.:* 1982–017.

c. *Date filed:* June 24, 1996.

d. *Applicant:* Northern States Power Company—Wisconsin.

e. *Name of Project:* Holcombe Project.

f. *Location:* On the Chippewa River in the Town of Holcombe in Chippewa and Rusk Counties, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Anthony G. Schuster, Northern States Power Company, 100 N. Barstow Street, P. O. Box 8, Eau Claire, WI 54702, (715) 839–2401.

i. *FERC Contact:* Julie Bernt (202) 219–2814.

j. *Comment Date:* 60 days from the filing date in paragraph C.

k. *Description of* Project: The existing project would consist of: (1) four earthen embankments that make up the dike system as follows: (a) North Dike located on the north bank of the Chippewa River is 700 feet long with a crest elevation of 1,055 feet; (b) South Dike located on the south bank of the Chippewa River is 200 feet long with a top elevation of 1.055 and is of zoned construction containing a compacted clay and/or silty sand core and a concrete core wall penetrating the compacted earth core; the North Dike and the South Dike make up the Holcombe Dam; (c) Holcombe Dike located 2,000 feet east of Holcombe Dam is 4,600 feet long and protects the town of Holcombe from flooding; and (d) Callahan Dike located 3 miles northeast of Holcombe Dam is 1,900 feet long and prevents the Jump River from bypassing the Holcombe Flowage; (2) an impoundment with a maximum surface area of 4,300 acres, a normal maximum water surface elevation of 1045.0 and 46,000 acre-feet of usable storage; (3) a powerhouse containing 6 generating units with a total rated capacity of 33 MW; (4) a 462-foot-long reinforced and mass concrete spillway equipped with 13, 30-foot-wide steel tainter gates; (5) a substation; and, (6) appurtenant facilities. The average annual energy production is 94,021 MWh. Applicant proposes no modification to the project.

l. With this notice, we are initiating consultation with the *WISCONSIN STATE HISTORIC PRESERVATION OFFICER (SHPO),* as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

5a. *Type of Application:* Major License.

b. *Project No.:* 11282–001.

c. *Date Filed:* November 21, 1995.

d. *Applicant:* Summit Hydropower, Inc.

e. *Name of Project:* Gainer Dam.

f. *Location:* On the North Branch Pawtuxet River, Town of Scituate, Providence County, Rhode Island.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Duncan S. Broatch, 92 Rocky Hill Road, Woodstock, CT 06281, (860) 974–1620.

i. *FERC Contact:* Charles T. Raabe (202) 219–2811.

j. Deadline Date: September 16, 1996.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph D7.

l. *Description of Project:* The existing inoperative project would consist of: (1) a 3,500-foot-long, 109-foot-high earthen dam having a 450-foot-long overflow-type spillway at its right (southwest) abutment; (2) a reservoir, known as the Scituate Reservoir, having a 3,400-acre surface area and a 112,270 acre-foot gross storage capacity at spillway crest elevation 283 feet MSL; (3) an intake structure; (4) a powerhouse containing a rehabilitated 1,500-kW generating unit operated at an 82-foot-net head and at a flow of 300 cfs and containing a new 70-kW generating unit operated at an 82-foot-net head and at a flow of 14 cfs; (5) a 400-foot-long tailrace tunnel and a 700-foot-long excavated tailrace; (6) a 500-foot-long underground, 2.3-kV transmission line; (7) a 2.3/23-kV substation (8) a 1.5-mile-long 23-kV transmission line; and (9) appurtenant facilities.

The primary purpose for the existing facilities, owned by the Providence Water Supply Board (PWSB), is water supply for the City of Providence. Applicant estimates that the project average annual generation would be 2,968,000 kWh.

m. *This notice also consists of the following standard paragraphs:* A2, A9, B1, and D7.

n. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Summit Hydropower, Inc., 92 Rocky Hill Road, Woodstock, CT 06281.

6a. *Type of Application:* Exemption of Small Conduit Hydroelectric Facility.

b. *Project No.:* 11578–000.

c. *Date filed:* March 29, 1996.

d. *Applicant:* Mojave Water Agency.

e. *Name of Project:* Rock Springs Hydroelectric Project.

f. *Location:* On the Mojave River, near the town of Hesperia, in San Bernardino County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. Lucien G. Hersh, Bechtel, 50 Beale Street, San Francisco, CA 94119–3965.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D–4.

k. *Comment date:* Sixty days from the issuance date of this notice.

l. *Description of Project:* The Rock Springs Project would utilize the approximately 25,000 acre-feet of flow annually discharged from the California Aqueduct into the Mojave River at the Morongo Basin pipeline turnout, which is part of the Upper Mojave River Recharge Project. This flow is discharged into the Mojave River to help recharge the groundwater aquifer there.

The project would consist of an 80-foot-long penstock bifurcating from the applicant's existing Morongo Basin pipeline, a powerhouse with a 2.6–MW generating unit, and a 1,600-foot-long tailrace returning water to the Mojave River. The project will tie into Southern California Edison's existing transmission corridor.

m. *This notice also consists of the following standard paragraphs:* A2, A9, B1, and D4.

n. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the offices of Bechtel Civil, shown in item h above.

7a. *Type of Application:* New Major License.

b. *Project No.:* P–1932–004.

c. *Date Filed:* April 29, 1994.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Lytle Creek Hydroelectric Project.

f. *Location:* On Lytle Creek in San Bernardino County, California, near the town of Devore. The project is located within the San Bernardino National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791 (a)–825(r).

h. *Applicant Contact:* C. Edward Miller, Manager, Hydro Generation, Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, CA 91770, (818) 302–1564.

i. *FERC Contact:* Ms. Sabina Joe (202) 219–1648.

j. *Comment Deadline Date:* September 18, 1996.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time. See attached paragraph.

l. *Description of Project:* The proposed Lytle Creek Project consists of: (1) a 3-foot-high, 200-foot-long rubble masonry gravity dam; (2) a concrete intake structure with trashracks and fish screen; (3) a 4.3-mile long flowline system comprised of 13 tunnels, a flume, a concrete pipeline, siphons and surge tanks; (4) a concrete forebay; (5) a 1,546-foot-long steel penstock; (6) a powerhouse containing two generation units with a combined installed capacity of 500 kilowatts; (7) a 906-foot-long tailrace channel; (8) a 12-kV distribution tap; and (9) related facilities.

The average annual generation is about 3.7 gigawatthour (GWH). The hydraulic capacity of the plant is 23.8 cfs. The applicant does not propose to modify project facilties or operations of the Lytle Creek project.

m. *Purpose of Project:* Project power is distributed over the Applicant's distribution system to serve the electrical load needs on its own system.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Locations of Applications:* A copy of the application, as amended and supplemented, is available for inspection and reproduction in the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

8a. *Type of Application:* New Major License.

b. *Project No.:* P–1933–010.

c. *Date Filed:* April 29, 1994.

d. *Applicant:* Southern California Edison Company (SCE).

e. *Name of Project:* Santa Ana River 1 and 2 Hydroelectric Project.

f. *Location:* On the Santa Ana River in San Bernardino County, near the town of Mentone. The project is located within the San Bernardino National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791 (a)–825(r).

h. *Applicant Contact:* C. Edward Miller, Manager, Hydro Generation, Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, CA 91770, (818) 302–1564.

i. *FERC Contact:* Ms. Sabina Joe (202) 219–1648.

j. *Comment Deadline Date:* September 18, 1996.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time. See attached paragraph.

l. *Description of Project:* The proposed project consists of two independent water conveyance and generation systems on the Santa Ana River.

Santa Ana 1 Project (SAR1) consists of: (1) a 6-foot-high, 40-foot-long dam on the Santa Ana River; (2) a 5-foot-high, 29-foot-long rubble concrete diversion dam on Bear Creek; (3) an intake/diversion structure on Breakneck Creek; (4) a 48-inch-diameter, 125-foot-long steel pipe carrying water; (5) a concrete lined sand box; (6) a 3-mile-long flowline comprised of 11,990 feet of tunnel, 851 feet of pipe in tunnel and 125 feet of steel conduit; (7) a 12 acre-feet concrete forebay; (8) two 3,111 foot-long steel penstocks; (9) a powerhouse containing 4 generating units (3,200 kw); (10) a concrete lined tailrace; (11) a 33-kv transmission line.

The average annual generation of SAR1 is about 13 gigawatthour (GWH). The hydraulic capacity of the plant is 93.3 cfs. The applicant does not propose to modify project facilities or operations of SAR1.

The proposed Santa Ana 2 Project (SAR2) consists of: (1) two intake structures; (2) a diversion and intake structure on Alder and Keller Creeks; (3) a 1.5 mile long flowline system comprised of 7,207 feet of tunnel, flumes, pipelines and 707 feet of siphon; (4) a 900 cfs concrete forebay; (5) a 644 foot long, 36 inch diameter steel penstock; (6) a powerhouse containing 2 generating units (800 kW); (7) a tailrace channel; (8) transmission distribution.

The average annual generation of SAR2 is about 6 GWH. The hydraulic capacity of the plant is 82.6 cfs.

The SAR2 system is linked to the upstream facilities, receiving water from the SAR1 powerhouse tailrace as well as from other sources. Water exiting the SAR2 powerhouse is immediately delivered into the flowline of the Santa Ana No. 3 (SAR3) [1] project located downstream of the SAR2 system.

SCE proposes to make two modifications to facilities and operations of the SAR 1 and 2 project: (1) The applicant proposes to release a minimum flow of 4 cfs from the SAR1 intake structure to enhance environmental resources (e.g., fish within the SAR1 bypass reach; and (2) the applicant proposes to relocate the SAR2 powerhouse and pressurize the SAR3 flowline. The powerhouse relocation is necessary to avoid inundation following construction of the Seven Oaks Dam; the flume must be pressurized to withstand inundation. The U.S. Army Corps of Engineers, in conjunction with local sponsors, is constructing the dam for flood control purposes in the Santa Ana River Canyon about one mile downstream of the SAR2 powerhouse.

m. *Purpose of Project:* Project power is distributed over the Applicant's distribution system to serve the electrical load needs on its own system.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Locations of Applications:* A copy of the application, as amended and supplemented, is available for inspection and reproduction in the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above.

9a. *Type of Application:* New Major License.

b. *Project No.:* P–1934–010.

c. *Date Filed:* April 29, 1994.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Mill Creek 2/3 Hydroelectric Project.

f. *Location:* On Mill Creek in San Bernardino County, California, near the town of Yucaipa. The project is located within the San Bernardino National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* C. Edward Miller, Manager, Hydro Generation, Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, CA 91770, (818) 302–1564.

i. *FERC Contact:* Ms. Sabina Joe, (202) 219–1648.

j. *Comment Deadline Date:* September 18, 1996.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time. See attached paragraph.

l. *Description of Project:* The proposed Mill Creek Number 2 system consists of: (1) a 3-foot-high, 42-foot-long, rubble-concrete weir with a crest elevation of 3,626 feet; (2) the Mill 2 River Pick-up, a 2-foot-high, 34-foot-long, rubble-concrete structure, with a crest elevation of 3,593 feet; (3) a concrete intake structure with trashracks, fishscreens and overflow pipe; (4) a 2.9 mile long flowline system comprised of 14,971 feet of concrete pipeline and 479 feet of flume; (5) a 600 cubic feet concrete lined forebay; (6) an 18-inch-diameter, 1,411 feet steel penstock; (7) a powerhouse containing 1 generating unit (capacity 250–KW); and (8) other appurtenant structures.

The Mill Creek Number 3 system consists of: (1) a 7-foot-high, 80-foot-long rubble concrete diversion dam, crest elevation 4,928 feet; (2) an intake structure with steel debris grid and fish wheel; (3) a 5.4-mile-long flowline comprised of 24,800 feet of flume and 3,607 feet of siphon; (4) a concrete sand box; (5) an 8,120-foot-long steel penstock; (6) a powerhouse containing 4 generating units (3,000 KW); (7) a 12 KV transmission line; and (8) other appurtenant structures.

The average annual combined generation of the Mill Creek 2/3 Hydroelectric project is about 14,103,000 kWh. Hydraulic capacity of the Mill Creek 2 plant is 8.8 cfs; the hydraulic capacity of the Mill Creek 3 plant is 24.4 cfs.

The applicant proposes to discontinue use of the Mill Creek No. 2 flowline but not to surrender the Mill Creek Number 2 system. As a result, the Mill Creek No. 2 diversion structures will no longer divert water into the Mill Creek No. 2 flowline.

m. *Purpose of Project:* Project power is distributed over the Applicant's distribution system to serve the electrical load needs on its own system.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Locations of Applications:* A copy of the application, as amended and supplemented, is available for inspection and reproduction in the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

10a. *Type of Application:* Subsequent

f. *Location:* On the Hoosic River in Rensselaer County, near Hoosick, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).

h. *Applicant Contact:* Mr. Frank O. Christie, 8 East Main Street, Malone, NY 12953, (518) 483–1945.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* Within 60 days of the filing date.

k. *Description of Project:* The existing project would consist of: (1) an existing 16-foot-high and 149.5-foot-long dam; (2) an existing 16-acre reservoir; (3) a powerhouse containing two generating units for a total installed capacity of 1050 kW; (4) a 500-foot-long transmission line; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 3,700 MWh for the project.

l. With this notice, we are initiating consultation with the New York State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

11a. *Type of Application:* Minor License.

b. *Project No.:* 11530–000.

c. *Date filed:* April 5, 1995.

d. *Applicant:* Mitchell County, Iowa.

e. *Name of Project: Mitchell Mill Dam.*

f. *Location:* On the Cedar River near Mitchell in Mitchell County, Iowa.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Milton R. Owen, 415 Lime Kiln Road, Osage, IA 50461, (515) 732–5204.

i. *FERC Contact:* Julie Bernt (202) 219–2814.

j. *Deadline Date:* See paragraph D9.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The proposed project would consist of: (1) an existing 16-foot-high, 149-foot-long dam; (2) an existing 16-acre reservoir; (3) a powerhouse containing two generating units with a total rated capacity of 900 kW; (4) an existing 220-foot-long transmission line; and, (7) appurtenant facilities. The applicant estimates that the total average annual generation would be 2,829,335 kWh. The cost of restoration would be $600,000. The project site is owned by Mitchell County.

m. *Purpose of Project:* Power produced would be sold to a local power company.

n. *This notice also consists of the following standard paragraphs:* A4 and D9.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the offices of the applicant.

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must

served on the applicant(s) named in this public notice.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One

and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (September 9, 1996 for Project No. 11576–000). All reply comments must be filed with the Commission within 105 days from the date of this notice (October 21, 1996 for Project No. 11576–000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008. All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D7. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (September 9, 1996 for Project No. 11530). All reply comments must be filed with the Commission within 105 days from the date of this notice (October 23, 1996 for Project No. 11530).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Standard Paragraphs

Dated: July 11, 1996, Washington, D.C.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18118 Filed 7–16–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–609–000, et al.]

Columbia Gas Transmission Corporation, et al.; Natural Gas Certificate Filings

July 10, 1996.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation

[Docket No. CP96–609–000]

Take notice that on June 28, 1996, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP96–609–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Johns-Manville Sales Corporation (J–M), all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia proposes to abandon the service, which was carried out under an agreement on file with the Commission as Columbia's Rate Schedules X–127 and authorized by the Commission in Docket No. CP85–184–000. It is stated that Columbia was purchasing natural gas from J–M at interconnections with J–M's wells in Guernsey, Noble and Muskingum Counties, Ohio, with a provision for J–M to retain 25 percent of the gas being purchased. Columbia was transporting the remainder to J–M's fiberglass manufacturing plant in Waterville, Ohio, with the deliveries being effected by Waterville Gas Company, the distributor, which is also a party to the agreement. Columbia states that it will cancel Rate Schedule X–127 on receipt of abandonment authorization. It is explained that no facilities will be abandoned, and no customers will lose service as a result of the proposed abandonment.

Comment date: July 31, 1996, in accordance with Standard Paragraph F at the end of this notice.

2. Great Lakes Gas Transmission Limited Partnership

[Docket No. CP96–615–000]

Take notice that on July 2, 1996, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, Suite 1600, Detroit Michigan 48226, filed in Docket No. CP96–615–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act (NA), as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) Regulations thereunder, for permission and approval to abandon a natural gas transportation service for ANR Pipeline Company (AIR), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that it proposes to abandon a transportation service for ANR originally certificated in Docket No. CP74–317 and performed under Great Lakes' Rate Schedule T–6. Great Lakes asserts that it currently transports gas under Rate Schedule T–6 for ANR from an interconnection between AIR's and Great Lakes' pipelines near Farwell, Michigan (Farwell Interconnection) to two interconnections between the two companies in St. Clair County, Michigan (Capac and Muttonville Interconnections). It is indicated that Great Lakes' current service for ANR under Rate Schedule T–6 is provided by Great Lakes during ANR's summer storage injection cycles related to AIR's Capac and Muttonville storage fields.

Great Lakes asserts that by ANR's letter date April 1, 1996, ANR has provided written notice to Great Lakes of its desire to cancel service under Rate Schedule T–6 effective April 1, 1997. Great Lakes states that it requests abandonment authorization effective on such date. It is indicated that no facilities are proposed to be abandoned.

Comment date: July 31, 1996, in accordance with Standard Paragraph F at end of this notice

3. Northern Natural Gas Company

[Docket No. CP96–617–000]

Take notice that on July 2, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–617–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to: (1) Abandon and remove two town border stations (TBS'), including appurtenant facilities, located in Mills and Story Counties, Iowa; and (2) abandon in-place one TBS, including appurtenant facilities and approximately 2,000 feet of 2-inch-diameter branchline NEB–52401 (known as the Roberts Dairy TBS branchline), located in Douglas County, Nebraska under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act (NGA), all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Northern proposes to abandon and remove two TBS' and abandon in-place one TBS and approximately 2,000 feet of branchline described as follows:

TBS/Branchline	Location	Utility
Glenwood 1A TBS.	Section 2, T72N, R43W in Mills County, IA.	Utilicorp United, Inc.
Nevada TBS #2	Section 35, T84N, R23W in Story County, IA.	IES Industries, Inc.
Waterloo #2 TBS and the Roberts Dairy TBS branchline.	Section 4, T15N, R10E in Douglas County, NE.	Utilicorp United, Inc.

Northern states that the facilities to be abandoned are jurisdictional facilities under the NGA and were constructed pursuant to superseded 2.55 regulations, budget or blanket authority depending on the year the facilities were originally placed in-service.

Northern also states that it has been advised by the above utilities that gas service downstream of the TBS' described above has been discontinued and that the TBS' and appurtenant facilities may be removed. Northern states that it has determined that no other use exists for the facilities proposed to be abandoned herein.

Comment date: August 26, 1996, in accordance with Standard Paragraph G at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP96–618–000]

Take notice that on July 3, 1996, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP96–615–000, a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to install a new delivery point located in McNairy

County, Tennessee, under Tennessee's blanket certificate issued in Docket No. CP82–413–000 and Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes to construct and operate a new delivery point for the Town of Selmer, Tennessee (Selmer). Tennessee states that it will own, operate and maintain the hot taps and measurement equipment and will operate the interconnect piping and meter. Tennessee indicates that Selmer will own and maintain the interconnect piping and meter station. Tennessee asserts that Selmer will reimburse Tennessee approximately $299,999 for these facilities. Tennessee further asserts that the installation of the proposed delivery point is not prohibited by Tennessee's existing tariff.

Tennessee states that it has sufficient capacity to accomplish deliveries at the proposed delivery point without detriment or disadvantage to Tennessee's other customers. Tennessee asserts that the total quantities to be delivered to Selmer after the delivery point is installed will not exceed the total quantities authorized prior to this request.

Comment date: August 26, in accordance with Standard Paragraph G at the end of this notice.

5. Koch Gateway Pipeline Company

[Docket No., CP96–620–000]

Take notice that on July 3, 1996, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP96–620–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service with Southern Natural Gas Company (Southern) which was authorized in Docket No. CP78–51–000,[1] all as more fully set forth in the application on file with the Commission and open to public inspection.

Koch Gateway proposes to abandon an exchange service with Southern because the service is no longer necessary or beneficial and both parties have agreed to terminate the exchange service.

Comment date: July 31, 1996, in accordance with Standard Paragraph F at the end of this notice.

6. National Fuel Gas Supply Corporation

[Docket No. CP96–622–000]

Take notice that on July 3, 1996, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order granting permission and approval to abandon certain storage services it provides to Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern) under National's Rate Schedule SS–1. The application is on file with the Commission and open to public inspection.

In its application, National requests authorization, effective August 15, 1996, to abandon its SS–1 service, which National states was authorized in Docket No. CP76–492,[2] to Bay State and Northern in connection with the conversion of these services to service under National's FSS and FST Rate Schedules, both provided under Part 284 of the Commission's Regulations.

Comment date: July 31, 1996, in accordance with Standard Paragraph F at the end of this notice.

7. Trunkline LNG Company

[Docket No. CP–96–623–000]

Take notice that on July 5, 1996, Trunkline LNG Company (Trunkline LNG), P.O. Box 1642, Houston, Texas 77251–1642, filed an abbreviated application with the Commission in Docket No. CP96–623–000 pursuant to section 7(b) of the Natural Gas Act, as amended, and Part 157 of the Commission's Regulations for authorization to abandon approximately 1.358 acres of land leased by Trunkline LNG. Trunkline LNG states that the release of such acreage is necessary to allow road improvements by Calcasieu Parish, Louisiana, all as more fully set forth in the application which is open to the public for inspection.

Comment date: July 31, 1996, in accordance with Standard paragraph F at the end of this notice.

8. Columbia Gas Transmission

[Docket No. CP–96–626–000]

Take notice that on July 5, 1996, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP–96–626–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate the facilities necessary to establish seven additional points of delivery to existing customers for firm transportation service under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate the necessary facilities to establish seven new points of delivery for firm transportation service under Part 284 of the commission's regulations and existing authorized Rate Schedules and within certificated entitlements, as follows:

Customer	Location of delivery point
Columbia Gas of Pennsylvania, Inc.	Fayette County, Pennsylvania.
Mountaineer Gas Company	Kanawha County, West Virginia. (2) Wayne County, West Virginia Wetzel County, West Virginia. Tucker County, West Virginia.
Waterville Gas & Oil Company.	Wood County, Ohio.

Columbia estimates that the quantities of natural gas to be delivered to each of the new points of delivery as 1.5 Dth/day and 150 Dth annually, except for the Ohio delivery point where the estimate is 1.6 Dth/day and 200 Dth annually.

Columbia states that the cost to install the new taps would be approximately $150 per tap and would be treated as an O&M expense.

Comment date: August 26, 1996, in accordance with standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–18119 Filed 7–16–96; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1120–DR]

Commonwealth of Pennsylvania; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania, (FEMA–1120–DR), dated June 18, 1996, and related determinations.

EFFECTIVE DATE: June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Manage ment Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 28, 1996, the President amended the major disaster declaration of June 18, 1996, under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the Commonwealth of Pennsylvania, resulting from flooding on June 12, 1996, is of sufficient severity and magnitude to warrant the expansion of the incident type to include severe storms and the expansion of the incident period to include damage which occurred through June 19, 1996, in the major disaster declaration of June 18, 1996, under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act").

All other conditions specified in the original declaration remain the same.

Please notify the Governor of the Commonwealth of Pennsylvania and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–18133 Filed 7–16–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1120–DR]

Commonwealth of Pennsylvania; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania, (FEMA–1120–DR), dated June 18, 1996, and related determinations.

EFFECTIVE DATE: June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Pennsylvania, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 18, 1996:

The counties of Adams, Beaver, Bedford, and Franklin, for Individual Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–18134 Filed 7–16–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL HOUSING FINANCE BOARD

[No. 96–N–5]

Notice of Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added a new Section 10(g) to the Federal Home Loan Bank Act of 1932 requiring that members of the Federal Home Loan Bank (FHLBank) System meet standards for community investment or service in order to maintain continued access to long-term FHLBank System advances. In compliance with this statutory change, the Federal Housing Finance Board (Housing Finance Board) promulgated Community Support regulations (12 CFR Part 936). Under the review process established in the regulations, the Housing Finance Board will select a certain number of members for review each quarter, so that all members that are subject to the Community Reinvestment Act of 1977, 12 U.S.C. § 2901 *et seq.*, (CRA), will be reviewed once every two years. The purpose of this Notice is to announce the names of the members selected for the second quarter review (1996–97 cycle) under the regulations. The Notice also conveys the dates by which members need to comply with the Community Support regulation review requirements and by which comments from the public must be received.

DATES: *Due Date for Member Community Support Statements for Members Selected in Second Quarter Review:* August 30, 1996.

Due Date for Public Comments on Members Selected in Second Quarter Review: August 30, 1996.

[1] *See* FERC ¶61,156 (1978).

[2] *See*, 38 FERC ¶61,135 (1987).

FOR FURTHER INFORMATION CONTACT: Mitchell Berns, Director, Office of Supervision, (202) 408–2562, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. A telecommunications device for deaf persons (TDD) is available at (202) 408–2579.

SUPPLEMENTARY INFORMATION:

A. Selection for Community Support Review

The Housing Finance Board currently reviews all FHLBank System members that are subject to CRA approximately once every two years. Approximately one-eighth of the FHLBank members in each district will be selected for review by the Housing Finance Board each calendar quarter. To date, only members that are subject to CRA have been reviewed. In selecting members, the Housing Finance Board follows the chronological sequence of the members' CRA Evaluations post-July 1, 1990, to the greatest extent practicable, selecting one-eighth of each District's membership for review each calendar quarter. However, the Housing Finance Board will postpone review of new members until they have been System members for one year.

Selection for review is not, nor should it be construed as, any indication of either the financial condition or Community Support performance of the institutions listed.

B. List of FHLBank Members To Be Reviewed in the Second Quarter, Grouped by FHLBank District

Member	City	State
Federal Home Loan Bank of Boston—District 1 P.O. Box 9106, Boston, Massachusetts 02205–9106		
Branford Savings Bank	Branford	CT
First FS&LA of East Hartford	East Hartford	CT
Enfield FS&LA	Enfield	CT
Essex Savings Bank	Essex	CT
First National Bank of New England	Hartford	CT
Farmers and Mechanics Bank	Middletown	CT
First City Bank	New Britain	CT
Bank of New Haven	New Haven	CT
Cargill Bank of Connecticut	Putnam	CT
North Middlesex Savings Bank	Ayer	MA
Boston Private Bank & Trust Co.	Boston	MA
First FSB of Boston	Boston	MA
First Trade Union S.B., FSB	Boston	MA
South Boston Savings Bank	Boston	MA
Union Federal Savings Bank	Boston	MA
Greater Boston Bank, A Co-operative Bank	Brighton	MA
Peoples Federal Savings Bank	Brighton	MA
Easthampton Co-operative Bank	Easthampton	MA
Everett Savings Bank	Everett	MA
Citizens-Union Savings Bank	Fall River	MA
Foxboro FS&LA	Foxboro	MA
Foxboro National Bank of Foxboro	Foxboro	MA
Georgetown Savings Bank	Georgetown	MA
First Essex Bank, FSB	Lawrence	MA
Marblehead Savings Bank	Marblehead	MA
Medford Co-operative Bank	Medford	MA
Plymouth Savings Bank	Middleborough	MA
Monson Savings Bank	Monson	MA
Lawrence Savings Bank	North Andover	MA
Warren Five Cents Savings Bank	Peabody	MA
Saugus Co-operative Bank	Saugus	MA
Scituate Federal Savings Bank	Scituate	MA
Middlesex Federal Savings, F.A.	Somerville	MA
Spencer Savings Bank	Spencer	MA
Hampden Savings Bank	Springfield	MA
Bristol County Savings Bank	Taunton	MA
Federal Savings Bank	Waltham	MA
Auburn S&LA	Auburn	ME
Augusta Federal Savings Bank	Augusta	ME
First N.B. of Bar Harbor	Bar Harbor	ME
First FS&LA of Bath	Bath	ME
Brunswick Federal Savings, F.A.	Brunswick	ME
Aroostook County FS&LA	Caribou	ME
Kennebunk Savings Bank	Kennebunk	ME
Skowhegan Savings Bank	Skowhegan	ME
Kennebec FS&LA	Waterville	ME
Federal Savings Bank	Dover	NH
Farmington National Bank	Farmington	NH
Franklin Savings Bank	Franklin	NH
Citizens NH	Manchester	NH
Meredith Village Savings Bank	Meredith	NH
BayBank, FSB	Nashua	NH
Primary Bank	Peterborough	NH

Member	City	State
Portsmouth Savings Bank	Portsmouth	NH
Salem Co-operative Bank	Salem	NH
First Brandon National Bank	Brandon	VT
Vermont National Bank	Brattleboro	VT
Howard Bank, N.A.	Burlington	VT
Vermont Federal Bank, FSB	Williston	VT
Woodstock National Bank	Woodstock	VT
Federal Home Loan Bank of New York—District 2 Seven World Trade Center 22nd Floor New York, New York 10048–1185		
Axia Federal Savings Bank	Avenel	NJ
Parmrapo Savings Bank, S.L.A.	Bayonne	NJ
Ocean Federal Savings Bank	Brick	NJ
Farmers' & Mechanics' S.B., F.S.B.	Burlington	NJ
Inter-Boro S&LA	Cherry Hill	NJ
Central Jersey Savings Bank	East Brunswick	NJ
Freehold S&LA	Freehold	NJ
GSL Savings Bank, SLA	Guttenberg	NJ
Oritani Savings Bank, SLA	Hackensack	NJ
Investors Savings Bank	Millburn	NJ
Millington Savings Bank	Millington	NJ
Dollar Savings Bank, SLA	Newark	NJ
Ocean City Home S&LA	Ocean City	NJ
Amboy National Bank	Old Bridge	NJ
Lakeview Savings Bank	Paterson	NJ
First Savings Bank	Perth Amboy	NJ
Ridgewood Savings Bank of NJ	Ridgewood	NJ
South Bergen Savings Bank	Wood Ridge	NJ
ALBANK, fsb	Albany	NY
Amsterdam FS&LA	Amsterdam	NY
Brooklyn Federal Savings Bank	Brooklyn	NY
Canisteo S&LA	Canisteo	NY
Canton FS&LA	Canton	NY
Home Federal Savings Bank	Douglaston	NY
Elmira Savings and Loan, F.A.	Elmira	NY
Glen Falls National Bank and Trust Company	Glen Falls	NY
Gloversville FS&LA	Gloversville	NY
Provident Savings Bank, F.A.	Haverstraw	NY
Maple City S&LA	Hornell	NY
Sunnyside FS&LA of Irvington	Irvington	NY
Maspeth FS&LA	Maspeth	NY
Massena S&LA	Massena	NY
Medina S&LA	Medina	NY
Long Island Savings Bank, FSB	Melville	NY
Union State Bank	Nanuet	NY
Carver Federal Savings Bank	New York	NY
Dime Savings Bank of New York, fsb	New York	NY
Ogdensburg FS&LA	Ogdensburg	NY
Wilber National Bank	Oneonta	NY
First Federal Savings Bank	Peekskill	NY
Schenectady FS&LA	Schenectady	NY
Yonkers S&LA	Yonkers	NY
Federal Home Loan Bank of Pittsburgh—District 3 601 Grant Street Pittsburgh, Pennsylvania 15219–4455		
Delaware National Bank	Georgetown	DE
Artisans' Savings Bank	Wilmington	DE
Laurel Savings Bank	Allison Park	PA
Investment S&LA	Altoona	PA
Reliance Savings Bank	Altoona	PA
Peoples Home Savings Bank	Beaver Falls	PA
Pennwood Savings Association	Bellevue	PA
Columbia County Farmers N.B.	Bloomsburg	PA
Bryn Mawr Trust Company	Bryn Mawr	PA
Community Bank, N.A.	Carmichaels	PA
Charleroi Federal Savings Bank	Charleroi	PA
East Stroudsburg SA	East Stroudsburg	PA
Citizens N.B. of Evans City	Evans City	PA
Armstrong County B&LA	Ford City	PA

Member	City	State
Greenville Savings Bank	Greenville	PA
First Commonwealth Bank	Indiana	PA
Westmoreland FS&LA of Latrobe	Latrobe	PA
First National Bank of Leesport	Leesport	PA
Keystone Savings Bank	Lehigh Valley	PA
Mifflin County Savings Bank	Lewistown	PA
First Citizens National Bank	Mansfield	PA
First National Bank of Mifflintown	Mifflintown	PA
First Federal Savings Bank	Monessan	PA
Parkvale Savings Bank	Monroeville	PA
Prudential Savings Bank	Philadelphia	PA
NorthSide Bank	Pittsburgh	PA
Troy Hill FS&LA	Pittsburgh	PA
Workingmens Savings Bank, FSB	Pittsburgh	PA
Liberty Savings Bank	Pottsville	PA
Elk County S&LA	Ridgway	PA
Sewickley Savings Bank	Sewickley	PA
Keystone State Savings Bank	Sharpsburg	PA
First N.B. of Slippery Rock	Slippery Rock	PA
Union National Bank & Trust Co.	Souderton	PA
First N.B. of Spring Mills	Spring Mills	PA
Grange N.B. of Wyoming County	Tunkhannock	PA
Main Line Federal Savings Bank	Villanova	PA
Washington Federal Savings Bank	Washington	PA
First FS&LA of Greene County	Waynesburg	PA
Citizens & Northern Bank	Wellsboro	PA
First Century Bank, NA	Bluefield	WV
Huntington FS&LA	Huntington	WV
First National Bank of Keystone	Keystone	WV
Merchants National Bank	Montgomery	WV
Doolin Security Savings Bank, FSB	New Martinsville	WV
United N.B. of Parkersburg	Parkersburg	WV
First FS&LA of Ravenswood	Ravenswood	WV
First FS&LA of Sistersville	Sistersville	WV

Federal Home Loan Bank of Atlanta—District 4
P.O. Box 105565
Atlanta, Georgia 30348

No members selected		

Federal Home Loan Bank of Cincinnati—District 5
P.O. Box 598
Cincinnati, Ohio 45201

First American Bank	Ashland	KY
First Federal Bank for Savings	Ashland	KY
Bank of Edmonson County	Brownsville	KY
United Citizens Bank and Trust Co.	Campbellsburg	KY
Citizens Bank & Trust Company	Campbellsville	KY
Farmers & Traders Bank of Campton	Campton	KY
Carrollton FS&LA	Carrollton	KY
First Kentucky FSB	Central City	KY
First National Bank	Central City	KY
Peoples Bank of Northern KY, Inc.	Crestview Hills	KY
Farmers National Bank of Cynthiana	Cynthiana	KY
Central Kentucky FS&LA	Danville	KY
United Kentucky Bank of Pendleton	Falmouth	KY
Columbia Federal Savings Bank	Fort Mitchell	KY
Harlan National Bank	Harlan	KY
Harrodsburg First FS&LA	Harrodsburg	KY
First FS&LA	Hazard	KY
Fifth Third Savings Bank of Northern Kentucky	Hebron	KY
Bank of Magnolia	Hodgenville	KY
Mid-America Bank, FSB	LaGrange	KY
First Lancaster FSB	Lancaster	KY
Citizens National Bank	Lebanon	KY
First FSB of Leitchfield	Leitchfield	KY
Home Federal Savings & Loan of Ludlow	Ludlow	KY
First State Bank of Pineville	Middlesboro	KY
Home Federal Bank	Middlesboro	KY
Middlesboro Federal Bank, F.S.B	Middlesboro	KY
Peoples Bank	Mount Washington	KY
Bank of Mt. Vernon	Mt. Vernon	KY

Member	City	State
Jessamine First FS&LA	Nicholasville	KY
Family Bank, FSB	Paintsville	KY
Security First Network Bank, FSB	Pineville	KY
Central Bank of North Pleasureville	Pleasureville	KY
First Bank and Trust Company	Princeton	KY
Trans Financial Bank, FSB	Russellville	KY
Liberty National Bank	Ada	OH
Industrial S&LA	Bellevue	OH
Bridgeport S&LA	Bridgeport	OH
Peoples Savings and Loan Company	Bucyrus	OH
First N.B. of Southeastern Ohio	Caldwell	OH
Guernsey Bank, a FSB	Cambridge	OH
Clifton Heights Loan & Building Co	Cincinnati	OH
Home Bank, FSB	Cleveland	OH
First City Bank	Columbus	OH
Valley Savings and Loan Company	Cuyahoga Falls	OH
First Federal Savings and Loan	Defiance	OH
Fidelity FS&LA of Delaware	Delaware	OH
Elyria Savings and Trust N.B	Elyria	OH
First FS&LA of Galion	Galion	OH
Home Building and Loan Company	Greenfield	OH
Greenville FS&LA	Greenville	OH
Mayflower Savings and Loan Company	Groesbeck	OH
Home Federal Bank, a FSB	Hamilton	OH
First FS&LA	Ironton	OH
Lawrence Federal Savings Bank	Ironton	OH
Liberty FS&LA	Ironton	OH
Citizens Bank of Logan	Logan	OH
Mechanics Savings Bank	Mansfield	OH
Peoples FS&LA	Massillon	OH
Metropolitan S.B. of Cleveland	Mayfield Heights	OH
Miami Savings and Loan Company	Miamitown	OH
Security Savings Association	Milford	OH
Nelsonville Home and S.A.	Nelsonville	OH
First FS&LA of Newark	Newark	OH
Geauga Savings Bank	Newbury	OH
Security Dollar Bank	Niles	OH
National Bank of Oak Harbor	Oak Harbor	OH
Valley Central Savings Bank	Reading	OH
Citizens Banking Company	Sandusky	OH
Peoples FS&LA	Sidney	OH
Monroe FS&LA	Tipp City	OH
Van Wert Federal Savings Bank	Van Wert	OH
Home Savings and Loan Association	Wapakoneta	OH
Adams County Building and Loan Co.	West Union	OH
Commerce National Bank	Worthington	OH
First FSB of Youngstown	Youngstown	OH
Mutual Federal Savings Bank, a Stock Corp.	Zanesville	OH
Dollar Bank, FSB	Pittsburgh	PA
Bank of Bartlett	Bartlett	TN
Bank of Bolivar	Bolivar	TN
Union Planters Bank of Chattanooga, N.A.	Chattanooga	TN
Farmers and Merchants Bank	Clarksville	TN
Farmers and Merchants Bank	Dyer	TN
First Citizens National Bank	Dyersburg	TN
Elizabethton Federal Savings Bank	Elizabethton	TN
First Citizens Bank	Hohenwald	TN
Progressive Savings Bank, FSB	Jamestown	TN
Marion Trust & Banking Company	Jasper	TN
Home Federal Bank of TN, FSB	Knoxville	TN
Union Planters Bank of E. TN, N.A.	Knoxville	TN
First Central Bank	Lenoir City	TN
Lexington First FSB	Lexington	TN
American Savings Bank	Livingston	TN
Volunteer FS&LA	Madisonville	TN
First National Bank of McMinnville	McMinnville	TN
First Federal Bank, FSB	Memphis	TN
Leader Federal Bank for Savings	Memphis	TN
Franklin Federal Savings Bank	Morristown	TN
Jefferson FS&LA	Morristown	TN
First Federal Bank, FSB	Nashville	TN
Union Planters Bank of Middle Tennessee, N.A.	Nashville	TN
Union Planters Bank of N.W. TN	Paris	TN
Citizens Community Bank	Winchester	TN

Member	City	State
Federal Home Loan Bank of Indianapolis—District 6 P.O. Box 60 Indianapolis, Indiana 46206–0060		
First FSB of Angola	Angola	IN
Peoples FSB of Dekalb County	Auburn	IN
Peoples Federal Savings Bank	Aurora	IN
Farmers and Mechanics FS&LA	Bloomfield	IN
First State Bank	Bourbon	IN
Columbus Bank and Trust Company	Columbus	IN
English State Bank	English	IN
Home Loan Bank, SB	Fort Wayne	IN
Farmers Bank, Frankfort	Frankfort	IN
Newton County Loan & SA	Goodland	IN
First FS&LA	Greensburg	IN
Greensburg S&LA	Greensburg	IN
Lake FS&LA of Hammond	Hammond	IN
HFS Bank, F.S.B	Hobart	IN
Security Federal Savings Bank	Logansport	IN
First FSB of Marion	Marion	IN
Michigan City S&LA	Michigan City	IN
People's Bank and Trust Company	Mount Vernon	IN
First Merchants Bank, N.A	Muncie	IN
Mutual Federal Savings Bank	Muncie	IN
American Savings, FSB	Munster	IN
Community Bank	Noblesville	IN
First National Bank of Odon	Odon	IN
Lincoln Federal Savings Bank	Plainfield	IN
Harrington Bank, FSB	Richmond	IN
First Parke State Bank	Rockville	IN
Rockville National Bank	Rockville	IN
Scottsburg Building and LA	Scottsburg	IN
Home Federal Savings Bank	Seymour	IN
Owen Community Bank, a.b	Spencer	IN
First Farmers State Bank	Sullivan	IN
Peoples Building and LA	Tell City	IN
Terre Haute First National Bank	Terre Haute	IN
First Federal Bank, a FSB	Vincennes	IN
First FSB of Wabash	Wabash	IN
First FS&LA of Washington	Washington	IN
Home Building Savings Bank, FSB	Washington	IN
Peoples National Bank & Trust Co	Washington	IN
First Federal S&LA of Alpena	Alpena	MI
Eaton Federal Savings Bank	Charlotte	MI
Hastings City Bank	Hastings	MI
Kalamazoo County State Bank	Schoolcraft	MI
Franklin Bank, N.A	Southfield	MI
First National Bank of St. Ignace	St. Ignace	MI
Northwestern Savings Bank & Trust	Traverse City	MI
Federal Home Loan Bank of Chicago—District 7 111 East Wacker Drive Suite 700 Chicago, Illinois 60601		
Bank of Alton	Alton	IL
First FS&LA of Barrington	Barrington	IL
Belvidere National Bank and Trust	Belvidere	IL
First FSB of Belvidere	Belvidere	IL
Farmers State Bank of Camp Point	Camp Point	IL
Greene County N.B. in Carrollton	Carrollton	IL
First Federal of Champaign-Urbana	Champaign	IL
Charleston FS&LA	Charleston	IL
Broadway Bank	Chicago	IL
Central FS&LA of Chicago	Chicago	IL
Fidelity Federal Savings Bank	Chicago	IL
First Security FSB	Chicago	IL
Liberty Bank for Savings	Chicago	IL
Lincoln Park Savings Bank	Chicago	IL
Universal Federal Savings Bank	Chicago	IL
Collinsville Building and LA	Collinsville	IL
Home FS&LA of Collinsville	Collinsville	IL
First Federal Bank for Savings	Des Plaines	IL
Calumet Federal S&LA of Chicago	Dolton	IL

Member	City	State
West Suburban Bank of Aurora, FSB	Downers Grove	IL
First FS&LA	Edwardsville	IL
Today's Bank—East	Freeport	IL
Farmers National Bank in Geneseo	Geneseo	IL
First National Bank of Jonesboro	Georgetown	IL
Glenview State Bank	Glenview	IL
Guardian Savings Bank FSB	Granite City	IL
Herrin Security Bank	Herrin	IL
Security Savings Bank, FSB	Hillsboro	IL
South End Savings, a F.A	Homewood	IL
Kansas State Bank	Kansas	IL
Eureka Savings Bank	La Salle	IL
First State Bank of W. Illinois	LaHarpe	IL
First National Bank of Illinois	Lansing	IL
Lisle Savings and Loan Association	Lisle	IL
Milford Building and LA	Milford	IL
Southeast National Bank of Moline	Moline	IL
Nashville Savings Bank	Nashville	IL
Citizens Savings Bank, F.S.B	Normal	IL
Peoples Bank and Trust of Pana	Pana	IL
Home Guaranty Savings Association	Piper City	IL
Poplar Grove State Bank	Poplar Grove	IL
First Robinson Savings & Loan, F.A	Robinson	IL
Rochelle S&LA	Rochelle	IL
Rock Island Bank	Rock Island	IL
Alpine Bank of Illinois	Rockford	IL
Damen Federal Bank for Savings	Schaumburg	IL
First Federal Savings and Loan	Shelbyville	IL
Tampico National Bank	Tampico	IL
First Federal Bank, F.S.B	Waukegan	IL
First National Bank of Bangor	Bangor	WI
Guaranty Bank, S.S.B	Brown Deer	WI
Bank of Edgar	Edgar	WI
Fox Valley S&LA	Fond du Lac	WI
National Exchange Bank and Trust	Fond du Lac	WI
First Northern Savings Bank, S.A	Green Bay	WI
Park Bank	Holmen	WI
Ixonia State Bank	Ixonia	WI
Advantage Bank, F.S.B	Kenosha	WI
First FSB La Crosse-Madison	La Crosse	WI
Ladysmith FS&LA	Ladysmith	WI
Markesan State Bank	Markesan	WI
Fidelity National Bank	Medford	WI
Merrill FS&LA	Merrill	WI
Continental Savings Bank, S.A	Milwaukee	WI
Lincoln Savings Bank	Milwaukee	WI
Farmers and Merchants Bank	Reedsburg	WI
M&I Bank SSB	Sheboygan	WI
Spencer State Bank	Spencer	WI
First Financial Bank, FSB	Stevens Point	WI
First Bank of Tomah	Tomah	WI
Farmers State Bank of Waupaca	Waupaca	WI
Paper City Savings Association	Wisconsin Rapids	WI
Federal Home Loan Bank of Des Moines—District 8 907 Walnut Street Des Moines, Iowa 50309		
Brenton Savings Bank, FSB	Ames	IA
First American Bank	Ames	IA
Citizens Savings Bank	Anamosa	IA
Community State Bank	Ankeny	IA
Ashton State Bank	Ashton	IA
Chelsea Savings Bank	Belle Plaine	IA
Liberty Bank and Trust	Bloomfield	IA
Hawkeye Federal Savings Bank	Boone	IA
Midwest FS&LA of Eastern Iowa	Burlington	IA
Guaranty Bank and Trust Company	Cedar Rapids	IA
Central Trust and Savings Bank	Cherokee	IA
Page County Federal S.A	Clarinda	IA
First State Bank	Conrad	IA
First FSB of Creston, F.S.B	Creston	IA
Mercantile Bank, FSB	Davenport	IA
State FS&LA of Des Moines	Des Moines	IA

Member	City	State
Fidelity Bank and Trust	Dyersville	IA
Community Savings Bank	Edgewood	IA
First American Bank	Fort Dodge	IA
Grinnell Federal Savings Bank	Grinnell	IA
Hampton State Bank	Hampton	IA
Independence Federal Bank for Savings	Independence	IA
Farmers State Bank	Jesup	IA
Liberty Savings Bank, FSB	Johnston	IA
Security Bank Jasper-Poweshiek	Kellogg	IA
First Community Bank, a FSB	Keokuk	IA
Keokuk Savings Bank and Trust Co	Keokuk	IA
Keystone Savings Bank	Keystone	IA
Iowa State Savings Bank	Knoxville	IA
Cedar Valley Bank and Trust	La Porte City	IA
Marshalltown Savings Bank, FSB	Marshalltown	IA
Interstate FS&LA	McGregor	IA
Mid-Iowa Savings Bank, FSB	Newton	IA
Citizens Bank	Sac City	IA
American State Bank	Sioux Center	IA
Northwest Federal Savings Bank	Spencer	IA
First FSB of the Midwest	Storm Lake	IA
Story County Bank & Trust Company	Story City	IA
Farmers Savings Bank	Walford	IA
State Bank of Waverly	Waverly	IA
First National Bank of Aitkin	Aitkin	MN
Viking Savings Association, F.A	Alexandria	MN
21st Century Bank	Balaton	MN
First State Bank of Biglork	Biglork	MN
First National Bank of Blue Earth	Blue Earth	MN
Brainerd S&LA; F.A	Brainerd	MN
Oakley National Bank of Buffalo	Buffalo	MN
First National Bank of Coleraine	Coleraine	MN
Western National Bank of Duluth	Duluth	MN
State Bank of Faribault	Fairbault	MN
Citizens State Bank of Gaylord	Gaylord	MN
State Bank of Kimball	Kimball	MN
First National Bank of Le Center	Le Center	MN
First State Bank of Le Roy	Le Roy	MN
Prairie State Bank	Milan	MN
TCF Bank Minnesota, FSB	Minneapolis	MN
First National Bank of Montgomery	Montgomery	MN
First National Bank of Monticello	Monticello	MN
Peoples National Bank of Mora	Mora	MN
United Farmers & Merchants S.B	Morris	MN
Merchants S.B. of North Branch	North Branch	MN
First National Bank of Osakis	Osakis	MN
Valley State Bank of Oslo	Oslo	MN
First National Bank of Plainview	Plainview	MN
Princeton Bank	Princeton	MN
Prior Lake State Bank	Prior Lake	MN
Goodhue County N.B. of Red Wing	Red Wing	MN
Minnesota Valley Bank	Redwood Falls	MN
Norwest Bank MN, South, N.A	Rochester	MN
First State Bank of Rushmore	Rushmore	MN
Murray County State Bank	Slayton	MN
Green Lake State Bank	Spicer	MN
Citizens Independent Bank	St. Louis Park	MN
First National Bank of St. Peter	St. Peter	MN
State Bank of Tower	Tower	MN
Tracy State Bank	Tracy	MN
Queen City Federal Savings Bank	Virginia	MN
Ozark Mountain Bank	Branson	MO
BC National Banks	Butler	MO
Missouri Federal Savings Bank	Cameron	MO
Carroll County Trust Company of Carrollton	Carrollton	MO
Southwest Missouri Bank	Carthage	MO
Roosevelt Bank, A FSB	Chesterfield	MO
Chillicothe State Bank	Chillicothe	MO
Union Planters Bank of Missouri	Clayton	MO
Union Planters Bank of Mid-MO	Columbia	MO
State Bank of Missouri	Concordia	MO
Continental Security Bank	Deepwater	MO
First State Bank of Farmington	Farmington	MO
North American Savings Bank, FSB	Grandview	MO

Member	City	State
MCM Savings Bank, F.S.B.	Hannibal	MO
First Federal Bank, FSB	Kansas City	MO
Sentinel FS&LA of Kansas City	Kansas City	MO
Central Bank	Lebanon	MO
Mercantile Bank of Lebanon	Lebanon	MO
Clay County S&LA	Liberty	MO
Liberty Savings Bank, F.S.B.	Liberty	MO
Pioneer Bank and Trust Company	Maplewood	MO
Marceline Home S&LA	Marceline	MO
Wood & Huston Bank	Marshall	MO
Citizens State Bank	Marshfield	MO
First N.B. of Audrain County	Mexico	MO
First Home Savings Bank	Mountain Grove	MO
Home S&LA of Norborne	Norborne	MO
Southern Missouri Savings Bank	Poplar Bluff	MO
The State Bank	Richmond	MO
Central FS&LA of Rolla	Rolla	MO
First N.B. of the Midsouth	Sikeston	MO
Citizens N.B. of Springfield	Springfield	MO
Guaranty Federal Savings Bank	Springfield	MO
Midwest FS&LA of St. Joseph	St. Joseph	MO
Provident Bank, FSB	St. Joseph	MO
BNC National Bank	Bismarck	ND
First Southwest Bank	Bismarck	ND
Ramsey National Bank & Trust of Devils Lake	Devils Lake	ND
American State Bank and Trust of Dickinson	Dickinson	ND
First National Bank North Dakota	Grand Forks	ND
National Bank of Harvey	Harvey	ND
First S & LA of South Dakota, Inc.	Aberdeen	SD
First Federal Bank, a FSB	Beresford	SD
First Savings Bank, FSB	Beresford	SD
First National Bank in Garretson	Garretson	SD
First Western Federal Savings Bank	Rapid City	SD

Federal Home Loan Bank of Dallas—District 9
P.O. Box 619026
Dallas/Forth Worth, Texas 75261–9026

First N.B. of Sharp County	Ash Flat	AR
First FS&LA of Camden	Camden	AR
First National Bank	Clinton	AR
Corning S&LA	Corning	AR
Hazen First State Bank	Hazen	AR
Heritage Bank, a FSB	Little Rock	AR
Bank of Malvern	Malvern	AR
Horizon Bank	Malvern	AR
First National Bank	Paragould	AR
Peoples Bank of Paragould	Paragould	AR
Pocahontas FS&LA	Pocahontas	AR
Citizens S&LA	Baton Rouge	LA
First N.B. of St. Charles Parish	Boutte	LA
Beauregard Federal Savings Bank	DeRidder	LA
First National Bank of Houma	Houma	LA
Home Savings Bank, FSB	Lafayette	LA
Calcasieu Marine National Bank	Lake Charles	LA
First FS&LA	Lake Charles	LA
Greater New Orleans Homestead, FSB	Metairie	LA
Minden Building & Loan Association	Minden	LA
Capital Bank	Monroe	LA
Algiers Homestead Association	New Orleans	LA
Dryades Savings Bank, FSB	New Orleans	LA
Fifth District S&LA	New Orleans	LA
Union Savings and Loan Association	New Orleans	LA
Plaquemine Bank and Trust Company	Plaquemine	LA
Rayne Building & Loan Association	Rayne	LA
Citizens Bank and Trust Company	Springhill	LA
Meritrust Federal Savings Bank	Thibodaux	LA
Magnolia Federal Bank For Savings	Hattiesburg	MS
Inter-City Federal Savings Bank	Louisville	MS
First National Bank of Lucedale	Lucedale	MS
Union Planters Bank of N.E. MS	New Albany	MS
First National Bank of Pontotoc	Pontotoc	MS
Lamar Bank	Purvis	MS
North Central Bank For Savings	Winona	MS

Member	City	State
Alamogordo FS&LA	Alamogordo	NM
First National Bank of Artesia	Artesia	NM
First National Bank in Clayton	Clayton	NM
Matrix Capital Bank	Las Cruces	NM
First FSB of New Mexico	Roswell	NM
Charter Bank For Savings, FSB	Santa Fe	NM
Tucumcari FS&LA	Tucumcari	NM
First Savings Bank, FSB	Arlington	TX
Franklin Federal Bancorp, a FSB	Austin	TX
Hartland Bank, N.A.	Austin	TX
Hill Country Bank	Austin	TX
Horizon Bank and Trust, SSB	Austin	TX
Citizens National Bank	BenBrook	TX
Mercantile Bank, N.A.	Brownsville	TX
Homestead Bank, SSB	College Station	TX
First State Bank	Columbus	TX
First Bank of Conroe, N.A.	Conroe	TX
First Commerce Bank	Corpus Christi	TX
Cuero FS&LA	Cuero	TX
Dalhart FS&LA	Dalhart	TX
Mercantile Bank & Trust, FSB	Dallas	TX
Texas Bank and Trust, N.A	Dallas	TX
Union State Bank	Florence	TX
Colonial S&LA	Fort Worth	TX
Guaranty National Bank	Gainesville	TX
National Bank	Gatesville	TX
Gilmer Savings Bank, FSB	Gilmer	TX
Gladewater National Bank	Gladewater	TX
Charter National Bank—Houston	Houston	TX
Houston Community Bank, N.A.	Houston	TX
Langham Creek National Bank	Houston	TX
Justin State Bank	Justin	TX
Farmers and Merchants State Bank	Krum	TX
Fayette Savings Association	La Grange	TX
Falcon National Bank	Laredo	TX
Lubbock National Bank	Lubbock	TX
Western National Bank	Lubbock	TX
FirstBanc Saving Association of TX	Missouri City	TX
First N.B. of Mount Vernon	Mount Vernon	TX
First National Bank in Munday	Munday	TX
First FS&LA of Paris	Paris	TX
Peoples National Bank	Paris	TX
PointBank, N.A.	Pilot Point	TX
Citizens First Bank	Rusk	TX
Intercontinental National Bank	San Antonio	TX
Northwest Bank Texas, San Antonio, N.A.	San Antonio	TX
Balcones Bank, SSB	San Marcos	TX
Citizens State Bank	Sealy	TX
Southern National Bank of Texas	Sugarland	TX
American National Bank of Texas	Terrell	TX
Terrell Federal Savings and Loan	Terrell	TX
Texarkana National Bank	Texarkana	TX
TexStar National Bank	Universal City	TX
American National Bank	Witchita	TX

Federal Home Loan Bank of Topeka—District 10
Post Office Box 176
Topeka, Kansas 66601

First National Bank in Alamosa	Alamosa	CO
San Luis Valley FS&LA of Alamosa	Alamosa	CO
Pikes Peak National Bank	Colorado Springs	CO
Delta Federal Savings, F.S.B.	Delta	CO
First Federal Bank of Colorado	Denver	CO
Rocky Mountain Bank and Trust	Florence	CO
First National Bank	Fort Collins	CO
Gunnison S&LA	Gunnison	CO
Rio Grande S&LA	Monte Vista	CO
First National Bank of Ordway	Ordway	CO
Paonia State Bank	Paonia	CO
The Minnequa Bank of Pueblo	Pueblo	CO
Rocky Ford FS&LA of Colorado	Rocky Ford	CO
Century Savings & Loan Association	Trinidad	CO
Park State Bank	Woodland Park	CO

Member	City	State
Prairie State Bank	Augusta	KS
First National Bank in Cimarron	Cimarron	KS
Mid-Continent Federal Savings Bank	El Dorado	KS
Golden Belt Bank, FSA	Ellis	KS
Farmers Bank and Trust, N.A	Great Bend	KS
Southwestern S&LA	Hugoton	KS
Argentine FS&LA	Kansas City	KS
Citizens Bank of Kansas, N.A	Kingman	KS
University N.B. of Lawrence	Lawrence	KS
Mutual S.A., an F.S.A	Leavenworth	KS
Peoples Bank	Pratt	KS
Security Savings Bank, a F.S.B	Salina	KS
The Stockton National Bank	Stockton	KS
First National Bank of Syracuse	Syracuse	KS
Capitol FS&LA	Topeka	KS
Silver Lake Bank	Topeka	KS
Kendall State Bank	Valley Falls	KS
Bank IV, National Association	Wichita	KS
Garden Plain State Bank	Wichita	KS
Bank of Bellevue	Bellevue	NE
First Federal Lincoln Bank	Lincoln	NE
National Bank of Commerce Trust & Savings Association	Lincoln	NE
First National Bank of McCook	McCook	NE
American N.B. of Nebraska City	Nebraska City	NE
Nehawka Bank	Nehawka	NE
Citizens Bank of Edmond	Edmond	OK
Guthrie Federal Savings Bank	Guthrie	OK
First State Bank	Keyes	OK
City National Bank & Trust Company	Lawton	OK
First Commercial Bank, SSB	Lawton	OK
First National Bank in OKeene	OKeene	OK
Local Federal Bank, F.S.B	Oklahoma City	OK
National Bank of Commerce	Oklahoma City	OK
Local America Bank of Tulsa, a FSB	Tulsa	OK
Triad Bank, N.A	Tulsa	OK
Valley National Bank	Tulsa	OK
First American Bank, N.A	Woodward	OK

Federal Home Loan Bank of San Francisco—District 11
600 California Street
San Francisco, California 94108

First Arizona S&LA	Scottsdale	AZ
Trust Savings Bank, F.S.B	Arcadia	CA
Borrego Springs Bank	Borrego Springs	CA
Secure Savings Bank, FSB	Fontana	CA
Fullerton S&LA	Fullerton	CA
Hemet FS&LA	Hemet	CA
American Savings Bank, FA	Irvine	CA
Western Financial S.B., F.S.B	Irvine	CA
Home Savings of America, FSB	Irwindale	CA
Broadway FS&LA of Los Angeles	Los Angeles	CA
California Federal Bank, a FSB	Los Angeles	CA
Coast Federal Bank, FSB	Los Angeles	CA
Family Savings Bank	Los Angeles	CA
Monterey County Bank	Monterey	CA
Standard Savings Bank, FSB	Monterey Park	CA
Metropolitan Bank	Oakland	CA
Bank of Petaluma	Petaluma	CA
El Dorado Savings Bank	Placerville	CA
Commerce Security Bank	Sacramento	CA
Life Savings Bank, F.S.B	San Bernardino	CA
Citibank, FSB	San Francisco	CA
First Nationwide Bank	San Francisco	CA
Sincere Federal Savings Bank	San Francisco	CA
East-West Federal Bank, F.S.B	San Marino	CA
Bay View Federal Bank	San Mateo	CA
First FS&LA of San Rafael	San Rafael	CA
First Federal Bank of California	Santa Monica	CA
Stockton Savings Bank	Stockton	CA
First FS&L of San Gabriel Valley	West Covina	CA
Interwest Bank	Fallon	NV

Member	City	State
Federal Home Loan Bank of Seattle—District 17 1501 Fourth Avenue Seattle, Washington 98101–1693		
Mt. McKinley Mutual Savings	Fairbanks	AK
American Savings Bank, F.S.B	Honolulu	HI
First FS&LA of America	Honolulu	HI
Mountain West Savings Bank, FSB	Coeur D'Alene	ID
Big Sky Western Bank	Big Sky	MT
Security Bank, FSB	Billings	MT
First National Bank of Eureka	Eureka	MT
Heritage Bank, F.S.B	Great Falls	MT
American Federal Savings Bank	Helena	MT
Glacier Bank, FSB	Kalispell	MT
First Security Bank & Trust	Miles City	MT
Western Federal Savings Bank of MT	Missoula	MT
Bank of Astoria	Astoria	OR
Security Bank	Coos Bay	OR
Bank of Salem	Salem	OR
Columbia River Banking Company	The Dalles	OR
First Security Bank of Utah, N.A	Salt Lake City	UT
Cascade Savings Bank, FSB	Everett	WA
InterWest Savings Bank	Oak Harbor	WA
Centennial Bank	Olympia	WA
North Sound Bank	Poulsbo	WA
Raymond FS&LA	Raymond	WA
EvergreenBank	Seattle	WA
Washington Federal Savings	Seattle	WA
Sterling Savings Association	Spokane	WA
Buffalo FS&LA	Buffalo	WY
Hilltop National Bank	Casper	WY
Big Horn Federal Savings Bank	Greybull	WY

C. Due Dates

Members selected for review must submit completed Community Support Statements to their FHLBanks no later than August 30, 1996.

All public comments concerning the Community Support performance of selected members must be submitted to the members' FHLBanks no later than August 30, 1996.

D. Notice to Members Selected

Within 15 days of this Notice's publication in the **Federal Register**, the individual FHLBanks will notify each member selected to be reviewed that the member has been selected and when the member must return the completed Community Support Statement. At that time, the FHLBank will provide the member with a Community Support Statement form and written instructions and will offer assistance to the member in completing the Statement. The FHLBank will only review Statements for completeness, as the Housing Finance Board will conduct the actual review.

E. Notice to Public

At the same time that the FHLBank members selected for review are notified of their selection, each FHLBank will also notify community groups and other interested members of the public. The purpose of this notification will be to solicit public comment on the Community Support records of the FHLBank members pending review.

Any person wishing to submit written comments on the Community Support performance of a FHLBank member under review in this quarter should send those comments to the member's FHLBank by the due date indicated in order to be considered in the review process.

By the Federal Housing Finance Board.

Dated: July 9, 1996.

Rita I. Fair,

Managing Director.

[FR Doc. 96–17926 Filed 7–16–96; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder Licenee Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

U.S. International Forwarding Agency, Inc., 62 NW 27th Avenue, Miami, FL 33125, Officer: Jamil Mouawad, President

S.A.C. International Forwarding, Inc., 8442 NW 70th Street, Miami, FL 33166, Officer: Marianela Villar Izquierdo, President

Dated: July 11, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–18092 Filed 7–16–96; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96M–0237]

Behring Diagnostics, Inc.; Premarket Approval of MicroTrak II IgM Anti-HAV EIA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Behring Diagnostics Inc., San Jose, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the MicroTrak II IgM Anti-HAV EIA. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 13, 1996, of the approval of the application.

DATES: Petitions for administrative review by August 16, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sharon L. Hansen, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2096.

SUPPLEMENTARY INFORMATION: On April 9, 1992, Behring Diagnostics, Inc., San Jose, CA 95161–9013, submitted to CDRH an application for premarket approval of MicroTrak II IgM Anti-HAV EIA. The MicroTrak II IgM Anti-HAV EIA is an enzyme immunoassay (EIA) intended for in vitro diagnostic use in the qualitative detection of immunoglobulin M (IgM) antibodies to hepatitis A virus (IgM anti-HAV) in human serum or plasma. This device is for use as an aid in the diagnosis of acute or recent hepatitis A infection (usually 6 months or less).

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Microbiology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On May 13, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 16, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 5, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–18088 Filed 7–16–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96M–0236]

Schneider (USA) Inc.; Premarket Approval of WALLSTENT® Transjugular Intrahepatic Portosystemic Shunt (TIPS) Endoprosthesis

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Schneider (USA) Inc., Plymouth, MN, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the WALLSTENT® TIPS Endoprosthesis. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 29, 1995, of the approval of the application.

DATES: Petitions for administrative review by August 16, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Dorothy B. Abel, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8262.

SUPPLEMENTARY INFORMATION: On October 4, 1994, Schneider (USA) Inc., Plymouth, MN 55442, submitted to CDRH an application for premarket approval of the WALLSTENT® TIPS Endoprosthesis. The device is an endovascular stent and is indicated for creation of intrahepatic shunt connections between the portal venous system and the hepatic vein for prophylaxis of variceal bleeding in the treatment of portal hypertension and its complications in patients who have previously failed conventional treatment techniques.

In accordance with the provisions of section 515(c)(2)(A) of the act (21 U.S.C. 360e(c)(2)(A)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee. FDA concluded that the review by two outside review bodies was sufficient to identify the issues associated with the device and that sufficient guidance in the

evaluation of the safety and effectiveness had been provided by these review bodies. In addition, the safety and effectiveness of stents used for other indications has been the subject of four FDA advisory committee meetings.

On September 29, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b)(21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 16, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 21, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–18071 Filed 7–16–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Provider/Supplier Enrollment Application; *Form No.:* HCFA–855; *Use:* This information is needed to enroll providers/suppliers by identifying them, verifying their qualifications and eligibility to participate in Medicare, and to price and pay their claims; *Frequency:* Other (Initial Application/recertification); *Affected Public:* Business or other for profit, not for profit institutions, and federal government; *Number of Respondents:* 165,000; *Total Annual Responses:* 165,000; *Total Annual Hours:* 370,000.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov , or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: John Burke, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 9, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–18094 Filed 7–16–96; 8:45 am]

BILLING CODE 4120–03–P

Submitted for Collection of Public Comment: Submission for OMB Review

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Request:* Revision of a currently approved collection; *Title of Information Collection:* Statistical Report on Medical Care: Eligibles, Recipients, Payments and Services; *Form No.:* HCFA–2082; *Use:* The data reported in the HCFA–2082 are the basis of actuarial forecasts for Medicaid service utilization and costs; of analyses and cost savings estimates required for legislative initiatives relating to Medicaid and for responding to requests for information from HCFA components, the Department, Congress and other customers; *Frequency:* Annually; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 54; *Total Annual Responses:* 54; *Total Annual Hours:* 17,214.

To request copies of the proposed paperwork collection referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: July 9, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–18093 Filed 7–16–96; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health; HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications and issued patents listed below may be obtained by contacting John Fahner-Vihtelic at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7735 ext 285; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Broadband Transmit-Receive Switch

TJ Pohida (NCRR)
Filed 06 Nov 95
Serial No. 08/554,003

Transmit-receive (TR) switches are commonly used in complex electronic systems such as magnetic resonance imaging systems, radar systems, and a variety of communication systems. These switches are typically designed using quarter wavelength transmission lines in conjunction with solid state componentry. Although this type of TR switch performs well, the desirable properties of a quarter wavelength transmission lines are only exhibited over about a 10% variation in frequency. This type of TR switch is considered a narrowband switch. A significant need exists for a TR switch that uses the advantages of quarter wavelength impedance transformers and provides a broad bandwidth. The design of the present invention satisfies those needs by providing a TR switch which features a broadband frequency response. This invention can be implemented on any one of several transmission line media. Also, it can be manufactured according to any known manufacturing methods for similar devices. This technology has been implemented on a prototype imaging system. (portfolio: Devices/Instrumentation—Diagnostics, imaging apparatus)

System and Method for Performing In Vivo Imaging and Oxymetry by Pulsed Radiofrequency Electron Paramagnetic Resonance

R Murugesan, MK Cherukuri, JB Mitchell, S Subramanian, R Tschudin (NCI)
Filed 20 Jul 95
Serial No. 08/504,616

This invention provides a non-invasive system for *in vivo* imaging by fast-response pulsed radiofrequency (RF) electron paramagnetic resonance (EPR) spectroscopy. The imaging system can be used for measurement and 3-dimensional imaging of oxygen and free radicals in living systems, in conjunction with appropriate free radical probes. The system can be used to perform rapid 3-dimensional mapping of tissues and vasculature, for example cardiac and cerebral angiography, and also to distinguish normal and diseased tissues. The short relaxation time of the probes and the fast response associated with pulsed EPR techniques permit virtual real-time imaging. The system uses a magnetic field of only 10 mT-orders or magnitude smaller than the field used in conventional MRI techniques. The sensitivity, image resolution, and imaging speed of the pulsed RF EPR system are far superior to continuous wave RF EPR systems. (portfolio: Devices/Instrumentation—Diagnostics, imaging apparatus, electron paramagnetic resonance; Devices/Instrumentation—Diagnostics, imaging apparatus, spectroscopy)

System and Method for Simulating a Two-Dimensional Radiation Intensity Distribution of Photon or Electron Beams

J van de Geijn, H Xie (NCI)
Serial No. 08/368,589 filed 06 Jan 95
U.S. Patent No. 5,526,395 issued 11 Jun 96

The present invention provides a method for computer-assisted, interactive 3-dimensional radiation treatment planning and optimization. The computerized system is capable of processing and analyzing data obtained from x-ray, CT, MRI, PET, SPECT, and gammacamera devices. Hence, the system can be used as a training device, alleviating the need for training centers to purchase each of these devices. The computerized system comprises a fast, versatile, and user-friendly software package and computer components which are commercially available and which can be used without significant modification. Because the hardware costs of this system are much lower than the cost of systems of comparable ability, this invention ought to be particularly attractive to smaller radiation oncology facilities which seek a powerful treatment planning system. The low cost of the system is also particularly advantageous for medical training facilities, including medical schools. The invention also has potential use as a monitor for clinical quality assurance. (portfolio: Devices/Instrumentation—Therapeutics, methods of using devices)

Variable Axial Aperture Positron Emission Tomography Scanner

MV Green, J Seidel, WR Gandler (CC)
Filed 15 Dec 94
Serial No. 08/357,574

Development of a unique system that can operate as both a scintillation camera and a positron emission tomography (PET) scanner offers to significantly improve the visualization of physiological processes in the human body and other biological systems. Single photon emission computed tomography (SPECT) imaging—which utilizes one or more scintillation cameras rotated around a subject—is used in nuclear medicine worldwide. More recently, an alternative to SPECT imaging has involved the development and use of positron emission tomography (PET) imaging, in which the subject is surrounded by rings of detectors that detect the emission of a pair of annihilation photons from positron emitting racers in the body.

SPECT and PET imaging, however, require different instrumentation: scintillation cameras used for SPECT imaging are generally regarded as too insensitive for effective PET imaging, while PET scanners cannot effectively image single photon emitting tracers used for SPECT. This newly developed system attempts to bridge this gap by using two uncollimated, tiltable scintillation cameras in time coincidence, rotated about the target to acquire PET image data. Tilting the cameras in the prescribed manner allows a tradeoff between axial field-of-view and photon path length through the scintillator that maximizes 2D coincidence sensitivity compared to cameras in full opposition. The resulting system exhibits the high spatial resolution expected of a scintillation camera at 511 keV but with substantially higher coincidence sensitivity. (portfolio: Devices/Instrumentation—Diagnostics, imaging apparatus, positron emission tomography)

Enzymatic Degrading Subtraction Hybridization

J Zeng (NCI)
Serial No. 08/322,075 filed 12 Oct 94
U.S. Patent No. 5,525,471 issued 11 Jun 96

The present invention provides an alternative method for selection and identification of differentially expressed genes involved in embryonic development and in the onset or maintenance of various pathological conditions due to genetic alterations in somatic cells. This method involves the prior modification of tester cDNA which contains the sequences of interest by incorporation of nuclease resistant nucleotide analogs. Driver cDNA not containing the sequences of interest is then used to remove sequences common to driver and tester cDNA populations through hybridization and subsequent exonuclease digestion, substantially enriching for the desired sequences. This method can also be used in conjunction with the phenol-emulsion reassociation technique (PERT), which significantly accelerates the hybridization rate allowing, the cDNA molecules to be efficiently subtracted using a very small amount of DNA. This method is less expensive, more efficient, and less time-consuming than previous subtraction hybridization methods. (portfolio: Cancer—Research Reagents; Cancer—Diagnostics)

Chromatographic Method and Device for Preparing Blood Serum for Compatibility Testing

R Butz (CC)
Filed 18 Oct 95
DHHS Reference No. E–141–94/0

The present invention provides a new method for antiglobulin testing of serum from a potential blood transfusion recipient. This process and device removes warm antibodies from serum to allow for the identification of alloantibodies present in the sample. The multiple absorptions required by current methods to remove the warm antibodies from serum of a potential blood transfusion recipient is superseded by this invention. The disclosed invention will remove the majority of warm antibodies in a single one-hour absorption. This invention also eliminates the need for pretreatment of cells with expensive reagents. Use of this column and method does not remove any clinically significant alloantibodies. Therefore, transfusion history accuracy and subsequent risk to the patient is greatly reduced. (portfolio: Internal Medicine—Diagnostics, cardiology; Internal Medicine—Miscellaneous)

Dated: July 8, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 96–18101 Filed 7–16–96; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Method of Treating Demyelinating Diseases With Insulin-Like Growth Factor I

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Application Serial Number 60/003,055, filed on August 31, 1995, entitled "Method of Treating Demyelinating Diseases With Insulin-Like Growth Factor I", to Cephalon, Inc., having a place of business in West Chester, Pennsylvania. The patent rights in this invention have been assigned to the United States of America.

The patent application claims a method to treat diseases or disorders associated with myelin injury, such as multiple sclerosis, by administering an effective amount of insulin-like growth factor I.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 90 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use would be the use of insulin-like growth factor I to treat nervous system disorders associated with perivascular lesions, such as those occurring in multiple sclerosis.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Leopold J. Luberecki, Jr., J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Box 13, Rockville, MD 20852–3804. Telephone: (301) 496–7735, ext. 223; Facsimile: (301) 402–0200. Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before October 15, 1996 will be considered.

Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 8, 1996.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 96–18102 Filed 7–16–96; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Minority Fellowship Program

AGENCY: Center for Mental Health Services, Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice of planned awards for renewal clinical training grants under the Minority Fellowship Program (MFP) to the American Nurses Association (ANA) and the Council on Social Work Education (CSWE).

SUMMARY: The Substance Abuse and Mental Health Services Administration's Center for Mental Health Services (CMHS) plans to award renewal MFP grants to the ANA and the CSWE for the clinical training of nursing and social work trainees who are committed to careers for service to ethnic minorities with mental and/or addictive disorders. The project period for the renewal grants is anticipated to be 3 years. The first year will be funded with approximately $300,000 for each grantee.

This is not a general request for applications. The renewal clinical training grants will only be made to the ANA and the CSWE based on the receipt of satisfactory applications that are recommended for approval by an Initial Review Group and the CMHS National Advisory Council.

AUTHORITY: The awards will be made under the authority of section 303 of the Public Health Service (PHS) Act. The authority to administer this program has been delegated to the Director, CMHS. The Catalog of Federal Domestic Assistance number for this program is 93.244.

BACKGROUND: CMHS has the responsibility for mental health workforce development, including the clinical training of mental health professionals concerned with the treatment of underserved priority populations; i.e., adults with serious mental illness; children with serious emotional disturbance; and elderly, and/or ethnic minority, and/or rural populations with mental and addictive disorders.

The CMHS MFP is specifically designed to significantly increase the number of professionals trained at the doctoral level to teach, administer, and provide direct mental health and substance abuse services to members of ethnic minority groups.

Renewal applications may be submitted only by the ANA and the CSWE. Each of these two professional organizations has unique access to those students entering its professions. Both the fields of social work and psychiatric nursing have been nationally recognized for decades as part of the four core mental health disciplines (along with psychiatry and psychology). Social workers and nurses provide parts of an essential core of services for individuals with serious mental illness and also less severe mental disorders.

The ANA is the largest national professional nurses organization in the country. The ANA and its affiliates have activities in all major areas of national policies affecting nursing as a profession, including education and training.

The CSWE is a specialized organization for the field of social work, focussing exclusively on the education and training of social workers.

Both ANA and CSWE along with their affiliates have direct involvement in curriculum development, school accreditation, and pre/postdoctoral training. The ANA and CSWE have had decades of experience in working directly with the university training programs in their respective fields.

Because of the above unique characteristics and long experience, the National Institute of Mental Health, the original funding agency for this program, chose ANA and CSWE as the exclusive representatives for their fields. For over 20 years, the ANA and CSWE have administered the MFP exceptionally well, have recruited excellent students, assured that all program requirements were satisfied, and effectively monitored the progress of fellows during and after the fellowship period. These two MFP grantees continue in their unique position to represent these two core mental health disciplines and eligibility has been restricted to them accordingly.

Therefore, because the ANA and CSWE grant support will end in FY 1996, CMHS is providing additional support for up to 3 years via renewal grant awards. The American Psychiatric Association and the American Psychological Association have ongoing CMHS MFP grant support.

FOR FURTHER INFORMATION: Questions concerning the CMHS MFP may be directed to Paul Wohlford, Ph.D., Acting Chief, Human Resources Planning and Development Branch, CMHS, Room 15C–18, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301)443–4257.

Dated: July 11, 1996.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 96–18067 Filed 7–16–96; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–4210–01]

Reinstatement of Currently Approved Information Collection; OMB Approval Number 1004–0023

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request reinstatement of approval for the collection of information from those persons who are applying for conveyance of public land under the General Allotment Act. Section 4 of the General Allotment Act of February 8, 1887, as amended, provides for the issuance of a deed to eligible Indians who are entitled to an allotment of public lands. The information collected on the Indian Allotment Application (Form 2530–1) is used by the BLM to determine eligibility and identify legal information to assist in the conveyance of title.

DATES: Comments on the proposed information collection must be received by September 16, 1996 to be considered.

ADDRESSES: Commenters may hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW., Washington, DC; or mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, DC 20240. Commenters may transmit comments electronically via the Internet to WOComment@WO0033wp.wo.blm.gov. Please include "Attn: 1004–0023" in your message. Comments will be available for public review at the L Street address during regular business hours (7:45 A.M. to 4:15 P.M., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Carl C. Gammon, (202) 452–7777.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.8(d), BLM is required to provide 60-day notice in the **Federal Register** concerning a proposed collection of information to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Any individual seeking to acquire an allotment must make application and provide information essential to compliance with law, regulations, and procedures. Information is collected on

Form 2530–1. The following is an explanation of specific items of information requested pursuant to 43 CFR 2531: Items 1 through 5 identify the applicant, mailing address, and if necessary, the miner child for whom the application is filed. Item 6 describes the land for which the application is filed. Item 7 requires the listing of prior allotments. Item 8 indicates whether the applicant or the minor child placed any improvements on the described land. Item 10 tells whether the applicant or minor child claim a bona fide settlement. Item 11 describes the manner in which settlement was made on the described land. Item 12 asks if the required petition for classification has been attached to the application. Specifically, completion of Items 6 through 12 is necessary in order to determine the eligibility of the applicant/minor and the validity of the claim. Any eligible individual desiring an allotment of public lands must file a fully completed application. Items 6 through 12 are justified pursuant to the requirements of 43 CFR 2530 and 2531. Section 4 of the Act of February 8, 1887 provides that a patent cannot be issued unless a completed application form has been received by BLM. If the information required by 43 CFR 2531 was not collected, the BLM would be unable to carry out the mandate of Section 4 of the Act of February 8, 1887.

Based on its experience administering the regulations at 43 CFR Part 2530, BLM estimates that the public reporting burden for the information collection is .5 hours per application. The respondents are individuals who seek to acquire public lands pursuant to the General Allotment Act of February 8, 1887, as amended. The frequency of response is one per application. BLM estimates that approximately 50 Indian Allotment Applications will be filed annually for a total burden of 25 hours. Copies of Form 2530–1 may be obtained by contacting the individual named under **FOR FURTHER INFORMATION CONTACT.**

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become part of the public record.

Dated: July 11, 1996.

Annetta L. Cheek,

Chief, Regulatory Management Team.

[FR Doc. 96–18066 Filed 7–16–96; 8:45 am]

BILLING CODE 4310–84–P

[NV–030–1430–01) N–61910]

Notice of Realty Action Amended: Sale of Public Land in Eureka County, Nevada, by Modified Competitive Sale Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Time Extension for Sale of Public Lands, Eureka County, Nevada Notice of the proposed sale of the following described public land in Eureka County, Nevada, by modified competitive sale procedures was published in the **Federal Register** on Tuesday, March 12, 1996 (61FR10006–10007).

Mount Diablo Meridian, Nevada

T. 20 N., R. 53 E.,
Sec. 30, lot 11;
Comprising 42.27 acres, more or less.

By this Notice, the following changes are made in the proposed realty action:

1. The date of the sale is postponed to August 7, 1996. Sealed bids for no less than appraised fair market value will be accepted until August 6, 1996, at 4:30 p.m.

2. A 60-foot wide easement in favor of Eureka County will be reserved along the west and south boundaries of the parcel.

3. In the event that no bids are received for the August 7, 1996, sale date, the parcel will remain for sale, using over-the-counter sale procedures described in the Notice published on March 12, 1996, until the segregation terminates on December 6, 1996.

Dated: July 3, 1996.

Michael C. Mitchel,

Acting District Manager.

[FR Doc. 96–18091 Filed 7–16–96; 8:45 am]

BILLING CODE 4310–HC–P

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before JULY 6, 1996. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by August 1, 1996.

Carol D. Shull,

Keeper of the National Register.

CONNECTICUT

Hartford County

Butler, Roger, House, 146 Jordan Ln., Wethersfield, 96000847

Litchfield County

Lakeville Historic District, Bounded by Millerton Rd., Sharon Rd., Allen St., and Holley St., Salisbury, 96000845

New Haven County

Hamilton Park, Roughly bounded by Silver St., E. Main St., Idylwood Ave., Plank Rd., the Mad River and I–84, Waterbury, 96000846

FLORIDA

Hillsborough County

Lutz Elementary School, Old, 18619 US 41, N., Lutz, 96000852

Orange County

Winter Garden Downtown Historic District, Roughly bounded by Woodland, Tremaine, Henderson, and Lake View Sts., Winter Garden, 96000850
Winter Garden Historic Residential District, Roughly bounded by Plant, Boyd, Tilden, and Central Sts., Winter Garden, 96000849

Volusia County

Daytona Beach Surfside Historic District (Daytona Beach MPS) Roughly bounded by Auditorium Blvd., the Atlantic Ocean, US 92, and the Halifax River, Daytona Beach, 96000851

ILLINOIS

Champaign County

Lincoln Building, 44 E. Main St., Champaign, 96000854

Johnson County

Ater—Jaques House, 207 W. Elm St., Urbana, 96000855

Kane County

LaSalle Street Auto Row Historic District, 56–84 LaSalle St. and 57–83 S. LaSalle St., Aurora, 96000856

Logan County

Mattfeldt, Theodore H. O., House, 202 S. Marion St., Mt. Pulaski, 96000853

McLean County

US Army Aircraft C–53–DO–41–20124, 1.25 mi. E of jct. of IL 9 and IL 5, Bloomington, 96000857

Macon County

Trobaugh—Good House, 1495 Brozio Ln., Decatur, 96000858

MASSACHUSETTS

Bristol County

Attleborough Falls Gasholder Building, 380 Elm St., North Attleborough, 96000848

NEW YORK

Greene County

Ulster and Delaware Railroad Station, NY 23A, Hamlet of Haines Falls, Hunter, 96000861

Orange County

African—American Cemetery, The, Co. Rt. 416, approximately .5 mi. S of jct. with NY 84, Montgomery, 96000862
Shafer, Jacob, House, 388 Kaisertown Rd., Montgomery, 96000864
Smith House, The, 2727 Albany Post Rd., Montgomery, 96000863

Otsego County

Fly Creek Methodist Church, Co. Rt. 26, N of jct. with NY 28, Fly Creek, 96000859

Ulster County

Cragsmoor Historic District, Roughly bounded by Henry, Cragsmoor, and Sam's Pt. Rds., Hamlet of Cragsmoor, Wawarsing, 96000860

OHIO

Cuyahoga County

Euclid, The—Seventy-First Street Building, 7002—70030 Euclid Ave., Cleveland, 96000866

Lake County

Young, Benjamin and Mary, House, 7597 S. Center St., Mentor, 96000867

Lucas County

Ira Apartments, 1302 Parkside Blvd., Toledo, 96000868

OREGON

Benton County

Hull, Ralph, Lumber Company Mill Complex, 23837 Dawson Rd., Monroe vicinity, 96000869

TEXAS

Bexar County

Yturri—Edmunds House, 257 Yellowstone St., San Antonio, 96000870

UTAH

Salt Lake County

Cohn, Henry A. and Tile S., House, 1369 E. Westminister Ave., Salt Lake City, 96000871
Riverton Elementary School, 12830 S. Redwood Rd., Riverton, 96000872

WASHINGTON

Yakima County

Liberty Theater (Movie Theaters in Washington State MPS), 211 S. Toppenish Ave., Toppenish, 96000873

[FR Doc. 96–18143 Filed 7–16–96; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–736 & 737 (Final)]

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany and Japan; Notice of Commission Determination to Conduct a Portion of the Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of respondents in the above-captioned final investigations, the Commission has unanimously determined to conduct a portion of its hearing scheduled for July 17, 1996, *in camera*. *See* Commission rules 207.23(d), 201.13(m) and 201.35(b)(3) (19 C.F.R. §§ 207.23(d), 201.13(m) and 201.35(b)(3)). The remainder of the hearing will be open to the public. The Commission unanimously has determined that the seven-day advance notice of the change to a meeting was not possible. *See* Commission rule 201.35(a), (c)(1) (19 C.F.R. § 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Neal J. Reynolds, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3093. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that the respondents have justified the need for a closed session. A full discussion regarding the financial condition and related proprietary data of petitioner in these investigations can only occur if a portion of the hearing is held *in camera*. Because much of this information is not publicly available, any discussion of issues relating to this information will necessitate disclosure of business proprietary information (BPI). Thus, such discussions can only occur if a portion of the hearing is held *in camera*. The Commission has determined to deny, however, respondents' request to be permitted to present customer testimony or to discuss revisions to questionnaire responses in the closed session. The Commission believes that respondents have not justified their request for an *in camera* discussion of these topics. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by petitioner and by respondents, with questions from the Commission. In addition, the hearing will include an *in camera* session for a presentation that discusses only the business proprietary information submitted by petitioner and for questions from the Commission relating to the BPI, followed by an *in camera* rebuttal presentation by petitioners. For any *in camera* session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation. *See* 19 C.F.R. § 201.35(b)(1), (2). In addition, to the extent petitioner's BPI will be discussed in the *in camera* session, a designated representative of the petitioning firm whose data will be discussed may also be granted access to the closed session while such data is discussed. The time for the parties' presentations and rebuttals in the *in camera* session will be taken from their respective overall allotments for the hearing. All persons planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR § 201.39) that, in her opinion, a portion of the Commission's hearing in *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan*, Inv. Nos. 731–TA–736 & 737 (Final) may be closed to the public to prevent the disclosure of BPI.

Issued: July 15, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–18253 Filed 7–16–96; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–749 (Preliminary)]

Persulfates From China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–749 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act) to determine whether there is a reasonable indication

that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of persulfates, provided for in subheadings 2833.40.20 and 2833.40.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. § 1673a(c)(1)(B)), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by August 26, 1996. The Commission's views are due at the Department of Commerce within five business days thereafter, or by September 3, 1996.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: July 11, 1996.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on July 11,1996, by FMC Corp., Chicago, IL.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on July 31, 1996, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Olympia Hand (202–205–3182) not later than July 26, 1996, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 5, 1996, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 12, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–18252 Filed 7–16–96; 8:45 am]

BILLING CODE 7020–02–M

Appointment of Individuals To Serve as Members of Performance Review Boards

AGENCY: United States International Trade Commission.

ACTION: Appointment of individuals to serve as members of performance review boards.

EFFECTIVE DATE: July 9, 1996.

FOR FURTHER INFORMATION CONTACT: Michael J. Hillier, Director of Personnel, U.S. International Trade Commission (202) 205–2651.

SUPPLEMENTARY INFORMATION: The Chairman of the U.S. International Trade Commission has appointed the following individuals to serve on the Commission's Performance Review Board (PRB):

Chairman of PRB—Commissioner Lynn M. Bragg

Member—Commissioner Don E. Newquist

Member—Commissioner Carol T. Crawford

Member—Commissioner Janet A. Nuzum

Member—Commissioner Peter S. Watson

Member—Lyn M. Schlitt

Member—Robert A. Rogowsky

Member—Lynn I. Levine

Member—Eugene A. Rosengarden

Member—Vern Simpson

Member—Lynn Featherstone

Notice of these appointments is being published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Issued: July 10, 1996.

By order of the Chairman.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–18106 Filed 7–16–96; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Fiscal Year 1996 Church Arson Prevention Grant Program.

In accordance with the Code of Federal Regulations (5 CFR Part 1320.13) the Department of Justice is requesting emergency approval by July 12, 1996, from the Office of Management and Budget for this collection of information. Emergency approval is need to comply with 42 United States Code Section 3760.

During the emergency approval period the Department will apply for three year approval under the normal processing procedures contained in 5 CFR 1320.

Request written comments and suggestions from the public and affected agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in **Federal Register**.

ADDRESSES: Additional comments, suggestions, requests for information, or need a copy of the proposed information collection instrument with instructions, should be addressed to Chief Andrew Mitchell, United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 633 Indiana Avenue, N.W., Washington, D.C. 20531. Information can also be obtained from Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, N.W., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: Chief Andrew Mitchell at (202) 616–3469.

SUPPLEMENTARY INFORMATION: Overview of this information collection:

(1) Type of Information Collection: New collection of information.

(2) Title of the Form/Collection: Fiscal Year 1996 Church Arson Prevention Grant Program Form.

(3) Agency form number, if any, and the applicable component of the United States Department of Justice sponsoring the collection: Bureau of Justice Assistance.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Units of county governments. Other: None. P.L. 90–351, as amended, enacted the Fiscal Year 1996 Church Arson Prevention Grant Program. This program awards grant funds to units of county governments for the purposes of reducing crime and improving public safety. The Application Form will be completed by each eligible unit of county government applicant and will provide information for application review and award processing.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 1291 responses at 15 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: annual burden 645.5 hours (including opportunity cost).

Request for Comments

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. our comments should address one or more of the following four points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Tisha D. Elliott,

Acting Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–18145 Filed 7–16–96; 8:45 am]

BILLING CODE 4410–18–M

Notice of Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that a proposed settlement agreement in *In re: Chem-Tech Systems, Inc.*, Case No. LA95–18924–SB (C.D. Cal.), was lodged on June 21, 1996 with the United States Bankruptcy Court for the Central District of California. On August 30, 1995, the United States filed a Proof of Claim in the Debtor's Chapter 11 case, seeking reimbursement of past and future response costs for a cleanup at the Casmalia Resources Hazardous Waste Disposal Facility Site (the "Site") in Santa Barbara, California. Under section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a), Chem-Tech is liable for these costs because of its contribution of hazardous substances to the Site.

The proposed settlement agreement provides that the United States' claim will be valued at $1.6 million and will receive the same treatment as other general unsecured creditors. Chem-Tech will receive a covenant not to sue from the United States related to the Site and will receive protection from suits from other parties.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed settlement agreement. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044; and refer to *In re: Chem-Tech Systems*, DOJ Ref. #90–7–1–611C.

The proposed settlement agreement may be examined at the office of the United States Attorney, Central District of California, 300 North Los Angeles Street, Los Angeles, California 90012; at the Region IX office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed settlement agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–18096 Filed 7–16–96; 8:45 am]

BILLING CODE 4410–01–M

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

[OJP No. 1092]
[ZFIN 1121–ZA42]

Title IV Missing and Exploited Children's Fiscal Year 1996 Program Announcement

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of proposed program plan for public comment.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing its Title IV Missing and Exploited Children's Fiscal Year (FY) 1996 Proposed Program Plan and is soliciting public comment on the proposed plan and priorities. Based on analysis of public comments, OJJDP will issue its final FY 1996 Title IV Program Plan.

DATES: Comments must be submitted by September 16, 1996.

ADDRESSES: Public comments may be mailed to Shay Bilchik, Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue N.W., Room 742, Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: Ronald C. Laney, Director, Missing and Exploited Children's Program, 202–616–3637. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Missing and Exploited Children's Program is a program of the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Pursuant to the Juvenile Justice and Delinquency Prevention Act (JJDPA) of 1974, as amended, provisions of section 406 (a)(2), codified at 42 U.S.C. 5776, the Administrator of OJJDP is publishing for public comment a Program Plan for activities authorized by Title IV, the Missing Children's Assistance Act, codified at 42 U.S.C. 5771 *et seq.*, that OJJDP proposes to implement in FY 1996. Taking into consideration comments received on this Proposed Program Plan, the Administrator will develop and publish a Final Program Plan that describes the program activities OJJDP plans to fund during FY 1996 using Title IV funds.

The actual solicitation of grant applications under the Final Program Plan will be published at a later date in the **Federal Register**. No proposals, concept papers, or other types of applications should be submitted at this time.

Background: The Nature of the Problem of Missing and Exploited Children

The issues involving missing and exploited children can be divided into four categories: family abduction, nonfamily abduction, child exploitation, and the impact these events have on children and families. These issues are summarized below, using data drawn from the 1988 National Incidence Study of Missing, Abducted, Runaway, or Thrownaway Children (NISMART).

Family Abduction

An estimated 354,100 family abductions occur each year. Forty-six percent of these abductions (163,200) involve concealment of the child, transportation of the child out of State, or intent by the abductor to keep the child indefinitely or to permanently alter custody. Of this more serious subcategory of family abductions, a little more than half are perpetrated by men who are noncustodial fathers and father figures. Most victims are children between the ages of 2 to 11. Half involve unauthorized takings, and half involve failure to return the child after an authorized visit or stay. Fifteen percent of these abductions involve the use of force or violence. Between 75 to 85 percent involve interstate transportation of the child. About half of family abductions occur before the relationship ends. Half do not occur until 2 or more years after a divorce or separation, usually after parents develop new households, move away, develop new relationships, or become disenchanted with the legal system. More than half occur in the context of relationships with a history of domestic violence. An estimated 49 percent of abductors have criminal records, and a significant number have a history of violent behavior, substance abuse, or emotional disturbance. It is not uncommon for child victims of family abduction to have their names and appearances altered; to experience medical or physical neglect, unstable schooling, homelessness; or to endure frequent moves. These children are often told lies about the abduction and the left-behind parent, even that the left-behind parent is dead.

Nonfamily Abduction

An estimated 3,200 to 4,600 short-term nonfamily abductions are known to law enforcement each year. Of these, an estimated 200 to 300 are stereotypical kidnapings where a child is gone overnight, is killed, or is transported a distance of 50 miles or more or where the perpetrator intends to keep the child permanently. Young teenagers and girls are the most common victims. Two-thirds of short-term abductions involve a sexual assault. A majority are abducted from the street. More than 85 percent of nonfamily abductions involve force, and more than 75 percent involve a weapon. Most episodes last less than a day. Most researchers and practitioners consider the number of short-term abductions to be an underestimate because of police reporting methods and lack of reporting on the part of victims. FBI data support estimates of 43 to 147 stranger abduction homicides of children annually between 1976 and 1987. An estimated 114,600 nonfamily abductions are attempted each year, all involving strangers and usually involving an attempt to lure a child into a car. In a majority of these cases, the police were not contacted.

Child Exploitation

Children are also at risk of being victimized as a result of a range of circumstances that fall into three categories: running away, being thrownaway by parents or guardians, or being otherwise lost or missing.

An estimated 446,700 children run away from households each year. In addition, an estimated 12,800 children run from juvenile facilities each year. Many children who run from households also run from facilities. About one-third of these runaways left home or a juvenile facility more than once. Of all runaways, 133,500 are without secure and familiar places to stay during their episodes. More than a third of runaways run away more than once during the year. One in ten travels a distance of more than 100 miles. Of the runaways from juvenile facilities, almost one-half leave the State. Runaways are mostly teenagers, but almost 10 percent are 11 years old and younger. They tend to come disproportionately from households with stepparents. Family conflict seems to be at the heart of most runaway episodes. Between 60 and 70 percent of runaways report being seriously abused physically. Sexual abuse estimates range from 25 to 80 percent of the total. Runaways, particularly chronic runaways, are at higher risk for physical and sexual victimization, substance abuse, sexually transmitted diseases, unintended pregnancies, violence, and suicide.

There are an estimated 127,100 thrownaway children who are directly told to leave their households, who have been away from home and are not allowed back by their caretakers, whose caretakers make no effort to recover them when they have run away, or who have been abandoned or deserted. By comparison, for every child who is a thrownaway, there are four runaway children. An estimated 59,200 thrownaway children are without secure and familiar places to stay during the episodes. Most thrownaways are older teenagers, but abandoned children tend to be young (half under the age of 4). Thrownaways are concentrated in low-income families and families without both natural parents. Compared to runaways, thrownaways experience more violence and conflict within their families and are less likely to return home.

An estimated 438,200 children are lost, injured, or otherwise missing each year. Of these, 139,100 cases are serious enough for the police to be called. Almost half involve children under 4. Most of these episodes last less than a day. A fifth of the children experienced physical harm. Fourteen percent of the children were abused or assaulted during the episodes.

Impact on Children and Families

The majority of families of missing children experience substantial psychological consequences and emotional distress. The level of emotional distress equals or exceeds the emotional distress for other groups of individuals exposed to trauma, such as combat veterans and victims of rape, assault, or other violent crime, with families where the missing child is subsequently recovered deceased exhibiting the highest level of emotional distress. Once home, a third of abducted children live in constant fear of a reabduction. Many child victims of family abduction experience substantial psychological consequences and emotional distress. Trauma symptoms may be evident for up to 4 or 5 years after recovery. More than 80 percent of recoveries of missing children are concluded in less than 15 minutes with no psychological or social service support. Almost four-fifths of victims and families of missing children do not receive mental health or counseling services. The only nonfamily person present is most often a police officer.

Long Range Plan for Future Title IV Funding

In FY 1995 OJJDP published a Long Range Plan for Title IV, which was based on the latest research in the field and on the input of experts and individuals who had been involved in family abduction cases. This Long Range Plan was designed to guide the expenditure of funds appropriated under Title IV for programs and services to benefit missing and exploited children and their families. OJJDP uses the Long Range Plan to establish Missing Children's Assistance Act priorities, develop programs, make grant awards, and deliver technical assistance and training.

As part of the Long Range Plan, OJJDP's Title IV funds are allocated to address three major goals. Each of these goals is aimed at improving services to missing and exploited children and their families by using existing community resources and multidisciplinary approaches. The three goals established in the Long Range Plan and OJJDP's current and proposed strategies to meet them are discussed below.

Goal 1: Increase Awareness of Problems Relating to Missing and Exploited Children

OJJDP is developing a series of clearly stated messages about missing and exploited children and vehicles to disseminate this information to targeted audiences. In cooperation with the National Center for Missing and Exploited Children (NCMEC), OJJDP is developing public service announcements (PSA's) to communicate information about the human, economic, and social costs of the victimization of missing and exploited children and their families. PSA's aimed at parents, professionals, and policymakers will be used to increase the visibility of the problem of missing and exploited children (including those who are abducted by their parents), raise public awareness about the needs of these children, and bring greater attention to the resources and services that are available to aid and support children who are missing, abducted, or victimized.

In FY 1996 OJJDP plans to use new technologies, such as teleconferencing and video training materials, to increase awareness and understanding of issues associated with missing and exploited children. OJJDP also will allocate funds to State clearinghouses through NCMEC to upgrade their online communications networks and enhance their ability to disseminate information about missing and exploited children. Supplemental funds will be awarded to NCMEC's Resource Center to provide these upgrades.

OJJDP plans to conduct training workshops in FY 1996 for State clearinghouses and missing children's organizations on multijurisdictional collaboration to offer communities creative solutions to common problems and challenges.

Another important step is development of strategies to determine if PSA's and messages regarding missing and exploited children are reaching their intended audience and improving understanding about the problems and needs associated with these children. Survey information or focus groups can be used to evaluate and assess how well public education materials impart key facts about prevention, intervention services, and the need to prosecute crimes against children committed by adults.

Goal 2: Develop Community Approaches for Addressing Problems Relating to Missing and Exploited Children

OJJDP will use the Title IV program to identify, design, and make available effective community approaches for addressing the problems of missing and exploited children and their families. These approaches will deal with specific aspects of family abduction, nonfamily abduction, and otherwise missing children.

Two Title IV projects will identify gaps and overlaps, increase knowledge and information about missing and exploited children, and improve the system's response to these children. OJJDP's Prevention of Parent or Family Abduction of Children Through Early Intervention Risk Factors is designed to reduce the number of parental abductions by identifying the factors and circumstances that are most likely to lead to the abduction of a child by a parent or a family member. Through increased awareness and understanding of risk factors, prevention and intervention tactics can be more sharply focused. NISMART II (National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children II), which was awarded in FY 1995 and is scheduled for completion in FY 1998, will improve understanding of the needs and problems associated with missing and exploited children. This study will expand the information and data generated by the original NISMART study and will generate more information about relatively new categories of missing children such as thrownaways and otherwise lost children.

In addition to these studies, Title IV has funded a number of initiatives that are responding to needs and gaps already identified in the field. The American Bar Association (ABA) is establishing a network of attorneys to represent families in legal actions under the Hague Convention. The ABA is recruiting and providing legal support to these attorneys, who will work with families referred from the NCMEC and the U.S. Department of State.

VOL
61
ISS
138
JL
17
1996
UMI

Through a cooperative agreement with the Association of Missing and Exploited Children Organizations (AMECO), a consortium of nonprofit organizations, standardized intake forms and procedures are being developed for nonprofit missing children's organizations (NPO's). Training and technical assistance needs of NPO's are being identified through focus groups, surveys of State missing children clearinghouses and nonprofit organizations, and consultation with AMECO representatives. After the identification of training needs, OJJDP's Title IV Training and Technical Assistance Project will develop a curriculum for training.

Title IV programs emphasize the use of existing resources and the development of multiagency approaches for dealing with missing and exploited children issues. This includes programs to help communities develop comprehensive case management methods and approaches, programs focusing on addressing confidentiality and information sharing issues and concerns, and programs that promote interagency collaboration.

Effective Community-Based Approaches for Dealing with Missing and Exploited Children, awarded in FY 1995, is a study that will help communities establish methods and procedures for multiagency planning and resource sharing. Conducted by the ABA, this study will identify effective community-based approaches for dealing with missing and exploited children. Study results will be used to design a training curriculum to help communities plan, implement, and evaluate a multiagency response to missing and exploited children and their families.

OJJDP's Missing and Exploited Children's Comprehensive Action Program (M/CAP), originally funded in FY 1988, has provided training and technical assistance to help local communities identify and address problems relating to missing and exploited children. Through a self-assessment process, community agencies are encouraged to work together to identify issues and needs; examine, plan, and allocate resources more effectively; and establish a comprehensive case-management system for serving missing and exploited children. M/CAP emphasizes multiagency cooperation and collaboration, information and resource sharing, and community planning and action. In FY 1996 M/CAP will be integrated into OJJDP's Title IV Training and Technical Assistance Program.

To encourage both justice system and human service agencies to participate actively in addressing issues associated with missing and exploited children, Title IV training programs and activities promote the use of community-based, multiagency teams to address issues relating to missing and exploited children. Attendance at many of OJJDP's training programs (such as M/CAP, cited above, and the Child Abuse and Exploitation Team Investigative Program) requires participation by both justice and human service agencies.

To ensure that OJJDP is abreast of emerging training needs and that Title IV training programs meet the needs of professionals in the field, OJJDP and its training and technical assistance providers are establishing a comprehensive training and technical assistance plan that is coordinated with other Federal agency training programs. Current and planned training and technical assistance activities are based on a thorough needs assessment of various constituent groups, including nonprofit organizations, law enforcement personnel, and attorneys. OJJDP integrates the latest research and evaluation results into its missing and exploited children training and technical assistance programs.

A calendar with a schedule of Title IV training and technical assistance activities is produced and updated on a regular basis. This schedule is used to plan Title IV training programs and activities; track resources, course availability, and demand; and coordinate Title IV activities with training and technical assistance activities sponsored by other Federal, State, local, private, or public agencies and other organizations.

OJJDP is also developing new training programs in direct response to needs identified from the field and reflected in the Title IV Long Range Plan. One example is the training that is being developed for chief executive officers (CEO's). CEO's have not been adequately targeted to receive information and training related to Title IV. As a result missing and exploited children's issues have not been given the level of priority necessary to effect change. Through OJJDP's Title IV Training and Technical Assistance Program, conducted by Fox Valley Technical College, a 1-day CEO program is being designed to highlight the most current research and practice relating to missing and exploited children. This program will enhance CEO knowledge and awareness about missing and exploited children needs and issues, improve community response to these children, and help community leaders integrate the needs and concerns of missing and exploited children into their overall community plans and strategies.

A 40-hour Child Sexual Exploitation Investigation Training curriculum for law enforcement investigators also was developed and tested this past year. This course will be offered regionally and will become part of the comprehensive training and technical assistance program offered through Title IV.

Through the Title IV Training and Technical Assistance Program, OJJDP will conduct a State clearinghouse needs assessment to identify problems and concerns and training and technical assistance needs. This information will be used to develop strategies and resources to respond to these concerns.

In FY 1996 OJJDP will identify information gaps and needs and address them through research, training, technical assistance, and other support. Through an interagency agreement, OJJDP will support an FBI research manager position and pay for investigating agents' travel expenses to interview convicted pedophiles. The purpose of these interviews is to increase law enforcement's understanding of homicidal pedophiles' methods in target selection, body disposal, advance planning, and luring strategies.

Goal 3: Provide Assistance to Communities to Help Them Implement Effective Approaches for Serving This Population

OJJDP assists communities committed to implementing effective approaches for dealing with the problems of missing and exploited children and their families. This assistance includes site visits, training, assessment reports, publications, teleconferences, and delivery of technical assistance and services.

OJJDP is developing a marketing plan to identify communities, constituent groups, or practitioners that might be interested in making further use of services supported by Title IV. The needs assessments of various constituent groups will contribute to this marketing plan and strategy. The marketing plan will be based on an analysis of the location of various types of child victimization related to Title IV and past community interest in Title IV issues. Materials and methods for marketing technical assistance and training to these communities will be developed.

To complement OJJDP's planning for future training and assessment of technical assistance needs, OJJDP is expanding its evaluation of technical assistance and training activities funded through Title IV. Grantees who deliver these services will provide the names and addresses of all individuals who requested and received services through Title IV. This information will be used to distribute evaluation surveys to assess the quality and effectiveness of services delivered.

Fiscal Year 1996 Programs

The Title IV continuation programs and proposed new programs for FY 1996 are summarized below. The available funds, listing of implementation sites, and other descriptive information are subject to change based on the plan review process, grantee performance, application quality, fund availability, and other factors. OJJDP has a limited amount of funds for new programs in FY 1996. Proposed new program funding levels are based on the availability of appropriations. Additional programs may be added to the plan based on the review and comment process.

Continuation Programs

National Center for Missing and Exploited Children. ($3,195,000)

This 3-year cooperative agreement funds the operation of a national resource center and clearinghouse as mandated in section 404 (b), 42 U.S.C. 5773, of the JJDPA. The Clearinghouse operates a 24-hour toll-free telephone line through which individuals may report information regarding the location of a child who is missing or who is age 13 or younger and whose whereabouts are unknown to the child's legal custodian or request information pertaining to procedures necessary to reunite the child with the legal guardian. The Clearinghouse is responsible for providing a wide range of assistance to State and local governments, public and private nonprofit agencies, and individuals. This assistance includes coordinating public and private programs that locate, recover, or reunite missing children with their legal guardians; providing training and technical assistance; disseminating information about innovative and model missing children's programs; and facilitating the lawful use of school records to identify and locate missing children.

In FY 1996 an additional $100,000 over the amount of FY 1995 funding will be provided to the Clearinghouse grantee, NCMEC, to upgrade the State clearinghouse online communications network. Enhancements will include updated personal computers and software components, high speed modems, advanced software, and imaging capability.

National Alzheimer Patient Alert Program. ($900,000)

OJJDP has responsibility for this program because NCMEC serves as the clearinghouse and operates the hotline for the Alzheimer program. The purpose of this program is to continue to expand the national registry of memory-impaired persons, support the toll-free telephone service, provide a Fax Alert System, conduct a "train the trainers" program for law enforcement and emergency personnel, develop information and educational materials, launch a national public awareness campaign, and transition current "wandering persons" programs into the national safe return program.

Title IV Training and Technical Assistance. ($1,250,000)

The Title IV Training and Technical Assistance Program assists OJJDP and missing children grantees in raising the awareness of missing children services and improving system capabilities to meet the needs of missing and exploited children. This is accomplished by developing and implementing quality training and technical assistance for Federal, State, and local governments; nonprofit organizations; and Title IV grantees. The grantee, Fox Valley Technical College, uses an advisory board composed of law enforcement, nonfamily and family abduction victim parents, and family services, mental health, prosecution, school, and medical professionals to provide input and direction.

In FY 1996 the Title IV Training and Technical Assistance Program also will assume responsibility for providing training and technical assistance related to the Missing and Exploited Children's Comprehensive Action Program (M/CAP). M/CAP is a national demonstration project to promote the implementation of multiagency community approaches to respond to missing and exploited children cases. Through a broad program of technical assistance and training, M/CAP has helped agencies develop an effective multiagency team to deal with missing and exploited children cases and provided training and technical assistance to build specialized skills to handle these cases.

In FY 1996 assistance will be offered to project sites that are in the process of developing a long-range implementation plan. Training and technical assistance will also be provided to sites that have already adopted long-range implementation plans. Training and technical assistance materials will be incorporated into the Title IV Training and Technical Assistance Program. Existing M/CAP sites will be encouraged to serve as regional technical assistance sites to provide OJJDP with a mechanism to support the delivery of services through the Title IV Training and Technical Assistance Program.

Association of Missing and Exploited Children's Organizations (AMECO). ($28,430)

An award will be made to AMECO, a consortium of nonprofit organizations (NPO's), to further enhance and support the capabilities of nonprofit organizations serving missing and exploited children. Specifically, AMECO will be developing standardized intake forms for NPO's, developing communications systems (online networks) to link NPO's, developing and distributing an NPO newsletter to discuss emerging themes and legislative issues, enhancing information sharing, facilitating discussions regarding fundraising among NPO's, and working with OJJDP to identify and assess the training and technical assistance needs of NPO's.

National Missing Children Data Archive. ($25,000)

This agreement continues funding for the Missing Children Data Archive. Through a cooperative agreement with the University of Michigan Consortium for Political and Social Research, staff process and archive OJJDP missing children data into a readily understandable, standard format (this includes data sets produced through OJJDP missing children projects).

National Crime Information Center (NCIC). ($100,000)

FY 1996 funds will be awarded to continue NCMEC's online access to the FBI National Crime Information Center's Wanted and Missing Persons files.

NISMART II. ($1,494,782)

Temple University Institute for Survey Research was awarded a grant in FY 1995 to conduct the second National Incidence Studies of Missing, Exploited, Abducted, Runaway, and Thrownaway Children (NISMART II). This project builds on the strengths and creatively addresses some of the weaknesses of NISMART I. Temple has assembled a team of experts in the field of child victimization and survey research capabilities, particularly surveys involving children and families

VOL
61
ISS
138
JL
17
1996
UMI

concerning sensitive topics. Temple is contracting with the University of New Hampshire Survey Research Lab and Westat, Inc., to carry out specific components of the study and providing extensive background knowledge about the particulars of NISMART I. Specifically, the project will (1) Revise NISMART definitions, (2) conduct a household survey that interviews both caretaker and child, (3) conduct a police records study, (4) conduct a juvenile facilities study, (5) analyze National Incidence Study—3 Community Professionals Study, (6) develop a single estimate of missing children, and (7) conduct analyses and prepare reports. No additional funds will be awarded to this project in FY 1996. The project is scheduled for completion in FY 1998.

Missing Children Program To Increase Understanding of Child Sexual Exploitation. ($98,000)

This project is a joint effort between OJJDP and the Office for Victims of Crimes. The goal of the project is to learn more about the missing children problem as it relates to children who become the victims of sexual exploitation, including pornography and prostitution; the precipitating circumstances surrounding children's path to involvement in pornography and prostitution; and the response of law enforcement, social welfare, and judicial systems to this serious and growing problem. The Educational Development Center is completing Phase II of this project, which involves youth interviews and the completion of reports.

Awarded with FY 1994 funding, the project is scheduled for completion in June 1997.

Effective Community-Based Approaches for Dealing With Missing and Exploited Children. ($249,234)

In FY 1995 the ABA was awarded an 18-month grant to study effective community-based approaches for dealing with missing and exploited children. The objectives of Phase I of this study are to (1) Conduct a national search for communities that have implemented a multiagency response to missing and exploited children and their families, (2) select five communities with a viable working multiagency response that holds promise for replication, (3) evaluate these five communities, and (4) prepare a final report. In Phase II the ABA will design and develop a modular training curriculum to help communities plan, implement, and evaluate a multiagency response to missing and exploited children and their families. No funds will be awarded in FY 1996.

Obstacles to the Recovery and Return of Parentally Abducted Children: International Child Abduction Attorney Network. ($170,299)

The goal of this project is to establish the International Child Abduction Network, composed of attorneys who are willing to represent parents on a pro bono basis in legal actions under the Hague Convention on the Civil Aspects of International Child Abduction and who are knowledgeable of the Hague and its implementing status in the United States. The key objectives of this project are to recruit 300 attorneys within 10 months; update, produce, and disseminate relevant legal materials for these attorneys, including special issue briefs; and establish a mechanism for upkeep and continuation of the referral network over time. This referral network will be used by NCMEC to resolve incoming Hague Convention cases. Funding for this 1-year project was awarded to the ABA in FY 1995. The project will be completed in FY 1996.

New Programs

Parent Resource Support Network. ($125,000)

OJJDP proposes to solicit competitive proposals for an assistance award to a nonprofit organization to develop and maintain a parent support network. The need for victim parents to speak with other victim parents has emerged as a constant theme in several OJJDP focus groups. The goal of this project would be to stimulate development of a network of screened and trained parent volunteers who will provide assistance and advice to other victim parents.

Product Development and Technical Assistance on Computer Crimes. ($150,000)

OJJDP plans to solicit competitive proposals for assistance in developing materials on child sexual exploitation to aid State legislatures that are considering new laws on computer-related crime against children (e.g., the use of the Internet for enticement of children). A complete analysis of Federal and State laws relating to computers and crimes against children is needed, leading to specific recommendations in policy, practice, and law. Areas to cover include, but are not limited to, constitutional issues, privacy issues, liability of law enforcement officers and network providers, legal responsibility of parents, and legal issues relating to providers' screening communications and participants on the Internet. Products include a survey of laws and trends; an annotated bibliography of current literature; legal issue briefs on specific key issues; model statutes; training curriculums for law enforcement officers, prosecutors, and law schools; and a comprehensive dissemination plan.

Judicial Teleconference on Interstate and Intrastate Child Abduction. ($50,000)

State court judges do not have sufficient information or knowledge regarding the laws pertaining to interstate and international parental abduction. This lack of information impedes effective resolution of jurisdictional conflicts between States and implementation of the Hague Convention on the Civil Aspects of International Child Abduction. A teleconference on interstate and international child custody jurisdiction and parental abduction would provide an opportunity for judges around the country to access information in an affordable, convenient forum. Conference proceedings can be used to develop a guidebook for judges. OJJDP proposes to fund this teleconference through an existing Part C discretionary grant with Eastern Kentucky University.

Dated: July 14, 1996.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 96–18140 Filed 7–16–96; 8:45 am]

BILLING CODE 4410–18–P

United States Parole Commission

Public Announcement: Pursuant to the Government in the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

TIME AND DATE: 2:30 p.m., Thursday, July 11, 1996.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Proposal to Amend Regulations to Provide that Transfer Treaty Hearings be Conducted by One Hearing Examiner.
4. Proposal Regarding Computer Restrictions on Parolees.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: July 3, 1996.

Michael A. Stover,

General Counsel, U.S. Parole Commissioner.

[FR Doc. 96–18269 Filed 7–15–96; 2:42 pm]

BILLING CODE 4410–31–M

Public Announcement: Pursuant To The Government In the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

DATE AND TIME: 10:30 a.m., Thursday, July 11, 1996.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting.

Appeals to the Commission involving approximately 10 cases decided by the National Commissioners pursuant to a reference under 28 C.F.R. 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: July 3, 1996.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 96–18270 Filed 7–15–96; 2:42 pm]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Corps: Preliminary Finding of No Significant Impact (FONSI) for the New Job Corps Center Located at 3300 South Kedzie Avenue in Chicago, IL

AGENCY: Employment and Training Administration.

ACTION: Preliminary Finding of No Significant Impact (FONSI) for the New Job Corps Center located at 3300 South Kedzie Avenue in Chicago, Illinois.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR Part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Employment and Training Administration, Office of Job Corps, in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared and the proposed plans for the new Chicago Job Corps Center will have no significant environmental impact, and this Preliminary Finding of No Significant Impact (FONSI) will be made available for public review and comment for a period of 30 days.

DATES: Comments must be submitted by August 16, 1996.

ADDRESSES: Any comment(s) are to be submitted to Amy Knight, Employment and Training Administration, Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210, (202) 219–5468 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Copies of the EA and additional information are available to interested parties by contacting Richard Trigg, Regional Director, Region V (Five), Office of the Job Corps, 230 South Dearborn Street, Chicago, IL 60604, (312) 353–1311 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The proposed site is located approximately 7 miles southwest of the Chicago Loop on a 30.7-acre parcel which is currently undeveloped and is in an urban/industrial area adjacent to the north side of the Chicago Sanitary and Ship Canal. The EA indicates that the property consists of 14 acres currently owned by the City of Chicago and 16.7 acres owned by the State of Illinois. An historical review indicates that one or several small structures may have existed on the property at one time or another; however, the records do not indicate how the structures were used. The site consists of fill material which is believed to have been dredged from the adjacent Chicago Sanitary and Ship Canal. The fill has been dumped on the site over a period of many years along with other unknown sources of garbage and miscellaneous debris. The southwest corner of the site slopes southwest towards the Canal where a small wetland area exists. The rest of the site is characterized by low quality vegetation. The proposed site is bordered by the Illinois Central Gulf Railroad to the north, the Chicago Sanitary and Ship Canal to the south, a radio station and Kedzie Avenue to the east, and more vacant land and Central Park Avenue to the west.

As a result of the many years of dredging and dumping of the nearby canal sediments onto adjacent land, the site was contaminated with lead and polychlorinated biphenyls (PCBs). Contaminated soils containing lead and PCBs were removed from the site as part of the pre-construction soil remediation work. If left unremediated, these contaminants could have posed a health risk via soil contact, air emissions, and groundwater contact during the construction process. Identified areas of PCB and lead contaminated soil have been remediated by the City of Chicago to safe levels.

A Corrective Action Certification Report was prepared to certify that the preconstruction soil remediation work at the above referenced project has been completed and meets the cleanup objectives of the Site Management Plan approved by the IEPA. The completed remediation work effectively reduced the risk of exposure to personnel performing the construction of the Job Corps training facility, as well as to Job Corps personnel and students, in accordance with the risk assessment approved by the IEPA. The conclusions of the Site Management Plan clearly indicate that the goals and objectives of the Site Management Plan can be effectively accomplished to further reduce the overall risk to workers during construction and to Job Corps personnel and students engaged at activities planned for the Chicago Job Corps Center.

The proposed Chicago Job Corps Center is designed to accommodate approximately 348 full-time residential students. An additional estimate of 28 non-resident students will increase the total to 376 students. The property will consist of dormitories, educational/vocational facilities, food service facilities, medical/dental facilities, recreational facilities, administrative offices, storage and support. The proposed project is designed to be constructed in accordance with the local fire, building, and zoning code requirements.

Conversion of this undeveloped property to a Job Corps Center would be a positive asset to the area in terms of environmental and socioeconomic improvements and long-term productivity. The Chicago Job Corps Center will be a new source of employment opportunity. In addition, the Job Corps program, which provides basic education, vocational skills training, work experience, counseling, health care and related support services, is expected to graduate students ready to participate in the local economy and elsewhere.

The proposed project will not have any significant adverse impact on any natural system or resource. There are no "historically significant" buildings on the site and no areas of archaeological significance. There are no threatened or endangered species located on the site.

VOL
61
ISS
138
JL
17
1996
UMI

Remediation of lead and PCB contaminated soil has been completed in accordance with the CDOE and IEPA approved site management plan, therefore surface water, ground water, and the remaining low quality vegetation would not be adversely affected. Future construction and operational activities associated with the proposed project will compare favorably to the surrounding land uses which are characterized by urban/industrial and residential construction. Any additional remediation of contaminated soil that may be encountered during the construction phase of this project will be remediated using proper engineering controls to minimize or eliminate impacts from contamination upon the natural systems and resources.

Garbage and debris on site which could contain asbestos and/or lead-based paint has or will be removed as part of the site remediation prior to the use of the facility. The proposed site has been identified by the Illinois Division of Nuclear Safety has an area of low potential for radon gas accumulation in concentrations requiring remediation activities.

The proposed project will not have any significant adverse impact upon air quality, noise levels, and lighting. Since this an industrial area, air quality is generally poorer than areas located west and north of the City of Chicago. The proposed project would not be a source of air emissions. Noise levels in the area are consistent with urban/industrial areas and, with the exception of the construction period, the proposed project will not be a source of additional noise. Finally, street lights for the proposed project will be modified in the final design, if necessary, to ensure levels of illumination consistent with the utilization needs.

The proposed project will not have any significant adverse impacts upon the existing surrounding infrastructure represented by water, sewer, and storm water systems. Adequate water is available to the site through the City of Chicago Bureau of Water Distribution. The City operates a combined sanitary and storm sewer system which is maintained by the Department of Sewers. The collection system is readily accessible and deemed to be adequate. All wastewater treatment will be handled by the Metropolitan Water Reclamation District of Greater Chicago at the Stickney wastewater treatment facility. The Stickney plant is operating under an existing National Pollution Discharge Elimination System (NPDES) permit.

The proposed site is surrounded by electrical power, with power lines bordering the site to the north and east. New distribution systems would be easily accessible from the adjacent lines. The proposed demands on electric power are not expected to have a significant adverse affect on the environment. The site location to road and public transportation corridors makes it an excellent location for public access. Adequate roads within the site would also be constructed, and traffic patterns to and from the site would be closely monitored to insure a satisfactory movement of vehicles. Therefore, no significant adverse affects are expected.

There will be no significant adverse affects upon local medical, emergency, fire and police facilities, all of which are located within 2.25 miles of the proposed site. A medical and dental facility will also be part of the on-site Job Corps complex to accommodate students. The new Job Corps facility will be supported by local medical facilities, including St. Anthony Hospital and Mt. Sinai Hospital Medical Center located in the nearby neighborhoods of Chicago. Emergency, fire, and police services will be provided by the City of Chicago Fire and Police Departments. None of these facilities will be adversely impacted by the Job Corps Center.

The proposed project population will not have a significant adverse sociological effect on the surrounding community, which is characterized by a diverse ethnicity, and offers an abundance of cultural, educational, and recreational opportunities. Similarly, the proposed project will not have a significant adverse affect on demographic and socioeconomic characteristics of the area.

The alternatives considered in the preparation of the EA were as follows: (1) the "No Build" alternative, (2) the "Alternative Sites" alternative, and (3) the "Continue as Proposed" alternative.

The "No Build" alternative, originally considered based on environmental concerns related to soil contamination specific to this site, was not selected. A Corrective Action Plan and Site Management Plan to address identified environmental concerns have been developed and approved by environmental regulatory agencies. Future actions to comply with the Site Management Plan include an orientation session, safety protocols, environmental monitoring, and placement of a 3-foot layer of clean fill to be spread as a protective cover over undeveloped portions of the site. Alternative sites in other regional metropolitan areas were considered by the Department of Labor for the new Job Corps Center site, but none of the proposed alternative sites met the minimum selection criteria for locating the proposed facilities. The proposed facilities will be suitable for their intended purpose in the Job Corps, will be environmentally safe, and will be consistent with current building codes and safety practices.

Based on the information gathered during the preparation of the EA for the Department of Labor, Employment and Training Administration, the Office of Job Corps finds that the location of a Job Corps Center on the undeveloped parcel of property located at 3300 South Kedzie Avenue in Chicago, Illinois will not create any significant adverse impact on the environment and, therefore, recommends that the project continue as proposed. The proposed project is not considered to be highly controversial.

Dated at Washington, DC, this 11th day of July, 1996.

Mary H. Silva,

Director of Job Corps.

[FR Doc. 96–18131 Filed 7–16–96; 8:45 am]

BILLING CODE 4510–3E–M

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act.

The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and States:

Volume V

Arkansas
AR960046 (JULY 19, 1996)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Delaware
DEC960002 (MARCH 15, 1996)
DEC960005 (MARCH 15, 1996)
DEC960009 (MARCH 15, 1996)
Maryland
MD960001 (MARCH 15, 1996)
MD960006 (MARCH 15, 1996)
MD960011 (MARCH 15, 1996)
MD960012 (MARCH 15, 1996)
MD960021 (MARCH 15, 1996)
MD960023 (MARCH 15, 1996)
MD960026 (MARCH 15, 1996)
MD960031 (MARCH 15, 1996)
MD960032 (MARCH 15, 1996)
MD960034 (MARCH 15, 1996)
MD960036 (MARCH 15, 1996)
MD960037 (MARCH 15, 1996)
MD960039 (MARCH 15, 1996)
MD960042 (MARCH 15, 1996)
MD960045 (MARCH 15, 1996)
MD960046 (MARCH 15, 1996)
MD960054 (MARCH 15, 1996)
MD960055 (MARCH 15, 1996)
MD960056 (MARCH 15, 1996)
MD960057 (MARCH 15, 1996)
MD960058 (MARCH 15, 1996)
Pennsylvania
PA960005 (MARCH 15, 1996)
PA960006 (MARCH 15, 1996)
PA960024 (MARCH 15, 1996)
PA960026 (MARCH 15, 1996)
PA960030 (MARCH 15, 1996)
PA960031 (MARCH 15, 1996)
PA960052 (MARCH 15, 1996)

Volume III

Kentucky
KY960004 (MARCH 15, 1996)
KY960025 (MARCH 15, 1996)
KY960027 (MARCH 15, 1996)
KY960028 (MARCH 15, 1996)
KY960029 (MARCH 15, 1996)
KY960044 (MARCH 15, 1996)

Volume IV

Indiana
IN960001 (MARCH 15, 1996)
IN960020 (MARCH 15, 1996)
IN960021 (MARCH 15, 1996)
Ohio
OH960001 (MARCH 15, 1996)
OH960002 (MARCH 15, 1996)
OH960003 (MARCH 15, 1996)
OH960028 (MARCH 15, 1996)
OH960029 (MARCH 15, 1996)
OH960034 (MARCH 15, 1996)
OH960035 (MARCH 15, 1996)
OH960036 (MARCH 15, 1996)
OH960038 (MARCH 15, 1996)

Volume V

Arkansas
AR960007 (March 15, 1996)
AR960044 (March 15, 1996)
Iowa
IA960002 (March 15, 1996)
IA960003 (March 15, 1996)
IA960004 (March 15, 1996)
IA960005 (March 15, 1996)
IA960012 (March 15, 1996)
IA960014 (March 15, 1996)
IA960017 (March 15, 1996)
IA960032 (March 15, 1996)
IA960038 (March 15, 1996)
Kansas
KS960007 (March 15, 1996)
KS960008 (March 15, 1996)
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KS960028 (March 15, 1996)
KS960029 (March 15, 1996)
KS960035 (March 15, 1996)
KS960061 (March 15, 1996)
KS960063 (March 15, 1996)

Volume VI

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

VOL
61
ISS
138
JL
17
1996
UMI

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 12th Day of July 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–18130 Filed 7–16–96; 8:45 am]

BILLING CODE 4510–27–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Thursday, July 18, 1996.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Buffalo Crushed Stone, Inc.*, Docket No. YORK 94–51–M. (Issues include whether the operator violated 30 C.F.R. § 56.14109(a) for failure to locate an emergency stop cord along a conveyor belt so that a person falling against the conveyor could readily deactivate its drive motor; whether the operator's violation of 30 C.F.R. § 56.11009 for failure to provide cleats on an inclined walkway was significant and substantial ("S&S"); and whether the operator's violation of 30 C.F.R. § 56.11002 for failure to provide an adequate stairway handrail was S&S.)

2. *New Warwick Mining Co.*, Docket Nos. PENN 93–445 and PENN 94–54. (Whether the operator's violation of 30 C.F.R. § 75.400 for failure to clean up coal and coal dust accumulations was the result of unwarrantable failure; whether the operator violated 30 C.F.R. § 75.360(b) for failure to note the accumulations during the preshift examination; and whether five violations of 30 C.F.R. § 77.202 for failure to clean up coal dust accumulations in overland belt transfer stations was S&S.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629 / (202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: July 11, 1996.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 96–18249 Filed 7–15–96; 2:38 pm]

BILLING CODE 6735–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454 and STN 50–455]

Commonwealth Edison Company; Byron Station, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. NPF–37 and NPF–66, issued to Commonwealth Edison Company (ComEd, the licensee), for operation of Byron Station, Units 1 and 2, located in Ogle County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow the licensee to utilize the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code) Case N–514, "Low Temperature Overpressure Protection" to determine its low temperature overpressure protection (LTOP) setpoints and is in accordance with the licensee's application for exemption dated March 14, 1996. The proposed action requests an exemption from certain requirements of 10 CFR 50.60, "Acceptance Criteria for Fracture Prevention Measures for Lightwater Nuclear Power Reactors for Normal Operation," to allow application of an alternate methodology to determine the LTOP setpoints for Byron Station, Units 1 and 2. The proposed alternate methodology is consistent with guidelines developed by the ASME Working Group on Operating Plant Criteria (WGOPC) to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure relieving devices used for LTOP. These guidelines have been incorporated into Code Case N–514, "Low Temperature Overpressure Protection," which has been approved by the ASME Code Committee. The content of this Code Case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI. However, 10 CFR 50.55a, "Codes and Standards," and Regulatory Guide 1.147, "Inservice Inspection Code Case Acceptability" have not been updated to reflect the acceptability of Code Case N–514.

The philosophy used to develop Code Case N–514 guidelines is to ensure that the LTOP limits are still below the pressure/temperature (P/T) limits for normal operation, but allow the pressure that may occur with activation of pressure relieving devices to exceed the P/T limits, provided acceptable margins are maintained during these events. This philosophy protects the pressure vessel from LTOP events, and still maintains the Technical Specifications P/T limits applicable for normal heatup and cooldown in accordance with 10 CFR Part 50, Appendix G and Sections III and XI of the ASME Code.

The Need for the Proposed Action

Pursuant to 10 CFR 50.60, all lightwater nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary as set forth in 10 CFR Part 50, Appendix G. 10 CFR Part 50, Appendix G, defines P/T limits during any condition of normal operation including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime. It is specified in 10 CFR 50.60(b) that alternatives to the described requirements in 10 CFR Part 50, Appendix G, may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent transients that would produce excursions exceeding the 10 CFR Part 50, Appendix G, P/T limits while the reactor is operating at low temperatures, the licensee installed an LTOP system. The LTOP system includes pressure relieving devices in the form of Power Operated Relief Valves (PORVs) that are set at a pressure below the LTOP enabling temperature that would prevent the pressure in the reactor vessel from exceeding the P/T limits of 10 CFR Part 50, Appendix G. To prevent these valves from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting and shifting operating charging pumps) with the reactor coolant system in a solid water condition, the operating pressure must be maintained below the PORV setpoint.

In addition, to prevent damage to reactor coolant pump seals, the operator must maintain a minimum differential pressure across the reactor coolant pump seals. Hence, the licensee must operate the plant in a pressure window that is defined as the difference between the minimum required pressure to start a reactor coolant pump and the operating margin to prevent lifting of the PORVs due to normal operating pressure surges. The 10 CFR Part 50, Appendix G, safety margin adds instrument uncertainty into the LTOP setpoint. The licensee's current LTOP analysis indicates that using this 10 CFR Part 50, Appendix G, safety margin to determine the PORV setpoint would result in an operating window between the LTOP setpoint and the minimum pressure required for reactor coolant pump seals which is significantly restricted when physical conditions such as PORV overshoot, RCP pump Δ Ps, and static head corrections are taken into account in setpoint determination. Operating with these limits could result in the lifting of the PORVs or damage to the reactor coolant pump seals during normal operation. Using Code Case N–514 would allow the licensee to recapture most of the operating margin that is lost by factoring in the instrument uncertainties in the determination of the LTOP setpoint. The net effect of using Code Case N–514 is that the setpoint will not change significantly with the next setpoint analysis. Therefore, the licensee proposed that in determining the PORV setpoint for LTOP events for Byron, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins required by 10 CFR Part 50, Appendix G. The alternate methodology is consistent with ASME Code Case N–514. The content of this Code Case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for LTOP considerations. By application dated March 14, 1996, the licensee requested an exemption from 10 CFR 50.60 to allow it to utilize the alternate methodology of Code Case N–514 to compute its LTOP setpoints.

Environmental Impacts of the Proposed Action

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) using a safety factor of two on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one quarter (1/4) of the vessel wall thickness and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Byron reactor vessel material.

In determining the PORV setpoint for LTOP events, the licensee proposed the use of safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel will not exceed 110% of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, use of the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Byron Station, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on June 19, 1996, the staff consulted with the Illinois State official, Mr. Frank Niziolek; Head, Reactor Safety Section; Division of Engineering; Illinois Department of Nuclear Safety; regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 14, 1996, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Byron Public Library District 109 N. Franklin, P. O. Box 434, Byron, Illinois 61010.

Dated at Rockville, Maryland, this 11th day of July 1996.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Project Manager, Project Directorate III–2, Division of Reactor Project—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–18137 Filed 7–16–96; 8:45 am]

BILLING CODE 7590–01–P

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the

VOL
61
ISS
138
JL
17
1996
UMI

Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 22, 1996, through July 5, 1996. The last biweekly notice was published on July 3, 1996 (61 FR 34884).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By August 16, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective,

notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: April 4, 1996

Description of amendments request: The proposed amendments would revise the Technical Specifications (TS) to add an allowance to complete a TS-required surveillance within 24 hours of discovery of a missed surveillance in accordance with the guidance of Generic Letter (GL) 87-09, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements" and NUREG-1433, "Standard Technical Specifications, General Electric Plants, BWR/4," Revision 1, April 1995. Typographical errors are being corrected and wording adjustments are being incorporated for consistency between plant TS terminology and the associated Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

. The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated. The operational flexibility resulting from the proposed revision to Technical Specification 3.0.4 is consistent with that allowed by the existing individual LCO [limiting condition for operation] and their associated ACTION requirements, which provide an acceptable level of safety for continued operation. A delay of up to 24 hours or the time of the surveillance interval, whichever is less, provided by Technical Specification 4.0.3 to complete a missed surveillance reduces the probability of a transient occurring when the affected system or component is either out of service to allow performance of the surveillance test, or there is a lower level of confidence in the operability because the normal surveillance was exceeded. The revision to Technical Specification 4.0.4 makes it clear that Technical Specification 4.0.4 does not prevent passage through or to OPERATIONAL CONDITIONS as required to comply with ACTION requirements. The revision to the wording in Unit 2 Technical Specification Table 3.12.1-1, Notation (h), revisions to the Bases of the Technical Specifications, and the elimination of specific exemptions to Technical Specifications 3.0.4 are administrative in nature.

Based on the above, the proposed license amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed license amendments do not introduce any new equipment nor do they require any existing equipment or systems to perform a different type of function than they are presently designed to perform. The proposed changes result in improved Technical Specifications by removing unnecessary restrictions on changes in OPERATIONAL CONDITIONS and facility operation, removing unnecessary shutdowns caused by inadvertently exceeding surveillance intervals, and removing conflicts between various Technical Specifications. The revision to the wording in Unit 2 Technical Specification Table 3.12.1-1, Notation (h), revisions to the Bases of the Technical Specifications, and the elimination of specific exemptions to Technical Specification 3.0.4 are administrative in nature.

Based on the above, the proposed license amendments do not create a new or different kind of accident from any previously evaluated.

3. The proposed license amendments do not involve a significant reduction in a margin of safety. The operational flexibility that results from the proposed revision to Technical Specification 3.0.4 is consistent with that allowed by the existing individual LCO and associated ACTION requirements, which provide an acceptable level of safety for continued operation. Therefore, there is no change in the margin of safety associated with this change. A delay of up to 24 hours or the length of the surveillance interval, whichever is less, provided by Technical Specification 4.0.3 to complete a missed surveillance reduces the probability of a transient occurring when the affected system or component is either out of service to allow performance of the surveillance test, or there is a lower level of confidence in the operability because the normal surveillance was exceeded. In addition, the proposed change acknowledges that the most common outcome of the performance of a surveillance is the successful demonstration that acceptance criteria are met. The proposed change provides the potential benefit of avoiding a shutdown transient when required equipment is still capable of performing its function, and variables are still within limits. The revision to Technical Specification 4.0.4 makes it clear that Technical Specification 4.0.4 does not prevent passage through or to OPERATIONAL CONDITIONS as required to comply with ACTION requirements. This change is considered to be a clarification to achieve consistency with existing Technical Specification requirements. The revision to the wording in Unit 2 Technical Specification Table 3.12.1-1, Notation (h), revisions to the Bases of the Technical Specifications, and the elimination of specific exemptions to Technical Specification 3.0.4 are administrative in nature.

The proposed changes would result in improved Technical Specifications and eliminate unnecessary plant challenges. Based on the above, the proposed license amendments do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

VOL 61 ISS 138 JL 17 1996 UMI

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Eugene V. Imbro

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: December 6, 1995

Description of amendment request: The proposed amendment would relocate the crane operation and movement of heavy loads requirements and their bases from the Technical Specifications (TS) to other plant documents.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The change moves the requirements from TS to other plant documents controlled under 10 CFR 50.59 without effecting their technical content. Since this change does not alter the technical content of any requirements, the operation of the facility in accordance with the proposed change cannot involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any previous evaluated, or involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201

NRC Project Director: Mark Reinhart

Duke Power Company, Docket Nos. 50-269, 270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: June 6, 1995

Description of amendment request: The proposed change would remove the Engineered Safeguard (ES) signals that presently open the outlet valves on the Low Pressure Service Water (LPSW) System coolers, LPSW-4 and LPSW-5, on high reactor coolant system pressure or high reactor building pressure. The valves will continue to be operable from the control room when needed. The proposed change to Technical Specification (TS) 4.5.1.1.2.a.(2) would require that the refueling outage test signal be applied to the LPSW pumps, but no longer to LPSW-4 and LPSW-5, and that the operability of the valves be verified by cycling them from the control room. A note would be added to reflect that the refueling outage test of LPSW-4 and LPSW-5 response to the ES signal will continue to be verified until the signal is removed from the ES system for each unit during the specified refueling outages. In addition, TS 4.5.1.1.2.b would be clarified to differentiate between test acceptance criteria for automatic actuation of the appropriate LPSW pumps and valves in response to the ES signal, and completion of travel of LPSW-4 and LPSW-5 in response to manual operation of the valves. A proposed change to the Bases would also reflect these changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10CFR50.91, Duke Power Company (Duke) has made the determination that this amendment involves a No Significant Hazards Consideration by applying the standards established by NRC regulations in 10CFR50.92. The following discusses the basis for our analysis:

Will operation of the facility in accordance with the proposed amendment:

A. Involve a significant increase in the probability or consequences of an accident previously evaluated?

No. Eliminating the automatic signal that opens Low Pressure Service Water (LPSW) System valves, LPSW-4 and LPSW-5, upon an Engineered Safeguards (ES) actuation does not increase the probability of any accident previously evaluated. The proposed change would involve a delay in providing cooling water to the Low Pressure Injection (LPI) System coolers after a design basis accident. Cooling water flow to the LPI coolers is isolated during normal power operation. During normal cold shutdown conditions, cooling water flow to the LPI coolers is normally open without relying on the ES actuation signal. This cooling water flow is needed to mitigate certain accidents, but a delay in providing this cooling water flow after a design basis accident does not significantly increase the probability of any accident previously evaluated.

Eliminating the ES actuation signal for LPSW-4 and LPSW-5 will not increase the consequences of an accident previously evaluated. After a loss of coolant accident (LOCA), operators will operate the appropriate valves from the control room in sufficient time to provide adequate cooling water flow to maintain containment temperature and pressure within acceptable limits. Duke has also evaluated the delay of LPSW cooling flow's impact on core cooling and concluded that there are no adverse impacts on the capability to maintain core cooling. Since the containment temperature and pressure limits after a LOCA will not be exceeded, this change will not increase any potential off-site dose consequences after a LOCA. Due to the time available for operator action (approximately one hour), there is no significant increase in operator burden during this accident scenario.

B. Create the possibility of a new or diffesent kind of accident from the accidents previously evaluated?

No. As stated above, due to the time available for operator action (approximately 1 hour), there is no significant increase in operator burden during this accident scenario. Eliminating the ES signal that automatically opens valves LPSW-4 and LPSW-5 results in significantly lower flow demand on the LPSW pumps. If all LPSW pumps are successfully started, this could result in a stronger pump causing deadhead conditions on a weaker pump since the pumps feed into the same piping system. To prevent any potential adverse effects on the LPSW pumps due to inadequate flow during the initial stages of a LOCA, minimum flow piping will be installed for the LPSW pumps to provide adequate flowpaths for pump minimum flow. Testing will be performed to validate that the LPSW pumps can operate at the chosen design value for pump minimum flow. In addition, Duke conducted an evaluation, based on manufacturer input, of the thermal effects on the LPI coolers due to delaying LPSW cooling flow. This evaluation concluded that the 30 minute delay of LPSW cooling flow has no adverse thermal effects on the LPI coolers. Therefore, because there is no significant increase in operator burden and because there will be no adverse effects on the LPSW pumps, LPI coolers, and associated piping caused by the delayed LPSW cooling flow, the proposed change will not create the possibility of a new or different kind of accident from the accidents previously evaluated.

C. Involve a significant reduction in a margin of safety?

No. There are no safety limits or limiting safety system settings associated with the LPSW System in the Oconee Nuclear Station Technical Specifications. The proposed change will not affect any existing safety limits or limiting safety system settings. The proposed change will not affect any existing Limiting Conditions for Operation in the Technical Specifications. The proposed change involves an alternative method of initiating cooling water flow to the LPI coolers after a LOCA. This alternative method will achieve the required results since there will be no significant change in the containment temperature and pressure after a LOCA.

Duke has concluded based on the above that there are no significant hazards considerations involved in this amendment request.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station (GGNS), Unit 1, Claiborne County, Mississippi

Date of amendment request: June 20, 1996

Description of amendment request: The amendment would redefine the secondary containment boundary to allow the enclosure building to be inoperable during the upcoming refueling outage 8 (RFO 8) scheduled to begin in October 1996. The amendment would add a condition to the license that the enclosure building may be inoperable during core alterations and movement of non-recently irradiated fuel (i.e., fuel that has not occupied part of a critical reactor core for 12 days) during RFO 8 and the standby gas treatment (SGT) system may be unable to automatically start or achieve and maintain the required vacuum, provided the following conditions exist:

a. All dampers communicating between the auxiliary building and the enclosure building are closed.

b. The access door between the auxiliary building and the enclosure building is closed, except when the access opening is being used for entry and exit.

c. The SGT system is blocked from automatic initiation.

d. SGT system is available for manual initiation or the actions for Limiting Condition for Operation 3.6.4.3 in the Technical Specifications for GGNS are complied with.

The non-recently irradiated fuel is spent fuel that has decayed at least 12 days after the reactor was shut down for refueling.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated.

The equipment affected by the proposed change is not considered an initiator to any previously analyzed accident, therefore, inoperability of the equipment does not increase the probability of any previously evaluated accident.

As described in Updated Final Safety Analysis Report [for GGNS,] Chapter 15, the accidents postulated to occur during core alterations in addition to fuel handling accidents are [the following]: inadvertent criticality due to a control rod removal error or continuous control rod withdrawal error during refueling and the inadvertent loading of a fuel assembly in an improper location. These events are not postulated to result in fuel cladding integrity damage. The only accident postulated to occur during core alterations that results in a significant radioactive release is the fuel handling accident. The proposed requirements in conjunction with existing administrative controls on light loads, bounds the conditions of the current design basis fuel handling accident analysis which concludes that the radiological consequences are within the acceptance criteria of NUREG 0800, Section 15.7.4 and General Design Criteria [GDC] 19 [of Appendix A to 10 CFR Part 50]. Therefore, the proposed changes do not significantly increase consequences of any previously evaluated accident.

Based on the above, the proposed changes do not significantly increase the probability or consequences of any accident previously evaluated.

2. The proposed changes would not create the possibility of a new or different kind of accident from any previous analyzed.

The leaktightness of the enclosure building does not affect the function of any plant system other than the ability of the SGT System to ensure the secondary containment is at the specified pressure. The proposed change in [the] normal SGT System alignment[,] by defeating the automatic start feature of the SGT System and the inability to ensure secondary containment is at the specified pressure[,] does not affect the operation of any [other] plant system or component. The SGT System is not relied upon to provide normal or accident cooling to plant systems or components. The function of the enclosure building and the SGT System is only to mitigate the release of radioactivity to the environment in the event of an accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes continue to ensure that the radiological consequences are at or below the current GGNS licensing limit. Safety margins and analytical conservatisms have been evaluated and are well understood. Substantial margins are retained to ensure that the analysis adequately bounds all postulated event scenarios. The current margin of safety is retained.

Specifically, the margin of safety for the fuel handling accident is the difference between the 10CFR100 [dose consequence guidelines of 300 rem thyroid and 25 rem whole- body] and the licensing limit defined by NUREG-0800, Section 15.7.4. With respect to the control room personnel doses, the margin of safety is the difference between the 10CFR100 [guidelines] and the licensing limit defined by 10CFR50 [10 CFR Part 50], Appendix A, Criterion 19 (GDC 19). The proposed applicability continues to ensure that the whole-body and thyroid doses at the exclusion area and low population zone boundaries[,] as well as control room doses[,] are at or below the corresponding licensing limit. The margin of safety is unchanged; therefore, the proposed changes do not involve a significant reduction in a margin of safety.

In excess to the margin of safety supplied by the licensing limits of NUREG-0800 and GDC 19, the proposed change incorporates an additional layer of conservative requirements. The proposed change leaves in effect a redefined secondary containment boundary which will provide a low leakage boundary (consisting of the primary containment and the auxiliary building) by automatically isolating in the event of the design basis fuel handling accident and requires that the SGT System be available for manual initiation when desired. These requirements will ensure that doses will be even lower than those calculated.

Therefore, the proposed changes do not result in a significant reduction in a margin of safety.

Based on the above evaluation, operation in accordance with the proposed amendment involves no significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: June 17, 1996

Description of amendment request: The proposed amendments would revise Technical Specification Section 5.3.1 to allow use of fuel assemblies containing fuel rods clad with ZIRLO™.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

VOL
61
ISS
138
JL
17
1996
UMI

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because:

The methodologies used in the accident analyses remain unchanged. The proposed change does not change or alter the design assumptions for the systems or components used to mitigate the consequences of an accident. Use of ZIRLO™ fuel cladding does not adversely affect fuel performance or impact nuclear design methodology. Therefore, accident analysis results are not significantly impacted.

The operating limits will not be changed and the analysis methods to demonstrate operation within the limits will remain in accordance with NRC-approved methodologies. Other than the changes to the fuel assemblies cladding, there are no physical changes to the plant associated with this Technical Specification change. A safety analysis will continue to be performed for each specific reload cycle to demonstrate compliance with all fuel safety design bases.

The 10 CFR 50.46 criteria are applied to the ZIRLO™ clad fuel rods. The use of these fuel assemblies will not result in a change to the reload design and safety analysis limits. Since the original design criteria are met, the ZIRLO™ clad fuel rods will not be an initiator for any new accident. The clad material is similar in chemical composition and has similar physical and mechanical properties as Zircaloy-4. Thus, the cladding integrity is maintained and the structural integrity of the fuel assembly is not affected. ZIRLO™ cladding improves corrosion performance and dimensional stability. Since the dose predictions in the safety analyses are not sensitive to the fuel rod cladding material used, the radiological consequences of accidents previously evaluated in the safety analysis remain valid.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The possibility for a new or different kind of accident from any accident previously evaluated is not created since the fuel assemblies containing ZIRLO™ clad fuel rods will satisfy the same design bases as that currently used for Zircaloy-4 clad fuel assemblies. All design and performance criteria will continue to be met and no new single failure mechanisms have been defined. In addition, the use of ZIRLO™ fuel assemblies does not involve any alterations to plant equipment or procedures which would introduce any new or unique operational mode or accident precursor. Therefore, the possibility for a new or different kind of accident from any accident previously evaluated is not created.

The proposed change does not involve a significant reduction in a margin of safety because:

The margin of safety is not significantly reduced since the ZIRLO™ clad fuel assemblies will not change the reload design and safety analysis limits. Their use will take into consideration the normal core operating conditions allowed for in the Technical Specifications. Each specific cycle's reload core will continue to be specifically evaluated using NRC approved reload design methods and approved fuel rod design models. This will include consideration of the core physics analysis peaking factor and core average linear heat rate effects.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: BurkeCounty Public Library, 412 Fourth Street, Waynesboro, Georgia 30830

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308

NRC Project Director: Herbert N. Berkow

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: June 17, 1996

Description of amendment request: The proposed amendments would clarify the requirement of Technical Specification Surveillance Requirement 4.8.1.1.2.j(2) that requires a pressure test of those portions of the diesel fuel-oil system that are designed to Section III, Subsection ND of the American Society of Mechanical Engineers (ASME) Code. The system pressure test would be performed at a pressure of 110% of the design pressure, at least once per 10 years and only on those sections of piping that are isolable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed clarification of T/S [Technical Specification] 4.8.1.1.2.j(2) does not involve a significant hazards consideration because operation of [the Vogtle Electric Generating Plant] with this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The configuration of the diesel fuel-oil system as currently installed and operated is such that a pressure test of 110% of design pressure would be impractical to perform. The system contains tanks designed for atmospheric pressure and isolation of them and their vent lines from the specified pressure test is not practical. The ASME Code, Section XI, provides alternate test methods to use when storage tanks are involved in a system pressure test. By clarifying this T/S requirement, the requirements set forth in ASME Section XI can be utilized as guidance for testing requirements to ensure the integrity of the diesel fuel-oil system to perform its intended safety function.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. There are no design changes being made that would create a new type of accident or malfunction and the method and manner of plant operation remain unchanged. Using ASME Section XI as guidance for pressure testing the isolable sections of piping provides assurance that the fuel oil supply system will perform its intended function.

3. Involve a significant reduction in a margin of safety. There are no changes being made to the safety limits or safety system settings that would adversely impact plant safety. Utilizing ASME Section XI as guidance for determining those sections of piping that should be pressure-tested and atmospheric-tested will ensure proper operation of the diesel generator fuel oil supply system.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: April 10, 1996

Description of amendment request: The proposed changes bring the surveillance requirements to conformance with Amendment No. 196 issued September 19, 1995. Additionally, this request changes frequency notation for a group of surveillance requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence of the consequences of an accident previously evaluated.

The proposed amendment extends the interval between successive refueling interval surveillances to once every 24 months for those surveillances evaluated herein, and to make administrative changes serving to conform the Technical Specifications to Amendment No. 196. Except for the administrative changes, the proposed surveillance interval changes do not involve any change to the actual surveillance requirements, nor does it involve any change to the limits and restrictions on plant operations. The reliability of systems and components relied upon to prevent or mitigate the consequences of accidents previously evaluated is not degraded by the proposed change to the surveillance interval. Assurance of system and equipment availability is maintained. This change does not involve any change to system or equipment configuration. Therefore, this change does not increase the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment extends the interval between successive refueling interval surveillances to once every 24 months for those surveillances evaluated herein, and to make administrative changes serving to conform the Technical Specifications to Amendment No. 196. Except for the administrative changes the proposed surveillance interval changes do not involve any change to the limits and restrictions in plant operation. This change does not involve any change to system or equipment configuration. Therefore, this change is unrelated to the possibility of creating a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendment extends the interval between successive refueling interval surveillances to once every 24 months for the surveillances evaluated herein, and to make administrative changes serving to conform the Technical Specifications to Amendment No. 196. Except for the administrative changes the proposed surveillance interval changes do not involve any change to the actual surveillance requirements, nor does it involve any change to the limits and restrictions on plant operation. The reliability of systems and components is not degraded by the proposed change to the surveillance interval. Assurance of system and equipment availability is maintained. Therefore, it is concluded that operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company (NNECO), Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: May 2, 1996

Description of amendment request: The proposed change would remove Technical Specification Figure 5.1, which is used in maintaining K_{eff} values, and substitute in its place a defined requirement for maximum K-infinity for any fuel placed in the Millstone Unit 1 spent fuel pool.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10CFR50.92, NNECO [Northeast Nuclear Energy Company] has reviewed the proposed change and concludes that the change does not involve a significant hazards consideration (SHC) since the proposed change satisfies the criteria in 10CFR50.92(c). That is, the proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

There are no spent fuel pool accident conditions discussed in Chapter 15 of the FSAR [Final Safety Analysis Report]. FSAR section 15.8 discusses a fuel handling accident which drops a fuel assembly into the core during refueling. Changing the maximum allowed fuel reactivity or allowing gaps in the Boraflex

panels will have no effect on the probability or consequences of a fuel assembly drop onto the core.

Therefore, based on the above, the proposed change to the Technical Specifications does not involve a significant increase in the probability or consequences of any previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The reduction in the allowable fuel reactivity in the SFP [spent fuel pool] is conservative and does not create the possibility of a new or different type of accident. Allowing boraflex gaps does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The margin to safety, for this proposed technical specification change, is to maintain the SFP K_{eff} to be less than or equal to 0.90. As described in the HOLTEC analysis, gaps in the Boraflex of up to 5 inches can exist in every boraflex panel of every rack with Boraflex in the SFP, with K_{eff} still less than 0.90. This is true even if all of the gaps are uniformly lined up at the same elevation. These calculations conservatively assumed 4% Boraflex width shrinkage as well as the axial Boraflex gaps. Older fuel designs were also considered to ensure that they had not become limiting with the reduced allowable K-infinity limit of 1.24. With no boraflex gaps, the maximum K_{eff} is less than .844. With 5 inch Boraflex gaps in every panel at the same elevation, the maximum K_{eff} is 0.896, which is less than 0.90. NNECO has implemented a 1 year decay time requirement to minimize gamma irradiation damage to the Boraflex, and will continue to measure via "blackness testing" the actual gap size to ensure the margin of safety in maintained.

Therefore, this change has no impact on the margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT 06385

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270

NRC Project Director: Phillip F. McKee

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: March 29, 1996

Description of amendment request: The proposed amendment would add limits associated with Departure from Nucleate Boiling (DNB) to the Indian Point 3 (IP3) Technical Specifications.

Basis for proposed no significant hazards consideration determination:

VOL
61
ISS
138
JL
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1996
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As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the criteria of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

Response:

The proposed amendment makes no changes to the way in which the plant is operated and has no effect on accident initiators associated with analyzed transients. The probability of previously analyzed accidents is not increased. The proposed amendment clarifies the relationship between measurable parameters (RCS [reactor coolant system] temperature, pressure, and flow rate) and the resulting heat transfer regime in the reactor core, as characterized by the Departure from Nucleate Boiling (DNB) ratio. This clarification ensures that safety analysis initial conditions regarding heat transfer remain valid, so that the consequences of previously analyzed accidents are not increased. The changes ensure that RCS pressure, temperature, and flow are within analytical bounds. This ensures that the plant is operated in a manner that will not increase the probabilities of previously analyzed accidents nor the consequences of previously analyzed accidents.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed amendment does not involve any modifications to plant systems, structures, or components. The proposed change clarifies existing limits on RCS parameters and makes no changes to plant setpoints or operating limits. The amendment does not involve any physical mechanism which could contribute to a new or different kind of accident. The changes ensure that RCS pressure, temperature, and flow are within analytical bounds. This ensures that the plant is operated in a manner that will not create the possibility of a new [or] different kind of accident from any previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed amendment clarifies existing limits on the measurable parameters (RCS temperature, pressure, and flow rate) so that the resulting DNB value is consistent with initial condition assumptions used in existing safety analyses. Maintaining these limits during normal plant operation ensures that the existing margins of safety remain valid. The proposed amendment does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Jocelyn A. Mitchell, Acting

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: June 18, 1996

Description of amendment request: The proposed amendment would change Technical Specification (TS) 5.2.2, "Design Pressure and Temperature," by adding design parameters for Main Steam Line Break (MSLB). The MSLB analysis results in a higher containment air temperature than the current value in TS 5.2.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The accidents considered for this change are the Loss of Coolant Accident (LOCA) and the Main Steam Line Break (MSLB). The proposed change ensures the design limiting containment pressure and temperature data specified in the TS is consistent with the [Updated Final Safety Analysis Report] UFSAR. Since no physical changes to the containment are being made there will be no change in the probability of either accident occurring.

Detailed structural analysis presented in Supplement 1 of Licensee Event Report (LER) 272/95-016 shows that the Design Basis LOCA combination of pressure and temperature result in more severe loading for the containment concrete structure and, therefore, bounds the temperature and pressure scenario associated with a MSLB accident. The pressure retaining capability of the liner is governed by the loads generated in the MSLB. Since containment leakage is maintained within the limits assumed in the Accident Analysis for either scenario there is no change in the consequences of either accident.

Therefore the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes proposed affect the post-accident condition of the containment, and have no impact on the pre-accident condition. Since there is no physical change proposed the containment and all systems in the containment will continue to perform as designed. With no physical changes being proposed and no change to the pre-accident condition of the containment it can be concluded that there will be no change in the probability of a new or different accident being created.

Therefore the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Although calculations indicate that some yielding of the liner plate could occur during a MSLB, loading is transferred to the containment concrete structure and leakage from the containment is maintained within the limits assumed in the Accident Analysis. Since containment leakage is maintained within the limits assumed in the Accident Analysis the proposed change does not involve a significant change the margin of safety provided by the containment for the MSLB.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, NJ 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: June 7, 1996 (TSC 95-19)

Description of amendment request: The proposed change would revise Section 6 of the plant Technical Specifications to be more closely aligned with the Revised Standard Technical Specifications for Westinghouse-designed nuclear plants (NUREG-1431). Additionally, the proposed changes would be consistent with the guidance provided in Administrative Letter 95-06, "Relocation of Technical Specification Administrative Controls Related to Quality Assurance."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA [Tennessee Valley Authority] has concluded that operation of SQN [Sequoyah Nuclear Plant] Units 1 and 2 in accordance with the proposed changes to the TS [Technical Specification] does not involve a significant hazards consideration. TVA's conclusion is based on its evaluation, in accordance with 10 CFR 50.91(a)(1), of the three standards set forth in 10 CFR 50.92(c).

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change is administrative. TVA has evaluated the proposed TS changes and has determined that the proposed changes are administrative in nature. Certain sections are being relocated into other licensee documents for which those provisions are adequately controlled by regulatory requirements. These changes do not affect any of the design basis accidents. They do not involve an increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed TS change is administrative. TVA has evaluated the proposed TS changes and has determined that the proposed changes are administrative in nature. Certain sections are being relocated into other licensee documents for which those provisions are adequately controlled by regulatory requirements. These changes do not affect any of the design-basis accidents. No modifications to any plant equipment are involved. There are no effects on system interactions made by these changes. They do not create the possibility of a new or different kind of accident from an accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed TS change is administrative. TVA has evaluated the proposed TS changes and has determined that the proposed changes are administrative in nature. Certain sections are being relocated into other licensee documents for which those provisions are adequately controlled by regulatory requirements. The margin of safety as reported in the basis for the TSs is not reduced. The proposed change is administrative and does not impact any technical information contained in the bases of the TS.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

North Atlantic Energy Service Company, Docket No. 50-443, Seabrook Plant Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: June 20, 1996

Description of amendment request: The proposed amendment would increase the allowed time for an inoperable service water cooling tower loop electrical supply to be the same as the allowed outage time for an operable service water cooling tower loop.

Date of publication of individual notice in **Federal Register**: June 26, 1996 (61 FR 33142)

Expiration date of individual notice: July 26, 1996

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, New Hampshire

Northeast Utilities Service Company, Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: June 3, 1996

Description of amendment request: The proposed amendments would provide a one-time change to Technical Specification 3.9.1, "Refueling Operations, Boron Concentration." This change would remove the requirement that the boron concentration in all filled portions of the Reactor Coolant System be "uniform" and would only be applicable during Millstone 2 Cycle 13 mid-cycle core offload.

Date of publication of individual notice in **Federal Register**: June 12, 1996 (61 FR 29771)

Expiration date of individual notice: July 12, 1996

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: May 23, 1996

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) for the Overtemperature delta T time constants in TS Table 2.2-1 and the Steam Line Pressure Negative Rate High Steam Line Isolation time constant in TS Table 3.3-4. Date of publication of individual notice in Federal Register: June 17, 1996 (61 FR 30639)

Expiration date of individual notice: July 17, 1997

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: June 10, 1996

Brief description of amendment request: The amendment proposes changes to Technical Specification 3/4.7.6, "Control Room Emergency Air Conditioning System," to reflect a control room design in which the common Salem Unit 1 and 2 control room envelope is supplied by 2 one hundred percent capable Control Room Emergency Air Conditioning System trains. Date of publication of individual notice in **Federal Register**: June 24, 1996 (61 FR 32468)

Expiration date of individual notice: July 24, 1996

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079

VOL 61 ISS 138 JUL 17 1996 UMI

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: June 24, 1996

Description of amendment request: The proposed amendments would revise Technical Specification Table 4.3.1 to delete the requirement for surveillance of the manual safety injection to the reactor trip circuitry until the next unit shutdown, following which, this testing will be performed prior to Mode 2 entry. This change is applicable only to Unit 1, Cycle 14 and Unit 2, Cycle 11. Date of publication of individual notice in Federal Register: July 3, 1996 (61 FR 34880)

Expiration date of individual notice: August 2, 1996

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: September 16, 1994, as supplemented January 31, 1996.

Brief description of amendments: The amendments revise the technical specifications to eliminate periodic response time testing requirements for selected pressure and differential pressure sensors in the reactor trip system and engineered safety features actuation instrumentation channels.

Date of issuance: June 26, 1996

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 84, 84, 76 and 76

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 13, 1996 (61 FR 10393). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 26, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: November 14, 1995, as supplemented by letters dated February 23, March 1, March 13, March 25, March 26, May 10, June 10, June 14, two letters dated June 25 and a letter dated June 26, 1996.

Brief description of amendments: The proposed amendments closed out additional open items identified in the NRC staff's review of the upgrade of the Dresden and Quad Cities Technical Specifications (TS) to the Standard Technical Specifications (STS) contained in NUREG-0123. The Technical Specification Upgrade Program (TSUP) is not a complete adaptation of the STS. The TS upgrade focuses on (1) integrating additional information such as equipment operability requirements during shutdown conditions, (2) clarifying requirements such as limiting conditions for operation and action statements utilizing STS terminology, (3) deleting superseded requirements and modifications to the TS based on the licensee's responses to Generic Letter (GL), and (4) relocating specific items to more appropriate TS locations.

Date of issuance: June 28, 1996

Effective date: June 28, 1996

Amendment Nos.: 150, 145, 171, and 167

Facility Operating License Nos. DPR-19, DPR-25, DPR-29 and DPR-30. The amendments revised the Technical Specifications and operating licenses.

Date of initial notice in **Federal Register:** November 29, 1995 (60 FR 61272) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 28, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: for Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: November 22, 1995 (NRC-95-0124)

Brief description of amendment: The amendment revises the Technical Specifications to remove accelerated testing frequencies and special reporting requirements for Fermi 2 emergency diesel generators (EDGs) in accordance with guidance contained in Generic Letter 94-01, dated May 31, 1994. NRC will issue a separate safety evaluation on extending the allowed outage time for the EDGs at a later date.

Date of issuance: June 20, 1996

Effective date: June 20, 1996, with full implementation within 60 days

Amendment No.: 107

Facility Operating License No. NPF-43. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** February 28, 1996 (61 FR 7550) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 20, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: December 12, 1995, as supplemented by letter dated June 10, 1996

Description of amendment request: The amendments revise the absolute values in the Axial Flux Difference (AFD) Equations to reflect the proper AFD limit reduction in the current Technical Specifications.

Date of issuance: July 2, 1996

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 167 and 149

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 24, 1996 (61 FR 18166) The June 10, 1996, letter provided clarifying information that did not change the scope of the December 12, 1995, application and the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 2, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 11, 1995, as supplemented by letter dated February 12, 1996

Brief description of amendment: The amendment reduced the minimum reactor coolant cold leg temperature to 541 °F from 544 °F in Technical Specification Section 3.2.6, "Reactor Coolant Cold Leg Temperature."

Date of issuance: June 24, 1996

Effective date: June 24, 1996

Amendment No.: 120

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 5, 1996 (61 FR 25706) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 24, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: March 20, 1996, as supplemented by letter date April 23, 1996.

Brief description of amendments: These amendments relocate the requirements for surveillance testing of the water level and pressure channel instrumentation for the reactor coolant system accumulators. These amendments also modify the existing action statements of TS 3.5.1 for accumulators to reflect the requirements of NUREG-1431 by requiring a 72- hour period to restore boron concentration if it is not within the limits, and a 1-hour period to restore any other condition rendering the accumulators inoperable.

Date of issuance: June 24, 1996

Effective date: June 24, 1996

Amendment Nos. 185 and 179Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 22, 1996 (61 FR 25707) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 24, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: February 21, 1996, as supplemented by letters dated May 1 and June 4, 1996.

Brief description of amendments: The amendments revise the Technical Specifications to change the Drywell Air Temperature Limiting Condition for Operation (LCO) from less than or equal to 135°F to less than or equal to 150°F. The proposed change would provide a margin for the primary containment Drywell Air Temperature LCO when prolonged summer and high river temperatures are experienced. Also, a strictly editorial correction to a Final Safety Analysis Report reference would be made.

Date of issuance: 201 and 142

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 201 and 142

Facility Operating License Nos. DPR-57 and NPF-5: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 24, 1996 (61 FR 18167) The May 1 and June 4, 1996, letters provided clarifying information that did not change the scope of the February 21, 1996, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 27, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: May 19, 1995, and supplemented October 20, 1995, and April 8, 1996 (AEP:NRC:1213A)

Brief description of amendments: The amendments modify the neutron flux high setpoints for one or more main steam safety valves inoperable in response to Westinghouse Nuclear Safety Advisory Letter 94-001. The associated action statements are also revised and an exemption to TS 4.0.4 is added to support the operability surveillance.

Date of issuance: June 28, 1996

Effective date: June 28, 1996, with full implementation within 45 days.

Amendment Nos.: Unit 1 - 210, Unit 2 - 195

Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 20, 1995 (60 FR 65681) The April 8, 1996, submittal provided information clarifying the location of the TS 4.0.4 exemption statement. This information was within the scope of the original application and did not alter the staff's no significant hazards considerations determination. Therefore renoticing was not warranted. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 28, 1996. No significant hazards consideration comments received: No.

VOL 61 ISS 138 JL 17 1996 UMI

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: January 17, 1996

Brief description of amendment: The amendment revises the Technical Specifications (TSs) and associated Bases by relocating certain response time limit tables from the TSs to the Updated Safety Analysis Report in accordance with the guidance of NRC Generic Letter 93-08. The relocated tables are for instrumentation for the Reactor Protection System, Isolation Actuation System, Emergency Core Cooling System, and the Recirculation Pump Trip System.

Date of issuance: June 25, 1996

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 73

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 8, 1996 (61 FR 20850) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 25, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: December 18, 1995

Brief description of amendment: The amendment changes the Reactor Coolant Flow - Low Flow in Technical Specification Table 2.2-1, "Reactor Instrumentation Protective Trip Setpoint Limits." The proposed change increases the allowable value from greater than or equal to 90.1% to greater than or equal to 90.9% of the reactor coolant flow with four pumps operating. As an editorial change for clarification, the word "flow" is added after "reactor coolant" in the above sentence.

Date of issuance: July 2, 1996

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 199

Facility Operating License No. DPR-65: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 14, 1996 (61 FR 5815) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 2, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT 06385

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: June 27, 1995, as supplemented July 21, 1995

Brief description of amendment: The amendment revises the Technical Specifications (TS) to relocate TS requirements for the containment purge exhaust and supply valves, and to remove a duplicate testing requirement for the safety injection input from engineered safety features from the TS.

Date of issuance: June 27, 1996

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 129

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 6, 1995 (60 FR 62494) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 27, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT 06385

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: January 26, 1996

Brief description of amendment: The amendment deletes three residual heat removal (RHR) system relief valves from Technical Specification (TS) Table 3.6.3-1, "Primary Containment Isolation Valves." These valves are no longer needed to support the steam condensing mode of RHR and are being removed from the plant during the Unit 1 ninth refueling outage.

Date of issuance: June 24, 1996

Effective date: As of date of issuance to be implemented within 60 days.

Amendment No.: 157

Facility Operating License No. NPF-14: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 27, 1996 (61 FR 13531) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 24, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: February 29, 1996

Brief description of amendments: These amendments relocate Specification 3/4.9.6, "Refueling Platform," to the Susquehanna Steam Electric Station Technical Requirements Manual, a document which is controlled under the requirements of 10 CFR 50.59.

Date of issuance: July 2, 1996

Effective date: July 2, 1996

Amendment Nos.: 158 and 129

Facility Operating License Nos. NPF-14 and NPF-22. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 10, 1996 (61 FR 15992) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 2, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: March 12, 1996

Brief description of amendment: The proposed changes would remove a requirement to cross tie safety injection accumulators.

Date of issuance: July 3, 1996

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 167

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 8, 1996 (61 FR 20853) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 3, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: April 24, 1996

Brief description of amendment: The amendment proposes to relocate Specification 3.11.B/4.11.B "Crescent Area Ventilation" and associated Bases from the TS to an Authority controlled procedure.

Date of issuance: June 28, 1996

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 231

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 22, 1996 (61 FR 25710) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: February 6, 1996

Brief description of amendments: The amendments change the Technical Specifications to lower the 125 Volt Battery Charger surveillance amperage from at least 200 amps to at least 170 amps.

Date of issuance: June 27, 1996

Effective date: As of date of issuance, to be implemented within 30 days.

Amendment Nos. 183 and 164

Facility Operating License Nos. DPR-70 and DPR-75. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 28, 1996 (61 FR 7556) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 27, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: June 26, 1995, as supplemented by letter dated February 2, 1996.

Brief description of amendment: The amendment revised the allowed outage time for component cooling water motor operated containment isolation valves, moved the list of containment isolation valves from the technical specifications to the final safety analysis report, and allowed containment penetration check valves to be used as isolation devices.

Date of issuance: June 28, 1996

Effective date: June 28, 1996, to be implemented within 30 days of the date of issuance.

Amendment No.: 113

Facility Operating License No. NPF-30: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 30, 1995 (60 FR 45187) The February 2, 1996, supplemental letter provided additional clarifying information and did not change the staff's original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Dated at Rockville, Maryland, this 10th day of July 1996.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation.

[Doc. 96–18007 Filed 7–16–96; 8:45 am]

BILLING CODE 7590-01-F

[Docket No. 55–21849–OT; ASLBP No. 96–716–01–OT]

Emerick S. McDaniel; Notice of Reconstitution of Board

Pursuant to the authority contained in 10 CFR § 2.721, the Presiding Officer for Emerick S. McDaniel, with the above-identified Docket Number, is hereby reconstituted by appointing Administrative Judge Peter B. Bloch as Presiding Officer in place of Chief Administrative Judge B. Paul Cotter, Jr. who is unavailable to serve. Administrative Judge Peter A. Morris will continue to assist the Presiding Officer in taking evidence and preparing the record.

All correspondence, documents and other material shall be filed with Judge Bloch and Judge Morris in accordance with 10 CFR § 2.701 (1980). Their addresses are:

Administrative Judge Peter B. Bloch, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Peter A. Morris, 10825 South Glen Road, Potomac, MD 20854

Issued at Rockville, Maryland, this 11th day of July 1996.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 96–18136 Filed 7–16–96; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 37420; File No. SR–MBSCC–96–03]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Proposed Rule Change Relating to Eliminating the Monthly Audit Package Requirements

July 11, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 18, 1996, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MBSCC proposes to modify its rules and procedures to eliminate the requirement that it provide a monthly audit package to each participant and the requirement that such participant review and respond to the package.

[1] 15 U.S.C. § 78s(b)(1) (1988).

VOL
61
ISS
138
JL
17
1996
UMI

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

MBSCC proposes to modify its rules and procedures to eliminate the requirement that it provide a monthly audit package to each participant and the requirement that such participant review and respond to the package. MBSCC currently provides each participant with the participant's Open Commitment Report on a daily basis pursuant to its rules. Participants have a duty under the rules to review each report for errors and discrepancies and to report any error or discrepancy to MBSCC. MBSCC's rules and source book also require MBSCC to send each participant a monthly audit package which consists of a copy of the participant's Open Commitment Report dated the last business day of the previous month and an Audit Exception Reporting Form which must be completed by each participant and returned to MBSCC whether or not any exceptions are found.

Participants are obligated to review daily Open Commitment Reports and will continue to be so required. By eliminating the monthly audit package and the participants' requirement to review it, the administrative and economic burdens on participants' resources due to the duplicative nature of the requirements will be eliminated without any substantive effect.

In connection with this proposed rule change, MBSCC will eliminate the late audit confirmation penalties from its schedule of penalty fees.

MBSCC believes the proposed rule change is consistent with its obligations under Section 17A of the Act because by eliminating the monthly audit package and the participants' requirement to review it, MBSCC will facilitate the prompt and accurate clearance and settlement of securities transactions.

[2] The Commission has modified the text of the summaries prepared by MBSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited or received. Members will be notified of the rule filing, and comments will be solicited by an important notice. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–96–03 and should be submitted by August 7, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–18082 Filed 7–16–96; 8:45 am]

BILLING CODE 8010–01–M

[3] 17 CFR 200.30–3(a)(12) (1995).

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bangladesh

July 12, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act

The current limits for certain categories are being increased by recrediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 65290, published on December 19, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 12, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 13, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on July 15, 1996, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
237	407,537 dozen.
334	118,823 dozen.
335	223,235 dozen.
336/636	388,516 dozen.
645/646	344,655 dozen.
847	626,208 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–18121 Filed 7–16–96; 8:45 am]

BILLING CODE 3510–DR–F

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–62]

Termination of Increased Duties on Certain Products of the European Community

AGENCY: Office of the United States Trade Representative.

ACTION: Terminiation of increased duties on certain products of the European Community.

SUMMARY: Pursuant to authority delegated by the President to the United States Trade Representative in Proclamation No. 5759 of December 24, 1987, the Acting U.S. Trade Representative (USTR) hereby terminates application of increased duties on imports of certain products of the European Community as proclaimed in Proclamation No. 5759 and as subsequently modified. (See 53 FR 53115; 54 FR 6630; 54 FR 31398; 54 FR 50673; 55 FR 23076; and Proclamation 6763 of December 23, 1994 (60 FR 1007)).

EFFECTIVE DATE: The termination of increased duties is effective with respect to articles entered, or withdrawn from warehouse for consumption on or after 12:01 a.m. July 15, 1996.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Len Condon, Deputy Assistant USTR for Agriculture (202) 395–9564 or Catherine Field, Senior Counsel for Multilateral Affairs (202) 395–3432.

SUPPLEMENTARY INFORMATION: On December 24, 1987, the President determined, pursuant to section 301(a) of the Trade Act of 1974, as amended, (Trade Act), that the "Council Directive Prohibiting the Use in Livestock Farming of Certain Substances Having a Hormonal Action" (the Directive), adopted by the European Community (EC) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, a trade agreement; or is unjustifiable or unreasonable and constitutes a burden or restriction on United States commerce. (52 FR 49131). The President also determined, pursuant to subsections 301 (a), (b), and (d)(1) of the Trade Act to increase duties on certain products of the EC.

In his statement of reasons, the President noted that implementation of the Directive would prohibit imports into the EC of any meat produced from animals treated with growth hormones, thereby severely disrupting exports of U.S. meat to the EC. Such a prohibition is not supported by valid scientific evidence. The President concluded that, "the United States considers that the imposition of import restrictions under the Directive constitutes a disguised restriction on international trade." (52 FR 49139).

The President also cited U.S. efforts to resolve this dispute within the framework of the Agreement on Technical Barriers to Trade of the General Agreement on Tariffs and Trade (GATT 1947). He also noted that the EC had blocked these multilateral efforts to resolve the dispute and stated his expectations that the EC would allow appropriate dispute settlement procedures to proceed expeditiously. (52 FR 49140). In Proclamation No. 5759, the President suspended the application of the increased duties and authorized the USTR to "suspend, modify, terminate, or terminate the suspension of the increased duties imposed by this Proclamation, upon publication in the **Federal Register**, of his determination that such action is in the interest of the United States. (52 FR 49131).

The USTR subsequently determined to impose increased duties on certain products of the EC when the EC began implementing the Directive against imports from the United States and partially terminated suspension of the increased duties imposed by Proclamation No. 5759. (53 FR 53115). Between January 1989, when the increased duties were first imposed, and December 1994, when application of duties was extended to Austria, Finland, and Sweden when these countries became EC member states, application of the duties was modified five times.

On May 20, 1996, based on a request from the United States, the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) established a dispute settlement panel to examine whether the Directive is consistent with the EC and its member states obligations under various WTO Agreements. (61 FR 33149).

As the United States not has effective multilateral procedures to address the matter of the EC's restrictions on imports of U.S. meat under the Directive, I have determined that it is in the interest of the United States to terminate the increased duties proclaimed in Proclamation No. 5759 and applied pursuant to the authority delegate to the USTR in Proclamation No. 5759.

Charlene Barshefsky,

Acting U.S. Trade Representative.

[FR Doc. 96–18122 Filed 7–15–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

Reports, Forms and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), United States Coast Guard.

ACTION: Notice and request for comments.

SUMMARY: This notice lists those reports, forms, and recordkeeping requirements imposed upon the public which were

VOL
61
ISS
138
JL
17
1996
UMI

transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 USC Chapter 35). In accordance with the Paperwork Reduction Act of 1995, the United States Coast Guard invites comments on certain information collections for which the USCG intends to request approval from the Office of Management and Budget.

DATES: Interested parties are invited to submit comments on or before August 12, 1996.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Office of Management and Budget, New Executive Office Building, ATTN: DOT/USCG Desk Officer, Room 10202, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, 2100 Second Street, SW; G–SII; Washington, D.C. 20593, Telephone number (202) 267–2326.

SUPPLEMENTARY INFORMATION: Office of Management and Budget (OMB) regulations (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that USCG is submitting to OMB for extension or reinstatement, as appropriate. These ICRs are: Collection of Marine Casualty Information (Forms CG–2692/2692A), Chemical Drug and Alcohol Testing Information (Form CG–2692B), and Management Information System Reports [ICR No. 2115–0003], Application and Permit to Handle Hazardous Materials [ICR No. 2115–0013], Welding and Hot Work Permit [2115–0054], and Plan Review for Facilities With Vapor Control System [ICR No. 2115–0581]. USCG has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collection were last approved. USCG will request a three-year term of approval for each information collection activity. The following information is provided for each information collection: (1) Title of information collection; (2) OMB Control Number; (3) Affected Entities, (4) Abstract of the information collection activity, including the need for and use of the collection; and (5) Estimate of total annual reporting.

Title: Collection of Marine Casualty Information (Forms CG–2692/2692A), Chemical Drug and Alcohol Testing Information (Form CG–2692B), and Management Information System Reports.

OMB No: 2115–0003.

Affected Entities: Commercial Marine Industry.

Abstract: Marine casualty information is necessary for informing Coast Guard of commercial vessel casualties involving death, vessel damage, etc., as mandated by Congress. Chemical retesting information is necessary to improve Coast Guard detection/reduction of drug use by mariners. Relative test result information must be sent to Coast Guard to evaluate program effectiveness.

Under Title 46 U.S.C. 7503, Coast Guard has authority to deny the issuance of licenses, certificates of registry and merchant Mariner's documents to users of dangerous drugs. Coast Guard will use this information to: (a) Determine if certain applicants are qualified to be issued seaman's papers, (b) initiate administrative action against a commercial mariner's right to continue holding seaman's papers, initiate civil or criminal penalty action when an individual has been found to be operating a vessel while intoxicated, and (d) to asses the impact of drug or alcohol use in serious marine accidents.

Burden Estimate: The current total annual respondent burden estimate is 33,878 hours. The average burden hour per response is 54 minutes reporting and 24 minutes recordkeeping.

Title: Application and Permit to Handle Hazardous Materials.

OMB No: 2115–0013.

Affected Entities: Shipping agents and terminal operators.

Abstract: This requirement ensures the safe handling of explosives and other hazardous materials in port areas and on board vessels. Shipping agents and terminal operators who handle the above commodities must comply. This information is a requirement stated under the Ports and Waterways Safety Act, 33 U.S.C. 1225, the Coast Guard has authority to establish procedures and standards for handling of hazardous material on vessels and waterfront facilities. This information will be used to determine if safe practices are being followed in the stowage and handling of explosives and hazardous materials.

Burden Estimate: The current total annual respondent burden estimate is 814 hours. The average burden hour per response is 1 hour reporting.

Title: Welding and Hot Work Permit.

OMB No: 2115–0054.

Affected Entities: Owners/operators of vessels and waterfront facilities.

Abstract: This information is used by the Coast Guard to ensure compliance with safety regulations. This allows the use of welding or other "hot-work" equipment on a designated waterfront facility.

Under Title 33 CFR 126.15(c), 33 CFR 127.617, 33 CFR 154.735(k)(1) and 49 CFR 176, Coast Guard has the authority to grant waterfront facilities and vessels permits to conduct Hot Works and welding activities.

Coast Guard proposed use of this information is to ensure that waterfront facilities and vessels are in compliance with safety standards.

Burden Estimate: The current total annual respondent burden estimate is 2,190 hours. The average burden hour per response is 5 minutes reporting.

Title: Plan Review for Facilities With Vapor Control Systems.

OMB No: 2115–0581.

Affected Entities: Owners/operators of vessels and facilities with vapor control systems.

Abstract: This information is used by the Coast Guard to ensure compliance with safety regulations. The regulations that require this reporting requirement establish safety requirements for marine vapor control systems, and require plans of a facility's vapor control systems to be reviewed by a Coast Guard accepted certifying entity to ensure compliance with the regulations. The regulations also establish procedures for applying to become a certifying entity.

The Coast Guard proposed use of this information is to ensure that facility's that have vapor control systems are in compliance with applicable regulations.

Burden Estimate: The current total annual respondent burden estimate is 1,390 hours. The average burden hour per response is 9 hours reporting.

Issued in Washington, D.C. on May 11, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–18117 Filed 7–16–96; 8:45 am]

BILLING CODE 4910–62–P

[CGD 96–033]

Chemical Transportation Advisory Committee; Subcommittee on Prevention Through People Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Prevention Through People (PTP) Subcommittee of the Chemical Transportation Advisory Committee (CTAC) will meet to continue discussions to assist the marine chemical transportation community in developing actions which minimize accidents and injuries through application of PTP principles. The meeting is open to the public.

DATES: The meeting of the PTP Subcommittee will be held on Thursday, July 25, 1996, from 9:30 a.m. to 3 p.m. Written material and requests to make oral presentations should reach the Coast Guard on or before July 21, 1996.

ADDRESSES: The meeting of the PTP Subcommittee will be held in the training room at Marine Safety Office Houston-Galveston, 9640 Clinton Drive, Houston, TX 77029. For directions to MSO Houston-Galveston, please contact Lieutenant Rick J. Raksnis, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Calvin A. Bancroft, Ocean Shipholdings, Inc., 16211 Park Ten Place, Houston, TX 77084; telephone (713) 579–3900, fax (713) 579–3329 or Lieutenant Rick J. Raksnis, Commandant (G–MSO–3), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; telephone (202) 267–0084, fax (202) 267–4570.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda includes the following:

(1) Review "draft" accident investigation form (CG 2692) which provides a more detailed root cause analysis for marine accidents. The Subcommittee plans to propose recommended changes to CG 2692 to better assist industry in completing this form while meeting the needs of the Coast Guard.

(2) Review sample ship/shore safety checklists to better define the role of human factors during pre-evolution and post-evolution conferences. The Subcommittee will consider methods for improved communications during cargo loading operations to better protect marine personnel and the environment.

Procedural

This meeting is open to the public. At the Subcommittee Chairperson's discretion, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations at the meeting should notify Mr. Bancroft no later than July 21, 1996. Written material for distribution at the meeting should reach the Coast Guard no later than July 21, 1996. If a person submitting material would like a copy distributed to each member of the subcommittee in advance of the meeting, that person should submit ten copies, to Mr. Bancroft no later than July 19, 1996.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meeting, contact Lieutenant Raksnis as soon as possible.

Dated: July 12, 1996.

George F. Wright,

Acting, Director of Standards Marine Safety and Environmental Protection.

[FR Doc. 96–18141 Filed 7–16–96; 8:45 am]

BILLING CODE 4910–14–M

[CGD 96–032]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Towing Safety Advisory Committee (TSAC) and its working groups will meet to discuss various issues relating to shallow-draft inland and coastal waterway navigation and towing safety. The agenda will include working group reports and discussion of various Coast Guard programs such as Prevention Through People and Regulatory Reform. The meetings will be open to the public.

DATES: The working group meetings will be held on Tuesday, August 13, 1996, from 9 a.m. to 4 p.m. The Committee meeting will be held on Wednesday, August 14, 1996, from 9 a.m. to 1 p.m. Written material must be received not later than August 2, 1996.

ADDRESSES: The TSAC working groups and Committee will meet in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: Assistant Executive Director, LTJG Patrick J. DeShon, U.S. Coast Guard (G–MSE–1), 2100 Second Street, SW., Washington, DC 20593–0001, telephone (202) 267–2997.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 21 *et seq.* The agenda for the Committee meeting includes the following:

Work Groups

(1) Prevention Through People;

(2) Licensing and STCW implementation;

(3) Regulatory Reform in the towing industry;

(4) Adequacy of tug/barge navigation lights; and

New Issues

(1) Barge retrieval and anchoring systems;

(2) Fire suppression systems for towing vessels;

(3) Structural soundness and loading practices;

(4) QAT report on casualty investigation and reporting;

(5) AWO/CG QAT report on towing vessel crew fatalities.

With advance notice, and at the discretion of the Chair, members of the public may present oral statements during the meeting. Persons wishing to make oral presentations should notify the person listed under **FOR FURTHER INFORMATION CONTACT** not later than August 2, 1996. Written materials may be submitted for presentation to the Committee any time; however, to ensure distribution to each Committee member, 45 copies of the written material should be submitted by August 2, 1996.

Dated: July 10, 1996.

George F. Wright,

Acting Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 96–18111 Filed 7–16–96; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Notice of Intent to Request Renewal From the Office of Management and Budget (OMB) of Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Renew I Currently Approved Public Information Collection Activity.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995, and 5 CFR Part 1320, Reporting and Recordkeeping Requirements, the FAA invites the public comment on I currently approved public information collections being submitted to OMB for renewal.

DATES: Comments must be received on or before September 16, 1996.

ADDRESSES: Comment on any of this collection may be mailed or delivered in duplicate to the FAA at the following address: Ms. Judith Street, Federal

VOL 61 ISS 138 JL 17 1996 UMI

Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: The FAA solicits comments on any of the current collections of information in order to: Evaluate the necessity of the collection; the accuracy of the agency's estimate of the burden; the quality, utility, and clarity of the information to be collected; and possible ways to minimize the burden of collection.

Following is a short synopsis of the 1 currently approved public information collection activity which will be submitted to OMB for review and approval.

1.2120–0576, Kansas City Customer Satisfaction Questionnaire. The respondents are 100 general aviation pilots, air taxi operators, airlines, military pilots, and adjacent facilities. The estimated total annual burden is 25 hours. Abstract: The information collected on this form represents customer feedback concerning the quality of service-provided to the users of Kansas City ARTCC airspace. This information may be used to solve problems, improve safety, and increase system efficiency.

Issued in Washington, DC, on July 11, 1996.

Steve Hopkins,

Manager, Corporate Information Division, ABC–100.

[FR Doc. 96–18146 Filed 7–16–96; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–96–34]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 12, 1996.

Michael E. Chase,

Acting Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 25233
Petitioner: Alaska Air Carriers Association
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To extend Exemption No. 4802, as amended, which permits appropriately trained and certificated pilots employed by a member of the Alaska Air Carriers Association (AACA) to remove and reinstall the passenger seats in aircraft that are used by that AACA member in operations conducted under part 135.
Grant, May 31, 1996, Exemption No. 4802F

Docket No.: 25242
Petitioner: Experimental Aircraft Association
Sections of the FAR Affected: 14 CFR 61.58(c) and 91.5
Description of Relief Sought/ Disposition: To extend Exemption No. 4941, as amended, which permits Experimental Aircraft members to complete an approved training course in lieu of a pilot proficiency check.
Grant, June 20, 1996, Exemption No. 4941D

Docket No.: 26103
Petitioner: Northwest Seaplanes, Inc.
Sections of the FAR Affected: 14 CFR 135.203(a)(1)
Description of Relief Sought/ Disposition: To permit Northwest Seaplanes, Inc., to conduct operations under visual flight rules (VFR) outside controlled airspace, over water, at an altitude below 500 feet.
Grant, June 11, 1996, Exemption No. 6481

Docket No.: 26690
Petitioner: AMR Eagle, Inc.
Sections of the FAR Affected: 14 CFR 121.411 (a) (2), (3), and (b)(2); 121.413 (b), (c), and (d); appendix H to part 121; 135.303; 135.337 (a) (2), (3), and (b)(2); and 135.339 (a)(2), (b), and (c)
Description of Relief Sought/ Disposition: To extend and amend Exemption No. 5486, as amended, which permits certain highly qualified AMR Eagle, Inc. (AMR Eagle), or AMR Eagle-affiliated instructor pilots and check airmen to use certain FAA-approved simulators to train and check part 121 and part 135 certificate holder's pilots. The amendment clarifies certain existing conditions and limitations
Grant, June 7, 1996, Exemption No. 5486B

Docket No.: 27388
Petitioner: Rockwell International Corporation
Sections of the FAR Affected: 14 CFR 21.195(a)
Description of Relief Sought/ Disposition: To extend Exemption No. 5849, as amended, which permits the North American Aircraft Division of the Rockwell International Corporation to obtain an experimental certificate for its two prototype Model DASA FR–06 Ranger 2000 airplanes, S/N–001 and –003, for the purpose of conducting marketing surveys, sales demonstrations, or customer crew training.
Grant, February 28, 1996, Exemption No. 5849B

Docket No.: 28100
Petitioner: Vector Air Services, Inc.
Sections of the FAR Affected: 14 CFR 121.411 (a) (2) and (3) and (b); 121.413 (b), (c), and (d); and appendix H to part 121
Description of Relief Sought/ Disposition: To permit certain pilot and flight engineer (FE) instructors employed by Vector Air Services, Inc., (VASI) and listed in a part 121 certificate holder's approved training program to act a simulator instructors for that certificate holder under part 121 without those instructors having received ground and program approved under subpart N of part 121. This exemption also permits simulator instructors employed by VASI and listed in a certificate holder's approved training program to serve in advanced simulators without being employed by the certificate holder for 1 year, provided the instructors receive applicable training in accordance with the provisions of this exemption.
Partial Grant, June 3, 1996, Exemption No. 6457

Docket No.: 28392
Petitioner: Aviation Services Unlimited
Sections of the FAR Affected: 14 CFR 65.91(c)(1)

Description of Relief Sought/ Disposition: To allow the petitioner to apply for an inspection authorization (IA) without obtaining the required 3 years of experience.
Denial, June 11, 1996, Exemption No. 6460

Docket No.: 28474
Petitioner: Instone Air Services
Sections of the FAR Affected: 14 CFR 25.857(e) and 25.1447(c)(1)
Description of Relief Sought/ Disposition: To allow the carriage of up to sixteen supernumerary occupants (i.e., animal handlers, or grooms) on the main deck of Boeing Model 747–100/200 cargo aircraft, to attend to live animal cargo.
Partial Grant, June 19, 1996, Exemption No. 6463

Docket No.: 28506
Petitioner: Corporate Aviation, Inc.
Sections of the FAR Affected: 14 CFR 135.153(a)
Description of Relief Sought/ Disposition: To permit Corporate Aviation, Inc., to operate one Grumman Gulfstream II (G–11) aircraft (Registration No. N658PC, Serial No. 658) equipped with an alternate system as provided by § 135.153(b), rather than an FAA-approved ground proximity warning system (GPWS), after April 20, 1996.
Denial, June 14, 1996, Exemption No. 6462

[FR Doc. 96–18147 Filed 7–16–96; 8:45 am]

BILLING CODE 4910–13–M

Surface Transportation Board [1]

[STB Finance Docket No. 32974]

Burlington Northern Santa Fe Corporation, BNSF Acquisition Corp., and Burlington Northern Railroad Company—Control—Washington Central Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Notice of acceptance of application.

SUMMARY: On June 17, 1996, the Washington Central Railroad Company (WCRC), the Burlington Northern Santa Fe Corporation (BNSF), the Burlington Northern Railroad Company (BNRR), and BNSF Acquisition Corporation (BNSF Acquisition) filed an application for BNSF to continue in control of BNSF Acquisition after BNSF Acquisition acquires the stock of WCRC. We accept the application for consideration. We further find that this is a "minor transaction" under 49 CFR 1180.2(c). Finally, we establish an expedited procedural schedule that would provide for the issuance of a final decision approximately 60 days prior to the deadline established for minor transactions in 49 U.S.C. 11325(d).

DATES: Written comments, including comments from the Secretary of Transportation and the Attorney General of the United States, must be filed with the Board no later than August 16, 1996. The Board will issue a service list shortly thereafter. Comments must be served on all parties of record within 10 days after the Board issues the service list. Applicants' reply is due on August 30, 1996. Unless unforeseen issues arise, the Board expects to be able to issue a final decision by October 15, 1996, with an effective date of October 30, 1996.

ADDRESSES: Send pleadings referring to STB Finance Docket No. 32974 to: (1) Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423; (2) Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 Seventh Street, S.W., Washington, DC 20590; (3) Attorney General of the United States, Washington, DC 20530; (4) Kathryn A. Kusske, Mayer, Brown & Platt, 2000 Pennsylvania Avenue, N.W., Suite 6500, Washington, DC 20006; and (5) Mark H. Sidman and Jo A. DeRoche, Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, N.W., Suite 800, Washington, DC 20005–4797.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5860. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Applicants seek approval under 49 U.S.C. 11323–25 for BNSF to continue in control of its noncarrier subsidiary BNSF Acquisition after BNSF Acquisition acquires the common stock of, and is subsequently merged with, WCRC. Applicants also seek approval under 49 U.S.C. 11323 for BNRR (controlled indirectly by BNSF) to operate the lines of the current WCRC system after WCRC is acquired by BNSF Acquisition, except for certain lines that will be leased to the Columbia Basin Railroad Company (CBRC).[2] Authority for this lease will be sought in a separate proceeding before the Board. Although BNRR will conduct most of WCRC's rail operations, BNSF Acquisition will retain its separate corporate existence.

The applicants allege that this is a "minor transaction" as defined in 49 CFR part 1180, the regulations that implemented former 49 U.S.C. 11343–45. The ICCTA has revised those statutory provisions and reenacted them as 49 U.S.C. 11323–25. The transaction here specifically is subject to 49 U.S.C. 11324(d) because the transaction does not involve the merger or control of two Class I railroads. Section 204(a) of the ICCTA provides that all ICC rules in effect on the date of the enactment of the ICCTA "shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Board . . . or operation of law." While the standards and procedures of former sections 11343–45 and current section 11323–25 are substantially similar insofar as minor transactions are concerned, the procedures of current section 11325(d), which applies if the transaction is a minor transaction, differ slightly from those at 49 CFR 1180.4 and shall govern. Otherwise, the use of the regulations at 49 CFR part 1180 for this proceeding appears proper.

Under 49 U.S.C. 11324(d), applying to proceedings that do not involve the merger or control of at least two Class I railroads, the Board shall approve a transaction unless it finds that: (1) the transaction will result in a "substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States"; and (2) "the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs." Addressing the first qualification in section 11324(d), applicants argue that the transaction can have no adverse competitive effects because it would be an end-to-end acquisition, not a parallel acquisition. According to applicants, the transaction would merely result in the reacquisition of connecting track that was previously owned by the BNRR before the track was sold to WCRC in 1986.

Addressing the second qualification in section 11324(d), applicants assert that the transaction will further the public interest in meeting significant transportation needs. BNSF Senior Vice

[1] The ICC Termination Act of 1996, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This notice relates to railroad acquisitions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323–25.

[2] The lines to be leased to CBRC are: (1) Connell, WA (MP 186.9) to Wheeler, WA (MP 147.3); (2) Bassett Junction, WA (MP 0.0) to Schrag, WA (MP 12.50); and (3) Moses Lake, WA (MP 18.3) to Sieler, WA (MP 5.0). In a separate transaction to be submitted to the Board, CBRC will receive trackage rights from BNRR to provide service between Warden, WA (MP 1976.0) and Othello, WA (MP 1989.0), a distance of approximately 13 miles.

VOL 61 ISS 138 JL 17 1996 UMI

President Babb testifies that the transaction would reduce track congestion in the Pacific Northwest, increase capacity to meet a growing demand for rail service, increase operating efficiency, and allow more timely service.

Applicants anticipate that no existing BNRR employees will be adversely affected by the transaction but that a total of 17 WCRC positions could be eliminated in the first year. According to applicants, the newly formed CBRC will employ at least 15 present WCRC employees. Applicants assert that "[t]he applicable level of labor protection for the transaction proposed herein is that set forth in *New York Dock—Control—Brooklyn Eastern District Terminal*, 360 I.C.C. 60 (1979)."

Under 49 CFR part 1180, the Board must determine whether a proposed transaction is major, significant, or minor. We find that the transaction is minor under 49 CFR 1180.2(c), because the transaction, which would merely allow BNSF to reacquire track that was previously sold to a Class III carrier (WCRC) by BNRR, has no regional or national transportation significance and clearly will not have any anticompetive effects. Because the application substantially complies with the applicable regulations governing minor transactions, we are accepting it for consideration.

Our finding that this transaction is minor under 49 CFR 1180.2(c) also satisfies the criteria for application of current 49 U.S.C. 11325(a)(3) and 11325(d).

By motion filed June 17, 1996, applicants suggest an expedited procedural schedule for processing the application. Due to the limited, end-to-end nature of the proposed transaction, it is not likely to involve complex issues. Thus, we will adopt the suggested expedited schedule, which is reflected in the "DATES" section above. But we reserve the right to modify this schedule if unforeseen issues arise.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Surface Transportation Board in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Interested persons, including government entities, may participate in this proceeding by submitting written comments. Any person who files timely comments will be considered a party of record if the person so requests. No petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, i.e., whether it supports or opposes the proposed transaction;

(d) A statement whether the commenting party intends to participate formally in the proceeding, or merely to comment on the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can be resolved only at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that this proposal is a minor transaction, no responsive applications will be permitted. The time limits for processing this application are set forth at 49 U.S.C. 11325(d), but, as noted above, we have provisionally adopted an expedited schedule.

Discovery may begin immediately. We encourage the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This application is accepted for consideration under 49 U.S.C. 11323–25 as a minor transaction under 49 CFR 1180.2(c).

2. The parties will comply with all provisions stated above.

This decision is effective on July 17, 1996.

Decided: July 11, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–18129 Filed 7–16–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 32989]

Evansville Terminal Company, Inc.—Acquisition and Operation Exemption—Trustee, Indiana HiRail Corporation

Evansville Terminal Company, Inc. (ETC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 40.4 miles of rail line from Trustee, Indiana HiRail Corporation (IHRC), between milepost 204.3 at Browns, IL, and milepost 244.7 at Evansville, IN, including, without limitation, the Harwood Yard North and side tracks. The transaction was to have been consummated on or after the June 28, 1996 effective date of the exemption.

This proceeding is related to *RailAmerica, Inc.—Continuance in Control Exemption—Evansville Terminal Company, Inc.*, STB Finance Docket No. 32990, wherein RailAmerica, Inc. (RailAmerica), has concurrently filed a verified notice to continue to control ETC, upon its becoming a Class III rail carrier.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32989, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Robert P. vom Eigen, Hopkins & Sutter, 888 Sixteenth Street, N.W., Washington, DC 20006.

Decided: July 10, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–18124 Filed 7–16–96; 8:45 am]

BILLING CODE 4915–00–P

Surface Transportation Board [1]

[STB Finance Docket No. 32990]

RailAmerica, Inc.—Continuance in Control Exemption—Evansville Terminal Company, Inc.

RailAmerica, Inc. (RailAmerica), a noncarrier, has filed a notice of exemption to continue in control of Evansville Terminal Company, Inc. (ETC), upon ETC's becoming a Class III rail carrier. The transaction was to have been consummated on or after the June 28, 1996 effective date of the exemption.

ETC, a noncarrier, has concurrently filed a notice of exemption in *Evansville Terminal Company, Inc.—Acquisition and Operation Exemption—Trustee, Indiana HiRail Corporation*, STB Finance Docket No. 32989, to acquire approximately 40.4 miles of rail lines of Trustee, Indiana HiRail Corporation, between Browns, IL, and Evansville, IN.

RailAmerica controls six other nonconnecting Class III rail carriers: Huron & Eastern Railway Company, Inc.; Saginaw Valley Railway Company, Inc.; West Texas & Lubbock Railroad Company, Inc.; Plainview Terminal Company; Dakota Rail, Inc.; and South Central Tennessee Railroad Company.

RailAmerica states that: (1) ETC will not connect with any of the other railroads in its corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect ETC with any other railroad in its corporate family; and (3) the transaction does not involve a Class I railroad. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III railroad carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32990, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423 and served on: Robert P. vom Eigen, Hopkins & Sutter, 888 Sixteenth Street, NW., Washington, DC 20006.

Decided: July 10, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–18125 Filed 7–16–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Docket No. AB–55 (Sub-No. 531X)]

CSX Transportation, Inc.—Discontinuance of Service Exemption—in Fayette and Raleigh Counties, WV

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to discontinue service over 4.8 miles of its line of railroad from milepost CAX–0.0 at Mill Creek Jct., to milepost CAX–4.8 at Garden Ground, in Fayette and Raleigh Counties, WV.

CSXT has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 16, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by July 29, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 6, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Charles M. Rosenberger, Senior Counsel, 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by July 22, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 10, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–18126 Filed 7–16–96; 8:45 am]

BILLING CODE 4915–00–P

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[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

VOL 61 ISS 138 JL 17 1996 UMI

Corrections

Federal Register
Vol. 61, No. 138
Wednesday, July 17, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB-96-18]

Tobacco Inspection; Growers' Referendum Results

Correction

In rule document 96–13832 beginning on page 27997 in the issue of Tuesday, June 4, 1996, in the second column, the **EFFECTIVE DATE** should read "July 5, 1996".

BILLING CODE 1505-01-D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Chapters XXVI and XL

RIN 1212-AA75

Reorganization, Renumbering, and Reinvention of Regulations; Correction

Correction

In rule document 96–17791 beginning on page 36626 in the issue of Friday, July 12, 1996 make the following corrections:

1. On page 36626, third column, instruction 10., fifth line, "it" should read "i_t".

2. On page 36627, first column, instruction 11, fifth line, "interger and $o<y\leq n_i$)," should read "interger and $0<y\leq n_i$),".

BILLING CODE 1505-01-D

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket Nos. RM96–1, MC95–1 and MC96–1; Order No. 1119]

Amendments to Domestic Mail Classification Schedule: Mail Classification Reform, Classification Reform I (MC95–1) and Experimental First-Class and Priority Mail Small Parcel Automation Rate Category (MC96–1)

Correction

In rule document 96–15932 beginning on page 32656 in the issue of Tuesday, June 25, 1996, make the following corrections:

Appendix A to Subpart C [Corrected]

The table at the bottom of page 32689 and pages 32690 and 32692 are reprinted in their entirety because of numerous typographical errors.

Special services	Description	Fee
SCHEDULE SS–1		
Address Corrections	Per manual correction	
	Per automated correction	
SCHEDULE SS–2		
Business Reply Mail	Active business reply advance deposit account:	
	Per Piece: Pre-barcoded	
	Other	
	Payment of postage due charges if active business reply mail advances deposit account not used Per Piece.	
	Annual License and Accounting Fees:	
	Accounting Fee for Advance Deposit Account	
	Permit Fee (with or without Advance Deposit Account)	
SCHEDULE SS–4		
Certificates of Mailing	Individual Pieces	
	Original certificate of mailing for listed pieces of all classes of ordinary mail [per piece]	(in addition to postage)
	Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest (per piece)	
	Each additional copy of original certificate of mailing or original mailing receipt for registered, insured, certified, and COD mail (each copy)	
	Bulk Pieces:	
	Identical pieces of First-Class and Single Piece, Regular, and Nonprofit Standard Mail paid with ordinary stamps, precanceled stamps, or meter stamps are subject to the following fees:	
	Up to 1,000 pieces (one certificate for total number).	
	Each additional 1,000 pieces or fraction.	
	Duplicate copy.	
SCHEDULE SS–5		
Certified Mail	Per Piece	(in addition to postage)
SCHEDULE SS–6		
Collect on Delivery	Amount to be collected, or Insurance Coverage Desired	(in addition to postage)
	Notice of nondelivery of COD	
	Alteration of COD charges or designation of new addressee	
	Registered COD	
SCHEDULE SS–8		
Money Orders	Domestic:	
	$0.01 to $700	
	APO–FPO $0.01 to $700	
	Inquiry Fee, which includes the issuance of copy of a paid money order	
SCHEDULE SS–9		
Insured Mail	Liability:	(in addition to postage)

	Box size	Box capacity (cu. in.)	Semi-annual fees		
			IA	IB	IC
SCHEDULE SS–10					
Post Office Boxes and Caller Service					
A. Post Office Box Semi-Annual Rental Rate					
Group I—offices with city carrier service.	1	under 296.			
	2	296–499.			
	3	500–999.			
	4	1000–1999.			
	5	2000 & over.			
Group II—offices city carrier	1	annual.			
	2	annual.			
	3	semi-annual.			
	4	semi-annual.			
	5	semi-annual.			
Group III—offices rural carrier	1–5	annual.			
B. Caller Service					
For Caller Service	.....	semi-annual.			
For Each Reserved Call Number	.....	annual.			

	Description	Fee
SCHEDULE SS–11a		
Zip Coding of Mailing Lists	Per thousand addresses	
SCHEDULE SS–11b		
Correction of Mailing Lists	Per submitted address	
	Minimum charge per list corrected	
SCHEDULE SS–11c		
Address Changes for Election Boards and Registration Commissions	Per change of address	
SCHEDULE SS–11d		
Corrections Associated with Arrangement of Address Cards in Carrier Delivery Sequence	Per correction	
NOTE: When rural routes have been consolidated or changed to another post office, no charge will be made for correction if the list contains only names of persons residing on the route or routes involved.		
SCHEDULE SS–12		
On-site Meter Setting	First Meter.	
	By appointment	
	Unscheduled request	
	Additional meters	
	Checking meter in or out of service (per meter)	
SCHEDULE SS–13		(in addition to Parcel Post postage)
Parcel Air Lift	Up to 2 pounds	
	Over 2 up to 3 pounds	
	Over 3 up to 4 pounds	
	Over 4 pounds	

	Description	Fee
SCHEDULE SS–15		(in addition to postage)
Restricted Delivery	Per Piece	
SCHEDULE SS–16		
Return Receipts	Requested at time of mailing:	
	Showing to whom (signature) and date delivered	
	Merchandise only—without another special service	
	Showing to whom (signature) and date and address where delivered	
	Merchandise only—without another special service	
	Requested after mailing: Showing to whom and date delivered	
SCHEDULE SS–17		
Special Delivery	First-Class and priority Mail	
	Not more than 2 pounds	
	Over 2 pounds but not over 10 pounds	
	Over 10 pounds	

VOL
61
ISS
138
JL
17
1996
UMI

	Description	Fee
	All Other Classes	
	Not more than 2 pounds	
	Over 2 pounds but not over 10 pounds	
	Over 10 pounds	
SCHEDULE SS–18		
Special handling	Not more than 10 pounds	
	More than 10 pounds	
SCHEDULE SS–19		
Stamped Envelopes	Single Sale	
	BULK (500) #6¾ size: Regular Window	
	BULK (500) size > #6¾ through #10 [1] Regular Window	
	Multi-Color Printing (500) #6¾ size, #10 size [1]	
	Printing charge per 500 Envelopes (for each type of printed envelope)	
	Minimum Order (500) envelopes)	
	Order for 1,000 or more envelopes	
	Double Window (500)—Size > #6¾ through #10 [1]	
	Household (50): size #6¾—Regular Window	
	size > #6¾ through #10—Regular Window	
SCHEDULE SS–20		
Merchandise Return	Per Transaction	
	Shipper must have an advance deposit account (see DMCS Schedule 1000)	
SCHEDULE 1000		
Fees	First-Class Presorted Mailing Fee	
	Periodicals Fees	
	A. Original Entry	
	B. Additional Entry	
	C. Re-entry	
	D. Registration for News Agents	
	Regular, Enhanced Carrier Route and Nonprofit Standard Mail Bulk Mailing Fee	
	Parcel Post: Destination BMC	
	Special Standard Mail Presorted Mailing Fee	
	Authorization to Use Permit Imprint	
	Merchandise Return (per facility receiving merchandise return labels)	
	Business Reply Mail Permit	

[1] Fee for precancelled envelopes is the same.

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federal register

Wednesday
July 17, 1996

Part II

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Guideline on Structure and Content of Clinical Study Reports; Availability; Notice

VOL
61
ISS
138
JL
17
1996
UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95D-0218]

International Conference on Harmonisation; Guideline on Structure and Content of Clinical Study Reports; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is publishing a guideline entitled "Structure and Content of Clinical Study Reports." The guideline was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guideline is intended to facilitate the compilation of a single worldwide core clinical study report acceptable to all regulatory authorities.

DATES: Effective July 17, 1996. Submit written comments at any time.

ADDRESSES: Submit written comments on the guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857. Copies of the guideline are available from the Division of Communications Management (HFD-210), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1012. An electronic version of this guideline is also available via Internet by connecting to the CDER file transfer protocol (FTP) server (CDVS2.CDER.FDA.GOV).

FOR FURTHER INFORMATION CONTACT:

Regarding the guideline: Robert Temple, Center for Drug Evaluation and Research (HFD-100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-6758.

Regarding ICH: Janet Showalter, Office of Health Affairs (HFY-1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are: The European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of August 23, 1995 (60 FR 43910), FDA published a draft tripartite guideline entitled "Structure and Content of Clinical Study Reports." The notice gave interested persons an opportunity to submit comments by October 10, 1995.

After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies at the ICH meeting held on November 29, 1995.

The guideline is intended to facilitate the compilation of a single worldwide core clinical study report acceptable to all regulatory authorities. The clinical study report described in this guideline is an integrated full report of an individual study of any therapeutic, prophylactic, or diagnostic agent conducted in patients. Certain information is contained in appendices, including the protocol, listings of investigators and their qualifications, trial material information, technical statistical documentation, related publications, patient data listings, case report forms, and documentation of statistical methods. These appendices should be prepared by sponsors, but may be submitted as part of an initial submission, or on request, at the discretion of the regulatory authority. The material in the appendices should be provided in submissions to the Food and Drug Administration unless specific agreements are reached with reviewing divisions/offices to retain particular appendices.

The guideline is intended to assist sponsors in the development of a report that is complete, free from ambiguity, well organized, and easy to review. It is intended to replace one section of an existing FDA guideline, specifically, Section III of the Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications.

In the past, guidelines have generally been issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to state procedures or standards of general applicability that are not legal requirements but are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Although this guideline does not create or confer any rights for or on any person and does not operate to bind FDA, it does represent the agency's current thinking on structure and content of clinical study reports.

As with all of FDA's guidelines, the public is encouraged to submit written comments with new data or other new information pertinent to this guideline. The comments in the docket will be periodically reviewed, and, where appropriate, the guideline will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The text of the guideline follows:

Structure and Content of Clinical Study Reports Table of Contents

Introduction to the Guideline

1. Title Page
2. Synopsis
3. Table of Contents for the Individual Clinical Study Report
4. List of Abbreviations and Definition of Terms
5. Ethics
5.1 Independent Ethics Committee (IEC) or Institutional Review Board (IRB)
5.2 Ethical Conduct of the Study
5.3 Patient Information and Consent
6. Investigators and Study Administrative Structure
7. Introduction
8. Study Objectives
9. Investigational Plan
9.1 Overall Study Design and Plan—Description
9.2 Discussion of Study Design, including the Choice of Control Groups
9.3 Selection of Study Population
9.3.1 Inclusion Criteria
9.3.2 Exclusion Criteria
9.3.3 Removal of Patients from Therapy or Assessment
9.4 Treatments
9.4.1 Treatments Administered
9.4.2 Identity of Investigational Product(s)
9.4.3 Method of Assigning Patients to Treatment Groups
9.4.4 Selection of Doses in the Study
9.4.5 Selection and Timing of Dose for Each Patient
9.4.6 Blinding
9.4.7 Prior and Concomitant Therapy
9.4.8 Treatment Compliance
9.5 Efficacy and Safety Variables
9.5.1 Efficacy and Safety Measurements Assessed and Flow Chart
9.5.2 Appropriateness of Measurements
9.5.3 Primary Efficacy Variable(s)
9.5.4 Drug Concentration Measurements
9.6 Data Quality Assurance
9.7 Statistical Methods Planned in the Protocol and Determination of Sample Size
9.7.1 Statistical and Analytical Plans
9.7.2 Determination of Sample Size
9.8 Changes in the Conduct of the Study or Planned Analyses
10. Study Patients
10.1 Disposition of Patients
10.2 Protocol Deviations
11. Efficacy Evaluation
11.1 Data Sets Analyzed
11.2 Demographic and Other Baseline Characteristics
11.3 Measurements of Treatment Compliance
11.4 Efficacy Results and Tabulations of Individual Patient Data
11.4.1 Analysis of Efficacy
11.4.2 Statistical/Analytical Issues
11.4.2.1 Adjustments for Covariates
11.4.2.2 Handling of Dropouts or Missing Data
114.2.3 Interim Analyses and Data Monitoring
11.4.2.4 Multiple Studies
11.4.2.5 Multiple Comparisons/Multiplicity
11.4.2.6 Use of an "Efficacy Subset" of Patients
11.4.2.7 Active-Control Studies Intended to Show Equivalence
11.4.2.8 Examination of Subgroups
11.4.3 Tabulation of Individual Response Data
11.4.4 Drug Dose, Drug Concentration, and Relationships to Response
11.4.5 Drug-Drug and Drug-Disease Interactions
11.4.6 By-Patient Displays
11.4.7 Efficacy Conclusions
12. Safety Evaluation
12.1 Extent of Exposure
12.2 Adverse Events (AE's)
12.2.1 Brief Summary of Adverse Events
12.2.2 Display of Adverse Events
12.2.3 Analysis of Adverse Events
12.2.4 Listing of Adverse Events by Patient
12.3 Deaths, Other Serious Adverse Events, and Other Significant Adverse Events
12.3.1 Listings of Deaths, Other Serious Adverse Events, and Other Significant Adverse Events
12.3.1.1 Deaths
12.3.1.2 Other Serious Adverse Events
12.3.1.3 Other Significant Adverse Events
12.3.2 Narratives of Deaths, Other Serious Adverse Events, and Certain Other Significant Adverse Events
12.3.3 Analysis and Discussion of Deaths, Other Serious Adverse Events, and Other Significant Adverse Events
12.4 Clinical Laboratory Evaluation
12.4.1 Listing of Individual Laboratory Measurements by Patient (16.2.8) and Each Abnormal Laboratory Value (14.3.4)
12.4.2 Evaluation of Each Laboratory Parameter
12.4.2.1 Laboratory Values Over Time
12.4.2.2 Individual Patient Changes
12.4.2.3 Individual Clinically Significant Abnormalities
12.5 Vital Signs, Physical Findings, and Other Observations Related to Safety
12.6 Safety Conclusions
13. Discussion and Overall Conclusions
14. Tables, Figures and Graphs Referred To But Not Included in the Text
14.1 Demographic Data
14.2 Efficacy Data
14.3 Safety Data
14.3.1 Displays of Adverse Events
14.3.2 Listings of Deaths, Other Serious and Significant Adverse Events
14.3.3 Narratives of Deaths, Other Serious and Certain Other Significant Adverse Events
14.3.4 Abnormal Laboratory Value Listing (each patient)
15. Reference List
16. Appendices
16.1 Study Information
16.1.1 Protocol and protocol amendments
16.1.2 Sample case report form (unique pages only)
16.1.3 List of EIC's or IRB's (plus the name of the committee Chair if required by the regulatory authority) - Representative written information for patient and sample consent forms
16.1.4 List and description of investigators and other important participants in the study, including brief (1 page) CVS or equivalent summaries of training and experience relevant to the performance of the clinical study
16.1.5 Signatures of principal or coordinating investigator(s) or sponsor's responsible medical officer depending on the regulatory authority's requirement
16.1.6 Listing of patients receiving test drug(s)/investigational products from specific batches where more than one batch was used
16.1.7 Randomization scheme and codes (patient identification and treatment assigned)
16.1.8 Audit certificates (if available)
16.1.9 Documentation of statistical methods
16.1.10 Documentation of inter-laboratory standardization methods and quality assurance procedures if used
16.1.11 Publications based on the study
16.1.12 Important publications referenced in the report
16.2 Patient Data Listings
16.2.1 Discontinued patients
16.2.2 Protocol deviations
16.2.3 Patients excluded from the efficacy analysis
16.2.4 Demographic data
16.2.5 Compliance and/or drug concentration data (if available)
16.2.6 Individual efficacy response data
16.2.7 Adverse event listings (each patient)
16.2.8 Listing of individual laboratory measurements by patient when required by regulatory authorities
16.3 Case Report Forms
16.3.1 CRF's for deaths, other serious adverse events and withdrawals for AE
16.3.2 Other CRF's submitted
16.4 Individual Patient Data Listings (U.S. Archival Listings)
Annex I Synopsis (Example)
Annex II Principal or Coordinating Investigator(s) or Sponsor's responsible medical officer (Example)
Annex IIIa Study Design and Schedule of Assessments (Example)
Annex IIIb Study Design and Schedule of Assessments (Example)
Annex IVa Disposition of patients (Example)
Annex IVb Disposition of patients (Example)
Annex V Listing of patients Who Discontinued Therapy (Example)
Annex VI Listing of Patients and Observations Excluded from Efficacy Analysis (Example)
Annex VII Number of Patients Excluded from Efficacy Analysis (Example)
Annex VIII Guidance for Section 11.4.2 - Statistical/Analytical Issues and Appendix 16.1.9

I. Introduction

The objective of this guideline is to facilitate the compilation of a single core clinical study report acceptable to all regulatory authorities of the ICH regions. The regulatory authority-specific additions will consist of modules to be considered as appendices, available upon request according to regional regulatory requirements.

The clinical study report described in this guideline is an "integrated" full report of an individual study of any therapeutic, prophylactic, or diagnostic agent (referred to herein as drug or treatment) conducted in patients. The clinical and statistical description, presentations, and analyses are integrated into a single report, incorporating tables and figures into the main text of the report or at the end of the text, with appendices containing such information as the protocol, sample case report forms, investigator-related information, information related to the test drugs/investigational products including active control/comparators, technical statistical documentation, related publications, patient data listings, and technical statistical details such as derivations, computations, analyses,

VOL 61 ISS 138 JL 17 1996 UMI

and computer output. The integrated full report of a study should not be derived by simply joining a separate clinical and statistical report. Although this guideline is mainly aimed at efficacy and safety trials, the basic principles and structure described can be applied to other kinds of trials, such as clinical pharmacology studies. Depending on the nature and importance of such studies, a less detailed report might be appropriate.

The guideline is intended to assist sponsors in the development of a report that is complete, free from ambiguity, well organized, and easy to review. The report should provide a clear explanation of how the critical design features of the study were chosen and enough information on the plan, methods, and conduct of the study so that there is no ambiguity in how the study was carried out. The report with its appendices should also provide enough individual patient data, including the demographic and baseline data, and details of analytical methods, to allow replication of the critical analyses when authorities wish to do so. It is also particularly important that all analyses, tables, and figures carry, in text or as part of the table, clear identification of the set of patients from which they were generated.

Depending on the regulatory authority's review policy, abbreviated reports using summarized data or with some sections deleted may be acceptable for uncontrolled studies or other studies not designed to establish efficacy, for seriously flawed or aborted studies, or for controlled studies that examine conditions clearly unrelated to those for which a claim is made. A controlled safety study, however, should be reported in full. If an abbreviated report is provided, a full description of safety aspects should be included in all cases. If an abbreviated report is submitted, there should be enough detail of design and results to allow the regulatory authority to determine whether a full report is needed. If there is any question regarding whether the reports are needed, it may be useful to consult the regulatory authority.

In presenting the detailed description of how the study was carried out, it may be possible simply to restate the description in the initial protocol. Often, however, it is possible to present the methodology of the study more concisely in a separate document. In each section describing the design and conduct of the study, it is particularly important to clarify features of the study that are not well-described in the protocol and identify ways in which the study as conducted differed from the protocol, and to discuss the statistical methods and analyses used to account for these deviations from the planned protocol.

The full integrated report of the individual study should include the most detailed discussion of individual adverse events or laboratory abnormalities, but these should usually be reexamined as part of an overall safety analysis of all available data in any application.

The report should describe demographic and other potentially predictive characteristics of the study population and, where the study is large enough to permit this, present data for demographic (e.g., age, sex, race, weight) and other (e.g., renal or hepatic function) subgroups so that possible differences in efficacy or safety can be identified. Usually, however, subgroup responses should be examined in the larger data base used in the overall analysis.

The data listings requested as part of the report (usually in an appendix) are those needed to support critical analyses. Data listings that are part of the report should be readily usable by the reviewer. Thus, although it may be desirable to include many variables in a single listing to limit size, this should not be at the expense of clarity. An excess of data should not be allowed to lead to, for example, overuse of symbols instead of words or easily understood abbreviations, or to too-small displays. In this case, it is preferable to produce several listings.

Data should be presented in the report at different levels of detail: Overall summary figures and tables for important demographic, efficacy, and safety variables may be placed in the text to illustrate important points; other summary figures, tables, and listings for demographic, efficacy, and safety variables should be provided in section 14; individual patient data for specified groups of patients should be provided as listings in Appendix 16.2; and all individual patient data (archival listings requested only in the United States) should be provided in Appendix 16.4.

In any table, figure, or data listing, estimated or derived values, if used, should be identified in a conspicuous fashion. Detailed explanations should be provided as to how such values were estimated or derived and what underlying assumptions were made.

The guidance provided below is detailed and is intended to notify the applicant of virtually all of the information that should routinely be provided so that postsubmission requests for further data clarification and analyses can be reduced as much as possible. Nonetheless, specific requirements for data presentation and/or analysis may depend on specific situations, may evolve over time, may vary from drug class to drug class, may differ among regions, and cannot be described in general terms. It is, therefore, important to refer to specific clinical guidelines and to discuss data presentation and analyses with the reviewing authority, whenever possible. Detailed written guidance on statistical approaches is available from some authorities.

Each report should consider all of the topics described (unless clearly not relevant) although the specific sequence and grouping of topics may be changed if alternatives are more logical for a particular study. Some data in the appendices are specific requirements of individual regulatory authorities and should be submitted as appropriate. The numbering should then be adapted accordingly.

In the case of very large trials, some of the provisions of this guideline may be impractical or inappropriate. When planning and when reporting such trials, contact with regulatory authorities to discuss an appropriate report format is encouraged.

The provisions of this guideline should be used in conjunction with other ICH guidelines.

Structure and Content of Clinical Study Reports

1. Title Page

The title page should contain the following information:

- Study title.
- Name of test drug/investigational product.
- Indication studied.
- If not apparent from the title, a brief (one to two sentences) description giving design (parallel, cross-over, blinding, randomized) comparison (placebo, active, dose/response), duration, dose, and patient population.
- Name of the sponsor.
- Protocol identification (code or number).
- Development phase of study.
- Study initiation date (first patient enrolled, or any other verifiable definition).
- Date of early study termination, if any.
- Study completion date (last patient completed).
- Name and affiliation of principal or coordinating investigator(s) or sponsor's responsible medical officer.
- Name of company/sponsor signatory (the person responsible for the study report within the company/sponsor). The name, telephone number, and fax number of the company/sponsor contact persons for questions arising during review of the study report should be indicated on this page or in the letter of application.
- Statement indicating whether the study was performed in compliance with good clinical practice (GCP), including the archiving of essential documents.
- Date of the report (identify any earlier reports from the same study by title and date).

2. Synopsis

A brief synopsis (usually limited to three pages) that summarizes the study should be provided (see Annex I of the guideline for an example of a synopsis format used in Europe). The synopsis should include numerical data to illustrate results, not just text or p-values.

3. Table of Contents for the Individual Clinical Study Report

The table of contents should include:

- The page number or other locating information of each section, including summary tables, figures, and graphs.
- A list and the locations of appendices, tabulations, and any case report forms provided.

4. List of Abbreviations and Definitions of Terms

A list of the abbreviations, and lists and definitions of specialized or unusual terms or measurement units used in the report should be provided. Abbreviated terms should be spelled out and the abbreviation indicated in parentheses at first appearance in the text.

5. Ethics

5.1 Independent Ethics Committee (IEC) or Institutional Review Board (IRB)

It should be confirmed that the study and any amendments were reviewed by an IEC or IRB. A list of all IEC's or IRB's consulted should be given in Appendix 16.1.3 and, if required by the regulatory authority, the name of the committee Chair should be provided.

5.2 Ethical Conduct of the Study

It should be confirmed that the study was conducted in accordance with the ethical principles that have their origins in the Declaration of Helsinki.

5.3 Patient Information and Consent

How and when informed consent was obtained in relation to patient enrollment (e.g., at allocation, prescreening) should be described.

Representative written information for the patient (if any) and a sample of the patient consent form used should be provided in Appendix 16.1.3.

6. Investigators and Study Administrative Structure

The administrative structure of the study (e.g., principal investigator, coordinating investigator, steering committee, administration, monitoring and evaluation committees, institutions, statistician, central laboratory facilities, contract research organization (C.R.O.), clinical trial supply management) should be described briefly in the body of the report.

There should be provided in Appendix 16.1.4 a list of the investigators with their affiliations, their role in the study, and their qualifications (curriculum vitae or equivalent). A similar list for other persons whose participation materially affected the conduct of the study should also be provided in Appendix 16.1.4. In the case of large trials with many investigators, the above information may be abbreviated to consist of general statements of qualifications for persons carrying out particular roles in the study with only the name, degree, and institutional affiliation and roles of each investigator or other participant.

The listing should include:

(a) Investigators.

(b) Any other person carrying out observations of primary or other major efficacy variables, such as a nurse, physician's assistant, clinical psychologist, clinical pharmacist, or house staff physician. It is not necessary to include in this list a person with only an occasional role, e.g., an on-call physician who dealt with a possible adverse effect or a temporary substitute for any of the above.

(c) The author(s) of the report, including the responsible biostatistician(s).

Where signatures of the principal or coordinating investigators are required by regulatory authorities, these should be included in Appendix 16.1.5 (see Annex II for a sample form). Where these are not required, the signature of the sponsor's responsible medical officer should be provided in Appendix 16.1.5.

7. Introduction

The introduction should contain a brief statement (maximum: one page) placing the study in the context of the development of the test drug/investigational product, relating the critical features of the study (e.g., rationale and aims, target population, treatment, duration, primary endpoints) to that development. Any guidelines that were followed in the development of the protocol or any other agreements/meetings between the sponsor/company and regulatory authorities that are relevant to the particular study should be identified or described.

8. Study Objectives

A statement describing the overall purpose(s) of the study should be provided.

9. Investigational Plan

9.1 Overall Study Design and Plan: Description

The overall study plan and design (configuration) of the study (e.g., parallel, cross-over) should be described briefly but clearly, using charts and diagrams as needed. If other studies used a very similar protocol, it may be useful to note this and describe any important differences. The actual protocol and any changes should be included as Appendix 16.1.1 and a sample case report form (unique pages only; i.e., it is not necessary to include identical pages from forms for different evaluations or visits) as Appendix 16.1.2. If any of the information in this section comes from sources other than the protocol, these should be identified.

The information provided should include:

- Treatments studied (specific drugs, doses, and procedures).
- Patient population studied and the number of patients to be included.
- Level and method of blinding/masking (e.g., open, double-blind, single-blind, blinded evaluators, and unblinded patients and/or investigators).
- Kind of control(s) (e.g., placebo, no treatment, active drug, dose-response, historical) and study configuration (parallel, cross-over).
- Method of assignment to treatment (randomization, stratification).
- Sequence and duration of all study periods, including prerandomization and post-treatment periods, therapy withdrawal periods, and single and double-blind treatment periods. When patients were randomized should be specified. It is usually helpful to display the design graphically with a flow chart that includes timing of assessments (see Annexes IIIa and IIIb for an example).
- Any safety, data monitoring, or special steering or evaluation committees.
- Any interim analyses.

9.2 Discussion of Study Design, Including the Choice of Control Groups

The specific control chosen and the study design used should be discussed, as necessary. Examples of design issues meriting discussion follow.

Generally, the control (comparison) groups that are recognized are placebo concurrent control, no treatment concurrent control, active treatment concurrent control, dose comparison concurrent control, and historical control. In addition to the type of control, other critical design features that may need discussion are use of a cross-over design and selection of patients with particular prior history, such as response or nonresponse to a specific drug or member of a drug class. If randomization was not used, it is important to explain how other techniques, if any, guarded against systematic selection bias.

Known or potential problems associated with the study design or control group chosen should be discussed in light of the specific disease and therapies being studied. For a cross-over design, for example, there should be consideration, among other things, of the likelihood of spontaneous change in the disease and of carry-over effects of treatment during the study.

If efficacy was to be demonstrated by showing equivalence, i.e., the absence of a specified degree of inferiority of the new treatment compared to an established treatment, problems associated with such study designs should be addressed. Specifically, there should be provided a basis for considering the study capable of distinguishing active from inactive therapy. Support may be provided by an analysis of previous studies similar to the present study with respect to important design characteristics (e.g., patient selection, study endpoints, duration, dose of active control, concomitant therapy) showing a consistent ability to demonstrate superiority of the active control to placebo. How to assess the ability of the present study to distinguish effective from ineffective therapy should also be discussed. For example, it may be possible to identify a treatment response (based on past studies) that would clearly distinguish between the treated population and an untreated group. Such a response could be the change of a measure from baseline or some other specified outcome like healing rate or survival rate. Attainment of such a response would support the expectation that the study could have distinguished the active drug from an inactive drug. There should also be a discussion of the degree of inferiority of the therapy (often referred to as the delta value) the study was intended to show was not exceeded.

The limitations of historical controls are well known (e.g., difficulty of assuring comparability of treated groups, inability to blind investigators to treatment, change in therapy/disease, difference due to placebo effect) and deserve particular attention.

Other specific features of the design may also deserve discussion, including presence or absence of washout periods and the duration of the treatment period, especially for a chronic illness. The rationale for dose and dose-interval selection should be explained, if it is not obvious. For example, once daily dosing with a short half-life drug whose effect is closely related in time to blood level is not usually effective; if the study design uses such dosing, this should be explained, e.g., by pointing to pharmacodynamic evidence that effect is prolonged compared to blood levels. The procedures used to seek evidence of "escape" from drug effect at the end of the dose-interval, such as measurements of effect just before dosing, should be described. Similarly, in a parallel design dose-response study, the choice of doses should be explained.

9.3 Selection of Study Population

9.3.1 Inclusion Criteria

The patient population and the selection criteria used to enter the patients into the study should be described, and the suitability of the population for the purposes of the study discussed. Specific diagnostic criteria used, as well as specific disease requirements

VOL
61
ISS
138
JL
17
1996
UMI

(e.g., disease of a particular severity or duration, results of a particular test or rating scale(s) or physical examination, particular features of clinical history, such as failure or success on prior therapy, or other potential prognostic factors and any age, sex, or ethnic factors) should be presented.

Screening criteria and any additional criteria for randomization or entry into the test drug/investigational product treatment part of the trial should be described. If there is reason to believe that there were additional entry criteria, not defined in the protocol, the implications of these should be discussed. For example, some investigators may have excluded or entered into other studies patients who were particularly ill or who had particular baseline characteristics.

9.3.2 Exclusion Criteria

The criteria for exclusion at entry into the study should be specified and the rationale provided (e.g., safety concerns, administrative reasons, or lack of suitability for the trial). The impact of exclusions on the generalizability of the study should be discussed in section 13 of the study report or in an overview of safety and efficacy.

9.3.3 Removal of Patients From Therapy or Assessment

The predetermined reasons for removing patients from therapy or assessment observation, if any, should be described, as should the nature and duration of any planned followup observations in those patients.

9.4 Treatments

9.4.1 Treatments Administered

The precise treatments or diagnostic agents to be administered in each arm of the study, and for each period of the study, should be described including route and mode of administration, dose, and dosage schedule.

9.4.2 Identity of Investigational Products(s)

In the text of the report, a brief description of the test drug(s)/investigational product(s) (formulation, strength, batch number(s)) should be given. If more than one batch of test drug/investigational product was used, patients receiving each batch should be identified in Appendix 16.1.6.

The source of placebos and active control/comparator product(s) should be provided. Any modification of comparator product(s) from their usual commercial state should be noted, and the steps taken to assure that their bioavailability was unaltered should be described.

For long-duration trials of investigational products with limited shelf-lives or incomplete stability data, the logistics of resupply of the materials should be described. Any use of test materials past their expiry date should be noted, and patients receiving them identified. If there were specific storage requirements, these should also be described.

9.4.3 Method of Assigning Patients to Treatment Groups

The specific methods used to assign patients to treatment groups, e.g., centralized allocation, allocation within sites, adaptive allocation (that is, assignment on the basis of earlier assignment or outcome) should be described in the text of the report, including any stratification or blocking procedures. Any unusual features should be explained.

A detailed description of the randomization method, including how it was executed, should be given in Appendix 16.1.7 with references cited if necessary. A table exhibiting the randomization codes, patient identifier, and treatment assigned should also be presented in the Appendix. For a multicenter study, the information should be given by center. The method of generating random numbers should be explained.

For a historically controlled trial, it is important to explain how the particular control was selected and what other historical experiences were examined, if any, and how their results compared to the control used.

9.4.4 Selection of Doses in the Study

The doses or dose ranges used in the study should be given for all treatments and the basis for choosing them described (e.g., prior experience in humans, animal data).

9.4.5 Selection and Timing of Dose for Each Patient

Procedures for selecting each patient's dose of test drug/ investigational product and active control/comparator should be described. These procedures can vary from simple random assignment to a selected fixed drug/dose regimen, to use of a specified titration procedure, or to more elaborate response-determined selection procedures, e.g., where dose is titrated upward at intervals until intolerance or some specified endpoint is achieved. Procedures for back-titration, if any, should also be described.

The timing (time of day, interval) of dosing and the relation of dosing to meals should be described and, if timing was not specified, this should be noted.

Any specific instructions to patients about when or how to take the dose(s) should be described.

9.4.6 Blinding

A description of the specific procedures used to carry out blinding should be provided (e.g., how bottles were labeled, use of labels that reveal blind-breakage, sealed code list/envelopes, double dummy techniques), including the circumstances in which the blind would be broken for an individual or for all patients (e.g., for serious adverse events), the procedures used to do this, and who had access to patient codes. If the study allowed for some investigators to remain unblinded (e.g., to allow them to adjust medication), the means of shielding other investigators should be explained. Measures taken to ensure that test drug/ investigational product and placebo were indistinguishable and evidence that they were indistinguishable should be described, as should the appearance, shape, smell, and taste of the test material. Measures to prevent unblinding by laboratory measurements, if used, should be described. If there was a data monitoring committee with access to unblinded data, procedures to ensure maintenance of overall study blinding should be described. The procedure used to maintain the blinding when interim analyses were performed should also be explained.

If blinding was considered unnecessary to reduce bias for some or all of the observations, this should be explained; e.g., use of a random-zero sphygmomanometer eliminates possible observer bias in reading blood pressure and Holter tapes are often read by automated systems that are presumably immune to observer bias. If blinding was considered desirable but not feasible, the reasons and implications should be discussed. Sometimes blinding is attempted but is known to be imperfect because of obvious drug effects in at least some patients (dry mouth, bradycardia, fever, injection site reactions, changes in laboratory data). Such problems or potential problems should be identified and, if there were any attempts to assess the magnitude of the problem or manage it (e.g., by having endpoint measurements carried out by people shielded from information that might reveal treatment assignment), they should be described.

9.4.7 Prior and Concomitant Therapy

Which drugs or procedures were allowed before and during the study, whether and how their use was recorded, and any other specific rules and procedures related to permitted or prohibited concomitant therapy should be described. How allowed concomitant therapy might affect the outcome due either to drug-drug interaction or to direct effects on the study endpoints should be discussed, and how the independent effects of concomitant and study therapies could be ascertained should be explained.

9.4.8 Treatment Compliance

The measures taken to ensure and document treatment compliance should be described, e.g., drug accountability, diary cards, blood, urine or other body fluid drug level measurements, or medication event monitoring.

9.5 Efficacy and Safety Variables

9.5.1 Efficacy and Safety Measurements Assessed and Flow Chart

The specific efficacy and safety variables to be assessed and laboratory tests to be conducted, their schedule (days of study, time of day, relation to meals, and the timing of critical measures in relation to test drug administration, e.g., just prior to next dose, 2 hours after dose), the methods for measuring them, and the persons responsible for the measurements should be described. If there were changes in personnel carrying out critical measurements, these should be reported.

It is usually helpful to display graphically in a flow chart (see Annex III of the guideline) the frequency and timing of efficacy and safety measurements; visit numbers and times should be shown, or, alternatively, times alone can be used (visit numbers alone are more difficult to interpret). Any specific instructions (e.g., guidance or use of a diary) to the patients should also be noted.

Any definitions used to characterize outcome (e.g., criteria for determining occurrence of acute myocardial infarction, designation of the location of the infarction, characterization of a stroke as thrombotic or hemorrhagic, distinction between TIA and stroke, assignment of cause of death) should be explained in full. Any techniques used to standardize or compare results of laboratory tests or other clinical measurements (e.g., ECG, chest X-ray) should also be described.

This is particularly important in multicenter studies.

If anyone other than the investigator was responsible for evaluation of clinical outcomes (e.g., the sponsor or an external committee to review X-rays or ECG's or to determine whether the patient had a stroke, acute infarction, or sudden death), the person or group should be identified. The procedures used, including means of maintaining blindness and centralizing readings and measurements, should be described fully.

The means of obtaining adverse event data should be described (volunteered, checklist, or questioning), as should any specific rating scale(s) used and any specifically planned followup procedures for adverse events or any planned rechallenge procedure.

Any rating of adverse events by the investigator, sponsor, or external group (e.g., rating by severity or likelihood of drug causation) should be described. The criteria for such ratings, if any, should be given and the parties responsible for the ratings should be clearly identified. If efficacy or safety was to be assessed in terms of categorical ratings or numerical scores, the criteria used for point assignment should be provided (e.g., definitions of point scores). For multicenter studies, how methods were standardized should be indicated.

9.5.2 Appropriateness of Measurements

If any of the efficacy or safety assessments was not standard, i.e., widely used and generally recognized as reliable, accurate, and relevant (able to discriminate between effective and ineffective agents), its reliability, accuracy, and relevance should be documented. It may be helpful to describe alternatives considered but rejected.

If a surrogate endpoint (a laboratory measurement or physical measurement or sign that is not a direct measure of clinical benefit) was used as a study endpoint, this should be justified, e.g., by reference to clinical data, publications, guidelines, or previous actions by regulatory authorities.

9.5.3 Primary Efficacy Variable(s)

The primary measurements and endpoints used to determine efficacy should be clearly specified. Although the critical efficacy measurements may seem obvious, when there are multiple variables or when variables are measured repeatedly, the protocol should identify the primary ones with an explanation of why they were chosen, or designate the pattern of significant findings or other method of combining information that would be interpreted as supporting efficacy.

If the protocol did not identify the primary variables, the study report should explain how these critical variables were selected (e.g., by reference to publications, guidelines, or previous actions by regulatory authorities) and when they were identified (i.e., before or after the study was completed and unblinded). If an efficacy threshold was defined in the protocol, this should be described.

9.5.4 Drug Concentration Measurements

Any drug concentrations to be measured and the sample collection times and periods in relation to the timing of drug administration should be described. Any relation of drug administration and sampling to ingestion of food, posture, and the possible effects of concomitant medication/alcohol/ caffeine/nicotine should also be addressed. The biological sample measured, the handling of samples and the method of measurement used should be described, referring to published and/or internal assay validation documentation for methodological details. Where other factors are believed important in assessing pharmacokinetics (e.g., soluble circulating receptors, renal or hepatic function), the timing and plans to measure these factors should also be specified.

9.6 Data Quality Assurance

The quality assurance and quality control systems implemented to assure the quality of the data should be described in brief. If none were used, this should be stated. Documentation of inter-laboratory standardization methods and quality assurance procedures, if used, should be provided under Appendix 16.1.10.

Any steps taken at the investigation site or centrally to ensure the use of standard terminology and the collection of accurate, consistent, complete, and reliable data, such as training sessions, monitoring of investigators by sponsor personnel, instruction manuals, data verification, cross-checking, use of a central laboratory for certain tests, centralized ECG reading, or data audits, should be described. It should be noted whether investigator meetings or other steps were taken to prepare investigators and standardize performance.

If the sponsor used an independent internal or external auditing procedure, it should be mentioned here and described in Appendix 16.1.8; audit certificates, if available, should be provided in the same appendix.

9.7 Statistical Methods Planned in the Protocol and Determination of Sample Size

9.7.1 Statistical and Analytical Plans

The statistical analyses planned in the protocol and any changes made before outcome results were available should be described. In this section, emphasis should be on which analyses, comparisons, and statistical tests were planned, not on which ones were actually used. If critical measurements were made more than once, the particular measurements (e.g., average of several measurements over the entire study, values at particular times, values only from study completers, or last on-therapy value) planned as the basis for comparison of test drug/investigational product and control should be specified. Similarly, if more than one analytical approach is plausible, e.g., changes from baseline response, slope analysis, life-table analysis, the planned approach should be identified. Also, whether the primary analysis is to include adjustment for covariates should be specified.

If there were any planned reasons for excluding from analysis patients for whom data are available, these should be described. If there were any subgroups whose results were to be examined separately, these should be identified. If categorical responses (global scales, severity scores, responses of a certain size) were to be used in analyzing responses, they should be clearly defined.

Planned monitoring of the results of the study should be described. If there was a data monitoring committee, either within or outside the sponsor's control, its composition and operating procedures should be described and procedures to maintain study blinding should be given. The frequency and nature of any planned interim analysis, any specified circumstances in which the study would be terminated, and any statistical adjustments to be employed because of interim analyses should be described.

9.7.2 Determination of Sample Size

The planned sample size and the basis for it, such as statistical considerations or practical limitations, should be provided. Methods for sample size calculation should be given together with their derivations or source of reference. Estimates used in the calculations should be given, and explanations should be provided as to how they were obtained. For a study intended to show a difference between treatments, the difference the study is designed to detect should be specified. For a positive control study intended to show that a new therapy is at least as effective as the standard therapy, the sample size determination should specify the difference between treatments that would be considered unacceptably large and, therefore, the difference the study is designed to be able to exclude.

9.8 Changes in the Conduct of the Study or Planned Analyses

Any change in the conduct of the study or planned analyses (e.g., dropping a treatment group, changing the entry criteria or drug dosages, adjusting the sample size) instituted after the start of the study should be described. The time(s) and reason(s) for the change(s), the procedure used to decide on the change(s), the person(s) or group(s) responsible for the change(s) and the nature and content of the data available (and to whom they were available) when the change was made should also be described, whether the change was documented as a formal protocol amendment or not. Personnel changes need not be included. Any possible implications of the change(s) for the interpretation of the study should be discussed briefly in this section and more fully in other appropriate sections of the report. In every section of the report, a clear distinction between conditions (procedures) planned in the protocol and amendments or additions should be made. In general, changes in planned analyses made prior to breaking the blind have limited implications for study interpretation. It is therefore particularly critical that the timing of changes relative to blind breaking and availability of outcome results be well characterized.

10. Study Patients

10.1 Disposition of Patients

There should be a clear accounting of all patients who entered the study, using figures or tables in the text of the report. The numbers of patients who were randomized and who entered and completed each phase of the study (or each week/month of the study) should be provided, as well as the reasons for all postrandomization discontinuations, grouped by treatment and by major reason (e.g., lost to followup,

VOL 61 ISS 138 JL 17 1996 UMI

adverse event, poor compliance). It may also be relevant to provide the number of patients screened for inclusion and a breakdown of the reasons for excluding patients during screening, if this could help clarify the appropriate patient population for eventual drug use. A flow chart is often helpful (see Annexes IVa and IVb for examples). Whether patients are followed for the duration of the study, even if drug is discontinued, should be made clear.

In Appendix 16.2.1, there should also be a listing of all patients discontinued from the study after enrollment, broken down by center and treatment group, giving a patient identifier, the specific reason for discontinuation, the treatment (drug and dose), cumulative dose (where appropriate), and the duration of treatment before discontinuation. Whether or not the blind for the patient was broken at the time of discontinuation should be noted. It may also be useful to include other information, such as critical demographic data (e.g., age, sex, race), concomitant medication, and the major response variable(s) at termination. See Annex V for an example of such a listing.

10.2 Protocol Deviations

All important deviations related to study inclusion or exclusion criteria, conduct of the trial, patient managements or patient assessment should be described.

In the body of the text, protocol deviations should be appropriately summarized by center and grouped into different categories, such as:

- Those who entered the study even though they did not satisfy the entry criteria.
- Those who developed withdrawal criteria during the study but were not withdrawn.
- Those who received the wrong treatment or incorrect dose.
- Those who received an excluded concomitant treatment.

In Appendix 16.2.2, individual patients with these protocol deviations should be listed, broken down by center for multicenter studies.

11. Efficacy Evaluation

11.1 Data Sets Analyzed

Exactly which patients were included in each efficacy analysis should be precisely defined, e.g., all patients receiving any test drugs/investigational products, all patients with any efficacy observation or with a certain minimum number of observations, only patients completing the trial, all patients with an observation during a particular time window, or only patients with a specified degree of compliance. It should be clear, if not defined in the study protocol, when (relative to study unblinding) and how inclusion/exclusion criteria for the data sets analyzed were developed. Generally, even if the applicant's proposed primary analysis is based on a reduced subset of the patients with data, there should also be, for any trial intended to establish efficacy, an additional analysis using all randomized (or otherwise entered) patients with any on-treatment data.

There should be a tabular listing of all patients, visits, and observations excluded from the efficacy analysis provided in Appendix 16.2.3 (see Annex VI for an example). The reasons for exclusions should also be analyzed for the whole treatment group over time (see Annex VII for an example).

11.2 Demographic and Other Baseline Characteristics

Group data for the critical demographic and baseline characteristics of the patients, as well as other factors arising during the study that could affect response, should be presented in this section and comparability of the treatment groups for all relevant characteristics should be displayed by use of tables or graphs in section 14.1. The data for the patient sample included in the "all patients with data" analysis should be given first. This may be followed by data on other groups used in principal analyses, such as the "per-protocol" analysis or other analyses, e.g., groups defined by compliance, concomitant disease/therapy, or demographic/baseline characteristics. When such groups are used, data for the complementary excluded group should also be shown. In a multicenter study, where appropriate, comparability should be assessed by center, and centers should be compared.

A diagram showing the relationship between the entire sample and any other analysis groups should be provided.

The critical variables will depend on the specific nature of the disease and on the protocol but will usually include:

- Demographic variables:
  - Age
  - Sex
  - Race
- Disease factors:
  - Specific entry criteria (if not uniform), duration, stage and severity of disease, and other clinical classifications and subgroupings in common usage or of known prognostic significance.
  - Baseline values for critical clinical measurements carried out during the study or identified as important indicators of prognosis or response to therapy.
  - Concomitant illness at trial initiation, such as renal disease, diabetes, heart failure.
  - Relevant previous illness.
  - Relevant previous treatment for illness treated in the study.
  - Concomitant treatment maintained, even if the dose was changed during the study, including oral contraceptive and hormone replacement therapy; treatments stopped at entry into the study period (or changed at study initiation).
- Other factors that might affect response to therapy (e.g., weight, renin status, antibody levels, metabolic status).
- Other possibly relevant variables (e.g., smoking, alcohol intake, special diets) and, for women, menstrual status and date of last menstrual period, if pertinent for the study.

In addition to tables and graphs giving group data for these baseline variables, relevant individual patient demographic and baseline data, including laboratory values, and all concomitant medication for all individual patients randomized (broken down by treatment and by center for multicenter studies) should be presented in by-patient tabular listings in Appendix 16.2.4. Although some regulatory authorities will require all baseline data to be presented elsewhere in tabular listings, the Appendix to the study report should be limited to only the most relevant data, generally the variables listed above.

11.3 Measurements of Treatment Compliance

Any measurements of compliance of individual patients with the treatment regimen under study and drug concentrations in body fluids should be summarized, analyzed by treatment group and time interval, and tabulated in Appendix 16.2.5.

11.4 Efficacy Results and Tabulations of Individual Patient Data

11.4.1 Analysis of Efficacy

Treatment groups should be compared for all critical measures of efficacy (primary and secondary endpoints; any pharmacodynamic endpoints studied), as well as benefit/risk assessment(s) in each patient where these are utilized. In general, the results of all analyses contemplated in the protocol and an analysis including all patients with on-study data should be performed in studies intended to establish efficacy. The analysis should show the size (point estimate) of the difference between the treatments, the associated confidence interval, and, where utilized, the results of hypothesis testing.

Analyses based on continuous variables (e.g., mean blood pressure or depression scale score) and categorical responses (e.g., cure of an infection) can be equally valid; ordinarily both should be presented if both were planned and are available. If categories are newly created (i.e., not in the statistical plan) the basis for them should be explained. Even if one variable receives primary attention (e.g., in a blood pressure study, supine blood pressure at week "x"), other reasonable measures (e.g., standing blood pressure and blood pressures at other particular times) should be assessed, at least briefly. In addition, the time course of response should be described, if possible. For a multicenter study, where appropriate, data display and analysis of individual centers should be included for critical variables to give a clear picture of the results at each site, especially the larger sites.

If any critical measurements or assessments of efficacy or safety outcomes were made by more than one party (e.g., both the investigator and an expert committee may offer an opinion on whether a patient had an acute infarction), overall differences between the ratings should be shown, and each patient having disparate assessments should be identified. The assessments used should be clear in all analyses.

In many cases, efficacy and safety endpoints are difficult to distinguish (e.g., deaths in a fatal disease study). Many of the principles addressed below should be adopted for critical safety measures as well.

11.4.2 Statistical/Analytical Issues

The statistical analysis used should be described for clinical and statistical reviewers in the text of the report, with detailed documentation of statistical methods (see Annex IX) presented in Appendix 16.1.9. Important features of the analysis, including the particular methods used, adjustments made for demographic or baseline measurements or concomitant therapy, handling of dropouts and missing data, adjustments for multiple comparisons, special analyses of multicenter studies, and

adjustments for interim analyses, should be discussed. Any changes in the analysis made after blind-breaking should be identified.

In addition to the general discussion, the following specific issues should be addressed (unless not applicable):

11.4.2.1 Adjustments for Covariates

Selection of, and adjustments for, demographic or baseline measurements, concomitant therapy, or any other covariates or prognostic factors should be explained in the report, and methods of adjustment, results of analyses, and supportive information (e.g., ANCOVA or Cox regression output) should be included in the detailed documentation of statistical methods. If the covariates or methods used in these analyses differed from those planned in the protocol, the differences should be explained and, where possible and relevant, the results of planned analyses should also be presented. Although not part of the individual study report, comparisons of covariate adjustments and prognostic factors across individual studies may be an informative analysis in a summary of clinical efficacy data.

11.4.2.2 Handling of Dropouts or Missing Data

There are several factors that may affect dropout rates. These include the duration of the study, the nature of the disease, the efficacy and toxicity of the drug under study, and other factors that are not therapy-related. Ignoring the patients who dropped out of the study and drawing conclusions based only on patients who completed the study can be misleading. A large number of dropouts, however, even if included in an analysis, may introduce bias, particularly if there are more early dropouts in one treatment group or the reasons for dropping out are treatment or outcome related. Although the effects of early dropouts, and sometimes even the direction of bias, can be difficult to determine, possible effects should be explored as fully as possible. It may be helpful to examine the observed cases at various times or, if dropouts were very frequent, to concentrate on analyses at times when most of the patients were still under observation and when the full effect of the drug was realized. It may also be helpful to examine modeling approaches to the evaluation of such incomplete data sets.

The results of a clinical trial should be assessed not only for the subset of patients who completed the study, but also for the entire patient population as randomized or at least for all those with any on-study measurements. Several factors should be considered and compared for the treatment groups in analyzing the effects of dropouts: The reasons for the dropouts, the time to dropout, and the proportion of dropouts among treatment groups at various time points.

Procedures for dealing with missing data, e.g., use of estimated or derived data, should be described. Detailed explanation should be provided as to how such estimations or derivations were done and what underlying assumptions were made.

11.4.2.3 Interim Analyses and Data Monitoring

The process of examining and analyzing data accumulating in a clinical trial, either formally or informally, can introduce bias and/or increase type I error. Therefore, all interim analyses, formal or informal, preplanned or ad hoc, by any study participant, sponsor staff member, or data monitoring group should be described in full, even if the treatment groups were not identified. The need for statistical adjustment because of such analyses should be addressed. Any operating instructions or procedures used for such analyses should be described. The minutes of meetings of any data monitoring group and any data reports reviewed at those meetings, particularly a meeting that led to a change in the protocol or early termination of the study, may be helpful and should be provided in Appendix 16.1.9. Data monitoring without code-breaking should also be described, even if this kind of monitoring is considered to cause no increase in type I error.

11.4.2.4 Multicenter Studies

A multicenter study is a single study under a common protocol, involving several centers (e.g., clinics, practices, hospitals) where the data collected are intended to be analyzed as a whole (as opposed to a post-hoc decision to combine data or results from separate studies). Individual center results should be presented, however, where appropriate, e.g., when the centers have sufficient numbers of patients to make such analysis potentially valuable, the possibility of qualitative or quantitative treatment-by-center interaction should be explored. Any extreme or opposite results among centers should be noted and discussed, considering such possibilities as differences in study conduct, patient characteristics, or clinical settings. Treatment comparison should include analyses that allow for center differences with respect to response. If appropriate, demographic, baseline, and postbaseline data, as well as efficacy data, should be presented by center, even though the combined analysis is the primary one.

11.4.2.5 Multiple Comparisons/Multiplicity

False/positive findings increase in number as the number of significance tests (number of comparisons) performed increases. If there was more than one primary endpoint (outcome variable) or more than one analysis of particular endpoint, or if there were multiple treatment groups or subsets of the patient population being examined, the statistical analysis should reflect awareness of this and either explain the statistical adjustment used for type I error criteria or give reasons why it was considered unnecessary.

11.4.2.6 Use of an "Efficacy Subset" of Patients

Particular attention should be devoted to the effects of dropping patients with available data from analyses because of poor compliance, missed visits, ineligibility, or any other reason. As noted above, an analysis using all available data should be carried out for all studies intended to establish efficacy, even if it is not the analysis proposed as the primary analysis by the applicant. In general, it is advantageous to demonstrate robustness of the principal trial conclusions with respect to alternative choices of patient populations for analysis. Any substantial differences resulting from the choice of patient population for analysis should be the subject of explicit discussion.

11.4.2.7 Active-Control Studies Intended to Show Equivalence

If an active control study is intended to show equivalence (i.e., lack of a difference greater than a specified size) between the test drug/investigational product and the active control/comparator, the analysis should show the confidence interval for the comparison between the two agents for critical endpoints and the relation of that interval to the prespecified degree of inferiority that would be considered unacceptable. (See section 9.2 for important considerations when using the active control equivalence design.)

11.4.2.8 Examination of Subgroups

If the size of the study permits, important demographic or baseline value-defined subgroups should be examined for unusually large or small responses and the results presented, e.g., comparison of effects by age, sex, or race; by severity or prognostic groups; and by history of prior treatment with a drug of the same class. If these analyses were not carried out because the study was too small, it should be noted. These analyses are not intended to "salvage" an otherwise nonsupportive study but may suggest hypotheses worth examining in other studies or be helpful in refining labeling information, patient selection, or dose selection. Where there is a prior hypothesis of a differential effect in a particular subgroup, this hypothesis and its assessment should be part of the planned statistical analysis.

11.4.3 Tabulation of Individual Response Data

In addition to tables and graphs representing group data, individual response data and other relevant study information should be presented in tables. Some regulatory authorities may require all individual data in archival case report tabulations. What needs to be included in the report will vary from study to study and from one drug class to another, and the applicant must decide, if possible after consultation with the regulatory authority, what to include in an Appendix to the study report. The study report should indicate what material is included as an Appendix, what is in the more extensive archival case report tabulations, if required by the regulatory authority, and what is available on request.

For a controlled study in which critical efficacy measurements or assessments (e.g., blood or urine cultures, pulmonary function tests, angina frequency, or global evaluations) are repeated at intervals, the data listings accompanying the report should include, for each patient, a patient identifier, all measured or observed values of critical measurements, including baseline measurements, with notation of the time during the study (e.g., days on therapy and time of day, if relevant) when the measurements were made, the drug/dose at the time (if useful, given as milligram per kilogram (mg/kg)), any measurements of compliance, and any concomitant medications at the time of, or close to the time of, measurement or assessment. If, aside from repeated assessments, the study included some overall responder versus

VOL 61 ISS 138 JL 17 1996 UMI

nonresponder evaluation(s) (bacteriologic cure or failure), it should also be included. In addition to critical measurements, the tabulation should note whether the patient was included in the efficacy evaluation (and which evaluation, if more than one), provide patient compliance information, if collected, and a reference to the location of the case report form, if included. Critical baseline information such as age, sex, and weight; disease being treated (if more than one in study); and disease stage or severity is also helpful. The baseline values for critical measurements would ordinarily be included as zero time values for each efficacy measurement.

The tabulation described should usually be included in Appendix 16.2.6 of the study report, rather than in the more extensive case report tabulations required by some regulatory authorities, because it represents the basic efficacy data supporting summary tables. Such a thorough tabulation can be unwieldy for review purposes, however, and it is expected that more targeted displays will be developed as well. For example, if there are many measurements reported, tabulations of the most critical measurements for each patient (e.g., the blood pressure value at certain visits might be more important than others) will be useful in providing an overview of each individual's results in a study, with each patient's response summarized on a single line or small number of lines.

11.4.4 Drug Dose, Drug Concentration, and Relationships to Response

When the dose in each patient can vary, the actual doses received by patients should be shown and individual patient's doses should be tabulated. Although studies not designed as dose-response studies may have limited ability to contribute dose-response information, the available data should be examined for whatever information they can yield. In examining the dose response, it may be helpful to calculate dose as mg/kg body weight or milligram per square meter (mg/m2) body surface.

Drug concentration information, if available, should also be tabulated (Appendix 16.2.5), analyzed in pharmacokinetic terms, and, if possible, related to response.

Further guidance on the design and analysis of studies exploring dose-response or concentration response can be found in the ICH Guideline entitled "Dose-Response Information to Support Drug Registration."

11.4.5 Drug-Drug and Drug-Disease Interactions

Any apparent relationship between response and concomitant therapy and between response and past and/or concurrent illness should be described.

11.4.6 By-Patient Displays

While individual patient data ordinarily can be displayed in tabular listings, it has on occasion been helpful to construct individual patient profiles in other formats, such as graphic displays. These might, for example, show the value of a particular parameter(s) over time, the drug dose over the same period, and the times of particular events (e.g., an adverse event or change in concomitant therapy). Where group mean data represent the principal analyses, this kind of "case report extract" may offer little advantage; it may be helpful, however, if overall evaluation of individual responses is a critical part of the analysis.

11.4.7 Efficacy Conclusions

The important conclusions concerning efficacy should be concisely described, considering primary and secondary endpoints, prespecified and alternative statistical approaches, and results of exploratory analyses.

12. Safety Evaluation

Analysis of safety-related data can be considered at three levels. First, the extent of exposure (dose, duration, number of patients) should be examined to determine the degree to which safety can be assessed from the study. Second, the more common adverse events and laboratory test changes should be identified, classified in some reasonable way, compared for treatment groups, and analyzed, as appropriate, for factors that may affect the frequency of adverse reactions/events, such as time dependence, relation to demographic characteristics, relation to dose or drug concentration. Finally, serious adverse events and other significant adverse events should be identified, usually by close examination of patients who left the study prematurely because of an adverse event, whether or not identified as drug related, or who died.

The ICH Guideline entitled "Clinical Safety Data Management: Definitions and Standards for Expedited Reporting" defines serious adverse events as follows: "A serious adverse event (experience) or reaction is any untoward medical occurrence that at any dose: results in death, is life-threatening, requires inpatient hospitalization or prolongation of existing hospitalization, results in persistent or significant disability/incapacity, or is a congenital anomaly/birth defect."

For the purpose of this guideline, "other significant adverse events" are marked hematological and other laboratory abnormalities and any adverse events that led to an intervention, including withdrawal of drug treatment, dose reduction, or significant additional concomitant therapy.

In the following sections, three kinds of analysis and display are called for:

(1) Summarized data, often using tables and graphical presentations presented in the main body of the report;

(2) Listings of individual patient data; and

(3) Narrative statements of events of particular interest.

In all tabulations and analyses, events associated with both test drug and control treatment should be displayed.

12.1 Extent of Exposure

The extent of exposure to test drugs/investigational products (and to active control and placebo) should be characterized according to the number of patients exposed, the duration of exposure, and the dose to which they were exposed.

• *Duration*: Duration of exposure to any dose can be expressed as a median or mean, but it is also helpful to describe the number of patients exposed for specified periods of time, such as for 1 day or less, 2 days to 1 week, more than 1 week to 1 month, more than 1 month to 6 months. The numbers exposed to test drug(s)/investigational product(s) for the various durations should also be broken down into age, sex, and racial subgroups, and any other pertinent subgroups, such as groups defined by disease (if more than one is represented), disease severity, or concurrent illness.

• *Dose*: The mean or median dose used and the number of patients exposed to specified daily dose levels should be given; the daily dose levels used could be the maximum dose for each patient, the dose with longest exposure for each patient, or the mean daily dose. It is often useful to provide combined dose-duration information, such as the numbers exposed for a given duration (e.g., at least 1 month) to the most common dose, the highest dose, or the maximum recommended dose. In some cases, cumulative dose might be pertinent. Dosage may be given as the actual daily dose or on a mg/kg or mg/m² basis, as appropriate. The number of patients exposed to various doses should be broken down into age, sex, racial, and any other pertinent subgroups.

• *Drug concentration*: If available, drug concentration data (e.g., concentration at the time of an event, maximum plasma concentration, area under curve) may be helpful in individual patients for correlation with adverse events or changes in laboratory variables. (Appendix 16.2.5.)

It is assumed that all patients entered into treatment who received at least one dose of the treatment are included in the safety analysis; if not, an explanation should be provided.

12.2 Adverse Events

12.2.1 Brief Summary of Adverse Events

The overall adverse event experience in the study should be described in a brief narrative, supported by the following more detailed tabulations and analyses. In these tabulations and analyses, events associated with both the test drug and control treatment should be displayed.12.2.2 Display of Adverse Events

All adverse events occurring after initiation of study treatments (including events likely to be related to the underlying disease or likely to represent concomitant illness, unless there is a prior agreement with the regulatory authority to consider specified events as disease related) should be displayed in summary tables (section 14.3.1). The tables should include changes in vital signs and any laboratory changes that were considered serious adverse events or other significant adverse events.

In most cases, it will also be useful to identify in such tables "treatment emergent signs and symptoms" (TESS: events not seen at baseline and events that worsened even if present at baseline).

The tables should list each adverse event, the number of patients in each treatment group in whom the event occurred, and the rate of occurrence. When treatments are cyclical, e.g., cancer chemotherapy, it may also be helpful to list results separately for each cycle. Adverse events should be grouped by body system. Each event may then be divided into defined severity categories (e.g., mild, moderate, severe) if these were used. The tables may also divide the adverse events into those considered at least possibly related to drug use and those considered not related, or use another causality scheme (e.g., unrelated or possibly, probably, or definitely related). Even when such a causality assessment is used, the tables should include all adverse events, whether or not considered drug related, including events thought to represent intercurrent illnesses. Subsequent analyses of the study or of the overall safety data base may help to distinguish between adverse events that are, or are not, considered drug related. So that it is possible to analyze and evaluate the data in these tables, it is important to identify each patient having each adverse event. An example of such a tabular presentation is shown below.

ADVERSE EVENTS: NUMBER OBSERVED AND RATE, WITH PATIENT IDENTIFICATIONS

Treatment Group X N=50

	Mild		Moderate		Severe		Total		Total
	Related[1]	NR[1]	Related	NR	Related	NR	Related	NR	R+NR
Body System A									
Event 1	6(12%)	2(4%)	3(6%)	1(2%)	3(6%)	1(2%)	12(24%)	4(8%)	
	N11[2]	N21	N31	N41	N51	N61			
	N12	N22	N32		N52				
	N13		N33		N53				
	N14								
	N15								
	N16								
Event 2									

[1]NR = not related; related could be expanded, e.g., as definite, probable, possible.
[2]Patient identification number.

In addition to these complete tables provided in section 14.3.1, an additional summary table comparing treatment and control groups, without the patient identifying numbers and limited to relatively common adverse events (e.g., those in at least 1 percent of the treated group), should be provided in the body of the report.

In presenting adverse events, it is important both to display the original terms used by the investigator and to attempt to group related events (i.e., events that probably represent the same phenomenon), so that the true occurrence rate is not obscured. One way to do this is with a standard adverse reaction/events dictionary.

12.2.3 Analysis of Adverse Events

The basic display of adverse event rates described in section 12.2.2 (and located in section 14.3.1) of the report should be used to compare rates in treatment and control groups. For this analysis, it may be helpful to combine the event severity categories and the causality categories, leading to a simpler side-by-side comparison of treatment groups. In addition, although this is usually best done in an integrated analysis of safety, if study size and design permit, it may be useful to examine the more common adverse events that seem to be drug related for relationship to dosage and mg/kg or mg/m² dose; dose regimen; duration of treatment; total dose; demographic characteristics such as age, sex, race; other baseline features such as renal status, efficacy outcomes, and drug concentration. It may also be useful to examine time of onset and duration of adverse events. A variety of additional analyses may be suggested by the study results or by the pharmacology of the test drug/investigational product.

It is not intended that every adverse event be subjected to rigorous statistical evaluation. It may be apparent from initial display and inspection of the data that a significant relation to demographic or other baseline features is not present. If the studies are small and if the number of events is relatively small, it may be sufficient to limit analyses to a comparison of treatment and control.

Under certain circumstances, life table or similar analyses may be more informative than reporting of crude adverse event rates. When treatments are cyclical, e.g., cancer chemotherapy, it may also be helpful to analyze results separately for each cycle.

12.2.4 Listing of Adverse Events by Patient

All adverse events for each patient, including the same event on several occasions, should be listed in Appendix 16.2.7, giving both preferred term and the original term used by the investigator. The listing should be by investigator and by treatment group and should include:

- Patient identifier.
- Age, race, sex, weight (height, if relevant).
- Location of case report forms, if provided.
- The adverse event (preferred term, reported term).
- Duration of the adverse event.
- Severity (e.g., mild, moderate, severe).
- Seriousness (serious/nonserious).
- Action taken (none, dose reduced, treatment stopped, specific treatment instituted, and so forth).
- Outcome (e.g., CIOMS format).
- Causality assessment (e.g., related/not related). How this was determined should be described in the table or elsewhere.
- Date of onset or date of clinic visit at which the event was discovered.
- Timing of onset of the adverse event in relation to the last dose of the test drug/investigational product (when applicable).
- Study treatment at the time of event or the most recent study treatment taken.
- Test drug/investigational product dose in absolute amount, mg/kg or mg/m², at time of event.
- Drug concentration (if known).
- Duration of test drug/investigational product treatment.
- Concomitant treatment during study.

Any abbreviations and codes should be clearly explained at the beginning of the listing or, preferably, on each page.

12.3 Deaths, Other Serious Adverse Events, and Other Significant Adverse Events

Deaths, other serious adverse events, and other significant adverse events deserve special attention.

12.3.1 Listing of Deaths, Other Serious Adverse Events, and Other Significant Adverse Events

Listings, containing the same information as called for in section 12.2.4, should be provided for the following events.

12.3.1.1 Deaths

All deaths during the study, including the post-treatment followup period, and deaths that resulted from a process that began during the study, should be listed by patient in section 14.3.2.

12.3.1.2 Other Serious Adverse Events

All serious adverse events (other than death but including the serious adverse events temporally associated with or preceding the deaths) should be listed in section 14.3.2. The listing should include laboratory abnormalities, abnormal vital signs, and abnormal physical observations that were considered serious adverse events.

12.3.1.3 Other Significant Adverse Events

VOL 61 ISS 138 JL 17 1996 UMI

Marked hematological and other laboratory abnormalities (other than those meeting the definition of serious) and any events that led to an intervention, including withdrawal of test drug/investigational product treatment, dose reduction, or significant additional concomitant therapy, other than those reported as serious adverse events, should be listed in section 14.3.2.

12.3.2 Narratives of Deaths, Other Serious Adverse Events, and Certain Other Significant Adverse Events

There should be a brief narrative describing each death, other serious adverse event, and other significant adverse event that is judged to be of special interest because of clinical importance. These narratives can be placed either in the text of the report or in section 14.3.3, depending on their number. Events that were clearly unrelated to the test drug/investigational product may be omitted or described very briefly. In general, the narrative should describe the following: The nature and intensity of event; the clinical course leading up to event, with an indication of timing relevant to test drug/investigational product administration; relevant laboratory measurements; whether the drug was stopped, and when; countermeasures; post-mortem findings; investigator's opinion on causality and sponsor's opinion on causality, if appropriate.

In addition, the following information should be included:

- Patient identifier.
- Age and sex of patient; general clinical condition of patient, if appropriate.
- Disease being treated (this is not required if it is the same for all patients) with duration (of current episode) of illness.
- Relevant concomitant/previous illnesses with details of occurrence/ duration.
- Relevant concomitant/previous medication with details of dosage.
- Test drug/investigational product administered; drug dose, if this varied among patients; and length of time administered.

12.3.3 Analysis and Discussion of Deaths, Other Serious Adverse Events, and Other Significant Adverse Events

The significance of the deaths, other serious adverse events, and other significant adverse events leading to withdrawal, dose reduction, or institution of concomitant therapy should be assessed with respect to the safety of the test drug/investigational product. Particular attention should be paid to whether any of these events may represent a previously unsuspected important adverse effect of the test drug/investigational product. For serious adverse events that appear of particular importance, it maybe useful to use life table or similar analyses to show their relation to time on test drug/investigational product and to assess their risk over time.

12.4 Clinical Laboratory Evaluation

12.4.1 Listing of Individual Laboratory Measurements by Patient (Appendix 16.2.8) and Each Abnormal Laboratory Value (section 14.3.4)

When required by regulatory authorities, the results of all safety-related laboratory tests should be available in tabular listings, using a display similar to the following, where each row represents a patient visit at which a laboratory study was done, with patients grouped by investigator (if more than one) and treatment group, and columns include critical demographic data, drug dose data, and the results of the laboratory tests. Because not all tests can be displayed in a single table, they should be grouped logically (e.g., hematological tests, liver chemistries, electrolytes, urinalysis). Abnormal values should be identified, e.g., by underlining or bracketing. These listings should be submitted as part of the registration/ marketing application, when this is required, or may be available on request.

List of Laboratory Measurement

							Laboratory Tests			
Patient	Time	Age	Sex	Race	Weight	Dose	SGOT	SGPT	AP	X
#1	T0	70	M	W	70 kg	400 mg	V1†	V5	V9	
	T1						V2	V6	V10	
	T2						V3	V7	V11	
	T3						V4	V8	V12	
#2	T10	66	F	B	50 kg	300 mg	V13	V16	V19	
	T21						V14	V17	V20	
	T32						V15	V18	V21	

† Vn = value of particular test

For all regulatory authorities, there should be a by-patient listing of all abnormal laboratory values in section 14.3.4, using the format described above. For laboratory abnormalities of special interest (abnormal laboratory values of potential clinical importance), it may also be useful to provide additional data, such as normal values before and after the abnormal value, and values of related laboratory tests. In some cases, it may be desirable to exclude certain abnormal values from further analysis. For example, single, nonreplicated, small abnormalities of some tests (e.g., uric acid or electrolytes) or occasional low values of some tests (e.g., transaminase, alkaline phosphatase, or BUN) can probably be defined as clinically insignificant and excluded. Any such decisions should be clearly explained, however, and the complete list of values provided (or available to authorities on request) should identify every abnormal value.

12.4.2 Evaluation of Each Laboratory Parameter

The necessary evaluation of laboratory values will in part be determined by the results seen, but, in general, the following analyses should be provided. For each analysis, comparison of the treatment and control groups should be carried out, as appropriate and compatible with study size. In addition, normal laboratory ranges should be given for each analysis.

12.4.2.1 Laboratory Values Over Time

For each parameter at each time over the course of the study (e.g., at each visit) the following should be described: The group mean or median values, the range of values, and the number of patients with abnormal values or with abnormal values that are of a certain size (e.g., twice the upper limit of normal or five times the upper limit; choices should be explained). Graphs may be used.

12.4.2.2 Individual Patient Changes

An analysis of individual patient changes by treatment group should be given. A variety of approaches may be used, including:

I. "Shift tables" - These tables show the number of patients who are low, normal, or high at baseline and at selected time intervals.

II. Tables showing the number or fraction of patients who had a change in parameter of a predetermined size at selected time intervals. For example, for BUN, it might be decided that a change of more than 10 mg/dL BUN should be noted. For this parameter, the number of patients having a smaller or greater change would be shown for one or more visits, usually grouping patients separately depending on baseline BUN (normal or elevated). The possible advantage of this display, compared to the usual shift table, is that changes of a certain size are noted, even if the final value is not abnormal.

III. A graph comparing the initial value and the on-treatment values of a laboratory measurement for each patient by locating the point defined by the initial value on the abscissa and a subsequent value on the ordinate. If no changes occur, the point representing each patient will be located on the 45° line. A general shift to higher values will show a clustering of points above the 45° line. As this display usually shows only a single time point for a single treatment, interpretation requires a time series of these plots for treatment and control groups. Alternatively, the display could show baseline and most extreme on-treatment value. These displays identify outliers

readily (it is useful to include patient identifiers for the outliers).

12.4.2.3 Individual Clinically Significant Abnormalities

Clinically significant changes (defined by the applicant) should be discussed. A narrative of each patient whose laboratory abnormality was considered a serious adverse event and, in certain cases, considered an "other significant adverse event," should be provided under section 12.3.2 or 14.3.3. When toxicity grading scales are used (e.g., WHO, NCI), changes graded as severe should be discussed regardless of seriousness. An analysis of the clinically significant changes, together with a recapitulation of discontinuations due to laboratory measurements, should be provided for each parameter. The significance of the changes and likely relation to the treatment should be assessed, e.g., by analysis of such features as relationship to dose, relationship to drug concentration, disappearance on continued therapy, positive dechallenge, positive rechallenge, and the nature of concomitant therapy.

12.5 Vital Signs, Physical Findings, and Other Observations Related to Safety

Vital signs, other physical findings, and other observations related to safety should be analyzed and presented in a way similar to laboratory variables. If there is evidence of a drug effect, any dose-response or drug-concentration-response relationship or relationship to patient variables (e.g., disease, demographics, concomitant therapy) should be identified and the clinical relevance of the observation described. Particular attention should be given to changes not evaluated as efficacy variables and to those considered to be adverse events.

12.6 Safety Conclusions

The overall safety evaluation of the test drug(s)/investigational product(s) should be reviewed, with particular attention to events resulting in changes of dose or need for concomitant medication, serious adverse events, events resulting in withdrawal, and deaths. Any patients or patient groups at increased risk should be identified and particular attention should be paid to potentially vulnerable patients who may be present in small numbers, e.g., children, pregnant women, frail elderly, people with marked abnormalities of drug metabolism or excretion. The implication of the safety evaluation for the possible uses of the drug should be described.

13. Discussion and Overall Conclusions

The efficacy and safety results of the study and the relationship of risks and benefits should be briefly summarized and discussed, referring to the tables, figures, and sections above as needed. The presentation should not simply repeat the description of results nor introduce new results.

The discussion and conclusions should clearly identify any new or unexpected findings, comment on their significance, and discuss any potential problems such as inconsistencies between related measures. The clinical relevance and importance of the results should also be discussed in the light of other existing data. Any specific benefits or special precautions required for individual subjects or at-risk groups and any implications for the conduct of future studies should be identified. Alternatively, such discussions may be reserved for summaries of safety and efficacy referring to the entire dossier (integrated summaries).

14. Tables, Figures, and Graphs Referred to but not Included in the Text

Figures should be used to visually summarize the important results, or to clarify results that are not easily understood from tables.

Important demographic, efficacy, and safety data should be presented in summary figures or tables in the text of the report. However, if these become obtrusive because of size or number they should be presented here, cross-referenced to the text, along with supportive, or additional, figures, tables, or listings.

The following information may be presented in this section of the core clinical study report:

14.1 Demographic Data Summary figures and tables.

14.2 Efficacy Data Summary figures and tables.

14.3 Safety Data Summary figures and tables.

14.3.1 Displays of Adverse Events

14.3.2 Listings of Deaths, Other Serious and Significant Adverse Events

14.3.3 Narratives of Deaths, Other Serious and Certain Other Significant Adverse Events

14.3.4 Abnormal Laboratory Value Listing (each patient)

15. Reference List

A list of articles from the literature pertinent to the evaluation of the study should be provided. Copies of important publications should be attached in an Appendix (Appendices 16.1.11 and 16.1.12). References should be given in accordance with the internationally accepted standards of the 1979 Vancouver Declaration on "Uniform Requirements for Manuscripts Submitted to Biomedical Journals" or the system used in "Chemical Abstracts."

16. Appendices

This section should be prefaced by a full list of all Appendices available for the study report. Where permitted by the regulatory authority, some of the following Appendices need not be submitted with the report but need to be provided only on request.

The applicant should therefore clearly indicate those Appendices that are submitted with the report.

N.B.: In order to have Appendices available on request, they should be finalized by the time of filing of the submission.

16.1 Study Information

16.1.1 Protocol and protocol amendments.

16.1.2 Sample case report form (unique pages only).

16.1.3 List of IEC's or IRB's (plus the name of the committee chair if required by the regulatory authority) and representative written information for patient and sample consent forms.

16.1.4 List and description of investigators and other important participants in the study, including brief (one page) CV's or equivalent summaries of training and experience relevant to the performance of the clinical study.

16.1.5 Signatures of principal or coordinating investigator(s) or sponsor's responsible medical officer, depending on the regulatory authority's requirement.

16.1.6 Listing of patients receiving test drug(s)/investigational product(s) from specific batches, where more than one batch was used.

16.1.7 Randomization scheme and codes (patient identification and treatment assigned).

16.1.8 Audit certificates (if available).

16.1.9 Documentation of statistical methods.

16.1.10 Documentation of inter-laboratory standardization methods and quality assurance procedures if used.

16.1.11 Publications based on the study.

16.1.12 Important publications referenced in the report.

16.2 Patient Data Listings

16.2.1 Discontinued patients.

16.2.2 Protocol deviations.

16.2.3 Patients excluded from the efficacy analysis.

16.2.4 Demographic data.

16.2.5 Compliance and/or drug concentration data (if available).

16.2.6 Individual efficacy response data.

16.2.7 Adverse event listings (each patient).

16.2.8 Listing of individual laboratory measurements by patient, when required by regulatory authorities.

16.3 Case Report Forms (CRF's)

16.3.1 CRF's for deaths, other serious adverse events, and withdrawals for adverse events.

16.3.2 Other CRF's submitted.

16.4 Individual Patient Data Listings (U.S. Archival Listings)

BILLING CODE 4160-01-F

VOL 61 ISS 138 JL 17 1996 UMI

SYNOPSIS *ANNEX I*

Name of Sponsor/Company:	Individual Study Table Referring to Part of the Dossier	*(For National Authority Use only)*
Name of Finished Product:	Volume:	
Name of Active Ingredient:	Page:	
Title of Study:		
Investigators:		
Study centre(s):		
Publication (reference)		
Studied period (years): (date of first enrolment) (date of last completed)	Phase of development:	
Objectives:		
Methodology:		
Number of patients (planned and analysed):		
Diagnosis and main criteria for inclusion:		
Test product, dose and mode of administration, batch number:		
Duration of treatment:		
Reference therapy, dose and mode of administration, batch number		

Name of Sponsor/Company:	Individual Study Table Referring to Part of the Dossier	*(For National Authority Use Only)*
Name of Finished Product:	Volume:	
Name of Active Ingredient:	Page:	
Criteria for evaluation: Efficacy: Safety:		
Statistical methods:		

VOL
61
ISS
138
JL
17
1996
UMI

SUMMARY - CONCLUSIONS

EFFICACY RESULTS:

SAFETY RESULTS:

CONCLUSION:

Date of the report:

ANNEX II

PRINCIPAL OR COORDINATING INVESTIGATOR(S) SIGNATURE(S)

OR SPONSOR'S RESPONSIBLE MEDICAL OFFICER

STUDY TITLE: .....

STUDY AUTHOR(S): .....

I have read this report and confirm that to the best of my knowledge it accurately describes the conduct and results of the study

INVESTIGATOR:_____ **SIGNATURE(S)**_____

OR SPONSOR'S RESPONSIBLE MEDICAL OFFICER

AFFILIATION:_____ _____

_____

DATE:_____

ANNEX III a

STUDY DESIGN AND SCHEDULE OF ASSESSMENTS

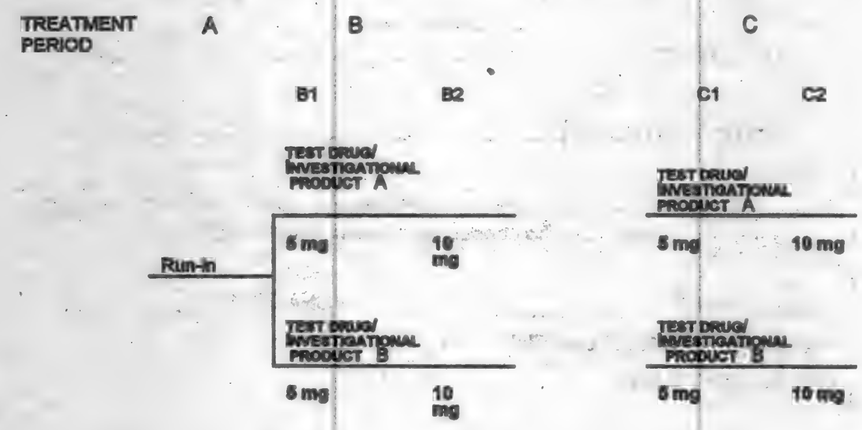

Weeks	-2(-3)	0	3	6	9	12
Visit	1	2	3	4	5	6
Exercise test 24 h	x[1]	x[2]	x	x	x	x
Medical history	x					
Physical examination	x					x
ECG	x					x
Lab. invest.	x					x
Adverse events		x	x	x	x	x

1 = 14-20 days after visit 1
2 = 1-7 days after the first exercise test

ANNEX III b

STUDY DESIGN AND SCHEDULE OF ASSESSMENTS

===> insert here : gui10tb.xls

Assessment	Screening	Run-in	Baseline	Treatment				Follow-up		
Study Week	-2	-1	0	1	2	3	4	5	6	8
Informed Consent	X									
History	X									
Physical Exam.	X									X
Effectiveness:										
primary variable	X	X	X	X	X	X	X	X	X	X
secondary variable	X	X	X	X		X			X	X
Safety:										
Adverse events	X	X	X	X	X	X	X	X	X	X
Lab. tests	X		X	X			X		X	X
Body weight	X		X						X	X

VOL 61 ISS 138 JL 17 1996 UMI

VOL 61 ISS 138 JL 17 1996 UMI

ANNEX IV a

Structure and Content of Clinical Study Reports

Structure and Content of Clinical Study Reports

ANNEX IV b

VOL 61 ISS 138 JL 17 1996 UMI

ANNEX V

STUDY #

(Data Set Identification)

LISTING OF PATIENTS WHO DISCONTINUED THERAPY

Centre.:

Treatment	Patient#	Sex	Age	Last Visit	Duration	Dose	Concomitant Medication	Reason for Discontin.
Test Drug/ investigational product								Adverse reaction • • • Therapy failure
Active Control/ Comparator								
Placebo								

The specific reaction leading to discontinuation

(Repeat for other centres)

ANNEX VI

STUDY #

(Data Set Identification)

Listing of Patients and Observations Excluded from Efficacy Analysis

Centre.:

Treatment	Patient #	Sex	Age	Observation Excluded	Reason(s)
Test Drug/Investigational Product					
Active Control/Comparator					
Placebo					

(Repeat for other centres)

Reference Tables

Summary:

VOL
61
ISS
138
JL
17
1996
UMI

ANNEX VII

STUDY #

(Data Set Identification)

Number of Patients Excluded from Efficacy Analysis

Test Drug/Investigational Product N =

	Week			
Reason	1	2	4	8
Total				

Similar tables should be prepared for the other treatment groups.

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ANNEX VIII

Guidance for Section 11.4.2—Statistical/Analytical Issues and Appendix 16.1.9

A. Statistical Considerations

Details of the statistical analysis performed on each primary efficacy variable should be presented in Appendix 16.1.9. Details reported should include at least the following information:

(a) The statistical model underlying the analysis. This should be presented precisely and completely, using references if necessary.

(b) A statement of the clinical claim tested in precise statistical terms, e.g., in terms of null and alternative hypotheses.

(c) The statistical methods applied to estimate effects, construct confidence intervals, etc. Literature references should be included where appropriate.

(d) The assumptions underlying the statistical methods. It should be shown, insofar as statistically reasonable, that the data satisfy crucial assumptions, especially when necessary to confirm the validity of an inference. When extensive statistical analyses have been performed by the applicant, it is essential to consider the extent to which the analyses were planned prior to the availability of data and, if they were not, how bias was avoided in choosing the particular analysis used as a basis for conclusions. This is particularly important in the case of any subgroup analyses, because if such analyses are not preplanned they will ordinarily not provide an adequate basis for definitive conclusions.

(*i*) In the event data transformation was performed, a rationale for the choice of data transformation along with interpretation of the estimates of treatment effects based on transformed data should be provided.

(*ii*) A discussion of the appropriateness of the choice of statistical procedure and the validity of statistical conclusions will guide the regulatory authority's statistical reviewer in determining whether reanalysis of data is needed.

(e) The test statistic, the sampling distribution of the test statistic under the null hypothesis, the value of the test statistic, significance level (i.e., p-value), and intermediate summary data, in a format that enables the regulatory authority's statistical reviewer to verify the results of the analysis quickly and easily. The p-values should be designated as one or two tailed. The rationale for using a one-tailed test should be provided.

For example, the documentation of a two-sample t-test should consist of the value of the t-statistic, the associated degrees of freedom, the p-value, the two sample sizes, mean and variance for each of the samples, and the pooled estimate of variance. The documentation of multicenter studies analyzed by analysis of variance techniques should include, at a minimum, an analysis of variance table with terms for centers, treatments, their interaction, error, and total. For crossover designs, the documentation should include information regarding sequences, patients within sequences, baselines at the start of each period, washouts and length of washouts, dropouts during each period, treatments, periods, treatment by period interaction, error, and total. For each source of variation, aside from the total, the table should contain the degrees of freedom, the sum of squares, the mean square, the appropriate F-test, the p-value, and the expected mean square.

Intermediate summary data should display the demographic data and response data, averaged or otherwise summarized, for each center-by-treatment combination (or other design characteristic such as sequence) at each observation time.

B. Format and Specifications for Submission of Data Requested by Regulatory Authority's Statistical Reviewers

In the report of each controlled clinical study, there should be data listings (tabulations) of patient data utilized by the sponsor for statistical analyses and tables supporting conclusions and major findings. These data listings are necessary for the regulatory authority's statistical review, and the sponsor may be asked to supply these patient data listings in a computer-readable form.

Dated: July 3, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–18000 Filed 7–16–96; 8:45 am]

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VOL
61

ISS
138

JL
17

1996

UMI

federal register

Wednesday
July 17, 1996

Part III

The President

Executive Order 13010—Critical Infrastructure Protection

VOL
61
ISS
138
JL
17
1996
UMI

Federal Register
Vol. 61, No. 138
Wednesday, July 17, 1996

Presidential Documents

Title 3—

The President

Executive Order 13010 of July 15, 1996

Critical Infrastructure Protection

Certain national infrastructures are so vital that their incapacity or destruction would have a debilitating impact on the defense or economic security of the United States. These critical infrastructures include telecommunications, electrical power systems, gas and oil storage and transportation, banking and finance, transportation, water supply systems, emergency services (including medical, police, fire, and rescue), and continuity of government. Threats to these critical infrastructures fall into two categories: physical threats to tangible property ("physical threats"), and threats of electronic, radio-frequency, or computer-based attacks on the information or communications components that control critical infrastructures ("cyber threats"). Because many of these critical infrastructures are owned and operated by the private sector, it is essential that the government and private sector work together to develop a strategy for protecting them and assuring their continued operation.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Establishment.* There is hereby established the President's Commission on Critical Infrastructure Protection ("Commission").

(a) *Chair.* A qualified individual from outside the Federal Government shall be appointed by the President to serve as Chair of the Commission. The Commission Chair shall be employed on a full-time basis.

(b) *Members.* The head of each of the following executive branch departments and agencies shall nominate not more than two full-time members of the Commission:

(i) Department of the Treasury;

(ii) Department of Justice;

(iii) Department of Defense;

(iv) Department of Commerce;

(v) Department of Transportation;

(vi) Department of Energy;

(vii) Central Intelligence Agency;

(viii) Federal Emergency Management Agency;

(ix) Federal Bureau of Investigation;

(x) National Security Agency.

One of the nominees of each agency may be an individual from outside the Federal Government who shall be employed by the agency on a full-time basis. Each nominee must be approved by the Steering Committee.

Sec. 2. *The Principals Committee.* The Commission shall report to the President through a Principals Committee ("Principals Committee"), which shall review any reports or recommendations before submission to the President. The Principals Committee shall comprise the:

(i) Secretary of the Treasury;

(ii) Secretary of Defense;

VOL
61
ISS
138
JL
17
1996
UMI

(iii) Attorney General;

(iv) Secretary of Commerce;

(v) Secretary of Transportation;

(vi) Secretary of Energy;

(vii) Director of Central Intelligence;

(viii) Director of the Office of Management and Budget;

(ix) Director of the Federal Emergency Management Agency;

(x) Assistant to the President for National Security Affairs;

(xi) Assistant to the Vice President for National Security Affairs.

Sec. 3. *The Steering Committee of the President's Commission on Critical Infrastructure Protection.* A Steering Committee ("Steering Committee") shall oversee the work of the Commission on behalf of the Principals Committee. The Steering Committee shall comprise four members appointed by the President. One of the members shall be the Chair of the Commission and one shall be an employee of the Executive Office of the President. The Steering Committee will receive regular reports on the progress of the Commission's work and approve the submission of reports to the Principals Committee.

Sec. 4. *Mission.* The Commission shall: (a) within 30 days of this order, produce a statement of its mission objectives, which will elaborate the general objectives set forth in this order, and a detailed schedule for addressing each mission objective, for approval by the Steering Committee;

(b) identify and consult with: (i) elements of the public and private sectors that conduct, support, or contribute to infrastructure assurance; (ii) owners and operators of the critical infrastructures; and (iii) other elements of the public and private sectors, including the Congress, that have an interest in critical infrastructure assurance issues and that may have differing perspectives on these issues;

(c) assess the scope and nature of the vulnerabilities of, and threats to, critical infrastructures;

(d) determine what legal and policy issues are raised by efforts to protect critical infrastructures and assess how these issues should be addressed;

(e) recommend a comprehensive national policy and implementation strategy for protecting critical infrastructures from physical and cyber threats and assuring their continued operation;

(f) propose any statutory or regulatory changes necessary to effect its recommendations; and

(g) produce reports and recommendations to the Steering Committee as they become available; it shall not limit itself to producing one final report.

Sec. 5. *Advisory Committee to the President's Commission on Critical Infrastructure Protection.* (a) The Commission shall receive advice from an advisory committee ("Advisory Committee") composed of no more than ten individuals appointed by the President from the private sector who are knowledgeable about critical infrastructures. The Advisory Committee shall advise the Commission on the subjects of the Commission's mission in whatever manner the Advisory Committee, the Commission Chair, and the Steering Committee deem appropriate.

(b) A Chair shall be designated by the President from among the members of the Advisory Committee.

(c) The Advisory Committee shall be established in compliance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The Department of Defense shall perform the functions of the President under the Federal Advisory Committee Act for the Advisory Committee, except that of reporting to the Congress, in accordance with the guidelines and procedures established by the Administrator of General Services.

Sec. 6. *Administration.* (a) All executive departments and agencies shall cooperate with the Commission and provide such assistance, information, and advice to the Commission as it may request, to the extent permitted by law.

(b) The Commission and the Advisory Committee may hold open and closed hearings, conduct inquiries, and establish subcommittees, as necessary.

(c) Members of the Advisory Committee shall serve without compensation for their work on the Advisory Committee. While engaged in the work of the Advisory Committee, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service.

(d) To the extent permitted by law, and subject to the availability of appropriations, the Department of Defense shall provide the Commission and the Advisory Committee with administrative services, staff, other support services, and such funds as may be necessary for the performance of its functions and shall reimburse the executive branch components that provide representatives to the Commission for the compensation of those representatives.

(e) In order to augment the expertise of the Commission, the Department of Defense may, at the Commission's request, contract for the services of nongovernmental consultants who may prepare analyses, reports, background papers, and other materials for consideration by the Commission. In addition, at the Commission's request, executive departments and agencies shall request that existing Federal advisory committees consider and provide advice on issues of critical infrastructure protection, to the extent permitted by law.

(f) The Commission, the Principals Committee, the Steering Committee, and the Advisory Committee shall terminate 1 year from the date of this order, unless extended by the President prior to that date.

Sec. 7. *Interim Coordinating Mission.* (a) While the Commission is conducting its analysis and until the President has an opportunity to consider and act on its recommendations, there is a need to increase coordination of existing infrastructure protection efforts in order to better address, and prevent, crises that would have a debilitating regional or national impact. There is hereby established an Infrastructure Protection Task Force ("IPTF") within the Department of Justice, chaired by the Federal Bureau of Investigation, to undertake this interim coordinating mission.

(b) The IPTF will not supplant any existing programs or organizations.

(c) The Steering Committee shall oversee the work of the IPTF.

(d) The IPTF shall include at least one full-time member each from the Federal Bureau of Investigation, the Department of Defense, and the National Security Agency. It shall also receive part-time assistance from other executive branch departments and agencies. Members shall be designated by their departments or agencies on the basis of their expertise in the protection of critical infrastructures. IPTF members' compensation shall be paid by their parent agency or department.

(e) The IPTF's function is to identify and coordinate existing expertise, inside and outside of the Federal Government, to:

(i) provide, or facilitate and coordinate the provision of, expert guidance to critical infrastructures to detect, prevent, halt, or confine an attack and to recover and restore service;

(ii) issue threat and warning notices in the event advance information is obtained about a threat;

(iii) provide training and education on methods of reducing vulnerabilities and responding to attacks on critical infrastructures;

VOL
61
ISS
138
JL
17
1996
UMI

(iv) conduct after-action analysis to determine possible future threats, targets, or methods of attack; and

(v) coordinate with the pertinent law enforcement authorities during or after an attack to facilitate any resulting criminal investigation.

(f) All executive departments and agencies shall cooperate with the IPTF and provide such assistance, information, and advice as the IPTF may request, to the extent permitted by law.

(g) All executive departments and agencies shall share with the IPTF information about threats and warning of attacks, and about actual attacks on critical infrastructures, to the extent permitted by law.

(h) The IPTF shall terminate no later than 180 days after the termination of the Commission, unless extended by the President prior to that date.

Sec. 8. *General.* (a) This order is not intended to change any existing statutes or Executive orders.

(b) This order is not intended to create any right, benefit, trust, or responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

William J. Clinton

THE WHITE HOUSE,
July 15, 1996.

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Federal Register
Vol. 61, No. 138
Wednesday, July 17, 1996

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The United States Government Manual	523–5227
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FEDERAL REGISTER PAGES AND DATES, JULY

33825–34366	1
34367–34712	2
34713–35082	3
35083–35588	5
35589–35914	8
35915–36276	9
36277–36492	10
36493–36608	11
36609–36808	12
36809–36988	15
36989–37198	16
37199–37350	17

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR	
Proclamations:	
6907	35083
6908	35587
Executive Orders:	
EO 13010	37347
Administrative Orders:	
Presidential Determinations:	
No. 96–34 of June 26, 1996	36493
No. 96–35 of June 26, 1996	36495
No. 96–36 of June 28, 1996	35075
No. 96–37 of June 29, 1996	36989
No. 96–38 of June 29, 1996	36991
4 CFR	
28	36809
29	36809
5 CFR	
530	34713
531	34713
532	36609
534	34713
550	34713
575	34713
581	34713
582	34713
630	34713
734	35068
1001	36993
1660	36610
2634	35589
3201	35915
Ch. XXIII	35085
Ch. XXXV	36993
Ch. LXV	36246
Proposed Rules:	
890	35973
7 CFR	
16	37199
29	37316
58	35589
301	35102, 35107, 36811, 36812
400	34367
729	36997
868	34714
946	35109
948	36813
958	35592
989	36814
997	35594
998	35594
1106	35596
1230	35597
1493	33825
1910	35916
1924	35916
1941	35916
1943	35916
1945	35916
1951	35916
1955	35916
1962	35916
1965	35916
1980	35916
Proposed Rules:	
210	35152
220	35152
225	35152
226	35152
300	34379
301	36016
319	34379
868	35687
956	36827
1240	34385
1280	35982
8 CFR	
103	35597
212	36610
214	35934
217	35596
301	35111
Proposed Rules:	
207	35984
208	35984
9 CFR	
92	36816
112	33840
113	33840
201	36277, 36279
Proposed Rules:	
1	34386
3	34386, 34389
11	34747
92	36520
93	36520
94	35987, 36520
95	36520
96	36520
98	36520
301	35990
304	35990
308	35990
318	35992
319	35157
320	35990
381	35157, 35990
391	34747
10 CFR	
53	35935
110	35600
205	3511
420	35890
430	36974

VOL
61
ISS
138
JL
17
1996
UMI

450 35890
463 35114
784 36611
1003 35112
1010 35085
1021 36222

Proposed Rules:
34 37019
1021 35990

12 CFR
324 33842
367 35115
1750 35607

Proposed Rules:
32 037227
205 037229
207 33874
218 34749
220 33874
221 33874
250 34749
327 34751
614 037230
745 36663

14 CFR
1 34508
25 34716
29 ..... 33963, 36965
39 ..... 33874, 34368, 34718, 35122, 35126, 35127, 35936, 35938, 35940, 35942, 35944, 35948, 36620, 36622, 36817, 37199, 37202
61 34508
71 ..... 33843 33844, 33845, 34720, 34721, 34722, 34723, 35307, 36283, 36284, 36285, 36286, 36820, 37001, 37113, 37204, 37205
73 35623
91 ..... 34508, 36286
95 37206
97 ..... 35623, 35624, 35626
119 35628
121 ..... 34508, 34927, 35628, 37222
125 34508
135 ..... 34508, 34927, 35628
141 34508
142 34508
211 34724
213 34724

Proposed Rules:
25 35056
39 ..... 34767, 35691, 35693, 35695, 36307, 36308, 36310, 36564, 36667, 36669, 37019
71 ..... 34391, 34393, 34394, 34395, 34396, 34397, 34398, 34769, 35991, 36311, 36312, 36313, 36314, 36315, 36316, 36317, 36520, 37113, 37230, 37231
121 37144
125 37144
129 37144
135 37144

15 CFR
902 ..... 34570, 34930, 34966, 35145, 35548
923 36965

Proposed Rules:
30 36318
922 33876

16 CFR

Proposed Rules:
303 35992

17 CFR

Proposed Rules:
240 36521

19 CFR
10 33845
12 33845
102 33845
134 33845

21 CFR
14 36624
175 37208
176 37209
177 ..... 34370, 37210
178 33846
184 36287
452 34726
510 35949
520 34727
522 ..... 34727, 35129, 36290
529 34727
558 ..... 34727, 35949, 36291

Proposed Rules:
106 36154
107 36154

22 CFR
41 35626
126 35625
514 37002
606 36820

23 CFR
630 35629

24 CFR
0 36246
60 36462
200 36260
201 36260
202 ..... 36260, 36452
203 ..... 35024, 36260, 36452
206 ..... 35014, 36260
221 ..... 36260, 36452
233 36260
234 ..... 36260, 36452
280 36260
291 36260
570 36456
901 35633
941 35958

25 CFR
10 34371
211 35634
212 35634
700 35666

Proposed Rules:
5 36671
11 35158
12 35163
21 33876
45 34399
152 34400
171 35167
256 36829
290 37022

26 CFR

Proposed Rules:
1 ..... 35696, 36320
31 36320

27 CFR
18 37002
30 37002
53 37005
275 37005

Proposed Rules:
53 37022

28 CFR
42 34729

Proposed Rules:
17 36679
31 34770

29 CFR
1952 36824
2509 33847
2520 33847
2550 33847
Ch. XXVI 34002, 36626, 37316
Ch. XL 34002, 36626, 37316
4044 36968

Proposed Rules:
101 35172
102 35172
Ch. XIV 34405

30 CFR
56 36790
57 36790
256 34730

Proposed Rules:
948 37023

31 CFR
321 37196
356 37007
575 36627

32 CFR
706 ..... 35958, 36291, 36497

33 CFR
100 36232
110 35785
116 36786
117 ..... 36786, 37211
127 36629
157 36786
158 36629
164 35064
165 ..... 35130, 35132, 37211
179 36629
181 36786
183 36629
334 34732

Proposed Rules:
117 35702
154 34775
155 34775
167 35703

34 CFR

Proposed Rules:
75 37184
208 37184
231 37184
235 27184
369 27184
371 27184
373 27184
375 27184
376 27184
378 27184
380 27184
381 27184
385 27184
386 27184
387 27184
388 27184
389 27184
390 27184
396 27184
610 27184
612 27184
630 27184
637 27184
658 27184
660 27184
661 27184
669 27184

35 CFR
61 36497
123 36497

36 CFR
1 35133
13 35133
222 35959
223 35960

Proposed Rules:
1190 36688
1191 36688

37 CFR
2 36825
251 37213

38 CFR
1 33850
21 35629

Proposed Rules:
1 33878
17 37024

39 CFR
5 36498
7 36498
10 36498
20 36500
3001 37316

40 CFR
9 ..... 33851, 34202
52 ..... 36292, 36501, 36502, 37216
55 34202
63 ..... 34140, 36295
70 34733
71 34202
79 36506
80 ..... 35310, 35673, 35960
180 ..... 34739, 34741, 36298, 36299, 37218
257 34253
261 34252
271 34252
300 ..... 35137, 35962
425 35680

Proposed Rules:
51 ..... 35994, 36112
52 ..... 35998, 36004, 36320, 36534, 37030, 37232

55 36012
61 36326
63 ..... 36326, 36835
79 36535
80 34775
81 ..... 33879, 36004
90 34778
93 ..... 35994, 36112
136 36328
180 ..... 36329, 36331, 36689, 37233
185 37233
186 37233
260 33881
261 33881
262 33881
264 33881
268 33881
269 33881
271 33881
300 36858
425 35705
430 36835

41 CFR
201 35685

42 CFR
405 35307
413 37011
417 35307
431 35307
473 35307
498 35307

Proposed Rules:
410 34614
415 34614

43 CFR
3710 37116

Proposed Rules:
11 37031
4700 36333

44 CFR
62 36513
64 36514
65 ..... 33852, 33854
67 33856

Proposed Rules:
67 33882

45 CFR

Proposed Rules:
232 37236
235 37236

46 CFR
42 35963
76 35138
108 36786
110 35786
111 ..... 35927, 36608, 36786
112 35786
113 36786
161 36786
167 35138
514 35685

Proposed Rules:
10 ..... 36543, 36606
15 ..... 36543, 36606

47 CFR
Ch. I 35964
1 36629
20 33859
22 34375
24 33850
36 34375
61 ..... 36515, 36653
64 ..... 36629, 36653
66 36654
73 ..... 34368, 34743, 34744, 35139, 36302
90 34375

Proposed Rules:
Ch. I 34405
1 37241
73 ..... 34406, 34407, 34784, 34785, 35705, 37241
76 ..... 34406, 34409

48 CFR
231 36305

Proposed Rules:
401 37032
453 37032

49 CFR
1 34745
40 ..... 37015, 37222
192 ..... 35139, 36825
193 36825
195 36825
199 37222
219 37222
233 33871
235 33871
236 33871
382 37222
571 ..... 33891, 36516, 36655
575 36655
653 37222
654 37222
1150 36965
1300 35139
1305 35141

Proposed Rules:
1 33886
8 33886
192 ..... 34410, 34413
195 ..... 34410, 34413
393 36691
397 36016
571 ..... 36334, 36698

50 CFR
Ch. III 35543
246 35548
280 35548
281 35548
282 35548
298 35548
299 35548
600 37225
622 34930
625 34966
630 ..... 34746, 35971
638 34930
641 34930
642 34785
645 34930
646 34930
647 34930
648 ..... 34966, 35142
650 34966
651 34966
652 34966
653 34930
655 34966
657 34966
658 34930
659 34930
660 ..... 34570, 35143, 35144, 36662
661 34570
663 34570
669 34930
670 34930
679 ..... 34377, 36306, 37225, 37226
680 34570
681 ..... 34570, 35145
683 34570
685 34570
695 35548
697 34746

Proposed Rules:
17 ..... 36020, 36021, 36346, 37034
229 37035
642 34785
648 37241
679 ..... 35174, 36702, 37041

VOL 61 ISS 138 JL 17 1996 UMI

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cranberries grown in Massachusetts et al.; published 6-17-96
AGRICULTURE DEPARTMENT
Meat import limitations; CFR part removed; published 7-17-96
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Atlantic swordfish fishery; drift gillnet closure; published 7-9-96
COMMERCE DEPARTMENT
Travel and Tourism Administration
Agency termination; CFR chapter removed; published 6-17-96
ENVIRONMENTAL PROTECTION AGENCY
Superfund program:
National oil and hazardous substances contingency plan--
National priorities list update; published 6-17-96
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Video dialtone service--
Subsidiary accounting requirements concerning costs and revenues for local exchange carriers offering services; published 6-17-96
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food additives:
Adhesive coatings and components--
1,4-cyclohexanedicarboxylic acid; published 7-17-96
Paper and paperboard components--
Ammonium zirconium lactate-citrate; published 7-17-96
Polymers--
Polymethylsilsesquioxane; published 7-17-96
TRANSPORTATION DEPARTMENT
Omnibus Transportation Employee Testing Act of 1991:
Substance abuse professional; definition amendment; published 7-17-96
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Omnibus Transportation Employee Testing Act of 1991:
Substance abuse professional; definition amendment; published 7-17-96
TRANSPORTATION DEPARTMENT
Federal Highway Administration
Omnibus Transportation Employee Testing Act of 1991:
Substance abuse professional; definition amendment; published 7-17-96
TRANSPORTATION DEPARTMENT
Federal Railroad Administration
Omnibus Transportation Employee Testing Act of 1991:
Substance abuse professional; definition amendment; published 7-17-96
TRANSPORTATION DEPARTMENT
Federal Transit Administration
Omnibus Transportation Employee Testing Act of 1991:
Substance abuse professional; definition amendment; published 7-17-96
TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Omnibus Transportation Employee Testing Act of 1991:
Substance abuse professional; definition amendment; published 7-17-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
Arizona-California citrus; comments due by 7-22-96; published 6-20-96
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Sea turtle conservation; shrimp trawling requirements--
Additional turtle excluder device requirements within statistical zones; comments due by 7-24-96; published 6-27-96
Fishery conservation and management:
Limited access management of Federal fisheries in and off of Alaska; comments due by 7-22-96; published 5-25-96
ENVIRONMENTAL PROTECTION AGENCY
Acquisition regulations:
Source selection process; comments due by 7-22-96; published 5-21-96
Air pollutants, hazardous; national emission standards:
Radon emissions from phosphogypsum stacks; comment period reopening; comments due by 7-26-96; published 7-10-96
Air programs:
Gasoline retailers and wholesale purchaser-consumer fuel dispensing rate requirements
Implementation date delayed; comments due by 7-26-96; published 6-26-96
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 7-24-96; published 6-24-96
New Mexico; comments due by 7-24-96; published 6-24-96
Puerto Rico; comments due by 7-22-96; published 6-21-96
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Tennessee; comments due by 7-24-96; published 6-24-96
Clean Air Act:
State operating permits programs--
Michigan; comments due by 7-24-96; published 5-24-96
Hazardous waste program authorizations:
Nebraska; comments due by 7-25-96; published 6-25-96
Nevada; comments due by 7-24-96; published 6-24-96
Pesticide programs:
Registration modifications; notification procedures; comments due by 7-26-96; published 6-26-96
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Copper 8-quinolinolate; comments due by 7-26-96; published 6-26-96
Water programs:
Pollutants analysis test procedures; guidelines--
Oil and grease and total petroleum hydrocarbons; comment period reopening; comments due by 7-23-96; published 5-24-96
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Telecommunications Act of 1996; implementation--
Market entry barriers for small businesses; identification and elimination; comments due by 7-24-96; published 6-26-96
Radio broadcasting:
Grandfathered short-spaced FM stations; comments due by 7-22-96; published 6-27-96
Television broadcasting:
Cable television systems--
Major television markets; list; comments due by 7-22-96; published 6-10-96
GENERAL SERVICES ADMINISTRATION
Acquisition regulations:
Contract Appeals Board; procedure rules--
Automatic data processing equipment and services procurements; Board's jurisdiction eliminated; comments due by 7-24-96; published 6-24-96
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Biological products:
Placental/umbilical cord blood stem cell products intended for transplantation, etc.; draft document; comments due by 7-26-96; published 5-28-96
Human drugs:
Orally ingested drug products containing calcium, magnesium, and potassium (OTC)--
Labeling provisions; comments due by 7-22-96; published 4-22-96
Sodium content (OTC); labeling provisions; comments due by 7-22-96; published 4-22-96
INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Barton Springs salamander; comments due by 7-24-96; published 6-24-96
Fat three-ridge, etc. (seven freshwater mussels); comments due by 7-26-96; published 7-9-96
Hunting and fishing:
Open areas list additions; comments due by 7-22-96; published 6-21-96
Refuge-specific regulations; comments due by 7-24-96; published 6-24-96
INTERIOR DEPARTMENT
Minerals Management Service
Royalty management:
Federal leases; natural gas valuation regulations; amendments; comments due by 7-22-96; published 5-21-96
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Ohio; comments due by 7-24-96; published 6-24-96
JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION
Fellowship program requirements; comments due by 7-22-96; published 5-22-96
LABOR DEPARTMENT
Federal Contract Compliance Programs Office
Government contractors, affirmative action requirementas; EO 11246 implementation; comments due by 7-22-96; published 5-21-96
MEXICO AND UNITED STATES, INTERNATIONAL BOUNDARY AND WATER COMMISSION
International Boundary and Water Commission, United States and Mexico
Freedom of Information Act; implementation:
Fee schedule; comments due by 7-22-96; published 5-20-96
NUCLEAR REGULATORY COMMISSION
Nuclear power reactors, standard design certifications; and combined licenses; early site permits:
Boiling water reactors--
System 80+ standard designs; certification approval; comments due by 7-23-96; published 5-30-96
PERSONNEL MANAGEMENT OFFICE
Acquisition regulations:
Health benefits, Federal employees; Truth in Negotiations Act; amendments; comments due by 7-24-96; published 5-24-96
POSTAL SERVICE
Domestic Mail Manual:
Mail classification reform; implementation standards; comments due by 7-24-96; published 6-24-96
TRANSPORTATION DEPARTMENT
Coast Guard
International Conventions on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 78):
Licensing, documentation, and manning; comments due by 7-24-96; published 3-26-96
International Conventions on Standards of Training, Certification and Watchkeeping for Seafarers
Meetings; comments due by 7-24-96; published 4-8-96
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operation:
Radar beacon system and Mode S transponder requirements in national airspace system; comments due by 7-22-96; published 5-23-96
Correction; comments due by 7-22-96; published 6-17-96
Airworthiness directives:
Airbus; comments due by 7-22-96; published 6-13-96
TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Warning devices--
Fusees or flares placed on roadway behind disabled buses and trucks; comments due by 7-25-96; published 5-10-96
TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous materials transportation--
Oxygen generators as cargo in passenger aircraft; temporary prohibition; comments due by 7-23-96; published 5-24-96
TREASURY DEPARTMENT
Internal Revenue Service
Income taxes, etc.:
Tax withholding on certain U.S. source income paid to foreign persons and related collection, refunds, and credits, etc.; comments due by 7-22-96; published 4-22-96
VETERANS AFFAIRS DEPARTMENT
Medical benefits:
Alcohol and drug dependence disorders; contract program; eligibility criteria; comments due by 7-22-96; published 5-21-96

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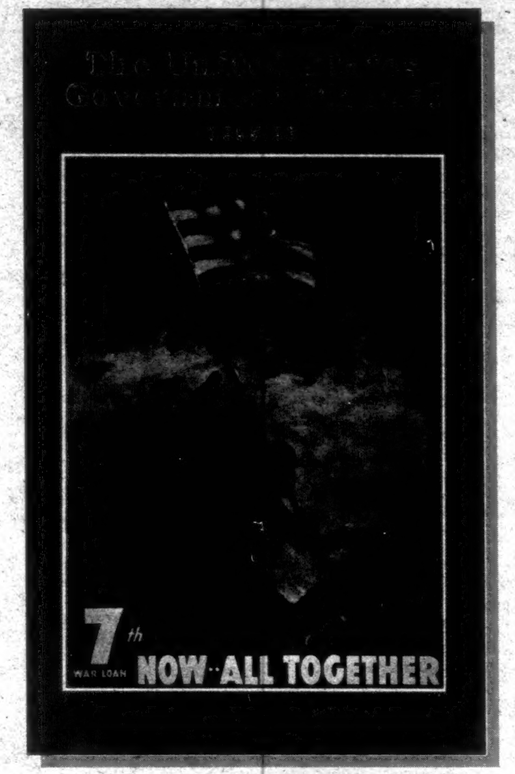

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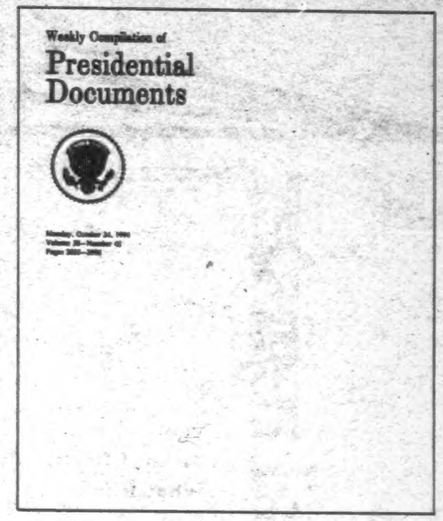

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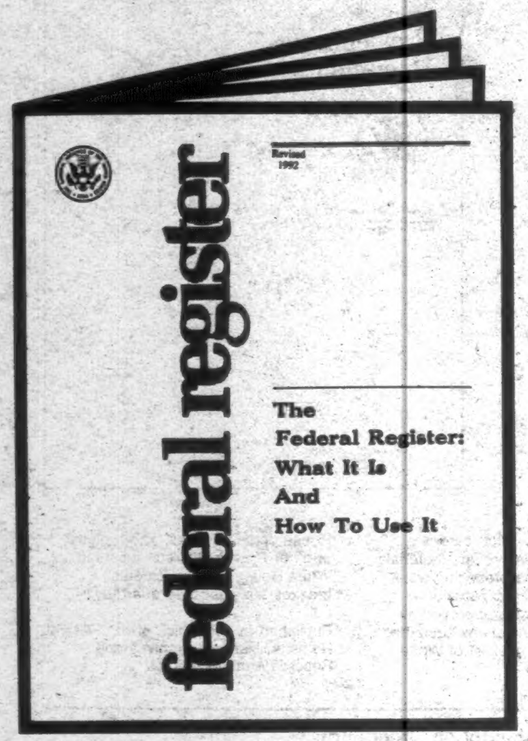

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